
IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE
FINANCIAL MARKETS TRIBUNAL
Case: FMT 19007

B E T W E E N:

Al Masah Capital Limited
Al Masah Capital Management Limited
Shailesh Kumar Dash
Nrupaditya Singhdeo
Don Lim Jung Chiat

Applicants

- and -

The Dubai Financial Services Authority

Respondent

- before -

His Honour Mr David Mackie CBE QC (President)
Mr Ali Malek, QC
Mr Patrick Storey

Day 4

Wednesday, 13 May 2020

Mr Richard Hill, QC, and Mr Gregory Denton-Cox
(of 4 Stone Buildings), Mr DK Singh, Ms Bushra Ahmed and
Ms Tina Asgarian (of KBH Kaanuun) appeared on behalf of the
Applicants

Ms Sarah Clarke, QC, (of Serjeants' Inn) and Mr Adam Temple
(of 4 Pump Court) appeared on behalf of the Respondent

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1 P R O C E E D I N G S

2 (1.00 pm)

3 PRESIDENT: Good morning, everyone. Welcome back. We're
4 going to resume with the evidence of Mr Dash, when
5 Ms Clarke is ready.

6 MR SHAILESH KUMAR DASH

7 Cross-examination by MS CLARKE (continued)

8 MS CLARKE: Mr Dash, yesterday, one of the things that you
9 said was that Al Masah Cayman did not have an office --
10 I think you said anywhere.

11 Mr Dash's microphone is not on.

12 PRESIDENT: Perhaps Mr Singh could remind Mr Dash to put on
13 his microphone. I think there may be a technical
14 problem there, which Mr Singh has gone off to look into.

15 WITNESS: Thank you. Apologies, sir.

16 PRESIDENT: That's all right. Would you like to ask the
17 question again, Ms Clarke.

18 MS CLARKE: Yes, I'll start again.

19 Mr Dash, yesterday you said that AMC, Al Masah
20 Cayman, didn't have an office anywhere; do you remember
21 saying that?

22 A. Yes, I said that they have subsidiaries in three
23 different cities.

24 Q. You said that Al Masah Cayman itself didn't have an
25 office anywhere?

1 13:02 A. They had a registered office in Cayman.

2 Q. Yes, but I think you told us yesterday, that was
3 effectively a postbox?

4 A. A registered office.

5 Q. But there was no actual office premises with staff
6 performing duties. I think you told us that yesterday,
7 didn't you?

8 A. That's correct.

9 Q. The other thing you said was that many of the board
10 members of AMC, Al Masah Cayman, were not situated in
11 Dubai?

12 A. That's correct.

13 Q. But obviously you were?

14 A. I was, yes, that's correct. I was the only one.

15 Q. You were the only one, right.

16 Al Masah Cayman board meetings, in your witness
17 statement, you, I think, said that you don't recall any
18 Al Masah board meetings taking place in the DIFC. This
19 is your third witness statement, paragraph 88, if you
20 want the reference to check it.

21 Sir, can I just say that I'm not going to keep
22 asking for the witness statements to be brought up on
23 the screen every time I refer to a paragraph, unless you
24 particularly want me to, given that everybody has hard
25 copies of the statements and can refer to them

1 13:03 themselves.

2 PRESIDENT: I think that's very sensible. We've all got
3 them.

4 MS CLARKE: Thank you. It might save time as well.

5 PRESIDENT: Just do whatever suits you best.

6 MS CLARKE: All right. I just wanted to explain, I'm taking
7 a slightly different approach to the approach that's
8 been taken in respect of other witnesses.

9 PRESIDENT: Okay.

10 MS CLARKE: Mr Dash, you've got your copies of the
11 statements, haven't you?

12 A. Yes, yes.

13 Q. You can check for yourself.

14 A. Yes.

15 Q. Third witness statement, paragraph 88; yes?

16 A. Yes.

17 Q. Have you been able to check that now?

18 A. Yes. I must say that, you know, I stand a little bit
19 corrected here. Some of the board meetings of AMCL,
20 because of the agreement that we had with AMCML, did
21 take place in the DIFC, pursuant to those agreements,
22 but many of the board meetings were actually in hotels
23 and different offices.

24 Q. Your statement here says:

25 "I do not remember any AMCL Board meetings taking

1 13:05 place at AMCML's offices inside the DIFC."

2 A. I stand corrected.

3 Q. You stand corrected. All right. At the time you wrote
4 this witness statement, presumably you had given this
5 issue considerable thought, hadn't you?

6 A. Like I said, I do remember, because I did say that I do
7 not remember, but I do remember now, that --

8 Q. Right. So --

9 A. -- some board meetings did take place in DIFC, pursuant
10 to the agreements that we had with the DIFC office.

11 Q. This statement, then, that you don't remember any board
12 meetings taking place in the DIFC, that's not
13 a statement that is seeking to distance the role of
14 Al Masah Cayman from activities in the DIFC?

15 A. Not correct. All I'm saying is that pursuant to the
16 agreements that we had between Al Masah Capital
17 Management Ltd and Al Masah Capital Ltd, there was
18 a function where the advisory role was given out. And
19 some of the meetings that we had for Al Masah Capital
20 Management Ltd, after those meetings, we might have
21 continued -- to continue and finish up the Al Masah
22 Capital Ltd board meetings.

23 Q. I see. So you're saying that it might just so happen
24 that you would move seamlessly into business of Al Masah
25 Cayman, having dealt with business of Al Masah DIFC; is

1 13:06 that what you're saying?

2 A. That's what I'm saying.

3 Q. That's not, of course, what's in that paragraph 88, is
4 it?

5 A. That's correct.

6 Q. What I suggest is that paragraph 88, the board meeting
7 issues, set out in paragraph 88, is in fact an attempt
8 by you to distance the activities of Al Masah Cayman
9 from the DIFC.

10 A. Not really that. Like I said, I had said, I do not
11 remember, but I do remember now. And I'm saying that
12 that was the case, because the boards were the same and
13 we had an advisory agreement signed between both the
14 entities and a service agreement. So the board decided
15 that since we're completing the Al Masah Capital
16 Management board meeting, let's continue and finish off
17 the parent company board meeting also.

18 Q. Because one of the exhibits that you produce in this
19 witness statement is, in fact, a board meeting minutes
20 for AMC, isn't it?

21 A. Which exhibit are we talking about?

22 Q. Exhibit C010, SKD 3-9, if we could have that brought up.

23 A. That is correct. As it says, "Al Masah Capital Ltd",
24 but if you see most of the happenings are there, are
25 actually that of Al Masah Capital Management Ltd.

1 13:08 Q. Let's take that in stages, shall we, Mr Dash?

2 A. Yes.

3 Q. First of all, the heading, "Al Masah Capital Ltd", no
4 dispute, of course, that that's a reference to Al Masah
5 Cayman; correct?

6 A. The way it is written, yes.

7 Q. Next part of the heading:

8 "Minutes of a Meeting of the Directors of the
9 Company ..."

10 We can see from above that "the company" means
11 Al Masah Cayman, doesn't it?

12 A. That's correct.

13 Q. Then:

14 "... Held at the EFT Tower [then it gives an
15 address] DIFC Area, Dubai ..."

16 A. That's correct.

17 Q. The EFT Tower was the premises from which Al Masah DIFC
18 operated as well, isn't it?

19 A. That is correct.

20 Q. Then it gives the date, 10 November 2013, at 3 pm; yes?

21 A. Yes.

22 Q. Next bit, if we can scroll back down, so we can see who
23 was there.

24 A. They are all the board members of Al Masah Management
25 Capital Ltd and same as Al Masah Capital Ltd.

1 13:10 Q. The point I was going to ask you about was that it seems
2 as if virtually all the board members of Al Masah
3 Capital were in fact present for the meeting?

4 A. Al Masah Capital Management were present in the meeting,
5 yes.

6 Q. Virtually all the board members --

7 A. That's correct.

8 Q. -- of Al Masah Capital were present at the meeting?

9 A. Both of them. The holding company and the subsidiary,
10 both were present.

11 Q. No, let's focus on Al Masah Capital, given that it's
12 minutes of a meeting for Al Masah Capital. So let's
13 focus on Al Masah Capital, please --

14 A. Yes, but -- I know, but what is important to understand
15 here is that it is exactly the same minutes that you
16 would see of Al Masah Capital Management Ltd as well,
17 except maybe one bit, about the financial discussion.

18 Q. Can I ask the question and then you answer the question
19 that I ask, please.

20 A. Thank you.

21 Q. We'll get on a lot quicker if we do it that way.

22 Going back to the question that I asked you,
23 virtually all the board members of Al Masah Cayman were
24 present at this meeting, weren't they?

25 A. They were.

1 13:11 Q. Then we have some other invitees: Mr Wael Zeenni,
2 Mr Harish Ahuja and Mr Singhdeo, who all, I think, had
3 roles in Al Masah Capital as well, didn't they?

4 A. That's correct.

5 Q. One person who is not listed as either present or an
6 invitee is Helen Baines?

7 A. Yes, that's correct.

8 Q. One of the reasons for that is because she was not
9 a compliance officer for Al Masah Capital, was she?

10 A. No, that is not the reason. The reason could be the
11 drafting of the document, because as you could see,
12 she's the one who presented the executive management
13 committee portion and the compliance portion to the
14 board. It is very well documented out there.

15 Q. We were taken to that yesterday.

16 A. Yes.

17 Q. But what I'm suggesting to you is the reason why she is
18 not recorded amongst these names, is because she does
19 not have a formal role at Al Masah Capital, does she, or
20 did she in this period?

21 A. She had a formal role in Al Masah Capital.

22 Q. She was not the compliance officer for Al Masah Capital,
23 was she?

24 A. She was the compliance officer for Al Masah Capital.

25 Q. The only role that she had at Al Masah Capital was the

1 13:13 role that she told us about yesterday, which was money
2 laundering and reporting. That was her only role at
3 Al Masah Capital, wasn't it?

4 A. Which is not correct.

5 Q. Nor, for that matter, was she what was described
6 yesterday as the group compliance officer?

7 A. She was the group compliance officer.

8 Q. Her only role as a compliance officer, I suggest, was in
9 relation to Al Masah DIFC.

10 A. Her role was as a group compliance officer. She was
11 also compliance officer for Al Etihad, which was a
12 subsidiary, under the Securities and Commodity Authority
13 of UAE. And she was also a compliance officer for
14 Al Masah Capital Asia, where she was also for that
15 business under Al Masah as well.

16 Q. I'm not going to keep putting the same point again and
17 again --

18 A. Documents are there to prove, so we can send the
19 documents over.

20 Q. What I suggest is that there is no document that
21 demonstrates that she was the compliance officer for
22 Al Masah Cayman.

23 A. Al Masah Cayman doesn't require any such documentation,
24 but the offer letter that was produced to her is very
25 clear on that.

1 13:14 Q. Right, and --

2 A. The role she actually did in the company was very clear
3 on that.

4 Q. Nor, I suggest, do any of the documents that we were
5 referred to yesterday, or that Ms Baines was referred to
6 yesterday, demonstrate that she had any role as a group
7 compliance officer.

8 A. I think it very well demonstrates that. That was the
9 whole point of presenting those documents.

10 Q. The reality was that her role was, as she described,
11 limited to DIFC and limited to compliance matters
12 relating to DIFC?

13 A. That is not what she said and there is documents, just
14 like you talk about here, about the minutes of Al Masah
15 Capital Ltd, the documents to prove that she was
16 involved and approved in Singapore and in Abu Dhabi as
17 the compliance officer.

18 Q. When we go on and look at a bit more of this document,
19 the minutes document that we have still got up on the
20 screen, could we go to page 4. It's item 10, so could
21 we go to paragraph 10.

22 It says here, paragraph 10.2:

23 "Leasing/buying of new head office space in EFT
24 Tower."

25 Do you see that?

1 13:16 A. That's correct.

2 Q. It said:

3 "The Board was presented with a proposal to lease an
4 entire floor in the EFT Tower ..."

5 Yes?

6 A. Yes.

7 Q. "... will result into having one large office and all
8 staffs can work from one location."

9 Yes?

10 A. That's correct.

11 Q. Then:

12 "Mr Darwish suggested that the company should
13 explore the possibility of buying the proposed office
14 space ..."

15 A. That's correct.

16 Q. Then it says:

17 "After due discussion the board approved that the
18 Company [which we know from the heading of this document
19 relates to Al Masah Cayman] can look towards owning the
20 proposed office floor through a lease ..."

21 A. Let me please provide an example here. We are talking
22 about UAE here. In UAE, in DIFC, you cannot have
23 a foreign company buy an asset. It is the DIFC entity
24 which is buying the asset. So when Mr Hamad Darwish,
25 the vice-chairman, is talking about here, he's talking

1 13:18 about the subsidiary company buying the asset. In UAE,
2 you cannot have -- in DIFC, in particular, if you're not
3 regulated in DIFC, you cannot buy an asset, as far as
4 I know, for office space.

5 Q. But leasing of office space, what about that?

6 A. Only a firm which is regulated in DIFC, at that point in
7 time, was supposed to be leasing in DIFC, no outside
8 company would do that. But today, I think now the new
9 regulations have come out, because of the situation in
10 the real estate sector, they are allowing other people
11 to buy and own real estate.

12 Q. Despite the fact that this is a matter recorded in the
13 Al Masah Cayman minutes and despite the fact that it
14 refers to the company, which according to the heading of
15 the document means Al Masah Cayman, you say that, in
16 fact, this section relates to Al Masah DIFC?

17 A. The subsidiaries, in the holding company, you do discuss
18 about the subsidiaries as well.

19 Q. But the point of this being in the Al Masah Cayman
20 minutes is because the reality was that Al Masah Cayman,
21 to all intents and purposes, was operating out of the
22 DIFC, wasn't it?

23 A. I think we are conflating a lot of situations here. To
24 be very frank, like we discussed yesterday, Al Masah
25 Cayman was a holding company. It holds 100 per cent of

1 13:19 the DIFC entity, it holds 80 per cent of the entity in
2 Singapore and it holds 70 per cent, I believe, of the --
3 80 per cent again of the stake in Abu Dhabi under the
4 ESCA regulations.

5 So it's not really to say that, you know, Al Masah
6 Cayman was based out of DIFC. You can say it was based
7 out of three different cities. But you can always say
8 that I was an SEO of the DIFC entity, I used to be based
9 out of DIFC and it would be true to also say that
10 because I used to hold the position of CEO, among all
11 the directors in Cayman, I had, you know, a licence out
12 of DIFC.

13 Q. I'm going to make the suggestion, then, because I don't
14 want to keep going over points again and again, the
15 reason why this item is included in the minutes of the
16 Al Masah Cayman meeting, is because Al Masah Cayman was,
17 in effect, operating out of the DIFC. And therefore,
18 the office space and how big it was and all the rest of
19 it was a matter that it was directly concerned with.

20 A. That is not correct. Holding a board meeting anywhere
21 doesn't mean the company is operating out of that place.
22 This is my understanding, but legally, I will leave that
23 for you (unclear ...)

24 Q. Can we go to the next bit, 10.3

25 "Exercise of warrants by Mr Shailesh Dash ..."

1 13:21 It was conveyed to the board that you were going to
2 convert a number of warrants into ordinary shares; yes?
3 A. That's correct.
4 Q. The exercise price was just shy of US\$750,000.
5 A. That's correct.
6 Q. You received as a result of that exercise -- I don't
7 criticise you for this, it's just the numbers that I'm
8 interested in, you received a sum of just shy of
9 \$750,000?
10 A. A warrant means you have to pay for it to get it, so
11 I paid cash for it.
12 Q. I understand that, but the point is, you made a handsome
13 profit out of that conversion, didn't you? Otherwise
14 you wouldn't have done it.
15 A. How would I do that when they're not sold? Handsome
16 profit is when you have bought something and sold
17 something to make money out of it.
18 Q. But you will have walked away with a sizeable amount of
19 money, wouldn't you, from this exercise? Otherwise why
20 bother doing it?
21 A. No, I think totally different things. One is expense.
22 When you buy shares, you pay for it and if you cannot
23 sell it, it's all zero, it's value is zero. So, there's
24 no handsome profits on it and you can always check on
25 all the accounts. Not a single share of Al Masah

1 13:23 Capital has been sold by me to anybody, so there has
2 been -- actually, it has reduced in value, it has not
3 gained any value. So I have lost money by doing this
4 investment.

5 Q. So you're saying that this exercise of warrants, because
6 as I understand it --

7 A. It was for me to show skin in the game.

8 Q. Sorry?

9 A. It was for me to show skin in the game, that I do
10 believe in the company. The board and the other
11 shareholders expected me to invest, so that is why they
12 had given a warrant to me, that whenever I have cash,
13 I should invest in the company, so that there is skin in
14 the game.

15 Q. What you're saying is that you converted warrants into
16 shares?

17 A. Yeah, paying the same price that other shareholders
18 paid.

19 Q. You're going to do that at the time that you think it's
20 a good price for you to do it, aren't you?

21 A. That's true, but that doesn't mean that you're making
22 profit out of it.

23 Q. I'm not going to keep going over, as I say, the same
24 points.

25 A couple of questions about your role on the board

1 13:24 of AMC. We established yesterday that you were the
2 founder and the CEO; yes?

3 A. That's correct. If I may say, I think we did discuss
4 a lot of roles. It might be confusing for everybody,
5 the tribunal and the counsel. It might be easy for me,
6 I think it will be easy to do this fast, if I can just
7 briefly tell my position with respect to the different
8 companies, so it is easy for everybody to understand.
9 So --

10 Q. Well, I'm going to stop you there, because I think it's
11 going to be important for you to answer my question
12 first --

13 PRESIDENT: Just a moment, Ms Clarke. Mr Dash, I quite
14 understand. It's important to appreciate that the
15 process of giving evidence is very different from
16 a business meeting. I appreciate it may seem a bit
17 illogical to you, but it's the way we have done it for
18 about 200 years.

19 What I'm going to ask you to do is just listen to
20 the question and answer it. One thing I can tell you is
21 that once Ms Clarke has finished her questions, Mr Hill
22 will be able to ask you questions to give you a chance
23 to explain more fully anything which has arisen in the
24 course of your discussion with Ms Clarke. Do you
25 follow?

1 13:25 A. Thank you, sir.

2 PRESIDENT: Would you just listen to the question and answer
3 it and don't bother about giving us any background.
4 We'll ask for that if we need it and I'm sure Mr Hill
5 will invite you to fill in any gaps.

6 A. Will do.

7 MS CLARKE: You told us yesterday that you were the founder
8 and the CEO of Al Masah Cayman; yes?

9 A. Yes.

10 Q. Of course, you were also on the board of Al Masah Cayman
11 as well?

12 A. That is correct.

13 Q. But you were not a non-executive member of the board,
14 were you?

15 A. In Al Masah Capital Cayman, no, I was not
16 a non-executive, but there was -- officially, the
17 designation is CEO. But there is no role, because it
18 was a holding company, there was no role as CEO. But,
19 yes, as executive function, as per the Cayman laws, and
20 I had to abide by the Cayman laws.

21 Q. You were not a non-executive member of the board, were
22 you?

23 A. That's correct.

24 Q. Can I refer you back to paragraph 88 of your witness
25 statement.

1 13:27 A. Yes.

2 Q. Of course, when you were drafting this witness
3 statement, you knew --

4 A. SKD 3?

5 Q. No, paragraph 88 -- yes, witness statement 3 and
6 paragraph 88.

7 A. Yes.

8 Q. By the time you came to draft this witness statement,
9 which was in April of this year, so only last month --

10 A. Yes.

11 Q. -- you, of course, by then, knew very clearly all the
12 issues in this case, didn't you?

13 A. I was getting a grapple of the whole thing, but I can
14 explain this statement I wrote there. What I --

15 Q. No, Mr Dash. You heard what the chair of the panel
16 said.

17 A. Yes.

18 Q. I ask the questions, you answer the questions. You can
19 give an explanation, obviously, because it's your
20 answer. And then Mr Hill, in re-examination, can pick
21 up anything that he thinks is important. But at the
22 moment, can you please answer my questions.

23 A. Certainly. Sorry for that.

24 Q. It's all right.

25 By the time you made this statement in April 2020,

1 13:28 so really a matter of weeks ago, you knew very clearly
2 what the issues in this case were, didn't you?

3 A. Yes.

4 Q. You knew very clearly that one of those issues, perhaps
5 one of the key issues, is the role that you played in
6 these various companies, wasn't it?

7 A. Correct.

8 Q. And, of course, the role that you played in relation to
9 the various contraventions that are alleged against the
10 companies and against you; correct?

11 A. Correct.

12 Q. Not only that, of course, you had had a long time to see
13 the evidence that the DFSA had produced, hadn't you?

14 A. That's correct.

15 Q. And, of course, no doubt, a long time to review what
16 evidence you had or your companies had in the matter?

17 A. That's correct.

18 Q. Not only that, you had attended a decision making
19 committee meeting as well, hadn't you?

20 A. DMC, yes, that's correct.

21 Q. All of those things had happened by the time you came to
22 make this statement, hadn't they?

23 A. Yes.

24 Q. And, of course, you knew that it was important to
25 include in this statement, matters that were true and

1 13:30 correct, didn't you?

2 A. I really don't think that the matter what we are talking
3 about, what I wrote there is not true and correct. It
4 is true and correct.

5 Q. Mr Dash --

6 A. There is no office there and there is -- I am based on a
7 licensed function in DIFC, so there cannot be any
8 executive role in a company where there is a holding
9 company and there is no office there. I'm based out of
10 DIFC in a licensed function. I'm SEO here. I cannot be
11 saying that I'm a CEO. Yes, the designation is CEO, but
12 there is no executive role. I'm a board member along
13 with nine other people.

14 Q. But, Mr Dash, you knew that when you drafted this
15 statement, it was important to be accurate and truthful,
16 didn't you?

17 A. This is accurate and truthful.

18 Q. Mr Dash, you knew at the time you drafted the statement
19 that it was important to be accurate and truthful,
20 didn't you?

21 A. That's correct.

22 Q. That was explained to you, wasn't it?

23 A. Correct.

24 Q. Before you signed this witness statement, I'm sure that
25 you were told to check it through carefully, weren't

1 13:31 you?

2 A. I was told.

3 Q. Because, of course, in the end, it's your statement,
4 because you're the one signing it?

5 A. Correct.

6 Q. If there was anything in it that you were unhappy about
7 or on reflection felt was not correct, then no doubt you
8 would have picked it up and corrected it, wouldn't you?

9 A. That is correct.

10 Q. So that's the context in which this statement was made.
11 So can we go back, then, to paragraph 88. What you have
12 told us in evidence today is that you were not
13 a non-executive member of the Al Masah Cayman board?

14 A. I would like to repeat, there is no function, as you
15 have just said, there was no office in Cayman, there was
16 no function to be done in Cayman. So you say it as
17 executive, non-executive, you know, I don't know what it
18 means, but I was a board member. The designation given
19 to me was CEO, but there was no role to play.

20 Q. Your statement at paragraph 88 says at line 2:

21 "Whilst I sat on the Board of AMCL [Al Masah
22 Cayman], I did so as a non-executive member ..."

23 A. Yes.

24 Q. Then you go on to say:

25 "... and so my function on the board of AMCL was

1 13:33 limited."

2 A. Yes, similar to all the other nine members of the board.

3 All I want to say is that I had a function where there
4 was -- the only functions were in DIFC or in Singapore,
5 where the holding company had a stake. So the licence
6 function for me was only in the DIFC.

7 Q. But as regards your role at Al Masah Capital, it is not
8 the case that your function was limited, is it?

9 A. What would that define?

10 Q. Your responsibilities at Al Masah Capital during the
11 period that we're concerned with, were extensive,
12 weren't they?

13 A. I don't know what that means, but what I meant here by
14 "limited", in the sense there is no job to be performed
15 in the Cayman company, except doing investments.

16 Q. Of course, the board of Al Masah Capital is the one that
17 approves decisions that affect the company?

18 A. That's correct, that's correct.

19 Q. The board of Al Masah Capital is the one that enters
20 into contracts that bind the company, isn't it?

21 A. That's correct, that's correct.

22 Q. You, as a board member, would have been involved in, for
23 example, those activities, wouldn't you?

24 A. For the investment activities, yes, and the engagement
25 letters, yes.

1 13:35 Q. A lot of other matters, I suggest, including the ones
2 that we saw in the minute of the meeting that we have
3 just looked at.

4 A. Yes, such as what other matters are we talking about?

5 Q. Unless we want to go back through that document, we have
6 now looked at a number of times, there are various
7 matters raised there at a board meeting at which you
8 were present.

9 A. Yes.

10 Q. And those are an example of the types of matters that
11 you, as a board member, would have been concerned with?

12 A. That's correct.

13 Q. In addition to being a board member, of course, we know
14 that you were also the CEO, and that would have meant
15 that your day-to-day responsibilities involved all the
16 responsibilities that one would expect a responsible CEO
17 to perform, wouldn't it?

18 A. I would like to take you back to the same SKD 3-9 and
19 show that there is nothing written in there that I'm the
20 CEO. I mean, if I'm saying it's in the articles of the
21 company, but there's no designation as a CEO to be done,
22 because it is the holding company, which is run by nine
23 board members or eight board members.

24 Q. You're not disputing that you were the CEO of Al Masah
25 Cayman, are you?

1 13:37 A. I'm not.

2 Q. But seeing as you want to go back to those minutes of
3 meeting, I'm not sure whether anyone else does, but if
4 you do, we will. Paragraph 9, which is on page 4, and
5 the exhibit reference is C010 SKD 3-9:

6 "Discussion on the Current Advisory Board of the
7 Company."

8 Yes?

9 A. Yes.

10 Q. "Mr Shailesh Dash updated the board about his discussion
11 with certain Advisory Board members who had conveyed
12 that they ..."

13 That they wanted, in effect, to resign; yes?

14 A. That's correct.

15 Q. The board also discussed if the company should continue
16 with having an advisory board and they discussed the
17 role of the advisory board; yes?

18 A. That's correct.

19 Q. Then what you said here is:

20 "Mr Dash mentioned that, it is important for the
21 Company to continue having an Advisory Board and given
22 that it is planning to market the Private Equity Fund to
23 large sovereign investors, who do like to see Advisory
24 Board associated with the Fund management Company/Fund.
25 Further, he mentioned that various Advisory Board

1 13:38 members who have expressed desire to resign can retire
2 on completion of the current financial year ..."

3 Yes?

4 A. That's correct.

5 Q. That was your direct involvement in this issue,
6 wasn't it?

7 A. Like I said, in the articles of the company, it does
8 mention me as the CEO, but there's no real function of
9 the CEO in a holding company, there is no activities in
10 the company.

11 Q. This is an activity in the company, isn't it? The
12 company had an advisory board.

13 A. It's (unclear ...)

14 Q. The company had to have an advisory board.

15 A. Yes.

16 Q. And the discussion was: should we carry on having an
17 advisory board or not?

18 A. That's correct.

19 Q. Your advice was: we should carry on with an advisory
20 board, because we're planning to market the private
21 equity fund to large sovereign investors and they like
22 to see advisory boards associated with the fund
23 management company/fund.

24 That was your advice to the board?

25 A. That is correct.

1 13:39 Q. The next paragraph, the third paragraph up here at item
2 9 is:

3 "Majority of the Board members suggested there is no
4 need for an Advisory Board ... However, the Board
5 finally agreed that if the CEO ..."

6 That is you, isn't it?

7 A. That's correct.

8 Q. "... doesn't come up with any suggested changes, the
9 Advisory Board will have its last meeting ..."

10 Right? That's you, in your CEO function of Al Masah
11 Cayman, dealing with an issue of importance to the board
12 and giving advice to the board as the CEO?

13 A. Yes, and as you could see, the role is limited as the
14 decision making body is the board.

15 Q. Of which you were also a board member?

16 A. Member, yes.

17 Q. But in this item, you're giving advice to the board as
18 the CEO, aren't you?

19 A. Advice, yes.

20 Q. As the CEO, this is exactly the sort of item that you
21 would be expected to deal with, isn't it?

22 A. I think, as a CEO, I'm expected to do a lot of other
23 stuff. If a real CEO in an operating company, which was
24 the case with AMCML, where my job was more in terms of
25 the licence function, to make sure the business is

1 13:41 compliant with the local -- with the DIFC regulations.

2 Q. You're still maintaining, are you, that even though you
3 were the CEO, your functions, as far as Al Masah Cayman
4 is concerned, were very limited?

5 A. Very, very limited, because it was only as you could see
6 in the whole minutes of this meeting, it is more of
7 a director. But my designation was CEO, because it was
8 in the articles of the company, as I had invited all the
9 shareholders to be investors in the company and for them
10 to run the company together.

11 Q. Could you please look now at your first interview with
12 the Dubai FSA. This is exhibit 107 at page 11.

13 In fact, Fatima, if you wouldn't mind, could you
14 scroll up to the end part of page 10, because that's
15 where the question actually starts.

16 Sorry, the end part of page 9 is what I meant.

17 You're asked:

18 "How long have you been occupying the position that
19 you currently occupy?

20 Shailesh Dash: I actually primarily was one of the
21 founders who started this business."

22 That, of course, means Al Masah Cayman, doesn't it,
23 as we established yesterday?

24 A. That is correct.

25 Q. Then Mr Glynn says:

1 13:44 "So founding member.

2 Shailesh Dash: Yes. 2010. 2009 was Al Masah
3 Capital came in November. August 17 or 18 we got the
4 approval from DFSA."

5 A. Yes.

6 Q. What that means is Al Masah DIFC, doesn't it?

7 A. That's correct.

8 Q. Then you're asked in connection with your role at
9 Al Masah Capital:

10 "Okay, and what are your day-to-day
11 responsibilities?

12 Shailesh Dash: Manager Al Masah Capital and, you
13 know, oversee the activities of Al Masah and its funds
14 and report to the board."

15 Yes?

16 A. Yes.

17 Q. Mr Glynn replies:

18 "So manage Al Masah Capital and oversee.

19 Shailesh Dash: All the fund.

20 Stephen Glynn: All the funds.

21 Shailesh Dash: All the funds --"

22 Right?

23 A. That's correct.

24 Q. I suggest that that is a pretty good description of what
25 your role at Al Masah Capital was.

1 13:45 A. Little bit different. I did explain yesterday that
2 I was quite shaken with almost 30, 40 enforcement
3 officers coming in and telling you to give an interview,
4 along with everybody else, and a lot of other people in
5 the company, serving you notices.

6 But what I could see that what it means is that I am
7 saying that to oversee Al Masah Capital's businesses,
8 whether in DIFC or to manage the various funds that were
9 launched by Al Masah Capital, through the relationship
10 that we have signed up with Al Masah Capital DIFC, where
11 I was having a licensed function.

12 Q. It's a pretty simple question, though, isn't it?

13 A. It is, true.

14 Q. What were your day-to-day responsibilities at Al Masah
15 Capital? That's what you were asked.

16 A. I think it's --

17 Q. That's the answer you gave.

18 A. The whole transcript --

19 MR HILL: That's not what he was asked. That's an unfair
20 characterisation of the transcript. The question was,
21 he having referred to getting approval in the DIFC, the
22 question was:

23 "Okay, and what are your day-to-day
24 responsibilities?"

25 My learned friend's interpolation is to say at

1 13:46 Al Masah Capital. She must put the question fairly.

2 MS CLARKE: Right. We have seen the transcript. I have
3 read it out. I'm not going to do it again. But your
4 reply was:

5 "Manager Al Masah Capital .."

6 A. "Manager Al Masah Capital and ... oversee ..."

7 Which means the subsidiaries such as the DIFC where
8 I was regulated.

9 Q. Then Mr Glynn says:

10 "So manage Al Masah Capital and oversee.

11 Shailesh Dash: All the funds."

12 Did you oversee all the funds, Mr Dash?

13 A. Oversee, in the sense, how to say, I was not managing
14 them. But, yes, oversee, you can say that, yes.

15 Q. We'll come back to that later.

16 Can we move to a slightly different topic now,
17 please. Al Masah Capital Management Ltd, so this is the
18 DIFC entity. This entity, as we established yesterday,
19 is a 100 per cent subsidiary of Al Masah Capital
20 incorporated in July of 2010; yes?

21 A. What page is this?

22 Q. No, sorry. I'm moving to a different topic. So it's
23 not a page of anything.

24 A. Sorry.

25 Q. I headlined the topic, which is we're moving now to talk

1 13:48 about Al Masah Capital Management Ltd.

2 A. Okay.

3 Q. Yesterday, we established or you told us that Al Masah
4 Capital Management Ltd is a 100 per cent subsidiary of
5 Al Masah Cayman incorporated in July 2010?

6 A. I forgot the date. Correct, I think so.

7 Q. If I have the date wrong, no doubt someone will correct
8 me.

9 Al Masah DIFC was licensed by the DFSA in 2010,
10 I think a month or so after its incorporation, and it
11 was licensed to carry out the following financial
12 services.

13 I'm going to read them out and obviously you don't
14 have to remember exactly what the terminology was, but
15 you tell me if broadly this accords with what you
16 understood the authorisations were.

17 So managing assets; yes?

18 A. Correct.

19 Q. Arranging deals in investments; yes?

20 A. That's correct.

21 Q. Advising on financial products; yes?

22 A. And credit, yes.

23 Q. Managing a collective investment fund?

24 A. Correct.

25 Q. Then, as you rightly say, arranging credit and advising

1 13:49 on credit?

2 A. That's correct.

3 Q. Which I don't think is a topic that needs to concern any
4 of us in this case, is it?

5 A. Correct.

6 PRESIDENT: Fatima, could you kindly take down the document
7 on the screen.

8 MS CLARKE: Thank you very much. I'm sorry.

9 What I think you also told us yesterday, but in any
10 event, I don't think is in dispute, is that all the
11 staff that worked for Al Masah DIFC actually had their
12 employment contracts with Al Masah Cayman, didn't they?

13 A. Very true, as drafted by the lawyers.

14 Q. They, in effect, were seconded to the DIFC company where
15 they worked from the two premises that the company had
16 in the DIFC at the relevant time.

17 A. That's correct.

18 Q. Emirates Tower and Liberty House; correct?

19 A. The DIFC offices, yes.

20 Q. Could we look now at a different topic, but related to
21 the first, which is the agreements, contractual
22 agreements that were in place between Al Masah Cayman
23 and Al Masah Capital Management Ltd. All right?

24 That's the topic I'm going to deal with you now,
25 Mr Dash. I'm not going to show you a document just yet.

1 13:51 When I do, I will tell you and we'll bring it up on the
2 screen in the usual way.

3 But I'm just going to ask a few questions, please,
4 about the topic of contractual agreements between
5 Al Masah Cayman and Al Masah DIFC. All right?

6 Firstly, there was no contractual agreement between
7 those two entities that stated in terms that Al Masah
8 DIFC would provide management services to any funds or
9 structures or whatever you want to call it, was there?

10 A. Can we go through them and see that? I believe from
11 what I have read, all the services were outsourced and
12 all the management services were outsourced to the DIFC
13 entity.

14 Q. What you're saying is you can't comment on that without
15 looking at the two agreements or three agreements?

16 A. Four agreements, I think. 310 to 313, something like
17 that.

18 Q. The same thing would apply, then, if I was to suggest
19 that there was no contractual agreement that stated in
20 terms that Al Masah DIFC would provide arranging deals
21 in investments services either?

22 A. Like I said, they were very clear that all the services
23 of Al Masah Capital Ltd were outsourced to Al Masah
24 Capital Management Ltd.

25 Q. In that case, I don't think I'm going to get much

1 13:53 further with that line of questioning. So we will,
2 then, go and actually look at what the agreements that
3 there were -- what there were and what they said.

4 So the first is a service fee agreement, which is at
5 exhibit 311.

6 A. I think it starts from 310, if I remember correctly.

7 Q. We're looking at 311. These are the agreements between
8 Al Masah Capital and Al Masah DIFC.

9 A. Yes.

10 Q. That's the topic we're looking at.

11 A. Correct.

12 Q. One of the agreements, contractual agreements between
13 those two entities was this service fee agreement
14 entered into on 15 January 2011; yes?

15 A. That's correct.

16 Q. As we established, it would have required the approval
17 of both boards, of both the entities, wouldn't it?

18 A. Correct.

19 Q. If we can look, then, at the substance of the agreement.
20 Page 2. First of all, it defines the two entities
21 involved. Number 1 is Al Masah Capital; yes?

22 A. Yes.

23 Q. Number 2 is Al Masah DIFC?

24 A. That's correct.

25 Q. Refer in the agreement to the first party and the second

1 13:55 party; do you see that?

2 A. Correct.

3 Q. "Recitals":

4 "Whereas, the First Party is in the process of
5 managing assets of a Healthcare Company which will be
6 spread across the Middle East and North African (MENA)
7 region."

8 Yes?

9 A. That's correct.

10 Q. That's Healthcare MENA, isn't it, HML?

11 A. That's correct.

12 Q. "Whereas, the Second Party has the expertise to evaluate
13 private equity transaction and advise on opportunities
14 to invest in."

15 Yeah?

16 A. That's correct.

17 Q. Those two recitals clearly state that the first party is
18 in the process of managing assets of HML, which is true,
19 isn't it? That is what Al Masah Capital is doing?

20 A. That's correct.

21 Q. The second party, it says here, apparently has the
22 expertise to evaluate private equity transactions and
23 advise on opportunities to invest in; yes?

24 A. That's correct.

25 Q. That's an advisory role?

1 13:56 A. Yeah.

2 Q. Apparently, the second party, according to the recitals,
3 desired to render those services to the first party, as
4 set forth in this service agreement; yes?

5 That sets the background to this service fee
6 agreement. Then it says:

7 "1.1 Upon the terms and conditions set forth in this
8 Agreement, the First party hereby engages the Second
9 Party to evaluate certain opportunities in the
10 healthcare sector."

11 Then at 1.2:

12 "The Second Party will evaluate the investment
13 opportunity referred to and then make its investment
14 recommendation to the First Party."

15 Do you see that?

16 A. That's correct.

17 Q. Then it says:

18 "1.3 On behalf of the First Party, the Second Party
19 may receive money from the client of the First Party in
20 a separate bank account designated to receive client's
21 money."

22 Yes?

23 A. That's correct.

24 Q. That appears to be something else that that party was
25 going to do.

1 13:58 Then it says:

2 "1.4 The First Party will provide necessary KYC
3 documents of their clients to the Second Party ..."

4 Yes?

5 A. Correct.

6 Q. "... from whom the Second Party has received the money
7 in the Client Bank Account."

8 The clients that are being referred to in this
9 agreement, is that investors into the platforms?

10 A. No, it's the clients that is referred to, is two
11 shareholders of the board members of Al Masah Capital
12 Management Ltd, who have transferred money to the bank
13 account to set up a new investment vehicle, which was
14 Healthcare MENA Ltd. This is the only two monies which
15 was received into this account. And once Healthcare
16 MENA Ltd company was set up, then it had its own bank
17 account and all the monies used to come there only.

18 Q. 1.5:

19 "The First Party will issue necessary instructions
20 to the Second Party as and when money from the Client
21 Bank Account needs to be deployed towards investment
22 opportunities recommended by the Second Party or towards
23 meeting any expenses on behalf of the client."

24 As you have helpfully told us, the client, of
25 course, is HML?

1 13:59 A. That's correct.

2 Q. What that's saying is Al Masah Capital, who's the first
3 party, will tell the second party, which is Al Masah
4 DIFC, whether to spend any money on the investment
5 opportunities that Al Masah DIFC has recommended.

6 A. That is what it says.

7 Q. Consistent, of course, with the roles of the parties, as
8 set out in this agreement, that Al Masah Cayman was the
9 manager of HML. And according to this agreement,
10 Al Masah DIFC was providing advisory services on what
11 might be a good investment.

12 A. To the DIFC entity, to the Cayman entity, yes.

13 Q. Then it says in the next section, section 2:

14 "Service Fee

15 2.1 The clients of the First Party [HML] may pay
16 directly to the Second Party a one time fee (the
17 'Service Fee') equivalent to 2 per cent the amount
18 transferred by the First Party clients into the Client
19 Bank Account for deployment in various healthcare
20 opportunities."

21 They were going to get a fee of 2 per cent,
22 a one-off fee of 2 per cent for doing the services
23 recorded in this agreement; yes?

24 A. That's correct.

25 Q. Those are the essentials of this agreement. If we

1 14:01 scroll down to the bottom, to the signatures, it's
2 signed by Mr Zeenni, as a board member of Al Masah
3 Capital, and then not signed by you, as CEO and board
4 member of Al Masah Capital Management Ltd. But you're
5 not saying that you, for all intents and purposes, were
6 not a party to this agreement, in your capacity as board
7 member of, let's face it, both entities?

8 A. No, it was signed, it was signed.

9 Q. Nothing turns on the fact that on the one we have, it
10 doesn't have a signature. All right.

11 So that is one of the agreements that was entered
12 into between Al Masah Cayman and Al Masah Capital
13 Management Ltd.

14 A. That's correct.

15 Q. To go back to the questions that I attempted to ask you
16 to start with --

17 -- (Overspeaking) --

18 A. -- undergone significant changes in 2012 and 2013, so it
19 would be nice for us to go through those as well,
20 because then it becomes the context.

21 Q. Yes, because the next agreement that I wanted to refer
22 you to was something called an investment advisory
23 agreement.

24 A. That's correct.

25 Q. Is that one of the changes that you're referring to?

1 14:03 A. Yes.

2 Q. Let's look at that. That's exhibit 312.

3 A. Yes.

4 Q. I'm not going to keep going over things that we have
5 seen in other agreements, but just so that we know that
6 the first party in this agreement is Al Masah Capital
7 and the second party, Al Masah Capital Management Ltd;
8 yes?

9 A. That's correct.

10 Q. The recitals say:

11 "... the First Party is the parent entity of the
12 Second Party and they share certain common expenses for
13 managing their businesses and other affairs."

14 Right?

15 A. That's correct.

16 Q. Currently, the majority of these common expenses are
17 incurred in the books of the second party, which is
18 Al Masah DIFC; yes?

19 A. That's correct.

20 Q. Then the next part is the basis of the sharing of common
21 expenses. And it says:

22 "The first ..."

23 Could you scroll down, Fatima. Thank you.

24 A. The critical thing is for managing the businesses and
25 other affairs.

1 14:04 Q. So they share certain common expenses for managing their
2 businesses, ie the businesses of the first party and the
3 second party; yes?

4 A. The businesses, yes.

5 Q. Managing their businesses, so it's the businesses --

6 A. The first party is paying the second party for managing
7 the businesses of the first party.

8 Q. Yes, exactly. The businesses of the two entities have
9 entered into the agreement:

10 "Basis of Sharing of Common Expenses

11 1.1 The First Party [Cayman] has agreed to pay an
12 Investment Advisory Fee to the Second Party towards such
13 common expenses incurred by the Second Party."

14 Yes?

15 A. That's correct.

16 Q. "Such Investment Advisory Fee will be limited to
17 75 per cent ... of the total expenses that are incurred
18 by the Second Party."

19 Then the remaining bit there says it will be payable
20 on a quarterly basis. Yes?

21 A. Correct.

22 Q. If we scroll down to the signature page at the bottom,
23 which is page 6, that is again the same two individuals,
24 but this time, we do have your signature, don't we?

25 A. Yes.

1 14:06 Q. That's what that one says. For completeness, there was
2 an addendum to this agreement, wasn't there?

3 A. Yes, and there was another one after that, 314 as well.
4 314 as well, we have another one.

5 Q. Let's go to exhibit 313 first.

6 A. Yes.

7 Q. Just give me a moment. Again, we have seen enough of
8 the title pages. Fatima, if you could go to the top of
9 page 1, so we can see the parties involved.

10 So Al Masah Capital again is the first party.

11 Al Masah DIFC is the second party. Then we go to the
12 recitals.

13 A. Yes.

14 Q. It says:

15 "Whereas, the Parties have signed an Advisory
16 Agreement between themselves on 1st June 2011."

17 So that's the one that we just looked at, isn't it?

18 It says:

19 "... the Second Party is rendering various advisory
20 services to the First Party."

21 Right? It says:

22 "... the First Party and the Second Party have
23 agreed the basis on which the First Party is supposed to
24 pay a Service Fee to the Second Party. However, given
25 the nature of activities being carried out by the Second

1 14:07 Party, they have discussed again the basis of charging
2 such Service Fee and have agreed to modify its terms."

3 Yes?

4 A. Yes.

5 Q. Then we can go to the "Service Fee" section. It says:

6 "1. Service Fee -- As Per Original Agreement."

7 It says there that it was a blended per hour fee
8 of \$2,500, which isn't quite the same as what the terms
9 of the previous agreement were, but maybe nothing turns
10 on that. Is that anything you can help us with?

11 MR HILL: It's something that my learned friend needs to
12 correct herself on. That reference to an earlier
13 agreement is not the agreement which she's already taken
14 the witness to. It's a different document.

15 MS CLARKE: I see, right.

16 Then if we go to:

17 "2. Service Fee -- As Per This Addendum Agreement."

18 A. That's correct.

19 Q. It says:

20 "1.1 The First Party will pay a fee (the 'Advisory
21 Fee') to the Second Party for various services that are
22 rendered by the Second Party as set out below."

23 It says:

24 "2.2 The Advisory Fee payable by the First Party to
25 the Second Party will be equivalent to 90 per cent ...

1 14:09 of the total revenue earned by the First Party on
2 account of Management Fees Income and Other Direct
3 Fees."

4 Yes?

5 A. That's correct.

6 Q. "For the sake of clarity, such calculation shall exclude
7 any income earned by the First Party, which are in the
8 nature of Advisory Income, Dividend Income or Placement
9 Fee Income."

10 A. That's correct.

11 Q. That's a revision then, is it, or an update of the
12 investment advisory agreements that we originally looked
13 at, exhibit 312?

14 A. That's an update.

15 Q. This one, exhibit 313, is an update?

16 MR HILL: My learned friend must put -- I'm sorry, my
17 learned friend must put the questions on a fair basis.
18 She hasn't been to the correct sequence of agreements.
19 Nothing may turn on it, but she mustn't put questions on
20 a false basis.

21 MS CLARKE: Right. Sir, I note the time. It's slightly
22 early to have a break, but I wonder whether you'd be
23 kind enough to give me a 10-minute break, so that I can
24 just check. Because if I have put something on a false
25 basis, then I want to correct it. So could I just have

1 14:10 10 minutes to check the position?

2 PRESIDENT: I think that's an excellent point --

3 MR HILL: I'm grateful. As I say, nothing may turn on this,
4 but I'm a little bit concerned my learned friend may not
5 have the sequence of agreements.

6 MS CLARKE: As I say, if I could have 10 minutes, then I'm
7 sure I can resolve that and deal with it.

8 PRESIDENT: We will stop now and we'll start again just
9 after 20 past.

10 (2.11 pm)

11 (Short break)

12 (2.23 pm)

13 MS CLARKE: Thank you very much for the time.

14 So I think I've got the narrative straight now.

15 Mr Dash, let me just take you through the chronology
16 and I think that that will help you as much as it will
17 help me.

18 We started with the service fee agreement that was
19 at exhibit 311. Do you remember? That was the first
20 agreement that we talked about; yes?

21 A. That's correct.

22 Q. That was, I think, entered into in 2011. Then what
23 happened is I missed out another agreement that should
24 have been in between that first one and the second one
25 that I dealt with, with you, at exhibit 312.

1 14:24 Can we go to the one that I missed out, which is at
2 bundle R003 at page 63.

3 This is the one that is next in time, so it's the
4 next one that was entered into after the service fee
5 agreement. And this is the one that I missed out. All
6 right? Let's deal with it now.

7 Do you understand what we're doing?

8 A. Yes.

9 Q. This is headed, "Advisory Agreement", dated 1 June 2011.
10 If we could go to the next page, look at the terms.
11 Party 1, Al Masah Capital, party 2, Al Masah DIFC. Yes?

12 Then if we could look at the recitals. Here
13 Al Masah DIFC has classified the first party, which is
14 Al Masah Cayman, as a professional client. All right?
15 Then it says:

16 "... [DIFC ie Al Masah DIFC] ... will not be
17 required to consider suitability of any investment
18 opportunity when giving advice or recommendation to the
19 First Party ..."

20 And then it says unless specific circumstances
21 apply.

22 Next bit:

23 "... the First Party is a 'Professional Client' and
24 has the mandate to be the Investment Manager of various
25 companies."

1 14:26 Yes?

2 A. Yes.

3 Q. "Accordingly, it is keen to evaluate and recommend
4 investment opportunities on behalf of their clients."

5 Yes?

6 A. Yes.

7 Q. Ie Al Masah Cayman, because it has the mandate to be the
8 investment manager, wants to evaluate and recommend
9 investment opportunities on behalf of their clients.

10 That's what Al Masah Cayman wants to do; yes?

11 A. Correct.

12 Q. Apparently, the next recital says that Al Masah DIFC has
13 the expertise to evaluate various investment
14 opportunities. And it says:

15 "... and offers investment management and advisory
16 services."

17 Yes?

18 A. Yes.

19 Q. The next one:

20 "... the Second Party desires to render such
21 services to the First Party as set forth in this
22 Agreement."

23 Of course, if we then go to the agreement, the next
24 page, the next section is headed:

25 "Evaluation of Opportunities and Broad Role of the

1 14:28 Second Party."

2 Yes? 1.1:

3 "The Second Party will provide various investment
4 opportunities in various sectors to the First Party,
5 that the Second Party will evaluate in its ordinary
6 course of business."

7 Yes? That's what the second party is going to do
8 for Al Masah Cayman, according to this agreement,
9 isn't it?

10 A. That's correct.

11 Q. Then 1.2:

12 "In case the First Party is keen to invest/recommend
13 their clients for any of these investment opportunities
14 provided by the Second Party, the Second Party will
15 convey to the First Party the value of such
16 investments."

17 The point is that Al Masah DIFC evaluates
18 opportunities, provides those evaluations to the first
19 party, Al Masah Cayman. And then Cayman decides whether
20 it's keen to invest or recommend any of those
21 opportunities to their clients, who are the investment
22 companies or holding companies; correct?

23 A. Correct.

24 Q. Then it says 1.3:

25 "Once the First Party or their client decides to

1 14:29 invest money towards the investment opportunity
2 presented by the Second Party, it should remit the money
3 for making such investments directly into those
4 opportunities."

5 Right? The point is that it's the first party or
6 the client who makes the decision whether to invest in
7 the investment opportunity. That's what this section
8 says, isn't it?

9 A. That's correct. The decision is given by the second
10 party. The first party implements it.

11 Q. Well, look at the terms of this 1.3:

12 "Once the First Party or their client ..."

13 And the client of the first party being Cayman.
14 Cayman is the first party:

15 "... or their client ..."

16 That is Cayman's client, which are the investment
17 companies, the four investment companies, aren't they?

18 A. Yeah, holding companies.

19 Q. Or holding companies as you would term them, I know.

20 So the first party, Cayman, or one of the holding
21 companies, decides to invest money towards the
22 investment opportunity presented by the second party,
23 which is DIFC. So it's the first -- Cayman or the
24 holding company that makes the decision whether to
25 invest, according to this, isn't it?

1 14:31 A. Or their client decides. Or their client or the first
2 party decides.

3 Q. First party or the client?

4 A. The first party or the client, so either the holding
5 company will decide.

6 Q. Or Al Masah Cayman?

7 A. Yeah. So Al Masah Cayman will decide on its own
8 proprietary money or the holding clients will decide on
9 their own money.

10 Q. That's the way you read 1.3, is it?

11 A. Yeah, that's where, once the first party or their
12 client.

13 Q. When you read 1.3 together with 1.2, though, I suggest
14 that what the agreement is saying is that the first
15 party, at 1.2, Cayman, is keen to invest or recommend to
16 their clients investment opportunities that DIFC will
17 provide. So that's the first part of the process.

18 A. Yes, that's correct.

19 Q. Then the second part of the process, at 1.3, is that the
20 first party, Cayman, or the client, decide to invest.
21 Surely that means that the client decides to invest in
22 conjunction with the investment recommendation that's
23 being made to them by the first party?

24 A. So invest/recommend. So invest for some, recommend for
25 some. It's two different things.

1 14:33 Q. I know, of course, a decision by the client to invest
2 will be taken by the client's board. I understand that.
3 But the decision will be made on the basis of the
4 recommendations made by Al Masah Cayman?

5 A. Al Masah DIFC. Because Al Masah Cayman also has its own
6 pot of money to invest. So the second party, which is
7 Al Masah DIFC, is making a recommendation to either the
8 clients of Al Masah Cayman or Al Masah Cayman to invest
9 that money.

10 Q. That's not what this agreement says, is it? Do we need
11 to look at it again, Mr Dash, do we? We can. Let's
12 look at 1.1.

13 A. Yes.

14 Q. 1.1 says, DIFC will provide various investment
15 opportunities in various sectors to Al Masah Cayman;
16 yes?

17 So DIFC is not providing investment opportunities to
18 the holding companies. It's providing them to Al Masah
19 Cayman, isn't it?

20 A. The second party is providing various investment
21 opportunities, so Al Masah DIFC is providing the
22 investment opportunities.

23 Q. Yes, to Al Masah Cayman?

24 A. That's correct.

25 Q. Not to any of the holding companies?

1 14:34 A. That is covered in 1.2.

2 Q. Then it says -- and I don't want to keep going over the
3 same provision, but I'm sorry, I just don't accept your
4 interpretation of it. So I think we're going to have
5 to:

6 "In case the First Party is keen to invest/recommend
7 their clients ..."

8 So that's Cayman:

9 "[If Cayman] is keen to invest/recommend their
10 clients [ie the holding companies] for any of these
11 investment opportunities provided by the Second
12 Party~..."

13 So that is DIFC. So that's the DIFC opportunities
14 that have been provided to Al Masah Cayman.

15 Then it says:

16 "... [Al Masah DIFC] will convey to [Al Masah
17 Cayman] the value of such investments."

18 So it is clear from 1.2 that the relationship that
19 Al Masah DIFC has in terms of the services that it
20 apparently provides under this agreement, is entirely
21 with Al Masah Cayman?

22 A. That is not correct. As you could see, it clearly
23 defines that in 1.2 and 1.3, that it is first party and
24 its clients.

25 Q. Right. Then we'll go to 1.3 --

1 14:36 PRESIDENT: I wonder whether it's necessary to do this,
2 given that we can see the agreement. You have put it to
3 the witness. We have the witness's answer and his
4 understanding of it. Is it really necessary to go back
5 over it?

6 MS CLARKE: Well, I'm trying to give Mr Dash the opportunity
7 to read the agreement carefully, so that he can --

8 PRESIDENT: Very well, but he has had an opportunity to look
9 at it. He's given his view and you've taken us to it
10 and him to it twice now.

11 MS CLARKE: I understand.

12 PRESIDENT: It's a matter for you, so by all means go on if
13 you wish.

14 MS CLARKE: No, I understand, and I can take a hint, but
15 I wanted to ensure that Mr Dash had had the opportunity
16 to read the agreement carefully and to consider the
17 answer that he gives.

18 But you are right, sir, and I think I did make the
19 point, that we did have to look at these provisions
20 a number of times.

21 And I'll simply say, Mr Dash, that this agreement
22 does not say that DIFC had any role in advising any of
23 the holding companies directly? Or dealing with any of
24 the holding companies directly?

25 A. I do not agree with that. That's not correct.

1 14:37 Q. Then if we could go on, the service fee payable, this is
2 at paragraph 2:

3 "The First Party will pay a fee (the 'Advisory Fee')
4 to the Second Party for various services that are
5 rendered by the Second Party as set out below."

6 It says:

7 "The advisory fee shall be a blended per hour fee of
8 USD2,500 payable by [Cayman] to [DIFC] on a quarterly
9 basis ..."

10 Yes?

11 A. Correct.

12 Q. For completeness, if we could go down to the end of the
13 agreement, where we can see the signatures, again signed
14 by the same people that signed the other two agreements
15 that we looked at; you and Mr Zeenni?

16 A. That's correct.

17 Q. That's the missing link agreement, if I can put it in
18 that way, because the next agreement in time was the
19 investment advisory agreement that I've already taken
20 you to, so I'm not going to take you to that one again.

21 Then the agreement that I took you to was
22 exhibit 313. So if we could bring that up, and then,
23 hopefully, I can correct where I went wrong, what seems
24 like some time ago.

25 We have the addendum to the advisory agreement made

1 14:40 in 2012?

2 A. Yes.

3 Q. I've already taken you to, I think, the preamble and the
4 recitals, et cetera, and the difference is that if we
5 can go to the bottom of page 1, where we see:

6 "Service Fee -- As Per the Original Agreement."

7 Where we see "... As Per the Original Agreement", it
8 now makes sense because, of course, the original
9 agreement that this is the addendum to, does in fact
10 refer to this blended per hour fee, doesn't it, because
11 we have just looked at that?

12 Then we can see by paragraph 2, which is at the top
13 of the next page, the advisory fee that Cayman is going
14 to pay to DIFC has gone up to 90 per cent of the total
15 revenue earned by Cayman, the first party, on account of
16 management fees, income and other direct fees; yes?

17 A. That's correct.

18 Q. "For the sake of clarity, such calculation shall exclude
19 any income earned by the First Party, which are in the
20 nature of Advisory Income, Dividend Income or Placement
21 Fee Income."

22 Yes?

23 A. That's correct.

24 Q. That's the new basis of the calculation. Then if we go
25 down to the last page, the signature, again, we will see

1 14:42 that it's signed by you and Mr Zeenni?

2 A. That's correct.

3 Q. Mr Dash, none of those agreements make reference to
4 Al Masah DIFC or state that Al Masah DIFC will be
5 providing any management of the holding companies or any
6 assets of the holding companies, et cetera, do they?

7 A. It is providing investment advisory services or
8 investment management services to the Cayman company and
9 its clients, as we saw that just before this. But all
10 the holding companies, if you're mentioning about, they
11 all have their own management team. We had no role to
12 run those businesses.

13 Q. I'm going to come to that aspect --

14 A. You mean management -- yes, thank you.

15 Q. I put my question and I think the position is you
16 disagree?

17 A. Correct.

18 Q. Can we move to another agreement, because I think there
19 is one more agreement between Al Masah Cayman and
20 Al Masah DIFC. It relates to payment of salaries of
21 staff, doesn't it?

22 A. Yes.

23 Q. Before we look at that agreement, can I ask you a couple
24 of questions about staffing issues; yes? Al Masah
25 Cayman employed the staff, but then the position was, as

1 14:44 we have established, they were seconded, so it seems, to
2 Al Masah Capital Management Ltd?

3 A. That's correct.

4 Q. But Al Masah Cayman, I think you told us yesterday, were
5 entitled, if they wanted to, to move staff around,
6 ie make resource allocation decisions about where staff
7 should work, or which entity or whatever, within the
8 Al Masah Cayman group?

9 A. When the staff were recruited, they were already
10 seconded as to where they need to work. And thereafter,
11 the company had the power to rotate, but that hardly
12 ever took place.

13 Q. Sure, but they had the power to do it. That's the
14 point.

15 A. That's correct.

16 Q. In terms of who would make the decision at Al Masah
17 Cayman to move staff around, that would be the province
18 of the board and the CEO of Al Masah Cayman, wouldn't
19 it?

20 A. That is true.

21 Q. That's you, as the CEO, and the board, which includes
22 you; correct?

23 A. Correct.

24 Q. Can we look at the agreement. It's exhibit 314, bundle

25 D. If we can just look at the title page, and if you

1 14:46 just give me a moment to bring up my version of this.

2 If we could go down to page 2, it says here that
3 Al Masah Capital are the first party, Al Masah DIFC, the
4 second party.

5 And then if we look at the recitals:

6 "... the First Party is the parent entity of the
7 Second Party and they share certain common expenses for
8 managing their businesses and other affairs."

9 So that's the businesses and other affairs of both
10 parties to the agreement, isn't it, Mr Dash?

11 A. Yes.

12 Q. "Accordingly, the First Party and the Second Party
13 together are referred to as the Group."

14 Yes?

15 A. That's correct.

16 Q. Then it goes on to say, and I think we covered this in
17 one of the other agreements:

18 "Common expenses are incurred in the books of
19 DIFC ..."

20 So then the next recital says:

21 "Currently all the employment contracts of the
22 employees working in the Group are signed with the First
23 Party and the entire Employee and Human Resources
24 Related Expenses, are booked/accounted for in the books
25 of the Second Party, as employment visa for employees

1 14:48 working in Dubai are issued by the Second Party."

2 The reason for that is because you have to be
3 a Dubai entity, don't you, in order to sponsor employees
4 with employment visas?

5 A. You have to be a DIFC employee, yes.

6 Q. Exactly. What has happened, it says:

7 "Now, therefore, both Parties have reviewed the
8 business activities being carried out by [them both and
9 they] would like to revise their current arrangement of
10 sharing of common expenses and ... agree as follows ..."

11 Then it says, "Sharing of Employee Cost."

12 So the parties, both parties, agree the employee
13 costs will be shared between them:

14 "Accordingly, 75 per cent of the Employee Cost will
15 be booked/accounted for in the financials of the First
16 Party."

17 So Cayman are going to pay 75 per cent of the cost;
18 yes?

19 A. That's correct.

20 Q. And the balance, which is 25 per cent, is going to be
21 paid by DIFC?

22 A. That's right.

23 Q. Then it talks about salary payments, et cetera. Then it
24 says at item 2 on the top of page 3:

25 "The current arrangement of sharing of common

1 14:50 expenses ... will get revised ..."

2 A. 1.3, I think we didn't discuss that.

3 Q. All right, we can discuss that:

4 "It has been further agreed that the current
5 arrangement of salary payment to employees through the
6 Second Party's bank account will continue, and the First
7 Party will settle in a timely manner, its share of
8 Employee Cost paid by the Second Party."

9 All right? Happy with that?

10 A. That's correct.

11 Q. Thank you. If we go to the top of the next page:

12 "Basis of Sharing of Common Expenses

13 2.1 The current arrangement of sharing of common
14 expenses between both the Parties will get revised ..."

15 Then it talks about:

16 "Net common expense ... will exclude the Employee
17 Cost already shared ..."

18 Then it says:

19 "Such Investment Advisory Fee will be limited to
20 75 per cent of the total common expenses that are
21 incurred by the Second Party ..."

22 Yes?

23 It says:

24 "The Investment Advisory Fee will be payable by the
25 First Party to the Second Party on a quarterly basis as

1 14:51 per the invoice raised by the Second Party."

2 Yes? That refers to the Investment Advisory Fee
3 that we looked at in one of the previous agreements,
4 doesn't it?

5 A. Yes.

6 Q. So what it looks like is that DIFC will get 75 per cent
7 of the total common expenses that are incurred by the
8 second party?

9 A. Yes, because as 1.3 says, it gets all the -- salaries
10 are already paid by the first party.

11 Q. Yes. It says the salaries are paid by the second party,
12 doesn't it?

13 A. But the money is coming from the first party to pay --
14 for the second party to pay all the salaries.

15 Q. Exactly. I think we're both understanding each other.

16 That is the agreement about who was going to pay for
17 the salaries of the people, who were working in the DIFC
18 during the period that we're concerned with; yes?

19 A. Correct.

20 Q. The agreements, then, with the investment companies, by
21 which I mean the four companies that you refer to as
22 holding companies, that we're concerned with, so HML,
23 ANEL, GLL and Gulf Pinnacle, GPL; yes?

24 A. Yes.

25 Q. I want to now ask you about the agreements that there

1 14:53 were, contractual agreements, with those four investment
2 companies. So that's the topic that I'm moving to now,
3 Mr Dash.

4 Before we actually look at the agreements, given
5 that you were chairman of the board of each of these
6 investment or holding companies, and that Al Masah
7 Cayman had a majority representation on the board, then
8 you would have been involved in the decisions to draft
9 and execute these agreements, wouldn't you?

10 A. Not really. My team would be involved, along with the
11 management of those companies. Initial setup, yes, that
12 is correct. So I was -- as a chairman, I do not engage
13 in drafting documents. It is more of oversight and
14 non-operational nature of the business. As you know,
15 I was not executive chairman of those companies. My
16 only role was in DIFC.

17 Q. You were the chairman of the board of each of those
18 companies, weren't you?

19 A. That's correct, non-executive chairman.

20 Q. Yes, you refer repeatedly to the term "non-executive
21 chairman". Is the suggestion that you're trying to make
22 that your role on the board of these holding companies
23 was rather hands off?

24 A. Quite, almost hands off. My role --

25 Q. Exactly the same, hands off?

1 14:55 A. No, I would certainly give overall inputs for the
2 business and try to develop the perception for the
3 business, but no operational activities whatsoever I was
4 involved in.

5 Q. You weren't involved in any operational activities at
6 all?

7 A. In terms of developing perception and in terms of
8 inputs, I would have. But not operational activities.

9 Q. I think you said largely hands off or virtually hands
10 off, if I heard you correctly?

11 A. Largely hands off.

12 Q. Largely hands off, all right. I suggest that you, in
13 fact, took a keen interest in matters of detail relating
14 to, for example, the businesses that these investment
15 companies invested in, didn't you?

16 A. Keen interest, yes. It is important, as my role. Keen
17 interest in the businesses that we invested in, yes.

18 Q. By way of example of that, could we please look at
19 exhibit A070.

20 This is headed, "Very Important". It comes from you
21 and it is addressed to Mr Lim and two others, and cc'd
22 to Mr Singhdeo. What it says here is:

23 "Dear Team,

24 From today any communications with parents and
25 teachers need to be approved by me both subject matter

1 14:57 and timing. Make sure it happens each and every time.

2 Thanking You"

3 The email is dated 29 January 2015. Firstly, this
4 is an email that relates to the activities of ANEL,
5 isn't it, or the businesses that ANEL invested in?

6 A. That is correct.

7 Q. Via the operational company structure, et cetera.

8 You are, it seems, sufficiently involved in what
9 appears to be, I suggest, an operational issue regarding
10 communications between parents and teachers at the
11 entities, the schools and nurseries and whatever, that
12 the structures had invested in?

13 A. This is -- are we talking about -- like I said, I would
14 be -- first of all, I must say, for everybody's
15 knowledge here, that the company was formed in 2011.
16 After four years, after 300,000 emails that we discuss
17 here, one email is there or two emails, where we are
18 talking about the perception of the company.

19 As the chairman, I'm very, you know, always
20 concerned about how the company is viewed outside or how
21 the business is viewed outside. But that doesn't talk
22 anything about communication, it is not about
23 operations. Operations of the businesses is different.

24 So all I'm saying is that I'm always worried about
25 the perception of the business, but nothing to do with

1 14:58 the operations of the business.

2 Q. This isn't about the perception of the business, is it?

3 This is --

4 A. I think communication is about perception.

5 Q. Sorry, I interrupted you.

6 A. Sorry, communication is about perception.

7 Q. This is about communications between parents and
8 teachers at, presumably, the schools that the structures
9 had invested in, et cetera?

10 A. I think what it says is that after four years of
11 operation of the schools, something must have happened
12 on that particular day, between parents and teachers,
13 which people must have called me about or I must have
14 seen in the newspapers.

15 As a result, I was very unhappy with the
16 communication that must have been happening with
17 teachers and parents, so that please it is about the
18 perception of the company, so such communications should
19 be shared. But as you could see after that, we never
20 seen anybody sharing anything with me.

21 Q. I suggest this is an example of you being involved in
22 the finer detail of the investments relating to, in this
23 case, ANEL?

24 A. It doesn't show that at all.

25 Q. Can we look at another exhibit, exhibit A071. It's an

1 15:00 email chain. If we start at the bottom, it talks about
2 a meeting, it seems, that had happened that hadn't gone
3 very well. And talks about:

4 "And I found some dresses that could be an uniform,
5 i will send u pictures during tomorrow."

6 And then the next, if we go up the chain to page 4,
7 we have there an email that says:

8 "I have few more interviews for the Hostess position
9 within next couple days and we should be OK with the
10 your team as I along with Shailesh almost completed the
11 interviews.

12 Please find attached CV's and some photos of your
13 Team. Still one more to go but as for now this is it as
14 per following info ..."

15 Then it lists reception and reservation manager, and
16 five hostesses.

17 According to this, you are involved in interviewing
18 hostesses for one of the businesses that relates to one
19 of these holding companies?

20 A. There's a bit of a difference between this and Al Najah.
21 At 2013, date of October 17, you are mentioning, all
22 100 per cent of the money belong to Al Masah Capital
23 prop(?) money and my board members' money.

24 So obviously, there was more involvement, but as you
25 could see here, it's about recruiting the management

1 15:02 team at that point in time for one restaurant. So
2 I would be involved sometimes in recruitment, but beyond
3 recruitment, once that has happened, I have no role in
4 terms of running of the business.

5 So all our strengths again -- you'll see further
6 emails that talk about that I'm worried about the
7 perception of people that you would build on a company,
8 which is 100 per cent owned by my shareholders or board
9 members, and it is different than the case that you
10 showed in Al Najah.

11 Q. But sufficiently worried or concerned that you're
12 sitting in or at least -- sorry, according to this,
13 conducting interviews, not just for the management team
14 of the restaurant, because we have five hostesses here
15 as well.

16 A. Yes, because the greenfield venture, we are opening
17 a new restaurant. The general manager of the company
18 wants me to be a part of the interview process that he's
19 doing. As you could see, he's not communicating with
20 me, he's communicating with his team.

21 Q. Then if we go up the page, the chain then becomes, if we
22 go to page 2, a discussion about uniforms and dresses
23 for the hostesses to wear. Do you see that?
24 I appreciate you're not copied in on these emails, but
25 at least what's happening is there's now a discussion

1 15:04 about uniforms or dresses or whatever for the hostesses?

2 A. Yes, like I said, we used to own 100 per cent of this
3 business at that point in time. And, as a chairman,
4 even though non-executive, I would be very worried about
5 the perception, as Dubai being an Islamic country, it
6 has got its own way of looking at, you know, hostesses
7 or dresses that needs to be worn. When you are owning
8 100 per cent of the business, you are very worried for
9 your shareholders that there's nothing wrong that people
10 would perceive it as.

11 Q. Can we then go up to look at your input. First of all,
12 just stop at Michael Szczepanski, 6 November. He sent
13 an email to you and Mr Ghosal, dated 6 November 2013:

14 "Subject: Uniforms for Hostesses

15 Please find attachments and let me know what you
16 think about those one."

17 Presumably, you have been sent some pictures or
18 something like that, have you?

19 A. I guess so. That's what it says, there's no attachment,
20 but it's okay.

21 Q. Top of the page, Mr Dash, you reply:

22 "Sorry for coming back to you late on this. Red is
23 the best to go for here and it is very lucky too!"

24 A. I have just explained, it's a greenfield venture,
25 100 per cent owned by my own shareholders and my own

1 15:06 capital. And my involvement, at that point in time, is
2 all about perception, how people will perceive the new
3 greenfield restaurant that Diamond Lifestyle is opening
4 up. It doesn't have any third-party money out there at
5 that point in time.

6 Q. Part of that is your involvement in the uniforms for the
7 hostesses, that red is the best colour to go for?

8 A. Let's put it this way. I have seen in a witness
9 statement, from DFSA, which talks about they have gone
10 through 700,000 email messages, 360,000 attachments,
11 130,000 loose documents, about 1.9 million of images.
12 From that, we have two emails, which we are trying to
13 say that I'm involved operationally, which is not --
14 I have been saying, I'm very much involved to make sure
15 that perceived -- the companies are perceived well in
16 the market.

17 Q. Let's just look at a couple more of these. Exhibit
18 A072. We can just look at the top, I think, because it
19 really just continues the same theme from the previous
20 exhibit. You say:

21 "Please don't make it short. I am afraid, our
22 investors would not like in their restaurant employees
23 wearing short dresses! Just make sure it looks
24 aesthetically good and not cheap!"

25 Being fair to you, there is a reference in those two

1 15:08 lines to the views of your investors; yes?

2 A. So, like I said, I'm worried about how people might
3 perceive it in a place like Dubai, where most of my
4 investors, many of my investors are Islamic investors.

5 Q. Then can we scroll down to page 2. Your email, Mr Dash:

6 "Please also tell us when the uniforms will be ready
7 for the restaurant staff? I hope you have gone with the
8 red and blue color as discussed before for the
9 hostesses!"

10 I'm not going to go over that because we have dealt
11 with that.

12 Next email is an email from Mr Szczepanski to you:

13 "Shailesh,

14 I am very happy to recalculate those prices as per
15 your request ..."

16 In fact, that's a response to your email, which is
17 at the bottom of -- sorry, on page 3. An email from
18 Mr Dash, that's you:

19 "We need to discuss this price list ... Please take
20 all Biryani's beyond Dhs220/- as they are dishes in
21 themselves. Amitava please look into it as it is going
22 for print now."

23 In fact, if you want, you can look at the bottom of
24 the chain and it shows that you were sent the menus and
25 the wine list, talking of the price of a biryani.

1 15:10 A. Like I have just explained, it was 100 per cent owned by
2 us. It is not third-party money that we are investing,
3 that were involved. It's a greenfield venture. It's
4 not a buy and build business that we are talking about.
5 Just like Al Najah HML would be.

6 I think we have two different things that we are
7 talking about. We are talking about starting a new
8 restaurant with the money with our own capital and my
9 board members' capital. And I'm the one who had brought
10 La Porte des Indes from London to Dubai. And being an
11 Indian, and Michael being the general manager, being
12 Polish, I thought I have a little bit more value added
13 to do. But as you could see, the team there,
14 incorporated there, includes Vishal Rane, Aman Kukreja,
15 Marko Aleksic, they are all part of the management team
16 who do operations.

17 Q. Mr Dash, I'm not suggesting that your days were spent
18 filled with nothing more important than deciding on the
19 colour of a uniform to be worn by the waitresses in
20 a restaurant and the price of a biryani, et cetera. But
21 what I do suggest is that these emails undermine your
22 suggestion that you had a hands off or largely hands off
23 role as a board member of these holding companies?

24 A. No, they're not the same. When you own 30 per cent of
25 the company and you own 100 per cent of the company are

1 15:11 very two different things. When you have an existing
2 business run by management and when you have
3 a greenfield business, it's very different.

4 So Diamond Lifestyle, which was a greenfield
5 business started, is very different than healthcare or
6 education or logistics for that matter. So they cannot
7 be compared with each other.

8 Like I remember one of the discussions that you had
9 on the first day that whether they are all the same.
10 They are not all the same.

11 Q. With that, can we go to the agreements, the contractual
12 agreements between Al Masah Cayman and the holding
13 companies or investment companies, the four companies
14 that we're concerned with now.

15 The only contractual agreements between a Cayman
16 entity -- sorry, an Al Masah entity and any of these
17 holding companies, or certainly the ones that we have,
18 were between Al Masah Cayman and the holding company;
19 isn't that right?

20 A. That's correct.

21 Q. Al Masah DIFC did not have any contractual agreement
22 with any of the four holding companies, did it?

23 A. No, it would provide the services to the Cayman company
24 for those services that it was providing to its clients.

25 Q. You're agreeing with me, then. DIFC did not have any

1 15:13 contractual agreement with any of the four holding
2 companies?

3 A. That is correct.

4 Q. Can we then look at the agreements. The first one is
5 management agreements at exhibit 308.

6 Mr Dash, just to set the scene, there are in the
7 bundle a number of management agreements. I think there
8 are four, in fact, one with each of the four holding
9 companies. I have chosen this one. And as far as
10 I read these four agreements, they are, to all intents
11 and purposes, the same. Therefore, I am going to refer
12 you to one of them and no doubt if Mr Hill feels that
13 there are any provisions in any of the others, then he
14 will refer you to any of the others.

15 Do you understand me?

16 A. I'm okay.

17 Q. No doubt, you, in connection with this case, will have
18 had the chance to review all four of those agreements,
19 haven't you?

20 A. I have looked at them, yes.

21 Q. Then you'll be comfortable, will you, looking at this
22 one, exhibit 308, the agreement between ANEL and
23 Al Masah Capital?

24 A. Yeah.

25 Q. Executed on 1 December 2011?

1 15:15 A. That's correct.

2 Q. Could Fatima please scroll down to page 2. It says:

3 "This Management Agreement ... dated

4 1 December 2011, is made and entered into by and

5 between:

6 1. Al Masah Education Holding Limited ..."

7 That's what I have been terming "ANEL", but that's

8 ANEL, isn't it?

9 A. That's correct.

10 Q. And Al Masah Capital is party number 2 to the agreement;

11 correct?

12 A. Correct.

13 Q. The recitals state that the manager -- and we should,

14 I'm afraid, go back to who the manager is. And we can

15 see that, according to the agreement, the manager is

16 party number 2, which is Al Masah Cayman, because in

17 brackets, at the end of 2, it says, "the Manager",

18 doesn't it?

19 A. Yeah.

20 Q. Where there are references to "the Manager", what that

21 means is Al Masah Cayman for the purposes of this

22 agreement. You understand?

23 A. That's correct.

24 Q. Then we go to the recitals:

25 "Whereas the Manager [Cayman] provides asset and

1 15:17 portfolio management services to investors interested to
2 invest in the Middle East and North Africa region
3 ('MENA').

4 Whereas, the Company [ANEL] is organized and
5 existing under the laws of the Cayman Islands ...

6 Whereas the Company [ANEL] desires to appoint the
7 Manager [Cayman] to achieve its objective of providing
8 education services across the MENA region by identifying
9 opportunities" --

10 A. Hello, Ms Clarke. Can I just one minute. I just want
11 the air conditioning to be --

12 Q. Yes, of course.

13 A. Sorry for this.

14 Q. No, not at all.

15 A. The air conditioning is off, so it's pretty hot.

16 Q. Is it on now and is it too hot for you to concentrate on
17 what I'm saying?

18 A. Yeah. No, I just said to start the air conditioning.
19 Sorry. Thank you.

20 Q. Are you comfortable enough to continue while the air
21 conditioning cranks up?

22 A. Please.

23 Q. Then we'll carry on. But if, at any point, it's too hot
24 for you to bear, and you're finding it --

25 PRESIDENT: I'm sure the witness will tell us. Can we

1 15:18 please just carry on.

2 MS CLARKE: Sorry. I'm trying to be courteous to the
3 witness and it is difficult when we're doing it all by
4 video.

5 Could we please then go back to where we were, which
6 was the recitals. So I think we were at recital 2:

7 "... the Company desires to appoint the Manager to
8 achieve its objective of providing education services
9 across the MENA region by identifying opportunities and
10 setting up a team of operational management and
11 coordinating with them to grow the business across MENA
12 and:

13 Whereas, the Manager desires to render such services
14 to the Company as set forth in this Agreement."

15 So that sets out what Al Masah Cayman was going to
16 be doing for ANEL under this agreement, doesn't it?

17 A. That's correct.

18 Q. Then could we go to the section, "Services and Duties".
19 It says -- and I'm going to try and paraphrase this,
20 I hope fairly.

21 So the company engages the manager to perform the
22 following duties and responsibilities, delegates them
23 out to the manager, the authority to execute such duties
24 and responsibilities on behalf of the shareholders of
25 the company. The manager agrees to perform the duties

1 15:20 and responsibilities and to accept such delegation. All
2 right?

3 Now it says, first:

4 "(a) The Manager will always have a majority of
5 representation on the Board of Directors which shall be
6 the governing body of the Company and shall exercise
7 overall direction, supervision and ultimate control of
8 all matters pertaining to the operations of the
9 Business.

10 (b) the CEO and the rest of management staff of the
11 company and its subsidiaries shall be appointed by the
12 Manager [Cayman] and shall manage the day-to-day
13 operations of the Company ...

14 (c) The Manager will be responsible for expanding
15 the activities of the company across MENA and in this
16 regard will be helping the Company to raise capital and
17 identify investment opportunities for the Board of
18 Directors of the company to evaluate and approve.

19 (d) In coordination with the operational management
20 team of the Company, the Manager will be responsible for
21 charting the strategy and business plan of the Company
22 and also ensure smooth functioning of the daily
23 operational activities of the Company. If required, the
24 Manager will depute its own staff for shouldering
25 specific responsibilities, the costs of whom will be

1 15:22 borne by the Company.

2 (e) The Manager will also take responsibility for
3 doing all things necessary to provide a profitable exit
4 for all investors in the company."

5 Yes?

6 A. That's correct.

7 Q. Then 1.2:

8 "In discharging any of its duties under this
9 Agreement, the Manager may utilize the services of
10 attorneys, accountants ... and others, including,
11 without limitation, affiliates of the Manager. The
12 costs of such services will be borne by the Company."

13 Then we get to "Management Fee":

14 "The Company shall pay to the Manager a management
15 fee ... of ... [2 per cent] on the Total Equity Employed
16 of the company every year ..."

17 Then it talks about how that would actually be
18 calculated in real terms. Yes?

19 A. (Witness nodded).

20 Q. Then can we scroll down to page 5 and if we could look
21 at 8.3.

22 Sorry, I have just been passed a note that
23 apparently in response to what I read out about the
24 terms of the agreement, you nodded rather than saying
25 yes, you agreed that those were the terms. But your nod

1 15:24 was intended to say, yes, you agree. Is that right,
2 Mr Dash?

3 A. Correct.

4 Q. Can we go back to where we were, 8.3:

5 "Assignment: Successors and Assigns. The Company
6 may not assign this Agreement without the written
7 consent of the Manager. The Manager may assign this
8 Agreement only to a wholly-owned subsidiary without the
9 prior consent of the Company."

10 It does provide that Cayman can assign this
11 agreement to a wholly-owned subsidiary and that the
12 company, ANEL, doesn't have to consent to that. But
13 there is no contract, because I think we have
14 established, that any of us have seen, that shows that
15 that was done by way of a contractual agreement between
16 Cayman and Al Masah DIFC, is there?

17 A. We saw that agreement, right? Investment management
18 agreement, where it mentions about Al Masah Cayman and
19 its clients and DIFC?

20 Q. Which related to investment advisory services,
21 I suggest, not to management services.

22 A. It says "investment management". It's okay.

23 Q. I suggest that there is no agreement that referred to
24 management services being contracted out or assigned by
25 Cayman to DIFC?

1 15:25 A. That is not correct. The management agreement is
2 subcontracted.

3 Q. That, I think, is all I wanted to ask you about in
4 relation to that. But for completeness, if we could go
5 to page 7, the signatures again, it's Mr Zeenni and you?

6 A. No. In this case, it's different.

7 Q. No, it's you.

8 A. Yes, that's correct.

9 Q. One of the things that this agreement, the terms that we
10 have been through, referred to, was that the majority of
11 the board of the investment company, ANEL, was to be
12 populated with members of Al Masah Cayman.

13 A. That is --

14 Q. Have a majority on the board of ANEL.

15 A. That is correct. For the oversight purposes, that's
16 correct.

17 Q. And --

18 -- (Overspeaking) --

19 A. -- with the articles of association of the company as
20 well.

21 Q. And, of course, for Cayman to fulfil the extensive
22 requirements of this agreement, the duties that this
23 agreement gives them, it would be important for them to
24 have that level of control, wouldn't it?

25 A. Sorry, I didn't hear that properly, please.

1 15:27 Q. Sorry. In order for Cayman to fulfil the extensive
2 duties that this agreement has set out, it was
3 important, wasn't it, for Cayman to have that level of
4 control of the board of the holding company?

5 A. Yes, it had a majority always on the board, along with
6 the other major shareholders of the company.

7 Q. If Cayman has a majority on the board, then that gives
8 them the most powerful position as regards the board as
9 a whole, doesn't it?

10 A. Yes. It needs to be understood in the right context.
11 When all of this business is started, which is the
12 agreements, the dates you're looking at, at that point
13 in time, all the businesses, when they were started,
14 were started by the shareholders of Al Masah Capital Ltd
15 and its board members and Al Masah Capital's own
16 capital. And as it expanded, then other people started
17 joining, the shareholders started joining the business.

18 But, yes, this agreement never got changed after
19 that, till 2016, when it got changed.

20 That is why the name Al Masah Education Holding Ltd,
21 not yet Al Najah, because it was funded all by Al Masah
22 and its shareholders.

23 Q. Consistent with what is set out in the management
24 agreements is one of the entries in the audited
25 financial statements for ANEL in 2013. Could we please

1 15:29 just look at that. It's exhibit 400. If we could go
2 within it to page 17.

3 Just to be clear, these are the genuine ANEL audited
4 statements, not the ones that were subsequently altered,
5 because I say that because we're looking at note 10.

6 The part that I'm interested in is that, of course,
7 it shows:

8 "Al Masah Capital ...

9 Advisory fees and other incremental costs relating
10 to the capital increase"

11 US\$6.5 million or thereabouts. Do you see that,
12 Mr Dash?

13 A. That's correct.

14 Q. Then Fatima, if you wouldn't mind scrolling down
15 a little bit more, so we can see the rest of note 10.
16 It says:

17 "Compensation of key management personnel

18 Major commercial and financial decisions are taken
19 by Al Masah Capital Limited, a related party for which
20 they receive management fees."

21 A. It's a related party, because a significant stake, at
22 that point in time, in 2013, belonged to the
23 shareholders of Al Masah and the board members of
24 Al Masah and Al Masah's own capital. That's why it's a
25 related party.

1 15:31 Q. "Major commercial and financial decisions are taken by
2 Al Masah Capital ..."

3 That statement is entirely consistent with the range
4 of activities set out in the agreement that we have just
5 looked at, isn't it?

6 A. Yes, commercial and financial, not operational, that's
7 correct.

8 Q. In your interview with the Dubai FSA, your second
9 interview, I think it was -- sorry, your first
10 interview. Do you recall -- I can show you the entry if
11 you like, but do you recall saying that the management
12 of the funds or the entities with which we're concerned,
13 was done by Al Masah Cayman?

14 A. No, I think you need to -- if you could put it up,
15 I think we can discuss that, because we had funds also
16 in Cayman.

17 Q. We will put it up.

18 A. Because we had funds in Cayman as well. So management
19 should not be -- of these companies should not be
20 confused with the funds. We had about eight or nine of
21 the funds.

22 Q. It's exhibit 107. Firstly, page 20. If we could scroll
23 down to just over halfway down the page, Fatima, the
24 question that you're asked there is:

25 "So Al Masah Cayman [this is Mr Glynn], it's

1 15:35 registered as a company in the Cayman Islands.

2 Shailesh Dash: Yes.

3 Stephen Glynn: But is it carrying out any
4 financial services activities?

5 Shailesh Dash: It does have the management
6 agreement for all the funds. Even the Luxembourg funds,
7 it is today the asset managers for many of the funds."

8 Yes? That is --

9 A. Can we go down a bit more? I know that I -- a caveat is
10 what I had told you before. It was with 30, 40 people
11 coming in, I was shaken up. But even then, let's go
12 down, below a little bit.

13 Q. Yes, please do. We can scroll down as much as you want.

14 A. Can we scroll down a bit?

15 Q. I think the next bit goes slightly off point.

16 A. So management agreements. So management agreement. So
17 I do talk about the management agreements, not for the
18 funds.

19 Q. Right. Then the next bit I wanted to refer you to is at
20 page 22, but if in the scrolling process, you see
21 anything else that you, in fairness, think is relevant,
22 then, of course, you can say so.

23 Are you happy for me to go to page 22?

24 A. Yes.

25 Q. Could you just scroll down to just about a third of the

1 15:36 page. The entry that I wanted to point out to you is
2 where Mr Glynn says:

3 "So Al Masah Cayman, to the best of your
4 recollection, has a management agreement with all of the
5 funds.

6 Shailesh Dash: All of the funds, yes. No, I
7 cannot say all of the funds. Many funds are also
8 managed out of Luxembourg. So Luxembourg also has -- we
9 have a UCITS 4 licence there."

10 But:

11 "A management agreement with all of the funds."

12 And your reply, "All of the funds, yes", is,

13 I suggest, a reference --

14 A. Can we go down a bit more?

15 Q. Let me ask a question and then you can answer it. That
16 is, I suggest, a reference to the management agreement
17 with the holding companies that we just looked at.

18 A. Can I go down and read a little bit more?

19 Q. Yes, of course.

20 A. Fatima, can we go down a bit more? Can we go down more?

21 Can we go down to the Luxembourg part where it ends and
22 the Cayman starts?

23 Q. I think you'll find that's page 26, which is the next
24 bit I wanted to refer you to.

25 We're now at page 26. Scroll through, where I think

1 15:39 what's talked about, that doesn't take matters much
2 further, but at page 26, we go back to Al Masah Cayman
3 and management agreements. And we find that at the
4 bottom third of the page. Mr Glynn says:

5 "Now, you said earlier that Al Masah Cayman has a
6 management agreement with the Al Masah -- with all the
7 funds. Would you make a note, thanks, to provide me
8 with a copy of all the management agreements?

9 Shailesh Dash: A copy of all management agreements
10 of all funds.

11 Stephen Glynn: Of all -- for which Al Masah Cayman
12 is the manager, yes.

13 Shailesh Dash: All funds. Okay."

14 And, of course, at least four of the management
15 agreements that you've supplied or were supplied are the
16 four that we have got in the bundle, aren't they, with
17 the holding companies?

18 A. No, we had funds as well. We had fixed income funds and
19 opportunities funds, which were Cayman funds, which we
20 had those as well.

21 Q. Yes, there may have been others, but four of them were
22 the ones that we have got in the bundle, with the four
23 holding companies?

24 A. The four are not funds, we all know that. I mean, the
25 characterisation is not funds, they're companies.

1 15:40 Companies are very distinct from funds. Anybody would
2 know that. I don't know why I would say this. This,
3 for sure, is not correct. Because companies are
4 companies, funds are funds. Everybody would know that.

5 But can we go down a bit more if I did describe
6 anything more on this? Sorry, I don't have it in front
7 of me.

8 Q. No, it's fine. Absolutely, we can. So 27:

9 "Stephen Glynn: So Al Masah Cayman manages these
10 funds. I'd just like to go back to that question about
11 whether they're licensed to carry out any financial
12 services activities in the Caymans ...

13 Shailesh Dash: No, I don't think so."

14 A. As you can see, I'm rambling a lot, because of being
15 shaken. So obviously, instead of saying "a company",
16 I might have said "funds", but that's not correct. We
17 know this.

18 Q. Mr Dash, you keep saying this, "I was shaken up and
19 nervous", et cetera --

20 MR HILL: If my learned friend is going to put that to the
21 witness, you ought to read him page 34 of the
22 transcript.

23 MS CLARKE: Yes, and no doubt Mr Hill can refer his client
24 to anything that he wants to in re-examination. I'm not
25 suggesting that you consistently referred to these

1 15:42 holding companies and the like as "funds", but at some
2 point during this interview, you did, and this is one of
3 those points.

4 A. So that is why I'm saying that because I was shaken up,
5 I could have used different terminologies, but that
6 would not differentiate the characterisation of the
7 companies from funds. We all know that what the units
8 of the funds are, what the shares of the company are.
9 And how a company operates and how a fund operates and
10 how a fund manager operates and what the investment
11 management agreement is, I think we have gone through
12 all that. I'm sure everybody knows this.

13 Q. I'm going to suggest this, Mr Dash, that one of the
14 reasons why, at certain points, quite a lot of points in
15 this interview, that you refer to what appears to be
16 your description of the arrangements between the holding
17 companies and Al Masah Cayman, and all the rest of it,
18 when you're talking in that context, you're referring to
19 use of the terminology "funds".

20 I know that that's not the position throughout the
21 interview, but what I suggest is that, in your mind,
22 although the structure was a corporate structure, in
23 your mind at least, they were operating at least in some
24 large respects like funds and that's why you're using
25 the word "fund".

1 15:43 A. Very different. To be frank with you, I think if
2 I start talking about the difference between a fund and
3 a company, I don't think we will stop, because there's
4 a huge difference between both of them. If you allow
5 me, I can start with a few, but I don't know whether you
6 want to hear those at this point in time.

7 Q. I don't think at the moment we do, but if Mr Hill thinks
8 that we do, then no doubt he can bring that up with you
9 in re-examination.

10 I have just been passed a note, sir, about
11 a reference, which I would just like to check, so I'm
12 just going to do that with your leave.

13 Could I ask you to look at one more entry on this
14 transcript and then we'll put this transcript aside, at
15 least for now. It's at page 42, the bottom of the page.
16 Mr Glynn says:

17 "So we're looking at the investor presentation for
18 Al Najah Education Ltd by managed by Al Masah Capital
19 Ltd.

20 Shailesh Dash: Yes. That's a fund manager. As a
21 management, it's fund manager, so this is where it is.
22 You see that here.

23 Stephen Glynn: The fund manager is Al Masah."

24 If we go to the next page, please.

25 A. This is where I say, "Yes. So investment manager."

1 15:45 Q. Then you say:

2 "So investment manager. So investment manager and
3 the investments, but each of these businesses had their
4 own managers and own management teams. So they will
5 primarily be having a general manager, head of
6 different -- every company has its own structure."

7 Yes?

8 A. Correct.

9 Q. That's another reference. And, as I say, I'm not saying
10 that you were consistent throughout this interview, but
11 that's another reference, isn't it, to you referring to
12 the arrangements that we're concerned with here as
13 a fund or as Cayman being the fund manager?

14 A. No, as investment manager. I think that's the correct
15 way of looking at it, but I understand what you're
16 saying.

17 Q. The term you use is "fund manager", isn't it?

18 A. No, like I said before, because I was shaken up, the
19 terminologies could be different. But what you are just
20 seeing now on the screen is the right terminology.

21 Q. But what we have also seen on the screen at page 42 is
22 you referring to it as a "fund manager", Al Masah
23 Capital. That is what the transcript shows, isn't it,
24 Mr Dash? Your words.

25 A. I think, like I said, transcript was done under

1 15:47 environment of, you know, with 30, 40 people coming in,
2 serving notice, taking over the company, making you to
3 sit, to give an interview. Otherwise, they would call
4 you for a compulsory interview. I'm sure if anybody
5 goes through that situation, would know exactly what it
6 means. But despite that, I did say this, that these are
7 investment management agreements.

8 Q. Thank you very much. We can leave that transcript there
9 for now.

10 Could we look at some other documents on this
11 related topic. And the first one is at C010, SKD 3-12.
12 It's page 82. Sorry, that's a wrong reference. That
13 relates to a different fund. Scrap that one.

14 Let's go to something else. Let's go to the topic
15 of placement fee agreements.

16 Sir, I'm very happy -- I notice that it's 10 to 1.
17 I'm very happy to make a start on this topic, but I'm
18 sure you'll appreciate, I'm not going to finish it in
19 10 minutes. So I'm entirely in your hands as to what
20 you would like to do now.

21 PRESIDENT: Well, I think we'll carry on for 10 minutes and
22 we'll break at 1 o'clock in the usual way. Thank you.

23 MS CLARKE: Certainly. Of course.

24 Can we turn to the topic of placement fee
25 agreements, because the other contractual document that

1 15:50 we have that Al Masah Cayman entered into with each of
2 the investment companies, were these placement fee
3 agreements, a copy of which we have at exhibit 304.

4 Again, I'm going to refer to the ANEL one for the
5 same reasons as before, because it seems to me that in
6 material terms, they are the same across all four
7 holding companies.

8 Can we look at this one. This is a placement fee
9 agreement between Al Masah Education Holding and
10 Al Masah Capital.

11 And if we scroll down to the next page, again, same
12 parties described in the same way, so we can go straight
13 to the recitals. It says:

14 "Whereas, the Manager is directly responsible for
15 the management and growth of the Company in the Middle
16 East and North African (MENA) region."

17 In fact, we can take this relatively shortly,
18 because those recitals mirror the recitals in the other
19 agreement that we looked at, don't they?

20 A. They have changed every two years almost, they have
21 changed. It was up to 10 per cent, then goes down to
22 6 per cent, goes down to 4 per cent.

23 Q. No, I'm not talking about the financial part. I'm just
24 talking about the recitals, where it sets out the
25 companies and what they have agreed to do, et cetera,

1 15:52 are the same as the previous recitals we looked at?

2 A. I'm not sure, but if you're saying, must be the same.

3 Q. If there are any material differences, no doubt Mr Hill
4 will point them out. But the key point is that ANEL has
5 appointed Cayman as the manager and to provide the same
6 services described in the same way as in the previous
7 recital and the manager, ie Cayman, desires to render
8 those services. And indeed, it says, as set forth in
9 the management agreement, which is the previous
10 agreement.

11 What it then says is that the parties agree that as
12 regards item 1, so if you could scroll down a bit,
13 Fatima, so that we can see the "Capital Raising"
14 section:

15 "1.1 Upon the terms and conditions set forth in this
16 Agreement, the Company hereby engages the Manager to
17 help raise equity capital at a premium to its par value.

18 1.2 ... the Manager may utilize the services of
19 attorneys, accountants ... and others, including,
20 without limitation, affiliates of the Manager."

21 Then in relation to the next section:

22 "2. Placement Fee

23 The Company shall pay to the Manager a fee (the
24 'Placement Fee') of up to 10 per cent of the funds
25 raised from the new investors. The fee will be payable

1 15:54 to the Manager when the Company receives the
2 subscription capital from the new Investor."

3 That placement fee is the terminology which is used
4 in respect of what is written here, throughout this
5 case, isn't it?

6 A. That is correct. I mean, different completions(?) have
7 been used by different auditors, but the same, and
8 people do use different terms, but here it is
9 "placement fee".

10 Q. Yes, I know. I understand that.

11 No doubt it will be pointed out, but I don't think
12 we need to take it in any detail.

13 At 6.3, there is exactly the same wording as regards
14 the ability to assign the agreement. All right?

15 A. That's correct.

16 Q. Then this one is signed by you and Mr Zeenni, page 6?

17 A. That's correct.

18 Q. I suggest that in accordance with her evidence, Helen
19 Baines -- you haven't produced any evidence that Helen
20 Baines ever did review this placement fee agreement,
21 have you?

22 A. I have evidence now, if you want, I can have it open as
23 exhibit, we have it there, to show that the compliance
24 was very much aware about the placement fees. Not only
25 compliance, the regulators were also aware of the

1 15:56 placement fees.

2 Q. Sorry, Mr Dash. I don't want to cut across you, but
3 that wasn't the question. I'm not talking about
4 awareness and all that. I'm talking about evidence.
5 There's no evidence that you produced that demonstrates
6 her reviewing these placement fee agreements?

7 A. Reviewing the placement fee agreements, I think that was
8 her role. It's not for me to provide, as SEO or CEO of
9 the business, it was not my role to provide her the
10 placement fee agreements. It was part of her role to do
11 that, while she's doing the process of compliance of the
12 business and the structure.

13 Q. You heard her evidence. Her evidence was that she was
14 the compliance officer for DIFC and we have already
15 dealt with that, and you've disagreed. But secondly,
16 that she did not and would not have expected to review
17 documents between Al Masah Cayman -- contracts between
18 Al Masah Cayman and the holding companies, including
19 a placement fee agreement?

20 A. She would do that --

21 Q. Sorry, carry on.

22 A. She will have to do that as a group head of compliance
23 and AML. At the least, she has to do the AML for the
24 clients, so she has to go through the documentation that
25 is being signed with the clients.

1 15:58 Q. But you have not produced -- I'm not going to keep
2 asking the same question, but I don't think you have
3 actually answered --

4 A. Like I said, it was not my job to do that. It was her
5 job to do that.

6 Q. So is the answer that you agree that you have not
7 produced any documentary evidence that she actually did
8 review the placement fee agreements?

9 A. I would not know. That was her job.

10 MS CLARKE: Sorry, sir. By my clock, I noticed it's
11 1 o'clock, but I don't know whether that's reliable. Is
12 that a convenient moment?

13 PRESIDENT: Yes, of course. We'll stop at this point and
14 resume at 2 o'clock.

15 May I just raise one point about the documents,
16 which has helpfully been suggested by one of my
17 colleagues and that is this. For entirely
18 understandable reasons, documents are being put to
19 witnesses from all over the shop, in terms of where all
20 the documents are. We would, I'm sure, find it most
21 helpful if a single file could be compiled and kept up
22 to date -- obviously, not today, because you have a lot
23 of things to do -- which contains those documents other
24 than the obvious.

25 That is to say skeleton arguments and witness

1 15:59 statements, which are actually being referred to in
2 cross-examination, because there is a vast amount of
3 material that so far hasn't been referred to and we
4 guess won't be referred to, and it will be a great deal
5 easier for us to find those documents if they are
6 identified in a specific file.

7 I don't know if my colleagues want to suggest any
8 refinement to that proposal? It seems not. So perhaps
9 if the people concerned could start to think about that,
10 we shall be most grateful.

11 Otherwise, we stop now and start again at 2 o'clock.

12 (4.00 pm)

13 (Lunch break)

14 (5.00 pm)

15 PRESIDENT: I think we're all here, so if you're ready,
16 Ms Clarke, we can proceed.

17 MS CLARKE: Yes, I am. Thank you very much.

18 Mr Dash, could we turn now to looking at some other
19 documents and see what was being said in some of the
20 documents that were being sent out in relation to what
21 we say are funds, and obviously, you say are private
22 equity structures and the like; yes? And what was being
23 said about the role of Al Masah Capital, et cetera.

24 First of all, could you look, please, at exhibit
25 A001.

1 17:01 Mr Dash, this is an email from you and it's headed:

2 "Invitation to become a founder shareholder in
3 Al Masah Capital Ltd."

4 Yes?

5 A. Yes.

6 Q. It's an Al Masah Capital offering document attached to
7 it; do you see that?

8 A. Correct.

9 Q. What it appears to be is a letter from you to somebody
10 called Yasmin, informing her about the launch of
11 Al Masah Capital and that they are looking to raise
12 funds by the issue of shares to investors. In effect,
13 it's inviting her to become a founder shareholder,
14 a seed investor, I suppose. Is that the purpose of this
15 email?

16 A. To become a shareholder in the company.

17 Q. Yes. So you're inviting her to become one of the
18 initial shareholders in the company, in the initial
19 fundraising that the company is undertaking; is that
20 correct?

21 A. That's correct.

22 Q. What you say here at paragraph 2 of this document is:

23 "In order to service the regional clients, [Al Masah
24 Cayman] will be setting up an Asset Management Company
25 in DIFC, which will have an authorized and paid up

1 17:02 capital ... This management company will be a 100%
2 subsidiary of [Al Masah Cayman] and intends to apply for
3 a DFSA license ... as to operate as investment manager
4 for the Funds to be launched by [Al Masah Cayman]. As
5 investment manager, [it] will be entitled to management
6 fees ..."

7 Do you see that?

8 A. Correct.

9 Q. Then you talk about the key features about the company,
10 one of which is you, because the first bullet point is
11 the company's founder and the CEO. And then it sets out
12 some of your credentials in previous roles that you have
13 held, doesn't it?

14 A. Yes, it is a letter, before, actually, the real company
15 came into being. And I was the only person who was
16 trying to build this company at that time. There was no
17 real company -- I mean, real company in the sense, I was
18 the SPV, I was the only person who was starting this
19 business, yes. There was nobody else at that point in
20 time in the company.

21 Q. I think we can skip over the other bullet points,
22 because the next one that I wanted to ask you about is
23 at the top of page 2. Do you see that? Sorry, Fatima,
24 if we can just see that bullet point at the top of
25 page 2:

1 17:04 "[Al Masah Capital] is a unique play for regional
2 and international investors to access the growing and
3 untapped MENA region, through alternative asset
4 management products including PE Funds, Real Estate
5 Funds and Hedge Funds."

6 This email, presumably, was written by you?

7 A. Yes, it was written by me. Like I said, it was before
8 even the business had started, which started
9 in April 2010. It was 2009, when I was trying to set up
10 Al Masah Capital Ltd.

11 Q. When you wrote this email, what you were looking at and
12 what you were telling this potential investor that
13 Cayman was intending to do, was:

14 "... to access the growing an untapped MENA region,
15 through alternative asset management products including
16 PE Funds, Real Estate Funds and Hedge Funds."

17 A. That is correct. We did try to --

18 Q. You have --

19 A. -- launch also --

20 Q. Sorry, I'm talking over you.

21 A. We did try to launch private equity fund twice, in 2011
22 and 2013, as you have in various exhibits, but we were
23 not successful in raising those monies.

24 Q. But certainly, at that time, you were looking at funds?

25 A. That's correct.

1 17:05 Q. Private equity funds?

2 A. Yes.

3 Q. As well as real estate funds and hedge funds?

4 A. That's correct.

5 Q. These are the products that you're talking about in this
6 document; yes?

7 A. (unclear ...) management company.

8 Q. That is what your intentions were at the time you were
9 setting up Al Masah Cayman, isn't it?

10 A. That's correct.

11 Q. Could we look, then, at another document, exhibit 601.
12 It is an Al Masah Capital corporate overview. I think
13 there's a date on it, it could be January 2015. Maybe
14 I have taken that from the bar code. Yes, there we
15 go, January 2015.

16 This is, in fact, the document that was used to
17 compile the schedule at appendix 6 to the Dubai FSA's
18 skeleton argument, that we were looking at yesterday,
19 Mr Dash, which gave the names of the individuals
20 associated with the various companies. Do you remember
21 that?

22 A. I don't remember --

23 Q. Do you remember that schedule?

24 A. Today, in the morning, when we were looking at the names
25 of people involved?

1 17:07 Q. Exactly. It was a schedule, a table that I showed you.

2 Do you remember?

3 A. Yes, yes.

4 Q. I'm not suggesting we bring that schedule up, because
5 I don't think we need to. But if anyone wants to check
6 it, in relation to Al Masah Capital, and indeed the
7 other entities, but it is Al Masah Capital I'm concerned
8 with, it gave exhibit 601 as the reference for where the
9 names of the senior executives had come from. All
10 right?

11 So if anyone wants to check that, they can check it
12 for themselves on the schedule.

13 Anyway, that's why I'm referring you to this
14 document.

15 First of all, if we could look at the bottom of this
16 page, page 1, it's not easy to read, but what we can see
17 on the left is that the address given for Al Masah
18 Capital Management is Liberty House in the DIFC,
19 isn't it?

20 A. That's correct.

21 Q. Then could we next go to page 3.

22 A. I have 601. Was this 601? I have a different --

23 Q. 601?

24 A. I have four addresses there, Dubai, Abu Dhabi, Singapore
25 and Cayman Islands.

1 17:09 Q. I'm looking at page 1. We were looking at page 1.

2 A. No, the address which showed me that only Al Masah
3 Capital Management, I -- just on my last page,
4 exhibit 601, is for Dubai, Abu Dhabi, Singapore and
5 Cayman Islands.

6 Q. All right. We can look at that. Then if we go to
7 page 3, we have there something called the Al Masah
8 Capital Ltd overview. And it gives a number of bullet
9 points about how by the time of this document, which we
10 remind ourselves is 2015, that Al Masah Capital had
11 been -- and I paraphrase -- successful, very successful.
12 And that you were:

13 "... providing tailored solutions for its broad
14 client base offering private equity (across Healthcare,
15 Education, Food & Beverages, Logistics and other
16 consumer driven sectors), asset management, corporate
17 and real estate advisory as well as public market
18 research services."

19 Do you see that?

20 A. Yes.

21 Q. Then it says that you raised over \$1 billion in four
22 years. You've established yourself:

23 "... as a leading asset management firm;
24 ... qualifying investors can gain exposure to the
25 MENA markets across multiple asset classes."

1 17:11 The next bullet point says:

2 "Al Masah Capital platform works through funds setup
3 in Luxembourg and Cayman Islands for qualifying
4 investors, providing domiciliation choices ..."

5 Then it says:

6 "The Company manages qualifying investor funds
7 primarily across regional equities and fixed maturity
8 funds, offering both discretionary mandates, customized
9 for specific institutional, corporate and individual
10 client needs."

11 Do you see that?

12 A. That's correct.

13 Q. I'm going to skim over the next two bullet points to the
14 very last one, where it says:

15 "Al Masah is headquartered in Dubai with offices in
16 Abu Dhabi and Singapore."

17 Do you see that?

18 A. Yes.

19 Q. Certainly as far as this page of this document is
20 concerned, what's being suggested is that Al Masah
21 Capital is headquartered in Dubai?

22 A. Is that so? I can't --

23 Q. Well, if you look at the top of the page, it says,
24 "Al Masah Capital Ltd -- Overview."

25 A. Yes.

1 17:12 Q. Then we have been through various bullet points about
2 what Al Masah Capital has been up to. The very last
3 one is:

4 "Al Masah is headquartered in Dubai with offices in
5 Abu Dhabi and Singapore."

6 Do you see that, Mr Dash?

7 A. Yeah:

8 "... established ... fastest growing alternative
9 investment management firms in the MENA & SE Asia
10 region ..."

11 Q. It's the last bullet point on this page.

12 A. "... headquartered in Dubai with offices in Abu Dhabi
13 and Singapore."

14 Okay.

15 Q. "Al Masah is headquartered in Dubai with offices in
16 Abu Dhabi and Singapore."

17 The only headquarters that Al Masah Capital could
18 have had in Dubai, would have been within the DIFC?

19 A. Al Masah DIFC, yes.

20 Q. No, I'm talking about the physical premises, the
21 building.

22 A. That's correct.

23 Q. Within the DIFC?

24 A. Within the DIFC.

25 Q. Just to complete that point, if we scroll down to

1 17:14 page 4.

2 A. I think that says that because I'm the SEO based out of
3 there.

4 Q. But --

5 A. I think it was checked by the compliance, had gone
6 through these documents, so I'm sure this is correct.

7 Q. Then page 4, "Al Masah Capital Ltd -- Overview", so it
8 appears to be a continuation of page 3. What we can see
9 is a number of countries highlighted, including Dubai,
10 highlighted in red; do you see that?

11 A. Yes.

12 Q. With a star, a red star. Then if you go across to the
13 left-hand side of the page, you can see that obviously
14 the red star is there and the word "headquarters"?

15 A. That's correct.

16 Q. That really puts the matter beyond doubt, doesn't it?
17 Is that what these two pages are saying is that Al Masah
18 Capital is headquartered in Dubai, which must mean the
19 DIFC?

20 A. So what it says is that the main office for Al Masah
21 Capital Cayman is a wholly-owned subsidiary in Dubai,
22 which is Al Masah Capital DIFC, as the other two have
23 other third-party partners, or like in Singapore, we own
24 80 per cent and in Abu Dhabi, we own 80 per cent. So
25 there were other partners in those businesses.

1 17:15 So all it shows is that the main office or the
2 headquarter office of Al Masah Capital Cayman, which was
3 the DIFC entity, wholly-owned subsidiary, had got its
4 office in DIFC and where I was the SEO.

5 Q. I suggest that that links the explanation that you have
6 just given, is not one that would be obvious to the
7 reader of this document, is it?

8 A. I think it really mentions. If you see the black below,
9 it says:

10 "Al Masah Capital Ltd is a limited liability company
11 established in the Cayman Islands under company number
12 ... and having its registered office address at the
13 Intertrust Corporate Services ..."

14 So it talks about where the Cayman company is
15 actually. Headquarters is not -- is because where the
16 actual licence from where it operates being
17 a wholly-owned subsidiary, that is what it says. If you
18 see the disclaimer down below, just in the same black --
19 in brown:

20 "Al Masah Capital Ltd is a limited liability company
21 established in the Cayman Islands ..."

22 Q. Yes, I understand that, but that's not what that bullet
23 point says, is it? And it's not what is described below
24 says either.

25 A. I think --

1 17:17 Q. We say this document would take it that Al Masah Capital
2 was headquartered in Dubai in the DIFC. That's what --

3 A. Headquarters is different than incorporation or the
4 legal address of a company. I think headquarters, they
5 are talking about, because the management team, because
6 of the agreement, was sitting out of the licence that we
7 had, wholly-owned subsidiary, in DIFC.

8 Q. I suggest that the purpose of that bullet point and the
9 map of the world below, et cetera, is to give the
10 impression that it is Al Masah Capital operating out of
11 the DIFC, because that was what was in fact happening.

12 A. That was happening, because of two reasons. One is the
13 wholly-owned subsidiary and licence agreement that we
14 had signed between the two entities, as a client.

15 Q. And the fact that Al Masah Capital itself was also
16 operating out of the DIFC, wasn't it?

17 A. It can't be operating out of the DIFC, when it is saying
18 that it is based out of Cayman Islands and the address
19 is given there down below.

20 Q. There's no office in the Cayman Islands, is there?
21 There's a postbox. We've already established that.

22 A. The name of the Intertrust corporate services, the
23 address is given.

24 Q. Yes, but it's a postbox, isn't it?

25 A. I think that is how the holding companies in Cayman

1 17:18 work. Like I said, all points in time, personnel were
2 based out of DIFC through a licensed agreement that we
3 had signed between both the entities, as it was
4 a wholly-owned subsidiary of the Cayman holding company.

5 Q. The proposition, then, that what this document is trying
6 to do, and I suggest succeeding, is to show what was in
7 fact the reality, that Al Masah Capital was also
8 conducting its business from its headquarters in Dubai?

9 A. It was conducting its business through a proper advisory
10 agreement, services agreement that it had signed.

11 Q. Let's move to a different point, then, shall we?

12 At the bottom of that map of the world, we have
13 a number of blue boxes and it tells us various things.
14 It includes a box that says that there are six funds.
15 Do you see that?

16 A. Yes.

17 Q. Four of which, if we look at the footnote, are SPVs.

18 A. Yes.

19 Q. Do any of those six funds refer to the four that we're
20 concerned with or the four entities that we're concerned
21 with?

22 A. It is mentioning the next slide, on the slide number 5.

23 Q. Let's go to slide number 5, then.

24 Slide 5 tells us what the business lines are, one of
25 which is private equity; yes?

1 17:20 A. Yes.

2 Q. Is it that private equity, then, that refers to the four
3 entities that we're concerned with?

4 A. Yes, it is mentioned out there, four platforms.

5 Q. If we go up again --

6 A. It's making a distinction between fund and the
7 platforms.

8 Q. If we go up again to the blue boxes, it says 51 assets.

9 A. Correct.

10 Q. Then if we go down again to where we were, it says, "We
11 manage 51 assets via seasoned ..." Yes?

12 A. Yes.

13 Q. So that means that the reader would draw a distinction
14 between funds and this private equity?

15 A. Exactly, that's correct.

16 Q. Then we have at page 9, a whole page devoted to you and
17 your achievements. I think what you told us in relation
18 to the previous document was, "Well, in 2009, I was the
19 one setting it up, so it was only me."

20 A. That's correct.

21 Q. But by 2015 --

22 A. We had almost eighty employees.

23 Q. Quite, you were in a different position. Al Masah
24 Cayman are in a different position, but it's still you,
25 isn't it, that's being trumpeted as the man who has

1 17:22 driven all of this success, as this document would have
2 it?

3 A. I think that is not the case. What it's saying is who's
4 the founder and CEO. I think it is as much as what is
5 written out there. I think it is talking about the
6 human capital and it's just saying who's the person,
7 who's the founder of the business.

8 Q. But there's a whole page on you, isn't there, here?

9 A. That's correct. That's a presentation format. I don't
10 have anything else to say on that.

11 Q. If we scroll down to the next page, we can see here the
12 seasoned investment professionals who are listed as
13 being, presumably, people who have contributed to the
14 success of Al Masah Capital?

15 A. Correct.

16 Q. Is that what this slide is intending to convey?

17 A. Correct.

18 Q. We have there, amongst others, Mr Singhdeo, and also
19 Mr Lim?

20 A. Correct.

21 Q. Who are the two people who had helped you when you were
22 setting up Al Masah Capital in the first place; yes?

23 A. Correct.

24 Q. And who were still with you over five years' later?

25 A. They all, I think, all the names are here, are the

1 17:25 people who started with me in 2010, except one name

2 I see here, which is Arindam Bose.

3 Q. But the name that isn't there, of course, is Helen
4 Baines?

5 A. Because she's not investment professional. She's part
6 of the management team and licensed individual, but
7 she's not a seasoned investment professional.

8 Q. Nor is Helen Baines in the next slide, which of course
9 relates to the board of directors, and nor is she
10 mentioned anywhere else in this document?

11 A. She's mentioned in many other documents. We can provide
12 with that, but this was a presentation about the
13 investment team and the board. It doesn't include the
14 overall -- we had 80 employees and there were many other
15 different functions that we had. So we had a group
16 legal head by that time, we had head of compliance and
17 risk in Helen Baines, and we have a head of HR. We had
18 by that point in time, a financial controller. All of
19 those names are not here.

20 Q. That is why her name didn't appear in the schedule, the
21 one that we looked at yesterday, but the real reason for
22 that is because, as I said, she was not and was never
23 intended to be the compliance officer for Al Masah
24 Cayman or a group compliance officer?

25 A. As you could see in this presentation that you are

1 17:26 showing us all, there's no mention about the operations
2 and the risk compliance teams. So I think it will be
3 very wrong to attribute this presentation to encompass
4 all the key management team members, who are responsible
5 for the success of the company.

6 I don't think that's the right way to put it. You
7 don't also have the head of HR's name, you don't have
8 the group head legal's name, you don't have the head of
9 compliance and risk's name, you don't have lots of names
10 out there. So this is only about investment team, as
11 you could see that.

12 Q. Can we go now to another document. This is exhibit 500.
13 It's the annual report for Al Masah Cayman for 2011. By
14 this stage, you were up and running?

15 A. Correct.

16 Q. You would have had input into this annual report,
17 wouldn't you, given your role at the company?

18 A. The annual reports usually would be written by the
19 analysts in the team and they would give me my portion
20 of reading. Like there's a chairman's message, it would
21 go to the chairman to read his portion and my portion
22 would come to me for me to read.

23 Q. But you would want to make sure that it was a document
24 that you were happy to go out on behalf of your company,
25 in effect, the company you had set up, wouldn't you?

1 17:28 A. That's correct. For that, I would certainly refer it to
2 the CFO and the compliance head to have a look at it
3 before it goes for printing.

4 Q. If we look, then, at page 6, and if we could scroll down
5 a bit, Fatima, so that we can try and see the flow
6 chart.

7 We have here a flow chart which gives the company
8 structure. Al Masah Capital and then flow down,
9 Al Masah Capital Management Ltd and the Luxembourg SARL,
10 which we perhaps don't need to concern ourselves with.
11 So that's Al Masah Capital DIFC, located in the DIFC.

12 And then scroll further down and it says, managing
13 assets, arranging credit, et cetera, managing
14 a collective investment fund.

15 So those are the licensed activities, aren't they,
16 in effect? Not the credit products, but we don't need
17 to worry about those.

18 A. That's right.

19 Q. Then it says at the bottom:

20 "Al Masah Capital Ltd was incorporated in the Cayman
21 Islands ... commenced operations in early 2010.

22 [Al Masah Capital] established Al Masah Asset Management
23 ... in Luxembourg as the domicile for its special
24 funds ... [Al Masah Capital] then established Al Masah
25 Capital Management Ltd in the DIFC ... as its local

1 17:30 office and headquarters."

2 A. That's correct.

3 Q. The intention of this paragraph, I suggest, is to
4 portray the licensed company that held the control
5 functions in the DIFC as a local office and
6 headquarters.

7 A. Yeah, wholly-owned subsidiary as the local office for
8 UAE market.

9 Q. But otherwise --

10 A. That's why we have taken the licence. That is what the
11 purpose was, to take the licence so that we can provide
12 financial services out of DIFC.

13 Q. But otherwise, this is a document devoted to Al Masah
14 Capital, isn't it?

15 A. It says:

16 "AMCL then established Al Masah Capital Management
17 Ltd in the DIFC ..."

18 Q. Can you go then to page 9 of the document. This is the
19 chairman's message. I think you told us earlier that
20 one of the things you would do in preparation of the
21 annual report, is to make sure that you were happy with
22 the content of the chairman's message?

23 A. He will be happy with the content of the chairman's
24 message, but I would also see what's being written for
25 him, yes, correct.

1 17:32 Q. Isn't this you or --

2 A. No, I have to be happy with my message, yes, correct.

3 You're talking about my message.

4 Q. It's a picture of you, isn't it?

5 A. Yes, yes.

6 Q. Sorry, it's the CEO's message.

7 A. Correct.

8 Q. I think that's where the confusion lay. But that's
9 a picture of you.

10 A. That's correct.

11 Q. So this message from you as the CEO.

12 A. Correct, correct.

13 Q. You would have made sure that you were happy with what
14 was in it?

15 A. Correct.

16 Q. Can we look, then, at the second paragraph in the first
17 column:

18 "Al Masah Capital was formed from that exact
19 situation [the one that you described above]. A group
20 of people willing to look beyond the short term, having
21 the ability to visualize a different tomorrow and then
22 using their own set of unique tools of intellect and
23 experience to make that future a reality."

24 Then you say:

25 "We started operation in the first few months of

1 17:33 2010 and received our DFSA and Luxembourg licenses in
2 the summer of 2010."

3 I suggest that what you're intending to convey is
4 that it's Al Masah Capital who effectively are the ones
5 who are operating in Dubai and -- let's discount
6 Luxembourg, because we're not concerned with that, but
7 in Dubai?

8 A. Yes --

9 Q. And that's why we say it is our DFSA licence.

10 A. Before we went to set up in DIFC, till about August, we
11 used to operate -- or even not even August, even later
12 than August, around till September/October, till we took
13 up our offices in DIFC, we were operating as
14 a subsidiary of the Cayman entity in a different company
15 name, known as Al Asayal, in Dubai, but trying with the
16 lawyers to get a licence from DIFC to operate.

17 So, yes, we were operating outside of DIFC, before
18 we got the licence and then we came inside DIFC.

19 Q. That's your explanation for that question, is it?

20 Can we move, then, to page 20.

21 A. Page 20?

22 Q. Yes, please. This is some information about Healthcare
23 MENA, so HML, one of the platforms. The first statement
24 on the page is:

25 "Healthcare MENA ... is an entity managed by

1 17:35 [Al Masah Capital] as its healthcare private equity
2 initiative."

3 Do you see that?

4 A. That's correct.

5 Q. Then it goes on to talk about the vision and what they
6 have been doing and all that. If we get down to line 6:

7 "AMCL's extensive healthcare investment experience,
8 the significant shortage in the private sector's
9 contribution to the healthcare sector ... were the main
10 drivers behind establishing HML."

11 A. HML or -- HML.

12 Q. That's what it says. I'm just reading what's there.

13 A. Sorry.

14 Q. Do you see it?

15 A. Yes, correct.

16 Q. What that is telling the reader is that HML is managed
17 by Al Masah Capital and that it is Al Masah Capital's
18 extensive healthcare investment experience and various
19 other things that were the main drivers behind
20 establishing HML in the first place?

21 A. That's correct. Al Masah Capital team's experience.

22 Q. Well, that's not what it says here, is it?

23 The reason I suggest that the entity referred to
24 here, as the manager, is Al Masah Capital, is because
25 that is exactly what the situation was. Al Masah

1 17:37 Capital was the manager of HML, the entity that is --

2 A. Yes, Al Masah Capital established Healthcare MENA with
3 two of its shareholders, funding \$10 million to buy the
4 first business and to put in a management team. The
5 experience comes from the people. Experience is not
6 that of the company. Experience comes from the people
7 who used to invest into healthcare sector before this.
8 And, as a result, you'll see the CEO, the next slide,
9 his name and details about him is there.

10 Q. That doesn't tell us that here, does it? What it tells
11 us here is that Al Masah Cayman is managing this fund or
12 as we would have it?

13 A. This company, yeah, the healthcare or the private equity
14 initiative and it is established because of the
15 experience of the AMCL team. When you say "AMCL", it is
16 comprised of a team, because of the investment
17 management agreement that you saw today, between 311 to
18 314.

19 As a result of that, it is the team which is based
20 out of DIFC, which is advising on buying this. But like
21 you could say, the operational management team is the
22 CEO whose name is mentioned just in the next slide,
23 which is number 18 for me here, but I don't know from
24 where. The second page, where the chart is built out
25 for the Healthcare MENA Ltd, people who are involved.

1 17:38 Q. I'm not going to keep making the same point again and
2 again through this document. But I just want to show
3 you another example of some very similar claims. Can
4 you go to page 26.

5 A. But what was the point here? I didn't get it.

6 Q. The point is that the reason why that document at
7 page 20 said that Healthcare MENA was being managed by
8 Al Masah Cayman, is because that is exactly what was
9 happening?

10 A. That is exactly the investment management agreement that
11 it had, yes.

12 Q. It is what Al Masah Cayman was actually doing,
13 I suggest.

14 A. No, Al Masah Capital DIFC was helping Al Masah Capital
15 as a result of the agreement to do that. And as you
16 could see here, Mr Ravi Dhir was a 30-year veteran in
17 the healthcare sector. He is the one who is managing
18 that business. His name and details are provided there.

19 Q. Can we go to page 26. As I say, I'm not going to go
20 through every single fund, but I just want to do one
21 more. Page 26 of the same document. We're now at ANEL,
22 Al Najah Education Ltd. ANEL is an entity managed by
23 Al Masah Capital Ltd, so the same claim is made?

24 A. Yes, that's correct.

25 Q. For the same reason, I suggest, because it is the truth

1 17:40 or was, as at 2011, when this was written.

2 A. I think we have proven that there is an investment
3 management agreement and that is a back-to-back
4 agreement signed with Al Masah Capital DIFC for the
5 same. I think we have -- I think you have taken us
6 through those agreements today in the morning.

7 Q. All right. That's all I want to ask you about that
8 document. We do have one other annual report for -- we
9 have two, actually, but I'll just do one more, which is
10 the 2012 version, which is at exhibit 501.

11 We can see from the first page, if you wouldn't mind
12 scrolling down, Fatima, to the bottom of page 1,
13 Al Masah Capital annual report 2012. All right?

14 A. Correct.

15 Q. If we could go to page 5, there's a little slide there,
16 "What we do"?

17 A. Yeah.

18 Q. It talks about private equity, asset management,
19 corporate advisory, et cetera. Then the three platforms
20 from private equity, healthcare, education, food and
21 beverage; yes?

22 A. Yes.

23 Q. Then if we look to the left, under the heading, "Private
24 Equity", we have the words:

25 "With unparalleled track record of its investment

1 17:42 team, Al Masah Capital manages \$175m of [assets under
2 management] and offers its clients an exposure ..."

3 Yes?

4 A. Correct.

5 Q. The reason why it says that is because it is the truth,
6 that Al Masah Capital was managing those entities, those
7 platforms and the businesses that all of those
8 arrangements comprised?

9 A. You have taken us through all the five things that
10 Al Masah Capital was entitled to do for the companies,
11 which was established initially by its shareholders.
12 Some of them who had controlling stakes, some of them
13 who are third-party investors were bigger.

14 Yes, you have taken through between 331, I think 311
15 to 314, you have taken us through those agreements and
16 the five things that you do as a result of those
17 corporate advisory, investment advisory, investment
18 management, whatever name you could do.

19 Those were the roles that we are doing for these
20 companies. That is recruiting the management team,
21 letting them run the business, have oversight of them,
22 trying to provide a profitable exit to the investors as
23 shareholders of those companies.

24 Q. Page 6. This is our history. The first paragraph is
25 devoted again to you, the founder, and how Al Masah

1 17:44 Capital came to be found. It talks about how you or
2 Al Masah established the -- sorry, I'm being asked if we
3 can zoom in, because no one can read it. I certainly
4 can't.

5 A. Yeah, I can't.

6 Q. Can you read it now, Mr Dash?

7 A. Yes. First paragraph, second paragraph?

8 Q. I was on the first paragraph, so I'll start again, now
9 that you can read it. The first paragraph is devoted to
10 you, the founder, and how it was that you came to create
11 Al Masah Cayman. And then the second paragraph says:

12 "Operations picked up significantly in 2011 on the
13 private equity and fixed income fronts with the debut of
14 the healthcare platform ..."

15 Then, in 2012, establishment of Al Najah Education
16 and then a healthcare portfolio, of course, which is
17 HML; yes?

18 A. I'll read it. It says:

19 "In 2012, Al Masah strengthened its private equity
20 businesses through the establishment of Al Najah
21 Education Ltd, an educational platform which few months
22 later acquired Horizon English School, a primary UK
23 curriculum school. Our healthcare portfolio expanded as
24 HML acquired an additional 6 medical centers and 2
25 pharmacies."

1 17:46 Q. Exactly. Then if we can go to the second column, and
2 it's the second paragraph of the second column:

3 "In addition, Al Masah Capital established a new
4 private equity fund that aims to invest in the food and
5 beverage sector ..."

6 If we look at the slide above, page 5, the top of
7 that one, it's the green boxes I'm interested in, we can
8 see that the three platforms that you have here are
9 healthcare, education and then food and beverage,
10 recently launched; yes?

11 A. That's correct.

12 Q. Food and beverage recently launched is Diamond
13 Lifestyle, isn't it?

14 A. That's correct.

15 Q. Then let's go back to where we were, page 6, second
16 paragraph in the second column:

17 "In addition, Al Masah Capital established a new
18 private equity fund that aims to invest in the food and
19 beverage sector ..."

20 That sentence is referring, isn't it, to Diamond
21 Lifestyle?

22 A. That is correct, but that nomenclature is wrong.

23 Because it was established as a company, as
24 a shareholding company.

25 Q. It's in an annual report that is going out to your

1 17:48 shareholders and others, no doubt, purporting to be the
2 activities of your company, Al Masah Capital?

3 A. That's correct. Like you could see before, it says
4 three platforms, that's the slide before. And here,
5 obviously, somebody who's writing, he's done a mistake.
6 He says "fund". But it's very clear in the slide above,
7 he says "platforms".

8 Q. You would have read this annual report in its final
9 draft before it went out, Mr Dash, wouldn't you?

10 A. I would not have a detailed read of this. I think it
11 goes into some 70, 80 pages, I believe. I would have
12 looked at the key part, which is my message, the
13 chairman's message, and I think mostly the board of
14 directors, the advisory board. I think that's about it
15 and leave it for my senior management to look at the
16 remaining part of the document.

17 Q. First of all, it's 51 pages, a lot of which are
18 pictures. But secondly, at 2012, your business had
19 taken off, if what is said in here is true or --

20 MR HILL: Just to be clear, sorry to interrupt my learned
21 friend, it's actually 98 pages.

22 A. 96 pages.

23 MS CLARKE: I have only got 51 -- I see, because they are
24 doubled up. Okay, fine. Doing the maths, that may well
25 be right.

1 17:50 But my point, I think, is the same. That a lot of
2 these pages, let's face it, haven't got a lot on them.
3 And all you would have to do is check the important
4 bits, which is the written representations and surely
5 given the role that you had in this company, you would
6 have done that, wouldn't you?

7 A. No, the written representations to look for accuracy
8 would be done by the compliance team and the other
9 management team, the senior management team. It would
10 not be done by me. You do not expect the CEO, who's
11 looking at developing a business, to read 96 pages of an
12 annual report.

13 Q. Mr Dash, you were perfectly happy, weren't you, for this
14 document to represent that this was a fund?

15 A. First of all, I think we need to accept as to who this
16 document was done for. The Al Masah Capital Ltd annual
17 report was not for investors. It was for its own
18 shareholders and for PR purposes.

19 Q. That's my point. It's not just for the existing
20 shareholders. It's for PR purposes. PR means getting
21 the name of this company out into the public domain as
22 being something that people want to give their money to,
23 to invest in what they're doing?

24 A. No, Al Masah Capital was not raising money.

25 Q. That wasn't my point. The PR, the point of PR is to

1 17:51 give the market or the public the impression that
2 Al Masah Capital are doing well financially and that
3 their products, therefore, are worth looking at.
4 A. No, it was never used anywhere and nobody says ever that
5 it was a marketing document. PR is a different thing
6 than marketing. Something for the press is not for
7 marketing. We are not selling any product here.
8 Q. You just did, Mr Dash. You just referred to public
9 relations.
10 A. Yes, public relations is not marketing of a financial
11 product.
12 Q. Public relations is about getting out the message that
13 Al Masah Cayman is doing well and that their products
14 are worth looking at and people spending money on them.
15 A. Doing well, yes, but not inviting anybody to invest.
16 Q. I see. Wasn't this document one of the documents that
17 was available for people who were considering investing?
18 A. No. It would not go out to people who are investing
19 into a fund. They will read a fund document,
20 a presentation, just like you saw before, of Al Masah
21 Capital Ltd, and if they wish to know, but usually
22 people who are interested to invest, where they are
23 investing in, to have the prospectus of that particular
24 fund or that particular company. People are not
25 interested to know about the history of the management

1 17:53 form. I haven't seen at least people asking for this
2 particular document ever.

3 Q. I see.

4 A. Except could be joint venture partners or PR firms.

5 Q. I see. So you say, then, that the fact that this
6 statement was made in this document has nothing to do
7 with you and is largely irrelevant anyway. Is that the
8 position?

9 A. That's correct.

10 Q. Can we go to a different type of document and have look
11 at an email. This is C010, SKD 3-1.

12 A. Yes.

13 Q. This is an email chain with -- we start at the top, as
14 one has to do with email chains, unfortunately. It's
15 a long one, I'm afraid. But page 25 of 26 is, I think,
16 where it all starts.

17 If we have the top of page 24 visible, Fatima. Then
18 you can see -- sorry, the bottom of page 24 visible.

19 This is an email chain between Mr Cameron of the
20 DFSA and Mr Singhdeo. I appreciate that you're not
21 copied into this, but I think that position changes as
22 we go up the chain. But I thought I better set the
23 scene, if you like, by starting at the bottom.

24 What appears to be happening, I'm going to
25 paraphrase it, because it's 26 pages, is that Mr Cameron

1 17:56 is querying with Mr Singhdeo information that has been
2 provided by Mr Singhdeo to the DFSA; correct?

3 A. Yes, as per the reporting here, reporting format, yes.

4 Q. You're not copied into this, but I'm only doing this to
5 set the scene, so I'll try and take it as quickly as
6 I can. But he has referred to a private equity fund and
7 then, "A Healthcare Fund will provide \$3.3M." He's
8 asked:

9 "2. Please provide details regarding the product
10 and services provided by AMCML.

11 3. An Education fund will provide \$3.6M. Please
12 provide details regarding the product and services
13 provided by AMCML."

14 Right? That's what he's referred to those entities
15 as in that email.

16 Then if we go up the page, you see at page 23 and by
17 this stage, Mr Singhdeo, in replying to Mr Cameron, has
18 copied in you.

19 A. Yes.

20 Q. Given, of course, that this is a communication with the
21 DFSA --

22 A. Has also copied in the compliance officer also.

23 Q. Yes, all right, fine. But obviously, it's your name
24 that I'm interested in, since you're the one I'm asking
25 questions of. But given that this was a communication

1 17:58 with the DFSA, you would no doubt have taken a keen
2 interest in it, wouldn't you?

3 A. I would do.

4 Q. What this email is, is a reply by Mr Singhdeo to the
5 email that we looked at originally; yes?

6 A. Yes.

7 Q. What seems to have happened is that Al Masah Capital's
8 projections had been provided by mistake instead of
9 Al Masah DIFC?

10 A. That's correct.

11 Q. Then the questions are answered and when we get to
12 number 2, a healthcare fund, which of course is
13 a reference to HML, isn't it?

14 A. Can I ask the number 1 also? At that point in time in
15 20 -- sorry, sorry, I know.

16 Q. Can we then look at number 2, "Healthcare Fund" is
17 a reference to HML, isn't it?

18 A. Not really. As you could see:

19 "AMCML will be providing advisory services to the
20 parent company, which has got a mandate to manage
21 a healthcare company."

22 Q. That's my point. What that is talking about is HML.

23 A. HML, yes.

24 MR HILL: Just to be clear, that "Healthcare Fund" quote was
25 taken from the DFSA's email. That's not coming from the

1 18:00 company. I think my learned friend --

2 MS CLARKE: I know that.

3 MR HILL: Please --

4 -- (overspeaking) --

5 MS CLARKE: Well, I'm sorry, but that's why I referred to
6 the original email, so that it was clear that that was
7 the DFSA asking questions and using that terminology.

8 PRESIDENT: Mr Hill, I don't think we're confused about
9 that, so you may move on.

10 MS CLARKE: Thank you very much.

11 "AMCML [Al Masah DIFC] will be providing advisory
12 services to the parent company ..."

13 The parent company of Al Masah DIFC is Al Masah
14 Cayman, isn't it?

15 A. Al Masah Cayman, the parent company, that's correct.

16 Q. Which has got a mandate to manage a healthcare company?

17 A. That's correct.

18 Q. So that's what Mr Singhdeo is telling the DFSA?

19 A. That's correct.

20 Q. What the regulated entity, Al Masah DIFC, will be doing
21 in relation to HML. And it is just as the written
22 agreements that we went through this morning show:
23 providing advisory services to Al Masah Cayman?

24 A. That's correct.

25 Q. The same with the Education Fund, which is at item 3?

1 18:01 A. That's correct.

2 Q. That's ANEL, isn't it? That's a reference to ANEL.

3 A. That's correct.

4 Q. The same statement is made:

5 "[Al Masah DIFC] is expected to provide advisory
6 services to the parent company, on an expected mandate
7 to manage a education holding company."

8 A. That's correct.

9 Q. Again, exactly in accordance with the written agreements
10 between AMC and AMDIFC that we looked at this morning?

11 A. That's correct.

12 Q. The service that AMDIFC was providing was advisory
13 services to AM Cayman?

14 A. Yes. The agreement, as we all saw today, it said
15 "investment advisory" and "advisory agreement", that's
16 correct.

17 Q. So advisory services only?

18 A. Investment advisory, we saw two agreements saying
19 "investment advisory" today.

20 Q. If we could just finish this email, item 4, the question
21 was asked:

22 "A revenue stream will commence from placement
23 income. Please provide details as this equates to
24 approx. \$6.7M."

25 The answer that Mr Singhdeo gives is:

1 18:03 "We have removed this placement fee income in the
2 revised projection sheet as the same will be earned by
3 the parent company."

4 A. That's correct. We have been very transparent to talk
5 about placement income with the regulator. This is what
6 it says.

7 Q. What it's saying is: placement fee income is being
8 removed, because that's being earned by HMC, not the
9 regulated entity, DIFC.

10 A. What it is saying is as per the agreement, the placement
11 fee income will now be earned by the Cayman company, not
12 the DIFC entity, because the agreement number 314 that
13 is there between DIFC, providing all the staff for the
14 sales services for the products and the salaries that
15 has been paid will be done. That's why the parent
16 company will be paying the salaries for the placement
17 team in DIFC, as per the exhibit 314 that we saw today.
18 And the placement fee income will be booked -- instead
19 of DIFC, will be booked in the parent company.

20 MS CLARKE: Sir, I have been sent a reminder about giving
21 the shorthand typist a break. So I don't know whether
22 that would be a convenient time.

23 PRESIDENT: I was waiting till you got to the end of this
24 document, which you now have. So we'll break now for
25 five minutes.

1 18:04 MS CLARKE: I've got to the end of this email. I haven't
2 got to the end of this document, but given that we have
3 two more pages --

4 PRESIDENT: Whatever you have got to the end of, we are
5 going to have a five-minute break and we'll start again
6 in five minutes.

7 (6.04 pm)

8 (Short break)

9 (6.16 pm)

10 MS CLARKE: I'm very sorry about that. I had an IT
11 malfunction and I had to resolve it, so I apologise to
12 everybody for the delay.

13 PRESIDENT: Relax, it's very upsetting and destructive of
14 the concentration, so just take your time and when
15 you're ready, we'll continue.

16 MS CLARKE: Thank you. I'm very grateful.

17 Now, Mr Dash, we were in the middle of this email
18 chain. Could I ask you, please, to go to the next email
19 up from the one that we just looked at -- well, actually
20 that's not quite right, because what then happens is
21 there's a bit of toing and froing between Mr Cameron and
22 Mr Singhdeo, providing documents and forms and whatever.
23 But the one I'm interested in is page 17.

24 This is Mr Naqvi of Al Masah Capital sending an
25 email to Mr Cameron of the DFSA, cc'd to Mr Singhdeo.

1 18:18 I appreciate you're not copied in on this, but I just
2 wanted to show it to you, because I think it sets the
3 context of the emails that we'll be looking at further
4 up.

5 It says:

6 "... please find attached the following ..."

7 And it attaches a number of documents relating to
8 certain funds, doesn't it? Do you see that?

9 A. That's correct.

10 Q. Then if we could go up the page -- sorry, just on that
11 email, item 3 is a board resolution, which appoints
12 AMCL. So AMCL DIFC, as the investment manager for the
13 SIF fund structure?

14 A. That's correct.

15 Q. Which board would have resolved that appointment?

16 A. It says, "AMCL DIFC", right?

17 Q. It says:

18 "3. Board resolution appointing AMCL DIFC as the
19 investment manager for the SIF fund structure."

20 I'm just saying, which board do you think -- you may
21 not know and if you don't know, please say, but which
22 board --

23 A. No, but I think it's very clear, "AMCL DIFC", it says.

24 Q. All right, but which is the board that has appointed
25 AMCL DIFC as the investment manager for the SIF fund?

1 18:19 A. The SIF fund board, the SIF funds board, which is the
2 Luxembourg fund.

3 Q. Then there's also there an investment agreement between
4 AMC Lux and AMCL DIFC included, isn't there?

5 A. That's right.

6 Q. That's in relation to that. Then if we go up, one thing
7 we don't have or at least in the documents that you've
8 produced or your solicitors have produced on your
9 behalf, Mr Dash, is any board resolution from any of the
10 four investment companies that we're concerned with,
11 appointing Al Masah DIFC as the manager of their private
12 equity business?

13 A. Because it is not needed, because it is not a fund
14 structure. It is not a fund. In a fund, you have those
15 things needed. Because those were not funds, there was
16 no need for that.

17 Q. You would say, then, would you, that there didn't need
18 to be any kind of board resolution?

19 A. A board resolution --

20 Q. Or anything of that kind?

21 A. There was investment management agreements that was
22 there between the Cayman --

23 Q. I know, yes.

24 A. -- and the holding companies and then the Cayman entity
25 and the DIFC entity, yes.

1 18:21 Q. You say that's all that was needed, nothing else,
2 nothing else from anyone else?

3 A. That's correct.

4 Q. If we just keep going up the page, to page 12. And if
5 you could go to the bottom of page 12, Fatima.
6 Christian Cameron of DFSA to Mr Naqvi, with you cc'd in,
7 and that email says:

8 "... given the proposed role of the DIFC entity to
9 act as promoter and initiate the set up of the fund in
10 Luxembourg I would be grateful if you could review the
11 DFSA's Financial Service of Managing a Collective
12 Investment Fund as per GEN Rule 2.12. This rule
13 stipulates that managing a collective investment fund
14 means 'establishing, managing or otherwise operating or
15 winding up a Collective Investment Fund ...'"

16 Yes? Then it goes on to say:

17 "It appears on the face of it that to act as a
18 promoter and initiate the set up of the proposed
19 Luxembourg fund that the DIFC entity would require an
20 upgrade of licence to include Managing a Collective
21 Investment Fund. This is something which the firm has
22 previously expressed an interest in achieving but was
23 unable to do so given Cayman Islands restrictions in
24 relation to Managing an External Fund from the DIFC. I
25 look forward to hearing from you both with regards this

1 18:23 point."

2 All right? You were copied in on that email. And
3 if we scroll up the chain, what we can then see is an
4 email, from the bottom of page 10, it starts, and it's
5 from Mr Singhdeo, you're cc'd in. And it says:

6 "... We are keen to get a license upgrade to do and
7 manage a [CIF]."

8 That's what the response was. And then, as I say,
9 just to complete the picture, there was then a meeting,
10 I believe, and the meeting I think was one that you
11 attended; is that correct?

12 A. I have no recollection. I might have. Or maybe it was
13 with the lawyers.

14 Q. Anyway, but the point is that at that part of the
15 exchange, I don't think we need to look at any more, it
16 was that that sparked the addition to the licence that
17 the Al Masah DIFC entity had of operating a CIF,
18 wasn't it?

19 A. That is correct.

20 Q. That's the information that the DFSA was basing it on
21 about the Luxembourg proposal, when the extension was
22 considered and granted, wasn't it?

23 A. Correct.

24 Q. The next point I want to deal with is advice obtained
25 regarding the funds issue, the issue of funds generally.

1 18:25 I would like you to look at an email. It's C010,
2 SKD 3-4.

3 Mr Dash, in your witness statement, at your
4 paragraph 73 --

5 A. Witness statement number 2?

6 Q. Witness statement number 3, paragraph 73.

7 A. Paragraph?

8 Q. 73. Have you got it? When you're ready.

9 A. Yes.

10 Q. Just to set the scene, 73 talks about or lists at (a) to
11 (d) a number of entities that gave advice to Al Masah
12 DIFC that we're talking about.

13 A. That's correct.

14 Q. The first item is Walkers Dubai LLC; yes?

15 A. That's correct.

16 Q. Which was engaged, apparently, according to your witness
17 statement, as legal counsel, advising both Cayman and
18 DIFC on the laws of the DIFC and the Cayman Islands;
19 yes?

20 A. Correct.

21 Q. The reference is given, there is a footnote there, 43,
22 and if you follow it down, the footnote down, we can see
23 that the footnote reference is to SKD 3-4, which is the
24 exhibit that we're looking at now.

25 A. That's correct.

1 18:28 Q. If we go to the bottom of it, fortunately, this one is
2 only three pages. And, in fact, we can even start it on
3 page 2, so it's the bottom half of page 2, if you
4 wouldn't mind.

5 This is an email from Mr Singhdeo to Daniel Wood,
6 who works at Walkers. You are cc'd in on it and the
7 subject is:

8 "Opinion on marketing materials sent from [Al Masah
9 DIFC]."

10 Yes?

11 A. Yes.

12 Q. The content of the email says:

13 "... appreciate if you can advise us if there are
14 any implication/restrictions with DFSA based on our
15 existing license, if we are sending any marketing
16 materials or offering documents to various investors
17 through our Al Masah Capital Management emails.
18 Further, in case our license prohibits us from sending
19 these marketing materials, prospectus or offering
20 documents through AMCML emails then what are the ways to
21 avoid any such breach. Looking forward to hear from you
22 on the above."

23 Right? So that's the question that he asked.

24 Then if we go up the page, we have an email from
25 you. You send an email to Mr Singhdeo and Mr Wood,

1 18:30 following on from the email that Mr Singhdeo sent:

2 "Basically Daniel since you know our business model
3 of marketing financial products and managing them. If
4 we can do it legally through AMCML and how that can be
5 done. Particularly if we are marketing Cayman, lux
6 companies here in UAE and other GCC countries."

7 Right?

8 A. Yeah.

9 Q. Then if we go up the page, we have Walkers' response:

10 "Dear Shailesh and Singhdeo

11 We refer to your below emails. There are a few
12 layers to this advice so we have explored each below.
13 At the outset, we confirm that AMCML is licensed to
14 'arrange deals in investments' so you are prima facie
15 able to market and distribute products to investors in
16 or from the DIFC. However, there are a number of
17 additional laws/rules that need to be complied with.

18 First, AMCML is only able to market and distribute
19 products to investors that fall within the definition of
20 a 'Professional Client'. We presume this is the case.

21 Secondly, there are additional restrictions on
22 marketing Foreign Funds -- including Cayman Islands and
23 Lux funds. Such funds can only be marketed in or from
24 the DIFC in the following circumstances ..."

25 That, of course, is a reference to the question that

1 18:32 you, Mr Dash, posed in the email that we just looked at,
2 where you said:

3 "Particularly if we are marketing Cayman, lux
4 companies here in UAE and other GCC countries."

5 That was the question that you posed and the
6 response was:

7 "... there are additional restrictions on marketing
8 Foreign Funds -- including Cayman Islands and Lux
9 funds."

10 Then it says:

11 "... [they] can only be marketed in or from the DIFC
12 in the following circumstances:

13 -- where the custodian and investment manager of the
14 fund are both regulated by a financial services
15 regulator in a jurisdiction recognized by the DFSA ..."

16 That would mean, wouldn't it, that it could only be
17 DIFC, Cayman DIFC?

18 A. Sorry, Cayman?

19 Q. The only licensed entity was Cayman DIFC, wasn't it?

20 A. I don't get the question. Sorry.

21 Q. I'll start again. He's giving advice to you and
22 Mr Singhdeo about the questions that you posed; yes?

23 A. Correct.

24 Q. What he says is:

25 "... there are additional restrictions on marketing

1 18:33 Foreign Funds -- including Cayman Islands and Lux funds.

2 Such funds can only be marketed in or from the DIFC in

3 the following circumstances:

4 -- where the custodian and investment manager of the

5 fund are both regulated by a financial services

6 regulator in a jurisdiction recognized by the DFSA ..."

7 Yes?

8 A. Yes.

9 Q. Then he gives a list of recognised jurisdictions?

10 A. That's correct.

11 Q. Of course, Al Masah Cayman wasn't regulated or licenced

12 or authorised or whatever term you want to use,

13 anywhere, was it?

14 A. Al Masah Cayman was not regulated. No, it was -- no,

15 only through its wholly-owned subsidiary in DIFC.

16 Otherwise it was not regulated, no.

17 Q. Al Masah Cayman wasn't. So that would mean that

18 according to this advice, that you were being given,

19 Al Masah Cayman couldn't market a foreign fund in the

20 DIFC or from the DIFC?

21 A. No, Al Masah Cayman had an SIBL exempt, which is known

22 as the securities investment law to operate as

23 a financial services holding company. That it had at

24 that point in time.

25 But nevertheless, if I may say, since this is

1 18:35 a question in consideration now, this was exactly -- as
2 you could see, we were very frank in terms of our
3 communications with our lawyers, because they were
4 forming all the documents. We had in Cayman, by that
5 time almost three funds, we were building up the fourth
6 fund.

7 There is another exhibit where he is in discussions
8 with Christian Cameron about how to manage the funds out
9 of DIFC or whether to give it a self-advisory to the
10 DIFC. I can tell you the exhibit. I just have to look
11 for it. But there is in the exhibits that email is also
12 there. His communications with Christian. And I'm cc'd
13 as well.

14 But at the same time, while I'm asking about the
15 companies, and Nrupaditya is asking for the whole
16 company, and as advice for the whole company, I was more
17 worried about the holding companies. And I ask him
18 exactly the question. And the last paragraph, he gives
19 the answer to that, saying that he's ready to help more,
20 but the compliance officer is the one who's responsible
21 and needs to tell us what it is.

22 Then he gives us information saying that these
23 companies are not foreign funds, which I'm sure you have
24 the exhibit, and it is there as well. So they do not
25 require the same approvals or the same regulations that

1 18:36 a fund would require, and they are not DIFC and they are
2 not a fund.

3 Q. Then can we just finish this email. This is what he's
4 saying to you, and I'm not going to get involved in the
5 legal niceties of all of this, because obviously, that's
6 going to be for the lawyers at a different time. But
7 given that you're copied in on the email, I just wanted
8 to get your take on it. What he's saying is that there
9 are restrictions on the marketing of foreign funds from
10 the DIFC, yes?

11 A. That's correct.

12 Q. He sets out three bullet points, for example, the
13 restrictions that there are; correct?

14 A. That's correct.

15 Q. That's the advice that you got from Walkers. But of
16 course, that advice does not specifically relate to the
17 holding companies and what was happening with them?

18 A. Correct.

19 Q. The next document, if you'll just bear with me, I just
20 want to check a reference.

21 The next document is R003, volume 3, at page 80.

22 I think that's one of the things you were telling us
23 about just now, Mr Dash?

24 A. Yes.

25 Q. But Walkers did give advice in respect of each of the

1 18:39 four investment companies. This one happens to relate
2 to Gulf Pinnacle, but the position is that there are
3 identical letters for each of the further four
4 investment companies, aren't there?

5 A. Holding companies, yes.

6 Q. Let's just look at one, because they're all in identical
7 terms. This one is for Gulf Pinnacle. The date on it
8 is 22 March 2017. By then, of course, the FCA's
9 investigation had already begun. In fact, it had been
10 going for over a year, hadn't it?

11 A. Yes, because when we tried to look for the document that
12 they had given us, at that time, and the advice, we
13 could not find it. So we said that, "The advice, we
14 have lost it, can you give us the fresh advice, please,
15 so that we can submit it."

16 Q. So you went to Walkers, did you, and you asked Walkers
17 to re-issue advice that they had previously given to you
18 before; is that right?

19 A. That's correct.

20 Q. Could you not just ask them for a copy of the advice
21 that they had re-issued to you before?

22 A. We could have. I mean, it's the same thing. I mean,
23 they issued a new one. Because this is what I had told
24 them, that, "The advice that you gave us, at that time,
25 we do not find in the file. Could you send it to us,

1 18:41 please."

2 Q. But could you not -- because, of course, the important
3 point, isn't it, that you would want to make, I imagine,
4 is that you took advice during the period that is
5 relevant, ie 2010 to 2016, before the investigation
6 began?

7 A. That's correct.

8 Q. If Walkers had given advice during that period, as
9 referenced in this letter, why didn't you just say to
10 Walkers, "We can't find a copy of that email. You will
11 have it on your files. Please provide it to us."

12 A. I guess I'm not a lawyer, I don't know. When I called
13 them, I just said that, "The advice that you have given
14 us, I'm not able to get it. Can you resend it to me,
15 please?"

16 Q. Mr Dash, you may not be a lawyer, but you're
17 a businessman.

18 A. That is correct. I refer to myself as an entrepreneur,
19 but that's okay.

20 Q. And you're no fool. And you would know that lawyers
21 would keep copies of advice given to clients, wouldn't
22 you?

23 A. I agree with that, I'm sure. We have to keep as well,
24 I guess.

25 Q. Exactly. Of course, you do. So you could have said to

1 18:42 them, "Please give us the advice that you gave us", back
2 in whenever it was?

3 A. We could have done that.

4 Q. But you didn't, did you? Instead --

5 A. No, we asked for, "That advice you have given us, we
6 need it now."

7 Q. Instead, what you have produced or at least what the
8 tribunal have, because we can only go on what you've
9 chosen to give us, and not on what else there maybe, and
10 I'm not suggesting there is, but we can only go on
11 what's here. What there is here is a letter dated
12 22 March 2017, which is after the DFSA investigation
13 began. It says that:

14 "We act as Cayman Islands legal counsel to the
15 Company ..."

16 What they seem to be saying there is that it's in
17 respect of Cayman Islands matters that they're advising
18 Gulf Pinnacle; is that correct?

19 A. That's correct.

20 Q. It says:

21 "The Company is an exempted company ...

22 We confirm that.

23 (a) the Company does not fall within the definition
24 of a 'mutual fund' as defined in the Mutual Funds Law
25 (as amended) of the Cayman Islands ... and therefore,

1 18:44 does not require to be registered or regulated by the
2 Cayman Islands Monetary Authority under the Mutual Funds
3 Law"

4 It says:

5 "(b) the Company is not required to be registered or
6 regulated under any other collective investment fund
7 regime (or similar) in the Cayman Islands; and

8 (c) The memorandum & Articles of Association,
9 offering document and subscription form of the Company
10 comply with Cayman Islands law."

11 As I say, there's one of those letters in identical
12 terms for each of the four platforms. What that letter
13 tells you is that, as far as Cayman Islands law is
14 concerned, it's not a mutual fund and doesn't have to be
15 registered under the collective investment fund regime
16 in the Cayman Islands. That's what it tells you,
17 doesn't it?

18 A. It also tells us that it is not a collective investment
19 fund.

20 Q. In the Cayman Islands?

21 A. In the Cayman Islands, yes.

22 Q. This letter only deals with the position under Cayman
23 Islands law, doesn't it?

24 A. That's correct.

25 Q. You have never disclosed in these proceedings any advice

1 18:45 from Walkers, or any other law firm, confirming that the
2 four structures are not CIFs under DFSA law, have you?

3 A. I think the views are given by KBH in the reply, whether
4 these are CIFs or not.

5 Q. Those are representations made on your -- or the
6 applicants' behalf to the DFSA in connection with the
7 DFSA's investigation. My question was different.

8 Given that you have disclosed four copies of this
9 letter, dealing with legal advice as to the position of
10 these four companies, under Cayman Islands law, as
11 regards whether they are funds or collective investment
12 funds, what you have not done is ever disclosed any
13 advice from Walkers, or any other law firm, confirming
14 that the four structures are not CIFs, under DFSA law,
15 have you?

16 A. I don't think I need to do that, because I have informed
17 the regulator, exhibit F405, and also to the regulator,
18 at SKD 3-1, we talked about our companies and when we
19 are doing the PIB forms, and they did not tell us that
20 these are funds to be registered.

21 So we had provided all that information. And
22 Walkers is the one who was preparing the documents and
23 you have seen all the company formations have been done
24 by Walkers. If they would think that these are
25 a foreign fund, they would have told us that this is

1 18:47 a foreign fund. And I have Total Solutions in
2 exhibit 700, who very clearly knew about the company,
3 the placement fees and they do not consider, it is also
4 in the reporting, to be a foreign fund.

5 Q. But what you haven't done is provided any advice
6 equivalent to the letter that we have just looked at,
7 have you?

8 A. No. What I'm saying is we have taken all the advice as
9 per the exhibits that we have given and shared our
10 communication with the lawyers, with the regulators and
11 the compliance officers.

12 Q. The other people that you mention in your paragraph 73
13 are Total Solutions; yes?

14 A. Yes.

15 Q. The reference there is SKD 3-6, which actually is -- we
16 can bring it up, but it's just a letter of engagement,
17 isn't it, so that just proves that they were engaged as
18 your external compliance consultants?

19 A. That's correct.

20 Q. Same question as regards them. You've never disclosed
21 an advice from or report from Total Solutions, which
22 says that the four structures we're concerned with are
23 not CIFs, under DFSA law, have you?

24 A. They are the ones who are filing the PIB after looking
25 at all the documents to the DFSA. I mean, after their

- 1 18:49 engagement, can you ask whether you have to give
2 a separate opinion on that? They're the ones who
3 engaged for this. What is the meaning of this
4 engagement letter then?
- 5 Q. So the answer is "no", is it?
- 6 A. Of course, when we saw the documents, we told them, "If
7 there is any violation, you have to tell us." Any
8 breach, that is the job of the compliance officers of
9 the companies. It's very specialised service. That's
10 why there are compliance officers. And it's
11 a third-party compliance officer, Total Solutions,
12 a company that we engaged, who is approved by the DFSA.
- 13 Q. So the answer is, no, you have never provided any advice
14 from them on that issue, have you?
- 15 A. There was no need for advice. They are working for the
16 company.
- 17 Q. Same with Protiviti, which is the other entity that's
18 mentioned?
- 19 A. That's a risk management company.
- 20 Q. So they haven't -- you have never disclosed to us any
21 advice from them about the issue of whether these
22 structures are CIFs, under DFSA law?
- 23 A. They are internal auditors. They are presenting to the
24 board every quarter or every six months, what they think
25 are the risks and the internal audit points. I think

1 18:50 the real responsibility lies with the lawyers and the
2 compliance team members, the external compliance
3 providers.

4 Q. I'm going with the people that you have listed, Mr Dash,
5 in your paragraph 73.

6 A. Yeah, we are talking about -- we had outsourced
7 arrangements with all of them.

8 Q. PricewaterhouseCoopers, of course, were the auditors, so
9 perhaps they're in a slightly different position.

10 A. That's correct.

11 Q. Of course, the other person that you have mentioned
12 there is Helen Baines.

13 A. That's correct.

14 Q. There's no document that you have produced from her,
15 where she has given specific advice on this issue of
16 whether these four structures are CIFs, under DFSA law,
17 have you?

18 A. She's an employee of the company. She's the group
19 compliance head. What particular advice she has to
20 give? She's the one managing, she's the licensed
21 officer, she's the one reporting to the DFSA of any
22 breaches. What are we talking about here?

23 Exhibit F405 shows all her communications with
24 Jonathan Reid and Michelle Klitscher, and how she's
25 describing all the companies. And despite that, she's

1 18:51 not saying that any of these four companies are funds.

2 Q. So the answer is "no" again, isn't it? Mr Dash?

3 A. I think I gave my answer.

4 Q. The answer to my question is "no", isn't it?

5 A. An employee of the company doesn't need to give an
6 advice. If they see a breach of the regulations, as
7 head of compliance, they're supposed to report to the
8 DFSA, supposed to report to us and we share the
9 information with the regulator. If they did see
10 a breach, they should have told us five years back,
11 three years back, two years back.

12 Q. Thank you, Mr Dash. That's all I want to ask on that
13 issue.

14 Sir, I note that it's not quite 4 o'clock, but I'm
15 planning to move to something else and there is a point
16 that I'd like to check with my team, if possible. I'm
17 not trying to shirk doing my full stint, but I wonder
18 whether you would indulge me by finishing, I think it
19 would be eight minutes earlier, and I apologise for
20 that.

21 MR HILL: Sir, I wonder if I could just --

22 PRESIDENT: Just one second. Can someone please take down
23 the letter of engagement document, because it's quite
24 difficult for me to see the entire team we need to see
25 and speak to with the document up.

1 18:53 Mr Hill, you wanted to say something.

2 MR HILL: Yes, only to put down a marker. Obviously,
3 Ms Clarke is managing her own timetable. I did say that
4 we had hoped, particularly as I gave Ms Clarke part of
5 yesterday afternoon, that she might finish both Mr Dash
6 and Mr Singhdeo by the end of tomorrow. That is not
7 looking --

8 PRESIDENT: I'm about to ask her about progress, so shall we
9 see what she says to us? And then if you want to ask
10 some more, you can.

11 MR HILL: I'm grateful.

12 PRESIDENT: Ms Clarke, what I was going to say is that,
13 obviously, if it's convenient, we will finish eight
14 minutes early. But I would like to get, as would my
15 colleagues, some indication from you of how you think
16 you're going in time terms.

17 MS CLARKE: Certainly. My best estimate is that I will
18 finish Mr Dash tomorrow. It may not be until after
19 lunch and that's one of the things I will obviously
20 review overnight, is how much of the remaining material
21 that I have needs to be asked in the light of where
22 we've got to today.

23 So it may be possible to start Mr Singhdeo tomorrow,
24 but I do not believe that I will finish with him
25 tomorrow.

1 18:54 PRESIDENT: Okay. Mr Hill, did you want to say anything
2 else about that?

3 MR HILL: Not really. We had expressed a hope of finishing
4 both. But to be fair to my learned friend, her own
5 timetable had envisaged she might need time on Sunday
6 with Mr Singhdeo, so I can't make much objection.

7 I would, though, stress that we must finish Mr Dash
8 tomorrow, come what may, because it would be very
9 unfortunate for him to be in purdah.

10 MS CLARKE: I'm not going to promise, because 24 years at
11 the Bar has taught me that one should never make rash
12 promises, but I would be very surprised if we did not
13 finish Mr Dash comfortably tomorrow.

14 MR HILL: Well, I would say if there's any risk, we should
15 keep going now, because, by tomorrow afternoon, he will
16 have been over two days in the witness box and it
17 wouldn't be right, he's obviously -- given his position,
18 for him to be in purdah and for us not to be able to
19 speak to him over the weekend.

20 MS CLARKE: You have heard what I have said.

21 PRESIDENT: Well, I did hear what you say, but your
22 indication was you hoped it was by lunchtime, but you
23 couldn't promise. Now you're saying you can't promise
24 it won't be all day.

25 MS CLARKE: No --

1 18:55 PRESIDENT: I think, frankly, if you are all day tomorrow
2 with Mr Dash, it would cause us some concern.

3 MS CLARKE: I will finish Mr Dash tomorrow, come what may.

4 PRESIDENT: I may have spoken out of turn, as far as my
5 colleagues are concerned. Do either of you want to add
6 anything?

7 MR MALEK: Nothing from me, Mr President.

8 MR STOREY: Nothing from me either, thank you.

9 PRESIDENT: So we'll stop now and start again tomorrow at
10 10 o'clock. Thank you very much.

11 (6.56 pm)

12 (The hearing adjourned until 1 pm on the following day)

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I N D E X

MR SHAILESH KUMAR DASH2

Cross-examination by MS CLARKE (continued)2