Paragraph 753 is amended pursuant to the "slip" rule to correct an arithmetical error.

Neutral Citation Number: [2018] EWHC 1040 (Ch)

Claim No: HC-2015-003085

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

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

Date: 8 May 2018

Before:

THE HONOURABLE MR. JUSTICE MARCUS SMITH

- -

SIGNIA WEALTH LIMITED

Claimant

- and -

(1) VECTOR TRUSTEES LIMITED
(as trustee of the Cap Ferret Trust)

(2) MS. NATHALIE DAURIAC-STOEBE

Defendants

- and -

NEW STREET TRUST LIMITED
(as trustee of the Cap Ferret Trust)

Third Party

- and -

GRECCO LIMITED

Fourth Party

- and -

MR. JOHN CAUDWELL

Fifth Party

- -

- -

Ms. Monica Carss-Frisk, Q.C. and **Mr. Edward Brown** (instructed by **Mishcon de Reya LLP**) for the **Claimant**, **Fourth Party** and **Fifth Party**
Mr. Thomas Plewman, Q.C., **Ms. Sarah Ford, Q.C.** and **Ms. Joanne Box** (instructed by **Rosenblatt**) for the **Defendants** and the **Third Party**
Hearing dates: 17-20, 23-26, 30-31 October, 1, 3 and 7 November 2017

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this judgment and that copies of this version as handed down may be treated as authentic

Mr Justice Marcus Smith

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ANNEXES

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Mr. Justice Marcus Smith:

A. INTRODUCTION

1. The Claimant, Signia Wealth Limited ("Signia"[1]), is a private company limited by shares registered in England and Wales with company number 07044573. Signia was incorporated on 15 October 2009. Its articles of association (the "Articles") have been amended, most recently by written resolution passed on 14 August 2013.[2] All references in this Judgment to "Articles" are to these, amended, articles of association.

2. The Articles describe a number of different shares ("Shares", held by a "Shareholder") in Signia. They are as follow:

   (1) "A Ordinary Shares", being A ordinary shares of £1.00 each in the capital of Signia.

   (2) "B Ordinary Shares", being B ordinary shares of £1.00 each in the capital of Signia.

   (3) "C Ordinary Shares", being C ordinary shares of £1.00 each in the capital of Signia.

   (4) "D Ordinary Shares", being D ordinary shares of £0.001 each in the capital of Signia.

   The Articles define "Ordinary Shares" as comprising A, B, C and D Ordinary Shares.

   (5) "Preference Shares", being preference shares of £1.00 each in the capital of Signia.

3. The Articles define the "Investor" as the holder(s) of the A Ordinary Shares. At all material times, the holder of the A Ordinary Shares in Signia was the Fourth Party to these proceedings, Grecco Limited ("Grecco"). Grecco was set up by Mr. Caudwell, the Fifth Party to these proceedings. Grecco is a company registered in Guernsey. Grecco holds the A Ordinary Shares on trust for Mr. Caudwell's children.[3] Grecco also holds, on trust on the same terms, 1,000,000 Preference Shares. Mr. Caudwell is an entrepreneur who, as will be described, invested in Signia.

4. The Second Defendant is Ms. Nathalie Dauriac. Ms. Dauriac was, until recently, married to a Mr. Konrad Stoebe and, when married, went by the name of Ms. Dauriac-Stoebe, the name in which she has been claimed against in these proceedings. I shall refer to her, as she was referred to during the course of the trial, as Ms. Dauriac.

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[1] The terms and abbreviations used in this Judgment are listed in Annex 1 hereto, which identifies the paragraph in the Judgment where each term/abbreviation is first used.

[2] The history of the articles of association was described on Day 1/p.102, but nothing turns on this.

[3] Day 1/p.75.

5. Prior to the termination of her employment – which is a matter that will have to be considered in due course in this Judgment – Ms. Dauriac was employed as the chief executive officer of Signia. The terms of her employment are set out in a written service agreement (the "Service Agreement"), signed on 12 February 2010.

6. The Articles from time-to-time make reference to a "Manager" (see, for instance, Article 6.2). Manager, according to the Articles, has the meaning given to it in the "Shareholders' Agreement". "Shareholders' Agreement" is itself not a defined term in the Articles of Association. I consider – and so find – that the reference to a Shareholders' Agreement is a reference to an agreement of that name dated 15 February 2010. The Shareholders' Agreement defines Ms. Dauriac as "Manager". Grecco is defined as the Investor – using the same term as used in the Articles.[4]

7. The following Shares were allocated by Signia to Ms. Dauriac on the following dates:

(1) On 15 February 2010:

(a) 20,000 B Ordinary Shares;

(b) 78,000 C Ordinary Shares.

(2) On 8 April 2011:

(a) 20,000 re-designated B Ordinary Shares;

(b) 78,000 re-designated C Ordinary Shares.

8. These Shares, which I shall refer to as the "Dauriac Shares", were transferred by Ms. Dauriac to the original First Defendant in these proceedings, Marlborough Trust Company Limited ("Marlborough"), to be held on trust for her. That trust is known as the "Cap Ferret Trust". Marlborough was succeeded as trustee of the Cap Ferret Trust and as First Defendant by Vector Trustees Limited ("Vector").[5] Vector was then succeeded as trustee by New Street Trust Limited ("New Street").[6] Permission to amend the pleadings so as to replace Vector with New Street was given on Day 1 of the Trial (17 October 2017).[7]

9. The Dauriac Shares (at that time held by Marlborough) were transferred away from Marlborough (pursuant to a procedure that is described below) on 30 June 2015. Neither Vector nor New Street ever held the Dauriac Shares pursuant to the Cap Ferret Trust or had any proprietary interest in those shares, although (as I have described) each was a trustee of the Cap Ferret Trust. The trustee – now New Street – is a party to these proceedings because some of the claims in these proceedings involve the trust, rather than Ms. Dauriac personally.[8]

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[4] See paragraph 3 above.

[5] Marlborough was trustee until 25 January 2017, when Vector assumed responsibility as trustee.

[6] Vector was trustee until 3 October 2017, when New Street assumed responsibility as trustee.

[7] Day 1/p.3. At the time of this Judgment, this change had not formally been reflected in the pleadings. However, this Judgment will refer to New Street as the First Defendant to these proceedings.

[8] The somewhat convoluted procedural history regarding the trustee is described at Day 1/pp.118*ff*.

10. Article 6.2 of the Articles provides that (subject to certain exceptions), "no Manager being a Shareholder may during the period of seven years from becoming a holder of Shares except with Investor Consent (which shall not be unreasonably withheld in the case of a transfer to the trustees of a trust for the benefit of the Transferor and his or her family or to a transfer on a change of trustees (any such transfer being a "Permitted Transfer" and the transferee being a "Permitted Transferee") transfer any Shares whilst the Investor is a Shareholder".

11. In this case, it was common ground that Ms. Dauriac's transfer of the Dauriac Shares to Marlborough was "a transfer to the trustees of a trust for the benefit of the Transferor and his or her family" within Article 6.2. Although I was shown no evidence of Investor Consent to these transfers, it was admitted on the pleadings that such transfers had taken place,[9] and I proceed on that basis.

12. The Dauriac Shares were compulsorily transferred away from Marlborough to Grecco pursuant to a procedure set out in Articles 6.21*ff*, at a (total) price of £1.00 for the B Ordinary Shares and a (total) price of £1.00 for the C Ordinary Shares. The date of transfer was 30 June 2015.

13. The Shareholders (disregarding the Preference Shares) immediately prior to this process of compulsory transfer were as follows:

Name	A Ordinary Shares	B Ordinary Shares	C Ordinary Shares	Total (%)
Grecco	204,000	0	0	204,000 (51%)
Marlborough	0	40,000	156,000	196,000 (49%)
Total	204,000	40,000	156,000	400,000 (100%)

Table 1 Shareholders in Signia immediately prior to the compulsory transfer

14. It will be necessary to describe this process of compulsory transfer in some detail, and to identify and resolve a number of issues that this process gives rise to. For the present, all that needs to be noted is that whether this process was properly followed is controversial.

15. In these proceedings, as pleaded in its Particulars of Claim, Signia seeks various declarations regarding the compulsory transfer process. In very brief summary, taken together, they amount to a declaration that the compulsory transfer process was properly carried out and that the value of the Dauriac Shares is as attributed by that process. The Defendants – New Street and Ms. Dauriac – have filed a detailed Defence disputing Signia's claims.

16. By a Part 20 Claim, Ms. Dauriac makes various claims against Signia, New Street, Grecco and Mr. Caudwell. The details are pleaded in Re-Re-Amended Particulars of Additional Claim (the "Part 20 Particulars"). In her turn, Ms. Dauriac seeks various declarations in respect of the compulsory transfer process, but also damages for breach of various agreements, damages for the tort of procuring these breaches of contract and

[9] See paragraph 7 of Signia's Re-Amended Particulars of Claim (the "Particulars of Claim") and paragraph 27 of Ms. Dauriac's Re-Re-Re-Amended Defence (the "Defence"). See also Day 2/p.79 (cross-examination of Mr. Canfield).

damages for conspiracy to injure. Although it will be necessary to consider these additional claims in their own right, the validity and strength of these claims essentially turns on the same or similar issues as those which arise out of the declarations sought by Signia in the Particulars of Claim and by Ms. Dauriac in the Part 20 Particulars.[10]

17. Although there are multiple parties to this dispute, there are only two sides: Mr. Caudwell (comprising Signia, Grecco and Mr. Caudwell himself) and Ms. Dauriac (comprising Ms. Dauriac herself and New Street). Save where it is necessary to do so, I shall not differentiate between the various parties comprising each side, but shall refer to Mr. Caudwell and Ms. Dauriac.

18. It is necessary for this Judgment to begin with an analysis of the compulsory transfer process pursuant to which Grecco acquired the Dauriac Shares. The relevant provisions regarding this process are described in Section B(1). Section B(2) then identifies a number of issues that arise out of this compulsory purchase process.

B. THE COMPULSORY TRANSFER PROCESS

(1) An analysis of the compulsory transfer process

(a) The triggering event

19. Article 6.21 of the Articles describes the "Transfer Events" that serve to trigger the compulsory transfer process. Article 6.21 identifies five Transfer Events, only one of which is relevant in these proceedings, which is that set out in Article 6.21.3.

20. Article 6.21.3 provides that a Transfer Event exists, in relation to any holder of B Ordinary Shares, C Ordinary Shares or D Ordinary Shares (or, where the relevant Shares are held by a nominee or have been transferred to a Permitted Transferee, the original holder of the relevant shares), where a holder becomes a Leaver.[11]

21. The Articles define a "Leaver" in the following terms:

> "a holder who is an individual and who is or was previously a director or employee of [Signia] ceasing to hold such office or employment and as a consequence no longer being a director or employee of [Signia] unless the Investor notifies [Signia] within one month of the matter coming to his attention that such event is not a Transfer Event in relation to that holder for the purposes of Articles 6.21 to 6.25".[12]

22. Article 6.25 provides, in relation to when a holder becomes a Leaver:

> "For the purpose of Article 6.21.3 the date upon which a holder becomes a Leaver shall be:
>
> 6.25.1 where a contract of employment or directorship is terminated by the employer giving notice to the employee of the termination of the employment or directorship, the date of expiry of that notice (whether or not a payment is made by the employer in lieu of all or

[10] As Mr. Plewman, Q.C. accepted (Day 1/p.129).

[11] It will be noted that the provision does not apply to the A Ordinary Shares held by Grecco.

[12] I should make clear that when quoting from documents, I have corrected minor typographical errors, where this does not affect the sense. Substantive changes – as where I have used a term defined in this Judgment, rather than the term in the document – are marked by the use of square brackets "[…]".

part of the notice period required to be given by the employer in respect of such termination);

6.25.2 where a contract of employment or directorship is terminated by the employee by giving notice to the employer of the termination of the employment or directorship, the date of expiry of that notice;

6.25.3 save as provided in Article 6.25, where an employer or employee wrongfully repudiates the contract of employment and the other accepts that the contract of employment has been terminated, the date of such acceptance;

6.25.4 where a contract of employment is terminated under the doctrine of frustration, the date of the frustrating event;

6.25.5 where a contract of employment or directorship is terminated for any reason other than in the circumstances set out in Articles 6.25.1 to 6.25.4 above, the date on which the action or event giving rise to the termination occurs."

(b) The Deemed Transfer Notice

23. Upon the happening of a Transfer Event, the holder in question is (by virtue of Article 6.22) "deemed to have immediately given a Transfer Notice in respect of all the Shares then held by him". This is described as a "Deemed Transfer Notice".

24. A Deemed Transfer Notice is to be contrasted with a "Transfer Notice", which is a term defined in Article 6.5.

(c) The process of sale of the Shares the subject of the Deemed Transfer Notice

25. Article 6.23 states that "[t]he shares the subject of any Deemed Transfer Notice shall be offered for sale in accordance with Articles 6.5 to 6.13 as if they were Sale Shares in respect of which a Transfer Notice had been given save that…". There then follow various provisions that serve to modify or exclude the application of the provisions in Articles 6.5 to 6.13.

26. "Sale Shares" are the Shares the subject of a Transfer Notice under Article 6.5.

27. It is proposed to set out the material provisions of Article 6.23, before considering which parts of Articles 6.5 to 6.13 pertain:

(1) Article 6.23.1 provides that a "Deemed Transfer Notice shall be deemed to have been given on the date of the Transfer Event or, if later, the date upon which the Investor becomes aware that the relevant event is a Transfer Event and has notified [Signia] that the relevant event is a Transfer Event".

(2) Article 6.23.5 provides that "the Prescribed Price shall be as set out in Article 6.24". As to this:

(a) Article 6.24 provides as follows:

"6.24 The Prescribed Price for any Sale Shares which are the subject of a Deemed Transfer Notice given as a consequence of a Transfer Event shall be:

6.24.1 in the case of a Good Leaver:

A Ordinary Shares = the lower of Fair Value and Exit Value

B Ordinary Shares = the lower of Fair Value and Exit Value

C Ordinary Shares:

Within 24 months of Employment Start Date – Issue Price

Within 36 months of Employment Start Date – 20% the lower of Fair Value and Exit Value

Within 48 months of Employment Start Date – 40% the lower of Fair Value and Exit Value

Within 60 months of Employment Start Date – 60% the lower of Fair Value and Exit Value

Within 72 months of Employment Start Date – 80% the lower of Fair Value and Exit Value

Within 84 months of Employment Start Date – 100% the lower of Fair Value and Exit Value

Thereafter – the lower of Fair Value and Exit Value

D Ordinary Shares = the lower of Issue Price and Fair Value; and

6.24.2 in the case of a Bad Leaver:

A Ordinary Shares = the lower of Fair Value and Exit Value

B Ordinary Shares = the lower of Issue Price and Exit Value

C Ordinary Shares:

Within 36 months of Employment Start Date – Issue Price

Within 48 months of Employment Start Date – 25% of the lower of Fair Value and Exit Value

Within 60 months of Employment Start Date – 50% the lower of Fair Value and Exit Value

Within 72 months of Employment Start Date – 75% the lower of Fair Value and Exit Value

Within 84 months of Employment Start Date – 100% the lower of Fair Value and Exit Value

Thereafter – the lower of Fair Value and Exit Value

D Ordinary Shares = the lower of Issue Price and Fair Value; and

6.24.3 in the case of an Incapacitated Good Leaver the lower of Fair Value and Exit Value, irrespective of the class of the Sale Shares."

(3) The Prescribed Price laid down by Article 6.24 thus turns upon a combination of factors: *(i)* the type of Leaver that a Shareholder is; *(ii)* the type of Ordinary Share that he or she holds; and *(iii)* the length of time since the Leaver's Employment Start Date. The first two factors determine which of "Fair Value", "Exit Value" or "Issue Price" is used for the purpose of valuation. The third factor can affect whether only a percentage of that price is to be paid.

(4) Article 6.24 makes reference to a number of defined terms:

(a) There are three types of Leaver:

(i) A "Good Leaver" is:

"a person who is a Leaver as a result of:

(a) his/giving notice to terminate their employment when not in breach of their terms of employment and where such notice of termination will expire five years or more after the Employment Start Date; or

(b) summary dismissal or service by [Signia] of notice to terminate the employment of a person when (1) [Signia] has no right to summarily dismiss such person without notice or (2) such person is not an Under Performer as defined in his contract of employment".

(ii) An "Incapacitated Good Leaver" is:

"a person who is a Leaver as a result of:

(a) death; or

(b) Serious Ill Health or permanent disability; or

(c) summary dismissal in accordance with a person's contract of employment for mental incapacity or long term absence".

(iii) A "Bad Leaver" is:

"any Leaver who is not a Good Leaver or an Incapacitated Leaver".

(b) The "Employment Start Date" means "the date that the relevant person becomes an employee and/or director of [Signia]".

(c) As noted, Article 6.24 references three different Share values – "Fair Value", "Exit Value" and "Issue Price":

(i) "Fair Value":

"for the purposes of these Articles means as determined between the Board and the Investor; save that where a Leaver indicates that he does not agree with such valuation, as determined by an Independent Valuer as at the date of the Transfer Event (such valuation to be on the basis of a

willing buyer and a willing seller and shall not take any account of whether the Shares comprise a majority or a minority interest nor the fact that transferability is restricted by the Articles)".

(ii) "Exit Value" means:

"the aggregate of the consideration received or unconditionally to be received from the purchaser by the holders of the Shares on or following an Exit".

"Exit" means:

"the sale of the whole of the issued share capital of [Signia] to a third party for value which includes a payment for each Preference Share of the Issue Price thereof".

(iii) "Issue Price" means:

"in respect of a Share in the capital of [Signia], the aggregate of the amount paid up (or credited as paid up) in respect of the nominal value and any share premium".

(5) Article 6.23.6 provides that "the share certificate for any Shares for which no buyers are found, will be deposited by the Proposing Transferor with [Signia] pending an Exit and pending such Exit all Shares the subject of a Deemed Transfer Notice shall carry no rights to vote at any meeting or class meeting of members of [Signia]."

28. Articles 6.5 to 6.13 operate in accordance with Article 6.23, but subject to and not in derogation from the compulsory transfer procedure:

(1) Most of Article 6.5 – which relates to an actual Transfer Notice, as opposed to the Deemed Transfer Notice under the compulsory transfer procedure – is inapplicable. The exception is that part of Article 6.5 constituting Signia the agent of the Proposing Transferor.

(2) Article 6.6 is excluded by the provisions of Article 6.24.

(3) Articles 6.7 and 6.8, which provide for the offering of Shares for sale following the ascertainment of the Prescribed Price are applicable.

(4) Article 6.9 expressly does not apply, by virtue of Article 6.23.2.

(5) Articles 6.10 to 6.13 are applicable.

(2) Issues arising out of the compulsory transfer process

29. The compulsory transfer process gives rise to a number of the issues between the parties which are important for the determination of these proceedings. It is helpful to identify them now, even though I do not propose to resolve them until later on in the Judgment:

(1) *Bifurcation between the Leaver and the holder of the Dauriac Shares.* As I have described, the Dauriac Shares were properly transferred by Ms. Dauriac to Marlborough. Thus, although Ms. Dauriac was, according to Signia, a Leaver, the shares the subject of the compulsory transfer process were not held by her, but by Marlborough pursuant to a Permitted Transfer by Ms. Dauriac. It is necessary to consider whether this bifurcation affects the operation of the compulsory transfer process.

(2) *Leaver or non-Leaver?* On the face of the pleadings, it is in dispute as to whether Ms. Dauriac was a Leaver within the meaning of the Articles.[13] During the course of the trial it appeared to be accepted by Ms. Dauriac that she was a Leaver. Nevertheless, given the fact that the point was not formally conceded, it is appropriate briefly to consider and determine the point.

(3) *Good Leaver or Bad Leaver?* Whilst the fact that Ms. Dauriac was a Leaver became relatively uncontentious, what was disputed is the type of Leaver Ms. Dauriac was. Neither party contended that Ms. Dauriac was an Incapacitated Good Leaver. Signia contended that Ms. Dauriac was a Bad Leaver; and Ms. Dauriac contended that she was a Good Leaver.

(4) *The date of the Transfer Event.* The timing of the Transfer Event determines when the Deemed Transfer Notice is deemed to have been given. This involves consideration of precisely when Ms. Dauriac's employment with Signia ceased.

(5) *The date of Ms. Dauriac's Employment Start Date.* As has been described, the duration of Ms. Dauriac's employment (i.e. the temporal gap between her Employment Start Date and the date of the Transfer Event) is one of the factors affecting the value that is attributed to the Dauriac Shares.

(6) *The value to be ascribed to the Dauriac Shares.* As has been noted,[14] the Articles contain three different valuation approaches or measures. Which measure applies turns upon some of the issues identified in this paragraph. Essentially, the following questions arise:

(a) First. what is the appropriate measure?

(b) Secondly, has that measure appropriately been applied so as to properly obtain a value for the Dauriac Shares? In other words, has the compulsory transfer process properly been followed so that the value attributed to the Dauriac Shares by Mr. Caudwell binds Ms. Dauriac?

(c) Thirdly, if not, what value is to be attributed to the Dauriac Shares, applying that measure?

C. STRUCTURE OF THE JUDGMENT

30. This Judgment deals with the following matters:

[13] See paragraph 10 of the Particulars of Claim and paragraph 81 of the Defence.

[14] See paragraph 27(4)(c) above.

(1) Section D describes the witnesses who gave evidence before me.

(2) Sections E, F and G set out a detailed factual history of Signia and Ms. Dauriac's relationship with Signia. An understanding of this history is essential in order to be able to determine the issues arising out of the compulsory transfer process. These sections are necessarily lengthy. Specifically, they consider:

(a) The events surrounding the establishment of Signia, including a description of a number of documents and instruments important to understanding the foundation and operation of Signia (Section E).

(b) The financial performance and metrics of Signia between the date of its establishment in 2010 to Ms. Dauriac's departure in December 2014/January 2015 (Section F).

(c) The events of 2014 (Section G). Section G considers the events that lead to Ms. Dauriac's departure from Signia. One of the main topics to be covered is an inquiry conducted into Ms. Dauriac's expenses. That inquiry features centrally in the allegations between the parties as to why Ms. Dauriac left Signia, and necessarily must be considered in detail. But the events preceding that inquiry also matter, and this section therefore considers the events of 2014 quite generally.

(3) As part of her Defence, Ms. Dauriac relied upon "similar fact" evidence, concerning events at another company in which Mr. Caudwell had an interest, Pure Jatomi Fitness ("Pure Jatomi"). Section H considers this similar fact evidence, including questions relating to its admissibility and its relevance.

(4) At this point in the Judgment, it is possible to return to, and determine, the various questions and issues arising out of the compulsory transfer process. Sections I to N consider these issues in the order they have been set out in paragraph 29 above.

(5) Section O considers the declarations that it is appropriate to make in light of the findings in the Judgment. Section O also deals with the related breach of contract and tort claims advanced by Ms. Dauriac.

D. THE WITNESSES

(1) Introduction

31. I heard evidence from a number of factual witnesses. Additionally, I heard evidence from two experts in the valuation of companies, Mr. Robert Sharp (who was called by Ms. Dauriac) and Dr. Min Shi (who was called by Mr. Caudwell).

(2) Factual witnesses called by Mr. Caudwell

(a) List of witnesses called

32. Mr. Caudwell called the following witnesses in the following order:

(1) Mr. David Canfield.

(2) Mr. Timothy (Tim) Maycock.

(3) Mr. John Caudwell.

(4) Ms. Katherine (Kate) Cooper.

(5) Ms. Janet Tarbet.

(6) Ms. Rebekah Caudwell.

(7) Ms. Victoria Olszewska.

(8) Mr. Paul Lester.

(9) Mr. David Hayes.

(10) Mr. Daniel Ward.

(11) Mr. Michael Fenton.

(12) Mr. Michael Balfour (who was, however, interposed and called after Ms. Dauriac had given her evidence).

(b) Mr. David Canfield

33. Mr. Canfield is by training an accountant and, after a career with (amongst others) British Leyland, the Volvo Bus Corporation and British Nuclear Fuels, he was introduced to and began working for Mr. Caudwell in 2007. From late 2007 until the spring of 2008, Mr. Canfield transitioned from his role at British Nuclear Fuels to a new role that Mr. Caudwell offered him. Mr. Canfield's new role became full-time when he left his employment with British Nuclear Fuels on 31 March 2008.

34. Mr. Canfield operated as Mr. Caudwell's right-hand in relation to his business and financial affairs. In 2011, Mr. Caudwell caused to be incorporated a company called JDC Investments Limited ("JDC"). JDC employed Mr. Canfield and others (such as Mr. Maycock) and it provided accountancy and other support services to Mr. Caudwell and his interests. Mr. Canfield was a director of JDC and of a number of other Caudwell companies, including Signia.

35. Mr. Caudwell was a delegator. In any new venture, it was his practice to be heavily involved in the strategic planning, and then to adopt a hands-off approach. His approach appears to have been similar if some problem emerged out of his business interests: he would be involved in the strategic issues but would delegate the detail. One of the persons to whom the important detail was delegated was Mr. Canfield.[15]

36. Mr. Canfield made two witness statements, the first dated 9 March 2017 ("Canfield 1") and the second dated 5 September 2017 ("Canfield 2"). Mr. Canfield gave evidence on Days 2 and 3 of the trial (18 and 19 October 2017).

[15] See, for example, the evidence at Day 2/p.30 (cross-examination of Mr. Canfield); Day 4/pp.176*ff* (cross-examination of Mr. Caudwell); Day 5/pp.17*ff* (cross-examination of Mr. Caudwell).

37. Mr. Canfield presented as a careful and competent person. He gave his evidence clearly and, within his limits, honestly. By this I mean that Mr. Canfield was a very loyal servant to Mr. Caudwell, with all the advantages and disadvantages that this entails. Mr. Canfield was assiduous in furthering and protecting Mr. Caudwell's interests. But, conversely, he was – entirely unsurprisingly – disinclined to cross his boss, even if Mr. Caudwell's interests required this. This can clearly be seen in the investigation that Mr. Canfield commenced, in 2014, into Ms. Dauriac's expenses. It is obvious – as is described in greater detail below – that Mr. Canfield was deeply reluctant to inquire into Ms. Dauriac's conduct at Signia until it was clear that such an inquiry would not discombobulate Mr. Caudwell. Mr. Canfield was – again, entirely unsurprisingly – unwilling to acknowledge this in his evidence, but this meant that his explanations as regards the commencement of his inquiry into Ms. Dauriac (the inquiry, at this stage, proceeded either slowly or not at all) were unsatisfactory, indeed non-existent.

38. Mr. Caudwell described Mr. Canfield as "hugely respected amongst everybody, all our associates. I've never found him anything other than the most honest, diligent and fair person…".[16] Subject to the proviso that everything that Mr. Canfield did was to further or defend Mr. Caudwell's interests, and to ensure that he (Mr. Canfield) did not incur Mr. Caudwell's displeasure, I would agree with this description.

(c) Mr. Tim Maycock

39. Mr. Maycock is an employee of JDC, reporting to Mr. Canfield, but he dealt face-to-face with Mr. Caudwell when occasion arose.[17] He trained and qualified as an accountant at PwC.

40. Mr. Maycock made one witness statement, dated 9 March 2017 ("Maycock 1"). Mr. Maycock gave evidence on Days 3 and 4 of the trial (19 and 20 October 2017).

41. Mr. Maycock was a self-confident and articulate witness. He gave his evidence clearly and, as I consider, entirely reliably. Although employed by Mr. Caudwell – through JDC – his evidence was not, in my judgment, affected by this fact. Mr. Maycock was straightforward and impartial in his evidence.

(d) Mr. John Caudwell

42. Mr. Caudwell was a successful entrepreneur, having developed and then sold the mobile telephone retailer, Phones 4U, for around £1.5 billion. Since 2006, when Phones 4U was sold, Mr. Caudwell has focussed on charitable and philanthropic activities, but he has retained interests in various businesses, including Signia.

43. Mr. Caudwell made two witness statements, the first dated 3 March 2017 ("Caudwell 1") and the second dated 5 September 2017 ("Caudwell 2"). He gave his evidence on Days 4 and 5 of the trial (20 and 23 October 2017).

44. Mr. Caudwell was a formidable man, who clearly knew his own mind and was, in my judgment capable of acting decisively, even ruthlessly. As I have described Mr. Caudwell was a delegator: he would take the broad strategic decisions and leave it to

[16] Day 5/p.110 (cross-examination of Mr. Caudwell).

[17] Maycock 1/para. 5; Day 3/p.217 (cross-examination of Mr. Maycock).

others to implement. However, I do not consider that Mr. Caudwell would allow his delegation of work to operate in an uncontrolled manner. The evidence in this case shows that Mr. Caudwell – as one would expect – kept a supervisory eye on what his subordinates were doing.

45. Mr. Caudwell was also an emotional man. He and Ms. Dauriac had obviously formed a close friendship, which unravelled and then ruptured – in circumstances that I will have to consider in some detail – in the course of 2014. Mr. Caudwell did not seek to minimise his own upset at this rupture and what he regarded as a betrayal by Ms. Dauriac. I obviously must bear in mind the extent to which these events have coloured Mr. Caudwell's recollection. I have no doubt that they did, but I consider that Mr. Caudwell, in giving his evidence, was doing his best to be as objective as he could.

46. As a witness, Mr. Caudwell was clear and articulate. It was suggested, in cross-examination, that he had come pre-prepared with certain speeches or points that he would deploy at appropriate points in his cross-examination. I reject that suggestion: I consider that – subject to the qualification I have made about Mr. Caudwell's objectivity being clouded by emotion – Mr. Caudwell's evidence was reliable.

47. In his first statement, Mr. Caudwell stated that he suffered from Lyme disease: one of the symptoms of this disease is that it can impact upon memory.[18] In both his statements and his oral testimony, Mr. Caudwell was careful to say when he could not remember something. He was also careful to differentiate between his actual recollection and reconstruction (i.e. what, based on the documents and the evidence of others, he considered he would have done or said, but without specific recollection).

(e) Ms. Kate Cooper

48. Ms. Cooper was, at all material times, an employee of Signia, although when she gave evidence to the court her role had become that of a consultant to Signia.[19] Ms. Cooper was the chief compliance officer of Signia.

49. Ms. Cooper was one of a number of employees or former employees of Signia to give evidence. The others (described further below) were Ms. Tarbet, Ms. Olszewska, Mr. Hayes, Mr. Ward and Ms. Degruttola. An organogram, setting out the structure of Signia, is appended hereto at Annex 2.

50. The investigation into Ms. Dauriac had a polarising effect on the Signia employees. At some stage in the process – and for some it was earlier than others – they were forced to choose or to change sides between Mr. Caudwell and Ms. Dauriac. For Ms. Cooper, this occurred during the process of the investigation, when she stopped assisting Ms. Dauriac and began to assist Mr. Canfield. The point at which this occurred can be timed very precisely, from the date of her conversation with Mr. Canfield on 17 December 2014.[20] The difficulties in recollection and impression that this gives rise to is a matter I have taken into account.

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[18] Caudwell 1/paras. 3-4.

[19] Day 6/p.2 (examination in-chief of Ms. Cooper).

[20] See paragraph 429 below.

51. Although Ms. Cooper was giving evidence for Mr. Caudwell, and against Ms. Dauriac, I found her to be a measured and objective witness. I consider that she was, justifiably, proud of her position in Signia and her performance in that position. She gave her evidence carefully, and I consider that I can place reliance on it.

52. Ms. Cooper made one witness statement in these proceedings, dated 9 March 2017 ("Cooper 1"). She gave evidence on Day 6 of the trial (24 October 2017).

(f) Ms. Janet Tarbet

53. Ms. Tarbet was, at all material times, Signia's chief operating officer. She made one witness statement, dated 9 March 2017 ("Tarbet 1") and gave evidence on Day 6 of the trial (24 October 2017).

54. Ms. Tarbet was one of those who began assisting Ms. Dauriac in responding to the expenses investigation, but who ended up giving evidence for Mr. Caudwell. I have borne this in mind. I find that Ms. Tarbet was a straightforward witness, doing her best to assist the court.

(g) Ms. Rebekah Caudwell

55. Ms. Caudwell is Mr. Caudwell's daughter and was, at the material times, a friend of Ms. Dauriac. As Mr. Caudwell's daughter, giving evidence on his behalf, I was naturally alive to a pre-disposition in favour of Mr. Caudwell. When giving evidence, Ms. Caudwell was frank, clear and careful in her evidence, and I find that she gave her evidence objectively. I found her evidence transparent, both in terms of its clarity and its neutrality.

56. Ms. Caudwell made one witness statement dated 27 February 2017 ("R. Caudwell 1") and gave evidence on Day 6 of the trial (24 October 2017).

(h) Ms. Victoria Olszewska

57. Ms. Olszewska was employed by Signia as a receptionist for five months. She reported to Ms. Dauriac's personal assistant, Ms. Degruttola. She assisted in processing expenses and in filling out expenses forms.

58. Her evidence was limited in scope and ambit and she gave it honestly. She made a single witness statement dated 30 January 2017 ("Olszewska 1") and gave evidence on Day 6 of the trial (24 October 2017).

(i) Mr. Paul Lester

59. Mr. Lester was the non-executive chairman of Signia. His role was an advisory one, and he was at the material times neither a director[21] of nor a shareholder in Signia. He presented as an experienced and competent businessman.

60. Mr. Lester was drawn into the later stages of the expenses investigation. He saw his role very much as a mediator or middleman, steering a course between Mr. Caudwell

[21] He is now a director: Day 6/p.152 (examination in-chief of Mr. Lester).

and Mr. Canfield on the one part and Ms. Dauriac on the other. Ms. Dauriac took him into her confidence on certain matters.[22] Mr. Lester described his role as follows:[23]

> "…I think it should be recognised that my non-executive capacity was supposedly two days a month, so the advice doesn't exactly come every day, it comes in bits and drabs, usually when you get a phone call, sometimes you haven't got the full facts in front of you, but part of the job of a chairman is to be on the side of the shareholder when that's necessary and on the side of management. You end up as that person in the middle, and so I played that role a little bit, which this is an example of, and then I played other roles of trying to solve problems that Nathalie had and the business had so that she could get on with what she did best, which you pointed out she was very good in going out and getting business."

I consider that this very aptly states the role that Mr. Lester played.

61. Mr. Lester made one statement dated 8 March 2017 ("Lester 1") and gave evidence on Day 6 of the trial (24 October 2017).

(j) Mr. David Hayes

62. Mr. Hayes is now the managing director of Hyde Park Finance Limited, a business he established (with the assistance of Mr. Caudwell[24]) in February 2015. Prior to that, Mr. Hayes had been employed by Signia as the head of debt structuring and real estate. He resigned from Signia on 16 October 2014.

63. Mr. Hayes was involved in the investigations into the expenses of both Ms. Dauriac and Mr. Wilson (another employee of Signia, who also gave evidence[25]). In the case of Ms. Dauriac, he was the whistleblower who provided information in relation to Ms. Dauriac's expenses to Mr. Canfield. In the case of Mr. Wilson, Mr. Hayes fanned the flames of an expenses investigation.

64. It was apparent that Mr. Hayes did not like either Ms. Dauriac or Mr. Wilson, and it was this dislike that I find was his prime motivator in his actions against them. I have therefore treated his evidence with a measure of care, in case this dislike influenced his evidence. When giving evidence, however, my impression of him was that he was doing his best to assist the court, and he gave his evidence straightforwardly. Nevertheless, on points that are material, I have sought to cross-check his evidence against other evidence in the case.

65. Mr. Hayes made one witness statement dated 23 February 2017 ("Hayes 1") and he gave evidence on Day 7 of the trial (25 October 2017).

(k) Mr. Daniel Ward

66. Mr. Ward was employed by Signia as financial controller between 10 October 2011 and 12 December 2014. He made one witness statement in these proceedings dated 23

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[22] Day 6/p.156 (cross-examination of Mr. Lester).

[23] Day 6/pp.159-160 (cross-examination of Mr. Lester).

[24] Mr. Caudwell is the only shareholder in the company: Day 7/p.3 (cross-examination of Mr. Hayes).

[25] See paragraphs 89*ff* below.

February 2017 ("Ward 1") and he gave evidence on Day 7 of the trial (25 October 2017).

67. Although I consider he gave his evidence honestly, Mr. Ward was unimpressive as a witness. In his evidence in-chief, he made a correction to paragraph 14 of his witness statement, correcting the date there stated from "July 2014" to "November 2014". The change was material in terms of the narrative of events. Obviously I accept that errors can be made in witness statements. I make no criticism of Mr. Ward in this regard. But Mr. Ward did not seem to take very seriously the importance of at least attempting to ensure that his evidence was accurate and reliable:[26]

Q (Mr. Plewman, Q.C.)	That's quite a big change, July to November. Any comment on that?
A (Mr. Ward)	Well, a couple of months.
Q (Mr. Plewman, Q.C.)	A couple of months. You made a very specific point in your witness statement that you had already been asked to do this in July and then referred, from paragraph 15 on, to some further involvement in November. You now say that you were only involved from November? Is that right?
A (Mr. Ward)	That is correct, yeah. It's a big witness statement. Having one error on a date is, in my opinion, acceptable.
Q (Mr. Plewman, Q.C.)	It's not a big witness statement. It's 24 paragraphs.
A (Mr. Ward)	Well, I've never written a witness statement before, so for me it was big.
Q (Mr. Plewman, Q.C.)	So how did you come to the date of July?
A (Mr. Ward)	It was an error.
Q (Mr. Plewman, Q.C.)	Well, it wasn't a typographical error. How did you come to believe that that had happened in July?
A (Mr. Ward)	I can only say it was a typographical error. I was not involved in July, I was only involved from November, so that's all I can put it down to.

I place limited weight on Mr. Ward's evidence.

(l) Mr. Michael Fenton

68. Mr. Fenton was a director of Pure Jatomi and his evidence related solely to the similar fact evidence considered in Section H below. Mr. Fenton made one witness statement dated 6 September 2017 ("Fenton 1") and gave evidence on Day 7 of the trial (25 October 2017).

[26] Day 7/pp.54-55.

69. I provide my views on the evidence given by Mr. Fenton – together with that of the other witnesses whose evidence related solely to Pure Jatomi (Mr. Balfour, Ms. Gehlan and Ms. Burger) – in Section H.

(m) Mr. Michael Balfour

70. Mr. Balfour was a minor shareholder in Pure Jatomi. He was also, at times, chairman, CEO and director of Pure Jatomi. His evidence related solely to the similar fact evidence considered in Section H below. Mr. Balfour gave one witness statement dated 31 August 2017 ("Balfour 1") and gave evidence on Day 9 of the trial (30 October 2017). I consider the evidence he gave in Section H.

(3) Factual witnesses called by Ms. Dauriac

(a) List of witnesses called

71. Ms. Dauriac called the following witnesses in the following order:

(1) Ms. Dauriac herself.

(2) Ms. Kelly Degruttola.

(3) Ms. Tracy Gehlan.

(4) Ms. Suzette Burger.

(5) Mr. Martin Wilson.

(b) Ms. Nathalie Dauriac

72. Ms. Dauriac made two witness statements, the first dated 10 March 2017 ("Dauriac 1") and the second dated 13 September 2017 ("Dauriac 2"). She gave evidence on Days 7, 8 and 9 of the trial (25, 26 and 30 October 2017).

73. Ms. Dauriac was appointed the managing director of Signia on 9 November 2009. She tended to be referred to as the chief executive officer of Signia, and it is by that title that I shall refer to her in this Judgment. She was, according to her evidence, very much a hands-on manager in Signia.[27]

74. Ms. Dauriac's honesty was, in many respects, central to these proceedings. It was alleged against her that various expenses that she charged to Signia's account as expenses had not only been improperly charged, but dishonestly so. It was also alleged that when it became clear that her expenses were going to be investigated, and during the course of that investigation, she deliberately and dishonestly sought to cover up her improprieties.

75. These are, obviously, most serious allegations, and they are considered in detail in the course of this Judgment. I do not, at this point in the Judgment, express any conclusion as to Ms. Dauriac's honesty: that, as it seems to me, is a matter that needs to be considered in light of all the facts, when those facts have properly been laid out.

[27] Day 7/pp.133-135 (cross-examination of Ms. Dauriac).

76. Allegations of dishonesty apart, Ms. Dauriac was a remarkably unsatisfactory witness for a number of reasons. In cross-examination, Ms. Dauriac gave long and generally not very responsive answers to questions that were put to her. She tended to the argumentative and – particularly when dealing with difficult points – was combative and aggressive in her answers. She was also prone to exaggeration.

77. Her memory of events did not appear to be especially good, and on a number of occasions the evidence she gave appeared to be more based upon what Ms. Dauriac thought would improve her case than on genuine recollection.

78. This was most evident when Ms. Dauriac was questioned in relation to individual expenses. Of course, giving evidence is not a memory test. However, Mr. Caudwell had fully pleaded the expenses that were alleged to have been improper, and Ms. Dauriac (and her legal team) had had every opportunity to consider these allegations in light of the disclosure. They took that opportunity, both in the Defence and in Ms. Dauriac's witness statements, and there was, in these documents, a detailed refutation of the allegations against her. In these circumstances, it was troubling that Ms. Dauriac's evidence as to why the expenses had been incurred changed over time. Even in the witness box, Ms. Dauriac tended to advance fresh explanations for the challenged expenses and seemed to be making up her explanations as she went along.

79. I can, for these reasons, place very little reliance on Ms. Dauriac's evidence. That does not mean – I stress – that a finding of dishonesty in relation to the expenses must follow. It is perfectly possible for Ms. Dauriac to give unsatisfactory evidence in relation to perfectly proper expenses, although it is equally possible for inferences to be drawn from a failure satisfactorily to explain facts. As I say, I consider the question of Ms. Dauriac's dishonesty separately, in light of all the evidence, later on in this Judgment.

(c) Ms. Kelly Degruttola

80. Ms. Degruttola was, at the material times, Ms. Dauriac's personal assistant at Signia. She left Signia on 16 January 2015[28] and – at the time she gave evidence – was again working for Ms. Dauriac as her PA at Hay Hill Wealth Management.[29]

81. Ms. Degruttola made one witness statement, dated 10 March 2017 ("Degruttola 1") and gave evidence on Day 9 of the trial (30 October 2017).

82. Like Ms. Cooper and Ms. Tarbet, Ms. Degruttola was one of those staff caught in the cross-fire between Ms. Dauriac and those investigating Ms. Dauriac. Unlike Ms. Cooper and Ms. Tarbet, Ms. Degruttola stayed with Ms. Dauriac. I consider that Ms. Degruttola was – between November 2014 and January 2015 – under considerable stress because of the investigation. She wanted to tell the truth; but she did not, out of loyalty to Ms. Dauriac, want to say anything that might prejudice Ms. Dauriac's position. She was also quite prepared herself to take the blame for matters that were not necessarily her fault.

[28] Day 9/p.105 (cross-examination of Ms. Degruttola).

[29] Day 9/pp.105-106 (cross-examination of Ms. Degruttola).

83. In short, Ms. Degruttola was a devoted and loyal employee, but I consider that that loyalty and devotion was primarily to Ms. Dauriac the person rather than to Signia the organisation. This coloured Ms. Degruttola's evidence and, although I consider that Mr. Degruttola was doing her best to provide the court with clear and honest and objective evidence, she lacked objectivity, and this affected her evidence.

(d) Ms. Tracy Gehlan

84. Ms. Gehlan was, until her dismissal, the chief executive officer of Pure Jatomi. Her evidence related solely to the similar fact evidence considered in Section H below. Ms. Gehlan made two witness statements in the course of the proceedings. One, dated 13 September 2016, was made in support of Ms. Dauriac's application to adduce the similar fact evidence ("Gehlan 1"). Ms. Gehlan did not, in her evidence in-chief, affirm the truth of Gehlan 1, but she was cross-examined on this statement.

85. Ms. Gehlan's second statement, dated 6 September 2017 ("Gehlan 2"), constituted her evidence in-chief at the trial. Ms. Gehlan gave evidence on Days 9 and 10 of the trial (30 and 31 October 2017).

86. I consider the evidence Ms. Gehlan gave in Section H.

87. After the trial, I received, via my clerk, an unsolicited communication from Ms. Gehlan on 12 March 2018, enclosing certain documents which Ms. Gehlan had (so her communication said) obtained pursuant to a request made by her under the Data Protection Act. Her communication was copied to the solicitors instructed in these proceedings and – on 15 March 2018 – I received a detailed response in regard to Ms. Gehlan's communication from Mr. Caudwell's solicitors, Mishcon de Reya LLP. Whilst I have read both of these communications, I consider that (with the exception of material that I specifically requested, notably the material described in paragraph 139 below) the evidence has closed and it would be inappropriate to have regard to post-trial material. I have, therefore, paid no regard to this material for the purposes of this Judgment.

(e) Ms. Suzette Burger

88. Ms. Burger was the former chief marketing and brand officer of Pure Jatomi. Her evidence related solely to the similar fact evidence considered in Section H below. Ms. Burger made one witness statement in the course of the proceedings dated 5 September 2017 ("Burger 1"). She gave evidence on Day 10 of the trial (31 October 2017). I consider the evidence Ms. Burger gave in Section H. Shortly before this Judgment was handed down, Ms. Burger wrote to me in terms similar to Ms. Gehlen. For the reasons stated in paragraph 87 above, I do not consider it appropriate to have regard to this material,

(f) Mr. Martin Wilson

89. Mr. Wilson was formerly employed by Signia, where he was head of wealth structuring. He made one witness statement dated 10 March 2017 ("Wilson 1") and gave evidence via video-link on Day 10 of the trial (31 October 2017). Whilst at Signia, he had been professionally close to Ms. Dauriac.

90. The video-link connection was less than satisfactory: quality was poor, and the connection was subject to multiple interruptions. On a number of occasions, parts of Mr. Wilson's replies to questions were lost because the connection broke down without Mr. Wilson appreciating this; and, for the same reason, questions put to Mr. Wilson by Ms. Carss-Frisk, Q.C. were not transmitted to him. This meant a great deal of repetition on the part of both sides to the cross-examination, and it is of great credit to Mr. Wilson's and Ms. Carss-Frisk Q.C.'s persistence that usable evidence was obtained.

91. It was, for this reason, quite difficult to pick up the nuances of Mr. Wilson's evidence. Subject to the technical problems with the video-link, Mr. Wilson came across as a rather definite witness, who was inclined not to differentiate between actual recollection and reconstruction. Given that his evidence went to matters substantially undocumented – specifically, oral conversations with Ms. Dauriac – this is a matter of some importance. I consider that Mr. Wilson was inclined to be over-definite in relation to these points. Whilst Mr. Wilson gave his testimony honestly, this tendency towards definite (but perhaps wrong) recollection is a matter I bear in mind.

(4) The expert witnesses

92. The question of the value of the Dauriac Shares was considered by two experts: Mr. Robert Sharp of Valuation Consulting LLP (who was called by Ms. Dauriac) and Dr. Min Shi of Oxera (who was called by Mr. Caudwell).

93. The experts' reports were exchanged sequentially, with Mr. Sharp going first. The reports that I saw were as follows:

(1) The first report of Mr. Sharp dated 27 October 2016 ("Sharp 1").

(2) The first report of Dr. Shi dated 20 December 2016 ("Shi 1").

(3) A supplemental report of Mr. Sharp, responding to Shi 1, dated 27 March 2017 ("Sharp 2").

(4) A supplemental report of Dr. Shi, responding to Sharp 2, dated 15 June 2017 ("Shi 2").

(5) A third report of Mr. Sharp dated 11 August 2017 ("Sharp 3").

94. The experts made a joint expert statement dated 13 October 2017 (the "Joint Expert Report"). Additionally, under cover of a letter from Signia's solicitors dated 5 December 2017, the experts provided me with a set of agreed metrics regarding Signia's performance.

95. Dr. Shi gave evidence on Days 10 and 11 of the trial (31 October and 1 November 2017). Mr. Sharp gave evidence on Days 11 and 12 (1 and 3 November 2017).

96. I consider the evidence of the experts more specifically in Section N below.

E. THE FACTS: THE ESTABLISHMENT OF SIGNIA

(1) The background to Mr. Caudwell's and Ms. Dauriac's relationship

97. Mr. Caudwell and Ms. Dauriac first met in 2006, when Mr. Caudwell became a client of the Private Office of Coutts Bank, following his sale of his "Phones 4U" mobile telephone business for around £1.5 billion. The Coutts Private Office, where Ms. Dauriac held the position of senior client partner, was awarded a mandate to manage roughly £300 million of Mr. Caudwell's assets.

98. Ms. Dauriac impressed Mr. Caudwell, both in the management of the assets entrusted to the Coutts Private Office and in the assistance she provided in relation to his personal financial affairs. During this time, Mr. Caudwell and Ms. Dauriac developed a strong professional relationship and a personal friendship, which included sharing family holidays, regular dinners and invitations to other social engagements.

99. In around 2009, Ms. Dauriac decided to leave Coutts and pursue setting up an independent wealth management firm. The proposition was that this firm would be managed by Ms. Dauriac, together with a colleague from Coutts, Mr. Gautam Batra, who already managed a significant proportion of Mr. Caudwell's assets. Accordingly, she approached Mr. Caudwell with this proposal to seek investment to assist in establishing what ultimately became Signia.

100. Mr. Caudwell was willing to consider such a proposal:[30]

Q (Mr. Plewman, Q.C.)	She had been your banker at Coutts and the relationship had developed from then?
A (Mr. Caudwell)	It had
	…
Q (Mr. Plewman, Q.C.)	While she was in that role, that's your banker at Coutts, you say at [Caudwell 1/para. 7] that she regularly went the extra mile of being of assistance, even on matters way outside her remit.
A (Mr. Caudwell)	She did.
Q (Mr. Plewman, Q.C.)	That really is one of the things that made her successful in what she did, isn't it?
A (Mr. Caudwell)	It's one of the things that made me really admire her and respect her, like her.
Q (Mr. Plewman, Q.C.)	…You appreciated, as other clients appreciated, her dedication and selflessness on a wide range of matters.
A (Mr. Caudwell)	I did.
	…
Q (Mr. Plewman, Q.C.)	Certainly, at that stage, your relationship was by then close enough for you to consider the possibility of going into business with her?

[30] Day 4/pp.202*ff*.

A (Mr. Caudwell) It was.

Q (Mr. Plewman, Q.C.) And you already had, I think, not merely business interaction but social interaction?

A (Mr. Caudwell) We did.

…

Q (Mr. Plewman, Q.C.) I would suggest that one of the reasons that you ultimately decided to back her in an investment management business was because you recognised not only her professional abilities, but also her social abilities?

A (Mr. Caudwell) Her professional ability was what interested me.

Q (Mr. Plewman, Q.C.) You expected that in an investment management business that you might start, she would be able to turn that same dedication and selfless commitment into a profitable business?

A (Mr. Caudwell) I expected her to perform in a very professional way and to win clients and succeed as a consequence.

Q (Mr. Plewman, Q.C.) Yes, and to win clients by applying what I've described as being that dedication and selfless assistance on a wide range of matters?

A (Mr. Caudwell) No. There is a point here, because when she did all these extraordinary things for me whilst working at Coutts, I had just – I mean, on the one hand, I was very, very pleased that I was getting this help. On the other hand, I just had a slight discomfort wondering whether Coutts would actually approve her going to the extent that she was to satisfy my – she didn't even satisfy me, she volunteered them and helped out dramatically. So I had a discomfort, and I would never have wanted her to work like that in my company or my relationship.

Q (Mr. Plewman, Q.C.) You regarded her at that time as very charismatic, correct?

A (Mr. Caudwell) Yes.

Q (Mr. Plewman, Q.C.) And very professional?

A (Mr. Caudwell) Yes.

Q (Mr. Plewman, Q.C.) And so, in fact, your suggestion that there was some professional criticism at that time is wholly contrary to what you say in [Caudwell 1/para. 7]?

A (Mr. Caudwell) No, it's not wholly contrary at all, my Lord. I saw a huge amount of positivity in Ms. Dauriac. I saw huge drive, huge effort at that time, and had this one little qualifying niggle in the back of my brain, but it's not inconsistent. I still admired her and respected her.

Q (Mr. Plewman, Q.C.) You did more than that. You considered her to be very professional in her approach?

A (Mr. Caudwell) I did.

(2) The objective of the collaboration

101. The proposal was for both Mr. Caudwell and Ms. Dauriac to contribute – in very different ways – to the establishment and operation of a new wealth management company. Ms. Dauriac would provide her services (at a salary) as the chief executive officer of the new venture.[31] Mr. Caudwell was to provide a substantial quantity of assets for the new venture to manage. This would provide a foundation from which the business could launch and begin to trade. It would assist Ms. Dauriac in attracting other investors so as to build the new venture into a successful business.

102. The plan was for the new business to be sold, when successful, at a profit to both Mr. Caudwell and Ms. Dauriac.

103. Whilst the new venture was establishing itself, Mr. Caudwell would, of course, have to fund its costs. It will be necessary to consider this aspect of the venture in some detail, but essentially the necessary funding could be achieved in three ways, which could be used either individually or in combination:

(1) Equity funding.

(2) Debt funding.

(3) Funding through management fees charged to Mr. Caudwell for the management of his assets. It is a convenient shorthand to refer to the assets managed by a wealth management company as "Assets Under Management". This is a measure that is of some significance in these proceedings.

104. Although, as has been described, the equity in Signia was owned 51% by Mr. Caudwell and 49% by Ms. Dauriac,[32] Mr. Caudwell did not want to fund the venture through equity, simply because (in the case of insolvency) he would be most unlikely to recover his investment. His preference was for debt funding, by loans procured by him. These loans were provided by Grecco.

105. Mr. Caudwell was less keen on funding Signia through the fees charged to him for the management of his assets. As will be seen, however, to an extent Signia was financed in this way.

(3) Mr. Caudwell's practice

106. As has been noted, Mr. Caudwell was a delegator. It was Mr. Caudwell's practice to be heavily involved in the strategic planning of a new venture, and then to adopt a "hands-

[31] The proposal to create a new wealth management company also involved a Mr. Gautam Batra, who was a colleague of Ms. Dauriac at Coutts. I note the involvement of Mr. Batra, but do not mention it further: his role has no bearing on the matters at issue in this dispute.

[32] Again, I am simplifying. Ms. Dauriac ended up with a 49% stake, as described in paragraph 13 above. Her original interest was less than this, but how she came to hold 49% is (apart from one point considered below) immaterial to the matters at issue in this dispute.

off" approach. It was common ground that this is what he did in the case of Signia, both in terms of setting up Signia, and in terms of its operation after being set up.[33]

107. On this occasion, once the strategic planning was done, Mr. Caudwell handed the process over to Mr. Canfield to work with Ms. Dauriac to develop Signia into a business that was ready to trade. But, during the initial strategic planning, Mr. Canfield's role was minimal.[34]

(4) The Indicative Terms

108. The essential commercial aspects of the venture were informally agreed between Mr. Caudwell and Ms. Dauriac[35] on 25 August 2009 in a document headed "Nathalie and Gautam Agreement", and which I shall refer to as the "Indicative Terms". These provided:

"**Salary – first year:**

Commence 1 January 2010 - £200k basic / £200k bonus.

Bonus to be paid for achievement of £250 million AUM.

First £100k bonus to be paid month after achievement of target.

Remaining £100k bonus to be paid month following end of year.

If needed, a 12 month period for bonus qualification to be extended by 3 months.

Salary – second year:

Full bonus to be paid for a PBT breakeven performance, and to be paid in the month following the 12 month period.

Shares

Nathalie to invest £200k for 5% class A shares.

Gautam to invest £100k for 2.5% class A shares.

Rest of shares taking total shareholding to 40% to be on a linear scale in line with final company valuation, between £75 million base price and £175 million target, so that the intention is that both ND and GB will end with 20% each in total of class A and B shares, provided that target is achieved.

9% of shares to be available to motivate new Managers coming into the business. Should the £175 million target be achieved and no extra shares given away, then the 9% will revert equally back to ND and GB.

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[33] See, e.g., Day 4/p.175; Day 5/pp.17*ff*.

[34] Day 2/pp.44-45 (cross-examination of Mr. Canfield).

[35] As well as Mr. Batra: for the reasons I have given, his role does not signify for the purpose of these proceedings.

JC to make a loan of up to £6 million interest accruing at 3% over 3 month libor, accruing until the business is cash flow positive, or will make a loan of £6.5 million interest to be paid quarterly.

Some of the above loan will actually be made as share capital and not interest bearing, and at the time of writing it is thought this would have to be equivalent to 3 months worth of overheads.

Good leavers and share treatment:

Good leaver events:

Death.

Serious illness and permanent disability.

A leaver who leaves amicably.

Share treatment:

Class A shares valued at fair market price.

Class B shares are calculated at fair market price x 20% (to a maximum of 100%) for each year of service, excluding the first 2 years.

Bad leaver and share treatment less than 2 years employment:

Bad leaver events:

All others.

Share treatment:

Class A shares paid at investment value or fair market price whichever is the lower.

Class B Shares nil value.

Bad leaver and share treatment more than 2 years employment:

Bad leaver events:

All others.

Share treatment

Class A shares paid at investment value or fair market price whichever is the lower.

Class B shares are calculated at fair market price x 25% (up to a maximum of 100%) for each year of service, excluding the first 3 years.

These values will be calculated at the point of employee termination and will be paid upon the sale of the business or earlier if the Board plus JC decides to.

Fair market valuation will be determined by the shareholding Board plus JC.

If the departing employee does not agree with the valuation, a valuer may be appointed completely independent of both parties and his cost shared 50/50.

JC investment

The business to take over the Coutts investment portfolio and it is expected that this investment will remain for several years, but will be subject to performance.

No management fee to be charged for the first 2 years.

Performance fee will be considered."

109. A number of points emerge from this. It is clear who was calling the shots: Mr. Caudwell was providing the finance and the AUM. The indicative terms reflect this fact. Whilst, I am sure, Mr. Caudwell had great appreciation for Ms. Dauriac's talents, and great liking for her at this stage, this did not override his businessman's instincts. The Indicative Terms are commercial: fair, but not generous.

110. Thus, we see that Mr. Caudwell was the main investor and in control. The good leaver/bad leaver provisions in the Articles are foreshadowed, as is the aim to sell the company in due course.

111. Apart from the (fairly limited) equity investment, the company would be funded by a loan (interest-bearing) of £6 million. Although Mr. Caudwell would transfer his AUM from Coutts to Signia, the Indicative Terms stated that no management fees would be charged for the first two years.

112. Mr. Caudwell said this about the Indicative Terms:[36]

Q (Mr. Plewman, Q.C.)	You can see that the focus in starting this business was to achieve AUM and growth in AUM. Would you agree with that?
A (Mr. Caudwell)	The focus on bonus was to do with AUM, but the business plan was to do with profit.
Q (Mr. Plewman, Q.C.)	Well, you are ultimately going to achieve profit by growing AUM?
A (Mr. Caudwell)	No, that's absolutely incorrect. To grow any business and manage it properly, you have to manage both turnover and profitability.
Q (Mr. Plewman, Q.C.)	…There were to be shares – I think you put in £300,000 of equity – and you were to make at that time a £6 million or £6.5 million loan to the business until it was cash flow positive?
A (Mr. Caudwell)	Yes.
Q (Mr. Plewman, Q.C.)	And the business would take over your portfolio from Coutts as an initial seed business, if you like?
A (Mr. Caudwell)	Yes.

[36] Day 5/pp.32*ff*.

Q (Mr. Plewman, Q.C.)	But you required it not to charge management fees for two years?
A (Mr. Caudwell)	That's correct?
Q (Mr. Plewman, Q.C.)	Which, of course, necessarily implies that there would be management fees thereafter?
A (Mr. Caudwell)	It doesn't imply that at all, no, because the agreement, right from Day 1 was that I expected to pay no or very little management fees and that the whole success of this business was to do with attracting outside investors to make the business profitable so that my money was actually irrelevant and if I wanted to take it somewhere I also could do [so] without damaging the business, and that the fee income from my portfolio was not necessary either.

(5) The Investment Term Sheet

113. An "Investment Term Sheet" – which was expressly subject to contract – was concluded on 22 September 2009. This was a lengthy document, expanding upon the Indicative Terms, which set out Mr. Caudwell's position on a range of subjects concerning the project. The following points are of significance for present purposes:

(1) Signia would be funded by a loan of either £6 million or £6.5 million, with repayment when "free cash permits" (Point 10).

(2) As regards future funding, the company was free to borrow in the ordinary course of business, and Mr. Caudwell (whilst not obliged to provide further funding) would give a request for further funding "reasonable consideration" (Point 12.1).

(3) The company's affairs were to be conducted in accordance with "good corporate governance and arm's length dealings" (Point 12.2).

(4) Point 12.8 concerned the use of Mr. Caudwell's management fees to defray Signia's expenses. Mr. Caudwell's position is recorded as follows: "[Mr. Caudwell] is sympathetic to this proposal provided it works legally in a tax efficient manner".

(6) Incorporation

114. Signia was incorporated on 15 October 2009 (as "True Wealth Limited") and was renamed as "Signia Wealth Limited" on 20 October 2009.

(7) Kinetic Partners' advice on regulatory capital

115. Kinetic Partners was a firm that was engaged to advise on the regulatory aspects of the new venture.

116. On 29 October 2009, Kinetic Partners sent an email to Ms. Dauriac entitled "Regulatory capital and financial projections". The email attached financial projections for 2010/2011. These showed – unsurprisingly for a new venture – that Signia would be

loss-making and would be dependent on loans from Mr. Caudwell (in the event, provided via Grecco). This, as has been seen, was already anticipated by Mr. Caudwell and Ms. Dauriac in the Indicative Terms and the Investment Term Sheet.

117. However, the email went on to say that the loans – whilst they would ensure Signia's solvency – would not ensure that Signia was compliant with the requirements in relation to regulatory capital. The email explained:

"**Further explanation following our conference call**

If a business makes a loss, this must be deducted from the Share Capital immediately before this capital can be assessed against the Regulatory Capital requirement. Conversely, if the business makes a profit, this can only be included as Regulatory Capital once it has been externally verified – i.e. after an audit.

It is not possible for Signia to meet its Regulatory Capital requirements with Share Capital and Long Term/Short Term Subordinated Loans alone. The business initially makes a loss, which must be deducted from the Share Capital before it can be assessed against the Regulatory Capital requirement. To qualify as Regulatory Capital, even Subordinated Loans have restriction on their values. These restrictions are based upon fixed percentages of the Share Capital, so, as the Share Capital is reduced by the business' losses, any loans are also reduced proportionately. The certain outcome therefore is that if a business is making a loss and its Share Capital is reducing accordingly, in time there is a breach.

Solution

It is necessary to charge a 45bp management fee on the £350m seed capital in order to prevent the business from making a loss in the initial months (Note: the above bulleted reductions to the business' costs have reduced this from 50bp). This preserves the £612k Share Capital for assessment against the Regulation Capital requirement. As you are aware, the Requirement itself is one quarter of your first year's fixed expenses – which are £3,206k – making the Requirement £802k.

A further capital injection is therefore needed in addition to the £612k Share Capital to cover this shortfall. This capital injection can either be in the form of Long-Term or Short Term Subordinated Loan and it must be at least £190k.

We would recommend that a buffer of one month's expenses was added to this figure and that the actual amount of Subordinated Loan that was placed in the business as Regulatory Capital was £350k. The loans maturity can either be Long-Term or Short-Term – the major difference being that the latter offers more flexibility.

We understand that your seed investor intends to put more capital into the business than the £962k (Share Capital of £612k + £350k Sub Loan) that is required to meet the Regulatory Capital Requirement. An additional amount can be put into the business at your discretion, and as a loan if this is preferable based on the legal and tax advice you receive, but we would not recommend that it be put in as Regulatory Capital (i.e. further Share Capital and/or Subordinated Loans) as this would place restrictions on its subsequent removal and future flexibility of the business."

118. Ms. Dauriac forwarded this email to Mr. Canfield on 1 November 2009, commenting as follows:

"David

> Please find below, the solution we found to fund the business. We aimed for John to put as little as possible cash and as max as a loan. However, we needed to find a solution that will meet the Regulatory requirement for the FSA (the issue is that any losses is added to the capital requirements so in order to reduce the loss we needed to produce additional income to the business).
>
> So the following proposed solution should satisfy John and the FSA. The requirements based on this solution is £802k which could be funded as below:
>
> > £612k Share Capital (including my £200k and £100k from Gautam) which should make easy the capital structure. As the requirement itself is £802k and to avoid putting additional cash, the difference of £190k can be put as a Subordinated loan (I did ask to increase the amount of capital that was supplied through a loan but FSA regulations restrict the amount of permitted regulatory capital that can be met through a loan to 250% of the Share Capital and, as the share capital is reduced by the losses on a monthly, the corresponding amount of capital allowed as a loan is also reduced until such a point as the regulatory capital requirement is breached). However see below they recommend that a buffer of one month's expenses was added to this figure and that the actual amount of Short term (more flexible) Subordinated Loan that was placed in the business as Regulatory Capital was £350k.
> >
> > However that solution of £802k is based on finding additional income to cover the losses to comply with the regulator. Therefore, we have found the solution of charging [Mr. Caudwell's] portfolio 45bp management fee based on his £350m we discussed. The only key downside for you is that the fees invested in the business cannot be recovered as easy as a piece of senior debt. On the business front, it would allow us to market our business without mentioning of side letters/special deals on fees or explaining why [Mr. Caudwell] has a different treatment. Second, it would help substantially with the clarity of the track record and the generation of an audited investment record. The only downside is that VAT will be payable on the management fee (unless we manage his funds offshore as it will avoid VAT but Gautam and I would prefer to use the Vestra platform in the UK as it is robust).
> >
> > The remaining amount can be put into the business as a loan.
> >
> > For clarification, I assume the £6.5m we agreed included interest payable on the loan and excluded the money that Gautam and I were putting in the business. Please find attached the proposed split based on all the above assumptions."

119. Thus, Mr. Caudwell's aim to fund Signia maximally by loans, with as little cash injection as possible, received a setback in the form of this unanticipated regulatory capital requirement. The anticipated solution was to charge Mr. Caudwell for the management of his assets, contrary to the original plan.[37]

(8) Ms. Dauriac's Service Agreement

120. Ms. Dauriac concluded the Service Agreement with Signia on 12 February 2010.

121. The relevant provisions were as follow:

(1) Clause 2.1 provided that Signia appointed Ms. Dauriac and Ms. Dauriac agreed to act "as Managing Director from the Commencement Date upon and subject to the

[37] See Day 2/pp.38*ff* (cross-examination of Mr. Canfield).

terms of this Agreement". The "Commencement Date" is a defined term and was typed as "11 January 2010", but that date was amended by hand to "09/11/09", i.e. 9 November 2009. By the end of the trial, it was common ground that this was the Commencement Date.

(2) Clause 3.2 provided:

"You shall perform all the duties (including but not limited to exercising all the powers) of the position of Managing Director (or such other position as you may hold from time to time). The following is a non-exhaustive list of your duties. You will:

(a) as soon as reasonably practicable in the first quarter following the end of the Financial Year, cause to be prepared and delivered to the Board an Annual Business Plan and obtain the Board's approval thereto making such changes to such Annual Business plan as may be necessary for obtaining such approval;

(b) be responsible for the day to day management of the Business of [Signia];

…

(f) ensure that you conduct your affairs with fidelity and with the highest standards of ethics and integrity…"

(3) Clause 5.1 provided that Ms. Dauriac's principal place of work was Signia's principal place of business (then 14 Cornhill, London), but that (on giving reasonable notice) Signia might require Ms. Dauriac to work anywhere, whether temporarily or permanently.

(4) Clause 5.2 provided:

"You shall make all journeys, whether in the United Kingdom or abroad, as may be required for the proper performance of your duties, whether inside or outside normal working hours."

(5) Clause 6.1 provided that Ms. Dauriac would receive a salary of £200,000 per annum. Clauses 7.1 and 7.2 set out the criteria for the payment to Ms. Dauriac of a bonus of up to £200,000 for the years 2010 and 2011. Clause 8 provided for a "a Discretionary Bonus scheme, which will apply to you in the third calendar year of your employment i.e. from 1 January 2012 and thereafter. The Board will determine in its absolute discretion at the end of the relevant calendar year whether any bonus is to be awarded in respect of that year, and if so, the form, amount and any conditions attached".

(6) Clause 9 made provision for expenses:

"[Signia] will reimburse you for all reasonable out-of-pocket expenses (including travel, subsistence and entertainment expenses) necessarily and wholly incurred by you in the proper performance of your duties, provided you claim such expenses and produce receipts or other evidence of actual expenditure."

(7) Clause 15 provided for termination of the employment relationship:

(a) Clause 15.1 set out the rights of Signia to terminate the employment relationship. So far as material, clause 15.1 provided:

"[Signia] may terminate the Employment:

(a) by giving you 3 months' notice if you are an Under Performer;

(b) without notice on grounds which merit summary dismissal. The following is an exhaustive list of the grounds which merit summary dismissal in the event of such a breach:

(1) In connection with the performance of your duties, you are guilty of:

1. serious or repeated breach of your obligation due to gross negligence; or

2. gross or wilful neglect.

(2) You are guilty of a gross breach of any fiduciary duties owed by you to [Signia].

(3) You commit any act of gross misconduct.

…"

(b) Clause 15.2 provided that Ms. Dauriac could "terminate the Employment for any reason by giving [Signia] at least 3 months' notice".

(c) Clause 15.3 provided that the employment relationship would terminate automatically at Ms. Dauriac's 65th birthday (the normal retirement age for employees of her position).

(d) Clause 15.4 provided:

"There will be no right to give notice of termination of, or otherwise terminate, the Employment other than under clauses 15.1, 15.2 and 15.3."

(8) Clause 20 provided:

"20.1 [Signia] does not have its own disciplinary and dismissal procedures but intends to comply and expects you to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures (the "Code"). The Code does NOT form part of this Agreement. If you are dissatisfied with any disciplinary decision relating to you, you should first attempt to resolve this by discussion with the person who took the decision. If, having taken this step, you remain dissatisfied with the disciplinary decision you should appeal in writing to the Board, whose decision on the matter will be final.

20.2 [Signia] does not have its own grievance procedure but intends to comply and expects you to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures (the "Code"). The Code does NOT form part of this Agreement. If you wish to seek redress of any grievance related to your employment, you should write to the Board with details of the basis for the grievance. If the grievance is not resolved to your satisfaction, you should appeal

in writing to the Board, which will allocate an appropriate individual to deal with it. The decision on appeal will be final."

(9) The Shareholders' Agreement

122. The Shareholders' Agreement was concluded on 15 February 2010 between (amongst others) Grecco, Ms. Dauriac and Signia.[38]

123. The Shareholders' Agreement:

(1) Provided that Ms. Dauriac would submit a business plan to Grecco for its approval (clause 4.2).

(2) Made provision for the appointment of directors (clause 4.4).

(3) Made provision for the funding of Signia (clause 5). In particular, clause 5.1 provided that Signia would be financed by "the Loan Agreement, the Subordinated Loan Agreement and the ND Loan Agreement".

(4) Clause 6.2 provided:

"The management of [Signia] shall be vested in the Board provided that the day to day management of [Signia] will be the responsibility of the Manager. Without prejudice to the generality of the foregoing, the Board will determine the general policy of [Signia] and the manner in which that is to be carried out (subject to the express provisions of this Agreement) and will reserve to itself all matters involving major or unusual decisions. In particular, but without limitation to the generality of the foregoing, the Board will procure that:

6.2.1 [Signia] shall transact all its business on arm's length terms…"

(10) The loan agreements

124. Clause 5.1 of the Shareholders' Agreement specified that Signia would be funded by three loan agreements – the "Loan Agreement", the "Subordinated Loan Agreement" and the "ND Loan Agreement".

125. It is unnecessary to describe these loans in any detail, save to note that they were entered into. Subsequently, other loans were made available by Mr. Caudwell to Signia. It will be necessary – in Section F below – to explore in greater detail how Signia was funded over time. As will be seen, this was from a combination of sources, including – but not restricted to – loans and fees for the management of AUM.

(11) The Articles of Association

126. The Articles were described in paragraph 1 above, and the compulsory transfer process provided in the Articles described in Section B above.

[38] Other parties were Mr. Batra and Signia Wealth EBT Limited, an employee benefit trust established by Signia.

(12) The early operation of Signia

127. Signia initially operated from the premises of Vestra Wealth at 15 Cornhill, London,[39] before moving to its current premises in the summer of 2011.[40]

128. Mr. Canfield was appointed a director of Signia on 16 October 2009 as Mr. Caudwell's nominated board director. Mr. Canfield continues to hold this appointment.

129. Ms. Dauriac was appointed as director of Signia on 28 October 2009 and was employed as chief executive officer of Signia from 9 November 2009, a position she held until her employment ended on 21 January 2015.

130. It was common ground that Mr. Caudwell acted as a shadow director of Signia through Mr. Canfield. But he was not a *de facto* director. It was contended by Mr. Caudwell that, in these circumstances, he was not able to bind Signia and that his conduct could not be attributed to Signia.[41] To the extent that it matters, I am prepared to accept this submission. On the facts, however, I do not consider that these questions of agency and attribution arise: Mr. Caudwell tended to act through and with others – notably Mr. Canfield – whose actions and words are undoubtedly attributable to Signia.

F. THE FACTS: SIGNIA'S PERFORMANCE AND FUNDING

(1) Signia's business activities and the revenue derived therefrom

131. There was, unsurprisingly, a high degree of agreement between the parties as to the nature of Signia's business activities. The following description of Signia's business activities is taken from Dr. Shi's first report, but I did not understand Mr. Sharp materially to disagree with this description.

132. Dr. Shi suggested that the main business activities of Signia during 2010 to 2014 could be split into three types:[42]

(1) What she termed "core activities", covering the management of clients' investments (including hedge fund management services from 2014 onwards) and cash holdings.

(2) What she termed "secondary activities", covering predominantly brokerage services where Signia introduced clients to borrowing and private equity opportunities.

(3) What she termed "other" – or perhaps "tertiary" – revenue generating activities, which chiefly consisted of rental income from renting out excess office space.

133. In my judgment, the secondary and tertiary activities of Signia can, for the purposes of this Judgment, be disregarded. It is obvious that a newly-established business must concentrate on its core activities, because these are the key revenue-generating

[39] Day 6/p.4 (cross-examination of Ms. Cooper).

[40] Day 6/p.5 (cross-examination of Ms. Cooper).

[41] See paragraphs 84*ff* of Mr. Caudwell's written closing submissions.

[42] Shi 1/paras. 2.9 and 2.10.

activities. Revenue from other sources, whilst no doubt welcome, would not be worth diverting substantial resource to. It is on the core activities of Signia that the focus must be.

134. Signia earned fees from investing its clients' money.[43] These are known as "discretionary" services, where in essence the expertise of Signia is deployed in determining how funds should be invested. These fees comprised three elements:

(1) Management fees, generally calculated as a fixed proportion of the Assets Under Management per annum from each investor.

(2) Custody fees through rebates from certain custodian banks chosen by the clients.

(3) Performance fees, paid when the returns of the investment exceed an agreed benchmark.

135. A less remunerative form of service is where a client's assets are "under supervision". "Assets Under Supervision" are client assets not managed by Signia, but for which Signia had some administrative or supervisory responsibility.[44]

136. Signia also managed clients' cash and charged an annual management fee of around 0.1%. Unlike in the case of investment and hedge fund assets under management, Signia did not charge performance fees on the cash it managed.[45]

137. Hedge fund management services are services relating to the management of hedge funds, pooled investment structures that adopt a wide variety of alternative investment strategies often using gearing, futures and options. Hedge fund management services are generally remunerated at a level at or above discretionary services. Signia began offering hedge fund management services in the second half of 2014, after hiring Mr. Rosenthal.[46]

138. The term "AUM" (for Assets Under Management) is used in this Judgment to describe all assets under Signia's management, namely:

(1) Discretionary;

(2) Hedge fund;

(3) Assets under supervision;

(4) Cash and custody.

139. The experts provided a variety of (unagreed, incomplete and not reconcilable) measures of Signia's performance over time in their reports. I invited them to set out, in a single document, agreed figures for each class of business over time. Although not completely agreed, the experts' response was provided under cover of a letter dated 5 December

[43] Shi 1/para. 2.14.

[44] Sharp 1/p.3.

[45] Shi 1/para. 2.30.

[46] Shi 1/para. 2.27.

2017. A copy of this data is at Annex 3 to this Judgment. The essential elements of that data are set out below:

Type of Assets Under Management ("AUM")		End 2010	End 2011	End 2012	End 2013	End 2014
A	**Discretionary**					
[1]	Total AUM	£544m	£782m	£768m	£789m[47]	£835m
[2]	Total revenue	[X][48]	£3.27m	£2.96m	£2.96m	£2.91m
B	**Hedge fund**[49]					
[1]	Total AUM	[X]	[X]	[X]	[X]	£355m
[2]	Total revenue	[X]	[X]	[X]	[X]	£224k
C	**Assets Under Supervision**					
[1]	Total AUM	£98m	£114m	£105m	£95m	£96m
[2]	Total revenue	[X]	[X]	£273k	£269k	£191k
D	**Cash and custody**[50]					
[1]	Total AUM	£218m	£448m	£377m	£204m	£184m
[2]	Revenue	[X]	£165k	£229k	£227k	£93k

Table 2: Signia's Assets Under Management and the revenue derived therefrom

140. Although the hedge fund AUM did not generate much revenue, this was partly because it was a new venture for Signia (the service was provided for the first time in 2014, and then only for the latter half of that year) and partly because (as will be seen) Mr. Caudwell provided the bulk of this class of AUM and paid very low fees for the service. The revenue for 2014 of £224,000 in Row B[2] of Table 1 is thus unrepresentatively low. More importantly, the evidence was that although a new service for Signia, it did perform extremely well.

141. In my judgment, the essential parts of Signia's business lay in its discretionary and hedge fund AUM. Although, no doubt, AUS and cash management services were services that Signia, as a wealth management company, had to offer to its customers, these services were not the profit centres that (if it was to be a success) Signia needed to develop. The same is true for the secondary and tertiary forms of business described in paragraph 132-133 above.

142. So far as discretionary AUM and hedge fund AUM is concerned, further analysis of the figures is in order. This set out in Annex 4 to this Judgment. Annex 4 provides a more detailed breakdown of the figures contained in Table 1 above. As to the data in Annex 4:

(1) The discretionary and hedge fund AUM is broken down according to AUM provided by Mr. Caudwell as a client of Signia and AUM provided by third

[47] Mr. Sharp treated some £21m of this AUM as hedge-fund related, although he could not identify the revenue associated with this AUM. I prefer Dr. Shi's analysis, and have treated this AUM as part of discretionary AUM. See Day 11/p.78 (cross-examination of Dr. Shi).

[48] "[X]" denotes that no figures are available or that this service was not provided by Signia at this time.

[49] This was a half-year figure, given the time when Signia began providing this service.

[50] I have elided the two classes of "cash" and "custody" used by the experts.

parties. As has been seen, it was anticipated that Mr. Caudwell would himself be a substantial client of Signia, and that proved to be the case. However, in addition to Mr. Caudwell, persons related to him (his brother and his ex-wife) were also clients of Signia. Essentially, fee arrangements Mr. Caudwell negotiated for himself were extended to these "Caudwell-related" parties.[51] The extent to which these parties were so tied to Mr. Caudwell so that, were Mr. Caudwell to leave Signia, they would leave also, is a matter that it will be necessary to consider later on in this judgment.[52]

(2) As regards discretionary AUM, the AUM provided by *(i)* Mr. Caudwell, *(ii)* parties related to Mr. Caudwell and *(iii)* third parties, expressed as a percentage of total AUM were as follows:

Discretionary AUM	End 2010	End 2011	End 2012	End 2013	End 2014
Caudwell	[X]	60.23%	60.29%	60.20%	57.01%
Caudwell-related	[X]	11.64%	11.85%	12.55%	12.57%
Third party	[X]	28.13%	27.86%	27.25%	30.30%

Table 3: Breakdown of the source of discretionary AUM

The percentages for the hedge fund AUM were:

Hedge fund AUM	End 2014
Caudwell	83.94%
Caudwell-related	12.39%
Third party	3.66%

Table 4: Breakdown of the source of hedge fund AUM

The lion's share of the AUM (particularly when Caudwell-related AUM is taken into account) came from Mr. Caudwell.

(3) However, Mr. Caudwell and those related to him paid less for Signia's services than did third parties. Typically, wealth management companies charge their clients a percentage of the Assets Under Management, generally measured in "basis points" or "BPS". One basis point is equivalent to 0.01%. The fees paid by the various parties (derived by calculating revenue as a percentage of AUM) were as follows:

[51] Day 2/p.54.

[52] The evidence from this was quite limited. Mr. Caudwell stated that they made their own decisions, but "[w]ith my advice" (Day 5/p.156).

Discretionary AUM	End 2010	End 2011	End 2012	End 2013	End 2014
Caudwell	[X]	0.34%	0.24%	0.24%	0.25%
Caudwell-related	[X]	0.34%	0.25%	0.24%	0.24%
Third party	[X]	0.62%	0.76%	0.66%	0.57%
Average	[X]	0.42%	0.39%	0.37%	0.35%

Table 5: Fees paid for Signia's discretionary AUM services

The equivalent figures for the hedge fund AUM were:

Hedge fund AUM	End 2014
Caudwell	0.06%
Caudwell-related	0.06%
Third party	0.17%

Table 6: Fees paid for Signia's hedge fund AUM services

The evidence was that one might expect to pay 50-100 BPS for discretionary AUM services and 70 or more BPS for hedge fund AUM services. Obviously, rates are negotiable and (in a competitive market) I do not consider that it is possible to establish a "market" rate for these services. Nevertheless, Mr. Caudwell clearly achieved competitive rates for his (and for the Caudwell-related) AUM, both when compared to the rates that one might expect to pay and (more importantly) when compared with what third parties were charged by Signia.

As regards the hedge fund AUM, I should say that I do not regard the fees charged by Signia as being commercial rates. They are far too low for that. I anticipate that the explanation for the low rates is simply that this line of business had only started up in 2014, and the figures are simply not representative.

(4) The effect of the lower rates charged to Mr. Caudwell and the Caudwell-related parties is evident when one compares the proportion of AUM contributed by Mr. Caudwell and the Caudwell-related parties (as set out in Tables 2 and 3 above) with the proportion of Signia's revenue that they contributed:

Discretionary AUM	End 2010	End 2011	End 2012	End 2013	End 2014
Caudwell	[X]	48.58%	37.46%	38.41%	41.02%
Caudwell-related	[X]	9.61%	7.76%	8.05%	8.73%
Third party	[X]	41.81%	54.78%	47.66%	50.25%

Table 7: Proportions of Signia's revenue: discretionary AUM

The percentages for the hedge fund AUM were:

Hedge fund AUM	End 2014
Caudwell	77.87%
Caudwell-related	12.04%
Third party	10.09%

Table 8: Proportions of Signia's revenue: hedge fund AUM

In revenue terms, the proportions contributed by third parties is substantially higher, and the proportions contributed by Mr. Caudwell and the Caudwell-related parties significantly lower, than when the measure is AUM.

(2) Signia's total costs and total revenue

143. Signia's costs, as they appear from Signia's management accounts and as agreed by the experts[53] were as follows:

		End 2010	End 2011	End 2012	End 2013	End 2014
A	Employee costs	[X]	£3,853,600	£4,720,424	£5,307,790	£5,377,472
B	Cost of sales and administration costs	[X]	£1,197,402	£1,571,105	£1,945,390	£2,492,564
C	Depreciation	£16,376	£45,514	£52,096	£55,912	£56,724
D	Interest costs	£47,222	£54,524	£59,555	£57,354	£66,843
E	Total	£3,963,306	£5,151,040	£6,403,180	£7,366,447	£7,993,601

Table 9: Signia's costs

144. The totality of Signia's revenues – including, but not limited to, those set out in Table 2 – were as follows:

		End 2010	End 2011	End 2012	End 2013	End 2014
A	Total revenue	£3.895m	£5.199m	£6.436m	£7.458m	£4.843m

Table 10: Signia's total revenues

(3) Signia's profit/loss

145. From Tables 9 and 10, it is possible to ascertain Signia's profit/loss: this is the difference between Row E in Table 9 and Row A in Table 10. This difference is set out in Row A of Table 11 below.

146. "EBITDA" stands for Earnings Before Interest, Taxes, Depreciation and Amortization. Self-evidently, the items recorded as costs in Table 9 include items that would not form part of EBITDA.[54] The experts have helpfully calculated what Signia's EBITDA would be, on the basis of the figures in Tables 9 and 10.[55] These figures are set out in Row B of Table 11 below.

[53] See the letter of 5 December 2017.

[54] E.g. Rows B and D in Table 9.

[55] See the letter of 5 December 2017.

147. Finally, the EBITDA as recorded in Signia's management accounts is set out in Row C of Table 11 below. It will be noted that these differ from the EBITDA in Row B, but not materially.

148. Table 10 thus shows that Signia had a modest loss in 2010, modest profits in 2011 to 2013, and a significant loss in 2014:

		End 2010	End 2011	End 2012	End 2013	End 2014
A	Signia's profit/loss according to Tables 9 and 10	[£68k]	£48k	£33k	£92k	[£3.151m]
B	EBITDA according to Tables 9 and 10	[£4k]	£148k	£144k	£205k	[£3.027m]
C	EBITDA according to the management accounts	[X]	£148k	£210	£278	[£2.981m][56]

Table 11: Signia's profit/loss and EBITDA

(4) Signia's sources of finance over time

(a) Introduction

149. Clearly, as a start-up company, making relatively small profits in 2011 to 2013, a small loss in 2010, and a significant loss in 2014, Signia was dependent upon the sources of finance described in paragraph 103 above. It is now necessary to describe, in greater detail and by reference to actual events, how Signia was financed over this period.

150. At Coutts, Mr. Caudwell paid a fee of 50 BPS for each £ managed.[57] As has been seen, the plan was for Mr. Caudwell to pay no management fees during the first two years of Signia's operation, and thereafter for his fees to be negotiated.[58] That would, self-

[56] Mr. Sharp appeared to suggest that these figures were in some way not to be relied upon. Sharp 1 states:

"4.6 The Strategic Report (dated 24 April 2015) in the financial statements explains the loss after tax as being due to a decline in turnover in 2014 predominantly caused by a reduction in secondary income, accompanied by an 8% increase in operating expenses, and a "number of challenges". The Strategic Report also states that a "comprehensive restructuring" is to be undertaken to "regain traction and improve focus". For the reason given in para. 4.7 below, I doubt that this statement explains the matter fully, and I note that these financial statements were finalised after the departure of [Ms. Dauriac].

4.7 It is apparent from the management accounts, which show a switch from a small loss in October (of £32k) and November 2014 (of £57k) to a significant loss of £1.618 million in December 2014, that the 2015 management who prepared these accounts felt the need, for some reason, to show a substantial loss for 2014."

I read these paragraphs as suggesting that Signia's accounts did not reflect, in some unspecified way, the true position. In his evidence, Mr. Sharp disavowed this reading: Day 11/pp.205-206 (evidence in-chief of Mr. Sharp); Day 11/pp.218*ff* (cross-examination of Mr. Sharp). Obviously, I accept this, and will simply treat the wording of these paragraphs as unfortunate. The corollary, however, is that I proceed on the basis that the figures in the accounts are proper and reliable figures.

[57] Day 1/p.93.

[58] See paragraph 108 above. The fact that there would be a negotiation did not mean that Mr. Caudwell was conceding that fees would be payable.

evidently, deprive Signia of fee income, but Mr. Caudwell planned to fund Signia through loans.[59]

151. The need to maintain regulatory capital (which was pointed out by Kinetic) required a reconsideration of this approach.[60] In order to preserve the share capital of Signia for assessment against Signia's regulatory capital requirements, Signia advised charging a 45 BPS management fee on the £350 million AUM that Mr. Caudwell was proposing to place with Signia. The fee income this was expected to produce to Signia was deducted from the amount of the loan facility that Mr. Caudwell was extending to Signia. Thus, the amount of the loan intended to be made available by way of the Loan Agreement was reduced from £6,000,000 to £4,263,000. Thus, the monies Mr. Caudwell was paying – or at least making available – to Signia remained the same; but, of course, Signia would not be obliged to repay the fees it received (which, of course, was why Mr. Caudwell preferred the structure of a loan).[61]

152. This, at least, was the plan. The following paragraphs describe how Signia was actually financed over time.

(b) Financing of Signia in 2011

153. On the assumption that Mr. Caudwell would place £350 million with Signia and pay a fee of 45 BPS, this would produce fee income of £1,575,000. In the event, in 2011, Mr. Caudwell placed £471 million AUM with Signia, paying fees of £1,586,354, at an implied[62] rate of 34 BPS.[63] Of course, Signia also received fees in respect of Caudwell-related and third-party AUM.

154. In the event, with the loan facilities made available to Signia, Signia was solvent and satisfied the regulatory capital requirements for this year.[64]

(c) Financing of Signia in 2012

155. For 2012, Mr. Caudwell only wanted to pay a rate of 25 BPS and he wanted the same rate for the Caudwell-related parties.[65] On 16 March 2011, Signia agreed with Mr. Caudwell that, from 1 January 2012, he would pay a reduced management fee of 25 BPS and a performance fee of 10% of performance above 5% on his portfolio.

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[59] See paragraphs 124-125 above.

[60] The advice from Kinetic regarding the regulatory capital requirements is considered in paragraphs 115-119 above.

[61] As Ms. Dauriac fully appreciated: in her email to Mr. Canfield dated 1 November 2009 (see paragraph 118 above), she said: "The only key downside for you is that the fees invested in the business cannot be recovered as easy as a piece of senior debt."

[62] I.e. a rate that has been derived by calculating revenue from Caudwell AUM as a percentage of Caudwell AUM.

[63] See Annex 4, Rows A[4], A[6] and A[7].

[64] See Day 1/p.95-96 (Dauriac opening).

[65] Day 1/p.97 (Dauriac opening); Day 2/p.59 (cross-examination of Mr. Canfield).

156. However, he also increased the loan facilities available to Signia by some £10 million to provide further capital for the growth of the business and to make further hires.[66]

157. In 2012, Mr. Caudwell placed £463 million AUM with Signia, paying fees of £1,109,900, at an implied rate of 24 BPS.[67]

158. In 2012, Signia's fees were insufficient to meet its regulatory capital requirements – although, because of the loans available, it remained solvent. The regulatory capital deficit was addressed by Mr. Caudwell waiving an introduction fee that would have been payable to him by Signia, and which he permitted Signia to retain. This, in addition to a £600,000 rebate, enabled Signia to meet its regulatory capital requirements for 2012.[68]

(d) Financing of Signia in 2013

159. The arrangement that Mr. Caudwell – and the Caudwell-related parties – pay 25 BPS for Signia's services continued into 2013.

160. Mr. Caudwell placed £475 million AUM with Signia, paying fees of £1,135,246 at an implied rate of 24 BPS.[69]

161. Signia's revenue – including, but not limited to, the fees paid by Mr. Caudwell – was not sufficient to prevent an issue arising in relation to regulatory capital in 2013.[70]

162. The potential for a regulatory capital shortfall was identified (at the latest) around 7 January 2014, when there was an email exchange between Mr. Wilson, Mr. Canfield, Mr. Ward and Mr. Maycock.[71] Mr. Wilson's role was to provide guidance to Mr. Canfield on how to satisfy the regulatory capital requirements.[72]

163. The shortfall in regulatory capital was addressed by Signia raising, for payment by Mr. Caudwell, two invoices, both dated 31 December 2013:

(1) The first invoice – "Invoice S01145" – was in the amount of £950,000. VAT was not said to be payable. The invoice was in respect of "Introducers fee: Final fee for introduction to HSBC for lending on Hedge Fund Portfolio".

(2) The second invoice – "Invoice S01146" – was in the amount of £750,000. VAT was not said to be payable. The invoice was in respect of "Successful introduction to RBC for property loan on Ancaster House & 3 Audley Square".

164. The evidence regarding the generation of these invoices was as follows:

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[66] Day 1/p.97 (Dauriac opening).

[67] See Annex 4, Rows A[4], A[6] and A[7].

[68] Day 2/pp.132-133, 150-151 (cross-examination of Mr. Canfield).

[69] See Annex 4, Rows A[4], A[6] and A[7].

[70] Day 2/p.130 (cross-examination of Mr. Canfield).

[71] In addition to the emails of 7 January, see also Day 2/pp.142-143 (cross-examination of Mr. Canfield).

[72] Day 10/pp.103-104 (cross-examination of Mr. Wilson).

(1) Although both dated 31 December 2013, these were backdated invoices generated in January 2014.[73] They were paid on 31 January 2014.[74]

(2) The invoices were generated by Mr. Ward, in conjunction with Mr. Wilson.[75] Mr. Hayes describes the background in the following terms:[76]

> "12. I have been shown a copy of the email I sent to Nathalie on 9 November 2013…This email relates to the proposed fees to be charged by [Signia] to [Mr. Caudwell] in relation to certain loans. Nathalie probably asked me to send her this information.
>
> 13. With regard to the loans, I recall coming under pressure from both Martin and Nathalie to get the deals approved before the end of 2013, so that they could immediately raise the fees for [Mr. Caudwell] for this work. I thought this was strange as normally a fee for this type of introductory work would only be raised when the loan had actually been drawn down, not merely when the loan arrangements had been approved by the lender.
>
> 14. I now understand that [Signia] raised invoices for a total of £1,700,000 for introducing [Mr. Caudwell] to Royal Bank of Canada and HSBC for the purposes of loan re-financing. Whilst this is clearly significantly more than the sums proposed in my email, I can confirm that the narratives of the invoices do relate to the introductory work I carried out for [Mr. Caudwell] in 2013…I can also confirm that I was unaware of these invoices at the time and I did not discuss them with [Mr. Caudwell, Mr. Wilson or Ms. Dauriac]."

(3) Mr. Ward recalled a number of conversations with Mr. Wilson regarding these invoices. He said that he "had a number of calls and conversations with [Mr. Wilson] during December 2013 in relation to the issue and how exactly the invoices should be raised and the payments should be made".[77] He did not, however, have any conversations (or other communications) with Ms. Dauriac about the invoices.[78] His understanding was as follows:[79]

> "I understood at the time that [Mr. Wilson] was having regular conversations with Nathalie about these issues. I therefore find it surprising that Nathalie should profess to have had no knowledge of all the circumstances regarding the payment of £1.7 million into the business in January 2014…until in or around October 2014, Nathalie generally kept herself up to date with matters of this nature and it is unlikely in my experience that these transactions would have proceeded without her full knowledge and authority."

[73] Day 2/p.134 (cross-examination of Mr. Canfield).

[74] Day 2/p.135 (cross-examination of Mr. Canfield).

[75] Day 2/p.135 (cross-examination of Mr. Canfield).

[76] Hayes 1.

[77] Ward 1/para. 5.

[78] Day 7/p.64 (cross-examination of Mr. Ward).

[79] Ward 1/para. 10. See also Day 7/pp.62*ff* (cross-examination of Mr. Ward).

(4) Mr. Wilson recalled that Ms. Dauriac was aware of the £1.7 million regulatory capital deficit:[80]

Q (Ms. Carss-Frisk, Q.C.)	What do you say was Ms. Dauriac's position as to how the £1.7 million would be raised at the end of 2013/early 2014?
A (Mr. Wilson)	Ms. Dauriac said I should discuss raising a management invoice with Mr. Canfield.
Q (Ms. Carss-Frisk, Q.C.)	You're saying she specifically referred to a management fee invoice, are you?
A (Mr. Wilson)	Yes, I believe that was the discussion, because that's how we'd previously rectified the position.
Q (Ms. Carss-Frisk, Q.C.)	You believe that was the discussion. Is it possible that she actually didn't specify whether it would be a management fee or some other kind of fee?
A (Mr. Wilson)	No. At the time when I raised the £1.7 million with her, she said: "Speak to David Canfield regarding a management fee".
Q (Ms. Carss-Frisk, Q.C.)	If that was her, as it were, instruction to you, you would have presumably wanted to implement that instruction, wouldn't you?
A (Mr. Wilson)	Yes, I would have gone away to implement that instruction.
Q (Ms. Carss-Frisk, Q.C.)	And you certainly would not have done something different without discussing it with Ms. Dauriac, would you?
A (Mr. Wilson)	That's – no, that's not correct. By then, the chain of events was then I went to speak to Mr. Canfield, and I didn't really discuss the matter in any detail with Ms. Dauriac post that, because myself, Mr. Ward and Mr. Canfield then took forward the implementation of the capital adequacy.
Q (Ms. Carss-Frisk, Q.C.)	Are you seriously saying that having been told, as you've described, by Ms. Dauriac that the fee should be a management fee, you then go and do something different without discussing it with her at all?
A (Mr. Wilson)	Yes, I then went and discussed in detail with Mr. Canfield, who is a director of the business and directly liaising with Mr. Caudwell. We had then agreed the plan of action. There was no need at that point to discuss it any further. I

[80] Day 10/pp.122*ff*. Mr. Wilson had some recollection – as had Mr. Caudwell – of a conversation between Ms. Dauriac and Mr. Caudwell about the £1.7 million, but the evidence was too unspecific for me to determine what was said: Day 10/pp.127-128 (cross-examination of Mr. Wilson).

	was talking directly with the representative director of our shareholder.
Q (Ms. Carss-Frisk, Q.C.)	Are you suggesting that Ms. Dauriac wasn't interested to find out exactly how the £1.7 million would be raised?
A (Mr. Wilson)	Ms. Dauriac simply asked me to keep her updated as to the progress of the £1.7 million and the capital adequacy; we didn't discuss details as we went along.
Q (Ms. Carss-Frisk, Q.C.)	If she wanted to be updated as to progress, I would suggest it's inconceivable that you would not have mentioned to her that a different solution was going to be adopted from the one that you claim she had instructed you to use?
A (Mr. Wilson)	No, that's not inconceivable. I was dealing with a director of the business, as I said, that I had dealt with on matters before in relation to Mr. Caudwell…

Mr. Wilson was, himself, at the time satisfied that these were "perfectly legitimate invoices to raise".[81]

165. In the pleadings and in correspondence between the parties, these payments were described as "*ex gratia*" payments.[82] In cross-examination, Mr. Canfield sought to qualify this position:[83]

Q (Mr. Plewman, Q.C.)	…So, the case at that stage that was put up was these are *ex gratia* fees?
A (Mr. Canfield)	I think the case that was put forward was that these were fees that Mr. Caudwell could have refused to pay.
Q (Mr. Plewman, Q.C.)	They were *ex gratia* fees. We don't have to gloss that proposition. They were fees he didn't have to pay but chose to pay and this is what was put up?
A (Mr. Canfield)	Correct.
Q (Mr. Plewman, Q.C.)	Whereas a genuine introduction fee would be something that he would have to pay, at least in whatever its amount may be?
A (Mr. Canfield)	I think that's the point. It's the extent of that introduction fee.
Q (Mr. Plewman, Q.C.)	It's not what it says. It says that the invoice as a whole was an *ex gratia* fee, Mr. Canfield.

[81] Day 10/pp.138-139 (cross-examination of Mr. Wilson).

[82] Day 2/pp.139-140 (cross-examination of Mr. Canfield).

[83] Day 2/pp.140*ff* (cross-examination of Mr. Canfield).

A (Mr. Canfield)	But in both instances he had already paid some fees, certainly for the HSBC hedge fund loan, he had already paid fees in 2013. This was an additional fee.
Q (Mr. Plewman, Q.C.)	So, in the further information and in the Eversheds' letter, the instructions which you were involved with obtaining, the position was taken that Mr. Caudwell paid these fees *ex gratia*, correct?
A (Mr. Canfield)	Yes.
Q (Mr. Plewman, Q.C.)	Whereas the position that is now contended is that they were genuine introduction fees, even if inflated?
A (Mr. Canfield)	I genuinely don't see the difference between the two.

166. Mr. Caudwell took the same line as Mr. Canfield: that the invoices were inflated, but that they reflected actual liabilities of Mr. Caudwell, albeit in a lesser amount.[84] He knew that the invoices had been raised to sort out a regulatory capital issue but was not closely involved.[85]

167. It is necessary to bring out the circumstances in which these invoices were produced, because it is these invoices that form the basis for Ms. Dauriac's contention that Mr. Caudwell (with Mr. Canfield) sought to get rid of Ms. Dauriac in the latter part of 2014. The point is considered and determined fully later on in this Judgment, but essentially Ms. Dauriac's contention (about which I express no view for the present) was as follows:[86]

(1) Everyone accepted that there was a regulatory capital shortfall in Signia for 2013.

(2) It was anticipated by everyone – including, in particular, Ms. Dauriac – that any regulatory capital shortfall would be addressed by raising invoices payable by Mr. Caudwell for managing his AUM. Such invoices, however, would have attracted VAT.

(3) In order to avoid paying VAT, Mr. Caudwell and Mr. Canfield procured that the invoices were raised in respect of matters that did not attract VAT. Ms. Dauriac was unaware of this.

(4) When Ms. Dauriac became aware of this, she was concerned at the dishonesty and the position this put Signia in. She raised the matter with Mr. Canfield and, as a consequence of her doing so, triggered the events that lead to her departure from Signia. In short, the expenses inquiry and the investigation into her were shams, simply designed to get rid of her.

Clearly, therefore, the circumstances in which the issue of the propriety of the invoices was raised by Ms. Dauriac is a matter of some factual importance in this case, and the

[84] Day 5/pp.189-190 (cross-examination of Mr. Caudwell).

[85] Day 5/p.189 (cross-examination of Mr. Caudwell).

[86] This case was put to Mr. Caudwell on Day 5/pp.192-198. He rejected the allegations.

reason I have described in some detail how Invoices S01145 and S01146 came to be raised.

(e) Financing of Signia in 2014

168. It is not necessary to consider the specifics of Signia's funding in 2014. The events of 2014 are considered in detail in Section G below. However, the issues of regulatory capital shortfall that might have arisen in 2014 were overtaken by the events surrounding the termination of Ms. Dauriac's employment with Signia, and there is no need to consider this issue for the purposes of this Judgment.

169. It was during the course of 2014 that Signia established – at some cost (mainly to recruit Mr. Rosenthal) – its hedge fund capability.[87]

(f) Signia's debt as at the end of 2014

170. As has been described, various loan facilities were made available to Signia over time, and Signia drew down on these.[88] The detail of these drawdowns is immaterial: it only needs to be noted that, as at the end of 2014, Signia had debt outstanding of £1.5 million, but also a cash holding of £90,000 – so net debt stood at around £1.4 million.[89]

171. Signia drew significantly on the loan facilities in 2015, after Ms. Dauriac had left the business.[90]

(5) Ms. Dauriac's bonuses

172. Ms. Dauriac was paid a bonus of £200,000 in both 2010 and 2011.[91]

173. In 2012, the growth in Signia's AUM decreased: total discretionary AUM was down from £782 million to £768 million. Part of this was due to a reduction in Mr. Caudwell's own AUM with Signia (which fell from £471 million to £463 million), but (perhaps crucially) third party AUM did not rise. It fell from £220 million to £214 million. Caudwell-related AUM remained constant.[92] Ms. Dauriac was not awarded a bonus in 2012, although Mr. Canfield considered she should have been. The decision not to pay a bonus would have been the decision of Mr. Caudwell.[93]

174. For 2013, Mr. Canfield again recommended a bonus, but again Mr. Caudwell did not agree, and no bonus was awarded.[94]

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[87] Day 5/p.168 (cross-examination of Mr. Caudwell).

[88] Day 5/pp.164*ff* (cross-examination of Mr. Caudwell).

[89] Shi 1/para 3.34.

[90] Day 5/pp.36-37 (cross-examination of Mr. Caudwell).

[91] Canfield 1/para. 38.

[92] See Annex 4. For the reasons given earlier in this Judgment, I have focussed on the levels of discretionary AUM. Hedge fund AUM did not, of course, exist at this point.

[93] Canfield 1/para. 38; Day 2/p.17 (cross-examination of Mr. Canfield).

[94] Canfield 1/paras. 39-42; Day 2/pp.94-95 (cross-examination of Mr. Canfield); Day 5/p.22 (cross-examination of Mr. Caudwell).

175. In an email dated 17 June 2014 from Ms. Ohbi (Signia's General Counsel) to Mr. Canfield (copied to Ms. Dauriac), Ms. Ohbi stated:

> "Further to conversations between Nathalie and John last week, John has confirmed that Nathalie shall be entitled to a bonus of £300,000 every year from 2014 going forward. The remaining terms of her employment contract will remain unchanged."

176. Ms. Dauriac contended that – on the basis of this communication – Mr. Caudwell had promised a bonus of £300,000 every year, irrespective of performance.[95] I reject this suggestion of bonus as salary as entirely implausible. When the point was put to him, Mr. Caudwell said that:[96]

> "I would never, ever, agree to unconditional bonuses other than in very extreme circumstances like somebody joining the business and doesn't know what the business targets might be and I might, for a very short period of time, guarantee a bonus. I would never guarantee a bonus ongoing to an employee in a failing business, and this business was failing dramatically at the time…"

I accept this evidence. At most, there was a conversation between Mr. Caudwell and Ms. Dauriac as to the sort of level of bonus she might hope to achieve in 2014. But I find that the terms of Ms. Dauriac's contract of employment – as I have set them out in paragraph 121 above – remained unchanged. In other words, Ms. Dauriac's bonus was to be individually negotiated each year.

G. THE FACTS: EVENTS OF 2014

(1) Setting the scene

177. At the beginning of 2014, Signia had been in business for just over three years. Performance had, perhaps, not been as Mr. Caudwell might have wished, and a good deal of the evidence adduced by Signia went to the disappointing nature of Signia's performance and, inferentially, the lacklustre leadership of Ms. Dauriac as Signia's chief executive officer.

178. Save for the purpose of valuation (which is considered separately in Section N below), I am disinclined to place very much – if any – weight on such points regarding performance. This is not so much because I reject them as because I do not consider that they were material factors in the circumstances that resulted in Ms. Dauriac's departure from Signia. In my judgment, had these circumstances not pertained, then Mr. Caudwell might well have pressed Ms. Dauriac to cause Signia to perform better; but her employment relationship with Signia would not have ended.

179. For this reason, it is not necessary for me to consider the extent to which Signia did, or did not, meet the requirements of the various business plans that were produced. That is probably just as well, because the management of Signia was conducted very informally indeed. Formal business plans were not agreed, and Signia's performance against those plans was not monitored. There were no board meetings. Although Mr.

[95] Day 5/pp.69-70, 167 (cross-examination of Mr. Caudwell).

[96] Day 5/p.72 (cross-examination of Mr. Caudwell).

Canfield was a director of Signia, his role was peripheral until the events that I come to describe in this Section.

180. Ms. Dauriac, as I find, ran the show, and she preferred to engage with Mr. Caudwell, rather than his subordinates, including Mr. Canfield. More specifically:

(1) Ms. Dauriac was quite autocratic in how she ran Signia. She was the boss, and she did not appreciate interference in what she regarded as her "baby". In the words of Mr. Canfield, she "exercised a high degree of control".[97] Mr. Canfield did not regard that as a good thing:[98]

Q (Mr. Plewman, Q.C.)	Do you agree that the exercise of that high degree of control that you refer to is a feature of the energy and selfless commitment that she applied to the business?
A (Mr. Canfield)	Not necessarily.
Q (Mr. Plewman, Q.C.)	You don't. Well, why else do you think she was doing it?
A (Mr. Canfield)	Because she wanted to control the business herself, because she objected to any intervention from anyone else.

(2) In terms of who she reported to, this was Mr. Caudwell rather than Mr. Canfield. That was because of their very close relationship.[99] Since their relationship began in 2006, Mr. Caudwell and Ms. Dauriac had enjoyed an "extremely close"[100] friendship, transcending their business relationship. Mr. Caudwell regularly invited Ms. Dauriac, Mr. Stoebe and their daughter to join him and his family on holiday in Vail or on his yacht. Mr. Caudwell employed Mr. Stoebe at Pure Jatomi, another business in which Mr. Caudwell was a majority shareholder. Mr. Caudwell was godfather to Ms. Dauriac's first child. In cross-examination, Mr Caudwell recognised that Ms. Dauriac had been extraordinarily supportive of him and Kate Caudwell (his then wife) when she (Mrs. Caudwell) was suffering from cancer.[101] In her oral evidence, Ms. Dauriac said she "look[ed] after him like a father";[102] in his, Mr Caudwell agreed that "in a friendship sense, she loved [him] and [he] loved her".[103]

[97] Canfield 1/para. 33; Transcript Day 2/pp.24-25 (cross-examination of Mr. Canfield).

[98] Day 2/p.25 (cross-examination of Mr. Canfield).

[99] Day 2/p.24 (cross-examination of Mr. Canfield).

[100] Caudwell 1/paras. 7-8

[101] Day 5/p.20

[102] Day 7/p.174

[103] Day 5/pp.20,.29 (cross-examination of Mr. Caudwell).

(3) In these circumstances, Mr. Canfield was, inevitably, kept somewhat out of the loop.[104] Although Mr. Canfield said he regarded Ms. Dauriac as a friend,[105] his relationship with Ms. Dauriac was not an easy one:[106]

Q (Mr. Plewman, Q.C.)	…You say that Ms. Dauriac was routinely confrontational, uncooperative and evasive?
A (Mr. Canfield)	I do.
Q (Mr. Plewman, Q.C.)	And that, despite the fact that at the end of December 2013/beginning of January 2014 you had a high regard for her and regarded her as a friend?
A (Mr. Canfield)	I did.
Q (Mr. Plewman, Q.C.)	And I would suggest you would not have regarded her as a friend or had a high regard for her if she was routinely confrontational, uncooperative and evasive?
A (Mr. Canfield)	I maintain that that was a characteristic of Nathalie's management of the company.

It will have been difficult for Mr. Canfield to prevent the experiences of 2014 from colouring his views of Ms. Dauriac prior to this. My conclusion is that prior to the events of 2014, Mr. Canfield had little to do with Signia, but that on those occasions when he did, it was made clear to him that he did not have a role, and that Ms. Dauriac reported to Mr. Caudwell. I am sure that relations between Mr. Canfield and Ms. Dauriac were cordial; I doubt they were particular friends. I am also sure that their relationship was particularly informed *(i)* by the fact that Ms. Dauriac was on excellent terms as a friend with Mr. Caudwell and *(ii)* that Mr. Canfield knew this very well. I have no doubt that it was this relationship that forced Mr. Canfield to cede to Ms. Dauriac an autonomy in relation to Signia that she would not otherwise have had.

181. Having set the scene, the events of 2014 fall into two, broad, chronological parts:[107]

(1) The events leading up to the investigation into Ms. Dauriac's expenses; and

(2) The expenses investigation itself, and its consequences.

[104] Day 2/pp.25-26, 121 (cross-examination of Mr. Canfield).

[105] Day 2/pp.15, 18 (cross-examination of Mr. Canfield).

[106] Day 2/pp.29-30 (cross-examination of Mr. Canfield).

[107] There is some chronological cross-over, but for purposes of exposition it is best to consider the investigation discretely.

(2) Events leading up to the investigation into Ms. Dauriac's expenses

(a) The Mayfair Project and its effect

182. During the course of the summer of 2014, the dynamic in Mr. Caudwell's relationship with Ms. Dauriac began to change:[108]

> **Q (Mr. Plewman, Q.C.)** You say in paragraphs 7 to 9 of your witness statement that you had an extremely close relationship with Ms. Dauriac until the dispute which gives rise to these proceedings?
>
> **A (Mr. Caudwell)** Yes, that's very nearly accurate but not quite.
>
> …
>
> …there was this issue with Mr. Babaee that caused me to go a little bit cooler towards Ms. Dauriac. The relationship was still good, but not as close as it had been.
>
> **Q (Marcus Smith J.)** It's really the words "until the dispute which gives rise to these proceedings". You're suggesting there was a cooling off –
>
> **A (Mr. Caudwell)** Yes, there was a cooling off.

183. The issue with Mr. Babaee arose in the following way.

184. In early 2012, prior to Mr Hayes' employment with Signia, he had worked on a deal together with Signia and a Mr. Babaee, a property developer, to acquire a property at 25 Culross Street, Mayfair, London ("Culross Street"), for £7 million. Mr. Hayes performed due diligence on the transaction and acted as the key point of contact between Signia and Mr. Babaee.

185. According to Mr. Hayes,[109] when carrying out this due diligence, he discovered some invoices at Culross Street from the previous year (2011), which were addressed to the "K10 Group", Mr. Babaee's property development business. The invoices related to some rubble which Mr. Babaee had had removed from the premises. When Mr. Hayes asked about this, Mr. Babaee explained that, in 2011, he had the benefit of a contract to purchase Culross Street and that he ultimately surrendered this contract because he was unable to line up a buyer for the property at a higher price. Instead, he introduced the deal to another buyer in return for receiving a commission for brokering the deal.[110] Culross Street was sold for £5 million in this 2011 transaction.

186. Mr. Hayes accepted that he was aware of Mr. Babaee's prior involvement in the project and he considered that Mr. Wilson was too.[111] There is no suggestion that either told Ms. Dauriac. It was only in June 2014, some two years after the transaction, that Ms.

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[108] Day 4/pp.198-201 (cross-examination of Mr. Caudwell).

[109] Hayes 1/paras. 16-18.

[110] Mr. Babaee purportedly received a "six-figure brokerage / commission fee" in relation to this transaction.

[111] Hayes 1/para. 18

Dauriac became aware of the fact that Mr. Babaee had been involved in the 2011 transaction relating to Culross Street, before working on the 2012 transaction with Signia. Although Mr. Babaee had no interest in Culross Street when it was sold to Signia, Ms. Dauriac considered that he should have disclosed his previous interest. Her point was that that failure had caused Signia to pay more for the property than it was worth (i.e. £2 million more than the 2011 sale price).[112]

187. Ms. Dauriac raised this issue with a number of people on a number of occasions, making serious allegations of financial impropriety against Mr. Babaee. These allegations of wrongdoing were vigorously denied by Mr. Babaee.

188. It is unnecessary for me to reach any view as to the soundness of these allegations. What matters, for the purposes of this Judgment, is the way in which the making of these allegations by Ms. Dauriac affected her relationship with others in the months leading up to the expenses investigation.

189. Ms. Dauriac raised the issue with Mr. Canfield, who initially was wholly supportive of Ms. Dauriac's concerns. However, Mr. Canfield suggested that it soon became clear to him that "she was becoming quite obsessive about this issue and was turning the episode into something of a witch hunt".[113]

190. In an attempt to resolve the issue, Ms. Dauriac and Mr. Hayes met with Mr. Babaee on or about 1 July 2014. Although Mr. Babaee remained calm throughout the meeting, Mr. Babaee reacted to Ms. Dauriac's comment that she would bring these allegations to Mr. Caudwell's attention by saying something like "if you step on my toes then I will step on yours".[114]

191. Ms. Dauriac interpreted this or chose to interpret this as a threat of physical violence against her, specifically a threat to break her fingers.[115] In his statement, Mr. Hayes said:[116]

> "I met Nathalie in the car outside and she was red-faced with anger. She asked me if I had heard his threat to "break her fingers". I explained to Nathalie in the taxi back to the office that he had not threatened to break her fingers and that the phrase Kam had used was merely a figure of speech that had been used during an admittedly quite heated business meeting. Despite me telling her this, she called her husband and said Kam had physically threatened her. I think Nathalie understood my explanation but chose to pretend not to understand it, as it suited her purposes to paint Kam as the oppressor and herself as the victim."

192. Ms. Dauriac deployed the episode in a conversation with Mr. Caudwell. Mr. Babaee was also a friend, or at least acquaintance, of Mr. Caudwell's. Mr. Caudwell's reaction to what Ms. Dauriac told him was as follows:[117]

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[112] Hayes 1/para.16; Canfield 1/para. 85

[113] Canfield 1/para. 85.

[114] Hayes 1/para.19;

[115] I am unclear how the transition from toes to fingers was made, but that is immaterial.

[116] Hayes 1/para. 19. See also Day 7/pp.48*ff* (cross-examination of Mr. Hayes).

[117] Day 4/p.199 (cross-examination of Mr. Caudwell).

"I very clearly remember a meeting, that she came back to see me and said, "Kam is an animal, he's an absolute ogre and he's threatened to break my fingers". Now, I know this guy quite well, and I couldn't really imagine that that was the case, but at the same time I did trust – at that stage trusted Ms. Dauriac totally and had sort of no reason to disbelieve her, but at the same time it didn't make sense…I really, at that point, was really struggling to work out whether I'd got one friend that was fraudulent, or a friend that was just destructive and malicious, or whether I'd got both…I didn't feel quite the same because I wasn't confident in the situation, so I distanced both of them at the same time because I just didn't know the truth…That caused me to be a little bit cooler with Ms. Dauriac…The relationship was still good, but not as close as it had been."

193. Such was the severity of the fallout from this episode that Mr. Babaee bought a defamation claim against Signia, which was settled later in 2014.[118]

194. For present purposes, the significance of this episode lies in the effect it had on the relationship between Mr. Caudwell and Ms. Dauriac. Although the episode did not cause "terminal" damage to Mr. Caudwell's relationship with Ms. Dauriac, it led to Mr. Caudwell being "wary and suspicious".[119]

(b) Provision of information by Mr. Hayes to Mr. Canfield

195. In early July 2014, Mr. Hayes and Mr. Canfield exchanged text messages and phone calls regarding Ms. Dauriac's activities at Signia. These included – but did not relate solely to – expenses. Mr. Canfield's witness statement states that Mr. Hayes identified "a number of very serious concerns", which he listed as follows:[120]

"(a) It was an open secret within Signia's office that [Ms. Dauriac] charged significant non-business expenditure to the company…

(b) He said that [Ms. Dauriac] had arranged for Signia to take a very considerable fee relating to a loan that Mr. Caudwell had made to a famous sportsperson, introduced by Signia, without disclosing this to Mr. Caudwell.

(c) That [Ms. Dauriac's] father, Christian Dauriac, who runs a vineyard in Bordeaux, was involved (as sole Négotiant) with Signia's wine investment fund. For obvious conflict reasons, the rules of the wine fund specifically prevented any purchase of Dauriac family estate wines by the fund unless specific approval was obtained from Signia's independent advisory board and with the consent of a majority of investors.

(d) That [Ms. Dauriac] routinely manipulated the reporting of client portfolio performance to hide the true poor performance and/or losses that had been incurred and had on a number of occasions held out to clients that she personally was invested in specific investment schemes which she was trying to persuade clients to participate in.

(e) That a succession of senior employees had left or were in the process of leaving Signia, disillusioned by her dictatorial management style."

[118] Day 5/pp.23-24 (cross-examination of Mr. Caudwell).

[119] Day 5/p.67 (cross-examination of Mr. Caudwell).

[120] Canfield 1/para. 92.

196. In addition to text messages and phone calls, screen-shots of Ms. Dauriac's expense claims were sent to Mr. Canfield by Mr. Hayes.[121]

197. On 16 July 2014, Mr. Hayes and Mr. Canfield met in a pub off Oxford Street to discuss Ms. Dauriac's expenses. Between 28 and 31 July 2014, there were further email exchanges between Mr. Hayes and Mr. Canfield regarding Ms. Dauriac's expenses.

198. A number of points must be noted about this "whistleblowing" in relation to Ms. Dauriac:

(1) Mr. Canfield and Mr. Hayes deleted the texts, messages and screenshots that they sent to each other. Mr. Canfield was unclear when exactly this deletion occurred.[122]

(2) Mr. Canfield explained that the reason he deleted these documents – despite their importance to any investigation into Ms. Dauriac – was to preserve Mr. Hayes' status as a whistleblower, i.e. to protect his identity:[123]

Q (Mr. Plewman, Q.C.)	And we established this morning that allegations of expense abuse against the chief executive officer would be very serious indeed?
A (Mr. Canfield)	Correct.
Q (Mr. Plewman, Q.C.)	And we established this morning that it would be very important that you then conducted a rigorous examination of all the evidence?
A (Mr. Canfield)	Correct.
Q (Mr. Plewman, Q.C.)	And that you preserve all of the evidence?
A (Mr. Canfield)	Correct.
Q (Mr. Plewman, Q.C.)	And yet the first thing you did was to delete all of the texts that you say were sent to you?
A (Mr. Canfield)	I deleted the texts because I needed to protect Mr. Hayes as a whistleblower.
Q (Mr. Plewman, Q.C.)	Nobody's got your phone, Mr. Canfield. Why does the need to preserve his anonymity as a whistleblower mean that you've got to delete the evidence?
A (Mr. Canfield)	I decided to do that.
Q (Mr. Plewman, Q.C.)	Yes, but why did you decide to do it?
A (Mr. Canfield)	I think I've already explained why I decided to do that.

[121] Day 2/p.183 (cross-examination of Mr. Canfield).

[122] Day 2/pp.180-182 (cross-examination of Mr. Canfield). It is clear, however, that Mr. Canfield did not stand by the assertion in Canfield 1/para. 91 that he deleted the text messages "at the time".

[123] Day 2/p.183 (cross-examination of Mr. Canfield).

Whilst it is perfectly comprehensible that Mr. Canfield should have wished to ensure that Mr. Hayes' identity was protected, it would surely have been possible to maintain this confidence whilst maintaining a copy of the evidence that Mr. Hayes was providing.

(3) Some communications – mainly emails – going between Mr. Canfield and Mr. Hayes survived the cull. These communications consist of Mr. Hayes identifying specific expenses or conduct of Ms. Dauriac, and Mr. Canfield commenting on these:

Mr. Hayes to Mr. Canfield (at 3:44pm on 28 July 2014)	£1650 to fly Juliette to the Bahamas. A legitimate business expense?
Mr. Canfield to Mr. Hayes (at 4:46pm on 28 July 2014)	F**k me, that's atrocious.
Mr. Canfield to Mr. Hayes (at 11:14am on 29 July 2014)	Hi David, Do you know if there were any claims re the trip to [Mr. Caudwell's] boat in May 2014? Also, do you know what the South African expenses were about from Feb? Were they there on business?
Mr. Hayes to Mr. Canfield (at 11:54am on 29 July 2014)	No claim yet or it may well have been paid for on her corporate credit card, in which case I wouldn't be able to see it. [South Africa] was their annual Christmas holiday. She will always "meet" someone out there to legitimise it as a business trip.
Mr. Canfield to Mr. Hayes (at 12:24pm on 29 July 2014)	I suspect she won't have claimed the one in May as it was a short cheap EasyJet flight. But I'm probably being naïve! This woman is morally bankrupt.
Mr. Canfield to Mr. Hayes (at 4:24pm on 31 July 2014)	[This is a surviving fragment of an email chain, and so reads incompletely.] Jesus, it all falls into place, although she would probably say that she was just introducing them…

(4) Of the allegations described in paragraph 195 above, Mr. Canfield only pursued the expenses allegation. Even that he did not pursue immediately – but, as will be described, only after a period of some months. He was asked about this in cross-examination:[124]

Q (Mr. Plewman, Q.C.)	Now, going back to July, serious allegations are

[124] Day 3/pp.20*ff* (cross-examination of Mr. Canfield).

raised. Did you not think it was imperative that you investigate them immediately?

A (Mr. Canfield) At that point, I was still deciding what to do. It was a very difficult situation because of the relationship between Mr. Caudwell and Ms. Dauriac. I needed to be – as I said, I needed to be absolutely certain that what I was being told was reliable.

Q (Mr. Plewman, Q.C.) Well, on your version, you are sent some mysterious screenshots in July 2014, which evidence claims which Mr. Hayes considers to be abusive.

A (Mr. Canfield) That's correct.

Q (Mr. Plewman, Q.C.) So you have the material. All you've got to do is investigate it?

A (Mr. Canfield) That's correct.

Q (Mr. Plewman, Q.C.) But you did nothing?

A (Mr. Canfield) I wouldn't say I did nothing. I didn't – as I said, I didn't get the USB stick from Mr. Hayes until late, that's clearly evident. But there were other matters going on at the time…

(5) Mr. Canfield did not communicate this information to Mr. Caudwell. At most, he might have mentioned "that there was an issue that I had been given some information. I wouldn't at that stage disclose any detail because I at that point had been unable to verify the accuracy and reliability."[125]

199. It is clear from the surviving email exchanges between Mr. Canfield and Mr. Hayes that Mr. Canfield took the allegations made by Mr. Hayes quite seriously. He should have investigated them, and as a director of Signia – albeit not as someone with day-to-day involvement – he could have done. He did not do so. I find that the reason he did not do so was because of his perception of Mr. Caudwell's relationship with Ms. Dauriac. He was, as I find, concerned that if he moved overtly against Ms. Dauriac, that might backfire against him. Whether he was right in his assessment of Mr. Caudwell matters not: it is his perception that counts for this purpose.

(c) The trip to see Rebekah Caudwell

200. Ms. Dauriac was a friend of Ms. Caudwell, but she also arranged or helped with a loan facility that Ms. Caudwell wanted. The details of this facility are immaterial, but I consider that Ms. Dauriac could fairly describe Ms. Caudwell as a "client".[126] However,

[125] Day 3/pp.18-19 (cross-examination of Mr. Canfield); Day 5/p.54 (cross-examination of Mr. Caudwell).

[126] Day 6/pp.137-142.

it was Ms. Caudwell's evidence, which I accept, that the assistance provided by Ms. Dauriac had already been provided by the time of this trip.[127]

201. On 1 September 2014, Ms. Dauriac and Mr. Stoebe had dinner with Ms. Caudwell. One of the subjects that came up was the recommendation of a doctor in New York. Ms. Caudwell emailed Ms. Dauriac and Mr. Stoebe on 2 September 2014 to give them the details of the doctor. Mr. Stoebe described this as "[n]ot only a good excuse to come to New York". In the email chain which followed (between 8 and 12 September 2014), Ms. Dauriac and Mr. Stoebe agreed to take premium economy flights to New York to spend Halloween (31 October – 2 November 2014) with their "dear friends" Ms. Caudwell and her husband, staying at their house.

202. In an email dated 12 September 2014, Mr. Stoebe identified the premium economy flights he proposed that he and Ms. Dauriac should take to New York, noting that this would cost around £1,000/person. Ms. Degruttola – who was copied in – inquired "shall I book these on the corporate card", to which Mr. Stoebe responded in the affirmative. Ms. Dauriac was copied in on this exchange.

203. Ms. Dauriac referred to the trips as "party time", and a trip to have a "fun time with you guys". Ms. Dauriac did, however, when asked whether she was free on the Saturday night in New York for dinner or whether she needed to see clients, ask if it was okay to invite another couple to dinner that evening.

204. It was Ms. Caudwell's evidence that this was a social trip:[128]

Q (Ms. Ford, Q.C.)	Your evidence is that as far as you were concerned you considered the trip to be social in nature. Do you consider that the fact that that the trip was a social trip from your perspective doesn't mean that it was social from Ms. Dauriac's perspective?
A (Ms. Caudwell)	I suppose I could – yes, I certainly could accept that. But actually, in the case of this trip, there was such a trail of conversation in which Nathalie said, you know – and I'm quite quoting her that, "Party time, we just want to have fun with you guys, we just want to see you", you know, at some point I said, "You'll probably have client work to do" and she said, "No, we just want to see you", and she was also coming to see a doctor as well – that I'd fail, I don't know, I struggle to see that it could be seen as a business trip when there was such a clear trail of it being personal.

205. Of course, Ms. Dauriac might travel to see potential clients (including herself), and this was put to Ms. Caudwell:[129]

[127] Day 6/pp.141-142, 143 (cross-examination of Ms. Caudwell). That, naturally, would not preclude further dealings, related or unrelated to this initial transaction. But I find that there were none at the time of the trip.

[128] Day 6/pp.142-143 (cross-examination of Ms. Caudwell).

[129] Day 6/pp.143-144 (cross-examination of Ms. Caudwell), and (more generally) pp.144-145.

Q (Ms. Ford, Q.C.) And you would be aware that travelling to meet clients in a social context is a means for Ms. Dauriac to strengthen the relationship with existing clients and so to increase the likelihood that they might provide new business?

A (Ms. Caudwell) Well, yes, of course I can see that that would be relevant for her, but I, in fact, was in England sort of very, very, very frequently at the time, we'd obviously just had dinner, which was where the whole idea of this trip had initiated when we talked about doctors, we'd had three weeks prior, or it might have been four weeks, I forget the actual date, I in fact was in London just before the trip to New York, I actually arrived in New York after Nathalie and Konrad on the 30th. They beat me out there. So I came out to New York purely to see them in New York, and then I was only there for five days, and then I flew back to London again.

206. In cross-examination, Ms. Dauriac was asked about the business justification for this expense.[130] She could not identify any specific business purpose. Her justification was altogether more general:

Q (Ms. Carss-Frisk, Q.C.) So the trip was not held at the request of Rebekah Caudwell, you accept you don't recollect, or at any rate you accept that there wasn't a discussion, or may not have been a discussion of significant foreign exchange transactions?

A (Ms. Dauriac) So, to answer your first point, in terms of request, it's how you interpret request, and how it works in my industry. She definitely invited us – that's why we went there – very kindly.

It's – part of the job, my Lord, is to be part of clients' life, and spending weekends with them, spending time outside the normal course of an office is how you develop a relationship. So, for me, going and spending time with people in their own house and having our families together helped building those relationships.

So I will not apologise for doing my job.

207. By contrast, the Defence pleaded as follows:[131]

"The item of expense dated 17 March 2014 was a travel expense incurred in respect of a business development trip by [Ms. Dauriac] and her husband to New York over the Halloween period to meet Mr. Caudwell's daughter, Rebekah Caudwell…The said trip was held at the request of [Ms. Caudwell] who was a client of [Signia] and one of the ultimate beneficial owners of [Signia] via Grecco. [Ms. Caudwell] and [Ms. Dauriac] discussed a series of significant foreign exchange transactions on which [Signia] had been engaged on [Ms.

[130] The cross-examination in relation to this trip is at Day 7/pp.154*ff*.

[131] Defence/para. 105(u).

Caudwell's] behalf. [Ms. Dauriac] also arranged a substantial loan of in excess of $3 million from Credit Suisse to [Ms. Caudwell] and her husband, secured against the assets of her mother…"

208. I find that this paragraph contains significant inaccuracies:

(1) The trip was not at Ms. Caudwell's "request": Ms. Caudwell gave an invitation, which Ms. Dauriac and Mr. Stoebe accepted. It is only if one attaches an extremely wide meaning to the term "request" that the use of the word is defensible. This, Ms. Dauriac sought to do:[132]

> "And in terms of the request, this is how I work in the industry, my Lord. People ask me to come, an invitation. It's how we build relationships, so again I will not apologise for it. However, you can interpret the word "request" as you want."

(2) Business was not discussed with Ms. Caudwell on the trip. Nor is there any evidence of business being discussed with anyone else on the trip.

(d) The problem with Barclays

209. The relationship between Mr. Maycock and Ms. Dauriac also came under strain at this time. An employee at Barclays had disclosed to Ms. Dauriac information relating to the performance of Mr. Caudwell's portfolio at Barclays, despite neither the relevant Barclays employee nor Ms. Dauriac properly having the right to access this information.

210. Mr. Maycock then investigated this issue on behalf of Mr. Caudwell, which caused a degree of tension between himself (and Mr. Canfield) and Ms. Dauriac. On 12 September 2014, Ms. Dauriac emailed Mr. Canfield to complain:

> "David, see attached, it is self-explanatory. I do not want another issue, but Tim [Maycock] should be respectful when he calls my team, about me or any members of the team. The mess he has created at Barclays is not great. Let's move on, but I find it unacceptable and my friend has lost is [sic.] suspended as a consequence…"

211. Once again, the precise rights and wrongs of this issue are nothing to the point. The relevance of the incident lies in the fault-lines it exposed or created between the various actors. Mr. Canfield had a long text message exchange about this with Ms. Cooper. He forwarded the chain on to Mr. Maycock, with the comment:

> "See below a copy of a text conversation with Kate Cooper last night and this morning. The bare faced lies are staggering."

212. In cross-examination, Mr. Canfield recognised this issue as an indication of "rising tension" between himself and Mr. Maycock, and Ms. Dauriac.[133]

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[132] Day 7/p.161 (cross-examination of Ms. Dauriac).

[133] Day 3/p.47 (cross-examination of Mr. Canfield).

(e) Events at Pure Jatomi

213. In late September/early October 2014, an expenses investigation was launched at Pure Jatomi, another company in which Mr. Caudwell was a majority shareholder and of which Mr. Canfield was a director. Within 24 hours of that investigation commencing, Mr. Stoebe resigned from Pure Jatomi.

214. In an email to Mr. Caudwell dated 6 October 2014, Mr. Stoebe sought to set Mr. Caudwell's mind at rest, telling him not to be "concerned about the expenses" and that he had in fact resigned because the investigation demonstrated a "loss of trust" in him, as opposed to any recognition of any misconduct regarding expenses:

"Hi John,

Thank you for your email last week and sorry for the late reply. I think in general it would be best if we discussed this in person, I will ask Michele for a meeting in London on Wednesday if that works for you.

I also fully appreciate your concern and disappointment around the business – I am in the same position and do not find anything more frustrating than this, especially taking into account where this business could be with the right leadership. A new team will get this business to the next level, I am absolutely sure.

Please be not concerned about the expenses – Mike and Jatomi's CFO Nigel have had a very hard lid on this and I can vouch for Nigel's integrity.

My reaction was based on your loss of trust and, in hindsight, myself being embedded in the business is probably the key reason for that, as it might have felt too close for you. Please be assured that I always had my best interest in mind with this investment and that I believe that it has all the potential to become a big success story under the right management."

215. Yet again, it is neither possible, nor desirable, to seek to plumb the rights and wrongs of this episode. The event is significant for its effect on relations between Ms. Dauriac, as Mr. Stoebe's wife, and Mr. Caudwell.

216. Mr. Caudwell's response to Mr. Stoebe's email was on the same date, 6 October 2014. Although Mr. Caudwell rejected any "loss of trust", his email demonstrated hostility and suspicion towards Mr. Stoebe:

"Dear Konrad,

Firstly, the information I have on the expenses is that they have been frivolously treated at best.

Secondly, I had no loss of trust in you. I sent Michael because the business was in such a serious mess to give me a second opinion.

…

When he asked to see the expenses apparently you became very irrational and emotive which, of course, raises the question why?

Given your significant financial commitments, I find it very peculiar that you would so irrationally give up your income. This suggests you have already found another job?

…

I hope you can put my mind at rest, but at the moment what I am seeing is not very pretty."

217. Mr. Stoebe forwarded this email chain to Ms. Dauriac on the same day:

"Now he has overstepped it.

Very simply – you will cancel the dinner on Wednesday and secondly I will find you a buyer."

218. Clearly, relations between Mr. Caudwell and Mr. Stoebe were rather frosty at this stage, and Ms. Dauriac knew it. Mr. Stoebe's reference to finding Ms. Dauriac a buyer would appear to be a reference to Signia, suggesting that Mr. Stoebe at least was contemplating a parting of the ways between Ms. Dauriac and Mr. Caudwell.

219. So far as Ms. Dauriac is concerned, I doubt very much that she would have attached any weight at this stage to the suggestion that Mr. Caudwell's interest in Signia be bought out.[134] However, I do consider that she would have noted from the exchange between Mr. Stoebe and Mr. Caudwell Mr Caudwell's concern about expenses at Pure Jatomi. It would be surprising if Mr. Stoebe had not kept his wife informed about the events at Pure Jatomi, and I find that he did.

(f) Mr. Caudwell's expression of discontent with Ms. Dauriac

220. On 9 October 2014, Mr. Caudwell sent an email to Ms. Dauriac expressing his discontent with her regarding the handling of the Mayfair project, another project[135] and the level of staff turnover:

"Dear Nathalie,

This dispute between Kam and you is getting increasingly out of hand.

Whilst I can agree with lots of things that you say, you then lose my support arguing about a point that has been my life time's work, buying cheap and selling dear. There is no reason on earth why somebody should not buy for £5 million and sell for £7.5 million in a sort space of time, and that is a fact. Whether there was some corrupt activity is another point, but you should not use the uplift in value as an indication that this has happened, only as an indication that it could have happened. It is not helpful to you or anybody else to argue points that are irrelevant and not justifiable, and this does tend to detract from the main issues.

I am now even more concerned about this whole thing, but have just had information on another matter that has really worried me.

Some weeks ago when the newspapers were getting involved in Signia you told me that John Moulton had not resigned, but may not be very active. He rang David up yesterday to make it crystal clear to David that he had resigned, but had allowed his photograph to remain.

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[134] Later on, of course, when the investigation into Ms. Dauriac's expenses was well-underway, the possibility did raise itself.

[135] This was the Greensphere or Port Talbot Project, which involved Mr. Canfield, Ms. Dauriac and Mr. Stoebe, as well as an investor in Greensphere and client of Signia, Mr. Moulton. Save to note that this project also served to heighten tensions between the parties, this matter has no bearing on the matters considered in this Judgment.

Furthermore, you told me a few weeks ago, at the same time, when the newspapers were talking about high staff turnover that only one person had left in the last 12 months. I am now told that 15 people have left in the last year. I have no way of knowing whether this is true at the moment but, needless to say, I am very worried about these two pieces of information."

221. Ms. Dauriac's reply, later that day, is a combination of the defensive and the aggressive. It concludes:

"I am not sure where this conversation is going and I am getting seriously offended and propose we meet to discuss. I am happy to come to your house before the party tonight or early tomorrow.

I can assure you that I will do all my best to take all emotions away."

(g) The commencement of the investigation into Mr. Wilson's expenses

222. Mr. Hayes was also involved in the investigation into Mr. Wilson's expenses, which began at about this time. Mr. Wilson was Ms. Dauriac's effective deputy, and someone she trusted and relied upon.

223. A meeting was held between Ms. Ohbi, Mr. Hayes, Ms. Cooper and Ms. Tarbet on 9 October 2014. This meeting was recorded by Mr. Hayes and a transcript subsequently obtained.[136] At this meeting, it became clear that Mr. Hayes had evidence that Mr. Wilson had been expensing lunches with Signia employees which he paid for on his corporate card, having already been reimbursed in cash by the other attendees for their proportion. Mr. Wilson was then pocketing the cash whilst also being reimbursed by Signia. This investigation resulted in Mr. Wilson's dismissal on 11 December 2014.

224. At the meeting, Ms. Ohbi, Ms. Cooper and Ms. Tarbet were all concerned to ensure that Ms. Dauriac did not discover that they had been investigating Mr. Wilson's expenses. Thus, at the start of the meeting, the attendees discussed potential excuses to give to Ms. Dauriac as to where they had been, should she notice that were all away from their desks at the same time.

(h) Inquiring into Ms. Dauriac's CV

225. In an email to Mr. Canfield from a Mr. Moulton (a client of Signia and investor in a project Mr. Stoebe, Ms. Dauriac and Mr. Canfield were involved in[137]) dated 13 October 2014, Mr. Moulton stated:

"An employee fed me the remarkable allegation that [Ms. Dauriac's] assertions about Cambridge University education on the web might be a little expansive – alleged to be Summer School in Cambridge, but not a University course."

226. Mr. Canfield clearly asked Mr. Maycock to investigate this allegation. Mr. Maycock reverted as follows:

"Can't find anything on the course she lists – it certainly doesn't exist anymore.

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[136] Mr. Hayes was cross-examined about this on Day 7/pp.40*ff* and 51*ff*. The recording was made by Mr. Hayes without the knowledge of the other participants.

[137] See footnote 134 above.

The dates between her internship at Lazard (Aug 99 – Sep 99) and then going back for a proper job (Aug 00 – Jul 01) imply she was at Cambridge for the entire year.

But, impressively, she was working for Credit Lyonnais in London (Nov 98 – May 99) at the same time as her degree from Bordeaux (1996-1999)."

227. Mr. Canfield reverted to Mr. Moulton via email with the following:

"…the reality is that, according to her CV (which I have), she achieved a post grad diploma in management studies at the Judge Institute Cambridge. That's not 'Finance' and also not, as the website seems to seek to suggest, an Oxbridge degree. Her degree is from somewhere in Bordeaux. Interesting!"

228. In cross-examination, Mr. Canfield denied that this amounted to investigating Ms. Dauriac's CV:[138] but it is difficult to see how any other description could pertain.

(3) The expenses investigation

(a) Commencement of Ms. Dauriac's "review" of her expenses

Introduction

229. It is important, but difficult, to separate the work Ms. Dauriac caused be done in relation to her expenses before Mr. Canfield notified Signia that there was to be a review of expenses (and requested copies of the expense records of Signia) on 11 November 2014 and the period after 11 November 2014.

230. In the following paragraphs, I set out the relevant evidence as regards the pre-11 November 2014 period and then state my findings.[139]

How the expenses were kept

231. Signia's records were ultimately kept on its Sage accounting system. These records, at year end, were fixed – they could not be amended or tampered with.[140] None of the records here in issue involve the Sage system.

232. Expense forms were generally filled-in by personal assistants or receptionists.[141] In the case of Ms. Dauriac:[142]

Q (Ms. Carss-Frisk, Q.C.)	So, who do we have then that was responsible for managing your expenses, Ms. Dauriac?
A (Ms. Dauriac)	The way we had my expenses done was claim forms were issued, made by the receptionist and Kelly, and Janet would – I will sign it, and Janet will approve it.

[138] See Day 3/pp.49-50 (cross-examination of Mr. Canfield).

[139] The post-11 November 2014 period is considered at the chronologically appropriate point.

[140] Evidence of Ms. Cooper on Day 6/p.10. See also paragraph 317(29) below.

[141] Ms. Tarbet described the process on Day 6/pp.105*ff* (cross-examination of Ms. Tarbet).

[142] Day 8/pp.73-74.

Q (Ms. Carss-Frisk, Q.C.)	So there we have it: Janet would approve it.
A (Ms. Dauriac)	Yes. I'm not sure if all the forms were even signed for me at the time. As I say, the expenses on my side was a mess, there's no point in saying something otherwise, in terms of paperwork.

233. Ms. Degruttola described the process of completing Ms. Dauriac's expense sheets in the following terms:[143]

> "5. A small number of people at Signia, around 4 or 5, had corporate credit cards. During my time as a receptionist (until 2013), I would receive the statement for the credit card and check the description for each item of expense which appeared on the statement. If I had not been provided with supporting receipts by the relevant person who had incurred the charge, I would ask for them. This was one of the standard tasks of the receptionists.
>
> 6. People also sometimes incurred business expenses in cash, or on their personal credit cards. In such cases, the relevant person gave me or one of my colleagues the receipt. Most of the time as a receptionist, I would be given a description of the expenses, but if not I would look at the diary for the relevant person and try to work out a description for the expense that way. Ordinarily, there was sufficient information in the diary to identify the client and the receipt itself would tell me everything else I needed to know. If I could not obtain enough information through my own review, I would simply ask the relevant person to give me more information. It was not considered to be a problem and people did not mind if I had to ask them.[144]
>
> 7. Once I had gathered enough information, I would fill out the expenses spreadsheet that was kept on the company shared drive, input the description, price and date of the expense then print it and give it to either Janet Tarbet (as COO) or Kate Cooper (as Head of Compliance). They were in charge of the expenses of the firm and as far as I knew had the final sign-off authority. So far as I am aware, one of them would then check it and then get the relevant expense sheet signed by the person making the claim before processing the payment. However, I do not know what happened to the expense sheets once I passed them to Ms. Tarbet. So, once they had been completed, they would be given to the claimant to sign and also signed off by Janet Tarbet or Kate Cooper and I would then receive the completed and signed form back from them for the purposes of scanning and saving. I cannot recall any of [Ms. Dauriac's] claims for expenses ever being queried by Ms. Tarbet or Ms. Cooper during my entire time at Signia.
>
> 8. Once I became [Ms. Dauriac's] personal assistant, I no longer had responsibility for submitting or processing expenses for Signia employees, but helped out from time to time if needed. [Ms. Dauriac] would give me her receipts and I would sort them into piles of expenses on her corporate card and personal card and then hand them over to the receptionists who would be inputting the expenses on a claim form…"

234. Thus, the process of recording expenses in Signia expenses was as follows:

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[143] Degruttola 1.

[144] Ms. Degruttola confirmed in cross-examination that she would, from time-to-time, check with Ms. Dauriac whether she was categorising expenses correctly: Day 9/pp.112-113 (cross-examination of Ms. Degruttola).

(1) An "expense form" was completed. The expense forms were on an Excel template. They were completed electronically, and then printed out.

(2) The printed form was signed and countersigned.

(3) That form was then uploaded back onto the system, but a paper copy was also kept.

235. I am quite prepared to accept that Ms. Dauriac's expense forms, as originally completed, were not completed by her, but by Ms. Degruttola or by receptionists, the receptionists having had that work delegated to them by Ms. Degruttola and/or Ms. Dauriac. I am also prepared to accept that Ms. Dauriac's original expense forms contained errors.

The evidence of Ms. Cooper

236. In her witness statement, Ms. Cooper stated:[145]

> "In October or November 2014, Nathalie mentioned to me that [Mr. Stoebe] had resigned from Pure Jatomi…At the time, I was unaware of the circumstances of his departure, but in the following weeks I became aware that there was an expenses review at Pure Jatomi following his resignation. At around the same time (but I cannot recall exactly when), I overheard [Ms. Degruttola] asking Janet to re-sign a number of amended expense forms because, as Kelly put it, they had been amended to remove John Caudwell and his family. I also overheard Janet refuse to re-sign the forms and express concern about why [Ms. Degruttola had made the changes…"

237. As she said, Ms. Cooper was uncertain about the timing, but she clearly placed these events before 11 November 2014.[146] In cross-examination, Ms. Cooper was able to add a little more information:[147]

Q (Ms. Ford, Q.C.)	And it's fair to say, isn't it, that Ms. Degruttola was being completely open about the changes that had been made to those forms, there wasn't any secrecy about it?
A (Ms. Cooper)	Correct.
Q (Ms. Ford, Q.C.)	And you did not, at that stage, as compliance officer, express any concerns about what you had understood to have taken place?
A (Ms. Cooper)	We advised Kelly that it wasn't a good idea to be removing names from expense sheets, which was why it led to the names being put back into the expense forms.
Q (Ms. Ford, Q.C.)	You haven't mentioned that in this paragraph, have you?
A (Ms. Cooper)	No, I have not.

[145] Cooper 1/para. 17.

[146] This is clear from the content of Cooper 1/para. 18, which refers to Mr. Canfield's communication of 11 November 2014.

[147] Day 6/pp.5-6 (cross-examination of Ms. Cooper).

Q (Ms. Ford, Q.C.)	When you say "we", you say you and…?
A (Ms. Cooper)	And Janet Tarbet.
Q (Ms. Ford, Q.C.)	And was that at this stage or at some later stage?
A (Ms. Cooper)	At this stage.

238. Ms. Cooper explained what was involved in removing names from expense forms:[148]

Q (Marcus Smith J.)	Ms. Cooper, just so I understand the mechanics of this, some records are clearly electronic, they're scanned in?
A (Ms. Cooper)	Yes.
Q (Marcus Smith J.)	And some records are clearly on paper, not scanned in?
A (Ms. Cooper)	Yes.
Q (Marcus Smith J.)	Are those two sets of documents mutually exclusive or are there some records which might be kept in paper form and also scanned?
A (Ms. Cooper)	There should be paper copies in a file, and they should also have the same copy in electronic version. So a scanned version with the signatures on them.
Q (Marcus Smith J.)	So you should have duplicates?
A (Ms. Cooper)	You should have duplicates, correct.
Q (Marcus Smith J.)	But not necessarily in practice?
A (Ms. Cooper)	Absolutely.
Q (Marcus Smith J.)	So in terms of the process of alterations that you're just giving evidence about, how would that work? Would the process be different depending on whether you had a paper or an electronic copy?
A (Ms. Cooper)	The process of making changes to those sheets meant you'd have to reprint -
Q (Marcus Smith J.)	If this was an electronic copy?
A (Ms. Cooper)	Yes, well, the process that took place was that you reprint – they were reprinted.
Q (Marcus Smith J.)	Yes.
A (Ms. Cooper)	They were handwritten on and Kelly was then updating those back into the Excel version. Then you reprint, get them signed and scanned back in.
Q (Marcus Smith J.)	I see.
A (Ms. Cooper)	So you are creating the expense sheets in an Excel template. You would normally print those, get them signed and scanned back in. So the scanned version is the signed version by two people.

[148] Day 6/pp.8-10 (cross-examination of Ms. Cooper).

Q (Marcus Smith J.)	So when you've got an amended version, you make the amendments electronically on the Excel spreadsheet?
A (Ms. Cooper)	Correct.
Q (Marcus Smith J.)	You print them out?
A (Ms. Cooper)	Correct.
Q (Marcus Smith J.)	The physical copy is then signed and then that is scanned and rendered into an electronic version.
A (Ms. Cooper)	Correct, and then those records are passed on to the finance team and those are uploaded into Sage, which is an accounting system which at the end of the year can't be amended or tampered with.
Q (Marcus Smith J.)	I see. What happened to the old scanned version of the form?
A (Ms. Cooper)	I have no idea. Possibly deleted.
Q (Marcus Smith J.)	But you can't speak to that.
A (Ms. Cooper)	I can't speak for that, no.

The evidence of Ms. Tarbet

239. Ms. Tarbet's evidence was as follows:[149]

"In or around October 2014, Kelly asked me to re-sign several months of Nathalie's corporate expenses claim forms for 2014. She provided copies of the forms she was asking me to re-sign. I could immediately tell from memory that the forms had previously been submitted but for whatever reason the descriptions in a number of the forms had been amended. The main changes related to the deletion of [Mr. Caudwell's] name and/or the names of members of his family from the description, so that such sections would have generic descriptions such as "client lunch" or "client travel". I asked Kelly why I was being asked to sign-off forms that had already been submitted, and she told me that the forms had been amended at Nathalie's request to make them clearer. I did not understand why these names had been removed because, rather than clarifying the description, and contrary to what Kelly told me, the amendments made them less clear. As amended, I could not tell which clients related to which expenses."

It is clear – both from Ms. Tarbet's statement and her cross-examination – that this was before 11 November 2014.[150] Ms. Tarbet declined to re-sign the expense sheets.[151]

The evidence of Ms. Olszewska

240. In her statement, Ms. Olszewska stated:[152]

"On 3 October 2014, Kelly approached the reception desk where I was sitting with the other receptionist, Eva Woodroof, and asked us to change all of Nathalie's expense forms which

[149] Tarbet 1/para. 22.

[150] Day 6/p.115 (cross-examination of Ms. Tarbet).

[151] Tarbet 1/paras. 22-23.

[152] Olszewska 1/para. 5.

related to John Caudwell. She provided us with a large quantity of forms going back to 2010. Specifically, we were told by Kelly to delete all references on the forms going back to 2010. Specifically, we were told by Kelly to delete all references on the forms to Mr. Caudwell's name and replace it with the word "client". I cannot recall why, but Eva Woodroof told Kelly she was unable to do this, so Kelly informed me I would have to do it. Kelly expressly told me that I was not to tell anyone what I was doing."

Ms. Olszewska was not comfortable with this instruction.[153] Ms. Olszewska was then asked, a few days later, "to reverse what I spent the last few days doing, in other words to add Mr. Caudwell's name back onto the expense forms I had already amended."[154]

The evidence of Ms. Dauriac

241. Ms. Dauriac's evidence as to what she asked Ms. Degruttola to do was as follows:[155]

Q (Ms. Carss-Frisk, Q.C.)	We know, I think, and agree that you were notified on 11 November that Mr. Canfield had indeed decided that there should be an investigation into your expenses and indeed those of other staff, too. That's right, isn't it?
A (Ms. Dauriac)	That's correct.
Q (Ms. Carss-Frisk, Q.C.)	But it's also right, isn't it, that at that time you had already started your own, as you call it, review of your own expenses?
A (Ms. Dauriac)	That's correct, too.
Q (Ms. Carss-Frisk, Q.C.)	Can we turn up, please, the way you put it at [Dauriac 1/para. 98]. You say there: "Given my focus on the expenses process at Signia at this time, I asked Ms. Degruttola to initiate a review of all my expenditure on the company credit card, as well as those items of business expenditure which I had spent on my personal credit card and for which I had then claimed reimbursement." Just to be clear, the review involved you instructing your PA, Ms. Degruttola, that all references to John Caudwell should go on a separate spreadsheet. That's right, isn't it?
A (Ms. Dauriac)	That's correct.
Q (Ms. Carss-Frisk, Q.C.)	And be removed from the main spreadsheet?
A (Ms. Dauriac)	To be honest, I didn't really specify that, but I did ask her to take them off, so I guess the answer is yes.

[153] Olszewska 1/para. 6.

[154] Olszewska 1/para. 9.

[155] Day 7/pp.135-136 (cross-examination of Ms. Dauriac).

242. Later on in her cross-examination, Ms. Dauriac was asked about a specific transaction – a birthday cake for Mr. Stoebe[156] – where the reference to Mr. Stoebe was removed. Ms. Dauriac gave the following, more general, explanation of both stages of the process:[157]

> **Q (Ms. Carss-Frisk, Q.C.)** That change was made out of a policy on your part, wasn't it, to ask Ms. Degruttola to remove references to members of your family from entries in these forms?
>
> **A (Ms. Dauriac)** So, my Lord, originally I asked to remove just John Caudwell, and when we had the 24 hours to give the spreadsheet, it is fully correct that I asked Kelly to remove – first of all, I asked her to check, to be honest, if – who was there on which flight and on which event, but then we became so pressurised by time I am the one who asked her to take the name of Konrad or anybody of my family out…

243. Ms. Dauriac was asked why she initiated this review prior to the 11 November 2014 communication from Mr. Canfield:[158]

(1) Ms. Dauriac accepted that one of the reasons for doing so were the events at Pure Jatomi.[159]

(2) Ms. Dauriac contended that another reason had been her discovery that the flights to New York to visit Ms. Caudwell had been expensed. As to this:

(a) This was an explanation that she gave at a meeting on 13 November 2014 (described in paragraphs 315*ff* below) to Mr. Canfield and Mr. Maycock:[160]

> "Two weeks ago, I'm telling you what really happened for the fifteenth time, two weeks ago, when I booked my flight, when I asked Kelly to book my flight to go on holiday to see the Caudwell children, okay to go and see a doctor, Kelly booked it on the corporate card and told me, "Oh, I've booked it, it's all fine", and I said to her, "Please make sure its on the personal front", and this is when she said "If its on the personal front, what do you want me to do with all the Caudwell thing?", and I said go through everything and make sure that every Caudwell thing goes on a reimbursement form, and that's what she has done."

In cross-examination, Ms. Dauriac maintained this explanation, even though it did not appear in her first witness statement.[161]

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[156] This expense is considered more specifically below.

[157] Day 8/p.84.

[158] Day 7/pp.136*ff* (cross-examination of Ms. Dauriac).

[159] Dauriac 1/paras. 97 and 98; Day 7/pp.136-137 (cross-examination of Ms. Dauriac).

[160] The meeting was transcribed, and this explanation appears at time stamp 56:17.

[161] Day 7/pp.138-143 (cross-examination of Ms. Dauriac).

(b) The problem with this explanation is that at trial, Ms. Dauriac was maintaining that these expenses (i.e. the Caudwell expenses and the trip to visit Ms. Caudwell) were legitimate expenses. It is therefore difficult to understand why – if Ms. Dauriac had always believed this to be the case – these expenses served as the trigger for her expenses review.[162]

(3) Finally, Ms. Dauriac said this by way of explanation:[163]

Q (Ms. Carss-Frisk, Q.C.)	The truth of the matter, as we now know, and as set out in your witness statement, is that you became concerned – after your husband had resigned from Pure Jatomi – you were concerned that the spotlight would fall on you, and that is why you started looking into your own expenses, but you failed to tell Mr. Canfield that at the time.
A (Ms. Dauriac)	No. The reason I – to explain you, my Lord, what happened, is I asked Kelly to remove everything with Mr. Caudwell's name for three reasons. One was that Mr. Caudwell was becoming completely irrational over the last few months. It was my opinion at the time. He had a personal problem, which I will not divulge here and be polite, but he's asked me to do some stuff which I wouldn't have liked to do in my professional capacity. The way he fired the board of Pure Jatomi when he got rid of, basically, of Mr. Balfour, who was the founder of the business and Mr. Richardson, I didn't feel was appropriate. The third reason was he was becoming increasingly hostile with me and my husband and I was scared. It was my baby [this was a reference to Signia] and I didn't want him to have anything that he would view as inappropriate which I view as appropriate. I completely believed that my expenses were legitimate. I thought that he may not see it that way, so I didn't want to take any risk, and I ask, on an open plan office to everybody, to refund those expenses in advance.

[162] The explanation (given by Ms. Dauriac on Day 7/pp.142-143) that it was necessary to keep from Mr. Canfield (and so Mr. Caudwell) the fact that Ms. Caudwell was a client of Signia's simply does not stand up. On this basis, the expense was a legitimate one, but one that could not be disclosed to Mr. Canfield. Even accepting this to be the case, the answer does not explain why the review was triggered in the first place. If the trip to see Ms. Caudwell triggered the review, then it must have been perceived, by Ms. Dauriac, as at least open to question.

[163] Day 7/pp.144-145.

The point that Ms. Dauriac was making was that whilst she did not consider her expenses to be illegitimate, she wanted to be above any criticism that Mr. Caudwell might make. This, according to her, was the rationale for the commencement of the review and, indeed, for her offering a refund of certain expenses. In relation to the trip to see Ms. Caudwell – where the flight costs were expensed, but where Ms. Dauriac offered a refund – Ms. Dauriac said this:[164]

Q (Ms. Carss-Frisk, Q.C.)	So you offered it for refund and, I would suggest, for the very good reason that it was indeed a personal expense that you shouldn't have claimed?
A (Ms. Dauriac)	As I say to you, absolutely not. The reason I've put it in the refund form was that I didn't want Mr. Caudwell to have any reason for him and I to have a disagreement over expenses. So, for a small amount of expenses, I said I will refund them. And I've offered to do that, I've started this process, before I was even asked to do so. So, as I said to you, the reason that I've done this is because if they didn't believe that all those expenses were purely legitimate, I didn't want to have an argument with Mr. Caudwell and my risk with my company.

244. Ms. Dauriac accepted that the work on the review commenced on 3 October 2014.[165]

The evidence of Ms. Degruttola

245. Ms. Degruttola was uncertain when the review exercise was initiated by Ms. Dauriac, but considered that it commenced in "the middle to the end of October",[166] although it could have been earlier.[167]

246. In terms of understanding the process, it is probably best to start with what Ms. Degruttola told Mr. Canfield and others over time. At the interview with Mr. Canfield and Mr. Maycock on 13 November 2014, Ms. Degruttola had said that they had deleted all references to Mr. Caudwell in the expense forms and placed them on a separate reimbursement form.

247. That, substantially, remained Ms. Degruttola's account at subsequent interviews, namely those on 18 December 2014 and 13 January 2015.[168] The clearest account is at the 13 January 2015 interview:

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[164] Day 7/p.164.

[165] Day 7/p.154 (cross-examination of Ms. Dauriac).

[166] Her witness statement put it at the end of October 2014: Degruttola 1/para. 13.

[167] Day 9/pp.108-109 (cross-examination of Ms. Degruttola).

[168] These are described further below.

Q (Mr. Canfield) …Obviously, you know that on 11 November [2014], I asked for copies of expense claim forms. Before that request, before I asked for them formally, were you ever asked to amend the forms by Nathalie after they had already been submitted?

A (Ms. Degruttola) Yes, so once the Rebekah Caudwell flight was booked, I was asked to start pulling John's name off and putting it onto a form for her to reimburse. I was also asked to take his name – at a different point, I was asked to take his name off all of her expense forms, and then I was asked to put them all back on.

Q (Mr. Canfield) So you mentioned then once when you booked the Rebekah Caudwell flight, now what was the significance to the Rebekah Caudwell flight?

A (Ms. Degruttola) I mentioned to her that I had booked it, just saying to her "I booked your flights for Rebekah", and I must have said booked them on your corporate card, and she said "Why did you book them on my corporate card?" and I just looked at her. She said, "Everything for John is personal, take everything that I ever spent on my corporate card off, and put it on a separate form for me to reimburse".

Q (Mr. Canfield) That suggests, well let me ask you in a different way, did Nathalie know you were routinely using her corporate card for all of her flights, whether it was to John's boat or wherever?

A (Ms. Degruttola) Yes.

Q (Mr. Canfield) She did. So when she asked you why you were using her corporate card, it seems strange?

A (Ms. Degruttola) I don't know what to say. I just sort of looked at her, and she said "Why have you put that on my corporate card?", and I just looked, and she said "Everything for John, take it off, and put it on a form for me to reimburse".

Q (Mr. Canfield) Yet you believe she knew you were always using the corporate card?

A (Ms. Degruttola) Yes.

Q (Mr. Canfield) Ok, do you know when that was?

A (Ms. Degruttola) It was a while before you came into the office.

Q (Mr. Canfield) A week?

A (Ms. Degruttola) Weeks, months, I don't know, I really can't remember.

Q (Mr. Canfield) So, having had that conversation, clearly there was a process undertaken of amending the claim forms. What reason did Nathalie give you for amending those forms?

A (Ms. Degruttola) For taking the names on and off?

Q (Mr. Canfield)	Yes.
A (Ms. Degruttola)	She didn't give me a reason, she just told me to do it.
Q (Mr. Canfield)	Can you describe what amendments she asked you to make, as it was clearly more than just John Caudwell's name?
A (Ms. Degruttola)	Was this when before?
Q (Mr. Canfield)	This was before.
A (Mr. Degruttola)	So, before you had sent your email, I was told to take John Caudwell's name off all her expenses, and just change to client. Then I was told, "No, actually, put them all back in, how they were originally. And then I was told to pull it all off to be put on a separate form to be reimbursed, everything relating to John.
Q (Mr. Canfield)	So, just to clarify, that in the first instance you were asked to take off all of the expenditure in relation to John Caudwell, to take it off or to amend the name?
A (Ms. Degruttola)	Sorry, to amend it to "client", not actually to take it off the form.
Q (Mr. Canfield)	And that was, what, a month before…?
A (Ms. Degruttola)	A month or so, I don't know.
Q (Mr. Canfield)	You were then asked to remove all those that originally referred to John, but now referred to client, you were asked to remove them on to a separate form?
A (Ms. Degruttola)	No, then I was asked to put John's name back. So they were "John", then they were "client", then they were "John" again, and then to take them off and put them on a claim form.

248. In both her witness statement at trial (Degruttola 1) and in cross-examination, Ms. Degruttola sought to resile from this account, suggesting that she had, in some way, been forced to give a false account.[169] The account she gives in her witness statement, whilst consistent with the account in the 13 January 2015 interview, is significantly less detailed:[170]

> "13. At around the end of October 2014, [Ms. Dauriac] asked me to undertake a general review of the expense claims she had submitted to Signia. I cannot now recall if I was asked to review for the period of the past two years or a longer period of time.
>
> 14. [Ms. Dauriac] specifically asked me to look through all her expenses and to identify any expenses claimed in relation to Mr. Caudwell's family so that they could be recorded on

[169] Degruttola 1/paras. 45-48; Day 9/pp.123-125 (cross-examination of Ms. Degruttola).

[170] Degruttola 1.

a separate spreadsheet. [Ms. Dauriac] said to me that she wanted to reimburse Signia for these expenses, although she did not explain why (nor would I have expected her to).

15. I asked one of the receptionists (Victoria Olszewska) to print all of [Ms. Dauriac's] corporate card expenses from the shared drive for me to look through and I then changed the ones relating to John Caudwell and replaced his name with "client". I then noted down each of these to put on a separate spreadsheet for [Ms. Dauriac] to reimburse. However, I did not get round to completing this by the time the investigation into [Ms. Dauriac's] expenses started two weeks later, as I had a lot of other work to do and just didn't get round to finishing it."

249. This account is broadly consistent with Ms. Degruttola's previous statements, but (as I have noted) is significantly less detailed. Given her suggestion that the account to Mr. Canfield was untrue and obtained under pressure, it was necessary to understand Ms. Degruttola's version of events in greater detail, resulting in the following exchanges:[171]

Q (Marcus Smith J.)	Well, let's start, what document would you have been looking at at this time? Would it have been a schedule of expenses, a list?
A (Ms. Degruttola)	So, at the beginning – yeah, all of Nathalie's expenses. Nathalie told me to go through…
Q (Marcus Smith J.)	I'm just trying to picture what documents you would have been looking at. So, would these have been the expense forms?
A (Ms. Degruttola)	Yes.
Q (Marcus Smith J.)	And are they paper or are they electronic?
A (Ms. Degruttola)	I think they'd been printed out at that point, so…
Q (Marcus Smith J.)	So, you've got the paper expenses forms in front of you?
A (Ms. Degruttola)	Mm hmm.
Q (Marcus Smith J.)	And what do you do? Do you go through them with a pen or pencil and mark them up?
A (Ms. Degruttola)	No, first of all, I asked the receptionist Victoria to go onto the system and change everything that related to John Caudwell to "client" and then print them. Once she'd done that, I could identify each of the Caudwell entries.
Q (Marcus Smith J.)	That puzzled me earlier. How could you identify Caudwell entries if the reference was a generic "client"?
A (Ms. Degruttola)	It was because there were so many and none of the other expenses were just generic "client". So, just in my head, it was easier to then go, right, this one's on the reimbursement spreadsheet. It just made it easier for me in my brain.
Q (Marcus Smith J)	Wouldn't it have been easier to simply have the

[171] Day 9/pp.128*ff*.

reference to Mr. Caudwell there in plain sight so that you could know that that was something you needed to move over?

A (Ms. Degruttola) At the time, there were just so many different Caudwells, different John Caudwell and the other Caudwells. Just for me, it was the logical way in my head to get around it.

Q (Marcus Smith J.) Okay. So what the receptionists were doing was, on the electronic version of the expense forms, changing "John Caudwell" to "client"?

A (Ms. Degruttola) Yeah, correct.

Q (Marcus Smith J.) So then you get these back?

A (Ms. Degruttola) Yeah.

Q (Marcus Smith J.) Again, in printed form or electronic form?

A (Ms. Degruttola) I can't really remember.

Q (Marcus Smith J.) That's fine. So, what did you do then?

A (Ms. Degruttola) Then I list – I go back through, and I list – I take off everything that's now "client", put it on the reimbursement form.

Q (Marcus Smith J.) When you say "take off", do you actually delete the entries from the expenses or not?

A (Ms. Degruttola) I think I did, yeah.

Q (Marcus Smith J.) You're not sure?

A (Ms. Degruttola) As far as I can remember.

Q (Marcus Smith J.) Right. And what happens next?

A (Ms. Degruttola) Then, next, I started going through them, because I noticed there as a lot of Caudwell expenditure. And, when I was checking them, I thought, these can't be right, they weren't adding up, the receipts, they weren't matching back to the diary and everything. So, then I thought, right, I need to start again and look through Nathalie's expenses properly because the receptionists have been doing them for the past couple of years and they weren't correct, they were all over the place. So then we changed everything back to how it originally was, so that then I could go back through the diary and match up and find out exactly to make them all correct.

Q (Marcus Smith J.) Right, so the expense forms are all changed back electronically, from "client" to…

A (Ms. Degruttola) Yeah.

Q (Marcus Smith J.) …whatever they said before?

A (Ms. Degruttola) Yeah.

Conclusions

250. The evidence is somewhat inconsistent, and all of the witnesses had only their unaided recollections to go on. There was no clear paper trail to assist recollection.

251. I make the following findings:

(1) The process of reviewing Ms. Dauriac's expense sheets began on 3 October 2014. With the possible exception of Ms. Degruttola, all of the witnesses were comfortable with the date,[172] Ms. Olszewska positively asserted this date, and I consider her evidence reliable.[173]

(2) The reason the review process commenced was because of the expenses investigation at Pure Jatomi. The timing fits – the investigation at Pure Jatomi and Mr. Stoebe's resignation occurred very shortly before 3 October 2014[174] – and Ms. Dauriac knew about this.[175]

(3) I do not accept Ms. Dauriac's explanation that the expenses for her trip to visit Ms. Caudwell were in some way the trigger for the review for the reasons I give in paragraph 243(2) above.

(4) For the present, I reserve judgment as to why the review was commenced. The cause, as I have said, was what had happened at Pure Jatomi, but that does not answer the question of what Ms. Dauriac's motivation was. That is a question to which I return when I consider the honesty of the review process.

(5) Ms. Olszewska was told to alter the expense sheets by deleting "Caudwell" and inserting "client". That entailed:

(a) Identifying the expense sheets that needed to be changed (which may have been done using the paper or the electronic files);

(b) Deleting in the electronic files the references to "Caudwell" and replacing this with "client";

(c) Printing out the revised expense sheet; and

(d) Presenting that to Ms. Tarbet for signing.

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[172] I.e. even if they lacked a positive recollection, that date fitted with their overall recollections. Ms. Degruttola preferred middle-to-late October, but even she was prepared to accept this date: see paragraph 245 above. Ms. Dauriac accepted the 3 October 2014 date: see paragraph 244 above.

[173] Paragraph 240 above.

[174] See paragraphs 213 to 219 above. The after-the-event email exchange between Mr. Caudwell and Mr. Stoebe on 6 October 2013 refers to events in the previous week, i.e. the week commencing 29 September 2014. The 3 October is the Friday of that week.

[175] There are emails to Ms. Dauriac about these events (see paragraph 217 above, for example); and, in any case, Ms. Dauriac accepted that one of the reasons for commencing the review was the investigation at Pure Jatomi: see paragraph 243(1) above.

This was the clear evidence of Ms. Olzewska,[176] Ms. Cooper,[177] and Ms. Tarbet.[178] Ms. Dauriac's and Ms. Degruttola's version of events at trial was more muddled, and to the extent that it differs with the evidence of Ms. Olzewska, Ms. Cooper, and Ms. Tarbet, I do not accept that evidence. Significantly, Ms. Degruttola's account on 13 January 2015 is consistent with the version of events that I have found.[179]

(6) The process came to a halt when Ms. Tarbet refused to sign the newly-created expense forms and expressed concern about the process.[180] At this point, the process was reversed, and Ms. Olszewska spent the next few days adding Mr. Caudwell's name back into the expense sheets.[181]

(b) Obtaining the first set of Ms. Dauriac's expense records

252. At some point in time, Mr. Hayes accessed Signia's expenses system and downloaded a copy of Ms. Dauriac's expenses records. I shall refer to these downloaded records as "Dauriac Expenses V.1".

253. There was considerable confusion as to when Mr. Hayes downloaded the information comprising the Dauriac Expenses V.1, put that information on a USB stick, and provided it to Mr. Canfield.

254. Until the first day of trial, Signia maintained that Mr. Hayes had sent the USB stick to Mr. Canfield in August 2014. This was asserted in Mr. Hayes' witness statement[182] and in Signia's written[183] and oral opening submissions.[184] A forensic IT analysis was conducted of the data on the USB stick by Ms. Dauriac. The date of that download was put at 4 October 2014, which date Signia did not seek to contest.[185] It therefore follows that Mr. Canfield can only have been provided with the USB stick after 4 October 2014, and not (as Mr. Canfield's statement implied) earlier on in July 2014.[186]

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[176] See paragraph 240 above.

[177] See paragraphs 236 to 238 above.

[178] See paragraph 239 above.

[179] See paragraph 247 above. Ms. Degruttola did, in this interview, also advance the "Rebekah Caudwell" explanation for the commencement of the review. To be clear, I do not accept this evidence.

[180] See paragraphs 236 and 239 above.

[181] See paragraphs 237, 240 and 249 above.

[182] Hayes 1/para. 28.

[183] See para. 88 of Signia's written opening submissions.

[184] Day 1/p.36 (Ms. Carss-Frisk, Q.C.).

[185] Day 3/pp.2-6. Mr. Hayes confirmed this date in his evidence in-chief: Day 7/p.2.

[186] Canfield 1/para. 95 states: "In the late afternoon of 16 July 2014, I met with Mr. Hayes in London. We met at a pub off Oxford Street. Subsequently, Mr. Hayes sent me a full copy of [Ms. Dauriac's] expense claims on a USB stick and I gave these to Mr. Maycock for analysis." I make no criticism of Mr. Canfield's statement – reconstructing events can be difficult – and Mr. Canfield does not actually provide a date as to when the USB stick was provided. Nevertheless, the implication as to timing is clear, and it proved to be wrong.

255. Mr. Hayes resigned from Signia by a letter dated on 16 October 2014 giving three months' notice. In his witness statement, he recalled citing these reasons to Ms. Dauriac:[187]

> "…her dispute with Kam over the Mayfair Property, the bad performance appraisal that I had subsequently received from her for not supporting her in relation to her dispute with Kam, the dysfunctional and demotivated culture in the business and the fact that I had lost all professional regard for her at this stage."

256. I accept this as a statement of Mr. Hayes' views; whether they were justified is another matter. Ms. Dauriac's (very different) views appear in an email she sent to Mr. Caudwell on 17 October 2014.

257. According to an email sent by Ms. Ohbi to Mr. Sullivan (Signia's solicitor at Grosvenor Law) on 17 November 2014, Mr. Hayes was told when he resigned on 16 October 2014 to go home and not return to the office unless asked to do so. That email, however, also discloses an apparent further visit by Mr. Hayes' to Signia. Ms. Ohbi's email states:

> "…David resigned to Nathalie on the morning of Thursday 16 October 2014. At that meeting, she told him he was to go home straight away and not to come into the office unless he was asked to. (I am not sure she confirmed that he was on gardening leave, she just said he was not to come in until we called.)
>
> On Saturday 18 October 2014, he came into the office and accessed the expenses folder for 2013.
>
> On Monday 20 October 2014, Martin [Wilson] and I met David on the second floor and confirmed with him that he was not to speak to clients or staff unless it was to handover on projects. He was on gardening leave and he was to provide Martin with a list of the projects he was working on. I followed this up with an email stating that although he was on gardening leave he was to simply state that he was out of the office until an official line was agreed about his departure.
>
> I am not sure it was clear enough to him that he was on gardening leave when he accessed the file on Saturday, nevertheless it is weird that he would come into the office on a Saturday and print off all these documents which have nothing to do with him."

258. The obvious question is whether Mr. Hayes downloaded or printed out some information relating to Ms. Dauriac's expenses. The answer is unclear: Ms. Ohbi's email is unequivocal, but I was shown no evidence establishing how Ms. Ohbi knew which files Mr. Hayes had accessed. Equally, the date of this episode does not fit with the date of the material on the USB stick. When it was put to Mr. Hayes in cross-examination that he accessed this material in order to give the records to Mr. Canfield, he said that he could not recall this and that it was "very, very unlikely".[188] Mr. Canfield had no knowledge of the episode,[189] and neither did Mr. Caudwell.[190]

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[187] Hayes 1/para. 32; Day 7/p.2 (evidence in-chief of Mr. Hayes).

[188] Day 7/pp.18-20 (cross-examination of Mr. Hayes).

[189] Day 2/pp.179-180 (cross-examination of Mr. Canfield).

[190] Day 5/pp.85-87 (cross-examination of Mr. Caudwell).

259. It seems to me quite likely that Mr. Hayes did enter Signia's premises with a view to have a further look at Ms. Dauriac's expenses. However, I can find no hint of such material feeding into the expenses investigation. I conclude that the material provided by Mr. Hayes to Mr. Canfield were the Dauriac Expenses V.1. Indeed, apart from the screenshots provided to Mr. Canfield in the summer and deleted by him, this was the only material provided by Mr. Hayes to Mr. Canfield.

(c) Efforts to maintain the integrity of the records

260. On 5 November 2014, Mr. Canfield messaged Mr. Ward "out of the blue"[191] on hearing that he (Mr. Ward) was leaving Signia. From the subsequent text messages,[192] Mr. Canfield appeared to be quite anxious to speak to Mr. Ward as soon as possible.

261. Mr. Canfield's objective was to request that Mr. Ward obtain a copy of Ms. Dauriac's expense records. In a message dated 11 November 2014, Mr. Canfield made the following request:

> "That's great, Dan, please make sure you have secure and independent copies of all those claims and if possible an electronic copy of the 2013 and 2014 accounts with all the historical detail. Thanks again for your assistance, it is appreciated. David."

262. In cross-examination, Mr. Ward said that he was not acting as Mr. Canfield's "mole", rather he was providing information about certain expenses which Mr. Canfield was concerned about. He also said he did not provide copies of the expenses records himself.[193] I accept this evidence, particularly when there is no hint in the documents of further records being provided by Mr. Ward to Mr. Canfield.

263. As I find, Mr. Canfield was not seeking additional information, he was seeking to preserve the integrity of the record. I infer two things from this:

(1) Mr. Canfield wanted a cross-check on the material that Mr. Hayes had provided him with. He wanted to be assured that, if and when recourse needed to be had to the Signia data, that data would be reliable. In short, whilst Mr. Canfield considered the information Mr. Hayes was providing to be credible, he wanted to be able to verify the information for himself by going to Signia's records.[194]

(2) Mr. Canfield did not trust Signia – and specifically, Ms. Dauriac – to leave the records untampered with. The reason for this appears to be a communication Mr. Canfield received from Mr. Hayes. Mr. Hayes' evidence was:[195]

> "In October 2014,[196] I came into the office one day and saw Nathalie's expenses sheets printed out and all over the reception desk where the PAs were sitting and there seemed

[191] Day 7/p.57 (cross-examination of Mr. Ward).

[192] There are various "WhatsApp" messages between Mr Canfield and Mr. Ward on this subject.

[193] Day 7/pp.58-59 (cross-examination of Mr. Ward).

[194] Day 3/pp.76-77 (cross-examination of Mr. Canfield).

[195] Hayes 1/para. 31; Day 7/pp.42-43 (cross-examination of Mr. Hayes).

[196] Mr. Hayes was able to pin the date down to 9 October 2014, as this was the date of his meeting with Ms. Cooper and Ms. Ohbi: Day 7/p.15 (cross-examination of Mr. Hayes).

> to be a lot of activity and urgency about it. By chance, I had a meeting with [Ms. Cooper and Ms. Ohbi] that morning in a boardroom on the second floor. During the meeting, I asked them what was going on with the expenses sheets and whether Nathalie was getting the PAs to amend them. In response, they raised their eyes and sighed. I phoned David and told him what I had seen and that it appeared that Nathalie was getting the PAs to amend the expense forms."
>
> The only oddity is why Mr. Canfield waited so long – about a month – before taking steps to protect the records. I assume the delay was for the same reason as Mr. Canfield's other delays in investigating Ms. Dauriac: he did not want to proceed until he was confident that Mr. Caudwell would not disapprove.

264. When it was put to Mr. Canfield in cross-examination that he could have openly asked Signia for this information himself, he recognised that there was nothing stopping him from doing so.[197] This is a fair point, so far as it goes: but, in my judgment, it mistakes why Mr. Canfield acted as he did.

(d) Mr. Canfield provides the USB to Mr. Maycock for analysis

265. In early November 2014, Mr. Canfield provided the USB containing the Dauriac Expenses V.1 to Mr. Maycock, for Mr. Maycock to undertake a detailed analysis.[198] Mr. Maycock describes the circumstances as follows:[199]

> "39. In early November 2014, [Mr. Canfield] gave me a USB stick with Signia's expenses on it. He asked me to look at it and in particular to see what Nathalie had spent and claimed as business expenses. David told me that he had been given the USB stick by David Hayes, who had told David that it had some "outrageous stuff" on it.
>
> 40. When David first handed it to me I did not think it was particularly important and so did not prioritise it. Due to other business commitments, I did not do anything with the USB stick for about a week or so. David then chased me about this at the weekend and said that it was now urgent. As a result, I ended up spending most of Sunday 9 November 2014 reviewing all the documents on the USB stick."

(e) The "green light" for urgent investigation

266. The reason for the urgency described by Mr. Maycock in Maycock 1/para. 40 was because of the intervention of Mr. Caudwell. On the morning of 9 November 2014 (which, as Mr. Maycock has noted, was a Sunday), Ms. Dauriac sent the following "WhatsApp" messages to Mr. Caudwell at 8:44am:

> "John, it has been very hard over the last few weeks and I would really ask you for all the years we had together to just give me an hour to understand what I have done wrong. I am not sure if it is about Kam, or Claire, or the business, but I cannot think what it is. As far as I know, I have been the most loyal person and love you with the bottom of my heart. Please let me know when you can meet today or please call me. I am just asking for an hour, just the 2 of us. It means so much to me. With all my love xxx thank you for tonight."

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[197] Day 2/pp.28-29 (cross-examination of Mr. Canfield); Day 3/pp.79-80 (cross-examination of Mr. Canfield).

[198] Day 2/p.19 (cross-examination of Mr. Canfield).

[199] Maycock 1/paras. 39*ff*.

267. From the documents before me, it does not appear that Mr. Caudwell responded to this message. However, two minutes later (at 8:46am), Mr. Caudwell sent the following message to Mr. Canfield:

"Ho, David. It's getting impossible now. We have to act soon with whatever we have. J."

268. Clearly, this implies some knowledge of the expenses issue on the part of Mr. Caudwell, but not necessarily very much. As has been described, Mr. Canfield told Mr. Caudwell something – but not very much – about his communications with Mr. Hayes in the summer. Mr. Caudwell was essentially content to allow Mr. Canfield to carry on and brief him as necessary.[200]

269. Mr. Caudwell was (understandably, in my view) vague about what he was told when:[201]

Q (Mr. Plewman, Q.C.)	So at what point did you learn more detail about the allegation?
A (Mr. Caudwell)	The initial was in the summer, and I really can't recall when the next – when I was next told something, but I think it was probably – probably early autumn that Mr. Canfield told me that there was going to be information forthcoming in written format, or in some format, that would enable him to have a look and investigate the expenses difficulty.
Q (Mr. Plewman, Q.C.)	Well, I would suggest to you that since you say that you were outraged and devastated by these allegations, the moment they were given any degree of detail, you must have felt that outrage and devastation.
A (Mr. Caudwell)	I did.
Q (Mr. Plewman, Q.C.)	And you would then immediately have wanted to take action?
A (Mr. Caudwell)	I would have wanted to take action, but I couldn't. I had to be patient, because Mr. Canfield first of all said he was absolutely on word of honour not to disclose the person's identity that was going to forward us the information, and secondly said he hadn't got the information in full, but that the information looked very, very worrying. So, of course, yes, I was very concerned, but you know, at this stage – and this is somewhere round about August/September maybe, I still felt very, very close to Ms. Dauriac. I felt an incredible sense of loyalty towards her, and I was really hoping, all the time hoping that whatever had been reported was going to prove to be incorrect.

270. Whilst I do not consider that the dates in this narrative can necessarily be relied upon, I consider the broad thrust of Mr. Caudwell's narrative to be reliable. He was told

[200] Day 5/p.55 (cross-examination of Mr. Caudwell).

[201] Day 5/pp.56*ff* (cross-examination of Mr. Caudwell).

something in the summer; he was told more, when Mr. Canfield received the memory stick. But he remained essentially loyal – if troubled – towards Ms. Dauriac, and that – for reasons that have been described – was Mr. Canfield's problem. He did not want to probe areas that Mr. Caudwell did not want to have probed so far as Ms. Dauriac was concerned.

271. This is clear from the exchanges between Mr. Canfield and Mr. Caudwell that arose in response to Mr. Caudwell's message of 8:46am, described above. Mr. Canfield responded about half an hour later, resulting in the following exchange:

Mr. Canfield (at 09:23am)	Hi John. Can I ask what has happened to escalate this? Clearly something last night. I've thought about this all weekend as I have done for months and, although I'm convinced there has, from my perspective at least, been serious wrongdoing, my concern is that I only have irrefutable proof in respect of issues which, when to be frank when we've spoken, I don't get the sense you completely share my perspective on the seriousness of. I need to be totally open as I've thought for some time that if I get this wrong it will make my position with you completely untenable and that may be how this ends. Nevertheless, I owe it to you and to myself (as my integrity and reputation mean more to me than anything) to act on what I already have. I will need a few days though to pull together my thoughts into something coherent. David.
Mr. Caudwell (at 09:36am)	Hi David. Nothing happened last night other than she continually asks what she has done wrong and it gets increasingly difficult to say nothing is wrong in light of info from you. So I fob in a way that clearly leaves her feeling that I am unhappy! I don't understand where your own tenability comes in unless you feel that you might have acted inappropriately and I don't feel that you have. I don't feel that this is a matter of you being right or wrong and nor should it be. It's a matter of trying to get to some of the truth and acting appropriately and in the least damaging way. You seem to have your own role in this out of perspective! John.
Mr. Canfield (at 09:54am)	Hi John. I agree up to a point and I am absolutely sure I have not done anything wrong, but this is incredibly difficult because of the nature and apparent strength of your relationship with Nathalie. So at each step I have to make sure what I'm being told is reliable and not in itself poisoned by the motives of those who have provided the information and also that the allegations are serious enough to warrant action from both our perspectives. My point was that if I make an error of judgement in relation to those then to be brutal, I'm fucked. Maybe I'm not making sense and maybe I'm sounding irrational, but it is a horrible situation to be in and it is very stressful. Probably better to talk face-to-face, can we please do that tomorrow? I have to

	take my son to school as Michelle has an appointment first thing, but I will be in around 9 if it's convenient for you. David
Mr. Caudwell (at 10:02am)	David, this should not be about you taking a position. It should only be about dealing with the facts. It should not be about you convincing me, but about us looking at the evidence and acting in unison together in the most appropriate way. You seem to be getting this out of perspective. I have no doubt there is a significant issue here. It's all about how we handle it. All the same, I believe that Nathalie may be cracking up!
Mr. Canfield (at 10:05am)	Fully understood, John. David.
Mr. Caudwell (at 10:06am)	We will meet as soon as you arrive tomorrow.
Mr. Canfield (at 10:07am)	OK, will be there as soon as I can. David.

272. The following things are, in my judgment, clear:

(1) First, it was Mr. Caudwell's unease at being pressed by Ms. Dauriac as to what was "wrong" that triggered his decision to make clear to Mr. Canfield that his (Mr. Canfield's) investigation had to proceed swiftly.

(2) Secondly, the conversation that Mr. Canfield had with Mr. Caudwell cleared the air as regards any inhibitions Mr. Canfield had regarding an investigation into Ms. Dauriac's expenses. Indeed, Mr. Canfield must have been clear, in his mind, that this was now an urgent matter. Certainly, he proceeded as if the matter was very urgent, as subsequent events make clear.

(3) Thirdly, I do not consider that the outrage and devastation that I accept Mr. Caudwell felt at some point had, at this stage, set in. Mr. Canfield had the documents: but he had not looked at them. He can only have given Mr. Caudwell the most general sense of what was suspected, because Mr. Canfield knew no more than this himself.

273. It was in these circumstances that Mr. Maycock was told by Mr. Canfield to move quickly to analyse the Dauriac Expenses V.1.

(f) Mr. Maycock's initial analysis

274. Mr. Maycock's first analysis of the Dauriac Expenses V.1 was conducted on 9 November 2014. There were various communications from him to Mr. Canfield:[202]

(1) Email at 4:29pm attaching an Excel spreadsheet entitled "Analysis sheet.xlsx". The email simply stated "this one has all the data in one list and a few tables of

[202] Mr. Maycock was cross-examined about these on Day 4/pp.1-4.

analysis". The spreadsheet contained a list of expenses, described under the following columns:

(a) "Expense type";

(b) "Details";

(c) "Date";

(d) "Client"; and

(e) "Amount",

This represented the original Dauriac Expenses V.1 data. Superimposed on this, Mr. Maycock had provided a (limited) analysis:

(f) Some entries he had highlighted yellow or green. Yellow denoted where there was a PDF copy of the expense sheet. Green denoted an expense of Mr. Stoebe.

(g) In a final column, headed "TM code", where Mr. Maycock had provided a limited analysis. Thus, for instance, he had identified expenses to do with Mr. Caudwell with the initials "JC".

(2) Email at 4:34pm attaching an Excel spreadsheet entitled "ND Expenses Main sheet.xlsx". The email stated:

"This one has every claim sheet – it is a bigger file, but should allow you to print the lot in one go. Big file, so might take some time to come over the server."

The spreadsheet was an evolution of the spreadsheet referred to in paragraph 274(1) above, containing more entries and a little more analysis. But, as the covering email notes, the file contained copies of the actual expense sheets also.

275. Annex 5 sets out, in tabular form, the various ways in which the same expense was described by Ms. Dauriac over time. Column (3) in the table at Annex 5 sets out the descriptions on the expense sheets as they were in the Dauriac Expenses V.1 data.

(g) The request to obtain copies of Ms. Dauriac's expense forms

276. On 11 November 2014, Mr. Canfield emailed Ms. Dauriac in the following terms:

"Hi Nathalie,

Hope you are well.

We have recently undertaken an in-depth review of the level, nature and appropriateness of the business expenditure being incurred within one of the companies under John's ultimate ownership and this has identified some quite serious issues regarding the governance and financial control being exercised within this organisation; particularly in relation to travel and subsistence and entertainment expense.

In light of that we are now broadening this review out to all the entities under John's family's control, including of course Signia Wealth.

We'll be in touch in due course to organise this review with you but in the meantime and in anticipation of your meeting with John which I understand is taking place on Thursday, we would like to start with a review of the expense claims of the key personnel within the business.

As a matter of priority can you therefore please arrange for someone to send us electronic copies of your personal and corporate card expense claims and those of the members of the Executive Committee (including those who have left in the last 12 months) for the past 2 years, being 2013 and 2014 to date. I assume these will already be held electronically on file so hopefully this doesn't present a logistical difficulty.

Any problems, please let me know. It would be preferable to have this to early timescales and well in advance of Thursday's meeting."

277. This email was somewhat disingenuous. Whilst it is true to say that matters at Pure Jatomi had thrown up expenses issues, the matter of Ms. Dauriac's expenses had been on Mr. Canfield's radar since the summer, and the work being done by Mr. Maycock – at Mr. Canfield's request – was focussing on Ms. Dauriac, and not on key personnel generally.

278. Ms. Dauriac forwarded this email, without written comment, to Ms. Ohbi. I have no doubt that they spoke.

279. It is to be inferred that either Ms. Dauriac or Ms. Ohbi also spoke to Ms. Degruttola about this email because, on the same day, Ms. Degruttola emailed Ms. Olszewska in the following terms:

"Don't speak about it to anyone, I need you to please print off every single expense form there is, put a post-it note on each of them, with the month, year and whose it is, and then also print-off every single expense form there is for Nathalie personal expenses and I need them also asap please"

280. At 11:23am on 12 November 2014, Mr. Maycock emailed Ms. Tarbet (and Mr. Canfield, for information) to explain that "David [Canfield] has asked me to facilitate the submission of a number of documents to the office here at Broughton".

281. At 1:36pm on 12 November 2014, Ms. Tarbet emailed Mr. Canfield (copying in Ms. Cooper and Ms. Dauriac, but not Mr. Maycock) identifying the employees for which she would be sending expenses records. The email continued:

"I would mention that as part of the expenses process, Nathalie makes a separate payment for her own personal expenses not payable by the firm and she reimburses this on an annual basis. For 2014, this payment will be made in December.

As you know, she entertains at her house on a regular basis and does not make any allowance for additional cleaning costs, providing accommodation to employees and clients who would otherwise be charged to the firm."

282. It will be necessary to consider this claim about reimbursement in greater detail. In her witness statement, Ms. Tarbet said this about the sending of this email:[203]

> "During a meeting to discuss our progress and to prepare a response to David's email, Nathalie told me it was her usual practice to reimburse Signia for her personal expenses incurred on her corporate card and I made a note of Nathalie's comment that this was her usual practice. I recall that I made this note on a piece of loose paper which unfortunately I have been unable to locate. I had no knowledge of Nathalie ever making reimbursements to Signia, but at the time this made sense to me, as I had seen the comment "Nathalie to reimburse" on a few corporate card entries on claim forms submitted by Nathalie over the course of the year. For this reason, I took Nathalie on her word [and sent the email described in paragraph 281 above]. Nathalie reacted furiously to my email to David. She shouted at me on the office floor and then called me into a meeting room and shouted at me again asking why I had sent the email to David. I had never seen her as angry as this before and I thought that she was going to fire me. I did not understand why she was so angry as she had mentioned only earlier that day that she made annual reimbursements of personal expenses. If anything, I thought my email helped to demonstrate that she had not done anything untoward. I now realise that she was angry because, contrary to what she told me in the meeting, she had in fact never made any substantial reimbursement payments to Signia. I am aware that in the course of this investigation, no evidence has been found of Nathalie reimbursing any significant corporate expenses claims."

283. Later that day (at 3:23pm), Mr. Canfield emailed Ms. Tarbet (copying in Ms. Cooper) asking her to focus on Ms. Dauriac's expenses:

> "Janet,
>
> I'm running out of time, can you please send me the residue of these claims asap. If you need to prioritise please send me Nathalie's first.
>
> Thanks,
>
> David"

284. Given that the request for this information had only been made the day before, this was a not entirely reasonable request. It underlines two things: first, the pressure under which Mr. Canfield was operating; and, secondly, the fact that Ms. Dauriac was the real focus of the inquiry.

285. In a series of emails later that day, Ms. Tarbet sent to Mr. Canfield three emails containing Ms. Dauriac's expenses records:

- **(1)** Email 1 of 3 at 04:12pm, with multiple attachments;
- **(2)** Email 2 of 3 at 4:23pm, with multiple attachments; and
- **(3)** Email 3 of 3 at 4:28pm, with multiple attachments.

286. I shall refer to this expense information as the "Dauriac Expenses V.2". As will become clear, the content of the Dauriac Expenses V.2 is not the same as that of the Dauriac Expenses V.1. It is necessary to explain why this is the case.

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[203] Tarbet 1/para. 31; Day 6/pp.117*ff* (cross-examination of Ms. Tarbet). Ms. Cooper's account was substantially the same: Day 6/pp.12-14 (cross-examination of Ms. Cooper).

(h) The manner in which the Dauriac Expenses V.2 were compiled

Introduction

287. Again, it is necessary to consider the evidence, before stating the findings of fact. However, in this case – in contrast to the work that was done prior to Mr. Canfield's letter of 11 November 2014 – the witnesses' accounts were broadly consistent. There was also more documentary evidence – namely the Dauriac Expenses V.2.

The evidence of Ms. Cooper

288. Ms. Cooper was asked to assist in the collation of the documents responsive to Mr. Canfield's request, and this was an urgent request (although Ms. Cooper did not understand the reason for the urgency). Mr. Canfield expressed the view to her that this material should be easily to hand.[204]

289. The information was not, in fact, easily to hand: but that was because Ms. Dauriac's expense forms were being amended:[205]

> "In relation to the other executive committee's expenses, no. We got them completed within the period. The reason it took so long to response to David was because a lot of Nathalie's sheets were being amended and that was what took so much time."

290. Ms. Cooper described the process of amendment:[206]

Q (Ms. Ford, Q.C.)	You say in [Cooper 1/para. 19] that Ms. Dauriac was sitting in a meeting room reviewing her printed expenses and that she would then hand them to Ms. Degruttola to be amended. Is that right?
A (Ms. Cooper)	Correct.
Q (Ms. Ford, Q.C.)	And again, there's nothing covert or secretive about that process, is there? It's being done in full view?
A (Ms. Cooper)	Well, she was sitting in a meeting room, not at her desk.
Q (Ms. Ford, Q.C.)	But you were clearly – you understood what was going on because you have given evidence about it?
A (Ms. Cooper)	Well, what I understood was going on, was she was looking at the descriptions to make sure they were accurate.
Q (Ms. Ford, Q.C.)	And then you explain at [Cooper 1/para. 22] that Ms. Degruttola told you that she was re-amending some of Ms. Dauriac's expenses to correct mistakes that the support team had made when preparing her expense claim forms. Is that right?
A (Ms. Cooper)	Correct.

[204] Day 6/pp.6-7 (cross-examination of Ms. Cooper).

[205] Day 6/p.11 (cross-examination of Ms. Cooper).

[206] Day 6/pp.11-12.

Q (Ms. Ford, Q.C.)	And your understanding was that she was making amendments to ensure the expenses matched Ms. Dauriac's diary, using only the expense sheets?
A (Ms. Cooper)	Correct.
Q (Ms. Ford, Q.C.)	And again, you as compliance officer didn't express any concerns at that stage about what was taking place?
A (Ms. Cooper)	I had no reason to have concern.
Q (Ms. Ford, Q.C.)	So you didn't?
A (Ms. Cooper)	No.

The evidence of Ms. Tarbet

291. Ms. Tarbet's recollection was similar, although she attributed the difficulty in meeting Mr. Canfield's request to the fact that things were missing or misfiled or wrongly scanned.[207]

292. Ms. Tarbet described the changes in the following way:[208]

"I believe Nathalie's expenses forms underwent a series of changes since they were originally filed and processed for payment. I was handed an amended set of expenses to re-sign in October. These forms were changed again when Kelly conducted a further amendment exercise, which resulted in the re-insertion of client names (including the names of John and his family) into Nathalie's corporate expenses forms. In addition, after we received David's email on 11 November 2014, Kelly told me that she was in the process of re-amending the corporate expenses forms following Nathalie's requests that she "correct mistakes" that the support team had made when matching receipts to Nathalie's diary. This process of amending and re-amending the corporate expenses forms made it difficult to identify which forms we should rely upon for the purposes of our investigation."

In cross-examination:[209]

Q (Ms. Ford, Q.C.)	And there was nothing secretive or covert about any of those amendments, was there, you were aware what was going on?
A (Ms. Tarbet)	Well, I was aware there was amendments being made, yes, that's correct.
Q (Ms. Ford, Q.C.)	And as the person in charge of the expenses procedure, you did not express any concern at that process, did you?
A (Ms. Tarbet)	No, I didn't.
Q (Ms. Ford, Q.C.)	And in full knowledge of the fact that those changes had been made, you then re-signed the forms, didn't you?

[207] Day 6/p.116 (cross-examination of Ms. Tarbet).

[208] Tarbet 1/para. 30.

[209] Day 6/pp.121-123.

A (Ms. Tarbet)	I re-signed the forms authorising them after Nathalie had signed them off as well. I wasn't aware – I didn't do a line-by-line analysis, because I didn't believe there was anything in there that I shouldn't be able to sign because I had been told that this was just a clarifying exercise.
Q (Marcus Smith J.)	And who told you that?
A (Ms. Tarbet)	So, Kelly had told me that she was just amending them to make clarifications, and I didn't do a line-by-line check, I just checked that the amounts hadn't changed so the monetary sums were the same, and then I signed them off.

The evidence of Ms. Dauriac

293. Whilst Ms. Dauriac accepted that the review of her expenses took place, she lacked a detailed recollection. The account she gives in her witness statement, by way of example, is quite short and elides what I find was a two-stage process (pre- and post-11 November 2014).[210] Her evidence was essentially consistent with that of the other witnesses, but not as clear. I should make clear that I do not regard this as a criticism of Ms. Dauriac.

The evidence of Ms. Degruttola

294. As I have described, there are occasions when Ms. Degruttola confused the pre-11 November 2014 review with the post-11 November 2014 review. I regard that as entirely understandable.

295. In her interview with Mr. Canfield on 13 January 2015, she said this:

Q (Mr. Canfield)	At what stage…there were, however, subsequent amendments made that were not in relation to Caudwell, can you describe what amendments they were and what you were asked to do?
A (Ms. Degruttola)	I was asked, when you sent the email, she asked me if I had started the reimbursement form yet, I said I hadn't, so I had to get on with that. She also said, look through my expenses and make sure they all add up to my diary, as when the receptionists were doing the expenses they were not all correct. So I started matching them up to her diary and was showing her and her asking her, and I suppose she asked me to take off Konrad and Juliette.
Q (Mr. Canfield)	Sorry, can you just clarify that, she asked you to take off Konrad and Juliette?
A (Ms. Degruttola)	She asked me to take off Konrad's and Juliette's names off the descriptions.

[210] Dauriac 1/paras. 97-103.

Q (Mr. Canfield)	In relation to what?
A (Ms. Degruttola)	Their names would have been against flights or hire cars.
Q (Mr. Canfield)	She asked you to take their names off flights and hire cars, and this was after I sent the email asking for the expense claims?
A (Ms. Degruttola)	Yes.
Q (Mr. Canfield)	What other amendments did you have to make?
A (Ms. Degruttola)	Match everything to her diary…I showed her some I printed off to query them, and she wrote on them and told me what to change them to. Dawn Ward was to be changed to YPO. So Nathalie went on Dawn Ward's 40th birthday party and I was told to change them to YPO trip.
Q (Mr. Canfield)	Okay. Did you believe that to be an accurate description of what that expenditure was for?
A (Ms. Degruttola)	No.

296. As has been described, Ms. Degruttola sought to distance herself from these answers. In particular, she asserted that her last answer, quoted above, was not true. Her evidence in cross-examination was as follows:[211]

Q (Ms. Carss-Frisk, Q.C.)	Now, what you told Mr. Canfield there was presumably true, was it not?
A (Ms. Degruttola)	The fact that it was Nathalie – Ms. Dauriac told me to change Dawn Ward to the YPO retreat – that's correct. Did I believe it was accurate? I said "No". Why would I know?
Q (Ms. Carss-Frisk, Q.C.)	Why would you believe it was accurate?
A (Ms. Degruttola)	That's what he's asked me there and I said "No, I didn't", I was told what I needed to say.
Q (Ms. Carss-Frisk, Q.C.)	Ms. Degruttola, are you suggesting that you were specifically told by someone to say something in particular about expenses in connection with Dawn Ward? Is that really what you're saying?
A (Ms. Degruttola)	I was asked all the questions – I was shown all the questions I'd be asked.
Q (Ms. Carss-Frisk, Q.C.)	How do you mean, you were shown all the questions?
A (Ms. Degruttola)	Ms. Ohbi showed me the list of questions and went through them with me and told me what my answers should be.

[211] Day 9/pp.125-127.

Q (Ms. Carss-Frisk, Q.C.)	Ms. Degruttola, again, I can only suggest to you that is absolutely untrue?
A (Ms. Degruttola)	That's not true: it is true.
Q (Marcus Smith J.)	Well, Ms. Degruttola, let's look at the answer that we've just been looking at on the transcript. Are you telling the court that your true answer would have been "yes"?
A (Ms. Degruttola)	Yeah, it would have. Nathalie told me to – that it was YPO retreat – looking at the diary. Why would I have any reason to question her?

The documentary evidence

297. Unlike with the pre-11 November 2014 changes, there are documents that can assist in determining what happened. By reference to Annex 5, it is possible to see the nature of the differences between the Dauriac Expenses V.1 and the Dauriac Expenses V.2. The differences fall into two classes:

(1) *The expense claim was deleted.* In Annex 5, examples of this are Column (4), item 2 (flight to meet John Caudwell), item 3 (flight to Vail to meet John Caudwell) and item 8 (gift for the Caudwells). It appears – the evidence is considered below – that Ms. Dauriac's thinking was that these deleted claims would be listed on a reimbursement schedule (the "Reimbursement Schedule") and that Ms. Dauriac would repay the expenses on this schedule. The evidence, it must be observed, is unsatisfactory in this regard, both because the Reimbursement Schedule (which I find did exist) has disappeared and because Ms. Dauriac's explanations as to what she intended changed over time. Nevertheless, it is clear from Mr. Maycock's analyses of the Dauriac Expenses V.2 that he had information from the Reimbursement Schedule before him.

(2) *The description of the expense claim was amended.* It must be stressed that the amendments were limited to the claim description. Dates and amounts were left unchanged. In Annex 5, examples of the sorts of changes made are set out in Columns (3) and (4) (the two obviously have to be compared) in respect of item 5 (John Caudwell meeting/Mad Lillies Hair Salon), item 6 (flight to Alicante for Detox week), item 7 (flights to St. Emilion) and item 10 (Dawn Ward's birthday).

Conclusions

298. As regards the post-11 November review, I make the following findings:

(1) It may be that some of the pre-11 November 2014 changes of "client" back to "Caudwell" persisted into the post-11 November 2014 period. However, the exercise that was conducted in response to Mr. Canfield's request was entirely separate and used the entries as they appeared in the Dauriac Expenses V.1 data.

(2) The exercise conducted in relation to Ms. Dauriac's expense sheets was altogether more sophisticated than the pre-11 November 2014 exercise. It involved a substantive review of the available data surrounding the expenses, and either a deletion of the claim (albeit that the claim was transferred to the, now

lost, Reimbursement Schedule) or an amendment in terms of how a claim was described.

(3) In terms of a general pattern, expenses relating to trips to visit Mr. Caudwell tended to be deleted; other expenses, if they were changed at all, were not deleted but the claim description amended.

(4) Again, I do not propose, at this stage, to consider why these changes were made. It is only necessary to make two observations at this stage:

(a) First, the changes were made at Ms. Dauriac's behest, and deploying a number of Signia staff – Ms. Cooper, Ms. Tarbet and Ms. Degruttola. Obviously, as regards these people, the changes were made openly. The fact that the process was – to this extent – open does not however permit any inference of honesty – or, for that matter, dishonesty. The point is neutral. The fact is that Ms. Dauriac used "her" team, and it is not possible to infer from that use whether she used her team for honest or dishonest purposes.

(b) Secondly, the changes that resulted in the Dauriac Expenses V.2 were made by Ms. Dauriac's team at Signia in ignorance of the fact that Mr. Canfield had, in his possession, the Dauriac Expenses V.1.

(i) Mr. Maycock's review of the Dauriac Expenses V.2

299. The Dauriac Expenses V.2 were sent by Ms. Tarbet to Mr. Canfield during the afternoon of 12 November 2014. It is to be inferred that Mr. Canfield passed these on to Mr. Maycock. Later that day, Mr. Maycock emailed (without message) various documents to Mr. Caudwell (copied to Mr. Canfield):[212]

(1) Email at 07:05pm attaching PDF "Jan Feb Mar 13.pdf";

(2) Email at 07:26pm attaching PDF "Apr May 13.pdf";

(3) Email at 07:57pm attaching PDF "May June 13.pdf";

(4) Email at 08:22pm attaching PDF "July 13.pdf";

(5) Email at 08:55pm attaching PDF "Aug 13.pdf"; and

(6) Email at 09:19pm attaching PDF "Sept Oct Dec 13.pdf".

300. These PDFs are scans of printed versions of the original expenses records which Mr. Maycock had received from Mr. Canfield (originally from Mr. Hayes' USB) – i.e. the Dauriac Expenses V.1 –and the expenses records which Ms. Tarbet had sent through on 12 November – i.e. the Dauriac Expenses V.2.

301. Mr. Maycock reviewed these documents as a matter of urgency. He marked them up to show the changes that had been made, as described above:[213]

[212] Mr. Maycock was cross-examined on these documents on Day 4/pp22*ff*.

[213] Day 4/p.23 (cross-examination of Mr. Maycock).

Q (Ms. Ford, Q.C.)	So, just in broad summary, you received Ms. Dauriac's expense information in the late afternoon on 12 November 2014. Is that a fair summary?
A (Mr. Maycock)	That's completely correct, yes.
Q (Ms. Ford, Q.C.)	And then, what you went on to do is to compare these records that you'd received with the record that you'd previously received, is that right?
A (Mr. Maycock)	I did, yes.
Q (Ms. Ford, Q.C.)	And what you identified then is the fact that there had been some changes made to some of the entries, including some of the ones you had previously highlighted?
A (Mr. Maycock)	Yes, I did.

302. Mr. Canfield was travelling to London for a meeting with Mr. Caudwell, and he had instructed Mr. Maycock to send the information as soon as possible.[214] Mr. Maycock's recollection was as follows:[215]

Q (Ms. Ford, Q.C.)	Now, on this day, there was then a meeting between Mr. Caudwell, Mr. Canfield and Ms. Dauriac at Ancaster House [Mr. Caudwell's London residence]? That's right, isn't it?
A (Mr. Maycock)	That's correct, yes.
Q (Ms. Ford, Q.C.)	And you weren't present at that meeting?
A (Mr. Maycock)	I was not.
Q (Ms. Ford. Q.C.)	But Mr. Canfield called you and he asked you to send through the information that you had been able to glean from the documents that had been sent through?
A (Mr. Maycock)	Yes. I think, as Mr. Canfield said, he already had to travel down for a meeting the next morning that was previously set, he had had to leave before these documents arrived, and so he asked me to highlight or send through any changes, my having told him that on first look there seemed to be some changes.
Q (Ms. Ford, Q.C.)	So, you'd had a conversation with him after receiving information, but before he left? Is that right?
A (Mr. Maycock)	I believe he left before the information came through.
Q (Ms. Ford, Q.C.)	So when you say you told him that there appeared to be some changes, when did that exchange occur?
A (Mr. Maycock)	At some point later, after I'd had a chance to look at the initial documents.

[214] Day 3/p.82 (cross-examination of Mr. Canfield); Day 4/p.24 (cross-examination of Mr. Maycock).

[215] Day 4/pp23-25 (cross-examination of Mr. Maycock).

Q (Ms. Ford, Q.C.)	So, that's right, isn't it, that there is a period of approximately three hours between when you first received the information on Ms. Dauriac's expenses and the point when you start sending information through to Mr. Canfield? Is that fair?
A (Mr. Maycock)	I wouldn't be able to comment. I believe there are a number of emails where I started to send information though.

303. Mr. Maycock's emails to Mr. Canfield actually have no substantive content. They simply attach documents, albeit with Mr. Maycock's annotations. I consider that there must have been some telephone conversation between Mr. Maycock and Mr. Canfield, after Mr. Canfield left for London, during the course of which Mr. Maycock said that he had identified some differences between Dauriac Expenses V.1 and Dauriac Expenses V.2.

(j) The meeting at Mr. Caudwell's house on the evening of 12 November 2014

304. A meeting had been pre-arranged by Mr. Caudwell and Mr. Canfield for 13 November 2014.[216] It was for this meeting that Mr. Canfield travelled to London on 12 November 2014. Mr. Canfield described the purpose of the meeting as follows:[217]

Q (Mr. Plewman, Q.C.)	Mr. Maycock received the records from Ms. Tarbet some time after 4:00pm?
A (Mr. Canfield)	Correct.
Q (Mr. Plewman, Q.C.)	And he then worked through them before sending you the product of his efforts, and within only a few hours you were in a position to make an accusation against Ms. Dauriac?
A (Mr. Canfield)	That's correct.
Q (Mr. Plewman, Q.C.)	You didn't take the time to allow for some more sober analysis of the records and nor seek any explanation of what they showed in advance?
A (Mr. Canfield)	Can I just put this into context, my Lord? Mr. Caudwell and I had pre-arranged a meeting with Ms. Dauriac for 13 November. That was going to be a discussion about inappropriate use of company funds based on the analysis regarding the undertaking with regard to the original expense claims. So that was the – that was why the meeting had been arranged. It took on an entirely different context, of course, when the records were amended.
Q (Mr. Plewman, Q.C.)	You had arranged a meeting to confront her with Mr. Maycock's analysis that he provided on 9 November?

[216] Day 3/p.80 (cross-examination of Mr. Canfield).

[217] Day 3/pp.80-81.

A (Mr. Canfield)	Correct.
Q (Mr. Plewman, Q.C.)	And when he looked at what Ms. Tarbet provided, she was hurried to provide it, and then, within a few hours, as it happened, you could confront her with allegations of serious misconduct?
A (Mr. Canfield)	That's correct.

305. There was no plan, therefore, to meet Ms. Dauriac that evening. For other reasons, however, Ms. Dauriac went to Mr. Caudwell's house in London. She had gone there to visit Mr. Caudwell's partner but, during the course of that meeting, was shown through to Mr. Caudwell's office, where Mr. Canfield was also present.[218]

306. Ms. Dauriac interrupted a discussion about her between Mr. Canfield and Mr. Caudwell.[219] Mr. Canfield had come equipped with Mr. Maycock's analysis of the Dauriac Expenses V.1, but he had a limited amount of information about Mr. Maycock's analysis of the Dauriac Expenses V.2. I find that at the time of Ms. Dauriac's interruption of this meeting, Mr. Canfield would have told Mr. Caudwell that it was Mr. Maycock's view that Ms. Dauriac's expenses had been altered prior to submitting them to Mr. Canfield pursuant to his investigation.[220]

307. I consider that this aspect – the alteration of the records – would have come as a considerable and most unpleasant surprise to Mr. Caudwell. I accept it would have been less of a surprise to Mr. Canfield, given what he knew about events at Signia and the fact that he had been careful enough to ensure that the integrity of Signia's records had been maintained through Mr. Ward.

308. Ms. Dauriac's interruption thus came at a most unfortunate time. Mr. Caudwell and Mr. Canfield were preparing for a meeting with her the next day and had just been confronted with a potential new dimension in relation to Ms. Dauriac's conduct.

309. By all accounts, the meeting between Mr. Caudwell, Mr. Canfield and Ms. Dauriac was emotional and fraught. As Mr. Canfield recalls it, Ms. Dauriac "became agitated and began to cry and shout…and became increasingly animated and aggressive".[221] Ms. Dauriac was left "very upset",[222] "crying and scared" and "was in tears and they [Mr. Caudwell and Mr. Canfield] were shouting at me".[223]

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[218] Day 3/pp.81-82 (cross-examination of Mr. Canfield).

[219] By this, I do not mean that Ms. Dauriac burst in uninvited. Her presence at Mr. Caudwell's house was unanticipated, and – when she learnt that Mr. Canfield was present – Ms. Dauriac demanded to see Mr. Caudwell. Mr. Canfield and Mr. Caudwell decided to see her and "get it over with": Canfield 1/paras. 117-118. Whilst no-one is to blame for it, I do consider that the meeting between Mr. Caudwell and Mr. Canfield was interrupted.

[220] Day 3/pp.81-83 (cross-examination of Mr. Canfield).

[221] Canfield 1/paras.120-123.

[222] Day 5/p.89 (cross-examination of Mr. Caudwell).

[223] Dauriac 1/paras. 111-112. Ms. Cooper received a call after the meeting from a distressed Ms. Dauriac: Day 6/p.14 (cross-examination of Ms. Cooper).

310. Mr. Canfield described the meeting as follows:[224]

Q (Mr. Plewman, Q.C.)	…You got his [Mr. Maycock's] input before Ms. Dauriac arrived? Correct?
A (Mr. Canfield)	To an extent.
Q (Mr. Plewman, Q.C.)	And you and Mr. Caudwell were in discussion about that when she arrived?
A (Mr. Canfield)	We may have been, yes.
Q (Mr. Plewman, Q.C.)	And you then confronted her with allegations immediately when it transpired that she came to see Mr. Caudwell?
A (Mr. Canfield)	We did.
Q (Mr. Plewman, Q.C.)	And immediately accused her of a fraudulent cover-up?
A (Mr. Canfield)	Well, I think we asked her to explain. I don't believe we accused her of a fraudulent cover-up.
Q (Mr. Plewman, Q.C.	In that conversation on 12 November, you accused her of a fraudulent cover-up. Do you deny that?
A (Mr. Canfield)	I may have done.
Q (Mr. Plewman, Q.C.)	So you had already reached the fixed conclusion at that stage that there had been a fraudulent cover-up?
A (Mr. Canfield)	I'd reached the conclusion that there was sufficient evidence, my Lord, to suggest a fraudulent cover-up, yes.
Q (Mr. Plewman, Q.C.)	And you didn't seek her proper prepared explanation of the records, you confronted her with those serious allegations there and then?
A (Mr. Canfield)	We asked her to explain herself.
Q (Mr. Plewman, Q.C.)	You didn't ask her to go away and compare the two records and explain each of the changes, for example.
A (Mr. Canfield)	That's what we did the next day.
Q (Mr. Plewman, Q.C.)	And Mr. Caudwell was already referring to the possibility of reporting her to the police?
A (Mr. Canfield)	He was.

311. Mr. Caudwell recalled that, by this point, he was of the opinion that "money had been stolen from Signia" and that "[Ms. Dauriac] had betrayed me". But he was still "torn between the evidence regarding [Ms. Dauriac's] actions and my own sense of loyalty to her" and hoped "the situation might be retrievable".[225] He elucidated this further in his oral evidence:[226]

Q (Mr. Plewman, Q.C.)	…you had decided she had stolen the money?

[224] Day 3/pp.82-83.

[225] Caudwell 1/paras. 39-40

[226] Day 5/pp.74-75 (cross-examination of Mr. Caudwell).

A (Mr. Caudwell)	I was a long way down the pathway of thinking that she'd probably stolen it … I can't remember the meeting very well, but I know there was a lot of confrontation between Ms. Dauriac and Mr. Canfield. There was a long of argument about it. During that meeting it became increasingly obvious to me that Ms. Dauriac was lying about stuff, and I eventually got very frustrated with listening to it, because I didn't feel that we were making any real progress at all in terms of getting to the truth of the matter…
Q (Mr. Plewman, Q.C.)	The proper response would have been to give her an opportunity to gather the material that was necessary to answer these allegations and explain herself, but you didn't provide her that opportunity before reaching this conclusion?
A (Mr. Caudwell)	I hadn't reached a conclusion. I was a long way on the way to reaching a conclusion, but I wasn't the judge and jury on this anyway, I was just sitting there in the hope first of all that the information would prove to be wrong, and secondly to try and rescue a situation if it was rescuable.

312. As well as accusing Ms. Dauriac of a fraudulent cover-up of her expenses and of stealing money from Signia, Mr. Caudwell also highlighted to her that he would have been within his rights to call the police in these circumstances:[227]

Q (Mr. Plewman Q.C.)	You accept, I think that you said you could call the police?
A (Mr. Caudwell)	I did.
Q (Mr. Plewman Q.C.)	Because you had decided she had stolen the money?
A (Mr. Caudwell)	…when there's a suspicion of theft, you're perfectly entitled to call the police…I did say I was within my rights to call the police, which I was.

313. During this meeting, Ms. Dauriac maintained that the discrepancies were administrative errors and that she had produced a reimbursement spreadsheet – the Reimbursement Schedule – to account for these errors as appropriate.

314. It was agreed that at 7:30am on the following morning, Mr. Canfield and Mr. Maycock would meet Ms. Dauriac at Signia's offices in order to obtain the Reimbursement Schedule. The purpose of meeting Ms. Dauriac at this early time, and before she had been able to enter Signia's offices, was to verify that Ms. Dauriac's assertions about the

[227] Day 5/pp.74-75 (cross-examination of Mr. Caudwell). On Ms. Dauriac's account, Mr. Caudwell had gone further and in fact threatened to call the police: Dauriac 1/para. 111.

Reimbursement Schedule were true and to remove any opportunity for her to create the spreadsheet that morning.[228]

(k) The visit to Signia's offices on 13 November 2014 and consequential events on 13 November 2014

315. On 13 November 2014, Mr. Canfield and Mr. Maycock attended Signia's offices together with Ms. Dauriac to obtain the Reimbursement Schedule. Although the Reimbursement Schedule has subsequently been lost and has not been disclosed in these proceedings, when Mr. Canfield and Mr. Maycock attended Signia's offices that morning the Reimbursement Schedule was indeed there as Ms. Dauriac had stated.[229] The Reimbursement Schedule was a list of expenses concerning Mr. Caudwell that Ms. Dauriac was prepared to repay, together with an unsigned cheque for that purpose.[230]

316. In cross-examination, Mr. Canfield admitted that he thought Ms. Dauriac had been lying, but recognised that she must have been truthful in this regard.[231]

317. A meeting then took place between Ms. Dauriac, Ms. Degruttola, Ms. Tarbet, Mr. Canfield and Mr. Maycock to discuss Ms. Dauriac's expenses. The meeting was recorded and subsequently transcribed.[232] The material parts of what was a long and clearly difficult meeting are as follow:

(1) Mr. Canfield revealed that a whistleblower had come forward, who was concerned by the level of expense being incurred by Ms. Dauriac. He explained that because of the risk that the whistleblower's motives might be "poisoned by circumstances", he had asked the relevant individual to provide proof (i.e. the USB stick provided by Mr. Hayes, although Mr. Hayes was not identified by name). Further, he had asked Ms. Dauriac to provide her own records, as he and Mr. Caudwell did not want to rely on the records provided by someone else second hand.[233]

(2) Mr. Canfield noted that when the records from Mr. Hayes and from Ms. Dauriac were compared, it appeared that "expense claims have been manipulated in the interim between [him] receiving the originals and what [Ms. Dauriac] has sent [him] now", such manipulation being "very extensive".[234]

(3) Ms. Dauriac and Ms. Degruttola explained the changes. They had deleted all of the references to Mr. Caudwell in the expense forms and placed them on the separate reimbursement form (i.e. what I am referring to as the Reimbursement

[228] Day 3/pp.85-86 (cross-examination of Mr. Canfield).

[229] Day 3/pp.86-87 (cross-examination of Mr. Canfield).

[230] Day 7/p.168 (cross-examination of Ms. Dauriac).

[231] Day 3, pp.86-87 (cross-examination of Mr. Canfield).

[232] There are, in fact, two transcripts of this meeting disclosed in these proceedings: the first produced by the Signia's solicitors and the second produced by Ms. Dauriac's solicitors. Although there are minor differences, they are materially the same. I will refer to the first version, simply because that transcript has been produced including timestamps for each statement for ease of reference.

[233] 00:17–01:11.

[234] 01:49.

Schedule).[235] Ms. Tarbet confirmed there had been no changes to the actual figures or amounts claimed.[236]

(4) Ms. Degruttola explained that the process of making these amendments had commenced "a couple of weeks ago", but the bulk of the changes were made in the previous two days since Mr. Canfield's request.[237]

(5) Ms. Dauriac's explanation for the removal of references to Mr. Caudwell was that the receptionists tended to put "Caudwell" for most expenses claimed because they were not aware of what Ms. Dauriac was actually doing on a particular day and did not check against the diary. As a result, expenses had been claimed against Mr. Caudwell's name which should not have been claimed.[238]

(6) Ms. Dauriac described both the various trips to see Mr. Caudwell, and the trip to see Ms. Caudwell in New York as holidays:[239]

> "…the only time I went on a proper holiday myself outside the John situation, outside going with John somewhere, has been Rebecca and Nick and I went to see my dad a few times."

(7) She also then blamed Ms. Degruttola for the mistakes made during the review:[240]

> "…Kelly fucked up as and it's a real mess up…let me be honest I didn't go through any of the lines here so there may be mistakes…"

(8) Ms. Tarbet concurred that this is a result of "terrible booking, poor record keeping".[241]

(9) Ms. Dauriac also said that she did not want to charge expenses relating to Mr. Caudwell to Signia because "he is my friend".[242]

(10) Mr. Canfield made clear that "the discussion has changed in complexion", as they were now less focussed on the legitimacy of the claims themselves, than on the "very substantial alteration to those expense claims".[243]

(11) Ms. Tarbet explained that both the original and amended forms had been signed (if at all) either by her, Mr. Wilson or Ms. Dauriac. There was no rationale behind who signed which expense forms.[244]

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[235] 03:18.

[236] 06:08.

[237] 07:31 – 07:48.

[238] 08:08.

[239] 08:59.

[240] *Ibidem*.

[241] 10:13.

[242] 11:56.

[243] 13:32.

[244] 14:43–14:50.

(12) Ms. Dauriac made reference to her meeting with Mr. Caudwell on the previous day and recalled that "John also says…that he may call the police".[245]

(13) A process going forward was suggested by Mr. Maycock, namely that they go through the original and amended forms line-by-line together with the card statements and receipts to ascertain the nature of each expenses claim.[246] Ms. Dauriac and Ms. Tarbet explained that whilst they should have the relevant card statements, Ms. Dauriac never kept any receipts.[247]

(14) Ms. Dauriac asserted that any discrepancies were mistakes, rather than deliberate changes:[248]

> "…if there is a mistake it's called a mistake ok, but if you think deliberately, which is the only thing that matters to me, that deliberately we have changed stuff, which are not true."

(15) Mr. Maycock then explained the process through which he had identified the changes in the expense sheets. Ms. Dauriac maintained that rather than her review being an "extensive exercise to change" the entries, it had been a process of "clarification". She admitted, however, that in the last two days she had undertaken a "full review of all [her] expenses".[249]

(16) It was suggested by Mr. Canfield and Mr. Maycock that regardless of any potential cover-up, the fact that her records were in such a poor state would amount to a breach of control. Ms. Dauriac agreed but said that it was not her fault as she has "4 people dealing with it".[250]

(17) In response to Mr. Maycock's question as to whether Signia had an expense policy, Ms. Dauriac said that it did and that it would be "clean for everybody else than me". Mr. Canfield questioned why, in an FCA regulated company, it wouldn't also be "clean" for her.[251] By "clean", I understand Ms. Dauriac to have meant "applicable". Mr. Maycock described this as a "severe" control breach.[252]

(18) Mr. Canfield stressed that he could not understand why there had been such an extensive exercise undertaken to remove Mr. Caudwell's expenses. Mr. Caudwell was a client and so "at no stage has anyone said you should not claim expenses to go and see John Caudwell".[253]

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[245] 15:23.

[246] 20:04.

[247] 20:36–24:16.

[248] 25:02.

[249] 25:24–26:36.

[250] 29:26–29:29.

[251] 30:45–30:59.

[252] 32:02.

[253] 32:07–33:50.

(19) Ms. Dauriac explained that the reason for instructing Ms. Degruttola to review and remove the Caudwell expenses was the realisation that she had booked the flight to visit Ms. Caudwell on the Signia corporate card, and that she might have done the same with various Mr. Caudwell expenses.[254]

(20) The point was made that Ms. Dauriac's explanation was insufficient to explain why there were "large numbers of descriptions that were John Caudwell but are now something else", suggesting they have been re-designated in some cases, rather than removed.[255]

(21) Ms. Dauriac referred again to the meeting with Mr. Caudwell on the previous evening.[256] She went on to explain that she instructed the Caudwell expenses to be removed because she did not think he (or rather Signia) should have to pay them:[257]

> "…it's me who said whatever John Caudwell I will pay myself 'cos I don't think that in my heart that I should have John paying that, that's it…"

(22) Having started to go through each expense line by line, it became clear that there were examples where the initial descriptions have been altered to make them more vague (for example, by removing Mr. Stoebe's name or changing actual client names to "client", etc.).[258] Ms. Dauriac offered the explanation that this is "'cos probably the girls just wanted to put flights and not names and stuff".[259]

(23) Ms. Tarbet accepted that they were trying to make the changes covertly:[260]

> "…we've just shared the task, there was an awful lot going on yesterday and as I said to you earlier you know we were trying not to raise awareness of what was going on…"

(24) Ms. Tarbet expressed an opinion on the nature of Ms. Dauriac's expenses claims:[261]

> "…I mean there were absolutely ridiculous entries, I have to say, things that you would know, I mean you would know people that wouldn't want you know, certain gifts you wouldn't want baby clothes if we got them for you…"

(25) Ms. Dauriac's explanation that the changes were made to "clean" her expenses also came under scrutiny. Mr. Canfield and Mr. Maycock could not understand what "cleaning" actually meant, why it was necessary, or who they were being "cleaned" for. Ms. Dauriac's reply was that they had asked her to send her

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[254] 33:10 – 33:15. This is further explained at 56:17.

[255] 34:15.

[256] 36:06–36:20.

[257] 37:00.

[258] 40:17–41:33.

[259] 40:41.

[260] 45:26.

[261] 48:40.

expenses records and so she wanted to make sure everything was "properly written and properly for what it is". This explanation was echoed by Ms. Cooper:

"…David, Nathalie just wanted to make sure everything was clear for you, right, which is what we have done over the last day to make sure everything is clear for you."

(26) Ms. Degruttola then explained the process of matching the expenses to Ms. Dauriac's diary, which involved the changing or the removing of the Caudwell expenses as these had originally been erroneously recorded as relating to him.[262]

(27) It also became clear that there was significant doubt as to whether Ms. Dauriac had in fact ever made any reimbursement payments to Signia.[263]

(28) When confronted with the number of changes or corrections, Ms. Dauriac said that Ms. Degruttola had "absolutely messed up" and agreed that the amended expenses were simply wrong. This raised the question as to why Ms. Dauriac would submit them in these circumstances.[264]

(29) Mr. Ward (who had now joined the meeting) confirmed that the original expenses claims as recorded in Signia's SAGE accounting system, rather than the PDF forms sent by Ms. Tarbet, would not have been amended.[265]

(30) Ms. Dauriac said she took "full responsibility" for the flaws in her expenses records, but maintained that the errors in the amended forms were in large part due to the time pressure imposed by Mr. Canfield.[266]

318. After this meeting, Ms. Degruttola sent Ms. Dauriac the following email at 12:02pm, with a slightly revised version being sent at 12:50pm. The revisions are <u>underlined</u> in the text below:

"Dear Nathalie

As you know, you asked me to look into your expenses two weeks ago to ensure that all expense for trips with John Caudwell etc were paid on your personal card and not your corporate card and that if for any reason a trip for John had been paid on your corporate card we needed to reimburse you and to make sure that all of your expenses were detailed correctly cross referenced with your diary.

When Janet informed me that they were reviewing all expenses I told her about our conversation and that I had started pulling out all expenses for trips with John Caudwell and putting them into a separate spreadsheet for 2013 and 2014 in which you needed to reimburse. I told her that you had asked me to go through your expenses again and make sure that all of the entries added up to what was in your diary. As the receptionists do expenses (not myself) and we have had so many of them over the past two years, the entries were not all correct with what you had in your diary therefore I was asked to match them to your diary.

[262] 53:29–54:37.

[263] 56:01 – 57:48.

[264] 1:22:30 – 1:23:00.

[265] 1:29:15 – 1:34:28.

[266] 1:37:40; 01:39:19.

Yesterday when yourself and Janet told me that all of your expenses needed to be sorted out before the end of the day as Janet and Martin needed to sign them and send them off I had a few hours to complete over two years' worth of expenses. You told me to go through your diary and match them to trips/clients/events that you were at, at the time of the expense and then give to Janet/Martin to look through and sign, therefore I did not go through the receipts to see what was what I just matched them to your diary as I thought you wanted me to. You also reminded me that there should be nothing in your expenses that relates to trips with John Caudwell.

David mentioned this morning that there are now some entries that are different to the statements that we have as I only went through your diary to find what they could have been for, as you asked me to do. As I had so many to do over such a short amount of time yesterday, there may have been some silly mistakes with the details of the entry. Some of the flights expenses were changing to flight to XXX with XXX rather than the full details as I did not have time to dig through the receipts and check everything precisely with only a few hours to complete all of these.

I would however like to confirm that although some of the descriptions of the expense have been amended were necessary none of the numbers (prices of the expense) were changed at all, as I was only asked to make sure that the descriptions were correct.

I am so very sorry that this may have been a miscommunication from you to myself as I only did what I thought you wanted me to and I was so shocked and upset in the meeting with David this morning that this may have all been wrong down to a miscommunication.

I always try my hardest to do everything that I am asked to do, to the best of my ability and take my job very seriously."

This email was then sent by Ms. Degruttola to Ms. Tarbet and Ms. Cooper for their review. Ms. Dauriac accepted that she reviewed this email with Ms. Degruttola,[267] but she denied having a "big input" into the text.[268] I do not accept this: in my judgment, this is an example of Ms. Dauriac – this time through Ms. Degruttola – seeking to control the narrative.

319. Ms. Dauriac herself drafted an email to Mr. Caudwell to explain the situation. She sent drafts of this email to Mr. Stoebe and Ms. Tarbet who provided their comments. At 2:34pm on 13 November 2014, she sent this email to Mr. Caudwell and Mr. Canfield, with Ms. Degruttola's email to her (referenced at paragraph 318 above) included at the bottom of the chain:

"John

To clarify what has occurred today as I now understand it and as explained to David and Tim, around two weeks ago my PA Kelly told me that she booked flights to New York to see Rebecca as a corporate expense as I asked for the cost. I asked her why she had done this and she said that all Caudwell expenses are charged as client expenses.

As you are a client, the team has always put expenses they booked on corporate as they do for all other clients, to be clear I was not aware about this and in good faith I told Kelly at the time that I would like to bear the cost myself. I therefore asked Kelly to go back and remove all Caudwell expenses onto a separate spreadsheet, which I would reimburse. She started creating

[267] Day 7/p.177 (cross-examination of Ms. Dauriac).

[268] Day 7/p.178 (cross-examination of Ms. Dauriac).

notes of those expenses and "play" with the expenses form and did a statement spreadsheet summarising it yesterday from her notes when she must have panicked as we were asked in a rush for expenses and did not have more than a few hours whilst working.

To be clear, I never checked or signed the reimbursement spreadsheets and did not have the time to go through it yesterday. As David will confirm she gave him the forms when he arrived in the office first thing. With some time I would have gone through it line by line which I intended to do. She then took your name literally out of all expenses without my knowledge, to be clear it is my mistake. To reaffirm I did not check what Kelly had done.

You need to realise that I have paid personally more than a lot of expenses out of my own money, hosted staff at home, did dinners at home…over the years and never claimed anything. I simply asked them to take your name out and reimburse due to our relationship when I found out.

There was also instances when other PAs did not check who meetings were with and put your name down or another family member. They have not been matched correctly to my diary and the descriptions were over-simplified. I have never looked at it as no-one can take funds out and she puts expenses through. I do not look at expenses in detail and have never done and have asked the compliance team to look at it a few months ago and take responsibilities.

Then this week as you know we received an email from David asking for all my expenses for 2013/2014. I didn't even know what had been put on these expenses as I do not have time to check this, so I asked Kelly to go through all my expenses and make sure that she matched them up against my diary. Kelly simply looked back at my diary and reconciled this against the dates in the expense forms. She did not manage to check the receipts and therefore a discrepancy has occurred between what was originally itemised on the expense forms versus the changes Kelly made by going through my diary. We often book flights and trains and other expenses in advance so the date of booking and the date of the event do not match.

The amounts, however, remain the same and no money has been taken from the company. I should have checked the changes made as I was in meeting most of the day and the girls were under pressure to send the forms through to David immediately so did not notice this discrepancy and I was in meetings most of the days.

I have agreed with David and Tim that they may have full access to [Signia's] expense records and can liaise with Dan our Finance Controller for any other information they need. I am sure they will see that after reviewing the receipts that no money has been taken from the company. To be clear, there was no bad intend on anyone's part, we are guilty of not having a proper process but have changed this and review has been and will be undertaken of all staff. My expenses had not been reviewed and the team did not feel it necessary to prioritise mine first as I am always out with prospects and clients and I pay many of those expenses myself.

Please see below Kelly's statement who just go very scared this morning. She is one of our best members of staff and had no intention to do anything wrong. I fully support her and it is my mistake but may I say that had one of you called me yesterday and told me what it was about, I would have taken the time to do it properly. There was no bad intention on anyone's part and could have been dealt differently. More importantly you will have understood that I or the team had no intention of wrong doing, the business is 4 years old and is not perfect but everyone has been trying to do the right thing.

I guess we will need to discuss what to do from there. Please give me a call when convenient."

320. This email was then forwarded by Mr. Canfield to Mr. Maycock, resulting in the following exchange:

Mr. Canfield (at 02:51pm)	Hi Tim You need to see this. It's appalling that Kelly is being victimised in this way, utterly disgusting.
Mr. Maycock (at 03:08pm)	Hopefully there is still enough mileage in the expenses to allow John to hit again hard. There is more to talk about now the bank statements are available. I'll see what I can get from Dan on the accruals in the 2014 accounts and the payment to KS and Nico – Can you Whatsapp him and ask him to bring me the bank statements for the South Africa flights that KS claimed and the 50k payment. I don't want to ask as the walls may have ears….

321. During the course of 14 November 2014, Mr. Canfield and Mr. Maycock (on the same email chain as referenced in paragraph 320 above) continued to consider further points on Ms. Dauriac's expenses to investigate, namely her mileage claims and the October flights to the United States. Mr. Maycock asserted that her practice of always claiming a full tank of petrol would be a "sackable offence at most companies", whilst Mr. Canfield describes her explanation on the US flights as "utter bullshit".

322. Clearly, Mr. Canfield considered that Ms. Degruttola was being pushed into defending Ms. Dauriac, hence his comment that she was being victimised. That was a view he expressed with some force in cross-examination:[269]

Q (Mr. Plewman, Q.C.)	…you say you think it's appalling that Kelly is being victimised in this way and you regard that as utterly disgusting?
A (Mr. Canfield)	I did and still do.
Q (Mr. Plewman, Q.C.)	Because you believed that Ms. Dauriac was causing Ms. Degruttola to lie?
A (Mr. Canfield)	Correct.
Q (Mr. Plewman, Q.C.)	Whereas Ms. Degruttola denies this?
A (Mr. Canfield)	She denies it now, she didn't deny it when she was interviewed on two occasions.

323. It was put to Mr. Canfield and Mr. Maycock that their comments – for instance, Mr. Maycock's response to Mr. Canfield that "[h]opefully there is still enough mileage in the expenses to allow John to hit again hard" – showed a predisposition against Ms. Dauriac and a desire to reach a specific outcome. They denied this.[270] The same point was put to Mr. Caudwell:[271]

[269] Day 3/p.96.

[270] Day 3/97-99 (cross-examination of Mr. Canfield); Day 4/pp.31-32 (cross-examination of Mr. Maycock).

[271] Day 5/pp.92-93.

Q (Mr. Plewman, Q.C.)	…Why do you think they would have wanted – expressed the hope – that you should still be able to hit again hard?
A (Mr. Caudwell)	You know, I can't – it's very difficult to imagine why that language was used, but would you like me to speculate on why?
Q (Mr. Plewman, Q.C.)	No, what I would like you to speculate about or to try to recall is what your instructions to them were?
A (Mr. Caudwell)	I did not have new instructions to them, other than this situation needed to be brought to a conclusion as soon as possible.
Q (Mr. Plewman, Q.C.)	I would suggest to you that what it shows – and I put this to Mr. Canfield – is that it was your desire to hit again hard?
A (Mr. Caudwell)	My Lord, nothing could be further from the truth. Nothing could be further from the truth. I wanted a conclusion to this, and the conclusion I would have dearly loved would have been justification so that the business could carry on and try and get itself out of trouble, so that my relationship with Nathalie could recover, and that's all I wanted, but as the days went by, it became increasingly obvious that that was just unlikely.

(l) Ms. Dauriac tries to regain the initiative

324. Over the course of the next few days, there were a series of emails from Ms. Dauriac, whereby she tried to regain control of events.

325. At 8:04pm on 14 November 2014, Ms. Dauriac sent an email to Ms. Ohbi reproducing an email which she had just sent to Mr. Caudwell recounting a conversation she had earlier with Mr. Maycock:

"For the record, I just sent that to John:

John, Tim just told me that he has finished his investigation this evening. He just confirmed to me "that what he has seen is bad housekeeping but nothing malicious". I take the point that I will have to improve our book keeping and we will put the right processes in place immediately. I am very hurt in the way this investigation was done and the accusations. All of this could have been resolved without my personal humiliation in front of the team or you. I am giving my life for this business and I would have never thought you could think I am maliciously stealing money from it, it really makes me so sad. I would really like to discuss with you how we can best move forward from here. Have a nice weekend in my beautiful country."

326. On 15 November 2014 (a Saturday), Ms. Dauriac sent an email to Mr. Canfield (copied to Mr. Caudwell and to Mr. Lester) regarding the events that had just taken place:[272]

"David

In light of the events over this week I believe we need to agree a way forward for now and I have proposed some action steps for the future.

I was accused on Wednesday night of stealing money from the business and wrongdoing with my expenses. I was also questioned with my team present, which was quite humiliating, to say the least. I am not going to go through again the way those accusations were made but I would simply ask for you to consider the impact on the team, the business and me personally.

I would have expected after so many years you have known me a different approach, i.e. you could have simply asked me and we could have resolved this in an amicable manner you would have seen that no-one was trying to do anything wrong.

To be clear on the face of it as I told you on Thursday, having seen what you had been sent, I can understand why you investigated.

I understand from Tim that the exercise, which I fully complied with, has been completed and I understand from him this should clearly vindicate me. He confirmed to me yesterday "that our housekeeping is poor but there is no malicious wrongdoings". No amounts were changed or money stolen from the business. To be clear again, I asked Kelly to undertake 2 weeks ago an exercise when I found out that they put some Caudwell expenses on the corporate card which I wanted to pay myself. This is what triggered this all story, which I am sure Tim will confirm.

For the record, I fully agree that the expenses process needs more rigorous controls and currently our system could be administered better by the office admin team.

Please note that I spend my life for this business and spent my own money to pay most of the dinners with clients or prospective clients which I organised at home or had the team helping at home to save cost. I am therefore very upset by the way the situation was handled, and I find it was very unfair and sad.

Going forward, Corporate Governance will be tightened up. I propose that Paul Lester signs my expenses as he is in the office every week, I also propose we have a quarterly board meeting to run through the numbers and key issues.

I fully agree with Tim that we need to improve our housekeeping and I will endeavour to hire a CFO to replace Dan by the end of January. And I propose that you meet him or her when they join to agree a positive way to work together. You may even want to participate in the hiring process.

As I am sure my chairman or our employees will confirm, I live 24/7 for the business and without the clients and the relational work I do on a daily basis, there would not be any business. To be clear, we are now 4 years old and I truly believe we have now laid the foundations and created an amazing and unique business, well-known in the market. We have recently restructured our team and have hired a different level of people which should help us accelerate to the next stage. We simply need to market our proposition more and hire more quality bankers to sell it.

[272] This email was drafted with some care. Drafts were sent to Mr. Lester and Ms. Ohbi for comments and review, and there were several iterations of the draft.

I have spent the last months fighting false accusations from Rupert and dealing with Kam and the Culross story, which I cannot comment on but can confirm that I have done nothing wrong, as I am sure Paul will confirm. Now, I am being accused this week of stealing funds. Please note that it is not good for either me, or John, or the business. Everyone's reputation is key for this business.

I would therefore propose that as representative of John and Signia, going forward if we continue, we all work together to build this business. To be fair up to the Kam story, you have been very supportive (I am sorry again for having said that you had never helped on Wednesday. I was seriously distressed by your accusations.)

I will be more than happy to have someone support me as it has been quite lonely and hard over the last 6 months and the only thing I want is for this business to succeed."

327. This was followed up by an email to Mr. Canfield alone – "David, I also wanted to add on a separate email that Tim after our meeting was professional and supportive. We also cleared the air about the Barclays story".

328. Ms. Dauriac's communications provoked the following exchanges:

Mr. Canfield to Mr. Maycock (at 01:15pm on 15 November 2014)	Fully vindicated? What exactly did you say? D
Mr. Canfield to Mr. Maycock (at 02:34pm on 15 November 2014)	Hi Tim, Whatsapp message sent to John: "John, you may have seen an email or message from Nathalie in which she claims Tim has cleared her of any wrongdoing and has vindicated her fully. This is of course utterly untrue. Having spoken to Tim, he tells me he fobbed her off yesterday as he left as he didn't relish a confrontation, but he is outraged that she has suggested he said or implied that. The reality is that he has found very significant issues which, as you have already witnessed, suggest at best collusion to misrepresent and utter disregard for any kind of propriety when it comes to spending company money. But potentially much more serious than that, and none of the explanations we have received to date are satisfactory or to my mind even remotely credible. Tim will of course be producing a report of his own conclusions."
Mr. Canfield to Ms. Dauriac (at 03:35pm on 15 November 2014)	Hi Nathalie Thanks for your email. I am not going to comment on the details of an investigation which, until we receive Tim's report and conclusions, is still ongoing. So I think it a little premature to be talking of vindication or for that matter condemnation. Tim will undoubtedly speak for himself as I do not know in detail what the content of your conversation was but please let me deal with a couple of points

which I think are relevant to me specifically.

Firstly, as I reiterated in front of witnesses on Thursday morning, at no point on Wednesday evening did I or anyone else accuse you of stealing, that would be a very dangerous accusation for anyone to make without having irrefutable evidence. For the record, what I said to you was that we had been provided with reliable information which pointed to what seemed to be significant personal expense, apparently being incurred by you, being funded through the business. By your own admission, you can see why we might have serious concerns and, up to now, no-one from Signia has even suggested that this information was false or misleading. Indeed, it has been verified that the claims we saw precisely match what still appears in the company's accounting records and that these are substantially different to what your team supplied to us on Wednesday following my request on Tuesday.

I'm sorry, but I don't apologise at all for the way in which the matter was handled and can take no responsibility for any humiliation you might have felt as it was actually you who brought your various staff members into the discussion, not I. Given that the main thrust of your explanation for what we have found was that the management of your expenses was your PA's responsibility and that she has over several years not carried out this role in accordance with your instructions I can, however, see why this was necessary.

With regard to the way forward, I would suggest we re-visit this one we have Tim's definitive observations and conclusions, which will of course be shared with you.

Mr. Canfield to Mr. Maycock

(at 08:10am on 16 November 2014)

[Forwarding his response to Ms. Dauriac]

Morning

I assume you are still intending to respond but just to be clear, my message was not intended to be a substitute for how we agreed you should reply. I just had a couple of personal comments I needed to make as she had made accusations about my conduct.

Mr. Maycock to Mr. Canfield

(at 08:11am on 16 November 2014)

I'm writing to everyone now. Thanks,

Tim

Mr. Canfield to Mr. Maycock

(at 08:23am on 16 November 2014)

Ok, thanks.

The more I think about this, the more incredible it is. She's a genius.

I know you told her you hadn't found any figures that had been changed, but is it worth qualifying that and making the point that there were inexplicable and

	worrying amendments to the justification of the nature and reason for the expenditure?
Mr. Maycock to Mr. Canfield (at 08:27am on 16 November 2014)	She's not a genius. But she is better at playing the game than us. We have the weight of evidence on our side and need to carefully execute this for maximum impact. The emails of this weekend are just a distraction, and I will make it clear how premature it is to start talking about next steps. Do you want to see may draft before it goes?
Mr. Canfield to Mr. Maycock (at 08:33am on 16 November 2014)	On that we disagree. I genuinely believe she is in many respects a genius. She has an incredible ability to outwit and manoeuvre and the way she has thus far been able to vindicate herself is stunning. Anyone else would be sacked by now. She is a sociopath in the strictest meaning of the word. I don't need to see your draft, you know better than me what was said and what needs to be put straight, but call me if you aren't sure.
Mr. Maycock to Ms. Dauriac (at 10:36am on 16 November 2014)	Hi Nathalie I fully understand your desire to have this matter concluded as quickly as possible, however, I would urge you to wait for the full report. I do have to take issue with a statement associated with me in your email from yesterday. I also note I was not included on this distribution list. "I understand from Tim that the exercise, which I fully complied with, has been completed and I understand from him that this should clearly vindicate me. He confirmed to me yesterday "that our housekeeping is poor but these is no malicious wrongdoings". No amounts were changed or money stolen from the business." Firstly, the exercise has not been completed. I have gathered a large amount of evidence and aim to publish the facts and my conclusions based on that evidence for discussion as soon as possible. Secondly, I certainly did not talk about vindication or implications for the business in any way. You and your team have confirmed there has been a concerted effort to alter the descriptions of a large number of expense claims. At present, the motivation for this exercise, and particularly the timing of it, is unclear and I would like to allow the readers of the report to draw their own conclusions based on the evidence. I agree I stated the administration of your personal business expenses is incredibly poor, and at present the absence of the majority of the receipts for items claimed as business expenses puts both Signia and you personally at risk should there be a tax

	investigation. I am astounded that the auditors have not highlighted this failure in the past as non-retention of documents is a clear breach of your responsibilities as a director under the Companies Act. We will also need to confirm whether there are any further implications due to Signia being an FCA regulated company. As to whether the actions in question were undertaken with malicious intent is a highly subjective question and I will leave it to those reading the report to draw their own conclusions. You are correct, I have not seen any instances of the amount claimed being changed. There were however numerous deletions and I am aware these items have been collated and you have offered to repay these amounts. I would like to thank you for confirming I have acted professionally so far and I reassure you that I will continue to do so as I draw together my findings.
Ms. Dauriac to Mr. Maycock (at 10:42am on 16 November 2014)	Tim Did you not tell me "you have not seen anything malicious and that it is just bad bookkeeping" and that you were going to tell John? Again, on the timing, we gave you a proper explanation of what happened, as you know.
Mr. Canfield to Mr. Maycock (at 10:48am on 16 November 2014)	Excellent Tim, well put. Her reply is yet another example of manipulation of the facts, which I hope you will put right. There is no point in even trying to be reasonable and congenial with this woman, as it backfires. Have a good day. D
Mr. Maycock to Ms. Dauriac (at 11:25am on 16 November 2014)	Nathalie, I recall saying that I had not seen anything to contradict your explanation given on Thursday as to why the descriptions had been altered and a number of lines deleted. The bad bookkeeping is addressed below. I did say that I would be issuing a report to John and others, and that I would include you on the distribution list. Again, I urge you to wait for that report before this matter is discussed further.
Mrs. Dauriac to Mr. Maycock (at 11:36am on 16 November 2014)	Tim, I know you are in a difficult situation, and for what it is worth I really meant my email on Friday evening. We both know you told me that nothing malicious and that you were going to tell John as I told you it was very important for me personally.

> You also said that you believed in the business and wanted to support it, which I really appreciated.
>
> On the receipt points, I will ask Dan and Martin to respond as I am not an accountant and never manage that side, as you know.
>
> We need to be careful to protect the business first, and all work together.

329. This exchange was the subject of cross-examination. It was suggested that Mr. Canfield and Mr. Maycock were – again – proceeding towards a defined goal of getting rid of Ms. Dauriac.[273]

330. As Mr. Maycock had raised the concern that Ms. Dauriac's "incredibly poor" administration of her personal business expenses and near non-existent receipt retention could give rise to tax and regulatory implications, Ms. Dauriac set out to address this concern. This resulted in many communications regarding Signia's regulatory and tax compliance.

(m) The next steps in the investigation

331. By an email sent at 9:58am on 17 November 2017, Ms. Tarbet explained to Mr. Maycock the next steps that "we" will be taking in relation to the investigation. This email was carefully drafted in consultation with Ms. Dauriac:

> "Dear Tim
>
> Further to our meeting and the outcome of your investigation, I can confirm that we will be taking the following action today:
>
> 1. As you know, a few weeks ago, Nathalie asked Kelly to amend her expenses and remove expenses in relation to [Mr. Caudwell], as she told us she wanted to pay this herself. Staff handling these expenses always assumed that as [Mr. Caudwell] is a client it should be a corporate claim. Kelly started removing those items and noting them down and as stated in our meeting, neither Nathalie nor I had time before sending on Wednesday to check them line by line. As you have seen, unless there have been mistakes due to time constraints, those items have been transferred to a separate reimbursement spreadsheet and send you a signed version.
>
> 2. We will go through all Nathalie's corporate and personal expenses and itemise on a separate spreadsheet all those entries that have been changed and the reason why Kelly provided clarification/amendment or change (accepting that there has been no change to financial amounts).
>
> 3. Kate is checking the regulatory aspect and will come back to you, however, we understand that this should not be an issue.
>
> As I stated in my previous email to David last Wednesday, there are many occasions where Nathalie would be entitled to expense items such as additional costs for dinners and events held at her home, accommodating clients and prospects at her home and these are not claimed.

[273] Day 3/pp.109*ff* (cross-examination of Mr. Canfield); Day 4/pp.38*ff* (cross-examination of Mr. Maycock)

We will send all the above to you by close of business today so that you can complete your report."

332. Mr. Maycock responded:

"Hi Janet,

As you know, I have reviewed the old and new expense claims from 2013 and 2014 in conjunction with the credit card statements and receipts where available. I will be issuing a report based upon the findings from this period in due course. If there is further information required as I go through this process, I will make a formal request. Please can I ask that no further records are changed in the meantime.

Separately, as per David's email of 11 November, we intended to undertake a full review of all business expenditure. The personal expenses piece has taken centre stage for obvious reasons, however I would like to start lining up the next steps, so, as a start, can you please let me have details of all salary and bonus payments made to all 'employees' (and for employees I include not only those on employment contracts but anyone, be it an employee, relative of an employee or associate whose services are perhaps retained on a part-time, ad hoc or consultancy basis) over the past two years, i.e. 2013 and 2014 to date. This should include all payments made to offshore entities/accounts and payments from all Signia-related accounts whether UK or offshore (not sure if the latter is relevant but if it is we need to see it). As you might imagine, this is primarily, but not exclusively, focussing on whether we have any tax non-compliance weaknesses and control breaches.

I imagine this information will have to come from Dan, so please ask him to make contact directly should he require further detail."

333. Ms. Tarbet replied that "[w]e will not be making any changes to the records but we will still send through the spreadsheets as detailed in my email below later today".

334. Meanwhile, Ms. Dauriac was contemplating a direct approach to Mr. Caudwell to suggest a meeting with him in an effort to alleviate his concerns about the expenses issues and try to protect Signia's reputation. She also made it clear that she had identified Mr. Hayes as the whistleblower. She sent a draft of this email to Mr. Stoebe for review, but does not appear to have sent an amended version or indeed any version on to Mr. Caudwell.

335. On 17 November 2014, Ms. Degruttola produced a first cut of the schedule listing all of the original and changed descriptions and the explanations for the changes and sent this to Ms. Tarbet and Ms. Cooper. Ms. Cooper provided substantive amendments to the document.

336. I appreciate, of course, that the schedule prepared by Ms. Degruttola was a draft. Nevertheless, it evidences the existence of the Reimbursement Schedule: a number of expenses that have been deleted, are explained by the following entry:

"Entry can be found on 2014 reimbursement spreadsheet as Nathalie wanted to refund this claim."

The schedule identifies a number of changes made in error; and justifies many other changes as errors "due to miscommunication" (meaning that the original description was a miscommunication).

337. Two days later, Ms. Cooper sent out an "Action List" to Ms. Tarbet, Ms. Degruttola and Mr. Ward (copying Ms. Dauriac) setting out the further steps to be taken in relation to the schedule Ms. Degruttola was working on and to the Reimbursement Schedule.

338. By 20 November 2014, work was still continuing at Signia on the schedule explaining the changes and the Reimbursement Schedule. Mr. Ward made the point that although the amounts recorded were unchanged, the amended descriptions would now "disagree to Sage" (Signia's accounting system) to which only he has access.

339. The plan was to produce this material to Mr. Maycock.

(n) The first draft of Mr. Maycock's report

340. By an email dated 19 November 2014, Mr. Maycock sent to Mr. Canfield a copy of a summary of his report. The email simply had the subject "Let me know what you think" – with no other text and only the attachment.

341. The summary highlighted the extensive changes that had been made between the Dauriac Expenses V.1 and the Dauriac Expenses V.2. It noted that there was evidence "to suggest these changes were made due to an awareness that David Canfield was going to be scrutinising [Ms. Dauriac's] expenses and "would not like" a number of items, particularly costs relating to [Mr. Caudwell]." The summary also noted a number of inappropriate or excessive items of expenditure.

342. Mr. Maycock accepted that he sent the summary to Mr. Canfield to ask for his views.[274] His primary concern related to the changes that had been made:[275]

> "The major point in my mind at that time was that there had been numerous changes made to documents sent through in the knowledge that Mr. Canfield and Mr. Caudwell were going to be seeing them. That was my primary focus."

343. The summary also noted a concern regarding Signia's staff:

> "[Willingness of senior staff members to sign-off re-stated expense claims without any evidence and proven knowledge of the rationale behind the changes indicates an issue with the moral standing of senior client staff and/or the level of control exercised by Nathalie.]"

This conclusion was in square brackets, perhaps indicating that it was not a firm conclusion. Mr. Maycock confirmed, in cross-examination, that the senior staff he was thinking of were Mr. Wilson and Ms. Tarbet.

(o) A proposed visit to Signia by Mr. Maycock

344. In a telephone conversation with Ms. Dauriac, Mr. Maycock had agreed to come to Signia on Thursday 20 November 2014. The previous day, Ms. Cooper had telephoned him to confirm whether he was still attending. Mr. Maycock responded by email on 19 November 2014:

> "Hi Kate,

[274] Day 4/p.50 (cross-examination of Mr. Maycock)

[275] Day 4/p.51 (cross-examination of Mr. Maycock).

Apologies for not being in contact yet, I am aware you have called twice. I am still on a conference call regarding an unconnected matter, and will be for some time to come.

I will let you know as soon as I can whether I will be coming to Signia tomorrow or not."

345. Ms. Cooper responded:[276]

"Thanks, Tim, much appreciated. If you can't make tomorrow, may I suggest we schedule an alternative date? In order to carry out a fair process and present John with an objective report we should have the opportunity to respond to your findings and provide you with any further information relation thereto before you go back to John."

346. There then followed a chain of emails involving not only Ms. Cooper and Mr. Maycock, but also Mr. Canfield and Mr. Lester:

Mr. Canfield to Ms. Cooper (cc. to Mr. Maycock) (at 3:54pm on 19 November 2014)	Hi Kate I'm not in the office for a few days and I'm just catching up on my emails. I'm afraid I'm not sure I fully grasp the point you are making. You saw the information in our possession last Thursday morning (which, of course, came from your system) and you have had the opportunity to comment and provide further explanation subsequent to that meeting. This is not a matter of subjectivity and I'm sure Tim can and will only report on the facts as presented, so there is no requirement for you to ensure objectivity.
Ms. Cooper to Mr. Canfield (cc. to Mr. Maycock and Mr. Lester) (at 4:51pm on 19 November 2014)	Hi David Thanks for your email. Since last week, we have undertaken a full review of our expenses and have found many additional receipts and other paperwork which we want to discuss with Tim. If Tim does provide a report to John at this stage without our further input, it will be incomplete and subjective as we have not had a chance to review and comment on his findings. There may be additional information which we are able to provide to Tim which will give him a fuller picture and will close gaps which he has identified. It would only be a fair and proper process to allow us to do so and therefore ensure that any report John received was comprehensive and accurate.
Mr. Maycock to Ms. Cooper (at 12:46pm on 20 November 2014)	Hi Kate, Having discussed with David, and noting your point that there is now further evidence available, I feel the best route forward in the first instance is to send across a sheet with the claims on the new versions of the expense sheets that do not tally with the spend on the credit card. If there are new receipts available, then I would be grateful if these can be scanned

[276] Ms. Cooper considered that Mr. Canfield (and, inferentially, Mr. Maycock) were being unreasonable in the pressure he was putting on Signia: Day 6/pp.37-38 (cross-examination of Ms. Cooper).

	across. I hope to have these line collated and sent across within the next few hours.
Mr. Lester to Mr. Canfield (at 2:40pm on 20 November 2014)	Just so you know when this whole exercise kicked off I went to the office after Tim had left. I sat Kelly, Dan and Janet down and told them to do a full review against Nathalie's diary from the start of the business. If no receipts, go to restaurant/hotel, etc and get copies, same with travel and all items including stuff at home. I check with IT to ensure the diary could not be changed without us knowing. I have not seen the results, but this is what Kate is referring to. As you said before, the housekeeping and discipline has been poor. I do trust Kelly and Dan to do a thorough exercise. The diary kept by Kelly is very comprehensive, both business and social. Let me know when you need my help. Lots of lessons to be learnt that we can improve the business going forward.

347. In light of Mr. Maycock's email to her, Ms. Cooper emailed the Signia team telling them to await Mr. Maycock's reconciliation.

348. Mr. Canfield replied to Mr. Lester's email in the following terms:

"From what I can gather there seems to have been an awful lot of effort being expended to legitimise Nathalie's expenses and I don't need to preach to someone with your experience that this shouldn't be necessary.

I'm sure Nathalie believes this to be some form of personally motivated witch hunt but it certainly isn't Paul. As you may be aware we had already begun an urgent financial review of a number of our businesses as a consequence of apparent chronic underperformance and, as I mentioned when we spoke on Monday evening, in the specific case of Signia, we are also responding to very extensive and broad ranging information provided to us by a "whistleblower" acting "in the best interests of the business". Regrettably the concerns behind this seem to be well founded and don't appear at face value to be false or borne out of maliciousness. As a Director, I obviously have an obligation to take this seriously and, given the particular sensitivity of the issue, we went to great lengths to ensure this information (which I should make clear, is not restricted to just expense claims) was credible and legitimate before we took the matter further. As you know we gave Nathalie and her team an opportunity to explain what we had found and regrettably some of the explanations received to date, particularly about the changes made to the previously filed claims and indeed the necessity for those changes and the basis for some of the claims are very concerning.

As you know Nathalie and I have not seen eye to eye since I refused to back her over the [Mayfair] dispute so, in order to take some of the unnecessary personal heat out of this, I have deliberately distanced myself from the detailed work which has subsequently been undertaken and have left it to Tim to conclude the review. I have, however, kept abreast of developments.

Although I'm not inclined to go into detail at this stage, from what I can see, what is particularly saddening and worrying is that key members of the Signia team seem prepared to forego their professional ethics and principles and put their own credibility at risk in the roles they are playing in the process."

349. On 21 November 2014, Ms. Cooper chased Mr. Maycock with regard to the reconciliation she was awaiting:

Ms. Cooper	Good morning Tim
(at 09:31pm)	I hope you are well?
	I wanted to check in and see whether you managed to finish collating the information for the report outlined below? As per our conversation yesterday, we will respond with your findings by early next week, along with the additional receipts and other supporting paperwork which we have found over the last week.
	Many thanks and kind regards
	Kate
Mr. Maycock	Hi Kate
(at 10:02pm)	I was under the impression that we agreed the next action was for Signia to sending across the results of your comprehensive review, and the updated repayment schedule on Monday afternoon. As I understood from our conversation, and having confirmed with John, this document highlights all the changes that were made, the rationale behind those changes and will indicate where newly obtained receipts are now available. I will clearly need to come down and go through this with you, and we mentioned this may happen on Wednesday or Thursday next week if this still suits you?
	Thanks,
	Tim
Ms. Cooper	Hi Tim
(at 10:12pm)	Apologies if you misunderstood our conversation, but I am certain that we confirmed yesterday that you were still going to send us your report, and that we would respond with our workings late Monday or Tuesday morning (I can confirm it will have to be Tuesday as Janet is not in today and I am out on Monday). Please can you send this through to us as discussed.
	On your second point, yes I agree, we did confirm that you should come down on Wednesday or Thursday.
	Many thanks
	Kate
Mr. Maycock	Hi Kate
(at 10:36pm)	Our conversation started with this as the proposed course of action, but once you explained the great depth of the investigation you have now performed, it became clear there was little use in you comparing my queries to your report at an intermediary stage.
	You have all the information I have, and as I understand it, you have now been able to explain why each alteration took place. Please send me this information as soon as you can so that it can be collated into my report to John. However, I am mindful of your comment during our

conversation and want to allow the time for this to be investigated fully.

Thanks and regards,

Tim

Ms. Cooper (at 11:22pm)

Tim,

Thanks for the call. As discussed, we have now agreed that you will not send through the report which was going to include a list of items from the "new claim forms" vs those which do not tally up with the card statements. You felt that it adds no value to the work we are currently doing – your reasons were that you feel these differences should be picked up in the review which we are currently undertaking anyway. I did emphasis that I would like to get this report as I am certain we agreed this yesterday – and it would give us the opportunity to respond to your concerns on any missing items within the reports we are issuing you next week. However, we have agreed that the best course of action going forward is as follows:

- We will send you our two reports which we discussed yesterday during the course of Tuesday next week
- You will review these reports and bring your findings to London on Thursday.
- On Thursday, we will go through your findings, and you will give us the opportunity to investigate any further points you have.
- You will not issue a report to John until we have agreed that the investigation is complete

I hope that you agree this is an accurate representation of our call?

Many thanks

Kate

Mr. Maycock (at 11:36pm)

Hi Kate

Thanks for the summary, that is what we agreed and I look forward to receiving reports on Tuesday.

Thanks,

Tim

350. Ms. Cooper's final response was copied to Mr. Lester, Mr. Canfield, Ms. Tarbet, Ms. Dauriac and Ms. Ohbi. In an email to Mr. Lester alone, Mr. Canfield stated that he was "getting increasingly frustrated by this interminable email stupidity" and was concerned to emphasise that this is "not a frivolous brownie point scoring game. It is potentially way more serious than that. It also has some way to go". Mr. Lester agreed that it was "very childish and inappropriate".

351. These exchanges reflect the level of mistrust that existed between those at Signia and those investigating Signia. Mr. Canfield and Mr. Maycock were determined to receive information out of Signia, but were not prepared to disclose Mr. Maycock's findings.[277]

352. By way of example, Mr. Maycock's summary report (described in paragraphs 340*ff* above) was not shown to anyone at Signia. It was, however, not only shown to Mr. Canfield, but also to Mr. Caudwell.[278] It was put to Mr. Maycock that he was, in effect, preventing Signia from responding effectively to the findings he was making.[279]

(p) Mr. Maycock's "main changes" sheet

353. In an email to Mr. Canfield sent on 24 November 2014, Mr. Maycock said:

> "I've taken the time to collate a sheet showing all the data I need and the questions to be answered for the next step. Mainly for information, but there might be some questions that spring to mind."

354. The attached spreadsheet – "Main changes sheet.xlsx" – seeks to track the main changes between Dauriac Expenses V.1 and Dauriac Expenses V.2, analyse those changes (under columns headed "Comments" and "Further Comments") and identify next steps (under a column headed "Next action"). It is plain from these columns that at the time of compiling this spreadsheet, Mr. Maycock had available to him a copy of the Reimbursement Schedule, for there are numerous references to the "repayment sheet".

(q) The conclusion of the investigation into Mr. Wilson's expenses

355. On 24 November 2014, Ms. Dauriac confirmed via email to Ms. Cooper, Ms. Tarbet, Ms. Ohbi and Mr. Lester that Mr. Wilson was going to be dismissed, based on the outcome of the investigation into his expenses claims. She asked Ms. Cooper and Ms. Ohbi to obtain advice and ensure that everything was properly dealt with from a legal and regulatory aspect. Ms. Ohbi informed Mr. Canfield of this on the following day.

(r) Ms. Cooper seeks time to make more submissions

356. On 25 November 2014 (a Tuesday), Ms. Cooper emailed Mr. Maycock to tell him that they had "almost completed" the spreadsheet they had agreed to send him, but that it was awaiting a final review from Ms. Dauriac the next morning.

357. Mr. Maycock responded to say the delay would put a question mark over plans to meet to discuss the findings on the following Thursday, as he had hoped for a full day review the spreadsheet. He suggested that he took a look at the spreadsheet when it was sent to him, and that they could (if necessary) re-arrange their meeting.

358. Mr. Canfield, who was copied in on this email chain, then replied:

> "No chance, Tim, we should tell her to swivel. Fair's fair, they were supposed to provide this yesterday, then it became this morning, now it's tomorrow etc.

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[277] See also Maycock 1/para. 74.

[278] Day 4/pp.53-55 (cross-examination of Mr. Maycock).

[279] Day 4/pp.52-61 (cross-examination of Mr. Maycock).

I suggest we wait until it arrives and then say Thursday's off as we won't have time to review in depth. Being utterly selfish, I need to plan for whether I'm coming back or not tomorrow evening.

What do you think?"

359. Mr. Maycock and Mr. Canfield then exchanged the following emails:

Mr. Maycock (at 19:48pm)	I agree, was just wanting to appear as co-operative as possible, before telling them to sod off tomorrow. Voice of objective reasonableness and all that. I would plan to come back tomorrow. We need to get the impact of this right, and I don't think it will be as easy to see the holes second time around. Do you think an ever so slightly patronising email from you to Nathalie telling her to "take her time and make sure it's right this time" would be appropriate?
Mr. Canfield (at 07:53pm)	Nice idea but I can't bring myself to patronise her and she would probably turn it around on me. I had a further exchange with Dan, he apologised for not answering your queries, apparently it's all done but she's holding it up. HF said he will talk to her tomorrow. He said he's done a reconciliation of the claims to the amounts paid to Nathalie and that this should help you. He also said "she's insane".

360. The prospect of a yet further delay was conveyed to Mr. Maycock and Mr. Canfield by Ms. Cooper on the Wednesday morning (9:40am on 26 November 2014) on the basis that Ms. Degruttola was off ill and she could not access her files to send over the documents that she has been working on.

361. Having consulted with Mr. Maycock, Mr. Canfield then sent an email to Mr. Lester addressing the "ridiculous" and "utterly ludicrous" excuses for the delay which "frankly offend our intelligence". He went on to say that the progress of the investigation was now taking on "a more sinister and worrying character". Mr. Lester agreed it "looks like a poor excuse" and that he was aware of how serious the allegations against Ms. Dauriac were.

362. Mr. Canfield emailed Mr. Lester later on during this Wednesday to inform him that Mr. Maycock's analysis (conducted before receiving any further evidence from Ms. Dauriac and her team) now identified more than 140 changes to her expenses forms for 2013 and 2014, which follow a "disturbing pattern".

363. Again, it was said on behalf of Ms. Dauriac that these exchanges showed an absence of objectivity on the part of Mr. Maycock and Mr. Canfield, combined with a desire to

achieve a given end – the dismissal of Ms. Dauriac.[280] The following exchange occurred in cross-examination:[281]

Q (Ms. Ford, Q.C.)	So, it's fair to say, isn't it, that any impression you were giving of co-operating with a full investigation and any appearance of objective reasonableness was a sham?
A (Mr. Maycock)	I disagree. I wanted a chance to review what they'd found before I was forced to discuss it in a – what I felt was a non-independent situation. Nathalie had been deeply involved with all of this.
Q (Ms. Ford, Q.C.)	You're saying, quite clearly, you wanted to appear as co-operative as possible before telling them to sod off? Any co-operation is a sham?
A (Mr. Maycock)	I disagree.
	…
Q (Ms. Ford, Q.C.)	And you're anticipating that she might well be able to justify why the changes had been made?
A (Mr. Maycock)	I'm anticipating that she may well have, yeah, obscured further reasoning as to why the changes had been made.
Q (Ms. Ford, Q.C.)	You're also saying, we need to get the impact of this right. So this is another example, isn't it, of the fact that you're not conducting an impartial investigation, you are essentially stage managing the impact of the conclusions that you intended to reach all along?
A (Mr. Maycock)	I would disagree.

(s) Further information is provided by Signia

364. At 4:25pm on Wednesday 26 November 2014, Ms. Cooper sent to Mr. Maycock (copying Ms. Dauriac, Mr. Lester, Mr. Canfield, Ms. Tarbet and Ms. Ohbi) a spreadsheet which showed:

(1) How the totals on each new claim form matched the receipts;

(2) Which items were on the Reimbursement Schedule;

(3) The documentary evidence for each expense.

365. Ms. Cooper also sent through the unchanged diary entries, the credit card bank statements for each month and the documentary evidence itself (receipts, flight confirmations and emails etc.). She said that consolidated spreadsheets, which explained the justification for each changed description, would follow from Ms. Tarbet.

[280] Day 4/pp.61-64 (cross-examination of Mr. Maycock).

[281] Day 4/pp63-64.

366. Ms. Cooper also included in this email the advice indicating that there were no negative VAT and corporation tax implications arising from the missing receipts. She also purported to have an "extensive" list of events which Ms. Dauriac personally paid for which would be provided upon Mr. Maycock's visit, which she suggested should be rescheduled for the Friday.

367. Ms. Tarbet followed this up with an email informing Mr. Maycock that Ms. Dauriac had been in several key meetings that day and would need to review her consolidated spreadsheets, which included the justifications for each change before she sends them over.

368. On the next day, Ms. Tarbet sent a further holding email to Mr. Maycock at 6:48pm. In this email, she informed him that Ms. Dauriac had again been in meetings and had not been able to review all of the material in the spreadsheet. Ms. Tarbet went on to set out in detail Signia's version of events regarding the review of Ms. Dauriac's expenses and the work they had carried out.

369. In response to Ms. Tarbet's email of 6:48pm, Mr. Maycock and Mr. Canfield exchange the following emails:

Mr. Canfield to Mr. Maycock (at 08:05pm)	This is utterly ludicrous! Do they think we are fucking stupid? D
Mr. Maycock to Mr. Canfield (at 09:03pm)	F.A.R.C.E
Mr. Canfield to Mr. Maycock (at 09:03pm)	We have to confront this lunacy. I can play John the tape?
Mr. Maycock to Mr. Canfield (at 09:09pm)	It would be a good time to sully this new stage in John's eyes by showing that they are still willing to lie about why this was done, and the timescales.

370. Ms. Tarbet sought advice from an IT expert to prove when the expense forms were first amended from the original versions as she believed it will be "quite crucial for [her] to explain this". The IT expert confirmed that because Signia did not elect to use a periodic offsite data backup system, the data regarding when these forms were first amended could not be retrieved.

371. The spreadsheet produced by Ms. Tarbet containing the justifications for each changed description was finally sent to Mr. Maycock by Ms. Cooper on Friday 28 November 2014. She again said that Ms. Degruttola would send through a separate list of client expenditure (for example entertaining at her home) for which she did not claim reimbursement from Signia.

372. It was put to Mr. Maycock that his exchanges with Mr. Canfield again showed a predisposition against Ms. Dauriac.[282] In particular:[283]

Q (Ms. Ford, Q.C.)	…when you say "It would be a good time to sully this new stage in John's eyes", what you are saying is you anticipate new information is going to come to light which might exonerate Ms. Dauriac, and what you're going to do is sully that possibility in Mr. Caudwell's eyes, try to undermine the possibility that she might be able to exonerate herself. That's right, isn't it?
A (Mr. Maycock)	Because we knew for a fact that the rationale put forward was incorrect and therefore this new stage was not addressing the issues as we knew them to be.

373. The emails contain a number of references to a "tape".[284] The tape in question was a recording made of the meeting on 9 October 2014, identified (during the course of the trial, and after a question by me) by Mr. Hayes.[285]

(t) The termination of Mr. Wilson's employment at Signia

374. On 1 December 2014, Mr. Wilson was invited by Mr. Lester to attend a disciplinary hearing on 4 December 2014 at the offices of Grosvenor Law regarding his expenses practices.

375. Mr. Canfield, who was looking at Mr. Wilson's expenses records, then sent the following email to Mr. Maycock on 2 December 2014:

"…Going through Wilsons at the moment, some juicy ND stuff in there, apparently he had coffee with me on 29/8/14. Twat must have been in Cyprus then?!

Did Dan send you the reconciliation of claims to payments that he promised?

My spy tells me Wilson has denied all charges, guess what his excuse is… the girls have fucked it up!"

376. The email conversation then turned to the investigation of Ms. Dauriac's expenses and the work that had been produced at Signia:

Mr. Maycock to Mr. Canfield (at 00:20am)	He did – I've been over it and can't see anything we didn't know – proves the personal expenses including the flights were paid. I'm through all of Janet's "explanations" – they

[282] Day 4/pp.65-68 and 73-75 (cross-examination of Mr. Maycock).

[283] Day 5/pp.67-68.

[284] Mr. Maycock was asked about this during the course of his evidence, but could not assist because he had not, himself, listed to the tape: Day 4/pp.70-71 (cross-examination of Mr. Maycock).

[285] Day 5/pp.4-6.

	really haven't done a great job and there is a fair amount to go at. Do you think Martin will have a team to go through and justify everything for him?
Mr. Canfield to Mr. Maycock (at 00:26am)	I doubt it, mate, but the fact that he's using the same excuse suggests to me that he might be daring her to sack him. Got lots of examples of flights for [Ms. Dauriac] and [Mr. Stoebe] on Wilson's card.
Mr. Maycock to Mr. Canfield (at 00:30am)	She's never there!
Mr. Canfield to Mr. Maycock (at 00:47am)	My conclusion too. I also dunno when Konrad ever did any work for Pure!

(u) Ms. Dauriac's attempt to document the work done in relation to her expenses

377. Also in early December, Ms. Dauriac was seeking to compile a record of all of the emails regarding the expenses investigation:

"Kel can you prepare two sets of files with all docs and exchange of emails (including dates) and request of the check the expense and findings today. We need everything including all correspondence thx."

378. Ms. Degruttola said that this would not be possible:

"There were no email exchanges for checking the expenses when I was originally asked as you asked me not to put anything to do with it on email?"

379. Ms. Dauriac responding, saying that "I regret that as it would have proved our case". She then made clear that she was referring to the emails between Mr. Caudwell, Mr. Canfield, Mr. Maycock and Signia.

380. There was, however, an attempt to create a paper trail as to what had gone on. On 2 December 2014, Ms. Olszewska sent an email to herself recording:

"To me,

I have been asked by Kelly Degruttola on Tuesday 2 December 2014 at approximately 11:40am to sign a formal statement that an email that was sent from my mailbox regarding John Caudwell. I don't understand why I have to sign something like that. It was sent from my mailbox so the email was real.

I know there are problems in the company with corporate expenses, that Nathalie Dauriac (CEO) was accused of stealing money from clients. There is an ongoing investigation regarding all corporate expenses regarding John Caudwell.

As a PA I have been told to do the corporate and personal expenses. 3 of October 2014 Kelly Degruttola asked me to change all of the expenses regarding John Caudwell and to delete his name from all the spreadsheets from 2010 till today (that was October 2014). A week later she said we have to add John Caudwell to all of them again.

I am worried now that I will be accused of something. I was only doing what I was asked and I didn't know what Kelly did later on."

381. The formal statement itself has not survived, and it is not clear what, exactly, Ms. Olszewska was being asked to sign up to by Ms. Dauriac and Ms. Degruttola.[286] It was suggested that this episode was invented. I am not prepared to accept that Ms. Olszewska has invented this episode: the email she sent to herself provides some form of corroboration, and I do not believe that Ms. Olszewska would have had the motive or the foresight to send the email to herself with a view to establishing the making of this request, when it had not been made. However, I make no findings about the specifics of the statement: I would only note that it is, in my judgment, another example of Ms. Dauriac seeking to control the narrative.

(v) The 2014 regulatory capital shortfall

382. By early December 2014, there was a concern that Signia had a regulatory capital shortfall for the year.

383. At 7:40am on 4 December 2014, Ms. Dauriac emailed Mr. Canfield regarding Signia's borrowing from Mr. Caudwell:

"David

On the loan front, could you send me the updated version of the amount, including interest, we owe John?

As Kirin should have told you, Martin is suspended and Tim and I are due to discuss the numbers and forecast for next. Please bear with me as I am not an accountant and do not fully understand how you and Martin did it in the past on the numbers front. Could you give me a call to discuss how you and Martin agreed the drawdown of the loan over the last years?"

384. Mr. Maycock described the events of 4 December 2014 in his witness statement.[287] He had a meeting with Ms. Dauriac:[288]

"I also discussed Signia's year-end funding requirements with Nathalie for 2014. In the context of this discussion, Nathalie referred to the £1.7 million financial support that John had provided for the year ended 2013. She told me that she had not been involved in the detail of how Signia would be funded in 2013 and that when Martin had told her three weeks ago what John and David had done to save tax last year she said she "almost fell off [her] chair". Given her knowledge of the business, I wondered why Nathalie was raising this point now. It seemed inconceivable to me that she was unfamiliar with any aspect of Signia's funding arrangements. When Nathalie had left the room, I subsequently discussed my conversation with her about Signia's financial support for 2013 with Dan."

385. This discussion between Mr Maycock and Mr. Ward was recorded and transcribed.[289] Mr. Maycock and Mr. Ward discussed the shortfall. The conversation began with Mr. Maycock asking Mr. Ward to explain a comment that Ms. Dauriac had made:

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[286] Olszewska 1/para. 11; Day 6/pp.149-150 (cross-examination of Ms. Olszewska). Neither the statement nor the email which the statement was about have survived: Day 6/p.150 (cross-examination of Ms. Olszewska).

[287] Maycock 1/paras. 76*ff*.

[288] Maycock 1/para. 79. He was cross-examined on this on Day 4/pp.78*ff* (cross-examination of Mr. Maycock).

"What was Nathalie referring to in terms of she almost fell off her chair when she found out, because I don't understand that. As I said, I am sure she was aware, but I don't actually understand the risk in that."

They then discussed the VAT implications of the fee invoices raised to Mr. Caudwell in order to inject sufficient regulatory capital into the business.

386. Mr. Ward said that he was present at the meeting also and recalls Ms. Dauriac making the remark that she "almost fell off her chair".[290] It was his view that Ms. Dauriac was pretending to be surprised for her own purposes. I consider this question in due course, but I do not consider I am assisted by Mr. Ward's views as to Ms. Dauriac's state of mind, and I leave those views out of account.

387. On 5 December 2014, Ms. Dauriac asked Mr. Ward how much was needed to "close the year". Mr. Ward responded that "[w]e will need all of [Mr. Caudwell] invoices paid, which are in the process; we will also need Greensphere and Energy deal. So circa £900k."

(w) Mr. Maycock's next report

388. Mr. Canfield emailed Ms. Cooper on 3 December 2014 to inform her that he considered that "we now have enough information to hand to enable us to complete the report and I don't believe we should put any more effort into undertaking further analysis or digging up more supporting documentation".

389. Mr. Maycock sent to Mr. Canfield a further evolution of his "main changes" report on 4 December 2014. The attachment was "Main changes sheet v1 breaklinks.xlsx". The covering email simply stated:

"This is my main sheet, the columns should be self-explanatory, but give me a call if there is anything that doesn't make sense. The yellow lines are the most interesting ones."

390. The spreadsheet itself sets out – amongst other things – the old description of the expense (i.e. that contained in Dauriac Expenses V.1), the new description of the expense (i.e. that contained in Dauriac Expenses V.2), what the change related to, whether the expense was on the Reimbursement Schedule, the explanation for the change as provided by Signia and Mr. Maycock's comments on this.

391. Mr. Maycock also met with Ms. Tarbet and Ms. Cooper on 4 December 2014 to discuss his findings. He sought to understand the rationale for the amendments that had been made. For Ms. Cooper, this was something of a turning point. Having previously

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[289] Day 7/p.60 (cross-examination of Mr. Ward). It is unclear to me why this conversation was recorded, but the earlier conversation with Ms. Dauriac was not. It was suggested to Mr. Ward that his conversation with Mr. Maycock occurred over the telephone, and so was automatically recorded. But that does not accord with the opening words of the transcript, nor with Mr. Ward's evidence.

[290] Ward 1/para. 22; Day 7/pp.60-61 (cross-examination of Mr. Ward).

considered – albeit with some increasing misgivings[291] – the changes to the expenses to be legitimate, her view changed:[292]

"The meeting was another important turning point for me in my understanding of the expenses investigation. It was clear to me that Nathalie's explanation for the amendments to her expenses and her motive for instructing Kelly to make the amendments lacked credibility. As Tim suggested, there was a common theme for the amendments, namely the deletion of the names of certain clients, including John's name and the names of his family. It seemed improbable to me that all those mistakes could be attributed to just Kelly making mistakes. Instead, the common theme of the amendments suggested that the changes had been made deliberately to conceal the true nature of the expenses that Nathalie had claimed, particularly in relation to expenses claimed in connection to John and his family."

(x) The telephone call from Ms. Lee

392. At 5:42pm on 4 December 2014, Ms. Dauriac emailed Mr. Canfield to inform him that:

"…a girl called Katie Lee is asking around to recruit someone to look after John's personal assets. Michael got a call. Do you know what it is about? It is not best for Signia's brand and panicking the team."

393. Obviously, and not surprisingly, Ms. Dauriac was inferring that someone might be looking to replace her.

394. Mr. Canfield responded around midday on the next day with the following explanation and reassurance:

"Karen Lee works for us, she was recently hired (Konrad was involved) to help us with recruiting for a range of roles across the companies John owns and to work for me here at Broughton Hall as we are strengthening the team in light of recent events. She is actively looking for Finance guys, one specifically for the Pure business and one of whom will probably be given the responsibility for overseeing financial performance of Signia. Unfortunately she has completely misinterpreted this and seems to have been obtaining the CVs of people involved in wealth management; which is clearly not what is required or what I asked for, which was experienced FD types. Whatever the role, she should never have revealed John's name in any event as that inevitably creates this kind of problem. She is a very experienced recruiter so I don't know why this happened. I forwarded your note on to her and have told her that this has caused deep embarrassment, she has apologised profusely for the mistake. I'm sorry if this has caused a problem for you, there was genuinely nothing underhand intended."

(y) Consideration of the terms on which Ms. Dauriac could stay on

395. On the evening of 4 December 2014, there was a discussion between Mr. Caudwell, Mr. Canfield and Mr. Lester about the basis upon which Ms. Dauriac could stay at Signia. The outcome of this discussion was summarised in an email from Mr. Canfield to Mr. Lester, sent the next day:

"Hi Paul,

[291] See Cooper 1/para. 64.

[292] See Cooper 1/para. 69; Day 6/pp.53-54 (cross-examination of Ms. Cooper). During the course of the process, Ms. Cooper felt that she had been placed in a position where her integrity was in question.

Thanks again for your time last night, it was good of you to travel up and put yourself to the trouble, hope you got your train okay and have by now managed to get home.

I think it was a very useful meeting and I said I would drop you an email to outline the steps which we discussed, these are outlined below:

- John, you and I will meet with Nathalie next Wednesday morning at 10.00am, in the meantime you will advise her that she needs to do the following if she is to remain in the role and John is to continue to support the business:

    - Own up to the fact that expenditure which is of a personal and inappropriate nature has historically been incurred by her at company expense. This of course must be repaid in full and we will produce a full list of what we believe should be included to be agreed with Nathalie.

    - Admit to the fact that the exercise which was undertaken to modify the 2013 and 2014 expense claims was undertaken at her behest in an effort to cover up the inappropriate and personal expense and was not actually as a consequence of errors committed by the Personal Assistant and that in doing so she encouraged the staff members involved to lie and conspire to mislead those undertaking the review on behalf of John.

    - Agree to seek help for what appear to be her psychological problems

    - Agree to underwrite the profit shortfall which will be incurred by the business in 2014 which will need to be bridged in order to prevent a regulatory capital problem. This can be achieved through a loan from John secured on ND's assets.

    - Relinquish responsibility for the day to day management of the business, other than a team of Private Bankers. Nathalie's role will therefore focus purely on growing the client base and retaining existing clients. In this context, and in light of all the problems we have experienced, I suggest we put in place a process whereby client entertainment and travel expense above a specified limit must be pre-authorised.

- We recruit a strong and experienced COO/Joint CEO to take responsibility for the day to day financial and operational management of the business, including, in conjunction with the Board, defining and leading the future strategic direction and growth of the Company. This role will have no responsibility whatsoever to Nathalie but will report to the Chairman and Board with a direct line into John.

- We will jointly speak to the people involved in the cover up (principally Kate and Janet) to notify them that we are aware of their actions and to remind them of their responsibilities in the context of Corporate Governance and FCA requirements. I think it would be a good idea to put a marker down that in the event of any further transgression disciplinary action will be taken. Kirin Ohbi was copied on a lot of the e mail traffic regarding this matter and must have been aware of what was going on – do we need to talk to her as well?

Let me know if you are in disagreement with any of the above. If we can agree this between us I will send it to John with a view to getting his agreement. None of the issues should come as a surprise to him as we have just about concluded most of it before he retired. I think it was only in relation to defining Nathalie's role and that of the COO/Joint CEO where we may have moved on a step or two.

We also agreed that it would be helpful to obtain an independent legal opinion regarding our responsibilities under the FCA rules with regard to Martin Wilson's position. In a recent

exchange with Kirin she said "Our initial call with the compliance consultants indicate that because he faked Nathalie's signature and in effect stole cash from the Company employees means he will be struck off by the FCA", so we obviously need to be careful and I'm mindful that I'm an FCA registered Statutory Director.

You should be aware that I got a text from Nathalie when I was driving home (around 11.50pm) in which she said that she really thinks it is time for both of us to sit down and discuss the best option for Signia. I haven't replied, not out of any kind of meanness or disdain, but simply because I do not know what to say in response."

396. Mr. Lester responded on 6 December 2014, to indicate that he was essentially happy with this approach.

397. Mr. Canfield emailed Mr. Caudwell on 8 December 2014, outlining the basis of what had now been jointly agreed regarding "the Nathalie situation". The proposals were substantially as set out in paragraph 395 above, "premised on what you prescribed on Thursday evening before you left us to sort out the detail". The email concluded:

"I still think this represents a significant compromise relative to what we could do (and hopefully she will appreciate that by complying) but I understand why we are taking this approach. The situation with Martin Wilson may still have an impact, particularly as he was involved in the cover up and he may seek to use that to his advantage.

I also understand through a contact still in Signia that Nathalie is actively obtaining legal advice regarding her position in terms of her rights under a constructive and unfair dismissal scenarios, so I suspect we might have a fight on our hands.

It would be good to get your agreement/views on this before Paul talks to Nathalie – although I suspect he already has if she is taking legal advice. I can obviously talk at your convenience."

398. A statement as to what Ms. Dauriac was owning up to – I shall refer to it as a draft "Statement of Culpability" – was first drawn up on about 10 December 2014. There are multiple versions, some with handwritten comments or amendments.

399. Mr. Caudwell was asked about this meeting:[293]

Q (Mr. Plewman, Q.C.)	You had a meeting at, I think, your home, but it may have been elsewhere, we'll check that, to discuss this issue with Mr. Canfield and Mr. Lester?
A (Mr. Caudwell)	Oh, yes, that's right.
Q (Mr. Plewman, Q.C.)	On an evening which I think was 4 December 2014?
A (Mr. Caudwell)	Yes, I do remember that.
Q (Mr. Plewman, Q.C.)	But you don't refer to that at all in your witness statement?
A (Mr. Caudwell)	Well, that will be a matter of record, so I accept that.
Q (Mr. Plewman, Q.C.)	Yes. So why not?
A (Mr. Caudwell)	Well, it appears that I've just made lots of omissions from the witness statement, but it does not alter the

[293] Day 5/pp.94-95 (cross-examination of Mr. Caudwell).

fact that everything I say there is 100% truthful and honest.

Q (Mr. Plewman, Q.C.) Well, it was critical, because it was the meeting at which you decided and instructed how the matter would be taken forward, wasn't it?

A (Mr. Caudwell) We – I think we jointly discussed what the right solution would be.

400. Asked about the various requirements or conditions regarding Ms. Dauriac that appeared in the email, Mr. Caudwell said this:[294]

Q (Mr. Plewman, Q.C.) …It was an aggressive series of demands?

A (Mr. Caudwell) No, it was a conversation with Ms. Dauriac where I was trying to find a solution that would mean that she didn't have to be dismissed, that the damage to her reputation was minimised, that the damage to Signia's reputation was minimised and that we could all move on in a much more controlled environment, you know, and evidenced to that is the fact that at the time, I was extremely concerned about how – whether I was overstepping the mark in terms of ethical or legal behaviour, because I questioned whether we could actually do this, and even with those terms involved whether it would be legal to do that in an FCA company. And I asked Mr. Canfield to go away and seek expert advice to make certain we could actually do this and keep her in the business given all the evidence that we had against her.

Q (Mr. Plewman, Q.C.) Do you agree that all of these demands were presented by Mr. Canfield on the basis that they were not negotiable?

A (Mr. Caudwell) Yes, I do.

Q (Mr. Plewman, Q.C.) And that was on your instructions, wasn't it?

A (Mr. Caudwell) No, everything in life is negotiable. I was trying to find a solution that would have made me feel comfortable that Ms. Dauriac could stay in the business and that we could protect everybody's reputation. So it may appear that it was intransigent, but it certainly wouldn't have been. At the end of the day, I would have been very happy to negotiate on certain points.

Q (Mr. Plewman, Q.C.) And you never indicated that. On your instructions, Mr. Canfield repeatedly said, "It's not a negotiation". Correct?

[294] Day 5/pp.99*ff* (cross-examination of Mr. Caudwell).

A (Mr. Caudwell) Well, I think Ms. Dauriac went away and then came back with a counterproposal which…

Q (Mr. Plewman, Q.C.) I am going to come to that, of course…

A (Mr. Caudwell) …wasn't acceptable to us because it didn't go far enough.

Q (Mr. Plewman, Q.C.) Of course, as she had to do. She was forced into a corner. But the position on your side was this was not negotiable?

A (Mr. Caudwell) Sorry, I can't agree with you she was forced into a corner. We didn't put her in the corner. She created – she was the mastermind who created her difficulty.

Q (Mr. Plewman, Q.C.) As to the demand that she see a psychiatrist, it was presented as a pre-determined and non-negotiable demand. Do you agree with that?

A (Mr. Caudwell) Yes, but that sounds very harsh, because I even – and I didn't necessarily mean psychiatrist, psychiatrist/psychologist, but I offered to go with her on the therapy. I really wanted to try and solve this, and I did believe that she'd got absolutely a mental condition that was potentially driving this. And I say that not just because of the theft of the money, which I can't for the life of me understand why she did it, but also because of the way she treated some of the employees after she and I became estranged. Prior to that, nobody would come to me – and I've challenged them all since and said: "Why did you not come to me?" And they all said the same thing, which is she wielded a reign of terror over the individuals, she threatened them that if they ever said anything wrong or tried to get close to me that she would put about into the industry that they were involved in drugs, involved in illicit sex, involved in everything, and she terrorised them. This was the sort of information that was coming back to me of this reign of terror that she'd imposed on the employees. I had stories of two or three people who had nervous breakdowns or virtual nervous breakdowns. So the whole thing to me was very bizarre, but it really felt to me as though she needed medical help, and that's why I was offering there in order to try and solve the whole situation and find a way of going forward.

Q (Mr. Plewman. Q.C.) That's another of the speeches that you've brought in to add to your witness statement, isn't it?

A (Mr. Caudwell) It's not a speech, Mr. Plewman, it's just the case, it's the truth.

401. Because Mr. Lester was on the best terms with Ms. Dauriac – as described above,[295] he sought to navigate a course between shareholders and management – he was nominated to be the one to speak to Ms. Dauriac about these conditions.[296]

(z) Ms. Dauriac enquires about the applicable expense policy

402. In an email sent on 9 December 2014, Ms. Dauriac asked Ms. Ohbi as to the expense policy applicable to her. Ms. Ohbi responded, saying:

> "The wording of your contract is vague in that there are no limits imposed. I think that it simply states that the Company will reimburse you for all reasonable out-of pocket expenses necessarily and wholly incurred by you in the proper performance of your duties."

(aa) Mr. Stoebe's offer to take a lie detector test

403. At around the same time, Mr. Stoebe wrote to Mr. Caudwell offering to take a lie detector test "to prove to you that I have not lied to you as I would never have paid myself without your approval". Mr. Caudwell's response was that a lie detector test was unnecessary: however, this was in substance because Mr. Caudwell was satisfied in his own mind that, even if Mr. Stoebe was not lying, the payments to him were not justified and not authorised by him (Mr. Caudwell).

(bb) Putting the terms to Ms. Dauriac and her reaction

404. On 10 December 2014, a meeting took place between Ms. Dauriac, Mr. Caudwell, Mr. Canfield and Mr. Lester. The substance of what was said at that meeting was controversial, but what is uncontroversial is that the demands that had been articulated between Mr. Caudwell, Mr. Canfield and Mr. Lester were put to her. It was not a friendly meeting. Mr. Canfield did not accept that Mr. Caudwell was "cold and dismissive" towards Ms. Dauriac, but he volunteered the description that he was "deeply upset and quite angry".[297]

405. The Statement of Culpability was, according to Mr. Canfield, given to Ms. Dauriac at the end of the meeting, after which Ms. Dauriac had lunch with Mr. Lester to talk over her response. According to Mr. Canfield, she did not see the text until later: she just took a copy with her.[298] Mr. Lester's recollection was different, and Ms. Dauriac's more different still:[299]

Q (Ms. Ford, Q.C.)	…Ms. Dauriac's evidence…is that it was you that gave her the letter at the lunch afterwards, and I would put it to you that that is correct, isn't it?[300]
A (Mr. Lester)	That's not true at all. It was given to her at the meeting. She opened it at the meeting and looked at

[295] See paragraph 60 above.

[296] Day 6/p.163 (cross-examination of Mr. Lester).

[297] Day 3/pp.150-151 (cross-examination of Mr. Canfield).

[298] Day 3/pp.150-151 (cross-examination of Mr. Canfield).

[299] Day 6/pp.167-168 (cross-examination of Mr. Lester).

[300] Ms. Dauriac stuck to this version in cross-examination: Day 7/p.189 (cross-examination of Ms. Dauriac).

> it, and I gave Nathalie the advice in front of David, which you can check, and John, to say that I would take it away and get it looked at and don't agree anything right now, because it would have been unfair for Nathalie to have done anything else. I definitely didn't take the letter away. We didn't plan to have lunch until we left the building. We just decided to go and have lunch.

406. On this point, I reject the evidence of Ms. Dauriac. I consider it unlikely in the extreme that Mr. Lester would have delivered such a document in the absence of Mr. Caudwell and Mr. Canfield. As to whether – in terms of how the Statement of Culpability was delivered during the course of the meeting – Mr. Canfield or Mr. Lester is right, to the extent it matters, I prefer the evidence of Mr. Lester.

407. As to what occurred at the lunch which followed (which was only between Mr. Lester and Ms. Dauriac), there was again a difference between the evidence of Mr. Lester and that of Ms. Dauriac. Ms. Dauriac claimed that she would never sign the Statement of Culpability, as it was factually incorrect. Mr. Lester maintained that she did not sign it – and he encouraged her not to sign it – because she needed to consider its terms most carefully.[301] But, according to Mr. Lester, there was no point-blank refusal on the part of Ms. Dauriac to sign. Mr. Lester's account of the lunch was as follows:[302]

> **Q (Ms. Ford, Q.C.)** It's right, isn't it, that your advice to Ms. Dauriac was that her best option was to apologise, admit wrongdoing, and Mr. Caudwell might be prepared to give her a second chance?
>
> **A (Mr. Lester)** Following the theme of the steps that we required Nathalie to make, and we discussed it over the lunch, and this statement here by Nathalie doesn't reflect any of the conversation we had.
>
> We walked to lunch, we chatted, we had a – I'd say a very pleasant lunch – and we were working out what was the best way to go back, and my view was that the items – some of those items were negotiable and she should have a look at it, to decide what she thought she could go back and accept.
>
> It all – it had got beyond reasonable doubt that a number of those expenses were incorrect. No question, incorrect. So it would seem an obvious thing to do for Nathalie to decide which ones were incorrect, and it was up to her.
>
> I've never even looked at any of the expenses. I've just taken it from the people who have spent hours looking at them, and I just left it to Nathalie and said it would be a good idea, that is an obvious one, you're not going to win that one.
>
> The rest, in terms of the loan, was up to Nathalie. I've

[301] Day 6/pp.169-170 (cross-examination of Mr. Lester).

[302] Day 6/pp.170-171 (cross-examination of Mr. Lester).

no idea what her personal expenses were at the time. She said she wouldn't be able to mortgage the house, and that took us into other conversations later on about obtaining an external loan. But it was up to Nathalie to take a point.

You also see here that she sought legal advice, and I recommended to her that she got legal advice, because it was a very important statement. I would hardly be doing that if I was ramming the note down her throat saying "accept this". It's a nonsense.

And why would she take the rest of my advice from this date of 10 December to early January if I wasn't giving her support and appropriate advice?

Q (Marcus Smith J.) Mr. Lester, you said at the beginning of than answer that some of those items were negotiable, and my question is: is that something you simply assumed or deduced through your experience as chairman or was it something that emerged from your conversations that you might have had with Mr. Canfield and Mr. Caudwell?

A (Mr. Lester) It was purely the first point, my Lord, that John's a businessman, he would negotiate, in my opinion. That was my view.

408. Mr. Lester saw his role as one of trying to bridge the gap between the two sides:[303]

Q (Ms. Ford, Q.C.) So, again, Mr. Lester, what I'm putting to you is that you advised Ms. Dauriac that she should confess to Mr. Caudwell in the hope that he should give her a second chance, didn't you?

A (Mr. Lester) There's no question I thought if Nathalie went back in a very sensible way along these lines then she stood a chance. I didn't know, it was just intuitive thoughts on my part. I was still trying to bridge the gap between the two parties. I refer back to the fact I'm a non-executive chairman and that was my job…

Q (Ms. Ford, Q.C.) And so the position was that…

A (Mr. Lester) And I would be giving advice to the other side as well, not just Nathalie. That's my job.

409. Ms. Dauriac, on the other hand, contended that Mr. Lester was pressing her to agree to something that was not true, just to appease Mr. Caudwell:[304]

[303] Day 6/p.177.

[304] Day 7/pp.191-192.

Q (Ms. Carss-Frisk, Q.C.)	I am not now asking you about the meeting that took place before lunch…
A (Ms. Dauriac)	I don't know if anybody has ever been treated like this, but it's a very, very scary moment. So, at lunch, we did discuss my expenses and, to respond to your question, Mr. Lester told me that unless I admit any wrongdoing, Mr. Caudwell was going to come after me, and I would lose the company. So we did discuss expenses and we did discuss a way how to resolve the issue at the time. But if you ask me, I was absolutely petrified.
Q (Ms. Carss-Frisk, Q.C.)	Ms. Dauriac, did Mr. Lester raise with you that there were certain expenses that he was aware of that you'd claimed that seemed to him to be plainly not justified?
A (Ms. Dauriac)	No. Mr. Lester and I discussed the fact that he said to me: "You need to look at yourself in the mirror, Nathalie, and find something which you think is not right, because Mr. Caudwell is not going to accept it otherwise, and you will lose everything you built for four years".
Q (Ms. Carss-Frisk, Q.C.)	So, Mr. Lester is simply not telling the truth, is this your evidence, when he refers in his witness statement…to discussing particular claims such as visiting the hairdresser, which he thought were patently not justified? That's not true, you're saying?
A (Ms. Dauriac)	What I'm saying, it's not true. We didn't discuss if they are legitimate or illegitimate. We tried to find a way how to make sure Mr. Caudwell wouldn't lose the plot and lose me my business. That was the discussion we had.

410. The difference between Ms. Dauriac and Mr. Lester was this. Ms. Dauriac, maintaining in the witness box that she had done nothing wrong, was (as a matter of logic more than anything else) compelled to contend that she was being forced to sign up to something that was untrue. Mr. Lester, to put it no higher than this, considered that there was something in what was being alleged against Ms. Dauriac, and he was urging her to own up – to the extent there was something to own up to.

411. Assuming Ms. Dauriac believed that she had done nothing wrong, there is actually very little between these two accounts. To someone convinced of their innocence, the suggestion that that person "own up" would sound very like an urge to confess to something that person had not done. However, to be clear, that is all I consider Mr. Lester was doing at the lunch: he was suggesting to Ms. Dauriac that she take a view about the allegations and that, if she considered them well-founded and after taking legal advice if appropriate, her best course as regards Mr. Caudwell might very well be to own up. I reject the suggestion that Mr. Lester was urging Ms. Dauriac to confess to something she had not done.

412. On 12 December 2014, Ms. Dauriac wrote the following (in an email) to Mr. Caudwell:

"Following our meeting yesterday,[305] I have reflected on our conversation and wanted to address the various points we discussed.

At a personal level, I have to say that it was incredibly hard for me to hear the message you delivered yesterday, and I'm sure it was equally difficult for you to deliver. We have always had an open and honest personal relationship and whatever the outcome, I want you to know that my respect for you and dedication to you and your family has always been unconditional and I would like to reassure you that this has not changed. I give you my word that I remain dedicated to ensuring your best interests are always at the forefront of everything I do. I know I had made errors in the past but for what it is worth, I am willing and able to accept this and learn from my mistakes. However, at times this exercise has felt like a personal witch hunt which is very hurtful. For what it is worth, I really love you and always will.

I know you felt I showed a lack of remorse or emotion yesterday and that you were surprised by that. But hopefully by now you know that I only ever got over-emotional about you and our personal relationship, nothing else. After dealing with all the personal attacks this year, as I am sure you must have experienced in your career too, I feel I have grown up and am now better equipped to deal with the challenges I expect to face in the future. I have felt very alone these last few months but in hindsight I think that may be a good thing, I can now face anything.

Before I address the issue of my expenses, I firstly want to clarify some key points about the business, as I understand you discussed these with Paul during your private conversation. Yes, I admit that the business is at a loss of over £2m this year and, to be clear, this is £800k more than we forecasted. That said, we will start 2015 with almost £1m of booked profit which is much higher than our forecast, based on the assets booked at the end of 2014. Please remember that the business is only 4 years old and that realistically I have done it on my own and handling 95% of the clients of the firm, albeit with your support. In case the point on staff turnover has been raised (although I will not apologise for losing the middle quality people, to be clear we have lost one person since inception I did not want to lose) – the £1m profit is based on the same amount of people as 2014, as we have replaced all the critical roles. More importantly, we now have a best-in-class investment team. 3 years ago, the business underperformed due to having the wrong investment team in place, but I have spent the last 2 years turning that around and today our results are better than ever. In the hedge fund world, we are best of class and in the long-only world, we are in the top 30% which is very good. We have only lost one client this year (Jon Moulton) and taken on 28 new clients. I think we have a morale issue in the team, due to the issues with Kam and Rupert which I take responsibility for, but we need to turn the morale around following these events plus the expenses investigation.

Unfortunately, I spent far too much of my own time on the Kam and Robert issues (to be clear, Rupert is my mistake and you have been nothing more than supportive). I am confident that I would have been able to raise substantially more funds and introduced new clients to the business if I hadn't been focussed on these ongoing issues. You have asked me to hire a strong COO/CFO and I fully agree and support this. I always planned and tried to bring in this person, but it is very hard to find the right individual. In general, although it is often interpreted differently, I really want you and your team's help, as I fully believe in this business and welcome your team's productive input to make it successful.

Secondly, it is important for me to make the point that I have always acted in the best interests of you and Signia. Yesterday you suggested that I used your money to fund my social life and this really hurt me. This is factually untrue and I think it is an unfair statement to make. You do

[305] This was a reference to the meeting on 10 December 2014.

not just approach clients like ours. It takes time to get to know them and for them to develop a trusting relationship with their managers. Please remember that I started Signia from scratch. This approach distinguishes our business from any other bank and makes Signia different and therefore a unique player. Without this relationship of trust, we would never have been able to keep all the clients we have. To be clear, a lot of these relationships are not personal friends – on the contrary, I have lost many of my real friends over the last few years because I have only been focussed in spending 100% of my time, including that of my family, on building business relationships. Please understand the key importance of entertainment and relationship building for our business. To be absolutely clear, entertaining and socialising is purely business driven and it built Signia's brand today.

Now to turn to the expenses and the accusations made in our meeting.

I have thought about it and would like to offer a full apology for my actions. I have let you down and can only say how sorry I am for this. With regards to the £26k of expenses we discussed yesterday, to be clear my team were never asked to lie or cover anything up as David and Paul got confirmed by Kate yesterday. The vast majority of these are mistakes, but I will admit there are a number of occasions over the last year when items (although linked to a client event) should have been paid for personally and were instead settled as a business expense.

To be clear, John, I was upset at that time of our meeting as you refused to pay me my bonus again, same as last year. It has been 5 years now and I have lost so much money compared to what I could have earned in the past, and I have given my life for this business and found your rationale for not wanting to pay me after what I did and the dedication and efforts very unfair. I am also guilty for not calling you myself when I found out about the flight bookings. For that, I am sorry as you are right you have always picked up my calls and I am guilty there and can only apologise.

You have also told Paul that I need psychological help. To be clear, I do not John, but it is correct that over the summer I felt let down and I was emotional. Today, I am stronger after all that has happened, and I believe I can deal with anything going forward.

To conclude, on a personal level, I am sorry you have been put through this and more importantly that our friendship has been so negatively affected.

John, I love you and despite everything which happened yesterday, I will always feel that way. All I ask is that if these past years have meant anything to you, please realise that what I have done, I have done for you and have always been loyal.

Yes, I have made mistakes and I am paying for this both financially and emotionally for it now and I do apologise for them. I have written the truth here and hope you will accept this. I truly think we have gold with the business but the internal structure needs to be improved, as I have already done on the investment front. I believe in Signia, and would not fight so hard for it while giving up my family life if this wasn't the case. I would like to suggest that I reinvest this bonus in the business but I will ask you to honour our loan agreement. I will focus on refunding the loan which should be approximately £10/£12m (I have asked David again today for the full amount, which he will give me) and if you want to get out in the future, we will find someone to buy your shares, or I will raise the money myself to buy your stake next year.

John, again I love you and for what it's worth I have never intentionally wanted to let you down."

413. Consistently with her version of events at the lunch, Ms. Dauriac contended that the content of this email was untrue. It was, according to Ms. Dauriac, written to get Mr. Caudwell "off her back":[306]

Q (Ms. Carss-Frisk, Q.C.)	So, you offer a full apology, you acknowledge you have let Mr. Caudwell down, you say how sorry you are. These are not the words of someone who feels that they have done nothing wrong, are they?
A (Ms. Dauriac)	My Lord, I've been asked to do a lie detector test, I had – was running a £2.3 billion company, or AUM/AUS, where I had 40 of my own employees being scared. I would have said anything to save my business, and for me, repaying £26,000 and writing an apology to Mr. Caudwell at that stage was less of a worry, if I may say. I would have done anything for that company.
Q (Ms. Carss-Frisk, Q.C.)	I didn't ask you at this point why you wrote these words. I simply asked you to agree to the simple proposition that those words are not the words of someone who is completely innocent of any wrongdoing.
A (Ms. Dauriac)	It is absolutely innocent of wrongdoing. That's not the reason I wrote this. I wrote this, as I said, because I would have done absolutely anything to save Signia.

414. As regards this evidence, I do not accept that the suggestion to confess to something untrue came from Mr. Lester. But it is quite possible that Ms. Dauriac wrote this email in an attempt to close the matter down. It is noteworthy that the email – as a confession – is remarkably carefully crafted to avoid confessing to very much. As will be seen, the terms of the email were certainly not enough to bring the matter to a close.

415. I consider that it would be an error to read too much into this "confession". As a document, it seems to me that Ms. Dauriac was – without making too material a confession – attempting to end the investigation. Ms. Dauriac said that she was saying things in this email that she did not mean, in the hope that it would solve the problem.[307] I accept that evidence.

(cc) Next steps by Mr. Canfield

416. It is not clear whether Mr. Canfield or Mr. Lester saw this email from Ms. Dauriac – they were not addressees – but it is to be inferred that they did. If so, Mr. Canfield did not regard it was an acceptable form of Statement of Culpability, because on 15 December 2014, he emailed Mr. Lester in the following terms:

[306] Day 7/pp197-198.

[307] Day 7/p.199 (cross-examination of Ms. Dauriac).

> "I'm very conscious that we need to move forward with the Signia/Nathalie situation but of course we can only do that if and when the letter I provided (a copy of which is attached), or an acceptable version thereof, is signed and I understand she may be finishing for her holidays within the next few days so sounds like time is of the essence.
>
> We also of course need Nathalie to very quickly acknowledge the steps we are taking with regard to her taking financial responsibility for the 2014 loss as we are in a very parlous position as Directors given the implications for the Company's regulatory capital position, which formally should be addressed as soon as it becomes evident there is an problem.
>
> As I mentioned, we already have Karen actively looking for candidates for the new COO (or whatever title we decide upon – MD may be more appropriate_ and I'll obviously share these with you once she starts sending through CVs. In the meantime, and in the spirit of our agreement, we should immediately implement a process whereby all key business decisions and, in the short term, specifically those regarding bonuses or changes to remuneration packages are agreed by you, John and I.[308] We agreed we would cap client entertaining and T&S generally at a sensible level but I assume you will, as indicated, be reviewing and approving Nathalie's expenses from here on in.
>
> We also said we would jointly talk to Kate and Janet (not sure re Kirin?) about their conduct during this debacle and particularly their roles in the cover up which ensured – let me know when would be a good time to do that…"

417. Mr. Lester responded on the same day, expressing his general agreement, noting that Ms. Dauriac had spoken to her lawyer about the "confession" and that she wanted to make changes. They agreed to take the matter forward.[309]

(dd) The telephone call between Mr. Canfield, Mr. Lester and Ms. Dauriac on 16 December 2014

418. There was a three-way telephone call between Mr. Canfield, Mr. Lester and Ms. Dauriac on 16 December 2014. The discussion was a wide-ranging one and ended in essential disagreement. The discussion began with the recruitment of a new COO or MD and the control of costs going forward (and in particular the "tightening" of process). On this, the parties were relatively *ad idem*. However, when it came to the demands that Ms. Dauriac sign a Statement of Culpability (in particular one in which she admitted asking staff to lie on her behalf), she made it very clear that she did not consider such a statement to be accurate and was not one that she was prepared to make. This resulted in a further discussion about the propriety or otherwise of Ms. Dauriac's "review" of her expenses and her expenses generally. Again, substantial disagreement was evidenced in terms of what Mr. Canfield (and, to an extent, Mr. Lester) considered Ms. Dauriac had done, and what Ms. Dauriac was prepared to concede in relation to her conduct. This led on to a discussion of Mr. Caudwell's other demands, including the manner in which the regulatory capital shortfall might be addressed. Ms. Dauriac was unwilling to meet the demand that she fund this shortfall.

419. Mr. Canfield took a fairly hard line – during the course of the discussion, he said:[310]

[308] Perhaps not entirely coincidentally, the question of bonuses and remuneration was raised by Ms. Cooper a few days later, which caused Mr. Canfield to express concern.

[309] Mr. Lester had, in fact, had a meeting with Ms. Cooper and Ms. Tarbet on 12 December 2014, explaining that there were concerns about their role in the expenses investigation: Day 6/pp.187-188 (cross-examination of Mr. Lester).

"What we need to realise here, Nathalie and Paul, is that this discussion is not a negotiation."

420. The call ended with substantial disagreement evident regarding Mr. Caudwell's demands of Ms. Dauriac. Mr. Canfield's views of the position, after this conversation, are set out in an email to Mr. Lester of the same date:

"Further to our discussions, I thought it worth clarifying the position as I see it.

Obviously, we have dictated a number of stipulations under which Nathalie could conceivably continue in her role (albeit with significantly diluted responsibilities) and under which John would perhaps continue to support the business. As you commented earlier, we seem to be regressing from where we (clearly over-optimistically) believed we were following your discussions with Nathalie last week and I think, based on our earlier very frustrating conversation, it is fairly obvious that she is unlikely to cooperate with what we have asked for even at the most basic level.

We have already expended way too much energy on this matter and meanwhile the business is stagnating, we are losing good people (as you will have seen from Tim's analysis) and our reputation will undoubtedly be suffering. If we are to move forward positively (if that is possible from this position) we therefore need to bring this to a head one way or another very very soon.

I've spoken again to our lawyers this afternoon and they have provided further advice. Suffice to say that they believe that as Directors, we are in a parlous position and may already have allowed this matter to drag on too long. The simple fact is that, despite our wishes at the outset to avoid an unnecessary situation, we may therefore have no option but to refer this matter to the FCA and possibly the Police.

I'm telling you this because as Chairman I believe you have some influence over Nathalie and am hopeful that you can perhaps make her see that she is not going to negotiate her way out of this with a series of inconceivable explanations and quite ridiculous smokescreens. In a different company, anyone who had done what she has done would be given absolutely no opportunity to cover up and no chance to repay; and I doubt you will disagree that her defence, for what it's worth, would be laughed out of court if it ever came to it.

The bottom line is that we have to now draw the line on this and I think it is appropriate to put a deadline in place as we have already lost a further week. I would therefore suggest that unless by close of play tomorrow we have Nathalie's response regarding her intentions with regard to the funding of the regulatory capital gap, together with an acceptable written acknowledgement that her actions in relation to her expense claims were deliberate and wrong, we should commence a formal disciplinary process and move to take the necessary steps with regard to reporting the matter to the responsible authorities.

John is fully in agreement with this but I would appreciate your views."

421. Mr. Lester agreed. His response was that he would speak to Ms. Dauriac and that he was "equally frustrated by the lack of progress and we have gone backwards. I think the timescale you spell out is fine and hopefully will galvanise Nathalie to agree an acceptable solution".

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[310] Put at Day 3/p.162 (cross-examination of Mr. Canfield).

(ee) Ms. Dauriac seeks legal advice

422. Ms. Dauriac sought legal advice from Grosvenor Law – Signia's solicitors – and received some, very limited, advice from a partner there, Mr. Mark Sullivan. However, Mr. Canfield made clear to Mr. Sullivan, in an email dated 16 December 2014, that Signia was Grosvenor Law's client and "we would therefore not expect you to act or act further for Nathalie in her personal capacity, without our prior written approval".

(ff) A meeting between Mr. Caudwell and Ms. Dauriac on 16 December 2014

423. There was a meeting between Mr. Caudwell and Ms. Dauriac on 16 December 2014. Ms. Dauriac's evidence regarding this meeting was as follows:[311]

> "I attended the meeting on my own. Mr. Caudwell was still very angry with me and cold and rude and said that Signia needed more money by way of capital investment (even though at this point [Signia] had used circa £1.5 million of available funding from Mr. Caudwell's £18 million loan facility). He said that I needed to obtain a mortgaged loan secured on my house to invest capital in Signia otherwise none of my staff would get paid and would all lose their jobs. He said that the alternative was to liquidate Signia. Mr. Caudwell said that my only way out of this was for me to sign the confession and admit my wrong doing. I said I was not happy with this ultimatum, but would try to find a form of wording that I could live with and send him an email. I also offered to buy his shareholding and asked for some time to raise the funds to do so. He told me he would give me 24 hours and would expect an email from me by midnight that day. I told him he was bullying me and we had a legal agreement that he needed to respect. He said he would prove that Ms. Cooper, Ms. Tarbet and Ms. Degruttola were lying about the £26,000 of expenses and that Mr. Canfield would interrogate them. I told him that he knew for a fact that I used those funds mainly to go and see him, but he would not listen. As we were leaving, I asked if this was all about the way in which the fees for the previous year were invoiced and the VAT treatment but he did not respond."

424. Mr. Caudwell's recollection of the meeting was very poor. It was not mentioned in his witness statement. In cross-examination, he said this:[312]

Q (Mr. Plewman, Q.C.)	…It's one paragraph describing one meeting which the witness says he doesn't recall.
A (Mr. Caudwell)	Yes, but I do recall sentiments, and I was never – almost never – angry with Ms. Dauriac. There were one or two heated moments we had when she was angry and emotional, and I was angry, but I never – I didn't really have angry moments. The relationships were not like that. In fact, it's not like that with most of my employees. It's just not my style. So I would take issue with that particular point. I think it's clear that I wanted Ms. Dauriac to put money into the business to make up for the shortfall. I do recall – and I don't know whether it was in that meeting – but I do recall that I offered her a soft loan on a house so that she could put the money in to make it as palatable and as easy for her to do and

[311] Dauriac 1/para. 141.

[312] Day 5/pp.115-118 (cross-examination of Mr. Caudwell).

that would have been a soft loan on a rate of interest.

I possibly said that it was the only way out to sign the confession, because I realised the seriousness of the situation and felt that was probably the only way out. So I probably would agree with that.

And I, as a form of reasonableness, would have been negotiable on the wording around the confession, but as long as it didn't dilute it down too much.

And, incidentally, my Lord, the reason I wanted the confession was because there was enough evidence already about her being unstable and her ability to be Machiavellian in life that I wasn't prepared to move on without some evidence as to what had happened before.

I want – I could not just draw a complete line in the sand under this. I needed something that made me feel secure about the future.

Q (Mr. Plewman, Q.C.) You wanted a confession to criminal conduct to keep in the cupboard?

A (Mr. Caudwell) Well, yes, it was criminal conduct, so I wanted the confession to keep in the cupboard, yeah, to protect me from whatever she might do in the future.

…

Q (Mr. Plewman, Q.C.) It's a meeting that you thought not to put in your witness statement and [Ms. Dauriac's account] is an accurate account of that meeting. Please add anything else about the meeting that you now recall?

A (Mr. Caudwell) It's – so "I told him he was bullying me and I had a legal agreement". You know, I've never sought to bully Ms. Dauriac. Once again, it's not my style. You know, I have hard meetings with people, but bullying is not something that – it's a very undesirable trait and I never want to be accused of being a bully and I never want to be accused of being unfair. And my whole life – and its well-documented on Google search and elsewhere – that fairness is one of my absolute prerequisites in life and losing your temper is not – it's not a creditable, it's not an admirable, thing.

So I'm very conscious to try and stay calm as much as possible. So I really don't agree that I would have been bullying Ms. Dauriac at all.

…

Q (Marcus Smith J.) Well, Mr. Caudwell, the last sentence [of Dauriac 1/para. 141]…I'd like your views on that?

A (Mr. Caudwell) Yeah, well, it's once again just another part of the fabrication to try and bully me into submission, and I'm afraid Ms. Dauriac's style from this all the way along is to hide behind the court pleadings so that she can then report it to the press without any threat

> of defamation and say the most horrible things about me and that's why we're here today…

(gg) The next iteration of the Statement of Culpability

425. On 17 December 2014, Ms. Dauriac produced a revised draft Statement of Culpability. At the same time, she emailed a draft of an email that she proposed to send to Mr. Caudwell to Mr. Lester:

"Paul, please see below, can I have your feedback? (Even if you speak badly of me behind me:))) xxx

Dear John,

Following our discussion last night, please find attached the letter which I believe is correct and should give you comfort that I am sorry for the way I handled expenses.

I understand that you are upset and I am sorry. But I will ask everyone in your team to act in the best interest of the business and the clients and to realise that the way in which this investigation has been handled scared the team very much. The business is our people and they are seriously worried and I ask that this week we concentrate on performing business as normal for them.

I also think the way I have been treated and how this investigation has evolved around me could have been done in a more collaborative and open way which would have allowed to have a more efficient discussion around the allegations, and would have resolved many of the questions faster and without some of the issues which occurred.

To be clear on what happened yesterday, David told me that unless I sign the letter drafted by him and fund or find funding for the funding gap, the business will be put into liquidation and I will potentially be reported to the FCA. To be clear, we have consulted an FCA consultant and they have confirmed that there should be no case for allegations.

You have asked me yesterday night to make a proposal on how to move things forward. As you know, we have a loan agreement, which allows the business to draw up to GBP 18 million to fund its expansion. Again, it is clear that 2014 will show an underperformance compared to the plan for all the reasons we discussed previously. That said, our forecast for 2014 always showed a negative number of GBP 1.2 million and showed a profit of GBP 500k for 2015. Against this forecast, we will now start off 2015 with a positive result of more than GBP 1 million of booked profits. As you know we have turned around the performance and have grown significantly in terms of AUM during the course of 2014. Again, please remember the business is only 4 years old and we will start our 5th year in March. I believe we have turned the corner to profitability. However, again, we need to be very careful about how the next days are handled with the team and the reputation in the market.

Having thought about it overnight, if you still do not want to honor the loan agreement, I would like you to consider the following options:

Option 1: I waive my bonus as set out in the letter and you honor the loan as per our agreement. I will stay in the business and commit to work as hard as before for it in future and hopefully you and I will find a way to resolve our differences on a personal level, which I very much hope for.

Option 2: I waive my bonus as set out in the letter and you honor the loan as per our agreement and we define a period of time you give me to find someone who will buy your shares through repaying your loan.

Option 3: I waive my bonus as set out in the letter, you provide me with an unsecured loan at a practical interest rate to fund the business for 2014; at repayment, your loan ranks first, my loan second. To be clear, I will stay in the business and commit to work as hard as before for it in future and hopefully you and I will find a way to resolve our differences on a personal level, which I very much hope for; otherwise, as under option 2, we define a period of time you give me to find someone who will buy your shares through repaying the loans.

John, you mentioned that if we do not agree on any of the above you will put the business into liquidation. If this is the case, I would urge you to give me a couple of weeks to find an alternative source for the funding needed to fill the 2014 gap and repay your loan (for regulatory purposes, I believe we only need to solve this by mid-January) which would be a much better option for everyone from a reputational level but also for you commercially.

Please note that during this time your money is managed well and the team is world class. I need, though, David's and his team's support to run the business properly over the coming weeks.

John, I have made some mistakes in the business, but I have worked 24/7 over the last years, raising two children in the middle. The business is turning the corner now and had two years of good investment performance which gives us investment credibility in the market. I will, of course, do anything to make this happen but it will never be done without having the best interest of our business, our clients, our team and on a personal basis my children in mind.

I really hope we find an elegant way to resolve our issue and start 2015 on a positive note."

426. An email – essentially along these lines – was sent by Ms. Dauriac to Mr. Caudwell on 17 December 2014. Again, Ms. Dauriac's position was that she would "have written anything which was acceptable and not had criminal implication in order to resolve that situation".[313]

427. This "watered down" version of the Statement of Culpability was not satisfactory to Mr. Caudwell.[314]

(hh) Interviews with Signia staff

428. The possibility of Mr. Canfield interviewing the relevant Signia staff had been raised, as a possible course of action, by Mr. Lester during the course of the three-way telephone conversation referred to in paragraphs 418-420 above.

429. In various emails on 16 and 17 December 2014, Mr. Canfield sought to arrange a meeting with Ms. Cooper. Ms. Cooper herself was keen to speak to Mr. Canfield because she had a "confidential FCA concern I need to cover off with you". Her concerns related to Ms. Dauriac's expenses.[315] During the course of her call with Mr. Canfield, Ms. Cooper effectively changed sides – from the side of the party being

[313] Day 7/p.205 (cross-examination of Ms. Dauriac).

[314] Day 3/pp164-165 (cross-examination of Mr. Canfield).

[315] See Day 6/pp62-69 (cross-examination of Ms. Cooper).

investigated (Ms. Dauriac and Signia) to the side doing the investigating (Mr. Canfield and Mr. Maycock). Her evidence was as follows:[316]

"The call was constructive. I was relieved that David believed and understood my account of my involvement in the investigation. He also shared my concerns about the impact of Nathalie's leadership on the reputation and commercial viability of the business. He decided to schedule urgent interviews with Janet, Kelly and Kirin with a view to bringing the investigation to a conclusion. I believe David wanted to meet as soon as possible to prevent Janet, Kelly and Kirin colluding about what they would say and agreeing on a "party line". For this reason, he asked me not to tell anybody about our conversation."

In cross-examination, Ms. Cooper said this:[317]

Q (Ms. Ford, Q.C.)	And it's fair to say that the pressure that had been exerted on you disappeared once you accepted Mr. Canfield's version of events, isn't it?
A (Ms. Cooper)	Well, I felt relief that it was coming to a point where I had called David, that was a very stressful phone call to make, for him to have listened to everything I'd said. I think probably in hindsight and looking back I'm sure he must have assumed that we were part of all this, part of all the changes that had been made, so it was a relief to be in a position where we actually understood each other. You know, as you pointed out, my integrity had been questioned twice. So, yes, it was a relief.
	…
Q (Ms. Ford, Q.C.)	I'm suggesting to you that once you accepted Mr. Canfield's version of events, namely that there had been wrongdoing on the part of Ms. Dauriac, that is the point at which the pressure that had been exerted on you then disappeared.
A (Ms. Cooper)	From his side, yes.

430. In an email dated 17 December 2014, Mr. Canfield emailed Ms. Cooper, Ms. Tarbet, Ms. Ohbi and Ms. Degruttola:

"Dear Kate, Janet, Kirin and Kelly,

During a conversation with Nathalie and Paul yesterday, it was suggested by Paul that you would like an opportunity to talk to me regarding your respective roles in the expense investigation. I do, of course, acknowledge that you deserve to have your views heard, so I'm more than happy to meet with you.

I'm in London at John's house (Ancaster House) in the morning, so would be grateful if you wouldn't mind coming there. Can I suggest that I see Kate and Kirin at 11.00am and then follow up with Janet and Kelly at 12.30pm?"

[316] Cooper 1/para. 87. See, to similar effect, Day 6/pp.68-71 (cross-examination of Ms. Cooper).

[317] Day 6/pp.69-70 (cross-examination of Ms. Cooper).

431. In light of the conversation that Mr. Canfield had had with Ms. Cooper, there is something a little artificial about this email: Ms. Cooper was not going to be interviewed.[318] In fact, she participated in the interviews as interviewer.

432. Ms. Degruttola was so reluctant to attend that she debated, with Ms. Cooper and Ms. Tarbet, whether she should call in sick. In the end, she was persuaded not to do so, and did attend.

433. There are transcripts of the interviews with Ms. Degruttola, Ms. Tarbet and Ms. Ohbi. In each case, Ms. Cooper participated with Mr. Canfield. She was not, herself, a subject of the interviews. Needless to say, Ms. Degruttola, Ms. Tarbet and Ms. Ohbi would have been nervous, but the interviews were properly and politely conducted.

434. Ms. Dauriac sought to keep close tabs on what was going on. She, of course, was under the impression that Ms. Cooper was a target of the interviews, rather than conducting them with Mr. Canfield. She interrogated Ms. Cooper on this basis after her return to Signia's offices and got Ms. Cooper to send the following email to Mr. Canfield:[319]

"Hi David,

Thank you for your time today. Following on from the meeting which were held with myself; Kirin; Janet and Kelly, I wanted to confirm the following points which were addressed in relation to the expenses in each of the meetings:

1. I can confirm that we were not asked to lie or cover anything.

2. The changes which were made were in relation to moving the Caudwell claims onto a refund form. This request was made by Nathalie a few weeks before you sent us the request as she asked to refund all JC expenses occurred.

3. Other changes, which were made, were matched up to the diary and some were also amended to make sure that the descriptions were correct and clear.

4. Kelly confirmed that these descriptions were not necessarily accurate and that due to time constraints she may have made errors in annotating those descriptions.

As discussed, I wanted to reiterate that we didn't appreciate having our integrity questioned during this process and that I can vouch for everyone here that everything that we do is in the best interest of our clients, the firm, the staff and the shareholders.

Finally, we fully recognise that we need to improve our expense process and we will ensure that the corporate governance changes suggested will be put in place."

435. Ms. Dauriac also ensured that this communication was sent to Mr. Caudwell.

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[318] Day 6/pp.71-72 (cross-examination of Ms. Cooper).

[319] Ms. Cooper was cross-examined on these communications at Day 6/pp.74*ff*. The cross-examination of Ms. Cooper proceeded on the basis that since Ms. Cooper was not interviewed on this occasion, whereas the others were, the points made in this email could not relate to these interviews. That, in my judgment, completely misunderstands the nature of this communication. In my judgment, this was another attempt by Ms. Dauriac to control the process, by dictating to Ms. Cooper what had been said at interviews she (Ms. Dauriac) had not attended and getting Ms. Cooper to send this to Mr. Canfield. Of course, Ms. Dauriac did not know that Ms. Cooper had not been interviewed, so the mismatch between reality and what Ms. Dauriac wanted Ms. Cooper to say about that reality was considerable. This episode says a great deal about Ms. Dauriac's *modus operandi*.

436. Ms. Cooper disavowed the communication. She warned Mr. Canfield it was about to be sent, and then emailed him 10 minutes after the email was sent to say that "[a]s you know, this does not reflect the points which were discussed in our meeting". Mr. Canfield responded:

"Kate,

Thank you, I understand you were under duress to send this and fully appreciate that under the circumstances you had little choice. The retraction you have kindly made is however very clear and I am appreciative of the openness and honesty shown today by you, Kirin, Janet and Kelly. I know it took courage, but your integrity is intact."

437. Mr. Lester concurred.

438. In an email sent to herself, Ms. Cooper recorded her own thoughts:

"Concerns

Expenses

Suspicions that expenses had been changed before being sent to David in order to conceal what expenses had been put through on the corporate card.

Kelly was asked to make some of the changes by Nathalie, they weren't all PA error.

Nathalie coached her PA to say it was her error in the first place.

Blame was being directed on Kelly, a tactic to divert attention from the original wrong doing.

The team were manipulated into believing that no wrongdoing was done, and Nathalie believed that this really was the case.

Nathalie was aware that her corporate card was being used for these expenses.

Too much of a coincidence that she asked Kelly to reimburse Caudwell expenses after Konrad was questioned over the same point.

Blame for reimbursements were deflected to Kelly, it was stated that Nathalie said that Kelly was responsible for her cheque book and refunds took place regularly.

Events were changed on the forms to cover up personal events with friends.

The team were manipulated into feeling responsible for her cheque book and refunds took place regularly.

Events were changed on the forms to cover up personal events with friends.

The team were manipulated into feeling responsible for the team and loss of jobs.

Kelly was coached into saying that she wasn't made to lie.

Process needs to be looked at and tightened.

Corporate governance changes.

Reputation.

Turnover of staff.

Staff don't ever leave on good terms anymore.

Clients are beginning to question turnover.

Litigation.

Culture: no-one trusts anyone any more.

Clients.

Will lots of clients leave if Nathalie isn't there anymore.

Will the business survive if they go?

What support will there be to the business from John."

(ii) Ms. Dauriac's suspension

439. On 18 December 2014, Ms. Dauriac was suspended pending disciplinary investigation. The letter stated:[320]

"Following the board meeting of 18 December 2014, I am writing to confirm that you have been suspended from work until further notice pending investigation into an allegation of gross misconduct. We reserve the right to change or add to these allegations as appropriate in the light of our investigation.

Your suspension does not constitute disciplinary action and does not imply any assumption that you are guilty of any misconduct. We will keep the matter under review and will aim to make the period of suspension no longer than is necessary. Your suspension may be lifted at any time and with immediate effect.

During your suspension, we shall continue to pay your salary in the normal way.

You will continue to be employed by us throughout your suspension and you remain bound by your terms and conditions of employment. In particular, you are reminded that you must not disclose any confidential information, set up in competition with us, solicit our employees or customers or undertake any other paid employment.

You are required to co-operate with our investigations and may be required to attend the workplace for investigative interviews or disciplinary hearings. However, you are not otherwise required to carry out any of your duties and you should not attend the workplace unless authorised by David Canfield to do so. You must not communicate with any of our employees, contractors or customers unless authorised by David Canfield. However, you are required to be available to answer any work-related queries.

Your email account has been suspended and you no longer have access to our computer network.

[320] This was reinforced by an email from Ms. Ohbi to Ms. Dauriac dated 19 December 2014. See also Day 6/pp.189-190 (cross-examination of Mr. Lester).

Your pre-arranged period of annual leave is unaffected by these arrangements, and you will not be required to be available for disciplinary or work-related matters during that time.

When we have completed the investigation, we will write to confirm whether you will be required to attend a disciplinary hearing. If we consider that there are grounds for disciplinary action, we will inform you of those grounds in writing and you will have the opportunity to state your case at the hearing.

If you know of any documents, witnesses or information that you think will be relevant to the matters under investigation please let me know as soon as possible. If you require access to the premises or computer network for this purpose, please let me know as we may agree to arrange this under supervision.

We shall send you a statement regarding the investigation, which will be used in response to any enquiries from employees and third parties, including customers, contractors and the press. Please refer any queries you may receive to David Canfield."

440. The letter was given to Ms. Dauriac by Mr. Lester.[321] It was Ms. Dauriac's evidence that when she was given this letter, Mr. Lester told her that she had been fired.[322] Mr. Lester's evidence, on the other hand, was as follows:[323]

> "48. Later that day, I took Nathalie into a meeting room and informed her that I had some news that she was not going to like. Before I could explain and hand Nathalie the letter, she interrupted me and said "Are you going to fire me?". I responded to this question by using a football analogy and I said that she had "lost the dressing room" as a result of her apparent misuse of expenses and her reaction to being questioned about them. I recall having to explain this analogy in blunter terms. John, David and key members of her staff had lost all faith in her.
>
> 49. I handed Nathalie her suspension letter. I was in the process of telling her that she would continue to get paid whilst she was suspended when she again interrupted me and said "John will never fire me"."

I do not consider that Mr. Lester would, when handing over a letter suspending Ms. Dauriac, have misrepresented its content. I prefer Mr. Lester's version of events.

441. The letter of suspension resulted in a series of recriminatory texts from Ms. Dauriac to Mr. Caudwell. The first few in the exchange read as follows:

Ms. Dauriac to Mr. Caudwell	I will never forget what you did to me. You have taken my life. I never thought you would be so cruel. I trusted you with my life.
Mr. Caudwell to Ms. Dauriac	I did not have the choice or the decision! You left Paul and David no choice!!
Ms. Dauriac to Mr. Caudwell	No, John, you had the choice, as you always do. Paul said he would never have done that. I trusted you with my life and you destroy it. You are even Juliette's Godfather. It makes me sick. You could

[321] Lester 1/para. 47.

[322] Day 8/pp.4-6 (cross-examination of Ms. Dauriac).

[323] Lester 1.

	at least let me save face and buy back the shares. It was my life this business.
Mr. Caudwell to Ms. Dauriac	David and Paul made the only decision they could given the evidence from your team. I am devastated by this whole situation and filled with sadness, but I ended up with no decision to make. In fact, I wasn't even part of the final decision. It was made by the team in the face of compelling evidence. I tried so hard to get you to come clean to save it spreading through the team! I will never understand why you did it, but would have done anything to have stopped it happening had I known! I am sickened and saddened to have lost somebody who I considered for so many years to be my best friend.

442. Ms. Dauriac's recriminations were not confined to Mr. Caudwell. Ms. Cooper was also texted.

(jj) Resignation

443. The outside world, however, was not told that Ms. Dauriac had been suspended. Although it was not intended to make any positive statement, a "holding statement for use on a reactive basis" was drafted. This was intended to be "very bland" and read as follows:

> "The Board of Signia confirms that Nathalie Dauriac-Stoebe, Chief Executive, has tendered her resignation from the business with immediate effect. She is leaving the firm at a time when Signia's performance is extremely strong and the company's balanced portfolio is +4.21% year to date. The company's hedge fund portfolio continues to significantly outperform the hedge fund indices. Year to date, the portfolio is up 6.51% compared to +0.17% for the HFRX Global HF Index".

444. The "Q&As" – to be used in response to any questions - indicated that Ms. Dauriac had resigned "as a result of differing views with the Board in relation to the strategic direction of the business" and that she had not been sacked.

445. The statement was sent to Ms. Dauriac,[324] and it was made clear that it was "not a press statement, it is a statement we will use if you or Signia are asked".[325]

446. It was Signia's position that the text of this statement was agreed, and this is borne out by an email from Mr. Lester to Ms. Dauriac, stating:

> "Further to our discussion on 18 December 2014, and in line with what we both agreed, please find below the official statement which will be used in the event that we receive any enquiries from employees, third parties, clients or press."

447. In cross-examination, Mr. Lester explained the thinking behind this:[326]

[324] Under cover of an email dated 19 December 2014.

[325] That was also Mr. Lester's evidence: Day 6/pp.192-193 (cross-examination of Mr. Lester).

Q (Ms. Ford, Q.C.) Well, we can see from your email at the top that the statement that you actually envisaged makes no mention whatsoever of any investigation, you are proposing to say simply that Ms. Dauriac resigned?

A (Mr. Lester) That's what I agreed with Nathalie in the meeting on 18 December, that we'd use that for the external world.

Q (Ms. Ford, Q.C.) And that's not the sort of statement you would put out if you'd merely suspended someone, is it?

A (Mr. Lester) Which statement are you referring to now?

Q (Ms. Ford, Q.C.) A statement that Ms. Dauriac has resigned is not the sort of statement that you would put out if you had merely suspended her pending an inquiry or an investigation into her conduct, is it?

A (Mr. Lester) As I made clear in my statement, I think it would have been very detrimental for a wealth management business to have the CEO suspended subject to an investigation, as a result of which would get out financial irregularities regarding her expenses, and it wouldn't have done Nathalie personally any good. So I said to Nathalie – and this was my idea, nobody else's – that what we should do in the external world, we should just say that you've resigned.

And as I point out in my statement, you would keep all your legal rights of employment as it was spelt out in that letter, and Nathalie agreed that that would be an appropriate approach.

I think when you're dealing with CEOs and the press, I would say on a regular basis, the Financial Times, the Times, the Telegraph, you'll often see statements about CEOs leaving companies, and it's always 99 times out of 100 that the person has resigned. What happens behind closed doors with the chairman involved and other directors is often very different, but that is what the outside statements say, and that's to protect the individuals and protect the company until such time that there's been a – usually what's called a compromise agreement gets signed.

…

Q (Marcus Smith J.) Mr. Lester, that implies that there is no going back. Resignation on one sense is neutral about why someone is leaving. It says, as you've implied, very little.

A (Mr. Lester) Yes.

Q (Marcus Smith J.) But the one thing it does say is that there's a parting of the ways?

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[326] Day 6/pp.190-192.

A (Mr. Lester) Mmm. I covered that as well by saying that if in the event Nathalie came back, we would say we requested her to come back and she agreed. So, you can come back. But I still think announcing to the world that the CEO of a wealth management business where you've got your money or you're trying to get people's money coming into it, to say that they've been suspended subject to an internal investigation – you have got to remember this is on the back that we fired the CFO shortly before this for misuse of expenses as well.

Although her witness statements suggested differently, by the time she gave oral evidence, Ms. Dauriac accepted that she had agreed to this approach.[327]

448. In an email to Mr. Lester dated 23 December 2014, Ms. Dauriac set out her thoughts:

"I have been thinking about the overall situation the whole night and I have to say that I am very confused and I don't really know who to trust anymore at all. Over the last weeks, I have been asked to sign a document that I was allegedly corrupt, asked to mortgage my house to John to fund the business loss when we had a loan available, threatened to be take to the police and the FCA or put the company into liquidation, and now the girls have been bullied into telling lies about me, although I have never asked them to lie and you know it and tried to protect them as realistically they are the ones who did not do their job properly. I also tried to raise money to buy him back and almost [got] there and then was suspended from my company by you for expense claims which, as you confirmed to me, were ridiculous.

I am at risk of losing everything I built for nothing and it feels so unfair and I cannot understand how you can accept that. The business may also not survive it. It also feels to me not like an orderly process, but a dirty war against me for no reason. You have been extremely supportive as a chairman and friend, but over the last weeks I feel that you are somehow not telling me something I am being accused of, as I cannot understand why you are not helping me, and push John more. What they did is not human. I feel like [I am] sitting in the dark without being able to defend myself and I honestly also feel threatened from the experience I had so far. They could come up with all sorts of lies and allegations through pressure on the team which I am not able to respond to in a fair and honest way.

I would need to understand what exactly was sent to the FCA, and please note that as far as I know I am still a director of the business and still employed. I know that you told everyone that I resigned as a window dressing but at the end we need a sensible solution quickly for everyone.

Paul, don't get me wrong, but I feel that you are somehow backing John in this process, and that makes me feel so bad because, first, I cannot understand why and how anyone can let someone be [treated] like this and then I cannot really trust anyone any more and need to start to defend myself in a way I never wanted to…"

449. The question is whether the press statement was simply window dressing, or whether Ms. Dauriac had, in fact, resigned. Her email suggests that she had not resigned. So, too, does the fact that Ms. Dauriac had been told she had been suspended, pending

[327] Day 8/pp.2-4 (cross-examination of Ms. Dauriac).

investigation. As will be seen, that investigation resulted in a report and ultimately in disciplinary proceedings.

450. All this, therefore, is consistent with Ms. Dauriac not resigning at this stage, and I find that Ms. Dauriac did not resign and that her employment at Signia continued. Yet Signia's advisory board were told that Ms. Dauriac had tendered her resignation, in emails dated 19 December 2014. Mr. Lester justified this to Ms. Dauriac as being consistent with "our joint approach to the external world…It helps you and the business as we discussed last night". It would therefore appear that these emails to the advisory board were, like the press statement, "presentational" only.

(kk) The statement of the investigation

451. By a document dated 11 January 2015, a summary of the investigation into Ms. Dauriac and the conclusions of that investigation was published internally. The document reads as follows:

"Investigation into Expenses Discrepancies – Nathalie Dauriac-Stoebe

Summary Investigation and Conclusions – TIMOTHY MAYCOCK

Date 11/01/2015

Investigations: Timothy Maycock (TM) (reviewed documentation and conducted interviews) David Canfield (reviewed documentation and conducted interviews)

In October [2014], a whistleblower with access to Nathalie Dauriac-Stoebe's (ND) expense records submitted these records to David Canfield in his role as director of Signia. The whistleblower was concerned over the amounts being claimed, and the appropriateness of some of those claims.

I have reviewed these expenses and found them to contain substantial amounts reclaimed that were not considered to relate to activities wholly and exclusively undertaken in the course of Signia's business.

In order to confirm the authenticity of the documents provided by the whistleblower and protect the identity and activity of the whistleblower, a formal request for the expense records for the whole executive committee was made by DC on 11 November 2014.

Expense claims for Nathalie were submitted via email to DC on the 12 November 2014 by Janet Tarbet. On receipt, these claims were compared to those received [from] the whistleblower and found to contain both deletions of expense records and alterations to the description of the amount claimed. Many of the claims deleted or changed were found to be for amounts considered to relate to non-business activities.

By coincidence, ND arrived at [Mr. Caudwell's] home in Mayfair on the evening of the 12 November and found DC and JC together. ND was confronted with the early findings of my comparison and a heated exchange took place. It was agreed that DC and TM would meet ND at Signia's office at 7:30am on the 13th November.

On the 13 November, ND was presented by DC and TM with the results of the comparison of the 2013 and 2014 records for claims made on the corporate credit card provided to ND by Signia.

The explanation given for these changes was not found to be sufficient to explain their existence and it was agreed that further investigation as to their validity would take place performed by TM at Signia.

The investigation has concluded there is sufficient evidence of discrepancies in ND's expenses, as follows. For the disciplinary procedure to be commenced.

1. ND has used the corporate credit card and claimed back amounts paid personally for expenditure not wholly and exclusively incurred in the course of business in direct contravention of Company Policy and ND's contract of employment. A full listing of these items is attached.

2. ND has made numerous claims without the supporting receipts or mileage declarations, in direct contravention of Signia's policy.

3. ND herself and via instruction to her personal assistant made extensive changes to her expense records to conceal the personal nature of the claims due to her becoming aware that DC would be reviewing expense claims via a related party. The explanation put forward by ND for the changes made has been found to be untrue. A full listing of the changes made to the forms is attached.

4. The changes made to the expense claims broadly fall into the following categories:

    i. Virtually all expenditures relating to John Caudwell, whether legitimate business expense or personal in nature have been changed to either just state "client", been removed completely or been changed to another client name.

    ii. Virtually all claims relating to ND's family, of which the majority relate to travel costs, have either been removed or the description amended to remove the previously stated family member's name.

    iii. Expenses for entertaining friends known by DC were changed to other legitimate client names."

(ll) Further interviews

452. On 13 January 2015, Mr. Canfield conducted a follow up interview with Ms. Ohbi and Ms. Degruttola.

(mm) Ms. Dauriac queries her on-going suspension

453. In a letter dated 15 January 2015 sent to Ms. Ohbi, Ms. Dauriac raised various issues in relation to her on-going suspension, which she described as "a campaign to force me out of the Company". She concluded by expressing the view that "I consider the Company's ongoing course of action to be entirely unauthorised and damaging to the value of the business and its reputation".

(nn) Ms. Degruttola complains of pressure

454. In an email also dated 15 January 2015, Ms. Degruttola emailed Ms. Ohbi to indicate that, because of ill-health, she would not be coming into work that day. In an email sent later on the same day, she explained further:

"…to be honest, I am really not coping very well at the moment. I feel completely pressurised by David and his team into giving statements on this whole issue with Nathalie and I feel like I've been manipulated to make statements which are not entirely accurate as I was under so much pressure. All of this pressure is starting to affect my health and I really don't know whether I'm coming or going at the moment…"

455. Ms. Degruttola left Signia for good the next day.[328]

(oo) Invitation to a disciplinary hearing

456. Also on 15 January 2015, Ms. Dauriac was invited to attend a disciplinary hearing on 22 January 2015 at Eversheds LLP. The letter stated:

"Given the issues you have raised, to ensure independence the Company has appointed an independent HR consultant to conduct the disciplinary hearing. The consultant is Steve Bolton, HR Consultant at Eversheds LLP. Steve will be accompanied by Tim Maycock who will attend the meeting in order to provide any necessary points of clarification.

There has been an investigation into anomalies in the expenses you have claimed and charges to your company credit card, and there is evidence to support allegations that:

1. You dishonestly, in breach of contract and in breach of your fiduciary duty to the Company, submitted expense claims for reimbursement for charges incurred for expenditure that was personal and which was not wholly and necessarily incurred by you in the proper course of your duties as an employee of the Company.

Particulars of dishonesty and breach of fiduciary duty

It has been identified that you have:

- Used the Company corporate cards to pay for personal meals, travel, gifts and other expenses for yourself and your family;

- Filed expense claims for reimbursement of personal expenses without production of a valid receipt or evidence of actual expenditure; and

- Disregarded your duties as a CF1 and CF3 person and have failed to fully record details of gifts or hospitality either received or given on the Company's gift register.

You are alleged to have done this on multiple occasions; dates and details of which are set out in the attached spreadsheet labelled Spreadsheet A.

2. Upon being informed that your expenses were to be the subject of a formal review, in order to cover up your actions and to justify the use of the company card and the claims for reimbursement, you dishonestly, in breach of contract and in breach of your fiduciary duty to the Company, made and encouraged other employees to make changes to your expense records.

Particulars of dishonesty and breach of fiduciary duty

It has been identified that you have:

[328] See paragraph 80 above.

- Instructed and/or coerced junior colleagues to assist you in amending your expense records in a deliberate attempt to conceal illegitimate claims;

- Used your position of influence to exert undue pressure on junior colleagues to prevent them being fully transparent and from disclosing key facts or information to investigating officers during this investigation;

- Falsely represented to the Company Shareholder and an Investigating Officer on 12th November 2014 that you routinely reimbursed the Company for personal expense you incurred.

You are alleged to have amended multiple expense forms which had already been submitted into the Company system and then caused these amended forms to be submitted to the Investigating Officers. Spreadsheet B sets out the changes made between the original expense forms held on record and the amended forms submitted by you or on your behalf to the Investigating Officers.

If either of these allegations is found to be proved, it will constitute gross misconduct. You should be aware that one of the possible sanctions for gross misconduct is immediate dismissal…

…

You are entitled to bring a colleague or trade union representative with you to this meeting. Please inform us at least 24 hours in advance of this meeting who you would like to attend with you so that we can make arrangements for you to contact this individual.

Should you wish us to consider any additional documents, including any written representations or response to the documents now provided to you, please provide these at least 24 hours before the disciplinary hearing. A copy of the company's Disciplinary Procedure is also annexed to this letter, and you should read this carefully."

(pp) Ms. Dauriac writes accepting constructive dismissal

457. In a letter from Jones Day LLP, solicitors then instructed by Ms. Dauriac, dated 21 January 2015, Ms. Dauriac took issue with the allegations that had been made by Signia, and sought to refute them in some detail. It was alleged that Mr. Caudwell and Mr. Canfield had conspired to have Ms. Dauriac removed from Signia through baseless accusations, threats and intimidation. In conclusion, it was asserted that Signia's conduct constituted a repudiatory breach of her contract of employment amounting to constructive dismissal. Ms. Dauriac accepted that breach, and terminated her employment. She expressly did not resign as a director of Signia.

458. Signia's response (from Ms. Ohbi to Ms. Dauriac direct) came on the same day:

"Dear Nathalie

We understand from your lawyers that you have chosen not to take the opportunity to answer the disciplinary allegations that we have raised and, instead, chosen to resign with immediate effect.

We are disappointed by the above and do not accept any suggestion that the Company has committed any act placing it in breach of your contract of employment (whether of a repudiatory nature or otherwise). Your decision to resign without notice, in fact, places you in

breach of your obligations to us. We could insist you remain employed and continue the disciplinary process but, as you have made clear you will not participate, there is no point in doing so and we accept your repudiatory breach ending your employment today.

In view of the above, the hearing scheduled for tomorrow is cancelled."

H. PURE JATOMI AND THE "SIMILAR FACT" EVIDENCE

(1) The pleaded case

459. By an order dated 6 February 2017, Chief Master Marsh granted Ms. Dauriac permission to amend her case to introduce certain "similar fact" evidence.[329] It is part of Ms. Dauriac's claim against Mr. Caudwell that Mr. Caudwell, Grecco and Signia conspired to terminate her employment, remove her as a director and deprive her of the Dauriac Shares "as punishment for her raising an allegation that Mr. Caudwell had engaged in an exercise to pay £1.7 million into [Signia] using false invoices and evading VAT".[330]

460. This, plainly, is an allegation that will need to be considered and determined. For present purposes, however, all that needs to be noted is that it is to this issue that the similar fact evidence goes. The point is pleaded as follows:[331]

"That Mr. Caudwell, acting either by himself or through Mr. Canfield, has behaved similarly in his capacity as a shareholder of [Pure Jatomi], punishing executives for enquiring into matters relating to his fiscal involvement with the company by commencing an investigation into the misuse of expenses in an attempt to obtain evidence to support dismissals and thereafter dismissing those executives prior to their receipt of bonuses so as to avoid paying those bonuses. In particular:

(i) In Autumn 2015, the Chief Executive Officer of Jatomi (Ms. Gehlan) raised with Mr. Canfield by telephone a concern that both she and Jatomi's Chief Marketing and Brand Officer (Ms. Burger) had about a collection of substantial invoices that Mr. Caudwell had presented to Jatomi at the same time. Those invoices were for management, recruitment and other services that neither Ms. Gehlan nor Ms. Burger ("the Executives") thought Mr. Caudwell had in fact carried out. Mr. Canfield did not claim that the invoices were accurate, but said words to the effect that it "did not matter because the money was really going into the same place anyway".

(ii) In December 2015, the Executives suggested to Mr. Caudwell in a meeting that Jatomi's targets were likely to be met so that 2015 bonuses would be payable. Mr. Caudwell said words to the effect that he "always sets the bonuses high but then finds a way to fire the employee before he has to pay it". Ms. Gehlan protested that not meeting obligations to Polish staff members would have negative consequences. Later in the meeting, Mr. Caudwell suggested a new commission plan for staff and Ms. Burger challenged the plan. Mr. Caudwell said to Ms. Burger words to the effect that she "did not want to go down this road with me" and that "she would not like the outcome".

(iii) In January 2016, Mr. Caudwell instigated an investigation into the expenses of the Executives. Despite the investigation, conducted by Mr. Canfield and another of Mr.

[329] Signia sought permission to appeal this order, and this was refused by Barling J.

[330] Part 20 Particulars/para. 92A.

[331] Part 20 Particulars/para. 92A(d).

Caudwell's trusted lieutenants, Mr. Fenton (who by then had been installed as the Chief Financial Officer at the direction of Mr. Caudwell), Mr. Caudwell was able to find no evidence on which he could mount an allegation of misused expenses. However, on 24 February 2016, the Executives were each summarily dismissed, purportedly for a range of misdeed, including, in the case of Ms. Burger and consistently with the warning that Mr. Caudwell had given her in December 2015, "a lack of discipline and disobedience in the workplace". These simultaneous dismissals of the Executives were effected four days before their bonuses would otherwise have been payable.

(iv) The Executives believe that the investigation into their expenses was commenced because of Mr. Caudwell's displeasure in response to their actions described in sub-paragraphs (i) and (ii) above, or because Mr. Caudwell wished to avoid having to pay bonuses to them, or because of a combination of those reasons, and that its purpose was to serve as a pretext for dismissal. When those investigations uncovered no evidence on the basis of which wrongdoing could be alleged against the Executives, Mr. Caudwell nonetheless required their dismissals just before bonuses were due to be paid, citing reasons which the Executives believe had no foundation and were designed to disguise the real reason for their dismissals. Ms. Dauriac Stoebe infers that the belief of the Executives is well-founded."

461. These are very specific factual allegations relating to the conduct of the Pure Jatomi business. Essentially, what appears to be relied upon by way of similarity to the case of Ms. Dauriac and Signia is that, in the case of Ms. Gehlan and Ms. Burger, Mr. Caudwell sought to use an expenses investigation as a means of dismissing them; failed in this, because (inferentially) their expenses were not capable of sufficient criticism; and then dismissed them anyway, in order to avoid paying them a bonus.

(2) The law

462. The circumstances in which "similar fact" evidence may be admitted into a civil trial were considered in the decision of the House of Lords in *O'Brien v. Chief Constable of South Wales* [2005] UKHL 26, [2005] 2 A.C. 534 and elucidated further in *J.P. Morgan Chase Bank v. Springwell Navigation Corporation* [2005] EWCA Civ 1602.

463. In *O'Brien*, Lord Phillips, who gave the leading speech (with brief concurring judgments from Lords Bingham, Carswell, Steyn and Lord Rodger), said this:

"51 In giving the judgment of the Court of Appeal, Brooke L.J. said:

"It follows that in civil proceedings, as opposed to criminal proceedings, the first question to be asked is whether the similar fact evidence is admissible. To be admissible it must be logically probative of an issue in the case, and the first part of the House of Lords' test in *P* must be applied to exclude evidence which is not sufficiently similar to the evidence in the case before the court."

52 I am inclined to think that, far from this test being too lenient a test of admissibility in civil proceedings, it was too restrictive. The test of admissibility of similar facts against a defendant in criminal proceedings, as propounded in *Director of Public Prosecutions v. P* and in the 2003 Act, requires an enhanced relevance or substantial probative value because, if the evidence is not cogent, the prejudice that it will cause to the defendant may render the proceedings unfair. The test of admissibility builds in protection for the defendant in the interests of justice. It leads to the exclusion of evidence which is relevant on the ground that it is not *sufficiently* probative. So far as evidence of bad character that the defendant wishes to adduce against a police witness, the test of

admissibility in both *Edwards* and section 100 of the 2003 Act requires an enhanced relevance in order to ensure that the ambit of the trial remains manageable.

53 I can see no warrant for the automatic application of either of these tests as a rule of law in a civil suit. To do so would build into our civil procedure an inflexibility which is inappropriate and undesirable. I would simply apply the test of relevance as the test of admissibility of similar fact evidence in a civil suit. Such evidence is admissible if it is potentially probative of an issue in the action.

54 This is not to say that the policy considerations that have given rise to the complex rules of criminal evidence that are now to be found in sections 100 to 106 of the 2003 Act have no part to play in the conduct of civil litigation. They are policy considerations which the judge who has the management of the litigation will wish to keep well in mind. CPR 1.2 requires the court to give effect to the overriding objective of dealing with cases justly. This includes dealing with the case in a way which is proportionate to what is involved in the case, and in a manner which is expeditious and fair. CPR 1.4 requires the court actively to manage the case in order to further the overriding objective. CPR 32.1 gives the court the power to control the evidence. This power expressly enables the court to exclude evidence that would otherwise be admissible and to limit cross-examination.

55 Similar fact evidence will not necessarily risk causing any unfair prejudice to the party against whom it is directed. It would not have done so in *Metropolitan Asylum District Managers v. Hill.* It may, however, carry such a risk. Evidence of impropriety which reflects adversely on the character of a party may risk causing prejudice that is disproportionate to its relevance, particularly where the trial is taking place before a jury. In such a case the judge will be astute to see that the probative cogency of the evidence justifies this risk of prejudice in the interests of a fair trial.

56 Equally, when considering whether to admit evidence, or permit cross-examination, on matters that are collateral to the central issues, the judge will have regard to the need for proportionality and expedition. He will consider whether the evidence in question is likely to be relatively uncontroversial, or whether its admission is likely to create side issues which will unbalance the trial and make it harder to see the wood from the trees. He will have well in mind the considerations that concerned this House when contemplating the effect of the admission of the disputed evidence in *Metropolitan Asylum District Managers v. Hill.*

57 For these reasons I would reject the appellant's submission that similar fact evidence is only admissible in a civil suit if it is likely to be reasonably conclusive of a primary issue in the proceedings or alternatively if it has enhanced relevance so as to have substantial probative value."

464. In *Springwell Navigation Corporation*, the Court of Appeal – in addition to referring to the speech of Lord Phillips – said this:

"67 The law relating to these matters is now relatively straightforward. The judge applied the principles set out in the judgments of this court in *O'Brien v. Chief Constable of South Wales* [2003] EWCA Civ 1085 Although the Chief Constable appealed, the House of Lords made the principles for admissibility even simpler when it dismissed his appeal (see the report at [2005] UKHL 26 ; [2005] 2 WLR 1038). There is a two-stage test: (i) Is the proposed evidence potentially probative of one or more issues in the current litigation? If it is, it will be legally admissible. (ii) If it is legally admissible, are there good grounds why a court should decline to admit it in the exercise of its case management powers? Lord Bingham suggested at para. 6 three matters that might affect the way in which a judge exercised his/her discretion in this regard:

(i) That the new evidence will distort the trial and distract the attention of the decision-maker by focussing attention on issues that are collateral to the issues to be decided;

(ii) That it will be necessary to weigh the potential probative value of the evidence against its potential for causing unfair prejudice;

(iii) That consideration must be given to the burden which its admission would lay on the resisting party.

The first two of these considerations were said to be particularly potent when trial was to be by jury. In relation to the third of these matters, Lord Bingham referred at para 6 to:

"the burden in time, cost and personnel resources, very considerable in a case such as this, of giving disclosure; the lengthening of the trial, with the increased cost and stress inevitably involved; the potential prejudice to witnesses called upon to recall matters long closed, or thought to be closed; the loss of documentation; the fading of recollections."

68 He ended by saying:

"In deciding whether evidence in a given case should be admitted the judge's overriding purpose will be to promote the ends of justice. But the judge must always bear in mind that justice requires not only that the right answer be given but also that it be achieved by a trial process which is fair to all parties.""

465. In this case, of course, the question of admissibility was decided by Chief Master Marsh and – given the expansive rules that apply in civil cases – it was certainly a case management decision that was open to him. Permission to appeal that decision was, entirely unsurprisingly, refused by Barling J.

466. As a result of the permission to adduce this evidence, quite substantial witness evidence was produced. There were no less than four witnesses specifically and only called to deal with the Pure Jatomi allegations – Mr. Fenton, Mr. Balfour, Ms. Gehlan and Ms. Burger – each of whom gave substantial witness statements (Fenton 1, Balfour 1, Gehlan 2 and Burger 1). The Pure Jatomi issues were also addressed by other witnesses (notably Mr. Canfield and Mr. Caudwell) in their evidence (Canfield 2 and Caudwell 2).

467. Although I had considerable concerns about the similar fact evidence, which I expressed to counsel during the course of opening,[332] it seemed to me that the only appropriate course was to hear the evidence, the decision to admit it having effectively already been made. The evidence on Pure Jatomi – including that from Mr. Canfield and Mr. Caudwell, but also that of Mr. Fenton, Mr. Balfour, Ms. Gehlan and Ms. Burger – took about two days to hear.

[332] Day 1/pp.16-20 and 136-140.

(3) The similar fact evidence in this case

(a) The primary case: the conspiracy allegation

468. The basis upon which the Pure Jatomi evidence is probative of the matters at issue before me is set out in paragraphs 468-470 of Ms. Dauriac's written closing submissions. In essence, the contention is that Mr. Caudwell sought to use an expenses investigation as a means of dismissing Ms. Gehlan and Ms. Burger; that this was pre-planned; that, having failed to use expenses as a lever for their departure, because (inferentially) their expenses were not capable of serious criticism, Mr. Caudwell dismissed Ms. Gehlan and Ms. Berger anyway, in order to avoid paying them a bonus. Paragraph 471 concludes:

> "Insofar as there is a dispute about Ms. Gehlan and Ms. Burger's performance, it is not suggested that the Court should resolve it. The parallels between Ms. Gehlan and Ms. Burger's treatment are striking, and remain relevant whether the performance allegations were or were not ill-founded. These events at Pure Jatomi show similar fact evidence of the formation of a conspiracy to get rid of employees before they cashed in on some sort of entitlement following a breakdown in relations."

I shall, purely as a shorthand, refer to this allegation as the "conspiracy allegation".

(b) A secondary case: disparaging and offensive comments

469. In addition to the conspiracy allegation, Ms. Dauriac relied upon the treatment of Ms. Gehlan and Ms. Burger while at Pure Jatomi,[333] and in particular a number of disparaging and offensive comments made about Ms. Gehlan and Ms. Burger behind their backs.

470. It will be necessary to consider the conspiracy allegation in a little greater detail below. I deal with this second, subsidiary, allegation now.

471. There can be no doubt that some of the email communications emanating from Mr. Fenton and (to an extent) Mr. Canfield in relation to Ms. Gehlan and Ms. Burger were deeply unpleasant, offensive, and to be regretted.

472. But, no matter how much I might deprecate such comments, I fail to see how the making such abusive messages can assist me in deciding the substantive matters before me in this dispute. It may well be that Mr. Canfield (for neither Mr. Fenton nor Mr. Balfour had anything to do with the substance of the Signia/Dauriac dispute that I am obliged to determine) had the capacity for acting unpleasantly. But that general characteristic cannot help me to determine the present case. That is an invitation to pre-judgment: because X has behaved unpleasantly in certain (otherwise irrelevant) circumstances, I cannot just infer that he or she has behaved unpleasantly in the case in issue.

473. I have seen and heard considerable evidence in relation to the manner in which Ms. Dauriac came to leave Signia, including less than flattering email communications about Ms. Dauriac between Mr. Canfield and Mr. Maycock. It is these communications to which, as part of the background to this dispute, I must have regard.

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[333] See paragraphs 470(6) and (7) of Ms. Dauriac's written closing submissions, in particular.

474. For purposes of this dispute, I leave out of account as irrelevant and prejudicial[334] the disparaging comments that were made about Ms. Gehlan and Ms. Burger. Of course, I recognise that Ms. Gehlan and Ms. Burger will have found these comments upsetting when they saw them, and may have found their experiences at Pure Jatomi challenging and difficult. I consider this further when I assess the weight that I should give to their evidence.

(c) A third point: admission by Mr. Caudwell

475. Ms. Dauriac also relied upon an alleged statement by Mr. Caudwell at a meeting in December 2015 attended by Mr. Canfield, Mr. Fenton, Mr. Balfour, Ms. Gehlan and Ms. Burger.

476. At this meeting, it was suggested by Ms. Gehlan and Ms. Burger that Mr. Caudwell had said words to the effect that he "always sets the bonuses high, but then finds a way to fire the employee before [he] has to pay it".[335] It was denied by Mr. Caudwell, Mr. Fenton and Mr. Balfour that these words were said.

477. This statement does not form part of Ms. Dauriac's pleaded case, but reference was made to it in the witness statements and a number of people were cross-examined about it. I do not consider that the point can simply be disregarded. But it is not similar fact evidence. If anything, it is an admission by Mr. Caudwell that he sought to force employees out before their bonuses accrued due. I propose to consider the alleged statement in that light.

(d) Considerations in evaluating the conspiracy allegation

478. In order to evaluate the conspiracy allegation, it is necessary to consider first the witness evidence that was adduced in support of that allegation, and then the allegation itself. The witness evidence is considered in Section H(4) below. The conspiracy allegation is then considered in Section H(5) below. Finally, the alleged admission by Mr. Caudwell is considered in Section H(6) below.

(4) The witness evidence

(a) Mr. Caudwell and Mr. Canfield

479. I have already given my assessment of Mr. Caudwell and Mr. Canfield as witnesses.

(b) Mr. Fenton and Mr. Balfour

480. Mr. Fenton and Mr. Balfour were impressive witnesses, who gave me their explanation of why the state of affairs at Pure Jatomi was such as to require the ending of Pure Jatomi's employment relations with Ms. Gehlan and Ms. Burger. They were impressive in their recall of, and comment upon, the factual detail, and I consider that they were entirely sincere in their explanations of the conduct of business at Pure Jatomi. Inevitably, they were justifying their own conduct. To that extent they were *parti pris*, I

[334] That is: this evidence was purely prejudicial and without probative value.

[335] Gehlan 2/para. 20; Day 10/pp.39, 45 (cross-examination of Ms. Gehlan); Burger 1/para. 12; Day 10/pp.75-78 (cross-examination of Ms. Burger).

have taken this into account. I consider that they gave their evidence honestly and that they were doing their best to assist the court.

(c) Ms. Gehlan

481. Ms. Gehlan was a dishonest witness who, as I find, was prepared to say anything to advance her interests which, in this instance, were aligned with those of Ms. Dauriac. I appreciate that these are serious findings in relation to Ms. Gehlan and it is important that I state their basis.

482. Ms. Gehlan's evidence began unsatisfactorily because she was only prepared, in her evidence in-chief, to affirm the truth of Gehlan 2:

(1) Whilst it is true that Gehlan 2 was the only statement prepared for the actual trial of these proceedings, Gehlan 1 was a substantive statement explaining why the similar fact evidence should be admitted. It traversed a lot of the same material – albeit in perhaps less detail – as Gehlan 2. It was Gehlan 1 – amongst other things – that persuaded Chief Master Marsh to admit the similar fact evidence. So it was extremely odd that Ms. Gehlan was not prepared to affirm this statement as her evidence (with or without corrections).[336]

(2) During the course of her cross-examination, it became clear that the reason Ms. Gehlan did not affirm Gehlan during the course of her evidence in-chief was because it was, in material respects, no longer true.[337]

(3) In Gehlan 1/para. 37, Ms. Gehlan described her dismissal from Select some four weeks after she started on the grounds of a lack of "cultural fit". She asserted that Mr. Caudwell was, in some way, involved in this dismissal.[338] Subsequent to the making of this statement – which was supported by a statement of truth – Ms. Gehlan learned that she was wrong in her assertion:[339]

A (Ms. Gehlan)	I removed this section from my witness statement because, due to evidence that came to light in the Select case and disclosures, I realised that this part of my statement was incorrect and that actually Mr. Canfield did not contact Select until June that year.
Q (Ms. Carss-Frisk, Q.C.)	So, you're saying that you now want to remove that part of your first witness statement?
A (Ms. Gehlan)	But I didn't swear in this witness statement, I changed it because I realised that there was, during the course of the disclosures in the Select

[336] Day 9/pp.149-152 (cross-examination of Ms. Gehlan).

[337] The exchange at Day 10/pp.17-18 (cross-examination of Ms. Gehlan) is particularly revealing. Ms. Gehlan considered that she could, simply by leaving out of Gehlan 2 points that were inaccurate in Gehlan 1, thereby depart from an earlier version of events expressed by her in Gehlan 1. Yet, inconsistently, parts of Gehlan 2 (e.g. Gehlan 2/para. 13), referred back to and corrected Gehlan 1.

[338] Day 10/pp.14-15 (cross-examination of Ms. Gehlan).

[339] Day 10/p.15. See also Day 10/p.19 (cross-examination of Ms. Gehlan).

> case, so I made it – I changed my witness statement and I removed it. This is what I believed at the time, and then I saw evidence to the contrary, so I changed my statement so that it would be honest evidence.

I appreciate that interlocutory statements do not normally feature at the substantive trial. That is because their content is, usually, irrelevant by this stage. That was not the case with Gehlan 1 which, as I have noted, traversed a similar subject-matter to, and was referred to in, Gehlan 2.

483. During the course of cross-examination, it was established that Ms. Gehlan was perfectly capable of lying (that is to say, was capable of telling <u>deliberate</u> untruths) when it suited her interests:

(1) In her witness statement, Ms. Gehlan said this:[340]

> "The situation was incredibly stressful and so much so it was affecting both my physical and mental wellbeing and I was unable to attend work for a few days. I returned to work on 22 February 2016…"

She testified that she was off work due to illness from 4 February until 22 February 2016, and medically signed off from 8 February 2016.[341] Whilst Ms. Gehlan did not attend for work at Pure Jatomi, during this time she sought other work with what would prove to be her next employer, Select. She travelled to and attended meetings for this purpose. She also lied about what she was doing:[342]

Q (Ms. Carss-Frisk, Q.C.)	So, on 5 February you were not unwell then? Is that right?
A (Ms. Gehlan)	No, I wasn't – I think I had reported in sick on the 5th or the 4th. I think I reported in sick on the 4th.
Q (Ms. Carss-Frisk, Q.C.)	So, is it your evidence that on 4 and 5 February you were too unwell to attend work?
A (Ms. Gehlan)	I was signed off with stress, yes.
Q (Ms. Carss-Frisk, Q.C.)	The answer is, yes: too unwell to attend work. Were you in hospital?
A (Ms. Gehlan)	I was in hospital having a procedure on one of – the day before, actually, yes.
Q (Ms. Carss-Frisk, Q.C.)	The day before? Which day?
A (Ms. Gehlan)	The Monday – or…I can't remember. The Monday of that week or the Tuesday of the week of the 5th.

[340] Gehlan 2/para. 30.

[341] Day 10/pp.2-3.

[342] Day 10/pp.2*ff*.

Q (Ms. Carss-Frisk, Q.C.) Well, Ms. Gehlan, can we get the chronology straight as to some things that you were doing in the period we are discussing?

A (Ms. Gehlan) Yeah.

Q (Ms. Carss-Frisk, Q.C.) Would you accept that on 2 February you saw a headhunter about a potential job at Select?

A (Ms. Gehlan) I did, yes.

Q (Ms. Carss-Frisk, Q.C.) And would you accept that on 15 February you saw the chief operating officer of Select in Southampton?

A (Ms. Gehlan) I did, yes.

Q (Ms. Carss-Frisk, Q.C.) …in Manchester?

A (Ms. Gehlan) That's correct.

Q (Ms. Carss-Frisk, Q.C.) All of which was considered, wasn't it, in the Employment Tribunal proceedings against Select?

A (Ms. Gehlan) I think that being stressed off from one job does not prevent me from going to job interviews for another one, because of the job I was in. I think it's perfectly natural that you would look for alternative employment. And I didn't look for it, actually: as you say, I was headhunted for that one.

Q (Ms. Carss-Frisk, Q.C.) Perfectly natural that you would claim to be too unwell to attend your actual employment, but at the same time be going off meeting people from a potential new employer?

A (Ms. Gehlan) But my illness was a stress-related illness, so it was related to my employment. So, that doesn't prevent me from doing other things, it just means that I felt too stressed at the circumstances within Jatomi to attend that job at the time. That doesn't mean I can't do other things. I wasn't dysfunctional.

…

Q (Ms. Carss-Frisk, Q.C.) [Referring to an email sent by Ms. Gehlan to Mr. Canfield at 5:53am on 5 February 2016] And do you see you say to Mr. Canfield:

"David, I would appreciate you re-schedule our call today [i.e. on 5 February]. Unfortunately, I have been kept in hospital.

I'm sure it's nothing serious, and I will be home and well Sunday."

You are telling Mr. Canfield, aren't you, that you have been kept in hospital on 5 February so you can't have a call with him on that day?

A (Ms. Gehlan) At 5:53 in the morning, that was correct, yes?

Q (Ms. Carss-Frisk, Q.C.) You're seriously suggesting you were in hospital at 5:53 in the morning?

A (Ms. Gehlan) I'm not suggesting it, I'm telling you, that I was from the…in that morning in the hospital at 5:53am, yes. That's how I sent an email at 5:53am.

Q (Ms. Carss-Frisk, Q.C.) And that is after that, you say, do you, that you went off to Southampton to see the CEO of Select on that day?

A (Ms. Gehlan) That's correct.

Q (Ms. Carss-Frisk, Q.C.) What, from Scotland to Southampton on that day?

A (Ms. Gehlan) It's a flight, it takes 45 minutes.

Q (Ms. Carss-Frisk, Q.C.)) What time did you leave the hospital?

A (Ms. Gehlan) About 7:30 in the morning.

Q (Ms. Carss-Frisk, Q.C.) Let's have a look at another email you sent to Mr. Canfield on 8 February…

"David

Thanks for your note, I was actually just writing to you when this came in. Just so you are aware, and without going into too many details, last week I had a minor planned treatment on Wednesday of which I had previously booked the two days off work, I was home by Thursday afternoon. However, on Thursday evening, around 10:00pm, I felt extremely unwell and my family being so concerned got medical assistance for me, I was detained for tests and returned home yesterday…"

And then you set out various things about an alleged condition.

In other words, you were telling Mr. Canfield that you were in hospital between the Thursday and the Sunday of 7 February?

A (Ms. Gehlan) Where does it say the Sunday, here, sorry?

Q (Ms. Carss-Frisk, Q.C.) Well, you are writing this on Monday, 8 February?

A (Ms. Gehlan) Yes.

Q (Ms. Carss-Frisk, Q.C.) And you say, "I was detained for tests…".

A (Ms. Gehlan) Yeah.

Q (Ms. Carss-Frisk, Q.C.) That's from the Thursday:

"…and returned home yesterday…"

I.e. "yesterday" being Sunday, the day before the Monday of this email.

So you were, I suggest, lying to Mr. Canfield

about your stay in hospital?

A (Ms. Gehlan) Perhaps I was in that email, that's correct.

Q (Ms. Carss-Frisk, Q.C.) Perhaps you were.

Perhaps, Ms. Gehlan, you are prepared to say anything that will suit your purpose at any given time, whether true or false?

A (Ms. Gehlan) I don't think that's correct, no. I think this is a particularly stressful situation at this time, so it's a different set of circumstances.

(2) Ms. Gehlan's position was that she was unjustifiably summarily dismissed from Pure Jatomi on 24 February 2016.[343] Yet in a claim for unfair dismissal made against Select, Ms. Gehlan gave a different version:[344]

Q (Ms. Carss-Frisk, Q.C.) But I'm sure you remember, Ms. Gehlan, that what you told the Employment Tribunal in your case against Select was rather different, wasn't it, because in that proceedings you told the Tribunal you had resigned?

A (Ms. Gehlan) Yes, let me explain that. I did accept an offer of employment in February from Select on the morning of the 24th.

Q (Marcus Smith J.) The 24th of which month?

A (Ms. Gehlan) 24 February, thank you.

I was made aware by a Wioletta Januszcyk, who was our HR director, that I was going to be terminated that day. So I made a decision within myself that I didn't want that to happen, I actually wanted to take the honest route and exit the business on constructive dismissal and do it on my own terms.

So I sent an email, that's correct, to Mr. Caudwell that morning at around 9:30am. It's deemed so, that Mr. Caudwell never received that letter, or either that or they ignored it and continued with the termination. But either which was, I was legally terminated. So my statement is correct: I was terminated on that day.

Q (Ms. Carss-Frisk, Q.C.) You sent an email, you say, on the morning of the 24th to Mr. Caudwell?

A (Ms. Gehlan) That's right.

Q (Ms. Carss-Frisk, Q.C.) Can we have a look at the witness statement

[343] Gehlan 2/paras. 30-31.

[344] Day 10/pp.8*ff*.

	that you gave to the Employment Tribunal…? "I received an offer letter sent to me on 23 February 2016, signed by Mr. Stott…" So that's the offer letter from Select, is it?
A (Ms. Gehlan)	That's correct.
Q (Ms. Carss-Frisk, Q.C.)	Not the 24th then, but 23 February?
A (Ms. Gehlan)	No, but what I said is I sent my resignation on the morning of the 24th. I didn't say I received my offer on the 24th.
Q (Ms. Carss-Frisk, Q.C.)	I see. I thought you had. Para. 37 on the same page: "I then resigned my previous employment from Jatomi. I resigned from Jatomi by sending a letter of resignation to Mr. Caudwell by email which I sent through their work systems. I think I sent this to him at about 9:00am on 24th…I don't know whether or not that email was ever received by him or what happened to it." Ms. Gehlan, that email, as I'm sure you are aware, has not been found. It was not an email, I would suggest, that you ever sent?
A (Ms. Gehlan)	I did actually find it, sorry.
Q (Ms. Carss-Frisk, Q.C.)	You found it?
A (Ms. Gehlan)	Well, Ms. Burger actually had a copy of it, so we do have it… …
Q (Ms. Carss-Frisk, Q.C.)	Now, why, if you claim that was the case, that you did send that email, that you resigned from Pure Jatomi, why is there no evidence of that in your witness statement in this case?
A (Ms. Gehlan)	This case is about something completely different. This case is about how I was treated by Jatomi…

484. The circumstances of Ms. Gehlan's departure from Pure Jatomi were, of course, central to the conspiracy allegations. Yet it was on these points that Ms. Gehlan's evidence was particularly unreliable. I conclude that I am unable to place reliance on Ms. Gehlan's evidence.

(d) Ms. Burger

485. Ms. Burger had worked with Ms. Gehlan previously, whilst they were both at Burger King.[345] She had, quite evidently and (as I find) quite genuinely found her time at Pure Jatomi unhappy. Of her time at Pure Jatomi she said:[346]

> "…in 15 years that I have worked as a professional businesswoman, I have never experienced the humiliation, the mobbing, the mocking and just bad business, unethical behaviour driven by Mr. Caudwell…"

The tenor of the emails written about her (and Ms. Gehlan) behind her back must have translated into a less than pleasant working environment.

486. The process of recollecting events, and the experience of seeing for the first time what was said behind her back, for the purposes of these proceedings only served to increase Ms. Burger's sense of grievance.[347]

487. Entirely understandably, I consider that Ms. Burger's recollection of events has substantially been coloured by her attempts at recollection and reconstruction after the event. I make absolutely no criticism of this: but I am not satisfied that Ms. Burger's recollections were particularly robust, nor that they were uncoloured by Ms. Gehlan's altogether more robust assertions about events at Pure Jatomi.

(5) The conspiracy allegation

488. I do not consider that the conspiracy allegation assists in any way in determining the primary matters that arise for decision in this case. I reach this conclusion for the following of reasons.

(a) No evidence of a "conspiracy" at Pure Jatomi

489. In the first place, I do not consider that there is any evidence to conclude that there was a "conspiracy" to get rid of Ms. Gehlan and Ms. Burger. Obviously, Ms. Gehlan's and Ms. Burger's employment at Pure Jatomi was terminated. I am satisfied that Ms. Burger was dismissed. I am less satisfied that that is so in the case of Ms. Gehlan. I consider (although I make no finding in this regard) that a respectable argument could be made that Ms. Gehlan jumped (i.e. resigned) before she was pushed (i.e. dismissed).

490. It is unnecessary to decide the point because I am completely satisfied that, however their employment relationship came to an end, there is no evidence of a conspiracy.

491. There was ample evidence – in the form of the testimony of Mr. Caudwell, Mr. Canfield, Mr. Fenton and Mr. Balfour – to support a conclusion that the termination of Ms. Gehlan's and Ms. Burger's employment was justified by them on performance grounds. Even if Ms. Gehlan's and Ms. Burger's employment was (as they say) unjustifiably terminated, that says nothing about a conspiracy to do so, and still less

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[345] Day 10/pp.57-58 (cross-examination of Ms. Burger).

[346] Day 10/p.58 (cross-examination of Ms. Burger). See also Day 10/p.59 (cross-examination of Ms. Burger).

[347] I.e. the derogatory emails referenced above. For Ms. Burger's reaction in court, see Day 10/pp.64-66 (cross-examination of Ms. Burger).

about a common practice of Mr. Caudwell in relation to his employees. The most that can be said – and I am doubtful even of that – is that Ms. Gehlan and Ms. Burger were wrongfully dismissed.

492. I should be clear that I do not accept the submission, advanced by Ms. Dauriac, that questions of Ms. Gehlan's and Ms. Berger's performance can be separated from the treatment of Ms. Gehlan and Ms. Burger. The two are intrinsically linked:[348] if Ms. Gehlan's and Ms. Burger's performance was as appalling as Mr. Caudwell, Mr. Canfield, Mr. Fenton and Mr. Balfour contended, then that explains their dismissal. As it is, even if their performance was not so bad as to justify dismissal, it was, in my judgment, the direct cause of that dismissal.

(b) No similarity with events at Signia

493. The similarity that is relied upon by Ms. Dauriac is that, in the case of Ms. Gehlan and Ms. Burger, Mr. Caudwell sought to use an expenses investigation as a means of dismissing them; failed in this, because (inferentially) their expenses were not capable of serious criticism; and then dismissed them anyway, in order to avoid paying them a bonus. The point being made is that there was a general conspiracy or practice to get rid of employees before they cashed in on some sort of entitlement following a breakdown in relations.

494. Beyond the fact that the relationship between Signia and Ms. Dauriac terminated, just as the relationship Ms. Gehlan and Ms. Burger had with Pure Jatomi terminated, I can see no similarity between the situation at Pure Jatomi and that at Signia so as to permit me to found any conclusion in the Signia case based upon what happened in the case of Pure Jatomi:[349]

(1) The issues at Pure Jatomi related to the performance of Pure Jatomi under the leadership of Ms. Gehlan and Ms. Burger. I make no findings as to whether the views expressed in relation to Pure Jatomi's under-performance and Ms. Gehlan's and Ms. Burger's poor performance as managers are justified or not. But the fact is that these issues are a world apart from what drove the investigation into Ms. Dauriac. The narrative, which I have set out in detail above, shows that the driver behind the investigation into Ms. Dauriac was her expenses. There is also the question as to whether Ms. Dauriac was a whistle-blower (to which I shall return). The performance of Signia – whether disappointing or otherwise – does not feature in the contemporary documentation.[350]

(2) Equally, the issues said to arise in the case of Signia are very different from those in Pure Jatomi. The issues in the case of Pure Jatomi were, essentially,

[348] I cannot say whether the two are causally linked without actually deciding the facts in issue. Given the conclusions that I have reached as to the probative value of the Pure Jatomi evidence, it would be a mistake to open yet further, substantial, factual issues, whose resolution will not actually assist in deciding the issues truly before me.

[349] I appreciate that the events at Pure Jatomi relied upon by Ms. Dauriac post-dated those at Signia. That, as it seems to me, is irrelevant. If post-dated material is probative, then it should not be excluded for that reason alone.

[350] Signia did try to make something of this in after-the-event witness statements. But I do not consider that Signia's performance had a material bearing on the investigation into Ms. Dauriac.

performance-based. There may be an additional personal factor – regarding Mr. Caudwell's alleged antipathy to the bonus scheme put forward by Ms. Gehlan and Ms. Burger – but that is as far as it goes. By contrast, Ms. Dauriac is contending that she was a whistle-blower (her case is summarised in paragraph 167 above), and that she was effectively hounded out of the company by Mr. Caudwell and Mr. Canfield, using expenses as a pretext.

(3) That leads to a further difference. In Ms. Dauriac's case, it was her expenses that lead to her departure: there was an actual allegation of wrongdoing on the part of Ms. Dauriac relating directly to her expenses. Ms. Dauriac contends that these allegations were spurious, and she is perfectly entitled to make that argument. But the fact is that expenses were not the pretext for getting rid of Ms. Gehlan and Ms. Burger. If anything – because the expenses allegations were persisted with in the case of Ms. Dauriac and dropped in the case of Ms. Gehlan and Ms. Burger – the facts of Pure Jatomi suggest that Mr. Caudwell only pursued expenses allegations when he considered they were justified. That, I consider, is an inference one could fairly draw. But I expressly do not draw it, because (as I have indicated) I regard the two cases as so widely different as to render it unsafe (even if the facts were straightforward) to read across any inferences from one case into the other.

(c) Factual unreliability

495. Even if the facts were straightforward and uncontested, in my judgment the Pure Jatomi case is so dissimilar to the present as to render the Pure Jatomi case valueless in probative terms. But the facts were not straightforward and were not uncontested. There were a myriad of details regarding the departure of Ms. Gehlan and Ms. Burger that were contested. I do not seek to resolve these issues – that would be disproportionate – but to the extent that the so-called similarity between the Pure Jatomi case and the Signia case rests on the evidence of Ms. Gehlan and Ms. Burger, it rests on very shaky foundations indeed.

(6) The alleged admission by Mr. Caudwell

496. I do not believe that such a statement was ever made by Mr. Caudwell. As I have noted, only Ms. Gehlan and Ms. Burger suggested that such a statement had been made. Mr. Caudwell, Mr. Canfield, Mr. Fenton and Mr. Balfour denied it. Of course, I appreciate that the evidence on this point went entirely according to side, those called by Ms. Dauriac asserting that the statement had been made, and those called by Mr. Caudwell asserting that it had not.

497. Nevertheless, I have found Mr. Caudwell, Mr. Canfield, Mr. Fenton and Mr. Balfour to be – within certain limits – reliable. I certainly do not believe that they would lie about such a matter. It is possible – but unlikely – that they had forgotten. I shall return to this point: it seems to me, given the extraordinary nature of the statement, that it is most unlikely that the statement, if made, would be forgotten.

498. On the other hand, I found Ms. Gehlan and Ms. Burger to be unreliable witnesses. I have, for the reasons I have given, essentially discounted anything Ms. Gehlan said: I do not consider her to be a witness of truth. Ms. Burger was, I consider, seeking to tell

the truth. But I am – for the reasons I have given – not persuaded as to the accuracy or correctness of her recollection on this or other points.

499. Finally, there is the intrinsic implausibility of Mr. Caudwell saying to four employees – all of whom were paid on a bonus basis – that his *modus operandi* was to seek to deprive employees of their bonuses. Such a comment would, in these circumstances, have been a remarkably stupid one to make and Mr. Caudwell is not a stupid man.[351] What is more, the remark does not appear to accord with Mr. Caudwell's practice: as Mr. Fenton pointed out, he tended to pay his employees their bonuses.

(7) Conclusion

500. I conclude that there is no probative value in the events at Pure Jatomi relied upon by Ms. Dauriac. Mr. Caudwell has a number of business interests which involve the employment and termination of managers. Ms. Dauriac's departure from Signia is one such instance; Ms. Gehlan's and Ms. Burger's departure from Pure Jatomi another. There, the similarity ends.

501. It was not contended that there was any specific link between these two cases, save that they evidenced a general practice on the part of Mr. Caudwell and/or the businesses associated with him. I have seen no evidence of such a general practice, and I regard the Pure Jatomi evidence as, essentially, irrelevant to the matters that need to be determined in this case.

502. I appreciate that the test regarding the admission of "similar fact" evidence is one of relevance.[352] Factors important in the criminal law, such as whether the evidence is "strikingly similar" or whether the defendant is prejudiced by the evidence, take a back seat. Nevertheless, it is important to note that "similar fact" evidence occupies an ambivalent position between evidence directly relevant to the issues in a case and evidence as to collateral facts:

(1) Facts in issue are those necessary in law to establish the claim, the liability or the defence that:

(a) Forms the subject-matter of the proceedings; and

(b) Is in dispute between the parties.[353]

Facts relevant to these issues are facts which tend, directly or indirectly, to prove or disprove a fact in issue.[354] Subject to the general power of the judge to control

[351] The point was put to Ms. Gehlan in cross-examination (Day 10/pp.46-47). She stood by her evidence that the comment had been made, but could give no sensible reason as to why it should have been made. The point was also put to Ms. Burger, who "was surprised that he would say something like that, because I believed at the time that Mr. Caudwell truly believed in paying people bonuses" (Day 10/p.79).

[352] See paragraphs 462-464 above; and Malek *et al* (eds.), *Phipson on Evidence*, 19th ed. (2018) at [39-35].

[353] Phipson, *op. cit.*, at [7-02].

[354] Phipson, *op. cit.*, at [7-03].

the evidence, including the power to limit cross-examination,[355] a witness' answers on these issues will not be final, but may be probed in cross-examination.

(2) By contrast, answers to questions as to collateral facts, put in cross-examination, are generally regarded as final, in the sense that the cross-examining party may not then seek to contradict such answers by other evidence.[356]

(3) "Similar fact" evidence is something of a misnomer. Essentially, it is evidence that is probative in relation to the facts in issue, even though it is at first sight collateral. Typically, it will go to showing a propensity to behaving in a certain way, so that (by relying on that propensity) it can be contended that a fact in issue ought to be determined in a particular way. It follows that similar fact evidence is strictly speaking collateral but, because of its probative importance to the facts in issue, the evidence is not treated as collateral, but is probed in much the same way as evidence pertaining to facts in issue.

(4) Similar fact evidence is dangerous to orderly trial management because it brings into play collateral disputes. It follows that its admission needs to be quite strictly controlled. As here, the similar fact evidence must be pleaded. But I consider that a proper pleading of similar fact evidence must go beyond simply pleading the facts relied upon. What ought specifically to be pleaded is why it is said (by the party seeking to rely on this material) that collateral evidence is so relevant that the ordinary rule regarding collateral facts ought to be set aside for the purposes of the trial.

I. BIFURCATION BETWEEN THE LEAVER AND THE HOLDER OF THE DAURIAC SHARES

503. As has been described, Ms. Dauriac was (or was alleged to be) the Leaver, but the Dauriac Shares were held, pursuant to a Permitted Transfer, by Marlborough. Article 6.21 of the Articles contemplates such a bifurcation by making clear that the compulsory transfer process is triggered by reference to the conduct or circumstances of the original holder of any shares ("…a "Transfer Event" means, in relation to any holder of B Ordinary Shares, C Ordinary Shares and D Ordinary Shares (or, where the relevant Shares are held by a nominee or have been transferred to a Permitted Transferee, the original holder of the relevant Shares)…").

504. It was not contended by Ms. Dauriac that the compulsory transfer process was not binding on Marlborough. That is obviously right: rights in shares are expressed, amongst other things, in the articles of association of a company, and when the Dauriac Shares were transferred to Marlborough, Marlborough took them subject to the compulsory transfer process.

505. It will be necessary – when considering the compulsory transfer process – to bear in mind the bifurcation between Ms. Dauriac (as Leaver) and Marlborough (as the holder of the Dauriac Shares).

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[355] CPR 32.1; and see Phipson, *op. cit.*, [12-13] and [39-35].

[356] Phipson, *op. cit.*, at [12-14]

J. LEAVER OR NON-LEAVER?

506. This point was not seriously contested by Ms. Dauriac at trial, but because the point remains open on the pleadings, I deal with it briefly.

507. In my judgment, it is clear that Ms. Dauriac was a Leaver within the meaning of the Articles. The definition of "Leaver" is set out at paragraph 21 above. Ms. Dauriac was, of course, both a director and an employee of Signia. The contention, in the pleading, appears to be that because Ms. Dauriac's employment ended, but she purported to retain her directorship, she was not a Leaver. In other words, the contention was that Ms. Dauriac would only be a Leaver if and when she ceased to be both an employee and a director.

508. I reject this contention. The definition of Leaver in the Articles refers, in the alternative, to a Leaver being an employee or a director. Obviously, the definition of Leaver seeks to embrace holders who are directors, but not employees, and employees who are not directors.

509. But this language of the Articles also has the effect that a person is rendered a Leaver should that individual, being both a director and an employee, lose only one of these positions.

510. I hold that, for the purposes of the compulsory transfer provisions, Ms. Dauriac was a Leaver.

K. GOOD LEAVER OR BAD LEAVER?

(1) Types of Leaver

511. The relevant provisions are set out in paragraph 27(4)(a) above. The Articles contemplate three types of Leaver – a Good Leaver, an Incapacitated Good Leaver and a Bad Leaver.

512. It was common ground – and, indeed, is self-evident from the facts – that Ms. Dauriac was not an Incapacitated Good Leaver.[357] A Bad Leaver is any Leaver who is not a Good Leaver or an Incapacitated Good Leaver,[358] an entirely negative "catch all" definition. In order to find that Ms. Dauriac was a Bad Leaver, it is necessary to hold that she was not a Good Leaver. That, accordingly, is the question that I turn to.

(2) The definition of a Good Leaver

513. The definition of a Good Leaver has two, alternative, limbs:[359]

(1) *"Limb A".* An employee is a Good Leaver under Limb A where the employee gives notice to terminate his or her employment:

(a) When not in breach of that employee's terms of employment; and

[357] See paragraph 27(4)(a)(ii) above.

[358] See paragraph 27(4)(a)(iii) above.

[359] See paragraph 27(4)(a)(i) above.

(b) Where such notice of termination will expire five years or more after the Employment Start Date.

(2) *"Limb B"*. An employee is a Good Leaver under Limb B where the employee leaves Signia as a result of summary dismissal by Signia, when Signia had no right to dismiss that employee without notice.[360]

514. Ms. Dauriac relied upon both Limb A and Limb B.

515. The basis upon which Ms. Dauriac left Signia was hotly contested between the parties:

(1) Signia contended that Ms. Dauriac's letter of 21 January 2015 (described in paragraph 457 above) was a repudiatory breach of her Service Agreement, which repudiation Signia accepted on the same day (see the letter set out at paragraph 458 above).[361]

(2) Ms. Dauriac contended that she had either given notice when not in breach of contract and five years after the Employment Start Date; or been constructively dismissed – that is, that Signia had, by its conduct, repudiated the Service Agreement, which repudiation she had accepted in her letter of 21 January 2015.[362] Paragraph 98 of the Defence states:

> "…[Ms. Dauriac]…was a Good Leaver within the meaning of [Limb A] of that defined term in the Articles because she gave notice on 21 January 2015 to terminate her employment, when not in breach…of her terms of employment and her notice, taking effect that day, expired more than 5 years after the start date of her employment on 9 November 2009. Alternatively…[Ms. Dauriac] was a Good Leaver within the meaning of [Limb B] because she was constructively dismissed when [Signia] had no right summarily to dismiss [Ms. Dauriac] without notice."

516. It was common ground that if Signia's case, set out in paragraph 515(1) above was right, then Ms. Dauriac was indeed a Bad Leaver. The position, as regards Ms. Dauriac's case, was more complex:

(1) In the first place, it was contended that – even on her own case – the manner in which Ms. Dauriac had severed her connection with Signia did not bring her within either of the limbs defining a Good Leaver.

(2) Secondly, it was contended that even if Ms. Dauriac could bring herself within the scope of the Good Leaver provisions, she was nevertheless a Bad Leaver for the reasons pleaded in paragraph 26 of the Particulars of Claim:

> "[Signia] avers that [Ms. Dauriac] did not meet the definition of a Good Leaver as:
>
> 26.1 [Ms. Dauriac] was in breach of her terms of employment when she sent the Termination Notice.

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[360] I have left out the reference to "Under Performer". In the end, it was not seriously contended that Ms. Dauriac was an Under Performer within the meaning of Limb B.

[361] Paragraphs 11.1 and 22 of the Particulars of Claim.

[362] Paragraphs 81 and 98 of the Defence.

26.2 If (which is denied) [Signia] summarily constructively dismissed [Ms. Dauriac]:

26.2.1 It had the right summarily to dismiss [Ms. Dauriac] without notice…

26.2.2 [Ms. Dauriac] was in any event an Under Performer as defined in the…Service Agreement…"

(3) Issues arising

517. A number of issues arise. The Leaver provisions set out a specific regime arising out of the Articles regarding the operation of the compulsory transfer process. It is clear, however, that these provisions are premised upon general employment law principles (see, e.g., the reference to "summary dismissal"). In these circumstances:

(1) It is appropriate, first, to begin with a statement of these general employment law principles regarding constructive dismissal and summary dismissal.

(2) Thereafter, it is necessary to determine, in light of these general principles, how exactly Ms. Dauriac's employment at Signia terminated. There are a number of possibilities:

(a) *Was Ms. Dauriac was constructively dismissed?* In this case, it must be considered whether Signia had, by its conduct, repudiated the Service Agreement, which repudiation Ms. Dauriac had accepted in her letter of 21 January 2015. If Signia repudiated the Service Agreement and if Ms. Dauriac accepted that repudiation, then her employment ended at that point.

(b) *If Ms. Dauriac was not constructively dismissed, what was the consequence of Ms. Dauriac's letter of 21 January 2015?* If Signia did not repudiate the Service Agreement, then the question arises whether this was (as Signia contended at the time) itself a repudiatory breach that Signia was entitled to accept. On this basis, on Signia's acceptance of Ms. Dauriac's repudiation, Ms. Dauriac's employment would end.

(c) *Assuming Ms. Dauriac was constructively dismissed, did Signia have the right summarily to dismiss Ms. Dauriac; and what is the relevance of that unexercised right?*

(i) I have found that – contrary to appearances to the outside world – Ms. Dauriac's employment was not terminated in December 2014. The relevant facts are considered in paragraphs 439 to 450 above. In short, Ms. Dauriac was suspended on full pay, pending investigation. Although this was presented to the outside world as a resignation, this was spin, and Ms. Dauriac remained employed by Signia until 21 January 2015.

(ii) It may be that Signia had the right summarily to dismiss Ms. Dauriac: that is a matter that must be determined. What is clear, however, is that such right, if it existed, was not exercised. It is clear that Ms. Dauriac's employment continued until 21 January 2015 and then was

ended in one of the two ways considered above,[363] and not by summary dismissal. Two questions therefore arise: *(i)* did Signia have the right summarily to dismiss Ms. Dauriac and *(ii)* if so, what is the relevance of this?

518. These various issues are dealt with in the next Sections. Section K(4) states the relevant applicable employment law principles. Section K(5) considers whether or not Ms. Dauriac was constructively dismissed. Section K(6) considers whether Signia had the right summarily to dismiss Ms. Dauriac.

519. In light of these sections, the operation of the Leaver provisions is then considered in Section K(7). In particular, Section K(7) considers the question of what, if at all, is the relevance of any right in Signia summarily to dismiss Ms. Dauriac.

(4) General employment law principles

520. These can be stated as follows:

(1) Relations between an employer and an employee are governed by the contract of employment that subsists between the employer and the employee plus a significant statutory overlay. However, the right summarily to dismiss an employee (on the part of an employer) and the right of an employee to treat him- or herself as constructively dismissed are both, in essence, contractual.

(2) To claim constructive dismissal, an employee must be entitled to terminate his or her contract by reason of the employer's conduct, which must amount to a repudiatory breach of contract. Obviously, the terms of the employee's contract will be highly relevant, but the courts have also implied terms obliging an employer to act towards his employee in good faith and with trust and confidence.

(3) In this case, Ms. Dauriac contended for the following implied terms:[364]

> "Implied terms of the Service Agreement were (i) that [Signia] would not, without reasonable cause, conduct itself in a manner likely to destroy or serious damage the relationship of trust and confidence between it and [Ms. Dauriac] (the "Trust and Confidence Term") and (ii) that [Ms. Dauriac]'s employment would not be terminated or the terms of that employment repudiated if the purpose of doing so was to deprive her of a valuable benefit (the "Anti-Avoidance Term").

(4) In its Reply,[365] Signia admitted the Trust and Confidence Term (although it also averred that the term was mutual as between Signia and Ms. Dauriac), but denied the existence of the Anti-Avoidance Term. As to these terms:

(a) The Trust and Confidence Term has been found to exist in a number of cases,[366] and I find such a term to exist in the Service Agreement.

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[363] I.e. by either Ms. Dauriac accepting Signia's repudiatory breach (paragraph 517(2)(a) above) or *vice versa* (paragraph 517(2)(b) above.

[364] Defence/para. 18.

[365] Paragraph 20 of the Re-Amended Reply (the "Reply").

[366] See, for example, *Courtaulds Northern Textiles Ltd v. Andrew* [1979] IRLR 84.

(b) The Anti-Avoidance Term is a rarer beast. I am not persuaded that such a term can properly be implied into the Service Agreement. Clearly, to the extent that an employer were to manufacture a ground for dismissing an employee, so as to deprive that employee of a valuable benefit, that would constitute a breach (a very serious breach) of the Trust and Confidence Term. To that extent, the Trust and Confidence Term and the Anti-Avoidance Term overlap, and I do not consider it appropriate to import into the Service Agreement implied terms that simply duplicate.

(c) If, on the other hand, the Anti-Avoidance Term is intended to prevent an employer from properly dismissing an employee, simply because a motivating factor or purpose in doing so was to prevent that employee earning a benefit, then I consider that the Anti-Avoidance Term goes too far. If an employee commits a breach of his or her contract of employment that is sufficiently serious to entitle the employer to dismiss summarily, then an implied term restricting that right is an unlikely one.

(d) Accordingly, I reject the contention of Ms. Dauriac that the Service Agreement contained the Anti-Avoidance Term.

(5) The provisions of the Service Agreement relating to termination of Ms. Dauriac's employment were set out in paragraph 121(7) above (i.e. clause 15). In summary, Signia was entitled to terminate Ms. Dauriac's employment:

(a) On three months' notice if she was an "Under Performer".

(b) Without notice on grounds meriting summary dismissal.

(c) The Service Agreement set out an exhaustive list of the grounds meriting summary dismissal. Signia relied on two of these grounds, namely grounds (2) and (3):

> "…[Signia] may terminate the Employment:
>
> …
>
> (b) without notice on grounds which merit summary dismissal. The following is an exhaustive list of the grounds which merit summary dismissal in the event of such a breach:
>
> …
>
> (2) You are guilty of a gross breach of any fiduciary duties owed by you to [Signia].
>
> (3) You commit any act of gross misconduct."

(6) It is worth observing that the provisions of clause 15 are on their face limiting of the right summarily to dismiss. Signia is only entitled to terminate the Employment without notice "on grounds which merit summary dismissal". The grounds then listed constitute "an exhaustive list of the ground which merit summary dismissal in the event of such a breach". In other words, it is necessary for the ground of dismissal to fall within this list, but not sufficient. Signia would,

in any case of unfair dismissal, still have to show that dismissal without notice was lawful at common law.

(7) A good test for whether summary dismissal is justifiable was stated in *Laws v. London Chronicle (Indicator Newspapers) Ltd* [1959] 1 WLR 698 as follows:

> "…whether the conduct complained of is such as to show the servant to have disregarded the essential conditions of the contract of service…One act of disobedience or misconduct can justify dismissal only if it is of a nature which goes to show (in effect) that the servant is repudiating the contract or one of its essential conditions; and for that reason, therefore, I think you find…that the disobedience must at least have the quality that it is "wilful"; it does (in other words) connote a deliberate flouting of the essential contractual conditions…"

(8) It is clear that an employer may rely on facts discovered after the dismissal to justify his action in summarily dismissing his employee: *Boston Deep Sea Fishing & Ice Co v. Ansell* (1888) 39 ChD 339.

(5) Was Ms. Dauriac constructively dismissed?

(a) Ms. Dauriac's case

521. Ms. Dauriac's case on constructive dismissal is based upon the proposition that there was a breakdown in her relationship with Mr. Caudwell because of her concerns regarding two invoices issued by Signia for payment by Mr. Caudwell, dated 31 December 2013, which Mr. Caudwell paid.[367]

522. It was her case that these invoices were "sham" invoices; moreover, that the invoices had been drawn so as not to incur VAT. Defence/para. 34(e) states:

> "…it appeared that the charges for the arrangement had been made in order to enable [Signia] to meet its regulatory capital requirements (by eradicating a loss of about £1.7 million from [Signia's] profit and loss account for the year ended 31 December 2013) rather than being a genuine charge for fees for services provided by [Signia]. Further, false invoices had been created for the £1.7 million payment which described the liability as one for "introducers fees" (which were not subject to VAT) instead of management fees at commercial rates, which Mr. Caudwell could have paid (but which were subject to VAT). Mr. Caudwell was the beneficiary of provisions whereby fees of any kind that he paid to [Signia] would be deducted from a loan facility provided by him and would be repaid to him once [Signia] had sufficient profits to do so. Hence, Mr. Caudwell would get his £1.7 million back no matter how the payment was attributed, but the benefit of giving a false description for the purpose of the payment would be avoidance of a substantial amount of unrecoverable VAT…"

523. Ms. Dauriac "therefore reasonably believed that the invoices to Mr. Caudwell were not genuine and that [Signia] and Mr. Caudwell had engaged in a sham transaction".[368] The Defence refers to this as the "Fake Fee Issue".

524. Ms. Dauriac communicated these concerns to Mr. Canfield during the two month period before she was suspended. As a result, Mr. Caudwell began the expenses

[367] See, generally, Defence/para. 34.

[368] Defence/para. 35.

investigation with a view to having Ms. Dauriac removed from Signia and so as to deprive her of the beneficial interest in the Dauriac Shares.

525. In view of the seriousness of these allegations, it is appropriate to set out the relevant parts of the Defence in full:

> "36. Ms. [Dauriac] communicated her concerns to Mr. Canfield and informed him during the two month period before she was suspended that she thought that [Signia] and Mr. Caudwell had acted unlawfully. Mr. Canfield stated (on that occasion and several subsequent occasions prior to her suspension) that the invoices were "okay". Ms. [Dauriac] was not qualified or sufficiently informed to dispute the matter with Mr. Canfield (who was appropriately qualified as an experienced accountant). Her understanding was that [Signia] was being funded through the very substantial facilities agreed with Mr. Caudwell, and provided by Grecco, of about £18 million. Nevertheless, Ms. [Dauriac] continued to express concern about the Fake Fee Issue until her purported suspension, including one occasion when she raised it directly with Mr. Caudwell at the meeting at his house on 10 December 2014, at which meeting Mr. Caudwell told her to "forget about it".
>
> 37. [Signia] thereafter (at the instigation of Mr. Caudwell and/or Mr. Canfield, acting on Mr. Caudwell's instructions) made false allegations against Ms. [Dauriac] in respect of alleged irregularities in expenses claims. The total sum in respect of which irregularities were claimed was about £33,000 over a period of three years and approximately 70% of such costs constituted travel costs to attend meetings with Mr. Caudwell, who was a client of [Signia]. Further, the complaint in respect of such expenses was in circumstances where Mr. Canfield had stated (at a meeting on 13 November 2014) that it was not suggested that travel to meet with Mr. Caudwell was not a proper expense to claim and where such expenses were in accordance with the expense policy of [Signia].
>
> 38. Mr. Caudwell and/or Mr. Canfield (acting on his instructions) induced [Signia] to pursue the allegations referred to in paragraph 37 as a pretext to procure the termination of Ms. [Dauriac's] employment and to seek to deprive her of her beneficial interest in shares in [Signia] for a fraction of their true value. Among other matters:
>
> (a) On 12 November 2014, Mr. Caudwell (in a meeting attended by Mr. Canfield) told Ms. [Dauriac] that she had "stolen money" from [Signia] and that he was going to report her to the police;
>
> (b) On about 20 November 2014, Mr. Caudwell demanded that Ms. [Dauriac] and her personal assistant each take a polygraph test in order to prove that she had not done anything wrong (which she agreed to do);
>
> (c) Mr. Caudwell sent a member of his personal staff into [Signia's] offices to examine Ms. [Dauriac's] expenses claims. At the end of his review, that accountant (Tim Maycock) informed Ms. [Dauriac] that he did not think she had done anything malicious, but that [Signia] needed improved processes and he confirmed to her that no monies had been stolen. In spite of that, Mr. Canfield subsequently stated that the investigation was continuing and that Mr. Maycock denied having stated the said matters;
>
> (d) Ms. [Dauriac] was instructed to dismiss Mr. Wilson, purportedly on grounds of improper expenses claims;

(e) In or around early December 2014, [Signia] instructed a head-hunter to find a replacement for Ms. [Dauriac], notwithstanding that it continued to maintain that it was pursuing a fair investigation;

(f) On 10 and 17 December 2014, Mr. Canfield and Mr. Caudwell sought to pressurise Ms. [Dauriac] to make a written confessional statement which had been pre-prepared. Mr. Canfield and Mr. Caudwell suggested that Ms. [Dauriac] obtain advice from Grosvenor Law, only to then write to Grosvenor Law to say that firm could not advise Ms. [Dauriac] for reasons of conflict. Mr. Canfield and Mr. Caudwell told Ms. [Dauriac] that she would be reported to the police and the FCA and would never work in the wealth management industry again if she did not sign. Mr. Caudwell told her that he would liquidate [Signia], that she was in need of psychological help and that (as a friend) he would accompany her to therapy. Ms. [Dauriac] despite being put under significant duress, refused to sign any statement which purported to confess to wrongdoing, the truth of which Ms. [Dauriac] in fact denied;

(g) On 16 December 2014, Mr. Caudwell, with the purpose of intimidating Ms. [Dauriac] and forcing her out of employment, demanded that Ms. Dauriac mortgage her family home and provide the funds obtained thereby to him, in order to fund [Signia] (in spite of [Signia] having a loan agreement with Mr. Caudwell for him to provide funding and in spite of clause 5.3 of the Shareholders' Agreement which provided that there was no obligation on Ms. [Dauriac] to provide additional funding;

(h) On 18 December 2014, certain members of [Signia's] staff were interviewed at Mr. Caudwell's home in circumstances that were designed to be intimidating with the object of seeking to implicate Ms. [Dauriac].

39. By a letter dated 18 December 2014, [Signia] purported to suspend Ms. [Dauriac]. When Ms. Dauriac was given the letter, she was told by Paul Lester (Chairman of [Signia]) that they had finished their investigation and that she was to be fired. [Signia] removed Ms. [Dauriac's] name from the FCA Register of authorised individuals as of 18 December 2014.

40. On 19 December 2014, [Signia] informed the press that Ms. [Dauriac] had resigned as the CEO and an employee of [Signia], which was not true. Paul Lester also told [Signia's] staff, including its advisory board…that Ms. [Dauriac] had resigned and told Ms. [Dauriac] to tell third parties the same story.

41. On 19 December 2014, Mr. Caudwell sent a text message to Ms. [Dauriac], advising her to seek psychiatric help.

42. On 12 January 2015, Ms. [Dauriac's] personal assistant was subjected to unjustifiably harsh, unfair and intimidating questioning, which was predicated on the basis that [Signia] had already decided that Ms. Dauriac had committed gross misconduct. The treatment was such that the personal assistant became ill from the stress suffered by her as a result of the said conduct.

43. By a letter dated 15 January 2015, [Signia] invited Ms. [Dauriac] to a disciplinary hearing on 22 January 2015. The letter provided a short description of the disciplinary allegations, but included no evidence and stipulated that they were to commence an investigation into expenses. However, by that time [Signia] had already told Ms. [Dauriac] that it had completed its investigation into her expenses and that she was dismissed. Ms. [Dauriac] contends that the proposed disciplinary hearing was (or would

have been) a sham, designed to provide a semblance of fairness to a decision that had already been taken.

44. By a letter dated 19 January 2015, [Signia] provided an "investigation summary", but no documentary evidence was provided in relation thereto.

45. By a letter dated 21 January 2015, Ms. [Dauriac] accepted [Signia's] repudiation of her contract of employment by terminating that employment…".

(b) Points that arise

526. Three points fall to be considered in relation to this allegation:

(1) First, the extent to which Ms. Dauriac actually was a whistle-blower in relation to the Fake Fee Issue. Obviously, if Ms. Dauriac never raised the issue of the legality or otherwise of Invoice S01145 and Invoice S01146, then the suggestion that the expenses investigation was somehow triggered by these allegations simply falls away.

(2) Secondly, and relatedly, can it be said that the expenses investigation in relation to Ms. Dauriac was a "sham", initiated with an intention to remove Ms. Dauriac from her position within Signia. Although this question is related to the question of whether Ms. Dauriac was a whistle-blower, it is distinct and requires separate consideration. It is possible for Ms. Dauriac to be a whistle-blower in relation to the Fake Fee Issue, yet for the expenses investigation to be launched entirely independently of this.[369]

(3) Thirdly, there is the question (irrespective of whether Ms. Dauriac was a whistle-blower) whether the expenses investigation was so poorly conducted as to amount to a breach of the Trust and Confidence Term. Defence/para. 38[370] sets out a number of matters relating to the expenses investigation which, in themselves, could be said to amount to a breach of the Trust and Confidence Term.

527. These points are considered in turn in the following paragraphs.

(c) Was Ms. Dauriac a whistle-blower?

528. During the course of the trial, it was suggested by Ms. Dauriac that there was a settled commitment by Mr. Caudwell to fund Signia – or at least fund any deficit in regulatory capital that Signia might suffer from – by way of fees for the management of his assets. This point was put, during the course of cross-examination, to a number of the witnesses called by Mr. Caudwell, including Mr. Canfield and Mr. Caudwell himself.

529. This allegation was advanced on the basis of the way in which Mr. Caudwell's case had been pleaded. Reply/para. 33.3, which sets out Mr. Caudwell's response to the Fake Fee Issue, pleads as follows:

[369] Although, were it to be the case that Ms. Dauriac blew her whistle, and the expenses investigation shortly followed, certain inferences would inevitably suggest themselves.

[370] Which is set out in full in paragraph 525 above.

"1 [Signia's] liquidity has been supported by shareholder loans from Grecco and payment of fees by [Mr. Caudwell]. That was an entirely ordinary arrangement in a start-up wealth management firm;

2 [Signia] at all times met capital adequacy requirements pursuant to FCA regulations (and on the basis of professional advice).

3 [Mr. Caudwell] also placed some of his assets under management with [Signia]. Again, this was an entirely ordinary arrangement in a start-up wealth management firm (particularly as [Mr. Caudwell] was an investor in Signia from its foundation). Funding provided by [Mr. Caudwell] was made pursuant to FCA Regulations (and on the basis of professional advice). Funding was, in part, also to prevent insolvency and therefore reverting a regulatory capital deficit, which could have led to FCA sanctions if left unresolved.

4 As a consequence of [Mr. Caudwell] placing considerable assets under management, and his status as a founder and cornerstone investor, it was originally envisaged that [Mr. Caudwell] would not pay management fees for the first two years of the venture (but would pay performance fees);

5 As a consequence of regulatory capital obligations (of which Ms. Dauriac was well aware) [Ms. Dauriac] and [Mr. Caudwell] agreed that fees would be payable in order to allow [Signia] to meet these obligations. [Mr. Caudwell] and [Ms. Dauriac] (acting *qua* managing director of [Signia]) therefore agreed that [Signia] would charge management fees to Grecco and/or [Mr. Caudwell]. This arrangement was intended to allow [Signia] to manage those assets on commercial terms until it became profitable, or there was a disposal of [Signia]…

6 Until his dismissal for gross misconduct, Mr. Wilson held the position of Head of Wealth Structuring and was responsible for the financial management of [Signia]. He, alongside [Ms. Dauriac], was responsible for liaising with [Signia's] auditors in order to arrange the transactions necessary to give effect to the arrangement set out above. [Ms. Dauriac] and Mr. Wilson were instrumental in devising and implementing the transaction now complained of [i.e. Invoices S01145 and S01146] and at all material times are that the transaction was an ordinary business transaction;

7 Accordingly, [Signia] supplied transactional services to [Mr. Caudwell] and charged him for those services. Such services are properly exempt from VAT under the applicable legislation. In January 2013, the invoices for the transaction were prepared and sent to [Mr. Caudwell] by Mr. Wilson. At Mr. Canfield's request, Mr. Wilson also disclosed the details of the transaction to [Signia's] auditors, who provided an unqualified opinion when signing off the accounts (which [Ms. Dauriac] also signed), as they had done in previous years.

8 Neither Mr. Wilson nor [Ms. Dauriac] ever made any contemporaneous assertion that the transaction was irregular or improper as now alleged. On the contrary, they were instrumental in the transaction being made."

530. In my judgment, the position was as follows:

(1) The manner in which Signia was funded was altogether more fluid than the Reply suggests. As I have described, Mr. Caudwell was in fact quite reluctant to fund Signia through the payment of fees for the management of his assets. His initial plan was to fund Signia through loans, and when the regulatory capital requirements made this either very difficult or impossible, he was prepared to

fund Signia in other ways, including by way of management fees. But there was never a definite understanding that this was how Signia's regulatory capital requirements would be met, year-in, year-out.[371]

(2) This is reflected in the manner in which Signia was funded over time.[372] Although Mr. Caudwell paid some management fees, where (in any given year) there was a shortfall in regulatory capital, an *ad hoc* approach was taken to meeting that shortfall. But in neither 2012 and 2013 – when there was a regulatory capital shortfall – was this addressed by increasing the management fees paid by Mr. Caudwell.[373]

(3) It is difficult – simply because her evidence was so vague and the evidence of others so unspecific – to be clear about what Ms. Dauriac knew and understood. In my view, she had an understanding, albeit not a particularly clear understanding, that there was a difference between Signia's cash flow requirements (which could be resolved through loans) and Signia's regulatory capital requirements (which could not so easily be resolved). I do not, however, consider that Ms. Dauriac immersed herself in all of the detail. She claimed to be very much a hands-on manager within Signia,[374] and I have no doubt that when an issue caught her eye, she could be both obsessive and controlling in relation to that issue – as was the case with the Mayfair Project and Mr. Babaee.[375] But she was selective in what she engaged with and I find that the question of Signia's compliance with its regulatory capital requirements was a matter she delegated and did not concern herself overly with.

(4) In these circumstances, I find it improbable that Ms. Dauriac concerned herself greatly with the £1.7 million regulatory capital shortfall in 2013. I accept that she was aware of it and probably would have spoken to Mr. Wilson about this. But I do not consider that she would have told Mr. Wilson that a management fee invoice should be raised to deal with the shortfall. That, I consider, is not the sort of specific instruction Ms. Dauriac would have given or (given her level of engagement on this point) been capable of giving to Mr. Wilson.

(5) It follows that, whilst I accept that Mr. Wilson was doing his best to recall what was said, I do not accept his evidence in this regard.[376] Ms. Dauriac would, as I find, simply have told Mr. Wilson to deal with the issue: she would not have mentioned management fees.

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[371] See paragraphs 112 (Mr. Caudwell's desire not to pay management fees), 115-119 (the Kinetic advice in relation to regulatory capital) and 149-152 (the approach to the funding of Signia).

[372] See paragraphs 153-171 above.

[373] See, in particular, paragraph 158 above (in relation to 2012) and paragraphs 161-166 (in relation to 2013).

[374] See paragraph 73 above.

[375] See paragraphs 182-194 and 220-221 above.

[376] The relevant evidence regarding an instruction to raise a management fee invoice is at paragraph 164(4) above.

(6) Mr. Wilson (with Mr. Canfield) then proceeded to deal with the issue in the manner I have described – by raising non-management fee invoices (Invoice S01145 and Invoice S01146).

(7) This renders much more plausible Mr. Wilson's account that he did not revert back to Ms. Dauriac when invoices having nothing to do with management fees were raised. In my judgment, had Ms. Dauriac told Mr. Wilson to deal with the regulatory capital shortfall in a particular way (i.e. by way of management fee invoices), and that approach was not then adopted, then I consider that Mr. Wilson would have reverted to Ms. Dauriac. By contrast, had Ms. Dauriac's instruction been altogether vaguer, as I find it was, there would have been no reason for Mr. Wilson to revert.

(8) That brings me to whether Ms. Dauriac "blew the whistle" in relation to the 2013 invoices late in 2014. I do not accept that she did, and I reach this conclusion for the following reasons:

(a) The issue of a regulatory capital shortfall raised itself again late in 2014 in relation to 2014,[377] and Ms. Dauriac raised an extremely general query with Mr. Canfield as to how matters had been handled in previous years.[378]

(b) It may very well be that the question arose sooner – although that would have been out of line with previous years – as Mr. Wilson suggested. Mr. Wilson suggested that the matter arose in October 2014, before his dismissal:[379]

> "…I'd also had a chance to review the advice in Kinetic Partners regarding to capital adequacy that actually said you should raise management fees and not one-off invoices. So it made me think perhaps we need to revisit capital adequacy for the current year.
>
> So at that time, I raised this point with Ms. Dauriac, and we then discussed how the invoices had been raised in 2013. At which point she seemed genuinely surprised that they had been done as lending invoices and not management fees."

The reference to "lending invoices" is inaccurate: that is not what Invoices S01145 or S01146 were. I do not believe that Mr. Wilson would have used such language. Whilst I am prepared to accept that Mr. Wilson may have discussed capital adequacy for 2014 with Ms. Dauriac, and in this context may have looked at how the issue was resolved in previous years, I do not accept that Mr. Wilson would have suggested to Ms. Dauriac that the approach taken in 2013 was in some way improper. Indeed, his own view at the time was that these were perfectly legitimate invoices to raise,[380] and I can see nothing in the evidence that could have caused his view to change.

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[377] Early December 2014: paragraph 382 above.

[378] See paragraph 383 above.

[379] Day 10/p.141 (cross-examination of Mr. Wilson).

[380] See paragraph 164(4) above.

(c) Nor do I accept that Ms. Dauriac would have been surprised by the course that was taken in 2014 with regard to the 2013 regulatory capital shortfall. As I have found,[381] Ms. Dauriac knew of the £1.7 million shortfall, and wanted it filled: but was not especially concerned as to how the shortfall was met.

(d) I conclude that Ms. Dauriac's contention that she was a whistle-blower and the Fake Fee Issue she advances were no more than a response by Ms. Dauriac to the on-going expenses investigation.

(e) The Fake Fee Issue was raised by Ms. Dauriac no earlier than 4 December 2014, when Ms. Dauriac asserted that she had nearly fallen off her chair when she discovered how the 2013 regulatory capital shortfall had been made.[382] Although Ms. Dauriac contended that she had raised the point earlier in time, there is no documentary evidence of this, and I reject that any such conversations took place.

(f) In early December 2014, the expenses investigation was in full flow, and I have no doubt that Ms. Dauriac was seeking weapons to deploy to derail the investigation. This particular point came to hand, and Ms. Dauriac tried to deploy it with Mr. Maycock.

531. In short, I conclude that the Fake Fee Issue was a response to the expenses investigation. The expenses investigation was not a response to the Fake Fee Issue, and Ms. Dauriac was not a whistle-blower.

(d) Was the expenses investigation a "sham", initiated with an intention to remove Ms. Dauriac from her position within Signia?

532. Given my conclusion that the Fake Fee Issue did not cause the expenses investigation, but was a response to it, it is possible to deal with this point relatively briefly.

533. The history of the expenses investigation has been set out very fully in Section G above. I consider that the information provided to Mr. Canfield by Mr. Hayes was sufficient to justify an investigation into Ms. Dauriac's expenses. Indeed, such an investigation should have been commenced far sooner than it was, in July or August 2014. The only reason the investigation was not commenced promptly was because of Mr. Canfield's concerns as to how Mr. Caudwell might react if his (Mr. Caudwell's) friend was investigated by Mr. Canfield.

534. The fact that the investigation was delayed for this reason does not affect my conclusion that the investigation arose out of an entirely proper concern regarding Ms. Dauriac's expenses.

[381] See paragraphs 530(3)-(5) above.

[382] See paragraphs 384-385 above.

(e) Was the expenses investigation so poorly conducted as to amount to a breach of the Trust and Confidence Term?

The issues

535. During the course of the trial, a number of concerns regarding the expenses investigation into Ms. Dauriac were raised. The first of these – namely, that the investigation was illegitimately commenced in response to the Fake Fee Issue – I have rejected for the reasons given in paragraphs 528 to 534 above. The other issues were as follow:

(1) The fact that the investigation was not commenced promptly by Mr. Canfield and that a proper documentary record (in terms of retaining communications from Mr. Hayes) was not kept.[383]

(2) The fact that, in other regards, there was a failure of due process and a rush to conclude the investigation, notably *(i)* as regards the obtaining of Ms. Dauriac's expense records post 11 November 2014,[384] *(ii)* the "springing" of allegations on Ms. Dauriac without due notice[385] and *(iii)* the failure to permit Ms. Dauriac to have her own input into the investigation and the failure to disclose that Mr. Caudwell was receiving reports about expenses from Mr. Maycock.[386]

(3) The evidence of pre-disposition against Ms. Dauriac, in the sense of running the inquiry to a pre-determined conclusion, such that any disciplinary proceedings would have a foregone conclusion and, effectively, be a sham.[387]

(4) The offer of onerous terms to Ms. Dauriac, as the price of staying at Signia.[388]

536. The relevant facts have been established in the course of this Judgment. The question is whether those facts amount to a breach, on the part of Signia, of the Trust and Confidence Term, such that Signia was in repudiatory breach of the Service Agreement. If Signia was in repudiatory breach, the next question is whether, in reaction to that breach, Ms. Dauriac accepted it.

Repudiatory breach

537. It is important to differentiate the investigation of wrongdoing by an employee from a disciplinary process that arises out of such wrongdoing as may have been discovered by the employer. The issues raised by Ms. Dauriac, to be clear, concern Signia's investigation and the extent to which that investigation effectively pre-determined the subsequent disciplinary process, which (in any event) commenced but never concluded.

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[383] See paragraphs 198-199 above.

[384] See paragraphs 276-286 above.

[385] See paragraphs 299-314 above.

[386] See paragraphs 331-373 above.

[387] See, for instance, the emails between Mr. Canfield and Mr. Maycock described in paragraphs 320, 328, 358-359 and 369 above and Mr. Caudwell's expressions at the meeting on 12 November 2014 (see paragraphs 304-314).

[388] See paragraphs 395-427 above.

538. Two general points can be made, before considering the specific points advanced by Ms. Dauriac:

(1) First, the process of investigation involves the employer finding the facts. There is, in my judgment, no necessity for such a process to involve the employee. Due process obviously requires the employee to be able to respond to the allegations made against him or her at the disciplinary stage, but not before.

(2) Secondly, the manner in which the employer finds the facts – within broad confines – is a matter for the employer. In this case, matters are complicated by the fact that whilst Signia was the employer formally looking into Ms. Dauriac's conduct through the agency of Mr. Canfield and Mr. Maycock, Ms. Dauriac, by virtue of her position as chief executive officer, had considerable scope for interfering with that investigation in a manner unusual in an employee. That is, of course, a reflection of her seniority, but it did not make Mr. Canfield's or Mr. Maycock's jobs any easier.

539. Turning, then, to the allegations made by Ms. Dauriac:

(1) *Failure to commence the investigation promptly.*[389] I consider that the investigation could and should have been commenced sooner by Mr. Canfield and that it would have been advisable for Mr. Canfield to keep copies of the communications he received from Mr. Hayes. Mr. Canfield had regard – perhaps excessive regard – to Ms. Dauriac's position in the organisation and was perhaps over-influenced by the need to ensure Mr. Hayes' anonymity. But I see no prejudice to Ms. Dauriac's position, and I certainly do not consider that these matters undermined the mutual trust between Signia and Ms. Dauriac. These matters do not amount to a breach of the Trust and Confidence Term.

(2) *A failure of due process and a rush to conclude the investigation, notably (i) as regards the obtaining the Ms. Dauriac's expense records post 11 November 2014, (ii) the "springing" of allegations on Ms. Dauriac without due notice and (iii) the failure to permit Ms. Dauriac to have her own input into the investigation and the failure to disclose that Mr. Caudwell was receiving reports from Mr. Maycock.*[390] As to this:

(a) I do not consider that Signia can properly be criticised in relation to the pressure that was brought to bear on Ms. Dauriac and her team regarding production of her expenses. Evidence as to what expenses were charged to the employer should be capable of being produced swiftly, and it is nothing to the point that the production of such evidence shows that the expenses were sloppily or poorly kept.

(b) If that is what the record shows, then that is what the record shows, and an employee under investigation is not entitled to seek additional time in order to make the record look better than it actually should.

[389] See paragraph 535(1) above.

[390] See paragraph 535(2) above.

(c) In other words, if Ms. Dauriac, in her efforts (to use a neutral term) to present her expenses in a good light, placed undue pressure on herself and her team within Signia, that is entirely her doing, and not a matter for which the blame can be laid at Signia's door.

(d) The "springing" of allegations without due notice – specifically at the meeting that took place at Mr. Caudwell's house on 12 November 2014 – is similarly a point without foundation. I have concluded that this meeting was unplanned on the part of Mr. Caudwell and Mr. Canfield and arose due to the arrival of Ms. Dauriac at Mr. Caudwell's home on an unrelated matter.[391] It was unfortunate that the meeting took place as it did, but neither Signia nor Ms. Dauriac can be blamed for this. Given the personalities involved, it is not surprising that the meeting was, as I have said, an emotional and fraught one.[392] That was because Ms. Dauriac was exposed to the internal workings of an on-going investigation. I do not consider that either Signia or Ms. Dauriac can be blamed for this. I consider further below whether this meeting fuelled a sense on the part of Ms. Dauriac that matters were being pre-determined against her.

(e) I bear in mind that, at the planned meeting that took place on 13 November 2014, Mr. Canfield and Mr. Maycock carefully and very professionally took Ms. Dauriac through the points they had discovered and invited her comments.[393]

(f) The point that Ms. Dauriac and her team were not permitted input into the investigation is factually correct, but it is nonetheless an entirely bad point. Signia were entitled to investigate: the time for Ms. Dauriac to make submissions and to challenge the evidence would come later, in any disciplinary proceedings.

(3) *Pre-disposition against Ms. Dauriac, in the sense of running the inquiry to a pre-determined conclusion, such that any disciplinary proceedings would have a foregone conclusion and, effectively, be a sham.*[394] As to this:

(a) Some of the email exchanges between Mr. Canfield and Mr. Maycock give rise to concern, notably (by way of example): "[h]opefully there is still enough mileage in the expenses to allow John to hit again hard";[395] "[s]he is a sociopath in the strictest meaning of the word";[396] "…just wanting to appear as co-operative as possible, before telling them to sod off…";[397] and "…a good time to sully this new stage in John's eyes by showing that they

[391] See paragraphs 305-306 above.

[392] See paragraph 309 above.

[393] See paragraphs 315 to 317 above.

[394] See paragraph 535(3) above.

[395] Paragraph 320 above.

[396] Paragraph 328 above.

[397] Paragraph 359 above.

are still willing to lie…".[398] I appreciate that these were not communications to Ms. Dauriac, and that they were made during the course of an investigative process which involved considerable pressure on both Mr. Maycock and Mr. Canfield. Nevertheless, these emails convey a distinct flavour that *(i)* Mr. Caudwell was going to be the ultimate decision-maker and *(ii)* that Mr. Maycock and Mr. Canfield both considered that Mr. Caudwell would have wanted the decision to go one way rather than another.

(b) Of course, Mr. Caudwell did not consider himself the decision-maker in this case,[399] and the disciplinary process against Ms. Dauriac began, but never concluded. Insofar as the disciplinary process was concerned, on the face of it, that process was conducted properly. Ms. Dauriac was suspended without prejudice,[400] a statement of the allegations was prepared and presented to Ms. Dauriac,[401] and Ms. Dauriac was invited to a disciplinary hearing before an independent HR consultant.[402]

(c) Nevertheless, I do have a degree of concern about whether the disciplinary process would have been a sham, given the email communications I have referred to,[403] the meeting on the evening of 12 November 2014[404] and the fact that – well before the disciplinary process began – terms were put to Ms. Dauriac regarding her continued employment at Signia.

(d) I conclude that the allegation that the disciplinary process was a sham must fail. Whilst I have some criticisms of what was said and done during the course of the investigative process, I am unable to conclude that these matters so infected the disciplinary process so as to render it an unfair process and a sham.

(4) *The offer of onerous terms to Ms. Dauriac as the price of staying at Signia.*[405] As to this:

(a) These terms have been described in some detail above. They were undoubtedly onerous, involving *(i)* the signing up to a Statement of Culpability, *(ii)* a re-classification and downgrading of Ms. Dauriac's role, *(iii)* the acceptance by Ms. Dauriac of financial responsibility for the 2014 losses of Signia and *(iv)* visiting a psychiatrist.

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[398] Paragraph 369 above.

[399] Paragraph 311 above.

[400] See paragraphs 439-440 above.

[401] See paragraph 451 above.

[402] I appreciate that the HR consultant in question, Mr. Bolton, came from Eversheds, a firm of solicitors retained by Signia. However, there is no reason why disciplinary hearings cannot be conducted "in house" within the employer, and the point about the appointment of Mr. Bolton was that he was not *parti pris*.

[403] See paragraph 539(3)(a) above.

[404] See paragraph 539(2)(d) above.

[405] See paragraph 535(4) above.

(b) Whilst I am prepared to accept that there was some room for negotiation on these points, Mr. Caudwell was prepared to cede Ms. Dauriac very little room for manoeuvre. The exchange in cross-examination between Mr. Caudwell and Mr. Plewman, Q.C. regarding the need for a confession demonstrates this extremely clearly.[406] Technically speaking, Mr. Canfield was wrong when he said to Ms. Dauriac that "this discussion is not a negotiation",[407] in that Mr. Caudwell would have given some ground. But Mr. Canfield was not far wrong: the amount of ground that Mr. Caudwell would have been prepared to cede would have been marginal.

(c) It is established that a downgrading of job content or status can give rise to a breach of the Trust and Confidence Term,[408] as can a requirement that an employee undergo a psychiatric examination,[409] as can the non-consensual variation of an employee's terms and conditions.[410]

(d) Of course, I appreciate that the question of whether the Trust and Confidence Term was breached is a question of fact, which is not particularly assisted by the citation of authority. In this case, I have no doubt that the attempt to impose these very onerous conditions on Ms. Dauriac, in advance of any disciplinary finding and as the price for staying on, was a clear breach of the Trust and Confidence Term, amounting to a repudiatory breach by Signia of the Service Agreement.

540. I conclude that for the reasons given in paragraph 539(4) above, Signia was in breach of the Trust and Confidence Term so as to render it in repudiatory breach of the Service Agreement.

Acceptance of repudiatory breach by Ms. Dauriac

541. There was over a month's gap between Ms. Dauriac's suspension on 18 December 2014 and her acceptance of Signia's repudiatory breach on 21 January 2015. A long period between repudiation and purported acceptance of that repudiation by an employee may result in the employee waiving the breach, but I do not consider that this period is sufficient to constitute a waiver on the part of Ms. Dauriac.

542. Ms. Dauriac's acceptance of the repudiatory breach, through her solicitors, Jones Day LLP, was long, but (at least in paragraph 20[411]) unequivocal. I do not consider the fact that Jones Day LLP made a number of points that I have not upheld, nor the fact that

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[406] See paragraph 424 above.

[407] See paragraph 419 above.

[408] See, for example, *Coleman v. S&W Baldwin* [1977] IRLR 342.

[409] See, for example, *Bliss v. South East Thames Regional Health Authority* [1985] IRLR 308.

[410] See, for example, *Gardner (F.C.) Ltd v. Beresford* [1978] IRLR 63; *Woods v. WM Car Services (Peterborough)* [1981] IRLR 347.

[411] "Signia's treatment of our client has fundamentally destroyed the relationship of trust and confidence which should exist between an employer and its employee. Accordingly, our client considers that Signia has acted in a manner that has fundamentally breached the implied term of trust and confidence in respect of our client's employment with Signia, and therefore considers that Signia has acted in repudiatory breach amounting to constructive dismissal. She accepts that repudiatory breach and therefore terminates her employment."

the commencement of the disciplinary process intervened between the attempt to impose conditions on Ms. Dauriac and the acceptance of Signia's repudiatory breach, to make any difference to that conclusion.

543. It was contended on behalf of Mr. Caudwell that the real reason for Ms. Dauriac's resignation was not Signia's repudiatory breach but her desire to avoid the disciplinary hearing that was due to take place. As to this:

(1) If Ms. Dauriac's real reason for resigning was her desire to avoid the disciplinary hearing and not Signia's repudiatory breach of contract, then I accept that this would not be a case of constructive dismissal.[412] The resignation must be in reaction to the repudiatory breach.

(2) The letter of 21 January 2015 was written before a disciplinary hearing that Ms. Dauriac knew was going to take place. However, it was also written shortly after Signia's repudiation. These events took place during the course of December 2014. I do not consider that the timing of the letter can allow me to draw sound inferences as to Ms. Dauriac's reasons.

(3) More importantly, there would have been, in Ms. Dauriac's mind, a clear nexus between the repudiatory breach, the suspension and the disciplinary hearing. The essence of Signia's repudiatory breach was an attempt to force Ms. Dauriac to accept extremely onerous terms as the price of staying on at Signia. She, as is clear from the evidence, resisted those terms and sought to water them down. I consider that she would have regarded the suspension and the threatened disciplinary hearing as directly related and consequential upon the onerous terms Signia was seeking to impose.

(4) In my judgment, the letter of 21 January 2015 was a direct response to Signia's repudiatory breach and this was, therefore, a case of constructive dismissal.

I therefore find that Ms. Dauriac accepted Signia's repudiatory breach of contract on 21 January 2015 and that she was constructively dismissed. It follows from this that Ms. Dauriac was not, by terminating the Service Agreement, herself in breach of contract.

(6) Did Signia have the right summarily to dismiss Ms. Dauriac?

(a) Introduction

544. Turning back to the issues identified in paragraph 517 above, I have concluded that Ms. Dauriac was constructively dismissed[413] and as a consequence have concluded that Signia could not terminate the Service Agreement on grounds of Ms. Dauriac's breach of contract.[414]

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[412] *Ishaq v. Royal Mail Group* [2017] IRLR 208, a decision of the Employment Appeal Tribunal; also Bowers, *A Practical Approach to Employment Law*, 9th ed. (2017) at [14.43].

[413] The issue at paragraph 517(2)(a) above.

[414] The issue at paragraph 517(2)(b) above.

545. The issue here under consideration is whether Signia had the right summarily to dismiss Ms. Dauriac.[415] Of course, I appreciate that Signia did not exercise that right. This Section simply considers whether the right existed: the relevance or significance of this right, if it existed, forms part of the consideration in Section K(7) below.

(b) Alleged breaches of the Service Agreement entitling Signia to terminate Ms. Dauriac's employment summarily

546. Mr. Caudwell contended that Ms. Dauriac breached the Service Agreement so as to entitle Signia to summarily dismiss her. The relevant parts of the Particulars of Claim aver:

> "27.4 At various times over the course of 2013 and 2014, [Ms. Dauriac] submitted wrongful and/or dishonest and/or improper claims for reimbursement of expenses (the "Wrongful Expenses Claims"). The Wrongful Expenses Claims (and each of them) did not constitute claims for reasonable out-of-pocket expenses (including travel, subsistence and entertainment expenses) necessarily and wholly incurred by [Ms. Dauriac] in the proper performance of her duties and which were reimbursable to her pursuant to clause 9 of the Service Agreement (or at all).
>
> 27.5 As a consequence of the Wrongful Expenses Claims, [Signia] paid to [Ms. Dauriac] the sum of (approximately) £33,640. Particulars of the Wrongful Expenses Claims are appended as Schedule 4 to these Particulars of Claim.
>
> 27.6 Further or alternatively, [Ms. Dauriac] instructed a junior employee of [Signia] to alter documents to conceal the circumstances of the Wrongful Expenses Claims. [Signia] avers as follows:
>
> 27.6.1 In October 2014, [Ms. Dauriac] instructed her personal assistant, Ms. Kelly Degruttola, to amend her expenses forms to remove certain details (such as references to [Ms. Dauriac's husband, daughter, nanny or friends or references to non-work activities).
>
> 27.6.2 In November and December 2014, [Ms. Dauriac] instructed Ms. Kelly Degruttola to amend further her expenses forms by altering the descriptions of the expenses claimed.
>
> 27.6.3 Thereafter, [Ms. Dauriac] sought to disguise the fact of the Wrongful Expenses Claims by preparing (or having prepared on her behalf) a schedule of proposed reimbursements. [Ms. Dauriac] (wrongly) sought to assert that she had always intended to make the proposed reimbursements (and thereby demonstrated a further lack of integrity). In fact, [Ms. Dauriac] had only reimbursed a total of £50 during her employment with [Signia].
>
> 27.6.4 [Signia] appends as Schedule 5 particulars of the 133 expenses in respect of which [Ms. Dauriac] made or caused to be made by other employees alterations to expenses previously claimed by her."

[415] The issue at paragraph 517(2)(c) above.

547. It was alleged by Signia that the submission of the Wrongful Expenses Claims constituted a breach of various provisions of the Service Agreement.[416] Two points can be made:

(1) Although a number of provisions of the Service Agreement are alleged to have been breached, in my judgment only those entitling Signia summarily to dismiss Ms. Dauriac can be relevant. In this judgment, therefore, I am only going to consider potential breaches of clause 15 of the Service Agreement. As I have already noted, Signia alleges breach of two provisions in the list contained in clause 15.[417] I leave out of account the other alleged breaches, as simply irrelevant to the questions before me.

(2) Although the disciplinary charges against Ms. Dauriac alleged as separate breaches of contract the Wrongful Expenses Claims and the suppression or hiding of those claims (hereafter the "Wrongful Suppression of Information Claims"), that is not how the claim is pleaded in the Particulars of Claim. The breach that is pleaded is the submission of the Wrongful Expenses Claims *simpliciter*.[418] Although it might have been alleged that the Wrongful Suppression of Information Claims in themselves constituted a breach of contract (and, of course, this is pleaded in paragraph 27.6 of the Particulars of Claim), it appears from the Particulars of Claim that these allegations are supportive of the breach of contract constituted by the Wrongful Expenses Claims, and not independent of that alleged breach. I proceed on that basis.

548. The question that arises, therefore, is whether the Wrongful Expenses Claims entitled Signia summarily to terminate the Service Agreement.

(c) The relevant provisions of the Service Agreement

Clause 15 and clause 9 of the Service Agreement

549. The relevant parts of clause 15 of the Service Agreement were set out in paragraph 121(7) above. Signia could terminate without notice if Ms. Dauriac:

(1) Was guilty of serious or repeated breach of her obligations due to gross negligence;

(2) Was guilty of gross or wilful neglect;

(3) Was guilty of a gross breach of fiduciary duty; or

(4) Committed an act of gross misconduct.

550. In the context of the Wrongful Expenses Claim, it is also relevant to refer to clause 9. Clause 9 of the Service Agreement provides as follows:

"9. Expenses

[416] Paragraph 27.7 of the Particulars of Claim.

[417] See paragraph 27.7.5 of the Particulars of Claim.

[418] See paragraph 27.7 of the Particulars of Claim.

The Company will reimburse you for all reasonable out-of-pocket expenses (including travel, subsistence and entertainment expenses) necessarily and wholly incurred by you in the proper performance of your duties, provided you claim such expenses and produce receipts or other evidence of actual expenditure."

551. The test is whether expenses were incurred reasonably, necessarily and wholly in the proper performance of Ms. Dauriac's duties. In this regard, two points are worth making:

(1) Mr. Maycock suggested that this was a "value for money test. The likelihood of actually raising that business needs to be taken into account before the costs are committed to".[419] I accept that this goes to the question of "reasonableness", but an expense that met this test might still not be "necessary" or "wholly incurred" by Ms. Dauriac in the performance of her duties.

(2) Signia contended even if I was able to identify a business purpose in relation to a particular expense, it did not inexorably follow that the "necessarily and wholly incurred" test was satisfied. I accept this. Incurring a particular expense (such as a weekend trip away with a client, prospective or otherwise) might generate a benefit for Signia, but that would not necessarily mean that such an expense was "necessary".

The meaning of clause 15

552. It is well established that financial impropriety (and, indeed, other forms of impropriety or misconduct) does not need to constitute fraud or dishonesty in order to constitute gross misconduct: *Adesokan v. Sainsbury's Supermarkets* [2017] EWCA Civ 22.[420] In *Adesokan*, Elias L.J. (following the decision in *Neary v. Dean of Westminster* [1999] IRLR 288) stated:[421]

"…the focus is on the damage to the relationship between the parties. Dishonesty and other deliberate actions which poison the relationship will obviously fall into the gross misconduct category, but so in an appropriate case can an act of gross negligence…"

553. Elias L.J. went on to consider what type of dishonesty or action might amount to poisoning the relationship between employer and employee: this was conduct which "had the effect of undermining the trust and confidence in the employment relationship" (at [26]) and which "was a serious breach of the standards expected of [the employee]" (at [29]).

554. In *Sinclair v. Neighbour* [1967] 2 QB 279, which *Neary* followed, the test was couched in terms of whether the conduct was:

"…of such a grave and weighty character as to amount to a breach of the confidential relationship between master and servant…" (*per* Davies L.J. at 289)

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[419] Day 4/pp.100-101.

[420] The law was set out very fully in paragraphs 76-82 of Signia's written opening. In the written closing submissions made on her behalf, Ms. Dauriac did not seek to contend otherwise: see paragraph 158 of Ms. Dauriac's written closing submissions.

[421] At [23] (emphasis supplied).

and

"…inconsistent, in a grave way – incompatible – with the employment in which he had been engaged as a manager…" (*per* Sellers L.J. at 287).

555. The test involves a fact-specific inquiry in the context of the particular contract of employment concerned. It is necessary to take account of the nuances of the relationship between the employer and employee in question when determining whether the relevant conduct breached the trust and confidence in that relationship.

Dishonesty or something less?

556. Clearly, it is possible for conduct short of dishonesty to entitle Signia to terminate the Service Agreement pursuant to clause 15. It was contended on behalf of Signia that it was not necessary for me to find that the Wrongful Expenses Claims were dishonest for Signia to succeed in the contention that it was entitled summarily to dismiss Ms. Dauriac pursuant to clause 15. It was submitted that conduct short of dishonesty could justify summary dismissal.

557. In purely abstract terms, I accept that this is the consequence of the decisions referred to above. However, this was a case concerning expenses claimed by a chief executive of a wealth management company, where it was contended by Ms. Dauriac that there was an extremely unclear border between "client entertaining" and expenses that could be labelled improper. As will be seen, during the course of her evidence, Ms. Dauriac repeatedly emphasised the importance of entertaining clients to grow and further Signia's business.

558. In these circumstances, I conclude that the question of whether Ms. Dauriac was in breach of clause 15 must turn on the binary question of whether Ms. Dauriac was or was not dishonest. Were I to conclude that Ms. Dauriac had honestly submitted these expenses and believed them to be legitimate, but that nevertheless the expenses were wrongly claimed by her, I should be most hesitant to conclude, in this case at least, that Ms. Dauriac was in breach of clause 15.

559. Accordingly, I approach the matter on the basis of dishonesty. On behalf of Ms. Dauriac, it was accepted that if Ms. Dauriac had acted dishonestly in relation to her expenses, then this would be sufficient to poison the relationship between herself and Signia and would constitute gross misconduct.

(d) The test for dishonesty

560. The test, in civil proceedings, as to whether particular conduct amounts to dishonesty was set out by the Privy Council in *Barlow Clowes International Ltd v. Eurotrust International Ltd* [2006] 1 WLR 1476 at [10]:

"Although a dishonest state of mind is a subjective mental state, the standard by which the law determines whether it is dishonest is objective. If by ordinary standards a defendant's mental state would be characterised as dishonest, it is irrelevant that the defendant judges by different standards."

561. This test was reaffirmed in civil actions, and introduced into criminal actions, (over-turning the test in criminal proceedings laid down in in *R v. Ghosh* [1982] QB 1053) by

the Supreme Court in *Ivey v. Genting Casinos (UK) Ltd* [2017] UKSC 67.[422] At [74], Lord Hughes JSC stated:

> "…When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

562. Accordingly, I must begin by ascertaining Ms. Dauriac's subjective state of mind as regards the expenses she claimed. Obviously, it will be critical to ascertain how Ms. Dauriac regarded her own conduct, and I must do this taking all relevant facts and matters into account, including the reasonableness of her conduct. Having done so, I must ask whether Ms. Dauriac's conduct in relation to the Wrongful Expenses Claims was dishonest according to the "ordinary standards of decent people".

(e) The approach to assessing dishonesty

563. I propose to approach the question of dishonesty in the following way:

(1) First, to clear the decks, I identify various matters which do not assist on the question of dishonesty, although they arose as points during the trial. These matters are:

(a) The "concessions" made by Mr. Maycock when cross-examined on Ms. Dauriac's expenses by Ms. Ford, Q.C.

(b) The "admissions" made by Ms. Dauriac during the course of the expenses investigation.

(c) The fact that the contemporary regulatory advice received by Signia did not identify a clear regulatory breach as regards the expenses.

(d) The fact that the original expenses were poorly recorded.

I explain why I was not assisted by the points in Section K(6)*(f)* below.

(2) Secondly, and much more importantly for present purposes, there are three broad areas which I must consider in order to reach a conclusion as regards Ms. Dauriac's honesty when submitting her expenses. These are as follow:

(a) The nature of the expenses actually submitted by Ms. Dauriac and the explanations advanced by Ms. Dauriac in relation to these expenses. It is not possible to consider individually each and every expense submitted by Ms. Dauriac, investigated by Mr. Maycock and Mr. Canfield and pleaded as wrongful by Signia. During the course of the trial, the parties themselves

[422] See, in particular, Lord Hughes JSC at [74].

had to adopt a selective approach, and I do the same. Various expenses claimed by Ms. Dauriac are considered in Section K(6)*(g)* below.

(b) The nature of Ms. Dauriac's reaction when she concluded that her expenses might be investigated, and her reaction to the expenses investigation when it was launched on 11 November 2014. This is considered in Section K(6)*(h)* below.

(c) The manner in which Ms. Dauriac's explanation for her expenses changed over time. This is considered in Section K(6)*(i)* below.

(3) Finally, in light of the foregoing, I consider in Section K(6)*(j)* whether the test for dishonesty has been met.

(f) Matters which do not assist when considering the question of dishonesty

"Concessions" made by Mr. Maycock

564. During the course of his investigation into Ms. Dauriac's expenses, Mr. Maycock inevitably expressed views as to the legitimacy of the expenses that Ms. Dauriac had claimed. Such views – to the extent they were not purely factual – inevitably expressed Mr. Maycock's subjective opinion.[423] In these circumstances, Ms. Ford, Q.C., quite properly, cross-examined Mr. Maycock on the question of the legitimacy of the expenses.

565. Mr. Maycock's responses to Ms. Ford, Q.C.'s questions were not, of course, formal concessions by Signia. Rather, they constituted a series of more-or-less qualified statements of Mr. Maycock's opinion on certain expenses. I set out examples of such exchanges below, where Mr. Maycock was being cross-examined by Ms. Ford, Q.C. as to whether a particular expense had a legitimate business expense:

Q (Ms. Ford Q.C.)	Well, I am putting to you that this is a legitimate business expense, in the sense that it is a trip that gives rise to opportunities to give rise to further business opportunities with Signia.
A (Mr. Maycock)	I accept that.[424]
	…
Q (Ms. Ford Q.C.)	So it's clear from that, isn't it, that what's going on here is there was a proposed pitch in respect of Mr Khoury?
A (Mr. Maycock)	Indeed.
Q (Ms. Ford Q.C.)	And then you can see essentially congratulatory emails further up the chain saying "well done"?
A (Mr. Maycock)	Yes.

[423] To be fair, Maycock 1/para. 59 – which scheduled various of Ms. Dauriac's expenses – was in essence factual.

[424] Day 4/p.102.

Q (Ms. Ford Q.C.)	So on the basis of that I would suggest that this trip is a legitimate business expense. Do you take issue with that?
A (Mr. Maycock)	I don't.[425]

566. With all due respect to both Mr. Maycock and to Ms. Ford, Q.C.'s cross-examination of Mr. Maycock, Mr. Maycock's views as to Ms. Dauriac's expenses (whether expressed during the course of the expenses investigation or in the course of his evidence before me) cannot assist me. In the first place, Mr. Maycock's views are premised on facts which it is my (and not his) duty to find. In the second place, Mr. Maycock's views, to the extent they do not state facts, are expressions of opinion which – Mr. Maycock not being an expert[426] – are inadmissible.

The "admissions" made by Ms. Dauriac during the course of the expenses investigation

567. The "admissions" to which I refer are the responses Ms. Dauriac made chiefly in response to Mr. Caudwell's demand that she provide a Statement of Culpability. Ms. Dauriac did not do so in terms sufficiently clear and sufficiently damning to satisfy Mr. Caudwell, but she did attempt to meet Mr. Caudwell's demands.[427]

568. Although the document Ms. Dauriac sent to Mr. Caudwell on 12 December 2014 is full of acknowledgements of mistakes,[428] it is not very clear as to what those mistakes might be. In my judgment, communications such as this were written in order to deflect or close down the expenses inquiry, and cannot be read as anything more than this. I should make clear that I do not regard the Reimbursement Schedule – which I consider in greater detail below – to fall into this class of irrelevant material.

Contemporary regulatory advice received by Signia did not identify a clear regulatory breach as regards the expenses

569. It is true to say that contemporary regulatory advice that Ms. Cooper sought in relation to Ms. Dauriac's expenses failed to identify any clear regulatory breaches in relation to Ms. Dauriac's expenses.

570. I regard this question as an irrelevance. The point at issue is whether Ms. Dauriac's expense claims complied with clause 9 and whether they were dishonestly submitted so as *(i)* not to comply with clause 9 and *(ii)* to breach the summary dismissal provisions of clause 15.

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[425] Day 4/pp.127-128.

[426] I should be clear that Mr. Maycock did not hold himself out to be an expert. He accepted that he was not involved in the wealth management business; and he was not independent.

[427] See paragraphs 412-415 above.

[428] The document is set out at paragraph 412. There are other occasions when, in communication to Mr. Caudwell, Ms. Dauriac makes a *mea culpa*. The same points apply.

The fact that Ms. Dauriac's original expenses were poorly recorded

571. In paragraph 235 above, I noted that I was quite prepared to accept that Ms. Dauriac's expense forms, as originally completed, contained errors. When considering Ms. Dauriac's expenses, it will be necessary to bear this fact in mind, because the mere fact that an expense was mis-recorded can say nothing about Ms. Dauriac's honesty.

572. When considering whether Ms. Dauriac's expenses were submitted honestly or dishonestly, it will be necessary to have regard to the correct explanation for those expenses, and to leave out of account mis-descriptions arising out of recording errors or mistakes.

(g) The nature of the expenses actually submitted by Ms. Dauriac and the explanation advanced by Ms. Dauriac in relation to those expenses

The trip to see Ms. Caudwell

573. The facts are set out in Section G(2)*(c)* above.

574. In Ms. Dauriac's pleaded case, this trip is described as a "business development trip", which was held at the request of Ms. Caudwell, who was a client of Signia. On this trip, it was pleaded, Ms. Dauriac and Ms. Caudwell discussed a series of foreign exchange transactions which Signia had entered into on Ms. Caudwell's behalf, and negotiated the arrangement of a US$3 million loan from Credit Suisse to Rebekah Caudwell and her husband.[429]

575. In Dauriac 1, Ms. Dauriac's version of events was different. There she stated that "Signia and I had previously arranged a loan of more than $3m for Rebekah Caudwell".[430] This suggested, contrary to Ms. Dauriac's pleaded case, that Ms. Dauriac and Ms. Caudwell did not arrange the loan during the course of the trip to New York. I have found that business was not discussed with Ms. Caudwell on this trip: see paragraph 208(2) above.

576. Both the account in the pleading and the account in Dauriac 1 sit ill with the contemporary documentation, which strongly suggests a purely social trip that should have been a personal expense paid for by Ms. Dauriac. Indeed, as is noted in paragraphs 243(2) and 251(3) above, Ms. Dauriac at times suggested that the trigger for her expenses review was the fact that the flights to see Ms. Caudwell had been paid for as expenses, when the cost should have been borne by Ms. Dauriac personally. Whilst I do not believe that explanation, it does strongly suggest that this was (at least at times) Ms. Dauriac's view.

577. In the transcript of Ms. Dauriac's meeting with Mr. Canfield, Mr. Maycock, Ms. Degruttola and Ms. Tarbet on 13 November 2014, Ms. Dauriac claimed that the event that triggered her review of her expenses was discovering that Ms. Degruttola had paid for these flights, which were a personal expense, on her corporate card.[431] At the same

[429] Defence/para. 105(u).

[430] Dauriac 1/para. 174.

[431] See the transcript of the meeting at 56:17; Day 7/p.140 (cross-examination of Ms. Dauriac).

meeting, she described the trip as a "holiday to see the Caudwell children [and] to go and see a doctor"[432] and as "proper holiday":[433]

"…the only time I went on a proper holiday myself outside the John situation, outside going with John somewhere, has been Rebecca and Nick…"

578. The picture that emerges is one of shifting explanations from Ms. Dauriac. Initially, in late 2014, Ms. Dauriac told Mr. Canfield that these flights were a personal expense in relation to a non-business trip. Then, through various iterations of her pleaded case and witness evidence, Ms. Dauriac sought to assert that this was in fact a business trip and that these expenses were legitimate.

579. By contrast, Ms. Caudwell's evidence was pellucid, and plainly conveyed a social and non-business visit, whilst fairly accepting that Ms. Caudwell might not know the whole story.

580. I have no doubt that the expense of this trip was not within the scope of clause 9 of the Service Agreement. I have no doubt that the expense of this trip was neither reasonable nor necessarily or wholly incurred by Ms. Dauriac in the performance of her duties. This view is only confirmed by the shifting and implausible explanations provided by Ms. Dauriac.

Mad Lillies Hair Salon

581. On 9 March 2013, Ms. Dauriac spent £135 on a hair appointment at Mad Lillies hair salon in Hampstead. This is item 5 on the list of expenses at Annex 5 to this Judgment.

582. The description of this expense, in both the Dauriac Expenses V.1 and the Dauriac Expenses V.2 is very different:

(1) Dauriac Expenses V.1 describe this expense as "John Caudwell meeting".

(2) Dauriac Expenses V.2 then amend this to "Gift for Jonathan Blooms birthday party".

Yet the supporting credit card receipt showed that this sum actually related to Mad Lillies.

583. Despite not pleading any defence in response to Mr. Caudwell's pleaded case on this expense, Ms. Dauriac admitted, both in Dauriac 2 and in cross-examination that this expense did indeed relate to a hair appointment. Her claim, now, was that this was a legitimate business expense.

584. Two questions arise:

(1) What is the justification for the expense claim?

(2) Why was the description, in both Dauriac Expenses V.1 and Dauriac Expenses V.2 wrong?

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[432] *Ibidem.*

[433] Transcript of the meeting at 08:59.

585. Ms. Dauriac's justification as to why the cost of a hair appointment was a legitimate business expense was (for the first time) set out in Dauriac 2:[434]

> "It is correct that I spent £135 at a hairdresser before a major client event. As a woman I consider it part of my duties to look impeccable for client events. The fact that I attend events on a Saturday evening, in what should be my own personal time, is not for fun but for the benefit of the business in order to grow the relationship with existing clients and meet new prospects. I therefore do not consider a hair appointment in order to prepare for a client party to be anything other than a business expense. To be clear this was the only instance where such an expense was claimed."

586. Ms. Dauriac went on to explain that the relevant client was Jonathan Bloom, who introduced a number of clients to Signia and who was in discussions with Signia about leveraging its compliance platform for a new business venture.

587. Ms. Dauriac provided further colour to this explanation in her oral evidence:[435]

A (Ms. Dauriac)	I also want to point out that it may be something irrelevant for you, but in France it's part of our culture that usually as part of corporate events we actually go to hairdresser and use the company accounts… It is a very big part of my job to look impeccable and I'm not going to apologise for this.
Q (Ms. Carss-Frisk, Q.C.)	Ms. Dauriac, I would suggest it's utterly ludicrous for you to claim that the hairdressing appointment is an expense necessarily and wholly incurred for the purposes of Signia's business.
A (Ms. Dauriac)	My Lord, as I said, I was responsible to bring 95 per cent of the business of the firm. I don't like and I don't enjoy to go on a Saturday night to try to get new clients. You know, there's a part of fun, to be honest, on a dinner and nice wine and everything, but that's my job, so I'm not going to apologise for an expense which I do not believe is not legitimate.

588. Whether or not Ms. Dauriac considered that it was a "very big part of [her] job to look impeccable", it is in my judgment not right to suggest that this amounts to a business expense within clause 9 of the Service Agreement.

589. The logical endpoint of Ms. Dauriac's evidence was that any item of personal expenditure, including food, personal treatments or anything required for her subsistence, would be "necessarily and wholly incurred" on Signia business since Ms. Dauriac herself was required to conduct Signia business. This point was put to Ms. Dauriac in cross-examination:[436]

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[434] Dauriac 2/para.55

[435] Day 8/pp.81-82.

[436] Day 8/p.81.

Q (Ms. Carss-Frisk, Q.C.)	So, Ms. Dauriac, on your logic, why not claim for your clothes, for your make-up?
A (Ms. Dauriac)	Because this is completely different. Here we're talking about going to a client event and looking impeccable on my hair. That's absolutely different from not having my own clothes, madam.

590. No good explanation was provided for the manner in which this expense was described in Dauriac Expenses V.1 and Dauriac Expenses V.2. If, as Ms. Dauriac contended, such an expense was legitimate, then why not describe it accurately as a hairdresser's appointment?

Mr. Stoebe's birthday cake

591. On 10 February 2014, Ms. Dauriac incurred an item of expense for £104.00 which was described as "KS birthday cake" in Dauriac Expenses V.1, which became "Birthday cake for client dinner" in Dauriac Expenses V.2. The reference to "KS" (Mr. Stoebe) was removed by Ms. Degruttola on Ms. Dauriac's instructions.[437] Details regarding this expense are set out as item 14 in Annex 5.

592. Ms. Dauriac's pleaded case (by way of amendment after disclosure) was that this expense was for the purpose of a cake to take to a dinner held by clients (Tamara Ralph and Michael Russo).[438] No mention was made of Mr. Stoebe, although it was clear from the relevant invoice that "Konrad" had been iced on the cake.[439]

593. There is no mention of this expense in Ms. Dauriac's first witness statement, but with the benefit of disclosure and having had the chance to read Mr. Maycock's witness statement, Ms. Dauriac offered the following explanation as to why the cake (despite being for Mr Stoebe's birthday) was a legitimate business expense:[440]

> "During the negotiation process [for Mr Caudwell's investment in Ralph and Russo's haute-couture brand which was brokered by Ms. Dauriac and Mr Stoebe], my ex-husband and I were invited to dinner at Tamara and Michael's house to discuss details of the deal as there remained issues to be finalised. The purpose of going to that dinner and indeed the reasons why I had made effort to build a relationship with them was to close the deal. The date of the dinner clashed with my ex-husband's birthday but rather than reschedule the client dinner (and possibly lose momentum in the transaction which we trying to finalise), we went to the event and, having agreed in advance with Ms Ralph, took a birthday cake along. Given the fact that my ex-husband did the deal with me it was obviously necessary and appropriate to take him with me. That does not mean that the sole purpose of the cake or of the evening was to celebrate his birthday – clearly it was not."

[437] Day 8/p.84.

[438] Defence/para. 105(t).

[439] Maycock 1/para.61(b).

[440] Dauriac 2/para. 52.

594. The contemporaneous evidence shows that this version of events is not correct. The dinner with Ralph and Russo was on 12 February 2014,[441] whereas the cake was purchased for a dinner hosted at Ms. Dauriac's home on 15 February 2014 to celebrate Mr. Stoebe's birthday. As such, the events which Ms. Dauriac describes in some detail in her second witness statement are a misrecollection or invention:[442]

Q (Ms. Carss-Frisk, Q.C.)	Ms. Dauriac, it is not a question of your matching things wrongly to the diary; it's a question of your giving elaborate evidence, as we've seen, of how you took this cake to the house of Ralph and Russo and how you would rather have done something else, et cetera, which I suggest was just a lie. … The only reason you've changed your story now is that you were caught out because it was patently obvious from these emails that we've looked at that actually the cake related to a dinner at your home.
A (Ms. Dauriac)	That's absolutely not correct. The reason that I explained better the story, which is the case in the whole proceedings, is that we didn't have the receipt until we were able to correspond it to – in this email. I just didn't have the exact receipt of the £104 cake, which I now understand you went to Lola's to find out it was £80 and then a delivery on it which would make it £104. We didn't have the receipt.
Q (Ms. Carss-Frisk Q.C.)	Ms. Dauriac, what you didn't have until recently were these emails that show how you came to invite various friends to a party at your house. That's what you didn't have. You did have all the other documents relating to this cake.
A (Ms. Dauriac)	My Lord, I didn't have the receipt, otherwise I would have pointed out it's actually a better explanation, to have drawn £100 million for a cake for £104 in my house for entertainment, for dinner with two people – I just had no reason to do that. I don't know exactly for each of the expenses what happened. It's impossible over a period of three years.
Q (Ms. Carss-Frisk Q.C.)	Isn't the reality that you will simply come up with anything by way of a story that you think may serve your purpose in this litigation?

595. Ms. Dauriac's email invitation to Mr Stoebe's birthday dinner on 15 February 2014 shows the nature of the event:

[441] Day 8/p.95.

[442] Day 8/pp.93-95.

"Our dear friends!!

Konie is growing up and we would like to invite you all for dinner on Saturday the 15th. Please let me know if you can join.

Love lots The Stoebies."

596. Ms. Dauriac's email to Ms. Degruttola on 12 February 2014 strongly suggests that she considered this occasion to be a personal dinner, despite instructing Ms. Degruttola to have the cost refunded by Signia anyway:

Ms. Degruttola to Ms. Dauriac (at 05:36pm)	…you said it's a corporate dinner, so I will ask Martin to pay? Xx
Ms. Dauriac to Ms. Degruttola (at 05:38pm)	No pay from my account and get it refunded (write client dinner hosted home) I do not want him to think we are taking the piss xx

597. In cross-examination, Ms. Dauriac provided a convoluted and contradictory explanation that the reason why she did not want Mr. Wilson to think she was "taking the piss" was because "Martin used to be very close to [her] in the business and I don't have enough space in my house to take two more people".[443]

598. Even if this is true, the logical inference to be drawn from that statement is that she wanted Mr Wilson to think this was a "client dinner hosted home", rather than a personal dinner for Ms. Dauriac's friends, so that Mr. Wilson did not feel put out by not being invited. This would point to this expense being a personal expense, regardless of how Ms. Dauriac sought to have it expensed at the time, or how she subsequently tried to justify it.

599. I have no hesitation in concluding that this was not an expense falling within clause 9.

Flights to Malaga for Dawn Ward's birthday

600. Between 2 and 9 July 2013, Ms. Dauriac expensed to Signia various costs associated with flying to Malaga to attend the birthday party of Dawn Ward.[444] In Dauriac Expenses V.1, these expenses were generally described as being in connection with Dawn Ward's birthday. In Dauriac Expenses V.2, references to Dawn Ward's birthday were deleted, and instead it was stated that the expenses were incurred in relation to a "YPO retreat". The "YPO" is, I understand, an international networking organisation for chief executives of companies.

[443] Day 8/p.91.

[444] The details are set out at item 10 in Annex 5.

601. Ms. Dauriac accepted that this description was wrong and (at least from her pleadings onwards) maintained that flying to Malaga for the birthday of Dawn Ward was a legitimate business expense:[445]

> "…Dawn Ward, who had previously been introduced to Ms. Dauriac-Stoebe by Mr. Caudwell as a potential client of [Signia]. As a result of the development of the relationship between Ms. Dauriac-Stoebe and Dawn Ward, [Signia] arranged a substantial loan between Mr. Caudwell and Ms. Ward which generated fee income for [Signia] in 2014."

602. In her witness statement, Ms. Dauriac stated:[446]

> "Ms. Ward was a well-known figure in the high net worth community, was formerly married to a Premier League footballer and was somebody with significant connections and influence in the world in which I operate. Ms. Ward is a TV celebrity. I made many connections and relationships via Ms and Mr Ward.
>
> …
>
> She was also a client of Signia in relation to some lending transactions for which Signia had charged a fee.
>
> …
>
> This was not a business trip in the sense of travelling to discuss a particular piece of business, but it was most certainly a business trip once one understands the nature of the business that I transact, which is to maintain relationships and obtain business from key networks or well-connected individuals as well as (especially in this case) a way to meet new clients and prospects. The way to meet new prospect and most efficient one to convert business is to be invited and introduced by existing clients satisfied with your service. In the wealth management industry, this is the main source of new clients, meeting them through attending those types of events where other wealth individual will be introduced to you. I am quite satisfied that this was the purpose of my attendance on that trip."

603. It was not asserted by Ms. Dauriac that this was a trip to visit a particular client, presumably at their request, to discuss a particular piece of business. Indeed, Ms. Dauriac did not seek to assert that any specific business was discussed on this trip. Ms. Dauriac's point was that the cost of travelling to Malaga for Ms. Ward's birthday was in order to maintain a relationship with an existing client and in the hope of meeting new clients. This rendered the expense "reasonable…and necessarily and wholly incurred" in the course of Ms. Dauriac's duties.

604. I accept that one of Ms. Dauriac's roles within Signia was as "a "rain-maker" – a person who is primarily tasked with winning new or re-newed business".[447] I can appreciate that many trips made purely personally or for pleasure could be justified as having a business aspect. Indeed, any expense involving a client or prospective client of Signia could be justified as a business expense on this basis.

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[445] Defence/para. 105(n).

[446] Dauriac 2/para.47.

[447] Dauriac 2/para.31

605. In order for such expenses to be properly recoverable, it is self-evident that an extremely broad right to recover expenses would have to be conferred, permitting the recovery of expenses not necessarily and wholly incurred in the course of Ms. Dauriac's duties.

606. That is not how clause 9 of the Service Agreement is framed. In my judgment, these expenses clearly and obviously fell outside the terms of clause 9. Certainly, they were neither "necessarily" nor "wholly" incurred in the proper performance of Ms. Dauriac's duties.

Flights to Alicante for "detox week"

607. In March/April 2013, Ms. Dauriac claimed two expenses – item 6 in Annex 5 – relating to a "ladies client detox week" or a "detox week", using the description in Dauriac Expenses V.1. According to Signia's pleaded case, Ms. Degruttola was instructed by Ms. Dauriac during the expenses review to change this reference to "Nathalie flight for ladies' client weekend event" in Dauriac Expenses V.2 as this would "sound better on reading as detox week could be negatively construed".[448]

608. Ms. Dauriac's case was that this event was hosted by her with three of the wives of Signia's biggest clients.[449] In her oral evidence, Ms. Dauriac asserted that this was a legitimate business expense because it allowed her to build and maintain relationships with the wives of major Signia investors:[450]

A (Ms. Dauriac)	That trip, Mrs Caudwell was there, and two of the other clients who was there had circa, I would say, £40 million with them, and it was a way I had to continue the relationship with them. So I actually paid for the week myself on this occasion. … But this, again, is an example of something which cost the firm £127 and which generated probably in excess of £120,000 or £140,000 a year. So I fully will clarify that as a business expense…
Q (Ms. Carss-Frisk Q.C.)	You are not able to point to any documentary evidence, are you, that supports what you say about this being a business trip as opposed to a trip with lady friends for a detox week?
A (Ms. Dauriac)	Well, so as I said, madam, there was one lady who just sold our business for £120 million, originally gave us £5, and we with went up by the end to almost £15 million. That's by doing those type of trips that you achieve it.
Q (Ms. Carss-Frisk Q.C.)	How does that relate to this particular weekend?

[448] This comment is set out in Schedule 5 to the Particulars of Claim. The comments contained in this schedule which are attributed to Ms. Degruttola are based on the meeting between Ms. Degruttola and Mr Maycock on 12 January 2015 (Day 4/pp.79-82).

[449] Defence/para. 105(i)(ii).

[450] Day 8/pp.197-198.

How does that relate to Signia's business?

A (Ms. Dauriac) Because she was there…

609. Once again, Ms. Dauriac's justification that this is a legitimate expense was simply because there were actual or prospective clients who attended the same event. Ms. Dauriac was unable to point any more substantial business purpose than this. There was no evidence of any specific business discussed on this trip and no evidence of any new investment obtained as a result of this trip.

610. For the reasons that I have given in paragraphs 604-606 above, the definition of claimable expenses in clause 9 of the Service Agreement is not wide enough to embrace these expenses.

611. Ms. Dauriac view of expenses is demonstrated by the following exchange. It emerged in cross-examination that the only expenses Ms. Dauriac appeared to have claimed from Signia were the flights, and that Ms. Dauriac had borne her other expenses herself. It was suggested that there was an inconsistency in her approach. As Ms. Carss-Frisk, Q.C. pointed out, if the flights were a legitimate expense, then why not the treatments? Ms. Dauriac's response was that these other expenses were claimable:[451]

Q (Ms. Carss-Frisk Q.C.) Ms. Dauriac, I think you said you paid yourself. Can you be clear about that?

A (Ms. Dauriac) I think I paid myself for some of the treatments, I think, there, because I tried to find and I couldn't find it in my claim form.

Q (Ms. Carss-Frisk Q.C.) So why would you pay for that yourself, especially bearing in mind that you've told us confidently that the hair appointment would be a legitimate expense?

A (Ms. Dauriac) Mm hmm. I don't know, on that trip, what I did. This is why I say I was trying to find a claim, and it's potentially there and I didn't see it. So, I just couldn't find it in the claim form when I look at it the other day.

Travel expenses incurred to see Mr. Caudwell

612. The majority of the disputed expenses claimed by Ms. Dauriac were for travel expenses incurred by Ms. Dauriac to see Mr. Caudwell.[452] Examples are detailed in Annex 5.[453]

613. As a general proposition, Mr. Caudwell asserted that he was "absolutely against corporate hospitality in its entirety".[454] That may very well be the case, but this is

[451] Day 8/pp.197-198.

[452] Day 1/p.142.

[453] See Annex 5, items 2, 3, 11.

[454] Day 5/p.119 (cross-examination of Mr. Caudwell).

nothing to the point. Provided corporate hospitality fell within the ambit of clause 9 of the Service Agreement, it would be recoverable.

614. More to the point, Mr. Caudwell contended that when Ms. Dauriac came to see him, it was as a friend, to go on holiday, not for business. He considered that, for this reason, the expenses should not be recoverable and should not be paid by Signia. Mr. Caudwell's evidence on this point was as follows:

(1) Contrary to what Ms. Dauriac asserted – and Ms. Dauriac's version of events is considered below – Mr. Caudwell did not "request" Ms. Dauriac's presence on these trips. He invited her to go.[455]

(2) He accepted that, on occasion, business might be discussed between himself and Ms. Dauriac,[456] but this was not his preference and (he suggested) was down to Ms. Dauriac. In any event, such discussions were incidental to the main purpose of the trips – which was to have a holiday:[457]

Q (Mr. Plewman, Q.C.)	So, taking these now collectively, can I just take it step-by-step? You have agreed that clearly there were business discussions on quite detailed issues on each of these trips?
A (Mr. Caudwell)	Yes.
Q (Mr. Plewman, Q.C.)	And I would suggest to you that, leave aside the request for the trip itself, it was also your expectation that business would be discussed on these trips?
A (Mr. Caudwell)	No, I'm afraid that was absolute fabrication. It was my expectation that when I had friends on board, that nobody discussed business. Nathalie did on occasion push forward business issues to me which I really didn't want to address, I've got no interest in addressing. I only ever actually wanted to leave things to Mr. Canfield. But, in any event, I didn't want to get into the details, as little as possible, but certainly not on holiday.
Q (Mr. Plewman, Q.C.)	What you can see in all of the documents that I have shown you is that Ms. Dauriac, acting for Signia, sought to engage you about the business in all of these respects on all of those trips?
A (Mr. Caudwell)	Well, I can't say that she did on all of those trips, because I don't know, but what I can say

[455] Day 5/p.125. Also Day 5/p.147.

[456] Some eight trips were put to Mr. Caudwell. I am prepared to accept that <u>some</u> business was discussed on every trip, and I do not consider that Ms. Dauriac's case went further than this. Ms. Dauriac did not assert that every visit to Mr. Caudwell was wholly and exclusively on business. Rather, her case was that but for the need to discuss business with Mr. Caudwell, she would not have gone.

[457] Day 5/pp.143*ff*.

is that she did seek to engage me on a couple of occasions for an hour…I didn't really want to, I wasn't really keen, but she was quite forceful about it and made it happen.

Q (Mr. Plewman, Q.C.) Exactly. What she felt was that it was important in the maintenance of your relationship to deal with these business issues while with you.

A (Mr. Caudwell) It was absolutely unimportant in the relationship, because I resented the imposition on my time. When I'm on my boat with my friends, which I thought Nathalie was, coming as a friend, I thought that was crystal clear…

Q (Mr. Plewman, Q.C.) You kept inviting her, and on each occasion, as we can see, she discussed the business with you?

A (Mr. Caudwell) It appears so.

Q (Mr. Plewman, Q.C.) It being in the interests of Signia to maintain the relationship with you as a client at the optimum level?

A (Mr. Caudwell) No, not really. You know, if I'd had any inkling that she was actually claiming that as a business expense, I would have been beside myself, I would have found it just completely appalling and I would never have invited her ever again…I did not want to be spending my money bringing somebody out on my holiday to then deal with business issues with me. It's just not what I do.

Q (Mr. Plewman, Q.C.) What I'd suggest to you, Mr. Caudwell, she obviously didn't discuss with you whether she was going to claim expense or not claim expense, but what she did do, as she did with every client, is seek every opportunity to discuss your business, correct?

A (Mr. Caudwell) Yes.

Q (Mr. Plewman, Q.C.) And seeing you in a social environment was as much an opportunity in that regard as it was when she saw any other client?

A (Mr. Caudwell) Yes, everything is an opportunity.

(3) Mr. Caudwell did not accept that Ms. Dauriac was obliged to go on these trips:[458]

Q (Mr. Plewman, Q.C.) …Ms. Dauriac's evidence will be that she was expected effectively to come on the trips, and it was not simply a matter of an invitation that she

[458] Day 5/p.148.

	could accept or reject?
A (Mr. Caudwell)	Well, I would disagree strongly with that.
Q (Mr. Plewman, Q.C.)	And she would say she would not have chosen to spend her holidays with her family with you had it not been in the interests of Signia?
A (Mr. Caudwell)	Why did she tell me she loved me, every day?
Q (Mr. Plewman, Q.C.)	And why did you tell her you loved her?...
A (Mr. Caudwell)	Because I did. Because I was genuine. Because I meant it.

615. Ms. Dauriac's evidence was that these trips were necessary for her to perform her duties as Signia's chief executive:[459]

> "…Mr. Caudwell travelled…at least six months of the year, and it was on his decision that I had to go and visit him – it was on his invitation, as you call it for me. He asked me how high I jump, I jump, because that's my job, and we had an understanding that all the deals and all the discussion we had was never in a room in Signia. I think we met once or twice a year at Signia. Most of the time was during those trips and I think it was proven yesterday."

616. Ms. Dauriac insisted that her description of these visits as meetings was accurate. Asked about a trip to Mr. Caudwell's yacht, Ms. Dauriac's evidence was as follows:[460]

Q (Ms. Carss-Frisk Q.C.)	May I suggest, Ms. Dauriac, that to describe this was a meeting on his yacht is a gross distortion of what was in fact an invitation to go out for a holiday?
A (Ms. Dauriac)	I would say no. And I've already explained to you why. And I would also say that you do not sign those kind of deals, again, by sitting on your own. So the answer is absolutely no again.
Q (Ms. Carss-Frisk, Q.C.)	Well, Ms. Dauriac, even if – let's assume for the sake of argument that you did discuss during that trip certain business-related matters, that does not make the purpose of the trip a business purpose, it doesn't make it necessary for you to accept that invitation in order to have those discussions?
A (Ms. Dauriac)	Yes, it does, because, as I've already explained, this is the way Mr. Caudwell and I did business.

617. Similarly, in relation to the ski trip in Vail:[461]

[459] Day 8/pp.166-167.

[460] Day 8/pp.181-182.

[461] Day 8/p.190-191.

Q (Ms. Carss-Frisk Q.C.)	…it is a gross distortion, isn't it, to describe it as a meeting: it was a skiing holiday, to which you were invited by Mr. Caudwell?
A (Ms. Dauriac)	My Lord, that's actually quite a good example, because we did a lot of our deals skiing, Mr. Caudwell and I, and that's what we discussed on those trips. So, again, I will refuse that implication. There was actually – I even have a memory of this because there was a place we used to go skiing, exactly discussing most of those business deals. So I'm definitely and happy to refuse those points, Madam.
Q (Ms. Carss-Frisk, Q.C.)	You've deliberately described this as a meeting, haven't you, to try to suggest this is a business meeting when, as we've already seen from the invitation, the email invitation that we looked at yesterday, plainly Mr. Caudwell's purpose was to invite you as friends, wasn't it?
A (Ms. Dauriac)	Absolutely not.

618. On the facts, there was little difference between Ms. Dauriac and Mr. Caudwell. Even Ms. Dauriac would accept that – to the outsider looking in – these trips appeared to be holidays. Her point – just as in other cases, already considered – was that this is how she did business.

619. The answer to whether the expenses she claimed in relation to these trips were within the scope of clause 9 of the Service Agreement is the same as in these other cases: it is clear that these expenses were not wholly or necessarily incurred in the proper performance of her duties.

620. Whilst I consider it to be clear in all of these cases that the requirements of clause 9 of the Service Agreement were not met, the case of the trips to see Mr. Caudwell is particularly clear, for the following reasons:

(1) I do not accept Ms. Dauriac's after-the-event denial of her friendship with Mr. Caudwell. Obviously, at trial, that friendship stood in ruins. But I do not believe that the friendship did not exist in 2014 and before. Mr. Caudwell, of course, made no effort to deny this friendship.[462] Ms. Dauriac did, by suggesting that she did not attend as a friend at all, but purely as a matter of her business.[463] It was necessary for her to do so, in order to contend that the expenses were wholly incurred in the proper performance of her duties. I do not accept her evidence in this regard.

(2) Nor do I accept that only business was discussed on these trips. I accept – as did Mr. Caudwell – that some business was discussed, but I accept Mr. Caudwell's evidence that it was incidental.

[462] See the exchange at paragraph 614(3) above.

[463] See paragraph 617 above.

(3) Mr. Caudwell, of course, suggested that he would far rather not have had these discussions, but I do not find that this was evident to Ms. Dauriac. However, I do find that there was no necessity in these discussions. They took place because Mr. Caudwell and Ms. Dauriac happened to be in the same place, but had Mr. Caudwell and Ms. Dauriac been apart, and had the discussions truly been necessary, then there would have been ways of having these discussions without Ms. Dauriac joining Mr. Caudwell on holiday. As Mr. Maycock put it:[464]

> "…I deal with Mr. Caudwell extensively and have never felt it necessary to travel to Vail or the superyacht"

(4) Indeed, Mr. Caudwell fell into a special position as a client of Signia. He asserted that he did not need to be wooed or marketed to by Ms. Dauriac, and I find that to be correct. Mr. Caudwell's assets were being managed by Signia in part because they constituted the foundation for Signia's business,[465] which business Mr. Caudwell hoped and expected would succeed and ultimately be sold for a great deal of money. He therefore had a considerable incentive not to remove his assets from Signia and a considerable incentive to keep Signia's costs down. I consider that both he and Ms. Dauriac would have appreciated this. Mr. Caudwell expressed the point with considerable force in cross-examination:[466]

> "You know, if I'd had any inkling that she was actually claiming that as a business expense, I would have been beside myself, I would have found it just completely appalling and I would never have invited her ever again…I did not want to be spending my money bringing somebody out on my holiday to then deal with business issues with me. It's just not what I do."

I accept this evidence. More to the point, I consider that Ms. Dauriac appreciated the fact.

Conclusions

621. For the present, I shall confine myself to stating that all of the expenses considered in this Section were not properly made and clearly and obviously fell outside the scope of clause 9 of the Service Agreement. In the end, Ms. Dauriac's overall justification for her expenses was that the means justified the end: if Ms. Dauriac's efforts brought about Signia's success, then anything was justified. Ms. Dauriac's evidence in this regard was, as Ms. Carss-Frisk, Q.C. put it, "entirely reckless".[467] Ms. Dauriac's ultimate justification appeared to be that even though a given expense might not be "reasonable…and necessarily and wholly incurred" in the performance of her duties, provided it related to actual or prospective clients of the firm, it inexorably followed that it was a legitimate expense:[468]

A (Ms. Dauriac) My Lord, can I answer with one point? Mr Maycock,

[464] Day 4/p.92.

[465] See paragraph 101 above.

[466] See paragraph 614(2) above.

[467] Day 9/pp.47-49 (cross-examination of Ms. Dauriac).

[468] Day 8/p.187 and p.194.

> when he was sitting in this box, made a comment, which by the way I don't agree with, but he said that if – the amounts expensed has to generate more business, more money in terms of business for the company, therefore even in their view they will find it legitimate. And I will say that £26,000 for £600 million of deals will be legitimate.
>
> **Q (Ms. Carss-Frisk Q.C.)** …you claimed, although now you're offering a refund for that too as I understand it, but you actually claimed for some photographs that you took on this trip and gave to Mr Caudwell as a gift, is that right?
>
> **A (Ms. Dauriac)** There was a £29 of photo from Vail.
>
> …
>
> Just to put a £29 present for a thing I don't think is a big issue.
>
> **Q (Ms. Carss-Frisk Q.C.)** You're suggesting it's not a big issue?
>
> **A (Ms. Dauriac)** To give a gift, no, it's not.
>
> **Q (Ms. Carss-Frisk Q.C.)** And to claim that gift as a business expense when you give the gift in return for lavish hospitality?
>
> **A (Ms. Dauriac)** Well, lavish hospitality when I made Mr Caudwell just, as I said to you, so much money over the last few years, I don't believe so. Giving gift, it's proper – in my opinion is a proper way how to build relationship and it should be a proper expense. Why should I pay for making him money? Please tell me.

I do not necessarily accept that Signia's business was as successful as Ms. Dauriac sought to present it. But, even if it had been, this is not a justification of Ms. Dauriac's expenses.

622. There are a number of aspects regarding these expenses to which it will be necessary to revert when considering the question of dishonesty in the round. I consider these aspects in Section K(6)*(j)* below.

(h) The nature of Ms. Dauriac's reaction when she concluded that her expenses might be investigated

The pre-11 November 2014 review

623. I have set out my conclusions regarding Ms. Dauriac's initial review of her expenses (that is, the review that took place before 11 November 2014) in paragraph 251 above. I have found that that review took place because of the expenses investigation at Pure Jatomi,[469] which caused Ms. Dauriac (quite rightly) to be concerned that her expenses might shortly be reviewed also.

[469] Paragraph 251(2) above.

624. The review involved simply the deletion of references to "Caudwell", which was replaced with the altogether less clear description of "client".[470] The only reason the expense sheets were not permanently changed in this regard is because Ms. Tarbet declined to sign these new – vaguer – expense sheets.[471]

625. I find that the only reason this exercise was undertaken was to hide the nature of Ms. Dauriac's expense claims, in the event of an investigation. I can see no other purpose to the process.

The post-11 November 2014 review

626. The post-11 November 2014 review had within it a number of elements:

(1) Expenses recorded on the expense sheets were either deleted or amended.[472] Ms. Dauriac did not, of course, undertake this process herself, but delegated it to others – notably, Ms. Cooper, Ms. Tarbet and Ms. Degruttola. However, Ms. Dauriac was the controlling mind of the process. Whilst errors no doubt occurred in terms of re-describing or deleting expenses, I consider that the essential objective and outcome of the exercise was as Ms. Dauriac intended. I do not accept Ms. Dauriac's efforts, in later interviews, to blame her staff (and in particular, Ms. Degruttola) for what were later termed errors.

(2) The essential objective and outcome of the exercise was twofold, as I have noted: amendment of some expenses and deletion of others. It is necessary to consider these two objectives separately.

(3) I begin with the amendments.[473] The changes made are best seen in Annex 5, but the table below provides a brief summary of various (but not all) of the changes between Dauriac Expenses V.1 and Dauriac Expenses V.2:

[470] Paragraph 251(5) above.

[471] Paragraph 251(6) above.

[472] Paragraph 297 above.

[473] My specific conclusions in this regard are at paragraph 297(2) above.

	Description in Dauriac Expenses V.1	Description in Dauriac Expenses V.2
1	Photos from Vail (John Caudwell)	Client refreshments
2	Nathalie, Konrad and Juliette flight to Geneva to meet Mario and Moez	Flights to Geneva for client trip with Mario Palencia
3	John Caudwell meeting	Gift for Jonathan Blooms birthday party
4	ND flight to Alicante for ladies client detox week	Nathalie flight for ladies client weekend event
5	ND flight for detox week	Flight change for trip with Clients due to another client meeting
6	Kristina (JS nanny), JS & KS St Emilion flights	Flights to St Emilion client event
7	Kristina (JS nanny) flight from Bordeaux to St Emilion	Flights to St Emilion for client event
8	Konrad and Juliette flight to London from Bordeaux	Flight for client weekend trip with Aurelie and Niels Nielson
9-15	Connecting flight to Malaga for Dawn Ward's birthday[474]	Flights for YPO retreat
16	Kristina & Juliette flight to Nice to meet Nathalie & John Caudwell	Baggage for flight for client weekend with Amin Khoury
17	KS birthday cake	Birthday cake for client dinner

Table 12: Changes in the description of Ms. Dauriac's expenses

These changes have a common theme: to make them more acceptable to a person scrutinising them. Thus:

(a) References to Mr. Caudwell are removed (Items 1, 3, 16).

(b) References to the travel costs of Ms. Dauriac's family are removed (Items 2, 6, 7, 8, 16, 17).

(c) References to what might be regarded as – and what I found to be –an impermissible expenses are eliminated or toned down (Items 4, 5, 9-15)

In some cases, the changes are positively misleading as to the nature of the expense incurred. The deletion of references to Mr. Caudwell and the references to Ms. Dauriac's family are examples. The clearest example is the substitution of "YPO retreat" for "Dawn Ward's birthday".

Once again, I find that the only reason this exercise was undertaken was to hide the nature of Ms. Dauriac's expense claims.

(4) Turning, then, to the deletions:[475]

(a) Although certain claims were deleted from the expense sheets, I have found that these deleted claims were transferred to and listed on the Reimbursement Schedule. It is unfortunate that this document has not survived, but I cannot conclude that it was Ms. Dauriac's intention to make these expenses disappear. Indeed, that would have been difficult to achieve

[474] There are six very similar entries: I have simply described the first.

[475] My specific conclusions in this regard are at paragraph 297(1) above.

because it would have introduced a discrepancy into Signia's books and accounts. Transferring the expenses to the Reimbursement Schedule ensured that the figures would continue to match.

(b) I consider that Ms. Dauriac's intention was to use the Reimbursement Schedule for those expenses that she felt were impossible for her to defend and which Ms. Tarbet had already refused to disguise (by using the anodyne term "client") during the pre-11 November 2014 review.

(c) Ms. Dauriac sought to suggest that her offers to repay the items on the Reimbursement Schedule did not reflect the unreasonableness of these expenses, but rather the unreasonableness of Mr. Caudwell and her desire to appease him. Whilst I accept that the purpose of the Reimbursement Schedule was to head-off any complaint regarding these expenses, I reject Ms. Dauriac's evidence that she was acting in fear of an unreasonable Mr. Caudwell. She was acting in fear of the reaction that the expenses she had claimed would provoke, for (as I have found: see paragraph 620(4) above) she knew very well what Mr. Caudwell's reaction would be when he discovered the nature of her expenses.

(i) The manner in which Ms. Dauriac's explanation for her expenses changed over time

627. Clearly, the description of Ms. Dauriac's expenses changed between Dauriac Expenses V.1 and Dauriac Expenses V.2. Even subsequently, however, Ms. Dauriac's explanation of and justification for the expenses that Mr. Caudwell was challenging varied and shifted. I have expressed, in paragraph 78 above, my concern at Ms. Dauriac's inability to give satisfactory explanations in relation to the expenses she claimed. As I noted there, Ms. Dauriac was well-apprised of the expenses that Mr. Caudwell was contending were wrongful, and she had every opportunity to provide an explanation.

628. Columns (7), (8) and (9) of the table at Annex 5 set out how Ms. Dauriac's explanations varied over time, but the instances set out in Section K(6)*(g)* demonstrate very clearly the unsatisfactory nature of Ms. Dauriac's explanations:

(1) *The trip to see Ms. Caudwell.* Ms. Dauriac's explanations varied from the contention that this particular claim was a mistaken expense claim that served to trigger her "review" to the opposite contention that the claim was an entirely legitimate business expense.[476]

(2) *Mad Lillies Hair Salon.* Ms. Dauriac's final position was that this expense was a hair appointment, as demonstrated by the credit card receipt. Yet this is not how the expense is described in either Dauriac Expenses V.1 or V.2. No good explanation was provided for this mis-description.

(3) *Mr. Stoebe's birthday cake.* As is described in paragraphs 591*ff* above, Ms. Dauriac's explanation evolved with the evidence. In the witness box, she abandoned her pleaded case, and sought to justify the expense on a different basis.

[476] See paragraphs 574-578 above.

(4) *Flights to Malaga for Dawn Ward's birthday.* It is difficult to understand how the repeated replacement of the reference to "YPO retreat" in place of "Dawn Ward's birthday" can be a mistake. It is difficult to see an honest explanation for this change and it was insufficiently explained by Ms. Dauriac in her evidence.

(j) Dishonesty and Signia's right to dismiss Ms. Dauriac summarily

629. I conclude that Ms. Dauriac knew, when she submitted the Wrongful Expenses Claims, that they were not expenses that could properly be submitted pursuant to clause 9 of the Service Agreement.

630. This, I find, is the only plausible explanation for Ms. Dauriac launching the pre-11 November 2014 review of her expenses. She knew that if her expenses were looked at, they would quickly be seen to be improper. She took steps to disguise the impropriety by deleting references to "Caudwell". Those steps ultimately failed: but that does not in any way diminish the inference that I draw as to her state of mind.

631. It is not as if the expenses that she sought to claim were borderline acceptable expenses claims. For the reasons I have given in Section K(6)*(g)*, these were clear and obvious cases falling outside the scope of clause 9, and I find that Ms. Dauriac knew this.

632. That knowledge is further underlined by the post-11 November 2014 expenses review. As I have described, this was a more sophisticated attempt by Ms. Dauriac to protect herself, involving alteration of some records and a limited *mea culpa* in relation to the records that were deleted and transferred to the Reimbursement Schedule.

633. I consider that, by this exercise, Ms. Dauriac was seeking to build herself a defensible position, in anticipation of the expenses review that she had – by this stage – been informed was in train. What proved to be her undoing was the fact that Mr. Canfield and Mr. Maycock had obtained from Mr. Hayes the Dauriac Expenses V.1 and so were able to identify each and every one of Ms. Dauriac's amendments and deletions by comparing the Dauriac Expenses V.1 with the Dauriac Expenses V.2. The consequence was that, instead of defending the Dauriac Expenses V.2, as she anticipated she might have to, Ms. Dauriac was compelled to explain and justify the changes she had made.

634. Again, the fact that Ms. Dauriac's attempted cover-up failed does not affect the inferences that I can draw as to her state of mind.

635. All this explains why – when this matter came to trial – Ms. Dauriac was unable to justify her position in a clear and compelling way. There is, quite simply, no explanation consistent with honesty.

636. For these reasons, I am satisfied so that I am sure that Ms. Dauriac deliberately made expense claims that she knew were not proper claims under clause 9 of the Service Agreement.

(7) The operation of the Leaver provisions

(a) Introduction

637. As was noted in paragraph 517 above, whilst the Leaver provisions in the Articles are premised upon general employment law principles, the Leaver provisions set out a

specific regime relating not to Ms. Dauriac's employment but as regards the compulsory transfer process of the Dauriac Shares held by Marlborough.

638. In short, this is not a case where the question to be determined is whether Ms. Dauriac was constructively or summarily dismissed. These are relevant questions, but they are incidental to the real issue, which is the operation of the Leaver provisions, and specifically the definition of a Good Leaver.

639. It is now necessary to apply the findings that I have made in relation to constructive dismissal and the right summarily to dismiss to the Leaver provisions.

640. Ms. Dauriac contended that she was a Good Leaver pursuant to both Limb A and Limb B.[477]

(b) Good Leaver under Limb A

Requirements

641. The requirements that have to be met to be a Good Leaver under Limb A were set out in paragraph 513(1) above. There are three requirements:

(1) The employee must give notice to terminate his or her employment.

(2) The employee must not be in breach of his or her terms of employment.

(3) The notice of termination must expire five years or more after the Employment Start Date.

Notice to terminate

642. In my judgment, Ms. Dauriac did give notice to terminate her employment by accepting Signia's repudiatory breach of contract in her letter of 21 January 2015.[478] I do not consider that "notice" implies advance notice. It seems to me to be perfectly possible for an employee to give immediate notice to terminate his or her employment, and that is what I consider occurred in this case.

Not be in breach of his or her terms of employment

643. I have found – for the reasons given in Section K(6) above – that Ms. Dauriac was in breach of her terms of employment, such that Signia had the right (which, however, was not exercised) to terminate Ms. Dauriac's employment summarily.

644. I conclude that this requirement in Limb A was not satisfied. For this reason, Ms. Dauriac fell outside Limb A.

[477] See paragraphs 513-514 above.

[478] See paragraphs 541-543 above.

A period five years after the Employment Start Date

645. Ms. Dauriac's Employment Start Date was 9 November 2009.[479] Ms. Dauriac's notice expired on 21 January 2015, which is a period five years after the Employment Start Date.

Conclusion

646. Ms. Dauriac was not a Good Leaver under Limb A.

(c) Good Leaver under Limb B

Requirements

647. The requirements that have to be met to be a Good Leaver under Limb B were set out in paragraph 513(2) above. There are as follow:

(1) The employee must leave Signia as a result of summary dismissal by Signia or service of a notice to dismiss.

(2) Signia must have had no right summarily to dismiss the employee in question.

Summary dismissal by Signia

648. Signia did not dismiss Ms. Dauriac. Although Signia had the right summarily to dismiss Ms. Dauriac, that right was never exercised. That was because Signia had commenced, but not concluded, disciplinary proceedings against Ms. Dauriac. The reason those disciplinary proceedings were never concluded was because Ms. Dauriac accepted Signia's repudiatory breach of contract.

649. In these circumstances, it is difficult to see how Limb B is engaged. It was contended by Ms. Dauriac that Limb B could be engaged by Ms. Dauriac's constructive dismissal. It was suggested that constructive dismissal could amount to "summary dismissal" within the meaning of Limb B:

(1) In my judgment, this is a misreading of the Limb B provisions. Limbs A and B must be considered together. Together, they set out the entirety of the circumstances in which an employee may be said to be a Good Leaver.

(2) Limb A deals with those cases where it is the employee who elects to leave Signia. Provided the five-year requirement is observed, an employee is a Good Leaver if that employee gives notice and was not in breach of his or her terms of employment.[480] As I have found, the words of Limb A are sufficiently wide to embrace an immediate notice to terminate employment. The acceptance of a repudiatory breach of contract on the part of the employer obviously is sufficient to amount to such notice.

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[479] See paragraph 121(1) above.

[480] A question, which does not arise in the present case, is whether any breach of an employee's terms of employment would render that employee not a Good Leaver. The question does not arise, because I have found breaches on the part of Ms. Dauriac so serious as to entitle Signia to dismiss her summarily. I express no view as to the effect of less serious breaches.

(3) Limb B, by contrast, deals with those cases where it is Signia, and not the employee, who is ending the employment relationship. In contrast to Limb A – where an employee is a Good Leaver if entitled to give notice, not being in breach of contract – Limb B focuses on an unjustified termination of the employment relationship by Signia. If termination was unjustified, then the employee is a Good Leaver.

(4) I can see no reason for re-writing the provisions of Limb B so as to cause them to embrace a case where an employee terminates the employment relationship, when such cases are clearly covered by Limb A.

(8) Conclusions

650. I conclude that Ms. Dauriac was a Bad Leaver under the Leaver provisions:

(1) The definition of Bad Leaver is essentially a "catch all" definition embracing those employees who are not Good Leavers.[481]

(2) There are two classes of Good Leaver – those falling within Limb A and those falling within Limb B.[482]

(3) Ms. Dauriac was not a Good Leaver within Limb B because Limb B deals with those cases where Signia terminates the employment relationship,[483] which did not occur in this case. Signia did not dismiss Ms. Dauriac.[484]

(4) Ms. Dauriac was, potentially, a Good Leaver within Limb A. Because Signia was in repudiatory breach of contract,[485] Ms. Dauriac was entitled to and did accept that repudiation.[486] This constituted notice to terminate her employment within Limb A.[487] However, the fact that Ms. Dauriac was herself in breach of her contract of employment, such that Signia would have been entitled to dismiss her summarily,[488] brought her outside Limb A and rendered her a Bad Leaver.[489]

(5) Mr. Caudwell contended that, in addition to the Wrongful Expenses Claims, Ms. Dauriac was in breach of other provisions of the Service Agreement. Given my conclusion in relation to the Wrongful Expenses Claims, it is unnecessary for me to deal with these, additional, alleged breaches and I do not do so.

651. It was contended by Ms. Dauriac that the differentiation between Good Leaver and Bad Leaver in the Articles constituted a penalty and that I should, for this reason, not

[481] See paragraph 512 above.

[482] See paragraph 513 above.

[483] See paragraphs 648-649 above.

[484] See paragraphs 541-545 above.

[485] See paragraphs 521-540 above

[486] See paragraphs 541-543 above.

[487] See paragraph 642 above.

[488] See paragraphs 546-636 above.

[489] See paragraphs 643-644 above.

enforce the Bad Leaver provisions (which provide for a different – lower – valuation of the Dauriac Shares), but treat Ms. Dauriac as a Good Leaver.

652. The law regarding penalties is stated in the Supreme Court's decision in *Cavendish Square Holding BV v. Makdessi* [2015] UKSC 67. The Supreme Court reaffirmed the importance of the rule against penalties, but re-stated and clarified the doctrine in important respects.

653. I do not consider this to be a case where the penalty doctrine applies; and, even if it did, I do not consider the Leaver provisions in the Articles to be a penalty:

(1) The paradigm of a penalty is the case where, in the event of a breach of contract, the contract-breaker is obliged to pay to the other party a fixed sum which is not "liquidated damages" (i.e. an attempt, in advance, to assess damages without the difficulty and expense of proving actual damage) but a penalty, in the sense that it imposes a detriment on the contract-breaker that is out of all proportion to any legitimate interest of the innocent party.

(2) The penalty doctrine applies to the consequences of a breach of contract – it regulates the remedies available for breach of a party's primary obligations, not the primary obligations themselves. Of course, the court must be astute to detect disguised penalties, and it is clear that the penalty doctrine extends to deposits, forfeiture clauses and provisions that require a party in breach of contract to transfer property to the other party at less than its full value.

(3) Although a court should be astute to detect disguised penalties, it is recognised that the penalty doctrine is an interference with freedom of contract. The court should be careful, in a commercial case, where the contract has been negotiated without suggestion of oppression, when applying the doctrine.

(4) In this case, the compulsory transfer process in the Articles sets out a detailed and extensive code for the compulsory transfer of a shareholder's shares. None of the Transfer Events[490] triggering the process have anything to do with the shareholder's breach of contract. That is true even of the Transfer Event applicable in this case – which is when a holder becomes a Leaver.

(5) It is true that the valuation process, whereby a value is attributed to the Leaver's shares, is affected by a variety of factors,[491] including whether the Leaver is a Good or a Bad Leaver. One of the factors determining whether a Leaver is Good or Bad is whether the Leaver is in breach of his or her contract of employment. But this fact does not mean that the Leaver provisions, still less the compulsory transfer process, amount to a penalty payable on breach. That is a mischaracterisation of the nature of the provisions which, as I have noted, are triggered by events other than a breach of contract. Indeed, in this case, the reason Ms. Dauriac is a Leaver is because she terminated the Service Agreement because of Signia's repudiatory breach.

[490] See paragraph 19 above.

[491] See paragraph 27(3) above.

(6) Accordingly, I do not consider the penalty doctrine to apply in this case. If I am wrong, then the Leaver provisions will be a penalty if they amount to an "…obligation which imposes a detriment…out of all proportion to any legitimate interest of the innocent party in the enforcement of the primary obligation. The innocent party can have no proper interest in simply punishing the defaulter. His interest is in performance or in some appropriate alternative to performance."[492]

(7) The purpose of the Leaver provisions is to ensure that, until the anticipated sale of Signia, the shares in Signia remain with Mr. Caudwell (or, more accurately, Grecco) and the current employees of Signia (Ms. Dauriac or, more accurately, Marlborough). That makes good sense: in a start-up venture, it is important that the shareholding in the company not be too diffuse and remain vested in those directly concerned with the development of the company. The Leaver provisions, equally, have an important function in incentivising employees to stay – hence the effect of the duration of the employee's employment on the value attributed to his or her shares.

(8) As I have noted, a whole range of factors are relevant to the value attributed to shares pursuant to the compulsory transfer process. One of these factors is whether the employee's employment was terminated for cause; another is whether – the employee having elected to leave – the employee was in breach of contract. I can see nothing in these detriments out of proportion with the legitimate interests of all of the parties to the Articles, including in particular the Leaver.

L. THE DATE OF THE TRANSFER EVENT

654. I find that the relevant provision determining the date of the Transfer Event is Article 6.25.3 (set out in paragraph 22 above), which defines the date on which a person becomes a Leaver as "where an employer or employee wrongfully repudiates the contract of employment and the other accepts that the contract of employment has been terminated, the date of such acceptance".

655. The Transfer Event therefore took place on 21 January 2015, the date Ms. Dauriac accepted Signia's repudiatory breach of contract.[493] In fact, this date would pertain even if Signia was not in repudiatory breach. There are two possibilities. Either:

(1) Signia was in repudiatory breach, through its conduct, which repudiation Ms. Dauriac accepted by letter on 21 January 2015; or

(2) Ms. Dauriac repudiated her contract of employment by her letter of 21 January 2015, which repudiation Signia accepted on the same date.

[492] *Makdessi* at [32]. I have omitted from the quotation the words "secondary obligation" and "contract breaker". These, of course, strongly suggest that the doctrine does not apply, as I have found. But, for this purpose, I am assuming that I am wrong in this conclusion.

[493] See paragraphs 541-543 above.

M. THE DATE OF MS. DAURIAC'S EMPLOYMENT START DATE

656. Although initially contentious, it was by the end of the trial common ground that Ms. Dauriac's Employment Start Date was 9 November 2009,[494] and I so find.

N. THE VALUE TO BE ASCRIBED TO THE DAURIAC SHARES

(1) The appropriate measures of value

657. To recap:

(1) Marlborough held 40,000 B Ordinary Shares and 156,000 C Ordinary Shares on trust for Ms. Dauriac.[495]

(2) Ms. Dauriac's Employment Start Date was 9 November 2009.[496]

(3) Ms. Dauriac's employment terminated on 21 January 2015.[497]

658. Ms. Dauriac's employment with Signia therefore terminated after 60 months of the Employment Start Date but within 72 months of the Employment Start Date.[498]

659. In these circumstances, given the time elapsed between the Employment Start Date and the date Ms. Dauriac's employment terminated:

(1) If a Good Leaver, Ms. Dauriac would be entitled to:

(a) The lower of Fair Value and Exit Value in the case of the B Ordinary Shares.

(b) 80% of the lower of Fair Value and Exit Value in the case of the C Ordinary Shares.[499]

(2) If a Bad Leaver, Ms. Dauriac would be entitled to:

(a) The lower of Fair Value and Issue Price in the case of the B Ordinary Shares.

(b) 75% of the lower of Fair Value and Exit Value in the case of the C Ordinary Shares.[500]

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[494] See paragraph 121(1) above.

[495] See paragraph 13 above.

[496] See paragraph 656 above.

[497] See paragraph 655 above.

[498] By the end of the trial, it was common ground that Ms. Dauriac's length of service was between 60 and 72 months: Day 10/pp.152-153 (cross-examination of Dr. Shi).

[499] See Article 6.24.1, set out in paragraph 27(2)(a) above.

[500] See Article 6.24.2, set out in paragraph 27(2)(a) above.

660. In the case of a Good Leaver, the Articles indicate two values – Fair Value and Exit Value – the lower of which is to be used to compute the value of the Dauriac Shares. In the case of a Bad Leaver – and these are the applicable provisions, given my findings – the same is true of the C Ordinary Shares, but in the case of the B Ordinary Shares, Ms. Dauriac is entitled to the lower of Fair Value and Issue Price.

661. Exit Value references the consideration received or to be received by the holders of Shares on or following an Exit,[501] an Exit being defined as the sale of the whole of the issued share capital of Signia to a third party.[502]

662. No Exit has taken place. There is, therefore, no value to be ascribed to this measure.

663. Although it might be possible to argue that this fact renders the Exit Value zero, and that therefore – since equity is incapable of having a value lower than zero – this must constitute the lower of Fair Value and Exit Value, no such argument (quite rightly) was put forward on behalf of Mr. Caudwell. Although, perhaps, technically an arguable point, it is an entirely meretricious one. It would have the result of depriving a Good Leaver of all value in that Leaver's B Ordinary or C Ordinary Shares in any case where no Exit had taken place, and of doing similarly to a Bad Leaver's B Ordinary Shares.

664. In my judgment, where there has been no Exit, and so no Exit Value can be calculated, the effect is to render Exit Value irrelevant for the purposes of valuing the Shares. It follows that, in this case, the applicable measures of value are Fair Value and Issue Price.

665. Issue Price is, of course, straightforward to determine: the Issue Price of the B Ordinary Shares was £1.00 per share. On this basis, Marlborough's B Ordinary Shares had a face value of £40,000. Of course, that value will only apply if it is lower than Fair Value. It is to that value that I now turn.

(2) Fair Value

666. The definition of "Fair Value" was set out in paragraph 27(4)(c)(i) above, but it is worth repeating. Fair Value means:

> "…as determined between the Board and the Investor; save that where a Leaver indicates that he does not agree with such valuation, as determined by an Independent Valuer as at the date of the Transfer Event (such valuation to be on the basis of a willing buyer and a willing seller and shall not take any account of whether the Shares comprise a majority or a minority interest nor the fact that transferability is restricted by the Articles)…"

667. The first question that arises is whether the compulsory transfer process was followed, such that the price of the Dauriac Shares has been determined according to that process. That depends on whether a Fair Value has been determined "between the Board and the Investor", without the Leaver indicating a failure to agree with such a valuation.

[501] See the definition of "Exit Value" set out in paragraph 27(4)(c)(ii) above.

[502] See the definition of "Exit" set out in paragraph 27(4)(c)(ii) above.

(3) Determination of Fair Value by the Board and the Investor

(a) Who determines Fair Value?

668. In the first instance, Fair Value is determined between the Board and the Investor:

(1) As has been described, the "Investor" was, in this case, Grecco.[503]

(2) The "Board" is a term not defined in the Articles. However, it is obvious that the Board must be the board of Signia and that it comprises "Directors", which is a defined term:

> "…the Directors for the time being of [Signia] or (as the context shall require) any of them acting as the board of Directors of [Signia]"

Directors would, therefore, appear to describe Mr. Canfield and (to the extent she remained a Director) Ms. Dauriac herself. It is also worth bearing in mind that by Article 6.5, a Transfer Notice constitutes Signia the agent of the Leaver for the purpose of the sale of the Shares.[504] In my judgment, that means that the Directors – as the controlling mind of Signia for this purpose – had an obligation to act in accordance with the fiduciary duties that an agent ordinarily owes his principal when determining the Fair Value of the Dauriac Shares with Grecco. The Directors could not properly, in my judgment, determine <u>any</u> price nor could they properly disregard any indication of Leaver dissent.

669. No time limit for this process is indicated. Ms. Dauriac contended that the time limits in Article 6.6 should apply,[505] but I can see no basis for importing these limits.

670. With these preliminary points in mind, it is possible to turn to the question of whether Fair Value was determined as between Grecco and the Board.

(b) Determination of Fair Value in this case

671. Pursuant to Article 6.25.3 of the Articles, the repudiation of Ms. Dauriac's contract of employment on 21 January 2015 constituted Ms. Dauriac a Leaver[506] and caused a Deemed Transfer Notice to be given on that date,[507] which is the date on which the Fair Value is to be assessed.[508]

672. Following 21 January 2015, the following communications took place:

(1) On 16 February 2015, Signia wrote to Marlborough explaining the compulsory transfer process, and assessing (subject to an Independent Valuer) the Fair Value

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[503] See paragraph 6 above.

[504] See paragraph 28(1) above.

[505] See Ms. Dauriac's written closing submissions at para. 352(2).

[506] See paragraphs 19-22 above.

[507] See paragraphs 23-24 above.

[508] See paragraph 22 above.

of the B Ordinary Shares at £1 and the Fair Value of the C Ordinary Shares similarly.

(2) It was suggested by Signia that this letter constituted a "determination" as between Grecco and the Directors of Signia, such as to bind Ms. Dauriac. That is an unsustainable argument. The terms of the letter itself make clear that the determination – such as it is – is subject to Ms. Dauriac giving written notice "within 14 days of the date of this letter that she does not agree with this valuation".

(3) It is plain, therefore, that the letter stated the position of Signia (and perhaps also that of Grecco) subject to Ms. Dauriac's response, to be received within 14 days. On its own terms, it was not a determination.

(4) It is quite evident that such determination as there was did not meet with the approval of Ms. Dauriac. That is clear both from a letter written by Ms. Dauriac's solicitors on 16 February 2015 and by a letter from Marlborough dated 2 March 2015 expressly disagreeing with the value attributed to the Dauriac Shares.

673. I appreciate that a great deal of technical argument can be had as to whether Signia and/or Grecco received proper notice of the fact that Ms. Dauriac was not in agreement with the provisional determination that Signia and/or Grecco had arrived at. I do not regard such points as in any way sound. In my judgment, whether the notice of the objection came formally from Ms. Dauriac or from Marlborough, that was sufficient to make clear to Signia that Ms. Dauriac as Leaver was not accepting the valuation. I do not consider, whatever Signia thought at the time, that it was open to Signia – as Ms. Dauriac's agent in this regard – to take technical points against her. I should say that I make this finding after the event, having carefully studied the complex provisions of the Articles. I make no criticism of Signia (or Grecco) for failing to follow the very complex valuation process. However, an innocent failure to follow the process cannot save it.

674. I conclude that there was no determination of Fair Value by the Board and Grecco. However, because Signia proceeded on the basis that Fair Value had been determined, no independent valuation was obtained.

675. It is unclear to me whether the failure to ascertain, in accordance with the Articles, the value of the Dauriac Shares constituted a breach of contract on the part of Signia or whether there has simply been a failure to ascertain the value of the Dauriac Shares, with a concomitant inability in the parties to agree that value now or even agree how that value might be ascertained, which might be resolved by declaration of the court. In their written submissions:

(1) Ms. Dauriac contended that if the Articles had not correctly been followed, then Ms. Dauriac was entitled to claim damages for their breach by reference to the proper value of the Shares (assessed in accordance with the value to be attributed to them applying the process that should have been applied).[509]

[509] See paragraphs 444*ff* of Ms. Dauriac's written closing submissions.

(2) It was accepted by Mr. Caudwell that if the provisions of the Articles had not been validly followed, then Ms. Dauriac was entitled to damages.[510]

In these circumstances, I proceed on the basis that any difference between value of the Dauriac Shares as assessed by Signia and the value of the Dauriac Shares as assessed by me is recoverable in damages for Signia's breach of the Articles.

(4) Determination of Fair Value by the court

(a) The approach of the experts

676. Each of the experts took a very different approach to the question of Fair Value. Here, I briefly explain the approach taken by each expert.

Mr. Sharp's approach

677. In Sharp 1, Mr. Sharp considered various valuation methodologies, which he termed the "cost", "income" and "market" approaches. His view was that the shares in Signia were best valued using what he called a "market" approach:

> "6.17 The market approach considers how the market views the business or asset concerned. As set out above, multiples derived from market benchmarks can be used in an income approach, and the income and market approaches are often intertwined.
>
> 6.18 A variation of this approach often used for asset and wealth management companies is to apply a market multiple to the AUM on the basis that the revenues and profits are generally earned by charging clients fees which are a percentage of their AUM. There is, therefore, in many cases, a predictable relationship between revenues and AUM…
>
> …
>
> 6.20 …I do not believe that I have reliable enough financial information suitable for valuation purposes for the year ended 31 December 2014 or particularly detailed forecasts in order to apply the income methodology. Because Signia has substantial and valuable AUM and few tangible assets the cost approach is also not appropriate.
>
> 6.21 Therefore, in common with many asset management companies I have adopted a multiple of AUM as my primary valuation methodology…This is, therefore, a method based on a market approach using a market-based multiple of the AUM."

678. Looking at comparable transactions and other data, Mr. Sharp derived an "AUM" multiple of 2.3%.[511] Applying this multiple to Signia's AUM as at 31 December 2014 (£1,876,390,702), Mr. Sharp derived an "enterprise value" for Signia of £43.16 million.[512] Of course, the value of the Dauriac Shares would be a proportion of this, which Mr. Sharp put at 49%, the extent of Ms. Dauriac's equity in Signia as represented by the Dauriac Shares.

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[510] See paragraph 141 of Mr. Caudwell's written opening submissions.

[511] Sharp 1/para. 7.6.

[512] Sharp 1/para. 8.1.

679. It is worth pointing out that Mr. Sharp's definition of "enterprise value" was controversial: that is a point to which I shall return. Mr. Sharp also commented in more general terms upon the valuation of the Dauriac Shares. He expressed the view that "there is no reasonable basis on which 49% of a wealth management company with AUM of £1.9 billion can be valued at £2. This is prima facie and obviously an extreme undervalue."[513]

Dr. Shi's approach

680. Dr. Shi's first report – Shi 1 – was responsive to Sharp 1. It is right to observe that Dr. Shi expressed a number of criticisms of Mr. Sharp's approach – to which Mr. Sharp responded. It will be necessary to consider these criticisms in due course, but for present purposes all that needs to be said is that Dr. Shi did not accept Mr. Sharp's analysis.

681. Dr. Shi began by making the (obvious) point that as a privately held company, Signia's value was not directly observable in the market. She considered there to be two commonly used methods for assessing the enterprise value of such a company:[514]

(1) The discounted cash flow method, which Dr. Shi did not adopt because she considered there to be insufficient data to provide a reasonable basis for applying this method.[515]

(2) A multiples method. This, of course, was the approach of Mr. Sharp, save that Dr. Shi's multiplicand was not AUM. Dr. Shi said this:

> "3.9 The multiples method, on the other hand, is based on the idea that two comparable companies have similar values. In general, there are two ways to perform multiples valuation.
>
> - Comparable companies method: this involves (i) identifying publicly listed companies that are comparable to the subject company in terms of the nature of operations, risk profile, expected growth, etc; and (ii) applying the valuation multiples of these companies – e.g. the ratio of their observable market value relative to certain accounting measures of the companies – to the subject company's accounting measure.
>
> - Comparable transactions method: this involves using valuation multiples of comparable companies involved in acquisitions/sales to value the subject company.
>
> 3.10 The multiples valuation method is relatively easy to implement, and is often considered as a shortcut to the DCF valuation because it does not require explicit forecasting of the subject company's cash flows and estimating the company's cost of capital. A key to obtaining a robust valuation estimate is to identify companies or transactions that are sufficiently comparable to the subject company to be valued. Moreover, as this method applies the estimated valuation multiples to accounting measures of the subject company, it is more suited for valuing

[513] Sharp 1/para. 8.15.

[514] Shi 1/para. 3.7.

[515] Shi 1/para. 3.18.

companies that are in a stable condition so that the accounting measures reflect the likely future condition of the company."

682. Dr. Shi identified two types of valuation multiple generally used for establishing the enterprise value of asset/wealth management companies: a multiple based on AUM; and a multiple based on EBITDA.[516]

683. Mr. Sharp, of course, had used the former. Dr. Shi used the latter. EBITDA was defined in paragraph 146 above. Dr. Shi said this about the EBITDA multiple:

"3.15 The EV/EBITDA multiple is the ratio of the EV of a company to its EBITDA, which is a proxy for the company's cash flows. Higher EV/EBITDA multiples are generally associated with companies with higher growth opportunities and/or lower risk levels, and vice versa.

3.16 As EBITDA of a company reflects the cash flows generated by the company, using the EV/EBITDA multiples of the comparators to value the subject company does not require the subject company to have similar operating efficiency as comparable companies; it only requires the assumption that companies with similar amount of cash flows (as proxied by EBITDA) have similar value. Therefore, using EV/EBITDA multiples of the comparator for valuing a company is more appropriate if the company's profit margins are not in line with others in the industry.

3.17 …the EV/EBITDA multiples of the comparable companies should be applied to the expected steady-state level of EBITDA of the subject company in order to estimate the enterprise value of the company."

684. Dr. Shi thus sought to "normalise"[517] Signia's EBITDA to reach a reliable figure that could be used as the basis for assessing future EBITDA. That "normalised" EBITDA formed the multiplicand to which Dr. Shi applied a multiplier at the lower end of the range of 5 to 8.4.[518] For her, Dr. Shi's multiplier was largely academic, for her normalised EBITDA came to zero. On this basis, Dr, Shi concluded that the total enterprise value of Signia was zero.

(b) Points in issue

685. In addition to the broad difference in approach between the experts – which is considered below – there are a number of subsidiary, but nonetheless material, issues affecting valuation that need to be determined. These issues are as follow:

(1) Whether the definition of "Fair Value" set out in Article 6.24 should be augmented by the words "…and for these purposes giving an Enterprise Value of [Signia]". This point is considered further in Section N(4)*(c)* below.

(2) Whether the meaning of "Fair Value" can be elucidated by reference to other Articles, in particular Article 6.6.2. The point is considered further in Section N(4)*(d)* below.

[516] Shi 1/para. 3.11.

[517] Shi 1/para. 3.26.

[518] Shi 1/paras. 3.20-3.23.

(3) The effect of the requirement not to take account of the fact that the Shares comprise a majority or minority interest. This point is considered further in Section N(4)*(e)* below.

(4) The extent to which Signia's dealings with Mr. Caudwell were on an arm's length basis and the effect this might have on "Fair Value". This point is considered further in Section N(4)*(f)* below.

(5) The extent to which other provisions in the Articles affecting or limiting the rights of the Shareholders were relevant to the question of "Fair Value". This point is considered further in Section N(4)*(g)* below.

(6) The extent to which "Fair Value" needs to take account of Signia's debt. This point is considered further in Section N(4)*(h)* below.

(c) Augmenting the definition of "Fair Value"

686. In his report, Mr. Sharp says this:[519]

> "My instructions also state that I should value the shareholding on the basis of "Fair Value" as defined as follows: "as determined by an independent valuer as at the date of the Transfer Event (such valuation to be on the basis of a willing buyer and a willing seller and shall not take account of whether the shares comprise a majority or minority interest nor the fact that the transferability is restricted by the Articles) **and for these purposes giving an Enterprise Value of [Signia]**". This wording reflects the definition in the [Articles], save that the words highlighted in bold are the words which were omitted in the signed Articles eventually filed by [Signia] at Companies House. I have been shown a copy of the draft Articles sent to [Ms. Dauriac] by Mr. Daniel Hall of Eversheds at 7:48pm on 21 January 2010 which includes the bold wording. My instructions are that [Ms. Dauriac] does not know why these words were omitted and intended that they should be included and that accordingly I am to include them in my definition."

687. No case that the Articles should be rectified or otherwise amended has been advanced by Ms. Dauriac.[520] There is no proper basis to contend that the definition of "Fair Value" should be augmented in this way, and I consider that the instructions to Mr. Sharp were misconceived in this respect.

688. I approach the question of valuation using the meaning of "Fair Value" as set out in Article 6.24.

(d) Elucidating the meaning of "Fair Value" by reference to Article 6.6.2

689. It was suggested by Ms. Dauriac that the provisions of Article 6.6.2 were relevant in terms of elucidating the meaning of "Fair Value" in Article 6.24.[521]

690. Article 6.6 is one of the provisions in the Articles dealing with pre-emption procedures. It contains a process and method for valuing Shares in these circumstances. Amongst

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[519] Sharp 1/para. 1.10.

[520] Mr. Sharp considered it was "fairer" to use the draft, unagreed, Articles: Day 11/pp.232-233. But he could not articulate any basis as to why these words should be read into the definition of Fair Value.

[521] See, for example, Day 10/pp.167-168 (cross-examination of Dr. Shi).

other things, Article 6.6.2 provides that the valuation shall have "regard to the market value of the business of [Signia] and its subsidiaries",[522] and suggests that valuation be on the basis of a purchase "from a willing vendor by private treaty" [523] and "at arm's length".[524]

691. Whilst I accept that the Articles should be read as a whole, and that the meaning of "Fair Value" must be considered in its context within the Articles, I do not consider it permissible to read into the meaning of "Fair Value" the provisions of Article 6.6.2. As I have noted, Article 6.6 deals with a very different type of valuation, and the application of Article 6.6 is expressly excluded by the provisions of Article 6.24.[525]

692. That said, both experts appear to have conducted their valuations on the basis that a "fair" value was, ultimately, a market value; that a market value involved a transaction between a willing buyer and a willing seller (as the words of Article 6.24 expressly provide) and hence would be by way of private treaty and at arm's length. I therefore consider that the points in Article 6.6.2 relied upon by Ms. Dauriac are present in the meaning of "Fair Value" without the need to refer to Article 6.6.2. However, to be clear, I consider that it is the definition of Fair Value unsupplemented by Article 6.6.2 that I must use.

(e) The effect of the requirement not to take account of the fact that the Shares comprise a majority or minority interest

693. "Fair Value" as defined in Article 6.24 requires the valuation not to take any account "of whether the Shares comprise a majority or a minority interest" in Signia.

694. Dr. Shi read this provision as obliging her, in her valuation, not to make any discount in relation to the Dauriac Shares to reflect the fact that the Dauriac Shares represented a minority interest in Signia. As described above, the Dauriac Shares comprise 49% of the equity in Signia, leaving out of account *(i)* the Preference Shares and *(ii)* the distinction between the different types of Ordinary Share.[526]

695. Dr. Shi sought to achieve this by valuing the equity of Signia as a whole, and then applying 49% to that value.[527] In her first report, Dr. Shi said:[528]

> "As the [Dauriac Shares] represent 49% of Signia's ordinary shares, the starting point for valuing them is to consider the Fair Value of all of Signia's ordinary shares, and attribute a proportion of that to the Marlborough Shares."

696. Although on the face of it Mr. Sharp's approach appeared to be very similar,[529] Mr. Sharp applied this provision in a very different way to Dr. Shi.[530] Mr. Sharp took the

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[522] Article 6.6.2.2.

[523] Article 6.6.2.

[524] Article 6.6.2.

[525] See paragraph 28(2) above.

[526] See paragraph 2 above (which describes the different Shares in Signia) and paragraph 13 above (which sets out the respective shareholdings of Grecco and Marlborough respectively).

[527] Day 10/pp.155, 157, 165-166 (cross-examination of Dr. Shi).

[528] Shi 1/para. 3.54.

view that he could, on the basis of this provision, assume that the hypothetical buyer would be able to make sweeping changes to Signia's structure and/or to the manner in which its AUM was held. The following exchange illustrates his thinking:[531]

Q (Ms. Carss-Frisk, Q.C.) Well, it's important, isn't it, to have in mind for the purpose of value what information would have been available to the hypothetical purchaser on the relevant valuation dates?

A (Mr. Sharp) I'm sure you'll ask me more questions about this, but I don't think the hypothetical purchaser of the whole business is particularly interested in what the balance sheet of Signia looks like.

Q (Ms. Carss-Frisk, Q.C.) That sounds to me, I have to say, an astonishing proposition, that the hypothetical purchaser wouldn't want to know what the balance sheet looks like.

A (Mr. Sharp) Well, the hypothetical purchaser is interested in buying the business. He can buy the company or he can buy the business.

As we've heard in previous evidence, the situation in this industry is one where it's frequent, probably in some cases more common than not, that the business is purchased and not the underlying company. So what the purchaser is really interested in, is the client base, the client relationships, and those personnel within the business that are valuable to those client relationships.

So, he's not particularly primarily interested in what the balance sheet looks like.

Q (Ms. Carss-Frisk, Q.C.) Well, Mr. Sharp, this is something that we'll certainly have to look at in more detail, but can I put down the following flag and put it to you that what we are specifically concerned with is a valuation of the shares in Signia, specifically the [Dauriac Shares]. That's what we are looking at. We are not concerned with the purchase of the business in any other way, or parts of the business.

A (Mr. Sharp) But, I mean, clearly one of the things that's important to a valuation of the business is a valuation and an analysis of the underlying assets of the business, and those underlying valuable assets, primarily the client base, need to be taken into consideration.

Q (Ms. Carss-Frisk, Q.C.) Well, Mr. Sharp, I'm not suggesting that the hypothetical buyer would not want to look at the assets that you refer to, and I assume you mean in

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[529] Day 11/pp.221*ff* (cross-examination of Mr. Sharp).

[530] This distinction was put to Dr. Shi on Day 10/pp.168-169 (cross-examination of Dr. Shi) and Day 11/pp.31*ff*, 34, 37, 43 and 128*ff* (cross-examination of Dr. Shi).

[531] Day 11/pp.213*ff*. See also Day 12/pp.7*ff*, 26*ff* (cross-examination of Mr. Sharp).

particular the AUM that was at that time with Signia. I'm not suggesting that, but I am suggesting to you that the idea that the buyer wouldn't be interested in the balance sheet is an astonishing idea.

A (Mr. Sharp) No, I don't think it's an astonishing idea at all, and I think it's probably been hinted at before. The buyer is primarily interested in the AUM of the business, the revenue streams that can be derived from that AUM, and the costs to him of actually servicing those clients and that AUM.

So what the balance sheet of the business looks like is a secondary consideration to him. And, as I say in my joint expert report, if he's really got a problem with the deficit and the capital adequacy situation, which he wishes to deal with by buying the business itself, then that's what he will do.

Q (Ms. Carss-Frisk, Q.C.) As I say, we will certainly come on to that in a moment, as to whether it's legitimate to look at the possibility of buying the business, but I think we are agreed then that at least the balance sheet is relevant. You're saying its of secondary interest, but you certainly accept it's a relevant consideration?

A (Mr. Sharp) I mean, clearly, it's not something that would be completely ignored, but…I've been involved in many situations of buying and selling wealth management companies, and usually in my experience what happens is that the underlying business is purchased or sold.

697. Both Mr. Sharp and Dr. Shi were concerned to avoid under-valuation by reason of the fact that the Dauriac Shares constituted a minority interest. But, equally, the compulsory transfer provisions require that no account be taken of the fact that the shares being valued constitute a majority interest. In short, whilst there is to be no discount to reflect a minority interest, there is also to be no increase to reflect the existence of any control premium a majority stake might have. This point was put to Mr. Sharp:[532]

Q (Ms. Carss-Frisk, Q.C.) Well, you have mentioned several times now the provision in the Fair Value definition which effectively says don't give a majority premium, don't give a control premium, don't apply a minority discount. Those are not the words, but that's the meaning, I suspect you would agree?

A (Mr. Sharp) Mm.

Q (Ms. Carss-Frisk, Q.C.) And that means, doesn't it, that we cannot assume, for valuation purposes, that we have a purchaser that acquires all the shares, because that would then

[532] Day 11/pp.227-229 (cross-examination of Mr. Sharp), emphasis added.

	involve that purchaser in acquiring control over Signia, which is contrary to the fair value definition?
A (Mr. Sharp)	Yes, I mean, this is also a common error, because what that particular clause means is that you cannot apply an additional control premium. I mean, obviously it's necessary, as I've previously said, that the hypothetical purchaser and the hypothetical seller are buying the whole company. I mean, there's no other way of doing it. What that particular provision in relation to control premium, which is just the mirror of the minority interest prohibition, is that if you were to value the company on the basis, let's say, a deal transaction base multiple, which assumes a control premium, then you cannot apply an additional control premium because that would be double-counting. … In my experience, that's always what these clauses mean.
Q (Ms. Carss-Frisk, Q.C.)	You can't apply any control premium at all, can you? Let me take you, please, to…
A (Mr. Sharp)	You can't apply an additional control premium. Obviously, the control premium is implicit in the willing buyer/willing seller situation, as buying the whole company…

698. Mr. Sharp's approach thus built in a premium for control, which he did not seek to eliminate. His understanding that the requirement in the "Fair Value" definition to not take account of whether the Shares comprised a majority interest meant only that he needed to be astute not to include an "additional" control premium I find frankly bizarre. It is clear to me that Mr. Sharp's approach was not consistent with – indeed, it disregarded – an important part of the "Fair Value" definition.

699. Of course, I accept that steering a middle course between undervaluing shares because they are a minority interest and overvaluing them because of a control premium is not an easy one. The expert valuer must consider what the hypothetical buyer might be able to achieve, in terms of improving the potential value of the undertaking being valued, without assuming (as Mr. Sharp did) that the hypothetical buyer could do what he or she pleased with the undertaking. At the end of the day, the expert valuer must look at all of the facts as they would appear to the hypothetical buyer and ask whether such a buyer would see and be able to realise such potential. My concern with Mr. Sharp's evidence was that he approached this nuanced question with a pre-disposition that AUM was like a commodity that the hypothetical buyer could carve-up, sell or transfer at will, entirely independently of the undertaking – Signia – holding that AUM.

(f) The extent to which Signia's dealings with Mr. Caudwell were on an arm's length basis and the effect this might have on "Fair Value"

700. Clause 6.2.1 of the Shareholder's Agreement obliges Signia to transact all its business on arm's length terms.[533] It was contended by Ms. Dauriac that the management fees charged by Signia to Mr. Caudwell and to the Caudwell related parties were not on arm's length terms.

701. Two questions arise:

(1) Did Signia transact its business with Mr. Caudwell on arm's length terms?

(2) If so, is this material to the value of Signia?

702. Dr. Shi accepted the proposition that <u>if</u> Mr. Caudwell's fees were <u>not</u> on arm's length terms, this was a matter that would have to be taken into account and would require an appropriate adjustment to any valuation.[534]

703. Mr. Caudwell – and indeed the Caudwell-related parties – were paying fees substantially lower than the fees paid to Signia by third parties. That much is clear from the analysis in paragraph 142 above, and in particular the data in Tables 5, 6, 7 and 8. This differential in favour of Mr. Caudwell is obviously suggestive that his dealings with Signia were <u>not</u> at arm's length. Before concluding that the rates were not at arm's length, it is necessary to consider why the rates charged to Mr. Caudwell and the Caudwell-related parties were so much lower. I consider that there were three factors at play:

(1) The first factor concerns the sheer amount of assets that Mr. Caudwell placed with Signia. It was accepted that – in general terms – the higher the AUM of a given individual, the lower the rates that individual was charged.

(2) The second factor is that Mr. Caudwell placed his AUM with Signia in order to establish Signia. It was, in short, "seed" AUM, intended to give Signia significant profile in the market.[535] Mr. Caudwell was, in taking this course, taking something of a risk: he was entrusting his assets to a new undertaking. Granted, he was doing so having considerable faith in Ms. Dauriac and with a firm intention of making money out of the eventual sale of Signia. But, nevertheless, there were risks, and this was reflected in the fact that Mr. Caudwell extracted an agreement that he would pay no management fees for the first two years of Signia's operation. I consider that Mr. Caudwell was entitled to a premium – i.e. lower fees – because of these risks and because he was, through his AUM, establishing Signia in the market.

(3) Thirdly, it is clear to me that management fees were only paid by Mr. Caudwell so that Signia's regulatory capital could be maintained. Mr. Caudwell's

[533] See paragraph 123(4) above.

[534] Day 11/pp.130-131 (cross-examination of Dr. Shi).

[535] In cross-examination, Mr. Sharp sought to suggest that Signia could have grown without the Caudwell "seed" AUM: Day 12/pp.91-92 (cross-examination of Mr. Sharp). I reject that suggestion as fanciful. The provision, by Mr. Caudwell, of substantial AUM was fundamental to establishing Signia: see paragraphs 99 and 101 above.

preference was to fund Signia through loans, and it is quite clear that he funded Signia in other ways (through management fees or other payments) very much through gritted teeth. That, I consider, reflects Mr. Caudwell's negotiating clout vis-à-vis Signia.

704. The question is whether these three factors render the fees charged to Mr. Caudwell not at arm's length. It was suggested to Dr. Shi in cross-examination that "if the relevant rate [payable by Mr. Caudwell] is different from the comparable market level because of the parties' relationship, that is not arm's length".[536] Another definition appeared in a publication by Deloitte on the *Arm's Length Standard 2013* in global transfer pricing:[537]

"The arm's length principle requires that transaction with a related party be entered into under comparable conditions and circumstances as a transaction with an independent party. It is founded on the premise that when market forces drive the terms and conditions agreed to in an independent party transaction, the pricing of the transaction would reflect the true economic value of the contributions made by each party to the transaction. Essentially, this means that if two associated enterprises derive profits at a level above or below the comparable market level solely by reason of the special relationship between them, the profits will be deemed non-arm's length."

705. It is necessary to consider which, if any, of the three factors set out in paragraph 703 above renders the relations between Mr. Caudwell and Signia not at arm's length:

(1) *Volume of assets placed with Signia.* This factor, plainly, does not render the relationship not at arm's length. Indeed, reflecting the relative negotiating strengths of the parties to a transaction is the essence of arm's length dealings. Volume of assets placed with a wealth manager is, as I have observed, reflected in the price charged in the wealth management market.

(2) *Signia was a start-up.* This factor, at least in part, is also consistent with an arm's length relationship. A client, having considerable assets available for management, can approach a start-up with a degree of negotiating strength – or, to put it another way, can take advantage of the relative weakness of the start-up undertaking. Clearly, this is consistent with arm's length dealings.

However, Mr. Caudwell did not simply deploy his AUM to get a good bargain: he used it as the "seed" AUM, and to this extent I consider a non-arm's length relationship arose. Mr. Caudwell was seeking – entirely properly – to benefit financially from the possible future sale value of Signia, and he did so by providing AUM in circumstances where he otherwise might not have done. A corollary of that relationship was that he was able to demand that his AUM be managed for no fees and (when this proved to be impossible) for very low fees. I consider this aspect of the relationship between Mr. Caudwell and Signia not to be arm's length, and I must be astute to ensure that it is properly taken into account in any valuation.

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[536] Day 11/p.131 (cross-examination of Dr. Shi). That definition resonates with the dictionary definition: see *Collins Dictionary of Business*: "arm's length price: the price at which unrelated sellers and buyers agree to transact a product or asset".

[537] At p.4.

(3) *The regulatory capital issue and Mr. Caudwell's desire to fund Signia through debt.* This, third, factor arises directly out of the non-arm's length relationship Mr. Caudwell had with Signia. The intention was that Signia be funded by debt: when that proved not to be possible, Mr. Caudwell had to find other ways of funding Signia, including by way of payment of AUM management fees. But it was, in large part, the need to ensure regulatory capital adequacy that drove the fee levels that Mr. Caudwell paid. I consider this aspect of the relationship between Mr. Caudwell and Signia not to be arm's length, and I must be astute to ensure that it is properly taken into account in any valuation.

706. I therefore consider that the mismatch between the fees paid by Mr. Caudwell – and, indeed, the Caudwell-related parties – and those paid by third parties is in part explained by arm's length dealings between Mr. Caudwell and Signia, but not wholly. Part of the mismatch derives from the fact that Mr. Caudwell was an investor in, majority shareholder of, and lender to, Signia. That will have to be reflected in any valuation of Signia.

707. It will also be necessary – when carrying out this exercise – to take account of the fact that part of the price paid by Mr. Caudwell for the management of his assets lay in the loan facilities he made available, via Grecco, to Signia.[538]

(g) The extent to which other provisions in the Articles affecting or limiting the rights of the Shareholders were relevant to the question of "Fair Value"

708. Dr. Shi considered that certain provisions in the Articles would affect the value that a hypothetical arm's length purchaser of the Dauriac Shares would attach to those shares. In particular, she considered that the provisions in the Articles providing for the distribution of the consideration received on Exit (i.e. the sale of the entirety of the issued share capital of Signia to a third party) would cause such a purchaser to downgrade the value to be attributed to the Dauriac Shares.

709. Contrary to what one might expect, any consideration received on Exit is not to be distributed proportionately amongst the Shareholders. In other words, on Exit, the holder of the Dauriac Shares does not receive 49% of the consideration. Rather, the relevant provisions in the Articles – contained in Article 5 – provide that:

(1) If the "Target Exit Valuation" is achieved, then the consideration on Exit is paid to Shareholders as follows:[539]

> "51% of the consideration actually received by the holders of Shares, to the holders of A Ordinary Shares;
>
> 24.5% of the consideration actually received by the holders of Shares, to the holders of B Ordinary Shares and C Ordinary Shares; and
>
> 24.5% of the consideration actually received by the holders of Shares, to the holders of D Ordinary Shares."

[538] This linkage was put to Mr. Sharp in cross-examination: Day 11/pp.217-218.

[539] Article 5.2.

Thus, whilst Grecco – the holder of 51% of the issued Shares, all A Ordinary Shares[540] – receives a proportion of the consideration in line with the proportion of Shares held, the holder of the Dauriac Shares (49% of the issued Shares, but all B or C Ordinary Shares) receives only 24.5%.

(2) If the "Minimum Exit Valuation" or less than the "Minimum Exit Valuation" is achieved, then the consideration on Exit is paid to Shareholders as follows:[541]

"80% of the consideration actually received by the holders of Shares, to the holders of A Ordinary Shares;

10% of the consideration actually received by the holders of Shares, to the holders of B Ordinary Shares and C Ordinary Shares; and

10% of the consideration actually received by the holders of Shares, to the holders of D Ordinary Shares."

Thus, if a disappointing price is received on Exit, the lion's share of that consideration does not go to the holder of the Dauriac Shares. That Shareholder receives, maximally, 10% of the consideration.

710. The point that Dr. Shi makes is that on Exit, the rights of B and C Ordinary Shareholders are significantly less than those of A Ordinary Shareholders, and that this difference would affect the price a purchaser would be prepared to pay:[542]

Q (Mr. Plewman, Q.C.) …what you go on to do…is then to look at other provisions in the Articles…and in particular the possibility that there would be an Exit event, and you seek to express the view that the buyer would take that into account?

A (Dr. Shi) Yes. May I elaborate why, my Lord? I think it will be quicker and simpler if I explain very briefly. The question is what's the Fair Value of [the Dauriac Shares]? And answering that question, [the Articles say] I cannot take into consideration the fact that my [Dauriac Shares] is consistent for a minority share of [Signia], so I don't do that. But the Fair Value of the Shares is affected by other factors, in addition to the fact that it consists of minority shares.

Now, other factors included in the event whoever owns [the Dauriac Shares] in the event of an Exit event, the Shares' value will not be 49% of the company, it would be 20% of the company. Therefore, that's a relevant factor to take into consideration when assessing Fair Value of these shares.

[540] See the table at paragraph 13 above.

[541] Article 5.3.

[542] Day 10/pp.169-170.

711. Farwell L.J. described a share in the following terms:[543]

> "A share is the interest of a shareholder in the company measured by a sum of money, for the purpose of liability in the first place, and of interest in the second, but also consisting of a series of mutual covenants entered into by all shareholders *inter se* in accordance with [section 33 of the Companies Act 2006]. The contract contained in the articles of association is one of the original incidents of the share. A share is not a sum of money settled in the way suggested, but is an interest measured by a sum of money and made up of various rights contained in the contract, including the right to a sum of money of a more or less amount."

712. Dr. Shi's point – expressed in the language of lawyers – is simply that the hypothetical purchaser of the Dauriac Shares would, when considering what to pay for those shares, have in mind the value of the rights conferred by those shares, and would note that – in this respect, at least – the B and C Ordinary Shares comprising the Dauriac shareholding were less valuable than the A Ordinary Shares held by Grecco.

713. Mr. Sharp disagreed with Dr. Shi. His view was that the instruction in the definition of "Fair Value" to ignore the fact that Shares might be a minority or majority interest had the effect of driving a valuer to ignore this sort of provision also.[544]

714. On this issue, I prefer the approach of Dr. Shi. Whilst "Fair Value" requires the valuer to leave certain matters out of account – a minority stake and a control premium, for example – absent such an exclusionary rule ascertaining "Fair Value" requires the valuer to have regard to all the relevant circumstances. Given that it is shares that are being valued, the relevant circumstances must include the rights attaching to those shares.

(h) The extent to which "Fair Value" needs to take account of Signia's debt

715. Mr. Sharp defined "enterprise value" as "the value of a business prior to deducting any net debt as defined in the Articles".[545] This definition – which Mr. Sharp readily accepted was not the usual one – derived from the Articles. Specifically:

(1) The draft Articles defined "Enterprise Value" as the value of Signia free of "Net Debt".[546]

(2) "Net Debt" was defined as any indebtedness of Signia in the nature of borrowings, but giving credit for any cash in Signia at the relevant date.[547]

716. Mr. Sharp's definition of "Enterprise Value" derived from the additional words he had been instructed to use to augment the meaning of "Fair Value".[548] In his first report, he explained the point as follows:[549]

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[543] *Borland's Trustee v. Steel Bros & Co. Ltd* [1901] Ch 279 at 288.

[544] Day 10/p.172 (cross-examination of Dr. Shi); Day 12/pp.21-25 (cross-examination of Mr. Sharp).

[545] Sharp 1/p.4.

[546] Article 2.

[547] Article 2.

[548] See paragraphs 686-688 above.

[549] Sharp 1/para. 1.11.

"This wording is important because, in both the draft and the final versions of the Articles which I have seen and referred to above, Enterprise Value is defined as being "the value of [Signia] free of Net Debt". Net Debt is defined in both versions of the Articles as "any indebtedness of [Signia] in the nature of borrowings but giving credit for any cash in [Signia] at the relevant date" – i.e. [Signia] borrowings less cash. I have therefore valued the [Dauriac Shares]…on the basis of the definition of Enterprise Value and therefore excluded Net Debt in my calculations. I have also concluded that the preference share capital is in the nature of borrowings and has also, therefore, been excluded."

717. It was common ground that if net debt was to be deducted it amounted to £1.4 million.[550] In addition, there are the Preference Shares. Dr. Shi said this in relation to the Preference Shares:[551]

"3.36 Signia's equity consists of both ordinary shares and preference shares, which were issued in 2013 with a face value of £1 million. The preference shares do not entitle the owner to dividends nor do they confer voting rights to the owner. The preference shares could not be converted into ordinary shares.

3.37 [The Articles specify] that preference shares rank above ordinary shares in the case of a wind up, bankruptcy or Exit – defined as "the sale of the whole of the issued share capital of [Signia] to a third party". Under these circumstances, the owners of the preference shares would first receive the face value of the shares (i.e. £1 million) before any payments can be made to the ordinary shareholders.

3.38 These features of the preference shares imply that they are more similar to debt than ordinary shares, and their value is likely to be much smaller than the face value. However, it is difficult to determine the exact value of the preference shares as at the end of 2014 because it depends on the probability of an Exit and winding-up situation occurring.

3.39 In conducting my valuation, I have been instructed to assume that only the [Dauriac Shares] are being sold, and not the whole of shares in Signia, i.e. the hypothetical sale does not constitute an Exit Event. Given that I do not know what probability a hypothetical buyer would have attached to the likelihood of an Exit Event or a winding up situation, I have no basis to assess the value of the preference shares, other than noting that it lies between zero and their face value of £1 million."

718. In view of these difficulties, Dr. Shi valued the Preference Shares at nil.[552] However, she considered that net debt could not be disregarded: and that, unless the enterprise value of Signia exceeded net debt, the value of Signia's Ordinary Shares would be nil.[553]

719. Mr. Sharp, as has been described, only left net debt out of account because of the reading of Enterprise Value he had been instructed to adopt. He readily conceded that

[550] Shi 1/paras. 3.34-3.35; Day 10/p.173 (cross-examination of Dr. Shi); Day 11/p.234 (cross-examination of Mr. Sharp).

[551] Shi 1.

[552] Shi 1/para. 3.41.

[553] Shi 1/paras. 3.41 and 3.44

"normally, net debt would be deducted from the enterprise value to arrive at the equity value".[554]

720. For the reasons given in paragraphs 686-688 above, I do not consider that the definition he was instructed to use to be a proper one. Any proper valuation must take account of Signia's debt. Indeed, this is also necessary in view of my finding at paragraph 707 above.

(i) Valuation[555]

Introduction

721. Essentially, the choice of valuation approach is between a multiple of AUM or a multiple of EBITDA. In each case, the actual figures of Signia's performance need to be adjusted – "normalised" to use Dr. Shi's terminology – to reflect a number of matters:

(1) The fact that the valuation is based upon a hypothetical transaction between a willing buyer and a willing seller. The willing seller, of course, is Marlborough. The willing buyer is hypothetical but is presumed to be an independent third party. Such a willing buyer will obviously look to the actual performance of Signia but will take account of Signia's future potential (whether that be good or bad).

(2) The fact that no account shall be taken of whether the Shares comprise a majority or minority interest.

(3) The fact that no account shall be taken of any restrictions on transfer of the Shares in the Articles. It is to be assumed that the Shares are freely disposable.

The "normalised" AUM or EBITDA is then used as a multiplicand to which a multiplier is applied. Then, as I have found, net debt needs to be deducted.

AUM or EBITDA?

722. There is an extremely close relationship between an AUM multiplicand and an EBITDA multiplicand. The level of EBITDA is, ultimately, driven by the undertaking's revenue and its costs. Revenue derives from the fees the undertaking can charge its clients, and that is (essentially) a proportion of the AUM (calculated in basis points).

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[554] Day 11/p.233 (cross-examination of Mr. Sharp).

[555] In the usual way, a draft of this Judgment was circulated to the parties for them to identify typographical and other obvious errors. This the parties most helpfully did. They also identified a number of more substantive points, for example where I had made a miscalculation in my computation of valuation or where I had failed to appreciate the significance of the history of the designation of shares to Ms. Dauriac. I am very grateful to the parties for having done so. In identifying these more substantive points, it was perhaps unavoidable that the parties would make submissions as to how my calculations should change. Given that the proceedings had closed, I treated such submissions with caution. Between the circulation of the draft Judgment and handing down, I reviewed the entirety of the substance of the Judgment. I took account of the points made by the parties, but I bore in mind that these points had been made after closings and not in open court.

723. The central difference between the two different multiplicands, is that the EBITDA multiplicand takes account of the undertaking's revenues and its costs, whereas the AUM multiplicand does not:[556]

Q (Marcus Smith J.)	I mean, obviously, as you've just said, Dr. Shi, there's a nexus between AUM and profit, because it's assets under management for which you charge a fee, which leads to the profit. And I imagine if all asset management companies were equally efficient, then there would be very little difference between Mr. Sharp's approach and your approach?
A (Dr. Shi)	That is exactly right.
Q (Marcus Smith J.)	What you're saying is that where there is a difference in efficiency between firms operating in the same business, whilst they may have the same assets under management, because they are either forced to charge less or because their cost base is different, their profit varies, and that I think…
A (Dr. Shi)	That is exactly the point I wanted…
Q (Marcus Smith J.)	…is the difference between you and Mr. Sharp?
A (Dr. Shi)	Yes. That is exactly the point I wanted to make, and that is the difference between Mr. Sharp and I.

724. I consider that the EBITDA multiplicand represents the best starting point for the valuation process, because it takes the undertaking being valued as the hypothetical buyer would see it and because it factors in the undertaking's costs and revenues. Of course, the hypothetical buyer may consider that those revenues can be increased and/or the costs reduced. If that potential exists, then the valuation must take it into account. But it is, I consider, a second-best approach to ignore these metrics. I consider that an AUM multiplicand disregards, for no good reason, the undertaking's costs and revenues.

725. Of course, I recognise that "normalisation" will render the difference between these two approaches much less stark. But it seems to me intrinsically preferable to start with the undertaking as it was performing at the relevant time – and the measure that best reflects this is the EBITDA multiplicand.

726. There is one further point that it is important to stress. Dr. Shi was taken to the sale of some wealth management companies having significant AUM but being loss-making. Nevertheless, valuable consideration was paid for these companies. The fact that some of these comparator companies had a negative EBITDA did not render them valueless.[557] This is, I consider, an important point to bear in mind. As I say, the

[556] Day 11/pp.19-20. See also Day 11/p.40 (cross-examination of Dr. Shi).

[557] See Day 11/pp.12*ff* and pp.41*ff* (cross-examination of Dr. Shi). Mr. Sharp identified six companies where high prices were still paid notwithstanding low profits or loss-making performance. Mr. Sharp was cross-examined as to the extent to which these comparators were truly comparable with Signia at Day 12/pp.79*ff*.

hypothetical buyer will have in mind the undertaking's potential, and will view its actual value in light of this potential.

727. The following statement in the *RICS Valuation – Professional Standards 2014* is helpful:

> "While the valuer should consider future returns likely to be received from the business, as well as the often theoretical aspects of valuation (particularly fiscal factors), ultimately the business that is to be valued is the one that actually exists, or the one that could exist on a commercial basis as at the valuation date. The valuer therefore needs to account for the future expectations of operation on the business. These expectations may be based partly on actual historic performance and partly on a notional unachieved one. They will be those of the market participants as identified by the valuer, following appropriate research as to the business and outlook for the industry, and discussions with the operators of the business as to their expectations."

728. In short, the fact that Signia's EBITDA, at the end of 2014, was substantially negative is, of course, a material factor.[558] But it is the starting point, not the end-point. The end-point is only arrived at through the process of normalisation.

Other factors or methods of assessment

729. It was suggested to Dr. Shi – but not pressed very hard – that consideration should have been given to valuing Signia on a liquidation basis.[559] Given that Signia's EBITDA was a negative £2.981 million at the end of 2014, this is an unpromising basis for valuation. In my judgment, a liquidation basis – ignoring, as it has to, Signia's future prospects – would produce a value of nil[560] and given that Signia was well-able to continue trading in 2015 is an inappropriate measure.[561]

730. Equally, although Mr. Sharp sought to buttress his AUM approach by a discounted cash flow "cross-check", I have not been assisted by this.[562]

731. Two factors that often feature in valuations are comparator sales and actual offers to purchase the undertaking in question. I recognise and accept that both comparator sales

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[558] In cross-examination, Mr. Sharp did not dispute Signia's poor financial position at the end of 2014, with a loss of over £3 million, a regulatory capital shortfall and a negative balance sheet: Day 11/pp.208*ff* (cross-examination of Mr. Sharp).

[559] See para. 4.4 of *RICS Valuation – Professional Standards 2014* and Day 11/pp.5-6 (cross-examination of Dr. Shi).

[560] Mr. Sharp indicated that this sort of approach might be valid where the undertaking had valuable assets, but was loss-making: Day 12/pp.1-2 (cross-examination of Mr. Sharp). I accept this point as far as it goes: the point is that apart from its business going forward, it is quite difficult to point to significant assets belonging to Signia.

[561] Mr. Sharp emphasised that Signia was a going concern at the end of 2014. Dr. Shi was, perhaps, more equivocal about this. A great deal turned on the extent to which Grecco would be difficult in terms of permitting Signia to draw down on the loan facilities available to it. It seems to me that it would be wrong to assume anything other than a proper and co-operative approach in this regard on Grecco's (and Mr. Caudwell's) part. I therefore proceed on the basis that substantial loan facilities were available to Signia and that cash-flow would not be a problem for the company going forward.

[562] Indeed, Mr. Sharp himself very much downplayed the helpfulness of this cross-check: Day 12/p.138 (cross-examination of Mr. Sharp).

and actual offers to purchase Signia could in theory provide valuable data in relation to the true value of Signia.

732. In order to do so, however, the comparators must properly be comparable with Signia; and any offers for the purchase of Signia must be genuine, reasonably advanced and arm's length.

733. There was a reason why both experts eschewed comparators and actual offers and took – as their primary method of valuation – a more theoretical, multiple-based, approach. That was because neither the comparators nor such limited offers as were made in relation to Signia were particularly helpful in this case. The comparators were not sufficiently comparable to provide a sound platform for a valuation.[563] The "offers" made in relation to Signia were more speculative than evidencing a clear analysis of the value of Signia or indeed a clear desire actually to proceed with a purchase. The offers did not progress far. None of them showed any of the assessment of the value of Signia that I would need to see in an offer if I were to attach weight on it.

My approach

734. For the reasons I have given, I consider that Dr. Shi's approach represents the most reliable way of attributing a value to Signia's Ordinary Shares. I propose, therefore, to adopt Dr. Shi's approach, but not her figures or detailed workings. On some issues regarding Signia's 2014 EBITDA, the experts had views and occasionally agreement as to how that EBITDA might be normalised. I have taken these views into account, but have not regarded them as determinative, still less binding on me. Having heard the evidence, it is incumbent on me to exercise my own judgment, particularly in light of my analysis of Signia's performance in Section F above and my assessment of the extent to which dealings between Mr. Caudwell and Signia were at arm's length. I also bear in mind that an exercise of this sort – of necessity hypothetical – can only be carried out taking a pragmatic approach and using a "broad brush".[564]

735. Dr. Shi approached the question of Signia's value in two stages:

(1) First, by "normalising" Signia's 2014 EBITDA, she explored the "level of steady state EBITA" that the hypothetical buyer would have been presented with when considering a purchase of the Dauriac Shares on 21 January 2015.

(2) Secondly, she considered "additional factors".

736. The wording in Dr. Shi's report is significantly coloured by her view that Signia was – on the basis of a normalised EBITA multiplicand – worth nothing. The relevant paragraphs of Shi 1 read as follows:

"**Steady-EBITDA needed to imply a positive value for Signia's ordinary shares**

[563] In particular, there was very limited data about the transactions in question. In addition, Signia – with its dependence on a single core investor providing the lion's share of AUM – was an atypical asset management company.

[564] See Edelman, *McGregor on Damages*, 20th ed. (2018) at [52-18].

3.42 Here I explore the level of steady-state EBITDA that a hypothetical buyer would have needed to assume in order to conclude that the value of Signia's Ordinary Shares was positive.

3.43 As explained above, Signia's Ordinary Shares would have been valued above zero only if Signia's enterprise value exceeded the value of its net debt and Preference Shares. As it is difficult to pin down the value of the Preference Shares, for ease of exposition on this part, I make the conservative assumption that the value of the Preference Shares is zero. This means that Signia's enterprise value needs to be greater than £1.4 million in order for its Ordinary Shares to have a positive value.

3.44 Using the EV/EBITDA multiple range of 5.0-8.4, in order for Signia to have an enterprise value of greater than £1.4 million, the hypothetical buyer would have needed to assume a steady-state EBITDA of more than £0.2 million - £0.3 million per annum…[565]

Additional factors to consider

3.45 Even if the hypothetical buyer were to conclude that Signia's future EBITDA would be in the range of £0.2 million - £0.3 million, other factors mean that the buyer is unlikely to have acquired the [Dauriac Shares] if the enterprise value were not significantly above £1.4 million."

737. I find this two-stage process helpful, and propose to adopt it. However, I find unhelpful the way Dr. Shi has framed the way in which a hypothetical buyer would approach the purchase of the Dauriac Shares.

738. The hypothetical buyer would not ask whether the normalised or steady-state EBITDA was such as to enable Signia's shares "to have a positive value". The hypothetical buyer would simply seek to establish the value of Signia based upon the normalised or steady-state EBITDA.

739. He or she would then consider whether additional factors ought to cause that value to rise or fall or stay the same.

Signia's value based upon a "normalised" or "steady-state" EBITDA

740. The starting point is Signia's EBITDA as at the end of 2014. According to the management accounts, Signia's EBITDA was negative [£2.981 million].[566] I bear in mind that Signia's EBITDA was capable of considerable fluctuation, as Signia's performance in previous years demonstrates. That, I consider, is a matter that the hypothetical purchaser would have in mind.

741. This, actual, EBITDA then needs to be adjusted, or normalised, to produce a steady-state EBITDA. I consider that the following adjustments must be made to the actual EBITDA:

Explanation for the adjustment to the actual EBITDA	Adjustment	Effect on EBITDA

[565] As Dr. Shi helpfully explains £1.4 million divided by the multiple of 5 to 8.4 gives £0.2 million to £0.3 million.

[566] See paragraph 148 and Table 11 above. Of the two EBITDA figures, I have taken the one that reflects the lower negative figure, i.e. the figure in Row C rather than that in Row B.

1. *Actual EBITDA*		[£2.981m]
2. *Adjustment for growth in Mr. Caudwell's discretionary AUM and the discretionary AUM of the Caudwell-related parties* Signia's AUM grew steadily over time, from £544m to £835m.[567] The proportion of AUM contributed by Mr. Caudwell remained steady, at around 60% of this figure, declining to 57% in 2014.[568] The proportion of Caudwell-related discretionary AUM also remained steady at between 11%-12%.[569] I do not consider that either Mr. Caudwell or the Caudwell-related parties would have increased their discretionary AUM further. I consider it would have remained constant at 70% of the 2014 total AUM figure of £835m.[570]	No adjustment.	[£2.981m]
3. *Adjustment for the rates paid by Mr. Caudwell and the Caudwell-related parties for the management of their discretionary AUM* The rates paid by Mr. Caudwell and the Caudwell-related parties tracked each other. I consider that any adjustment should be the same for both. In 2014, the fees paid by Mr. Caudwell and the Caudwell-related parties were 24-25 BPS. By contrast, the fees paid by third parties were 58 BPS.[571] I consider that an arm's length rate would have been 50 BPS.[572]	On an arm's length basis, Mr. Caudwell and the Caudwell-related parties would have paid fees of £2.905m. In fact, they paid £1.448m.[573] I consider that Mr. Caudwell and the Caudwell-related parties underpaid by £1.457m and that the EBITDA needs to be adjusted by this amount.	[£1.524]
4. *Adjustment for the rates paid by third parties for the management of their discretionary AUM* Third parties paid 58 BPS in 2014.[574] The figure did fluctuate considerably over time, but 58 BPS is consistent with what I understood market rates to be, and there is no basis for varying this figure.	No adjustment.	[£1.524]
5. *Adjustment for growth in third party discretionary AUM* In the three-year period between 2011 and 2014, third party discretionary AUM increased from £220m to £253m,[575] or £11m per year. This is scarcely impressive growth. There was some evidence of additional AUM "in the pipeline". Inevitably, it is a matter of speculation how much additional AUM (if any) would have been generated in 2015. I am going to postulate an increase of just under £50m – specifically, £47m, to bring total third party AUM up to £300m. I make no discount for Ms. Dauric's departure, although that did cause some business to depart.	The increase of £47m in third party discretionary AUM would have resulted in increased revenue of £273k.	[£1.251m]
6. *Adjustment to the hedge fund AUM revenue* Signia's hedge fund services only commenced in mid-2014,	The limited fee income of £224k	£925k

[567] See Annex 4/Row A[1].

[568] See Annex 4/Row A[5].

[569] See Annex 4/Row A[10].

[570] See Annex 4/Row A[1].

[571] See Annex 4/Rows A[7], A[12] and A[17].

[572] Considering the factors outlined in paragraphs 700-707 above, and bearing in mind the rates charged to third parties, I consider this to be the arm's length rate.

[573] See Annex 4/Rows A[4] and A[9].

[574] See Annex 4/Row A[17].

[575] See Annex 4/Row A[14].

but the service (in terms of its performance) was excellent. I consider that whilst the hedge fund AUM contributed by Mr. Caudwell and the Caudwell-related parties would not have increased, the third-party AUM would have done. At the end of 2014, this stood at £13m.[576] I am going to assume an increase to £50m (i.e. an increase of £37m in AUM). I do not consider the revenue figures that this hedge fund AUM produced to be reliable. They are for part of a year, but in any event improbably low.[577] I am going to assume that Mr. Caudwell and the Caudwell-related parties would have negotiated a rate of 60 BPS[578] and that third parties would have paid fees of 70 BPS.	actually received by Signia is deducted and replaced by proper annual rates of 60 BPS for the Caudwell and Caudwell-related hedge fund AUM and 70 BPS for the third party hedge fund AUM. This results in increased revenue to Signia of £2.4m.[579] Thus, the adjustment required is £2.4m less £224k, giving £2.176m.	

Table 13: Adjustments to the actual EBITDA

In adjusting the actual EBITDA, I have focussed on what I have termed Signia's core activities – that is, the discretionary and hedge fund AUM.[580] I do not consider that it is appropriate, in this case, to extrapolate or normalise revenues arising out of Signia's non-core activities, although of course the revenue from these activities is present in the actual EBITA for 2014.[581] The experts also considered that Signia's costs should be normalised to exclude certain exceptional items in 2014.[582] I do not consider it appropriate to adjust Signia's costs in any way. There is insufficient evidence to permit me to do so, notwithstanding the experts' views. The fact is that I have annualised the hedge fund AUM revenue (resulting in an extremely significant change to the EBITDA) without making any (upwards) adjustment to Signia's costs. That is for two reasons: first, although the hedge fund services commenced midway through 2014, the cost of the infrastructure for that service was obviously incurred prior to this, and may have amounted to an annual figure; secondly, because there is not very much data on the point. Clearly, there is a risk of over-compensation by not adjusting the costs upwards. Applying a broad-brush, and having regard to the uplifted AUM revenue,I am not going to make a downwards adjustment to Signia's costs.

742. I conclude, therefore, that Signia's normalised EBITDA is positive £925,000. Applying a multiplier of 5, this gives an enterprise value of £4.625 million. I accept that the multiplier that I have applied is the lowest in the range suggested by Dr. Shi. However,

[576] See Annex 4/Row B[14].

[577] See Annex4/Rows B[2], B[6], B[11] and B[16].

[578] I take account of the negotiating advantages Mr. Caudwell had, and consider this to be in the circumstances an arm's length rate.

[579] Calculated as follows: *(i)* fees at 60 BPS paid by Mr. Caudwell and the Caudwell-related parties on the actual hedge fund AUM of £342m are £2,052,000; and *(ii)* fees at 70 BPS paid on assumed third-party hedge fund AUM of £50m are £350,000. This gives a total of £2.4m

[580] See paragraphs 133 and 141 above.

[581] Dr. Shi proposed the normalisation of Signia's introductory fees, and Mr. Sharp took the view that her approach was reasonable, if conservative: Joint Expert Report/para. B4.5. Applying a broad brush, however, I prefer my approach of focussing and normalising Signia's core revenue streams, and leaving untouched the rest.

[582] See the Joint Expert Report/para. B4.5.

given the fact that Signia was a start-up and moreover a start-up that was enormously dependent on Mr. Caudwell and the Caudwell-related parties staying with Signia (a point to which I return) I do not consider that a higher multiplier can be justified.

743. From this enterprise value, I must deduct the net debt of £1.4 million. On this basis, I conclude that, on the basis of my adjusted EBITDA, and without taking into account any additional factors, the Ordinary Shares in Signia were worth £3.225 million.

Additional factors

744. Having established that – purely based on the normalised EBITDA – that Signia has a low, but positive, value, the hypothetical buyer would have to consider whether that value was affected by additional considerations. These additional considerations mainly go to Signia's potential. Those considerations, in my judgment, would include the following:

(1) *Signia might need loans for liquidity purposes.* Given that I have to value Signia on the basis that it entered into all transactions on an arm's length basis, I consider that it cannot be assumed that Signia would continue to be lent money by either Grecco or Mr. Caudwell. Signia might need to borrow from a third party, and might not be able obtain such funding. On the other hand, the revenue Signia derived from the discretionary and hedge fund AUM that it was managed is, in the counter-factual world I am considering, considerably higher than it was in the real world. It might be that Signia would not need to borrow at all or that – given its adjusted revenues – that it would find borrowing easier. I consider that this would be a negative factor in the mind of a hypothetical buyer, but not one of great weight.

(2) *Mr. Caudwell and the Caudwell-related parties might move their AUM away from Signia.* It was common ground that Signia's AUM was highly concentrated, the vast majority coming from Mr. Caudwell and the Caudwell-related parties. It was also common ground that this AUM was highly portable or transferable. Neither Mr. Caudwell nor the Caudwell-related parties were tied in to Signia. I consider that:

(a) The hypothetical buyer would have proceeded on the basis that Mr. Caudwell and the Caudwell-related parties would act together, in tandem. The fact that the rates the Caudwell-related parties paid were negotiated by Mr. Caudwell and matched the rates he himself paid suggests a strong link between Mr. Caudwell and the Caudwell-related parties and I consider it more likely than not – even though Mr. Caudwell only advised his relatives – that they would follow his lead.

(b) The hypothetical buyer – knowing that Mr. Caudwell (and the Caudwell-related parties) were paying fees on an arm's length basis – would have appreciated that Mr. Caudwell (and the Caudwell-related parties) would be concerned to ensure that their assets were properly and well-managed. If Signia's performance gave rise to concern – or Mr. Caudwell (and the Caudwell-related parties) considered they could get a better deal elsewhere – then the bulk of Signia's AUM might move more-or-less overnight.

Whilst this might not destroy Signia, it would certainly damage it most seriously.

(c) Of course, the hypothetical buyer would also appreciate that if the Caudwell and the Caudwell-related AUM moved away from Signia, the value of shares that Grecco held would also be negatively affected. Indeed, the hope of making a significant profit on Exit would, in my judgment, either vanish or be massively reduced. This would incline Mr. Caudwell, at least, to keep his AUM with Signia.

I consider that the hypothetical buyer would take this factor extremely seriously, and it would cause the price that the hypothetical buyer would be prepared to pay to be materially reduced.

(3) *The possibility of a successful Exit.* I find that a substantial part of the value that a shareholder – and so, a hypothetical buyer – would attach to Signia would be the possibility of developing Signia's business and selling the company at a significant profit in the future. In other words, the possibility of a successful Exit is a factor that augments Signia's value. I consider that the hypothetical buyer would also take this factor extremely seriously and would regard it – subject to the next point – as effectively cancelling out the negative factor described in paragraph 744(2) above (the risk of Mr. Caudwell and the Caudwell-related parties transferring their AUM away from Signia). Indeed, it might fairly be said that my second and third factors are actually two sides of the same coin.

(4) *The Dauriac Shares are not A Ordinary Shares.* The fact that the Dauriac Shares are materially inferior, in terms of the rights they confer on Exit, to the A Ordinary Shares held by Grecco is described in paragraphs 708-714 above. The hypothetical buyer would understand that, in an Exit, the value he or she would receive would be less – and quite possibly substantially less – than the value Grecco would receive. I consider that this would be a very material, negative, factor bearing on the mind of the hypothetical buyer.

745. The price that a willing hypothetical buyer would be prepared to pay for the Dauriac Shares would be as follows:

(1) The hypothetical buyer's starting point would be the value of the Ordinary Shares in Signia, which I have assessed at £3.225 million.

(2) The hypothetical buyer would, of course, expect to pay no more than 49% of this sum and quite possibly less than this. In any event, the maximum that the hypothetical buyer would pay would be £1.580 million.

(3) Of the additional factors considered above, I do not consider that the first factor (Signia's borrowing needs) would cause the hypothetical buyer to alter the price he or she was prepared to pay.

(4) The second and third factors (movement of AUM away from Signia and the possibility of a successful Exit) I consider operate in opposite directions, and effectively cancel each of out.

(5) The fourth factor – the fact that the rights attaching to the B and C Ordinary Share are, on Exit, significantly inferior to the right attaching to the A Ordinary Shares – would have a bearing on the price the hypothetical buyer would be prepared to pay, for the very reason that the buyer would be hoping to profit from a successful Exit:

(a) The buyer would want to price in the fact that even if the Exit was successful – i.e. if the Target Exit Valuation was achieved – the holder(s) of A Ordinary Shares receive 51% of the consideration on Exit, whereas the holder(s) of B and C Ordinary Shares receive only 24.5% of the consideration.[583]

(b) The buyer would also appreciate that the position – for the holders of B and C Ordinary Shares – would be even worse if the Minimum Exit Valuation or less was received.[584]

(c) Given the importance of the point, the buyer would probably make inquiry, and would be told that 20,000 of the B Ordinary Shares held by Marlborough and 78,000 of the C Ordinary Shares were originally D Ordinary Shares.[585] The buyer would also be told that Article 6.29 of the Articles provided that such re-designation "shall be without prejudice to the rights attaching to original B, C or D Ordinary Shares under Article 5 (Exit) on a subsequent Exit.

(d) Having made inquiry, the Buyer would therefore appreciate that, on Exit, provided the Target Exit Valuation was achieved, the Dauriac Shares would receive 49% of the consideration, in line with the proportion of Shares held. However, if the Minimum Exit Valuation was achieved, the owner of the Dauriac Shares would receive 20% of that (lower) consideration.

(6) I appreciate that the Exit provisions in Article 5 of the Articles are complex, and the hypothetical buyer would have to predict what might happen on the occurrence of a future contingency. Inevitably, there are uncertainties, but I consider it inconceivable that a willing hypothetical buyer would not apply a substantial discount to the value of the Dauriac Shares because of the Exit provisions. As to what this discount might be:

(a) The Articles define "Minimum Exit Valuation" as an Enterprise Value of less than £75 million. On any view, this values Signia highly, particularly given the value I have found. The hypothetical buyer would have to reckon on there being a significant risk that this minimum would not be achieved. On this basis, the Dauriac Shares are worth significantly less than the Grecco Shares. The owner of the Dauriac Shares would receive only 20% of the consideration, whereas Grecco would receive 80%.

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[583] See paragraph 709(1) above.

[584] See paragraph 709(2) above.

[585] Shi 1/para. 1.15.

(b) On the other hand, if the Target Exit Valuation was met or exceeded (put at £175 million) the consideration would be allocated in proportion to shareholding.

(c) If the Exit Value lay between £75 million and £175 million, a formula would be applied. This is set out in Article 5.4, but the formula produces an outcome that does not reflect the proportion of Shares held.[586]

(d) The hypothetical buyer would, in my judgment, discount the value of the Dauriac Shares by about 50%. He would consider an Exit possible, but an Exit at very much over £75 million as unlikely. He would regard an Exit at £175 million as "pie in the sky", given a 2015 value of £4.625 million. A 50% discount postulates an Exit at above, but not significantly above, £75 million.

746. Accordingly, I find that the price that a willing buyer would be prepared to pay for the Dauriac Shares would be 50% of £1.580 million, namely £790,000. I find this to be the Fair Value of the Dauriac Shares according to the compulsory transfer process laid down in the Articles.

The value of the Dauriac Shares

747. The Dauriac Shares comprise 196,000 Ordinary Shares, of which 40,000 are B Ordinary Shares and 156,000 are C Ordinary Shares.[587] Pro-rating the Fair Value of £790,000 amongst the 196,000 Ordinary Shares values each share at £4.03. I find that:

(1) The Fair Value of the B Ordinary Shares is £161,200;

(2) The Fair Value of the C Ordinary Shares is £628,680.

Postscript: Mr. Sharp's AUM-based valuation

748. In his evidence, Mr. Sharp came as close as an expert can to evincing a preconception. As I noted in paragraph 679 above, Mr. Sharp appeared to be of the view, from the outset, that substantial AUM meant a substantial valuation. That was a view he expressed again during the course of cross-examination:[588]

"So, I really just can't conceive of any situation, especially with an asset management company with £1.5 billion of assets under management, how it cannot sell for valuable consideration…I actually find it quite inconceivable."

749. This was the problem with Mr. Sharp's approach. As I have noted, the difference between an AUM-based valuation and an EBITDA-based valuation may not result in

[586] Essentially the formula adjusts the 20% to be received by the B, C and D Ordinary Shareholders proportionately upwards according to the amount by which the consideration exceeds £75 million until the Target Exit Valuation is reached. The same process operates in reverse as regards the A Ordinary Shares. Thus, as the consideration exceeds £75 million, so the proportion of the consideration received by the B, C and D Ordinary Shareholders increases until it reaches 49% (at £175 million) and so the proportion of the A Ordinary Shareholders diminishes until to reached 51% (at £175 million).

[587] See paragraph 13 above.

[588] Day 12/pp.81-82 (cross-examination of Mr. Sharp).

very great differences provided a sensible approach is taken to normalising both the AUM and the EBITDA values. I consider – for the reasons given in paragraphs 722-728 above – that EBITDA is the better measure because it looks at the undertaking's actual costs and revenues. But I accept that there is a close link between AUM and EBITDA and so a necessarily close link between valuations based on AUM and EBITDA, provided these are properly carried out.

750. However, a preconception that AUM automatically translates into value renders the AUM-based valuation more-or-less valueless, and that was the position with Mr. Sharp's assessment of Signia's value. I was invited, in Mr. Caudwell's written closing submissions, altogether to disregard Mr. Sharp's evidence as legally inadmissible by reason of his demonstrable lack of independence.[589] I do not go so far, and I have taken Mr. Sharp's evidence into account. But, for these reasons, I have given it less weight than I otherwise would have done.

O. DISPOSITION

751. The compulsory transfer process in the Articles describes the events that trigger the process and how – when triggered – that process is to play out. Clearly, the compulsory transfer process has not operated uncontroversially and the court has had to resolve a number of issues between the parties in relation to the compulsory transfer process.

752. As regards these issues, I declare as follows:

(1) According to the Articles, and under the compulsory transfer process in those Articles, Ms. Dauriac was a Bad Leaver.

(2) There was no proper determination of the value of the Dauriac Shares pursuant to the compulsory transfer process, and it is therefore incumbent upon the court to declare their value.

(3) The value of the Dauriac Shares is to be determined as at 21 January 2015.

(4) In the case of the 40,000 B Ordinary Shares held by Marlborough, Ms. Dauriac, as a Bad Leaver, is entitled to the lower of Fair Value or Issue Price. The Issue Price was £40,000.[590] The Fair Value of these Shares was £161,200.[591] Ms. Dauriac is, therefore, entitled to £40,000.

(5) In the case of the 156,000 C Ordinary Shares held by Marlborough, Ms. Dauriac, as a Bad Leaver, is entitled to 75% of the lower of Fair Value or Exit Value. Exit Value is incapable of determination,[592] and Ms. Dauriac is therefore entitled to 75% of the Fair Value of these Shares. The Fair Value of the Shares is £628,680,[593] and 75% of that sum is £471,510.

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[589] Paras. *455ff* of Mr. Caudwell's written closing submissions.

[590] See paragraph 665 above.

[591] See paragraph 747(1) above.

[592] See paragraphs 661-664 above.

[593] See paragraph 747(2) above.

753. As Mr. Caudwell has accepted,[594] a failure to comply with the provisions of the Articles constitutes a breach of contract on the part of Signia compensable in damages. I assess those damages in the amount of £511,510 (that is, £471,510 plus £40,000), less the nominal price that Ms. Dauriac was paid in relation to the Dauriac Shares.

754. I should make clear that I find only that the procedure required by the Articles was not followed. I make no finding that the procedure was either negligently or deliberately not followed. If and to the extent that such an allegation arises incidentally out of the other causes of action pleaded by Ms. Dauriac, then I should make clear that I reject that allegation. I find that the breaches of the Articles were innocent ones.

755. As regards the other causes of action advanced by Ms. Dauriac, they fail:

(1) It was contended that there was a breach of clause 12 of the Shareholders' Agreement. Clause 12 provides that "[a] Shareholder may only transfer Shares pursuant to the Articles". I do not accept that a failure to comply with the requirements of the Articles in the transfer of Shares results in a breach of clause 12 or a right to claim damages pursuant to clause 12. The purpose of clause 12 is to oblige Shareholders only to transfer Shares pursuant to the Articles. Whilst a failure to comply with the Articles can (as here) give rise to a claim in damages, I do not consider that a parallel claim exists under the Shareholders' Agreement.

(2) As regards the claim against Mr. Caudwell that he procured or induced breaches of the Articles and the Shareholder agreement, it is a necessary element of this cause of action that the defendant know he or she is procuring or inducing a breach. I find no such knowledge in this case as regards Mr. Caudwell (or indeed, any of the other Caudwell parties).

(3) As regards the conspiracy claim, it is a necessary element of a lawful means conspiracy (which is what is alleged here) that two or more persons join together with the predominant intention of injuring another person and to have successfully carried out their intention. There was no such intention in this case, as I have found.

[594] See paragraph 675 above.