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TRANSCRIPT OF PROCEEDINGS

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S ECI 2020 02990

SUPREME COURT OF VICTORIA

COMMERCIAL COURT

MELBOURNE

MONDAY 22 MARCH 2021

(2nd day of hearing)

BEFORE THE HONOURABLE ASSOCIATE JUSTICE MATTHEWS

IN THE MATTER OF IPO WEALTH HOLDINGS NO. 2 PTY LTD (ACN 620 610 157) (IN PROVISIONAL LIQUIDATION) and OTHERS

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1 HER HONOUR: Yes. Can I have the appearances, please.

2 MR GALVIN: If it please, Your Honour, I appear with Ms Papaleo  
3 for the liquidators.

4 HER HONOUR: Thank you, Mr Galvin. And, Mr Mawhinney, you're  
5 present?

6 MR MAWHINNEY: I am, Your Honour.

7 HER HONOUR: And you can hear me and Mr Galvin?

8 MR MAWHINNEY: Yes, I can. Thank you.

9 HER HONOUR: Thank you. All right then. Are there any  
10 preliminary matters that we need to deal with?

11 MR GALVIN: No, Your Honour, not that I'm aware of.

12 HER HONOUR: All right then. Well, Mr Mawhinney, you have  
13 heard me make the opening comments to you a few times  
14 now. I won't bore your socks off by reading them out  
15 again, but I will - unless you would like me to.

16 MR MAWHINNEY: No, that's okay, Your Honour.

17 HER HONOUR: All right. I will just remind you that if you -  
18 that if you wish to, you can object to a question and I  
19 will rule on the objection. If you are - you may be  
20 entitled to refuse to answer a question if to do so would  
21 be to disclose something that was subject - a  
22 communication that was subject to legal professional  
23 privilege, being communications between you and a lawyer  
24 for the dominant purpose of seeking legal advice or for  
25 use in litigation, and also to remind you that if you  
26 wish to claim the privilege against incriminating  
27 yourself, then you need to say the word, 'Privilege',  
28 before you answer each question, and that doing so  
29 protects the answers you give in relation to them being  
30 used against you in criminal proceedings or proceedings  
31 for the imposition of a penalty, but not in respect of

1 civil proceedings. Now, you are still under oath from  
2 the previous occasions. Mr Galvin, is there a preference  
3 that I have Mr Mawhinney re-sworn?  
4 MR GALVIN: No, no, I think he understands that he is still  
5 under oath.  
6 HER HONOUR: Yes. Do you understand you're still under oath,  
7 Mr Mawhinney?  
8 MR MAWHINNEY: I do, Your Honour.  
9 HER HONOUR: And that you are required to tell the truth?  
10 MR MAWHINNEY: Yes.  
11 HER HONOUR: Yes. Good. All right then. Thank you.

1 <JAMES PETER MAWHINNEY, recalled and examined:

2 HER HONOUR: All right then. I see that there are a number of  
3 observers. If you could just please make sure that you  
4 have yourself on mute, that would be of assistance to the  
5 court. All right. Thank you, Mr Galvin. Please  
6 commence whenever you're ready.

7 MR GALVIN: Thank you, Your Honour. Just two matters. There  
8 are - Your Honour should have received a third volume of  
9 the examination book.

10 HER HONOUR: I will just get my associate to confirm that.

11 ASSOCIATE: Yes, I have that, Mr Galvin.

12 MR GALVIN: Thank you. And the other document that Your Honour  
13 ought to have received again is a copy of an email which  
14 my instructor sent you on 25 February, the last time we  
15 were before Your Honour, attaching an email from  
16 Mr Mawhinney to Mr Greg Wallace dated 31 May 2020,  
17 together with the attached memorandum. Does Your Honour  
18 have that?

19 HER HONOUR: Sorry, sent on 25 February?

20 MR GALVIN: Yes, and we have sent it to you again this morning,  
21 Your Honour, because I took Mr Mawhinney to it but I  
22 neglected to tender it as an exhibit.

23 ASSOCIATE: I have received that, Your Honour.

24 HER HONOUR: Yes. Very well.

25 ASSOCIATE: My apologies for not showing that to you this  
26 morning.

27 HER HONOUR: That's all right. I do remember it. This is the  
28 one where we needed to find the original email, isn't it?

29 MR GALVIN: That's the one, yes, Your Honour.

30 HER HONOUR: Do you want me to mark it as - mark it as an  
31 exhibit?

1 MR GALVIN: Yes. I'm happy to have Mr Mawhinney identify it  
2 again, just to make it clear that it's the document that  
3 we're talking about on the previous occasion.

4 HER HONOUR: All right then. Perhaps if my associate could  
5 show it on the screen. That would be helpful. And then  
6 also need to mark the - is it volume 3 of the examination  
7 book, is it?

8 MR GALVIN: Yes, Your Honour.

9 HER HONOUR: And shall I mark that for identification?

10 MR GALVIN: Yes, please.

11 HER HONOUR: And that will - my associate will need to remind  
12 me what MFI we're up to. And then this email -  
13 Mr Mawhinney, this looks like it's an email from you to  
14 Greg Wallace and others dated 31 May 2020?---Yes,  
15 it - - -

16 With a Word document attached called Accloud and 101  
17 Investments Limited Share Transfer.

18 MR GALVIN: Could we open that attachment, please, Associate.

19 HER HONOUR: Mr Associate, you will need to share the screen  
20 still. Yes, thank you.

21 ASSOCIATE: Yes, I just needed to share a different document.

22 HER HONOUR: Right. Thank you.

23 MR GALVIN: So, Mr Mawhinney, last time you were before Her  
24 Honour, I took you to this document and the email that -  
25 to which it's attached, because you expressed some  
26 uncertainty about whether or not you recognised the - the  
27 memo, I think because its format seemed unfamiliar to  
28 you; do you recall that?---I do.

29 And you're satisfied, are you, that this is an email and a  
30 memorandum which you attached to it? That is, you  
31 prepared the email and you prepared the

1 memorandum?---Yes, it was prepared and sent to our  
2 lawyers originally.

3 Could you please just speak up a little bit? You might need to  
4 be a bit closer to your microphone perhaps?---No problem.  
5 Is that - - -

6 Go on?---Yeah. It was prepared and actually sent to your  
7 lawyers originally, that memo.

8 All right. And so could I have that marked for identification,  
9 please, Your Honour.

10 HER HONOUR: Yes. So I will mark the email with the attachment  
11 - and, Mr Associate, do you know what number we're up to  
12 with the exhibits?

13 ASSOCIATE: I'm just identifying that now, Your Honour. I  
14 believe we're up to MFI 12 and 13.

15 HER HONOUR: Yes. That's what I have identified as well.

16  
17 #EXHIBIT 12 - (For identification) Email from  
18 James Mawhinney to Greg Wallace and others with  
19 attachment dated 31/05/2020.

20  
21 #EXHIBIT 13 - (For identification) Volume 3 of the  
22 examination book.

23 MR GALVIN: Thank you, Your Honour. Could we just scroll down  
24 a little bit, please, Mr Associate, to the bottom. Thank  
25 you, that's fine there. Do you see the paragraph headed  
26 Trustee Risk in the middle of the page,  
27 Mr Mawhinney?---Yes.

28 The paragraph above that reads: 'The point should be made that  
29 the group has not disposed of the asset and (prior to  
30 receivers being appointed) the funds investors still had  
31 the same underlying assets supporting the fund, albeit  
32 not directly held by IPO Wealth Holdings Pty Ltd'. What  
33 asset were you referring to there? Was that the Accloud

1 shares?---Yeah, the Accloud asset was the asset that the  
2 group, broadly speaking, hadn't disposed of.

3 And the funds investors are the investors in the IPO Wealth  
4 Fund; is that correct?---Privilege. That's correct.

5 Now, they didn't, did they, have in any relevant sense, access  
6 to the Accloud shares at this time, did  
7 they?---Privilege. The IPO Wealth Fund has never held  
8 any Accloud shares ever.

9 I beg your pardon, what was that?---Privilege. The IPO Wealth  
10 Fund has never held any Accloud shares.

11 I see, but could we go to the next page, please, Mr Associate -  
12 actually to the next page there after that one, please.

13 Do you see the - there's this - sorry, you'll have to  
14 scroll back up a little bit, please. (To witness) Under  
15 the heading Choices Jurisdiction there are some bullet  
16 points. Do you see the second bullet point it reads, 'It  
17 is already covered in the media so I don't think we  
18 should entertain reversing the transaction as it won't be  
19 a good look'? What were you referring to  
20 there?---Privilege. This is an internal memorandum. Um,  
21 it wasn't converted to PDF and finalised so it was only a  
22 discussion paper at that point.

23 HER HONOUR: Mr Mawhinney, could you answer the question,  
24 please. What were you referring to in that second dot  
25 point?---I was referring to my understanding of the  
26 Accloud transaction at the time when the accounts at the  
27 time hadn't been reconciled - have subsequently been  
28 reconciled and demonstrated the shares had, in fact, been  
29 paid for in full.

30 MR GALVIN: Okay. Mr Mawhinney, just again what was your  
31 understanding at that time when you wrote that bullet

1 point? What are you referring to or what were you  
2 referring to at the time?---Privilege. My understanding  
3 is what I was led to believe by our accountant firm,  
4 Pinnacle Advisory Group, that the shares had been sold  
5 from 101 Investments under a then finance agreement. I  
6 subsequently (indistinct) that had been the finance  
7 agreement was, in fact, not even in place. It wasn't  
8 signed in counterparts. Um, and I'd subsequently  
9 identified that the shares hadn't even been transferred  
10 by the liquidators to fulfil their obligations under the  
11 share sale agreement given that they'd received or the  
12 IPO Wealth Holdings Group has received \$19.46m in cash  
13 for those shares.

14 The liquidators hadn't been appointed at this time, had  
15 they?---Privilege. That's correct.

16 So why are you referring to what the liquidators have done or  
17 haven't done when I'm asking you about your understanding  
18 at the time of this memo? I don't quite  
19 follow?---Privilege. I'm referring to the fact that the  
20 shares are currently is still sitting in IPO Wealth - the  
21 three IPO Wealth Holding entities because the liquidators  
22 had refused to fulfil their obligations under the sale  
23 contract.

24 But I didn't ask you about that, did I?---Privilege. You're  
25 asking me about my understanding of the Accloud  
26 transaction and - - -

27 Do you think you could confine your answer to that question?

28 Would you mind? I'd be obliged?---Privilege. I'm more  
29 than happy to.

30 So your understanding at the time you wrote that bullet point  
31 was that the shares had been sold to 101 Investments by

1 IPO3; is that right?---Privilege. I believe that's the  
2 case. I can't - it was a few years ago now.

3 Yes. And what gave you the reason to believe that?---Ah,  
4 privilege. I executed the sale document.

5 So you recall executing the sale document which provided for  
6 the vendors' terms?---Privilege. No, I recall executing  
7 the share sale agreement.

8 Yes. So what was it though that made you think at the time --  
9 no, I'll withdraw the question. What was it that you  
10 were concerned about not reversing at the time you wrote  
11 that bullet point?---Privilege. At the time, as you're  
12 no doubt aware, we had a lot of media coverage over the  
13 group, um, and we decided that it wasn't a good idea to  
14 transfer the shares at that time we believed were in the  
15 possession of 101 Investments Ltd because the  
16 shares - - -

17 HER HONOUR: Sorry, I've asked everyone else who's observing to  
18 put themselves on mute, please.

19 MR GALVIN: I have a feeling that Siri was responding to  
20 Mr Mawhinney. Is that right, Mr Mawhinney?---Siri was,  
21 Mr Galvin, yes.

22 So I think you might just need to turn your phone off just for  
23 the time being perhaps.

24 HER HONOUR: Very well. All right. Thank you. I hadn't  
25 realised it was Siri. Thank you.

26 MR GALVIN: So we're looking for your answers, Mr Mawhinney,  
27 not Siri's answers. I was asking you about the - what it  
28 was that you were concerned not to be seen to  
29 reverse?---Privilege. At the time the receivers and  
30 managers were appointed to the IPO Wealth Holdings Group  
31 it was alleged that we had wrongfully transferred Accloud

1 shares to the British Virgin Islands, 21.25 million of  
2 them. It was alleged by the trustee and it was alleged  
3 by the liquidators or receivers and managers at the time.  
4 Given the attention around that, um, we decided that it  
5 would not be a good look to reverse that transaction  
6 given that we were of the understanding that the  
7 transaction and the sale had, in fact, taken place and  
8 the shares had, in fact, been transferred. We've  
9 subsequently identified that the shares haven't been  
10 transferred and the liquidators still to this day retain  
11 those shares without transferring them - - -

12 So reverse what transaction?---Privilege. The sale of the  
13 shares to 101 Investments Ltd.

14 So you thought it wouldn't be a good look to transfer the  
15 shares back from 101 to IPO3; is that what you  
16 meant?---Privilege. At the time with the scrutiny around  
17 the group it made sense not to change anything, um, that  
18 had already been undertaken such as the share sale which  
19 had been executed, and we were of the understanding the  
20 shares had, in fact, been transferred.

21 The transaction that's referred to is the sale from IPO3 to 101  
22 Investments, isn't it?---Privilege. That's correct.

23 So the reversal of that would have involved the shares going  
24 back to IPO3, wouldn't it?---Privilege. It would have  
25 mean - it would have meant \$19.46m cash would have been  
26 returned to Eleuthera Group too.

27 Yes, I understand that, but would it have meant the transfer of  
28 the shares back to IPO3?---Privilege. Yes, if the  
29 transaction was reversed the shares would have come back  
30 and the money would have gone back to Eleuthera to  
31 finance the purchase, however - - -

1 You thought that would be a bad look?---Privilege. That's  
2 correct.  
3 Yes. Did you talk to anybody about that?---Privilege. Ah, we  
4 obtained advice from a number of different parties.  
5 Who did you obtain advice from?---Privilege. Ah, lawyers, ah,  
6 our advisers, um, internal discussions.  
7 When you say we who - you said - it was you, wasn't it, who  
8 didn't - who decided it wouldn't be a good look to  
9 reverse the transaction?---Privilege. Ultimately I make  
10 the ultimate decisions, but they're always a collective  
11 decision drawing on input from various different team  
12 members and advisers.  
13 Who were the advisers? Just identify them,  
14 please?---Privilege. I can't recall, Mr Galvin.  
15 You can't identify who the lawyers were at the  
16 time?---Privilege. It was KHQ Lawyers.  
17 KHQ. Any other external advisers?---Privilege. I can't recall  
18 at the time.  
19 You can't recall the name of an individual?---Privilege. I  
20 can't recall who I spoke to regarding that transaction.  
21 We just had a receiver appointed to 17 companies.  
22 So you don't really know, do you, who you spoke to about  
23 reversing the transaction and whether or not it would be  
24 a good or a bad look?---Privilege. Who says I spoke to  
25 other people regarding?  
26 That's what I was asking you about, Mr Mawhinney. You said  
27 that you spoke to advisers and lawyers and had internal  
28 meetings about this topic; is that not the  
29 case?---Privilege. I didn't say we had internal meetings  
30 about the topic.  
31 Did you have internal meetings about it?---Privilege. I can't

1 recall.

2 No. And you spoke to your lawyers, did you, about it, KHQ

3 Lawyers?---Privilege. That's correct.

4 And you don't recall who else you spoke to about

5 it?---Privilege. I can't recall, no.

6 No. All right. Then - - -

7 HER HONOUR: Just before you move on, Mr Galvin. I forgot to

8 check with you, Mr Mawhinney, do you have anyone else in

9 the room with you this morning?---Ah, no, I don't,

10 Your Honour.

11 Right. Thank you?---Only Siri.

12 MR GALVIN: Yes. Mr Mawhinney, the next bullet point reads,

13 'Instead of trying to deny it we should own the decision

14 for moving the shares as there is a sound justification'.

15 What decision is being referred to there? It's a

16 decision to move the shares from IPO3 to 101 Investments,

17 is it?---Privilege. Yes, I believe so.

18 And the reference to the decision as having a sound

19 justification is, I put to you, the justification

20 described above about protecting the assets from Vasco

21 and receivers; is that right?---Privilege. No. It

22 wasn't the case, Mr Galvin. The decision to move the

23 shares, the British Virgin Islands, was primarily driven

24 by tax considerations, and at the time the advice that we

25 received from Pinnacle in relation to structure versus

26 how the transaction was actually undertaken were two

27 different things, so trustee risk, and I think there was

28 another component mentioned up there, ultimately it's

29 not, you know - ultimately, in the end, it was not

30 relevant for the purposes of the transaction, given that

31 the shares were fully paid for.

1 That's quite different to what you said last time, though,  
2 isn't it, when you acknowledged that it was a reason for  
3 moving the shares?---Privilege. Yes, there were many  
4 reasons for transferring the settlement shares.  
5 What were the tax considerations?---Privilege. British Virgin  
6 Islands is a tax-free jurisdiction under a section of the  
7 Income Tax (Assessment) Act and transfer of shares go -  
8 by an Australian company in an overseas company where you  
9 own more than 10 per cent of the company into another  
10 jurisdiction without incurring a capital gains, tax  
11 advice arrived written - provided by in writing by the  
12 bi-Pinnacle Advisory Group that we acted upon.  
13 And how was that going to benefit investors in the IPO Wealth  
14 Fund?---Privilege. They receive 19.4. IPO Holdings  
15 Group received \$19.46 million in cash, of which just over  
16 \$7 million was the loan repayment that facilitated  
17 redemptions, given that there was an increase in  
18 redemptions. Also to facilitate interest payments that  
19 provided a capital gain of about \$8.3 million to the IPO  
20 Holdings Group.  
21 Yes, but that money had already been paid before the transfer,  
22 hadn't it?---Privilege. That's not correct.  
23 When was it paid? I thought it was paid between - we're up  
24 to November 2019. Is that not correct?---Privilege.  
25 That's correct. The share started as 4 October 2019.  
26 I see. But most of the payments has been made before that  
27 date, hadn't they?---Privilege. The transfers had been  
28 made. The transfers were made from an asset purchase  
29 bearing account for the purposes of acquiring those  
30 shares.  
31 I see. Was there is a resolution about acquiring those shares

1 or anything like that that we can see?---Privilege.

2 Anything in written?---Privilege. I can't recall. There may  
3 be 101 Investments Ltd. In fact, I believe there is one  
4 from 101 Investments Ltd with respect to the purchase of  
5 the shares and the drawdown of the facility agreement  
6 with Eleuthera who financed the purchase of it.

7 Good. Can we go back to the top of the memorandum, please,  
8 Mr Associate, and just, could you identify, please, for  
9 the court where in this memorandum you refer to the tax  
10 benefit as being the justification for the  
11 transfer?---Privilege. It's contained within the advice  
12 that we received from our accountant. This is an  
13 internal draft memo. It's a Word document. It's not  
14 signed. As you can see, it's not dated. It doesn't even  
15 have our logo on it.

16 Are you saying that it's - there's no reference in this memo to  
17 the tax justification?---I have - privilege, I haven't  
18 reread the memo.

19 Well, could you have a look now, please, and see if you can  
20 identify for the court where the tax considerations  
21 you've referred to provide the justification for the  
22 transfer of the shares to the British Virgin Islands.  
23 Take your time. And just tell the associate when to  
24 scroll down?---Sure. Please scroll down. Next one down,  
25 thanks. Next one down, please. Scroll down a bit.  
26 Privilege. Mr Galvin, the first bullet point under  
27 Choice and Jurisdiction, there are obvious taxation  
28 benefits of the BVI.

29 I see. So that is the justification, is it, that's referred to  
30 at the bottom of this memo, is it? Is that what you're  
31 saying, or are you just reconstructing?---Privilege.

1           Bullet point No.1 where it says Joint Jurisdiction, there  
2           are obvious taxation benefits of the BVI.  
3   But the next bit reads, 'However, anonymity and an English-  
4           based legal system were primary reasons for establishing  
5           101 Investments with the assistance of Pinnacle Group'.  
6           That suggests that the primary reasons have got nothing  
7           to do with tax considerations, doesn't it?---Privilege.  
8           No, not at all. I think the fact that it seems there are  
9           obvious taxation benefits at the beginning of the  
10           sentence is one of the very key reasons why the shares -  
11           a long (indistinct) decision to hold the shares there,  
12           acting on tax advice we had received.  
13   All right. Could you take that document down, please,  
14           Mr Associate. 101 Investments is, ultimately, owned by  
15           your retirement fund, isn't it, Mr Mawhinney; is that  
16           right?---Privilege. That's right.  
17   So the beneficial owner of the shares, in Accloud shares is  
18           ultimately, your retirement fund, is that what you would  
19           say?---Privilege. That's correct.  
20   Can we go, please, to - and, as I understand it, you say that  
21           the transfer of the shares is justified by advances of  
22           money by Eleuthera Group and Sunseeker; is that right  
23           ?---Privilege. The moneys were advanced without the  
24           (indistinct) of the facility agreement in Eleuthera from  
25           101 Investments Ltd for the purpose of acquiring those  
26           shares.  
27   Can we go, please, to court book 664. It's probably a bit  
28           difficult to read, Mr Mawhinney. I might ask the  
29           associate just to magnify the top left-hand corner. You  
30           can see this is - if we go - these are account  
31           transactions for IPO Wealth Holdings. If we scroll down

1 to the bottom of that page, you'll see the reference to  
2 that company in the bottom left-hand corner there, just  
3 there. Do you see that, Mr Mawhinney?---Yes. I can see  
4 the left part, Mr Galvin.

5 Are you familiar with this sort of document?---Privilege. I'm  
6 not an accountant. I - I haven't seen it before, but  
7 feel free to ask more questions.

8 If we could scroll back to the top of the page, please,  
9 Mr Associate. You see there under the heading halfway  
10 down on the screen Inter-Company Eleuthera Group Funds  
11 Transfer and there's a date 26 April 2017, 'spend money,  
12 Eleuthera Group, transfer to EG', which is Eleuthera  
13 Group, isn't it, 'account'; is that right?---Privilege.  
14 I must see the others, the side of the screen. I can  
15 only see half.

16 If we could scroll to the - if you can, please,  
17 Mr Associate?---(Indistinct words) with a little bit of  
18 luck.

19 Thank you. And you see that there's a transfer of \$475,000 and  
20 that's from IPO Wealth Holdings to Eleuthera Group. You  
21 understand that?---I understand it, yes.

22 And that gives rise to a running balance, you'll see, on that  
23 date of \$475,000 owing by Eleuthera Group to IPO Wealth  
24 Holdings; is that right?---It's a bit slow. Come up  
25 (indistinct) Yes, I can see that.

26 And this was 26 April 2017. If we go back to the left, you can  
27 see the date of this entry. And as we scroll down, you  
28 will see there are more and more - well, actually, if we  
29 go to the third one, 25 May 2017, and scroll to the  
30 right, you will see there's a credit to the account of  
31 \$10,000?---Privilege. Yes.

1 Okay. Now, as we go down that column there with the brackets,  
2 the running balance column, you can see that the debt of  
3 Eleuthera Group to IPOW - or IPO Wealth Holdings  
4 increases. If we could scroll down, please,  
5 Mr Associate. It continues to increase. Do you see  
6 that?---Privilege. Ah, that's not correct.  
7 Do you say that the figure at the bottom of the page there,  
8 \$8,425,000, is not an increase in the - does not reflect  
9 an increase in the debt?---Privilege. That's correct.  
10 Um, Mr Galvin, with due respect, your client has an  
11 undertaking for reconciliation of the accounts. Had they  
12 done that, then they would have identified the fact that  
13 the moneys that were advanced between IPO Wealth Holdings  
14 and Eleuthera were over time apportioned out across the  
15 SPVs in line with our expense allocation policy, No.1,  
16 and there are certain instances where Eleuthera I believe  
17 have made investments on behalf of (indistinct) so proper  
18 reconciliation of the accounts would identify that  
19 there's actually more money owing from IPO Wealth  
20 Holdings to Eleuthera than the other way around.  
21 Did you examine the accounts of Eleuthera and IPO Wealth  
22 Holdings from time to time and the state of accounts  
23 between them?---Privilege. Yes, I did.  
24 So why didn't you say something about this at the time? I  
25 mean, this goes back to April 2017?---Privilege.  
26 Why didn't you have it corrected?---Privilege. At - I haven't  
27 seen the accounts for 12 months to know exactly where  
28 this report is from. I haven't seen it before.  
29 No, no. Mr Mawhinney, what I'm asking is if you go back to,  
30 say - let's say, if we go to the - scroll to the left,  
31 please, Mr Associate. You will see the date here

1 is January 2019?---Yes.

2 And the page started out at April 2017. Are you saying that

3 you didn't - that you weren't aware of the state of

4 accounts between IPO Wealth Holdings and Eleuthera

5 between April 2017 and January 2019, that you didn't

6 check or look?---Privilege. Of course I was across them.

7 Then why didn't you have these accounts corrected if they're

8 inaccurate?---Privilege. The - if I recall correctly,

9 the 2017 tax return was done, the 2018 would have been

10 done, the 2019 (indistinct) finalised (indistinct)

11 Pinnacle Advisory Group (indistinct) so that would have

12 captured all of these transactions.

13 But why didn't - these accounts clearly show a very substantial

14 indebtedness from Eleuthera Group to IPO Wealth Holdings.

15 You don't appear to have done anything to have them

16 corrected or reconciled?---Privilege. That's not

17 correct. The accounts had not been lodged. Your client

18 obtained them when they were still in draft.

19 But what about between April 2017 and January 2019? Did you do

20 nothing at all to check the state of

21 accounts?---Privilege.

22 Just waited for tax returns, did you?---Privilege. The returns

23 were prepared. We did review the accounts. We even

24 provided a copy of the accounts to the trustee.

25 All right. Could we go down to the next page, please. You can

26 see that on the right side there, I mean, those figures -

27 if you will just see - if you need them magnified, please

28 tell the associate, but you can see they continue to

29 increase until you get to about September 2019. Could we

30 scroll down to there, please. You see, if we go over to

31 - over to the right, please - - -?---Sorry, Mr Mawhinney,

1 I didn't quite hear.

2 I just asked the associate to scroll over to the right. You  
3 can see that the indebtedness of Eleuthera to IPO Wealth  
4 Holdings exceeds \$20m at one stage, and then from that  
5 point, from around September, it starts to reduce. Do  
6 you see that? If you could scroll down to the next page,  
7 please. So that by 14 May 2020 - - -

8 HER HONOUR: Mr Associate, could you put whoever that is on  
9 mute, please.

10 ASSOCIATE: Yes, I have done so, Your Honour.

11 HER HONOUR: Thank you. I will remind observers to please make  
12 sure they're on mute.

13 MR GALVIN: If we scroll to the left, please, Mr Associate, you  
14 will see the date at the bottom there is 14 May 2020, and  
15 if we scroll to the right, Eleuthera, according to these  
16 accounts, were indebted to IPO Wealth Holdings for a sum  
17 of \$3.148m; do you see that?---Privilege. Yes, they're  
18 draft accounts.

19 And you say that's it. Well, these aren't draft accounts, are  
20 they?---Privilege. Absolutely, they are.

21 These are ledgers. They're not draft accounts?---Privilege.  
22 Your client obtained the books and records within 24  
23 hours of being appointed. The tax returns hadn't been  
24 lodged. There were no formal accounts finalised or  
25 lodged, other than the tax returns, which I believe are  
26 2017 and 2018 (indistinct).

27 But these aren't draft management accounts. These are ledgers  
28 entered in the Xero accounting system of the  
29 group?---Privilege. Correct. Drafts.

30 They're the prima facie evidence of what transactions were  
31 taking place, aren't they?---Privilege. As I said, these

1 are internal draft accounts. They're not finalised.

2 They're not lodged.

3 And they're entirely inaccurate; is that what you're

4 saying?---Privilege. No, they're not entirely

5 inaccurate. They record the transfer of moneys, and when

6 the accounts are finalised and when the accounts are

7 reconciled against the books of Eleuthera Group, which is

8 a process that has already been undertaken with the

9 assistance of KPMG, then these accounts would marry up

10 with those of the Eleuthera Group.

11 Can we go, please, to - sorry, could you just explain, please,

12 Mr Mawhinney, what would need to be done to correct these

13 accounts, and who would be responsible for doing

14 that?---Privilege. Well, are you referring to where the

15 liquidator is appointed or if the liquidators were not

16 appointed?

17 I'm talking about before the liquidators were appointed, before

18 receivers were appointed, who would be responsible for

19 correcting these accounts, and what would they need to do

20 to correct them?---Privilege. It's not a case of

21 correcting. This particular ledger that we see here

22 records the transfer of funds. At the end of the

23 financial year, the proper statutory accounts are

24 prepared and they will align and match up with other

25 entities within the group, including Eleuthera Group.

26 Now, we have undertaken a reconciliation of the accounts

27 subsequent to the receivers and managers being appointed.

28 It seems, however, that the liquidators haven't done that

29 and they have not asked us once for a copy of Eleuthera's

30 balances so that they can go and undertake that

31 reconciliation.

1 I see. And so you have said that these figures are not  
2 inaccurate, but you do say, don't you, that the running  
3 balance is inaccurate?---Privilege. The running balance  
4 is simply the sum - the addition and minuses of the  
5 credit and debit balances.

6 Mr Mawhinney, you do say, don't you, that the running balance  
7 is inaccurate, insofar as it records Eleuthera being  
8 indebted to IPOW - IPO Wealth Holdings?---Privilege.  
9 This is an internal draft ledger that has been utilised  
10 to record, which is - no. There has been great scrutiny  
11 of (indistinct) not recording transactions. This clearly  
12 demonstrates we have recorded and undertaken - making  
13 sure there was a - well, not reconciliation, but a record  
14 of all the transactions that took place, so that the  
15 final accounts can be prepared. The final accounts have  
16 not been prepared and there has not been a final  
17 reconciliation been undertaken against investment  
18 documentation and against the accounts of other entities  
19 within the group.

20 Mr Mawhinney, you do say, don't you, that the negative balances  
21 here are wrong. You say they're wrong, or do you now -  
22 do you now agree that, in fact, those figures are  
23 correct? Which is it?---Privilege.

24 It's a simple question?---Privilege. This report that you're  
25 showing me here is - ah, of course, those figures, if you  
26 add them up and subtract the - or add the debits and  
27 subtract the credits, or whichever it is, that will give  
28 that total. There's no doubt about it. What hasn't been  
29 done is that these figures have gone and been reconciled  
30 and apportioned to the relevant compartments that were  
31 meant - and accounts that were meant to be put with

1 (indistinct) and had that been done, then we would find  
2 that this report is a very different-looking report.  
3 Who has - in other words - all right. I think I - I don't  
4 think I can take that any further, Your Honour. I have  
5 done my best. Mr Mawhinney, who did the reconciliation  
6 that you're talking about?---Privilege. Ah, KPMG, ah,  
7 did so on an eight-week secondment back in about June  
8 last year.  
9 June last year. And did they re-draft the accounts? What did  
10 they do exactly by - just tell me what they did by way of  
11 reconciliation?---Privilege. They - they undertook a  
12 process of identifying any moneys that had flowed to and  
13 from the IPO Wealth Holdings Group to other major 101  
14 Group entities. Those loans and loan balances were then  
15 consolidated into Eleuthera Group such that a balance  
16 could be ascertained between IPO Wealth Holdings - or the  
17 IPO Wealth Holdings Group and Eleuthera Group. The net  
18 result is that IPO Wealth Holdings actually owes  
19 Eleuthera close to \$7m. That is after the \$40m was  
20 flowed in to IPO Wealth Holdings from the other  
21 noteholders, which has paid for the Accloud shares,  
22 \$19.46m, and paid for the PayMate shares and the Accloud  
23 revenue share agreement, which off the top of my head  
24 totalled about \$12.3m. So the net result is that there  
25 has been over \$30m that has been paid to IPO Wealth  
26 Holdings to acquire assets with 101 Investments, and the  
27 balance is still a balance owing from the IPO Wealth  
28 Holdings Group to Eleuthera.  
29 So this work that KPMG did, is it in writing anywhere? Is it  
30 set out in a form of accounts or working  
31 papers?---Privilege. Yes, it is. We have - - -

1 Who was the person at KPMG who did the work or was responsible  
2 for it?---Ah, privilege. The partner we were dealing  
3 with was Belinda - someone I can't recall her name. I  
4 can provide it to you, if you like.

5 So as I understand it, the basis for your belief that IPOW - or  
6 IPO Wealth Holdings owes money to Eleuthera Group and not  
7 the other way around is the work that KPMG did in  
8 about June last year?---Privilege. That's correct.

9 And nothing else?---Privilege. We have continued - I mean,  
10 their secondment was an eight-week process. Um, we  
11 continued to go through and reconcile the accounts and we  
12 now have a set of accounts that (indistinct) reconciled,  
13 and we have engaged with BDO to finalise those accounts  
14 in the coming weeks.

15 All right. So KPMG has done some work over a period, I think  
16 you said, of about four weeks; is that  
17 right?---Privilege. Around eight weeks.

18 Around eight weeks. And then after KPMG, who did - who also  
19 worked on the accounts to reconcile them?---Privilege.  
20 Um, we have had the assistance - ah, sorry. Privilege.  
21 Which accounts are you referring to?

22 I'm talking about the - the accounts you're referring  
23 to?---Privilege. Which are they, Mr Galvin?

24 You will have to tell me, Mr Mawhinney. You referred to them.  
25 The accounts you said that had been  
26 reconciled?---Privilege. I - I'm referring to the non-  
27 IPO Wealth Holdings Group accounts.

28 But I have been asking you about the state of accounts between  
29 Eleuthera and IPO Wealth Holdings. Surely, that's what  
30 you were talking about. You were talking about something  
31 else, were you?---Privilege. I was talking about a

1 broader Mayfair Group versus IPO Wealth Holdings Group.  
2 All right, Mr Mawhinney. Let's just be careful about focusing  
3 on the same thing?---Sure.  
4 I'm asking you questions about the state of accounts between  
5 Eleuthera Group and IPO Wealth Holdings. Do you  
6 understand that and what it means?---Privilege. I do.  
7 You said, as I understood it, that KPMG in June last year did  
8 about eight weeks work, or thereabouts, to reconcile the  
9 accounts between those two companies, and as a result of  
10 that, you have come to understand that, in fact,  
11 Eleuthera Group is owed money by IPO Wealth Holdings, not  
12 the other way around; is that correct?---Privilege.  
13 That's correct.  
14 And I then asked you who else had done work after KPMG in  
15 relation to those accounts. That is, the accounts that  
16 relate to the state of accounts between IPO Wealth  
17 Holdings and Eleuthera?---Yes.  
18 And I thought you - you mentioned BDO. Did they do any work in  
19 relation to it?---Privilege. No, they haven't. There  
20 was an independent contractor that we engaged for a very  
21 short term. I can't quite recall his name, but he also  
22 assisted us with some of the accounts (indistinct) I  
23 think in the - in the last year.  
24 And this independent contractor whose name you can't recall,  
25 was he or she associated with a firm of accountants or  
26 some firm - a chartered accounting firm, or something  
27 like that?---Privilege. Ah, I believe he has the  
28 relevant qualifications for undertaking such tasks.  
29 Do you mean he's a sole practitioner?---Privilege. Ah, I don't  
30 profess to know his full business. I have only ever  
31 (indistinct) him once.

1 And you have no recollection of his name?---Privilege. No. I  
2 can find it for you, Mr Galvin.  
3 Could you do that, please, and inform the liquidators?---Yes, I  
4 can.  
5 Now, what documents do you have that have been created as a  
6 result of KPMGs work on this matter and the independent  
7 contractor's work on this matter?---Ah, privilege. Ah,  
8 KPMG provided, from what I recall, a list of proposed  
9 (indistinct) journals that consolidate all the  
10 intercompany balances between IPO Wealth Holdings Pty Ltd  
11 and any of the SPVs, and any of the other Mayfair Group  
12 entities, for the purposes of consolidating them into  
13 effectively one loan balance between IPO Wealth Holdings  
14 and Eleuthera Group.  
15 Did you meet with KPMG to discuss their brief?---Privilege.  
16 Ah, yes, we met with four of their staff, um, in our  
17 Melbourne office, ah, to brief them initially. This was  
18 in the midst of COVID lockdown and we had quite a number  
19 of phone calls thereafter to - to work through the  
20 accounts with them.  
21 Who attended the meetings?---Ah, privilege. There was - from  
22 KPMGs side or our side?  
23 I beg your pardon?---Privilege. From KPMGs side or from our  
24 side?  
25 Well, from - let's say from your side?---Ah, privilege. There  
26 was Greg Wallace, Brigette Panetta, ah, I think Lydia Lee  
27 attended at the time, um, and Cindy Huong, I think it  
28 was.  
29 And who from KPMGs side?---Ah, privilege. Ah, Belinda - it was  
30 Belinda Cheeswright, ah, Andrew Mascara, ah, Tiffany  
31 Someone - apologies. I can't remember her surname - ah,

1 and, ah, I seem to think his name was Justin, but don't  
2 quote me on that.

3 And did you provide any written instructions to KPMG?---Ah,  
4 privilege. I can't recall. I would need to have a look  
5 at my email correspondence with them. There is a formal  
6 engagement letter.

7 And did they provide you with any documents or accounts as a  
8 result of their work?---Privilege. They provided us, as  
9 I said, with a list of proposed journals, based on the  
10 very detailed spreadsheets that consolidated the loan  
11 balances, and also undertook reconciliations. They  
12 undertook reconciliations, not just with respect to the  
13 IPO Wealth Holdings Group but other entities as well.

14 Yes. But let's just focus on Eleuthera and IPOW - IPO Wealth  
15 Holdings?---Yes.

16 Did they provide you with adjusted or amended accounts relating  
17 to those entities?---Privilege. They provided, ah, a  
18 list of journals that they composed in order to  
19 effectively reconcile those accounts and bring that loan  
20 balance into the (indistinct) one balance between  
21 Eleuthera and IPO Wealth Holdings.

22 Your Honour, I will seek an order for production of the  
23 documents that relate to engagement of KPMG. I won't ask  
24 Your Honour to make the order at the moment. I will ask  
25 Ms Papaleo to prepare an order over lunch, perhaps, but  
26 the order will be along the lines that Mr Mawhinney  
27 produce copies, electronic or hard copies, of all  
28 communications between IPO - or, sorry, between him and  
29 KPMG and the independent contractor in relation to the  
30 state of accounts between the two entities we have been  
31 talking about. Is there any difficulty about that,

1 Mr Mawhinney?---Privilege. No, that should be fine,  
2 Mr Galvin.

3 And how long do you think you would need to provide those  
4 documents?---Privilege. Ah, if I could have until, say,  
5 Wednesday next week, given we have (indistinct).

6 All right. Okay. Thank you. Now - - -

7 HER HONOUR: That will be the 31st?---It sounds about right,  
8 yes.

9 All right. Thank you. All right, thank you, Mr Galvin. I  
10 will trouble Ms Papaleo for a description of the  
11 documents.

12 MR GALVIN: Yes.

13 HER HONOUR: Thank you.

14 MR GALVIN: Thank you, thank you, Your Honour. Could I ask the  
15 associate, please, to go to court book 192. Do you see  
16 that email, Mr Mawhinney. There's an email from you to  
17 Craig Van Wegen dated 14 June 2019. You told Mr Van  
18 Wegen that Accloud was on track to list in the second  
19 week of July. Do you recall seeing this email, or being  
20 aware, rather, that Accloud was on list to track - sorry,  
21 was on track, rather, to list in the second week of July  
22 2019?---Privilege. Vaguely, but I can see that's an  
23 email sent, yes.

24 Yes. And there's no reason to doubt that you had a belief at  
25 that time that Accloud was going to list in the second  
26 week of July?---Privilege. The nature of any company  
27 listed is any statement would be with a - very much a  
28 degree of caution given that an IPO always isn't a  
29 definitive outcome. However, at the time it was not a  
30 costs (indistinct) were quite strong with this.

31 And how did you form a few about that? Did you communicate

1 with Mr Ross James of Accloud, did you?---Privilege I  
2 can't recall, but I'd imagine that I would have at the  
3 time, yes.

4 Did you communicate with Mr James via WhatsApp at  
5 all?---Privilege. Yes, we did.

6 I will ask - or add to the production order, Your Honour,  
7 communications between Mr Mawhinney and Mr James via  
8 WhatsApp. Now, can we go, please, to 193, one page down.  
9 There's an email there from - you need to scroll up a bit  
10 to see that it's from you, Mr Mawhinney. Do you recall  
11 that email?---Let me just read it one second.

12 Yes. Please. Take your time and ask the associate to scroll  
13 when you need it scrolled?---Yes, please scroll. Thanks.  
14 Yes, I can see that.

15 And it's dated 23 June 2019. So about a little over a week  
16 after the last email. And in this email - it's an email  
17 to Mayfair Platinum or to Mr Chris Magill of Mayfair flat  
18 numb. Who's Chris Magill?---Privilege. Would you mind  
19 just scrolling up. I'll - - -

20 There's a group of people. They all seem to be part of Mayfair  
21 Platinum?---Correct. Is this very clearly just an  
22 example template email given that it has XXX for  
23 recipient the at beginning.

24 It was sent, I take it? There's no reason to doubt that, is  
25 there?---Privilege. Yes, this is a - it's a template.

26 If we go down you see sigh it reads from the paragraph, 'As  
27 mentioned'. If we just pause there, please. 'As  
28 mentioned, Mayfair 101 has been involved with Accloud for  
29 over five years and remains a significant shareholder.  
30 We have recently made a further sizeable commitment to  
31 help fuel their Indian rollout', and then the next

1 paragraph, 'This is a great opportunity to buy into  
2 Accloud before the company missed on AIM'. What's AIM?  
3 Does that mean the English stock exchange?---Yes. It's  
4 the secondary market of - sorry, it's a secondary  
5 exchange on the London Stock Exchange.

6 And you say which you expect to occur in the second half of  
7 2019. That was your expectation when you sent this  
8 email, was it?---Privilege. This is a templated email,  
9 but at the time, yes, we had no reasonable prospects to  
10 believe - - -

11 What do you mean by saying it's a templated email? Are you  
12 saying that it was sent or not sent?---Privilege. As you  
13 will see, it hasn't been addressed to anyone.

14 Yes, but Mr Mawhinney, it has been addressed to all these  
15 people. If we go back to the top, please. You can see  
16 that it's addressed to five people and copied to a number  
17 of others and it's sent at 7.59 pm on 23 June 2019. It  
18 doesn't matter that there's XXX at the start of it, does  
19 it? It was sent to those people at that  
20 time?---Privilege. They're all staff.

21 Yes. And it was sent to them at that time, wasn't it?---Yes,  
22 it was.

23 Thank you. If we go back down, please, to the paragraph headed  
24 The Offer. You see, 'This is a great opportunity to buy  
25 into Accloud before the company lists which we expect to  
26 occur in the second half of 2019. The offer A\$3.5m for  
27 Accloud PLC shares. Price, .8 of a pound per share,  
28 which is 20 per cent discount below the expected list  
29 price'. Is that contract? Was the expected list price  
30 one pound per share?---Privilege. Correct. At the time  
31 I believe it was.

1 Yes. And was an offer made at this time?---Privilege. An  
2 offer by who?  
3 I'm sorry, I couldn't quite hear that?---Sorry. An offer by  
4 who?  
5 I'm sorry. I really - it might be my ears, but that was a bit  
6 unclear. You said what sort of offer was made?---So I  
7 was asked who - an offer by whom?  
8 Well, by anybody within Mayfair. Isn't - well, what's the  
9 offer a reference to?---My apologies. The offer there,  
10 the offer was offering for sale a small portion of our  
11 overall Accloud share shareholding.  
12 Are you saying someone was offering to buy Mayfair's share -  
13 the Accloud shares held by the IPO Wealth Group or  
14 by Mayfair or - - -?---Privilege.  
15 Who?---No.  
16 No. Well, who's making the offer?---Privilege. No one in this  
17 email.  
18 What offer are you referring to?---Privilege. This is an  
19 internal sales template that was prepared with a view to  
20 offer Accloud shares to potential investors that might  
21 like to invest in the quality of the company.  
22 I see. All right. And could we go, please, to p.202, down to  
23 the bottom of the page you'll see there's an email from  
24 to you Craig Van Wegen dated 8 July 2019. Is that big  
25 enough for you to read? Do we need to magnify  
26 that?---That's better.  
27 And you said to Craig and Nora, who are both with Pinnacle  
28 group - - -?---Yes.  
29 - - - 'I met with Ross James, the founder of Accloud, today for  
30 an update on their listing. There is a 50 per cent  
31 chance they will list this month and a 50 per cent chance

1 they will list in September'. That suggests to me that  
2 there's a 100 per cent chance in your mind that it would  
3 list by the end of September. Do you agree with  
4 that?---Privilege. No. I disagree with that.

5 Is that because you don't think 50 per cent, 50 per cent add up  
6 to 100 per cent or is there some other logic behind your  
7 answer?---Privilege. The logic is if the company lists,  
8 there's a 50 per cent chance that it will be this month  
9 and 50 per cent chance it will be in September. As I  
10 said earlier, the prospects of the company listing is  
11 never a given.

12 All right. If we go down to the next page, please,  
13 Mr Associate, the heading New Rare Opportunity. 'Ross  
14 needs to dilute down to less than 50 per cent of the  
15 company to be EIS compliant. What's EIS  
16 compliant?---Objection. This has nothing to do with the  
17 IPO Holdings Group, Your Honour.

18 Well, is this concerned with the acquisition of shares in  
19 Accloud?---Privilege. Yes, but not (indistinct)  
20 And doesn't it deal with the price that was being paid for  
21 shares in Accloud?---Privilege. This email doesn't have  
22 anything to do with - or this component of the email  
23 hasn't got anything to do with the IPO Holdings Group.

24 I'm sorry. Doesn't it deal with shares that were being paid -  
25 sorry, the price that was being paid for shares in  
26 Accloud at this time?---Privilege. Separate to the IPO  
27 Holdings Group.

28 Yes. But, nonetheless, the shares - it deals with the value of  
29 the shares, does it, in the Accloud group at this  
30 time?---Privilege. No, it doesn't deal with the value of  
31 Accloud's shares. It deals with the shares that Ross

1 James held at the time.

2 And are they his shares in Accloud?---Privilege. Yes, they  
3 were. All - - -

4 MR GALVIN: Your Honour, if there's an objection that I suppose  
5 Your Honour needs to rule on, the point is very simple  
6 and obvious. That is that it deals with the value of the  
7 Accloud shares at this time which is around the time at  
8 which the Accloud shares were transferred to the British  
9 Virgin Islands.

10 HER HONOUR: Yes, I don't - I mean, my recollection is that the  
11 value ascribed to the shares has been the subject of  
12 previous examinations, at least the value said to have  
13 been paid by 101 when it acquired the shares from the IPO  
14 Wealth entity, but there are many different ways to come  
15 to what the value of the shares may be. I don't see why  
16 this email is, therefore, not relevant if it goes to what  
17 value the shares held in someone else's hands that were  
18 possibly going to be sold or transferred at around the  
19 same time. So I'll ask you to answer the question  
20 please, Mr Mawhinney?---Sure.

21 MR GALVIN: So, Mr Mawhinney, there's a new - - -

22 HER HONOUR: I think first of all, Mr Mawhinney, the question  
23 that I'd like you to answer is what is EIS?---Privilege.  
24 It's some form of, um, tax concession that's provided to  
25 companies in the UK that list on the stock market.

26 All right. Thank you.

27 MR GALVIN: So it looks like Mr James needed to offload some  
28 shares for tax purposes; is that right?---No - privilege.  
29 Not for his tax purposes, no. It was for the companies -  
30 sorry - for the shareholders of the companies tax  
31 purposes.

1 All right. Thank you?---More attractive to shareholders to buy  
2 in given it is an EIS compliant business.  
3 And then you said in the next paragraph - - -  
4 HER HONOUR: Mr Galvin - - -  
5 MR GALVIN: Sorry.  
6 HER HONOUR: - - - I'll just interrupt you for a minute then  
7 just to note that that simply reinforces in my mind the  
8 relevance for the examinable affairs of the question.  
9 Thank you. Sorry, I interrupted you.  
10 MR GALVIN: If it please Your Honour. Mr Mawhinney, the next  
11 paragraph reads, 'The deal I have agreed is that we buy  
12 them for £1.30 each. The company is expected to list at  
13 £1 on a deferred consideration basis'. So did you have  
14 an agreement with Mr James for some entity associated  
15 with you to purchase shares from Mr James?---Ah,  
16 privilege. It was a verbal discussion that was never  
17 undertaken.  
18 So why did you say that the deal was agreed?---It was a verbal  
19 agreement.  
20 Yes, okay. So there was an agreement. It was just verbal, not  
21 in writing; is that what you mean?---Privilege. It was a  
22 discussion that we had, um, subject to documentation that  
23 we would undertake the transaction on that basis.  
24 I see. What you're saying is there was an agreement, but it  
25 wasn't going to be a binding agreement until there was  
26 some documentation for it; is that right?---Privilege.  
27 Absolutely.  
28 Right. So, in any event, you'd had a discussion about paying  
29 £1.30 for each of the shares; is that right?---Privilege.  
30 Yes.  
31 Yes. And how did you strike that figure?---Privilege. You'll

1 see in the second line where it says 'on a deferred  
2 consideration basis'. If you read more about that  
3 proposed transaction, um, the actual price is irrelevant  
4 for the purposes of the transaction being beneficial to  
5 both parties.

6 Yes. Why do you say that?---Privilege. Because the £1.30, um,  
7 was a nominal value that was agreed, ah, such that it  
8 would be the marking point. Where we've seen a few  
9 bullet points there if the shares go up and we sell them,  
10 ah, he receives 30 per cent, we receive 70 per cent. If  
11 the shares go down, ah, we pay him 30 per cent - ah,  
12 sorry - we keep 30 per cent and we pay him 70 per cent.  
13 So the actual price is irrelevant.

14 And it was true, was it, that the company was expected to list  
15 at £1?---Ah, privilege. That was what had been discussed  
16 at the time.

17 That was your belief at the time, was it?---Privilege. That  
18 was the belief at the time. That's always going to be  
19 subject to what the brokers and nomads that Accloud has  
20 appointed decide ultimately the company lists at.

21 It was your expectation though, wasn't it?---Privilege. Yes.  
22 That being said, Mr Galvin, in my industry, um, listing  
23 at a certain price is never a given till until the bell  
24 is rung.

25 Yes. If we could go - scroll down a little bit further,  
26 please. Do you see the words highlighted in green,  
27 'There is a reasonable prospect of the share price  
28 increasing five times in the first 12 months due to one  
29 of their JV partners wanting to double the size of their  
30 contract'? Was this a reference to something happening  
31 in India?---Privilege. Ah, I believe so.

1 Yes. And so you thought, didn't you, at this time that there  
2 was a reasonable prospect of the share price increasing  
3 by a factor of five in the first 12 months after  
4 listing?---Privilege. Yes, that's correct.  
5 Can we go, please, to court book 402. That's the share sale  
6 agreement that you mentioned earlier. I'll just wait for  
7 the associate to get there, sorry.  
8 HER HONOUR: Mr Associate, could we go to p.402 in the court  
9 book, please. Just bear with me for a moment,  
10 Mr Mawhinney.  
11 MR GALVIN: Yes. Yes?---Sure.  
12 HER HONOUR: Page 402 please, Mr Associate.  
13 ASSOCIATE: Thank you, Your Honour.  
14 MR GALVIN: That's the share sale agreement which we've been  
15 talking about, Mr Mawhinney, from IPO Wealth Holdings  
16 No.3 to 101 Investments; you see that?---Yes.  
17 And that was executed, I think you mentioned yourself, on  
18 4 October 2019; is that right?---Correct.  
19 But it was intended to express to have effect on 31 January  
20 2019. If we could scroll down a bit further, please,  
21 Mr Associate, to the first substantive page. (To  
22 witness) Do you see there the date 30 January 2019? I  
23 think you've said in the past that that was Pinnacle's  
24 idea; is that right?---Privilege. That's correct.  
25 And the price - if we go, please, to p.413, the price that was  
26 agreed to be paid here for the 21,250,000 shares was 57  
27 euros per share; is that right?---Privilege. That's  
28 correct.  
29 Sorry, that's not quite right. I should say .57 euro per  
30 share?---Yes.  
31 Which I think relates - is approximately half a pound; is that

1 right?---Privilege. That's correct, 50P.  
2 Now, as a result of those share - sorry - this agreement, the  
3 share transfers occurred, didn't they?---Privilege. No,  
4 they haven't. Your client is still sitting on the  
5 shares.  
6 I beg your pardon?---Your client is still sitting on the  
7 shares. They haven't transferred them.  
8 I see. Could we go, please, to p.423. (To witness) Do you  
9 recognise this document?---Privilege. Yes, I do.  
10 That's a share transfer that you signed in relation to the  
11 Accloud shares; is that right?---Privilege. Yes.  
12 If we scroll down we can see that the transferee is 101  
13 Investments. Just scroll a little bit - yes, stop there,  
14 please. You can see - you might need to magnify it a  
15 bit. (To witness) You can see the reference to 101  
16 Investments and this deals with - if we go back to the  
17 top of the page - it deals with 6 million shares in  
18 Accloud?---Yes.  
19 Do you see at the top there the consideration is recorded as  
20 nil?---Yes  
21 Why is that?---Privilege. I don't know. These were prepared  
22 by Pinnacle.  
23 Yes, but you signed it, didn't you?---Privilege. Yes, I did.  
24 Do you think you would have read it before you signed  
25 it?---Privilege. Yes, I would have.  
26 So why did you sign it if the consideration was nil? Was there  
27 nil consideration given?---Privilege. No, there was  
28 consideration given.  
29 What was the consideration?---Privilege. I don't know what it  
30 was for that parcel of shares, but again I'm acting on  
31 taxation advice and accounting advice from the firm that

1 put it together.

2 You're not able to say what consideration was given for the

3 transfer - well, perhaps if I withdraw that,

4 Mr Mawhinney. I will come back to that in a moment. Can

5 we go, please, to the next - two pages on to the next one

6 which deals with the parcel of one and a half million-odd

7 shares, same - same entries there, and you will see 101

8 Investments at the very bottom of the screen. Again, nil

9 consideration at the top the screen. You signed that,

10 didn't you?---Privilege. Yes, that's my signature.

11 And then I might have missed one. Just bear with me. Well,

12 there's a few of these and we probably don't need to go

13 to all of them. Can we go to the one - let's just focus

14 on those two at the moment. They both record that nil

15 consideration was paid. But you're not able to identify

16 what the consideration was for these

17 transfers?---Privilege. I don't know what it would be

18 for each one, and I would need to speak to Pinnacle Group

19 to understand why nil was put there as consideration

20 (indistinct).

21 Well, it's not - the entry nil is not consistent with 101

22 Investments having paid any consideration for these

23 shares, is it?---Privilege. Again, I would need to speak

24 with Pinnacle to understand why it was nil put in there.

25 All right. Just pardon me, Your Honour. Can we go, please, to

26 p.205.

27 HER HONOUR: Sorry, was that 205?

28 MR GALVIN: Yes, two-zero-five.

29 HER HONOUR: Thank you.

30 MR GALVIN: There's an email from you, Mr Mawhinney, to

31 Craig Van Wegen. It seems to relate to the sale of five

1 million Accloud shares for £1.30 each, with 200,000  
2 pounds being paid upfront. Did this transaction  
3 occur?---Privilege. No.

4 And why didn't it occur?---Privilege. It was never documented  
5 and there was no consideration ever paid. It was - yeah,  
6 it just didn't proceed.

7 So is it fair to say that on 8 July 2019 you expected the  
8 Accloud shares to list at about one pound per share? It  
9 seems to be what you have been saying in the email  
10 correspondence?---Privilege. I would need to see the  
11 email again, sorry.

12 All right. If we could go back, please, to 202, just a few  
13 pages before this. That's your 8 July email. You  
14 expected the shares to list for \$1 - sorry, one pound,  
15 and it's a - the next page under the heading New, Rare  
16 Opportunity?---Yep.

17 So you agree, don't you, that at this time that's what you were  
18 expecting?---Privilege. And the agreement was signed  
19 in October subsequent to both of those 50 per cent  
20 chances, as I - - -

21 Did you hear me ask you a question about that or you just  
22 thought you would volunteer something?---I'm volunteering  
23 (indistinct).

24 Yes. Well, it would be helpful if you wouldn't, Mr Mawhinney.  
25 It doesn't work like that, I'm afraid. Just listen to  
26 the question. As I understand it, you agree that at this  
27 time, the time of this email, you expected the Accloud  
28 shares to list at one pound a share?---Privilege. Fifty  
29 per cent chance being that month and 50 per cent being  
30 in September.

31 And if we look towards the bottom of this page, you also

1 considered that there was a reasonable prospect that the  
2 share price would increase by a factor of five within 12  
3 months of the listing. If you could scroll down, please,  
4 Mr Associate. The green highlight. Do you agree?  
5 That's what you - - -?---Privilege. Yes, I did, and as  
6 with any listing, nothing is guaranteed.  
7 Yes. And yet, notwithstanding these - this state of mind, on  
8 4 October 2019, you caused IPO 3 to enter into a sale of  
9 the - its Accloud shares to 101 Investments for a price  
10 of 50p a share, or half a pound a share, didn't  
11 you?---Privilege. Yes.  
12 Yes. Well, that's a significant undervalue, isn't  
13 it?---Privilege. Not at all.  
14 All right. I see. What's your explanation for the difference  
15 between the one pound and the half a pound?---Privilege.  
16 There are unlisted shares. There would be almost no  
17 other organisation that would buy those shares at short  
18 notice, provide liquidity to the IPO Wealth Holdings  
19 Group and the IPO Wealth Fund, that would buy unlisted  
20 securities in that parcel size and in that timeframe, so  
21 50p a share was an entirely reasonable price.  
22 And how did you agree that figure? How did you strike that  
23 figure?---Ah, privilege. If I recall, it was based on  
24 previous transactions that had taken place, not - not  
25 with us but other - you know, other buyers of Accloud.  
26 When had those transactions taken place?---Privilege. I can't  
27 recall, but I would expect it was early in 2019.  
28 Yes. Was it at a time when there was an expectation that the -  
29 that Accloud would list in the second half of 2019?---Ah,  
30 privilege. I believe so, yes.  
31 What makes you believe that?---Ah, privilege. The nature of

1 any IPO is that when a company sells shares price  
2 listing, they're typically sold at - anywhere between the  
3 30 and 70 per cent discount price of listing because its  
4 securities are (a) unlisted, and (b) there is no  
5 guarantee that the company will be listed.

6 I take it from your answer you don't have any specific  
7 recollection as to why you thought the previous  
8 transactions were at 50p a share?---Privilege. It would  
9 have been based on my discussions with the Accloud  
10 (indistinct).

11 Yes. When you say it would have been, that's because you're  
12 just guessing. You're reconstructing; is that  
13 right?---Privilege. Because I have had a number of  
14 conversations with (indistinct) back during that period  
15 of time, and he informed me of other transactions that  
16 had taken place, and (indistinct).

17 I see. Who were those conversations with?---Privilege. It was  
18 my conversation with Ross James.

19 Can we go, please, to court book 153. There's another copy of  
20 your email of 8 July. If we then go to p.149, the bottom  
21 half, there's an email from Mr Van Wegen to you dated  
22 11 July 2019. He said: 'Hi James, thanks for the below.  
23 We will come back to you hopefully' - in the second  
24 paragraph: 'With respect to the current holding of  
25 Accloud shares, we have a strategy for correcting the  
26 shareholding of Accloud which will not require an actual  
27 correction of the shareholder registered'. Presumably,  
28 he meant 'shareholder register'. Do you remember talking  
29 to him about that?---Ah, privilege. Very vaguely, yes.

30 And what was the purpose of correcting the shareholding of  
31 Accloud without correcting the register?---Privilege. It

1           wasn't - I - I didn't suggest for a moment that there  
2           should be any corrections. I contacted Pinnacle, um,  
3           seeking advice with respect to those Accloud shares and  
4           this was the recommendation that they put forward.

5 I see. If we go, please, to p.152, on 9 July, Mr Van Wegen  
6           sent an email to you - perhaps we had better go back to  
7           the 8 July email at 153. If you can just look through  
8           that again, please?---Please scroll down.

9 Yes, so just pausing there, you said - you're referring to the  
10          new rare opportunity. What was new and rare about  
11          it?---It was - privilege. It wasn't an opportunity that  
12          was available previously and the nature of the  
13          opportunity was very rare. If you read and understand  
14          the transaction it was an opportunity that would be  
15          available to many people.

16 That's what made it rare, is it?---Privilege. That's correct.

17 You said at the bottom, 'For this to work, I can't own the  
18          shares'. Why was that?---Privilege. Objection. This is  
19          nothing to do with the IPO Holdings Group, Your Honour.

20 Well, this is about client shares in Accloud, isn't  
21          it?---Privilege. Which has nothing to do with the IPO  
22          Holdings Group. These shares were very concentrated, as  
23          you rightly pointed out where I said I can't answer the  
24          shares. Therefore, the ownership and the transaction  
25          doesn't have anything to do with the IPO Holdings Group.

26 HER HONOUR: Isn't this part of the structuring of the ultimate  
27          transaction, or consideration of the structuring of the  
28          transaction?---No, it's entirely separate, Your Honour.  
29          As you will see in that heading New/Rare Opportunity,  
30          this is separate from the shares that had already been  
31          acquired by the IPO Holdings Group.

1 Well, the IPO - but there was around this time, was there not,  
2 the proposal for the IPO Wealth shares in Accloud to be  
3 transferred to 101 Investments, wasn't  
4 there?---Privilege. That's correct, but, again, this  
5 transaction is entirely separate to that. As you will  
6 see at the bottom of the paragraph there, it says, 'For  
7 this to work, I can't own shares', as in I/Mayfair Group  
8 can't own those shares.

9 Well, we don't know who 'I' is here, do we, Mr Mawhinney? It  
10 could be any one of a number of entities that you own, or  
11 it could be you personally?---With respect, Your Honour,  
12 it says my options are Brigette, John Anasis, or my  
13 younger sister.

14 All right. I'm going to require you to answer the question,  
15 Mr Mawhinney. I think it has sufficient connection to  
16 the examinable affairs of the company.

17 Mr GALVIN: Mr Mawhinney, you - IPO 3 acquired shares in  
18 Accloud because of your activities; isn't that  
19 correct?---Privilege. Yes. That's correct.

20 But here there's a discussion of you, yourself personally,  
21 acquiring shares in Accloud as well; is that  
22 right?---Privilege. This is, again, a hypothetical  
23 transaction that never took place.

24 Yes?---But there's, nonetheless, a discussion about you  
25 acquiring shares in the same investment that IPO Wealth  
26 Holdings - three rather, have gained - three have  
27 acquired an investment in?---Privilege. These are a  
28 discussion around me acquiring or holding anything.

29 So why did you say that you couldn't own the shares? What did  
30 you mean by that?---Privilege. To your previous quotes  
31 in that that highlights that this wasn't to do with me

1 holding or owning the shares.

2 HER HONOUR: Mr Mawhinney, answer the question, please?---Would  
3 you mind rephrasing the question, Mr Galvin.

4 MR GALVIN: Yes. You said at the start of that bottom  
5 paragraph, 'For this to work I can't own the shares'.  
6 Why was it that you couldn't own the shares?---Privilege.  
7 If I recall correctly, it was because - sorry, just give  
8 we one sec. I do want to recall. There was a good  
9 reason behind it.

10 Was it because you were a director of IPO 3?---Privilege. No,  
11 I don't believe that was the reason, Mr Galvin. Do you  
12 mind if I come back to you on that because there was a  
13 genuine reason why we - to go ahead with this particular  
14 transaction.

15 Yes. Yes, of course. Thank you, Mr Mawhinney. We will come  
16 back to that, perhaps. All right. Then in response to  
17 this email, there's an email, if we scroll upwards,  
18 please, to 152, an email from Van Wegen to you, referring  
19 to your email saying, 'We have the documents around the  
20 current Accloud holding ready to go. We will send these  
21 through with an explanation. We don't really need any  
22 corrections based on our approach. Is there any  
23 particular reason you cannot be identified or cannot be  
24 linked? This will help us work out the best solution'.  
25 Does that help you recall what it might have been.  
26 Privilege. It does, Mr Galvin. It was all to do with  
27 escrow provisions and lock up provisions on their own  
28 market.

29 Yes. What was the impediment to you holding the shares?---If I  
30 or anyone of IPO Wealth Holdings or its entities held  
31 those shares, then those shares would be locked up for 12

1 months.

2 I see. So the idea was that somebody else, either Brigette  
3 Panetta or John Anasis or your sister, Inga Tamminga,  
4 would hold them on trust for you?---Privilege. It was -  
5 we, again - we didn't decide exactly how it would be  
6 structured.

7 But you were suggesting they would - they would hold them. It  
8 was suggesting that they would hold them on trust for  
9 you; is that right?---Privilege. It would be me holding  
10 (indistinct).

11 I beg your pardon?---Privilege. It would have been me or the  
12 IPO Wealth Holdings Group holding those shares.

13 If we go to the next page, there's an - sorry, upwards, sorry,  
14 Mr Associate, to your email of 10 July 2019. This is at  
15 p.151. You said: 'Hi Craig, at the moment it is likely  
16 we will be subject to escrow by holding more than 10 per  
17 cent of Accloud'; is that what you're referring  
18 to?---Privilege. That's correct.

19 'Having an allocation of shares in the hands of a trusted third  
20 party would provide us with some liquidity. Obviously  
21 keen to structure this in a tax-effective way'. What did  
22 you mean when you said that having the allocation of  
23 shares in the hands of a trusted third party would  
24 provide you with liquidity?---Objection, Your Honour.  
25 This is a transaction at the end that sits outside the  
26 IPO Wealth Holdings Group.

27 Your Honour, I withdraw the question. I won't press it. I  
28 will move on.

29 HER HONOUR: Thank you.

30 MR GALVIN: If we go, please, to the bottom of p.149, and just  
31 take a moment to look at that, please, Mr Mawhinney, and

1 ask the associate to scroll down when you're ready,  
2 because it goes over a couple of pages, this  
3 email?---Please scroll down. Please scroll down. Yes.  
4 Go back to the bottom of the page before that one, please. You  
5 will see there's a paragraph that begins: 'With respect,  
6 to the current holding of Accloud shares, we have a  
7 strategy for correcting the shareholding of Accloud which  
8 will not require an actual correction of the shareholder  
9 register'. So I take it from this email that there was a  
10 strategy that was being developed by which the  
11 shareholding in the Accloud shares would go to an entity  
12 other than the IPO Group, and it would be structured  
13 through a process of a series of agreements which are  
14 listed in this email; is that right?---Ah, privilege.  
15 That's correct.

16 Now, if we go to the bottom of the page below, please. Thank  
17 you. Do you see the paragraph numbered 5?---Yes.

18 Well, if you look at 3, for example: 'IPO Wealth Holdings No.3  
19 will then enter into a share sale agreement with 101  
20 Investments Limited, effectively dated 1 January 2019  
21 (indistinct) IPO Wealth Holdings No.3 will agree to sell  
22 and 101 Investments will agree to acquire 20 million-odd  
23 Accloud shares beneficially owned by IPO Wealth Holdings  
24 No.3', and there's a similar arrangement referred to in  
25 paragraph 5?---Sorry, would you mind just scrolling up?  
26 I can't see the question.

27 I'm sorry, paragraph - you just read paragraphs 3 and 5 to  
28 yourself, the paragraphs numbered 3 and numbered  
29 5?---Yes.

30 And then below that, Mr Van Wegen said: 'We note that the  
31 effect of the above documents will be to move the

1 beneficial ownership of all 20 million Accloud shares  
2 currently owned by various entities within the Mawhinney  
3 Group to IPO Wealth Holdings No.3 with effect from  
4 30 October 2017, and then transfer again this beneficial  
5 ownership to 101 Investments with effect from 1 January  
6 2019. Throughout this entire period, however, legal  
7 ownership of the shares will remain with the current  
8 shareholders'. So this was a strategy that was carried  
9 into effect, wasn't it, by agreements that were  
10 subsequently executed?---Ah, privilege. It was a  
11 strategy put together by Pinnacle and most but not all of  
12 the agreements were executed.

13 What was the object of the strategy?---Ah, the primary  
14 objective of the strategy was (1), ah, tax considerations  
15 like I mentioned, (2), trustee risk as I mentioned, um,  
16 and (3), it was, ah, provide greater flexibility over the  
17 sell down of the Accloud shares over time. Um, given  
18 that - as I've touched on earlier, that there was a risk,  
19 um, we considered that the trustee wouldn't understand  
20 our investment strategy. Um, obviously this particular  
21 format of transaction didn't proceed, um, and instead the  
22 shares were paid for in full.

23 But this is - this email is 11 July 2019. As I understand it  
24 you - this is not consistent with the idea that the  
25 payments by Eleuthera Group were going to fund the  
26 acquisition of the - and Sunseeker were going to fund the  
27 acquisition of the shares by the BVI company, is it?  
28 This is a different plan?---This is Pinnacle's  
29 recommendation.

30 I see, but it was carried into effect, wasn't it?---No, it  
31 wasn't.

1 Have a look, please, at p.146. There's an email from Kate  
2 Power of Pinnacle to you dated 23 July 2019 attaching  
3 copies of the agreements to give effect to the strategy  
4 in the email we just looked at. Do you see that?---Yes.  
5 And those documents were all executed, weren't  
6 they?---Privilege. No.  
7 Have a look, please, at 156, please. That's one of them, isn't  
8 it?---Privilege. Yes, that agreement was executed - the  
9 share sale agreement was.  
10 Yes. And if we look at 168 that's another one that was  
11 executed by you; is that right?---Ah, privilege. Yes,  
12 scroll down - down to the signature page there. Yes,  
13 correct.  
14 And then there's another one at 180, for example, in relation  
15 to - these are three different parcels of shares at page  
16 three-eight - sorry - 180. That's another one. Now,  
17 these were all signed by you to give effect to the  
18 strategy, weren't they?---Privilege. These agreements  
19 you've taken me to, Mr Galvin, are all share sale  
20 agreements.  
21 Yes, and they're all part of the transaction which is described  
22 in the email correspondence I've just taken you  
23 to?---They were components of the transaction, yes.  
24 Would that be a convenient time to break, Your Honour?  
25 HER HONOUR: Yes, thank you, it would be, Mr Galvin. Sorry, I  
26 lost track of the time. All right, then. What time  
27 would you like to resume, please?  
28 MR GALVIN: Is 2 o'clock a possibility?  
29 HER HONOUR: It's all right with me. Is that all right with  
30 you, Mr Mawhinney?---Yes, of course. That's fine. Thank  
31 you, Your Honour.

1 Ms Papaleo? And, Mr Associate, is that convenient?  
2 ASSOCIATE: Yes, thank you, Your Honour.  
3 HER HONOUR: All right. Then thank you. We'll adjourn now  
4 until 2 o'clock. You can either keep the Zoom link open  
5 but put your microphones on mute and your cameras off or  
6 you can dial back in just prior to 2 pm. All right.  
7 MR GALVIN: If the court please.  
8 HER HONOUR: Thank you. Could you adjourn the court,  
9 Mr Associate, and put me in the waiting room, please.  
10 ASSOCIATE: Yes, Your Honour.  
11 <(THE WITNESS WITHDREW)  
12 LUNCHEON ADJOURNMENT

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UPON RESUMING AT 2.00 PM:

HER HONOUR: Thank you. Are we ready to resume, Mr Galvin?

MR GALVIN: Yes, Your Honour.

HER HONOUR: Mr Mawhinney?

MR MAWHINNEY: Yes, thank you.

HER HONOUR: The technology is still working for you,

Mr Mawhinney?

MR MAWHINNEY: It is. I'll turn Siri off. One sec.

HER HONOUR: Very well. Thank you.

MR GALVIN: Your Honour, just before we get started, I

mentioned the orders that we were going to prepare for -  
later for production.

HER HONOUR: Yes.

MR GALVIN: I just want to confirm that the documents we will

be seeking will include spreadsheets prepared by KPMG,  
but we'll be looking for them in native format, Excel  
format. Is there any difficulty with that, Mr Mawhinney,  
providing them in Excel, in their original native format?

MR MAWHINNEY: Yes. They are in Excel format, so that

shouldn't be a problem.

MR GALVIN: All right. Thank you.

1 <JAMES PETER MAWHINNEY, recalled and examined:

2 MR GALVIN: Mr Mawhinney, can I ask you, do you hold any shares  
3 in Accloud personally, or does anybody hold any shares on  
4 your behalf in Accloud?---Privilege. No, they don't.  
5 Other than the Mayfair group of companies, no, there  
6 isn't.

7 I just want to ask you some questions about the Sunseeker  
8 payments. If we go to 417 of the court book, please.  
9 There's a letter from Carey Olsen dated 24 December 2020  
10 to Dye & co. Carey Olsen acts for 101 Investments Ltd.  
11 You've seen this letter before, haven't you,  
12 Mr Mawhinney? I think we talked about it last time,  
13 perhaps?---(Indistinct words).

14 HER HONOUR: Sorry, what was the answer, Mr Mawhinney?---Yes,  
15 I'm familiar with the letter.

16 Thank you.

17 MR GALVIN: Now, according to this letter, Sunseeker, the  
18 Sunseeker trust has made payments - or made payments to  
19 IPO Wealth Holdings totalling \$13,880,000 between 28 June  
20 2019 and 11 September 2019. We can see that at the top  
21 of p.418 in a table.

22 HER HONOUR: Can you scroll down, please, Mr Associate. Thank  
23 you.

24 MR GALVIN: And also they allege that Eleuthera's payments to  
25 IPO Wealth Holdings in that period - sorry, in a  
26 different period, 6 September 19 to 20 November 19, total  
27 \$5,580,672. Do you know where Carey Olsen got those  
28 figures from?---Privilege. The bank statements and our  
29 books and records for Sunseeker and Eleuthera.

30 And where did they get those records from?---Privilege. We  
31 provided it to them as part of their due diligence on the

1 transaction.

2 You provided those documents to Carey Olsen as part of their  
3 due diligence?---Privilege. As a law firm, we provided  
4 them with a copy of all the documentations that  
5 (indistinct) prepared (indistinct) in the British Virgin  
6 Islands, so I consider that they were undertaking a form  
7 of due diligence to ultimately prepare it from the  
8 internet.

9 Did you speak to somebody from Carey Olsen about  
10 that?---Privilege. Yes. A number of people there.

11 And were you a director of 101 Investments Ltd at the time you  
12 spoke to them?---Privilege. No.

13 On what basis then were you speaking to them?---I - privilege.  
14 The authorisation of 101 Investments.

15 Who authorised you at 101 Investments to speak to  
16 them?---Privilege. The director at the time had accepted  
17 Carey Olsen's engagement to act for the firm - act for  
18 their company, should I say.

19 Yes. Who was that? Mr Nicholas Cook?---Privilege. Yes, I  
20 believe it was.

21 Did he authorise you to talk to Carey Olsen on your behalf  
22 ?---Privilege. Yes, he did.

23 And was that orally or in writing?---Privilege. I can't  
24 recall. I would need to have a look at our  
25 communication.

26 Now, the counts of the IPO Group, if we go to - pardon me. If  
27 we go to Annexure A on p.419, pardon me, we see a list of  
28 the Sunseeker payments there. If you scroll down in the  
29 become of the next page you'll see the payments allegedly  
30 from Eleuthera. If you can just scroll down to the next  
31 page. You can see Eleuthera referred to in the bottom of

1 the page. You see that? And then the total of the - on  
2 the next - top of the next page is 19 and a half million-  
3 odd dollars. Go to the next page. Yes. Now, exactly  
4 what documents did you provide to Carey  
5 Olsen?---Privilege. That's privileged information.

6 Well, they're not your solicitors, are they?---Privilege. They  
7 act for a company that I'm the ultimate beneficial owner.  
8 It's part of the Mayfair group. As the managing director  
9 of the group, I consider that they are very much a part  
10 of acting for the group.

11 But the documents that you provided were not documents -  
12 weren't they accounting documents? They were not  
13 prepared for the purpose of litigation, were  
14 they?---Privilege. It was all the transactional  
15 documents including bank statements, including some of  
16 the documents that we went through earlier today and an  
17 account with reconciled account statements that we had  
18 recently provided the client with a copy of.

19 So were the KPMG documents provided?---Privilege. KPMG  
20 provided a set of manual journals based on their  
21 reconciliation. They were provided in a spreadsheet  
22 format for us to transpose into the books of Eleuthera  
23 and various other Mayfair group entities.

24 So KPMG prepared a spreadsheet which someone at Eleuthera then  
25 translated into accounts for Eleuthera, is that what  
26 you're saying?---Privilege. Yes. They were the journals  
27 that were recommended going into the accounts, if I  
28 recall correctly. I didn't do it, so I can't say for  
29 certain.

30 And did these spreadsheets at KPMG prepare taking into account  
31 all of the transactions between the entities, or just

1           some of them?---Privilege. I think it was most, but not  
2           all. They were engaged, as I said, for a period of about  
3           eight weeks or so, so they did the work they could in  
4           that period of time.

5   They didn't what? Pardon me?---They did the work that they  
6           could within that set period of time.

7   So their work is probably not complete if it didn't take  
8           account of all the transactions?---Privilege. The work  
9           that we asked them to do was complete.

10   What exactly did you ask them to do?---Privilege. I would need  
11           to have a look at the engagement letter.

12   Now, nothing in the accounts of the IPO group identify any of  
13           these payments that are referred to in the annexure to  
14           the Carey Olsen letter as payments which are made in  
15           repayment of any debt. Does that surprise  
16           you?---Privilege. Not at all.

17   And why not?---Privilege. Because the payments were made to  
18           acquire assets out of the IPO Holdings Group and then  
19           that particular list of the transactions there, that was  
20           to settle the Accloud share purchase.

21   Sorry, what I meant to say was none of these payments have been  
22           identified in the accounts as being paid in consideration  
23           from the acquisition of any shares in  
24           Accloud?---Privilege. As I mentioned earlier this  
25           morning, the accounts are on finalised saved draft and  
26           when - and if they were to be completed, then it would  
27           have the relevant notation against them.

28   I see. The IPO accounts or IPO Wealth Holdings accounts have  
29           treated the Sunseeker payments as reductions of a debt  
30           owed to IPO Wealth Holdings by Sunseeker. Were you aware  
31           of that?---Privilege. No, I can't recall.

1 If you go to court book p.432, please. These are account  
2 transactions of IPO Wealth Holdings relating to the  
3 Sunseeker trust. If we go down to p.434, beginning on  
4 21 May 2019, about halfway down, you will see there are a  
5 whole lot of payments which appear to be the payments  
6 that are listed by Carey Olsen. If we go to the right,  
7 scroll to the right, take, for example, the payment on  
8 28 June 2019 - you probably need to scroll to the left to  
9 see it first - so it's 28 June 2019, receive money into  
10 Sunseeker trust and then we see \$500,000. Do you see  
11 that?---Yes.

12 If we go back to the letter, Carey Olsen letter - it's at 417  
13 or the annexure which is at 419 - you'll see that first  
14 entry is \$500,000. So are you prepared to take my word  
15 for it that all of those transactions and the accounts at  
16 434 from 28 - sorry - from 28 June 2019 down to  
17 11 September 2019 - if we could go please to 434 - all  
18 those payments from that date going all the way to the  
19 top of the next page, 11 September 2019 - scroll to the  
20 right - they're all payments which, far from being  
21 advances to IPO Wealth Holdings, were applied in  
22 reduction of amounts owed by Sunseeker to IPO Wealth  
23 Holdings?---Privilege. No, that's not the case.

24 Well, that's what these accounts say though, Mr Mawhinney. Is  
25 your answer that they're draft accounts and they're  
26 inaccurate or something? Is that your answer - your  
27 explanation?---Privilege. Yeah, your clients seized  
28 those accounts at short notice and we hadn't had the  
29 opportunity to reconcile them. Had we had the  
30 opportunity then it would have matched with Eleuthera's  
31 accounts which showed that the shares were paid for.

1 At the end of the period here you can see that the amount owed  
2 is in the order of \$261,000. That is an amount owed by  
3 Eleuthera - sorry, not Eleuthera - Sunseeker to IPO  
4 Wealth Holdings, but you say that's not the  
5 case?---Privilege. So this is just a ledger that records  
6 the movement of moneys. It doesn't record specific  
7 transactions that those moneys relate to.

8 Well, it does more than that, Mr Mawhinney, doesn't it? It  
9 records a running balance, doesn't it?---Privilege.  
10 There's a total at the bottom there based on the movement  
11 of money. As I said, as yet those transactions have not  
12 been allocated.

13 What do you mean by allocated?---Privilege. This particular  
14 ledger records the transfer of moneys. At the end of the  
15 financial year when the accounts were finalised and  
16 lodged the transactions will be allocated to relevant  
17 investments or expenses in line with our policies and  
18 obviously investment documentation.

19 So if these - each one of these payments we're talking about is  
20 allocated to an investment, do you mean to an SPV, a  
21 special purpose vehicle?---Privilege. Not necessarily.  
22 It could be the parent or an SPV.

23 You could allocate them however you like, but isn't it the fact  
24 that these are payments which are made by IPO Wealth -  
25 or, rather, Sunseeker to IPO Wealth Holdings and had the  
26 effect of reducing a debt?---Privilege. The bit that is  
27 missing and your clients have overlooked is the fact that  
28 moneys that have been advanced to Sunseeker and Eleuthera  
29 were subsequently apportioned across the SPVs in line  
30 with our expense allocation policy.

31 The money, by the way, that came from Sunseeker - where did

1 Sunseeker get its money from?---Privilege. Ah, from what  
2 date are you referring?  
3 Well, let's say back in 2018?---Privilege. Are you implying  
4 that Sunseeker, ah, lent money to the IPO Wealth Holdings  
5 Group then?  
6 No, I'm asking you where Sunseeker got its funds from. Why  
7 don't we go back to p.432, for example. You see there  
8 are payments here - you see the spend money payments on  
9 the bottom of p.432, aren't they payments of money coming  
10 out of IPO Wealth Holdings to Sunseeker?---Privilege.  
11 Ah, it looks like it.  
12 I beg your pardon?---Privilege. It looks like it. I haven't  
13 got the bank statements so I can't say categorically.  
14 So what were the sources of Sunseeker's funds?---Privilege. In  
15 2018, clearly it had received some funds from the IPO  
16 Wealth Holdings Group.  
17 Did it have any other sources of money?---Privilege. Ah, it  
18 did. It had funds raised through another entity within  
19 the group, unrelated to IPO Wealth Holdings Group.  
20 Which entity is that?---Ah, that was IPO Capital Pty Ltd.  
21 And do you have any idea how much was raised - how much money  
22 was paid by IPO Capital to Sunseeker?---Sorry, and there  
23 was (indistinct) Group Pty Ltd, ah - privilege. Off the  
24 top of my head, it was somewhere in the vicinity of seven  
25 to 10 million dollars.  
26 And where did IPO Capital derive its funds from?---Ah,  
27 privilege. Ah, from investments and (indistinct) notes.  
28 Now, can we go, please, to page - pardon me, Your Honour. Page  
29 600 of the court book. That's a report - a company -  
30 sorry, a report on company activities and property  
31 relating to IPO Wealth Holdings. If we scroll down, you

1 will see that that company's name appears - where is  
2 it?---Yes, I can see it there.

3 Yes, you will see it - yes. So if we could go, please, to  
4 p.608. There's a list of creditors. And, actually, go  
5 to - yes, 608. You will see - it really starts on the  
6 previous page. Six-oh-eight, there's a reference to  
7 Sunseeker Holdings Pty Ltd. That was the trustee at one  
8 time of the Sunseeker Trust, wasn't it?---Privilege.  
9 That's correct.

10 And according to this document, you see it was owed \$409,000,  
11 and you signed this document, didn't you?---Privilege.  
12 That was prepared off the basis of the draft accounts. I  
13 don't understand how anyone can be expected to fill out  
14 that document, um, when accounts had been seized at the  
15 eleventh hour.

16 Are you saying the accounts just simply weren't up to date; is  
17 that right?---Privilege. We're a private company that  
18 holds investments with minimal transaction volume. Um,  
19 there's no statutory obligation to maintain real time  
20 accounts.

21 Mr Mawhinney, just listen carefully to the question and tell me  
22 if you don't understand it. Are you saying that when you  
23 signed this report as to affairs, the accounts were not  
24 up to date?---Privilege. That's correct, because we  
25 didn't have access to the accounts because your client  
26 had seized access and turned off our subscription.

27 Will you look at the previous page, please. Eleuthera Group is  
28 identified there as second from the top, and it's said to  
29 be owed \$6m, according to the asset summary as at  
30 31 March 2020. The asset summary is the portfolio  
31 spreadsheet, isn't it?---Privilege. Yes, it is.

1 So that - is that the source of that figure, is  
2 it?---Privilege. (Indistinct) yes.  
3 Can we go, please, to - I wonder if the associate could bring  
4 up the third examination book, p.1.  
5 ASSOCIATE: Yes. Can you see that, Mr Galvin?  
6 MR GALVIN: Yes, thank you very much. Got that. Now, if we  
7 scroll down a little bit, please - or just look at the  
8 top there, actually. If you go to the top of it, please.  
9 This is the Eleuthera Group balance sheet - draft balance  
10 sheet as at 30 June 2020. If we go to the next page,  
11 which is 1491 - - -  
12 ASSOCIATE: I'm sorry, do you mean 1491 of the - - -  
13 MR GALVIN: Yes, you have got it. That's exactly - that's  
14 exactly what - sorry. I meant p.2, sorry. I have got a  
15 different numbering.  
16 ASSOCIATE: Thank you.  
17 MR GALVIN: According to this, IPO Wealth Holdings is owed some  
18 \$18m, isn't it, by Eleuthera?---Privilege. What date was  
19 this report prepared, please?  
20 Well, looks like it's 4 August 2020. If you just scroll to the  
21 bottom of the page, please, Mr Associate, just so  
22 Mr Mawhinney can check that date?---Yes.  
23 So according to Eleuthera's draft accounts, it was a debtor of  
24 IPO Wealth Holdings to the tune of about eighteen and a  
25 half million dollars?---Privilege. If I recall  
26 correctly, this was prior to the KPMG journals being  
27 entered, um, which obviously undertook the process of  
28 reconciling all the moneys that would float between the  
29 IPO Wealth Holdings Group or the Mayfair Group. Um  
30 (indistinct) - - -  
31 So - sorry, go on?---Ah, and more - the current accounts more

1 accurately reflect what - what the - what the latest  
2 position is.

3 So KPMG didn't just reconcile IPO Health - sorry - IPO Wealth  
4 Holdings' accounts with Eleuthera's accounts. It did  
5 more than that. It also reconstructed Eleuthera's  
6 accounts to do that. Is that right?---Privilege. No, it  
7 never undertook a reconciliation of IPO Wealth Holdings  
8 Group accounts. That was - your - the liquidator's role,  
9 which they haven't undertaken, from what I can see.

10 So what is it that KPMG did? Just let's go back. Just tell us  
11 again what it was that they did?---Privilege. Our  
12 instructions to them, which I may - may or not be on  
13 their letter of engagement. I just can't recall. I'm  
14 happy to provide a copy of it - was to undertake a  
15 reconciliation of, ah, specific entities within  
16 the Mayfair Group, um, including note-issuing entities  
17 unrelated to the IPO Wealth Holdings Group, um, to ensure  
18 that we had accounted for all invested funds, which we  
19 did. Um, we also, um, undertook a process to, ah,  
20 reconcile any moneys that had flowed to and from the IPO  
21 Wealth Holdings Group, including the SPVs, ah, from the  
22 other Mayfair entities, and then consolidate whatever  
23 that total is, the balance, ah, into Eleuthera Group.

24 Okay. In relation to that last task, which was to reconcile  
25 amounts which had flowed between the IPO - included,  
26 sorry, reconciling amounts flowing between the IPO Wealth  
27 Holdings Group of companies and other group - and other  
28 companies in the Mayfair Group, that would have involved  
29 addressing the state of accounts, for example, between  
30 IPO Wealth Holdings and Eleuthera?---Privilege. It  
31 included, ah, updating the accounts of Eleuthera Group,

1 ah, because again, we don't - we have never had access to  
2 the IPO Wealth Holdings Group entities since about  
3 22 May, or very close to it, when your client was  
4 appointed over it.

5 So what I'm trying to understand is if you're trying to - if  
6 you're an accountant and you're trying to work out whether  
7 Eleuthera owes money to IPO Wealth Holdings, or IPO  
8 Wealth Holdings owes money to Eleuthera, your starting  
9 point would be the accounts, wouldn't it, for those  
10 entities?---Privilege. Privilege. No, the starting  
11 point is the bank statements.

12 All right. So you would ignore the - you would completely  
13 ignore the accounts, would you, if you were an  
14 accountant? Is that what you're suggesting?---Privilege.  
15 I'm not an accountant. Um, no, I - I - no. Please  
16 rephrase the question.

17 All right. So you did provide the accounts to KPMG, didn't  
18 you?---Privilege. We provided them with Xero access.

19 Yes. So you did that because you knew that was - that material  
20 would be relevant to what they were doing?---Privilege.  
21 Of course, yes.

22 Yes. So the accounts were relevant to what they were  
23 doing?---Privilege. They're an accounting firm.  
24 Accounting firms work on accounts.

25 That's right. So they would have looked at the accounts for  
26 the purposes of carrying out your instructions. That's  
27 what you were expecting, surely?---Privilege. We  
28 provided them with instructions of, um, the tasks that we  
29 wanted them to undertake, and they undertook those tasks.

30 So what they did was they looked at the accounts, and one of  
31 the things that they were able to do was to work out how

1 much Eleuthera was owed by IPO Wealth Holdings. That's  
2 how the Carey Olsen letter was able to be drafted, isn't  
3 it?---Privilege. That was one of the steps in - involved  
4 in the reconciliations, correct.

5 Now, do you know what documents they looked at apart from the  
6 draft - what you call the draft accounts and the bank  
7 statements?---Ah, privilege. I hadn't - I wasn't across  
8 all of it. Um, we provided them with a fair amount of  
9 information.

10 I beg your pardon, what was the last part?---We provided them  
11 with a fair amount of information. We provided all the  
12 documentation we had with respect to the Accloud  
13 transaction in particular. As you're aware this a  
14 pertinent transaction for both parties to get right and,  
15 um, we asked them to undertake a proper reconciliation of  
16 that in amongst also reconciling the movement of moneys  
17 between the IPO Wealth Holdings Group and the  
18 other Mayfair Group entities.

19 So they didn't just prepare a reconciliation though. They  
20 recast the accounts, didn't they?---Privilege. They  
21 undertook a reconciliation of the accounts for the  
22 purposes of bringing them up to date.

23 By reconciliation what they did was they - no, I withdraw that.

24 I withdraw that, Your Honour. (To witness) They did  
25 ultimately though, didn't they, recast the Eleuthera  
26 accounts, for example?---Privilege. Ah, what do you mean  
27 by recasting?

28 Well, they changed the figures in them, didn't  
29 they?---Privilege. They're draft accounts and the  
30 figures change every time someone does bookkeeping for  
31 Eleuthera.

1 Yes, that's right. So you accept then that they did change the  
2 figures in the accounts?---Privilege. Yes, as part of  
3 the reconciliation process.

4 And what documents did they rely upon to change the figures in  
5 the accounts?---Privilege. I didn't provide them with  
6 all the documents. I'm happy to provide any  
7 correspondence that you require in that regard.

8 Is your answer you don't know?---Correct. I don't know what  
9 documents were provided. We're a largish organisation.  
10 There's a lot of companies and a lot of transactions and  
11 a lot of investments. There's a lot of bank statements,  
12 a lot of back accounts. So we provided them with a  
13 copious amount of information for the purposes of them  
14 undertaking their task.

15 So if we come back to this document on the screen and go to  
16 page - I think it's p.1, please. At the top of the page  
17 there - no, it must be p.2. (To witness) Do you see the  
18 figure of 18 - 18m, sorry, over to the right  
19 there?---Yes.

20 If we were to look at the Eleuthera accounts now that figure  
21 wouldn't be there, would it?---Privilege. That's  
22 correct. It has since been reconciled and the figures  
23 agreed - - -

24 I understand your word is reconciled. Another word might be  
25 changed or amended?---Privilege. Amended is correct  
26 based on reconciliation processes. It's standard  
27 accounting practice.

28 And the reconciliation was performed to the best of your  
29 knowledge on the basis of bank statements, but you're not  
30 aware of any other documents that it was based  
31 upon?---Privilege. Ah, investment agreements, ah, bank

1 statements as I mentioned. Um, again I don't have a full  
2 list of the documents that were provided to them.

3 How would investment agreements inform the  
4 amendment?---Privilege. Well, as you're aware, the  
5 Accloud investment represents \$19.46m worth of cash  
6 investment and they were provided with all the  
7 documentation surrounding that so that they could  
8 undertake the job.

9 But the only way to determine whether the cash actually moved  
10 would be to look at the bank statements, wouldn't  
11 it?---Privilege. Yes, correct. Bank statements are  
12 ultimately the key source document, as are investment  
13 agreements, that reflect how those investments should be  
14 reported.

15 Now, after the last examination on 25 - the last day of  
16 examination on 25 February, you were directed to provided  
17 recent reports generated by Xero relating to the  
18 Eleuthera Group payments and the Sunseeker payments. Do  
19 you recall that?---I do, yes.

20 Now, according to the liquidator's analysis, those documents  
21 had been altered as recently as 14 February 2021. Do you  
22 understand why that was?---Privilege. Yes. It was to  
23 update the description so that it was very clear if we  
24 needed to provide the reports in the future what the  
25 allocation of the funds was.

26 Who made the alterations of the - or the addition - sorry, the  
27 edits, rather, to the accounts?---Privilege. It's  
28 recorded on the documents that we provided. I don't know  
29 specifically.

30 Well, who are the - how many people are there who work in the  
31 accounts department?---Ah, privilege. Ah, at the moment,

1           ah, well - privilege. At the - you're referring to at  
2           the time that the amendments were made; is that right?  
3   Yes. So let's say between September 2020 and February 2021.  
4           Who are the people who could have made the amendments to  
5           those reports?---Privilege. Um, we have the third-party  
6           contractor that I mentioned earlier. I can't - - -  
7   You still don't remember his name?---No, I can't recall. If  
8           it's there in the logs, I would recall it.  
9   Yes. Who else?---Um, Cindy, or Huong, I think it was.  
10   How do you spell his surname?---No, Cindy is spelled  
11   C-i-n-d-y and I think it was H-u-o-n-g.  
12   Anybody else? Lydia Lee?---Ah, privilege. No, I don't believe  
13           so.  
14   And how did these people know what alterations to  
15           make?---Privilege. Ah, it would have been filed under  
16           KPMG worksheets, I believe.  
17   So are you guessing or you're confident of that?---Privilege.  
18           I'm guessing, because I don't have the information in  
19           front of me.  
20   Well, did someone instruct them to make the  
21           changes?---Privilege. Ah, it would have been myself, if  
22           there were changes made.  
23   When did you instruct them to make the changes?---Privilege.  
24           Which changes are you referring to?  
25   The changes that were made between February - sorry,  
26           between September 2020 and February 2021?---Privilege.  
27   To the reports that you were produced - that you have produced  
28           from the Xero accounting system?---Privilege. Can you  
29           repeat the first part of the question?  
30   When did you instruct people to make changes to the reports  
31           which you have produced pursuant to the production order

1 made on 25 February this year?---Privilege. The draft  
2 accounts have been worked on consistently - no, ongoing  
3 accounts is an ongoing process, and we asked the people  
4 that were managing the accounts to implement the journals  
5 that KPMG had provided so that the transactions and  
6 payments could accurately be reflected, so that we had  
7 (indistinct) accounts.

8 All right. Let me get this straight. So as I understand, you  
9 said, 'We asked'; who's 'we'?---Privilege. I did.

10 Yes. You - so you, James Mawhinney, asked people like the  
11 people you just named, including Cindy - was it  
12 Cindy Huong? Is that who it was?---Ah, Huong -

13 H-u-o-n-g.

14 H-u-o-n-g. H-u-o-n-g. And then there was another person. I  
15 can't remember the name?---Privilege. I - it was an  
16 independent contractor. I just can't remember the - - -

17 His name. Yes, I see. You asked those persons to make changes  
18 to these reports based on work or worksheets that KPMG  
19 had prepared; is that right?---Privilege. Yes, based on  
20 that and based on investment agreements.

21 So they made some changes relying on information or  
22 instructions separate from what KPMG had  
23 prepared?---Privilege. That's correct.

24 And who instructed them to take those documents into  
25 account?---Privilege. Your question is very generic,  
26 Mr Galvin. Can you please point to a specific  
27 transaction.

28 Who - as I understand it, you have said that these two people  
29 made changes to these reports which you produced to the  
30 court pursuant to the orders of 25 February based on  
31 worksheets or information provided by KPMG, but you said,

1 I thought, a moment ago, that they also made the changes  
2 based on investments agreements, which is not what KPMG  
3 provided to them. Someone else provided those things to  
4 them; is that right?---Privilege. The KPMG work was done  
5 on the basis of investment agreements, bank statements  
6 and whatever other documentation that was relevant to be  
7 provided (indistinct).

8 Yes. So was their work in making these edits based on  
9 anybody's work other than KPMGs work or  
10 instructions?---Ah, privilege. I - the question is very  
11 generic. There's a whole range of different updates that  
12 have been made as part of the reconciliation process.

13 Yes. All right. Let me go back again a few steps. Do you  
14 remember that on 25 February Her Honour made an order  
15 requiring you to produce some reports relating to the  
16 Eleuthera Group payments and the Sunseeker  
17 payments?---Privilege. Yes.

18 And you did produce reports, didn't you, in native  
19 format?---Privilege. Yes.

20 Those reports appear to have been edited in the period between  
21 - or the - rather, the reports or the information  
22 contained in those reports appears to have been edited  
23 between September 2020 and February 2021. Are you aware  
24 of that?---Privilege. Mr Galvin, what date in February  
25 2021?

26 The reports have been edited on dates

27 between - - -?---Privilege - - -

28 September 2020 and February - or 14 February 2021?---Privilege.

29 Do you understand that?---Privilege. Mr Galvin, the final edit  
30 on the 14<sup>th</sup> was 11 days before Her Honour asked for us to  
31 provide any documents. I had no idea what documentation

1 Her Honour was going to ask for us to provide.  
2 Thank you. Just coming back to the question, you're aware,  
3 aren't you, that changes were made to these reports - or  
4 the information contained in these reports  
5 between September 2020 and February 2021?---Privilege.  
6 It's whatever the logs say that we provided you with. I  
7 don't recall specifically what changes were made and by  
8 whom and by when. You have the information at your  
9 fingertips.

10 All right. I didn't ask you to identify what changes had been  
11 made. I'm just asking you to state whether you were  
12 aware that changes were made to these reports in that  
13 period?---Privilege. Privilege. Amendments were made  
14 because they are still draft, unlodged, unfinalised  
15 accounts.

16 Is your answer to my question, 'Yes, I am aware of changes  
17 being made'?---Privilege. Yes, there have been  
18 amendments made.

19 Thank you. Now, the amendments were made, it appears, by two  
20 persons, either by Mr Huong or by the unnamed independent  
21 accountant; is that correct?---Privilege. I don't have  
22 the logs in front of me so I - I don't know, Mr Galvin.

23 Well, they could have been made by other people?---Privilege.  
24 If you bring them up on the screen, I'm happy to have a  
25 look at them and read them.

26 No, no, I don't - I'm just asking you if you can recall as you  
27 sit there who would have been responsible for making the  
28 changes?---Privilege. It's as I said a moment ago.

29 I beg your pardon?---It's as I said a few minutes ago.  
30 Those two - those two men that you have mentioned?---Privilege.  
31 One is a woman, one is a man.

1 Which one is the woman?---Cindy.  
2 Huong; is that right?---Correct.  
3 Yes. Okay. Now, we have got that far. Now, do you know on  
4 whose instructions they made these  
5 amendments?---Privilege. Ultimately, through my  
6 instructions.  
7 Well, do you remember giving them instructions?---Privilege.  
8 No, I don't recall specific instructions.  
9 All right. When they made the amendments, do you know what  
10 documents or information they had regard to? What did  
11 they look at? How did they know what changes to make,  
12 essentially is the question?---Privilege. They had  
13 reliance on the KPMG reports that we are going to provide  
14 you a copy of. They provided spreadsheets with copious  
15 amounts of detail, reconciling the intercompany loan  
16 balances so that adjusting journals could be made so that  
17 the Eleuthera loan balance with IPO Wealth Holdings Group  
18 was reflected accurately in Eleuthera's books. That's  
19 what KPMG did and that's what was transposed into the  
20 books.  
21 And the same with Sunseeker?---Privilege. That's correct.  
22 All right. Was there any other information, spreadsheets,  
23 documentation of that - anything of that nature, other  
24 than what KPMG provided that they would have had regard  
25 to?---Privilege. I don't recall if there was any other  
26 material. I - yeah, I - I just can't recall.  
27 Can we go, please, to p.634. You recall this facility  
28 agreement?---Privilege. Ah, yes, I do.  
29 And it was prepared - or, sorry, it was signed on 23 January  
30 2019. If we could go to p.642, please. Do you recall -  
31 well, you agree that that's your signature on that page

1           there for both entities?---Privilege. Yes, it is.  
2 The commencement date, even though this document was created or  
3           signed on 23 January 2019, the commencement date is  
4           18 April 2018. You can see that on p.635.

5 HER HONOUR: If we could close 635, please, Mr Associate.

6 MR GALVIN: Just scroll down to the Definition of Commencement  
7           Date. So, essentially, this - by this agreement this was  
8           a retroactive characterisation of payments as payments  
9           under this agreement; is that right?---Privilege. The  
10          agreement says what the agreement says.

11 Yes. So this is an agreement that comes into existence  
12          in January 2019. It doesn't exist before that date, does  
13          it?---Privilege. So which date? Say that again.

14 Let's go to p.642. Do you agree that this document did not  
15          exist before 23 January 2019 in an executed  
16          form?---Privilege. Yes.

17 Yes. So insofar as it purported to effect or affect  
18          transactions going back to April 2017, which appears on -  
19          which is the date of the commencement on 635 - on p.635,  
20          it was characterising those transaction, wasn't it, those  
21          loans under this document?---Privilege. No, because  
22          there was never a drawdown in that facility.

23 So you were saying that no money was ever paid under this  
24          document.

25 ASSOCIATE: Sorry to interrupt, Mr Galvin. Her Honour appears  
26          to have dropped out of the hearing.

27 MR GALVIN: All right.

28 ASSOCIATE: So we'll just - - -

29 MR GALVIN: We'll just wait for Her Honour to come back in, if  
30          that's suitable sorry.

31 ASSOCIATE: Yes. Thank you.

1 MR GALVIN: I see Your Honour is - - -

2 HER HONOUR: Hopefully I'm back. Mr Galvin, can you hear and  
3 see me?

4 MR GALVIN: I can, indeed, yes.

5 HER HONOUR: Mr Mawhinney, can you hear and see me?

6 Mr Mawhinney seems to have turned his camera off and he's  
7 on mute. Here - - -?---Sorry, my apologies.

8 No, that's all right. Can you hear and see me now,

9 Mr Mawhinney?---Yes, I can, Your Honour.

10 All right. Thank you. My apologies for that. I think the  
11 hearing probably went by without any difficulty. My  
12 computer shut itself down. I had to rejoin. The last  
13 question I heard was you were asking Mr Mawhinney about  
14 the date that the agreement was executed and I think  
15 - - -

16 MR GALVIN: Yes. Yes. The position was that it was executed  
17 in January 2019 - - -

18 HER HONOUR: Yes.

19 MR GALVIN: - - - and it relates - it's an agreement for the  
20 loan of money from Eleuthera Group - sorry, loan of money  
21 from IPO Wealth Holdings to Eleuthera Group as the  
22 borrower.

23 HER HONOUR: Yes.

24 MR GALVIN: It commences in respective payments as far back as  
25 18 April 2017. At least that's the deemed commencement  
26 date. I think we got to the point where Mr Mawhinney had  
27 said that no payments were made under this agreement. Is  
28 that right, Mr Mawhinney?---Privilege. It's a few years  
29 ago now, but I believe that that was the case. It's a  
30 facility agreement, not a loan agreement, and so I don't  
31 recall there being any drawdown notes as executed in any

1 form.

2 What's the difference between a facility agreement and a loan  
3 agreement?---There's big difference.

4 Please enlighten us?---Yes. Sure. A facility agreement is  
5 typically for a specified term, and a facility is made up  
6 of a number of drawdowns under the facility. If the  
7 facility agreement is executed that there are no  
8 drawdowns, there is no loan.

9 What about if there's a loan agreement but no money is advanced  
10 under the loan agreement?---Privilege. Then there is no  
11 loan.

12 Correct. Thank you. So as far as you're aware, no money was  
13 advanced under this document; is that right?---Privilege.  
14 As far as I can recall, yes.

15 So why was it entered into? Are you able to say?---Privilege.  
16 I can't recall at the time. You may recall there were a  
17 number of facility agreements entered into between IPO  
18 Wealth Holdings Pty Ltd and the SPVs. Again, they're  
19 facility agreements, not loan agreements, so no moneys  
20 were advanced under those either.

21 Was this agreement executed to reflect the fact that IPO Wealth  
22 Holdings, in fact, did lend money to Eleuthera from time  
23 to time and had done so from at least as early as  
24 18 April 2017, 18 April 2017?---Privilege. It was  
25 executed to capture that. However, we never ended up  
26 utilising the agreement on that basis because we never  
27 entered into any drawdowns, so no moneys were advanced  
28 under the agreement.

29 But it would be difficult to advance moneys under this  
30 agreement before it was executed, wouldn't it, unless you  
31 had a time machine or something?---Privilege. Let me

1           just get my head around that. Say that again.  
2 I suggest to you, Mr Mawhinney, it would be impossible to get  
3           your head around that?---Sure.  
4 Because it just doesn't make any sense?---But - sorry, can you  
5           just go back two steps (indistinct words).  
6 You can't enter into an agreement to lend money or to provide  
7           for drawdowns which have already occurred, can  
8           you?---Privilege. They're not necessarily drawdowns, but  
9           you can have retrospective acting agreements.  
10 Is that what this is, that's what I'm asking you?---Privilege.  
11          Well, that was the exact word that you used a moment ago  
12          to describe it.  
13 I think I used the word 'retroactive', but it's the same  
14          meaning, for all intents and purposes. Was that the  
15          intent? Was the purpose of this agreement to cover  
16          payments which had been made back in time?---Privilege.  
17          At the time it was executed the intention was that we  
18          could have it operating from back at that date if we  
19          wanted it to. However, we, obviously, subsequently  
20          didn't choose to do so. It's the same with all the other  
21          facilities agreements.  
22 That is the case, isn't it, that documents like this were  
23          created on the basis that you could rely upon them if you  
24          wanted to, but you could ignore them if you wanted to as  
25          well?---Privilege. At the time it was created for the  
26          purpose of relying on it, but we decided that we didn't -  
27          that that wasn't appropriate any further. Hence, why  
28          they were the drawdowns.  
29 And that's your attitude to all of the agreements that were  
30          like this one, is that right, that that could be relied  
31          upon if you wanted to, but if you didn't want to, or if

1 it wasn't convenient, you could pretend that they didn't  
2 have any effect?---Privilege. The facility agreements  
3 between IPO Holdings and the SPVs were entered into - I  
4 can't recall the specific date, but there were no  
5 drawdowns and, therefore, no moneys advanced, and the  
6 balance sheets reflect that, and that's why the  
7 insolvency of characterisation of the SPVs is flawed.  
8 They were never insolvent because they never borrowed  
9 money off the IPO Wealth Holdings Group. It was a  
10 facility agreement with no moneys advanced and,  
11 therefore, there was no borrower-lender relationship  
12 between IPO Wealth Holdings and the SPVs, IPO Wealth  
13 Holdings and Eleuthera.

14 Can we go to 656, please, Mr Associate.

15 HER HONOUR: Before do you that, Mr Galvin, can I just ask a  
16 question, please, to make sure I understand what  
17 Mr Mawhinney is saying. I'm not referring to his last  
18 answer because he wasn't answering anything to do with  
19 this document, as far as I can understand. But,  
20 Mr Mawhinney, are you saying that this document was a  
21 facility agreement entered into in January 2019 providing  
22 for the possibility of advances going back as far  
23 as April 2017 which advances had not occurred, but which  
24 you might want to view as having occurred prior to the  
25 agreement being entered into? That's what you're saying,  
26 isn't it?---I'm saying the agreement was entered into,  
27 um, in a period and a year when the tax - the - the  
28 accounts for the entities and - or those two entities  
29 there had not been filed and finalised. Um, however, it  
30 was available to us, um, if we - if it made sense, based  
31 on the investments the group had made and the flow of

1 funds, to record moneys under this agreement.

2 But moneys either flow or they don't?---Correct, but they also

3 get - accounting is a historical function so moneys flow

4 and then it is accounted for subsequently.

5 So really this sort of arrangement is so that you can

6 characterise the flow of moneys any way you like at some

7 point after the money has actually flowed?---Privilege.

8 It - it - it is for the proposes of when the tax accounts

9 - sorry - when the final accounts are lodged that will

10 accurately reflect how the moneys did, in fact, flow and

11 how they were accounted for.

12 Well, if it reflects how they did, in fact, flow, and how they

13 were accounted for, why does it need to be done so far

14 into the - after the event? Why isn't it based on

15 historical source documents?---Privilege. I - I can't

16 recall who prepared this agreement. Um, I suspect it

17 might have been Pinnacle because it was backdated - - -

18 I expect you would say it was Pinnacle, Mr Mawhinney, but I

19 just wanted to understand what it was you were saying was

20 the characteristic of this document. I'm not sure I can

21 take it any further than that. Thank you. Sorry,

22 Mr Galvin, I interrupted you.

23 MR GALVIN: No, thank you. Your Honour, I think, has picked up

24 the theme, however poorly executed, of my examination.

25 HER HONOUR: I wasn't implying that. I was just having a lot

26 of difficulty understanding what Mr Mawhinney's point

27 was. I just wanted to make sure that I had understood it

28 correctly.

29 MR GALVIN: Yes. Thank you, Your Honour.

30 HER HONOUR: Thank you.

31 MR GALVIN: Can we go to 656, please. (To witness) Six hundred

1 and fifty-five actually is the first page, the deed of  
2 amendment. This is a deed of amendment. If we go to the  
3 next page it's said to have effectively been made on  
4 12 December 2019. It doesn't appear to have been signed,  
5 Mr Mawhinney, at least this copy of it. Are you able to  
6 say whether this - a version of this document was signed?  
7 You can see what it did was it increased the facility  
8 between these two entities from 20m to 100m. Do you  
9 recall that happening?---Ah, privilege. I don't recall  
10 it being signed.

11 Yes, but do you recall giving someone instructions to draft  
12 this document?---Ah, privilege. I can't recall who  
13 drafted it. It was either myself or Pinnacle Advisory  
14 Group.

15 And do you recall why it was that you wanted to increase the  
16 facility to 100m?---Ah, privilege. At the time if we  
17 were considering that moneys had been advanced, um, were  
18 done so under a facility, then, um, the amount advanced  
19 would have been higher than \$20m if that was, in fact,  
20 the case at the time. It wasn't executed because that's  
21 how it wasn't accounted for ultimately.

22 HER HONOUR: Well, what would the flow of funds have shown,  
23 Mr Mawhinney?---I can't recall what the - the balance  
24 was, but this would imply that if the document was  
25 prepared that there was more than \$20m that went from IPO  
26 Wealth Holdings to Eleuthera Group. The subsequent  
27 reconciliation, as I said, is identified, but once  
28 investment was taken into account and expenses were  
29 allocated, um, there's a net result that the IPO Wealth  
30 Holdings Group owes I think it's about five or six  
31 million dollars to Eleuthera.

1 Thank you.

2 MR GALVIN: Mr Associate, can we go - pardon me, Your Honour.

3 HER HONOUR: I was just confirming that Mr Mawhinney had  
4 finished his answer. Thank you.

5 MR GALVIN: Mr Associate, could you go to court book 759,  
6 please. Have you seen this document before,  
7 Mr Mawhinney?---Yes.

8 It seems to be a notice of drawdown on a facility presumably  
9 between 101 Investments and Eleuthera; is that  
10 right?---Ah, privilege. Yes, it is.

11 So Eleuthera, according to this, advanced 19 and a half million  
12 dollars under a facility agreement which I think we've  
13 looked at before. It was one of those documents created  
14 on the 4<sup>th</sup> of October 2019, is that right?---Yes, correct.

15 It's said to be effective as at 7 January 2019. And this was  
16 to pay for the Accloud shares, wasn't it?---That's  
17 correct.

18 Now, this is dated 15 July 2020, so it appears that Mr Cooke as  
19 the sole director of 101 Investments, has determined to  
20 draw down that amount of money on the facility. Is that  
21 what happened?---Privilege, that's correct.

22 I beg your pardon?---Yes, that's correct.

23 But hadn't the purchase price for the shares already been  
24 paid?---Privilege, that's correct.

25 So there was no drawdown at all, was there?---Privilege - - -

26 This is noticeable drawdown, it's not a document which is meant  
27 to reflect what's occurred in the past. Isn't it a  
28 document that's requiring a drawdown on an existing  
29 facility?---Privilege, as I've mentioned earlier,  
30 Pinnacle hadn't recorded the transaction in the  
31 appropriate fashion. Subsequent to their departure and

1 the receivers and managers being appointed, we went  
2 through endlessly with a fine-tooth comb to make sure  
3 that it was accurately documented. And yes, Mr Cooke  
4 couldn't execute this document on the 4<sup>th</sup> of October 2019  
5 that once we'd subsequently reconciled the transaction,  
6 we thought it would be a good practice and good corporate  
7 governance to ensure that there was a drawdown notice  
8 prepared - - -

9 That's what he thought, was it?---Correct. It's - - -

10 How do you know that Mr Mawhinney?---Pardon, what was the  
11 question?

12 How do you know that's what he thought?---Privilege, did he  
13 think what, sorry?

14 How do you know that he thought this was - should be executed  
15 for good governance?---Privilege, because of the amount  
16 money that had flowed for the purpose of that funds, it  
17 would make sense for the transaction to be documented  
18 with a drawdown, given that one hadn't been previously  
19 prepared by Pinnacle. They resigned on the 6<sup>th</sup>  
20 of June - - -

21 Mr Mawhinney, can I just interrupt you. I'll just go back to  
22 the question. How do you know what prompted Mr Cooke to  
23 execute this document? Did you talk to him about  
24 it?---Privilege, yes, I did.

25 Before he signed it or afterwards?---Privilege, before he  
26 signed it.

27 Did you ask him to sign it?---Privilege, I believe so, yes.

28 Did you send - did you draft the document or instruct someone  
29 to draft it?---Privilege, I can't recall if I did or if I  
30 instructed someone. But yes, the instructions came out  
31 of our office.

1 Do you recall what you said to Mr Cooke about it?---Privilege,  
2 it provided him copious amounts of background on the  
3 Cloud transaction, so that he was well across all of the  
4 hyperbole that had gone on a few months before we  
5 received that a manager was being appointed so - - -  
6 You had provided him with copious amounts of  
7 what?---Information on the Cloud transaction, so that  
8 he - - -  
9 No, just a moment please, listen to the question?---Were the  
10 copious amounts of information in writing or over the  
11 telephone or in person?---Privilege, in writing and the  
12 lines of information was also provided to KPMG.  
13 I see, so and you were the one who suggested that he sign this  
14 document?---Privilege, I provided it to him and said  
15 here's the drawdown for this flexi-transaction you've  
16 taken previously. Go and satisfy yourself that that's  
17 how the money flowed and so he, upon reviewing it that it  
18 made sense to enter into to.  
19 But, Mr Mawhinney, this document says that - according to this  
20 document an advance of \$19.5 m is required pursuant to  
21 those clauses to fund the purchase of the shares. But  
22 according to what you've been saying now, the money had  
23 already been paid for the shares?---Privilege. Yes,  
24 again, we were going back and documenting the transaction  
25 that had been poorly documented from the outset because  
26 of the mistakes that Pinnacle had made with it.  
27 HER HONOUR: This is required, Mr Mawhinney, it's clearly been  
28 dated 15 July 2020, which is after the transaction that  
29 you say occurred, occurred, but why would it be worded as  
30 'is required'? Why would the record refer to a historic  
31 drawdown?---Privilege are you suggesting it should say

1           'was required'?

2 I'm asking you why it says, 'Is required'?---Privilege. I

3           don't know, Your Honour. Nicholas Cooke executed the

4           document.

5 Oh, okay, because a few moments ago, I don't think you were

6           able to answer the question of who prepared the

7           document?---Privilege, I can't recall who prepared it, I

8           know that Nicholas Cooke executed it and he was happy to

9           as the director of 101 Investments.

10 Alright, thank you.

11 MR GALVIN: Your Honour, I want to move to another topic now.

12           I don't know if Your Honour wants to take a short break.

13 HER HONOUR: Oh, I would do. Yes please Mr Galvin. I didn't

14           do so this morning because we started later. But I think

15           you should - - -

16 MR GALVIN: Thank you.

17 HER HONOUR: - - - the witness and the parties a 10-minute

18           break.

19 MR GALVIN: Yes. Of course.

20 HER HONOUR: Alright, so 3:10 we'll resume please.

21           Mr Associate, could you adjourn the court and put me in

22           the waiting room please.

23 <(THE WITNESS WITHDREW)

1 (Short adjournment)

2 <JAMES PETER MAWHINNEY, recalled and examined:

3 HER HONOUR: Mr Galvin, are you ready?

4 MR GALVIN: Pardon me, Your Honour, I thought I was on camera  
5 and - - -

6 HER HONOUR: That's all right. Not a problem. Mr Mawhinney,  
7 you're ready to resume?---Yes, I am, Your Honour.

8 Thanks.

9 All right. Thank you. You can hear and see  
10 sufficiently?---Yes.

11 All right. Thank you. Yes, thank you, Mr Galvin.

12 MR GALVIN: Thank you. Mr Associate, could we go to p.6 of the  
13 court book.

14 ASSOCIATE: My apologies. I can't seem to find the court book  
15 any more on my shared screen.

16 MR GALVIN: Here we go.

17 ASSOCIATE: Here we go. Can you see it?

18 MR GALVIN: Yes, that's - - -

19 ASSOCIATE: Which page did you need, Mr Galvin?

20 MR GALVIN: Page 6.

21 ASSOCIATE: Thank you. Page 6 of the first court book or third  
22 court book?

23 MR GALVIN: Of the first one which is really the second one.

24 ASSOCIATE: Yes.

25 MR GALVIN: Thanks. That's it. Now, do you see here,  
26 Mr Mawhinney, this is again a transaction schedule for  
27 IPO Wealth Holdings and the top of the page here is  
28 concerned with payments that were made for 101  
29 Investment's benefit by way of a loan? Do you see  
30 that?---Do you mind just making it a big larger?

31 Yes. Of course, yes. If we could magnify that, please,

1 Mr Associate. Just tell us if it's still not clear,  
2 Mr Mawhinney?---I can see it.  
3 Maybe expand a little bit more. So you can see here that on  
4 1 April 2019 there was an advance of \$585,000, on  
5 11 April a further advance of 436,000 and then 6 August  
6 and 9 August was two further advances, and ultimately  
7 you've got total amounts which have been advanced by IPO  
8 Wealth Holdings to 101 Investments of \$2.962m. Do you  
9 see that?---Ah, I do. Ah, so this is moneys advanced  
10 from IPO. I'm just not familiar with the report, sorry.  
11 This is a report of IPO Wealth Holdings - - -?---Yes.  
12 - - - which records advances by IPO Wealth Holdings to 101  
13 Investments?---Yes.  
14 And the money that IPO Wealth Holdings was advancing was money  
15 which was received from investors in the IPO fund?---Yes.  
16 Now, as at 31 March 2020 the amount which was owed appears to -  
17 that is, owed by 101 Investments to IPO Wealth Holdings,  
18 was \$2,962,000 - sorry - 2,962,313 - let me start again,  
19 \$2,962,313?---Yes.  
20 Now, that amount hasn't been repaid, has it?---Ah, privilege.  
21 Yes, it has.  
22 Can I just clarify that that was an amount of money that was  
23 advanced for investment in PayMate India; is that  
24 right?---Privilege. Yes, that's correct.  
25 And when was it repaid?---Ah, privilege. I - I can't recall  
26 the specific dates, but there was a series of payments  
27 that were made, I believe, late 2019, early 2020, um,  
28 that repaid that amount on behalf of 101 Investments.  
29 The moneys were advanced from Eleuthera.  
30 Well, sorry, this says at 31 March 2020 the debt was \$2.9m.  
31 Are you saying money was paid after that

1 date?---Privilege. I don't have the dates and the report  
2 that you're looking at there isn't a finalised report.  
3 How do you know that?---Privilege. Because, ah, I don't  
4 believe that the accounts were finalised based on  
5 anything that I've seen so far from the IPO Wealth  
6 Holdings Group.  
7 Well, what makes you say that money was repaid to - part of  
8 this debt was repaid? What makes you say  
9 that?---Privilege. Bank statements that showed moneys  
10 had flowed between Eleuthera to - from Eleuthera's asset  
11 purchase clearing account to the IPO Wealth Holdings  
12 Group for the purposes of repaying that debt on behalf of  
13 101 Investments Ltd.  
14 Sorry, are you saying that there is - there are bank  
15 statements which show Eleuthera repaying this debt on  
16 behalf of 101 Investments?---Privilege. That's correct.  
17 And where are those bank statements?---Privilege. It's our  
18 Eleuthera ANZ Bank account.  
19 And how have you worked out which payments related to this -  
20 were made in repayment of this debt? How did you work  
21 that out? Well, who worked it out first? Was it you or  
22 someone else?---Ah, privilege. We undertook a - a  
23 reconciliation to see, ah, what payments had been made  
24 from the asset purchase clearing account, um, and we  
25 allocated them accordingly.  
26 Who undertook that exercise?---Ah, I did it with Greg Wallace,  
27 um, and - I'm trying to recall whether it's anyone else.  
28 I think that was it.  
29 So the two of you sat down at some point, looked at the  
30 Eleuthera Group bank statements and were able to allocate  
31 certain payments that had been made from Eleuthera to

1 someone else as payments in discharge of 101 Investment's  
2 liability to IPO Wealth Holdings; is that  
3 right?---Privilege. It is reflected on the asset summary  
4 that demonstrates that there were payments made by  
5 Eleuthera to, um, effectively repay that debt on behalf  
6 of - - -

7 The asset summary is the spreadsheet, isn't it,

8 the - - -?---Yes, correct. It's recorded in that - - -

9 I'm asking you about primary documents, not spreadsheets.

10 Apart from the bank statements are there any other  
11 documents you could rely on?---Privilege. The  
12 spreadsheet has always been a primary document so I  
13 wouldn't discard it that easily.

14 Yes, but it's based on other documents, isn't it? It must

15 be?---Privilege. Well, bank statements, the, ah - the  
16 investment documentation. Um, I believe there was  
17 drawdowns, um to that effect.

18 So how did you calculate with Mr Wallace or work out which  
19 payments were payments made in reduction of this debt,  
20 this \$2.9m debt?---Privilege. When we went through to  
21 clear the asset purchase clearing account, um, it was  
22 clear that the - certain transfers for those shares, um,  
23 were still outstanding so they matched up one by one to  
24 clear the debt.

25 So is that - were your workings in writing somewhere?---Ah,  
26 privilege. It's all recorded in Xero in the group's  
27 accounts.

28 You're saying that the payments that were made in reduction of  
29 this debt have been recorded in Xero?---Privilege.

30 That's correct.

31 And when were they recorded?---Privilege. Sorry, when were

1           they recorded?

2   Yes?---Ah, I can't recall what date, but, um, a handful of

3           months ago at least.

4   Well, how could you do that?  IPO Wealth Holdings was in

5           liquidation or receivership so how did you go about

6           adjusting the accounts when the company was in

7           receivership or liquidation?---Privilege.  It was

8           Eleuthera's accounts, the company that made those

9           payments, where - - -

10  I'm - - -?---As part of the reconciliation that has been

11           undertaken at our end.

12  I see, but you don't - you can't identify any documents within

13           IPO Wealth Holdings or within the IPO Group which would

14           evidence these payments?---Privilege.  Yes, the asset

15           summary.

16  Yes, the portfolio spreadsheet?---Correct.

17  Right.  Now, the next group of payments you see at the bottom

18           half of this page they total \$8,541,698 and these seem to

19           relate to the acquisition by 101 Investments of an

20           interest in the Accloud revenue product; is that right -

21           revenue stream, rather?---Privilege.  That's correct.

22  And is your evidence the same here, that all of that money has

23           been repaid as well?---Privilege.  Yes, that's correct.

24  And when did you work that out?---Privilege.  It was in recent

25           months when we went through and undertook the

26           reconciliation of Eleuthera's accounts.

27  Yes.  You and Mr Wallace?

28  UNIDENTIFIED SPEAKER:  Good.  Pardon?

29  WITNESS:  Yes.  It - - -

30  UNIDENTIFIED SPEAKER:  Yes.  And the (indistinct words).

31  HER HONOUR:  Whichever observer has their device off mute,

1 please place themselves on mute. Thank you. Sorry,  
2 Mr Mawhinney, could you start that answer again, please  
3 ?---Sure. The answer is yes.

4 MR GALVIN: And you were able to find payments in bank  
5 statements which could be allocated to a reduction of  
6 this debt. Is that how you did it?---Privilege. There's  
7 - there was an outstanding balance sitting in the asset  
8 purchase clearing account which was established for the  
9 purposes of acquiring assets out of the IPO Wealth  
10 Holdings Group on behalf of 101 Investments Ltd, so those  
11 payments were allocated as part of our reconciliation.

12 If we go, please, to - no, I withdraw that. Yes, can we go to  
13 court book 72, please, Mr Associate. This is the  
14 Eleuthera facility agreement of - the facility agreement  
15 between Eleuthera Group and 101 Investments Ltd. It is  
16 dated 15 July 2020 and it's said to be effective - just  
17 let me go back to the start. So the date is on p.81,  
18 date and execution, and then the effective date, like  
19 with other documents, is the commencement date 30 January  
20 2019. That's on p.73. Now, do you know why this  
21 document was created?---Privilege. Yes. It's to record  
22 any advances for moneys advances between Eleuthera and  
23 101 Investments Ltd. It was created again because of the  
24 poor documentation that Pinnacle had put in place to  
25 account with transactions, so, as you can see, after the  
26 receivers and managers were appointed after Pinnacle was  
27 no longer the group's accountants, we had a lot of  
28 tidying up to do. Hence, why we wanted to make sure all  
29 of these transactions were properly documented.

30 So this is a document created after the advances?---Privilege.

31 Yes. 15 July 2020 I believe it was.

1 So it's after all the money had already been advanced. So  
2 what's the purpose of having the loan agreement trying to  
3 impose the terms on the parties after the money has  
4 already been advanced? Why would you do  
5 that?---Privilege. So things like interest and any of  
6 the moneys that had been advanced prior are accounted for  
7 under the terms of the document.

8 But there was no agreement for interest before this document,  
9 was there?---Privilege. That's correct.

10 So why would 101 Investments suddenly agree to pay interest or  
11 agree to a transaction under which they would pay  
12 interest if they had the money interest free to begin  
13 with? Why would they do it?---Privilege. It was done by  
14 mutual agreement. Their director signed off on it and I  
15 signed off on Eleuthera's part.

16 And did you negotiate this with Mr Cooke, or did you just tell  
17 him this is what you were going to do?---No. Mr Cooke  
18 makes his own decisions. We provided him with all the  
19 information so that he could make an informed decision.  
20 On numerous occasions Mr Cooke, including his father,  
21 Graham Cooke, had pushed back in relation to certain  
22 components, so - and until they're satisfied, they won't  
23 execute anything that they're not comfortable with.

24 What made them decide to suddenly agree to pay interest on the  
25 loan?---Privilege. I would suggest it's because the  
26 money had been advanced without an appropriate governing  
27 document because Pinnacle didn't provide one to reflect  
28 it. Now - - -

29 Why did that make them suddenly agree to pay  
30 interest?---Privilege. I can't speak for Mr Cooke.

31 You drafted the document?---Privilege. I can't recall.

1 Well, it wasn't Mr Cooke, was it?---Privilege. I don't believe  
2 so, no.

3 No. It came from you, didn't it? It's just like the other  
4 documents. It's similar to what we've seen?---Privilege.  
5 I - yes, I sent a copy of this document to him.

6 Yes. And there was no discussion or negotiation. He just  
7 signed it; is that right?---Privilege. No, it was never  
8 the case.

9 So what discussion did you have with him about this  
10 document?---This - - -

11 What negotiation did you have with him?---Mr Cooke provides  
12 professional director services. Any information that any  
13 document that he signs off on is a decision made of his  
14 own accord acting in the best interests of 101  
15 Investments Ltd.

16 Thank you, Mr Mawhinney. Can we just come back to the  
17 question. What discussion or negotiation did you have  
18 with Mr Cooke about this document?---Privilege. I  
19 provided him with a copy of this document. I don't have  
20 the email in front of me, but I would have provided a  
21 detailed explanation of the Accloud transaction so - - -

22 Can you remember doing that?---Privilege. Yes, I do recall  
23 providing him with a detailed explanation of the Accloud  
24 transaction in writing. It's the same information that  
25 we would (indistinct words).

26 Yes. And what discussion did you have with him, or  
27 negotiation, about this document?---Privilege. I can't  
28 recall that we discussed it verbally. Any - most of our  
29 communication has always been in writing.

30 I see. All right. I will give you more one opportunity to  
31 explain why he agreed to pay interest, why he bound 101

1 Investments to pay interest on moneys that it had already  
2 received. Can you offer any explanation for  
3 that?---Privilege. I'm not Nicholas Cooke. I can't  
4 speak for him, sorry.

5 You're, ultimately, the one who would benefit, though,  
6 from it, isn't that right, your retirement  
7 fund?---Privilege. Yes, that's the ultimate beneficial  
8 owner of 101.

9 And so surely you were the one who told Mr Cooke what to do and  
10 what not to do?---Privilege. No, I can't tell another  
11 director what to do with respect to the company.

12 No, no, no. I'm not asking you about the general principles,  
13 Mr Mawhinney. I'm suggesting to you that you told  
14 Mr Cooke what to do and what not to do in relation to 101  
15 Investments?---Privilege. No, that's not the case,  
16 Mr Galvin. It never has been.

17 Was any security given to support this - taken, rather, to  
18 support this indebtedness?---Privilege. No, I don't  
19 believe so. If I recall correctly, that's an unsecured  
20 facility agreement.

21 Why was it unsecured? Weren't you a director of Eleuthera,  
22 obliged to do something about taking  
23 security?---Privilege. No, I wasn't obliged to do that.

24 Wouldn't that be in the interests of the shareholders of  
25 Eleuthera?---Privilege. Ultimately I am a shareholder of  
26 Eleuthera.

27 Yes. So wouldn't it have been in your interest to take  
28 security?---Privilege. It wasn't a requirement, no.

29 Sorry. My question was wouldn't it have been your  
30 interests?---Privilege. There are lots of different  
31 outcomes that could have been in my interest. Taking

1 security could have been one, but that's not what we  
2 determined as part of what we put in place here.

3 Can we go to court book 87, please. This is a special purpose  
4 financial report for 101 Investments prepared by Pinnacle  
5 Advisory Group; is that right? Can you scroll up a bit,  
6 please, Mr Associate. No. Sorry, the other way. Do you  
7 recognise this document?---No, I don't. What date was it  
8 prepared?

9 We'll see if we can find a date. It's for the period  
10 29 January 2019 to 31 December 2019. I don't know if it  
11 bears a date?---Yes. I'm not familiar with the document.

12 ASSOCIATE: Would you like me to keep scrolling through,  
13 Mr Galvin?

14 MR GALVIN: No. That's all right. Just pause there. Perhaps  
15 if we go to p.92. And so this records a liability from -  
16 of 101 to IPO Wealth Holdings of \$11,407,000. Do you see  
17 that?---No. No, I don't.

18 No, I think we'll have to scroll down just a little bit - about  
19 another quarter of a page, please. There we are. Thank  
20 you. (To witness) Do you see the unsecured loans  
21 there?---Ah, yes, I can see them.

22 Now, according to these accounts that was a debt that was owed  
23 to IPO Wealth Holdings by 101 Investments. Do you say,  
24 do you, that that amount has been repaid?---Privilege.  
25 That's correct.

26 And that's just on the basis of some calculations that you and  
27 Mr Wallace did having regard to bank  
28 statements?---Privilege. No, it's a lot more than that.  
29 It included what we reported to the trustee had occurred  
30 by way of a flow of funds.

31 It included something in a spreadsheet that you provided to

1 Vasco?---Privilege. Which is our quarterly reporting  
2 requirements to demonstrate how funds have been provided,  
3 any changes in balances associated with the assets.

4 What was the information in the spreadsheet that related to the  
5 repayment of this debt?---Ah, privilege. Ah, I can't  
6 recall the exact row of the spreadsheet, but, um, you may  
7 recall that the Accloud revenue share and PayMate shares  
8 were no longer, ah - oh, sorry - the debt relating to the  
9 moneys owed by 101 to the IPO Wealth Holdings Group was  
10 no longer an asset of the IPO Wealth Holdings Group in  
11 lieu of a change in the Eleuthera intercompany balance.

12 Yes. And what was the basis for that - those entries in the  
13 spreadsheet? What primary documents did you rely  
14 upon?---Ah, well, the - the share sale agreements, ah,  
15 initially record the value of the assets. Um, the  
16 expense allocations that were capped later in reply to  
17 the various SPV, um, and then the bank transfers that  
18 were made, um, which effectively settled the debt.

19 Could you explain how the expense allocations had an effect on  
20 this debt?---Um, so I'm having with that - well, go back  
21 a few years ago here, Mr Galvin, so bear with me. The  
22 expense allocation policy if I recall, um, allowed for  
23 the allocations of expenses across the SPVs themselves  
24 not to the actual investments themselves. So to your  
25 question about the relevance for that particular debt,  
26 um, the expense allocations are - are not relevant.

27 Okay. All right. Well, you can stop there then. What is it  
28 then that is in the spreadsheet - sorry. What is it that  
29 was contained in the - no, I'll start again. There's  
30 something in the spreadsheet, the portfolio spreadsheet,  
31 which tells Vasco that this debt is no longer owed; is

1           that right?---Correct.

2   What is it that that conclusion is based on?   What primary  
3           evidence?   What documents, what bank statements, what  
4           receipts?   What documents?---The transfer of funds  
5           between Eleuthera and IPO Wealth Holdings which settled  
6           the debt.

7   So does that mean that you and Mr Wallace identified the  
8           transfer of funds from Eleuthera to someone else that had  
9           the effect of reducing this debt; is that right?---No,  
10          this report was provided as at 31 March 2020 to the  
11          trustee.   This is 12 months ago.

12   Right.   So you understand what I'm trying to understand.   I'm  
13          trying to understand how this debt of \$11,407,000 has  
14          been repaid.   Are you able to explain that?---Privilege.  
15          Certainly.   The Eleuthera asset purchase clearing account  
16          records, um, transactions and advances to Eleuthera for  
17          the purposes of acquiring assets out of the IPO Wealth  
18          Holdings Group.   The asset here is a debt of \$11.407m.  
19          There's \$11.407m that was transferred between Eleuthera  
20          and IPO Wealth Holdings to settle the debt.   Um, that was  
21          drawn under the facility agreement - the 100m facility  
22          agreement with - - -

23   Okay.   Just pausing there, are you saying that there was a  
24          facility agreement between Eleuthera and 101 Investments  
25          which was drawn upon to pay this debt?---Correct.

26   And was there a drawdown document signed for that?---I can't  
27          recall.   I just can't recall if one had been prepared or  
28          not.

29   But it was important to document these things, isn't why you  
30          created these documents even after the  
31          fact?---Absolutely.

1 It doesn't appear that any such drawdown has been produced. So  
2 on what basis do you say that money was drawn down under  
3 the Eleuthera/101 investment facility to pay down this  
4 debt?---Because the funds that were transferred from the  
5 asset purchase clearing account were specifically for  
6 that purpose.

7 So there was funds transferred from an asset purchase clearing  
8 account? When did that occur?---Privilege, I don't have  
9 the transfer dates in front of me. There's a series of  
10 transactions between late 2019 and, I believe, early  
11 2020.

12 Okay, so there were transactions and how is one able to  
13 identify those payments as - I presume they don't appear  
14 in the accounts of Eleuthera, is that right?---Privilege,  
15 the payments, well, would be recognised in both Eleuthera  
16 and IPO Holdings bank accounts in terms of the flow of  
17 funds. As you will note, the transaction references for  
18 each of those payments is generic. It was purposely done  
19 for the purposes of enabling the asset purchase clearing  
20 account subsequently, when the accounts were fully  
21 reconciled and lodged, to allocate those payments towards  
22 specific assets that had been purchased out of the IPO  
23 Holdings group.

24 So what was the asset being purchased out of the IPO Group  
25 here?---The debt owing to - - -

26 The debt. So who purchased the debt?---Eleuthra Group did on  
27 behalf of 101 Investments Limited.

28 Well - - -?---101 Investments, sorry, Eleuthra settled the debt  
29 that was owing to 101 Investments Limited such that it's  
30 now owed between Eleuthra and 101 Investments Limited.

31 Okay, so Eleuthra settled the debt and effectively, you say

1 purchased the debt from IPO Wealth Holdings?---Yes, it  
2 was settled on behalf of 101 Investments Limited.  
3 Oh, if it's - well, if it's settled then how is it that the  
4 debt is now owed to Eleuthra?---Because - - -  
5 Without an assignment, I mean?--- - - - Yes, sure, because it  
6 settled it on behalf of 101 Investments Limited, Eleuthra  
7 now - sorry, 101 Investments now owes the (indistinct)  
8 \$4.3m in total to Eleuthra.  
9 On what basis?---On the basis that Eleuthra paid those moneys  
10 to IPO Wealth Holdings to settle that debt which is what  
11 we reported to the trustee.  
12 Well, doesn't that - aren't you really saying there was an  
13 assignment of the debt. That doesn't sound like there  
14 was any basis - in what you've said there was no legal  
15 basis that I'm aware of which would make 101 Investments  
16 liable to Eleuthra Group, it was a voluntary payment. So  
17 what's the foundation for saying the money is now owed to  
18 Eleuthra Group?---Privilege, it wasn't an assignment with  
19 the debt. If there was an assignment there would have  
20 been an agreement saying there was an assignment.  
21 So there's no assignment. But nonetheless, the money is now  
22 owed by 101 Investments to Eleuthra Group rather than to  
23 IPO Wealth Holdings?---Privilege, correct, that's exactly  
24 what the accounts of 101 Investments demonstrate.  
25 Now, that means Eleuthra paid the debt?---Privilege, correct.  
26 What is the evidence that that money was paid to IPO Wealth  
27 Holdings?---Privilege, bank statements that show there  
28 was, I think it was \$12.3m paid to settle that from the  
29 asset purchase billing account.  
30 And when was that money paid?---Privilege, you've asked me that  
31 three times Mr Galvin.

1 When was the money paid?---Between late 2019 and early 2020.  
2 And was it by multiple payments or one lump sum?---Privilege,  
3 it was multiple payments.  
4 Who directed the making of those payments?---Privilege, I made  
5 the payments myself.  
6 Thank you. Now, could we go please to court book 104. And if  
7 you could scroll down to the bottom half of that page,  
8 please, Mr Associate, you'll see there's an email,  
9 Mr Mawhinney, from you dated 11 July 2019 to Craig Van  
10 Wegen, subject matter is loan agreement, holdings to 101  
11 Investments. You see, 'Hi Craig. We need to get a loan  
12 agreement in place between IPO Wealth Holdings and 101  
13 Investments, please, with a security charge of sort so we  
14 can cover the recent investments through this entity.  
15 Those being PayMate equity US\$2m, and Accloud revenue  
16 share US\$15 to 30m over 20 - just over. I'd suggest it  
17 be structured as a facility agreement with 100-year  
18 limit, 15-year term and 12 per cent coupon, similarly to  
19 the Octo agreement'. Now, why did you tell Mr Van Wegen  
20 that you needed to get a loan agreement in place between  
21 IPO and 101?---Privilege. Because there had been moneys  
22 advanced to 101 to make those two investments and,  
23 therefore, I thought it was the prudent thing to do to  
24 have a facility agreement in place with security over it  
25 in relation to those two investments.  
26 So there had already been money advanced by IPO Wealth Holdings  
27 to 101 Investments, and you thought that should be  
28 reflected a loan agreement?---Privilege. That's correct.  
29 Or you would call it will a facility agreement; is that  
30 right?---Privilege. Yes.  
31 And what prompted you to do it at this stage? I mean, why not

1 do it before the moneys are advanced?---Privilege. I  
2 can't say I know why that was the case. We wanted to  
3 make the investments and hold them in the appropriate  
4 structure and in certain instances we needed to move  
5 quickly to make the investments, hence why we looked to  
6 document the relationship between IPO Wealth Holdings and  
7 101 Investments after that - or at least the payment of  
8 investment had been made. I don't think Accloud  
9 (indistinct) had been made at that point, or an  
10 investment had been made at that point.

11 Now, on p.103 at the bottom there's a reply from Mr Van Wegen  
12 dated 11 July 2019. He says to you that he will get the  
13 agreement to you in draft that week. Then on p.102  
14 there's an email from Pinnacle, from Kate Power of  
15 Pinnacle to you in relation to this agreement, and she  
16 attaches a draft facility agreement with the terms akin  
17 to the ones you've proposed?---Yes.

18 And then - pardon me. I take it that this email correspondence  
19 is what led to the facility agreement we looked at a few  
20 moments ago; is that right?---Which one, Mr Galvin?

21 The - well, the Eleuthera - sorry. Let me start again. I  
22 didn't mean to mislead you there. There was an agreement  
23 between IPO Wealth Holdings and 101 Investments, is that  
24 right, a facility agreement?---IPO Wealth Holdings and  
25 101 Investments, no longer (indistinct) was put in place.

26 So the one that is - was drafted here was never put in place?

27 This was never excused, is that what you're  
28 saying?---Privilege. That's correct.

29 But there was, nonetheless, a debt that had accrued of about  
30 \$12m which funded the acquisition of PayMate India and  
31 the Accloud revenue stream, but that has been paid out by

1 Eleuthera. That's your evidence, isn't it?---Privilege.  
2 As at 12 July I believe that only \$1m or less of the  
3 PayMate agreement or investment had been made. I don't  
4 think any of the Accloud revenue share (indistinct) or  
5 investment had been made at that stage. So the loan  
6 balance between IPO Wealth Holdings and 101 Investments  
7 at the date of that email, give or take, may have only  
8 been 1 or 2 million dollars. You are right in saying  
9 that further moneys that were advanced between IPO Wealth  
10 Holdings and 101 Investments were subsequently centred by  
11 Eleuthera on behalf of 101 Investments.

12 Go to court book 106, please. This is a letter I asked you  
13 about on a previous occasion dated 25 May 2020 from KHQ  
14 Lawyers to Thomson Geer?---Yes.

15 If we go to paragraph 4 at the bottom of p.107, there was a  
16 question there after you see the, 'Please advise the  
17 reason why the Accloud investment was transferred to 101  
18 Investments and of any agreement or arrangement which  
19 exists between IPO 3 and any other party and 101  
20 Investments in relation to that investment'. If you go  
21 down to 4.1(f) in the middle of the next page - and this  
22 is more to do - I take it this is to do with the Accloud  
23 share investment, is that right, not PayMate India or the  
24 Accloud revenue stream; is that right?---Privilege. Yes,  
25 that's correct.

26 Now, can we go, please, to 126. This is an email from you to  
27 various people including some people from KPMG dated  
28 15 July 2020. You've attached some documents and then do  
29 you see towards the bottom of the screen you said,  
30 'Please arrange the following. Put these in the 101  
31 Investments folder on G drive, coordinate with KPMG and

1           Brigette to ensure 101 Investments Ltd's zero file  
2           matches this transaction, reflect the loan in Eleuthera's  
3           books'. So this seems to relate to the share sale  
4           transaction, is that right, to 101  
5           Investments?---Privilege. Yes, I believe it does, yes.  
6       There's a reference in the second bullet point that you see on  
7           that page, Eleuthera agreed to 101 Investments facility  
8           agreement. Also seems to relate to that facility  
9           agreement we looked at a short time ago; is that  
10          right?---Yes.  
11       That's not just connected to the Accloud share sale, is it?  
12          That's connected with the revenue stream and the  
13          repayment of the debt to - sorry, repayment of 101's debt  
14          to IPO Wealth Holdings, isn't it?---Privilege. Yes.  
15          It's a facility for a large amount that enables multiple  
16          transactions to be covered by it.  
17       Yes. So it seems to cover all of these Accloud  
18          issues - - -?---Yes.  
19       - - - as well as PayMate India and 101 Investments' liability  
20          to IPO Wealth Holdings. Now, you appear hear to be  
21          giving instructions to KPMG as to how to deal with these  
22          transactions. Is this an example of sort of instruction  
23          you gave KPMG?---Privilege. That was actually  
24          instructions that I provided internally to our team and  
25          cc'd in KPMG so that they were across it.  
26       I see. So that - for example, the second bullet point under  
27          'please arrange the following: coordinate with KPMG and  
28          Brigette to ensure 101 Investments Ltd's zero file  
29          matches this transaction'. What's 'this transaction'?  
30          What transaction is that referring to?---Privilege. It's  
31          the transaction that's in all of the accompanying

1 documentation. It's the Accloud share sale.  
2 Is it not connected with the Eleuthera Group and 101  
3 Investments facility agreement as well?---Privilege.  
4 Yes, that.  
5 Right. And do you see - you said KPMG - at the bottom, 'KPMG  
6 team. Let us know if there is any additional  
7 documentation required to validate this  
8 transaction'?---Mr Associate, can I just scroll down.  
9 ASSOCIATE: Yes. Sorry, yes.  
10 MR GALVIN: You see that's the last sentence in the  
11 email?---Yes. Correct.  
12 Is that - this transaction is, again, just the Accloud share  
13 sale transaction, is it?---Correct. I believe so, yes.  
14 And do you know if KPMG sought additional information?---Yes.  
15 There was - well, there's a lot of communication with  
16 KPMG. With respect, see the transaction, Andrew Mascara,  
17 there was a spreadsheet, a very detailed spreadsheet  
18 which I'm happy to provide which outlined the historical  
19 movement of the Accloud shares within the Mayfair 101  
20 group and, obviously, subsequent sale to 101 Investments  
21 Ltd (indistinct words).  
22 Look, what investments does 101 Investments - what assets does  
23 101 Investments currently hold?---Ah, it should hold  
24 21.25 million Accloud shares, but it doesn't. It's a bit  
25 (indistinct) those accounts (indistinct) it does hold the  
26 Accloud revenue share agreement. It holds US\$2m worth of  
27 PayMate shares and it holds about \$3m ordinary shares in  
28 Accloud PLC Limited  
29 What are its liabilities?---Ah, I'm happy to provide a copy of  
30 the financials, but its primary liability is a loan that  
31 - ah, back to Eleuthera Group, if I recall correctly, for

1 about \$32m.

2 All right. And what payments is it making to Eleuthera

3 Group?---Ah, 101 Investments doesn't have a bank account

4 to make payments at this stage.

5 So it's not making any payments on its debt to Eleuthera?---Ah,

6 privilege. Correct, not at this stage.

7 And that debt is - is accruing interest, is it?---Privilege.

8 That's correct. Under the facility agreement, it allows

9 for that.

10 So how is it intended that 101 Investments will eventually

11 repay its debt to Eleuthera?---Ah, privilege. Through

12 the realisation of those assets that it holds.

13 Now, I want to ask you some questions about Mayfair 101

14 Limited, Mr Mawhinney. That's a company which is also

15 incorporated in the British Virgin Islands; is that

16 right?---Privilege. No.

17 No. Where is 101 Investments - sorry. Where is Mayfair 101

18 Limited incorporated?---Ah, privilege. It's domiciled in

19 England.

20 England. All right. Who are its directors?---Ah, privilege.

21 It's myself.

22 Shareholders?---Ah, privilege. I can't recall. It's one of

23 our holding companies.

24 When was it formed?---Ah, privilege. I can't recall. I think

25 2018 or 2019, from memory.

26 And what was the purpose of its formation?---Ah, privilege. We

27 had just started expanding (indistinct) to the UK. Ah,

28 it made sense to have an entity over there, um, and as

29 you will no doubt come to, we decided to use that entity

30 to hold a convertible note agreement that we had made

31 with Accloud - ah, Accloud Switzerland for - I think it

1           was US\$2m to borrow (indistinct).

2   Now, according to the books - - -

3   HER HONOUR:   Sorry, Mr Galvin.   Sorry, Mr Galvin.   If I can

4           just ask a question before you move on.

5   MR GALVIN:    Yes.

6   HER HONOUR:   Who is the ultimate beneficial shareholder of that

7           company, Mr Mawhinney?---Yeah, it's myself, Your Honour.

8   Thank you.

9   MR GALVIN:    Mr Mawhinney, according to the records of IPO

10           3, Mayfair 101 Limited owes IPO 3 a debt of about \$3.28m.

11           Is that correct?---Privilege.   No, it's about \$2.889m.

12           So Mayfair 101 Limited owes \$2.889m to IPO 3?---Privilege.

13           That's correct.

14           And when is that due to be repaid?---Ah, privilege.   It was

15           advanced - oh, there is - I don't believe that there was

16           an agreement (indistinct) loan agreement in place.   Um,

17           but it's due to be repaid upon realisation of the assets

18           that ultimately it funded the purchase of, which was

19           Accloud - an Accloud convertible note.

20           Why isn't it immediately due and payable?---Ah, privilege.

21           Because the asset hasn't been realised at this stage.

22           What difference does that make?   There's no provision - no

23           written agreement to the effect that the debt is only

24           repayable at that point in time, is there?---Privilege.

25           No, there was no agreement.   There's no basis, ah, to -

26           well, for there to be a timeframe, but, um, subject to

27           the court decision, I guess.

28           What assets does Mayfair 101 Limited currently hold?---Ah,

29           privilege.   It has a facility agreement in place with 101

30           Investments Limited for that same amount, 2.899 million.

31           Sorry, it has a facility agreement with 101 Investments, does

1 it? Who lent - which company lent money to which  
2 company?---Ah, privilege. Ah, Mayfair 101 Limited, when  
3 it converted its convertible notes to shares - - -  
4 Yes?--- - - - those shares were held by 101 Investments Ltd and  
5 the property of 101 Investments Ltd, um, and in exchange  
6 for that they received a facility - an obligation to  
7 repay from 101 Investments Ltd to Mayfair 101 Limited and  
8 that allowed us to consolidate our Accloud shareholdings  
9 in this one entity.

10 The money that was advanced by IPO 3 to Mayfair 101 derived  
11 from the investment in the IPO Wealth Fund, didn't  
12 it?---Privilege. That's correct.

13 And IPO 3 lent it on an unsecured basis to Mayfair 101; is that  
14 right?---Privilege. That's correct.

15 Why didn't it take security?---Ah, privilege. It wasn't  
16 required. It was an intercompany transfer, um, that had  
17 taken place. It wasn't contemplated that there would be  
18 receivers appointed, um, and, ah, we didn't realise and  
19 we didn't feel that that was going to be necessary in  
20 order to effect the realisation of the asset which is  
21 ultimately the most important thing.

22 Could we go to 759, please. There's a convertible loan  
23 agreement which is expressed to be as of 16 July 2018.  
24 Is that the convertible loan agreement you're referring  
25 to?---Privilege. Yes, it is.

26 So why is the investment in this convertible loan made  
27 by Mayfair 101 and not by IPO 3 directly?---Privilege.  
28 If I recall correctly, um, the nature of the investment  
29 it had some relationship (a), to their Swiss company, um,  
30 and, (b), ah, it was - it had an intention to go one or  
31 two ways. One was it encompasses at the time when the

1 cryptocurrency space was, um, very much alive, um, where  
2 it - it was successful in undertaking a - I think an  
3 initial coin offering then the entity would be - would  
4 receive payment in the form of digital currency, um, and  
5 as a fall-back, which ultimately was what we relied on,  
6 um, it would convert to ordinary shares in the company.  
7 Um, England, I believe, has a lower tax, um - company tax  
8 rate or corporate tax rate than Australia, um, and it  
9 would have made more sense for the shares ultimately -  
10 sorry - the investment, should I say, ultimately to be  
11 held by Mayfair 101 Limited.

12 Would you say it was mainly for tax reasons, would  
13 you?---Privilege. Yes, that was a key consideration.

14 Now, as I understand it there was a - if we go to p.783, there  
15 was an extension of the time for conversion; is that  
16 right?---Scroll down a bit, please.

17 Do you see there paragraph (a) refers to the convertible loan  
18 agreement we just looked at?---Yes.

19 In paragraph 1 it provides for the extension of the - it  
20 provides for an extension of the conversion date?---Yes.

21 Now, is it the case that Mayfair 101 has since acquired about 3  
22 million shares in Accloud under this  
23 arrangement?---Privilege. No, it's not the case.

24 It didn't acquire shares in March 2020?---Ah, privilege. No,  
25 it didn't.

26 So what's happened to this conversion - this loan - sorry -  
27 this conversion or convertible note - convertible loan  
28 agreement - if I can call it?---Privilege. The - ah, the  
29 convertible note was converted to shares and those  
30 shares, um, were held and then it was re-owned by 101  
31 Investments Ltd, with Mayfair 101 Limited receiving a

1 facility agreement so that we could honour our  
2 commitments back to IPO Wealth Investment.  
3 So Mayfair 101 was the one that was entitled to make the  
4 conversion under this agreement. That's right, isn't  
5 it?---Yes, correct.  
6 And it did exercise that right, but the shares have ended up  
7 with 101 Investments; is that right?---Privilege. That  
8 was the decision, yes.  
9 And on what basis did the shares end up in 101 Investments  
10 rather than Mayfair 101? In other words, Mayfair 101,  
11 did it sell them to 101 Investments? How did that  
12 occur?---Privilege, yes, the shares, the entitlement to  
13 the shares was replaced with an entitlement to the  
14 repayment of moneys with those shares. And the advantage  
15 of that being that the assets of 101 Investments Limited  
16 could become realised. Any assets with 101 Limited, for  
17 the purposes of getting money back to IPO Wealth's  
18 investments.  
19 So the Mayfair 101 is owed money by IPO - sorry, not by IPO, by  
20 101 Investments. Is that right? As a result of the  
21 shares being given to 101 Investments?---Privilege,  
22 that's correct.  
23 And how much does 101 Investments owe Mayfair 101 as a  
24 result?---Privilege, sorry, does who does owe who?  
25 I'm sorry, I didn't hear that?---Sorry, repeat the question.  
26 As a result of the shares going to 101 Investments, how much  
27 does 101 Investments owe to Mayfair 101?---Privilege,  
28 \$2.889m.  
29 And that's the amount you mentioned earlier, isn't it?---Yes.  
30 It's the amount of moneys that were advanced by the IPO  
31 Wealth Holdings Group. So it reflects dollar for dollar

1 what was owing.

2 I see. Now, on the 25<sup>th</sup> September last year, the liquidators  
3 made a demand on 101 - Mayfair 101, that is, on behalf of  
4 IPO 3. If we go to 786, please, two pages on. A demand  
5 was made, is there any reason why that amount shouldn't  
6 be paid, Mr Mawhinney?---Privilege, yes, because the  
7 amount it owed is \$2.899 or \$2.889m.

8 Alright, you say it's the wrong amount, but there's no reason  
9 you can offer as to why the amount of \$2.889m shouldn't  
10 be paid?---Privilege, it is money owed and we've  
11 acknowledged the debt. As in Mayfair 101 Limited has  
12 acknowledged the debt to IPO Wealth 3.

13 The accounts of Mayfair 101, regrettably, they're unwritten,  
14 but in June 2019, if you look at 787 of the court book.  
15 We're on 786. There doesn't seem to be any reference in  
16 these accounts to the liability?---Privilege, if you have  
17 a look at the accounts today, which I am happy to  
18 provide, you see that the liability is acknowledged.

19 Oh, you say the accounts are now recognised - the accounts now  
20 recognise the liability there?---Privilege, that's  
21 correct.

22 Yes. Now, do you recall whether - there are shares that are  
23 currently held by 101 Investments, that is the shares  
24 that were (indistinct) as a result in Mayfair's exercise  
25 of its rights under the convertible loan agreement. Have  
26 they been offered for sale recently?---Privilege, they  
27 were for a very limited time. But not anymore.

28 They're still held, then, by the company, are  
29 they?---Privilege, I am of the understanding that the  
30 liquidators have taken steps with Accloud to cancel the  
31 shares to reissue them to Mayfair 101 Limited. I'm not

1 across the detail of what's gone on there, but it's a bit  
2 complex with how it's been, you know, the transaction.  
3 They were recorded as being issued to Mayfair 101, but they  
4 should have been issued to 101 Investments, is that what  
5 you're saying?---Privilege. They - I - I've only come to  
6 understand very recently that the shares in 101  
7 Investments, that three-odd million shares were cancelled  
8 and reissued and were about to be reissued to make the  
9 101 limited. I'm not aware of the status beyond that. I  
10 haven't seen the latest Accloud shares, so - - -

11 Can we look, please, at p.799, and if we go to p.800 there's a  
12 - do you see under the fixed assets there's the - this a  
13 balance sheet of Mayfair 101 as at 30 June 2020. One of  
14 the assets is an investment in Accloud valued at \$1.6m.  
15 Do you see that? I don't know if that's - maybe that's  
16 meant to be pounds, is it?---It should be pounds, yes.

17 Those are the shares that we're talking about, aren't they  
18 ?---Privilege. Correct.

19 I think 1 point - anyway, don't worry about it, about trying to  
20 convert. If you look at the liabilities, you see the  
21 reference, the last reference is to an inter-company debt  
22 to IPO Wealth Holdings?---Yes.

23 That should be a reference to IPO 3, shouldn't it?---Privilege.  
24 Yes. It doesn't specify whether it's IPO Wealth Holdings  
25 Pty Ltd, so yes, initially. No, I might - I retract  
26 that. It was taken off Holdings Pty Ltd, if I recall  
27 correctly, as that was the entity that advanced the  
28 funds - - -

29 Well?--- - - - according (indistinct) I just don't have the  
30 accounts in front of me, so I can't recall.

31 That's what the liquidators have identified is a debt to IPO 3,

1 Mr Mawhinney. Are you confidential of that?---Privilege.  
2 No, I'm not, not without seeing the documents. I just  
3 can't if the investment was made by IPO Wealth Holdings  
4 or IPO Holdings 3.  
5 Can we go, please, to 802. You see the highlighted items - as  
6 I - this is the IPO Wealth Holdings number 3 debt  
7 investment, Accloud, Switzerland?---Yes.  
8 This seems to come to the 2.889m that you were talking  
9 about?---Yes.  
10 And there, the one - or the payments, I should say, that are  
11 highlighted in yellow, as I understand, they reflect  
12 interest payments, is that right, or interest liabilities  
13 which have been - which are accruing?---Privilege. I  
14 don't know what the payment fee - are you referring to  
15 the three (indistinct)?  
16 Yes?---I don't know what those are. It's not descriptive.  
17 They look - just (indistinct) three years ago now, but  
18 they may have been interest payments from Accloud to IPO  
19 Wealth Holdings 3. I just - I just can't recall.  
20 Just pardon me, Your Honour. Now, I think you said that recent  
21 accounts of Mayfair 101, you will reflect the liability  
22 to IPO or IPO 3; is that right?---Yes, that's correct.  
23 And they could be provided, couldn't they, to the  
24 liquidators?---Yes. I'm more than happy to.  
25 Have there been any recent sales of Accloud shares by 101  
26 Investments?---Privilege. There was only one parcel  
27 that's sold.  
28 When did that occur?---Privilege. It was around Christmas  
29 time.  
30 How many shares were sold?---Ah, privilege. Oh, give or take  
31 50,000 shares I think.

1 And what was the price received for those shares?---Ah,  
2 privilege. It was 50P a share.  
3 So £25,000; is that right?---Privilege. Correct - - -  
4 And what became of the proceeds of sale?---Ah, privilege. They  
5 repaid the Eleuthera facility.  
6 Are there currently any ongoing negotiations for the sale of  
7 any Accloud shares by 101 Investments?---Privilege. No,  
8 there's not.  
9 Now, Your Honour, I was going to go to another topic now, but  
10 it might be a convenient time to break.  
11 HER HONOUR: Yes, I think it probably would, Mr Galvin. We're  
12 continuing tomorrow as I understand it.  
13 MR GALVIN: Yes. Yes, Your Honour. I'm hoping - yes.  
14 Tomorrow, yes.  
15 HER HONOUR: Yes. All right. So 10.30 tomorrow?  
16 MR GALVIN: Yes.  
17 HER HONOUR: Mr Mawhinney, is 10.30 tomorrow convenient?---Ah,  
18 it is. I have a decision in the Federal Court that will  
19 be handed down tomorrow, but I would imagine that I - I  
20 can't be in two places at once so will need to be here;  
21 is that correct?  
22 Yes. What time is the decision in the Federal Court?---I've  
23 been told it's 8.30 eastern daylight savings time so if  
24 it's read down within the first hour that won't be an  
25 issue.  
26 Yes. Do you have lawyers in respect of that matter?---No, I  
27 don't. There are four entities that I'm a director of  
28 that are the defendants in that matter and it's a big  
29 case and I would like to be present for it. But I also  
30 acknowledge my obligations here at the Supreme Court.  
31 Alright, well, I think in those circumstances, it makes sense.

1 It sounds to me like it's likely that that would be  
2 concluded before we start because that will be some two  
3 hours earlier - - -

4 MR GALVIN: We've got - - -

5 HER HONOUR: - - - as I understand it?--- If you are able to  
6 start in half an hour to an hour later that would be  
7 appreciated. But if not, I'm happy to be present for  
8 10:30.

9 Well, what I suggest that you do, Mr Mawhinney, is I'll adjourn  
10 this until 10:30. If you're still in the Federal Court  
11 hearing at that time, you can send an email to my  
12 associate and I'll stand the matter down for half an hour  
13 and then hopefully, you'll be finished by then?---Right,  
14 that's greatly appreciated. Thank you.

15 Alright, is that alright with you Mr Galvin?

16 MR GALVIN: Yes, yes, Your Honour.

17 HER HONOUR: Yes, alright, so I think we can take care of it  
18 that way, Mr Mawhinney?---Certainly, thank you.

19 Alright then. And Mr Galvin, I'm not sure if you want to have  
20 the orders made in respect to those documents now or if I  
21 should just make orders at the end of tomorrow.

22 MR GALVIN: Yes, I think what we'll do, is we'll prepare the  
23 orders overnight and ask Your Honour to make them  
24 tomorrow at a convenient time.

25 HER HONOUR: Yes, that will be fine. Alright then,  
26 Mr Associate, we can use the same Zoom link tomorrow, is  
27 that right?

28 ASSOCIATE: Yes, that's right.

29 HER HONOUR: Yes, alright then, so I'll have my associate  
30 adjourn the court. If there's nothing further, I'll have  
31 my associate adjourn the court until 10:30 am Melbourne

1 time tomorrow morning using the same Zoom link please.

2 Thank you, Mr Associate.

3 <(THE WITNESS WITHDREW)

4 ADJOURNED UNTIL TUESDAY 23 MARCH 2020