Case No: HC-2013-000029

Neutral Citation Number: [2016] EWHC 150 (Ch)
IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 4 February 2016

Before :

THE HON MR JUSTICE ARNOLD

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Between :

(1) ANTONIO CALIENDO **(2) BARNABY HOLDINGS LLC**	**Claimants**
- and -	
(1) MISHCON DE REYA (A FIRM) **(2) MISHCON DE REYA LLP**	**Defendants**

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Alan Gourgey QC and **Katie Powell** (instructed by **DLA Piper UK LLP**) for the **Claimants**
Ian Croxford QC, **Clare Stanley QC** and **Jonathan Chew** (instructed by **Robin Simon**) for the **Defendants**

Hearing dates: 1-4, 7-11, 14, 17-18 December 2015

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Judgment

MR JUSTICE ARNOLD:

Contents

Introduction

1. This is a claim for professional negligence by Antonio Caliendo and Barnaby Holdings LLC ("Barnaby") against the firm of solicitors Mishcon de Reya (which become a limited liability partnership during the relevant period, but for present purposes the distinction between the firm and the LLP can be ignored). Mr Caliendo and Barnaby claim not only in their own right, but also as assignees of Franco Zanotti and Wanlock LLC following an assignment on 13 March 2013, and accordingly for convenience I shall refer to all four collectively as "the Claimants". The claim concerns a transaction on 1 September 2007 in which Wanlock sold its 19.9% shareholding in QPR Holdings Ltd ("QPRH") to Sarita Capital Investment Ltd ("Sarita", a vehicle for Flavio Briatore) and Bernie Ecclestone (together, "the Purchasers"), and in which Barnaby and Moorbound Ltd undertook to sell their 27.5% and 14.8% shareholdings to Sarita, and in which Mr Caliendo partially waived various loans he had made to QPRH ("the Transaction").

2. The Claimants contend that the terms of the various documents which were entered into by the parties to the Transaction ("the Transaction Documents") differed materially, and to the detriment of the Claimants, from the terms which Mr Caliendo had instructed Mishcon de Reya to implement on their behalf.

3. Mishcon de Reya denies that it was retained by the Claimants or assumed any duty to the Claimants. It is common ground that Mishcon de Reya did act on behalf of QPRH in relation to the Transaction, and that this is not determinative of the question of whether it also acted on behalf of the Claimants. Mishcon de Reya also contends that the Claimants have suffered no loss, or were contributorily negligent. More fundamentally, however, Mishcon de Reya takes issue with a number of the key factual foundations for the Claimants' claims.

The Transaction Documents

4. The principal Transaction Documents were as follows:

i) A share sale agreement between Wanlock, Mr Caliendo, Sarita and Mr Ecclestone dated 1 September 2007 ("the SSA"). The SSA provided for the sale by Wanlock of its shares in QPRH for a total price of £199,000, of which £49,000 was payable by Sarita and £150,000 by Mr Ecclestone. The SSA was executed by Kevin Steele of Mishcon de Reya on behalf of Wanlock and Mr Caliendo.

ii) A deed of irrevocable undertaking given by Barnaby in favour of Sarita, by which Barnaby undertook to accept an offer of 1 pence per share for all of its shares in QPRH from Sarita. One copy of the undertaking dated 31 August 2007 was executed by John Wortley Hunt on behalf of Barnaby. A second copy of the undertaking dated 1 September 2007 was executed by Mr Steele on behalf of Barnaby.

iii) A deed of irrevocable undertaking given by Moorbound in favour of Sarita dated 1 September 2007, by which Moorbound undertook to accept an offer of 1 pence per share for all of its shares in QPRH from Sarita. The undertaking was executed by Gianni Paladini and Mr Steele on behalf of Moorbound.

iv) A document signed by Mr Caliendo and witnessed by Ilario Calvo on 29 August 2007 acknowledging that the sums owed to Mr Caliendo by QPRH totalled £6,581,328 interest free and that Mr Caliendo was not owed any other sums ("the Caliendo Acknowledgement").

v) A deed executed on behalf of Mr Caliendo by Mr Steele on 30 August 2007 acknowledging that the sums owed to Mr Caliendo by QPRH totalled £6,581,328 interest free, that the loans were redeemable at any date before March 2011 but not were due until March 2011 and that Mr Caliendo was not owed any other sums ("the Deed of Acknowledgement").

vi) A deed of waiver between Mr Caliendo, QPRH, Sarita and Mr Ecclestone dated 1 September 2007 ("the Caliendo Waiver"). Under the Caliendo Waiver, Mr Caliendo waived £4,581,328 out of the debt of £6,581,328 owed to him by QPRH. £2 million was left outstanding, but subject to being reduced by an indemnity given by Mr Caliendo in favour of Sarita and Mr Ecclestone in the events that the Completion Net Assets determined pursuant to the Schedule to the deed were less than £3 million ("the Net Assets Indemnity"). The Caliendo Waiver was executed by Mr Steele on behalf of Mr Caliendo.

vii) An undated deed of waiver between Barnaby, Sarita and Mr Ecclestone, under which Barnaby waived any claim against Sarita or Mr Ecclestone. This was executed by Mr Hunt on behalf of Barnaby.

viii) An undated deed of waiver between Wanlock, Sarita and Mr Ecclestone, under which Wanlock waived any claim against Sarita or Mr Ecclestone. This was executed by Damian Calderbank on behalf of Wanlock.

ix) A deed of waiver between Barnaby and Sarita, under which Barnaby waived any claim against Sarita dated 1 September 2007. This was executed by Mr Steele on behalf of Barnaby.

x) A deed of warranty by Mr Paladini, Mr Caliendo and Mr Zanotti in favour of Sarita and Mr Ecclestone dated 31 August 2007, warranting that there were no outstanding loans or other indebtedness that are either convertible or owing to any of Carlos Dunga, Simon Blitz or a Mr Padula ("the Dunga Warranty"). The Dunga Warranty was signed by Mr Paladini and by Mr Steele on behalf of Mr Zanotti and Mr Caliendo.

xi) Loan and security documents providing for the loan by the Purchasers to QPRH of up to £5 million.

Brief outline of the Claimants' case

5. In brief outline, the Claimants' case against Mishcon de Reya is follows. The Claimants contend that Mr Caliendo expressly, alternatively impliedly, retained Mishcon de Reya to act on behalf of the Claimants in respect of the Transaction, alternatively that Mishcon de Reya assumed a responsibility to act on their behalf.

6. The Claimants further contend that Mishcon de Reya acted in breach of their duty to the Claimants by executing Transaction Documents which deviated from their instructions, and without advising them properly or at all, in the following respects:

i) the Transaction Documents failed to provide for the payment of a further £2 million to Mr Caliendo in the event that Queen's Park Rangers was promoted to the Premier League within five years, as in fact happened ("the Promotion Bonus");

ii) the Transaction Documents wrongly included the Dunga Warranty;

iii) the Transaction Documents wrongly included the Deed of Acknowledgment, and Mishcon de Reya failed properly to advise Mr Caliendo with respect to the Caliendo Acknowledgement;

iv) the Transaction Documents wrongly included the Net Assets Indemnity; and

v) the Transaction Documents failed to provide for the payment by the Purchasers of sums of £264,870, £198,161.69 and £541,134 (totalling £1,004,165.69) which the Claimants contend were owed by QPRH to third parties and guaranteed by Mr Caliendo ("the Three Debts").

7. The Claimants complain that, whereas they expected to receive a total of £2.5 million for their shares and partial repayment of loans made by Mr Caliendo to QPRH, £2 million in the event of promotion to the Premier League and discharge of the Three Debts, in the event they only received £485,488.36 and Mr Caliendo was left with liability in respect of the Three Debts. In addition, Mr Caliendo was exposed to proceedings brought by QPRH ("the QPRH Proceedings") following QPRH's settlement of proceedings brought by Mr Dunga ("the Dunga Proceedings").

8. Damages are claimed on the footing that, but for Mishcon de Reya's breaches of duty, the Transaction would not have been concluded on the terms of the Transaction Documents and that there was a substantial chance that the Transaction would have been concluded on the basis of the terms which the Claimants contend Mishcon de Reya had been instructed to agree. So far as concerns an overall payment of £2.5 million and the Promotion Bonus, those terms reflected the Purchasers' initial offer on 9 August 2007. The Claimants claim for loss of that chance.

9. In the alternative, the Claimants claim damages on the basis that, if the Purchasers had been unwilling to agree to their terms, the Claimants would have looked for another purchaser. The Claimants contend that there was a substantial chance that they would have secured an alternative purchaser during the course of the 2007/08 season on terms at least as beneficial as those which they had thought had been agreed with the Purchasers. Again, the Claimants claim for loss of that chance.

10. In addition to the claims for a loss of a chance, the Claimants seek recovery of the costs that Mr Caliendo incurred in defending the QPRH Proceedings.

The witnesses

The Claimants' factual witnesses

11. I heard evidence from the following witnesses for the Claimants: Mr Caliendo; Mr Zanotti; Mr Dunga; Claude Tomatis; and Timothy Clarke.

12. Mr Caliendo is Italian, but has been based on Monaco since before the events which gave rise to these proceedings. He became involved in football in the 1970s, when he became the first person to establish himself as an agent for professional footballers. Since then, he has represented and managed hundreds of footballers. He represented 12 of the 22 players on the pitch in the 1990 World Cup final between West Germany and Argentina. Some of his business was in 2006 and 2007 carried on through Image Promotion Company SAM ("IPC"), a Monegasque company. At that time, Mr Caliendo also had interests in a number of companies which owned real estate in Monaco, in particular companies called SCI Aurora, MIKI and MIMA. As described in more detail below, Mr Caliendo was, prior to the Transaction, a director of, Chairman of, and (through Barnaby) a shareholder in QPRH. In addition to Barnaby, Mr Caliendo also had an interest in a Panamanian company called Redhill Overseas SA (also referred to as Redhill Overseas Ltd), but the evidence regarding this company is very sketchy.

13. As both counsel recognised, the Claimants' claims depend to a considerable extent on the credibility of Mr Caliendo's evidence. Mr Caliendo speaks little English, and he gave evidence through interpreters. Even making full allowance for that, and for the fact he was cross-examined on a lot of documents which were in English and therefore had to be translated for him at least in part, and for the fact that that he was being asked about the events of over seven years ago, Mr Caliendo was on any view a very unsatisfactory witness. He frequently did not answer the question even after it had been repeated two or three times. Parts of his oral evidence were directly contradictory of his written evidence. He also contradicted his own oral evidence. Significant aspects of his oral evidence were not foreshadowed in his lengthy written evidence. Significant parts of his evidence were contradicted by the documentary

evidence. Other parts were simply implausible. He did not hesitate to question the authenticity or provenance of documents whose authenticy and provenance had not been challenged by the Claimants, or to blame others, when confronted with difficulties in his evidence. Counsel for Mishcon de Reya submitted that Mr Caliendo was not a truthful witness, relying upon a schedule of no less than 24 examples of what was contended to be false evidence. Counsel for the Claimants accepted that some of Mr Caliendo's evidence was inaccurate or unreliable, including many of the 24 examples, but submitted that it was not dishonest. My assessment is that Mr Caliendo was not a witness on whose evidence I can safely rely unless it was contrary to his interests (as some of it was) or supported by independent evidence.

14. Mr Zanotti is also Italian and also based on Monaco. He is an international businessman and a long-standing friend of Mr Caliendo's. As described in more detail below, prior to the Transaction he was a director of and (through Wanlock) a shareholder in QPRH. Mr Zanotti was a straightforward witness, but as he readily admitted his recollection of the details of the events in question was not good. Furthermore, he accepted that, as the contemporaneous documents suggest, he had taken a back seat in relation to the Transaction and had let Mr Caliendo drive it forward. Thus his knowledge of key matters will have derived from what he was told by Mr Caliendo. In those circumstances, I consider that caution is required before relying upon his evidence to corroborate Mr Caliendo's.

15. Mr Dunga's proper name is Carlos Verri, but he is commonly known as Carlos Dunga, and that is how I shall refer to him since that is the name that was generally used in the contemporaneous documents. Mr Dunga is Brazilian. He had an illustrious career as an international footballer, which included winning the World Cup as captain of Brazil in 1994. He is currently head coach of the Brazilian team. Mr Caliendo was Mr Dunga's agent when Mr Dunga was a footballer, and they have been close friends for many years. Mr Dunga was a director of QPRH from 13 October 2004 until 1 August 2007. Mr Dunga was a straightforward witness, but he had considerable difficulty in explaining the transactions and documents in which he had supposedly been involved. It is clear that this is because he relied entirely upon Mr Caliendo. Indeed, it was Mr Caliendo's own evidence that he managed Mr Dunga's assets. Thus while I do not cast any doubt on Mr Dunga's integrity, I do not consider that I can rely upon his evidence to corroborate Mr Caliendo's evidence with respect to the transactions in question.

16. Mr Tomatis is a chartered accountant from Alléance Audit in Monaco, which is part of the PricewaterhouseCoopers ("PwC") network. Mr Tomatis is a Monegasque citizen whose first language is French, but who communicated with Mr Caliendo in Italian. Mr Tomatis has been the accountant for IPC for around 20 years. I have no difficulty in accepting his evidence.

17. Mr Clarke is a solicitor. He trained at Mishcon de Reya and was a friend of Mr Steele. He was an engaging and frank witness.

Mishcon de Reya's factual witnesses

18. I heard evidence from the following witnesses for Mishcon de Reya: Mark Cooke and Charles Pennington.

19. Mr Cooke is an ACCA qualified accountant who worked for QPRH and its subsidiary Queens Park Rangers Football and Athletic Club Ltd ("QPRFC") (collectively "QPR") as Financial Controller on a temporary basis from January to February 2007 and full time from April 2007 to February 2009. Mr Cooke was a director of QPRH from 24 July 2007 to 20 August 2007 and company secretary of QPRH from 23 July 2007 to 31 August 2007. Mr Cooke was a completely independent witness. Although he had understandable difficulty in recalling some of the details of the events in question, and was slightly mistaken in at least one respect, I found him a generally convincing witness.

20. Mr Pennington was Chief Financial Officer and company secretary of QPRH from 10 November 2004 to 14 September 2006, although in practice he left the company in early August 2006 to work for a company of Mr Zanotti's. (Intriguingly, he said that some of his day-to-day duties were taken over by "this Italian firm of accountants and other advisors that Antonio had", which may be a reference to the T&F Group referred to below.) He gave evidence in response to a witness summons served at short notice, but was a straightforward witness.

21. In addition, Mishcon de Reya relied on three hearsay statements:

    i) A witness statement made by Harold Winton in anticipation of these proceedings in September 2009 when he was suffering from terminal cancer. Unfortunately Mr Winton died in February 2010. Mr Winton had a long-standing involvement with QPR, having been a fan from 1947. From late May 2002 to 12 September 2003 Mr Winton was a director of QPRH. From at least 17 January 2006 until the Transaction he was (through Anaid Holdings Ltd, "Anaid") a small shareholder in QPRH. Thereafter he remained Honorary Life President of QPR until his death.

    ii) Part of a witness statement made by Rebecca Caplehorn, who was QPRH's Financial Controller from October 2009 and then Financial Director from March 2010, in July 2014 in the course of the QPRH Proceedings.

    iii) Part of a witness statement made by Antonio Indaimo, a solicitor and a partner at Withers LLP, which acted for the purchasers in the Transaction, in the course of the QPRH Proceedings.

22. The Claimants did not apply to cross-examine either Ms Caplehorn or Mr Indaimo, and therefore their evidence is unchallenged.

Expert witnesses

23. I also heard evidence from three expert witnesses:

    i) Daniel Jones of Deloitte LLP gave evidence on behalf of the Claimants in relation to the financial position of QPRH and the valuation of, and market for, the shares in QPRH at the relevant time.

    ii) Martin Cottle of PwC gave evidence on behalf of Mishcon de Reya in relation to the financial position of QPRH.

iii) Douglas Harmer of Oakwell Capital Ltd gave evidence on behalf of Mishcon de Reya in relation to the valuation of, and market for, the shares in QPRH.

24. All the experts were well qualified, although Mr Cottle had no experience of football clubs. All the experts did their best to assist court, and all properly made certain concessions in cross-examination. Through no fault of the experts, however, I shall make very little reference to their evidence in this judgment, although I have taken it into account. This is because of my findings of fact.

Missing witnesses

25. This is a case in which there is a surprisingly large number of missing witnesses on both sides and none.

Missing witnesses on the Claimants' side

26. According to Mr Caliendo, Mr Calvo is an Italian actor and TV presenter who speaks English. On Mr Caliendo's own account, in August 2007 Mr Calvo acted as Mr Caliendo's translator during a number of important meetings and telephone conversations with Mr Steele and also translated emails for him. Moreover, Mr Calvo was described in a number of contemporaneous documents as "Mr Caliendo's assistant". Mr Caliendo gave evidence that Mr Caliendo had seen Mr Calvo as recently as September 2015, that at that time Mr Calvo was alive and well, and that Mr Caliendo could call him at any time. No explanation was given as to why the Claimants had not called Mr Calvo as a witness.

27. Eric Manasse was only mentioned by Mr Caliendo once in passing in his written evidence, but was frequently mentioned by him in his oral evidence. Eric Manasse was another football agent based in Monaco. Mr Caliendo described Eric Manasse as a "legal consultant" who worked a lot with Mr Caliendo's organisation. It does not appear that Eric Manasse, as opposed to his brother Donald with whom Eric shared an office, was legally qualified, however. Eric Manasse died sometime ago, and therefore he was not able to give evidence. Donald Manasse was instructed by Mr Caliendo in relation to the Transaction between at least 17 November 2008 and 14 July 2009, but this was well after the events which gave rise to the present dispute.

28. Paulo Mina, Andrea Primicerio, Laura Murgia and Maria Tomassini appear to have been respectively the founder or principal, a senior employee and two more junior employees of AccounTrust Ltd (referred to in some documents as AccounTrust plc) and/or T&F Ltd and/or T&F Financial Ltd and/or T&F Tax & Finance SA ("T&F SA I") and/or T&F Tax and Fiduciary SA ("T&F SA II"). AccounTrust was founded in 2002. It is based in Mayfair, London and currently describes itself as "a UK chartered accountancy practice, which provides a wide range of accounting, taxation, compliance and business advisory services to UK and overseas clients". T&F Ltd, T&F Financial Ltd, T&F SA I and T&F SA II (collectively "T&F") appear to be tax and financial advisors based in Mayfair, Mayfair, Lugano and Costa Rica respectively. AccounTrust and T&F appear to be part of the T&F Group, which currently describes itself as "a leading provider of international tax consultancy and trust services to corporate groups, businesses, entrepreneurs, expatriates, private individuals and families". It appears that Mr Mina, Mr Primicerio, Ms Murgia and Ms Tomassini were all Italian (hence a number of the documents emanating from the

T&F Group are in Italian) and that at least Ms Murgia and Ms Tomassini also spoke English. Counsel for the Claimants told me on instructions that the T&F Group had declined to cooperate with his clients, but no evidence was adduced as to the Claimants' attempts to obtain evidence from any of the relevant witnesses. I would add that, in June 2006 and June 2008 Mr Mina, and in August 2007 Ms Murgia and Ms Tomassini, appear to have been based in Mayfair. If that is still the case, then their attendance could have been compelled by witness summons. Furthermore, Mr Primicerio is recorded at Companies House as being resident in the United Kingdom.

29. Mark Buckley was a solicitor at Fladgate Fielder, a firm instructed by the T&F Group shortly before the completion of the Transaction, and continues to be a partner in that firm. No explanation was given as to why he had not been called, but I accept that his role was relatively peripheral and that there might well have been a problem with privilege in the absence of cooperation from the T&F Group.

30. Raffaele De Riu, Patrizia Pighini, Ramon Dias and Zeno (I assume that this is the Romanian football player) were, like Mr Dunga, friends and/or associates of Mr Caliendo's. In the case of Ms Pighini, she worked for IPC at least in 2006. As described in more detail below, and as Mr Caliendo accepted in cross-examination, despite not having mentioned it in his main (second) witness statement and having only referred to it in passing in his fourth witness statement, these people were Mr Caliendo's financial "partners", in as much as Mr Caliendo invested their money in QPRH on their behalf. No explanation was given as to why none of them were not being called as witnesses. This is omission is most significant in relation to Mr De Riu for reasons that will appear.

31. Gualtiero Trucco is another Italian based in Monaco who appears to have been an associate of Mr Caliendo and Mr Zanotti. He was a director of QPRH from 10 November 2004 to 25 November 2005, representing Wanlock. As explained below, he was also involved in an attempt to attract investment into QPRH in mid 2007. No explanation was given as to why he was not called as a witness, although it is fair to say that his involvement appears to have been relatively peripheral.

32. Barbara Carrara was Mr Caliendo's secretary at IPC for a number of years until 2012. She spoke English, and frequently translated and sent documents and messages for Mr Caliendo. (Thus, when I refer to Mr Caliendo sending emails, they were generally sent by Ms Carrara on his behalf.) A particular matter which Ms Carrara would have been in a position to shed light on is the manipulation of the QPRH cash flow sheet (as to which, see paragraph 498 below). No explanation was given as to why she was not called.

Missing witnesses on Mishcon de Reya's side

33. At the relevant time, Mr Steele was a solicitor, a partner in Mishcon de Reya's Real Estate Group and a lifelong QPR fan. Mr Steele appears to have been treated as a non-executive director of QPRH for a period in 2007, but he was never formally appointed as a director of the company. Mr Steele was expelled as a partner of Mishcon de Reya on 19 September 2008. After that, Mishcon de Reya brought a civil claim against him which commenced with the obtaining of a freezing injunction and a search order. On 5 December 2011 Mr Steele was convicted on two counts of conspiring with another to use false instruments and to commit fraud by false representation after a trial at

Southwark Crown Court. He was sentenced to a total term of 5½ years (reduced on appeal to 4 years 4 months). Three of the Crown witnesses at Mr Steele's trial were from Mishcon de Reya. As I understand it, both the civil claim and the convictions related to an unrelated fraud committed by Mr Steele in 2008. He was made bankrupt on 5 October 2011. He was struck off the Roll of Solicitors on 22 August 2012. In May 2015 Mishcon de Reya served a witness statement of Mr Steele on the Claimants and indicated that they would call upon him to give evidence at trial, but in October 2015 Mishcon de Reya informed the Claimants that they would not in fact be calling to Mr Steele to give evidence. Counsel for Mishcon de Reya explained that Mishcon de Reya had decided not to call Mr Steele because of the obvious risk of hostility by Mr Steele to Mishcon de Reya given the civil claim and Mishcon de Reya's support for the criminal prosecution. I have no difficulty in accepting that explanation.

34. At the relevant time Jason Kallis was a solicitor in Mishcon de Reya's Real Estate Group and a QPR fan, but he is no longer with Mishcon de Reya. Mr Kallis also appears to have been treated as a non-executive director of QPRH for a period in 2007, but was never formally appointed as a director of the company. Counsel for Mishcon de Reya explained that he had not been called because he had not been involved with the Transaction during the crucial period. That I accept, but he would have had some relevant evidence to give.

35. Stuart McMaster was, and remains, a solicitor and a partner in Mishcon de Reya. He was briefly involved in advising in relation to the Transaction, but I accept that his involvement appears to have been peripheral.

Others

36. Mr Paladini is an Italian who speaks good English. He was a friend of Mr Caliendo's from 1983, when he worked for a period as Mr Caliendo's interpreter. After that, Mr Paladini became a football agent. As described in more detail below, it was Mr Paladini who persuaded Mr Caliendo to invest in QPRH in May 2004. Mr Paladini was a director of and (through his company Moorbound Ltd, of which his wife Olga was a director) a shareholder in QPRH. According to Mr Caliendo, the relationship between Mr Paladini and himself became strained in May and broke down in the first week of August 2007. Mr Cooke's evidence was that he was not aware of any falling out between them in the period from June to August 2007. There is one document suggesting that they fell out in about mid August 2007, but the same document suggests that they quickly made up. In his oral evidence, Mr Caliendo went so far as to accuse Mr Paladini of conspiring with Mr Steele against him, a matter I shall revert to below. Despite this, he revealed that he had met Mr Paladini for coffee about a month or so before the trial. In May 2015 the Claimants served a witness statement made by Mr Paladini and Mishcon de Reya served a witness summary in relation to him, but in the event neither side chose to call him to give evidence. Counsel for Mishcon de Reya told me that Mr Palidini had not cooperated with his side, which is consistent with the service of a witness summary. Counsel for the Claimants made no real attempt to explain his side's failure to call Mr Paladini.

37. Nick De Marco was, and remains, a barrister specialising in (among other things) sport law and a QPR fan. Mr De Marco was appointed as a director of QPRFC on 14 February 2007 and of QPRH on 24 July 2007. He ceased to be director of QPRH on 20 August 2007, and it is probable that he ceased to be a director of QPRFC at about

the same time. Counsel for Mishcon de Reya explained that he had not been called because he had not been involved with the Transaction during the crucial period. That I accept, but he would have had some relevant evidence to give.

38. As explained in more detail below, Angela Duquemin recruited Mr Cooke to QPR and worked alongside him in its Financial Department during the relevant period. No explanation was given as to why she had not been called, but it fair to say that her evidence would probably have been largely duplicative of that of Mr Cooke.

Should an adverse inference be drawn from the failure to call witnesses?

39. Both sides invited me to draw an adverse inference from the other side's failure to call witnesses, applying the principles summarised by Brooke LJ in *Wisniewski v Manchester Health Authority* [1998] PIQR 324 at 340. The Claimants relied in particular on Mishcon de Reya's failure to call Mr Steele, and Mishcon de Reya relied in particular on the Claimants' failure to call Mr Calvo, Mr Paladini and any witness from the T&F Group. In my view the Claimants' failure to call relevant witnesses, and in particular Mr Calvo or any witness from the T&F Group, is more significant than Mishcon de Reya's failure to call Mr Steele. Given my conclusion as to Mr Caliendo's reliability as a witness, however, the main significance of the Claimants' failure to call relevant witnesses is that there is no evidence from those witnesses to corroborate Mr Caliendo's account.

Should an adverse inference be drawn from the Claimants' failure to give disclosure?

40. Counsel for Mishcon de Reya submitted that an adverse inference should also be drawn from the Claimants' failure to give proper disclosure, in particular of documents recording the obtaining of funds by Mr Caliendo from his partners, his arrangements with those partners and his accounting to them. Counsel for the Claimants rightly accepted that on the evidence the Claimants' disclosure was deficient in this respect. In my judgment this is a further reason why Mr Caliendo's evidence must be treated with considerable caution.

41. Counsel for Mishcon de Reya also relied upon the Claimants' failure to give disclosure of documents emanating from the T&F Group. As counsel for the Claimants explained, however, the Claimants did give disclosure of relevant documents from four files of documents provided by the T&F Group. In addition, Mishcon de Reya made an application for third party disclosure against the two English companies which the Claimants supported, but which yielded little more. I am not satisfied that it has been established that there are relevant documents in the possession of either the Claimants or the T&F Group which have not been disclosed. There is a reason to believe that at least one document did exist which has not been disclosed, but it would not be surprising if it had been destroyed or mislaid during the intervening period.

Mishcon de Reya's files

42. Given the issues in this case, I would have expected Mishcon de Reya to call a witness to explain its filing system at the time and what could or could not be deduced from the file numbers which appear on the Mishcon de Reya documents which have been disclosed. I would also have expected such a witness to deal with matters such as

time sheets and billing. No such witness was called. I was informed by counsel for Mishcon de Reya, however, that these matters had been considered during the disclosure process. As I understand it, Mishcon de Reya satisfied itself that it had disclosed all discloseable documents, but discovered that at least one of the file numbers quoted in the contemporaneous documents in fact related to a different matter involving a different client.

43. Counsel for the Claimants did not submit that any inference should be drawn from the absence of evidence of the kind described above. Rather, he drew attention to the fact that only one attendance note had been disclosed by Mishcon de Reya, it appears because only one was made. Futhermore, the only timesheet to which I was referred was one made by Mr McMaster (which identified his client as QPRH). Since I was not shown any fee notes, I presume that no relevant fee notes exist.

Factual background

44. The factual background to this case is of some complexity. Given the large number of missing witnesses and given the unreliability of the principal witness who did give evidence, Mr Caliendo, the most reliable guide to the facts is the documentary evidence. Matters are not assisted, however, by the facts that (i) the documents are incomplete and (ii) as explained below, at least one of the documents is of questionable authenticity and others appear to have been back-dated. In order to try and establish what happened, I must set out the facts in considerable detail. I shall do so primarily by reference to the documents and largely chronologically. Although I shall refer to a large number of documents, I should make it clear that the documents referred to are only a selection from the documents disclosed. Furthermore, my account is not intended to be comprehensive. For example, there are certain aspects of the Transaction which have no relevance for present purposes and therefore are not mentioned in what follows.

QPR

45. QPR is a professional English football club which was founded in 1882. Since 1917 the club's stadium has been in Loftus Road in White City, London ("the Stadium"). The club's honours include winning the League Cup in 1967, being runner-up in the old First Division in 1975/76 and reaching the final of the FA Cup in 1982. In 1992/93 the club was one of the founder members of the Premier League, but it was relegated to what was then called Division One at the end of the 1995/96 season. In 1996 Chris Wright, a music business executive, took over QPRH and floated it on the stock market. In April 2001 QPRH went into administration. A month later the club was relegated to Division Two.

The ABC Loan

46. In order to come out of administration, on 17 May 2002 QPRH entered into an agreement with ABC Corporation Ltd ("ABC", a Panamanian company), pursuant to which it borrowed £10 million for a term of 10 years ("the ABC Loan"). Under the ABC Loan, QPRH agreed that it would pay an initial interest rate of 10% per annum, with provision for upwards only revision of that rate after five years, and that the ABC Loan would be secured against the Stadium.

Promotion to the Championship

47. At the end of the 2003/04 season, QPR was promoted to Division One, which then became the Championship. The club remained in the Championship until it was promoted at the end of the 2010/11 season.

Mr Caliendo and his partners invest in QPRH

48. According to Mr Caliendo, in May 2004 Mr Paladini proposed that Mr Caliendo acquire a 10% shareholding in QPRH at a cost of approximately 5.5 pence per share. It appears that Mr Caliendo did so later that year through Barnaby, possibly using money provided by Mr Dunga. At around the same time Mr Paladini acquired a shareholding through Moorbound of some 14.8% (14,763,183 ordinary shares) and Mr Zanotti acquired a shareholding through Wanlock of some 19.9% (19,900,000 ordinary shares). Subsequently, Mr Caliendo increased his shareholding to some 27.5% of the issued QPRH shares (27,648,836 ordinary shares) by purchasing shares owned by Bill Power in about September 2005 (although it is possible that this transaction was not completed until later that year). At that point, Messrs Caliendo, Zanotti and Paladini acquired majority control of QPRH.

Barnaby, Wanlock and Moorbound

49. Messrs Caliendo, Zanotti and Paladini acquired those shares through Barnaby, Wanlock and Moorbound respectively. Barnaby was incorporated in New York on 10 March 2004. In August 2007 its sole director and manager was Mr Hunt, who was based in the United Arab Emirates. Wanlock was incorporated in New York on 27 August 2003. In August 2007 its sole director and manager was Mr Calderbank, who was also based in the UAE. Barnaby and Wanlock were both administered by the T&F Group. Moorbound was incorporated in England on 11 June 2003. It appears that the T&F Group had no involvement with Moorbound.

The relationship between Mr Caliendo and his partners

50. Mr Caliendo accepted in cross-examination that he had invested in QPRH, both by way of equity and by way of loans, not only on his own behalf, but also upon behalf of his financial partners, in particular Mr Dunga, Mr De Riu, Ms Pighini, Mr Dias and Zeno. It appears that, in general, Mr Caliendo's arrangements with his partners were kept as private side agreements. As discussed above, very little documentation relating to such side agreements or the accounting in respect thereof has been disclosed by Mr Caliendo.

51. Nevertheless, from the documents that have been disclosed, there appears to have been a degree of confusion or inconsistency with respect to the paperwork. Thus, although it was Mr Caliendo's and Mr Zanotti's evidence that the ultimate beneficial owner of Wanlock was Mr Zanotti, contemporaneous documents dated 27 October 2005 refer to Wanlock as having been beneficially owned by Mr Caliendo as to 77.3% and by Mr Zanotti as to 27.3%. Curiously, another document of the same date records that Mr Caliendo held his 77.3% on behalf of Mr Zanotti.

52. Although Mr Caliendo's evidence was that he was the ultimate beneficial owner of Barnaby, some contemporaneous documents refer to Barnaby as having been owned

or part owned by Mr Dunga. Indeed, Mr Caliendo managed to sign two documents dated 22 August 2007, one of which stated that Mr Caliendo was the ultimate beneficial owner of Barnaby and one of which stated that Mr Dunga was.

53. Counsel for Mishcon de Reya submitted that the court should conclude that Mr Caliendo's and Mr Zanotti's evidence that they were respectively the sole beneficial owners of Barnaby and Wanlock was untrue. I am not persuaded that this is the conclusion to be drawn, but it is evident that Mr Caliendo has not revealed the complete picture.

The T&F Group's role in the acquisition of Mr Caliendo's shares in QPRH

54. Mr Caliendo gave evidence that Mr Mina of the T&F Group had been his adviser for 20 years. It is clear from the documentary evidence that the T&F Group acted on behalf of Mr Caliendo at least in relation to his acquisition of Mr Power's shareholding in QPRH. Thus there is an invoice from T&F SA II to Barnaby dated 29 December 2005 in the sum of £39,873.24 plus disbursements of £310.94 for work described as follows:

> "All work undertaken in relation to the acquisition Of further shares in [QPRH] (includes liaison with Companies House, legal counsel representing Bill Power, Lloyds Register, Inland Revenue (Stamp Duty office), meetings With legal counsel representing Bill Power. Review of statutory documentation pertaining to QPR, Agreements relating to the sale, issue of share certificates Completion and submission of stock transfer forms."

For completeness, I note that there is also an invoice from AccounTrust to QPRH dated 31 June 2006 in the sum of £30,000 plus VAT in respect of a very similar description of work. It appears likely that the T&F Group had acted in relation to Mr Caliendo's original acquisition of his 10% shareholding as well, although there is no documentation to confirm this.

55. There is no evidence that Mr Caliendo (or Barnaby or the T&F Group) instructed lawyers to act on his behalf in relation to this acquisition. As counsel for Mishcon de Reya submitted, it is evident that the T&F Group undertook work that might also be done by lawyers or accountants, and that they negotiated with Mr Power's lawyers. Furthermore, if the T&F Group undertook such work in relation to Mr Caliendo's acquisition of shares in QPRH, then it could equally have done so in relation to Mr Caliendo's disposal of those shares.

Other shareholders

56. After September 2005, the remaining shares in QPRH were held by numerous other minor shareholders, including:

    i) Anaid, which owned 3.5% of the shares (3,470,000 shares); and

    ii) Tring Securities Ltd ("Tring"), a company owned by Kevin McGrath, which owned 8.8% of the shares (8,790,740 shares).

Mr Caliendo's and Mr Dunga's loans: introduction

57. After the purchase of their QPRH shareholdings, Mr Caliendo and his partners lent large sums of money to QPRH in order to keep it going. These loans were reflected in QPRH's annual accounts for 2004, 2005 and 2006. The documentary evidence shows that these loans were always (or almost always) posted to Mr Caliendo's loan account in QPRH's records. Mr Cooke's evidence was that, during his time at QPRH, this was done on Mr Caliendo's express instructions. There are a number of issues in the proceedings concerning Mr Caliendo's loans ("the Caliendo Loans") and three loans alleged made by Mr Dunga ("the Dunga Loans"). Accordingly, I shall have to examine these closely below.

Directors of QPRH

58. By 10 November 2004 the directors of QPRH were Mr Power (Chairman), Mr McGrath, Mrs Paladini representing Moorbound, Mr Dunga representing Barnaby and Mr Trucco representing Wanlock.

59. The Board changed in the second half of 2005 as follows:

    i) Mr Paladini replaced Mrs Paladini on 6 July 2005. He became Chairman of the Board in August 2005 (replacing Mr Power);

    ii) Mr Power resigned on 9 September 2005;

    iii) Mr McGrath resigned on 30 September 2005;

    iv) Mr Trucco resigned on 25 November 2005; and

    v) Mr Caliendo and Mr Zanotti were appointed as directors on 25 November 2005. Mr Caliendo assumed the position of Chairman of the Board at the same time (in place of Mr Paladini).

Mr Caliendo's involvement in the affairs of QPR

60. Mr Caliendo appears to have been closely involved in the affairs of QPR. Although Mr Caliendo regularly attended the QPR offices and matches at the Stadium, as noted above he was a resident of Monaco. It appears that he relied upon Mr Paladini as his friend, fellow investor and co-director to keep him regularly informed, and updated in his absence. Mr Zanotti's evidence was that Mr Caliendo and Mr Paladini "ran the club on a day to day basis". Mr Cooke's evidence is consistent with this. There is also documentary evidence that Mr Caliendo and Mr Paladini were regularly in contact with each other.

Convertible loan agreements between Mr Caliendo and QPRH

61. Between March 2005 and January 2007 Mr Caliendo entered into a series of convertible loan agreements with QPRH, all of which are in similar form and some of which are undated. In apparent date order, these are as follows:

    i) An agreement between Mr Caliendo and QPRH for the loan of £450,000 bearing 7.5% interest per annum payable monthly with the first payment due

on 31 March 2005, the loan to be redeemable at "Any date before March 2010 at Borrower's option" and to be convertible into 6 million shares. There are three copies of this agreement in evidence, all of which are signed by Mr Power as Chairman, Mr McGrath as director, Mark Devlin as CEO and Mr Caliendo as lender. Curiously, the signatures on one copy different slightly from the signatures on the other two copies, suggesting that the agreement may have executed in duplicate. Of the two copies bearing identical signatures, one is dated in manuscript 1 March 2015 and other bears various annotations in a different manuscript (possibly Mr Cooke's).

ii) An agreement between Mr Caliendo and QPRH for the loan of £500,000 bearing 7.5% interest per annum payable monthly with the first payment due on 31 January 2006, the loan to be redeemable at any date before January 2011 at the borrower's option and to be convertible into 6 million shares. The copy of the agreement in evidence is signed by Mr Paladini as director, Mr Zanotti as director, Mr Pennington as company secretary and Mr Caliendo as lender.

iii) An agreement between Mr Caliendo and QPRH for the loan of £950,000 bearing 7.5% interest per annum payable monthly with the first payment due on 31 March 2006, the loan to be redeemable at any date before March 2011 at the borrower's option and to be convertible into 12,666,667 shares. Again there are two copies of the agreement in evidence. One copy is signed by Mr Paladini as director and Mr Caliendo and is formally dated 3 March 2006. The second copy also bears the signature of Mr Pennington as company secretary with the same date added in manuscript.

iv) An agreement between Mr Caliendo and QPRH for the loan of £350,000 bearing 7.5% interest per annum payable monthly with the first payment due on 31 March 2006, the loan to be redeemable at any date before March 2011 at the borrower's option and to be convertible into 4,666,667 shares. There are two copies of the agreement in evidence. One copy is signed by Mr Paladini as director and Mr Caliendo and is formally dated 3 March 2006. The second copy also bears the signature of Mr Pennington as company secretary with the same date added in manuscript.

v) An agreement between Mr Caliendo and QPRH for the loan of £255,000 bearing 7.5% interest per annum payable monthly with the first payment due on 31 March 2006, the loan to be redeemable at any date before March 2011 at the borrower's option and to be convertible into 3.4 million shares. The copy of the agreement in evidence is signed by Mr Paladini as director, Mr Pennington as company secretary and Mr Caliendo as lender. It is dated, apparently in manuscript by Mr Pennington, 4 April 2006.

vi) An agreement between Mr Caliendo and QPRH for the loan of £570,000 bearing 7.5% interest per annum payable monthly with the first payment due on 31 July 2006, the loan to be redeemable at any date before July 2011 at the borrower's option and to be convertible into 7.6 million shares. There are two copies of the agreement in evidence. One is signed by Mr Paladini as director, Mr Caliendo, Mr Pennington as company secretary and Mr Caliendo as lender. The second copy is missing Mr Caliendo's signature on behalf of QPRH. It

also differs from the first copy is that, unlike the first copy, it is not on QPRH headed notepaper.

vii) An agreement between Mr Caliendo and QPRH for the loan of £1 million bearing 7.5% interest per annum payable monthly with the first payment due on 31 January 2007, the loan to be redeemable at any date before January 2012 at the borrower's option and to be convertible into 13,333,333 shares. The copy of the agreement in evidence is unsigned, but has spaces for signature by Mr Paladini as director, Akin Yilmaz as company secretary and Mr Caliendo as lender.

62. I infer that each of these agreements was entered into shortly before, or shortly after, the date when the respective first interest payments were due.

Loan agreements between Mr Caliendo and QPRH in respect of players

63. In addition to the convertible loan agreements listed above, Mr Caliendo also entered into a series of agreements with QPRH under which he purported to lend sums in respect of players (whether for the purchase of the players' registrations or otherwise) on terms that Mr Caliendo would receive 25% of the net amount received from the sale of the players' registrations:

i) An agreement dated 20 December 2005 for the sum of £950,000 in relation to Lee Cook.

ii) An agreement dated 20 February 2006 for the sum of £700,000 in relation to Ray Jones.

iii) An agreement dated 9 August 2006 for the sum of £1.72 million in relation to Dexter Blackstock.

iv) An agreement dated 5 October 2006 for the sum of £636,328 in relation to Baidoo Shabbazz and Dean Parrett.

v) An agreement dated 9 January 2007 for the total sum of £4.55 million relation to all the above players plus Patrick Kanyuka.

Payment of £225,000 by Mr Dunga to HMRC on 10 January 2006

64. Although it was not mentioned by Mr Dunga in his witness statement, there is documentary evidence that on 10 January 2006 Mr Dunga authorised the payment of the sum of £225,000 from an account he maintained at Credit Suisse in Monaco to what was then the Inland Revenue (later Her Majesty's Revenue and Customs, "HMRC"). It appears from this that Mr Dunga paid £225,000 to HMRC at the request of Mr Caliendo for the benefit of QPRH, in order to settle a tax bill. As explained below, there is at least one other document which supports this.

Convertible loan agreements between Mr Dunga and QPRH

65. There are two undated documents which appear to be convertible loan agreements between Mr Dunga and QPRH and which featured quite extensively in the evidence at trial:

i) An agreement between Mr Dunga and QPRH for the loan of £500,000 bearing 7.5% interest per annum payable monthly with the first payment due on 31 January 2006, the loan to be redeemable at any date before January 2011 and to be convertible into 6 million shares. The copy of the agreement in evidence is signed by Mr Paladini as director, Mr Caliendo as Director and Mr Pennington as company secretary, but not by Mr Dunga as lender (the space for his signature is blank).

ii) An agreement between Mr Dunga and QPRH for the loan of £250,000 bearing 7.5% interest per annum payable monthly with the first payment due on 31 March 2006, the loan to be redeemable at any date before March 2011 and to be convertible into 3 million shares. The copy of the agreement in evidence is signed by Mr Paladini as director, Mr Caliendo as Director and Mr Pennington as company secretary, but not by Mr Dunga as lender (the space for his signature is blank).

66. Although Mishcon de Reya at one stage sought to question the authenticity of these documents, in the end there was no issue as to their authenticity. Given what is apparent on the face of the agreements and given Mr Pennington's departure from QPRH in August/September 2006, it is evident that the agreements must pre-date 31 January 2006 and 31 March 2006 respectively.

67. Consistently with the apparent date of the second agreement, there is documentary evidence that on 21 March 2006 Credit Suisse in Monaco transferred £250,000 to QPRH on the instructions of Mr Dunga and that on 23 March 2006 the money was credited to QPRH's Barclays account.

68. By contrast, there is no documentary evidence showing a transfer of a sum of £500,000 from Mr Dunga, or on his instructions, to QPRH in or around January 2006 (although there is a rather mysterious fax sent by Mr Dunga to someone called "Signore Giorgio" on 9 January 2006 giving authorisation for £250,000 to be made available to Mr Caliendo). As explained below, however, there is documentary evidence apparently showing advances of sums totalling £500,000 by *Mr Caliendo* in December 2005.

69. Despite the evidence summarised above, both Mr Caliendo and Mr Dunga claimed in their evidence both in the QPRH Proceedings and in these proceedings that these loans were made on or about 31 December 2006 and on or about 28 February 2006 respectively. Mr Dunga can be forgiven for not knowing the truth about this, but not Mr Caliendo.

Overdraft from Barclays guaranteed by Credit Suisse backed by funds from Mr Dunga and Mr De Riu

70. Prior to April 2006 Barclays Bank plc ("Barclays"), QPRH's bank, had been providing QPRH with an unsecured overdraft facility of £250,000. In about April 2006 this was temporarily increased to £400,000 because of QPRH's cashflow difficulties, but even this was not enough. Barclays was unwilling to increase its exposure on an unsecured basis.

71. Accordingly, at 14:20 on 26 April 2006 Steve Walton of Barclays sent Mr Pennington an email saying:

> "… We had hoped that funds of £500k would have been received by now to cover the final few weeks of the season before season ticket income begins to flow into the club. I understand that the monies due from Carlos Dunga are tied up in fixed depoits that would entail high penalties to release.
>
> The current level of exposure is as high as the Bank would wish to have on an unsecured basis and as such I would suggest that the best way forward would be to arrange for a Bank guarantee from Carlos Dunga's bankers in Monaco in favour of ourselves to cover the additional £500k overdraft that you are looking for in the short term. … "

72. At 18:10 Mr Pennington forwarded Mr Walton's email to Mr Caliendo, with a copy to Mr Paladini, explaining that what Mr Walton was requesting was a bank guarantee from Credit Suisse in Monaco in favour of QPRH for £500,000 which would in turn be guaranteed by Mr Dunga's funds at Credit Suisse.

73. It appears that Mr Caliendo did as Mr Walton requested and arranged for Credit Suisse to provide a guarantee of £500,000, which in turn was backed by funds held by Mr Dunga at Credit Suisse. Subsequently it appears that a further guarantee of £325,000 was provided in the same way, making a total of £825,000.

74. Although there is no direct documentary evidence of this, Mr Caliendo accepted in cross-examination that Mr De Riu had also put up cash as security in this way at around the same time. It appears from subsequent events that the sum in question was £250,000.

QPRH's financial position as at 31 May 2006

75. QPRH's Annual Report and Financial Statements for the year ending 31 May 2006 (which as discussed below were approved on 24 April 2007) record the "disappointing" position of QPRH at that time:

    i) The team had finished the 2005-06 season in 21st place in the Championship (out of 24), and average attendances were down by 2,500. In addition, season ticket holder numbers had also fallen by over 2,500.

    ii) QPR had returned a loss of £3.344 million, with net current liabilities of £5.896 million.

    iii) A drain on finances was the £1 million payable each year under the terms of the ABC Loan.

Mr Pennington's reconciliation of the loans from Mr Caliendo and Mr Dunga

76. It appears that in early August 2006 Mr Pennington undertook a reconciliation of the loans received by QPRH from Mr Caliendo and Mr Dunga. He produced a document which he initialled and dated 9 August 2006.

77. This document contains a list of amounts received and dates under the following headings: "Barclays – funds received from Directors 2004/05"; "Barclays – funds received from Directors 2005/06"; "Barclays – funds received from Directors 2006/07"; "Royal Bank of Scotland – funds received from Directors 2005/06"; and "other funds received from directors 2005/06". The total sum shown as having been received is £3,825,000.

78. Many of the amounts listed under the first four headings are captioned "Antonio Caliendo" or with a reference to one of Mr Caliendo's companies. These include, for example, the sum of £570,000 shown as having been transferred by Mr Caliendo on 21 July 2006 (a transfer which is confirmed by other documentary evidence that shows the funds to have come from UBS in Monaco).

79. In addition, one amount is captioned with Mr Dunga's name (£250,000 on 23 March 2006, which fits with the evidence concerning this loan discussed in paragraph 67 above) and one with Ms Pighini's name. Furthermore, the list of "other funds" includes the sum of £225,000 with no date captioned "Inland Revenue" (which fits with the evidence concerning the payment made by Mr Dunga discussed in paragraph 64 above).

80. For reasons that will appear, it should be noted that there is no entry in the list of an amount of £500,000. It can be seen, however, that three amounts in the Royal Bank of Scotland ("RBS") list of £175,000 received on 9 December 2005 (captioned "MIKI"), £200,000 received on 15 December 2005 (captioned "Antonio Caliendo") and £125,000 received on 15 December 2005 (captioned "Signore") total £500,000.

81. The document also contains a list of figures headed "contracts AC and CD" i.e. contracts with Mr Caliendo and Mr Dunga. The AC column consists of the figures 450, 950, 350, 500, 255 and 570, making a total of 3,075. The CD column consists of the figures 250 and 500, making a total of 750. The total of the two columns is 3,825 i.e. £3,825,000. Mr Pennington's evidence was that he believed that he would have had contracts in front of him supporting these figures. This evidence suggests, among other things, that the two loan agreements between Mr Dunga and QPRH were in existence by 9 August 2006.

First "instruction" of Mishcon de Reya – refinancing

82. It appears from the documentary evidence that the first material contact between QPRH and Mishcon de Reya was on 10 August 2006 when Mr Steele met Mr Paladini in connection with Mr Paladini's attempts to obtain finance. It appears that Mr Paladini was exploring whether any of Mr Steele's contacts might be interested in becoming involved in either buying a 15% equity stake or refinancing the ABC Loan.

83. Counsel for Mishcon de Reya characterised this as QPRH "instructing" Mishcon de Reya in this regard. It does not appear that there was anything remotely resembling a formal retainer, however. The same comment applies to the subsequent "instructions" discussed below. For convenience, however, henceforward I shall refer to instructions without putting the words in inverted commas.

84. Immediately after this, Mr Steele began to put out some "feelers" seeking investors. A Stephen Schechter quickly told Mr Steele that his contacts were not interested in a

15% stake in QPR. More positively, Mr Steele informed Mr Paladini and Mr De Marco on 14 August 2006 that RBS, with which QPRH had a current account, might be interested in refinancing the ABC Loan.

85. Mr Steele continued to try to find people willing to invest in QPRH as shareholders or to assist with providing urgently needed finance from time to time thereafter.

QPRH agrees deferred payment arrangement with HMRC

86. On 28 August 2006 HMRC and QPRH agreed a deferred payment arrangement in respect of tax arrears involving the payment of £500,000 in January 2007 and payment of the estimated balance (including accrued interest) of £404,000 at the end of April 2007. This was subject to payment of all new liabilities on time.

Mr Caliendo's introduction to Mr Steele and Mr Kallis

87. According to Mr Caliendo, in around October 2006, Mr Caliendo was introduced to Mr Steele and Mr Kallis by Mr De Marco at a QPR match at the Stadium. Following that meeting, an understanding was reached that Mishcon de Reya would receive a number of match tickets and the use of a box, together with a certain number of invitations to the QPR Directors' Box, in exchange for the provision of legal advice to QPR. (A box at the Stadium was then worth around £20,000 per year.) There is little documentary evidence to support this account, but it is consistent with the fact that Mishcon de Reya does not appear to have charged QPRH or QPRFC any fees for its work. Certainly it does appear that, as discussed below, it was subsequently agreed that Mr Steele and Mr Kallis would be appointed as a non-executive directors of QPRH in recognition of their provision of free or discounted legal advice.

Second instruction of Mischon de Reya – AccountTrust

88. Although the documentary evidence is significantly incomplete, it is clear that by early October 2006 a dispute had arisen between Mr Caliendo, Barnaby and QPRH on the one hand and AccounTrust on the other hand with regard to payment of the latter's fees for work in connection with Barnaby, Wanlock and Redhill, and in particular Barnaby's acquisition of shares in QPRH. Although it is clear that there had been earlier correspondence relating to the dispute, the earliest document in evidence concerning it is a letter dated 16 October 2006 from Mr Caliendo to Pini Bingham & Partners, a firm of solicitors acting for AccountTrust, replying to a letter from the latter dated 13 October 2006 which is not in evidence. The letter dated 16 October 2006 has been signed by Mr Caliendo, but it has also been annotated in manuscript "non spedita", and it was Mr Caliendo's evidence that it had indeed not been sent. Whether or not it was sent, the significance of the letter for present purposes is that it contains the statement that "Mr Primicerio … knows perfectly the reality of our business dealings".

89. It is common ground that Mr Caliendo and QPRH jointly instructed Mishcon de Reya to act in relation to this dispute. On 18 October 2006 Mr Kallis undertook a conflict check within Mishcon de Reya asking whether there was "any reason why we cannot act for Antonio Caliendo, Barnaby Holdings Ltd [sic] and [QPRH] in relation to [a] claim against Trust Accounts Ltd [sic] and Andreas Primcerio [sic]". Despite Mark

Levine replying to Mr Kallis and Mr Steele, "Yes, they have no money to pay your bill", Mishcon de Reya accepted the instructions of Mr Caliendo and QPRH.

90. On 26 October 2006 Mr Kallis sent a letter addressed to both Mr Caliendo and Mr Paladini at QPR's premises enclosing draft open and without prejudice save as to costs letters to Pini Bingham and asking for comments. Evidently Mr Caliendo and/or Mr Palidini did provide comments, because the letters were sent to Pini Bingham in amended form on 30 October 2006. It is evident from the open letter that Pini Bingham had written to Mr Caliendo on 2 October 2006, that AccounTrust had served a statutory demand on QPRH and that QPRH denied that AccounTrust had advised QPRH (as opposed to Mr Caliendo and/or Barnaby).

91. This dispute carried on into the following year, as discussed below.

Third instruction of Mishcon de Reya – ground-sharing

92. In early November 2006 QPRH instructed Mishcon de Reya in relation to the possibility of building a new stadium for the Club on a joint venture "ground-sharing" basis with the London Irish Rugby Club on land at South Africa Road. Mishcon de Reya pursued these instructions into early 2007. By 7 February 2007 the parties were looking at a potential site on Wood Lane, London W12. In the event these discussions went nowhere.

Fourth instruction of Mishcon de Reya – Turkish claim

93. According to Mr Caliendo, in November 2006 Mr Caliendo instructed Mishcon de Reya, and specifically Mr Kallis, to represent him in a dispute with the Turkish football club Fenerbahçe. It is not in dispute that Mr Caliendo did instruct Mishcon de Reya in relation to a claim with a Turkish dimension, but the documents show that in fact it was a claim against Turkiye Vakiflar Bankasi, a large Turkish bank. The earliest documentary reference to this claim is an internal Mishcon de Reya email dated 19 June 2007. On 5 November 2007 Mr Kallis sent Mr Caliendo an email in which Mr Kallis said that they had received advice from counsel that they had a good chance of winning the case against the bank, but that in order to do so they needed to serve the claim in Turkey. Mr Kallis asked for confirmation that Mishcon de Reya should instruct counsel to making an application for permission to serve the claim out of the jurisdiction and for £5,000 on account. Mr Kallis also said that he would be obliged to send Mr Caliendo a retainer letter if the matter proceeed further. On 22 November 2007 Mr Kallis sent Mr Caliendo a fax asking Mr Caliendo to telephone him to discuss the matter. It appears from an email from Mr Kallis to Mr Steele dated 7 April 2008 that the claim related to the return of moneys due under a bank guarantee, and that (despite good prospects of success) Mr Caliendo "would not back it with money" and so it "went to sleep".

QPRH agrees revised payment arrangement with HMRC

94. As at 30 November 2006, QPRH/QPRFC had outstanding liabilities to HMRC in respect of NI/PAYE of nearly £900,000 (with interest accruing at £143 per day) which were the subject of the deferred payment agreement. QPRH had failed to pay the August 2006 or November 2006 quarters' VAT totalling £154,000, however. Following discussions with the HMRC debt management unit, QPRH entered into a

revised payment plan requiring £1.53m to be paid by 31 January 2006, with the balance of about £380,000 to be paid by April 2007. This was again contingent on all new liabilities being paid on time. (I note in passing that it was Mr Cooke's evidence that it was his impression that Mr Caliendo and Mr Paladini didn't really believe in paying HMRC.)

QPRH's relationship with Barclays deteriorates

95. QPRH's relationship with Barclays steadily deteriorated towards the end of 2006. On 8 November 2006 there was a meeting of between Kevin Reed, a Business Support Unit Manager at Barclays, and at least Mr Paladini. (Mr Caliendo could not remember if he attended or not.) Mr Reed's subsequent letter of 15 November 2006 records the Bank's concerns as being:

    i) the overdrawn position of the current account;

    ii) the immediate cash requirements of the business;

    iii) the funding requirements going forward;

    iv) the current security available to Barclays.

96. Mr Reed went on to list the action plan agreed at the meeting, which included the following:

    i) Lee Manning of Deloitte & Touche would undertake an independent review of the business, the cost to be borne by QPRH.

    ii) The current cash position of QPRH would be managed on a daily basis to ensure that the overdraft would not exceed £1.575 million. Barclays would only provide such an overdraft if guarantees were given which matched the amount of the overdraft. At that time Barclays had guarantees of £1.325 million, and was expecting a further guarantee of £250,000 by the end of December. It also required personal guarantees of £500,000 in the process of being given by the directors.

    iii) QPRH would engage with HMRC to obtain a further agreement for a payment deferral in order that QPRH could remain within the agreed overdraft limit.

    iv) Barclays would charge QPRH 1% of the facility limit plus a monthly management charge of £3,000 for providing the facility.

    v) If the agreed lending limits were not adhered to, Barclays would return payments.

97. The required overdraft of £1.575 million turned out to be greatly underestimated, as quickly became apparent. Mr Walton sent Mr Zanotti an email about this on 17 December 2006 saying that it appeared that "the clubs [sic] requirements are much higher than we had been led to believe and we need to agree with the directors the way forward". Two days later David Weldon on behalf of Mr Walton emailed Mr Zanotti a summary of QPRH's current position showing the need for an overdraft of £3.075 million.

98. Barclays seems to have been getting increasingly concerned, in part it would appear because a large part of the overdraft was unsecured and Barclays was thus rather exposed. On 20 December 2006 Barclays wrote to Mishcon de Reya for the attention of Mr Steele chasing for an executed guarantee which Mr Caliendo had agreed to provide.

99. It is clear that at this time Mr Caliendo was continuing to provide substantial cash injections to keep QPRH going. Thus on 12 January 2007 HSBC Private Bank (Monaco) SA remitted the sum of £1 million to QPRH's account at Barclays on Mr Caliendo's instructions.

100. A further meeting was arranged for 16 January 2007, which was attended by (at least) Mr Caliendo, Mr Manning (Deloitte), Mr Reed and Andrew Tidbury. Mr Tidbury was Credit Manager at Barclaycard Business Corporate Risk. Barclaycard provided the credit card facilities needed by the Club to process, for example, season ticket payments by fans. Despite the £1 million advanced by Mr Caliendo on 12 January 2007, QPRH's current account was still overdrawn by £1.346 million by the time of the meeting on 16 January 2007. Immediately after the meeting Mr Caliendo wrote on behalf of QPRH to each of Mr Manning, Mr Reed and Mr Tidbury. In his letter to Mr Tidbury, Mr Caliendo said it was QPRH's intention to provide Barclaycard with appropriate guarantees and asked for details of an insurer. (I note in passing that Mr Caliendo stated in his main witness statement, albeit by reference to a later point in time, that he was never involved in the discussions with Barclays, but this was clearly misleading.)

101. On 18 January 2007 Mr Reed wrote to Mr Caliendo outlining Barclays' concerns. As well as repeating the concerns previously expressed, as a result of Deloitte's preliminary investigation, a series of new concerns had been identified. These included the following (I should explain that, as with some other documents, I am quoting from an English translation of an Italian translation presumably made for Mr Caliendo at the time, the original English document not being available):

> "The availability of the management of information is problematic. There is no initial balance sheet, nor a budget or cash flow forecasts.
>
> There are additional issues regarding the level of support available in the accounting office.
>
> The legally established audit may contain a qualification or request confirmation on the support in progress by the directors/shareholders.
>
> Deloitte & Touche focussed on the immediate outflows of cash flow that the club was facing and identified significant additional debts.
>
> The cash flow forecasts prepared by Deloitte & Touche were not in accordance with the bank position that resulted in excess or being potentially in excess. …

> There is no certainty regarding the forecasts beyond just the next two weeks. Despite the valued contribution of £1 million by the directors, the last cash flow forecast indicated a significant need beyond £1.575 million and currently we are working on this with no possibility of addressing this deficit.
>
> During the last meeting in December, [Mr Paladini] indicated that the outstanding account would be remunerated by the end of January. The forecasts show that there will be a significant need for funds of £2,300,000 by the end of May 2007.
>
> Given the need for funds equal to £2,300,000, it appears at this stage that there is no evaluation regarding how the probable deficit would be met in the next season and on what may be requested from the bank for a probable provision of [facilities]. Ideally it may be hoped that overdraft is set which is proportional in measure and nature for this business which fluctuates wildly. In addition, it would be required for there to be an appropriate guarantee level which covers and is established prior to any use."

102. Again an action plan was proposed, which included the following:

i) The overdraft would be limited to £1.575 million. This was subject to suitable guarantees. A £250,000 guarantee from a Swiss account was to expire on 12 March 2007 and the overdraft would be reduced accordingly unless it was replaced.

ii) Either personal guarantees or a letter of credit for £500,000 were required.

iii) Appropriate forecasts were to be provided for the next season, which could be scrutinised by Deloitte.

iv) Barclaycard facilities were operating under normal terms and conditions until the end of the 2006-7 season, but in the absence of an insurance policy or additional capital the card service could not be used.

Mr Cooke is hired by QPRH

103. As part of the attempt by QPRH to gain control of its finances, Mr Cooke was hired by QPRH on a contract basis in January 2007. He was recruited on the recommendation of Ms Duquemin, who had joined QPRH a short time before. Ms Duquemin and Mr Cooke had worked together before. Ms Duquemin explained to Mr Cooke that, when she joined QPRH, she had found that both the finances and the financial processes were a complete mess, and someone was needed to sort things out. When he arrived, Mr Cooke found that her description was correct. He was told that in the middle of 2006 QPRH had dismissed its entire financial team, and so for several months there had been no proper financial control at all. Mr Cooke found that, even before that, there had not been proper record keeping. Accordingly Mr Cooke had to start from scratch finding the necessary information and building proper

processes. After leaving and rejoining QPRH on a full time basis in April 2007, he was able to start producing management accounts.

Finalisation of QPRH's 2005 Annual Report and Financial Statements

104. QPRH's Annual Report and Financial Statements for the year ending 31 May 2005 were not finalised and approved by the Board until 22 January 2007. They were audited by Niemann Walters Niman ("NMN"), a different firm of accountants to the firm which had audited the previous year's accounts. Because of the parlous financial state of the company in January 2007, in order for the financial statements to be prepared on a going concern basis, the auditors required (as is not uncommon) a letter of comfort from the directors. Accordingly, on 15 January 2007 Messrs Caliendo, Zanotti and Paladini all signed a letter as directors of QPRH to NMN as follows:

> "We understand that as part of your statutory and professional obligations as auditor of the above companies that you have to satisfy yourselves that it is appropriate to prepare the financial statements for the year ended 31 May 2005 on a going concern basis.
>
> We are aware that currently there is a recurring deficit of income necessary to cover the overheads of the companies, and that this deficit can only be covered by the sale of players or by an injection of finds from the directors. On advice from the bank, and to identify the extent of this shortfall, Deloitte & Touche LLP have been engaged to prepare a detailed week by week cash-flow forecast to the end of May 2007. This is to be extended to the end of July 2007.
>
> It is not our preferred policy to be forced into selling any of our players during the transfer windows in order to cover the funding deficit, but we are of the opinion that the quality of our football squad gives the club a sizeable realisable asset should it be necessary to sell one or more players.
>
> We are aware of the need to reduce the size of the overheads of the companies, and this will mainly be achieved by not renewing a significant number of players' contracts which fall due at the end of this season.
>
> We confirm that to date we have loaned QPR Holdings Ltd £3.85m. These loans are neither repayable on demand, or are secured against the companies assets. We further confirm that we personally guarantee for a minimum of the next 12 months from the date of this letter to support the companies by providing the necessary funding to ensure that they are able to meet their debts as they fall due and thereby cover any funding shortfall."

105. It will be appreciated that the figure of £3.85 million is rounded up from the figure in Mr Pennington's reconciliation, and no doubt derives from that source.

106. The letter was reflected in note 1 to the financial statements under the heading "Going Concern":

> "The Directors continually monitor the financial position of the Group, taking into account the latest cashflow forecasts and the ability of the Group to generate cash. The Directors have prepared the financial statements on a going concern basis having regard to detailed cashflow projections for the period to 31 May 2007, and beyond. Additionally the directors have committed themselves to continue to support the Group by making available any necessary funds. The Directors have also considered the impact of player trading, which in an integral part of the Group's activities, and the cash flows associated with this trading activity.
>
> While there will always be some inherent uncertainty the Directors remain confident that sufficient funds will be forthcoming and, therefore, it is appropriate to draw up the financial statements on a going concern basis."

107. This note was in turn reflected in the auditors' report under the same heading:

> "In forming our opinion we have considered the adequacy of the disclosures made in note 1 to the financial statements, relating to the financial requirements of the Group. Due to the significance of this matter, we draw your attention to it, but our opinion is not qualified in this respect."

108. Note 16 to the financial statements mentioned two unsecured convertible loans: a loan of £450,000 convertible into 6 million shares carrying interest at 7.5% per annum and a loan of £500,000 repayable at 143.6% of the principal amount on 29 April 2010 convertible into 7,180,150 shares. The description of the former matches the agreement between Mr Caliendo and QPRH apparently dating from 1 March 2005 (see paragraph 61(i) above). The description of the latter matches a convertible loan agreement between a Valentine Ehmer and QPRH dated 15 April 2005.

Fifth instruction of Mishcon de Reya – Barclays freezes the account

109. In late January 2007 Barclays froze QPRH's current account. Mishcon de Reya was instructed by QPRH to demand that Barclays unfreeze the account. On 29 January 2007 Mr Kallis telephoned Mr Reed twice and Mr Reed's assistant once seeking this, and followed this up with an urgent letter sent by fax in which he stressed that QPRH had a number of transactions (involving up to £300,000) which needed to go through that day. He also said that QPRH intended to "forward" £1.6 million to Barclays the same day.

Sixth instruction of Mishcon de Reya - winding-up petition by CPA (Paid) Ltd

110. Also in January 2007 QPRH was the subject of a winding up petition by a company called CPA (Paid) Ltd. There is no evidence as to the details of this. On 31 January 2007 Mishcon de Reya wrote to CPA (Paid) Ltd's solicitors on behalf of QPRH

asking for confirmation that the petition had been withdrawn. Again Mr Kallis dealt with this.

QPRH sells Dean Parrett

111. On 31 January 2007 QPRH sold one of its key players, Dean Parrett, to Tottenham Hotspur for £1 million plus 25% of the proceeds of any future sale. According to the Deloitte Report, this was £1.2 million less than originally forecast. Although, as noted above, Mr Parrett was the subject of an agreement between Mr Caliendo and QPRH, it appears from a letter from Mr Paladini on behalf of QPRH to Mr Caliendo dated 31 January 2007 that this was varied so that Mr Caliendo would receive either this 25% or 25% of the 25% (the letter is singularly unclear as to which).

Payments due to HMRC at end of January 2007

112. Pursuant to the revised payment agreement QPRH was supposed to pay HMRC £1.53 million by 31 January 2007. In the event, QPRH paid only £1 million late, on 5 February 2007. The outstanding balance after that payment was £530,194.82. By a fax of that date, Akin Yilmaz of QPRH (the company secretary) told HMRC that the outstanding balance would be paid within the week. It is not clear when this was in fact paid.

Mr Steele, Mr Kallis and Mr De Marco are asked to become non-executive directors of QPRH

113. At the beginning of February 2007 Mr Steele, Mr Kallis and Mr De Marco were all asked to become non-executive directors of QPRH. The documents suggest that the purpose of these appointments was to recognise their provision of legal expertise for QPRH on preferential terms as to payment for such services.

114. Although Mr De Marco was appointed as a director of QPRFC, and subsequently of QPRH, it appears that neither Mr Steele nor Mr Kallis was ever formally appointed. It is common ground, however, that Mr Steele proceeded as if he had been so appointed. Prior to an amendment of the Particulars of Claim in June 2015, Mr Caliendo alleged that Mr Steele was a director, and so it may be inferred that he believed at all material times until then that Mr Steele had in fact been appointed as a director.

Proposed loan by Rock Investments

115. On 1 February 2007, Daniel Levy (who was associated with Tottenham Hotspur FC) proposed that Rock Investments should lend QPRH £1 million at 5% interest, with monthly payments of £25,000 starting at the end of February and the remainder being repayable in full at the end of August 2007. This proposal was brought to Mr De Marco's attention the next day. He passed it on to Mr Steele and Mr Kallis. Nothing came of this proposal.

ABC Loan arrears

116. On 5 February 2007 Hurst Morrison Thomson Corporate Recovery wrote to QPRH on behalf of ABC. It is evident from the letter that QPRH had been in discussions with ABC about early redemption of the ABC Loan. The letter stated that there were

interest arrears of £205,592.52. ABC proposed redemption of the loan on terms involving payment in full by 16 February 2007. That required a payment of £66,666.67 in a matter of days, and repayment of the remainder of £10,205,592.51 (capital of £10 million, interest arrears of £172,259.18 and £33,333.33 for February interest) by 16 February 2007. The letter also pointed out that, as from the fifth anniversary of the ABC Loan, ABC was entitled to revise the interest payable upwards.

An offer to purchase Barnaby and Wanlock's shares in QPRH

117. On 8 February 2007 a Majid Mohammed acting on behalf of an unidentified client sent Mr Caliendo a fax outlining a proposal to purchase the shares of Barnaby and Wanlock at 6 pence a share and to repay £2 million to Barclays to discharge Mr Caliendo's personal guarantees. Nothing came of this proposal, but it may indicate that Mr Caliendo and Mr Zanotti were already thinking about selling their shares by this point.

The Deloitte Report

118. On 2 March 2007 Mr Manning of Deloitte sent Mr Paladini a draft report ("the Deloitte Report") in advance of a meeting with Barclays. Two key issues were raised in the covering email:

> "Liquidity - notwithstanding the recent shareholder injection, there is a further cash need from March. Anticipating a ratcheting down in the overdraft requirement as bank guarantees expire, a further £1.8 million (on top of the monies recently advance[d] or already agreed) may be required by July. This increases to £400k as a result of our sensitivities reflecting unconfirmed event income. The key variances to the previous cashflow (which showed no new money requirement) relate to Parrett (sold for £1.2m less than originally forecast) and a VAT payment of c £300k due in June which was omitted from the previous version of the forecast.
>
> Management information - notwithstanding the steps taken to bring the information up to date, the lack of current management account information, a forecast for the rest of this financial year and budgets for next year, together with an overall strategy for the Group represent the next biggest issue facing the Group. Since without these tools the Board will be entirely reactive to the shocks which the Group is likely to face in seeking to achieve a turnaround in financial performance."

119. The Deloitte Report contains a number of passages which warrant noting. First, under the heading "Legal & Organisational structure: Overview", the Report stated:

> "The Group has been subject to significant change in Management over the past few years. Gianni Paladini is currently fulfilling the roles of Chairman and CEO. The Group has been without a COO since October '06.

…

> Mr Paladini has advised that there is no intention to fill this role as he and Mr Caliendo are currently involved with the business on a daily basis.
>
> However, we understand that 3 additional non-executive directors (with legal backgrounds) are shortly to be appointed."

120. Secondly, under the heading "Legal & Organisational Structure: Finance Department", the Report stated:

> "The absence of a finance team between December '05 and July '06 created significant problems for the Group which have still not been fully resolved. There remains a considerable backlog of reconciliations to be prepared and regular monthly management accounts have not been produced since May '06."

121. Thirdly, under the heading "Medium Term Strategy", the Report Stated (emphasis added):

> "Managements' current ambition is to see the Group break even during FY08. However, no detailed strategy has been developed to achieve this. While there are plans to reduce the size of the playing squad, the anticipated savings appear minimal in the context of the turnaround required.
>
> … relegation from the Championship would likely reduce turnover by circa £1m due to much lower Football League awards, lower average attendances, and reduced sponsorship and marketing opportunities.
>
> Against this background, the Club is presently at risk of relegation, being in 22nd position in the Championship, and the Group is continuing to require additional funds over and above normal trading income (the exact level of losses cannot be estimated without management account information). At present this is being met by a combination of additional shareholder loans and player sales.
>
> *The ability of the current shareholders to continue to fund the business is uncertain* and based on the current squad there are only three or four players that would garner significant transfer revenues.
>
> However, any player sales need to be balanced carefully against maintaining Championship status."

122. Fourthly, under the heading "Cash Flow Forecast – Overview", the Report stated (emphasis added):

"Notwithstanding significant cash injections from the Directors by way of loan funding and player sales, the Group's funding position is forecast to worsen as the overdraft facility is ratcheted down. There may be a funding gap of £1.5m at July, after taking into account £2.2m season ticket receipts relating to next season.

The Group overdraft facility is currently £1.575m, which is supported by a number of bank guarantees.

….

The initial cash flow by Management identified a significant funding gap (>£3.6m). Management have partially addressed this through a combination of further shareholder loans (£2.5m, of which £1.75m has been received) and player sales (principally £1m excl VAT for Dean Parrett). These items are incorporated into the forecast. However this stills leaves a deficiency of £1.8m over the anticipated overdraft facility limit.

Additional funds, over and above those already agreed with the Directors, are required from March '07.

This funding has arisen only recently as a result of a reduction in the proceeds from the sale of Dean Parrett. The initial consideration for Parrett was anticipated to be £2m (plus VAT). However, the final terms agreed mean that only £1m (plus VAT) was received up-front with future amounts being contingent on a subsequent transfer fee (in excess of £2.5m) being received by Tottenham Hotspur, which is unlikely to occur in the short to medium term in view of the player's age (15).

We have assumed for the purpose of the cash flow forecast that the overdraft facility limit will be reduced as and when the existing other bank guarantees provided to the Bank expire.

It is currently uncertain whether further shareholders funds will be forthcoming to support the excess over the anticipated facility limit, although to date shareholders have been prepared to support the Group financially when required.

May to July receipts are highly dependent on 'Early Bird' season ticket sales (estimated at £2.2m relating to next season's games). As a substantial portion of this is likely to be paid by credit card, these funds may only be available if the release of the monies can be agreed with BMS [Barclays Merchant Services] through the use of a suitable insurance policy or if alternative security is provided."

123. Fifthly, under the heading "Cash Flow Forecast – Amounts due to HMRC", the Report stated (emphasis added):

> "The cash flow forecast includes payment of arrears of amounts due to HMRC totalling some £1.5m, most of which have now been paid. In addition, HMRC are claiming a further £226k by way of additional tax on payments made to players' agents.
>
> [After reviewing the deferred payment agreement of 28 August 2006 and the subsequent revised plan]
>
> *February '07 PAYE/NIC has yet to be paid pending receipt of agreed shareholder funds.*
>
> HMRC had advised that no further material deviations from the agreed plan would be allowed and the Group is therefore running a substantial risk that the arrangement will be cancelled. In this situation the remaining balance may have to be paid immediately or HMRC could commence enforcement proceedings, possibly without further notice to the Group."

124. Sixthly, under the heading "Cash Flow Forecast – Sensitised Cash Requirement", the Report stated:

> "We have identified risks within the forecast relating to the HMRC claim and a number of unconfirmed fixtures which mean that the overdraft may rise to £2.8m by the end of July."

125. Lastly, under the heading "Cash Flow Forecast: Further Play Sales", the Report stated (emphasis added):

> "The Group faces a trade off between retaining key players to enhance on field performance and hopefully guard against relegation and cash constraints which make such sales an attractive solution to the current funding deficit.
>
> …
>
> Based on FY06 performance the Group may currently be losing £1.5-£2.0 million per annum and at present this is being met by a combination of additional shareholder loan injections and player sales.
>
> *The ability of the current shareholders to fund this level of losses is uncertain*, although action has recently been taken to reduce the costs of the playing squad. Furthermore, based upon the current squad there are only three or four players that would garner significant transfer revenues."

126. It can be seen the Report stated no less than three times that the ability of the current shareholders to continue to fund the business and its losses was uncertain.

Notwithstanding Mr Caliendo's evidence to the contrary, it is probable that this information came from Mr Caliendo.

127. A page of the Report which was not referred to during the course of the trial and which I only noticed during the course of preparing this judgment is Appendix 2 – Directors' Loans. This tabulates "the financial support given to the group by its shareholders by way of loan or securing the Bank indebtedness". The table lists a series of loans, all of which bar one is recorded as being from Mr Caliendo, totalling £5.12 million. The exception is one from Mr Dunga in the sum of £250,000 in March 2006. An additional £775,000 is recorded as having been promised by Mr Caliendo in March 2007. The source of the table is stated to be "management information". The text states:

> "During the course of our work the Directors agreed to inject an additional £2.525m to meet cash flow requirement. As at the date of this report £1.75m has been received by the Group. We understand the balance will be received in March.
>
> We understand that the initial loans granted to December '05 totalling £950,000 have an option enabling them to be converted into equity in the period to March/April 2010 (interest at 7.5%).
>
> We understand that the terms for the other loan advances (including details of interest and repayment provisions) have yet to be formally documented. Although we understand that these will be on the same basis as the convertible loans noted above."

128. The initial loans referred to are four loans by Mr Caliendo in the sums of £450,000 (March 2005) and £175,000, £200,000 and £125,000 (all December 2005). As noted above, the latter three sums total £500,000.

129. If the table in Appendix 2 is compared with Mr Pennington's reconciliation of 9 August 2006, it can be seen that the loans listed in the table for the period from March 2005 to July 2006 match the figures and dates given in Mr Pennington's document for the same period. Except the sum identified as having been received from Ms Pighini, the sources also match. The table also includes two later loans from Mr Caliendo of £1 million in January 2007 (i.e. the money used to pay HMRC) and £750,000. The table does not include the £455,000 of "other funds" listed in Mr Pennington's document (which included the £225,000 paid by Mr Dunga to HMRC).

130. It is not clear why Deloitte was given to understand that the loan from Mr Dunga of £250,000 had not been formally documented. Nor does the table assist in clarifying the position regarding the apparent loan by Mr Dunga of £500,000.

Proposed refinancing by Simon Blitz and Simon Corney

131. By 6 March 2007 Mr Caliendo and Mr Paladini were discussing a proposed refinancing of QPRH with Mr Blitz and Simon Corney. Mr Blitz was Chairman of Oldham Athletic FC and it appears that he and Mr Corney had a financial interest in

that club. There is an undated translation of an email from Mr Caliendo to Mr Paladini outlining a proposal involving repayment of the ABC Loan and £2.5 million of new money at 9% interest for five years. On 6 March 2007 Mr Corney sent Mr Kallis an email proposing repayment of the million ABC Loan and £2 million of new money. A purchase option for Mr Paladini and Mr Caliendo's shares in QPR was to be included at a price to be agreed, and it was for the sellers to propose that price as part of the initial negotiations. Mr Kallis sent an email to Mr Paladini on 7 March 2007 about the proposal. He left it to Mr Paladini, Mr Caliendo, Mr Dunga, Mr Zanotti and the two Simons to discuss the matter.

132. Mr Kallis subsequently drafted a letter dated 12 March 2007 from Mishcon de Reya to Mr Blitz and Mr Corney's solicitors, although it is not clear whether the letter was actually sent. The letter began by stating that Mishcon de Reya were "instructed by" QPRH in relation to the manner. The letter went on to propose a loan by Mr Blitz and Mr Corney of £12.5 million with a £1 million advance payment by 19 March 2007. An option to purchase the shares was to be included at an open market price to be agreed between the parties. Mr Caliendo's opening bid was as follows:

> "At this stage Mr Caliendo has confirmed that if your clients wished to purchase an interest in the club today they would have to pay 7 pence per share if they purchase the shares owned by Mr Dunga, Mr Caliendo and Mr Zanotti whose total shareholding would come to 47.4% of QPR Holdings …."

Seventh instruction of Mishcon de Reya – Anaid claim

133. On 14 March 2007, after reviewing the Deloitte Report, Mr Steele wrote to Mr Paladini saying that it was not suitable for discussions with funders about replacing the ABC Loan since it was too negative. He asked for instructions to request to Deloitte to redraft the Report, but warned that Deloitte would almost certainly charge an additional fee. It does not appear this was requested or that Deloitte ever finalised the Report.

134. In this same letter, Mr Steele referred to a dispute between the QPRH and Anaid. Anaid was entitled to repayment of monies loaned to QPRH. In particular, it had apparently been promised that payments would be made from the proceeds from the sale of a player (Danny Shittu) by QPRH. Mr Steele advised that he considered the moneys were not due until 15 August 2007. The dispute with Anaid continued.

HMRC issues statements of indebtedness

135. On 20 March 2007 HMRC issued Statements of Liabilities for each of QPRH and QPRFC showing a combined indebtedness of £2.447 million.

136. There are two other documents dated 20 March 2007 suggesting that there was some real concern that day at QPRH about understanding its indebtedness. The first is a Profit & Loss account, which showed a net loss for the year from June 2005 to May 2006 of £2.262 million. The second is a list of "Creditors payments due as at 20 March 2007" totalling £1.395 million, including £750,000 due to HMRC.

Mr Caliendo brings QPRH's relationship with Barclays to an end

137. It appears that at some time in March 2007 it was agreed between Mr Caliendo and Mr Reed that QPRH's banking relationship with Barclays would cease on 30 April 2007. After this, QPRH relied on current accounts with RBS and Lloyds TSB for its banking needs, but it did not have any overdraft facilities in respect of those accounts.

Transfers on 28 March 2007

138. On 28 March 2007 Credit Suisse Monaco transferred £825,000 to QPRH's account at Barclays to enable QPRH to obtain the release of two guarantees, one in the amount of £500,000 and the other for £325,000. In each case the account number debited was the number of an account held by Mr Dunga. It appears that these sums represented funds provided by Mr Dunga which had been used to secure the guarantees provided by Credit Suisse to Barclays in respect of QPRH's borrowings, as discussed above.

139. There is evidence suggesting that on the same date Mr De Riu instructed HSBC in Geneva to transfer £250,000, also to release a guarantee in favour of Barclays, again as discussed above. (It is possible that this occurred earlier in time, however, perhaps on 21 or 22 February 2007.)

140. One of the more extraordinary omissions from Mr Caliendo's witness statements was any reference to these guarantees and the payments made to obtain their release. As explained below, these matters are an important part of the story concerning both the loans allegedly made to QPRH by Mr Dunga and the Three Debts.

Mr Blitz lends QPRH £500,000

141. Also on 28 March 2007 QPRH entered into an agreement with Mr Blitz, under which Mr Blitz loaned £500,000 secured by a first floating charge over QPRH's present and future rights in respect of a player called Lee Cook ("the Blitz Loan"). It seems likely that this money was used to pay off the remainder of the Barclays overdraft of £1.575 million. As explained below, the Blitz Loan subsequently led to problems for QPRH because Football League rules prohibited Mr Blitz from having an interest (including by way of such a loan) in another club. It appears that, at the time, Mr Blitz believed that he would not contravene the rules because he was making the loan in a personal capacity. (I note in passing that Mr Caliendo stated in his witness statement the he was not aware of the Blitz Loan at the time, but I do not accept this.)

Eighth instruction of Mishcon de Reya – HMRC

142. On 17 April 2007 Clarke Willmott (solicitors for HMRC) wrote to QPR setting out the tax owing by both QPRH and QPRFC. On 20 April 2007, Mishcon de Reya responded with a holding letter confirming their instruction.

Finalisation of QPRH's 2006 Annual Report and Financial Statements

143. QPRH's Annual Report and Financial Statements for the year ending 31 May 2006 were finalised and approved by the Board on 24 April 2007. They were again audited by a different firm of accountants to the firm which had audited the previous year's accounts, this time Shipleys LLP.

144. Note 1 to the financial statements included the following under the heading "Going Concern":

> "The Directors continually monitor the financial position of the Group, taking into account the latest cashflow forecasts and the ability of the Group to generate cash. The Directors have prepared the financial statements on a going concern basis having had regard to detailed cashflow projections for the period to 31 May 2008, and beyond. The directors are currently in the process of refinancing the [ABC Loan] … and also obtaining additional funds to pay outstanding debts due to [HMRC] and other creditors. Additionally the directors have committed themselves to continue to support the Group by making available any necessary funds, until the new financing is in place.
>
> While there will always be some inherent uncertainty the Directors remain confident that sufficient funds will be forthcoming either through new financing or Director funding and, therefore, it is appropriate to draw up the financial statements on a going concern basis."

145. This note was in turn reflected in the auditors' report under the same heading:

> "Without qualifying our opinion, we draw attention to note 1 in the financial statements which indicates that the directors are currently in the process of obtaining additional funds to pay outstanding debts to [HMRC] and other creditors. It also states that the directors have committed themselves to continue to support the cashflow of the group by making available any necessary funds until the new financing is in place."

146. There is no letter in evidence corresponding to the letter dated 15 January 2007, but it is likely that the auditors would have required the directors to write a letter along the lines set out in note 1.

147. Note 16(a) to the financial statements listed six directors' unsecured convertible loans and two other unsecured convertible loans all. This list cannot be reconciled with the loan agreements in evidence. Of the six directors' loans, the first three listed match the loan agreements between Mr Caliendo and QPRH for £450,000, £350,000 and £950,000. The fourth loan listed is said to be for £500,000, but the description does not match the loan agreements for that amount between Mr Caliendo and QPRH or Mr Dunga and QPRH because the loan is said to be redeemable at any date before March 2011 and to be convertible into 6,666,667 shares. The fifth and sixth loans listed are said to be for £350,000 and £170,000 respectively, but neither matches any of the loan agreements in evidence. The first of the other loans, for £500,000, matches the loan to Mr Ehmer (see paragraph 108 above). The description of the second of the other loans (for £250,000 redeemable before March 2011 and convertible into 3,333,333 shares) is close to the agreement between Mr Dunga and QPRH for that amount. I also note that the eight loans listed total £3.52 million.

HMRC presents winding-up petitions

148. On 30 April 2007 HMRC presented two winding-up petitions, one against QPRFC for £1,598,181.10 and one against QPRH for £907,954.29.

149. The HMRC petitions were listed for 4 July 2007. As noted above, Mishcon de Reya was already instructed. It engaged in correspondence with Clarke Willmott seeking to obtain time and, so far as was possible, to dispute the debts. A limited indulgence was obtained that, if the petition debts were paid in full before the date on which HMRC proposed to send them to the Gazette for advertisement, namely 18 June 2007, HMRC would not advertise the petitions and would withdraw them. At this stage HMRC refused to countenance any "time to pay" arrangement because of QPRH's previous defaults on such arrangements.

Mr Winton pursues Anaid's claim

150. Mr Winton continued to seek payment of the sums owed by QPRH to Anaid. On 8 May 2007 Mr Paladini sent a fax on behalf of QPRH to Mr Winton's son Alex promising to pay the outstanding sum of £482,812.50 due to Anaid from the sale of Danny Shittu on or before 15 August 2007, when QPR would receive the final instalment of fees due from Watford FC. On 15 May 2007 Alex Winton sent an email to Mr Steele stating the current amount owing was in fact £760,937.50. (It is convenient to note at this point that subsequent documents mostly refer to the money being owed to Mr Winton or both Wintons personally, rather than Anaid, but this does not matter.)

QPRH is required to repay the Blitz Loan

151. By 3 May 2007 the Blitz Loan had become publicly known (according to Mr De Marco, because Mr Blitz's lawyers had registered his charge with Companies House). On that date Mr Steele sent Mr De Marco, Mr Paladini and Mr Kallis an email stating that Mr Corney had been told by the Football League that the loan had to be repaid.

152. On 8 May 2007 Mr Blitz's solicitors (Cramer Richards) wrote to QPRH warning of the likelihood of disciplinary action by the Football League, and explaining that "the only realistic way" of avoiding this was for QPRH to repay the loan forthwith, or to put in place formal arrangements for its discharge. This was followed by a letter from the Football Association dated 14 May 2007 demanding that the loan be repaid before a meeting on 22 May 2007.

QPRH requests Barclays to re-open its account

153. As a result, on 14 May 2007 Mr Kallis wrote to the Chairman of Barclays asking for QPRH's account to be re-opened:

> "To cut a long story short, the club needs the account just to be able to receive payments from season ticket holders for their new tickets from the coming season. Not being able to do this now is a major problem – in effect we may not be able to pay the VAT man in time. Season ticket money is the biggest tranche of money a football club like this receives in any given

> year. If the fans are put off because we cannot take credit card payments it could be disastrous, financially, to the club. I was hoping that you might be able to pass this email onto the appropriate person to facilitate the account being reactivated. The club urgently needs [to] take credit card and switch card receipts from today onwards. I understand that this is something of an emergency for the club…"

154. The next day Mr Kallis sent another email to Deanna Oppenheimer who was in charge of Barclays' Retail Banking in the UK. He explained that his "client" had a pressing need to make a payment of £500,000 before 22 May 2007 (i.e. in order to repay the Blitz Loan) and wages of £500,000 shortly thereafter, and he pleaded for an overdraft facility.

155. On 17 May 2007 Lisa Brown of Barclays wrote to Mr Kallis declining to provide an overdraft to QPRH or to extend its credit card facilities with Barclays Merchant Services.

QPRH is banned from buying players

156. Due to Barclays' refusal of an overdraft, QPRH was unable to repay the Blitz Loan by 22 May 2017. As a result, QPRH was banned by the Football League from buying players until the Blitz Loan was repaid. The Blitz Loan was not repaid until two payments were made in July and August 2007, as discussed below.

QPRH is unable to process credit and debit card payments from season ticket sales

157. Because of the refusal of Barclays Merchant Services to continue to provide credit and debit card processing facilities to QPRH, QPRH was left without the ability to process credit and debit card payments for sales of season ticket for the following 2007/08 season, which went on sale some time in May 2007. Accordingly, QPRH was forced to demand payment by cheque or cash. Unsurprisingly, this led to a significant drop in season ticket sales, which represented QPRH's largest single source of revenue.

158. It appears that even that expediency was not sufficient, and that eventually QPRH was forced to start accepting applications for season tickets to be paid for by credit and debit cards later even though it could not process the payments at the time. As at 12 June 2007 the Club held over £913,000 in unprocessed credit/debit card receipts for season tickets, in the hope that Streamline would provide facilities later that month. It appears that by the time Streamline did agree to provide facilities, QPRH had some £2 millon of unprocessed receipts.

159. Matters were made worse by the fact that, in early July 2007, QPRH was forced to upgrade its online booking system, and had to shut it down while this work was undertaken.

Attempts to attract investment

160. It is clear from the documentary evidence that, from at least early May 2007 onwards, Mr Caliendo and Mr Paladini were in discussions with a series of parties about the

possibility of those parties investing in QPRH by way of either equity or debt or a combination of the two. It is also clear that Mr Kallis and Mr Steele were involved in many of these discussions, but not all of them. Examples of these discussions in May 2015 included the following:

i) Steve Dagworthy: On 9 May 2007 Mr Kallis sent a draft confidentiality agreement to Mr Clarke (then at Arthur Barnes), who represented a Steve Galvin of MPG Financing Ltd who had been introduced by a Steve Dagworthy. It is now clear that Mr Dagworthy was not a serious investor or intermediary, but rather a fraudster who was convicted on eight counts of theft and deception in December 2009 and sentenced to six years in prison and disqualified as a director for 15 years (there is also a suggestion that he had previously been disqualified as a director for 8 years in 2006). Perhaps as a result, these discussions ultimately went nowhere, but Mr Dagworthy continued to correspond with Mr Steele for some time.

ii) Moore Capital: On 21 May 2007 Mr Kallis sent Tim Leslie of Moore Capital a draft confidentiality agreement at Mr Steele's request following discussions about Moore Capital lending money to QPRH. These discussions appear to be have petered out very quickly.

iii) RP Capital: On 31 May 2007 Mr Trucco sent an email "on behalf of Mr Caliendo, following instructions received" to Eran Rabinovitz of RP Capital setting out a proposed deal involving RP Capital refinancing the ABC Loan with £4 million of new money also secured against the Stadium and taking a 15% shareholding for a consideration of £3 million. Mr Rabinovitz made a counterproposal for a loan of up to £13 million by email dated 7 June 2007 to which Mr Trucco replied on 12 June 2007. After a lull in the correspondence, it appears that on or about 3 July 2007 Mr Trucco sent Mr Rabinovitz a further proposal following a meeting between Mr Trucco and Mr Caliendo. On 13 July 2007 Robert Skalina of RP Capital sent Mr Caliendo and Mr Trucco an indicative term sheet for the proposed £13 million loan setting out some fairly onerous terms for QPRH. On 19 July 2007 Mr Trucco "as instructed by Antonio Caliendo" replied requesting some changes to the proposed terms. After a meeting between Mr Caliendo and representatives of RP Capital on 25 July 2007, RP Capital withdrew from the negotiations on 26 July 2007.

161. There is also documentary evidence of discussions with other potential investors in June and July 2007, including Heritage Private Banking, Boutique Football and State Securities, but I do not consider it necessary to set all these out in detail. In addition, Mr Cooke gave unchallenged evidence about an approach from a potential purchaser called Ronny Rosenthal. None of these discussions proceeded as far as a concrete and firm offer.

QPRH's financial position as at 31 May 2007

162. QPRH's financial position as at 31 May 2007 can be summarised as follows:

i) it was facing winding up proceedings in respect of debts totalling £2.5 million with the HMRC petitions due to be advertised shortly after 18 June 2007;

ii) Mr Winton was chasing for payment of over £760,000;

iii) it had at least another £300,000 of debts which needed to be paid;

iv) it was the subject of sanctions by the Football League as a result of its failure to repay the £500,000 Blitz Loan;

v) it was in arrears in payments of interest in respect of the ABC Loan (as to which, see further below); and

vi) it had no credit or debit card facilities and so was being forced to accept payment for season tickets by cheque or cash, which was depressing a key source of revenue.

163. Accordingly to QPRH's Annual Report and Financial Statements for the year ending 31 May 2007 (which were approved by the board on 5 March 2008), QPRH made a consolidated loss of £4.729 million that year, a loss some £1.4 million greater than the previous year. The team had finished the 2005/06 season in 18th place in the Championship, a marginal improvement on its performance the previous year.

The HMRC petitions become public

164. On Friday 8 June 2016 QPRH received a tip-off that the existence of the HMRC petitions was likely to become public in the near future, probably in the Sunday papers. That afternoon Mr De Marco drafted and emailed to Mr Paladini and others a draft statement to be issued by him in his capacity as director of QPRFC to representatives of QPR's fans. Having referred to the fact that "the tax man has brought a winding-up petition against QPR", this draft statement continued (emphasis added):

> "The Board has been doing everything it can to try and meet these liabilities before any proceedings are made public or actually go to Court. *Unfortunately the Monaco investors have put in the limit of the monies they are able to put in* – millions of pounds without which the Club would not have remained in existence over the past years. Gianni Paladini and the Board have been working tirelessly to attract new investors and new sources of finance. Given season ticket sales and the increase in Sky revenue new year, we are confident that QPR will be in an improved financial position next year. We will also be continuing to seek new investors to take QPR to the next level.
>
> In the meantime, we are moving heaven and earth to avoid the winding up proceedings. …
>
> Despite pressures from some quarters to go into voluntary administration or sell players for under value, the Board is determined to keep the Club out of administration and keep hold of our team. It makes no sense for anyone for QPR to go into administration. …"

165. It appears that it was decided not to issue the draft statement on the Friday or the Saturday. Subsequently the story was reported in the *Sunday Mirror* on 10 June 2007, and it appears that at that stage the statement was circulated to interested fans.

HMRC gives QPR more time to pay

166. Mishcon de Reya, on behalf of QPRH and QPRFC, brought in a specialist tax adviser, Richard Yewdall of Tax and Legal Services Ltd, to assist in the negotiations with HRMC. Mr Yewdall sought to persuade HMRC to agree a time to pay arrangement, on the basis that the petition debts were repaid by 31 August 2007. On 12 June 2007 Mr Yewdall wrote to Clarke Willmott saying:

> "The club will definitely be in a position to satisfy the whole amount of the debt by 31 August 2007 at the latest and at the same time fulfil any additional liabilities which have been identified up to that date. This is due to a firm offer being received for one of the club's players in the sum of £3.5 million …"

Although not identified in the letter, the player in question was Lee Cook.

167. On 13 June 2007 Clarke Willmott replied to Mr Yewdell indicating that QPRH's history of failing to comply with ongoing returns and payments due meant HMRC would not withdraw the petitions or agree to their dismissal until both petition debts were paid in full. However, HMRC was willing to defer advertising the petitions and to adjourn the hearing listed for 4 July 2007 to a date in mid-August on the following conditions:

i) QPRH paid the sum of £1 million and provided details of PAYE/NI deductions for the periods April – June 2007 by 19 June 2007;

ii) the remainder of the petition debts (some £1.5 million) was paid by end of July 2007; and

iii) by the end of August 2007 a binding agreement was concluded to settle all other debts due from QPRH and QPRFC to HMRC.

168. On 14 June 2007 Mr Yewdall replied that QPRH was making every effort to ensure that it was able to pay the sum of £1 million by 19 June 2007.

169. Mr Caliendo stated in cross-examination that Mr Mina of the T&F Group had accompanied him to a meeting with HMRC at which an agreement was reached with HMRC for staged payments of the petition debts. Mr Caliendo's recollection was that this meeting had taken place in March or early April 2007. There is no documentary evidence of such a meeting, and in any event Mr Caliendo's recollection of the date must be erroneous. It is possible there was such a meeting in late June or July 2007, however. Certainly, it does appear that at some point HMRC agreed to the £1.5 millon being paid (together with certain other sums which had fallen due in the meantime) in three instalments in July and August 2007, with the final and largest payment of £963,000 to be made by 31 August 2007.

Mr Paladini tells the BBC that QPRH is for sale

170. On 15 June 2007 the BBC published an article on its website headed "QPR owners prepared to sell the club" which stated (emphasis added):

> "QPR chairman Gianni Paladini says the club's Italian owners are ready to sell up for about £4m.
>
> Paladini says he will sell his stake for the £650,000 he paid for it when he joined the board in 2004.
>
> Fellow investors Antonio Caliendo and Franco Zanotti are also believed to be prepared to accept the price they paid for their larger stakes.
>
> *Paladini said: 'We've taken the club as far as we can and don't have the money to take it further.'*
>
> Between them, Paladini, Caliendo and Zanotti owned about 62% of the Championship club.
>
> Paladini added: 'We need new investment and new people to take QPR forward. …'
>
> …
>
> Caliendo has loaned the club a substantial amount in order to prevent it from going into administration.
>
> Paladini insists that this money will only be repayable should QPR make a profit by reaching the Premiership, and should not be a barrier to a takeover.
>
> But any new owner would have to deal with ongoing losses and 11.59% interest payments on a £10m loan the previous regime at Loftus Road arranged to take the club out of administration in 2002.
>
> 'When we came here the club was in a very bad position', Paladini added.
>
> 'Things are better now but we've done all we can and someone else is needed to take things forward. …'"

171. Mr Caliendo denied knowing about this report at the time, but I do not accept that evidence. In my view Mr Caliendo must have become aware of this even if Mr Paladini did not consult him in advance. Apart from the nature and source of the report, this inference is supported by the fact that, when Ilja Kaenzig of Boutique Football contacted Mr Caliendo on 21 June 2007 to request a meeting to discuss possible investment in QPR, Mr Kaenzig referred to "having learnt from various sources as well as the British media about your interest in inviting new investors-partners to Queens Park Rangers FC". It is also supported by the fact that it is clear

from Mr Caliendo letter to Sean Fay dated 10 August 2007 (as to which, see below) that Mr Caliendo was familiar with British media websites.

QPRH obtains a further loan from ABC

172. On 22 June 2007 there was a QPRH directors' meeting. According to the minutes signed by Mr Paladini, it was attended by Mr Paladini and Mr Cooke in person, and by Mr Caliendo by telephone. Mr Caliendo alleged for the first time in cross-examination that the statement that he had attended the meeting by telephone was untrue. I cannot see any reason why Mr Paladini should have falsified the minutes in this respect. Moreover, although Mr Cooke gave general evidence that he did not recollect Mr Caliendo attending meetings with Mr Cooke and Mr Paladini by telephone, it was not put to Mr Cooke that Mr Paladini had falsified these minutes (which would presumably have required Mr Cooke's connivance). By contrast, Mr Caliendo had a clear motive for trying to dissociate himself from the minutes in view of their contents. Accordingly, I do not accept Mr Caliendo's evidence on this point.

173. As the minutes record, the purpose of the meeting was to approve the entering by QPRH into agreements for the provision of a further loan by ABC of £1.3 million secured by a second fixed charge over the Stadium and a floating charge over all QPRH's assets ("the new ABC Loan"). The purpose of the new ABC Loan was stated to be to enable QPRH to pay (i) arrears of interest on the original ABC Loan of £281,012.77 as at 18 June 2007 and (ii) £1 million to HMRC on 22 June 2007. Thus it appears from the minutes that QPRH had not in fact succeded in paying HMRC the £1 million by 19 June 2007 as it had promised to do, and only did so on or shortly after 22 June 2007. The minutes also recorded that, in addition, HMRC required payment of £700,000 on or before 31 July 2007 and some £1.246 million by 31 August 2007.

174. The agreements provided that the new ABC Loan and all interest on it was payable by 15 August 2007. They also varied the terms of the original ABC Loan, in particular to make it repayable in full by 31 July 2008.

175. The minutes also recorded that (emphasis added):

> "The Directors considered the Documents carefully. The directors were advised that the Company had received advice that the directors should give approval to the Company entering into the Documents and the transactions contemplated by the Documents only if they were satisfied that it was in the best interests of the Company, the Company's shareholders and the Company's creditors to do so.
>
> …
>
> *It was noted that no other source of funds was immediately available to the Company*. Accordingly, the directors resolved that it was in the best interests of the Company for the Company to accept the Loan on the terms on which it was offered …"

QPRH sells Lee Cook

176. On 19 July 2007 QPRH agreed to sell Lee Cook to Fulham Football Club for £2.5 million, rather than the £3.5 million previously anticipated, which was to be paid by 10 August 2007.

177. The transaction was reported by the *Mail Online* on 26 July 2007 under the heading "Rangers saved by £2.5m fee for Cook". This article stated (emphasis added):

> "Fulham saved West London rivals Queens Park Rangers from administration when they paid £2.5million for winger Lee Cook, it has emerged.
>
> The deal allows the debt-ridden club to repay a £1.3m loan from Panamian-based money-lenders, the ABC Corporation, which is secured against Loftus Road.
>
> …
>
> The money from last week's Cook transfer will allow the club to pay off the short-term loan and give chairman Gianni Paladini more time to find new investors.
>
> Rangers director Nick De Marco said: 'QPR were faced with a winding-up order in July. If the club had not found a substantial sum of money to pay off before 4 July, the club would have been put in administration.
>
> Faced with that risk, and the need to pay various other debts and on-going costs, the club had no alternative than to seek a short-term bridging loan.
>
> *Nobody was prepared to lend the club the sums required in time, apart from ABC*. It's not a great agreement for QPR but it was a choice between that and administration. QPR are able to repay the loan now, in part from the proceeds of sale of Lee Cook.'
>
> …"

178. Like the BBC article referred to above, this article makes it clear that it was public knowledge that QPR was in financial trouble and looking for new investors.

The Takeover Panel and the Takeover Code

179. At this point, it is necessary to explain a little about about the Takeover Panel and the Takeover Code, because they form an essential part of the backdrop to the events that followed. The Panel on Takeovers and Mergers (commonly referred to as the Takeover Panel, "the Panel") is an independent body, established in 1968, whose main functions are to issue and administer the City Code on Takeovers and Mergers (commonly referred to as the Takeover Code, "the Code") and to supervise and regulate takeovers and other matters to which the Code applies. The Panel has been

designated as the supervisory body to carry out certain regulatory functions pursuant to European Parliament and Council Directive 2004/25/EC of 21 April 2004 on takeover bids and the Takovers Directive (Interim Implementation) Regulations 2006.

180. The Code is designed to ensure that shareholders are treated fairly and are not denied an opportunity to decide on the merits of a takeover and that shareholders of the same class are afforded equivalent treatment by an offeror. The Code also provides an orderly framework within which takeovers are conducted. In addition, it is designed to promote, in conjunction with other regulatory regimes, the integrity of the financial markets. The Panel has certain enforcement and disciplinary powers of its own and can apply to the courts for enforcement of the Code in certain circumstances.

181. A brief synopsis of the main relevant provisions of the Code for present purposes is as follows:

i) The Code begins with six general principles. The first is that all holders of the securities of an offeree company of the same class must be afforded equivalent treatment; and, if a person acquires control of a company, the other holders of securities must be protected. The third is that the board of an offeree company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of a bid.

ii) Rule 1 provides that an offer must be forward in the first instance to the board of the offeree company or to its advisors.

iii) Rule 2.2 requires an announcement in certain circumstances, including (a) when a firm intention to make an offer (the making of which is not, or has ceased to be subject to any pre-conditon) is notified to the board of the offeree company from a serious source, (b) immediately upon an acquisition of any interest in shares which gives rise to an obligation to make an offer under Rule 9, (c) when, following an approach to the offeree company, the offeree is the subject of rumour and speculation, and (f) when a purchaser is sought for an interest in shares carrying in aggregate 30% or more of the voting rights of a company.

iv) Rule 2.3 provides that, following an approach to the board of the offeree company which may or may not lead to an offer, the primary responsibility for making an announcement will normally rest with the board of the offeree.

v) Rule 2.5 provides that, when a firm intention to make an offer is announced, the announcement must state various things.

vi) Rule 3.1 provides that the board of the offeree company must obtain competent independent advice on any offer and the substance of such advice must be made known to its shareholders.

vii) Rule 9.1 provides that, except with the consent of the Panel, when any person acquires an interest in shares which, taken together with the share in which persons acting in concert with him are interested, carry 30% or more of the voting rights of a company, such person must extend offers to the holders of any class of equity share capital. Rule 9.5 makes provision for the

consideration which must be offered in such circumstances. The notes to Rule 9 explain that the Panel can grant dispensation from these provisions in certain circumstances, in particular where a company is in such a serious financial position that the only way in which it can be save is by a urgent rescue operation.

viii) Rule 16 provides that, except with the consent of the Panel, an offeror or persons acting in concert with it may not make any arrangements with shareholders if there are favourable conditions attached which are not being extended to all shareholders.

ix) Rule 19.1 provides that each document or advertisement issued, or statement made, during the course of an offer must be prepared with the highest standards of care and accuracy and the information given must be adequately and fairly presented.

x) Rule 19.2 provides that each document issued to shareholders or advertisement published in connection with an offer by or on behalf of the offeror or offeree must state that the directors of the offeror or offereee as the case may be accept responsibility for the information contained in the document.

xi) Rule 20.1 provides that information about companies involved in an offer must be made equally available to all offeree company shareholders as nearly as possible at the same time and in the same manner.

xii) Rule 23 provides that shareholders must be given sufficient information and advice to enable them to reach a properly informed decision as to the merits or demerits of an offer in good time.

xiii) Rule 25.1 provides that the board of the offeree company must circulate to the company's shareholders its opinion on the offer and the substance of the advice given to it by the independent advisors appointed pursuant to Rule 3.1.

Mr Briatore and Mr Ecclestone express interest in purchasing QPRH

182. On 20 July 2007 Mr De Marco sent Mr Caliendo an email at Mr Paladini's request advising Mr Caliendo that Mr Paladini had spoken with a consortium which was interested in buying shares in QPRH. Mr Paladini proposed to come to Monte Carlo on the following Thursday (26 July 2007) with representatives of the consortium to meet Mr Caliendo to discuss a sale of Barnaby and Wanlock's shares and asked whether Mr Zanotti would able to attend the meeting as well. The email did not disclose the identity of the potential bidders, a point that I shall return to below. At some point, however, it became known that they were Mr Briatore and Mr Ecclestone.

183. Mr Caliendo's evidence was that Mr Paladini had been introduced to Mr Briatore by Antonio Giraudo (who was formerly associated with Juventus), which may be correct. Mr Caliendo was clearly not correct to say that the introduction took place at the beginning of August 2007, however.

184. On 24 July 2007 Mr Cooke sent an email to Suzanne Hanks of Billionare Couture, who represented the consortium at that stage. Although Mr Cooke's email does not

appear to have been sent in reply to any email, and there is no reference in it to any preceding telephone call or meeting, it seems clear from its content that it was sent as a result of some prior conversation or request for information. Given the Billionaire Couture connection, it is probable that Mr Cooke would have known of Mr Briatore's involvement in the consortium. It is also probable that Mr Paladini would have informed him of this. There is no evidence that Mr Caliendo knew of Mr Briatore's involvement at this date, however. It is evident from this email and subsequent documents that Ms Hanks was undertaking a review of QPRH's financial position.

185. In his email Mr Cooke said (emphasis added):

> "The major events that have happened, or are planned for are as follows:
>
> June – We took out a £1,300,000 loan with ABC, taking the total up to £11,300,000.
>
> June – We paid off £300,000 to ABC to catch up on Interest Arrears …
>
> June – We paid £1,000,000 to [HMRC].
>
> July – We paid £200,000 to Simon Blitz.
>
> July – We paid £200,000 to [HMRC].
>
> July 31st – We expect to pay a further £250,000 to [HMRC]. Lloyds bank will help us here, setting it off against Lee Cook money.
>
> August 10th – We expect to receive £2,500,000 after reductions from the sale of Lee Cook.
>
> August 10th – Pay Simon Blitz £300,000. This will lift the current Player registration embargo against us, so we can sign 2 more players we need…
>
> August 15th – We will pay off £1,300,000 ABC loan. Lee Cook money covers this. Bringing it back down to £10,000,000 with all interest paid up to date, and able to get out of it any time we can, but we have to fully pay it by the 31st July 2008.
>
> August 19th – We will pay [HMRC] £400,000. Lee Cook money covers this.
>
> *August 31st. [HMRC] demand £960,000. We currently cannot cover this. So we have to get something in place.*
>
> September 30th. [HMRC] will take the balance of what we owe…."

186. This email sets out very clearly QPRH's hand-to-mouth financial existence at this time. It also makes it clear that QPRH was faced with a requirement to pay HMRC nearly £1 million on 31 August 2007, which it presently had no means of paying. This soon came to drive the timetable for completion of the deal with the Purchasers.

187. It is unclear whether there was a meeting on 26 July 2007 as had been proposed, or what happened with respect to the consortium's bid, if anything, between then and 6 August 2007, but an email exchange between Mr Steele and Mr Dagworthy on 31 July 2007 suggests that the consortium had made an offer by that date. This is also supported by Mr Steele's note dated 14 August 2007 (as to which, see below).

Ninth instruction of Mishcon de Reya – Football Association/Football League

188. On 25 July 2007 Mr Steele wrote to the Football Association saying that his firm acted for QPRFC and QPRH and that his client expected shortly to receive £2.5 million from the sale of Lee Cook and that his client authorised the Football Assocation to deduct £300,000 from that sum and remit it to Mr Blitz (i.e. to complete repayment of the Blitz Loan as envisaged by Mr Cooke's email to Ms Hanks). The Football League required Mishcon de Reya to prepare a deed of assignment of this sum which was executed on 1 August 2007.

Mr Power threatens Mr Paladini and Mr Caliendo

189. On 26 July 2007 Mr Power sent Mr Paladini an email in the following terms:

> "I am very concerned to hear rumours that Mr Caliendo and the shareholders that he represents are proposing to take a course of action which can only be to the detriment of the Club.
>
> When I sold my shares to Mr Caliendo I only did so after you and he had promised me that he would act at all times in the interests of the club, that he would make sure that sums were available to invest in the team and that he would place the club's interests ahead of his own.
>
> It now appears that I was fraudulently induced to sell my shares and I require you to pass this e mail to Mr Caliendo and warn him that if he makes any attempt to resile from his promises to me I shall sue him and his companies and seek recovery of my shared."

190. Mr Power blind copied the email to Mr Steele. Not only that, but in addition Mr Power had obtained Mr Steele's approval of the wording of the email in advance. Furthermore, it appears that Mr Power sent the email at Mr Steele's request. It is unclear what "course of action" on the part of Mr Caliendo they were trying to forestall, although it appears that part of the (purported) complaint related to Mr Caliendo's failure to "make sure that sums were available". Whatever the purpose of the email was, there is no evidence that Mr Paladini replied to it or passed it on to Mr Caliendo. Counsel for the Claimants submitted that this episode was evidence that relations between Mr Caliendo and Mr Paladini had broken down by this date, but in my view it is not.

Tenth instruction of Mishcon de Reya - Anaid's proposed purchase of Barnaby, Wanlock and Moorbound's shares

191. It appears that, at some point in late July 2007, Mr Winton discussed with Mr Caliendo the possibility of Anaid purchasing Barnaby, Wanlock and Moorbond's shares in QPRH.

192. Following these discussions, Mishcon de Reya (probably in the person of Mr Steele) drew up a draft contract dated 22 July 2007. It provided for Anaid to purchase the shares belonging to Barnaby, Wanlock and Moorbound at a price of 6.5p per share with completion on 9 August 2007, and for Anaid to pay Barnaby (or whomever Barnaby directed) £2,000,000 if the club was promoted to the Premier League in 2007/08, 2008/09 or 2009/10.

193. The draft contract also provided that:

i) Barnaby and Wanlock would assign to a company to be nominated by them the entire benefit of loans provided by Barnaby and Wanlock to QPR, and that it was agreed that such loans inclusive of accrued interest to date amounted to £7,500,000; and

ii) Anaid would pay quarterly interest on the loans at the rate of 7.5% per annum, the beneficiary of such payment to be nominated by Barnaby; and

iii) Mr Caliendo would be life president of QPR.

194. On 3 August 2007 Mr Winton sent Mr Caliendo a fax saying that on 1 August 2007 Mr Winton had agreed to confirm by 3 August 2007 a bid to purchase the shares owned by Barnaby, Wanlock and Moorbond for 6.5 pence per share with completion by 10 August 2007. Mr Winton continued:

> "I stated that it would be necessary for me to speak directly to the financial partners. They are persons with an international reputation. I explained that the transaction was being negotiated by a third party however, I would sign the contract.
>
> I can confirm that the representative of these persons has carried out due diligence of the Q.P.R. financial situation.
>
> Yesterday afternoon, I was informed by a representative of the Q.P.R. Board, Kevin Steele that you were negotiating to sell your shares or a majority of your shares to a Portuguese/Russian partnership. Furthermore, a representative of these persons wanted to meet with Nick De Marco at 5.30pm this evening.
>
> I am sure that you will understand that I am a very serious person in honouring my obligations. I cannot therefore ask people of eminence to confirm agreement to buy shares and to forward the necessary funds to Mishcon de Reya when I may be unable to deliver the relevant shareholding.

> Under the circumstances, I remain available to discuss this matter after you have decided what you wish to achieve."

195. Mr Winton's evidence in his witness statement is that he was asked by Mr Paladini to "front" an offer to purchase Mr Caliendo's shareholding at a price of 6.5 pence per share by another investor and that he attended a meeting with Mr Paladini, Mr Caliendo and Mr Steele to discuss. Mr Winton also says that he was subsequently told by Mr Paladini that the investors were Mr Briatore and Mr Ecclestone, and that Mr Paladini did not want to tell Mr Caliendo who the purchasers were because he thought that Mr Caliendo would insist on a higher price for his shares if he knew that Mr Briatore and Mr Ecclestone were involved. Mr Winton's evidence broadly fits with the available documentary evidence, except that the documents make it clear that the offer was for the purchase of Mr Paladini's and Mr Zanotti's shareholdings as well as Mr Caliendo's.

196. Counsel for the Claimants again relied on this episode as evidence that relations between Mr Caliendo and Mr Paladini had broken down by this time, but again I do not accept this. All it shows is that Mr Paladini was concerned that, if Mr Caliendo demanded too high a price for his shares, a sale would not be achieved. Moreover, subsequent events indicate that Mr Caliendo proved more willing to accept a lower price than Mr Paladini perhaps feared.

197. There is no evidence which elucidates Mr Winton's reference in his fax of 3 August 2007 to Mr Caliendo negotiating with a Portuguse/Russian partnership. Nor is there any evidence of what reply Mr Caliendo made to the fax, if any. But it seems clear that the putative Anaid offer was not purused any further.

198. At 12:37 on 6 August 2007 Mr Steele sent an email to Mr De Marco in the following terms:

> "I am writing to you in confidence, having learned that Harold's offer to purchase the shares held by the Monaco investors has been withdrawn, or is about to be withdrawn.
>
> Harold has established that the Club have debts in excess of £28,000,0000 [sic] including the ABC loan. Only ABC are secured, so that in the event of the club going into administration only ABC would be protected. Other creditors would receive only a small fraction of what they are owed, some would probably recover nothing.
>
> The club would receive a 10 point penalty. Some season ticket holders might cancel their season tickets. They would then have to be repaid
>
> I do not know if Gianni, Antonio and Franco are aware of how bad the position is, but something has to be done very quickly, even if it means they do not recover the monies they have lent the club. In fact they are better off accepting a deal to sell their shares now, whilst preserving the right to be re-paid their loans

> if the Club are promoted, rather than doing nothing. If they do nothing, all will be lost.
>
> This should be discussed with Gianni, Antonio and Franco as a matter of urgency."

199. Mr De Marco replied at 14:51 the same day:

> "Many thanks for this information. It confirms my worst fears. I am also concerned that any new buyer purchasing over 29.9% of the shares would have to make an offer to all shareholders which would take a few weeks. I suggest, if you have time, that you convert this email to a letter and send it urgently to the Board of QPR. Please feel free to say you have discussed the contents with me and I agree with you."

200. It is clear from this that Mr De Marco had in mind the provisions of the Code. It is also clear that the reason for Mr Steele's and Mr De Marco's concern was the need to pay HMRC nearly £1 million by 31 August 2007.

201. Mr Steele proceeded to do as Mr De Marco had suggested, and on 7 August 2007 he sent a fax to Mr Paladini, copied to Mr Caliendo and Mr Zanotti, in essentially the same terms as his email to Mr De Marco. Counsel for the Claimants suggested that Mr Steele was putting pressure on Mr Caliendo to sell his shares in QPRH. I do not accept this. Rather, I consider that he was impressing upon all three directors of QPRH the importance of taking action to save the company, since otherwise creditors other than ABC would receive little or nothing. As I shall discuss below, this was the right advice for Mr Steele to give.

Eleventh instruction of Mishcon de Reya – Monday 6 August 2007

202. At 13:18 on 6 August 2007 Ms Duquemin sent Mr Steele an email (from Mr Cooke's email address) in the following terms:

> "Please can you email Bruno@gp2series.com containing the following information for a letter of intent:
>
> £2.5 Million offered to Mr Antonio Caliendo for his shares in QPR,
>
> £2 Million Bonus given to Mr Antonio Caliendo upon QPR reaching the Premiership [sic] League."

It appears likely that Ms Duquemin received the information about this offer from Mr Paladini. The Bruno referred to in this email was Bruno Michel, who was acting on behalf of Mr Briatore and Mr Ecclestone. It is probable that Mr Paladini (and possibly Ms Duquemin) would have been aware of this, but it is less clear whether Mr Steele was aware of it at that time.

203. Mr Steele replied two minutes later asking "Are they also offering to buy Gianni's and Zanotti's shares? If so, at what price?"

204. At 14:57 on 6 August 2007 Ms Duquemin sent Mr Steele a second email (again from Mr Cooke's email address) in the following terms:

> "Please can you email Bruno@gp2series.com containing the following information for a letter of intent:
>
> £2.5 Million offered to Mr Antonio Caliendo for 17,520,061 shares and Mr Franco Zanotti 19,900,000 shares in QPR,
>
> £2 Million Bonus given to Mr Antonio Caliendo upon QPR reaching the Premiership [sic] League."

205. Mr Steele duly sent an email to Mr Michel at 15:18 in the following terms:

> "We act for [QPRH] ('QPR').
>
> We understand that your principal proposes to purchase the shareholding of Mr Antonio Caliendo (17,521,061 shares) and Mr Franco Zanotti (19,900,000 shares) for a combined price of £2,500,000, with Mr Caliendo personally being paid a further £2,000,000 in the event QPR are promoted to The Premier League.
>
> We should be grateful if you would confirm that this is the case, in order that we may take matters further."

206. Mr Steele subsequently forwarded that email to Mr De Marco at 16:51 saying: "READ AND DESTROY!". It is not clear why Mr Steele would have wanted Mr De Marco to destroy the email. Counsel for the Claimants suggested that it was out of a desire to keep Mr Caliendo in the dark about the approach from Mr Michel. But it was neither necessary nor sufficient for that purpose for Mr Steele to ask Mr De Marco to destroy the email. Furthermore, Mr Caliendo obviously had to be told about the approach, and as the Claimants accept he was informed shortly afterwards.

207. At 17:07 Mr Steele sent Mr Michel a further email in which Mr Steele stated that the correct number of shares held by Mr Caliendo's company was 27,648,836. At 8:53 on 7 August 2007 Mr Steele re-sent his email of 15:17 on 6 August 2007, but with the number of Mr Caliendo's shares corrected to 27,648,836.

Thursday 9 August 2007

208. Mr Michel replied at 11:18 on 9 August 2007:

> "I confirm [to] you that we are willing to buy the mentioned shares for 2.5m pounds sterling and that subject to Mr Callendo [sic] waiving the debts the company has towards him upon sell [sic] of the shares he will be paid 2 M pounds if the club gets promoted.
>
> My principal wants as well to have the control of the board and will proceed to a cash injection to the company by the way of a capital increase.
>
> Let me know how you want to proceed."

209. Mr Steele replied at 13:00:

> "Many thanks for your response.
>
> Please let me know the names and registered offices of the companies which will be acquiring the shares, and the proposed shareholding for each.
>
> The two departing shareholders each have one member on the board, and they will resign.
>
> Please let me know if you would like me to prepare the sale documents, or, if you have UK lawyers, their name and address."

It appears from this email that Mr Steele was aware by this time that there was to be more than one purchaser.

210. In the meantime, at 11:21 Mr Steele forwarded Mr Michel's email to Mr Paladini. It is evident that Mr Paladini provided a copy of the email to Mr Caliendo (see below).

211. At 17:37 Mr McMaster sent an email to Mr Kallis and Mr Steele. It appears that he had been asked by them whether the Code would apply to the proposed transaction. Mr McMaster, who evidently had expertise in takeovers, said it would be important for the board to liaise with the Panel immediately to ascertain the extent to which the Code would apply. Having noted that it appeared from the last annual return that there were over 30 shareholders, Mr McMaster warned:

> "Given the number of shareholders, the Panel is likely to rule that the Code applies in full to this transaction. This means that anyone that acquires more than 29.9% of the target company must make an offer to acquire all the shares in the company at the same price or highest price paid in the last 12 months by the offeror and its concert parties…."

Friday 10 August 2007

212. At 8:18 on 10 August 2007 Mr Steele sent two colleagues in Mishcon de Reya an email saying:

> "The full story is in The Times and has been on the radio. Ecclestone is said to be furious but has not withdrawn his bid.
>
> The content of the Times article has detail in it which only Jason and I knew about, and on that basis alone I believe the leak could not have come from here.
>
> However the Mail say that they and The News of The World obtained the story from a woman who either works here, or has a husband who works here. …"

Although the *Times* article is not in evidence, it is evident from Mr Caliendo's letter to Mr Fay later the same day that it also referred to Mr Briatore as being involved in the bid.

213. At 10:14 Mr McMaster, who had evidently been informed that QPRH had over 5,200 shareholders, sent Mr Steele and Mr Kallis an email saying that this meant that it would be impracticable to obtain a waiver of their rights under the Code and so the bidder would have to make an offer to purchase all shares in the target company. He also said that the board should appoint a merchant bank to act as its Rule 3 advisor as soon as possible.

214. At 12:03 Mr Caliendo emailed Mr Steele about Mr Michel's offer:

> "Thank you for your email that I received by Gianni concerning the offer of Bruno Michel.
>
> About this subject could you please let me have copy of the contracts that you have prepared? I must estimate the proposal together with my partners. …."

Although Mr Caliendo did not identify the partners he was referring to, they must have included at least Mr Zanotti, Mr Dunga and Mr De Riu.

215. At 12:46 Mr Steele forwarded Mr Caliendo's email of 12:03 to Mr Paladini, copied to Mr De Marco, saying:

> "I don't like the 'I must estimate the proposal together with my partners' bit."

216. Mr De Marco replied at 13:15:

> "Just spoke to Gianni. He is less concerned about this as if Antonio was not interested he would say so or just not reply. So all looks good still. Gianni said if you can prepare a draft contract (albeit with some blanks) setting out terms of Bruno's offer and send it to Antonio today it would speed things up."

This email is of some importance because it shows that the instruction to Mr Steele to prepare a draft contract came from Mr Paladini (via Mr De Marco). Counsel for the Claimants again submitted that these exchanges showed that relations between Mr Caliendo and Mr Paladini had broken down, but again I do not accept this. Rather what they show is that Mr Steele's main contact on the QPRH board was Mr Paladini. This is unsurprising given that he spoke English and was based in England, whereas Mr Caliendo did not speak English and was based in Monaco and Mr Zanotti spoke English, but was based in Monaco and was much less closely involved than Mr Caliendo.

217. At 13:19 Mr Steele replied indicating that he would prepare the draft contract.

218. At 14:12 Mr Steele sent Mr Caliendo an email stating:

> "I am forwarding you under separate cover draft contracts. The Buyer has not yet seen these. They have told me the price and offer is non-negotiable.
>
> I am so pleased that you and Franco have been able to sell the shares because I have been worried that if the Club did not pay the Revenue the Club would go into administration and everyone would lose everything. Now, when the deal goes through you will all be great heroes to the QPR fans."

219. At 14:38 Mr Steele sent Mr Caliendo a further email stating (emphasis added):

> "I attach the contracts.
>
> The buyers also require *a letter confirming that you personally agree to cancel all loans* made to QPR and any subsidiary or associated company of QPR."

It is clear from this that Mr Caliendo knew from the outset that cancellation of all his loans was a condition of the deal. As will appear, subsequently the structure of the offer was changed so that the loans were only partially cancelled, but this did not affect the economics of the deal or the significance of the total amount of Mr Caliendo's loans.

220. Attached to this email were two draft contracts, one each for Barnaby and Wanlock. The draft Barnaby contract provided for its shares to be sold at a price of 5.25 pence per share (a total of £1,453,707.30) and for a bonus of £2 million to be paid to Barnaby on QPR's promotion to the Premiership. The draft Wanlock contract provided for its shares to be sold at the same price (a total of £1,046,292.70). In each case the name of the buyer was left blank. It is not clear who instructed Mr Steele as to the division of the consideration between Barnaby and Wanlock, but he may have simply calculated this from their respective shareholdings.

221. At 14:40 Mr Steele forwarded this email to Mr Paladini and Mr De Marco.

222. At 14:50 Mr De Marco replied saying:

> "Deal seems 100% back on. With the proviso that Antonio must sign in the next 48 hours and by Monday at latest. Sellers insist on this because news already leaked. I know a bit more will have to be done on the contracts, but can you stress to Antonio that this is the final and only offer and the sellers require his agreement and signature by Monday and before if possible otherwise they will withdraw it."

223. At 16:27 Mr McMaster sent Mr Steele and Mr Kallis an email posing a prescient question:

> "In terms of who Mishcons are acting for, are we acting for the Company or the selling shareholders? There are 2 distinct

> interests here, and we need to be careful about who is being advised. …"

224. At some point on 10 August 2007 Mr Caliendo sent a letter on QPRH notepaper by email to Mr Fay, who appears to have been a potential investor. According to the letter, this followed a telephone conversation between Mr Fay and Mr Calvo, who is described in the letter as "my assistant". The letter refer to the fact that recently "we have have been approached by Mr Flavio Briatore who presented an offer to buy the Club (please, find in 'The Times on line' pages about it [with a hyperlink]". Having said that "we have found the style of Mr Briatore not in line with the spirit of the people who represent this club", Mr Caliendo went to inform Mr Fay that "there is the possibility to acquire the 47.5% of the shares that I represent … in the amount of 25 Mill £".

225. It is convenient to note here that on 13 August 2007 Mr Caliendo sent a similar letter to a Mr Cusdin.

Saturday 11 August 2007

226. QPR's first game of the 2007/08 Championship season was on Saturday 11 August 2007. QPR lost away to Bristol City.

Sunday 12 August 2007

227. At 21:58 on 12 August 2007 Mr Michel sent Mr Steele an email in the following terms:

> "Thanks for your e-mail. Can you explain why we need two companies to acquire the shares and if we can take offshore companies.
>
> Can you please prepare the sale documents, and also prepare an agreement for the waiving of the debts from Mr Callendo [sic] for a consideration of 2 M£ if the club gets to premiership.
>
> Can you also prepare an agreement with Mr Palladini [sic] where he gives us his shares and then he will get 5% of the shares after we increase the capital of the company and in which we have an option to buy his shares after 2 years for 500,000£.
>
> We also need an employment agreement with him for 3 years at the same conditions as now.
>
> As to the board, we wish to have the resignation of everyone except Palladini [sic] and let me know how many numbers we need. …"

Monday 13 August 2007

228. At 8:23 on 13 August 2007 Mr Steele forwarded Mr Michel's email to Mr Paladini and Mr De Marco.

229. At 8:52 Mr Steele replied to Mr Michel saying:

> "It is better if two companies buy the shares. If one company buys more than 29.9% of the shares in another company, the buyer must offer to buy all shareholders' shares at the same price. The two purchasers may be offshore and ought really to be unconnected. …"

It appears from this that Mr Steele did not understand the concert party provisions in the Code at this point. At 8:56 Mr Steele forwarded his email to Mr Paladini and Mr De Marco.

230. At 10:09 Mr Steele sent Mr Michel a further email asking the identity of the party to whom Mr Paladini would giving his shares.

231. At 11:01 Mr Michel replied that he guessed he needed three companies now and asking Mr Steele to confirm that the total shareholding the purchasers would be aquiring including Mr Paladini's shares was 62%.

232. At 12:20 Mr Steele replied that the total was 62.2%.

233. At 22:07 Mr Michel replied saying that he would provide the companies' names as soon as possible, but he needed to look into the tax situation, and asking that Mr Steele prepare the agreements in the meantime.

Tuesday 14 August 2007

234. At 8:21 on 14 August 2007 Mr Steele sent Mr Michel the draft Wanlock contract.

235. At 13:00 Ms Duquemin sent Mr Steele at Mr Paladini's request a spreadsheet showing QPRH's cash flow from 28 June 2007 to 22 August 2007. The spreadsheet showed the payment of £200,000 to HMRC on 19 July 2007 and of £250,000 to HMRC on 31 July 2007 and the receipt of £2,216,350 from Fulham on 6 August 2007. It also showed a projected payment of £400,000 to HMRC on 15 August 2007 and a cumulative deficiency of £569,003.97 by 22 August 2007.

236. At 13:10 Mr Steele made an electronic note in the following terms:

> "The bidders offered £1,500,000 for the Monaco shares and £1,000,000 for the directors loans. GP refused.
>
> 2 The offer was increased to £2,000,000 for the Monaco shares, £2,000,000 for the directors' loans IF the club was promoted and £500,000 for GP's shares
>
> 3 GP said to pay £2,500,000 for the Monaco shares and the bidders could have GP's shares free, as GP was being ret[a]ined for three years after the sale
>
> 4 GP then asked for an additional £250,000 for the directors' loan[s]. Bidders refused

> 5 Bidders now say they will pay no more than what has been offered
>
> Holdings MUST pay £400,000 by this Friday and about £1,600,000 by the end of the month
>
> OPTIONS
>
> 1 Accept bidders[’] offer
>
> 2 Find better offer (but no time)
>
> 3 Try and raise funds until end of month. Ask Antonio and Franco. There is no time to raise new share issue as 32 days clear notice must be given to the shareholders. Going forward the Club needs circa £900,000 per month to survive
>
> 4 Call in KPMG as administrators BUT ABC may call in their own Receiver. This has possible DTI implications and fall out amongst fans".

237. It appears from this note that Mr Paladini had been trying to persuade the purchasers to increase the offer made in respect of the directors' loans, but the purchasers would not budge.

238. It appears that Mr Steele printed off a copy of the note at 14:57, and that at some point either that copy or a copy of that copy found its way to Mr Caliendo, since the Claimants have disclosed a copy of the print-out (with manuscript additions).

239. At 22:59 Mr Michel sent Mr Steele an email as follows (emphasis added):

> "Can you confirm [to] me that *the debt owed to Mr Caliendo by the club (I understand between 6.5 and 7 millions £) is being waived totally by Mr Caliendo* in consideration for the promotion in Premiership. *This should not be in this agreement* which should be only this agreement which should be only the purchase of 62.2% of the shares for 2.5m£.
>
> …
>
> And we will need a separate agreement for this.
>
> *I will need also in the share purchase agreement a total guarantee from the sellers on any undisclosed liabilities.*"

240. During the day QPR played Leyton Orient in the first round of the Carling League Cup and lost.

Wednesday 15 August 2007

241. At 9:37 on 15 August 2007 Mr Steele forwarded Mr Michel's email of 22:59 on 14 August 2007 to Mr Paladini and Mr De Marco. Mr Caliendo has admitted that this

email was provided to him by Mr Paladini. There is no contemporaneous documentation recording any response by Mr Caliendo or any indication of an objection by Mr Caliendo to what was proposed.

242. At 13:32 Mr Cooke sent Mr Steele a spreadsheet called "Antonio Caliendo Loan Account.xls" and described by Mr Cooke as "Antonio's loan account showing money he has put into QPR". The spreadsheet consisted of two pages.

243. The first page listed 28 loans, all said to be from Mr Caliendo, in date order beginning with £450,000 on 1 March 2005 and ending with two loans of £325,000 and £500,000 on 28 March 2007. Each loan was accompanied by a brief description, in many cases referring just to the relevant bank account (Barclays or RBS). The only loan of £500,000 listed was the last one. The total of the loans listed was £6,581,328. The following points should be noted about this list.

244. First, the list also included £250,000 on 23 March 2006 and £225,000 on 22 May 2006 described as "Inland Revenue". It is clear from this that, at least for the purposes of this spreadsheet, Mr Cooke was treating the sums lent by Mr Dunga as loans from Mr Caliendo.

245. Secondly, the list included all of the amounts listed in Mr Pennington's reconciliation, but it also included: (i) four relatively small amounts in August and October 2006 (two of which were described as "ABC"); (ii) £1 million on 15 January 2007; (iii) three sums of £250,000 on 21, 21 and 22 February 2007; and (iv) the sums of £325,000 and £500,000 I have already mentioned.

246. The second page of the spreadsheet was headed "Directors' Loans 2005-06". This page listed 13 loans in date order beginning with £175,000 on 9 December 2005 and ending with £225,000 on 22 May 2006. These 13 loans match the corresponding entries in the first page of the spreadsheet, but the second page differs from the first page in that the column headed "name" does not always identify Mr Caliendo as the source of the loan. In particular, it identifies Mr Dunga as the source of the £250,000 received on 23 March 2006. Otherwise, the information in this column corresponds with the information in Mr Pennington's reconcilation except that it identifies *Mr Caliendo* as the source of the £225,000 paid to HMRC on 22 May 2006 (rather than Mr Dunga).

247. In her witness statement Ms Caplehorn gave evidence of a conversation she had had with Ms Duquemin in about October 2010 following receipt by QPRH of the claim made by Mr Dunga (as to which, see below). Ms Duquemin told Mr Caplehorn that she and Mr Cooke had put together the spreadsheet in accordance with the normal practices of QPRH for the purposes of the Transaction. It was an extract from QPRH's Sage accounting software that had been exported to Excel and subsequently edited. Ms Duquemin had also told Ms Caplehorn that the information she and Mr Cooke had put into the system concerning the Caliendo loan account had come from Mr Caliendo, and that Mr Caliendo was the only person who knew where the money was coming from. This evidence was corroborated by Mr Cooke, who gave evidence that Mr Paladini, and possibly Mr Caliendo, had confirmed that the spreadsheet was correct. Mr Cooke also said that, at Mr Paladini's request (and possibly Mr Caliendo's) he had not included in the spreadsheet the £400,000 odd that had been repaid to Mr Caliendo by that time.

248. At 13:52 Mr Steele sent Mr Michel an email saying:

> "The total of the loans, excluding interest, is £6,581,328. I can provide a detailed breakdown if you wish. I propose that Mr Calliendo [sic] signs a letter of discharge of the debt, in consideration of the payment being made if the Club is promoted…"

249. Mishcon de Reya pleaded in its Defence that there was a meeting between Mr Calvo and Mr Steele on about 15 August 2007, but this contention was rightly not pursued by counsel for Mishcon de Reya in his closing submissions.

Thursday 16 August 2007

250. At 10:52 on 16 August 2007 Mr Steele sent Mr Michel an email, copied to Ms Hanks, saying:

> "As far as the guarantee is concerned I understand Suzanne has seen all the financial information up to the end of April this year, since when the financial position has marginally improved. Subject to your views I intend to draft the guarantee from Mr Caliendo along the following lines
>
> - that to the best of his knowledge the financial information so far presented is accurate, and
>
> - that there are no material omissions (material being any sum in excess of £100,000)".

251. At 10:57 Mr Steele forwarded this email to Mr Paladini and Mr De Marco, saying in addition:

> "I asked Ilario last night if he wanted to look at the sale agreements, as so far Antonio has only seen the first draft. He said not at this stage".

It is clear from this that Mr Steele was aware that Mr Calvo was assisting Mr Caliendo with regard to the Transaction.

252. At 11:01 Mr Michel forwarded to Mr Steele an email Mr Michel had received from Ron Smith of Wilkins Kennedy solicitors, whom Mr Michel had asked for advice about the acquisition. Mr Smith advised (correctly) that, if the company was subject to the Code, then buying through three different offshore companies would not help to avoid the 30% trigger for an offer to all shareholders since the rules covered companies acting in concert. Mr Michel asked Mr Steele:

> "Can you confirm [to] me that the company is subject to the take over panel, and if this is the case, what should we do because it seems that buying from 3 different companies does not make a difference. Otherwise, would we have to make an offer to the other shareholders?"

253. At 11:29 Mr Steele sent Mr McMaster an email asking about the "rescue" exception to Rule 9 of the Code. At 15:52 Mr McMaster replied explaining the circumstances in which this exception would apply.

Friday 17 August 2007

254. On 17 August 2007 the *Mail Online* published an article headed "Briatore buy-out keeps QPR going" which stated:

> "Renault chief Flavio Briatore will complete a £19 million deal for Queens Park Rangers next week, saving the club from going into liquidation.
>
> Gianni Paladini, who will stay as chairman, said: 'This saves the club from liquidation. Mr Briatore wants to do for QPR what Mohammed Fayad has done for Fulham and turn us into a Premier League club. It is a dream come true for all the fans.'
>
> Billionare Briatore will wipe out QPR's debt of £17m and invest in the club that has been out of the top flight since 1996 and beset by debt and boardroom rows.
>
> …"

255. Presumably as a result of this publicity, the Panel got in touch with QPRH. At 10:46 on 17 August 2007 Mr Steele's secretary sent him an email asking to call Anna Howard at the Panel back urgently.

256. At 11:32 Mr De Marco sent Mr Paladini an email, copied to Mr Steele, saying:

> "Further to our conversation, I agree that the Panel are being a pain, but they are clearly pressing us right now. I have checked the Code and they do have the power to apply to Court to stop the takeover if we breach the Code. …
>
> I agree with you Gianni that we should not do anything until after you have met with Antonio so as not to jeopardise things. Surely we can tell the panel we are just waiting for a meeting of the Board members before we are able to agree an announcement, I am sure they will be satisfied with this. But once you have met within [sic] Antonio then I am sure you can agree with him just to issue a statement on the website saying 'the Board confirms that talks with new investors are taking place and we hope for an announcement next week.' …."

It was Mr Caliendo's evidence that he was never informed at any stage of any problem regarding the Code with respect to the Transaction. I do not accept this.

257. At 12:53 Mr Steele replied saying that he agreed and that Ms Howard was "furious" when she had spoken to him.

Satruday 18 August 2007

258. On 18 August 2007 QPR played its second game in the Championship at home to Cardiff City and lost.

Sunday 19 August 2007

259. At 13:49 on 19 August 2007 someone sent Mr Steele an unsigned email from a private email address belonging to Mairi MacLeod. There is no evidence as to who Ms MacLeod was, but it appears from the content of the email that she may have been Mr Steele's partner and that he was using her email account to send himself the email as an *aide memoire*. This inference is supported by the way in which Mr Steele forwarded the email as discussed below. The email states (emphasis added):

> "QPR Holdings Limited was AIM listed until 2004.
>
> There are 100mill issued shares.
>
> 62% are owned by three investors who acquired them in 20003 and have been since that date operating as a concert. No Panel clearance appears to have been obtained at that date.
>
> It is proposed to sell the 62% to Briatore and two Italians. Briatore would acquire 27%, the other two 20% and 15% respectively. Briatore would then increase the share capital and pay for the club to expand
>
> 26% of the shares are held by about 6 different companies and individuals who welcome Briatore's involvement.
>
> The remaining 12% are held by 5,100 separate shareholders. Views are unknown, but no hostility is expected.
>
> *The sale needs to take place this month as the sellers are unprepared to provide further finance and payments to creditors are to be met by the end of the month.*
>
> Complying with the Code will be too time consuming and expensive."

It is not clear who the "two Italians" referred to were.

260. An attendance note prepared by Mr Steele on 21 August 2007 ("the Attendance Note", as to which see further below) contains the following passage under the heading "19 August 2007":

> "Gianni has had further conversation with Flavio Briatore who is going to acquire the Barnaby shares.
>
> Another party, an Italian with a background in football is going to buy the shares held by Zanotti in his company, Wanlock.

> The price in both cases is 5p per share, but in the case of Barnaby Antonio will be paid £2 million if the club are promoted to the premiership, in consideration for which he will waive repayment of the loans made to the Club.
>
> Briatore will arrange for the ABC loan, currently £11 million and 11% per annum, to be paid off and replaced by a cheaper loan at an interest of 6.5%.
>
> Gianni is to donate his shares to a third company who will pay him £500,000 within two years if the share capital has increased but will pay him to remain as chairman for three years.
>
> I explained to Gianni that the Takeover Panel had been in contact alleging that someone had offered to purchase all the shares in QPR. Gianni said this was not true. The shares that have been purchased were the shares from the so-called 'Monaco' investors who had purchase[d] shares in 2004. It seems obvious to me that that purchase constituted a concert party for the purposes of the Takeover Code but nothing was done about at it at the time. Gianni said the panel received about 200 letters of complaint from shareholders owning two or three shares each."

Monday 20 August 2007

261. At 8:21 on 20 August 2007 Mr Steele forwarded the email apparently from Ms Macleod to a colleague at Mishcon de Reya, Kevin Gold, saying:

> "as discussed on Friday. The sale price is 5 price.
>
> The client is aware of the risks of non-compliance, I doubt whether the potential purchasers are.
>
> On a different note I am resigning as a director today. I am spending every weekend talking to someone or other at the club and it's becoming too much".

262. At 8:31 Mr Steele sent Mr Michel an email saying:

> "Further to your conversation with Gianni I should be grateful if you would let me have the names and addresses of the three companies.
>
> The current non-executive directors are resigning today as previously mentioned."

263. At 11:00 Ms Lambert sent Mr Steele an email asking him to call Ms Howard back with the note "urgent – r u still avoiding her?"

264. The Attendance Note includes the following passage under the heading "20 August 2007" which records a conversation some time before 15:00, and probably prior to 13:01 (emphasis added):

> "I asked Gianni again whether there had been any enquiries from the Panel as to what had occurred in 2004 when the Monaco investors acquired their shares. He replied that they had not. The shares had simply been transferred at the then market price of about 6p per share. Effectively Caliendo spoke for Zanotti, Zanotti put no money in at all and was effectively a silent partner. There is one other company loan of some £700,000 and monies lent by the Winton family, which will be repaid by Briatore.
>
> …
>
> I said to Gianni that unless it can be demonstrated that the three purchasers are entirely unconnected there will be a concert party and the panel have various powers in respect of that. *His point is that the Club has no time: there is a petition from [HMRC] to which the Winton family has joined, wages must be paid this week and other sums fall due to be paid on or before 31 August 2007. It is a question of new finance from Mr Briatore or putting the Club into administration*. If that happens there will be an automatic 10 point reduction, players may have to be sold and ABC may enforce their loan."

265. It is convenient to note at this point that the statement that Mr Winton (or Anaid) supported the HMRC petitions is consistent with the evidence of Mr Winton in his witness statement. Mr Winton says that shortly after 15 August 2007 he met Mr Caliendo and Mr Calvo for lunch. At the lunch Mr Winton asked Mr Caliendo if QPR had received the money from the sale of Danny Shittu and Mr Caliendo said no. After the lunch Mr Winton telephoned the Chief Executive of Watford FC who told me that the money had been paid. Following this Mr Winton met Mr Caliendo at the Stadium, when Mr Caliendo confirmed that the money had been received, but had been used to pay HMRC. Mr Caliendo explained that HMRC had served a winding up petition on 30 April 2007. Mr Winton's view was that this was completely wrong, and he and his son had joined the HMRC petition as a last resort in their attempt to recover the money from the sale of Danny Shittu.

266. At 13:01 Mr Steele sent Mr Paladini an email, copied to Mr De Marco, attaching the draft Barnaby and Wanlock contracts and also draft contracts for Moorbound and Mr Caliendo, asking "Are Antonio, you and Franco happy with them?"

267. The draft Moorbound contract provided for its existing shares to be donated to the purchaser, for the purchaser to procure that Moorbound was allotted a new 5% shareholding and for the purchaser to acquire that shareholding for £500,000 within two years. The draft Caliendo contract provided for Mr Caliendo irrevocably to write off all his loans to QPRH, for Mr Caliendo to warrant that the financial position of QPRH had not materially detiorated since 30 April 2007 and for Mr Caliendo to resign as a director.

268. At 15:00 Mr Steele's secretary sent Mr Steele an email asking him to call Charlie Crawshay at the Panel with the note "he said they're not used to being ignored & he will speak to the senior partner if u don't call back within the hour".

269. It is evident that Mr Steele did call Mr Crawshay back. The Attendance Note also includes the following passage under the heading "20 August 2007" (emphasis added):

> "Mr Crawshay of the Takeover Panel then phoned at about 3pm. He asked whether there had been a takeover bid i.e. an offer to purchase all of the shares.
>
> I told him there had not and I explained the background to the three shareholdings of the Monaco investors. I explained that the Panel had shown no interest in 2004 when that had occurred and that the three investors were now seeking privately to sell their shares to third parties. *I explained the financial imperatives behind the sale: if the Club did not have a fresh injection of cash imminently it would face administration. It was in a position of financial jeopardy.*
>
> He said on that basis the Code did not apply."

270. At 20:51 Mr Dagworthy sent Mr Steele an email which included an extract from an unidentified online media source stating:

> "Formula One team boss Flavio Briatore has moved a step closer to completing a takeover at Queens Park Rangers after the club's current board of directors tendered their resignations.
>
> Board members Nick De Marco, James Ferrary and Kevin Steele has all stepped down with immediate effect as Briatore – the team principal of Renault – moves closed to completing a reported buyout at Loftus Road.
>
> 'We are delighted to be able to tender our resignations in order to assist in the changes set to take place this week,' read a joint statement from the outgoing trio.
>
> 'We would like to thank Gianni Paladini in particular for attracting this important new investment and we are delighted he will stay on as chairman. …'"

The reference to "James Ferrary" was erroneous; it was Mr Kallis.

QPRH receives two or three invoices

271. Mr Cooke gave evidence that, around two weeks before the Transaction was concluded, QPRH received a fax with three invoices but no cover sheet or letter. Neither he nor Ms Duquemin had recognised the "sent from" fax number. Neither he nor Ms Duquemin knew what the invoices related to. Mr Cooke thought that he had discussed the fax with Mr Paladini,

272. The fax referred to by Mr Cooke does not appear to have survived, but there are two documents in evidence which appear to correspond to two of the three invoices.

273. The first is a fax from Credit Suisse Monaco to QPRH dated 20 August 2007 in the following terms:

> "As from 12th October 2004 until the recall of the guarantees favour Barclays Bank London on 28th of March 2007, outstanding debt interests to be paid amount to 198,161.89 GBP to be credited on account 103314 Redhill Overseas Ltd."

274. The second is a letter from Mr De Riu to QPRH also dated 20 August 2007 in the following terms:

> "SUBJECT: BANK GUARANTEE
>
> Despite your continual assurances, at the time being my bank didn't receive the refund of the bank guarantee to [QPRH] on 28th March 2007 corresponding to:
>
> - £250,000.00 … paid at first demand to the Barclays Bank.
>
> - £14,870.00 … regarding accrued interests.
>
> For a total of £264,870 …"

It appears that this related to the security put up by Mr De Riu (see paragraph 74 above).

275. Although no document which appears to correspond to the third invoice mentioned by Mr Cooke has been found, given what transpired subsequently, it is possible that there was a third document from either Credit Suisse or Mr Caliendo on 20 August 2007 demanding the payment of £541,134.

276. Mr Cooke gave evidence that Mr Paladini had agreed with him that the invoices appeared to be unrelated to QPRH and therefore should not be paid. Accordingly, he and Ms Duquemin put them to one side and did not record them in the accounts.

Tuesday 21 August 2007

277. At 10:14 on 21 August 2007 Mr Cooke or Ms Duquemin printed out an aged creditors analysis for QPRH for its accounting system. This extended to nearly three and a half-pages. It showed the total due to creditors as £1,762,337.72, of which £1,028,129.22 had been outstanding for more than three months. Rather oddly, the creditors listed did not include HMRC.

278. At some point on 21 August 2007 Mr Steele typed or dictated the Attendance Note. As noted above, it is the only attendance note which Mishcon de Reya has disclosed. It is headed "Mishcon de Reya Solicitors/Attendance Note". It then sets out the following information

> "**Client** QPR Football Club

Matter Takeover

Matter No 26598-4

Fee Earner Kevin Steele

Date 21 August 2007".

For the reasons explained above, the matter number does not assist in resolving any of the issues in these proceedings.

279. The Attendance Note includes the following manuscript addition:

> "21 August
>
> Anna Howard asked if Bernie Ecclestone was buying [illegible word] the shares. No."

280. Mishcon de Reya contends that there was a meeting on 21 August 2007 at Mishcon de Reya's offices attended by Mr Steele, Mr Caliendo, Mr Calvo, Mr Paladini, Mr Zanotti and Ms Murgia of the T&F Group during which a number of documents were signed. Mishcon de Reya also contends that one of the key purposes of the meeting was to settle the outstanding dispute between Mr Caliendo/QPRH and the T&F Group with regard to the latter's fees in order to enable Mr Caliendo to obtain advice from the T&F Group with respect to the Transaction.

281. Mr Caliendo appeared to admit in his main witness statement that there was a meeting between Mr Steele, Ms Murgia and their clients on 21 August 2007, but denied that he was present at the meeting. At one point in his cross-examination, he appeared to admit that in fact he was present at this meeting; but he may have been intending to refer to a meeting on 22 August 2007. He also said that he could not remember the date of his first meeting with Mr Steele. Mr Zanotti accepted that it was possible that he had attended meetings with the T&F Group in this period, but did not recall whether he had done so or not.

282. The documentary evidence concerning this meeting consists of five strands. First, there is an email from Mr Steele to Ms Murgia at 10:13 on 22 August 2007 (as to which, see below) which records that he "handed" the draft Barnaby and Wanlock contracts to her "yesterday". Thus it is clear that Mr Steele met Ms Murgia on 21 August 2007. Since there is no evidence of any previous contact between them, this makes it likely that Mr Caliendo was also present to introduce them. Furthermore, Mr Caliendo admitted in his main witness statement that he had informed Mr Steele that Ms Murgia "acted for Barnaby, Wanlock and me" prior to Mr Steele's email to Ms Murgia at 9:12 on 22 August 2007, and he did not identify any other occasion on which he could have informed Mr Steele of this.

283. Secondly, there is a fee note from AccounTrust to QPRFC numbered FN00338 dated 21 August 2007 for "all work undertaken in relation to the above to date" in the sum of £48,082.86 including VAT. In itself, this is neutral, but it supports Mishcon de Reya's case as to the purpose of the meeting. Furthermore, since Mr Caliendo had

previously been involved in the dispute with the T&F Group, this supports the proposition that Mr Caliendo was involved in settling that dispute on this occasion.

284. Thirdly, there are a series of three documents dated 21 August 2007 as follows:

i) A document signed by Mr Paladini as Chairman of QPRFC and witnessed by Mr Steele's secretary confirming that QPRFC will pay AccountTrust's fee note on or before 31 August 2007. There is also a further copy of this document bearing a statement by Mr Steele as a solicitor of the Supreme Court certifying that the signatures of Mr Paladini and his secretary are true and that he witnessed them.

ii) A document signed by Mr Caliendo in his capacity as ultimate beneficial owner of Barnaby instructing Barnaby to issue a power of attorney in favour of Mr Steele for the purpose of signing the agreement for the sale of Barnaby's shares in QPRH for £1,453,707.30 on behalf of Barnaby and also authorising T&F SA I to instruct the directors of Barnaby to release this sum to an account at Barclays in Monaco.

iii) A document signed by Mr Zanotti in his capacity as ultimate beneficial owner of Wanlock instructing Wanlock to issue a power of attorney in favour of Mr Steele for the purpose of signing the agreement for the sale of Wanlock's shares in QPRH for £1,046,292.70 on behalf of Wanlock and also authorising T&F SA I to instruct the directors of Wanlock to release this sum to an account at Credito Foncier in Monaco.

285. Although only the first of these three documents is witnessed, all three bear Mishcon de Reya document numbers, indicating that they were all prepared on Mr Steele's instructions. This is at least consistent with all three having been executed in the same place and at the same time.

286. Fourthly, at 18:48 on 21 August 2007 Mr Malik sent Mr Steele by fax a signed print-out of an email from himself to Mr Steele confirming that Mrs Paladini had instructed him as company secretary to authorise Mr Paladini to deal with matters pertaining to Moorbound on her behalf including signing any documents on behalf of Moorbound and stating that Moorbound will not be responsible for any professional fees incurred in relation to the matter. This is consistent with Mrs Paladini having been requested by Mr Paladini to organise this confirmation following the meeting.

287. Fifthly, Ms Tomassini of T&F Group referred in an email she sent to Mr Steele and copied to Ms Murgia at 14:53 on 29 August 2007 (as to which, see further below) to "our file notes taken during the meeting between Laura, the clients and yourself at your premises". As noted above, Mr Caliendo accepted that this referred to the meeting on 21 August 2007, but denied that he was present. In my judgment "the clients" to whom Ms Tomassini referred must have included Mr Caliendo.

288. Accordingly, I conclude that Mr Caliendo did attend the meeting. Counsel for the Claimants submitted that, even if Mr Caliendo attended the meeting, it was not attended by Mr Paladini or Mr Zanotti, but in my view it is more probable than not that they both attended as well.

Wednesday 22 August 2007

289. At 10:13 on 22 August 2007 Mr Steele sent Ms Murgia an email, attaching copies of the draft Barnaby, Wanlock and Moorbound contracts, in the following terms:

> "Further to our telephone conversation yesterday I confirm that we have agreed, in principle, as follows:
>
> 1. You will have duly signed by two directors or a director and secretary as appropriate the sale contracts from Barnaby and Wanlock which I handed to you yesterday.
>
> 2. You will have the stock transfer form signed by the appropriate officers of both companies by the appropriate officers of both companies.
>
> 3. You will send the above two documents to me with the share certificates which I undertake to hold STRICTLY to your order.
>
> 4. You will send me the bank account details of both Wanlock and Barnaby.
>
> 5. When you have received the monies from the purchaser the documents mentioned above will be released and I may have them dated, executed by the buyer and certified. I will send you certified copies.
>
> If there is anything I have missed from this email please do not hesitate to contact me."

290. At 10:59 Mr Steele sent Ms Murgia an email in the following terms:

> "In order to avoid falling foul of the takeover panel the transaction has to be revised so that Antonio and Franco sell their shares for 1 penny each, with the balance of the £2,500,000 being paid to Antonio to cancel his loans. The bonus payment of £2,000,000 is unaffected.
>
> This means Antonio will have to account to Franco for the monies Franco will lose on the reduced share price, but the end result is the same."

291. It is likely that this change in the structure of the deal was suggested by the purchasers on legal advice. At some point prior to 11:04 on 22 August 2007 Mr Michel instructed Mr Indaimo (of Withers) on behalf of the purchasers and Mr Michel asked Mr Steele to call Mr Indaimo. Mr Steele left a message on Mr Indaimo's mobile phone and sent him an email at 11:04 saying he had done so.

292. At 11:42 Ms Duquemin sent Mr Steele a spreadsheet showing QPH's cash flow from 20 August 2007 to 7 September 2007. This showed a projected payment of the following sums on 31 August 2007: (i) £963,000 to HMRC; (ii) £78,000 to ABC in

respect of interest; (iii) £450,000 to Mr Winton; and (iv) £48,082.86 to AccounTrust. It also showed a cumulative deficiency of £2,104,371.39 by 7 September 2007.

293. At 11:51 Mr Steele replied to Ms Duquemin asking whether the spreadsheet included "about £40,000 plus vat due to T and F Limited?" At 11:54 Ms Duquemin asked "Who is T and F Ltd?" At 11:55 Mr Steele replied that "they supplied tax advice to Barnaby and Wanlock and apparently the Company agreed to pay their fees. Gianni and I discussed this last night". At 11:58 Ms Duquemin replied that she had had the invoice from AccounTrust for £48,082.86, which she had discussed with Mr Paladini that morning, and this was included in the cash flow. At 11:59 Mr Steele forwarded Ms Duquemin's email to Ms Murgia, saying "I have received confirmation that your fee account is included in the cash flow which is to be sent to the purchaser".

294. At 15:16 Mr Steele emailed Mr Indaimo copies of revised drafts of the four contracts Mr Steele had prepared. These drafts differed from the previous drafts in that: (i) the Barnaby draft provided for consideration of £276,488.36; (ii) the Wanlock draft provided for consideration of £199,000; (iii) the Moorbound draft provided for immediate consideration of £147,631.83 and deferred consideration of £352,369; and (iv) the Caliendo draft provided for Mr Caliendo to waive repayment of his loans in consideration of the payment of £2,024,511.64.

295. At 17:15 Mr Steele forwarded Ms Duquemin's cash flow spreadsheet to Mr Indaimo, describing it as "a list of critical payments due and the due dates".

296. At 17:24 Mr Murgia replied to Mr Steele's earlier email to her, saying (emphasis added):

> "Thanks for sending us the sale contract for our perusal. We await to receive the Side Letter and Escrow agreement for our perusal as discussed on the phone today.
>
> *With regard to the wording of the main contract you sent us, and after discussion with the client, we would have the following comments:*
>
> clause 1.
>
> …
>
> Please can you kindly clarify this point, who are the other members of QPR referred above?
>
> Please note that Barnaby/Wanlock can sign only what is strictly relating to their own obligations for the transaction; the contract cannot be made conditional to obligations on the part of other QPR members.
>
> clause 2.
>
> (Barnaby) it does not specify a deadline within which the £2 mil is due. We understand from the client he wishes this to be

> paid within 30 days of the club being promoted to the Premiership.
>
> What happens if the club is promoted by the Buyer does not pay? What other guarantees/undertakings are in place to safeguard Barnaby?
>
> …
>
> *After speaking to the client*, he is suggesting to include in the contract that, should the Buyer sell the holding to a third party, Barnaby should have the option to buy back the shares from the Buyer at the same price offered by the third party.
>
> We also take note of the latest changes in the share transaction price and await to receive the revised contract for our perusal, as this fact does also affect the wording of the Powers of Attorney that Barnaby/Wanlock are authorised to issue in your favour for signing the contract (*instruction from the clients yesterday did specify the previous purchase price*).
>
> We also understand from the client that a separate agreement will now be necessary as the repayment of the loans would be made to Mr Caliendo personally as the loans were effect by him as Chairman and not by Barnaby. Can you pls kindly confirm this is indeed the case.
>
> *As we understand time is of the essence for the client, we look forward to finalising the above.*"

297. As Mr Caliendo accepted, the "client" referred to by Ms Murgia was Mr Caliendo. It is clear from the email that the T&F Group were advising Mr Caliendo in relation to the terms of the draft Barnaby contract. It appears from Ms Murgia's subsequent email at 10:07 on 30 August 2007 (as to which, see below) that Mr Primicerio was involved in giving this advice.

298. At some point on 22 August 2007, probably after this email, various documents were executed on the vendors' side. It is probable that these were executed during a meeting between Mr Caliendo and Ms Murgia. These documents were as follows:

    i) A document signed by Mr Caliendo in his capacity as ultimate beneficial owner of Barnaby instructing T&F SA I to instruct Barnaby to issue a power of attorney in favour of Mr Steele for the purpose of signing the agreement for the sale of Barnaby's shares in QPRH for £276,488.36 on behalf of Barnaby, authorising T&F SA I to instruct the directors of Barnaby to release this sum to an account at Barclays in Monaco and confirming that he had received independent legal advice in relation to the transaction.

    ii) A document in the name of Mr Dunga (but signed by Mr Caliendo using Mr Dunga's name) in his capacity as ultimate beneficial owner of Barnaby instructing T&F SA I to instruct Barnaby to issue a power of attorney in

favour of Mr Steele for the purpose of signing the agreement for the sale of Barnaby's shares in QPRH for £276,488.36 on behalf of Barnaby, also authorising T&F SA I to instruct the directors of Barnaby to release this sum to an account at Barclays in Monaco and confirming that he had received independent legal advice in relation to the transaction.

iii) A document signed by Mr Caliendo in his capacity as ultimate beneficial owner of Wanlock instructing T&F SA I to instruct Wanlock to issue a power of attorney in favour of Mr Steele for the purpose of signing the agreement for the sale of Wanlock's shares in QPRH for £199,000 on behalf of Wanlock, authorising T&F SA I to instruct the directors of Wanlock to release this sum to an account at Credito Foncier in Monaco and confirming that he had received independent legal advice in relation to the transaction.

iv) A document signed in the name of Mr Zanotti (but signed by Mr Caliendo in both Mr Zanotti's name and his own name) in his capacity as ultimate beneficial owner of Wanlock instructing T&F SA I to instruct Wanlock to issue a power of attorney in favour of Mr Steele for the purpose of signing the agreement for the sale of Wanlock's shares in QPRH for £199,000 on behalf of Wanlock, authorising T&F SA I to instruct the directors of Wanlock to release this sum to an account at Credito Foncier in Monaco and and confirming that he had received independent legal advice in relation to the transaction.

299. I surmise that the reason for the preparation of the documents in the names of Mr Dunga (concerning Barnaby) and Mr Caliendo (concerning Wanlock) was that Ms Murgia was aware from T&F Group's previously involvement with Barnaby and Wanlock that the position regarding the ultimate beneficial ownership of these companies was not entirely clear, and therefore wanted to be sure that all possibilities were covered.

300. At 22:04 Jamie Cuffe of Withers emailed Mr Steele an extensive due diligence questionnaire and said that Withers anticipated that "our client will appoint someone to review the current financial and tax position of the company in order to update the position they have as a result of Suzanne Hanks review which took place some time ago". In due course the Purchasers appointed Baker Tilly to undertake this exercise.

Thursday 23 August 2014

301. At 8:19 on 23 August 2007 Mr Steele forwarded Mr Cuffe's email to Mr Cooke and Mr Paladini. At 11:42 Mr Cooke forwarded it on to Mr Caliendo.

302. At 11:11 Mr Steele forwarded to Mr Cuffe Ms Duquemin's cash flow spreadsheet asking him to note that "the correct figure due to the Wintons is £832,000". It is not clear where Mr Steele got this information from.

303. At 13:40 Mr Winton sent Mr Steele a letter by fax saying that he was "most surprised to be informed last night that the proposed purchasers of the Q.P.R. equity had reduced their bid price to 1p per share, as the company was without any realistic net asset value" and arguing that the Stadium was worth £20 million and six of the players were worth a total of £5,250,000.

304. At 15:16 Paul Ellison and Sarah Moppett of Tenon Recovery, acting for ABC, sent Mr Cooke an email informing him that the amount which would be required to redeem the ABC Loan as at 31 August 2007 would be £10,078,367.54 plus ABC's legal costs.

305. At 16:00 Ms Murgia sent Mr Steele an email informing that "this morning, upon the client's request, we have provided him via fax with a photocopy of the Share Certificate n. 6259 of [QPRH] issued to [Barnaby] for a total n. of shares 17,648,836" and that T&F SA I held the original.

306. At 16:15 Mr Cuffe emailed Mr Steele a set of seven draft Transaction Documents and a draft timetable, subject to his clients' comments, in anticipation of a conference call that evening. Although Mr Cuffe said in his covering email that the attached documents were "in substitution for those circulated last night", there is no evidence that Mishcon de Reya had received any previous drafts. Mr Cuffe also stated that:

> "Having discussed it with Charles Stanley, the preferred structure is now to sign up the shares of [Barnaby], [Moorbound] and [Wanlock] immediately and trigger a mandatory rule 9 offer."

307. The documents attached to the email were:

i) A draft share sale agreement between Barnaby, Mr Caliendo and Mantee Capital Holding Inc ("Mantee") providing for the sale of Barnaby's shares to Mantee for £275,210.61 (draft 1 of the SSA, "SSA1"). Schedule 2 to SSA1 was a deed of waiver between Mr Caliendo, QPRH and Mantee which recited that Mr Caliendo had lent QPRH £6,581,328. In return for waiving QPRH's obligation to repay these loans, Mr Caliendo was to be paid £2,024,511.64 by Mantee (i.e. the difference between £2.5 million and the consideration he would receive for his shares). In addition, Mantee would pay Mr Caliendo £2 million if QPR was promoted to the Premiership within five years. Schedule 2 also contained an indemnity by Mr Caliendo if the Completion Net Assets of QPRH were less than an amount to be specified (i.e. the Net Assets Indemnity), but with the indemnity capped at £4,024,511.64 (i.e. £2,024,511.64 plus £2 million), and a warranty from Mr Caliendo to effect that QPRH's tax affairs were all in order.

ii) A draft share sale agreement between Wanlock and Mantee providing for the sale of Wanlock's shares to Mantee for £199,000;

iii) A draft share sale agreement between Moorbound and Mantee providing for sale of Moorbound's shares to Mantee for £147,631.83;

iv) A deed of waiver of claims against QPRH by Wanlock;

v) A deed of waiver of claims against QPRH by Mr Zanotti;

vi) A deed of waiver of claims against QPRH by Moorbound;

vii) A deed of waiver of claims against QPRH by Mr Paladini.

308. The draft timetable provided for "Bruno to seek Mr Paladini's consent to 1p per share only and no additional consideration" and for the Board of QPRH to take advice from a Rule 3 adviser on 23 August 2007 and for completion and payment of HMRC on 29 August 2007.

309. At 17:47 Ben Simpson of Withers emailed Mr Steele and others an agenda for a conference call starting at 18:00. The main headings of the agenda were "Timing", which included appointment of QPRH's Rule 3 advisor, "Due diligence required before committing funds", "Structure of offer" and "Next steps", which included "agree form of documents with Mishcons".

310. At 20:16 Henry Fitzgerald-O'Connor of Charles Stanley Securities, which was acting for the Purchasers, emailed Mr Steele a draft "Statement in respect of a possible offer" to be issued by QPRH saying that the Board was "engaged in discussions with a number of parties that may or not lead to an offer being made for the entire issued share capital", together with a draft letter from QPRH authorising Charles Stanley to submit announcements on its behalf to the London Stock Exchange's Regulatory News Service ("RNS"). Mr Fitzgerald-O'Connor requested that the letter be printed on QPRH notepaper, signed by Mr Paladini and faxed to RNS, and said the Panel required the announcement to be out by 9:00 the next morning.

311. At 23:55 Mr Cuffe sent Mr Steele an email saying that Mr Steele had mentioned during the conference call that he held powers of attorney from shareholders who were to give irrevocable undertakings and asking which shareholders and whether Mr Steele could provide Withers with copies.

Alleged meeting between Mr Caliendo and Mr Steele on 23 or 24 August 2007

312. It is the Claimants' case that Mr Caliendo and Mr Calvo attended a meeting with Mr Steele at Mishcon de Reya on either 23 or 24 August (but more probably 23 August 2007) at which SSA1 was discussed. Mr Caliendo claims that at this meeting he told Mr Steele (through Mr Calvo) that he could not agree to either the Net Assets Indemnity or the tax warranty included in the draft Schedule 2. Mr Caliendo also claims that Mr Calvo expressed concern that he could not see provision for reimbursement of the Three Debts in SSA1 and that Mr Steele said that they were covered somewhere in it and Mr Calvo should read the draft agreement overnight (and Mr Caliendo claims that, when Mr Calvo could not find any mention of the Three Debts overnight, Mr Steele assured Mr Calvo that they would be included in the next draft of the SSA). Mishcon de Reya disputes that there was a meeting on 23 or 24 August 2007 and disputes that Mr Caliendo gave Mr Steele such instructions at any meeting or that Mr Calvo raised the subject of the Three Debts.

313. This alleged meeting was not referred to in the Claimants' Pre-Action Protocol letter dated 18 December 2009 or in a subsequent Pre-Action letter dated 3 June 2010. It was first mentioned in the Particulars of Claim. There is no contemporaneous documentary evidence that this meeting took place, and in my judgment the documentary evidence suggests that it did not. Mr Caliendo's written evidence was that he did not attend any meeting with Mr Steele on 21 August 2007, but did attend one on 23 or 24 August 2007. I have already noted that in cross-examination Mr Caliendo said that he could not remember the date of his first meeting with Mr Steele

and concluded that Mr Caliendo did attend the meeting on 21 August 2007. Accordingly, I conclude that there was no meeting on 23 or 24 August 2007.

314. Furthermore, Mr Caliendo changed his story in cross-examination as to when he gave Mr Steele the alleged instructions concerning the Net Assets Indemnity and the tax warranty, and said that it was at a second meeting with Mr Steele on 28 August 2007 (which, to be fair, is what was alleged in the Claimants' letter dated 3 June 2010). Finally, I would add I do not accept that any mention was made of the Three Debts at this stage, particularly given the absence of corroboration from Mr Calvo.

Friday 24 August 2007

315. At 0:42 on 24 August 2007 Mr Cuffe sent Mr Steele a draft undertaking from Mishcon de Reya to Withers for comment. The draft was in the following terms (emphasis added):

> "We refer to the Transactions [defined as 'Purchase of shares in [QPRH] by [Mantee] and waiver of debts by Antonio Caliendo] *in which we act for [Barnaby], Antonio Caliendo, [Wanlock] and [Moorbound]*.
>
> We undertake that upon receipt of [£] in our client account we will hold such amount to your order, returnable to you upon demand together with any interest accrued thereon, pending completion of the Transactions."

316. At 0:52 Mr Cuffe emailed Mr Steele revised drafts of the SSA ("SSA2") and of the waivers by Wanlock, Mr Zanotti, Moorbound and Mr Paladini.

317. At 8:17 Mr Steele replied to Mr Fitzgerald-O'Connor's email of 20:16 the day before approving the draft announcement. At 8:45 Fitzgerald-O'Connor asked whether the announcement had been submitted to RNS. At 8:46 Mr Steele replied "going now". At 9:32 Mr Steele sent Mr Fitzgerald-O'Connor an email saying that he had been told that the announcement needed Rule 8 wording. At 10:35 Mr Fitzgerald-O'Connor sent him an amended announcement.

318. At 8:24 Mr Steele replied to Mr Cuffe's email of 0:42 approving the draft undertaking.

319. At 8:58 Mr Steele replied to Mr Cuffe's email of 23:55 the day before saying "not quite".

320. At 13:05 Ms Duquemin sent Mr Steele an email explaining:

> "As per the QPR Cash flow, the amount of £304,850.15 [is] for supplier payments. Throughout the month an Excel spreadsheet is compiled with a list of all the Creditors chasing for payment of their invoices. Towards the end of the month, the list is presented to the directors with a view to gain authorisation to pay depending on the cash flow and available funds. This list is

> not set in stone and any suppliers not paid for that particular month gets rolled into the next month."

The amount of of £304,850.15 referred to by Ms Duquemin appears in the spreadsheet she sent Mr Steele at 11:42 on 22 August 2007 as one of the payments scheduled for 29 August 2007.

321. At some point on 24 August 2007, probably shortly after 9:00, the Panel wrote to QPRFC (a mistake for QPRH) stating that, following QPRH's announcement, the company was now in an "offer period" as defined in the Code and explaining the consequences of this.

322. Mr Fitzgerald-O'Connor wrote to the Panel twice on 24 August 2007 regarding Mantee's proposed offer. The first letter, which was sent in the morning, began by explaining the background to the proposed offer. It stated that (emphasis added):

> "The Company has been loss making for several years and the May 2007 accounts are likely to show a balance sheet in a negative equity position. *Antonio Caliendo … is no longer willing to continue supporting the Company by making funding available (having already advanced approximately £6.6 million).* If external funding is not introduced by 31 August 2007, the Company is unlikely to be able to meet certain liabilities, including those to HMRC, and the Company is expected to be forced into administration."

323. The letter proceeded to outline the structure of the deal as then envisaged. It stated that Mantee intended to make an offer for the entire issued share capital of QPRH of 1 pence per share. It was anticipated that Mantee would initially purchase the Barnaby stake of 27.6% and would then make a formal offer to be recommended by the board by way of Rule 2.5 announcement. It was also anticipated that the announcement would disclose that Mantee had obtained irrevocable undertakings in respect of the Wanlock 19.9% and Moorbound 14.8% stakes.

324. Having summarised QPRH's major liabilities, including £3.1 million due to HMRC, of which circa £950,000 was due on 31 August 2007, the letter went on:

> "Accompanying the share purchase agreement between Mantee and [Barnaby], Mr Caliendo has agreed to waive the £6.7 million loan to the Company in consideration for £2,025,789 and an extra £2,000,000 should QPR return to the Premier League within the next 5 seasons. Mr Caliendo will therefore agree to write off a minimum of approximately £2.7 million and a maximum of £4.7 million. We do not believe that this will constitute a special arrangement under Rule 16 of the Code as Mr Caliendo, whose debt is repayable on demand by virtue of having no formal loan documentation in place, will be suffering an immediate write off of at least £2.7 million, which cannot be seen as 'favourable' towards Mr Caliendo."

325. The second letter, which was sent in the afternoon, began by stating that the offeror was to be Sarita rather than Mantee. (Sarita was incorporated in the British Virgin Islands on 10 August 2007.) The letter went on:

> "Contrary to my previous letter, Mr Caliendo has agreed to waive £4.78 million of the £6.7 million loan to the Copan for no consideration on the signing of the share purchase agreement. Mr Caliendo will therefore be left with an outstanding debt of £2 million in the Company. It is anticipated that he will be treated like all other creditors and could expect to have his debt repaid by the Company at some point in the future. There are no special arrangements to treat Mr Caliendo preferentially, and we therefore understand that this will not constitute a special arrangement under Rule 16 of the Code."

326. At 13:28 Chris Winn of Withers sent Mr Steele a draft term sheet for a proposed loan from Sarita to QPRH of up to £4 million to enable QPRH to pay HMRC £960,000 and to pay the balance for three players at an interest rate of 11.76% per annum secured by fixed and floating charges over all of the QPRH's assets for Mr Steele to review. The reason for the proposal to lend an additional £3 million was that QPR was desirous of acquiring further players before the summer transfer window closed on 31 August 2007.

327. At 13:48 John Shields of Withers sent Mr Steele a form of undertaking for each of the three selling shareholders asking Mr Steele to arrange for the appropriate details for each shareholder to be filled and for the undertakings to be signed. It appears that these undertakings were not to enter into negotiations with other potential purchasers of the shares during an exclusivity period ending at midnight on 31 August 2007. Mr Steele asked his secretary to prepare undertakings in this form for each of Barnaby, Wanlock and Moorbound and to email them to Mr Paladini.

328. At some point on 24 August 2007 Mr Simpson sent Mr Steele an email attaching a draft irrevocable undertaking and EGM resolutions. The email set out a proposed timetable which still envisaged completion on 29 August 2007.

329. At 15:15 Mr Steele sent Mr Paladini an email which he asked Mr Paladini to forward to Ceri Jones of Lloyds TSB, who at that stage QPRH proposed to appoint as its Rule 3 adviser, explaining three issues. The first issue was that Mr Jones needed to advise the shareholders on the benefits of what was proposed:

> "It seems to me that without this bid succeeding the Club will fold. We have tried to attract new investment from other sources and have failed. We are saddled with a £10 million loan and an 11% interest rate. We have struggled to pay off historic debts owed to [HMRC]. At present the Club has unsecured creditors of over £2 millions. The directors are owed some £7 million. The shares are virtually worthless. They will become worthless if the club goes into administration. If the Club goes into administration there will be a 10 point deduction and the team might be relegated."

330. The second issue concerned the bidder's proposal at that stage to acquire more than 75% but less than 90% of the shares.

331. The third issue was expressed by Mr Steele as follows:

> "The difficult issue, and one which must be kept secret, relates to Mr Caliendo's loan. The bidder is proposed to buy his shares and the loan for £2.5 million. It is doing this by paying him a penny a share, with the balance (circa £2.3 million) as consideration for the write off of the loan. The Panel might try and argue that this is no more than a device to reduce the share price from what it would otherwise be (5 pence per share) to 1 penny per share. However this has been done before.
>
> Ceri may wish to run this past a corporate finance officer at the bank."

332. At 15:27 Mr Simpson sent Mr Steele an email asking for information to be provided to Baker Tilley, so that Baker Tilly could start discussing a net assets figure for the completion accounts with QPRH's financial team (i.e. Mr Cooke and Ms Duquemin).

333. At 20:09 Mr Indaimo emailed Mr Steele and others a fourth draft of the SSA ("SSA4"). The following points about SSA4 are of note:

i) Sarita was named as the Purchaser.

ii) Barnaby was to sell its shares and Wanlock and Moorbound were to give irrevocable undertakings to sell their shares.

iii) The deed of waiver was expressed to waive Mr Caliendo's loans save for £2 million. Mr Indaimo commented in his covering email that "we still need to make clear … the terms on which the balance of £2M was lent".

iv) The Promotion Bonus had been deleted altogether.

v) The Net Assets Indemnity and tax warranty liabilities were capped at £4,024,511.64 save in the case of fraud.

Sunday 26 August 2007

334. At 0:23 on 26 August 2007 Mr Fitzgerald-O'Connor sent an email to Roland Cornish and a colleague at Beaumont Cornish saying that Charles Stanley had suggested that Beaumont Cornish be appointed as QPRH's Rule 3 advisor. Mr Fitzgerald-O'Connor also said:

> "Discussions are well developed and due to the fact that QPR is in financial difficulty, it is imperative that any deal is concluded by 29 August, being the last day in which funds must be available to the club in order for them to purchase certain players before the close of the transfer window on 31 August."

335. At 20:31 Mr Fitzgerald-O'Connor sent Mr Steele an email saying that Mr Cornish was in London the next day and was looking to meet up to discuss the detail and asking Mr Steele to contact Mr Cornish to arrange this.

336. At 22:01 Mr Fitzgerald-O'Connor emailed Mr Cornish some key documents concerning the deal, with a copy to Mr Steele.

337. QPR had been scheduled to play Burnley away in the Championship on 25 August 2007, but the game was postponed that morning as a result of the unfortunate death of QPR's striker Ray Jones in a car crash in the early hours.

Bank holiday Monday 27 August 2007

338. At 13:40 on 27 August 2007 QPR faxed to Mishcon de Reya the exclusivity undertakings executed on behalf of each of Barnaby, Wanlock and Moorbound by Mr Paladini and another person whose identity is unclear. Mr Caliendo gave evidence that he had not authorised Mr Paladini to do this. It is unclear upon what other basis Mr Paladini would have done so, but it is unnecessary to try to resolve this question.

Tuesday 28 August 2007

339. At 8:19 on 28 August 2007 Mr Steele sent an email to Mr Fitzgerald-O'Connor, Mr Indaimo and others saying that QPRH was happy to accept Mr Fitzgerald-O'Connor's suggestion that Beaumont Cornish be appointed as QPRH's Rule 3 advisor and that he was available for a proposed meeting at Withers that afternoon. The meeting was subsequently arranged for 15:30. In answer to a question from Mr Cuffe at 12:02 as to was attending "from the Board and Baumont Cornish", Mr Steele replied at 13:99 "Roland Cornish, me and Gianni Paladini". The agenda for the meeting included at item 4.3 "Agree form of documents with Mishcons" including the SSA. Completion was queried for 29 August 2007.

340. At 11:46 Mr Winn emailed Mr Steele and others a revised draft term sheet, this time providing for Sarita to lend QPRH £5 million.

341. At 16:21 Ms Tomassini (of the T&F Group) emailed Mr Steele further to a voicemail saying that she had taken over the QPR matter from Ms Murgia and asking "whether you are in a position to send us the documents tomorrow, for our review." It appears that the documents she was referring to were those identified in the subject line of the email: "Side letter, escrow agreement and revised contract – QPR".

342. At same point on 28 August 2007 Mr Caliendo executed a general power of attorney under the Powers of Attorney Act 1971 in favour of Mr Steele. Mr Caliendo's signature was witnessed by Mr Calvo. It is common ground that this document was executed by Mr Caliendo whilst he and Mr Calvo attended meeting with Mr Steele at Mishcon de Reya's offices. It is implicit in Mr Caliendo's evidence that Mr Zanotti was not present. Although Mishcon de Reya pleaded that Mr Zanotti was present at this meeting, it was not put to either Mr Caliendo or Mr Zanotti that he was present.

343. In his witness statement, Mr Caliendo claimed that this meeting lasted no more than 15 minutes from start to finish; that he expected to see a revised version of the SSA which he and Mr Calvo had been shown at the meeting on 23/24 August 2007; that

Mr Steele told him (through Mr Calvo) that he was still waiting to receive a revised draft; and that instead Mr Steele presented Mr Caliendo with a power of attorney to sign, explaining to Mr Caliendo that he needed to sign it as the SSA would need to be signed imminently and Mr Caliendo would be back in Monaco.

344. In cross-examination, however, Mr Caliendo admitted that he was shown a revised draft of the SSA at this meeting. As noted above, Mr Caliendo claimed that it was at this meeting that he gave Mr Steele the instructions concerning the Net Assets Indemnity and the tax warranty, rather than at the previous meeting. Given the significant changes in Mr Caliendo's evidence on these points, as well as his general unreliability, I do not believe that Mr Caliendo gave Mr Steele such instructions at either meeting. I consider that it is likely, however, that Mr Steele explained the SSA to him, at least in outline.

345. At 18:07 Edd Castledine of Baker Tilly emailed Mr Cornish and Mr Steele a list of documents used as the basis for Baker Tilly's report saying that he would forward the documents once he had permission from Mr Steele to do so.

346. At 22:22 Stephen Abletshauser of Withers sent Mr Steele an email saying:

> "Attached is a Word document based on an excerpt … of the last audited accounts (31 May 2006) of [QPRH].
>
> As you can see, there appear to be a number of unsecured loans to [QPRH].
>
> We have received from [QPRH] loan documentation in relation to some of them:
>
> - Loan from Antonio Caliendo is loan A;
> - Loan from Antonio Caliendo is loan B;
> - Loan from Antonio Caliendo is loan C;
> - Loan from Carlos Dunga is loan H;
>
> We have, however, received no loan documentation for loans D, E, F and G;
>
> Additionally, we have received loan documentation for two loans from Antonio Caliendo (one for £1,000,000 and another for £350,000) copies of which are attached this email.
>
> Please can you confirm, with supporting evidence, that these loans have been repaid. Please can you also clarify the status/history of these loans.
>
> To the extent that these loans have not been repaid, we should be grateful if you would confirm that a waiver for each will be signed so that none of these loans will be outstanding on completion of the deal."

347. Loan A was the directors' loan for £450,000, loan B the directors' loan for £350,000, loan C the directors' loan for £950,000 and loan H the "other" loan for £250,000. Withers do not appear to have spotted that the loan agreement between Mr Dunga and QPRH did not quite match the description given in the accounts (the agreement states that the loan is convertible into 3 million shares whereas the accounts state that it is convertible into 3,333,333 shares). The additional agreements copies of which were attached to the email were the loan agreements between Mr Caliendo and QPRH for £1 million and £570,000 (not £350,000 as stated in the email) described above.

348. At 22:35 Mr Cuffe sent Mr Steele, Mr Fitzgerald-O'Connor, Mr Cornish, Mr Castledine and others a revised set of Transaction Documents including a fifth draft of the SSA ("SSA5") There were three key changes from SSA4, as follows:

i) Barnaby had been replaced by Wanlock as the vendor. Despite this change, Mr Caliendo remained a party to SSA5.

ii) The deed of waiver in Schedule 2 had the figure of £4,581,328 inserted as the amount of the debt that Mr Caliendo was waiving, leaving the sum of £2,000,000 payable by QPRH.

iii) Schedule 5 of SSA5 provided for Barnaby and Moorbound (as opposed to Wanlock and Moorbound as in SSA4) to provide irrevocable undertakings.

349. In Mishcon de Reya's manuscript mark-up of SSA5, Mr Steele inserted his own name and address as both Barnaby's and Mr Caliendo's agent for the service of process in relation to any proceedings before the English courts arising from the agreement.

Wednesday 29 August 2007

350. At 8:56 on 29 August 2007 Mr Steele forwarded Mr Abletshauser's email to Mr Paladini and Mr Cooke with the comment "urgent".

351. At 9:58 Mr Castledine emailed copies of the documents listed in his previous email (plus the 2006 audited accounts) to Mr Cornish. Among these documents were the management accounts for May 2007 (the most recent available), which include a budgeted monthly cashflow for the 2007/08 season showing a peak deficiency of £3.857 million in April 2008. Also included was a copy of Ms Duquemin's spreadsheet showing cash flow for the period from 20 August to 7 September 2007.

352. At 9:59 Mr Steele sent an email to Grant Jones of Squire Sanders and Dempsey LLP ("SSD") saying (emphasis added):

> "I refer to our telephone conversation. *I act for [Barnaby] and [Wanlock]*.
>
> *My clients intend to sell their shareholdings in an English company* and in due course we shall require letters of comfort as to the good standing of the American companies and legal opinion confirming their ability to execute various documents relating to the sale. In this regard my clients propose to grant powers of attorney to the beneficial owners of the two

companies to enable them to execute the documents as deeds. This latter point causes me some concern… "

353. At 11:24 Mr Steele sent Mr Cornish an email setting out the background to Sarita's offer (emphasis added):

"The historical problems are that when the company came out of administration in 2002 it was only able to do so with the benefit of a loan of £10 million from [ABC], a Panama based company believed to be beneficially owned by three Italian restauranteurs. The interest rate was 10% per annum, the loan term 10 years. The loan contained a term entitled [ABC] to increase the interest rate in the fifth year of the term which was earlier to this year (to 11.59%). The burden of the ABC loan has contributed to the company making financial losses, year on year (e.g. financial year 2005/06 showing a loss of £3,344,000).

The majority shareholder, [Barnaby], beneficially owned by Mr Antonio Caliendo, has supported the company through making a series of director's loans. These total on aggregate £6.5 million. *Last November he announced he was not prepared to make any further loans to the Club.*

This coincided with demands from [HMRC] for unpaid PAYE and VAT, in some cases in respect of sums due as far back as 2002. Accordingly the then directors of the company decided to seek equity investment and a replacement lender to ABC.

Enquiries were made to all the main high street banks, as well as a number of other financial institutions. Whilst there was some initial interest no offers of refinancing were made. The common theme to the rejections the company received was that football was regard as a volatile market and the company's major asset (the ground) was not considered a readily saleable asset in the even of default. This is due to the fact that there is a restrictive covenant on the title which prevents the ground from being used for any other purpose.

The Board of the Company also approached various venture capitalists, both here and in the USA. They were either uninterested in an equity injection or made offers which were unacceptable to the potentially outgoing shareholders.

The present difficulty is compounded by the fact that on 30 April [HMRC] presented a winding up position against the company. A programme of repayments was negotiated with the solicitors acting for [HMRC] but £980,000 is due to be paid pursuant to that programme before the end of this month. There are other pressing short-term creditors of approximately £1.1 million.

> In the absence of continued support from the majority shareholders, the company is in danger of entering into administration for a second time. This would lead to the Football League imposing a penalty of a 10 point deduction which would probably lead to the Football Club being relegated. That in turn would lead to a further fall in income: reduced gate receipts, reduced money from the television companies and reduced sponsorship. In addition the shareholders would lose everything."

354. At 12:01 Richard Lord of Withers sent Mr Steele an email asking for various things, including confirmation of the status of the Blitz Loan and a reply to Mr Abletshauser's email concerning the convertible loans.

355. At 12:06 Mr Steele replied to Mr Lord without answering most of his requests, but attaching a draft of a document to be executed by Mr Caliendo acknowledging the sums set out in the attached schedule and totalling £6,581,328 were debts due and owing to him by QPRH that were repayable and interest-free and that he was not owned any other monies by QPRH or QPRFC (i.e. the Caliendo Acknowledgment). The schedule was not attached at that stage.

356. At some point later on 29 August 2007 Mr Caliendo signed the Caliendo Acknowledgement. His signature was witnessed by Mr Calvo. Mr Caliendo accepted in cross-examination that this took place at a short meeting with Mr Steele at Mishcon de Reya's offices. Attached to the Caliendo Acknowledgment was a copy of the first page of the spreadsheet which Mr Cooke had sent to Mr Steele at 13:32 on 15 August 2007. In his main witness statement Mr Caliendo claimed that, whilst Mr Calvo may have translated the Caliendo Acknowledgment to him before he signed it, he did not fully digest what the document said. He also said that he could not remember if the schedule was attached, but even if it was, he would not have given it too much attention. In cross-examination, however, Mr Caliendo accepted that he had looked at the schedule. He said that he assumed that it was correct, and that it was only subsequently that he realised that there was a mistake. It is clear from the evidence in this case that Mr Caliendo had a considerable interest and expertise in financial matters, particularly those affecting his and his partners' interests. The nature of the document is plain from even a cursory inspection. I have no doubt that the schedule was attached when Mr Caliendo signed the document and that he understood what he signing.

357. At 12:57 Ms Tomassini sent Mr Steele an email saying:

> "I have just returned your 2 calls, but the receptionist just informed me that you were in a meeting.
>
> I have just been pulled out of a client meeting as Mr Caliendo has called into out offices this morning and left a message to contact him or youself in relation to documentation that you were waiting from us.
>
> As per his last conversation with Mr Andrea Primicerio, Mr Caliendo was politely reminded that under no circumstances

> would we be in a position to release a photocopy or original of the powers of attorney prepared, unless we received from your firm the documentation requested namely the side letter and the escrow agreement.
>
> I take the opportunity to remind you that the contracts for the sale of the shares can only be signed by the directors of the companies and your firm and/or the clients do not have have any authority to sign the documents, unless they have been granted specific powers to do so by the directors.
>
> Furthermore, please note that my colleague Laura has given Mr Caliendo (by hand) only photocopies of the share certificates and that the originals are kept in our safe.
>
> I look forward to receiving the agreed documentation and kindly ask you to contact me should you require further clarification."

358. This email tends to confirm that the documents signed by Mr Calderbank and Mr Hunt had not been signed at this juncture.

359. At 14:53 Ms Tomassini sent Mr Steele a further email saying (emphasis added):

> "Further to our telephone conversation today, I have taken a look at our file notes taken during the meeting between Laura, the clients, and yourself at your premises during which which you were instructed by the client to prepare a 'side letter' which states that the sale of the shares of the club are conditional on the buyer undertaking to settle all debts of the club including but not limited to Accountrust Limited's fee note number FN00338 dated 21.08.07 for £48,082.86 and that you will not release the signed documents nor the share certificates to the buyer until the payment has been credited to the companies' bank account and Accountrust has received settlement of its fees.
>
> I understand that we are no longer expecting an escrow agreement from you, as the buyer will be settling the consideration amount directly to bank accounts indicated by the two companies.
>
> *I would be grateful, however, if you could let me have the revised contracts for sale for the directors' perusal as the directors are asking for an update on the situation.*
>
> …"

360. At 16:10 Mr Steele replied to Ms Tomassini's email of 12:57 (emphasis added):

> "The documents cannot be signed under powers of attorney - they must be signed by directors.
>
> Please forward me your bank details and I will TT you the money to pay your fees on sight of the following
>
> - executed deeds of sale by the directors. These will be tt'ed to you tomorrow. *They are not for comments and are subject to the Takeover Rules*
>
> - proof of good standing and capacity of the companies.
>
> Upon receipt of the same I want an undertaking from YOUR SOLICITORS that the share certificates will be released to [me]."

361. At 16:21 Mr Steele forwarded to Ms Tomassini Mr Cuffe's email of 22:35 on 28 August 2007 attaching the draft Transaction Documents. This included all the main documents that were subsequently executed as they then stood.

362. As 16:28 Mr Steele replied to Ms Tomassini's email of 14:53 stating (emphasis added):

> "I have attempted to telephone you on a number of occasions today.
>
> Whilst I have no doubt that the file notes that you have read accurately recall what Laura requested, they do not accurately recall the true position, which is as follows:
>
> 1. The transaction is due to complete on Friday.
>
> 2. The Club has agreed to pay your feees, your fees have been included within the list of debts due to be paid by the buyer (which is a private and confidential document and not for your eyes) and I have confirmed this with the solicitors acting for the buyer.
>
> 3. *Laura has already approved the documentation.* You appear ignorant of the requirements of the Takeover Panel which do not permit indiscriminate disclosure of documentation.
>
> 4. I require documentation to be signed by the directors of Barnaby and Wanlock and for opinion letters to be obtained as to the good standing of both companies and as to the correct attestation (i.e. signature) of the documents by the directors. The opinion letter has to come from an American attorney and I expect the same to be available tomorrow afternoon, *as Laura was made aware of this at the meeting it is referred to in the draft documents*.

5. *If the directors want an update on the situation they can ask Mr Caliendo who is, as I understand it, waiting outside your office.*

6. I am instructed that TNF Ltd's conduct is seriously threatening to jeopardise this transaction. Please review your position very carefully and reply by return."

363. At 16:31 Mr Steele sent Mr Cuffe an email saying:

> "As for Friday, apart from the transfer fees, the only two sums which have to be paid are to [HMRC] and T and F (the bill for £48k which we discussed). This is for their professional fees".

364. At 17:29 Mr Steele's secretary sent him an email asking him call to Ms Howard back "urgent tonight".

365. At 17:31 Ms Tomassini sent an email to Mr Primacerio, copied to Ms Murgia, setting out a draft of a detailed response to Mr Steele's emails earlier in the day. It appears that this draft was never finalised or sent to Mr Steele. Three points in the draft are of note. First, it said that the T & F Group had already prepared powers of attorney in Mr Steele's favour "as agreed during the meeting last week". This appears to be a reference to the meeting on 21 August 2007.

366. Secondly, it reminded Mr Steele that "*we act in the interests of of the majority shareholders* of *your client* and kindly ask to see the list of debts due to be paid by the buyer [emphasis added]."

367. Thirdly, it concluded as follows:

> "Lastly, *we will review the documents attached in your email* titled 'Project – Tiger Updated Documents' and will revert shortly under separate cover. Laura nor T&F has ever received these documents before today and therefore *the same have not been approved by the Directors of the Company.*"

The email referred to is the one which Mr Steele had forwarded attaching the draft Transaction Documents.

368. At 18:19 Steven Skulnik of SSD sent Mr Steele an email, copied to Grant Jones, saying that he was a lawyer with SSD in New York and might be able to help. After a voicemail message and an email from Mr Steele, Mr Skulnik sent Mr Steele a further email at 21:10 asking for details of owners and directors of Barnaby and Wanlock.

369. At 20:22 Mr Lord sent Mr Steele an email saying that there appeared still to be some uncertainty about exactly what was owed by QPRH and to whom, and particular Withers had not yet received definitive confirmation of outstanding loans to QPRH or QPRFC by directors and others.

370. At some point on 29 August 2007 Mishcon de Reya (acting by Mr Steele) wrote to Clyde & Co, who acted for ABC, saying "We act for [QPRH]" and informing Clyde & Co that a majority of the shareholders in QPR were negotiating the sale of their

shares to a third party and that the Panel had requested the disclosure, in confidence, of the identity of the beneficial owner of ABC.

Thursday 30 August 2007

371. At 8:24 on 30 August 2007 Mr Steele sent Mr Skulnik an email saying that Barnaby was beneficially owned by Mr Caliendo and Wanlock by Mr Zanotti and that Mr Primicerio was believed to be a director of both companies. He also said that the purchaser was a new company owned by Mr Briatore and Mr Ecclestone.

372. At 9:20 Bruce Mackay of Baker Tilly sent Mr Steele an email, copied to Mr Fitzgerald-O'Connor and others, saying that Mr Fitzgerald-O'Connor had asked him "to do some more digging into the Caliendo loan to help satisfy Panel queries". Mr Mackay noted that there was some inconsistency between the schedule of advances (i.e. the one drawn up by Mr Cooke) and what appeared in the 2006 accounts and suggested that it might be helpful if his firm was authorised to approached NMN and Shipleys.

373. At 9:49 Ms Tomassini sent an email to Mr Buckley (of Fladgate Fielder) attaching copies of Mr Steele's two emails to her of the previous day and saying:

> "Please note that Mr Steele is asking for good standing certificates from the US, which we will request today, but will take approx 48-72 hours to be issued by the State Department; I presume that Mr Steele would want some form of undertaking from us regarding this, but I would be grateful if you could advise further.
>
> Furthermore, please note that our fee note did not include costs related to the issue of 2 good standing certificates and they will need to be billed to QPR separately; the cost for the certificates will be £150 per certificate …
>
> In the meantime, I will arrange, for your compliance purposes, the necessary identification documents related to [T&F SA I's] Directors."

374. At 9:52 Mr Steele replied to Ms Tomassini's email of 14:53 on 29 August 2007 saying:

> "I am surprised not to have heard from you given that this matter is due to complete tomorrow
>
> as I have not heard from you I have arrange for New York lawyers to prepare opinion letters on Barnaby and Wanlock, although they have complaieed that without knowing details of the officers of the companies they may not be able to proceed. Do you have current certificates of good standing?
>
> We also need draft board minutes from Barnaby and Wanlock approving the sale. Drafts of these are urgently required.

> Finally I need your bank details, as previously requested, and those of Barnaby and Wanlock."

375. At 9:57 Ms Tomassini forwarded Mr Steele's email to Mr Buckley. At 10:05 Mr Buckley asked her who Barnaby and Wanlock were. At 10:11 she replied that they were two LLCs registered in New York managed by T&F SA I, which held the shares on behalf of the beneficial owners, that owned shares in QPRH.

376. At 10:07 Ms Murgia sent Ms Tomassini an email saying that points 3 and 4 of Mr Steele's email of 16:28 on 29 August 2007 were "simply UNTRUE" and continuing:

> "3. 'Laura had already approved the documentation' – what documentation??? Side Letter we never received – Sale contracts received was version with previous sale price and we sent Mr Steele an email on 22/8 with AP [i.e. Mr Primicerio] & client comments on this, for the client's protection, however AP said that it would be up to them/the client whether they wish to act upon or not. This does not mean that we had 'approved' the contract.
>
> 4. 'Laura was made aware of this at the meeting' and 'it is referred to in the draft documents': never mentioned a GSC at meeting: it was never mentioned in Steele email of 22/8 with draft dox; and never mentioned in draft sale contract received on 22/8 either!"

377. At 10:16 Ms Tomassini sent Mr Steele an email saying that "our lawyers" would be contacting him shortly and that certificates of good standing for Barnaby and Wanlock had been requested.

378. At 10:19 Mr Steele replied saying that "we are to complete tomorrow and there is a great deal of paperwork to be completed by Wanlock and Barnaby".

379. At 11:10 Ms Tomassini replied providing AccounTrust's bank details and that she was still waiting for Barnaby and Wanlock's account details.

380. At 11:22 Mr Fitzgerald-O'Connor sent Mr Steele and others an email saying that he had spoke to Alan Mackenzie at ARM Corporate Finance Ltd ("ARM") which was prepared to act as QPRH's Rule 3 adviser (it is not clear why Beaumont Cornish dropped out). Subsequently ARM was appointed as QPRH's Rule 3 advisor and was involved (among other advisors on both sides) in amending and agreeing the text of a Rule 2.5 announcement drafted by Charles Stanley.

381. At 11:35 Mr Steele forwarded Ms Tomassini's email of 11:10 to Mr Cooke saying that Ms Tomassini had "now appointed solicitors w[h]o are doing all the necessary to sort out the share transfers. They need paying asap." It is fairly clear that the "they" who needed paying were the T&F Group (more exactly, AccountTrust).

382. At 11:45 Mr Buckley sent Ms Tomassini an email asking for the names of the directors of Barnaby and Wanlock and where they were based "in case the Takeover

Panel call me". At 11:49 Ms Tomassini replied saying that the directors were Mr Hunt and Mr Calderbank respectively and that they were both based in the UAE.

383. At 12:08 Joe Kinton of Shipleys sent Mr Cooke copies of the loan documentation held by Shipleys. At 12:12 Mr Cooke forwarded them to Mr Mackay. The documents attached to this email were as follows:

i) Four of the agreements between Mr Caliendo and QPRH, namely those for £450,000, £500,000, £950,000 and £350,000.

ii) The agreement between Mr Ehmer and QPRH dated 15 April 2010.

iii) Three documents evidencing two transfers from Mr Caliendo's company SCI Aurora: one to QPRH of £900,000 on 10 March 2006 and one to Sandersons solicitors of £50,000 on 14 March 2006. The first transfer precisely matches one of the entries in Mr Pennington's reconciliation under the heading "Barclays – funds received from directors 2006/07" (see paragraph 77 above). The second transfer corresponds to one of the entries in Mr Pennington's reconciliation under the heading "Other funds received from directors 2005/06", namely a sum described as "£50,000 P Grimwood solicitors". I note that Paul Grimwood is currently a solicitor and partner in Sandersons, who is described as having "a particular interest in the resolution of sports related disputes, most notably in relation to football". The second transfer also corresponds to one of the entries in Mr Cooke's spreadsheet (see paragraph 242 above) except that the latter ascribes the date of 10 March 2006 to it.

384. At 12:49 Mr Buckley sent Mr Steele an email, copied to Ms Tomassini, saying that he was "instructed by T&F", but he had no objection to Mr Steele continuing to liaise with Ms Tomassini to save time. He went on to say that "we" would be able to get Mr Steele faxed copies of the Barnaby/Wanlock directors' signatures, but the originals would take 48 hours to arrive by courier.

385. At 13:01 Ms Tomassini sent Mr Buckley an email saying (emphasis added):

> "*I've finished looking at the contracts that Mr Steele sent yesterday afternoon*. …
>
> One major puzzle is that there is no draft Share Sale Agreement relating to the shares owned in QPR by Barnaby whilst in other cases, there are missing documents for Wanlock such as the Deed of Waiver and Deed of Irrevocable Undertaking. I willl query this with Mr Steele.
>
> There are some minor amendments to be made on the documents, in respect of the registered Address of Wanlock/Barnaby. I will notify Mr Steele of this and also [various other fairly minor amendments and actions required].
>
> There is one schedule contained within the Share Sale Agreement which is the Vendor's Deed of waiver (attached); I can arrange for this to be signed, *but I kindly ask you to look at*

> *it carefully as we will be waiving any rights or claims against QPR etc if we submit these to Mishcon before receiving any payment from the client.*
>
> ….
>
> I will also be contacting the clients this morning, as I will need to obtain from them a written instruction to sign any and all documentation received from Mishcon de Reya in relation to concluding the sale of shares. I will notify Mr Steele that we require these before the documents are released.
>
> Lastly, I have asked Mishcon to let me have a template of the minutes to be signed Barnaby/Wanlock …"

386. Also at 13:01 David Dannreuther of Withers sent Mr Steele revised drafts of convertible loan agreements between Sarita and Mr Ecclestone on the one hand and QPRH on the other hand providing for loans of £4.25 million and £750,000 respectively and of a guarantee and debenture between QPRH, QPFRC, Sarita and Mr Ecclestone. In his covering email Mr Dannreuther said:

> "Please note we have incorporated some of your comments. Those we have not, we do not agree. In relation to whether QPR bears the legal costs of the loan documentation, we are taking instructions, but have left your amendment in for the time being."

387. At 13:14 Mr Steele replied to Mr Buckley's email of 12:49, with a copy to Ms Tomassini, saying "Monies have been Tded to your client" and asking for a copy of Mr Caliendo's passport. At 13:34 Ms Tomassini sent Mr Buckley saying "Good news! They seem to be paying us before we release documents". She went on to say that she would have to obtain a copy of Mr Caliendo's passport from the T&F Group's Swiss office, since compliance documents were held in a safe there, and asked why this was needed.

388. At 13:48 Ms Tomassini sent Mr Zanotti an email, following a telephone conversation, attaching a draft letter of resignation as a director of QPRFC and asking Mr Zanotti to sign it, fax it back and post or courier the original.

389. At 14:37 someone at T&F SA I sent Mr Caliendo a fax attaching three letters for signature, two by Mr Caliendo on behalf of Barnaby and Wanlock and one by Mr Dunga on behalf of Barnaby. These letters instructed T&F SA I to sign "any and all documentation received from and requested by Mishcon de Reya", to "receive any monies on the Company's bank account arising from the transaction" and to release the funds to the accounts at Barclays and Credito Foncier in Monaco. They also confirmed that Mr Caliendo and Mr Dunga had received independent legal advice. Mr Caliendo signed the two in his own name and Mr Dunga signed the one in Mr Dunga's name, apparently on the same day.

390. At 14:51 Mr Steele again replied to Mr Buckley's email of 12:49 saying "Monies have been Tded to your client from Lloyds TSB. Please could someone confirm that Barnaby and Wanlock directors are available to execute documents at short notice".

391. At 15:08 Ms Tomassini sent Mr Steele an email setting out comments on the draft Transaction Documents as presaged in her email to Mr Buckley. One of her comments was in the following terms:

> "9. In the Schedule to Mr Caliendo Deed of Waiver of Schedule 2 of the agreement, neither companies have appointed Accountants, nor auditors."

392. At 15:17 Sheila Marson of QPR sent Mr Indaimo an email saying that QPRH needed to be in a position to transfer the sum of £191,250 to the Football League by 16:00 on 31 August 2007 in respect of the VAT and levy due in connection with the transfer of Mikele Leigertwood from Sheffield United for a fee of £850,000 payable in two instalment of £425,000 on 7 September 2007 and 31 December 2007.

393. At 15:21 Mr Steele sent Ms Tomassini an email explaining that the reason for the missing share sale agreement was that the deal was that Barnaby would sell after Wanlock. In relation to her point 9, he asked if he could insert T&F Ltd's details.

394. At 15:41 Ms Tomassini replied saying "kindly note that the Directors will be in the office until 5pm today" and that they could be contacted via T&F SA I. It is fairly clear that the directors referred to were the directors of Barnaby and Wanlock i.e. Mr Hunt and Mr Calderbank.

395. At 16:39 Mr Dannreuther sent Mr Steele an email saying that his clients' instructions were that legal costs for the loan transaction documents should be for QPRH's account and Withers had amended the loan documentation to reflect this.

396. At 17:36 Mr Cuffe sent Mr Steele and others a sixth draft of the SSA ("SSA6"). The principal difference from SSA5 was that the purchasers were to be Sarita and Mr Ecclestone. Mr Ecclestone was to buy 15,000,000 shares for £150,000 and Sarita 4,900,000 shares for £49,000 from Wanlock.

397. Also at 17:36 Ms Tomassini sent Mr Zanotti another email attaching the draft letter of resignation from QPRH following a telephone conversation with Mr Caliendo. Mr Zanotti replied saying that he had signed the document.

398. At 18:01 Mr Steele replied to Mr Lord's email of 20:22 on 29 August 2007 saying that he believed that the matter had now been dealt with between Mr Cooke and Baker Tilly.

399. Seconds later Mr Steele's secretary sent Mr Lord drafts of (i) a deed by Mr Caliendo acknowledging that the sums owed to him by QPRH totalled £6,581,328 and that he was not owned any other sums by QPRH or QPRFC (i.e. a draft of the Deed of Acknowledgement), (ii) board minutes for Wanlock and QPRH and (iii) Forms 288b terminating Mr Caliendo and Mr Zanotti's appointments as directors of QPRH and QPRFC.

400. At 18:24 Mr Lord sent Mr Mackay and Mr Castledine an email asking them whether they were happy with the outstanding loan position "i.e. are you clear what is owed by the club and to whom?"

401. At 18:42 Mr Lord sent Mr Steele an amended draft of the Deed of Acknowledgement. This contained two amendments, one acknowledging that the debts were interest-free and the other that Mr Caliendo could not demand repayment of the debts until March 2011. Mr Lord also asked Mr Steele to advise as to the status of the signatories for Wanlock and Barnaby and said that he understood that Mr Paladini and the company would sign the irrevocable undertaking for Moorbound.

402. It appears that Mr Steele executed the Deed of Acknowledgement as amended by Mr Lord shortly after this.

403. At 18:43 Mr Indaimo sent Mr Steele an email following a conference call shortly before asking for "your and your client's urgent comments" on a list of 18 documents or classes of document including SSA6. Mr Indaimo went on to say that, as Mr Steele knew, Charles Stanley and QPRH's Rule 3 advisor together with Mr Paladini were currently in a meeting at Withers' office to agree, inter alia, the terms of the Rule 2.5 announcement. Once this had been agreed, the parties could complete subject to all of the Transaction Documents being in agreed form and ABC consenting in writing to a second charge being registered.

404. Also at 18:43 Mr Skulnik emailed Mr Steele good standing certificates for Barnaby and Wanlock dated 29 August 2007.

405. At 19:52 Mr Mackay replied to Mr Lord's email of 18:24 saying that the loans position as Baker Tilly understood it was as follows:

- "ABC Loan £10m
- Caliendo owed £6.58m before waivers
- Val Ehmer owed £500k …
- McGrath owed £100k …
- Winton loan (according to info obtained by Withers) £832k (in B/S at 31/5/07 at £358k)

…."

406. At 20:47 Mr Lord sent Mr Steele and others an email saying that Withers had received confirmation from Clarke Wilmott that HMRC had agreed not to advertise the winding-up petition provided HMRC received the debt due by 16:00 on Tuesday 4 September 2007.

407. At 20:48 Mr Mackay sent various recipients including Mr Steele a draft amended deed of waiver (Schedule 2 to the SSA6), saying that he would discuss the trigger figure for paragraph 2.1 with Withers shortly.

408. At 22:10 Mr Steele replied to Mr Indaimo's email of 18:43 saying inter alia that SSA6 was agreed and that he had faxed Mr Lord the certificates of good standing for Barnaby and Wanlock. In relation to the letters of resignation from Mr Caliendo and Mr Zanotti as directors of QPRH and QPRFC, Mr Steele said:

> "I am awaiting these from AC's and FZ's tax advisors who, unhelpfully, have gone home. I have faxed your office a POA in my favour from AC and will be armed with a FZ POA tomorrow morning."

409. At 22:23 Alex Winton sent an email to Mr McGrath, copied to Mr Steele, saying among other things (and following earlier communications which I have not set out above) that he had informed Mr Steele that Mr McGrath would happily take 6.5 pence per share for his 8% stake in QPRH and the Wintons would happily do the same.

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410. At 0:50 on 31 August 2007 Mr Cuffe emailed Mr Steele and others a revised draft SSA. Although this was still marked as draft 6, it incorporated various detailed drafting changes ("SSA7"). It still did not include a figure for the Net Assets Indemnity.

411. At 8:00 Mr Steele forwarded Mr Cuffe's email attaching SSA7 to Ms Tomassini. His covering email stated:

> "Please see attached.
>
> please prepare the required letters from Wanlock and Barnaby.
>
> Do you have any letters from anyone confirming Banrnaby [sic] and Wanlock are solvent, of good standing and are able to execute the … de[e]ds? If not, can you please prepare one?"

412. At 8:09 Mr Steele replied to Alex Winton's email of 30 August 2007, with a copy to Mr McGrath, saying:

> "I have conveyed your request to the bidder.
>
> My gut feel is they will not wish to acquire shares at 6.5p, because Baker Tilly have valued them at less than a penny each, on the basis [that] the ground is worth 10mill, net of ABC, there are other loans and liabilities of circa 10m, and asets (the players) worth about 5m.
>
> Their other points are
>
> - they are pumping money into the club and need absolute control to protect the investment
>
> - without them the club goes bust and the shares are worthless anyway

> I am pleased to say everything else appears to have been resolved".

413. There was further correspondence between Mr McGrath and Mr Steele later in the day, but it is unnecessary for present purposes to go into the details of this.

414. At 9:25 Mr Steele sent Mr Cuffe an email in which he asked:

> "Lest I forget, how is it intended to document the £2m bonus to Caliendo should the Club be promoted."

415. Also at 9:25 Ms Tomassini sent Mr Zanotti an email attaching a draft letter of resignation from QPRH, saying that she was being chased by Mr Steele to obtain his signature and asking him to fax it to her and post or courier the original.

416. At 9:34 on 31 August 2007 Mr Steele emailed a director's draft statement of responsibility in the names of Mr Paladini, Mr Caliendo and Mr Zanotti to Mr Paladini and Mr Mackenzie for their urgent approval in connection with the mandatory offer that needed to be made in order to comply with the Code.

417. Also at 9:34 Mr Mackenzie sent an email to Mr Steele and Withers (amongst others) in the following terms:

> "Given the sensitivity of the Panel to the Caliendo loan and our recommendation relating to it, could both Mishcon and Withers please confirm that there are no other agreements or arrangements between Mr Caliendo and the offeror, or any other connected party, in regards to the Caliendo loan other than those which relate to the loan acknowledgment and the [SSA]."

418. At 9:52 Ms Tomassini replied to Mr Steele's email of 8:00 saying:

> "I should be receiving the resignation letters shortly which I will send to you by email.
>
> I've taken a look at the statutory records of both companies which my Swiss office has sent to me and the directors have full power and authority to sign the agreements and I was wondering whether a goodstanding certificate prepared by an English solicitor would serve your purpose. …"

419. At 9:57 Mr Steele replied to Ms Tomassini's email of 9:52 saying that the bank had told him that AccounTrust's money had been sent the day before and that he was not sure if a certificate from an English solicitor would do and asking if Ms Tomassini knew an American lawyer who provide opinion letter that day. It is not clear why Mr Steele was re-assuring Ms Tomassini about the money, since Ms Tomassini had sent him an email at 9:10 that day acknowledging receipt by AccounTrust of £48,082.86.

420. At 9:58 Mr Lord replied to Mr Mackenzie's email of 9:34 as follows (emphasis added):

> "Withers cannot give a formal confirmation of this fact. This will have to come from Mishcons/the club/Caliendo. There will be a waiver of claims by him today, as attached.
>
> We are aware of the Dunga loan for £250k, a copy of which was included in the documents uncovered yesterday by Bakers (see attached). *We are told by the club that that loan has effectively been subsumed within the Caliendo loan and is therefore no longer outstanding to Dunga himself.* However, we have seen no waiver by Dunga or other evidence of this."

It is evident from this that Baker Tilly had found one of the two convertible loan agreements between Mr Dunga and QPRH, but not the other. This suggests that, at this time, QPRH did not have a copy of the second agreement on file, even though Mr Pennington had had sight of it on 9 August 2006.

421. At 10:01 Mr Mackenzie replied saying "Surely you can get confirmation from your clients?" It is not clear to whom Mr Mackenzie was directing this question, but it appears that Mr Steele understood that Mr Mackenzie was asking him to get confirmation from QPRH.

422. At 10:04 Mr Steele sent Mr Cooke an email asking:

> "Please confirm that the Dunga loan is a part of the monies lent by Antonio.
>
> When Gianni was at Withers yesterday, was the bonus to Antonio mentioned?"

423. At 10:06 Mr Steele replied to Mr Lord of Withers saying:

> "I think he's getting at the bonus payment of 2m if the Club are promoted."

424. At 10:08 Ms Tomassini replied to Mr Steele's email of 9:57 saying that the money had been received and that she would try and contact the T&F Group's US colleagues.

425. At 10:14 Mr Cooke replied to Mr Steele's email of 10:04 saying that the Dunga loan was part of the monies lent by Mr Caliendo and that he could not answer the question as to whether the bonus to Mr Caliendo had been mentioned at the meeting with Withers the previous day as he had not been there. Mr Cooke gave evidence that his answer about the Dunga loan was based on what he had been told by Mr Paladini.

426. At 10:27 Mr Mackenzie sent an email to various recipients asking if someone could explain the make up of the debt figure of £13 million in the draft documentation.

427. At 10:35 Ms Tomassini replied to Mr Steele once again saying (emphasis added):

> "*I've taken a look at the contracts sent this morning and I have the following comments*:

…

2. I note that we will now be using your client account to receive the monies on behalf of Wanlock LLC; as you will be receiving and transferring the funds on behalf of Wanlock LLC, the Directors of the company would need some sort of letter which formalises the relationship between Wanlock and Mishcon with specific regards to your obligations. Please let me have a draft template to send to the Directors in this regards.

…

5. I note that you have appointed yourself as agent for service of documents. We have asked for [T&F SA I] to be appointed. Please amend.

Most importantly in Schedule 2 (Mr. Caliendo Deed of Waiver), you have stated that we act as Mr. Caliendo's Accountants; I will need to check this with the partners as I do not believe that T&F has been appointed as his accountants and I will revert to you on this matter shortly."

428. At 10:46 Mr Mackay replied to Mr Mackenzie, with copies to Mr Steele and others:

"£13m debt figure was built up as follows:

- ABC loan £10m
- Caliendo loan (post waiver) £2m
- Sundry loans (Winton/McGrath/Ehmer) £1m

The sundry loans figure was clearly an estimated provision before waivers or partial waivers of these loans are obtained. To say the least, this has been a moving feast but at the time it was difficult to be precise."

429. At 11:13 Ms Tomassini sent Mr Zanotti an email thanking him for sending the signed documents and continuing:

"As discussed in our telephone conversation, Mishcon de Reya has again changed the terms of the contract suggesting that the client account is used to receive the funds generated by the transaction. Therefore these funds will then be transferred directly indicated in the attached letter.

Accordingly, we have prepared a new letter of instruction which you will find attached which we would ask you to kindly sign.

> Please could you send us this letter via fax … and send the original by express post or courier."

Earlier the same day T&F SA I had sent sent a fax to Mr Caliendo in very similar terms, except that the fax asked Mr Caliendo to ask Mr Dunga to sign the letter relating to Barnaby as well as himself.

430. At some point on 31 August 2007 Mr Caliendo and Mr Dunga duly signed the letters on behalf of Barnaby. The letters were similar to the ones signed on 30 August 2007: they instructed T&F SA I to instruct to sign any and all documentation received from and requested by Mishcon de Reya and to appoint Mishcon de Reya to receive in their client account the proceeds of the sale of Barnaby's shares and to instruct Mishcon de Reya to transfer the proceeds to the Barclays account in Monaco. Again the letter confirmed that Mr Caliendo and Mr Dunga had received independent legal advice. It is probable that Mr Zanotti signed a corresponding letter on behalf of Wanlock although no such letter is in evidence. The T&F Group do not appear to have understood that, on completion, it was only Wanlock's shares that were to be sold, with Barnaby giving an irrevocable undertaking to sell its shares subsequently.

431. At 11:14 Mr Cuffe emailed Mr Steele an execution copy of the SSA. Mr Cuffe asked Mr Steele to note that "the [SSA] now contains the completion net assets figure". The figure which had been inserted in the Net Assets Indemnity was £3,000,000. Accordingly, Schedule 2, clause 2.1 read as follows:

> "Subject to clause 3.3 below, the Lender [Mr Caliendo] indemnifies the Purchaser [Sarita] and Mr Ecclestone as to the amount by which the Completion Net Assets determined pursuant to the schedule to this Deed are less than £3,000,000, such amount to be paid as to 85% to the Purchaser and 15% to Mr Ecclestone."

432. It is not entirely clear where the figure of £3 million came from. It appears likely, however, that it was arrived at by taking the net asset deficiency shown in the management accounts to the end of August 2007 (£1,302,770), adding back the loans being waived by Mr Caliendo (£4,581,328) and rounding down.

433. At 11:39 Ms Tomassini emailed to Mr Steele faxed copies of the four resignation letters signed by Mr Caliendo and Mr Zanotti all dated 31 August 2007.

434. At some point on 31 August 2007 Mr Cooke completed the Forms 288b terminating Mr Caliendo's and Mr Zanotti's appointments as directors of QPRH and QPRFC, which were signed by Mr Paladini.

435. At 12:08 Mr Steele replied to Ms Tomassini's email of 10:35 that day saying:

> "…
>
> 2 I suggest you appoint me as your agent for the purpose of collecting money and accounting to you. I would expect my accounting to you to discharge any obligations I might owe to Wanlock.

…

5 Isn't it better I am appointed as there will be a delay in sending documents to Switzerland? If you disagree please amend by hand when the originals arrive.

…

Schedule 2 is important to remain as is because if there is a disagreement, and the final completion account figure is £3million, then you will be able to act for AC and, if necessary, appoint your own auditors."

436. At 12:09 Mr Mackenzie sent an email to various recipients, including Mr Steele and Mr Lord, saying

> "As a reminder, before approving the release of the announcement we require:
>
> 1. Mishcon and Withers to confirm that there are no other agreements or arrangements between Mr Caliendo and the offeror, or any other connected party, in regards to the Caliendo loan other than those which relate to the loan acknowledgment and the [SSA].
>
> 2. Signed and dated copy of the Caliendo letter of acknowledgement.
>
> 3. Signed and dated copy of the [SSA] (as it is only the [SSA] which confirms the waiver of £4.8m of the loans)."

437. At 12:13 Mr Steele sent Mr Paladini an email in the following terms:

> "The bonus to Antonio CANNOT be put in writing as it will conflict with the Code. Antonio will have to rely on FB's goodwill after the event and the fact there is enough documentation to show that he has been promised such a bonus.
>
> Can you let Antonio know. If required I'll explain to Ilario."

It seems likely that Mr Steele sent this email as a result of a conversation with one of the Withers team.

438. At 12:22 Ms Tomassini replied to Mr Steele's email of 12:08 saying:

> "…
>
> 2. I will prepare a short mandate which I will forward to you for signature
>
> …

5. noted

Schedule 2: I'm having difficulty tracking the partners regarding this matter. In any case, for the avoidance of doubt, T&F Limited and [T&F SA I] are not Chartered Accountancy firms.

…."

Ms Tomassini did not raise any query, or ask for any explanation, regarding the figure of £3 million which Mr Steele had mentioned.

439. At 12:30 Mr Steele emailed Ms Tomassini draft board minutes for Wanlock and Barnaby.

440. At 12:40 Mr Lord replied to Mr Mackenzie's email of 12:09 "We are confirming with Sarita and BE that no such arrangements exist".

441. At 12:43 Mr Dannreuther sent Mr Steele six drawdown notices, one each from Sarita and Mr Ecclestone in respect of monies to be paid by QPRH to or in respect of Mikele Leigertwood, HMRC and ABC interest.

442. At 12:48 Mr Steele forwarded Mr Dannreuther's email of 12:43 to Mr Cooke.

443. At 12:52 Mr Lord sent Mr Steele an email saying:

"Our cut-off-time for bank payments is about 2:30pm today. Please confirm when you are in a position to complete, following this morning's call, as we are obviously getting very close to that deadline.

I also attach the form of declaration required from the directors, as discussed re no more convertibles and no o/s debts to Dunga (and the 2 others for completeness)."

Attached to the email was a draft deed for execution by Mr Paladini, Mr Zanotti and Mr Caliendo warranting to Sarita and Mr Ecclestone that there were (i) no outstanding convertible loans or other debts and (ii) no outstanding loans or indebtedness to QPRH or any subsidiary from Mr Dunga, Mr Blitz or a Gino Padula (i.e. the Dunga Warranty).

444. At 12:54 Mr Steele faxed to Mr Lord the four resignation letters from Mr Caliendo and Mr Zanotti.

445. At 12:59 Mr Steele forwarded Mr Lord's email of 12:52 to Mr Paladini saying:

"Please get [th]is signed pronto, and witnessed by Sheila or Mark, then faxed to me.

Please ask Mark to sign the drawdown papers asap".

446. At 13:00 Mr Steele forwarded Mr Lord's email of 12:52 to Ms Tomassini asking that Mr Zanotti or his attorney sign it as soon as possible and fax it back to him.

447. At 13:03 Ms Tomassini forward Mr Steele's email of 13:00 to Mr Zanotti, asking him to sign the attached document and fax it back to her.

448. At 13:09 Ms Tomassini emailed Mr Steele a draft mandate document regarding Wanlock.

449. At 13:24 Mr Cuffe emailed Mr Steele the execution version of the guarantee and debenture, which Mr Steele forwarded to Mr Cooke at 13:26 asking him to pass it to Mr Paladini and for them to "GET SIGNING!"

450. At 13:35 Mr Steele replied to Ms Tomassini's email of 13:09 asking whether the T&F Group could also say that they acted for Wanlock and Moorbound.

451. At 14:01 Mr Lord emailed Mr Steele copies of the final versions of the Transaction Documents executed on behalf of the Purchasers to be held to Withers' orders until completion and "receipt of all necessary documents from your clients to our clients' satisfaction". Attached to the email were copies of the SSA, guarantee and debenture, convertible loan agreement between Mr Ecclestone and QPRH, convertible loan agreement between Sarita and QPRH, Caliendo Waiver, and powers of attorney granted by Sarita and Mr Ecclestone in favour of Mr Lord and an opinion letter from Harneys (BVI lawyers) in respect of Sarita. It is convenient to note that at this point that Mishcon de Reya has admitted that Mr Steele did not show the execution version of the Transaction Documents to the Claimants prior to executing them on their behalf.

452. At 14:08 Ms Tomassini replied to Mr Steele's email of 13:35 saying:

> "We do not act for Moorbound at all and I do not know who you would need to refer to for this Company. I will revise the draft and ask the Directors to issue for Barnaby/Wanlock."

453. At 14:09 Mr Steele replied to Ms Tomassini email of 14:08 saying "SORRY MEANT BARNABY".

454. At 14:25 Ms Tomassini replied to Mr Steele's email of 14:09 explaining that the draft mandate had been amended in four respects and asking for any news on the final agreements to be signed.

455. At 14:35 Mr Steele replied to Ms Tomassini's email of 14:25 saying "PLEASE CHASE USA!"

456. At 14:41 Mr Steele replied to Ms Tomassini's email of 14:25 asking for Mr Zanotti's resignation letter from QPRH, the signed waiver and completion powers of attorney from Wanlock and Barnaby and the Wanlock and Barnaby board minutes.

457. At 14:53 Ms Tomassini replied to Mr Steele's email of 14:41 saying that the letters of resignation from Mr Caliendo and Mr Zanotti had already been sent that morning and that the completed powers of attorney were coming over to him and asking Mr Steele to call him re the USA.

458. At 15:06 Ms Tomassini emailed Mr Steele copies of the following documents:

i) A power of attorney dated 22 August 2007 executed by Mr Hunt, as director of Barnaby, appointing Mr Steele as Barnaby's attorney for the purpose of signing the agreement for the sales of its shares in QPRH at a consideration of 1 pence per share and any other documents ancillary to the sale.

ii) A power of attorney dated 22 August 2007 executed by Mr Calderbank, as director of Wanlock, appointing Mr Steele as Wanlock's attorney for the purpose of signing the agreement for the sales of its shares in QPRH at a consideration of 1 pence per share and any other documents ancillary to the sale.

iii) A letter from Mr Hunt for Barnaby to Mr Steele dated 22 August 2007 instructing him to send the proceeds from the sale of the shares to the account at Barclays in Monaco.

iv) A letter from Mr Calderbank for Wanlock to Mr Steele dated 22 August 2007 instructing him to send the proceeds from the sale of the shares to the account at Credito Foncier in Monaco.

459. Although all four documents were dated 22 August 2007, it seems plain that they had been backdated. It is not clear why this was done.

460. A separate point is that the Claimants have pointed out that there are two versions of the two powers of attorney in evidence. In each case the difference between the two versions is that the words "to sign any other documents ancillary to said sale" have been added in manuscript. The Claimants alleged that these manuscript additions were not made by or initialled by the respective directors, but there is no evidence to substantiate this allegation. On the face of the documents, the manuscript additions appear to have been initialled by Mr Hunt and Mr Calderbank, and there is no evidence from those individuals that they did not initial the documents.

461. At 15:32 Ms Tomassini emailed Mr Steele a copy of share certificate number 6259 for 17,648,836 QPRH shares in the name of Barnaby which had been faxed by someone (I presume a representative of T&F SA I) to Mr Caliendo at 11:32 on 30 August 2007, saying:

> "Please note that attached is a copy of the original share certificate in our possession (the original is in a safe). The other original share certificates owned by Barnaby and Wanlock are in the hands of Mr Antonio Caliendo. Please refer to him directly for these."

462. At 16:21 Ms Tomassini emailed Mr Steele a signed deed of irrevocable undertaking dated 31 August 2007 signed by Mr Hunt as director of Barnaby.

463. At 16:24 Ms Tomassini emailed Mr Steele signed copies of the following documents:

i) an undated letter of instructions from Barnaby to Mr Steele signed by Mr Hunt;

ii) an undated letter of instructions from Wanlock to Mr Steele signed by Mr Calderbank;

iii) an undated deed of waiver by Barnaby signed by Mr Hunt;

iv) an undated deed of waiver by Wanlock signed by Mr Calderbank;

v) a resolution by Mr Hunt, as sole manager of Barnaby, dated 22 August 2007 that it was in the best interests of the company to enter into an agreement to sell its shares in QPRH to Sarita;

vi) a resolution by Mr Calderbank, as sole manager of Wanlock, dated 22 August 2007 that it was in the best interests of the company to enter into an agreement to sell its shares in QPRH to Sarita.

464. Again it seems plain that the two resolutions were backdated. (Indeed, it was not known on 22 August 2007 that the purchaser was to be Sarita.)

465. At 16:32 Ms Tomassini emailed Mr Steele two certificates dated 31 August 2007 signed by Richard Thompson, an English solicitor, respectively certificating that the management of Barnaby was vested in Mr Wortley Hunt who was authorised to bind the company with his sole signature and that the management of Wanlock was vested in Mr Caldebank who was authorised to bind the company with his sole signature. It appears that it had been agreed between Ms Tomassini and Mr Steele to proceed in this way instead of obtaining opinions from New York lawyers.

466. At 17:11 Ms Tomassini emailed Mr Steele a copy of an undated completion power of attorney in favour of Sarita executed on behalf of Wanlock by Mr Calderbank.

467. At 17:27 Mr Lord sent Mr Steele, Mr McGrath and others an email, following a telephone conversation with Mr Steele, Mr Paladini and Mr Michel, recording his client's surprise and frustration at learning at the 11th hour that what it had been told was a £100,000 gift to the club by Mr McGrath was in fact a loan. He went on to say that his client would nevertheless agree to document the arrangements with Mr McGrath provided that the document and an irrevocable undertaking were signed by Mr McGrath that evening in order to enable completion of the deal. He concluded:

> "As we are sure Mr McGrath appreciates, given the financial predicament of the club, it will enter administration if this deal is not completed."

At 17:37 Mr McGrath replied setting out his position in relation to what was proposed. Thereafter discussions continued between Mr Lord, Mr McGrath and Mr Steele by email and telephone during the evening. It appears that an agreement was reached in an email from Mr McGrath to Mr Lord at 21:54.

468. In parallel with the negoiations with Mr McGrath, Mr Steele was also in negotiations with Mr Ehmer, but it is not necessary to go into these.

469. At 17:29 Mr Lord sent an email to Mr Mackenzie and others about the proposed agreement with Mr McGrath asking whether they saw any problems with it. At 17:39

Mr Mackenzie asked what documentation already existed. At 17:45 Mr Lord replied saying that, as he understood it, this was "another of the undocumented loans".

470. At 17:51 Ms Tomassini emailed Mr Steele a copy of the SSA executed by Mr Calderbank on behalf of Wanlock. Clause 2.1 of Schedule 2 to the SSA still had the figure for the Net Assets Indemnity left blank in this copy. The explanation for this appears to be that Mr Steele had not forwarded to Ms Tomassini the execution copy of the SSA which Mr Cuffe had circulated at 11:14. In addition, as counsel for the Claimants pointed out, the copy of the SSA executed by Wanlock had certain manuscript amendments: in particular, (i) T&F SA I was appointed as Wanlock's address for service and (ii) T&F Ltd was removed from the definition of "Lender's Accountants" in the Schedule to the Caliendo Waiver.

471. At 17:57 Mr Mackenzie replied to Mr Lord's email of 17:45:

> "How many other undocumented loans are there? The Caliendo loans were at least documented in the accounts. Can it be proven that these were loans and what the terms were. The Panel has already flagged up their disquiet at possible preferential treatment."

472. At 18:05 Ms Tomassini emailed Mr Steele the stock transfer forms for the transfer of Wanlock's shares to Sarita and Mr Ecclestone signed by Mr Calderbank.

473. At 18:11 Mr Lord replied to Mr Mackenzie's email of 17:57:

> "We can only go on what we have seen through the DD documents produced to us by the club and what Kevin [i.e. Steele] has told us. If you have any further questions of your client, please speak to Kevin/Gianni, thanks. They will no doubt have evidence of the 100k payment to the club. …"

474. At 18:43 Mr Mackenzie sent Mr Steele asking "Can you provide comfort on the loan agreements/arrangements re Caliendo as requested?".

475. At 19:21 Mr Steele replied to Mr Mackenzie's email of 18:43 saying "To the best of my knowledge information and belief there are no such arrangements or loans" (i.e. other those those already disclosed).

476. At 19:40 Mr McKenzie replied to Mr Lord's email of 12:40 saying:

> "Richard, we have had confirmation from Kevin Steele, need your confirmation, then all we will require is sight of the signed [SSA]. …."

477. At 23:04 Mr Steele emailed Mr Lord a letter on Mishcon de Reya headed paper. The letter stated:

> "I act for Antonio Caliendo, Franco Zanotti and Gianni Paladini

> They have instructed me to confirm that save as already disclosed there are no outstanding convertible loans to [QPRH]."

Completion of the Transaction on Saturday 1 September 2007

478. Because of all the last minute problems that had emerged and had had to be dealt with, the Transaction could not be completed on 31 August 2007. Instead it was completed at a meeting starting at about 11:00 at QPR's premises on 1 September 2007. The SSA was executed by Mr Lord on behalf of the Purchasers and by Mr Steele on behalf of Wanlock and Mr Caliendo. The executed SSA did not incorporate the manuscript amendments which had been made to the version executed by Wanlock (see paragraph 470 above). On the other hand, the executed SSA incorporated certain manuscript amendments which appear to have been made after the document had executed on behalf of the Purchasers the previous day (see paragraph 451 above).

479. It appears that, as part of the Transaction, Mr Paladini entered into a fixed term contract with QPRH under which he was appointed as an executive director at a salary of £140,000 until 31 May 2010 with provision for this to be doubled, and for Mr Paladini to receive substantial bonuses, if QPR was promoted to, and remained in, the Premier League.

480. The final version of the Rule 2.5 announcement was circulated by email at 12:30. This announced a recommended cash offer ("the Offer") by Sarita to purchase the entire issued share capital of QPRH (except for the shares which Sarita and Mr Ecclestone had already acquired from Wanlock) for 1 pence per share. This valued the equity of QPRH at approximately £1 million. Together with total debt of approximately £13 million, this represented an enterprise value of approximately £14 million. The announcement revealed that Sarita and Mr Ecclestone had already acquired a 19.9% stake from Wanlock, beneficially owned by Mr Zanotti, and that the directors of QPRH other than Mr Zanotti had undertaken to accept the Offer in respect of their beneficial shareholdings of 42.4%. After completion of the Transaction, there remained quite a lot of work to be done by Withers, Mishcon de Reya, Charles Stanley, ARM and others to finalise the Offer. Since most of the details of this work do not matter for present purposes, I shall only make occasional reference to it.

481. Following the completion of the Transaction, and announcement of the Offer, QPR played Southampton in the Championship at home and lost.

Power of attorney purported granted by Mr Zanotti to Mr Steele

482. Amongst the documents that were subsequently included within the Transaction Documents was a general power of attorney under the Powers of Attorney Act 1971 purportedly executed by Mr Zanotti in favour of Mr Steele and witnessed by Mr Clark on 31 August 2007. The evidence clearly establishes that this is not a genuine document: both Mr Zanotti and Mr Clarke testified that they had not signed the document. Further, it is fairly clear from the evidence discussed below that the document was not created before 3 September 2007. There can be little doubt that the person who was responsible for forging the document was Mr Steele.

483. It is important to make it clear that the Claimants do not base any claim against Mishcon de Reya upon this act of forgery, because although Mr Steele executed the Dunga Warranty on behalf of Mr Zanotti, apparently in reliance upon the forged power of attorney, Mr Zanotti suffered no loss as a result. Rather, the Claimants rely upon it as something akin to similar fact evidence: they say is indicative of a cavalier approach to the discharge of his duties. Up to a point, I accept this. But in my view what it mainly shows is a willingness on the part of Mr Steele to take an improper short-cut to ensure that the Transaction was completed. I think it is clear that he did so out of concern for what would happen to QPRH if the Transaction was not completed.

Monday 3 September 2007

484. At 09:51 on 3 September 2007 Mr Lord sent Mr Steele an email saying that there were a couple of documents that needed to be competed following the meeting on 1 September 2007. Mr Lord also asked Mr Steele to send him "the documents showing your appointment as attorney for the various people and entities". At 10:02 Mr Steele replied that he would send Mr Lord copies of the powers of attorney in the post that day.

485. At 10:13 Mr Lord sent Ms Marson an email, copied to Mr Cooke and Mr Steele, saying that his firm would transfer the following monies that say:

i) the HMRC debt of £963,000 directly to Clarke Wilmott;

ii) the Leigertwood money of £191,250 to QPRH's account with Lloyds for onward payment to the Football League;

iii) an ABC interest payment of £7,367.54 to QPRH's account at RBS for onward payment to ABC; and

iv) the consideration for the Wanlock shares of £199,0000 to Mishcon de Reya's client account for onward payment to Wanlock.

486. At 10:33 Mr Lord sent Mr Steele an email concerning Moorbound saying:

> "A company search shows that Gianni is NOT a director or secretary of the above. I am not sure why he has therefore signed the document for Moorbound. The sole director appears to be Olga Paladini; the secretary is Mr Malik.
>
> If you have a valid attorney for Moorbound, then perhaps you can re-sign the attached, or obtained the 2 signatures from the above-mentioned officers today and return the originals to me by hand."

487. At 11:54 Mr Lord sent another email to Ms Marson, copied to Mr Cooke and Mr Steele, saying:

> "Actually, I recall someone saying that the Leigertwood fee had been paid on Friday (hence why he was able to play), so the amount re Leigertwood is to put the club back in funds (I

> understand that the funds were paid to the League out of a hastily arranged overdraft). Please can someone confirm."

488. According the properties of the electronic copy of the power of attorney purportedly executed by Mr Zanotti, the document was created by Mr Steele's secretary at 12:20 on 3 September 2007.

489. At 19:17 Mr Lord sent Mr Steele an email setting out a list of ten sets of documents which he needed, including:

> "1) The re-signed **original** irrevocable and deed of waiver from Moorbound (see earlier email). Gianni does not appear to be a director or secretary so signature by you as attorney in fact or by the existing sole director and secretary.
>
> …
>
> 3) Copies of your appointments as attorney by (1) Wanlock (2) Barnaby (3) Moorbound (4) Zanotti …"

Tuesday 4 September 2007

490. At 8:46 on 4 September 2007 Mr Steele forwarded to Mr Paladini (and Mr Cooke) Mr Tomassini's email of 15:32 on 31 August 2007 saying "Please ask Antonio for his two certificates. I also need Moorbound's".

491. At 13:12 on 4 September 2007 Mr Steele faxed to Ms Tomassi copies of the letters of instruction from Barnaby and Wanlock to himself countersigned by himself.

Wednesday 5 September 2007

492. At 11:41 on 5 September 2007 Mr Mackenzie sent an email to Mr Lord, Mr Steele and others saying, among other things:

> "Richard, you are going to give us some comfort on the Caliendo Loan, as previously outlined."

493. At 16:18 Ms Tomassini sent Mr Steele an email saying the documents duly signed in original should have been delivered to him that morning and asking him to confirm that the funds from the sale had been received and full transferred to Barnaby's and Wanlock's accounts "as Mr Calvo (Mr Caliendo's assistant) is requesting confirmation of this".

494. It appears that the Purchasers encountered a logistical difficulty in getting new directors appointed to the board of QPRH. Accordingly, at 17:32 Mr Lord sent Mr Steele and others an email saying:

> "I think we are just going to have to live with the directors not being appointed yet. However, this means that Zanotti and Caliendo cannot resign as of 1.9.07 because there is a quorum of 3 directors for board meetings. Kevin - this means the resignation letters and accompanying minutes will need to be

> revoked and resigned/dated to be agreed. Please therefore do not file any forms 288b."

It appears that Mr Caliendo and Mr Zanotti were not made aware of this at the time. It also appears that it was not until 26 October 2007 that QPRH filed the Forms 288b in respect of Mr Caliendo and Mr Zanotti.

495. At 18:00 Mr Lord sent Mr Mackenzie, Mr Steele and others an email saying that on 3 September 2007 the aggregate amount of £1,232,617.54 had been drawn down under the loan facilities from Sarita and Ecclestone, 85% under the former and 15% under the latter, which had been used to make the payments in respect of the HMRC debt, the Leigertwood monies and the ABC interest.

Thursday 6 September 2007

496. At 11:26 on 6 September 2007 Mr Caliendo's secretary (Ms Carrara) sent an email in the name of Mr Caliendo to Mr Steele, copied to Mr Paladini and Mr Calvo, saying:

> "Until today we didn't receive any communication concerning the payment established at the signature of the sale promise of the shares.
>
> It has appear to us that the established payments (that you can see in the attached file) to be made within the 31st August 2007 weren't done.
>
> My partners, with which I had a meeting yesterday from both Barnaby and Wanlock, would like to receive an answer concerning all the payments established and to be made.
>
> …
>
> We would like to receive the confirmation on how and when all this payments will be done as well as the invoice of the bills to be paid within the 31.08.2 that were a part of our agreement."

497. At 11:31 Mr Steele replied requesting the file referred to, which had not been attached. At 11:32 Ms Carrara replied attaching two documents in JPEG format. At 11:33 Ms Carrara re-sent the original email to Mr Paladini and Mr Calvo with the same attachments. Each document is an image of one page of a print-out of what appears at first sight to be the cash flow spreadsheet which Ms Duquemin sent Mr Steele at 11:42 on 22 August 2007. If they are compared with that spreadsheet, however, it can be seen that there are certain differences. In particular the first page shows the following additional payments of as having been due, on 31 August 2007:

i) £264,870 to Mr De Riu;

ii) £198,161.69 to Credit Suisse Monaco;

iii) £541,134 to "AC interest";

iv) £600,000 (rather than £450,000) to Mr Winton.

498. Counsel for Mishcon de Reya put it to Mr Caliendo that the reason why his secretary had sent these documents to Mr Steele in the form of JPEG images, rather than in the form of the native Excel spreadsheet, was in order to conceal the fact that the spreadsheet had been altered by or at the direction of Mr Caliendo, since if Mr Steele had been sent the spreadsheet, it would have been possible for him to discover when, and possibly by whom, the relevant cells had been added to the spreadsheet. Mr Caliendo denied this, but had no alternative explanation either for the format of the documents or the differences between the documents and earlier copies of the spreadsheet. As noted above, Ms Carrara was not called as a witness. In those circumstances, I conclude that the explanation put to Mr Caliendo is the correct one.

499. At 16:30 there was a meeting between Mr Steele and representatives of Withers, Charles Stanley and ARM at Mishcon de Reya's officers to discuss the Offer documentation.

Friday 7 September 2007

500. At 10:16 on 7 September 2007 Mr Abletshauser sent Mr Steele an email saying that Withers understood that QPRH had drawn down a further £1 million on Wednesday (i.e. 5 September 2007) and asking Mr Paladini to sign further drawdown notices attached.

501. At 11:54 Mr Cooke emailed Mr Steele the latest management accounts for QPRH up to August 2007. These included a balance sheet as at 31 August 2007 showing other long term loans of £6,574,193.84 and a net deficiency of £1.303 million.

502. At 12:04 Ms Tomassini chased Mr Steele for a reply to her email of 16:18 on 5 September 2008 and saying "we have just had a call from Mr Calvo saying there is a problem". Mr Steele replied at 12:07 saying that he was checking all the documents and would be transferring £199,000 to Wanlock's account the following Monday.

503. At 15:18 Ben Jeynes of ARM sent Mr Steele an email saying:

> "The schedule of Caliendo loans totals £6,581,328 – which is the same figure include in the draft [SSA] we have. Looking that the latest management accounts received (and particularly the Balance sheet at 31 August 2007), long term loans (other than the ABC Loan) are included as £6,574,193.84. Which is the correct figure?
>
> Furthermore, my understanding is that the Caliendo Loans totalling £6.5 million have now absorbed the Carlos Dunga loan of £250,000, but what of the Valentin Ehmer loan of £500,000? …"

504. At 15:21 Mr Steele replied to Mr Jeynes saying that Mr Cooke was looking into the discrepancy and that the Dunga loan was included within the Caliendo loans.

505. At 16:25 Mr Cooke replied to Mr Steele confirming that "the Carlos Dunga £250,000 had been absorbed into the total Caliendo amount" and explaining that the figure of £6,581,328 represented all the loans that Mr Caliendo had ever put into QPRH but did

not include amounts Mr Caliendo had taken back out. As at 31 August 2007, the breakdown for loan term loans was £500,000 due to Mr Ehmer and £6,074,194.84 due to Mr Caliendo.

Monday 10 September 2007

506. At 10:32 on 10 September 2007 Mr Caliendo sent Mr Steele an email asking for a reply to an email he had sent on Friday (the email referred to does not appear to be in evidence). Furthermore, he asked Mr Steele to give copies of all the documents that he (Mr Caliendo) had signed to Mr Calvo, since Mr Calvo would be travelling from London to Monaco the following day and hence would be in a position to deliver them to Mr Caliendo.

507. During the course of the day there was a certain amount of to-ing and fro-ing between Mr Steele, Ms Tomassini and Mr Zanotti regarding the details of the bank account to which Mishcon de Reya was transferring the £199,000 proceeds of sale of Wanlock's shares.

508. At 17:16 Mr Lord sent Mr Steele asking him to bring the remaining outstanding documents to a meeting which had been arranged for the following day.

Tuesday 11 September 2007

509. At 10:46 on 11 September 2007 Mr Dagworthy emailed Mr Steele a letter addressed to the Board of Directors of QPRH from Crawford Solicitors. The letter stated:

> "Queens Park Rangers Football and Athletic Club (the 'Club')
>
> We have a client who has expressed a very serious interest in the acquisition of the above.
>
> We are appreciative of the fact that the Club is already under offer and that unless any offer form our client either equalled the current offer or was to exceed the same; an approach at this stage is not likely to be of interest.
>
> The current offer has been reported to be in the region of £14-18 million; and includes the sum of £11 million to discharge the ABC Loan plus accrued interest thereon.
>
> If you are interested in receiving new offers in respect of the Club, we should be grateful if you would please provide us with your Non Disclosure and Confidentiality Agreement…
>
> When returning a finalised NDA and Confidentiality Agreement, we shall provide to you a bank reference in respect of our client confirming a net worth of £100,000,000.00."

In his covering email Mr Dagworthy asked if there was "any mileage in this at all". Mr Steele replied at 14:02 saying "no". There is no evidence as to who was behind this approach. Given Mr Dagworthy's involvement, I am sceptical that this represented a realistic alternative to a sale to the Purchasers.

510. At 11:00 there was a meeting between Mr Steele and representatives of Withers, Charles Stanley and ARM at Withers' offices to discuss the Offer documentation.

Wednesday 12 September 2007

511. At 17:33 on 12 September 2007 Mr Steele sent Mr Mackenzie an email explaining the efforts which the outgoing board of directors had made to attract new investment into QPRH (emphasis added):

> "I personally became involved in advising the company in July 2006 and am not aware of any efforts made prior to that date to attract new investment. To the best of my knowledge it was only in July 2006 that the Monaco investors first started to intimate a willingness to dispose of their shares, coupled with the determination to reduce any further investment into the Club.
>
> With Gianni we had a two stage strategy first, we sought to replace the ABC loan with a loan from another party on more beneficial terms; secondly we sought equity investment.
>
> Dealing first with our efforts to have the ABC loan refinanced, I can confirm that we spoke to all the major lending institutions, none of who were interested in providing the necessary finance. The nearest we came was following a meeting we had with the Club bankers, Lloyds TSB. Their relationship manager explained to us that none of the major banks were interested in lending money to football clubs because of the perceived risk of the clubs defaulting on loans. The banks were wary of the potential adverse publicity of seeking to foreclose on loans made to football clubs. There was also the hard economic fact that most professional football clubs in England and Scotland were heavily in debt.
>
> On the equity side we approached a number of people and organisations. You will appreciate that in each case we asked them to sign confidentiality agreements. Some refused, so discussions were taken no further. By way of example, a senior director at Citibank intimated a willingness to purchase the Monaco shares, but immediately lost interest when he found out about the ABC loan.
>
> The most promising approach came from Simon Blitz in February this year. He had a controlling interest in Oldham Football Club. He was seeking to divest himself of that interest and invest instead in QPR. We met with him and his lawyers. He was aware of the fact that he was unable to have an interest in two football clubs at the same time, and told us that he anticipated being in a position to sell all of his interests in Oldham Football Club by June 2007. However our due diligence revealed that be was awaiting a planning permission

which was unlikely to be granted until this November, without which he was unable to sell out. The talks with him collapsed.

Gianni and I then met with a venture capitalist (Steven Galvin) who undertook some routine due diligence before indicating, at the end of April this year, that he was interested in making an offer. No offer washforthcoming. As far as we were able to gather he was of the view that the Club required significant financial investment, which he was unable to provide. Thereafter Gianni met with a consortium led by Ronny Rosenthal. Rosenthal was an ex international footballer. There were several discussions with him, but nothing was put in writing, and no offer was made.

Shortly before the current offer was made I identified a consortium led by Brian Kerr, in Eire. Whilst much interest was expressed, the ABC loan proved to a problem.

It was a common theme of those that gave reasons for pulling out of talks that they were concerned that ABC had a strangle hold over the Club. I am aware of your views that in a liquidation the shareholders might be in a better position than under the current offer, but in a liquidation control of the sale of the ground would pass to ABC, Technically, they could legally be obliged to try and sell (as mortgagees) at the highest price. But in practice our suspicion was that they would have sold at a conveniently low price to a friendly developer. That would have left the liquidator with no recourse against ABC, a foreign corporation of unknown resources. Put simply the fear was that ABC would sell the ground at a pittance, pocket the cash and disappear. That would leave the only assets as the playing staff. They have not been valued. But on the basis that the best player was recently sold for £2.5 million our view, not contested by any of the shareholders to whom we spoke, was that on a good [day] the playing staff might realise £5 million in transfer fees. That ignores the legal argument that had the Club entered liquidation the players could argue they were discharged from their contracts of employment and became free agents.

I should add that the discussions I have mentioned above with potential investors took place against a background where the Club received a letter before action from the solicitors acting for HM Revenue & Customs on 17 April 2007. The letter before action claimed that the Club owed £1,598,181 in unpaid VAT and tax. This figure was disputed. The Club hired an independent consultant to advise. He negotiated with the Revenue. The negotiations were unsuccessful.

On 30 April 2007 the Revenue presented a petition. We were successful in stalling the petition until this October. That was

> on the basis of payments being made under an agreed programme which the Club was able to adhere to. *However the raw problem was that a substantial payment was due on 31 August and the Monaco investors were not prepared to make that payment.* Even if they had made that payment, it was our view that they would merely have been postponing the inevitable. A further payment was due to the Revenue in the first week of this month, the Winton family were owed £860,000 and had applied to be joined to the petition and there were other pressing creditors."

512. On 12 September 2007 Fladgate Fielder issued an invoice addressed to T&F SA I in the sum of £1,400 plus VAT for "acting on your behalf in connection with" QPR in August 2007. The copy of the invoice in evidence has been electronically stamped with the following:

> "Work done yes/no
>
> Costs OK yes/no
>
> Pay yes/no
>
> Add to disburs. Yes/no
>
> Date
>
> Signature ".

The answers to the first three questions have been marked "yes" with a manuscript circle and the answer to fourth question "no", with an illegible signature and the date 14 September 2007. Thus it appears that the T&F Group did not claim this sum as a disbursement from its client(s). This tends to confirm that Fladgate Fielder was instructed by the T&F Group on behalf of the T&F Group rather than on behalf of Mr Caliendo (or Mr Zanotti).

Thursday 13 September 2007

513. At 10:06 on 13 September 2007 Mr Caliendo sent an email to Mr Steele asking if they could meet the following Monday (when Mr Caliendo had arranged to meet Mr Briatore in London). Mr Steele replied at 10:12 saying that he was away the following week, and proposed a meeting the week after. Mr Caliendo replied at 11:04 proposing a meeting on 25 September 2007 and asking Mr Steele to answer the requests he had sent the previous week.

514. At 14:00 on 13 September 2007 Mr Mackenzie sent an email to Mr Lord, Mr Steele and others stating that he did not believe that he had yet had confirmation that there were no other agreements or arrangements between Mr Caliendo and the Purchasers, or any other connected party. He warned that, without such confirmation, he did not believe he could provide the recommendation the Panel required regarding the loans from Mr Caliendo.

515. At 14:03 on 13 September 2007 Mr Steele replied to Mr Lord's email of 14:00 saying:

> "and please note my point yesterday about the discrepancy in the offer as to the loan balance of £2m being repayable in 2011 and what the SPA provides."

516. At 14:15 Mr Mackenzie replied to Mr Steele's email saying:

> "… we have checked and the date is 2011 (being the latest date as laid out in the loans schedule of the accounts too."

517. At 14:28 Mr Steele replied to Mr Mackenzie:

> "Agreed, but not consistent with the SPA which seems to contemplate payment after any dispute about the completion accounts (otherwise it's unfair as Caliendo could be obliged to pay damages under the SPA if the accounts go against him, but otherwise has potentially to wait for repayment of the loan if the accounts go for him."

Friday 14 September 2007

518. At 14:04 on 14 September 2007 Mr Caliendo sent Mr Steele an email saying that the bank in Monaco had stopped the transfer because the transfer had been made in the name of Wanlock rather than in the name of Mr Zanotti. He went on:

> "This money will not be touched because we don't understand why you didn't send us all the payments despite our several and continous assurances and despite also all the documents that we signed further to your requests.
>
> We are really astonished for this behaviour …
>
> P.S.
>
> Kevin, I think that you'll enforce all established agreements, including the payments which must be settled within last 31st August. Please confirm by return the receipt of this e-mail message. Please arrange as soon as possible the payments regarding me, Mr De Riu and Credit Suisse, as per the files attached."

Attached to the email were further copies of the two JPEG files which had been sent on 6 September 2007.

Wednesday 19 September 2007

519. At 16:29 on 19 September 2007 Lesley Timms of Withers sent Mr Steele and Mr Cooke a list of statements relating to the Offer document, which needed to be confirmed by QPRH's directors for the purposes of verification (these were to be

incorporated into a more extensive set of "verification notes"). Ms Timms asked Mr Steele and Mr Cooke to:

> "…arrange for the Directors to read the statements and then send me a reply email confirming that the Directors have read and agreed with the information contained in the statements."

520. These documents were not forwarded to Mr Caliendo, notwithstanding that one of the documents purported to provide that Mr Caliendo accepted responsibility for the information contained in the Offer document.

Thursday 20 September 2007

521. At 12:42 on 20 September 2007 Ms Tomassini sent Mr Steele an email asking if she could send him the original share certificate in T&F Group's possession.

522. At 14:27 Clarke Wilmott sent Mr Lord an email saying that sum which QPR was due to pay HMRC by 30 September 2007 was £659,654.70 and that when this payment was received the petition debts would be paid in full.

523. At 16:46 Mr Caliendo sent Mr Steele a fax asking up to contact him urgently upon Mr Steele's return to the office on 24 September 2007 to fix a meeting on 24 or 25 September.

Friday 21 September 2007

524. At 18:46 on 21 September 2007 Mr Steele's secretary sent Mr Caliendo's secretary an email saying, due to unforeseen circumstances, Mr Steele would not be able to meet Mr Caliendo until 27 September 2007 and asking the recipient to contact Mr Steele or his secretary on Monday or Tuesday to arrange a time.

Monday 24 September 2007

525. A meeting to complete the Offer documentation was arranged for 14:00 on 24 September 2007.

526. At 9:12 Mr Steele replied to Ms Tomassini's email of 12:42 on 20 September 2007 asking her to send the certificate.

527. At 10:56 on 24 September 2007 Mr Jeynes sent Mr Steele an email saying:

> "As well as needing the confirmation of the directors' addresses for sign off, and as per Alan Mackenzie's request over the weekend, there needs to be comfort that the Directors are happy with the document (as they are responsible for it). The most efficient way would probably be for either Mishcon or Gianni to email it to Antonio and Franco, with them emailing back their confirmation that they are happy with it, and willing to be responsible for it. Whilst you have power of attorney to sign on their behalf, it does not necessarily mean that they have read/approved the document."

528. At 11:03 Mr Steele replied to Mr Jeynes:

> "The only problems are that I am not sure where Franco is at the moment and neither he nor Antonio speak good English. They'd need it translated and that could take days."

529. At 11:42 Mr Jeynes replied to Mr Steele asking whether Mishcon de Reya could provide a short letter along the lines attached to his email. Shortly afterwards, Mr Steele sent a letter to ARM on Mishcon de Reya notepaper in the form suggested by Mr Jeynes:

> "The cash offer (the 'Offer') by Sarita Capital Investment Inc ('Sarita') for [QPRH] ('QPR' or the 'Company')
>
> We refer to the offer document by Sarita proposed to be dated 25 September 2007 (the 'Offer Document').
>
> Paragraph 1 of Appendix III of the offer documented [sic] sets out a responsibility statement by the QPR directors. We have discussed the offer document with the directors and confirm that the responsibility statement has been made after due and careful enquiry."

It does not appear that Mr Steele had in fact discussed the Offer document with Messrs Caliendo or Zanotti, and so far as they were concerned they had resigned as directors on 31 August 2007.

530. At 11:58 Mr Lord emailed Mr Steele draft completion minutes for the board of QPRH to approve the Offer document.

531. At 12:00 Mr Caliendo's secretary replied to Mr Steele's secretary's email of 18:46 on 21 September 2007 saying that Mr Paladini had told her that the meeting had been arranged for 26 September 2007 and asking for confirmation. Although no reply to this email is in evidence, there is other evidence that the meeting did take place (notably Mr Caliendo's email of 27 September 2007 referred to below).

Tuesday 25 September 2007

532. On 25 September 2007 Mr Steele sent a letter to Mr Jeynes on Mishcon de Reya notepaper saying:

> "We confirm that we act for QPR Holdings Ltd, which has been a client at this firm for over a year. We further confirm that Mr Antonio Caliendo (who was also a client of this firm) is ordinarily resident at 35 BL Larvatto Monaco 98800 and that Mr Franco Zanotti is ordinarily resident at Le Riviera 5 Rue Des Lilas Monaco.
>
> We confirm that we have seen utility bills addressed to both the above mentioned gentleman at their ordinary residences, and that such utility bills were produced and shown to us at Loftus Road Stadium … in or about July 2006."

533. At 10:05 Mr Lord sent Mr Steele and others an email asking for a copy of the signed completion minutes.

534. At 16:07 Mr Lord sent Mr Steele and others a copy of the verification notes for the Offer, saying that they needed to be signed by each of the QPRH directors.

Wednesday 26 September 2007

535. At some point on 26 September 2007 Mr Steele sent Mr Paladini the draft completion minutes by fax.

536. At 17:42 Mr Lord sent Mr Steele an email saying that he needed the signed completion minutes and verification notes urgently, as the Offer was being posted the next day.

Thursday 27 September 2007

537. At 8:42 on 27 September 2007 Mr Steele forwarded Mr Lord's email of 16:07 on 25 September 2007 to Mr Paladini asking him to sign and fax back to him the verification notes.

538. At 11:57 QPRH faxed the completion minutes signed by Mr Paladini to Mr Steele. The signed minutes purport to record a meeting of the board of directors of QPRH at the Stadium at 11:00 on 26 September 2007 at which Mr Caliendo and Mr Zanotti had been present, in the course of which the terms of the Offer document were approved. This was despite the fact that (i) as far as Mr Caliendo and Mr Zanotti were concerned, they had resigned as directors on 31 August 2007 and (ii) contrary to the signed minutes, neither had attended the meeting.

539. At 12:05 Mr Steele sent email to Laura Rignanese at T&F Group confirming that the original share certificate had arrived the day before.

540. At 12:24 Mr Caliendo sent an email to Mr Steele saying:

> "Further to our yesterday's meeting please can you confirm that you talked with Mark [Cooke] that the three payments will be made?"

541. At 14:47 QPRH faxed the verification notes in respect of the Offer signed by Mr Paladini. The verification notes were also signed by Mr Steele as attorney for Mr Caliendo and for Mr Zanotti. It is not clear whether Mr Steele signed before or after Mr Paladini, but this does not matter. As executed, the verification notes run to 214 paragraphs over 48 pages referring to at least 83 tabs of documents supporting the accuracy of the statements made in connection with the Offer. As noted above, neither Mr Caliendo nor Mr Zanotti had in fact confirmed the accuracy of the parts of the verification notes which purported to be verified by QPRH's directors. Nor had Mr Zanotti in fact given Mr Steele a power of attorney.

October 2007

542. At 10:19 on 2 October 2007 Mr Caliendo sent Mr Steele an email in the following terms:

> "I received from Ilario several documents that you gave to him, but I cannot understand their meaning.
>
> The only thing that I need to understand is the following:
>
> 1. The agreement drawn up at the beginning foresaw a payment of £2,500,000 at the signature and £2,000,000 to be paid at the promotion of the team in Premier League, plus the payment of the three invoices that were indicated.
>
> 2. Has something change [sic] concerning these terms since the signed agreement?
>
> I wait urgently for your kind reply."

543. At 10:20 Mr Steele forwarded Mr Caliendo's email to Mr Paladini, asking:

> "Is he stupid or playing games?"

544. At 16:01 Mr Steele's secretary sent him a message asking him to call Mr Calvo.

545. At 17:26 Mr Caliendo sent Mr Steele a further email asking Mr Steele to reply to his earlier email as it was "very urgent and important for me".

546. At 8:40 on 3 October 2007 Mr Steele replied to Mr Caliendo's email of 10:19 on 2 October 2007 as follows:

> "I think there is some confusion.
>
> The agreement drew up at the beginning was superceded [sic]. It did not have the approval of the purchaser (I drew it up) and it was in breach of the Takeover Code, as we later found out. So we could not use that agreement and the purchasers then told us of their terms for the deal and said they would draw up the agreement.
>
> The purchaser then drew up a new agreement, which you also signed. That agreement is the one Ilario has and you may remember that when you and he were here you queried the section dealing with Tax. I explained that that only dealt with Tax matters which had been disclosed and that everything had been disclosed."

547. At 13:59 on 5 October 2007 Mr Winton faxed a letter to Mr Paladini on Anaid notepaper saying:

> "I am delighted to learn that we are to receive payment for the outstanding debts. Thank you for your assistance."

Mr Winton's evidence was that he was finally paid the money he was owed from the sale of Danny Shittu on 19 October 2007.

548. At 11:37 on 8 October 2007 Mr Caliendo sent Mr Steele an email saying:

> "With reference to your e-mail dated 3 October 207 and to the documents I received later (i.e. the Deed of Waiver, the Share Sale Agreement, the Guarantee and Debenture), I should like to confirm that:
>
> we received an offer of £2,500,000 by Mr Bruno Michel, payable on delivery of the duly completed and executed transfer of the shares to the purchasers, plus £2,000,000 payable when QPR is promoted to the Premier League.
>
> Besides, the purchasers Group undertook to pay three invoices by 31 August 2007 (the amount of which I detail below) before we accepted to resign from the Board of Directors:
>
> £264,870 to Raffaele De Riu;
>
> £198,161.69 to the Credit Suisse
>
> £541,134 to the Credit Suisse for interests paid by the Bank on behalf of QPR that I guaranteed.
>
> The above mentioned payments, however, have not been made.
>
> Consequently, I cannot understand the meaning of all the documents I received, where there are written neither the amounts mentioned above nor the payments relevant deadlines.
>
> In my previous email I asked you only to give me an answer, a precise answer, but you did not do it. That is the only thing I want to know from you, who are my lawyer."

549. At 11:41 Mr Steele forwarded Mr Caliendo's email to Mr Paladini and Mr Cooke, saying:

> "I'd like to run the reply past Mark because Antonio is completely confused as
>
> - he signed an agreement admitting no interest was payable.
>
> - when did the purchasers undertake to pay the three interest payments?"

550. At 12:52 on 9 October 2007 Mr Steele sent to Mr Paladini and Mr Cooke his proposed reply to Mr Caliendo:

> "There is a misunderstanding.
>
> The buyers agreed to buy your shares for 1p each. They agreed to buy your loans for £2,500,000. To meet the legal

> requirements of the takeover panel you signed an agreement not to charge interest. Ilario witnessed the agreement.
>
> To meet the requirements of the talkever [sic] panel there is no mention in the documents of you being paid if QPR are promoted. Again, that is because if the panel knew you would be in serious trouble as receiving preferential treatment as a former shareholder.
>
> Please send me copy of the undertaking you received and I'll find out the position from the club."

551. At 10:44 on 11 October 2007 Mr Steele's secretary forwarded to Mr Caliendo the email Mr Steele had sent to Mr Paladini and Mr Cooke at 12:52 on 9 October 2007.

552. At 11:37 Mr Caliendo replied to Mr Steele, with a copy to Mr Paladini, reiterating that his understanding of the deal agreed was as set out in his previous email and saying that "Mr Paladini … can surely confirm what I'm saying".

553. At 11:39 Mr Steele replied saying:

> "I'll wait to hear from Giani. As I have explained much of the transaction could not be put in the documents because of the Takeover Panel".

554. At 15:27 Mr Caliendo replied saying

> "I do not understand his reply as the payment of invoices had to be done by 31/08/07 and is not done yet. Please confirm the payment below will be done with no futher delay:
>
> …
>
> Second, irrespective of what of the transaction can be put in the documents, I need your urgent confirmation that all is progressing in line with the deal as confirmed by Bruno Michel…. "

555. At 16:51 Mr Steele replied saying that he would need to obtain Mr Paladini's input on the invoices.

556. At 10:46 on 12 October 2007 Mr Caliendo sent Mr Steele an email saying:

> "I understand £2,000,000 cannot be mentioned in the principal contract you've signed on my behalf (I do imagine you've signed it since I didn't received any copy till now!)
>
> I'd like to know where and which are the possible guarantees concerning the agreed amount of £2,000,000 if QPR will be promoted in Premier League."

557. At 10:55 Mr Steele forwarded to Mr Caliendo a copy of Mr Michel's email of 11:19 on 9 August 2007.

558. At 10:52 on 16 October 2007 Mr Caliendo sent Mr Paladini an email, copied to Mr Steele, thanking Mr Paladini for confirming that he (Mr Paladini) had asked Alejandro Agag (one of the new directors of QPRH) "for the settlement of" the three invoices.

559. At 18:21 David Robinson of Fladgate Fielder sent Mr Steele an email, copied to Ms Tomassini and Mr Buckley, saying:

> "I refer to your conversation with my partner Mark Buckely earlier today. As you know we have been brought into this transaction to assist Mr Caliendo at a very late stage so please forgive me if I am not entirely on top of the facts.
>
> I believe that you acknowledged to Mark that sums owed to Mr Caliendo by [QPRH] will be repaid on 'completion'. I assume that this means upon the offer being declared unconditional in all respects which I presume will be immediately following the EGM. I have not seen a copy of the offer document or the EGM notice so please would you let me know when completion and payment will take place. My understanding is that the debt is repayable on demand and on that basis I am not aware of their [sic] being any Panel issues surrounding repayment. If there are any Panel issues please would you let me know what they are.
>
> I understand that the deal done originally between Mr Michel and Mr Caliendo included a payment of £2m conditional upon the club reaching the Premier League. That arrangement would have been in breach of the City code; I wonder would it be possible to vary the waiver of debt so that rather than £2m, remaining outstanding, £4m remains outstanding of which £2m could only be demanded if the club were promoted? Given that the debt was owed to Mr Caliendo and was repayable on demand it does not seem to me to infringe the principle of treating all shareholders equally (but again, you or Withers may have been party to conversations with the Panel in which it looked at debt differently in these circumstances).
>
> Finally, you have sent forms of acceptance to T&F Limited asking Wanlock and Barnaby to sign them. Isn't it only Barnaby that need sign since Wanlock has already transferred its shares pursuant to the sale and purchase agreement between Wanlock, Mr Caliendo, Sarita and Mr Ecclestone? Please confirm."

560. At 14:43 on 17 October 2007 Mr Robinson sent Mr Steele an email saying

> "As you will appreciate Mr Caliendo does not speak English; it is does not appear to be that he understands the deal that was signed on his behalf. I would like to obtain as much clarity as possible as regards the repayment of debt and other sums that may or may not be payable as soon as possible. …"

561. The first closing of the Offer took place at 13:00 on 18 October 2007. Sarita received acceptances in respect of 45,764,368 of the shares. In addition to the 19.9 million shares already owned by the Purchasers, that gave the purchasers had a total shareholding of some 65.66% of the shares in QPRH.

562. At 15:34 on 24 October 2007 Mr Robinson sent Mr Steele a further email saying:

> "We have still not been able to speak about QPR. Mr Caliendo and his associates are particularly anxious to understand the position both regards repayment of the loans and any repayment on promotion. You will appreciate that Mr Caliendo speaks little English; he is confused as to the deal which has been done and which, I understand, was signed under the power of attorney given to you. He needs matters to be resolved failing which he will have little choice but to call into question the validity of the whole transaction. In the circumstances a meeting might be helpful."

November 2007

563. Mr Buckley and another representative of Fladgate Fielder met Mr Steele at Mishcon de Reya's offices on 1 November 2007. Mr Buckley prepared an Attendance Note which includes the following passages (emphasis added):

> "KS informed us that he was appointed by QPR a year ago to raise finance in view of their difficult position regarding restrictions on use of the stadium and onerous terms of the loan owed to ABC.
>
> In the middle of 2007 [HMRC] issued a petition. Antonio Caliendo did not want to pay and at that point wanted to sell his shares. KS negotiated an instalment payment programme with [HMRC] which still left the sum of £600,000 due on 31 August 2007 with no possibility of further time. ….
>
> QPR had other problems …
>
> In August Bruno Michel on behalf of Flavio Briatore came along with a deal on a 'take it or leave it' basis.
>
> There were further problems. …
>
> Gianni and AC fell out. AC claimed there a better offer for the club than from Bruno Michel. KS had a number of meetings with AC but he never produced any evidence of this better

offer. The deadline of 31 August to pay the balance to [HMRC] was crucial.

KS says he advised AC to speak to T&F about Barnaby and Wanlock. When AC went to T&F he got arrested over an outstanding invoice.

Ilario is Antonio's interpreter but he has a business background.

…

As far as AC's loan is concerned, the loans were for a total of £6.m. They were originally repayable in March 2011 (for tax reasons?) Baker Tilly found the loan agreements when they were doing the company's accounts. AC claimed that the repayment date had been varied but no-one could find any documentary evidence of this.

The Takeover Panel did not know about the £2m promotion payment deal. The minority shareholders had complained to the Panel about the 1p share price so this was a very hot issue.

The Panel suspected that the loan repayment was a device to get a higher share price for AC. … Withers refused to restructure the deal so that the loan was waived to a lesser extent. KS personally thought that the club would in fact go into liquidation.

KS acted for the club. He thought T&F advised AC (although he admitted that he knew T&F were refusing to advise AC because the outstanding invoice). KS claimed he persuaded the club to pay T&F.

…

Gianni and AC have now made up. Briatore knows AC well. ...

The bank debts are apparently news to KS. KS got a list of debts from the club and these bank debts were not included. AC had agreed to make the £6.5m loan interest free (he signed a document on 30 August). KS showed AC the list of agreed debts. He told him AC needed to speak to the club's finance director, Mark Cook[e], and that if the debts were genuine then he would be paid. KS suspects that the debts are AC's interest payments on the loans.

…

Mark Cook[e] said he would look into the debt[s]. He has not been able to find anything supporting them yet. Gianni thinks it is a try on. …

The future payment to AC (i.e. £2m now and £2m on promotion) are in Gianni's gift. Gianni says he wants to pay AC as soon as possible to get him off the balance sheet and to stop him causing trouble.

KS was given a list of creditors by the club including T&F and this was paid. He was keen to pay as they were not advising AC because of this debt. The list did not include AC bank debts.

AC produced his own list of club debts. *KS gave it back to him saying he was not acting for him.*

AC said the buyers are going to pay these bank debts. If so that is a matter between AC and the buyers. It may have been kept quiet on purpose by Flavio Briatore and AC.

…

KS said he does act for AC and is currently preparing a claim against Andrea Primicerio for commission as a result of a Brazilian footballer deal a year ago. It is ongoing but has stalled.

…

In answer to my prepared questions:

1. *There is some justification for AC believing that KS was acting for him. It does [n]ot appear that KS told AC to get separate legal advice.*

4. The £2m is to be paid off the record when the dust settles. It should be shortly after the meeting on Wednesday.

   The payment for the shares will be made in the proper way. KS has already told Maria that he would rather the share payment goes direct to T&F.

…

6. He says AC knows that the £2m on promotion is a gentleman's agreement and is not enforceable. ARM do not know about it. Withers do know about it.

7. QPR have not seen the invoices for the bank debts. They are concerned that they relate to interest that has been written off. If they relate to proper debts they should be supported by evidence and will be paid. …"

564. At 14:01 on 2 November 2007 Mr Buckley sent Mr Primicerio an email summarising the position as it appeared to Mr Buckley following his meeting with Mr Steele. At

15:34 Mr Primicerio forwaded Mr Buckley's email to Mr Caliendo and Mr Zanotti with his own comments.

565. At 17:34 Mr Steele sent Mr Buckley a fax enclosing "Antonio's debt declaration, the schedule of loans (initialled by him) and only written evidence the Club found of his loans (some were made by Antonio paying bills on the Club's behalf)." One of the enclosures was a print-out of the first page of Antonio Caliendo Loan Account spreadsheet which Mr Cooke had sent Mr Steele on 15 August 2007 (see paragraph 243 above) which bore a set of initials at the lower right hand corner of the page.

566. At 17:40 Mr Buckley sent Mr Primicerio a copy of his attendance note of his meeting with Mr Steele. At 19:40 on 5 November 2007 T&F SA I forwarded this email to Mr Caliendo and Mr Zanotti.

567. At 16:38 on 6 November 2007 Mr Caliendo sent Mr Steele an email saying:

> "Regarding the report that I received about the meeting that you attended with the lawyer Mr Flagate Fielde[r] I don't repute it correct and I think it doesn't reflect the agreement concerted and the reality of the facts. …
>
> Bruno Michel committed himself verbally with Mr Gianni Paladini in order to pay the invoices under condition that the amount doesn't exceed £5,000,000 included the balance to be paid to [HMRC].
>
> The list of payments performed by me and Mr Gianni Paladini in your office before the signature of any agreement to the sale doesn't achieve either to £4,000,000 including the three invoices of the creditors which helped the Club with their contribution.
>
> Despite other offers that I owned, one of them signed in your office with the Group Harold Winton on much better conditions than that Briatore offered (demonstrable), and a further offer received from a financial group to take over also the debt with ABC.
>
> Following my convictions I preferred the Briatore solution, because he is an appreciated man and very successful in business. I knew I was handing over to a group that could bring QPR at the top levels.
>
> Now someone want to speculate on an agreement established between Mr Bruno Michel, Mr Paladini and I, for the release of the shares, when the following conditions were fixed:
>
> - The payment of £2,500,000 at the moment of the release of the shares

- The payment of £2,000,000 at the promotion of QPR in Premier League

- The payment of the three invoices that at the time being have not yet be [sic] paid.

The rest is just a speculation and I don't lend my image to this".

568. QPRH held an Extraordinary General Meeting in connection with the Offer on 7 November 2007. Mr Caliendo gave instructions, via T&F Group, for Barnaby's shares to be voted in favour of the resolutions proposed.

569. At 18:26 on 9 November 2007 Mr Jeynes sent Mr Steele saying:

> "… I also want to express my apologies for chasing you at points throughout the transaction for certain things – I only realized when it was pointed out at the EGM that your services were provided in your own time and holiday. … "

570. At 15:41 on 20 November 2007 Mr Caliendo sent Mr Steele an email saying:

> "On the 28th August 2007 I signed in your office, witnessed by Mr Ilario, who has not professional experience in this kind of business and that just came with me at this meeting in quality of friend, a general power of attorney in your favour, of which I attach a copy.
>
> Furthermore on the day 20th August 2007 I sent to you the list of payments that the buyers should have made within 31st August 2007 and of which I also attach a copy.
>
> Three months have passed by and despite my several requests I didn't receive the copies of all the documents that you have signed on my behalf, thanks to the power of attorney in your possession. I need them urgently.
>
> As per today I didn't received the amount of £2,025,000.00 for the difference of £2,500,000 established, as well as the payment of the three invoices (see attachments) … :
>
> £264,870 to Raffaele Deriu …
>
> £198,161.69 to Mr Verri …
>
> £541,134.00 to Mr Antonio Caliendo …
>
> Once these amounts will been paid as agreed, it remains that the £2,000,000 at the promotion in Premier League will be due. … "

571. Although it is not clear, it appears that the second attachment was a copy of the first JPEG which had been sent by Ms Carrara to Mr Steele on 6 September 2007 (see

paragraph 497 above). This document was not sent to Mr Steele on 20 August 2007, and it could not have been, as it was based on the spreadsheet produced on 22 August 2007. I note that this email alleged for the first time that the second debt was due to Mr Dunga.

572. At 9:21 on 26 November 2007 Mr Steele replied to Mr Caliendo's email of 15:41 on 20 November 2007 saying:

> "I have sent the full pack to you.
>
> I have spoken to the club and they are finalizing the accounts position. As per the documents they must do this by 30 November. Then I will ask them to pay balance to you".

573. Also on 26 November 2007 Mr Caliendo's secretary sent Mr Caliendo a fax setting out the text of a message from Mr Caliendo to Mr Briatore asking the latter to intervene to settle payment for sums due to the former.

December 2007

574. After Mr Caliendo had chased Mr Steele on 3 and 4 December 2007, at 18:19 on 5 December 2007 Mr Steele sent Mr Caliendo an email saying:

> "Yesterday I spoke at length to the lawyers for the new owners.
>
> As I have previously explained the deal they did was based on accounting figures prepared by Mark Cooke as as the end of May. The deal obliged the accountants for the new owners to use all reasonable endeavours to verify the May figures by the end of November. As you will recall they did this because they were concerned that they may have been unknown deficits which were not properly reflected in the accounts. You will also recall that this was partly reflected in the tax warranty which they asked you to give and which I explained to you. Part of the problem was that the new owners were worried that the sums due to [HMRC] had been understated …
>
> The difficulty is that the accountants have not finished the exercise. They have told me they do not expect to finish it this month. I have told them that you will find this unacceptable as it is holding up repayment of your loan. They have simply said that they were under a duty to use reasonable endeavours to conclude the exercise and they are actually doing their best.
>
> …"

575. On 14 December 2007 QPRH wrote to Mr Caliendo saying that the statutory accounts would be finalised by 31 January 2008, after which the completetion accounts in respect of the Transaction would be prepared.

576. By 17 December 2007 Mr Caliendo still had not received the documents he had requested from Mr Steele, and accordingly arranged to meet Mr Steele at Mishcon de

Reya's offices on 20 December 2007. Mr Zanotti also attended the meeting that day during which Mr Steele was only in a position to provide a copy of the execution draft of the SSA, rather than a copy of the SSA as executed. It appears that Mr Steele did not have a copy of that document himself, and hence was forced to ask Mr Lord for a copy. Mr Steele emailed this to Mr Zanotti at 18:20 on 4 January 2008.

Delay in producing the statutory accounts

577. There was once again considerable delay by QPRH in producing its statutory accounts. During the intervening period there was considerable chasing by Mr Caliendo and Mr Zanotti of Mr Steele and a certain amount of chasing by Mr Steele of QPRH (both via Withers and directly). QPRH's Annual Report and Financial Statements for the year ending 31 May 2007 were approved by the board of QPRH on 5 March 2008, but even then QPRH declined to disclose the accounts to Mr Caliendo and Mr Zanotti until they had been approved by the shareholders. At 17:16 on 15 April 2008 Mr Lord emailed Mr Steele the statutory accounts following QPRH's Annual General Meeting the previous day.

Mr Zanotti's letter to Mr Caliendo

578. On 18 April 2008 Mr Zanotti wrote to Mr Caliendo following a meeting in London with Liam Davies of Crown Agents, saying:

> "Everything began about two years ago when you called me to propose, as a friend, that I participate with you in a great deal that you were finishing up in England. You explained to me that this was something exception and that you were offering it to me, as a friend, therefore giving me a great opportunity. I immediately and enthusiastically accepted even if I was afraid, given that the requested investment represented a lot for me even if perhaps it wasn't much to you. Therefore I also involved my father so that he could guarantee me his support, which he provided given the trust that both of us have in you.
>
> At a certain point I tried to formalize a written agreement between us, with the collaboration of Liam. This almost annoyed you and therefore our agreements remained those 'sealed with a handshake'. Obviously I had faith in you and therefore you remained my guarantee. I certainly would not have ventured into such a demanding situation without a written guarantee if I had not had the certainty of feeling protected by your word.
>
> Always to support you, and certainly not in my own interest, I agreed to serve as the Director of QPR. This came with serious responsibilities but without any remuneration or reimbursement for any of the costs incurred. The only compensation was seeing a few games and in fact I must admit I did have fun.
>
> During this period, I permitted myself to make a few suggestion such as, for example, to assign the position of Chief

> Accountant to a person to be hired, Italian and trusted by you. I also suggested assigning the position of Company Secretary to Liam Davies We also could have assigned the task of legal support to Crown Agents but even this didn't go over well with you and we therefore ended up in the hands of Kevin Steele…
>
> I have to say that although I don't understand much about football affairs if you had listened to my advice we would have fewer problems.
>
> Now we find ourselves facing the prospect of fighting in order to try not to lose the first 2 million and the minimum objective for me is to recover my money, which is 350.000 GBP which represents the 420,000 GBP initially put forward and the interest that the bank charged me, minus the 100,000 GBP that I have already received. This is vital for me. Then, with the subsequent payment (that from the promotion) I would expect to have something more so that I can actually feel that I made an investment and did not make a blunder.
>
> …"

579. Mr Caliendo drafted a reply dated 25 April 2008 which he amended in manuscript and eventually sent on 25 May 2008 saying among other things (emphasis added):

> "Nobody matters to you and you didn't even ask if the writer of this letter despite the enormous loss he must have sustained (alone), given that you disregard the amounts that were paid in order to support the investments that were supported only by me and by Dunga, while you backed out altogether with Zeno, *without wanting to throw in a penny to help us get out of a situation that was falling apart due to lack of funds.*
>
> Even your father despite the fact that he was asked for a loan of 30 days of £250,000 telling us that he was practically ready to lose everything just to avoid risking more money.
>
> Despite the guarantee that I would have provided him to return the amount at 30 days with a post-dated title.
>
> If you want to know over 7 million sterling were earmarked between me and Dunga …"

Preparation of the Completion Accounts

580. As noted above, the Caliendo Waiver provided that Mr Caliendo waived £4,581,328 of the Caliendo Loans (and interest thereon) and that the outstanding amount was £2 million, that Mr Caliendo indemnified the Purchasers if the Completion Net Assets were less than £3 million and that Mr Caliendo warranted to the Purchasers that QPRH's tax affairs were in order. The Schedule to the Caliendo Waiver set out machinery for the preparation and agreement, or in default of agreement expert

determination, of Completetion Accounts, following the preparation by QPRH of its statutory accounts, which were to be used to determine the Completion Net Assets.

581. Once the statutory accounts were available, Mr Caliendo instructed AccounTrust (in the person of Mr Mina) to prepare the Completion Accounts, in accordance with the Schedule (in fact the Schedule specified T&F rather than AccounTrust, but nothing turns on that). Mr Mina subsequently instructed Moore Stephens to assist AccounTrust with this work. AccounTrust and Moore Stephens dealt with Baker Tilly, which was acting for QPRH. The process of preparing the Completion Accounts became very drawn out, because Mr Caliendo's advisors sought to insist upon a revaluation of the Stadium, but QPRH resisted this, and instructed Withers in relation to this dispute. Mr Caliendo instructed first Donald Manasse and, later, Charles Fussell.

582. This dispute led to Withers on behalf of QPRH requesting the President of the Institute of Chartered Accountants to appoint an expert under the Schedule on 14 December 2009. John Ellison of KPMG was duly appointed on 3 June 2010. However, Mr Mina and Charles Fussell declined to agree Mr Ellison's terms of reference. As a result, Mr Ellison was unable to proceed with his determination. Thus the Completion Accounts were never agreed or determined. Accordingly, no figure for the Completion Net Assets was ever agreed or determined.

Mr Caliendo instructs Mr Franzi

583. At 11:05 on 4 June 2008 Stefano Franzi sent an email to Mr Steele introducing himself as an Italian lawyer instructed by Mr Caliendo to obtain prompt payment by the purchaser or QPR of outstanding monies owed to Mr Caliendo.

584. At 12:31 on 17 June 2008 Mr Franzi sent an email to Mr Steele saying:

> "… we had been instructed by Mr Caliendo to request a meeting with you without delay. The purpose of such meeting is to obtain clarity on all faces of the above referenced transaction, including on your professional contribution as Mr Caliendo's advisor and solicitor, which contribution has not, in our client's opinion, sufficiently protected his position and interests as a vendor."

585. At 16:01 on 17 June 2008 Mr Steele replied to Mr Franzi's email saying:

> "As far as I am concerned I did everything I was instructed to do to protect Mr Caliendo's position, in circumstances where his company's investment in the club was imperilled by a statutory demand for non-payment of tax and the imminent threat of insolvency.
>
> At all relevant times Mr Caliendo met here (with me and his other advisors and translator) to review the important papers. He did not disagree with any of the main terms of the sale agreement. He was not, as a gesture of goodwill, charged for our services.

> At all relevant times he was accompanied at those meetings by Mr Paladini and Mr de Marco. They can confirm what I have said and what I advised. Messrs Primicerio were also present at one meeting and were sent the relevant documents.
>
> The position he is now is in as a result of how the accounts have been presented – not by reason of anything I have done or not done….
>
> Since the sale was concluded I have met with Mr Caliendo here on a number of occasions, again without charge, and have presented his agent (Ilario) with a complete set of papers which were, he told me, to be handed to Mr Caliendo in Monaco.
>
> Meanwhile Mr Caliendo owes us money for a barrister's fee relating to another matter where he has instructed us. …"

586. At 15:54 on 19 June 2008 Mr Franzi responded to Mr Steele's email saying:

> "Many thanks for your e-mail of 18 [sic – this appears to be an error] June 2008.
>
> We understand that you have acted both in a professional capacity as Mr Caliendo's solicitor and and you also owe him fiduciary and other duties as his agent under a general power of attorney dated 28 August 2007.
>
> Our client believes that after execution of the contractual documentation regarding the QPR matter you have failed to reply to his enquiries, have not returned calls and messages, timely or at all, and have generally been unapproachable. …"

587. At 16:01 Mr Steele replied saying:

> "I do not accept the points made in the second paragraph of your letter …"

588. At 16:06 Mr Steele replied again, saying:

> "Apologies – I was referring to the third paragraph of your e mail in my earlier e mail".

Sarita complains of defamation

589. On 16 June 2008 Robert Morruzi of Withers wrote to Mr Steele to allege that comments made by Mr Caliendo in Mr Caliendo's blog on 11 June 2008, which had been repeated in the *Sunday Mirror* on 15 June 2008, were defamatory of Sarita. Mr Morruzi referred repeatedly to Mr Caliendo as "your client".

Queries raised by Mr Mina

590. At 15:27 on 1 August 2008 Mr Mina sent Mr Cooke an email saying:

> "I have received the attached documents and I was wondering whether, and if so where, these transactions have been recorded in the accounts."

Attached to the email were copies of Credit Suisse Monaco's fax and Mr De Riu's letter both dated 20 August 2007 (see paragraphs 273-274 above).

591. At 12:01 on 7 August 2008 Mr Cooke replied saying "I cannot find these transactions in the accounts."

592. At 11:57 on 11 September 2008 Mr Mina sent Vicky Richards of Moore Stephens saying:

> "Please find attached the two agreements in relation to the loans made by Carlos Dunga to [QPRH]. I could not find them in the ledgers but I was wondering if you had come across them in your review."

Attached to the email were copies of the two convertible loan agreements between Mr Dunga and QPRH (see paragraph 65 above).

593. At 16:62 Ms Richards replied saying

> " … no loans from Mr Dunga are recorded in the completion accounts or in the brought forward figures at 1 June 2007. I had a look at Mr Caliendo's loan account as well, as I'm sure you have done, and can't see the loans recorded there either. …"

QPR is promoted to the Premier League

594. QPR was promoted to the Premier League at the end of the 2010-11 season (the fourth season after the Transaction). No promotion bonus of £2 million was paid to Mr Caliendo by Sarita or Mr Ecclestone.

The Dunga Proceedings

595. On 16 September 2010 Marianna Anteo, an Italian lawyer who is Mr Caliendo's niece, wrote to QPRH on behalf of Mr Dunga wrote seeking repayment of "two loans made to [QPRH] of GBP 500,00[0] in January of 2006 and GBP 250,00[0] in March of 2006".

596. Ms Caplehorn responded on 1 October 2010 saying:

> "The 2007/2008 statutory accounts for [QPRH] detail all of the outstanding long-term loans and no loan from Carlos Dunga is included in the accounts.
>
> As you may be aware, [QPRH] came under new ownership in November 2007 and it is my understanding that any outstanding loans due from Carlos Dunga were cleared prior to this date. In fact our records include a signed deed from the previous owners' directors confirming that at the time of the

takeover there were no outstanding loans between QPR and Carlos Dunga."

597. On 14 October 2010 Ms Anteo replied saying that Mr Dunga denied that he had signed any deed releasing QPRH from its obligations to him.

598. On 18 October 2010 Ms Caplethorn replied reiterating her previous understanding, but asking for futher details of Mr Dunga's alleged loans.

599. On 22 October 2010 Ms Anteo sent Ms Caplethorn copies of (i) the loan agreement for £500,000, (ii) the loan agreement for £250,000, (iii) a document from Credit Suisse Monaco evidencing the transfer of £250,000 on 21 March 2006 and (iv) a document from Credit Suisse Monaco evidencing the transfer of £500,000 on 28 March 2007 (see paragraphs 67 and 138 above).

600. By 12 January 2011 QPRH had instructed Withers to defend Mr Dunga's claim. On that date Withers wrote to Ms Anteo arguing that the documents executed on 1 September 2007 showed that Mr Dunga's loans been assigned to Mr Caliendo who had then waived them, and therefore Mr Dunga's claim should be against Mr Caliendo.

601. On 24 January 2011 Ms Anteo sent Charles Fussell & Co LLP by fax a draft of a letter to be sent by Ms Anteo on behalf of Mr Dunga to Charles Fussell on behalf of Mr Caliendo and copied to Withers. The draft letter referred to the letter from Withers to Ms Anteto dated 12 January 2011 and what was alleged in it, asserted that Mr Dunga had at no time assigned the benefit of his loans to Mr Caliendo and asked for Mr Caliendo's explanatiom. On 27 January 2011 the letter was formally sent by Ms Anteo to Charless Fussell, with a copy to Withers.

602. On 2 February 2011 Charles Fussell replied to Ms Anteo agreeing that Mr Dunga's loans had not been assigned to Mr Caliendo and asserting that the deeds dated 31 August 2007 (this should have been 30 August 2007) and 1 September 2007 relied upon by Withers had been executed by Mr Steele without Mr Caliendo's authority. Accordingly, Charles Fussell argued that Mr Dunga's claims lay against QPRH.

603. On 20 March 2012 Mr Dunga commenced proceedings against QPRH seeking repayment of the loans. Although only two loans (of £500,000 and £250,000) had been mentioned in the pre-action correspondence discussed above, in the proceedings Mr Dunga also claimed a third loan in the sum of £325,000. Mr Dunga's evidence was that he authorised Mr Caliendo to instruct lawyers to bring this claim. It is clear that in substance the proceedings were brought by Mr Caliendo, albeit in Mr Dunga's name and for Mr Dunga's benefit, just as Mr Caliendo conducted other business on Mr Dunga's behalf.

604. On 30 May 2012 QPRH and Mr Dunga entered into a settlement agreement under which QPRH agreed to pay Mr Dunga £750,000 in full and final settlement and each party bore their own costs. I infer that the reason why the settlement was for £750,000 was because Mr Dunga had documentary evidence to support his claims for the two loans of £500,000 and £250,000, whereas he did not have documentary evidence to support his claim in respect of the third loan.

605. In the course of the pre-action correspondence, Withers had already raised QPRH's intention to seek to recover from Mr Caliendo any sums paid to Mr Dunga, relying on the Dunga Warranty. The obvious inference is that this informed QPRH's settlement policy despite the doubts QPRH and Withers had over Mr Dunga's claim.

The QPRH Proceedings

606. As foreshadowed in the correspondence relating to Mr Dunga's claim, QPRH then claimed the sum of £857,512.82 plus interest from Mr Caliendo by a claim issued on 1 February 2013.

607. The claim was based on the Deed of Acknowledgment and the Dunga Warranty. QPRH contended that these amounted to warranties by Mr Caliendo that QPRH was not liable for the Dunga Loans.

608. In his Defence, Mr Caliendo admitted that the Transaction Documents were binding on him. Notwithstanding that, Mr Caliendo disputed the claims made. First, he argued that on the true construction of the Deed of Acknowledgment and the Deed of Waiver these did not in fact warrant the matters contained therein. Secondly, Mr Caliendo argued that, since the information that the Dunga Loans were his loans was provided by QPRH, it was somehow estopped from denying that information was accurate. Insofar as QPRH was claiming as assignees of the Purchasers, he averred that the Purchasers had not suffered a diminution in the value of their shares.

609. Moreover, Mr Caliendo chose to go beyond merely defending the claim. He also commenced a counterclaim of his own with a view to recovering the £2 million said to be the outstanding balance of the Caliendo Loans remaining after the Transaction. He did this despite having failed to agree or finalise the Completion Accounts and hence the Completion Net Assets.

610. QPRH initially defended the counterclaim on the ground that it was Mr Caliendo's fault that the Completion Net Assets had not been determined. Subsequently, on 25 February 2014, QPRH amended its claim to seek a declaration that in fact any liability to Mr Caliendo was extinguished because the Net Completion Assets, had they been determined, would have been in the sum of £298,070 such that Mr Caliendo would have been liable for the full £2 million under the Net Asset Indemnity. It followed that the Purchasers/QPRH had no liability to Mr Caliendo in respect of his Loans.

611. Mr Caliendo's defence to the counterclaim was to allege that it was the Purchasers who failed to act properly (in not allowing a revaluation of the Stadium), such that the £2 million loan was still owing.

612. Witness statements were served in the summer of 2014. Expert reports were served on 25 September 2014 and 24 October 2014. The opinion of Mr Caliendo's expert (a Mr Wilkinson of BDO) was that the QPRH shares were valueless.

613. By a Consent Order made by Master Teverson on 4 February 2015, the claim was discontinued with an order that each side bear their own costs. This Consent Order was made just 12 days before the start of the trial on 16 February 2015.

614. Mr Caliendo now seeks to recover the costs of these proceedings from Mishcon de Reya. The only information given in respect of those costs are solicitors' invoices with no substantive narrative entitled "Advice re claim in the High Court for breach of contract". The total bills add up to £505,224.34 (including disbursements and VAT). In a response to a request for further information, Mr Caliendo declined to waive privilege in the advice sought and received in the QPRH Proceedings. Apart from a payment on account (of unknown amount), it does not seem that these costs have been paid.

Key factual issues

615. There are a number of key factual issues which it is convenient to resolve before turning to consider the Claimants' claims.

The Dunga Loans

616. The Claimants' pleaded case is that Mr Dunga made three loans to QPRH which had not been repaid as at 1 September 2007 ("the Dunga Loans"):

i) a loan of £250,000 advanced on or about 21 March 2006 and repayable by 28 February 2011 pursuant to a loan agreement made on or about 28 February 2006;

ii) a loan of £500,000 advanced on or about 28 March 2007 and repayable by 31 December 2011 pursuant to a loan agreement made on or about 31 December 2006; and

iii) a loan of £325,000 advanced on or about 28 March 2007 and repayable by 31 December 2011.

617. Mishcon de Reya disputes that Mr Dunga lent any of these sums to QPRH.

618. Before proceeding further, it is convenient to note five preliminary points. First, it is no part of the Claimants' pleaded case that Mr Dunga paid HMRC £225,000 on behalf of QPRH to pay HMRC on 10 January 2006, even though there is clear documentary evidence of this (see paragraphs 64, 79 and 244 above). No explanation for this was given by the Claimants.

619. Secondly, for the reasons discussed in paragraph 66 above, it is clear that the pleaded date of the second loan agreement is wrong. It appears that the first two agreements pre-date 31 March 2006 and 31 January 2006 respectively. This fits with the dates ascribed to the two agreements by Ms Anteo in her letter before action to QPRH (see paragraph 595 above).

620. Thirdly, the pleading does not identify any agreement pursuant to which the £325,000 was to be repayable by 31 December 2011.

621. Fourthly, Mr Dunga's oral evidence was that the three loans were either in cash or by way of provision of a bank guarantee.

622. Fifthly, it is clear from the evidence that the person who would have arranged these loans, if they were made, was Mr Caliendo.

623. I shall now consider each of the alleged loans in the order in which they are pleaded. So far as the first is concerned, as discussed in paragraph 67 above, there is documentary evidence that Mr Dunga transferred £250,000 to QPRH on 21 March 2006 which was received by QPRH on 23 March 2006. This is consistent with the terms of the agreement which appears to pre-date 31 March 2006. Accordingly, I conclude that Mr Dunga did lend QPRH £250,000 as alleged.

624. So far as the second loan is concerned, as discussed in paragraphs 68 and 80 above, there is no documentary evidence that Mr Dunga advanced £500,000 to QPRH in or around January 2006, but there is documentary evidence that Mr Caliendo advanced £500,000 to QPRH in December 2005. Counsel for Mischon de Reya suggested that the agreement reflected the transfer for the release of the £500,000 Credit Suisse guarantee on 28 March 2007, but I do not agree with this: as discussed in paragraphs 66 and 81 above, the agreement must have been existence by 9 August 2006. Counsel for the Claimants submitted that it reflected Mr Dunga's provision of security for the Credit Suisse guarantee, which was subsequently released as a result of the transfer on 28 March 2007. Although the evidence indicates that the Credit Suisse guarantee was not arranged until late April or early May 2006, this submission is supported by Mr Walton's email of 26 April 2006, which indicates that monies were "due" from Mr Dunga (see paragraph 71 above). In my view the most likely explanation is that the agreement was originally entered into as part of some private arrangement between Mr Caliendo and Mr Dunga, but that subsequently it was agreed between them that Mr Dunga would lend the sum in question to QPRH by providing security for the Credit Suisse guarantee as requested by Mr Walton.

625. As to the third loan, counsel for the Claimants submitted that this again was a loan provided by Mr Dunga by way of security for a guarantee provided by Credit Suisse prior to its release on 28 March 2007. Even though there is no specific evidence from Mr Caliendo or Mr Dunga to support this, I accept that this is the most likely explanation for what is shown by the documentary evidence, including the evidence that Barclays required and obtained further security for the overdraft (see paragraph 96 above). There is no acceptable evidence as to the terms upon which the £325,000 was lent, however.

626. Thus I conclude on the balance of probabilities that Mr Dunga did lend QPRH sums of £250,000, £500,000 and £325,000, a total of £1,075,000, albeit not precisely in the manner pleaded. It does not necessarily follow that QPRH owed these amounts to Mr Dunga as at 1 September 2007, however.

The Caliendo Loans

627. It is common ground that Mr Caliendo lent QPRH substantial amounts of money ("the Caliendo Loans"). The Claimants' case is that the Caliendo Loans totalled £5,506,328 and thus were overstated in the Caliendo Acknowledgement (and in the Deed of Acknowledgement and the Caliendo Waiver). Mishcon de Reya's case is that the Caliendo Loans totalled £6,581,328 and thus were correctly stated in the Caliendo Acknowledgement. It will be appreciated that the difference between the two figures is £1,075,000 i.e. the total of the Dunga Loans. The Claimants' case is that the Dunga Loans were wrongly included in the Caliendo Acknowledgement. Mishcon de Reya's case is that they were correctly included. Mishcon de Reya contends that, even if the sums in question were advanced by Mr Dunga, by August 2007 it had been either

agreed between Mr Caliendo and Mr Dunga, or unilaterally decided by Mr Caliendo pursuant to his authority to manage Mr Dunga's assets, that QPRH should treat them as loans from Mr Caliendo, and Mr Caliendo so instructed QPRH.

628. In my judgment Mishcon de Reya is correct about this. My reasons are as follows.

629. First, the evidence of both Mr Cooke and Ms Duquemin (via Ms Caplehorn) was that Mr Caliendo instructed QPRH's financial department to record all sums advanced by Mr Caliendo and his partners as loans by Mr Caliendo. Moreover, Mr Caliendo accepted in cross-examination that this was the case.

630. Secondly, it is clear from the documentary evidence that, despite the existence of the two loan agreements between Mr Dunga and QPRH, by 15 August 2007 QPRH's financial department had recorded the Dunga Loans as loans from Mr Caliendo. This was in accordance with the instructions referred to in the preceding paragraph.

631. Thirdly, I do not consider that this treatment of the Dunga Loans is inconsistent with the fact that the sums in question were originally advanced by Mr Dunga. As discussed in paragraph 15 above, Mr Caliendo managed Mr Dunga's money for him and, as discussed in paragraph 50 above, in general Mr Caliendo kept his arrangements with his partners as private side agreements. Whatever reason Mr Caliendo may have had for arranging the two loan agreements between Mr Dunga and QPRH for £500,000 and £250,000, he did not arrange any such agreement in respect of the advance of £325,000. Thus it appears that, by later in 2006 or 2007, Mr Caliendo preferred QPRH to treat all loans as having been made by himself, and to deal separately with his partners. (Indeed, at one point in his cross-examination, Mr Caliendo said that £500,000 transferred by Mr Dunga to QPRH on 28 March 2007 might have been a loan from Mr Dunga to himself.) Counsel for the Claimants submitted that, if the Dunga Loans had been converted into loans from Mr Caliendo, this would have been documented. Given the absence of proper disclosure from Mr Caliendo of his arrangements with his partners, however, one cannot be sure that no such documents exist. In any event, the informality of Mr Caliendo's approach means that it would not be surprising if he did not document the arrangement.

632. Fourthly, as explained in paragraph 356 above, Mr Caliendo signed the Caliendo Acknowledgement and I have no doubt that he knew and understood what he was signing.

633. Fifthly, the fact that the Dunga Loans were treated by QPRH as loans from Mr Caliendo is supported by the Dunga Warranty. Although this was drawn up and executed at a late stage of the process, without any specific instructions from Mr Caliendo, it is clear that it reflected the instructions Mr Steele had received from Mr Paladini, Mr Cooke and Ms Duquemin and that they believed that nothing was owed to Mr Dunga.

634. Sixthly, on 18 December 2009 Charles Fussell sent a Pre-Action Protocol letter to Mishcon de Reya positively asserting that the Caliendo Loans totalled £6,581,328. Subsequently the Claimants' case as to the amount of the Caliendo Loans changed, but without (so far as I am aware) any explanation as why the wrong amount was asserted in the 18 December 2009 letter.

635. Seventhly, it is very telling that, as noted above, Mr Dunga advanced QPRH £225,000 to pay HMRC, but this sum was recorded by QPRH as a loan by Mr Caliendo, and the Claimants do not suggest that it was wrongly so recorded.

636. Eighthly, although I have concluded on the balance of probabilities that Mr Dunga did advance the £325,000, it is quite telling that this sum was not originally included in Mr Dunga's claim against QPRH and was first mentioned some 18 months later and that even at this trial the Claimants struggled to explain the circumstances in which this loan was made.

637. Ninthly, also quite telling is the window-dressing correspondence between Ms Anteo and Charles Fussell in January 2011 (see paragraph 601 above) which was evidently intended by Mr Caliendo to try to persuade QPRH that Mr Dunga had a valid claim.

The Three Debts

638. The Claimants' pleaded case is that, as at August 2007, QPRH owed the following debts, each of which had been guaranteed by Mr Caliendo:

i) £264,870 owed to Mr De Riu;

ii) £198,161.69 owed to Credit Suisse; and

iii) £541,134 owed to Credit Suisse which represented interest on a loan taken out by QPRH with Credit Suisse.

639. Mishcon de Reya disputes any of the Three Debts were owed by QPRH or guaranteed by Mr Caliendo.

640. So far as the sum of £264,870 is concerned, as noted above, there was no evidence from Mr De Riu about this. Mr Caliendo admitted that Mr Riu had transferred £250,000 to QPRH at Mr Caliendo's request in about March 2007 and that, in accordance with Mr Caliendo's instructions, this had been recorded by QPRH as a loan from Mr Caliendo. Consistently with this, the £250,000 was included in the spreadsheet of Caliendo Loans, and hence formed part of the total of £6,581,328 which was the subject of the Caliendo Acknowledgement. The balance of the sum appears to have been for interest charged or foregone on the principal sum demanded by Mr Riu on 20 August 2007 (see paragraph 274 above). Mr Caliendo claimed that on 18 October 2007 he had paid Mr De Riu £100,078.68 with the assistance of a loan from Mr Zanotti and that on 4 March 2008 he had paid Mr De Riu the balance of the £264,870. That does not affect the fact that the principal sum was, on Mr Caliendo's instructions, treated by QPRH as a loan from Mr Caliendo.

641. As for the sum of £191,161.69, Mr Caliendo claimed in cross-examination that Mr Dunga had lent him money through Redhill and that the amount of the debt represented interest which had not been paid to Mr Dunga. I do not accept this evidence, for a number of reasons. First, it is not supported by any evidence from Mr Dunga. Indeed, it is striking that Mr Dunga said nothing at all about this sum in his witness statement. Secondly, while the reference in the fax from Credit Suisse to the release of guarantees in favour of Barclays on 28 March 2007 may suggest a connection with the funds provided by way of security by Mr Dunga, the date of 12

October 2004 is inconsistent with that. Indeed, there is no evidence whatever of Mr Caliendo or any of his partners lending money to QPRH as early as 12 October 2004. Thirdly, the role of Redhill is completely obscure, there being very little evidence at all about this company. In any event, even if Mr Caliendo's evidence is taken entirely at face value, it does not support the contention that the debt was owed by QPRH to Credit Suisse and guaranteed by Mr Caliendo. Rather, it amounts to a claim that the debt was owed by Mr Caliendo to Mr Dunga.

642. As to the sum of £541,134, Mr Caliendo's evidence was that this was his "own" interest. As I understand it, this amounts to a claim that the debt was owed by QPRH to Mr Caliendo in respect of the Caliendo Loans. Again, it does not support the contention that the debt was owed by QPRH to Credit Suisse and guaranteed by Mr Caliendo. I would add that there is not a shred of evidence that QPRH had taken out a loan from Credit Suisse, which would surely have been documented if it had happened. Moreover, as discussed above, Mr Caliendo warranted in the Caliendo Acknowledgement that the Caliendo Loans were interest-free.

643. In relation to the second and third sums, there is also the point that Mr Caliendo warranted in the Caliendo Acknowledgement that no other sums were owed to him by QPRH apart from the Caliendo Loans totalling £6,581,328. In relation to all three sums, there is also the fact that there is no documentary evidence of any guarantee by Mr Caliendo.

644. Accordingly, I conclude that the Claimants have not established that any of the Three Debts were owed by QPRH in August 2007 or, if they were owed by QPRH, that they were guaranteed by Mr Caliendo.

Did Mr Caliendo decide to stop funding QPRH?

645. Mr Caliendo, Mr Zanotti and Mr Dunga all gave evidence that, if a sale to the Purchasers could not have been agreed on the terms set out in Mr Michel's email of 9 August 2007, they would have been willing to continue to fund QPRH whilst they found an alternative purchaser.

646. Mishcon de Reya contends that this is untrue, and that in fact Mr Caliendo had decided (on behalf of himself and his partners, including Mr Zanotti and Mr Dunga) in early 2007 not to continue to fund QPRH because he did not want to throw good money after bad.

647. I am in no doubt that Mishcon de Reya is correct about this, for the following reasons.

648. First, Mr Caliendo admitted that no further monies were put into QPRH after the release of the guarantees on 28 March 2007. Mr Caliendo had no coherent explanation as to why, if he and his partners were willing to continue to fund QPRH after that, they did not do so. In particular, he had no explanation as to why he had not paid off the HMRC petition debts. It is manifest that HMRC's demand to be paid £963,000 by 31 August 2007, not to mention QPRH's other pressing creditors, put Mr Caliendo and his partners in a weak negotiating position with the Purchasers (and other potential investors), but Mr Caliendo failed to do anything about this. If Mr Caliendo and his partners were willing to continue funding QPRH, the rational approach would have been to pay off at least the most pressing creditors, and in particular HMRC, in

order to make QPRH a more saleable proposition. Indeed, Mr Caliendo was not even prepared to pay off the Blitz Loan (the discovery of which resulted in QPR being banned from signing players it needed). Instead, QPRH had to take out the new ABC Loan by way of short-term bridging finance to pay this and other pressing debts, but even that did not cover the HMRC payment due on 31 August 2007. It is clear that Mr Caliendo did not advance any more funds because he was concerned that, if he lent QPRH any more money, there was a strong risk that he would not get it back as QPRH would go into administration or liquidation.

649. Secondly, Mr Caliendo suggested in cross-examination that he had not needed to put further funds in after March 2007 because QPRH had been tided over by advance season ticket sales. I do not accept this. As explained in paragraphs 157-159 above, QPRH was unable to process credit and debit payments for season ticket sales for some time, and lost sales as a result. In any event, the money from season ticket sales was only enough to keep QPRH going, and in particular to pay the wages bill. It was nowhere enough to pay QPRH's creditors such as HMRC.

650. Thirdly, there is a considerable body of contemporaneous documentary evidence which supports Mishcon de Reya's case on this point: see for example the Deloite Report (paragraph 126 above), Mr De Marco's email of 8 June 2007 (paragraph 164 above), Mr Paladini's statement to the BBC on 15 June 2007 (paragraph 170 above), the QPRH board minutes of 22 June 2007 (paragraph 175 above), Mr De Marco's statement to the *Mail Online* of 26 July 2007 (paragraph 177 above), Mr Steele's email to himself of 19 August 2007 (paragraph 259 above), Mr Fitzgerald-O'Connor's letter of 24 August 2007 (paragraph 322 above), Mr Steele's email of 11:24 on 29 August 2007 (paragraph 353 above) and Mr Steele's email of 17:53 on 12 September 2007 (paragraph 511 above).

651. Fourthly, there is Mr Caliendo's letter to Mr Zanotti of 23 May 2008 (see paragraph 579 above). Although Mr Caliendo sought to dispute this when the letter was put to him in cross-examination, I consider that it is clear that he was saying that their position at QPRH had become difficult due to lack of funds. Furthermore, in the light of this correspondence, I do not accept Mr Zanotti's evidence that he was willing to continue funding QPRH.

652. Fifthly, as discussed below, the evidence shows that, although Mr Caliendo had substantial assets at the time, he did not have sufficient liquid funds and there is no evidence that he took any steps to raise loans secured on his assets. Nor did Mr Zanotti have the money.

653. Sixthly, Mr Cooke gave evidence that he recalled Mr Caliendo saying (through Mr Paladini) on more than one occasion that he couldn't continue continue funding QPR, and in particular a conversation in which Mr Caliendo said that he no longer wanted to continue funding QPR because he was experiencing a major health problem. Mr Cooke was challenged as to his recollection in cross-examination, but I found his evidence convincing.

654. Lastly, although the Claimants rely upon the guarantee contained in the letter to the auditors signed by Mr Caliendo, Mr Zanotti and Mr Paladini dated 15 January 2007 (see paragraph 104 above), I am unimpressed by this. That statement was made specifically for the purpose of QPRH's accounts for the year ended 31 May 2005

being prepared on the going concern basis. It would have been easy for the directors subsequently to say that they had changed their minds in the light of QPRH's continuing financial difficulties. Indeed, it may well be the case that it was not until 28 March 2007 that Mr Caliendo finally decided that he would not put any more money in. In any event, the fact of the matter is that the directors did not comply with the guarantee, since they did not provide the necessary funding to enable QPRH and QPRFC to meet their debts as they fall due.

The role of the T&F Group in relation to the Transaction

655. It is common ground that the T&F Group administered Barnaby and Wanlock, and in particular arranged for documents to be executed on behalf of Barnaby and Wanlock. Furthermore, it is clear that the T&F Group held at least one of the Claimants' share certificates in QPRH. Accordingly, it is common ground the involvement of the T&F Group was required in order to complete the Transaction. It was for this reason, if no other, that it was necessary to ensure that QPRH agreed to pay the T&F Group's outstanding invoice. The Claimants contend that that was the full extent of the T&F Group's involvement. Mishcon de Reya contends that the T&F Group's role extended beyond this, and that the T&F Group acted on behalf of the Claimants in relation to the Transaction, including giving such advice as was considered appropriate.

656. In my judgment Mishcon de Reya is correct about this. My reasons are as follows.

657. First, as noted above, Mr Caliendo's evidence was that Mr Mina of the T&F Group was a long-standing advisor of his.

658. Secondly, Mr Caliendo admitted in his witness statement that he had introduced Ms Murgia of the T&F Group to Mr Steele and said that she "*acted for* Barnaby, Wanlock *and me* [emphasis added]". I have concluded that this occurred at the meeting on 21 August 2007 (see paragraphs 282-288 above).

659. Thirdly, Mr Zanotti accepted in cross-examination that the T&F Group had acted for Barnaby and Wanlock, although he was vague about their exact role in the Transaction.

660. Fourthly, it is clear that the T&F Group acted on behalf of Mr Caliendo and Barnaby in relation to the acquisition of shares in QPRH from Mr Power, and may well have acted on behalf of the Claimants in relation to the acquisition of their other shares in QPRH as well (see paragraphs 54-55 above).

661. Fifthly, Mr Steele described the T&F Group in his email to Mr Indaimo at 22:10 on 30 August 2007 as Mr Caliendo and Mr Zanotti's "tax advisors" (see paragraph 408 above). Counsel for the Claimants submitted that both Mr Steele's email of 16:10 on 29 August 2007 (see paragraph 360) and this email showed that Mr Steele did not regard the T&F Group as acting as the Claimants' lawyers. I disagree that the email of 16:10 on 29 August 2007 shows this, but I accept that the email of 22:10 on 30 August 2007 does show this. As discussed above, however, the fact that the T&F Group were not, and were not understood by Mr Steele to be, lawyers, is not inconsistent with the T&F Group having acted, and having been understood by Mr Steele to act, as the Claimants' advisors in relation to the Transaction.

662. Sixthly, I consider that the documentary evidence shows that the T&F Group's role in the Transaction went beyond the purely administrative function ascribed to them by the Claimants and extended to reviewing, taking instructions from the Claimants in relation to, advising the Claimants in relation to and commenting on the draft Transaction Documents. This is evidenced in particular by Ms Murgia's email of 17:24 on 22 August 2007 (see paragraph 296 above), Ms Tomassini's email of 16:21 on 28 August 2007 (see paragraph 341 above), Ms Tomassini's email of 14:53 on 29 August 2007 (see paragraph 359 above), Mr Steele's email of 16:21 on 29 August 2007 (see paragraph 361 above), Ms Tomassini's email of 17:31 on 29 August 2007 (see paragraph 365 above), Ms Murgia's email of 10:07 on 30 August 2007 (see paragraph 376 above), Ms Tomassini's email of 15:08 on 30 August 2007 (see paragraph 391 above), Mr Steele's email of 8:00 on 31 August 2007 (see paragraph 411 above), Ms Tomassini's email of 10:35 on 28 August 2007 (see paragraph 427 above), Mr Steele's email of 12:08 on 31 August 2007 (see paragraph 435 above), Ms Tomassini's email of 12:22 on 31 August 2007 (see paragraph 438 above) and Ms Tomassini's email of 14:08 on 31 August 2007 (see paragraph 452 above).

663. Lastly, there are the letters dated 22, 30 and 31 August 2007 signed by Mr Caliendo (and, it would appear, one dated 31 August 2007 signed by Mr Zanotti) acknowledging receipt of independent legal advice (see paragraphs 298, 389 and 430 above). While these statements could be taken to refer to advice from Mishcon de Reya, in all the circumstances I consider that the better view is that they refer to advice from the T&F Group.

The role of Fladgate Fielder in relation to the Transaction

664. There is also a minor dispute as to the role of Fladgate Fielder in relation to the Transaction. Counsel for Mishcon de Reya submitted, albeit without enthusiasm, that Fladgate Fielder had been instructed by the T&F Group to act on behalf of the Claimants. Counsel for the Claimants disputed this. In my judgment it is reasonably plain from the documentary evidence that the T&F Group instructed Fladgate Fielder to act on behalf of the T&F Group. Hence Fladgate Fielder billed the T&F Group, but the T&F Group did not pass this charge on to the Claimants as a disbursement.

Retainer or assumption of responsibility

665. As noted above, the Claimants contend that they expressly or impliedly retained Mishcon de Reya to act on their behalf in respect of the Transaction, alternatively that Mishcon de Reya assumed a responsibility to act on their behalf. Mishcon de Reya disputes this.

666. As noted above, it is common ground that Mishcon de Reya did act on behalf of QPRH, but that this is not determinative of the question of whether it also acted on behalf of the Claimants. Nevertheless, it is an important factor to taken account when considering the Claimants' cases of implied retainer and assumption of responsibility.

667. It is also common ground that Mishcon de Reya was not paid for its work on the Transaction, whether by QPRH or by the Claimants. Again, it is not suggested that this is determinative, but it is another significant factor to take into account.

668. Finally, there is no dispute that, prior to the Transaction, both QPRH and Mr Caliendo had instructed Mishcon de Reya in respect of other matters as outlined above. Again, this must be taken into account.

Express retainer

669. *The law*. There is no dispute as to the applicable principles. It is trite law that the Claimants must establish that there was (i) an offer, (ii) acceptance of that offer, (iii) an intention to create legal relations and (iv) consideration. These matters must be objectively assessed.

670. *Assessment*. The Claimants' case is that Mr Caliendo expressly orally instructed Mr Steele to act on behalf of the Claimants, that Mr Steele accepted those instructions at least by conduct, that it is to be inferred that the parties intended to create legal relations and that it was implicit that Mishcon de Reya would be paid for its work (although no rate was agreed and in the event Mishcon de Reya did not bill the Claimants out of goodwill).

671. In my judgment the Claimants' case falls at the first hurdle, since I am not satisfied that the Claimants have established that Mr Caliendo expressly orally instructed Mr Steele to act on behalf of the Claimants. My reasons are as follows.

672. First, the Claimants' pleaded case is as follows (note that here "the Claimants" refers to Mr Caliendo and Barnaby):

> "From around the second week of August 2007, Mishcon, through Mr Steele, was retained to act, and did act, on behalf of the Claimants, Wanlock and Zanotti in relation to the proposed sale and/or disposal of the interests of the Claimants and Wanlock in [QPRH], namely the Transaction …"

This signally fails to particularise any express oral instructions from Mr Caliendo to Mr Steele. (Nor does it particularise in what manner Mr Steele accepted the instructions.)

673. Secondly, Mr Caliendo's evidence in his second witness statement on the point was as follows:

> "50. The sale of my shares in QPRH was not the first time that I had instructed Mishcons to act on my behalf. …
>
> 59. It is not, therefore, surprising that I instructed and believed Mishcons to be acting for me for a month or so later in August 2007 in relation to the QPRH sale. I never for a minute doubted that Mr Steele was acting for me/the shareholders (Barnaby and Wanlock) in the sale of the Club. Indeed, Mishcons never sought to make it clear to the contrary that they were not acting for me and/or were only acting for QPRH in the Transaction.
>
> …

> 84. Following [a meeting in the beginning of August 2007 at which Mr Giraudo introduced Mr Paladini to Mr Briatore and Mr Briatore expressed interest in acquiring QPRH], I had various discussions about this potential deal with Mr Steele and Paladini. …
>
> 85. I instructed Mr Steele/Mishcons to act for me, Barnaby, Wanlock and Zanotti in relation to this potential investment in the Club …"

Again, this signally fails to particularise any express oral instructions from Mr Caliendo to Mr Steele. In particular, paragraph 85 does not specify what Mr Caliendo said to Mr Steele, when or where. (Again, nor does it specify in what manner Mr Steele accepted the instructions.)

674. Thirdly, when I asked Mr Caliendo about this, he said that he had given the instructions at a meeting at Mishcon de Reya's offices on an unspecified date. He had no explanation for why this was not mentioned in his witness statement. He also told me that he did not expect Mishcon de Reya to act for free, but had no explanation as to why he had not asked for a bill. Nor was he able to suggest that anything had been agreed with respect to payment for Mishcon de Reya's services. I found his evidence on these points deeply unconvincing, and I do not accept it.

675. Fourthly, if one takes "the second week of August" to mean the period from 6 to 13 August 2007, there is no documentary evidence that Mr Caliendo attended a meeting with Mr Steele at Mishcon de Reya's offices during this period. Indeed, on Mr Caliendo's own account in his witness statement, his first meeting with Mr Steele in relation to the Transaction was on 23 or 24 August (although I have concluded that in fact it was on 21 August.) Nor is there is any documentary evidence which shows that Mr Caliendo gave any oral instructions to Mr Steele in any other way during the second week of August.

676. Fifthly, when Mr Caliendo was being cross-examined on his email to Mr Steele at 12:03 on 10 August 2007 (see paragraph 214 above), he said that he had asked Mr Steele to prepare a draft contract. It seems to me that this answer was prompted by a desire on Mr Caliendo's part to identify an instruction from himself to Mr Steele. But the email is a written request, not an oral one. Furthermore, it does not show that Mr Caliendo instructed Mr Steele to prepare a draft contract. Rather, Mr Caliendo was asking Mr Steele for copies of contracts which he assumed had already been prepared. Furthermore, the instruction to Mr Steele to prepare a draft contract came from Mr Paladini (via Mr De Marco) at 13:15 on 10 August 2007 (see paragraph 216 above). I will return to this point below.

677. Sixthly, the evidence of Mr Zanotti does not assist the Claimants on this point. On his own account, Mr Zanotti was happy for Mr Caliendo to act on behalf of Wanlock and himself in respect of the Transaction and therefore Mr Caliendo handled the negotiations. Although Mr Zanotti stated in his witness statement that he "knew that Antonio had instructed Mr Steele of Mishcons to act", in context this knowledge must have derived from what Mr Caliendo told him. Mr Zanotti did not give evidence that he was present when Mr Caliendo instructed Mr Steele. In particular, Mr Zanotti did

not suggest that Mr Caliendo had done so at the meeting which I have concluded took place on 21 August 2007.

678. Lastly, the Claimants rely upon a number of contemporaneous and post-Transaction documents as supporting their case. None of these evidence any instruction by Mr Caliendo, however. Accordingly, I shall consider them more fully in the context of the Claimants' case of implied retainer.

Implied retainer

679. *The law*. It is well established, that even if there has been no express retainer, the existence of a retainer may be inferred from the acts of the parties. Thus in *Morgan v Blyth* [1891] 1 Ch 337 Stirling J stated at 355:

> "It is quite plain that no formal or express retainer was ever given by him to them; but that was not necessary, for although no such express retainer has been given, the relation may subsist, and its existence may be inferred from the acts of the parties. If any authority for that proposition be required, it will be sufficient to refer to the decision of the Court of Appeal in the case of *Bean v Wade* 2 Times LR 157."

680. The leading case on when a retainer will be inferred is the decision of the Court of Appeal in *Dean v Allin & Watts* [2001] PNLR 921, where Lightman J, with whom Robert Walker and Sedley LJJ agreed, stated at [22]:

> "… As a matter of law, it is necessary to establish that A&W by implication agreed to act for Mr Dean: an implied retainer could only arise where on an objective consideration of all the circumstances an intention to enter into such a contractual relationship ought fairly and properly to be imputed to the parties. In *Searles v Cann and Hallett* [1993] PNLR 494 the question arose whether the solicitors for the borrowers impliedly agreed to act as solicitors for the lenders. Mr Philip Mott QC (sitting as a deputy judge of the Queen's Bench Division) held that there was nothing in the evidence which clearly pointed to that conclusion. He went on:
>
> > 'No such retainer should be implied for convenience, but only where an objective consideration of all the circumstances make it so clear an implication that [the solicitor himself] ought to have appreciated it.'
>
> 'All the circumstances' include the fact, if such be the case (as it is here), that the party in question is not liable for the solicitors fees and did not directly instruct the solicitors. These are circumstances to be taken into account, but are not conclusive. Other circumstances to be taken into account include whether such a contractual relationship has existed in the past, for where it has, the court may be readier to assume that the parties intended to resume that relationship, and where

there has been such a previous relationship the failure of the solicitor to advise the former client to obtain independent legal advice may be indicative that such advice is not necessary because the solicitor is so acting: see e.g. *Madley v. Cousins Combe & Mustoe* [1997] EGC 63. …"

681. Counsel for Mishcon de Reya relied on the following statements of principle by Hamblen J (as he then was) in *Brown v InnovatorOne plc* [2012] EWHC 1321 (Comm):

> "1014. An implied contract is one that is inferred from the conduct of the parties. However, such a contract must still satisfy the other pre-requisites to contractual formation, including an intention to create legal relations.
>
> 1015. As stated by Mance LJ in *Baird Textiles Ltd v Marks & Spencer plc* [2001] EWCA Civ 274:
>
> > '61. An intention to create legal relations is normally presumed in the case of an express or apparent agreement satisfying the first requirement: see *Chitty on Contracts* (28th ed.) vol. 1 para. 2–146. It is otherwise, when the case is that an implied contract falls to be inferred from parties' conduct: *Chitty*, para. 2–147. It is then for the party asserting such a contract to show the necessity for implying it. As Morison J said in his paragraph 12(1), if the parties would or might have acted as they did without any such contract, there is no necessity to imply any contract. It is merely putting the same point another way to say that no intention to make any such contract will then be inferred.
> >
> > 62. That the test of any such implication is necessity is, in my view, clear, both on the authority of *The Aramis* [1989] 1 Ll.R. 213, *Blackpool and Fylde Aero Club Ltd. v. Blackpool B.C.* [1990] 1 WLR 1195, *The Hannah Blumenthal* [1983] AC 854 and *The Gudermes* [1993] 1 Ll.R. 311 cited by the Vice-Chancellor, and also a matter of consistency. It could not be right to adopt a test of necessity when implying terms into a contract and a more relaxed test when implying a contract — which must itself have terms."
>
> 1016. Necessity in this context generally requires demonstrating that the parties have acted in a way which is consistent only with an intention to make a contract. If they would or might have acted the same way in the absence of such a contract then necessity is unlikely to be established. In *The Gudermes* [1993] 1 Ll.R. 311 at 320 the Court of Appeal approved the following direction given by the Judge (Hirst J):

> ‘In my judgment no implied contract can be inferred unless it is necessary to give business reality to the transaction, and unless conduct can be identified referable to the contract contended for which is inconsistent with there being no such contract; and it is fatal to the implication of such a contract if the parties would or might have acted exactly as they did in the absence of such a contract..’”

682. Counsel for the Claimants submitted that, if this involved applying a different test to that stated in *Dean v Allin & Watts*, then the latter should be preferred, due to the differing contexts in the two cases. In my judgment, there is no inconsistency between the two lines of authority, as can be seen from the approval by Lightman J in *Dean v Allin & Watts* of what Mr Mott QC had said in *Searles v Cann and Hallett*. As counsel for Claimants submitted, the test can summarised as follows: was there conduct by the parties which was consistent only with Mishcon de Reya being retained as solicitors for the Claimants?

683. *Assessment*. In addition to the evidence of Mr Caliendo and Mr Zanotti, which I have already analysed above, the Claimants rely upon first the circumstances and secondly a series of items of documentary evidence as supporting the existence of an implied retainer. Mishcon de Reya disputes that these support the inference of a retainer, and contends that the role of the T&F Group points the other way. In addition, Mishcon de Reya relies upon the evidence of both Mr Winton and Mr Cooke that their understanding was that Mishcon de Reya acted for QPR and not for Mr Caliendo.

684. Before considering the matters relied upon by the Claimants, it is convenient to address three preliminary points. The first is that I do not understand it to be in dispute that it is the acts of Mr Caliendo and Mishcon de Reya which matter for these purposes, since Mr Zanotti left the negotiations to Mr Caliendo.

685. The second concerns the manner in which Mishcon de Reya was retained by QPRH in relation to the Transaction. Counsel for Mishcon de Reya submitted that there was an express retainer which came about as result of the instruction contained in Ms Duquemin’s emails to Mr Steele of 13:18 and 14:57 on 6 August 2007 and Mr Steele’s acceptance of that instruction by sending his email of 15:18 to Mr Michel stating that Mishcon de Reya acted for QPRH (see paragraphs 202-205 above). I do not accept this, since Ms Duquemin’s instruction went no further than a request to prepare a letter of intent.

686. In my view a better candidate for the instructions is Mr De Marco’s email at 13:15 on 10 August 2007 relaying Mr Paladini’s request to prepare a draft contract (paragraph 216 above). It seems to me, upon analysis, Mr Paladini gave that instruction as a director of QPRH, and hence on behalf of QPRH. Moreover, it was accepted by Mr Steele by conduct, in that he duly proceeded to draft a contract. It is fair to say that the draft contract which Mr Steele prepared did not have QPRH as a party, since the Transaction as proposed at that stage did not require QPRH to be a party. (As counsel for the Claimants rightly accepted, that subsequently changed on 22 August 2007.) But that is not significant for the reason I shall address below.

687. In any event, Mishcon de Reya continued to act for QPRH throughout the Transaction, and I consider that the conduct of the parties is consistent only with there having been an implied retainer even if there was no express retainer. As I have already noted, Mishcon de Reya did not charge for its work for QPRH on the Transaction, but it does not follow that there was no consideration. As discussed in paragraph 87 above, it was Mr Caliendo's evidence that Mishcon de Reya benefited from the provision of match tickets, the use of a box and invitations to the Directors' box. These benefits were of monetary value. They were also benefits that only QPRH could provide. Mr Caliendo personally could not provide such benefits.

688. The third point is that, as counsel for Mishcon de Reya submitted, it is important to bear in mind the position of Mr Caliendo, Mr Zanotti and Mr Paladini as directors of a company which was both balance-sheet and cash-flow insolvent and was at considerable risk of being placed in administration or liquidation, even though they were also beneficially shareholders in that company. The relevant legal principles in this respect were helpfully summarised by Newey J in *Vivendi SA v Richards* [2013] EWHC 3006 (Ch), [2013] BCC 771:

> "148. While the interests of a company are normally identified with those of its members, the interests of creditors can become relevant if a company has financial difficulties. In *West Mercia Safetywear Ltd v Dodd* (1988) BCC 30, Dillon LJ (with whom Croom-Johnson LJ and Caulfield J agreed) endorsed (at 33) the following statement of Street CJ in *Kinsela v Russell Kinsela Pty Ltd* (1986) 4 NSWLR 722:
>
> > 'In a solvent company the proprietary interests of the shareholders entitle them as a general body to be regarded as the company when questions of the duty of directors arise. If, as a general body, they authorise or ratify a particular action of the directors, there can be no challenge to the validity of what the directors have done. But where a company is insolvent the interests of the creditors intrude. They become prospectively entitled, through the mechanism of liquidation, to displace the power of the shareholders and directors to deal with the company's assets. It is in a practical sense their assets and not the shareholders' assets that, through the medium of the company, are under the management of the directors pending either liquidation, return to solvency, or the imposition of some alternative administration.'
>
> 149. The interests of creditors can 'intrude' even when a company may not strictly be insolvent. For example, in *Colin Gwyer & Associates Ltd v London Wharf (Limehouse) Ltd* [2002] EWHC 2748 (Ch), [2003] BCC 885 Mr Leslie Kosmin QC (sitting as a deputy High Court Judge) put the position as follows (at [74]):

> 'Where a company is *insolvent or of doubtful solvency or on the verge of insolvency* and it is the creditors' money which is at risk the directors, when carrying out their duty to the company, must consider the interests of the creditors as paramount and take those into account when exercising their discretion.'

(The emphasis has been added.)

150. Recent Australian authority is to similar effect. For example, in *Kalls Enterprises Pty Ltd v Baloglow* [2007] NSWCA 191, (2007) 25 ACLC 1094, Giles JA (with whom Ipp and Basten JJA agreed) said (at [162]):

> 'It is sufficient for present purposes that, in accord with the reason for regard to the interests of creditors, the company need not be insolvent at the time and the directors must consider their interests if there is a real and not remote risk that they will be prejudiced by the dealing in question.'

This passage was quoted with apparent approval in *Bell Group Ltd v Westpac Banking Corporation* [2008] WASC 239 and, on appeal, *Westpac Banking Corporation v Bell Group* [2012] WASCA 157. At first instance, Owen J, having quoted from *Kalls*, said (at [4445]):

> 'The basic principle is that a decision that has adverse consequences for creditors might also be adverse to the interests of the company. Adversity might strike short of actual insolvency and might propel the company towards an insolvency administration. And that is where the interests of creditors come to the fore.'"

689. It follows that Messrs Caliendo, Zanotti and Paladini had a duty to act in a manner which put the interests of QPRH's creditors ahead of their own interests as shareholders. Although there is no evidence that Mr Steele ever articulated this duty to them at the time, or even addressed his mind to it, it seems to me that Mr Steele implicitly acted on this basis. Moreover, it also seems to me that at least Mr Paladini acted in the same spirit. As both Mr Steele and Mr Paladini clearly recognised throughout the relevant period, the only realistic option for saving the company, and hence enabling creditors other than ABC to be paid, was for the company to be sold to the Purchasers. (I think that Mr Caliendo and Mr Zanotti were more concerned to look after their own interests than Mr Paladini was, but they too recognised that a deal with the Purchasers was the only realistic way forward.) Hence it was that Mr Paladini instructed Mr Steele to prepare the draft contract even though the contract did not at that stage involve QPRH.

690. Turning to the circumstances relied upon the Claimants, these are that (i) Mishcon de Reya had acted for Mr Caliendo previously and had done so without a retainer letter, (ii) no other firm of solicitors acted for the Claimants, (iii) the only firm of solicitors

negotiating with Withers was Mishcon de Reya, (iv) Mishcon de Reya negotiated amendments to the Transaction Documents on behalf of the Claimants, (v) Withers understood that Mishcon de Reya was acting for the Claimants, (vi) Mr Steele signed a number of the Transaction Documents, (vii) Mr Steele was appointed in the SSA as the Wanlock's and Mr Caliendo's agent for service of process in any proceedings before the English courts concerning the SSA and (viii) Mishcon de Reya received the proceeds of sale. I shall consider these matters in turn.

691. So far as (i) is concerned, this is undisputed. But as Mishcon de Reya points out, the earlier occasions were specific retainers in relation to separate matters, the prime example being the Turkish claim (see paragraph 93 above). There was no general or long-standing relationship between Mr Caliendo and Mishcon de Reya.

692. As for (ii) and (iii), these points are again undisputed. But as counsel for Mishcon de Reya pointed out, it was not essential for the Claimants to be represented by solicitors. It was essential for QPRH to be represented by solicitors once it was appreciated that the Code applied and once the Transaction involved substantial secured loans by the Purchasers to QPRH, and Mishcon de Reya did act for QPRH. But the Claimants could be advised by other professional advisors, such as accountants and financial advisors. As discussed in paragraph 55 above, Mr Caliendo did not retain solicitors when he acquired his shareholding in QPRH, but was advised by the T&F Group. Furthermore, on the Claimants' case, Mr Paladini and Moorbound were not represented by anyone in relation to the Transaction. I shall return to both of these points below.

693. As to (iv), counsel for the Claimants relied, for example, on Mr Steele's email to Mr Indaimo at 15:16 on 22 August 2007 (see paragraph 294 above). It is correct that the attachments to this email were revised draft contracts prepared by Mishcon de Reya which envisaged Barnaby and Wanlock selling their shares and Mr Caliendo waiving his loans in consideration of a payment of a little over £2 million and did not involve QPRH as a party. But they also envisaged Moorbound selling its shares. As noted above, it is not the Claimants' case that Mishcon de Reya was instructed by Moorbound or by Mr Paladini. Indeed, if Mr Caliendo's evidence were to be believed, there was a conflict of interest between Mr Caliendo and Mr Paladini at the relevant time. Moreover, as I have explained, Mr Steele was acting on instructions which emanated from Mr Paladini in his capacity as a director of QPRH, and hence on behalf of QPRH.

694. As for (v), Mishcon de Reya disputes that Withers understood that Mishcon de Reya was acting for the Claimants. In this regard counsel for the Claimants relied generally upon the communications between Withers and Mishcon de Reya with regard to the negotiation of the Transaction, but these are equivocal given that Mishcon de Reya was negotiating on behalf of QPRH. For example, agendas for meetings circulated by Withers referring to agreeing the Transaction Documents with Mishcon de Reya do not prove the Claimants' point, because the Claimants accept that Mishcon de Reya was acting for QPRH by that stage and thus had to agree the Documents on behalf of QPRH.

695. Counsel for the Claimants relied in particular upon Mr Cuffe's email of 0:42 on 24 August 2007 attaching a draft undertaking by Mishcon de Reya stating that they acted for Barnaby, Mr Caliendo, Wanlock and Moorbound (see paragraph 315 above). In

my judgment this does not assist the Claimants, for two reasons. First, the proposed undertaking was to hold the proceeds of sale in Mishcon de Reya's client account pending completion of the Transaction. Thus in context what Withers was envisaging was that Mishcon de Reya would act for the persons identified for the purposes of receiving the proceeds. It is fair to say that the drafting is expressed a little more widely that this, but I attach no significance to that given that the document was apparently drafted after midnight and that it was never executed by Mishcon de Reya. Secondly, the draft recited that Mishcon de Reya acted for Moorbound as well as Barnaby, Mr Caliendo and Wanlock, but as I have said, it is not the Claimants' case that Mishcon de Reya was instructed by Moorbound or by Mr Paladini.

696. Counsel for the Claimants also relied upon Mr Morruzi's letter to Mr Steele dated 16 June 2008 (see paragraph 589 above). This does not assist the Claimants either. This was long after the Transaction; Mr Moruzzi had not been involved in the Transaction; and the subject matter of the letter was an allegation of defamation by Mr Caliendo in what he had written long after the Transaction. No doubt it was convenient for Mr Moruzzi to address his letter to Mr Steele, in the same way as it was convenient for Mr Steele to be appointed as agent for service under the SSA, but this does not begin to show that Withers understood that Mr Steele acted for Mr Caliendo in relation to the Transaction.

697. As to (vi), it is true that Mr Steele signed the SSA and other Transaction Documents on behalf of Mr Caliendo, Barnaby and Wanlock; but he did so pursuant to powers of attorney granted to him for this express purpose. It is apparent that this was deliberately arranged so to ensure that neither Mr Caliendo nor the directors and managers of Barnaby and Wanlock had to sign the documents. This was no doubt connected with the offshore status of Barnaby and Wanlock and designed to minimise their exposure to tax. It is also true that I have concluded that, as the Claimants contend, Mr Steele forged the power of attorney from Mr Zanotti to himself, but it appears that he did so simply to ensure that the Transaction was completed at a time when he had discovered that there was a lacuna in the paperwork.

698. As to (vii), it is true that Mr Steele was appointed as agent for service in the SSA. This was first added to the draft SSA when Mr Steele amended SSA5 on 28 August 2008 (see paragraph 349 above). When Ms Tomassini queried it, Mr Steele explained that this was for convenience (see paragraph 427 and 435 above). The appointment was in respect of any disputes arising after completion of the SSA, and hence does not show that Mr Steele acted in relation to the Transaction. Furthermore, as counsel for the Claimants himself pointed out, in the version of the SSA executed by Wanlock, this provision was amended to appoint T&F SA I as the agent for service.

699. As to (viii), it is true that Mishcon de Reya received into its client account the proceeds of sale of first the Wanlock and later the Barnaby shares. Counsel for the Claimants relied upon Rule 15 of the Solicitors Accounts Rules 1998 (the rules then in force) as showing that Barnaby and Wanlock must have been Mishcon de Reya's clients in order for Mishcon de Reya to receive this money in its client account. As counsel for Mishcon de Reya submitted, this is a misunderstanding of the 1998 Rules. Rule 13 defines "client money" as including money held or received "as agent, bailee, stakeholder or the donee of a power attorney". Rule 1 recognises the distinction between "the client" and "other people" who may pay money to a solicitor. Rule 15 requires client money to be paid into a client account. Thus payment of money

received from a person into a solicitors' client account does not demonstrate that that person is the solicitors' client. Furthermore, in the present case Mishcon de Reya did so on the basis of written instructions from T&F SA I and on the terms of solicitors' undertakings as sought by the T&F Group on behalf of Barnaby and Wanlock (see paragraphs 427, 438 and 458 above). As counsel for Mishcon de Reya submitted, the seeking by T&F Group and the giving by Mishcon de Reya of these undertakings would have been unnecessary and superfluous if Barnaby and Wanlock had been Mishcon de Reya's clients. Thus I agree with counsel for Mishcon de Reya that this is evidence which is contrary to the existence of a retainer between Barnaby/Wanlock and Mishcon de Reya, rather than supportive of it.

700. Turning to the documents relied upon by the Claimants, in addition to those already mentioned, these are as follows.

701. First, Mr Steele's email to Mr Michel of 13:52 on 15 August 2007 (see paragraph 248 above). Counsel for the Claimants submitted that this showed that Mr Steele was acting for Mr Caliendo. I disagree. First, Mr Steele relayed information as to the total of the Caliendo Loans which Mr Steele had obtained from QPRH. In that regard I consider that he was acting for QPRH, albeit that the information affected Mr Caliendo's interests. Secondly, Mr Steele proposed that Mr Caliendo sign a letter of discharge in return for the Promotion Bonus. I accept that this is more supportive of the Claimants' case, but I nevertheless consider that Mr Steele was acting for QPRH for the reasons explained above. Mr Steele was negotiating outline of a deal to save the company. His proposal affected Mr Caliendo's interests and would require Mr Caliendo's assent, but it does not follow that Mr Steele was acting on his behalf.

702. Secondly, Mr Steele's email to Mr Michel of 10:52 on 16 August 2007 (see paragraph 250 above). Counsel for the Claimants again submitted that this showed that Mr Steele was acting for Mr Caliendo. Again I disagree. It is true that Mr Steele proposed to draft a guarantee from Mr Caliendo, that this affected Mr Caliendo's interests and that it would require Mr Caliendo's assent, but it does not follow that Mr Steele was acting on his behalf. At this date Mr Steele had not yet met Mr Caliendo in connection with the Transaction, and was operating primarily on the basis of the instructions he was receiving from Mr Paladini.

703. Thirdly, Mr Steele's email to Mr Jones of 9:59 on 29 August 2007 stating that he acted for Barnaby and Wanlock (see paragraph 352 above). I agree that, at first blush, this appears to support the Claimants' case. Upon analysis, however, it is rather less supportive. This is for three reasons. First, in context, Mr Steele was saying that he acted for those companies for the purpose of seeking certificates of good standing and an opinion as to their ability to execute Transaction Documents. This was in circumstances where there was considerable time pressure with respect to the Transaction: it had been intended to complete that day, and it was thought that it had to be completed by 31 August 2007 at the latest. Thus it appears that Mr Steele was trying to speed things up in circumstances where he was evidently getting a little frustrated with the tardiness of the T&F Group (see in particular Mr Steele's email to Ms Tomassini at 16:28, paragraph 362 above). Secondly, it was in QPRH's interests to ensure that the Transaction was completed as soon as possible. Thirdly, this was not a communication passing between Mishcon de Reya and the Claimants. Indeed, there is no evidence that the Claimants were aware of it at the time.

704. Fourthly, the letter from Mr Steele to Mr Lord dated 31 August 2007 stating that he acted for Messrs Caliendo, Zanotti and Paladini (see paragraph 477 above). But, in context, it is clear that Mr Steele was saying he acted for them in their capacities as directors of QPRH, not in their personal capacities, since he went on to say that they confirmed that there were no outstanding convertible loans to QPRH.

705. Fifthly, Mr Steele's letter to Mr Jeynes dated 25 September 2007 (see paragraph 532 above). Counsel for the Claimants relied on the reference to Mr Steele having seen Mr Zanotti's utility bills, and submitted that this must have been in connection with the Transaction. This ignores what Mr Steele actually wrote, however, which is that he saw them in July 2006, a year earlier. Rightly, counsel did not rely upon the statement that Mr Caliendo was also a client of the firm.

706. Sixthly, Mr Caliendo's email to Mr Steele at 11:37 on 8 October 2007 and Mr Steele's reply at 10:44 on 11 October 2007 (see paragraphs 548 and 551 above). Mr Caliendo described Mr Steele as "my lawyer", and Mr Steele did not take issue with this description. But at the time it appears that Mr Steele was concentrating on other aspects of Mr Caliendo's email.

707. Seventhly, the email from Mr Steele to Mr Franzi at 16:01 on 17 June 2008 (see paragraph 585 above). In his email at 12:31 Mr Franzi had described Mr Steele as "Mr Caliendo's … solicitor". In his reply Mr Steele did not deny this. On the contrary, he said that "did everything I was instructed to do to protect Mr Caliendo's position" and went on to say that Mr Caliendo "was not, as a gesture of goodwill, charged for our services". He also that "Mr Caliendo owes us money for a barrister's fee for relating to another matter where he has instructed us." In my view this is one of the two strongest pieces of evidence in support of the Claimants' case. It would have been the simplest thing for Mr Steele to say that Mr Caliendo was not his client if that was his view. Accordingly, I consider that Mr Steele was must be taken to have accepted that Mr Caliendo had been his client. But that was Mr Steele's view looking back about 8 months after the relevant period. It is rightly not suggested that Mishcon de Reya is bound by it.

708. Lastly, the two emails from Mr Steele to Mr Franzi at 16:01 and 16:06 on 19 June 2008 (see paragraphs 587-588 above). Taken together, these are perhaps even stronger evidence of an acceptance by Mr Steele that Mr Caliendo had been his client. Nevertheless, the same comments apply.

709. As noted above, Mishcon de Reya relies upon the role of the T&F Group. I have considered this above. In summary, I have concluded that the T&F Group did act for the Claimants in relation to the Transaction. They were not lawyers, but they did not need to be. In my judgment, the involvement of the T&F Group on behalf of the Claimants is not conclusive of the question of whether there was an implied retainer of Mishcon de Reya: it would have possible for the Claimants to have retained both the T&F Group and Mishcon de Reya. Nevertheless, it is a factor which points against there having been an implied retainer of Mishcon de Reya.

710. Consistently with my conclusion as to the role of the T&F Group, there is no documentary evidence to show that the Claimants requested Mishcon de Reya to advise the Claimants or that Mishcon de Reya did advise the Claimants in relation to the Transaction or the Transaction Documents during the critical period from 22

August to 1 September 2007. As I understand it, the Claimants say that it was Mishcon de Reya's duty as their solicitors to advise the Claimants even if such advice was not specifically requested. If the premise were established, I would accept the consequence. But the issue here is to the correctness of the premise. Again, I consider that the absence of advice is a factor which points against there having been an implied retainer of Mishcon de Reya.

711. Finally, I need to revert to two matters which I have already touched on. The first is the position of Mr Paladini and Moorbound. As I have already pointed out, the Claimants do not contend that Mishcon de Reya acted for Mr Paladini or Moorbound. Nor do the Claimants suggest that anyone else acted for Mr Paladini and Moorbound. Counsel for the Claimants submitted that it was possible to conclude that Mishcon de Reya acted by the Claimants, but not for Mr Paladini or Moorbound. I accept that this is so. Nevertheless, what the documentary evidence shows is that Mishcon de Reya was also involved in aspects of the Transaction that affected the latter's interests. For example, the letter from Mr Steele to Mr Lord dated 31 August 2007 relied upon by the Claimants is expressed to be written on behalf of Mr Caliendo, Mr Zanotti and Mr Paladini. Counsel for the Claimants accepted that this showed that Mishcon de Reya was acting in this instance as much on behalf of Mr Paladini as on behalf of Mr Caliendo and Mr Zanotti. But in my judgment this weakens the case that Mishcon de Reya was impliedly retained by the Claimants, but not by Mr Paladini or Moorbound.

712. Secondly, there is the question of consideration. As in relation to the express retainer case, counsel for the Claimants argued that it was implicit that Mishcon de Reya would be paid for its work. He submitted that it was not fatal to the Claimants' claim either that no rate was agreed or that in the event Mishcon de Reya did not bill the Claimants out of goodwill. I accept the first point entirely. Where there is an implied retainer, it will often be the case that nothing has been agreed with respect to the solicitors' remuneration. The law is clear that this does not in itself prevent the existence of a contract, since it is implied that the solicitors will be paid reasonable remuneration. I also accept that the absence of any bill is not fatal either. In the present case, however, there is no contemporaneous evidence that the Claimants ever expected to have to pay Mishcon de Reya for its services. On the contrary, it seems clear that the Claimants did not expect to be charged by Mishcon de Reya. One has to ask why not. As I have already commented, it is understandable that QPRH did not expect to have to pay Mishcon de Reya for its services, because QPRH was providing valuable benefits to Mishcon de Reya. The same does not apply to the Claimants. Again, this is a factor which tells against there having been an implied retainer, although it is not conclusive.

713. It is now time to draw these threads together and reach a conclusion. I have not found this easy, in particular because of the admissions (or at least, non-denials) on the part of Mr Steele. Nevertheless, the conclusion I have reached is that the actions of the parties are not consistent only with Mishcon de Reya being retained as solicitors for the Claimants. Rather, they are at least equally consistent with Mishcon de Reya acting as solicitors for QPRH and its directors in their capacities as directors of the company.

Assumption of responsibility

714. *The law*. The relevant legal principles were again considered by Lightman J in *Dean v Allin & Watts*, where he set out passages from the judgment of Neill LJ in *Bank of Credit and Commerce International (Overseas) Ltd v Price Waterhouse* [1998] PNLR 564 at 582 (at [33]), the speech of Lord Slynn in *Phelps v Hillingdon BC* [2000] 3 WLR 776 at 79 (at [35]), the speech of Lord Goff of Chieveley in *White v Jones* [1995] 2 AC 207 at 256 and 268 (at [36]) and the judgment of Schiemann LJ in *Gorham v British Telecommunications plc* [2004] 4 All ER 867 at 881 (at [39]). I shall not lengthen this judgment still further by repeating those citations here, but it is worth setting out Lightman J's own observation at [33]:

> "In a situation such as the present where (to the knowledge of both parties) a solicitor is retained by one party and there is a conflict of interest between the client and the other party to a transaction, the court should be slow to find that the solicitor has assumed a duty of care to the other party to the transaction, for such an assumption is ordinarily implausible."

Nevertheless, on the facts of that case, the Court of Appeal held that the solicitor had owned the claimant a duty of care.

715. Although I was referred to certain other authorities, and in particular the decisions of the Court of Appeal of New Zealand in *Brownie Wills v Shrimpton* [1999] PNLR 552 and of the House of Lords in *Customs and Excise Commissioners v Barclays Bank plc* [2007] 1 AC 207, it does not seem to me any of them detract from, or materially add to, the analysis of the law in *Dean v Allin & Watts* for present purposes.

716. *Assessment*. The Claimants rely upon a number of matters in support of their case that Mishcon de Reya assumed a responsibility to the Claimants and thus owed the Claimants a duty of care. I shall consider these in turn.

717. First, the facts that the Claimants did not instruct their own solicitors to protect their interests and that Mr Steele was aware of this. The Claimants did, however, instruct the T&F Group, and Mr Steele was aware of this.

718. Secondly, the Claimants contend that Mr Steele knew, or ought reasonably to have known, that the Claimants were relying on him to protect their interests. As counsel for Mishcon de Reya submitted, however, this contention was not made out on the evidence. Unsurprisingly, there was no evidence as to reliance from the directors of Barnaby and Wanlock. Although Mr Zanotti gave evidence that he relied on Mr Steele to protect his interests, I cannot place any weight on that evidence given Mr Zanotti's acceptance that (a) he had taken a back seat and Mr Caliendo had driven the Transaction forward and (b) he knew the T&F Group was acting for Barnaby and Wanlock. As for Mr Caliendo, I do not believe that he relied on Mr Steele. On Mr Caliendo's own evidence, he only met Mr Steele two or three times, and he could not speak English and Mr Steele could not speak Italian. In my judgment it is clear that Mr Caliendo relied on the T&F Group, with whom he had a long-standing relationship, with whom he communicated in Italian and who had assisted him to purchase at least some of the shares in the first place. Thus the T&F Group made

comments to Mr Steele about the draft Transaction Documents based on instructions from Mr Caliendo rather than Mr Caliendo instructing Mr Steele direct.

719. Thirdly, the Claimants rely upon the fact that Mr Steele did not disclaim any duty to them or advise them to obtain independent legal advice. This is factually accurate, but I do not consider that it advances the Claimants' case greatly given that Mr Steele was aware that the Claimants had instructed the T&F Group.

720. Fourthly, the Claimants argue that Mr Steele acted in a manner which at least potentially exposed the Claimants to significant liabilities, in particular by executing the Transaction Documents and signing the verification notes under his power of attorney. Counsel for the Claimants submitted that Mr Steele must have owed the Claimants a duty of care when signing documents under the powers of attorney granted to him. As explained in more detail below, Mishcon de Reya accepts that Mr Steele owed Mr Caliendo fiduciary duties of loyalty and to act within the scope of the powers granted given under the power of attorney granted by Mr Caliendo, but (on the premise advanced by the Claimants, which I have accepted, that the power of attorney apparently granted by Mr Zanotti was a forgery) not Mr Zanotti. But in my view this is not an answer to the Claimants' case that Mr Steele owed both Mr Caliendo and Mr Zanotti (and their companies) a duty of care.

721. Counsel for Mishcon de Reya submitted that no duty of care to the Claimants could be imposed upon Mishcon de Reya because there was a conflict of interest between the Claimants and QPRH. I do not accept this submission, for the following reasons. First, as *Dean v Allin & Watts* makes clear, the existence of a conflict of interest does not preclude the imposition of a duty of care.

722. Secondly, it is implicit in Mishcon de Reya's own case that, although their interests were not wholly aligned, there was a commonality of interests between the Claimants and QPRH. As I have discussed, QPRH was insolvent and at considerable risk of being put into administration or liquidation. The only realistic way of saving the company was to accept the Purchasers' offer. That was in the interests of the company and of its creditors, and thus it was the duty of the directors to put those interests before their personal interests. But in addition, it was in the directors' personal interests to accept the Purchasers' offer, because it offered some measure of recovery of their investments, whereas they would almost certainly have recovered next to nothing on an administration or liquidation. There was a conflict of interest between the Claimants and QPRH to the extent that it was in Claimants' interests to push for better terms from the Purchasers provided that this did not endanger the deal, whereas it was in QPRH's interests to go for the certainty of a deal rather than holding out for the best terms for the Claimants. But, to the extent that there was a commonality of interest between the Claimants and QPRH, there is no obstacle to the imposition of a duty of care on Mishcon de Reya.

723. I should mention at this point that counsel for the Claimants relied on the fact that it is Mishcon de Reya's pleaded case that the Claimants consented to Mishcon de Reya acting for QPRH. This is beside the point, because the question is whether QPRH consented to Mishcon de Reya acting for the Claimants. There is no evidence of any explicit consent by QPRH. Nevertheless, I think that it is clear that QPRH would have had no objection to Mishcon de Reya acting for the Claimants to the extent that their respective interests were aligned. Moreover, it is clear that Mr Paladini was aware that

Mishcon de Reya was, to put it neutrally, liaising with the Claimants with respect to the Transaction.

724. Again I have not found this an easy question to decide, but the conclusion I have reached is that, to a limited extent, Mishcon de Reya in the person of Mr Steele did assume a responsibility to the Claimants and thus owed the Claimants a limited duty of care. Perhaps the clearest illustration of this is Mr Steele's email to Mr Jones at 9:59 on 29 August 2007 in which Mr Steele stated that he acted for Barnaby and Wanlock. For the reasons given above, I have concluded that this does not justify the conclusion that Mishcon de Reya was impliedly retained by the Claimants. But it seems to me to be inescapable that Mr Steele was assuming a responsibility to the Claimants. As indicated above, I consider that Mr Steele also assumed a responsibility to the Claimants when he executed documents under the powers of attorney granted by Barnaby, Wanlock and Mr Caliendo. I consider that he also did so when he executed documents relying upon the power of attorney from Mr Zanotti that he forged. In my view it is for reasons of this kind that Mr Steele did not deny that he had acted for the Claimants in the emails relied upon by the Claimants. As Mr Buckley recorded Mr Steele as having said on 1 November 2007, there was "some justification for AC believing that KS was acting for him" (see paragraph 563 above).

725. As I have said, however, I consider that the duty of care which Mishcon de Reya owed the Claimants was a limited one. Although I was referred to a number of authorities on the scope of the duties of care owed by solicitors to their clients, I do not propose to discuss them here because the factual circumstances of the present case are quite different to most of them (although *Newcastle International Airports Ltd v Eversheds LLP* [2013] EWCA Civ 1514, [2014] 1 WLR 3073 is comparable in certain respects). I would characterise the duty as a duty to exercise reasonable skill and care in the negotiation and execution of the Transaction Documents, but only in so far as (a) the Claimants' interests were aligned with those of QPRH and (b) the Claimants were not advised by the T&F Group. I do not consider that Mishcon de Reya owed the Claimants any duty of care in respect of matters where there was a conflict between the Claimants' interests and those of QPRH. Nor do I consider that Mishcon de Reya owed the Claimants a duty of care in respect of matters where the Claimants were advised by the T&F Group. Thus I do not consider that Mishcon de Reya was under a duty to explain the nature and effect of the Transaction Documents to the Claimants, because Mr Steele was entitled to assume that the T&F Group would do that (and ask questions if the the T&F Group or Mr Caliendo did not understand something).

726. As I see it, there are two key questions with respect to the scope of the duty of care. The first arises out of the fact that Mishcon de Reya dealt with Withers, whereas the T&F Group dealt with Mishcon de Reya and not directly with Withers. Thus Mr Steele was a conduit for information between Withers (acting for the Purchasers) and the T&F Group (acting for the Claimants). In those circumstances, Mr Steele was under a duty to take reasonable care to ensure that information and drafts emanating from Withers were passed on to the T&F Group and that information emanating from the T&F Group was passed on to Withers.

727. The second is the extent to which Mr Steele was under a duty to take reasonable care to ensure that the Claimants were aware of any conflict of interest between the Claimants and QPRH arising out of the draft Transaction Documents. Suppose that

Mr Steele knew that the Claimants' instructions were that the Transaction Documents should include term X, but his instructions from QPRH were not to include term X. Was Mr Steele entitled to rely upon the T&F Group to advise the Claimants about this conflict, or did he owe the Claimants a duty to advise them? My answer to this question is that I consider that Mr Steele was under a duty to raise any such issue with the Claimants either directly or via the T&F Group.

Fiduciary duties under the powers of attorney

728. As mentioned above, it is common ground that Mishcon de Reya owed the Claimants fiduciary duties under the powers of attorney. There is a dispute as to the scope of those duties. In his closing submissions counsel for the Claimants sensibly accepted that little turned on this. I consider that this remains the case even though I have concluded that the duty of care owed by Mishcon de Reya is much narrower than that contended for by the Claimants.

Breach of duty

729. The Claimants advance five main allegations of breach of duty. In each case, the Claimants' case depends upon the correctness of their factual allegations as to what Mr Caliendo knew and the instructions he gave Mr Steele. I will consider the allegations in the order in which they were addressed by counsel for the Claimants in his closing submissions.

The Promotion Bonus

730. The Claimants contend that Mishcon de Reya acted in breach of its duty to the Claimants because the Claimants required the Promotion Bonus to form part of the Transaction, Mr Steele knew that that was the case and the Promotion Bonus was omitted from the Transaction Documents without Mr Caliendo's knowledge or consent. Mishcon de Reya disputes each of these assertions.

731. It is common ground that the Promotion Bonus was part of the deal until about 24 August 2007. It appears that the Purchasers required the Promotion Bonus to be excluded from the deal on or about that date as a result of a concern on the part of Charles Stanley that it would contravene Rule 16 of the Code (see paragraph 325 above). The Claimants contend it would not have contravened Rule 16, but it is unnecessary for me to decide whether they are right about that.

732. The Claimants suggest that this change in the terms of the deal passed Mr Steele by until his email to Mr Cuffe of 9:25 on 31 August 2015 (see paragraph 414 above), but that Mr Steele was then informed of the Purchasers' position, as can be seen from his email of 12:13 to Mr Paladini (see paragraph 437 above). The Claimants contend that Mr Steele then failed to inform Mr Caliendo about this change, failed to advise Mr Caliendo as to the risk of proceeding with the Transaction without the Promotion Bonus being recorded in writing and failed to take instructions from Mr Caliendo as to whether he was prepared to take that risk.

733. Mishcon de Reya contends that Mr Caliendo knew and accepted that the Promotion Bonus was not included in the Transaction Documents and that he would have to rely

upon the Purchasers' (specifically Mr Briatore's) goodwill. Mishcon de Reya relies upon three matters in support of this contention.

734. First, Mr Caliendo admitted having been shown the draft contracts at the meeting on 28 August 2007. At that time the relevant draft of the SSA was SSA4, which did not include the Promotion Bonus. I would add that I do not consider that Mr Steele's email of 9:25 on 31 August 2007 as showing that Mr Steele was previously unaware that the draft SSA did not include the Promotion Bonus. Rather, I think it shows that he was aware of this, but was under the impression that the Purchasers were agreeable to some side agreement or letter being executed to deal with the Promotion Bonus (as suggested by Mr Michel's email of 22:59 on 14 August 2007, see paragraph 239 above).

735. Secondly, the T&F Group was well aware of the Promotion Bonus, as can be seen from Mr Steele's email to Ms Murgia of 10:59 on 22 August 2007 and her reply of 17:24 (see paragraphs 290 and 296 above). The T&F Group would have seen that it was not included in the drafts of the Transaction Documents sent to them on 29 and 31 August 2007 (see paragraphs 361 and 411 above). The T&F Group raised no query about this.

736. Thirdly, counsel for Mishcon de Reya submitted that it was to be inferred that Mr Paladini had communicated the contents of Mr Steele's email of 12:13 on 31 August 2007 to Mr Caliendo as Mr Steele had requested. So far as this is concerned, there is no evidence that Mr Paladini did so, but equally no evidence other than that of Mr Caliendo that he did not. The only reason why Mr Paladini might not have do so was if Mr Paladini was conspiring against Mr Caliendo or relations between them had broken down at that point. I am not satisfied that Mr Paladini was conspiring against Mr Caliendo as Mr Caliendo alleged, particularly since Mr Caliendo declined to elaborate on his basis for this allegation when I asked him. Nor am I satisfied that the relations between them were in break down at that point. Mr Steele clearly expected that Mr Paladini would pass the message on to Mr Caliendo. Accordingly, I do not accept Mr Caliendo's evidence that Mr Paladini did not do so, and I find on balance of probabilities that Mr Paladini did.

737. Accordingly, I accept Mishcon de Reya's contention that Mr Caliendo knew and accepted that the Promotion Bonus was not included in the Transaction Documents and that he would have to rely upon the Purchasers' (specifically Mr Briatore's) goodwill. It follows that Mishcon de Reya did not act in breach of any duty it owed the Claimants in this respect.

The Dunga Loans and the Dunga Warranty

738. Mr Steele executed the Dunga Warranty on behalf of both Mr Caliendo and Mr Zanotti using his powers of attorney. The Claimants contend that Mishcon de Reya acted in breach of its duty to the Claimants because Mr Steele did so without informing Mr Caliendo or Mr Zanotti that he proposed to do this, he failed to seek their instructions as to whether the Dunga Warranty was accurate and he failed to obtain their consent to his execution of the Dunga Warranty. Although this allegation includes Mr Zanotti, it is Mr Caliendo's claim that matters. As noted above, the Claimants accept that Mr Zanotti suffered no loss.

739. Underlying this aspect of the Claimants' claim are the propositions that (i) Mr Dunga made the Dunga Loans to QPRH and (ii) the Dunga Loans were wrongly included in the Caliendo Loans in the Caliendo Acknowledgement, Deed of Acknowledgement and Caliendo Waiver. I have found that proposition (i) is correct, but not proposition (ii). It follows that the Dunga Warranty was accurate, and therefore Mr Caliendo suffered no loss either,

740. Mishcon de Reya disputes these allegations of breach of duty in any event. In this regard, Mishcon de Reya relies upon two arguments. First, Mishcon de Reya contends that Mr Steele had power to execute the Dunga Warranty on behalf of Mr Caliendo pursuant to his power of attorney. Mr Steele was expressly instructed by Mr Cooke in his email at 10:14 on 31 August 2007 (see paragraph 425 above), following the discovery by Baker Tiller of the £250,000 loan agreement between Mr Dunga and QPRH, that Mr Dunga's loan had been (to use the language of Mr Lord's email at 9:58) subsumed into the Caliendo Loans. Mr Steele had no reason to doubt that this was true, particularly given that Mr Caliendo had signed the Caliendo Acknowledgement in his presence. (It does not appear that any query had been raised with respect to the £500,000 loan agreement, apparently because Baker Tilly had not discovered it, but in my view this does not affect the position.) Moreover, Mr Paladini confirmed the accuracy of the Dunga Warranty by executing it.

741. Secondly, Mr Steele sent the draft Dunga Warranty to the T&F Group on 31 August 2007 (see paragraph 4446 above), and the T&F Group raised no objection. Thus Mr Steele was entitled to assume that Mr Caliendo consented to him executing the Dunga Warranty.

742. I agree that, at least taken together, these points mean that Mishcon de Reya did not act in breach of any duty to the Claimants in this respect.

The Caliendo Acknowledgement and the Deed of Acknowledgement

743. The Claimants contend that Mishcon de Reya acted in breach of duty to the Claimants with respect to the Caliendo Acknowledgement and the Deed of Acknowledgement in a number of respects.

744. First, the Claimants contend that the total of the Caliendo Loans in the Caliendo Acknowledgement and the Deed of Acknowledgement (and the Caliendo Waiver) was overstated by the amount of the Dunga Loans, that Mr Steele was on notice that it was incorrect and that he took no steps to bring this to Mr Caliendo's attention or to investigate the situation. For the reasons given above, I do not accept that the total was overstated. It follows that Mr Steele was not in breach of any duty.

745. Secondly, the Claimants complain that the Caliendo Acknowledgement and the Deed of Acknowledgement wrongly stated that the Caliendo Loans were interest-free, when in fact the convertible loan agreements provided for interest at 7.5%. The Claimants further complain that Mr Steele failed to draw this to Mr Caliendo's attention, to advise him as to the consequences or to investigate the position. The short answer to this complaint is that Mr Caliendo signed the Caliendo Acknowledgement. As stated above, I have no doubt that he understood what he was signing. I would add that the statement that the loans were interest-free reflected the reality that QPRH had not

been paying Mr Caliendo interest because it could not afford to do so. It follows that Mr Steele was not in breach of any duty.

746. Thirdly, the Claimants complain that the Deed of Acknowledgement wrongly stated that the Caliendo Loans were not redeemable by Mr Caliendo until March 2011. As the Claimants point out, this statement was not included in the Caliendo Acknowledgement.

747. There are two preliminary points to note in relation to this allegation. The first is that the majority of the loan agreements provided for a redemption date of any date before March 2011 "at Borrower's option". Thus they were not redeemable by Mr Caliendo before that date. The only agreements which provided for earlier redemption dates, again at the borrower's option, were those for £450,000 (March 2010) and £500,000 (January 2011). It follows that, save with regard to those agreements, the Deed of Acknowledgement was accurate.

748. Secondly, it follows from the first point that all that Mr Caliendo can have lost as a result of this inaccuracy in the Deed of Acknowledgement is interest on £450,000 from March 2010 to March 2011 and on £500,000 from January 2011 to March 2011.

749. It is clear that Mr Steele executed the Deed of Acknowledgement pursuant to his power of attorney from Mr Caliendo believing it to be accurate. Furthermore, it appears that the March 2011 date came from the discussions between Mr Cooke and Baker Tilly with respect to the Caliendo Loans, of which Mr Steele had been informed. Accordingly, I am not satisfied that the Claimants have established that Mishcon de Reya acted in breach of any duty to the Claimants.

The Net Assets Indemnity

750. The Claimants contend that Mishcon de Reya acted in breach of duty to the Claimants with respect to the Net Assets Indemnity in two respects.

751. First, the Claimants contend that Mr Caliendo instructed Mr Steele that he was not prepared to enter into any net assets indemnity at the meeting on 23/24 August 2007, and accordingly Mr Steele acted directly contrary to his instructions in executing the Caliendo Waiver with this provision. I have already concluded that there was no such meeting. Furthermore, as noted above, Mr Caliendo admitted that he had seen the draft contracts at the meeting on 28 August 2007, and SSA4 included this provision (albeit without the figure of £3 million). Yet further, this provision was included in the drafts which Mr Steele sent to the T&F Group on 29 and 31 August 2007. Accordingly, I do not accept that Mr Caliendo gave the instructions alleged. On the contrary, I conclude that Mr Caliendo knew that this was a key term of the deal.

752. Secondly, the Claimants contend that Mishcon de Reya failed to inform Mr Caliendo that the figure was £3 million or to advise him how that figure had been arrived at or as to the consequences. In this regard, counsel for the Claimants pointed out that the first draft of the SSA in which the figure of £3 million appeared was the execution draft which Mr Cuffe emailed to Mr Steele at 11:14 on 31 August 2007 (see paragraph 431 above).

753. Mr Caliendo admitted at least twice during the course of cross-examination, however, that he had known that the figure was £3 million. Indeed, it was his evidence that this figure was one of the reasons why he had objected to the Net Assets Indemnity at the meeting on 23/24 August 2007. As Counsel for Mishcon de Reya fairly pointed out to him, the figure of £3 million was first mentioned on 31 August 2007. It is therefore clear that Mr Caliendo's recollection was mistaken as to the timing. Counsel for Mishcon de Reya submitted, however, that it was probable that Mr Caliendo was informed of the figure of £3 million on 31 August 2007. As he pointed out, the £3 million was expressly mentioned in Mr Steele's email to Ms Tomassini at 12:08 (see paragraph 435 above). While the reference to this figure in that email is not crystal clear, it is notable that no query was raised by the T&F Group. Accordingly, I accept this submission.

754. Furthermore, Mr Caliendo made it clear in his evidence that he believed that £3 million understated the net assets of QPRH as at 31 August 2007. As counsel for Mishcon de Reya submitted, it may therefore be inferred that he was happy to accept that figure in the Net Assets Indemnity. This is supported by the fact that the first occasion on which Mr Caliendo objected to this provision was in the Pre-Action Protocol letter dated 18 December 2009 (by which time Mr Caliendo was aware that the Completion Net Assets were likely to be significantly less than £3 million).

755. Finally, I consider that Mr Steele was entitled to assume that the T&F Group would advise Mr Caliendo with respect to the £3 million figure.

756. For these reasons I conclude that Mishcon de Reya did not act in breach of any duty to the Claimants in this respect.

The Three Debts

757. The Claimants contend that Mishcon de Reya acted in breach of duty to the Claimants since Mr Steele failed to give effect to Mr Caliendo's instructions that the Purchasers should settle the Three Debts as part of the Transaction. Mishcon de Reya disputes this.

758. Mr Caliendo claimed in his witness statement that, after Mr Steele had sent him Mishcon de Reya's draft contracts, Mr Caliendo had told Mr Steele that the Purchasers would have to settle the Three Debts on behalf of QPRH to ensure that there was no liability on Mr Caliendo to re-pay them, and that Mr Steele subsequently led him to believe that this was acceptable to the Purchasers. He did not specify when or how he had given Mr Steele these instructions. When I asked Mr Caliendo about this, he said that it was at a meeting Mr Steele "could be after 16 August" which was also attended by Mr Zanotti.

759. Even if (contrary to the conclusion I have reached above) the Three Debts were owed by QPRH in August 2007 and guaranteed by Mr Caliendo, I do not accept this. The only possible candidate for such a meeting is the meeting on 21 August 2007. But Mr Zanotti did not corroborate Mr Caliendo's evidence as to his instructions with respect to the Three Debts. Nor is there any documentary evidence to support Mr Caliendo's account. Indeed, the earliest document passing between Mr Caliendo and Mr Steele which refers to these sums is the JPEG image of the print-out of the cash flow

spreadsheet sent by Mr Caliendo's secretary to Mr Steele at 11:32 on 6 September 2007 (see paragraph 497 above). As I explained, that is a highly suspicious document.

760. Counsel for the Claimants relied on a manuscript note in evidence which had been disclosed by Mishcon de Reya, and which Mishcon de Reya suggested was in Mr Steele's handwriting, that lists the amounts of the Three Debts alongside the name "Mark". The document bears the date 29 August 2007, and it was suggested that this showed that Mr Steele was aware of the Three Debts by that date. But it is far from clear that this represents the date of the document. The document also refers to "AGM 5/11" with an arrow from "AGM" to "OFFER 1p", which suggests to me that the document post-dates completion of the Transaction. The significance of the date of 29 August 2007 is unclear.

761. Accordingly, I conclude that Mishcon de Reya did not act in breach of any duty owed to the Claimants in this respect.

Loss

762. Although I have concluded that Mishcon de Reya did not act in breach of any duty owed to the Claimants in any of the respects alleged, in case I am wrong about that, I shall consider whether any breach by Mishcon de Reya caused the Claimants any loss.

The law

763. It is well established that a negligent defendant is only liable to the extent that its breach of duty caused the claimant loss falling within the scope of the duty owed by the defendant to the claimant. It is not sufficient if the breach of duty provides the occasion for the loss. This is sometimes expressed as the need for the breach of duty to be the effective cause of the loss.

764. The applicable principles where the loss claimed is the loss of a chance were recently reviewed by the Court of Appeal in *Wellesley Partners LLP v Withers LLP* [2015] EWCA Civ 1146, where Floyd LJ (with whom Longmore LJ and Roth J agreed) stated:

> "98. Questions of assessment of damage … have to be distinguished from questions of causation. These issues are discussed at length in the decision of this court in *Allied Maples.* As the court there explained, in the context of causation, some hypothetical questions ('what would have happened if ...') do fall to be decided on the balance of probabilities. Thus (see Stuart-Smith LJ at page 1610 D-H) where the breach of a duty consists of an omission, for example to provide safety equipment, and the question is what the claimant himself would have done had the breach of duty not occurred – a question of causation - the claimant has to prove the matter on the balance of probabilities. He does not get a percentage award if he falls just short of the threshold, and he does not suffer a discount if he passes it.

> 99. Stuart-Smith LJ went on to explain that in many cases the causation of the claimant's loss may depend on the hypothetical action of a third party, either in addition to the claimant himself or independently of him. In those cases the court does not demand that the claimant establish his case of causation on the balance of probabilities: see *Allied Maples* at 1611 A-C. All the claimant has to show in such cases is that the chance is a real or substantial one. Having done so he must still show, on the balance of probabilities that the defendant's act has caused the loss of the chance (see to this effect per Lord Nicholls in *Gregg v Scott* [2005] UKHL 2, [2005] 2 AC 176 at [17]). Once the claimant has shown on the balance of probabilities that he has lost the relevant chance, the valuation of the chance is a question for the quantification or assessment of damages.
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> 100. I would have thought that, applying those principles to the present case, it would be plain that, whilst WP would need to show on the balance of probabilities that, but for the negligence complained of, they would have opened a US office (a question of causation dependent on what the claimant would have done in the absence of a breach of duty), the actual loss which they claimed to have been caused by the defendant was dependent on the hypothetical actions of a third party, namely Nomura. Accordingly, in line with well established principle, the chances of Nomura deciding to award the mandates to WP would have to be reflected in the award of damages."

He went on at [101]-[111] to reject the claimant's argument that a number of subsequent cases showed this to be incorrect.

Assessment

765. For the reasons explained above, it is necessary to consider two questions in relation to each of the Claimants' primary and alternative cases. So far as the Claimants' primary case is concerned, the first question is whether the Claimants have proved on the balance of probabilities that, but for the breaches alleged, they would not have entered into the Transaction on the terms of the Transaction Documents, but only on the terms which the Claimants contend were acceptable to them. The second question is whether there is a real or substantial chance that the Purchasers would have agreed to enter into the Transaction on those terms. Turning to the Claimants' alternative case, the third question is whether the Claimants have proved on the balance of probabilities that, if the Purchasers would not have agreed to enter into the Transaction on those terms, the Claimants would have able and willing to continue to fund QPRH until May 2008 while they looked for an alternative purchaser. The fourth question is whether there is a real or substantial chance that the Claimants could have found an alternative purchaser prepared to enter into the Transaction on their terms. I shall consider these questions in turn before turning to the Claimants' claim in respect of the QPRH Proceedings, which requires separate consideration.

766. *(1) Would the Claimants have refused to enter into the Transaction Documents on the terms of the Transaction Documents*? I have concluded that in fact Mr Caliendo knew

and agreed to the terms of the Transaction Documents. But for these purposes I shall assume that he did not know or agree to the matters in respect of which the Claimants complain.

767. Mishcon de Reya contends that the Purchasers' offer, as finally formulated in the Transaction Documents, was the only offer realistically available, and that accordingly Mr Caliendo would have agreed to it as being preferable to receiving nothing on an administration or liquidation. More specifically, he would in all probability have been willing:

i) to give up the claim for the Three Debts, because he had no real prospect of success in any claim against QPRH for these sums;

ii) to give up the claim for the Dunga Loans, because he would have appreciated that, if the Dunga Loans were excluded from the Caliendo Waiver, the Purchasers would simply have reduced the £2 million payment *pro rata*, as is obvious from the fact that the offer made was premised on the Caliendo Loans waived being £6.5 – 7 million;

iii) to give in on the Net Assets Indemnity, because he believed that the Completion Net Assets would comfortably exceed £3 million; and

iv) to rely upon Mr Briatore's goodwill to pay the Promotion Bonus, as he in fact did, particularly as QPR's prospects of achieving promotion did not at that stage appear very promising.

768. I accept this analysis. I therefore conclude that the Claimants have not established on the balance of probabilities that they would have refused to enter into the Transaction on the terms of the Transaction Documents.

769. *(2) Was there a real or substantial chance that the Purchasers would have entered into the Transaction on the terms contended for by the Claimants?* The Claimants' pleaded case is that there was a substantial chance that the Purchasers would have agreed to all of the terms which the Claimants contend that they would have demanded, namely (i) inclusion of the Promotion Bonus, (ii) removal of the Net Assets Indemnity, (iii) exclusion of the Dunga Loans and (iv) payment of the Three Debts.

770. Mishcon de Reya contends that this is fanciful. I agree. It is clear that the Purchasers had by far the upper hand in the negotiations. There were no competing bidders. On the contrary, Mr Caliendo and others had been desperately searching for buyers and/or investors for months, but those efforts had come to nothing. The negotiations with the Purchasers as at 14 August 2007 were summarised in Mr Steele's note of that date (see paragraph 236 above). It can be seen that the Purchasers had reached the limit of what they were prepared to pay and that the Claimants decided to accept their bid. By this point or shortly afterwards, the essential terms of the deal (although not yet its structure) had been agreed. There is no evidence at all of Mr Caliendo seeking to press the Purchasers for better terms after that. On the contrary, all the evidence is that, like Mr Paladini, he was focused on getting the Transaction concluded. As counsel for Mishcon de Reya pointed out, it is telling that, as early as 20 August 2007,

Mr Cooke was removed from office as a director of QPRH, evidently because it was expected that the deal was going through.

771. So far as the Promotion Bonus is concerned, as noted above, this was removed from the Transaction at the instigation of Charles Stanley because of a concern that it would contravene Rule 16 of the Code. There is no evidence that the Panel objected specifically to this, but there is evidence that the Panel were generally concerned about possible preferential treatment of Mr Caliendo. The Claimants have adduced no evidence that Charles Stanley could have been persuaded to change its advice to the Purchasers about this or to have sought and obtained a waiver from the Panel.

772. As for the Net Assets Indemnity, Mr Michel's email of 22:59 on 14 August 2007 (see paragraph 239 above) made it clear that it was an important part of the deal that the sellers should give a "total guarantee" that there were no undisclosed liabilities. The need for this would have been clear to the Purchasers given QPRH's loss-making status and the lamentable state of QPRH's financial records, which the Purchasers would probably have been aware of even by then from Ms Hanks' investigations and would subsequently have had confirmed by the due diligence exercise and Baker Tilly's review. It would have been all the more necessary given the speed with which the Transaction had to be completed. In those circumstances I agree with Mishcon de Reya that it is inconceivable that the Purchasers would have agreed to give up the Net Assets Indemnity. Nor is there is any likelihood that they would have agreed to a substantially lower figure than £3 million. I am not persuaded that the fact the figure of £3 million was only finalised very late in the negotiations shows otherwise.

773. As for the Dunga Loans, the Claimants have adduced no evidence that the Purchasers would have agreed to these being excluded. The contemporaneous evidence shows that the Purchasers spend a considerable amount of time and effort in trying to nail down all the loans which were outstanding, and in particular all the loans in which Mr Caliendo had had a role. As it was, the Purchasers insisted on the Dunga Warranty being executed. If the Claimants had taken the position that the Dunga Loans should not be included in the Caliendo Loans, it is plain that the Purchasers would have insisted in a corresponding increase in the amount waived by Mr Caliendo.

774. Turning to the Three Debts, the Claimants have adduced no evidence that there was any prospect of the Purchasers agreeing to pay these. Mr Steele's note of 14 August 2007 shows that the Purchasers had rejected Mr Paladini's request for an additional £250,000 towards the directors' loans, and therefore there is no prospect that the Purchasers would have increased the offer by £1 million, particularly given the absence of documentation to support the claims in respect of the Three Debts.

775. *(3) Would the Claimants have been able and willing to continue to fund QPRH until May 2008?* This aspect of the case gave rise to a lot of evidence, and in particular (i) factual evidence as to the Claimants' means at the time and (ii) expert evidence from Mr Jones and Mr Cottle as to the sums which would have been required to fund QPRH until May 2008. Since I have already concluded that in fact Mr Caliendo had decided to stop funding QPRH by the end of March 2007, however, I shall deal with this aspect of the case briefly.

776. *(a) QPRH's funding requirement*. Mr Jones' opinion was that QPRH would have required at the peak £2.9 million. Mr Cottle's opinion was that it would have required

at the peak £6.2 million. The main differences between them (although there were others) were that Mr Cottle considered that some unwinding of debts due to long-delayed creditors was inevitable, whereas Mr Jones disagreed; and Mr Jones made a series of assumptions about how QPRH's cash flow could have managed (such as by selling players and "hiding behind Christmas") which Mr Cottle considered over-optimistic. Counsel for the Claimants submitted that the evidence of Mr Jones was to be preferred, in particular because Mr Cottle's lack of football experience. I accept that this affected some of Mr Cottle's evidence, but nevertheless other points made by Mr Cottle are well supported by the contemporaneous evidence. Counsel for Mishcon de Reya invited me to conclude in the light of the evidence that a figure in the range of £4-5 million would have been required. I agree with this.

777. *(b) The Claimants' means.* Mr Caliendo's evidence as to his means in 2007 to 2008 was very unsatisfactory. It even involved calling Mr Tomatis to give evidence when Mr Tomatis had little relevant evidence to give since he was the accountant for IPC and not Mr Caliendo's personal accountant. I accept that the evidence shows that Mr Caliendo had substantial assets, in particular in form of real estate in Monaco owned through the Aurora, MIKI and MIMA companies. It is fairly clear, however, that Mr Caliendo was short of liquid funds at the time. A striking illustration of this is that, on his own account, he borrowed £100,078.68 from Mr Zanotti to make a partial payment to Mr De Riu in October 2007 (see paragraph 640 above). Moreover, there is no evidence that he had raised finance on his properties or made any preparations to do so. Nor is there any reliable evidence as to how much could have been raised in this way. Finally, there is IPC. The evidence shows that this was profitable, and had over €780,000 in the bank as at 31 August 2007. Even assuming that Mr Caliendo would have been lawfully entitled to treat IPC as his personal piggy bank (as to which there is no evidence), and would have done so, this would not have been enough to keep QPRH going. Accordingly, I am not satisfied that Mr Caliendo would have been able to lend QPRH £4-5 million in the period from September 2007 to May 2008.

778. So far as Mr Zanotti and Mr Dunga are concerned, the position is as follows. First, it is clear that Mr Zanotti did not possess significant wealth at the time. Thus he agreed that £400,000 was a fairly big amount for him. He also agreed that he did not make, and could not have made, substantial sums available to QPRH. Secondly, although Mr Dunga had a portfolio which appears to have been worth £4.8 million, it is not clear how liquid these assets were. Nor is there evidence as to his outgoings and commitments. According, I am not satisfied that he would have been able and willing to lend lend QPRH £4-5 million in the relevant period. Thirdly, I do not accept that either Mr Zanotti or Mr Dunga would have acted independently of Mr Caliendo in any event.

779. *(4) Was there a real or substantial chance of finding another purchaser who would have accepted the Claimants' terms?* For the reasons give above, I consider that it is doubtful that the Claimants would have been able to continue to fund QPRH until May 2008, but in any event they were not willing to do so. Accordingly, I shall deal with this question briefly.

780. Mr Jones and Mr Harmer gave evidence as to the valuation, and market for sale, of clubs such as QPR in the relevant period. They agreed that the best approach to valuation was a comparable multiples analysis, but this exercise was highly dependent on the reliability of the available information, and as a result both experts had to make

a number of adjustments to their figures. I do not propose to analyse this evidence, because it was common ground between the experts that football clubs like QPRH were "trophy assets" which required "special purchasers" i.e. very wealthy individuals who were able and prepared to purchase a football club despite the fact that it was not an economic proposition and on contrary a loss-making enterprise which would be likely to require on-going support. It follows that, as Mr Harmer convincingly explained, the multiples analysis is of very limited relevance in the real word of buying and selling football clubs as opposed to *ex post facto* analysis of what happens to be agreed in circumstances which are invariably specific to each deal.

781. Accordingly, I agree with counsel for Mishcon de Reya that the most persuasive evidence is provided by the fate of Charlton Athletic FC, then another Championship club. It is common ground that Charlton was put up for sale in August 2007 and did not find a buyer, and then for a price of just £1, until December 2010. This was despite the fact that Charlton had just been relegated from the Premiership where it had been for almost all of the previous nine years, and thus might well have been regard as better prospect for promotion than QPR, and was in receipt of "parachute" payments to ease its cash flow. Mr Jones acknowledged that such circumstances might have served to encourage a special purchaser to acquire the club. But it simply did not find a buyer. Mr Jones had no convincing answer to the question as to why Charlton was not a good guide as to the difficulty in finding another buyer for QPRH if the deal with the Purchasers had not gone through. The evidence also shows that it was difficult to generate in other clubs such as Fulham FC (very close to QPR) and Portsmouth FC at that time. A factor in all these difficulties may well have been the deteriorating financial climate from the autumn of 2007 to the summer of 2008.

782. This evidence reinforces the conclusion which is suggested by the failure of Mr Caliendo to find any alternative purchaser prior to 1 September 2007. In my judgment, if the Transaction with the Purchasers had not gone ahead, there was no real or substantial chance of the Claimants finding another purchaser who would have offered even the same terms as the Purchasers, let alone the terms the Claimants contend that they would have demanded.

783. *(5) The claim in respect of the QPRH Proceedings*. The Claimants' case is that they were exposed to the QPRH Proceedings, and hence the costs expended in defending them, as a result of Mishcon de Reya's breaches of duty with regard to the Dunga Warranty and the Caliendo Acknowledgement/Deed of Acknowledgement. Mishcon de Reya contends that Mr Caliendo brought the QPRH Proceedings upon himself.

784. The starting point for consideration of this issue is the Dunga Proceedings. As noted above, in substance these proceedings were brought by Mr Caliendo. Although I have accepted that Mr Dunga did make the Dunga Loans to QPRH, the Dunga Proceedings were premised on the Dunga Loans being outstanding to Mr Dunga. I have concluded that, in fact, Mr Caliendo had taken over the Dunga Loans and they were included in the Caliendo Loans, either by agreement with Mr Dunga and pursuant to Mr Caliendo's authority to manage Mr Dunga's assets. It follows that the Dunga Proceedings were based upon a premise which was false, and which Mr Caliendo knew to be false. If Mr Dunga had not brought the Dunga Proceedings, QPRH would not have brought the QPRH Proceedings.

785. Furthermore, Mr Caliendo's defence of the QPRH Proceedings was likewise based upon a false account of the material facts. It also involved arguments of legal ingenuity but no merit. Yet further, Mr Caliendo chose to advance a counterclaim which was clearly unsustainable.

786. Accordingly, I conclude that the Claimants' expenditure on the defence of the QPRH Proceedings was not caused by any breach of duty on the part of Mishcon de Reya.

Conclusion

787. For the reasons given above, I conclude that the breaches of duty complained of did not in any event cause the Claimants any loss.

Result

788. The Claimants' claims are dismissed.