

Neutral Citation Number: [2013] EWHC 2232 (Ch)

Case No: HC11C01798

**IN THE HIGH COURT OF JUSTICE**  
**CHANCERY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 31/07/2013

**Before:**

**THE HONOURABLE MR JUSTICE PETER SMITH**

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**Between:**

(1) Stephen Hemsley	
(2) RBC Trustees (CI) Ltd	<b><u>Claimants</u></b>
- and -	
(1) Peter Graham (A Bankrupt)	
(2) Mohammad Ishaq Malik	
(3) Sunil Bance	
(4) Antonia Graham/Jones	
(5) Wey Bridging Ltd (In Liquidation)	<b><u>Defendants</u></b>

**And Between**

HC11C03698

(1) Stephen Hemsley	
(2) RBC Trustees (CI) Ltd	<b><u>Claimants</u></b>
- and -	
(1) Christopher Arnold	
(2) Sara Meurisse	<b><u>Defendants</u></b>

**And Between**

HC10C03997

(1) Capital For Enterprise Fund LP	
(2) Maven Capital Partners UK LLP	

**(3) CFE A General Partner Ltd**  
**- and -**  
**(1) Mohammad Ishaq Malik**  
**and 11 others**

**Claimants**

**Defendants**

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**John Taylor** (instructed by **Sherrards**) for the **Hemsley Claimants**  
**Peter Graham** the **First Defendant** acting in person  
**Gabriel Fadipe** (instructed by **Rylatt Chubb**) for the **Third Defendant**

Hearing dates:

8, 17 February; 5, 6, 9 March; 2, 3, 4 July; 1, 29 October; 1, 2, 5, 6, 7, 8, 9, 12, 16, 22, 23, 27, 30  
November; 3, 4, 5, 6, 7, 10, 12, 13, 14, 17, 18, 19, 20 December 2012  
5 & 6 February 2013

## **Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MR JUSTICE PETER SMITH

### **INDEX**

INTRODUCTION

BRIEF OUTLINE OF CLAIM

NATURE OF THE FRAUDS

THE CLAIMANTS

### **PARAGRAPH**

1

8

20

21

**THE ACTIVE DEFENDANTS**

MR GRAHAM	23
MR BANCE	33
MR MALIK	38
MR ARNOLD	40
THE CLAIMS	41
THE RELEVANT DOCUMENTS	44
THE REPRESENTATIONS	49
FALSITIES	53
NATWEST DRAW DOWNS	61
FALSE DRAW DOWN NOTICES	62
DRAW DOWNS 1-3 DONKIN, SKEENE AND MEURISSE	64
CONTINUATION OF THE FRAUD	73
DRAW DOWN FOR DARRYL STONE, DISGUISED PAYMENT TO MR ARNOLD	76
DRAW DOWN 5: HYDE PARK MANAGEMENT	81
DRAW DOWN 6: FRANCIS NII ANNAN	82
CROZIER HADLEY VALUATIONS	86
OTHER DISHONEST ACTIVITIES	90
THE QUEEN'S GATE TERRACE PREMISES	92
3 THE MEWS COBHAM	105
MORTGAGE FRAUD 188 HARLEY SHUTE ROAD ST LEONARDS ON SEA	112
THE FALSE CERTIFICATE	114
SIGNIFICANCE OF THESE EARLIER TRANSACTIONS	122
THE CLAIMANTS BECOME INVOLVED	123
INVESTMENTS	129
DOCUMENTATION	130
THE E&Y REPORT	134
<b><u>INDEX</u></b>	<b><u>PARAGRAPH</u></b>
THE STALLARDS SCHEDULE	140
POSITION AS AT THE END OF 2008	144
MR GRAHAM'S EVIDENCE ON THE DOCUMENTS	148
CROSS FIRING	160

DEFENDANTS' KNOWLEDGE OF AND INVOLVEMENT IN CROSS FIRING – SPINS	173
FABRICATED LOAN AGREEMENTS	199
BREACH OF BANKING COVENANT	214
LOAN AGREEMENTS 2009	236
MR BANCE'S ROLE AT THIS TIME	245
THE MARCH SHARE PURCHASE	247
SHARE IN THE PROCEEDS OF SALE OF MR ARNOLD'S SHARES	254
EVENTS LEADING TO JUNE 2009 SPA	257
JUNE 2009	266
JUNE 2009 INVESTMENT AGREEMENT	275
EVENTS SUBSEQUENT TO JUNE INVESTMENT AGREEMENT	284
DECEMBER 2009 FURTHER INVESTMENT	293
USE OF CLAIMANTS' MONIES	298
DECEPTION OF AUDITORS	304
FEBRUARY – SEPTEMBER 2010	319
AIMS INTERNATIONAL LTD	331
THE COLLAPSE OF WBL	335
LATE MOVEMENT OF FUNDS	339
INSOLVENCY	354
FURTHER LIES BY MR BANCE	358
SHORT SUMMARY	366
NET AMOUNT RECEIVED BY MS MEURISSE AND MR ARNOLD FROM WBL	371
AMOUNTS RECEIVED BY MR & MRS MALIK FROM WBL, PRISM, HAMMONDS AND MALLARDS	374
AMOUNTS RECEIVED BY MR & MRS BANCE FROM WBL, PRISM, HAMMONDS AND MALLARDS	375
<b><u>INDEX</u></b>	<b><u>PARAGRAPH</u></b>
CONCLUSION	377
MR GRAHAM'S CLOSING CHALLENGE TO THE ABOVE CONCLUSION	381
MR BANCE'S CLOSINGS	393

MR MALIK	404
MR ARNOLD	405
CONCLUSION ON DEFENDANTS' CLOSING	408
DECEIT	410
CONSPIRACY	418
MISREPRESENTATION ACT 1967	421
BREACH OF WARRANTY	422
REMEDIES	423

## **APPENDICES**

SCHEDULE C

SCHEDULE OF COMPANIES

FLOW OF FUNDS CHART

SCHEDULE COMPARING LOANS OUTSTANDING

**Peter Smith J:**

### **INTRODUCTION**

1. This judgment arises out of the trial of the 3 actions above mentioned.
2. The main Defendants are Peter Graham ("Mr Graham"), Mohammad Ishaq Malik ("Mr Malik"), Sunil Bance ("Mr Bance") and Christopher Arnold ("Mr Arnold").

3. Those Defendants at material times were officers of Wey Bridging Ltd (in liquidation) the Fifth Defendant (“WBL”) save Mr Bance was also an accountant employed by WBL to prepare its 2006 annual accounts.
4. Numerous other Defendants are to be found in the 3<sup>rd</sup> action (HC10C03997). They feature in the story but not as significantly as first appeared for reasons which will appear clearly from this judgment.
5. Antonia Graham/Jones is as I understand the former wife of Mr Graham (her status is not clear). Sarah Meurisse is the partner of Mr Arnold.
6. Although those two featured prominently in the litigation initially they took no part in the trial because the Claimants compromised the claims against them shortly before its commencement.
7. The 3<sup>rd</sup> action (“the Maven Claim”) also took a surprising turn. After the openings were concluded but before any evidence was led Counsel for the Maven Claimants (Mr Orlando Fraser) announced terms of settlement as between them and all Defendants. They promptly then departed from any further participation in the case. This was slightly disconcerting to Mr Taylor (now Mr Taylor QC) who appears for the Claimants in the first and second actions (“the Hemsley Claimants”). The different Claimants had clearly divided the tasks of opening and presenting this complex case between them. With the Maven Claimants unexpected and unheralded departure the entirety of the tasks thereafter fell on Mr Taylor. He discharged that increased task with great skill and it is a tribute to his performance in this case that I was able to unravel the complex story that this trial presented.

#### BRIEF OUTLINE OF CLAIM

8. The Hemsley Claimants contend that they were induced to lend money to WBL and to acquire shares in it as a result of fraudulent misrepresentations made to them to induce such lending and share acquisition and as a result of a conspiracy between the main Defendants identified above to defraud them.
9. WBL is in liquidation and therefore took no regular role in the litigation except the liquidator appeared by Counsel from time to time.
10. The total amount advanced by the Hemsley Claimants in loans and share purchases between January 2009 and February 2010 to WBL is £4,625,000.
11. The Claimants contend that WBL was represented to them by the active Defendants as being an excellent company in the secondary loan market providing short term funds to businesses or latterly funds to enable (for example) borrowers to acquire property by auction and funding the deposits necessary on the acceptance of a successful bid.
12. In fact the Claimants contend that the operation of WBL was entirely bogus and that far from being an excellent company the transactions which underpinned this business were largely bogus and dishonest. It is claimed by the Claimants that the active Defendants were all involved in masquerading the true bogus nature of the business by virtue of “*cross-firing*” payments. This involved money being transferred out of WBL to the bank accounts of the Defendants and their companies usually with a false narrative to give the impression that a genuine loan was being made. On the same day

or shortly thereafter this money would then be paid back to WBL with a false narrative in the bank statement to give the impression a different loan had been repaid. The purpose of this was to give the false impression that loans were being made and loans were being repaid in turn.

13. Similarly WBL's loan book was fabricated using the same transactions in a summary form.
14. Of the active Defendants only Mr Graham and Mr Bance took part in the trial. Mr Malik absented himself on the first day. The reason he gave was that because he was under criminal investigation he had been advised by his lawyers that the civil trial should not proceed and that it would be dangerous for him to participate in the civil trial at all. This is of course quite wrong. Civil cases (with the necessary proper protection) regularly take place before a criminal trial in respect of the same allegations see for example *Attorney General of Zambia v Meer Care & Desai [2007] EWHC 952 (Ch)* where ring fencing orders were made to protect the giving of evidence in the civil proceedings in advance of potential criminal proceedings. Further the provisions of the Fraud Act 2006 (section 13) provide that any answers given in civil proceedings relating to property as defined is not admissible as evidence against him in subsequent criminal proceedings.
15. It follows that Mr Malik's absence in my view had no justification. As the evidence deployed it is plain in my view why he absented himself. He was plainly guilty of the fraud and conspiracy allegations made against him by the Claimants.
16. One unfortunate aspect of Mr Malik's absence was the fact that he was not there to challenge his role in the conspiracy and fraud as alleged by the Claimants. Nor was he able of course to challenge the role the other Defendants had in the fraud. Both Mr Graham and Mr Bance exploited that by (whilst ultimately accepting that the Claimants had been defrauded) saying that they had no role in the defrauding or the conspiracy and that it was just as big a surprise to them as it was the Claimants. In effect they blamed everything on Mr Malik. He at all material times was the Finance Director and implemented a large amount of the questionable transactions (but by no means all of them). His absence therefore enabled him to be an easy target.
17. I am quite satisfied as this judgment will show that this sole blaming of Mr Malik was entirely bogus and was merely a tactical ploy indulged in by Mr Graham and Mr Bance in the hope that I would be deceived into believing it was all done by him.
18. I was not deceived as I shall set out in this judgment.
19. Mr Arnold was away from the trial (but had the benefit of transcripts) for personal reasons which need not be gone in to in this judgment. He had already obtained an adjournment in March to address those personal problems but still did not attend the trial of this action. However I am quite satisfied as I shall set out in this judgment that the claim brought by the Claimants is established against him as well.

#### NATURE OF THE FRAUDS

20. In order to understand the wide ranging nature of the fraud and conspiracy it is necessary to set out the areas where the Claimants contended that fabricated and false documents were produced. They are as follows:-

- (1) Fabricated documents were being provided to WBL's auditors in 2007 Ernst & Young ("E&Y").
- (2) Substantial cross firing as described above was operated throughout the entirety of WBL's existence during the period of this action.
- (3) The contemporaneous documents that were discovered (mostly on Mr Graham's computer) demonstrate the extent of the fraudulent documentation being created (whatever it is). For example as part of the scheme numerous draw down notices were provided to NatWest under a lending facility it gave WBL which falsely stated that monies were to be used to make loans to borrowers when in fact there were no such borrowers and the monies were simply paid to one of the Defendants or used to fund cross firing payments or to pay off HMRC and other creditors.
- (4) To add to the deception fabricated loan agreements were produced.
- (5) A false Loan Book was presented to Mr Hemsley and Mr Wray supporting other misrepresentations such as the representation that WBL had no bad debts and no loans in arrears. Contemporaneous documents obtained showed that WBL had dozens of bad debts and delinquent borrowers specifically those identified in a document called "*bad debt list*".
- (6) When it came to buying Mr Arnold's shares in WBL it was falsely represented that Mr Arnold was not involved with the management of WBL when in fact he was. As a result of this statement that he had little management role it was agreed by Mr Hemsley when he acquired the shares for £1,500,000 in March 2009 that Mr Arnold would give no warranties save as to title. The contemporary documents showed that upon sale of the shares Mr Arnold shared a large part of the share proceeds with Ms Jones.
- (7) Monthly management accounts were presented to Mr Hemsley and Mr Wray when they became board members following their loans and share acquisitions. These the Claimants contend were works of fiction and the evidence showed that they were indeed works of fiction. The live Defendants accepted that all the loans in the monthly accounts for 2009 were all false but blamed Mr Malik. They were produced by Mr Malik but the Claimants contend they were also "*finessed*" by both Mr Graham and Mr Bance and that they in any event knew that these were works of fiction.
- (8) Following the investments by Mr Hemsley and the second Claimants RBC Trustees (CI) Ltd ("RBC") substantial withdrawals were made from WBL for the benefit of the Defendants and their companies. Thus for example within 5 weeks of the initial £2,000,000 made in January 2009 over £1,400,000 had been made out in payments to the Defendants or their companies. A similar pattern occurred in January 2010 when further investments had been made.
- (9) The Claimants were led into believing that WBL was branching out in to a new area of business called Client Credit which was meant to make loans to solicitors firms to fund litigation whereas the Claimants contend no single legitimate loan has been found but instead the monies were used to fund other businesses of the active Defendants (save Mr Arnold).



(10) Funds that were represented as being acquired to fund the expansion of the business were simply used to make substantial payments to the active Defendants and Ms Meurisse and Ms Jones.

(11) The Claimants contend that the fraud is well illustrated by the board meeting of 14<sup>th</sup> October 2010. Management accounts were presented to the Claimants by Mr Graham, Mr Malik and Mr Bance which showed that WBL had 109 outstanding loans worth £15,900,000 the earliest of which dated from 3<sup>rd</sup> April 2010 with 19 loans worth £2,762,000 having been made in September 2010 alone. These management accounts the Claimants contend were entirely false and WBL collapsed into insolvent administration on 25<sup>th</sup> November 2010.

(12) Attached is a Flow Chart showing where the monies the Claimants provided ultimately ended up. Ignoring the Maven Claimants it will be seen a vast amount ended up in the control of Mr Graham and/or Ms Jones and companies under their control.

### THE CLAIMANTS

21. Mr Hemsley is a successful business man. After qualifying as a chartered accountant he worked as an Investment Company Director for venture capitalist 3i before moving to Domino's Pizza (UK & IRL) Plc where he rose from Chief Financial Officer in 1998 to the Chief Executive Officer in 2001 and is now non executive chairman.
22. The second Claimant RBC ("Mr Wray") is the trustee of the Edna Wray Accumulation and Maintenance Trust the beneficiaries of which are his children. He too is a successful businessman and an investor and has been on the board of more than a hundred companies. He is the chairman of Saracens Rugby Club and non executive director of Domino's Pizza at all material times he was the investment advisor to RBC and as a result of representations made to him he advised the trust to invest in WBL. It is fair to say that his decision to make that recommendation was based on the review conducted on his behalf by Kamal Shah a chartered accountant who was Mr Wray's Executive Assistant and he evaluated WBL's business and reported back to Mr Wray.

### THE ACTIVE DEFENDANTS

#### MR GRAHAM

23. Mr Graham is a self educated entrepreneur. He has always worked for himself starting small businesses and selling them to managers and then moving on. In that vein he has owned several wine bars and restaurants, a commercial cleaning company, a snack bar and a childrens' home. The last of his ventures was WBL. He says that prior to the business failure in WBL he had in 18 years never had a business failure.
24. As a result of the collapse of WBL he has lost everything (subject to what the Claimants say about hidden assets). He made himself bankrupt but that might have been a tactical move in the incorrect belief that would put an end to all the litigation against him.
25. Mr Graham details the formation of WBL with Mr Arnold and himself in 2006 and then a decision it is said to raise money to expand it.

26. In his witness statement (paragraphs 58-160) Mr Graham identifies a number of emails which he suggests that WBL was doing legitimate bridging finance with a large number of solicitors and introducers. The vast majority of these emails relate to transactions in 2007 and 2008 and therefore predate the complaints made in this action. The evidence of the emails does not in my view show cogent evidence of transactions. It falls apart when compared with the Claimants' expert report of Moira Hindson dated 10<sup>th</sup> April 2012 to which I shall make reference below. He goes into extensive detail about how the Claimants became involved in WBL and his relationship with Mr Hemsley. He is clearly a very strong willed individual. This was demonstrated graphically in his evidence before me. I do not think for one minute that working with Mr Hemsley would be an easy exercise and probably could be unpleasant if one stood up to him. However not standing up to people like Mr Hemsley is invariably fatal. It is also clear on the unchallenged evidence of Mr Graham that Mr Hemsley with Mr Wray wanted to ensure that they had some form of direct or indirect control of WBL at board level. Mr Graham complains about this effectively losing his company. Mr Arnold of course went out with the sale of his shares in early 2009. It is clear that the company structure would have to change once this large amount of money was invested by the Claimants. None of this is relevant to the claims. I say that because the issue is what representations were made to the Claimants to invest in WBL by acquiring shares or providing loans. The second question is did the Claimants rely on those representations? The third question is, were those representations made innocently, negligently or fraudulently? In the action the only live issue is whether or not the active Defendants made fraudulent representations. In the case of investment in WBL they are in effect being accused of making fraudulent representations on its behalf to induce loans. As regards the sale of the shares by Mr Arnold the claim is they and Mr Arnold fraudulently represented the financial position of WBL to induce the sale of the shares.
27. Those are the major points which the Claimants need to establish. As an alternative they have a fall back claim that all of the active Defendants conspired to defraud them. That is very much a fall back and really adds nothing greatly to the claims of fraudulent misrepresentation. Whatever the personality of Mr Hemsley and Mr Wray they are entitled not to be defrauded when they advance monies. Equally this action has been pursued with great vigour. While that is upsetting for the active Defendants and a very difficult exercise for them to deal with there is nothing wrong with Claimants who believe they have been wronged in pursuing actions to the best of their ability to achieve a judgment in their favour. Whilst the process was vigorous there was nothing in the Claimants' conduct or the conduct of their lawyers in the action which crossed the boundaries of acceptable behaviour in relation to a case of this nature. They are in my view if they establish their case (and I believe they have for the reasons in this judgment) entitled to be angry at the way in which they have been treated.
28. Even ignoring the large part of Mr Graham's statement dealing with the Maven Claimants it is long on irrelevant material namely the clearly tense relationship he says he had with Mr Hemsley and Mr Wray and indeed the Maven Claimants and short on detailed response to misrepresentations. It is not until paragraph 376 that he starts to deal with the fundamental claims against him. It is at best a simple denial. As will be set out below the Claimants' allegations of misrepresentation are entirely based on documents which Mr Graham singularly fails to deal with in his evidence. His case deteriorated further on cross examination.

29. Despite the length of his witness statement Mr Graham singularly fails to address the fundamental claims that are made by the Claimants. For example there is barely any reference to cross firing. He certainly fails in his witness statement (and failed at the trial) to challenge the expert evidence to demonstrate at least some of the loan transactions as referred to in Ms Hindson's report were genuine.
30. Mr Graham is clearly a clever individual. A Litigant in Person (as we are now able to call them again) faces formidable difficulties in a trial like this. There were 120 lever arch files at the end. The core bundle was whittled down to 12 bundles, the Claimants' opening (for Hemsley alone) went to 95 pages (excluding schedules). That of the Maven Claimants went to 115. The Claimants closing was 245 pages excluding schedules. Mr Graham's closing went to at least 100 pages (although I accept it was large print with large gaps between the lines). Mr Bance's went to in excess of 40 pages.
31. Mr Graham struggled manfully under this weight of documentation. He was also extensively cross examined which was inevitable given the stance taken in his witness statement and opening statement. All of the transactions which the Claimants say were dishonest had to be put to him. Ultimately in that cross examination he accepted (as did Mr Bance) that the Claimants had indeed been defrauded and had been the victim of fraudulent representations. However the essence of the defence for both of them was that they too had been deceived they knew nothing about the fraud; it was entirely down to Mr Malik. This is of course convenient because Mr Malik was not there at the trial.
32. The difficulty with Mr Graham in my view was that whilst he was clever and provided detailed responses he fundamentally avoided dealing with the major issues of fraud and ultimately in my view was like Mr Malik and Mr Bance dishonest. The position of Mr Arnold is somewhat different.

### MR BANCE

33. Mr Bance is a qualified chartered accountant having qualified as such in 1999 having previously studied maths and computer science degree at the City University. He qualified whilst he was with Ernst & Young. He developed his career and began a small chartered accountancy practice.
34. During the period as a chartered account practitioner he prepared accounts for WBL (and as the evidence will show had a role in a number of fraudulent mortgage applications that were made by Mr and Mrs Graham). He became a director of WBL from 4<sup>th</sup> February 2009. Mr Graham had been a director from 31<sup>st</sup> March 2006 when the company was formed and at the time of the matters of complaint by the Claimants was the Chief Executive Officer. Mr Malik became a director on 1<sup>st</sup> June 2007 and at the time of the subject matter of the complaints by the Claimants was the Finance Director. Mr Arnold was a director from 31<sup>st</sup> March 2006 to 1<sup>st</sup> June 2007.
35. Mr Bance in addition (like several of the other Defendants) had a substantial number of directorships of companies which were involved in the questionable transactions. I attach to this judgment a schedule of key individuals and the directorships they held.
36. Mr Bance like Mr Graham ultimately accepted that the Claimants had been defrauded but denied any knowledge of it. In particular he denied any knowledge of any representations that were made to induce them to invest in early January 2009 because

he was not a director. However the Claimants do not accept that because it is their case that he was knowingly involved in the preparation of the fraudulent documents which were provided to induce them to invest whilst he was an accountant as opposed to being a Director subsequently.

37. Mr Bance's case is that he had a limited role in WBL's affairs although it is to be noted he was paid £80,000 pa plus a car allowance (similar to Mr Malik who had a car). He says he had no responsibility for preparation of the financial information was not involved in it and did not know that there was anything wrong in the material which was prepared by Mr Malik and not him.

#### MR MALIK

38. Mr Malik as I have said whilst he provided a witness statement that went to 124 pages he did not participate in the trial and his witness statement was not put in evidence.
39. As I have said above his absence enabled the other active Defendants to blame it all on him. He was the Finance Director from June 2007 at the above mentioned salary.

#### MR ARNOLD

40. Mr Arnold was the cofounder of WBL with Mr Graham and held a 50% shareholding until his shares were sold on 4<sup>th</sup> March 2009 to the Claimants for £1,500,000. He was a director from its inception until 1<sup>st</sup> June 2007. The Claimants contend that despite that resignation he remained active in the affairs of WBL until at least mid 2009. They contend that the representations made to them at the time of the acquisition of the shares to the effect that Mr Arnold had no effective role in WBL's affairs were false and false representations.

#### THE CLAIMS

41. The Claimants allege that the Defendants entered into an unlawful means conspiracy and/or common design to secure loan finance and share capital ostensibly to enable WBL to expand its business and they did that by making inaccurate and untruthful representations to the Claimants as to the state of WBL business and for the purpose of which the money would be applied. The further conspiracy was to use any monies advanced by the Claimants to pay off other creditors rather than expand the business and to make payments for their own purposes or for the purposes of 3<sup>rd</sup> party businesses in which they were connected.
42. Separately it is alleged that the Defendants made dishonest misrepresentations and were liable in deceit (including Mr Arnold) by reason of the misrepresentations that were made in financing documents to induce the Claimants to invest in loan finance and share capital.
43. There is a separate residual claim against Mr Graham for breach of share warranties that he gave for which in fact there is no defence. The reason for that is the warranties are absolute and Mr Graham has acknowledged during the course of the trial that the Claimants were defrauded. Whether or not he knew about it he is liable on the warranties given about WBL's financial position.

## THE RELEVANT DOCUMENTS

44. At several meetings in late 2008 and early 2009 involving Mr Graham, Mr Malik, Mr Hemsley, Mr Wray and Mr Shah, documents describing WBL's business were provided by Mr Graham and Mr Malik to Mr Hemsley and Mr Wray. These documents had originally been produced with the intention of WBL being listed on the Alternative Investment Market ("AIM"). When that proposal did not materialise the Claimants contend the documents were simply provided to Mr Hemsley and RBC to invest in WBL. According to Mr Hemsley's evidence they were described by Mr Graham and Mr Malik as providing "*an excellent overview of the business*". The documents provided were:-
- (1) Pathfinder Admission Document [CB1/239]
  - (2) Emergence of a Specialist Lender [CB1/21]
  - (3) Reports produced by E&Y on WBL's finances [CB2/299/393]
  - (4) A Due Diligence Report produced by WBL's solicitors (Stallards) [CB2/446] together with the Loan Book produced by WBL as at 30<sup>th</sup> June 2008 (Stallards' Original Schedule of Loans).
45. Mr Graham denied that those documents were produced but he was unable to say how the Claimants obtained them. I am quite satisfied that the documents were produced as contended by the Claimants in their evidence.
46. The production of those documents in negotiations to lead up to a contract are of course representations as regards any matters of fact set out therein see *Howard Marine Dredging Co Ltd v A Ogden & Sons (excavations) Ltd [1978] 1QB 574*. In that case Lord Denning commented on the nature of misrepresentations following the passing of the Misrepresentation Act 1967. He said this:-

### ***"THE MISREPRESENTATION ACT, 1967.***

*Alternatively Ogdens claim damages for innocent misrepresentation under the Misrepresentation Act, 1967. It says: "... When a person has entered into a contract after/representation has been made to him by another party thereto and as a result thereof he has suffered loss, then, if the person making the representation would be liable in damages in respect thereof had the representation been made fraudulently, that person shall be so liable notwithstanding that the misrepresentation was not made fraudulently, unless he proves that he had reasonable ground to believe, and did believe up to the time the contract was made that the facts represented were true".*

*This enactment imposes a new and serious liability on anyone who makes a representation of fact in the course of negotiations for a contract. If that representation turns out to be mistaken -then however innocent he may be - he is just as liable as if he made it fraudulently. But how different from*

*times past! For years he was not liable in damages at all for innocent -misrepresentation - see Heilbut v Buckleton [1913] AC 13. Quite recently he was made liable if he was proved to have made it negligently, see Esso v. Mardon (1976) Queen's Bench 801. But now with this Act he is made liable - unless he proves - and the burden is on him to prove - that he had reasonable ground to believe and did in fact believe that it was true.*

*Section 2(1) certainly applies to the representation made by Mr. O'Loughlin on 11th July, 1974, when he told Ogdens that each barge could carry 1600 tonnes. The judge found that it was a representation: that he said it with the object of getting the hire contract for Howards. They got it: and, as a result, Ogdens suffered loss. But the judge found that Mr. O'Loughlin was not negligent: and so Howards were not liable for it."*

47. It cannot be argued that if the Claimants established that they were handed these documents as they say that they were not given to them to induce them to invest in WBL on the basis of the information contained in them. That will equally apply to documents which a representor knows are going to be passed on to other people (Chitty on Contracts paragraph 6-031).
48. On a number of occasions Mr Graham submitted that the Claimants had enough material to check that the statements in the financial documents were true or not. This is not correct. The Claimants were handed the documents and they were entitled to rely upon them and were not required to investigate whether the documents being put forward were truthful and accurate. Merely because they did some due diligence (as to which see the evidence of Mr Khan below) does not eliminate the representational nature of the statements of fact produced in the documents see the well known case of *Redgrave v Herd [1881] 20Ch D1* (summarised in Chitty *ibid* paragraph 6-042).

#### THE REPRESENTATIONS

49. The representations relied upon by the Claimants are that these documents were produced with intention of showing that WBL:-
  - a. Offered short term bridging loans to experienced property owners, developers and investors mainly within the M25.
  - b. Had never had a bad debt and had no loans in arrears.
  - c. Was a successful company with an excellent record.
  - d. Its Loan Book was accurately described as at June 2008 in Stallards' Original Schedule of Loans.
50. In fact the Claimants case is that WBL did not have an excellent record by the end of 2008, that it had participated in extensive mortgage frauds, fabricated documents, disguised payments to directors as loans and carried on its business by falsely

representing that transactions which were actually cross firing (as to which see below) disguised payments which were then dressed up as supposed loans and repayments of loans. Finally they failed to disclose that at the time a previous investor Mr Alexander Kelly was seeking repayment of a loan of £500,000 he had made to WBL in August 2007. That was known to the Claimants but the existence of winding up proceedings or threatened winding up proceedings was concealed from them.

51. The Claimants further contend that WBL actually had a large number of bad debts and had a lot of loans in arrears.
52. The Claimants contend that all of these representations were made dishonestly by all of the Defendants. As I said as the trial progressed (subject to Mr Malik) the other active Defendants acknowledged that the Claimants had plainly been defrauded as a result of fraudulent representations that were made to induce them to invest.

### FALSITIES

53. By far the largest and most significant fraudulent representations in my view are the cross-firing transactions. This was a strategy whereby monies were paid out of WBL's bank account purportedly being loans. The payments were made out over a number of years starting in 2007 to companies where one or other of the Defendants or their spouses were interested or to their personal bank accounts. Invariably the monies came back in the same day or very shortly thereafter. The purpose of these payments was to give an impression of normal loan transactions.
54. There are numerous examples in the Claimants' evidence. For example on 24<sup>th</sup> December 2007 WBL paid £120,000 to a joint account of Mr Graham and Ms Jones. That was paid back the same day with a reference in WBL's bank statement being "Jim Kelly". He was a borrower from WBL dating back to January 2007. By December 2007 it is clear from WBL's internal documents that the loan was well overdue. As a result of the cross fire which in effect is a payment out from WBL and the money coming back with the Jim Kelly reference it could be presented that Jim Kelly repaid his loan. On 2<sup>nd</sup> January 2008 his name was nevertheless included in a bad debt list sent by email by a WBL employee (Kylie Clarke) to Mr Graham and Mr Arnold.
55. On 6<sup>th</sup> December 2007 WBL transferred £170,000 to Mr Arnold's bank account. A few days later on 20<sup>th</sup> December 2007 he transferred this precise amount back to WBL with a narrative on the bank statement of "CS Sturdy". He was a borrower from WBL dating back at least to May 2007.
56. Those two examples of course predate any investment by the Claimants. There are plenty of other examples. Many of them relate to a facility WBL obtained from Natwest on 11<sup>th</sup> January 2008. The facility was £1,500,000. Its purpose was to provide funds to WBL from which it could make loans to its own borrowers. There were terms in the Natwest loan facility:-
  - (1) It was a condition precedent to making a draw down that WBL had to provide Natwest with a draw down notice which stated the name of the debtor, their address, the amount and terms of the loan, the market value of the property and confirmation that a suitable professional valuation addressed to WBL had been obtained.

- (2) WBL had to repay each draw down within 6 months after the draw down. It was an Event of Default entitling Natwest to demand immediate repayment of the entire loan facility if draw downs were not paid within this 6 month period.
- (3) Mr Graham provided a £500,000 guarantee in respect of the facility.
57. At the time of this facility Mr Graham was late in making repayments of a personal loan of £700,000 which he had taken from a finance company called Tuita Plc in July 2007. He then lent £600,000 of this to WBL in July 2007. This liability of WBL to Mr Graham was (contrary to his assertions in the trial) treated as being capitalised at 31<sup>st</sup> December 2007. This was as a result of an investment by a group of private investors amounting to £1,500,000 (collectively called “the Falcon investors”). In the Information Memorandum in relation to the investment Mr Graham’s loans to WBL as at 31<sup>st</sup> May 2007 amounted to £547,839 and Mr Arnold’s amounted to £361,995, they agreed with Falcon that they would put in another £90,166 so that the combined loans came to £1,000,000 and this would be capitalised into share capital upon the receipt of the outside investment. This agreement is recorded in the audited accounts which were annexed to the Information Memorandum.
58. Therefore the accounts for the year end of 31<sup>st</sup> December 2007 showed that the director’s loans accounts of Mr Graham and Mr Arnold stood at nil and that in return for capitalising their loans they received 7,000,000 shares in WBL. Those accounts were approved by (inter alia) Mr Graham.
59. Notwithstanding that he asserted that he was owed other monies by WBL prior to 31<sup>st</sup> December 2007. He was unable to explain why the accounts stated the opposite. He attempted to say that he did not understand the accounts or that he did not read them. I reject that evidence. This was one of a number of occasions when Mr Graham in my view simply told lies. He is not the stupid person he repeatedly tried to present to me. The repayment of the loans was a term of the investment of the Falcon investors and also led to the increased shares. It follows therefore that as at 31<sup>st</sup> December 2007 I find that WBL did not owe Mr Graham anything. This will have significance in relation to later transactions where Mr Graham removed monies from WBL which he has asserted were repayments of loans that were due to him before 31<sup>st</sup> December 2007.
60. In fact as I set out below under the section headed Natwest Draw Downs the Tuita loan was repaid by Mr Graham utilising false draw downs under the Natwest facility.

#### NATWEST DRAW DOWNS

61. The facility as I have said was £1,500,000 pursuant to the facility letter of 11<sup>th</sup> January 2008. Its purpose was to provide funds of a short term nature to enable WBL to make similar short term loans to its borrowers. In effect WBL was making a turn on the borrowings. I have set out above the requirements of any draw down and the fact that it had to be repaid within 6 months. Mr Graham had guaranteed the liability up to £500,000.

#### FALSE DRAW DOWN NOTICES

62. The Claimants in schedule 12 to their Amended Particulars of Claim set out 41 instances of false draw down notices sent to Natwest. They are described in detail in paragraphs 44-282 of Mrs Julia Choudhury’s supplemental witness statement. None of



this evidence was challenged by the Defendants in any meaningful way. These false draw down notices were listed in schedule 4 of the Claimants' opening together with the references of where they appear in the trial bundles.

63. On day 1 of the trial I directed the parties agree a representative sample of the draw down notices in order to determine the issue and facts as to whether those notices were false. The Claimants drew up a list of 12 and it was directed that they should be a representative sample of the draw downs and the determination and effect of those samples should be treated as determinative of all draw downs. No other choice was possible given the large number of false draw downs.

#### DRAW DOWNS 1-3, DONKIN, SKEENE AND MEURISSE

64. The first 3 draw downs were those signed by Mr Graham in February 2008 in the sum of £700,000 which stated the draw downs were for loans to "Graham Donkin" £279,000, "Sarah Meurisse" £249,000 and "Andrew Skeene" £172,000. The entirety of the £700,000 went to Mr Graham he had to admit (T13/168/13/17). At the time of this draw down Mr Graham was liable in respect of the £700,000 loan he had taken out from Tuita PLC in July 2007. He had lent £599,759 on to WBL in July 2007. That loan liability was capitalised as I have said at the end of the year end when WBL raised investments of £1,500,000 from Falcon. That left Mr Graham still owing a personal liability of £700,000 to Tuita. He admitted in cross examination that the £700,000 which was for the draw downs 1-3 was immediately used by him to pay off the Tuita loan (T13/168/18-22).
65. All of these draw down notices were blatantly false. On 22<sup>nd</sup> February 2008 Mr Graham signed a draw down notice saying £279,000 was required in respect of a loan to Mr Graham Donkin ***for a property purchase. The resale will fund the repayment of the loan plus interest.*** The value of the property 19 Old Farmhouse Drive Oxshott Surrey KT22 0EY was given as £279,000 and was supported by a valuation from Crozier Hadley (although none has been found). In accordance with the draw down notice Natwest transferred £279,000 from Wey Bridging's loan account to its current account with a reference "***draw-down/Donkin***". However the money was paid directly into Mr Graham's and Miss Jones' bank account (HSBC account no. 01591959) and was recorded with a narrative statement "***draw down-G Donkin***" in WBL's bank statement.
66. Mr Donkin did buy that property for the sum of £805,000 on 25<sup>th</sup> February 2008. WBL lent the sum of £758,000 through Lucas Solicitors on 21<sup>st</sup> February 2008 for that acquisition and the sum of £766,216.30 was returned to WBL on 22<sup>nd</sup> February 2008 by Lucas Solicitors. There is a fax from WBL to Natwest sent on 22<sup>nd</sup> July 2008 in which it was represented that the Donkin loan had been repaid. However there is no evidence of any such receipt by WBL and the £279,000 was simply transferred from the current account to the loan account on 23<sup>rd</sup> July 2008.
67. Three days later on 25<sup>th</sup> February 2008 Mr Graham signed a further draw down notice stating that £249,000 was required in respect of a loan to Sarah Meurisse "***for a property purchase. The resale will fund the repayment of the loan plus interest.***"[CB1/104]. The value of the property was given as £249,000 and was stated to be supported by a valuation by Crozier Hadley (none was found). Once again it is stated that the acquisition was supported by a valuation by Crozier Hadley. Further

WBL (via Ms Hollaway) sent a fax to Natwest on 25<sup>th</sup> February 2008 stating ***“I can also confirm we have a second legal charge for both”***.

68. Once again the £249,000 was paid into WBL’s current account then onto Mr Graham and Ms Jones’ joint bank account (HSBC account no. 01591959). The narrative was ***“draw down-Meurisse”*** recorded in the WBL statements. The property (flat 13 Victoria Place Cobham Surrey) had nothing to do with Ms Meurisse. It was purchased according to land registry records by a Gavin Call for £230,000 on 4<sup>th</sup> August 2006 and remains in his ownership to this day (K1/tab1/p7-9).
69. Also on 25<sup>th</sup> February 2008 Mr Graham signed a draw down notice stating that £172,000 was required in respect of a loan to Andrew Skeene ***“for a property purchase. The resale will refund the repayment of the loan plus interest”***. The property (32 Heathview Road Thornton Heath Surrey) was given as having a valuation of £172,000 supported by Crozier Hadley (none being found again). Following these representations Natwest transferred £172,000 from WBL’s loan account to its current account referenced ***“draw-down-ASkee”***. This figure however was not paid to Mr Skeene but once again found its way into Mr Graham and Ms Jones’ joint account with the same reference. Further the land registry records showed the property at the time was owned by a Mr Mohammed Ajmal Patel and had been since 1989.
70. Mr Graham justified these false draw downs by saying that he had lent WBL £674,687 on 20<sup>th</sup> February 2008 (derived from the proceeds of Queens Gate Terrace transaction (see below)) and that this money had been used to make loans to Mr Donkin, Ms Meurisse and Mr Skeene and the draw downs enabled WBL to reimburse Mr Graham the money he had lent WBL with which he had funded the 3 loans (T13/173-175).
71. This explanation is obviously false. The 3 loans were not genuine as set out above. Mr Graham signed the draw down requests. He affected not to read any of WBL’s bank statements. I simply do not believe him. It does not square with the statement of one of his duties in the E & Y report on Financial Reporting Procedures where it stated that Mr Graham as CEO was responsible for monitoring the daily cash balance. This is monitored on the office white board and in Microsoft excel spreadsheets [CB2/409]. It is difficult to see how Mr Graham could do that without looking at the bank statements to monitor the daily cash balance.
72. Mr Graham also lied of course to Natwest because the draw down facility was on the basis of secured lendings on a short term bridging basis for borrowers. These were not genuine transactions. The bank had no security and monies were used as alleged to pay Mr Graham enough monies to repay his Tuita liability.

#### CONTINUATION OF THE FRAUD

73. When the Claimants were considering investments in WBL and making loans to it they were provided with a document which had initially been used for the proposed floatation on the AIM market (called in the trial the Stallards schedule). Stallards were WBL’s solicitors and the schedule was prepared showing the existing loans supposedly held by WBL as at 30<sup>th</sup> June 2008.
74. The loans to Donkin, Skeene and Meurisse (totalling £700,000) were included in the Stallards schedule. Given that the loans were not genuine it would be false to include those loans in the Stallards schedule. Mr Graham’s answer on cross examination

(T14/2/16-22) was that he had not seen the Stallards schedule. He maintained this position even though he was copied into Mr Malik's email to Stallards sending them the schedule on 30<sup>th</sup> September 2008. He was also unable to explain how Mr Malik would have known of these loans without him having told him. The only explanation (which I find) is that Mr Graham told Mr Malik to include these false loans in the Stallards schedule.

75. Finally Natwest was told in August 2008 that the loans to Skeene and Meurisse were repaid. However they were not repaid. They were the subject matter of cross firing payments through one of Mr Bance's companies Featherstones.

#### DRAW DOWN FOR DARRYL STONE, DISGUISED PAYMENT TO MR ARNOLD

76. Natwest were told by a false draw down notice on 14<sup>th</sup> March 2008 signed again by Mr Graham that £200,000 was being requested for loan to be made to Darryl Stone with a security being provided over 30 West Street Field Lane Barnet Herts. Following these representations Natwest transferred £200,000 from WBL's loan account to its current account with a narrative appearing in WBL's bank statements "*chaps transfer Darryl Stone LO*". In fact the payment was made from there to Mr Arnold's bank account.
77. Further the address given in the draw down notice does not exist and the postcode (EN6 2AY) relates to a completely different property in Mutton Lane Potters Bar.
78. Mr Graham also told Natwest that the acquisition was supported by a valuation from Crozier Hadley but no such valuation has been found. This is hardly surprising given the fact that the property in question does not exist.
79. In cross examination (T14/56-59) Mr Graham agreed the bank statements show the £200,000 had been paid to Mr Arnold. He sought to justify this by speculation that there might have been a property transaction between Mr Arnold and Mr Stone. However that fell apart when it was shown that the monies were used to finance Mr Arnold's living expenses.
80. Finally in a desperate attempt to evade liability for this non existent loan he suggested that his signature on the draw down notice had been forged. I do not accept that evidence. It is another of the many lies that Mr Graham made up on the hoof to avoid having to deal with the obvious consequences of the documentation that was being repeatedly presented to him by the Claimants' Counsel.

#### DRAW DOWN 5: HYDE PARK MANAGEMENT

81. On 18<sup>th</sup> August 2008 Mr Graham signed a draw down notice to Natwest (CB1/188.3) in the sum of £250,000 for Hyde Park Management Services ("Hyde Park") in which he and Mr Arnold were directors and shareholders and Mr Bance was the Company Secretary. It was said that the funds were for a purchase of a property called 3 Savoy Mews Clapham. However that property had been purchased by Mr Arnold back in November 2004 and Mr Graham admitted (T14/25/4-6) that no loan at all was ever made to Hyde Park. It was plainly a false draw down notice and the funds were used in a cross firing payment to Featherstones.

DRAW DOWN 6: FRANCIS NII ANNAN

82. On 16<sup>th</sup> February 2009 Mr Malik and Miss Holloway signed a draw down notice in respect of a purported loan of £260,000. In fact it was used to fund a payment to Ms Jones. Mr Graham accepted it was a false draw down notice.
83. The balance of the identified cross fire draw downs were all clearly demonstrated by the Claimants on the documentation to be false. I do not need to set them out except to note that draw down number 10 Neil Hobbs was a purported loan for £300,000 to Mr Neil Hobbs for the supposed purchase of a property 31 Galley Lane Hertfordshire. The draw down notice was signed by Mr Malik and Ms Holloway.
84. Mr Hobbs gave evidence and confirmed that while he had applied for a loan to WBL he had never actually received one. He gave evidence to the effect (unsurprisingly) that he was appalled to discover that his name and address had been used by WBL to obtain a draw down of monies from Natwest when in fact no such loan was made to him.
85. Mr Graham sought to suggest that monies were drawn down in advance but there was no evidence to support that. The funds should have been returned to Natwest in accordance with the draw down facility but were not. The money was drawn down with two other draw downs totalling £805,000 and the first significant payment out of the account was £300,000 to Ms Jones. Mr Graham denied that he knew the false draw down was in respect of Mr Hobbs. I reject his evidence again.

CROZIER HADLEY VALUATIONS

86. A feature of the various transactions was the statement that the properties had valuations to justify the loans from Crozier Hadley.
87. After WBL went into administration Crozier Hadley wrote by letter dated 15<sup>th</sup> December 2010 to Addleshaw Goddard (WBL's administrators' solicitors) stating that the firm had not carried out any valuation work for WBL. They further said that someone had crated a false letterhead to give the impression that Crozier Hadley had carried out valuations. Mr Graham, Mr Bance, Mr Malik and Mr Arnold were all party to a fabrication of a Crozier Hadley invoice in July 2007. All of them knew that valuations had to be produced to obtain money from Natwest. Mr Graham, Mr Malik and Mr Bance were also aware that WBL had purchased a Crozier Hadley stamp in order to facilitate this (see note of meeting 3<sup>rd</sup> March 2009) attended by Mr Graham, Mr Bance, Mr Malik and Mr Thakur where the minutes recorded "*[Stacy Holloway] to enquire about purchasing Crozier Hadley stamp*". It is impossible to see any legitimate reason for WBL having a Crozier Hadley stamp. It was obviously used to fabricate valuations such as that for 39b Redcliffe Gardens. It bore the stamp "*Crozier Hadley CN no 3914986*" which had been purchased by WBL. There were others similarly created.
88. Mr Bance was unable to explain this. Ultimately he was driven to saying he could not remember the meeting. Mr Graham came out with a number of explanations. First he contended that it had been discussed with Crozier Hadley because Natwest wanted to see the original valuation. Second he queried the provenance of the minutes and finally he had no recollection of the meeting (T14/79-80). It is impossible for him to deny that Crozier Hadley valuations were being fabricated. He had signed 5 of the sample draw down notices all of which said that Crozier Hadley had provided the valuations and one

at least was for a nonexistent property. He knew full well that there could be no genuine valuations because the draw downs were false.

89. All of the Defendants in my view were involved in one way or another in false draw downs. There can be no legitimate reason for these false draw downs. It follows they were all implicated in obtaining monies by fraud from Natwest. This is significant because it means that they are causing WBL to carry on a dishonest business. It does not matter for these purposes that the transactions took place before the Claimants invested. It will be seen as I set out above that 3 loans at least in the Stallards schedule were in respect of nonexistent transactions.

#### OTHER DISHONEST ACTIVITIES

90. The Claimants led evidence showing that the Defendants in various ways had participated in other fraudulent transactions. None of these directly affected the Claimants as they took place before their investments. However the Claimants' case is that they are demonstrative of the fact that WBL was dishonestly represented having been a valuable company with good loan books and was effectively being run in a proper corporate way. The Claimants also submitted evidence which supported their contentions that the Defendants were dishonest in relation to their dealings with them.
91. I will deal with 4 examples.

#### THE QUEEN'S GATE TERRACE PREMISES

92. This involved a property 11 Queen's Gate Terrace London. Ultimately it was occupied by WBL for the purpose of its business.
93. At the time of the transactions the registered proprietor of the property was Christos Christou but Mr Graham accepted that the beneficial owners were Flores Charalambous and Chris Gorgiou as shown by his email dated 31<sup>st</sup> December 2007. Mr Charalambous was a borrower from WBL at the time and WBL's bank statements show that he borrowed £300,000 from WBL on 5<sup>th</sup> March 2007.
94. At 5pm on 20<sup>th</sup> February 2008 Mr Charalambous and Mr Georgiou sold the property to Rag Portfolio Ltd for a price of £1,200,000. That company was owned by Mr Graham and Mr Arnold. In addition to paying this cash price £350,000 of Mr Charalambous' indebtedness to WBL was written off as shown in Mr Graham's email sent 17<sup>th</sup> February 2008 to Mr Charalambous. That represented WBL giving up £350,000 worth of its assets for the benefit of Rag Portfolio.
95. Two minutes later at 5.02 pm Rag Portfolio sold on to Mr Graham for a price of £2,500,000. Mr Arnold acted on behalf of Rag Portfolio and instructed Elliot Stephens solicitors. Mr Graham instructed Anil Bance (Mr Bance's brother) at Ascot & Chase solicitors.
96. This had been planned by Mr Graham since December 2007 when he sent an email stating ***"Elliot Stephens.... will be acting for Rag Portfolio who will buy property at £1,200,000 on an assignable lease. Rag will sell the property on to WBL"***. In the event Mr Graham took the property rather than WBL.

97. Mr Graham financed this acquisition by obtaining a 75% mortgage from Clydesdale Bank. The amount he obtained was £1,875,000. Mr Graham admitted that £102,655.75 of the purchase price was provided by WBL but the documents show that Ascot & Chase Mr Graham's solicitors only paid £1,879,687.50 to Rag Portfolio rather than the purchase price of £2,500,000. Mr Graham maintained (T12/108) that he had in fact paid £2,500,000 but he was unable to say where the balance of the purchase price came from. He was unable to refer to any documents that showed that he had in fact paid £2,500,000 to Rag Portfolio. Later in his cross examination Mr Graham suggested that Rag Portfolio may have made him a "*gifted deposit*" of £620,313 being the difference between the price of £2,500,000 and amounts raised from Clydesdale Bank and WBL.
98. Of the figure of £1,879,687.50 paid to Elliot Stephens £1,200,000 was paid on to Mr Charalambous and £674,687 was paid to WBL on 20<sup>th</sup> February 2008.
99. I have never heard of this concept of "*gifted*" deposit. The reality in my view was that the price was inflated so as to pretend to Clydesdale Bank that they were only lending against 75% of the purchase price where as in fact they were lending against 100%. Further the price was inflated from £1,200,000 to £2,500,000 but no credible evidence was given by Mr Graham in his evidence and cross examination to explain why the property in a matter of minutes would double in price. This to my mind was also a device to enable funds to be obtained by WBL.
100. It is quite clear that Mr Graham's application for a mortgage from Clydesdale Bank was made fraudulently and that Mr Bance also participated in that fraud as I shall set out.
101. Mr Graham's application for a mortgage on 10<sup>th</sup> September 2007 had Mr Bance as his accountant certify that Mr Graham's salary and dividend for the 8 months to 31<sup>st</sup> August 2007 was £552,740. He certified that for the year ending 31<sup>st</sup> December 2006 the income had been £482,994 and for the year ending 31<sup>st</sup> December 2005 it had been £335,091. Thus the picture portrayed Mr Graham's salary and dividends largely increasing.
102. Those figures bore no relation to the statements in Mr Graham's income tax returns for those years which were also produced by Mr Bance. In fact the tax returns showed that his salary and dividends totalled only £277,108 for the two years between 6<sup>th</sup> April 2006 and 5<sup>th</sup> April 2008 as opposed to a statement in the mortgage application that for the 8 month period to 31<sup>st</sup> August 2007 it amounts to £552,740.
103. Mr Graham admitted he covered the payments due to Clydesdale Bank by entering into a lease with WBL under which he was paid £126,000 per annum.
104. Unsurprisingly both Mr Graham and Mr Bance were cross examined on this transaction. In my view both of them lied and I am satisfied having seen their performances in the witness box that they had participated in a fraud whereby the property price was inflated so as to raise extra money from the inflated price to put into WBL. No other explanation is credible. That fraud extended to the inflation of the price to justify the amount borrowed and the provision of false statements as to Mr Graham's income. Various attempts were made to explain the difficulties with the case. I have already referred to the so called gifted deposit. I reject that and I also reject the suggestion that Rag Portfolio agreed to lend its profit to Mr Graham on an unsecured loan (without any reserves being held to satisfy any future tax liability and at a time

when it was about to be dissolved) to enable him to lend that to WBL. This is all fanciful and I reject it. Equally I reject the suggestion that when the fact that the certificate itself required salary and dividends “*declared for tax purposes*” it extended to undistributed profits within the company of which he was a shareholder. In addition neither the alleged loan of £674,687 nor any part of it was disclosed as a related part of the transaction in the 2008 accounts even though Mr Graham’s lease of the property to WBL was disclosed. Mr Graham signed off those accounts and claimed again (falsely in my view) that he failed to read the accounts which explained why he had not spotted this alleged inaccuracy. I accept the Claimants’ contention that Mr Arnold and Mr Graham participated in this transaction to defraud Clydesdale Bank to raise extra money for the benefit of WBL by inflating the value of the property. Mr Bance participated in that by providing false certificates. It was significant that when giving his evidence Mr Bance accepted that the figures were clearly incorrect (T22/16/25-25) but that he had signed the letter by mistake. No credible explanation was given as to how such a mistake could be made in relation to such an important and short document. In reality Mr Graham told him what he wanted put in the figures and Mr Bance obliged. Mr Bance referred to this letter in his witness statement but did not refer to his mistake; that was only extracted in cross examination.

### 3 THE MEWS COBHAM

105. A Ms Avril Jones (no relation to Mr Graham’s wife) sold the property for £625,000 on 24<sup>th</sup> May 2007 to Rag Portfolio she having originally purchased it in 2003 for £500,000. Ultimately Mr Graham acknowledged that he and Mr Arnold were 50% shareholders in Rag Portfolio and directors of that company. Mr Arnold represented Rag Portfolio in that transaction and once again Elliot Stephens were instructed to act for it. Mr Graham admitted that he was aware that Rag Portfolio purchased 3 The Mews on 24<sup>th</sup> May 2007 for £625,000. On the same day it immediately sold the property to Mr Graham for a price of £1,170,000. Mr Graham could not explain why he paid this hugely increased price. He asserted in his evidence that there must have been a valuation but none was produced. The contract between Mr Graham and Rag Portfolio was signed by Mr Graham for himself and Mr Arnold for Rag Portfolio.
106. The acquisition by Mr Graham at a price of £1,700,000 was by way of a mortgage of £877,500 from Northern Rock. That figure of course exceeds the purchase price paid by Rag Portfolio by more than £250,000. Mr Graham admitted that he did not tell Northern Rock that he was purchasing 3 The Mews from a company in which he was a 50% shareholder and director nor did he tell Northern Rock that Rag Portfolio bought 3 The Mews on the very same day for £625,000. I have no doubt had the Northern Rock been told of those matters they would have looked very carefully at the funding of such a largely increased purchase on the same day. Mr Graham funded the balance of the purchase by a bridging loan from a company called Handf Finance of £340,000. This was only revealed at trial for the first time. Again Northern Rock were not informed that the entirety of the purchase price was being raised by debts.
107. The ledger produced by Elliot Stephens shows that following receipt of the purchase price Rag Portfolio paid £344,000 to Handf Finance. This in effect repaid Mr Graham’s indebtedness to Handf Finance. Thus part of his purchase price which he handed over to Rag Portfolio had “*turned the circle*” and come back to him. This Mr Graham admitted (T12/29). A further figure of £110,891.13 was paid into the joint

account of Mr Graham and Ms Jones thus benefiting them personally and finally £100,000 was paid into WBL's account by Elliot Stephens on 24<sup>th</sup> May 2007.

108. Mr Arnold the Claimants' contend (and I agree) was complicit in all of this since he was acting for Rag Portfolio. Mr Graham knew all about it because he participated in the transactions and received the benefit of the two payments above repaying his loan and going into his joint account with his wife.
109. The property is now valued at £600,000 while the mortgage owed to the Northern Rock stands at £930,000.
110. This is a classic mortgage fraud in my view involving back to back sales in a company controlled by the ultimate purchaser. In his reconciliation figures Mr Graham claimed he should be given credit for the £100,000.
111. In cross examination Mr Graham pretended in my view that he was unaware that Mr Arnold was involved in the transaction. He also claimed not to know that Rag Portfolio had used Elliot Stephens and he asserted that the sale by Ms Jones was a very very distressed sale. There was no evidence to support that contention. He affected not to remember where the £340,000 had come from but ultimately revealed Handf Finance. When presented with Elliot Stephens' ledgers (which had been obtained during the trial pursuant to an order under CPR 34.17) Mr Graham acknowledged how the purchase had been funded and that he had not previously disclosed the borrowings from Handf Finance. I find his evidence evasive on this and I reject his suggestion that he did not have any recall of the transaction because he did so many.

#### MORTGAGE FRAUD 188 HARLEY SHUTE ROAD ST LEONARDS ON SEA

112. Mr Graham had acquired this property from his mother on 21<sup>st</sup> June 2006. He took out a mortgage with the Cheltenham & Gloucester Building Society and as at 9<sup>th</sup> May 2008 the sum of £223,312 was owed under that mortgage. On 13<sup>th</sup> May 2008 Mr Graham purported to sell that property to Ms Jones (i.e. his wife) for £495,000. There was no commercial reason why Mr Graham would sell the property to his wife and incur (for example) stamp duty of £14,850. When cross examined Mr Graham sought to explain this by saying he wanted to release equity from the property at the time and furthermore he had reached a mortgage threshold as he had six or seven mortgages which meant that raising new finance was becoming difficult. He confirmed that the whole transaction was a strategy because he had exhausted his ability to have new mortgages.
113. The Claimants contend that the sale between Mr Graham and his wife involved a mortgage fraud on Clydesdale Bank again. First they contend that Clydesdale was misled by Mr Graham and Mr Bance concocted a false certificate of income for Ms Jones which hugely overstated her income for 2005, 2006 and 2007. Second it was misled into thinking the purchase price was £495,000 when in fact £123,875 of that purchase price was simply circulated from WBL through Mr Graham and Ms Jones' joint account with HSBC and back to WBL.

#### THE FALSE CERTIFICATE

114. On 25<sup>th</sup> March 2008 Ms Leslie Parsons of Clydesdale Bank sent an email to Mr Graham which attached a certificate to be forwarded to "*Antonia's accountant*". Clydesdale explained "*please can this document be mailed back and the original sent*



*in the post*". On the same day Mr Graham forwarded this to Mr Bance saying "***Sunil, please can you complete and return it today with the figures I am about to send.***" Mr Bance accepted he was Ms Jones' accountant at the time and maybe earlier. The figures show her income of £172,000 for 2005, £176,000 for 2006 and £196,000 for 2007. Mr Graham asked Mr Bance to send a standard Chartered Accountant's reference and complete the Clydesdale reference with identical information. In other words Mr Graham provided the figures and Mr Bance adopted them and simply filled in the form.

115. He duly certified the income as set out above.
116. There is no doubt that these figures were completely false. This was demonstrated during the course of the cross examination of Mr Graham as to his wife's business activities and the income generated. He eventually accepted that the figures he had given to Mr Bance were false but that he had made a mistake or error (T12/65).
117. The reality is in my view is that he simply made figures up to justify obtaining the mortgage.
118. Mr Bance initially sought to support his figures by suggesting he had seen some accounts as well showing those figures but backed down and accepted he produced the certificate based only on what Mr Graham told him to write. He said he discussed them on the telephone which had led to the round sum figures being changed into very precise figures in the certificate.
119. This plainly undermined his certificate. He is certifying nothing at all; indeed he is finessing the fraud by removing the suspicious nature of round sum payments to give an impression of precise figures. This is dishonesty in my view on the part of Mr Bance and he cannot have had any honest basis at all for believing these figures were genuine figures.
120. Equally the purchase price in my view is fraudulent and was simply created so as to enable Ms Jones to obtain a mortgage of £371,250 which represented 75% of the purported purchase price. The balance of the purchase price namely £123,875 was simply circulated out and then back into WBL on 12<sup>th</sup> and 14<sup>th</sup> May 2008. The purchase monies were used by Elliot Stephens on Mr Graham's behalf to discharge his charge on the Gloucester mortgage (£223,212) and the balance went back to Mr Graham and Ms Jones' joint account. The very next day Mr Graham and Ms Jones returned £123,975 from their HSBC joint account to WBL. There was therefore no genuine purchase of £495,000.
121. Once again Mr Graham tried to explain this as a basis of a gifted deposit from him to his wife. The reality of course is that Clydesdale Bank had they been told of the gifted deposit would know that in reality they were providing 100% of the cash towards the purchase price. They were not told. Further for the reasons set out above the mortgage was obtained by false statements as to income which Mr Graham and Mr Bance well knew.

#### SIGNIFICANCE OF THESE EARLIER TRANSACTIONS

122. The significance of these transactions is that they demonstrate all of the active Defendants had regularly participated in bogus property transactions or fraudulent

property transactions to raise money for themselves or for purposes contrary to the stated purpose in the documents. WBL was involved in some of these transactions as set out above. However the greater significance of this evidence is that it shows the willingness of the Defendants to participate in frauds. It is strongly supported of the Claimants' contentions as regards what happened when they became involved in the companies.

### THE CLAIMANTS BECOME INVOLVED

123. The lead investor was Stephen Hemsley. He was the former CEO of Domino's Pizza until 2007 when he became Chairman of that company an office which he retains now. He is clearly a very experienced businessman.
124. The Second Claimant RBC Trustees (CI) Ltd is a trust of the Edna Wray Accumulation and Maintenance Trust the beneficiaries of which are the children of Mr Nigel Wray. He is a businessman and investor. He is Chairman of Saracens Rugby Club and a non executive director of Domino's Pizza and has been on the boards of 100 companies. He led the trust fund to invest in WBL.
125. He relied on advice of his right hand man and executive assistant Kamal Shah. Mr Wray had no direct involvement the entirety of his knowledge was passed through Mr Shah. Despite that the initial introduction was by Mr Wray meeting Mr Graham and in turn introducing him on to Mr Hemsley. A decision was made to invest in WBL and the Claimants between them between January 2009 and February 2010 invested some £4,600,000 by way of loans and share capital. Some of the investors are friends and family of Mr Hemsley. As soon as the present claims arose he paid them out and took assignments of any claims they might have.
126. Such investors of course had no direct involvement at all and only have a claim based on what they were told by Mr Wray and Mr Hemsley and on the assumption of what they were told and passed on was made dishonestly as the Claimants allege.
127. In addition to those main witnesses the Claimants had evidence from Mrs Julia Choudhury. She is a very experienced advisor in business finance and investment activities.
128. She was retained by the Executive Directors of WBL in 2010 to put together a business plan to seek further investment in WBL from outside investors. She had no role in the initial decisions made by the Claimants to invest in WBL.

### INVESTMENTS

129. As at 25<sup>th</sup> November 2010 when WBL went into administration the following were the investments:-
  - (1) Mr Hemsley had an outstanding loan of £1,250,000 and had invested £1,349,999 in acquiring shares in WBL.
  - (2) RBC had outstanding loans of £250,000 and had invested £1,349,999 in acquiring shares in WBL.
  - (3) The total amount of the friends and family investments was £425,000.

DOCUMENTATION

130. The initial loans were made in January 2009 pursuant to written loan agreements dated 30<sup>th</sup> January 2009. The share purchases were made pursuant to a contract dated 3<sup>rd</sup> March 2009 (“the March 2009 SPA”) and a contract dated 22<sup>nd</sup> June 2009 (“the June 2009 Investment Agreement”).
131. The Claimants contend that Mr Graham and Mr Malik explained to them (Mr Bance confirmed it throughout their relationship) that WBL carried on a business in the provision of short term loan facilities to finance residential property transactions and (subsequently through Client Credit Ltd) loan finance to solicitors for matrimonial claims, litigation and personal injury claims which was supposed to be secured by charges against residential properties or charges secured by solicitors’ undertakings against the properties.
132. The Claimants’ evidence is that they received the Ernst & Young report. That report was prepared in 2008 in the context of a proposed floatation of WBL on the AIM market. That did not take place but I am satisfied and accept the Claimants’ evidence that the Ernst & Young report was sent to them to induce them to invest in WBL. They received that report considered it and in the light of it (and other matters) I am quite satisfied, decided to make the investment.
133. Mr Graham denied that the E&Y report had been delivered to the Claimants but I reject that evidence. He also regularly distanced himself from things in the E&Y report claiming not to know anything about them. I reject that too. On 8<sup>th</sup> May 2008 a Mr Phipps of E&Y sent a copy of the draft report to Mr Graham for his consideration.

THE E&Y REPORT

134. After giving details of the various individuals involved in WBL it described its products as being loan products aimed at experienced real estate developers and buy to let investors and took the form of short term bridging loans. All loans in question were stated to be secured by a solicitor’s undertaking to repay the debt on behalf of the borrower or by a second charge taken over the property.
135. When discussing the balance sheet the report observed that the trade debtors consisted of loans less than 28 days and loans greater than 28 days with a general bad debt provision of £43,000 as at December 2007 and March 2008. At those dates it was stated that more than 50% of the debt was related to loans greater than 28 days and were due within 60 days.
136. It noted that in 2007 Mr Graham and Mr Arnold had lent significant sums to WBL but that they were all converted into equity at the yearend (a point which Mr Graham affected not to understand). The significance of it is that if that is a true position (and I am sure it was) Mr Graham had no creditor claims in WBL after 31<sup>st</sup> December 2007 for loans made before that date and up to the date that the accounts were signed off.
137. The trade debtors were discussed and it was noted that they had increased by £4,700,000 from December 2006 to March 2008. It was stated that this was due to an increase in the loan book funded by loans from the founding shareholders, third party loans, equity fund raising and a Natwest facility. As I have set out above the non existent loans to Ms Jones, Mr Skeene, Ms Meurisse and Mr Donkin were all included

there as purported borrowers. The Claimants contend that they were unaware of the relationship between Ms Jones and Mr Graham and that of Ms Meurisse and Mr Arnold. I accept that evidence. The Defendants were unable to produce any credible evidence to contradict that.

138. In the review of the company loans E&Y noted that the directors had lent £1,000,000 but had converted it to share capital. This information was provided on the basis of the management and I cannot accept that Mr Graham did not know that that was happening. Yet again his position was despite the fact that he was the CEO and despite the fact it related to a large amount of money lent by him he was unaware of it. The desire on the part of the Directors to increase the shares is obvious. It was proposed to float the company on the AIM market and they wanted to ensure that they had a larger shareholding when the company was listed on AIM.
139. Mr Graham actually provided a detailed response to Mr Phipps' request by an email of 12<sup>th</sup> May 2008. He commented significantly in my view on the existence of the relevant debtors being identified in the E&Y report. He would therefore know that E&Y had included bogus borrowers. He would know further for the reasons set out above in this judgment that he had an active role in the creation of the bogus draw down borrowings from Natwest. He sent some further comments on 21<sup>st</sup> May 2008. In those comments he observed that the loan security should refer to the fact that WBL had not experienced any bad debts in respect of the loans granted.

#### THE STALLARDS SCHEDULE

140. This schedule was created as part of the AIMs exercise to show the results of the review by Stallards (WBL's solicitors) of its business. The schedule set out all the loans which were then considered to be the loans of WBL. As has been seen above earlier in this judgment several of the ones identified were actually non-existent loans. The figures were provided by Mr Malik under cover of an email dated 3<sup>rd</sup> September 2008 to Chris Simmonds who was the Stallards lawyer in question. Mr Graham was copied in. As Mr Graham was the signatory of several of the bogus loans which appeared in the Stallards schedule he clearly therefore knew that fraudulent material was being put forward on WBL's behalf. Mr Hemsley in paragraph 52 of his witness statement confirms that all of these documents (and others) were provided to them before they invested. Mr Graham denied that but he could not explain how the Claimants had these documents and I accept what the Claimants say in their evidence.
141. Then Claimants consequently contend that the documents contained misrepresentations because the WBL loans were meant to be short-term bridging loans to existing experienced property owners, developers and investors mainly within the M25 and that when a loan request was received WBL carried out (1) Experian credit checks, (2) obtained a valuation (3) verifies the identity of the borrower with a solicitor and (4) obtained details of how the borrower would repay the loan.
142. None of those is possible when loans are being concocted by the Defendants.
143. Further other representations were made concerning the security, the existence of bad debt and loans in arrears and the duration of any loans.

POSITION AS AT THE END OF 2008

144. The Claimants' case is that WBL was presented to them as a successful company pursuing a niche market in giving loans to experienced property developers to redevelop or buy to let investors.
145. In fact the Claimants say that the company was being run in a fraudulent way and that is demonstrated by the following:-
- (1) Numerous cross firing payments had been made between WBL and Mr Graham, Mr Malik, Mr Bance and Mr Arnold which had intended to disguise bad debts within WBL and give the impression that it was an active loan business.
  - (2) WBL had been involved in a number of transactions which were clearly mortgage frauds.
  - (3) False documents had been sent to Natwest in order to procure draw downs from WBL's loan account.
  - (4) Payments had been made to Mr Graham, Ms Jones and Mr Arnold which had been disguised as loans to borrowers.
146. All of the relevant documents were produced to the Claimants before the agreement was finalised. These were the documents which were initially prepared for the AIM posting but that did not happen. As a result the Defendants simply sought out the Claimants.
147. These documents were designed to show that WBL was in a profitable and workable business. The opposite was actually the case as the Claimants show.

MR GRAHAM'S EVIDENCE ON THE DOCUMENTS

148. The Claimants' case was that the various documents were produced to them in meetings towards the end of 2008 and into 2009 and that Mr Graham and Mr Malik attended those meetings along with Mr Wray and Mr Shah.
149. Mr Graham was cross examined on the documents and whether they were produced (T14/42-54). Initially he denied he had any involvement in the preparation of any of the documents which was untrue in view of the long comments he provided which I have set out above. Mr Bance like Mr Malik were also similarly involved.
150. Initially (T14/39/17) he accepted the Claimants had received the documents but not from him. He accepted however that if they were not given by him personally he was aware they were being given to the Claimants for the purpose of evaluating an investment.
151. Mr Graham initially in his evidence in cross examination asserted that he had no role in the preparation of these documents (T14/42/21). He was then shown the May 2008 exchanges where it is quite clear he was telling a lie. He clearly did have significant involvement in the preparation of the report. He was shown an email from him to a number of people concerning the loans that WBL held in the email he said (inter alia) that loan security should read "*since incorporation the company has not experienced*

*any bad debts in respect of loans granted*". He admitted (T14/51/9) that was untrue. Faced with all of these documents which showed contrary to his initial statement that he *was* involved in these documents in their gestation he tried to suggest his role was minimal. I reject that. It is an attempt to cover up the fact that he was caught in a bare faced lie that he had no involvement in the documents. It would be quite fantastic for the CEO of this company faced with its most important act in its short life namely going public, not to have a role in the preparation of the documents which would then be put in the public domain to induce investors to make substantial investments. I saw Mr Graham give evidence and be cross examined for an extensive period and I saw his demeanour throughout the trial. He is a very careful man and he is not stupid. Although he suggested from time to time that he was only careful *now* because of what has happened in the claims made against him I do not accept that. I am quite satisfied that he knew these documents were prepared initially for a floatation and then were used to induce the Claimants to invest. He knew that the documents contained very large false statements about the strength of WBL.

152. Ultimately Mr Graham accepted that the finance documents presented to the Claimants portrayed a picture of a successful company with an excellent credit history and admitted on the documents he had seen this was a highly misleading impression of the company (T19/93-95). He also ultimately accepted that his statement that there were no loans in arrears was false but he denied he was aware of it.
153. He contended that by the time of the investment the loans had either been sorted out or brought up to date or they had been rolled so that the outstanding interest had been rolled into a new loan. He said the loans were only defined to be in arrears if they were 90 days or 30 days in arrears (he was unable to remember which).
154. This was untrue in my view. First he said that the Claimants knew about its alleged 90 day rule for arrears but there was no evidence to show how they were aware and there is no document to identify it which was shown to them. A loan is in arrears as soon as payment of interest or principal is missed. This was the description given to arrears at management meetings attended by Mr Graham, Mr Malik, Mr Arnold and Mr Bance where a one monthly interest payment being missed led to a loan being categorised in arrears. In response to this Mr Graham sought to suggest that the word arrears was being used incorrectly in the minutes by a junior member of staff (T17/42/23) he also suggested that loans were rolled over into new loans. In fact as shall be seen when we look at some of the cross firing the loans were not rolled over into genuine new loans they were transformed into supposedly fresh loans by cross firing. Further the E&Y long form reports stated that less than 1% of loans were rolled up into new agreements.
155. A good example of the dishonesty of the main participants including Mr Malik is the statement in the Financing Documents Emergence of a Specialist Lender dated 4<sup>th</sup> September 2008. This contained the representation that WBL had no loans in arrears. Yet Mr Graham, Mr Malik and Mr Arnold at management meetings on 4<sup>th</sup> August 2008 and 8<sup>th</sup>, 17<sup>th</sup> and 23<sup>rd</sup> September 2008 clearly showed they were aware that numerous loans were in arrears. The Claimants have set them all out in paragraph 326 of their closing and I accept their evidence and the inevitable conclusion that the Defendants knew from these meetings alone that borrowers were in arrears. It showed that some were in arrears (take the Mireskandari loan) even if one applied Mr Graham's invented 90 day rule. Yet while these loans were in arrears this document was created showing no loans in arrears. These and other loans remained in arrears at all times prior to the

Claimants' investment at the end of January 2009. This was evidenced from the spreadsheet Ms Holloway emailed to Mr Graham on 6<sup>th</sup> January 2009 attaching "*as discussed*" a list of "*outstanding*" loans. The vast majority of loans which were in arrears at the time of August/September 2008 were still in arrears in January 2009. The Claimants set these out in paragraph 328 of their closing. This is further reinforced by WBL's internal ledgers when they were available. Mr Graham cannot claim to be unaware of this as he received a client update document on 12<sup>th</sup> January 2009 setting out Mr Arnold's comments on the outstanding loans.

156. When one looks at the 9 examples given in paragraph 330 of the Claimants' closing in addition to showing that there were significant arrears which were being hidden from the Claimants they also show that all of the Defendants one way or another were involved in the exercise of dealing with these arrears. Mr Graham received a client update which set out Mr Arnold's comments on outstanding loans. This of course undermines the Defendants' contentions (particularly Mr Arnold) that he was no longer involved in the business therefore should not give any warranties as regards his shareholding.
157. Mr Graham despite being the CEO was forced in his evidence to distance himself from documents which plainly one would have expected a CEO to see. Indeed during the trial it was difficult to recall any internal document which Mr Graham admitted he had seen. Further as is shown with the draw downs when his signature was apparently on the draw down documents he insisted that his signature had been forged. It is difficult to see why anyone would forge his signature especially Mr Malik at whom he pointed the finger.
158. Mr Graham was increasingly forced into a number of lies. These are summarised in paragraph 332 of the Claimants' closing. I am quite satisfied that there was indeed a white board in WBL's office showing its loans and a code which used dots and stars. I am quite satisfied that the dots showed missed interest payments and Mr Graham lied when he said he did not show loans in arrears. Equally I do not accept Mr Graham's denial that he had seen the 6<sup>th</sup> January 2009 spreadsheet which was recovered on his computer. The denouement in this case occurred when he was shown an email from Ms Holloway to him attaching the spreadsheet (CB2A/562.10(a) (T19/16-17)).
159. The transcript of Mr Graham's cross examination at that point demonstrates a significant failing in his evidence. As I pointed out to him it was important that he thought before he answered his questions. Frequently the reaction that he gave instinctively to an inconvenient document was to deny that he had ever seen it. As the exchange on T19/17 shows he had denied having seen the aged debt list of January 2009 despite the fact that there was an email which shows that he had been sent it. He was forced to acknowledge that he could not recall seeing at the time of the trial. This then puts Mr Graham in difficulties. First he instinctively lied and second when he was caught out he said he cannot recall seeing it. The clear inference is that he saw it. I do not believe he did not take it in. He must therefore have known that contrary to what was being said to the Claimants *at that time* WBL's internal documents showed significant arrears. As was put to him correctly in cross examination by Mr Taylor the arrears' debtors in 2009 were the same as in the bad debt list a year earlier. Mr Graham's answer was that they were not the same loans. This is the roll over point when in fact at best they were cross fired to create false new loans when it was the same debt that was simply not being discharged. Mr Graham repeatedly attempted to

redefine arrears. Ultimately he was driven to assert that a loan was not in arrears until every attempt (including going to court and obtaining charging orders) has been exhausted. That in my view is untenable. I do not believe for one minute the Claimants would have accepted such a definition of arrears so as to justify statements to them that there were no arrears. This to my mind was one of the many instances of Mr Graham making his evidence up as he went along to attempt to deal with the obvious fact that he knew internally that there were significant arrears that portrayed a completely different position to the Claimants in order to induce them to invest in WBL and its shareholding. The true position was set out in the ledgers which were put to Mr Graham. His answer to that was that these ledgers were not WBL documents and were private documents maintained by Mr Malik for which no one else was aware (T20/107/5-6). This too was a spontaneous lie by Mr Graham as the email from Mr Malik to him dated 11<sup>th</sup> May 2009 shows. Further it was obvious that Ms Holloway used the ledgers to compile her 6<sup>th</sup> January 2009 spreadsheet which she sent to Mr Graham as the figures in Ms Holloway's spreadsheet match the figures in the ledgers as set out in paragraph 332 (3) of the Claimants' closing.

### CROSS FIRING

160. As I have said cross firing was a device used by WBL to give the false impression that loans had been repaid. Mrs Choudhury who gave evidence for the Claimants set out in detail in her witness statement the large extent that the cross firing took place. This was unchallenged by the Defendants. The first example was by a company called Heritage Capital Ltd of which Mr Arnold, Mr Malik and Mr Bance were involved. Her evidence showed that between 19<sup>th</sup> June 2008 and 16<sup>th</sup> June 2009 Heritage received £4,000,000 and paid in £3,000,000 in a series of over 100 individual transactions leaving it in a net receipt of £79,000 the actual details were set out in schedule 6 to her first witness statement. The result of the exercise was that old debts were simply re-introduced as new loans by giving the impression that the old loan had been repaid. The first example she gave was of a loan to Stephen Ijewere. According to Stallards' original schedule of loans he received a loan of £30,895 on 5<sup>th</sup> November 2007 with a loan number 108. This was still outstanding in December 2008 and on 3<sup>rd</sup> December 2008 Heritage transferred £30,895 to WBL with WBL's bank statement containing the narrative "*Stephen Ijewere*". That was designed to give the impression that Mr Ijewere's loan was being repaid. On the same day £30,895 was transferred back from WBL to Heritage with the bank statement narrative referring to loan 108. In the summary loan book presented to the Claimants on 22<sup>nd</sup> April 2009 loan 108 was given a start date of 28<sup>th</sup> January 2009 when in fact the loan in reality dated back to November 2007.
161. Thus the impression given was that this was an active loan which had been repaid consistent with WBL's assertion that there were no loans in arrears and no roll over or churning of loans.
162. A similar situation occurred in respect of a company called Prism Worldwide Ltd. That was a company incorporated on 21<sup>st</sup> January 2009. Its registered office was at Mr Malik's address and its directors were Mr Malik, Mrs Malik and Mrs Bance. It was struck off the register and dissolved on 22<sup>nd</sup> June 2010. Mrs Choudhury's investigations revealed that between 6<sup>th</sup> February 2009 and 18<sup>th</sup> June 2010 Prism received £6,100,000 from WBL and paid back £6,000,000. This covered 180 individual transactions.



163. Following the dissolution of Prism Featherstone took over. This company was connected to Mr Bance and a Mr Thakur as set out in the schedule of companies attached to this judgment. In this case Mrs Choudhury revealed that in 2008 WBL made payments to the Featherstone group of companies in the sum of £620,600 and they repaid £601,471.59. In 2010 WBL made payments to them of £938,964 and received the same back. All of these transactions took place on the same day and were fictitious loans being recreated.
164. Similar cross firing occurred through Hammonds Ltd and Mallards Trading Ltd. Mallards received £1,700,000 and paid back £1,400,000 (net £307,231 between July and November 2010). Hammonds received £1,100,000 between August and November 2010 and repaid £860,000 with a net receipt of £266,972.
165. All of the Defendants in my view were directly or indirectly involved in these cross firing companies by virtue of shareholdings in the name of spouses or other related persons. Attached to this judgment is a schedule (Schedule C) which was prepared by Mrs Choudhury which sets out the various cross firing companies and the apparent ownership of the same.
166. In her second witness statement Ms Choudhury following an order I made on 17<sup>th</sup> February 2012 for access to Mr Graham's computer revised her analysis of the Stallards schedule that showed that some 60% of the value of loans were actually extended beyond 12 months as at January 2009 and 84% had been extended beyond 6 months as at January 2009.
167. This evidence was not challenged by any of the Defendants.
168. That leads inexorably to the conclusion that the Claimants were induced to invest in WBL in January 2009 by representations as to the true position of WBL. Far from being successful company all of its loan book was largely bogus and was falsely created by the cross firing.
169. In addition as appears below large amounts of money was extracted from WBL by various of the Defendants. None of that was disclosed to the Claimants either.
170. In January 2009 Mr Hemsley advanced £1,000,000 to WBL as a loan and RBC did the same. On 3<sup>rd</sup> March 2009 Mr Hemsley and RBC each paid £578,571 for Mr Arnold's 42% shareholding in WBL. On 22<sup>nd</sup> June 2009 Mr Hemsley and RBC's loans were partially repaid leaving £228,500 outstanding on each loan. Loan repayments of £771,428 were used to invest in shares in WBL. On 21<sup>st</sup> September 2009 Mr Hemsley and RBC each advanced £21,500 by way of loans to WBL bringing their respective loans to £250,000. Between December 2009 and February 2010 £425,000 was invested by loans to WBL by the Hemsley family and friends. In December 2009 Mr Hemsley and RBC made further loans of a £1,000,000 to WBL. In January 2010 RBC's loan was repaid in full and £250,000 of Mr Hemsley's loan was partly repaid. In February 2010 Mr Hemsley invested £250,000 by way of a loan to WBL's subsidiary Client Credit.
171. All of these transactions the Claimants say were induced by misrepresentations as to the true financial position of WBL. The Claimants contend that the representations were made fraudulently. In addition they claim that the various Defendants themselves knew

that the representations (which had effectively been made by them in various ways) were fraudulent and therefore they too are liable for fraudulent misrepresentation.

172. It is essential therefore to test the Claimants' contentions against each of the individual Defendants that they establish that the relevant Defendant knew of the representations and knew that they were fraudulent. Claims against WBL are in reality theoretical only as it is now in liquidation. The only caveat to that is that if there is a claim for rescission and the Claimants can trace monies as a result of that order for rescission they might be able to follow the money.

#### DEFENDANTS' KNOWLEDGE OF AND INVOLVEMENT IN CROSS FIRING - SPINS

173. The active Defendants have accepted that the Claimants have established that cross firing took place. Each of the active Defendants denied any involvement in such cross firing conveniently all blaming Mr Malik.
174. Unfortunately for the Defendants it is quite clear that there is considerable internal documentation which the Claimants discovered and referred to at the trial which showed that throughout the periods of the cross fires to varying degrees all of the active Defendants were involved and knew what was going on. I refer to the company structures attached to this judgment which shows their direct or indirect involvement to varying degrees in all of the companies participating in cross firing. I also point to the fact that there was not one piece of documentary evidence which showed any legitimate basis for these huge transfers of money between WBL and the various companies. The only documentation that existed were the cross firing of payments for the false repayment of loans.
175. The Claimants contend that all the Defendants participated in this and the internal code word for the operation was "*spin*".
176. Thus in an email 2<sup>nd</sup> September 2010 sent by Mr Bance to Mr Malik and Mr Graham he set out his thoughts about Mr Vijay Thaker. He was a director of Featherstone Consultants (Mr Bance and he were 50% shareholders). He was a 100% shareholder and sole director of both Hammonds and Mallards. The email talked about the work that he was doing. In paragraph 2 he said he was "*getting more involved in [WBL] spins as he is the account holder*". Later Mr Bance says this:-

*"Vijay doesn't really understand the spins because he is a bit slow, but it is a valuable service to us and we don't want to let that go for a few quid. If you guys think we need to put him more money then lets get something together"*.

177. Mr Graham responded "*suits me! I like him. Pay him more you tightfisted.....*"
178. Both Mr Graham and Mr Bance suggested the word spin was a reference to an acronym for "*Separate Private Investments*". Mr Graham said Mr Malik used the word spin to refer to 20 hour bridging loans or proof of funds while Mr Bance used the word spin to refer to their separate private investments.
179. This is untenable. An example of the use of the word spin was an email dated 11<sup>th</sup> November 2008 from Steve Tester the then compliance director to Mr Malik. In that email he said:-

*“Due to concerns about the overuse of Heritage Capital Bank Account for the “spinning around” of [WBL] loans, this process has been temporarily stopped until an alternative account has been sourced. So you are aware the total of the loans that are due to expire by the end of 2008 is 23 loans and £2,497,873”.*

180. On 17<sup>th</sup> September 2008 there was a weekly management meeting. Mr Tester was in the chair. Mr Graham, Mr Malik and Mr Arnold all attended. Item 11 dealt with Heritage Capital and under that heading was a reference to *“expired loans - /addendums – contact current client/spin around loans”*. Two days later Mr Tester sent an email to Mr Graham *“have you got any ideas for a name and address that we can use to spin the Lawrence Lillie loan?”* After that email was sent on 19<sup>th</sup> September 2008 WBL paid £185,000 to Heritage under the name of Mario Carrozzo. A six month loan agreement was drawn up dated 18<sup>th</sup> September 2009 for a non existent loan to Mario Carrozzo. On 23<sup>rd</sup> September 2008 Heritage cross fired back this money to WBL by transfer of £200,000 with the narrative *“L Lillie propert”* thus giving the false impression that Mr Lillie was repaying his loan on that date.
181. Mr Graham sought to explain Mr Tester’s email by saying that Mr Tester was being *“sarcastic”* because Mr Graham had asked Mr Tester to do a 24 hour bridge or proof of funds for Mr Lillie but had not provided the details. This does not explain the email and there is not a single document to support the contention that Mr Lillie was to have a 24 hour loan or proof of funds in September 2008. Mr Tester’s email does not refer to a 24 hour bridge or proof of funds with Mr Lillie.
182. Two further examples in September 2008 relating to cross firing are relevant. First in an email dated 16<sup>th</sup> September 2008 from Mr Malik to Stacy Holloway he stated :-
- “Stacy*
- do not say it aloud.....*
- Pete sent £250k out to Sunil, and £249k was sent back*
- That 1k, Pete gave to me, and in return I am going to give you*  
*the expenses to what it relates to*
- Pete and Chris authorised this. ”*
183. That email was obtained from Mr Graham’s computer. It shows evidence of a spinning transaction.
184. A further exchange of emails on 1<sup>st</sup> July 2008 between Mr Malik and Mr Bance shows splitting of payments to conceal the cross firing of the particular loan Kashmiri (see Mrs Choudhury’s supplemental witness statement at paragraph 22).
185. Mr Graham said (T14/178) that Mr Lillie did not have an outstanding loan to be *“spun”* in September 2008 because he had paid his loan off back on 1<sup>st</sup> July 2008 as shown in the bank statements. This was ingenious but it was exposed by the Claimants as being false. On 19<sup>th</sup> May 2008 Mr Malik and Ms Holloway signed a draw down notice to Natwest in the sum of £200,000 for Lawrence Lillie. The expected return date was 19<sup>th</sup>

September 2008 (hence Mr Tester's email asking Mr Graham for a name to spin). This £200,000 was drawn down from the loan account to WBL's current account and then lent to Mr Lillie or his company Barham Group Ltd. Another of Mr Lillie's companies (Keltbray Hunt Ltd) repaid this £200,000 on 1<sup>st</sup> July 2008 but there was no corresponding repayment of the loan account by WBL to Natwest. Thus Natwest were not aware that the loan had been repaid.

186. As set out in the draw down notice Natwest expected the Lillie loan to be repaid on 19<sup>th</sup> September. In order to give Natwest the false impression the funds had been received from Mr Lillie to fund this repayment Mr Tester and Mr Graham engaged in the Heritage cross firing following the receipt of the Heritage of £200,000 bearing the narrative L. Lillie. That very day Mr Tester sent a fax to Natwest stating that Lawrence Lillie had repaid the loan and asked for £200,000 to be transferred from WBL's current account to repay its loan account and the bank statements reflect that.
187. What is missing from that reference to spins is any suggestion that the spins can be anything other than the Claimants say namely a false repayment of a loan by spinning the money round through (in this case) Heritage.
188. At about the time of the concern over the use of Heritage a new company Legal Credit Ltd was introduced in November 2008. Mr Bance was a director; its registered office was his home address. Mr Thakur was its company secretary and Mr Arnold was appointed director on 17<sup>th</sup> November taking over from Mr Bance.
189. At the management meeting 4<sup>th</sup> August 2008 attended by Mr Graham, Mr Malik, Mr Arnold, Mr Bance and Mr Tester a loan to Michael Parchment was recorded outstanding; it should have been repaid 8<sup>th</sup> February 2008. On 19<sup>th</sup> November 2008 Mr Tester sent an email to Mr Bance (copy to Mr Malik) in which it said WBL had sent £15,000 by CHAPS to Legal Credit's account and this needed to come back to WBL with a reference "**Michael Parchment**". That payment was described as a loan with WBL's bank statement stating it was loan 182. This reflected on the accrued interest spreadsheet where loan 183 purported to be a loan to Mr Parchment made **November 2008**. On 20<sup>th</sup> November 2008 Mr Bance drew a cheque on Legal Credit and paid this into WBL's account in order to create the false impression that Mr Parchment's genuine old loan had been paid off. WBL's internal ledger recorded "**loan repaid by us**".
190. This in fact was the only transaction ever carried out by Legal Credit. Its bank statements were sent to Mr Bance's home address. Legal Credit's bank account was closed on 24<sup>th</sup> December 2008.
191. There can be no legitimate explanation for any of that transaction and it shows Mr Bance (even before he became a director of WBL) was involved in cross fires.
192. When the allegation about this transfer was first made in the Particulars of Claim the email from Mr Tester to Mr Bance dated 19<sup>th</sup> November 2008 had not been found nor had the documents evidencing who actively participated in making the cross firing payment back to WBL. In paragraph 17 B of his Re Amended Defence dated 1<sup>st</sup> March 2012 Mr Bance pleaded he resigned as director of legal Credit on 17<sup>th</sup> November 2008 and Mr Arnold had taken his place. He made no admissions about the payment on the basis it was not within his knowledge. However the email and the cheque were subsequently obtained (the latter by third party disclosure application) and it showed that **Mr Bance** had signed the Legal Credit cheque.

193. At trial Mr Bance asserted that this was just another 24 hour bridge which fell through (T23/45). However no documentation was produced to substantiate this supposed 24 hour bridge. The various changes show that Mr Bance has been caught out in telling a lie in his original Defence when he claimed to know nothing about the transaction. The fact that he signed the cheque destroys his credibility on this issue. It also of course shows him being involved in cross fires contrary to his primary stance.
194. The Defendants' case initially on all these cross firings were that they were transactions for short term bridging loans or proof of funds operations. I should say something about the latter because that operation seems to be nothing more than a fraudulent activity. Basically the proof of funds operation as explained to me by Mr Graham was that WBL would provide funds to a prospective buyer and the funds would be put in his account. He would then show the bank statement to the prospective vendor to show that he had funds to complete a purchase. After the showing of the statement to the vendor the monies would be returned to WBL. In other words the purpose was to give a false impression that a purchaser was in funds when in fact he was not in funds because he had to repay the money to WBL the next day. The other alternative was supposed bridging loans to enable to people to make bids at auctions and to provide the deposit. The monies were returned the next day because the auction bid was unsuccessful.
195. Neither of these is plausible. Further there was not one piece of documentation in the entirety of the case which showed any such transactions being recorded. It was a lie to explain the quick turn around of monies through Heritage and the successor companies. Ultimately all Defendants who gave evidence admitted that there was cross firing but all denied they were involved in it universally blaming Mr Malik.
196. The Claimants have comprehensively set out in their closing numerous examples of the cross firing operations in which all Defendants participated to a degree. It is significant to show that Mr Bance was involved before he became a director. I am satisfied that Mr Malik was extensively involved in the cross firing as well. I refer to the evidence summarised by the Claimants in paragraph 293 of their closing.
197. The evidence implicating Mr Arnold I accept as summarised in paragraph 294 of their closing.
198. The main active Defendants Mr Graham and Mr Bance were clearly involved in cross firing. I have given a number of examples above; the Claimants have set them out comprehensively in paragraph 295 of their closing (Mr Graham) and 296 (Mr Bance).

#### FABRICATED LOAN AGREEMENTS

199. In paragraph 297 and following and Schedule 5 the Claimants set out a total of 59 loan agreements and supplemental loan agreements that have been found in WBL's records together with a summary of evidence which proves they were fabricated.
200. The key fact which demonstrates that they are fraudulent and false is that all of them are executed on stationery showing that Mr Hemsley and Mr Wray were directors of WBL. Those appointments occurred on 23<sup>rd</sup> June 2009. Every one of the agreements and supplemental agreements pre dates their appointment.

201. These fabricated loan agreements were drawn up to disguise payments to Mr Arnold, Mr Graham, Ms Jones and Ms Meurisse. Although they were all drawn up by Mr Malik it is impossible in my view for Mr Arnold and Mr Graham in particular to distance themselves from the fact that they were dishonest agreements as they received the benefits of them.
202. In addition some of the loan agreements were drawn up to correspond with cross firing payments to the cross firing companies. There were no genuine loans when the cross firing payments took place.
203. Mr Graham and Mr Bance admitted that WBL's loan book was fabricated by means of cross firing and it inexorably followed that the loan agreements drawn up to support such payments were fabricated. Mr Malik's involvement is demonstrated tellingly by the fact that he was a signatory in every one of the 59 loan agreements none of which was genuine.
204. Mr Graham justified the falsity of these agreements by suggesting that a number of supplemental agreements had been damaged in 2 or 3 floods which occurred in January 2010 and that the Wey Bridging borrowers were asked to resign their agreements (T16/19). Mr Bance came up with the same explanation. I do not accept that evidence as credible. Further Mr Bance and Mr Graham have created false documents because the documents were not created on the dates on which they given. It is easy to say that because they used the wrong notepaper. Further a good example of how this was a lie can be shown by reference to a supplemental agreement dated 27<sup>th</sup> November 2008 purportedly signed by Mr Bryan Lewis. However Mrs Lewis wrote on 1<sup>st</sup> April 2008 denying that her husband had ever taken out a loan from WBL and said that he had in fact died. It is impossible on that basis to see how Mr Lewis could have been asked to come into the office in January 2010 to resign a supplemental agreement.
205. Some fabricated loan agreements were sent to Stallards to produce their schedule (see above).
206. All of the executive officers were clearly involved in the preparation of cross firing arrangements. The Claimants set it out comprehensively in paragraphs 293-296 and I need not set it out again in this judgment.
207. No credible answers were given by any of the Defendants to this deluge of evidence showing that they were all complicit in cross firing.
208. As regards Mr Bance it is particularly significant to note that he was involved in cross firing with Featherstones before he was a director of WBL. Further he incorporated Heritage and was its company secretary throughout the 12 months it was cross firing.
209. With knowledge of the cross fires and active participation in them Mr Bance had seen the draft E&Y long term report which stated that WBL had no bad debts. Further he also admitted that he put WBL's accounts to 30<sup>th</sup> June 2008 in the UK GAAP format and therefore knew that no provision had been made for bad debts in the accounts which were audited by E&Y. Mr Bance was sent a copy of those audited accounts. He had been actively involved in cross firing as I said before a director (see the Kashmiri loan, the Parchment loan and the Skeene loan summarised in paragraph 354 of the Claimants' closing).

210. I reject his suggestion that he was duped into carrying out the 5 cross fires in 2008. He participated in the cross firing because he knew that WBL was falsifying its loan book and WBL (or rather the officers of WBL) knew they could trust him to carry out these dishonest cross fires.
211. The same occurred in respect of the loans that were listed in January 2009. I ordered the Claimants to draw up a schedule tracking the loans in the 2008 bad debt list through the Stallards schedule through any cross firing into the January 2009 list. I attach that schedule (**CB1/92.3-92.6**). None of these was a new loan as Mr Graham asserted because he was unable to identify any new loan that was taken out in January 2009. Graphically the Lewis loan proves clearly the falsity of what was going on. Of the 13 loans in January 2008 bad debt list 8 of those had been subject to cross firing (3 by Mr Arnold personally, 4 by Heritage and 1 by Featherstones).
212. I reject again the suggestion given by Mr Graham and Mr Bance in their evidence that this was all down to Mr Malik and they knew nothing about it. Both they and Mr Arnold were clearly involved in these dishonest operations as set out above.
213. This carried through to the statements made to induce the Claimants to invest in WBL. For example it was stated that the 6 sample loans in the Stallards due diligence report had been repaid (Mr Malik's email 15<sup>th</sup> January 2009). Mr Graham was copied into that email and the statement was to the knowledge of Mr Malik and Mr Graham false. Further one loan was subject to the cross fire by Mr Arnold on 10<sup>th</sup> December 2008 (Rehman) the loans to Georgiou Wilson and Daryl Stone were all fictitious. They disguised payments to Mr Graham, Mr Arnold and Heritage. I have already commented on participation of Mr Graham for example in some of those loan agreements.

#### BREACH OF BANKING COVENANT

214. The Claimants contend that in November 2008 Mr Graham, Mr Malik and Mr Bance conspired together to doctor an email that had been originally sent to Mr Malik from Marie Dolman at Natwest before forwarding it to E&Y to deceive them whilst they were auditing the accounts into believing there had been no breach of the Banking Covenants.
215. The background was that E&Y were in the final stages of producing their "**WCR**" ("**WCR**") on the Finance Documents relied upon by the Claimants prior to their investment. Reference was made in the WCR to the £500,000 loan Alexander Kelly a third party and it was noted that WBL's management had not included it within WBL's "**Gross Borrowings**" when the covenant calculation was made each month. The Natwest facility letter with WBL (clause 11.1) provided for a calculation to be carried out each month when WBL's monthly management accounts were produced. WBL's gross borrowings were expressed as a percentage of net tangible assets and required not to exceed 50%.
216. E&Y stated that in their view this loan ought to be included and when it was WBL would thereby be in breach of the Banking Covenant all times from 2008. This was also Natwest's position because only shareholder loans could be excluded from the calculation of gross borrowings and Mr Kelly was not a shareholder.

217. The Claimants say that the problem was addressed by Mr Graham, Mr Malik and Mr Bance doctoring an email which had originally been sent to them by Ms Dolman from Natwest to alter the status of the Kelly loan to that of a shareholder **“guaranteed loan”** i.e. a loan guaranteed by a shareholder to remove it from the calculation. The Claimants say that Mr Malik then forwarded the doctored email to E&Y who were deceived into believing this was the genuine position of Natwest and who then relied upon it to amend their original wording in the WCR.
218. The Claimants contend that this is shown by a chain of emails that passed between Ms Dolman and Mr Malik and involved Mr Graham and Mr Bance. It started with Ms Dolman emailing Mr Malik copying to Mr Graham where she summarised her understanding based on a conversation she had with Mr Malik that the £500,000 loan related to a **shareholder** loan and therefore had not been included.
219. On 26<sup>th</sup> November Mr Malik initially played around with the wording in the email and sent his first doctored version of Ms Dolman’s email to Mr Graham and Mr Bance and asked them to check whether they could tell the email had been doctored by asking them **“just checking if this email works”**.
220. Later that day Mr Graham forwarded this first doctored email to Rebecca Jones at Proteus Virtual. That was WBL’s IT provider and he asked for her expert view on whether the changes could be identified. He wrote **“Rebecca this is the email from Marie Dolman that has the word removed. Is there anyway this can be seen?”**
221. Within an hour Mr Graham received the confirmation it could not. He then falsely wrote back (so the Claimants say) to her that Natwest had taken the **“word”** out anyway and the **“panic”** was over. While these emails exchanges were underway E&Y produced a final draft of their WCR.
222. Having obtained the expert IT assurance they required Mr Malik improved the drafting of his doctored email still further and emailed his revised doctored version to E&Y timed at 17.07. This falsely represented that Natwest did **not** take into account **“shareholder guaranteed loans”** when carrying out its Banking Covenant calculation when in fact the genuine email from Natwest stated they did not take into account **“shareholder”** loans. This brought the Alexander Kelly loan within the definitions of loans which Natwest said did not have to be taken into account when performing the covenant calculations.
223. Mr Graham was plainly aware of this because of the emails Mr Malik sent to him at 16.06pm referring to a note stating **“her original email”**.
224. The next difficulty was of course having altered the requirement was the production of a guarantee. Mr Arnold had provided a guarantee way back when Mr Kelly originally provided the loan although it appears Mr Malik had forgotten this or a guarantee from Mr Arnold was not acceptable. An E&Y partner raised the guarantee with Mr Malik at 18.38 saying he could not see reference to it in the Kelly loan agreement. Mr Malik then emailed Mr Graham 20 minutes later saying **“just got to make guarantee doc and send it to them, hopefully that should be it”**.
225. Mr Bance who was involved in these emails served a witness statement where he said that his understanding of what happened was that Mr Malik was writing from a new email address. This was simply wrong and untenable.



226. Mr Graham attempted to suggest the matter had been raised by Natwest and then sorted out.
227. He could offer no explanation why Mr Malik suggested a guarantee be drawn up if everything had been resolved and in desperation blamed it on Mr Malik's allegedly poor English. Nor could he explain the change to the Dolman email.
228. The reality is that the original Dolman email which had a requirement of exclusion only where there were shareholder loans was doctored to include shareholder guaranteed loans. There was then clearly a bit of a panic on Mr Malik's part because E&Y had raised the question of a lack of a reference to a shareholder guarantee in the loan documentation that they had overlooked or did not know of the separate guarantee document. That led Mr Malik to suggest that a fresh guarantee should be in effect concocted.
229. Thus the whole purpose of the exercise was to forge the Dolman letter and suggest it excluded shareholder guaranteed loans as opposed to shareholder loans. It never did. This was a blatant attempt to hide the fact that WBL broke its Banking Covenant.
230. This led E&Y to provide a false confirmation to the Claimants that the £500,000 loan from Kelly was excluded from the Natwest covenants because it was a shareholder guaranteed loan. Mr Shah making pre investment enquiries on behalf of the Claimants picked up on page 34 of the WCR which stated that the Gross Borrowing Covenant had been breached for most of the year by not treating the mezzanine loan correctly. He raised this with Mr Malik in his email 15<sup>th</sup> January 2009 Mr Malik replied (copied to Mr Graham) the same day saying there was no breach of covenants and attached the forged Natwest email. He blamed E&Y as misinterpreting the requirements and said that an explanation had been sent to E&Y which he attached. His attachment was an email from E&Y to Mr Graham headed "**Revised Loan Covenant**" dated 14<sup>th</sup> January 2009. That referred to their WCR and the fact that E&Y published their report but afterwards received the email from Mr Malik which incorporated the email from Natwest which stated £500,000 was a "**shareholder guaranteed loan**" and should not have been included in the covenants that were tested.
231. Accordingly E&Y revised the wording included in their WCR report which referred to the Kelly loan as being guaranteed by **Peter Graham** and as such is a shareholder guaranteed loan and therefore satisfies the Natwest letter. The Natwest letter of course is the forged one.
232. Mr Graham and Mr Bance were clearly involved in this falsity. Mr Graham in cross examination said he had failed to spot identifying him as the guarantor and said it was "**just one of those things that is completely irrelevant**". It is not of course completely irrelevant because the need for a guarantor is concocted by Mr Malik as Mr Graham knew and Mr Malik having forgotten the original Arnold guarantee had asked Mr Graham to create a new one.
233. Separately the fact that Mr Kelly had threatened or was pursuing litigation was deliberately concealed from the Claimants.
234. These two matters once again show the willingness of the active Defendants to make fraudulent statements when it suited them.

235. WBL's financial position was precarious and its operations were almost all carried on on the basis of false loan documents and false repayments of loans and using monies obtained fraudulently from Natwest under its loan facility and its draw down facility. Any attempt to present WBL in any other light would misrepresent its position and the active Defendants if they participated in such misrepresentation would know (because they were involved in it all) that the representations were being made fraudulently.

#### LOAN AGREEMENTS 2009

236. On 30<sup>th</sup> January 2009 WBL borrowed £1,000,000 from Mr Hemsley. That loan was guaranteed by Mr Graham. Paragraph 3 of the loan facility required WBL to use the loan for providing bridging finance to its customers.

237. RBC entered into an identical facility for another £1,000,000.

238. Neither loan facility provided a term so they were both repayable on demand. Mr Graham complained about this in his evidence but there was no merit in its complaint. It is not unusual for loans to be made to companies that are repayable on demand.

239. In fact of the £2,000,000 advanced £1,453,752 was transferred out within 5 weeks of the receipt of the loan monies to Mr Graham, Ms Jones (i.e. his wife), Ms Meurisse (Mr Arnold's partner) and Prism.

240. Some of these monies paid out were then transferred back to WBL for cross firing. Thus the sum of £243,750 was paid out to Ms Jones on 11<sup>th</sup> February 2009 and was transferred by her to her joint account with Mr Graham at HSBC and from there a sum of £233,750 was transferred back to WBL by Mr Graham and Ms Jones comprising of two payments namely £200,000 with a bank narrative of Gavin Wilson and £33,750 with a bank statement narrative of Heritage Capital. WBL sent a fax to Natwest on 11<sup>th</sup> February 2009 stating that Wilson's loan had been repaid.

241. The Claimants knew none of this. Further I find that they did not know that Ms Jones was Mrs Graham. Mr Graham sought to justify these payments because he said that the true accounting position between himself and WBL (a stance he repeated at trial) was that he was owed over £1,000,000 by WBL at that time (i.e. as at 31<sup>st</sup> December 2008). He produced a reconciliation for the trial as at that date which showed he was owed £1,045,387. This he said justified repayments of at least £970,000 to him and his wife (T19 seriatim). He was unable to explain why E&Y failed to include these loans in their accounts. There was no evidence to show that he informed E&Y of the existence of these loans. Further there is an important question of the write off of his and Mr Arnold's loans as at 31<sup>st</sup> December 2007. He admitted that the maximum amount he put in between 30<sup>th</sup> October 2008 and January 2009 was £50,000 (T19/161). The former date is when E&Y's balance sheet produced as at 31<sup>st</sup> October 2008 was included in their Long Form Report.

242. The best that Mr Graham could come up with at trial in respect of the £243,000 that moved from WBL having been provided by the Claimants to Ms Jones to his joint account and back to WBL was that it was an error. This does not begin to explain why the fictitious loan repayments were made. As a result of those fictitious loan repayments Ms Holloway sent a fax to Natwest stating that the loans to Gavin Wilson and Heritage had been repaid.

243. The full details of the misapplication of the Claimants' lendings are set out in paragraph 402 of their detailed closing. I reject Mr Graham's evidence that he had conversations with Mr Hemsley and Mr Wray who reassured him that he could use the money to make payments to himself and his wife and that they knew WBL owed him money. These conversations in my view were made up. They were never put properly to Mr Wray or Mr Hemsley. Mr Bance accepted that these payments were not discussed at board meetings (T18/26).
244. I do not accept Mr Graham was owed any money as he alleges. If he was owed money properly it ought to have been disclosed in the company accounts. No liabilities to him were disclosed after the write offs of 31<sup>st</sup> December 2007. The same applies to Mr Arnold. Of the 9 payments out shown above one of them was made in favour of Ms Meurisse on 2<sup>nd</sup> March 2009 by a false Natwest loan draw down. It was stated that the borrower was Azhar Malik to purchase a property 39 Whitehall Road Thornton Heath Surrey. This property at all material times was owned by a company called Mountview Estates and was never purchased by Azhar Malik. No payment was made to Azhar Malik. Instead the sums were paid to Ms Meurisse under the false narrative Azhar Malik. The documentation was signed by Mr Malik. Mr Graham admitted the draw down notice was false (T14/105) and admitted that he must have known that Mr Arnold was taking £200,000 out of WBL but was unable to give any reason for it suggesting it could have been repayment of a loan due to Mr Arnold. That suffers from the same inadequacies of his own loan claims in that no document has been revealed showing WBL owed that sum or anything like it to Mr Arnold. On 26<sup>th</sup> August 2009 a false fax was sent to Natwest saying that Ms Malik had repaid her loan but that was untrue as she had never borrowed it in the first place.

#### MR BANCE'S ROLE AT THIS TIME

245. In January 2009 Mr Bance moved from being an outside accountant preparing accounts to a director of WBL. At the same time Mr Thakur started working for WBL. For some reason which was never explained Mr Graham and Mr Malik agreed with Mr Bance that WBL's payment for Mr Thakur's services would be made into Mrs Bance's bank account. Thus from January 2009 to October 2010 false monthly invoices were raised in the name of Vijay Thakur Financial Services in the sum of £2,166. WBL satisfied these cheques payable to Mr Bance. Mr Bance admitted he only paid Mr Thakur £8,500 per annum with the result that Mr Bance was making a secret profit of £17,492 right from the outset of his directorship. In addition of course he had remuneration of £80,000 pa plus the use of a Bentley.
246. Mr Graham also took out a benefit of Vijay Thakur Financial Services invoices which were made in the sum of £650 each month and resulted in WBL cheques being paid to Ms Jones.

#### THE MARCH SHARE PURCHASE

247. On 3<sup>rd</sup> March 2009 Mr Arnold sold 4,000,000 shares in WBL. He sold 1,542,857 to Mr Hemsley for £578,571.03. He sold a like amount for the same price to RBC. He sold a further 571,427 to Regent House a Jersey company for £214,285.88. He purported to sell 228,571 shares to Mr Graham for £85,714.03 and finally he sold 114,286 to Kamal Shah for £42,857.25. The total consideration was £1,500,000.

248. The warranties bearing in mind that it was a purchase of shares in a private company were extremely limited and were only in respect of the confirmation that the shareholding was issued as sold and that the seller was the legal and beneficial owner of the shares and they were sold free from encumbrances.
249. There were no warranties given as to the financial state of WBL. This was the Claimants say because Mr Graham and Mr Malik had already represented to Mr Hemsley that warranties would be given because Mr Arnold was not involved in the day to day running of the business and had no executive functions and was in fact simply a shareholder. Mr Graham denies he ever said this. The Claimants' case in my view is to be preferred as it is supported by an email dated 24<sup>th</sup> February 2009 from Mr Malik to the Claimants' solicitors (copied to Mr Graham) where it was stated "**Stephen suggests that Chris does not need to give warranties as simply a shareholder not an office holder of the company**" Stephen was not Mr Hemsley but was Stephen Clow of Stallards Mr Arnold's lawyer (T20/52). Thus even if Mr Graham is correct the lawyers for Mr Arnold clearly represented to the Claimants' lawyers that Mr Arnold was merely a shareholder and not an office holder.
250. This representation was false. Mr Arnold was involved in the day to day running of the business right up until the sale as the evidence set out above shows. As Mr Graham confirmed (T20/57) Mr Arnold carried on doing the same functions after he ceased to be a director as he had done before. The only difference is that he disappeared off the notepaper. Mr Arnold clearly continued to be involved as a shadow director.
251. The consequence of that misrepresentation is presumably the Claimants contend they would have had full warranties from Mr Arnold as to the state of the company.
252. In fact this is not particularly significant because I am satisfied that the misleading financial information that was handed out to the Claimants leading up to the loan in January was also intended to induce the Claimants to buy Mr Arnold's shares. It is equally the case in my view that the Claimants relied upon those financial statements in deciding to pay £1,500,000 nearly for Mr Arnold's shares in a company which when one looks at the true state was actually worthless.
253. Further Mr Graham the Claimants contend dishonestly misrepresented to the Claimants that he was personally going to buy the shares referred to in the January SPA. In fact Mr Graham admitted he had a conversation with Mr Arnold and they agreed that Mr Arnold would "**gift me whatever shares were purchased as a thank you**" for having "**increased the value of his investment**". Mr Graham was unable to explain why he stated to Mr Hemsley and Mr Shah in an email on 3<sup>rd</sup> March 2009 that he would make his transfer later that afternoon. The Claimants contend that the total amount payable to Mr Arnold was to be £1,500,000. However that included the £85,714.29 which Mr Graham never paid. The Claimants contend that is covered by the £200,000 received by Ms Meurisse on 2<sup>nd</sup> March 2009 by virtue of the bogus Azhar Malik loan.

#### SHARE IN THE PROCEEDS OF SALE OF MR ARNOLD'S SHARES

254. On 5<sup>th</sup> March 2009 Mr Arnold paid £750,000 to Ms Jones splitting the monies between two of her HSBC accounts. Thus half the proceeds of sale went to Ms Jones.

255. The Claimants claim that they seek rescission of the March 2009 SPA on the grounds of fraudulent representation and claim to be entitled to trace the monies paid to Mr Arnold.
256. Ms Jones contended that this payment was a loan for her to carry out a property venture with Mr Arnold but there were no documents produced evidencing such a huge investment. Ms Jones did not give evidence (because her liabilities were compromised with the Claimants). Nor of course did Mr Arnold. Absent any explanation it seems to me that the Claimants' case is made out that in effect this was the splitting between Mr Arnold and Ms Jones (and thus Mr Graham) of the £1,500,000 which they had obtained from the Claimants by virtue of their fraudulent representations as to the state of WBL.

#### EVENTS LEADING TO JUNE 2009 SPA

257. By March 2009 the Claimants had invested in loans and share capital some £3,000,000. Thereafter Mr Hemsley and Mr Wray attended board meetings and Mr Hemsley was anxious to see Key Performance Indicators ("KPI") for the business. A number of board meetings took place between March and June leading to the June 2009 SPA.
258. The Claimants' case is that false management accounts were produced every month and that all of the Defendants knew that these monthly accounts were false.
259. The first significant board meeting took place on 22<sup>nd</sup> April 2009. Mr Hemsley, Mr Wray, Mr Shah, Mr Graham, Mr Bance and Mr Malik were present. At that meeting WBL's monthly management accounts for March 2009 were produced. A loan book in addition was produced containing 73 loans.
260. The Claimants contend that the management accounts including the KPI loan book were represented as being accurate by Messrs Graham, Malik and Bance. In my view it is correct that if the Executive Directors produced these documents without correcting the errors in them or falsifications in them they impliedly represented that the contents are true. However those are representations made on *behalf of WBL*. As such they cannot incur liability unless they knew the representations were made fraudulently. WBL is in a different position of course because it is the principal and the Claimants have remedies against WBL for any representations which are made on its behalf which turn out to be false. That is of course small comfort and irrelevant to the action before me because any possibility of recovering monies from WBL is theoretical rather than actual because of its insolvency. Both Mr Graham and Mr Bance accepted that the loan book and the accounts were all false. Their stance however is the one repeated throughout the trial namely that Mr Malik prepared the false documents and they did not know they were false. I have rejected such a contention in relation to the financial information which was produced to induce the Claimants to invest under the January 2009 loan agreement and the March 2009 SPA.
261. It seems to me that the Defendants' first difficulty is that the loan agreements and accounts produced in 2009 were inevitably false because they are follow ups from the 2008 information which as I have set out above was false and fraudulent. By not correcting the company's loan book and records in 2009 it seems to me that the individual Defendants perpetuate the fraud because they know that these accounts are built upon previous fraudulent accounts and records themselves. The 2009 documentation can only be correct if it is reconstructed to take into account all the

- falsities in 2008. Plainly it was not done and therefore plainly in my view the Defendants by failing to do that perpetuate the fraudulent activities in to 2009.
262. That strictly makes it irrelevant in my view the question as to whether or not the Defendants also fraudulently knew that all the 2009 financial information was false and fraudulently so.
263. The Claimants in their closing (paragraphs 439- 468) set out comprehensively in my view that the management accounts that were produced each month were dishonestly false in that they purported to show repayments of loans and new loans. I am also satisfied that Messrs Graham, Malik and Bance all participated in them.
264. I will refer to some of the Claimants' evidence which supports that. As I have said all of the Defendants ultimately acknowledged that the loan book was largely false. Two obvious falsities are loans 200 and 201 in the loan book which were shown as assets worth £200,000 and £150,690. In fact those payments out of WBL were not loans at all but payments to Ms Jones disguised as loans to "**Tom Reynolds**". On 25<sup>th</sup> July 2008 WBL paid Mr Arnold £100,000 but this was disguised in the bank statements as payment to "**C Lovick**" and given loan number 163 (see WBL's AIS provided to its auditors). It was included in the loan book and also given a fabricated payment date of 1<sup>st</sup> December 2008.
265. The WBL meeting on 20<sup>th</sup> May 2009 had accounts presented with a loan book with 36 of the loans with false dates retained. It was also stated no less than 14 loans had been made in April 2009 and that 5 loans had been paid off. All this was false. WBL's bank statements did not support it and Mr Graham admitted he could find only one genuine loan made in April 2009 (T20.123). Finally it was said that loan 126 should have been repaid on 28<sup>th</sup> April 2009 but had in fact been repaid on 11<sup>th</sup> and 14<sup>th</sup> May 2009. This was false. Loan 126 was described internally as a loan to "**E Jansz**". It had not been repaid by E Jansz. It was a subject of cross firing payments by Heritage.

#### JUNE 2009

266. The evidence disclosed from Mr Graham's computer in respect of the accounts for this period is quite telling. On 14<sup>th</sup> June 2009 Mr Malik sent an email to Mr Graham and Mr Bance attaching the May 2009 draft management accounts and board pack. In that email he stated:-

*"Guys*

*Please look at this very carefully.....you both know who we are dealing with.....*

*Note the following:*

*(i) revenue has been inflated (my emphasis) by £10,000 this month to keep it in line with previous periods*

*(ii) costs have also been inflated (my emphasis) put £4,000 in costs and a further £1,500 in legal therefore we have £5,500 to play with each month roughly to add in expenses.*

*They could argue that the loan book has increased by a further 200k this period, so we shouldn't revenue increase in proportion even at the rate of 2% that is an increase in the top line of 4k. Is that correct to assume or put in at this stage or leave for the time being. ”*

267. The Claimants submit that this is a telling piece of evidence demonstrating the manipulation of WBL's management accounts to produce an entirely false picture of its business and financial position. They also submit it shows Mr Malik, Mr Graham and Mr Bance are all involved in that exercise. Further they commented on them, ironed out any inconsistencies and suggested ways in which they could be made plausible. Thus the Claimants contend it demonstrates Mr Graham, Mr Malik and Mr Bance work in consultation together to fabricate the management accounts and loan book which were then presented at monthly board meetings to Mr Hemsley and Mr Wray and Mr Shah.
268. Between the draft and final version the figure for revenue was inflated by a nice round sum of £4,000 in the finalised accounts. That increase was 2% and was based on the fabricated increase in the size of the loan book of £200,000. They also increased further the false figures for costs and legal expenses. The costs were said to relate to valuation expenses but no valuations were carried out and in March 2009 (see above) Mr Malik, Mr Graham and Mr Bance had been at the management meeting where it was agreed to buy a Crozier Hadley stamp which was used to fabricate valuations.
269. These accounts were presented at the meeting which took place 17<sup>th</sup> June 2009. The loan book retained 23 of the falsely dated loans which had appeared in the loan book presented at 22<sup>nd</sup> April 2009 meeting. According to the updated loan book some 14 loans which had been outstanding as at the end of April 2009 had been repaid in May 2009. The basis for that contention is set out in footnote 689 of the Claimants' closing which I accept. However the bank statements did not show any repayments. The only substantial payments into WBL were cross firing payments from Heritage and one from Mr Graham. Even the loans which received specific mention in the KPIs as having been repaid were the subject of cross firing. None of that is disputed by the Defendants. Further the management accounts said that 15 loans worth around £2,300,000 had been made in May 2009 but in fact no loans had been made. All of the substantial CHAPS transfers out of WBL in May 2009 went to Heritage and were simply cross firing payments. Nor was interest income of £233,184 received. Mr Graham admitted in cross examination that not a single of these alleged 15 loans had been made (T20/143).
270. Despite all that Mr Graham's report to the board said *“we have had a material rise in first charge business. Although this has meant a reduction average return of new business underwritten the company is excited about 2% monthly returns for 50% (and below) of first charge loans.*
271. Mr Bance was unable to provide an innocent explanation for Mr Malik's use of the word *“inflated”* and he said this was down to Mr Malik's poor grasp of the English language (a line of resort of which Mr Graham made use).
272. Mr Graham also blamed Mr Malik's poor English; denied he was aware that no valuations had been carried out, claimed he could not remember Mr Malik's email and sought to explain his report which referred to an increase in first charge lending as

referring only to demand and not actual lending. He also suggested that the rolling up of the loans was known to Messrs Hemsley, Wray and Shah and was a common topic of discussion.

273. I do not accept any of this. The Defendants have no credible challenge to it. It must be remembered this is a snapshot of the cross firing activity with Heritage continued in April, May and June 2009 as set out in the Claimants' expert report (which itself was not challenged on this aspect). The essence was that after Messrs Hemsley, Wray and Shah came on board virtually no new business was done but that was concealed from them.
274. The accounts that were produced for the meeting of 17<sup>th</sup> June 2009 carried on the dishonest and fraudulent activity. Shortly thereafter the June 2009 investment agreement was executed.

#### JUNE 2009 INVESTMENT AGREEMENT

275. By this agreement Mr Hemsley and RBC invested a further £771,428.29 each. In exchange for that investment they received 771,429 ordinary shares and 763,714 preference shares. It was funded by partial repayment of the January loans by WBL and that money was then credited as having been received by WBL. Kamal Shah also purchased 57,143 ordinary shares and 56,571 preference shares for a subscription of £57,142.43.
276. By clause 2.2 Mr Graham (described in the agreement as "the founder") appeared to apply for a further 114,286 ordinary shares and 113,143 preference shares at a price of £0.01 for ordinary and £1.00 per preference share payments were made in accordance with clause 3.2 (c) (i) i.e. telephonic transfer of funds to WBL. In fact the monies were paid by Mr Arnold out of the monies that were received for the March share sale as set out above. The purpose of Mr Graham making this supposed investment the Claimants contend was to give them a false impression that he too was investing in the prosperity of WBL.
277. Unlike the March 2009 agreement both WBL and Mr Graham by clause 4.1 and schedule 4 gave warranties. These were the traditional form of warranties in respect of a sale of a private company namely warranting that the statements in the disclosure letter and the matters set out in schedule 4 were true.
278. Warranty 2 was a warranty that all of the information identified in pre contractual documentation was true. Warranty 3 was a warranty that the accounts gave a true and fair view of the state of affairs of the company and the profit and losses and made proper provision for all liabilities and all bad doubtful debts.
279. Warranty 4 said that management accounts had been prepared on a similar basis. Warranty 5 (inter alia) stated that WBL's business had been carried on in its ordinary and usual course without interruption and there had been no material adverse change in the financial trading position in its business. Warranty 10 was a warranty that no interest payments due from WBL's customers were overdue. Warranty 11 said that no loans were made by the company to any of its directors or shareholders or any person connected with them. Warranty 14 provided that the records and registers were duly written up and contained truthful and accurate records of all matters required to be dealt



- with. Paragraph 18 required warranties that all details of bank overdrafts and all borrowings had been set out and WBL was not in breach of any of the facilities.
280. As the evidence which I have set out above shows all of those warranties were significantly broken. Mr Graham admitted this in cross examination.
281. Liability for such breaches is absolute; there is no requirement to prove negligence or fraud to establish breach of those warranties.
282. Nevertheless I am satisfied that all of the representations by the continued production of false accounts were made fraudulently by Mr Malik, Mr Graham and Mr Bance to induce the Claimants to subscribe for further shares. I reject Mr Bance's evidence that he was unaware of the terms of the warranties and that he did not read them.
283. Following the execution of the June share purchase agreement Mr Hemsley and Mr Wray were appointed non Executive Directors on 23<sup>rd</sup> June 2009 and were paid £20,000 per annum.

#### EVENTS SUBSEQUENT TO JUNE INVESTMENT AGREEMENT

284. The manipulation of the accounts plainly continued. As the Claimants have shown the management accounts to the end of July 2009 were manipulated following exchanges between Mr Malik and Mr Bance. Fresh loans were invented (numbers 269, 270, 271 and 272). These cannot have been genuine because they came into existence after Mr Malik's email of 27<sup>th</sup> August 2009. Further loan 268 in the draft had to be re-dated from 30<sup>th</sup> July to 28<sup>th</sup> July 2009 to make room at the end of July for the addition of the 4 more fictitious loans.
285. Mr Bance affected not to remember any of these matters not why loans 194, 196, 198 and 200 had disappeared from the finalised management accounts.
286. Mr Graham contended that he had never read the management accounts and that the print was certainly too small for him to read and that he did not appreciate what was happening in the company because he was going to lots of meetings. He could not understand why Mr Malik sent him draft management accounts to which false amendments were made if in fact Mr Malik was falsifying the accounts behind his back.
287. All this is unbelievable. I am quite satisfied again that Mr Malik was as Finance Director creating manipulated accounts and sharing the manipulated accounts both with Mr Bance and Mr Graham for their concurrence or to receive alterations or suggestions. They are plainly acting in concert to produce false figures to be produced at the management meetings.
288. Further cross firing occurred in August via Prism as shown in the Expert report and schedule 6 to the Claimants' closing.
289. Mr Hemsley and RBC on 3<sup>rd</sup> September 2009 invested a further £21,500 each to bring up the total respective loans to £250,000 (taking into account the monies that were used to enter into the June Investment Agreement). They plainly did this in reliance upon the false management accounts. Further examples of falsity are found in the exchange of emails between Mr Malik, Mr Graham and Mr Bance in August 2009. In September

2009 Mr Malik and Mr Graham were negotiating an increase in the Natwest facility from £1,500,000 to £3,000,000. This was signed on 11<sup>th</sup> September 2009.

290. In October 2009 Mr Malik sent an email to Ms Holloway which was copied to Mr Graham and Mr Bance. This reported that the last loan was 226. He enclosed what was the new list which he said took to the end of September and invited them to get all the documentation together. He then listed out the 13 loans which were numbered consecutively from 227 to 239 and dated over a 3 month period between 2<sup>nd</sup> July and 29<sup>th</sup> September 2009. Thus Mr Malik was saying that in that 3 months July, August and September WBL had made only 13 loans. On the very next day he sent an email to Mr Graham and Mr Bance enclosing draft management accounts and asking them to review them **VERY CAREFULLY**". This loan book showed that no less than 40 loans had allegedly been made in that 3 month period. The loan numbers were entirely inconsistent with the loan numbers shown in Mr Malik's email.
291. Mr Graham was forced to admit these documents showed that Mr Malik was running two false loan books (T21/35). He said he was not aware of this. Mr Bance contended that WBL's accounting package contained a drawback in that it would group together loans to the same borrower which is why the two emails showed different numbers of loans. This is completely unsustainable; the value of the loans the 13 borrowers listed in Mr Malik's 11<sup>th</sup> October 2009 email was around £2,380,000 whereas the value of the 40 loans in the loan book was around £4,900,000. It must be remembered that Mr Malik should be reporting facts and not events in the future because he is reporting in October all the loans which he says have taken place in September. It is impossible to see therefore how he can produce on consecutive days different figures for the amount of the loans for the period which has already passed. This shows the falsity of the loan book as prepared by Mr Malik. It also makes plain that Mr Graham and Mr Bance knew full well what he was doing. There was simply no other explanation for this. On examination only 2 out of the 13 loans on Mr Malik's first list were genuine (Sampson and Hoffman). Ten of the loans were in fact fictitious and based on Prism cross firing.
292. This is further reinforced by the fact that both Mr Bance and Mr Graham responded with suggestions to vary the period of the loans for example to introduce a variety. That was Mr Bance's email of 12<sup>th</sup> October 2009 with which Mr Graham agreed. Mr Malik responded changing some of the loans in September and varying them so they were not all 6 months. Thus Mr Malik is rewriting history at the suggestion of Mr Bance with the knowledge of Mr Graham. Similarly in October there were only 5 genuine loans as opposed to the 23 supposed new loans. Part of these transactions disguised payments of £150,000 to Mr Pinon a friend of Mr Graham and an identical amount to Ms Jones and Mr Arnold. None of these "**loans**" were included in the loan book and Mr Graham could not explain that beyond asserting that the Claimants knew full well that he and his wife took loans from WBL. I simply do not accept that. I cannot see how it can be realistically suggested that the Claimants would invest money in WBL on the basis that it would simply be removed by the other shareholders.

#### DECEMBER 2009 FURTHER INVESTMENT

293. In December 2009 WBL's cash was running low. On 18<sup>th</sup> December 2009 it had £228,874.54 in its Natwest current account. The Claimants contend that Mr Graham told Mr Hemsley that WBL could always make use of more funds to expand its loan book and that possibly he could raise money from his family and friends. The

Claimants also contend that Mr Malik and Mr Bance were aware of that as appears from an email sent by Mr Graham dated 2<sup>nd</sup> September 2009 entitled “*Friends and Family Loans*” which was copied to Mr Bance and Mr Malik.

294. Pursuant to that invitation the Claimants contend that Mr Hemsley did approach his family and friends and reproduced in effect the financial picture given to him by the management accounts. It was clear on that analysis that Mr Hemsley was inducing (albeit innocently on his part) his family and friends to invest in WBL on the strength of the company as represented to him. This is supported by evidence of various family and friends none of whose statements was challenged.
295. This led to loans totalling £425,000 provided between 17<sup>th</sup> December 2009 and 8<sup>th</sup> February 2010. In addition Mr Hemsley contended that Mr Graham approached him during December 2009 and told him there was potential to engage in some short term lending over the year end and that the money would be returned in January 2010. As a result of that the Claimants contend that Mr Hemsley and RBC were persuaded to invest further and on 22-24 December 2009 each invested a further £1,000,000 by way of loans to WBL.
296. Mr Graham in cross examination of Mr Hemsley put it to him that he had not asked for money to fund lending over the year end. Mr Hemsley rejected that. In addition the other departed Claimant Maven made a loan of £2,000,000 to WBL on 25<sup>th</sup> January 2010. The Claimants said that Mr Graham told Mr Hemsley and Mr Wray that the year end business had not materialised on the scale anticipated and that the monies loaned had only been partially utilised so the balance remained in WBL’s bank account. At a board meeting attended by Mr Graham, Mr Hemsley, Mr Wray, Ms Panu, Mr Malik and Mr Bance it was agreed that RBC would be repaid £1,000,000 and Mr Hemsley would be repaid £250,000 on the basis that Mr Hemsley would leave £750,000. That sum was returned to Mr Hemsley was reinvested by him on 4<sup>th</sup> February 2010 into the bank account of client credit (“Mr Hemsley’s February 2010 loan”).
297. I accept the Claimants evidence again in this area. It is equally the case that I accept that in effect there were continuing representations as to the supposed state of WBL’s finances. In addition I accept the representations that were made as to the purpose for which the money was required were themselves false and made fraudulently. This is demonstrated by the analysis by the Claimants of what actually happened to the monies that were thus provided to WBL.

#### USE OF CLAIMANTS’ MONIES

298. Between 22<sup>nd</sup> December 2009 and 15<sup>th</sup> March 2010 a total of £1,874,368 was dispersed in favour of Mr Graham, Ms Jones, Mr Bance, Mr Malik and Mrs Malik.
299. The details are as follows:-

#### *“Misuse of the Claimants’ investments*

1. *Just as had happened in early 2009, as the money started coming in to Wey Bridging, the Defendants started taking it out for their own purposes. Thus:*
  - (1) *22 December 2009:*

- (a) *£200,000 to Ms Jones (Green Prem account with the reference in Wey bridging's bank statements being "Alecto Loan").*
  - (b) *£5,000 to Ms Jones (by 2 Wey Bridging cheques for £2,500)*
- (2) *23 December 2009:*
  - (a) *£20,000 to Mr Bance (paid into his Barclays joint account with Mrs Bance)*
- (3) *30 December 2009:*
  - (a) *£250,000 to Ms Jones (paid by Wey Bridging cheque deposited into Ms Jones' MoreforMore Savings account). This was disguised by a fabricated loan agreement for £250,000 to "Mayflower Development" [H4/tab95]*
- (4) *8 January 2010:*
  - (a) *£50,000 to Mr Bance*
  - (b) *£50,000 to Mr Malik*
- (5) *19 January 2010:*
  - (a) *£100,000 to Mr Graham (Wey Bridging cheque 588).*
- (6) *26 January 2010:*
  - (a) *£250,000 to Ms Jones (Wey Bridging cheque deposited in her ON BNS Saver account ending 3432).*
  - (b) *£2,500 to Mr Graham/Ms Jones (Wey Bridging cheque)*
- (7) *27 January 2010:*
  - (a) *£24,747.04 to Mrs Malik*
  - (b) *£12,373.52 to Mrs Bance (Wey Bridging cheques 608 and 609)*
- (8) *28 January 2010:*
  - (a) *£21,799.09 to Mr Graham (referred to in Wey Bridging bank statements as a "bonus")*
- (9) *1 February 2010:*
  - (a) *£200,000 to Ms Jones (Wey Bridging cheque 599 – disguised by a fabricated loan agreement with "Richard Cunningham" [H4/tab88]. Mr Graham admitted this loan had been fabricated, but maintained that this £200,000 to Ms Jones was a loan repayment. Again, it simply makes no sense for Mr Graham to contend that loan agreements were fabricated behind his back when the payments they were disguising were to his wife).*

- (b) £73,500 to Ms Jones (Wey Bridging cheque 600)
- (10) 18 February 2010:
  - (a) £100,000 to Mr Graham
- (11) 26 February 2010:
  - (a) £2,500 to Mr Graham/Ms Jones (Wey Bridging cheque 628)
- (12) 1 March 2010:
  - (a) £300,000 to Ms Jones
  - (b) £11,949 to Mrs Bance (Wey Bridging cheques 624 and 630)
- (13) 15 March 2010:
  - (a) £200,000 to Ms Jones.”

302. As is set out above the Claimants have identified £650,000 as being paid to Ms Jones under disguised loans.
303. Mr Graham suggested that the payments to him and his wife were a mixture of loan repayments and new loans. I reject that for the following reasons. First as I have set out above the suggestion of repayment of loans is dependent on there having been loans which were actually consolidated in the accounts ending year end 2008. Second there is no documentary evidence to support any such loans. Third none of the specific transactions was disclosed to the board. Mr Graham admitted that (T21/82/4) Mr Bance also admitted that none of the transactions was disclosed to the non Executive Directors except for his bonus. He also admitted that he was aware that the money put into the company had been for the supposed purpose of expanding the loan book.

#### DECEPTION OF AUDITORS

304. For the preparation of the accounts to the end of December 2009 the Defendants presented to WBL’s accountants (Hacker Young) a document called the Accrued Income Spreadsheet (“AIS”) to enable that firm to conduct an audit of WBL’s books. The document is summarised in schedule 6 to the closings.
305. The Claimants’ evidence established (and this was not challenged) that of the total 51 loans that were provided in the AIS 8 “loans” were payments made to Ms Jones, 19 “loans” were payments to Prism which were cross fired back to WBL. Mr Bance’s and Mr Malik’s wives were Prism’s shareholders and between January and February 2009 its directors. In addition 9 “loans” were payments to Heritage which were cross fired back. One loan was made to Ms Meurisse and a further loan was split into two payments one to Mr Malik and one to Mr Bance.
306. Mr Bance called Andrew Bailey the audit manager of Hacker Young who did the audits for year ending 31<sup>st</sup> December 2008 and 31<sup>st</sup> December 2009.
307. He failed to discover any of the extensive frauds which had been uncovered by the Claimants in this action. In respect of the accounts to 31<sup>st</sup> December 2009 he said in paragraph 7 of his witness statement that Mr Malik and Mr Bance “*provided sufficient evidence and explanations to support the position there were no bad or doubtful debts in the 31 December 2009 loan book balances*”. He recalled having had discussions

- with the Executive Directors and that he knew that a number of loans had been extended or rolled but they were all secured either by second charges or solicitors' undertakings and he saw no reason to dispute the view of the Executive Directors that there were no bad debts.
308. His evidence fell apart spectacularly on cross examination (T25). It was clear from his cross examination that he had extensive discussions with all of the active directors about the preparation of the accounts. For example (T25/14/1) he referred to Mr Bance telling him that all lenders were known to the directors, they had a track record of property development and that WBL either had a charge or a solicitors' undertaking over properties. He acknowledged having discussions with Mr Malik and whilst having less knowledge of discussions with Mr Graham he apparently came in and out of meetings but he was there when the accounts were signed off.
309. Mr Bailey had chosen a number of loans which he wanted to test for audit purposes. He took these from the loan book which had been provided to him by Mr Malik. For each sample he checked the individual's file and the details given in the loan book to satisfy himself that they married the actual loan agreement on the file. He checked the loan redemption date and he checked the loan draw down from the company's bank statement. He checked the loan redemption amount to the post year end bank statement in respect of loans redeemed after the year end. He checked whether or not there were solicitors' undertakings and kept one example for his records.
310. In the light of his examination of those loans and all the checks on the samples selected he considered the accounts were satisfactory. In other words he considered the documentation being produced to him showed a true and fair view of WBL's finances and that the loans were of course all genuine loans.
311. In fact the overwhelming number of loans were bogus and examples of cross firing.
312. Although he looked at the bank statements he failed to discover any of the cross firing. The reason for this is that he just satisfied himself that the accounts showed the money going out. Thus for example on the first one a purported loan to Hyde Park Management he missed the fact that Hyde Park Management did not receive the money but in fact it went to Featherstones.
313. It became clear during the cross examination that Mr Bailey simply accepted as read everything in WBL's documents that were produced to him. He failed to spot the cross firing repayments because he only looked for money going out of WBL's bank account and missed for example the Hyde Park money actually coming back in the next day. He never made any attempt to contact any of the borrowers. Had he done so he would have found some of the borrowers were non existent. He never checked whether there were actually any securities for example by checking the land registry a relatively easy exercise and the reality is that Mr Bailey simply accepted as read everything that was presented to him and did not question it. He acknowledged that if he had spotted the fact that the Hyde Park money actually went out to Featherstones that would have concerned him (T25/26/3). When it came to the repayment of the Hyde Park Management loan in March 2010 (a post balance sheet event) the bank statement showed them coming in in instalments but they all came from Prism. He accepted the statement that it was a repayment of the loan but he did not look into why Prism was making the repayment.

314. In respect of a loan supposedly made to a Mr Damayantharan he missed the fact that the loan went out and was repaid the same day via Heritage.
315. He did not check any of the solicitors' undertakings with the relevant firms of solicitors. Had he done so he would have discovered that those solicitors would have denied giving the undertakings. False undertakings were created on occasions by one or other of the Defendants. The Claimants established this during the cross examination of Mr Bailey (T25/55 and following). Further the undertakings that were produced were of doubtful worth because they only bit if the solicitor received funds. It provided therefore a limited security. Mr Bailey did not understand this. Further Mr Bailey took no attempts to ascertain the strength of the solicitors giving the undertakings. Mr Graham had described undertakings as gold dust. In my view a lot of them were fools gold dust and no more. Mr Bailey knew that one firm of solicitors Elliot Stephens had apparently given undertakings worth millions but that did not concern him for some reason.
316. In summary Mr Bailey made no attempt to go behind the documents that were being produced to him to verify them by speaking with the borrowers or the solicitors and fully reading the bank statements. If he had done that he would have found all of the sample ones were not genuine loan transactions and were the subject matter of cross firing. His audit was therefore worthless as an audit exercise. It also follows of course that Mr Bailey's passing of the accounts does not assist the Defendants because of the limited nature of the work that he did.
317. Further he like the Claimants was unaware that Ms Jones was actually Mrs Graham and he was unaware that Ms Meurisse was Mr Arnold's partner (T25/81).
318. At the end of the day Mr Bailey's evidence showed that he had also been seriously misled in respect of the material provided to him to audit the accounts of WBL.

#### FEBRUARY – SEPTEMBER 2010

319. On 19<sup>th</sup> January 2010 Client Credit was on Mr Bance's instructions incorporated as a subsidiary of WBL with Mr Graham being the sole director. It was meant to be in the business of lending to solicitors firms for litigation (PPI and Divorce Claims). It opened a bank account with HSBC (73956733). The only substantial payment into that account was a payment of £250,000 made by Mr Hemsley on 5<sup>th</sup> February 2010 to provide initial funding.
320. During the course of 2010 the Executive Directors painted a picture of an expanding new line of business. For example the management accounts presented by the Executive Directors stated that 9 Client Credit loans had been made to the end of June 2010 to the value of £1,028,595. By the time Wey Bridging went into administration in November the management accounts were showing 19 client credit loans worth £1,900,000.
321. The Claimants have established in my view that all of the loans were false. There was no evidence produced showing any loans to solicitors firms and no activity in Client Credit's bank statements which supports there being any loans. Neither Mr Graham nor Mr Bance could identify a single firm of solicitors that had taken a loan from WBL.
322. The stance of Mr Graham and Mr Bance was to blame Mr Malik.

323. The Claimants correctly contend that Mr Graham and Mr Bance were involved in the creation of the false Client Credit account just as much as Mr Malik. The exchange of emails on 30<sup>th</sup> June 2010 in respect of the May 2009 draft management accounts demonstrated their creativity. Although the accounts being circulated are management accounts to May 2009 (plainly a mistake for May 2010) Mr Graham felt able to say ***“all sounds ok, but we need to show that new CCL loans as well. Don’t forget they have a lower monthly interest so it all equals out. We must demonstrate that CCL grows every month.”*** Mr Bance was copied into the emails and agreed what was going on ***“subject to Peter’s CCL comments”*** (CB6/1641/B). Mr Malik responded to Mr Graham’s email and copied Mr Bance stating that he was going to state that a fresh loan went out for CCL in early June. He stated ***“I would rather go with that, as to change all numbers now, is a big job, as it is all wrapped up now as I would have restarted from consolidation once again and re do it all....thanks my man....in essence it is me saying .....too late.....lol”***.
324. Mr Graham replied that it was too late telling him when he told Mr Malik at the start of the month ***“come on guys we need to make sure this reads correctly every month”***.
325. There is no genuine or reasoned explanation for those exchanges of emails in my view. The only conclusion that can be made is that Mr Bance, Mr Graham and Mr Malik together are doctoring the management accounts in respect of CCL to show loans growing every month.
326. The expert Moria Hindson for the Claimants conducted an analysis of the 2010 accounts and concluded that the management accounts provided a wholly misleading picture for a business which seemed to have few if any actual loan transactions passing through its bank account (paragraph 2.7).
327. Her evidence was not challenged at the time she gave evidence. As the case went on both Mr Graham and Mr Bance admitted that the management accounts were false from March 2009 onwards (T18/11/2).
328. The management accounts were completely fictitious because the Defendants carried on in the same old way by creating business with cross fires. Those cross fires went through Prism and new companies Featherstones Consultants Ltd, Hammonds Ltd and Mallards Ltd.
329. Featherstones share capital was held by Mr Bance and Mr Thakur equally. Its registered office was Mr Bance’s home. Mr Thakur was the only director. Hammonds was incorporated with a nominal share capital of £100. Its sole director and shareholder was Mr Thakur and its registered office was 48 Hindes Road Harrow where Mr Thakur rented a one room bedsit. Mallards Ltd sole director and shareholder was Mr Thakur with a registered office again at Mr Thakur’s bedsit in Harrow.
330. Mr Bance paid Mr Thakur Mr Bance accepted Mr Thakur acted on his instructions and the instructions of Mr Malik and Mr Graham. In this way the Claimants contend (and I accept) that the Executive Directors were controlling Mr Thakur. I have already referred to the exchange of emails on 2<sup>nd</sup> September 2010 talking about giving him some more money and more significantly talking about spins.



AIMS INTERNATIONAL LTD

331. AIMS was set up in 2010 as a PPI claims business. Over 2010 it received over £500,000 from WBL. The main mover behind the company appears to be somebody called Adam Bennett. An intriguing email exchange dated 18<sup>th</sup> October 2010 between him and Mr Graham with a Shaun Taylor who is also involved in it shows that Mr Graham wanted his role in the company to be concealed. Mr Bennett sent details of a new website for the company and in it he said to Mr Graham “*shall I assume that you don’t want your details on it.*”
332. Mr Graham replied “*correct!!!!*”
333. What is significant is that none of the monies paid to AIMS which was supposedly loans by WBL appeared in WBL’s monthly loan books. Ms Jones’ involvement as a shareholder was not disclosed as Mr Graham admitted (T21/94). The loans to AIMS were not secured in any way and loan documents were produced which suggested the loans were to purchase the Dylan Harvey Business Centre in Blackburn. Later loan agreements were produced during the course of Maven’s freezing order hearing. AIMS is now in liquidation and there has been no recovery from it. It did not feature in the litigation and Mr Graham was not cross examined extensively on AIMS.
334. In his witness statement for the trial Mr Graham devoted a large amount of time to AIMS (paragraphs 167-259). He was not cross examined on any of this. The reason for this was that this was to be part of the Maven claims and it became of no significance when they compromised. I do not see that this matter can be taken any further except that I accept the Claimants’ submissions that the activity in respect of this company was concealed from them. That much was accepted by Mr Graham. It is another example of removal of funds from WBL for the private purposes of the director (in this case Mr Graham and Ms Jones) as opposed to advancing monies on legitimate loans as it was stated was WBL’s true activity. AIMS last payment was £150,000 on 2<sup>nd</sup> November 2010 just before the collapse of WBL.

THE COLLAPSE OF WBL

335. It was clear the Claimants contend that the active directors knew that WBL was running out of money by October 2010 and could not carry on. On 7<sup>th</sup> October 2010 HMRC wrote to WBL demanding £537,749.91. The existence of this demand was apparently not revealed by the Executive Directors at the board meeting on 18<sup>th</sup> October 2010. Mr Graham claimed that he had not seen the demand (T21/99). I do not believe him.
336. On 1<sup>st</sup> November 2010 there was a meeting between Mr Graham, Mr Malik and Mr Bance on the one side and Mr Hemsley and Mrs Choudhury on the other. Mrs Choudhury had been engaged to assist the Executive Directors in producing a business plan to assist WBL in raising further finances. The information within that business plan came from the Executive Directors.
337. The document contained a large number of untruths. First it said WBL had made 164 loans in the 9 months to 30<sup>th</sup> September 2009 totalling £26,310,000 which was false. Second it stated it had 19 Client Credit loans which was false and that it only had 1 bad debt since inception.

338. At that meeting Mr Hemsley asked to see a loan book which contains names and addresses of borrowers not just loan numbers and details of the solicitors giving undertakings for the Client Credit loans. Up until then the identity of the loans had never been produced at the monthly management account meetings simply the loan numbers. Mr Graham refused on the basis that the information was “*confidential*”. There can be no basis for that assertion and in my view is a stalling tactic by Mr Graham because he knew if Mr Hemsley got his hands on the documentation behind the management accounts the fraud would have unravelled fairly quickly. Mr Hemsley said that Mr Graham eventually agreed to provide it but it never was provided. In cross examination Mr Graham said he could not remember whether or not there was a meeting on that day but alleged that Mr Hemsley and Mrs Choudhury had totally fabricated their account of the meeting. I reject such a contention. Also on that day two final cross firing payments of £43,636 were carried out between WBL and Featherstone Consultants. No further cross firing payments took place. However substantial sums were removed out of the company just before it was put into administration.

#### LATE MOVEMENT OF FUNDS

339. The first one was 2<sup>nd</sup> November 2010 when WBL made a payment of £150,000 to AIMS.
340. On 3<sup>rd</sup> November 2010 WBL made two further payments to Hammonds and Mallards. Ms Holloway signed a cheque for £15,369 to Hammonds and Mr Bance signed a cheque to Mallards for £16,234. Mr Bance asserted in his evidence that this was repayment of Mr Thakur’s expenses and fees in relation to potential auction purchases including wining and dining and travel expenses. There was no evidence to support such a contention and I reject it. Further of the monies paid to Mallards Mrs Malik received a CHAPS payment of £15,369 on 8<sup>th</sup> November 2010 and £9,674 was received in Mr Bance’s accountancy business Featherstones on 22<sup>nd</sup> November 2010. This Mr Bance said was a loan from Mr Thakur to help Mr Bance restart his accountancy business following the collapse of WBL, I do not accept that explanation either.
341. On 4<sup>th</sup> November 2010 Mr Graham met with Saunders Bearman solicitors for insolvency advice. On that day £58,750 was transferred to that firm and to 13 Old Square Lincoln’s Inn. The latter was a payment in advance to David Oliver QC for his urgent advice on the insolvency of WBL.
342. On that same day WBL made a payment of £307,419 to Mallards by CHAPS transfer falsely described in the bank narrative as a loan. Of this £282,000 was then transferred to Whitecross in Dubai in two separate transactions on 11<sup>th</sup> and 23<sup>rd</sup> November. That latter payment has not been recovered.
343. Despite the fact that the question of WBL’s solvency was relevant on that day both Mr Graham and Mr Bance denied any knowledge of the transfer. Mr Bance offered an explanation that the payments were for potential loans for auction purchases. Mr Graham suggested they might have been proof of funds payments or a 24 hour bridge.
344. Whatever it was supposed to be it never happened and the money never came back. This payment was never raised with the administrator RSM Tenon nor was the £150,000. Thus in a matter of days before WBL went into administration £457,000 at least was removed from its account and put beyond the reach of WBL’s creditors.

345. Whitecross is a mysterious entity. It was incorporated in the United Arab Emirates on 20<sup>th</sup> November 2009. Mr Bance incorporated it and Mr Thakur was its director. The only transaction it did was to receive £282,000. Nobody was able to explain what this was all about. The Claimants have been unable to obtain any relief in respect of that money because proceedings are not possible in the UAE.
346. I simply do not accept that the active Defendants do not know what this is all about. Mr Thakur was a relatively low paid person doing jobs for the Executive Defendants (see above in relation to spins).
347. WBL funded the incorporation. In an email from Mr Bance to Mr Graham dated 9<sup>th</sup> November 2009 he said the costs of incorporation would be approximately £3,750 and said *“I suggest we go through Prism so not to leave any trace of Weybridging”* no credible explanation was given by Mr Bance for what he said in this email. On 11<sup>th</sup> November 2009 WBL transferred the money to Prism and it funded a payment in UAE Dirham (equivalent to £1,492.56) with the reference *“Sunil Bance”*. Mr Bance accepted that that was used to pay the incorporation costs. He also admitted that in November 2009 he transferred to Dubai with Mr Thakur to incorporate Whitecross. On 23<sup>rd</sup> November 2009 Mr Bance emailed Mr Graham the certificate of incorporation in Whitecross and stated the bank account opening was underway. It was not opened until 2<sup>nd</sup> February 2010 and Mr Bance emailed Mr Graham, Mr Malik and Mr Thakur informing them after numerous calls and emails that he had managed to get Standard Chartered to issue a debit card for Whitecross which was being sent by DHL. Mr Thakur was the person authorised to use the debit card. On 23<sup>rd</sup> April 2010 Mr Malik emailed Mr Graham saying Mr Bance had asked whether he should bring the balance of the £4,000 that was sitting in the Whitecross account in Dubai back to England. Mr Graham said it should be left for now. On 2<sup>nd</sup> September 2010 Mr Bance sent an email to Mr Malik and Mr Graham stating one of the jobs Mr Thakur did for them was to act as the Whitecross director.
348. Mr Graham in cross examination denied that he knew anything about Whitecross and all of these matters. I find that incredible. First he has no explanation for the emails set out above and in particular the decision to hide the use of WBL funds to incorporate Whitecross. On 4<sup>th</sup> November 2010 when he was having a meeting about the insolvency of WBL this large payment was made out to Mallards. I cannot believe that Mr Graham as CEO of WBL would allow any operations in respect of its monies at a time when he was receiving insolvency advice unless he knew of them and agreed to them.
349. Mr Bance was inextricably involved in Whitecross. In my view and I so find both Mr Malik and Mr Graham were similarly involved as well.
350. The transfer was a naked attempt to move the assets beyond the creditors of WBL. At the moment that has succeeded because it is impossible for the Claimants to obtain any access to funds in Dubai and to seek freezing injunction relief there because no such relief is available. This is a serious failure on the part of the active Defendants to come clean about these monies. There can be no possibility of the monies belonging to Mr Thakur. He was their agent at all material times. He has conveniently disappeared and I am of the opinion that those monies were paid out to put funds beyond the reach of the creditors for the benefit of the active Defendants.

351. On 8<sup>th</sup> November 2010 Mr Oliver advised in writing stating that *“nominally [WBL] owed some £16,000,000. I am instructed that a very substantial amount of these latter debts are proving to be irrecoverable for whatever reason and that [WBL] is clearly insolvent upon any reasonable basis and need to engage in some form of insolvency process and indeed is under an obligation to do so as soon as possible”*.
352. The instructions to Mr Oliver have disappeared. It is extraordinary that the position of WBL could have been presented so rosily at the meeting on 1<sup>st</sup> November 2010 yet 3 days later Mr Graham is going to leading Counsel and the instructions on that day apparently told Mr Oliver that a substantial amount of the £16,000,000 of debt owed to WBL was irrecoverable. That is Mr Graham telling Mr Oliver despite the fact that he affects to know nothing about the details of the loans that WBL is in great difficulties. The only reason why the loans are irrecoverable is because the vast bulk of them are not genuine. It follows that Mr Graham clearly knew that the loans were not genuine.
353. On 8<sup>th</sup> November 2010 Mrs Malik received a CHAPS payment from Mallards of £15,369 and WBL received a further letter from HMRC.

### INSOLVENCY

354. On 9<sup>th</sup> November Mr Graham and Mr Bance met with RSM Tenon and trading was then suspended. However as set out above some £450,000 had been removed from WBL's account a matter of days before this meeting. Neither Mr Graham nor Mr Bance disclosed those payments to RSM Tenon.
355. Mr Graham alleged (T21/112) that he gave instructions to Natwest Bank to freeze the bank account on 8<sup>th</sup> or 9<sup>th</sup> or something like that. He did that without seeing the bank accounts repeating his statement that he never looked at the bank accounts.
356. He told me that even when WBL was nearing its death and when the account was frozen the bank said the figure in the account was near £400,000 that he still did not look at the accounts (T21/113). I simply do not believe him.
357. This is another of a long line of lies where Mr Graham denies having seen documents. Any key documents Mr Graham despite being the CEO insisted he never saw them. This goes to the Accrued Income Schedules and Stallards Schedule of Loans and internal loan spreadsheets relating to individual borrowers and the WBL office whiteboard picture. They are all summarised in schedule 8 to the Claimants' closing. I simply do not accept this evidence on the part of Mr Graham. This was one of several ways of Mr Graham reacting to the inconvenience of documents being put to him by denying he had any involvement with them. As CEO he was clearly the man in control and I simply cannot believe he did not see these documents. There were very few documents that he owned up to having knowledge of. Further when presented with a whole series of loan agreements and draw down agreements (summarised in schedule 7 to the Claimants' closing) he asserted that his signature on all of those was forged. I reject that evidence. That was his knee jerk attempt again to distance himself from documents which were inconvenient for him. His signature on the various documents shows that he well knew what was going on.

FURTHER LIES BY MR BANCE

358. On 2<sup>nd</sup> February 2012 I made an order that Mr Bance disclose his tax returns plus all supporting documentation and working papers. As part of that exercise Rylatt Chubb Mr Bance's solicitors informed the Claimants' solicitors that his tax return for 2010/2011 had not yet been filed but would be filed very shortly. The reason given for the late filing was because he was an accountant in January 2012 working on affairs with his own clients and heavily involved in dealing with the case.
359. In cross examination Mr Bance stated that this was the tax return that HMRC *had* seen but they had not seen the supporting spreadsheet. The tax return is at I7/393 and the supporting spreadsheet is at I7/380.
360. The purpose of this tax return was to declare for the first time bonuses supposedly due to him totalling £69,013 paid on 20<sup>th</sup> July 2009, 8<sup>th</sup> July 2010 and 21<sup>st</sup> July 2010. These bonuses were paid on WBL's net profits but Mr Bance for reasons set out at length in this judgement knew that there were no profits. The £50,000 paid in January 2010 was described as a loan in WBL's bank statement as was £50,000 paid to Mr Malik on the same day. Both of those funds were immediately transferred to the ACM FX trading account in Switzerland. Neither bonus was put through WBL's payroll and taxed at source. If they were genuine bonuses they would have formed part of his schedule E earnings and Mr Bance as an accountant knew that such payments ought to be put through the payroll as PAYE income and taxed at source. Mr Bance did not disclose these payments in his 2009/2010 tax return. Mr Bance had no answer to this point.
361. Further when he prepared this tax return to submit he disclosed all of the items to HMRC for the first time. That would have exposed him to a large amount of tax and possibly interest and penalties on them because some of them should have been declared earlier. He sought to set intriguing losses against them in a document which he did not send to HMRC but which was a justification on his analysis as to why no tax was payable on the bonuses. He purportedly deducted £20,000 of losses at Betfair against his income. He described that betting loss (and £80,000 of FX trading losses) in his tax return as "*costs of goods bought for resale and goods used*".
362. Mr Bance contended he could not give them any other posting on the online filing system (T24/133). That was plainly incorrect because there was a separate box "*other business expenses*".
363. He also asserted that he did not disclose the items in earlier years because he had not received them at that time. The difficulty with that is that income tax is payable on money that is due whether paid or not. The only exception to that rule so far as I am aware for several decades was Barristers and that exception was removed some 10 years ago. Mr Bance should have declared them earlier and subjected them to tax. If they were not paid he could have written them off and obtained bad debt relief as he accepted.
364. All of this in my view was dishonest. I do not believe for one minute Mr Bance thought that these were genuine deductions from his income. It was a belated attempt when he had removed these monies at the death of WBL to justify taking them. His justification of them before me was further evidence of dishonesty.

365. Thus Mr Bance is a man who is willing to provide false income statements to enable Mr Graham to obtain mortgages, prepared false accounts as an accountant in respect of WBL of which he was aware, participated in the cross firing and fraudulent activities designed to conceal what was actually happening in WBL. Further he was involved in the creation of Whitecross and knows more about what has happened to the monies transferred to it than he is preparing to admit.

### SHORT SUMMARY

366. The Claimants' evidence overwhelmingly shows that WBL was being run as a fraud. That started before they were involved but continued during the period of their investments and purchases and the fraudulent activity continued right up until the collapse of WBL in November 2010.

367. None of the active Defendants in the end seriously challenged the Claimants' evidence. Ultimately they also accepted that the Claimants had been defrauded but they sought to put all the blame on Mr Malik. For the reasons I have set out in the judgment that is not sustainable. They are all (including Mr Arnold) involved in the running of a dishonest business activity.

368. They all received financial benefits to a varying degree. The Claimants summarised the amounts received in section 18 of their closing. I do not accept that the Defendants have provided any challenge to these figures.

369. The only person who attempted anything like a challenge was Mr Graham. However the fundamental flaw in his arguments is that to justify his figures he needed to bring into account so called loans that were made before year end 31<sup>st</sup> December 2007. Any such outstanding loans were capitalised in accordance with the accounts approved and signed off by him. I therefore reject his evidence that he was owed £1,149,456 as at 31<sup>st</sup> December 2007 and £1,045,387 as at October 2008. That is inconsistent with the audited accounts prepared by Ernst & Young and Hacker Young and Ernst & Young's Long Form report. Further there is no evidence to show any of these loans were reduced into writing and they were not disclosed to the board in breach of his duties as a director of WBL.

370. I accordingly accept the Claimants' figures as showing the true and accurate amounts of monies Mr Graham/Ms Jones extracted from WBL. From 31<sup>st</sup> December 2007 even on Mr Graham's own case in 2008, 2009 and 2010 he and Ms Jones were net recipients from WBL of £1,511,868 (excluding wages and rent) (scheduled to Mr Graham's statement 5<sup>th</sup> September 2012 E3/13/14). However Mr Graham also claims credit for the £674,687 which was paid in to the WBL account on 20<sup>th</sup> February 2008 in respect of the Queensgate Terrace property purchase. This was a mortgage fraud and it would be quite wrong for him to claim benefit for those sums which had been obtained by a fraud from Clydesdale Bank. The same is in respect of the payment he made to Heritage on 18<sup>th</sup> September 2008 (£200,000). In fact this was Mr Graham funding the Daryl Stone cross fire carried out by Heritage. It repaid Mr Graham the £200,000 with monies which came from WBL so WBL made this payment in effect not Mr Graham. If those sums were added the total amount of sums received is £2,386,555.

NET AMOUNT RECEIVED BY MS MEURISSE AND MR ARNOLD FROM WBL

371. They did not dispute the schedules of payments paid to them personally and to Mr Arnold's companies.
372. Accordingly the Claimants have established that they were net recipients of some £674,340 after capitalisation of Mr Arnold's loans at the end of 31<sup>st</sup> December 2007.
373. In addition Mr Arnold received £1,500,000 when he sold his shares in WBL half of which he shared with Mr Graham/Ms Jones.

AMOUNTS RECEIVED BY MR & MRS MALIK FROM WBL, PRISM, HAMMONDS AND MALLARDS

374. The total amount set out in schedule 11 to the Particulars of Claim is £125,566. Mr Malik sought to explain these as being wages for prior work, bonuses, commissions or expenses or profit split. No evidence was produced by Mr Malik to support this and I reject any suggestion these were genuine payments.

AMOUNTS RECEIVED BY MR & MRS BANCE FROM WBL, PRISM, HAMMONDS AND MALLARDS

375. Excluding his salary the total amount received between 26<sup>th</sup> June 2009 and 8<sup>th</sup> November 2010 was £250,022.
376. Once again in his 19<sup>th</sup> witness statement dated 12<sup>th</sup> October 2012 Mr Bance sought to explain these as being commissions, car allowance, bonus and loans. I simply do not accept anything that Mr Bance says and I am satisfied the Claimants have established that there was no proper basis for Mr & Mrs Bance to receive any of these sums. In particular the cross examination of Mr Bance in relation to the commissions showed that his evidence on that was incredible. None of it is supported by his tax return about which I have made observations above.

CONCLUSION

377. I therefore conclude that all of the active Defendants have received all of the sums identified by the Claimants in their closing and there can be no lawful basis for any of the sums being so received.
378. Further I have concluded that WBL was run largely on a fraudulent basis and that all of the active Defendants to some degree participated in the activities. The true state of WBL's operations was concealed from the Claimants when they were invited to lend money to WBL and to acquire Mr Arnold's shares. That fraudulent activity continued after the Claimants became non Executive Directors and the loan book of WBL was largely a source of fiction as the evidence summarised above shows.
379. I now consider the legal consequences of those factual findings.
380. The Claimants contend that they were induced to lend money to WBL and acquire shares in it as a result of fraudulent representations made to them to induce such lending and share acquisition. In addition they also contend that the monies were

advanced in that way as a result of a conspiracy between the main active Defendants to defraud them.

### MR GRAHAM'S CLOSING CHALLENGE TO THE ABOVE CONCLUSION

381. Mr Graham delivered a very long closing. Although the print was broadly spaced nevertheless it went to 674 paragraphs.
382. The first 528 paragraphs were (I suspect) prepared as the trial went on and consist of a commentary on the evidence on a daily basis interspersed with Mr Graham's comments. The comments do not necessarily reflect the evidence see for example item 33 where Mr Graham contends that on day 3 Mr Hemsley admitted negligence in his own duties. I have not found any such admission in the relevant transcripts (T3/49-55). One finds a similar misreporting of what Mr Hemsley said at T4/58 where Mr Graham (paragraph 73 of his closing) says that Mr Hemsley stated that he did not think that Mr Graham knew what really happened at WBL. Mr Hemsley said no such thing. What he said was in relation to what was being put to him about the difference between new loans and rolled over loans. In that context he said "***I mean, I think it is a concoction you have come up with to fit the facts. I don't think it is what you even think really happened. But nevertheless, rolled over loans are of a far lower quality than good new loans that are repaid on time in cash***".
383. The analysis shows in my opinion that in fact bogus new loans were created on numerous occasions to give the appearance that old loans had been repaid and new ones taken out whereas the reality was that the old loans (and in some cases accrued interest) were all rolled up into what was described as a new loan when there was not even new loan documentation. This seems to me to be of concern to a business because it means the interest payments are not being kept up and the solution to that is simply to add to the debt and increase the loan. The extent to which this was happening was hidden as the cross examination of Mr Hemsley on day 4 shows.
384. It is important to understand the relative insignificance of this. It is of course not acceptable for these matters to be concealed from the Claimants but the more important and significant representations are those that I have set out in the judgment above. The major part of the Claimants' case is based on the cross firing. There can be no genuine basis for such cross firing to occur. I have referred to the other representations set out above and Mr Graham in his long closing simply does not address any of those matters which are alleged against him.
385. Another example of Mr Graham raising matters which are not of great significance is the reference to the bad loan involving HSBC in some way (T4/113-116; Graham closing paragraph 95).
386. It is true that Mr Hemsley said that he was told something about a bad debt involving HSBC but believed it was a cock and bull story now but the real representations that the Claimants say were fraudulent are the ones set out in (for example) paragraph 87 of their opening as summarised by me at T115. How it was a cock and bull story was not explained or investigated. Another instance is Mr Graham's reference to the breach of the banking covenants (point 111). I have referred to this breach of banking covenants above. The true position was that the Defendants created the false document from the bankers and duped E & Y in to accepting on the strength of that forged email that there was no breach of the banking covenants.



387. In submission 122 Mr Graham submits that Mr Hemsley said that the Claimants invested on a zero valuation of WBL's business (T4/146-147). That is not what he said. If he invested on a zero assets basis he would put a zero valuation on *goodwill*. He still puts a value on the company on a net assets basis and his answer (page 146) was that he thought the balance sheet was about £7,000,000 but *“obviously we now know it wasn't a hill of beans and we ended up owning 30% or £1.5m or £1.6m....”*
388. Mr Graham raises the issue of the Stallards schedule in his closing (paragraphs 125-129). However he never seriously challenged the Stallards schedule and I have rejected his evidence that he never saw it before the trial. As set out above the Stallards schedule itself contained fraudulent representations in respect of loans which were not genuine. It was fleetingly suggested that the document in court was not the Stallards schedule by Mr Graham but that was not persisted in and he never in any credible way put to Mr Hemsley that the Claimants had concocted the Stallards schedule as produced to the court. Overnight and before the 5<sup>th</sup> day the matter was investigated by the Claimants at my suggestion and the material produced on the 5<sup>th</sup> day demonstrated beyond per adventure that the Claimants had received the Stallards schedule as part of the documentation produced to encourage them to invest in WBL. That evidence also showed that Mr Graham was aware of the loan book by virtue of an email to which he was copied into sent by Mr Malik to Stallards on 3<sup>rd</sup> September 2008.
389. Mr Graham established that Mr Hemsley ought to have known that his wife was being put forward as a creditor/investor in WBL by June 2010 when the accounts to year end 31<sup>st</sup> December 2009 were signed off (T5/42). However that was very late in the life WBL and I have already observed that I do not believe the Claimants knew of her involvement when they made the investments. The significance of these transactions in favour of Mr Graham and his wife of course is that they clearly extracted significant funds out of WBL. Further such extractions were financed in part by false loan applications as set out above. There were clearly opportunities for Mr Hemsley to discover the existence of Ms Jones/Graham as a creditor and/or borrower in respect of WBL. That was established on day 6 when he reviewed the evidence he gave the day before and volunteered that she was identified as a creditor and shareholder in the accounts to 31<sup>st</sup> December 2008 (as at 22<sup>nd</sup> June 2009). However Mr Graham admitted when he was cross examined (T21/82) that the Claimants would not be aware of what went on and it had not been disclosed to them expressly. Mr Graham acknowledged for example that the £200,000 paid to his wife on 1<sup>st</sup> February 2010 was achieved by a fabricated loan in favour of Richard Cunningham. I think that Mr Hemsley had the opportunity to link in with Ms Jones but as he said on day 6 he was careless. I cannot believe for one minute that the Claimants would have been at all happy if they knew that the large amounts of money that were being made out to Ms Jones/Graham especially if those monies were being paid out through the medium of false loans. Providing monies to Ms Jones through fake transactions was not an isolated occurrence. I refer to the payments made in 2009 under the false loan in favour of Tom Reynolds (£300,000 in total) and the payment made to her as a result of the false Natwest draw down under a loan to Nilofar Rehman on 12<sup>th</sup> February 2009 (a payment of £200,000) and one of £260,000 on 17<sup>th</sup> February 2009 pursuant to another false Natwest draw down in the name of Frances Nii Annan. I reject Mr Graham's evidence that he did not know of any of these transactions.
390. The bulk of Mr Graham's closings consisted of a narrative of what the evidence appeared to him to be on a daily basis. Some of it as I have said was not accurately

reported but it did not actually assist me a great deal. Mr Graham despite the length of his closing (like his opening) has failed to address the documentary evidence in this case which demonstrates the Claimants' allegations are true. The vast amount of the business of WBL was financed by borrowing which was supposed to be provided for a short term loan business. That very rarely happened. The overwhelming bulk of transactions identified in the loan books from time to time were entirely bogus and the cross firing was used extensively to give the false impression that loans were being taken out and repaid when all that was happening was that money was being turned around out of the WBL account to companies controlled by one or other of the individual Defendants and then turned back in to WBL sometimes on the same day but almost inevitably within a matter of days. That shows that the business of WBL was founded on fraud. It follows fundamentally (and this is the point that Mr Graham has not addressed) that any production of documentation which is provided to the Claimants is false unless it acknowledges self evidently the dishonest nature of WBL's business.

391. The evidence above shows that Mr Graham, Mr Bance, Mr Malik and Mr Arnold were all aware of the fraudulent nature of the WBL business to some degree or another. The evidence about the mortgage frauds demonstrate that both Mr Graham and Mr Bance are prepared to do dishonest things if it suited them.
392. Mr Graham might well believe that he scored points in cross examination off various of the Claimants' witnesses. It is certainly true he showed that their memory was inaccurate from time to time. However as I have said this is largely a documents case and when the documents relied upon by the Claimants are provided to them they are entitled to rely on those documents as being true and are not required to check the veracity of the documents. This is the fundamental point Mr Graham does not grasp.

#### MR BANCE'S CLOSINGS

393. Mr Bance makes the point that the Claimants' evidence does not show him having a direct role in matters to the same extent as the other Defendants. As is said in paragraph 13 of the closing the Claimants' case against Mr Bance is largely one of "*guilt by association*". That is correct but as the evidence shows which I have summarised above Mr Bance did things which were dishonest. Those things extended beyond the false mortgage statements on behalf of Mr Graham and his own false statements in his tax returns but also his involvement in various of the spinning transactions both directly through the use of his company and indirectly when he is involved in emails that talk about this spinning as set out above.
394. The inevitable conclusion is that Mr Bance well knew that WBL's business was being run dishonestly. Further of course he benefitted. He was paid a large salary with a car; he took "expenses" and he was clearly involved in the Whitecross creation.
395. Whilst the questions of roll overs was hotly debated there is no doubt that the evidence shows that the roll overs were done by the creation of artificial fresh loans rather than any negotiated new loan with the relevant debtors. That is why so many of the internal accounts showed "*repaid by us*". It is important however to appreciate that whilst the presence of these roll overs is significant in that the Claimants contend (and I agree) the failure properly to identify these artificial loan roll overs means that the monthly accounts at WBL were not accurate because they disguise the true numbers of new business loans which is the life blood of WBL. Nevertheless the primary claims by the

Claimants are that the whole operation was substantially being done by reference to false loans which were artificially created and were allegedly paid out and repaid when in fact nothing could be further from the truth. Further these so called loans were financed by significant draw downs on the Natwest loan facility which themselves were fraudulent.

396. The Claimants summarise Mr Bance's involvement in paragraph 296 of their closing. First he carried out cross firing transactions between WBL and Featherstones between July and November 2008. This was *before* he became a director. Second he was involved in cross firing transactions involving Legal Credit on 25<sup>th</sup> November 2008. Third WBL's loan ledgers recorded "*repaid by us*" following cross fire payments from Featherstones and Legal Credit.
397. Mr Bance was involved in Heritage; he having incorporated it and been the Company Secretary for the 12 month period it was cross firing. The cross firing payments were all carried out from WBL's office (by Ms Bond and Mr Arnold) where Mr Bance worked. Its bank statements were sent to WBL's office. It is inconceivable in my view that Mr Bance did not know that was going on. Similarly Mr Tester had spoken to Mr Bance about the huge amount of money that was circulated between WBL as set out in his email to Mr Bance dated 20<sup>th</sup> November 2008 "*I hope this is going to get easier? There is a lot to go out and get sent back!*"
398. Mr Bance was similarly directly or indirectly involved in Prism, Hammonds, Mallards and Featherstones and was involved in the incorporation of Whitecross.
399. Finally he himself referred to "*spins*". I have rejected his version as to what that phrase meant.
400. These pre director transactions show that Mr Bance knew that the fraud was going on before he became a director. There were other instances of his improper behaviour before he became a director such as the income statements for the benefit of Mr Graham and his improper suggestion in 2007 that WBL fabricate copy documents i.e. the Crozier Hadley and Dunlo Blaine invoices.
401. Once he admits that cross firing was occurring (and also accepts he was involved in some) he therefore becomes aware that the loan books are supported by false loan agreements created fraudulently by virtue of the spins. The evidence shows he was involved in the creation of false loans for the purpose of management accounts as set out above. He was of course involved in the creation of the forged Natwest email that was sent to E & Y.
402. The conclusion I draw from that is that Mr Bance is a man who is prepared to participate in fraudulent activities if it suits him. Bearing that in mind in my view I do not accept his evidence that he did not know the fraud was going on. This is reinforced by the involvement of Mr Bance and his wife in the cross firing companies, Mr Bance's own involvement in some of the cross fires and his involvement in the creation of loans for the purpose of monthly management accounts.
403. His fraudulent actions occurred before he was a director. He prepared WBL's accounts up until 2007 and he therefore knew that the accounts were based on a fraud. He knew the documentation was being provided therefore to the Claimants for investment purposes which (naturally) did not acknowledge this fraudulent activity. He therefore

knew that fraudulent documents and accounts were being put forward to the Claimants to induce them to invest and therefore embraced them by silence.

#### MR MALIK

404. Mr Malik was plainly involved in all aspects of the fraud and was the creator of a very large amount of the cross firing arrangements. I have set out above where he was involved. In addition Mr Graham and Mr Bance say on the one hand there was a fraud and on the other hand it was all down to Mr Malik. I reject that but it shows the strength of the evidence against Mr Malik.

#### MR ARNOLD

405. Whilst Mr Arnold had no role after he had sold his shares he plainly had a role in the cross firing. He used his own personal account to carry out a cross fire in respect of the Brian Lewis loan. He was the beneficial owner of Heritage and was a director for 5.5 months of the time it was cross firing and he was authorised to operate Heritage's bank account. He was also involved in a WBL management meeting where one of the agenda items was to discuss "*contact current client/spin around loans*". Finally on 10<sup>th</sup> December 2008 he used his personal bank account to cross fire a loan in the name of N Rehman.

406. I have already set out the fact that the lack of production of warranties by him was as a result of a false statement made to the effect that he had no role in WBL.

407. It follows that Mr Arnold would know that all of the accounts of WBL were based on the false cross firings and that these were being produced in the documentation which the Claimants received to induce them to invest in WBL and to buy his shares. He himself knows that those documents are false for the reasons set out earlier in this judgment.

#### CONCLUSION ON DEFENDANTS' CLOSING

408. I conclude therefore that WBL was to a large extent being run as a fraudulent business. I conclude that all of the Defendants in this action were aware of it and participated in it to a varying degree.

409. Thus the Claimants' case against the Defendants is in my view made out and there is nothing in the Defendants' closing that suggests otherwise.

#### DECEIT

410. In the *Kriti Palm [2007] 1 Lloyds Rep* Rix LJ set out the 4 elements of the tort of deceit:-

*"The elements of the tort of deceit are well known. In essence they require*

*(1) a representation, which is*

*(2) false,*

*(3) dishonestly made,*

*(4) intended to be relied upon and in fact relied upon”.*

411. Further the Defendants as fiduciaries were under a duty to speak and disclose to WBL the misconduct of others *Sybron Corporation v Rochem Ltd [1984] 1 Ch 112* at 129F and their own misconduct see *Tesco Stores v Pook [2003] EWHC 823 Ch (approved) Item Software (UK) Ltd v Fassihi [2005] ICR 450*.
412. That disclosure is of course to the entity to which the relevant person owed fiduciary duties. None of these Defendants owe fiduciary duties to the Claimants. WBL and Mr Arnold as potential contracting parties owe a duty not to mislead the Claimants to induce them to enter in the share sale agreement or the loan agreements respectively.
413. They owe the fiduciary duty to WBL. Thus they ought to have disclosed their own and other breaches to WBL and WBL would then have prepared true accounts and WBL would not have fraudulently represented its financial position.
414. The directors are under an obligation to declare to the company any interest in any proposed or existing transactions in which they are directly or indirectly interested (sections 117 and 182 CA 2006) those provisions came in to force from 1<sup>st</sup> October 2008 but are restatements of the pre existing law.
415. Officers of the company can be liable personally in deceit even when acting on behalf of the company on the basis that they carried out necessary acts to make the representation or as a joint tortfeasor see *Standard Chartered Bank v Pakistan National Shipping Company [2001] 1 Lloyd's Rep 218* per Aldus LJ. Mr Bance is potentially liable in fraud as a joint tortfeasor even though he might not have been an officer at the time some of the representations were made.
416. It is quite clear that all these Defendants satisfy the well known definition of dishonesty set out in *Derry & Peak*. The representations were made knowingly without belief in their truth in this case.
417. It follows that they are all liable for the dishonest representations made as set out earlier in the judgment. I have already shown that those documents were sent intending to be relied upon.

### CONSPIRACY

418. The basic ingredients of a tort of unlawful means conspiracy was set out by the Court of Appeal in *Kuwait Oil Tanker Co v SAK V Al Badar [2000] All ER (Comm) 271* at paragraph 106:-

*“Conspiracy Legal Principles*

*106. The judge held that all three defendants were liable for the tort of conspiracy to injure by unlawful means. He held that under English law they were parties to a single actionable conspiracy wrongly to misappropriate the claimants' assets and that the damage caused by that conspiracy extended to the whole of the losses suffered by the claimants, save that Captain Stafford was not liable for the losses before September 1986 because he did not join the conspiracy until then. Mr Brodie submitted that the judge made a number of errors in his*

*approach to the principles governing the tort of conspiracy to injure. He accepted that the tort of conspiracy is known to English law, but submitted that it was subject to important limitations.*

*107. It is common ground that there are two types of actionable conspiracy, conspiracy to injure by lawful means and conspiracy to injure by unlawful means. The first is sometimes described simply as a conspiracy to injure and the second as a conspiracy to use unlawful means: see eg Clerk & Lindsell on Torts, 17th edition, paragraph 23-76. In our view they are both conspiracies to injure and their ingredients are the same, with one crucial difference. In both cases there must be conspiracy to injure the claimant, but in the first case (in which the means employed would otherwise be lawful) the predominant purpose of the conspiracy must be to injure the claimant whereas in the second case, although the defendant must intend to injure the claimant, injury to the claimant need not be his predominant purpose.*

*108. We shall treat them as different torts, although, as it seems to us, they are better regarded as species of the same tort. It matters not. For present purposes we would define them as follows:*

*(1) A conspiracy to injure by lawful means is actionable where the claimant proves that he has suffered loss or damage as a result of action taken pursuant to a combination or agreement between the defendant and another person or persons to injure him, where the predominant purpose of the defendant is to injure the claimant.*

*(2) A conspiracy to injure by unlawful means is actionable where the claimant proves that he has suffered loss or damage as a result of unlawful action taken pursuant to a combination or agreement between the defendant and another person or persons to injure him by unlawful means, whether or not it is the predominant purpose of the defendant to do so. We shall call them a ‘lawful means conspiracy’ and an ‘unlawful means conspiracy’ respectively.”*

419. Further it is not necessary to show there is an express agreement. It is sufficient if two or more persons combine with a common intention or in other words they deliberately combine albeit tacitly to achieve a common end (ibid paragraph 111) and equally it is not necessary for all conspirators to join the conspiracy at the same time but the parties must be sufficiently aware of the surrounding circumstances and share the same object (ibid 111). I followed these cases in *Attorney General of Zambia v Meer Care & Desai [2007] EWHC 953 Ch* see in particular paragraphs (94 and 320).
420. It follows therefore in view of my findings above I am satisfied that the Claimants have established that all of the relevant Defendants are liable as having participated in a

conspiracy to defraud by unlawful means namely the activities summarised in this judgment.

MISREPRESENTATION ACT 1967

421. Mr Arnold is liable in that his contract for shares was induced by fraudulent representations made to induce that contract. His liability is also under section 2 (1) of the Misrepresentation Act 1967. The burden is on him to show he had reasonable grounds for the representations. He has not even begun to address that see the analysis in *Howard Marine* above.

BREACH OF WARRANTY

422. Mr Graham accepted that he was liable under schedule 4 of the warranties in the June 2009 Investment Agreement.

REMEDIES

423. I will hear what remedies are sought against the various Defendants when I hand this judgment down.

Approved Judgment

SCHEDULE C

(1) Prism Worldwide Limited (“**Prism**”): [JC4]

- (a) was incorporated on 21.1.09
- (b) had its registered office at Mr Malik’s home address
- (c) had Mr Malik, his wife and Mr Bance’s wife as its director
- (d) was struck off the register and dissolved on 22.6.10.

(2) Heritage Capital Limited (“**Heritage**”) (JC4):-

- (a) had company number 06344425 and was incorporated on 16<sup>th</sup> August 2007 with Mr Arnold as sole director and with Tyllercast Holdings Limited, a Cyprus-based company as initial subscriber, which Wey Bridging paid to be incorporated;
- (b) had Mr Arnold as sole shareholder from thereon;
- (c) had Mr Arnold as a director until 1<sup>st</sup> May 2008;
- (d) had Claire Bond as a director from 1<sup>st</sup> May 2008 to 30<sup>th</sup> January 2009;
- (e) had Mr Arnold reappointed as a director from 30<sup>th</sup> January 2009;
- (f) had Mr Bance as its company secretary until 2<sup>nd</sup> July 2009;
- (g) had Mr Malik as an employee (as evidenced by the facts that he was stated to be Heritage’s point of contact in its 2008 filing at Companies House and that he signed Heritage’s filing made to Companies House on 5<sup>th</sup> May 2009); and
- (h) was struck off and dissolved on 29<sup>th</sup> March 2011.

(3) Hamonds Ltd (“**Hamonds**”) (JC4):-

- (a) was incorporated on 16<sup>th</sup> June 2010 with a nominal share capital of £100;
- (b) had Mr Thakur as sole director and shareholder (Mr Thakur)
- (c) had a registered office at 48 Hindes Row, Harrow, HA1 1SL (where Mr Thakur rented a one room bed sit – “Mr Thakur’s Bed-Sit”)
- (d) changed its name to Claridges Square Ltd on 10<sup>th</sup> November 2010.



Approved Judgment

- (e) is referred to in this statement as “**Hamonds**”.
- (4) Mallards Trading Ltd (JC4):-
- (a) was incorporated on 16<sup>th</sup> June 2010 as Mallards Trading Limited;
- (b) is recorded at Companies House as having a sole director and shareholder (Mr Thakur) and a registered office at Mr Thakur’s Bed-Sit;
- (c) changed its name to Hayward Trading Ltd on 10<sup>th</sup> November 2010; and
- (d) is referred to in this statement as “**Mallards**”.
- (5) Featherstones Consultants Ltd (“**Featherstones Consultants**”) (JC4):-
- (a) has company number 07190472 and was incorporated on 11<sup>th</sup> March 2010 with an issued share capital of £100 held equally by Messrs Thakur and Bance;
- (b) is recorded at Companies House as having a registered office at Mr Bance’s home address (11 Bulmer Gardens) and one director (Mr Thakur);
- (c) is one of four companies with common shareholders and/or directors bearing the Featherstones name and/or common registered addresses (hereinafter “**the Featherstones Companies**”), the three others being:
- (i) Featherstoness Capital Partners Ltd, company number 06474506 (incorporated on 16th January 2008 with Mr Bance as company secretary and shareholder and Kashif Malik as director, and dissolved on 1st August 2009),
- (ii) Featherstoness Ltd, company number 06349091, (incorporated on 21<sup>st</sup> August 2007 and controlled by Mr Bance and his wife), and
- (iii) Fetherstons Ltd, company number 6345511, (incorporated on 16th September 2007 with Mr Bance as sole director and shareholder and his wife as its company secretary). Mr Thakur was company secretary between 27th February 2008 and 17th February 2009, replacing Manjit Bance. Mr Bance resigned as director on 17th February 2009. On 25th September 2009, the company changed its name to Imperiali Ltd. Its registered address is still Mr Bance’s house in Harrow.
- (d) Mr Bance’s wife (Manjit Bance) was registered as Company Secretary on Incorporation of Featherstones Limited.

Approved Judgment

- (6) Aims International Limited (“**Aims International**”) (JC4):-
- (a) company number 4775032 bearing the name Aims International Ltd (“Old Aims International”) was incorporated on 22.5.03 and dissolved on 5.5.09 and had a registered office address in Nottingham;
  - (b) Aims International (with company number 7217569) was incorporated on 8.4.10, with the Queen’s Gate Terrace Premises as its registered office (until the registered office address was changed on 30 December 2010 to Trident Park in Blackburn);
  - (c) on incorporation, Ms Jones was the sole shareholder and one of two directors of Aims International (the other being a Mr Adam Bennett), and was listed in the Memorandum of Association as the only subscriber;
  - (d) Ms Jones resigned her directorship of Aims International on 8.4.10;
  - (e) Ms Jones was re-appointed as a director of Aims International (together with one Joanna Taylor) on 30.9.10. Ms Taylor’s address on her appointment as a director was registered at Companies House as the Queen’s Gate Terrace Premises;
- (7) FX Traders Corporation Ltd (“**FX Traders**”) (JC4):-
- (a) was incorporated on 2.12.09, ostensibly at the subscription of the wives of the First Three Defendants (i.e. Rabia Malik, Manjit Bance and Ms Jones) and a Ms Shafaq Aziz;
  - (b) had Mr Malik’s home address as its registered office on incorporation and on 18.07.10 was changed to the Queen’s Gate Terrace Premises;
  - (c) has Ms Aziz as its sole registered director.
- (8) Jigsaw Media (UK) Limited (“**Jigsaw Media**”) (JC4):-
- (b) was incorporated on 17 April 2009 by Kenneth Macleod, the sole director and subscriber
- (9) Jigsaw Promotions Limited (“**Jigsaw Promotions**”) (JC4):-
- (a) was incorporated on 13 August 2010
  - (b) had Mr Bance as Company Secretary
  - (c) had Kenneth Macleod as director
- (10) The Empire Property Group Limited (“**Empire**”) (JC4):-

Approved Judgment

- (a) has company number 05803166 and was incorporated on 03<sup>rd</sup> May 2006 by Mr Arnold;
  - (b) is recorded at Companies House as having Mr Arnold as the subscriber and sole director and Sandy Gill as company secretary;
  - (c) had Mr Malik as a director from 1st May 2007 to 28th February 2008;
  - (d) had Mr Thakur as a director from 12th September 2007 to 28th February 2008;
  - (e) had Mr Malik as company secretary from May 2007 to 28 February 2008, who took over from Sandeep Gill who was also secretary to Wey Bridging;
  - (f) had Mr Graham as an employee prior to the establishment of Wey Bridging;
  - (g) had Stacey Holloway as an employee until June 2007;
  - (h) used Bance Chartered Accountants between May 2005 and December 2007;
  - (i) is still carrying on business.
- (11) Legal Credit Limited (“**Legal Credit**”) (JC4):-
- (a) had company number 06624168 and was incorporated on 19th June 2008 with Mr Bance as director until 17th November 2008, Mr Thakur as company secretary and Mr Arnold as subscriber;
  - (b) had Mr Arnold as director from 17th November 2008;
  - (c) had Mr Bance’s residential address in Harrow as its registered address; and
  - (d) was struck off and dissolved on 2<sup>nd</sup> February 2010.
- (12) Oldgate Developments Limited (“**Oldgate**”) (JC4):-
- (a) had company number 05459143;
  - (b) had Mr Arnold as director from 31st May 2005 to 15th January 2008; and
  - (c) was dissolved on 15<sup>th</sup> January 2008.

Approved Judgment

- (13) Celebrity Style Me Limited was a company related to Mr Arnold and he was director between 28 January 2006 and 6 November 2007.
- (14) Designer Kidz Limited (“**Designer Kidz**”) (JC4):-
- (a) was incorporated on 17 March 2004
  - (b) had Ms Jones as director until 1 March 2008 and company secretary until 24 April 2008
  - (c) had Mr Graham as director between 17 March 2004 and 1 March 2008
  - (d) had Ms Jones as 100% shareholder until 2008 when she sold the business to another company
- (15) Object Source LLP (“**Object Source**”) (JC4):-
- (a) is a Surrey-based IT company that carries on business in website development
  - (b) appears to have been responsible for designing at least one of the Aims websites and undertaken design work on the FX Traders website.
  - (c) Ampito Ltd is a member of Object Source, and of the Ampito Group LLP.
  - (d) Antonia Jones LLP is also a member of the Ampito Group LLP (and has been since 6.4.10)
  - (e) The sole director and shareholder of Ampito Ltd is Manuel Pinon-Martinez, who was a non-executive director of Wey Bridging between 17 January 2008 and 23 January 2009. Mr Pinon-Martinez co-founded Ampito Ltd and had previous business dealings with Mr Graham prior to joining Wey Bridging.

**SCHEDULE OF COMPANIES**

Last Name	First Name	Description
ARNOLD	Christopher Derek	Defendant in these proceedings (HC11C03698). Former director of Wey Bridging Limited. Director of Celebrity Style Me Limited. Director of Donkin Lodge Limited ( <b>Peter Graham</b> also a director). Director of The Empire Property Group Limited ( <b>Ishaq Malik</b> and <b>Vijender Thakur</b> also directors). Director and 50% shareholder of Fund A Property Limited ( <b>Peter Graham</b> also a director). Director of Gamble It Limited ( <b>Peter Graham</b> also a director). Director of Heritage Capital Asset Management Limited. Director and shareholder of Heritage Capital Limited ( <b>Sunil Bance</b> also a director). Director of Hyde Park Management Services Limited ( <b>Peter Graham</b> and <b>Sunil Bance</b> also directors). Director and sole shareholder of Legal Credit Limited ( <b>Sunil Bance</b> and <b>Vijender Thakur</b> also directors). Director of Oldgate Developments Limited. Director and 50% shareholder of Pro Promotions Limited ( <b>Peter Graham</b> also a director and 50% s/holder). Director and 50% shareholder of RAG Portfolio Limited ( <b>Peter Graham</b> also a director and 50% shareholder). Director and 50% shareholder of Silverdean Management Limited ( <b>Peter Graham</b> also a director and 50% shareholder).
AZIZ	Kashif	Engaged on the FX Traders project, described as a “trader”.
AZIZ	Shafaq	Defendant in these proceedings (HC10C03997 only). Director and major shareholder of FX Traders Corporation Limited ( <b>Antonia Jones, Sunil Bance</b> and <b>Ishaq Malik</b> also directors).
BANCE	Manjit	Wife of <b>Sunil Bance</b> . Director of Bance Consultants Limited ( <b>Sunil Bance</b> also a director). Director of Featherstoness Limited ( <b>Sunil Bance</b> also a director). Director of Fetherstons Limited ( <b>Sunil Bance</b> and <b>Vijender Thakur</b> also directors). Shareholder of FX Traders Corporation Limited ( <b>Antonia Jones</b> also a shareholder; <b>Shafaq Aziz</b> a director). Director of Imperiali Limited ( <b>Sunil Bance</b> and <b>Vijender Thakur</b> also directors). Director and 50% shareholder of Prism Worldwide Limited ( <b>Ishaq Malik</b> also a director).

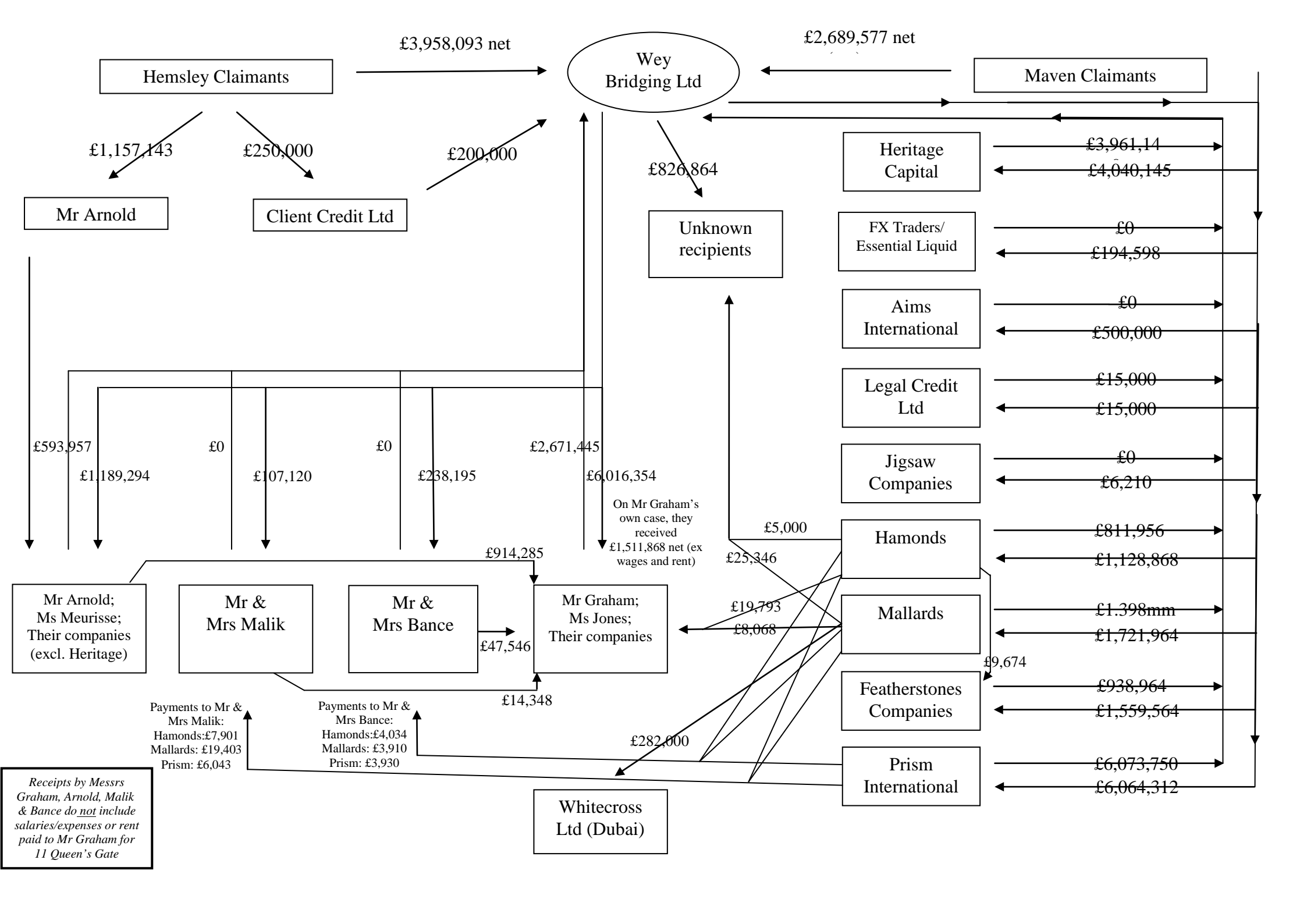
BANCE	Sunil	<p>Defendant in these proceedings (HC11C01798 and HC10C03997). Chief Operating Officer and Compliance Director of <b>Wey Bridging Limited</b> from 01/01/09. Director and sole shareholder of Bance Consultants Limited. Director and sole shareholder of Apple Financial Services Limited. Shareholder of Fairmont Partners Limited (<b>Ishaq Malik</b> a director). Director and 50% shareholder of Featherstones Consultants Limited (<b>Vijender Thakur</b> also a director and shareholder). Director of Featherstoness Capital Partners Limited (<b>Vijender Thakur</b> also a director). Director and sole shareholder of Featherstoness Limited. Director of Fetherstons Limited. Director of Frontline Press Limited. Director of FX Traders Corporation Limited (<b>Shafaq Aziz, Ishaq Malik</b> and <b>Antonia Jones</b> also directors). Director of Heritage Capital Limited (<b>Christopher Arnold</b> also a director). Director of Hyde Park Management Services Limited (<b>Christopher Arnold</b> and <b>Peter Graham</b> also directors). Director of Jigsaw Promotions Limited. Director of Legal Credit Limited (<b>Christopher Arnold</b> and <b>Vijender Thakur</b> also directors). Director of Olympus Information Technology Limited. Director of Packard Limited (<b>Ishaq Malik</b> also a director). Director and minor shareholder of Redstone Media plc. Director and 25% shareholder of The Trident Partnership Limited (<b>Ishaq Malik</b> also a director and shareholder).</p>
BENNETT	Adam	<p>Sole director and shareholder of Aims Advice Limited. Director of Aims International Limited (<b>Antonia Jones</b> also a director). Director and minor shareholder of Aims Legal Limited. Director and 50% shareholder of Aims Services Limited.</p>
BOND	Claire	<p>Née Claire CLARKE. Loans administrator at Wey Bridging Limited from 01/05/08 - 31/12/08. Apparent recipient of a loan from Wey Bridging Limited of £201,561.83 on 09/06/08, recorded as Borrower No. 156 - "Heritage". Director of Heritage Capital Limited (<b>Christopher Arnold</b> and <b>Sunil Bance</b> also directors).</p>

GILL	Sandeep Kaur ("Sandy")	Former director and company secretary of Wey Bridging Limited. Director of Celebrity Style Me Limited ( <b>Christopher Arnold</b> also a director). Director of Donkin Lodge Limited ( <b>Christopher Arnold</b> and <b>Peter Graham</b> also directors). Director of The Empire Property Group Limited ( <b>Christopher Arnold</b> , <b>Ishaq Malik</b> and <b>Vijender Thakur</b> also directors). Director of Evergreen Security Investments Limited ( <b>Vijender Thakur</b> also a director). Director of Fund a Property Limited ( <b>Peter Graham</b> and <b>Christopher Arnold</b> also directors). Director of Gamble It Limited ( <b>Peter Graham</b> and <b>Christopher Arnold</b> also directors). Director of Hyde Park Management Services Limited ( <b>Peter Graham</b> , <b>Christopher Arnold</b> and <b>Sunil Bance</b> also directors). Director of Oldgate Developments Limited ( <b>Christopher Arnold</b> also a director). Director of Pro Promotions Limited ( <b>Christopher Arnold</b> and <b>Peter Graham</b> also directors). Director of RAG Portfolio Limited ( <b>Christopher Arnold</b> and <b>Peter Graham</b> also directors). Director of Silverdean Management Limited ( <b>Christopher Arnold</b> and <b>Peter Graham</b> also directors).
GRAHAM	Peter	Defendant in these proceedings (HC11C01798 and HC10C03997). Husband of <b>Antonia Jones</b> . Managing Director of <b>Wey Bridging Limited</b> . Sole director of <b>Client Credit Limited</b> , of which Wey Bridging Limited is the sole shareholder. Director of Designer Kidz Limited (17/03/04 - 01/03/08) ( <b>Antonia Jones</b> was also a director). Director of Donkin Lodge Limited ( <b>Christopher Arnold</b> also a director). Director of Fund a Property Limited ( <b>Christopher Arnold</b> also a director). Director of Gamble It Limited ( <b>Christopher Arnold</b> also a director). Director of Hyde Park Management Services Limited ( <b>Christopher Arnold</b> and <b>Sunil Bance</b> also directors). Director and 50% shareholder of Pro Promotions Limited ( <b>Christopher Arnold</b> also a director). Director and 50% shareholder of RAG Portfolio Limited ( <b>Christopher Arnold</b> also a director). Director and 50% shareholder of Silverdean Management Limited ( <b>Christopher Arnold</b> also a director). Director of Wey Bridging Holdings Limited ( <b>Ishaq Malik</b> also a director).
GURPEET	Vijay	Uncle of <b>Sunil Bance</b> , said to have invested £250,000 in Wey Bridging.

JONES	Antonia Heather	<p>Defendant in these proceedings (HC11C01798 and HC10C03997).  Wife of <b>Peter Graham</b> (from time to time referred to as Antonia Graham).  Sole shareholder in Aims International until []; Director of Aims International Limited (twice). .  Member of Antonia Jones LLP.  Director of Designer Kidz Limited (17/03/04 - 28/04/08) (<b>Peter Graham</b> also a director).  Shareholder of FX Traders Corporation Limited (<b>Shafaq Aziz</b> a director).  Director of Initial Consultancy Limited.  Director and sole shareholder of WB Investments (UK) Limited.</p>
MACLEOD	Kenneth	<p>Director and 50% shareholder of Eye4All Events Limited.  Director and sole shareholder of Fanzone UK Limited.  Director of Frontline Press Limited (<b>Sunil Bance</b> also a director).  Director of Jigsaw Media (UK) Limited (a joint venture with <b>Sunil Bance, Peter Graham</b> and <b>Ishaq Malik</b>).  Director and 50% shareholder of Jigsaw Media &amp; Marketing Limited.  Director of Jigsaw Promotions Limited (<b>Sunil Bance</b> also a director).  Director and major shareholder of Redstone Media plc (<b>Sunil Bance</b> also a director).  Apparent recipient of sums cross-fired between Wey Bridging Limited and Prism Worldwide Limited.</p>
MALIK	Kashif	<p>Director of Featherstones Capital Partners Limited (<b>Sunil Bance</b> also a director).</p>
MALIK	Mohammad Ishaq ("Ishaq")	<p>Defendant in these proceedings (HC11C01798 and HC10C03997).  Financial Director of Wey Bridging Limited (appointed June 2007).  Director of Chester City Football Club Limited (from 15/02/08 - 01/11/08).  Director of Critical Logistix Limited (01/04/03 - 29/05/07).  Director of The Empire Property Group Limited (<b>Christopher Arnold</b> and <b>Vijender Thakur</b> also directors).  Director and 23% shareholder of Fairmont Partners Limited.  Director of FX Traders Corporation Limited (<b>Shafaq Aziz, Antonia Jones</b> and <b>Sunil Bance</b> also directors).  Director of Packard Limited (<b>Sunil Bance</b> also a director).  Director of Prism Worldwide Limited.  Director of Quadrant Risk Management Insurance Services Limited.  Director and sole shareholder of Surrey Chauffeur &amp; Courier Service Limited.  Director and 25% shareholder of The Trident Partnership Limited (<b>Sunil Bance</b> also a director and shareholder).  Director of Wey Bridging Holdings Limited (<b>Peter Graham</b> also a director).  Director of Whitedrake Limited.</p>



MALIK	Rabia	Wife of <b>Ishaq Malik</b> Director and 50% shareholder of Prism Worldwide Limited ( <b>Ishaq Malik</b> also a director). Shareholder of FX Traders Corporation Limited ( <b>Antonia Jones</b> also a shareholder; <b>Shafaq Aziz</b> a director).
Masood	Kasar	Borrower from Wey Bridging in 2007, who paid off debt by developing software for FX Traders between October 2009 and November 2010.
MEURISSE	Sarah Eleanor Nicole	Defendant in these proceedings (HC11C03698). Partner/common-law wife of <b>Christopher Arnold</b> .
TESTER	Steven ("Steve")	Employee of Wey Bridging Limited from 01/04/07 to December 2008 or January 2009, brought in to assist the company in achieving FSA regulation.
THAKUR	Vijender ("Vijay")	Defendant in these proceedings (HC10C03997 only). Employee of Bance Chartered Accountants – paid £8,500 per annum. Occasional intern work at Wey Bridging Limited. - paid £100 pcm.  Director of Claridges Square Limited (formerly Hamonds Limited). Director of The Empire Property Group Limited ( <b>Ishaq Malik</b> and <b>Christopher Arnold</b> also directors). Director of Evergreen Security Investments Limited (26/06/08 - 30/03/10). Director and 50% shareholder of Featherstones Consultants Limited ( <b>Sunil Bance</b> also a director and shareholder). Director of Featherstoness Capital Partners Limited ( <b>Sunil Bance</b> also a director). Director of Fetherstons Limited ( <b>Sunil Bance</b> also a director). Director of Hamonds Limited (later Claridges Square Limited). Director of Mallards Trading Limited (later Hayward Trading Limited). Director of Imperali Limited ( <b>Sunil Bance</b> also a director). Director of Legal Credit Limited ( <b>Sunil Bance</b> and <b>Vijender Thakur</b> also directors). Director and sole shareholder of Whitecross Ltd



Hemsley Claimants

Wey Bridging Ltd

Maven Claimants

Mr Arnold

Client Credit Ltd

Unknown recipients

Heritage Capital

FX Traders/  
Essential Liquid

Aims International

Legal Credit Ltd

Jigsaw Companies

Hamonds

Mallards

Featherstones Companies

Prism International

Mr Arnold;  
Ms Meurisse;  
Their companies  
(excl. Heritage)

Mr &  
Mrs Malik

Mr &  
Mrs Bance

Mr Graham;  
Ms Jones;  
Their companies

Whitecross  
Ltd (Dubai)

*Receipts by Messrs  
Graham, Arnold, Malik  
& Bance do not include  
salaries/expenses or rent  
paid to Mr Graham for  
11 Queen's Gate*

Payments to Mr &  
Mrs Malik:  
Hamonds: £7,901  
Mallards: £19,403  
Prism: £6,043

Payments to Mr &  
Mrs Bance:  
Hamonds: £4,034  
Mallards: £3,910  
Prism: £3,930

On Mr Graham's  
own case, they  
received  
£1,511,868 net (ex  
wages and rent)

£3,958,093 net

£2,689,577 net

£1,157,143

£250,000

£200,000

£826,864

£3,961,14

£4,040,145

£0

£194,598

£0

£500,000

£15,000

£15,000

£0

£6,210

£811,956

£1,128,868

£1.398mm

£1,721,964

£938,964

£1,559,564

£6,073,750

£6,064,312

£593,957

£1,189,294

£0

£107,120

£0

£238,195

£914,285

£47,546

£14,348

£2,671,445

£6,016,354

£5,000

£25,346

£19,793

£8,068

£282,000

£9,674

Schedule comparing loans outstanding as at 2 January 2008, 30 June 2008, and 6 January 2009

Borrower	E-mail from Ms Clark to Mr Graham and Mr Arnold dated 2 January 2008, subject: bad debt list [CB1/92.1]	The Stallards Schedule dated 30 June 2008 [CB2/562.1]	Cross Firing payments	Amount outstanding as at 6 January 2009 [CB2A/562.11]
<p><b>Brian Lewis</b></p> <p>As at 2 January 2008 Mr Lewis had 1 loan from WB, taken out on 1 August 2007 in the sum of £150,000 [H vol 1, tab 19]</p>	<p><i>"Full loan amount was due back on 2nd December but we have received no payment and contact details are incorrect. Solicitor has been chased continuously but is hard to reach and also does not return calls. The last time we spoke to solicitor he advised he was meeting up with client that evening and getting payment from him but we still have had no response"</i></p>	<p>As at 30 June 2008, a loan of £150,000, with loan date 08 February 2007, is recorded as outstanding, loan 104</p>	<p>Cross firing payment of £180,000 made by Mr Arnold on 16 July 2008 supported by fabricated drawdown notice to NatWest dated 07/07/2008 in the sum of £180,000 purportedly to a Mr Brian Lewis [CB1/181], but which was paid to Mr Arnold. [I/1 p.372]. Loan number changed to 162, recorded as "New Brian Lewis" on AI spreadsheet, dated 15 July 2008</p>	<p>As at January 2009, the amount outstanding from Mr Lewis was said to be £222,000. This included the original loan of £150,000 which had been cross fired by Mr Arnold plus accrued interest. By the end of January 2009, the Accrued Income ("AI") spreadsheet records "new" loan 162 as having £219,097 of capital outstanding and £6,000 of accrued interest, a total of £225,097</p>
<p><b>BKS</b></p> <p>As at 2 January 2008 Lakhbir Kaur (through BKS Solicitors) had 2 loans from WB. One was taken out on 1 May 2007 in the sum of £60,000 and the second was taken out on 16 May 2007 also in the sum of £60,000. [H, vol 1, tabs 3 and 4]</p>	<p><i>"Interest is currently being accrued. A total of 7 interest payments are outstanding on both loans"</i></p>	<p>As at 30 June 2008, two loans to Mrs Lakhbir Kaur, (through BKS Solicitors) loans 101 and 121 (both with loan dates 31 May 2007), are recorded as outstanding in the sum of £110,790</p>	<p>Cross firing payment by Heritage Capital into WB of £94,789 on 5 November 2008 with statement reference "Ref Mrs L Kaur". On the same day WB made a payment to Heritage Capital for £94,800 with the reference "Loan 181". This relates to loan 101. [I/1 p.408]. Second Cross firing payments by Heritage Capital into WB of £43,105 on 10 December and £59,894 on 11 December 2008 (it, total of £102,999) with statement reference "Lakhbir Kaur". On the same days WB made a payment to Heritage Capital of £45,000 and £65,000 with the statement reference "Loan Ref 194". This relates to loan 121. [I/1 p.420 and 421]</p>	<p>As at January 2009, the amount outstanding from Mrs Kaur (under the client name "Sahil" Footnote 1) was said to be £203,300. This included the original loans which had been cross fired by Heritage Capital plus accrued interest. By the end of January 2009, the AI spreadsheet records "new" loan 181, for customer Lakhbir Kaur, as having £101,300 outstanding, and "new" loan 194, for customer BKS, as having £124,000 outstanding, ie, a total outstanding for Mrs Kaur of £225,300</p>
<p><b>Dirk Jansz</b></p> <p>As at 2 January 2008 Mr Dirk Jansz had 1 loan from WB, taken out on 5 April 2007 in the sum of £16,000. [H, vol 1, tab 1]</p>	<p><i>"Client cannot afford to pay loan back therefore Chris has arranged to accrue all his outstanding interest plus interest up until March 2008 when he is due to have a completion"</i></p>	<p>As at 30 June 2008, a loan of £16,000, with loan date 31 May 2007) is recorded as outstanding, loan 107</p>	<p>Cross Firing payment by Heritage Capital into WB on 28 November 2008 of £39,422 with statement reference "Dirk Jansz". On the same day WB made a payment to Heritage Capital for £39,500 with the reference "Loan Ref 184". [I/1 p.412].</p>	<p>As at January 2009, the amount outstanding from Mr Dirk Jansz was said to be £42,768. By the end of January 2009, the AI spreadsheet records loan 107, for customer Dirk Jansz, as having no sum outstanding. However, a "new" loan to Dirk Jansz (loan 184) is recorded on the spreadsheet as having been made on 28 November 2008 and £42,958 is recorded as being outstanding in January 2009. This included the original loan of £16,000 which had been cross fired by Heritage Capital plus accrued interest.</p>

P/ p356  
CB1/92.3

<p><b>Mohan Paroha</b></p> <p>As at 2 January 2008 Mohan Paroha had 2 loans from WB. One was taken in January 2007 in the sum of £70,000 [JC7/vol6/1722] and the second was taken out on 20 April 2007 in the sum of £10,000 [JC7/vol6/p1721].</p>	<p><i>"We received £10,000 in September and since then the client has promised to pay another lump sum to clear further interest and pay back some of the capital. Client is currently four payments outstanding and these have been added onto the lower of this two loan amounts"</i> (Footnote 3)</p>	<p>As at 30 June 2008, two loans to Mr Paroha, loans 131 (with loan date of 31 May 2008) and 138 (with loan date of 31 May 2007) are recorded as outstanding in the sum of £80,000.</p>	<p>No Cross Firing payment identified in the period 30 June 2008 to 30 January 2009</p>	<p>As appears from the AI Spreadsheet, the 2 loans which were outstanding in January 2008 were combined into a single loan of £250,000 on 4 August 2008 [H/vol3/tab67] at which time a further £25,000 was advanced by WB to Mr Paroha [(1)vol2/p380]. This was given loan ref 166. The AI Spreadsheet shows that a further capital drawdown was made on this loan in September 2008. As at January 2009, the amount outstanding from Mr Paroha was said to be £272,500. As appears from the AIS, this was made up of loan ref 166 (under which £225,532 was owing at 31.1.09) plus loan ref 113 which was another loan to Mr Paroha made in March 2008 in the sum of £50,000. Thus, the 2 loans outstanding in January 2008 were still outstanding in January 2009 and had been combined into one loan with ref 166.</p>
<p><b>Gavin Wilson</b></p> <p>As at 2 January 2008 Mr Wilson had 1 loan from WB, taken out on 25 June 2007 in the sum of £50,000. [H. vol 1, tab 7]</p>	<p><i>"Client currently has two payments outstanding and due to problem with a completion doesn't think he will be able to pay these back till the end of January when his full amount is due back"</i></p>	<p>As at 30 June 2008, a loan to Mr Wilson of £50,000 (with loan date of 25 June 2007) is recorded as outstanding, loan 140</p>	<p>Cross Firing payment by Christopher Arnold into WB on 12 December 2008 of £108,956 with statement reference "G Wilson". On the same day WB made a payment to Christopher Arnold for £120,000 with the reference "Loan Ref 197" [I/1 p.422].</p>	<p>As at January 2009, the amount outstanding from Mr Wilson was said to be £120,000. In January 2009, the AI spreadsheet records loan 149, for Mr Wilson as having no sum outstanding. However, a "new" loan to Gavin Wilson is recorded on the spreadsheet as having been made between 11-16 December 2008 (loan number 196) and £145,000 is recorded as being outstanding in January 2009. This included the original loan of £50,000 which had been cross fired by Mr Arnold plus accrued interest.</p>
<p><b>Nilofar Rehman</b></p> <p>As at 2 January 2008 Nilofar Rehman had 2 loans from WB. One was taken out on 27 July 2007 in the sum of £35,000 [H1/tab 15]. The second was taken out on 3 August 2007 in the sum of £120,000 [H1/tab 22]. Subsequently a third loan was taken out on 26 April 2008 in the sum of £40,000 [H1/tab 58] and a fourth loan was taken out on 26 June 2008 in the sum of £83,720 [H3/tab 66]</p>	<p><i>"Client was due to have a completion before Christmas which didn't happen, she has advised this should now be in the New Year. From this she is due to pay all outstanding interest plus a £50,000 of the capital"</i> (Footnote 4)</p>	<p>As at 30 June 2008, four loans to Mrs Rehman, loans 141 (with loan date of 5 August 2008), 142 (with loan date of 27 July 2007), 151 (with loan date of 29 April 2008) and 155 (with loan date of 27 June 2008), are recorded as outstanding in the sum of £249,000.</p>	<p>Cross Firing payment by Christopher Arnold into WB on 10 December 2008 of £90,937 with statement reference "N Rehman". This relates to loans 141 and 142 where the AI spreadsheet shows sums repaid of £90,937 in December 2008, which reduces the balance owing on loan 141 to £91,470 and the balance on loan 142 to zero. On the same day WB made a payment to Christopher Arnold for £91,000 with the reference "Loan Ref 193" [I/1 p.419 and 420]. Loans 141 and 142 are combined into "new" loan 193.</p>	<p>As at January 2009, the amount outstanding from Mrs Rehman was said to be £297,232. In January 2009 the AI spreadsheet shows "new" loan 193 to Mrs Rehman as having £123,000 outstanding, loan 155 as having £44,800 outstanding (although this appears to refer to loan 151), a further (unreferenced) loan as having £63,720 outstanding and loan 141 (which had been partially cross fired by Mr Arnold) as having £95,419 outstanding. These sums total £329,759.</p>

P/1/p357

0811/92.4

<p><b>Nathalie Smith</b> (Footnote 2)</p> <p>As at 2 January 2008 Mr and Mrs Smith had 1 loan from WB, taken out on 2 November 2007 in the sum of £50,000. [H, vol 2, tab 40]</p>	<p><i>"Interest was due on the 2nd January, she has advised the completion is set for 7th January and will be paying full loan amount plus interest payment"</i></p>	<p>As at 30 June 2008, a loan to Mr and Mrs Smith of £50,000 (with loan date of 2 November 2007) is recorded as outstanding, loan 106</p>	<p>Cross firing payments by Heritage Capital of £41,715.78 on 5 December 2008 and £15,284 on 8 December 2008 (total of £56,999) with statement references "George Smith". On 5 December 2008, WB made a payment of £57,000 to Heritage Capital with the statement reference "Loan Ref 190". [U1 p.417 and 418]</p>	<p>As at January 2009, the amount outstanding from Mr and Mrs Smith was said to be £58,000. By the end of January 2009, the AI spreadsheet records "new" loan 190, for Mr and Mrs Smith, as having £65,000 outstanding. This included the original loan of £50,000 which had been cross fired by Heritage Capital plus accrued interest.</p>
<p><b>Jim Kelly</b></p> <p>Mr Kelly received a loan of £60,000 from WB on 5 March 2007 [(1) vol1 p.60]. The AIS shows that as at December 2007 Mr Kelly owed WB £120,000. On 24 December 2007 Mr Graham made a cross-firing payment from his joint HSBC account 1591959, with statement reference "Jim Kelly". WB made a payment of £120,000 back to this account on the same day with reference "Jim Kelly" [U1 vol1 p.253 and 254].</p> <p>WB's computer records show that this payment out of £120,000 with reference "Jim Kelly" was treated as a new loan made on that date with number 133. Mr Kelly's liability was recorded as £170,000 as interest was said to have been paid upfront [JC7, vol 5, p.1298]</p>	<p><i>"No payments received since June 2007. Loan currently stands at £120,000 but have been advised by Chris that no further interest is to be added on"</i></p>	<p>As at 30 June 2008, there are two references to loan number 133 to Mr Kelly totalling £170,000 recorded as outstanding</p>		<p>As at January 2009, the amount outstanding from Mr Kelly was said to be £219, 998. In January 2009, the AI spreadsheet records loan 133, for Jim Kelly, as having £230,479 outstanding. This included the indebtedness in January 2008 which had been the subject of Mr Graham's cross-firing.</p>
<p><b>Adil Rehman</b></p> <p>As at 2 January 2008 Mr Rehman had 1 loan from WB, taken out on 31 July 2007 in the sum of £25,500 [H, vol 1, tab 17]</p>	<p><i>"Client is one payment overdue. This has been added onto loan amount as client is out of the country and not able to take [make] payment"</i></p>	<p>As at 30 June 2008, a loan to Mr A Rehman of £25,500 (with loan date of 1 February 2008) is recorded as outstanding, loan 149</p>	<p>Cross firing payment by Heritage Capital of £34,680 on 01 December 2008 with statement reference "Adil Rehman". WB made a payment to Heritage Capital for the same amount on the same day with the statement reference "Loan Ref 185". [U1 p.414]</p>	<p>As at January 2009, the amount outstanding from Mr Rehman was said to be £36,120. In January 2009, the AI spreadsheet records loan 185, for Adil Rehman, as having £46,000 outstanding. This included the original loan of £25,500 which had been cross fired by Heritage Capital plus accrued interest.</p>
<p><b>Mohammed Saleem</b></p> <p>As at 2 January 2008 Mr Saleem had 1 loan from WB, taken out on 31 July 2007 in the sum of £83,000. [H, vol 1, tab 18]</p>	<p><i>"Last payment received was in November which Asim Hussain paid. Client is currently one payment overdue plus his full loan amount as this was due back on the 31 December. Due to no further payments being made Asim Hussain is now arranging payment. I have been chasing Asim Hussain today but have had no response"</i></p>	<p>As at 30 June 2008, a loan to Mr M Saleem of £132,700 (with loan date of 31 March 2008) is recorded as outstanding, loan 170</p>	<p>No Cross Firing payment identified in the period 30 June 2008 to 30 January 2009</p>	<p>As at January 2009, the amount outstanding from Mr Saleem was said to be £148,425. In January 2009, the AI spreadsheet records loan 170, for Mr Saleem, as having £151,000 outstanding.</p>

P/ p358  
 CB1/92.5

<p><b>Kashmiri</b></p> <p>As at 2 January 2008 Mr and Mrs Kashmiri had 1 loan from WB, taken out on 10 July 2007 in the sum of £80,000 [H, vol 1, tab 9]</p>	<p><i>"Due to no response from client and solicitor all interest has been added onto the loan amount. Client is currently four payments overdue, total of £16,000"</i></p>	<p>As at 30 June 2008, a loan to Kashmiri of £130,000 (with loan date of 30 June 2008) is recorded as outstanding, loan 161</p>	<p>Cross firing payments from WB to Featherstones Limited on 30 June 2008 with statement reference "Saeeda/Sugra" and two payments of £74,980 and £54,980 from Featherstones Limited to WB on 1 July 2008 [p1 p.367 and 368]</p>	<p>As at January 2009, the amount outstanding from Mr and Mrs Kashmiri was said to be £175,000. In January 2009, the AI spreadsheet records a loan (not numbered) for Mr and Mrs Kashmiri, as having £175,500 outstanding. This included the original loan of £80,000 which had been cross fired by Featherstones plus accrued interest.</p>
<p><b>Anthony Williams</b></p> <p>As at 2 January 2008 Mr Williams had 1 loan from WB, taken out on 10 July 2007 in the sum of £50,000. [JC7, vol 8, p.2314 and 2315]</p>	<p><i>"Client is currently one payment overdue which he cannot afford to pay, the client is arranging another loan to be able to pay back ours so overdue interest has been added onto loan amount"</i></p>	<p>The loan to Anthony Williams was completely omitted from the Stallards Schedule but ought to have been included</p>	<p>No Cross Firing payment identified in the period 30 June 2008 to 30 January 2009</p>	<p>As at January 2009, the amount outstanding from Mr Williams was said to be £9,500. Mr Williams loan was originally a 24 hour loan [JC7, vol 8, p. 2314-15]. However, it was not repaid at the time. 4 payments totalling £62,000 are recorded as having been made to 11 June 2008 [JC7, vol 8, p. 2357]. A loan agreement of £7,500 was drawn up on 23 June 2008 [JC7, vol 8, p.2333]. By 11 September 2008 the loan was recorded as having £17,500 outstanding all of which was accrued interest [JC7, vol 8, p.2357]. On or around 22 September 2009, Mr Arnold then agreed that this amount would be reduced to £9,500 provided that Mr Williams agreed to the new payment schedule and signed a loan agreement [JC7, vol 8, p.2358]. This corresponds to the £9,500 recorded in the spreadsheet dated 6 January 2009</p>
<p><b>Francis Anan</b></p> <p>As at 2 January 2008 Mr Anan had 1 loan from WB, taken out on 8 June 2007 in the sum of £27,000. [H, vol 1, tab 6]</p>	<p><i>"Client is currently two interest payments overdue plus £1,160 which was part payment from a previous month. Client solicitor is trying to arrange a remortgage for client to enable him to pay back full loan amount and outstanding interest"</i></p>	<p>The loan to Francis Anan was completely omitted from the Stallards Schedule but ought to have been included</p>	<p>No Cross Firing payment identified in the period 30 June 2008 to 30 January 2009</p>	<p>As at January 2009, the amount outstanding from Mr Anan was said to be £21,687. A spreadsheet recovered from Mr Graham's laptop records that the loan to Mr Anan, for £27,000, made on 17/06/2007 had the customer reference number 123. By 17 February 2009 the loan amount stood at £25,294. In January 2009, the AI spreadsheet records a loan (not numbered) for Mr Anan, as having only £13,669 outstanding.</p>

**Footnotes:**

1. I have identified Sahii as Mr Sahii Aashuri, sole director and shareholder of the Middlesex School of Management which is shown to have received the proceeds of the loan to Mrs Lakhbir Kaur on 01/05/2007 (loan #101) [JC7, vol 4, p.1214]. The address for Middlesex School of Business is 81 Castle Street, Kingston Upon Thames which is very similar to the address recorded on the spreadsheet dated 6 January 2009 [JC7, vol 5, p.1289]
2. Nathalie Smith is the daughter of George and Pauline Smith who had borrowed from Wey Bridging and was liaising with Wey Bridging on their behalf