
TRANSCRIPT OF PROCEEDINGS

S ECI 2020 02990

SUPREME COURT OF VICTORIA

COMMERCIAL COURT

MELBOURNE

THURSDAY 25 FEBRUARY 2021

BEFORE THE HONOURABLE ASSOCIATE JUSTICE MATTHEWS

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

PUBLIC EXAMINATION

MR M. GALVIN QC with MS N.L. PAPALEO appeared on behalf of the Plaintiff Provisional Liquidators.

MR J.P. MAWHINNEY appeared as the Examinee

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5 system or transmitted without prior written permission of the
6 Authorised Officer.

7 MR GALVIN: If it please the court, I appear with MS PAPAleo
8 for the liquidators.

9 HER HONOUR: Thank you, Mr Galvin. And Mr Mawhinney, I can see
10 that you're here.

11 MR MAWHINNEY: Yes, good morning. I am. Yes.

12 HER HONOUR: Thank you. Are you represented this morning,
13 Mr Mawhinney?

14 MR MAWHINNEY: No, I'm not.

15 HER HONOUR: Thank you. All right, then. Now, Mr Galvin, are
16 there any preliminary matters?

17 MR GALVIN: No, not that I'm aware of. I understand that we
18 have examination book, which I think has been delivered
19 to the court electronically. And when it's appropriate,
20 I'd ask for that to be marked for identification - - -

21 HER HONOUR: Yes.

22 MR GALVIN: - - - in the usual way.

23 HER HONOUR: Yes.

24 UNIDENTIFIED SPEAKER: (Indistinct words).

25 HER HONOUR: I beg your pardon, sorry?

26 MR GALVIN: That wasn't me, Your Honour. It was someone else.

27 HER HONOUR: Right, then. I'll deal with that. If I could
28 please ask that any observers or members of the public
29 observing today's examination please keep their cameras
30 off, which they all appear to be. And if they could also
31 please put themselves on mute, that would be of
32 assistance. Thank you. All right, then. I have to say,
33 Mr Galvin, I'm not sure what MFI number we might be up

1 to, but I'll have my associate check.

2 MR GALVIN: Thank you.

3 HER HONOUR: And we can deal with that in due course. All

4 right, then. I think we'll begin, then, by swearing

5 Mr Mawhinney in. Mr Mawhinney, do you prefer to take the

6 oath by swearing on the bible or by making an

7 affirmation.

8 MR MAWHINNEY: I'll need to take an affirmation, thank you.

9 HER HONOUR: I beg your pardon?

10 MR MAWHINNEY: I'll need to take an affirmation, please.

11 HER HONOUR: Thank you. Mr Associate. Mr Associate, could you

12 please administer the affirmation.

1 <JAMES PETER MAWHINNEY, affirmed and examined:

2 HER HONOUR: All right, then. I know I've made these opening
3 remarks to you before, Mr Mawhinney, but it was several
4 months ago. So if you'll bear with me, I'll repeat them
5 for you, because they're important, and I need to make
6 sure that you're reminded of your rights in these
7 regards. So you've been summonsed to appear here today
8 to answer questions relating to the affairs of IPO - a
9 number of companies in the IPO Wealth Group. The
10 liquidator's counsel, Mr Galvin, will be asking you
11 questions. I may also ask you some questions. And the
12 answers given by you will assist the liquidators in
13 performing their statutory functions under the
14 Corporations Act. My role is to ensure that this process
15 is conducted fairly. You'll have an opportunity at the
16 end of the examination to make a statement if you wish to
17 do so. You do not have to do that unless you want to.
18 You are giving sworn evidence and you must provide
19 truthful answers. Your testimony is also being recorded
20 and will later be transcribed. I've already made
21 directions in this examination earlier that the questions
22 put to you and the answers given by you at the
23 examination be recorded in writing as provided by s.597,
24 sub-s.(13) of the Corporations Act, and you're likely to
25 be asked to sign each page of that transcript when it's
26 prepared. It's important that you listen to each
27 question carefully and answer as directly as possible.
28 If you do not understand the question, please say so. If
29 you do not know the answer to the question, it is
30 acceptable to say that you do not know. There's no point
31 in guessing. Generally speaking, you are required to

1 answer all questions put to you unless I rule otherwise.
2 You may be entitled to object to answering a question.
3 If that happens, I will consider the objection and then
4 rule on it. You may not be obliged to answer a question
5 where such an answer would be the subject of a proper
6 claim of legal professional privilege. In general terms,
7 legal professional privilege has the effect that you are
8 not required to give evidence which discloses a
9 communication made between you and a lawyer for the
10 dominant purpose of obtaining legal advice or for use in
11 litigation. The next part is very important. You are
12 not excused from answering questions put to you on the
13 ground that the answer you give may tend to incriminate
14 you or make you liable to a penalty. The Corporations
15 Act does, however, provide you with protection in that
16 you may claim a privilege against incriminating yourself.
17 If you think that an answer to a question may tend to
18 incriminate you or expose you to a penalty, you can say
19 the word 'privilege' before answering the question. For
20 example, if your answer to a question is 'yes', you would
21 say, 'Privilege, yes'. It is not possible to make a
22 blanket claim of privilege. It can only be done on a
23 question by question basis. It is not my responsibility
24 to prompt you to make a claim of privilege. It is up to
25 you whether or not you wish to do so. If you do claim
26 privilege in this way, it will protect you against the
27 use of your answers in criminal proceedings and in
28 proceedings for the imposition of a penalty, except for
29 proceedings which are brought against you for giving a
30 false answer to a question put to you at the examination
31 or, for example, for failing to comply with your

1 obligation to answer a question which I direct you to
2 answer. I need to point out that a claim for privilege
3 does not prevent the questions and answers being used in
4 civil proceedings, only criminal proceedings of the type
5 that I have described. So just to emphasise that if you
6 wish to invoke the privilege, you must do so in response
7 to each question. Do you have any questions,
8 Mr Mawhinney?---No. I don't. Thank you.

9 All right. Thank you. Could I just ask you a couple of
10 questions, please. Do you have anybody else in the room
11 with you?---No. I don't.

12 And what documents or - do you have any documents in front of -
13 with you?---No. I don't.

14 And what devices have you got with you?---I have my laptop in
15 front of me with the screen folded down and I have a
16 large screen right in front of me.

17 Right. Thank you. All right. Thank you, Mr Galvin. My
18 associate tells me that we appear to be up to MFI 11.

19 MR GALVIN: Thank you.

20
21 #EXHIBIT 11 - (For identification) Court book 25/02/21.

22 HER HONOUR: Thank you. Please - over to you when you're
23 ready.

24 MR GALVIN: Thank you. Thank you, Your Honour. Mr Mawhinney,
25 can I ask you where you're presently located? Are you in
26 an office somewhere?---I am in an office. Yes.

27 Whose office is that?---Ah, it's one of our group offices.

28 What's the address?---Ah, Donkin Lane in Mission Beach. I
29 don't know the specific address off the top of my head.

30 You're living at Mission Beach at the moment, are you?---Ah,
31 we've been living here for nearly two years.

1 I'm sorry. I missed that. You said 'we have been'
2 something?---Yeah. Sorry. Would you mind rephrasing
3 your question?
4 You're living at Mission Beach at the moment, are you?---Ah,
5 I'm presently in Mission Beach, but no. My permanent
6 residential address is Melbourne.
7 Look, you're fading in and out a bit. It might be that you
8 need to be a little bit closer to the monitor or to the
9 microphone?---Is - is that any better?
10 Yes. That seems all right. I'll let you know if you fade out
11 again, but at the moment, that seems all right?---Sure.
12 So your residential address is in Melbourne. What's the
13 residential address?---73 McIntyres Road, Park Orchards.
14 HER HONOUR: (Indistinct) - - -
15 MR GALVIN: All right. Well, you seem to have someone
16 else - - -
17 HER HONOUR: Yes. It's all right. They've put themselves on
18 mute now. Thank you.
19 MR GALVIN: Mr Mawhinney, and what address do you inhabit when
20 you're at Mission Beach?---Ah, presently, 1/2 Donkin
21 Lane, Mission Beach.
22 And who owns that property?---Ah, I don't know who the owner
23 is. It's being leased short-term.
24 You're leasing that from a - through a real estate agent, are
25 you?---That's - that's correct.
26 And what's the purpose of being in Mission Beach rather than
27 Melbourne at the moment?---I think that's very publicly
28 known, that we had a significant investment in Mission
29 Beach and, ah, it's been important with the restructuring
30 work that we're on - that we are actually on the ground
31 to get that project moving.

1 When you say we, who do you mean by we?---Ah, the Mayfair
2 Group.

3 I see. Mayfair 101 is the Mayfair Group, is it?---Ah, Mayfair
4 101 is the trading name of one entity within the Mayfair
5 Group.

6 What's the entity that has that trading name?---Online
7 Investments Pty Ltd.

8 Would you say that the Mayfair 101 Group business is, in broad
9 terms, international investment - as an international
10 investment company and corporate advisory group?---Yes.
11 Correct.

12 Would you agree that it's - the nature of this business can be
13 divided between investment holdings, real estate, and
14 fundraising?---Ah, it's a bit broader than that.

15 What else does it include?---Ah, well, the group, ah, has
16 investments in real estate, pre-IPO companies in tech
17 businesses, um, ah, ah, and obviously through the IPO
18 Wealth Holdings Group previously held other investments.

19 101 Investments Ltd, which is a company incorporated in the
20 British Virgin Islands, is a company I've asked you
21 questions about before. Do you recall that?---I do.

22 Is it the case that that company was incorporated to
23 hold Mayfair 101 Group's international assets?---Ah, no.
24 That's not that case.

25 Well, why - when was 101 Investments Ltd incorporated?---Ah,
26 privilege. I believe it was 30 June 2019. But I - as I
27 said, I can't recall specifically.

28 And what was the purpose of its incorporation?---Ah, privilege.
29 To hold the group's pre-IPO and technology investments,
30 ah, in international or businesses that are located
31 outside of Australia.

1 And what was the object of having 101 Investments hold those
2 (indistinct) - - -?---Privilege - yeah. Privilege. It
3 was on the tax advice we received via our accountants,
4 Pinnacle Advisory Group.

5 Was that advice in writing?---Privilege. Yes. It was.

6 Do you recall whether it was in an email or a letter?---Ah,
7 privilege. It was in a formal written advice statement
8 from Pinnacle Advisory Group, so - - -

9 Just coming back to the Mayfair 101 Group, how many entities in
10 that group - well, let me start again. Do you know how
11 many bank accounts were held by the group generally in
12 Australia in, say, 2019, 2020?---Privilege. Um, I - I
13 don't know specifically, but it wouldn't have been
14 anything more than bank accounts that (indistinct) six or
15 eight Australian companies plus a number of those bank
16 accounts - sorry, a number of those companies had savings
17 accounts.

18 Do you recall which companies had the bank
19 accounts?---Privilege. Um, IPO Wealth Holdings Pty Ltd,
20 IPO Wealth Holdings number 14 Pty Ltd, IPO Wealth
21 Holdings number 17 Pty Ltd. Um, Eleuthera Group Pty Ltd,
22 Online Investments Pty Ltd, ah, what was known as Mayfair
23 Wealth Partners Pty Ltd and is now Australian Income
24 Solutions Pty Ltd. Um, ah, Sunseeker Holdings Pty Ltd as
25 trustee to the Sunseeker Trust. Um, I believe there was
26 a bank account for Mission Beach Operations Pty Ltd. Um,
27 I - I can't recall anything much further than that.

28 Thank you. You mentioned Eleuthera - or Eleuthera Group Pty
29 Ltd, is that right?---Privilege. Yes.

30 And just for the benefit of the transcript, Eleuthera is spelt
31 E-l-e-u-t-h-e-r-a. When was Eleuthera

1 formed?---Privilege. It was either 2013 or 2014.

2 And what was the purpose of its incorporation?---Privilege. At

3 the time Eleuthera's business was the provision of

4 professional services to small businesses.

5 Who were its officers when it was formed?---Privilege. It was

6 myself, I believe - I can't recall, it was eight years

7 ago now.

8 All right. As at 2019, for example, what was its role within

9 the Mayfair 101 Group?---Privilege. From around mid-'19

10 Eleuthera Group's primary purpose was to be the treasury

11 entity for the Mayfair 101 Group.

12 What do you mean by 'the treasury entity'?---Privilege. To

13 make payments on behalf of other group members.

14 And what were the source of the funds which it used to do

15 that?---Privilege. In and around mid to late-2019

16 onwards the primary source of funds were the notes that

17 were issued by M101 Holdings Pty Ltd and M101 Nominees

18 Pty Ltd.

19 And how did those funds make their way into Eleuthera? By way

20 of a loan, or how?---Yes, privilege. They were advanced

21 under a facility agreement with those two respective

22 entities.

23 I see. Is it the case that Online Investments Pty Ltd has also

24 at some point in time functioned as a treasurer for the

25 group?---Privilege. Yes, that's correct.

26 When was that?---Privilege. It's been at various stages

27 throughout the group's history. I - I will explain

28 further. We have a banking relationship with ANZ Bank

29 and up until - I believe it was either late 2019 or early

30 2020 we only had a \$1m a day transfer limit. Given a

31 number of our transactions were larger than that it meant

1 (indistinct) group bank accounts needed to be used in
2 order to settle payments on certain days.
3 Online Investments is the trustee of the Sunseeker Trust, is
4 that right?---Privilege. No, that's incorrect.
5 Was it ever the trustee of the Sunseeker Trust?---Privilege.
6 Yes, it was.
7 When did it cease to be the trustee of the Sunseeker
8 Trust?---Privilege. I can't recall precisely, it was
9 sometime in 2019.
10 And who is currently or which entity is currently the trustee
11 of the Sunseeker Trust?---Privilege. Sunseeker Holdings
12 Pty Ltd.
13 So you're the sole director of that company, is that
14 right?---Privilege. No, that's incorrect.
15 Well, who are the directors of that company?---Privilege. It's
16 myself and Brigette Panetta.
17 Is the - who are the beneficiaries of the Sunseeker
18 Trust?---Privilege. If I recall correctly the Sunseeker
19 Trust is a discretionary trust and there are no
20 specifically named beneficiaries. That being said, I
21 don't have the trust deed in front of me, so I - - -
22 No?--- - - - I (indistinct words).
23 Now, Mayfair 101 as a group, I think, as I have seen in
24 documents, it appears that you describe yourself as the
25 managing director of that group, is that a fair thing to
26 say?---Privilege. Yes.
27 And you've held that role for a number of years, is that
28 right?---Privilege. Since inception.
29 And the staff of Mayfair 101 would include who, would you say?
30 Let's say in 2019?---(Indistinct) - - -
31 Two thousand - no, sorry, I withdraw that. Who would currently

1 be the staff of Mayfair 101?---Privilege. We'd have Greg
2 Wallace, Brigette Panetta, Ciaran Handy, Massi Zambon,
3 Arianna Ceribelli, Inga Tamminga, I don't know if I
4 (indistinct) Dylan Panetta, and myself.

5 All right. If you wouldn't mind, I noted some of those names,
6 but I've missed some of them, I just wanted to identify
7 who they were and what their roles are within the group.
8 You mentioned Greg Wallace, what is Mr Wallace's role in
9 the group?---Privilege. May I ask what this has to do
10 with the company's affairs?

11 Yes, well, you would say, wouldn't you, that 101 Investments
12 Pty Ltd is part of the Mayfair 101 Group?---Yes.

13 Yes. And you would say, wouldn't you, that 101 Investments
14 owns the Accloud shares, is that right?---Privilege.
15 Yes.

16 Yes. And you would say that the staff members whom you've
17 identified are persons who act in the administration of
18 101 Investments' affairs?---Privilege. I'm trying to
19 understand the relationship between the companies that
20 these questions relate to, being the IPO Holdings Group.

21 All right. So can we come back to Mr Wallace, what is his role
22 within the group?---Privilege. May I ask what this has
23 to do with the companies that are in liquidation?

24 No, you can't ask questions, Mr Mawhinney, you're here to
25 answer them. If you have an objection to the question
26 you may object to the question and her Honour will rule
27 on it.

28 HER HONOUR: Mr Mawhinney, do I take it that that's an
29 objection to the question?---Yes, it is, Associate.

30 Mr Galvin, could you just explain to me in brief terms what the
31 functions of the staff employed by - I think it was 101

1 Investments?

2 MR GALVIN: 101 - no, by the Mayfair 101 Group.

3 HER HONOUR: The Mayfair 101 Group, how that relates to the
4 examinable affairs of the IPO Wealth Group.

5 MR GALVIN: Because these are officers and employees of a group
6 with whom 101 - sorry, with whom the IPO Group, I should
7 say, the entities within the IPO Group, have transacted.
8 And those persons are persons we would - we may be
9 interested in asking questions of about the nature of the
10 transactions. So they're on one - - -

11 WITNESS: (Indistinct words) - - -

12 MR GALVIN: These are people on one side of the transactions to
13 which IPO, or in which IPO companies are on the other
14 side of the transactions.

15 HER HONOUR: Yes, I understand. Right, thank you.

16 Mr Mawhinney, did you want to say anything further about
17 the objection?---Privilege. I do.

18 UNIDENTIFIED SPEAKER: (Indistinct words) - - -

19 WITNESS: The bulk of the staff that you're referring to,
20 Mr Galvin, are not and were not employed at the time that
21 the IPO Wealth Holdings Group was operational.
22 Therefore, I consider that the question - the line of
23 questioning isn't relevant.

24 HER HONOUR: Well, Mr Mawhinney, whatever you just said - what
25 you said just then should have been directed to me as a
26 response to the - as part of the dealing with the
27 objection, and it's not part of - - -?---My apologies.
28 - - - your evidence. I'm satisfied, based on what Mr Galvin
29 has said, that the questions as to who the staff are and
30 what their function is is relevant. If you think that it
31 is pertinent, give what you've heard Mr Galvin say about

1 the purpose of the question, to identify whether they
2 were or were not employed at the time the relevant
3 transactions occurred, I expect that would be helpful
4 information to the liquidators. So perhaps as you're
5 answering the question you could indicate whether they
6 were employed by the Mayfair 101 Group at the time of the
7 relevant transactions with - - -?---Certainly.

8 - - - the IPO Wealth Group. Thank you, Mr Galvin.

9 MR GALVIN: Thank you, Your Honour. Mr Greg Wallace, firstly,
10 Mr Mawhinney, what is his current role within the Mayfair
11 101 Group?---Privilege. He's senior investor relations
12 manager.

13 Right. And how long has he been employed in the
14 group?---Privilege. Since May 2020.

15 You mentioned Brigette Panetta?---Privilege. Yes.

16 What is Ms Panetta's role in the Mayfair 101

17 Group?---Privilege. She's currently on maternity leave.

18 And what was her role in the group before she went on maternity
19 leave?---Privilege. She was a member of the client team.

20 And she was also involved in the IPO Wealth Group, wasn't
21 she?---Privilege. Only on a limited basis.

22 You mentioned Inga Tamminga, is her surname spelt T-a-m-m-i-n-
23 g-a?---Privilege. Correct.

24 And she's your sister, is that correct?---Privilege. That's
25 correct.

26 What is her role in Mayfair 101?---Privilege. Executive
27 assistant.

28 And how long has she held that role?---Privilege. If I recall
29 correctly it's since late 2019 or early 2020.

30 And what do her duties include doing?---Privilege. The
31 standard duties of an executive assistant.

1 So whose instructions does she act upon?---Privilege. Mine and
2 other team members.
3 Which other team members?---All of the other team members.
4 Okay. Well, so including Mr Wallace and Ms Panetta, for
5 example?---Privilege. That's correct.
6 Okay. Who else is there within the Mayfair 101
7 staff?---Privilege. There are no other staff that relate
8 to the companies in question.
9 No, who else is employed in the affairs of Mayfair
10 101?---Privilege. Ciaran Handy.
11 How do you spell his name?---C-i-a-r-a-n H-a-n-d-y.
12 What is his role?---Privilege. He's overseas (indistinct)
13 breach operations.
14 I see. Who else is within the group at Mayfair 101? Who's
15 next?---Privilege. Massimiliano Zambon.
16 Could you please spell his name for the transcript?---M - I may
17 get this wrong, but M-a-s-s-i-m-i-l-i-o-n a or o, I
18 believe.
19 All right?---(Indistinct response).
20 What's his surname?---Privilege. Zambon, Z-a-m-b-o-n.
21 What is his role in Mayfair 101?---Privilege. He works within
22 the Mayfair tourism team at Mission Beach.
23 I see. Next?---Privilege. Arianna Ceribelli.
24 How do you spell her name, please, for the
25 transcript?---Privilege. Yeah, A-r-i-a-n-n-a C-e-r-i-b-
26 e-l-l-i. Again, I may not have that exactly correct.
27 And what is her role within the Mayfair 101 group?---Privilege.
28 She also works specifically on the Mission Beach project.
29 Who else do you have?---Privilege. I believe that's it.
30 I see. Are any of these people typically involved in issuing
31 correspondence, for example, to investors, people who are

1 in the Mayfair 101 group?---Privilege. Yes.

2 Who amongst them is involved in issuing communications to

3 investors in the Mayfair 101 group?---Objection. May I

4 understand the line of questioning and how it relates to

5 the IPO Holdings Group, given that we are very familiar

6 that there are injunctions in relation to communicating

7 with former IPO Wealth fund - current IPO Wealth fund

8 investors?

9 I withdraw the question, if I may, Your Honour. Can I ask you

10 please - - -

11 HER HONOUR: Yes. Thank you, Mr Galvin.

12 MR GALVIN: Can I ask you, please, to look at court book

13 1480?---I'll need someone to bring that up on the screen

14 for me, please.

15 Yes. The associate will bring it up.

16 ASSOCIATE: Yes. Mr Galvin, would you like me to share the

17 screen now?

18 MR GALVIN: Thank you.

19 ASSOCIATE: What was the page number, Mr Galvin?

20 MR GALVIN: One-four-eight-zero.

21 ASSOCIATE: Thank you.

22 MR GALVIN: If you could scroll down (indistinct) please,

23 Mr Associate. Would you see there's an email - sorry,

24 back - a bit further back up. There's an email - thank

25 you. (To witness) There's an email there from Mayfair

26 101 to a person named Robert Storai, S-t-o-r-a-i, at

27 autoguild.com.au. Do you see that? It's dated

28 18 February 2021?---Privilege. I do.

29 Have you seen that email before?---Privilege. Yes.

30 When did you first see it?---Privilege. I would have seen it

31 the day that email was distributed out.

1 Yes. Who sent it?---Privilege. It was sent from our general
2 email address, Mayfair 101 (indistinct) mayfair101.com.
3 Thank you. Who sent it?---Privilege. It was communication
4 from our company. Which - may I understand your
5 question?
6 Are you having difficulty understand the question, are
7 you?---Privilege. Yes.
8 I'm asking you who pushed the send button on this
9 email?---Privilege. I think it's (indistinct) and I note
10 that Robert Storai isn't an investor in the IPO Wealth
11 fund.
12 Yes. Did you hear me ask a question about whether or not
13 Mr Storai was an investor in the group or not?---No, I
14 didn't. But I (indistinct) - - -
15 But you thought you'd volunteer that all the same, did
16 you?---Correct.
17 Yes, thank you. Who is Autoguild?---Privilege. I'm not aware.
18 Isn't Autoguild one of the biggest investors in the IPO
19 group - in the IPO Wealth Fund?---Privilege. Not to my
20 knowledge, it's not.
21 Now, you said Inga Tamminga, who is your sister, sent this
22 email out?---Privilege. That's correct.
23 How do you know that?---Privilege. Because I asked her to.
24 Right. And when did you do that?---Privilege. The date of
25 that email is dated at the top there; 18 February.
26 And why did you ask her to do it?---Privilege. Because we are
27 in the process of communicating the current status of the
28 companies to our broader database.
29 All right. Now, when you say, 'we are in the process', do you
30 mean you, James Mawhinney, are in the process of doing
31 that?---Privilege. The company is.

1 Yes. Who makes the decision, though, to communicate with these
2 investors? It's you, isn't it?---Privilege. I - I need
3 some clarity by what you mean with investors.

4 You don't know who the investors are? You don't know what that
5 term means? What do you mean?---Privilege. I understand
6 what an investor is, but Robert Storai was never an
7 investor in any of the Mayfair products, including the
8 IPO Wealth Fund.

9 Yes. But I didn't ask you about him. I asked you about
10 communications with investors, didn't I?---Correct. And
11 I - - -

12 All right, who - so who make the decisions about communicating
13 with investors? Is it not you?---Privilege. Yes, it is
14 me.

15 Do you see the document below? But if we could scroll down
16 please, Mr associate. (To witness) Document is headed,
17 'liquidated dying co faces court over Accloud share
18 dispute'. And then there's a paragraph under that. Just
19 take a moment to look at that, please?---Yes.

20 Did you draft that?---Privilege. Yes. Do you know where the
21 email address, robertstorai@autoguild.com.au, was
22 obtained from? How - - -?---Privilege - - -

23 How did Ms Tamminga know how to address the email?---
24 Privilege. There is an automatic system that we utilise.

25 I'm sorry, I couldn't quite understand that. What was
26 that - - -?---Privilege. There is this automatic system
27 that we utilise for mail distribution.

28 I see. And does that include the IPO Wealth Fund
29 investors?---Privilege. Not to my knowledge, no.

30 Are you sure about that?---Privilege. I haven't - we have a
31 significant database and I have not - I'm - I'm not aware

1 of all of the many thousands of people on that database.
2 To whom did you ask Ms Tamminga to send this
3 email?---Privilege. To the group's database.
4 Does the group's database include the IPO Wealth Fund
5 investors, or not?---Privilege. I don't know.
6 Could we please go to page 1483. There's email that - if we
7 could scroll down a bit, please. Just pause there, thank
8 you. (To witness) This is an email dated 18 February
9 2021, sent at 12.19 pm by jacket@autoguild. Do you know
10 who that might be?---Privilege. I suspect it may be Jack
11 Torcaso.
12 I beg your pardon, sorry? It's a little unclear, Mr Mawhinney,
13 I'm sorry?---I - privilege. I believe it's Jack Torcaso.
14 How do you spell his surname?---Privilege. T - T-o-r-c-a-s-o.
15 And who is he?---Privilege. I've never met Jack.
16 Well, do you know who he is, though? What do you - what his
17 employment is, for example, what his occupation
18 is?---Privilege. I believe he's involved in the car
19 yards.
20 Okay. Does that give you - does that remind you at all of who
21 Autoguild is?---Privilege. I'm not familiar. I've never
22 looked up Autoguild.
23 Is Jack Torcaso, or an entity that he's associated with, an
24 investor in the IPO Wealth Fund?---Privilege. I don't
25 know. All communications have been through Robert
26 Storai.
27 Is your answer to my question, 'I don't know'?---Privilege.
28 Yes.
29 If you scroll down a bit further, please. Just pausing -
30 sorry. Sorry. A little bit too far, Mr Associate. Just
31 there. Thank you. That's an email of 18 February 2021

1 at 10.58 am from Mayfair 101 to ceo@autoguild. Now, is
2 this an email that was sent by Ms Tamminga as
3 well?---Privilege. I don't know.
4 You don't know. You don't know who sent this
5 email?---Privilege. I haven't - I don't have this system
6 in front of me to look it up.
7 Do you see what's attached below, if you can scroll down,
8 please, Mr Associate. Just pause there, please. Do you
9 recognise that document? It's the same or similar to the
10 one we saw above, isn't it?---Privilege. Yes. It looks
11 the same.
12 And you drafted that document, didn't you?---Privilege. Yes.
13 And you drafted the media release that is referred to at the
14 bottom of that page?---Ah, privilege. I don't know where
15 that link goes.
16 All right. I wonder if we can click on that link, please,
17 Mr Associate.
18 ASSOCIATE: It's opened to a web link. I'll just have to pull
19 that up.
20 MR GALVIN: Thank you. Thank you.
21 ASSOCIATE: Mr Galvin, would you like that document to be
22 shown?
23 MR GALVIN: Yes, please.
24 ASSOCIATE: Yes. That's the web link.
25 MR GALVIN: All right. Are we able to open the press release
26 by clicking on the words 'press release'? Thank you.
27 Could you have a look at - you might need to expand it
28 for Mr Mawhinney. If you have a look at this document,
29 please, Mr Mawhinney (indistinct) - - -?---Privilege
30 (indistinct) yes.
31 - - - tell Her Honour whether that's a document that you

1 drafted?---Privilege. It is.
2 It is. Thank you. Can we now go back to the court book,
3 please, Mr Associate. P.1483, actually, please, the page
4 before. Thank you. That email. Thank you. Now, CEO
5 Autoguild received this email, apparently. Was an email
6 that I suggest to you was sent out on your instructions
7 because of the press release. Is that
8 right?---Privilege. Ah, objection. Um, associate, this
9 line of questioning is to deal with an email address that
10 was obtained independently, ah, the IPO Wealth Holdings
11 Group, and therefore, I'm of the view that this has no
12 relevance to this line of questioning.
13 Your Honour has seen the attachment to the email deals directly
14 with my clients and the Accloud share dispute. The
15 documents are undoubtedly relevant to the affairs of the
16 IPO Wealth Fund.
17 HER HONOUR: That's beyond doubt, Mr Mawhinney. It's clearly
18 relevant to the eligible - the examinable affairs of the
19 IPO Wealth Group company, so please answer the
20 question?---But associate, I understand that the line of
21 questioning was in relation to who it's being sent to,
22 not the actual contents of the document.
23 Well - - -?---I agree that the contents of the document does
24 pertain to the business and affairs of the company.
25 However, who it's sent to and how it's sent to - how it's
26 sent to them doesn't have any relevance to the affairs of
27 the company.
28 It does, Mr Mawhinney. An organisation that you're associated
29 with is making communications to people about the affairs
30 of the company. The rationale for sending it to such
31 persons is clearly relevant. I'll allow the question.

1 MR GALVIN: Thank you, Your Honour. Mr Mawhinney, was it you
2 authorised the sending of this email?---Privilege. Yes.
3 You asked Ms Tamminga to send it, did you?---Privilege. Yes.
4 And do you know whether she sent it to members of the IPO
5 Wealth Fund?---Privilege. I don't know.
6 Did you ask her to exclude investors in the IPO Wealth
7 Fund?---Privilege. I can't recall.
8 Do you think Ms Tamminga would recall if we were to ask
9 her?---Privilege. Ah, I don't know.
10 All right. Do you know what the purpose was of sending this
11 email to Autoguild or to - - -?---Privilege. Yes.
12 - - - (indistinct) CEO?---Yes. Privilege. To make everyone
13 on our distribution list aware the fact that we did in
14 fact pay for the Accloud shares that has been the subject
15 of this, um, the - the appointment of receivers and
16 managers and the subsequent winding up of the company.
17 All right. Mr Associate, could you please go to 1483. No,
18 1486, I beg your pardon.
19 ASSOCIATE: Which part, Mr Galvin?
20 MR GALVIN: Just a little bit further below, please. That's
21 it. Thank you. (To witness) Do you see there's an email
22 there dated 18 February 2021 sent at 10.58
23 am?---Privilege. Yes.
24 From Mayfair 101 to girlfriday@y7mail.com?---Privilege. Yes.
25 Do you know who - if we look above that, we'll see the name
26 Joey Campbell. Do you know who Joey Campbell
27 is?---Privilege. No. I don't.
28 Yes. Is Joey Campbell a lady who is an investor in the IPO
29 Wealth Fund?---Privilege. I don't know.
30 Did you authorise the sending of this email on 18 February at
31 10.58?---Privilege. Ah, I believe - I haven't seen the

1 body of the email. Can you scroll down?
2 Yes. If we could scroll down, please. Just pausing there for
3 the transcript, the associate has turned to p.1488 of the
4 court book, and there's a document there headed
5 'Liquidator Dye & Co faces court over Accloud share
6 dispute'. Another similar document to the other ones we
7 looked at a few moments ago. Is that right?---Privilege.
8 Yes. It is.
9 And that's a document that you drafted?---Privilege. Yes.
10 Yes. And you authorised Ms Tamminga to send it to investors.
11 Is that right?---Privilege. I authorised her to send it
12 to a database contact. It was obtained independent of
13 the, ah, business of the IPO Wealth Holdings Group.
14 How did you obtain that database?---Privilege. It has been
15 made up of many sources over many years.
16 Did it include, though, members of the IPO Wealth Fund or
17 investors in the IPO Wealth Fund?---Privilege. I can't
18 recall, and even if it did, those email addresses were
19 obtained independent of the trustee and independent
20 of - - -
21 I see?--- - - - (indistinct).
22 I see. And how do you know that?---Privilege. Because I set
23 the structure up to retain and develop the database.
24 How do you know that the 'girlfriday' email address here was
25 obtained by the Mayfair 101 Group independently of IPO
26 Wealth Fund's investment database or investor
27 database?---Privilege. If in fact she or he is an
28 investor, I presume it's a she by the name, um, then that
29 email address would have been obtained by a
30 website Mayfair 101 Group ran and controlled. The email
31 address would never have come via, ah, the trustee who

1 has subsequently claimed ownership of those email
2 addresses (indistinct).

3 Okay. Thank you. Now, were - do you know whether other
4 investors in the - persons who were investors in the IPO
5 Wealth Fund received these sorts of emails from you
6 earlier in this year?---Privilege. I don't know.

7 Did you take any steps to ensure that they were not sent such
8 communications?---Privilege. We took steps to make sure,
9 um, that any - that any potential breach of court orders,
10 um, or - or - that we complied with the court's
11 orders - - -

12 I see?--- - - - um, and we only sent to contacts on the mailing
13 list, um, that we had obtained through our own means.

14 Can I ask you, please - I don't think we have a copy of the
15 court order. Ms Papaleo will point it out to me if we
16 do. But if I can read to you the - - -

17 MS PAPAEO: We do.

18 MR GALVIN: - - - paragraph. Yes. Could we go, please, to
19 those orders - - -

20 MS PAPAEO: It's at - - -

21 MR GALVIN: - - - that were made in - - -

22 MS PAPAEO: - - - p.1490.

23 MR GALVIN: I'm sorry. I cut you off. What was that?

24 MS PAPAEO: One-four-nine-zero.

25 MR GALVIN: Thank you. Can we go to 1490. I see. Yes. Can
26 we scroll down a little bit. Just pausing there, we can
27 see that this is - these are the orders of Justice Robson
28 made on 17 September 2020; is that right, do you recall
29 that?---Privilege. Yes, I believe so.

30 If you scroll down a bit further. Just there. Stop, please.

31 You see your name is included amongst those who attended

1 before his Honour?---Privilege. Yes, I see.
2 Go down please through the orders, Mr Associate, to paragraph
3 11. Stop there, please. Do you see - this is the
4 transcript, paragraph 11 of the orders reads, 'James
5 Peter Mawhinney by himself, his servants, agents, and
6 employees is until further order restrained from
7 communicating with any unitholder of the IPO Wealth Fund
8 (a) in relation to or to seek support for any proposal
9 for the restructure of the IPO Wealth Fund or (b) in
10 relation to anything otherwise to do with the IPO Wealth
11 Fund, Vasco, or the defendants by using information as to
12 the identity of or contact details of that unitholder
13 which was provided to Mr Mawhinney by IPO Wealth Pty
14 Ltd.' Do you see that order?---Privilege. Yes.
15 Yes. Did you understand it when it was made?---Privilege. I
16 understand it, yes.
17 You still understand it, do you?---Privilege. I do and we've
18 been fully compliant with it.
19 I see. All right. Thank you. The database that you've been
20 referring to that you - you say there was a database that
21 was used to identify persons to whom Ms Tamminga sent
22 this email correspondence. Where is that database
23 located?---Privilege. In the cloud.
24 In the cloud. And you're not able to say whether it includes
25 persons who were investors in the IPO Wealth
26 Fund?---Privilege. It contains a list of email addresses
27 only.
28 I'm sorry. I couldn't quite hear that?---Privilege. It
29 contains a list of email addresses only.
30 Email addresses only. I see. And did any of those email
31 addresses not come from people because they were

1 investors in the IPO Wealth Fund?---Privilege. No, at
2 the time we had inquiries (indistinct) they were not
3 investors in the IPO Wealth Fund when they were obtained.
4 Yes, I see. Now, how do you know where Ms Tamminga got the
5 email addresses from?---Privilege. They're stored in the
6 group's cloud database of email contacts.
7 Yes. Did you hear my question, was it clear to
8 you?---Privilege. Restate the question, please.
9 How did Ms Tamminga know who to send the emails do, how did she
10 know which email addresses to use and where to get them
11 from?---Privilege. There's a bulk send feature in the
12 system that we use.
13 You might need to lean a bit closer to your microphone,
14 Mr Mawhinney, or - - -?---Sorry. Yes. Yes. I said
15 there's a bulk send feature within the email platform
16 that we use.
17 And does that bulk send email listing include IPO Wealth Fund
18 investors?---Privilege. You've asked me that question
19 multiple times. I said I don't know.
20 You don't know. All right. Would Ms Tamminga know, do you
21 think, if we were to ask her?---Privilege. No, she
22 wouldn't.
23 All right. Who would know?---Privilege. None of the current
24 staff, actually.
25 So no - well, what about former staff?---Privilege. Possibly,
26 yes.
27 Who amongst the former staff?---Privilege. Our marketing
28 manager Kristiina Lumeste.
29 So - - -?---Well, former marketing manager. Sorry.
30 Yes. How do you spell her surname?---L-u-m-e-s-t-e.
31 The email addresses of people who are - no, I withdraw that. I

1 withdraw that, Your Honour. I will move on. Now, there
2 are currently proceedings in the Supreme Court of
3 Victoria relating to the Accloud shares; is that right,
4 you're aware of that?---Privilege. I believe so, yes.
5 Yes. And proceedings have been commenced by 101 Investments
6 Ltd in the British Virgin Islands in relation to the
7 Accloud shares as well; is that right?---Privilege. Yes.
8 I just want to go a little bit back over the history of the
9 acquisition of the shares. The shares were initially
10 registered in the names of various entities within the
11 IPO Group and Online Investments; is that
12 right?---Privilege. Yes.
13 Now, as I understand it, and I appreciate you may not recall
14 these exact figures, but I want to put them to you
15 nonetheless, there were 5,160,428 registered to IPO
16 Capital Pty Ltd. They're Accloud shares I'm talking
17 about; do you recall that?---Privilege. I don't have the
18 exact number.
19 All right. There were 5,250,000 registered to IPO Wealth
20 Holdings No.3, the SPV 3 or IPO 3?---Privilege. Again, I
21 can't recall the exact number.
22 Six million shares were registered in the name of IPO Holdings
23 No.6 Pty Ltd or IPO 6?---Privilege. That sounds correct.
24 And there were one and a half million shares registered, or
25 1,595,745 registered to IPO Wealth Holdings Pty Ltd, the
26 holdings company?---That's correct.
27 And then Online Investments itself had 3,243,827 shares
28 registered to its name?---Privilege. I can't recall the
29 exact number.
30 The total number of those shares adds up to 21,250,000; does
31 that seem right to you?---Privilege. Yes, it does.

1 The number of those shares acquisitions were the result of a
2 deed of settlement and release. Can we go please to page
3 130 of the examination book, please, Mr Associate. Just
4 scroll slowly through that, please. Do you recognise
5 this document, Mr Mawhinney?---Privilege. Very vaguely.
6 If I recall correctly, it's from 2016.

7 All right?---So five years ago.

8 All right. Well, let's just look at the execution, please,
9 Mr Associate, on page 140. According to that page, this
10 document as executed on 1 September 2017; does that seem
11 about right?---Privilege. Yes, that looks like it is
12 2017.

13 If we scroll back up, please. Can we go to the recitals,
14 please, on page 133. And scroll down, please, to clause
15 1.2. A bit further, please. That's fine. Thank you.
16 You can see there that according to these recitals,
17 equity funding had been provided to Accloud in the amount
18 of \$905,000 by Online Investments. Do you see
19 that?---Privilege. Yes.

20 Is that the case?---I can't recall, but according to the
21 document it looks like it was the case.

22 Would the document be likely to represent something that's not
23 true, do you think, is it possible - - -?---Privilege.
24 No. No, I don't believe that it would. I believe what
25 is stated there is, in fact, what occurred.

26 According to paragraph (b), IPO Capital had provided a loan of
27 \$348,544; is that right?---Privilege. That's what the
28 document says.

29 But is it right?---Privilege. Yes. I don't have any reason to
30 believe why it wouldn't be right.

31 According to paragraph (c), IPO Capital had invested \$200,000

1 to acquires shares; is that right?---Privilege. Yes.

2 Again, that's what the document says.

3 And then there was some services rendered by the parties; do

4 you know what that's a reference to?---Privilege. Yes.

5 What services were they, and who provided them, and to whom

6 were they provided?---Privilege. Yes. Those services

7 provided to the cloud to assist with its listing process,

8 capital raising process. We assisted with the relocation

9 of the business to London and identified potential board

10 candidates for the company.

11 According to the passage below those sub-paragraphs, 10 million

12 fully paid ordinary shares in Accloud were to be issued

13 to IPO Capital and Online Investments, IPO Capital

14 receiving 5,162,428 and Online Investments receiving

15 4,839,572 shares. Is that what happened?---Privilege. I

16 believe it occurred over - just hard to recall - so I

17 believe it was a portion of the shares, if I recall

18 correctly, out of Online Investments that was

19 subsequently acquired by the IPO Holdings Pty Ltd, which

20 I believe was the 1.59, 57, (indistinct) million shares

21 or thereabouts.

22 We might - thank you. We might come back to that. Could we

23 have a look, please, at p.146, Mr Associate. Just scroll

24 down there, please. Actually, if we could go, please, to

25 p.153. Go to the bottom of that page, please. Actually,

26 if we could go down even further to 155. Now, I don't

27 think we have the - no, I'm sorry to do this to you,

28 Mr Associate. Could we please go back to 153. Thank

29 you. If we could just look through that email, please,

30 Mr Mawhinney, 8 July 2019, sent at 5.04 am by you to

31 Mr Van Wegen. Mr Van Wegen was a principal at Pinnacle

1 Group; is that right?---Privilege. Yes, he is. Or he
2 was at the time, as far as I know.

3 Now, according to this email, you advised that you had met with
4 Ross James, the founder of Accloud, that day for an
5 update on the listing of the Accloud shares. Is that
6 right?---Privilege. Yes. I would have if that's what
7 the email says, which it does.

8 And do you recall that you were told that there was a 50 per
9 cent chance that the shares would list that month and a
10 50 per cent chance that they would list in September
11 2019?---Privilege. That was my assessment of our
12 conversation.

13 Yes. And that was what you anticipated would happen at that
14 time; is that right?---Privilege. As with all these
15 things, that was my best estimate at the time.

16 All right. Now, under the heading Current - you said there
17 were two things that needed to be resolved. The first
18 one was current shareholding. 'Ross is happy to see if a
19 correction can be made to the register to reflect the
20 fact that we hold more than 10 per cent of the company.
21 Can you send me an outline of what we need to do here,
22 please?' What's that a reference to? What was the
23 concern? What was the thing that needed to be
24 resolved?---Privilege. I can't recall. Privilege. If I
25 recall correctly, 10 per cent was, um, based on the tax
26 advice that Pinnacle had provided us. And if the group
27 held more than 10 per cent of the company in a particular
28 entity, um, then the shares could be sold to BVI company
29 without - or potentially without incurring a capital gain
30 for the sale of those shares.

31 Under the heading New Rare Opportunity, you stated that 'Ross

1 needs to dilute down to less than 50 per cent of the
2 company to be EIS compliant'. What does EIS
3 mean?---Privilege. If I recall correctly, it's a
4 special, um - it's a classification of a business fitting
5 - I can't remember what EIS stands for, but it provides
6 certain tax breaks for the company and its shareholders.
7 In any event, you said that this meant that he needed to
8 offload somewhere between five and - I suggest to you it
9 should have been six - five and six million shares,
10 rather than five to 9.6 million shares. Is that
11 right?---Privilege. That's what the email says.
12 Well, what's the 9.6 million? Is that a typographical error?
13 Should it have said five to six million
14 shares?---Privilege. This transaction went ahead, so I
15 don't understand the relevance.
16 Thank you. Do you think the five to 9.6 should be five to six
17 million shares?---Privilege. No, I can't recall.
18 You don't know what the 9.6 million means?---Privilege. It -
19 that range would've been - that - that range was provided
20 because that was my understanding of what was required at
21 the time. I didn't hold at the time a copy of the
22 current share register. This was based on information
23 that I'd gleaned in the discussions.
24 You said that you'd entered into a deal that, 'we buy the
25 shares', those shares, for £1.30 each. Do you see
26 that?---Privilege. I can see that.
27 Was that true?---Privilege. The transaction didn't proceed.
28 Let me ask the question again in case you're having difficulty
29 following. Was it true?---Privilege. Was what true?
30 That the deal you had agreed to was that you buy them for £1.30
31 each?---Privilege. It was a verbal agreement that was

1 held. It was never documented.

2 Let me ask you one more time, Mr Mawhinney. Is it true that
3 the deal you had agreed was that you would buy the shares
4 for £1.30 each?---Privilege. It was agreed verbally,
5 yes.

6 All right. Could we please go to - that was on 8 July. Could
7 we go then please to an email on 10 July at court book
8 151. Pardon me. Sent at 4.20 am by Mr Mawhinney to
9 Mr Van Wegen. (To witness) You said, 'at the moment, it
10 is likely we will be subject to escrow by holding more
11 than 10 per cent of the cloud. Having an allocation of
12 shares in the hands of a trusted third party would
13 provide us with some liquidity. Obviously, keen to
14 structure this in a tax effective way'. What did you
15 mean by all of that?---Privilege. Your Honour, may I - I
16 firstly object here. This is correspondence between
17 myself and our accountants. And my understanding is, it
18 is, therefore, privileged. Would you mind enlightening
19 me as to whether or not that is - is not the case?

20 HER HONOUR: Well, what privilege are you relying upon there,
21 Mr Mawhinney?---Privilege. This is a form of, I believe,
22 legal professional privilege. It's no different to
23 communication with lawyers and accountants. They are
24 professional services that we'd engaged in for advice on
25 a range of matters.

26 Well, I'm not sure that accountants would be subject to the
27 legal professional privilege. Is there some other
28 species of privilege that you would rely
29 upon?---Privilege. I don't know the exact terminology,
30 but I would've expected that, as a professional services
31 organisation of a similar calibre to a law firm, that the

1 same privilege would be afforded.

2 Mr Galvin?

3 MR GALVIN: I'm not aware of an accountant's privilege. I will
4 say that I've heard (indistinct) before, but I'm not
5 aware of any authority to support its existence.

6 WITNESS: Privilege. I'm happy to proceed. That being said,
7 if it subsequently found that this is privileged
8 information, then I'd ask that that get struck out.

9 MR GALVIN: Well, the difficulty with that, Mr Mawhinney, is
10 these documents have been produced. If there was any
11 privilege in them that didn't belong already to the IPO
12 group of companies, that privilege has been waived. And
13 that's a submission I make to Your Honour as
14 well?---Privilege. This email here actually had nothing
15 to do with the IPO Holdings Group anyway.

16 Well, that's entirely a different question and a matter for
17 argument. It's not a matter of privilege.

18 HER HONOUR: No. Well, if there was to be a claim to privilege
19 in this document, then that claim ought to have been made
20 before the document was produced. Mr Galvin, I'm just
21 wondering if it would possible for you to return to this
22 or other like documents after lunch.

23 MR GALVIN: Yes.

24 HER HONOUR: And it will give us an opportunity to consider the
25 question.

26 MR GALVIN: Yes. I'm happy to do that, if that's convenient.

27 HER HONOUR: I just - with Mr Mawhinney not being
28 represented - - -

29 MR GALVIN: Yes.

30 HER HONOUR: - - - I don't want to be in a position where I'm
31 trying to shut the gate after the horse has bolted. I'd

1 rather - I think if he's asserted a privilege that
2 requires me to have a bit of a look at that before I can
3 rule on the objection.

4 MR GALVIN: If it please, Your Honour. Of course.

5 WITNESS: Thank - thank you, Your Honour.

6 MR GALVIN: Thank you. Now, I will assume that the same point
7 is taken in relation to the email beginning at the bottom
8 of p.149, please, Mr Associate. Just pause there,
9 please. This is an email sent by Mr Van Wegen to you at
10 2 am on 11 July 2019. Would you scroll through so
11 Mr Mawhinney can see its content, please. You can direct
12 the associate, Mr Mawhinney, when to stop?---Yeah.
13 Privilege. It's at - Your Honour, this is the - the same
14 category as the former document.

15 Thank you, Mr Mawhinney. All right. Could I ask the
16 associate, please, to go to p.156 of the court book.
17 This is a share sale agreement between IPO Wealth
18 Holdings and IPO Wealth Holdings number 3. If we could
19 scroll through that, please, slowly to the next page.
20 Just pausing there, please. This is an agreement that
21 was made in its terms to be effective on 30 October 2017.
22 Is that right?---Privilege. Yes. That's what it says.

23 And you - yes. You remember this document, do you, this
24 agreement?---Privilege. That (indistinct words). It was
25 a few years ago now.

26 This is one of the documents that's referred to in the email
27 which I just took you to that Mr Van Wegen sent you,
28 isn't it?---Privilege. I didn't observe the contents of
29 the previous email.

30 Well, we might come back to that later. You see that it
31 provides for the transfer of some shares. Shares are

1 defined at the bottom of that page to mean the shares in
2 the company described in schedule 2. Just scroll down,
3 please, Mr Associate, to the bottom of that page.
4 Definition of shares. Just pause there, please. If you
5 could scroll back up a little bit too, please, to get -
6 that's it. Thank you. The cash component is defined as
7 \$1. Completion date means 30 October 2017, and the
8 shares are those described in schedule 2 which will go to
9 straight away. If we go, please, to p.167. One million,
10 five hundred and ninety-five thousand, seven hundred and
11 forty-five shares in the company. That's in Accloud. Is
12 that your understanding? If we go back to schedule 1,
13 the page before, we'll see that?---Privilege. Yes.
14 Accloud PLC.

15 That's right. Accloud PLC. Thank you. Now, this provided for
16 the transfer of that one and a half million-odd shares to
17 IPO 3 from IPO Wealth Holdings. Is that
18 right?---Privilege. Yes. I believe so.

19 It was a transfer of the beneficial ownership of those shares,
20 wasn't it?---Privilege. Yes.

21 Can we go, please, to - - -?---So - sorry, Mr Galvin. Um, if I
22 recall correctly, there was a bare trust deed that
23 related to these shareholdings as well. I just don't
24 have the benefit of the documentation in front of me.

25 All right. Thank you. I can get some instructions about that.
26 At p.156 of the court book - sorry. That's not right.
27 At p.168. It sounds like we're in a shopping centre,
28 Your Honour, for a moment there. I don't know what that
29 is. (To witness) Share sale agreement between Online
30 Investments and IPO Wealth Holdings number 3. A similar
31 document, if we scroll down to the next page, see this is

1 also made effectively on 30 October 2017. It has similar
2 terms. You recall this document?---Privilege. Yes. I -
3 I do.

4 If we could go, please, to p.179. The number of shares being
5 transferred here are 3,243,827 shares in the company, and
6 that was a transfer of the beneficial ownership of those
7 shares in Accloud from IPO Wealth Holdings to IPO 3. Is
8 that right?---Privilege. Ah, I believe so. As I said a
9 minute ago, ah, I believe that there was a bare trust
10 deed (indistinct) um, that related to this as well.

11 Can we go to the next - the trust deed that you're talking
12 about, who are the parties to that?---Privilege. I - I -
13 I - I can't recall specifically.

14 All right. Can we go to the next page, please, 180. This is
15 the third and last of these documents I was going to take
16 you to. It's IPO Capital and IPO Wealth Holdings number
17 3 is the purchaser, IPO Capital the vendor. If we go to
18 the next page, you'll see it's a very similar document
19 with similar definitions, p.181. And just scroll
20 down?---So I'm familiar with the document.

21 I beg your pardon?---I said I'm familiar with the document.

22 All right - - -?---They have the same - - -
23 - - - thank you?--- - - - similar format as the other two
24 documents.

25 If we go to p.191, we'll see that this provided for the
26 transfer to IPO 3 of 5,160,428 shares. That right?---Ah,
27 I can't see the page. Sorry.

28 I'm sorry. P.191?---Privilege. Yes.

29 Now, the shares in these three agreements total 10,000,000
30 shares in number. Do you agree with that?---Privilege.

31 I don't have a calculator in front of me.

1 So - - -?---Privilege. It - it would - would be close to
2 10,000,000.

3 Yes. Well, all right. I think it's exactly 10,000,000, but we
4 don't need to - don't need to test your maths,

5 Mr - - -?---Sure.

6 - - - Mawhinney. Thank you. So in addition to these shares,
7 the 10,000,000 shares, there were some shares that were
8 purchased by IPO 3 with funds provided to it by IPO 3 or
9 - sorry, with funds provided to it by IPO 6 or perhaps
10 another entity. Do you recall that?---Privilege. Ah, I
11 don't believe that the shares in IPO - - -

12 No. I should - - -?--- - - - 3 are - yes.

13 I'm sorry. I withdraw that. I've confused myself. There were
14 funds in - further funds invested by IPO 3 or IPO 6 which
15 led to the acquisition of a further 11,250,000 shares,
16 5,250,000 of which were held by IPO 3, and 6,000,000 of
17 which were held in the name of IPO 6 but on behalf of IPO
18 3, acquired from Northvale. Does that ring a
19 bell?---Privilege. Yes. It does.

20 And was it in relation to that that there might have been a
21 bare trust deed?---Privilege. Yes. I believe so.

22 When I say that, I mean the 6,000,000 shares that were
23 registered in the name of IPO 6?---That's correct.

24 So if there are 10,000,000 shares under those three agreements
25 I took you to a - took you to a moment ago and there's
26 additional 11,250,000 shares, the total amount of shares
27 which were transferred to IPO or beneficially owned by
28 IPO 3 was 21,000 - sorry, 21,250,000. Is that
29 right?---Privilege. Yes.

30 Now, can we go, please, to p.192, the next page. There's an
31 email - just scroll a bit further down, please,

1 Mr Associate. There's an email from you to Mr Van Wegen
2 dated 14 June 2019 sent at 8.26 pm?---Privilege. I - may
3 I stop there, Your Honour - Your Honour. This is the
4 same category as, ah, the previous emails we discussed.

5 All right.

6 HER HONOUR: Mr Galvin, I'm just wondering if now would be - I
7 was planning on taking a short break, mainly for the
8 witness's benefit but also the rest of us. Would it be
9 convenient to break now for five minutes or so? I've
10 been having a look at this question while you've been
11 continuing with other matters.

12 MR GALVIN: Yes.

13 HER HONOUR: We will work out when we come back whether we're
14 in a position to deal with it when we come back at, say,
15 just after 10 to 12. Is five minutes a long enough break
16 for you, Mr Mawhinney?---Yes. That's fine. Thank you,
17 Your Honour.

18 And we'll either deal with it then or after the lunch break.

19 MR GALVIN: Thank you. Thank you.

20 HER HONOUR: I'll just - all right. I'll leave it at that for
21 the moment. Thank you. Mr Associate, could you stand
22 the court down until just after 10 to 12, please.

23 (Short adjournment)

24 HER HONOUR: All right. Thank you. Perhaps if I could just
25 make a couple of comments at the moment about this issue
26 of whether communications between a person and their
27 accountant are privileged. I'll just say these comments
28 at the moment, and I'll find out if Mr Mawhinney wants an
29 opportunity to review the situation over lunch, before
30 coming back to it. I just don't want to put him too much
31 on the spot.

1 But the legal professional privilege arises through
2 operation of the common law and through the Evidence Act.
3 Could observers could please put themselves on mute.
4 Thank you. And that privilege applies to lawyers. It
5 doesn't apply to any other persons. Now, that's well
6 understood in the law.

7 The reason I hesitated before was because I have
8 heard of some aspects of a tax accountant's material and
9 communications with clients being protected in some way,
10 and that's why I wanted to check. In the time available
11 I have checked that, and there's an administrative
12 guideline issued by the Australian Tax Office, which are
13 often referred to as the accountant's concession, which
14 protects certain types of documents from being
15 compulsorily required to be produced to the Commissioner
16 of Taxation by the taxpayer or by the accountant.

17 It's, as far as I'm aware, not in any legislation,
18 but in an administrative guideline that applies solely in
19 respect of documents that the Commissioner might
20 otherwise require a taxpayer or their accountant to
21 produce. That's the only type of protection that exists,
22 so far as I'm aware, in respect of accountants' material,
23 and my preliminary view is that unless Mr Mawhinney can
24 point to something else, the documents that you were
25 seeking to take him to before, Mr Galvin, are not
26 privileged. Are you on mute, Mr Galvin?

27 MR GALVIN: No, Your Honour. I appreciate that Mr Mawhinney
28 needs an opportunity to consider this, but I should
29 mention - and we will provide to him a copy of the
30 High Court's judgment in Baker v Campbell (1983) HCA 39,
31 and I think the relevant passage is paragraph 22. I just

1 wanted to check that. Ms Papaleo said it's paragraph 22,
2 but I'm not sure that's - - -

3 MS PAPAEO: I'm sorry. I said 21.

4 MR GALVIN: Twenty-one. I beg your pardon - is paragraph
5 number 21.

6 HER HONOUR: Yes. Thank you. I'll have a look at that as
7 well. Mr Mawhinney, do you want an opportunity to have a
8 look at that over the lunch break?---Yes, Your Honour,
9 given I'm not represented. I'll appreciate that
10 opportunity. Thank you.

11 Yes. All right, then. Mr Galvin, if that's interfering too
12 much with the matters that you want to question
13 Mr Mawhinney about, we could break earlier for lunch than
14 we normally would if that was of assistance. I - - -

15 MR GALVIN: I'm grateful for that. Look, I can probably
16 proceed, get through a fair bit without that, but let's
17 see how we go.

18 HER HONOUR: All right, then.

19 MR GALVIN: And what I might do is - I don't know that we have
20 Mr Mawhinney's email address. We're happy to provide a
21 copy of the judgment to Your Honour so that the court can
22 send it to him if that's convenient and is - - -

23 HER HONOUR: Yes, certainly. Thank you. If you or your
24 instructors could send it to my associate, he'll be able
25 to forward it to Mr Mawhinney, and I'm fairly - I think
26 Mr Mawhinney has probably given his email address to my
27 associate. Yes. He's had email contact with my
28 associate this week. So, yes, that would be helpful.
29 Thank you, Mr Galvin.

30 MR GALVIN: All right. Well, we'll do that. Thank you. Thank
31 you, Your Honour. Now, I just wanted to - what I'm

1 trying to do, Your Honour, is exclude from consideration
2 for the time being documents that I suspect Mr Mawhinney
3 will make similar claims in relation to.

4 HER HONOUR: All right. Do you want me to stand down for a few
5 minutes while you do that or are you (indistinct)?

6 MR GALVIN: No. No. I don't think that's necessary.

7 HER HONOUR: All right.

8 MR GALVIN: I think I can move on.

9 HER HONOUR: All right.

10 MR GALVIN: Thank you.

11 HER HONOUR: That's fine, Mr Galvin. I know that that probably
12 means that there will be a bit of a gap before you're
13 ready to ask your next question, so that's fine.

14 MR GALVIN: If I could ask the associate, please, to go to a
15 document at p.417. And if we could just scroll through
16 that letter, please, slowly. If I can identify it for
17 the transcript. It's a letter from Carey Olsen, C-a-r-e-
18 y, Olsen, O-l-s-e-n, dated 24 December 2020, addressed to
19 Dye & Co, and just - if we could go back to the top of
20 the letter for the moment, please. Have you seen that
21 letter before, Mr Mawhinney?---Privilege. Yes.

22 It's a letter that was sent by Carey Olsen, who are solicitors
23 in the British Virgin Islands; is that right? Or
24 Singapore, rather?---Privilege. Singapore.

25 Singapore. And they act for 101 Investments; is that
26 right?---Privilege. I can't quite recall.

27 Just if we could scroll down a little bit, please. Just
28 pausing there. You see the first sentence in the letter:
29 'We act for 101 Investments Ltd'?---Privilege. Yes.

30 Do you know who instructed that firm to act?---Privilege. 101
31 Investments Ltd.

1 No. Which individuals? Sorry?---Privilege. The director of
2 101 Investments Ltd.
3 Who's the current director of 101 Investments Ltd?---It's a
4 professional - privilege. It's a professional services -
5 director services firm based in the British Virgin
6 Islands.
7 Is there a single person or individuals persons who are
8 identified as directors of the company?---Privilege. Not
9 to my knowledge.
10 And how do they make decisions about how to act for the company
11 or represent its interests?---Privilege. They have a
12 standard decision-making process, from what I understand.
13 Right. Where did you get that understanding from?---Privilege.
14 From my, I guess, correspondence with them in recent
15 months.
16 Your correspondence with whom exactly?---Privilege. The
17 company that I was - that is currently appointed as
18 directors.
19 Where's that company located?---Privilege. I believe it's in
20 the British Virgin Islands. I've obviously never been
21 there, so I don't know specifically.
22 Have you spoken to anybody from this firm?---Privilege. I
23 have.
24 What's the name of the person you spoke to?---Privilege. Nick
25 Lane.
26 Nick Lane, L-a-n-e?---Privilege. Correct.
27 And how did you come across this company and
28 Mr Lane?---Privilege. On recommendation from
29 Carey Olsen.
30 How do you spell - Carey Olsen, from the firm, you
31 mean?---Privilege. Correct.

1 Mr Graham Cook had been the sole director or at least one of
2 the directors of 101 Investments, hadn't he?---Privilege.
3 That's correct.
4 When did he cease to be a director?---Privilege. If I recall
5 correctly, early 2020. Can't quite recall specifically.
6 And why did he cease being a director? Do you
7 know?---Privilege. I'm not aware.
8 You're ultimately the controlling mind of 101 Investments;
9 isn't that right?---Privilege. No, it's not the case.
10 Don't they - who are the - I withdraw that. Mr Nick -
11 Nicholas, of the - Mr - but I forgot the name of the
12 director I just mentioned. What was his name? Cook,
13 Mr Cook. Mr Nicholas Cook was his son; is that
14 right?---Privilege. As far as I know. Again, I've never
15 met them. Sorry. I've never met Nicholas. So I - I
16 don't know. They - they share a common surname.
17 Are you saying that you didn't - you don't know whether they
18 were father and son?---Privilege. Correct.
19 Did Mr Nicholas Cook become a director?---Privilege. Yes, he
20 did.
21 How did that happen?---Privilege. Standard replacement and
22 resignation process of - like any company.
23 Who executed that process?---Privilege. I don't know for
24 certain, but I expect it would have been the registered
25 agent of the company at the time.
26 Who's the registered agent of the company?---Privilege. Do you
27 mean now or when that occurred?
28 When that occurred?---Privilege. S - SRM is all I recall. I -
29 I - I didn't make that appointment. Pinnacle Advisory
30 Group made the appointment. So it's probably best raised
31 with them.

1 How did Pinnacle Advisory Group know to make an appointment?
2 Who told them to make an appointment?---Privilege. It
3 was their recommendation that at the time we incorporate
4 the BVI structure with various suppliers that they had
5 developed existing relationships with.
6 It was their recommendation; is that what you're saying?
7 Pinnacle's recommendation?---Privilege. Correct.
8 But it wasn't their decision, was it?---Privilege. It was a
9 written recommendation provided by Pinnacle.
10 Yes. Thank you. It was a written recommendation, but it
11 wasn't their decision, was it?---Privilege. No, it
12 wasn't.
13 It was your decision, wasn't it?---Privilege. Yes.
14 This current organisation - I can't remember the name of the
15 current - it's a corporate director, is it, of the
16 company in the British Virgin Islands?---Privilege.
17 Correct.
18 And it was appointed on the recommendation of Carey Olsen; is
19 that right?---Privilege. Correct.
20 Now, they made the recommendation, but you made the decision,
21 didn't you, to appoint this organisation as a corporate
22 director? Is that right?---Privilege. That's correct.
23 And what was your reason for appointing this organisation as a
24 corporate director of 101 Investments?---Privilege.
25 Because Nicholas Cook had tendered his resignation and
26 we, therefore, needed to obtain a new director.
27 Why did he - well, when did he tender his resignation and why
28 did he tender it?---Privilege. I can't recall
29 specifically when, but he did give us several months
30 notice. Privilege. Why he did it, I don't know.
31 I see. Did you speak to anybody about his

1 resignation?---Privilege. In - in what way do you mean?
2 Did you speak to any person about his resignation at the time
3 you became aware of it?---Privilege. Yes.
4 To whom did you speak?---Privilege. Carey Olsen.
5 I see. All right. If we come back to Carey Olsen's letter,
6 please. If you scroll down a bit, please, you will see
7 that this is a response to a letter sent by Thomson Geer
8 on behalf of the liquidators demanding payment of
9 \$12,628,310; do you see that?---Privilege. Sorry. Do
10 you mind just repeating the first bit.
11 Do you see the - the first part of the letter deals with a
12 demand for the payment of \$12,628,310 said to be owing by
13 101 Investments to IPO Wealth Holdings?---Privilege. It
14 says, 'Our client denies that it owes the sum of \$12.628m
15 or any sum at all'.
16 That's right. It's a response to the liquidator's claim, isn't
17 it?---Privilege. That's correct.
18 The next part of the letter deals - well, most of the letter
19 deals with the part that's underlined in that page, 'The
20 transaction between our client and IPO 3, pursuant to the
21 share sale agreement dated 4 October 2019'; do you see
22 that?---Privilege. Yes.
23 It says that according to this - according to Carey Olsen, in
24 order to fund the purchase of the shares, 101 Investments
25 entered into a facility agreement with Eleuthera Group;
26 do you see that?---Privilege. Yes.
27 And is that what happened?---Privilege. It is, yes.
28 And when did 101 Investments enter into that facility agreement
29 with Eleuthera?---Privilege. I can't recall.
30 They assert that - if we go further down, please, Mr Associate,
31 to the bottom of that page, that they're, 'instructed

1 that the acquisition of shares was for valuable
2 consideration and at fair market price'; do you see
3 that?---Privilege. Yes.

4 Who gave them that instruction?---Privilege. Which
5 instruction?

6 The instruction that the acquisition of the shares was for
7 valuable consideration and at a fair market
8 price?---Privilege. That has been the case since this
9 was - well, since the transaction was contemplated.

10 I'm sorry, Mr Mawhinney, if my questions are a little unclear.

11 I'm now sure how I can make it simpler for you, but let
12 me just try again. Who instructed this firm that the
13 acquisition of the shares was for valuable consideration
14 and at fair market value?---Privilege. It was
15 instructions from the company 101 Investments Limited.

16 Right. And who at 101 Investments gave that
17 instruction?---Privilege. I don't know.

18 You don't know. You sure it didn't come from you?---Privilege.

19 I've had much correspondence with Carey Olsen in relation
20 to this claim.

21 Did you say you've had much correspondence with
22 them?---Correct.

23 Why?---Privilege. Because I'm the ultimate beneficial owner of
24 the company.

25 Right. And what's been the purpose of those communications?
26 Without telling me what the communications are, what has
27 been the purpose of the communications?---Privilege. The
28 overarching purpose of the communications was to ensure
29 that the investments in the M+ Fixed Income product
30 issued by M101 Holdings Proprietary Limited, the
31 (indistinct) are protected, given that their investment

1 moneys were applied to the acquisition of these shares
2 from IPO Wealth Holdings No.3.

3 Now, the - did you see that these - according to this letter -
4 if we scroll down. First of all, the last sentence on
5 that page reads, 'They were paid for in full in various
6 tranches from June 2019 to November 2019'; do you see
7 that?---Privilege. Yes.

8 Is that true?---Privilege. Absolutely.

9 We can go down to the next page, please. There's a table at
10 the top there, which sets the total of the amounts that
11 were paid, and the suggestion is that the - that
12 Sunseeker Trust made payments to IPO Wealth Holdings
13 between September - sorry, between June 2019
14 and September 2019, totalling \$13,880,000; do you see
15 that?---Privilege. Yes.

16 Is that - and is that what happened, and were those payments
17 made?---Privilege. Yes. The bank statements confirm
18 that.

19 And you see the next one is Eleuthera made payments to IPO
20 Wealth Holdings totalling \$5,580,672 between September
21 2019 and November 2019; is that true?---Privilege. Yes.
22 Again, the bank statements confirm the sale.

23 That's all confirmed by the bank statements, is it?---Correct.
24 Right.

25 HER HONOUR: Mr Galvin.

26 MR GALVIN: Yes.

27 HER HONOUR: I'm so sorry to interrupt. May I ask whether
28 Mr Mawhinney could move his laptop a little bit closer.
29 We've having some trouble hearing at our end?---Sure. My
30 apologies.

31 Thank you.

1 MR GALVIN: Now, Mr Mawhinney, the transaction that was entered
2 into - if we go back to the page above. Just stopping
3 there, please. You see the sentence beginning, 'As you
4 would be aware', towards the bottom?---I do.
5 And then the final sentence of that paragraph reads, 'To fund
6 the said transaction, our client had entered into a
7 facility agreement with Eleuthera Group'?---Privilege.
8 Yes.
9 And was it pursuant to that facility agreement that those
10 payments that are referred to in the table I just took
11 you to on the second page were made?---Privilege. Yes.
12 Correct.
13 Now, when was the facility agreement entered into?---Privilege.
14 I can't call specifically - recall specifically.
15 Wasn't it after all these payments were made?---Privilege. I
16 can't recall.
17 Is it - how is it possible that a lender can provide money
18 before it's entered into the facility
19 agreement?---Privilege. It's not uncommon.
20 I see. How does that - can you explain how it worked in this
21 case? There were payments by Sunseeker Trust and
22 Eleuthera. Those payments were made to IPO Wealth
23 Holdings, is that right?---Privilege. Correct. The
24 trustee was informed of the same.
25 Yes. And how is it that those were payments made pursuant to a
26 facility agreement between Eleuthera and 101 Investments,
27 is that right?---Privilege. Correct.
28 So how is it that those payments which are made between
29 Sunseeker and IPO Wealth Holdings or Eleuthera and IPO
30 Wealth Holdings, how are they payments - considering they
31 were payments that were made up to November 2019 an

1 earlier, how are they payments pursuant to a facility
2 agreement between Eleuthera and 101 Investments; can you
3 explain that?---Privilege. The drawdown notice confirms
4 that both payments were pursuant to the Eleuthera
5 facility agreement.

6 How - I will ask the question again. How can payments between
7 Sunseeker and IPO Wealth Holdings, for example, be a
8 drawdown on a facility between Eleuthera and 101
9 Investments? They're different parties?---Privilege.
10 I'm not sure I understand the question.

11 Well, you see the payments referred to in the table at the top
12 of the next page?---Privilege. It's one party making
13 payment on behalf of another party because that other
14 party doesn't hold a bank account.

15 Yes. And where are the documents and evidence that these
16 payments were made on behalf of Eleuthera?---Privilege.
17 Where are they located?

18 What documents are there?---Privilege. As a minimum, there's,
19 if I recall correctly, a drawdown agreement, the facility
20 agreement, and a board minute as a minimum confirming the
21 sale, including the bank statements.

22 When was the board minute - it recorded for resolution, did
23 it?---Privilege. I believe it did. I can't recall the
24 date.

25 Well, what's the relevance of the board minute if it didn't
26 record a relevant resolution?---Privilege. I said I
27 can't recall the date.

28 Right. Okay. Well, do you think it was before or after these
29 payments?---Privilege. I can't recall.

30 It was after them, wasn't it, Mr Mawhinney?---Privilege. I
31 can't recall, but, in any event, if it was after it's not

1 to say that you can't capture something that had happened
2 by a board minute anyway.

3 I see. Now, according to this letter, these payments - which
4 if we could go to the top, please, of the next page,
5 Mr Associate. These payments were made between June
6 and November 2019; is that right?---Privilege. Correct.
7 The facility agreement wasn't entered into until about - just
8 bear with me for a moment. July 2020, is that
9 right?---Privilege. I can't recall specifically. I
10 don't have a copy of it. Do you have one there?

11 Yes. Perhaps we can go to page 72 of the court book,
12 Mr Associate. If we just scroll slowly through that
13 document. Is that the facility agreement that we've been
14 talking about?---Privilege. Yes, it looks like it.

15 It's commencement date, if we scroll down, you can see there
16 it's 30 January 2019; is that right?---Privilege.
17 Correct.

18 Which would cover all of those payments, wouldn't
19 it?---Privilege. Correct.

20 If we go please to page 81, you will see the execution page.
21 It was executed on 15 July 2020, wasn't it?---Privilege.
22 Can you just scroll down a little bit further?
23 Privilege. That's correct.

24 So the document didn't come into existence until July 2020, did
25 it?---Privilege. It had been contemplated since January
26 2019.

27 The comment didn't come into existence until July 2020, did
28 it?---Privilege. The document was not executed
29 until July 2020.

30 It had no effect before July 2020, did it,
31 or - - -?---Privilege. The documents state it does have

1 effect prior to that date.

2 Yes, but it didn't - I know it had effect once it came into
3 existence once it was executed, but there was no
4 facility, was there, before 15 July 2020?---Privilege.
5 It had not been documented at the time. There was a
6 facility in place and that's the basis on which those
7 funds were advanced.

8 I see. Where's that - is that facility in writing
9 somewhere?---Privilege. This is the document that
10 captures that facility in writing.

11 Isn't it the case that there was no facility at all between
12 Eleuthera and 101 Investments before this document was
13 executed?---Privilege. That's not the case.

14 Okay. So what's the evidence that it existed before that
15 date?---Privilege. The relationship of the investments
16 that was specified on the asset summary provided to the
17 trustee.

18 Are there any documents that show that, apart from this
19 agreement and recent accounts, that the payments that
20 were made between June 2019 and November 2019 were made
21 pursuant to a loan facility between Eleuthera and 101
22 Investments?---Privilege. The asset summary I mentioned
23 earlier provided as at 31 March 2020, I believe,
24 reflected that those investments were, in fact, financed
25 and funded by Eleuthera.

26 That's the portfolio summary that we've seen previously; is
27 that right?---That's correct.

28 And how was that document - insofar as it contained data
29 relating to advances by Eleuthera to 101 Investments,
30 what were the sources of that data?---Privilege. The
31 company's accounts.

1 I beg your pardon?---The company's draft accounts.
2 Which company's draft accounts?---The Group's, IPO Wealth
3 Holdings Pty Ltd, Eleuthera Pty Ltd, IPO Wealth Holdings
4 No.3 Pty Ltd.
5 So you're saying that if the liquidator looks at those accounts
6 or the liquidator (indistinct) at those accounts, they
7 will find references to money being loaned by Eleuthera
8 to 101 Investments, will they?---Privilege. If the
9 accounts of Eleuthera and the accounts of 101 Investments
10 Ltd were investigated, it will reflect the nature of this
11 transaction being paid pursuant to the facility
12 agreement.
13 So the accounts of Eleuthera, for example, as at 30 June 2019
14 will show a loan facility with 101 Investments, will
15 they?---Yes, I believe so.
16 And where are those accounts now?---Stored in Xero, the online
17 accounting package that we use.
18 And what about the accounts as at June 2020 of Eleuthera, would
19 they show the same thing?---Yes. Privilege. Sorry, just
20 going back to the previous question, Mr Galvin, the
21 accounts as at 30 June 2019 would not have shown the
22 facility agreement because the facility had not been
23 drawn.
24 It hadn't been drawn down upon?---Privilege. Correct.
25 So when the facility agreement, the one that wasn't in writing,
26 when did that come into existence, when was there an
27 agreement between Eleuthera and 101 Investments for a
28 loan of money?---Privilege. 30 January 2019 as per the
29 document there.
30 So there was - and so you're saying that this document
31 reflected an agreement between the parties that actually

1 occurred on 30 January 2019, is that right, is that what
2 you're telling the court?---Privilege. That's correct,
3 when the company was incorporated.

4 So wouldn't there be something in the records of Eleuthera,
5 other than this document, that reflected the existence of
6 a loan agreement between Eleuthera and 101 Investments as
7 at 30 June 2019, for example?---Privilege. No, because
8 no money was drawn under the agreement.

9 So how does anybody know that there's a loan agreement if
10 there's no record of it?---Privilege. Because we run a
11 private group and there were transactions and payments
12 made between the various different entities, and our
13 accounts team was across the movement of those monies.

14 Are there trial balances, for example, as at September 2019 for
15 Eleuthera?---Privilege. Yes (indistinct).

16 And wouldn't those trial balances in those months, for example,
17 the second half of 2019, wouldn't they should monies
18 having been advanced by Eleuthera to 101
19 Investments?---Privilege. That's correct.

20 Yes. So - and where are those documents? Those trial
21 balances?---Privilege. In Xero, the accounting package
22 we use.

23 Your Honour, I call for production of those accounts, those
24 trial balances of Eleuthera for the period 30 June 2019
25 to 30 June 2020. And I seek a direction that those
26 documents be produced.

27 HER HONOUR: Sorry, Mr Galvin, could you repeat that, please?

28 MR GALVIN: I seek a direction for production of the trial
29 balances of Eleuthera Group Proprietary Limited, created
30 in the period between 30 June 2019 and 30 June 2020.

31 WITNESS: More than happy to comply with that.

1 HER HONOUR: All right. Thank you, Mr Mawhinney. All right,
2 I'll include that direction in any orders that are made.
3 But, Mr Mawhinney, they can be produced, please, directly
4 to the liquidator's solicitors?---No problem,
5 Your Honour.
6 Thank you.
7 MR GALVIN: Thank you. Thank you - - -
8 HER HONOUR: When will they be able to be produced by,
9 Mr Mawhinney?---Close of business Monday.
10 MR GALVIN: Now, you - sorry, Your Honour.
11 HER HONOUR: Mr Galvin, is that timing acceptable?
12 MR GALVIN: Yes, Your Honour.
13 HER HONOUR: Right. You don't - I'm just conscious that we've
14 got Mr Mawhinney booked in again for Monday.
15 MR GALVIN: Yes, I know. And, look, I don't think there's any
16 reason to depart from that. I mean, Mr Mawhinney hasn't
17 asked for an unreasonable time to produce the documents.
18 HER HONOUR: All right. All right then, thank you. What I'll
19 do then, I'll make it by close of business on the
20 Tuesday, given that I know we're going to be occupying
21 him on the Monday.
22 MR GALVIN: Yes. And I should make it clear that the order is
23 that - we're talking about documents that were created,
24 not documents that have been since modified. (To
25 witness) You understand that, don't you,
26 Mr Mawhinney?---Privilege. I understand the request.
27 HER HONOUR: Yes. Production of trail balances of Eleuthera
28 Group Proprietary Limited, created in the period 30 June
29 2019 to 30 June 2020. That's how I've recorded it.
30 MR GALVIN: Thank you. Thank you, Your Honour.
31 HER HONOUR: Thank you.

1 MR GALVIN: Now, I'll come back to where we were. Could the
2 associate please go to examination book 419.

3 WITNESS: Privilege. Can I just add, if you don't mind, that
4 the accounts that will be provided will be trial balances
5 only. They will not be audited, published, finalised
6 accounts as at those dates.

7 MR GALVIN: Are there audited or published, or final accounts
8 published as at those dates?---Privilege. No there's
9 not.

10 Yes. These are a list of the payments that was attached to - I
11 should say this a list of payments that was attached to
12 Carey Olsen's letter, which you've seen; is that right?
13 You need to scroll down please, Mr Associate. (To
14 witness) The first couple of pages, two or three pages, I
15 think, deal with the payments by Sunseeker to IPO. And
16 then, after that, we see a lesser number of payments by
17 Eleuthera. All totalling 19 million 500 - sorry, I
18 should say \$19,460,672, according to this table. Is that
19 - you say that's accurate, do you?---Privilege. Yes,
20 correct.

21 In the BVI proceeding - well, proceeding which has been
22 commenced by 101 Investments, there is an allegation that
23 the Accloud transaction was financed by way of a facility
24 between 101 and Eleuthera, which is the facility we've
25 been talking about, and the decision to settle the
26 transaction with cash was due to a significant increase
27 in investor redemptions from the fund that had occurred
28 in the second-half of 2019. Do you recall that
29 allegation?---Privilege. Yes, I do.

30 Could you explain it, please?---Yes. Privilege. Certainly.
31 The IPO Wealth Fund grew in funds under management

1 progressively over its first two, two and a half years.
2 It continued to grow in early 2019, and then
3 progressively as Mayfair Group launched its note products
4 through the Mayfair Platinum brand, I made the decision
5 to gradually wind down the IPO Wealth Fund given that we
6 had found a more sustainable option for obtaining capital
7 for the group. We met with the trustee, and the trustee
8 expressed some concern over the IPO Wealth Holdings
9 Group's liquidity position. They - we suggested to them
10 one option might be looking to obtain a standby credit
11 facility and also change the mix of investments in the
12 IPO Wealth Holdings Group towards more shorter-term good
13 investments and taking onboard the trustee's
14 recommendation and utilising the capital-raising
15 activities of the Mayfair Platinum brand. We then
16 proceeded to acquire assets out of the IPO Wealth
17 Holdings Group with a view that we would then employ that
18 capital and via more shorter-term liquid assets, for
19 example, the loan - the loan book with Australian
20 Business Credit was a high-end loan book, plus also
21 facilitate redemptions which, if I recall correctly, is
22 about \$7.8m in loan repayments that was made back to the
23 IPO Wealth Fund in 2019 as a result of these - the sale
24 of these Accloud shares.

25 Right. Thank you. It's also alleged in the BVI proceeding as
26 follows - paragraph 13 of the claim: that IPOs assets at
27 the time were unlisted and illiquid in nature, thus to
28 facilitate the redemptions by fund investors and provide
29 liquidity for interest payments and further investments,
30 Eleuthera provided \$19,510,000 to IPO between June
31 and November 2019 of which the sum of \$19,460,672 was

1 payment for the Accloud shares. These funds were raised
2 externally from investments in other financial products
3 offered by the Mayfair Group; is that
4 correct?---Privilege. That's correct.

5 So the contention here is that Eleuthera provided nineteen and
6 a half million dollars to IPO between June and November
7 2019; is that right?---Privilege. That's correct. I
8 don't understand why that's contentious.

9 I beg your pardon?---I don't understand why that's contentious.
10 Don't you? All right?---Privilege.

11 What about the fact that Sunseeker advanced a large portion of
12 that money and not Eleuthera?---Privilege. I don't
13 understand the relevance.

14 All right. Could we go back, please, to the top of page - just
15 scroll up, please, Mr Associate, from where you are at
16 the moment?---As I touched on earlier, because the group
17 had a limited number of bank accounts, moneys were
18 advanced - - -

19 Just pausing there, please. You see Annexure A. That lists,
20 firstly, the payments by Sunseeker to IPO. Do you see
21 that?---Privilege. Yes.

22 They're not payments by Eleuthera, are they?---Privilege.

23 They're payments from a Sunseeker bank account made on
24 behalf of the trust.

25 And is there a written agreement between Sunseeker and
26 Eleuthera recording that?---Privilege. Yes, I believe
27 there is.

28 Okay. And where would we find that?---Privilege. Stored on
29 our server, I believe.

30 When was that created?---Privilege. I - I can't recall, but we
31 have numerous facility agreements within the group

1 (indistinct).

2 It had been created in about July 2020, perhaps?---Privilege.

3 No. I don't think that's the case.

4 Right. I call for production of that document: any loan

5 facility agreements between Sunseeker - what's the name

6 of the company? Sunseeker Pty Ltd or Sunseeker - what's

7 it called?---Privilege. Sunseeker Holdings Pty Ltd.

8 Sunseeker Holdings Pty Ltd and Eleuthera Group Pty Ltd.

9 How long would you need to produce those,

10 Mr Mawhinney?---Privilege. By Monday.

11 Did Pinnacle prepare that agreement?---Privilege. At this

12 stage, without having the benefit of looking at our files

13 and documents, I - I can't say for certain if there is

14 such an agreement. Like I said, we do have facility

15 agreements documented quite broadly across the group, so

16 I would need to double-check that for you.

17 HER HONOUR: I'll make that the same timeframe, Mr Galvin: end

18 of Tuesday.

19 MR GALVIN: Thank you, Your Honour. Mr Associate, could you go

20 to p.675, please. And this is a letter from KHQ to

21 Thomson Geer, my instructors, the liquidator's

22 solicitors, dated 25 May 2020. If we could just scroll

23 through that, please. Have you seen that letter before,

24 Mr Mawhinney?---Just keep scrolling. Thanks. Privilege.

25 Yes, I have.

26 Yes. Do you recall being involved in drafting that

27 letter?---Privilege. No, I don't.

28 All right?---Sorry. Let me rephrase that. Privilege. I did

29 see a draft of it. The contents of that letter explained

30 the Accloud transaction provided by Pinnacle Advisory

31 Group.

1 I see. Not provided by you?---Privilege. That's correct.

2 Yes. I see?---I can produce documents to confirm that.

3 I see?---(Indistinct).

4 It's fair to say, though, that as at May 2020 your belief -
5 this is what you say, as I understand it. Your belief
6 was that there was an as yet to be documented agreement
7 that Eleuthera would lend the money to IPO - sorry, to
8 101 Investments to pay for the Accloud shares or, in
9 fact, had already lent the money in that it had already
10 been paid?---Privilege. That's correct.

11 Right. So anything that you would have contributed to this
12 letter would have been consistent with that, wouldn't
13 it?---Privilege. I didn't contribute anything to that
14 letter at the time. It was rushed out the door to get it
15 (indistinct) - - -

16 I see. I see?--- - - - to liquidators at the time.

17 All right. Can we go to p.746, please. If we just scroll
18 through that, please. This is a draft of that letter,
19 isn't it? This one is dated 23 May. Can we scroll
20 through that, please?---Privilege. Your Honour, this is
21 not related to legal professional privilege given this is
22 correspondence between myself and the legal firm that we
23 had engaged.

24 HER HONOUR: Could you scroll up, please, Mr Associate.

25 WITNESS: It - it - it is a draft that clearly was circulated
26 between the law firm and myself.

27 MR GALVIN: Yes, but, Mr Mawhinney, these are documents that
28 are created for IPO Wealth Holdings - - -?---I'm sorry,
29 Mr Galvin. I'm - I would like to hear her Honour's
30 response.

31 HER HONOUR: I'm sorry. I didn't understand what you said,

1 Mr Mawhinney?---Yes. So, Your Honour, I believe that
2 this document - I would like to claim legal professional
3 privilege over. It is communication between - I believe
4 between myself and the lawyers that were acting for us at
5 the time.

6 But who were the lawyers retained to act for,

7 Mr Mawhinney?---Privilege. It was KHQ Lawyers based in
8 Melbourne.

9 Yes. Who were they retained to act for?---Privilege.

10 IPO Wealth Holdings Group at the time.

11 Well, it's not your privilege to claim, Mr Mawhinney. If they
12 were retained by - to advise and act for the IPO Wealth
13 companies, then the privilege belongs to them, and given
14 that those companies are now in liquidation, it's the
15 liquidators who can assert privilege if they wish
16 to?---Okay. I understand that. May I just have a look
17 at the opening of this letter, please. I - I'd like to
18 see who KHQ says who they act for.

19 MR GALVIN: Sorry, Mr Mawhinney. What do you (indistinct)?

20 HER HONOUR: Scroll down, Mr Associate.

21 WITNESS: Yes. Sorry. If you would mind just scrolling down
22 to the introduction of the letter.

23 MR GALVIN: Is that the part you mean, Mr Mawhinney?---Yeah, a
24 bit further, thanks. Your Honour, you'll see that KHQ
25 Lawyers was acting for me personally, so I do believe
26 this is privileged, in 2.2(b).

27 HER HONOUR: Yes, I see that. Mr Galvin.

28 MR GALVIN: Well, Your Honour, these are documents which are
29 clearly documents of my client. And they were plainly
30 prepared - my clients being the companies - they were
31 clearly prepared for its purposes in response to the

1 receiver's inquiries. And the document has been produced
2 in any event by Pinnacle. Any privilege has been waived.

3 WITNESS: (Indistinct).

4 MR GALVIN: If there were privilege. There's no doubt that
5 privilege has been waived.

6 HER HONOUR: Mr Mawhinney?---Your Honour, I completely disagree
7 with that. It's very black and white there that this
8 document was communication between me and my legal
9 representatives, and therefore, professional privilege
10 should be claimed.

11 And the origin of this document, Mr Galvin? It was produced by
12 Pinnacle, was it?

13 MR GALVIN: Yes. Yes, Your Honour.

14 WITNESS: And, Your Honour, may I point to the fact that it is
15 fact a draft document, which clearly points out that this
16 is communication between myself and my legal
17 representatives. If you scroll to the top of the letter,
18 Associate?

19 HER HONOUR: I saw the draft, Mr Mawhinney. I need it to be
20 scrolled for that purpose if it - - -?---No, it's not -
21 sorry, Your Honour. There's - in the opening sentence,
22 it states that 'We refer to your letter to Mr James
23 Mawhinney', so it's very clearly correspondence relating
24 to me personally.

25 Yes, but the document's been produced, Mr Mawhinney, by
26 Pinnacle, and no claim to privilege was made to it in
27 relation to - well, sorry. I want to go back a minute.
28 Mr Galvin, I think you said the document was produced by
29 Pinnacle. Is that correct?

30 MR GALVIN: That's my understanding, yes, Your Honour. And it
31 was produced by them in their capacity as agents and

1 accountants to the IPO Group.

2 WITNESS: Privilege. And therefore I consider that this
3 potentially falls in the same category as the documents
4 we discussed before the break.

5 MR GALVIN: Yes, but the privilege - if there's a privilege -
6 if this document - the statement that this document was -
7 sorry, let me start again. The statement that this firm
8 acts for Mr Mawhinney does not equate to a statement that
9 this letter is prepared and provided on his behalf.
10 Rather, it is plainly on its face a document that's
11 responding to queries about IPO - the IPO Group. The
12 letter was prepared in response to inquiries by the
13 receivers. And it was provided on behalf of the IPO -
14 sorry, the IPO companies?---Privilege. I don't believe
15 it was provided on behalf of the IPO companies. It
16 clearly states that it was provided on behalf of Mayfair
17 Group Pty Ltd and myself personally.

18 No, I should say in relation to the IPO companies. There is
19 nothing in this letter which indicates it was provided
20 pursuant legal advice given to Mr Mawhinney personally in
21 relation to any claims against him. It is plainly given
22 in relation to the affairs of IPO Wealth Group.

23 HER HONOUR: Mr Associate, could you just scroll through it for
24 me, please. I want to have a look at the letter. Yes,
25 thank you. Keep going, please, Mr Associate.

26 ASSOCIATE: Is that an appropriate speed, Your Honour?

27 HER HONOUR: Yes, that's fine. Thank you. Yes, you can move
28 through a bit faster, Mr Associate. Yes, thank you. Is
29 there anything else either of you wish to say about it?

30 MR GALVIN: There is one other thing I should say, that this
31 letter is actually provided, this is not a letter

1 exchanged between Mr Mawhinney and lawyers, it is, in
2 fact, attached to the email at page 743.

3 HER HONOUR: Mr associate, could take me 743, please.

4 MR GALVIN: Which is a communication from the accountants to
5 Mr Mawhinney.

6 WITNESS: Privilege. And on that basis, I consider it's the
7 same category as what we discussed earlier.

8 MR GALVIN: All right. I think if the associate could just
9 scroll up a bit, just to be clear about this, the last -
10 just pausing there - the last item in the attachments is
11 a letter to TG draft 22 May 2020.

12 HER HONOUR: Yes. Which is the letter that you've been
13 taking - - -

14 MR GALVIN: I think so, yes. Or it might have - - -

15 HER HONOUR: Yes.

16 MR GALVIN: - - - been dated the 23rd, but it's the same
17 letter, plainly. And I should say, though, that it is
18 copied to Chris Baring-Gould, Vin King and Nora
19 Fairbanks. (To witness) I presume Vin King is - I
20 presume they're the lawyers, Mr Mawhinney; is that
21 right?---Privilege. They're (indistinct) lawyers. Chris
22 Baring-Gould from the CFO Centre and Nora Fairbanks from
23 the Pinnacle Advisory Group.

24 So I rely on the fact that from its content, it can be seen
25 that this is not a letter that was prepared for the
26 personal legal purposes of Mr Mawhinney, but, rather, for
27 - rather in relation to the IPO Group. And further, that
28 it's a document that was provided to these accountants,
29 and the accountants have since produced the documents to
30 my client. So there can't be any privilege surviving any
31 of that if there ever was any privilege.

1 HER HONOUR: Yes, thank you. Look, I asked Mr Mawhinney who
2 KHQ were retained by and he said that it was for the IPO
3 Wealth Group. There's no evidence that there was a
4 retainer by him personally. The letter itself is,
5 clearly, in respect of the IPO Wealth Group and not in
6 respect of Mr Mawhinney personally. So I don't accept
7 that there's a privilege claim - a legal professional
8 privilege claim that Mr Mawhinney is able to make to
9 sustain in his own right.

10 To the extent that it might be privileged, then that
11 privilege belongs to the company, the companies being IPO
12 Wealth Group. And, in any event, the document has been
13 produced to the - even if it was privileged to
14 Mr Mawhinney, it's been produced by Pinnacle to the
15 liquidators and any privilege has been waived. (To
16 witness) I think you said, Mr Mawhinney, if that being
17 the case, that you then rely on the, what you've referred
18 to as, the accountant's privilege?---Yes, Your Honour.
19 If I may also add to that, the date of this letter is
20 quite pertinent. Receivers and managers were appointed
21 to the IPO Holdings Group on 22 May, therefore, the
22 letter could not possibly have been drafted by the
23 entities and the IPO Holdings Group themselves. And,
24 therefore, had to be from me personally.

25 Thank you. Mr Galvin, I'm wondering, given that Mr Mawhinney
26 wants to rely on what I'll loosely call the accountant's
27 privilege, to the extent such a thing exists, I think now
28 might be a convenient time to break for lunch if that's
29 acceptable.

30 MR GALVIN: Yes.

31 HER HONOUR: And we can resume at - after lunch, we can deal

1 with this issue. Is 2 pm a convenient time, Mr Galvin?

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

3 HER HONOUR: Mr Mawhinney, is that a convenient time?---Yes,
4 that's fine. Thank you.

5 All right then. Mr Mawhinney, my associate either has or will
6 email through to you a copy of the decision that
7 Mr Galvin referred to earlier. The relevant passage has
8 been high - that Mr Galvin relied upon has been
9 highlighted by Ms Papaleo for you. So I want to deal
10 with this issue and rule upon it after the lunch
11 break?---Noted. Thank you.

12 All right, thank you. Mr associate, please adjourn the court
13 until 2 pm. Can I just indicate to everyone, that
14 they're welcome to keep the link open if they wish, but
15 they should turn their cameras off and make sure they're
16 on mute. Or they can leave and then dial back in using
17 the same Zoom link as was used earlier. All right, thank
18 you, Mr associate.

19 <(THE WITNESS WITHDREW)

20 LUNCHEON ADJOURNMENT

1

(MATTHEWS ASJ)

2 UPON RESUMING AT 2.01 PM:

3

1 <JAMES PETER MAWHINNEY, recalled and examined:

2 MR GALVIN: Your Honour, before we continue, I wanted to
3 address two matters, if I may.

4 HER HONOUR: Yes.

5 MR GALVIN: The first one is the documents in respect to which
6 we're seeking production. I was seeking trial balances.
7 I have sought some instructions about the appropriate
8 documents that should be produced, and I'm instructed
9 that the documents that should be produced are two
10 categories. First of all, electronic account transaction
11 reports in native format, which can be generated from the
12 Xero software of Eleuthera for the period - - -

13 HER HONOUR: Just a minute, Mr Galvin. I've got to keep up
14 with you.

15 MR GALVIN: Yes. I'm sorry. I'll say that again.

16 HER HONOUR: Electronic accounting - - -

17 MR GALVIN: Account - it's electronic account transaction - - -

18 HER HONOUR: (Indistinct words).

19 MR GALVIN: - - - transaction reports.

20 HER HONOUR: (Indistinct) reports in native format.

21 MR GALVIN: Yes. For the period June 2019 to November 2019.

22 HER HONOUR: June 2019 to November 2019. Yes.

23 MR GALVIN: And then the second category is what are called
24 view transaction reports, v-i-e-w, view transaction
25 reports in native format for each of the transactions
26 identified in the Carey Olsen letter. Now, they will be
27 - that relates to both Sunseeker's accounts - sorry. I
28 should say both these categories relate to both Sunseeker
29 and Eleuthera.

30 HER HONOUR: All right. What's the Carey Olsen letter dated?

31 MR GALVIN: The Carey Olsen letter - I'll get that. Pardon me.

1 24 December 2020, and it's in the examination book

2 at - - -

3 HER HONOUR: 24 - what was it? 24 - - -

4 MR GALVIN: December 2020.

5 HER HONOUR: Yes.

6 MR GALVIN: It's in the examination book at 417, but we'll
7 provide the letter to Mr Mawhinney separately.

8 HER HONOUR: Yes. I was going to say that would need to be
9 provided.

10 MR GALVIN: Yes.

11 HER HONOUR: Now, was that instead of the first category that
12 you referred to this morning, which is the trial balances
13 of the Eleuthera Group, or is in addition to that?

14 MR GALVIN: It's instead of, in place of.

15 HER HONOUR: In place of. And both of those are in respect of
16 the Eleuthera Group Proprietary Limited and Sunseeker
17 Holdings Proprietary Limited.

18 MR GALVIN: Yes, that's right.

19 HER HONOUR: And then separately there's any loan facility
20 agreements between Sunseeker Holdings and Eleuthera
21 Group.

22 MR GALVIN: That's right.

23 HER HONOUR: Yes. All right. Mr Mawhinney, do you understand
24 (indistinct)?---Yes, I do, Your Honour. If I may, I'd
25 appreciate if we could have, say, until close of business
26 Friday next week just now that the scope of this has
27 increased a bit, that's all. I have another court matter
28 that I'm needing assist our legal counsel on, which will
29 be consuming a lot of my time next week.

30 MR GALVIN: I don't have any objection to that, Your Honour.

31 HER HONOUR: All right. Well, I'll make that by 5 March, and I

1 will use that date for the facility agreements as well,
2 Mr Mawhinney?---Thank you.

3 These will all be set out in the orders, and the Carey Olsen
4 letter that identifies the transactions, Mr Galvin has
5 said that that will be sent separately to you?---Sure.
6 Yes.

7 MR GALVIN: Your Honour, the second question - - -

8 HER HONOUR: Yes.

9 MR GALVIN: - - - the matter I want to address, was the
10 privilege claims.

11 HER HONOUR: Yes.

12 MR GALVIN: And I think I need to be clear about our position.

13 I've reflected over the lunch break as to how we should
14 put our claim to - or our entitlement to ask questions of
15 Mr Mawhinney about the email correspondence and also the
16 draft KHQ letter, and the first point I would make is
17 that the KHQ letter and the email correspondence which
18 Mr Mawhinney exchanged and received after the appointment
19 of receivers - pardon me - are not, as I think he put it,
20 documents of the IPO Group.

21 I think that he is, with respect, correct about
22 that, and I won't press a submission to the contrary;
23 however - and those documents were - it doesn't really
24 matter who they were prepared for or who might have had
25 legal professional privilege in them, unless they were
26 exchanged with lawyers for the purpose of obtaining legal
27 advice or for the purpose of litigation, or if they were
28 provided to anybody else for the purpose of litigation.

29 The key issue here is that all these documents have
30 been provided by Pinnacle to the liquidators. So
31 whatever privilege may have affected them has been

1 waived, and that, we would say, is clear. And to the
2 extent that they were communications with accountants, we
3 would say they were not subject to any legal professional
4 privilege in the first place anyway.

5 The second point I want to make about that is that
6 the documents that predate - or any email correspondence
7 that predates the appointment of the receivers must be -
8 or on its face, as Your Honour will see, correspondence
9 in respect of which the IPO companies might have claimed
10 legal professional privilege - assume they met the other
11 criteria.

12 But any - in any event, they're IPO documents, and
13 it's for the liquidators to decide whether to assert or
14 waive any privilege in relation to those. But in any
15 event, we say even with those - that correspondence has
16 been provided by Pinnacle to the liquidators and,
17 therefore, an privilege that might have affected them has
18 been waived.

19 HER HONOUR: Yes. I understand. The - what about the draft
20 letter? Is that in the same - I think you said that the
21 emails as between Mr Mawhinney and others after the
22 appointment of receivers are not documents of the IPO
23 Group.

24 MR GALVIN: Yes, that's right.

25 HER HONOUR: And you don't - the liquidators don't claim -
26 sorry, don't say that any privilege there belongs to IPO.

27 MR GALVIN: No.

28 HER HONOUR: Is that the same for the draft KHQ letter?

29 MR GALVIN: KHQ letter is in a slightly different category,
30 because that is obviously the communication between a
31 client and lawyers. So we don't know who the client was.

1 It's not clear who the client was.

2 HER HONOUR: Yes.

3 MR GALVIN: Mr Mawhinney may say it was him, and maybe it was,
4 but the difficulty with that is that the letter, the
5 draft letter was then provided to accountants, and even
6 after that the accountants, in any event, have provided
7 it to the liquidators.

8 HER HONOUR: Yes. So would you - - -

9 MR GALVIN: So - - -

10 HER HONOUR: - - - make - what you're saying is that to the
11 extent that that letter was - draft letter was privileged
12 in the - and that privilege belongs to someone in IPO,
13 the privilege has been waived.

14 MR GALVIN: That's exactly what I'm saying, Your Honour. Yes.

15 HER HONOUR: For the purposes of - by having been provided to
16 the accountants, which is, I suppose, one asserted
17 waiver, and then the second asserted waiver is Pinnacle
18 producing it to the liquidators.

19 MR GALVIN: Which is the overriding asserted waiver.

20 HER HONOUR: Yes. All right, then. It's - I was - I've been
21 reflecting on - over this - on this over the lunch break
22 as well, and I recollect Mr Mawhinney saying that the
23 date of that draft letter is the same date as the date
24 the receivers were appointed.

25 WITNESS: It was three days after, Your Honour.

26 HER HONOUR: Three days after. All right. Sorry (indistinct)
27 is that a draft, was three days after, Mr Mawhinney?---I
28 believe so.

29 MR GALVIN: Your Honour - - -

30 HER HONOUR: All right. Very well. I thought - I remembered
31 wrong, then. I thought he said it was the same day,

1 which I was thinking, 'Now we're going to have to work
2 out what time they were appointed', but it doesn't sound
3 like we need to go there. All right. I understand the
4 submission, Mr Galvin. So you're saying that you're able
5 to question Mr Mawhinney on these documents, because to
6 the extent they privileged, privilege has been waived.

7 MR GALVIN: Yes, Your Honour.

8 HER HONOUR: Yes. Mr Mawhinney, do you want to (indistinct)
9 that?---Thank you, Your Honour. Yes. I understand
10 Mr Galvin's position. I would like to submit as follows:
11 Pinnacle Advisory Group is a accounting tax and legal
12 firm. They are a law firm, and, therefore, on that
13 single basis alone the correspondence should be
14 privileged. And, secondly, based on the research I've
15 undertaken at lunch time, I believe that there's a
16 section or provision within the Evidence Act that relates
17 to whether the correspondence - or the dominant purpose
18 of the correspondence is to do with litigation, which
19 clearly it is, and on that basis it would be privileged.

20 Well, what's the litigation, Mr Mawhinney?---Well, my
21 understanding was that the appointment of receivers and
22 managers was the form of litigation that had commenced in
23 relation to the companies.

24 No. Appointing receivers and managers is not litigation. It's
25 not litigation or anticipated litigation?---This was in
26 the Supreme Court for some months, from 22 May onwards.
27 Is that not litigation?

28 Wasn't the purpose of that letter to respond to a letter sent
29 by Vasco?---Correct.

30 So the letter has not been prepared for use in litigation, has
31 it?---Would Your Honour bring me up a copy of the letter

1 so I may have another look.

2 MR GALVIN: Yes. It's at - pardon me. I think it was 744.

3 Just a moment. No. That's not it. Sorry.

4 HER HONOUR: I think it might be the next page - a few pages
5 down.

6 MR GALVIN: Yes. 753, perhaps. No. All right. I will find,
7 if you just bear with me.

8 MS PAPAEO: Draft is at 746.

9 MR GALVIN: 746. Thank you.

10 WITNESS: Thank you. Your Honour, you will see that the
11 correspondence was not from Vasco. It's actually Thomson
12 Geer Lawyers, and it is dated - the draft is dated
13 Saturday, 23 May. The receivers and managers
14 (indistinct) the IPO Wealth Holdings Group were appointed
15 on 22 May.

16 HER HONOUR: Yes. But what litigation are you referring to?
17 Lawyers write to each other all the time without there
18 necessarily being litigation involved. What litigation
19 are you referring to?---My apologies. The litigation, I
20 believe, was the winding up application that had been
21 brought against IPO Wealth Holdings Group.

22 And when was that winding up application made?---22 May.

23 Mr Galvin.

24 MR GALVIN: The - this letter was in response to demands and
25 requests, I seem to recall. I don't - it's not in
26 relation to - what I would say is I won't resist the
27 suggestion that it was connected to the litigation,
28 because I don't really know what the purpose of the
29 letter was. Only Mr Mawhinney can tell us that. But
30 it's reasonable to say, I would suggest or concede, that
31 it was written in the context of the litigation between

1 Vasco, the companies - the IPO companies and
2 Mr Mawhinney, who was participating in that proceeding,
3 the winding up proceeding.

4 HER HONOUR: Yes. Thank you.

5 MR GALVIN: As a sort of an intervenor, I suppose.

6 HER HONOUR: All right, then. Thank you. Well, if that's the
7 case, then, the issue is whether - well, it sounds, then,
8 to me that the liquidators are conceding that it's not
9 IPOs document, so it's, therefore, not IPOs privilege to
10 assert. It may be Mr Mawhinney's privilege to assert,
11 but the issue is whether or not there has been waiver.

12 MR GALVIN: Yes. And we would say that it's plain that the
13 documents (indistinct) the liquidators from Pinnacle,
14 that we don't see that there could be any reasonable
15 argument to rebut that.

16 WITNESS: I submit that Pinnacle is also a law firm that was
17 engaged by our companies.

18 MR GALVIN: But it doesn't change the fact that it provided the
19 document to the liquidators.

20 HER HONOUR: But they've proved - the issue is this - part of
21 the issue is this, Mr Mawhinney: for privilege to be
22 maintained and - well, for it to exist in the first place
23 and then for it to be maintained, it needs to be a
24 confidently communication between lawyer and client. And
25 here what's being submitted by the liquidators is that
26 because it has been produced to the liquidators by
27 Pinnacle - correct me if I'm wrong about what the gist of
28 the submission is, Mr Galvin - that the document has lost
29 that quality of confidentiality.

30 MR GALVIN: It has lost the quality of legal professional
31 privilege if there was legal professional privilege.

1 So - - -

2 HER HONOUR: Yes. Because it has lost the confidentiality,
3 it's no longer confidential.

4 MR GALVIN: Yes. Yes. It has been - exactly. It has been
5 provided to a third party.

6 HER HONOUR: That's right. The third party here being the
7 liquidators?---Your Honour, the third party is Pinnacle
8 Advisory Group but then subsequently provided it to the
9 liquidators, I acknowledge that. As I said, they also
10 were the Group's lawyers and provided copious amounts of
11 legal advice in addition to accounting advice for the
12 Group. And I believe that - I mean, the purpose of the
13 layout and contents of the letter all relates to legal
14 advice which was provided by KHQ Lawyers and also
15 Pinnacle Advisory Group. And on that basis, that's
16 confidential correspondence. And the fact that that has
17 now been provided to the liquidators - I acknowledge that
18 the email itself that was sent we cannot claim privilege
19 on, however the attachment which is this letter is
20 clearly a privileged document.

21 But it has been provided to the liquidators who are not within
22 that chain of persons who were part of any privileged or
23 confidential communication?---Okay. I understand that.
24 On what basis though can the court rely on a document
25 when it has been provided without my consent when it's
26 privileged? It's clearly a privileged communication.

27 MR GALVIN: We wouldn't accept - - -

28 HER HONOUR: Mr Galvin, what do you say about that?

29 MR GALVIN: Your Honour, we don't know whether it has been
30 provided without his consent or not, but that's not to
31 the point. He may have a complaint against Pinnacle.

1 Mr Mawhinney may have or someone else may have a
2 complaint against Pinnacle, but once the privilege has
3 been waived, it's waived. Pinnacle was, of course, the
4 agent for - it appears, for the IPO Group but also
5 Mr Mawhinney and his other entities.

6 HER HONOUR: Yes, but there's - sorry, did you want to say
7 something, Mr Mawhinney?---Yes. Would you mind going to
8 the email between Craig Van Wegen or any email, in fact,
9 with Craig Van Wegen's email signature in it?

10 MR GALVIN: There's one - shall we try the one at page 743 as
11 an example?---And if you would just - - -

12 Just scroll down on it?---Thank you. A little bit further.
13 Further again. We will see in the signature there it
14 says, 'Tax, legal, family, office accounting, and
15 pensions.' They're clearly a law firm.

16 HER HONOUR: Yes, but the question is whether they're providing
17 you or the Group with legal services, Mr Mawhinney. Now,
18 I don't recall any evidence previously in these
19 examinations that Pinnacle were providing were retained
20 to provide legal services. I might be wrong,
21 but - - -?---Yes, but (indistinct).

22 But where's the retainer letter for - for example, was there a
23 retainer letter between IPO and Pinnacle, or was there a
24 retainer between you and Pinnacle?---I believe so. I
25 just - I haven't got a copy of it here, honestly. I have
26 copious amounts of written advice that has been provided
27 by Pinnacle Advisory Group, both in a tax accounting and
28 legal advice, including, you may recall, the Venice
29 transaction where they recommended a legal framework for
30 that and including the Accloud transaction which there
31 was certainly many legal elements to that particular

1 transaction.

2 Are you able to assist me at all there, Mr Galvin?

3 MR GALVIN: All I can tell Your Honour is that when one looks
4 at the substance of these communications, they're all
5 related to accounting issues. This was accounting
6 advice, plainly, and one can see that from the substance
7 of the documents.

8 HER HONOUR: Yes. I mean, it just - even if someone is
9 retained to give legal advice, it doesn't mean that
10 everything they do then has that quality or
11 characteristic. It depends on - particularly where
12 somebody has been retained in multiple - provide multiple
13 services.

14 MR GALVIN: Yes, that's right. And that's why we understand
15 these documents have been produced because anybody
16 reading them would know that they're not for the purpose
17 of legal advice or litigation, it's accounting. It's
18 accounting advice. Restructuring of accounts and
19 transactions, you know, these agreements to give effect
20 to accounting considerations.

21 HER HONOUR: Yes. Now, there's the issue here of - if these
22 communications and this draft is in the process of being
23 prepared and it's involving the accountants in order to
24 assist the lawyers with either drafting the letter or
25 providing legal advice in terms of how to respond, then
26 the fact that the accounts are part of that email chain
27 does not necessarily mean that it's not privileged.

28 MR GALVIN: I accept that. Yes.

29 HER HONOUR: So the presence of Pinnacle on these - even if all
30 that Pinnacle was doing in this regard was providing the
31 accounting input, I think Mr Mawhinney said that some of

1 the people on this email chain were the lawyers.

2 MR GALVIN: Yes.

3 HER HONOUR: And it's content that is being inserted into a
4 letter that is being drafted by the lawyers which - I
5 think it's difficult to see that in itself as breaking
6 any privilege chain.

7 MR GALVIN: And that's why I say to Your Honour that the
8 overriding fact is here that Pinnacle provided this
9 material to the liquidators.

10 HER HONOUR: Yes. How do they come to provide it, Mr Galvin?
11 Was there just a call by the liquidators of the previous
12 accountants?

13 MR GALVIN: I think - yes, there was a call under two
14 provisions of the Corporations Act. I don't have the
15 provisions handy. I think one was perhaps 422 and 439A.
16 I don't have the sections in front of me. They're
17 requests under the Corporations Act to produce the
18 documents, and these documents were produced in response
19 to that request or those requests.

20 HER HONOUR: Yes. All right. Thank you. All right.

21 Mr Mawhinney, did you want to say anything further?---I
22 don't, Your Honour.

23 All right, ten. And could you just clarify your position,
24 then, in relation to these documents,

25 Mr Mawhinney?---Yes, certainly. So the documents were
26 not produced - well, sorry, let me rephrase that. The
27 email or the document that was brought up on the screen a
28 moment ago, which was the letter from KHQ Lawyers, from
29 my perspective is categorically privileged because I am
30 the named party in that letter personally. The IPO
31 Wealth Holdings Group were not represented by KHQ Lawyers

1 in that communication. That is there on page 2, I
2 believe it is. It specifies me as the named party.
3 Secondly, both the draft and the final version of that
4 letter, the version that we have here in the court book,
5 were both produced post the appointment of receivers -
6 albeit it was the next day, it's still post the
7 appointment of receivers and managers. And whilst,
8 indeed, there is a level of accounting input from
9 Pinnacle, they also are a law firm and, more importantly,
10 the dominant purpose of that communication was that it
11 was a legal - it was a legal letter between KHQ Lawyers,
12 acting for me specifically, and Thomson Geer Lawyers and,
13 on that basis, it should be privileged.

14 What do you say about waiver?---With respect, the - Pinnacle
15 waiving that privilege?

16 Well, yes. What do you say about it; yes?---My answer in
17 relation to that is that the communication was provided
18 by Pinnacle Advisory Group, who is also a law firm
19 (indistinct) some copious amounts of legal advice over
20 the period - - -

21 I'm sorry, Mr Mawhinney. I mightn't have made my question
22 specific enough?---Sure.

23 If we assume, for the moment, that the document is privileged
24 and that it's your privilege to assert, what do you say
25 about the submission that privilege has been waived
26 because the documents have been produced to the
27 liquidators?---I accept Mr Galvin's position that
28 privilege was not waived for my perspective. The fact
29 that the liquidators have obtained that document through
30 their own methods I don't believe should prejudice my
31 position.

1 Thank you. Mr Galvin, do you have anything to say about that?

2 MR GALVIN: No. I don't think it addresses the question is all

3 I would say, Your Honour. The fact of the matter is the

4 documents have been provided to the liquidators and

5 there's no question that, in those circumstances - it

6 doesn't matter that they were provided pursuant to a

7 request of the liquidators. They were provided to the

8 liquidators and if there was any prejudice affecting

9 these documents, in particular, this letter, that

10 privilege has been waived and I don't think Mr Mawhinney

11 has provided an answer to that point.

12 HER HONOUR: All right. What about the - what about the

13 principle in some of the authorities that privilege can

14 only be waived by the person who can assert the

15 privilege?

16 MR GALVIN: Well, the - Pinnacle are at all times the agent for

17 Mr Mawhinney. He has instructed them in relation to

18 this. So - - -

19 HER HONOUR: In a similar way to a law firm is taken to be - if

20 a law firm produces the document then they're taken to

21 have done so as agent.

22 MR GALVIN: That's right. And that's why I said that if -

23 Mr Mawhinney may well have a complaint against Pinnacle

24 but that's neither here nor there for the purpose of the

25 present situation.

26 HER HONOUR: Yes, I understand. All right then. After quite a

27 discussion here now about this - and I realise the

28 discussion was done in a slightly unorthodox way in terms

29 of by me asking for responses to particular propositions

30 but that was mainly so that I could tease out all of the

31 relevant considerations that I need to take into account,

1 particularly for Mr Mawhinney's benefit, given that he's
2 not represented today.

3 I'm satisfied that, through - that to the extent
4 that these documents - and by 'these documents' I'm
5 talking about the email chain and the draft letter - are
6 - were privileged and that that's a privilege that can be
7 asserted by Mr Mawhinney, I'm also satisfied that the -
8 that privilege in those documents have been waived
9 because they've been produced by somebody who is
10 characterised, for the purposes of this consideration, as
11 an agent of Mr Mawhinney. So questions can be asked of
12 Mr Mawhinney about these documents.

13 Now, I think we should also deal with this
14 accounting - accountant's privilege, as I loosely
15 referred to it before lunch. Mr Mawhinney, are you in a
16 position to address that now?---Your Honour, I accept
17 that the accounting privilege provision, based on my very
18 basic research at lunch, doesn't exist in as much as it
19 would restrict Mr Galvin from continuing to ask questions
20 in relation to those documents. I have no issue with
21 that. I do just want to touch on the point you made a
22 moment ago, Your Honour, in relation to the waiver of
23 that privilege by an agent. Pinnacle Advisory Group
24 categorically did not have my authority to obviously
25 provide the documents. I accept that's something that
26 they can be compelled to do under law. I have no issue
27 with that. The issue is, as I said, that I did not grant
28 or provide them with authorisation to do that
29 (indistinct) my view is that the privilege should
30 continue to extend to those documents.

31 Well, I understand, Mr Mawhinney, but that doesn't alter my

1 ruling?---Understood. No problem.

2 All right. Thank you for checking the other question that had
3 been raised around whether or not there was any
4 privilege. I appreciate your doing that. All right
5 then. Can we resume then, please, Mr Galvin.

6 MR GALVIN: Yes. Thank you, Your Honour. Mr Mawhinney, I will
7 take you to the letter that KHQ drafted at 746, please,
8 and if we scroll through that you will see some
9 highlighted passages in yellow and red as well as - and
10 green as we go through. If we just pause, please,
11 Mr Associate, at the highlighted parts just so
12 Mr Mawhinney can familiarise himself with the general
13 content. Go a bit further, please.

14 WITNESS: Okay.

15 MR GALVIN: If we could go to the next - or the bottom of that
16 page, please. Just pausing there. Is - the part
17 highlighted in red, is that something that you think
18 Mr Van Wegen inserted in this letter?---I believe that
19 the part in red and the part in yellow in their entirety
20 were provided by Mr Van Wegen.

21 All right. Thank you. Could we now go, please, to the email
22 at p.744.

23 ASSOCIATE: Sorry, which document, Mr Galvin?

24 MR GALVIN: The 744.

25 ASSOCIATE: Thank you.

26 MR GALVIN: There's an email here from you, Mr Mawhinney, dated
27 23 May 2020 sent at 5.25 pm to Mr Wegen and others -
28 Mr Van Wegen and also there are copies - there's
29 references to the lawyers from KHQ there. And it refers
30 to draft responses to Vasco's lawyers and says, 'Please
31 find attached a partly completed document addressing the

1 queries of Vasco's lawyers'. The KHQ letter is not
2 addressed to Vasco's lawyers. So I'm not sure whether
3 that letter, that you've just been looking at, was the
4 attachment to this email or is intended to be referred
5 to. Are you able to assist in that regard?---No. I was
6 asked the same question. I'm unsure what the attachment
7 is. So I don't know we're able to ascertain that from
8 the court book. Does it have in the bottom of this email
9 somewhere what the attachment is?

10 No. We don't have - we don't have the attachment. We'll move
11 on to the next email at 743. If we scroll down we can
12 see that comes from Mr Van Wegen. It's addressed to you
13 and Lydia Lee, L-e-e, 24 May 2020, 9.26 am, and you will
14 see, amongst the attachments, the very last attachment is
15 a letter to TG draft 22 May 2020?---Yes.

16 Now, that would be - although the letter that is at p.746, that
17 we went to a moment ago, is dated 23 May, do you agree
18 that that would be the same document, perhaps in a
19 slightly different alteration, perhaps? A different
20 iteration but the same letter?---Yes. If I may explain
21 that communication (indistinct) best as I can recall,
22 that previous email you had a moment ago, I - without
23 having the benefit of the attachment in front of me, I
24 believe that I sent a copy of the questions to respective
25 parties named in that email chain and asked them to
26 complete the sections in the relevant highlighted
27 colours. Mr Van Wegen then responded in this email here
28 attaching that document. I specifically recall yellow
29 sections in that email or - sorry, in the letter
30 addressed to (indistinct) were specifically provided by
31 Mr Van Wegen.

1 All right. Thank you. So that's why he says - he says in the
2 first line, 'See attached letter without parts completed.
3 Please note my comments in pink', which was
4 the - - -?---That is correct. It doesn't say that he
5 wrote in yellow but it was - and the pink bit was his
6 questions (indistinct) correct.

7 I see?---I think if you scroll down you can see that - I
8 believe - I believe my request of him was that he
9 completes his bit in yellow.

10 All right. And did you - this letter was ultimately sent, I
11 think we've shown it to you previously, let me just get
12 that - if you can go to 675, please. That's the final
13 letter that went out; do you agree?---Privilege. Yes, it
14 looks like it.

15 And do you agree that it went out on your
16 instructions?---Privilege. Can you just scroll down a
17 bit more? I'd like to actually see the letter.

18 If you need to read the letter, please do?---Sure. If we just
19 quickly scroll through it, please.

20 And, just for your benefit, can I point out that it's the
21 section numbered 4.3 that I want you to address
22 particular attention to?---Certainly.

23 We might pause at 4.3, please, Mr Associate, when we get there.
24 Just there, thanks. I would ask you to read 4.3A and B,
25 please?---Certainly. Okay.

26 Now, the reference in 4.3A to a loan in exchange for Accloud
27 shares is a reference to the transfer of the shares from
28 IPOW 3, the Accloud shares, 2.25m, to 101 Investments
29 and, according to this paragraph, that was on terms of
30 vendor finance and IPO 3s accounts, according to this
31 letter, now show an asset being a loan to 101 Investments

1 in place of an asset being the investment in the Accloud
2 shares. So one moment IPO 3 had the shares, the next
3 moment it had a debt owed to it for an amount of €12.1m;
4 is that correct?---No, it's not.

5 Did you read this letter before it went out?---I recall reading
6 it in great haste because we had refers and managers
7 appointed to 17 companies only the Friday beforehand. So
8 I admit I did not have the benefit of reviewing this in
9 detail (indistinct) a filed set of accounts on which to
10 make that assessment. This information - this
11 information was provided by Pinnacle Advisory Group.

12 Where would Pinnacle have got this information from if not
13 you?---Pinnacle constructed the proposed transactions
14 but - - -

15 I'm sorry, they constructed what?---The transaction. So they
16 proposed the consolidation of the shares into IPO Wealth
17 Holdings No.3 and the proposed sale of those shares to
18 101 Investments right through to, obviously,
19 incorporating 101 Investments itself. Subsequently, it's
20 become evident that, based on the payments that have been
21 made int IPO Wealth Holdings, the acquisition of those
22 shares that were, in fact, paid for and not pursuant to
23 any facility agreement. As we've informed the court
24 previously, that facility agreement was never
25 countersigned and the bank statements demonstrate that
26 the payments had been made in (indistinct) those shares.

27 But how can accountants make statements like this without
28 having your instructions about what the nature of the
29 transaction was? They must have understood that that was
30 your view of the transaction, surely?---Privilege. As
31 I'm sure you recall, Mr Galvin, we have lodged formal

1 complaints against Pinnacle Advisory Group. We have
2 identified that they've entered manual journals in our
3 books and records, which we had not consented to, I was
4 not even aware of, there's no drafts providing
5 (indistinct) - so this is yet another example of where
6 this - this information was provided without
7 authorisation.

8 Your Honour, would you excuse me just for a moment, please?

9 HER HONOUR: Yes, Mr Galvin.

10 MR GALVIN: Do you recall, Mr Mawhinney, making affidavits in
11 the Supreme Court proceeding that confirmed the view that
12 was being expressed in clause 4.3(a) of this
13 letter?---Privilege. I can't recall specifically; there
14 are a number of affidavits that were filed.

15 Paragraph 4.3(b): 'The market value of the shares was
16 determined in accordance with the most recent third party
17 share transaction in Accloud as at the date of the
18 transfer, being half a pound for each share, as confirmed
19 by Accloud's managing director'. Is that - sorry, and
20 then it reads, 'The Accloud investment was valued at 50p
21 for each share as at 31 December 2018'. Is that all
22 correct?---Privilege. Yes, I believe so.

23 Right. Could I ask you, please, to go to p.753, Mr Associate.

24 (To witness) That's an email from you, Mr Mawhinney, to
25 Mr Wallace and others dated 31 May 2020 at 9.57 pm. Do
26 you recall that email?---Privilege. No, I don't.

27 If we could scroll down, please, to the next document on the
28 next page. (To witness) The document's headed Accloud
29 and 101 Investment Ltd Share Transfer.docx. Do you
30 recall this document, Mr Mawhinney?---Privilege. No, I
31 don't.

1 Do you know whether you drafted it or not?---Privilege. It
2 doesn't look familiar at all.
3 Well, look at the email above it which attaches it. So if you
4 go back to 753, please?---It may be that the format's
5 different to how it was drafted, but I - I just - it
6 doesn't look familiar at all.
7 Do you accept that this is the attachment - or the document at
8 754 is the attachment to the email at 753?---(Indistinct)
9 - yeah. Without seeing it in an electronic format it's
10 difficult to know, but if you scroll down.
11 Scroll down, please, to 75 - - -?---There's attachments Accloud
12 and 101 Investments Ltd Share Transfer.docx. Scroll down
13 further, thanks. It would appear to be the corresponding
14 attachment.
15 Now, I want to just go through this document and ask you some
16 questions about it. First of all, it says that, 'Accloud
17 and 101 Investments share transfer' - well, it just has
18 a, sort of, a heading there and then it says, 'Key
19 asset' - - -?---(Indistinct words) - - -
20 That's because the Accloud shares were a key asset of the IPO
21 Group, isn't it?---Privilege. That doesn't look like
22 something that I would have written.
23 Do you - are you saying that you didn't write
24 this?---Privilege. Would you mind scrolling down
25 further. Further thanks. Sorry - - -
26 ASSOCIATE: (Indistinct words) - - -
27 WITNESS: Further.
28 ASSOCIATE: I'm sorry, could you repeat your request?
29 WITNESS: Yes, sorry, would you mind scrolling down further.
30 I'm not familiar with the email, or the document, or
31 whatever it is. I'm happy to answer questions if there's

1 content there that you'd like to (indistinct words) - - -

2 MR GALVIN: Well, have a look at that third-last paragraph, 'We
3 are an international company and I have spent nearly 50
4 per cent of my time overseas over the past five years,
5 with the exception of COVID. I even got a letter one
6 year from the ATO asking if I was still a resident of
7 Australia doing - due to being overseas so frequently'.
8 Do you agree that that's you?---Privilege. That sounds
9 correct, yes.

10 So this is your document, isn't it?---No, it's - I didn't say
11 that.

12 No, but it is, isn't it? I mean, no one else would write this
13 letter, would they?---Privilege. You just asked about
14 one paragraph in a three-page document.

15 Yes?---(Indistinct words) - - -

16 And I'm asking you about the whole document now. Don't you
17 agree, having regard to that third-last paragraph, that
18 this is a document that you authored?---Privilege. No, I
19 don't believe that it is. It's not in a format of
20 something that I would (indistinct) - - -

21 Don't worry about the format, what about the substance of
22 it?---Privilege. That one paragraph looks familiar, I
23 don't know about the rest though.

24 All right. So you - - -?---(Indistinct words) - - -

25 But you agree though, don't you, that this is a document you
26 attached to an email; is that right?---Privilege. No, I
27 don't recall the email, I don't recall the document.
28 (Indistinct words) - - -

29 Do you think the email might be a fabrication, is that what
30 you're saying?---Privilege. I'm not suggesting that, I'm
31 just saying I don't recall that document. I'm more than

1 happy to take questions on the document if you'd like me
2 to.

3 All right, okay. Thank you, Mr Mawhinney. Do you agree,
4 though, that this email was intended to provide further
5 background explaining why 'We' - presumably IPO Group
6 or Mayfair 101 - 'took the steps we did with the Accloud
7 shares'. That's what the email says and that's what this
8 document explains, doesn't it?---Privilege. I don't have
9 the email in front of me so I don't know.

10 Can we go back, please, to p.753, Mr Associate.

11 WITNESS: Okay.

12 MR GALVIN: There's no reason to doubt that you sent that
13 email, is there?---Privilege. No, there isn't, unless
14 it's fabricated. I'd be highly surprised if it was.

15 Yes?---But nothing surprises me (indistinct).

16 All right. If we come back, please, to p.754. (To witness)

17 This document refers to Accloud being a key asset, that's
18 a key asset of the IPO Group, isn't it, the IPO Wealth
19 Group?---Privilege. No, it's not.

20 Okay. What's the key asset - the reference to 'key asset' mean
21 there?---Privilege.

22 I'm assuming - I'm putting to you that this is your document,
23 of course?---Privilege. As I said, I can't recall
24 altering the document. This is not in a format, and I
25 haven't had the opportunity to review every word. If I -
26 if I had a moment on my laptop, I could tell you in two
27 minutes if it was in fact something I offered.

28 If you what, sorry? If you had what?---If I had the
29 opportunity to review the document on my laptop, or the
30 email as at that date, then I may become familiar to it.
31 But as I said, I just - I have never authored a document

1 that says - that has that type of title to it, the item
2 ID with file name (indistinct) typed at the top of it.
3 I see?---Categorically.
4 Now, according to the first main paragraph, Accloud is the
5 group's most valuable non-real estate investment. As of
6 the time of this email, which was May 2020, was that
7 true?---Privilege. Absolutely. That being said, it
8 wasn't an aspect of the IPO (indistinct) - - -
9 I know. I understand that. But it says 'Accloud is the
10 group's most value'. So you would say that's the Mayfair
11 Group, would you?---Privilege. Correct.
12 Yes. But it was originally the IPO Group's asset, wasn't
13 it?---Privilege. It was one of the assets of IPO Wealth;
14 correct.
15 It was originally an asset of the IPO Group, until it was
16 transferred to 101 Investments?---Privilege. Until it
17 was sold to 101 Investments.
18 It was - part of the sale was a transfer, wasn't
19 it?---Privilege. It was a sale, which includes the
20 transfer, yes.
21 Yes?---And I might add that those shares haven't yet been
22 transferred by your client.
23 Yes. Yes. We might (indistinct words) - - -?---But they're
24 paid for.
25 And the sentence reads, "and is an investment we consider
26 extremely important to protect, to provide underlying
27 security for the group and its investors'. So which
28 group and which investors were being
29 protected?---Privilege. The ones that paid for the
30 asset.
31 So not the IPO investors?---Correct. They got the cash.

1 They got the cash, did they? What cash is that?---Privilege.
2 \$19.51m.
3 That's the money that was transferred from Sunseeker Eleuthera
4 early on?---Privilege. That's correct.
5 Is that right? Yes. And that was paid to IPOW Holdings. Is
6 that what you say?---Privilege. To that bank account,
7 that's correct.
8 It wasn't paid to IPO 3, though, was it?---Privilege. It was
9 paid pursuant to that sale agreement.
10 It wasn't paid to IPO 3, was it?---IPO 3 did not have a bank
11 account.
12 Yes. One more time. It wasn't paid to IPO 3, was it?---Yes,
13 but it wasn't paid to IPO 3's bank account, because it
14 didn't have one.
15 Now, the sentence - the next sentence reads, 'The management
16 team and I' - that being you and your management team
17 at Mayfair?---Privilege. That's correct.
18 'In consultation with our accountants Pinnacle, considered it
19 important to have Accloud held in a structure that would
20 not put it at risk of a fire sale by Vasco or receivers
21 that would likely significantly devalue the asset'. Was
22 that the thinking behind the transfer?---Privilege.
23 That's exactly how this has played out. It's a very
24 accurate and very commercial decision.
25 So you concede, do you, that the purpose of the transaction was
26 to remove the asset from the risk of a fire sale by Vasco
27 or receivers?---Privilege. No, that wasn't the purpose.
28 I see?---It was not the sole purpose.
29 Let me read it - it wasn't the sole purpose? Was it a
30 purpose?---Privilege. No, it was one of a number of
31 purposes. But given the shares were paid for in cash, it

1 became no longer the property of the IPO Holdings Group,
2 and therefore, had nothing to do with receivers in
3 relation to that group.

4 Let me read it to you again. 'The management team and I, in
5 consultation with our accountants Pinnacle, considered it
6 important to have Accloud held in a structure that would
7 not put it at risk of a fire sale by Vasco or receivers
8 that would likely significantly devalue the asset'. Is
9 it true that the value - - -?---Privilege - - -

10 Just hear the question, please. Is it true that you and the
11 management team considered that?---Privilege. What date
12 is this document, please?

13 Well, it's sent out under cover of the email of 31 May
14 2020?---Privilege. What date's the document, please?

15 It's - it doesn't have a date on it. But it's clearly attached
16 to an email which is dated 31 May 2020?---Privilege. So
17 the date - that document clearly doesn't have a date on
18 it, so I can't answer your question unless I (indistinct)

19 All right. Mr - you understand, don't you, Mr Mawhinney, that
20 you're under oath, don't you?---Absolutely.

21 In a courtroom?---Yes.

22 Yes. Is it the case that the management team of Mayfair or the
23 IPO Group, whichever it was, and you, in consultation
24 with the accountants, at any point in time considered it
25 important to have the Accloud shares held in a structure
26 that would not put it at risk of a fire sale by Vasco or
27 receivers that would likely significantly devalue the
28 asset?---Absolutely.

29 Yes. When did you and the management team hold that
30 view?---Privilege. I've held that view for a very long
31 time, being a client of Vasco Trustees Limited.

1 And was it not a motivating factor behind the transfer of the
2 assets to 101 Investments?---Privilege. Originally it
3 was. Subsequently, when the shares were actually paid
4 for it became an irrelevant factor.

5 Okay. So originally it was considered that it was important to
6 transfer the shares to 101 Investments to protect them
7 from Vasco or the receivers?---Privilege. This was
8 before the transaction was even documented, that there
9 was some general discussions around it; however, when the
10 transaction actually took place, it was a genuine sale of
11 the asset for which full and valuable consideration was
12 paid for.

13 All right. Just listen carefully to the question. It was
14 considered by you and others around you important to have
15 the Accloud shares transferred to - sorry, transferred to
16 - what's it called - 101 Investments, in order to avoid
17 the assets being sold at what you would perceive at an
18 undervalue by Vasco or the receivers?---Privilege. This
19 was the key asset of the group, and the only reason that
20 we would transfer it - or we ultimately transferred it
21 was because it was paid for.

22 What - - -

23 HER HONOUR: Mr Mawhinney, you're not answering the question.
24 You're not being asked what happened at the time the
25 transfer took place or an agreement for the transfer took
26 place. You were being asked about what the thinking was
27 at an earlier point in time?---Privilege. The thinking
28 at the time is exactly what that email states, but that
29 is not what actually transpired.

30 Right.

31 MR GALVIN: Okay. So you agree, then, that the thinking at

1 this time was that there was some sort of a risk of a
2 fire sale by Vasco or the - or receivers, not the
3 receivers - or receivers, because this is before the
4 receivers were appointed perhaps. Not
5 sure - - -?---Privilege. And that is why the date of
6 this document is so (indistinct) to this discussion
7 (indistinct)

8 Well, look at the email. Look at - perhaps we better go back
9 to it. 753, please, Mr Associate. Do you see the date
10 there, 31 May 2020?---Privilege. I do.

11 And do you agree that this document at 754 is attached to the
12 email?---Privilege. I do.

13 And does it not - doesn't the email not suggest that the views
14 expressed in the attachment are the views held by you as
15 at 31 May 2020?---Mr Galvin, I completely disagree. It
16 is evident from the fact I don't recognise that document
17 that that has been copied and pasted out of another
18 document, and pasted in - into that email. I don't -
19 because I don't know the date of that document, I can't
20 say for certain that it was published on that date.

21 All right. You don't accept this document as your document, do
22 you? That's what you're really saying?---As I -
23 privilege. As I said, I'm not familiar with the
24 document. It doesn't look familiar. I'm more than happy
25 to obtain the source document for you and obtain the date
26 for you for that document it that assists with your
27 inquiries.

28 Mr Mawhinney, I just want you to say whether you can say one
29 way or the other whether this is a document that you
30 authored?---Privilege. No.

31 You can't say one way or the other?---Privilege. That's - no.

1 Privilege. I can't say one way or another, because it
2 looks to me like it's either an incomplete document or a
3 reformatted document. Without having the benefit of the
4 original source document, I - I can't answer the
5 question.

6 Mr Mawhinney, the formatting has got nothing to - whatsoever to
7 do with whether or not you authored it, has
8 it?---Privilege. Mr Galvin, can you take me to the
9 original document, please.

10 I don't have the original document. I have this document, and
11 I'm asking you whether you can say whether or not you
12 authored it, and it appears - - -?---Privilege.

13 (indistinct words)

14 - - - that you're not prepared to say one way or the
15 other?---Privilege. I would prefer if we can refer to
16 the original document, not some variation or fabrication
17 of the original document.

18 So you think this is a variation of a document or a
19 fabrication; that's your answer, is it?---Privilege. I
20 believe that there's a high probability that that's the
21 case.

22 Yes. Any ideas who might have fabricated the
23 document?---Privilege. I don't know. I'm just saying I
24 don't recognise the document in that format.

25 All right. Well, let me just ask you about some of the views
26 that are expressed in it, nonetheless?---Certainly.

27 I don't know that you've answered the question as to - I think
28 you did - sorry, you did at one point concede that at
29 some stage you considered it was important to have the
30 Accloud shares held in a structure that would avoid the
31 risk of them being sold in a fire sale by Vasco or

1 receivers?---Privilege. That's correct.

2 Yes. And was it also the case that you thought that putting
3 these shares into this structure would enable the Group -
4 that is, the Mayfair Group - to manage the asset in a
5 controlled manner?---Privilege. Absolutely.

6 Yes. What does managing the asset in a controlled manner
7 mean?---Privilege. If I may use Venice as an example, as
8 the court is well aware, we - and I voluntarily
9 transferred that asset to the receivers. We're under no
10 obligation to do that. However, we weren't in a position
11 to continue to develop and manage that asset. Had that
12 asset been developed, over time it would have a luxury
13 resort on there which could have been sold for a lot more
14 than the money that was owed back to the IPO Wealth
15 Holdings Group. Instead, now, it is with the receivers
16 and it is likely that it will take perhaps a very long
17 time for any money to be realised from that asset.

18 Sorry, what does it mean - what did you have in mind when you
19 thought that putting this asset, these shares, into a new
20 structure which removed it from Vasco or receivers was
21 going to enable you to manage it in a controlled
22 manner?---Privilege. It's very straightforward. When a
23 company lists, selling down shares on day 1 may or may
24 not be the right decision. However, if that asset is
25 then in the hands of a liquidator as opposed to an
26 investment manager, any person with half a year of
27 business experience would understand that the receivers
28 were in the business of selling assets for what they
29 could get for them. Investment managers were in the
30 business of maximising the value of assets.

31 I See. Well, I think you're answering my question there. What

1 you mean is that, with respect, a controlled manner means
2 not a fire sale manner in a way that will maximise
3 return?---Privilege. Correct. So that the money can be
4 returned to the IPO Wealth unitholders in full.

5 I see. And so the next sentence picks up on that. It says,
6 'Protect in such a way that the Group's investors would
7 still benefit from the structure in place'?---Privilege.
8 Would you mean mind scrolling down? I just can't see the
9 email.

10 I'm sorry. Yes. Could we - - -

11 HER HONOUR: If we could go back to that page, was it - - -

12 MR GALVIN: Yes. 754. I'm sorry. I didn't realise we weren't
13 there. A little bit further, please. Thank you. Do you
14 see the - halfway down the page, 'Protect in such a way
15 that the Group's investors would still benefit from the
16 structure in place.' Now, I will just ask you some
17 questions about that. Which group is being referred to
18 there, do you know?---Privilege. No, because I don't
19 know the date of this document and neither do you.

20 So the words at the top there say, 'Accloud is the Group's most
21 valuable asset, non-real estate asset.' That could be
22 the IPO Group, couldn't it?---Privilege. I don't know
23 because I don't know the date of the email.

24 You were very confident before that it wasn't the IPO Group,
25 that it was the Mayfair Group; do you recall
26 that?---Privilege. If this document is dated the same
27 date as that email, then, yes, you're correct. If it's
28 dated prior to 22 May, the date the receivers and
29 managers were appointed, then - sorry, prior to 4 October
30 2019, then Accloud was still an asset of the IPO Wealth
31 Holdings Group.

1 I see. So which investors were going to benefit from this
2 structure?---Privilege. Objection, Your Honour. I'm
3 being asked questions in relation to a document that I'm
4 not familiar with and that Mr Galvin is unable to provide
5 me with the date that this document was published. I
6 would like to see the original source document, please.

7 Now, I will - - -

8 HER HONOUR: Mr Mawhinney, we've been through this. Mr Galvin
9 has said that he doesn't have any other document in
10 relation to this, and I think that he ended up saying
11 that he was going to ask you whether or not you agreed
12 with the sentiments expressed in this - - -?---Privilege.
13 I'm happy to answer in relation to the sentiments
14 expressed, but when I get asked questions that are date
15 sensitive, I'm unable to answer those questions.

16 Well, then, isn't the answer if it relies on the date, there's
17 no reason why you can't qualify your answer by doing
18 that, but I'm not going to allow you to not answer it
19 because of that. If you need to factor the date into
20 your answer, fine, but you need to answer the question
21 even if it is to qualify it in some way
22 by - - -?---Privilege. I'm more than happy to do that.
23 Would - I'm more than happy to provide, if I can obtain,
24 if I have it, the original copy of this document to the
25 court so that it can be properly examined in a subsequent
26 time.

27 Can I just ask a question about it anyway in - perhaps if you
28 could scroll up, Mr Associate, to the top of this page.
29 Right. And then if you could go back to the previous
30 page where the email is. That's it. Now, I think you've
31 already said, Mr Mawhinney, that the attachment that we

1 were just looking at was attached to this email. I think
2 you've already - - -?---I - yes. With respect,
3 Your Honour, I can't tell if an email - if that was
4 attached to that email. This is a PDF document file we
5 have here.

6 All right. I thought - yes, I thought - but I thought you
7 previously agreed with Mr Galvin that the document was
8 attached to this email. I might be wrong?---The
9 attachment - - -

10 Mr Galvin (indistinct)?---The attachment heading or the
11 attachment document name that I'm looking at on my screen
12 now, Accloud and 101 Investments (indistinct) Share
13 Transfer.docx matches the document on the subsequent
14 page.

15 Yes, it does. Thank you. And then if you have a look at the
16 text of that email, 'Attached is some further background
17 which explains why we took the steps we did with the
18 Accloud shares.' Doesn't that suggest that, at the very
19 least, the purposes or reasons expressed in that document
20 existed at the time the steps that were taken in respect
21 of the Accloud shares?---Privilege. It's a - as I think
22 the court knows, this is a very complex transaction.
23 There have been many steps through it. I would be more
24 than happy if Your Honour would like me to add to
25 Mr Galvin's questions based on different assumptions of
26 this document being published at different times.

27 Well, I'm just asking why we can't rely on the words that are
28 in this email?---Privilege. Because I think there's -
29 there's three potential dates or, say, range of dates at
30 which this email could have been published: one, it
31 could be prior to 4 October 2019. One, it could be

1 between 4 October 2019 and 20 May 2020. It could -
2 sorry, the third option could be between 22 May 2020 and
3 31 May. Obviously, it's (indistinct) unlikely that it
4 would have been subsequent to that.

5 But it talks about 'took the steps we did with the Accloud
6 shares.' Those steps are in the past, aren't they, as in
7 prior to this email of May 31 2020?---Privilege. It
8 would appear to be the case, yes.

9 Yes. Mr Galvin, I might pause there and hand it back to you
10 because you've obviously got a better idea than I do of
11 where this is going, but - - -

12 MR GALVIN: Yes.

13 HER HONOUR: - - - it did occur to me that the wording of that
14 email might shed some light.

15 MR GALVIN: I'm very grateful. Thank you, Your Honour. And
16 they certainly do. Mr Mawhinney, so in the email - let's
17 perhaps go back to the email - - -

18 HER HONOUR: Mr Galvin, if I can just interrupt you for a
19 minute, I think Ms Papaleo wants to say something.

20 MS PAPAleo: Yes. Your Honour, thank you. I wonder if I might
21 speak to Mr Galvin for a moment offline.

22 MR GALVIN: Yes.

23 MS PAPAleo: If that would be all right. Thank you.

24 HER HONOUR: Yes. Well, now might be a convenient time to take
25 a five-minute break, everybody, anyway. So let's come
26 back at 3.15.

27 MS PAPAleo: Thank you, Your Honour.

28 HER HONOUR: Mr Mawhinney, is that satisfactory?---Thank you.

29 All right. Thank you.

30 <(THE WITNESS WITHDREW)

1 (Short adjournment)

2 HER HONOUR: Yes. Thank you, I think we're ready to resume.

3 Thank you, Mr Galvin.

4 MR GALVIN: Thank you. We have emailed to the court the email

5 and the attachment in their native format so that

6 Mr Mawhinney can see them as they were sent -

7 appeared - - -

8 HER HONOUR: All right.

9 MR GALVIN: - - - electronically.

10 HER HONOUR: Yes, I can see that. Mr Associate, the email is

11 there. If you could just - the attachment is what needs

12 to be forwarded by you to Mr Mawhinney, please.

13 MR GALVIN: I was just going to suggest at the moment,

14 Your Honour, that we open the email on the shared screen.

15 HER HONOUR: Yes, of course. Yes. So, Mr Associate, it's the

16 email that's attached to the email that needs to be

17 opened, please.

18 ASSOCIATE: Yes, I have it. Just to confirm, it's an email

19 dated Sunday 31 May 2020.

20 MR GALVIN: Yes.

21 ASSOCIATE: Yes, I'll share that now. Yes, is that on

22 everyone's screen?

23 MR GALVIN: Yes. Thank you.

1 <JAMES PETER MAWHINNEY, recalled and examined:

2 Mr Mawhinney, do you see that email?---I do. Thank you.

3 And it's dated 31 May 2020, and it's sent by you to Greg

4 Wallace at (indistinct)?---Yes.

5 It reads 'Team, attached is some further background which

6 explains why we took the steps we did with the Accloud

7 shares. I'll discuss it with you more tomorrow'. You

8 agree that you sent that email to those people on that

9 day?---Privilege. Yes.

10 And you know what you were referring to - well, no, I withdraw

11 that. If we now click on the attachment, please. And

12 Mr Associate might need to double click on that. Thank

13 you. (To witness) You see that that is the same document

14 but without the heading which was concerning you earlier,

15 I think?---Privilege. Yes. I can't say it looks overly

16 familiar, but it does align with the document you showed

17 me previously.

18 You agree that you'd prepared this document?---Privilege. Yes,

19 but I don't believe it was prepared on 31 May. The

20 contents that you took me through earlier - I haven't had

21 the benefit of reading the full document - but it would

22 appear to have excerpted content that were relevant prior

23 to 31 May.

24 Can we please - yes, well, of course, because it refers to a

25 history or a background, doesn't it?---Privilege. That's

26 correct.

27 Could I ask the associate, please, to click on the file drop

28 down menu on the top left of the screen. To the left

29 there, for the word File. Thank you. You should be able

30 to open the metadata with Properties.

31 WITNESS: Privilege. That's relevant for the document, but it

1 doesn't mean that some of the content may have been
2 copied from other documents. I just can't recall.
3 Thank you. Well, it appears at the moment - yes, Properties.
4 Could we click on that, please. (To witness) Yes, do you
5 see the properties there identify the author as James?
6 Do you agree that that's you?---Privilege. I'd imagine
7 it is, yes.
8 Yes. So I'm suggesting to you that you did draft this
9 document?---Privilege. That's - it seems to be case, but
10 as I said, it could well be a compilation of previous
11 documents and emails that we typed out previously.
12 All right. Okay, we can close that menu, please - that item,
13 please, Mr Associate. We go back, then, to the
14 agreement. Not the agreement, sorry. The document. (To
15 witness) 'Accloud is the group's most valuable non-real
16 estate investment'. Now, do you know what you meant by
17 the term 'group' in this document, now that you see it
18 again?---Yes - privilege - so thank you for obtaining the
19 original document. Yes, by 'group' I mean the Mayfair
20 101 Group excluding the IPO Holdings Group, because at
21 the time that this document was sent, the IPO Wealth -
22 sorry, the (indistinct) investment was held by 101
23 Investments Ltd.
24 All right. And do you agree that you considered it, by this
25 stage or - at the time that that transfer took place, you
26 had considered it important to have Accloud or the
27 Accloud investment shares held in a structure that would
28 not put it at risk of a fire sale by Vasco or
29 receivers?---Privilege. Yes, that was a key
30 consideration of the transaction, amongst many others.
31 And do you also agree that it was to protect the asset in such

1 a way that the group's investors would still benefit from
2 the structure in place?---Privilege. Absolutely. At the
3 time, I did. Yes.

4 Which investors are you referring to there?---Privilege. At
5 the time that the transaction hadn't occurred, I
6 considered that it was important to have the asset in a
7 structure that would - - -

8 Sorry, can I just interrupt you, please, Mr Mawhinney. I just
9 wanted you to answer the question, please. Which
10 investors are you referring to in that part of the
11 document, the third bullet point?---Privilege. That
12 third bullet point relates to an explanation that we
13 gave - - -

14 No, Mr Mawhinney, I'll give you one more chance. I just want
15 you to say who the investors are that are referred to
16 there?---Privilege. The context is immensely important,
17 Mr Galvin.

18 I'll permit you to address the context if you wish. But first
19 of all, I'd like you, please, to answer the
20 question?---Privilege. It was, at the time, the IPO
21 Wealth fund investors and M+ and M Core and IPO Capital
22 investors.

23 Right. Now, why - how were the IPO investors going to benefit
24 from this new structure?---Privilege. Which new
25 structure are you referring to?

26 The structure that's referred to in the full paragraph - last
27 line in the full paragraph above. It's the word you
28 used. The structure that you're referring
29 to?---Privilege. I see where it says structure. What
30 was the question again, sorry?

31 The question is, how was it that the IPO investors were going

1 to benefit from that structure?---Privilege. Given that
2 the shares were paid for, the IPO investors did benefit
3 from that transaction with a tune of 19.4 - or \$19.51m
4 that was paid into the IPO Wealth Holdings Group for
5 those shares.

6 No. No. It says - it doesn't refer to something that's
7 happened in the past. Those payments had occurred up
8 to November 2019, hadn't they?---Privilege. Correct.
9 Those (indistinct words).

10 Though how - in what sense were these investors going to still
11 benefit from the structure in place as at May
12 2020?---Privilege. The IPO Wealth investors had already
13 had the benefit of the cash; therefore, there was no more
14 benefit to be had post 4 October 2019.

15 So what did you mean by the words "would still benefit from the
16 structure in place"?---Privilege. At the time I was
17 referring to the M+ and M Core investors, I believe.

18 Do you remember drafting this document now?---Privilege. No,
19 because as I said, this - it seems to be a compilation of
20 a variety of content that had been previously produced.

21 Produced by whom?---I haven't had the benefit of reading the
22 full document.

23 Well, then, why do you say it's a collection of various pieces
24 of prior work?---Privilege. This is an internal
25 memorandum. It is nothing more than that.

26 All right?---This is a briefing to our - to team members
27 internally. It's nothing more.

28 What's the security arrangement referred to in the fourth
29 bullet point?---Privilege. This was a security
30 arrangement that Pinnacle had advised us at the time in
31 relation to this transaction that was never actually

1 implemented.

2 So - but this is background. The object of the structure was

3 to provide a security arrangement so that the fund - is

4 that the IPO Wealth Fund?---Privilege. Correct. Yes.

5 Would still have reach to the asset if required?---Privilege.

6 Correct. If that structure that Pinnacle had recommended

7 was, in fact, implemented, which it wasn't, then the IPO

8 Wealth Fund would still have reach to that investment

9 insofar as a repayment of that facility in the event of

10 non-repayment of that facility, then it would have full

11 call-back rights on all of the shares.

12 But, Mr Mawhinney, the email says this is background which

13 explains, 'Why we took the steps we did'. It - what it's

14 - what the email - what you said in the email is that

15 these steps were taken?---Privilege. I - I - - -

16 This was put into effect?---Privilege. This is an internal

17 memorandum. It doesn't obviously reflect, um, actually

18 how the transaction took place.

19 Well, then, why did you draft it? Why did

20 you - - -?---(Indistinct)

21 - - - tell people that it was - that it explains why you took

22 the steps that you took with Accloud?---Privilege.

23 Because I was relying on the information that Pinnacle

24 Advisory had given me that that's how the transaction had

25 been completed, which it hadn't.

26 I see. So the next sentence reads - paragraph reads,

27 'Furthermore, the group had plans to launch additional

28 investment products. Mayfair Platinum was launched

29 in June 2019', meaning it would have more investors it

30 was responsible for, and, therefore, would need to

31 protect its key asset for the benefit of all investors.

1 So this key asset was being protected for Mayfair 101
2 investments - Mayfair 101 investors; is that
3 right?---Privilege. I don't understand what the crime is
4 it in trying to protect assets for the benefit of
5 investors. This is exactly what we've been trying to do
6 as an investment manager, so that we can return - - -
7 Which investors - - -?---So that we can return capital to all
8 of our investors.

9 HER HONOUR: Look, I'm going to (indistinct) interrupt you
10 there, Mr Mawhinney, and ask you to answer the question
11 that's asked, please, rather than launching to some sort
12 of self-serving speech?---No problem.

13 MR GALVIN: Mr Mawhinney, this paragraph suggests that this key
14 asset, which is the shares of - the Accloud shares, are -
15 is to be protected for the benefit of all investors; do
16 you agree with that?---Privilege. That's what it says.
17 Yes. And it's - that's what you said, isn't it, in this
18 document?---Privilege. By "all investors", the investors
19 that are protected by this investment are the M+, M Core,
20 IPO Capital and Australian Property Bond investors. The
21 IPO Wealth Fund investors benefited - or IPO Wealth
22 Holdings Group benefited from the cash that it received
23 in full for those shares.

24 Yes. But that's the benefit that it had - they had received
25 before November 2019, well before - six months before
26 this?---Privilege. Accounting, by definition, is a
27 historical - has a historical function. And so the
28 transaction took place. It was accounted for
29 subsequently. That is stock standard business practice.

30 Thank you for that. The next paragraph reads, 'The point
31 should be made that the group has not disposed of the

1 asset'. Is 'the group' the IPO Group?---Privilege. I
2 can't see the email. Sorry.

3 Can we scroll down, please, Mr Associate, to the next
4 paragraph.

5 ASSOCIATE: Yes. I'm sorry. My screen seems to have frozen.
6 I will scroll when I can. Yes. I'm afraid that's
7 frozen, Mr Galvin. I could return to the copy in the
8 examination book and see if that works.

9 MR GALVIN: Yes. Yes. Are you prepared to do that,
10 Mr Mawhinney?---Privilege. Prepared to what, return to
11 the court book?
12 To the PDF version in the court book rather than the electronic
13 version?---I'm happy to do that. Sure.

14 All right. Thank you, Mr Associate. So this document is at
15 page 754.

16 ASSOCIATE: Yes, I have it.

17 MR GALVIN: Thank you.

18 HER HONOUR: Can you scroll down further, please, Mr Associate.

19 MR GALVIN: So I was asking you about the paragraph beginning
20 with the words, 'The point should be made that the Group
21 has not disposed of the asset.' Do you see that?---Yes.
22 'And prior to receivers being appointed, the fund's investors
23 still had the same underlying assets supporting the fund,
24 albeit not directly held by IPO Wealth Holdings'. In
25 what sense was the fund - did the fund still have the
26 same underlying asset?---Privilege. It didn't.

27 No. So that sentence is false, is it?---Privilege. As I said,
28 this was an internal communication at the time based on
29 the information - - -

30 Sorry, can I just remind you again, please, Mr Mawhinney, my
31 question was: is this sentence false?---Privilege.

1 That's correct.

2 And why did you make this false statement to your
3 team?---Privilege. Because at the time I was of the
4 understanding that, based on the advice I had received
5 from Pinnacle, that's how the transaction had been
6 accounted for. Subsequent analysis indicates that that
7 was not, in fact, the case.

8 So your understanding of the transactions that occurred is
9 based not on your awareness or understanding of the
10 transactions as they occurred but rather an ex post facto
11 analysis; is that what you're saying?---Privilege. That
12 is exactly how accounting works.

13 Thank you. I don't need you to tell me that. I just need you
14 to answer the question. Is that how you have worked out
15 what transactions occurred by an ex post facto analysis
16 rather than an understanding of the transactions as they
17 occurred at the time they occurred?---Privilege. No,
18 that's incorrect. I don't agree with that statement.

19 You say in the third or fourth last paragraph, 'We have always
20 been' - sorry, I will just - yes. No, go to the next
21 paragraph beginning, 'We have always been concerned'.
22 'We have always been concerned that if we were to miss
23 any interest or loan repayments, regardless of
24 circumstances, Vasco may call in the loan and appoint
25 receivers and ultimately dispose of the largely in liquid
26 assets of IPO Wealth Holdings in a timeframe and at a
27 price that would be detrimental to investors'. Do you
28 recall those words?---Privilege. I do.

29 And what they indicate is that the purpose of the transaction
30 or a purpose of the transaction - that is, the
31 transaction by which the Accloud shares were transferred

1 to 101 Investments - was so that Vasco or receivers
2 appointed by them or by the court, for that matter, would
3 not be able to get to that asset and realise it in a
4 fire sale fashion; that as the concern, wasn't
5 it?---Privilege. It was a concern. However, it wasn't,
6 in fact, how this played out.

7 No, but it was a concern that you had as at the time the
8 transaction occurred?---Privilege. It was a concern that
9 I had at the time the transaction occurred. However,
10 those shares were paid for in full in cash.

11 Yes, I know. I understand that, but - - -?---Basically
12 (indistinct)

13 - - - in other words, I'm suggesting to you that the
14 transaction occurred not because of payments which had
15 previously been made, but rather because there was a
16 concern that the receivers or Vasco or creditors of the
17 IPO Group might be able to get to those
18 assets - - -?---Privilege - - -

19 - - - and sell them in a fire sale at less than their real
20 value?---Privilege. That was one of many concerns that I
21 had.

22 In other words, it has got nothing at all to do with the fact
23 that payments had already been made. That's just a
24 convenient fact that you have relied upon in recasting
25 the circumstances or recasting the basis upon which these
26 shares were transferred; isn't that the
27 case?---Privilege. At the time, I was led to believe by
28 Pinnacle that that was how the transaction occurred.
29 Subsequent investigation indicated that was not, in fact,
30 what took place. Our accounts were in draft, they were
31 unaudited, they were unfinalized, so they have not been

1 lodged. Subsequent examination of the accounts, there's
2 - accounting for the transaction, including the
3 reconciliation of the accounts, which Dye & Co have still
4 yet failed to do or come to us and ask to close the
5 balances on it, has not been completed.

6 So Pinnacle didn't execute the agreements, did they, you
7 did?---Pinnacle prepared the agreements and - - -

8 Did you execute them or not?---I did not execute all of the
9 agreements from what I recall.

10 Did you execute the documents by which the shares in Accloud
11 were assigned to 101 Investments?---Privilege. I only -
12 well, I executed the share sale agreement.

13 Yes. So there's no doubt that Pinnacle didn't execute it. You
14 were the one who decided to execute it; isn't that
15 right?---Privilege. Correct.

16 You were the one who decided to transfer the Accloud shares to
17 101 Investments?---Privilege. That's correct, for many
18 reasons.

19 No. That's all right, but one of the reasons is - even a
20 prominent reason, is that it was to ensure that Vasco and
21 receivers would not be able to get to the assets and sell
22 them in what you perceive would be a fire
23 sale?---Privilege. That was not the prominent reason for
24 doing that.

25 Was it a reason?---Yes, it was a reason.

26 Thank you. Now, could I ask you please to go to the next
27 page, please, Mr Associate, 755, under the heading Nature
28 of Assets. And if we look at the paragraph beginning,
29 'There are relations'. 'There are relations and
30 intellectual property that has been developed over the
31 last five years that have gone into the building out of

1 the portfolio with the Group playing an active role in
2 developing many of the assets fund moneys were used for.
3 That is, we have not simply been buying listed stocks or
4 other asset classes that are more widely known. It is
5 ludicrous to think that a receiver can manage the assets
6 to achieve an optimal sale price, given the asset class
7 and the level of support provided by the Group'. That
8 paragraph amongst others suggests that the real concern
9 behind this transaction was the fact that you wouldn't
10 control the sale of the assets, but Vasco or receivers
11 might control the sale of the assets. That was your real
12 concern?---Privilege. No, that's not correct. As you
13 said a moment ago, it was one of a number of different
14 concerns I had.

15 What about the next sentence: 'This was a significant
16 contributing factor in the Group's decision to transfer
17 the assets so that the Group could see it's more valuable
18 investments achieve a pathway to liquidity without being
19 unnecessarily devalued'. Does that not tell the reader
20 that your real concern was Vasco or receivers getting to
21 the assets and realising them?---Privilege. I disagree.
22 My real concern was making sure that we got all of our
23 unitholders' money back to them, something that the
24 liquidators are failing to do. This is why we - - -

25 Thank you for that, but how was this going to help get money
26 back to the investors? Money had already been lent -
27 according to you, money had already advanced by Eleuthera
28 and Sunseeker in the month June to November 2019. How
29 was this transaction which occurred in October 2019 or
30 thereabouts, how was this going to assist the investors
31 in the IPO Group?---Privilege. As I've explained, in

1 hindsight with how the transaction was completed, it
2 didn't. The IPO Wealth Fund got the - and the IPO Wealth
3 Holdings Group got the benefit of the cash. It is still
4 refusing to transfer those shares to the rightful owner,
5 which is 101 - - -

6 Yes. Mr Mawhinney, I just want you to focus on the question.
7 At the time that this document was prepared, how did you
8 think that the IPO investors were going to benefit from
9 the transfer of the shares to 101 Investments?---I don't
10 know.

11 Now, can we go to the next section, Internal Transfer.

12 HER HONOUR: Just before you do, Mr Galvin, can I just indicate
13 for the record that I've got the Word version of this
14 that my associate was sharing on the screen earlier on my
15 computer. And I'm following along on that, just so that
16 I can note if there's any difference in content - - -

17 MR GALVIN: I'm very grateful.

18 HER HONOUR: - - - between that version that you're taking
19 Mr Mawhinney to from the court book. There hasn't been
20 any differences in the passages that you've read out -
21 other than, I think, there was a couple of words
22 underlined. But if there are any, I'll point them out
23 for the benefit of the record.

24 MR GALVIN: I'm very grateful for that, Your Honour. Thank
25 you.

26 HER HONOUR: Sorry. I think you were going to go to the
27 section Internal Transfer.

28 MR GALVIN: Yes, Internal Transfer. Mr Mawhinney, it says here
29 that 'As the value of the Accloud shares increased, we
30 considered it to be high risk to leave the group's key
31 asset in IPO Wealth Holdings'. High risk. In what sense

1 was it high risk?---Privilege. In no sense, because the
2 - what's described in this email is now irrelevant. This
3 is not - this is not (indistinct).

4 No, at the time this document - at the time this document was
5 created - - -?---Yes.

6 - - - in what sense did you perceive there to be a high risk in
7 leaving the group's key asset, the Accloud shares, in IPO
8 Wealth Holdings?---As you're well aware, this document
9 was, in fact, completed and prepared on 31 May 2020. The
10 Accloud transaction had already completed, and therefore,
11 the Accloud shares were not an asset of the IPO Holdings
12 Group.

13 Mr Mawhinney, in what sense did you consider that there was a
14 high risk to leave the group's key asset in IPO Wealth
15 Holdings? What was the high risk?---The second line -
16 privilege - the second line explains that a trustee - we
17 had minimal confidence in the trustee.

18 I see. So, again, there was - the movement of the asset out of
19 the IPO Group was motivated by a concern about the
20 trustee taking action; is that right?---Privilege.
21 Action is the wrong word.

22 Well, taking action to realise the asset?---Privilege. No, not
23 taking action to realise the asset.

24 Then what was the concern that was going to be averted by
25 transferring the asset to 101 Investments?---Privilege.

26 In my role as an investment manager, I have to manage all
27 sorts of risks.

28 No, no. Mr Mawhinney, we don't need a speech. We just need to
29 hear why you thought it was essential to protect these
30 assets from a trustee - or the trustee - by transferring
31 to 101 Investments?---Privilege. To make sure unit

1 holders got as much of their money back to them as
2 possible.

3 And how would that not happen if - how was there a risk that
4 that might not happen?---Because - privilege - because
5 the liquidators have proven that they have as yet not
6 realised a single - - -

7 No, no. Mr Mawhinney, how was - there were no liquidators
8 then. And there - what I want to know is, how is it, at
9 that time, the time you created this document or
10 expressed these views, provided this background - how is
11 it that there was some risk to the asset by reason of the
12 existence of the trustee. What was the trustee going to
13 do that you were concerned about?---Privilege. We've
14 held concerns for the trustee for nearly three years
15 about their understanding of the assets that we invested
16 in and the nature of them.

17 What was the concern about what they were going to
18 do?---Privilege. Our concern was, that based on a lack
19 of understanding of our investment strategy, that they
20 may then seek to call in the loan and enforce security,
21 resulting in those assets being fire sold to the
22 detriment of unit holders.

23 Thank you. Now, they would only do that if there were a
24 default. Isn't that right?---Privilege. That's correct.

25 And is it the case that you were anticipating - that you had
26 anticipated, at the time of the transfer, that there
27 would be a default or maybe perhaps there had already
28 been a default?---Privilege. There had been no default
29 as at the time of the transfer.

30 Well, if there's - if there - and was there possibly going to
31 be a default?---Privilege. No, there wasn't at the time

1 of (indistinct words).

2 Well, then, if there was no - if there was not going to be a
3 default, why was there a high risk?---Privilege. Because
4 the trustee had very broad reaching powers in order to
5 step in and call in the loan.

6 There'd have to be a default, wouldn't there?---Privilege. I
7 haven't got the loan agreement in front of me. I
8 can't - - -

9 Well, you agreed a moment ago that it was because - it would be
10 in the event of a default that the liquidator - that the
11 trustee would call in the loan?---Privileged. Correct.
12 That - that's one of the primary bases on which they
13 could do that.

14 Well, that was the concern, that there was going to be a
15 default, and they would call in the loan, and the asset,
16 the Accloud asset, would be sold - - -?---Privilege.
17 - - - on a fire sale basis?---Privilege.

18 That was your concern, wasn't it?---Privilege. That is simply
19 risk management. There had been moneys borrowed from the
20 fund and we had made a series of investments. It was
21 (indistinct) in order to maximise the return of moneys
22 back to (indistinct words).

23 You can call it risk management, but I suggest to you that it
24 was the concern you held at the time of the transfer of
25 the assets to 101 Investments?---It's one of many
26 concerns I held at the time. That being said, I held
27 concerns since the inception of the IPO Wealth Fund.
28 That risk has never changed.

29 Yes. Thank you. Now, if we could go, please, to the next
30 heading Assets of 101 Investments. In addition to its
31 21.25m shares in Accloud and its \$2m investment in

1 PayMate India, 101 Investments also holds a revenue share
2 agreement with Accloud. Is that also what's known as
3 Accloud Mauritius?---Privilege. I believe so. Yes.
4 Which entitles it up to 10 per cent of the revenue of Accloud
5 India based on the provision of up to \$30m. We have paid
6 approximately - - -

7 HER HONOUR: US. Yes.

8 MR GALVIN: Yes. US. US\$30m. 'We have paid approximately
9 \$US7m, off the top of my head, towards this agreement to
10 date, meaning we have an entitlement of approximately -
11 to approximately 2.5 per cent of Accloud's Indian
12 revenue. The revenue projections are on the last page'.
13 Now, I don't know that we have the last page, unless
14 that's on the next page. I don't think that's the case.
15 Could we have a look, please, Mr Associate, p.756. No.
16 I don't think there's anything.

17 HER HONOUR: There's no - there's no such content on the Word
18 version - - -

19 MR GALVIN: No. Thank you. Thank you, Your Honour.

20 HER HONOUR: - - - Mr Galvin. That - what was it that said
21 that - the revenue projections are on the last page.
22 There's no revenue projections there. The document ends
23 - the Word document ends where that PDF does.

24 MR GALVIN: Thank you. The next heading is Choice of
25 Jurisdiction on - the bottom of p.755, 'There are obvious
26 taxation benefits of the BVI; however, anonymity and an
27 English-based legal system were primary reasons for
28 establishing 101 Investments Limited with the assistance
29 of Pinnacle Group'. So 101 Investments Limited was
30 established purposefully for the transfer of the Accloud
31 shares; is that right?---Privilege. It was one of a

1 number of investments who were looking at holding in that
2 company. It wasn't just specifically Accloud.
3 I see. What's the significance of anonymity?---Privilege. To
4 operate any company and develop a significant amount of
5 value in investments, um, certain people prefer to be
6 very public with their financial position. Personally, I
7 prefer to be a bit more quiet. That's obviously been
8 challenged somewhat with the media of late; however, that
9 - that was the consideration. It was nothing more than
10 that.

11 What is the advantage of anonymity?---Privilege.

12 What was the advantage of 101 Investments' anonymity, being a
13 company incorporated in the BVI?---Privilege. The
14 advantage of that is - no. If you have people trying to
15 extort money from you, then they aren't aware of what
16 assets - or potentially unaware of what assets you hold.
17 If you have the media trying to obtain, figure out, how
18 much your net wealth position is and things like that,
19 this is all - this is all - these are issues that high
20 net wealth individuals have to give serious consideration
21 to and it's something that I personally prefer to keep a
22 lot quieter and under the radar than - - -

23 Yes. What you were keeping quiet and under the radar in this
24 case, though, was the transfer of the Accloud shares out
25 of the IPO Group?---Privilege. I completely disagree
26 with that statement.

27 Well, isn't that what - then how is anonymity relevant to the
28 transfer of the Accloud shares, what's the relevance of
29 it?---Privilege. As you know, I'm not a director of that
30 company and I'm not a shareholder of that company. Yes,
31 it is part of Mayfair 101 Group and it sits there for the

1 benefit of our investors.

2 How is the anonymity factor relevant to the transfer of the
3 Accloud shares to 101 Investments?---Privilege. It
4 doesn't have any relevance.

5 Well, then why have you referred to it in this memorandum
6 explaining the background for the reasons you entered
7 into the transfer transaction?---Privilege. I don't
8 know. At the time, it was something that was put
9 together - as I said, it's really totally irrelevant to
10 the transaction.

11 I see. All right. Could we please go to page 72 of the court
12 book, Mr Associate. This is a copy of the Eleuthera and
13 101 Investments Ltd facility agreement. I think I took
14 you to this earlier, Mr Mawhinney?---Yes.

15 If we go to the second page of it, please. The commencement
16 date is 30 January 2019. A bit further down, please,
17 just into the definition section. There you can see
18 30 January 2019. But if we go to the very end, you will
19 see that this was, in fact, executed on 15 July 2020.
20 Now, is that when this document was executed by
21 you?---Privilege. Yes. Correct.

22 Yes. Why was it backdated to January 2019?---The effective
23 date was chosen because that was the date that the
24 company was incorporated.

25 When was it decided that this document should be
26 created?---Privilege. I can't recall.

27 Was it around June or July 2020?---Privilege. I can't recall.
28 It relates to moneys that had already been - it covers moneys
29 that had already been advanced, is that right, by
30 Eleuthera to 101 Investments?---Privilege. It accounts
31 for moneys that had been advanced.

1 Well, a loan agreement doesn't normally do that, does it, it
2 normally provides for advances, possibly past advances.
3 It doesn't account for them though, does it?---Privilege.
4 This does account for the transactions.

5 All right. Can we go please to the - just pardon me,
6 Your Honour. If we go back to a matter which we were
7 dealing with earlier at page 417 of the court book. I
8 would ask you some questions about this letter and the
9 acquisition of the Accloud shares. Now, I'm instructed
10 by the liquidators that these payments that are - perhaps
11 if you can just roll down a bit, please, Mr Associate, so
12 Mr Mawhinney can see the table. Do you remember this
13 letter, Mr Mawhinney?---Privilege. Yes, I do.

14 It sets out the money totalling nineteen and a half million
15 dollars that was advanced by Sunseeker and Eleuthera to
16 IPO Wealth Holdings which you say effectively funded the
17 purchase or funded the payment of the purchase price for
18 the Accloud shares sold by IPO 3 to 101 Investments; is
19 that right?---Privilege. That's correct.

20 Now, I'm instructed by the liquidators that the IP group's -
21 IPO Group's accounts do not identify the receipt of any
22 of this money as being on account of or for the purposes
23 of satisfying 101's obligation to pay the purchase price
24 for the shares. You haven't - do you understand that to
25 be the case?---Privilege. Um, my understanding is that
26 there was, ah, nothing to notate that they would be
27 applied to anything else.

28 No. But there's nothing in the accounts of the IPO Group which
29 identify these payments as payments effectively received,
30 notionally or in fact - or in fact received by IPO - the
31 IPO Group for the transfer, in particular, IPO 3, for the

1 transfer of the Accloud shares to 101 Investments. What
2 do you say to that?---Privilege. That's because the
3 accounts had not been completed and we haven't had the
4 opportunity, given that the accounts were seized from us,
5 to complete, ah, the transaction, um, the - and account
6 for all the transactions.

7 I see. Thank you. If we could go, please, to court book 432.

8 Do you understand what this document is,

9 Mr Mawhinney?---Privilege. No. Please explain it to me.

10 Well, it's probably hard to read. I don't know if you can -

11 can we possibly expand it, just the top left-hand corner,

12 Mr Associate, so it's easier to read. It's a - it's a -

13 it's a record, a Xero record of an account between

14 Sunseeker and IPOW - IPO Wealth Holdings. And if we

15 scroll down to p.435. Go back up a bit, please. Little

16 bit further. Just a tad further. That's it. Thank you.

17 Do you see the - there's a payment there on 21 May 2019.

18 You see that date about a quarter of the way down from

19 the top of the page?---Twenty-first of May? Yes.

20 Two thousand and nineteen. Received money. And then if you go

21 across to the right of that, you'll see that the amount

22 is - received is \$450,000.

23 HER HONOUR: Mr Associate, you'll need to move the document to

24 the right, please.

25 MR GALVIN: That's it. Thank you.

26 HER HONOUR: Yes. Thank you.

27 MR GALVIN: And if you go a little bit further, you'll see

28 there's also a running account as between Sunseeker and

29 IPO Wealth Holdings. That payment on 28 June - sorry,

30 21 May - sorry. I should say it's the - for the one on

31 21 - sorry, 28 June, I wanted to take you to, really,

1 which is for an amount of \$500,000. Do you see that?

2 HER HONOUR: Is that the next one down?

3 MR GALVIN: Yes. It is. Yes.

4 HER HONOUR: All right.

5 MR GALVIN: It is, Your Honour.

6 HER HONOUR: Perhaps if you could go back to the left a bit,
7 Mr Associate, so that we can see the date. Yes. Twenty-
8 eighth of June, Sunseeker Trust.

9 MR GALVIN: Now, if we go back to the - - -

10 HER HONOUR: And we go back to the right. Yes.

11 MR GALVIN: Now, if we go back, please, Mr Associate, to p.419,
12 which is the annexure, Annexure A to the Carey Olsen
13 letter. You see that the first payment listed there is a
14 payment from Sunseeker to IPO, IPO Wealth Holdings. Is
15 it - it's that payment, isn't it?---Ah, 28 June, 500,000.
16 Yeah. Can you just back to the other one?
17 Yes, which I think is at p.434?---Yes.
18 And then if you confirm - look at the next payment, 1 July
19 2019?---Yes.
20 And go across to the right, you'll see a payment of
21 \$800,000?---Yes.
22 Then if we go back to the Carey Olsen annexure at 417 or 418, I
23 think?---Yes.
24 Do you see that's the second payment?---Correct.
25 And so is it the case that Carey Olsen identified these
26 payments from these accounts, the ones I've taken you
27 to?---Privilege. What do you mean identified those - - -
28 Well, where did they get these figures and dates
29 from?---Privilege. It's - it's what the books and
30 records show for the transaction.
31 Yes, and the records are the records I've just shown you, don't

1 they reflect those payments?---The records that you're
2 referring are draft incomplete accounts that were seized
3 at very short notice.

4 So are there some other accounts on which they have based these
5 figures?---Privilege. They based these figures on bank
6 accounts.

7 So these come straight from the bank accounts; is that
8 right?---Privilege. Correct.

9 Okay. Well, if we go to - I should say to Your Honour
10 that - - -?---Privilege. And Sunseekers' books and
11 Eleuthera's books.

12 Did you say they're based on Eleuthera's books or
13 not?---Privilege. Yes, they're both based on Sunseekers'
14 books, Eleuthera's books, and that all ties right back
15 into the bank accounts.

16 So these are the moneys that - in this annexure which you say
17 support the payment of the purchase price for the Accloud
18 shares?---Correct.

19 You say that those transactions are evidenced in the accounts
20 of Eleuthera and Sunseeker?---Privilege. Correct.

21 So I call for production of the accounts of Sunseeker and
22 Eleuthera supporting these - the making of these payments
23 or evidencing the making of these payments, Your Honour.

24 HER HONOUR: Are these - so the payments in the Carey - - -

25 MR GALVIN: Carey Olsen letter, annexure A.

26 HER HONOUR: - - - Olsen letter. Yes. And that's the same
27 letter that we had in the previous call. So these
28 documents are different from the - these documents that
29 are being sought are different from the ones that you
30 referred to earlier?

31 MR GALVIN: No. No. I would say that the ones I've referred

1 to earlier would be included within the broader category
2 I've just described.

3 HER HONOUR: All right. Okay, then.

4 MR GALVIN: Yes. Mr Mawhinney, I think you haven't been
5 specific about which types of documents one would find
6 these transactions evidenced in. Can you be more
7 specific?---Privilege. Certainly. In Eleuthera Group,
8 there is a transaction account called the asset purchase
9 clearing account. The asset purchase clearing account
10 records the acquisition or facilitation of the
11 acquisition of assets out of the IPO Wealth Holdings
12 Group.

13 All right. Well, can we have that in its native format?

14 HER HONOUR: Asset purchase - what was it called?---Asset
15 purchase clearing account.

16 And is there the same sort of thing for Sunseeker?---Privilege.

17 Yes, there is. There's a - there's a transaction record
18 for all of these payments relating to the purchase of the
19 Accloud shares in full.

20 All right, then. So if I describe them in the general terms
21 that Mr Galvin referred to earlier, just a few minutes
22 ago, the accounts of Sunseeker and Eleuthera evidencing
23 the making of the payments in the Carey Olsen
24 letter - - -

25 MR GALVIN: In native format.

26 HER HONOUR: - - - in native format. And then I will do an -
27 including but not limited to - - -

28 MR GALVIN: Yes.

29 HER HONOUR: - - - what are now four sets of ways that they
30 might be described.

31 MR GALVIN: Thank you, Your Honour.

1 HER HONOUR: All right. Thank you.

2 WITNESS: Mr Galvin, would you mind just explaining so I can
3 comply with the orders what you mean by native format?

4 MR GALVIN: Native format means not a PDF but - for example, if
5 an email - if we were requiring production of an email,
6 it would be in the relevant email outlook or whatever
7 format. If it's a Word document, it wouldn't be a PDF
8 version of that, it would be the document in Word?---Yes.
9 If it's an accounting document, it'll be a document that will
10 need to be opened and viewed. In this case, I take it
11 through the Xero software platform. So it's an
12 electronic document, but not a copy of an electronic
13 document?---(Indistinct).

14 A PDF copy?---So if I may clarify this, then, with the court.
15 Your Honour, what Mr Galvin is seeking is access to the
16 books of Sunseeker Holdings, as opposed to the financial
17 reports of Sunseeker Holdings and Eleuthera; is that
18 correct?

19 MR GALVIN: Yes. The accounts of Sunseeker and Eleuthera
20 insofar as they relate to these transactions, insofar as
21 they evidence these transactions.

22 HER HONOUR: Yes. So, for example, it might be necessary to
23 take an extract of a spreadsheet, for example?---I'll -
24 I'll gladly provide the extract. The - the natural
25 format of our accounting packages, to run a report you
26 will convert back to PDF, and that - that prints a PDF
27 document. More than - more than happy to provide
28 (indistinct words).

29 MR GALVIN: No. We don't want PDFs. We want native format,
30 because we need to go and review the metadata; understand
31 that?---PDF (indistinct) format that reports get

1 published in.

2 Yes. Reports the creation of the PDF, but not the original
3 count - account of which it's a copy?---Well, it's a
4 direct print in native format directly from Xero.

5 That's PDF copy of an account. Like, for example, what we're
6 looking at now is not native format. 'Native format'
7 means - - -

8 HER HONOUR: Whatever the format originally was.

9 MR GALVIN: That's right.

10 HER HONOUR: So if it's an Excel spreadsheet, then you produce
11 it as an Excel spreadsheet, and if it's just one page of
12 a spreadsheet, then it's still produced in Excel
13 form - - -?---Yes.

14 - - - but it's not converted to or printed to a PDF?---Yes.

15 PDF is not a native format?---Privilege. No. I understand,
16 but I - I - I still don't understand - I'm just trying to
17 make this - work out how we export the information that
18 Mr Galvin requires from our accounting package in native
19 format.

20 Well, you might need to make some inquiries offline about that,
21 Mr Mawhinney?---Because the only way to export it is into
22 a PDF report that's printed and published by Xero.

23 MR GALVIN: I don't - look, I'm not an expert on these things,
24 Mr Mawhinney, but I'm fairly confident that that is not
25 the case. We've already - I've already had instructions
26 to seek the production of account - electronic account
27 transaction reports and view transaction reports in
28 native format, and that's because I'm instructed by
29 people who know these things that they can be produced in
30 native format. And we all know that Word documents and
31 Excel spreadsheets, for example, are often produced in

1 native format so that the document can be
2 interrogated?---Yes. I - I understand that. As I said,
3 maybe we can communicate about this offline to get
4 (indistinct) - - -

5 If Mr Mawhinney has some - if there is some logistical
6 difficulty, Your Honour, then we will attempt to
7 cooperate with Mr Mawhinney and deal with it. I'm
8 not - - -

9 HER HONOUR: Yes.

10 MR GALVIN: I don't want him - have him committed for contempt
11 of court because he can't do - he doesn't
12 (indistinct) - - -

13 WITNESS: I'm more than happy to provide the information that's
14 required.

15 HER HONOUR: Yes.

16 MR GALVIN: Now, but I just want to make it clear that access
17 to the metadata is essential.

18 HER HONOUR: Well, the orders will say that they're to be
19 provided in native format. If there's some problem with
20 that, then it can perhaps be raised - if there's some
21 problem with that that can't be resolved between you
22 offline, then it can be raised when we're back on Monday.

23 MR GALVIN: Yes. Thank you.

24 HER HONOUR: I think that might probably then be a convenient
25 time, Mr Galvin - - -

26 MR GALVIN: Yes, of course. Of course, yes.

27 HER HONOUR: - - - to adjourn for the day, and to indicate that
28 we will be commencing again on Monday at 10.30 am. I'll
29 just ask my associate to confirm - I think it's possible
30 for the same Zoom link to be used?

31 ASSOCIATE: Yes, that's right.

1 HER HONOUR: All right. So I think it would be best if we use
2 the same Zoom link. It saves everybody having to find
3 another one. So is there anything further that you want
4 me to deal with today?

5 MR GALVIN: No. We will prepare a form of the orders. And
6 unless - well, if Your Honour's content for us to prepare
7 a form of the orders, we'll provide them to you.

8 HER HONOUR: Yes. Thank you, that would be helpful. I can
9 make sure that I've - I describe the documents
10 accurately, then.

11 MR GALVIN: All right. Thank you, Your Honour.

12 HER HONOUR: All right, then. Thank you.

13 WITNESS: Your Honour, if I may, you mentioned this morning
14 that there'd be an opportunity to make a statement at the
15 conclusion of today. Is that still a - - -

16 HER HONOUR: No, I said at the conclusion of the examination,
17 Mr Mawhinney. So perhaps if we could save that for
18 Monday, please?---Understood. No problem.

19 All right, then. All right, then, thank you. Mr Associate,
20 could we adjourn the court, please.

21 <(THE WITNESS WITHDREW)

22 ADJOURNED UNTIL MONDAY 1 MARCH 2021