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Case No: CL-2020-000507

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 12/05/2023

Before :

MR JUSTICE JACOBS

- -

Between :

Watchstone Group PLC	**Claimant**
- and -	
PricewaterhouseCoopers LLP	**Defendant / Part 20 Claimant**
- and -	
Slater & Gordon (UK) 1 Limited	**Part 20 Defendant**

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Tim Lord KC and Watson Pringle (instructed by **Dorsey & Whitney (Europe) LLP**) for the **Claimant**
Richard Handyside KC and Rebecca Loveridge (instructed by **Dentons UK and Middle East LLP**) for the **Defendant / Part 20 Claimant**
James Brocklebank KC and Ian Bergson (instructed by **CMS Cameron McKenna Nabarro Olswang LLP)** for the **Part 20 Defendant**

Hearing dates: 26th, 30th, 31st January, 1st, 2nd, 6th, 7th, 13th-15th February

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Approved Judgment

This judgment was handed down remotely at 10.30am on Friday 12th May by circulation to the parties or their representatives by e-mail and by release to the National Archives

(see eg https://www.bailii.org/ew/cases/EWCA/Civ/2022/1169.html).

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MR JUSTICE JACOBS

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A: Introduction

The transaction, the parties and the claims

1. This claim arises from a substantial corporate M&A (i.e. Mergers and Acquisitions) transaction completed in May 2015 (the "transaction" or "acquisition"). The transaction involved the sale by an AIM listed UK company, Quindell plc ("Quindell"), of its legal services arm known as the professional services division or "PSD". The principal business of that division was the provision of legal services relating to road traffic accident claims, and there was also a developing business relating to claims for noise induced hearing loss (or "NIHL").

2. The purchaser was Slater & Gordon (UK) 1 Ltd, a subsidiary of an Australian parent company, Slater & Gordon Ltd, which was listed on the Australian Securities Exchange. (I shall refer to both parent and subsidiary as "S&G", since it is usually unnecessary to distinguish between them). S&G's business is the provision of legal services. It has its origins in the Melbourne law firm of Slater & Gordon which was founded in 1935 as a personal injury and trade union law firm. In the late 1980's/ early 1990's, the then partners in the law firm embarked on advertising the services of the law firm under the banner "No Win No Fee", and also prosecuted various pieces of class action litigation. Subsequent to its listing on the Australian Securities Exchange in 2007, S&G expanded into the UK. Its UK operations commenced in 2012, when it acquired the business of Russell Jones & Walker, a London based national law firm. Between 2012 and 2014, a number of other legal practices, variously based around England, were acquired. The transaction in May 2015 was intended as a further significant expansion which would result in S&G having around 15% of the UK personal injuries litigation market.

3. Quindell is now Watchstone Group plc ("Watchstone"), the claimant in these proceedings. Since it was called Quindell at the time of the relevant events, I shall refer to "Quindell" when describing the events underlying the claim and "Watchstone" when describing the claimant and claims in this and earlier litigation.

4. The transaction proved financially catastrophic for S&G. The goodwill of £ 558 million was subsequently written off completely in S&G's audited accounts for its financial year ending June 2016. The transaction led to substantial Commercial Court litigation between S&G and Watchstone ("the earlier litigation"), in which S&G made various claims, including claims of fraud. Extensive disclosure was given in the earlier litigation, both by the parties themselves and various third-party advisers who had been involved on different sides of the transaction. The present proceedings have their origin in that disclosure.

5. One of the advisers on the S&G side of the transaction was an Australian corporate finance adviser, Greenhill & Co ("Greenhill"). The principal advice given to S&G was given by individuals in Australia. However, Greenhill also had a London office and operation, where a senior individual was Mr Gareth Davies. The provision of disclosure by Greenhill in the earlier litigation brought to light, as far as Watchstone was concerned, the existence of a meeting which had taken place on 15 January 2015 ("the 15 January meeting") between Mr Davies and Mr Ian Green of the well-known

accountancy firm, PricewaterhouseCoopers LLP ("PwC"), the defendant in these proceedings. At the time of that meeting, PwC had been engaged by Quindell to perform services which included financial analysis of Quindell's accounting practices and cash-flow position. The work was known internally at PwC as "Project Goldfish".

6. Prior to this disclosure in the course of the earlier litigation, Quindell (now Watchstone) had not known about the 15 January meeting. The disclosure led, in August 2019, to the amendment of Watchstone's pleadings in the earlier litigation, so as to advance a counterclaim for the misuse by S&G of confidential information which was alleged to have been passed by Mr Green to Mr Davies at that meeting. The claims and counterclaims in the earlier litigation were resolved by a settlement between Watchstone and S&G shortly before trial in October 2019 without admission of liability on either side. Accordingly, the issues raised by the counterclaim ultimately did not fall for resolution in court.

7. The substance of that claim for the misuse of confidential information now does fall for resolution in the different context of the present proceedings which Watchstone has brought against PwC. Watchstone alleges that there was a misuse of its confidential information by PwC at the 15 January meeting, by virtue of which information confidential to Quindell came to be known by S&G, and that this had a real and substantial effect on the purchase price which S&G paid for the PSD under the transaction. The upfront purchase price which had been paid by S&G under the transaction was around £ 645 million. The parties also agreed a contingent earn-out arrangement for the NIHL part of the PSD's business, under which Quindell and S&G were to share any profits from the NIHL business on a 50:50 basis. In the event, there were no profits to be shared. Watchstone alleges that the upfront payment would have been significantly higher if the confidential information had not been provided to Greenhill at the 15 January meeting. Watchstone seeks damages, up to £ 63 million, on the basis that this is the additional amount that would have been paid by S&G, or at least that Watchstone lost a real and substantial chance of receiving an additional £ 63 million as a result of PwC's misuse of Watchstone's confidential information. The claims against PwC are brought for breach of contract, breach of confidence, breach of fiduciary duty, and unlawful means conspiracy. The alleged co-conspirator with Mr Green of PwC was Mr Davies of Greenhill.

8. PwC accepts that a meeting did take place, on 15 January 2015, between Mr Green and Mr Davies, and that Quindell did not know about this meeting at the time. However, PwC contends that the meeting was short and inconsequential, and that no confidential information of any relevance to the proposed acquisition of the PSD was passed by Mr Green to Mr Davies. PwC also contends that no relevant confidential information was in fact passed on by Mr Davies to anyone at S&G, and that accordingly nothing that was said at the meeting had any impact at all in terms of the price that was ultimately paid for the acquisition.

9. Those key aspects of PwC's case are supported by the evidence adduced and submissions made on behalf of S&G. Slater and Gordon (UK) 1 Ltd, which was the purchasing company under the transaction, has been joined by PwC as an additional defendant to the proceedings in order to advance a claim for contribution. In turn S&G issued an additional claim against Watchstone for an indemnity under the settlement agreement which had brought an end to the earlier litigation. Under that agreement, Watchstone provided S&G with a full indemnity in respect of any loss resulting from

any claim brought by Watchstone against PwC. Watchstone accepts that it is liable to indemnify S&G if the additional claim by PwC were to succeed. It has therefore been agreed that any contribution found to be due from S&G will serve to reduce any amount which PwC would otherwise be liable to pay Watchstone.

10. As a result of releases and the indemnity in the settlement agreement, there is no direct claim by Watchstone directly against Greenhill or Mr Davies, notwithstanding that the latter is alleged to have been a co-conspirator with Mr Green in relation to the confidential information allegedly passed by Mr Green to Mr Davies.

The issues

11. Although the pleadings and list of issues in the case traverse much ground, the case ultimately turns on the resolution of a relatively small number of central factual issues. The three key critical factual issues are identified below, and I also introduce the evidence relating to those issues.

12. *(1) What happened during the 15 January meeting between Mr Green and Mr Davies?* On this issue, there is a limited amount of documentary evidence. It primarily consists of some internal Greenhill emails showing Mr Davies preparing for the meeting, and most importantly an email sent at 6.58 pm London time to his colleagues in Greenhill shortly after the meeting had taken place ("the 15 January email"). It was the disclosure by Greenhill of this email in the earlier litigation which led originally to the counterclaim against S&G, and thence to the present claim against PwC. Watchstone contends that the 15 January email is an accurate, or broadly accurate, account of what Mr Green said at the 15 January 2015 meeting. PwC contends that it is not. On that issue, PwC has called Mr Green to give his account of what transpired at the meeting, and he was cross-examined for over a day. Mr Davies has not been called by any of the parties as a witness.

13. *(2) Was the 15 January email or its contents passed to S&G?* This is an important question for obvious reasons. If neither the 15 January email nor its contents were passed to S&G, then it would be impossible to conclude that the information contained in that email had any impact at all on S&G's approach to the negotiations with Quindell for the acquisition of the PSD.

14. There was no documentary record of the email itself having been passed to S&G. The evidence of Mr Fowlie and Mr Grech, the two very senior individuals at S&G who had responsibility for the key aspects of the proposed transaction, was that they were not given, and did not see, the 15 January email at the time, and that they only became aware of its existence following its disclosure in the earlier proceedings. I unhesitatingly accept that evidence, which is consistent with the documents discussed in more detail in Section D below.

15. Watchstone was, however, able to rely upon some evidence, both documentary and in the shape of Mr Fowlie's testimony, that indicated that some information, which purported to come from PwC, was provided orally by Mr Davies to Mr Fowlie on 16 January 2015. S&G's case, and Mr Fowlie's evidence, was that such information was very limited in nature, and that nothing said had any material impact on S&G's approach to the negotiation of the price to be paid for the acquisition. Watchstone

contends otherwise: in particular, that Mr Davies gave a full briefing to Mr Fowlie as to what he had learned from PwC, and that the information so provided was significant.

16. Watchstone also alleged that there was a subsequent occasion when information, derived from the 15 January 2015 meeting, was passed to S&G. This occurred at or around the time that a presentation was to be made, on 29 January 2015, at an S&G board information meeting. Watchstone here rely upon some draft slides prepared by Greenhill for the purposes of that meeting, and the final slides actually produced, one of which refers to "PwC Intelligence". S&G contends that no confidential information was in fact conveyed to Mr Fowlie, Mr Grech or indeed the S&G board on that occasion.

17. *(3) Did any confidential information derived from the 15 January meeting make any difference to the price S&G paid for the PSD?* The evidence of both Mr Fowlie and Mr Grech was, in summary, that even if any information, derived from the 15 January meeting, had been passed to them, it had no material impact on the course of the negotiations for the transaction, and in particular on the price paid. This was disputed by Watchstone, and both witnesses were cross-examined at some length on the sequence of events between 15 January and the weekend of 21/22 February 2015. Over that weekend, serious discussions took place between Mr Grech and his counterpart at Quindell, Mr David Currie, and these resulted in the parties reaching agreement on the price.

18. There is a very considerable amount of documentation relating to that sequence of events. It includes many internal messages on the S&G side of the transaction, as well as handwritten notes made by Mr Fowlie and Mr Grech, and materials compiled by Mr Fowlie. It is no exaggeration to say, as described in more detail in Section D below, that there is nothing in those materials which indicates that anything that may have been derived from the 15 January 2015 meeting had any material impact at all on the thinking of Mr Fowlie and Mr Grech. Indeed, a striking feature of the documentary record is that there is no detailed discussion of anything that may have been derived from the 15 January 2015 meeting. There is certainly nothing in the documentary record which suggests, let alone clearly indicates, that anything said at that meeting was of any significance at all in terms of the price which S&G was willing to pay or (subject to one qualification) the stance which it would take in the negotiations with Quindell. That qualification, described in more detail below, is that on 16 January 2015, Mr Fowlie did receive information from Mr Davies that meant that it might now be easier for S&G to receive sight of a report which PwC had prepared or were in the course of preparing. That was a matter which was thereafter pursued by S&G, with a limited degree of success.

19. Watchstone contends, however, that the disclosed documents are unlikely to tell the full story in relation to the thinking of S&G and the matters which were motivating their approach. They rely upon passages in some documents which, as they contend, indicate that the information allegedly derived from the 15 January meeting was regarded as significant, notwithstanding the evidence of Mr Fowlie and Mr Grech. They submit that once confidential information derived from the meeting had been passed on by Mr Davies on 16 January 2015, or by other senior people at Greenhill on around 29 January 2015, this formed part of the body of information upon which S&G was basing its approach, as the information could not be unlearned.

The witnesses

20. Each of the parties called two witnesses: Mr David Currie and Mr Lee Aston (called by Watchstone); Mr Ian Green and Ms Heather Donougher (called by PwC); and Mr Ken Fowlie and Mr Andrew Grech (called by S&G).

21. Mr Currie was the interim non-executive chairman of Quindell from November 2014, following the departure of the former chairman Mr Robert Terry. Mr Currie was also a part of a corporate advisory firm called Codex Capital Partners (UK) Ltd ("Codex"), who were advising Quindell in relation to the transaction. Mr Currie was the lead negotiator on the transaction on Quindell's side, and his counterparty at S&G was Mr Grech.

22. His evidence covered the course of the negotiations with S&G, including what was happening on the Quindell side during those negotiations and his perception of its bargaining position. Mr Currie was in many ways an impressive individual and witness. The sale transaction to S&G represented something of a triumph for him personally: he achieved very considerable value for the shareholders of Quindell against a background, described in more detail below, of the company having previously experienced a considerable drop in its share price and facing cash-flow problems. He described the price realised on the sale of the PSD as twice the market capitalisation of Quindell (around £ 325 million) at the time that he had become chairman. It was, he said, "a lot higher than the market thought … they thought we were going to go bust, so it was a much better price than people were expecting. I thought it was a good deal".

23. I had reservations about an answer given in re-examination, based upon his reading of the evidence of the case, when he sought to suggest that Mr Grech had negotiated on the basis of inside knowledge. I was also somewhat surprised at the time by his reluctance to accept, at the end of his evidence, that Quindell had received fair value for the asset that they sold. However, generally speaking, I thought that Mr Currie gave very fair answers to the questions which he was asked, with a view to assisting the court. The evidence, as to which I have reservations, was discordant compared to the evidence which preceded it.

24. Mr Aston had spent his career in corporate finance after having qualified as a barrister. He had set up Codex with Mr Currie and two others, and he worked closely with Mr Currie. Unlike Mr Currie, he did not have a position within Quindell, and therefore his role was as a corporate finance adviser to the company. He gave evidence as to broadly the same matters as Mr Currie. His answers in cross-examination were always straightforward and given with a view to assisting the court, with no attempt to start to argue the case.

25. Mr Ian Green is now retired, but at the time of the relevant events was a partner and the head of Business Recovery Services ("BRS") at PwC. He had joined one of PwC's predecessor firms in 1987, and had become a partner in PwC in 2002. In 2008, he became the leader of the Northern BRS Practice, and was based in Leeds. In 2010, he became the Head of Regions for BRS and, in 2014, had moved to London and became the Business Unit Leader of BRS and joined what was called the "Deals Leadership Team". As a licensed insolvency practitioner, he had acted on many high-profile cases, including Lehman's, Phones 4 U, and Carillion. As its name implies, the Business

Recovery Services unit at PwC is concerned with companies which may be facing a degree of financial distress or possible or actual insolvency.

26. This case involves allegations of serious impropriety against Mr Green: Watchstone's case in these proceedings involved allegations against him of conspiracy and (in the context of an issue which arose concerning limitation provisions in the agreement between PwC and Quindell) fraud. Such allegations impose obvious pressure upon an individual in Mr Green's position. However, he dealt well, fairly and patiently with the questions which he was asked in cross-examination, and I consider that he did so with a view to assisting the court to the best of his recollection. He had enjoyed an impressive career, and clearly knew how to handle himself under pressure: he was impressive in the witness box, and his demeanour was good.

27. It does not, of course, follow that I should accept his evidence as to what was said at the critical 15 January 2015 meeting, where there is a substantial dispute as to the accuracy and reliability of his evidence. The substance of Quindell's case is that the 15 January email, written shortly after the meeting, is a far better guide to what was said at the meeting than Mr Green's recollection many years after the event. I agree that, in considering the reliability of Mr Green, it is necessary to consider his oral evidence in the light of the objective evidence, including in particular contemporaneous documents, as well as the inherent probabilities. I consider the meeting in detail in Section C below.

28. Ms Heather Donougher (who was known professionally as Heather Swanston) is a partner in PwC and was, until recently, the Global Leader of BRS. At the relevant time, she was a partner and leader of Refinancing, Restructuring and Insolvency (or "RRI"), which was an operating unit within BRS. She was the lead relationship partner on the work which PwC was engaged to do for Quindell (and initially its lenders) in December 2014, and which was given the name "Project Goldfish". She reviewed any significant work before it was sent to the client, attended a number of client meetings, and was the partner responsible for key decision-making on the Quindell engagement within PwC. She went on holiday towards the end of December 2014, returning in early January 2015. It was her absence on holiday which meant that Mr Green became involved in Project Goldfish, having originally not formed part of the PwC team initially engaged by Quindell and its lenders at the beginning of December 2014.

29. Ms Donougher gave evidence as to the work performed by PwC on Project Goldfish, and in particular as to a number of reports that were provided to Quindell pursuant to that assignment. She was cross-examined relatively briefly, and there was no material dispute as to her evidence. She too was an impressive individual and witness.

30. Mr Ken Fowlie was the CEO for the Australian operations of S&G (i.e. Slater and Gordon Ltd, the listed company) at the relevant time. He had particular responsibility for the due diligence process that informed S&G's position in the negotiations. He has subsequently left S&G's business. His evidence covered the due diligence process, the way in which S&G's knowledge of Quindell's business developed, and his involvement in and input into the negotiations which were being conducted by Mr Grech.

31. He explained, at the start of his evidence in response to a question asked, that the transaction had proved to be very disappointing for both S&G and for him personally, but that he did not harbour any ill-feeling towards Watchstone. Throughout his lengthy cross-examination, I did not detect any sign that his evidence was coloured by any

personal animosity towards Watchstone. On the contrary, Mr Fowlie gave thoughtful, fair, and careful answers to the questions asked, and I have no doubt that – as he said at the start of his evidence – he was "there to tell the truth". On many occasions, he accepted that Mr Lord had made a fair point to him, which he accepted. In Watchstone's closing submissions, such criticism as was made of Mr Fowlie's evidence was limited.

32. The key issues addressed by Mr Fowlie concerned the extent to which he was told of the matters alleged to have been discussed at the 15 January meeting, and the extent to which any of those matters influenced S&G's approach to the negotiations. In summary, his evidence was that he was not given or shown the 15 January email; that he had no recollection of anything important being said by Mr Davies at the meeting on 16 January 2015, except for a couple of points which he noted at the time; and that such information as he was given, or may have been given, had no material effect on S&G's approach to the negotiations with Quindell or the price which they were willing to offer and pay. I thought, at the time that this evidence was given, that it was reliable, as being consistent with the objective evidence and inherent probabilities. As discussed in Section D below, that remains my conclusion after considering the evidence in the light of the parties' submissions.

33. Mr Andrew Grech was the Group Managing Director of the Australian parent company, Slater and Gordon Ltd. Mr Grech had originally spent much of his career as a personal injuries lawyer, but he had become significantly involved in S&G's expansion via acquisitions in the UK and therefore had, by the time of the transaction, a considerable amount of M&A experience albeit not from the perspective of an M&A lawyer. The central pricing negotiations for the transaction took place between Mr Grech and Mr Currie on 21/22 February 2015.

34. The substance of Mr Grech's evidence is that he did not actually know anything about the 15 January 2015 meeting which had taken place between Mr Green and Mr Davies, and that there was nothing at that meeting, or information derived from it, that had any material effect on S&G's approach to the negotiations with Quindell or the price which they were willing to offer and pay. Although Quindell's closing submissions were more critical of Mr Grech's evidence than Mr Fowlie's, I consider that Mr Grech was an honest and (as with Mr Fowlie) impressive witness whose evidence on the key issues was truthful and reliable.

B: Factual background and events prior to the 15 January 2015 meeting

35. In this section, I describe the relevant background to the transaction and the meeting between Mr Green and Mr Davies on 15 January 2015. It is not necessary to deal with this in exhaustive detail, since in the end there was very little, if any, material background that was in dispute. There are, however, a number of reasons why certain aspects of the background are important to the central issues in dispute.

36. First, some understanding of the background is of course necessary in order to understand the context of the disputed issues.

37. Secondly, there are certain aspects of the 15 January email which, on PwC's case (supported by S&G) are factually inaccurate. PwC therefore contends that it is improbable that this information was in fact conveyed by Mr Green to Mr Davies at the 15 January meeting. If so, it is argued that this casts doubt on the accuracy and reliability

of the 15 January email as a record of the meeting with Mr Green. The allegation of factual inaccuracy requires some consideration of the facts as they existed as at 15 January 2015.

38. Thirdly, and most importantly, S&G's case – supported by the evidence of Mr Fowlie and Mr Grech – is that, subject to one qualification described below, there was nothing in the 15 January email which would have told them anything important that they did not already know as a result of information in the public domain, the due diligence which they had carried out prior to 15 January, and the discussions that had already taken place with Mr Currie, Mr Aston and others at Quindell. In order to examine whether this is so, it is necessary to look at what was happening, and what S&G had learnt, prior to 15 January 2015. If it is correct that the 15 January email, or the information contained in it, was not (by reference to what S&G already knew) revelatory in any real sense, then it would provide support for the evidence of Mr Fowlie and indeed Mr Grech that it had no impact on the approach which they took to the negotiations or the price which they were ultimately willing to offer and pay.

39. The only qualification to the proposition that there was nothing important in the 15 January email, or its contents, is, as previously discussed, that Mr Fowlie did learn from Mr Davies on 16 January 2015 that PwC's instruction was no longer a joint instruction from Quindell and its lenders ("the lenders") but rather that PwC was now engaged solely by Quindell. This information was potentially important to S&G not because it would in itself have any impact on the price that might be paid for the PSD. Its importance was that it might assist S&G in obtaining access to the report which it understood that PwC had been instructed to produce; because S&G would now only have to persuade Quindell to provide the report, rather than being faced with possible objections from Quindell's lenders. The information thus showed that a potential roadblock, which S&G had understood to exist (in the form of the lenders' unwillingness to share the PwC report) might no longer exist. It does not appear that S&G knew about the possible removal of this roadblock prior to 16 January 2015.

40. Fourthly, the evidence as to the background to the 15 January 2015 meeting indicates the way in which S&G were approaching the possible transaction with Quindell: for example, their approach to pricing, the matters which were concerning them, and the speed with which they were moving. S&G contends that, when those matters are considered, there was no discernible change in S&G's approach after 15/16 January 2015. If so, this would support S&G's case that there was nothing in the 15 January email, or its contents, which impacted materially upon their approach.

41. In looking at these various matters, in particular the discussions that took place between Quindell and S&G, I focus principally on what was being conveyed to S&G, and how matters were understood on the S&G side, rather than how matters may have been perceived on the Quindell side. It is commonplace, if not inevitable, in any negotiation that a party will wish to present a bolder picture to the other side, rather than to reveal the things which may be worrying them. Here, for example, Mr Currie was keen to emphasise to S&G that Quindell had a variety of options, moving forward, other than a sale of the PSD to S&G. The former became referred to as "Plan B", and the latter as "Plan A". Privately, Mr Currie may have been less confident about Plan B than the impression that he gave, and wished to give, to S&G. In the light of the key factual issues, what matters is S&G's perception, rather than Mr Currie's private doubts.

42. I will start by describing the commercial background to the proposed transaction, S&G's interest in it, and relevant aspects of the discussions between the parties in the period to 15 January 2015. This is largely based on the evidence of Mr Fowlie and Mr Grech, whose evidence on these matters was not significantly challenged and which in any event I accept, and the contemporaneous materials. To some extent, this will involve describing aspects of PwC's involvement, but I will then circle back and describe this in more detail.

Quindell in 2014

43. Quindell was a company which was listed on the AIM index. By 2014, it had grown rapidly and was actively considering a listing on the main market of the London Stock Exchange.

44. The PSD (i.e. Professional Services Division) of Quindell comprised two main parts. The main operating entity of the PSD of Quindell was Quindell Legal Services Ltd ("QLS"). This was the largest provider of personal injury claims services in the UK, with a caseload at the end of 2014 of more than 140,000 cases. The essence of QLS's model was a high volume "no win, no fee" claims processing business. The core of QLS's business concerned road traffic accident ("RTA") claims, but it also dealt with employers' liability and public liability claims.

45. Significantly, in 2014, Quindell had sought to expand heavily into NIHL claims. At the time of the negotiations for the transaction in January 2015, only a tiny fraction of these NIHL claims had been resolved: 8 cases out of 46,000. As a result of the due diligence which S&G carried out, S&G had significant and justified concerns about the NIHL business and the value of the claims which Quindell had acquired. During that due diligence process, Mr Grech and his colleagues came to the view that Quindell's processes for dealing with NIHL claims were not as strong as they had been described to them by Quindell. The NIHL aspect of Quindell's business was ultimately addressed separately in the purchase price paid by S&G.

46. The second operating part of the PSD provided services which supplemented the legal claims business, such as motor vehicle services (arranging hire cars and repairs for drivers whose vehicles had been damaged in an accident) and health services (arranging medical reports and rehabilitation services).

47. In addition to the PSD, there were a number of other aspects to the business of Quindell, largely derived from acquisitions which it had made. They included, for example, a technology-related telematics business. S&G were, however, never really interested in anything outside the PSD, and indeed were initially not particularly attracted to the second operating part of the PSD described above. In the event, it was the PSD that was acquired. Had negotiations with Quindell been unsuccessful, it would have been theoretically possible for S&G to have launched a "hostile" bid for the entirety of Quindell, and this (if successful) would of course have resulted in the acquisition of the parts of the business that were of no interest to S&G. However, although this possibility was briefly floated in internal discussions within S&G, it was not a matter that was ever seriously considered.

48. On 22 April 2014, Gotham City Research LLC published a 74 page report on Quindell (the "Gotham City Report") titled "*Quindell: A Country Club Built on Quicksand*",

which made serious criticisms of Quindell and its management. The report contains a very detailed analysis. It raised significant concerns about the group, its business and its accounting and concluded, among other things, that: (i) 42%-80% of Quindell's profits were "suspect"; (ii) there was "no free cash flow and negative operating cash flow"; and (iii) Quindell's shares (which were then trading at around 42 pence per share) were "worth no more than 3p/share." The report also referred to Quindell "bleeding cash" and stated that "it seems Quindell would've run out of cash if it weren't for the £ 200 million it raised in Q4 last year … If you remove the £ 200 million raised, cash is zero, but the bank overdraft and borrowings are up considerably, year-over-year."

49. The Gotham City Report was, as Mr Currie accepted in evidence, widely commented upon in the media at the time. The commentary was negative, and there was a very sharp drop in Quindell's share price, which went more or less immediately from 42p to 18.75p, and was then (according to the Financial Times) bouncing around 23p. Its market capitalisation went, in consequence, from £ 2.4 billion to £ 1.3 billion.

50. The share price and market capitalisation later fell further, so that by November 2014 the market capitalisation was around £ 325 million, having at one stage fallen as low as £ 160 million. Quindell's reputation and share price had been further damaged in autumn 2014 following a controversy over share dealing by its then Chairman, Robert Terry. That controversy led to Mr Terry's resignation on 18 November 2014 and the appointment of Mr Currie as non-Executive Interim Chairman whilst Quindell sought a new Chairman.

51. In his evidence, Mr Currie compared the £ 645 million transaction agreed with S&G in February 2015 and the £ 325 million market capitalisation and gave this as a reason why S&G's offer was attractive. It seems to me that it reflected a considerable achievement on his part.

S&G's interest in Quindell

52. S&G had, as described above, started its UK operations in 2012 with the acquisition of Russell Jones and Walker. There was a plan to expand the business in the UK, and this was primarily driven and overseen by Mr Grech. Between 2012 and 2014, the UK operations expanded by acquiring other personal injury legal practices in England. By 2014, S&G was looking to scale up. Its management had taken the view that success in the UK would be tied to an ability to transact high volumes of relatively low value work in the UK personal injury sector, particularly claims connected with road traffic accidents. A rapid scaling up could be achieved either by a series of further transactions, or a single transformative transaction. The acquisition of the PSD was an opportunity for the latter.

53. By November 2014, Quindell's reputational issues and cash flow difficulties, as outlined above, were well known in the market. They were known to S&G before it engaged in any discussions with Quindell, both from publicly available information and also from discussions with Mr Ravech, a shareholder of Quindell who had made contact with S&G with the idea of S&G making an approach to Quindell.

54. On 19 November 2014, Matthew Jackson, then Head of M&A and Corporate Finance at S&G, sent an internal email including to Mr Grech in which he explained that "in

light of the recent press on Quindell", he had thought it worthwhile to do some background work on the company. He explained that he had "worked backwards through the past few years accounts to build up their revenue". Most of the analysis in the email is concerned with analysing Quindell's legal services revenue. Mr Jackson concluded, among other things, that:

> "Operating cash flow for the 6 months to 30 June was [minus] £78m
>
> Total cash flow for the period (excluding capital raisings and debt) was [minus] £130m
>
> At 30 June cash was £64m and there have been no capital raisings since – they must therefore be running low on cash".

55. Mr Jackson stated, however, that Quindell's recent troubles were not related to cash-flow or revenue issues but rather to the conduct of the previous chairman which had spooked the market.

56. At around that time, the possibility of a transaction involving Quindell was given the name "Project Malta" within S&G. On 26 November 2014, Mr Jackson sent a background paper on Project Malta to (among others) Wayne Brown, the CFO of S&G, in which he stated, among other things, that a "defining feature" of the growth of Quindell had been "significant acquired growth and a focus on revenue growth at the expense of sustainable EBITDA growth and cash flow growth". Mr Jackson noted that recent events had caused a significant decrease in the market value of Quindell, and that: "An opportunity has presented for S&G to acquire the legal services business of Quindell due to the distressed nature of the current capital structure." He stated that the proposal was for S&G to acquire Quindell's legal service business based upon a multiple of 6 x EBITDA, and that EBITDA was estimated to be between £ 50 million and £ 80 million so producing a value of between £ 300 million and £ 480 million. The acquisition, if it went ahead, would mean that the combined UK business of S&G would represent 15% plus of the UK personal injuries litigation market. Mr Jackson thought that key institutional shareholders of Quindell would look favourably upon a share for share exchange in the light of S&G's history of sustained growth in the legal services sector. He sought approval in principle from S&G's board in order to progress discussions with Quindell.

57. I pause at this stage to describe some aspects of Mr Jackson's paper, since it set the scene for much of what followed.

58. First, EBITDA means "Earnings before interest, tax, depreciation and amortisation". The approach of S&G throughout the following 3 months was to focus on the question of what the EBITDA of the acquired business would be, on a sustainable basis. This involved a considerable amount of work and modelling, with various assumptions having to be made as to what the acquired business could achieve. Throughout, the modelling was directed at sustainable earnings. The underlying basis of the approach is that the purchaser wants to try to ascertain how much income the relevant business, which it is thinking of acquiring, will generate. A multiple can then be applied to that income in order to ascertain its value. If, as Mr Jackson was proposing, a multiple of 6

times was applied, that would equate to the purchaser receiving back the purchase price over a period of 6 years, assuming that the income was achieved.

59. Secondly, some information as to the EBITDA of the business could, at least in theory, be derived from Quindell's published accounts and other information in the public domain. However, the Gotham City report had indicated that there were severe question-marks as to the reliability of earnings figures which were being produced by Quindell. Mr Jackson's paper described Quindell's accounts as "relatively opaque", and he identified concerns as to Quindell's accounting practices, and in particular that work in progress had been overstated and was not consistent with S&G's approach. Mr Jackson had therefore heavily discounted Quindell's figures in order to produce his estimate of between £ 50 million and £ 80 million. That figure compared to the figure of £ 200 million which Quindell had previously disclosed.

60. In the light of these matters, and in view of the potential size of a possible multi-million-pound transaction, it would obviously be necessary, as Mr Grech explained in his evidence, for S&G to carry out a due diligence process in order to ascertain what the maintainable earnings of the business were likely to be. The due diligence which later followed was extensive, and was described in the evidence as being colossal. This is because S&G's approach to the acquisition, throughout, was data-driven: S&G wanted to receive as much hard data as possible, as to the earnings of the PSD, in order to form a view as to maintainable earnings. This was one of the reasons why, in the months that followed, S&G was keen to see the report which it understood that PwC was in the process of preparing or had prepared.

61. Thirdly, S&G's focus was on maintainable earnings. It was not focused on trying to work out the cash-flow position of Quindell. Indeed, Mr Jackson's paper does not refer to cash-flow issues as being a driver of or reason for the possible acquisition. Whilst, therefore, there was extensive modelling of Quindell's earnings, I was not shown any materials which indicated that there was any equivalent modelling of Quindell's cash-flow position. As described above, S&G was aware from the outset that Quindell had cash-flow issues. These issues were confirmed, and indeed became even more apparent, in December 2014 when Quindell raised cash from S&G by selling a large number of claims files under the "Advance Purchase Agreement" described later. As Mr Jackson's paper recognised, the problems facing Quindell, which had resulted in the very significant fall in its share price and therefore market capitalisation, were viewed by S&G as creating the opportunity for a possible acquisition. But it does not follow that this meant, or that S&G ever formed the view that this meant, that Quindell was in such a distressed position that its only option was to sell. On the contrary, the evidence clearly shows that there were other options, apart from a sale to S&G, which were available to Quindell in order to raise cash, and certainly this was the way that S&G perceived it.

62. Fourthly, Mr Jackson's paper valued the business at between £ 300 million and £ 480 million. This compared to a current market capitalisation of £ 325 million. Mr Jackson said that the valuation at that level would represent in excess of current market capitalisation, and so would be seen as an attractive option for shareholders. Accordingly, Mr Jackson was contemplating that S&G would need to pay a premium over and above Quindell's current share price in order to attract the support of Quindell's shareholders for a sale. This indicates that S&G were not approaching the

possible acquisition on the basis that Quindell or its shareholders would, because of its well-publicised problems, be desperate to sell.

63. Fifth, as matters progressed, S&G continued to work on the basis that a fair price to pay for the business would be the multiple of 6 x sustainable EBITDA referred to by Mr Jackson. That multiple was somewhat higher than the multiples which had been used for the acquisition by S&G of law firms previously. Although S&G used a benchmark of 6 x EBITDA for the purposes of considering how much to pay, I accept Mr Grech's evidence that this was not an immutable approach to which S&G was chained.

64. I revert now to the chronology of events. Later on 26 November 2014, Mr Jackson sent Mr Currie a letter from Mr Grech in which Mr Grech proposed that S&G enter into discussions with a view to agreeing Heads of Terms for the potential acquisition of the legal services businesses of Quindell (described in the letter as "Quindell Legal"). The letter stated that S&G proposed to value those businesses at an enterprise valuation representing 6 x EBITDA. Mr Grech's letter stated that although S&G had reviewed Quindell's recent financial filings, S&G could only estimate an EBITDA for the legal services businesses. No figure was put forward in the letter. Mr Grech stated that the "valuation achieved will be a function of the view we take of the maintainable earnings of the business post due diligence". He also stated that the valuation would be on a "cash free, debt free" basis, albeit there would need to be a transition of a normal level of working capital within the business.

65. On 27 November 2014, a meeting took place at Heathrow airport between representatives of S&G and Quindell. S&G were represented by Mr Grech, Mr Ravech, Mr Jackson and Mr Andrew Pedrette (who was the Head of M&A Corporate Finance at S&G UK). Quindell was represented by Mr Currie, Mr Aston, Mr Robert Fielding (then the Group CEO of Quindell) and Mr Robert Thompson (Quindell's CEO for the EMEA region).

66. Mr Grech's evidence (which I accept) was that, even at that very early stage, there was discussion about the possibility of S&G purchasing a selection of the PSD's case files. Quindell's openness to this idea confirmed Mr Grech's initial thoughts that it had cash flow issues. This was consistent with what he had learnt from other sources by this stage, in particular from his discussion with Mr Ravech and Mr Jackson and also from the Gotham report. At the meeting, S&G raised the point that the Gotham report showed that Quindell had cash difficulties, and Mr Fielding's response was that this was short term. Mr Fielding sought to reassure Mr Grech that the claims made in the Gotham report were nonsense, and he provided him with a broker's report. This did not, however, assuage Mr Grech's concerns regarding the main contention made in the Gotham report: that Quindell was recognising too much revenue / work in progress on its cases very early in the claims resolution cycle, and that it seemed not to be recognising all of the costs of acquiring cases as they were incurred.

67. Mr Currie mentioned at the meeting that Quindell was in the process of hiring an independent firm to review its accounting systems and policies, and that this might be a complicating factor (in relation to any transaction) because there was an additional demand on management time. Mr Grech learned, either at the meeting or shortly afterwards, that this firm was PwC. Mr Grech's impression was that Mr Fielding was prone to exaggerate, whereas Mr Currie was much more circumspect and prepared to admit that Quindell had difficulties that the board was trying to understand and

overcome. Mr Currie was relatively frank with Mr Grech in acknowledging that Quindell's accounting systems were not really up to scratch, in the sense that they were not properly integrated and that they had difficulty generating reliable reporting at group level. Mr Currie was at pains to impress on Mr Grech that PwC were looking at Quindell's accounting systems and polices, so as to alleviate Mr Grech's concerns regarding the criticisms made in the Gotham report.

68. Mr Currie's evidence was that he did not emphasise the need for haste. This was because, as he told the meeting, they did not at that time have any basis on which to value Quindell, and did not know where the "cash flow would come out". Cash flow was a matter which the independent firm would be looking at. He therefore felt that it was too soon to engage in a discussion about a sale. These statements chimed with one thing, which Mr Currie said, which really stuck in Mr Grech's mind: he said words to the effect of "we don't know what it's worth".

69. On 30 November 2014, Mr Grech reported on the Heathrow meeting to the S&G board. I consider that his report accurately captures the nature of the discussion. Mr Grech referred to the hiring by Quindell of an independent firm to review their position, and that Quindell had "conceded that they didn't have the management bench strength to "right the ship" and engage in a proper [due diligence] process". He said that some high-level numbers had been discussed. Quindell had continued to promote the view that the earnings of the PSD were north of £ 200 million, but enough had been said to indicate to S&G that the number was more likely in the vicinity of £ 75 million - £ 125 million, although that number had not been shared at the meeting. Mr Grech also reported that Mr Currie had felt compelled to say that Quindell "were concerned that they had an internal leak and that we should understand that whilst they were making all effort to keep the information confidential they were concerned that the fact (rather than the detail of our discussions) would leak". The documentation thereafter indicates that Quindell remained concerned throughout that there were leaks from their side.

70. On 28 November 2014, Mr Grech wrote to Mr Currie, setting out a suggested process map for a proposed due diligence process. The letter recorded S&G's proposal to value Quindell's legal services business at 6 x maintainable earnings and proposed a timetable leading to an announcement of the transaction on 11 February 2015 and completion on 27 March 2015. The timetable was subject to S&G being provided with financial and operational data of sufficient quality and in a timely manner to conduct the required due diligence.

71. S&G's thinking with regard to the proposed timetable was explained by Mr Grech in an internal email to his colleagues in which he noted that they were "most likely to extract most value from the transaction by acting quickly – before the[y] come to grips with their own situation and before they are able to rebuild relationships with investors and thereby rebuild the stock price."

72. Around this time (i.e. late November 2014), Quindell was in the process of appointing PwC to perform an independent review of Quindell's short term cash flow forecast to 31 March 2015 and of its 2015 budget, so as to facilitate discussions between the group and its lenders, and thereafter to undertake an independent business review of Quindell. Work commenced on 2 December 2014, with the terms of PwC's engagement being set out in an engagement letter dated 17 December 2014. The letter was headed "Project Goldfish", which was the codename used by PwC. That engagement letter was entered

into between PwC and each of (i) Quindell and its subsidiaries; and (ii) Quindell's lenders, namely Royal Bank of Scotland ("RBS"), Lloyd's Bank plc ("Lloyds") and Clydesdale Bank (known as "NAB").

73. Mr Currie's response to Mr Grech's 28 November letter was that although Quindell considered S&G's approach to have significant merits, Quindell was not in a position to progress it at that stage as it needed to take stock for a couple of weeks. However, discussions continued and, on 7 December 2014, Mr Grech wrote to Mr Currie with proposals for addressing various issues that had been raised by Quindell, and stated S&G's strong preference to move the discussions to a conclusion quickly. On 11 December, Mr Currie responded that Quindell was not willing to enter into substantive discussions until it had at least received the first phase of PwC's report, but expected to be in a position before Christmas to discuss a timetable with S&G. Mr Currie referred to the announcement, described below, which had been made on 8 December. This had detailed the commencement of an independent review by PwC of, amongst other things, Quindell's main accounting policies and expectations as to cash generation into 2015.

74. An updated S&G board paper dated 8 December 2014 estimated EBITDA for Quindell's legal services business to be in the range of £ 75m to £ 100m per year, providing a value of between £ 450 million and £ 600 million. The paper also noted that that valuation was in excess of the current market capitalisation of Quindell, and as such was likely to be seen as an attractive option for Quindell's existing shareholders.

75. On the same day, Citibank ("Citi"), who were at that time pitching for a role as an advisor to S&G in respect of the proposed transaction, noted that Quindell's share price had fallen 91.6% from its April 2014 high, and that its fall in market capitalisation – from £ 2.7 billion in April 2014 to £ 243m in December 2014 – presented a unique opportunity for S&G to acquire Quindell's legal services business.

76. On 8 December 2014, Quindell issued a trading update in an "RNS" or "Regulatory News Service" announcement. (RNS has become the London stock market's official news outlet for both regulatory and financial announcements for UK-listed and AIM-listed companies.) This announced that PwC had been engaged to conduct an "independent review". The update stated:

> "**Trading update**
>
> Quindell Plc (AIM: QPP.L), a market leading global provider of professional services and digital solutions, provides an update on its current trading.
>
> The Directors believe that the recent changes to the Board mark a natural point at which to take stock of the Group's position. As set out below, PwC is being engaged to conduct an independent review.
>
> The Board is satisfied with the overall trading performance of the Group throughout a period in which a number of distractions have been encountered, and thanks its staff, customers, referral partners and suppliers for their support during this challenging period.

Trading Update

The Group's business remains robust in both of its divisions: Professional Services and Digital Solutions. In particular, case numbers across its broad base of cases in the Professional Services division remain in line with management's expectations. There continues to be positive feedback and support from customers and clients regarding the quality of service and products provided by the Group.

Cash flow from operations in the Professional Services division continues to grow as the cases within Legal Services progress through to settlement, and cash receipts in this area are greater than in comparison to previous quarters. The growth in cash receipts in the final quarter of the year has not been as significant as previously anticipated. The Board remains comfortable with the Group's overall cash position; cash generation remains a key focus of the Group and initiatives to improve the working capital profile of the Group continue to be pursued.

The Board believes, taking into account the Group's cash reserves and continued access to its three credit facilities, that the Group's resources are sufficient to deliver on management's current plans.

Independent Review

Further to the recent board changes, the Group's ongoing development and the announcement on 13 October 2014 in relation to its internal business review on Noise Induced Hearing Loss, and in conjunction and consultation with the Company's bankers, advisers and auditors, PwC is being engaged to carry out an independent review. This will review, inter alia, the Group's main accounting policies and expectations as to cash generation into 2015. Initial work on this review has commenced and the Board will update shareholders on its results and provide future guidance in due course.

David Currie, interim non-Executive Chairman, said: "The appointment of PwC to conduct an independent review is the natural next step to give additional support to the Board's confidence in the business and will also assist the Company in assessing its future strategy and outlook. The search for a permanent Chairman and new board members is ongoing and we will update shareholders as appropriate."

Robert Fielding, Group Chief Executive, commented:

"The Group's business remains robust and we believe we have sufficient resources to deliver on management's plans. I would like to take this opportunity to thank all of the Group's staff for

> their hard work and professionalism and for the notable support of customers and suppliers over the past few weeks. I believe that we have a strong business, with great people and we look forward to the future with optimism.""

77. Quindell's announcement, in particular as regards cash generation, was widely reported in the press. The coverage was not positive. Multiple news outlets highlighted concerns around Quindell's cash position, with one article titled "Quindell rekindles cash qualms" stating that Quindell "may need a Christmas miracle." Other comments included: "In my view, today's update is a transparent attempt to prepare investors for a major profit warning and cash crisis early in 2015"; "the company is clearly now dependent on its banks' goodwill to continue trading"; and "the company's soaring revenue and meagre cash flows has been a source of worry for investors for most of the last year. As it became clear that Quindell was aggressively recognizing revenue from lawsuits that might take years to finish (and which aren't guaranteed to pay off), investors have been demanding to see actual cash on the books by the end of this year.". Quindell's share price fell 5% upon the announcement.

78. On 15 December 2014, Mr Jackson reported to Mr Grech an "interesting call" in which Mr Jackson had been told by Mr Fielding that Quindell was looking to sell some 6,000 of its case files and "could do more if we wanted". According to Mr Jackson, Mr Fielding was looking for an agreement preferably that week, with cash at completion, and wanted £ 14 million for the files. He also wanted a decision from S&G on this proposal by the following evening.

79. On 17 December 2014, Mr Grech informed Mr Currie that S&G was in the process of retaining Citi and Greenhill as advisers. He also stated: "While our current preference is for the acquisition of Quindell Legal, we recognise that a whole-of-company solution may be attractive to Quindell and its shareholders. At this stage we do not have sufficient information to assess such an option, however we are willing to consider it as a potential path."

80. Mr Grech also stated that S&G was willing to acquire a mix of case files from Quindell (as Mr Fielding had proposed) but that, as a condition of that acquisition, S&G wanted an agreed process and timetable, and a period of exclusivity, for undertaking due diligence on Quindell. Negotiation of the terms of that deal continued over the course of the following two weeks, culminating in the conclusion of the Advance Payment Agreement ("APA") on 31 December 2014. Pursuant to the APA, S&G paid £ 12.12 million to Quindell on 31 December 2014 as an advance on the purchase price of a prospective acquisition of the PSD. In consideration for that advance, S&G was granted an exclusive dealing period until 31 January 2015 and access to extensive due diligence materials in relation to Quindell. The advance was secured by access to files from Quindell meeting specified criteria. S&G was entitled to request an assignment of 6,150 of those files, the effect of which would be to reduce, by an agreed value per file, the amount of the advance which would otherwise eventually be set off against any future acquisition price. The 6,150 files comprised up to 3,350 fast track RTA matters, 2,250 NIHL matters, and 550 multi-track personal injury matters.

81. As Mr Fowlie explained in his evidence, the rationale for entering into the APA was for S&G to gain an exclusivity period until the end of January 2015 to investigate the viability of the acquisition of the entire PSD and at the same time to use the cases as a

means of file due diligence, which is important to any acquisition of a personal injury business. Even if no acquisition took place, the APA would provide S&G with a new batch of cases which they expected to be of sufficient value to make the APA profitable in itself. Mr Grech agreed a price with Mr Fielding for each category of case that was to be acquired via the APA. The price agreed was at a level less than S&G expected that the cases would ultimately be billed at conclusion.

82. Mr Fowlie understood at the time that Quindell was keen to monetise some of its case stock, and he was also aware of the Gotham City report which referenced cash flow issues. He therefore understood that the APA would assist Quindell with working capital. Quindell's willingness to sell these files confirmed that Quindell needed a cash injection to fund its ongoing operations. In his experience, law firms do not sell case files to other firms at a discount to the work in progress ("WIP") value unless they are experiencing cash problems. Mr Grech said that Quindell's keenness to ensure that the APA was concluded by the year end further highlighted the pressure.

83. It is clear from the correspondence, for example Mr Currie's email to Mr Grech on 23 December 2014, that Quindell were very keen indeed to conclude the deal and receive the cash prior to the year end.

84. Whilst the negotiations leading to the APA were underway, S&G proposed that it obtain access to the PwC report in order to speed up the due diligence process. In an email from Mr Fowlie to (amongst others) Mr Currie and Mr Aston dated 28 December 2014, Mr Fowlie referred to recent conversations and wanted again to "emphasise the importance of the PwC study to our collective ability to work to an expedited timetable within a limited window of exclusivity". The email referred to the PwC "Phase 1" report, which S&G had assumed would be available prior to Christmas. Quindell were asked to "retest" with their lenders their willingness to make this report available to S&G. The email also referred to the PwC final report, describing it as a critical document. S&G asked for an extension of the exclusivity period if the final report was not made available to them by 19 January; the extension being for an equivalent period matching any delay in providing the final report after 19 January.

85. Mr Aston gave a detailed response to Mr Fowlie on the same day, 28 December 2015. He said, amongst other things, that one of the lenders had refused third party access to any draft report, and that this was not going to change. He told Mr Fowlie that PwC's output to date was draft and incomplete, and that there were no conclusions in relation to accounting policies and the impact on 2015 forecast financials. For this and other reasons, the draft report would not be provided and nor would access to PwC itself. However, the email stated that it was the Quindell board's expectation that it would share the PwC report when it was finalised, albeit that this could not be guaranteed. Mr Aston also stated that it was not expected that the report would "provide any unexpected insights", and that, to the extent that anything material, not already in the public domain, were to emerge, Quindell would be obliged under AIM rules to announce to the market without delay. On the following day, Mr Currie conveyed broadly the same message to Mr Grech, indicating that it was his and the board's intention to share the report once it was finalised.

Quindell's announcements in early January 2015

86. On 2 January 2015, Quindell issued the following RNS announcement

> "As stated on 8 December 2014, cash generation remains a key focus of the Group and initiatives to improve the working capital profile of the Group continue to be pursued. One such initiative was concluded on 31 December 2014. As part of that initiative, Quindell has entered into exclusivity arrangements with a third party in respect of the possible disposal of an operating division of the Group.
>
> In addition to cash generation initiatives that will continue into 2015, the Group is in early discussions with a range of parties interested in exploring possible transactions with the Group relating to a number of its operating businesses.
>
> There can be no certainty that any of these discussions will lead to the disposal of any of the Group's assets.
>
> Regardless of the outcome of the discussions detailed above, the Board remains comfortable with the Group's overall cash position."

87. There was significant press coverage of that announcement, including a comment in a blog titled "The Motley Fool" that "Today's announcement does nothing to turn me from my view that Quindell really is in a cash flow hole, as disposing of assets that it paid big money for in its recent expansion-by-acquisition spree is not a characteristic of a successfully growing company that genuinely has no cash flow worries."

88. On 12 January 2015, Quindell announced that it had appointed a new permanent non-executive Chairman, Richard Rose, and a new non-executive Strategy Director and Deputy Chairman, Jim Sutcliffe, who would take up those positions following completion of formalities such as the obtaining of regulatory approval. Upon Mr Rose taking up his position, Mr Currie was to step down from his position as interim non-Executive Chairman and to revert to his role as a non-Executive Director.

89. The announcement also contained a further trading update.

> "**Trading update**
>
> Trading in the Group's business remains robust in both Professional Services and Digital Solutions with management satisfied with case volumes, case settlements and digital solutions revenues. The Group's revenue and earnings are subject to the Independent Review of accounting policies and guidance will be given by the Board following conclusion of the Review.
>
> Operating cash inflow for H2 2014 (before exceptional items but including initiatives that concluded in the period) was approximately £13 million. Cash generation remains a key focus of the Group and initiatives to improve the working capital profile of the Group continue to be pursued. The Board remains comfortable with the Group's overall cash position and, taking

> into account the Group's cash reserves and continued access to its three credit facilities, believes that the Group's resources are sufficient to deliver on management's current plans. As at 31 December 2014, the Group had gross cash of approximately £69 million and drawn banking facilities of approximately £52 million.
>
> **Corporate matters**
>
> As announced on 2 January 2015, the Company has entered into an exclusivity arrangement with a third party in respect of the possible disposal of an operating division of the Group. The Company remains engaged with this party and is also in early discussions with a range of parties interested in exploring possible transactions with the Group relating to a number of its operating businesses but there can be no certainty that any of these discussions will lead to the disposal of any of the Group's assets.
>
> **Independent Review**
>
> The Independent Review is ongoing and shareholders will be updated as appropriate. The Board's current expectation is that the review will be completed by the end of February."

S&G's due diligence

90. At the time of these announcements, S&G's initial due diligence was well underway. By the end of December 2014, S&G had appointed a number of external advisers, including Greenhill, Citi and Ernst and Young ("EY"). Greenhill's role was independently to assess the acquisition, advise the S&G board and assist with building S&G's pricing model. Citi's role was to advise on the raising of capital and debt finance to enable the acquisition to take place. Both Greenhill and Citi were working primarily from Australia. Greenhill's team was led by Ms Michelle Jablko, and she and her team had a very strong reputation in Australia for providing high quality independent advice to boards contemplating significant acquisitions. S&G's model was primarily built by Mr Jackson and a team at Greenhill led by Mr Nick Bordignon, a principal based in Greenhill's Melbourne office. In England, S&G appointed the transaction services team within EY, who conducted the financial due diligence described below. EY also assisted in the building of the model, in particular in designing its overall structure and formulae. S&G also engaged the lawyers Macfarlanes in London and Arnold Bloch Leibler in Australia.

91. S&G embarked on a very extensive due diligence exercise in respect of the PSD, and this was described by Mr Currie, who has overseen hundreds of transactions during his career, as "enormous" and "colossal". Mr Aston described it as one of the most thorough processes he had seen in his 20-year career advising on corporate transactions. When the transaction was announced on 30 March, Mr Grech referred to the rigorous due diligence that had been conducted over a three-month period, involving over 70 S&G lawyers and a very detailed forensic process.

92. There were various aspects of the due diligence that was carried out. S&G was given access to a virtual data room, populated with a large number of documents, plus answers to numerous due diligence inquiries. S&G conducted due diligence on the thousands of files that were transferred under the APA. One of the matters that emerged from these reviews were the serious issues with Quindell's NIHL business. By 24 January 2015, as recorded in an internal report of that date, S&G's reviewing lawyers had looked at some 3,736 files. The NIHL files, of which 2,599 had been reviewed, were described as presenting the most challenges. There were concerns, amongst other things, that the files had not been robustly screened leading to a lack of quality. The NIHL business was a particular concern to S&G because Quindell did not have a track record in this area, and NIHL claims represented a significant portion of the total number of Quindell's cases and its WIP value (in Quindell's view) of the legal services component of the PSD as a whole. By the end of January 2015, S&G had learned that only 8 NIHL files had reached settlement, out of the thousands of cases that had been acquired. In due course, this led to the separation of the NIHL practice from the upfront consideration for the acquisition.

93. In addition, beginning in the week of 12 January 2015, there were a series of site visits by S&G representatives to various PSD offices throughout the UK, involving management presentations and interactions with local teams. Financial due diligence was the responsibility, principally, of EY. This was a very substantial engagement, in the course of which EY requested, received and reviewed a large quantity of financial information relating to the PSD. It culminated in a report of some 120 pages, plus appendices. EY's work also included a call with PwC on 27 January 2015 described in Section D below.

94. An important aspect of S&G's due diligence was modelling. Mr Jackson took the lead on modelling Quindell's maintainable earnings, in conjunction with Greenhill and EY. The model went through many iterations, but it was always focused on the PSD's EBITDA, in other words the maintainable earnings of the business to be acquired. There was no attempt to model Quindell's cash position. In none of the iterations of the model was Quindell's cash position a relevant factor.

95. In his evidence, Mr Grech described Mr Jackson and Mr Bordignon working closely together to absorb a large amount of information from multiple sources. This included discussions with lawyers internally working for the PSD, competitors, defendant law firms who had dealings with the PSD, S&G's own businesses in the UK, who were helping with aspects of the work. There were meetings with insurers where S&G, including Mr Grech, tried to get a better understanding of NIHL cases. S&G were therefore trying to verify data points from many different sources to ensure that they had a proper understanding of the business, and these fed into the assumptions underpinning the financial model.

96. It will be apparent from this description that S&G's approach was data driven. S&G was interested in seeing hard data, including in the form of ongoing case files or the financial information and analysis which PwC was understood to be carrying out. The request for PwC's report, which was the subject of the exchange on 28 December 2018, was repeated from time to time thereafter. In his oral evidence, Mr Fowlie emphasised, in response to questions in cross-examination, that what S&G were interested in was seeing the PwC report, in other words the work product which would (it was hoped) provide hard data. It was not simply a question of wanting to meet PwC. This evidence

was, in my view, persuasive and consistent with the documents and S&G's data-driven approach to the acquisition.

97. Due diligence took place both before and after the meeting on 15 January 2015 relied upon by Watchstone, and indeed it continued after Mr Grech and Mr Currie had agreed a price on 22 February 2015. Both Mr Fowlie and Mr Grech gave evidence, which was not seriously challenged and which in any event I accept, as to what they had learned and understood by the time of the 15 January meeting between Mr Green and Mr Davies. This evidence was given in support of the proposition that there was very little in Mr Davies' 15 January email that they did not already know, and certainly nothing which was capable of having, or which in fact had, any material impact upon the approach which they were taking to the acquisition. Thus Mr Fowlie's evidence was that to the extent that any information was received from PwC via Greenhill, it was all known to S&G from other means or immaterial as regards the valuation of the business and the negotiation of the price.

98. Mr Fowlie's evidence was that one of the objectives of the due diligence was to identify the inputs to build their financial model, so that S&G could assess whether the PSD was worth acquiring and what they thought the value of it was. It was clear to S&G that Quindell's reported financials were not going to be reliable in achieving this objective. S&G had already come to a view, at the beginning, that Quindell's approach to revenue recognition was not aligned with S&G's. It was therefore always the case that there was going to have to be a "bottom-up" assessment based on the fundamental drivers of the business. Mr Fowlie travelled to England in order to visit Quindell's sites and talk to their top executives, as part of the process of understanding the key drivers of the business. He led that part of the due diligence process.

99. Mr Fowlie was well aware of the engagement of PwC, which had been publicly announced and referred to in communications between the parties. He understood that they were doing a review of Quindell focused on its main accounting policies and expectations as to cash generation into 2015. He was also well aware of Quindell's cash flow problems, which had been the subject of market and shareholder commentary. Quindell's need for cash was readily apparent from their willingness to enter into the APA. He knew that the payment of £ 12.12 million made under the APA represented almost all of Quindell's approximately £ 13 million cash flow for the 6 month period ending 31 December 2014: the figure of £ 13 million had been given in the RNS announcement on 12 January 2015. S&G were also receiving due diligence analyses from EY which indicated that Quindell had significant cash challenges if it proceeded with business as usual and unless it received a further cash injection. Accordingly, S&G were fully aware by mid-January 2015 that Quindell had serious cash flow issues.

100. Mr Fowlie also said that, by mid-January 2015, S&G's developing hypothesis – as a result of its due diligence work – was that Quindell's business was operating sub-optimally, and was experiencing cash flow issues connected with this. This was a consequence of the large proportion of NIHL cases it had taken on, and which had generated almost no cash, as well as the inability of Quindell to resolve RTA cases with sufficient speed given Quindell's insufficient resources. This view was formed through a combination of the review of files received under the APA and the due diligence meetings from the week of 12 January 2015 onwards. This hypothesis informed the modelling carried out in February. However, it was never part of the modelling, or

S&G's approach, that costs could be cut. In fact, they assumed that S&G would add to the operating costs of the PSD rather than reduce them.

101. Mr Fowlie was also aware that a sale of the PSD to S&G was Quindell's Plan A, whilst a funding commitment from Quindell's shareholders, particularly M&G and Tosca, was its Plan B. This was known by 15 January 2015. It was a message conveyed both by Quindell's personnel directly, and also by Mr Aston. Plan B was referred to, for example, in an email from Mr Ravech to (amongst others) Mr Fowlie and Mr Grech on 11 January 2015: Mr Ravech suggested that S&G would need to interrogate Mr Currie as to what sources of funding "they may reckon they can rely on to tide them through if it ends up as plan B". Mr Fowlie said that it made sense that this was how Quindell were positioning themselves, so that S&G understood that Quindell had other options that they were considering and would be happy to go with, if S&G's offer was not good enough. The evidence of Mr Fowlie and also Mr Grech in cross-examination left me in no doubt that Quindell's strategy of emphasising the existence of Plan B was effective, in that S&G genuinely believed, throughout, that Quindell had a range of other possible funding options apart from the proposed sale of the PSD. Indeed, S&G and its advisers took the view, as matters developed in January and February 2015, that Quindell's position was strengthening in terms of its ability to address its known cash-flow problems by solutions other than the proposed sale. This was one reason why S&G perceived the need to move quickly, in order to avoid the transaction getting away from them by becoming less attractive to Quindell. It is clear from the evidence that S&G at no stage sought to delay matters, or to play it long.

102. An example of a possible funding option, which Mr Fowlie and S&G knew about, was the provision of finance by Wingate, an Australian funder. Mr Fowlie became aware, on S&G's first visit to Liverpool on 14 January 2015, that there were discussions between Quindell and Wingate. This was because slide decks and presentations, provided to S&G, were labelled for Wingate. Mr Fowlie was told, either by Mr Fielding or Mr Thompson, who were showing them around that week, that this was done intentionally by Quindell; so that internally at Quindell people would not be distracted or concerned at the appearance of Australians asking questions, in that they would appear to be from the funder rather than from a potential buyer.

103. Mr Fowlie and S&G were also aware of the appointment of Mr Rose as non-Executive Chairman, and Mr Sutcliffe as Strategy Director and Deputy Chairman which was publicly announced on 12 January 2015. Mr Currie had given Mr Grech advance notice of this, and the appointment had been the subject of prior press comment as well. Mr Ravech's email to Mr Fowlie and Mr Grech on 12 January 2015 identified potential adverse consequences to S&G of this appointment: the new non-executive directors "know about Malta and have apparently muttered about lack of competition in the process". He went on to say that this "could get messy if we are slow".

104. Although there had not been any serious price discussions by mid-January, Quindell had given an indication of the sort of figure they were looking for, at least as a starting point. A figure in excess of £ 1 billion had been referred to at the Heathrow meeting in December 2014. In mid-January, Mr Fowlie said that a purchase price of £ 1.2 billion was "pressed upon me by Mr Aston".

105. Mr Grech's evidence, as to his state of knowledge as at 15 January 2015, and more broadly in January 2015, was to similar effect. Whilst the due diligence was progressing

in January 2015, his role included monitoring its progress at a high level, and sometimes escalating responses in relation to the process to Mr Currie at the request of Mr Fowlie where the latter was facing resistance or lack of progress. The key ongoing feedback that Mr Grech received from Mr Fowlie, whilst the latter was in the UK in January 2015, was that Mr Fowlie's impression was that Quindell's board had a limited grasp of the business of the PSD and its value. This chimed with what Mr Currie had previously said to Mr Grech as to not knowing what the business was worth, and as to how a number of businesses had not been properly integrated. Mr Fowlie also reported his impression that there was a palpable schism between Quindell's board and its management (in particular between Mr Currie and the newly arrived Mr Rose/ Mr Sutcliffe) and also as between certain members of the board and Mr Fielding, and that the board had no sense as to what the true earnings profile of the business was. Mr Grech's impression, from his own conversations with Mr Currie, was that the latter thought that the PSD was worth much more than S&G did and was capable of producing greater maintainable earnings than S&G were thinking.

106. Mr Grech said that by the middle of January 2015, S&G were becoming increasingly concerned about Quindell's NIHL business and the information being fed back by the team involved in the case review process under the APA. The view was developing that Quindell's NIHL practice was a problem to be solved, perhaps by running it down, whereas the RTA practice was a sustainable business that could be run and improved by S&G. He accepted in cross-examination that, by mid-January, his view of the NIHL business was not settled. It was put to him that it would therefore have been useful to have PwC's view about the NIHL business. He answered this point convincingly by saying that, with no disrespect to PwC, he did not think that they were in a position to express any opinion about it. It "came down to judgments about the value of those cases, and that's not a question for accountants, frankly". I have no doubt that S&G's views and concerns about Quindell's NIHL practice were derived from the extensive due diligence work on the NIHL files carried out by their very large team of experienced lawyers, and had nothing whatever to do with any views that were allegedly expressed by PwC at the 15 January meeting.

107. Other matters known to Mr Grech by mid-January 2015 can be summarised as follows. He knew of the appointment of PwC, and understood that PwC was performing corporate advisory work and trying to get on top of what was going on in the business in respect of Quindell's accounting systems and policies, following from and arising from the controversy associated with the Gotham City Report. He was aware, from a time before discussions with Quindell started, that Quindell's cash flow was tight and that it would face difficulties in the short to medium term due to having insufficient working capital. Indeed, it was obvious to him that it was because of Quindell's cash flow position that they were having any discussions at all. He appreciated that the money paid under the APA represented almost the entirety of Quindell's cash flow for their half year. He believed that Quindell's NIHL business was operating as a drain on its cash-flow, because of the costs of acquisition and the very small number of settled cases, and that the drain would continue if Quindell continued to acquire NIHL cases. But he also considered that if the proposed acquisition by S&G did not go through, Quindell had various options. Its level of debt was relatively low, and a lender might advance funds, or Quindell might sell off parts of its business or more case files. He described Quindell's cash flow problems as serious, and understood that Quindell was likely to run out of cash in the short to medium term unless there was a short term cash

inflow solution, such as described above. He was aware of issues relating to Quindell's accounting, in particular that there were issues with its accounting control systems and processes. These were apparent from the Gotham City Report, his discussions with Mr Currie and the broader due diligence work that S&G and its advisers had performed by mid-January 2015. During his discussions, Mr Currie flagged to Mr Grech at some point that PwC was going to confirm in its report that Quindell's accounting policies were too aggressive and needed to be corrected. Early on in the discussions, Quindell had been told that S&G was not prepared to do a valuation of the PSD based on those aggressive accounting policies, and Mr Grech's impression was that Mr Currie recognised that these policies needed to be corrected, because he volunteered his own criticisms of them. Mr Grech felt that he was therefore pushing at an open door.

108. Mr Grech was also aware, from his discussions with Mr Currie, that the sale to S&G was Quindell's "Plan A" (although Mr Grech did not recall whether he actually used that term), but also that they were considering other options. Those options included getting in additional capital – which Mr Grech considered could come either from existing lenders or from disbursement funders like Wingate, whom he knew they were engaging with, or from selling more work in progress or selling individual businesses in the group. He had the sense that there were factions within Quindell's board and the then management team with differing views as to the merits of each of the options. But he took the view that if S&G continued to approach the due diligence and pricing process diligently and earnestly – which is in fact what, in my view, S&G did – then they would remain in favour, albeit that Quindell might ultimately pursue another option if S&G did not meet its price expectations. He was also aware, and this would in any event have been an obvious assumption, that there was a possibility that the Quindell board's openness to the sale of the PSD to S&G might not be shared by the new management team whose appointment was announced in January. He was also aware that Quindell were hoping to receive over £ 1 billion for the sale: this sort of figure had been discussed at the Heathrow meeting, and it was also being reported in the media.

The engagement and work of PwC in the period up to 15 January 2015.

109. I will now move back in time and summarise PwC's engagement and work. This was addressed in detail in the witness statement of Ms Donougher, and was not the subject of substantial challenge. My summary is based on her evidence.

110. In early December 2014, PwC was instructed to consider Quindell's short term cashflow, review the accounting policies and undertake a broad independent business review. The instruction was provided jointly by Quindell and its lenders, which were RBS, Lloyds and NAB. At the end of December 2014, PwC's services were expanded to include business disposals and contingency planning under a separate engagement solely for Quindell, but with a duty of care to the lenders. Both engagements were given the code name Project Goldfish, and Ms Donougher was the lead relationship partner on each engagement and therefore she had overall responsibility for Project Goldfish. The core team at PwC comprised Ms Donougher, Gavin Stoner (the delivery partner), Chris Rooney (a "Director" brought in to lead the assignment) and Catherine Moodie (a senior manager). A number of other individuals worked on Project Goldfish, which was a significant time-sensitive matter. PwC was not instructed in relation to Project Malta, the proposed sale to S&G, but they knew that this project was running in parallel to their work on Project Goldfish.

111. Mr Ian Green was the head of BRS, and the person who was to have the meeting with Mr Davies on 15 January 2015. He would have been aware of Project Goldfish at a high level, given its significance within BRS. But he did not form part of the PwC team initially engaged by Quindell and the lenders at the beginning of December 2014. He became involved at the end of December 2014 when Ms Donougher went on holiday.

112. PwC's involvement began following approaches in November 2014 from Bain Capital and also from a senior officer at RBS, Mr Wright. Mr Wright told Ms Donougher that there were concerns about Quindell's accounting policies and, relatedly, its cash flow. Quindell were sent PwC's terms of business, and there followed some negotiation about the level of PwC's proposed fees. Once PwC were engaged, they were quickly aware that Quindell was going to face significant cashflow difficulties in the short term. Meetings took place between Ms Donougher and others in her team with the management of Quindell and Codex who were providing corporate finance advice. PwC became focused on how to optimise cash and how to engage with the lenders to make sure that they maintained their support for Quindell. Ms Donougher was aware of Project Malta from an early stage, and also that it was one of many potential options being considered by Quindell.

113. Work began on 2 December 2014, and PwC produced a draft report on short-term cash dated 19 December 2014, and the findings from their review were presented to the lenders shortly before Christmas. The report stated, at the outset, that PwC's work was not complete, and a result the draft report may not represent their final findings or conclusions. The report also stated that it had been prepared in connection with the recent decline in Quindell's share price, and that PwC had been engaged to perform a review of its short-term cash flow forecast to 31 March 2015 and an independent business review. The forecast that was being reviewed had been prepared by Quindell in the first week of December 2014, with actual cash flow shown to 28 November 2014.

114. In summary, this report showed that Quindell was in trouble. There was a significant short-term cash flow problem, and Quindell needed to undertake urgent initiatives in order to realise additional liquidity. PwC considered that, without initiatives, Quindell would run out of available cash by 6 February 2015. PwC also considered that, given the weekly volatility in cash movements, Quindell required between £ 10 million and £ 15 million cash as "headroom" in order for it to operate effectively. PwC's analysis in their report showed that Quindell would fall below the necessary £ 10 million headroom by early January 2015. It was therefore clear, in PwC's view, that Quindell needed to undertake a number of initiatives to meet its short-term funding requirements in order to ensure that its gross cash remained above the aggregate of (i) the headroom of at least £ 10 million, and (ii) £ 15 million of "trapped cash", which for various reasons could not be relied upon to assist with Quindell's cash flow. This "trapped cash" could not be used to fund Quindell's everyday operations because it was either sitting in a blocked account as collateral for a financing facility provided by NAB, or was held in certain offshore subsidiaries and was not readily accessible. The overall conclusion was that Quindell had reached a "critical point and there's a risk that the Group could exhaust existing cash funds by as early as the first week in February 2015, and almost certainly during 2015 unless a further c £ 25-35m can be generated from cash initiatives". As previously discussed, one such initiative was the APA, which raised a significant amount of cash, at the end of December 2014.

115. Whilst Quindell was not surprised by PwC's views, the lenders had not anticipated that Quindell's cashflow would be such a significant short-term issue. This led to some challenging discussions with the lenders, with the issue coming to a head around Christmas and New Year 2014/2015. Ms Donougher was on holiday for two weeks starting on around 23 December 2014, returning on around 5 January 2015. She nevertheless carried on working remotely during that holiday. Mr Green became involved in Project Goldfish when she went away. There were a number of reasons for this, as Ms Donougher explained. First, Project Goldfish was a significant matter requiring a great deal of partner time, and Mr Green was therefore asked to provide some cover. Secondly, the 19 December 2014 report, and its indications as to when Quindell would lose its headroom and then run out of cash, had a number of knock-on effects concerning PwC's role. They had to consider contingency planning and the possibility that the company may become insolvent. Quindell needed to consider a number of urgent initiatives, including business disposals. Mr Green was well placed to assist with both of these: he was an experienced insolvency practitioner and had significant experience of business disposals in a restructuring context. Thirdly, Mr Green had an existing relationship with two of the lenders, Lloyd's and NAB.

116. The possibility that PwC would expand the scope of its services, in order to deal with these consequences, led Mr Wright of RBS to question whether this might create a conflict in PwC continuing to work for the lenders. This led to PwC continuing to work for Quindell, but the lenders engaging their own independent advisers. It also led to Mr Green agreeing to become responsible, within PwC, for business disposals, but not for contingency planning. However, as matters transpired, there were no business disposals other than the APA which Ms Donougher described as significant by providing substantial additional cash. Given the possibility that Quindell might run out of cash, leading to defaults, DLA Piper were instructed to advise on, amongst other things, directors' duties. Mr Green was involved in the instruction of DLA. The upshot of these matters was a second engagement letter which was agreed between Quindell and PwC: it was dated 8 January 2015 but was effective from 22 December 2014. This engagement letter expanded the scope of PwC's services, for example so as to include business disposals, and was an agreement with Quindell alone.

117. In the first half of January, and prior to the 15 January 2015 meeting, PwC reviewed a number of forecasts. On 2 January 2015, Ms Moodie sent Mr Green an email which contained a chart showing an improving position. The 28 November forecast had been for the amount of cash, as at 31 March 2015, to be £ 11.788 million. A later forecast had now been prepared at the end of December. This forecast cash, as at 31 March 2015, to be £ 30.817 million. This improvement reflected, in part, the positive impact of the APA.

118. On 9 January 2015, PwC received a spreadsheet containing an updated cash flow forecast from Mr Laurence Moorse, who was Quindell's Group Finance Director. This was then circulated by Ms Moodie to various colleagues, including Ms Donougher, in PwC. This showed an improved position, indeed a significantly improved position, compared to earlier forecasts. For example, the forecast cash at the end of March 2015 was now £ 43 million. For each week prior to the end of March 2015, the forecast cash was above, and often well above, £ 25 million. The lowest figure during that period was for the week ending 6 March 2015, when the forecast cash was £ 29.42 million.

119. However, the spreadsheet shows a sudden drop in cash between 10 April 2015 (£ 27 million) and 17 April 2015 (£ 3.9 million). The figure of £ 3.9 million was therefore well below the approximately £ 25 million which was required when taking account of the required headroom and trapped cash. The forecast cash figures remained below this £ 25 million figure for most of April, May and June, but reaching £ 28.7 million at the end of June 2015. These were projected figures without "initiatives".

120. Ms Donougher explained, in her evidence, the reason for the sudden drop in cash. The spreadsheet included a payment of £ 25 million in respect of taxation. Ms Donougher explained that although these spreadsheets showed Quindell running out of available cash during the week ending 17 April 2015, PwC intended to negotiate a "time to pay" arrangement with HMRC. In her experience, it was usually possible to negotiate such arrangements with HMRC, especially where the liability would otherwise cause the company to become insolvent. Accordingly, PwC anticipated that Quindell would not in fact run out of available cash in the week ending 17 April 2015, or indeed at any point in the period up to 30 June 2015.

121. PwC prepared a second "Short-term cash flow update", in similar format to that dated 19 December 2014, which was provided to the lenders. This was dated 9 January 2015. The update reported on the period to the end of March 2015. It showed that throughout that period, cash was generally forecast to be above the approximately £ 25 million required when taking account of headroom and trapped cash. The low point was the week ending 6 March 2015, when forecast cash was £ 24.9 million. The report makes clear that this was a forecast of cash "before forecast initiatives". This was therefore a significant improvement from the position shown in the forecast which PwC had reported in December, and a marginal improvement on a forecast made on 2 January 2015. A colour chart on page 3 of the report illustrated the improvements.

122. On 14 January 2015, Mr Moorse circulated a further spreadsheet. This showed a broadly similar, but somewhat (though not significantly) worse picture to the spreadsheet dated 9 January 2015. Forecast cash was above £ 25 million throughout the period to the end of March and into early April, but with a drop to £ 3.9 million in the week ending 17 April 2015, and a further drop to just under £ 1 million in the week ending 6 May 2015. Again, these were figures without initiatives. Ms Donougher said that, as with the 9 January 2015 forecast, PwC would have been reasonably confident of agreeing a "time to pay" arrangement with HMRC. Her evidence was that this, together with a continued focus on cash management and other initiatives, led PwC to believe that Quindell would not have needed the headroom range predicted and therefore would not have run out of available cash throughout the period. In cross-examination, Ms Donougher confirmed that it was PwC's view that Quindell would not run out of cash during the period covered by the forecasts, namely up until the end of June 2015. She was asked about the period after 30 June 2015, and she said that the company had not provided forecasts for that period and so she did not know what the cashflow looked like after that. She did recall, however, that management had indicated that there would be an upturn in the business cycle and hence the cash flow of the company. So PwC were not taking the view that cash flow would be worse after the end of June, since they had not been given any figures. She added that obviously there would be concerns about a company in the position of Quindell, and hence there would be conversations on the topic of liquidity.

123. The upshot of these forecasts in the first half of January, as Mr Green explained in his written and oral evidence, was that the directors of Quindell could be satisfied that the company could continue to trade, and could justify a decision not to call in administrators. It was, he said, reasonably likely that an agreement could be reached with HMRC so as to defer the tax liability that would otherwise be payable in April. This meant that the company would not run out of cash at all during the period covered by the forecast. He explained that if the position had been that there were not reasonably likely initiatives to counteract the forecast which showed free cash running out in April 2015, then PwC would have advised Quindell that they needed to talk to their broker with a view to making a market announcement, and it would have been Mr Green's personal view that such an announcement should be made. However, PwC did not feel the need to give that advice because the April problem could be managed through an HMRC arrangement.

124. Ms Donougher's evidence was that around mid-January, the prospect of Project Malta completing seemed to become increasingly likely. The focus therefore turned to ensuring that Quindell had sufficient cash resources to get through to deal completion, rather than through to the end of the restructuring process. Also at around this time, Ms Donougher herself became much less involved with Project Goldfish.

The 15 January meeting

125. There is no dispute that Mr Green met Mr Davies at PwC's offices in London on 15 January 2015. Subsequent to the meeting, Mr Davies produced an email which he sent to some colleagues in Greenhill. There is a substantial dispute as to what transpired at that meeting, and also whether the email is a record of what was said at that meeting and if so whether it is an accurate record. The issues relating to what transpired at the meeting on 15 January are addressed in Section C below.

The 16 January meetings

126. Mr Fowlie was still in England in mid-January. On 16 January 2015, Mr Fowlie attended a number of meetings relating to the proposed transaction. His evidence was that he was not shown the 15 January email, and therefore had never read it prior to the time when it came into focus in the earlier litigation. Mr Davies had joined one of the 16 January meetings by telephone, and Mr Fowlie accepted that he was given some information about the meeting that had taken place on the previous day. The extent of the information, and its significance (or lack thereof) is discussed in Section D below. In short, Watchstone contend that Mr Fowlie was given a detailed account of what transpired at the meeting, and that what he heard was important to him and that it had a material impact at the time, and thereafter, on S&G and its negotiating strategy. This is disputed by S&G.

The second half of January – May 2015

127. The events of the second half of January, and the negotiations for the acquisition, are covered in more detail in Section D below. What follows is a summary of how matters developed in the period after the 15 January meeting.

128. S&G's due diligence continued, and from late January 2015 onwards, following the due diligence carried out over the preceding weeks, S&G, together with its advisors at

Greenhill, Citi and EY, began to put together its view on valuation of the PSD. This was based, as it had been from the outset, on its analysis of maintainable earnings. They also considered how best to present any offer to Quindell.

129. On 4 February 2015, S&G obtained formal board authorisation to open a dialogue with Quindell regarding the drivers underpinning its assessment of maintainable earnings. This followed the provision to key board members of a very detailed paper on the proposed transaction and a presentation made to them at the board information session on 29 January 2015. The paper was prepared by Mr Fowlie and Mr Grech, with assistance of others. Mr Grech, who had been in Australia during January, travelled to London for the purpose of this dialogue.

130. Mr Grech and Mr Currie had an initial discussion on 6 February 2015, at which Mr Grech stated that S&G's view of maintainable EBITDA was in the order of £ 70 million per year. Mr Currie indicated that a bid at the level suggested by S&G would not be given a favourable recommendation, but he was unwilling to commit to a number which Quindell would recommend. Mr Grech thought that it was likely to be in the range of £ 120 - £ 140 million. It was agreed that S&G would identify the factors that were critical to the differences between the parties on valuation, in advance of a further meeting on Friday 13 February 2015.

131. At the meeting, S&G delivered a presentation that compared Quindell's stated assessment of the maintainable EBITDA for the RTA and NIHL businesses respectively with S&G's assessment. S&G's analysis produced a maintainable EBITDA figure for the whole PSD of £ 68 million, implying an acquisition price of just over £ 400 million using a multiple of 6.

132. As at 13 February 2015, there was a very significant gap between the parties. The difference between the parties was particularly stark for NIHL. Having heard S&G's presentation, Mr Currie acknowledged that it was unlikely S&G would be convinced that the NIHL numbers could or should change dramatically and that therefore S&G should concentrate on the rest of the businesses which Quindell thought that S&G had undervalued. As a way of bridging the gap, Mr Currie suggested that the RTA side of the business be "supercharged", with resources to do this freed up by downscaling the NIHL business.

133. After the 13 February meeting, there was considerable pessimism on S&G's side about whether the valuation gap could be bridged and whether the transaction would proceed. S&G adjusted its modelling to reflect the "supercharging" proposal following receipt of revised numbers provided by Quindell. This led to an increase of S&G's assessment of maintainable EBITDA from £ 68 million to a much higher figure (of around £ 100 million).

134. The decisive negotiations on price took place between Mr Grech and Mr Currie in the short period from 20 to 22 February 2015. These negotiations took place without any reference to Quindell's cash position. There was the usual back and forth inherent in any commercial negotiation. On 22 February 2015, agreement was reached on the price and structure of the transaction, Mr Grech confirmed to Mr Currie S&G's willingness to proceed quickly to completion. The headline price agreed was £ 640 million (subject to adjustment in light of what had already been paid under the APA), plus an uncapped earn-out for the NIHL cases. The agreement was to the effect that S&G would acquire

the PSD in exchange for: (i) paying an upfront cash sum of £ 640 million; (ii) waiving its right to take a transfer of a portion of the files envisaged by the APA, without requiring a refund of the relevant component of the consideration already paid for those files (which was expected to equate to a value of £ 5-6 million); and (iii) paying Quindell an additional conditional deferred amount based on the performance of the NIHL cases. Taking account of the amount already paid under the APA, the total upfront purchase price for the PSD was around £ 645 million. Mr Aston calculated that, on Quindell's assumptions as to the expected revenues to be generated from the NIHL cases, the agreement for deferred consideration could yield an additional payment of £ 148 million to Quindell.

135. Having reached agreement in principle, S&G undertook confirmatory due diligence in March 2015, alongside arranging the funding for the transaction. The further due diligence gave rise to additional concerns as to the value of the business being acquired. In the period leading to the finalisation of the SPA, representatives of Quindell, in particular Mr Aston, expressed concerns that S&G might seek to "chip" the price agreed on 22 February 2015. However, S&G did not seek to reduce the headline price that had been agreed in principle.

136. The SPA was signed on 29 March 2015. This reflected the terms which had been agreed between Mr Grech and Mr Currie on 22 February 2015.

137. There then followed a period of fundraising by S&G, leading to completion of the sale of the PSD on 29 May 2015. Quindell therefore received consideration of around £ 645 million, plus an entitlement to deferred consideration contingent on the performance of the NIHL cases.

C: The 15 January 2015 meeting

138. The only oral evidence at trial in relation to the background to the meeting, and what occurred at it, was given by Mr Green of PwC. Mr Fowlie was told something about it on 16 January 2015, but he believed that he had been told relatively little that was important and he was obviously not in a position to provide a detailed account of what had occurred at a meeting which he had not attended.

139. Although the 15 January meeting was central to the case advanced by Watchstone in these proceedings, no evidence was called from the other participant, Mr Gareth Davies. Instead, Watchstone based its case primarily upon the 15 January email which Mr Davies prepared and sent to his colleagues at Greenhill on the evening that the meeting took place. Watchstone contended that this email recorded what Mr Green had told or confirmed (expressly or impliedly) to Mr Davies at the meeting, and that the evidence provided by this contemporaneous document should be preferred to any evidence given by Mr Green, notwithstanding that Mr Davies had not been called to give any evidence about the meeting. Watchstone submitted that it was inherently probable that the 15 January email was a reliable record of the meeting, and that the account given by Mr Green in his written and oral evidence was, in material respects, implausible.

Mr Green's evidence

140. In his witness statement, Mr Green's evidence concerning Mr Davies and the 15 January meeting was as follows. Mr Davies was a senior investment banker and the

head of Greenhill's UK M&A team. Much of his practice concerned transactions involving financially distressed companies, where Mr Davies typically acted for the company in question. Mr Davies was a "larger than life character". From 2012 onwards, Mr Green would occasionally encounter Mr Davies when they were working on the same transaction. Outside those engagements, he would catch up with Mr Davies once or twice a year, together with the Head of Restructuring at the law firm Pinsent Masons. Their relationship was a professional one: as part of Mr Green's role, he was expected to meet regularly with senior individuals at law firms, investment banks and other professional advisors.

141. In around January 2015, Mr Green was working on a number of engagements outside Project Goldfish, including one for a company based in Green Park in Central London, in the same building as Greenhill. On a number of occasions, sometime in early January, Mr Green bumped into Mr Davies. He recalled that on one occasion, Mr Davies asked him what he was working on, and Mr Green mentioned that "BRS" (i.e. PwC's Business Recovery Services unit) had been engaged by Quindell. Mr Green did not remember Mr Davies saying that Greenhill was acting for S&G on Project Malta: he believed that if Mr Davies had said this, he would remember it. Mr Green and Mr Davies agreed to catch up over a coffee at some point soon.

142. Mr Green became aware of Greenhill's involvement in Project Malta on 7 January 2015. The new board of Quindell, including Mr Currie, were attending PwC's offices that day, and Mr Green hosted the meeting prior to Ms Donougher being able to join it. Mr Currie had provided a brief update of the business, including that Greenhill were involved. Mr Green asked if Mr Davies was part of the Greenhill team, and Mr Currie said that he was not.

143. On 12 January 2015, Mr Davies sent his secretary (copying in Mr Green) an email asking her to organise "a date for a quiet coffee with Ian". Mr Green did not think that he had read this email at the time, but in any event would not have read any significance into the request for a "quiet coffee". He received numerous emails every day, and his secretary had access to these and managed his diary. She then scheduled the meeting for 5 pm on 15 January 2015 at PwC's offices. Mr Green did not anticipate that Mr Davies would discuss Project Malta or Quindell, because he had recently been informed at the 7 January meeting that Mr Davies was not involved in that transaction at all. Mr Green therefore assumed that the meeting was a regular catch-up which Mr Davies had organised after he bumped into him in early January 2015.

144. Prior to the meeting, Mr Green was aware of Quindell's updated cash flow forecast (see Section B above) which showed that, without initiatives, Quindell would run out of available cash on 17 April 2015. He said that when a business is projected to run out of cash, the directors must be satisfied that, in continuing to trade, they are not putting the creditors in a worse position than the position they would have been in had the directors appointed administrators. In other words there needs to be a justification to continue to trade. Here there were contingencies which could justify a decision not to call in administrators. The most significant of these was whether an agreement could be reached with HMRC to defer the tax liability that was due in April 2015. PwC considered this reasonably likely, and this advice would have been passed to Quindell and the law firm DLA.

145. As for the meeting itself, Mr Green's evidence was that, given the passage of time, he did not recall the 15 January Meeting in detail. He recalled that it was due to take place at the end of the day and that, later that evening, he had another engagement. His approach to the meeting was therefore that he did not have much time, and that he had to see Mr Davies briefly before his other engagement.

146. At the start of the meeting, they asked each other about Christmas and New Year, and discussed the market generally. After that discussion, Mr Davies then raised the topic of Quindell. Mr Green did not recall precisely how Mr Davies raised this, but he recalled that Mr Davies said words to the following general effect: (i) Greenhill had been instructed by S&G on Project Malta, but Mr Davies was not directly involved; (ii) instead, the matter was being run out of Australia, although Mr Davies wanted the UK team also to be involved; (iii) Mr Davies had therefore been speaking to Quindell's lenders and others in the market so as to demonstrate the value that he could add to the transaction; and (iv) in his view, Quindell was going to run out of cash, and so the price paid by S&G should be much lower than was currently being discussed.

147. All of this came as a surprise to Mr Green. First, he had expected an informal chat, relating to general matters only, following their chance encounters at the Green Park office. Secondly, he was surprised that Mr Davies was involved in Project Malta, having recently been told the opposite by the board of Quindell. Finally (and most significantly), he was concerned to hear Mr Davies say that Quindell was going to run out of cash. This was the last thing he wanted to hear at this point. Mr Green therefore wanted to ensure that, whatever he said, he did not dissuade S&G from continuing with Project Malta. He was also concerned not to say anything outside of what had been published in Quindell's RNS announcements, which he would have been aware of at the time. By way of background, he regularly attended meetings concerning public companies where PwC was advising, and he was careful not to say anything beyond what was contained in the public domain. In this regard, he recalled that Quindell had recently announced that it was broadly comfortable with its cash position, following the sale of around £ 10 million claims to S&G. Mr Green therefore told Mr Davies that there was enough cash to complete Project Malta. In doing so, he was trying to reassure him and, at the same time, get him to move on to a different topic. He was also conscious that, had he refused to respond to the question at all, this could have implied that Mr Davies' statement was correct.

148. However, Mr Davies then took out a notebook and started to read a prepared summary / list of questions and to write down some occasional notes. He recalled that Mr Davies asked Mr Green to correct him where he was wrong. Whilst Mr Green would always approach a meeting like this with an appropriate degree of caution, at this point he realised that he had to be guarded with Mr Davies. He therefore decided that the most appropriate thing to do was to let him talk without confirming anything. In any event, he was not sufficiently in the detail to challenge Mr Davies on anything he was saying.

149. The only other thing that Mr Green could recall from the 15 January meeting was that he asked Mr Davies why S&G did not want to buy all of Quindell. Mr Green knew, from his preliminary work on business disposals, identifying peripheral businesses outside of the PSD to potentially sell, that the overwhelming majority of the value of Quindell was contained in the PSD. Mr Green therefore did not understand why S&G were looking to carve out such a small proportion of the group from the transaction. Mr Davies did not know the answer to this question.

150. Mr Green also commented in his witness statement on one particular aspect of the 15 January email, namely that, in relation to the number of Quindell offices, Mr Green "agreed quietly to look into the assumption that more cost was needed, given overtrading and margins being much higher." Mr Green had no recollection of Mr Davies raising this, or discussing it with him at all. However, Mr Green believed that this is not something he would have been willing to do, or to offer to do for Mr Davies, or for anyone else in this situation.

151. At the time, Mr Green did not think this was a consequential meeting – all he had done was let Mr Davies talk, without confirming anything or challenging him on any of the points he raised. Mr Green did not take notes of the meeting, but he recalled that, very shortly after the meeting with Mr Davies, he bumped into Mr Rooney in PwC's offices. Mr Green recalled that he mentioned that he had just met Mr Davies and, contrary to the understanding of PwC and Quindell, Mr Davies was involved in Project Malta (or at least, was trying to become involved).

152. Mr Green was cross-examined by Mr Lord for over a day. It was apparent that the task of cross-examination was not an easy one. Watchstone had called no oral evidence from Mr Davies, and there was no written statement from Mr Davies as to the background to the meeting or what transpired at the meeting itself. There were constraints upon the challenges that Mr Lord could properly make to the evidence of Mr Green. Much of what Mr Green had said in his witness statement – for example the statements made by Mr Davies when he initially raised the topic of Quindell, or the time when Mr Davies took out his notebook and started to read a prepared summary or list of questions – were not directly challenged at all.

153. In the course of his cross-examination, Mr Green essentially adhered to the account of the meeting which he had given in his witness statement. He described Mr Davies as rambling off a series of points that he had written down in his notebook, and in so doing he was checking on information that he had gleaned from other sources in the marketplace. He said that, in so doing, Mr Davies was trying to get information from him, but he was unsuccessful: Mr Green was careful not to say anything. He said that the meeting ended amicably. Mr Green denied that he had impliedly endorsed anything that Mr Davies had been saying.

154. I considered, at the time when he gave his evidence, that Mr Green was a careful and credible witness, who was doing his best to give accurate evidence, to the best of his recollection, as to what had happened many years ago. Mr Green answered directly, succinctly and patiently each question that he was asked. As already noted in Section A above, Mr Green had enjoyed an impressive career, and clearly knew how to handle himself under pressure: he was impressive in the witness box, and his demeanour was good. But it does not follow that I should necessarily accept his evidence as to what was said at the critical 15 January 2015 meeting, and I need to consider, in particular, whether Mr Davies' email, written shortly after the meeting, is a better guide to what was said at the meeting than Mr Green's recollection many years after the event.

Approach to disputed evidence

155. In assessing the evidence of Mr Green (and indeed the evidence of Mr Fowlie and Mr Grech, whose evidence was challenged in certain respects), I adopt the approach

commended by Robert Goff LJ in *Armagas Ltd v Mundogas S.A. (The Ocean Frost), [1985]* 1 Lloyd's Rep. 1, 57:

> "Speaking from my own experience, I have found it essential in cases of fraud, when considering the credibility of witnesses, always to test their veracity by reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities. It is frequently very difficult to tell whether a witness is telling the truth or not; and where there is a conflict of evidence such as there was in the present case, reference to the objective facts and documents, to the witnesses' motives, and to the overall probabilities, can be of very great assistance to a Judge in ascertaining the truth."

156. In the same case, Dunn LJ said (to similar effect):

> "I respectfully agree with Lord Justice Browne when he said in re F, [1976] Fam. 238 at p. 259, that in his experience it was difficult to decide from seeing and hearing witnesses whether or not they are speaking the truth at the moment. That has been my own experience as a Judge of first instance. And especially if both principal witnesses show themselves to be unreliable, it is safer for a Judge, before forming a view as to the truth of a particular fact, to look carefully at the probabilities as they emerge from the surrounding circumstances, and to consider the personal motives and interests of the witnesses. As Lord Wright said in *Powell v. Streatham Manor Nursing Home* sup. at p. 267:
>
> > … Yet even where the Judge decides on conflicting evidence, it must not be forgotten that there may be cases in which his findings may be falsified, as for instance by some objective fact …
>
> and he referred in particular to some conclusive document or documents which constitute positive evidence refuting the oral evidence of the witnesses."

157. The approach of Robert Goff LJ was approved by the Privy Council in *Grace Shipping v Sharp & Co* [1987] 1 Lloyd's Rep 207 at 215-216:

> "And it is not to be forgotten that, in the present case, the Judge was faced with the task of assessing the evidence of witnesses about telephone conversations which had taken place over five years before. In such a case, memories may very well be unreliable; and it is of crucial importance for the Judge to have regard to the contemporary documents and to the overall probabilities.

> That observation [ie of Robert Goff LJ] is, in their Lordships' opinion, equally apposite in a case where the evidence of the witnesses is likely to be unreliable; and it is to be remembered that in commercial cases, such as the present, there is usually a substantial body of contemporary documentary evidence."

158. Robert Goff LJ's judgment was described as the "classic statement" in *Simetra Global Assets Ltd. v Ikon Finance Ltd*. [2019] EWCA Civ 1413, where Males LJ said at [48]:

> "In this regard I would say something about the importance of contemporary documents as a means of getting at the truth, not only of what was going on, but also as to the motivation and state of mind of those concerned. That applies to documents passing between the parties, but with even greater force to a party's internal documents including emails and instant messaging. Those tend to be the documents where a witness's guard is down and their true thoughts are plain to see. Indeed, it has become a commonplace of judgments in commercial cases where there is often extensive disclosure to emphasise the importance of the contemporary documents. Although this cannot be regarded as a rule of law, those documents are generally regarded as far more reliable than the oral evidence of witnesses, still less their demeanour while giving evidence."

159. Robert Goff LJ's approach is also reflected in other recent authority such as *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm), at [15]-[23]. In *Gestmin*, Leggatt J referred at [22] to the appropriateness of basing factual findings on inferences drawn from the documentary evidence and known or probable facts. As explained by the Court of Appeal in *Kogan v Martin* [2019] EWCA Civ 1645, however, this does not mean that oral testimony from witnesses should be disregarded. That evidence forms part of the evidence in the case. If the sworn evidence of Mr Green, or indeed other witnesses, is to be rejected, the court must say why: see paragraph [45]. Although contemporaneous documents are obviously very important in commercial cases, as explained by Males LJ in *Simetra*, I do not accept Mr Lord's argument to the effect that *Kogan* shows that witness evidence is only of importance in non-commercial cases.

160. Accordingly, my approach is to consider the objective evidence and in particular the documentary evidence, as well as the inherent probabilities, and to test the accounts of the witnesses against those matters. I shall consider these matters before returning to my overall conclusions in relation to Mr Green's evidence.

The contemporaneous documents

161. *Documents prior to the meeting.* The contemporaneous documents prior to the meeting have two features which in my view are relevant.

162. First, there are scarcely any documents passing between Mr Davies and Mr Green. There is certainly nothing which suggests that Mr Green was told, in advance, that Mr Davies wanted and intended to talk about Quindell and the Project Malta transaction,

or that Mr Green was himself willing to meet Mr Davies for the purpose of (what Watchstone described as) an illicit conversation.

163. There is evidence that Mr Green sent Mr Davies a text message some days before the meeting, at 1.14 pm on 9 January. This was around 45 minutes prior to a 2.00 pm meeting which had been scheduled for Mr Green to see his client in the building in Green Park. Mr Green said in cross-examination that he did not know what the text message said, but he agreed with the suggestion that it was possible that he texted Mr Davies to see if he was around for a chat. The text message itself is no longer available: mobile phone providers retain records of when texts were sent by a customer, but they do not the details of the messages themselves. There are a number of other documents which, due to the passage of time, have been lost: for example, the notebook that (on Mr Green's evidence) Mr Davies used at the 15 January meeting, the notes that are likely (in my view) to have been prepared by Mr Davies for the purposes of that meeting, and a "day book" which Mr Green said that he used at the time and might have had with him at the 15 January meeting. In addition, although records can be obtained from a mobile phone provider when texts were sent by the customer, that provider will not have records of incoming texts. Accordingly, it is not known what texts Mr Davies was sending to Mr Green at this time, and therefore whether the message sent by Mr Green on 9 January was a response to something which Mr Davies had sent.

164. At 4.25 pm on 12 January 2015, Mr Green sent Mr Davies a second text. Again, it is not known what this text said, or whether it was a response to something sent by Mr Davies. Shortly afterwards, at 16.39, Mr Davies sent the "quiet coffee" message to his secretary, copying in Mr Green.

165. I consider that there is nothing in the evidence of these two text messages, taken together with the "quiet coffee" email, which provides any support for the suggestion that Mr Green knew that Mr Davies wanted an illicit meeting to discuss Quindell, and hence nothing which causes me to doubt Mr Green's evidence that he thought that the meeting was simply one of their regular "catch up" meetings. No evidence has been called by Watchstone from Mr Davies, or anyone else, to contradict or cast doubt on this (or indeed any other) aspect of Mr Green's evidence. It seemed to me that this was one of a number of areas where Watchstone invited me to make a finding, adverse to Mr Green and PwC, which was not based on the evidence itself, but was in spite of the evidence. Furthermore, the suggestion that Mr Green knew in advance that this was to be an illicit meeting is difficult to square with the fact it was organised to take place at PwC's offices and was diarised in the usual way.

166. I also see no reason at all to conclude, despite the evidence of Mr Green and the absence of any contemporaneous documentary evidence, that it is inherently probable that Mr Green was told in advance that the purpose of the meeting was to discuss Quindell. Indeed, I consider it inherently probable that Mr Davies did not wish to reveal to Mr Green, in advance of the meeting, that this is what he wanted to discuss. That is in my view why there is no document, sent to Mr Green, indicating that this was the nature of the proposed discussion, and why the meeting was described by Mr Davies simply as a "quiet coffee". Mr Davies would have been intelligent enough to realise that, if he were to show his hand and intentions in advance, there was a substantial risk that the meeting would not happen: Mr Green would then have been given time to think about whether such a meeting was appropriate, and if necessary to consult others, and it is likely that Mr Green's guard would have been up.

167. Furthermore, in assessing the likelihood that Mr Davies told Mr Green in advance about the purposes of the meeting, I can and do take into account the fact that Mr Davies was – on Watchstone's own case – acting improperly in planning to seek, and then trying to seek, confidential information from Mr Green. In his oral opening submissions, Mr Lord rightly accepted that, on Watchstone's case, the meeting was totally improper, and that Mr Davies was acting with a complete lack of integrity. Similarly, in their written opening submissions, Watchstone submitted – based upon a number of internal documents of Greenhill – that the meeting was obviously illicit. For example, on 29 December 2014, Mr Davies told Mr Bordignon of Greenhill (in Australia) that they could "also access the PwC guys indirectly at some point, because it sounds from the email earlier they are in effect doing an IBR [internal business review] and advising the Banks on what to do. This has much less chance of getting back if done at the right time but question whether now".

168. In their closing submissions, Watchstone submitted that the significance of the 9 January 2015 text message was that it contradicted the suggestion that Mr Green and Mr Davies had simply bumped into each other, and therefore made it even more likely that there was an understanding that the quiet coffee would be about Quindell. I do not consider that the evidence of a single text being sent by Mr Green – in circumstances where the details of the message are unknown, and where it is unknown whether or not this was a response to Mr Davies – enables any such conclusions to be drawn. Mr Green's evidence was that he was going over to Green Park on a regular basis during this time, and it is possible that he did bump into Mr Davies and that this provoked some text communication. However, even if they were in touch with other by text, and did not meet by chance, there is no reason to conclude that Mr Davies revealed that he wanted to sit down with Mr Green to talk about Quindell, and good reason to conclude that he did not.

169. I therefore accept Mr Green's evidence that he did not know, in advance of the meeting, that Mr Davies intended to discuss Quindell or that anything other than a short "catch up" would occur.

170. The second feature of the contemporaneous communications prior to the meeting are various communications between Mr Davies and others at Greenhill. There is nothing in these communications which indicates that Mr Davies had told Mr Green about the intended subject of the proposed meeting. They also reveal a fair degree of preparation by Mr Davies for the meeting itself. On 14 January 2015, he emailed various colleagues at Greenhill saying that he was going to have a "quiet coffee with the lead partner from PwC tomorrow evening – list of questions?". Mr Davies then identified some questions that he had in mind: "views on accounting", "position of banks/general liquidity", "plan for the new team (were they brought in by Tosca or with their support") and "appetite for S&G". He added that "we can assume it will go no further". Mr Lord added some further potential questions, and Ms Jablko identified some areas which she wished better to understand. There is no documentary or other evidence that any of these topics were communicated to Mr Green prior to the meeting.

171. I did not consider that Mr Davies' preparation for the meeting provided any evidence as to what Mr Green actually said at the meeting. Mr Green's evidence was that Mr Davies went through various points which he read from his notebook, and this evidence is consistent with the preparation evident from Mr Davies' 14 January communications with his colleagues.

172. *The 15 January email.* The most important document relied upon by Watchstone is the 15 January email. This was sent by Mr Davies at 6.58 pm London time on 15 January 2015. This was relatively soon after the meeting with Mr Green had concluded. That meeting had been scheduled for 5 pm, and Mr Green's evidence (which was not contradicted by any other evidence and which I accept) was that the meeting was relatively short and lasted around 30 minutes. Accordingly, there was just under an hour and a half between the time when the meeting finished and the time when Mr Davies sent his email to various colleagues at Greenhill, including Ms Jablko.

173. The email states as follows:

> "Pls keep confidential.
>
> PwC were put in by RBS
>
> Initial plan was for them to work for the banks, but they went company side as debt was small and value clearly breaks in the equity
>
> Report was mainly cashflow focussed, with a bit on accounting policies – as he said slightly academic sticking to accounting policies if not generating any cash
>
> Conclusion – running out of cash mid-15; accounting aggressive on hearing loss side, RTA ok
>
> RBS prevented us from getting report – they are generally being difficult (as normal) and have 15m exposure; other two banks are behaving ok – total debt exposure 30m, 'chicken feed'
>
> Now starting work on projections (and company doing business plan) but no real deadline as waiting for offer from S before deciding whether to push ahead on Plan B hard (company never done forecast before)
>
> RBS cannot block us from accessing new reports as done for the company – it will either be for a working capital report or support a sale (although doesn't sound it will be ready soon enough for us – see below)
>
> Initially he thought no business, but actually there is a good one
>
> Systems for cases ok, accounting / controls poor
>
> Offices everywhere and not needed, cut out significant costs [I said our assumption was more cost needed given over-trading and margins much higher – he'll have a look into this quietly as recognises key question on value]
>
> The legal business kicked off a lot of cash in the past but all spent on telematics / hearing loss cases

> Not sat with auditor yet to compare notes on accounting but thinks K's defence will be never signed off on material hearing loss cases yet
>
> They are trying to figure out S's accounting policies - I said ironic as we are trying to do the opposite - we agreed much easier if everyone sat in a room and had a sensible debate
>
> Questioned why not buy the whole pic? As the bits we don't want are small and easily separable or shut down (as to their value who knows but telematics fascinating technology, cost a lot to buy and could either be worth a fortune or next to nothing – sell for +30m could be 200m today and ???m tomorrow)
>
> S is definitely Plan A In DCs mind – whether new team think differently he doesn't know
>
> Plan B is a fundraising via Tosca / M&G
>
> New team were going to do a whole lot of DD but in the end didn't bother and dived in much quicker than expected – apparently DC worked with M&G to bring them on board; Tosca were stake building at the time so less involved
>
> They think c.200m of sustainable profit but work ongoing and still need to rec into S's accounting policies and the big unknown is cashflow off the hearing cases
>
> Hence expectation of +lbn deal; he assumes why still Plan A otherwise no logic to sell now
>
> However, hearing loss is the big question – reason accounting aggressive they accrue income against costs incurred to create net neutral position BUT there is no revenue to date and totally new / unproven product – hence reported profits all RTA but clearly absorbing costs into the hearing loss side
>
> hearing loss could be massive area but nothing can point to in the numbers will prove that (vast numbers of populous impacted, potentially a big handout)
>
> bottom line hearing loss drives everything – cashflow, business plan, future growth, but hugh uncertainty / opportunity / risk"

174. The email was not sent to Mr Green. Nor was any email sent, following the meeting, in which Mr Davies said anything to Mr Green about the meeting that had taken place.

175. Watchstone submits that the email is the most reliable record of what was said at the meeting. It was produced contemporaneously, immediately after the meeting and from notes which were made by Mr Davies during the meeting (albeit that these notes are not available). They submitted that there has been no challenge to the authenticity of the email, which has been disclosed in native format. There was no reason to think that

Mr Davies would lie internally about the content of what he had found out from Mr Green – it would not serve his interests to do so, because if the intelligence turned out to be unreliable it would harm S&G and potentially jeopardise the entire transaction and Greenhill's fees. Mr Davies' primary concern was to act in the best interests of his client, which involved collecting reliable intelligence and reporting it back faithfully. Mr Davies was a highly competent and senior banker at a leading firm with considerable experience of distressed situations, and was prepared to do whatever it took to give his client an advantage. They also submit that the reliability of the 15 January 2015 email is not undermined by the absence of Mr Davies.

176. PwC (supported by S&G) submits that the email did not record, accurately or otherwise, what Mr Green had said at the meeting. It was, they submitted, an amalgamation of information which Mr Davies thought that he had gleaned from various sources other than Mr Green – much of which was inaccurate – combined with Mr Davies' own observations and conclusions. They submit that the evidence called by Watchstone, in support of allegations of serious professional misconduct on the part of Mr Green, is hopelessly inadequate. The email itself does not purport to be a record of what was said at the meeting in question, and Watchstone has not called Mr Davies either to explain what happened at the meeting or to identify the sources of the observations in his email.

177. I broadly accept the submissions of PwC as summarised above. I do not consider that the email can be considered to be a reliable record of what was said by Mr Green at the meeting. In my view, the email contains a large number of statements which are plainly inaccurate, and which it is most unlikely that Mr Green would have made. I also consider it probable that other information in the email would have been outside Mr Green's knowledge, and was therefore most likely derived from other people with whom Mr Davies was in contact. Overall, I consider that there are such serious doubts as to the accuracy of the email, as a purported record of what transpired at the meeting, that I do not consider that I can place any reliance upon it. This conclusion is reinforced by the fact that the author of the email acted, on any view, improperly and with a lack of integrity in seeking to elicit confidential information from Mr Green. Since Mr Davies has not been called to give evidence about the meeting and the 15 January email, it is unclear whether or not he would actually have disputed Mr Green's account of the meeting. If there was a dispute, then it is obvious that there would have been an interesting and extensive cross-examination about the meeting. As things stand, I do not consider that the email is a weighty piece of evidence which causes me to doubt the evidence of Mr Green as to what transpired at the meeting. I explain below the principal matters which have led me to these conclusions.

178. It is inherently probable that, prior to the meeting, Mr Davies had been speaking about Quindell to other people. As Mr Lord realistically accepted in his oral closing submissions, it was likely that Mr Davies was seeking to check certain points that he thought that he had established, although it was not known where he had got the information: as Mr Lord said, it could have been study of the company, press reports market chatter, Mr Davies' own experience, it "could be all sorts of things".

179. This conclusion is supported by various documents. For example, on 30 December 2014, Ms Jablko had emailed Mr Davies saying that she had spoken to Quindell's adviser earlier, and that they had acknowledged that their projections were "meaningless and they have no idea what their sustainable earnings are". Mr Davies responded by saying that he was "not greatly surprised + consistent with what I heard

from some people before heading off on Xmas break". There is also a fair amount of evidence that information relating to Quindell and the possible transaction with S&G was being leaked from the Quindell side. Such leaks were discussed as early as the Heathrow meeting, and the contemporaneous documents contain various references to leaks, which Quindell thought were coming from their side. The documentation also indicates that Mr Davies was a person who was, and considered himself to be, well connected. For example, on 10 December 2014, he told his colleagues that he had in the previous 24 hours been approached by two funds saying that they would be doing a rescue.

180. Against this background, I consider that there is no reason to doubt, and every reason to believe, Mr Green's evidence that Mr Davies told him, when the topic of Quindell was first raised, that he had been speaking to Quindell's lenders and others in the market. The inaccuracy of some of the information in the 15 January email is in my view a likely consequence of Mr Davies picking up information from a variety of people who may themselves not have had an accurate understanding of the position. Some of the more important inaccuracies are as follows.

181. The 15 January email records, after discussing the report which was "mainly cashflow focussed", a "Conclusion – running out of cash mid-15". I agree with PwC's submission that it is most improbable that Mr Green would have said this. PwC's work on Quindell's cash-flow projections in January 2015 had shown that Quindell's cash would run out either in the week ending 17 April 2015, if no initiatives were taken or – if initiatives were taken – not at all. The expectation was that there was an available initiative, namely deferral of a tax liability, which would mean that cash would not run out at all in the period up to June 2015. Quindell's cash-flow projections to June 2015, on which PwC reported, showed a better position (without initiatives) as at the end of June 2015, in terms of cash-flow, than in previous months, and a reasonably healthy position once the HMRC initiative had been taken into account. Accordingly, there was nothing to suggest to Mr Green that cash would run out in mid-2015, and no obvious reason why he would have believed, much less said this.

182. There is another reason why it is improbable that Mr Green would have said this. The company had recently said, in an RNS announcement, that it had sufficient cash to meet its current plans. The accuracy and completeness of such a statement would be called into question if the true position was that the company was going to run out of cash in mid-2015. It is improbable that Mr Green would have said anything which contradicted, directly or indirectly, what the company had only just announced.

183. By contrast, there is clear evidence, in a number of Mr Davies' communications prior to the January meeting, that he believed that Quindell had significant cash flow problems and was likely to run out of cash. For example, on 16 December 2014, Mr Davies expressed the view to his colleagues that the file acquisition by S&G (i.e. what became the APA) indicated Quindell's severe cash issues, and that there was a liquidity crisis coming. In a later email on that day, he told them that he was unsure whether the company had enough money to get through to February. He expressed a similar sentiment to Mr Bordignon on 29 December, describing the file acquisition as some form of liquidity support to bridge the company through a month or so: "Otherwise why go through the pain – just progress and do the whole deal in Feb".

184. I therefore consider that the conclusion that Quindell was running out of cash mid-15 was Mr Davies' own conclusion based upon his own thoughts and whatever he had been told from various sources, rather than anything derived from Mr Green at the meeting.

185. The 15 January email begins by saying that PwC had been "put in by RBS", and that the initial plan "was for them to work for the banks, but they went company side as debt was small and value clearly breaks in the equity". Mr Green explained in his evidence, and I accept, that this contained various inaccuracies. The history of PwC's engagement is described in Section B above, and this indicates that PwC were not put in by RBS: the engagement was initially jointly for the lenders and Quindell, and that the reason that PwC had gone "company side" had nothing to do with the debt being small or value breaking in the equity. In my view it is improbable that Mr Green would have said any of this, and far more likely that Mr Davies was basing this part of his email on (inaccurate) information received from others.

186. The email then goes on to state:

> "Now starting work on projections (and company doing business plan) but no real deadline as waiting for offer from S before deciding whether to push ahead on Plan B (company had never done forecast before)"

187. Mr Green's evidence was that the suggestion that there was no real deadline was "rubbish": there was a deadline. He said that the company had of course done forecasts before: it was a PLC, and had done forecasts every year. I accept this evidence, which makes obvious sense and again conclude that it is improbable that these statements in the 15 January email were derived from anything that Mr Green had said. Mr Green also said that he had "absolutely no idea about waiting for offers from S or otherwise", and I accept this evidence as well. There is nothing in the documentary evidence which suggests that the time-scale for the work to be carried out by PwC was in any way dependent upon, let alone slowed down by, an expected offer from S&G.

188. There were other aspects of the email about which Mr Green said he had no knowledge. Mr Green said that he would not have made the statement: "Initially he thought no business, but actually there is a good one": PwC had not done any work to work out whether the business was good, bad or indifferent. He would not have been able to comment on whether: "New team were going to do a whole lot of [due diligence] but in the end didn't bother and dived in much quicker than expected". I again accept this evidence, which was not contradicted by any documentary evidence that I was shown or that Mr Green was cross-examined upon.

189. There is also an extremely odd statement in the email:

> "Offices everywhere and not needed, cut out significant costs [I said our assumption was more cost needed given over-trading and margins much higher – he'll have a look into this quietly as recognises key question on value]".

190. Mr Green's evidence was that he did not know where Quindell had offices or how many offices there were. He also said that it would have been highly inappropriate for him to

have "agreed to go to do that. It would have been bloody stupid as well to throw away my career on something such as that, which I would have had to have gone to dig to find out". Later in his evidence, he said that "if he'd have asked me to look into something which would have involved me going back and rooting through files, interrogating various different people at PwC, I would have remembered that and I don't." I consider it most improbable that Mr Green agreed "quietly" to look into these matters, or indeed anything at all. This is, as PwC submitted, consistent with the complete lack of evidence that Mr Green ever did look into such matters, or that Mr Davies ever subsequently raised that issue either within Greenhill or with Mr Green. I accept Mr Green's evidence in relation to this passage in the 15 January email.

191. Another puzzling part of the email concerns hearing loss: after the passage referring to hearing loss being the "big question", the email states:

> "hearing loss could be massive area but nothing can point to in the numbers will prove that (vast numbers of populous impacted, potentially, a big handout)."

Mr Green's knowledge of the area of hearing loss claims was not explored in cross-examination, but I would be most surprised if Mr Green would have been in a position to express any views, or would have expressed any, as to whether or not hearing loss was a massive area or whether (as the next the line records) "bottom line hearing loss drives everything". Indeed, the statement that hearing loss drives everything is itself very odd in circumstances where that area of business was not producing any revenue, as the note earlier records. This discussion of hearing loss in the email is, in my view, far more likely to be Mr Davies' musings, based on what he had heard from others, rather than anything that Mr Green said at the meeting.

192. Mr Green's evidence was therefore that a very large part of the email was wrong factually, "or I had absolutely no knowledge of them". I consider that this evidence was consistent with the inherent probabilities and the documentary evidence in the case. In my view, this is a significant point, because it substantially undermines Watchstone's case that the note is an accurate record of the meeting with Mr Green.

193. It also seems to me that there are indications within the email itself that information had been obtained by Mr Davies from sources other than Mr Green. The statement about the due diligence performed by the new team continues as follows:

> "New team were going to do a whole lot of [due diligence] but in the end didn't bother and dived in much quicker than expected – apparently [David Currie] worked with M&G to bring them on board; Tosca were stake building at the time so less involved.
>
> They think c.200m of sustainable profit but work ongoing and still need to rec into S's accounting policies and the big unknown is cashflow off the hearing cases.
>
> Hence expectation of + 1 bn deal; he assumes why still Plan A otherwise no logic to sell now".

194. I consider it improbable that Mr Green would have known anything about what the new team's intentions had been, or whether or not they had dived in. Furthermore, in the above passage, the statement that "they" think that there was around £ 200 million of sustainable profit was, clearly, not a reference to what PwC were thinking or what Mr Green was thinking. It appears to be a reference to what Quindell's management were thinking. In his closing submissions, Mr Lord accepted that it looked as though the £ 200 million was the view of the new Quindell team as to sustainable profit, although it could have been PwC's view. It is in my view inherently probable that this information, as to the thinking of Quindell's management, and their profit expectations, was derived from conversations which Mr Davies was having with other people, and not from anything said by Mr Green.

195. It also seemed to me that there were other parts of the email which were based on information derived from others, with there being no sufficient evidence that they were known to Mr Green. One example is the reference to "Plan B is a fundraising via Tosca/ M&G". Mr Green was not cross-examined on the basis that he knew about Tosca (which was a shareholder in Quindell and therefore a potential source of additional finance). Indeed, in cross-examination, Mr Green was not taken through the email with a view to establishing that he knew of all the matters described in the text, or that the information therein was derived from him. Be that as it may, in my view it is probable that this reference to Tosca had nothing to do with anything said by Mr Green, but was information that Mr Davies had learned from elsewhere. Indeed, the question of Tosca, and their potential willingness to provide additional funding, had been discussed at a meeting attended by Mr Davies and others at Greenhill (as well as representatives of S&G) on 7 January 2015. The note of the meeting records:

> "Slater and Gordon needs to be mindful of Quindell's Plan B, most notably what Quindell would be able to do with Tosca fund.
>
> Tosca fund has previously contributed significant funding to companies and are willing to act powerfully to fulfil their objectives"

196. There are other aspects of the email which support the conclusion that it is not an accurate record of the discussion that took place. There was no dispute that the meeting only lasted half an hour. Mr Green's evidence was that the meeting began with some general conversation about Christmas and the New Year, and then matters such as the market. It is inherently probable that there would have been some discussion along these lines, and that it would have taken up a reasonable amount of the available time. It is likely that Mr Davies would have sought to put Mr Green at his ease at the outset by carrying out the sort of the conversation which Mr Green would have been expecting, rather than coming straight to a discussion about Quindell. It is not clear how much time this would have left for a discussion of the points raised in the email. However, the email covers a very large number of points, and I find it difficult to imagine that there could have been a sensible discussion of all of the matters covered in the email in the time remaining after the normal discussion that occurred at the start of the meeting. This lends credence to Mr Green's account that Mr Davies was reading from some pre-prepared notes, and was adding to them as thoughts occurred to him whilst he was doing the talking.

197. PwC also submitted that the email itself does not in fact purport to be a record of the meeting. There is force in this submission. The email does not state in terms that it is a record of the meeting that has taken place, or that all of the statements in that email are to be attributed to Mr Green. I accept that, in context, it would appear that some of the statements (for example that "he'll have a look into this quietly") appear to be a reference to what Mr Green was alleged to have said, but for reasons already given I think it most improbable that Mr Green actually made this statement. One of the difficulties with the email, however, is that it is not possible clearly to distinguish between what Mr Green is alleged to have said, and what Mr Davies's views and conclusions were based on his own perceptions following discussion with others.

198. I accept that there is something in Watchstone's point that Mr Davies was giving information to his colleagues, and that it would be surprising if he were to give them misleading information. However, I do not think that this point goes very far, or that it is such as to outweigh the force of the other considerations. If, as I consider to be the case, the email was an amalgamation of the information that Mr Davies thought that he had gleaned from various sources, together with his own observations and conclusions, then the email would not, from Mr Davies perspective, be misleading or at least not substantially so. However, I do not see why I should proceed on the basis that Mr Davies was a man of integrity who would necessarily report entirely accurately to his colleagues. On Watchstone's own case, and indeed on the basis of the evidence before me, Mr Davies acted with a lack of integrity and improperly in ambushing Mr Green at the meeting with the aim of obtaining confidential information from him. Also, in one email, Mr Davies described himself as "maverick".

199. There was also evidence that Mr Davies may have been prone to exaggeration. For example, an internal email of Greenhill dated 5 December refers to "Gareth's relationship with David Currie" as being "very helpful". It is likely that this information came from Mr Davies, who made the point in two later emails that he knew Mr Currie. However, Mr Currie's evidence was that he did not really have a relationship with Mr Davies as of the end of 2014, and that he was not aware that Mr Davies would have had any reason to believe that their relationship would be very helpful to Greenhill in connection with Project Malta.

200. I also consider that there was force in PwC's argument that Mr Davies did have reason to exaggerate the significance of his meeting with Mr Green. Having informed his colleagues that he was due to meet with the lead partner from PwC (in fact, Mr Green was not the lead partner on Project Goldfish), and collected questions from those colleagues on the basis that he could get answers, it would indeed have been rather awkward for Mr Davies to report that his meeting had been uninformative. Mr Green's evidence is that he was told by Mr Davies that he was looking to increase the role of his UK team and to demonstrate the value which he could bring to the transaction. It is therefore entirely plausible that Mr Davies would have sought to exaggerate the information that he had received.

201. *Documentation subsequent to the 15 January email.* There is relatively little contemporaneous documentation subsequent to the email which bears on the question of what transpired at the meeting. Mr Green did not report to any of his colleagues in writing about the meeting. This is consistent with his evidence that he did not consider it to have been a meeting that was of any consequence. I can see, however, that if Mr Green had passed confidential information to Mr Davies at the meeting, then that would

provide a reason for not telling his colleagues about it. Mr Davies initially wanted his 15 January email to be passed by his Greenhill colleague, Mr Michael Lord, to Mr Fowlie, but not passed on any further. However, when Mr Davies later learned on 16 January 2015 that it had not been passed on by Mr Lord, he did not take any steps to pass it on himself or request that it was passed on. In the meantime, in the afternoon of 16 January, Mr Fowlie was given some information by Mr Davies about the meeting and he made a note of what he considered important. I was not persuaded, on the evidence, that Mr Davies went through the matters covered in the email when speaking to Mr Fowlie, and I shall return to this in Section D below.

202. Overall, I did not think that this evidence was of any real assistance on the question of what transpired at the meeting and whether or not I should accept Mr Green's evidence.

The inherent probabilities

203. I have considered aspects of the inherent probabilities in my discussion of the documentary evidence. There are, however, some more general points which I will address.

204. In considering the inherent probabilities, I consider that it is indeed relevant, as PwC submitted, that this case would require a finding of discreditable conduct against a professional person, Mr Green, who had enjoyed a long and successful career (unblemished as far as I am aware) and who had risen to a senior position in a leading accountancy firm. The allegations against Mr Green, and hence PwC, encompass serious allegations of breach of confidence, unlawful means conspiracy and indeed the criminal offence of disclosing inside information for the purposes of Part V of the Criminal Justice Act 1993.

205. In the context of such serious allegations, the following passage from *Fiona Trust v Privalov* [2010] EWHC 3199 (Comm) (which has been recently cited, with approval, by Sir Geoffrey Vos C in *Bank of St Petersburg PJSC v Arkhangelsky* [2020] EWCA Civ 408) is relevant:

> "[it] is well established that 'cogent evidence is required to justify a finding of fraud or other discreditable conduct': per Moore-Bick LJ in *Jafari-Fini v Skillglass Ltd* [2007] EWCA Civ 261 at [73]. This principle reflects the court's conventional perception that it is generally not likely that people will engage in such conduct: 'where a claimant seeks to prove a case of dishonesty, its inherent improbability means that, even on the civil burden of proof, the evidence needed to prove it must be all the stronger', per Rix LJ in *Markel International Insurance Company Ltd v Higgins* [2009] EWCA Civ 790 at [50]. The question remains one of the balance of probability, although typically, as Ungoed-Thomas J put it in *In re Dellow's Will Trusts* [1964] 1 WLR 451, 455 (cited by Lord Nicholls in *In re H* [1996] AC 563, 586H), 'The more serious the allegation the more cogent the evidence required to overcome the unlikelihood of what is alleged and thus to prove it'. Associated with the seriousness of the allegation is the seriousness of the consequences, or potential consequences, of the proof of the

> allegation because of the improbability that a person will risk such consequences: see *R (N) v Mental Health Review Tribunal (Northern Region)* [2005] EWCA Civ 1605; [2006] QB 468, para 62, cited in *In re D (Secretary of State for Northern Ireland intervening)*, [2008] UKHL 33; [2008] 1 WLR 1499, para 27, per Lord Carswell."

206. In *Arkhangelsky*, Males LJ said at [117]:

> "In general it is legitimate and conventional, and a fair starting point, that fraud and dishonesty are inherently improbable, such that cogent evidence is required for their proof. But that is because, other things being equal, people do not usually act dishonestly, and it can be no more than a starting point. Ultimately, the only question is whether it has been proved that the occurrence of the fact in issue, in this case dishonesty in the realisation of the assets, was more probable than not."

207. In my view, the evidence presented by Watchstone in support of its case of seriously discreditable conduct on the part of Mr Green lacks any real cogency. Ultimately, that case depends upon conclusions to be drawn, in the absence of any oral evidence from Mr Davies, from the 15 January email which I do not consider (for reasons given) to be a reliable record of what was said, or is likely to have been said, by Mr Green at the meeting.

208. I have also considered whether Mr Green's account of the meeting is inherently probable. Mr Lord submitted that Mr Green's account of what transpired was incredible. In his closing submissions, he said that the obvious thing for Mr Green to have done would have been to have stopped the meeting in its tracks, as soon as the topic of Quindell was raised. That would not have been a difficult line to take, since Mr Green was not an ingenue or junior person caught in the headlights. It was incredible for Mr Green to say that the meeting continued, with Mr Green participating in a "mute way". This was just fanciful.

209. A meeting whereby a senior investment banker plans to try to elicit confidential information from a professional accountant engaged by the opposing party in a proposed acquisition is, in my view, itself an inherently improbable scenario, but it is what happened here. Furthermore, Mr Green was, quite deliberately, given no advance warning of what Mr Davies had in mind as being the focus of discussion, and this too must be borne in mind when considering the inherent probabilities. Against this background, there is no single obvious way in which one would expect such a meeting to unfold, and I do not consider that Mr Green's account of the meeting is implausible or incredible. There are important aspects of that account which were very plausible and which had the obvious ring of truth: for example, the way in which, on Mr Green's evidence, Mr Davies introduced the subject of Quindell (e.g. that he was trying to carve out more of a role for the UK team, and that he had been speaking to various people about Quindell). Indeed, Mr Green was not, and could not be, cross-examined on the basis that this evidence was inaccurate. Similarly, the evidence that Mr Davies had made notes in advance of the meeting, and read from his notebook, seemed to me to be plausible and consistent with Mr Davies' preparation for the meeting. Again, it was not

suggested in cross-examination, and could not be suggested, that Mr Green's evidence about that aspect of the case was inaccurate.

210. At the heart of the case on implausibility was Mr Green's evidence that he did not, in response to Mr Davies reading out his list of points, engage in discussion. I can well understand how Mr Green would have been discomfited by the direction that the meeting had begun to take. With the benefit of hindsight, it would obviously have been better for Mr Green to have stopped the meeting there and then. But where people are taken by surprise, and discomfited, as Mr Green was, they will very often not react as they might in a perfect world. Mr Green took the view that he would not engage in the discussion, and I see nothing implausible in that: it is not unusual for people to seek to avoid confrontation, and to keep quiet, when faced with someone saying something which is surprising or with which they disagree or even which they find offensive.

211. I have of course considered whether Mr Green's account is itself coloured by the wisdom of hindsight, in particular that his evidence as to how he reacted is his view of how he wished he had reacted. As the judgment of Leggatt J in *Gestmin* shows, recollection will very often alter over time. Mr Lord was able to point to what seemed to me to be a minor difference between PwC's pleaded case as to what Mr Davies said about cash ("Mr Davies indicated that Greenhill believed that Quindell was running out of cash and raised a concern that Quindell would do so before the deal with S&G could be completed") and Mr Green's witness statement ("… in his view, Quindell was going to run out of cash, and so the price paid should be much lower than was currently being discussed"). However, this difference reflects the likelihood that, in relation to conversations in the distant past, a witness's recollection of the details of the discussion will not be perfect. I am, however, satisfied that the meeting did not progress in the fundamentally different way that Watchstone alleges; i.e. with Mr Green fully engaging with Mr Davies in the discussion that Mr Davies wished to have. I consider that Mr Green's evidence does essentially reflect what transpired at the meeting.

212. I have also considered whether Mr Green had a motive to impart confidential information to Mr Davies, and in so doing to breach his professional duties. The suggested motive was his desire to maintain and develop his business relationship with Mr Davies. This did not seem to me to be a powerful motive for Mr Green to do what he is alleged to have done. The relationship between the two men was not a particularly strong one, and there was nothing in the nature of close friendship: they had worked together occasionally, and met up once or twice a year.

Conclusions in relation to the 15 January meeting and the 15 January email

213. My overall conclusion is as follows. PwC has called a responsible and honest former accountant who gave clear evidence as to the background to the meeting, and what occurred at it. There was no suggestion that Mr Green had any history of acting with professional impropriety. As against that evidence, Watchstone has not called the witness (Mr Davies) who might have disputed Mr Green's account. I see no reason, on the evidence at trial, to regard Mr Davies as a person whose account of the meeting (if that is how the 15 January email were to be regarded) should be regarded as reliable, and such as to outweigh the evidence of Mr Green. Mr Davies' conduct on this occasion gives rise to serious question-marks as to his integrity and whether he conducts himself with propriety, and there is evidence that Mr Davies was prone to exaggeration and considered himself to be a maverick. The email itself is in my view unreliable as a

record of the meeting that has taken place. Against this background, I consider that Watchstone has failed to prove its case that any of the information contained in the email was in fact imparted by Mr Green to Mr Davies at the 15 January 2015 meeting. Furthermore, I do not consider that there is, in these circumstances, any reason to reject the evidence of Mr Green as to how the meeting progressed.

Was there a breach even on PwC's case?

214. This is not, however, quite the end of the case advanced by Watchstone. It was submitted that even if I were to accept Mr Green's evidence as to what transpired at the meeting, including one of the exchanges prior to the meeting, it was nevertheless the case that Mr Green had acted in breach of duty in passing confidential information to Mr Davies. This case itself had a number of aspects.

215. First, reliance was placed on Mr Green telling Mr Davies, at one of the occasions when they had spoken prior to the meeting, that PwC's BRS unit had been engaged. Mr Green's evidence was that any knowledgeable reader of the RNS announcement made by Quindell on 8 December would have appreciated that it was PwC's business recovery unit that would be doing the work described in that announcement. There was no evidence to the contrary, and indeed some positive support for Mr Green's evidence is an internal note of Mr Kisenyi of Greenhill dated 7 January 2015. This states: "G [Mr Davies] suggests doing as much DD as possible with a smile then speak to the PwC restructuring team". It would therefore appear that by that time, Mr Davies understood that the PwC restructuring team was involved. There is no positive evidence that Mr Davies had spoken to Mr Green by this time, and the first entry in Mr Green's diary showing a visit to the Green Park client was on 9 January 2015. It is reasonable to infer that Mr Davies – who was frequently involved with companies undergoing a degree of distress – would have worked out for himself, from the RNS announcement and the market information concerning Quindell's difficulties, that PwC's restructuring department was involved.

216. In any event, this is not a point which leads anywhere. There is nothing in the evidence which suggests that Mr Fowlie or Mr Grech were told that it was PwC's restructuring department that was involved, still less that they attached any significance to that. They were not cross-examined on the basis that they knew about PwC's restructuring department, or that they regarded this as significant.

217. Secondly, reliance was placed on Mr Green's response to Mr Davies' statement that Quindell was going to run out of cash. Mr Green's response, as described above, was to tell Mr Davies that there was enough cash to complete Project Malta. Mr Green described this, in cross-examination, as a paraphrase of the relevant RNS announcement. In the then most recent announcement, on 12 January 2015, Quindell had stated, under the heading "Trading Update":

> "The Board remains comfortable with the Group's overall cash position and, taking into account the Group's cash reserves and continued access to its three credit facilities, believes that the Group's resources are sufficient to deliver on management's current plans."

218. In the next section of the RNS announcement, Quindell stated:

> "As announced on 2 January 2015, the Company has entered into an exclusivity arrangement with a third party in respect of the possible disposal of an operating division of the Group. The Company remains engaged with this party and is also in early discussions with a range of parties interested in exploring possible transactions with the Group relating to a number of its operating businesses but there can be no certainty that any of these discussions will lead to the disposal of any of the Group's assets."

219. In my view, there was no material difference between Mr Green's statement to Mr Davies, and what had been announced on 12 January. Quindell stated that cash was sufficient to deliver on management's current plans, and the possible disposal of the operating division would obviously be one of those plans. Quindell was therefore saying that it believed it had sufficient resources to deliver the possible disposal of the relevant operating division.

220. Even if that conclusion were wrong, this is again not a point which leads anywhere. Mr Davies 15 January email does not refer to what Mr Green had actually said, but instead contained Mr Davies' conclusion that cash would be running out in mid-2015. It is not in my view possible to interpret Mr Green's statement as giving rise to the implication that cash would run out in mid-2015: the latter was Mr Davies's own conclusion and, if it had any foundation at all, was likely based on what he had heard from others. At some points in his argument, Mr Lord sought to interpret Mr Green's statement as meaning that the company only had enough cash to complete the proposed transaction; i.e. that the cash would run out more or less immediately thereafter. However, there is no evidence that Mr Davies put this interpretation on Mr Green's words. Furthermore, the transaction was at that stage looking for completion much earlier than June. The original timetable proposed by S&G envisaged completion by the end of March. And although there had been some slippage, with PwC's documents indicating that completion was unlikely to be before mid-April, there was nothing to suggest that anyone was envisaging completion as late as June 2015. A statement that cash would be running out in mid-2015 could not have been based on what Mr Green was saying about there being sufficient cash to complete the deal.

221. Thirdly, reliance was placed on the question that Mr Green accepts that he asked Mr Davies: why S&G did not want to buy all of Quindell. Mr Davies did not know the answer to this question. I do not see how a question of this kind constitutes the passing of any confidential information to Mr Davies. In any event, the point leads nowhere. S&G were never interested, or at least never seriously interested, in buying the whole of Quindell, and no offer was ever made for the whole of Quindell. There was even an initial reluctance to purchase the whole of the PSD. Mr Green's asking this question plainly had no impact at all on the course of events after the meeting.

222. Finally, Watchstone submitted that Mr Green's conduct at the meeting was such as impliedly to endorse the correctness of what Mr Davies was saying when the latter ran through his list of points and Mr Green was silent in response. Mr Lord submitted that it did not matter, when looking at the 15 January email, which information had come from Mr Green directly, and which information reflected statements made by Mr Davies. The critical point was that Mr Green was validating the points which Mr Davies

was making, and thereby was giving his and PwC's views on Quindell which were and should have remained confidential.

223. I reject this argument essentially for the reasons which Mr Handyside gave in his closing submissions. First, there is no evidence from Mr Davies that this was how he interpreted Mr Green's silence. It is difficult to see how a case based on an implied representation can succeed in the absence of any evidence from the representee. Secondly, there was no suggestion that Mr Green agreed that he would correct Mr Davies if he said something wrong: Mr Davies could not therefore proceed on the basis that Mr Green was agreeing, expressly or impliedly, to correct him. Thirdly, Mr Davies should not have been having a meeting in which he sought to elicit information about Quindell from Mr Green. Mr Davies could not, in those circumstances, reasonably have understood that Mr Green's silence was intended to endorse the accuracy of what Mr Davies was saying: a reasonable person in Mr Davies' position would have understood that Mr Green was unwilling to be drawn into such matters. This conclusion is reinforced by Mr Green's evidence that he (Mr Green) was discomfited by what was happening, and in my view this was or should reasonably have been apparent to Mr Davies. Finally, the argument again does not lead anywhere, because there is no evidence as to what points were actually put by Mr Davies to Mr Green. Mr Davies did not read from the 15 January email itself during the meeting – the email itself was created later. Mr Green could not say what points were read to him by Mr Davies, and there is no evidence from Mr Davies on this. There is therefore no basis to conclude that every point, or indeed any particular point, in the later email was made by Mr Davies during the meeting, or that any particular point was put in the terms set out in the subsequent email.

Conclusion

224. For the above reasons, Watchstone's case that PwC wrongly passed confidential information to Mr Davies at the meeting of 15 January 2015 fails. It follows that Watchstone's claim for breach of confidence fails. Since all the causes of action are ultimately based on the allegation that confidential information was passed by Mr Green at the meeting, the claim must be dismissed in its entirety.

D: Causation

The parties' arguments in outline

225. In view of my conclusion in Section C, that Watchstone has failed to establish any relevant breach of confidence by PwC, the other issues in the case do not arise. However, for the reasons discussed in this section, the claim also fails on causation grounds.

226. In their written closing submissions, Watchstone submitted that it needed to establish causation, which itself involved a number of different elements.

227. First, Watchstone needed to establish what it would have done on the balance of probabilities. However, this simply amounted to showing that it would have accepted more if a higher deal were on the table – and this was obviously the case here. There was no substantial dispute that, if a higher deal was on the table, it would have been accepted by Mr Currie on behalf of Quindell.

228. Secondly, Watchstone said that it had to "establish what S&G in fact did, again on the balance of probabilities"; i.e. that S&G received the information and acted on it. Watchstone contended that S&G had indeed received all of the information in the Davies' email, and that this had materially impacted upon their approach to the negotiations. This was disputed, on the facts, by both PwC and S&G.

229. Thirdly, Watchstone said that it had to establish what S&G would have done but for the breach. Since this involved establishing the hypothetical actions of a third party, it fell to be determined on a loss of a chance basis. That meant that Watchstone had to show, on the balance of probabilities, that there was a greater than 10% chance that S&G would have paid more for the PSD but for the breach. There was some dispute as to whether or not this was the correct legal approach: PwC contended that Watchstone needed to show, on the balance of probabilities, what S&G would in fact have done and that a loss of a chance analysis was incorrect. It seemed to me that Watchstone's approach was more consistent with the leading decision in this area, *Allied Maples Group Ltd v Simmons & Simmons* [1995] 1 WLR 1602. I shall therefore proceed on the basis that, as Mr Lord put it in his oral reply submissions, the counterfactual is what S&G would have done but for the confidential information alleged to have been passed through to them, assessed on a loss of a chance basis.

230. Fourthly, if Watchstone succeeded on these three points, then the court would have to assess the value of the lost chance. Watchstone contended that S&G would, but for the breach, have paid very significantly more than it actually paid. S&G and PwC argued that there was no real or substantial chance that S&G would have paid any more for the PSD than it actually did, and that the price ultimately paid was not affected in the slightest by any information contained in the 15 January email.

231. In his oral reply submissions, Mr Lord seemed to move somewhat away from the proposition that Watchstone needed to show, on the balance of probabilities, that S&G had received the information and acted on it. He said that all that needed to be shown was that "we have probably lost a real chance". In my view, however, the second element did need to be established, as Watchstone's written closing accepted. If Watchstone cannot show that S&G received the information and acted upon it, I cannot see how a loss of chance case could begin to succeed.

D1: The evidence of Mr Fowlie and Mr Grech

232. At the start of his written evidence, Mr Fowlie summarised the position as follows. He said that he never regarded any information received from Greenhill as illicit. To the extent that he received information that might have been obtained from PwC at the 15 January meeting, he did not understand it to be confidential or improperly obtained. Any such information or communication was so totally inconsequential to the acquisition as a whole that he did not recall it until his attention was drawn to the issue in August 2019. It was unrealistic to claim that S&G would have paid any more for the PSD than it did. To the extent that any information had been obtained from PwC via Greenhill, it was all known to S&G from other means or immaterial as regards the valuation of the business and the negotiation of the purchase price. S&G was at the limit of what it was willing to pay. Furthermore their entire focus during the acquisition process was to understand the PSD and to seek to reach agreement with Quindell regarding the maintainable earnings of the PSD. The process of negotiating the purchase price between Mr Grech and Mr Currie, in February 2015, was predicated on

the future performance of the PSD and not Quindell's then cash position. In later paragraphs, he expanded upon these matters.

233. He emphasised that S&G were focusing their attention on the maintainable earnings (or EBITDA) of Quindell. Thus, whilst the cash consequences of S&G's expectations for profit were considered and modelled, there was no specific focus on Quindell's cash position, as far as he recalled. He referred to S&G's (negative) views of the NIHL business, and said that he did not believe they would have been able to reach agreement on a deal for the PSD if it involved S&G paying money for the NIHL practice upfront and in advance of the practice actually delivering some results.

234. Mr Fowlie said that by mid-January 2015, S&G did not regard Quindell as being a distressed business, and that this view influenced how they approached the transaction, including valuation. They did not think that it was a business that was especially vulnerable. Quindell did not have a lot of debt in comparison to its gross cash position. Further, the level of debt was small in comparison to its reported revenue generation and corresponding market capitalisation, as well as relative to what they expected that an RTA personal injury business of that scale could generate in terms of cash and could support in terms of indebtedness. Instead, they thought that the business was one which had some strategic and operational challenges, and that it had options other than proceeding with a transaction with S&G. Accordingly, taking advantage of a vulnerable cash position was not a consideration.

235. Mr Fowlie's recollection was that he was not given or shown the 15 January email from Mr Davies. He said that the email appeared to set out a broadly positive view on Quindell and the PSD. Had it been shown to him at the time, he would not have inferred from its contents that S&G was in a stronger bargaining position vis-à-vis Quindell than he in fact understood to be the case in mid-January 2015. Referring to various points on the email pleaded in Watchstone's claim, he said that he was already aware of all of the issues either from information that was received from Quindell directly or from information that was in the public domain.

236. He did attend a meeting in London on 16 January 2015, at the offices of Greenhill, and this was attended by representatives of Greenhill. Mr Davies joined by phone and gave what Mr Fowlie described as a "general briefing". Having reviewed his notes of the meeting, Mr Fowlie described his sense at that time that Quindell's position was strengthening rather than weakening, and they had more options available to them (i.e. apart from the possible transaction with S&G). Mr Davies' oral briefing included reference to a discussion that he had with a representative of PwC, but he did not recall any secrecy. He could not remember the specific detail or content of the briefing, since it was "subsumed into the morass of information that we were gathering and analysing at the time and subsequently". However, there was nothing particular about the meeting that stood out to cause him to change his approach, other than to be aware that Quindell had other options. It affirmed that a continuation of their cooperative engagement with Quindell remained indicated and that alignment between EY and PwC continued to be important. He would have noted down any facts and matters that appeared to be important. The fact that PwC was now acting for Quindell was important in the context of seeking a meeting between EY and PwC, because they had previously been informed by Quindell that one of its lenders was a major hindrance to making PwC and their work available.

237. Over the weekend following the 16 January 2015 meeting, Mr Fowlie spoke to Mr Grech and told him that it was now possible for them to progress or encourage an interaction between PwC and EY, because it now appeared to be entirely within the gift of Quindell to provide access to PwC. Following discussion between Mr Grech and Mr Currie, a meeting between PwC and EY did in fact take place, on 27 January 2015.

238. In relation to the negotiations on the weekend of 21/22 February, Mr Fowlie discussed those negotiations with Mr Grech at the time. They were focused on where S&G could get comfortable in terms of the PSD's maintainable earnings against which the multiple of 6 x was to be applied. He did not recall at any point during that process discussing with Mr Grech the possibility of exploiting their understanding of Quindell's cash position, or any of the other allegedly confidential information, in order to obtain a more advantageous deal. S&G's position in its internal discussions was not that it was willing to pay £ 700 million or more for the PSD. In particular, S&G could not have been persuaded to pay upfront for the NIHL part of the business.

239. Mr Fowlie was cross-examined for approximately a day and a half, and his answers were consistent with and largely repeated the evidence which he had given in his witness statement.

240. Mr Grech's evidence, in his witness statement, was that he did not recall having discussed the 15 January meeting with anyone at Greenhill, Citi or internally within S&G before or after 15 January 2015. As far as he could recall, he had first learnt of this meeting when it was raised with him during the course of the earlier proceedings. He did not recall being shown the 15 January email by Mr Fowlie, or anyone else, prior to August 2019 when it was raised in the context of the earlier proceedings. He did not recall any of the information in the email being passed on to him, nor of discussing any action that S&G might take in respect of it. Had he been shown the 15 January email, or if its substance had been passed on to him, he would not have regarded its content as being confidential on its face, because the information it contained was already known to S&G and/or was in the public domain, and he would not have thought that PwC would have disclosed information about its client in breach of any of its own confidentiality obligations. Mr Grech did recall discussing, with Mr Fowlie, the merits of encouraging a discussion between EY and PwC as a way of getting insight into PwC's findings if S&G was otherwise unable to get access to the PwC report. He did not specifically recall whether the discussion with Mr Fowlie took place over the weekend of 17/18 January or at some other time.

241. With reference to Watchstone's pleaded case on confidential information, Mr Grech said that if any of the information had been communicated to him at around the time of the 15 January 2015 meeting, it would not have had any effect on his negotiation on behalf of S&G of the purchase price subsequently agreed, because it was information that he already knew or was not material to the negotiation. He referred to his discussions with Mr Currie around pricing as being grounded in the valuation exercise that SGL and its advisors had undertaken.

242. S&G did not seek to take advantage of any vulnerability in Quindell's cash position. To the contrary, Quindell's cash problems were well known to S&G at the time, and had led to the APA. S&G had positively assisted Quindell's cash position by paying £ 12.12 million under the APA. S&G did not delay reaching an agreement with Quindell

nor seek to put pressure on Quindell in respect of its cash position in negotiating the deal.

243. From around mid-February 2015, S&G began discussing internally in earnest the process of putting forward a firm number to Quindell for maintainable earnings. They had reached a range of £ 600 - 650 million excluding the NIHL business. At a meeting on 19 February attended by Mr Grech, Quindell or its advisers were putting forward figures of £ 900 million to £ 1.2 billion for the business. But in follow up calls after the meeting, Mr Currie pushed for £ 750 million in cash, and then £ 650 million in cash and £ 100 million deferred for the NIHL element of the PSD. The idea of the deferred payment then developed and was further discussed between them. As discussions progressed, Mr Grech recalled that his personal view was that anything beyond £ 600 million for the cash component relating to the non-NIHL business was a stretch, and that the differing views at SGL board level tended to coalesce around £ 600 - 650 million. S&G did not reach a view that it might go as high as offering a cash component of £ 700 million: all the information from their perspective was coalescing around the low to mid £ 600 million mark as the upper end of their tolerance. Late in the negotiations, the then chairman of S&G (Mr John Skippen) agreed for Mr Grech to offer £ 640 million in cash, but said words to the effect that he would not give Mr Grech approval for more and that he should not come back to ask for it. Mr Skippen made it clear to Mr Grech that he thought the deal was very fully priced.

244. On 22 February 2015, Mr Grech offered £ 640 million in cash, with an additional uncapped deferred consideration based on the performance of the NIHL practice. SGL also agreed to waive its right to take a transfer of a portion of the files that were the subject of the APA without requiring a refund of the relevant component of the advance payment, which had been expected to be worth around £ 5 - 6 million. This was eventually agreed.

245. Mr Grech said that in ultimately agreeing the purchase price, he never believed that Mr Currie was under any pressure to do the deal, whether because of Quindell's cash flow difficulties or for any other reason. Mr Grech believed that the transaction was fully priced at the edges of both what represented fair value for the assets and S&G's capacity to fund the acquisition. He repeated that he did not recall seeing the 15 January email from Mr Davies or being told its content. But even if he had seen it, or been informed of its contents, the information it contained would not have been a surprise to him, and thus would not have made any difference to how he conducted the negotiations in relation to the acquisition.

246. Mr Grech was cross-examined for approximately a day, and again his evidence was broadly consistent with the account which he had given in his witness statement.

247. In their closing submissions, Watchstone made limited criticisms of Mr Fowlie's evidence but were rather more critical of aspects of Mr Grech's evidence. In my judgment, both witnesses gave evidence which was consistent with the contemporaneous documents and the inherent probabilities, and I have no hesitation in accepting their evidence on the key issues as summarised above. I identify below certain features of the contemporaneous documents and the inherent probabilities that I consider to be important.

248. However, if one stands back from the detail of individual documents, and considers the overall picture, it is in my view very clear that there was nothing in the 15 January email, or the matters covered in that email, which had any real or material or practical impact on S&G's approach to the transaction or the price that they were prepared to pay and ultimately paid for the PSD. This can be seen in a number of ways.

249. First, the evidence is in my view clear that Mr Fowlie was not given a copy of the email, and also that he was not actually shown the email itself at any stage. At best, on Watchstone's case, he was given a verbal summary by Mr Davies, on 16 January 2015, of the meeting which had taken place with PwC. It is apparent from Mr Fowlie's notes taken at the meeting that there was very little that he considered to be of any importance. The only point that he regarded as being of any significance was the information that PwC were now instructed by Quindell, and that therefore an obstacle to access to PwC's work (i.e. opposition from an instructing bank) might no longer exist. Even assuming, in Watchstone's favour, that he was verbally told everything else that was in the email, it is apparent that he did not regard any of it as being of sufficient importance either to note it down himself, or to ask Mr Davies to provide a note of the meeting so that he would have a record of what was said. In my view, this indicates the unimportance, from Mr Fowlie's perspective, of such information as may have been conveyed by Mr Davies, if indeed it was conveyed.

250. Secondly, if Mr Fowlie had considered that anything received from Mr Davies was potentially important to possible negotiations with Quindell, the obvious thing to do would have been to ask Greenhill for a written note of the meeting, so that it could be passed to his colleagues within S&G, in particular to Mr Grech with whom Mr Fowlie was working closely and who was ultimately responsible for negotiations with Mr Currie. Otherwise, how would Mr Grech know about the information which, on this hypothesis, was important to the prospective negotiations? This did not happen: Mr Fowlie did not ask for a note of the meeting to be given to him for that purpose, or at all. An alternative approach, less satisfactory, would be for Mr Fowlie to have prepared his own note of what Mr Davies had said, and to have communicated it to Mr Grech. This did not happen either. There is in fact no documentary evidence which suggests that Mr Grech was told about any aspect of what Mr Davies had allegedly been told at the meeting, save for the one matter which Mr Fowlie had considered important, namely the possibility of access to the work of PwC.

251. Thirdly, if the information alleged to have been provided at the 15 January 2015 meeting had been of any importance, I would expect to see a serious discussion about its import in the contemporaneous internal communications. As Males LJ said in *Simetra*, a party's internal documents, including emails and instant messaging, tend to be the documents where a witness's guard is down and their true thoughts are plain to see. There has here been very extensive disclosure of S&G's internal emails and handwritten notes, in particular the thorough and copious notes of Mr Fowlie and Mr Grech. There is in my view nothing in those documents which suggests that the information imparted by Mr Davies, whatever it was, merited discussion, let alone was of importance. In that context, it is also relevant in my view that many of the statements in the 15 January email are somewhat cryptic or unclear. If someone on the S&G side had been interested in what had been said, one would expect to see requests for clarification or expansion, in order fully to understand what Mr Green was supposed to have communicated. One does not see any of this in the extensive materials.

252. Fourthly, in their opening submissions, Watchstone advanced a case that the reason for the absence of written communications about the meeting was the extreme sensitivity of what had occurred, with S&G appreciating that it should not be discussed openly. I did not understand that argument to be pursued in closing, and in any event it is unsustainable on the facts. Mr Grech was not cross-examined on the basis that the information was of such sensitivity that there had been a decision to avoid reference to it in the documents. Mr Fowlie made it clear in cross-examination that he had not in any way omitted information from the notes that he made contemporaneously.

253. Fifthly, there is no evidence of any alteration, in consequence of any of the information in the 15 January email, to S&G's approach to the transaction or their valuation of the PSD business when comparing the position before and after 16 January, when the information gleaned by Mr Davies is alleged to have been communicated. Prior to 16 January 2015, S&G were moving forward with their due diligence as quickly as they could, with a view to making an offer in relatively short order. That due diligence was focused on obtaining hard data, including statistical data, which would enable them to take a view as to the PSD's maintainable earnings. That is the basic process that continued after 16 January 2015. In particular, S&G did not decide – as a result of the information in the 15 January email that Quindell was running out of cash in mid-2015 – that they would now play things long, in the hope of getting a better deal. Indeed, at no stage during the negotiations did S&G ever put forward the point, as a negotiating tactic, that Quindell had cash-flow difficulties and was going to run out of cash, and hence they should accept the offer that S&G was making. Furthermore, there are extensive notes written by Mr Grech at the time of the crucial negotiations with Mr Currie which led to the agreement over the weekend of 21/22 February. There is nothing which suggests that Mr Grech was giving any thought at all to anything which had been said by Mr Green to Mr Davies; unsurprisingly, because he had never been given a report of the 15 January meeting.

254. Sixthly, there are in my view good reasons for the matters set out above. I am far from persuaded that Mr Davies did give a full report, as per the terms of his 15 January email, to S&G. But even if he had done so, then (consistent with the evidence of Mr Fowlie and Mr Grech) I do not consider that it would have told S&G anything material that, in substance, they did not already know from publicly available sources or information which had been gathered in the course of due diligence, or which would have been of any assistance to their negotiating position. As Mr Fowlie rightly pointed out, the email when taken as a whole is a positive one. It does not suggest that Quindell will run out of cash immediately. The time-frame when this would happen is stated as being "mid 2015". This is a period which would be beyond the time when it was then expected that any transaction would take place. Furthermore, the reference to running out of cash must itself be seen in the light of the email as a whole, which refers to Quindell's other "Plan B" options, and the uncertainty now introduced by new management who may prefer Plan B to the proposed sale to S&G. All of this would indicate that if S&G wanted to acquire the PSD, then they had to move forward with a degree of urgency and offer an attractive price, which is in fact what they did.

255. Furthermore, the email provides nothing by way of hard data for S&G to analyse or to feed into the important work of trying to understand Quindell's maintainable EBITDA, and (as it was hoped) trying to reach agreement with Quindell as to what that EBITDA was. The email contains some very general statements (many of which, as Mr

Brocklebank submitted, could be described as "generic, anodyne or superficial"), whilst also indicating that PwC were only beginning their work and had not completed it. It does not seem to me that there is anything that S&G could use in their modelling process. Hence, even if Mr Davies had given a full briefing of his conversation, it would be entirely understandable for Mr Fowlie to consider that the only important information was the fact that there was now the possibility of more immediate access to the work of PwC, since PwC were apparently no longer instructed by the lenders. This information opened up the possibility of future useful data or other material being obtained which might feed into S&G's analysis of maintainable earnings. This information was not useful in itself, but it might open the way for useful information being obtained in the future.

256. The question of access to PwC's work was a matter which had been raised back in December 2014. It was a running theme in the discussions between S&G and Quindell. Quindell does not seem to have regarded the fact that PwC were instructed by the company, rather than by the lenders, as confidential. On 30 December 2014, according to Mr Aston's file note, he told certain representatives of Citi and Greenhill (not including Mr Davies) that: "the PwC report was a company initiated report that has co-addressees".

257. Access to PwC was pursued, in an open way, between S&G and Quindell after the 16 January meeting. On 18 January 2015, Mr Fowlie sent Mr Grech some draft talking points for a call which Mr Grech was going to have with Mr Currie on the following day. The script included reference to S&G understanding that "PwC are now company advisors and that whatever constraints may have exist[ed] (vis a vis banks) to giving us access to them and their material have evaporated. The position now is a position for you and PwC". The talking points also proposed that Mr Grech tell Mr Currie that he suggested "that we permit EY and PwC respectively to consult, advisor to advisor" in order to avoid the outcome that they reach fundamentally different views as to the approach to revenue recognition. Mr Grech was to propose that EY share with PwC its "WIP Curves and Effort curves". Mr Grech's email of 19 January 2015 indicates that he "stuck to the script" in his conversation with Mr Currie, and that the conversation had gone well. There was no reaction from Mr Currie that the information, as to PwC's instruction by Quindell rather than the lenders, was information which S&G should not have. Indeed, the call led to the meeting between EY and PwC on 27 January 2015. It was not, and could not sensibly be, suggested that the information, that PwC were now instructed solely by Quindell, had any later impact on the price negotiations. In any event Quindell knew that S&G were aware of the point.

258. Accordingly, I do not consider that when the information in the 15 January email is viewed in the context of what S&G already knew from their due diligence work, and noting the lack of detail in the email, the timetable in which S&G were operating, and the approach which they were taking to valuing the PSD by reference to its maintainable earnings, that there was anything in the email which was reasonably capable of influencing the price paid for the PSD. Nor is there anything which was reasonably capable of influencing the course of negotiations, except for the information as to the lenders no longer instructing PwC: a matter which did impact the negotiations, openly, in the manner which I have described. In cross-examination and in his closing, Mr Lord identified six particular "points of commercial leverage" within the 15 January email. These did not include the information that the lenders were no longer instructing PwC.

259. Seventh, there is extensive documentary evidence about the course that the negotiations took. There is nothing in my view which indicates that S&G had (to use Mr Lord's expression) the "whip hand" in those negotiations, or indeed any advantage at all as a result of the information alleged to have been derived from the meeting on 15 January 2015. On the contrary, the negotiations seem to me to have been a perfectly ordinary commercial negotiation, with each side starting from somewhat extreme positions and then finding a range within which there was scope for a real and sensible discussion. It is also in my view counter-intuitive, and an unlikely factual analysis, for Quindell to suggest that the price paid for the PSD was lower than it would otherwise have been (but for the confidential information), in circumstances where the price was obviously considered by Quindell's board, and its financial advisers Rothschild, to be a good price for the assets acquired and indeed was considered by Mr Currie and Mr Aston to have been a very good deal.

260. Having summarised what I consider to be the main points, I refer now to relevant aspects of the contemporaneous documents and the inherent probabilities.

D2: The contemporaneous materials and the inherent probabilities

16 January 2015

261. There was no suggestion that Mr Fowlie (or indeed Mr Grech) knew anything about the 15 January meeting in advance, or had authorised it. Mr Fowlie did, however, become aware of the meeting with PwC in the afternoon of 16 January 2015, during the course of a number of meetings that Mr Fowlie attended that day. Mr Fowlie's programme started with a series of meetings at Quindell's offices which were due to last the whole morning, beginning at 9 am and ending with a "wrap session" with Quindell at around 12 noon. Separately, Mr Jackson was going to be meeting EY. Mr Fowlie also asked for a telecon, at around 16.00, "to be clear who is doing what so that we are in a position by Monday morning [to have] an indicative valuation for Quindell."

262. It is clear from the documents that it was originally Mr Davies' intention that the 15 January email should be passed on to Mr Fowlie by Mr Michael Lord, but on the basis that Mr Lord should "stress to him not to pass on please". It is equally clear that Mr Lord did not actually do that before the day's meetings started. This is apparent from an exchange later in the afternoon when Mr Lord told Mr Davies that the email had not been passed to Mr Fowlie. Mr Davies did not then ask again for the email to be passed on, and it never was. There is no reason in my view to doubt Mr Fowlie's clear evidence that he was never shown the email at the time, and that he did not see it at any stage before it surfaced in 2019 in the context of the earlier litigation following disclosure by Greenhill. The email was not contained within S&G's disclosure in that earlier action, and there is nothing to suggest that Mr Fowlie obtained a copy of it. It is apparent from the documents in these proceedings that Mr Fowlie was very well-organised in terms of maintaining a record of what was going on: he made and retained notes of the meetings and conversations in which he was participating, and maintained these in a file interspersed with copies of material documents.

263. There was some exploration, in the evidence and the parties' submissions, as to why the email was not passed on to Mr Fowlie. Michael Lord's email sent at 08.39 on 16 January 2015 indicates that he was not sure as to what email Mr Davies wanted passed to Mr Fowlie. Mr Davies's response came at 08.55 ("just stress to him not to pass on")

and was in all likelihood received too late for Mr Lord to pass the email on to Mr Fowlie before the day's meetings. It is clear from the correspondence in the evening that he did not do so.

264. There are various possible reasons as to why Mr Davies, who was told by Mr Mr Michael Lord that the email had not been passed on, did not then ask Mr Lord to do so. Watchstone's favoured explanation was that it was not necessary to do so, because the contents of the email and hence the discussion with Mr Green had been fully briefed to Mr Fowlie during the course of the meeting on 16 January 2015. S&G submitted that there were various possible explanations. One was that the flow of discussion in the course of the 16 January meetings meant that most of what was in the email did not seem to be germane. Another was that Mr Davies knew what had really happened at the coffee meeting, and knew that Mr Green had given him virtually nothing, and so he had second thoughts about trumpeting what he actually knew not to be of any real value. I think that one or other of these suggestions by S&G, or a combination of both of them, is far more likely than Watchstone's suggestion that the full briefing obviated the need for the email to be sent on. If the full contents of the email had been briefed orally and therefore in some detail, then it would be likely that Mr Fowlie would have asked whether, or someone would have told him that, there was an email or document setting out the detail which he had just heard. It is likely that that the email would then have been passed to him. Indeed, it would have been sensible, if there was to be a full briefing on the email, for Mr Fowlie to have been given a copy of it at the time that Mr Davies was speaking, so that he could be taken through it. The fact that it was not passed to him thus, in my view, provides some support for the conclusion that Mr Fowlie was not fully briefed on the contents of the email. The conclusion that Mr Fowlie was not fully briefed on the contents of the email is further supported by Mr Fowlie's notes taken at the meeting described below.

265. Mr Fowlie accepted in his witness statement that Mr Davies had provided a general oral briefing, including reference to a discussion he had had with a representative of PwC. Mr Fowlie could not recall the specific detail or content of that briefing. His notes of the meeting confirm that he was told something about PwC. The notes include the following (although this does not precisely reproduce the manner in which the notes are set out on the page):

> "PwC want to see our WIP curves
>
> Need to narrow gap between PwC and EY
>
> …
>
> Game has changed. They need to want the proposal
>
> TACTICS
>
> …
>
> Close – PwC
>
> TO DO

AAG Conversation

-- PwC? -- Company side advisor

Meeting between EY and PwC

WIP curve to PwC

2 sets of numbers – challenge

Best PwC and EY are close together for all of us"

266. These notes do not suggest that Mr Fowlie was given a detailed briefing on the meeting with PwC, or that all of the matters set out in Mr Davies 15 January email were covered. Mr Fowlie did learn that PwC was the "Company side advisor" – which was a matter covered in the 15 January email. As already discussed, this was important to him because it opened up the possibility of a meeting between EY and PwC, and thereby the possibility of narrowing the gap between the views of EY and PwC. He was also apparently given to understand that PwC wanted to see S&G's "WIP curves"; these would identify S&G's views as to when work in progress should be recognised, in terms of revenue, during the life cycle of a claim. It is somewhat puzzling that Mr Fowlie should have been told this; because the 15 January email does not refer to Mr Green saying this, and it was not suggested to Mr Green in cross-examination that PwC had asked for it. Be that as it may, Mr Fowlie was given to understand that PwC would like this information, and this then fed into the approach that S&G took following the meeting. Accordingly, it can be seen that the focus of these notes was moving forward to a meeting between EY and PwC, in order to narrow differences between them. This is entirely consistent with S&G's data driven approach: if EY and PwC could reach agreement, or at least come close, on the relevant numbers, then this could be fed into S&G's modelling and the price negotiation would be more straightforward.

267. Mr Fowlie's note – "Game has changed. They need to want the proposal" – is also significant. Mr Fowlie's evidence, which I accept, was that this reflected his sense that at that point in time, Quindell's position was strengthening rather than weakening and that they had more options available to them. This note provides evidence against Watchstone's thesis that the information derived from the Davies meeting with Mr Green provided information to S&G that they could exploit to their advantage in a negotiation, and that was thereafter exploited. Indeed, there is nothing in Mr Fowlie's note of the meeting which suggests that Mr Fowlie thought that he had received any information which strengthened S&G's negotiating hand.

268. In cross-examination, Mr Fowlie's evidence was that he made a note of things that were important to him, so "new or important pieces of information, and then actions that I needed to take following the meeting". In my view, the only matters of significance to Mr Fowlie, arising from whatever Mr Davies may have said, were noted down by him. There was in my view nothing else arising from whatever Mr Davies said that Mr Fowlie assimilated or considered important. Mr Fowlie said, sensibly in my view, that the information in the 15 January email is quite detailed, that there was a morass of information being gathered, and that Mr Fowlie's task was to try to assimilate the information. He drew the conclusion that he had not been shown the email; because if he had then he "would have needed to have at least made some notes of what was new,

important information, failing which I don't know how I would have recalled it or assimilated it, given all the other information that we were seeing at the time". I agree with Mr Fowlie that his notes reflect the improbability that he was actually shown the 15 January email. Indeed, it is improbable that if he had been shown it, he would not have asked for a copy of it. I also consider that his notes reflect the fact that he did not assimilate or consider important anything else that Mr Davies may have said. There were some limited action points, focused on EY and PwC narrowing the gap. There were no action points requiring follow-up of any of the many other points covered in the 15 January email. For example, there is nothing to suggest that S&G were interested in finding out further information about Quindell's cash position, and when if at all it might run out of cash.

269. Furthermore, although EY were by this time very much engaged in due diligence, and the action points referred to EY, there is no evidence that they were informed about the meeting between Mr Davies and Mr Green, still less that they were asked to investigate any of the matters covered in the 15 January email as part of their due diligence work. Although a large number of documents have been disclosed relating to the work of EY, there is nothing to suggest that they were ever briefed on any aspect of the 15 January 2015 meeting.

270. Overall, I consider it far more likely than not that Mr Davies did not give a detailed briefing as to his meeting with Mr Green. He was attending by speakerphone, and a speakerphone participant, in a meeting where others are physically present, will often find it difficult to participate fully. If a detailed account had been given, then not only would one expect to see more evidence of it in Mr Fowlie's notes, but it would have made sense for the email itself to have been provided subsequent to the meeting so that Mr Fowlie could have a written summary. The likelihood is, in my view, that Mr Davies could understand, from the discussion going on at the meeting, the direction that S&G were taking, and what they were interested in. Accordingly, Mr Davies told them about PwC now being the company side adviser and (albeit without any apparent basis) that they would like to see S&G's WIP curves, and the discussion then moved on to the topic of arranging a meeting between EY and PwC. I also think it likely that Mr Davies may have appreciated that he was somewhat behind the pace in terms of the work that S&G had been doing, what they had already discovered, and where they wanted to go, and that therefore much of the information in his email was not germane or of any significance. This may explain why, subsequent to the meeting, he was not concerned that Mr Lord had not previously given the email to Mr Fowlie, and why Mr Davies did not press for that to be done. It may also be the case, as Mr Brocklebank submitted, that Mr Davies did not want to give a full briefing to all the participants in a plenary meeting, in circumstances where his thinking (on 15 and the morning of 16 January) had been that only Mr Fowlie should see his email, and that Mr Fowlie should not pass it on.

271. Accordingly, in relation to the 16 January meeting, I conclude that (as Mr Brocklebank submitted) the only points discussed were those noted down by Mr Fowlie in his manuscript notes; and that, even if more than that was discussed, those were the only points that registered with Mr Fowlie as having any significance.

17 – 19 January 2015

272. Mr Fowlie was in touch with Mr Grech by email on 17 January 2015, and suggested that they speak over the weekend. It is apparent from that email that there had been no

previous discussion between them, following the 16 January meetings: Mr Grech was in Australia and had not participated in those meetings, and Mr Fowlie was of course in London. They therefore spoke for the first time on 18 January. There is nothing in Mr Fowlie's email which suggests that he had just learned some vital intelligence as a result of whatever Mr Davies had said.

273. It is apparent from Mr Fowlie's email of 18 January 2015 that he spoke to Mr Grech on 18 January 2015, and that he had prepared some "talking points" for the call with Mr Currie. Some other points are covered in that email, but again there is no reference to the meeting between Mr Davies and PwC nor indeed anything which suggests that there has been some important change in the landscape as a result of that meeting. Item 2 of the draft talking points concerns the proposed meeting between EY and PwC, and thus reflects the only point of importance emerging from whatever Mr Davies said on 16 January:

> "2. PwC – We understand that PwC are now company advisors and that whatever constraints may have existing (vis a vis banks) to giving us access to them and their material have evaporated. The position now is a position for you and PwC. We frankly think that the worst outcome for both parties, whether in the context of a possible transaction, or otherwise, would be for EY and PwC to reach fundamentally different view about the approach to revenue recognition/WIP in these cases. Consequently, I wanted to suggest that we permit EY and PwC respectively to consult, advisor to advisor, this week to try and avoid that outcome. We would permit EY to share with PwC our WIP Curves and Effort curves, given that you have already shared yours with us."

274. As I have said, this was a matter which S&G proposed to discuss openly with Quindell, thereby supporting the evidence of Mr Fowlie that he did not understand that the relevant information had been acquired illicitly.

275. There is no evidence to suggest that Mr Grech was told anything about the meeting between Mr Davies and PwC. He did raise with Mr Currie the issue which is covered in item 2 of the proposed talking points, namely the proposed meeting between EY and PwC, but it is not clear that Mr Grech was told that this had arisen from a meeting between Mr Davies and PwC. If Mr Grech was told, there is no reason to think that he attached any importance to that. Mr Fowlie made a handwritten note of the conversation with Mr Grech, and this was contained within his file of notes and contemporaneous documents. When shown the notes in re-examination, he said that this reinforced his view that these were the points that he wanted to pick up and discuss with Mr Grech. Apart from the possibility that Mr Grech was told that a meeting with PwC was the origin of the matters which Mr Fowlie had noted down, and which are reflected in item 2, it is clear on any view that Mr Grech was not told anything else about what had transpired at the meeting attended by Mr Davies.

276. It is in my view clear from the communications, and contemporaneous documentary evidence, in the days following the 15 January 2015 meeting, that there was nothing about the meeting which had impacted on the thinking of Mr Fowlie and Mr Grech in any way at all – except for the possibility that a meeting between EY and PwC might now take place and move matters forward. That possibility was raised openly by Mr Grech with Mr Currie. On 19 January, Mr Currie emailed Mr Grech to say that he had

followed up with his side, and that he agreed that "it makes sense for PwC and EY to meet up asap". He asked who at EY should be contacted, and suggested that the discussion would benefit from an agenda / areas for discussion.

277. When considering whether anything about the 15 January 2015 meeting had any impact upon S&G and its thinking, the immediate aftermath of the 16 January 2015 meeting (when Mr Fowlie learned something about the 15 January 2015 meeting) is particularly important. If S&G had thought that anything important had been said – and in particular something which potentially advantaged S&G in their approach to the negotiations and the price that they might pay – then one would expect to see it being noted down, communicated internally, and being discussed in its immediate aftermath. Indeed, it is here possible to see, and trace through the documents, the point that was communicated on 16 January, and was then pursued; namely the proposed meeting between EY and PwC. But one does not see any other point advanced or pursued in that way in the documentary evidence.

278. I accept that in some cases, where the documentary record is sparse, this might not be a weighty point. But in the present case, there is a rich documentary record, with notes of meetings and discussions having been taken on the S&G side and having survived, as well as a considerable amount of internal communications including between the two key S&G individuals, Mr Fowlie and Mr Grech. These materials emanate from a vast body of disclosure provided by S&G. In the earlier proceedings, S&G disclosed in the region of 400,000 documents, and in the present proceedings the disclosure from the S&G disclosure pool comprises around 67,000 documents.

279. I also accept that if there were any evidence of self-censorship and concealment, in what S&G were writing down, then again the documentary record might be less weighty. However, although a case of self-censorship formed part of Watchstone's opening, it did not survive the evidence at trial and was not ultimately pursued. To the extent that it was pursued, I have no hesitation in rejecting it: neither Mr Fowlie nor Mr Grech were tailoring their handwritten notes, or internal communications, in order in some way to avoid reference to the 15 January 2015 meeting or its significance.

280. Accordingly, one does not see what one would expect to see, if Watchstone's case had any factual substance. The reason is that the case lacks factual substance. The reason that one does not see the matters which I have described is simple: S&G was not fully briefed on the 15 January meeting and, even if they were, there was simply nothing that Mr Fowlie considered to be of any significance at all apart from the matters which he noted down and which were then pursued openly by way of the suggested meeting between EY and PwC.

281. Indeed, not only does one not see any relevant discussion in the immediate aftermath of the meeting, but in my view one does not see it in any later documentation either.

Late January: continuing due diligence and the EY/ PwC meeting

282. There is further evidence that S&G were uninfluenced by any negative aspects (i.e. matters that might reflect negatively on Quindell) of the information in the 15 January email, in particular the suggestion that cash would be running out in mid-2015. One fairly obvious tactic, if S&G had believed that Quindell was in imminent serious financial trouble, would have been for S&G to have slowed down their due diligence

work or their progress towards a deal. This did not happen, a fact consistent with Mr Fowlie's note of the 16 January and evidence as to his perception that Quindell's position was strengthening. On 25 January 2015, Mr Fielding of Quindell reported to Mr Currie that he had held a long conversation "with our back channel". This appears to have been a reference to Mr Ravech. Mr Fielding reported that Mr Fowlie was "100% bought into the acquisition", and that in summary "they remain very keen and anxious to complete the transaction as soon as possible before others begin to realise the true value of that which QLS has to offer". It seemed to me that Mr Fielding's perception that S&G remained keen to complete the transaction as soon as possible was accurate and consistent with the way in which S&G moved forward.

283. On 24 January 2015, the S&G personnel who had been examining the files provided under the APA produced their preliminary report, based on 3,736 files out of a total of 7,075 files. This report is described in Section B above. The authors of the report noted various concerns as to the NIHL cases, including that case selection was poor and that very little work had been done on the cases. A later report, dated 6 February 2015, added to the negative view of the NIHL cases. For example, the file reviewers considered that 75% of the NIHL cases had a probability of success of less than 60%. Both reports concluded that the NIHL claims had not been screened robustly.

284. Information about the NIHL portfolio was also contained within a draft status update report produced by EY on 27 January 2015. This report was emailed to Mr Fowlie and others at 22.02 on 27 January 2015. In the covering email, Mr Phillips of EY said that this included comments from the call with PwC which had taken place that afternoon. The report, including appendices, ran to 26 pages and included financial analysis of a number of matters.

285. The first issue addressed by EY concerned "Adjusted EBITDA". They considered it appropriate to make a substantial adjustment to the revenue which Quindell had recognised in respect of industrial disease (i.e. the NIHL) cases. EY considered that in the light of only 8 settled cases in the last two years, "any recognition of IDC [industrial disease claim] revenue could be considered premature". The topic was then addressed again under the heading of "Key business drivers", with EY noting that Quindell derived a significant proportion of its revenue and EBITDA from the movement in unbilled work in progress for ongoing industrial disease cases but that it had generated minimal cash flow from these NIHL cases. In the next section, dealing with QLS's EBITDA, EY again returned to the topic of the NIHL cases, again referring to the fact that in the last 24 months only 8 out of 11,407 NIHL cases had settled.

286. In the light of what EY were saying, when taken in conjunction with the information from the file reviews by S&G, it is in my view obvious that S&G's concerns about Quindell's NIHL practice had nothing to do with the very brief information contained in the 15 January email, but were derived from the detailed analytical work that was being carried out.

287. On pages 6 and 7 of the report, EY addressed the issue of "free cash flow". This reported that free cash flow was negative £ 5.0 million in the 2013 financial year, and negative £ 50.3 million in the 2014 financial year up to November 2014. The increase in the 2014 was driven by an increase in the cost of sales payments of £ 95.1 million "as the business invests more heavily into winning the IDC cases". There was a net cash outflow of £ 38 million in the financial year up to November 2014. EY went on to say

that their expectation for 2015 was that this would be "another cash outflow year which will require additional funding". In my view, it would have been obvious from this information (and would likely have been obvious anyway, even if EY had not analysed the figures), that a substantial cause of Quindell's well-known cash flow problems was the amount being spent on NIHL cases. It is also clear from EY's description of the anticipated position in 2015 that Quindell was, to put it colloquially, running out of money and therefore would need additional funding.

288. On page 9, EY reported on their call with the PwC team which had taken place on 27 January. They stated:

> "► We had a call with the PwC team on 27 January 2015 who we understand have been engaged by Management to review its significant accounting policies. As such, the PwC team we spoke to were not able to comment on the wider work which we understand PwC are also completing on behalf of the financing banks/Management around the business model and forecast cash flows.
>
> ► PwC are at an early stage of their accounting policies review and as such their knowledge is only at a high level and they were unable to answer some of our detailed questions. In summary, notwithstanding that PwC are in the early stages of their work, PwC:
>
> - Agreed that in principal your and Target's accounting policies in relation to revenue recognition (based on effort incurred) were aligned, however the accounting estimates used to apply the policies (completion milestones versus time lapsed) had the potential to create significant differences.
>
> - Agreed in principal that 8 out of circa 50,000 settled IDC claims was not a significant basis on which to recognise any revenue, but their work is still ongoing in this area.
>
> - Was surprised by the level of difference between your and Target's effort curves, predominantly the headline numbers for RTA cases where 5% of revenue is recognised by you for claims less than three months old compared to 91% for Target.
>
> - Did not appear to agree with the basis for the deferral of acquisition costs by Target
>
> - Had been led to understand that the 'cost accrual' made by Target to accrue costs in relation to claims which remain unsettled beyond the typical life of a claim related to some form of bad debt provision applied against the WIP.
>
> - Had yet to look at the accounting for disbursements"

289. Accordingly, this passage indicated that although PwC were still at an early stage of their work on accounting policies, they were willing to express the view to EY that the

small number of 8 settled cases was not a significant basis on which to recognise any revenue. This was the same view that EY had formed, as described earlier in the report.

The 29 January 2015 S&G board information meeting

290. On 29 January 2015, there was what Mr Fowlie explained was an S&G "board information" meeting, rather than an S&G board meeting as such. The purpose of that meeting was for there to be a detailed transfer of information from the executives at S&G, who were "in the weeds" of the transaction, to the non-executives. It was therefore to bring the non-executives up to speed.

291. For the purposes of that meeting, Mr Fowlie and Mr Grech had been responsible for preparing what Mr Fowlie fairly described as a fairly hefty report. The meeting was to take place on a Thursday, and the report indicated that a slideshow presentation would be provided by close of business on Wednesday. This would summarise the material and serve as an agenda for the information session. The report referenced the recently produced EY status update report. The report comprised 45 pages followed by various appendices. It shows, as Mr Brocklebank submitted, the evidence-based and data-driven approach that Mr Fowlie and Mr Grech were taking. It provides a broadly positive view of Quindell, as can be seen in various parts of the report including the SWOT (Strengths, Weaknesses, Opportunities, Threats) analysis. It contains no discussion of or reference to the meeting between Mr Green and Mr Davies.

292. In the many pages of the report, there was only one passage which Watchstone alleged to have been derived from the 15 January email or information contained within that email. Paragraph 3.5.2 of the report is as follows:

> "Q made a decision to invest very heavily in noise induced hearing loss cases on the basis of their assessment that given the changes occurring with RTA this would be an area of higher fee (hence profit) opportunity. The problem is that the resolution rate in NIHL is significantly slower than RTA (7 months vs 18 – 24 months) and the matters are generally more complex. Given that Q have invested something in the order of GBP60 in NIHL cases to date, they are basically running out of cash. This problem is exacerbated by the fact that they have no track record in NIHL and now, a significant portion of their total WIP asset (about 1/2) is tied up in this product line.
>
> In terms of assessing the Q opportunity, this is the key variable in terms of both valuation and execution risk".

293. It is in my view obvious that this detailed information came, as Mr Fowlie said in re-examination, from the various aspects of the detailed due diligence work that had been carried out in relation to NIHL, including the insight from EY in relation to the cash burn of the business during the previous period. An earlier paragraph of the report (paragraph 3.3.1.2) contains a number of sub-paragraphs which are very obviously derived from the due diligence work, including EY's work, and which cannot realistically be said to derive from the 15 January email. Although the 15 January email does refer to NIHL, it does not do so in terms which contain the information that is contained in paragraphs 3.3.1.2 or 3.5.2. In any event, I see no reason why the one paragraph to which Watchstone referred (3.5.2) should have its origin in the 15 January

email or briefing, whereas the rest of the detailed report does not. The idea is to my mind even more fanciful when one bears in mind that Mr Fowlie, in his notes of the 16 January 2015 meeting, made no note of anything relating to NIHL in the context of the references to PwC.

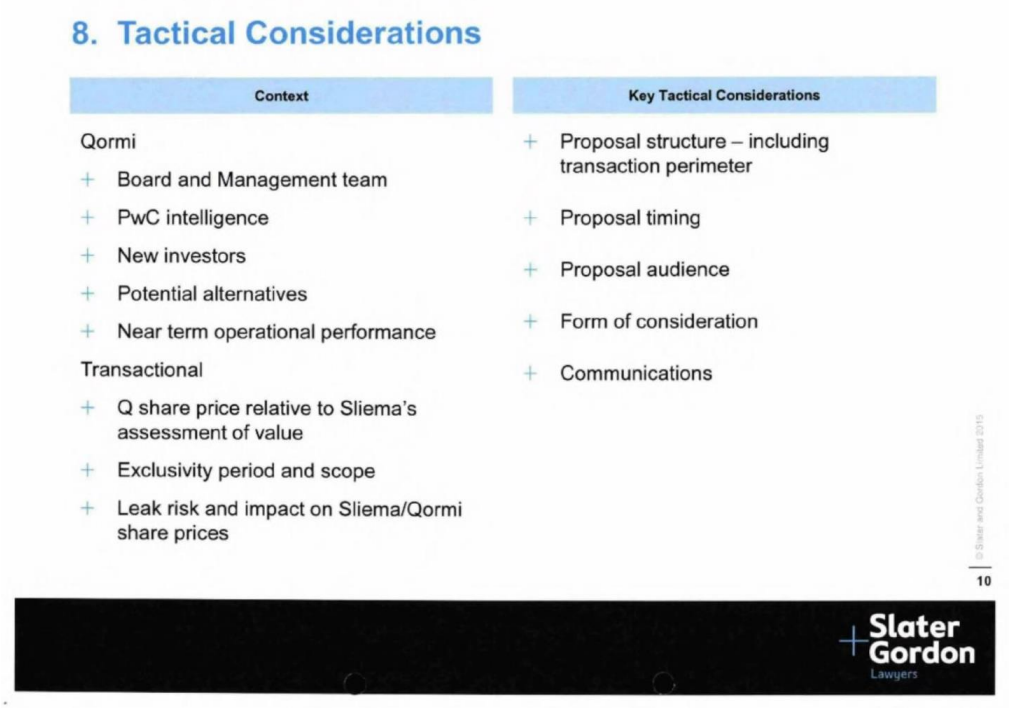
294. The absence of any direct (or indeed indirect) reference to any information (allegedly) passed by Mr Green to Mr Davies on 15 January, in a lengthy document prepared by Mr Grech and Mr Fowlie for the purposes of bringing the board up to speed, provides further evidence that neither of them were conscious of any significant information being communicated at that meeting, or information that would be important for the board to know as matters moved forward.

295. The board paper contained information as to possible EBITDA numbers. Paragraph 5.1 referred to preliminary analysis indicating £ 391 million of revenue producing EBITDA of £ 108 million on a "steady state" basis. This was compared to Quindell's 2015 budget figures of £ 750 million revenue and £ 348 million EBITDA. A bar chart showed EBITDA, on S&G's estimation, growing from £ 102 million in 2015 to £ 108 million in 2018. The paper then described that cash flow was anticipated to be negative in 2015 as a result of work in progress on NIHL cases building faster than consolidated fee revenue. The paper then states that the "limited hearing case completion experience means that the assumptions underlying NIHL are relatively more uncertain than the other legal business lines, and as a result are a key focus of ongoing diligence". This section of the report confirms the evidence of Mr Grech and Mr Fowlie as to their concerns about the NIHL part of Quindell's business, the due diligence that was being undertaken, and where the financial analysis was leading.

296. The figure of £ 108 million for steady state EBITDA was also referred to in the slide presentation referenced earlier in the report, and which I shall describe below. The board report did contain some other EBITDA figures, indicating that S&G were looking at a range of possible outcomes. Section 8 referred to a range of sustainable EBITDA of £ 90 - £ 130 million, and gave figures (£ 464 million to £ 666 million) based on the assumption of a multiple of 5. I note that the figure of £ 108 million is just below the midpoint within that range.

297. Watchstone placed a considerable amount of reliance on one of the PowerPoint slides which was prepared for and shown to the board at this meeting. This was, as it seemed to me, really the high point of Watchstone's case: the slide in question was alleged to be the important "smoking gun" which demonstrated the significance to Mr Fowlie and Mr Grech of the information which Mr Davies had been given by PwC at the meeting on 15 January 2015. The slide presentation ran to 16 pages, and an appendix. It condensed down a considerable amount of information. It reproduced, in substance, the information in paragraph 5.1 of the report, including the bar chart, which I have described above, referring to the base case EBITDA of £ 108 million resulting from the preliminary analysis.

298. Slide 8 was headed tactical considerations, and its text was as follows:



8. Tactical Considerations

Context	Key Tactical Considerations
Qormi	+ Proposal structure – including transaction perimeter
+ Board and Management team	+ Proposal timing
+ PwC intelligence	+ Proposal audience
+ New investors	+ Form of consideration
+ Potential alternatives	+ Communications
+ Near term operational performance	
Transactional	
+ Q share price relative to Sliema's assessment of value	
+ Exclusivity period and scope	
+ Leak risk and impact on Sliema/Qormi share prices	

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299. Thus there was a reference under "Context" to PwC intelligence. Watchstone argued, in substance, that this was a reference to information passed at the meeting between Mr Green and Mr Davies; that both Mr Fowlie and Mr Grech knew this; that it showed the importance of that information to the tactical decision making on the part of S&G; and that the board would have been given information about that meeting, as part of the oral presentation which would have accompanied the slides.

300. In that context, reliance was also placed by Watchstone upon earlier drafts of the slide presentation, which had been prepared by Greenhill, which went into more detail on the topic of "PwC intelligence". The earlier draft of the slide presentation, on which both Mr Grech and Mr Fowlie were cross-examined, was originally circulated internally at Greenhill on 22 January 2015. There is nothing to suggest that either Mr Grech or Mr Fowlie, or indeed anyone else at S&G, saw this or any similar draft. Although the ultimate slide deck presented to the board had, at least to some extent, its origins in this draft, they are very different documents. The reference to "PwC intelligence" in the 22 January 2015 draft appears in the following context on page 3 of the draft slides:

> "**Situational Overview**
>
> **Quindell Developments**
>
> **Quindell management**
>
> - The attitude of C-level management has become increasingly more positive regarding Quindell's outlook
>
> **PwC intelligence**
>
> - Working for Quindell rather than lenders

- Good operational processes for RTA cases, though poor accounting and internal controls; hearing loss too early stage

- Cash deficit in mid 2015 if business continues to operate on current basis

New investors

- Toscafund has taken a 5%+ stake (rumoured to be approaching - 10%) – while sometimes a passive investor, also has a history of recapitalising distressed companies

New board members

- Appointment of Richard Rose (ex Redde plc, Chair AO World and Booker) as non-executive Chairman and Jim Sutcliffe (Chair Sun Life, director Lonmin, ex CEO Old Mutual and Prudential UK, Special Adviser to CVC) as Strategy Director and Deputy Chairman

- Controversial issuance of short dated options – Jim Sutcliffe subsequently resigned from the board of the Financial Reporting Council, whose code appeared to be contravened by the issuance

- David Currie to remain interim Chairman until new appointment approved by SRA

- External consultants (associated with Jim Sutcliffe) engaged to assist the Company"

301. On the left hand side of the slide, there was the following text:

> "Although Quindell management's attitude seems more positive than in late December, we have not identified any fundamental business changes that support this shift
>
> Rather the shift appears to be underpinned by the emergence of alternative investors on Quindell's register and the (unconfirmed) potential for a recapitalisation transaction
>
> [Comment re new board members attitude]"

302. A later draft slide, which has no counterpart in the ultimate slide deck, was headed: "Should S&G Submit a Proposal in the Near Term". The slide then compared the benefits and risks of a "near term proposal" and a "delay proposal". The text on the left-hand side of the slide indicated that Greenhill's view, on balance, was that S&G should delay making an offer. They identified the risk that Quindell might use the S&G proposal to precipitate a recapitalisation as being high. There was then the following text:

> "Instead, we would recommend that S&G focuses on completing its preparation in the near term, with a view to submitting a proposal (if desired) at a point when either:

- Quindell's position deteriorates further, increasing S&G's leverage, or

- An alternative proposal emerges that S&G is confident it can trump"

303. Mr Fowlie's evidence, in his witness statement, was that he did not believe that he was provided with a copy of the draft presentation which had been prepared by Greenhill. He said that it was not uncommon for S&G's professional advisers to prepare presentation packs or slides, or parts of them, for S&G, but it was not necessarily the case that S&G would see all of Greenhill's earlier, internal drafts of those documents. I accept that evidence. Mr Fowlie accepted that he did see the board pack of 29 January 2015 (i.e. the final slide presentation), and that he authored or provided input for slides 4, 5 and 6 in the deck. He did not recall providing input on the other slides in that deck.

304. Mr Grech's evidence, in his witness statement, was that he did not recall having had any involvement in the review of the Greenhill draft presentation or having seen the document at the time. In my view, there is no evidence that he did. He said that he had some involvement in the drafting of the board report, but did not recall being involved in the drafting of the accompanying slide presentation. He would review the material that was to be placed before the SGL board, so as to be in a position to answer any questions. He did not recall the meaning of the reference to "PwC intelligence". He certainly did not recall it being a reference to any covert operation or back channel involving PwC. He knew of high-level conversations going on to get access to the PwC report, as had previously been promised by Mr Currie, and to see whether PwC could be encouraged to talk to EY.

305. I am unpersuaded by Watchstone's case that the reference to "PwC intelligence" was significant for any of the reasons advanced on Watchstone's behalf. Slide 8 and its wording are cryptic, and "PwC intelligence" is perfectly capable of referring (as Mr Grech suggested in his evidence) to the ongoing efforts to obtain PwC's report or indeed to the very recent meeting that had taken place between EY and PwC, and which was referred to in the EY paper which had been produced shortly before the board meeting. Although Mr Fowlie was inclined to accept, in cross-examination, that the topic of "PwC intelligence" had been discussed at the 29 January 2015 meeting, it is apparent from his answers as a whole that he had no recollection of any such discussion, or what was said. There was certainly nothing to suggest that he, or anyone else, had attached any significance to whatever discussion had taken place.

306. In re-examination, Mr Fowlie was shown the notes which he had taken at the meeting itself. Those notes identified the points which the board members had indicated, at the start of the meeting, they were interested in being focused on. There is nothing there that suggests that the board were interested in understanding what "PwC intelligence" was. The topics were instead financial and operational, as one might expect, and the board members do not appear to have been interested in discussing tactics for any negotiation. Mr Fowlie made some further notes in the meeting, and there is nothing there which suggests that any discussion, let alone any important discussion, of "PwC intelligence" had occurred.

307. I do not consider it likely that there would have been any relevant discussion of the meeting that had taken place between Mr Green and Mr Davies, or any information emanating from that meeting. Mr Grech would not have been in a position to provide

any information about the meeting, and Mr Fowlie would have been in only a marginally better position. Ms Jablko was at the meeting, and she could have provided more information, since she had seen Mr Davies' 15 January email. But Mr Grech's evidence was that he did not recall her saying much at the meeting.

308. In any event, even if I were to accept that there was some discussion of "PwC intelligence" at the meeting, it is improbable that it would have gone beyond the three bullet points under "PwC intelligence" which were in the draft slide prepared on 22 January. Those three matters are in my view anodyne, in the context of what S&G knew.

309. The first point was that PwC was working for Quindell rather than the lenders. I cannot imagine that anyone would have attached any significance to that, and in any event it was a point which had been raised directly with Quindell and which had led to the 27 January 2015 meeting between PwC and EY. It was not something that was capable of having influence in terms of the price to be paid for the business, and as discussed above, it was not relied upon by Watchstone as one of their points of commercial leverage.

310. The second point was that there were "Good operational processes for RTA cases, though poor accounting and internal controls; hearing loss too early stage". These were all matters which had become apparent, and in much greater detail, as a result of S&G's due diligence, or were points which had been made by Quindell themselves during the discussions that had taken place, including at the very earliest Heathrow meeting.

311. The final bullet point ("Cash deficit in mid 2015 if business continues to operate on current basis") covers broadly the same ground, but in far less detail, addressed in the EY report. Even leaving aside the EY report, given what S&G knew from publicly available sources about the cash consumption of Quindell's business, I agree with Mr Handyside's submission that this bullet point is a statement of the obvious.

312. It is also difficult to see how such a statement could, given what was publicly known and the due diligence that had been carried out, be regarded as being of any significance or such as to give some sort of negotiating advantage. The bullet point does not say that Quindell is going to the wall, or will in fact run out of cash. Even if one were to assume that this bullet point was discussed at the 29 January meeting in the context of "PwC intelligence", it would have been relevant for Ms Jablko to have discussed, in that context, the important positive features of Quindell's position that appear on the very draft slide on which reliance is placed. The draft slide refers to the emergence of alternative investors on Quindell's register, the (unconfirmed) potential for a recapitalisation transaction, the stake taken by Tosca which had a history of recapitalising distressed companies, and the appointment of new board members (i.e. people who might take a different view to the desirability of a sale). It would also have been pertinent to have raised the point made on a later slide that the prospects of recapitalisation were high, in Greenhill's view, if S&G made an offer.

313. It is also plain that Greenhill's thinking must have moved on considerably from the time that the 22 January draft slide was prepared. The final set of slides did not recommend any delay in making an offer. The "Tactical Considerations" final slide refers to new investors, potential alternatives, the structure of the proposal, and the proposal timing. Even if the final bullet point under "PwC intelligence" on the draft slide had been discussed, there is nothing to suggest that it was discussed in the context of Quindell's

cash position having any material impact on when or how much S&G should offer for the PSD. In fact, as matters then developed over the next 3 weeks, S&G moved forward quickly and made proposals which, on the evidence, were not influenced in the slightest by Quindell's cash position, whether as recorded in the third bullet of the draft slide or otherwise.

1-17 February including the 13 February 2015 meeting

314. Although there was a considerable amount of cross-examination directed towards the course that the negotiations then took place, I do not propose to discuss every aspect of that evidence. In summary, the evidence indicates that there was a normal commercial negotiation between an interested seller and buyer, with nothing in the communications between them, or in S&G's internal documents, which indicates that any of the information allegedly derived from the 15 January 2015 meeting was either deployed by S&G or played any part in their thinking. I also have no hesitation in rejecting Watchstone's argument that the information obtained at that meeting resulted in the loss of a significant chance that the price which S&G paid would have been higher.

315. On 4 February 2015, Mr Fowlie told Greenhill that, in continuing board discussions that day, authorisation had been given to open a dialogue with Quindell about the drivers underpinning S&G's assessment of maintainable earnings. There is nothing to suggest that the board's decision on that day was in any way influenced by anything imparted to Mr Davies at the 15 January 2015 meeting.

316. On 8 February 2015, in an email with the subject line "Some gratuitous advice", Mr Fowlie gave Mr Grech some advice on how to approach discussions, which Mr Grech would be having in the UK. Mr Fowlie underlined the importance of mastery of the detail, and that: "What we can bring to the table is an alternative universe, informed by actual evidence. The power of that is the strength of the evidence and analysis that sits behind it". This email is entirely consistent with the overall data-driven and evidence-based approach of Mr Fowlie and S&G. There is in my view a striking contrast between the hard data and modelling that was actually driving S&G's approach, and the very generalised and loose statements which were contained in the 15 January email.

317. In the meantime, on 5 February 2015, Mr Aston had called Aidan Allen of Citi for a "less formal conversation". Mr Aston there signalled the sort of offer that Quindell was looking for. He said (according to an internal email sent by Mr Kisenyi of Greenhill on that day – which Mr Aston said he had no reason to dispute) that £ 1 billion was what they wanted, but a number close to £ 600 – 700 million would be something that they would have to consider. Mr Fowlie recorded, in his notes for 6 February, that Quindell wanted £ 600 - £ 700 million, based upon what Mr Aston was saying. Part of Mr Aston's messaging, according to Mr Fowlie's notes, was that there were: "2 camps – Focused on Plan B". Mr Aston was therefore keen to convey that Quindell had other options, and that there was potential disagreement within Quindell on the question of the possible sale.

318. The figure of £ 600 - £ 700 million was below figures that had been mentioned previously. In his oral evidence, Mr Aston described a figure of £ 1.2 billion having been given at the Heathrow meeting, and stated that this figure was "chuckled about". He said that there was no hard data to support that sort of figure, which was why they

got to £ 900 million very quickly. In fact, by 5 and 6 February 2015, Mr Aston was putting out a strong signal for a figure in the range of £ 600 - £ 700 million.

319. A meeting then took place on 13 February 2015. For the purposes of that meeting, S&G prepared a very detailed slide deck, where each page was qualified with the words "subject to further diligence and review". Consistent with S&G's data-driven approach, there was a considerable amount of financial detail within the slides. The maintainable EBITDA, on page 25 of the slide deck, was £ 68 million. This was a fair distance below the £ 108 million figure that was contained in S&G's internal board paper for the 29 January meeting. It was put to Mr Grech in cross-examination that he was deliberately lowering the EBITDA in order to start to calibrate the price discussion with Quindell at a much lower level. Mr Grech said that there was a need for caution: there were a number of matters outstanding in the due diligence and it made sense to err on the side of caution. He accepted that he was in part trying to calibrate the "negotiation debate with Quindell". Whilst accepting this, he said that his main concern was to try to engage Mr Currie about the elements that comprised S&G's valuation.

320. I think that there was an element of "low-balling", on the part of S&G, at this meeting, as indeed Mr Grech's evidence acknowledged. However, anyone who has attended a mediation knows that this is a typical way in which discussions start, and in my view it says nothing at all about whether or not the 15 January email was influential in that approach. It will be apparent from this judgment that I do not consider that it had any impact at all. Contrary to Watchstone's closing submissions, in my view S&G's approach had nothing to do with a tactic that would not have been tried with a stronger opponent. Mr Grech was taking a sensible and obvious approach to the start of a negotiation by trying to feel out the other side. There is nothing in the documents which suggests that S&G thought that they were dealing with a weak opponent. On the contrary, there had been consistent "Plan B" messaging by Quindell, and S&G and its advisers took this seriously and believed that Quindell had other options. Indeed on the following day (14 January), Ms Jablko asked Mr Skarbek of Citi what he thought Quindell would do if S&G walked away. Mr Skarbek's response was:

> "We are so far away from being able to transaction and many of the people are violently against us, some on the fence … so net/net they would be delighted. We may not be for ever".

321. Following the meeting, Mr Grech reported by email to his colleagues and S&G's advisers. He described Mr Jackson and Mr Bordignon having done an excellent job taking Quindell through the slides. He thought that S&G had done a reasonable job of giving them a reason to take pause on their enthusiasm for Plan B. Mr Currie had thanked them, but said that they were "not in the same postcode and that it was not likely we would bridge the gap". He declined to give the number that they had in mind. There was then a break in the meeting after the presentation, and the Quindell people had some time together. Mr Currie then came back with the idea that the RTA business could be "supercharged": in other words, diverting resources from NIHL cases to RTA cases. There was agreement to keep the discussions alive. Mr Grech concluded that they were a long way from a deal, and considered that there were at least two explanations for Quindell being willing to continue to engage: Quindell wanted to do a deal, or they wanted to buy time to better formulate and test Plan B.

322. The internal email traffic on the weekend (14/15 February 2015) after the 13 February meeting, such as Mr Skarbek's email, reveals uncertainty on the S&G side as to whether a deal might be possible. There is nothing to suggest any perception that they were dealing with a weak opponent who would be likely to capitulate in some way, nor an opponent whose negotiating position was in some way weakened as a result of the disclosure of information by Mr Green to Mr Davies in the 15 January 2015 meeting.

323. Mr Fowlie's email to his colleagues and advisers on 15 February 2015 indicates that further work was being done, and that there had been a "Board catch-up", and that the bid/ask spread had apparently narrowed. This appears to have been a reference to some figures provided by Mr Fielding subsequent to the 15 February 2015 meeting in relation to the supercharging idea, and modelling that S&G had carried out which gave effect to that idea. Mr Fowlie reported that discussion about maintainable EBITDA would probably settle towards £ 96- 110 million, but that there was still work to be done. In the end, as described below, S&G's modelled EBITDA figure at the time that the negotiations began in earnest on 19 February 2015, was £ 100 million. Mr Fowlie's email also reflects genuine concern on the part of S&G about the possibility of cash to support Plan B being generated by disposal by Quindell of non-core assets.

324. Watchstone placed considerable reliance on an email from Ms Jablko to her colleagues, including Mr Davies, on 17 February 2015. The email, which was not sent to Mr Grech or anyone else at S&G, said:

> "Gareth I discussed with Andrew today whether it is worth you checking back in with your contact at PwC to see what Intel you can gather. Nick and I will give you a call to discuss".

325. Mr Lord described this as one of the important "smoking gun" documents. In his oral reply submissions, he submitted that it completely upended S&G's case, because "their case is an entire denial by Mr Grech that he ever knew about this contact, he never knew about this PwC point of contact". He asked how that could be if Mr Grech was asking Ms Jablko to check back in. Mr Grech must therefore have known about the contact and its significance.

326. I do not consider that this document can bear anything like the weight of that submission. It is not a document authored by Mr Grech. It was sent by Ms Jablko, who of course knew all about the meeting on 15 January 2015, both its preparation and the email sent by Mr Davies subsequently. The phraseology of "checking in" and "Intel" is hers, and cannot automatically be attributed to Mr Grech. In his evidence, Mr Grech did not dispute that there had been a conversation with Ms Jablko, nor that PwC was discussed. He could not remember the conversation, but did recall that he and Ms Jablko shared a concern that S&G was not being given a credible account by Quindell's representatives for why the release of the PwC report to S&G was being delayed. There was increasing frustration in the S&G team and S&G's advisors that Quindell were not providing what they had said they would provide. It was therefore possible that he and Ms Jablko discussed the possibility of speaking to PwC about the release of the report at some point in February 2015, although he did not actually remember the conversation. In my view, this is a plausible explanation of the conversation that appears to have taken place. I am not persuaded that I should reject Mr Grech's evidence, as to his lack of knowledge of the 15 January 2015 meeting, on the basis of this single email which he did not author and which was not sent to him (or to do so

even taking into account the other "smoking gun" document on which significant reliance was placed, namely the slides for the 29 January board information meeting). Furthermore, this email from Ms Jablko must be viewed in the light of the documents as a whole, which I have described in this section D of this judgment, and in particular the absence of any document authored by Mr Grech which describes any aspect of the 15 January 2015 meeting or which suggests that this influenced his approach to the transaction. As Mr Lord rightly said in his oral reply submissions, it is necessary to "fit together all the pieces of the jigsaw and apply an appropriate forensic judgment to the matter to draw whatever appropriate inferences should be drawn to see the whole picture". This is what I have endeavoured to do in this section.

327. Ms Jablko's email did not produce any consequence in terms of further contact between Mr Davies and Mr Green. The evidence indicates that Mr Davies tried to get in touch with Mr Green, but that no discussions and no meeting actually took place.

The successful negotiations on 19 - 22 February 2015

328. There is a considerable volume (unusually large in my experience) of documentary evidence concerning the negotiations which reached a successful conclusion on the weekend of 21 - 22 February. There are notes of Mr Grech and Mr Fowlie, written exchanges between the parties, and internal written communications on each side.

329. There is nothing which suggests any impact, either on the discussions, or on the thinking of Mr Grech or anyone else on the S&G side, from the meeting between Mr Green and Mr Davies which had happened 5 weeks earlier. Indeed, in my view it is inherently improbable that that very brief meeting (even assuming that its contents had been relayed) would have any impact on the serious negotiations that began so many weeks later. During those intervening weeks, there had been many significant developments involving a level of detail and analysis which was infinitely greater than anything said on 15 January 2015, and which would have very obviously been the matters that would influence and shape S&G's approach to the negotiations. They included: the continuing due diligence carried out by S&G itself, including the file reviews where two reports had been produced; the due diligence of EY, resulting in their report dated 27 January 2015; the meeting between EY and PwC on 27 January; the detailed work, particularly of Mr Fowlie, in conjunction with Mr Grech, which had resulted in the lengthy report that was produced for the board information meeting on 29 January; the modelling work which had continued throughout the period, but which was revisited after the meeting on 13 February after Mr Currie's "supercharging" idea, with further figures being provided by Mr Fielding shortly after that meeting. All of this in my view makes anything in the 15 January email pale into insignificance and irrelevance, even assuming (contrary to my findings) that it had any significance or relevance in the first place.

330. The main features of the negotiations were as follows.

331. On Thursday 19 February, Mr Grech told Mr Currie that S&G's calculated EBITDA figure had moved very considerably: from £ 68 million to £ 100 million. That figure of £ 100 million was consistent with figures contained in documents prepared by S&G at that time. Mr Fowlie referred in his evidence to a bar chart showing EBITDA of £ 100 million, and this was incorporated into a draft "Project Malta" presentation which was prepared for S&G's board and dated 19 February 2015. Accordingly, S&G were being

candid with Mr Currie as to what their EBITDA figure was at that stage. Significantly, it was substantially above the EBITDA figures that Quindell had in mind: on 21 February, Mr Aston referred internally to their consultants' view that EBITDA was around £ 60 - £ 70 million, and on 22 February, Mr Fielding referred to a figure of around £ 80 million.

332. Mr Grech's notes indicate that, later that day, there was a discussion with Mr Currie who was apparently indicating that shareholders would want to see £ 650 - £ 700 million, and that at £ 750 million there would be recommendation by the Quindell board. There was also reference to a deferred payment structure in order to bridge a gap arising from the NIHL claims. Mr Grech's notes summarise the position by saying that Quindell's number is £ 750 million in cash, and that S&G's number is £ 600 million cash. Mr Grech then referred to a gap of £ 150 million, and later on records: "deferred payment – conditional". There is another reference to the deferred payment being conditional in the same note: against the sum of £ 53.5 million, Mr Grech has written "deferred conditional cash", and he identifies the condition that he had in mind at that stage, namely 10,000 NIHL cases resolving by 30 November 2016. I accept S&G's case that Mr Grech always had in mind that any payment for the NIHL claims would be both deferred and conditional. In the event, this was what was agreed, albeit not along the lines of the approach recorded by Mr Grech in his notes on 19 February.

333. On the morning of Friday 20 February 2015, Mr Grech offered, as Mr Currie reported to his colleagues, "£ 600 million cash plus £ 50 million deferred based on NIHL settlements". Mr Currie said that he did not think that the offer would get a recommendation, but agreed to think about it and revert during the day. In his evidence, Mr Currie agreed that "based on NIHL settlements" meant that it was dependent on a number of cases settling within a given time frame. Accordingly, it was both deferred and conditional.

334. During the course of that day, there was some discussion where Mr Currie was looking for £ 725 million, and Mr Grech said that S&G would not get there. Mr Currie put forward a figure of £ 650 million cash plus £ 100 million deferred as being something that he would propose to his board. Mr Grech said that the headline was too high, but that he would put it his board.

335. In a subsequent email to his colleagues, Mr Currie records Mr Grech having now offered a "final" offer of £ 625 million cash and £ 50 million deferred. Mr Currie told his colleagues that he thought that Mr Grech was close to his limit. Mr Currie's response to Mr Grech's offer was that he would take £ 625 cash and £ 75 million deferred to "his side to see if that would be sufficient". Accordingly, Mr Grech had moved very quickly, by splitting the difference between his previous proposal of £ 600 million and Mr Currie's proposal of £ 650 million. I agree with Mr Brocklebank's submission that this is not the approach of someone who held the whip hand in the negotiations, whether as a result of the 15 January email or at all.

336. That was where things rested at the end of 20 February 2015. Mr Grech's notes record that an impasse had been reached: with S&G at £ 625 million cash plus £ 50 million deferred conditional, and Quindell at £ 650 million cash and £ 100 million deferred conditional. At this point in time, the precise nature of the "deferred conditional" obligation had not been nailed down, but there can be no real doubt that the discussions

at this stage were proceeding on the basis that the payment for the NIHL element would be both deferred and conditional.

337. On the following morning, 21 February 2015, there was a discussion between Citi (for S&G) and Rothshild (for Quindell) in a telephone call. The figures under discussion were £ 625 million cash and £ 75 million contingent; i.e. the figures which Mr Currie had said that he would take to his side if they were put forward. However, it does not appear that these sums were actually offered. In an email sent to his colleagues, Mr Grech indicated that he had moved to £ 625 million plus £ 50 million, but that Quindell seemed 'stuck' on £ 725 million. Mr Currie had, however, raised what Mr Grech described as an "interesting idea". The idea was that alongside cash of £ 625 million, there would be payment of £ 100 million "conditional upon revenue or profit generation". This idea was different to the deferred conditional payment previously being discussed, which had been dependent on a certain number of cases settling by a particular date. Mr Currie's evidence was that the idea involved the revenue being split.

338. At 12.31 pm on 21 February, Mr Grech advised his colleagues and S&G advisers that S&G was doing a "top to bottom review" of the model for non-NIHL businesses, in order to satisfy themselves that "we are able to recommend to the Board either that the limit is 625, and if not what the max price we are prepared to pay which represents a compelling acquisition opportunity for our shareholders". They were also going to review their own, and Quindell's, assumptions on NIHL in order to determine the net present value of that body of cases. The purpose of doing this was to "allow us to put a value on the caseload but also to inform the triggers for payment". Watchstone suggested, by reference to a passage in Mr Grech's notes referring to a net present value of £ 50 million, that S&G were willing to make an outright payment of £ 50 million for the NIHL caseload. I do not accept that argument. Throughout the negotiations starting on 19 February, S&G had been discussing a deferred and conditional payment. I do not consider that their position changed. Mr Grech's email at 12.31 pm referred, in the context of NIHL and net present value, to the "triggers for payment". The conditionality of that payment was therefore something which Mr Grech still had well in mind.

339. In a conversation between Mr Currie and Mr Grech at 4.30 pm on 21 February, Mr Grech said that he was not in a position to move beyond £ 625 million cash plus £ 50 million deferred. However, Mr Grech said that further work was being done, and he referred to the modelling work carried out that day. He said that there was to be a board call later that evening. Mr Currie expressed the view to his colleagues that Mr Grech would move up from £ 625 million, but he was not sure how far. He said that they had discussed deferred, and had agreed "the concept and that it is the way to bridge the gap". Mr Currie's evidence confirmed that this was a reference to a split of the revenue and profit.

340. At 8.14 pm on Saturday 21 February, Mr Currie emailed Mr Grech to propose up front cash of £ 650 million and contingent consideration with a minimum value of £ 50 million. This was the first time that a minimum deferred payment (i.e. a "floor") had been proposed by Quindell. The email spelt out the mechanism for calculating and paying the contingent consideration. Quindell recognised internally that S&G were unlikely to agree to the £ 50 million minimum amount: for example, Mr Aston told his colleagues "guess Andrew [Grech] will say no to it". Rothschilds also agreed that S&G were more likely than not to push back on it, given their previous discussion. These

comments stemmed from the fact that Mr Grech's position was known by Quindell to be that S&G would not pay up front for the NIHL cases.

341. On Sunday 22 February, Mr Grech increased the cash offer to £ 640 million. In addition, S&G offered to waive entitlements to payment under the APA, which were worth an additional £ 5 or £ 6 million. Mr Grech also offered uncapped contingent payments in respect of the NIHL cases, largely using the methodology proposed by Mr Currie in his offer of the previous evening. In all these respects, there were significant concessions by S&G, again demonstrating that this was not a negotiation in which they held the "whip hand". The one area of push back was, as anticipated by Quindell and its advisers, that there was no "floor"; in other words, no guaranteed amount, in respect of the NIHL contingent payments.

342. Agreement in principle was reached on that proposal, which was then set out in writing in an email sent by Mr Grech to Mr Currie at 5.24 pm.

343. There is nothing in the sequence of communications which led to agreement on 22 February, or the documents surrounding those communications, which even remotely suggests that S&G was able to obtain the price that it did in consequence of (as Watchstone submitted) "the use of levers including those informed by the PwC Intelligence". On the contrary, it seemed to me that S&G was able to obtain the price that it did because: (i) on the S&G side, it had done a very considerable amount of detailed work in seeking to quantify the sustainable EBITDA of the PSD, and had taken the view as to a fair price which could reasonably be offered for the business, and (ii) on the Quindell side, the price offered represented very good value – a point reinforced by the fact that it was based on an EBITDA which was substantially in excess of the figures which were being discussed internally at Quindell.

344. I was unpersuaded that there was any real or substantial chance of S&G offering more than it ultimately agreed to pay. Mr Currie is a shrewd and experienced businessman, and his perception on 20 February 2015 (when Mr Grech was at £ 625 million plus £ 50 million deferred) was that Mr Grech was close to his limit. In my view, that perception reflected the factual reality on the S&G side. I see no reason to doubt Mr Grech's evidence that Mr Skippen told him not to come back and ask for more than £ 640 million. Mr Skippen thought that the deal was very fully priced, and again that is a conclusion which seems amply borne out by the evidence that I have heard.

345. It is also very clear, in my view, that S&G – for entirely understandable reasons, given the information which emerged on due diligence – would not have been willing to pay upfront for the NIHL. Accordingly, it would need to be posited that for some reason S&G would have paid more for the non-NIHL area of the business. I do not see that there was any real or substantial chance of S&G doing that. When the negotiations began in earnest on 19 February, S&G's EBITDA modelling produced a figure of £ 100 million. On the basis of the multiple on which S&G had been working (a multiple of 6), the value of the business was £ 600 million. The figure of £ 640 million (or £ 645 or £ 646 million, if the APA waiver figure is taken into account) therefore represented a premium over that valuation. It is therefore not surprising that Mr Skippen thought that the deal, as it was, was fully priced.

346. It is true that, at a very late stage, on 22 February 2015, the further modelling by S&G over the weekend indicated EBITDA of £ 118 million for the non-NIHL business.

However, Quindell's argument that this meant that S&G would have been willing to pay a multiple of 6 x 118 million = £ 708 million is in my view fanciful. By the time that this information became available, Mr Currie had shown Quindell's hand and was looking for £ 650 million cash for the non-NIHL business. There is no sensible basis upon which S&G would ever have felt the need to offer a higher sum than that, and the question was how far they were prepared to move towards the £ 650 million figure. The answer was that they would move to £ 640 million, with an additional £ 5 - 6 million represented by the APA element of the transaction. (PwC and S&G advanced other arguments as to why the modelling on 22 February could not be regarded as a satisfactory basis for a substantially increased offer, including that the EBITDA figure was later revised substantially downwards. Since there was no sensible basis on which S&G could, after Mr Currie had shown his hand, go beyond £ 650 million, it is not necessary to deal with those arguments).

Conclusion

347. Accordingly, Watchstone's causation case fails on multiple levels. Watchstone has failed to prove that any of the information in the 15 January email, other than the matters noted by Mr Fowlie, was in fact passed to S&G. They have failed to prove that any such information was recognised as important by Mr Fowlie at the time, or was assimilated by him. They have failed to prove that Mr Fowlie passed on to Mr Grech any of the information in the 15 January email which is relied upon as giving a negotiating advantage. They have failed to prove that any of that information had any impact on the negotiations which took place, and which reached fruition. And they have failed to prove that, but for the alleged breach of confidence, there was a real and substantial chance of a higher offer by S&G than the one that was finally made and agreed upon.

348. On the contrary, I am satisfied on the evidence that the only material information purporting to come from the 15 January 2015 meeting was the information that PwC were no longer instructed by the lenders. This did have an impact in terms of S&G's approach, in that the point was raised with Quindell with a view to enabling the accountants to meet, and this is what in due course happened. This piece of information had nothing to do with the price that was later negotiated for the PSD, and cannot provide the basis for the claim which Watchstone advances. It was not one of the "points of commercial leverage" relied upon by Watchstone.

349. I am also satisfied that the course which the negotiations took was not impacted in any way by any information which had allegedly been passed to Mr Davies by Mr Green. I reject the case that, as Mr Lord submitted in closing, the information in the 15 January email played a material part in S&G's thinking. I also consider that, in the light of the course that negotiations took in February 2015, there is nothing which suggests that (as Mr Lord also submitted) S&G had the upper hand, or was in a position to "boss" the negotiation.

350. There was also, in my view, no real or substantial chance of a higher offer than the one that was made, and certainly none that can be causally related to any of the information allegedly passed at the 15 January 2015 meeting.

CONCLUSION

351. Accordingly, Watchstone's case fails because they have not established that Mr Green passed confidential information to Mr Davies at the 15 January 2015 meeting, for the reasons set out in Section C above. Even if that conclusion were wrong, it also fails on causation grounds for the reasons set out in Section D above.

352. In these circumstances, the claim is dismissed and it is not necessary to deal with other arguments that were advanced by the parties. Since PwC has no liability, the additional claim by PwC against S&G does not arise and therefore is also dismissed.