
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 2

Monday, 11 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: Let's start when you're ready, Mr Hill. Welcome
4 back, everybody.

5 Opening submissions by MR HILL (continued)

6 MR HILL: I dealt yesterday with the structural allegations.

7 I turn now to what we describe as the second group of
8 allegations, those relating to whether placement fees
9 were sufficiently disclosed in the marketing material.
10 We say the marketing material was not misleading. That,
11 too, was approved and vetted by competent individuals,
12 including Ms Baines. And we certainly don't accept that
13 she did not know about placement fees, which is her
14 evidence.

15 Many of the points on this area are covered in the
16 skeleton and points to be picked up in closing. Can
17 I just pick up on one or two now.

18 The first is the suggestion from the DFSA that
19 placement fees were in some way buried by being referred
20 to in the articles. My learned friend expanded on that
21 orally. That is to ignore the subscription form. The
22 subscription form could not be clearer about the
23 investors binding themselves to the terms of the
24 articles.

25 The articles are given prominence in the

1 13:01 subscription form. And we'll be going to that. And it
2 was noticeable yesterday that my learned friend didn't
3 take you to all the references in the articles we find
4 in the written form. All the references to the articles
5 that you find in the subscription form.

6 My learned friend made a point yesterday about
7 investors perhaps not having read the articles, but the
8 subscription forms couldn't have made it clearer that
9 the articles were what they were signing up to. There
10 was also a provision in the subscription forms, which
11 again my learned friend didn't take you to, which
12 confirm that the investors had been provided with all
13 requested materials.

14 It's also worth bearing in mind that these
15 shareholders were investors who Ms Baines classified as
16 professional investors. While my learned friend refers
17 to the articles as including four pages of legal jargon,
18 that is not a realistic description to give to the legal
19 arrangements by which professional investors clearly
20 agreed to be bound.

21 The second point I would just like to pick up now is
22 a point that arises from paragraph 101.5 of the DFSA's
23 skeleton, where they make a semi-concession -- rightly,
24 I suggest -- that the brokerage fees paid to third
25 parties could be said to come under the description in

1 13:02 the articles.

2 It's always worth bearing in mind that it's not just
3 a question of Al Masah Cayman receiving placement fees.
4 Most of these investors were introduced by third
5 parties. All of whom received placement or brokerage
6 fees or of a similar type. Those fees, of course, came
7 out of the fees that Cayman charged as placement fees.

8 The DFSA rightly concede or semi-concede that the
9 articles are apt to cover those third-party brokerages.
10 They suggest that wouldn't extend to Al Masah Cayman's
11 placement fee. These are, of course, the same type of
12 fee. It is a brokerage or placement fee in return for
13 introducing the investor with new capital. When you
14 look at the articles, there's no meaningful distinction
15 to be drawn between the position of third-party brokers
16 and the position of Al Masah Cayman.

17 On that aspect, can I also mention DFSA's attempts
18 to address a point that arises in Mr Dash's witness
19 statement, which is that it is common for fees of this
20 nature not to be referred to specifically.

21 Mr Dash's example is of a proposed agreement with
22 Nomura and a proposed letter to prospective investors
23 that Nomura intended to provide.

24 That draft, that did not refer to Nomura receiving
25 brokerage fees, which it was going to do, those are the

1 13:04 brokerage fees that Nomura was going to receive from the
2 platform company, just as Al Masah Cayman.

3 The DFSA did not suggest that Nomura itself might
4 have been doing anything wrong by sending a letter along
5 the lines of their proposal. Instead, the DFSA's stance
6 is to say that in circumstances where Nomura was not
7 charging additional fees, incentive or management fees,
8 there's no appropriate parallel with my clients. That
9 is a lawyer's argument. It doesn't work. In all these
10 structures, there are fees coming out in management fees
11 and there are incentive fees connected. The Nomura
12 example is no different.

13 In the Nomura example, they were to be paid
14 a 3 per cent success fee by ANEL. That's at clause 3.2,
15 for your note, at C010, SKD3-3, page 2. Nomura proposed
16 to disclose that ANEL was paying management fees to
17 Regulus, but its letter did not propose to disclose its
18 own fees to ANEL. The Nomura letter, just for your
19 note, begins at page 27 and the fees aspect is at
20 page 32 of the exhibit I have just referred to.

21 These two fees are distinct. The manager is getting
22 a 2 per cent management fee. The placement agent is
23 getting a 3 per cent success fee. And there's no
24 reason, just to pick up one of the DFSA's
25 counterarguments, there is no reason why investors

1 13:05 reading that material would have assumed that Nomura's
2 fees is perhaps coming out of regulative management. It
3 wasn't. And if investors had made that assumption, it
4 would be wrong. That's not something that you could
5 assume reading into Nomura's proposal.

6 This would be, quite simply, an additional fee to
7 the management fee, which Nomura was not disclosing, and
8 it wasn't coming out of the management fee itself.

9 Nomura itself had no difficulty with the fact they
10 were proposing not to disclose it. Their position is no
11 different than in this case where Al Masah Cayman was
12 both the manager getting the management fee and the
13 placement agent getting the placement fee.

14 The investor could, I suggest, be expecting the
15 company to be -- the platform company to be paying
16 somewhere a placement fee. And indeed, in some cases,
17 as we will come to, offering material referred to -- the
18 offering documentation referred to the fact that
19 Al Masah Cayman was the placement agent.

20 Whether the fee might be paid to the referral agent,
21 a third party, or to Al Masah Cayman itself, there's no
22 reason to think the fee would be, for instance, coming
23 out of Al Masah's (unclear ...) just Nomura's.

24 We do suggest that the Nomura example is very apt.
25 It does show placement fees are common and they're not

1 13:07 separately disclosed. And it does support our case that
2 to the extent any disclosure was needed, it was more
3 than sufficiently provided in the subscription forms and
4 in the articles.

5 My learned friend suggested yesterday that investors
6 would have assumed that 100 per cent of their
7 investments to ANEL were being turned to direct
8 investments in schools. That is a false point.
9 Investors would not make that assumption. They would
10 assume that there were all sorts of expenses that the
11 investment company had, including various types of fees.
12 Placement fees is just one such expense. There's an
13 element of circularity in that.

14 I should just also make clear we don't accept the
15 suggestion made yesterday that the one time placement
16 fee is the fee that cost the most money. We don't
17 accept that arithmetically.

18 That's what I wanted to say about placement fees in
19 the literature in opening.

20 That brings me to the third group of allegations,
21 which are what we have described as a series of episodes
22 which the DFSA rely on.

23 I'm not going to go through all these episodes
24 individually. We do suggest the case on them has been
25 put unfairly and exaggerated to a significant extent by

1 13:08 the DFSA. Just to give one example, we set out at
2 paragraph 108 of our skeleton, quite a detailed account
3 of the sequence of events regarding the corrections put
4 out to shareholders in connection with the ANEL annual
5 report.

6 The presentation of that allegation by the DFSA has
7 been consistently unfairly presented and there was
8 another unfair presentation of it yesterday. It did not
9 correctly characterise what happened.

10 Just to give one instance of that yesterday. My
11 learned friend took you to exhibit F207, which was the
12 email in which Mr Lim instructed that the letter that
13 the DFSA criticised, which refers to printing errors, to
14 be couriered to every shareholder with copies of the
15 audited financial statements. The suggestion being made
16 yesterday appeared to be Mr Lim had deliberately
17 instructed the printing errors letter be sent to
18 shareholders rather than the Ernst & Young draft.

19 That impression was not a fair impression. Mr Lim's
20 email was sent at 4.35 pm, 26 November. This was in
21 circumstances where he had already sent a draft letter
22 to Ernst & Young, volunteered and not required by Ernst
23 & Young, suggesting that they comment on his draft. And
24 they hadn't returned comment on his draft, even though
25 the Ernst & Young deadline was about to expire.

1 13:10 Mr Lim's email with his alternative version,
2 I should say a version approved by the third-party
3 internal auditors, that version was sent when the
4 deadline was expiring in circumstances where Ernst
5 & Young had not said no letter should be sent, had not
6 yet commented on the draft that had been sent to them.

7 That email to shareholders went out after 6.26 pm.
8 It wasn't until 7.45 pm, later in the day, that Ernst
9 & Young first said they were not satisfied with the
10 earlier draft that had been provided. That's
11 exhibits 702 and 703.

12 We should say that the Ernst & Young letter, after
13 they did comment, was then the one that they were happy
14 with, then couriered to all shareholders, as my learned
15 friend seems to accept. All of that is accepted, is
16 explained in paragraph 108 of the skeleton. It's
17 regrettable we are still seeing unfair characterisation
18 of this.

19 The other episodes dealt with by my learned friend
20 and relied on by the DFSA also involved a lot of adding
21 two and two together to make 22, in our submission.
22 That was rather apparent from the series of logical
23 jumps and ambitious inferences, which was characterised
24 by many of my learned friend's submissions yesterday.
25 Lots of these points are for the witnesses, so we'll

1 13:11 have to see how things develop.

2 To give one example, when it came to their
3 description of the email sent to what we call
4 distributor B, which is Noor Bank, my learned friend
5 attempted to tie Mr Dash into the events by referring to
6 an email from him at the end of a chain of
7 correspondence where he said, "That's right".

8 That was a very unfair synopsis of what actually
9 happened. When you see the full email exchange, which
10 no doubt you will, you will see that Mr Dash's first
11 response to distributor B's request for audited
12 statements was simply to ask his team to provide the
13 information.

14 He says, "Have your team send the info by tomorrow
15 morning."

16 That's at exhibit 764, page 5. In other words, his
17 actual position is he had no difficulties at all with
18 audited statements being provided to this distributor.
19 What then happened is the chain of emails carries on
20 without him, there's a subsequent email in the chain
21 that he does get copied in on again, which Mr Eyad says:

22 "Send them the annual report as it includes the
23 financial statement."

24 And Mr Dash says, "That's right."

25 What he said accorded with his own understanding.

1 13:13 We explain that in his evidence.

2 So there's no fair basis for making criticism
3 against Mr Dash for this episode. And this is just one
4 example where it's important to look carefully at what
5 actually happened, what the actual involvement and
6 understanding of the relevant information really was.

7 Just one more point of detail on that area. Part of
8 the DFSA's case is that the ANEL 2013 annual report was
9 emailed to shareholders. That's what the DFSA say. The
10 covering email they rely upon explained what the annual
11 report was in fact meant to provide. It described the
12 contents as giving:

13 "A detailed insight into the company and the
14 business overview as well as the financial review ..."

15 Didn't say more than that, didn't refer to audited
16 financial statements. That fairly summarises what the
17 document was intended for. That's important when you
18 see the evidence that each of my individual clients
19 gives about their understanding of the document before
20 and what was given to them. That is at exhibit C002.

21 Putting all that together, we do invite you to look
22 carefully at what happened with each of the events, the
23 actual involvement and the understanding of the
24 individuals as distinct, for example, from what
25 Mr Agarwalla says, what Mr Agarwalla may have been up

1 13:14 to.

2 We will be inviting, as I say, the tribunal, to look
3 at each of these individually, look at each of my
4 clients individually and to conclude that they do not
5 put the episodes -- the events generally do not show
6 a lack of integrity on the part of my individual clients
7 or any of my clients as the DFSA has assumed. And nor
8 would the episodes justify penalties on the scale that
9 the DFSA are proposing.

10 That's all I wanted to say in opening. I'm sorry to
11 have extended into this morning, but hopefully not for
12 too long and we can now move on with the witnesses.

13 PRESIDENT: Thank you both very much indeed. We'll now move
14 on to the evidence. Ms Clarke, if you're ready with
15 your first witness.

16 MS CLARKE: Yes, we are ready with our first witness and it
17 will be Mr Clink. And my junior Mr Temple will be
18 taking the witness, so I'll hand over to him.

19 MR TEMPLE: Thank you. I don't think Mr Clink is in the
20 hearing room, so we'll have to wait for him to appear.
21 I hope someone is emailing him.

22 PRESIDENT: Why don't we take the pressure off you,
23 Mr Temple? We'll stop for five minutes and see where we
24 are in five minutes' time.

25 MR LAKE: Morning, sir. Just to let you know, we had primed

1 13:16 Mr Clink to be available at 10.30 this morning. I have
2 just emailed him, he is normally very quick to respond.
3 So I'm hoping that he will be available in just a few
4 minutes' time.

5 PRESIDENT: We'll break. That's quite understandable.

6 We'll break for five minutes and see where we are then.

7 (1.17 pm)

8 (Short break)

9 (1.29 pm)

10 MR ROBERT CLINK

11 PRESIDENT: Good morning, Mr Clink. Welcome.

12 Mr Temple, your witness.

13 Examination-in-chief by MR TEMPLE

14 MR TEMPLE: Good morning, Mr Clink. Before we start, can

15 I ask you to give an affirmation of the evidence you're
16 going to give.

17 WITNESS: Yes, please.

18 MR TEMPLE: If you repeat after me. I do solemnly sincerely
19 and truly declare and affirm.

20 A. I do solemnly, sincerely and truly declare and affirm.

21 Q. That the evidence I am about to give.

22 A. That the evidence I am about to give.

23 Q. Is the truth, the whole truth and nothing but the truth.

24 A. Is the truth, the whole truth and nothing but the truth.

25 Q. Thank you.

1 13:30 Can you please give the tribunal your full name and
2 address.

3 A. My full name is Robert Neil Clink. I have two
4 addresses. The main address is [redacted].

5 Q. I hope you've got a copy of your witness statement, but
6 so that we're all looking at the same thing, I'll ask
7 that document C003 be brought up on to the screen.

8 Fatima, can you scroll down that document to the
9 end, please.

10 Mr Clink, do you recognise that as your witness
11 statement?

12 A. Yes, I do, and that is my signature.

13 Q. Are the contents of that witness statement true, to the
14 best of your knowledge and belief?

15 A. That is correct.

16 Q. If you wait there, I'm sure there will be some questions
17 for you from the other barrister.

18 A. That will be fine.

19 Cross-examination by MR HILL

20 MR HILL: Mr Clink, you are an experienced investor; yes?

21 A. It's not my day job, sir. I do invest in things that
22 catch my attention, but I wouldn't class myself an
23 experienced investor.

24 Q. Paragraph 1 of your witness statement says:

25 "I am an experienced investor ..."

1 13:31 Is that incorrect?

2 A. As you put it to me, it's not my day job, but, yes,
3 I have various investments in different things.

4 Q. So is your witness statement you have just affirmed
5 correct when you say you are an experienced investor?

6 A. It is correct in that context.

7 Q. You are friends with Mr Martin Bond, aren't you, and you
8 discuss investment opportunities with him and on
9 occasion investing in the same investment products?

10 A. That is correct.

11 Q. You had a meeting with Mr Bose in November 2014, but
12 otherwise all your dealings in connection with the
13 Al Masah private equity investments have been through
14 Mr Bond or by email; yes?

15 A. Not primarily through Mr Bond, but, yes, primarily
16 through email.

17 Q. And with Mr Bond; yes?

18 A. No, we initially looked at the investment, we thought it
19 had good potential and I invested directly with Al Masah
20 and I contact them primarily directly through the
21 investor relations team.

22 Q. Because you say in paragraph 5 of your witness
23 statement:

24 "All of my other dealings with Al Masah was either
25 by email, or through Mr Bond."

1 13:33 A. Yes, primarily through email.

2 Q. It's right to say that all your dealings with Mr Bond
3 and Mr Bose took place outside the DIFC; yes?

4 A. Yes, yes, I've never been inside the DIFC, other than to
5 deal with this case.

6 Q. You have made four investments into private equity
7 platforms. I'm just going to go through them. First
8 you invested into the Healthcare platform in
9 November 2014; correct?

10 A. Correct.

11 Q. For that investment, you signed the subscription form,
12 which we have at exhibit F350, and I am going to ask
13 that to be brought up.

14 That's the subscription form -- I'm getting an echo.
15 I wonder if those not speaking could have their
16 microphones off.

17 So that's a subscription form, which you signed for
18 the Healthcare platform; correct?

19 A. Maybe scroll down, Fatima?

20 Q. Yes, please do.

21 A. That's correct. That is my signature. Yes, that is
22 correct.

23 Q. You explained to the DFSA in interview that you were
24 given this by Mr Bond in person. That's correct, yes?

25 A. I was given the subscription form, yes.

1 13:35 Q. By Mr Bond personally?

2 A. Yes.

3 Q. You have initialled every page in the bottom right-hand
4 corner, saying you have read it?

5 A. That's normally my style, yes.

6 Q. If we go back to the first page, if we look at the
7 bottom of your screen now, you can see the paragraph
8 that says:

9 "We, the undersigned, having received and read
10 a copy of the offering presentation of the Company dated
11 October 2014 hereby apply for the following ordinary
12 shares ..."

13 You were confirming you had read and received a copy
14 of the investment presentation; correct?

15 A. We have an investor presentation, yes.

16 Q. That was your confirmation, that was correct; yes?

17 A. Yes.

18 Q. Then scrolling down the page, Fatima, to (a), it
19 also says:

20 "We hereby confirm we hereby agree to be bound by
21 the memorandum and articles of association of HML as may
22 be amended or restated from time to time ('the
23 Articles') ..."

24 You were making clear, weren't you, that you were
25 agreeing to be bound by the memorandum and articles of

1 13:36 the company; yes?

2 A. Yes, that's what it says.

3 Q. Can we go to page 3 of the form, Fatima.

4 If you look at the top paragraph:

5 "We agree that the issue and allotment to me/us of
6 shares is subject to the provision of the articles, the
7 offering document and the provisions of this
8 subscription form including all schedules and
9 attachments hereto and my/our subscription for shares
10 will be governed by and construed in accordance with
11 Cayman Islands law. Confirm that, by subscribing for
12 shares, we are not relying on any information or
13 representation other than such as may be contained in
14 the articles, offering document and this subscription
15 form ..."

16 You were again agreeing, weren't you, that the issue
17 and allotment of shares to you is subject to the
18 provision of the articles; correct?

19 A. Correct.

20 Q. Then can we go back to the previous page, Fatima,
21 page 2.

22 Do you see what's now the top paragraph on that
23 page:

24 "I/we warrant we have the knowledge, expertise and
25 experience in financial matters to evaluate the risk in

1 13:38 investing in HML, aware of the risks inherent in
2 investing in shares, the method by which the assets of
3 HML are held and/or traded. I can bear the risk of loss
4 of my entire investment and I have been provided with
5 all documentation concerning HML as requested and have
6 satisfied myself completely before investing in the
7 shares."

8 You were confirming that you had the knowledge,
9 expertise and experience in financial matters to
10 evaluate the investment; correct?

11 A. It's not a problem there.

12 Q. You were also confirming that you had been provided with
13 all documentation concerning the investment, as
14 requested, that you had satisfied yourself; yes?

15 A. Correct.

16 Q. You suggest in your witness statement that you did not
17 in fact have the articles of association of the company.
18 That's what you say; yes?

19 A. That is correct.

20 Q. But you are a sophisticated investor and you were making
21 it clear in your subscription form that you were
22 agreeing to be bound by the articles; correct?

23 A. Right.

24 Q. You were also making it clear that as an experienced
25 investor, you had received all the documentation that

1 13:40 you requested; yes?

2 A. Correct.

3 Q. If it is correct that you did not have the articles,
4 then it was your decision not to ask for them; yes?

5 A. Correct.

6 Q. You're not suggesting that they were not available to
7 you if you had wanted to see them?

8 A. No, and I have no questions about the bona fide of the
9 investment. I'm quite satisfied with the investment, as
10 it stands in the assets that they own.

11 Q. Mr Bond, if he asked you for a copy of the articles --
12 if you had asked Mr Bond for a copy of the articles, he
13 would no doubt have provided them; yes?

14 A. It's not Martin's responsibility to provide the
15 articles. We know where to go if we wish to have
16 a copy.

17 Q. On your evidence, since you didn't ask for a copy of the
18 articles, whatever it is they had said, about placement
19 fees or anything else, you would have been agreeing to
20 be bound by those articles without knowing what they
21 said; yes?

22 A. Let me consider your question for a second.

23 We'd agreed to be bound by the articles of
24 association. It would be unlikely that the articles
25 would have indicated a placement fee. That would have

1 13:41 been pertinent investor information that would have been
2 upfront in the presentation. So I wouldn't have
3 expected to see a placement fee in the articles of
4 association.

5 Q. The presentation made clear, as we have seen in two
6 places, that you were agreeing to the articles and if
7 there had been more information about placement fees in
8 the articles, then it was your decision not to look at
9 the articles and not look for that; correct?

10 A. That is correct and I would have been surprised to see
11 a placement fee there.

12 Q. This was the first of your investments. You entered
13 into another investment in the Al Masah education
14 platform around the same time; correct?

15 A. February 5, 2015.

16 Q. We have the subscription form for that at F356, if that
17 could be brought up, please, Fatima.

18 If you could just scroll through, scroll down so
19 that Mr Clink can see this is the subscription form he
20 signed for the Al Najah investment.

21 Do you recognise that as your subscription form for
22 the Al Najah investment?

23 A. That is correct.

24 Q. That subscription form had the same provisions as the
25 subscription form we have just looked at. You agreed

1 13:43 again to be bound by the articles of that investment;

2 yes?

3 A. Correct.

4 Q. You confirmed, as we saw, because it had the same clause
5 we have just looked at, you confirm there again that you
6 had been provided all the documentation as requested and
7 satisfied yourself completely before investing?

8 A. Correct.

9 Q. Again, if you didn't have the articles of association,
10 that would have been your decision not to ask for them?

11 A. That is correct again.

12 Q. Then the next investment was made in February 2015, so
13 three months' later. Can we go to the subscription form
14 for that, which is at exhibit F351. Again, if we scroll
15 down. You recognise that as being your next investment?

16 A. Yes, that's correct. That's my details and that's my
17 signature.

18 Q. That again had the same provisions as the other
19 subscription forms. You are agreeing again to be bound
20 by the articles; yes?

21 A. Correct.

22 Q. Again, if you didn't see the articles, again it was your
23 decision not to ask for them?

24 A. Correct.

25 Q. Then your next investment was in November 2015. We have

1 13:44 the subscription form at exhibit F352. Again, if we
2 scroll down. That's your next investment, isn't it?

3 A. Correct.

4 Q. Again, agreeing to be bound by those articles as well;
5 yes?

6 A. Correct.

7 Q. You say in your witness statement it was not until you
8 met with the DFSA, on 12 December 2016, you were first
9 advised that a placement fee had been paid to Al Masah
10 Cayman?

11 A. That is correct.

12 Q. Just so we're all talking about the same thing, you
13 appreciate, don't you, this was not a fee payable by the
14 investor? The liability from the company you were
15 investing in, to pay Al Masah Cayman as a placement or
16 brokerage fee due from the investment company to
17 Al Masah Cayman, as a placement fee. You understand
18 that that's the structure?

19 A. I have no idea where the placement fee comes from. If
20 you look at my statement of account, for example, the
21 first investment where I invested \$272,000, at \$1.65 per
22 share, I have a finite amount of 164,848 shares. So
23 that is the complete value of my investment there on the
24 statement of account. So I have no idea where the
25 placement fee comes from or where it's gone to. I don't

1 13:46 have that information.

2 Q. But just so I understand, is it your understanding and
3 has it been suggested to you, the placement fee is a fee
4 that's due from you as an investor to the structure --
5 to someone in the structure?

6 A. I have no idea where the investment -- the placement fee
7 would come from. I understand there has been
8 a placement fee. Where the money has come from, I have
9 no knowledge of that.

10 Q. If I explain to you that what it is, is a liability
11 from, say, the Al Najah investment company to Al Masah
12 Cayman, not a liability from the investor, but
13 a liability from the company to the placement agent.
14 You understand that?

15 A. I understand what you're saying. I don't have any
16 evidence or seen anything to know that that's the truth
17 or not.

18 Q. But when you have been giving your witness statement and
19 expressing your understanding of what you did and didn't
20 know, were you assuming this was some kind of fee that
21 was due from you, as the investor, rather than
22 a liability from the investment company to the placement
23 agent?

24 A. I assume it has come from the investment. Which part,
25 I don't know. The collective part or individually,

1 13:48 I have no knowledge of that.

2 Q. You're saying you're assuming it's coming from the
3 investment. Again, this is something that's coming from
4 the company, it's a fee due from the company to the
5 placement agent. Do you understand that?

6 A. I understand what you're saying.

7 Q. Do you understand that you are still getting, in terms
8 of the amount of your shareholding, amount of dividends,
9 that's still calculated on 100 per cent of your
10 investment, not on some amount net of placement fee.
11 Do you understand that?

12 A. Well, you've mentioned the dividends, sir, and I do have
13 a question on that. In 2016, Al Masah declared
14 a dividend of 7 per cent. For me, that would have been
15 \$128,536. They only paid \$28,000. They were
16 \$100,000 short on the 2016 declared dividend. When
17 questioned on it, it was a case of we've decided to
18 change our mind, go away. I do have objection to that
19 point. As you mentioned dividends, I thought I would
20 bring that one up.

21 Q. Well, you're talking about something else. Can I just
22 get you to focus on my question. You appreciate, don't
23 you, that the amount of your shareholding, the amount of
24 dividends that you received is calculated on
25 100 per cent of your investment, not on your investment

1 13:49 net of some amount of placement fee? Do you appreciate
2 that?

3 A. Well, I think I've answered your question that I have an
4 objection to that, because you're saying that my
5 dividend is based on 100 per cent of my investment, as
6 it should be. But Al Masah are not exercising that
7 dividend properly, because they've declared 7 per cent
8 and paid only 1.75 per cent flippantly. So, yes, you
9 are correct and I'm responding that this is how Al Masah
10 have actually exercised the dividend.

11 Q. Again, you're not focusing on my question. I'll just
12 ask you to. The placement fees, the fact that Al Najah
13 may pay Al Masah Cayman placement fees is not altering
14 the fact that your shareholding, your dividend rights,
15 are calculated on 100 per cent of your investment and
16 not some amount net of placement fees. Do you
17 appreciate that?

18 A. Sir, I've replied to you on that one already. I agree
19 with what you're saying, that is how it should be
20 exercised, but it's not the case.

21 Q. Subject to your point about what's happened with some
22 dividend payments, that if it was exercised in that way,
23 you would have no complaint; correct?

24 A. I have no complaints it was exercised correctly, in
25 2015, where the dividend was released. And 2014, it was

1 13:51 released properly. But --

2 Q. I'm sorry. I'm interrupting. You carry on.

3 A. But in 2016, they started to not issue the dividend as
4 per the declaration. And since 2016, have not issued
5 any dividend.

6 Q. I'm right to say you, just focusing on 2014, 2015, you
7 don't have a problem, do you, with the fact that
8 Al Najah may have paid Al Masah Cayman some placement
9 fees, provided you're still getting a shareholding
10 calculated on 100 per cent of your investment and you're
11 getting your dividend; correct?

12 A. Based on those two years, correct.

13 Q. You're an experienced investor, aren't you, and you
14 appreciate that it's common in the industry for
15 businesses looking for investors to have to pay
16 brokerage or placement fees when investors are sourced?
17 It's commonly done?

18 A. Commonly done at a percentage of around 2 per cent.

19 Q. Take Mr Bond, for example. He acted as a third-party
20 agent. He would himself earn commission or brokerage
21 for introducing investors. That would be normal; yes?

22 A. I have no idea.

23 Q. You do understand that part of his business was to
24 introduce investors into Al Masah, to take brokerage
25 fees?

1 13:52 A. I don't know that he does that business for Al Masah.

2 Q. But you know that he does that business and it's the
3 type of business he normally does?

4 A. He does that business in other areas. I have no idea
5 which ones and I have no idea if it's Al Masah.

6 Q. That's a normal type of business and then it normally
7 results in fees being earned for introduction or
8 brokerage; correct?

9 A. As I have seen over the years and particularly in the
10 Dubai area, the introduction fees are around 2 per cent.

11 Q. Those fees, introduction fees, need to be paid
12 ultimately out of the investment structure, don't they?

13 A. Correct.

14 Q. Ultimately, they're going to be sourced from the
15 business of being invested; correct?

16 A. Say that again, please?

17 Q. Ultimately, we are saying the same thing, I think.

18 Ultimately, they're going to be sourced, come out of
19 business being invested?

20 A. Correct.

21 Q. You would expect a company like Healthcare or Al Najah
22 ultimately to be funding some brokerage fees or
23 placement fees?

24 A. Yes.

25 Q. I would suggest you might expect a place where they

1 13:54 would disclose any practice of paying or of being able
2 to pay brokerage fees is in the company's articles of
3 association?

4 A. I haven't seen anything in any articles of association
5 regarding brokerage fees.

6 Q. Is that partly because you don't appear to take the
7 articles of association when you invest, as you have
8 seen in this case?

9 A. In this case, I didn't look at the articles of
10 association, but I'm referring to other investments.
11 I have not seen a placement fee in articles of
12 association.

13 Q. But in this case, you would or wouldn't have known to
14 what extent the payment of fees was or was not disclosed
15 in the articles?

16 A. Correct.

17 Q. It's fair to say, isn't it, that you weren't
18 particularly concerned about what fees the underlying
19 investment companies Al Najah or Healthcare were paying
20 as brokerage to third parties?

21 A. That is their business. I have no knowledge of what
22 they had agreed to do with Al Masah.

23 Q. You weren't particularly concerned about that when
24 making your investment, were you?

25 A. I would assume it was at a sensible rate. But it's not

1 13:55 something that I am interested in.

2 Q. You would have assumed that there was some level of
3 placement fees or brokerage fees, as you say, at
4 a sensible rate?

5 A. Yes.

6 Q. Is that your evidence?

7 A. Yes.

8 Q. Coming back to Mr Bond, am I right in saying that he
9 didn't tell you about brokerage or commission that he
10 was making based on your investments?

11 A. He has not made any commissions or brokerage fee on my
12 investment.

13 Q. Are you sure about that?

14 A. I think so.

15 Q. You would have assumed, though, that he was charging
16 others in respect of commission and brokerage fee?

17 A. I have no knowledge of what Martin has been doing for
18 Al Masah.

19 Q. But no brokerage fees were disclosed to you by Mr Bond?

20 A. Correct.

21 Q. About your investments; correct?

22 A. Correct.

23 Q. You said in interview, I'm just going to quote, because
24 you were asked a similar question to this by Mr Hammond
25 in your DFSA interview. You said in answer -- I'm just

1 13:56 going to quote:

2 "No. Martin and I don't believe he'd take any fees
3 from my investment at all. Does he get an incentive to
4 recommend anybody? Probably he does."

5 So you thought he probably did get brokerage fees
6 for introducing other clients?

7 A. In any of his other works, if he is introducing people,
8 I would assume he would receive some brokerage fee, as
9 that is the structure of brokers. But I have no
10 knowledge of his business and I don't take any interest
11 in his business.

12 Q. That again would ultimately need to be funded out of the
13 assets of the investment company?

14 A. Yes.

15 Q. Had anyone told you at the time that the investment
16 company was funding placement fees over to Al Masah or
17 to third-party brokers, like Mr Bond, you wouldn't have
18 been surprised at all?

19 A. Had someone told me that they were paying 6 per cent
20 placement fees, I would not have invested, because that
21 is higher than the regular 2 per cent rate around the
22 Middle East.

23 Q. Can we look at your interview transcript and just look
24 at page -- we'll find that at exhibit 123, page 12.

25 I'm going to ask Fatima to go to the bottom of

1 13:58 page 12. There's a question:

2 "Do you remember any discussions either with Mr Bond
3 or with Al Masah about the fee structure for this
4 investment?

5 Robert Clink: No discussion with Al Masah. Martin
6 and myself have discussed the high level of fees that
7 Al Masah charge. They are higher than say, not
8 a comparable investment, but they're higher than other
9 investments. So, yeah, they are charging quite high but
10 they are paying the dividend. We are all making money.
11 But I have no particular feelings either way about how
12 much they charge other than it is higher than other
13 investments."

14 The correct position is that you were not bothered
15 about the level of fees being charged because you were
16 receiving dividends; yes?

17 A. No, we're not receiving dividend and we're receiving
18 declared dividends that are not being paid, which
19 I questioned the ethics and legality of. What I'm
20 referring to there is that we have a feeling they're
21 charging higher dividends, but we're not sure.

22 Q. But subject to your concern, again as you said before
23 about 2016 dividend payments, you were not concerned
24 about the fees being charged because you were receiving
25 dividends; yes?

1 14:00 A. It's difficult to discount an event where a company
2 declares a dividend at 7 per cent and then refuses to
3 pay out the full amount. It's difficult to put that to
4 one side and answer your question on 2014, 2015. But
5 I shall do so.

6 So at 2014 and 2015, the company was being operated,
7 in my opinion, to my satisfaction. But I had no
8 knowledge of what placement fees they were paying. Had
9 they been upfront about the placement fees, I probably
10 wouldn't have invested at 6 per cent.

11 Q. As we have seen, you were not particularly bothered
12 about the fees being charged and because you were
13 receiving dividends, as I say, you understand you're
14 receiving dividends based on the totality of the amount
15 invested; yes?

16 A. Yes.

17 Q. In 2014 and 2015; yes?

18 A. If we only look at those two years, correct.

19 Q. Your concerns arise in relation to 2016 because you've
20 got a concern about the level of dividends actually paid
21 (unclear ...) paid; yes?

22 A. Not the level of dividend. Had the level been
23 1 per cent, I wouldn't have minded. The fact that you
24 declare a dividend publicly to the investors and then
25 don't pay that figure, I think is wrong. But the level

1 14:01 of investment, the success or failure of the investment
2 is my responsibility and my choice. But I think when
3 you declare a dividend of 7 per cent, it should be paid.

4 Q. Could I ask you about paragraph 37 of your witness
5 statement, where you deal with an email received
6 attaching financial statements. And you say there you
7 don't believe that you received this in hard copy from
8 the courier. We have evidence from Ms Zudikova who
9 explains about sending a courier pack out to all
10 investors. Do you accept it's possible that there was
11 a courier?

12 A. Paragraph 37.

13 Q. Just at the end there, you say:

14 "I do not believe I received this in hard copy from
15 a courier."

16 We have evidence from the person who prepared the
17 courier pack whose job it was to send all these courier
18 packs out. She gives evidence --

19 A. What is the courier pack related to?

20 Q. This relates to some copy of an email with some audited
21 financial statements and the correspondence.

22 A. Separate financial statements. If I've received it by
23 email, I'm happy to receive it by email, but I have no
24 knowledge of receiving a hard copy from a courier, no.
25 Why would that --

1 14:03 Q. That's what you say. My point is that we have evidence
2 from the person at the company whose job it was to send
3 the courier out, she sent it to all shareholders, that's
4 her evidence. So, do you think it's possible that there
5 was in fact a courier, you just don't recall it?

6 A. No, it's very simple. The couriers are all registered.
7 My signature would be there on the date that I received
8 it and they know the courier they use. So it's very
9 simple to prove whether I received it or not, because
10 I would have signed a receipt for it. I'm not sure of
11 the relevance here, of why it's relevant or not, because
12 I'm not saying that I've not received a financial
13 statement from Al Masah Education.

14 Q. It's correct, isn't it, that you took steps to liquidate
15 your investments when you were first contacted by the
16 DFSA; yes?

17 A. No, I took steps to liquidate my investment in Al Masah
18 Education before I met the DFSA.

19 Q. You said to the DFSA in interview:

20 "My level of protection is exiting when I feel
21 things are not right."

22 And, "There's no smoke without fire."

23 Yes? That was the basis on which you exited;
24 correct?

25 A. Negative. I thought about exiting Al Masah Education

1 14:04 much before the DFSA got involved, particularly the 2016
2 incident regarding declaring dividends, then deciding
3 flippantly that you're not going to pay them now and
4 you're going to pay only 1.7 per cent of the dividend,
5 I find being very cavalier.

6 Q. You yourself offered a brokerage commission to Al Masah
7 to sell your shares?

8 A. I asked Al Masah many times to sell my shares and since
9 then, they've even stopped sending the quarterly
10 statements. We're missing the last three quarterly
11 statements. I've tried to contact them, they've not
12 replied and I'm concerned about the whole investment now
13 and how they're managing it.

14 Q. You were offering a brokerage commission to sell your
15 shares; yes?

16 A. I might have done.

17 Q. Again, recognising that it's normal practice to offer
18 brokerage --

19 A. I've never offered a brokerage fee, but I have offered
20 them to sell my investment and I might have said, "Sell
21 it for what I paid for it", just to get out, because
22 I have lost my faith in the management.

23 MR HILL: Just give me one more moment, Mr Clink, and I'll
24 come back to you.

25 Thank you, Mr Clink.

1 14:06 PRESIDENT: Mr Clink, if you could just wait there one
2 moment.

3 Mr Temple, do you have any questions for Mr Clink?

4 MR TEMPLE: Just one question, sir.

5 Re-examination by MR TEMPLE

6 MR TEMPLE: Mr Clink, earlier on you were asked about the
7 articles and I think you said you wouldn't expect
8 information about the placement fees to be in the
9 articles. Can you just tell me where you would expect
10 to see information about the placement fees?

11 A. Upfront in the investor proposal.

12 MR TEMPLE: Thank you. That was really the only question
13 I have. I don't know whether the tribunal has some for
14 you.

15 PRESIDENT: I'm just going to ask my colleagues if they have
16 some questions for this witness.

17 MR MALEK: No, thank you, president.

18 PRESIDENT: Mr Storey, do you have any questions?

19 MR STOREY: No, nothing from me, thank you.

20 PRESIDENT: Thank you very much.

21 (Witness withdrew)

22 PRESIDENT: Mr Temple, do you have another witness for us?

23 MR TEMPLE: The next witness is due to be Mr Mehta and
24 I think he was told 11 o'clock, in which case he may be
25 available. I'll just need to check in the participants.

1 14:08 PRESIDENT: I suggest we break and if someone would send us
2 a chat, we'll then reconvene. Thank you.

3 MR TEMPLE: Thank you, sir.

4 (2.08 pm)

5 (Short break)

6 (2.09 pm)

7 MR RAJESH VRAJLAL MEHTA

8 Examination-in-chief by MR TEMPLE

9 MR TEMPLE: Good morning, Mr Mehta.

10 A. Good morning -- afternoon, actually.

11 Q. Good afternoon. First of all, could I ask you to affirm
12 the truth of your evidence by repeating after me the
13 following oath or affirmation.

14 A. Sure.

15 Q. I do solemnly, sincerely and truly.

16 A. I do solemnly, sincerely and truly.

17 Q. Declare and affirm.

18 A. Declare and affirm.

19 Q. That the evidence I am about to give.

20 A. The evidence I'm about to give.

21 Q. Is the truth, the whole truth and nothing but the truth.

22 A. Is the truth, the whole truth and nothing but the truth.

23 Q. Thank you. And can I ask you to give the tribunal your
24 full name and address, please.

25 A. Rajesh Vrajlal Mehta, living at [redacted].

1 14:11 Q. Thank you. I hope you have got a copy of your witness
2 statement, but I'm going to ask Fatima to bring it up on
3 the screen, so that we're all looking at the same thing.
4 It's document C007. Fatima, can you scroll to the end
5 of that, please.

6 Mr Mehta, do you recognise that as your witness
7 statement?

8 A. Yeah, that's right.

9 Q. Is that your signature on the screen at the moment?

10 A. That's right.

11 Q. Thank you. Could we just scroll up to paragraph 15 and
12 for the tribunal, there's a short point of clarification
13 I have informed my learned friend I'm going to ask
14 about.

15 We can see here in paragraph 15 and in some other
16 paragraphs, you refer to having been advised about the
17 amount of placement fees that were paid. Can you tell
18 me who gave you those numbers?

19 A. These numbers, they were given when we came for the
20 interview with the DFSA. I never knew these numbers.

21 Q. Sorry, did you say you don't have personal knowledge of
22 these numbers; is that right?

23 A. No, these numbers were given by the DFSA.

24 Q. So based on one of the documents, which I don't think --

25 A. I mean, the numbers of, I'm advised that 10,000 of this

1 14:13 was paid to Al Masah.

2 Q. Yes. Based on --

3 A. 1 million -- sorry.

4 Q. Sorry. Based on another document, I don't need to show
5 it to you, these are numbers given to you by the DFSA.

6 The DFSA now thinks that the number was 100,000. Should
7 we trust the DFSA's number or the number that's there on
8 the witness statements?

9 A. No, the DFSA's number, because I have no knowledge of
10 what the amount was.

11 Q. Thank you. Subject to that clarification, are the
12 contents of this witness statement true to the best of
13 your knowledge and belief?

14 A. Yes.

15 MR TEMPLE: Thank you. Mr Hill will have some questions for
16 you, if you will just wait there.

17 Cross-examination by MR HILL

18 MR HILL: Good afternoon, Mr Mehta.

19 A. Good afternoon.

20 Q. You are an experienced investor; yes?

21 A. Sorry? I can't see you. Okay. How do I get the
22 screen?

23 Q. Can you see me now? I'll put my hand up.

24 A. No, I think the way, because of the -- just one second.
25 Maybe I have to change.

1 14:14 PRESIDENT: It may simply be the effect of having a document
2 on the screen.

3 A. It's okay. Yeah, now, okay. Fine. I can see you.

4 Sorry, Richard, yeah.

5 MR HILL: Can I also suggest unless you haven't already done
6 it, that you have "view active cameras" on at the top of
7 your screen as one of the options.

8 A. My camera is on, no? Now I can see you.

9 Q. Fine. Let's hope -- let me know if you --

10 A. Yeah, I couldn't see you when the document was on,
11 sorry.

12 Q. You are an experienced investor, yes?

13 A. That's right.

14 Q. You made four investments into Al Masah private equity
15 vehicles. You made an investment into the MENA
16 Healthcare platform in September 2012; yes?

17 A. Yeah.

18 Q. Made an investment in June 2013 into Al Masah
19 Education Ltd; yes?

20 A. Yeah.

21 Q. And you made an investment into MENA Healthcare in
22 January 2015; correct?

23 A. Yeah.

24 Q. An investment into Gulf Pinnacle Investment
25 in December 2014?

1 14:15 A. That's right.

2 Q. Your investments were made through a company, Hazelside
3 Ltd?

4 A. That's right.

5 Q. That's your investment company; yes?

6 A. Yeah, it used to be anyway.

7 Q. You were a shareholder; yes?

8 A. Yeah, I was 100 per cent a shareholder.

9 Q. You said in your interview with the DFSA that you used
10 that company for all kinds of private equity and venture
11 capital investments; correct?

12 A. That's right.

13 Q. As an experienced investor, you obviously understand
14 that when investment vehicles are seeking subscription
15 for investments, it's common for them to pay brokerage
16 or commission fees to people who introduce them,
17 isn't it?

18 A. I think as an experienced investor, we understand that
19 there is a fee of quarter per cent, half a per cent or
20 1 per cent. But we did not clarify what percentage they
21 are paying. We assume that it is that, because the
22 initial story with Vineet and Shailesh was that the main
23 charges that every year, there will be a charge of
24 2 per cent for costs and 20 per cent when you make
25 a profit.

1 14:17 Q. It's standard in the market, isn't it, that when people
2 are able to source investors, and there is an entity
3 looking for investments, they pay brokerage fees of some
4 level to the people who are sourcing the investments;
5 yes?

6 A. That's what I said, yeah, agreed, quarter per cent, half
7 a per cent, 1 per cent, depends.

8 Q. You might call it commission or brokerage or placement
9 fee. It's all the same type of fee income?

10 A. Correct.

11 Q. Do you recall you gave an interview to the DFSA
12 in June 2016; yes?

13 A. That's right.

14 Q. You would have obviously given correct answers to the
15 questions to the DFSA; yes?

16 A. Yeah.

17 Q. Could you be shown that interview, it's at exhibit 115.

18 A. I don't have it.

19 Q. Don't worry. It will be shown to you on the screen.

20 A. Okay.

21 Q. I'm going to ask Fatima to go to page 67.

22 I'm just going to read with you a chunk of that.

23 Fatima, scroll down just a little. I'm going to
24 start reading the middle of that paragraph. There's
25 a question from Mr Hammond. He says:

1 14:18 "You don't recall whether there were any other fees
2 discussed. Did they ever use the term placement fee or
3 refer to a fee that would be paid from the -- from the
4 verticals to Al Masah, in addition to the management or
5 the --

6 Rajesh Mehta: Yeah, there was some costs they ...

7 Matthew Hammond: Costs.

8 Rajesh Mehta: Yeah.

9 Matthew Hammond: Okay.

10 Rajesh Mehta: But I don't remember having asked --
11 I assume something goes all the -- you know they pay
12 commissions to brokers and this and that. So that is
13 something, I mean, which is normal.

14 Matthew Hammond: Sure.

15 Rajesh Mehta: For these private equity guys to
16 raise money.

17 Anthony Jensen: Sure. But specifically had you
18 ever heard the term placement fees, or were you aware of
19 this --

20 Matthew Hammond: In relation to fees(?) --

21 Anthony Jensen: -- placement fees.

22 Rajesh Mehta: I may have, or maybe Vineet got
23 a commission or something, I don't know.

24 Matthew Hammond: Okay.

25 Anthony Jensen: Yeah.

1 14:19 Rajesh Mehta: But you know -- possibly, I mean
2 I don't remember but must be --

3 Anthony Jensen: Okay, that's fine. No, if you
4 don't remember, you --

5 Rajesh Mehta: No, but at the back of my head
6 I assume that it was there. I'll tell you, when all
7 these guys come, we call them tie-wallahs(?)."

8 And so on.

9 You were explaining there that you would have
10 assumed commissions were being paid. And indeed, you
11 may have recalled mention of some commissions being
12 paid; correct?

13 A. No. I think I still maintain the same thing. We never
14 discussed what commission was paid and if it was out of
15 normal or whether it was normal, we never mentioned,
16 there was no discussion of it. But I assume there must
17 be a small commission.

18 Q. You assume that that --

19 A. Because -- no, there's one thing. You know, when Vineet
20 and both came, that here were two guys, Shailesh and --
21 I forgot the name -- who was starting, who were old
22 private equity, working for somebody before, and now
23 they're starting this fund. They've already invested in
24 Healthcare and this. They see this long and these are
25 the guys to back. This was the story and that they are

1 14:21 very, very, very good and very reasonable. So there was
2 no discussion of what -- whether there would be a big
3 fee or non-fee or what fee. There was no discussion.

4 Q. Is it right to say you would have assumed that there was
5 some level of fee being taken, but you didn't know what
6 fee?

7 A. No, we knew Vineet for quite some time.

8 Q. Yes, sorry, I'm just going to repeat that question.
9 You've assumed that there was some level of commission
10 or brokerage being paid, but you wouldn't have known
11 what amount?

12 A. Yeah, but what my understanding or at least assumption
13 was, was it must be quarter per cent, half per cent,
14 maximum 1 per cent or something like that.

15 Q. Just to be clear, what we're talking about with these
16 fees, that's a fee that will be paid from the investment
17 vehicle, from Al Najah or Healthcare company, to the
18 broker or the placement agent. We're not talking about
19 a fee that's deducted straight from the investor; yes?

20 A. Let me tell you then and let me tell you even today. We
21 were not at all clear at the way the damn structure was.
22 We trusted people, that I agree, and maybe today, we may
23 realise something different. But even at that time, the
24 way the whole structure worked, we were never -- we
25 never understood the investment vehicle.

1 14:22 Q. I'm just making sure you understand now what the
2 placement fees that we're talking about are. We're not
3 talking about a fee that's payable by the investor to
4 anyone. We're talking about a fee that's payable by the
5 investment company to anyone that provides brokerage
6 fees to Al Masah as placement agent.

7 A. No, I understand that, but you asked me specifically
8 about an investment vehicle, which is going to pay. The
9 complex structure of their vehicles, we could not
10 understand it.

11 Q. Do you appreciate that quite a lot of the investments
12 into the Al Masah private equity platforms have been
13 sourced by third-party brokers or referral agents? Does
14 that surprise you or were you aware of that?

15 A. No, I was only aware of Vineet. Only later maybe in
16 2015/16, we became aware of it.

17 Q. But it would be normal, wouldn't it, for a private
18 equity structure such as this to have third-party
19 brokers or agents who would try and find investors; yes?

20 A. Not necessarily. There are private equity investments
21 which are very, very tight and closed and they do their
22 own placement with professionals and we have invested in
23 those vehicles also.

24 Q. But where you do --

25 A. I won't have -- sorry, I won't assume there being on

1 14:24 a market basis. It depends on each one's marketing
2 ability or reputation, I would say.

3 Q. Where you do have third-party brokers involved, they
4 obviously take their commission; yes?

5 A. Yeah, that -- obviously, that is how the market works,
6 I think.

7 Q. Those are, again, funded out of -- you expect those to
8 be funded out of the company that's taking the
9 investments and issuing capital; yes?

10 A. Yeah, that's how the market works.

11 Q. That amount of fee would be likely to vary in the
12 market. It just depends on the circumstances of what
13 the amount was.

14 A. The word "vary" means what? 50 per cent? 20 per cent?
15 10 per cent? 1 per cent or quarter per cent?

16 Q. Let me give an example. We have seen material in this
17 case showing that brokerage commissions paid to some of
18 the third-party agents was of the order of 5 per cent of
19 the investment value. That doesn't surprise you?

20 A. No, I think in some instances what we are saying is
21 10 per cent, which is absurd. I mean, you know, before
22 you start you're already on a backfoot.

23 Q. Well, just focusing on my question, in the material in
24 this case, we can see that some of the third-party
25 brokers, so nothing to do with Al Masah, some of the

1 14:25 third-party brokers were getting 5 per cent

2 introductions. That doesn't surprise you?

3 A. But what I have been told is they were getting
4 10 per cent, but 5 per cent is also surprising. Because
5 no normal fund would give 5 per cent. Normally, it
6 would be 2 per cent. 1.5, 2, 1, or half a per cent or
7 quarter per cent. We invested in European private
8 equities, American, we have never had this kind of
9 commissions. Never heard of this.

10 Q. 5 per cent is the level that other people, not Al Masah,
11 5 per cent is the level that other third-party brokers
12 were charging to investors -- charging to Al Masah for
13 sourcing investors into the structure. So that does
14 look like it's the sort of level that one expects to
15 see.

16 A. I don't think one -- I mean, I won't expect it. If
17 other people do, it is great.

18 Q. In terms of the paperwork, if an issuer of shares was
19 paying brokerage fees to third parties or to brokers,
20 you wouldn't necessarily expect to see those fees
21 specifically disclosed, or you wouldn't expect to see
22 the level of those fees specifically disclosed to
23 underlying investors?

24 A. Sorry, I didn't understand that question.

25 Q. I'll start the question again.

1 14:27 In terms of the paperwork, if you have these fees
2 being paid, you wouldn't necessarily expect the level of
3 the fees to be disclosed to underlying investors in the
4 paperwork?

5 A. Honestly, we thought with the DFSA, it would all be
6 monitored -- I mean, with the DIFC, since it's a very
7 well-controlled organisation belonging to the Dubai
8 Government, and it's supposed to be one of the better
9 financial monitoring institutes, or oversight. We
10 wouldn't expect that this thing would happen, number 1.

11 Number 2, I know in America and I know in India,
12 that these amounts are just not acceptable. And if it
13 is, it is disclosed, of what commission is given.

14 Q. But again, as I understand your answer, you're talking
15 about the level, that you are not happy with the level
16 of those fees as opposed to the fact that fees of this
17 kind are paid?

18 A. Yes, but if it is out of level, they will be disclosed.

19 Q. In the case of your investments in the Al Masah private
20 equity companies, that you signed a series of
21 subscription forms on behalf of Hazelside. Do you
22 recall that?

23 A. Yes.

24 Q. Can we go to exhibit F414. Fatima, could you scroll
25 down so that you can see that this is your subscription.

1 14:29 A. Yeah.

2 Q. That was your subscription form; yes?

3 A. Right.

4 Q. If you look at page 2 of that form -- it's probably
5 page 1, I apologise.

6 Sorry, I do apologise. I have the wrong reference.
7 Go back to page 2.

8 Could you scroll down. Do you see you have
9 a paragraph at the bottom of your screen that says:

10 "We warrant that we have the knowledge, expertise
11 and experience in the financial markets to evaluate the
12 risks of investing in ANEL. I am aware of the risks
13 inherent in investing in shares and the method by which
14 the assets of ANEL are held and traded. We bear the
15 risk of loss of our entire investment, provided all
16 documentation concerning ANEL as requested and have
17 satisfied myself completely before investing in the
18 shares."

19 You were agreeing to all those things when you
20 subscribed; correct?

21 A. Yeah.

22 Q. If you scroll a little bit further down, do you see that
23 you said that you:

24 "... agree be bound by the memorandum and articles
25 of association of ANEL current as at the date of this

1 14:31 subscription form."

2 You were agreeing to be bound by ANEL's memorandum
3 and articles; correct?

4 A. I agree and we never even saw them. We were not even
5 given them. Anywhere. Carry on.

6 Q. We have just seen in the paragraph above that you
7 confirmed you had been provided with all the
8 documentation concerning ANEL --

9 A. We were not provided it. Also be very -- whatever we
10 signed, after -- can you check the date of this
11 signature and you check what date they got the money?

12 Q. Just to be clear, you signed this document confirming
13 that you had been provided with all documentation
14 concerning ANEL, as requested, and satisfied yourself
15 completely before investing in the shares.

16 A. I agree with you. But this was signed probably much --
17 I don't know when it was signed, we just signed blindly
18 with faith. We didn't get any of those documents of
19 ANEL.

20 Q. But you were concerned --

21 A. As of today, what is ANEL, I really don't know.

22 Q. You were confirming that you had received all the
23 documents requested --

24 A. Yeah, because, no -- today, when we agree to conditions,
25 we paid the money, even when they take a software, we

1 14:33 don't know, nobody reads all the damn conditions.

2 Q. But --

3 A. If you give us to sign, then you click.

4 Q. You didn't have the articles of association?

5 A. No.

6 Q. If you didn't have the articles of association, then it
7 was your decision not to get them?

8 A. It's not my decision. It was their decision not to
9 give.

10 Q. You are subscribing and agreeing to be bound by the
11 articles and you're confirming you had all the documents
12 at that request.

13 A. I'm sorry, I agree we have signed it. I'm not denying
14 that. But even now it is their decision not to give.
15 Even in the last meeting, we asked for the audited
16 accounts of last year and they're not providing it.

17 Q. It would be --

18 A. They said, "It's in our decision not to give to
19 anything. We don't have to give anything to you."

20 Q. The articles is the place where or one of the places
21 where one might expect to see mention of placement fees
22 if there was going to be mention; yes?

23 A. I don't know. We haven't seen the articles. We haven't
24 got it.

25 Q. It wouldn't surprise you for -- any mention of placement

1 14:34 fees in the article?

2 A. Of course, it would surprise us. But, you know, you go
3 on trust with this guy. Either you trust him or you
4 don't. It's not -- I have not gone through all those
5 documents. Let's be very clear.

6 Q. You said you would be surprised at 5 per cent brokerage
7 fees, you said a little earlier, to be paid to brokers?

8 A. Yes, I think that's too high.

9 Q. Were you aware that on your own investment, it wasn't
10 just a question of Al Masah Capital taking a placement
11 fee on your investment, out of that placement fee, they
12 had to pay 5 per cent fee on your own investment?

13 A. I think that's absurd, too high.

14 Q. Well, that is an amount that had to be paid to the
15 broker broking your investment, irrespective of any
16 amount that Al Masah Capital took. Do you understand
17 that?

18 A. What do you think the broker is who? Vineet Arora?
19 When you say that it was paid to a broker, who's the
20 broker?

21 Q. Yes, Vineet Arora.

22 A. But I thought he was working for Royal Canadian Bank or
23 something. So how could he be taking a commission?

24 Q. That's the point. It's not surprising in this market
25 for brokers to charge commission and it's not surprising

1 14:36 about --

2 A. No, he's working for who? He's working for the bank and
3 he's working on his own also.

4 Q. But you don't find, when you think about it now,
5 realise --

6 A. No, at that time, that is shocking. I thought it was
7 just an introduction. Because he was working for Bank
8 of Canada and we never worked with Bank of Canada. We
9 told him openly, "Sorry, we are not going to open an
10 account with the bank", or whatever, the Canadian bank
11 or whatever his bank was. So he was given, that is even
12 more shocking.

13 Q. Can you be shown, then, bundle exhibit 115, page 68.
14 Just scroll up. This is the bit we looked at before.
15 You were asked about placement fees and you said:

16 "I may have, or maybe Vineet got a commission or
17 something, I don't know."

18 You weren't, at that stage, concerned or surprised
19 at Mr Arora getting a commission. That's something you
20 just said today.

21 A. No, that's true, because I was not at that time -- look,
22 at that time, the company was okay. And at that time,
23 one is not -- the capital is not at risk for the moment.
24 But this is even getting worse what you're telling me.

25 Q. It's the same thing. The question you were asked. You

1 14:37 were asked --

2 A. No, at that time -- no, at that time, the perspective is
3 that the company is doing okay. So he got it, he didn't
4 get, I don't want to go into -- I mean, if they didn't
5 tell me he got a commission, it's okay.

6 Q. Could you just say that answer again, sorry, I missed
7 it.

8 A. No, I think at that time, whether he got or not,
9 I didn't even bother to ask and I was not concerned. My
10 concern was at least my capital, I'll get my money back.
11 Today, I think the way the management and the amount of
12 fees that are being deducted and the way the company is
13 going, the way it's been managed, it's become a mess.

14 Q. But that's a fair summary, isn't it, that your concern
15 when we were looking at your position, when you were
16 asked about things by the DFSA, is that you were not
17 concerned about these commissions and you were not --

18 A. Of course not concerned. No, but at that time, it was
19 not such a big event. I mean, it would not have been
20 such a big issue. If I'm making money, it's okay. What
21 can I do? It's too late.

22 Q. You were not surprised --

23 A. In 15 or 16. Of course, I'm surprised.

24 Q. No, but you were not surprised at the time about the
25 idea of Vineet Arora getting a commission, were you?

1 14:39 A. Wait, the word "surprised", I was, but it was not as
2 hurting as it is today. It didn't hurt me as much as
3 today. Of course, it hurts. But maybe we never
4 expressed it as much.

5 Q. You like to say you sold your Avivo shares at
6 \$3 a share; yes?

7 A. \$3 less 20 per cent, not all of them. They only allowed
8 us to sell part. And today, again, I don't know the
9 truth, maybe you can enlighten us, that some people got
10 to sell everything.

11 Q. Thank you, Mr Mehta.

12 A. That's it?

13 MR HILL: Yes, you may have some questions from someone
14 else, but that's it from me.

15 PRESIDENT: Mr Mehta, what happens next is you may be asked
16 one or two questions by Mr Temple, but then you will be
17 free to go. So if you just wait for a little longer.
18 Thank you very much.

19 A. Sure, no problem.

20 Re-examination by MR TEMPLE

21 MR TEMPLE: Me Mehta, I have only got a couple of questions.
22 Mr Hill asked you a number of questions about commission
23 and at some point you said that private equity vehicles
24 sometimes do their own placement. I'm not sure whether
25 you finished off that answer.

1 14:40 Would you expect private equity vehicles to charge
2 placement fees where it does its own placement?

3 A. No, certainly not. We have done that in Europe in one
4 or two or three private equity. We didn't do it, but at
5 that time, when we went directly to them, they had no
6 placement fees, but that was clear.

7 Q. Whose private equity vehicles did you consider the
8 education and Healthcare investments to be?

9 A. Al Masah, Shailesh Dash.

10 MR TEMPLE: Thank you. I don't have any further questions.

11 PRESIDENT: I have no questions, but Mr Malek and Mr Storey
12 may have.

13 MR STOREY: No questions from me either. Thank you very
14 much.

15 MR MALEK: No questions from me.

16 PRESIDENT: Mr Mehta, that's it. Thank you very much indeed
17 for sparing the time to talk to us. We are most
18 grateful.

19 WITNESS: Thank you very much.

20 (Witness withdrew)

21 MR TEMPLE: Sir, according to an email I got this morning
22 about when people were lined up, Ms Zudikova isn't lined
23 up until 1 o'clock. Mr Lake tells me he's already
24 emailed her, so we'll see whether she becomes available
25 in the next few minutes.

1 14:42 The other point is that we haven't had a specific
2 break for transcribers, so maybe a returning in
3 10 minutes or so might make sense when we know whether
4 she'll -- hopefully, we'll know whether Ms Zudikova will
5 be available.

6 PRESIDENT: Okay. In which case we will take a 10-minute
7 break.

8 Could I just say that the lining up of witnesses,
9 when they're non-DFSA people, I quite understand that
10 you give them times, but I think in your planning, you
11 must be prepared to let the occasional DFSA witness
12 waste a bit of time hanging around rather than holding
13 us up.

14 So could you perhaps review when you're dealing with
15 DFSA homegrown witnesses, their availability, so we
16 don't have to have these breaks. But we are due one,
17 I suppose, anyway. So we'll stop now and start again at
18 11.55.

19 MR HILL: Could I just give a warning on timing. Ms
20 Zudikova, I expect I think to be less than an hour, so
21 if Ms Baines can be made available after that, that
22 would be very helpful, because she's the one that I may
23 take more time with, so I would like to get cracking on
24 her.

25 PRESIDENT: That's very helpful. Thank you. So we'll stop

1 14:43 and rejoin at 11.55.

2 (2.43 pm)

3 (Short break)

4 (2.55 pm)

5 MR TEMPLE: The DFSA has asked me to ask about the
6 16 January decision and the amendments that were
7 provided overnight.

8 PRESIDENT: The answer to that is we are now all happy with
9 it. I sent a message to Mr Lake saying that we were
10 almost there, but we're happy with the way that's been
11 done.

12 MR TEMPLE: Thank you. I'm sure he's heard that and I think
13 that will allow the transcript to go online.

14 The other issues of housekeeping are just in terms
15 of timing and witnesses. There is only one DFSA
16 witness, Mr Hammond. Whilst he is on I think at all
17 times on the conference, and would be able to go, as it
18 were, we would be concerned about him starting in a way
19 that left him in purdah overnight, given that he's the
20 officer on the case and the one with knowledge of lots
21 of the documents.

22 So that is his position.

23 As for Ms Baines, we hope it's okay if she's
24 available from after lunch, even if Mr Hill finishes
25 a little bit before lunch. That way there will be

1 14:56 a clear run at her evidence. But obviously, if we need
2 to get in contact with her and ask her to be available
3 in half an hour, we could send that email.

4 PRESIDENT: I think Mr Hill indicated that he might not be
5 long with the next witness, so I think she should be
6 available, if we're going to start -- if we ran out of
7 this next witness at 12.30, I think she should be
8 available, simply because while it's important to have
9 regard to her convenience, there are about 15 people in
10 this room, whose convenience also has to be had regard
11 to. So if she can be made available so to ensure that
12 when Mr Hill is finished, he can get on with her, so
13 much the better.

14 So subject to that, let's see if your witness is
15 here.

16 MR TEMPLE: Ms Zudikova is, she appeared momentarily there
17 and if I could ask her to turn her camera and microphone
18 on, I'm sure she'll reappear.

19 MS ILONA ZUDIKOVA

20 PRESIDENT: Mr Temple will ask you some questions and then
21 Mr Hill will do the same.

22 Examination-in-chief by MR TEMPLE

23 MR TEMPLE: Hello, Ms Zudikova. I'm not sure whether you
24 were intending to swear an oath on a holy book or give
25 an affirmation. Which would you prefer?

1 14:58 A. I prefer to give an affirmation.

2 Q. If you could repeat after me. I do solemnly, sincerely
3 and truly.

4 A. I do solemnly, sincerely and truly.

5 Q. Declare and affirm.

6 A. Declare and affirm.

7 Q. That the evidence I am about to give.

8 A. That the evidence I am about to give.

9 Q. Is the truth, the whole truth and nothing but the truth.

10 A. Is the truth, the whole truth and nothing but the truth.

11 Q. Thank you. I hope you have got a copy of your witness
12 statement, but I'm going to ask Fatima to bring up your
13 statement on the screen. It's document C001.

14 If you could just scroll down to the end of that
15 document.

16 Do you recognise that as your witness statement?

17 A. That's correct.

18 Q. Is that your signature on the screen at the moment?

19 A. I confirm that.

20 Q. I realise I forgot to ask you to confirm your full name
21 and address, so if you could do that, I would be
22 grateful.

23 A. Ilona Zudikova. My current address is in [redacted].

24 Q. Are the contents of the witness statement true to the
25 best of your knowledge and belief?

1 14:59 A. Yes, it is true.

2 Q. Thank you. Mr Hill will have some questions for you
3 now.

4 A. Yes, please.

5 Cross-examination by MR HILL

6 MR HILL: Good afternoon, Ms Zudikova.

7 A. Yes.

8 Q. We have just seen your witness statement. In addition
9 to that, you also had an interview with the DFSA on
10 24 August 2016; yes?

11 A. That's correct.

12 Q. The answers you gave to the DFSA, were they correct in
13 that interview?

14 A. Yes.

15 Q. You were initially appointed as office manager in 2012;
16 correct?

17 A. Well, my employment contract was signed as for office
18 manager, that's correct.

19 Q. Your position was changed early on to relationship
20 manager?

21 A. Yes, in the very first week, if I recall it right.

22 Q. The reason for that, as you understood it, was because
23 of your previous background and experience?

24 A. I understand so, yes.

25 Q. You say in paragraph 4 of your witness statement, that

- 1 15:01 you thought you were working for Al Masah Capital in
2 a general sense and didn't distinguish between Al Masah
3 DIFC entity and Al Masah Cayman?
- 4 A. That's correct. I only distinguish the difference later
5 on through the course of work. In the beginning,
6 I didn't know the difference.
- 7 Q. I see. In the beginning, you didn't, but then you came
8 to understand the distinction; yes?
- 9 A. Yes.
- 10 Q. You understood, didn't you, that your contract of
11 employment, was signed by Mr Dash on behalf of Al Masah
12 Capital Management Ltd, which was the DIFC company; yes?
- 13 A. To be frank, I didn't look into the formalities at that
14 time. I was just happy to get the job and I didn't know
15 whether Mr Dash was the one to sign the contract or not.
- 16 Q. Can we look at the terms of your contract, exhibit F201.
17 Can we have a look at clause 2.3. If that can be
18 brought up on the screen for you.
- 19 A. Okay.
- 20 Q. Do you have a document on the screen? This is a clause
21 in your employment contract.
- 22 A. Okay.
- 23 Q. Do you see there, it says:
24 "You may be required, in pursuance of your duties of
25 employment, to perform services not only for the Company

1 15:02 but also for any Group Company and, without further
2 remuneration, to accept any such office or position
3 within the Company or a Group Company as the Board or
4 the Company may from time to time require. The Company
5 may, at its discretion, assign your employment to any
6 Group Company on the same terms and conditions set out
7 in this Contract."

8 Did you understand that you could be required to
9 perform the duties for any Al Masah group company?

10 A. That's correct, but this was the only document I have
11 signed during the course of my employment as
12 a contractor.

13 Q. Sorry, could you just say that answer again and perhaps
14 speak up a little.

15 A. Okay. Yes, I understood that.

16 Q. But did you say something about this document?

17 A. Yes, but this contract was the only one I signed during
18 my course of employment. I didn't sign other documents,
19 as far as I remember, with any other group companies.

20 Q. In practice, you were working in the DIFC offices of
21 Al Masah Capital Management Ltd?

22 A. Correct.

23 Q. Just staying with this document, you had to comply, it
24 says, with the laws and rules laid down by the DFSA;
25 yes?

1 15:04 A. That's correct.

2 Q. You understood that you were representing Al Masah
3 Capital Management Ltd and were authorised to represent
4 them; yes?

5 A. I did not know whether they were authorised or not at
6 that point of time, because that was my first position
7 in the DIFC. I never found the position in the DIFC
8 before, so I didn't know those technicalities or the
9 nuances which you are talking about now. So, for me,
10 the company, which was located in the Liberty House on
11 the 9th floor, 906, and that was my -- supposedly the
12 place of work and the company name was Al Masah Capital
13 Management Ltd.

14 Q. You were able to represent Al Masah Capital, you signed
15 that signature on your emails?

16 A. Yes.

17 Q. Al Masah Capital Management, sorry. Yes?

18 A. I don't remember that. If you can show any of my emails
19 from that time, I will be able to confirm.

20 Q. You confirmed in your interview that you signed all your
21 emails with Al Masah Capital Management Ltd signature.
22 Do you recall that?

23 A. Could be. I cannot recall that now. I need to see any
24 of my emails to confirm. I just know that the address
25 was in the Liberty House, 906.

1 15:05 Q. That was the office of Al Masah Capital Management?

2 A. Yes.

3 Q. That was the company that you signed your emails, signed
4 off your email; yes?

5 A. Yes.

6 Q. Your job title was later changed to senior associate
7 operations and compliance; yes?

8 A. Yes.

9 Q. In that role, you reported to Helen Baines; correct?

10 A. Correct.

11 Q. She was the head of compliance, your job was within
12 compliance?

13 A. Yes, correct.

14 Q. If we just look again at your interview with the DFSA,
15 which is exhibit 122, and go to page 41. Maybe start at
16 page 40, middle of the page.

17 I'm going to read an extract now. Do you see you're
18 asked by Mr D'Cotta:

19 "Who do you actually report to?

20 Ilona Zudikova: I am reporting to Helen Baines and
21 financial controller, both.

22 Christopher D'Cotta: And the financial controller,
23 who is that?

24 Ilona Zudikova: Manamohan Parida."

25 Then a little further down, you explain about where

1 15:07 you're sitting in the Liberty House office.

2 Then at the bottom of the page, D'Cotta says:

3 "But what do you report to the financial controller
4 about."

5 On the next page, you say:

6 "To be honest, hardly anything. I just have to
7 ensure that the funds are received and they are updated
8 in my records, and that confirmation usually comes from
9 him.

10 Christopher D'Cotta: And so that's really your only
11 interaction with him?

12 Ilona Zudikova: Yes, but this is how the company
13 structure works, so I didn't question that, I mean why
14 did they actually make it like this.

15 Christopher D'Cotta: But like for example, if you
16 were doing performance appraisal, your performance
17 appraisal you've got Helen?

18 Ilona Zudikova: Done by both.

19 Christopher D'Cotta: By both, okay.

20 Ilona Zudikova: Although I don't know why, because I
21 don't have much interaction with him at all."

22 "Him" is the financial controller; yes?

23 A. Yes.

24 Q. Then the question is:

25 "Christopher D'Cotta: So, you have the majority of

1 15:08 the interaction with Helen?

2 Ilona Zudikova: That's correct.

3 Christopher D'Cotta: And do you have interaction
4 with any of the other senior management on a daily
5 basis?

6 Ilona Zudikova: No, not at all."

7 That all fairly summarises the position, doesn't it?

8 A. Yes, that's correct.

9 Q. You're reporting to Ms Baines, most of your interaction
10 is with Ms Baines. You're not really interacting on
11 a day-to-day basis with the senior management; correct?

12 A. No.

13 Q. Your witness statement suggests that you reported to
14 Mr Dash. As we have just seen, that's not right.
15 You're in fact reporting to Ms Baines. You didn't have
16 interaction on a day-to-day basis with Mr Dash; correct?

17 A. Not on a daily basis, but for my major work or even
18 appraisal, it would have been in the end with Mr Dash.

19 Q. That's not right, is it? Because your appraisals were
20 in fact conducted by Ms Baines, weren't they?

21 A. Earlier before that, it was -- I don't know who signed
22 on the appraisals, but it was with Ms Baines, and also
23 I remember myself and with Mr Manamohan Parida and
24 Mr Shailesh Dash, the appraisals.

25 Q. Look at your appraisals and they're done by Ms Baines.

1 15:10 We can also look at your evidence that you gave to the
2 DFSA. You're quite clear, aren't you, your reporting is
3 in fact to Ms Baines; yes?

4 A. Yes, here we don't, in the conversation with the DFSA,
5 we are not talking about appraisals, which I mentioned
6 now. So the appraisal is not mentioned in my earlier
7 conversation in 2016.

8 Q. We did look at appraisals in the section we just looked
9 at. It's on this page, up at page 41.

10 A. Okay.

11 Q. If Fatima could scroll up. It's just there. Mr D'Cotta
12 asked you at the time:

13 "... if you were doing performance appraisal, your
14 performance appraisal you've got Helen?"

15 You said, "Done by both". You were referring to
16 Ms Baines and the financial controller.

17 It was never suggested your appraisal had been done
18 by Mr Dash, did you?

19 A. I didn't mention that. Because as per the HR, or shared
20 organisation lines, I was reporting to Ms Baines and
21 Mr Parida, yes. But unofficially, I was reporting also
22 to Mr Dash and acting on his instructions.

23 Q. Your appraisals were in fact not done by Mr Dash but by
24 Ms Baines, weren't they?

25 A. Officially by Ms Baines and Mr Parida. Yes, that's

1 15:11 correct.

2 Q. Not a question of official and unofficial, because you
3 made it very clear in your interview you didn't interact
4 with senior management on a daily basis --

5 A. Daily basis, no, but appraisal is happening once a year.

6 Q. This suggestion about Mr Dash's involvement is something
7 that's only emerged from your witness statement and is
8 not accurate?

9 A. Sorry, can you repeat the question?

10 Q. Your suggestion about Mr Dash's involvement giving you
11 instructions has only emerged in your witness statement
12 and is not accurate?

13 A. Is not accurate?

14 Q. Yes, it's incorrect what you say in your witness
15 statement about Mr Dash.

16 A. What do you mean is not correct? I don't understand.

17 Q. You understand --

18 A. Which statement is not correct?

19 Q. Paragraph 6, you say:

20 "Although in the Organization Chart, my reporting
21 line was to the Compliance Officer Helen Baines (Ms
22 Baines) and the Financial Controller, Manamohan Parida
23 (Mr Parida), in reality I reported to Mr Dash ..."

24 That is not correct and it's not consistent with
25 your statement to the DFSA on the previous occasion;

1 15:13 correct?

2 A. I would say that the information in 2016 provided to
3 Mr D'Cotta probably wasn't complete, because I was very
4 nervous at that point in time. And my witness
5 statement, I prepared now few years back, when
6 I couldn't, you know, recollect probably more
7 information from my past, from my previous employment.

8 Q. I'm going to suggest your recollection in 2016 is
9 clearly more accurate than recently. Could you comment
10 on that?

11 A. I have no comment on that.

12 Q. You explain in your witness statement about the various
13 people working in the DIFC offices. If I could just try
14 and summarise the position, you have the investor
15 relations team or the placement team. Yes? That's
16 right?

17 A. Yes.

18 Q. After the move back to the new office in Emirates
19 Financial Towers, they were working in the Emirates
20 Financial Towers office alongside Ms Baines and others;
21 yes?

22 A. Correct.

23 Q. At paragraph 7 of your witness statement, you describe
24 your role as being to manage the clients. You say you
25 held the client files; yes?

1 15:14 A. Yes.

2 Q. When you refer to "clients", you're referring to
3 shareholders, investing shareholders of private equity
4 companies; correct?

5 A. Yes, the four platforms.

6 Q. Yes. At paragraph 14 of your witness statement, you
7 refer to your processes of on-boarding new investors.
8 And it's fair to say, isn't it, that your on-boarding
9 processes were devised and monitored together with -- in
10 conjunction with Ms Baines as compliance officer; yes?

11 A. Yes.

12 Q. As far as you could see, she was making sure you had in
13 place all the processes that were necessary for
14 on-boarding investors?

15 A. That's correct.

16 Q. That included checking client classification; yes?

17 A. That's correct.

18 Q. Together you were ensuring you weren't taking on retail
19 clients, you were only dealing with professional clients
20 as defined by the DFSA rules; yes?

21 A. She was the one to define whether the client is
22 a professional client, yes, correct.

23 Q. If you go back to your interview, which was at 122,
24 page 14, top of the page, you're explaining to the DFSA
25 there about the processes where you refer to the bank

1 15:16 reference letter, stating you have been banking with
2 them for at least three years:

3 "And also, we'll be asking the person who, let's say
4 through whom you got to know about the product, that
5 they fill up the client identification form and client
6 classification form, which is requirement by DFSA, if
7 I'm not mistaken, DFC or DFSA. When they've looked our
8 client's background and basically then the head of
9 compliance, she will do the review of the documents, and
10 then she will see whether the client can be considered
11 suitable as a professional client to invest in the
12 company. So, once all these criterias are met and
13 diligence is done, only then we will go back to the
14 client and say yes or no, you can invest with us or
15 not."

16 That's a fair description of your process, isn't it?

17 A. Okay, correct.

18 Q. Ms Baines was determining whether the clients met the
19 professional client classification or not; yes?

20 A. Yes, I didn't do the classification myself.

21 Q. But Ms Baines did?

22 A. Yes.

23 Q. The investor wasn't taken on until Ms Baines had signed
24 it all off; yes?

25 A. That's correct, yes.

1 15:17 Q. Other than Ms Baines, no one else in senior management
2 was involved in this investor on-boarding process?

3 A. No, nobody.

4 Q. Can we move on to the question of marketing materials.
5 You deal in your witness statement with marketing
6 materials and you explain in your paragraph 19 that you
7 maintained a shared folder for the investor relations
8 team. Yes?

9 A. Yes, it's like a common folder for the team members to
10 access. Everybody had access to it and my
11 responsibility was to save the information, the latest
12 marketing material there, for their use, for the
13 documents.

14 Q. The process was marketing materials would sit on this
15 shared folder, then the investor relations team could
16 access the material from that folder; yes?

17 A. That's correct.

18 Q. You say that prior to the time when material was put up
19 on the portal, marketing material might be sent by the
20 investor relations team. Is that right? Out directly,
21 not from the portal; yes?

22 A. I remember there were cases where I came across that,
23 yes, the material was sent directly by the investor
24 relations team members.

25 Q. Then the time came when all the material was put on the

1 15:18 portal, and it was then accessed from the portal;

2 correct?

3 A. Yes.

4 Q. All that material, whether it was sent by the investor
5 relations team or put on the portal, all of that
6 material was approved by compliance?

7 A. As far as I know, the internal process was that, yes,
8 compliance has to approval all the marketing material
9 before it is sent out.

10 Q. The process was first it gets approved by compliance and
11 then it goes to the investor relations team or up on to
12 the portal; yes?

13 A. Yes.

14 Q. When new marketing material arrived, is the sequence it
15 was created, material was created by the teams working
16 for the platform companies themselves and then vetted by
17 Ms Baines; yes?

18 A. Yes, that's correct.

19 Q. Then sent to you and made accessible to the investor
20 relations teams; yes?

21 A. That's correct, yes.

22 Q. It's right to say that leaving aside Ms Baines, senior
23 management were not involved in the creation or the
24 vetting or the distribution of that marketing material?

25 A. I cannot comment on that, because I don't know who were

1 15:19 benefiting to the content of the marketing material
2 itself. I know that I was receiving it from the team
3 members, so that specific platform from which it was
4 coming, but who were responsible for creating the
5 content, I don't know.

6 Q. But you are able to say the content creation, certainly
7 the vetting and distribution process, that was something
8 that was for you and Ms Baines and the investor
9 relations team; yes?

10 A. Yes.

11 Q. Just picking up one point about the portal, you suggest
12 in your witness statement that that was a change in
13 approximately 2016 to have everything up on the portal.
14 We have got other evidence on that in this case and it's
15 right, isn't it, that the portal change happened in
16 early 2015, rather than 2016?

17 A. I can't comment on that.

18 Q. I'm going to move on to the topic of quarterly and
19 annual reports. In terms of existing shareholders, you
20 explain in your witness statement that you sent out
21 quarterly updates; correct?

22 A. Yes.

23 Q. These were sent, as I understand it, as a matter of
24 course not just when they were specifically requested;
25 yes?

1 15:21 A. Yes, whenever there was a quarterly update out, it was
2 our responsibility to disseminate it to the existing
3 shareholders.

4 Q. In terms of annual reports, those were not sent out as
5 a matter of course, but were sent out when requested;
6 yes?

7 A. Correct.

8 Q. You say in paragraph 20, you refer in your witness
9 statement, at paragraph 34, to an email in which Mr Lim
10 instructed you to send Al Najah's annual report in
11 response to a request for financial statements.

12 You don't recall, do you, having any conversation
13 with Mr Dash about investors seeing the financial
14 statements?

15 A. I don't understand, what conversations with Mr Dash?

16 Q. Do you recall having any conversation with Mr Dash about
17 investors seeing any of the financial statements at the
18 platform? You don't recall any conversation, do you?

19 A. No, I do not recall now at this point in time.

20 Q. Can we look at the email you refer to in paragraph 34.
21 We have it at exhibit F205. I'm going to ask for that
22 to be brought up.

23 A. Yes, I can see.

24 Q. I'm going to ask Fatima to go to the second page of that
25 email. Can you scroll out, so we can see both emails on

1 15:23 that page.

2 In that case, scroll down, Fatima. I'd like to see
3 the email to which this is a response lower down on the
4 page.

5 Do you see there's a request that comes from
6 Mr Singh for:

7 "... the latest approved and audited financial
8 statements for both Al Najah and Healthcare
9 MENA at the earliest convenience ..."

10 If you scroll up, you see your response. You say:

11 "Dear Don and Eyad,

12 Please provide us the audited financial statements
13 of accounts as requested below by KIB."

14 Just looking at your email in response, looks like
15 you're simply asking the financial statements to be
16 provided to you so you can pass them on; yes?

17 A. My job was just to process the request and on the
18 response from the heads of the platforms, then I would
19 reply to the client accordingly.

20 Q. You obviously at the time you're sending this email,
21 your expectation is that the financial statements are
22 going to be provided to you so you can pass them on;
23 yes?

24 A. Naturally, I did not see the reason why the statements
25 could not be shared.

1 15:25 Q. So you, at this stage, this is August 2015, clearly
2 didn't have an expectation that there would be
3 a difficulty in you having the financial statements and
4 passing them on; yes?

5 A. I don't recall that whether it was around 2015 August or
6 it was early or later. I can't remember the exact date
7 when it became -- when they communicated that we cannot
8 share the soft copy of the actual audited financial
9 statements with the investors.

10 Q. If you look at this email --

11 A. It could be around 2015 or 16, yes.

12 Q. Up until the time of this email, it looks like if you
13 yourself were sending out annual reports, in response to
14 a request for financial statements, that's something
15 that you would have been doing of your own volition;
16 yes?

17 A. Can you repeat that?

18 Q. Looks like up until this point, if in response to
19 a request to send out financial statements, you had been
20 choosing to send the annual reports, that would have
21 been your decision?

22 A. Not in my decision. I would check on any request with
23 the heads of the platforms with regards to such
24 information to share.

25 Q. You say in paragraph 44 of your witness statement that

- 1 15:26 you were aware that placement fees were earned by
2 Al Masah by reference to money coming in from new
3 investors; yes? You knew about placement fees?
4 A. Can I see the document, please?
5 Q. Yes, it's your witness statement at paragraph 44.
6 A. To the staff members, yes.
7 Q. You were aware about placement fees being earned by
8 Al Masah Capital by reference to money that came in from
9 shareholders; yes?
10 A. I remember this communication from Mr Singhdeo. I did
11 not recollect from which entity the placement fees were
12 going to be paid until I saw the similar again now,
13 because it was in 2012, so I did not remember.
14 Q. Just to be clear, in paragraph 45, in your witness
15 statement, you say:
16 "I was not involved in the calculation or
17 transaction of the placement fees, but was aware from
18 emails sent to me from time to time that placement fees
19 were charged on investments by Al Masah, and the agents
20 retained by Al Masah were also paid placement fees."
21 That was information that you were aware of?
22 A. I was aware of. I did not -- I was not involved in any
23 of this, but I was aware of it.
24 Q. You were aware Al Masah sales staff earned commission on
25 the placement fees; yes?

1 15:28 A. That's correct, yes.

2 Q. If we go to the email at exhibit F206, this is an email
3 from Mr Singhdeo and he says:

4 "I am forwarding an earlier mail again to all staffs
5 as there has been new addition to our team. This
6 explains about the incentive what staffs can earn for
7 introducing client/investors to the Company. Feel free
8 to check with me in case any clarification is required."

9 Mr Singhdeo was notifying all staff about placement
10 fees, wasn't he?

11 A. Yes.

12 Q. Then lower down in the email, can we just see the email
13 he's been forwarding. It explains, if you look at the
14 bullets, about clients earning a referral fee. And in
15 that first bullet, you can see:

16 "All staffs can earn a referral fee of 5 per cent on
17 the income booked by Al Masah from a client referred by
18 him. Accordingly, you will earn the referral fee on the
19 initial placement fees plus the recurring management fee
20 income that is booked by the Company."

21 So it explains that staff who themselves make
22 a referral, get this commission based on the initial
23 placement fees earned by Al Masah Cayman; yes?

24 A. Yes, that's correct.

25 Q. As this email shows, placement fees were no secret

1 15:29 within the staff of the organisation, were they?

2 A. No, as I can recollect, those were the employees at that
3 point in time of Al Masah.

4 Q. This is information that's available to all
5 shareholders -- all employees; yes?

6 A. Yes.

7 Q. Ms Baines would have known about them as well; yes?

8 A. Is she copied in the email?

9 Q. She's not copied in the email.

10 A. I don't know. As far as I remember, she joined the
11 company in 2013.

12 Q. Yes, but these placement fees -- these arrangements are
13 still continuing, aren't they?

14 A. I think they were, yes, continuing. I think later, they
15 just reduced the number of percentage referral fee to
16 3 per cent, something like that, but I cannot remember
17 exactly the dates on the communication.

18 Q. Staff continue to be paid if they make introductions as
19 a share of placement fees, don't they?

20 A. Yes.

21 Q. That's part, isn't it, of the incentives for the
22 investor relations team; correct?

23 A. It was for all staff members.

24 Q. Yes, but obviously, the investor relations team are the
25 people who are probably going to have the most exposure

1 15:31 to introductions, because they are the people who are
2 going to be most incentivised, aren't they, by this
3 arrangement?

4 A. That's correct, yes. They benefited the most from it,
5 yes.

6 Q. None of this was a secret in any way in the
7 organisation?

8 A. No, it was not a secret.

9 Q. Ms Baines, in her role, would obviously have known about
10 it?

11 A. I would assume so. I cannot confirm. I only assume.

12 Q. Do you recall discussing them with her?

13 A. No.

14 Q. I'm going to move onto the question of annual reports.
15 You deal in your witness statement with some events on,
16 you may recall, at the weekend of 26 November 2015 and
17 the weekend that followed, which you sent out
18 correspondence from courier packs, the Al Najah
19 financial statements to investors. Do you recall that?

20 A. Yes, I do recall.

21 Q. You explain -- you talk in your witness statement about
22 a sequence of emails and we can all look at them. Can
23 I ask you to particularly look at exhibit F210.

24 That is an email you sent to all shareholders at
25 6.26 pm on 26 November. Do you recall that email?

1 15:32 A. Yes, I remember these were individual emails because
2 it's copied only to one person, individual emails that
3 we had to send out to our Al Najah education investors.

4 Q. That's right. The sequence of events is you sent an
5 email to each of the investors on that evening of
6 26 November.

7 A. Yes.

8 Q. If you just scroll down that email, we can see it's
9 referring to errors being made at note 7 and 10 of the
10 accounts and it's attaching full financial statements;
11 yes?

12 A. Yes.

13 Q. Shortly before that, you were sent an email by Mr Lim at
14 F209. This is an email to you and Ms Benseghir saying:

15 "After the email below has been sent to all
16 investors, it would be good to inform the sales team
17 [whose] tagged to the investors of this email about the
18 content as the investor might go to them for any
19 clarifications."

20 Mr Lim was encouraging the investor relations team
21 to be familiar with the content of your email, so that
22 they could discuss it with shareholders who were
23 interested; yes?

24 A. Yes.

25 Q. The investor relations team were obviously entitled to

1 15:34 know the content of your email; yes? Did you share it
2 with them?

3 A. Yes, as per this email, yes, they were entitled to know.

4 Q. That would also include the content of the attachments
5 to the email, or email which included the financial
6 statements with the full note 7 and note 10; yes?

7 A. Yeah.

8 Q. The investor relations team were being encouraged to
9 familiarise themselves with it all, so that they could
10 discuss the matter with shareholders who phoned them up;
11 yes?

12 A. Yes.

13 Q. You were involved in putting together a courier pack
14 that subsequently went to shareholders, weren't you?

15 A. Yes.

16 Q. That pack was sent to all shareholders, was it?

17 A. Absolutely all, yes, in Al Najah Education.

18 Q. In terms of what was in the courier pack, there's
19 a suggestion in your witness statement that the courier
20 pack contained a letter already emailed. That's
21 Mr Lim's letter that we have just looked at. It is
22 right to say, isn't it, that the printing of a document
23 wasn't completed until it went, while you were there, it
24 wasn't completed until the following day, the courier
25 came to collect the packs; is that right?

1 15:36 A. That's correct, yes. That was a lot of information to
2 print and we had over 100 investors.

3 Q. It's common ground between my clients and the DFSA, the
4 courier pack that contained a letter that we have in the
5 bundle could -- it's not easy, I'm afraid, for Fatima to
6 bring this up, but can we try? It's at exhibit R004,
7 tab 28, page 2.

8 That's a different letter which Ernst & Young asked
9 to be sent. It's common ground that that letter was
10 included in the courier pack. And that letter, if we
11 scroll to the end of it, 12th page of the letter -- I'm
12 just going to keep asking questions, because it may not
13 matter.

14 This letter had at the end of it a question for
15 acknowledgment of receipt by shareholders couriered to
16 Ernst & Young and we know that Ernst & Young did receive
17 some acknowledgment -- did receive some acknowledgments
18 of receipt. So this letter was included in the courier
19 pack. Do you understand that?

20 A. Yes.

21 Q. I just want to be clear what letter you're referring to
22 in your witness statement, because in your witness
23 statement, you don't refer to this letter at all. Was
24 that an error or a misrecollection or do you actually
25 recall this letter going in?

1 15:39 A. I remember a one-page document which was attached to the
2 audited financial statements.

3 Q. What I'm just trying to understand is, if it's your
4 recollection or the fact that you were not there when
5 this final courier pack was put together and sent out.
6 You don't deal with the fact that it's this letter that
7 went into the courier pack?

8 A. No, I cannot confirm how exactly, because Thursday was
9 my last working day before I went on leave. And I only
10 can recollect the email sent by Don on the same day, on
11 Thursday, the one-page document addressed to the
12 shareholders and the audited financial statements for
13 2013 and 14, if I'm not mistaken.

14 Q. I think we're saying the same thing. You can recollect
15 that email, because you sent it. In terms of what
16 actually went into the courier pack, you either can't
17 recollect or you may not actually know, because you were
18 away when it was finally put together and sent out?

19 A. That's correct, yes.

20 MR HILL: Thank you, Ms Zudikova. You may have some more
21 questions from the tribunal or the other barrister.

22 A. Sure.

23 PRESIDENT: Mr Temple, do you want to ask some questions?

24 MR TEMPLE: Yes.

25 Re-examination by MR TEMPLE

1 15:40 MR TEMPLE: Could I ask Ms Zudikova to look at exhibit F204,
2 if that could be brought up by Fatima.

3 This is an email that's referred to in your witness
4 statement and you say you sent a copy of the ANEL 2013
5 annual report to these 102 investors.

6 When my learned friend was asking you about sending
7 out annual reports, he referred to the part of your
8 witness statement that said you did so when requested.

9 Can I just ask you, did each of these 102 investors
10 request a copy of the annual report or was there some
11 other reason for sending it out?

12 A. For this annual report, probably there was a request to
13 send it out, because I would never share it without
14 prior instructions from the management.

15 Q. Who would have requested that that be sent out?

16 A. 2013, it probably was the head of financial. I can't
17 remember who it was, maybe Manamohan Parida or
18 Mr Shailesh or maybe Don Lim. Could be. I don't know.
19 I don't recall. It was long time ago.

20 Q. Some other questions that my learned friend had for you
21 were about the letter that went into the courier pack.
22 Can I ask for document exhibit 726 to be brought up.

23 This is, I think, in the same letter that you say
24 Mr Lim sent to you. Do you recall whether a letter of
25 this, looking like this, went into the courier packs

1 15:43 whilst you were in the office, or did that happen, or
2 can you not recall that?

3 A. Yes, I can recall that. We were requested to put this
4 letter along with the audited financial statements of
5 Al Najah.

6 MR TEMPLE: Thank you. Then I don't think I have any other
7 questions.

8 PRESIDENT: Mr Malek, Mr Storey, do you have any questions?

9 MR MALEK: I have no questions.

10 MR STOREY: No questions from me either.

11 PRESIDENT: I have no questions either, so thank you very
12 much, Ms Zudikova. We're most grateful to you for
13 sparing the time to come and speak to us. Thank you.

14 (Witness withdrew)

15 PRESIDENT: Mr Temple, are we ready?

16 MS CLARKE: It's me now, sir.

17 PRESIDENT: Okay.

18 MS CLARKE: The next witness is Ms Baines. I have had
19 a message, I think she is available, so we could make
20 a start. On the other hand, it's quarter to 1, so I'll
21 be guided by you, sir, as to whether you would rather
22 start now or at 2 o'clock.

23 PRESIDENT: It's probably going to make sense to start at 10
24 to 2.

25 MS CLARKE: Certainly.

1 15:44 PRESIDENT: So we'll break now and start again at 10 to 2.

2 And if I could, without disclosing the secrets of the
3 tribunal, just mention to my two colleagues that our
4 discussions should perhaps be 10 minutes earlier. Thank
5 you very much.

6 MS CLARKE: Thank you, sir.

7 (3.44 pm)

8 (Lunch break)

9 (4.51 pm)

10 MS HELEN BAINES

11 PRESIDENT: Ms Baines, welcome. Thank you for sparing the
12 time to come and talk to us. We're most grateful.

13 WITNESS: Thank you.

14 Examination-in-chief by MS CLARKE

15 MS CLARKE: Ms Baines, can I first please take you through
16 the words of the affirmation before we start anything
17 else.

18 Could I ask you to repeat after me. I do solemnly,
19 sincerely and truly declare and affirm.

20 A. I do so solemnly, sincerely and truly declare and
21 affirm.

22 Q. That the evidence I'm about to give is the truth.

23 A. That the evidence that I'm about to give is the truth.

24 Q. The whole truth and nothing but the truth.

25 A. The whole truth and nothing but the truth.

1 16:52 Q. Thank you very much.

2 Could you please confirm your full name for the
3 record?

4 A. My full name is Helen Linda Baines.

5 Q. I'm going to ask now for the witness statement that you
6 have prepared in connection with this proceeding to come
7 up on the screen, which is C004, and there it is.

8 Could I ask that we scroll down this witness
9 statement to the signature at the end, please.

10 If you could just go up a little bit so that we can
11 see the end of the statement.

12 Ms Baines, can I confirm that that's your signature?

13 A. Yes, it is.

14 Q. Is the content of your witness statement true, to the
15 best of your knowledge and belief?

16 A. Yes, it is.

17 Q. For the moment, that's all I ask. Would you wait there.
18 Mr Richard Hill for the applicants will have some
19 questions for you.

20 A. Okay.

21 Cross-examination by MR HILL

22 MR HILL: Ms Baines, you were the compliance officer
23 from July 2013 to March 2017; yes?

24 A. That's correct, yes.

25 Q. Your position was head of compliance and risk, wasn't

1 16:53 it?

2 A. That's correct, yes.

3 Q. You say in your witness statement that you considered
4 yourself to be working for Al Masah Capital
5 Management Ltd, the DIFC entity. I'll come back to that
6 point in a moment. But can we just for a moment focus
7 on other employees of the company, for example,
8 Ms Zudikova, whose role was senior associate for
9 operations and compliance. She reported to you, didn't
10 she?

11 A. She didn't report directly to me. I only had another
12 reporting person, but not her.

13 Q. You conducted her appraisals?

14 A. Just I think on the little AML bits, but she didn't
15 report to me directly for everything.

16 Q. Did you see her as working for Al Masah DIFC?

17 A. Yes.

18 Q. There were also placement teams or investor relations
19 teams. Did you see them as working for Al Masah DIFC?

20 A. Yes.

21 Q. Coming back to your position, you were the anti-money
22 laundering officer, weren't you, for both Al Masah
23 Cayman and Al Masah DIFC?

24 A. That's correct, yeah.

25 Q. You were head of compliance and risk for the whole

1 16:55 Al Masah group; yes?

2 A. I was the compliance officer for Al Masah Capital
3 Management Ltd and the MLRO for Al Masah Capital
4 Management Ltd and the MLRO for Al Masah Capital. Those
5 were my roles.

6 Q. Were you head of compliance and risk for the whole
7 Al Masah group?

8 A. Not necessarily for the whole Al Masah group, of all
9 subsidiaries, no.

10 Q. You were head of compliance and risk certainly for
11 Al Masah Capital Ltd, the Cayman company, the head of
12 the group and Al Masah Capital Management DIFC.

13 A. I was the registered money laundering reporting officer
14 for Al Masah Capital Cayman. That was my role.

15 Q. You're not suggesting there was another compliance and
16 risk officer for Al Masah Cayman, are you?

17 A. I'm not suggesting that. I'm just telling you that was
18 my reported role for Al Masah Capital Ltd Cayman.

19 Q. Can we go to exhibit F400. This is your contract of
20 employment. At page 1, your employer is identified as
21 Al Masah Capital Ltd. That's the Cayman company, isn't
22 it?

23 A. That is the Cayman company.

24 Q. Can you go to clause 2.3. You were obliged under that
25 clause to work for the Cayman company or for any group

1 16:57 company; yes?

2 A. That's what it says in that document.

3 Q. Your employment contract reflected the understanding,
4 didn't it, that you would be acting as compliance and
5 risk officer for both Al Masah Capital and Al Masah
6 Cayman Ltd and could be required to operate out of the
7 offices in the DIFC, which is what happened; yes?

8 A. That document is signed on behalf of Al Masah Capital
9 Management Ltd. It was my understanding that the only
10 job that I did for any company, other than Al Masah
11 Capital Management Ltd, was the MLRO role for Al Masah
12 Capital Ltd. The rest of my work, my visa, my pay,
13 everything else was for head of compliance or risk and
14 the compliance officer for Al Masah Capital
15 Management Ltd.

16 Q. You explain in paragraph 9 of your witness statement
17 that you headed the risk and compliance team; yes?

18 A. Yes.

19 Q. You had a deputy under you who looked after the
20 Singapore operation; yes?

21 A. That's correct, yes.

22 Q. In the DIFC operations, you were the expert on the DFSA
23 rules; yes?

24 A. Sorry, say that again?

25 Q. You were the expert on the DFSA side. You had a deputy

1 16:58 who dealt with Singapore operations. You were the
2 expert on the DFSA side; yes?

3 A. Yes.

4 Q. You, as a team, you and your deputy, were providing the
5 compliance and risk services to the companies in the
6 group, specifically Al Masah Capital Ltd, the Cayman
7 company, and Al Masah DIFC, and Al Masah Pte. in
8 Singapore, weren't you?

9 A. The compliance function would have -- the compliance
10 function for the companies would have been the
11 anti-money laundering function for Al Masah Cayman and
12 then the compliance and anti-money laundering function
13 for Al Masah Capital Management Ltd.

14 Q. You and your team, the team that you headed, was for the
15 totality of the compliance function, totality of the
16 risk function for the group company?

17 A. The compliance function, I was the registered compliance
18 officer for the Singapore office. I was the registered
19 money laundering reporting officer for Al Masah Cayman
20 and the compliance and money laundering reporting
21 officer for Al Masah Capital Management Ltd. And those
22 are the functions that I carried out. On the risk side,
23 I only looked after Al Masah Capital Management Ltd.
24 I did not perform any other risk functions for any other
25 subsidiaries in the group.

1 17:00 Q. You were the totality of the compliance functions. The
2 team you headed, the whole group?

3 A. I was -- no, I was the head of the people -- I was the
4 people -- head of the people that reported into me.

5 Q. Yes, and between you, you were all of the compliance
6 function of the group. That is the Cayman holding
7 company and the DIFC and Singapore subsidiaries?

8 A. Only the roles for which I was registered for.

9 Q. There wasn't anyone else providing the compliance
10 function within this group, was there?

11 A. No.

12 Q. We'll come to some of the detail in a moment, but for
13 that purpose, you were providing compliance manuals
14 covering the group operations across the whole group,
15 weren't you?

16 A. The compliance manual did say that it would cover
17 operations across the group, yes.

18 Q. You were group compliance officer; correct?

19 A. Only for the roles that I undertook.

20 Q. You took over, didn't you, from Total Solutions, who
21 were the outsource compliance officer provider; yes?

22 A. I took over from the functions of Total Solutions in
23 relation to Al Masah Capital Management Ltd.

24 Q. Did you regard yourself as having suitable
25 qualifications and experience for your post as risk and

1 17:01 compliance officer?

2 A. Sorry, say that again?

3 Q. Did you regard yourself as having suitable
4 qualifications and experience for your role as risk and
5 compliance officer?

6 A. Yes.

7 Q. When you were recruited for the role, you represented to
8 management that you were suitable for it in terms of
9 your competence and your expertise; yes?

10 A. Yes.

11 Q. As far as you're aware, no one at Al Masah Management
12 had any basis for thinking you weren't appropriately
13 qualified and competent?

14 A. No.

15 Q. Can we have a look at clause 5 of your contract that we
16 have up. This gives your remuneration.

17 Your remuneration package totalled \$164,000 as
18 a total package. Just to give a point of comparison,
19 you also have Ms Zudikova's contract of employment in
20 the bundle. That gives a compensation package which
21 totals \$47,000. So less than a third of yours.

22 It's fair to say you were one of the more senior
23 people in this organisation, weren't you?

24 A. Yes.

25 Q. You also received a shareholding in Al Masah Capital Ltd

1 17:03 as part of your compensation; correct?

2 A. Yes.

3 Q. You were a member of the Al Masah group of executive
4 management committee, weren't you?

5 A. Al Masah group, no, I don't believe I was, no. I don't
6 recall that.

7 Q. You're a member of the executive management committee.
8 That was the executive management committee for the
9 group, wasn't it?

10 A. I don't recall that, no.

11 Q. Can we have a look at bundle SKD 3-9 and you'll find
12 that, Fatima, in C010.

13 We have here minutes of a meeting of directors of
14 Al Masah Capital. That's the group holding company,
15 isn't it?

16 A. That's the Cayman company, yes.

17 Q. This is a board meeting of those directors. This is
18 in November 2013, so four months after you joined the
19 company. Can we have a look at paragraph 8.1. There's
20 a section there headed, "Compliance Reports and Related
21 Discussion":

22 "Introduction to new Compliance Officer: The board
23 was introduced with the new Compliance Officer of the
24 Company, Ms Helen Baines, and she updated the board with
25 various compliance monitoring and other compliance

1 17:05 related activities that she has undertaken in the
2 Company."

3 It's quite clear, isn't it, you were being
4 introduced to the board as the compliance officer of the
5 company, that is the Cayman company; yes?

6 A. I don't recall that meeting and I don't recall seeing
7 these minutes.

8 Q. You must recall that you were introduced to the board of
9 the Cayman company as the compliance officer, weren't
10 you?

11 A. I don't recall that meeting, to be honest with you.

12 Q. If you go down to paragraph 8.3, you'll see there it
13 says:

14 "Upcoming DFSA Risk Assessment: The Compliance
15 Officer further updated the board that the Company's
16 Dubai's subsidiary Al Masah Capital Management Ltd will
17 have a risk assessment by the DFSA ..."

18 This is you, in your capacity as compliance officer
19 of the group company, further updating the board about
20 a risk assessment that's going to happen for Al Masah
21 Capital Management Ltd, DIFC company; correct?

22 A. I mean, those are what it says in the minutes. As
23 I said, I don't recall that board meeting. I don't
24 recall the meeting or what I discussed at that meeting.

25 Q. Let's have a look at bundle C016, SKD 4-2. The file is

1 17:06 20131107, Fatima.

2 MR STOREY: Mr Hill, whilst we're waiting for the document,
3 could you please repeat the reference for the document?

4 MR HILL: Yes, full reference is C016, SKD 4-2 and the
5 number is 20131107, email compliance presentation.

6 MR STOREY: Thank you.

7 MR HILL: This is an email from you to Mr Dash and
8 Mr Singhdeo shortly before this board meeting and you're
9 saying:

10 "Hi Shailesh & Nrupaditya,

11 Please find attached the draft Compliance
12 Presentation for the Board Meeting on Sunday. I am
13 aiming to use my presentation time as more discussion
14 than just looking at numerous slides -- hence I have
15 only done a few slides."

16 So you prepared a presentation at this board
17 meeting; yes?

18 A. Yes, that seems to be so, yes.

19 Q. But you're suggesting you don't recall the board
20 meeting?

21 A. I don't recall that board meeting, no.

22 Q. We can see the presentation, if we go to C016, SKD 4-2
23 at 20131110 and that's a compliance presentation that's
24 attached to that email. Do you see there it's entitled:

25 "Compliance Presentation

1 17:09 Board of Directors Meeting ..."

2 Do you have that?

3 A. Yes, I can see that.

4 Q. Can we go on to the first substantive page of the
5 presentation, page 3. I'm just going to ask Fatima to
6 go back to page 2 briefly.

7 We can see the table of contents, that will remind
8 you of the issues covered within your presentation.

9 A. Right.

10 Q. Then on page 3, if you look at the first and second
11 bullet, you're explaining how the compliance functions
12 have been brought in-house. Yes?

13 A. That's correct, yes.

14 Q. Then in the bottom bullet of the page, you're giving the
15 board of management comfort about your qualifications
16 and experience for the role; yes?

17 A. That's correct, yes.

18 Q. I'm just going to ask Fatima to go back two documents to
19 the board meeting we were looking at, at C010 SKD 3-9.

20 Can you look at paragraph 10.1 of this document.

21 You'll see there that approval is given to the charter
22 of the executive management committee. It says:

23 "The Charter of the recently formed Executive
24 Management Committee ('EMC'), which defines the role of
25 the EMC, and which was circulated to the Board is now

1 17:12 approved."

2 Do you recall the executive management committee?

3 A. Sorry? Do I recall the executive management committee?

4 Q. Do you recall there was an executive management
5 committee, yes?

6 A. I think there was an executive management committee.

7 I do recall it, yes.

8 Q. You were on that committee, weren't you?

9 A. My understanding is that I was on the executive
10 management committee for Al Masah Capital
11 Management Ltd.

12 Q. You were on -- I'll come back to that in a minute, but
13 you were certainly on an executive management committee,
14 weren't you?

15 A. Honestly, I must have been, but I don't recall it
16 specifically.

17 Q. You wrote the terms of the charter that are being
18 approved in these minutes, didn't you?

19 A. I don't recall writing it. I may have done, but I don't
20 recall it.

21 Q. Can we look at bundle C016, SKD 4-4. This is an email
22 from you to Mr Singhdeo and others, September 2013.

23 Subject is "New Executive Management Committee".

24 Just scrolling down, it says:

25 "Dear All,

1 17:13 As part of the ongoing development of the Company,
2 the formation of an Executive Committee is being
3 undertaken to enable key senior management to focus on
4 specific business and operational issues."

5 Just scrolling down:

6 "Others will also join the Committee as and when
7 necessary."

8 Then you say at the bottom:

9 "I am currently drafting the Terms of Reference for
10 the Committee and will circulate a draft soon along with
11 the date and time of the first 'inaugural' meeting."

12 You were responsible for drafting the terms of the
13 charter?

14 A. Yes, it was the terms of reference for the executive
15 management committee, yes.

16 Q. Can you go to bundle C016, SKD 4-19. We see there you
17 have the Al Masah Capital Ltd logo. Underneath there:

18 "Al Masah Capital Limited
19 Executive Management Committee
20 Draft Terms of Reference."

21 Do you see that?

22 A. Yes.

23 Q. Then if we go down, we can see the content of the draft
24 terms of reference and it starts with an introduction of
25 what the committee is. If we look at the second

1 17:15 paragraph:

2 "The EMC assists the Chief Executive in running the
3 business and/or acts as an advisory committee for the
4 Chief Executive. It will typically be made up of the
5 executive directors and the most senior members of the
6 management team -- those individuals one level down from
7 the Board who report directly to the Chief Executive or
8 possibly to the Finance Director."

9 Do you see that?

10 A. I do.

11 Q. That describes the purpose of the executive committee,
12 doesn't it?

13 A. It does, but the next sentence clearly says that it's
14 the executive management committee for Al Masah Capital
15 Management Ltd.

16 Q. It is your position, just so I understand it, the
17 executive management committee was only for Al Masah
18 Capital Management Ltd and not for the group?

19 A. To the best of my knowledge, yes, it was. From what
20 I can remember seven years ago, yes, it was.

21 Q. Are you able to explain why the first page of this
22 document refers to executive management committee for
23 the group?

24 A. I can't explain that, no.

25 Q. We can see the functions of the executive management

1 17:16 committee, and the purpose and authority, and they
2 include implementation of budgets and the monitoring of
3 operating financial performance, don't they?

4 A. That's the purpose and authority. That's correct.

5 Q. That was what then happened with the executive
6 management committee; correct?

7 A. I can't remember exactly whether the terms of reference
8 were followed to the letter.

9 Q. If we look at the second section under "Membership", we
10 see that you were a member of the committee as head of
11 risk; yes?

12 A. Yes, as I said before, for Al Masah Capital
13 Management Ltd, yes.

14 Q. You would have been involved in discussions on the
15 topics that we see identified in the previous numbered
16 paragraph; yes?

17 A. Through the terms of reference, if I was at the
18 meetings, yes.

19 Q. I'm going to talk a little more about your role of you
20 and your compliance team. Paragraphs 9 and 11 of your
21 witness statement deal with the services that you were
22 providing to Al Masah.

23 A. Right.

24 Q. You say in paragraph 9:

25 "The compliance function sat in the Risk and

1 17:18 Compliance Team (Compliance), which I headed, and
2 included a Compliance and AML Deputy based in Singapore,
3 for the Singapore operations of Al Masah Capital (Asia)
4 Pte Ltd. Compliance provided services to various
5 companies in the Al Masah Group of companies including
6 Al Masah Cayman, Al Masah DIFC, and Al Masah Capital
7 (Asia) Pte. Ltd."

8 In your witness statement, you didn't seem to have
9 any difficulty explaining that the compliance function
10 was providing compliance services to all these group
11 companies, including the Al Masah Cayman company as well
12 as DIFC and Singapore.

13 A. That, to me, is not what that says. It says that the
14 services were provided to various, but not all of the
15 companies. So that, to me, is a difference. I would
16 then provide them the services where I was the -- would
17 have been the registered, either registered compliance
18 officer or the registered money laundering reporting
19 officer.

20 Q. Taking the first of those points, you do say various
21 companies, but the companies you say include Al Masah
22 Cayman holding company, don't they?

23 A. Because I was the registered money laundering reporting
24 officer for Al Masah Cayman.

25 Q. Then you say in paragraph 11:

1 17:19 "The Compliance team's roles and responsibilities
2 included compliance oversight related to Risk monitoring
3 and analysis, reporting and filings of Al Masah DIFC and
4 Al Masah Capital (Asia) Pte Ltd functions, both as
5 regulated entities."

6 It's entirely clear, isn't it, your compliance team
7 are providing these services for the relevant companies
8 within the group, which in this case include DIFC, the
9 Singapore subsidiary?

10 A. I was only -- it's very clear from that statement that
11 I was providing the services to the DIFC and the Asia
12 company for which I was registered as the compliance
13 officer in both cases.

14 Q. I'm just trying to understand how it is that you're
15 saying to us that you're heading up this compliance and
16 risk team, providing services for these group companies,
17 when it comes to the regulated companies who need
18 reporting, you are providing those reported services to
19 both subsidiaries. You're resisting the suggestion you
20 are compliance and risk officer to the group, which
21 I suggest is an obvious proposition.

22 A. It is my understanding that I was not the compliance and
23 risk officer for the whole group for which there were
24 a number of different subsidiaries. I was only
25 performing the duties for which I was the registered

1 17:21 person for.

2 Q. In order to fulfil your functions, obviously -- I'll
3 start that question again.

4 It would be fair to say that your role involved
5 monitoring and compliance activities; yes?

6 A. Yes, within the job role, yes.

7 Q. Identifying and reporting anything in the operation of
8 the business to make the company non-compliant with
9 regulations; yes?

10 A. The regulatory compliance, if there was any
11 non-compliance with the regulations, I would need to
12 report it, yes.

13 Q. Advising on steps to be taken to remedy any
14 non-compliance; yes?

15 A. Yes.

16 Q. If not remedied, ultimately advising the DFSA of any
17 non-compliance you were aware of?

18 A. If necessary, yes.

19 Q. In order to fulfil your functions, you obviously needed
20 to gain an understanding of what the business activities
21 were; yes?

22 A. Of the concerned companies, yes.

23 Q. For example, the private equity business that was being
24 operated, launched by Al Masah Cayman and operated with
25 investor relations teams in the Al Masah DIFC?

1 17:22 A. That is not my understanding. I did not -- my
2 understanding is I did not need to know parts of the
3 private equity division of what they were doing on, you
4 know, on an operational level.

5 Q. I'm not suggesting that. I'm not suggesting you needed
6 to know what was happening with the education business
7 and schools or anything like that. You needed to
8 understand the business structure, the structure of the
9 investments?

10 A. I needed to have an overview of the investment
11 structures, but I didn't need to have a detailed
12 knowledge.

13 Q. You also needed to consider what risks they gave rise
14 to, you needed to consider those risks in your capacity
15 as head of risk; yes?

16 A. We would have to look at the risks of the operational
17 risks for the business. If the private equity division
18 was in that, then that would be classed as an
19 operational risk, but it was targeting at looking at the
20 different operational risks, et cetera, and the
21 financial risks as per the remit of the DFSA
22 regulations.

23 Q. You needed to look at compliance issues in your capacity
24 as head of compliance; yes?

25 A. Yes.

1 17:24 Q. You deal in your witness statement with the compliance
2 manual. In the minute we just looked at -- I'm just
3 going to ask Fatima to put that back up, C010 SKD 3-9
4 paragraph 8.1.

5 We saw there that you were updating the Al Masah
6 board about compliance related activities you had
7 undertaken; yes?

8 A. The compliance activities I had undertaken within
9 Al Masah Capital Management Ltd.

10 Q. You're updating the Al Masah Capital group, the Cayman
11 company board, aren't you?

12 A. As I said before, I cannot recall the meeting itself or
13 the discussions in the meeting, but I can confirm that
14 I have not seen these minutes. So I would not be able
15 to say whether the minutes were correct or not. I would
16 not have seen the minutes of this meeting.

17 Q. What you're updating on is that you have updated various
18 compliance related manuals and you had indeed redrafted
19 the compliance manual, and separated the compliance and
20 anti-money laundering process, haven't you, as
21 a separate manual?

22 A. Yes, I separated out the compliance manual from the AML
23 manual and the activities were relating to Al Masah
24 Capital Management Ltd.

25 Q. That's not right, is it? Because you confirm expressly

1 17:25 in your witness statement, the compliance manual was for
2 all companies in the Al Masah group, don't you,
3 paragraph 16?

4 A. The anti-money laundering manual was separated out and
5 that talks about Al Masah Capital Management Ltd.

6 Q. Just to be clear, the compliance manual was something
7 you were providing for all companies in the Al Masah
8 group?

9 A. I would need to have a look at the manual. I can't
10 comment on that.

11 Q. I'm asking you to comment on your own witness statement.
12 You say in terms:

13 "The Compliance and Ethics Manual was used for all
14 the companies in the Al Masah group."

15 Paragraph 16.

16 A. Right, then that would be correct.

17 Q. That's because you're the compliance officer for the
18 group, providing a manual for the group companies; yes?

19 A. As I said before, the compliance officer role was only
20 undertaken for the registered positions within certain
21 businesses within the group, not the entire group,
22 Within the certain groups I was registered for.

23 Q. Can we have a look at exhibit F401. This is an email
24 from you in October 2013:

25 "Dear Shailesh & Nrupaditya,

1 17:27 Please find attached the new AML Manual, which has
2 been drafted to take into account the new DFSA AML
3 Rulebook, which came into force on 14th July. You will
4 recall that, until now, we have had a combined
5 Compliance & AML Manual.

6 With the new Risk Based Assessment AML guidelines --
7 it is beneficial for us to have a separate AML Manual --
8 to ensure that all aspects of the DFSA new rules are
9 taken into account and complied with. I should be
10 grateful if this new AML Manual can be submitted to the
11 next Board of Directors meeting of Al Masah Capital
12 Management -- and approved -- so that I can circulate to
13 all staff."

14 You have plainly taken the initiative in drafting
15 this manual, haven't you?

16 A. Yes, I took the initiative in drafting the manual, yes.

17 Q. You had no difficulties in taking the initiative in
18 compliance areas such as this one and giving guidance to
19 others for the manual?

20 A. I took the initiative to do the manual and I would also
21 help and support anybody with any queries with regards
22 to the rules of the DFSA or the guidelines within the
23 manual.

24 Q. Can we look at bundle F403. This is another email from
25 you to a number of people in the organisation including

1 17:29 management. If we just have a look at it, you say:

2 "Dear All,

3 This is an important reminder of the DFSA rules on
4 marketing materials and the issue of Financial
5 Promotions in or from the DIFC.

6 All financial promotions must be approved by an
7 Authorised Firm prior to issue (GEN Section 3). The
8 Definition of a Financial Promotion is very broad and
9 includes any communication, including marketing
10 material; term sheets, company information reports etc...,
11 however made, which invites or induces a Person to enter
12 into, or offer to enter into, an agreement in relation
13 to the provision of a financial service, or acquire a
14 financial product. Therefore it is important to note
15 that any publication issued by the Company upon which a
16 Person subsequently makes an investment/uses any of our
17 products or services, could be classed as a Financial
18 Promotion, irrespective of whether the content of the
19 publication is product specific or not.

20 With the above in mind, you are reminded to seek
21 Compliance approval and sign off for all marketing
22 material/publications, prior to issue. This approval
23 process is the method by which we are able to prove
24 compliance with the DFSA's regulatory obligation."

25 Again, you have no difficulty in issuing

1 17:30 instructions like this across the organisation; correct?

2 A. That is correct, I would send out such reminders, yes.

3 Q. I want to look at the compliance manual, which you

4 produced for all the companies in the Al Masah group.

5 Could you be shown bundle C010, SKD 3-11. Can we go to

6 page 81.

7 This is the compliance manual. It's headed,

8 "Al Masah Capital Group of Companies". Do you see that?

9 A. Yes.

10 Q. It's right, isn't it, that you provided this compliance

11 manual to the DFSA so as to demonstrate to them the

12 adequacy of the compliance function in the organisation?

13 A. I would have provided that to the DFSA to show that the

14 policies for Al Masah Capital Management Ltd, you know,

15 would be -- what the policies for Al Masah Capital

16 Management Ltd would be, because we didn't have

17 a separate manual for that.

18 Q. Can we look at paragraph 1.2 of the manual. That's the

19 section headed, "Business Activities of Al Masah Capital

20 Management Ltd". Your manual says:

21 "The principal business activity of AMCML is to act

22 as investment manager for the investment funds launched

23 by the Holding Company (or other such entities), which

24 will include private equity funds, hedge funds, and

25 real-estate funds.

1 17:32 Additionally, AMCML conducts marketing/distribution
2 activities on behalf of hedge funds and similar
3 investment vehicles. Offers and sales will only be made
4 to high net worth individuals and institutional
5 investors. In this respect, AMCML will not be in the
6 business of clearing or taking funds directly, but will
7 limit its activities to making introductions, answering
8 questions, and directing inquiries."

9 Your understanding is that the part of the function
10 of Al Masah Capital Management, DIFC company, was to act
11 as investment manager for investment structures to be
12 launched by the holding company, by Al Masah Cayman;
13 yes?

14 A. In certain instances, yes, but not in all instances.

15 Q. You understood also that Al Masah Capital Management
16 were carrying on marketing and distribution activities;
17 yes?

18 A. Yes.

19 Q. In particular, it was undertaking marketing and
20 distribution activities in respect of the private equity
21 platforms that were launched by Al Masah Cayman?

22 A. Yes, that's my understanding.

23 Q. That was one of the main functions of the investor
24 relations or the placement team working in the DIFC
25 office; yes?

1 17:33 A. Yes.

2 Q. In the third paragraph, on this page, it says:

3 "AMCML is licensed, as a Category 3c Company, by the
4 DFSA to carry out the following financial services ..."

5 It lists four financial services for which Al Masah
6 Capital was licensed. Did you understand that any of
7 these were in play in connection with the activities of
8 Al Masah DIFC for the private equity platform?

9 A. Sorry, can you just repeat that for me again?

10 Q. Did you understand that these licensed activities were
11 happening with regard to any of Al Masah DIFC's
12 activities, private equity?

13 A. For the private equity, the arranging function and the
14 advising function.

15 Q. Can we look now at section 2 of this compliance manual,
16 which is headed, "Corporate Governance". That deals
17 with corporate governance principles at -- and it
18 explains those at section 2.1. It also deals with the
19 audit committee, the remuneration committee, risk
20 committee, internal audit function and risk management
21 function. All in that section of the document.

22 Did you understand that all the bodies of that kind,
23 the audit committee, the remuneration committee, risk
24 committee, the internal audit function, risk management
25 function, were all up and running for Al Masah Capital

1 17:35 Management Ltd?

2 A. That was my understanding, that the functions were for
3 Al Masah Capital Management Ltd.

4 Q. Did you understand those functions were functioning
5 appropriately?

6 A. I don't understand what your question is.

7 Q. Do you understand those bodies were all up and running
8 and working in relation to remuneration committee, risk
9 committee, internal audit function?

10 A. But what you're saying is at what point in time were
11 they up and running? Can you please clarify.

12 Q. During your tenure as compliance officer.

13 A. I can't recall whether they were all up and running at
14 all points during that tenure.

15 Q. We'll come back to that. Can you look at
16 paragraph 2.2.7. You say -- it says there that, last
17 two paragraphs:

18 "The Compliance function is now in-house and headed
19 up by the Head of Risk & Compliance, who will take over
20 all of the above roles in addition to enhancing the
21 function and Compliance culture within the organisation.

22 The Head of Risk & Compliance is also authorised by
23 the DFSA as the authorised Compliance Officer and Money
24 Laundering Reporting Officer for the Company and in this
25 regard, is required to ensure that the operations of the

1 17:36 Company, at all times, are in compliance with the rules
2 and regulations of DIFC and the DFSA."

3 It's right to say, isn't it, that you were enhancing
4 compliance function, compliance culture within the
5 organisation; yes?

6 A. I was enhancing it from the perspective that it was now
7 an in-house compliance function rather than an
8 outsourced compliance function, but it was always for
9 Al Masah Capital Management. This was for Al Masah
10 Capital Management Ltd.

11 Q. You say you were enhancing it in the sense that it's
12 going in-house rather than external, but this paragraph
13 says rather more than that. It says:

14 "... the Head of Risk & Compliance, who will take
15 over all of the above roles in addition to enhancing the
16 function and Compliance culture within the
17 organisation."

18 What you're saying is in addition to taking over the
19 external role, you also enhanced the function of the
20 compliance culture within the organisation. Is that
21 accurate?

22 A. So taking over the role of the outsourced compliance
23 function and enhancing the function and the culture,
24 yes, within the organisation, within Al Masah Capital
25 Management Ltd, which would essentially mean, you know,

1 17:38 being there enhancing the function and the support to
2 the company.

3 Q. You were also required to ensure the operations of the
4 company at all times in compliance with the rules and
5 regulations of the DIFC and DFSA; yes?

6 A. I don't see that as a role of the compliance function.
7 I don't see that the compliance function is responsible
8 for the operations of the business. Compliance is
9 responsible for the compliance function.

10 Q. Yes, but the compliance function is something that
11 follows from what people are doing in the company.

12 A. The compliance function is essentially to monitor the
13 operations of the business. It is not to be involved in
14 the operations of the business.

15 Q. It requires you to understand and acquaint yourself with
16 what the company's operations are, so that you're sure
17 in terms of financial promotion or arranging or anything
18 else, the company is compliant with regulations; yes?

19 A. It is agreed, it is to have an understanding of the
20 operations of the business, in order to ensure
21 compliance and understanding of the operation.

22 Q. If you look at this paragraph, it says:

23 "The Head of Risk & Compliance is ... required to
24 ensure that the operations of the Company, at all times,
25 are in compliance with the rules and regulations of DIFC

1 17:39 and the DFSA."

2 That was what I put to you, but you don't accept
3 that. Is that right?

4 A. The compliance officer role was as set out in the job
5 responsibilities. The job roles and responsibilities of
6 the compliance officer and MLRO, it was set out in the
7 job role for which was given to me, and also as per the
8 regulations of the DFSA. It was not required to ensure
9 that the operations of the company are at all times in
10 compliance. The compliance role is not the sole control
11 function. It is part of the overall control function of
12 the company for which there are other control functions,
13 such as the directors and internal audit and others.

14 Q. This is your compliance manual.

15 A. It is my compliance manual, but to take it literally
16 like that, I do not believe is correct.

17 Q. It's your document that you were providing to the DFSA
18 to satisfy them that there were suitable compliance
19 measures in place; yes?

20 A. It was my -- that document is to set out the policies
21 and procedures to ensure that the operations are in
22 compliance. If people don't follow those policies and
23 procedures, that's another matter.

24 Q. You were comfortable with saying that the compliance
25 officer is required to ensure the operations of the

1 17:41 company are at all times in compliance with the
2 regulations?

3 A. I'm not comfortable in saying that, no.

4 Q. Can we look at section 3.2.1 of this document on
5 page 92. This is a section headed, "The Role of the
6 Compliance Officer":

7 "The role of the Compliance Officer is documented in
8 the DFSA regulations. Specifically, the Compliance
9 Officer is responsible for:

10

11 I. Ensuring compliance with legislation applicable
12 in the DIFC."

13 Are you suggesting you don't accept that or are you
14 comfortable with that now?

15 A. Within the role and the remit of the function, then that
16 would be my job ensuring compliance. But that does not
17 state, and it was never the intention for me to adopt
18 the compliance for the operations and the whole of the
19 business. That is not the compliance role and it was
20 never intended to be the compliance role and it was
21 never given to me in that respect. My compliance role
22 was just the compliance with the DIFC and DFSA
23 regulations.

24 Q. But the thing that has to be compliant is the business,
25 so what the company does. It's a financial services

1 17:42 business. It's your role to check and ensure compliance
2 of that business. It's what your job is.

3 A. My role is to set out the policies and procedures that
4 are designed or should be implemented for compliance
5 with the regulations within the DIFC and the DFSA.
6 Regulations are then put into policy documents. Those
7 policy documents are then circulated to staff for their
8 adherence and their compliance. And then there's
9 a monitoring for compliance, which is done by the
10 compliance officer and then there is a reporting
11 function.

12 But it is not correct to say that the compliance
13 officer or the compliance function is responsible for
14 all of the operations of the business.

15 Q. It's not suggesting you're responsible for the
16 operation. I'm suggesting you're responsible for
17 regulatory compliance. I think you may be agreeing with
18 me. To set out what the policies are, you have to
19 ensure they are being followed. You have to tell
20 management there are activities within the business
21 which are not compliant. Yes?

22 A. That's correct, yes.

23 Q. Can we look at subparagraph (v) on the next page, where
24 your role includes:

25 "Checking that the compliance policies and

1 17:44 procedures have been correctly implemented."

2 That's correct, yes?

3 A. That's correct, yes.

4 Q. Then (vi):

5 "Reviewing and testing for compliance with code of
6 conduct and policies and procedures within the
7 operations of the Company."

8 That's correct?

9 A. That's correct, yes.

10 Q. (vii):

11 "Maintaining a complete record of occurrences of
12 alleged breaches of legislation applicable in the DIFC
13 and rectifying actions taken."

14 Yes?

15 A. Correct.

16 Q. (viii):

17 "Reporting to senior management any significant
18 breaches."

19 That is correct?

20 A. That's correct.

21 Q. (xi):

22 "Maintaining and updating the Compliance Manual in
23 accordance with any changes to DIFC or DFSA rulebooks."

24 Yes?

25 A. That's correct, yes.

1 17:45 Q. Go back to (ix):

2 "Reporting any significant breaches to the DFSA."

3 Yes?

4 A. Yes, that's correct.

5 Q. Then (x):

6 "Ensuring any services offered by the Dubai office
7 are in accordance with the DFSA authorised licensed
8 activities."

9 A. That's correct.

10 Q. You discharged all those responsibilities as far as
11 you're aware?

12 A. To my knowledge and the best of my abilities, yes,
13 I did.

14 Q. As far as you were aware, there was nothing in the
15 operation of the business that was in breach of DFSA
16 regulation?

17 A. Through the activities that we have just mentioned,
18 which is the policies and the procedures and the
19 compliance monitoring calendar, and the reviews, if
20 there was anything in the business that had come to my
21 attention, it would have been reported to the senior
22 management.

23 Q. There was nothing in the operation of the business that
24 as far as you saw, gave rise to a breach of DIFC
25 regulatory law, either on the part of Al Masah Capital

1 17:46 Management Ltd or on the part of Cayman company?

2 A. I can't answer that question. That's not a question

3 I can answer.

4 Q. I'll take it in stages. Nothing in the operation of the
5 business that you saw that you considered gave rise to
6 the breach of regulation on the part of Al Masah Capital
7 Management; correct?

8 A. Whatever I have recorded, whatever I have reported to
9 the management is in the management reports. So if
10 there was anything that was any different to the
11 policies and procedures, if there was anything that
12 I felt to be reported to the management, it would have
13 been reported and it would have been in the reports
14 which were submitted.

15 Q. But I may come back to this later in regards to specific
16 allegations. But you didn't consider that there was
17 anything inherent in the structure of the business that
18 gave rise to a breach of regulation by Al Masah Capital
19 Management Ltd on the collective investment fund or
20 arranging investments or anything like that?

21 A. I can't answer that question. I don't understand what
22 you mean by that question.

23 Q. I'm asking you whether there were any breaches of
24 regulations you were aware of. Firstly, were there any
25 breaches of regulations you were aware of?

1 17:48 A. If there was a breach of regulation, it would have been
2 reported in the compliance reports. We are talking many
3 years ago and you are talking a lot of work was done
4 throughout that time, so it would be wrong for me to
5 say -- give you a categorical "yes" or "no".

6 If there was any concerns with regards to the
7 business, the operations, the following of policies and
8 procedures, the monitoring, anything like that, it would
9 have been documented and it would have been reported
10 through the compliance monitoring framework and the
11 compliance framework that was in the company.

12 Q. Are there any that you reported to the DFSA?

13 A. I don't recall there being any breaches reported to the
14 DFSA.

15 Q. Any breaches that you reported to management that
16 weren't corrected to your satisfaction and dealt with
17 satisfactorily?

18 A. The breaches -- if there was breaches reported to
19 management, it would have been documented in the
20 compliance monitoring, the compliance reports and the
21 compliance monitoring programme. And if those instances
22 were not resolved, then that would also have been
23 reported, but it would have been fully documented to the
24 management.

25 Q. We don't have any documentation of breaches of any

1 17:49 relevance to this case, allegations in this case, so it
2 would be fair to conclude that there are none in this
3 case; yes?

4 A. I don't know what the allegations are in this case, so
5 I can't comment on that.

6 Q. I'll be coming to them with you. You didn't consider
7 that there was anything in the operation of this
8 business that gave rise to any breach of DIFC regulatory
9 law on the part of Al Masah Capital Ltd, the Cayman
10 company?

11 A. I don't recall anything like that. I don't recall ever
12 talking about Al Masah Capital Cayman Ltd, if they were
13 part of breaches.

14 Q. If you had thought that there was anything inherent in
15 the way the business was conducted, that gave rise to
16 a breach by Al Masah Cayman Ltd, you would have said
17 something?

18 A. Al Masah Cayman Ltd was not licensed in the DIFC/DFSA,
19 so if there was anything that caused a concern, it would
20 have been raised.

21 Q. If, for example, you thought that Al Masah Cayman was
22 conducting financial services in DIFC, in breach of the
23 prohibition, you would have said something?

24 A. If there was any breach of DFSA regulations, I would
25 have said so, yeah.

1 17:50 Q. As far as you were aware, the group had appropriate
2 procedures to address risk and compliance; yes?

3 A. With the policies and procedures I felt that were
4 appropriate, yes.

5 Q. You didn't suggest to management that they were
6 inappropriate; correct?

7 A. No.

8 Q. Management didn't ignore any advice from you to improve
9 the compliance framework within the organisation?

10 A. I can't recall that.

11 Q. As far as you can see at the time, management would have
12 been entitled to think compliance issues within the
13 organisation were being properly attended to by you and
14 your team; yes?

15 A. Within the organisation of Al Masah Capital
16 Management Ltd, then I had no reason to -- you know, if
17 it was a breach there, then it would have been
18 documented. I have no reason to believe within Al Masah
19 Capital Management Ltd that the four, you know,
20 regulated activities were not being followed.

21 Q. As far as you could see, management were entitled to
22 think the Al Masah company was in compliance with DFSA
23 regulation?

24 A. Which Al Masah company is that?

25 Q. Either of them.

1 17:52 A. No, Al Masah Capital Management, as I have said before,
2 I was not a registered compliance officer for Al Masah
3 Capital Ltd. I was only the registered money laundering
4 reporting officer. I was the compliance officer for Al
5 Masah Capital Management Ltd.

6 MR HILL: I wonder if now is a convenient time for a break
7 for the shorthand writer.

8 MR MALEK: We'll take a break now. We'll come back at 10
9 past 3. Thank you.

10 (5.53 pm)

11 (Short break)

12 (6.09 pm)

13 MR HILL: Ms Baines, we were looking at the compliance
14 manual. And I'm going to come back to that in a moment.
15 Before I do, can we deal with your regulatory compliance
16 report you provided to management. You provided those
17 to management on a quarterly basis, didn't you?

18 A. Yes, that was correct, on a regular basis, yes.

19 Q. Can we have a look at one. It's at bundle C016 -- just
20 so Fatima knows, I will be coming back to the compliance
21 manual -- SKD 4-15 and the reference is 20141101. The
22 description is "attached email QCR".

23 This is an example, isn't it, of one of your
24 quarterly reports to management; yes?

25 A. Yes, that's correct.

1 18:11 Q. Could I ask you to look at the second page of that
2 document. You have a reference to something called the
3 breach register; yes?

4 A. That's correct, yes.

5 Q. That requires you to provide a summary of rule breaches
6 occurred or discovered during the period and you say to
7 management that there are no reportable breaches in the
8 period of this report; yes?

9 A. That's correct, in that report, yes.

10 Q. Just a little bit further down, you have a reference to
11 the business plan and you explain there:

12 "The Business Plan of the Company was updated in
13 December 2013 in readiness for DFSA Risk Assessment --
14 there were no changes to the said Business Plan during
15 the period of this report."

16 That's correct?

17 A. That's correct, yes.

18 Q. The period we are talking about is 1 November 2014 to
19 31 March 2015, you see from the front of the document?

20 A. Is that at the top of the document? I'll have to check
21 245.

22 Q. Yes, please do, it's at page 1 of the document. Do you
23 see that?

24 A. That's correct, yes.

25 Q. Now can you be taken to page 3 of the document. Do you

1 18:13 see there's a section of "Compliance Awareness", and you
2 explain there:

3 "Regular Compliance review meetings are held with
4 the SEO and CFO to discuss compliance and other business
5 related matters and decide on actions to be taken. The
6 basis of the review meetings is the Compliance
7 Monitoring Plan. Compliance matters are also raised for
8 discussion at the regular Executive Management Committee
9 meetings."

10 That's all that is.

11 A. Yeah.

12 Q. Can you also go to page 6 of the document. Do you see
13 there's a section under, "Licences -- Commercial
14 & Regulatory". That says:

15 "Confirm the current validity of the Company's Legal
16 and Regulatory licences."

17 You are saying:

18 "All Commercial and Regulatory Licences are in place
19 for Al Masah Capital; Al Masah Capital Management;
20 Al Etihad Financial Advisory and Al Masah Capital
21 (Asia). The Compliance Officer has not received any
22 notifications of concern with regards to the same."

23 A. That statement, yes. That statement there, yes.

24 Q. You are dealing there with the existence of sufficient
25 and appropriate regulatory licences as necessary of not

1 18:14 just Al Masah Capital Management, the DIFC company, but
2 also Al Masah Cayman and indeed the Singaporean company
3 as well as the Al Etihad company; yes?

4 A. I mean, that's a confirmation, yes, but it doesn't mean
5 to say I was dealing with it.

6 Q. You're providing this form to management to confirm the
7 current validity of the company's legal and regulatory
8 licences.

9 A. I said, it states there that they're in place and I've
10 not received any notifications of concern regarding the
11 same. The Al Masah Capital licences would have been
12 dealt with by the corporate administrator in the Cayman.
13 And that statement would be correct in that if I had any
14 notification of concerns, I would have documented it.

15 Q. That's right --

16 A. But that doesn't mean to say that I was responsible
17 for it.

18 Q. The reason for that is that this all comes under the
19 umbrella of what you're dealing with. It's all part of
20 your compliance umbrella, isn't it?

21 A. No, it's not all part of my compliance umbrella.

22 Q. There isn't anyone else as we have seen, in 2015, this
23 is you, and the person who is reporting to management is
24 you. Not just for Capital Management Ltd, but also for
25 the Cayman.

1 18:16 A. If there was any concerns by Al Masah Capital Ltd, it
2 would have come from or it should have come from the
3 corporate administrator in the Cayman Islands. That was
4 not my remit.

5 Q. If you look at the next paragraph under "Marketing
6 Documentation":

7 "Provide an update on marketing documentation
8 reviews done during the period.

9 Marketing documentation, presentations, updates to
10 Offering Documents and Term Sheets and Teasers are
11 reviewed by Compliance on an ongoing basis and
12 a Register of all Marketing Documentation approved by
13 Compliance is maintained."

14 That was also part of your responsibility; yes?

15 A. For the marketing documentation, presentation updates
16 for Al Masah Capital Management Ltd.

17 Q. You were confirming to management that there was no
18 breach of regulations that you were aware of; correct?

19 A. This is an Al Masah Capital Management report, so on the
20 report, I would have been confirming that all of the
21 term sheets would have been reviewed on an ongoing basis
22 and approved.

23 Q. More broadly than that, as we saw from the breach box,
24 you were confirming to management that there was no
25 breach of the regulations that you were aware of?

1 18:17 A. For Al Masah Capital Management Ltd.

2 Q. I said we would go back to the compliance manual and
3 let's do that now. Let's look at section 3.2.2.

4 Can I just read the third and fourth paragraphs
5 here:

6 "As there is an open dialogue between Senior
7 Management and the Compliance Officer, the Compliance
8 Officer can request ad-hoc meetings to deal with matters
9 as they arise."

10 That's accurate, isn't it? There was an open
11 dialogue?

12 A. There was an open dialogue, yes.

13 Q. Then:

14 "The Compliance Officer has unrestricted access to
15 all relevant records of the [company] and can freely
16 interview all employees or representatives of the
17 [company]. In case the [company] has outsourced some of
18 its functions or activities, these arrangements
19 should ..." be subject to oversight by the compliance
20 officer's activities.

21 That was accurate as well?

22 A. Yes, for Al Masah Capital Management, yes, it was.

23 Q. You could request ad hoc meetings, as that previous
24 paragraph says, to deal with matters as they arose; yes?

25 A. Yes, if I felt the need, yes.

1 18:18 Q. Can we go to section 5.1.2. This says under

2 "Organisation and management information":

3 "The [company] implements clear reporting lines that
4 take into account the nature, scale and complexity of
5 its business. These reporting lines, together with
6 clear management responsibilities, and are communicated
7 to all Employees and documented. The [company]
8 identifies clearly the Employees who will be delivering
9 financial services to its customer and their respective
10 lines of accountability and supervision.

11 The [company] has established and maintains
12 arrangements to provide its Board and senior management
13 with the information necessary to organise and control
14 its activities, to comply with legislation applicable in
15 the DIFC and to manage risks. The information must be
16 relevant, accurate, comprehensive, timely and reliable."

17 The corporate governance framework has been adopted
18 by the board which includes policies, procedures and
19 evaluations of its activities and decision making.

20 Those paragraphs were accurate?

21 A. Yes, to the best of my knowledge.

22 Q. Underneath that we have a section called, "Risk
23 Monitoring", can we just have a look at that:

24 "The [company] has established and maintains systems
25 and controls ... to enable it to identify, assess and

1 18:20 mitigate, control and monitor its [internal and
2 external] risks. The [company] develops, implements and
3 maintain policies and procedures to manage the risks to
4 which the [company] and where applicable, its customers
5 or users, are exposed."

6 That was accurate, yes?

7 A. Yes, for Al Masah Capital Management Ltd, yes.

8 Q. If you go to 5.2.2, it says there:

9 "Employees and agents (including outsourced
10 activities).

11 The [company] maintains systems and controls to
12 enable it to satisfy itself of the suitability of its
13 Directors, Senior Management, Employees and of its
14 contractors who are used for tasks the functions where
15 internal expertise is insufficient."

16 That was accurate as well; yes?

17 A. Yes.

18 Q. Section 5.2.3 dealing with training. I'm going to ask
19 you to read that to yourself. I'm not going to read it
20 out to you. But I'm going to ask you to confirm that
21 fairly summarises the arrangements with regard to
22 training?

23 A. Yes.

24 Q. Could Fatima just go, so you can see the whole section,
25 right to the end of the section. You're happy that

1 18:21 that's accurate?

2 A. Yes.

3 Q. You were responsible for ensuring that training was
4 given to all staff; yes?

5 A. Within my job role for Al Masah Capital Management Ltd,
6 that was documented as a responsibility, yes.

7 Q. Just to answer the question, you were responsible and
8 you performed that role; yes?

9 A. I performed that role, yes.

10 Q. That included ensuring training was given to investor
11 relations teams at the DIFC offices?

12 A. Yes.

13 Q. Can we go to section 6 of this document. This deals
14 with the company's permitted activities. If we look at
15 section 6.2, it deals with "authorised activities". The
16 second paragraph says:

17 "No Employee should ever conduct any activities
18 outside the scope of the [company's] DFSA authorised
19 activities. Any Employees found to be acting outside of
20 the scope of the [company's] permitted activities will
21 be subject to disciplinary action, including
22 termination."

23 As per the HR manual and/or handbook.

24 As far as you were aware, the company employees were
25 not conducting activities outside the scope of the

1 18:23 company's DFSA authorised activities; correct?

2 A. These are the employees of Al Masah Capital
3 Management Ltd, so where -- I was dealing with the
4 employees of Al Masah Capital Management Ltd. And, yes,
5 that is correct. They should not be conducting any
6 activities outside of the Al Masah Capital
7 Management Ltd licence.

8 Q. You didn't consider that the ordinary activities of the
9 investor relations team did constitute any infringement
10 of the DFSA regulation; correct?

11 A. I didn't consider, because those -- I considered those
12 to be employees of Al Masah Capital Management Ltd and
13 I considered that they did their job in regards to the
14 licensed advising and arranging function.

15 Q. The next section 6.3 deals with operational
16 requirements. The first paragraph reads:

17 "Under the DFSA regulations, the Compliance Officer
18 must check that the [company] continues to act within
19 the scope of its permitted activities."

20 So it was your obligation, wasn't it, to check the
21 company remained within the scope of its permitted
22 activities; yes?

23 A. It was a compliance function to make sure that the
24 company did not -- Al Masah Capital Management Ltd did
25 not fall -- you know, the activities did not fall

1 18:24 outside the scope of the licence.

2 Q. As we can see from the next paragraph:

3 "This requires a physical check, evidence of which
4 must be retained, and a report to the DFSA of any
5 changes."

6 Yes?

7 A. Yeah.

8 Q. You did undertake this physical actual check of the
9 business activities, whether they were within the scope
10 of Al Masah Capital?

11 A. The compliance monitoring plan that I followed as part
12 of my compliance function would have taken into account
13 all of the regulatory checks that I needed to do.

14 Q. It's not just a question of having a plan, it requires
15 you to actually do it and you did do some actual as
16 opposed to just devising a plan. You actually did --

17 A. So the compliance monitoring plan sets out all of the
18 checks that I would have needed to do, it sets out the
19 check that would have been needed, it sets out the
20 relevant relation into the relevant rulebook and the
21 process and the documentation followed. That would have
22 been documented in the compliance monitoring plan.

23 Q. The things that were required to be done by the
24 compliance monitoring plan, you did; yes?

25 A. As per the compliance monitoring plan, yes, that would

1 18:26 have been done.

2 Q. Can we go to section 8 of this manual. This deals with
3 conduct of business requirements. If you look at
4 paragraph 8.2.3, this deals with marketing material.
5 The third paragraph provides:

6 "Every formal document, report or release must be
7 submitted to the Compliance Officer for approval ..."

8 You ensured that that's what happened; correct?

9 A. The formal document in terms of marketing material.

10 Q. Exactly. That's what happened?

11 A. Yes, to my knowledge, yes.

12 Q. You had to satisfy yourself as to what material amounted
13 to marketing material that fell within this part of the
14 compliance policies, yes?

15 A. Well, I had to -- I have set out the policies and
16 procedures that what the compliance personnel and myself
17 would consider as marketing material. I set that out in
18 the policies and procedures. It was then the
19 responsibility of the person who was drafting or issuing
20 the marketing material. If it was deemed to be
21 marketing material, then it would have to come to
22 compliance for review.

23 Q. But the quality of assessment of what was sort of
24 material amounted to marketing material was yours, as
25 you set out those policies?

1 18:28 A. No, I did not assess all documents.

2 Q. That wasn't my question. Just listen to my question.

3 The quality of assessment of what type of material that
4 amounted to marketing material was yours, because you
5 set out those policies to follow?

6 A. Yes, I set out the policies to follow and what I would
7 consider would be classed as marketing material.

8 Q. If we go to clause 8.3 of the manual, you can see there
9 is a section on client classification. The first
10 paragraph says:

11 "Since the [company] will only be dealing with
12 professional clients in carrying out its business
13 activities, it must ensure that all clients can be
14 classified as such appropriately and ensure that proof
15 of the basis on which this classification was made is
16 retained."

17 It's right, isn't it, the company could only deal
18 with professional clients and there had to be
19 appropriate client classification of all clients; yes?

20 A. That's correct, yes.

21 Q. Then if you go to section 8.3.2, this explains the
22 analysis to be undertaken of any professional client;
23 yes?

24 A. That is correct, yes.

25 Q. Part of your role was to ensure there were processes in

1 18:29 place so that all necessary client on-boarding and
2 client classification was happening; yes?

3 A. The policies and procedures with regards to client
4 on-boarding and client classification were documented
5 and set out in -- as a requirement from the compliance.
6 But it was not my decision as to whether a person was
7 deemed to be a client or not. That would have been the
8 responsibility of the sales or marketing or relationship
9 management team.

10 Q. You're the expert in compliance. You're the person who
11 has to ensure there's appropriate client on-boarding?

12 A. For which there is policies and procedures for which
13 there is training and there is the compliance monitoring
14 plan. But I have to educate the people who are on the
15 frontline, if you want -- first line of defence or
16 frontline to say: is this person, would this person be
17 considered a client or not? If they are considered
18 a client, then they have to follow this policy and
19 procedure.

20 Q. But what constitutes a client is a regulatory question.
21 You're the regulatory expert advising the company?

22 A. For which the employee, the Al Masah Capital Management
23 employee, if they have any queries, they would have to
24 come to me.

25 Q. It's your job, when we have seen about physical

1 18:31 inspection, physical checks would be made to you, it's
2 your job to ensure that client on-boarding is happening;
3 yes?

4 A. Where clients needed to be on-boarded, then I would make
5 sure that the policies and procedures for on-boarding
6 would be followed.

7 Q. The decision as to which people of the company were
8 dealing with amounted to clients, that was also
9 something within your sphere of responsibility?

10 A. No, it was not my decision as to whether somebody would
11 or would not be a client. I don't know --

12 Q. You were the only person who could advise on whether
13 under the DFSA rules, people needed to be on-boarded as
14 clients or not. You're the expert, aren't you?

15 A. I was the expert in terms of the policies and
16 procedures. I was also responsible for training the
17 staff, to understand -- the staff have to also
18 understand the policies and procedures. And then they
19 would have to make the decision as to whether somebody
20 would need to be on-boarded, or if they had a question,
21 whether somebody needed to be on-boarded, then they
22 would have to come to me.

23 Q. If we take, as an example, shareholders who become
24 shareholders in the private equity platforms, the
25 decision as to whether or not they should be on-boarded

1 18:32 as clients would come within your remit?

2 A. Not necessarily, no.

3 Q. As a whole, you must have been considering and
4 monitoring whether or not it's appropriate for them to
5 (unclear ...)?

6 A. I did not get involved in the shareholders. The only
7 interaction with the shareholders of the private equity
8 firms was through the KYC due diligence on the
9 subscription forms.

10 Q. I'm not suggesting you were interacting with the
11 shareholders on a personal basis. What I'm suggesting
12 is that the policy of the company as to whether those
13 shareholders would or would not be on-boarded as
14 clients, that was within your remit.

15 A. The policy of the company was in my remit. The policies
16 would be in line with DFSA rules and regulations.
17 Whether somebody needed to or whether the employee
18 needed to start that on-boarding process, the employee
19 of Al Masah Capital Management, whether they needed to
20 start that process, was not my decision. It's the
21 employee's decision.

22 Q. You had risk committee meetings for the Al Masah group?

23 A. Sorry, say that again?

24 Q. You had risk committee meetings for the Al Masah group;
25 yes?

1 18:34 A. I don't recall that.

2 Q. Can I suggest you did attend meetings, risk committee
3 meetings for the Al Masah group. You are saying you
4 don't know?

5 A. I don't recall that.

6 Q. Could you have a look at bundle C016 at SKD 4-16. The
7 reference number, for Fatima, is 20150614.

8 It's entitled, "Email FW Compliance Board
9 Presentation".

10 This is an email from you to Mr Dash and Mr Singhdeo
11 and you're attaching a compliance presentation for the
12 Al Masah board meeting.

13 Can we go to the attachment, which is at C016, SKD
14 4-16. This is entitled:

15 "Compliance & Risk Presentation.

16 Risk Committee Meeting -- 15 June 2015."

17 If you go to page 6, you'll see there is a profile
18 of the group client base. It's showing all the assets
19 under management, including in the private equity
20 structure. Do you recall that presentation?

21 A. I don't recall this presentation.

22 Q. But we can see here that what you're doing is presenting
23 to the group board, the profile of the assets of the
24 group client base. It's nothing to do with just
25 Al Masah Capital Management Ltd, is it? It's an

1 18:36 Al Masah Cayman holding company group level

2 presentation, isn't it?

3 A. That is the presentation, but I don't recall it.

4 Q. You're not disputing that it's your presentation, it's
5 the attachment to the email we just looked at?

6 A. I honestly can't remember the presentation.

7 Q. Can we go down to page 7 of your presentation. You're
8 giving there an update in relation to particular
9 investment fraud.

10 If we look at the third bullet, you -- it's the page
11 above. Again, it's the same topic, it's an update on
12 this investment. The third bullet about the portfolio
13 being transferred to Al Masah and managed under the DFSA
14 regulated entity, Al Masah Capital Management.

15 Again, this is clearly a presentation you're giving
16 to the board at group level in which you're explaining
17 about a particular portfolio being managed under DFSA
18 regulated entity, Al Masah Capital Management. Is that
19 correct?

20 A. Yes, the Al Masah Capital Management Ltd, the licence
21 allowed them to do asset management activities and
22 [redacted] was on-boarded as a client under
23 a discretionary portfolio arrangement. It was
24 on-boarded as a client of Al Masah Capital
25 Management Ltd. It was not -- as my recollection goes,

1 18:39 it was not a client of Al Masah Capital Ltd. It was
2 on-boarded as a client of Al Masah Capital
3 Management Ltd.

4 Q. Yes, I'm not disputing that. My point is that we can
5 see from this document how your job works within this
6 company. You are making a presentation to the board at
7 group level, discussing the affairs of the group, that
8 we saw from your previous page, of all the group assets
9 under management and you're referring here to a specific
10 incident. And as part of that incident, you're
11 referring to the portfolio being transferred to and
12 managed under the DFSA regulated entity, Al Masah
13 Capital Management. Do you see that?

14 A. I do see this. I don't believe that the slide
15 previously, you know, shows that I'm acting in a group
16 capacity. It's just giving an overview of certain
17 things. It doesn't -- to me, it would not support the
18 argument that I'm acting in a group capacity.

19 Q. It's quite obvious you are acting in that capacity,
20 because here you are presenting to the group. You're
21 presenting to the group about that. In fact, you're
22 being treated at group level, such that when you refer
23 to the DIFC company level, you refer to it in the third
24 person, as it were, by describing something as being
25 transferred to the DFSA regulated entity, Al Masah

1 18:40 Capital Management. Do you see that?

2 A. From what I've seen, it does not indicate that this was
3 done for an Al Masah Capital group board. The email
4 that you showed me previously does not say Al Masah
5 Capital group board.

6 Q. If it was done -- if this was a presentation for the
7 board of Al Masah Capital Management, it wouldn't be
8 saying the portfolio is being managed under the DFSA
9 regulated entity, Al Masah Capital Management. It would
10 just be saying the portfolio is managed under this
11 company. It's not saying that at all.

12 A. I can't comment on that.

13 Q. The reason you can't comment is it's quite obvious what
14 the reality is, which is that you are group compliance
15 and risk management, not solely Al Masah Capital
16 Management.

17 A. That's not the case. I was the compliance officer for
18 the entities for which I was registered.

19 Q. Can you go to page 10.

20 PRESIDENT: Before we go on to -- I'm sorry to interrupt,
21 it's just a slightly wider point, which is that we're
22 looking at some documents that disclose the names and
23 identities of a variety of people who are not directly
24 involved in this case.

25 Are there some sort of checks in place to ensure

1 18:41 that the disclosure of individual clients' identities,
2 which themselves are not relevant to the proceedings,
3 are not referred to in the published version of the
4 transcript?

5 MR HILL: I don't know about that. But it certainly should
6 be. And we would, from our side, completely support
7 that and I imagine the DFSA will support that too.
8 We'll make sure that that happens.

9 PRESIDENT: I'm sorry to interrupt, but I think it's quite
10 important from a third party point of view. So if the
11 two parties would have a view, discuss that before
12 things actually go on to the website. Thank you.

13 MS CLARKE: Certainly, we can do that, sir. I know we have
14 a process in place to check the transcripts before they
15 are published. And so, I'm sure that we will ensure
16 that that matter is taken care of too. But I will
17 revert to the team and I'll confirm the position. I'll
18 confirm it to my learned friend as well.

19 MR HILL: Equally, if in the future, there's any process by
20 which any documents could be sought publicly, this
21 document at least should be redacted or removed in that
22 process.

23 PRESIDENT: Thank you very much. And again, sorry to
24 interrupt.

25 MR HILL: Can we now, Ms Baines, focus on page 10 of this

1 18:43 document.

2 A. Okay.

3 Q. You'll see there you commissioned a review of operations
4 and private equity. That was completed in 2014 with no
5 major issues or recommendations for improvements. That
6 was a review on -- that would have included the private
7 equity business; yes?

8 A. That review was done on the private equity teams that
9 were within Al Masah Capital Management Ltd.

10 Q. No major issues were identified or recommendations
11 approved; correct?

12 A. The internal audit function, the risk management
13 function, were outsourced services. And as the
14 compliance and risk, I organised the plans with the
15 outsourced function. I did not carry out internal audit
16 reviews or risk management reviews, they were done by an
17 outsourced function.

18 Q. Can we look at the business activities now of the
19 Al Masah companies. I would like to focus on the
20 Al Masah private equity platforms. You understood that
21 there were four corporate entities incorporated in the
22 Cayman, yes, which were the companies in which
23 shareholders purchased shares?

24 A. That was my understanding.

25 Q. Investors could purchase shares in those investments;

1 18:44 yes?

2 A. That was my understanding.

3 Q. There was this placement or investor relations team
4 operating out of the DIFC offices, the same office as
5 you were based in?

6 A. The Al Masah Capital Management team were there, yes, in
7 the offices.

8 Q. They were the only investor relations team in relation
9 to this platform?

10 A. I can't comment on that.

11 Q. They were operating in the same office as you; yes?

12 A. They were on the same floor as me on the other side of
13 the building.

14 Q. You deal in your witness statement with the approval of
15 marketing material and was it your understanding that
16 there were marketing activities being undertaken in or
17 from the DIFC?

18 A. There was a marketing activity undertaken in or from the
19 DIFC by the employees of Al Masah Capital
20 Management Ltd.

21 Q. When you refer to "the employees of Al Masah Capital
22 Management Ltd", you're thinking again of the investor
23 relations team?

24 A. The people that were sat in our office, yes.

25 Q. That team was responsible for generating new

1 18:46 subscriptions into the private equity, yes?

2 A. My understanding is that they were bringing the
3 subscription documents into Al Masah.

4 Q. Yes, so exactly, they were responsible for generating
5 leads, subscriptions into the private equity structures,
6 yes?

7 A. Yes, that's my understanding.

8 Q. What did you understand that their activities might
9 involve?

10 A. Sorry, say that again.

11 Q. What did you understand their activities might involve?
12 What did you think they were doing?

13 A. My understanding of their activities is as per the
14 witness statement. I think it's already in the witness
15 statement, isn't it?

16 Q. Why don't you tell us rather than looking at your
17 witness statement. What's your recollection? Don't
18 worry about your witness statement. What's your
19 recollection?

20 PRESIDENT: You're giving contrary advice to the witness.
21 She can just take her time and find it if that's what
22 she would like to do.

23 MS CLARKE: Thank you, sir. Yes, if she wants to look at
24 the witness statement, she can look at the witness
25 statement. She's entitled to do so and to read what's

1 18:47 there before she answers any questions. I'm sure my
2 learned friend wouldn't want to suggest otherwise.

3 A. I'm just checking. Just a moment.

4 So, yes, as per the witness statement, the
5 relationship management or the placement team, as it's
6 referred to in the witness statement, is responsible for
7 generating new subscriptions into the PE funds as well
8 as other investment structures launched from time to
9 time.

10 MR HILL: That was the bit I was asking you about.

11 "Responsible for generating new subscriptions into the
12 PE fund", what did you understand they were actually
13 doing?

14 A. Well, explaining that a little bit further -- I mean --

15 Q. Sorry, you finish your answer.

16 A. So generating new subscriptions could be, like I say,
17 doing some financial promotions, which are within the
18 scope of the licence, talking to people about the PE
19 funds, as per the marketing material that was actually
20 generated and signed off, you know, which sets out all
21 of the different bits and pieces of the funds. And just
22 generally talking to different people about the new
23 subscriptions and how people could potentially
24 subscribe. But also may be talking to not so much
25 individual clients, but maybe also talking to

1 18:49 distributors, other corporates who, you know, would be
2 able to generate new subscriptions into the fund.

3 Q. Were you also aware that some shareholders were
4 introduced through third-party referrals? Is that what
5 you meant by "distributors"?

6 A. Yes.

7 Q. Ms Zudikova's evidence is that, at some point in time,
8 there was a website portal which potential investors
9 were directed to, but prior to that material might be
10 sent to potential investors by the investor relations
11 team. Is that also what you would understand or would
12 you have some different understanding?

13 A. I don't have any comment on that.

14 Q. Whether we're talking about material on the portal or
15 marketing material available to the investor relations
16 team, all of that, the system that you set up provided
17 for all of that material to be approved by you?

18 A. Where the material was considered marketing material --
19 and, again, the policies and procedures state that, you
20 know, where -- and also the training and the emails that
21 were sent out that says that where such a document was
22 deemed to be marketing material, it would have to be
23 reviewed and approved by the compliance, within the
24 framework of the financial promotions regulations.

25 Q. You explain at paragraphs 24 and 25 of your witness

1 18:51 statement how you reviewed and approved marketing

2 material for the private equity --

3 -- (Unclear -- paper rustling) --

4 A. Yes.

5 Q. Here you explain offering documents, financial
6 projections, investor presentations, and teasers; yes?

7 A. That's correct, yes.

8 Q. You were satisfied that that material was true, fair and
9 not misleading?

10 A. As per the DFSA regulations, I would have followed the
11 DFSA regulations that it was true, fair and not
12 misleading, within a reasonable measure.

13 Q. You carried out that assessment based on your
14 understanding of the structure and the assets?

15 A. Based on my understanding of the structures and the
16 businesses, yes.

17 Q. Just to pull what you're saying in your evidence
18 together, as I understand it, you've got this system in
19 place so that the investor relations team might liaise
20 with potential investors to generate new funds. At some
21 stage in the process, a potential investor might receive
22 this marketing material, but that was marketing material
23 approved by you. It was only if the investor was
24 interested that they might go on to invest in shares in
25 the company; yes?

1 18:52 A. Yes. The marketing material that would have been
2 approved by me were the only ones that were allowed to
3 be circulated. So if an investor received that, then,
4 you know, that's what I would have been approved.
5 I don't believe that he would have, you know, been given
6 anything else. That would have been against the
7 regulations of the employees.

8 Q. You may have just answered my next question, but we'll
9 just check.

10 As far as you were concerned, systems were in place
11 such that none of this activity involved any
12 noncompliance with DFSA rules and regulations?

13 A. The systems and policies were there, the training was
14 done, so that the employees knew the process to be
15 followed before issuing marketing material.

16 Q. Can we look at bundle C016, SKD 4-6.

17 This is an email, you may recall it, from you to
18 a number of people in the company, December 30, 2013.
19 The subject is, "New Investors into the PE vehicles".

20 You say:

21 "Hi All,

22 Ilona has recently shared with me a list of
23 investors who have paid funds to the applicable PE
24 platform but have yet to complete/finish the on-boarding
25 process ie: submitted their Subscription Forms and

1 18:54 completed required KYC documentation.

2 As a consequence of this -- these investors have not
3 yet been registered as shareholders of the respective PE
4 company and have not yet been issued with share
5 certificates proving that they are shareholders.

6 This is a concerning and serious matter because
7 apart from being in breach of Cayman Islands AML
8 regulations, we are also in breach of Cayman Islands
9 Companies Laws in not properly registering the concerned
10 investors as shareholders of the Company. If the
11 individuals are not registered as shareholders, any
12 subsequent corporate actions requiring shareholder
13 approvals/involvement may also prove to be legal
14 invalid/void."

15 This is an email from you picking up on a compliance
16 issue with regard to investors being registered as
17 shareholders of the private equity investment; yes?

18 A. To the best of my knowledge, this was an email from my
19 position as the money laundering reporting officer that,
20 you know, people were not undertaking the KYC for the
21 Cayman Islands entities. That's my recollection of
22 that, my recollection of that email.

23 Q. That's not really what your email says, if we just
24 scroll back up. You see your concern is broader. What
25 you're complaining about is the situation where:

1 18:55 "... investors who have paid funds ... have yet to
2 complete/finish the on-boarding process ie: submitted
3 their Subscription Forms and completed required KYC ..."

4 Then the consequence being that the investors have
5 not yet been registered as shareholders. You're
6 explaining about the Cayman law consequences; yes?

7 A. I mean, yes, that's true. That's what that's saying
8 here, yes.

9 Q. So what we're seeing here is an example of you stepping
10 in as compliance officer, where you consider that
11 there's a potential infringement of law; yes?

12 A. I don't recollect that that was the intention of
13 the email.

14 Q. In this case, also DIFC DFSA (unclear ...) you're
15 concerned about an infringement of the Cayman law in
16 connection with the investor subscriptions; yes?

17 A. My recollection is that I was concerned from the money
18 laundering reporting officer perspective for the Cayman
19 perspective, not the DIFC perspective, because these
20 people are not clients of the DIFC entity. They were
21 going into the Cayman entity, for which even for Cayman
22 AML regulations, the KYC had not been done.

23 Q. It's another example, isn't it, of you exercising your
24 function as group compliance and risk officer?

25 A. No, I don't agree.

1 18:57 MR HILL: I'm going to move to a different topic now, so
2 I wonder if that's a convenient moment.

3 I don't know whether, sir, you could have any sort
4 of witness --

5 PRESIDENT: Yes, can we just -- whether or not it's
6 a convenient moment, I suppose, depends roughly how much
7 longer you think you're going to have to need.

8 MR HILL: I'm doing well, in terms of my overall time.
9 I will certainly finish with Ms Baines -- certainly
10 finish all remaining DFSA witnesses tomorrow. I think
11 there's a chance we'll finish them all by lunchtime, but
12 I'm not sure about that.

13 PRESIDENT: I wasn't trying to press you. It was simply if
14 you only had five more questions for this witness, then
15 it would seem sensible to ask them now.

16 MR HILL: Sadly, not.

17 PRESIDENT: On that basis, what we will do is stop now and
18 resume again at 10 am.

19 Could I just say to the witness, Ms Baines, since
20 you are still giving evidence and are going to have to
21 come back tomorrow, one of my jobs is to ask you not to
22 talk to anyone else about your evidence while you're
23 giving that. Is that clear?

24 WITNESS: Yes, that's clear.

25 PRESIDENT: I imagine on a pleasant Dubai evening, there are

1 18:58 few things less likely that you would want to discuss,
2 but it's my duty just to warn you about that.

3 So thank you very much for your help so far. If you
4 could be ready to give evidence again tomorrow at 10 am
5 our time, which I think is 1 pm your time, we shall be
6 most grateful.

7 WITNESS: Yep. Okay.

8 MS CLARKE: Sir, I'm sorry, can I just raise one matter of
9 housekeeping.

10 We have got, obviously, the remaining DFSA
11 witnesses -- Mr Sikander from Ernst & Young and
12 Mr Hammond -- lined up for tomorrow. It would really
13 help if we could have at least a rough estimate from
14 Mr Hill as to how much longer he thinks he's going
15 to be.

16 I know it's difficult, it's not an exact science,
17 but if he can give us any steer, it just does help with
18 lining up the other witnesses.

19 MR HILL: I'm happy to. My best estimate is that I will be
20 around two hours with Ms Baines. I might accelerate,
21 but that's my best estimate. So certainly at least an
22 hour and a half.

23 Then with Mr Sikander Sharif, I'll be quite short,
24 less than 45 minutes, I would have thought, and also not
25 very long with Mr Hammond.

1 19:00 MS CLARKE: That's really helpful and very much appreciated.

2 Thank you.

3 PRESIDENT: Yes, it is very much more than I would have
4 given my opponent, but thank you for that. It shows
5 what high-class people we are dealing with.

6 Okay, we'll meet again tomorrow at 10 am.

7 (7.00 pm)

8 (The hearing adjourned until 1.00 pm on the following day)

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