

NOTES FROM EMPLOYMENT TRIBUNAL HEARING

MR BA LITTLE v (1) MAGELLAN AEROSPACE (UK) LIMITED & (2) MAGELLAN AEROSPACE CORPORATION

4-5 JUNE 2008

Wednesday 4 June 2008 – starts at 1.05pm

BL	WITNESS	AL	CHAIR
			William Dimma (“WD”) is the first witness.
	[Affirms.]		
		We can take WD’s witness statement as read.	
			To make progress with the case, we will have no supplementary questions from AL. We will go straight to the cross-examination of WD. We have new statements in the Bundle to read, which we will do tomorrow morning.
	[Confirms he signed his witness statement. Contents are true to his knowledge and belief.]		
			That is your evidence-in-chief. We can now move on to the cross-examination.
Latter part of paragraph 15 of your witness statement. Can you consider that you did in fact receive my letter on 24 September 2006? It was dated 20 September, but you received it on 24 September.			
	No, I did not see it at that time.		
Incorrect. Think again.			
	No, I assure you I didn’t. The meeting		

BL	WITNESS	AL	CHAIR
	was so garbled, you couldn't produce the letter and discuss it rationally.		
Vol. 6, 2497. This is the letter I gave you at the start of our meeting. Consider your position.			
			He said you didn't give it to him, it doesn't matter how often you ask, he will not change his mind. Let's make progress.
I left my PC with you. It would have had a record of the letter on it. Only possible that I created the letter in advance.			
			Don't answer – no need.
Vol. 7, 2544. Penultimate paragraph: "An electronic copy of the 20 September letter is in my local documents – user name is litbr and password is L1tle. The PC will also be sealed and secured by yourself so that can be used at a later date should that be necessary." I couldn't have created the letter after the 24 th because it's on the PC.			
	No comment re the creation of the letter. We just didn't discuss it at the beginning of our meeting.		
It was the centrepiece of our discussion.			
	The centrepiece was your discomfort at being sacked.		
Simply not true. Vol. 6, 2500-4. My note of our meeting. Records chronology. Starts at paragraph 6.			

BL	WITNESS	AL	CHAIR
These notes were sent to you and you didn't say they were wrong.			
	I was so overwhelmed by emails and memos from you, on advice from counsel and the Board I didn't reply.		
Exactly how many emails in six weeks?			
	An innumerable number.		
There were, in fact, three. Was all the relevant info discussed for the internal report?			
	I think so.		
All documents relevant to my case were included?			
	As far as I know.		
Have you read my witness statement and supplementary witness statement?			
	Tiresomely, yes.		
The internal investigation presumably took place September-November?			
	I don't understand. You were sacked and the Audit Committee ("AC") accepted it as correct.		
Following the investigation into my whistleblowing allegations, you produced a report around 14 November.			
	Show us it.		
Vol. 7, 2676-7. The Respondents say this is the basis of your report. This is your report?			
	This is a letter to you summarising your position.		
This was disclosed by the Respondents in response to a request for your report.			

BL	WITNESS	AL	CHAIR
			The letter is after whatever investigations you did.
3 rd paragraph from the end of 2676.			
	Correct.		
Where in the Bundle are any documents you used to establish the relevant facts?			
			That's an unfair question. Ask him what he used to establish the various facts.
What did you use to establish the various facts?			
	You were terminated. Any aspect of whistleblowing followed your termination. Whistleblowing complaints can only be made to me under the Whistleblowing Policy. Nothing was made to me before termination. The AC decided termination led to whistleblowing, not the other way around.		
What facts?			
	Abusive conduct. Inappropriate use of the F word. Throwing a file. Acting as what us North Americans would call an imperial CEO when you weren't CEO at all. This was discussed with management.		
Discussed with who?			
	Rich Neill ("RN"), John Dekker ("JD"), Jo-Ann Ball ("JBall"), Murray Edwards ("ME").		
They had a vested interest in having me sacked; they were hardly independent regarding the whistleblowing.			

BL	WITNESS	AL	CHAIR
	Whistleblowing was not raised with me until after the fact. You had no right to blow the or a whistle without following the Policy.		
I told RN I'd tell you. The Institute of Directors said do it internally. My letter to JD – I was no longer standing by to let it happen.			
	By my letter (14 November), it was all to do with termination.		
What investigations did you make into: solvency in the UK, engineering overheads, engineering bonuses, Boeing discounts, A340?			
	All investigations were about your termination, not about subsequent claims.		
No points re the certs etc were investigated? Vol. 7, 2522-4. Your own handwriting?			
	Yes.		
I gave you files and offered to return early October?			
	I saw no reason for you to return. I passed your letter on to the AC, CEO and CFO.		
Vol. 7, 2524. Did you obtain the “certs” and ascertain the discussions which took place?			
	When the AC met, we concluded the principal issue was your termination. Whistleblowing came as a result of the termination. We referred the		

BL	WITNESS	AL	CHAIR
	termination back to management.		
You didn't look for the certification documents? Yes or no?			
	Yes, everything referred to was looked at. I can't show evidence that it was passed to you.		
What did I say in those documents?			
			You are badgering the witness. Not appropriate. WD took the view that you only raised concerns with him post-termination as a result of your termination.
	Correct.		
You looked at the information at point 2 on 2524?			
		He said he has.	
What did he do about it?			
			WD took the view that you only raised concerns with him post-termination as a result of your termination. He says you did not raise anything of a whistleblowing nature with him pre-termination. The AC took the view you came to see WD <i>because</i> you were terminated. You raised the issues post-termination <i>because</i> you were terminated.
	I confirm that is correct.		
You should ask RN. Vol. 6, 2338-9. Both these documents were in the dossier you received prior to my termination? This suggested I was concerned about issues prior to termination?			

BL	WITNESS	AL	CHAIR
	It was clear you had concerns.		
It suggests that I was raising issues of substance prior to termination?			
	You should have known that, under the Whistleblowing Policy, any such concerns had to be sent to me as chair of the AC.		
Did you see documents saying I considered informing you?			
			This is not a memory test. Take him to the documents.
Vol. 6, 2377. From A2 dossier, email BL to RN. 2 nd paragraph. I say I should raise these issues with the chairman and if I can't get satisfaction I will go to WD. I am telling my boss I'm going to raise these issues with you.			
	You didn't contact me until after termination.		
		We don't accept BL's interpretation of 2377.	
			I'm not sure how helpful WD is going to be.
Vol. 7, 2676-7. 2 nd paragraph. At that stage you insisted I had contacted you under the Whistleblowing Policy.			
	No, your whistleblowing complaint came <i>after</i> you were terminated but I understood that subsequently you were blowing a whistle.		
Your response was to refer it back to management?			

BL	WITNESS	AL	CHAIR
	Yes.		
Vol. 7, 2637-8. Your email in October. Referring whistleblowing back to management. Or see 2634 – it is all encapsulated in one paragraph.			
	I recall sending that email.		
If I'm blowing the whistle on senior management, how can you pass it back to them for investigation?			
	All three of us on the AC concluded the whistleblowing was a result of you being terminated. Termination is an issue for management.		
Vol. 7, 2676. ME met me. Whistleblowing Policy doesn't require me to go to ME.			
	Not saying that, just that you met ME.		
End of 2676. No "further steps or remedy" required. No "unethical or unlawful acts on the part of the Company or any of its employees." Is that still your view?			
	Yes.		
Nothing I raised concerns you ethically/legally?			
	[Repeats the paragraph in the letter.] That was true then and is true today.		
What points were not concerning you ethically/legally?			
	You're leaping forward to the PWC investigation.		
			I'm not sure he can say much else.
One more thing: "The matters that you were raising were historic. "			

BL	WITNESS	AL	CHAIR
	That means they took place prior to the whistleblowing.		
But UK solvency was a live issue.			
	It just means in the past.		
They were live issues, not historic. UK solvency at termination. Engineering overheads. Stat accounts. Engineering bonuses. A340. On all 5 counts you're incorrect. All were live issues.			
	Historic refers to their origins. I won't quarrel about the use of the word.		
Why did you instruct PWC?			
	You met Barbara Hadfield ("BH"), external auditor, E&Y. Auditors are extremely risk-averse. BH raised the issue with her partners. They felt they had an obligation to meet you.		
Then the AC decided to commission the investigation?			
	Yes. E&Y were sufficiently aware/concerned you had raised these issues, they felt they should investigate further. On UK counsel advice, the AC hired PWC.		
Vol. 2, 585. Transcript of my meeting on 29 January 2007 with PWC: "Meet with AC, PWC and EY but without your lawyers to agree the scope of an investigation". I never had that opportunity, did I?			
	Our view was that the appropriate way to proceed was to hire independent forensic accountants. Appropriate arm's length way to proceed. Terms of		

BL	WITNESS	AL	CHAIR
	reference set between AC and PWC.		
I had no say?			
	No reason why you should.		
It was important.			
	You met with John Tracey, as 585 attests, for a long time. The AC felt PWC investigated your concerns and would discuss further with you.		
Why not share the terms of reference?			
	You're the aggrieved party, we wanted a totally arm's length relationship.		
I saw you in early February at your office.			
	We met in the lobby briefly.		
I said I wanted to work through it with you.			
	I don't recall, but you might well have said so.		
Was I asked to make amendments about factual accuracy? Vol. 8, 3002. Sent by independent lawyers working for the AC. I asked to make comment as I had been advised to do so by Deloitte. I asked if I would be asked to comment on the factual accuracy – it was denied.			
	You met with PWC during the investigation?		
These are specific questions. I asked if I could make comments. This opportunity was denied.			
	In the view of the AC, PWC is a reputable audit firm, a first-class UK forensic accountancy team, capable of		

BL	WITNESS	AL	CHAIR
	getting all the facts for a sound report. They did so. There was no need for other parties' comments.		
Why could the MALUK management comment? It takes longer for me now to bring up factual issues.			
			You don't have to. Not sure WD can help on factual issues. Try a couple.
Major concerns about Airbus A340. \$40m on Magellan balance sheet.			
	Yes.		
Significant challenge to inventory value, significant impact on future asset value and cash recoveries.			
	Yes.		
EAC – estimate at completion document – did the AC look at this regularly?			
	Yes.		
I raised the issue about this in June 2006.			
	Yes.		
Vol. 5, 1830-1. June 2006.			
	Yes.		
Gross profit: 5m loss.			
	Yes, I see the number.		
That didn't appear in the accounts at Q2 when reviewing certs docs – I put a note on 9 August 2006: please discuss A340, Boeing systems integrator kits. I had a discussion on my return on 8 August about that. Did JD tell you I had that discussion?			
	I would like to make a general		

BL	WITNESS	AL	CHAIR
	comment before going into this level of detail.		
			Are you struggling to answer?
	The AC looks at things from a different level of detail. We looked very, very carefully at the draft and final PWC Report, but we didn't get into the exquisite level of detail that BL is now pursuing and JD would have been involved with.		
			Once you received the PWC Report, the AC looked at it but didn't investigate the factual issues on which the conclusions were based.
	The AC read the report, discussed it, but focused principally on the conclusions and no exquisite details at the bottom of the numbers.		
			I'm not sure you'll get more than that.
		JD and RN were cross-examined on this. It's been dealt with.	
			You're expecting too much of WD. You have had a significant opportunity to cross-examine people who dealt with the detail and there is also your own evidence.
Vol. 2, 586-7. Transcript of the same conversation as before, specifically regarding spares etc on the A340 programme/market analysis data. Why was this not factually recorded in the PWC report?			
			The PWC Report was prepared on the basis of information PWC obtained. WD can't say why – it's a matter for PWC.

BL	WITNESS	AL	CHAIR
I'll want to call PWC as a witness.			That's a matter for you to persuade us. We don't want to hear any more now. You won't carry on in that vein. WD is well removed from the nuts and bolts of your case.
Vol. 2, 605, paragraph 240 (draft report). Didn't this give you cause for concern? What, if anything, has been done?			
			This is not in the final report. The final conclusion is more important. Any questions must be answered by PWC.
In April 2008, Magellan disclosed fraud position of \$7m in British Columbia.			
			What's the relevance?
They've had another fraud allegation. Commentary on the overall company.			
			We won't widen our considerations.
It goes to the culture of how they run their business.			
			No. Not relevant.
10 August 2006. You're on holiday, not at the board meeting. You joined by telephone conference.			
	Yes.		
Vol. 1, 294. 9 November board meeting. You are reporting back on the claim and investigation.			
	Yes.		
297C, point 7. 7 December board meeting.			
		JBall may recollect this page is in the	

BL	WITNESS	AL	CHAIR
		bundle of supplementary documents.	
	[JBall finds page 297C.] Yes.		
Remark about E&Y. In your investigation, you spoke to Phil Underwood (“PU”), VP and General Manager in the UK?			
	I don’t recall speaking to him about this issue at that time. I do recall speaking with counsel for advice on the best firm in UK to do the accounting.		
PU agreed in his evidence he didn’t speak to you. 297D “Whistleblower Claim”. PU did advise the board. What in fact did he say or do?			
			WD can’t answer. This is a matter for your own submission.
		This document wasn’t put to PU.	
We didn’t have it then.			
			These are board minutes. No one thinks they’re wrong. Move on.
Publication of statutory accounts in the UK. Is the AC responsible for them at all?			
	They might come up indirectly.		
There is no normal process re the legal obligation to file properly complete stat accounts? AC review?			
	Not in detail. We rely on the CFO to inform the AC of any issues/problems/things to deal with.		

BL	WITNESS	AL	CHAIR
We you aware of any issues in 2004, 2005 or 2006? All the accounts were in breach of the legal deadlines.			
			Why are you asking him that? Why this witness?
The AC, even in a large company, looks at this.			
			He has given his evidence.
Are there any differences between directors' responsibilities in the UK and the USA?			
			We have heard extensive cross-examination of other witnesses on this subject.
WD set the terms of reference for PWC. If you set the terms of reference, you look at the going concern at corporation level.			
	I didn't set the terms of reference for the PWC Report.		
11 of the protected disclosures are to do with the doubtful solvency of MALUK. Why was this not investigated?			
	The terms of reference were set by PWC and the AC, taking account of BL's five issues raised with the AC. The joint decision was that what should have been investigated <i>was</i> investigated.		
The PWC Report deferred and never investigated these issues.			
	We discussed the terms of reference over several weeks – what we did investigate was entirely appropriate.		
Solvency wasn't investigated?			

BL	WITNESS	AL	CHAIR
			We have heard WD's answer. BL can make further submissions on this if necessary.
Are you familiar with the terms "doubtful solvency" or "zone of insolvency"? What responsibilities, or legal obligations to shareholders and creditors, do UK directors have in such situations?			
	I have no idea.		
Are you familiar with the term "shadow director"?			
	I have a very vague knowledge of the term.		
		Why?	
			BL, you can make submissions on this matter. You have made your point that they did not investigate UK solvency.
Were you aware that BL was threatening to resign?			
	Yes.		
Why was he threatening to resign?			
	Generally speaking, it was frustration at not getting his own way on various issues.		
Were you aware of the Supplier Payment Policy in the UK, and that it is a statutory requirement on the directors?			
	I am not aware of that in any detail.		
Directors are obliged to have such a policy under statute. The MALUK policy was stated after the board meeting in 2004.			

BL	WITNESS	AL	CHAIR
<p>Vol. 2, 423. Directors' report. Practices ensuring the directors are aware of the terms of payment under the contracts.</p> <p>My resignation letter. I was making the point to PU and Shawn Smith ("SS"), whose policy to continue paying only when under threat was <i>not</i> a policy consistent with their legal and fiduciary duties.</p>			
			Take him to the document, ask him if he has seen it, if so ask him for comment. You cannot do things in a vacuum.
		You cannot ask a witness why someone else wrote a letter.	
			Yes, but BL asked if WD knew why BL had threatened to resign. It may jog WD's memory if he is shown the document.
Vol. 6, 2123. Why was I threatening to resign?			
			Did WD see that document?
	I may have seen it.		The valid question would be, "If you had seen it, how did you form the view that the real reason for BL threatening to resign was not getting his own way?"
	Companies manage receivables and payables as cash. BL was pushing for more reference to legal than is accepted general practice.		

BL	WITNESS	AL	CHAIR
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Did you think it was appropriate practice?			
	I cannot generalise without knowing more.		
Airbus accelerated £500,000 before my termination and £500,000 to £600,000 post-termination?			
	Yes.		
So, BL was carrying out his obligations, but was being frustrated by SS. JD didn't know until 14 September when he was reminded.			
		Is it a good moment for a short break?	
			Break for 15 minutes until 2.40pm (UK), 9.40am (Canada).
		WD, you must not talk to anyone during the break.	
			[Rises.]

Resumes at 2.41pm

			How much longer will you have with WD?
A couple of hours. It is my intention to finish by 5pm. Vol. 7, 2533. These are the three emails I sent to you, not a "large number" as you said.			
	My comment included emails to other people.		
I was writing for you to call me back. Vol. 7, 2538-41. Are these your notes of the meeting we had on 24 September? There is no signature or date.			

BL	WITNESS	AL	CHAIR
	Yes.		
They have no date?			
	They were made for my own benefit. They were made on the same date as our meeting – 24 September.		
It says we met for “an hour and a half last Sunday.”			
			So the notes cannot have been made on the same day, but were made no longer than 6 days later.
What was I “going on at length” about?			
			Put to him what <i>you</i> say that you discussed.
If we go to my notes. We discussed the Supplier Payment Policy and directors’ responsibilities regarding the zone of insolvency/doubtful solvency.			
	The meeting was conducted in a manner in which BL was distraught. It was a very disjointed meeting.		
It wasn’t.			
	In my view it was.		
			There is no point in pursuing this because you disagree. The ET will decide which version is preferable.
Do you have any memory of a discussion of doubtful solvency?			
	It was very, very briefly discussed.		
I was not asking about reinstatement. You raised it.			

BL	WITNESS	AL	CHAIR
	No. I concluded that you really had not accepted your termination. I accepted that you were distraught. I concluded that you thought that you were still working for the company or would be reinstated.		
By doing what?			
	Working with Airbus and generally making the point that your life was tied up in the company and that you wanted to do everything in your power to ensure it succeeds. And the accounts payable issue.		
We discussed the A380 issues – the greater than £1m figure?			
	Our discussion was not that specific.		
I explained that ME had said that he was not prepared to give MALUK any more money.			
	Yes.		
We discussed that, at that time, MALUK was not a wholly-owned subsidiary as it was still a separate legal entity with no parent company guarantees?			
	No, not in that level of detail.		
I put it to you that we did discuss it.			
	You were rambling and incoherent at times.		
We had discussions on the engineering bonuses?			
	No.		
The revenue recognition policies on Boeing?			
	No, not at that meeting.		

BL	WITNESS	AL	CHAIR
I suggested you look at the B4 folder (examples from North America)?			
	I take objection to you producing a checklist of items, which were only discussed at the most peripheral level, if at all.		
Warren Buffett?			
Do you recall being concerned about taking the dossiers without a lawyer present?			We will have no further detail of this meeting. It is your recollection against his.
	Yes.		
			WD, you suggested a lawyer?
You are familiar with the 100-page PWC Report?	I was concerned that if I accepted the documents, it might be a legal issue if there was no lawyer there. BL would not take them back, so I took them.		
[What were your conclusions?]	The AC, all three members, read it at least twice, but based the vast bulk of our conclusions on PWC's conclusions.		
		They are in the Report!	
I need to know his conclusions. Does the Report actually reflect his conclusions?			The Report stands for itself. Don't ask WD to carry out a memory test or go behind the Report.
			Ask him what he understood by the conclusions.

BL	WITNESS	AL	CHAIR
Vol. 2, 596-7. For the engineering overheads, what did you understand by 2.5(a) to (f)?			
		This is the draft report, but this part is the same as in the final report.	
To do it out of the main report: Vol. 2, 618-9. The design engineering overheads – what did you understand to be PWC’s conclusion?			
	Fundamental best business judgment would have led to a different accounting treatment. In practice, however, judgment counts. This is a difference in opinion, but there was no fraud, no accounting imprudence, no flouting of accounting rules.		
			There we are.
It says the accounting policy was not a problem. But it doesn’t say anywhere that the implementation was correct.			
			No, it says there was a difference of opinion, but the way it was dealt with was not improper or illegal.
	Correct.		
The engineering overheads – in PWC’s experience, these wouldn’t be included at £80,000 to £90,000.			
			Don’t answer that. The PWC Report stands for itself. Ask PWC if you have a problem, not WD. Where does this take us regarding your protected disclosures and your dismissal for those protected disclosures?
It doesn’t.			

BL	WITNESS	AL	CHAIR
			Then don't ask. We need to make progress. You can make submissions or give evidence if you think the PWC Report was deficient.
Vol. 2, 624-5, paragraph 2.30. Boeing revenue generation – what is your understanding of what PWC said?			
	There is a judgment issue here. A verbal agreement was obtained informally, and was not in writing for the first three financial quarters. The accruals were put into the books. After discussion with the auditors, it was reversed for the year-end. In retrospect, there might have been insufficient evidence to take a price increase for the first three quarters. The following June we got the price increases we were hoping for earlier.		
Were you aware that I brought that to JD and RN's attention in mid-August?			
	Yes.		
I was also a senior officer of MAC?			
	Yes.		
What obligations would I have regarding financial reporting and satisfying myself with what was happening at corporation level?			
	All officers and informed employees have a responsibility to voice their concerns.		
What could I do to satisfy myself on a quarterly basis regarding financial accounting?			
	That is a very general question. Explain your concerns, I expect.		

BL	WITNESS	AL	CHAIR
<p>My major concerns re litigation on the A340 Saffron/Aircelle. Escalation and arbitration led to a financial issue and concerns about recovering cash. When was this discussed with me after PWC's initial investigation?</p>			
			<p>This can't help as to whether you made protected disclosures. At the time you were dismissed, you say you made protected disclosures. This witness cannot help us regarding whether you were dismissed for that reason. He was not a decision-maker.</p>
<p>The Ethics Policy refers to the spirit and letter of the law, the spirit of the law being one step beyond the letter of the law. If I am subject to the Ethics Policy, I must pay attention to the spirit of the law. Where did this come from?</p>			
			<p>WD cannot answer and should not have to. This is not relevant to whether you made protected disclosures. Or whether they were protected disclosures or management discussions. Or whether, if they were protected disclosures, you were dismissed for those protected disclosures. That is what you need to focus on.</p>
<p>I will keep going back to the same issues.</p>			

BL	WITNESS	AL	CHAIR
			This will not assist you. The other previous witnesses are relevant, but not this one. We will hear your evidence on this in due course, and we will decide based on that. Do you have any further questions?
<p>[Checks.] I am not going anywhere here in terms of where I thought it would be going.</p> <p>I sent you documents post-termination suggesting that you talk to Paul Precious (“PP”), Clare Pettifer (“CP”) and others. You never made contact with them. Why?</p>			
	<p>You blew the whistle formally, if at all, well after you were terminated. After discussion with the AC and members of management, I concluded that you were terminated because of behavioural issues. We turned back to management how to conclude the matter of your termination and reach a financial settlement. We raised the issue with the external auditors, and the decision was that there was no need for them to contact people internally in the UK.</p>		
			We are back to where we started as I cautioned you earlier. Do you have anything further?
I think you would consider anything else as matters for my submissions and evidence.			
			Yes. AL?

BL	WITNESS	AL	CHAIR
		<p>Back to the early questions. Your enquiries after your meeting with BL on 24 September. You looked at the documents, but formed the view that the whistleblowing was a reaction to BL being dismissed for other reasons. In your investigation of the documents, if you had found anything significant, what would you have done?</p>	
	<p>Convene the AC. Have a meeting with management. Go through the allegations in considerable depth. Take action as a result. This was not done, because we did not view the allegations as appropriate for investigation for the AC at that time. It was only necessary after BL engaged the extremely risk-averse auditing community.</p>		
		<p>Vol. 2, 585. Transcript of a conversation between BL and John Tracey of PWC, 29 January 2007. The joint setting of the terms of reference.</p> <p>Vol. 2, 588 and 590 (590 is actually first chronologically). What is your understanding of the extent to which PWC discussed matters with BL?</p>	
			The seven-hour meeting?
Yes.			

BL	WITNESS	AL	CHAIR
		<p>Thank you.</p> <p>Vol. 2, 590.</p> <p>What was the extent to which PWC was independent?</p>	
	<p>PWC was fully independent. They are experienced forensic accountants. They have been through this sort of thing many times. At no time during the regular updates did we attempt to influence their investigations and conclusions. Some in management think PWC went too far, but there was no interference at any stage.</p>		
		<p>PWC were forensic accountants working in the UK jurisdiction?</p>	
	<p>That is my understanding.</p>		
		<p>Vol. 6, 2123.</p> <p>Penultimate paragraph of the main email: "This means that we can discharge the creditors as suggested with no difficulty."</p> <p>Is this in any way at all consistent with concerns at that time about doubtful solvency regarding whether the company can or cannot pay its creditors?</p>	
			<p>The question is: did you understand that paragraph to be a complaint by BL about doubtful solvency?</p>
	<p>Not specifically. It was just that we could discharge creditors better. The reference to solvency was not dealt with there.</p>		

BL	WITNESS	AL	CHAIR
		Vol. 6, 2123. Top email. Did you consider those emails to be questions of a whistleblowing type, or emails of management discussion?	
	The latter – a discussion of credit terms, rapidity of payment of cash payables, collection of receivables. It is a normal trade-off between members of management.		
		BL has suggested in his witness statement that your consideration of his complaints was nothing more than a whitewash.	
	We discounted his “whistleblowing” as just a result of his termination. It was a management issue and therefore not an issue for the AC, which is made up of external directors.		
		Was that conclusion meant in any way to punish BL for his whistleblowing?	
	It was absolutely the result of our investigation. There was no attempt to punish BL at all.		
			The Panel has no questions.
		One more thing – a correction. WD’s witness statement, paragraph 21. A very small matter – your discussion with JD and JBall – the witness statement states that it was a conference call. JD thinks that you actually met.	
	It is incorrect to say that it was a conference call; it was, in fact, a meeting.		

BL	WITNESS	AL	CHAIR
			Thank you very much. That concludes the evidence for today because ME is not with us until tomorrow.
		Has the Tribunal formed a view on the submissions regarding the statement?	
			<p>We have started to read the statement. We won't finish by tomorrow morning. We will read it then. We will hear submissions relating to the admissibility of the statement on Friday morning.</p> <p>We will also hear any other submissions that need to be made, including relating to witness orders.</p> <p>We will hear submissions on splitting the hearing to liability only. This will allow for a much earlier judgment on liability than would otherwise be the case, and provide longer for BL to be cross-examined on remedy. It would also give us time to hear from experts on remedy if necessary. If you are not agreed, we will make the decision on whether to split the hearing.</p> <p>We will also set dates for the resumption of the hearing in September.</p>
There are a number of witnesses who have evidence on the allegations which have been made since 18 October.			

BL	WITNESS	AL	CHAIR
			<p>We will deal with that on Friday. You are asking us to make new witness orders. We need a summary of why we need them. Check the file for whether the orders were in place for the original hearing.</p>
<p>Four out of five of my witnesses are willing to provide supplementary witness statements on the allegations which have been made since 18 October.</p>			
			<p>It is preferable that every witness has given a witness statement on all matters. We will discuss this on Friday. Identify to AL in advance who the additional witnesses are. Identify what it is that the supplementary witness statements will say. AL will then decide if he wants a written form by July. The only basis for a supplementary witness statement is on the specific allegations in the schedule from October.</p> <p>We will be here again tomorrow.</p> <p>[Rises.]</p>