
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 5

Thursday, 14 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 PROCEEDINGS

2 (1.00 pm)

3 PRESIDENT: Good morning, everyone. Welcome back.

4 Can I just raise, before we begin, a point about
5 transcripts.

6 We mentioned the process of correcting the
7 transcript, I think at the beginning of the second day
8 and were given some assurances about that. We haven't
9 actually seen any sign of any corrections. It may be
10 that they're perfect or the corrections happen
11 automatically.

12 Obviously, eventually, we need to work only from
13 corrected transcripts. And, Ms Clarke, I'm not asking
14 you to tell me on the spot, but if your team could
15 perhaps, in fact, both teams, let us know as soon as is
16 reasonably practicable, what the position is on
17 transcripts, we shall be grateful.

18 MS CLARKE: Yes, we'll do that, sir. Thank you.

19 PRESIDENT: Thank you.

20 MR SHAILESH KUMAR DASH

21 Cross-examination by MS CLARKE (continued)

22 MS CLARKE: Mr Dash, I want to move to the topic of how
23 potential investors into these four investments that
24 we're concerned with, were dealt with.

25 First of all, a few questions about referral agents.

1 13:00 A lot of the investors were sourced by using referral
2 agents, weren't they?

3 A. That's correct, apart from the shareholders of Al Masah,
4 who directly invested in all these businesses.

5 Q. All the contracts with the referral agents were between
6 Al Masah Capital and the referral agent, weren't they?

7 A. I think so, yes.

8 Q. The referral agents were paid a fee by Al Masah Capital
9 in return for their services, which, from a perusal of
10 the sample referral agreements we've got in the bundle,
11 was around 5 per cent of the sums invested?

12 A. At the start, 5 per cent, it went down, it went to
13 2 per cent and 3 per cent, yes.

14 Q. Could we go then to exhibit 340.

15 We're not going to obviously go through all of
16 these, there's a lot of them, a lot of them are in very
17 similar terms, but can we just look at this one at
18 page 1. This is an agreement between somebody called
19 Mr Agarwalla and, of course, Al Masah Cayman; do you see
20 that?

21 A. Yes, correct.

22 Q. Obviously, the preamble sets out who the two parties are
23 and it describes Al Masah Capital as having:

24 "... its primary activities are launching and
25 seeding various investment funds, providing advisory

1 13:02 services and distributing wealth management products."

2 Yes?

3 A. Correct.

4 Q. Subject matter of the agreement is the next section,
5 section 1. I don't think we need to dwell on that
6 particularly, but let's go to section 2, which is on
7 page 2.

8 Provision 1, paragraph 1 of section 2, basically
9 says that the documents that the distribution partner
10 uses, are available in electronic or physical form and
11 provided by the AMCL group; yes?

12 A. Yes.

13 Q. Secondly, that the marketing documents have to be used
14 that come from the AMCL group; yes? The referral agent
15 can only use -- and I think it says this at paragraph 4,
16 can only use the marketing documents provided by the
17 AMCL group; correct?

18 A. Correct.

19 Q. Then if we can go to "Obligations", item 3, which is at
20 the bottom of that page, it says at paragraph 2:

21 "The Distribution Partner represents to comply with
22 all applicable legal requirements ..."

23 Et cetera. Including, and it says:

24 "In particular, the Distribution Partner
25 represents ..."

1 13:04 Then if we go over to page 3, there are a number of
2 bullet points that are the representations made by the
3 Distribution Partner.

4 There's only one that I want to refer you to. If
5 Mr Hill wants to refer you to others, I'm sure he will.
6 It's the bottom of those, and it says:

7 "To discuss to its clients that sales commissions or
8 comparables fees are paid by AMCL Group -- also in
9 connection with the resale or brokerage of the
10 Investment Products by the Distribution Partner in
11 compliance with all applicable requirements on
12 disclosure of distribution fees."

13 Really, it's the first line that I'm interested in:

14 "To discuss to its clients that sales commissions or
15 comparables fees are paid by AMCL Group ..."

16 It does appear that in this agreement, one of the
17 things that the distributor is agreeing to do is to tell
18 the clients that he, the distributor, will get sales
19 commissions or fees. Is that what this is intended to
20 convey?

21 A. That is what it is.

22 Q. It doesn't say that explicitly, of course. It
23 just says:

24 "To discuss to its clients that sales commissions or
25 comparables fees are paid by AMCL Group ..."

1 13:06 "Compensation" is the next section, which is the
2 bottom half of the page, if we could just go to that.

3 Before we do that, sorry, that last bullet point
4 that we looked at. What, of course, that bullet point
5 doesn't say is that the distributor is required to say
6 anything about the fact that Al Masah Capital would also
7 be getting a placement fee, does it?

8 A. What it does -- trying to convey is that the distributor
9 needs to inform that there's a placement fee.

10 Q. That's not what it says, is it? It said:

11 "To discuss to its clients that sales commissions or
12 comparables fees are paid by AMCL Group ..."

13 This is paid by AMCL group, not paid to AMCL group?

14 A. That's correct.

15 Q. The position is that this section does not say that
16 distributors are required to tell clients or proposed
17 investors, that Al Masah Capital would be getting
18 a placement fee, does it?

19 A. Correct.

20 Q. Now could we go to item 4, "Compensation". There it
21 summarises -- I'm not going to read all of this out,
22 because I think we've covered it already.

23 But that sets out the fees or how the fees are
24 calculated, what compensation, in effect, the referral
25 agent is going to get as a result of these services of

1 13:07 introducing clients; correct?

2 A. Correct.

3 Q. If we could just scroll down to the bottom, which is
4 page 6 of the exhibit. And it says any notices or
5 communications shall be sent for your attention,
6 Mr Shailesh Dash. And the care of address is Walkers'
7 corporate services in the Cayman Islands, and then the
8 distributors signed the agreement; correct?

9 A. That's correct.

10 Q. Most of the other documents -- as I say, we're not going
11 to go through them all, but I'm sure you have looked at
12 them -- are in more or less similar terms. There are
13 a couple, though, that are a little bit different and
14 they are in a different exhibit, so can we please just
15 briefly look at those. These are the Bond referral
16 agreements which we find, first of all, at exhibit 350.

17 I think the position is that this is the first
18 referral agreement that there was for Bond and then
19 there was an amended agreement that we have got at
20 exhibit 351 a bit later on; is that right?

21 A. No, the position is that this was the first one signed
22 in 2011. Since then, there were various changes --
23 2012, 2013, which are not part of the exhibit here, and
24 then --

25 Q. I see --

1 13:09 -- (Overspeaking) --

2 A. -- yes.

3 Q. But the two we've got in the bundle, this is the first
4 one, isn't it?

5 A. Yes.

6 Q. Of course, it's obviously in a completely different
7 format to what we saw before, but --

8 A. It started in 2011 like this and changed by 2012 and
9 2013. We saw the earlier agreement was 2013.

10 Q. Yes, sure. I understand. I'm not making a point about
11 the fact that it's in a different font and the layout.
12 The one point that I did want to make about it is that
13 there is nothing in it about any requirement to tell the
14 investor about the fact that he would receive
15 a commission or that Al Masah Capital would have to
16 pay -- would pay him a commission, is there?

17 A. I think it's important at this point in time for me to
18 talk about, as an industry person, I think it's very
19 important to say that I don't think anybody -- we have
20 heard at least two witnesses out of the 400 yesterday.
21 I don't think anybody is saying that they did not expect
22 to pay any commissions and neither is the DIFC
23 saying that.

24 I think what was being made out is that whether
25 there is a difference between funds and the companies

1 13:10 and whether the same regulations apply to a company that
2 are applied to a fund.

3 So I think what we need to understand is what the
4 transaction we are talking about. The transaction we
5 are talking about is somebody to buy a share at
6 a certain value. A fund, when money reaches there, the
7 NAV straightaway deducts the 2 per cent and starts at
8 95 per cent or 98 per cent or 90 per cent. When you buy
9 at \$1, it starts at 0.9, 0.95 cents.

10 Here the investors are buying at \$1.65, \$1.85, \$2,
11 they buy a share at a premium. They are determining
12 what is the value of the share. There is no way for
13 anybody, any consultant, anybody to determine what is
14 the true value of the share. It is only the buyer who
15 determines what is the value of the share. And we guess
16 the share. The next time, he gets the report, it
17 doesn't show that there's a decline in the value of his
18 shares.

19 So the whole -- I think the discussion that is
20 happening is that we're trying to confuse between a fund
21 and the company shares. They're very distinct from each
22 other.

23 Q. Thank you, Mr Dash. Can you now please answer the
24 question that I asked, please.

25 A. Sorry.

1 13:12 Q. The question that I asked was: there is nothing in this
2 document, is there, which says that Mr Bond has to tell
3 the investors that he is getting a commission or that
4 Al Masah Capital is going to pay a commission to him?

5 A. That's correct, but it also says that -- okay.

6 Q. It will be a lot easier if you answer the questions that
7 I ask, Mr Dash, and a lot quicker.

8 A. Will do. Thank you.

9 Q. Exhibit 351 is the other agreement we have with Mr Bond.
10 We can just quickly bring that up, just so you can see
11 that it's there.

12 Again, I don't want to go through the terms of this.
13 I'm going to ask the same question: nothing in this
14 agreement, either about commission payments to Mr Bond
15 or paid to him by Al Masah Capital or requirement to
16 disclose those -- sorry, that's not quite right. Let me
17 rephrase that.

18 There's nothing in this agreement that requires
19 Mr Bond to tell a potential investor about any
20 commission payment to him or any payment to him from
21 Al Masah Capital, is there?

22 A. I think it says that he has to comply with the laws of
23 the country where he has to sell the product, so --

24 Q. That's true, but that's not what I'm asking you.
25 There's nothing that says, in terms here, that he has to

1 13:13 disclose to investors commission fees or placement fees
2 or whatever?

3 A. That's correct.

4 Q. Materials that were provided to prospective investors,
5 so a slightly different topic, but related.

6 The position is, as I understand it, until 2015,
7 documents were sent out largely by email, but from 2015,
8 documents were uploaded to a portal on the Al Masah
9 Capital website; is that correct?

10 A. That's correct.

11 Q. The position is that any marketing material was supposed
12 to be pre-approved by Helen Baines?

13 A. That's correct, and before that Total Solutions.

14 Q. Yes, okay. But obviously, Helen Baines is the witness
15 we have heard from.

16 A. Yes.

17 Q. Some of the documents that Mr Hill referred Ms Baines to
18 showed that certainly the instruction or the procedure
19 was supposed to be that staff wouldn't send out
20 marketing material that hadn't been approved?

21 A. That's correct.

22 Q. Material that was given to investors or available to
23 investors, to potential investors, prior to them
24 actually making an investment, fell into the following
25 categories. An offering document or investor

1 13:15 presentation; correct?

2 A. Correct.

3 Q. Teaser?

4 A. Correct. It was not a marketing document, but, yes.

5 It was given out --

6 Q. Financial projections?

7 A. Correct.

8 Q. Occasionally, annual reports for Al Masah Cayman and the
9 investment companies; agreed?

10 A. The memorandum and articles of association.

11 Q. I'll come to that, but for the moment, what about annual
12 reports for Al Masah Capital, would they be sent out to
13 potential investors?

14 A. Not really.

15 Q. What about annual reports for the investment companies?

16 A. Not at all. I mean, it was not as per compliance and as
17 per the investor manual, we just saw in the last three
18 days, it was not a marketing document.

19 Q. But did it happen sometimes, that those documents would
20 also be sent out to potential investors?

21 A. If they went out, it was not as per the policy of the
22 company.

23 Q. Let's have a look, then, at the documents that we agree
24 were part of the marketing material. First of all, the
25 offering document or investor presentation, can we have

1 13:17 a look at exhibit 623. This is a document that relates
2 to ANEL and it's a 2015 document.

3 If we could go to page 2 and if you could just
4 scroll down to the bottom of the page. Mr Dash, if you
5 could just look at the last two paragraphs under the
6 disclaimer, and it's the last sentence of the
7 penultimate paragraph. It says:

8 "Al Masah Capital ... has been appointed as the
9 Investment Manager and Placement Agent for AN."

10 "AN", of course being ANEL; correct?

11 A. Yes, that's correct.

12 Q. That's what this document represents, doesn't it?

13 A. That's correct.

14 Q. Then it said, and this is the last paragraph:

15 "This document is being distributed by Al Masah
16 Capital Management Ltd ... regulated by the Dubai
17 Financial Services Authority ... This marketing
18 material is intended only for Professional Clients (as
19 defined by the DFSA) no other persons should act
20 upon it."

21 I'm just going to read that first sentence again,
22 because I missed a bit out:

23 "This document is being distributed by Al Masah
24 Capital Management Ltd ... on behalf of [Al Masah
25 Capital]."

1 13:18 Yes? That's what it says?

2 A. That's correct.

3 Q. That's what the disclaimers say. If you could go to
4 page 6 in the document. We have a pretty flow chart
5 there. The only bit of it that I wanted to refer you to
6 is the bit that we can see top right-ish, where we can
7 see it says that the investment manager is Al Masah
8 Capital Ltd, AMCL (Cayman) then a dotted line that goes
9 from there into ANEL; yes?

10 A. That's correct.

11 Q. That's what this document was representing to potential
12 investors.

13 Page 9, the term sheet. Two bits I'm interested in.
14 The first bit is under "Manager", which is the fourth
15 box down:

16 "Manager -- Al Masah Capital ... will be managing
17 Al Najah Education."

18 Yes?

19 A. That's correct.

20 Q. Then the next bit I'm interested in is "Fees":

21 "Investors to sign a subscription form with AN
22 wherein AMCL (The Manager) [so that's Al Masah Cayman]
23 will be charging 2% Management Fee [per annum] from the
24 Holding Company's capital & 20% of the returns with
25 a hurdle rate of 10% (with Catch-up)."

1 13:20 Yes?

2 A. That's correct.

3 Q. You will know, I'm sure, that that is the only reference
4 in this document to fees that will be received by
5 Al Masah Capital as a result of this investment?

6 A. As far as the investor is concerned, that is correct.

7 Q. Yes. There's nothing --

8 -- (Overspeaking) --

9 A. -- that is coming from investor's money, because it's
10 from the profits of the company, the management fee, and
11 any sales, and makes again profit, that is coming as
12 well. So this is the only money that's coming from the
13 investors.

14 Q. Mr Dash, I understand that that's your explanation for
15 this.

16 A. Thank you.

17 Q. We will get to the point when we discuss, when I ask you
18 about the reasons why placement fees were not disclosed.
19 At the moment, what I'm seeking to do is establish with
20 you what was disclosed in these documents. Do you
21 understand?

22 A. Thank you.

23 Q. With that in mind, can you confirm, as I'm sure you can,
24 because I'm sure you'll have read these documents
25 carefully, that save for that box about fees, there's

1 13:21 nothing else in there about fees that are going to be
2 received by Al Masah Capital in connection with this
3 investment, is there?

4 A. That's correct.

5 Q. Lastly, page 13, board of directors. Of course, this is
6 Al Masah Capital's board of directors, isn't it?

7 A. No, this is the board of directors of Al Najah.

8 Q. ANEL, sorry, you're quite right. We've got you,
9 Mr Singhdeo and, of course, Mr Lim, because all three of
10 you were on the board of ANEL, weren't you?

11 A. Yes, and the other board members also, shareholders on
12 the board.

13 Q. Yes. That's --

14 -- (Overspeaking) --

15 A. -- and Dr Khaled El Nagggar.

16 Q. I'm not saying that you were the only ones, but
17 obviously, you were the three that are featuring in the
18 case that we're doing at the moment. Do you understand?

19 A. That's correct.

20 Q. Obviously, everyone can see the document and see that
21 there are other people on it.

22 Thank you. Could we go to an example of an investor
23 presentation, please, exhibit 632. If we could do the
24 same again, if we could go to the bottom of page 2, the
25 very last paragraph:

1 13:24 "Al Masah Capital Ltd ... has been appointed as the
2 Investment Manager and Placement Agent for [Al Najah].
3 This document is being distributed by Al Masah Capital
4 Management Ltd ... on behalf of [Al Masah Cayman].
5 [Al Masah DIFC] is regulated by the ... 'DFSA'."

6 Correct?

7 A. Yes, thank you.

8 Q. Then page 6, we have -- no, I don't think we need to go
9 to that one. Let's go straight to the term sheet.
10 Otherwise we are just making the same points again and
11 again. The term sheet is at page 10.

12 Same points as before. In terms of what it says
13 about who the manager is and what the fees are, exactly
14 the same as what we saw in the offering document;
15 correct?

16 A. That's correct.

17 Q. Then can we look at a sample financial projection at
18 exhibit 630. There are a number in here, but we're only
19 going to look at one. So we'll look at the first one,
20 which is for ANEL, May 2015.

21 If we could go to the disclaimers on page 2, the
22 last two paragraphs. In the penultimate paragraph,
23 three lines down -- I point this out, in fairness to
24 you. It does say:

25 "This document should be read in conjunction with

1 13:26 the Memorandum and Articles of Association of ANEL and
2 the Subscription Form."

3 Yes?

4 A. That's correct.

5 Q. Then the final paragraph, similar wording to what we
6 have seen elsewhere:

7 "Al Masah Capital ... (... 'the Manager') has been
8 appointed as the Manager of ANEL and Al Masah Capital
9 (Asia) Pte Ltd ... has been appointed as the Sub-Manager
10 of ANEL. This document has been approved for
11 distribution Al Masah ... ('DIFC') authorised firm,
12 which is licensed by the DFSA ..."

13 Yes? Do you see that, Mr Dash?

14 A. That's correct.

15 Q. That's all I'm going to ask you about that document.

16 Can we just have a quick look at a teaser. We can see
17 the teasers, the sample teasers are exhibit 636. We'll
18 just look at this one, Healthcare MENA Ltd. First two
19 lines:

20 "Healthcare MENA ... is a Cayman Island registered
21 limited company, managed by Al Masah Capital Ltd ... an
22 alternative investment manager."

23 Yeah?

24 A. That's correct.

25 Q. If you scroll down, Fatima, towards the bottom of that

1 13:28 first page:

2 "Management Team: [Al Masah Capital's] private
3 equity team are pioneers in investing in MENA healthcare
4 assets with significant experience.

5 Operational Team: A team led by a CEO has been set
6 up to manage day to day operations of HML. The CEO has
7 more than 30 years of experience in the regional
8 healthcare sector ..."

9 That's what's being said to investors about the
10 management team and the operational team of HML in this
11 document?

12 A. That's correct, yes.

13 Q. Then page 2, "Terms". \$1.5 per share is the current
14 equity offering:

15 "No management fees will be charged to the
16 investors. However, AMCL will be charging a management
17 fee of 2% per annum ..."

18 Then it also talks about the incentive fee of
19 20 per cent; correct?

20 A. That's correct.

21 Q. Again, nothing in this document about placement fees.
22 These are the only references to fees, aren't they?

23 A. For the investors, because this is being -- the
24 placement fee is paid by the holding company to Al Masah
25 Capital Cayman. It's not paid by the investors.

1 13:29 Q. I know, but the point is, there's nothing else about
2 fees in this document, apart from what we have just
3 seen, is there?

4 A. That's correct.

5 Q. If you could scroll down towards the bottom of page 2,
6 it talks about notices:

7 "Al Masah Capital ... has been appointed as the
8 Investment Manager and Placement Agent ... This
9 document is being distributed by Al Masah [DIFC] ... on
10 behalf of [Al Masah Cayman]."

11 Correct?

12 A. That's correct.

13 Q. The next document I want to ask you about is
14 subscription forms. Could we go to exhibit 631.

15 Subscription forms were also provided as marketing
16 documents, weren't they?

17 A. That's correct.

18 Q. Page 1, we can see that the document, when duly
19 completed, should be sent to "Al Masah Capital Ltd
20 (the 'Manager')." Yes?

21 A. Yes.

22 Q. That's obviously consistent with everything that we have
23 seen in all the other documents that were provided to
24 the investors, isn't it?

25 A. That's correct. Just to say that this document has

1 13:31 undergone several changes every year, depending on the
2 compliance and the legal department who would tell us to
3 do the changes.

4 Q. I'm going to refer to one and it's going to be this one.
5 And I don't think any of the terms that I'm concerned
6 with or that we're concerned with have materially
7 changed. But again, if Mr Hill thinks that that's not
8 right, then no doubt he will take that up in
9 re-examination. All right?

10 A. Okay.

11 Q. I'm going to refer to this one.

12 Then what it says is:

13 "We the undersigned, having received and read a copy
14 of the offering presentation of the Company ... hereby
15 apply for the following number of ... shares ..."

16 Then the investor fills in the details.

17 Then towards the bottom of that page, the investor
18 has to "hereby confirm that" -- and there are three
19 things. The first two, we can see there, that they:

20 "... agree to be bound by the memorandum and
21 articles of association of AN, as may be amended or
22 restated from time to time ... the Offering Document and
23 the provisions of this Subscription Form (including all
24 schedules and attachments hereto); and

25 (b) I/We hereby confirm that we have read the

1 13:33 Offering Document in its entirety and acknowledge our
2 understanding of the contents therein ..."

3 Yes?

4 A. That's correct. Also, it's important to note here the
5 bank account details are that of Al Najah Education Ltd.

6 Q. Thank you. Could we then go to page 2 and look at the
7 section under "Fees". In the interests of brevity,
8 could you please just confirm, that may be using
9 slightly different language, but the essence of what is
10 stated there is the same as the representations about
11 fees made in the other documents that we have looked at?

12 A. That's correct.

13 Q. Then we go to "Warranties and Undertakings". There's
14 quite a few. I'm not interested in most of them, but
15 there's one that I suspect you might be interested in,
16 which is the fourth paragraph down, under, "Warranties".

17 This is the one that says that the investor is
18 acknowledging that they have knowledge, expertise and
19 experience in financial matters to evaluate risks,
20 et cetera. Yes?

21 A. That's correct.

22 Q. Then page 3, it's the top third of the page, third
23 paragraph down. The representation is:

24 "I/We agree that the issue and allotment ... of
25 Shares is subject to the provisions of the Articles, the

1 13:35 Offering Document and the provisions of this
2 Subscription Form ..."

3 And we're not relying on any other representation,
4 other than what's in those documents; yes? So that's
5 another provision that I think has been referred to by
6 your team; correct?

7 A. Correct.

8 Q. Then towards the bottom of that page, it's the third
9 paragraph up from the bottom. It says:

10 "I/We hereby appoint [Al Masah Cayman] or any
11 representative thereof, with full power of substitution,
12 as my/our proxy to attend any meeting (whether a general
13 meeting, a class meeting or otherwise) of the
14 shareholders of AN and to vote and speak, at any such
15 meeting at which such Shares could be voted, on my/our
16 behalf and to represent the Shares in such manner as
17 [Al Masah Cayman] in its absolute discretion deems fit."

18 I'm not going to read the last sentence, because
19 I don't think it takes the issue any further. What that
20 says is that the investor is appointing Al Masah Cayman
21 as his or her proxy; correct?

22 A. If they don't attend the meeting or they don't want to
23 vote.

24 Q. It doesn't say that, does it? It says --

25 A. That's the Cayman law and you covered it in your opening

1 13:37 submission on 47.1.

2 Q. It says that Al Masah Cayman is appointed:

3 "... with full power of substitution, as my/our
4 proxy to attend any meeting ..."

5 A. Yes, if they don't want to attend.

6 Q. But it doesn't say that there, does it?

7 A. There is a lot of exhibits to prove otherwise, that they
8 have attended and they have voted in negative also.

9 Q. But otherwise, what this says, all this says is that the
10 investor appoints Al Masah Cayman as a proxy?

11 A. I think we heard from Mr Mehta that he has confirmed
12 that he attended the AGMs. So that only goes on to
13 prove that you are invited to attend the AGM and to vote
14 in the AGM. This is the Cayman law. But if you do not
15 want to attend, you want to give your proxy, that's the
16 proxy given to --

17 Q. Can we agree on this, then, the default position is that
18 Al Masah Cayman, by virtue of this agreement, this
19 subscription form, has a proxy on behalf of the
20 shareholder? That's the default position, isn't it?

21 A. That's the default position, yes.

22 Q. The next part, there are a number of schedules. I'm not
23 sure that any of those take us any further. I don't
24 think they do.

25 That's all I'm going to ask you about the

1 13:38 subscription forms.

2 The next document I want to ask you about is the
3 articles of association. For this, if we could go to
4 exhibit 212, which is the articles of association for
5 ANEL.

6 Again, I know there are a number in the bundle, but
7 I'm going to use this one as an example. All right?
8 This is for ANEL. One of the things that I think you
9 have said is that investors were also provided with
10 copies of the articles of association?

11 A. That was, like I said, as a default position, that the
12 compliance put as a regulation, as per here, and the
13 lawyers, that all the investors, when they are provided
14 documents, they should be provided with the articles as
15 well.

16 Q. But, of course, you know that the investors that the
17 DFSA have spoken to, have not said that they were given
18 them or read them?

19 A. So, investors have said they have not read them. It's
20 different than having been given.

21 Q. Well, no doubt the panel can read the evidence and read
22 the transcripts and consider that issue for themselves.

23 The paragraphs that I'd like to refer you to are,
24 first of all, at page 6. Item 1 describes what various
25 terms mean, including what an Al Masah director means.

- 1 13:40 And obviously, your name is there, along with
2 Mr Singhdeo, Mr Lim and Mr Ghosal. And obviously, each
3 director is appointed by the manager and the manager is
4 Al Masah Cayman, isn't it?
- 5 A. That's correct.
- 6 Q. We can see that, in fact, if we go to page 7, because
7 these are done alphabetically, "'Manager' means Al Masah
8 Capital Ltd ...", ie Al Masah Cayman.
9 Page 10, and it says at article 11:
10 "The Company may insofar as may be permitted by law,
11 pay a commission to any Person in consideration of his
12 subscribing ... for any Shares."
13 Then it talks about how that can be satisfied. So
14 that part of article 11 is talking about ANEL paying
15 a commission, isn't it, to a person subscribing for
16 shares?
- 17 A. That's correct.
- 18 Q. Then the second sentence of that -- sorry, the last
19 sentence of that paragraph says:
20 "The Company may also pay such brokerage as may be
21 lawful on any issue of Shares."
22 A. That's correct.
- 23 Q. That is the one sentence that you rely upon to say that
24 there was disclosure of placement fees to the investor,
25 isn't it?

1 13:42 A. The articles of the company allows what the company can
2 do or not do. So that gives an agreement to the
3 company, to be able to sign an agreement to anybody they
4 want to give the fees, for such activity, that is
5 mentioned here, which is brokerage in this case.

6 Q. By a combination of the subscription form and then this
7 document or the articles of association of which this is
8 an example, this line here:

9 "The Company may also pay such brokerage as may be
10 lawful on any issue of Shares."

11 Is the line that you say provides disclosure or
12 sufficient disclosure, in your view, of placement fees
13 to the potential investor?

14 A. To be frank with you, I don't think there's any need for
15 any disclosure to the investor, because the investor is
16 not the one who's paying for it. So I think I'm telling
17 this many times, there is no need for any disclosure.

18 This gives the ability, article gives the ability to
19 the company, how they need to operate. So it only gives
20 the ability for the company to pay brokerage fees to
21 raise money.

22 This has -- you know, the investor is buying the
23 shares, I keep saying, at a certain value and they are
24 determining what is the value of the business through
25 their own experience and being a professional investor.

1 13:44 They're not buying the business at a par value.

2 Q. The way this worked, though, in practice, was this,
3 wasn't it? The investor fills out a subscription form
4 and then sends a cheque to the ANEL bank account;
5 correct? Or makes a transfer?

6 A. That's correct.

7 Q. Let's say, for the sake of argument, that he's buying
8 \$100 worth of shares. I know that is a tiny number, but
9 it's an easy number to work with. He sends a cheque for
10 \$100 to the ANEL bank account.

11 A. That's correct.

12 Q. It's paid into the ANEL bank account; correct?

13 A. That's correct.

14 Q. Within a very short time of that happening, 10 per cent
15 or so of that amount, let's say it was 10 per cent,
16 because --

17 A. Up to 10 per cent, up to 10 per cent.

18 Q. Yes, okay. But let's say for the sake of argument and
19 because it makes the maths easier, that 10 per cent is
20 then paid out from the ANEL bank account to Al Masah
21 Capital's bank account, isn't it?

22 A. That is not correct. First, Mr Clink did give evidence,
23 which was 6 per cent, but the answer to this particular
24 query is in exhibit 716. If we go into exhibit 716, it
25 will give you an answer exactly. Under bundle D,

1 13:46 exhibit 716, it will give the exact answer to what you
2 just said, which shows that the money goes into the
3 account of the company, but doesn't get paid
4 immediately. It gets used for its own purpose and
5 whenever they have the money, they release it.

6 Q. I see --

7 A. Also, we saw yesterday the placement agreements, which
8 talked about we paid at the end of the quarter.

9 Q. Your position is, then, is it, that placement fees
10 wouldn't necessarily be paid out straightaway or within
11 a short period of time? They might be paid out on
12 a quarterly basis?

13 A. On a quarterly basis or if the company has to use the
14 capital, when they have the capital. Because once the
15 money reaches the company's bank account, it becomes the
16 proceeds of the company and depends on what expenses and
17 what acquisitions they have in line, whenever they have
18 the money, they can pay for it.

19 Q. In any event, the amount of money, of the \$100 that the
20 investor has paid into ANEL's bank account, \$10 will
21 then, at some point, I suggest fairly shortly after, you
22 suggest not necessarily, will be paid to Al Masah
23 Capital?

24 A. I mean, whatever I have repeated, which is that it is
25 not really payable on the company receiving the money.

1 13:47 The company's proceeds are used for the company purposes
2 and as soon as they have the money, as per the
3 agreement, they will transfer the fees.

4 Q. The point is that the placement fee is a percentage of
5 the investment, isn't it? On my example, the placement
6 fee is 10 per cent and so it's \$10?

7 A. By your example, I think it's important to mention here,
8 it is 10 per cent of the market value of the shares the
9 team is buying -- up to 10 per cent.

10 Q. Up to 10 per cent, but on my example, we're agreeing,
11 just for the purposes of my example, because it makes
12 the maths easier, it's 10 per cent. So \$10 of the \$100
13 that the investor has invested is going to be, at some
14 stage, paid to you or to AMC as a placement fee. So
15 it's a direct calculation, based on the value of the
16 investment, isn't it?

17 A. Value of the investment, yes. Not the number of shares.

18 Q. No, that's what I mean. The value of the investment, so
19 the \$100, 10 per cent of \$100 is \$10.

20 A. Yes. That calculation is there in F600, so we all have
21 it, yeah.

22 Q. We all have it, exactly.

23 The practical effect of that is this, isn't it? Of
24 the \$100 that the investor has paid into ANEL's bank
25 account, in reality, only \$90 is going to be available

1 13:49 in order to be applied to investing in schools or
2 whatever from that \$100. That's the practical reality.
3 Whatever the legal position may be, that's the practical
4 reality, isn't it?

5 A. No, that is not the practical reality. The practical
6 reality is a company has many expenses, such as legal
7 fees, consulting fees, regulatory fees, the salaries of
8 the employees, head office. So there are many expenses
9 that a company has. Fundraising is one of the expenses
10 of the company.

11 So the practicality is it could be significantly
12 less than the amount which could really be invested into
13 the business, because the operating company has many
14 other expenses. Auditors' fees, there are many other
15 expenses a company has, which includes a fundraising
16 expense.

17 I must mention here that the value of the company is
18 built on the fact that the company is able to raise
19 money and invest in these businesses profitably, so that
20 the shareholders can make money. There is no direct
21 linkup that is being trying to build up, that the 100
22 comes in, 90 gets invested.

23 Maybe 90 doesn't get invested, maybe only 60 gets
24 invested, because there are consultants for the company,
25 there is salary for the employees, there is lawyers'

1 13:50 costs, there is regulatory costs, there is auditors'
2 cost. All those costs are there in the company.

3 Q. But, Mr Dash, placement fees were paid to Al Masah
4 Cayman in every case, weren't they?

5 A. That's correct.

6 Q. If we could go back to our article 11 --

7 A. That may not be correct, because in Diamond Lifestyle,
8 in many of the cases, we didn't get the placement fee,
9 but that's a different subject. We'll discuss that
10 afterwards.

11 Q. Okay, fine, but let's go back to paragraph 11 of the
12 articles. That one sentence there says:

13 "The Company may also pay such brokerage as may be
14 lawful on any issue of Shares."

15 The use of the word "may", of course, would not tell
16 a reader that it would happen and did happen in every
17 case, would it?

18 A. I mean, that's English or what is written now there, I
19 think different people would interpret it in a different
20 way.

21 Q. It may be English, but I think --

22 A. That gives the ability for the company to pay the fees.

23 Q. But that one line doesn't say to anyone who reads it, to
24 the investor who has read the subscription form and then
25 says, "I better have a look at the articles of

1 13:52 association", that one line isn't going to tell that
2 investor that a fee will be paid, based on a percentage
3 of the value of his investment to Al Masah Cayman,
4 will it?

5 A. I think I have been saying, the investor is not paying.
6 These articles is for the company's ability to pay the
7 fees. This is what it says. It has nothing to do with
8 investor. Investor is not paying these fees.

9 Q. The position is this, I suggest, that to tell an
10 investor, specifically and in terms about two types of
11 fees that were payable, but not to tell the investor, in
12 terms or indeed one might say at all, about these
13 placement fees, was misleading, wasn't it?

14 A. That is not correct at all. I think, first of all,
15 misleading is if there is the money that is being paid
16 by the investor. One is the annual fee, that investor
17 has binded to pay every year. This is a one-time fee
18 paid by the company to raise the capital that they have
19 to pay to anybody they go to for a service.

20 The management fee comes out of the profits of the
21 business every year. So investor has to be aware of
22 that that's being paid out. And the carry on the
23 profits is when investor sells his shares, he makes
24 a profit, he has to pay out. So he needs to know that
25 it will be from his profit that comes out. Very

1 13:54 different perspective.

2 So what we're trying to make out of the original
3 thing, to say that is misleading, is not misleading
4 at all.

5 Q. What an investor wants to know is how much of my \$100
6 that I pay to ANEL is actually going to be used to
7 further this investment --

8 A. No, there is a legal opinion given by the lawyer in
9 Cayman, which clearly states an investor has nothing to
10 do with the financials of the company. The investor has
11 nothing to do with the financials of the company. They
12 don't have a right. It's for the board of the company
13 to look at the financials of the company. The investor
14 has no right.

15 Once it goes to the company, it becomes the right of
16 the company and it is the board which is managing the
17 company. So the investor is buying shares at a certain
18 value and he expects to exit at a certain value, so that
19 he can get a return on his investments.

20 Q. Your position remains, does it, that not telling an
21 investor about the large placement fees that were paid
22 in every instance that we're concerned with, is not
23 misleading to that investor?

24 A. My position remains that, we went through this
25 yesterday, we have informed the regulator through the

1 13:55 exhibit SKD 3-1. We have informed the compliance
2 officer, exhibit 700. We have informed the lawyers.
3 Lawyers are the ones who are drafting it anyways. We
4 informed the auditors, 400 and 401, auditors' report.
5 So there is nothing misleading being done that needs to
6 be hidden. But it needs to be the right people who pay
7 for it needs to know about it.

8 Q. I suggest to you precisely the opposite, Mr Dash, that
9 to tell the investors about two fees that were going to
10 be paid and not to tell them about this one big one that
11 was also going to be paid out of the value of their
12 investment, was misleading.

13 A. That is not correct.

14 Q. Can we move to a different topic. The decision not to
15 disclose the placement fees in terms to the investor,
16 that was a deliberate decision made by, I presume, the
17 board of Al Masah Cayman, wasn't it?

18 A. The board of Al Masah Cayman? Deliberate? We are
19 trying to confuse the matter totally.

20 Q. The holding company.

21 A. I don't know where does the board of Al Masah Cayman
22 come in here? The companies are managed by their own
23 boards and the fees that we are talking about are not
24 misleading, because we have gone through -- again,
25 I would like to repeat, we have said that, you just saw

1 13:57 yesterday, SKD 3-1, it is told to the regulator. It is
2 told to the compliance officer, exhibit 700.
3 Exhibit 400, 401, it is told to the auditors. It is
4 known to the referral agents.

5 So how come, you know, to say that it's misleading
6 and knowingly, where does that come from? Why would any
7 board, when it is supposed to be disclosed, they would
8 disclose. When the regulator is saying the compliance
9 is not saying that it needs to be disclosed, because
10 they understand the structure. They understand the
11 structure. That's why they're not saying that it has to
12 be anywhere.

13 Q. Again, it would help a lot if you just answer the
14 question that I ask. The question that I asked was the
15 decision to disclose -- not to disclose in terms
16 placement fees, was a deliberate decision made by, for
17 example, the board of Al Masah Cayman?

18 A. That is not correct. Al Masah Cayman has nothing to do
19 with what is happening at Al Najah or Avivo or other
20 companies.

21 Q. But what Al Masah Cayman does do, of course, is manage
22 the investment, as we have seen a number of times. And,
23 of course --

24 A. That's correct, manage the investment.

25 Q. -- it is involved in the subscription process, as we

1 13:58 have seen from the subscription form?

2 A. Marketing the company, yes.

3 Q. And, of course, Al Masah Cayman is the one who's going
4 to receive the placement fee?

5 A. Yes, but all those activities we discussed yesterday
6 through service agreements, 311 to 314, were done out of
7 the DIFC being a wholly-owned subsidiary. We have gone
8 through those documents yesterday.

9 Q. And, of course, Al Masah Cayman are producing or are
10 involved in the production of the various documents that
11 went to the investors when deciding whether they were
12 going to invest?

13 A. Just like any distribution agent would do with an
14 operating company for which they're raising the money.
15 So it includes, involves the operating company
16 management and the distribution agent.

17 Q. So the fact that those documents refer in terms to two
18 types of fees, but not to placement fees, it must
19 follow, mustn't it, that the decision not to refer to
20 placement fees was a deliberate decision?

21 A. The fact that it is mentioned to everybody, including
22 regulator, compliance, auditors, lawyers, and that shows
23 that this is not a deliberate attempt to hide anything
24 from anybody. People who need to know.

25 Q. You misunderstand me. It's a simple question. Leaving

1 13:59 aside the allegations of whether the decision was
2 misleading, the point is it was a deliberate decision,
3 wasn't it?

4 A. Not really. There's no deliberate --

5 Q. Not really?

6 A. I disagree with that. A deliberate decision by who?

7 Q. A deliberate decision by, for example, the board of
8 Al Masah Cayman.

9 A. Why? Why would that be the case? What Al Masah Cayman
10 has to do with Al Najah Education?

11 Q. What about you? Was it a deliberate decision by you not
12 to disclose placement fees to investors, to the
13 potential investors?

14 A. Where is the deliberate decision? When you see that
15 I have informed the compliance officer, who is looking
16 at the documentation and preparing with the lawyers,
17 knows about the placement fee and decides that there's
18 no need for disclosure of that. Where is there
19 a deliberate decision? If I have to deliberate, I'll
20 not inform the regulator, I'll not inform the
21 compliance, I would not inform the auditors. Where is
22 the deliberate decision?

23 Q. What about Mr Singhdeo and Mr Lim, given their roles at
24 these various companies, were they involved in the
25 decision not to disclose placement fees to investors?

1 14:01 A. I think this interview is for me. I cannot answer for
2 them. I'm sure you can ask them when you want to
3 interview them.

4 Q. You would know, wouldn't you?

5 A. I wouldn't know.

6 Q. Were they involved in any deliberate decision made by
7 any of these entities, or the individuals that we know
8 about, were they involved --

9 A. No, I would not know.

10 Q. -- to your knowledge?

11 A. No, I would not know.

12 Q. You wouldn't know?

13 A. I can only speak for myself.

14 Q. Your position, as I understood it, and as I think you
15 expressed it in interview as well, is that there were
16 commercial reasons why you didn't disclose or these
17 placement fees were not disclosed in terms to the
18 investors?

19 A. I think my position was the commercial reason was not
20 disclosed fully to the referral agents.

21 Q. What about to the investors?

22 A. It was the job of the referral agent to tell the
23 investors that there is a placement fee.

24 Q. We have already looked at that and I think we saw that
25 the terminology in relation to that dealt with the

1 14:02 referral fee for the agent, not the placement fee that
2 was going to be received by Al Masah Cayman.

3 My understanding of what you have said in your
4 interview and various representations is that it's
5 perfectly normal, in your view, for placement fees not
6 to be disclosed to investors, because of commercial
7 sensitivity?

8 A. No, I think I have said it's industry practice, as the
9 placement fees, as corporate finance fees, is paid by
10 the company, not by the investors. And this is what we
11 have given a live example in terms of the Nomura
12 offering, which they did for ANEL, saying that they are
13 supposed to have a success fee of 3 per cent. They did
14 not disclose.

15 I must say that, I think the DIFC agrees with that.
16 Otherwise, after the four and a half years, they would
17 have started an investigation or do the same thing they
18 did to us, to those at Nomura, hundreds of those
19 placement agents, who marketed those products and took
20 placement fees.

21 I'm sure you understand that that is not the case.
22 Otherwise, the DFSA would have taken action against at
23 least those firms which are inside the DIFC.

24 Q. I'm going to come to the Nomura issue in a moment.

25 PRESIDENT: Ms Clarke, Mr Dash, it's been pointed out to me

1 14:03 by my colleagues, and I thank them, that Mr Dash, you're
2 speaking very fluently, if I may say so, but also very
3 fast. If you could -- and we have a transcriber, who is
4 trying to make a good note of what you're saying. But
5 obviously, it's very important that we have a good note
6 of what you're saying. So could you perhaps just try to
7 speak a little bit more slowly.

8 A. Thank you, sir.

9 PRESIDENT: Thank you.

10 MS CLARKE: I'll come to the Nomura email, but your
11 position, then, remains that this sentence in article 11
12 is sufficient disclosure in all the circumstances?

13 A. That's clear.

14 Q. Can we go to the Nomura email, which is at C010,
15 SKD 3-3. I say it's an email. It's not actually,
16 is it?

17 This document that we have here is an agreement
18 between Nomura and ANEL, isn't it?

19 A. That's correct.

20 Q. It is not any kind of agreement between ANEL and
21 Al Masah Cayman, is it?

22 A. No.

23 Q. Or for that matter, between Nomura and Al Masah Cayman?

24 A. Not really, no.

25 Q. Nor is it an agreement with the investors in ANEL,

1 14:06 is it?

2 A. Sorry?

3 Q. It is not an agreement between Nomura and, for example,
4 the investors? It's not a document --

5 A. No, it is not. It is between Nomura and the company.

6 Q. So it's not a document that an investor or a potential
7 investor would be party to?

8 A. No.

9 Q. At paragraph 3.2, which we have at page 2, it says:

10 "The Company agrees to pay to Nomura a fee of
11 3 per cent ..."

12 Yes?

13 A. That's correct.

14 Q. That's Nomura's commission, if you like, or --

15 A. That's correct, yes.

16 Q. We note, of course, that it says here 3 per cent, not
17 10 per cent.

18 A. We are talking about the year 2017 here, when it was
19 3 per cent for Al Najah.

20 Q. As I read the rest of this document, there is nothing in
21 it that bars or prevents Nomura from disclosing the
22 placement fee to the investor or potential investor,
23 is there?

24 A. I'm sure you have gone through the document. That's
25 correct.

1 14:07 Q. I'm sure you have too, Mr Dash.

2 A. Yes, yes.

3 Q. There's nothing in it that stops Nomura from telling an
4 investor or potential investor about this fee?

5 A. That's correct.

6 Q. Page 32 of this, because it's a very long exhibit, it's
7 got an attachment, I think, of an ANEL offering
8 document. It says here, "Appendix I -- Structured
9 Equity ..."

10 MR HILL: Just to be clear, I'm sure my learned friend
11 misspoke, but she does know this is an attachment to
12 Nomura's letter.

13 MS CLARKE: Yes, absolutely.

14 MR HILL: Sorry.

15 MS CLARKE: I do. Appendix I, so this is the term sheet,
16 it's got here at the bottom, it says, "Management Fee",
17 and all it says is:

18 "[As per existing agreement between Regulus Capital
19 Limited and Al Najah.]"

20 A. That is correct.

21 Q. That's all that's said in appendix I of the term sheet
22 there. But the position is that --

23 MR HILL: I'm sorry to interrupt again, but my learned
24 friend is, I'm afraid, going down a wrong route. This
25 is an attachment to a letter that starts at page 27,

1 14:09 which is Nomura's draft letter to investors.

2 MS CLARKE: Yes, yes. I see that.

3 MR HILL: Exactly, so I think my learned friend does need to
4 correct that.

5 MS CLARKE: Yes, all right. So this is a draft letter
6 attaching this appendix, which is a draft term sheet.

7 A. Which they send out to the investors.

8 Q. This is the draft that's attached to the letter.

9 A. This is the draft from Nomura attached in the letter for
10 the investors.

11 Q. The term sheet, as I say, has a reference to "Management
12 Fee", and it says:

13 "[As per existing agreement between Regulus Capital
14 Limited and Al Najah.]"

15 Of course, management fees are not fees that are
16 paid by the investor, are they?

17 A. Sorry?

18 Q. Are management fees paid by the investor?

19 A. Yes, because it comes from the profits of the business,
20 yes.

21 Q. But this is what you put forward to say that Nomura as
22 well wouldn't be disclosing their commission to the
23 investors. Is that what you're saying?

24 A. I put forward to say, what I'm trying to say is it is
25 industry practice in a company, when people raise money

1 14:10 for the company, it is expected that the company would
2 pay fees for that job, for that job done and it is
3 a normal industry practice to pay fees. And it is
4 because the company is paying the fees and the
5 shareholder or investor is not paying the fees, there is
6 no need for him to know, because he is buying shares at
7 a certain price in that business and he is not bothered
8 about -- he's bothered about the return that he will do
9 from the price that he's buying at.

10 Q. But, of course, Nomura didn't have any role in managing
11 ANEL and wouldn't have, would it?

12 A. I would like to say here that please do not confuse the
13 management with placement. Placements is a different
14 team and management, Nomura itself, or Goldman, would
15 always have teams, which would have management of
16 companies. And at the same time, they would have
17 a private banking team which would raise money.

18 So it is totally different. Let's not confuse that.
19 Because there's a management agreement, which is done by
20 a different team at Al Masah Capital Management Ltd.
21 Placement is done by a different team. So both of them
22 have to be compensated separately, for the roles that
23 they are playing.

24 Q. What I suggest, Mr Dash, is that it is not in fact
25 a similar or the same arrangement as what was happening

1 14:12 between Al Masah Cayman and these investment companies
2 and the investors. This is just not an appropriate
3 comparison. That's my suggestion.

4 A. It's a very appropriate comparison, to be very frank,
5 which really gives the industry perspective to know what
6 happens in the industry. Obviously, I mean, I will not
7 go into this, it's not my area to say, but there have
8 been recent cases which have been -- for Barclays as
9 well, the commission payment, and we all know about
10 those as well.

11 Q. Can I refer you to your second interview, which is
12 exhibit 108. If we could scroll down to 173.

13 If we start at the bottom of 172, and if you could
14 just scroll up a little bit. We're talking about there,
15 it says:

16 "So the referral person, it's mentioned out there
17 that he should mention. It's in the agreement."

18 That's talking about the distribution agents,
19 isn't it?

20 A. That's correct.

21 Q. Then Mr D'Cotta says:

22 "Should he mention the placement fee, not only for
23 himself but also for Al Masah Capital?"

24 Do you see that?

25 A. Yes, I see that.

1 14:14 Q. That's the question that was asked. Then your reply is,
2 "For the company", meaning Al Masah Capital, presumably?

3 A. Yes.

4 Q. Then you go on to give a lengthy explanation, what you
5 say is, having said that, you say:

6 "... I mean there is no, how do you say? Don't take
7 it as a (Inaudible) that it has to be mentioned.

8 I formally don't agree with that statement because, like
9 I said, this number could vary from person to person,
10 from time to time."

11 This, I think, summarises what you have said to us
12 in evidence a number of times; yes?

13 A. That's correct.

14 Q. Then if we could go to page 174, Mr D'Cotta says:

15 "Just to summarise then. What you're saying is
16 that --

17 Shailesh Dash: It's not an obligation.

18 Christopher D'Cotta: -- it's not an obligation to
19 disclose the amount of the placement, I think.

20 Shailesh Dash: Yes.

21 Christopher D'Cotta: But I think that you're saying
22 that it is an obligation to disclose the fact --

23 Shailesh Dash: There is a placement fee. Yes."

24 A. I think what I'm saying is it's not an obligation.

25 Q. Let's read what he says here and what you reply:

1 14:16 "Just to summarise then. What you're saying is

2 that --

3 Shailesh Dash: It's not an obligation.

4 Christopher D'Cotta: -- it's not an obligation to
5 disclose" --

6 A. Yes, that's what I'm saying.

7 Q. -- "the amount of the placement fee, I think.

8 Shailesh Dash: Yes.

9 Christopher D'Cotta: But I think that you're saying
10 that it is an obligation to disclose the fact --

11 Shailesh Dash: There is a placement fee. Yes."

12 A. That's correct.

13 Q. Then to go down --

14 A. I must say that I'm talking about the obligation here,
15 the language that has been used is "obligation", because
16 Mr D'Cotta was using that word. I said it's not an
17 obligation. But the placement fee, like I have been
18 saying and I have written in my written statement, it's
19 not a payment by the investor, it's by the client, which
20 is the companies in this case.

21 Q. I don't want to cut you off, but we've had the same
22 explanation a number of times now. I'm sure the
23 tribunal have got your point. What I would like you to
24 do, please, is to focus on what you told the FCA in your
25 second interview. Let's bear in mind this is your

1 14:17 second interview, not the first one. Right?

2 A. That's right.

3 Q. Let's go back to the transcript. You're saying that it
4 is -- Mr D'Cotta says:

5 "But I think that you're saying that it is an
6 obligation to disclose the fact --

7 Shailesh Dash: There is a placement fee. Yes.

8 Christopher D'Cotta: -- that there is a placement
9 fee?"

10 Then if you go down, he says:

11 "And where that is disclosed, I think you're saying,
12 is in the Articles."

13 A. That's correct.

14 Q. That's what you're saying. Then if we keep going:

15 "But I think you're also saying that referring
16 parties will disclose the fact of a placement fee to --

17 Shailesh Dash: Yes. This is part of their
18 obligation.

19 Christopher D'Cotta: And you're saying that not
20 only do they disclose the fact of a placement fee coming
21 to them, as referrers, but also going to Al Masah
22 Capital?"

23 A. Yeah.

24 Q. Then you say something like, "I can read that". Then
25 the referral agreement is there and then there's

1 14:18 a discussion about the referral agreement.

2 I think you're then taken through some of the terms
3 of the referral agreement, which is why I'm jumping
4 through a bit.

5 At 177, it's just about halfway down the page,
6 Mr Hammond says:

7 "How does Al Masah Cayman and Al Masah DIFC get
8 comfort that the referral agents are fulfilling its
9 obligations?

10 Shailesh Dash: Sorry?

11 Matthew Hammond: How does [it] get comfort that
12 [they] are complying with this obligation to disclose
13 the fees?

14 Shiraz Sethi: How do you check ..."

15 The answer is, "Actually, I don't know."

16 That's what you said?

17 A. That is correct.

18 Q. What you appear to have said there is it's not an
19 obligation, in your view, to disclose the amount --

20 A. Yes.

21 Q. -- but it is an obligation to disclose the fact that
22 there is placement fees being paid?

23 A. That's correct.

24 Q. In your view, despite everything we have looked at, your
25 view is, then and now, that that was discharged by

1 14:20 principally -- well, exclusively, I would suggest,
2 article 11 of the articles of association in conjunction
3 with this subscription form, et cetera?

4 A. Correct.

5 Q. Mr Dash, I suggest that is completely wrong. And that,
6 in fact, this was a deliberate commercial decision to
7 withhold this large fee from these investors, because
8 you knew that it might well affect their decision
9 whether to invest in this investment in the first place.

10 A. I totally disagree with that. I have been saying that
11 the investor was investing into the companies for
12 a certain price that he was buying the shares at. And
13 many people and most of them have confirmed that they
14 were buying the company's shares at a certain value,
15 because they were expecting a certain return from those
16 investments. It has nothing to do with what fees was
17 being charged. That is there in many of the interviews
18 which are there, as I'm sure the tribunal can have
19 a look at that.

20 So that point that you're making that it would help
21 in terms of fundraising, that is not correct. If that
22 would be the case, we would also be hiding it from the
23 regulator, from the compliance, from the lawyers, from
24 the auditors.

25 All I'm saying is that none of them ever told us,

1 14:21 looking at those documents, that this is something which
2 is wrong or not lawful and you should not -- you should
3 be disclosing it. And I have told you the market
4 practice. I have given the market practice as well.

5 Q. One more small topic, Mr Dash, and then I expect the
6 shorthand typist, with the leave of the chairman, might
7 appreciate a short break.

8 Al Masah Cayman, in approximately a five-year period
9 between 2011 and 2016, received in the region of
10 \$30 million in placement fees, didn't they?

11 A. That is correct. But --

12 Q. And from that, about 8.8 million were paid to the
13 referral agents?

14 A. Roughly 9 million. So we would expect 18 million of
15 payments, people, investors to know. On top of that,
16 there is another \$8 million of placement fees, which was
17 paid by Al Masah Capital from its own capital to itself,
18 and the shareholders of Al Masah Capital who paid those
19 fees as well. So almost \$8 million is that which the
20 DFSA has totally ignored and they're now charging the
21 shareholders of Al Masah Capital for fees that they paid
22 to the company.

23 Q. So \$30 million in placement fees, \$8.8 or so, I think
24 you said nearly \$9, from that to the brokers, to the
25 referral agents, leaves, if I've done my maths

1 14:23 correctly, around \$21 million net that Al Masah Capital
2 received in placement fees over that five-year period?

3 A. Not that correct, because \$8 million of that \$21 million
4 came from the shareholders of Al Masah Capital, who
5 invested into the products, and as a result the company
6 made fees. That has totally been ignored by the DFSA in
7 its calculation. So what the net effect is around \$12
8 to \$13 million.

9 Q. Mr Dash, I don't have the means to check all of that
10 information now --

11 A. It is there in F600. We all know who the shareholders
12 of Al Masah Capital are, and there is --

13 Q. Sorry, Mr Dash. Those figures have been in the DFSA's
14 investigation report for a very long time and there's
15 never been a suggestion that they are incorrect,
16 until now?

17 A. There has never been a discussion on that point with us.

18 Q. Well, in any view --

19 A. This is the first time that we're having a substantive
20 hearing.

21 Q. It's a lot of money, isn't it, Mr Dash?

22 A. You mean a lot of money for \$13 million, having raised
23 \$375 million over a period of six years?

24 Q. Isn't that what this is really all about: money? Large
25 amounts of money --

1 14:24 A. No. This is --

2 Q. -- being made by Al Masah Cayman out of these
3 placements?

4 A. Not really. This is about developing businesses for
5 shareholders, where they could have a significant value
6 in those businesses that they're buying into.

7 MS CLARKE: Thank you, Mr Dash. Sir, I don't know whether
8 that would be a convenient moment for a short break.
9 I note the time.

10 PRESIDENT: We'll take a 10-minute break and come back at
11 25 to.

12 (2.25 pm)

13 (Short break)

14 (2.35 pm)

15 MS CLARKE: Mr Dash, could you please look or could we
16 please look at exhibit 711. If we could scroll down to
17 the bottom, because of course it's an email chain, so we
18 need to start at the bottom.

19 Mr Dash, just to set the scene, as we can see it
20 from the email, this is an email from somebody called
21 Ajay Garg to someone called Usman Basharat --

22 A. The compliance officer.

23 Q. Thank you. And cc'd to you and to Mr Singhdeo and it's
24 to do with a draft of a press release relating to
25 Al Masah Capital; yes?

1 14:37 A. That's correct.

2 Q. He's saying "Let me know if it's okay." Then just
3 scrolling up to the next one, further discussion about
4 amendments and sending the final clean version.

5 Then if we could scroll up a little bit more,
6 Fatima, talk about the disclaimer is fine. And then if
7 we go up the page, you, Mr Dash, send an email to the
8 other people involved in this chain, saying:

9 "We have many family offices as investors not only
10 [redacted]. So we should mention it."

11 Then if we go up to the reply, the reply from
12 Mr Basharat is:

13 "But they are not direct clients of Al Masah. If
14 they are then I have never done any due diligence on
15 them.

16 This is why I had suggested not mentioning it in the
17 article."

18 Then go up a little bit further to the reply, which
19 is from you. Your reply is:

20 "They are direct clients of Al Masah Capital, and
21 their KYC has been done by the law firm Walkers."

22 Yes?

23 A. Yes.

24 Q. [Redacted] are investors into one or more of the four
25 platforms, aren't they?

1 14:38 A. Yeah, they're shareholders of Al Masah Capital, yes.

2 Q. Also, not just shareholders of Al Masah Capital, but
3 also shareholders in one or more of the four platforms?

4 A. That is correct.

5 Q. That is why you've referred to them as direct clients of
6 Al Masah Capital, isn't it?

7 A. Direct clients?

8 Q. Yes, that's what you've said:

9 "They are direct clients of Al Masah Capital ..."

10 A. Where are we?

11 Q. It's on the screen.

12 A. Yes, that's correct.

13 Q. Then Mr Basharat says:

14 "Did Al Masah Capital receive any fee from them?"

15 Scroll up a little bit more, Fatima.

16 He says:

17 "Did Al Masah Capital receive any fee from them?"

18 Then scroll up to the reply from you, Mr Dash:

19 "From clients we receive capital in our PE companies
20 and also we get fees from them at the Al Masah Capital
21 level."

22 A. That's correct.

23 Q. Capital from the clients in the private equity companies
24 and also we get fees from them at the Al Masah Capital
25 level.

1 14:40 A. That's correct.

2 Q. To which the compliance officer replies:

3 "I thought we got fee from the PE itself ['PE'
4 presumably means private equity] rather than from the
5 investors in those companies?"

6 A. Correct.

7 Q. What he's referring to there, I imagine, is management
8 fees, isn't it?

9 A. No, placement fee and management fee.

10 Q. Placement fee and management fee, I see.

11 A. When we go up, we'll see that.

12 Q. He's referring, you think there, to placement fees and
13 management fees?

14 A. Yeah.

15 Q. Then if we go up the page, to page 2, this is your
16 reply:

17 "Yes from the companies directly but it is the
18 investors money and they agree in the application form
19 that we take these fees."

20 You see?

21 A. Correct.

22 Q. Is that a reference to management fees and placement
23 fees by you?

24 A. No, the placement fee comes a little bit higher when we
25 go up.

1 14:41 Q. At that point, what are you referring to?

2 A. Management fees, yes.

3 Q. It's just management fees, is it?

4 A. Yeah.

5 Q. Then the reply from Mr Basharat is:

6 "But Al Masah only has one contract with the PE
7 company and no one else as a client.

8 I still suggest we keep a light approach and not
9 mention family offices in the article."

10 Then we go up and we just complete the chain. You
11 say:

12 "We don't have much of institutions. Family offices
13 are our main clients. We have been charging placement
14 fee to the PE companies for the fundraising. If we
15 avoid saying family offices it would be wrong."

16 Then he challenges that:

17 "... it does not sound correct when you say that
18 these family offices are clients of Al Masah."

19 A. What I just wanted to say is this is one example given
20 in 2012, we were being fully disclosed to the compliance
21 officers about the placement fees and they are not
22 telling us that regulatory wise, it is something that
23 needs to be disclosed.

24 So this is why I have been saying many times, we
25 were always very transparent with our regulators,

1 14:43 compliance officers and auditors. Nobody ever --
2 lawyers -- nobody ever told us that this is something
3 that is disclosable, because I believe they know that it
4 is the industry practice that for a corporate finance
5 activity, it is the client who's paying, it is not the
6 shareholder who's paying.

7 Q. Of course, Total Solutions, which is I think who Usman
8 Basharat worked for, as I understand it, was compliance
9 officers for Al Masah DIFC, not Al Masah Cayman?

10 A. That is correct.

11 Q. But the point is this, Mr Dash. If we can go back to
12 the bottom of page 2, when you say:

13 "Yes from the companies directly but it is the
14 investors money and they agree in the application form
15 that we take these fees."

16 You say you're referring at that point to management
17 fees?

18 A. No, I think placement -- it's very old, it's 2012, eight
19 years back. All I'm trying to say is that it had the
20 same articles, at that point in time. It had the same
21 subscription form. So it would be referring to the fact
22 that as a result of all the marketing documents, all the
23 fees are being disclosed. And that is why I'm telling
24 him that, "We are -- you know this, that we are charging
25 a placement fee. Why you're telling me not to talk

1 14:44 about it?" He says that because it is coming from
2 a company, and not from the investors, you don't need to
3 disclose.

4 This is, if you understand, all this email chain,
5 this is what is going on.

6 Q. But my point is this --

7 -- (overspeaking) --

8 A. -- all over.

9 Q. My point is this. Management fees also are a fee that
10 are paid by the holding company, investment company, to
11 Al Masah Cayman, aren't they?

12 A. Yes, it's the annual fee, every year.

13 Q. Those fees, everybody agrees, were disclosed in terms
14 both in the subscription forms and in all the other
15 documents that we have looked at, the offer documents,
16 et cetera, weren't they?

17 A. Anything that the investor has to pay every year to
18 anybody needs to agree. For example, I'll give you the
19 auditor. He comes in every year to audit a company.
20 Every year, the board needs to appoint the auditor,
21 needs to negotiate the fees and it becomes different
22 fees.

23 So all I'm trying to say is that the fees that is
24 done one time and keeps changing, and is paid by the
25 company, not by the investors. From what you see here,

1 14:45 the compliance, and before the lawyers and auditors, as
2 well as the regulators, nobody told us that it's
3 a disclosable item. And the market practice as well.

4 So what I'm trying to say here is that the only fee,
5 which is supposed to be coming out from investors funds,
6 regularly, it needs to be mentioned out there.

7 Q. It's a fee, then, paid by ANEL to Al Masah Cayman,
8 isn't it?

9 A. That's correct.

10 Q. The placement fee is also a fee paid by ANEL to Al Masah
11 Cayman, isn't it?

12 A. Two different type of fees. One is the annual fee.
13 That's why it needs to be disclosed. One is one time
14 fundraising fees. Because annual fees will have to come
15 from the profits of the company.

16 Q. I suggest, Mr Dash, that the distinction that you're
17 seeking to draw is artificial and that --

18 A. I would like to say that is a comparison that is --

19 Q. Sorry.

20 A. Please finish. Sorry to interrupt.

21 Q. No, I've interrupted you and you must finish.

22 A. No, I just want to say that this is actually artificial
23 in the industry to say that placement fees, the
24 companies should disclose to the investors, because
25 you'll not find one single case of a company which does

1 14:47 private placement of shares ever to disclose that.

2 Q. The reason, I suggest, that management fees were
3 disclosed, but placement fees -- well, disclosed in
4 terms and placement fees most certainly were not, is
5 because there was, as I think I started this line,
6 a deliberate decision that those placement fees would be
7 kept secret from the investors. I think you would
8 disagree with me on that.

9 A. This email from me to the compliance officer is clear,
10 that there is no deliberate attempt to hide anything.

11 Q. I suggest that my analysis, as I have put to you, is
12 demonstrated by the matters that we're going to come on
13 to next, the first of which is the information,
14 misleading information, that was contained in the ANEL
15 annual reports; right?

16 A. Right.

17 Q. That's the topic we're going to deal with now.

18 Firstly, a few preliminary questions, please. This
19 was, wasn't it, a board decision to have audited reports
20 done for ANEL in the two years that we're concerned
21 with?

22 A. Audited financial statements, to audit the financial
23 statements of the company.

24 Q. Yes, so that was a decision that was taken by the board
25 of ANEL?

1 14:49 A. Al Najah, yes.

2 Q. You would have been party to that decision, wouldn't
3 you, as --

4 A. I would -- the party to the decision would be the audit
5 committee, which runs that. But, as a chairman, I would
6 know of it.

7 Q. Exactly.

8 A. Because as chairman, non-executive chairman, I have --
9 like I said yesterday, my role was to play up on the
10 perception, and the oversight. But the role is done by
11 those particular audit committee members who were
12 responsible for that act.

13 Q. But it would be the board, not the audit committee, that
14 would have to sign off on the decision to go ahead with
15 instructing accountants and paying accountants in order
16 to prepare audited reports, isn't it?

17 A. No, the way it happens, the audit committee make
18 a recommendation to the board and the board approves it.

19 Q. That's my point. It's the board that has to approve it,
20 at board level?

21 A. That's correct.

22 Q. It being the case that the board would have had to
23 approve the decision to instruct Ernst & Young to
24 prepare these reports, then it would follow that you, as
25 chairman of the boards, would be part of the board that

1 14:50 approved the decision?

2 A. Again, yes, if you want to put it that way, that's
3 correct, but the decision is usually taken by the audit
4 committee and the board just approves it.

5 Q. The point is you knew about it, didn't you?

6 A. That's correct.

7 MR HILL: Sorry to interrupt, could I just ask my learned
8 friend to make clear when she's talking about audited
9 financial statements and reports, because there's
10 a nomenclature the parties have been using. I think
11 there's a danger of her being confusing in her
12 questions.

13 MS CLARKE: I see, all right. Yes, of course, I will.

14 So once the audited financial statements have been
15 signed, you agree, don't you, that they should not be
16 altered?

17 A. Audited financial statements, once they have been
18 signed, they should not be altered, for sure.

19 Q. Nor should sections of them be deleted?

20 A. I would think so, yes.

21 Q. To do that would be a very serious matter indeed,
22 wouldn't it?

23 A. That is correct.

24 Q. The ANEL annual reports and the preparation of the
25 audited financial statements and then the annual reports

1 14:52 that followed, the chronology is in a number of emails,
2 I think probably not all of them do we need to go to
3 directly, unless you want to, because they don't all
4 concern you. But the position is that, first of all,
5 dealing with the financial statements for the year
6 ending 31 August 2013, that on or about 31 March 2014,
7 the audited separate financial statements were approved
8 by the board. Agreed?

9 A. That's correct.

10 Q. They were signed on behalf of the board by Mr Singhdeo
11 and Mr Lim?

12 A. I'm sure that's a fact, must be.

13 Q. When I say "the board", I mean, of course, the board by
14 ANEL --

15 A. Audit committee members, yeah.

16 Q. The audit and the preparation of those financial
17 statements was done by Ernst & Young, wasn't it?

18 A. That's correct.

19 Q. And, of course, the audit partner is one of the
20 witnesses that we heard from, was Mr Sikander?

21 A. That's correct.

22 Q. If we look at the audited financial statements for 2013,
23 exhibit 400. These are the genuine, unaltered version.

24 A. That's correct.

25 Q. If we scroll down to page 2, we can see the report and

1 14:54 then it's signed. Could you scroll down to the
2 signatures. There we see signed by Mr Singhdeo and
3 Mr Lim, the date 31 March 2014.

4 In the statement of assets and liabilities, which we
5 find at page 6 of this document. And if we could scroll
6 down to where it says, "Equity and Liabilities", we see
7 a figure for share premium received by ANEL during that
8 financial year and if we follow across, it's \$4,256,260,
9 isn't it?

10 A. That's correct.

11 Q. Of course, that includes a reference to note 7, because
12 we can see a little "7" next to it. Do you see that?

13 A. That's correct.

14 Q. Note 7, we find at page 15 of this document.

15 A. Yes.

16 Q. Scroll down to the section where it says, "Share
17 Premium". Note 7 tells us that share premium is the net
18 figure when you take off a transaction costs figure.

19 A. That's correct.

20 Q. The share premium is in fact \$10,763,442 and the
21 transaction costs, just over \$6.5 million. And, of
22 course, if you do the maths, you end up with the figure
23 of \$4 and a bit million that we saw in the statement of
24 assets and liabilities that we looked at, at page 6,
25 don't we?

1 14:57 A. That's correct.

2 Q. There's a little asterisk next to the words "transaction
3 costs", and the little asterisk appears underneath the
4 number I have just read out. And it says:

5 "The transaction costs represent advisory fees and
6 other incremental costs paid to a related party in
7 relation to the capital increase (see note 10)."

8 A. That's correct.

9 Q. If we just do note 10 for completion, which we find at
10 page 16, and it goes over on to page 17, which is the
11 bit that's relevant. Underneath, "Related Party
12 Transactions and Balances":

13 "Other transactions with related parties include the
14 following:

15 Al Masah Capital Limited

16 Advisory fees and other incremental costs relating
17 to the capital increase -- \$6,507,182."

18 Yes?

19 A. Yes.

20 Q. That's the figure that we saw at note 7; yes?

21 A. Correct.

22 Q. That is what a person reading those financial statements
23 would see in relation to how the figure for share
24 premium of \$4 million and something was actually arrived
25 at. That gives the full audit trail, doesn't it? It

1 14:59 gives the explanation for how you get to the 4 million
2 or so figure for share premium that's in the statement
3 of assets and liabilities that we looked at, doesn't it?

4 A. And there is another document which clearly goes to
5 that, known as F303. But, anyway, I think 2013 and 2014
6 are important for us to go through here. I mean, at
7 that point in time, I didn't focus so much, but now
8 since 2015, I came to know of this, November 2015,
9 I have gone through these documents.

10 Q. Anyway, that sets the scene, doesn't it? You
11 understand, having reviewed the document with me, that
12 the combination of the statement of assets and
13 liabilities, and then note 7 and note 10, what that does
14 is set out how the figure that's shown in the statement
15 of assets and liabilities is arrived at. That's what
16 it's all for, isn't it?

17 A. Correct, correct.

18 Q. The wording that is used in relation to the expression
19 "transaction costs", so for that, if we just go back to
20 note 7, which is at page 15. So the wording there at
21 page 15 of the document in the middle, you can see the
22 little asterisk.

23 A. Yes, "transaction costs".

24 Q. "The transaction costs represent advisory fees and other
25 incremental costs ..."

1 15:01 The wording of that had been the subject of some
2 negotiation, a discussion between Mr Sikander and
3 Mr Singhdeo, wasn't it?

4 A. I have seen it. Like I said, at that point in time,
5 I was aware that there is a discussion going on, but
6 I was not involved. But I have seen it since
7 2015 November. All these documents have gone through
8 since the whole thing started and we are told by E&Y
9 there is some issue with respect to the documents in the
10 annual report.

11 Q. Let's look at the discussion between Mr Sikander and
12 Mr Singhdeo and see what the discussion was. It's
13 exhibit 766, at the bottom of the page.

14 Mr Sikander sent an email in April 2007, so this is
15 7 April 2007:

16 "I have discussed the matter with the IPR and have
17 also shared the placement fee agreement with him which
18 he reviewed and concluded that the current treatment is
19 the appropriate treatment under IFRS -- specifically
20 under IAS 1 para 109. The transaction costs were paid by
21 the Al Najah -- as is clear from the placement fee
22 arrangement between the Al Najah and Al Masah and also
23 supported by the cashflow movement for the settlement of
24 these fees."

25 Mr Sikander, as you will know, says that that email

1 15:03 came about as a result of discussion about whether
2 placement fees needed to be referred to in the accounts
3 and he went away, discussed it with his colleagues and
4 came back with this email.

5 Were you aware that that discussion was going on?

6 A. Not really, but I know I have seen this financial
7 statement that you've showed me. This is discussion I'm
8 not aware of, but I would depend on Mr Nrupaditya to
9 manage it as part of the audit committee with the
10 auditor. If there's some discussion going on, as you
11 could see, I am not cc'd, so I was not aware of this.

12 Q. But you are saying you were not aware --

13 A. But I must say that I have been aware of it since
14 2015 November, as I have been trying to go through all
15 the documents since it was informed to us by E&Y --

16 Q. What I'm interested in is that your position is at the
17 time of these discussions, you say you weren't aware?

18 A. Yeah, that's correct.

19 Q. Then what Mr Sikander's email says is that:

20 "As an alternative to the current presentation
21 format, we could present share premium as a net figure
22 in the SOCE and include the gross movements in the
23 notes ..."

24 And then it sets out how that would work. So
25 it says:

1 15:05 "Less transaction costs
2 Net share premium"
3 Then "transaction" and then the wording in the notes
4 that he's suggesting is:
5 "Transaction costs represent costs placement fees
6 (advisory fees) and other costs incurred in connection
7 with the equity raising activity.
8 Please let me know if you want to leave the current
9 presentation as is or would prefer the alternative ..."
10 Mr Singhdeo replies, and this is the email at
11 page 1, and the email says:
12 "Further to our discussion in the morning, would
13 accept the alternate treatment suggested by you, with
14 few change to the language in the note, which I have
15 marked out below. Hope the same will be acceptable to
16 you."
17 Then it talks about other matters.
18 A. It is very important for us to read it here.
19 Q. Yes, of course.
20 A. One of the points we had raised before is that money
21 used to come to Al Najah and we straightaway used to
22 take the money out from the company. As you could see
23 here, Al Masah Capital, as they have waived part of the
24 year 1 transaction costs, as you could see here, it very
25 clearly says that not always the money used to come.

1 15:06 There has been waivers as well given to the company at
2 different point in time:

3 "We will provide you with the required credit note
4 and balance confirmation for amount receivable from
5 Al Masah."

6 What it tells you, is that a part of the transaction
7 cost has been waived off.

8 Q. Then we get to what Mr Sikander had suggested as the
9 wording for the notes, as to what the wording should
10 say. Mr Singhdeo has made some changes to it, which we
11 can see in this email, can't we?

12 A. That's correct.

13 Q. The changes that have been made is, instead of it saying
14 "transaction costs represent costs placement fees", he
15 has deleted "costs placement fees" and left the words
16 "advisory fees" and then added the words "and other
17 costs incurred".

18 So that's what he is recommending as an alternative,
19 isn't he?

20 A. I mean, it's all there.

21 Q. Then, obviously, we know that the final wording that was
22 in the audited accounts was not dissimilar to that --
23 not wholly the same, but not dissimilar, so there must
24 have been other discussions. But the fundamental point
25 is that, in the end, the specific words "placement fees"

1 15:08 did not go in as a specific term into the note to the
2 accounts, did it?

3 A. What was the wording that we had in F400? Was it very
4 different from this?

5 Q. It's a bit different. It's not very different.

6 A. It says, for the capital raising, "Expenses for capital
7 raising", right, it says?

8 Q. It's not very different, but it's a bit different. So:

9 "Transaction costs represent advisory fees and other
10 costs incurred ..."

11 Then he has deleted "in connection with the equity
12 raising" and the actual wording in the end was, if you
13 want to go to 400, if we could:

14 "The transaction costs represent advisory fees and
15 other incremental costs paid to a related party in
16 relation to the capital increase (see note 10)."

17 A. That's correct.

18 Q. There is an email at exhibit C009. We are jumping ahead
19 in time here, I acknowledge, because what we were
20 looking at before was April 2014.

21 If you could scroll down to the bottom, your
22 position is that you knew nothing of the conversations
23 that were going on with Mr Sikander and Mr Singhdeo and
24 Mr Lim, et cetera, about the wording of the treatment of
25 placement fees and the wording that was going to be used

1 15:11 in relation to that issue in the audited financial
2 statements; is that right?

3 A. In those terms that you mentioned, yes, that is right.
4 I mean, like I said before, I knew there were
5 discussions going on, but what was it exactly, I would
6 not know.

7 Q. This email, as I say, albeit a year later, and this
8 email from Mr Lim, is sent to you and also to
9 Mr Singhdeo. So you specifically are included and it
10 says:

11 "Subject: Financials for Al Najah Education
12 Shailesh,

13 We had spoken to Sharif and we will be getting the
14 final F/S [financial statements] for Al Najah from E&Y
15 within a day or 2.

16 We are thinking that Nrupaditya and myself will sign
17 the F/S and close this case. We do have an Audit
18 Committee in Al Najah but we can just separately brief
19 them right after the Board and we prefer not to have
20 Sharif join us in the event he brings up the placement
21 fee issue from last year, etc."

22 Then your reply to that that we can see just above
23 is, "Ok". Yeah?

24 A. Yes. Very clearly what I'm replying to there is that
25 him and Nrupaditya to sign the financial statement. As

1 15:13 I'm not involved in the audit committee, I have no role
2 to play there.

3 Q. But, of course, you are involved in the email chain,
4 which --

5 A. There's only one email, right, sent by Don Lim to
6 Shailesh and Nrupaditya? Where he is talking about he
7 and Nrupaditya will sign the audited report and they
8 have an audit committee. What I'm trying to say here is
9 that, "Yes, please go ahead and sign, because you are
10 the responsible person for those."

11 Q. But what you are saying "ok" to, I suggest, is not only
12 the suggestion that Mr Lim and Mr Singhdeo would sign
13 the financial statements and close this case, but also
14 the reason for that, as he gives Mr Lim in his email.

15 Because in order for you to say, "ok" to the
16 decision, in your capacity, I imagine, as chair of the
17 board of Al Najah, you, as a responsible chairman, would
18 want to understand, not only what is the proposal, but
19 why is it being proposed and is it appropriate, wouldn't
20 you?

21 A. As a responsible chairman, is to know what are my
22 boundaries and what I'm supposed to do and what is not
23 my role. As a chairman, the audit committee members are
24 saying that they want to sign the audited report.
25 I say, "Ok". What they're going to do with the audit

1 15:15 committee is not my responsibility.

2 Q. Let's take that in stages. You're "okaying" the
3 decision that Mr Singhdeo and Mr Lim will sign the
4 financial statements; yes?

5 A. Correct.

6 Q. But ordinarily, as you have told us, there is an audit
7 committee in Al Najah that would deal with preparation
8 et cetera, of financial statements?

9 A. That's correct.

10 Q. And then what would happen is that once the financial
11 statements have been signed and completed, et cetera,
12 they would then be presented to the board or would the
13 board see a draft in advance?

14 A. No. The audit committee, the way it happens, the audit
15 committee approves the audit and then the audit
16 committee members sign it, but they do inform the board.
17 As you could see, there was a whole board meeting where
18 they would inform us about how the results of the
19 company were.

20 Q. The audit committee, then, are the ones who deal with
21 the preparation of the audit, who then deal with the
22 preparation of the financial statements and --

23 A. No, no. I must correct this. This is the board audit
24 committee. I'm sorry, this is a board audit committee.
25 The audit committee doesn't prepare anything. The board

1 15:16 audit committee doesn't prepare anything. It's all --

2 Q. No, no. I realise that --

3 -- (overspeaking) --

4 A. -- the CFO and the team prepare the audit.

5 Q. No, I realise that. I'm just trying to understand the
6 process. The audit committee has the responsibility, if
7 I have understood you correctly, for signing off the
8 audited financial statements?

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

10 Q. When they have done that, so when the audit committee
11 considers that it's appropriate to do that, then the
12 signed off audited financial statements are presented to
13 the full board; is that correct?

14 A. That's correct.

15 Q. That's the company process?

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

17 Q. Audit committee first, then full board?

18 A. That's correct.

19 Q. You, as the chairman of the board, the board that
20 presumably put the audit committee in place, didn't it?

21 A. The audit committee, yes, the audit committee is formed
22 by the board.

23 Q. Exactly. So you, as chairman of the board, are being
24 asked in this email to approve a change in the process,
25 aren't you?

1 15:18 A. No, what is the change in the process?

2 Q. Let's look at it. The second main paragraph, if we
3 could scroll back down again, please, Fatima, to the
4 bottom of page 1, it says:

5 "We had spoken to Sharif and we will be getting the
6 final F/S [financial statements] for Al Najah from E&Y
7 within a day or two.

8 We are thinking that Nrupaditya and myself will sign
9 the F/S and close this case.

10 Do you see that?

11 A. That's correct.

12 Q. That's the bit that you say you were saying "okay" to?

13 A. Yeah.

14 Q. But if we read on, as I'm sure you did, Mr Dash, given
15 your position as chair and your responsibilities --

16 A. My responsibility is not part of the audit committee.

17 Please let's not try to, you know, put them altogether.

18 Q. As chairman of the board --

19 A. That's correct.

20 Q. It is in your role as chairman of the board that you're
21 being asked to "okay" this proposal, isn't it?

22 A. There is a chairman of the audit committee also.

23 Q. No, Mr Dash, please listen to the question. It is in
24 your role as chairman of the board of ANEL that you are
25 being asked to approve this action?

1 15:19 A. That's correct, to sign the financial statements.

2 Q. That is the hat that you are wearing, ie chairman of the
3 board, when you consider whether to agree with what is
4 being proposed?

5 A. That's correct, correct.

6 Q. Now can we go again to paragraph 2. I have already read
7 that out many times. So that's what's being
8 proposed, is:

9 "[Lim] and [Singhdeo] will sign the [financial
10 statements] and close this case."

11 Then he explains the reason for doing that:

12 "We do have an Audit Committee in Al Najah but we
13 can just separately brief them right after the Board and
14 we prefer not to have Sharif join us in the event he
15 brings up the placement fee issue from last year, etc."

16 So what is being proposed, the reason for what's
17 being proposed is that they want, in effect, to just
18 sign the statements, the two of them, Singhdeo and Lim,
19 and avoid the need to have a meeting between the audit
20 committee and Mr Sikander, et cetera, in case he brings
21 up the placement fee issue from last year.

22 A. Yeah. The way you're putting --

23 Q. That's the same change in process you're being asked to
24 approve --

25 A. No, it's not the process that is being asked to approve.

1 15:21 It is the signing of the audited report that is being
2 asked for.

3 Q. Are you saying that when you read this carefully, as I'm
4 sure you did in your capacity as chairman of the board
5 of ANEL, that you did not ask any questions of either
6 Mr Singhdeo or Mr Lim about why it was important not to
7 have Sharif, that's Mr Sikander, turn up to the audit
8 committee and brief them and risk bringing up the issue
9 of placement fees?

10 A. Yes, as you have described the day before yesterday, in
11 the first hour, that I was involved in many companies.
12 Obviously, I received many emails a day, which could go
13 up to 400 to 500 emails a day. When I'm asked
14 a question, as you could see, I'm not elaborating
15 anything, I'm just saying, "Okay, sign the financial
16 statement."

17 Q. Are you saying you didn't read the rest of it?

18 A. No, because -- the rest of it, it doesn't concern me.

19 Q. Doesn't it? Why doesn't it concern you? It's a change
20 in process.

21 A. Because audit committee --

22 Q. I'm sorry, Mr Dash. I will ask the question and then
23 you'll answer it.

24 It's a change in process on a fundamental issue as
25 regards the signing off of audited financial statements,

1 15:22 which would ordinarily be done, as you have told us
2 a number of times, by the audit committee, who would
3 then present them to the board. And this is
4 a fundamental change in that process that is being
5 proposed?

6 A. No --

7 Q. Are you telling us that you wouldn't have bothered to
8 read that and ask any questions about it?

9 A. No, it's not a fundamental change. What it might mean
10 is that also if somebody reads that the audit committee
11 has already gone through the financials, they have not
12 met together as a team, but they already decided that
13 this is the right financials for them to sign off.

14 Q. But the reason given for why they don't want the audit
15 committee to be briefed until after the board, which is:

16 "... we prefer not to have Sharif join us in the
17 event he brings up the placement fee issue from last
18 year, etc."

19 A. Like I said, it is a non-issue for me, as I'm not
20 involved with the audit committee on these things.

21 Q. Mr Dash, I suggest you are not telling the truth about
22 this.

23 A. I think I'm under oath. I'm telling the whole truth.

24 Q. I suggest, Mr Dash, that the truth of this email and
25 your response to it is that you knew that the reason why

1 15:24 Don Lim and Mr Singhdeo wanted to, in effect, circumvent
2 the audit committee process, sign off the financial
3 statements and close the case themselves, was because
4 Mr Sikander might bring up the placement fee issue from
5 last year.

6 A. I disagree.

7 Q. The way that that email is written -- and I appreciate
8 it's written by Mr Lim and he will no doubt answer for
9 himself as to why he wrote it in the way he did, but
10 I would suggest that the reason that the email is
11 written as:

12 "... in the event he brings up the placement fee
13 issue from last year, etc."

14 And the reason he's written that in an email to you,
15 is because you knew perfectly well what the issue was
16 that Mr Lim was referring to, because you knew about the
17 discussions that had happened with Mr Sikander as
18 regards inclusion of placement fees in the financial
19 reports and whether the word "placement fees" should
20 appear and what other wording should be used. You knew
21 all about that and that's why this email is written in
22 this way.

23 A. Are you saying that the placement fees were not
24 disclosed to the auditor here?

25 Q. No, Mr Dash. Answer the question, please. My question

1 15:25 is, my suggestion is that the reason why this email is
2 sent to you and worded in this way, and in particular,
3 the words:

4 "... we prefer not to have Sharif join us in the
5 event he brings up the placement fee issue from last
6 year, etc."

7 Is because Mr Lim knows that you knew about the
8 placement fee issue, that Mr Sikander and Mr Singhdeo,
9 et cetera, had been discussing last year, which was, "Do
10 placement fees have to be in the accounts? And, if so,
11 what words have to be used and how does it have to be
12 done?"

13 A. How would I know and why would I know?

14 Q. Well, you can tell us.

15 A. This is the audit committee meeting. What they're
16 discussing with the auditors, why would I be interested
17 to know?

18 Q. One reason why you might be interested --

19 A. How many roles I had in different companies, so you
20 think that I go into nitty-gritty? When the job is
21 given to a particular team to do their job, or a board
22 to do their job, why would I interfere in their job?

23 Q. One reason, Mr Dash, that you might be interested to
24 know is if you were equally keen to ensure that the
25 placement fee issue didn't come up and that the words

1 15:27 "placement fees" didn't appear in the genuine audited
2 financial statements, and that you knew all about those
3 discussions that had happened a year ago with
4 Mr Sikander.

5 A. I think just before this --

6 Q. That's my suggestion --

7 -- (Overspeaking) --

8 A. -- email at exhibit 711, where I was very keen, the
9 people that I was interacting with, to tell them about
10 the placement fee. You were the one who saw the 711
11 email, where I'm telling the compliance officer, "We are
12 charging placement fee." So I don't know why you think
13 that I would be anywhere involved in hiding anything.

14 Q. I take it from that that you disagree, do you?

15 A. That is correct.

16 Q. Mr Dash, let's go back to the chronology, so we go back
17 to the year before, April 2014, and we're still in the
18 topic of the preparation and signing off of the --

19 PRESIDENT: Sorry to interrupt. Since we are not going to
20 have a chance to do this later on, could I just ask
21 a question arising from this email of 27 April.

22 MS CLARKE: Of course.

23 PRESIDENT: Mr Dash, forgetting the fine points of your
24 respective positions, we've got here an email to you, as
25 it were, the boss, from Mr Lim, and we have the first

1 15:28 paragraph and we have the second paragraph. In the
2 second paragraph, he says:

3 "We do have an Audit Committee in Al Najah but we
4 can just separately brief them right after the board and
5 we prefer not to have Sharif join us in the event he
6 brings up the placement fee issue from last year, etc.
7 What do you think?"

8 Do I understand from your evidence that when you
9 said, "Ok", you were not responding to the second part
10 of that paragraph?

11 A. That is correct, sir.

12 PRESIDENT: If a colleague asks you what you think about
13 something he's proposing to do, why would you not
14 respond to the second part?

15 A. Sir, because as a chairman of the board of Al Najah,
16 I was not involved in the audit process and what the
17 audit committee, which includes three people of the
18 board, what they do, doesn't need my involvement, sir.

19 PRESIDENT: The reason I ask it is simply the words "what do
20 you think?" At the bottom. Did you take that as simply
21 meaning you weren't being asked to think about all of
22 it, but to give your thoughts only about something more
23 limited?

24 A. To the signing of the financial statements, sir.

25 PRESIDENT: Very well. Thank you very much.

1 15:30 A. Thank you, sir.

2 MS CLARKE: Mr Dash, as I say, we jump back a year to April
3 of 2014 and we're still in the part of the story that is
4 dealing with the genuine financial reports. All right?

5 A. Which exhibit?

6 Q. I'm going to take you to an exhibit, but I'm just
7 setting the scene for you.

8 A. Okay.

9 Q. So that you know precisely where we are and that
10 hopefully will mean that there won't be any confusion.

11 The exhibit is exhibit 765, if we can start at the
12 bottom again, bottom of page 2. And the email that
13 appears at the bottom of page 2, this is an email from
14 Ernst & Young to Mr Agarwalla of ANEL.

15 Subject "ANEL -- FS". It says, "Thanks and
16 regards".

17 I appreciate you were not copied in on this, but if
18 you go up the page to the next email, which is from
19 Mr Agarwalla forwarding to Mr Lim and Mr Singhdeo. And
20 it says:

21 "FW: ANEL -- FS

22 Dear Don,

23 Please find attached final word FS for annual
24 report.

25 Thanks & Regards."

1 15:32 Do you see that?

2 A. That's correct.

3 Q. Again, appreciating you were not involved, but what that
4 appears to show is that Ernst & Young sent the final
5 Word version of the audited financial statements to
6 Mr Agarwalla and Mr Agarwalla forwarded the Word
7 version, the final Word version, to Mr Singhdeo and
8 Mr Lim, didn't he?

9 A. That's correct.

10 Q. On 10 April. Then if we could go to the top, this is an
11 email from Mr Lim to Mr Agarwalla, cc'd to Mr Singhdeo.
12 Again, I appreciate you were not copied in, but again,
13 it says, dated April 10th:

14 "Raj,

15 financial statements for Al Najah will only be
16 accessible to the 3 of us here.

17 any usage of the statements or sharing with any
18 party outside the 3 of us can only be done through NS
19 [Mr Singhdeo] or myself."

20 Yes?

21 A. Correct.

22 Q. Were you made aware by Mr Singhdeo and Mr Lim or
23 Mr Agarwalla, for that matter, that there were Word
24 versions of the final audited financial statements being
25 held between the three of them in Al Najah?

1 15:34 A. Like I said before, as chairman, I was not involved in
2 the audit function of the business, so there is no
3 reason for me to know what is happening.

4 Q. You would say, would you, that you didn't know?

5 A. I think this email says that as well.

6 Q. No, it doesn't necessarily. It says you're not copied
7 in. What I'm asking you is whether you knew and you're
8 saying you didn't?

9 A. No, I didn't.

10 Q. But what you would have known, of course, is that the
11 final versions of the reports in whatever form, would be
12 available to members of the audit committee, which
13 included Mr Lim and Mr Singhdeo, wouldn't you?

14 A. Yes.

15 Q. And for that matter you, as chairman of the board, if
16 you had wanted them?

17 A. If I wanted them, yes.

18 Q. Could we go to the 2013 annual report --

19 A. I'm not saying that I didn't see these financials.

20 I did see these financials. As a board, as a whole
21 board, we did see these financials. I remember we do
22 not go into details, but we do see the financials, what
23 the profits of the company are, how the company is doing
24 revenue. We do go through these financials. It's not
25 that we don't. But we don't go as detailed as audit

1 15:35 committee members would do.

2 Q. No, but that's a good point, actually, because you would
3 receive the financial statements in connection with the
4 board approving them and you would go through them,
5 wouldn't you?

6 A. Yes, I would not say superficially and I would not say
7 very technically, but, yes, we would go through, just
8 look through how the numbers are doing.

9 Q. Presumably, you would be briefed by members of the audit
10 committee when the audited financial statements are
11 presented to the board?

12 A. That is correct.

13 Q. About any significant matters, wouldn't you?

14 A. That's correct.

15 Q. Of course, one of the significant matters we know from
16 the audit trail, from the emails we have just looked at,
17 one of the significant matters that had arisen in
18 connection with the preparation of the audited financial
19 statements, was the treatment of placement fees,
20 wasn't it?

21 A. That is how you make it, but it was never discussed in
22 the board meetings. We all knew that there is
23 a placement fee.

24 Q. Mr Dash, given that it was a matter of sufficient
25 importance to be the subject of discussion and exchange

1 15:36 with Mr Sikander, are you saying that it's not a matter
2 that was ever drawn to the attention of the board of
3 which you were chairman?

4 A. No.

5 Q. When you read the financial statements yourself, no
6 doubt you would have been interested to see how the fees
7 that Al Masah Capital received from ANEL were accounted
8 for in the financial statements, wouldn't you?

9 A. Yeah, you would know, yes.

10 Q. That's one of the things that you in particular would be
11 interested in?

12 A. No, I would be interested in the health of the company,
13 but I would know what fees are being received by
14 Al Masah Capital.

15 Q. Because you wear, in this respect, two hats, don't you?
16 Al Masah Capital --

17 A. Yeah, but a bit different. Al Masah Capital, I was
18 executive role, but --

19 Q. And a board member.

20 A. -- in here is a non-executive role.

21 Q. But wearing your two hats of senior roles, at both
22 companies, you would have paid, I suggest, wouldn't you,
23 particular attention to how the issue of fees paid from
24 ANEL to Al Masah Capital was expressed in those
25 financial statements?

1 15:38 A. Not in the words that you are mentioning, but I would
2 certainly see the financials, see that the payments are
3 there.

4 Q. You wouldn't have wanted, would you, the word "placement
5 fees" to appear in the ANEL financial statements,
6 would you?

7 A. I think you're doing a wrong observation. I have no
8 role to play on the audit of the company, where I'm not
9 involved. So I have nothing to say on what is happening
10 on the audit side, what the accountants are doing, what
11 the audit committee board members are doing. When the
12 audit is presented to the board, what is told is that
13 what is the revenues, what are the expenses, what are
14 the profits of the company are. You don't discuss notes
15 of the companies. That is only for you to go back and
16 look at if you wish to look at.

17 Q. It's your evidence, then, that that wasn't a matter that
18 you paid any particular attention to when you were
19 reviewing these financial reports?

20 A. That is correct, because it doesn't affect the
21 shareholders in any way.

22 Q. No, but it does, of course, potentially affect Al Masah
23 Capital, doesn't it? Because --

24 A. No, why would it affect?

25 Q. Because if this genuine version of the report was

1 15:39 obtained by shareholders in ANEL, it might give rise to
2 questions, mightn't it?

3 A. You are going into something, like I said before,
4 I think when we started today, the balance sheet of
5 portfolio companies, as per the Cayman law, was only
6 made for the boards of these companies. So what you're
7 talking about now is totally different.

8 Q. Is it?

9 A. Yes.

10 Q. Is it different? All right. That's your evidence, is
11 it, that it's just a totally different scenario?

12 A. Yes.

13 Q. I see.

14 A. We have.

15 Q. Then let's look at what information was in fact provided
16 to investors by way of the 2013 annual report for ANEL.

17 A. Okay.

18 Q. Before we do that, the decision whether to do an annual
19 report, that would have been a board decision, wouldn't
20 it, whether to prepare an annual report?

21 A. Yes, that's correct. It was a board decision to make
22 a good PR document, marketing document, which could help
23 the sales team at Al Masah Capital, the referral agents
24 and the various PR firms who do market information about
25 these companies.

1 15:41 Q. So it was a board decision to do an annual report?

2 A. That's correct.

3 Q. It was presumably also part of the board decision to
4 include what purported to be the audited financial
5 statements?

6 A. No, not really. The board decision was exactly you had
7 an email from Ilona, which was sent out, which is
8 I believe exhibit C002. This is what was the decision
9 of the board, to include a financial review. So people
10 would know about the financial review. It was not
11 about, you know, to do audited financial statements
12 there. And also the board had to approve the cost of
13 such items of expense of printing these annual reports.

14 Q. I think we have seen some emails where you're querying
15 how much it's going to cost in order to print these
16 annual reports, aren't you?

17 A. That's correct.

18 Q. But given that, there is no obligation, as I think you
19 have said in written representations and I think your
20 witness statement, there's no obligation on ANEL to do
21 audited financial statements; correct?

22 A. That's correct.

23 Q. I think your position is, if I have understood it
24 correctly, that there's also no obligation to provide
25 them to shareholders?

1 15:43 A. That is correct.

2 Q. I think the position, again if I have understood
3 correctly, what's being suggested by the applicants, is
4 that if a shareholder, for whatever reason, requested to
5 see the audited financial statements, they would be told
6 they would have to come into the office and actually
7 have a look at them, physically?

8 A. That is what it is, as per the Cayman laws, yes, to
9 inspect the financials of the company.

10 Q. Therefore, when it came to preparing the 2013 annual
11 report, you know that that report did in fact contain
12 what purported to be the audited financial statements,
13 didn't it?

14 A. How they both relate to each other, I don't know. We
15 just discussed the audited financial statements are not
16 supposed to go out. They are supposed to remain in the
17 company premises.

18 Q. That's my point --

19 A. And what is in that annual report.

20 Q. That's my point, that if a decision is taken to include
21 the audited -- supposedly audited financial statements
22 in the annual report, that's going to be sent out to all
23 the shareholders, then surely that is something that the
24 board of ANEL must have known about?

25 A. If the audited, we would have been told.

1 15:44 Q. You're saying that the board were not told that it was
2 proposed to include the full audited reports in the --
3 sorry, audited financial statements in the annual
4 reports, the board were not told that, is that your
5 position?

6 A. Let's put it this way. If we can go through the exhibit
7 C002, it would give you a good idea as to what in the
8 board we wanted to achieve.

9 Q. We'll go to a number of exhibits, but we'll get to C002
10 in due course. First of all, I just want to know from
11 you, is it your position that the board were not told
12 that the plan was that the supposedly genuine financial
13 statements were going to be included in this annual
14 report?

15 A. Yeah, we had discussed about printing the annual report,
16 what would go in that would be mostly marketing about
17 the different businesses that we have, schools,
18 management and all, and it was supposed to be
19 a financial review of the business. I mean, it
20 contained annual financial statements. We realised that
21 afterwards that it contained audited financial
22 statements, which were not audited, and the wrong
23 numbers. We realised that in November 2015.

24 Q. Your position, then, to summarise, I think we've got to
25 the same place in the end, is your position is you're

1 15:46 saying you, the board, and you, were not told that the
2 plan was to put the audited financial statements in the
3 annual report, you didn't know and nobody told you?

4 A. Yes, nobody told me.

5 Q. That's your position, is it?

6 A. That's correct.

7 Q. I see. When it came to what was going to go into the
8 annual report, that was something, wasn't it, that the
9 board took a role in, deciding what was going to be
10 included?

11 A. Like I said before, the annual report is a company
12 document and the company document is prepared by the
13 company executives. And I guess you have many emails to
14 show that who were the company executives who are
15 involved in preparing that annual report. For example,
16 the chairman's statement you have there as AR001, which
17 gives you as to who prepared my statement.

18 Q. Right. I'm going to come to that, because we're going
19 to look at the annual report, but before we do, what
20 I want to know is: did the board have any views on what
21 was or wasn't to go in the annual report?

22 A. No, not really.

23 Q. No, not really or no, not at all?

24 A. Not really.

25 Q. Not really? What does "not really" mean? Does that

1 15:48 mean "no, we didn't" or "yes, we did"?

2 A. No, we didn't have the full view of what is supposed to
3 be included there, as it was the company executives who
4 were preparing it.

5 Q. Were there any particular matters that you do recall
6 that the board expressed a view about whether they
7 should or shouldn't be included?

8 A. Not that I remember anything, no.

9 Q. Nothing that you remember?

10 A. No.

11 Q. I see. Just --

12 A. I mean, this is seven years old, it's very difficult to
13 say that if you remember something which happened seven
14 years back.

15 Q. Okay, but nothing that you particularly remember,
16 particularly you say given that it was seven years ago;
17 yes?

18 A. That's correct.

19 Q. Do you remember that in connection with the decision
20 making committee meeting that took place in the autumn
21 of last year, your lawyers submitted written
22 representations to the decision making committee on
23 behalf of all the applicants, including you?

24 A. I'm sure that was done.

25 Q. Do you remember that it was done?

1 15:49 A. Yes.

2 Q. We'll look at the document in a moment, but let's bring
3 the document up, first of all, and then I'll ask the
4 questions that surround it. It's bundle D and the
5 exhibit reference is F011. Sorry, it's not bundle D,
6 it's bundle F, exhibit F011.

7 Just scroll down, Fatima, so we can see the front
8 page. Then scroll back up so we can see the title. We
9 can see the date there that they were prepared was
10 20 June 2019. It says:

11 "Responsive to the Preliminary Notices dated
12 11 February 2019 in respect of ..."

13 Then all five applicants in this matter, including
14 you, are listed.

15 You accept, don't you, that this document, this
16 written document, was submitted on your behalf?

17 A. I think it is. If it has been represented by my
18 lawyers, I have to accept it.

19 Q. It is, you would agree, an important document, isn't it?

20 A. I mean, it's a representation from my lawyers. I didn't
21 go through or read it in detail, but it was --

22 Q. Is it an important document?

23 A. It is, for sure, an important document, as it is
24 regarding us, with respect to the DFSA thing, which is
25 going on at the moment.

1 15:51 Q. Exactly. Because, of course, by that stage, preliminary
2 notices had been issued against all of you, and the
3 recommendation that was being made by the Dubai FSA was
4 that very large fines were being levied against all five
5 applicants, different amounts. And, of course, as
6 regards the three individuals, of which you are one, the
7 recommendation was for prohibition orders against all of
8 you.

9 A. That's correct.

10 Q. All five of you had referred that decision to the
11 decision making committee and this was the written
12 representations that your lawyers submitted in order to
13 attempt to persuade the decision making committee not to
14 issue decision notices, isn't it?

15 A. Yeah.

16 Q. There's no doubt, is there, that it's an important
17 document?

18 A. I must say that I tried to read it at that time. It had
19 a lot of legal connotation, a lot of legal wording, a
20 lot of cases, so it was not very easy for me to go
21 through and understand those matters.

22 Q. It was prepared, though, on your instructions and the
23 instructions of the other applicants involved,
24 wasn't it?

25 A. That is correct.

1 15:53 Q. That's how lawyers work. They can only put things in
2 documents --

3 PRESIDENT: Perhaps we can move to the substance.

4 MS CLARKE: Yes, sorry, all right.

5 Can we move, then, to page 49. You'll see that
6 paragraph 147.2 relates to submissions in relation to
7 the 2013 and 2014 annual reports. Do you see that
8 written at 147.2?

9 A. That's correct.

10 Q. Then could you go to 147.2.6, which is at the bottom of
11 the page. Do you see that?

12 A. That's correct.

13 Q. What it says there is:

14 "The Board Members of ANEL in various discussions
15 about retaining their competitive edge in the market
16 decided that Placement Fees should not be referred to in
17 the financial statements included in the Annual Reports,
18 and accordingly that the Annual Reports should not
19 purport to include audited financial statements.

20 Mr Dash --

21 A. I think this is exactly why I said it would be
22 financial -- we had discussed, it should be the
23 financial review of the company. It's no different than
24 what I just said before.

25 Q. "Mr Dash was not responsible for implementing that

1 15:55 decision, and was not involved in its implementation."

2 A. That is correct.

3 Q. What that isn't saying is that you didn't know about it?

4 A. No, what it's saying is that it is not supposed to have
5 the audited reports. It is supposed to be a financial
6 review, which is exactly what I just said.

7 Q. What it says here -- and this is your lawyers. Now
8 I appreciate what you have said about you didn't read
9 all the legal jargon, et cetera, but this isn't legal
10 jargon, is it? This is instructions on factual issues,
11 which are within the province of you, as the board
12 member of ANEL.

13 A. This is no different than what I just said. I said that
14 it was not supposed to have the audited reports, it's
15 supposed to be a financial review. This is exactly what
16 it's saying as well.

17 Q. It's completely different to what you have --

18 A. Let me read it out:

19 "The Board Members of ANEL in various discussions
20 about retaining their competitive edge in the market
21 decided that Placement Fees should not be referred to in
22 the financial statements included in the Annual Reports,
23 and accordingly that the Annual Reports should not
24 purport to include audited financial statements."

25 This all says that exactly what I'm saying. That we

1 15:56 were supposed to have a financial review, it was not
2 supposed to have audited financial statements.

3 Q. Mr Dash, what you told us in evidence, until you were
4 shown this paragraph, is that you don't recall any
5 discussion about placement fees not being referred to in
6 the annual reports, yet here it appears that your
7 lawyers have represented precisely the opposite?

8 A. No, there's no difference. All I'm trying to say, and
9 I have been telling from last 5, 10 minutes, it was
10 supposed to have the financial review, not the whole
11 audited financial statements. You want to put it as you
12 want to put it, but this is what I have been saying.
13 And this is also evident in C002 when the communication
14 is going out to the shareholders of the company.

15 Q. Mr Dash, the other thing that you told us in evidence,
16 on oath, is that you did not recall discussions about
17 inclusion of financial statements in the annual reports.
18 Yet, according to this paragraph put forward by your
19 lawyers on your behalf, apparently you did recall that
20 there were board discussions about non-referral of
21 placement fees and financial statements in the annual
22 reports?

23 A. No, you're just conflating the issue. I think the issue
24 is that what they're saying, very clearly, is that
25 audited financial statements were not supposed to be

1 15:58 there. And I have been saying it for the last
2 10 minutes, that it was supposed to be a financial
3 review that was supposed to be there.

4 Q. So you're now saying you can recall that there was
5 a discussion about including a financial review?

6 A. No, no, not I can recall. Last 15 minutes, this is what
7 I have been saying. It's on the record.

8 Q. What about the fact that the board made a decision about
9 placement fees? Can you now recall that?

10 A. No, I think it's writing by the lawyers. All I'm trying
11 to say is that a financial review would never include
12 placement fees.

13 Q. Lawyers can't write things like this unless it's based
14 on your instructions, can they, Mr Dash?

15 A. I leave it for you to decide on that.

16 Q. Which version is true? Is it the version that's put in
17 here or is it the version that you've given us in
18 evidence today? Which one is it?

19 A. I think both are correct. They don't -- they are not
20 clashing with each other. The report here is saying
21 that you had the annual report to be prepared, which was
22 supposed to have a financial review. The financial
23 review talks about ratios, revenue growth, business
24 growth, profit growth, EBITDA growth, asset growth. It
25 doesn't include placement fees.

1 15:59 So they all are saying exactly the same that I'm
2 saying, but you're trying to confuse one with the other
3 and trying to make me tell something that is not there.

4 Q. Mr Dash, what I am saying is you're confusing yourself,
5 because you're the one that's giving different
6 explanations. And the reason for that is because you
7 knew full well that placement fees was not a topic that
8 you wanted being drawn to the attention of the
9 shareholders of ANEL.

10 A. That is not correct.

11 MS CLARKE: Sir, I note the time. Is that a convenient
12 moment?

13 PRESIDENT: Yes, we will break for an hour, but before we
14 do, I just remind people that we are, of course, at the
15 end of our first week, at the end of today. And my
16 colleagues and I would like to discuss the question of
17 closing submissions, recognising that's still some
18 distance away in terms of time, in the context of the
19 timetable, and what it would and would not be useful for
20 us to have.

21 So if you could be composing your own thoughts about
22 that, so that we can have a productive discussion at the
23 end of today.

24 Subject to that, unless there's anything else, we
25 stop now.

1 16:01 (4.01 pm)

2 (Lunch break)

3 (5.00 pm)

4 MS CLARKE: Mr Dash, can we please go to the annual report
5 itself, which is at exhibit 503. If we could just
6 scroll down, and go to page 27. That's, of course, you,
7 isn't it, Mr Dash?

8 A. That's correct.

9 Q. This is the chairman's message, from you, as chairman to
10 the shareholders?

11 A. That's correct.

12 Q. Could I draw your attention to the second column. So if
13 we could go down the page a bit, Fatima. The wording
14 that you've chosen to use in this statement in this
15 second paragraph is:

16 "On behalf of the Board of Directors of Al Najah
17 Education Limited, it is with great pleasure that I
18 present the annual report and the audited financial
19 statements for the financial year ended August 31,
20 2013."

21 So that's your words in the chairman's report?

22 A. That's correct.

23 Q. There must have come a time, then, when you did know
24 that the plan was to put what was supposed to be the
25 genuine audited financial statements in this annual

1 17:02 report?

2 A. From the statement here, it's clear that when it was
3 written, the author of the -- which is Gopinathan
4 Satish, as you have the email AR001, they have
5 considered putting the audited financial statements.

6 Q. You were sent a draft, EXH-AR001, we won't turn it up in
7 the interests of time, but the draft is attached to that
8 exhibit, and it has that wording in it as well, doesn't
9 it?

10 A. It does, and the email, as you could see there, final
11 report, which is designed now, except for the
12 financials.

13 Q. Then there's an attachment to AR001, which is the
14 chairman's message, the draft of the chairman's message,
15 and it's sent to you for you to read and approve,
16 isn't it?

17 A. That's correct.

18 Q. That draft has exactly the same wording as this wording
19 that I've just read out, that actually went into the
20 annual report?

21 A. That's correct.

22 Q. At that point, at least, I suggest before, but we won't
23 go back there, you knew that supposedly the genuine
24 financial statements were supposed to go in this report?

25 A. That's correct.

1 17:03 Q. Certainly that's what's represented here, but of course,
2 we know that that isn't actually a truthful statement,
3 is it?

4 A. Yes, as it turned out, on November 15, that certain
5 parts of the actual audited financial statement was not
6 part of the annual report.

7 Q. No. My suggestion to you is that you knew that that was
8 the case.

9 A. I think for the interest of the tribunal, it's important
10 to see the AR001, so that they could see as to what is
11 my involvement. It's very important, since you are
12 making an allegation here, it's important for them to
13 see that email.

14 Q. All right. We'll look, then, at AR001. If we could
15 scroll down, so it's an email from Satish Gopinathan to
16 you, cc'd to Deepa lssrani:

17 "Dear Shaileshji

18 Please find attached the Chairman's message for the
19 Annual Report which is in the designing phase now
20 (except for the financials).

21 Kindly comment on the message."

22 Then if you scroll down, you can see that the
23 attachment to that email is the chairman's message,
24 ie the message that's going to go out in your name in
25 the annual report for ANEL. And if you look at the

- 1 17:05 second paragraph, it's got that wording in it about
2 presenting the annual report and the audited financial
3 statements.
- 4 A. That is correct. As you could see, in the whole annual
5 report of -- I'm sure you would be knowing the number of
6 pages of the annual report --
7 -- (overspeaking) --
- 8 A. I was only limited to two pages, and which was prepared
9 by somebody within the company.
- 10 Q. Right, but you read --
- 11 A. Yes, I went through my message and I know what was
12 written out there.
- 13 Q. You read it, you approved it --
- 14 A. That's correct.
- 15 Q. That's why it went out with this wording in it?
- 16 A. That's correct.
- 17 Q. My suggestion to you is that you knew that this wording
18 was not true, and that you knew that the annual reports
19 did not contain the genuine audited financial
20 statements.
- 21 A. And how did you reach upon that conclusion?
- 22 Q. Mr Dash, I ask the questions and you answer them.
- 23 A. I totally disagree. I don't know why you're making such
24 suggestions.
- 25 Q. You don't know?

1 17:06 A. I don't agree.

2 Q. Then can we go back to the annual report and just look
3 at the changes that were made. That's exhibit 503. The
4 financial bit starts at page 69, financial review,
5 audited financial statements, 31 August 2013.

6 You would agree, Mr Dash, that that is clearly
7 saying, in line with what you have said in your
8 chairman's message, to anyone reading this, that what
9 they are about to see are the genuine audited financial
10 statements; agreed?

11 A. That is correct. If somebody reads what is written on
12 the front, we would think that this is audited, yes.

13 Q. If we go to page 70, the signatures have changed, bottom
14 of page 70, because it's Mr Bukhamseen, apparently,
15 who's now signing off on this, along with Mr Singhdeo,
16 so that's a change. But, of course, the difference, the
17 real differences are to be seen in notes 7 and 10,
18 aren't they, which is at page 83? So we see note 7 is
19 at page 83.

20 A. Yes, which was told to us by Ernst & Young at the end
21 of November, I guess.

22 Q. Let's just look quickly at the differences, just so that
23 we can be clear what we're talking about. Please at
24 page 83, if you scroll down to the section where it
25 says, "Share premium", what we can see there is that

1 17:09 note 7 has been altered to remove the reference to
2 "transaction costs", et cetera, and to remove the gross
3 figure, which, as I recall, was about 10 million. And
4 the transaction costs, et cetera, that was around
5 6 million, and instead, shows only the net share premium
6 received.

7 A. That's correct.

8 Q. Information has been deleted from note 7, hasn't it?

9 A. That is correct.

10 Q. The information that's been deleted relates to the
11 6 million in transaction costs, et cetera?

12 A. That is correct.

13 Q. Now if we could go to note 10, which is at page 85, that
14 note has been altered, so that -- top of page 85.

15 What's been done to that is that the bit in note 10,
16 in the genuine report, which relates to related party
17 transaction and balances, et cetera, and the information
18 concerning the amount of \$6.5 million for advisory fees
19 and other incremental costs, et cetera, paid by ANEL to
20 Al Masah Cayman, has been completely removed.

21 A. Correct.

22 Q. Mr Dash, those two deletions of that information have
23 been done deliberately, haven't they?

24 A. Deliberately, how would you make that out?

25 Q. Somebody has taken the genuine statements and has

1 17:11 deleted the information that we've identified in notes 7
2 and 10. Somebody has done that.

3 A. Somebody has done that, yes. People who are preparing
4 the annual report.

5 Q. That can only have been done deliberately, can't it?

6 A. It has been done. I think this is proven, it has been
7 done. I think we knew about it from Ernst & Young when
8 they came and showed it to us, so it is --

9 -- (overspeaking) --

10 Q. I'm asking you for your opinion, as an experienced
11 businessman, and a man of the world, these deletions in
12 notes 7 and 10, noting, of course, that the deletions
13 relate to exactly the same information, must have been
14 done deliberately, mustn't they?

15 A. I cannot say at this point in time. It happened --
16 which year was that? 2012, 2013. Seven years back.
17 But what I have shown you is -- I understand where you
18 are reaching, what I have shown you are the names of the
19 people who are preparing in the company those annual
20 reports. What could have been the case at that time,
21 I don't know.

22 Q. You're not prepared to express any view on whether these
23 deletions must have been done deliberately? Is that
24 right? Is that your evidence?

25 A. I only can say I don't know.

1 17:12 Q. You don't know?

2 A. I know when it was reported to us, and immediately, we
3 send out emails to all the shareholders as required by
4 Ernst & Young. The moment it was told to me, that there
5 is -- there's something like this has happened, as
6 a chairman of the board, the moment it came to me, the
7 information, I immediately told to take action and
8 follow what Ernst & Young has told them to do.

9 Q. It's not a coincidence, though, is it, that the
10 deletions at notes 7 and 10 relate to exactly the same
11 information? That's not a coincidence, is it?

12 A. I think your opinion. I would not like to ...

13 Q. So you're not even prepared to express a view on that.

14 The effect of these deletions is that the material
15 in these annual reports, and in particular in what
16 purported to be genuine audited financial statements,
17 but were not, that made at least these statements
18 misleading, false and deceptive?

19 A. That is a factual error. What you're saying is, you
20 know, is what was told to us by Ernst & Young. And at
21 that point, we realised that a mistake has been done.

22 Q. A mistake? Is that how you characterise it, it's
23 a mistake?

24 A. That's what I characterise, people who prepared the
25 annual report, they have done a mistake and it needs to

1 17:14 be corrected ASAP.

2 Q. Is that your view, that this is a mistake? What's
3 happened here is a mistake?

4 A. Yeah, there were errors in it. It should not have
5 happened. If it is audited, if it says "audited",
6 doesn't say "financial review", it should have been
7 audited.

8 Q. So your view is that it's a mistake or an error?

9 A. Sorry?

10 Q. Your view is that these alterations to notes 7 and 10
11 were either a mistake or an error? Is that your view?

12 A. They are, yes.

13 Q. But a reader of the annual report reading your
14 chairman's message and reading the parts of the report
15 that I've referred you to, I think you agreed, would
16 think that what they were looking at were the genuine
17 reports -- financial statements, sorry, but they
18 weren't. Therefore, the reader would have been misled,
19 wouldn't they?

20 A. 87 pages of the annual report, reading by a reader --

21 Q. Focus on the bits that we have looked at --

22 A. If they would read through -- sorry, I didn't get the
23 question.

24 Q. Focus on the bits we've looked at.

25 A. Yes.

1 17:15 Q. The chairman's message says, I have pleasure in
2 presenting the audited financial statements.

3 A. Yes.

4 Q. Then we went to the section with the financial
5 statements and we looked at the front page and it said,
6 "Audited Financial Statements".

7 A. Yes.

8 Q. Then we went to notes 7 and 10 and we saw that the same
9 information, relating to transaction costs, et cetera,
10 that was paid to Al Masah Capital, had been deleted.

11 A reader, therefore, reading this annual report along
12 with these supposed financial statements would be
13 misled, wouldn't they?

14 A. That is correct, if this is what they were looking at,
15 the financial cost of fundraising. If they were looking
16 at the revenues, EBITDA, and profitability like I look
17 at, and the business growth of the company, there's
18 nothing to be misled there. But, yes, if they have to
19 focus on what you are talking about, which is the cost
20 only, then of course what you're trying to say is
21 correct.

22 Q. It doesn't matter whether they're focusing on what you
23 say or generally. The point is that a false
24 representation has been made to the reader, hasn't it?

25 A. I think when it was told to me, it is very clear that we

1 17:17 wrote -- I have written myself that, and I'm sure if
2 there is some email or not, I don't know, but I did tell
3 the team immediately to rectify and do as required by
4 Ernst & Young.

5 Q. We will get to that. I think I've probably taken that
6 as far as I will.

7 To cut a long story short, the same thing happened
8 the following year, didn't it? Because we had
9 preparation of the genuine audited financial statements
10 for the following year, 2014, and they were signed off
11 by Mr Lim and Mr Singhdeo, weren't they?

12 We can look at them, but I mean, we have seen all
13 the evidence and all I would be doing is taking you to
14 exactly the same bits as the year before. But we can do
15 it, if you want?

16 A. No, no, that's okay. If you're saying it's correct,
17 it's correct .

18 Q. I'm sure if I'm getting it wrong, Mr Hill will jump in.

19 So that's the position, is that genuine financial
20 statements, same information in notes 7 and 10, save
21 that the figure had changed, because I think the
22 transaction cost figure was less this time. Then an
23 annual report is prepared, and this is at exhibit 504,
24 so if we could look at that.

25 A. What does the chairman's message say? Again, it says,

1 17:19 "Audited Annual report"?

2 Q. Interestingly, no, it doesn't. The chairman's message
3 in this version is presented rather differently to the
4 previous one.

5 If you could just scroll down for me, Fatima, to
6 page 3.

7 I only show you this, because it's the contents
8 page. You can see that the chairman's message starts at
9 page 4 and goes up to page 29, and it's a narrative of
10 a lot of information about a lot of things.

11 If we scroll down, through pages 4 down to 29, what
12 seems to be the case is that the chairman's message is
13 blocks of text inserted in between some pictures and
14 graphs and various other things.

15 You'd know all of this, of course, because you will
16 have no doubt approved the chairman's message for this
17 year as well?

18 A. That's correct. So I believe in this year, they made
19 a very brief -- yeah, the chairman message in terms of
20 the financial review, I think review of the business.

21 Q. Yes, exactly. It's interspersed with pictures and
22 graphs and all the rest of it, between pages 4 and 29,
23 which is what we're scrolling through now. Yes?

24 A. Correct.

25 Q. Actually, you're right. There is no reference in this

1 17:20 version of the chairman's message to you taking pleasure
2 in presenting the audited financial statements. But
3 let's go to page 76, because that's where the financial
4 statements part starts.

5 This time it's called, "Separate Financial
6 Statements", 31 August 2014. Yes?

7 A. Yes.

8 Q. But then if we go to the next page, 77, you can see that
9 the first section:

10 "Report of the Board of Directors

11 The Board of Directors has pleasure in submitting
12 its report on the audited separate financial statements
13 of Al Najah Education ... for the year ended
14 31 August 2014."

15 Then if we scroll down, we've got the signatures of
16 Mr Lim and Mr Singhdeo.

17 Then if we go to the next page, 78, the independent
18 auditor's report to the shareholders of Al Najah. And
19 at 79, we can see that that's signed by Ernst & Young,
20 dated 5 May 2015.

21 The effect of those pages is that what is being
22 presented here is being represented as the genuine
23 audited financial statements, isn't it?

24 Isn't it, Mr Dash?

25 A. It seems so.

1 17:22 Q. Well, is it or isn't it? "Yes" or "no"?

2 A. Yes, I think so.

3 Q. Thank you. Then if you go to page 94, we've got the --

4 A. Actually, I don't know why notes to separate.

5 Q. Sorry, it's at page 92 is the first one. So note 7, if
6 we look at the share premium figure, what has been
7 removed is the reference -- we can look at the genuine
8 version, if you want to. But what's been removed is the
9 same information that was present in the previous
10 financial statements, but of course, the figure was
11 different. You've looked at this and no doubt you can
12 verify what I have said. Haven't you?

13 A. Yes, this is what was told to us by Ernst & Young.

14 Q. The same for item 10, which is at page 94, so that's
15 note 10. If we get down to the bottom of note 10, where
16 it says, "Transfer of buildings", what's been removed
17 again is any reference to the same transaction costs and
18 advisory fees paid to Al Masah Cayman. That's what's
19 been removed. Yes?

20 A. Correct.

21 Q. Exactly the same deletions from this document in the
22 annual report, as was in the last annual report a year
23 earlier, save, of course, that the figures were
24 different. But other than that, the same deletions in
25 the same places. Agreed?

1 17:24 A. Correct.

2 Q. That must have been deliberate, mustn't it?

3 A. I can't say. Like I said, as you have shown us that
4 I was not involved in the preparation of the annual
5 reports, so you're asking me a question about somebody
6 who's preparing that annual report and what they're
7 trying to do.

8 It relates to a different company than where I'm
9 having an executive function. This is a company where
10 I'm a non-executive chairman. As you could see, the
11 name of the people who are preparing the annual report,
12 and they're also writing the chairman's message for me,
13 and you're trying to say I can see what is done. I know
14 what has been done, because it has been told to us by
15 E&Y. And, as a result, I have given instruction at that
16 time immediately, as you have seen in the emails, to
17 correct those errors.

18 Q. You're not prepared to say, even now, that the fact that
19 this has happened twice over in exactly the same way, is
20 deliberate?

21 A. Is factual, right? Whatever is the fact is in front of
22 all of us, right, to see?

23 Q. Isn't the point that the person, whoever it was who made
24 the changes to both of the financial statements that
25 appear in both of these reports, did in fact make

1 17:26 precisely the changes that apparently the board
2 required, in the sense that the board, according to your
3 representations to the decision making committee, had
4 made a decision that placement fees would not be
5 referred to in the annual reports?

6 A. I think that is not correct. I think you were doing
7 wrong assumptions from what was said in the decision
8 making committee. It was very clear what I said today
9 and what is there in exhibits, that the whole idea of
10 doing the annual report was to do a financial review.

11 That is why I could see that I think the second
12 annual report, the team removed "audited" and does a
13 description of the whole review of the business, in my
14 statement.

15 Q. My suggestion is that in the light of the evidence, you
16 knew about this, you must have known about it.

17 A. I think in light of the evidence, it's very clear that
18 I was not involved in this.

19 Q. And that you knew that this was a misleading and
20 deceptive document both times, 2013 and --

21 A. If I was not involved, how would I know? You are saying
22 that even they're not even sending the financial
23 statement. You saw the email from Satish Gopinathan,
24 who's a company executive to me, who clearly says the
25 financials are not included here.

1 17:28 Q. The reason for it all, as you well knew, was because you
2 didn't want the shareholders to know about the placement
3 fees that were being charged and that Al Masah Cayman
4 were receiving?

5 A. I think we have gone through many exhibits to show that
6 I was the one who was telling everybody about the
7 placement fees. We did not anywhere try to hide the
8 placement fees.

9 Q. Can I ask you to look, because it's next in the
10 chronology, at exhibit A061. Do you see at the top,
11 it's an email from Don Lim to somebody called Billel
12 Ouafi and it's cc'd to you and Mr Singhdeo? Do you see
13 it?

14 A. Yes.

15 Q. Attachments, Al Najah Cayman separate final and then
16 ANEL consolidated management accounts, March 2015.

17 It says:

18 "Please find attached the following pertaining to
19 Al Najah Education.

20 1) Audited [financial statements] ... 2013.

21 2) Management [financial statements] for ...

22 2014 ..."

23 I think the position is that we have the attachment
24 at A062. If we scroll down to page 15, we have note 7.

25 We can see the share premium bit. And what we can

1 17:30 see, therefore, is that this document that was attached
2 to that email, that you were cc'd in on, is the forged
3 version of the financial statements and not the genuine
4 one, isn't it? We can see that from the fact that the
5 deletions have been made to the share premium section of
6 note 7, can't we?

7 A. I can see that.

8 Q. Then the same for page 17. Same deletion to note 10.

9 A. I see the document.

10 Q. The attachments purported to be from Mr Lim, the genuine
11 financial statements, but the attachment was in fact the
12 forged financial statement, wasn't it?

13 A. I see that.

14 Q. I suggest that you knew that that was the case.

15 A. Why would I know this?

16 Q. Because it was part of a strategy that you knew and
17 probably were instrumental in, I suspect, or were
18 instrumental in, to ensure that placement fees --

19 A. I totally disagree with that --

20 Q. -- were not disclosed to potential investors or
21 investors. And this was a document that was going to
22 either a potential investor or referral agent or
23 whatever.

24 A. Yeah, Royal Bank of Canada is a referral agent, but --

25 Q. Therefore, may go to potential investors?

1 17:33 A. But I think your suggestion here is that I knew of this,
2 what is going out, is totally wrong.

3 Q. So you disagree?

4 A. Why would I doubt something sent out by a senior team
5 member of my company to a referral agent? Why would
6 I doubt that there's something wrong with these
7 financials?

8 Q. This isn't about a one-off email that you were cc'd on.
9 This is about the whole picture that's painted by all
10 the evidence we have been going through.

11 A. I think this is -- the relationship with this
12 institution was mine, with Royal Bank of Canada. So
13 that's why I see it. But, as you would know, in the
14 current environment where we have mass media, where we
15 own a BlackBerry, we go around, we receive 300, 400
16 emails every day, we are going in and out of the
17 meetings, unless something is asked to you, and it is
18 important to you, you do not look at it, you do not even
19 answer it.

20 So I don't know. Your suggestion that I would
21 receive a cc email and try to open and read it, from
22 a senior team member of the company, why would I do
23 that? I would think that they are doing the right job.

24 Q. Let's move to a different topic, then. The next stage
25 of things is how all of this came to light. The first

1 17:34 event of note is Mr Agarwalla having a falling out with
2 a member of staff called Mr Kishore Dash and there's an
3 email chain relating to that, which is at exhibit 768.

4 From the bottom of the page -- well, I mean, we can
5 look through the whole chain, if you want. And I accept
6 that you yourself are not copied in on this, but I just
7 wanted to refer you to one particular part, and it is at
8 page 1 of 6 -- let's start at page 2, because it will
9 set the scene. Top of page 2, the email from
10 Mr Singhdeo.

11 What's led up to this email from Mr Singhdeo is that
12 Mr Kishore Dash is proposing to take administrative
13 action and basically get rid of Mr Agarwalla and replace
14 him, and Mr Singhdeo says, "We support what you're
15 planning to do."

16 The next email up is from Mr Lim and this is at the
17 bottom of page 1, and it says:

18 "There is a risk of Raj taking our annual reports
19 and 'edited' financials to EY [Ernst & Young] so I want
20 to manage this process well to minimize any possibility
21 of that etc."

22 Right?

23 A. I read that.

24 Q. Then at the top of the page, we have Mr Singhdeo's
25 reply. He says:

1 17:36 "Hi Don -- don't worry on that front. Annual
2 reports are not statutory documents, hence I am not too
3 worried. If Raj thinks, he can take advantage of the
4 accounting presentation he has prepared, he is living in
5 a fool's paradise."

6 Mr Dash, reading that email from Mr Lim, and the
7 reply from Mr Singhdeo, does that suggest to you that
8 these two knew about these falsified financial
9 statements?

10 A. I think you will get a chance in the next couple of days
11 to interview them, right? So you can form a judgment,
12 I'm sure.

13 Q. You're saying you're not going to comment on that?

14 A. I would not know the replies and I would not comment on
15 something that I'm not involved in.

16 Q. Was any of this reported to you by these two?

17 A. None.

18 Q. That there was a risk that Mr Agarwalla was going to
19 blow the whistle on the fact that these financial
20 statements had been edited?

21 A. Nothing, I don't remember, because I don't involve
22 myself in operations of companies.

23 Q. You suggest that you didn't know that --

24 A. That's the year 2015 -- between 2013 and 2015, we are
25 growing very fast and we have so many new businesses

1 17:38 happening. There was very little time for me to focus
2 on the nitty-gritties of things and what's happening,
3 because I had very skilled people or professionals who
4 could do their job. I believed in them.

5 Q. I see. Do you still believe in them, Mr Singhdeo and
6 Mr Lim, Mr Dash? Do you still believe in them?

7 A. No, I think they are subject matter of this tribunal at
8 the moment and we all look forward to knowing what is
9 exactly the right, and then take a decision on those as
10 well, including myself.

11 Q. All right. Anyway, let's go on to how it came to be
12 that Ernst & Young found out about what had happened;
13 yes?

14 A. Yes.

15 Q. To paraphrase, the Dubai FSA notified Ernst & Young of
16 the discrepancies, which I think had been drawn to their
17 attention by Mr Agarwalla. And as a result of that,
18 Mr Sikander held a meeting at the Emirates Financial
19 Tower offices on 22 November 2015, with Mr Murphy of
20 Ernst & Young and with Mr Lim and Mr Singhdeo.

21 I appreciate that you were not at that meeting, but you
22 would have been aware of it, wouldn't you?

23 A. It was brought to my attention later.

24 Q. But were you aware that that meeting was going to take
25 place at the time?

1 17:39 A. No.

2 Q. Not at all?

3 A. Not at all. But I know after the meeting was over,
4 I was informed and I had told them that this is very
5 serious matter, should not have happened, immediately
6 needs to be corrected as required by EY.

7 Q. Then Mr Sikander said that Mr Lim and Mr Singhdeo tried
8 to pass the issue off as printing errors. He made it
9 clear that he didn't accept that. He said that he
10 required them to write to all the investors, setting out
11 the material omissions, as he regarded them, and
12 withdrawing the annual reports. He then sent an email
13 where he set all of that out, didn't he?

14 A. I think that was a matter of detailed discussion during
15 the opening session as well as with Mr Sharif Sikander.
16 I guess Mr Nrupaditya will also get time to reply to
17 your question. Since I'm not involved in this process
18 at all, it would not be right to ask me this question.

19 Q. No, fine. I'm not actually asking you questions, I'm
20 just setting the scene. I don't propose that we look at
21 Mr Sikander's email, because, as you rightly point out,
22 we've already done it and we can do it again. But you
23 were made aware, you said, of what the allegations were
24 that were being made?

25 A. That's correct.

1 17:41 Q. After the meeting?

2 A. That's correct.

3 Q. Who was it who made you aware of the allegation that had
4 been made and what had happened?

5 A. Both of them, Nrupaditya and Don.

6 Q. Right. So both --

7 A. I mean, this is about five years back. But I don't
8 know, one of them maybe, I think maybe Mr Nrupaditya.

9 Q. Okay, did he come and see you and speak to you about it?

10 A. Yes.

11 Q. You said that you took the view this was a very serious
12 matter?

13 A. That's correct.

14 Q. And, of course, it is a very serious matter, isn't it?

15 A. You have my witness statement.

16 Q. No doubt you would have taken a keen interest in how it
17 was resolved, wouldn't you?

18 A. I think there's an email that I write to Ilona and Ghita
19 to make sure to stay back during the weekend, to make
20 sure that the work is done, as required by the team and
21 Ernst & Young, so that it goes out on the timeline that
22 Ernst & Young has required it to be.

23 Q. Were you ever shown, for example, the email that
24 Mr Sikander sent to Mr Singhdeo and Mr Lim setting out
25 the points that had to be dealt with?

1 17:42 A. No.

2 Q. You don't think you were?

3 A. No.

4 Q. Did you take any personal involvement yourself in
5 ensuring that this matter was dealt with, because it was
6 (a) urgent and (b) extremely serious, wasn't it?

7 A. Personal involvement, like I said, I had told the
8 operations team and the investor relations team to stay
9 back, to make sure what comes from Ernst & Young needs
10 to go out to all the investors on time, as required.
11 Because I knew that there was a deadline given by them,
12 so we wanted to send it out before that.

13 Q. Did you want to approve the wording of any letter that
14 was sent out given how serious this was?

15 A. No, I think the wording was supposed to be, if I'm not
16 wrong, was supposed to be agreed with Ernst & Young. So
17 I cannot add any value, because I was not an auditor on
18 the whole matter. My background, I'm not an auditor, so
19 I can't add value to something which is required for an
20 audited statement.

21 Q. You're saying you didn't review any letter before it was
22 sent out?

23 A. No, I would read the letter, but I would not understand
24 what should go out, because it was Ernst & Young who had
25 said that they will give their opinion before it goes

1 17:44 out. So I had no opinion. I just wanted it to be done
2 as required.

3 Q. Did you receive a copy of the letter, which referred to
4 the changes in the financial statements as printing
5 errors? Do you remember that?

6 A. I really -- at this point in time, I don't remember.
7 But I know that there was a lot of back and forth, which
8 was happening between Ernst & Young and the team.

9 Q. Because Mr Lim sent --

10 A. But I do now know, because for the last, I think one
11 year, we are going through this. So I know this,
12 because I have seen the emails now.

13 Q. Right, but do you recall at the time being shown a draft
14 of a letter, which referred to these errors --
15 deliberate errors, I would say, but you disagree -- as
16 printing errors?

17 A. I would not remember.

18 Q. So you don't remember?

19 A. But now I know what went out.

20 Q. If you had seen a letter like that, wouldn't you have
21 said, "Now, come on, we can't possibly characterise what
22 has happened here as a printing error. This is clearly
23 deliberate and has been described by Ernst & Young as
24 a material omission. Therefore, we cannot describe what
25 has happened as a printing error"?

1 17:45 A. I think that has been very clearly mentioned by our
2 counsel and I'm sure you will hear from Nrupaditya as
3 well as to what was happening. I think they were --
4 I have seen -- the readings I have done in the last one
5 year, I have seen there was a lot of back and forth with
6 EY and Protiviti, which was happening to make sure that
7 the timeline given by EY is met. So I think that as
8 long as EY is happy and Protiviti is giving the right
9 feedback, I thought it is being taken care of and it's
10 in safe hands.

11 Q. You were okay, then, even though you say you can't
12 remember whether you saw a draft, but if you had seen
13 a draft that characterised this as a printing error,
14 you'd have been okay with that?

15 A. I think it's a very hypothetical question.

16 Q. Would you or wouldn't you?

17 A. About what?

18 Q. If you had seen a letter, which characterised what had
19 gone on here as a printing error and you were told that
20 that was what was going to be emailed out to investors,
21 would you have been okay with that?

22 A. No, I would not be okay with that, as long as if it is
23 not agreed by Ernst & Young.

24 Q. So your view was that it should be agreed by Ernst
25 & Young?

1 17:47 A. That's correct.

2 Q. The position is, though, that the printing errors email
3 did get sent out, didn't it, before it had been agreed
4 by Ernst & Young?

5 A. I think that was a discussion two days back with
6 Mr Sharif Sikander.

7 Q. That's the narrative of what happened, isn't it?

8 A. Correct.

9 Q. Then after that, Mr Sikander responded to the draft
10 printing errors letter that he had been sent, saying,
11 "No, I'm sorry, that is just not acceptable", didn't he?

12 A. He said that. Yes, I can see that.

13 Q. He suggested alternative wording.

14 A. That's correct.

15 Q. There is one email, I think, which has your name on it
16 or at least -- yes, from you, and it's exhibit F208,
17 where Mr Lim, if we go down to page 2, says:

18 "Hi Ilona,

19 This letter to be printed and included in every
20 courier ..."

21 Then if we go up:

22 "We need each and every delivery receipt. Please
23 make sure no investor is missed out."

24 Go up:

25 "... we should send the email out to each investor

1 17:49 individually ..."

2 Then you reply, "I agree." So you have been cc'd in
3 on this email chain and this was about sending out the
4 email?

5 A. I think I just said that I wanted to make sure that it
6 is being sent out, as required by EY, on time to all the
7 investors. So this is the action I was taking, telling
8 my team that, "Please make sure that it goes out."

9 Q. Because what must have been attached to this letter is
10 the printing errors letter, isn't it? What must have
11 been attached to this email is the printing errors
12 letter. There's nothing in here that says it's all been
13 approved by Ernst & Young, so it's all fine and the
14 letter can go out. There's nothing about that, is
15 there?

16 A. I can't say. I can't see the letter. I'm sure you have
17 it as an exhibit. I'm sure you can show, right?

18 Q. I'm not asking you to look at the letter, but we know
19 that the letter that did get emailed out was a version
20 of the printing errors letter.

21 A. Okay, if you say so.

22 Q. But there's nothing in this email chain that says,
23 "Mr Dash, Ernst & Young have approved this draft and it
24 can now go out"?

25 A. No, it doesn't.

1 17:50 Q. So why didn't you say, given that that's what you were
2 concerned about, was, "Have Ernst & Young approved
3 this?" Why didn't you say, "Is this approved by Ernst
4 & Young? Is this draft approved?"

5 A. I think I just told you before that, I knew that the
6 draft will have to be agreed with Ernst & Young.
7 I would think that my team has got the draft already
8 agreed with Ernst & Young. It didn't have to say that
9 it already agreed.

10 Q. You just assumed that that was the case?

11 A. Yeah, this is a senior management team of my company.
12 I would think that -- you know, it's very senior people.
13 I would think that they are following the right, you
14 know, requirements that is required by the auditors.

15 Q. If ever there was a situation, though, that required
16 hands-on management and tone from the top, it was this,
17 wasn't it?

18 A. What is hands-on management? If it is hands-on
19 management, tone from the top, I think they're very
20 suggestive, I guess. What you're trying to say is that
21 I was involved in doing all this, which is not clear,
22 and which is not true at all. I think you're being
23 suggestive of something which is not there anywhere.

24 Q. I see. But anyway, you were prepared to just leave it
25 to them and not question whether they'd got Ernst

1 17:51 & Young's permission. Is that the position?

2 A. No, I think once I have given the instruction, I would
3 think that the team would follow and do the right thing.

4 Q. What then happened is that Mr Sikander sent an email to
5 Mr Lim, which is at EXH-703. It says:

6 "Please see the attached letter to be sent out to
7 the shareholders."

8 The letter is exhibit 702, the attachment. You can
9 see that Ernst & Young have track-changed the letter and
10 deleted the words "erroneous printing" and added
11 "contain material errors of omission." And "financial
12 statements ... were not consistent ..."

13 I'm not suggesting that you are --

14 A. We all know this. We all know about this for the last
15 one year or last three, four years. But you're asking
16 me about things that I have no involvement in, whether
17 I was cc'd -- or not written to me, cc'd is different,
18 not written to me. So I don't know what you're trying
19 to get here at.

20 Q. My point is this. You told this tribunal that you
21 instructed them, Mr Singhdeo and Mr Lim, to send out an
22 approved letter that Ernst & Young had approved. And as
23 far as you were concerned, you could leave them to
24 follow that instruction and you didn't need to get
25 involved any further.

1 17:53 But what has happened is Mr Lim has caused to be
2 sent out the printing errors letter and now Mr Sikander
3 has come back and said, "This draft is not acceptable",
4 and has materially amended it.

5 Surely, at that stage, Mr Singhdeo and Mr Lim must
6 have come to you and said, "I'm terribly sorry,
7 Chairman, but we've got an even bigger problem now."
8 Mustn't they?

9 A. I think you're asking something which happened five
10 years back or maybe -- yeah, five years back, now four
11 and a half years back, and we have heard exactly in two
12 days before, with interview of Mr Sharif Sikander, what
13 exactly happened. I don't know why you want me to
14 comment on that.

15 Q. Are you saying that they didn't come and tell you that
16 they'd compounded the problem by sending out an
17 unapproved letter and that Ernst & Young had now come
18 back and said, "No, you've got to send this letter,
19 a different letter"? Nobody told you anything about
20 that? Is that what you're saying?

21 A. I don't remember if they told me about it. I don't
22 remember.

23 Q. You don't remember?

24 A. That's true.

25 Q. And then --

1 17:55 A. From what I have learnt since then, I believe these
2 documents went out by courier. These letters were
3 couriered to investors.

4 Q. I'm about to come on to that, because that was all dealt
5 with in the fifth witness statement of Mr Hammond,
6 wasn't it, do you remember, that we received a few days
7 ago?

8 A. That's correct.

9 Q. It attached five exhibits, didn't it? Do you remember
10 that?

11 What, in summary, Mr Hammond's statement said is
12 that he was given by one of the investors, the pack of
13 documents in an envelope that had been received by him
14 from the courier that had been sent to him by ANEL. And
15 then Mr Hammond exhibited the five documents, which
16 we've got at F702, pack letter 1.

17 That's the first document that's exhibited that was
18 in the pack that one of the investors received by
19 courier. And lo and behold, it's the printing errors
20 letter, isn't it, as we can see from line 1?

21 A. And what are the other exhibits?

22 Q. We'll look at those. That's fine.

23 Then if we look at the exhibit F705, if you scroll
24 down, it's a lengthy letter and this is a letter that
25 refers to material errors and omissions.

1 17:57 A. This is the letter that was approved by Ernst & Young,
2 I guess?

3 Q. Exactly, and it's got a whole load of other information,
4 including the extracts of the financial statements.

5 A. I guess --

6 MS CLARKE: Sorry, I'm getting an echo. Is anyone else
7 getting an echo? I'm not sure what I do about it, I'm
8 afraid.

9 PRESIDENT: We'll have a five-minute break for the shorthand
10 writer. Thank you.

11 (5.58 pm)

12 (Short break)

13 (6.04 pm)

14 PRESIDENT: There seems to be an echo, so can we start by
15 taking down the document that's on the screen.

16 Mr Dash, can you hear me?

17 WITNESS: Yes, I can hear.

18 PRESIDENT: I'm sorry to have to raise this with you, but at
19 the time we broke for the five-minute break, your
20 microphone was left on.

21 (Discussion off the record)

22 WITNESS: Is it okay now?

23 PRESIDENT: I think it probably is. The reason I started to
24 talk was this. When we broke for the five-minute break,
25 you did not switch off your microphone, and as a result,

1 18:06 all three members of the tribunal appeared to hear you
2 having a discussion with your lawyer, which included the
3 words "what was I supposed to say?" Can you tell us
4 what all that was about, please.

5 A. I think it was, to be very frank, I'm sure, since you
6 heard it, it was not -- basically what you heard is
7 right. I was talking about the annual report
8 misprinting error.

9 PRESIDENT: Who were you talking with?

10 A. With my group head legal.

11 PRESIDENT: And who is that?

12 A. Shobhana Kumar.

13 PRESIDENT: Does that mean -- it was our understanding that
14 the only person you had with you in the room was your
15 solicitor, Mr Singh?

16 A. No, because it was a break, they are in other room, and
17 she's a participant as well, she came in. And Mr Singh
18 is there as well, with me in the room, and it was
19 Sobhana, our group head legal, as well as the -- and
20 Mr Singh is there as well.

21 PRESIDENT: Thank you for letting us know the position. We
22 may need to come back to that. But, for the moment,
23 we're going to return to the questioning and I'll ask
24 Ms Clarke to resume. Thank you.

25 MS CLARKE: I hope my echo at least has gone. I think it

1 18:08 has -- no, it hasn't, I can still hear it.

2 Sir, I don't know what you want me to do, to try and
3 press on anyway, or not?

4 PRESIDENT: Unless the technicians think we can solve this
5 quickly, then I think we just have to go on.

6 Mohammed, who is infallible, is he there? Is he
7 able to tell us?

8 MR MALEK: Ms Clarke, if I can just add, I think, what
9 I noticed was that when Mr Dash's microphone was on
10 silent, there was no echo, so it suggests to me that the
11 issue may be coming from the room he's in. But I just
12 noticed that.

13 MS CLARKE: I should say that when I was in the virtual
14 breakout room with my team, there was no echo from any
15 of us, including me, so I suspect that the problem isn't
16 with me.

17 MR MALEK: There's no echo when you were speaking with
18 Mr Dash's microphone off. So let's see how we get on.

19 PRESIDENT: We've all got lots of powers of analysis, but
20 that is no useful information, except for -- it's
21 clearly, as Mr Malek was saying, it's clearly at
22 Mr Dash's end.

23 MS CLARKE: Sir, do I understand that you'd like me to press
24 on and we'll do the best we can?

25 PRESIDENT: (Unclear ...) technical help, so for the moment,

1 18:10 yes.

2 MS CLARKE: All right. Mr Dash's, of course, microphone is
3 off, so he'll need to turn it on again.

4 PRESIDENT: I think he'll only need to turn it on to speak.

5 MS CLARKE: I see. Is that the plan, that I ask the
6 question and then he turns his microphone on to reply?

7 A. Is this okay now? You can hear me?

8 MS CLARKE: I think there's still an echo. Yes, there is.
9 There's still an echo.

10 MR HILL: If I could just volunteer an observation. It's
11 something that just started about three minutes before
12 the interval. I don't know if anything happened in that
13 room with the microphones that may be different.

14 A. Now I hope it's okay?

15 MS CLARKE: No, it's not. But sir, do you want me to just
16 carry on any way?

17 A. I'll just quit and join again.

18 PRESIDENT: We will break for five minutes and see if they
19 can sort it out at Mr Dash's end and then have another
20 word.

21 MS CLARKE: Thank you.

22 (6.13 pm)

23 (Short break)

24 (6.16 pm)

25 MS CLARKE: Thank you, sir. I can hear no echo, so that's

1 18:16 probably fine.

2 Mr Dash, we were talking about the documents that
3 actually got sent out in the courier packs?

4 A. That's correct.

5 Q. I've shown you the printing errors letter, and I think
6 your position was that you didn't know that that
7 printing errors letter was sent out in the courier
8 packs; is that right?

9 A. That's correct.

10 Q. Can you just have a look. We will go back to the other
11 letters in the courier pack, but could you just have
12 a look at exhibit F207. We can see that this is an
13 email from Mr Lim to Ms Zudikova, cc'd to you and
14 Mr Singhdeo and Mr Ghosal:

15 "This letter to be printed and included in every
16 courier [pack] to AN investors. The courier should
17 include this letter and copies of the 2 audited
18 financials."

19 Then if you scroll down, we've got the attachment
20 and of course the attachment is the printing errors
21 letter. Question number 1: did you receive this email?

22 A. I think I didn't receive this email, no.

23 Q. You didn't receive the email?

24 A. But I know that it has gone out like this. We all know
25 that now.

1 18:18 Q. No --

2 A. Information is available for all of us to see. And
3 I guess the second -- you just showed us the exhibit
4 submitted by Mr Matthew Hammond, which had the right
5 letter as well --

6 Q. No, no, stop. No, I'm sorry, Mr Dash, stop. Please
7 focus on the question and the topic that we are on at
8 the moment. I told you that we will go back to the
9 other exhibits. This is taking a lot longer than it
10 needs to. If you answer the questions, we'll go a lot
11 faster.

12 We have just looked at an exhibit, which showed that
13 you were cc'd into an email, which instructed Ilona to
14 print this letter and include it in every courier to the
15 ANEL investors.

16 A. That's correct.

17 Q. What we're looking at now is the attachment, which is
18 the letter which contains the expression "certain
19 printing errors"? My question --

20 A. I'm sure, then I have seen it.

21 Q. Mr Dash, my question was, number 1, did you receive this
22 email?

23 A. Yes, I'm sure I received it, because I'm cc'd.

24 Q. Number 2, did you read the email?

25 A. I am sure I read it.

1 18:19 Q. Number 3, having read the email, did you read the
2 attachment, the letter?

3 A. This, I'm not sure about.

4 Q. Do you think you would have read it, given how important
5 the issue was?

6 A. I'm not sure at this point in time, to be very frank.
7 Like I said, it was expected that the correct version of
8 the letter would go out or the right letter is going out
9 after the communications that we had from Protiviti and
10 Ernst & Young, and I thought that was being followed.

11 Q. I suggest that, of course, you read it and you knew full
12 well that the printing errors letter was going to go out
13 and that that's in accordance with what you would have
14 wanted to happen?

15 A. I think this is only assumptions --
16 -- (overspeaking) --

17 A. I think this is inference and assumptions. I'm sure
18 this is not correct. But might be. I don't know. At
19 this point in time, five years down the line, you're
20 asking me. Maybe I read it. I have no idea.

21 Q. I did say to you that we'd go back to the other
22 documents in the pack, so we'll do that now. I think we
23 were at exhibit F705. That was what we were looking at,
24 the letter that was the Ernst & Young version, with the
25 various extracts from the financial statements attached

1 18:21 as per Ernst & Young's instruction. Yes?

2 A. Yes.

3 Q. Then another letter, exhibit F706, which looks very
4 similar. Then the other two documents are at F703 and
5 F704. I suggest we don't open them both, because one of
6 them is the 2013 financial statements and the other one
7 the 2014 financial statements, ie the correct financial
8 statements.

9 Those are the five documents that did in fact go out
10 in the courier pack, didn't they?

11 A. Correct.

12 Q. That's all I'm going to ask you about that topic. Can
13 we go to the next topic, which is the information that
14 was provided to what has been described as investor A
15 and is, in fact, Noor Bank. All right? So that's the
16 topic we're going to deal with now.

17 A. Noor Bank?

18 Q. Noor Bank, who are being referred to in the documents as
19 investor A.

20 A. I think in the document, it's investor B, I believe,
21 Noor Bank.

22 Q. Is that right? I'm sorry, yes, you are right.

23 All right, so investor A and -- sorry, you're right.

24 Investor A is the [redacted], isn't it?

25 A. Who's not really an investor.

1 18:23 Q. Yes, I know that is an issue between us, and obviously
2 we'll cover that. Sorry, it's been a long day.

3 I'm trying to set the scene and do it as quickly as
4 I can. What happened is that if we look at exhibit
5 A051, what we have here is quite a long email chain.

6 But to try to focus it on the bits that matter, if
7 we could please go to page 5 of 9, to the bottom of the
8 page, we've got an email from Andreea Danila to
9 [redacted] of [Investor A], and it's cc'd to you and
10 Dom Lim.

11 If we scroll through it, to cut this short, what
12 appears to be the content of this letter is providing
13 them with, [Investor A] with information about various
14 funds, none of which are the funds or the structures,
15 let's use a neutral term, that we are concerned with in
16 this hearing. Agreed?

17 A. Sorry?

18 Q. I'll start again. This email is providing [Investor A]
19 with information about a number of different
20 investments, none of which are the four that we are
21 concerned with?

22 A. That's correct.

23 Q. Then if we keep scrolling up. To summarise, what then
24 happens is that there is a continuing discussion between
25 Andreea Danila and [Investor A], various people are

1 18:26 copied in, but much of it, in fact, none of it, refers
2 to the four funds that we're concerned with. Agreed?

3 A. That's correct.

4 Q. Then if we could go to page 3 --

5 A. Four holding companies that we're concerned with.

6 Q. Yes, the four structures, or whatever you want to call
7 it, but I think we agree.

8 Page 3, that's an email from Andreea asking whether
9 they would be available for a meeting.

10 Then if we scroll up a bit further, we can see at
11 the very top of the page, Mr Lim emailing you, cc'ing
12 Ms Danila, and it says:

13 "Shailesh, for review and approval below -- am
14 thinking since we are offering 10% distribution plus 10%
15 extra fund units -- should we put the mgmt fees at 1%
16 instead of 0%?"

17 The content of the email, "Dear [redacted]", is
18 referring to a proposed investment, which does not
19 appear to relate to the four structures, holding
20 companies, investment companies, that we're concerned
21 with. Agreed?

22 A. That's correct. We are talking about a commercial
23 transaction to launch a fund, together with them being
24 a partner.

25 Q. Certainly, at that point, nothing there appears to

1 18:27 relate to the four companies that we're interested in.

2 So if we go to the next email, it's A052, all we
3 need to do is look at the top of the page of A052, you
4 weigh in with your views on what they should be offered.
5 Agreed?

6 A. Yes.

7 Q. That's the only extra significance. I don't think we
8 need to look at it, but the approved email, which
9 included your comments about fees, et cetera, was sent
10 to [Investor A] later that day, to investor A. Yes?

11 Then also --

12 A. This is my email to my team members. This is my email
13 to my team members.

14 Q. Yes, I realise that. Let's go to A053, then. I was
15 hoping that we could paraphrase some of this, but maybe
16 not. A053, that's the email that got sent by Don Lim
17 and I don't think we need to read the content, but it
18 incorporates your views on what they should be offered
19 in terms of fees or whatever, but it doesn't relate to
20 our four companies, does it?

21 A. That's correct.

22 Q. Also what happened is -- I'm not suggesting we look at
23 the email, because again, I don't think it relates to
24 our four companies, but Ms Danila wrote to investor A
25 and attached a document, described as the updated

1 18:29 Al Masah Capital MENASEA fund presentation and
2 supporting financial model.

3 So again, that appears to be something that was
4 under further discussion that doesn't concern the four
5 companies we're interested in?

6 A. That's correct.

7 Q. Then can we go to A046. At the very top, there's an
8 email on 8 July, from Mr Lim, cc'd to you, attaching the
9 HML annual report and the ANEL annual report for 2013.
10 Do you see that?

11 A. That's correct.

12 Q. Of course, that annual report for 2013 would have
13 contained, wouldn't it, the forged financial statements?

14 A. The wrong financial statements, that's correct.

15 Q. If we look at the content of the email, third paragraph
16 up from the bottom, he says:

17 "I am also attaching the annual report for both the
18 Healthcare and Education platforms ... which contains
19 more information on these platforms as well as contain
20 their financials. The 3rd seed asset (Diamond
21 Lifestyle -- f&b platform) will have its first FY
22 closing end of this year.

23 Do let me know if you require any other information
24 on our proposed fund or the platforms. We have the
25 detailed offering information for the respective

1 18:31 platforms which I think we would have shared previously
2 but let us know if we should send it again."

3 Mr Dash, given that email, the position is that, at
4 some stage, discussions had moved on and were now
5 including a potential investment into one or other of
6 the platforms, weren't they?

7 A. No, I must set it right. So this whole conversation
8 went on for five, six months, as you would have known,
9 from March till September or so. It started with
10 a fund. For launch of fund for them to partner with
11 you, they needed your track record, so you would share
12 information of what we have done until now, to show that
13 track record.

14 And one of the interesting things that they have
15 told us in between, while in those discussions, is that
16 why not have -- you know, you have two platforms, which
17 are very exciting for us, which you have healthcare,
18 education, could they form part of the fund? Could the
19 fund invest into them? That is what the discussion is
20 about.

21 Q. Then the next email is exhibit 714, which is Andreea
22 Danila. We need to go down to page 9. This email is
23 from Andreea Danila, cc'd to you, et cetera, and it's
24 about arranging a site visit. There was a site visit
25 arranged to cover one asset for each platform.

1 18:34 A. That's correct.

2 Q. That was the three platforms that had been referred to
3 in the previous email, wasn't it?

4 A. That's correct.

5 Q. Investor A had actually gone and visited an asset
6 belonging to each platform?

7 A. Yeah, track record. Again, like I said, to partner for
8 them, partner with us in a new fund, they needed to know
9 our track record. And also there was, at some point in
10 time, discussion whether this fund, when it is found,
11 whether it can have part of these assets also.

12 Q. You knew, of course, about this site visit, because
13 you're being cc'd in on all the emails about it?

14 A. That's correct.

15 Q. But the position was, wasn't it, that the reason they
16 went to visit these sites was not just -- maybe partly
17 the reasons you say, but also because, by this stage,
18 they were considering an investment into one or other of
19 the platforms?

20 A. Never. Never. They don't invest directly into
21 companies. They do as funds. I mean, for MENA, they
22 wanted to partner with somebody to launch a fund, to
23 have more say in the fund. They are usually a fund
24 investor. These are sovereigns. Unless it's a very
25 large strategic stake, they don't do this small, small

1 18:35 investments into companies. That's both healthcare and
2 education were very small companies.

3 Q. Then what happens is that there is some follow-up, if we
4 can go to exhibit -- we are still in exhibit 714, and if
5 we could go to page 3 of the exhibit that we're
6 currently in. This is Andreea Danila to [redacted],
7 except not cc'd to you. If we look at the second
8 paragraph:

9 "Alongside with the other items of follow up such as
10 valuation, fee income breakdown and funds investment
11 strategy and geographical exposure we would like to
12 propose a conference call ... so we can cover investment
13 strategy and value proposition for DLL."

14 That's Diamond Lifestyle, isn't it?

15 A. That's correct.

16 Q. At that stage, they're discussing Diamond Lifestyle
17 specifically?

18 A. No, but if you could see that, items follow such as
19 valuation. Valuation for all the businesses, how they
20 are done, because they are trying to understand, as
21 a commercial sense, how we run our businesses. What do
22 we do? What kind of reporting happens? What kind of
23 investment strategy is there? What kind of geographical
24 exposure the fund will have?

25 At the same time, Diamond Lifestyle is a new thing

1 18:37 coming up, so whether they would like to understand
2 about what is happening in Diamond Lifestyle as well,
3 what we are doing there. So it's a mix-up, everything
4 that you have read down below, from the chain that
5 you're reading from March/April, it's a mix of
6 everything.

7 Q. Then if we could look at exhibit 769, page 3. At this
8 stage -- we're going to come back to this exhibit, but
9 at this stage, Mr Lim emailing Mr Singhdeo, cc'd to you:

10 "Andreea,

11 Please arrange for a follow-up call with [redacted]
12 and his team to discuss specifically about Diamond
13 Lifestyle ... Shailesh will like to be on the call ..."

14 Yes? But you would say that that had nothing to do
15 with a potential investment, would you, into Diamond
16 Lifestyle or, for that matter, any of the other
17 platforms?

18 A. That's correct, it was not into any of those. I mean,
19 the whole chain of discussions is there, you could find
20 out that it's all about looking into doing a fund
21 together.

22 Q. Could you go to your interview, exhibit 108.

23 PRESIDENT: Before you ask the question, can I just remind
24 you that we're drawing to the end of the day.

25 MS CLARKE: Yes, sir, I know. And I'm afraid that, as you

1 18:38 probably realised, I haven't been able to make as much
2 progress as I would like today. It's not, I hope,
3 you'll realise, necessarily because I haven't been
4 trying to take a short approach to things, but there are
5 certain matters that relate to this topic.

6 And then, of course, the other allegation that's
7 specifically made in the decision notice, which relates
8 to investor -- distributor B and then a couple of other
9 matters that I need to cover, and I don't think I'm
10 going to do that in 20 minutes, I'm sorry. I just don't
11 think I can.

12 PRESIDENT: It's not a question of what you can do in 20
13 minutes. It's a question of what you can do in a couple
14 of days.

15 The tribunal did make it clear that it would expect
16 cross-examination to be distinctly shorter than it
17 conventionally is in the High Court in England.

18 MS CLARKE: Understood.

19 PRESIDENT: I'll listen to Mr Hill, but we will have to have
20 a discussion how far, given what was said last night,
21 this witness has to be required to come back again.
22 I recognise, of course, as do my colleagues, that it
23 takes two.

24 MS CLARKE: Quite.

25 PRESIDENT: We have that in mind as well, so it's not a

1 18:39 criticism of you, but we're just getting concerned about
2 the time that it's taking to get through things, if we
3 approach things very much in an English High Court
4 style.

5 I'll leave that with you, but I'm sorry to interrupt
6 after you have asked a question, but it's better than
7 interrupting when you're in the middle of asking one.

8 So we will have a discussion at 4 o'clock or just
9 before 4 o'clock, but I just thought I ought to tell you
10 where we've got to in terms of time.

11 MS CLARKE: Yes. I'll make as much progress as I can, up to
12 4 o'clock.

13 MR HILL: Could I just put down a marker that I will be
14 strongly objecting to the idea of keeping Mr Dash in
15 purdah. We had the best part of the first day going
16 through agreements that didn't need any
17 cross-examination at all, because they're all in the
18 bundle. My learned friend has had two days, more than.

19 MS CLARKE: Yes, well, thank you very much for that,
20 Mr Hill. But you will appreciate that I have a case to
21 develop and put, and that Mr Dash is the main witness.
22 So shall I carry on?

23 PRESIDENT: Carry on, for the moment.

24 MS CLARKE: Yes, certainly.

25 Where we have now got to is your interview at

1 18:41 exhibit 108 and it's page 193.

2 Just to set the scene, you're being asked about what
3 had gone on with [Investor A] and you'd given an
4 explanation about negotiations that had been happening
5 and all the rest of it. And then Mr Hammond asks at the
6 top of page 193:

7 "Sure. Sorry, just to be clear. Was this an
8 investment into Al Masah or into one of the platforms?

9 Shailesh Dash: Platforms. Nothing to do with
10 Al Masah."

11 A. As you could see in the emails, chains, it is into the
12 funds, not the platforms.

13 Q. Right, but here, when you're asked in your interview,
14 this is your second interview:

15 "Was this an investment into Al Masah or into one of
16 the platforms?"

17 The answer was:

18 "Platforms. Nothing to do with Al Masah."

19 A. Yeah, I mean, we have the factual information in front
20 of us, which talks about doing a fund together, so that
21 information is there in front of all of us to see. We
22 have gone through those emails now.

23 Q. So you say that despite what you said in interview,
24 [Investor A] were not a potential investor into one of
25 our four platforms?

1 18:43 A. I think we have information for five months, emails back
2 and forth. I'm sure you have the same that I have, it
3 obviously discusses about doing a fund together.

4 Q. Then if we have exhibit 769, we've got, if we can move
5 up, page 2. What had happened is that [Investor A] had
6 asked for clarity on the 14 million assets under
7 management figure for Al Masah Cayman. And Mr Singhdeo
8 had been asked to provide a breakdown of the figure. Do
9 you recall that? That's what this email is showing.

10 A. No, what [Investor A] had asked for is about the AUM
11 that we have, the assets under management that we have.
12 And so that -- and they had asked for what is the
13 management fee we do from the AUM that we have, how much
14 management fee we do from the AUM. I think there's
15 a lot of other emails that are covered here.

16 Q. But anyway, what then happens is that Mr Singhdeo sends
17 an email, which says:

18 "Don -- Please find below the break up of income."

19 Do you see that?

20 A. That's correct.

21 Q. He split out the figures into a number of different
22 headings and amounts.

23 A. That's correct.

24 Q. Notably, the placement fee income figure is given at
25 just under \$10 million.

1 18:46 A. That's correct.

2 Q. That figure is an accurate figure, isn't it, 10 million,
3 at that time?

4 A. I'm not sure if that's an accurate figure, but if
5 Mr Singhdeo has sent, it must be accurate figure,
6 because he was the CFO at that point in time for
7 Al Masah Capital Management Ltd.

8 Q. Your response to that email -- because the proposal was
9 that this table would be sent to investor A, wasn't it?
10 That was the proposal, and --

11 A. We keep saying investor A, investor A. It's not
12 investor A, it's a commercial partner, we're talking
13 a business venture. So it's a very different
14 perspective than saying it's investor, investor.

15 Q. Your email response to that is:

16 "This will not go out. NS and Eyad speak to me
17 tomorrow morning."

18 A. That is correct. I think I've covered this in detail in
19 my witness statement. The reason why I didn't want the
20 financials of Al Masah Capital to go to outside people,
21 is that they are not investing into Al Masah. We are
22 not inviting them to invest into Al Masah Capital
23 Management Ltd.

24 So for them to ask -- we are not asking for their
25 financials. For them to ask for our financials doesn't

1 18:47 make sense for me to declare our own financials to them,
2 which are made for our own shareholders only.

3 Q. Then at the top of the page, Mr Huwaij says, "Sure
4 Shailesh, we will do."

5 So there was clearly then a meeting, wasn't there,
6 between the three of you? Was there a meeting between
7 the three of you?

8 A. Yeah, I think I have covered that again in my witness
9 statement, where I say the next day morning, they said
10 [Investor A] would be a very good name to cover, to have
11 a joint venture partner, and it includes our profile, so
12 if they want the financials, let us send them out.

13 Q. What you said is that, as I recall it from paragraph 45
14 of your first witness statement, is that you were
15 persuaded that you should share the information;
16 correct?

17 A. Correct.

18 Q. Secondly, though, that the various headings provided in
19 the table should reflect the different terminology that
20 was being used?

21 A. That's correct.

22 Q. What do you mean by "different terminology"?

23 A. So there are two things involved. Each of these
24 companies have a different -- Al Masah Capital has
25 a financial year end of March. Healthcare MENA has

1 18:48 a year end of December. Al Najah Education has a year
2 end of August.

3 So when you have March financial year-end numbers
4 given out and you know that you have already sent to
5 them the financial statements, for Al Najah and Avivo,
6 which have a totally different financial year, and now
7 you're sending a number to them; first of all, they have
8 to match with each other. Because if somebody is going
9 to mix and match, they have to be the same number or you
10 have to have an explanation for it.

11 And the second is they have to say the same in those
12 financial statement that has gone to them. It has to
13 make the same sense. It has to show the same number.

14 Q. Similar terminology --

15 A. Yes.

16 Q. "Terminology" meant what? Description of the various
17 items?

18 A. No, "terminology" means if you open the Al Masah Capital
19 annual report or financial statement, and you open the
20 Avivo and Al Najah, then they have to match with each
21 other, terminology used, because I know Ernst & Young
22 was using a different terminology. I know PwC was using
23 a different terminology.

24 PRESIDENT: Stop there. We're stopping the evidence for
25 today.

1 18:50 MS CLARKE: All right.

2 PRESIDENT: The following matters I think arise on the
3 evidence. We have not finished with Mr Dash. We'll
4 hear some submissions from you both about that, and
5 obviously, we'll consider them carefully.

6 At the moment, it seems to us inevitable that
7 Mr Dash is going to have to return, if only because
8 justice requires that Mr Hill have a proper opportunity
9 to re-examine, if he wishes to do so.

10 So one, I'm afraid, Mr Dash, I'm sorry you have been
11 troubled, because it has been a long session for you, we
12 are conscious of that, but you're going to have to
13 return on Sunday or whenever is convenient. That's the
14 first thing.

15 The second thing is we appreciate that that creates
16 a difficulty for Mr Hill. As regards what he had to
17 say, first of all, can I say that we're not happy with
18 the use of the word "purdah". It's not appropriate in
19 a DIFC context, particularly, or respectful in any
20 context.

21 But we appreciate your difficulty and it seems to us
22 only just that given the estimates that were given, that
23 if you or your junior wish to take instructions from
24 Mr Dash, you should feel entirely free to do so.

25 So that's how we would propose to proceed with that.

1 18:51 Ms Clarke, as I say, we recognise that these things
2 take two, but I do urge you, please, to revisit the
3 specific direction we gave about cross-examination.

4 MS CLARKE: Yes, I've got --

5 PRESIDENT: Whether we can cut things down a bit next week.

6 And also, since I'm dishing it out, Mr Hill, we are
7 very concerned about the matter that I raised after the
8 shorthand break. And particularly, we're disturbed that
9 that conversation took place and, at the moment, rather
10 baffled to understand how it could have taken place, if
11 indeed Mr Dash is accompanied by his solicitor. And if
12 you could perhaps get a witness statement or something
13 from his solicitor about how that came to happen, it
14 would be of assistance to us when we resume on Sunday.

15 Having said that, you can both, of course, now
16 respond to what I was saying.

17 MS CLARKE: I suppose I'll go first, sir. Yes, I have taken
18 the hint and I can assure you that I will keep Mr Dash
19 for as short a time as possible when we resume on
20 Sunday.

21 MR HILL: Thank you. From my point of view, there's no
22 point of crying over spilt milk, because we are where we
23 are, we will have to resume.

24 Can I just say, because it may give my learned
25 friend a steer going forward. I did raise this as

1 18:53 a concern yesterday. I was concerned with the amount of
2 time spent, for instance, looking through agreements
3 with the witness, which you don't need to do, taking the
4 witness to emails, which he wasn't party to, and
5 spending a long time on them, which I suggest is not
6 necessary. And scene setting, which is again not
7 necessary. And if we have that with Mr Singhdeo as
8 well, we will be here for a very long time.

9 I am concerned that I having raised it yesterday, my
10 learned friend then, on the back of that, under
11 persuasion from the tribunal, having said she would
12 finish today, now got to the end of today and we haven't
13 finished. And it's unfortunate.

14 That's all I can say about that. But as I say, we
15 are where we are and I completely agree that we can't
16 stop the evidence halfway through.

17 With regard to what happened, obviously, I will have
18 to speak to those instructing me and obtain a witness
19 statement as appropriate.

20 PRESIDENT: Thank you both for that. Let's just move on and
21 have a discussion about closings. And I'm going to ask
22 Mr Malek, as it were, to lead that.

23 MR MALEK: Thank you, Mr President.

24 As far as closings are concerned, as I understand
25 it, there's going to be two parts. There's going to be

1 18:55 something in writing and then the oral part. On the
2 current timetable, the oral is going to be on Thursday.

3 And as far as the writing is concerned, we have had
4 a look at the list of issues, which seem to us to
5 clearly set out the points that we're going to have to
6 look at.

7 And although we can't lay down a rule, it would be
8 helpful to have your position on each of those issues,
9 with references to the submissions that are
10 cross-referenced, may be enough, and to identify the
11 evidence that you're relying upon. And also to indicate
12 the findings of fact that you will be inviting us to
13 make in respect of those issues.

14 I appreciate that time is quite short, so we're not
15 expecting sort of polished briefs, so to speak, and
16 we're quite happy to receive any written material in
17 whatever form is convenient to both of you. That's all
18 I wish to say, Mr President.

19 PRESIDENT: Mr Hill and Ms Clarke, can we have your views
20 about that?

21 MR HILL: Just on timing, are you envisaging we still go
22 ahead for next Thursday? Because as I intimated in
23 opening, from our perspective, even in abbreviated form,
24 trying to get comprehensive submissions on the issues in
25 time to get them in and then have an oral hearing on

1 18:56 Thursday, is overly tight.

2 I think I mentioned 28 days in my opening. That
3 probably is itself too leisurely, but we would certainly
4 suggest we have at least until Thursday week, so that's
5 basically two weeks from today, to file a document. So
6 that will be a week and a half or a week or so from when
7 we finish the evidence at this stage.

8 Then I would propose that we came back early the
9 following week, if people can make it, for a day or half
10 a day, whichever you direct, for oral closings.

11 PRESIDENT: Ms Clarke?

12 MS CLARKE: Sir, we have been discussing the issue of
13 timing, because obviously, you had asked us to do so
14 over lunch. And, of course, we're not as far forward as
15 we thought we were, and would like to be, in terms of
16 the evidence. And we had, I think, had cause therefore
17 to pause and reconsider whether our original suggestion,
18 which was crack on with the written reps and have the
19 oral reps on Thursday, might now be a little
20 unrealistic. In terms of, apart from anything else,
21 preparing the written document and dealing with issues
22 that have arisen in the course of the evidence,
23 et cetera.

24 So the position I think we were going to take,
25 unless I'm getting anything from my team, which tells me

1 18:58 I'm wrong, is that we would reluctantly agree with
2 Mr Hill's broad proposal, that there be a slightly
3 longer period for written representations and then
4 a date fixed for oral representations, if required.

5 PRESIDENT: Thank you. We'll discuss that. You will be
6 able, I think, to persuade us that it's appropriate to
7 not have the closing submissions next Thursday.

8 But I think we'd need to try and get it into the
9 following week, simply because everybody here and
10 obviously particularly the lawyers, have got commitments
11 and then we have a nightmare trying to get it altogether
12 and then we've all got to try and remember, frankly,
13 what this case is about.

14 So we will consider it, but I think we're probably
15 persuadable into fixing a day or half a day in the
16 following week.

17 Can I just echo what Mr Malek was saying about the
18 informality of submissions. We've got two very fine,
19 very detailed skeleton arguments and if things come in
20 note form and with spelling mistakes, as long as the
21 references are right, and the thing is reasonably
22 accessible, you're really not going to get points for
23 perfection, so please feel relaxed about that.

24 Is there anything else that my colleagues would like
25 to contribute to this discussion or that counsel wishes

1 18:59 to add?

2 MS CLARKE: Sorry, I've got nothing to add, except to
3 apologise that I left my microphone on while you were
4 talking.

5 MR MALEK: Just one question. If the decision is that we
6 give the further time for the written submissions
7 towards the end of next week, are there any difficulties
8 in getting together the following week? Because I know
9 it's Whitsun and I think with the lockdown, none of us
10 have got any holidays. So I'm hoping that we will be
11 able to get together towards the end of the week, if
12 that's what the tribunal decides.

13 PRESIDENT: We'd ask either the DFSA or perhaps the
14 registrar to make enquiries about that.

15 MR HILL: If it fits with everyone's diaries, could I put in
16 a bid for the day of the oral submissions to be at the
17 end of the week. That would enable the written document
18 to be filed perhaps on Sunday or even the Monday, that
19 gives a decent amount of time.

20 PRESIDENT: Okay. Bid noted. The three of us will discuss
21 it again briefly at the beginning of the week. So I'm
22 sorry you are not all getting away for Whitsun, but
23 there we go.

24 I can recommend the town of Aldeburgh on the east
25 coast of England as an excellent place for barristers to

1 19:01 come and spend their earnings.

2 But with that, thank you all very much for your help

3 and we'll meet again on Sunday morning at 10 o'clock.

4 (7.01 pm)

5 (The hearing adjourned until 1 pm on the following Sunday)

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I N D E X

MR SHAILESH KUMAR DASH2
 Cross-examination by MS CLARKE (continued)2