



Neutral Citation Number: [2026] EWHC 2028 (Ch)

Petition No: CR-2024-003936

Claim No: CR-2025-001274

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

7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: 31 July 2026

Before:

MR JUSTICE MARCUS SMITH

Between:

PETER WADDELL HOLDCO LIMITED

Petitioner

-and-

(1) BLUEBELL CARS HOLDING LIMITED

Respondents

(2) BLUEBELL CARS TOPCO LIMITED

(3) REZA FARDAD

(4) LAURENCE VAUGHAN

and between:

(1) PETER WADDELL HOLDCO LIMITED

Claimants

(2) PETER WADDELL

-and-

(1) BLUEBELL CARS HOLDING LIMITED

Defendants

(2) BLUEBELL CARS TOPCO LIMITED

(12) BLUEBELL CARS MIDCO LIMITED

(13) BLUEBELL CARS BIDCO LIMITED

(14) BAPCHILD MOTORING WORLD (KENT) LIMITED

Heard on 16-20, 23-27 February, 2-6, 9-13, 16-20, 30-31 March 2026 and 1 April 2026

Alan Gourgey, KC, Anna Littler and Ernest Leung, with Talia Barsam (instructed by Quinn Emmanuel Urquhart & Sullivan UK LLP) for the Petitioner and the Claimants ("Mr Waddell")
George Spalton, KC and Mark Wraith (instructed by Willkie Farr & Gallagher (UK) LLP) for the First and Third Respondents and the First Defendant ("Freshstream")
James Laddie, KC and Ben Griffiths, KC (instructed by Stephenson Harwood LLP) for the Second Respondent and the Second, Twelfth, Thirteenth and Fourteenth Defendants ("BIG")
Graeme McPherson, KC and Rachael Earle (instructed by Kennedys Law LLP) for the Fourth Respondent ("Mr Vaughan")

Approved Judgment

This judgment was handed down remotely at 10.30 am on 31 July 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Warning: Some of the incidents recorded in this Judgment involve the use of obscene, racist and sexist language. In order for the facts to be accurately and fairly set out, this language has been repeated without any redaction.

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**BET YOU’D LIKE TO SUCK MY DICK AS WELL
BUT I’M A MARRIED MAN”
(SEPTEMBER/OCTOBER 2023)**

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MR JUSTICE MARCUS SMITH:

Part I: Introductory

A. OVERVIEW

A.1. Big Motoring World and Mr Waddell

1. Big Motoring World (“BIG”¹) is a network of second-hand car dealerships built up from nothing by Mr Peter Waddell (“Mr Waddell”). Mr Waddell was the main shareholder of BIG and ran BIG as CEO. Since it is materially relevant to the disputes before me, it should be noted that Mr Waddell is hard of hearing (and uses hearing aids to hear), dyslexic (and so has difficulty in processing written material) and has been diagnosed (since his summary dismissal from BIG for gross misconduct in April 2024) as sitting on the autism spectrum (a matter that is controversial not as to the autism diagnosis itself, but as to how severe it is). These personal characteristics are relevant (i) to the reasonable adjustments needed to enable Mr Waddell to give evidence effectively² but (ii) also to the substantive issues before me. As I will come to describe, Mr Waddell was summarily dismissed for gross misconduct. The gross misconduct consisted of 31 instances of misconduct (the “Incidents”), each of which was (according to BIG) capable of justifying Mr Waddell’s summary dismissal.

A.2. Retirement and Freshstream

2. In around 2020, Mr Waddell was thinking of retiring. He decided to sell the business, but in stages (his intention being that his role steadfastly diminish). He was then around 55 years old. He hired a firm (“DC Advisory”) to assist in this process. Initially, therefore, Mr Waddell was looking only to sell a minority stake in the business and ultimately came to terms with a venture capital outfit called “Freshstream”.
3. Freshstream did not acquire a share of the business directly, but became indirectly interested through Bluebell Cars Holding Ltd. The structure by which the various interests in BIG were held was complex. It is generally unnecessary for the purposes of the issues arising for determination in this Judgment for these complexities to be unpacked, although I have borne them in mind throughout. For clarity of exposition, it is generally possible to refer to three entities BIG, Freshstream and Mr Waddell, reflecting three quarters of the representation before me. The fourth represented party was an individual, Mr Laurence Vaughan (“Mr Vaughan”). As I shall come to describe, Mr Vaughan was appointed chair of BIG in 2022 at the instance of Freshstream and – after Mr Waddell’s dismissal – became chief executive officer or CEO of BIG.

¹ Annex 1 contains a list of terms and abbreviations used in this judgment.

² The reasonable adjustments needed were considered at the pre-trial review, where direction was given. It is unnecessary to say more about the regime that was put in place. However, it is appropriate to note that Mr Waddell’s evidence was not prejudiced (in my judgment, having seen him give evidence over a number of days) by his disabilities and Mr Waddell was not under any disadvantage by reason of these disabilities.

4. Mr Waddell's interest in BIG – which is a majority holding – was held by a corporate vehicle, Peter Waddell HoldCo Limited (“PWHL”). I will only differentiate between Mr Waddell and PWHL where it is necessary to do so. Generally speaking, references to “Mr Waddell” includes reference to PWHL, although I have well in mind the importance of the distinction so far as the unfair prejudice petition is concerned.³

A.3. The Transaction

5. I shall refer to the manner in which Freshstream purchased its holding in BIG as the “Transaction”. The Transaction was complex, involving multiple different layers of holding company and instruments and agreements of considerable length and complexity. It is generally unnecessary to go into too much detail: this Judgment focusses only on those elements of the Transaction necessary to determine the issues before the Court.

A.4. A minority stake

6. The Transaction involved Freshstream acquiring – initially, at least – a minority shareholding in BIG. Freshstream was generally reluctant to acquire a significant shareholding in any venture without majority control. This was, therefore, something of an exceptional case for Freshstream, although not a unique one.
7. A lack of (majority) control meant that Freshstream would be inhibited in the changes it could make to the business, prior to its sale; and, conversely, Freshstream would be subject to the controlling behaviour of Mr Waddell, as majority shareholder. Like most private equity firms, Freshstream looked to add value to its acquisitions in the relatively short term, and then to exit (by selling the entire company, not just its (Freshstream's) interest) in three to five years from the date of acquisition. An absence of control would inhibit or render more difficult a clean exit by Freshstream.
8. The disadvantages of a minority stake were mitigated (from Freshstream's point of view) by various forms of protection, which Freshstream negotiated with Mr Waddell. Two of these need to be identified now. The first was an option in Freshstream to purchase a majority stake in BIG (the “Call Option”). The second was a bundle of rights that I shall term the “Freshstream Minority Rights”.

A.5. The Call Option

9. As part of the transaction, Freshstream negotiated an option – the Call Option – to acquire a further 35% of the business (and so majority control of BIG). The Call Option is provided for in a “Call Option Deed”. According to the Call Option Deed, the Call Option could only be exercised once and in respect of all (not some) of the shares subject to the Call Option, at a price that would not be less than £72 million. The Call Option was structured around two periods, the

³ When I quote from the record, I correct, without marking up, obvious errors and typos. Where a change is substantive, it is either footnoted or marked in square brackets.

“First Option Period” (which for present purposes ran from 1 October 2023 to the end of that month), where the option price was £72 million; and the “Second Option Period” (which for present purposes ran from 1 November 2023 for a period of 18 months, to roughly April 2025), where the option price was *at least* £72 million, the option price in the Second Option Period being an “upwards only” price based on the performance of BIG.

A.6. Freshstream Minority Rights

10. The Freshstream Minority Rights had multiple aspects, involving provisions giving Freshstream rights beyond those ordinarily accruing to a minority shareholder. The Freshstream Minority Rights were provided for in a document referred to as the “Securityholders’ Deed”.
11. The Freshstream Minority Rights ensured that BIG was run by the board,⁴ to which certain matters (“Board Approval Matters”) had to be put for prior approval (clause 3 and Schedule 4 of the Securityholders’ Deed).⁵ There were controls as to the board’s composition,⁶ including as to the appointment of Freshstream directors. Freshstream had the right to appoint a non-executive chair of BIG and the chief financial officer (or CFO).⁷
12. The allocation of certain matters to the exclusive province of the board of BIG had the effect of constraining the powers of the CEO. This was (at the time) Mr Waddell. Absent the exercise of “Step-In Rights” (another of the Freshstream Minority Rights allowing it to “Step-In”) the constraint was not a particularly significant one. Without “Step-In”, Mr Waddell had an automatic majority on the board (however many directors there were, and irrespective of who appointed them) to reflect the fact that he was the majority shareholder in BIG.⁸
13. Focussing on the essentials, Step-In Rights arose on (i) the occurrence of a “Trigger Event” (which was an event where BIG’s performance fell below pre-ordained financial criteria over a period of time) and (ii) the service of a “Step-In Rights Exercise Notice” or “SIREN”, consequent upon the occurrence of a Trigger Event. Step-In Rights, when exercised, gave Freshstream effective control of the BIG board.⁹ The effect of Step-In was to reverse the position described in [12] and gave Freshstream effective majority control of the board of BIG.
14. The Securityholders’ Deed additionally gave Freshstream protection in the event of the occurrence of a reputationally damaging event by an employee of BIG. These reputationally damaging events were referred to as “Material Default Events” or “MDEs”.¹⁰ Focussing on the essence of the provisions,

⁴ See clause 3 of the Securityholders’ Deed.

⁵ See clause 3 and Schedule 4 of the Securityholders’ Deed.

⁶ Clause 4 of the Securityholders’ Deed.

⁷ I am oversimplifying here: because of the complex holding structure, this was not in fact the board of BIG, but a different entity. However, nothing turns on this: what these provisions were concerned about was the control of the economic entity that I have defined as “BIG”.

⁸ The voting position on the board is more fully described below.

⁹ Set out in clause 9 of the Securityholders’ Deed, more fully considered below.

¹⁰ Provided for in clause 19 of the Securityholders’ Deed.

where there were reasonable grounds for Freshstream to suspect an MDE, Freshstream had the right to require BIG (by way of an “MDE Investigation Notice”) to conduct an investigation (an “MDE Investigation”). The MDE Investigation would be conducted by a “suitably qualified independent third party” (the “Independent Investigator”) into the conduct of any employee (widely defined and importantly including Mr Waddell) if there were “reasonable grounds (in the opinion of [Freshstream] (acting reasonably)) to suspect that such Employee has breached any applicable law or regulation in relation to discrimination, harassment, or any ABC Law in each case in connection with their employment...with [BIG] and that such breach is reasonably likely to have (in the opinion of [Freshstream] acting reasonably) or has had a material adverse effect on the reputation of [BIG] and/or [Freshstream]”, this being defined as a Material Default Event. If the MDE Investigation established on the balance of probability that a Material Default Event had occurred, then certain consequences set out in the Securityholders’ Deed could follow (“MDE Rights”) provided Freshstream made an “MDE Notice” to that effect.

15. Under the terms of the Securityholders’ Deed, the Independent Investigator would be appointed and provided with terms of reference by a committee of BIG, (the “MDE Investigation Committee”).
16. The consequences of the MDE process (ie, the nature of the MDE Rights conferred on Freshstream) differed according to whether the employee was or was not Mr Waddell. Since the clause 19 MDE process was invoked against Mr Waddell (and not against any other employee), it is only necessary to consider the consequences as they applied to Mr Waddell. Clause 19(i) (which related to Mr Waddell only) provided that if (i) there was no on-going Proceeding in respect of the MDE and (ii) the MDE Investigation concluded on the balance of probability that an MDE had occurred with respect to Mr Waddell, then all directors appointed by Mr Waddell could be removed and Mr Waddell’s and PWHL’s voting rights were attenuated or extinguished.
17. Although in the case of employees other than Mr Waddell, MDE Rights included the right to suspend the employee or terminate the employment of that employee,¹¹ these were not MDE Rights in the case of Mr Waddell.¹² Suspension or termination of Mr Waddell’s employment as CEO could, however, occur pursuant to his contract of employment, considered below.
18. The MDE process was thus a complex and sophisticated one. It required Freshstream to be sufficiently satisfied that an MDE had been committed by an employee so that Freshstream could properly make an MDE Investigation Notice. On the making of such a notice, an MDE Investigation Committee within BIG would be established, and an Independent Investigator appointed. That Independent Investigator would investigate and determine whether MDEs had occurred and would report accordingly to the MDE Investigation Committee who would report to Freshstream. Assuming MDEs were

¹¹ See clause 19(d)(i) and (iii) of the Securityholders’ Deed.

¹² They are not enumerated in clause 19(i) and clause 19(d) only applies to employees other than Mr Waddell.

established, and Freshstream was notified accordingly, Freshstream had the right (not the obligation) to make an MDE Notice, which would then trigger the exercise of MDE Rights.

A.7. Mr Waddell's Service Agreement

19. As part of the Transaction, Mr Waddell's terms of employment were restated in a Service Agreement (the "Waddell Service Agreement") dated 4 April 2022, between Mr Waddell and BIG.¹³ The Service Agreement contained provisions in regard to the termination of Mr Waddell's employment (at clause 16) and suspension pending investigation into misconduct (at clause 22, in particular clause 22.4) which it will be necessary to consider in due course.

A.8. Tensions in the running of BIG

20. Tensions in the running of BIG soon emerged after the conclusion of the Transaction. Why they emerged will be a matter that needs to be considered, but (to anticipate) the tensions were due to a toxic combination of (i) Mr Waddell's disappointed expectation of being bought out through the exercise of the Call Option, thus enabling him to further extract himself from the day-to-day affairs of BIG, (ii) Freshstream's concern at the under-performance of BIG compared to Mr Waddell's predictions, (iii) Freshstream's concerns at Mr Waddell's management style and the Incidents which ultimately resulted in his dismissal and (iv) Mr Waddell's concerns at the level of "interference" in BIG's affairs by a minority shareholder (albeit one with the Freshstream Minority Rights) in circumstances where that minority shareholder could, but chose not to, exercise an option that would have given them majority control.
21. Unpacking these factors in a little greater detail, but recognising that the underlying facts are contentious and will need to be considered in detail, Mr Waddell was concerned that the Call Option be exercised in the First Option Period. For its part, Freshstream wanted to be assured that, when exercised, the Call Option would be in the money and were unimpressed at the performance of the business (including the fact that Mr Waddell's predictions for the performance of the business had proved false). Freshstream considered that they had every right to exercise the Call Option when they wished (subject to its terms) or not at all. These divergent interests operating within the BIG corporate environment were destructive.
22. The underperformance of BIG was relevant not merely to the non-exercise of the Call Option, but also to the exercise of Step-In Rights. The exercise of Step-In rights was, according to Freshstream, under consideration from the final quarter of 2023.
23. Even more controversial are the Incidents which served both to trigger the MDE process and cause Mr Waddell to be suspended and ultimately dismissed under the Waddell Service Agreement. Freshstream contended that the potential

¹³ The Service Agreement was initially with one company in the structure, but was subsequently novated by a Deed of Novation dated 12 January 2023. The date of the novation was retrospective and took effect from 1 October 2022. Nothing turns on the novation of the Service Agreement, and I have therefore continued to use the simplifying terminology of BIG/Freshstream/Mr Waddell.

exercise of MDE Rights and rights under the Waddell Service Agreement were contemplated some months *after* Step-In was being considered. It was Freshstream's case that whereas Step-In was under consideration from late-2023, MDE and termination of employment were only under consideration some months later, when the seriousness of the Incidents came to BIG's and Freshstream's attention. As it happens, however, these rights (Step-In, investigation pursuant to the MDE provisions and suspension of employment under the Waddell Service Agreement) were all exercised, without prior warning to Mr Waddell, on the same date, 7 March 2024.

24. Mr Waddell, on the other hand, contended that the simultaneous exercise of these rights on the part of BIG and Freshstream had been pre-planned when Freshstream decided that it wanted control of BIG, but without incurring the not insubstantial cost of exercising the Call Option. It was Mr Waddell's case that at some point after October 2023, Freshstream and certain persons within BIG (including, in particular, Mr Vaughan) cynically and in bad faith decided to obtain effective control of BIG without paying for that control by acquiring a majority stake.

A.9. The events of 7 March 2024 and beyond

25. Events came to a head on 7 March 2024, when a first SIREN was issued. On the same date, the MDE process was triggered by Freshstream making an MDE Investigation Notice. Subsequently, an MDE Investigation Committee was established with Mr Vaughan as chair and the MDE Investigation Committee appointed the Independent Investigator Mr Nicholas Siddall, KC ("Mr Siddall, KC").
26. Also on 7 March 2024, Mr Waddell was suspended pursuant to the terms of the Waddell Service Agreement.
27. So far as Mr Waddell was concerned, the triple-whammy of Step-In, MDE Investigation and suspension came out of the blue.¹⁴ It was common ground amongst all the parties that the events of 7 March 2024 were coordinated. They can hardly have been otherwise. What was controversial was *how* they came to be so co-ordinated.
28. Mr Siddall, KC was asked by the MDE Investigation Committee to give a view on the existence of any MDE Events in an email dated 9 April 2024. He did so under protest on the same day, 9 April 2024 (the "Siddall Initial MDE Findings") but nevertheless found a number of MDEs established. On the back of this, Freshstream made an MDE Notice triggering the MDE Rights arising under clause 19 of the Securityholders' Deed, causing Mr Waddell to be removed as a director of BIG. The MDE Notice from Freshstream to BIG provided:

We note that on 9 April 2024, you informed us of the outcome of the Independent Investigation in respect of certain conduct of Peter Waddell: that the Independent

¹⁴ It is not clear whether, even on 7 March 2024, Mr Waddell was clear that this was a "triple whammy": there was an elision of the MDE process conducted pursuant to the Securityholders' Deed and the disciplinary process conducted pursuant to the Waddell Service Agreement.

Investigation has concluded that, on the balance of probability, a Material Default Event has occurred with respect to [Mr Waddell]. Accordingly, pursuant to Section 19(i)(i) of the Securityholders' Deed, we instruct you...

29. Mr Waddell's employment as CEO was not terminated at this stage. Instead, a "Disciplinary Hearing" was conducted on 12 April 2024, which Mr Waddell did not attend. By a letter dated 16 April 2024 (the "Dismissal Letter"), Mr Waddell's employment as CEO was terminated on multiple grounds which, individually and collectively were said to justify his summary dismissal. Also on 16 April 2024, Mr Siddall, KC produced a final report setting out his conclusions as to the existence of MDEs (the "Siddall Final MDE Report").

A.10. Proceedings

30. These events have spawned three sets of proceedings brought by Mr Waddell and/or PWHL as follows:
- i) Employment tribunal proceedings brought by Mr Waddell (the "ET Proceedings"). These are stayed pending the outcome of the matters to be determined in this Judgment, and are considered no further.
 - ii) An "unfair prejudice" petition brought by PWHL under Claim No CR-2024-003936 (the "Petition").
 - iii) A CPR Part 7 Claim brought by PWHL and Mr Waddell (the "Part 7 Claim") alleging breach of contract on the part of various defendants, including a claim for the wrongful dismissal of Mr Waddell.
31. This Judgment determines the question whether "unfair prejudice" exists under the Petition and the issues arising out of the Part 7 Claim.

B. THE RIVAL CONTENTIONS AND THE PLEADINGS

B.1. Overview

32. The broad thrust of Mr Waddell's case is set out in the Waddell Opening:

[5] The period for the option commenced in October 2023 for a period of 15 months. [Freshstream] decided against exercising the option in Q4 2023. The Transaction had been negotiated at a time when the market for car dealerships was booming. The macro environment by Q4 2023 was very different with car dealerships operating in a much tougher trading climate. [Mr Waddell] contends that by Q4 2023 [Freshstream] was experiencing buyer's remorse, believing that it had paid too much for its minority stake and that the floor price that it had agreed for stepping up to a majority shareholding was too high. It nevertheless wanted to gain control of the business. The plan, as it developed to do so without exercising the option, was to exercise step-in rights in conjunction with the MDE provision to suspend and then remove Mr Waddell from his position as director and from his position as CEO. The plan was developed by [Freshstream] in conjunction with [Mr Vaughan] who had been appointed by [Freshstream] pursuant to the [Securityholders' Deed] as chairman of the BIG Group and [Mr Clarke] who was the Company Secretary. All this took place behind Mr Waddell's back notwithstanding that it involved collusion with his managerial colleagues.

[6] The meticulous plan was implemented on 7 March 2024 when Mr Waddell and PWHL was served with a Step-In Notice and Mr Waddell was suspended pending investigation into misconduct. He was excluded from the various [BIG] offices and premises, cut-off from access to his emails and from access to [BIG]'s dashboard which provided real-time information. Staff were instructed not to speak to him. All this at a time when he had not been provided with any meaningful details of the allegations against him.

33. Freshstream's answer to this conspiracy¹⁵ or plan is a straightforward denial of what is said to be a fanciful and untrue conspiracy theory. The Call Option was not exercised because it was not in Freshstream's financial interests to do so, although that was a difficult call, with divergent views even within Freshstream. The exercise of Step-In Rights and the MDE provisions were considered separately by Freshstream and were exercised lawfully and in order to protect the business and Freshstream's interests in the business.

B.2. Amendments to the pleadings

34. During the course of the oral opening of the trial, the defendants made clear that they considered there to be a mismatch between Mr Waddell's pleaded case and the case advanced in opening. It would have been unsatisfactory to have an argument on the pleadings, after the evidence had been heard, during closing submissions. Accordingly, I directed that Mr Waddell (or rather his legal team) identify his case during the course of Mr Waddell's evidence, so that the case was clear when the defendants' witnesses came to give evidence. I am very grateful to the parties for managing this exercise during the course of a full-on trial, with the result that agreed amendments and a summary of how Mr Waddell put his unfair prejudice case were produced in a manner that did not derail the trial.¹⁶
35. My references to the pleadings in this Judgment are to the latest versions – the Re-Re-Amended Petition (the "Petition") and the Re-Re-Re-Amended Particulars of Claim in the Part 7 Claim (the "PoC").

B.3. The Petition

36. The Petition is based upon Mr Waddell's exclusion from BIG on 7 March 2024, as well as certain post-exclusion events. Referring to the summary of the Petition at Petition/[19], Petition/[19(1)] pleads:

On 7 March 2024 and without any prior notice or warning, Mr Waddell was entirely excluded from the business. Initially, he was suspended as an employee and director and was instructed that he was to have no communication or contact with any staff. On 10 April 2024 his directorships were purportedly terminated and on 16 April 2024 his employment was summarily terminated.

¹⁵ There was no plea of conspiracy, but in lay terms the allegations advanced by Mr Waddell certainly smack of conspiracy, and the use of the term is sometimes hard to avoid. Where it is used in this Judgment (and the term is avoided where possible) it is not being used in a technical sense.

¹⁶ This meant that some points had to be put in cross-examination of Mr Waddell which ultimately proved not to be live, but it would not have been possible to have the pleadings amended any sooner without adjourning the cross-examination, which would have prejudiced the trial.

I shall refer to this as the “Exclusion”. The question is whether the Exclusion was unfairly prejudicial to PWHL within the meaning of section 994 of the Companies Act 2006. I shall not, at this stage, parse these statutory provisions, but it is necessary to identify the acts of unfair prejudice relied upon:

- i) The Exclusion was achieved through the service of two Step-In Rights Exercise Notices or SIRENs. It is contended that each of these SIRENs was invalid and issued in breach of the Securityholders’ Deed.
 - ii) If, contrary to the primary case regarding the SIRENs (viz, their invalidity), the SIRENs were in fact valid, the Investor’s failure to give effect to the fact that a “Step-Out Event” (which reverses the effects of a Step-In) has occurred was itself an instance of unfair prejudice.
 - iii) The MDE Investigation Notice that commenced the MDE process as well as the MDE Notice itself were invalid.
 - iv) Two directors of BIG – Mr Reza Fardad (“Mr Fardad”, of Freshstream) and Mr Laurence Vaughan (the appointed chair of BIG) acted in breach of their directors’ duties in relation to the MDE process and the subsequent disciplinary hearing.
37. The unfair prejudice post-Exclusion related to various disparate post-Exclusion events which will be set out and considered in due course.

B.4. The Part 7 Claim

38. The principal elements of the Part 7 Claim were:
- i) Declarations of invalidity in respect of the Step-in Notices and the MDE Notices and a declaration that (if the SIRENs were valid) there had been a Step-Out.
 - ii) Consequential orders regarding the appointment of directors, pursuant to those notices and restoration of Mr Waddell’s rights under the Securityholders’ Deed.
 - iii) A claim for wrongful dismissal.

C. THE STRUCTURE OF THE JUDGMENT

39. Part II of the Judgment deals generally with questions of misconduct. Part II(i) of the Judgment describes the acts of Mr Waddell said to constitute acts of gross misconduct (justifying summary dismissal) or MDEs within the meaning of clause 19 of the Securityholders’ Deed. They are referred to as Incidents. Part II does not determine the many factual controversies surrounding these Incidents (which I shall refer to as numbered Incidents, in the form of “Incident No x”), but describes them in summary form and sets out the various determinations that were made in relation to each one during the course of the MDE and disciplinary processes.

40. Thus, the table at [47] provides a summary of each Incident and, in respect of each Incident states:

- i) Whether the Incident in question appears in the annex to the resolution of Freshstream resolving (amongst other things) to make an MDE Investigation Notice thereby requiring BIG to conduct an MDE Investigation. The resolution is dated 6 March 2024 and is referred to as the “Freshstream MDE Resolution”. The MDEs identified by Freshstream for investigation were set out in an Annex to the Freshstream MDE Resolution (the “Annex to the Freshstream MDE Resolution”). The Freshstream MDE Resolution resolved (amongst other things) that:

[7.1] ...the directors have been notified of certain events, incidents and patterns of behaviour which, taken together, provide the directors [with] reasonable grounds to suspect that Peter Waddell, the CEO of [BIG] and director of [BIG], has breached applicable laws and regulations in relation to discrimination, harassment, or any ABC Law, in connection with his employment, appointment and/or engagement with [BIG] (“Potential Default Events”). Given the nature and gravity of the Potential Default Events notified to the directors, the directors are of the opinion that if any or all of such Potential Default Events are ultimately (after an Independent Investigation) found to be true, these Potential Default Events are reasonably likely to have a material adverse effect on the reputation of [BIG] and [Freshstream].

[7.2] Accordingly, pursuant to clause 19(a) of the Securityholders’ Deed, the directors, acting reasonably, have determined that there are sufficient grounds to require [BIG] to commission an investigation by a suitably qualified third party to identify whether a Material Default Event has occurred under the Securityholders’ Deed.

As just noted, these Potential Default Events were listed in the Annex to the Freshstream MDE Resolution.

- ii) Whether the Incident in question was listed in the initial terms of reference to the Independent Investigator (ultimately Mr Siddall, KC) for the conduct of the MDE Investigation (the “Terms of Reference”). The Terms of Reference identified a number of Incidents. These Incidents were supplemented by the MDE Investigation Committee either because the MDE Investigation Committee had identified other potential MDEs or because they had been independently identified by Mr Siddall, KC himself.
- iii) Whether Mr Siddall, KC dealt with the Incident in the Siddall Initial MDE Findings and – if so – what Mr Siddall, KC’s determination was.
- iv) Whether Mr Siddall, KC dealt with the Incident in the Siddall Final MDE Report and – if so – what Mr Siddall, KC’s determination was.
- v) The Incidents are listed as the order in which they appear in the Dismissal Letter. By definition, therefore, the table lists each and every

Incident considered in the Dismissal Letter. The table states the outcome of the disciplinary process in the case of each Incident.

The Incidents themselves are considered in greater detail, and factual controversies resolved, in Part IV of the Judgment.

41. Part II(ii) sets out the relevant law insofar as this is necessary to enable factual controversies (in particular as they relate to the Incidents) to be determined. As will be clear from the summary description of the Incidents in the table, many Incidents give rise to issues of discriminatory language or conduct (racist and/or sexist), harassment and/or bullying. It is necessary to define these concepts and terms, which constitute bright lines as to acceptable conduct in the work environment. Relatedly, there is a question of whether such conduct inevitably amounts to conduct justifying summary dismissal, and the law in this area is also considered and set out.
42. Part II(iii) describes my approach, and the factors that I bear in mind, when considering the Incidents and making factual findings.
43. Part III of the Judgment considers the corporate duties that arise in this case. In substance, the law was uncontroversial, but because it is relevant to my assessment of some of the facts, the relevant legal principles are set out in this Part.
44. Part IV of the Judgment contains a detailed factual narrative of the events at issue, ending with the events that took place in March/April 2024. Where appropriate, to understand the facts (or, more particularly, their significance), the material law is set out and decided insofar that has not been done in Parts II and III. Points of specific factual controversy are resolved in Part IV. Thus, for instance, the specific allegations regarding the SIRENs and their validity are dealt with as they arise chronologically. The factual narrative in Part IV subdivided into the following distinct elements:
 - i) *Part IV(i)*. The period up to Mr Waddell's plans for the sale of BIG.
 - ii) *Part IV(ii)*. Mr Waddell, BIG and the BIG/Waddell relationship.
 - iii) *Part IV(iii)*. The Transaction with Freshstream.
 - iv) *Part IV(iv)*. The thinking of the parties on conclusion of the Transaction.
 - v) *Part IV(v)*. Post-Transaction events.
 - vi) *Part IV(vi)*. Events to 1 October 2023.
 - vii) *Part IV(vii)*. The non-exercise of the Call Option: October to December 2023.
 - viii) *Part IV(viii)*. Implementation of "Option 4" – January to March 2024.
 - ix) *Part IV(ix)*. A foregone conclusion?

- x) *Part IV(x)*. Execution – March and April 2024.
45. Building on this narrative, the rest of the Judgment considers the wrongful dismissal claim (in Part V), the Petition and the unfair prejudice claim (in Part VI) and the counterclaims brought by the defendants (in Part VII). Part VIII states very briefly how I propose to dispose of these proceedings.

Part II: Misconduct

Part II(i): The Incidents

A. THE PROCESS

46. Mr Waddell was summarily dismissed on the basis of a number of acts of gross misconduct which, individually and collectively, were said (by BIG) to justify his summary dismissal. These Incidents will have to be considered in detail. It is appropriate to set out the grounds for Mr Waddell’s summary dismissal as they were set out in the Dismissal Letter of 16 April 2024, but also to summarise the anterior consideration that these Incidents received prior to their determination in the Dismissal Letter. In addition to the outcome as expressed in the Dismissal Letter, the table considers:
- i) Whether the Incident as described in the Dismissal Letter sufficiently appears in the Annex to the Freshstream MDE Resolution. By “sufficiently” I mean whether applying a generous construction the Incident as described in the Dismissal Letter can be correlated to the Incident as described in the Annex to the Freshstream MDE Resolution.
 - ii) Whether the Incident sufficiently appears in the Terms of Reference, where this is appropriate.
 - iii) Whether the Incident is considered in the Siddall Initial MDE Findings. The Siddall Initial MDE Findings only listed those Incidents in relation to which Mr Siddall, KC considered he could find an MDE. The outcomes in relation to these Incidents were therefore all one-way.
 - iv) Whether the Incident is considered in the Siddall Final MDE Report, and what the outcome of Mr Siddall, KC’s consideration was. The Siddall Final MDE Report did not simply consider the binary question of whether an Incident was an MDE. From time-to-time, Mr Siddall, KC made findings of fact – including whether an Incident constituted misconduct (eg, bullying) but did not fall within the (narrower) definition of MDE.
 - v) The outcome of the disciplinary process, as set out in the Dismissal Letter.

B. TABLE SETTING OUT THE CONSIDERATION OF THE INCIDENTS

47. The table below lists each Incident as it was described in the Dismissal Letter in the order set out in the Dismissal Letter (which was not chronological). The

procedural history regarding each Incident is considered by reference to the process described in [46].

Incident	Date	Description
No 1	Before Oct/Nov 2023	Mr Waddell referred to people of Asian ethnicity as “Hyundais” including in front of Laurence Vaughan when stating that he had “Asian friends. I call them Hyundais, I do” (one such occasion being in the former Group Head Office in Gillingham prior to October/November 2023).
		Listed in the Annex to the Freshstream MDE Resolution/[1.1] Listed in the Terms of Reference/[10.1] Considered in the Siddall Final MDE Report/p57, concluding that the incident occurred but that it was not an MDE Found to be gross misconduct in the Dismissal Letter
No 2	Q3 or Q4 2023	During a discussion with Laurence Vaughan in Q2 or Q3 of 2023, Mr Waddell criticised BIG’s then People Director (Andrew Holness) for not recruiting enough sales people at BIG’s Enfield premises and stated that at Enfield there were “too many Muslims”.
		Not described with sufficient specificity for the Incident to be identified in the Annex to the Freshstream MDE Resolution.¹⁷ Listed in the Terms of Reference/[10.2] Considered in the Siddall Final MDE Report/p59, concluding that the incident occurred and that it was an MDE Found to be gross misconduct in the Dismissal Letter
No 3	31 Mar 2023	Mr Waddell called James Hunt (the Group’s then Group Management Accountant) on 31 March 2023 to instruct him to “go and talk to the brown one and tell her to get off of her phone”, after having observed, via CCTV, a black employee being on the phone.
		Not described with sufficient specificity for the Incident to be identified in the Annex to the Freshstream MDE Resolution Listed in the Siddall Terms of Reference/[10.3] Considered in the Siddall Final MDE Report/p62, concluding that the incident occurred but that it was not an MDE Found to be gross misconduct in the Dismissal Letter
No 4	Jan 2024	On or around 2 Jan 2024, Mr Waddell said about, and in front of, Huma Rather (Compliance Officer) whilst on the phone to Ben Goodwin (Sales Director) that “I have the Iron Lady in front of me. She looks absolutely ravishing. She is wearing blue today, a Gucci scarf today. I think we pay her too much” and then said to Huma Rather of Ben Goodwin “I have got your secret

¹⁷ As can be seen from the wording of the Annex to the Freshstream MDE Resolution – which is set out in full at the appropriate chronological point in this Judgment – a number of the Incidents listed are so vaguely framed that they could embrace any number of potential MDEs or types of misconduct, and cannot (for that reason) be linked to a specific Incident.

		admirer on the phone, he's coming to see you" (or similar words).
		Not described with sufficient specificity for the Incident to be identified in the Annex to the Freshstream MDE Resolution Listed in the Siddall Terms of Reference/[10.4] Considered in the Siddall Final MDE Report/p63, concluding that the incident occurred and that it was an MDE Found to be gross misconduct in the Dismissal Letter
No 5	Nov 2023	On or around 17 Nov 2023, you stroked Huma Rather's back whilst saying: "You should be glad that I am a married man" or similar words.
		Not described with sufficient specificity for the Incident to be identified in the Annex to the Freshstream MDE Resolution Listed in the Siddall Terms of Reference/[10.5] Found to be an MDE Event in the Siddall Initial MDE Findings/[E(i)] (Allegation [1]) Considered in the Siddall Final MDE Report/p67, concluding that the incident occurred and that it was an MDE Found to be gross misconduct in the Dismissal Letter
No 6	Sep/Oct 2023	In or around Sep/Oct 2023, at the Group's Ambley Green Premises, you said to Beth Murphy, a cleaner employed in the Group, "I bet you'd like to suck my dick as well, but I'm a married man".
		Not described with sufficient specificity for the Incident to be identified in the Annex to the Freshstream MDE Resolution Listed in the Siddall Terms of Reference/[10.6] Found to be an MDE Event in the Siddall Initial Findings/[E(ii)] (Allegation 1(f)) Considered in the Siddall Final MDE Report/p68, concluding that the incident occurred and that it was an MDE Found to be gross misconduct in the Dismissal Letter
No 7	Mar 2024	On or around 7 Mar 2024 at an industry event at which Mr Waddell was a keynote speaker, Mr Waddell made a comment about Female X, a female member of the catering staff at the British Motor Museum where the event was held, which made Female X feel incredibly uncomfortable. Mr Waddell said to Female X she was "wearing that miniskirt because she knows I have a helicopter outside". Later at the same event, when Female X was clearing your plate, you made a further comment to people you were speaking with that "she can't leave me alone as she knows I have my helicopter outside". A complaint was raised by the Head of Operations at the British Motoring Museum in respect of this.
		Not listed in the Annex to the Freshstream MDE Resolution, as the event post-dates the Resolution. Listed in the Siddall Terms of Reference/[10.7]

		Considered in the Siddall Final MDE Report/p71, concluding (essentially because Female X did not give evidence) that the incident did not occur Found to be gross misconduct in the Dismissal Letter
No 8	Feb 2024	In the Peterborough Prep Centre, on two occasions on or about 6 February 2024, you made comments to a female employee, Lily Gable, about her bottom. The first comment was “you have got a cute arse for that” and the second was “oh, look, it is the girl with the cute arse again”.
		Not listed in the Annex to the Freshstream MDE Resolution, as the event post-dated the Resolution Listed in the Siddall Terms of Reference/[10.8] Found to be an MDE Event in the Siddall Initial MDE Findings/[E(iii)] Allegation [1(h)] Considered in the Siddall Final MDE Report/p74, concluding that the incident occurred and that it was an MDE Found to be gross misconduct in the Dismissal Letter
No 9		During a Senior Leadership Team operations meeting held in person at the Groups Gillingham Head Office, Mr Waddell said that “we get 3 weeks out of 4” in reference to female staff and menstrual cycles. This meeting was attended by Huma Rather and Andrew Holness (People Director) amongst others.
		Listed in the Annex to the Freshstream MDE Resolution/[5.1] Listed in the Siddall Terms of Reference/[10.9] Considered in the Siddall Final MDE Report/p77, concluding that the incident occurred and that it was an MDE Found to be gross misconduct in the Dismissal Letter
No 10	Jan 2024	When Aishah Khan and Ebony were on the floor cleaning the bar area in Leeds in mid-Jan 2024, you commented “that’s how I like my women – on their hands and knees” or similar words.
		Not described with sufficient specificity for the Incident to be identified in the Annex to the Freshstream MDE Resolution Listed in the Siddall Terms of Reference/[10.10] Found to be an MDE in the Siddall Initial MDE Findings/[E(iv)] Allegation [1(j)] Considered in the Siddall Final MDE Report/p81, concluding that the incident occurred and that it was an MDE Found to be gross misconduct in the Dismissal Letter
No 11	Jan/Feb 2024	When observing Sophie Clarke tidying cables on the floor of the Leeds branch in Jan/Feb 2024, you said “guys, there is nothing more beautiful in a morning than a girl on her knees, is there?” or words to that effect.

		Not described with sufficient specificity for the Incident to be identified in the Annex to the Freshstream MDE Resolution Listed in the Siddall Terms of Reference/[10.11] Found to be an MDE in the Siddall Initial MDE Findings/[E(v)] Allegation [1(k)] Considered in the Siddall Final MDE Report/p85, concluding that the incident occurred and that it was an MDE Found to be gross misconduct in the Dismissal Letter
No 12		Mr Waddell said to or about Alex Maby (i) “you’re fucking ruining my business”, (ii) “you’ve cost me millions of pounds”, (iii) “ignore Alex, let’s focus on my figures” and/or “I want that fucking CFO out of my building today” (or, in each case, similar words).
		Not described with sufficient specificity for the Incident to be identified in the Annex to the Freshstream MDE Resolution Listed in the Siddall Terms of Reference/[11.1] Considered in the Siddall Final MDE Report/p104, concluding that the incident occurred, that it was bullying but that it was not an MDE Found to be gross misconduct in the Dismissal Letter
No 13	Feb 2024	Mr Waddell threatened Nick Lapthorne, the Group’s F&I Director, that he would be dismissed for gross misconduct should he work anywhere other than what was required of him in a work rota sent to him on 9 February 2024.
		Not described with sufficient specificity for the Incident to be identified in the Annex to the Freshstream MDE Resolution Listed in the Siddall Terms of Reference/[11.2] Considered in the Siddall Final MDE Report/p108, concluding that the incident occurred but that it was not an MDE Found to be gross misconduct in the Dismissal Letter
No 14		Mr Waddell engaged in inappropriate communications with Neil Hodson including telling him that he had cost the Group “around 9 million” and that losses from Mr Hodson would result in a “witch hunt” being started on Mr Hodson.
		Not described with sufficient specificity for the Incident to be identified in the Annex to the Freshstream MDE Resolution Listed in the Siddall Terms of Reference/[11.3] Considered in the Siddall Final MDE Report/p113, concluding that the incident occurred, that it was bullying but that it was not an MDE Found to be gross misconduct in the Dismissal Letter
No 15	Jul 2022	Mr Waddell physically slapped or punched Tom Chapman, the General Manager of the Group’s West Malling premises, in or around July 2022 and/or subsequently deleted the relevant CCTV in relation to this incident.

		Not described with sufficient specificity for the Incident to be identified in Annex to the Freshstream MDE Resolution Listed In the Siddall Terms of Reference/[12] Considered in the Siddall Final MDE Report/p119, concluding that the incident occurred but that it was not an MDE Found to be gross misconduct in the Dismissal Letter
No 16	Nov 2023	Mr Waddell used inappropriate language including “cunt” in a work meeting with NatWest on 28 Nov which was attended by David Thorley.
		Not described with sufficient specificity for the Incident to be identified in the Annex to the Freshstream MDE Resolution Listed in the Siddall Terms of Reference/[13.2] Considered in the Siddall Final MDE Report/p124, concluding that the incident occurred but that it was not an MDE Found to be gross misconduct in the Dismissal Letter
No 17	Mar 2024	Mr Waddell required Black Horse, a financier of the Group, to provide JW Autos with the same terms that they agreed with the Group. Black Horse reported to the Group on 8 March 2024 that they were not comfortable with such a requirement or with Mr Waddell's erratic behaviour or the level of customer complaints received by Black Horse directly in relation to the Group.
		Not described with sufficient specificity for the Incident to be identified in the Annex to the Freshstream MDE Resolution Listed in the Siddall Terms of Reference/[13.3] Considered in the Siddall Final MDE Report/p128, concluding that the incident occurred and that it was an MDE Found to be gross misconduct in the Dismissal Letter
No 18		Mr Waddell behaved inappropriately with customers, including but without limitation, in communications with a Mr White.
		Not described with sufficient specificity for the Incident to be identified in the Annex to the Freshstream MDE Resolution Listed in the Siddall Terms of Reference/[13.4] Considered in the Siddall Final MDE Report/p131, concluding that the incident occurred and that it was an MDE Found to be gross misconduct in the Dismissal Letter
No 19		Mr Waddell required James Rumble, the Group's Transport Manager, to remove a child's play area and/or pool table belonging to the Group from the Group's premises in Leeds and transport it to Mr Waddell's house in Kent.
		Listed in the Annex to the Freshstream MDE Resolution/[7.3]

		This incident was not included in the Terms of Reference Considered in the Siddall Final MDE Report/p135, concluding that the incident occurred but that it was not an MDE Found to be gross misconduct in the Dismissal Letter
No 20	Aug 2022	Mr Waddell informed Huma Rather in her interview in August 2022 that "I have got other brown friends too. Look, my friend Bob, he is brown".
		Not described with sufficient specificity for the Incident to be identified in the Annex to the Freshstream MDE Resolution Arose unprompted in the course of a Rather/Siddall interview, and so not listed in the Terms of Reference Considered in the Siddall Final MDE Report/p85, concluding that the incident occurred and that it was an MDE Found to be gross misconduct in the Dismissal Letter
No 21	Mar 2024	On 5 Mar 2024, Mr Waddell suggested to Huma Rather and Stewart Ford that he would "bend you over the desk and then you exit that way and you are fired" or words to that effect.
		Not described with sufficient specificity for the Incident to be identified in the Annex to the Freshstream MDE Resolution Arose unprompted in the course of a Rather/Siddall interview, and so not listed in the Terms of Reference Considered in the Siddall Final MDE Report/p91, concluding that the incident occurred and that it was an MDE Found to be gross misconduct in the Dismissal Letter
No 22	4 Nov 2023	On 4 Nov 2023, Mr Waddell commented on Huma Rather's WhatsApp profile picture in a manner which she considered "creepy".
		Not described with sufficient specificity for the Incident to be identified in the Annex to the Freshstream MDE Resolution Arose unprompted in the course of a Rather/Siddall interview, and so not listed in the Terms of Reference Considered in the Siddall Final MDE Report/p96, concluding that the incident occurred but that it was not an MDE Found to be gross misconduct in the Dismissal Letter
No 23	Jul/Aug 2023	In a team meeting in Wimbledon in or around Jul/Aug 2023, Mr Waddell enquired whether members of the team had recently engaged in sexual activity.
		Not described with sufficient specificity for the Incident to be identified in the Annex to the Freshstream MDE Resolution

		Arose unprompted in the course of Mr Siddall, KC's interviews, and so not listed in the Terms of Reference Considered in the Siddall Final MDE Report/p100, concluding that the incident occurred and that it was an MDE Found to be gross misconduct in the Dismissal Letter
No 24	Oct 2023	In a team meeting in Leeds in October 2023, Mr Waddell asked if the attendees had had sex that morning.
		Not described with sufficient specificity for the Incident to be identified in the Annex to the Freshstream MDE Resolution Arose unprompted in the course of Mr Siddall, KC's interviews, and so not listed in the Terms of Reference Considered in the Siddall Final MDE Report/p103, concluding that the incident occurred and that it was an MDE Found to be gross misconduct in the Dismissal Letter
No 25	Jan 2024	Mr Waddell made comments to and about Sophie Hazell suggesting that she was useless and/or miserable or similar words to that effect.
		Not described with sufficient specificity for the Incident to be identified in the Annex to the Freshstream MDE Resolution Considered in the Siddall Final MDE Report/p117, concluding that the evidence was insufficient to conclude that the incident had occurred Found to be gross misconduct in the Dismissal Letter
No 26	Mar 2024	The Group was informed by NatWest on 20 Mar 2024 that NatWest's senior management (which included Iwan Jones and his line manager) had considered "debanking" the Group (a comment said to Laurence Vaughan and David Thorley at the aforementioned meeting) due to Mr Waddell's increasingly "erratic behaviour" and the consequential risk that Mr Waddell's behaviour posed to NatWest. NatWest stated that it had adopted a watching brief in that respect. The meeting on 20 Mar 2024 had convened to discuss comments made on 14 Mar 2024 between the Group and NatWest, which in part discussed a complaint between Mr Waddell and support staff at NatWest, the situation being that a female member of staff received an email from you and complained about this internally at NatWest which escalated to senior management at NatWest.
		Not described with sufficient specificity for the Incident to be identified in the Annex to the Freshstream MDE Resolution Considered in the Siddall Final MDE Report as part of Incident No 16. Mr Siddall, KC regarded Incident No 26 as a consequence of Incident No 16, and did not consider it separately Found to be gross misconduct in the Dismissal Letter

No 27		Mr Waddell's behaviour caused Tom Kilgannon from Black Horse to inform Mr Vaughan and Nick Laphorne that it was close to ending its relationship with the Group due to Mr Waddell's behaviour. Mr Waddell's recent reposting of his comment that he had offered to buy 3,500 cars from Cazoo troubled Black Horse further.
		Not described with sufficient specificity for the Incident to be identified in the Annex to the Freshstream MDE Resolution Considered in the Siddall Final MDE Report/p128, concluding that this Incident amounted to an MDE Found to be gross misconduct in the Dismissal Letter
No 28	Mar 2024	Mr Waddell sent threatening WhatsApp messages to Messrs Vaughan, Clarke and Fardad on 22, 27 and 28 Mar 2024.
		Not listed in the Annex to the Freshstream MDE Resolution, as the event post-dates the Annex Too late for inclusion in the Siddall Final MDE Report, and not considered by Mr Siddall, KC Found to be gross misconduct in the Dismissal Letter
No 29	Apr 2024	On 10 Apr 2024, Mr Waddell wrote to Reza Fardad insinuating that he would file defamation claims against Mr Fardad, Huma Rather and Laurence Vaughan. Such proceedings appear vexatious and a further attempt to threaten and intimidate the Company and its representatives including, in particular, one of the female witnesses who has given evidence as part of the Investigation into Mr Waddell's conduct.
		Not listed in the Annex to the Freshstream MDE Resolution, as the event post-dates the Annex Too late for inclusion in the Siddall Final MDE Report, and not considered by Mr Siddall, KC Found to be gross misconduct in the Dismissal Letter
No 30		Mr Waddell repeatedly breached the terms of his suspension, including (but not limited to) by contacting, either directly or indirectly, individuals who gave witness evidence and/or employees and/or connected parties as part of the Investigation, including (without limitation) Mr Vaughan, Mr Fardad and Georgia Hockley.
		Not listed in the Annex to the Freshstream MDE Resolution, as the event post-dates the Annex. Too late for inclusion in the Siddall Final MDE Report, and not considered by Mr Siddall, KC Found to be gross misconduct in the Dismissal Letter
No 31		Mr Waddell repeatedly breached his obligations under clause 22.3 of his Service Agreement.
		Not listed in the Annex to the Freshstream MDE Resolution, as the event post-dates the Annex Too late for inclusion in the Siddall Final Report, and not considered by Mr Siddall, KC

		Found to be gross misconduct in the Dismissal Letter

48. It will be necessary to consider the detail of these allegations as they arise chronologically. The Incidents will be referred to by reference to the numbering set out above (ie “Incident No x”, etc).
49. It will be necessary to evaluate the credibility of a number of witnesses, in addition to Mr Waddell. In doing so, I bear in mind (and will describe in greater detail) that a number of these witnesses were – through no fault of their own – caught in the cross-fire between two sides of what has become a bitter commercial dispute with long-lasting antipathy on both sides. Witnesses were often approached to give evidence by both sides, and I am in no doubt that they came under considerable pressure, again from both sides, as to the giving of their evidence at various stages in the process I will come to describe.

Part II(ii): The relevant law

C. AREAS UNDER CONSIDERATION

50. The question of unfair prejudice can only be considered when the facts have been found, and it is sensible to defer consideration of the law regarding section 994 of the Companies Act 2006 until after a consideration of the facts.
51. As part of this factual consideration, it will be necessary to consider the nature of each of the Incidents. This involves consideration of the following areas:
- i) Whether each Incident constituted “gross misconduct” enabling BIG summarily to end Mr Waddell’s employment, as it did by way of the Dismissal Letter.
 - ii) BIG had in place for many years an employee handbook (the “BIG Employee Handbook”). The BIG Employee Handbook was in place before the Transaction and continued in place after the Transaction. The BIG Employee Handbook was a sophisticated document, stating BIG’s expectations as to standards and conduct (including a definition of gross misconduct), a statement of the disciplinary processes within BIG, an articulation of BIG’s equal opportunities and diversity policy, a statement of BIG’s grievance procedure and a statement of BIG’s anti-harassment and anti-bullying policy. The BIG Employee handbook is thus a document of importance when it comes to evaluating the Incidents, and its provisions need to be set out at some length.
 - iii) The law (apart from the provisions of the BIG Employee Handbook) of discrimination, harassment and bullying.
 - iv) The duty to give reasons when dismissing an employee and the rule in *Boston Deep Sea Fishing*, whereby a dismissal for no or bad reason can be justified by later-discovered repudiatory breaches on the employee’s part.
 - v) The definition of MDE in the Securityholders’ Deed.

D. WRONGFUL DISMISSAL AND SUMMARY DISMISSAL

52. It is important to differentiate between *wrongful* and *unfair* dismissal. In 1971, the Industrial Relations Act created the right for many employees not to be *unfairly* dismissed. Although the Industrial Relations Act 1971 has come and gone, unfair dismissal has been a constant in our employment law. This remedy is before the Employment Tribunal in the ET Proceedings and I do not consider it further.
53. Unfair dismissal has largely subsumed – or at least rendered less important – the Common Law relating to wrongful dismissal. In this case, however, it forms part of the Part 7 Claim and needs to be considered. Wrongful dismissal and summary dismissal are closely related. Where an employee is wrongfully dismissed, their employment has been terminated in breach of contract, because eg the termination has occurred with less notice than stipulated or before the date on which a fixed-term contract was due to expire. Damages are calculated by reference to the term of employment the employee was entitled to.
54. Summary dismissal is permissible where the employee can be said to be in repudiatory breach of contract (where the terms of the contract are either express or implied) which the employer may (or may not) accept. In *Jupiter General Insurance Co v Shroff*,¹⁸ the Privy Council stated that summary dismissal was a strong measure, to be justified only in the most exceptional circumstances. That puts matters too highly. It is better to consider the issue through the lens of contractual analysis and ask whether, by their conduct, the employee has “repudiated” their contract of employment, permitting the employer to “accept” that repudiatory breach. In these circumstances, what constitutes a repudiatory breach will turn on the terms of the contract (here, Mr Waddell’s Service Agreement) as supplemented, in this case, by BIG’s Employee Handbook, which is considered next.

E. THE BIG EMPLOYEE HANDBOOK

E.1 Introduction

55. The BIG Employee Handbook had been in place for many years, and continued unchanged with the advent of Freshstream. The Waddell Service Agreement made reference to the BIG Employee Handbook, making clear that Mr Waddell was subject to the disciplinary procedures set out therein (clause 22). It is to be inferred – although I heard very little evidence to this effect – that the BIG Employee Handbook was disseminated within BIG and that all employees of BIG at least knew of it and were bound by it.
56. The extent to which the BIG Employee Handbook actually informed the true culture within BIG is a matter that will need to be considered. It is quite clear that the culture within BIG fell materially short of the standards set out in the BIG Employee Handbook, but it was controversial before me (i) how far short BIG fell and (ii) why this was the case.

¹⁸ [1937] 3 All ER 67.

57. The BIG Employee Handbook is a sophisticated document, comprising (for present purposes) the following interlocking elements:
- i) A definition of standards and conduct – including a definition of gross misconduct.
 - ii) A statement of the disciplinary process that will be followed, where there is an allegation of misconduct or falling short.
 - iii) An articulation of BIG’s equal opportunities and diversity policy.
 - iv) A statement of BIG’s grievance procedure.
 - v) A statement regarding harassment and bullying.
58. These elements interlock in the following way. An employee grievance is investigated in accordance with the processes described in the BIG Employee Handbook. Grievances comprise any concern, problem or complaint an employee may have in relation to their employment. The BIG Employee Handbook gives particular emphasis to equal opportunities and diversity, which can give rise to grievances, and which have their own (separate but related) standards, policy and processes.
59. Whilst a grievance may not necessarily give rise to a potential disciplinary infringement, that case is likely to be the exception rather than the rule. Put another way, where there is a grievance there is likely to be at least a need for a disciplinary investigation. Whether a grievance by an employee amounts to misconduct by another employee is assessed by reference to the Handbook’s definitions of standards and conduct; and investigated and determined by reference to the disciplinary process.
60. It is important to appreciate, however, that the grievance process and the disciplinary process are distinct. BIG – as the BIG Employee Handbook recognises – has an independent duty to ensure that employees work in a lawful environment. The fact that the grievance procedure has not been triggered in no way derogates from BIG’s duty to maintain a proper disciplinary process.
61. The various interlocking elements of the BIG Employee Handbook are now considered, beginning with “conduct and standards”, and followed by “discipline”, “equal opportunities”, the “grievance procedure”.

E.2. Conduct and standards

62. The relevant parts of the BIG Employee Handbook relating to conduct and standards are as follow:

Conduct and Standards

What this policy covers

This policy details the main standards of behaviour that you need to adhere to and also details the behaviours that the Company would normally regard as gross

misconduct. The standards of behaviour and the details of gross misconduct listed in this policy should not be considered exhaustive.

Your duties and responsibilities

You are under a duty to comply with the standards of behaviour required by the Company and to behave in a reasonable manner at all times.

Attendance and timekeeping

You must:

- Comply with the rules relating to notification of absence set out in the Company's Absence Procedure
- Arrive at work promptly, ready to start work at your contracted starting time
- Remain at work until your contracted finishing time
- Obtain management authorisation if for any reason you wish to arrive later or leave earlier than your agreed normal start and finish times

The Company reserves the right not to pay you in respect of working time lost because of poor timekeeping

Persistent poor timekeeping may result in disciplinary action.

Conduct standards

You must:

- Maintain satisfactory standards of performance at work
- Comply with all reasonable management instructions
- Co-operate fully with your colleagues and with management
- Ensure the maintenance of acceptable standards of politeness
- Take all necessary steps to safeguard the Company's public image and preserve positive relationships with all persons and organisations connected to the Company
- Ensure that you behave in a way that does not constitute unlawful discrimination
- Comply with the Company's Operating Policies and Procedures

Unless otherwise instructed, personal mobile telephones must be switched off or switched to silent mode at all times during normal working hours

Flexibility

You may be required to work additional hours at short notice, in accordance with the needs of the business.

You may also be required to undertake duties outside your normal job remit and to work at locations other than your normal place of work.

...

Breach of this policy

A breach of the Company's standards of behaviour is likely to result in disciplinary action being taken.

Gross misconduct

Set out below are details of behaviour that the Company views as gross misconduct, which is likely to result in dismissal without notice. This list is not exhaustive. Such behaviour includes:

- Theft, dishonesty or fraud
- Deliberate recording of incorrect working hours
- Unauthorised absence
- Smoking on Company or a third party's premises (in contravention of site rules or outside of a designated area) or in a vehicle belonging to the Company
- Sleeping during working hours
- Assault, acts of violence or aggression
- Bullying
- Unacceptable use of obscene or abusive language
- Possession or use of or being under the influence of non-medicinal drugs or alcohol on Company premises or during working hours
- Wilful damage to Company, employee or third party property
- Serious insubordination
- Bringing the Company into disrepute
- Falsification of records or other Company documents, including those relating to obtaining employment
- Unlawful discrimination, including acts of indecency or harassment
- Refusal to carry out reasonable management instructions
- Gambling, bribery or corruption
- Serious breach of health and safety policies and procedures
- Breach of confidentiality, including the unauthorised disclosure of Company information to the media or any other party

- Unauthorised accessing or use of computer data
- Unauthorised copying of computer software
- Buying a car directly from a customer
- Personal use of a customer's car without consent of the customer

...

E.3. The disciplinary process

63. The relevant parts of the BIG Employee Handbook relating to disciplinary process are as follow:

Disciplinary Policy and Procedure

What this policy covers

This policy is designed to ensure that all disciplinary matters are dealt with promptly, fairly and consistently and to encourage an improvement in individual conduct and/or performance. It outlines the procedures that the Company will follow should there be a need to take disciplinary action and your right to appeal.

The Company reserves the right to discipline or dismiss you without notice following the Disciplinary Procedure if you have less than 24 months' continuous service.

Your entitlements and responsibilities

The Company aims to deal with disciplinary matters promptly and fairly.

You have the right to appeal against a decision the Company makes at a disciplinary meeting. In these cases, the Company will make every effort for the appeal to be dealt with by a different manager to the person who dealt with the matter initially.

The Company's decision at the appeal stage is final and there is no further right of appeal.

You have a responsibility to assist the Company, if required, to investigate the matters raised at disciplinary meetings and comply with the disciplinary procedures.

Disciplinary sanctions

The level of the disciplinary sanction, if any, will be determined by the severity of the offence. The Company will normally select one of the following:

Written warning

A Written Warning will usually be applied as the first step of corrective action following unsatisfactory performance or conduct offences.

The Company will define the unacceptable acts and explain the conduct or standards required in the future. You will be advised in writing that a failure to improve the standard of conduct or performance may result in further disciplinary action. A time limit will be placed on the warning.

Final written warning

A Final Written Warning is usually applied after a Written Warning has been given and performance or conduct has not improved but may be applied after a more serious first or a second offence.

You will be advised in writing that a failure to improve the standard of conduct or performance may result in dismissal. A time limit will be placed on the warning.

Dismissal

Dismissal occurs when your employment is terminated either with or without notice. Dismissal without notice is also referred to as “summary dismissal” and is restricted to cases of gross misconduct.

The Company reserves the right, at its complete discretion, to impose a sanction short of dismissal if it is deemed appropriate. This may include demotion, transfer to a different post or another appropriate sanction. Any such decision will be confirmed to you in writing once you have been informed of the outcome.

Disciplinary procedure

Suspension from work

If the Company believes it is appropriate, it may decide to suspend you from your work pending further investigation or disciplinary action. Suspension itself is not a disciplinary sanction.

If a decision to suspend is made, you will be informed verbally and this will usually be followed up in writing. While you are suspended, you should not attend work or make contact with anyone connected to the Company unless otherwise instructed by the Company. If you need to contact anyone connected to the Company while you are suspended, you must notify your manager. Any reasonable request will not be refused. Breach of the terms of your suspension may result in additional disciplinary action up to and including dismissal without notice.

The Company will endeavour to keep any suspension as brief as possible. Any period of suspension will be on full pay. However, should you fail to co-operate at any time with the investigatory process, for example by failing to attend any meeting, without good reason, then the Company reserves the right to treat this as unauthorised absence and this may result in pay being withheld until such time as you attend any rearranged meeting.

Investigation Meetings

Depending on the circumstances, you may be required to attend Investigation Meetings before a decision is taken to invoke the disciplinary procedure. An Investigation Meeting is an informal meeting and so you are not permitted to be accompanied unless you are under the age of 18 (when a parent or guardian will be permitted).

You must notify and obtain the consent of all those present at the meeting if you intend to record it.

Depending on the outcome of the investigation, the Company will decide whether or not to proceed with a Disciplinary Meeting.

If it is decided that there is no case to answer then you will be informed of this fact either verbally or in writing. You will be expected to return to work at the agreed date and time. This will end the process.

Invitation to a Disciplinary Meeting

If you are required to attend a Disciplinary Meeting, the Company will inform you of this in writing.

In the letter, the Company will set out the issues that are to be considered, how seriously these are being viewed, the potential consequences and details of any intention to call witnesses. The letter will also inform you of the date and time of the meeting to allow you sufficient time to prepare your case.

As this is a formal meeting, the letter will also detail your right to be accompanied.

Your right to be accompanied at a Disciplinary Meeting

You are entitled to be accompanied at a Disciplinary Meeting by a fellow worker or a trade union official. With the exception of those under the age of 18, when a parent or guardian will be permitted, no other person will be permitted to attend.

Should you wish to be accompanied, you must notify the Company of the name and position of your chosen companion as soon as possible.

Your companion is permitted to put forward and summarise your case, respond on your behalf to views expressed in the meeting, ask questions and confer with you, but will not be entitled to answer questions directly on your behalf.

Trade Union involvement at Disciplinary Meetings

Any employee who is a member of a recognised trade union has the right to be accompanied at formal meetings by their trade union representative regardless of whether the Company recognises a trade union.

Your trade union representative has the same rights as any other companion as detailed above. A trade union representative who is not an employed official must have been certified by their Union as being competent to accompany a worker.

The Company will request that your trade union representative provides their identity card to prove they are permitted to accompany you to the meeting.

Action if you cannot attend the meeting on the proposed date

If you feel that you have a legitimate reason why you cannot attend the meeting on the proposed date, you must contact the person named on the invitation letter to advise them of this fact immediately. The meeting may then be delayed to facilitate your attendance if this is considered reasonable.

Attending the disciplinary meeting

You must attend the meeting at the proposed time. Failure to participate in the process or attend arranged meetings without good reason may result in additional disciplinary action or a decision being made in your absence.

Prior to the meeting, you should ensure that you are fully prepared to answer questions relating to the incident/circumstances in question. At the meeting, you will be given every opportunity to state your case, present any evidence and call relevant witnesses before any decision is made.

You must notify and obtain the consent of all those present at the meeting if you intend to record it.

After the disciplinary meeting

At the end of the meeting there will normally be an adjournment to allow for consideration of the facts. You will be informed of the outcome and any sanction will be confirmed in writing to you as soon as possible.

In some circumstances there may be a need to adjourn and reconvene a meeting at a later date, to allow further investigation. In this case, you will be advised accordingly.

Notification of the decision and disciplinary sanction

Following the Disciplinary Meeting, the Company will notify you of its decision and the disciplinary sanction it will apply. This letter will also explain your right to appeal against any decision taken and sanction applied.

Your right of appeal against disciplinary action

If you wish to appeal against a decision you must submit your request in writing, stating the reasons for the appeal, to the individual identified in the letter confirming the sanction. This should be submitted within five working days of receiving notification.

...

E.4. Equal opportunities

64. The equal opportunities and diversity policy within the BIG Employee Handbook provides:

Equal Opportunities and Diversity

What this policy covers

The Company recognises the benefits of a diverse workforce and is committed to providing a working environment that is free from discrimination.

The Company will seek to promote the principles of equality and diversity in all its dealings with employees, workers, job applicants, clients, customers, suppliers, contractors, recruitment agencies and the public.

All employees and those who act on the Company's behalf are required to adhere to this policy when undertaking their duties or when representing the Company in any other guise.

Your entitlements and responsibilities

Unlawful discrimination

Unlawful discrimination of any kind in the working environment will not be tolerated and the Company will take all necessary action to prevent its occurrence.

Specifically, the Company aims to ensure that no employee or job applicant is subject to unlawful discrimination, either directly or indirectly, on the grounds of gender, gender reassignment, race (including colour, nationality, caste and ethnic origin), disability, sexual orientation, marital status, pregnancy or maternity, age, religion or belief, political belief or affiliation or trade union membership. This commitment applies to all aspects of employment, including:

- Recruitment and selection, including advertisements, job descriptions, interview and selection procedures
- Training
- Promotion and career development opportunities
- Terms and conditions of employment, and access to employment-related benefits and facilities
- Grievance handling and the application of disciplinary procedures
- Selection for redundancy

Equal opportunities practice is developing constantly as social attitudes and legislation change. The Company will review all policies and implement necessary changes where these could improve equality of opportunity.

Recruitment of ex-offenders

The Company actively promotes equality of opportunity for all candidates, including those with criminal records where appropriate.

The Company requires you to provide details of any relevant criminal record at an early stage in the application process. Specific rules about which convictions and spent convictions you should disclose and those you need not disclose – known as “protected convictions” – are contained in legislation.

Any such information should be sent in a separate confidential letter to the designated person. Only those who need see it as a formal part of the recruitment process will have access to this information.

Having a criminal record will not necessarily prevent you from being appointed.

Any recruitment decision will depend on the nature of the position and the circumstances and background of the offence(s). The Company will discuss with you the relevance of any offence to the job in question.

If you fail to reveal any information relating to disclosures in accordance with the Company’s Disclosures Policy, this may lead to the withdrawal of an offer of employment.

The Company’s policy in relation to the handling of criminal records data is contained in the Disclosure and Disclosure Information Policy.

Career development

While positive measures may be taken to encourage under-represented groups to apply for employment opportunities, recruitment or promotion to all jobs will be based solely on merit.

All employees will have equal access to training and other career-development opportunities appropriate to their experience and abilities.

However, the Company will take appropriate positive action measures (as permitted by equal opportunities legislation) to provide specialist training and support for groups that are under-represented in the workforce and encourage them to take up training and career-development opportunities.

Procedure

Complaints of discrimination

The Company will treat seriously all complaints of discrimination made by employees, clients, customers, suppliers, contractors or other third parties and will take action where appropriate.

If you believe that you have been discriminated against, you are encouraged to raise the matter as soon as possible with your manager or other senior employee using the Company's Grievance Procedure (outlined elsewhere in the Employee Handbook).

Allegations regarding potential breaches of this policy will be treated in confidence and investigated thoroughly. If you make an allegation of discrimination, the Company is committed to ensuring that you are protected from victimisation, harassment or less favourable treatment. Any such incidents will be dealt with under the Company's Disciplinary Procedures.

Investigating accusations of unlawful discrimination

If you are accused of unlawful discrimination, the Company will investigate the matter fully.

During the course of the investigation, you will be given the opportunity to respond to the allegation and provide an explanation of your actions.

If the investigation concludes that the claim is false or malicious, the complainant may be subject to disciplinary action, up to and including dismissal without notice for gross misconduct.

...

E.5. The grievance procedure

65. The BIG Employee Handbook described BIG's grievance procedure in the following terms:

Grievance

What this policy covers

A grievance is any concern, problem or complaint that you have in relation to your employment.

Where possible, you should try to settle any grievance informally with your manager at the earliest opportunity. Where any grievance is unable to be resolved informally, this policy sets out the Company's Grievance Procedure.

Your responsibilities

You have a responsibility to raise any grievances promptly and reasonably, assist the Company, if required, in any investigation of the matters raised in your grievance, follow the grievance procedure and attend all meetings arranged under it.

You may raise grievances either informally or formally. If you raise a grievance informally first, you may still raise the grievance formally subsequently if it is not resolved to your satisfaction.

The Company aims to deal with all grievances promptly and impartially, and to make all reasonable efforts to achieve a satisfactory outcome.

You have the right to appeal against a decision the Company makes in respect of a grievance raised by you. In these cases, the Company will make every effort for the grievance to be dealt with by a different manager to the person who dealt with the grievance initially.

The Company's decision at the appeal stage is final and there is no further right of appeal.

Procedure

Dealing with grievances informally

If you have any grievance, you should discuss this with your manager in the first instance, who will then attempt to resolve the situation on an informal basis.

If you feel unable to approach your manager directly, you should approach another manager or a more senior member of the Company, who will discuss with you ways of dealing with the matter.

If attempts to resolve the matter informally do not work, it may be appropriate for you to raise a formal grievance under the following formal procedure.

Your right to be accompanied at Grievance Meetings

At all formal stages of this procedure, you are entitled to be accompanied by a fellow worker or by a trade union official. If you are under 18, your parent or guardian will be allowed to accompany you.

Should you wish to be accompanied, you must notify the Company of the name and position of your chosen companion as soon as possible.

Trade union involvement at Grievance Meetings

Any employee who is a member of a recognised trade union has the right to be accompanied at formal meetings by their trade union representative regardless of whether the Company recognises a trade union.

...

Formal procedure

The Company will make all reasonable efforts to deal with formal grievances in a fair and consistent manner. While the Company will make every effort to settle any grievance within the time limits detailed in this procedure, this may not be possible on some occasions.

You must set out the nature of the grievance, and the full particulars of it, in writing. The written grievance should be submitted to your manager in the first instance or to the person identified in your contract of employment. If your grievance is against your manager, you should submit it to another manager or a more senior member of the Company.

Attending the Grievance Meeting

You will be invited to a meeting to discuss the grievance, normally within five working days of the Company receiving your grievance. You must take all reasonable steps to attend this meeting.

Prior to the meeting, you should ensure that you are fully prepared to present your grievance, share any supporting evidence and answer any questions relating to the incident/circumstances in question.

You must notify and obtain the consent of all present at the meeting if you intend to record it.

Notification of the outcome

After the Grievance Meeting, an appropriate period of time may be taken to allow for any further investigation and/or the consideration of all the facts before a decision is reached. The Company will then, normally, inform you in writing of its decision regarding the raised grievance without unreasonable delay. The letter will also explain your right to appeal against any decision taken.

Appeals against grievance outcomes

If you are dissatisfied with a decision made regarding a grievance you have raised, you have the right of appeal. Whenever possible, the appeal will be dealt with by a different manager to the person who dealt with the grievance.

Your appeal must be made in writing, stating the reasons for the appeal, to the individual identified in the decision letter. This should be submitted no later than the end of the fifth working day after you received written notification.

...

E.6. Harassment and bullying

66. The BIG Employee Handbook's policy against harassment and bullying was as follows:

What this policy covers

As part of the Company's overall commitment to equality of opportunity, it is fully committed to promoting a fair and harmonious working environment in which everyone is treated with respect and dignity and in which no individual feels bullied, threatened or intimidated. The aim of this policy is to prevent harassment and bullying in the workplace which includes harassment and bullying by other workers or by third parties you encounter while doing your job.

Harassment or bullying at work in any form is unacceptable behaviour and will not be permitted or condoned and will be viewed as a gross misconduct offence which may result in dismissal without notice.

What is harassment and bullying?

Harassment and bullying detract from a productive working environment and can impact upon the health, confidence, morale and performance of those affected by it, including anyone who witnesses or has knowledge of the unwanted or unacceptable behaviour.

Definition of harassment

Harassment is any unwanted physical, verbal or non-verbal conduct based on sex, sexual orientation, marital or civil partnership status, gender reassignment, religion or belief, age, race, disability which affects the dignity of anyone at work or creates an intimidating, hostile, degrading, humiliating or offensive environment.

A single incident of unwanted or offensive behaviour can amount to harassment. Some examples are given below, but many forms of behaviour can constitute harassment. These examples are:

- physical conduct, ranging from touching, pushing or grabbing to punching or serious assault
- verbal or written harassment through jokes, offensive language, defamatory remarks, gossip, threats or letters
- unwelcome sexual behaviour, including unwanted suggestions, propositions or advances
- the sending or displaying of material that is pornographic or obscene, including emails, text messages, video clips, photographs, posters, emblems or any other offensive material
- inappropriate posts or comments on or via social media commonly known as "cyber bullying"
- isolation, non-cooperation at work or exclusion from social activities
- coercion, including pressure for sexual favours

- inappropriate personal contact, including intrusion by pestering or spying

It should be noted that it is the impact of the behaviour that is relevant and not solely the motive or intent behind it.

Definition of bullying

Bullying is persistent, offensive, abusive, intimidating or insulting behaviour, which, through the abuse of power, makes the recipient feel upset, threatened, humiliated or vulnerable.

Bullying can be a form of harassment and can undermine an individual's self-confidence and self-esteem and cause them to suffer stress.

Bullying can take the form of physical, verbal and non-verbal conduct. As with harassment, there are many examples of bullying, which can include:

- shouting at or humiliating others
- high-handed or oppressive levels of supervision
- unjustified, offensive and/or insulting remarks about performance
- excluding employees from meetings, events or communications without good cause
- physical or emotional threats

Bullying can occur in the workplace and outside of the workplace at events connected to the workplace, such as social functions or business trips.

Your rights and responsibilities

Your rights

You have the right to work in an environment which is free from any form of harassment or bullying. The Company recognises your right to complain about harassment or bullying should it occur. All complaints will be dealt with seriously, promptly and confidentially.

Every effort will be made to ensure that, when you make a complaint, you will be protected from further acts of bullying and harassment. If others also give evidence or information in connection with the complaint, they equally will be protected. Perpetrators of these acts will be subject to disciplinary action which may warrant dismissal.

Your responsibilities

You have a responsibility to help ensure a working environment in which the dignity of everyone is respected. You must comply with this policy and you should ensure that your behaviour to colleagues and anyone connected to the Company does not cause offence and could not in any way be considered to be harassment or bullying.

You should discourage harassment and bullying by making it clear that you find such behaviour unacceptable. You should also support colleagues who suffer such treatment

and are considering making a complaint. You must alert a manager or supervisor immediately to any incident of harassment or bullying to enable the Company to deal with the matter promptly and effectively.

The Company's responsibilities

The Company will ensure that adequate resources are made available to promote respect and dignity in the workplace and to deal effectively with complaints of harassment and bullying. This policy and procedure will be communicated effectively to all employees and the Company will ensure that all employees are aware of their responsibilities. Appropriate training, where necessary, will be provided.

Procedure

In order to raise a complaint of harassment or bullying, please refer to the Company Grievance Procedure (outlined elsewhere in this Employee Handbook).

F. THE LAW REGARDING DISCRIMINATION, HARASSMENT AND BULLYING

F.1. Introduction

67. Although the BIG Employee Handbook contains provisions against discrimination and bullying, the Handbook will be construed consistently with general (Equality Act 2010) provisions in regard to discrimination and harassment. Equally, the fact that something is not covered by the Handbook but is proscribed by the general law will not protect an employee from summary dismissal or other disciplinary sanction.
68. I proceed on the basis that the BIG Employee Handbook was intended to articulate – in more helpful, lay, language – the general protections conferred by employment law, including in particular as regards discrimination, harassment and bullying. It would, of course, be possible for the BIG Employee Handbook to lay down higher standards.
69. The areas of law that require specific consideration are (i) discrimination, (ii) harassment and (iii) bullying.

F.2. Ambit of the rules

70. Discrimination and harassment are prohibited only in certain contexts (defined in the Equality Act 2010). It was common ground that the rules considered here applied to all employees of BIG, and there is no need to consider the statutory ambit of these rules any further. A point did arise as to whether Mr Waddell was entitled – by reason of his disabilities – to “reasonable adjustments”. This aspect of the Equality Act 2010 is considered elsewhere in this Judgment, when I come to consider the significance and effect of Mr Waddell’s three disabilities.

F.3. Discrimination

F.3.1. Direct discrimination

71. Discrimination can be either “direct” or “indirect”. Section 13(1) of the Equality Act 2010 defines direct discrimination:

A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

72. The “protected characteristics” are (i) age (section 5), (ii) disability (section 6), (iii) gender reassignment (section 7), (iv) marriage and civil partnership (section 8), (v) race (section 9), (vi) religion or belief (section 10), (vii) sex (section 11) and sexual orientation (section 12).
73. Although the Incidents involve both comments and conduct that refer to protected characteristics (notably (v): race; and (vii): sex), the Incidents do not fall within section 13 because there is no causal link between any less favourable treatment and the protected characteristic. Although “less favourable treatment” carries with it a broad definition, no such differential treatment has been identified. I bear in mind that unreasonable treatment alone does not establish direct discrimination.
74. Often, in the course of the evidence, reference was made to “discriminatory” or “sexist” or “racist” language. Such language obviously has the enormous potential to be harassing and/or bullying; but use of such language is not *per se* discriminatory.

F.3.2 Indirect discrimination

75. Section 19 of the Equality Act 2010 defines indirect discrimination as:

(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B’s.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B’s if –

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.

(3) The relevant protected characteristics are –

age;

disability;

gender reassignment;
marriage and civil partnership;
race;
religion or belief;
sex;
sexual orientation.

76. It was not suggested that any of the Incidents constituted indirect discrimination.

Harassment

77. It is difficult – although not impossible – to discriminate by speech. Most of the Incidents concerned speech. For the reasons I have given, it is not possible (in this case) to characterise these Incidents as discriminatory. It is important to make this point, because a number of the witnesses referred to certain speech by Mr Waddell as “racist” or “sexist”. It was not clear what these witnesses meant by this. If the point was that the substance of the speech or its content made a reference to a person’s race or sex (none of the other protected characteristics were engaged), then such statements were purely factual and I will evaluate them on this basis.

78. If it was being suggested that these references to race and sex were particularly egregious because they were in some way “discriminatory”, then that is a characterisation that I reject. The Incidents do *not* involve discriminatory conduct. That, however, is not the point that I consider was being made by these witnesses. Rather the point that was being made was that the references to race and sex rendered the statements *more offensive* than if the statements had been made without reference to these protected characteristics. That is a point that I readily accept.

79. When considering offensive speech, the protection conferred on freedom of speech by Article 10 ECHR needs to be borne in mind.¹⁹ Article 10 ECHR provides:

(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the

¹⁹ Given the nature of the speech involved, this was not an issue before me. Indeed, it may be the case that the protection of Article 10 ECHR simply does not extend to certain categories of expression. For instance, a statement may fall outside the protection of freedom of expression where the sole intent is to insult. It was not necessary to consider Article 10 ECHR in such granular detail, but it did need to be borne in mind when considering the provisions in the Equality Act 2010.

protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

80. Although the ECHR operates “vertically”, so as to control state constraints on freedom of speech, it is well accepted that Article 10 ECHR protection extends to the working environment and employees such as Mr Waddell. This was uncontroversial before me, but the parties were also agreed that the relevance of Article 10 ECHR was extremely limited (if it was relevant at all) in this case.
81. Freedom of expression in Article 10 ECHR is qualified, and as a human right different from the absolute nature of the First Amendment (“Congress shall make no law respecting an establishment of religion, of prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances”). The freedom under Article 10 ECHR is the freedom of reasonable speech, and in this context the limits to the freedom are (in part) circumscribed by section 26 of the Equality Act 2010, which provides:
- (1) A person (A) harasses another (B) if –
 - (a) A engages in unwanted conduct related to a relevant protected characteristic, and
 - (b) the conduct has the purpose or effect of –
 - (i) violating B’s dignity, or
 - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
 - (2) A also harasses B if –
 - (a) A engages in unwanted conduct of a sexual nature, and
 - (b) the conduct has the purpose or effect referred to in subsection (1)(b).
 - (3) A also harasses B if –
 - (a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,
 - (b) the conduct has the purpose or effect referred to in subsection (1)(b), and
 - (c) because of B’s rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.
 - (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account –
 - (a) the perception of B;
 - (b) the other circumstances of the case;
 - (c) whether it is reasonable for the conduct to have that effect.

(5) The relevant protected characteristics are –

age;

disability;

gender reassignment;

marriage and civil partnership;

race;

religion or belief;

sex;

sexual orientation.

82. Conduct is, obviously, wide enough to include speech. The court’s duty under section 6 of the Human Rights Act 1998 means that, since section 26 constitutes an articulated qualification to Article 10(1) ECHR, the requirements of the section need to be considered with care when applying them to cases of harassment by speech.

83. Conduct will not have the prohibited effect where the alleged victim does not perceive it,²⁰ although the victim does not have to be the target of the comment. The test for harassment also requires that the conduct in issue be capable of reasonably being considered as having the adverse effect identified in the section, taking into account the circumstances of the case. The language defining the adverse effect in section 26 makes clear that even significantly inappropriate conduct may be insufficient to constitute a “violation of B’s dignity” or “creates an intimidating, hostile, degrading, humiliating or offensive environment for B”. As Underhill J noted in *Richmond Pharmacology v Dhaliwal*, [2009] IRLR 336:

“...not every racially slanted adverse comment or conduct may constitute the violation of a person’s dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.”

The conduct must be capable of reasonably being considered as having this adverse effect, taking into account all the circumstances of the case. Obviously, such an evaluation is highly fact sensitive and context specific.

84. The harassing conduct needs only to be “related to” a protected characteristic, even if the conduct occurred for a reason other than the protected characteristic. It need not be related to the *victim’s* protected characteristic. For example,

²⁰ *Greasley-Adams v Royal Mail Group Ltd*, [2023] EAT 86.

conduct may be related to sexual orientation, whether or not the victim is gay, perceived as gay or associated with someone who is gay. A single incident may amount to harassment.

F.4. Bullying

85. There is no statutory definition of bullying. Bullying is, however, defined in the BIG Employee Handbook.
86. Harassment is defined both in the Employee Handbook and in the Equality Act 2010. The definitions are similar, but not identical. In this case, I consider that the BIG Employee Handbook is seeking to put, into plain English, the statutory sense of the harassment provision in the Equality Act. I propose, when considering the Incidents, to refer to the statutory definition of harassment.
87. That leaves open the question of how to assess bullying conduct that falls outside the statutory definition of harassment. Judging by the BIG Employee Handbook, the differences between harassment and bullying can be stated in this way:
- i) Harassment can be constituted by a single act, whereas bullying tends to be more a course of conduct.
 - ii) Harassment needs to relate to a protected characteristic, whereas bullying does not (although of course it can).
 - iii) In both cases, the impact on the victim must be more than *de minimis*, and the approach and test for bullying is as set out in section 26 of the Equality Act 2010.
88. Most of the Incidents are to be classified as cases of bullying or harassment; and some can be classified as amounting to both.²¹ Although many of the Incidents have a sexual or racial quality, they do not plausibly constitute discrimination (whether direct or indirect).
89. I have considered whether it is necessary, for the purposes of considering whether the Incidents amount to gross misconduct to differentiate between cases of bullying and cases of harassment. My concern is that it might, in some cases, plausibly be arguable that Mr Waddell's alleged conduct was not "related to a relevant protected characteristic", and so did not constitute harassment but *might* amount to bullying.
90. I consider that for the purposes of assessing the Incidents, I should apply the test of whether Mr Waddell engaged in unwanted conduct which had the purpose or effect of violating B's dignity or created an intimidating, hostile, degrading, humiliating or offensive environment for B, bearing in mind the factors in section 26(4) which have to be taken into account in cases of harassment (but not necessarily bullying, because that is not defined in statute).

²¹ It does not seem to me that there is any reason for these categories to be mutually exclusive.

91. This approach has the effect of creating a single form of gross misconduct, one of harassment/bullying. I make clear that in applying this test:
- i) I am abandoning the requirement that the conduct “relate to” a relevant protected characteristic. Of course, that does not mean that such factors are irrelevant. To the contrary, the use of sexist or racist language is likely to highly significant when considering whether B’s dignity has been violated or whether an intimidating, hostile, degrading, humiliating or offensive environment for B has been created.
 - ii) I proceed on the basis that bullying, like harassment, can indirectly affect B.
 - iii) I consider that bullying can comprise a single incident.

F.5. Gross misconduct

92. Not all of the “unwanted conduct” comprising the Incidents falls within this definition of harassment/bullying. “Unwanted conduct” is a necessary, but not a sufficient, condition. Additionally, it must be the case that (i) B’s dignity has been violated or (ii) that an intimidating, hostile, degrading, humiliating or offensive environment for B has been created.
93. Both of these tests set the bar quite high, and rightly so. The employment relationship involves a degree of discipline and compulsion – the worker is obliged to provide their work in the manner the employer has contracted for – which may, in many cases, be “unwanted”. Whilst some people may be lucky enough to do work that they enjoy, and that involves no cost to them in terms of time given up, that is not true of many. Work can involve pressures, particularly when things go wrong (as where there is a grievance or disciplinary process). It cannot be the case that where a grievance or disciplinary process is run – even if ultimately the case is dismissed – that this automatically amounts to harassment/bullying. Equally, even unequivocally “bad” or “inappropriate” conduct does not automatically mean a violation of dignity or a degrading, humiliating or offensive environment. These are all strong words, as I have noted.
94. That is particularly the case where the establishment of harassment/bullying in any given case amounts to gross misconduct. The approach I take to assessing the Incidents is to consider whether in each case Mr Waddell engaged in unwanted conduct which had the purpose or effect of *violating B’s dignity* or created an *intimidating, hostile, degrading, humiliating or offensive environment for B*. Where I am satisfied that this is the case, then it will be my conclusion that such conduct is (i) gross misconduct, (ii) amounting to a repudiatory breach of contract which (iii) is capable of acceptance by the employer.
95. Where conduct is bad or inappropriate but is not sufficiently serious either to *violate B’s dignity* or create an *intimidating, hostile, degrading, humiliating or offensive environment for B*, when comprising a single incident, it will not amount to gross misconduct, although it will very likely constitute an incident

that would be captured by BIG’s disciplinary processes at stated in the BIG Employee Handbook.

96. As I have said, most of the Incidents constitute an allegation of harassment/bullying. Almost all of the Incidents – if established – would be sufficient to trigger some form of disciplinary sanction against Mr Waddell. However, that is *not* the question that I need to resolve in this Judgment. I am concerned *not* with the question of whether there has been *misconduct* but with the question of whether there has been *gross misconduct* giving rise to a right of summary dismissal.
97. Although most of the Incidents involve potentially bullying or harassing behaviour, there is one case, Incident No 15 involving Mr Chapman, where the incident is said to have amounted to what the criminal law would call “battery”. This allegation might be regarded as both harassment/bullying and as a form of assault. Then there are allegations of breach of fiduciary duty; and post-suspension infringements by Mr Waddell, where Mr Waddell is said to have breached the terms of the Waddell Service Agreement. Clearly, in these cases, the criteria by which gross misconduct is to be assessed will be different.

G. REASONS AND THE RULE IN BOSTON DEEP SEA FISHING

98. Chitty says this:²²

An employer, when he or she dismisses his employee, need not allege any specific act of misconduct on the employee’s part as the ground for the dismissal; it is sufficient if such a ground did exist, whether or not the employer knew of it at the time of the dismissal. But if the employer does know of the misconduct in question and thereafter continues the employment, he or she may be taken to have waived his or her right to dismiss the employee on that ground. The employee now has a statutory right to a written statement of reasons for dismissal. The existence of that right does not in itself alter this aspect of the law of summary dismissal, unless the employer were held to be estopped from asserting grounds for dismissal which do not form part of a statutory written statement of reasons for dismissal.

99. The rule that an employee can properly be dismissed for no articulated reason (or, indeed, for a reason that is bad), provided a repudiatory breach on the part of the employee exists at the time of the dismissal is based on old and venerable authority, in particular *Boston Deep Sea Fishing & Ice Co v Ansell*.²³ It will be referred to as the “rule in Boston Deep Sea Fishing”.

H. MDEs

100. Clause 19(a) of the Securityholders’ Deed provides:

In addition to any Group Company’s rights under any employment agreements or service agreements with Employees, the Investor shall have the right to require that the Company commission an investigation by a suitable qualified independent third party (an “Independent Investigation”) into the conduct of any Employee if there are reasonable grounds (in the opinion of the Investor (acting reasonably)) to suspect that

²² Beale (ed), *Chitty on Contracts*, 36th ed (2026) at [43-186].

²³ (1888) 39 ChD 339.

such Employee has breached any applicable law or regulation in relation to discrimination, harassment, or any ABC Law in each case in connection with their employment, appointment or engagement with the Group and that such breach is reasonably likely to have (in the opinion of the Investor, acting reasonably) or has had a material adverse effect on the reputation of any Group Company and/or the Investor (a “Material Default Event”).

101. The processes involved in invoking clause 19 will be considered later. For the present, it is only necessary to identify the relevant standards that constitute a Material Default Event. These are:
- i) *Laws and regulations in relation to discrimination.* This is a term undefined in the Securityholders’ Deed. I find that it refers to the laws of discrimination in the Equality Act 2010 set out above, as augmented by the BIG Employee Handbook. The law of discrimination is not engaged in the Incidents.
 - ii) *Laws and regulations in relation to harassment.* Again, “harassment” is an undefined term. I find that it refers to harassment as defined in the Equality Act 2010 as set out above, as augmented by the BIG Employee Handbook. Many of the Incidents involve harassment as so defined.
 - iii) *ABC Law.* This is a defined term, defined in clause 26(a) as “any activity, practice or conduct that would constitute an offence under the UK Bribery Act 2010, US Foreign Corrupt Practices Act of 1977 or similar legislation in other jurisdictions or any AML Laws (“ABC Law”). AML Laws are defined in clause 1 (definitions: under “AML Laws”) as “applicable laws, rules, regulations and guidance in any relevant jurisdiction relating to anti-money laundering and combating the financing of terrorism, including Economic Sanctions Law.” None of the Incidents involve ABC Law, and it is unnecessary to consider this further.
102. The definition of an MDE thus includes harassment, but *not* bullying. That was a distinction that Mr Siddall, KC clearly appreciated. In the Siddall Final MDE Report, Mr Siddall, KC found a number of Incidents to amount to bullying but which (because they were not harassment) did not constitute MDEs. To this extent, therefore, my unified definition of harassment/bullying breaks down.

Part II(iii): Approach to factually evaluating the Incidents

I. SUMMARY

103. The Incidents will require a careful factual evaluation. In almost no case were the facts completely uncontroverted: even if the facts were substantially common ground, the seriousness of the Incident was invariably contentious. This renders a careful, incident-by-incident, scrutiny inevitable. I have been able to leave some of the Incidents out of account, but most have required careful consideration of the evidence that I heard.
104. That scrutiny takes place mainly in the chronological narrative in Part IV of this Judgment.

105. There are a number of themes or aspects common to the Incidents which it is appropriate to lay out at this stage. These themes or aspects are:
- i) The nature or type of Incident.
 - ii) The fact that those witnesses who gave evidence before me (and, indeed, before Mr Siddall, KC as a part of his investigation) were deeply polarised and fell into two “camps” – the “Mr Waddell” camp, and the “Freshstream” camp.
 - iii) The significance of the use or non-use of the grievance procedure contained in the BIG Employee Handbook.
 - iv) The significance to be attached to the findings of Mr Siddall, KC.

J. TYPES OF INCIDENT

106. As I have noted, most of the Incidents were cases of harassment/bullying. For the purposes of assessing whether such an Incident amounted to gross misconduct on the part of Mr Waddell, it will be sufficient to apply the unitary test described above. In order to determine whether the Incident qualifies as an MDE, it will be necessary to classify such cases as one of either harassment or bullying.
107. Incidents that do not constitute harassment/bullying will have to be evaluated (as they arise) by reference to different criteria. Such Incidents will generally not be MDEs.

K. POLARISATION

108. The tensions that manifested themselves – or became exacerbated – with the arrival of Freshstream have been adverted to. The consequence was that two “camps” emerged over the course of 2022 to 2024, a “Mr Waddell” camp and a “Freshstream” camp. It was very difficult for employees of BIG to avoid choosing one side over another, although both sides inevitably (i) denied that there were camps at all and (ii) in any event claimed that they were acting in the interests of BIG and its shareholders. The fact is that the shareholders were – from around October 2023 – at loggerheads, and relations deteriorated. I have described this effect as a polarising one: but this is a euphemistic term and it would be wrong not to acknowledge real dislike between a number of protagonists. This polarisation had a number of consequences and effects.
109. First, a number of potential witnesses, who might have given evidence of real significance, declined to assist either side. In many cases the failure to call a witness having material evidence to give might be a matter for adverse inference. This is not such a case. It is understandable that witnesses would want to remove themselves from the unpleasantness of this dispute.
110. Secondly, there were a number of witnesses who gave evidence, but with great reluctance. In one case (Ms Gable²⁴), the court exercised its coercive powers,

²⁴ She was the subject of Incident No 8.

but others, who technically were giving evidence voluntarily, had been sucked into the process and were only technically willing witnesses. In some cases, their evidence changed over time. I will have to consider the reasons for this, but in a number of cases this was not because they were seeking to mislead the court or change their story, but because the process (both before Mr Siddall, KC and before me) was distortive of their true evidence. Even so, in a number of instances, inducements appear to have been offered (again by both sides) seeking to shape the evidence witnesses were giving

111. That leads to the third point. The processes of gathering evidence resulted in an inevitable “baking-in” of the polarisation that I have identified. Trigger words appeared in statements – “banter”, “safe”, “shocked”, etc. It is necessary to approach such evidence with a degree of caution. Honest witnesses were forced into positions that were not completely theirs by a process that was a distortive one.
112. Fourthly, there were a number of witnesses who were dishonest, either in limited parts of their testimony or else more generally. Equally, a number of witnesses sheltered behind legal advice they had received, and used the importance of not waiving privilege to avoid answering questions which could have been properly answered.
113. These factors – as well as the usual problems of memory – have made the weighing of the evidence a difficult and sensitive process. I have taken to heart the point made by Lord Goff in *The Ocean Frost* regarding the reliability of documents, and I have sought to locate individual events in their context, so that a consistent and credible narrative emerges.

L. SIGNIFICANCE OF THE (NON-USE) OF THE GRIEVANCE PROCESS

114. As I have described, BIG had, in the BIG Employee Handbook, a sophisticated process for maintaining a decent workplace environment. Yet that process appears comprehensively to have failed, in that a large number of Incidents (whether ultimately well-founded or not) were never the subject of a grievance process nor a disciplinary process as laid down in the BIG Employee Handbook.
115. One of the matters this Judgment will be concerned with is *why* the climate within BIG became so poisonous. Each side advanced a different theory. For Freshstream, the position was that they acquired a business, thinking that it was run by a colourful, idiosyncratic, demanding, self-made man, only to discover that Mr Waddell was the worst version of this – a racist, sexist bully, against whom they belatedly had to take action both to preserve the business and protect the workforce within BIG.
116. Mr Waddell, on the other hand, contended that BIG was a “happy family”, and that it was Freshstream that created tensions by introducing new and divisive processes, mismanaging the business and causing dissent and stress, not least by operating behind his back. Because Freshstream declined to exercise the Call Option, whilst behaving as if they were the majority shareholder, when Mr Waddell pushed back against this, Freshstream reacted by using (illegitimately according to Mr Waddell) their powers under the Securityholders’ Deed.

117. Both of these versions of events are too extreme, but both contain an element of truth. One factor, however, in determining the true position is the role played – or not played – by the grievance process. The fact is that whilst the process was used, it tended *not* to be used against Mr Waddell. The inferences that can be drawn from this are several, but not necessarily consistent. The absence of complaints made could be indicative of Mr Waddell’s alleged misconduct being so minor that the Incidents were not truly grievances at all. Alternatively, the absence of formal complaint might demonstrate that Mr Waddell was “beyond the law”. Both of these explanations can be true of different Incidents.
118. At the same time, the reason for the reporting and non-reporting of the Incidents (and others) is important background to the activities of Mr Tom Clarke (“Mr Clarke”), in particular in February/March 2024. Mr Clarke was an employee of BIG who was assiduous in collating and bringing before Mr Siddall, KC many of the Incidents. Few of these triggered a grievance or disciplinary process.²⁵ The question is why this was the case. Was it because the Incidents were insufficiently serious, and Mr Clarke was constructing a bogus or inflated case against Mr Waddell? Or was it that the workforce within BIG was so cowed that they knew that reporting Mr Waddell’s misconduct was not merely a waste of time, but actually career threatening and a source of trouble and strife? Again, I have described two extremes on the spectrum, and the truth is likely to vary from Incident to Incident and to sit somewhere between these extremes.
119. The non-use of the grievance procedure is a factor that I bear in mind, noting that it does not point in a single direction.

M. THE MDE INVESTIGATION AND THE SIDDALL FINAL MDE REPORT

120. During the course of the MDE Investigation, Mr Siddall, KC heard a great deal of evidence, which was transcribed, and to which I will refer. Some exchanges between Mr Siddall, KC and witnesses who did not give evidence before me were the subject of CEA Notices, bringing those exchanges into evidence. In other cases, witnesses who gave evidence before me, had their evidence before Mr Siddall, KC explored during the course of their examination.
121. I have found the record of the evidence before Mr Siddall helpful. In the first place, Mr Siddall heard evidence in March/April 2024, whereas I heard evidence two years later. It is well-appreciated that evidence does not (generally speaking, at least) improve over time. Secondly, as I have noted, Mr Siddall, KC heard from some witnesses I did not hear from.
122. I have also taken into account the findings made by Mr Siddall, KC. Save in one respect, I do not consider myself to be bound by those findings, but I have taken them into account. The exceptional case is where the MDE Investigation Committee – having commissioned an investigation by Mr Siddall, KC – was presented with a finding of MDE by Mr Siddall, KC. Such a finding, when communicated by BIG to Freshstream, triggered Freshstream’s ability to issue an MDE Notice.

²⁵ The only clear exception is Ms Gable’s complaint in Incident No 8.

123. There is no point in re-visiting from a factual perspective Mr Siddall, KC's findings of MDE, because those findings fed into the MDE process which is a matter of history. Accordingly, my analysis of the Incidents focuses on the question of gross misconduct, although clearly there is a good deal of overlap between what constitutes gross misconduct and what constitutes an MDE. It is for this reason that the work done by Mr Siddall, KC during the course of the MDE Investigation and the conclusions of the Siddall Final MDE Report is so helpful.
124. The question whether the MDE process was regularly conducted is a completely separate area of consideration, to which I will come.

Part III: Corporate Duties

A. OVERVIEW

125. The law regarding unfair prejudice will be considered later. The law regarding wrongful dismissal has been considered. This Part considers:
- i) The justification for the simplified approach to corporate relations that I have adopted, i.e. the trifurcation between BIG, Mr Waddell and Freshstream.
 - ii) The duties of an employer (BIG) to its employees. For these purposes, it is necessary to consider specifically (i) the interests of employees who are the subject of abusive conduct by another employee, in this case Mr Waddell, who had an extremely senior position in the company; and (ii) the position of Mr Waddell himself, who was entitled to certain protections when accused of wrongdoing.
 - iii) Control of the board of BIG.
 - iv) The duties of directors in such a context.
 - v) The specific point – articulated at various times in the trial – that there was simply nothing that BIG or Freshstream could do regarding Mr Waddell.

B. JUSTIFICATION FOR A SIMPLIFIED APPROACH

126. The boards of the various interested companies comprising what I term “BIG” did not tend to meet separately, but had collective board meetings for all involved.²⁶ Sometimes, these meetings combined with management executive team meetings.²⁷ Information was provided at these meetings, in the form of board packs (which Freshstream received throughout).²⁸ I explain further below the reason why, as a matter of legal analysis, it is not necessary to disaggregate the omnibus concept of “BIG”.

²⁶ Day 14/p95 (XX Fardad).

²⁷ Day 14/p95 (XX Fardad).

²⁸ Day 14/p97 (XX Fardad).

C. DUTIES OF AN EMPLOYER TO EMPLOYEES

127. One of the recurrent themes over the course of cross-examination was the duty of an employer towards that employer's employees, particularly where one employee is misbehaving in relation to another.
128. The BIG Employee Handbook was very clear on this point. The whole point of the grievance procedure was to enable employees to bring to their employer's attention issues, including issues with other employees. The BIG Employee Handbook makes clear that BIG regarded it as an obligation it owed to its employees to ensure that standards were maintained. That is no more than an expression of the duty of mutual trust and confidence between an employer and an employee, which is implied into every contract of employment.²⁹

D. CONTROL OF THE BOARD

129. At the board meetings Mr Waddell was the only "Waddell" director present. The others were either explicitly associated with Freshstream (e.g., Mr Fardad) or else had come over to Freshstream's side (e.g., Mr Vaughan). Numerically, therefore, Mr Waddell was outnumbered. But that would be to understate the strength of Mr Waddell's position in a number of regards. First, the force of Mr Waddell's character, and his unquestionable expertise in the business. Secondly, there was his position as CEO. Thirdly, there was his position as majority shareholder (disregarding the alter ego of PWHL). This third point needs to be considered in light of the Securityholders' Deed, which served to protect Freshstream's minority interest. As to this:³⁰
- i) BIG would be run by a board of directors (clause 3(a)), to whom certain matters would have to be referred for approval (in addition to shareholder approval) (clause 3(b)).
 - ii) The board's composition – prior to an Investor Control Event: essentially, the exercise of the Call Option – was provided for, entitling Freshstream and Mr Waddell to appoint a certain number of directors to the board (clause 4(a)).
 - iii) In terms of voting, unless Step-In Rights had been exercised, the Securityholders' Deed provided:³¹

Each director shall have one vote with respect to each matter voted upon by the Board, provided that (other than during a Step-In Period where the provisions of Section 5(b)(ii) shall apply) the PW Directors present at a meeting of the Board shall together be entitled to exercise such number of votes to ensure that at all times the PW Directors present at such meeting of the Board shall hold a number of votes equal to a simple majority of the aggregate votes of the Board...

²⁹ See e.g., the IDS Employment Law Handbook: Contracts of Employment (2024) at [3.38]ff.

³⁰ All references in this paragraph are to the Securityholders' Deed.

³¹ Clause 4(b)(ii).

- iv) On the occurrence of Step-In, the position would be reversed, with clause 5(b)(ii) providing:

The Investor directors present at a meeting of the Board shall together be entitled to exercise such number of votes to ensure that at all times the Investor Directors present at such meeting shall hold a number of votes equal to a simple majority of the aggregate votes cast in respect of any matter put to a vote.

130. The operation of BIG's board was thus significantly more complex than in the ordinary case. Absent Step-In, not only could Mr Waddell pack the board (a power he did not exercise, but could have done), but also Mr Waddell alone could achieve a majority vote, if present at the meeting. On Step-In, not only did the weighted voting reverse, but (by clause 9) various governance matters shifted to Freshstream's favour. Of course, this would have rendered the due performance of the duties of the Investor directors all the more important and difficult, given that they could override the majority shareholder view but were obliged to act in the best interests of BIG.
131. Freshstream were conscious of their position as minority shareholder. Freshstream's decision-making body was its investment committee (the "Freshstream Investment Committee"). At all material times, the Freshstream Investment Committee comprised five persons: Mr Patrick Smulders, Mr Rayhan Davis, Mr Adam McLain ("Mr McLain"), Mr Lodewijk de Graauw and Mr Fardad. The Freshstream Investment Committee did not minute its meetings, and sometimes operated informally. The Committee was briefed by way of memoranda referred to herein as "IC Memos". From these it is possible to make some assessment of what was discussed by the Freshstream Investment Committee, and to infer what was decided. However, the process of inference is a difficult one, particularly given (i) that not even decisions of the Freshstream Investment Committee were published or articulated, (ii) Mr McLain and Mr Fardad had remarkably poor memories of what was discussed/decided and were, in many instances, circumscribed in what they could say by legal advice privilege and (iii) the seriousness of the allegations being advanced by Mr Waddell.
132. Freshstream's awareness of its position as a minority shareholder is evident from an IC Memo dated October 2022, which stated:
- Until [Freshstream] is a majority shareholder in [BIG], we need to be realistic on what changes we make to the business and the pace of change
 - We should focus on areas which where there is a strong alignment with Pete and where there is a value creation opportunity or a need to mitigate a specific risk
 - The following priorities are considered to meet these criteria and to be a focus for the business:
 - Defend: ensure key members of senior management remain motivated and do not exit the business
 - Defend: put HR basics in place to reduce risk, ensure the business is compliant and accelerate recruitment

- Defend: get finance basics in place, strengthen finance team and upgrade the finance system
- Defend/grow: retain focus on existing site performance and ramping up Peterborough sites
- Grow: secure a location for a new retail site and prepare for launch
- Grow: diversify the sources of vehicles and improve economics (primary focus on D2C car buying but start to consider auction given dependency)
- Grow: assess IT / technology landscape (“as is” and “to be”) and develop a road map to implement
- Grow: quick win opportunities on vehicle sourcing and pricing (TBD – limited Pete buy-in)
- It is important to have a clear plan to ensure these succeed, leveraging Laurence [Vaughan] and the FS team:
 - Manage Pete relationship and clearly communicate what is needed for [Freshstream] to exercise (Reza/Laurence)
 - Ensure Pete is aligned with priorities and understand where he would value support (Reza/Laurence)
 - Keep close to the management team and ensure they feel heard (Laurence led with [Freshstream] team involved e.g. Bob/Darren meet up every six weeks)
 - Set up regular check-ins on key topics to ensure we are making progress (replace fortnightly [Value Creation Plan, “VCP”] call):
 - Finance (Gilles/Marika) (Alex)
 - New site (Gilles/Marika/Laurence)(Pete)
 - Sourcing and auction (James)(Darren/Neil)
 - Technology (James/Gilles)(Stewart/Alex)

133. This memo contains the seeds of many of the facts and matters that will be considered in the factual narrative in Part IV. The IC Memo demonstrates a sophisticated understanding of the power realities on the part of Freshstream. It shows, even at this early stage (October 2022), an alignment between Mr Vaughan and Freshstream to control Mr Waddell;³² that there was an alignment problem between Mr Waddell’s views and those of Freshstream; that there was a “team within a team”, in that there was a Freshstream core within BIG that (as will be further described) had more influence than Freshstream’s minority stake

³² Mr Fardad and Mr Vaughan spoke regularly, and Mr Vaughan made clear to Mr Fardad his negative views of Mr Waddell. These conversations were not reported back to Mr Waddell: Day 14/pp103-104 (XX Fardad).

would suggest; and that Mr Waddell was kept out of the loop when considering e.g. new appointments.

E. DIRECTORS' DUTIES

E.1 Duties relied upon

134. Mr Waddell relied upon a number of directors' duties in support of his claims. It is helpful to set out the nature of these duties now.

E.2. Conflict of interest

135. Fiduciaries like directors are subject to the no-conflict rule, which demands that they avoid conflicts of interest. This includes a conflict between *interest* and *duty* as well as a conflict between *duty* and *duty*. That rule is now codified in section 175 of the Companies Act 2006:

(1) A director of a company must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.

(2) This applies in particular to the exploitation of any property, information or opportunity (and it is immaterial whether the company could take advantage of the property, information or opportunity).

(3) The duty does not apply to a conflict of interest arising in relation to a transaction or arrangement with the company.

(4) The duty is not infringed –

(a) if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or

(b) if the matter has been authorised by the directors.

(5) Authorisation may be given by the directors –

(a) where the company is a private company and nothing in the company's constitution invalidates such authorisation, by the matter being proposed to and authorised by the directors; or

(b) where the company is a public company and its constitution includes provision enabling the directors to authorise the matter, by the matter being proposed to and authorised by them in accordance with the constitution.

(6) The authorisation is only effective if –

(a) any requirement as to the quorum at the meeting at which the matter is considered is met without counting the director in question or any other interested director, and

(b) the matter is agreed without their voting or would have been agreed to if their votes had not been counted.

(7) Any reference in this section to a conflict of interest includes a conflict of interest and duty and a conflict of duties.

136. The duty is a strict one, acting as a prophylactic, a deterrent and a guard against “human frailty”. The fiduciary must not place themselves in a position where they *may* be tempted to prefer their own interests over the beneficiary’s.
137. The no-conflict rule demands that if, during a fiduciary’s appointment, a conflict of interest or duty arises, the fiduciary must immediately step down from their position as fiduciary, unless the conflict is authorised by the beneficiary or, in relation to directors, authorised in accordance with the provisions of section 175.

E.3. Good faith

138. A director’s duty to act in good faith, and in the best interests of the company, is now codified in section 172 of the Companies Act 2006:
- (1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to –
- (a) the likely consequences of any decision in the long term,
 - (b) the interests of the company’s employees,
 - (c) the need to foster the company’s business relationships with its suppliers, customers and others,
 - (d) the impact of the company’s operations on the community and the environment,
 - (e) the desirability of the company maintaining a reputation for high standards of business conduct, and
 - (f) the need to act fairly as between members of the company.
- (2) Where or to the extent that the purposes of the company consist of or include purposes other than the benefit of its members, subsection (1) has effect as if the reference to promoting the success of the company for the benefit of its members were to achieving those purposes.
- (3) The duty imposed by this section has effect subject to any enactment or rule of law requiring directors in certain circumstances, to consider or act in the interests of creditors of the company.
139. The touchstone of good faith is honesty. Honesty has a subjective and an objective quality. The subjective quality is that the breach of the duty is assessed by reference to the director’s subjective knowledge of circumstance. In light of that (subjective) knowledge, it must be asked (applying an objective test) whether the conduct embarked upon was honest by reference to the standards of right-thinking people in that position with that knowledge. The duty applies to the consideration, by the director, of what is in the company’s best interests, as well as that director’s acts, in terms of what that director *does* when acting for the company.

E.4. Duty to exercise independent judgment

140. Section 173(1) of the Companies Act 2006 provides for the duty to exercise independent judgment, providing that “[a] director of a company must exercise independent judgment.

F. THE RELEVANT DIRECTORS

F.1. Identity

141. I was provided with a schedule setting out the directors of all of the companies within the complex corporate structure comprising BIG, Freshstream and Mr Waddell, together with their terms of appointment. It is unnecessary to replicate this list. It is only necessary to note that the relevant directors for the purposes of this Judgment were Mr Waddell, Mr Fardad, Mr Gradassi, Mr Vaughan and Mr Clarke. Others, featuring in this judgment, were also directors (e.g., Mr Maby) but that status is not material.

F.2. Simplifying the structure

142. Save where a more specific reference is required (and generally it is not), I refer to three groupings in this case: (i) Mr Waddell (to include Mr Waddell’s interest in PWHL), PWHL being the majority shareholder in BIG; (ii) BIG itself, comprising all entities within the group, including (save for the uppermost tiers) the companies put in place for the purposes of the Transaction; and (iii) Freshstream (in preference to the term Investor, which is obviously a part of Freshstream, the greater whole).
143. So far as BIG is concerned, it is possible to collapse the structure and merely refer to “BIG” because directors holding multiple directorships must comply with all of their directors’ duties (including those set out above) to each of the companies of which they are a director. If a director is unable to act in the best interests of all of the companies to which they owe duties, they must resign.³³
144. Thus, in the unlikely event of there being a difference or divergence in the duties owed to the various companies comprising BIG, the directors’ duty would be clear. They would have to remove themselves.
145. Mr Fardad understood this point clearly:³⁴

Q (Marcus Smith J)

...what did you regard as your duties when you were contributing to decisions of the board? To whom do you owe your loyalties and duties to act? Just your impression, I don’t need to know what the duties were as a matter of law, I want to know what was going through your mind when you were contributing to these decisions.

³³ This fairly trite – but in this case important – point is made in Waddell Closing/[148]. I shall not repeat the authorities there cited – the point was not controversial.

³⁴ Day 14/pp98-99 (XX Fardad).

A (Mr Fardad)

It was what was best for the company. So it was the duties to the company itself. So if you – the various boards I was on, from TopCo downwards, it was – I mean, there's a few entities like TopCo, MidCo, BidCo,³⁵ there isn't much, they don't have anything to them, it's really, they're just the shareholders of all – you know, the structure. The operating companies is where it is.

So as a board member of TopCo, you would sit there and you would get presented with these things, and in my mind what is going on is: okay, I'm being told what's going on in the business, what's good for the business, and I owe my duties to that company's board. So my duties as a director are to that company. And the questions I asked, the responses I got, the suggestions I made, were driven by trying to do what's best for that – in the interests of that company.

Q (Marcus Smith J)

For BIG in this case?

A (Mr Fardad)

In this case, BIG, yes.

Q (Marcus Smith J)

You put it very elegantly, but let me put it a little less elegantly. So the structures above BIG were essentially to regulate ownership and be effectively disregarded. In other words, looking at the actual operation which was within the curtilage of BIG, and that's what you focussed on when you were making decisions in the best interests of the company, it was the operational side you were thinking of?

A (Mr Fardad)

Yes, because everything we discussed was – I'm trying to think through what you're saying is correct, and I believe it is, because everything we discussed was, I think almost entirely, happening at the operating company...So all discussion was that. I mean, there are some small differences between what – like you know, loans between these entities, like there are some things in there, but overall, there isn't – everything you discussed was happening at the operating company.

146. Mr Fardad had a clear – and, if I may say so – articulate and sophisticated understanding of his responsibilities. As a director, at whatever level, he was obliged to act in the interests of BIG.

F.3. Differences between the position of the directors

147. The position of Mr Vaughan and Mr Clarke, as directors, was far more straightforward than the positions of Mr Waddell, Mr Fardad and Mr Gradassi. Mr Vaughan and Mr Clarke had no conflicting or potentially conflicting interests.

³⁵ These are entities falling within the compendious term “BIG”.

148. Mr Waddell did. Not only was he a director and the CEO, but he was also (through PWHL) the majority shareholder. He would be obliged to take account of the interests of BIG and its shareholders as a whole in discharging his duties.
149. The point is the same, so far as Mr Fardad and Mr Gradassi were concerned. The position is most acute in the case of Mr Fardad, simply because he was more senior within the Freshstream organisation. Mr Fardad would not be entitled to favour the interests of Freshstream over those of BIG. In this, to anticipate, Freshstream's decision not to exercise the Call Option (a decision which Mr Fardad opposed) placed Mr Fardad in very real difficulties. We will come to these, but it can plausibly be said that when everyone was anticipating with confidence that the Call Option would be exercised, it could be asserted with confidence that the interests of Freshstream and BIG aligned. However, if that intention failed, then the interests of Freshstream (as a minority shareholder) would not necessarily be aligned with those of BIG, and might very well diverge.
150. The no-conflict rule articulated above applies in such cases, as where a fiduciary, like a director, acts for two principals with their consent. In *Bristol and West Building Society v Mothew*,³⁶ Millett LJ stated:

Even if a fiduciary is properly acting for two principals with potentially conflicting interests, he must act in good faith in the interests of each and must not act with the intention of furthering the interests of one principal to the prejudice of those of the other...But it goes further than this. He must not allow the performance of his obligations to one principal to be influenced by his relationship with the other. He must serve each as faithfully and loyally as if he were his only principal...

Finally, the fiduciary must take care not to find himself in a position where there is an actual conflict of duty so that he cannot fulfil his obligations to one principal without failing in his obligations to the other...If he does, he may have no alternative but to cease to act for at least one, and preferably both. The fact that he cannot fulfil his obligations to one principal without being in breach of his obligations to the other will not absolve him from liability.

151. Directors' duties were explored with Mr Fardad in the course of the trial:³⁷

Q (Mr Gourgey, KC)	...this wasn't the first time in BIG that you acted as a director of a company, was it?
A (Mr Fardad)	No, it's not.
Q (Mr Gourgey, KC)	How many prior directorships had you had?
A (Mr Fardad)	More than a few. I'd have to think it through.
Q (Mr Gourgey, KC)	A number?
A (Mr Fardad)	A number, correct.
Q (Mr Gourgey, KC)	Thank you.
	And you appreciated, prior to becoming a director of BIG, that a director of a company has a duty to act in the

³⁶ [1998] Ch 1 at 19.

³⁷ Day 16/p5 (XX Fardad).

way he considers in good faith would be most likely to promote the success of the company for the benefit of its members as a whole?

A (Mr Fardad) Yes.

Q (Mr Gouragey, KC) And you knew that in so doing, a director is required to have regard, amongst other matters, to the need to act fairly between members? Something you're aware of?

A (Mr Fardad) Yes.

152. Although the point was not put quite so unequivocally to Mr Vaughan, Mr Vaughan was anxious to press his credentials as an experienced director, CEO and chair. I consider that his knowledge of directors' duties would be similar to that of Mr Fardad.

G. "IT'S BEYOND MY CONTROL"

153. One of the questions that emerged with some frequency was why BIG, as the employer, did not intervene to prevent repetition by Mr Waddell of the Incidents and to discipline him in relation to such Incidents that had occurred. These are questions that will be considered Incident-by-Incident, but it is appropriate now to consider the generic position of the parties as to why the BIG Handbook was (in the case of Mr Waddell) apparently not followed.
154. Mr Waddell's answer to this issue was straightforward: the Incidents either did not occur or else were grossly exaggerated. This explained both the absence of articulated grievances and the non-use of the disciplinary process.
155. Neither Freshstream nor BIG accepted this explanation. To the contrary, they asserted that there was a climate of fear within BIG, such that whilst the grievance and disciplinary processes might have worked *generally*, they did *not* do so in the case of Mr Waddell. Essentially, employees in BIG were too afraid of the consequences of reporting a grievance concerning Mr Waddell and simply did not do so.
156. If neither BIG nor Freshstream were aware of these grievances, this would be a complete explanation for their failure to discipline Mr Waddell. However, if and to the extent they *were* aware of the Incidents, and their seriousness – matters that will have to be considered on the evidence – the question arises as to *why* BIG and Freshstream did nothing. The question is most pertinent for BIG, as Mr Waddell's employer, and in particular for Mr Vaughan as the chair of BIG. But the question also arises in relation to Freshstream, and in particular in relation to Mr Fardad as the "lead" on the BIG acquisition. Freshstream, as has been described, had the Freshstream Minority Rights which had been agreed precisely to enable the minority shareholder to exercise control over Mr Waddell and the power conferred by his majority holding and his position as CEO.
157. The question as to why nothing was done arises most acutely with Mr Vaughan, Mr Fardad and Mr McLain – another member of the Freshstream Investment Committee who was involved in the affairs of BIG. More junior members in

both organisations could – quite legitimately – regard the Incidents as well-above their pay grade. Thus, Mr Gilles Gradassi (“Mr Gradassi”) – a junior member of the Freshstream team – had limited and generally second-hand knowledge of the Incidents. Additionally, it was not – in his view, and I think rightly – his role to do anything about such allegations:³⁸

Q (Mr Gourgey, KC) And what did you – you’re a director you were and are a director – you were a director of Topco and Bidco, yes?

A (Mr Gradassi) Yes, correct.

Q (Mr Gourgey, KC) What did you do about these reports when you heard about them?

A (Mr Gradassi) As a person, I remember discussing with Reza at the time and I felt, as a partner on the deal, you know, he was maybe the best point of contact to address any issues in the business. My relationship with Peter at that time was friendly, I would say, but not at the level where I felt I could have discussions more, I would say, deeper or more important than some of the numbers I was looking after at the time.

Q (Mr Gourgey, KC) So, is it fair to say, you left it to Reza to deal with?

A (Mr Gradassi) Implicitly, as my position in the deal chain, yes. I know he was discussing with Peter and Laurence on a regular basis. So my assumption was that if there were serious concerns, the main conduit would have been through Reza.

158. Mr Fardad, in what became a regular refrain, suggested that there was nothing that could be done about Mr Waddell’s conduct. He accepted that bad behaviour on the part of Mr Waddell was occurring, and that Freshstream and BIG knew of at least some of it.³⁹ However, Freshstream and BIG were not condoning this behaviour, but simply helpless in the face of Mr Waddell’s power within the organisation. In Fardad 4, Mr Fardad said:

[101] Alex repeatedly came to me, Laurence and Gilles to complain about Pete’s aggressive behaviour throughout his employment. I wasn’t a go-between for Alex and Pete. Depending on the situation, sometimes I listened to the complaints Alex had and at other times I needed to judge whether I should try to make a change within my limited power. If I had been a majority shareholder, I would listen and make a decision on what changes needed to be made. As a minority shareholder, I could only tell Pete that I was not happy with the way Alex Maby was being treated and if Alex left it would not be good for business. That’s the kind of conversation I could have and did have, rather than just explain that if he continued to behave in this way we would replace him with another CEO. I didn’t have the power as a minority shareholder, so I tried to work within my powers.

³⁸ Day 18/pp4-5 (XX Gradassi)

³⁹ As will be seen, Mr Fardad was at times reluctant to accept this, but as is clear from the narrative in Part IV he knew of large parts of Mr Waddell’s misconduct.

159. In cross-examination:⁴⁰

- Q (Marcus Smith J)** Just to ask about the hypothetical at the end of this paragraph? You say that if Freshstream had been a majority shareholder, your conduct would have been rather different?
- A (Mr Fardad)** Mm hm.
- Q (Marcus Smith J)** And you suggest that you would have said that if he continued to behave in this way, he'd be replaced with another CEO?
- A (Mr Fardad)** Yes.
- Q (Marcus Smith J)** What would the basis of that replacement have been? How would you have triggered that?
- A (Mr Fardad)** Well, as CEO – I would explain that a CEO that puts that kind of pressure and says the things that he said to Alex is not acting professionally, that – and in context of all the other things going on as well, it wasn't just Alex, right? – I would have explained that we cannot – we will not accept that kind of unprofessional behaviour from our CEOs and you need – exactly what I said in my statement.
- Q (Marcus Smith J)** But you could have said that being in a minority shareholder position, as indeed you were?
- A (Mr Fardad)** Well, I couldn't – well, as I mentioned yesterday, including Alex, a lot of people, when they did actually highlight pressure they were under, they would also say they don't want me to speak to Pete about it, and – or in the case of Alex, it wouldn't make any difference, so no point speaking to Pete about it. So there was an element of because I didn't have the power to do something about it afterwards, had I gone to Pete and said these individuals or this particular individual has complained about the way you are treating them, what – I was – my view, and the view I still hold is that what would have simply happened is that Pete would have applied more pressure to them and forced them out of the business. And there was nothing I could do about that because, as a minority shareholder, I didn't have the right to replace the CEO.
- Q (Marcus Smith J)** But why couldn't you have done what ultimately you did do, which is commence some form of disciplinary process?
- A (Mr Fardad)** That would have to meet the threshold of the MDE and I did – that's not where I was.
- Q (Marcus Smith J)** Well, no, I don't think that's my point. The MDE process is rather different from the ordinary disciplinary process that you can apply to any employee of a company?

⁴⁰ Day 15/pp24ff (XX Fardad).

- A (Mr Fardad)** I don't believe I could do that when he controlled the board. But, I – I – that's not what we were thinking at the time?
- ...
- Q (Mr Gourgey, KC)** You didn't table anything at a board meeting, did you, concerning his conduct?
- A (Mr Fardad)** No.
- Q (Mr Gourgey, KC)** It was open for you to do that at any time, wasn't it?
- A (Mr Fardad)** I could do it, but there would be consequences, as I mentioned, to – of doing it.
- Q (Mr Gourgey, KC)** But that would depend on whether you gave names or not, wouldn't it?
- A (Mr Fardad)** It would.
- Q (Mr Gourgey, KC)** What names did you have, other than Mr Maby and Mr Ruprah, prior to October '23?
- A (Mr Fardad)** I don't recollect the timeline of when people had mentioned things to me. During this period, there was Nick Lapthorne that was complaining about the pressure he was under, there was Bob, as you mentioned. Alex, Neil. There was a lot – there was a fair number of people that were complaining and mentioning this.
- Q (Mr Gourgey, KC)** Alex didn't require you not to mention anything to Peter, did he? He didn't ask that you keep his name and his complaints confidential, did he?
- A (Mr Fardad)** No, he did, he was very much – I mean, from my recollection, when he did say he was under a lot of pressure, he said: "There's no point mentioning anything to Pete, nothing will change."
- Q (Mr Gourgey, KC)** He didn't tell you don't mention it to Peter, did he?
- A (Mr Fardad)** My recollection was that he did ask me not to mention it to Pete, but...
- Q (Marcus Smith J)** But because it was pointless or because he was scared of the consequences.⁴¹
- A (Mr Fardad)** Both because it would be pointless but because he'd be scared of the consequences. There would be no benefit of doing it, and Pete would put him under a lot more pressure.
- Q (Mr Gourgey, KC)** But you were telling – but your evidence in your witness statement, Mr Fardad, is that you did intervene and speak to Peter?
- A (Mr Fardad)** But in – in case of Alex, I did say he's under a lot of pressure.
- Q (Mr Gourgey, KC)** Yes.

⁴¹ The transcript shows some overspeaking. I have separated the question and the answer to make the sense clearer on the page, but the substance of Mr Fardad's evidence is untouched.

- A (Mr Fardad)** I did do that, that is fair.
- Q (Mr Gourgey, KC)** And you don't suggest in paragraph [101] in all its glory, you don't suggest that when Alex was coming and giving you these complaints that he said, "Oh, but I don't want you to tell Peter that I told you", there's no mention of that here, is there?
- A (Mr Fardad)** Well, my witness statement here, I believe, is saying that I had that conversation with Peter, but it doesn't mention – you're right – it doesn't mention that Alex did ask me not to have that conversation. That is fair.
- Q (Mr Gourgey, KC)** And that's because he didn't ask you to not have the conversation?⁴²
- A (Mr Fardad)** No, he did. My recollection is that he did.
- Q (Mr Gourgey, KC)** What, so he was coming to you, making complaints, saying he was not wanting you to do anything about it? Is that your evidence, Mr Fardad?
- A (Mr Fardad)** Yes, yes.
- Q (Mr Gourgey, KC)** What was the point of him coming to see you, if he didn't want you to do anything about it?
- A (Mr Fardad)** He wanted me to know about it at least.
- Q (Mr Gourgey, KC)** Is this a – this is an aspect you've just made up on the hoof, Mr Fardad, isn't it?
- A (Mr Fardad)** No. No, it is not.
- Q (Mr Gourgey, KC)** Well, why didn't you mention this in your witness statement? Why didn't you say in the witness statement: "Yes, he came to me, but he made it very clear that he didn't want me to speak to Peter about it"?
- A (Mr Fardad)** I believe elsewhere in the witness statement I have said that people came to me and – but, in every situation, they had asked me not to mention it to Pete. So I didn't repeat it here.
- Q (Marcus Smith J)** Could you have escalated the matter to Mr Vaughan?
- A (Mr Fardad)** Mr Vaughan was aware of Alex's complaints. It wasn't just to me.
- Q (Marcus Smith J)** That's not quite the question.
- A (Mr Fardad)** Sorry.
- Q (Marcus Smith J)** If you've got, as you're saying in your evidence, a problem with the CEO and their behaviour and you don't feel comfortable yourself in approaching the CEO for whatever reason, oughtn't you to articulate that as a problem to the chair, so that that can be handled? Not so you're aware, but we've got a problem, we ought to do something about it?

⁴² Again, the transcript records some overspeaking, which I have rendered in form clearer, but without affecting the substance.

- A (Mr Fardad)** Yes. I mean Laurence and I did talk about these issues, the pressure and the complaints, regularly. So I don't know if that answers your question?
- Q (Marcus Smith J)** And what did you conclude you should do?
- A (Mr Fardad)** Well, practically, what could we do? Should we – we discussed, we would – we could – I mean, as I mentioned, we were in a bit of a - between a rock and a hard place. If we discussed these things with Pete, the pressure on the team would be either that individual or the team would increase. We were – one thing we could obviously do, look forward to exercising the call option and being able to change – then have the power to actually change – make changes. These are the kind of conversations Laurence and I had.

160. It will be necessary to consider, in some detail (in Part IV), *why* BIG and Freshstream waited until March 2024 to act against Mr Waddell. There are a number of possible explanations:

- i) Some Incidents *occurred* late in the day, and there is no question of delay on the part of either BIG or Freshstream.
- ii) In some cases, whilst an Incident may have been historic, neither BIG nor Freshstream knew of the Incidents until shortly before March 2024. Here, the timing of the disciplinary process is explicable, although an important question will be *how* these Incidents came to the attention of BIG/Freshstream.
- iii) However, in the case of Incidents that were known to Freshstream over a period of months, the question of BIG/Freshstream's inaction looms large, and the reasons for such inaction become pertinent. This is because the inaction may be explicable by virtue of the fact that these Incidents were simply not that serious; and/or that Freshstream was saving them up, in order to depose Mr Waddell at a point in time of their choosing. This, of course, was Mr Waddell's contention, and it was resisted by BIG, Freshstream and Mr Vaughan. Their consistent explanation was that they were powerless in the face of Mr Waddell's position as majority shareholder and CEO. There is a degree of force in this explanation, but it should not be overstated. One of the functions of a chair is to hold the CEO of the organisation to account.
- iv) Mr Vaughan (and Messrs McLain and Fardad) countered by suggesting that an Incident would have to be raised with the board of BIG, and that Mr Waddell controlled the board. Any attempt at discipline would simply generate heat rather than light. Again, there is force in this point, but a number of matters will need to be borne in mind when considering the factual narrative in Part IV:
 - a) First, the mere fact that something is difficult and unpleasant (as this undoubtedly would be) is not an excuse for doing nothing. As has been described, both through the obligation of trust and

confidence and by virtue of the provisions in the BIG Employee Handbook, BIG was obliged to protect employees from the misconduct of other employees – even if the misbehaving employee was very senior.

- b) Secondly, the mechanics of BIG moving disciplinary proceedings against Mr Waddell appears never to have been considered, and was only tangentially explored in cross-examination. It would be surprising if a CEO who also happened to be majority shareholder could thwart disciplinary proceedings against him by virtue of his position as CEO and majority shareholder.
- c) Thirdly and finally, rendering the second point somewhat academic, it was not in the end really disputed that these figures enabled Freshstream to exercise Step-In Rights from late 2023 onwards, a Trigger Event having occurred. As has been described, Step-In would have the effect of transferring board control from Mr Waddell to Freshstream. Thus, it would appear that from late-2023 at least there was nothing to stop a disciplinary process against Mr Waddell provided BIG and Freshstream operated together.

Part IV: Factual Narrative up to March/April 2024

Part IV(i): Period up to Mr Waddell's plans for the sale of BIG

A. EARLY YEARS

161. Mr Waddell was born in Glasgow, the youngest of six children. He did not have an easy childhood. His father abandoned his family. His mother left for a time (when the children ended up in a home in Rousay, an island off Scotland) and was physically abusive when present.⁴³

...My mother had a new boyfriend called Alex. One night, Alex and my mother physically abused me – they literally beat me up. When they went to bed, I ran to my grandma's house nearby. But my mother and Alex came and picked me up. They took me home and beat me again, but this time with a hammer. They also tried to cut off my fingers. They made me sleep in the bath tub covered in blood. The next morning, I ran to my other grandparents' house. The police turned up. My mother was arrested. I do not know what happened to her after that. I was taken to the Children's Hospital in Glasgow. I spent a while there recovering – I think it was a period of months. I have scars all over my body from that evening.

162. After hospital, Mr Waddell was taken to a care home for “mentally disturbed children”, near Glasgow, only going to school when he was about 12. Mr Waddell disliked both institutions and had a lonely childhood. He left school without any “O” levels, and at 16 (when social services ceased to be responsible for him) he ended up homeless in Glasgow. One day, he stowed away in a bus

⁴³ Waddell 5/[7]. The point is uncontroversial.

for London, ending up in the area around Brixton and Peckham, where he stayed.

163. He got a job as a mini-cab driver, although he did not have a licence. He worked hard, saved money, and began buying cars to lease to other taxi drivers. During this time, he was convicted of a number of offences:⁴⁴

[11] ...Eventually I was caught out driving without a licence and was formally disqualified from driving. But I needed to survive and the minicab driving was the only job I had, so I did not stop. I did not want to end up back on the streets.

[12] I was caught driving whilst disqualified soon after that. As a result I ended up in prison for around 12 months for driving whilst disqualified, reckless driving and shoplifting (which I had done to get by)...

164. Mr Waddell was released from prison in the late 1980s. With his girlfriend and future wife (Deborah), who was the sister of his cellmate, he set up home in a council house in Catford, and began buying and selling cars. He worked as a mini-cab driver by day, and prepared the cars at night:⁴⁵

I worked as a minicab driver during the day and would prepare the cars at night. I would vacuum and polish the cars at a nearby petrol station, take a polaroid photo, and then list them for sale in the Autotrader magazine. That was how it all started. I focused on buying BMWs so that when someone looked for a BMW in Autotrader, they would see a page full of my cars.

165. Mr Waddell moved out of London to Kent with his wife, and started a repossession business (“Snatchers the Catchers”, later “Capital Collections”) which grew to employ around 140 employees and became one of the biggest collection agencies in the UK at the time and was sold as a business for around £2 million.

B. BIG

166. Mr Waddell continued selling cars and in around 1990 purchased the Teynham Trade Centre:⁴⁶

In around 1990, I purchased the Teynham Trade Centre. The site had capacity for 15 cars, with another three in the garages and 12 out the front. There was a hairdressers upstairs, so Deborah learned to become a hairdresser. I would drive around the village in my Bentley and collect old ladies for their hairdressing appointments. We also did charity work. Everyone in the community got to know us. At paragraph 11 of Waddell 1, I said that I purchased the Teynham Trade Centre in 1986 and that I moved into the flat next door with my family. In preparing this witness statement, I have realised this statement was not correct. Given the dates of my convictions, I must have purchased the Teynham Trade Centre a few years later in around 1990. It is also incorrect that we moved into the flat next door. We were still living in Faversham at the time.

167. Mr Waddell’s business grew from there. In 1997, he acquired a new location in Bapchild, Kent (Bapchild Motoring World), with capacity for 60 cars and a

⁴⁴ Waddell 5. The chronology discloses a number of convictions in the period 1986 to 1990.

⁴⁵ Waddell 5/[13].

⁴⁶ Waddell 5.

team of 10 staff. Over the years, the business expanded into other sites (the Folkstone Motoring Centre (2001), another site in Teynham (2002), a site in West Malling (2004)).

168. In 2004, Mr Waddell consolidated all the dealerships to create BIG:⁴⁷

In 2004, I decided to consolidate all of the dealerships. I purchased a new site in West Malling, Kent for £650,000. The West Malling site initially had a stock capacity of 150 cars and 15 staff members. Bob Ruprah, the Operations Director, and Sophie Hazell, the Head of BIG Assist (customer complaints), joined the business around this time. I called it “BIG Motoring World”...This was because I wanted to be the biggest independent garage in the UK. Our slogan was “BIG enough to cope, small enough to care”.

169. The company continued to grow.

C. BARBARA FERGUSON (2015)

170. In 2015, Mr Waddell’s older sister, Ms Barbara Ferguson (“Ms Ferguson”), joined BIG. Mr Waddell describes his relationship with her, and her role in BIG, in the following terms:⁴⁸

[30] Barbara (who I called “Babs” from very early age because I struggled to pronounce her name) is one of my older sisters. She is six or seven years older than me. She always looked out for me growing up and when we were in the home in Rousay. We are very close. She understands me like no-one else does.

[31] For a long time, Barbara worked in the accounts department for the NHS at Medway Hospital. In 2015, Barbara joined BIG to help out with the accounts department. At the time, I used to have a red book in which I would write down the registration of every car in stock and record all the bills and payments. Barbara helped us move away from my red book to spreadsheets. I am not good with spreadsheets myself, but Barbara would always spend the time taking me through them and answering all the questions I had.

[32] Barbara was by far the most important person in the business for me. I trusted her and relied on her for information so that I could make decisions. I would usually talk to her three or four times a day. I would talk to her in person whenever we were both in the head office, which was usually once a week.

171. Ms Ferguson gave evidence during the course of Day 12. Although she clearly had a great deal of love and affection for Mr Waddell, that did not distort the objectivity and accuracy of her evidence. Ms Ferguson was that rare thing, a witness with a good recollection, transparent honesty and with no discernible bias in any direction (including as regards her brother). I accept her evidence without any hesitation.
172. Ms Ferguson has a degree in Business Accounts and worked in the accounts department at Medway Hospital in Kent.⁴⁹ She left Medway Hospital in 2015 when she was around 55 and was looking to retire. However, she was persuaded

⁴⁷ Waddell 5/[17].

⁴⁸ Waddell 5.

⁴⁹ Ferguson 1/[16].

by Mr Waddell to join BIG as head of accounts. She stepped into a rudimentary department,⁵⁰ and made a number of changes and improvements.⁵¹

173. She also improved the HR system at BIG:⁵²

[24] I also worked to develop and improve the HR system at BIG. When I joined, there was no single database containing all staff names, addresses and emergency contact details, and there was none of the standard paperwork such as right to work, new starter or leave us paperwork that you would expect to see at a business. There was no formal procedures and policies, and the record keeping was poor to non-existent, for example, instead of having a database of CVs of employees, the CVs were stuffed into hard copy folders. I introduced some of the processes and documentation that I had seen used at Medway hospital to create and modernise this HR system. For example, I introduced new joiner forms and leaver forms (to be completed by employees when joining or leaving BIG), CV checklists, formal disciplinary procedures, and policy documents like health and safety policies. Ching Patel, Darren Miller, and Peter were on board with these changes on the whole and they were willing to embrace a new way of doing things. Peter would sometimes be opposed to the changes that I was trying to introduce but I was normally able to turn him around and point out the longer-term benefits.

[25] Once John Bailey invested in BIG on or around 2016, the HR processes became even more formal. John wanted us to hire a full time HR manager. This role was first held by a person named Karen, but we eventually added Joanne Duey in around 2017 or 2018 when Karen went on maternity leave. Joanne was qualified with lots of experience that were transferable into BIG and we worked well together. We would bounce ideas off each other and I was able to help and support her when pitching new ideas to Peter. In around 2016, I set up a dedicated HR related e-mail address. My inbox was getting full with various emails from suppliers and managers, and with emails related to the day-to-day running of the business. I set up a separate HR email address so that all payroll-related emails would be stored in one place and would not be missed. Once Karen and Joanne joined the business, I did not really monitor that HR email address. I had too much work of my own to do and left Joanne to run that department. I would only look at that HR email address if Joanne specifically asked me to check something, or if Joanne was on holiday, or for when payroll related queries arose. In around 2018 or 2019, Joanne set up a second HR related email address in addition to her own by Gmail account. This email address was used to staff complaints, disciplinary issues, and personnel management related HR matters. I did not have access to this particular email account, and never requested access. This was all managed by Joanne, it was her department and she was more than capable of running this herself.

174. Ms Ferguson initially reported to Mr Waddell, but when Mr Bailey invested, BIG hired a financial director (Mr John Titchmarsh) and technically Ms Ferguson reported to him. Of course, by reason of her relationship with Mr Waddell, she would always have a direct line to Mr Waddell, and it is clear that her influence over Mr Waddell was considerable. She was able to persuade Mr Waddell to do things – like upgrade HR – which Mr Waddell would otherwise regard as a waste of time and money. Mr Waddell regarded anything not directly

⁵⁰ Ferguson 1/[22].

⁵¹ Ferguson 1/[23].

⁵² Ferguson 1.

related to selling cars at a profit as questionable in terms of benefit and (as will be seen) this had a significant effect on employees in such roles.

175. Ms Ferguson’s view was that without her re-organisation, the business could not have grown further:⁵³

... If I had not joined BIG in 2015, I do not think they could have taken on any more garages while operating in the way they did. Peter has great instincts for business, but he needs support for things like making sure everything is done according to whatever rules and regulations are in place, making sure the right people are in the right roles, and making sure the accounts are being watched closely and no one is skimming money off the top. I was able to bring an element of reassurance and trust for Peter, and Peter valued my opinions and judgement on important decisions.

I accept this evidence, as indeed I accept the evidence of the Freshstream witnesses that a similar block to growth was present when Freshstream acquired its minority stake in 2022.

176. Mr Waddell was not straightforward to work for, and Ms Ferguson knew how to handle him, and had influence as Mr Waddell’s older sister, who had looked out for him when he had been a child. It is clear that Mr Waddell found trust hard – he liked to do things himself – but that he trusted Ms Ferguson.⁵⁴ This may, in part, have been due to his autism, but the main reasons I find were not autism but the fact that Mr Waddell was self-taught (and would have little patience with abstracts not delivering concrete benefit to the business), obsessive about the business and highly controlling in the way the business was run.
177. Ms Ferguson and Mr Waddell were extremely close.⁵⁵ Ms Ferguson provided the following pen-portrait of Mr Waddell, which I broadly accept:⁵⁶

I was able to work well with Peter because I know him very well. I know his strengths and weaknesses. I have known that Peter has real difficulty with reading and writing since we were in the first care home on Rothesay. I would see Peter struggling with his homework, with really basic phonetic stuff that he could just not get right. Initially I thought it was a problem with the tiny village school he was in, with just eight people in each class, but I soon realised that he was not learning in the same way that I and Peter’s other siblings were learning. The teachers must have been aware of it but back then he was just seen as a problem child. I also know how Peter can sometimes struggle to listen. My gran used to call him “Gabby Peter” – in Scotland, that means someone who does not stop talking. Peter has always had nicknames for everyone. It is just the way he processes things. He even has nicknames for my children – his nieces and nephews. Peter is also deaf – I remember moving back to the UK from Brunei (where my husband and I had been living for a time) and seeing Peter for the first time in a few years. He had a massive mobile phone and was just shouting into it. I asked my sister what was going on and why Peter was shouting; She told me that he was now profoundly deaf.

⁵³ Ferguson 1/[31].

⁵⁴ Ferguson 1/[33]-[34], [37], [38].

⁵⁵ Day 12/pp92-93 (XX Ferguson).

⁵⁶ Ferguson 1/[38].

178. As I say, I largely accept this picture, and expand on it below. What Ms Ferguson emphasises less in this paragraph, is Mr Waddell's controlling and obsessive streak. She also says little about his bad language. I anticipate that this is because Ms Ferguson disapproved of bad language and Mr Waddell behaved differently in front of his older sister.
179. Ms Ferguson was asked about this in cross-examination. She had been interviewed by the Chelsea Clinic in connection with her brother's autism diagnosis:⁵⁷

Barbara described explaining Peter's "ways" to people before meetings, often filtering any information via her, prior to, during and after interactions. Peter has often upset others at work.

In cross-examination:⁵⁸

Q (Mr Laddie, KC)	Did you say that in the interview you had with the Chelsea Clinic?
A (Ms Ferguson)	He does often – he gets picked up the wrong way. It's like he's got no filters. He says things, and you just sort of warn people, he's loud, he's brash...
Q (Mr Laddie, KC)	Listen to the question...
A (Mr Ferguson)	...and I just let people...
Q (Mr Laddie, KC)	First of all, did you say that?
A (Ms Ferguson)	Yes. I said that.
Q (Mr Laddie, KC)	So that's an accurate record of what you said?
A (Ms Ferguson)	Yes.
Q (Mr Laddie, KC)	Did your brother scream and yell at people at work?
A (Ms Ferguson)	Not in my office. He did yell once, at – he did it to Mr Maby, Alex.
Q (Mr Laddie, KC)	He did?
A (Ms Ferguson)	But not in my office. Not...
Q (Mr Laddie, KC)	Not to the people that worked for you?
A (Ms Ferguson)	He's shouted at me a couple of times as well, and...it wasn't very often, but when he did, you know, he had the ultimatum. I go home or you stop shouting.
Q (Mr Laddie, KC)	You were his sister, you were able to say that to him. Do you agree that that puts you in a privileged position within the business?
A (Ms Ferguson)	Yes
Q (Mr Laddie, KC)	But you did hear him screaming and shouting at Alex Maby?
A (Ms Ferguson)	Yes.

⁵⁷ Day 12/p105 (XX Ferguson).

⁵⁸ Day 12/p106 (XX Ferguson).

180. I do not consider that Ms Ferguson was seeking, by her evidence, to suppress these aspects of Mr Waddell's character. Rather, she was speaking of Mr Waddell as he presented when she was around, which was more controlled, less shouty and less abusive.

181. Ms Ferguson disapproved of Mr Waddell's propensity towards inappropriate racial language:⁵⁹

Q (Mr Laddie, KC) ...I think you were in court when your brother admitted, on two occasions, as he put it, calling someone a Paki.

A (Ms Ferguson) Yes.

Q (Mr Laddie, KC) Were you in court? You have just shut your eyes. It was painful for you to hear that, wasn't it?

A (Ms Ferguson) Yes.

Q (Mr Laddie, KC) And the reason it's painful for you to hear it is because you understand that it's a completely unacceptable way of talking to somebody?

A (Ms Ferguson) Yes, and to be fair, when I started at BIG, we were in Snodland at the time, and I knew Ching,⁶⁰ he was very nice. And I think I was there, maybe, a couple of months when I came across him and Ching were in the office and I walked down, they were trying to organise dinner, and he called him it that then, and I was quite firm and upset that he'd done it and I spoke to them both. They both thought it was hilarious. And I spoke to them both about it and I told them I didn't want to hear it again and I never heard it again. So I did hear it once, but I didn't hear it again.

Q (Mr Laddie, KC) And that was in 2015, you say?

A (Ms Ferguson) It was not long after I joined.

182. Ms Ferguson did not regard Mr Waddell as racist.⁶¹ If, by this, she meant that neither he nor BIG discriminated racially, then I accept that. There was no evidence before me of discriminatory conduct – Mr Waddell was pleasant or unpleasant on a basis that did not discriminate, directly or indirectly, on the basis of protected characteristics. But the language within BIG, including in particular that of Mr Waddell, was both racist and sexist, in that these characteristics were used in speech in circumstances where offence would be taken. A number of the Incidents are characterised by this. What is more, Mr Waddell knew this (if only because his sister told him) and was able to moderate his conduct in his sister's presence. That speaks volumes for the voluntary or deliberate nature of Mr Waddell's conduct, and the fact that he could control it if he wanted to.

⁵⁹ Day 12/pp109-110 (XX Ferguson).

⁶⁰ Mr "Ching" Patel.

⁶¹ Day 12/pp110-111 (XX Ferguson).

183. Ms Ferguson could also help – through firm but kind guidance – ameliorate Mr Waddell’s obsessive, controlling, tendencies.⁶²

Q (Mr Laddie, KC)

You told James Hunt [“Mr Hunt”] that you used to stop your brother from going into the accounts office when he visited because you had seen him upset people there before. Do you recall that?

A (Ms Ferguson)

I know exactly when that was. The reason for that was that I banned – I did ban him from the accounts department. The accounts department was in Canterbury, I was in Snodland. I went to – it was 2019 – I went to New Zealand for two weeks’ holiday. My team had worked really hard to get the month-end done for me to go on the eighth working day and I thanked them and I asked one of the girls to do the bill list whilst I was away. And when I came back, they told me that Peter had been down there the day after the bill list and wanted to see every invoice that was related to that [bill list].⁶³ It was thousands of invoices, the girls spent the day pulling all the invoices out, for no – I couldn’t see any value in it, and I had serious words with him after that and he was not allowed in the accounts department. If he wanted any information, he had to come through me, and I would get the appropriate person.

Q (Mr Laddie, KC)

And that lasted for a number of years?

A (Ms Ferguson)

He wasn’t allowed in. He did take them doughnuts and chicken. The girls all loved him.

184. Mr Waddell regarded his sister’s help as invaluable.⁶⁴

185. As I have described, Mr Waddell was, in his younger days, convicted of a number of offences. They were committed long ago, but (although spent for certain purposes) were disclosable to the FCA, it being a criminal offence knowingly or recklessly to give materially false information to the FCA. Ms Ferguson (together with a third party agent who assisted her, a Ms Tara Williams of Auto Protect) made a submission to the FCA on Mr Waddell’s behalf on 1 September 2020.⁶⁵ The disclosure made on Mr Waddell’s behalf was materially wrong. A number of questions regarding his criminal record were answered “No”, when they would better have been answered “Yes”. The limited disclosure of Mr Waddell’s record was exactly that: limited, vanilla and erring on the side of painting black as white. Thus, BIG answered “No” to the question of whether Mr Waddell had been convicted of any criminal offence involving theft, which was false, but then said:

In 1984, Mr Waddell received a conviction for shoplifting. At this point in time Mr Waddell was in a situation where following a traumatic childhood he was homeless.

⁶² Day 12/pp111ff (XX Ferguson).

⁶³ The transcript records “invoice” but (having reviewed the recording) Ms Ferguson said “bill list”.

⁶⁴ Day 4/pp75ff (XX Waddell).

⁶⁵ Day 12/p99 (XX Ferguson).

His rehabilitation from this event and subsequent achievements as a business leader in the automotive industry, achieving both professional and personal success has more than proven his resilience and courage. He shares his experience openly in his aim to support those less fortunate.

186. Ms Ferguson was asked about these obviously insufficient answers:⁶⁶

Q (Mr Laddie, KC)	...The DBS certificate shows your brother being convicted of offences of dishonesty on multiple occasions: shoplifting multiple times, theft, theft from a vehicle and so on.
A (Ms Ferguson)	Well, I don't know about that. I only know about the one.
Q (Mr Laddie, KC)	The information on here, did you – was it provided by you in – the passage beginning “In 1984, Mr Waddell...”?
A (Ms Ferguson)	That would have been written by Tara, I think. Tara was...
Q (Mr Laddie, KC)	But Tara wouldn't have known, would she?
A (Ms Ferguson)	I didn't write it.
Q (Mr Laddie, KC)	Listen. Tara, in writing whatever she had to write in this document, would have been dependent upon information provided by somebody else, wouldn't she?
A (Ms Ferguson)	Well, it must have been Peter, then, because I didn't write that.
Q (Mr Laddie, KC)	You definitely didn't provide this information?
A (Ms Ferguson)	No.

187. I accept this evidence. It was Mr Waddell who provided this inaccurate information to the FCA.

D. INVESTMENT BY MR BAILEY (2016/2017)

188. In 2016 or 2017, John Bailey bought 12% of BIG:⁶⁷

In around 2016 or 2017, John Bailey invested in the business. Mr Bailey had been the President of Cox Automotive, which owns Manheim (an auction centre BIG uses to dispose of cars that cannot be retailed). Today, Cox Automotive has around 34,000 employees and an annual turnover of around £21 billion. We got to know each other and became friends. I helped him screen potential investments. In the end he invested in BIG. He paid £10 million for 12% of the business (a valuation of around £100 million). We started Carzam together a number of years later. I address Carzam in more detail below...

⁶⁶ Day. 12/p104 (XX Ferguson),

⁶⁷ Waddell 5/[20].

E. FURTHER DEVELOPMENT OF THE BUSINESS

189. Mr Waddell described the development of his business from 2016 in the following terms:⁶⁸

[21] In 2016, we acquired a new site at Blue Bell Hill for £3 million (this is the inspiration behind the name “Bluebell” used in the names of the Group Companies). The site was 32 acres in total, although a large part of it was forest. We opened the site in 2016, but closed it again in 2017 for re-development and construction of a brand new showroom.

[22] We re-opened the Blue Bell Hill site in 2018. It became BIG’s flagship dealership with capacity for around 1,200 vehicles. BIG also won multiple industry awards in 2018. We were the winner of “Used Car Supermarket of the Year” at the national Car Dealer Used Car Awards 2018. Later that same year we received a ‘gold’ award in the Feefo Trusted Service Awards 2018. This is an award based on independent, unsolicited customer reviews. This was a source of great pride for me and a testament to the hard work and dedication of my staff.

[23] In 2019, we opened the Peterborough Preparation Centre. This is a dedicated preparation centre for maintenance work and pre-delivery inspections. It was where most cars acquired by BIG are prepared for sale. We also acquired two sites in London, Stratford (which was closed in 2020 at the start of COVID and was given rent-free to the Lord Mayor for use as a COVID testing site and overflow parking for the temporary NHS Nightingale Hospital) and Enfield (which opened in 2020 but shut temporarily during COVID). The new site in Enfield had capacity for around 900 to 1,000 cars and quickly became one of the top performing sites. We also won our second consecutive “gold” award at the Feefo Trusted Service Awards 2019 and the runner up awards for “Days to Sell” and “Dealer Principal” at the Car Dealer Used Car Awards 2019.

[24] By 2020, BIG stocked over 3,500 vehicles. At paragraph 19 of Waddell 1, I said we had around 300 members of staff at this time, but in fact it was more like 600. That year, we won “New Dealership of the Year” and “Used Car Dealer Group of the Year” at the national Motor Trader Awards. We also received the “Platinum Trusted Service Award” from Feefo in 2020, marking [BIG’s] third consecutive year of trusted service recognition from the general public.

[25] In October 2021, we acquired two sites in Peterborough (Fengate and Werrington) from SW Car Supermarket. SW Car Supermarket had three owners, Anton Khan, who was the CEO, and two others. Mr Khan rolled his shares from SW Car Supermarket into BIG and came on board as the Chief Operating Officer. We won “Used Car Supermarket of the Year” again at the Car Dealer Used Car Awards 2021. I also won the Motor Trader “Outstanding Achievement Award”, as judged by people in trade, for my lifetime contribution to the industry. This was a proud moment for me, especially as the award was collected on my behalf by my son, Jack.

[26] As can be seen, I have been building BIG as a business for nearly 40 years. Over that time, it has gone from being a one-man operation to one of the most profitable and largest used car supermarkets in the UK, which has multiple sites, provides employment to over 1,400 people, and has won multiple industry awards (including in 2023 when we won “Used Car Dealer Group of the Year” at the Motor Trader Awards and the “Outstanding Achievement Award” at the Car Dealer Used Car Awards). BIG represents my life’s work, and I am very proud of the business and what has been

⁶⁸ Waddell 5.

achieved by me and my dedicated team of employees. I care about the business and the people I worked with deeply.

F. RETIREMENT PLANNING (c. 2020)

190. In around 2020, Mr Waddell was thinking about retiring. He was around 55 years old, and wanted to spend more time with his family, in particular his youngest son, then four. He hired DC Advisory to assist in the sale process, and his senior team were fully aware:⁶⁹

In around 2020, we hired DC Advisory to help with the sale process. I dealt mostly with Richard Pulford and Luka Hennin. In around September or October 2020, I had a meeting in the board room at the Peterborough Preparation Centre with Barbara, Mr Ruprah, Darren Miller (the Head of Marketing) and John Titchmarsh (the Finance Director). They were all going to receive around £350,000 each from the sale from me as a “thank you”. I said to everyone that I wanted to spend more time with my family. Mr Ruprah and Mr Miller started crying and said, “don’t leave us boss, we don’t want you to go, you’ve got another five years in you”. We were a family and this was a difficult and emotional conversation. In the end, we agreed that we would try and find a deal that involved selling the business in three stages, which would allow me to gradually step away from the business over time.

191. During COVID, the business did extremely well – Mr Waddell refers to the market for car dealerships being “on fire”.⁷⁰ By early 2021, there was considerable interest in BIG.⁷¹

[46] In early 2021, there were at least three investors interested in buying a minority stake in BIG. Marubeni Corporation, a Japanese investor, made an offer based on a valuation using an EBITDA multiple of 6x or 7x. We also had an offer from Freshstream. Mr Fardad was our primary contact at Freshstream. Around the time of this first offer, we met with Mr Fardad, Mr Smulders, Mr Davis and Mr Gradassi at the Peterborough Preparation Centre. Freshstream were prepared to value BIG at £180 million (a 10x multiple based on EBITDA of £18 million). The third offer was from Tikehau Capital (which I call “Ticker”). Tikehau was prepared to value BIG at £200 million (which equated to a 10x multiple based on EBITDA of £20 million). There were also some European investors interested. Tikehau offered to buy at the highest valuation, so we moved forward with their offer.

[47] The Tikehau deal was on track to close until we got to the Carzam issue. I founded Carzam with Mr Bailey in 2019 (it went into administration in 2022). We owned 50% each. Carzam was an online platform for buying cars. Customers could buy a car online and then have it delivered to their address. As part of the deal, Tikehau wanted me to dispose of my shares in Carzam. I did not want to do this. At the time, Cazoo, another online car retailer, had a valuation of \$8 billion and had raised over £1.8 million. As a result of the Carzam issue, Tikehau pulled out of the deal in September 2021.

Freshstream deal

[48] Throughout the period we were negotiating with Tikehau, I remained in contact with Mr Fardad. When Tikehau pulled out of the deal in September 2021, Mr Fardad told me that Freshstream was still interested in BIG. I met with Mr Fardad at a seafood

⁶⁹ Waddell 5/[44].

⁷⁰ Waddell 5/[45].

⁷¹ Waddell 5.

restaurant (Estiatorio Milos) near the Freshstream offices on 27 September 2021. I told Mr Fardad that unless Freshstream did the same deal as Tikehau (based on a £200 million valuation), I was not going to be interested in selling. Mr Fardad said that Freshstream was prepared to do the same deal as Tikehau. After this, Freshstream agreed to purchase the due diligence materials for the deal from Tikehau to progress the deal more quickly.

G. MR CLARKE JOINS BIG (2021)

G.1. Mr Waddell's initial encounter with Mr Clarke (2016)

192. Mr Clarke was a lawyer that Mr Waddell encountered in around 2016:⁷²

...I first met him around 10 years ago when my son, Jack, had been found with marijuana at school and was taken to the police station. My solicitor and friend, Barry Bond, recommended that I speak to Mr Clarke, who he called “Mr Fix It”. I phoned Mr Clarke. He then came down to the police station, spoke to the officers and Jack was released. After this, I called him “Mr Fix It” as well. In the middle of 2021, Mr Clarke called me and said he had had “a falling out with his law firm” and wanted a stable “9-5” job. Because he had done a good job for my son, I hired Mr Clarke to deal with the County Court cases customers would bring from time to time. At the time, Mr Clarke was driving an old beat-up Subaru and my impression was that he was struggling financially.

G.2. Mr Clarke's career until joining BIG

193. Mr Clarke began his career as a caseworker at a firm of solicitors, Bond Joseph, specialising in criminal and family law, with an increasing emphasis on the former.⁷³ Mr Clarke had gone to university for two years, but left before taking his degree for personal reasons.⁷⁴ Bond Joseph paid for Mr Clarke to obtain his police station accreditation certificate.⁷⁵ Throughout his time at Bond Joseph Mr Clarke did minor “police” work – summarising evidence, accompanying clients to the Crown Court, attending at police stations, assisting counsel.⁷⁶

194. Mr Clarke left Bond Joseph in July 2021. He did not do so voluntarily:⁷⁷

Q (Mr Gourgey, KC) You left them in July 2021?

A (Mr Clarke) Yes.

Q (Mr Gourgey, KC) Why was that?

A (Mr Clarke) There was an SRA investigation into some client monies which were not paid into the firm client account and I was put on gardening leave. Ultimately, I resigned.

⁷² Waddell 5/[170].

⁷³ Day 21/p192 (XX Clarke).

⁷⁴ Day 21/pp192-193 (XX Clarke).

⁷⁵ Day 21/p193 (XX Clarke).

⁷⁶ Day 21/pp193-194 (XX Clarke).

⁷⁷ Day 21/pp194ff (XX Clarke).

- Q (Mr Gourgey, KC)** Can we turn to the SRA disciplinary findings...I'm sure you're very familiar with this document, Mr Clarke?
- A (Mr Clarke)** Yes.
- Q (Mr Gourgey, KC)** It provides that on two occasions, we can see under "the Facts", on two occasions, you accepted cash payments from a client and did not pay them into the firm's account.
- A (Mr Clarke)** Yes.
- Q (Mr Gourgey, KC)** So is this money that was supposed to be passed over to the firm and that you kept for yourself?
- A (Mr Clarke)** It's money I accepted from a client, and the lie I told the SRA was that I didn't take that money from a client. And, of course, this has been raised multiple times in these proceedings and has been, you know, a thorn in my side frankly, since this issue arose originally.
- It's an error of judgement I completely regret, something that occurred at a very difficult time in my life. That sort of dishonesty, it's not something that I engaged in previously, it's not something I've engaged in since. I regret it, and – frankly – am hugely embarrassed by it.

Mr Clarke's dishonesty was twofold. First, he took from his employer, by diverting monies paid in cash to him by the firm's clients for the account of the firm, not himself.⁷⁸ Secondly, he lied about the source of the funds, and denied receiving them from a client as a payment to the firm. As a result of this, a "Section 43" order was made against Mr Clarke, preventing him from being employed in a solicitor's firm.⁷⁹

G.3. Disclosure of Mr Clarke's disciplinary record

G.3.1. General

195. The SRA's findings show that Mr Clarke was capable of dishonesty. The question is how far this was a not-to-be-repeated one off. It was put to Mr Clarke that he concealed the SRA findings and/or the reasons why he left Bond Joseph on a number of occasions. This is relevant because it goes to Mr Clarke's propensity to lie or deliberately misrepresent when it suited him.

⁷⁸ I do not consider that Mr Clarke was right that these monies should have gone into the firm's client account. These were Bond Joseph's monies, and Mr Clarke was taking from the firm. Little turns on this: had these been monies destined for the client account, Mr Clarke would have been taking from the client.

⁷⁹ Day 21/p196 (XX Clarke).

G.3.2. The management incentive plan

196. As part of BIG’s management incentive plan,⁸⁰ Mr Clarke had to answer various questions, including whether he had been the subject of any regulatory or criminal actions. He was cross-examined on his response:⁸¹

- Q (Mr Gourgey, KC)** ...we have your response to a question, which we can see two above documents “Identity Documents”:
“Have you been the subject of any regulatory or criminal actions or noted as associated with any such persons”?
And you say “Yes” and then you say:
“SRA accounting enquiry in 2021”.
Do you see that?
- A (Mr Clarke)** Yes.
- Q (Mr Gourgey, KC)** Then you say:
“Took receipt of £200 cash...payment,⁸² which was not paid into firm client account.”
- A (Mr Clarke)** Yes.
- Q (Mr Gourgey, KC)** You don’t, in this disclosure, say that you were found dishonest – to have committed dishonest conduct in taking money from a client without paying it into the firm’s account, do you?
- A (Mr Clarke)** No, that’s not what I say, no.
- Q (Mr Gourgey, KC)** And you don’t say that you were found dishonest, of lying, to the SRA, do you?
- A (Mr Clarke)** No.
- Q (Mr Gourgey, KC)** So the answer you gave in this response was incomplete, wasn’t it?
- A (Mr Clarke)** Well, I suppose I could have given much greater detail. I accept that. But what I had given is entirely true.
- Q (Mr Gourgey, KC)** You didn’t say that you had been found guilty of dishonest conduct, both in receipt of the money and in lying to the SRA, did you?
- Q (Mr Laddie, KC)** He’s already answered that question.
- A (Mr Clarke)** I feel I’ve given, at the time, sufficient information. And, in any event, information which I feel could have triggered further inquiry and I, of course, would have been happy to give further information should it have been asked of me.

⁸⁰ Day 21/pp196ff (XX Clarke).

⁸¹ Day 21/pp196-197 (XX Clarke).

⁸² I have omitted as irrelevant an exchange where Mr Gourgey, KC was seeking to decipher the wording.

197. This exchange shows a capacity in Mr Clarke to suppress and misrepresent the truth in important respects. His omission of the fact that he had been found to be dishonest significantly affected the truth of his answers, and it is not right to say that an account that is true in what it says but omits a key detail is – viewed in the round – in fact true. The exchange also shows an unwillingness on the part of Mr Clarke, when pressed, to acknowledge that a prior account was materially misleading.

G.3.3 Disclosure to Mr Waddell (when recruited)

198. Mr Waddell denied being told by Mr Clarke of the SRA’s findings, when he appointed Mr Clarke. Mr Clarke asserted that he “gave all the detail to Mr Waddell when I met him”.⁸³ Mr Clarke’s evidence as to *what* he told Mr Waddell was as follows. In his witness statement, he said:⁸⁴

[9] In July 2021, I began seeking a new role. I contacted anyone I thought might help me with finding a job. One of those people was Pete. I had found him very enjoyable to work with during my time at Bond Joseph, and he had been trying to get me to work with him for a long time.

[10] I messaged Pete and then met with him in early July 2021 in Snodland, Kent, which is where BIG’s offices were at the time. During that meeting, I explained to Pete that I was leaving Bond Joseph because I was the subject of an ongoing SRA investigation. I told him about the allegations which had been made against me, and I told him that I admitted to telling a lie to the SRA and then I was awaiting the outcome of the investigation. I didn’t think twice about telling him about it and I did not have any concerns about him knowing. Pete appeared shocked when I told him, but was also friendly, welcoming and sympathetic; frankly, he said everything I needed to hear at the time. He was very down to earth; he wore his heart on his sleeve. He was somebody I could talk to and be honest with.

199. This is specific evidence, both as to timing (July 2021) and as to what Mr Clarke told Mr Waddell (that he had admitted dishonesty). It was not until some eight months later that SRA disciplinary against Mr Clarke was in fact resolved. The outcome date of the SRA disciplinary was 2 March 2022 and it was published on 6 April 2022.
200. It is intrinsically unlikely that – prior to a finding of dishonesty by the SRA – Mr Clarke would go out of his way to admit this to Mr Waddell, even if the dishonesty had been admitted to the SRA, on which point Mr Clarke (quite understandably) could not assist.⁸⁵ I do not accept that Mr Clarke would have told Mr Waddell that he had “admitted” telling a lie. I consider that it is unlikely that Mr Clarke would have said anything about the SRA investigation at all, but (seeing the writing on the wall) was making sure of a safe berth away from Bond Joseph with BIG.⁸⁶

⁸³ Day 21/p198 (XX Clarke).

⁸⁴ Clarke 1.

⁸⁵ Day 21/p199 (XX Clarke).

⁸⁶ Mr Clarke tries to buttress his evidence by saying, in cross-examination, that Mr Waddell had told Mr Ruprah that he (Mr Waddell) had been told by Mr Clarke about the SRA disciplinary: Day 21/p200

201. Accordingly, I disbelieve Mr Clarke’s evidence on this point. However, I do not (in reaching this conclusion) place weight on Mr Waddell’s evidence. As will be seen, I found Mr Waddell himself a not particularly reliable witness, with a capacity to lie. Accordingly, I base my finding on (i) the inherent improbability that Mr Clarke would have made the disclosure as he describes and (ii) because of what Mr Clarke failed to tell BIG on a later occasion, when interviewed by Ms Ferguson, for the job he had informally asked Mr Waddell to give him. I turn to that now.

G.3.4. The interview with Ms Ferguson

202. Ms Ferguson’s evidence was as follows:⁸⁷

... Since leaving the business, I have learned that Tom Clarke had been penalised by the Solicitors Regulation Authority (“SRA”) for dishonesty. I interviewed Tom Clarke with Joanne Duey when he applied to be Peter’s PA sometime around mid-2021. The interview took place on Zoom and lasted for around half an hour. Joanne and I could not understand why Tom Clarke, who we understood was a lawyer, was leaving his law job to become someone’s PA. It seemed like a backwards step in his career. We asked him about this during the interview and he told us that he was looking for a job that would allow him to have a better quality of life and spend more time with his family. He never mentioned anything about having had problems with the SRA. John Titchmarsh knew that Tom Clarke was applying for the PA role and told me that he was also confused about why someone would stop being a lawyer and instead become someone’s PA.

203. I have found Ms Ferguson to be a credible witness, and her account (that she asked why Mr Clarke was moving) is inherently probable. Had Mr Clarke given a full answer about the SRA finding, I am sure that she would have remembered it. Her statement was put to Mr Clarke:⁸⁸

Q (Mr Gourgey, KC) Do you remember that interview?

A (Mr Clarke) I do, yes.

Q (Mr Gourgey, KC) “Joanne and I could not understand why Tom Clarke, who we understood was a lawyer, was leaving his law job to become someone’s PA. It seemed like a backwards step in his career.”

This is the bit I want to ask you about:

“We asked him about this during the interview and he told us he was looking for a job that would allow him to have a better quality of life and spend more time with his family.”

That’s what you told them, isn’t it?

A (Mr Clarke) I don’t recall saying that.

Q (Mr Gourgey, KC) “He never mentioned...having had [any] problems with the SRA.”

(XX Clarke). Mr Ruprah did not give evidence, and this material does not help me deciding the point in issue.

⁸⁷ Ferguson 1/[78].

⁸⁸ Day 21/pp199ff (XX Clarke).

- A (Mr Clarke)** That's correct. I didn't disclose the SRA issue during that interaction. I'd already told Mr Waddell about it, by that time.
- Q (Mr Gourgey, KC)** You left your job at Bond Joseph not because you wanted a better quality of life, but because you'd been put on gardening leave because of the investigation?
- A (Mr Clarke)** I agree. I left my job because I was under investigation. I'd resigned from it. I didn't see there was any way of going back to that job and I needed to pursue a new opportunity.
- Q (Mr Gourgey, KC)** Yes. So I suggest to you that if you did tell them that you were looking for a job that would allow you to have a better quality of life, that wasn't a true explanation for why you had left Bond Joseph?
- A (Mr Clarke)** Quite right, but I didn't say that to them.
- Q (Mr Gourgey, KC)** Well, a moment ago, you said you didn't recall saying that. Are you now saying you didn't say it?
- A (Mr Clarke)** Forgive me. I don't recall. I don't recall saying that.

204. I find that Mr Clarke deliberately suppressed the reasons for his departure from Bond Joseph and the reasons why he was seeking new employment when he was seeking a new job at BIG. To this extent, therefore, he was suppressing relevant facts and presenting a false picture to his new employer. I do not find that – on this point – he was lying to the Court. Mr Clarke was careful not to contradict Ms Ferguson's account; and I am prepared to accept that Mr Clarke's recollection that he told Mr Waddell was simply a false recollection.

G.4. Statements made when acquiring Available Cars

205. As part of the process of acquiring Available Cars (a rival second-hand car business that was doing badly), BIG needed to make a submission to the FCA. This included providing a biography/CV of each director of BIG, including Mr Clarke. The description of Mr Clarke was as follows:

Experienced in leading teams to enhance effective corporate governance, Tom has over 15 years of experience advising boards in various industries in a qualified legal capacity. Responsible for compliance, governance, ESG and general corporate administrative issues, Tom also utilises his expert legal experience as litigator and mediator both internally and externally on behalf of the business. Tom has strong communication and influencing skills and is adept at working collaboratively to develop and maintain strong relationships with key internal and external stakeholders at all times, whilst always acting professionally and with discretion and tact.

206. Mr Clarke was asked about this:⁸⁹

- Q (Mr Gourgey, KC)** It says:
"Experienced in leading teams to enhance effective corporate governance, Tom has over 15 years of

⁸⁹ Day 21/pp204ff (XX Clarke).

experience advising boards in various industries in a qualified legal capacity”.

Was that statement true, Mr Clarke?

A (Mr Clarke)

Yes.

Q (Mr Gouragey, KC)

Where had you gained this experience?

A (Mr Clarke)

What I’m referring to, I think, is – well, what I’m referring to, I know, is my experience in the 15 years that I was at Bond Joseph. I ended up advising businesses, individuals, various times in relation to criminal investigations. When I say “qualified legal capacity”, I’m referring to my qualification I obtained from Cardiff, and I’m seeking – I accept this is a polished and short resumé, but it is accurate.

Q (Mr Gouragey, KC)

I thought your work at Bond Joseph was largely concerned with – after you started with summarising statements, after you got your qualification, it was largely spent at the police station?

A (Mr Clarke)

It was largely spent at the police station, but I suppose, as time went on, and I became more experienced, I ended up advising on all manner of criminal investigations, not just at the police station, but Trading Standards Investigations, other sorts of quasi-criminal investigations, and that’s what I’m referring to here.

Q (Mr Gouragey, KC)

Right.

It also says

“...Tom utilises his expert legal experience as litigator...”

You hadn’t been involved in any litigation, had you?

A (Mr Clarke)

Well, we referred to litigation in the sense of case preparation. When I was working on Crown Court preparation, we readily referred to it as litigators.

Q (Mr Gouragey, KC)

All you were doing there was, what, summarising statements? Is that what you’re talking about?

A (Mr Clarke)

Partly summarising statements, taking witness statements, preparing bad character applications, various administrative pieces of work.

Q (Mr Gouragey, KC)

And you’d never acted as a mediator, had you?

A (Mr Clarke)

No, I had.

Q (Mr Gouragey, KC)

Where had you acted as a mediator, given you were a criminal practitioner?

A (Mr Clarke)

On many occasions, actually. One such occasion, shortly before I resigned, there was a dispute between a husband and wife, relating to a potential planning breach, criminal planning breach, which required mediation between the parties to find a resolution.

Q (Mr Gouragey, KC)

So, that one occasion?

- A (Mr Clarke)** Well, that's the one occasion that springs to mind that I can relay to you now. There were other occasions throughout the 15 years of my working for the firm.
- Q (Mr Gourgey, KC)** So, over those 15 years, you were advising boards? So, back from...you joined – you joined Bond Joseph in 2004, yes?
- A (Mr Clarke)** Yes.
- Q (Mr Gourgey, KC)** When did you get your qualification at Cardiff University?
- A (Mr Clarke)** I think that was perhaps 2005 or 2006.
- Q (Mr Gourgey, KC)** Okay. And when did you start “advising boards in various industries in a qualified legal capacity”?
- A (Mr Clarke)** Certainly much later. I think probably within the last, sort of, five years of me being there.
- Q (Mr Gourgey, KC)** So saying you've got 15 years' of experience wasn't true, was it?
- A (Mr Clarke)** I mean, I do accept that that's a polished statement, and I am saying I wasn't advising boards from year one.
- Q (Mr Gourgey, KC)** By “polished statement”, you mean it's not strictly true?
- A (Mr Clarke)** I accept I wasn't advising boards on criminal investigations from the first year I was at the firm.
- Q (Mr Gourgey, KC)** How many boards did you advise on criminal investigations?
- A (Mr Clarke)** Numerous. I can't say how many.

207. Mr Clarke's evidence that “this is a polished and short resumé, but it is accurate” is not right. This was not a case of gilding the lily, but one of presenting Mr Clarke's experience and business acumen in an entirely false light.

G.5. Conclusions regarding Mr Clarke's evidence

208. Mr Clarke played an important role in the MDE Investigation. He was not only a member of the MDE Investigation Committee, but he took the lead in identifying Incidents, listening to people, interviewing them, persuading them to appear before Mr Siddall, KC. That process – unless scrupulously carried out – ran the risk of over- or mis-stating the Incidents, particularly if there was an “agenda” behind the process beyond simply wanting to ensure that grievances were resolved and wrongdoers disciplined.
209. Mr Clarke's propensity to shape facts into untruths when it suited him is thus highly significant in terms of the MDE Investigation. Mr Clarke was manipulative in terms of how he portrayed facts and he is capable of distortion and deceit, in a sly and carefully self-justificatory way. His evidence needs to be treated with great caution. His responsibility for assembling the evidence for the MDE Investigation is, for this reason, of concern and the processes will have

to be examined with some care, both in terms of distortions introduced by Mr Clarke during the Investigation process and in terms of Mr Clarke's evidence of that process.

G.6. Mr Clarke's progression within BIG

210. Mr Clarke was initially employed as Mr Waddell's personal assistant or PA,⁹⁰ but his responsibilities were wider than this, particularly in the confused BIG administrative environment. From August 2021, Mr Clarke was "head of legal and executive assistant to the CEO",⁹¹ after which he became known as "commercial director".⁹² When Freshstream came on board, he became company secretary.⁹³
211. Although Mr Clarke acted as Mr Waddell's PA throughout, with Freshstream's arrival, his responsibilities broadened and deepened.⁹⁴

Q (Mr Gourgey, KC) So you continued to be an assistant to Mr Waddell in the last part of '22 through 2023?

A (Mr Clarke) Yes. I did continue to assist him with all manner of things.

Q (Mr Gourgey, KC) What other responsibilities did you have in the business?

A (Mr Clarke) Following Freshstream's involvement?

Q (Mr Gourgey, KC) Yes.

A (Mr Clarke) I suppose I became more responsible for compliance, for data protection, various company administrative matters. In recent times, I've become more involved in many other areas.

212. Mr Clarke claimed to have liked Mr Waddell,⁹⁵ but if that was the case, this was only for a short time. Mr Clarke described the corporate culture at BIG as toxic, and blamed Mr Waddell for this:⁹⁶

But the culture Pete built was one of fear. Pete was not a polite individual; there were no airs and graces, or courtesies. Pete was a micromanager. He was in charge, and everything revolved around him. Pete, in my experience, is an angry man, and he operated by shouting and corralling people. Shortly before he left, the atmosphere in the business was incredibly toxic. I reported directly to Pete and, when he arrived in the morning, my heart would sink in my chest. I did not know what he would be like on any given day or what you would ask me to do, or what would not be good enough, or who I was going to see him humiliate that day.

⁹⁰ Day 22/p4 (XX Clarke).

⁹¹ Day 22/p4 (XX Clarke).

⁹² Day 22/pp4-5 (XX Clarke).

⁹³ Day 22/p5 (XX Clarke).

⁹⁴ Day 22/pp5ff (XX Clarke).

⁹⁵ Day 22/p9 (XX Clarke).

⁹⁶ Clarke 1/[25].

213. These are strong words, and I will consider below how far they truly reflect what was going on in BIG. But true or not, this paragraph tells of personal, dislike of Mr Waddell on the part of Mr Clarke.
214. Mr Clarke regarded Mr Waddell as surrounded by “yes people”, who did not push back. Standing up to Mr Waddell was difficult, and you had to pick your moment.⁹⁷ Mr Clarke was of the view that Mr Waddell’s behaviour deteriorated after Freshstream failed to exercise the Call Option in October 2023,⁹⁸ and that Mr Waddell’s behaviour toward him (Mr Clarke) had changed for the worse over time.⁹⁹

Part V(ii): Mr Waddell, BIG and the BIG/Waddell relationship

H. INTRODUCTION

215. Before turning to Freshstream’s interest in BIG and the Transaction, it is appropriate to take stock of a number of (related) matters: the manner in which BIG was run by Mr Waddell, before Freshstream’s involvement; and Mr Waddell’s character, approach to running BIG, disabilities and credibility as a witness.
216. In considering these aspects of Mr Waddell and BIG, I draw on all of the evidence before me, including how Mr Waddell presented in the witness box. It is important to note that Mr Waddell was cross-examined over a period of eight days. I gained a very clear insight into Mr Waddell as a result.

I. GENERAL CHARACTER

217. Mr Waddell was confident and assertive in his business. He enjoyed the car business, and felt in his comfort zone. He is a highly intelligent man, if not an intellectual.¹⁰⁰ Mr Fardad called him “the mad genius”.¹⁰¹ With the assistance of his sister (Ms Ferguson) and doubtless others, he evolved straightforward

⁹⁷ Day 22/p10 (XX Clarke).

⁹⁸ Day 22/p11 (XX Clarke).

⁹⁹ Day 22/p12 (XX Clarke). Certain communications involving Mr Clarke exchanging snide or sarcastic comments about Mr Waddell were put to Mr Clarke: Day 22/pp16ff and pp18ff. These would suggest that a dislike of Mr Waddell was present amongst his senior staff in October 2023. Of course, too much weight should not be placed on what was private work griping.

¹⁰⁰ Put on Day 5/p69 (XX Waddell). This was obvious not merely from the extraordinarily successful way in which he built up the BIG business, but also from his performance in the witness box. He was well able to traverse significant documents (as in reviewing those for the Available Car transaction: Day 4/pp85ff (XX Waddell), understand spreadsheets (Day 4/p78 (XX Waddell) and describe how his business worked. He was easily able to deal with the volume of material that confronted him in the witness box. Although the court put in place a number of “reasonable adjustments” to assist Mr Waddell – and it was right that these be directed, given the disabilities Mr Waddell suffers from – it is clear with hindsight that these were in fact unnecessary.

¹⁰¹ Day 4/p42 (XX Waddell).

means of keeping track of data.¹⁰² His attention to detail within the business was minute and driven.¹⁰³

218. Within the business, Mr Waddell liked socialising, and saw BIG as a family.¹⁰⁴ However, it was a family with Mr Waddell very much at its head, and I am in no doubt that Mr Waddell's employees did not entirely reciprocate these warm feelings. Mr Waddell was extremely hard working – getting up at 4:00am and working until late at night – and he expected similar commitment from his staff in terms of performing according to their contractual commitments.¹⁰⁵
219. Mr Waddell was also very good at his job, and he expected high standards from his staff. Thus, whilst Mr Waddell could be generous to staff,¹⁰⁶ he was also demanding and – when crossed – capable of losing his temper.¹⁰⁷

Q (Mr Laddie, KC) ...sometimes there must have been things that happened which made you cross, within the business?

A (Mr Waddell) All businesses have good times, bad times. That is what business – it's the same as a marriage: you have good times, and you have bad times.

Q (Mr Laddie, KC) So, I'm interested in how you dealt with the bad times. And, in particular, Mr Waddell, I'd like you to tell his Lordship your management style when it came to dealing with people who disappointed you at work.

A (Mr Waddell) So, usually, I would take them to the café, I would sit them down, and I would say, this is A, this is B, this is C, and the only way we're going to combat this is if you sort out A, B and C.

So, I'll give you a quick example. I sat Duncan Preston down, and I said: "Duncan, if you don't get these cars through the workshop, they decrease in value, they lose about £100-£200 a week. So if a car sits in the prep centre, by the time it gets to site, its lost £500. On 10,000 cars, that's £5 million. Duncan you need to sort it. We need to get it down to two days."

So, that's how I would do it. That was mostly how I would deal with my staff. I would sit them down,

¹⁰² Like the "dashboard" described by Mr Waddell at Day 6/pp122-123 (XX Waddell): "Basically, the dashboard, my Lord, is a thing that shows us how many cars are sold, how many cars are prepared, how many appointments we've got, how many cars we've got in stock, is it the right place in the right stock. And we had a dashboard that had each site on it, my Lord, and it would show how many cars was on each site. So, if it was in the red, my saying was "We're not going to bed". If it was in the green, "We're very keen. So that was the colours. So if the site had 400 cars and it should have 700 cars, it would show up red, my Lord."

¹⁰³ Day 6/pp124

¹⁰⁴ Day 4/pp43-46 (XX Waddell).

¹⁰⁵ He did not expect his staff to work these hours. But he was very controlling about how they did their jobs, and extracted value for money. His use of CCTV to keep track of staff members demonstrates exactly how Mr Waddell saw those who worked under him. Also, he dictated where staff had to work, and was controlling about time off.

¹⁰⁶ Day 6/p136 (XX Waddell).

¹⁰⁷ Day 6/p136ff (XX Waddell).

- either in the café or at McDonald's, and I would go through it, line-by-line, to get it right.
- Q (Mr Laddie, KC)** So, the impression I'm getting of your evidence is as follows, that if something wasn't working properly, you would sit down with the employee concerned and have a calm, constructive conversation with them about how they could improve their work?
- A (Mr Waddell)** So...
- Q (Mr Laddie, KC)** Is that correct? Have I understood your evidence correctly?
- A (Mr Waddell)** Well...
- Q (Mr Laddie, KC)** Yes or no?
- A (Mr Waddell)** Yes, but no. Because if someone kept doing it and driving me mad and driving me mad and driving me mad, I would get frustrated, I would get annoyed, and then I would shout at them after I've asked them five or six times. That's what would happen.
- Q (Mr Laddie, KC)** Just so I'm clear, after you've asked someone to do something five or six times, you would then shout at them?
- A (Mr Waddell)** Probably, yes, to be honest with you. I swore on the Bible and I'll only tell the truth.
- Q (Mr Laddie, KC)** Did you swear at them?
- A (Mr Waddell)** I probably would have done, in anger.
- Q (Mr Laddie, KC)** Would you call people "cunts"?
- A (Mr Waddell)** I probably did, and I regret that from my heart, now that I know what I know. And I'm sorry for that, deeply sorry for that. But I can't change the past, I can only change the future.
220. I am in no doubt that Mr Waddell could lose his temper, and did so on multiple occasions. I am satisfied that when he did, his language could be unpleasant. I do not accept that Mr Waddell only knows "now that I know what I know" (presumably after his autism diagnosis) (i) that losing his temper is wrong and (ii) that using unpleasant language is wrong.
221. Nor do I accept that every time Mr Waddell shouted or used unpleasant language, he did so because he had lost his temper. Mr Waddell has a domineering and controlling personality. He leads from the front, and he imposes his will on those around him. In this, Mr Waddell shows a great deal of instinctive human awareness, in particular how to get the most out of the people who work for him. Hence, the generosity to staff, but also the *tactical* loss of temper and the prevailing sense of staff that everyone was under surveillance at BIG, which they were. There was an extensive CCTV system throughout BIG, and Mr Waddell used it as a tool of control to monitor and improve performance. So, too, with the "dashboard". I find that Mr Waddell can subtly intuitive in terms of how he gets people to do what he wants them to do

(although that can lead him to overtly, and deliberate, unpleasant behaviour). He was, as CEO of BIG, very happy to speak to customers and be the public face of the company, understandably talking up his rags to riches story. He could, when he wanted, be hugely and charmingly persuasive:

Q (Mr Laddie, KC)	...I've watched all your videos.
A (Mr Waddell)	Good.
Q (Mr Laddie, KC)	I've sat through them.
A (Mr Waddell)	Thank you.
Q (Mr Laddie, KC)	And in one of them, you tell a story about being so good at selling cars that you spent three months persuading someone who didn't even have a driving licence...
A (Mr Waddell)	That's right.
Q (Mr Laddie, KC)	...to buy a BMW off you, that sat in her drive until she died.
A (Mr Waddell)	F969VRB. It was a 325 green Touring.

222. Mr Waddell's ability to control manifested itself in court. There was a great deal of overspeaking throughout his evidence, as (in my judgement) Mr Waddell sought to impose his will on those cross-examining him. Mr Waddell then suggested to counsel "[i]f you could do me a favour and just put your pen up when you want me to speak, it would be a lot easier".¹⁰⁸ These are just examples, but they tell.

223. Mr Waddell's attention to detail arose out of an obsessive personality, at least so far as his business was concerned. As evidence of his autism, he referred to a defective fan in court:¹⁰⁹

So, yesterday, I was over in the corner, your Honour, and this fan kept falling off its stand, seven times. I wanted to get up and fix the fan. I am probably in the biggest time of my life, but my mind was telling me to fix your fan.

224. Mr Waddell referred to his propensity to line things up precisely, in particular in relation to cars:¹¹⁰

Q (Mr Spalton, KC)	You don't suggest that Mr Fardad watched you line up the cars?
A (Mr Waddell)	Mr Fardad used to comment many times. He would say to me - he come to Wimbledon, I think you'll see the pictures my Lord. And he actually said: "Peter, you've got this the same as every other site: every car is at the same line, the same angle. The tables, the

¹⁰⁸ Day 6/pp38 (XX Waddell). The injunction was repeated a number of times (Day 6/pp40, 40, 48, 95, 98 (XX Waddell), until it was made clear to Mr Waddell ("Put the pen up, I know when to talk...") that this was not helpful (Day 6/pp115-116 (XX Waddell)), whereupon the requests stopped.

¹⁰⁹ Day 4/p27 (XX Waddell).

¹¹⁰ Day 4/pp73-74 (XX Waddell).

chairs, everything, has to be in line. I was very pedantic. If a numberplate was squinty, if it catch my eye, I would need to go and change the number plate to put it right. It's just the way I was.

Q (Mr Spalton, KC)

That's just good management...

A (Mr Waddell)

Pardon?

Q (Mr Spalton, KC)

...keeping your cars in order and keeping the business tidy.

A (Mr Waddell)

Well, if that's the case, I can show you videos now where you haven't done that and you've lost £20 million.

...

Q (Mr Spalton, KC)

Lining up the cars in the way you have described and ensuring the computers were organised is just good management of your offices and your car park?

A (Mr Waddell)

No, because if that was the case, why was it I would always moan about it when I go on to a site. And I want to go to site every week to make sure that everything was proper.

There's a saying, "If you can see a car, you can sell a car. If you can't see it, you can't buy it." So, everything had to be in line, so that you could see it. So if you park a car at a different angle, you don't see it. If you park a car at an angle, you can see both cars, my Lord.

So, that's how I was. That's why we were successful. That's why we became the biggest, because I was so pedantic, from the cleaning of the site, to the cars being at the right angle, to them being clean and tidy. That's how it was. It had to be right. And if it wasn't, I'd get upset in myself.

225. Two further examples of Mr Waddell's obsessive approach are worth noting, as examples of his character and approach. First, Ms Ferguson's story of Mr Waddell requiring the accounting staff to chase down multiple invoices, resulting in her permanently banning him from the accounts department.¹¹¹ Secondly, as part of the Freshstream due diligence, a banker recounted how Mr Waddell would, in the middle of the night, visit a competitor's forecourt to see and record their prices, so that he could undercut them.

J. USE OF NICKNAMES

226. Mr Waddell has been accused of – and, to an extent, admits – making inappropriate comments. Many of these are considered in course of this narrative. This behaviour (which is in many respects highly contentious) is said

¹¹¹ See [183].

to have been one reason why the Material Default Event provisions were so important to Freshstream. Mr Fardad said this:¹¹²

Mr McLain refers in his Section C3 to the rationale for including the Material Default Event provisions in the Securityholders' Deed. Even prior to concluding the deal there were some aspects of [Mr Waddell's] conduct which gave me cause for concern and which made it all the more important for such provisions to be included. In particular, I am aware of an incident which occurred on a financial due diligence call during the course of negotiations. One of the attendees was a fairly young female employee of one of Freshstream's advisors. [Mr Waddell] said something along the lines of "you are pretty" and some other comments that made her very uncomfortable and she was then destaffed from the deal. This was relayed to me via the partner at the advisor, and I discussed it with the other Partners at Freshstream and we seriously considered pulling the deal. Ultimately we decided not to, on the basis that I would make it clear to [Mr Waddell] that this conduct was not acceptable to us as institutional investors and that it must never happen again. I duly did so, and [Mr Waddell] accepted that he had made that remark and promised that it would never happen again. In those circumstances the Material Default Event provisions were critically important to Investor.

227. This specific episode will be considered in due course: it is, I find, one of considerable significance for a number of reasons, but also very difficult to analyse because of the paucity of the evidence. Mr Waddell denied the substance of this particular allegation, but then made a general point regarding his use of nicknames:¹¹³

[51] I have read paragraph 9 of the First Witness Statement of Mr Fardad (dated 17 April 2024), in which Mr Fardad stated he was told that I made some sort of inappropriate comment during a financial due diligence call. I do not accept this. I remember this call. Mr Fardad was not even on it. There were four sets of accountants on the call (KPMG, PWC, EY and Deloitte) firing questions at me. The meeting lasted a long time. Some of the questions were ridiculous. For example, they were asking whether I could confirm that my helicopter, which was to be transferred from BIG to me as part of the deal, had not been used for military operations or involved in the Russian War. During the call, a woman appeared on the screen with a big smile. I said something like, "thank god we've got someone who is smiling". This was the first thing that came into my head. My recollection is that this woman was a senior employee of one of the accountancy firms. I did not say she was "pretty" or anything like that. I also note that Mr Fardad stated that he discussed this comment with me and I promised that it would never happen. I reject this. This conversation did not happen.

[52] It is clear to me from paragraph 9 of Fardad 1 that Mr Fardad knew that I could say things that might come across as inappropriate (which I now know is a result of my autism). Another example of this is the nicknames I have to members of the Freshstream team (before the deal). I called Mr Fardad "James Bond" or "Reza Royale" (like the Bond film, "Casino Royale") because when we were negotiating he wanted to "bet on red but win on black" – in other words, he wanted to have it both ways. I called Mr Gradassi "Clint Eastwood" or "Cowboy" because he was always "riding" me (as in, working me hard) to get things done. On one occasion before the deal, I brought the charity horse I sponsor to the Peterborough Preparation Centre and had Mr Gradassi

¹¹² Fardad 1/[9].

¹¹³ Waddell 5/[51].

put on a cowboy hat and ride it. I also called Mr Davis “Baby Face” or “Smooth Face” because he is a young-looking man.

228. Mr Waddell did not limit his use of nicknames to Freshstream employees. There was also, in his evidence at the beginning of his cross-examination, an element of playing to the gallery,¹¹⁴ which faded as we got to the meat of the allegations against him. Mr Waddell’s evidence was that he used nicknames because he could not remember or properly pronounce names respectfully. He ducked the question (which was put to him) of whether he knew, at the time, that nicknames could upset:¹¹⁵

Q (Mr Spalton, KC)	You learned that nicknames upset people?
A (Mr Waddell)	I’ve learnt that, too. Not all the time. Like “Ching-a-ling-ling, three men and a king”, he smiles and he’s happy with that.
Q (Mr Spalton, KC)	Do you have other nicknames for people in this room?
A (Mr Waddell)	I used to call [inaudible name] Diana Ross, because she made me look like that, and so...But now, I don’t call her that, in fact, I’m actually quite proud because I call Anna “Anna”, with “ANN”. I call Alan “Big Alan”, and I call Justin “the best lawyer in town” because I can’t pronounce his second name. So, yes, if you ask me. But now I call the best lawyer, Justin...
Q (Mr Spalton, KC)	All right.
A (Mr Waddell, KC)	I call Sam, “Sam”, who I used to call “Rambo”, and I call Anna “Anna”, and Ernest, who I now – so actually, for the last month, your Honour, including your name, which is Justice Smith, you know, Judge Justice Smith, it’s took me a month to make sure I could respectfully get your name sir.
Q (Marcus Smith J)	I understand.
A (Mr Waddell)	So I do apologise, sir, if I’m asking the question wrong.
Q (Marcus Smith J)	Let’s get back to the question.
Q (Mr Spalton, KC)	You’ve learned that nicknames upset? You’ve learned to think before speaking?
A (Mr Waddell)	I’m doing my best. I’m not always getting it right, like I did earlier, but I’m trying.
Q (Mr Spalton, KC)	And you’ve learned, presumably, also that written communication can upset people?
A (Mr Waddell)	Well, the problem of it is...

¹¹⁴ Day 4/p25 (XX Waddell): Q: “Which lawyer was that?” A: “I call him Justin, the best lawyer”; Day4/p26 (XX Waddell): “A: “So what happened, a “Dr D” – I call him “Dr D”, Donner...”; Day 4/p52 (XX Waddell): A: “You forgot to mention one of my closest friends, which is Ching Patel, “Ching-a-ling-ling, three men and a king”, who is also a very close friend of mine...”; Day 4/p80 (XX Waddell): A: “These spreadsheets were done by Barbara. We called her “Auntie Barbara””. As the cross-examination progressed, these references became fewer.

¹¹⁵ Day 4/pp94ff (XX Waddell).

- Q (Mr Spalton, KC)** Yes or no?
- A (Mr Waddell)** But I don't really that good a writer.
- Q (Mr Spalton, KC)** Sorry?
- A (Mr Waddell)** I'm not a very good writer.
- Q (Mr Spalton, KC)** Okay, well, that's a separate issue.
You know, however, that written communications upset people. Let's look at some documents...
- Q (Marcus Smith J)** Well...you do know...you know that written communications can upset people, Mr Waddell?
- A (Mr Waddell)** I understand now.
- Q (Marcus Smith J)** Right.
- A (Mr Waddell)** I didn't really know then. I just said that now, yes.

229. Here Mr Waddell was referencing his autism, and suggesting that it was only post-diagnosis and after reading up on his condition that he appreciated how language – oral and written – could harass/bully.
230. I do not consider, however, that Mr Waddell's use of nicknames can be explained by memory failure, banter or jest, nor justified by reliance on autism. To anticipate, a number of the Incidents involve the use of nicknames by Mr Waddell as a means of control – of putting subordinates in their place. This is particularly the case as regards two women, Ms Rather and Ms Butler. In these cases, I do not consider that the intent was to *offend* (although offence was caused) but to *control* (with an indifference as to whether offence was caused or not). These Incidents are described in detail below. I do not consider that autism played any role in these incidents, or in any substantial way in Mr Waddell's conduct generally. In short, I do not accept that Mr Waddell has only now learned of the corrosive effects of the use of language.
231. With that, it is necessary to turn to Mr Waddell's disabilities.

K. THE MEANING OF DISABILITY

232. "Disability" is a defined term under the Equality Act 2010. Section 6 of that Act provides:
- A person (P) has a disability if –
- (a) P has a physical or mental impairment, and
 - (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.
233. The test for disability is further defined in supplemental provisions at Schedule 1 to the Act, which (amongst other things) defines the effect of an impairment as "Long term" if it has lasted for at least 12 months. Section 212(1) defines "substantial" as "more than minor or trivial". This is informed by the statutory

guidance on matters to be taken into account when determining questions relating to the definition of disability.

234. The consequences of a finding of disability are for later. For the present, the question is whether Mr Waddell was disabled within the meaning of the Equality Act 2010.

L. DISABILITIES ASSERTED

235. Mr Waddell asserts that he is a disabled person.¹¹⁶ Mr Waddell suffers from deafness, dyslexia and autism. The deafness was uncontroversial, and no expert evidence in this regard was adduced before me. Dyslexia and autism *were* controversial before me, not in terms of diagnosis, for the experts were agreed that Mr Waddell suffered from both dyslexia and autism. The difficulty is that both dyslexia and autism each present and/or manifest themselves in a wide variety of ways and the fact that Mr Waddell is correctly diagnosed as (i) dyslexic and (ii) autistic¹¹⁷ actually says very little about Mr Waddell's disability or whether he is (within the meaning of the Act) disabled at all.
236. It is, therefore, necessary to consider all three of the disabilities arising in turn. Before doing so, it is necessary to describe and comment upon the expert evidence that I received on this during the course of the hearing:
- i) Mr Waddell adduced evidence from Dr Vana Avgerinou ("Dr Avgerinou") on dyslexia and Mr Ben Donner ("Mr Donner") on autism. The defendants adduced evidence in response from Dr Helen Ross ("Dr Ross") on dyslexia and Professor Seena Fazel ("Professor Fazel") on autism. I heard from the autism experts both before and after Mr Waddell gave evidence. I would have followed the same process with the dyslexia experts, but that proved not to be possible logistically. The reason I wanted to hear from the disability experts *before* Mr Waddell gave evidence is because I wanted to be educated, on the record, before Mr Waddell appeared before me in person. It was, of course, important for the experts to give their views on disability taking into account all of the evidence, including in particular Mr Waddell's performance in the witness box.
 - ii) All of the expert evidence could have been more helpful in articulating the nature of dyslexia and autism by reference to Mr Waddell rather than seeking to make a diagnosis and express final views on the factual/legal question of disability. All of the experts, but particularly those adduced by Mr Waddell, crossed this particular line and sought to impose their views of Mr Waddell's disability on the Court.
 - iii) All of the parties before me agreed that this was not appropriate, and that this particular question fell for determination by the Court – taking fully

¹¹⁶ Waddell 4/[33].

¹¹⁷ The experts used the longer term "autism spectrum disorder" or "ASD". This helpfully expresses the fact that autism can and does present in a great variety of different ways. I intend to avoid the acronym "ASD" and will prefer the terms "autism" and "autistic" for reasons of brevity. But the point that autism exists on a spectrum is important.

into account the evidence before the Court, including the expert evidence. That is what I have done.

237. One further point of complexity is that Mr Waddell's three disabilities are interlinked. The meaning of "impairment" must, as it seems to me, be considered in the round, without seeking to assess, distinctly, what may be multiple conditions. The test, I remind myself, is whether the impairment has a substantial and long-term adverse effect on Mr Waddell's ability to carry out normal day-to-day activities. I consider that it would be open to me to conclude that Mr Waddell was impaired by reason of a combination of hearing, dyslexic and autistic symptoms and that collectively (even if not individually) these amount to an "impairment" within the meaning of the 2010 Act.
238. Although in the following paragraphs I have been compelled (purely for the sake of clarity of exposition) to consider the three disabilities distinctly, I stress that I have at all times striven to take a holistic approach.

M. DEAFNESS

239. Mr Waddell said this of his condition:¹¹⁸

[34] I am half deaf. As I explained above at [7], I was physically abused by my mother as a child. I think my deafness is a result of this. I could never hear well in the classroom at school. My hearing got worse and worse as I got older. I first got hearing aids when I was around the age of 20-25. Without my hearing aids, it was very hard for me to hear. I would speak loudly and people would tell me it sounded like I was shouting at them. I also have difficulties with my hearing aids when I am on the phone. As I said at [Waddell 3/[25]], they interfere with the signal and start making high-pitched sounds in my ears. Sometimes when I was in meetings, the batteries would die or the filters would get blocked and my hearing aids would not work properly.

[35] Until June 2025, I had been using the same pair of hearing aids for about 11 years. I would go in to the hearing clinic every couple of years for a checkup and they would turn up the volume because my hearing was getting worse. In around 2021, I had an operation to repair a burst eardrum as, even with my hearing aids, I was struggling to hear. My hearing improved slightly after this. In June 2025, I bought a new pair of hearing aids. They use a new technology. The new hearing aids are amazing compared to my old ones (although they are less comfortable). My hearing is twice as good with the new hearing aids than it was with the old ones. I did not realise how bad my hearing was, even with hearing aids, until I got my new hearing aids. Looking back, I realise it might have sometimes sounded like I was yelling at people even when I had my hearing aids in.

[36] My hearing aids are obvious, so I often tell people when I meet them that I am half-deaf. My deafness was common knowledge at BIG. I told Laurence Vaughan (the Executive Chairman), Neil Hodson (the Commercial Director) and Mr Clarke about it, among others. I also told Reza Fardad and Gilles Gradassi that I was half-deaf when we were negotiating the Freshstream deal. If I was speaking loudly to people, it would have been well-known by Freshstream that this was because of my deafness and not because I was yelling.

¹¹⁸ Waddell 5.

240. In the courtroom, Mr Waddell's deafness was well-compensated for by the in-court hearing loop, which worked extremely well. Outside court, it is clear that the improvements in Mr Waddell's hearing – whether through the operation or improved equipment – post-date the events considered in this judgment. I am quite prepared to accept that in the months and years preceding Mr Waddell's summary dismissal in April 2024, there were times when Mr Waddell spoke more loudly than was necessary in the circumstances due to his deafness.
241. What I am not prepared to accept is that Mr Waddell did not lose his temper (whether forensically or actually) and that there has been a mischaracterisation as losses of temper of what was merely deafness-induced yelling. There was, in the evidence, only one recording (where Mr Waddell was addressing Mr Maby) where it is not possible to explain away the aggression in the "conversation" (it was really a monologue) by deafness. An aggressive conversation may (but may not) be characterised by a raised voice. In this particular case, Mr Waddell was not speaking especially loudly,¹¹⁹ but his conversational manner was unquestionably aggressive and threatening.
242. I will, when considering the Incidents, bear in mind the hearing impairment that Mr Waddell suffered from and – to be clear – I consider it to be an impairment within the meaning of 2010 Act. But each case will have to be considered in the round.
243. Beyond its relevance to the occurrence of misconduct (by "bullying"), I do not need to consider the issue of Mr Waddell's deafness any further. It was not contended that there were any "reasonable adjustments" that needed to be made in view of Mr Waddell's disability that are relevant to the outcome of this dispute. I reach this conclusion having considered the issue of deafness in conjunction with both dyslexia and autism.

N. DYSLEXIA

244. Dyslexia is a neurodevelopmental, learning-based condition characterised by persistent, unexpected difficulties with accurate or fluent word reading, decoding or spelling. It is a brain-based disorder but is independent of overall intelligence. Dyslexia is a lifelong condition that exists (i) on a continuum of severity (so, for instance, spelling can be variably bad in different cases), but (ii) manifests itself in different ways (e.g. spelling, forms of speech and ability to process information, whether in writing or orally). All these different manifestations are not binary but exist on their own spectrum.
245. The experts were agreed that Mr Waddell was properly to be diagnosed as dyslexic. Given the nature of the condition, that is not – for the purposes of this Judgment – a particularly helpful conclusion. In this case, it is quite clear that Mr Waddell had an impairment, within the meaning of the 2010 Act, in terms of his ability to write. The record is littered with emails that are not only

¹¹⁹ Of course, there will have been distortion in the recording, but it did not seem to me that Mr Waddell was shouting (although he may have been). What matters is that – shouting or not – Mr Waddell's speech conduct was aggressive and threatening and littered with bad language. I want to stress, however, that even the bad language is not the central fact. It is perfectly possible to be threatening and aggressive without using bad language.

misspelt, but also (considering spelling, sentence structure and quite possibly unhelpful auto-corrects by IT) at times remarkably hard to penetrate documents. Often it was possible to gain the overall sense of a communication, but the moment one tried to transcribe it, almost insuperable problems arose.¹²⁰

246. However, Mr Waddell's ability to write is not relevant to the substantive matters arising for resolution. Certainly, in the course of the Exclusion that lies at the heart of the unfair prejudice claim, no-one sought to contend that any form of reasonable adjustment needed to be made in this regard.
247. Rather, what was suggested, was that reasonable adjustments were required because of Mr Waddell's inability to assimilate large quantities of documentation because of his dyslexia (whether considered on its own or in conjunction with his autism). Put another way, Mr Waddell's "working memory" – his ability to hold and manipulate verbal information – was said to be impaired.¹²¹
248. I do not consider that Mr Waddell's ability to assimilate large quantities of information *was* materially impaired by his dyslexia (whether considered on its own or in conjunction with his autism). During his extensive cross-examination, Mr Waddell (under stressful and tiring circumstances) coped remarkably well with a welter of oral and written information, and proved well able to assimilate and respond to this material.¹²² In this, Mr Waddell demonstrated, in the most practical way, that the adjustments made by my order prior to trial for the purposes of giving evidence were in fact unnecessary. (Obviously, I do not regret making the adjustments: not doing so would have prejudged an important issue against Mr Waddell. But the fact remains that the adjustments were not needed for either the dyslexia or the autism, to which I will come.)
249. Over the course of 30 years, Mr Waddell built a remarkably successful business. This involved not merely buying and selling cars, but transactions that can only have been paper-intensive. The history of BIG before Freshstream's involvement is littered with such acquisitions, and in the limited time of Mr Waddell's partnership with Freshstream, there were transactions (e.g., Available Cars) in which Mr Waddell took an active part. Similarly, Mr Waddell's ability to qualify as a helicopter pilot involved the processing and assimilation of a great deal of data and information, on which he (personally) was examined without third party assistance.¹²³

¹²⁰ The same issue arose in respect of Mr Waddell's witness statements. These were beautifully written and carefully compiled. It is obvious that Mr Waddell had (quite properly) a great deal of help from his lawyers at Quinn Emanuel. The efforts that Mr Waddell and his legal team were put to were described (without waiving privilege) in a letter to me, which confirms the extent of these efforts. This was also apparent when Mr Waddell was cross-examined on the point (Day 4/pp122ff (XX Waddell)).

¹²¹ Put in cross-examination on Day 4/pp112ff (XX Waddell). Obviously, this is not a point on which Mr Waddell's answers can assist. Rather, this is a matter of (i) his competence in the witness box (which I was able directly to assess) and (ii) his ability as a CEO in BIG on which I heard evidence.

¹²² See, purely by way of example, the exchanges on Day 5/pp7ff (XX Waddell).

¹²³ For the very good reason that when flying a helicopter solo, the public interest in avoiding crashes does not permit much – if anything – by way of reasonable adjustment.

O. AUTISM

250. Autism spectrum disorder or ASD is a lifelong, behaviourally defined, neurodevelopmental condition characterised by persistent challenges in social communication, interaction and restricted, repetitive patterns of behaviour or interests. It is a spectrum disorder, affecting individuals differently.
251. Mr Waddell was diagnosed with autism after his dismissal. The experts disagreed as to the severity of his autism. That disagreement was not helpful in terms of assessing Mr Waddell's mental impairment for the purposes of the 2010 Act. Given that it is a spectrum disorder, manifesting itself in different ways, it is necessary for me to assess how (if at all), in Mr Waddell's specific case, his autism had "a substantial and long-term adverse effect on [Mr Waddell's] ability to carry out normal day-to-day activities".
252. It is clear that Mr Waddell's autism did not manifest itself clearly to those who engaged with him and knew him well. Until a solicitor suggested that Mr Waddell be examined, no-one amongst his family, friends and colleagues suspected autism.¹²⁴ That included Mr Fardad, who had a heightened awareness of autism, because his son is autistic. Furthermore, there is some suggestion, which I accept, that Mr Waddell (whose autism was assessed twice using the same questionnaire) manipulated the answers second-time round so as to "improve" his autism score.¹²⁵ Dr Donner, who carried out the second test, denied that it was possible for a patient to fool a doctor. I do not accept that evidence: it is plain from the questionnaires that an averagely intelligent person could game the system. Mr Waddell is far more than averagely intelligent, and the differences between the two questionnaires are highly suggestive of exactly this sort of manipulation.
253. That being said, I am not rejecting the experts' evidence on the diagnosis of autism, although I *am* rejecting Dr Donner's evidence as to the severity of that autism. There are clearly aspects of Mr Waddell's conduct which, with the benefit of hindsight, may be explicable by autism. One aspect – not relevant for present purposes – is Mr Waddell's preference for routine (same food, etc).
254. Another aspect is Mr Waddell's obsessive conduct, which I have already referred to. However, it is perfectly possible to be driven – in some eyes obsessive – without suffering from autism. In any event, I do not consider that this conduct can be regarded as having "a substantial and long-term adverse effect on [Mr Waddell's] ability to carry out normal day-to-day activities".¹²⁶ To the contrary, it is this obsessive attention to detail and compulsion towards perfectionism that has enabled Mr Waddell to achieve the success he has. As I have also described, that obsessiveness and perfectionism led Mr Waddell to expect a great deal from those working under him, but Mr Waddell's reaction (to lose his temper when let down) is *not* an aspect of autism, and cannot be

¹²⁴ Day 4/pp37ff (XX Waddell).

¹²⁵ Put Day 4/pp53ff, 64ff, 70ff

¹²⁶ Emphasis added.

used to justify bad conduct (to which I will be coming: I am making general findings as to Mr Waddell's character and disabilities).

255. Mr Waddell's controlling character, his desire to dominate and be in command, *may* also arise from his autism. However, the *way* in which he chose to exercise control over others – again, matters which I will be exploring – are not attributable to autism, but to a choice on the part of Mr Waddell to get his way. I consider that a great deal of Mr Waddell's complained of behaviour – (apparent) loss of temper, bad language, nicknames – are attributable to this desire for control and a deliberate *choice* on the part of Mr Waddell to act in this way.
256. Although there were times when Mr Waddell's autism may have thrown him into making over-familiar (and so potentially inappropriate) remarks,¹²⁷ these were nothing like the abusive language of the misconduct allegations. Mr Waddell's autism may have precluded him from precisely understanding the nature of any upset his comments might cause, but Mr Waddell was subjectively aware at all material times that such language *could* cause upset, and I so find. None of the experts suggested that autism removed agency: in other words, Mr Waddell had free choice in how he addressed people (unlike, say, a case of Tourette Syndrome). Autism can, at best, explain that there is a lack of appreciation of consequence or effect on others. But that – whatever may be the general case – was not the case with Mr Waddell.
257. This was evident when Mr Waddell was asked about unacceptable behaviour (specifically, gross misconduct) as defined in the BIG Employee Handbook:¹²⁸

Q (Mr Laddie, KC)	So, do you accept that if somebody committed an assault during the course of their employment, it would be properly regarded as an act of gross misconduct?
A (Mr Waddell)	If I had hit someone or assaulted someone or any violence, then yes.
Q (Mr Laddie, KC)	Next, "bullying". Do you agree that if you or any other member of staff engaged in bullying that might be regarded as gross misconduct?
A (Mr Waddell)	Yes.
Q (Mr Laddie, KC)	Then: "Unacceptable use of obscene or abusive language."
A (Mr Waddell)	Yes.
Q (Mr Laddie, KC)	What kind of language would you regard as obscene?
A (Mr Waddell)	What do you mean?

¹²⁷ For example, when thanking the solicitor who pointed out relevant passages on the EPE (Electronic Presentation of Evidence) monitor, Mr Waddell said: "She's been a great help for two days, this lady. I don't know what I'd have done without her. She's like my sister". Similarly, Mr Gourgey, KC bore his nickname in court of "Big Alan" with fortitude, although this use of the nick-name struck me more as grandstanding on the part of Mr Waddell.

¹²⁸ Day 6/pp113ff (XX Waddell).

- Q (Mr Laddie, KC)** I want you to give me an example of language that you consider obscene.
- A (Mr Waddell)** I just need to ask the question., what do you mean by that? I...
- Q (Mr Laddie, KC)** I want you to tell his Lordship one or two words that you consider obscene.
- A (Mr Waddell)** You want me to say them?
- Q (Mr Laddie, KC)** Yes, I do.
- Q (Marcus Smith J)** Yes.
- A (Mr Waddell)** If you said something like “bastard”, I think that’s wrong. If you said...I’m trying to think of another one, my Lord. [Pause] I think that’s it.
- Q (Mr Laddie, KC)** That’s it?
- A (Mr Waddell)** Yeah.
- Q (Mr Laddie, KC)** You really can’t think of another obscene word other than “bastard”?
- A (Mr Waddell)** I’m learning there are a lot more. But that sort of word, if you said “bastard”...
- Q (Mr Laddie, KC)** What about “cunt”?
- A (Mr Waddell)** At the time, before I’ve learnt what I am, and bear in mind, in the business, it’s not a college of Oxford graduates, the business of the car business, I don’t know if anybody’s ever seen Wall Street, the movie, or Secret Boss, if you go and look at Robert Forrester, you will see the car business is a unique business. It’s a different business. If you go and watch Wall Street, sales is different. So that is used, not frequently, but it has – is being – used.
- Q (Mr Laddie, KC)** I asked you a simple question?
- A (Mr Waddell)** And I’m trying to answer a simple question.
- Q (Mr Laddie, KC)** Is “cunt” an obscene word?
- A (Mr Waddell)** If you ask me today, yes.
- Q (Mr Laddie, KC)** Right. But if I had asked you two years ago, what would you have said?
- A (Mr Waddell)** No.
- Q (Mr Laddie, KC)** You wouldn’t have thought it was an obscene word?
- A (Mr Waddell)** No, because then, I didn’t – I haven’t been and done a load of these investigations and learnt and explained the difference. No, if you ask me today, I would say it is definitely rude.

258. I am quite prepared to accept that the second-hand-car business in general, and BIG’s environment in particular, involved the regular use of bad language. Whether that culture was one that was inculcated because of bad examples from

the top or was just endemic is a matter that will need to be considered. But the fact that Mr Waddell was known in the industry as “effing Pete” strongly suggests that, in this regard, he led from the front.¹²⁹ All of this is important context to the Incidents I am going to come to consider. But I should be clear that I do not regard the use of bad language – even very bad language – automatically to constitute gross misconduct (whether within the meaning of the Handbook or generally). Context is everything. Equally, it is perfectly possible to use language that *does* amount to gross misconduct which does not involve any individually bad words at all. Again, context is everything.

259. What Mr Laddie, KC was exploring with Mr Waddell was the extent to which Mr Waddell’s disabilities (specifically autism, but considering Mr Waddell’s case generally) precluded him (i) from understanding that certain words were “wrong” in that they crossed a line of societally appropriate conduct, (ii) from appreciating that such words could engender adverse reactions in people (upset, fear, etc) and (iii) from controlling his behaviour in these regards.
260. I reject Mr Waddell’s evidence that he did not understand that certain words were wrong until he was properly educated as to his autism in 2025, post the Exclusion. The word “bastard” appears to have been one of the swear-words that Mr Waddell did not use, which is why he picked that particular word in response to Mr Laddie’s request for an example of an obscene word.
261. Equally, Mr Waddell did not want to acknowledge that “cunt” was inappropriate because that was a word he *did* use, critically both before and after his autism diagnosis. In a series of WhatsApps sent *post-dismissal*, but before diagnosis, addressed to those he felt were responsible for that dismissal, Mr Waddell used some unpleasant, threatening and abusive language:¹³⁰

And there’s lots more coming your office was bugged. And I have you all conspiring. On doing what you did. FSA is going to be notified very very shortly. On reza. I got you all

What from your bedroom window cunt

Telephone was tapped

262. I do not accept that Mr Waddell needed to be taught that the word “cunt” was obscene in order to overcome some cognitive disability. I consider that Mr Waddell had an understanding of the normal sensibilities of people as regards obscene language generally.
263. I also consider that Mr Waddell at all times had an excellent understanding of the effect these words could have. I have found that Mr Waddell was a controlling personality, and that he used a variety of tools to achieve control, ranging from the emollient/persuasive (when selling cars or (generally) presenting in court), the generous (when rewarding employees) to the hectoring/bullying (when dealing with employees that he judged were falling

¹²⁹ Evidence of Mr Vaughan to Mr Siddall, KC: Siddall Transcript/p7; Butler 1/[20].

¹³⁰ The spelling is as in the original. I would not want to overcorrect in order to make colder and more calculating what may have been an intemperate message.

short). The swearing and use of abusive or threatening language was part of this controlling behaviour.

264. The third question is whether Mr Waddell could control his controlling behaviour. I consider that Mr Waddell's obsessiveness and quest for perfection will have created an impulsion to act. The question is whether that impulsion was controllable. It does not seem to me – having considered the expert evidence – that the experts were suggesting that an irresistible compulsion to act (even in the face of explicit warnings or norms not to) is a hallmark of autism. Professor Fazel, in particular, was clear that this was not a characteristic of autism. But even assuming it is, I do not consider that Mr Waddell's conduct was beyond his control. He chose how he conducted himself and – if the lines were clearly enough drawn and the sanctions for infringement clear, enforceable and serious – then Mr Waddell would comply. The problem was that Mr Waddell was unquestionably in charge of BIG, answering to no-one, for most of its history.

265. Mr Laddie, KC described the position very clearly in opening.¹³¹

He created a major business, but in doing so, we say, he created a fiefdom, a workplace which brooked no dissent as far as Mr Waddell was concerned, and where, due to the control he had over the business, so helpful to the business in so many ways, he was also unfortunately free to give vent to the sexist, racist and bullying aspects of his character. He was effectively unchecked in his ability to do so by virtue of the power that he wielded at the helm of the organisation...

I do not consider that Mr Laddie, KC was suggesting that Mr Waddell's conduct was *uncontrollable* (and, if he was, I disagree), but that it was *uncontrolled*.

266. When that changed – with the advent of Freshstream's minority interest – Mr Waddell considered that he remained in charge, but because he was expecting – rightly or wrongly – majority control to pass from himself to Freshstream he successfully subordinated his views as to how the business should be run to those of Freshstream. It will be necessary to come in detail to his deliberate subordination of his business desires and instincts and goals for BIG to those of Freshstream, but I find as a fact that they were (until the non-exercise of the Call Option in October 2023, when things changed). Mr Waddell was very much in control of himself and his obsessions and perfectionism. Indeed, that is what made him the formidable businessman he was.

267. In addition to Mr Waddell's behaviour towards Freshstream in the run up to 1 October 2023, which I have concluded shows a remarkable ability in Mr Waddell to subordinate his will and conduct to others, his sister, Ms Ferguson gave another powerful example which has been recounted at [183].

268. Mr Waddell was asked whether he would have agreed to undergo "training" in regard to his conduct.¹³² His response was equivocal: he suggested that whilst he would have been willing, he would have had too much work to participate. However, if the consequences of not regulating his conduct had been made clear

¹³¹ Day 1/p128 (Opening: Mr Laddie KC).

¹³² Day 6/pp89ff (XX Waddell).

(eg Freshstream would not exercise the Call Option or would exercise their Step-In Rights) then I consider that Mr Waddell could have complied with what was required of him. It was all a question of communication and power.

269. This sits ill with Mr Waddell's communications to those he blamed after his dismissal. I have no doubt (although, to be clear, no privilege has been waived) that Mr Waddell would have been told by his lawyers that protagonists on the other side (Mr Fardad, Mr Vaughan, Mr Clarke and others) should not be approached by him directly. Yet Mr Waddell nevertheless did so, and did so in aggressive form.¹³³ This suggests behaviour that *was* beyond Mr Waddell's control, and the point needs to be addressed.
270. Mr Waddell's responses to justify such communications ranged from the contention that he was merely regularly reporting matters to regulators (which I do not accept – the content does not support this)¹³⁴ to having no explanation at all¹³⁵ to relying on some form of disability:¹³⁶

I think it's a mental issue. I get in a room on my own, and I think it's just what happens. I send these – my lawyers are always moaning at me...it just gets in my head, to be honest with you...These are all the messages when I was in a dark place...

271. I do not accept this assertion of an absence of agency on the part of Mr Waddell. I consider that Mr Waddell was, to the contrary, trying to control the litigation process and thought – erroneously – that he could further his cause by acting for himself *in addition to* the very capable legal team he had assembled.¹³⁷ He was wrong about this, and almost all of Mr Waddell's exploits in this regard damaged his case instead of furthering it. But I see this not as *uncontrolled* behaviour, but as a failure in judgement in the context of a process with which Mr Waddell was unfamiliar, but where he thought he knew better. This is a form of arrogance of spirit, not a sign of an absence of control nor a manifestation of any disability.¹³⁸

P. HONESTY

272. It is clear from the foregoing that I have concluded that Mr Waddell was capable of giving untrue evidence on points where he felt that lying was the only way he could avoid giving a damaging answer. Mr Waddell was a selectively dishonest witness. However, Mr Waddell had a formidable grasp of the detail

¹³³ Some of these exchanges were put to Mr Waddell on Day 4/pp96ff (XX Waddell).

¹³⁴ See Day 4/pp97-98 (XX Waddell).

¹³⁵ Day 4/pp100-101 (XX Waddell).

¹³⁶ Eg Day 4/p102, p103 (XX Waddell). See also Day 4/pp106-108 (XX Waddell).

¹³⁷ Examples in this regard included: (i) deploying third parties like Mr Mark Halford (Day 4/p119 (XX Waddell) to "support" his cause; (ii) approaching, other than through lawyers, witnesses or potential witnesses (eg Ms Gable); (iii) deleting, in the presence of his own lawyer and whilst in the course of giving evidence, potentially material text messages from his phone, thus potentially breaching his "purdah" and the continuing obligation to give disclosure (Day 4/pp138ff (XX Waddell); Day 5/pp193ff (XX Waddell); and Day 6/pp99ff (XX Waddell); (iv) his repeated reference, whilst giving evidence, to matters that were "in the record", which would be brought out in due course, but which rarely were.

¹³⁸ The same trait is evident in Mr Waddell's approaching of witnesses, specifically Ms Murphy and Ms Buzina. In this, Mr Waddell was playing with fire. I have recounted how his actions affected not merely his, but also these witnesses', credibility.

and a remarkable memory. His evidence was of potentially great value. I have considered it with care throughout this judgment, and make clear at the appropriate points in this judgment those matters of factual dispute where I do not accept Mr Waddell's evidence and why I do not do so.

Q. MR WADDELL'S RELATIONSHIP WITH HIS CREATION

Q.1. The culture at BIG

273. The relationship between Mr Waddell and his creation, BIG, has already somewhat been described. BIG was Mr Waddell's creation, and the expansion and success of BIG was essentially due to Mr Waddell's personal efforts. Mr Waddell was passionate about his business, which he regarded as an extension of himself, and he was obsessive about detail and driven in developing the business. Obviously, over decades, BIG's culture will have reflected Mr Waddell's persona.

274. Mr Waddell said this about the culture at BIG:¹³⁹

[27] At its heart, BIG is a family business. Even as the business grew to have multiple sites and over 1,000 employees, I made sure we kept the family business feel. The staff were like my family. This was important to me because I did not have a functioning family unit of my own growing up. It is why I take loyalty and friendship very seriously. This family feeling was built on jokes, laughter and "banter". We worked hard, but we cared about each other. We would go out together and celebrate birthdays and go on outings to London. Staff would bring their kids in. The daughter of one of the technicians, Katie, painted me a stone with the BIG logo on it which I still keep in my office to this day. Some of the employees even named their children after me. These are the things from my time at BIG that mean the most to me. We had good days and bad days, but we faced them together as a family.

[28] Whenever I would walk round the sites, there was a real "buzz" in the air. I would talk to everyone, right down to the yardmen and valeters (sometimes I would even wash cars with them, much to the annoyance of my wife when I came home with stained clothing). I could tell the staff were enjoying themselves and enjoying their work. They were always smiling, joking and laughing with each other. It was important to me that BIG was a fun place to work. For example, we released a recruiting video in December 2022 called "Speed Interviews" where candidates for sales roles were interviewed in the back of a car while being driven at high speed around a racetrack. The video went viral. We also released a "behind the scenes look" video in October 2022 as part of another recruiting drive. The video showed the staff doing things like competing in tug-of-war, wheelbarrow races and indoor football. These videos also show that BIG was a diverse place with employees of all different backgrounds and ethnicities. I worked hard to create a culture where everyone felt welcome and was treated equally.

[29] I was always generous with my staff. For example, Bob Ruprah, the Operations Director, was one of my best friends. He and his family would come on family holidays with me around the world, including, most recently, a trip to Dubai for Christmas in 2023. I would sometimes cover their expenses. I also paid for the holidays of other employees, such as Tom Clarke the Company Secretary. I would regularly bring in food for staff when I went to visit the sites, and would take staff who asked for a ride in my helicopter. I installed gym rooms, games rooms and garden spaces for staff. I

¹³⁹ Waddell 5.

bought remote control cars to give to the kids of staff. I helped staff find accommodation if they were struggling to find somewhere to live. During COVID, I also bought groceries for staff. I celebrated the success of the team. I would often send around internal videos thanking them for their hard work and achievements. I was so keen to motivate them and make them feel good about themselves. Whenever I did media interviews, I would always talk about the staff. One example is the interview I did with Car Dealer on 8 May 2020. There are many others.

275. Mr Clarke's take on culture was different:¹⁴⁰

[24] Pete told me his rags to riches story during my time at Bond Joseph so I took that into account and admired the fact that he'd grown a massive business without any education, without any formal upbringing, without any parenting. I respect the fact that Pete has grown a truly successful business from very little; that is an achievement. Pete is a larger-than-life character, which can really work in business and he could be very friendly and jovial. He would often go round the departments when he arrived in the morning and say hello to everyone. He is very hands on and often bought pizzas and cakes and donuts for employees, and these things do go down well.

[25] But the culture Pete built was one of fear. Pete was not a polite individual; there were no airs and graces, or courtesies. Pete was a micromanager. He was in charge, and everything revolved around him. Pete, in my experience, is an angry man, and he operated by shouting and corralling people. Shortly before he left, the atmosphere in the business was incredibly toxic. I reported directly to Pete and, when he arrived in the morning, my heart would sink in my chest. I did not know what he would be like on any given day, or what he would ask me to do, or what would not be good enough, or who I was going to see him humiliate that day.

[26] Pete, as a manager, was never someone who would say "let me think about that and come back to you". He always had to have an answer, which was often an immediate off-the-cuff answer which was not what was in fact needed. Everyone in the room would have to pause and think, "hang on, does he really want me to do that? Or is he just saying that because he has to give a response?" It was more often the latter. So, you would have to not do it and hope that it was not what he really wanted you to do. The alternative was going back to him after you had thought about the best course of action and somehow get your good idea to come from him. It made operations very difficult. The starting point was that you had to establish whether there's any meaning to the instruction coming from the top or if it's something you should ignore. That made running the business and operating within the business at an executive level very difficult. We all needed clear instruction from the CEO: we did not get that with Pete and he rarely delegated decisions.

276. I have explained why Mr Clarke's evidence on this topic and on the topic of Mr Waddell needs to be treated with caution. It is worth noting that although a culture of fear is the headline point Mr Clarke makes, it is made without particular specificity and seems ungrounded in precise fact. What Mr Clarke is describing is much more the cult of personality that Mr Waddell promulgated within BIG prior to sale of a substantial minority stake to Freshstream. Although Mr Waddell's obsession with control would have involved him treading on subordinates' toes or worse, I do not accept the "culture of fear" label.

¹⁴⁰ Clarke 1.

277. I accept that it would have been extremely difficult to rein Mr Waddell in prior to Freshstream's entry. As I have noted, I consider Mr Laddie, KC's description to be apposite.
278. Mr Clarke went out of his way to suggest that victims of Mr Waddell's conduct would be too afraid to take the matter further. Thus, in the case of Ms Beth Murphy (who, according to Mr Clarke, took the step of reporting inappropriate behaviour to Mr Clarke) the matter was taken no further by Mr Clarke for this reason:¹⁴¹

I knew that if I'd gone to HR about a comment like the one Beth shared with me, I would have been sacked immediately. Pete controlled HR. He controlled every part of the business. The HR function was led by Joanne Duey at the time and Pete's sister, Barbara, also had a part in the HR function. Pete would have got wind of anything that was reported to HR; it would have come to his knowledge how the investigation had been triggered. Had I reported something to HR so serious as some of the matters that had been reported to me (such as the comment made to Beth) and even if HR followed the right procedure, it would not have been any good for me nor, frankly, the people accusing him of the behaviour. I was aware that not only would the people subject to the behaviour be fired, but I would be too. There was one incident in 2022 where Pete had hit an employee, Tom Chapman. Tom told me the CCTV footage of that incident vanished shortly after it happened. He had tried to get the video evidence, but by the time he had accessed the CCTV system, the key 30 seconds of footage that showed Pete hitting him had been deleted. Tom said that he had filmed what was shown on the CCTV system on his phone (and he later shared a copy of that video with me).

279. Again, Mr Clarke's evidence on this point needs to be treated with great caution. The evidence of Ms Murphy is considered in relation to the relevant Incident (Incident No 6). BIG had what was, on the face of it, a competent and effective "human resources" department, initially headed by Ms Joanne Duey, who (after Freshstream came on board) had Mr Holness appointed above her, but without (at least ostensibly) any demotion of Ms Duey. Of the many incidents that arise for consideration during the course of this judgment, none were reported using the channels laid down in the BIG Employee Handbook. It is imperative that I do not prejudge why this was the case. There are two basic possibilities:
- i) First, as Mr Clarke contends, there was a sense within the BIG organisation that there was no point in reporting any misconduct involving Mr Waddell because, at best, nothing would be done and, at worst, there would be victimisation.
 - ii) Secondly, and alternatively, the incidents were not as serious as Freshstream sought to make out, and that the failure of the "victim"¹⁴² to report the matter reflected not the suppression of a serious grievance and disciplinary matter, but instead the fact that the matter was not serious at all.

¹⁴¹ Clarke 1/[37].

¹⁴² I use quotes because to determine that a potential complainant was a victim is to predetermine the matter. The same is true of terms like "survivor", which implies a finding that an event to be "survived" has in fact occurred.

280. I will, therefore, leave consideration of the efficacy of the grievance and disciplinary processes within BIG, and the relevance of this, to later discussion. I can, however, express my conclusions as to the atmosphere within BIG prior to Freshstream's acquisition of a stake, in the following terms.
281. I do not accept the "happy family" description put forward by Mr Waddell. Mr Waddell was deluding himself in this regard. Driven, obsessive, people do not generally make good bosses, although they can make successful (in purely economic terms) organisations. BIG was a driven organisation, driven by a CEO around whom the business orbited. It was a high pressure, high performance environment, which did not tolerate incompetence or falling short. On the other hand, Mr Waddell was a charismatic, even inspirational leader, who led from the front, and there will have been, mixed with the pressure and the hard work, a sense of pride in being part of an extremely successful organisation led by someone who had a proven history of success and a clear idea of where he was going.
282. I do not accept Mr Clarke's characterisation, which I find to be prejudiced against Mr Waddell.

Q.2. The implications of expansion

283. Although it was Mr Waddell's view (or at least the view that he expressed in Court) that the operations at BIG were scalable without significant organisational change, given the scale of BIG's operations, and its plans for the future, I do not accept Mr Waddell's view on this point. BIG could not, in my judgement, continue to be managed simply by adding more sites and more data to the dashboard, with Mr Waddell jetting around the country, visiting and seeking to manage ever more sites.
284. This was certainly Freshstream's view and – as will be seen – Freshstream took immediate steps on the conclusion of the Transaction to "professionalise" BIG. This is a tendentious way of describing how BIG presented, because it implies incompetent management previously. That is not a fair or correct description of BIG's organisation – and represents Freshstream's view after the event, when the relationship with Mr Waddell had broken down.
285. Putting it less tendentiously, at the time the Transaction with Mr Waddell was being negotiated and concluded, it was Freshstream's view that Mr Waddell had taken BIG as far as it could go as a "one-person-show", and that BIG was at a point where its management structure needed to change. Indeed, this was precisely why BIG presented such an attractive opportunity to Freshstream: it was an extremely successful company, but one that had the potential to become even more successful.
286. This was not Mr Waddell's view, but he was prepared to accede to it, because he wanted to retire. In short, Freshstream and Mr Waddell reached the same conclusion – that the management at BIG needed to change – by radically different routes. Freshstream's position was that Mr Waddell had taken BIG

(with great success) as far as a CEO running the business on his own could.¹⁴³ Mr Waddell did not agree with this. But Mr Waddell wanted to retire, and that implied him taking a back seat, with a new structure filling the very considerable void he would leave. Since, therefore, Mr Waddell was going to cede control of BIG at some point in the future, Mr Waddell was perfectly prepared to allow new practices. But those would not have been his practices, if left in control.

287. This divergence of reasoning informed a culture clash between Mr Waddell and Freshstream which manifested itself (as I shall come to describe) on 1 October 2023.

Part IV(iii): The transaction with Freshstream

R. ENTER FRESHSTREAM

R.1. The deal's significance for Freshstream

288. Freshstream is a private equity investor. This transaction was the biggest ever undertaken by Freshstream;¹⁴⁴ even so, Freshstream only acquired a minority interest, which was unusual for them. They preferred the control that a majority stake brought.¹⁴⁵

R.2. Organisation

289. The Freshstream Investment Committee made the significant decisions.¹⁴⁶ The Investment Committee comprised (as has been described) five persons:¹⁴⁷ (i) Mr Smulders; (ii) Mr Davis; (iii) Mr McLain; (iv) Mr de Graauw and (v) Mr Fardad.
290. The Investment Committee would be advised by a “Deal Group”, specific to a particular transaction. There was thus a Deal Group for the BIG transaction, led by Mr Fardad, and comprising (although roles and activity varied over time) Mr Gradassi, Mr James Cartwright (“Mr Cartwright”) and Mr Alex Potter (“Mr Potter”).
291. The Deal Group would report to the Freshstream Investment Committee, which was the decision-making body. In order to assist the Freshstream Investment Committee to make its decisions, a presentation would be made to the Investment Committee in the form of written IC Memos¹⁴⁸ and oral presentations. The point of an IC Memo was to ensure that the Freshstream Investment Committee had drawn to their attention all material information,¹⁴⁹ although this rule was sometimes honoured in the breach, in that Freshstream

¹⁴³ This is, of course, an overstatement: Mr Waddell obviously did have senior managers under him. But he would intervene and cut through layers of management as and when it suited him – and with great success. That was Freshstream’s point: the organisation had got so big that a more formal structure was required.

¹⁴⁴ Day 14/p5 (XX Fardad).

¹⁴⁵ Day 14/pp5-7 (XX Fardad).

¹⁴⁶ Day 14/p8 (XX Fardad).

¹⁴⁷ Fardad 4/[13].

¹⁴⁸ Day 14/pp8-9 (XX Fardad).

¹⁴⁹ Day 14/p9 (XX Fardad).

Investment Committee members might convene, discuss and decide matters less formally. No minutes of Freshstream Investment Committee meetings were ever kept, nor was there any record of discussions or oral presentations by the Deal Group.¹⁵⁰

R.3. Decision-taking metrics: EBITDA

292. EBITDA stands for Earnings Before Interest, Taxes, Depreciation and Amortisation. It is a financial metric used to evaluate a company's operating performance and cash flow, excluding financing costs, tax jurisdictions and non-cash accounting items. It is calculated as:

$$\text{EBITDA} = \text{Net Income} + \text{Interest} + \text{Taxes} + \text{Depreciation} + \text{Amortisation}$$

293. EBITDA featured in the calculation of BIG's value, and the price which interested parties were willing to pay. EBITDA also featured – as has been described and as will be considered further below – in the Step-in Rights that Freshstream negotiated.
294. EBITDA is thus an important metric in this case. Although we will be coming to the Step-In Rights in due course, it is helpful to set out now the quarterly BIG EBITDA in fact achieved as against the EBITDA “target” contained in the Securityholders' Deed.¹⁵¹

Quarter	Actual quarterly EBITDA	Target EBITDA	% Actual / Target
Q3 2022	£4,558,028.33	£8,242,671.30	55.30%
Q4 2022	£1,699,208.08	£4,121,335.65	41.23%
Q1 2023	£4,638,111.36	£8,878,470.75	52.24%
Q2 2023	£3,622,661.40	£10,654,164.90	34.00%
Q3 2023	£5,278,007.17	£10,654,164.90	49.54%
Q4 2023	£1,094,359.86	£5,327,082.45	20.54%
Q1 2024	£3,858,630.74	£12,997,289.50	29.73%

R.4. Initial meetings

295. The investment in BIG was led by Mr Gradassi, a principal in Freshstream's investment team under the supervision of Mr Fardad. Mr Gradassi had a relationship with DC Advisory, and this was how BIG and Freshstream got in touch. Mr Fardad described his initial meetings as follows:¹⁵²

[24] I cannot recall exactly, but I suspect I first met Pete after we had signed an NDA with BIG to begin the DD process. I am pretty certain that I met Pete for the first time

¹⁵⁰ Day 14/pp79-80 (XX Fardad). The consequence of this is that IC decisions were neither formally documents nor formally disseminated for action. According to Mr Fardad, “the deal captain or the partner in charge of the deal, and the deal team who presented, would duly execute the verbally, sort of, given instructions and decisions of the IC”. In this case, Mr Fardad was the best record of what the IC decided as regards BIG, and who was primarily responsible for following through on IC decisions. His recollection tended to be poor.

¹⁵¹ See Freshstream Opening/[25].

¹⁵² Fardad 4.

at the Peterborough prep centre and Bob Ruprah from BIG was also there along with John Titchmarsh who had been brought on board by Pete to help get the company's financials in order to sell the stake in the business. DC Advisory representatives were also present but I can't specifically recall the names of the individuals but I suspect Richard Pulford was there with one of his junior team members.

[25] When I first met Pete, I noticed that he couldn't hear very well and had a hearing aid. It was immediately obvious to me that he had to fix it in place in order to hear properly. Once fixed, Pete was able to hear well and converse easily.

[26] Pete is very charismatic. He was very much into the detail. He knew exactly what was going on in that instant in his business. He knew how many cars were sold that day, at what price and how many cars were in the prep centre. That struck me about him. He also commanded the room and relatively speaking, Bob was quiet. They talked us through their financial data and John took us through their analytics – for example, how many cars were sold on each side, the price and the margin on the cars. They also showed us the business' dashboard, which is a tool that shows how many cars have been sold that day and at what price. The dashboard shows a snapshot of the business' sales for the day. Pete kept discussing and explaining how the dashboard works and it seemed like he was into the weeds of the business.

[27] I thought it was an interesting meeting and the business had potential – there were a few things I liked and I thought the prep centre was impressive.

[28] As far as I recall, the initial conversations and meetings with Pete and the management team went smoothly and there was a good rapport between us and the team at BIG. I remember thinking that Pete's approach was not like most professional CEOs – he does not communicate like a professional and polished CEO but he understands his business well and explained things logically.

296. Freshstream had exploratory meetings with BIG and its representatives from around March 2021.¹⁵³ It was at around this time that Mr Fardad and Mr Gradassi first met Mr Waddell.¹⁵⁴

R.5. Non-binding expression of interest

297. On 23 March 2021, Freshstream sent DC Advisory a non-binding expression of interest in BIG. The letter stated:

We left Peterborough on Friday afternoon very impressed by the professionalism, passion and quality of both the business and the people working there. We could sense the pride felt from working at Big Motoring World by all of the employees we interacted with, from those working on showroom floor who welcomed us, to the mechanics who explained to us the issues they were trying to fix. In our view, what Peter, Bob Darren & their team have built over decades of hard work is a high-quality, industry-beating business which we are very excited about.

We strongly believe that private equity ownership will ensure that the Company can maintain its identity and entrepreneurial culture which will allow it to continue its rapid growth for many years to come.

¹⁵³ See an email setting out an agenda for meetings in March 2021.

¹⁵⁴ Day 14/p10 (XX Fardad).

298. The letter went on to suggest a management incentivisation scheme giving the management team an equity stake in the business, and there was a strong hint that Freshstream would want to have their own CEO, with Mr Waddell taking a back seat:

We see a lot of parallels in Peter's desire to spend more time with his family and we are fully confident in our ability to make this happen in a manner which benefits Peter while preserving the business' ability to continue its growth...

299. At this stage, the proposal was for Freshstream to acquire 100% of BIG's share capital:

Our Proposal is to value Big Motoring World at an Enterprise Value of £150-180m for 100% of the issued share capital of the Company on a debt and cash free basis, assuming a normalised level of working capital. We have come to this valuation by applying a 10xEV/EBITDA multiple to an EBITDA range of £15-18m. We have produced a valuation range at this stage out of honesty because we have not had the time to do our work to ascertain a more precise FY20 EBITDA.

300. Although Freshstream emphasised their commitment to the long-term future of BIG, they made quite clear that Freshstream itself would be looking to exit in around 2023.

R.6. View of the strength of the car dealership market

301. At this time, the market for the investment in car dealerships was particularly strong, which was why a multiple of 10 to EBITDA was applied.¹⁵⁵

R.7. Freshstream's stated business approach

302. Mr Fardad was cross-examined about a passage in the letter regarding Freshstream's approach to its counterparties:¹⁵⁶

Q (Mr Gourgey, KC)

If we go to the bottom of that page, you say this, "you" being Freshstream:

"We should note that it is a core principle of our firm that we do not lower our initial valuation of any business at a later stage of a process unless due diligence brings to light unexpected matters that could have a material impact on valuation."

Then you say:

"What we value as a firm and as individuals above all is trust. Our aim is always to be transparent with our counterparties in order to build relationships with longevity."

Was that statement, that you always aimed to be transparent with counterparties, true when made, Mr Fardad?

A (Mr Fardad)

Yes.

¹⁵⁵ Day 14/pp11-12 (XX Fardad).

¹⁵⁶ Day 14/pp12-13 (XX Fardad). See also Day 15/47-48 (XX Fardad).

- Q (Mr Gourgey, KC)** And in relation to BIG, did you always aim to be transparent with Mr Waddell?
- A (Mr Fardad)** Tried to be, yes.
- Q (Mr Gourgey, KC)** Did you ever deliberately conceal matters from him relating to BIG?
- A (Mr Fardad)** No.
- Q (Mr Gourgey, KC)** It's right, isn't it, that you and your colleagues at Freshstream sought to build a relationship of trust with Mr Waddell?
- A (Mr Fardad)** That's correct.

R.8. The Neotas report

303. On 29 March 2021, Freshstream commissioned an investment due diligence report from Neotas, which was provided on 9 April 2021. The report red-flagged adverse employee – client reviews of BIG and specifically Mr Waddell:

Negative reviews were identified for Big Motoring World on employee review websites Indeed and Glassdoor.

The reviews describe the subject as “crazy”, “rude”, “absolutely disrespectful to staff”, “treats staff like absolute poo!”, talking “to everyone like dirt” and “not scared to scream and shout at people”. He is singled out in one review which states that “management, especially CEO, will at one point disrespect you!”

Other reviews are critical of management in general, who “consistently threaten you with your job”, “speak to you like absolute scum-bags”, “very rude”, “abusive”, comparing the atmosphere to “being on the set of Wolf of Wall Street but with cars”...

304. Mr Fardad considered this report.¹⁵⁷ He was asked whether it gave rise to concerns:¹⁵⁸

- Q (Mr Gourgey, KC)** And it must be the case, I suggest to you, that you had no concerns about offering to invest in a company which was getting reviews such as this?
- A (Mr Fardad)** I wouldn't say we had no concerns, no. We had concerns in terms of what this brought up, but then we would...if I can explain, maybe...?
- Q (Mr Gourgey, KC)** Yes
- A (Mr Fardad)** ...what Neotas does, and how we would then treat something like this when we received it. We did have concerns about this, so it was something that we looked at, but Neotas is an on-line, fairly sort of simple way to check reviews, fairly cheaply, before you get into deep due diligence.
- So in this particular case, yes, you know, you've got to consider the source, this is Glassdoor, so this will

¹⁵⁷ Day 14/p21 (XX Fardad).

¹⁵⁸ Day 14/22-23 (XX Fardad)

be all disgruntled employees putting whatever they like onto a website. So while this raises something that we would need to dig into further at a later stage, I wouldn't say we're not concerned about it...

305. This was thus a matter of concern, but for further investigation and not a deal-breaker. It did not put Freshstream off incurring the very considerable costs of due diligence.¹⁵⁹

R.9. A second approach

306. In a letter dated 1 May 2021, Freshstream submitted a second, non-binding, expression of interest:

Our Proposal is to initially acquire 38% of the entire issued share capital of Big Motoring World from existing shareholders for £65m, implying an Enterprise Value of £170 million, with the expectation that we would acquire a further 22% of the share capital of Big Motoring World within 18 months of the initial transaction at the same valuation. Our proposed Enterprise Value is on a debt and cash free basis and assumes a normalised level of working capital.

Big Motoring World is in our view a unique asset which value would be significantly reduced without a substantial re-investment from its founder who has built an incredible business. We also believe that re-investing into the Company alongside a professional investor with an active investment approach and a long track record of investing in retail businesses will strongly benefit the existing shareholders and allow them to maximise the value of their holding over time.

...

Freshstream will be granted a call option exercisable for up to 18 months post transaction to acquire a further 22% of the rollover securities from the vendors at the same valuation as the initial transaction, delivering up to a further £37m to the vendors. We envisage that we would choose to exercise the call option as long as the business is performing broadly in line with the business plan...

307. This proposed acquisition of a minority interest represented a significant shift in Freshstream's approach.¹⁶⁰

S. TIKEHAU AND OTHER INTERESTED BUYERS

308. Freshstream's attempt to acquire BIG at this stage failed. Mr Waddell received interest from another party, "Tikehau".¹⁶¹ Although this interest served to confirm the fact that BIG represented a "high quality" proposition,¹⁶² Mr

¹⁵⁹ Day 14/pp27-28 (XX Fardad).

¹⁶⁰ Put to Mr Fardad on Day 14/pp19-20 (XX Fardad), but the shift in approach was not elucidated.

¹⁶¹ Day 14/p14 (XX Fardad).

¹⁶² Freshstream email dated 31 March 2021: put Day 14/p14 (XX Fardad). There are a number of emails in the record which do not have the sender(s) or recipient(s) identified. Some were draft aide-memoires, some were sent. There is nothing sinister in this, but it does make assessing the history trickier. Mr Fardad was asked about this on Day 14/p15 (XX Fardad). Mr Spalton, KC for Freshstream produced a schedule showing (as best as could be discerned) whether Freshstream internal emails were draft or sent and if sent, to whom. At the end of the day, because these emails were evidence of Freshstream internal thinking, the question of whether they were sent or not matters little.

Waddell chose to negotiate with Tikehau, until Tikehau insisted that he (Mr Waddell) dispose of his interest in Carzam.¹⁶³

309. A version of the Step-In Rights that were included in the Securityholders' Deed ultimately agreed between Mr Waddell and the Investor was included in the transactional documents inconclusively being negotiated between Tikehau and Mr Waddell.¹⁶⁴ Although it is to anticipate, a version of the MDE provisions were contained in the transactional documents being negotiated between Mr Waddell and Freshstream from around December 2021.¹⁶⁵

T. RESUMPTION OF NEGOTIATIONS WITH FRESHSTREAM

310. Negotiations between Freshstream and Mr Waddell resumed in October 2021. In an email from Mr Gradassi, the outlines of a new deal were set out by Mr Gradassi. Although the detail differed, the structure of a minority stake acquisition plus a Call Option to obtain a (later) majority stake was retained.

311. These negotiations resulted in a third non-binding expression of interest letter dated 8 October 2021:

We value Big Motoring World at an Enterprise Value of £200m, which we assume translates into an Equity Value of c. £200m as per guidance received. Our Proposal is to initially acquire 35% of the entire issued share capital of Big Motoring World from Peter Waddell and John Bailey for £70m, with a call option to acquire up to a further 30% from Peter on terms described below.

312. The option price would be c. £62m if exercised within 18 months and at the prevailing fair market value if exercised between 18 and 24 months post transaction. As long as Freshstream remained minority shareholders, they would be granted "minority protection rights including, but not limited to, appropriate step-in rights and exit provisions, which we would like to agree before we start our diligence work. If the call option is exercised and Freshstream owns 65% of the Business, we will be granted full control rights over a range of corporate matters".

313. Freshstream proceeded to due diligence, purchasing from Tikehau the due diligence that they had carried out.¹⁶⁶ An IC Memo dated January 2022 provided the Freshstream Investment Committee with data regarding the acquisition. The Neotas report and other parts of the due diligence acquired from Tikehau were referenced.¹⁶⁷ A further background check – by Kroll – was also

¹⁶³ Mr Fardad did not accept that this was the reason why negotiations foundered, but nothing turns on this: Day 14/p28 (XX Fardad).

¹⁶⁴ Day 5/p19 (XX Waddell). Mr Waddell sought to distance himself from this fact by saying that dealings were lawyer-to-lawyer (Day 5/p21 (XX Waddell)). However, Mr Waddell's lawyers would have explained to Mr Waddell what was being negotiated on his behalf.

¹⁶⁵ Day 5/p31 (XX Waddell). There was some debate about when Freshstream became concerned to insert the MDE provisions into the Deed: Day 14/pp58ff (XX Mr Fardad). Although there was some suggestion that an exchange between Mr Waddell and a (female) employee of PwC was the genesis of the MDE provisions, that is clearly not the case. The MDE provisions were in travelling drafts of the Deed well before this incident. However, this "PwC" incident, which is described below, will certainly have reinforced the view in Freshstream that these provisions were necessary.

¹⁶⁶ Day 14/p31 (XX Fardad).

¹⁶⁷ Day 14/pp31-32 (XX Fardad).

referenced. Financial due diligence was conducted by a Mr David Thorley, who (during the due diligence) operated in parallel with BIG's existing CFO, Mr Titchmarsh.¹⁶⁸ Mr Thorley's role "was to basically sit with them and try to help them go through the DD process, which PwC would carry out".¹⁶⁹

U. THE KROLL REPORT

314. The (draft¹⁷⁰) Kroll Report is dated 16 February 2022. Of BIG generally, the report noted:

Big Motoring World now operates five car supermarkets, two of which it gained when it acquired SW Car Supermarket in November 2021. In 2019, it opened a state-of-the-art National Preparation Centre in Peterborough and also has a service centre in Kent as well as a car collection and service centre in Kent. In addition to selling cars, it offers extended warranties under its Big Assist Product brand and Bapchild Motoring World Kent provides finance as a credit broker regulated by the Financial Conduct Authority. From the mid-2000s, the company has enjoyed a significant acceleration of year-on-year revenues although growth in pre-tax profits has been more restrained. In 2020, the company reported turnover of GBP 304 million, despite challenges faced by the pandemic. Although trading in showrooms halted, the company claims that this was offset by online sales and continuing to extend its geographic reach of customers.

Waddell, the Person with Significant Control of Bapchild Motoring World Kent, currently owns 75% or more of the company's shares through Peter Waddell Holdco Limited. He also acts as a trustee for shares beneficially owned by his son Jack and John Bailey, with whom he founded Carzam, also has a stake...

Waddell is a well-known figure in the used car industry and acts as a spokesperson for Big Motoring World and Carzam. He is said to be thinking of moving to the chairman role at Big Motoring World and handing over the reins as CEO to Anton Khan, who came on board as COO when Big Motoring World bought SW Car Supermarket last year. He said in an interview in 2020 that he cannot imagine retiring from business completely.

315. Of BIG's reputation, the Kroll Report noted:

Big Motoring World has been popular with the motoring press who have chronicled its rapid expansion and revenue growth. The company has also received several awards from industry publications in the last several years. Kroll identified some areas of potential risk regarding perceptions of the quality of the company's product and HR practices.

The company has attracted some negative reviews from customers, with recurring complaints including being sold faulty or even unsafe cars, false advertising, and the warranty scheme being "a scam" which does not pay out and sales staff who are aggressive and lie. Further research would be required to ascertain whether the company's reviews are out of line with sector standards, relative to competitors.

In 2021, a Big Motoring World customer won GBP 1,000 compensation for a data protection breach after Bapchild Motoring World passed on his details to a warranty provider without his consent. No other litigation in which Bapchild Motoring World

¹⁶⁸ Day 14/p33 (XX Fardad).

¹⁶⁹ Day 14/p33 (XX Fardad).

¹⁷⁰ It is not clear whether there was a final report. It was not referenced before me.

Kent has been a named party has been identified and there are no judgments registered against the company.

Big Motoring World has an average score of 3.9 out of 5 on the *Indeed* website, with current and former employees complaining of unfair treatment including long hours with no overtime pay and a lack of respect from management. There was repeated commentary around “the owner/CEO”, which may be a reference to Peter Waddell, as being rude and disrespectful to staff. Kroll did not identify any reference to an internal culture tolerant of discriminatory behaviour of a racial or sexual harassment nature.

316. Turning to Mr Waddell specifically, a confidential source told Kroll that “Waddell has a “sixth sense” as to how the used car business works and is “remorseless in pursuing his vision...The source stated that he had no particular concerns in dealing with Waddell but that his single-mindedness as an entrepreneur may mean that “one of his strengths is probably not following other people’s direction”.” The source went on:

The source also commented on Waddell’s high attention to detail with respects to keeping costs down and shared another anecdote about his working practices: “I remember when he was quite [a] small [operator]...this is when I only knew his name and not him personally...one of the customers I had [at the bank] who was doing quite well but as he expanded he started to do not so well and then closed down and went out of business. I found out year’s later when I finally got to know Peter that he saw himself as a competitor to this business...he said what he’d do is...around midnight...drive onto their site, note every single vehicle and then undercut the prices on his site on any vehicle that looked similar or the same...this is before the internet...But that is the sort of individual he was...determined to succeed and prepared to do those hard miles and hard hours to give himself a commercial marketing advantage...That just...sums him up”.

This is a good instance of the driven and obsessive manner in which Mr Waddell carried on business.

317. The Kroll Report noted a number of both positive and negative comments. For present purposes, the latter (the negative) are more important than the former:

Negative comments repeatedly refer to an undesirable work-life balance at the company with “poor” management (January 2022) and perceived unfair treatment of workers. Kroll did not identify any references to allegations of racism or other forms of discrimination in the feedback.

“Terrible place to work”, said a reviewer, a former vehicle inspector, in May 2021. “Easy job to get but don’t expect to be there long, staff come and go, you barely get to know someone’s name. Management are terrible, unorganised and self centred, couldn’t care less. Promises are made but never kept with progression and pay.” Criticisms of unsatisfactory pay and progression was echoed by reviewers in February 2021, with the individual, who claimed to be a current employee, stating: “...colleagues aren’t trustworthy, doesn’t feel like a team and a happy place to work at. A lot of things go on behind closed doors.”

A reviewer in September 2020 described “the owner of the company” as “crazy” and claimed that he was “disrespectful to staff” and “[gets] rid of anyone he doesn’t like, even if they are a great sales executive.” A former yard assistant (July 2020) claimed that the management “has no idea about what stock they have before ordering new

stock in, big boss of Enfield is very rude abusive.” A review in March 2019 claimed the management was “not organised at all” and noted that “the commission seems great but what the company doesn’t tell you is you do not get it all...you do all the work, the owner is rude...and you never get paid right.” In May 2018, a former sales executive referred to “pay cuts and fines” levied on employees “even though you’ve been working like a dog.” In August 2017, an employee wrote: “There are too many cooks but no one with balls enough to make a decision for fear of getting spoken to like dirt from the CEO.”

318. The Kroll Report is extensive (running to 123 pages), and Mr Fardad would have read it carefully at the time.¹⁷¹ Its content did not prevent Freshstream from going ahead with the acquisition.¹⁷²

V. BASIS FOR THE DEAL AT VALUE £200m

319. Mr Waddell was committed to a £200m valuation of BIG, which Freshstream rationalised as a £20m EBITDA with a multiplier of 10.¹⁷³ In March 2022, the Freshstream Investment Committee was informed (in an IC Memo of that date) of the position. The purpose of the IC Memo was described as:

The purpose of this memo is to update the Investment Committee on our due diligence work on [BIG] and to seek final [Investment Committee] approval to sign the deal around the 18th of March, with a first closing occurring in late March (£52m investment incl £4m of deal fees) and a second closing once FCA approval is received between June and September (£21.5m investment). This initial transaction will see us acquire a 35% equity stake in the business with a call option to acquire another 35% within 27 months of our investment.

320. Under the heading “key risks and concerns”, were listed “key man risk / relationship with Peter” and “professionalisation of the business”. The IC Memo also noted as factors that might make the deal go wrong:

- Strained relationship with Peter leading to disruption in the business whilst we are in a minority position (performance, frustration of an exit)
- Key mitigants include robust step in rights, appointment of the Chairman and CFO and strong 2nd tier management with whom we started to build a direct relationship

When this document was put to Mr Fardad, he agreed that there was a concern within Freshstream that they were “heavily reliant on Peter because he is the key man in the business”.¹⁷⁴

321. The description of the team at BIG said this of Mr Waddell (as CEO) and Mr Khan¹⁷⁵ (as COO):

Peter Waddell (CEO)

¹⁷¹ Day 14/p34 (XX Fardad).

¹⁷² Day 14/p37 (XX Fardad).

¹⁷³ Fardad 4/[51]; Day 14/p38 (XX Fardad).

¹⁷⁴ Day 14/p50 (XX Fardad).

¹⁷⁵ Mr Khan left the business shortly after the Transaction, and does not feature very much in the narrative.

- Founder of Big Motoring World. Started with a small dealership opened in 1986.
- Pete is a highly driven, smart, individual with a strong gut instinct for the business. He is good at spotting opportunities (new sites, new business models, etc) and has a strong bias to action. However, he pushes his team hard and his management style is to apply pressure

Anton Khan (COO)

- Founder of SW Car Supermarket, a used car supermarket with two sites near Peterborough. SW Car Supermarket was acquired by Big Motoring World in November 2021. Whilst his title is COO, he operates more as a CCO and right hand man of the CEO.
- Anton attended our portfolio conference in 2021 and we have had extensive interaction with him over the last 4 months. He knows the industry well having built and run SW, is highly driven with ambition to be the CEO of the group. He has good people management skills and we understand is well liked and respected by the team. Our Chairman candidate rates Anton highly, but caveats that he has limited interaction with him. With mentoring and training Anton could be a potential CEO in 2-3 years time.

322. The IC Memo described actual and expected EBITDA in some detail; as well as the “downside” protections. There is a clear relationship between these two, in the sense that Step-In Rights were triggered by a failure to meet EBITDA:¹⁷⁶

Q (Mr Gourgey, KC)

I just want to ask you a few questions in relation to those items, Mr Fardad.

The reference to the “aggressive EBITDA levels” are to the very ambitious EBITDA targets that had been agreed for step-in with Mr Waddell, correct?

A (Mr Fardad)

It was – we didn’t agree, that was Peter’s own numbers, it wasn’t us sort of working with him on it.

Q (Mr Gourgey, KC)

Right. But you were happy to accept those numbers?

A (Mr Fardad)

Yes.

Q (Mr Gourgey, KC)

And you must have regarded those numbers as very ambitious?

A (Mr Fardad)

Yes.

Q (Mr Gourgey, KC)

And you must have seen that as a beneficial right to have, Mr Fardad, because aggressive targets increased your chances of being able to exercise step-in rights?

A (Mr Fardad)

Yes.

Q (Mr Gourgey, KC)

And you must have perceived that having the chance to be able to use step-in rights gave you leverage in any subsequent negotiations with Mr Waddell if you needed them?

¹⁷⁶ Day 14/pp42-43 (XX Fardad).

A (Mr Fardad) If they were that far below, more than 40% below those projections, which then would not have been that great, but yes, it would have given me some leverage. That's correct.

Q (Mr Gourgey, KC) In fact, even as performance progressed into 2022, 2023 and the EBITDA levels fell below the 60% threshold, the performance was still regarded by you as good?

A (Mr Fardad) In the context of the world as I found it after the deal, yes, correct.

323. Another protection was what may be called (tendentiously, but not inaccurately) an ability to “asset-strip” the business:¹⁷⁷

Q (Mr Gourgey, KC) At the foot of the page, there is reference to “Sale and leaseback proceeds of £43m with rent” at 2.2, and you say you noted:

“...this represents approximately 20% of the EV of the transaction. The real estate proceeds alone, after repaying the mortgage, would be sufficient for us to recover 40% of our initial investment.”

Now, it's right, isn't it, that these downside protections, including step-in rights and sale and leaseback potential, gave Freshstream a back-up plan if the business did not perform well and did not exit through a sale?

A (Mr Fardad) Yes

Q (Mr Gourgey, KC) The back-up plan was that Freshstream would use control rights, whether as a result of step-in or option exercise, to cash-strip the assets of the business and repay itself?

A (Mr Fardad) It was an option if that was the right thing to do at the time.

Q (Mr Gourgey, KC) And one means that was perceived of generating that cash would be sale and leaseback of freeholds owned by BMW?

A (Mr Fardad) Yes.

Q (Mr Gourgey, KC) So this was an attractive deal for Freshstream even if the business performed badly?

A (Mr Fardad) Up to a point – I mean, beyond a certain point it – that would still not be attractive.

324. This protection of the downside was highlighted in an internal Freshstream email:

...the key point that we need to focus on is that to the extent financial performance does not hit some pretty high thresholds, we can step in and assume something pretty close

¹⁷⁷ Day 14/pp43-44 (XX Fardad).

to operational control to ensure we get our min return. The first element would be a sale and leaseback. Then we sweep the cash flows and ultimately we can exercise our option and drag. So on a liquidation valuation basis, we should get out 1.45x return at the current EV.

325. This reflected Mr Fardad's understanding.¹⁷⁸

W. THE DEAL (MARCH 2022)

W.1. Corporate structure

326. A deal – the Transaction – between Mr Waddell and Freshstream was concluded in March 2022. It involved a complex corporate structure, which (for reasons I have given) it is unnecessary to describe. The simplifying terminology Mr Waddell/BIG/Freshstream continues to be sufficient.

327. Nevertheless, it is worth noting that the transaction involved the creation of a number of corporate entities. Bluebell Cars Holdings Limited (generally referred to as the Investor) was Freshstream's vehicle for its investment in BIG. The Investor is wholly owned by Bluebell Cars Ultimate Holding Limited, which is itself majority owned by a Freshstream Corporate Vehicle, Freshstream II Investments Cooperatif UA. The directors of the Investor are (and at all material times were) Mr Fardad and Mr McLain. I shall continue to refer to "Freshstream", which embraces the Investor, save where it is necessary to differentiate.

328. PWHL was a vehicle for Mr Waddell's interest in BIG. PWHL is wholly owned by Mr Waddell, who is (and at all material times was) PWHL's only director. Again, I shall only differentiate between Mr Waddell and PWHL where this is necessary.

329. The share capital in BIG was held in a complex manner, which it is unnecessary to describe. The incidents attaching to these shares were various. For present purposes, it is sufficient to note that by number, PWHL was the majority shareholder, holding 62.86% of the shareholding. Freshstream held c. 37%.

W.2. The Call Option and the Freshstream Minority Rights

330. As a condition of the investment by Freshstream, Mr Waddell and Freshstream (as well as other parties) entered into the Securityholders' Deed, which has already been described. The key rights to recollect (for present purposes) are Step-In Rights and the MDE Rights. These were rights conferred on *Freshstream* which Freshstream was entitled to exercise in accordance with their terms in Freshstream's interest, without regard to the interests of Mr Waddell or BIG. In other words, if Freshstream, as minority shareholder, wanted to exercise these rights – even if this was contrary to the interests of Mr Waddell (as majority shareholder) or even BIG – Freshstream was free to do so. That, in a very real sense, was the *point* of the Freshstream Minority Rights. They existed to protect *Freshstream*. There was obviously an alignment between Freshstream's interests, BIG's interest and those of Mr Waddell – all

¹⁷⁸ Day 14/pp45-46 (XX Fardad).

wanted BIG to do well. But, in strict legal terms, the rights conferred on Freshstream were *Freshstream's* rights.

331. The same is true of the Call Option: the decision to exercise it was Freshstream's, acting in its own interest.
332. These issues are relevant to the question of unfair prejudice: the exercise of a right conferred on a party which owes no specific duty to the member bringing the petition may well involve *prejudice* to the petitioner, but it is unlikely to be *unfair*. Mr Waddell sought to ameliorate that consequence by contending that Freshstream's rights were constrained by a common understanding or an estoppel or an equitable restraint. The case in this regard was shifting, and will be considered as a whole when the question of unfair prejudice is considered and determined.
333. Pursuant to the Securityholders' Deed, Freshstream also had the right to appoint a non-executive chair of BIG and BIG's CFO.
334. The persons appointed were Mr Laurence Vaughan as chair. His role quickly came to be regarded as executive, not non-executive. Mr Waddell appears to have acquiesced in this evolution in Mr Vaughan's status. The first CFO appointed was Mr Alex Maby. The circumstances of Mr Maby's departure from BIG forms one of the Incidents (Incident No 12).
335. Although the right to appoint was – like the Call Option, Step-In and MDE rights – a right that belonged to Freshstream, once appointed these directors owed fiduciary duties (or directors' duties) to BIG, not to Freshstream.

W.3. Mr Waddell's Service Agreement

336. Although there was no doubt a contract of employment between Mr Waddell and BIG appointing him as CEO, if it existed in writing, I was not taken to it. What is material for present purposes is the contract of employment Mr Waddell entered into with BIG at the time of the deal, the Waddell Service Agreement already described. It is now necessary to describe the terms of the Waddell Service Agreement in greater detail.
337. Mr Waddell was appointed as BIG's Chief Executive Officer (clause 4.1) and agreed (in clause 4.2) without limitation or further remuneration to carry out duties for and hold any office or other appointment in or on behalf of BIG. He was appointed a director. His duties were set out in clause 4.3:

[4.3.1] act as a director of the Company;

[4.3.2] comply with all and any statutory, fiduciary or common law duties to the Company or any Group Company of which you are a director;

[4.3.3] devote the whole of your working time, attention and ability to carrying out your duties under this Agreement;

[4.3.4] faithfully and diligently perform your duties in a professional and competent manner in willing co-operation with others and exercising only such powers as are consistent with those duties;

[4.3.5] comply with all and any lawful and reasonable directions of the Board or anyone duly authorised by it;

[4.3.6] comply with all codes, procedures or policies adopted by the Company, including, but not limited to, the Company's anti-corruption and bribery policy, anti-facilitation of tax evasion policy, the Company's data protection policy and any staff handbook;

[4.3.7] act in accordance with the memorandum and articles of association of the Company and of any relevant Group Company (the "Articles");

[4.3.8] use your best endeavours to promote, protect, develop and extend the success of and at all times act in the best interests of the Company and any Group Company, taking into account where appropriate the interests of the Group as a whole;

[4.3.9] keep the Board promptly and fully informed (in writing if requested) of your conduct of the business or affairs of the Company and of any relevant Group Company of which you act as a director and provide such explanations as the Board may require;

[4.3.10] promptly make such reports to the Board on any matters concerning the affairs of the Company as are reasonably required;

[4.3.11] report to the Board your own wrongdoing and any wrongdoing or proposed or suspected wrongdoing (included but not limited to breaches of the Bribery Act 2010) of any other employee, director or any other person employed or engaged by the Company or any Group Company as soon as practicable after becoming aware of it;

[4.3.12] ensure that the Board is aware as soon as practicable of the intention (whether settled or not) of any agent, employee, officer or worker of the Company or any Group Company who reports directly or indirectly to you to terminate their employment or engagement with the Company or any Group Company;

[4.3.13] under no circumstances whatsoever either directly or indirectly receive or accept for your own benefit any commission, rebate, discount, gratuity or profit from any person, firm or company having business transactions with the Company or any Group Company in existence from time to time unless previously agreed with the Board;

[4.3.14] comply with any law, principles, rules and regulations which apply to the Company or you as a director or employee of the Company;

[4.3.15] comply with any corporate governance code or guidelines to the extent required by law or regulation or as adopted by the Company from time to time;

[4.3.16] notify the Board or such other person stipulated by the Company immediately on becoming aware of an actual or potential data security breach and take such steps as may be required to handle such breach.

338. Although the BIG Employee Handbook was to be complied with pursuant to clause 4.3.6, clause 4.4 provided that:

The Staff Handbook does not form part of this Agreement and the Company may amend it at any time. To the extent there is any conflict between the terms of this Agreement and the Staff Handbook, this Agreement shall prevail.

339. Clause 7.1 provided for Mr Waddell's salary:

The Company will pay to you during the Appointment a salary of £750,000 per year inclusive of any fees payable to you as the holder of offices or appointments within the Group or on behalf of the Company or any Group Company and less deductions for income tax, employee's National Insurance contributions and any other deductions required by law to be made or agreed by you.

340. Mr Waddell's employment with BIG was ultimately terminated pursuant to clause 16.6 of the Waddell Service Agreement. It is, however, appropriate to reference the entirety of clause 16:

[16.6] The Company will also be entitled to terminate the Appointment with immediate effect and without payment in lieu of notice or any liability to make any further payment to you (other than in respect of amounts accrued due at the Termination Date) if you:

[16.6.1] commit any act of gross misconduct or wilful neglect of duty or continue any other material breach of your obligations under the Agreement which will include but is not limited to breach of the Company's anti-corruption and bribery policy, anti-facilitation of tax evasion policy, your obligation under clause 4.3 and/or your warranties under clause 2.1;

[16.6.2] engage in any conduct which, in the opinion of the Board, is calculated or likely to affect prejudicially the interests of the Company or any Group Company, brings or is likely to bring the Company or any Group Company into disrepute or which is likely to cause your continued employment to be detrimental to the interests of the Company or any Group Company;

...

[16.6.5] commit any breach of fiduciary duty or act of dishonesty whether or not relating to the Appointment.

X. CONCLUSION OF THE DEAL

341. The deal concluded on 4 April 2022. In Mr Waddell's words:¹⁷⁹

[54] The contractual documents for the deal were signed on 4 April 2022. Freshstream agreed to buy approximately 36% of the shares in BIG (through its holding company, Bluebell Cars Holding Limited) for around £72 million – an equity valuation of close to £200 million (and an enterprise valuation of around £217 million). I kept around 62% of the business (worth around £126 million) through my holding company [PWHL], with Mr Khan retaining some shares as well. (Mr Khan left the business shortly after the deal. His shares were repurchased and cancelled, which increased my shareholding to 63%.) I remember Mr Fardad telling me that it was the first deal he had done as a minority and that Freshstream normally acquired a majority stake. He also said that it was the biggest investment in their fund. When we were finalising the press release to announce the deal, Mr Fardad request that we remove the reference to

¹⁷⁹ Waddell 5.

EBITDA being £11 million in 2021 as his investors were expecting EBITDA to be around £20 million.

[55] The transaction was done in two stages because Freshstream needed approval from the FCA. Obtaining the necessary approval was going to take time and Freshstream did not want to wait. Freshstream acquired around 25% when the deal was signed, and were going to acquire the balance once they obtained FCA approval. But when the FCA approval came through in the middle of 2022, Freshstream did not have the money to pay for the remaining shares, and they could not get it because their investors were not available in the summer period. We agreed that Freshstream would pay me interest because of the delay in getting their money. The second part of the deal completed on 30 September 2022. After the second round, Freshstream had invested around £72 million, of which I had received around £41 million or £42 million.

IV(iv): The thinking of the parties on conclusion of the Transaction

Y. FRESHSTREAM

Y.1. Freshstream's understanding of Mr Waddell

342. Mr Fardad considered Mr Waddell to be a hands-on, unconventional, CEO, knowing a great deal about a business he had grown himself. He described Mr Waddell as a “character”,¹⁸⁰ with strong views about things,¹⁸¹ “open”.¹⁸²

343. Mr Fardad – after summarising negotiations he had had with Mr Waddell – expressed the view in an email “[t]hat took 1 hr...the guy can talk for England...”.¹⁸³ In evidence, Mr Fardad said:¹⁸⁴

I don't recollect exactly my view at that point in time, but when I met Pete, Mr Waddell, my view of him, immediately after the meeting and around this time, was he's impressive, you know, he'd achieved a lot building this business. Very much into the detail. He really does understand, goes into every single detail of his business. Smart individual. Does, you know, command the room, I think was one of the other things I thought about him. You know, he does command the room in a meeting. Yes, those are my impressions of him around this time.

344. Mr Fardad was reluctant to characterise Mr Waddell as obsessive, preferring the phrase “[h]e is very much into the detail”.¹⁸⁵ I do not accept this (more benign) characterisation, and it may be that Mr Fardad was seeking to avoid admitting that Mr Waddell had characteristics that might assist Mr Waddell in establishing a disability. But one can be obsessive without being disabled, and Mr Waddell was unquestionably obsessive (and not, in this regard at least, disabled).

¹⁸⁰ Day 14/p51 (XX Fardad).

¹⁸¹ Day 14/p51 (XX Fardad).

¹⁸² Day 14/p52 (XX Fardad).

¹⁸³ Email from Mr Fardad dated 6 Apr 2021.

¹⁸⁴ Day 14/p18 (XX Fardad).

¹⁸⁵ Day 14/p18 (XX Fardad).

345. The deal was not ideal from Freshstream’s point of view, in that Freshstream were only obtaining a minority interest, and would ordinarily want a majority stake:¹⁸⁶

In a majority deal we have full control and the term sheet is fairly short. In a minority deal we needed to have governance protections to protect our investment and...we also negotiated a call option, and we would have different governance rights if the call option was exercised. The term sheet was therefore fairly lengthy but the deal was not unusually complicated for a minority investment.

346. However, one consequence of Freshstream’s position as a minority shareholder was that Mr Waddell’s character was of importance, because he was not only CEO, but also the majority shareholder. The minority stake – in combination with the perceived character of Mr Waddell – also made Freshstream’s rights under the Securityholders’ Deed important. Mr Gradassi explained the importance of Mr Waddell’s personality as follows:¹⁸⁷

So, at the time, there was a general concern, as with all founder-led businesses, that all the key decisions are effectively flowing through one individual. So, investing a lot of money in a founder-led business creates structural risk, whether it was BIG or any business. The founder is very important when it comes to commercial decisions, and so by backing BIG, we were effectively backing Peter. Other concerns were around the number of related party transactions, I remember at the time. So Peter was a landlord of a few properties owned by him, but lent to Big Motoring World and so, in the event that the relationship would deteriorate, that would be something to bear in mind.

And we knew it – so it was high pressure individual, so how we would manage that relationship in bad times, not only in good times, was something we were conscious of at the time of investment...

...our overall concern, general concern, was like dealing with someone with high pressure when the environment gets tough...

347. Mr Gradassi regarded Mr Waddell as a “unique character”.¹⁸⁸ During due diligence, Mr Waddell’s penchant for “flashy cars”, showing off, nicknames and personal jokes were evident.¹⁸⁹ However, Mr Gradassi also noted (during due diligence) that “[Mr Waddell] could switch very quickly and get angry at people”.¹⁹⁰ He saw this as an isolated incident, and did not consider it to be a huge concern.¹⁹¹

348. In an internal Freshstream email dated 21 March 2021, Mr Gradassi expressed the view:

- Management transition

¹⁸⁶ Fardad 4/[37].

¹⁸⁷ Day 17/pp155-156 (XX Gradassi).

¹⁸⁸ Day 17/p146 (XX Gradassi), confirming what he said in his witness statement.

¹⁸⁹ Dat 17/pp146-147 (XX Gradassi). Some of Mr Waddell’s “jokes” were reviewed with Mr Gradassi at Day 17/pp159ff (XX Gradassi). Just as with “banter”, the term “joke” needs to be carefully used, particularly when it is being used as *justification*.

¹⁹⁰ Day 17/p154 (XX Gradassi).

¹⁹¹ Day 17/p154 (XX Gradassi).

- Founder/CEO will need to change but we have been impressed by the ops and marketing director so we do not think we are taking a huge risk here
- Lot's of knowledge but not the kind of guy who could operate under PE ownership – not corporate background we would expect, self-made man, etc

Q: CEO, what do you think

- Perfect example of rags-to-riches success story
- Beaten by his mother, homeless, ended up in London starting mini-cab driver - extremely driven, passionate to prove to himself and the world that he is a successful man / tendency to show up his wealth etc
- Really caring about [his]¹⁹² team / a real leader, you can see they look up to him
- Is he someone with whom we could have VCP sessions or Board, probably not – very likeable guy, but not corporate at all. Fine, he wants to work less, so not an issue, but profile is a bit different to what we are used to
- Given knowledge, are we taking risk here – probably not, is our view, strong COO/marketing director, and the business I think outweighed him

349. This was a note (probably to Mr Gradassi himself) to enable him better to inform the Freshstream Investment Committee, but it would have reflected what Mr Gradassi thought and said to his colleagues. Mr Gradassi stressed that at the time he was relatively junior, and I accept that. But Mr Gradassi was an impressive witness, and his views (junior as he was) would have carried weight.¹⁹³

350. Ten days' later, in the email dated 31 March 2021, Mr Gradassi said this:¹⁹⁴

The key concerns I have are the following (in order):

- People and who we back:
 - CEO – Pete would need to be transitioned out relatively quickly in my view, we can't have him running the business there is some risk from a reputation perspective. He can remain as NED and if he wants to work less, don't think it would be an issue for him and he even said he would be fine appointing someone – either Bob or an external hire. I do think if we were to progress, I would start that search asap so we have a CEO in place by the time we do the deal (e.g. in three months). Will also give us much more comfort on what we are buying
 - CFO – ideally we bring an interim guy alongside us who is our guy. I am a bit concerned by the fact they know each other very well and that the

¹⁹² The email says "this", but I find this is a typo.

¹⁹³ Day 17/pp147-148 (XX Gradassi).

¹⁹⁴ Put Day 17/pp151-153 (XX Gradassi).

CFO has just been brought in to help them sell the company i.e. he has no skin in the game

351. Both of these documents were written while Freshstream was considering a 100% acquisition earlier on in the deal-negotiation process, rather than (as at the time of the Transaction) a minority interest. However, I consider (and so find) this remained Freshstream's thinking at the time when the Transaction concluded. In terms of improving the business, Freshstream's assessment of Mr Waddell's likely future contribution to the business was most unlikely to change. Of course, *implementing* such changes would be far harder where Freshstream was contemplating the acquisition of only a minority stake.¹⁹⁵ In cross-examination, Mr Fardad suggested that this was Mr Gradassi's view, not shared generally within Freshstream, which had a more uncommitted view as regards Mr Waddell's tenure as CEO.¹⁹⁶ I do not accept this evidence. It was, from the outset, Freshstream's strategy to have in place new management before they exited, and the new management would require time to bed-in so that the business could plausibly be sold. Doubtless – given his reputation in the industry and his skills – the plan would have involved retaining Mr Waddell in some non-executive capacity.
352. There is nothing odd about this: the Call Option envisaged Freshstream acquiring a majority interest, and so control. Although there was no *obligation* in Freshstream to exercise the Call Option, it would be entirely natural – at this stage – for Freshstream to anticipate that the Call Option would be exercised.
353. Mr McLain was asked about this:¹⁹⁷

Q (Mr Gourgey, KC)	So you had an eighteen-month period from the start of the entry into the SHD to the start of the option period, and you were ideally looking for an exit eventually from this investment through a sale, weren't you?
A (Mr McLain)	As a financial investor, that's what we do every time we make an investment. Our investment always has a natural end...
Q (Mr Gourgey, KC)	I think the answer is "Yes" to my question?
A (Mr McLain)	Yes, and it was agreed that there would be an intention to exit in approximately three years. It's in the SHD.
Q (Mr Gourgey, KC)	Yes. And you wanted to have in place, ideally, a different CEO and a more professional management team, 12 to 18 months before you exited, didn't you?
A (Mr McLain)	Yes. We are typically the first providers of institutional capital to founder and entrepreneurial led businesses, and part of the – it's often a founder succession story and part

¹⁹⁵ Mr Fardad suggested that this was Mr Gradassi's view, which was not shared generally within Freshstream, who would look at Mr Waddell's tenure as CEO in a less conclusory way: see Day 14/pp24-26 (XX Fardad). Given the later events – which are considered subsequently – I do not accept this evidence. For the reasons that I give, I consider that Mr Gradassi's email expresses Freshstream's settled view that it wanted Mr Waddell out of the CEO role.

¹⁹⁶ Day 14/pp24-26 (XX Fardad).

¹⁹⁷ Day 18/pp72ff (XX McLain).

of that is looking forward to the next buyer of the business, they need a professional management team in place who will continue to run the business, not someone who's intending to retire.

Q (Mr Gourgey, KC) And when you entered into the SHD, the thinking was that Mr Waddell would step down as CEO once you had exercised the option, that's right, isn't it?

A (Mr McLain) Those are – again, you're asking two questions at once. The thinking was that Mr Waddell wanted to step down because he wanted to retire.

One path to achieving that would have been through exercising the option, but it wasn't the only path.

Q (Mr Gourgey, KC) Well – really? So you are saying that it was envisaged that even if he didn't – when you entered into the SHD, it was envisaged that even if [Freshstream]¹⁹⁸ didn't exercise the option, Mr Waddell would step down as CEO?

A (Mr McLain) Well, he told us he wanted to retire.

Q (Mr Gourgey, KC) Yes, but that was in the context of you acquiring a majority stake in the business? That's right, isn't it, Mr McLain?

A (Mr McLain) I think they're different things, right? So that is one path to him retiring, is to sell a controlling stake and retire. But the reasons why he told us he wanted to retire by age 60 were not about who controlled the business, they were about spending time with family, being home with his son, etc.

Q (Mr Gourgey, KC) It was obvious to you, when you entered into the SHD, that Mr Waddell was not envisaging retiring from the business unless he became a minority shareholder?

A (Mr McLain) I think not necessarily. We see this all the time with founders, that part of the reason they come to us is we help to facilitate a founder transition out of the business. Everyone has their own reasons for wanting to do that. So when we entered into the SHD, did I know what Mr Waddell would be thinking about his job prospects two years into the future? No, because often the founder himself doesn't know because their identity, their professional existence, is so wrapped up in the business, as you get a couple of years down the line and they've started to move on to other things, it's very difficult to predict how that's going to go. So, yes, of course, he would've preferred that we exercise the option. He's made that very, very clear. I didn't think it was a foregone conclusion that he would never leave the business if we didn't.

¹⁹⁸ The transcript says "he", but "Freshstream" was obviously meant.

354. Mr McLain was being asked about Freshstream’s thinking of Mr Waddell’s plans at the time the transaction concluded. Of course, it would have been *possible* for Mr Waddell to retire from the business, but remain majority shareholder. But the expectation within Freshstream was that Mr Waddell’s conception of retirement involved reducing his involvement in the business both in terms of his workload *and* in terms of his financial interest. Mr McLain chose to avoid giving a straight answer to this straightforward question, because he did not want to make any concession as to the importance of the Call Option to Freshstream’s thinking. I find that Freshstream’s thinking, at this time, was that in order to effect exit in three or so years, the Call Option would have to be exercised. I consider that Mr McLain was being deliberately disingenuous in his evidence recorded in [353].

Y.2. The teaching of the due diligence

355. In both the contemporaneous documents authored by Freshstream, and in the evidence the Freshstream witnesses gave in court, were circumspect about how much they knew about the less pleasant aspects of Mr Waddell’s character. However, the due diligence, which has been described above, and which Freshstream considered, contained some clear warnings as regards Mr Waddell’s personality. I consider that the relevant persons within Freshstream – the Freshstream Investment Committee, in particular Mr Fardad, and Mr Gradassi – would have been aware of this due diligence, including in particular the negative parts.

Y.3. Alleged misconduct during due diligence (pre-March 2022)

Y.3.1. Summary

356. The concerns that Freshstream should – and, as I find, did – have about Mr Waddell were reinforced by an episode involving a young (unnamed) female employee of PwC, who I shall refer to as X.¹⁹⁹ There was very little evidence surrounding this event (neither PwC nor X provided any evidence to the court, whether documentary or oral), and the recollections of Mr Gradassi, Mr Fardad and Mr Waddell were both vague and contradictory.²⁰⁰ The episode must, therefore, be approached with care. But it is one of importance in terms of what it tells of Freshstream’s attitude going in to the Transaction in general and as regards Mr Waddell in particular.
357. Freshstream contended that during the course of a “hybrid” video-call between a number of people, some attending in person, some remotely, including Mr Fardad, Mr Gradassi,²⁰¹ Mr Waddell and various representatives of PwC including a junior female representative, X, Mr Waddell made what was said to

¹⁹⁹ I shall use “X” to anonymise all witnesses. Because they are involved in different incidents, there is no prospect of confusion.

²⁰⁰ None of this is a criticism. PwC and X were not asked to provide documentation or evidence; and the recollection of this event was vague on the part of witnesses, and I accept (in this case) that their memories were not very good.

²⁰¹ Mr Gradassi was not sure whether Mr Fardad was on the call: Day 17/p162 (XX Gradassi). Mr Fardad had no recollection of the incident, and was so vague in his recollection generally, that he may not have been.

be an inappropriate comment to X. This was reported upwards within PwC, and a representative of PwC on-reported the comment and the effect it had had on X to Mr Gradassi at Freshstream. So much can uncontroversially be said.

Y.3.2. Evidence of Mr Fardad regarding the comment made by Mr Waddell

358. Mr Fardad's witness statement says:²⁰²

I remember that Gilles told me that on a video call, Pete had made an inappropriate comment about a young female PwC employee's looks (he said something along the lines that she was pretty). I was in that meeting, but I don't recollect hearing the comment. Gilles was also at the meeting and told me about it. After it came to my attention, we almost decided to pull the deal but the partners and I at Freshstream decided that I should speak to Pete first and make clear that as an institutional investor we could not tolerate this behaviour and it could not happen again. Pete said he was trying to pay a compliment and be nice but told me that he understood my point and said it would not happen again.

359. Mr Fardad, although he was (according to him) on the call, had no recollection of the comment.²⁰³

- Q (Mr Gourgey, KC)** How many people were on the call?
- A (Mr Fardad)** It was a lot. It was maybe three, four, a number of people from PwC, a number of people from...
- Q (Mr Gourgey, KC)** Freshstream?
- A (Mr Fardad)** Freshstream. And a number of people from the company. So it was fairly high – you know, large number of people.
- Q (Mr Gourgey, KC)** And you didn't notice anything yourself inappropriate being said by Mr Waddell on the call, did you?
- A (Mr Fardad)** I didn't hear it, yes. No, I didn't witness it.
- Q (Mr Gourgey, KC)** You were on the call for the whole call, I assume?
- A (Mr Fardad)** I was, but I didn't hear it.
- Q (Mr Gourgey, KC)** You didn't hear anything inappropriate being said by Mr Waddell, was my question?
- A (Mr Fardad)** No.
- Q (Mr Gourgey, KC)** If Mr Waddell had said on the call that a young, female, PwC employee was pretty, you would have regarded that as inappropriate, I assume?
- A (Mr Fardad)** Correct, yes.
- Q (Mr Gourgey, KC)** So, if he had said it, you certainly would have noticed, wouldn't you?
- A (Mr Fardad)** No, not necessarily.
- Q (Mr Gourgey, KC)** Why do you say "not necessarily"?

²⁰² Fardad 4/[43].

²⁰³ Day 14/pp64ff (XX Fardad).

- A (Mr Fardad)** It was a very long call about the details of accounting, which – there was at least a dozen other people on the call and I could easily have missed it, which I did. I did not hear him say that.
- Q (Mr Gourgey, KC)** Well, it might have made quite a difference in the atmosphere of the call, mightn't it, if he'd said something along – in the midst of a somewhat dull call about finances, if somebody had made a comment as inappropriate, such as that the lady is pretty, you would have noticed it, wouldn't you?
- A (Mr Fardad)** I didn't notice it.
- Q (Mr Gourgey, KC)** If Mr Waddell had simply said "good to have someone with a smiling face", you wouldn't have regarded that as inappropriate, would you?
- A (Mr Fardad)** I don't think so, no.

Y.3.3. Mr McLain regarding the comment

360. Mr McLain had no recollection of the comment or even if it was made.²⁰⁴ To anticipate, he also could remember none of the discussion that took place subsequently within Freshstream once PwC had called Mr Gradassi.²⁰⁵ But he did make the point that this episode reinforced Freshstream in their view as to the importance of the MDE provisions.²⁰⁶

So we had negotiated the MDE provisions. Pete had said that he was going to abide by them. We did due diligence to check whether we thought that was credible: we concluded that it was, erroneously. And therefore we felt we had the protections we needed.

361. I accept this evidence. Although the MDE provisions were a fixture in the draft Transaction documentation from an early stage, the point Mr McLain was making was altogether independent of the drafting history. The MDE provisions mattered because of Mr Waddell's character; and this episode illuminated that character in a manner emphasising the importance of the MDE provisions.

Y.3.4. Mr Gradassi regarding the comment

362. Mr Gradassi had a better recollection:²⁰⁷

[21] One incident stands out when I think about whether there were any "red flags" about Pete's character before Freshstream made the investment. We were on a due diligence video call with PwC, who assisted with our financial due diligence. I remember that Pete, John Titchmarsh (who I think had come on board as interim CFO of BIG during the due diligence process, and Richard Pulford from DC were also on the call. I cannot recall if Reza was on the call. Pete said something to a female PwC analyst along the lines of "you're pretty". Immediately after the call, the seriousness of the incident dawned on me. I was shocked – it was clearly very inappropriate. The PwC

²⁰⁴ Day 18/p94 (XX McLain).

²⁰⁵ Day 18/p94 (XX McLain).

²⁰⁶ Day 18/p95 (XX McLain).

²⁰⁷ Gradassi 1.

partner called me afterwards to say we needed to talk, because the analyst had asked to be de-staffed from the BIG deal. The matter went to PwC's risk committee, and they had to take her off the deal and find a replacement. I phoned Reza to explain what had happened, expressing my concern about the seriousness of the incident and what it suggested about Pete's character. At that stage, I instinctively thought we might have to kill the BIG deal. I understand it was discussed between Reza, Adam McLain (a partner and the General Counsel at Freshstream) and the rest of the partnership. I was not privy to those discussions. The incident heightened the focus on Pete and the potential reputational risk should we decide to invest.

[22] Personally, I was concerned about the reputational risk...

363. As I have noted, the court received no evidence (documentary or otherwise) from PwC or X.²⁰⁸ Neither Mr Fardad nor Mr McLain had any recollection at all of the incident, and Mr Gradassi's recollection was devoid of all context and (this is no criticism) I question his recollection even of the content. Words along the lines of "you're pretty" do not generally drop into a conversation out of nowhere.
364. Mr Gradassi was pressed on this in cross-examination, and Mr Waddell's version of events put to him. Mr Waddell accepted that a comment had been made, but that it had been along the lines of "Thank god we've got someone who is smiling". Mr Gradassi's evidence was as follows:²⁰⁹

- Q (Mr Gourgey, KC)** Now, in relation to the incident itself, how long was the call?
- A (Mr Gradassi)** I can't remember. It may have been a long call if it is an FD – a call on members can, it can be quite long.
- Q (Mr Gourgey, KC)** Now, in your witness statement, going back to paragraph [21], you say, about six lines down:
"Pete said something to a female PwC analyst along the lines of "you're pretty".
- A (Mr Gradassi)** Yes.
- Q (Mr Gourgey, KC)** You didn't make a note at the time of the call as to what was said, did you?
- A (Mr Gradassi)** No.
- Q (Mr Gourgey, KC)** And you didn't make a note, subsequent to the call, of what was said, did you?
- A (Mr Gradassi)** No, I didn't take a note, no.
- Q (Mr Gourgey, KC)** And you didn't record in any email or WhatsApp with any of your colleagues what was said, did you?
- A (Mr Gradassi)** No, but I remember telling Reza, who is the partner in charge, after the call.
- Q (Mr Gourgey, KC)** No.

²⁰⁸ I stress this is no criticism of the parties, PwC or X.

²⁰⁹ Day 17/p165ff (XX Gradassi).

And do you accept that in fact Peter said something along the lines “Thank god you’ve got someone who is smiling”.

A (Mr Gradassi)

I don’t remember that.

Q (Mr Gourgey, KC)

Rather than say “You’re pretty”.

A (Mr Gradassi)

No, I don’t remember that. There was some comment about the appearance.

Q (Mr Gourgey, KC)

You didn’t think, when the remark was made, that there was anything inappropriate about the remark, did you, at the moment when it was made in the call?

A (Mr Gradassi)

The call, it went very quickly. Questions were going back and forth, so it didn’t dawn on me until after the call was finished that it was inappropriate.

Q (Mr Gourgey, KC)

So, at the time – just to answer my question – at the time it occurred, you say that the remark was made during the call, it did not occur to you it was inappropriate?

A (Mr Gradassi)

When the actual comment is made, no, it does not dawn on me at this time, correct?

Q (Mr Gourgey, KC)

Okay.

And you say it dawned on you after the – immediately after the call? Was it in fact after you spoke to somebody at PwC?

A (Mr Gradassi)

No, I think it was after the call, and then the partner called me very quickly afterwards.

Q (Mr Gourgey, KC)

There was no discussion between – I suggest there was no discussion between you and Reza, subsequent to this incident, about possibly pulling out of the deal, was there?

A (Mr Gradassi)

No, I categorically deny that. I remember telling Reza, “This is serious, are we going to do the deal?” or something along those lines.

Q (Mr Gourgey, KC)

You made no mention, did you, of this incident in the IC memo? Did you?

A (Mr Gradassi)

In the IC memo, no. But the way we got comfortable and the way we addressed these risks was through the legal documentation, and it’s not uncommon for us to talk about the merits of a deal from a commercial perspective in the memo and then to address the risks we have in mind in the legal docs, because we don’t do an update of the legal documents to IC because those are very long documents.

Q (Mr Gourgey, KC)

But the role of the – one of the matters that I suggest you think about when you’re putting together an IC memorandum for a substantial investment is to ensure that anything material to the decision that is to be made is disclosed in the memorandum? That’s right, isn’t it?

- A (Mr Gradassi)** So, yes, the investment committee is made up of the five founding partners of Freshstream and the PwC incident was discussed with the same partners when it happened, so they were already aware of this incident, and so that's why it was not put in the memo at the time.
- Q (Marcus Smith J)** Just to understand how that might have worked, you recall speaking to Mr Fardad?
- A (Mr Gradassi)** Yes.
- Q (Marcus Smith J)** And you would presume he would speak to the other members of the IC?
- A (Mr Gradassi)** I would presume so, yes, because of the seriousness.
- Q (Marcus Smith J)** You weren't present at that discussion?
- A (Mr Gradassi)** No, I don't recall being present.
- ...
- Q (Mr Gourgey, KC)** So, when you were putting together the memo – I mean, you say in your witness statement:
“The incident heightened the focus on Pete and the potential reputational risk should we decide to invest.”
- A (Mr Gradassi)** Yes, that's correct.
- Q (Mr Gourgey, KC)** If we look at the memo that was produced in advance of the IC meeting...So this is the memo that you assisted with?
- A (Mr Gradassi)** Yes, correct.
- Q (Mr Gourgey, KC)** We've got an executive summary, then we've got “Key risks and concerns”. Do you see that?
- A (Mr Gradassi)** Yes.
- Q (Mr Gourgey, KC)** Then, we have “Keyman risk/relationship management with Peter”? Yes?
- A (Mr Gradassi)** Yes.
- Q (Mr Gourgey, KC)** So, even though you have a section of the memo which is concerned with Peter and your relationship with him, you don't identify anywhere in the memo, do you, this incident?
- A (Mr Gradassi)** No, it's not in the memo.
- Q (Mr Gourgey, KC)** And you don't identify anywhere in the memo this concern, this reputational risk, that you refer to in your witness statement, do you?
- A (Mr Gradassi)** So, on this page, we don't list that concern, but it doesn't mean that it does not exist and hence why I remember the provision in the legal document was heavily negotiated.
- [Pause]
- Q (Mr Gourgey, KC)** You say that the provision in the legal document was heavily negotiated? You'd already negotiated the key

parts of the MDE clause long before this incident had occurred, hadn't you?

A (Mr Gradassi)

No, that's not correct. The provisions were negotiated throughout the process between January and April, and the incident was not before December. It was heavily negotiated for a number of weeks.

Q (Mr Gourgey, KC)

Yes. The substance of the MDE provision – I'm not going back to look at it with you, I'm just going to suggest it to you – was already in place by 6 December, that document I showed you?

A (Mr Gradassi)

The spirit, yes.

Q (Mr Gourgey, KC)

Right. What I suggest to you is that you have in your witness statement exaggerated the significance of this incident when it occurred at the time, and in particular I suggest to you is that there was no thought at the time that the incident occurred of pulling from the deal? Do you agree?

A (Mr Gradassi)

No, absolutely not. And on the first part of your question, the fact that a senior partner from a reputable big firm calls me – I'm not the most senior person in [the team] but I was on the call – calls me and tells me we have to disturb that person from the deal – because it went all the way to the risk committee of PwC – is not something I've ever seen before. So it is serious and the fact that I mention it to Reza at the same time does show it was a concern and intuitively I thought it could have been enough to not go ahead.

Q (Marcus Smith J)

Just so I can get the chronology in my mind, you hear the remark in the conversation, but because it is a conversation you don't immediately react, but it strikes you as something noteworthy at the end of the conversation?

A (Mr Gradassi)

Correct.

Q (Marcus Smith J)

Do you then have the call from PwC or do you speak to Reza?

A (Mr Gradassi)

I don't remember the exact chronology.

Q (Marcus Smith J)

Fair enough. Getting a call from PwC, you obviously remember that. Was the call solely to do with this issue regarding the female employee of PwC and the fact that she had been removed from the team or was there any other topic of conversation?

A (Mr Gradassi)

No, that was it. The message was that she felt uncomfortable, and didn't want to work again on this assignment.

Q (Marcus Smith J)

This was a discomfort that had been created over a video-call, so it wasn't an in-person comment, it was a comment over the ether?

- A (Mr Gradassi)** No, it was in person, because PwC was sitting at the Big Motoring World Offices.
- Q (Marcus Smith J)** I'm sorry, I misunderstood. Thank you, That's very helpful.
So, the likelihood – and I appreciate you can't remember – but reconstructing, the likelihood is that whatever you thought of the remark, PwC thought it was serious, they had taken steps, and does it follow that probably you would have spoken to Mr Fardad after the PwC call than before?
I appreciate you can't remember, but I'm just trying to reconstruct how the event happened.
- A (Mr Gradassi)** It happened on the same day. I mean, it was very quick, in quick order, but I would have most likely had a discussion with him after the call from the PwC partner because of the risk committee and the overall course of action.
- Q (Marcus Smith J)** Thank you. Finally, just to go back to the document on the screen where you're identifying key man risks, I can appreciate that the MDE provisions, which I'm prepared to accept were in before this event, might be regarded as in some way managing the risk of a repeat by Mr Waddell of this sort of conduct, but it doesn't completely contain the risk.
Your evidence is that it wasn't included [in the IC Memo] as a problem with Mr Waddell because Mr Fardad knew about it already and the IC committee had discussed it?
- A (Mr Gradassi)** I think my evidence is that – so Adam and Reza were heavily involved in the legal discussion and were two of the IC members and were constantly updating each other on what we needed, especially in light of the deal. It's not like we have – we start our diligence three months later, there is a committee and we learn about things. So it's a constant process and especially we are a close group of people, so people are getting regular updates on the situation.
So by having Adam in the legal negotiations we knew we were covered from a deal team perspective, that the IC was aware of what was going on. Also, I think there is an element of sensitivity about putting those kind of incidents in an IC memorandum in terms of, you know, purely the commercial risk of the business and so because it was covered in the legal documents that may have been the thinking that it didn't need a repeat here in that document.
- Q (Marcus Smith J)** I see. Thank you very much...

Y.3.5. Subsequent events

365. Mr Fardad’s evidence was that this was not the end of this episode.²¹⁰

Q (Mr Gourgey, KC) In any event, you are not able to give any evidence as to what Mr Waddell said, are you?

A (Mr Fardad) Well, yes, because I spoke to Pete about it afterwards, and he did say, “I think I just called her something, pretty, or something like that”. So he didn’t deny that he said those things to her.

Q (Mr Gourgey, KC) So you’re saying that you spoke to Peter afterwards and Peter told you that he had said that she was pretty?

A (Mr Fardad) No. What happened was that the matter was brought to our attention by someone from PwC. I was then – we discussed it internally. I then went, I spoke to Peter about it and said, “Peter, you know we’re told that this is what happened”. And he goes, “I’m sorry, I didn’t mean – I was just trying to be nice to her, I didn’t mean anything by it”. And we had the discussion I have in my witness statement. So, if it didn’t happen, he would have denied it, but he didn’t deny it.

Q (Marcus Smith J) Just slow that down at little bit. You say it was drawn to Freshstream’s attention by PwC?

A (Mr Fardad) Mm Hm

Q (Marcus Smith J) Can you be a bit more specific as to how that occurred?

A (Mr Fardad) One of the senior people at PwC spoke to Gilles.

Q (Marcus Smith J) Right.

A (Mr Fardad) And then it was brought to our attention. And I was on – then we had a call about it with him and it was brought to my attention as well.

Q (Marcus Smith J) Right. So the chain is PwC to Mr Gradassi?

A (Mr Fardad) Mm Hm.

Q (Marcus Smith J) To you?

A (Mr Fardad) And then a call with me and Mr Gradassi and that individual, and the person at PwC.

Q (Marcus Smith J) I see. Right. And all of this undocumented?

A (Mr Fardad) Yes, it was a call. So we didn’t send emails about it afterwards.

366. It was Mr Fardad’s evidence that Freshstream regarded this incident as one of considerable seriousness.²¹¹

Q (Mr Gourgey, KC) You then say you almost decided:

²¹⁰ Day 14/pp66ff (XX Fardad).

²¹¹ Day 14/pp68ff (XX Fardad).

“...we almost decided to pull the deal but the partners and I at Freshstream decided...I should speak to Pete first...”

Who are the partners at Freshstream with whom you had this discussion, Mr Fardad?

A (Mr Fardad) It was all the IC members, which are the same, so Lodewijk, Rayhan, Patrick, Adam.

Q (Mr Gourgey, KC) Right, so it was discussed at an IC meeting?

A (Mr Fardad) It wasn't at an IC meeting, but it was the five of us, so it was effectively an IC decision.

367. It was put to Mr Fardad that there was no such discussion,²¹² and that any subsequent Fardad/Waddell conversation had been “low-key” at best.²¹³

Q (Mr Gourgey, KC) Do you accept that you may not have actually spelt out the details to Mr Waddell? We're talking about an incident that took place...

A (Mr Fardad) No, because...

Q (Mr Gourgey, KC) ...over four years ago?

A (Mr Fardad) Not on this occasion, because I remember him saying, “I was trying to pay a compliment”. That was the reason he gave. So I don't see how I could have not explained to him what had happened without him saying that.

Q (Mr Gourgey, KC) I suggest to you, Mr Fardad, that the reason that there are no records of any discussion about aborting the deal is that the deal was never close to being aborted as a result of this incident. Do you accept that?

A (Mr Fardad) No.

Q (Mr Gourgey, KC) You weren't – on the basis of your evidence, you weren't shy or embarrassed to be raising this matter with Mr Waddell, were you?

A (Mr Fardad) It wasn't an easy conversation, but it had to be had.

Q (Mr Gourgey, KC) Right.
So, in the event that other inappropriate conduct subsequently came to your attention concerning Mr Waddell after you had invested in the company, there was no reason for you, was there, to be shy or embarrassed about raising matters of concern with Mr Waddell? Was there?

A (Mr Fardad) In the right circumstances, no.

Q (Mr Gourgey, KC) What do you mean, in the right circumstances, Mr Fardad?

A (Mr Fardad) In the circumstances where the person telling me about their disagreement with Pete, or some – Pete had done

²¹² Day 15/pp68-69 (XX Fardad).

²¹³ Day 15/p70 (XX Fardad).

something and then, on many occasions, when I asked, “Can I speak to Pete about this?”, their answer was “No”. So in that circumstance, it’s difficult for me to then go and speak to Pete about something that I find out.

Q (Mr Gourgey, KC) Have you identified in your witness statement every occasion where somebody told you not to speak to Pete about conduct that had come to your attention?

A (Mr Fardad) No, I don’t even recollect every incident.

Q (Mr Gourgey, KC) Well, how many times did people come up to you or say to you, “I don’t want you to take this up with Pete”?

A (Mr Fardad) Pretty much every time they complained to me about Pete.

Q (Marcus Smith J) Who was doing this blocking?

A (Mr Fardad) The person who’s saying, Pete has done this, Pete has done – whatever Pete has done to them that they’re not happy with, they would then – and it’s normally about, they would say – they would say “Peter is doing these things”, and I would then say, “Okay, fine, would you like me to speak to Pete and ask him to do something different?” or whatever. And they often said, “No, no, I don’t want Pete to find out we had this conversation”. That was almost always, or always was, from my recollection, the response from the individual.

...

Q (Marcus Smith J) So, would it be fair to say that you were aware of problems caused by Mr Waddell within BIG and...

A (Mr Fardad) After the transaction, to be clear, sir.

Q (Marcus Smith J) After the transaction, sure. I mean, we’re taking about these instances that were brought to your attention?

A (Mr Fardad) Mm Hm.

Q (Marcus Smith J) And the victim, or the alleged victim, because this might be contentious, says this happened, but please don’t do anything?

A (Mr Fardad) Correct.

Q (Marcus Smith J) And you thought it was right, in those circumstances, not to do anything?

A (Mr Fardad) But each case depends on what they were – what they were saying that Pete had done. It would be things – nothing – it wasn’t anything, just to be clear, like the MDE events that we were talking about. It was more along the lines of “he’s putting too much pressure on us”, “he’s asking us to come in on weekends”, “he’s asking me to travel from...”, you know, it would be things like that. It was pressure, as opposed to the kind of things that I discovered later.

Y.3.6. Mr Waddell's evidence

368. Mr Waddell's recollection of the meeting and the comment was as follows:²¹⁴

I have read paragraph [9] of the First Witness Statement of Mr Fardad...in which Mr Fardad states he was told that I made some sort of inappropriate comment during a financial due diligence call. I do not accept this. I remember this call. Mr Fardad was not even on it. There were four sets of accountants on the call (KPMG, PWC, EY and Deloitte) firing questions at me. The meeting lasted a long time. Some of the questions were ridiculous. For example, they were asking whether I could confirm that my helicopter, which was to be transferred from BIG to me as part of the deal, had not been used for military operations or involved in the Russian War. During the call, a woman appeared on the screen with a big smile. I said something like "thank god we've got someone who is smiling". This was the first thing that came into my head. My recollection is that this woman was a senior employee of one of the accountancy firms. I did not say she was "pretty" or anything like that. I also note that Mr Fardad stated that he discussed this comment with me and I promised that it would never happen. I reject this. This conversation did not happen.

369. The Freshstream evidence was put to Mr Waddell,²¹⁵ who maintained his version of events as stated in Waddell 5, save that he appeared now to recollect a conversation with Mr Fardad regarding the comment.²¹⁶

Y.3.7. Findings

370. I have described this episode at length, because the evidence is unfortunately exiguous but the episode significant. The key to understanding it is Mr Gradassi who (as I have already said) was a careful, articulate and scrupulously honest witness, who had the helpful skill of being able to distinguish between recollection and reconstruction.

371. I do not accept that Mr Waddell said something innocuous (like "thank god we've got someone that's smiling"). Throughout his evidence Mr Waddell had a tendency to soften allegations against him where he could not deny them outright. I am not, on the basis of this sole case, prepared to say that Mr Waddell was lying (it is possible, in an attempt to reconstruct, he came to believe what he said), but I disbelieve his evidence.

372. Without making any findings as to what, precisely, was said, the one thing that *can* be concluded is that the comment went beyond the merely offensive and either was, or came close to, what the Equality Act defines as harassment. Whilst PwC might have removed X from the deal team at her request because Mr Waddell had said something that *subjectively* caused X offence or upset, I do not consider that a senior partner in PwC would have made a call to Freshstream without serious reflection (that reflection taking place in the risk committee of PwC) and a firm conclusion that PwC could not simply leave the matter to be dealt with by them internally.

²¹⁴ Waddell 5/[51].

²¹⁵ Day 5/pp39ff (XX Waddell),

²¹⁶ Day 5/pp46-48 (XX Waddell).

373. Had the issue straightforwardly been one of X being abused by Mr Waddell, PwC (having no leverage with Mr Waddell) could only have dealt with matters internally. In this case, however, *Freshstream* was PwC's *client*. PwC took a step – which in Mr Gradassi's (admittedly limited) experience was unprecedented – of speaking to their client, Freshstream. What could the purpose of the call have been? Mr Waddell was no client of PwC and Freshstream's interest was contingent – they were thinking about buying BIG, with Mr Waddell as CEO. I consider that the call made by PwC was made to *warn* Freshstream of a risk arising out of Mr Waddell's conduct which Freshstream needed to be aware of, given its interest in acquiring BIG. In other words, PwC were acting not to complain (that would have had to have been directed at BIG or Mr Waddell) but to *warn* a client who was walking into potential trouble.
374. That is how I consider the conversation was treated by Freshstream. They considered the risk – again at a very senior level – and decided that the risk could be mitigated by the terms of the deal, which included not just the MDE provisions, but also (and rather more importantly) the Call Option, which would cause Mr Waddell to recede from BIG. In other words, the risk could be contained in two ways: first, temporally – if the transaction went ahead, Freshstream would, relatively quickly, be in majority control. Secondly, if something bad happened, through MDE. But this latter option would very much be after the event, shutting the stable door after the horse had bolted. This accords very much with Mr McLain's evidence as to how the risk that was Mr Waddell could be managed.
375. I conclude that Freshstream carefully considered the risk of Mr Waddell's potential future (mis)conduct, and decided that it was sufficiently contained such that the transaction could safely proceed. Two questions remain to be considered:
- i) What exactly was the risk? I do not consider that the words "you're pretty" simply emanated out of Mr Waddell's mouth without cause. I have found Mr Waddell to be a controlling person who (as will be seen) uses ostensible compliments or nicknames or apparently harmless "jokes" or "banter" as a means of control, of getting his way. It is the business of due diligence inquiries to ask awkward and difficult questions. My conclusion is that Mr Waddell was using language as a means of shutting down an annoying question, and that this constituted a form (albeit perhaps a subtle form) of bullying of X. In any event, its unacceptable nature was apparent to X, to PwC and (even if after the event) Mr Gradassi. I do not consider that an ill-advised compliment would have provoked the reactions that it did. This comment was perceived by PwC as quite literally a deal-breaker, of which Freshstream needed to be warned. Freshstream, too, regarded the episode as a potential dealbreaker, but they nevertheless proceeded.
 - ii) What, then, did Freshstream do? Freshstream are hard-nosed businesspeople, well able to assess the upsides and downsides of risk. That is exactly what they did here, and they concluded that the remark was not a deal-breaker. The risk was fully considered by the Freshstream

Investment Committee members (albeit out of committee) and considered acceptable by them. Hence, it did not appear in any IC memo. I doubt very much if the matter was raised with Mr Waddell, given the deal status (being negotiated). Freshstream, as intended purchaser, could either say “We don’t like what we see, we’re walking” or nothing. Something in-between would only sour relations. It may be that, being a subtle man, Mr Fardad said something sufficiently innocuous to cover himself but protect relations between Freshstream/Fardad and BIG/Waddell. But if he did, it was so innocuous as to be unmemorable by Mr Waddell (at least when writing his witness statement).

376. I make no criticism of Mr Fardad’s recollection of the PwC incident in Fardad 4. It is quite clear from his cross-examination that his recollection was poor, but that he was doing his best to assist the court. Mr Gradassi’s recollection was far better, and I accept his version of events. I reject, for the reasons I have given, Mr Waddell’s version of the event. But, as I have described, I have concluded that although Mr Fardad probably had a conversation with Mr Waddell about his conduct, this was not the sort of conversation that an employer (which, of course, Freshstream was not) would have had with an employee – even, and perhaps especially, a senior employee. I do not therefore find it surprising that Mr Waddell had no recollection of this conversation.

377. The reason the episode is so telling is because of the insight it gives to Freshstream’s attitude towards unacceptable conduct that did not harm its immediate business interests. Following his description of the PwC event (Fardad 4/[43]), Mr Fardad said this:

[44] At that time I didn’t anticipate all the serious problems which later materialised but I was keen to ensure that we were protected in case something like the UKFast situation occurred. At that time, I didn’t think we were going to use the removal clause.

[45] However, as a result of the DD process and my discussions with Anton Khan, who was then a minority shareholder in BIG, I was aware that Pete ran the business in a high-pressure environment. I was worried that if the business did not perform according to Pete’s expectations, or if we didn’t exercise the call option, or the economy had a downturn, Pete’s behaviour would get worse. He would end up applying more pressure. That fed into the desire to have a clause like this.

[46] I had also been told by John Bailey, another minority shareholder in BIG at that time, that Pete’s behaviour would change if things weren’t going his way. He explained that Pete was on best behaviour and that we would see a different side to him once Pete thought he did not have anything to gain from us. I recall this having been said to me on a call by John Bailey but I think I took it with a pinch of salt since John was trying to get out of the business at that time.

378. I do not accept this evidence. Freshstream *knew* what they were buying into, namely an extremely successful business that had been made successful, at least in part, by unacceptable conduct on the part of its CEO, but that they were prepared to buy into that situation because they considered that the upsides of the investment outweighed the downsides. Money talks, and in this case it spoke particularly loudly.

Y.4. MR WADDELL'S THINKING

379. Mr Waddell's thinking at the conclusion of the Transaction can be stated more briefly. He wanted to retire, so that he could spend more time with his family *and* (here I differ with Mr McLain's assessment) take out of the company the wealth that he had generated.
380. Mr Waddell – wrongly – considered the exercise of the Call Option as almost a done deal. Of course, as a matter of strict law it was not. Mr Waddell was consistently agitating for assurances that the Call Option be exercised, after the deal was done; and he was extremely angry and disappointed when (after it became exercisable) it was not in fact exercised.
381. I shall deal separately (when considering the question of unfair prejudice) with the contentions advanced by Mr Waddell that some extra-contractual assurance was given by Freshstream regarding the exercise of the Call Option.

Part IV(v): Post-Transaction events

Z. APPOINTMENT OF MR VAUGHAN

382. According to the Securityholders' Deed, Freshstream had the right to appoint the chair of BIG. The person intended for this role was Mr Vaughan, who (in the eyes of Freshstream) would "de-risk" the investment for Freshstream.²¹⁷

Q (Mr Gourgey, KC) You refer there to the fact that Laurence Vaughan had agreed terms and that he confirmed he would be able to step in, if required, as an interim CEO, and that his appointment materially de-risked the concerns around the reliance of the business on Peter.

Where you say it de-risks the reliance of the business on Peter, that deals with potentially the key-man risk, doesn't it, because you've got a CEO who could step in if Peter gets knocked over by a bus?

A (Mr Fardad) Yes.

Q (Mr Gourgey, KC) But how did you envisage the appointment of Mr Vaughan as de-risking the management of the relationship with Peter?

A (Mr Fardad) There's a number of reasons, I think I can give you one straightaway. Just generally, Laurence having been a CEO of a car dealership business in the past [Sytner], having worked with private equity firms like us in the past as well. And one of the reasons we always appoint a non-exec chairman who will have that kind of background, industry and private equity background, is to be able to help us have a good relationship with the CEOs and for us to sort of speak each other's language, as it were. So that's one of the reasons Laurence would help.

²¹⁷ Day 14/p54ff (XX Fardad).

The other way would be that he would be more aware of what's going on in the business and, again, having run businesses like this in the past, certainly something I haven't done, so we felt having someone like that, a non-exec chairman involved in the business, just de-risks that complete reliance on Mr Waddell.

Q (Mr Gourgey, KC) But it wasn't enough for you to have a non-executive chairman to do that, was it?

A (Mr Fardad) To be honest, I – I mean Laurence ended up being an exec chairman, I don't recollect the circumstances under which he went from non-exec to an exec chairman.

Q (Mr Gourgey, KC) You needed somebody who was going to be involved in the business in an executive, a sort of day-to-day capacity, or at least once-a-week capacity, rather than somebody who was simply non-exec, if you were going to manage your relationship with Peter. That's right, isn't it?

A (Mr Fardad) I think at the beginning of the deal his contract was still 10 days, eight or 10 days a month, and that was the expectation. His title, what that was, was not really the important part from my perspective. He was working 10 days a month in the business, that's not just board meetings, that's a lot more than just board meetings. And that's what he did from the beginning.

Q (Mr Gourgey) You saw your use of – you saw the appointment of Laurence Vaughan as a means for you to influence the running of the business through him. That's right, isn't it?

A (Mr Fardad) I wouldn't say necessarily influence, but yes, being better informed what's going on in the business, having his strategic input in which way – how the business should be run, a second opinion when we're told the business should be run in a particular way. These are the kind of things. I wouldn't say it's necessarily the sole objective of Laurence was to be an instrument through which we influence the company. That wouldn't be correct.

383. Mr Fardad described Mr Vaughan's appointment in the following terms:²¹⁸

Laurence was appointed as Chairman of BIG as part of the investment deal. We had the right to appoint a Chairman. I was directly involved in the recruitment process (as were others at Freshstream). Drax Recruitment helped with the search. Pete saw the CVs of the best candidates and he met them to make sure he was happy with the candidate. Whilst we had the right to appoint Laurence without Pete's consent, it was important that Pete was happy with the Chairman (and CFO). The reason we have a chairman in our portfolio companies is that they are typically from the sector in which the portfolio company operates. Laurence had successfully run a number of car dealerships in his career. He has also worked with other private equity firms. As a

²¹⁸ Fardad 4/[103].

result, he had a good understanding of where everyone on the board is coming from. I don't recall exactly when Laurence was recruited but it was before the deal took place.

AA. THE VAUGHAN SERVICE AGREEMENT (AS CHAIR)

384. A service agreement with Mr Vaughan was concluded on 13 April 2022. Mr Vaughan was employed as chair (there was no reference to whether this was an executive or a non-executive appointment) and many of the clauses are identical or at least very similar to the Waddell Service Agreement.

385. Under "Hours of Work", the contract provided:

[5.1] You will be required to work at least 10 days per month. Your normal working days will predominantly be on Monday to Friday inclusive, 9:00am to 5:30pm but in some circumstances you will be required to work weekends (Saturday and Sunday) as determined by the Board. You are, however, expected to work such additional hours without additional remuneration as the needs of the Company and any relevant Group Company dictate.

The point to note, for future reference, is that Mr Vaughan's hours of work were upwardly extendable without additional remuneration. Doubtless, this provision could be abused; and in such a case, no doubt, Mr Vaughan would have raised this.

386. Other important provisions were as follow:

- i) By clause 7.2, Mr Vaughan's salary was £275,000.
- ii) By clauses 3.4 and 3.5, Mr Vaughan's appointment was conditional upon his giving up his directorships of Sytner (clause 3.4) and Aston Barclay (clause 3.5).
- iii) By clause 4.3(k), there was an obligation to report wrongdoing in BIG,²¹⁹ and a rule against the taking of secret profits (clause 4.3(m)).

BB. ROLE OF THE CHAIR

387. Mr Vaughan described his role as chair in the following terms:²²⁰

...Freshstream sold the Executive Chairman position to me as a broad one. My understanding was that they knew the investment was going to be a hands-on one, and that I needed to help Pete better understand how these kinds of private equity investments work. An important part of my role would be to try to ensure that the relationship between Freshstream and Pete was harmonious. I knew what it was like to run a private equity-backed business and had run a similar business to BIG: I felt that I had a good understanding of the challenges that Pete faced and what I could do to help him and BIG to succeed. In essence, I was tasked with ensuring that the relationship between Freshstream and Pete was a good one.

²¹⁹ Put Day 19/p22ff (XX Vaughan).

²²⁰ Vaughan 3/[12].

388. In cross-examination, he expanded on this:²²¹

Q (Mr Gourgey, KC) Your role as chairman included, amongst other things, managing Freshstream’s relationship with Mr Waddell?

A (Mr Vaughan) I don’t know if I’d characterise it as managing the relationship. I would say it was trying to best make that relationship work well, but obviously there was a lot of direct involvement rather than through me.

389. Mr Vaughan rejected the suggestion that his role was to be “Freshstream’s eyes and ears into the day-to-day operation of the business”:²²²

Q (Mr Gourgey, KC) In that sense, you were Freshstream’s eyes and ears into the day-to-day operation of the business? Do you agree?

A (Mr Vaughan) Partly. I’d been involved in a number of private equity deals over the years and normally it’s not quite as defined as that – it’s more collaborative. So its not a question of eyes and ears, you know, it’s hopefully everybody just working together.

390. Mr Vaughan was right to cavil at the suggestion that he was “Freshstream’s” person within BIG. It is, of course, true, that Mr Vaughan was Freshstream’s appointee. But the duties of a director, appointed by a given shareholder, are no different from those of any other director. A director appointed by a given party will have been selected and appointed for a reason, and will almost inevitably have sympathetic views towards the interests of the appointing shareholder. But that does not change the nature of the duties of the director appointed in such circumstances.

391. Mr Vaughan came to align himself with Freshstream, the party who appointed him. Whether this was a breach of his duties as a director is a matter for later consideration in all the circumstances. It should only be said that there is no automatic rule, and there will be cases where, in performance of their duties to the company of which they are a director, a director needs to align themselves against a senior employee of a company, even when that employee is a major – even majority – shareholder.

392. It is important not to understate the difficulty of Mr Vaughan’s position as the tensions between Mr Waddell (CEO and majority shareholder) and Freshstream (minority shareholder, but with the benefits of the Freshstream Minority Rights) increased. Clearly, and as Mr Vaughan said on a number of occasions in the course of his evidence, his duty was to BIG, the company, not to any one shareholder. But when the shareholders are themselves at odds, what that duty entails may in practice be harder to ascertain. Mr Vaughan was asked about this

²²¹ Day 19/p15 (XX Vaughan).

²²² Day 19/p18 (XX Vaughan).

at the time when he entered into a consultancy agreement with Freshstream (to which we will come) in December 2023:²²³

Q (Mr Gourgey, KC) ...at this time of uncertainty, Mr Vaughan, what did you think your position would be in the company if Mr Waddell remained in charge?

A (Mr Vaughan) Just to remind you, I was the appointee of Freshstream and my remuneration was set by Freshstream, What did I think? I thought that would continue, regardless of the outcome, but quite how that would work out, you know, was up in the air, because it depended on the outcome of negotiations and whatever between the shareholders.

Q (Mr Gourgey, KC) And Mr Waddell was seeking, by this time, to limit the amount of time you spent on the company business and indeed the amount that the company was going to pay you? That's right, isn't it?

A (Mr Vaughan) He was saying that, but it wasn't within his remit to do so.

Q (Mr Gourgey, KC) Yes. And he was trying to marginalise your role...?

A (Mr Vaughan) He was.

Q (Mr Gourgey, KC) ...in the business?

A (Mr Vaughan) Yeah, he was.

393. Two further points should briefly be made about Mr Vaughan's position at this time. He had limited knowledge of the Securityholders' Deed and – it is to be inferred – the Freshstream Minority Rights there articulated.²²⁴ That is unsurprising, given that these were *Freshstream's* rights. Mr Vaughan would have learned of Step-In Rights and MDE Events as matters unfolded.

394. Secondly, everyone regarded Mr Vaughan as an *executive* chair.²²⁵ The Vaughan Service Agreement is silent on the point; but the Securityholders' Deed makes clear that Freshstream only had the right to appoint a non-executive chair.²²⁶

CC. SUCCESSION

CC.1. Initial thinking regarding Mr Waddell's departure

395. The thinking of both Freshstream and Mr Waddell on the conclusion of the deal as regards Mr Waddell's tenure as CEO of BIG was linked to the question of

²²³ Day 20/pp11-12 (XX Vaughan). In other words, at a rather later point in time than the time here under discussion (events post-Transaction).

²²⁴ Day 19/p25 (XX Vaughan).

²²⁵ See eg Day 19/p14 (XX Vaughan).

²²⁶ Thus, the definitions section of the Securityholders' Deed provides in section 1 (definitions) that ““Non-executive Chairman” has the meaning set forth in Section 4(a)(i) and Section 5(a)(i) as applicable”. Section 4(a)(i) provides for Freshstream's right to appoint a *non-executive* chair which is a defined term (ie, “Non-executive Chairman”). The point matters very little, save when the constitution of the MDE Investigation Committee came to be considered.

Mr Waddell's retirement. As regards retirement, I have found that intrinsic to the *initial* thinking of both Freshstream and Mr Waddell was the acquisition of a majority interest by Freshstream.²²⁷ That implied exercise of the Call Option.

396. The question of succession – who would take over as CEO when Mr Waddell retired – would thus have featured in the thinking of both Freshstream and Mr Waddell at this time.
397. The question is the extent to which Mr Vaughan was privy to their thinking. The point was put to Mr Vaughan in cross-examination:²²⁸

Q (Mr Gourgey, KC) Did you understand, from Freshstream's point of view, that they thought that Mr Waddell would stay in place until the exercise of the option?

A (Mr Vaughan) I can't remember. At some point, I think I became aware that that was the plan. But in the early days of the investment, it was much more about sort of getting to grips with all the various parties, you know, sort of working with one another, and trying to push forward to where we were trying to get to. So it was never really high on the agenda, I suppose, is what I'm saying.

And again:²²⁹

Q (Mr Gourgey, KC) ...I suggest to you that, right from the outset, that Freshstream were telling you...that Mr Waddell planned to stay in place until the option was exercised and he became a minority?

A (Mr Vaughan) That was never said to me.

...

However, very early on in the whole journey, there was a lot of discussion, including with Mr Waddell, that everybody accepted that for a successful exit in the business that there would have to be a change, but when that meant, I was never very specific.

Q (Mr Gourgey, KC) You also appreciated that Mr Waddell was not looking to step down as CEO whilst he was a majority owner of the business?

A (Mr Vaughan) I never knew that, no.

398. I do not accept this evidence. I consider that Mr Vaughan was aware from very early on that there was a linkage between Mr Waddell's departure as CEO

²²⁷ I stress that there was no obligation on Freshstream to exercise the Call Option: I am merely making a finding as to Freshstream's thinking *at this time*.

²²⁸ Day 19/p16 (XX Vaughan).

²²⁹ Day 19/p17 (XX Vaughan).

(whatever other role he retained in the business) and the acquisition, by Freshstream, of a majority interest in BIG.²³⁰

CC.2. The intended successor

399. Mr Vaughan and Freshstream had an understanding, from shortly after the Transaction concluded, that Mr Vaughan would become the CEO once Mr Waddell had retired from that position.²³¹

Q (Mr Gourgey, KC) And at the time you were appointed, you had already agreed with Freshstream that you were able to step in as interim CEO should that be necessary?

A (Mr Vaughan) I never said I would, but I said I wasn't ruling it out.

Q (Mr Gourgey, KC) If I take you to a document which I expect you didn't see at the time. This is an IC Memo for the investment in BIG. You will see, in the final bullet point (this is March 2022):

"We are close to agreeing terms with the Chairman candidate (Laurence Vaughan). He will be committing 8-10 days per month to the deal and is coming off most of his other board positions so that he can focus on BMW.

Then it refers to:

"His compensation package takes this higher level of time commitment into account."

Then it says:

"He has confirmed that he would be able to step in as an interim CEO should that be necessary."

I suggest to you that that is indeed the confirmation that you provided before your appointment to Mr Fardad?

A (Mr Vaughan) That's incorrect. I did exactly what I've just said, which was I didn't rule it out, and I understood in certain circumstances it might be necessary.

400. I do not accept this evidence. I consider that one of the criteria that Freshstream would have had when seeking a chair was whether that person would be willing and able to assume the role of CEO. It was an important part of Freshstream's exit strategy. The March IC memo (put to Mr Vaughan) confirms this, as do other factors: (i) the discouragement of other potential CEO candidates; and (ii) the speed with which Freshstream moved to agree terms with Mr Vaughan for him acting as CEO. These points are addressed below. Before coming to them, however, I shall address Mr Vaughan's professed lack of keenness for the role of CEO.

²³⁰ Mr Vaughan impliedly confirms this in Vaughan 3/[16], where he says: "...it was my impression at that early stage that Pete felt that he had made good money out of BIG and he was ready to enjoy it and step back" (emphasis added). Although one should not read too much into this, this does imply the exercise of the Call Option. Mr Vaughan knew all the material details regarding the Call Option from when he joined BIG as chair: Vaughan 3/[17].

²³¹ Day 19/p18ff (XX Vaughan).

Mr Vaughan's professed lack of "keenness" for the role

401. Mr Vaughan played down his keenness to do the CEO job.²³² Mr Vaughan's evidence was that he was, if asked, prepared to do the job of CEO, but that it was not a matter of great importance to him. The sense of his evidence was that if Freshstream pressed him, he would be prepared to step up:²³³

- Q (Mr Gourgey, KC)** ... "Laurence is up for CEO role".
You were telling Mr Fardad that you would like to have the CEO role, weren't you?
- A (Mr Vaughan)** It was an ongoing discussion at that point.
- Q (Mr Gourgey, KC)** And at this point in time, you were telling Mr Fardad that you were "up for [the] CEO role"?
- A (Mr Vaughan)** I think, from memory, I said I might be, rather than specifically I was.
- Q (Mr Gourgey, KC)** You might be rather than specifically you were? So you were just raising it as something you might be interested in considering? Is that what you're saying?
- A (Mr Vaughan)** I'm saying what I just said, really, that Reza did talk to me about it, I certainly didn't rule it out and I said I was happy to talk about it, but it would have depended on the circumstances at the moment in time that that actually came round to transpire.

402. Although it is a question of emphasis, I consider that Mr Vaughan was understating his desire for the CEO job. Not only would it involve significantly more money, it would also involve a great deal more power in a business that had obvious potential for growth and even greater success. Mr Vaughan had not had a full-time executive function for a long time, and his efforts to portray himself as so occupied with other business that accepting the BIG CEO job would be a sacrifice were unconvincing.²³⁴ Mr Vaughan overstated his success in other areas of business, as his evidence in relation to Superbikes demonstrates:²³⁵

- Q (Mr Gourgey, KC)** You then had Superbikes, and so far as concerns Superbikes, you resigned as a director and chairman of Superbikes in January 2024, didn't you?
- A (Mr Vaughan)** That's about right, yes.
- Q (Mr Gourgey, KC)** You explain in your witness statement...that, up and until January 2024, you were the non-executive chairman of Superbikes, and you say that you were paid around £75,000 to £100,000 per year for that role. After it was sold by its private equity majority owner, you were

²³² See the exchange on Day 19/pp112ff (XX Vaughan).

²³³ Mr Vaughan was asked about a remark in a document dated 1 March 2023 that he (Mr Vaughan) was "up for the CEO role": Day 19/pp46ff (XX Vaughan).

²³⁴ Mr Vaughan was cross-examined on the point on Day 19/pp116ff (XX Vaughan).

²³⁵ Day 19/pp116ff (XX Vaughan).

offered to remain as chairman, but you decided you did not want to continue with that role?

A (Mr Vaughan)

Correct.

Q (Mr Gourgey, KC)

So your giving up of Superbikes had nothing to do with taking on the position of CEO of BIG, did it?

A (Mr Vaughan)

It had to do with the fact that I was getting – the way I structured all of this was to have plenty of spare time and, by then, I was spending a lot of time on BIG, so I didn't feel like I had the bandwidth anyway. And when there's a change of ownership in private equity owners, there tended to be a real spike in activity. So I felt it was inconsistent with maintaining what I was doing at BIG.

Q (Mr Gourgey, KC)

You'd had shares in Superbike, hadn't you?

A (Mr Vaughan)

Not normal shares. I had the normal private equity, upside only, beyond a certain hurdle type shares.

Q (Mr Gourgey, KC)

Yes. And they turned out to be on no value?

A (Mr Vaughan)

At that point, yes.

Q (Mr Gourgey, KC)

And in fact, if we just look at the accounts of Superbike...These are the accounts for 31 December 2024. The position was that both in the year to 2023, when you were still involved in Superbikes, it made a loss of £6.8m? Yes?

A (Mr Vaughan)

Again, it is a very similar thing to the discussions that we had yesterday about the relevant number from a private equity perspective, and the relevant number was EBITDA, and we were growing EBITDA reasonably well. I would like to have done better, but yes, that is not reflective of the position from an investment perspective.

Q (Mr Gourgey, KC)

In the following year, the loss was very substantial: £18m, wasn't it?

A (Mr Vaughan)

Again, that wasn't the EBITDA performance. The business was still growing quite well and most of that was a notional impairment of goodwill, which was not a cash item.

Q (Mr Gourgey, KC)

Well, how much was the business sold for?

A (Mr Vaughan)

Very little.

Q (Mr Gourgey, KC)

Right. How much?

A (Mr Vaughan)

I'm trying to remember the exact numbers. It was next to nothing.

Q (Mr Gourgey, KC)

So, it wasn't doing very well, was it?

A (Mr Vaughan)

That wasn't the reason it was sold at that rate, actually.

Q (Mr Gourgey, KC)

But it wasn't doing very well?

A (Mr Vaughan)

Actually, my view was it was going quite well.

Q (Mr Gourgey, KC)

Right, but it was sold for virtually nothing?

A (Mr Vaughan) Yes, for other reasons than that.

403. The performance of Superbikes is collateral to the issues in this case. But what this exchange shows (and the rest of the cross-examination on Mr Vaughan's other activities) is (i) that Mr Vaughan was prepared to devote more time to BIG than to other activities and (ii) that those other activities were not as successful as might have been wished.
404. I find that Mr Vaughan was keener on assuming the role of CEO than he was prepared to admit. That would have made him keen – for his own reasons – for Freshstream to exercise the Call Option because, in his view, there was a link between the Call Option exercise and Mr Waddell's retirement.

CC.4. Discouraging other potential candidates

405. In his witness statement, Mr Vaughan said this about succession planning:²³⁶

As soon as I got involved in BIG, it was a pretty well understood assumption that Pete would be stepping back as CEO. This was understood between me, Pete and Freshstream. It was not a secret. Pete could not step down as CEO 5 minutes before an exit. It had to be done well ahead. So, CEO progression was an open discussion between Freshstream and Pete from early on and I was present at some conversations where that was discussed. Reza told me when I joined the company that he had had a discussion with Pete in which Reza told Pete that there would need to be a new CEO, albeit with Pete remaining on board in some capacity, before the next exit event. Pete was engaged with it, his conduct suggested he accepted that he would step back at some point. Pete himself introduced me to the person who was supposed to be the CEO designate soon after my appointment. His name was Anton Khan, the Chief Operating Officer of BIG in 2022, who had previously run SW Cars in Peterborough, which BIG had purchased prior to the Freshstream investment. When I met Anton for the first time, I was not impressed and asked Pete: "Are you sure he is the right person?". Pete agreed that he was not up to the job, but he is the person who Pete originally put forward to Freshstream and me as the future CEO. Reza also asked me to meet another potential candidate who he thought could take the CEO position, called Daksh Gupta, who was formerly CEO of a motor group called Marshalls. However, that idea was not pursued.

406. Mr Vaughan's statement was coy about how the prospect of Mr Gupta succeeding Mr Waddell was killed off. In cross-examination, it became clear that the idea was not pursued because it was Mr Waddell's idea, with which neither Freshstream nor Mr Vaughan agreed. Freshstream and Mr Vaughan were agreed that Mr Vaughan should succeed Mr Waddell, and they progressed this behind Mr Waddell's back. As to this:
- i) Mr Vaughan accepted (in cross-examination) that Mr Waddell had raised Mr Gupta "as a possibility, but Reza was the guy who said, "Well, why don't you go and meet him and have a chat?"".²³⁷
 - ii) An email from Mr Fardad to the Freshstream team dated 1 March 2023 gives the lie to this:

²³⁶ Vaughan 3/[15].

²³⁷ Day 19/p57 (XX Vaughan).

Management structure plan from Laurence

- Background:
 - Pete is still causing a lot of disquiet
 - Andy speaks regularly with Drax about how bad it is there
 - Laurence spends a lot of time calming people down
 - All of them are hanging on for the call option being exercised
 - Alex is getting it now from Pete
- Plan from Laurence for this CEO:
 - Laurence is up for CEO role
 - Tell Pete that we will put Laurence as CEO when we exercise the Call Option
 - We need to get Laurence's thumbs up to do this
 - We would need to keep Pete involved in:
 - We want him on top of Ben
 - Negotiate terms with lenders
 - But Pete can be difficult to box
 - Recruit another Ben
 - We cannot do Available Cars if Pete gets unleashed on them. So we need to exercise the Call Option before we get control
 - Everybody reports to Pete, which is not constructive. Make Neil CCO and have some report to him (including Darren)
- Bob needs refocusing – operations to Bob means anything that is not selling things. We should focus him on prep centre and movement of cars (particularly when BWYC grows).
- Need to have a property person in the business. Procurement officer needed too. At the moment Bob does both of these.
- Need to message Daksh that he is not the right person for CEO at BIG – Laurence wants to business and people and is willing to do it
- Set up lunch with Laurence and Daksh
- Need to discuss terms with Laurence for becoming CEO

...

- Laurence needs to know that if we do not exercise the Call Option – the notice period for Laurence will increase will be 12 months as 6 months mother. He would need to let BGK know before we exercise Call Option
 - Superbikes could be up for sale for something like 100m (10x EBITDA). Laurence will share a draft teaser doc.²³⁸ Issue is whether CEO would stick around.
 - What does Pete do when Laurence is CEO:
 - We need to hire someone that can keep pressure on the team (in a better way)
 - We need to box Pete in but keep him mostly away
- iii) I have underlined the portions of this email that are directly relevant to Mr Gupta. A number of points – which will be developed later – are evident from this email:
- a) Freshstream were acting as if they were in control.
 - b) Mr Vaughan was going well beyond what even an executive chair should be doing.
 - c) The CEO – because they did not like what he was doing – was being marginalised and side-lined.
 - d) The only justification – and I do not consider it was a sufficient one – was that Freshstream were going to exercise the Call Option. The centrality of the Call Option, and the assumption it would be exercised, permeates this document.
- iv) Turning to Mr Gupta and the CEO position, it is obvious that Mr Vaughan was willingly being lined up for CEO, and that Mr Gupta (Mr Waddell's choice) was being brushed aside. When cross-examined on this, Mr Vaughan's answers were evasive,²³⁹ but when the point was squarely put to him, he denied it:²⁴⁰

Q (Marcus Smith J)

The sense one gets from this note, and it would be helpful to have your comment on this, is that there was a kind of pre-agreed clearing the way between yourself and Mr Fardad to make sure that it was you and not anyone else who entered the CEO slot?

A (Mr Vaughan)

Absolutely not the case. I think, just – I don't know – a bit of background...?

²³⁸ Given where Superbikes ended up, this was an extraordinarily optimistic view, which obviously favoured Mr Vaughan.

²³⁹ Day 19/pp58-60 (XX Vaughan).

²⁴⁰ Day 19/pp60-61 (XX Vaughan).

- Q (Marcus Smith J)** No, please.
- A (Mr Vaughan)** ...but it might be helpful. I mean, in my mind, I'd already been the CEO of the number one business in the sector and I stepped back from doing that to do a variety of roles, including chairman of quite a number of companies. And that was my position. So that, you know, was I trying to arrange it so I was the only choice? No. As I say, I've worked with a number of CEOs, which have worked really well, and I've really enjoyed doing that. So its, you know, if there'd been a great candidate, we should certainly have considered them.
- Q (Mr Gourgey, KC)** What you and Mr Fardad were planning to do at this meeting was to tell Mr Gupta, who was Mr Waddell's candidate, essentially not to bother and to do all that behind Mr Waddell's back. That's right, isn't it?
- A (Mr Vaughan)** Not at all. I think I told Pete as well that I didn't think Daksh was the right guy.
- Q (Mr Gourgey, KC)** You didn't tell Pete that you were being lined up for the CEO role, did you?
- A (Mr Vaughan)** Not specifically, I don't think so. But my understanding was – in fact, at one point, he raised it with me, when we were talking about Anton, actually.
- Q (Mr Gourgey, KC)** When you talked about Anton?
- A (Mr Vaughan)** Yes.
- Q (Mr Gourgey, KC)** What, do you say he raised it with you?
- A (Mr Vaughan)** I think his – I can't remember the exact words, but it was something along the lines of: you'd be a much better candidate than Anton.
- Q (Mr Gourgey, KC)** You never told Mr Waddell that you were being lined up by Freshstream for the CEO role did you?
- A (Mr Vaughan)** No, I didn't.

- v) I consider that Freshstream (specifically, Mr Fardad²⁴¹) and Mr Vaughan agreed between themselves that Mr Vaughan should succeed Mr Waddell as CEO, and to that end (i) they deliberately sidelined other potential candidates, (ii) did not consult with Mr Waddell, but kept him in the dark and (iii) conducted no wider recruitment exercise.

²⁴¹ Mr Fardad accepted that he and Mr Vaughan discussed “taking Mr Gupta out for lunch and persuading him not to put himself forward”: Day 14/p107 (XX Fardad).

- vi) On Mr Vaughan's appointment as CEO, Mr Waddell would be "boxed-in but keep him mostly away".²⁴²

407. At this time, Mr Vaughan's understanding was that his appointment as CEO was contingent upon the Call Option being exercised. Although Mr Vaughan suggested that there were "a range of contingencies" regarding his appointment as CEO, the only contingency he could actually identify was the exercise of the Call Option, and he considered that "there was a working assumption from everybody in the company that the option would be exercised".²⁴³

CC.5. Agreeing terms with Mr Vaughan

408. On 23 April 2023, Mr Fardad emailed Mr Vaughan (Mr Waddell *not* in copy) setting out "the key terms of a proposed package for CEO", with a salary up from £250,000 (Mr Vaughan's remuneration as chair) to £400,000.²⁴⁴ Mr Vaughan responded the next day with "Let's grab a few minutes on Wednesday to discuss".

409. The terms were evidently not acceptable to Mr Vaughan, because Mr Fardad reverted (on 18 May 2023) with an improved package, including a salary at £500,000. Again, Mr Laurence responded expressing a willingness to discuss. As Mr Vaughan noted, "There was a negotiation going on, certainly".²⁴⁵ Freshstream discussed the outcome of this negotiation internally (Mr Fardad/Mr De Graauw) and terms were agreed with Mr Vaughan in May 2023.²⁴⁶

410. Mr Waddell was not involved in these discussions, nor even told about them. Mr Fardad was asked about this.²⁴⁷

- Q (Mr Gourgey, KC)** But you don't communicate it to Peter, do you?
- A (Mr Fardad)** Because its subject to the exercising of the Call Option.
- Q (Mr Gourgey, KC)** My question is you didn't communicate it to Peter...
- A (Mr Fardad)** No, not at this point in time.
- Q (Mr Gourgey, KC)** No. You didn't tell Peter that you had agreed, subject to the Call Option being exercised, for Laurence to be appointed CEO, did you?
- A (Mr Fardad)** No, my plan was to deliver the message that: here's exercising the call option; here's, you know, the – the exercise price, so £70 million or whatever it was; and now we would like Laurence to be a CEO and for you to go up to Chairman. So that was the plan.
- Q (Mr Gourgey, KC)** Right, so at this stage, we're May '23, the earliest date you can exercise the call option is 1 October 2023?
- A (Mr Fardad)** Correct.

²⁴² Day 19/p53 (XX Vaughan).

²⁴³ Day 19/pp64-66 (XX Vaughan).

²⁴⁴ Put to Mr Fardad on Day 14/p117, p118 (XX Fardad).

²⁴⁵ Day 19/p63 (XX Vaughan).

²⁴⁶ Day 14/pp118-199 (XX Fardad).

²⁴⁷ Day 14/pp119-121 (XX Fardad).

- Q (Mr Gourgey, KC)** And you did not disclose to Peter that the person he was working closely with as chairman was lined up to take Peter's job in the event the option was exercised?
- A (Mr Fardad)** No.
- Q (Mr Gourgey, KC)** And you must have appreciated that if Peter learnt that the man he was working closely with was lined up for his job, he would be very suspicious of Mr Vaughan?
- A (Mr Fardad)** The reason I didn't have the conversation with him wasn't the "suspicious of Mr Vaughan" issue. The reason was it would only be relevant when we're having the – exercising the call option, and it was better to have the conversation in one go, rather than: if I exercise the call option, which I may or may not do at some point in the future, Laurence would potentially – would become the CEO.
- Q (Mr Gourgey, KC)** And Laurence was...
- A (Mr Fardad)** It's a very odd conversation, that.
- Q (Mr Gourgey, KC)** Laurence was very keen to be the CEO, wasn't he?
- A (Mr Fardad)** I think he wanted the role.
- Q (Mr Gourgey, KC)** Yes. Well, he was very keen, wasn't he, to have this job, at the salary you'd agreed with him?
- A (Mr Fardad)** Yes, I...yes.
- Q (Mr Gourgey, KC)** He was only going to get that job through Freshstream, correct? He wasn't going to get the job through Pete, was he?
- A (Mr Fardad)** For the CEO of Big Motoring World?
- Q (Mr Gourgey, KC)** Yes.
- A (Mr Fardad)** No, that's right. That's right.
- Q (Mr Gourgey, KC)** So his interests were very closely aligned to Freshstream's interests, weren't they, from this point onwards?
- A (Mr Fardad)** Not from this point onwards, no. He was our appointed chairman, you know, with our unilateral right to appoint him, so his interests were aligned with us.
- Q (Mr Gourgey)** Right, so they were always aligned closely with you?
- A (Mr Fardad)** I think – he was the chairman of the company, he was trying to do what's good for the company, but yes.
- Q (Marcus Smith J)** Mr Fardad, did you give any thought, when you were having these conversations with Mr Vaughan, as to what the effect might be on BIG if the option was not exercised?
- A (Mr Fardad)** Well, if the option is not exercised, then Laurence would remain as chairman. So I'm trying to understand the...
- Q (Marcus Smith J)** Well, don't you think there would be any effect on the approach of Mr Vaughan as chair, having these

discussions, which are presuming the Call Option would be exercised, and you don't think there would have been any adverse effect on relations between Mr Waddell and Mr Vaughan in the event of the Call Option not being exercised?

A (Mr Fardad) I didn't think that at the time, no.

CC.6. Treading a difficult line

411. Mr Fardad was wrong in failing to involve Mr Waddell in these discussions. All three involved parties – Mr Fardad, Mr Vaughan and Mr Waddell – had a duty to act in the best interests of BIG. The nature of those duties were informed by a contingency – the exercise of the Call Option.
412. Mr Fardad was being placed, by Freshstream, in an extremely difficult position. Freshstream had, as no-one has disputed, complete contractual freedom as to whether or not to exercise the Call Option. But Mr Fardad's position regarding the replacement of Mr Waddell was only defensible given his role and duties as a director of BIG if, as a matter of certainty, the Call Option was going to be exercised. On that basis, Mr Fardad's conduct regarding the removal of the CEO and majority shareholder in BIG is perhaps defensible.
413. On this basis, Mr Fardad's explanations as to his conduct stacks up. Freshstream were *contingently* in the majority if the Call Option was exercised in the First Option Period, and it may be that this gave Mr Fardad the latitude to operate in the way he did. But the moment the alternative is recognised – that the Call Option might *not* be exercised – the position changes. Mr Waddell was the appointed CEO and the majority shareholder. It is difficult to see how acting behind the back of Mr Waddell could be in the best interests of BIG. On the basis that the Call Option would not be exercised in October 2023, Freshstream could have no entitlement to behave – as they were behaving – *as if* they were the majority shareholder. Mr Fardad's position only makes sense – is only defensible – if one adopts in a business context the old Equitable precept that Equity looks on that which ought to be done, as done. The problem is that here, there was no obligation in Freshstream to exercise the Call Option. Mr Fardad erred in proceeding on the basis that the Call Option inevitably would be exercised, but it was an understandable error. By this conduct, Mr Fardad laid the foundations for the events occurring when the Call Option came not to be exercised.
414. Mr Vaughan, although an appointee of Freshstream, was obliged to act in the best interests of BIG. By his actions, Mr Fardad created an environment where Mr Vaughan was liable to align himself with the minority shareholder in circumstances where his duty as a director lay elsewhere.
415. When asked about what he would do if the Call Option was not exercised, Mr Fardad focussed on Mr Waddell's behaviour and the fact that he would have to have.²⁴⁸

²⁴⁸ Day 14/pp122-123 (XX Fardad).

...more and more difficult conversations with Pete, and say “Look, you need to change your behaviour here”. But if we were going to exercise the option in seven month’s time, the easier path would have been to exercise the option and then make the changes subsequent to that. But up until that point, you know, if we never exercised the Call Option, then you’re right, I would have to take action and I would have to start having more difficult conversations with Pete about the issues here.

416. This betrays a misunderstanding of the position that Freshstream, Mr Vaughan and Mr Waddell (without any knowledge on his part) were in:

- i) If there were aspects of Mr Waddell’s conduct that required addressing (e.g., bullying), then it was wrong to “park” these until the Call Option had been exercised. This would be to disregard the provisions of the BIG Employee Handbook and BIG’s obligations of trust and confidence to its own workforce. That, however, appears to be exactly what Mr Vaughan and Mr Fardad (in his capacity as director of BIG) did.²⁴⁹ The proper course would have been for Mr Vaughan to intervene right away, to bring an errant CEO into line.
- ii) If, on the other hand, Mr Waddell’s conduct was not crossing the line into breach of duty and disciplinary matters, then neither Freshstream nor Mr Fardad as director of BIG nor Mr Vaughan could have had any business in telling Mr Waddell how to do his job as CEO.
- iii) The awkward conversation that Mr Fardad would have had to have had in October 2023, when/if the Call Option could have been, but was not, exercised, was *not* about Mr Waddell’s conduct (for the reasons given) but about what had been going on behind Mr Waddell’s back. Mr Fardad must have appreciated – because this mirrored his own thinking – that in Mr Waddell’s mind there was a linkage or nexus between his relinquishing the post of CEO and his position as majority shareholder. There would be very little question of Mr Waddell relinquishing control of the business whilst it remained *his business* because of his majority stake. On this hypothesis, Mr Fardad (and Mr Vaughan) would have had to have come clean about the machinations going on behind Mr Waddell’s back.

417. Mr Fardad gave this no thought at this time. Doubtless, that was because Mr Fardad was – at this time – very confident that the Call Option would be exercised by Freshstream.²⁵⁰

418. Mr Waddell had no right to object to Mr Vaughan’s appointment as chair; and he did not do so. What he was not told, however, was that Mr Vaughan was being lined up, from the time of his appointment, as a potential CEO. In cross-examination, Mr Fardad was asked:²⁵¹

²⁴⁹ Freshstream would also have an interest, but they themselves owed no duties to the BIG workforce.

²⁵⁰ Day 14/p123 (XX Fardad).

²⁵¹ Day 14/p57 (XX Fardad).

Q (Mr Gourgey, KC) And you didn't tell Mr Waddell that, at this time or indeed at any time, that Laurence Vaughan had been lined up as interim CEO, did you?

A (Mr Fardad) I don't recollect discussing with him whether Laurence could be the potential CEO in the future, after Peter is not the CEO. I don't remember having that conversation with Pete.

DD. CRITERIA FOR THE EXERCISE OF THE CALL OPTION

419. The (non-) exercise of the Call Option will be considered in due course. For the present, it is only necessary to note the expectations post-Transaction.

420. As a matter of law, the Call Option was exactly that: an option.²⁵² Although Mr Waddell clearly wanted the Call Option to be exercised, and Mr Fardad was proceeding on the basis that it would be, Freshstream were always clear that there was no inevitability about the exercise of the Call Option. In an email from Mr Fardad to Mr Waddell dated 16 Sep 2022 (which was re-sent to Mr Waddell in 2023 as a reminder and is set out below) the criteria that would inform the decision to exercise were set out. There was no inevitability that the Call Option would be exercised.

421. There was a significant mismatch in *expectation* regarding the exercise of the Call Option in Mr Fardad and BIG's senior management (including Mr Waddell) and what the Freshstream Investment Committee thought:²⁵³

Q (Mr Gourgey, KC) ...were you confident that you were going to exercise the option?

A (Mr Fardad) I thought there was a very high chance we would exercise the option in March '23.

Q (Mr Gourgey, KC) Was that the message you gave to the – sorry, I didn't mean to interrupt you.

A (Mr Fardad) No, please go ahead.

Q (Mr Gourgey, KC) Was that the message that you communicated through to the senior management who were, according to Laurence, hanging on the Call Option being exercised?

A (Mr Fardad) I didn't say we were definitely going to exercise the Call Option.

Q (Mr Gourgey, KC) No, that wasn't what I asked. You said that you thought there was a very high chance we would exercise the option. My question is, was that the message you gave to senior management?

A (Mr Fardad) I don't think so, no, but I don't recollect the exact message I gave the management around it.

²⁵² When considering the question of unfair prejudice, I will consider whether Freshstream's strict legal rights were in some way qualified by collateral understandings or promises.

²⁵³ Day 14/pp123ff (XX Fardad).

- Q (Mr Gourgey)** You say you don't think so, you don't recollect? You knew that the senior management are hanging on for the Call Option being exercised? So did it cross your mind to try and calm them down by saying: "It's likely that we're going to exercise the Call Option"?
- A (Mr Fardad)** I would have been very careful about how I would have said it, but I don't recollect what I said, no.
- Q (Mr Gourgey, KC)** If you in March 2023 thought that there was a very high chance that you'd exercise the option, as you've just said you did, was that a message that you communicated to Peter in your conversations with him?
- A (Mr Fardad)** I was very clear with Peter when I communicated. I put on an email in – the criteria which we would use to decide whether to exercise the Call Option and I stuck to that.
- Q (Mr Gourgey, KC)** That was your email of 16 September 2022, I believe?
- A (Mr Fardad)** Yes, and then forwarded to him again in 2023.
- Q (Mr Gourgey, KC)** Yes. But when you were speaking to Peter, not about the criteria but about the likelihood of the Call Option being exercised, did you communicate to him in March 2023 or thereabouts the opinion that you had at the time that there was a very high chance you would exercise the option?
- A (Mr Fardad)** I may, I don't recollect.
- Q (Mr Gourgey, KC)** You may have done, though?
- A (Mr Fardad)** It's possible.

The attitude of the Freshstream Investment Committee differed, as will be seen.

IV(vi): Encroachment by Freshstream

EE. "EVERYTHING CHANGED"

422. It was Mr Waddell's position that once the Transaction with Freshstream had concluded, everything changed:²⁵⁴

Everything changed in the business after the Freshstream investment. My job as CEO became much harder. There was so much more to do. Freshstream required constant reports and information...I also had to spend large amounts of time looking for and considering potential acquisitions to help with the story of growth. When we opened the Wimbledon site in April 2023, there was even more to do and the job became harder again. I also felt that loyalties amongst senior staff, who knew that Freshstream had the Call Option and were planning to take over the business, began to shift away from me and towards Freshstream, primarily because of the lucrative Management Incentive Plan they introduced.

423. On one level this is trite. Everything *had* changed. Mr Waddell had sold a substantial minority stake to Freshstream, with an option to buy more, and with

²⁵⁴ Waddell 5/[66].

significant minority protection rights accorded to Freshstream by virtue of the Securityholders' Deed. There is nothing remotely strange or unusual in this, and Mr Waddell has nothing to complain about if and to the extent that Freshstream simply exercised rights Mr Waddell had accorded them.

424. Mr Waddell's point, however, was more sophisticated and nuanced than this. His point was that Freshstream went beyond their legal rights and behaved much more in the manner of a majority shareholder than a minority shareholder (even taking into account the Freshstream Minority Rights). I find this to be the case. Aspects of this have already been shown in the approach taken by Mr Vaughan to his duties as chair and by Freshstream's discussion of and agreement of terms (behind Mr Waddell's back) with Mr Vaughan to take over as CEO. Freshstream initially behaved in this way in the confident anticipation that the Call Option would be exercised.

425. This was acknowledged internally by Freshstream. In an email to Mr de Graauw, Mr Fardad stated:

We should absolutely be active shareholders, for all the good reasons we have discussed. The question for me is how we adapt the level and type of activity we have in each business at different stages of its development and quality of the CxO team. I think we do it well intuitively and the feedback has almost always been very positive. We are good at creating a VCP²⁵⁵ and what needs to be done, but perhaps we need to spend a bit of time allocating responsibilities and roles between us and the management team so that we are all on board on who does what as well as what needs to be done.

We briefly got it wrong (or at least we got a lot of pushback) on Themis at the beginning when we tried to launch a whole load of activities onto a weak management team. We quickly corrected and pared back the list to something that was more manageable which has delivered good results...

426. It might be asked why Mr Waddell did not react or push back. In some cases, this is because he did not know of the encroachment by Freshstream (as in the CEO-succession discussions). But in other cases, he did, and I find that he acquiesced in this because, like Freshstream, he anticipated the Call Option being exercised and was anticipated Freshstream majority control and retirement to the back benches, perhaps as a figurehead or non-executive chair.

427. Ms Ferguson also noted that things changed post-Transaction. Freshstream had a lot of ideas about how to develop the business,²⁵⁶ and the team within BIG expanded because of Freshstream's views.²⁵⁷ The business also expanded – the acquisition of Available Cars will be touched on later.²⁵⁸ This expansion meant that BIG's systems came under pressure, and required development.²⁵⁹ Freshstream itself had considerable demands for information and metrics about

²⁵⁵ A Value Creation Plan.

²⁵⁶ Ferguson 1/[48].

²⁵⁷ Ferguson 1/[48].

²⁵⁸ Ferguson 1/[48].

²⁵⁹ Ferguson 1/[49].

the business.²⁶⁰ All of this increased pressure on Mr Waddell, both in terms of additional work and (more particularly) in a sense of a diminution of control.²⁶¹

428. The narrative of events up to October 2023 discloses the extent of Freshstream's encroachment into the rights of the majority and the undermining of the duly appointed CEO, Mr Waddell, who happened to be the majority shareholder. But this trend was evident from the outset. The drawing in of Mr Vaughan to be Freshstream's representative has already been described; so too has the tendency of Freshstream to operate behind Mr Waddell's back.
429. The following paragraphs consider other forms of encroachment under the heads of (i) provision to Freshstream of more information than it was strictly entitled to, (ii) recruitment of staff whose loyalty was more to Mr Vaughan and Freshstream than Mr Waddell and (iii) the focus on Human Resources or HR by Freshstream.

FF. PROVISION TO FRESHSTREAM OF MORE INFORMATION THAN IT WAS STRICTLY ENTITLED TO

430. As part of the Transaction, information rights were granted to Freshstream.²⁶² Mr Waddell permitted Freshstream to see more than they were strictly entitled to:²⁶³

Q (Mr Gourgey, KC)	And it's right, isn't it, that Mr Waddell did not seek to limit you to these contractual rights, did he? He gave you a lot more information and access to information than what you were contractually entitled to under clause 24?
A (Mr Fardad)	I'd need to check between...but yes, we had access to information whilst we were in the business. As a director, but also as a shareholder.
Q (Mr Gourgey, KC)	Yes. And you had access to information, for example, because members or representatives of Freshstream were on various WhatsApp groups involved in the teams running the company, running BIG, yes?
A (Mr Fardad)	Yes.
Q (Mr Gourgey, KC)	You had access to the dashboard?
A (Mr Fardad)	Yes.
Q (Mr Gourgey, KC)	And you were getting reports from senior management, who met you or representatives of Freshstream and provided you with such information as you wanted?
A (Mr Fardad)	Yes.

²⁶⁰ Ferguson 1/[50].

²⁶¹ Ms Ferguson touches upon this at Ferguson 1/[51]-[55], [57], where she identifies the additional work pressure, but not the psychological pressure arising out of no longer completely being in charge. I find that this latter fact will have occasioned more pressure on Mr Waddell than simply more work: Mr Waddell was accustomed to hard work and unreasonable hours.

²⁶² Day 14/pp87-88 (XX Fardad).

²⁶³ Day 14/p89 (XX Fardad).

GG. BUILDING RELATIONS

431. Freshstream intentionally acted as an “active shareholder”. Freshstream deliberately went out of its way to build relations with senior persons within BIG, so that Freshstream’s influence in BIG became greater.²⁶⁴
432. A Freshstream IC Memo dated December 2022 contained an “organogram” setting out how “[s]ince our investment we have focussed on professionalising the management team”. This demonstrates two things: first that there was a cultural difference between Freshstream and Mr Waddell as to how the business should be run. Mr Waddell had built the business up from nothing, and this now enormous business revolved around him – and he liked that. Freshstream, unsurprisingly, regarded this as unsustainable, and rightly so. Not only was Mr Waddell planning on retiring, but also the business was getting too big for Mr Waddell’s methods.
433. Secondly, this professionalisation resulted in a “team within a team” – a group of Freshstream loyalists, waiting for Mr Waddell’s exit, and owing their primary loyalty to a BIG *without* Mr Waddell.²⁶⁵ This team within a team had a high internal coherence (i.e., they knew each other from before their time at BIG) and most (though not exclusively: see Mr Clarke) had joined post-Freshstream investment. These new hires included:

Laurence Vaughan	Chair	
Neil Hodson	Commercial Director	Joined 5 Sep 2022
Alex Maby	CFO	Joined 7 Sep 2022
Andy Holness	People Director	Joined 1 Aug 2022
Stewart Ford	Technology Director	Joined 5 Sep 2022

Freshstream only had the right to appoint Mr Vaughan and Mr Maby pursuant to the Securityholders’ Deed.

434. An internal Freshstream email records a discussion with Mr Vaughan regarding BIG’s organisation structure and strategy. It is dated 20 April 2022. Under the heading “Org structure”, one can see the level of Freshstream’s interest in personnel:

Org structure

- Anton: retail operations
- Where will pricing sit?
- Pete (CEO)
 - New site openings (finding them)

²⁶⁴ Day 14/pp92-93 (XX Fardad).

²⁶⁵ See Day 14/p93 (XX Fardad).

- Bob (COO)
 - New site openings (building, logistics)
- Anton (CRO)
 - New site development, once open
 - Omnichannel
 - Fair treatment of customers
- Darren CCO (CMO)
 - Need to understand a bit better what he does
- CFO
 - Candidate
 - Michael good CFO at Mannheim. But understand point he failed in next job
 - Add him when we interview ppl
 - We want someone independent from Pete
- Head of sourcing (CCO)
 - Neil Hodson? He build the car buying function and trade disposal
 - Knows AB very well
 - Very good digit clicker
 - Good relationships with dealers, etc
 - 150-175k salary
 - Remainder of this yr bonuses stay the same
 - When this year is over, target 50% of salary
 - Equity, who do we want to match him to? Bob? 1.25 point (vesting period)
 - We will need to bump Bob
 - Put Cliff in Neil's group? He has done mostly trade disposals

435. Mr Vaughan knew a lot of people, and saw one of his roles as “vetting” so as to get the appropriate people.²⁶⁶ As a result, BIG recruited people with whom Mr

²⁶⁶ Day 19/p21 (XX Vaughan).

Vaughan was familiar and who would have owed their loyalty away from Mr Waddell.

436. Five appointments to BIG shared a common or largely common history.²⁶⁷ These were: Mr Vaughan, Mr Gilmour, Mr Hodson, Mr Ford and Ms Butler. Thus, Mr Hodson, Mr Ford and Ms Butler moved, over time, from Cap HPI to Aston Barclay (where they were joined by Mr Vaughan) to Motorpoint (where they were joined by Mr Gilmour, but without Mr Vaughan) until they were all united at BIG. I draw nothing from this save that they knew each other and there would have been synergies between them at some level, whereas none of them (with the possible exception of Mr Hodson, who knew Mr Waddell “professionally”) would have known Mr Waddell. For reasons that have been described – Mr Waddell was not an easy person to work for. Moreover, he was (rightly) perceived as being on the way out, and Freshstream were the people taking over the business. It is not surprising that loyalty within the organisation did not embrace Mr Waddell, but rather Freshstream’s appointees and Mr Vaughan.²⁶⁸

HH. THE REVIEW OF HR

437. As early as June 2022, Freshstream was looking at BIG’s HR. Mr Fardad sent an email to himself recording his notes of a meeting with Joanne Duey. That meeting was attended by Mr Vaughan and Mr Cartwright – in addition to Mr Fardad and Ms Duey. Mr Waddell was not present.

438. Mr Fardad’s notes record:

Laurence: Human capital needs to be right, we need to be able to be much larger. We need to invest more in HR.

1. Get Joanne’s view on where it is not and
2. Views on current performance – KPIs
3. Boost

Joanne:

Been here 4.5 years at that time there was absolutely nothing. The culture was very different. Peter was a different person to what he is now and it was an uphill struggle. The structure has changed.

Put in place basic processes (application forms, filing was very basic...)

Proud of where we have got to but need to drive it forwards. Has been a battle to get that support.

We need HR to stand on its own away from the accounts department.

²⁶⁷ This was helpfully illustrated by a diagram at Appendix 1 to the Waddell Opening.

²⁶⁸ This is evident, for instance, in Freshstream’s repeated mention of its “team” within BIG.

What can we do to remove the blocks: Needs to be more of a voice. A forum that HR is involved in so that we can question the structures and how we can do things. We have a board (Peter, Barbara, Darren, Bob and John T). HR needs to be on the board so that they are not fighting for information.

HR needs to work with accounts to do its job. "HR needs a voice"!

You talk we listen process recommendation: we need to execute on these but there isn't a proper format.

How does the rest of the business think of HR? They see HR as the people that get people in and manages the process to get them out. Sales and sales target focus so not value people. It has got better over the last 18 months.

Top 3 wish list:

10. Set of values that becomes part of our culture

2, HR system that we can drive performance and valuation – they are developing this

3. Management team need specific targets in their objectives some people management objectives.

...

4. Communication zones into the branches and listening groups (you talk we listen). Feedback from staff is that they want to talk and be involved. We need to go back quickly to these people. HR does not have a forum is an issue. The ops meetings are not happening every week. Bob and Scott sometimes do not respond.

...

How do you monitor the way people talk to each other? Not really formally

Views on bullying at the company?

Complaints policy?

1. Listening group at Fengate for example. Culture did come up with management style: F'ing and Blinding. Morning meetings are negative and not motivational. Grievance about this manager in place. "to be fair, we all need to push the reset button, how we talk to each other". Ben is up there to try to help.

2. Any issues at Bluebell Hill? That is down to constant coaching and training Scott. Talk to the staff a lot. Why is there no feedback method at Bluebell? If we suggest stuff like that in the past, senior management would have feared Peter. Peter used to walk in on a bad day and everybody would get it. Peter has got a lot better!

Do you see yourself as the top HR person? "Just wants to make sure we do the right thing for the business". Business has grown massively, I have worked incredibly hard with limited resources and only been since January that I have been allowed to have my own team. I would love to carry on seeing this through...did not really answer the question directly, but probably would not work with others.

439. Apart from showing Freshstream’s interest in HR from an early stage (mid-2022), Mr Fardad learned (because it is in his notes) (i) that there was a cultural problem (language and possibly bullying) within BIG, (ii) that it involved Mr Waddell, but that his behaviour had improved and (iii) that although HR had been neglected and there was work to be done, the problems were being addressed.

440. Even before this meeting, Freshstream was of the view that Ms Duey was not suitable for the top job. On 29 May 2022, Mr Cartwright emailed Mr Fardad:²⁶⁹

I reflected on Joanne applying for the HRD role and being included in the Drax process – overall, I think it is the right thing to do, but the situation needs to be carefully managed given we don’t expect she will be successful but likely we want to keep her in the business. I was thinking Laurence could have a discussion with her to let her know we will be recruiting this role and find out whether she would like to apply (while managing her expectations that this role is different to the role she performs today). She is close to Barbara and we mentioned the role in the VCP pack so suspect she may even know about it already.

...

Gilles/Marika – for context Pete suggested Joanne as a candidate for the HRD role during the org discussion on Friday and we discussed including her in the Drax process.

441. In the end, Mr Holness got the job, but Ms Duey stayed in the business.

TWO “TEAMS” OR “CAMPS”

442. As has been foreshadowed, there were, from early on, two “teams” or “camps” within BIG – people loyal to Freshstream and people loyal to Mr Waddell. I am putting this very starkly because I consider that the position was as polarised as these words indicate. This polarisation started early on, practically from the date of Freshstream’s acquisition of its interest.

443. Until the Call Option was not exercised – in October 2023 – this polarisation was relatively unproblematic. Mr Waddell was expecting the Call Option to be exercised (but understood that it was only an option, hence his anxiety) and so was prepared to permit Freshstream to act as if it was the majority shareholder in BIG.

444. Similarly, those on the Freshstream side were prepared to bide their time, bite their tongues in regard to Mr Waddell’s way of doing things, and await the exercise of the Call Option.

445. The time for the exercise of the Call Option is a time of peculiar importance. However, it is important to consider how key persons were aligned before that time. Mr Vaughan was aligned with Freshstream from the beginning. The same will have been true – although perhaps to varying degrees – of those who were recruited after March 2022.

²⁶⁹ Put to Mr Fardad on Day 14/pp100-101 (XX Fardad).

446. Mr Clarke played a key role in the events from October 2023, and aligned himself with Freshstream from early on. Like Mr Vaughan, he denied this. His relationship with Mr Waddell was explored in cross-examination:²⁷⁰

Q (Marcus Smith J)

You said, a few moments ago, he [Mr Waddell] was very angry in the last months. What was he angry about?

A (Mr Clarke)

He was angry about all manner of things, but I was certainly of the view that his behaviour had become worse post-October, post-knowing that Freshstream weren't exercising the Call Option. He clearly had pinned a lot of hope on that happening and when it was communicated to him that it wasn't, his behaviour just – frankly, it felt like it spiralled out of control, he was so unpredictable.

Mr Gourgey, KC, cross-examining, put it to Mr Clarke that this was not correct, and that there was no dramatic change in Mr Waddell's conduct in October.²⁷¹ Mr Clarke, however, stuck to his position ("I can only really repeat what I've said. He became increasingly more unpredictable, increasingly more angry, and my heart would sink in my chest because you just didn't know, on any particular day, just how bad he would be").²⁷² On this point, I accept the evidence of Mr Clarke.

447. Mr Clarke did not accept that this change in behaviour might be attributable to the overt existence of two camps. He denied their existence.²⁷³

Q (Marcus Smith J)

In that time, did you get a sense that there were really two camps in BIG: the Waddell camp, if you like, and the Freshstream camp?

A (Mr Clarke)

No. I didn't really get that sense, no. I mean that's not something that I ever thought, certainly. But it was an incredibly difficult time. It's hard to know, sometimes, quite what I was thinking. There was all sorts going on: difficult Pete, unpredictable, aggressive, angry. Sometimes, then, occasionally quite pleasant. I think that just made a very challenging environment to work in.

Q (Mr Gourgey, KC)

In answer to my Lord's question, which was in that time, did you get a sense there were really two camps. You say, "I didn't really get that sense". Just to be clear, was there a time when you did get the sense that there were two camps: a Freshstream camp and a Waddell camp?

A (Mr Clarke)

I would never use – not really. The only time that I've considered there was a sort of Pete versus

²⁷⁰ Day 22/pp11ff (XX Clarke).

²⁷¹ Day 22/p11 (XX Clarke).

²⁷² Day 22/p11 (XX Clarke).

²⁷³ Day 22/pp11ff (XX Clarke).

Freshstream camp, frankly, is since this litigation started.

...

What I'm saying is the analogy of there being two camps is not something I'd ever considered or anything I would say. I didn't consider there was a two different camps during the time that Pete was working in Big Motoring World. The only time that's really become apparent is since this litigation commenced.

448. Whilst Mr Clarke may not have articulated it in these terms, I do not accept his evidence on this point. The “two camps” analogy is really a benign articulation of what I consider was occurring, namely that Freshstream were pursuing their own interests in regard to BIG and that in some cases Mr Waddell accepted this and in other cases did not know.
449. But there was alignment and positioning within BIG, and Mr Clarke was aligned on the Freshstream side. That is scarcely surprising. Mr Clarke had, in less than a year, obtained a senior job within BIG and was anticipating Mr Waddell retiring. He had no prospect of obtaining a similar job (or perhaps any job) elsewhere because of his disciplinary record and it was in his own interests to ingratiate himself with the new powers – Mr Vaughan and Mr Fardad – whatever his inclinations.
450. That is exactly what Mr Clarke did. His conduct towards Mr Waddell was characterised by acts of disloyalty which could not be justified as defensible in the best interests of BIG. For this reason, I leave altogether out of account his role in assembling evidence for the Investigation and his participation in the Freshstream Investigation Committee, because these are *prima facie* matters where he was acting in BIG's best interests (as was his primary duty). But Mr Clarke's loyalties can be seen in the following matters, which are considered later on in this narrative: (i) As has been described, Mr Waddell was less than frank with the FCA as regards his criminal record. When Mr Clarke discovered this, he did not seek to manage (with Mr Waddell) that failure and mitigate it to the extent he could, but reported it to Mr Vaughan as an instance of misconduct; (ii) When he needed to attend a “war planning” meeting that Mr Waddell did not know about, Mr Clarke lied to Mr Waddell in order to get out of an appointment with Mr Waddell.

Part IV(vii): Events to 1 October 2023

LL. INCIDENT NO 15: ALLEGED SLAPPING/PUNCHING OF MR CHAPMAN AT WEST MALLING (JULY 2022)

LL.1. The evidence of Ms Gregory

451. Ms Helen Gregory (“Ms Gregory”) worked in the same office as Mr Chapman at BIG’s West Malling Site. The case against Mr Waddell is put, at its highest, by Ms Gregory:²⁷⁴

[26] I witnessed an incident involving Peter and the General Manager of the West Malling site, Tom Chapman.

[27] I cannot remember the specific date, but I think it was sometime between March and December 2022. I remember Peter coming to the West Malling site (where I was covering a shift at the time). Tom and I, and possibly someone from the part-exchange team, were in the office when Peter walked in. I think it was late morning. The office at West Malling was quite an intimate setting, and I remember that Tom was seated at his usual desk. Given the passage of time, I cannot now recall where I was positioned when it happened, but I remember seeing the incident clearly.

[28] Peter came into the office like a whirlwind that day and went over to Tom. I saw Peter lash out at Tom and whack him hard on the shoulder. He used such force that I remember thinking he must have been angry or frustrated with Tom. I’ve never witnessed anything like that before, it made me feel uneasy or on edge. He said “Alright, Tom” (or something similar) at the same time, but it sounded to me like a sarcastic comment.

[29] Immediately after Peter whacked him, Tom said “that isn’t on” (or something like that). They exchanged further words, but I can’t remember what was said, and then Peter left the office. After Peter left the office, Tom and I stayed and had a brief conversation. I remember asking if he was ok, but obviously he was angry, and although he wasn’t crying, I could tell he was upset by the situation. Seeing him upset was difficult for me to witness because I care about the people I work with. Because Tom didn’t see it coming, I believe he thought Peter had punched him, but I think he used an open hand rather than a closed fist. In any case, I thought what happened to Tom was bad. I had never witnessed anything like that in the workplace before.

[30] Either on the same day or a few days later, Tom told me that he looked through the CCTV footage to try and find the clip of what happened. Given the passage of time, I cannot remember the specific details of the conversation we had, but I know that he had access to the CCTV as the General Manager. I wasn’t there when he viewed the CCTV footage.

[31] I don’t think Tom ever told me why he looked for the CCTV footage, but I assume it was because he wanted to escalate what had happened.

[32] Having reviewed page 15 of the transcript of my meeting with Nick Siddall, KC on 25 March 2024, I now remember that I heard a rumour that the CCTV footage of the moment when Peter whacked Tom went missing. This was approximately three

²⁷⁴ Gregory 1.

years ago, so I cannot now remember any more information, such as when I heard the rumour or who from.

[33] Although BIG technically had a small HR team, my understanding at the time was that Peter became involved in all HR cases. Because Peter was in charge of the company, and it was him that was in the wrong, I didn't feel like I could report what I had witnessed.

452. Ms Gregory attended for interview by Mr Siddall, KC, and that interview was transcribed. Ms Gregory was candid that her relationship with Mr Waddell and BIG was “like being in a bad relationship but you kind of just get on with it”.²⁷⁵ She described Mr Waddell as “aggressive”, this manifesting itself “in voice, tone, threats, everything that you can imagine that would be horrendous, really”.²⁷⁶
453. As regards this incident:²⁷⁷

Ms Gregory ...When [Mr Waddell] turned up that day it was like Peter straight went for Tom, as in come into the office and start shouting.

Mr Siddall, KC Okay.

Ms Gregory I can't remember what they were talking about, to be fair, but all I remember from the incident is Peter came up. He would normally whack a guy on the shoulder, I suppose, to say hello or whatever, but he literally hit him; it was hard, really, really hard. Too hard. Then Tom obviously responded, something along the lines of “do not hit me again” or “if you hit me again”. I can't remember precisely what was said but I was definitely there and I definitely remember it happening and I definitely remember it affecting Tom.

...

Mr Siddall, KC Dealing with how Pete was holding his hand, was it a closed fist or an open palm?

Ms Gregory That is what I cannot be 100%.

Mr Siddall, KC Right.

Ms Gregory I don't believe it was a – because you would not be able to do the power from a hit that you would with probably a closed fist. I couldn't say 100%.

...

Mr Siddall, KC Okay. What was causing you to look at Tom at the time that it happened, please?

Ms Gregory As soon as Peter arrives, I feel I need to go into protection mode when he is around, just protecting people. I know Tom can be quite vulnerable at times and obviously the

²⁷⁵ Siddall Transcript/p249.

²⁷⁶ Siddall Transcript/p249.

²⁷⁷ Siddall Transcript/pp255ff.

relationship was quite vulnerable at the time, so I just stayed around to see if I could help.

...

Mr Siddall, KC

In terms of the force used by Pete, how would you describe that?

Ms Gregory

Really bad. Like really aggressive, really hard. Definitely I remember that because you are taken aback when it happens and Tom was obviously taken aback as well.

...

Mr Siddall, KC

How was Tom? What was his demeanour after this had happened?

Ms Gregory

Not great. Like I say, the relationship was very stressed at the time anyway and obviously that does not help. That was like the icing on the cake.

Mr Siddall, KC

Yes.

Ms Gregory

Maybe, and this is a real maybe, if they had never had any run-ins or the way Peter talks to people before, like zilch, which is never going to happen, maybe Tom would not have reacted the way he did. I am not saying it was uncalled for because what he did, the aggression that was hit or whatever you want to call it, wasn't right.

Mr Siddall, KC

Yes.

Ms Gregory

Tom was very – I just class him as vulnerable at the time because of the situation he was in with Peter, as in how he was spoken to and how he felt, but that does not warrant what was done at all, at all.

...

Mr Siddall, KC

On your version of events, this is extremely unusual that Pete would hit somebody, okay?

Ms Gregory

Yes.

Mr Siddall, KC

I am wondering, from your analysis of the situation, what was it about what Tom had done or Tom had said or the circumstances which made Pete hit Tom?

Ms Gregory

I think it is more about Peter. It is more about how he was. He was obviously pissed off with Tom for some reason but had no right to be, if that makes sense. There was nothing Tom had done that I knew of. Obviously, I do not know any conversations they had prior but it was just Pete has come in in his storm that he does and that is how that ended, basically.

LL.2. Conclusion in the Siddall Final MDE Report

454. In the Siddall Final Report, Mr Siddall, KC concluded that the allegation was proven,²⁷⁸ basing himself on Ms Gregory's evidence to him (which he found

²⁷⁸ Siddall Final Report/[214].

credible), but also on the basis of Mr Waddell's demeanour on CCTV (which however failed to record the actual incident) and the record of a disciplinary hearing of Mr Chapman (to which I will come).

455. Mr Siddall, KC came to no conclusion as to the amount of force used by Mr Waddell.²⁷⁹

I should observe that there may be scope on the evidence to question if PW intended a more gentle contact with [Mr Chapman] and miscalculated or whether he intended to strike [Mr Chapman] with force. Certainly, [Ms Gregory's] evidence supports the latter. However, this is not a conflict of evidence which I consider that I need to resolve. This is because a mistaken overuse of force is just as much an assault as is a deliberate forcible blow. Further it is plain on the evidence that I have received that [Mr Chapman] did not consent to the level of force used by [Mr Waddell].

456. Mr Siddall reached no finding as to gross misconduct (he was not asked to), but did conclude that this allegation did not amount to an MDE.²⁸⁰

LL3. Documentary evidence: Mr Chapman's disciplinary hearing

457. Mr Chapman did not give evidence either to Mr Siddall, KC or to the Court. Accordingly, there was no witness statement, nor was there any witness summary. The closest to a statement from Mr Chapman is contained in a meeting note dated 11 August 2022 of a disciplinary hearing initiated by Mr Waddell²⁸¹ against Mr Chapman concerning his non-attendance at his workplace (in order to attend hospital in order to attend a scheduled baby scan: his wife was having a baby). The substance of the disciplinary is of no moment. What is interesting is the fact that Mr Waddell did not have the matter out with Mr Chapman on the day, but dealt with the matter indirectly through formal disciplinary process. This was not Mr Waddell's usual practice.

458. Mr Chapman's explanation of this Incident as recorded in the meeting note was as follows:

Explained that a couple of weeks ago Peter had gone into the office in a boisterous mood. He stated that when Peter is like that it is usual from him to give Tom a slap or a pat on the back. He stated that there is never any harm in this. However, on this occasion, he didn't know what had happened, but the slap was more like a punch and was extremely forceful. He stated that he didn't know whether it was just that Peter

²⁷⁹ Siddall Final Report/[215].

²⁸⁰ Siddall Final Report/[216].

²⁸¹ Day 6/62 (XX of Mr Waddell by Mr Laddie, KC). This is evident from the meeting note:

"Tom explained that he had phoned Jack [Milner] and could hear Peter in the background shouting. Jack had told him that Peter was on a call to Scott regarding Tom's absence. Tom then advised Jack that he would abandon the scan and would return to work.

Tom explained that during his drive back to work he had worked himself up due to the stress of the situation and the anticipation of what he was returning to. He parked at the top of the site and walked down to the building. When he saw Peter he had said "Shall we have a chat?" as he knew that Peter would want to speak to him about the situation. Peter had responded with "What about?" to which Tom had replied "The fact that I wasn't here". Peter had told him that he was not going to speak to him, but that the matter would be dealt with by HR."

momentarily didn't control his own strength, but that it had hurt him. He had reacted to this by saying that Peter should not hit him like that again. He stated that this was an automatic reaction to the situation. He explained that there was a room full of people and he could see how his reaction may have taken Peter by surprise as he didn't believe that Peter meant to hurt him.

Tom explained that his intention was never to make any issue out of the situation, but stated that he believes that it has now affected their relationship. He stated that he wanted to go back to working with Peter in the way that he did before. He then asked Scott [Brown] for advice on how he should handle the situation going forward.

459. Mr Brown, sensibly, indicated that he would tell Mr Waddell of their meeting, "that he had met with Tom and had discussed his mistake regarding the scan. He would advise him of the fact that this absence had now been taken as holiday and that in future such time should be booked off through the correct channels, ensuring that proper cover is in place. Moving forward, Tom needed to focus on his job to ensure that West Malling was putting in the best performance that it could. Scott would give Tom any support that he needed to ensure that this happens."

LL.4. Reporting of the Incident

460. Mr Chapman did not report the Incident at the time. Neither did Ms Gregory. Rather, the Incident was reported after 7 March 2024, when Mr Waddell had been suspended. Mr Vaughan described the process:²⁸²

[83] After the SIRE and MDE Notices were served on [BIG] by Freshstream, and BIG had suspended Pete's employment, we sent out communications to the senior team and then I spoke to as many colleagues as I could to explain what had happened. Many people expressed relief to me in those conversations; a couple of people were more cautious and there was a fair degree of shock as well.

[84] Following those conversations, I recall that a number of other people came forward to either me or [Mr Clarke] with details of behaviour Pete had directed towards them. In particular, Tom Chapman (the General Manager of our West Malling site) came to me and told me about an incident where Pete had physically assaulted him. He told me that Pete had yelled at him and then struck him. After that happened, Tom had tried to get CCTV evidence of what had happened, but by the time he accessed the system the relevant footage had been removed from the CCTV record. I asked him whether he would participate in the investigation but after consideration he said that he felt it was too exposing to stand up to Pete and give evidence. Tom Chapman told me that he felt scared of what Pete would do, and was concerned that it would end his career, along with fears of physical implications it might have for him. Apart from Tom Chapman, I do not recall any other people coming forward to me directly; generally, I kept a distance from the witnesses in the investigation to make sure that my position remained entirely independent.

²⁸² Vaughan 3.

LL.5. Ms Gregory's evidence in cross-examination at trial

461. Ms Gregory was cross-examined on this Incident,²⁸³ in particular as regards the documentary evidence at Mr Chapman's own disciplinary hearing:²⁸⁴

- Q (Mr Gourgey, KC)** Now, were there other people in the room at the time?
- A (Ms Gregory)** Not that I remember.
- Q (Mr Gourgey, KC)** Right. And it's right, isn't it, from what you witnessed, that there was a momentary immediate reaction by Mr Chapman to the physical contact? Do you agree with that?
- A (Ms Gregory)** Yeah, I agree with that, yeah.
- Q (Mr Gourgey, KC)** And after that reaction, after he had said what he is recorded here as saying to Peter, they just go on with the meeting? That's right, isn't it?
- A (Ms Gregory)** Well, I can't remember what happened immediately after. I remember having a small conversation with Tom and him being upset. But that's about as much as I remember.
- Q (Mr Gourgey, KC)** And I suggest to you that, other than that immediate reaction from Mr Chapman, he was not visibly upset for the balance of the meeting. Do you agree?
- A (Ms Gregory)** I remember him telling me he was upset so...I stick to what I say, that he was upset.

LL.6. No CCTV

462. Although parts of the interaction between Mr Waddell and Mr Chapman were recorded, the blow itself was not. The CCTV footage was deleted. Although there were suggestions that this might have been deliberate, these were not pursued, and I make no findings in this regard.

LL.7. Evidence of Mr Waddell

463. In his witness statement, Mr Waddell said:²⁸⁵

[273] At the time this allegation was considered by Mr Siddall, it was almost two years after the event. It concerned a small interaction with Tom Chapman, who was the General Manager of the West Malling site. When I was at the West Malling site, I would often walk into Mr Chapman's office, say hello, and sometimes give him a friendly pat on the back.

[274] Back in 2022, Mr Chapman was very stressed and he and his girlfriend had their first baby on the way. I remember one day I walked into Mr Chapman's office. As I often did, I said hello and gave him a friendly pat on the back. Mr Chapman jumped up and said "don't hit me like that". I could tell by his reaction that Mr Chapman was very stressed and very tense. I deny that I "physically slapped or punched" Mr Chapman. It

²⁸³ Day 23/pp104ff (XX Gregory).

²⁸⁴ Day 23/pp109ff (XX Gregory).

²⁸⁵ Waddell 5.

was just a friendly slap on the back – the same as every time I went into the office. I did not use any more force on this occasion. It was the same as always.

[275] I note that Ms Gregory told Mr Siddall that I was “picking on” Mr Chapman at the time. I deny this. Around the time of this allegation, there had been two or three times when issues had come up at West Malling and Mr Chapman was not around to deal with them. I tried to explain to him that as General Manager, he needed to be around for these sorts of things. In the end, I said to Mr Chapman that he needed to have a meeting with HR. This is what led to the HR meeting on 11 August 2022 referred to by Mr Siddall. I have always had a good relationship with Mr Chapman. He recently sent me a picture from his wedding.

464. Mr Waddell was cross-examined on the incident.²⁸⁶ Mr Waddell maintained that it had only been a “friendly pat”, but accepted (as he had in his witness statement) that Mr Chapman had jumped up and said “Oh, Pete, that was a bit hard”. Mr Chapman may well have used the word “hit” (as per Mr Waddell’s statement). There was no accusation of “hitting” by Mr Chapman. The pat on the back was, according to Mr Waddell, the same as previously, and he attributed Mr Chapman’s (over-) reaction to stress.

LL.8. Ms Ferguson’s conversation with Mr Chapman

465. Shortly before the events of early March 2024, when Mr Waddell was suspended, Ms Ferguson observed what (with hindsight) she regarded as an unusual pattern of meetings between Mr Vaughan, Mr Clarke and Mr Ruprah.²⁸⁷ Mr Clarke seemed to be looking for material to use against Mr Waddell.²⁸⁸ It was in this regard that Mr Chapman came to see Ms Ferguson:²⁸⁹

In addition, shortly after Peter was removed from the business, Tom Chapman came to visit me in my office and told me that he had just had a meeting with Laurence Vaughan and Tom Clarke. Tom Chapman told me that Tom Clarke had asked him to provide a statement against Peter regarding an incident that happened a few years earlier, where Tom Chapman was unhappy at the way Peter had overzealously patted him on the back. Tom Chapman told me that he told Lawrence and Tom Clarke that he would not providing a statement, and that he had no issues with Peter and the incident had been resolved immediately. Tom Chapman told me that he was upset that Lawrence and Tom Clarke had brought this up and seemed to be trying to use it against Peter. In that period, I also had a visit at my office from Joe Evans, who was the part exchange manager. Joe told me that Lawrence and Tom had asked him to give a statement against Peter, but he was not going to get involved because he is known Peter for many years and as always liked Peter.

LL.9. Approach to assessing Incidents

466. This is chronologically the first Incident. It is appropriate to set out how I assess them. My approach is to determine the facts, and then to consider whether – viewed purely from a wrongful dismissal standpoint – this Incident constituted a repudiatory breach on the part of Mr Waddell entitling BIG to accept the

²⁸⁶ Day 6/pp166ff (XX Waddell).

²⁸⁷ Ferguson 1/[77]-[78].

²⁸⁸ Ferguson 1/[78].

²⁸⁹ Ferguson 1/[79].

repudiation and terminate Mr Waddell's employment under the Waddell Service Agreement.

467. I shall not, in making these determinations, use the language of *repudiation*, but the language of *misconduct* (which is more natural) I shall differentiate between (i) cases of no misconduct, (ii) cases of misconduct falling short of gross misconduct and (iii) cases of gross misconduct. The distinction between (ii) and (iii) matters. I equate, for the purposes of this Judgment, gross misconduct with repudiatory breach. Accordingly, Mr Waddell's summary dismissal on the basis of an Incident is only lawful if I find gross misconduct. I am (obviously) not sanctioning misconduct falling with (ii) – such conduct should not be condoned – but such conduct is irrelevant for the purposes of this Judgment.
468. It is unnecessary for me to consider Mr Siddall, KC's conclusions as to whether the Incident constitutes an MDE. That is because Mr Siddall, KC's finding of an MDE would (assuming the process operated as it should) be reported to the MDE Investigation Committee by Mr Siddall, KC, and by the Committee to Freshstream. It would then be for Freshstream to decide whether or not to make an MDE Notice. There is thus no point in second-guessing Mr Siddall, KC's findings in this regard. However, to be clear, that does not mean that the MDE process will not be considered. The validity of the MDE process was one of Mr Waddell's central points in relation to unfair prejudice, but those points do not turn on the correctness of Mr Siddall, KC's conclusions as to the existence of an MDE.

LL.10. Conclusions

469. I find that Mr Waddell behaved, or intended to behave, as he normally did, patting Mr Chapman on the back. For whatever reason – taking Mr Chapman by surprise or excessive force – Mr Chapman was struck with too great force by Mr Waddell and made an oral and immediate complaint to Mr Waddell. Mr Waddell was embarrassed by this, and this put a strain on what was an otherwise good working relationship between Mr Waddell and Mr Chapman.
470. The best evidence of what happened is the documentary evidence contained in the record of Mr Chapman's own disciplinary hearing, which was that this was an Incident over and done with in the instant, save for the effect this had on Mr Chapman's working relationship with Mr Waddell. I accept the view expressed by Mr Chapman in his disciplinary interview that this Incident affected the relationship between himself and Mr Waddell, which issue Mr Brown appears to have handled rather well by acting as an intermediary between Mr Chapman and Mr Waddell.
471. I consider that good relations were restored after this. This was Mr Waddell's evidence (which on this occasion I accept), but more particularly because of Ms Ferguson's evidence regarding her later conversation with Mr Chapman.
472. Ms Gregory's version of events is (as Mr Siddall, KC noted) very different, as is the report of Mr Chapman to Mr Vaughan. The problem is that this material post-dates Mr Waddell's suspension, after which the actors within BIG polarised into "pro-Waddell" and "anti-Waddell" positions. Ms Gregory and Mr

Chapman both stayed with BIG, and aligned themselves (to that extent at least) with Freshstream. Their evidence, therefore, needs to be treated with some caution.

473. I am satisfied that Ms Gregory was doing her best to reconstruct what happened years after the event. However, in being obliged to categorise this as a form of misconduct, Ms Gregory innocently became committed to a more extreme version of events than I find actually occurred. Mr Waddell patted Mr Chapman on the back harder than Mr Chapman at that moment in time expected, resulting in an awkward moment between the two. I consider that Mr Siddall, KC was right to find that the incident occurred, but wrong to consider that it did not matter what force Mr Waddell intended to apply. Given that Mr Waddell was prone to patting people on the back, this was a highly relevant factor. I also consider that Mr Siddall, KC was wrong to place any weight on the CCTV (which I have seen) and which teaches nothing of significance.
474. The non-reporting of the Incident at the time cuts both ways: as I have indicated more generally elsewhere, the conclusion from non-reporting can either be that the Incident was insufficiently serious to be reported or because the climate of fear in BIG precluded the reporting of grievances against Mr Waddell. Here, I conclude that the former is the case, and that neither Mr Chapman nor Ms Gregory reported the matter because it was trivial. It only assumed the seriousness that it did because of Mr Vaughan's and Mr Clarke's need to find material to deploy against Mr Waddell. I appreciate that this is a serious finding against both Mr Vaughan and Mr Clarke. It is made good when the detail of the MDE Investigation is considered.
475. I find that this was not a case of gross misconduct entitling BIG summarily to dismiss Mr Waddell. It is either misconduct so trivial it should have been dealt with informally – as it was – or else not misconduct at all.

MM. A PRESENTATION TO OPT (JULY 2022)

476. OPT was a pension fund that ultimately co-invested in BIG to the tune of about £20m.²⁹⁰ At this time, OPT were yet to commit to invest, but they were interested. In an email written by Mr Fardad in July 2022 to Mr Nick Lapthorne, Mr Fardad identified key points to articulate when presenting the BIG opportunity to OPT.
477. The email – entitled “Key points for Nick” – had the following numbered key points (omitting those that are immaterial for present purposes):
2. What you found when you arrived – try not to be too negative, but say what the business was focusing on
 3. Explain in fair amount of detail what you put in place and how that increased penetration rates
 4. Explain how much further you think we can go and what it would take to get there

²⁹⁰ Day 15/p40 (XX Fardad).

5. Don't be negative on the tech systems in place today. We have explained to the OPT people that the company has excellent systems in place, so please don't contradict this!

6. They may ask what it is like to work for Peter:

- a. He is a high intensity CEO and drives people pretty hard
- b. You have to work hard at BMW, but Peter does the same himself
- c. It's been a period of change with two new sites, a pandemic, etc

478. Mr Fardad was asked about the sixth key point (working for Mr Waddell):²⁹¹

Q (Mr Gourgey, KC) And you were concerned, weren't you, as to what he might say about what it was like to work with Peter? That's right, isn't it?

A (Mr Fardad) Yes, maybe.
[Pause]
Yes, I might have been concerned about that, yes.

Q (Mr Gourgey, KC) What were you particularly concerned about, that he might say, Mr Fardad?

A (Mr Fardad) I don't recollect now.

Q (Mr Gourgey, KC) If all he wanted to do was to give a – him to give a balanced view to OPT, the prospective investors, then you could have just simply said to him, "please give a balanced view", couldn't you?

A (Mr Fardad) And that may be what I said to him, I don't recollect.

Q (Mr Gourgey, KC) I suggest to you that the guidance you were giving him here was not to give a balanced view – sorry, the guidance that you conveyed to him, as evident from these notes, was not to give a balanced view, but not to tell the prospective investors who you were dealing with, OPT, anything negative about the business that you wanted them to invest in. That's right, isn't it?

A (Mr Fardad) No.

479. From early on, Mr Fardad was conscious that Mr Waddell's conduct was an issue, and he wanted to keep a lid on discussion about that conduct.

NN. INCIDENT NO 20: STATEMENT TO MS RATHER IN INTERVIEW ("...I HAVE GOT OTHER BROWN FRIENDS TOO...") (AUGUST 2022)

NN.1. Witness statement of Ms Rather

480. Ms Huma Rather ("Ms Rather") applied for the role of Compliance Officer at BIG in 2022. She reached the final round of interviews, and was told by Mr

²⁹¹ Day 15/pp45-46 (XX Fardad).

Lapthorne that Mr Waddell would be present at the interview, which took place in August 2022. Ms Rather recounts:

[38] Once Peter joined the interview, he essentially took it over. For around half an hour, Peter was describing how he had just sold some of the shares in the business to an investor, was planning on retiring, but that some people, including Bob Ruprah, were asking Peter not to leave the business yet. Peter then said, “I’ve got other brown friends too. Look at Bob, he’s brown”, whilst showing me a video on his phone of a man who I now understand was Bob Ruprah, the Head of Operations, and children who I understand were Bob’s children jumping from a yacht into the sea.

[39] When Peter made this comment, I couldn’t respond, since Peter carried on speaking, but I sensed that Nick saw my facial reaction. I found the comment shocking and offensive because it was made specifically to me because I, like Bob, am British-Indian.

NN.2. Cross-examination of Ms Rather

481. In cross-examination, Ms Rather stood by her witness evidence. She was asked why she took the job, if Mr Waddell’s comments were so offensive:²⁹²

Q (Mr Gourgey, KC) So why did you go ahead and accept the job?

A (Ms Rather) So, as someone that is part of an ethnic minority, unfortunately we live in a society where people will make comments like this. You have to have – you tend to give people the benefit of the doubt, they don’t realise what they’re saying. It is an offensive term, because I don’t know what anyone’s skin colour has got to do with anything in life. It’s nothing relevant. But you tend to listen to it, and think, maybe he hasn’t realised what he said or maybe he’s not educated in this part of the world to realise that it’s offensive. But it doesn’t take it away from the fact that referring to someone by their skin colour is a form of racism.

Ms Rather accepted that Mr Waddell may have made the comment without realising its significance.

NN.3. Ms Rather’s evidence to Mr Siddall, KC

482. Ms Rather’s evidence to Mr Siddall, KC was entirely consistent with her oral and written evidence, if a little shorter.²⁹³

NN.4. The Siddall Final MDE Report

483. Mr Siddall, KC noted that this allegation came “unprompted” from Ms Rather.²⁹⁴ He accepted Ms Rather’s account – and did not hear from Mr Waddell, who did not make himself available for interview. Mr Siddall, KC

²⁹² Day 23/pp44-45.

²⁹³ Siddall Transcript/pp66-67.

²⁹⁴ Siddall Final Report/[121].

found that the comment constituted harassment contrary to section 26(1) of the Equality Act 2010 and that it was an MDE.²⁹⁵

NN.5. Evidence of Mr Waddell

484. In his witness statement, Mr Waddell denied in emphatic terms that the comment was made.²⁹⁶ He was also cross-examined on the incident,²⁹⁷ maintaining his denial. However, he did appear to accept that he showed Ms Rather a video of the boat,²⁹⁸ which goes some way to confirming Ms Rather's version of events and is evidence that does not appear in his witness statement.

NN.6. Evidence of Mr Lapthorne

485. Mr Nick Lapthorne ("Mr Lapthorne") echoed Mr Waddell's denial – "I clearly recall that Peter did not make the remark in question, or any other offensive remarks during Huma's interview".²⁹⁹ He did recall Mr Waddell mentioning his yacht and Mr Ruprah,³⁰⁰ but he was certain that no such remark was made.³⁰¹ He was also certain that had the remark been made (i) he would have heard it and (ii) he would have remembered it.³⁰² Pressed, he considered that Ms Rather was fabricating the remark she said Mr Waddell made.³⁰³

NN.7. Conclusions

486. I consider that the comment, as recounted by Ms Rather, was made by Mr Waddell. Ms Rather was an impressive and straightforward witness, with a good recollection. Although she was very much in the "Freshstream" camp, rather than Mr Waddell's camp, she was doing her best to be objective and fair, and I consider that her best was very good. I am inclined generally to accept her evidence; and where I do not, that is because of an innocent misrecollection and not because of any desire to mislead.

487. Mr Waddell had every reason to deny having made the remark, and I do not consider him an especially reliable witness. His concession that he showed a video of Mr Ruprah and his children on the yacht reinforces Ms Rather's recollection. Mr Lapthorne was a truthful, but over-emphatic witness. I consider it very likely that either he did not hear the remark or took the view (rightly or wrongly) that this was "Peter being Peter" and simply forgot about it.

488. I do not however, accept that this incident amounts to harassment. I reach this conclusion accepting that the comment was inappropriate and should not have

²⁹⁵ Siddall Final Report/[125]-[126].

²⁹⁶ Waddell 5/[239], [241].

²⁹⁷ Day 7/pp2ff (XX Waddell).

²⁹⁸ Day 7/p5 (XX Waddell).

²⁹⁹ Lapthorne 1/[60].

³⁰⁰ Day 13/p144 (XX Lapthorne).

³⁰¹ Day 13/p145 (XX Lapthorne).

³⁰² Day 13/pp146-147 (XX Lapthorne).

³⁰³ Day 13/p147 (XX Lapthorne). Mr Lapthorne did not regard Ms Rather as liable to make evidence up.

been made, and that it related to a protected characteristic. It was clearly misconduct, but not gross misconduct.

489. My approach is to equate harassment under section 26 of the Equality Act (and the definition of bullying that I have derived from section 26) with gross misconduct, which accords proper weight to the terms of section 26 (“violates B’s dignity”, “creates an intimidating, hostile, degrading, humiliating or offensive environment for B”).
490. Inappropriateness is not the touchstone of a section 26(1) infringement. I place considerable weight on Ms Rather’s own, elegantly put and nuanced, reaction to this remark.
491. Respect for others involves seeing others as they truly are, and not landing upon points of difference that are *immaterial*. Sometimes, points of difference are *material*, including race, sex and gender, and in such cases it is incumbent upon us to take these into account. But in this context, there was no such justification, and Mr Waddell was acting inappropriately in an interview by referring to matters wholly irrelevant for the purposes of that interview.
492. But I do not consider that the necessary elements for section 26(1) harassment were met. Was Ms Rather’s dignity violated? Did the interview result in an intimidating, hostile, degrading, humiliating or offensive environment? These are strong words, and it seems to me that the reactions of Mr Laphorne (who, if he heard it, regarded it as so unexceptionable as to forget it) and (in particular) Ms Rather (who saw them as inappropriate and a sign of bad education) are telling. Mr Waddell was showing off about his boat, and in doing so made inappropriate remarks about Mr Ruprah, doubtless wanting to show his tolerance and open-mindedness, unaware of the fact that he was doing the very opposite.
493. I conclude that this was not harassment contrary to section 26, although I want to make clear that I am in no way condoning the comment. The comment was inappropriate but insufficiently serious to constitute harassment or gross misconduct.

OO. MR FARDAD’S EXPLANATION TO MR WADDELL AS TO THE CIRCUMSTANCES IN WHICH THE CALL OPTION WOULD BE EXERCISED (16 SEPTEMBER 2022)

494. On 16 September 2022, Mr Fardad emailed Mr Waddell in the following terms:

Hi Pete

Hope you’re well.

As discussed, I thought it would be useful to set out what I think our investment committee would look at in order to decide on the exercise of the call option. The IC will make the decision at the time but I think it will consider the following factors:

1. LTM³⁰⁴ EBITDA at the time we exercise the call option. Would need to be at or around £20m. We're on track on this metric, so I'm feeling pretty good about this factor.

2. Whether we have a new site signed up or in ramp up which may not be in the EBITDA at that time, but gives us a clear view for how EBITDA would grow in the next 1-2 years

3. The stability of the senior team: This would include Bob, Darren, Neil, Andrew, Alex, Ben, Stewart, Nick and Scott's replacement. We would want to see this group of people being stable (no departures), clear on what their roles are, and functioning in an effective way with each other

4. Market environment at the time (not in any of our control, but does have an impact on our decision)

We have a board meeting and dinner with Gilles on the 28th so can discuss it all face to face then.

495. The EBITDA of £20m mentioned was below the targets set in the Securityholders' Deed, and in fact below the point at which Step-In Rights became engaged, if they were activated.³⁰⁵

PP. MR VAUGHAN'S EMAIL OF A CARTOON (27 SEPTEMBER 2022)

496. There was some evidence that Mr Vaughan and Mr Waddell did not get on, although this was controversial.³⁰⁶ In an email dated 27 September 2022, with "Pete!" in the subject line, Mr Vaughan sent Mr Fardad a cartoon of two people looking at a large portrait of a somewhat stern looking gentleman, with the caption:

This is Peter, our no bullshit, hard driving founder, who mysteriously fell off a cliff during a weekend team building exercise

497. It is significant that this was not sent to Mr Waddell. This was an in-joke between Mr Vaughan and Mr Fardad, which Mr Fardad accepted was "unfortunate"³⁰⁷ and Mr Vaughan similarly. Whilst the cartoon shows a certain malice towards Mr Waddell, what is more telling is what it says about Mr Vaughan's intentions as regards Mr Waddell: namely that he wanted Mr Waddell out, under whatever circumstances.
498. I attach little weight to these questions of like or dislike. It is certainly true that by the time of his giving evidence, Mr Waddell evinced a loathing for Mr Vaughan, which was not equally, but nevertheless clearly, reciprocated by Mr Vaughan. Obviously, that affected the evidence they gave, but not by very much. Of far greater moment was the fact that each had a corner to defend, and lost no opportunity of taking shots at one-another. That means that I must treat

³⁰⁴ Last Twelve Months, as opposed to a run-rate projection for the future.

³⁰⁵ Day 15/p56 (XX Fardad).

³⁰⁶ See, eg, Day 19/pp27ff (XX Vaughan).

³⁰⁷ Day 14/p108 (XX Fardad).

their evidence with caution, but I do not consider the dislike to be a further factor requiring further discount of their evidence.

QQ. INCIDENT NO 12: BULLYING OF MR MABY

QQ.1. Appointment

499. Mr Maby was appointed by Freshstream pursuant to their rights under the Securityholders' Deed. Drax Recruitments helped with the process and Mr Fardad and Mr Gradassi were involved in Mr Maby's recruitment.³⁰⁸
500. Neither Mr Fardad nor Mr Gradassi say in their witness statement when Mr Maby commenced work, but this is not especially material. What is material is why Mr Maby left. In the statements of the witnesses called by BIG and Freshstream, the blame for Mr Maby's departure was firmly placed at the door of Mr Waddell.

QQ.2. The witness statements of BIG and Freshstream regarding Mr Maby's exit

501. Mr Gradassi described the circumstances of Mr Maby's exit as follows:³⁰⁹

[66] By the end of summer 2023, things had become very, very tense between Pete and Alex Maby. I remember feeling the dynamic mirrored Pete's behaviour during due diligence with John Titchmarsh: a number had to be met. If reports differed from Pete's expectation, the messenger was blamed. My impression was that Alex tried to report the numbers accurately, but they did not align with Pete's aim to push Freshstream to exercise the Call Option. Alex got the blame and unfortunately bore the brunt of the pressure from Pete.

[67] The pressure around the Call Option made Alex's position untenable. My recollection is that he resigned around the end of summer 2023. Pete's pressure to deliver numbers that would cause the Investor to exercise the option took a toll. Alex opened up to Reza about it, I think, albeit that I do not know the details. The situation wore him down.

[68] After Alex left, we brought back David Thorley while we launched a search for a new CFO.

502. Mr Fardad's written evidence was as follows:³¹⁰

[95] Pete was never happy with Alex and his approach to the numbers. Pete often called me to complain about Alex. Alex prepared the monthly financial reports showing EBITDA below what Pete wanted. Alex reported this data accurately, as far as I can remember, but Pete was not happy because, for example, Pete wanted the fixed costs to be looked at, let's say £3m for the month, when they were actually £3.5m once the monthly accounts were prepared. Alex's approach was to report the expenses which the company incurred in that month, which is not what Pete wanted, although Alex was clearly right. There were expenses that were exceptional items which is normal in monthly accounts and I remember that Pete and Alex had disagreements about what constitutes an exceptional expense. I don't remember what the exceptional expenses

³⁰⁸ Fardad 4/[94].

³⁰⁹ Gradassi 1.

³¹⁰ Fardad 4.

were during this period. Alex and Pete had different views but Pete was very aggressive about it. At one point, Pete was accusing Alex of stealing from him and I tried to convince Pete that was not the case and Alex was just following standard cost accounting. Similarly, when the 2023 budget was being prepared (at the end of 2022), Pete did not like the level of EBITDA which Alex had estimated (it was around £18m). Pete felt it should be much higher.

[96] Pete was very aggressive with Alex about his views and this caused a huge strain in the relationship. I tried to convince Pete that Alex was not trying to be a problem and that he was simply following general accounting rules. Pete called it Alex's or Freshstream's EBITDA but it was actually just Alex trying to put the numbers together accurately. The issue of fixed costs is not a matter of opinion as far as I understand – it is a matter of fact. Accounting issues which are a matter of opinion relate to provisioning for stock or projected revenues and costs. These can be issues of opinion but Pete's disputes with Alex were about facts.

[97] It seemed to me that Pete had no good justification for his attacks on Alex and Pete was just trying to show numbers that would get us to exercise the call option. Anytime Alex reported the EBITDA as being below £20m. Pete was not happy.

[98] I remember there were many issues and problems between Pete and Alex almost continuously throughout the time Alex was CFO. I didn't like the pressure Pete was putting on Alex since the finance function is meant to be independent. The whole point of having the right to appoint a CFO was so that we could get accurate financial information about the business. In addition to Barbara being financial controller, there was a concern that the finance function was not independent.

...

[102] Alex eventually resigned under heavy duress and Pete and I agreed to disagree about our views on Alex.

503. Mr Vaughan said this about bullying generally:³¹¹

[59] Ops Board meetings always ended up being a waste of time because they regularly turned into an hour or more of Pete shouting and humiliating Alex Maby or others (everyone except me was put under a degree of pressure by Pete at some point). Alex had tried to put in place the basic disciplines of good accounting, along the lines I have outlined above. He actively looked at run rates (which are essentially a means of extrapolating future trends by looking at existing trading) and used those to form informed projections of how profitable he expected BIG to be at year end. Alex was one of those people that tried to stand up for themselves and do the job properly; he told Pete things that Pete didn't want to hear, mostly that the business was not projected to make as much profit as Pete kept saying it would. Pete forcefully resisted Alex's projections and did so in a way which in my view amounted to bullying. He told Alex "you're destroying my business" because Alex told the truth, as he saw it, to Freshstream and others about how much money we were projected to make in a year. Alex had all the evidence to support what he was saying, including that Pete's figures would have required an entirely unrealistic number of cars to be sold. But, because it wasn't what Pete wanted to hear, he targeted Alex. Every operations meeting, Pete humiliated Alex to the extent that he left Alex shaking like a leaf. Pete was on better

³¹¹ Vaughan 3.

behaviour in Topco board meetings but he was still disparaging and confrontational towards Alex in front of Freshstream.

[60] Pete humiliated people in front of others. Alex Maby started off as quite a confident individual when he joined the business; by the end of it, he was in pieces. I had quite a few conversations with Alex where he told me he was hanging on in the business in the hope that Pete would sell his second tranche of shares and step back into a non-exec role. But, before that could happen and in the run up to Alex's departure from BIG, the bullying culminated with Pete yelling at the top of his voice in the finance department (which was a partially open plan space) "I want that fucking cunt out of my business today", including in my and Alex's earshot. When I heard that, I immediately steered Pete downstairs to the boardroom. I told him that he could not behave in that way in front of the whole of Alex's team and if he had a problem with Alex we needed to talk about it. We could deal with it, but it had to be in the right way. Alex did not last much longer in the business after that. It was a shame, as he [was] more competent as a CFO than the financial leadership [the] business had had before.

504. These passages (particularly those in the statements of Mr Fardad and Mr Vaughan) give a misleading impression of the relationship between Mr Waddell and Mr Maby, and of Mr Waddell's role in Mr Maby's exit. The sense is one of an unremitting, unreasonable and aggressive attack by Mr Waddell on a blameless and competent CFO. This was put to Mr Fardad, in terms, by Mr Gourgey, KC:³¹²

Q (Mr Gourgey, KC)

So when I asked you at the outset of my questions in relation to this part of your evidence as to whether your evidence in your witness statement that Mr Maby was competent was true, in fact it isn't true, is it?

A (Mr Fardad)

I think [Pause] I think the way I would – I wouldn't say it was – my witness statement was more around that he was capable and – well, he was competent. But at this stage, yes, it became clear that working with Pete was not going to work and for some bad reasons and some good reasons, Pete does not have a constructive relationship with him, and he had made some mistakes, so it's time to find a new CFO, because practically a CFO who doesn't get on with the CEO is not going to be able to do a good job anyway.

505. This is a disingenuous answer. The reason the evidence was adduced from Mr Fardad, Mr Gradassi and Mr Vaughan was to provide the background to the serious allegation of bullying that constitutes Incident No 12, for which Mr Waddell was summarily dismissed. It is of material significance that (i) Mr Maby was not good at his job, (ii) that he significantly annoyed Freshstream and (iii) that he did not resign but was in substance dismissed (however that was dressed up³¹³). In this regard, the witness statements of Messrs Fardad, Vaughan and Gradassi are at the very least misleading. Similarly, Mr Fardad's evidence

³¹² Day 15/pp14-15 (XX Fardad).

³¹³ Mr Fardad's evidence was that Mr Maby resigned: Day 15/p15 (XX Fardad). Mr Fardad was unable to recollect whether he had a conversation with Mr Maby so as to induce that resignation, but I find that there must have been such a conversation, and that resignation was a face-saving device for the benefit of Mr Maby.

on this point was unsatisfactory: I do not accept that his general sense of Mr Maby's competence could so completely have escaped recollection.

QQ.3. A fuller picture

506. The fuller picture, not conveyed in the BIG and Freshstream witness statements, was that Mr Maby was regarded as less than competent (including, but very much not limited to, by Mr Waddell) and was let go by Freshstream (the evidence is that they would have dismissed him, but a face-saving arrangement appears to have been reached instead).

507. Mr Cartwright considered Mr Maby liable to make mistakes, giving him this less-than-full endorsement:³¹⁴

My view of Mr Maby's competence was that he was competent and he had a good CV and track record. However, I would say that, through my limited dealings, but the dealings of other members of the team, he did make mistakes during his tenure as CFO of Big Motoring World.

508. In an IC Memo entitled "Big Motoring World Health Check H1 2023" Mr Maby rated the highest in answer to the question "Could we find a stronger candidate for this role if we ran a search today" (i.e., a stronger candidate could be found in a role that of high importance, and clearly not being done properly). The memo also contained an individual performance assessment of various Freshstream employees, based on a traffic light system (green/amber/red). Mr Maby scored no green. His scores, by various different individuals across various competencies was a mixture of 50%/50% amber and red, comfortably the worst performance of those assessed.

509. Mr Potter, like Mr Cartwright, also had a qualified opinion of Mr Maby, calling him "competent" in his witness statement, but accepting in cross-examination that "I think there was a moment when we conducted a management team review and I understood at that point that there were questions around Mr Maby's competence".³¹⁵

510. Although the witness statements of BIG and Freshstream say that Mr Maby resigned, and strongly suggest that this was solely because of Mr Waddell, the true position is that Mr Maby was pushed out by Freshstream and Mr Vaughan. In an internal Freshstream email from Mr Fardad dated 25 July 2023, Mr Fardad said:

Spoke to Laurence again today. We both think it's time to let the CFO go. He's not performing well and Pete hates him for some good and bad reasons. We would not have him as our permanent CFO in the business in any case so the only reason to wait would be the PWC work done and for Available integration. One of my issues with Alex is that he has not lead on either of these projects. David Thorley is far more involved. The Available finance team is running well so it's not a problem that needs fixing.

³¹⁴ Day 18/p183 (XX Cartwright).

³¹⁵ Day 19/p3 (XX Potter).

The plan would be to get David Thorley to step in as interim. We have met one potential candidate for the permanent role but he would not be available until December and we need to run a proper search.

511. Although Mr Fardad sought to maintain in cross-examination that Mr Maby did a good job,³¹⁶ that was contradicted by some of the contemporary documents, which were put to Mr Fardad in cross-examination.
512. The biggest of these incidents was the provision, by Mr Maby, of inaccurate EBITDA figures in February 2023.³¹⁷ The nature of the error does not matter, but the following WhatsApp exchange between Mr Fardad and Mr Gradassi is instructive:

Mr Gradassi	WTF on BIG?
Mr Gradassi	600k EBITDA in Feb?
Mr Fardad	That is ridiculous...how can Alex not have been aware? You have calls with him regularly, so he can't say Pete doesn't let me tell you
Mr Gradassi	Told him now, as we have a separate call and he said "I don't know, I expected 1.3m, will look into this". There are other people on the call, so can't go harder at him and he can't lose face by admitting it's his fault, but he'd better be apologetic next time
Mr Fardad	Yes, it is totally unacceptable
Mr Fardad	Let's hope the EBITDA is actually higher
Mr Gradassi	Yes, because otherwise we have a big issue
Mr Fardad	Ridiculous that we find out at the same time as he does
Mr Gradassi	I am so angry
Mr Fardad	Yes
Mr Fardad	Fair reaction...let's not have him resign, would be better if we fire him
Mr Gradassi	Don't worry, will not do anything stupid. EBITDA better be higher
Mr Fardad	Cool
Mr Gradassi	I am a stoic
Mr Fardad	Oh god, I hope not. Start of the downfall in performance.
Mr Gradassi	Ahah
Mr Gradassi	All good at home
Mr Fardad	Kind of...nothing that can't be fixed as long as Alex finds the missing 600k!
Mr Gradassi	Oh, hope nothing too bad

³¹⁶ Day 15/p1 (XX Fardad).

³¹⁷ Put to Mr Fardad Day 15/pp2ff (XX Fardad).

Mr Gradassi They think they have found the issues. It may be about duplicated invoices in the accounts, so it seems like the 1.2m may be the right number. More work needed

Mr Fardad Thank god.

Mr Gradassi Not there yet.

Mr Gradassi But they have found 50%.

Mr Fardad Keep going!

Mr Gradassi Pete and Laurence called

Mr Gradassi Pete is not happy and is right

Mr Gradassi He understand the point we are making: we communicated that number externally

Mr Fardad Pete is right

Mr Gradassi Yep

Mr Gradassi Had a bit of a go at Alex and explained the info flow must be better but he was pissed off by his day, so tried to reassure him as well. Told him re property valuation process though, which I think could have been handled better, but didn't push too much

Mr Gradassi Sent him a message afterwards to hang in there and told him we must learn from today and move on

Mr Fardad Well done...let's see how he ups his game

513. Relatedly, there was an email chain emanating from Ms Ferguson. It was in this chain that the shortfall in EBITDA was notified. Mr Gradassi responded to Ms Ferguson's email with:

Thanks – sorry if I missed something here, but how can we be at 600k whilst we were all expecting an EBITDA of 1.3m in February?

Mr Maby responded:

Agreed, far below what we were expecting.

Management accounts hopefully being prepared today, and so will be analysing overnight and tomorrow. Will report back.

514. This email chain contains the following assessment by Mr Fardad of Mr Maby's capabilities:

We seem to have a CFO that i) can get his numbers wrong by a huge amount, ii) doesn't give us a heads up on surprises and seems like we found out at the same time as he did (he's going to find out why it's so low...another example of him just reporting problems, not having the maturity to understand implications, understand the problem it causes and come up with solutions)

515. Finally, Mr Vaughan weighed in with "I'm not sure I liked his response on James' query re bonus targets either".

516. Mr Fardad’s position was that this was a regrettable event, which should not have happened, but this was an aberration, perhaps due to Mr Maby still getting his feet under the table – although he had actually been in BIG’s employment for some time.³¹⁸

517. In March 2023, Mr Waddell sent an email to Mr Maby (copying in Mr Vaughan, Mr Fardad, Mr Gradassi and others) complaining about the difficulties Mr Maby was causing him in running BIG:

As you can see, I don’t need, as you say, Alex, NOISE. I have a job to do, and NOISE from accounts do not help. Hopefully, no more NOISE will be good, because for three months now, I had NOISE...Have fun today. Go big or go home.

518. This unquestionably discourteous email was in response to an email from Mr Maby, which made unapologetic reference to the EBITDA problems that have been described:

All

The management accounts were only prepared this evening, so not yet reviewed, but I wanted to get draft figures out for February, given this week’s “noise”.

519. Mr Maby did not appreciate Mr Waddell’s email (and *vice versa*), and sent the following to Mr Vaughan, Mr Fardad and Mr Gradassi (but not Mr Waddell):

Go big or go home...an interesting option! Ha ha!

Very frustrating to wake up to threatening emails. It’s a shame he tries to drive his perception to becoming reality in your minds. Incredibly demotivating and disheartening.

Anyway, onwards and upwards. Shout if you wish to discuss any of the below or his forecast. He’s all over blaming accounts for not hitting his £2.7m March forecast. I can see this on 1 April...

520. If Mr Maby was seeking to elicit sympathy or support from Freshstream, he would have been disappointed. The following exchanges (to which Mr Maby was not a party) followed:

Mr Gradassi Always complaining.

Mr Fardad Still not clear whether Barbara checked with him before sending monthly numbers.

Mr Gradassi What did Laurence say? Did he talk to Barbara? Anyway, let’s not dwell on that, but it’s an amber flag overall for Alex.

Mr Fardad Not spoken to her yet.
It is amber.

521. Mr Fardad agreed that the EBITDA episode was correctly regarded as an “amber flag” but – although his evidence was somewhat equivocal – did not

³¹⁸ Day 15/p5 (XX Fardad).

appear to accept that that was a general characterisation of Mr Maby's performance.³¹⁹

522. In May 2023, there was a further issue, regarding an information request from NatWest. Mr Maby told Mr Waddell: "Just to manage expectations, Pete, this is months, not weeks, away". Mr Fardad's response – sent to Mr Vaughan – was "WHY WOULD YOU SAY THAT!" (his capitals), to which Mr Vaughan responded "Words fail me".³²⁰

523. Again, Mr Fardad's view appears to have been this was an isolated instance of poor performance:³²¹

Q (Mr Gourgey, KC) ... You were upset at what Mr Maby had put in his email, weren't you, "months not weeks away"?

A (Mr Fardad) I don't recollect what I was thinking when I read that.

Q (Mr Gourgey, KC) And Mr Vaughan says, "Words fail me", doesn't he, in response?

A (Mr Fardad) Yes.

Q (Mr Gourgey, KC) You were both pretty dissatisfied weren't you about the way that Alex Maby performed, both you and Mr Vaughan, Mr Fardad? That's right, isn't it?

A (Mr Fardad) In this particular instance. It seems to be the case, yes.

524. I do not accept Mr Fardad's characterisation of Mr Maby's performance as generally good, but with instances of poor performance. In the first place, that is not the tenor of the remarks made by the Freshstream team and Mr Vaughan (let alone Mr Waddell, whose evidence on this point I am inclined to discount).

525. Further, during Mr Maby's tenure as CFO, Mr Thorley was brought in to assist on the accounting front. In an email to Mr Fardad dated 31 May 2023, Mr Thorley reported as follows to Mr Fardad:

Morning Reza

I visited Big Motoring World Head Office yesterday, as agreed, to meet PW.

...

We also discussed at length his concerns about reporting from Alex and he shared his detailed concerns that are also held by Laurence (I have not yet discussed with Laurence). There is clearly a breakdown in communication and Pete was open in his criticism of Alex to Barbara and also Anthony (who has clearly been caught in the crossfire)...

...

³¹⁹ Day 15/p9 (XX Fardad).

³²⁰ Day 15/p10 (XX Fardad).

³²¹ Day 15/p10 (XX Fardad).

Pete has asked me to attend the operations meeting next Tuesday and at the moment I need to work out how I can contribute and not just get caught in the middle...

I have received a number of files from James and Antony is sending some more over this morning, so I can spend today getting back up to speed with BIG as I have not been involved since August.

I am happy to discuss further and would appreciate some guidance on how to go forward.

526. If all was well with the accounting function in BIG, Mr Thorley would not have been asked to come back. Whilst Mr Thorley clearly saw issues on both sides, the suggestion that Mr Waddell was unreasonably dissatisfied with Mr Maby is wide of the mark. Mr Fardad was unable, when these documents were put to him, to assist with any recollection.³²²

527. WhatsApp messages between Mr Gradassi and Mr Fardad towards the end of July 2024 suggest that it was Freshstream that gave Mr Maby the final push out of the door:

Mr Fardad	Spoke to Laurence. Thinking it's time to let Alex M go. Bring in David T as interim. Look for [new] CFO...
Mr Fardad	What do you think? Would you be ok with that? Not sure Pete has left us much choice
Mr Gradassi	Oh really? What did Alex do? Or is it just Pete being Pete?
Mr Gradassi	Can discuss soon if you want (in transit).
Mr Fardad	Let's speak later today and tomorrow
Mr Fardad	Just not doing his job and Pete has him in his sights

Bullying of Mr Maby: the test

528. The fact that Mr Maby was no good at his job is no excuse for bullying (or any discourteous) behaviour.³²³ The problem is that the bullying allegations comprising this Incident turn on the evidence of Mr Fardad and Mr Vaughan (and to an extent Mr Gradassi) and the evidence of Mr Fardad and Mr Vaughan is seriously incomplete. *Of course* Mr Waddell had issues with Mr Maby: I have found – indeed Mr Waddell admitted – that he could lose his temper with incompetents, and the question for me is not whether Mr Waddell lost his temper, but whether Mr Maby was exposed to conduct that that amounted to harassment/bullying as I have defined it. Mr Siddall, KC concluded, this was a case of bullying and not harassment under section 26, because no protected characteristic was engaged. The evidence of Mr Fardad and Mr Vaughan is obviously intended to establish that level of harassment/bullying, but I find that

³²² Day 15/pp13-14 (XX Fardad).

³²³ Again, I want to stress that I am not condoning bullying or discourtesy. Nor am I saying that these events constitute a grievance within the BIG Employee Handbook. The question primarily being considered is the question of summary dismissal for gross misconduct, in this case harassment/bullying as I have defined it.

evidence both incomplete and misleading. I do not consider that I am able to rely upon it.

529. What is more, the contemporaneous Freshstream communications disclose a willingness to put pressure on Mr Maby with regard to his performance. Were Freshstream bullying Mr Maby?
530. It may very well be said (and rightly so) that an incompetent employee is in greater need of protection from their employer because they may be subject to criticism that is substantively justified but overly aggressive in form and manner. The fact that someone is being legitimately criticised does not give *carte blanche* to behave – verbally (still less physically) – as one pleases. The reason that I consider the written evidence from Freshstream and from BIG to be so troubling is because, by airbrushing out Mr Maby’s deficiencies as CFO, and Freshstream’s and Mr Vaughan’s own conduct towards Mr Maby, they have rendered a finding of bullying by Mr Waddell easier to make in error. But that airbrushing does not mean that bullying did not take place. It makes the fact finding harder.
531. In determining whether there was bullying of Mr Maby, the test I am using is whether the conduct of Mr Waddell was such that Mr Maby’s dignity was violated or so as to create an intimidating, hostile, degrading, humiliating or offensive environment for Mr Maby. These are strong words, and I stress if the test as I have framed it is met, then this would constitute gross misconduct justifying summary dismissal. I am not saying that lesser misconduct would not result in some disciplinary sanction short of dismissal.

QQ.5. Evidence of Mr Fardad revisited

532. Mr Fardad was cross-examined on which side of this line Mr Waddell’s conduct fell and (relatedly) what Mr Fardad did about such conduct.³²⁴

Q (Mr Gourgey, KC) What you told him was that if his conduct continued, Alex would leave and that would not be good for business?

A (Mr Fardad) No, what I said to Pete was if Alex – you’re putting Alex under a lot of pressure, it would not be good if he left, you know, he’s our appointed CFO and – yes, that’s pretty much the gist of it.

Q (Mr Gourgey, KC) I see. So that was the extent of the gist of the conversation as best you can remember it?

A (Mr Fardad) Correct.

Q (Mr Gourgey, KC) Okay.
You didn’t suggest to Peter that, for example, you regarded his behaviour as bullying, did you?

A (Mr Fardad) No.

³²⁴ Day 15/pp22ff (XX Fardad).

- Q (Mr Gourgey, KC)** Did you regard his behaviour as bullying, based on what you were being told by Mr Maby?
- A (Mr Fardad)** I don't remember whether I thought whether it breached the threshold of bullying. I thought it was unprofessional.
- Q (Mr Gourgey, KC)** And that's as far as it went?
- A (Mr Fardad)** That's as far as I remember thinking about it.
- Q (Mr Gourgey, KC)** I mean, in your witness statement, in respect of the period after the signing of the [Securityholders' Deed] this is the sole instance where you refer to speaking to Peter about his treatment of staff? That's right, isn't it?
- A (Mr Fardad)** I think there was one other incident I recall, where I did tell him, you know, that you're putting the team under a lot of pressure, but I didn't specify specific members of the team.
- Q (Mr Gourgey, KC)** I see...
- A (Mr Fardad)** But that's about it.
- Q (Mr Gourgey, KC)** ...with the exception of this second instance, and we'll come back to that in a moment, those were the only occasions where you spoke to Peter about his treatment of staff, is that right?
- A (Mr Fardad)** I don't recall any other ones, that's right.
- Q (Mr Gourgey, KC)** And in relation to this other instance, was that just a general statement to him that he was putting the team under a lot of pressure?
- A (Mr Fardad)** Yes.
- Q (Mr Gourgey, KC)** No more specific than that?
- A (Mr Fardad)** No.
- Q (Mr Gourgey, KC)** ...So the fact that he was putting his staff under pressure was in line with your description of him, wasn't it?
- A (Mr Fardad)** Yes, but the level of pressure, as the pressure increased, that's what I was highlighting to him.
- Q (Mr Gourgey, KC)** You didn't say anything more to Peter other than he was putting too much pressure on – putting his team under a lot of pressure? That's as far as it went?
- A (Mr Fardad)** Correct.

533. This is very different to the picture painted in Mr Fardad's witness statement. Although there were others at this time complaining about the conduct of Mr Waddell³²⁵ (Mr Ruprah, Mr Hodson and, as we shall see, Mr Godwin) the substance of this Incident is in relation to Mr Maby, and this is how I propose to consider it. It was Mr Fardad's view at the time, taking all the circumstances

³²⁵ Day 15/pp31 (XX Mr Fardad).

into account, that although Mr Waddell's conduct was "unacceptable" it was *not* bullying.³²⁶

Q (Mr Gourgey, KC) Did any of the complaints that you received, let's say up until November '23, the one we're looking at at paragraph [199], lead you to the view that it was conduct which amounted to bullying?

A (Mr Fardad) I don't recollect concluding that.

Q (Mr Gourgey, KC) If you don't recollect it, do I take it from that that in fact you didn't think any of this conduct amounted to bullying?

[Pause]

A (Mr Fardad) I didn't think – I thought the conduct was unacceptable, but I didn't think whether it was – I didn't sit down and think does it meet the definition of bullying. So I guess not, no.

Q (Mr Gourgey, KC) What do you understand to be the definition of bullying?

A (Mr Fardad) Um – I haven't looked up the legal definition of it, I'll be honest.

Q (Mr Gourgey, KC) You take a view, don't you...if you see conduct, you take a view as to whether – forget about the legal definition – it constitutes bullying or not in your view? You must take a view on that sort of thing, Mr Fardad?

A (Mr Fardad) Yes.

Q (Mr Gourgey, KC) And if you had regarded any conduct that was reported to you amounted to bullying, what steps would you have taken?

A (Mr Fardad) Again, in that situation where – I would try and see what I'm trying to achieve and what I can do about it. So sitting in a minority position, you take actions that try to improve the situation for the individual as well as the company and that's the sort of rock and a hard place I was at that point this time. I had a situation where I wasn't able to – I was a minority investor so there was limitations, as we discussed earlier, of what I could do about it.

534. Mr Fardad's evidence is confused³²⁷ because he was at one and the same time seeking to assert that Mr Waddell's conduct amounted to gross misconduct (i.e., bullying), whilst at the same time seeking to explain why BIG had not intervened to protect their employee Mr Maby against such conduct. There was no way of reconciling these two positions. Either Mr Waddell was bullying, and

³²⁶ Day 15/pp33-34 (XX Fardad).

³²⁷ Particularly as to whether there had, or had not, been bullying of Mr Maby by Mr Waddell: see, to similar effect, Day 15/p35 (XX Fardad). Mr Fardad appears to have considered that once "you fall into the camp of racism or sexism and things like that, or sexist comments, I think then I would have done something about it and I could have done something about it".

BIG was condoning it; or he was not, in which case BIG's failure to act is comprehensible.

535. There is a distinction to be drawn between a "high pressure" environment and harassment/bullying. BIG and Freshstream have chosen *now* to characterise Mr Maby's treatment as the latter, when *at the time* it was their view that it was the former. In cross-examination, Mr Fardad was asked what he meant by a "high pressure environment":³²⁸

- Q (Mr Gourgey, KC)** What do you mean by "a high pressure environment"?
- A (Mr Fardad)** Demanding a lot from people, for example?
- Q (Mr Gourgey, KC)** Shouting?
- A (Mr Fardad)** No. No, that's different.
- Q (Mr Gourgey, KC)** Bullying?
- A (Mr Fardad)** No. That's different.
- Q (Mr Gourgey, KC)** So you say you were worried that if the business did not perform according to his expectations, his behaviour would get worse?
- A (Mr Fardad)** Yes.
- Q (Mr Gourgey, KC)** Right. So what led you to believe that, Mr Fardad?
- A (Mr Fardad)** Because Pete's – one of the ways Pete drove the business is by expecting and applying pressure on employees to perform. So, to give an example, he would monitor the performance of the sites on an hourly basis. If one of the sites didn't perform so well, he would call the – for a couple of hours even, he would call the manager or even physically go to the site and try to, you know, apply pressure, I would say. He would say motivate, but I would say apply pressure to the employees to drive sales at that site. As the company's performance would deteriorate, I was worried that he would use those tactics too much and apply too much pressure to the employees.
- Q (Mr Gourgey, KC)** Right. "Too much": can you be more specific? I'm not clear. I mean, did you see anything, at the time you entered into the deal or were negotiating the deal, which is the time you're dealing with here in paragraph [45], did you see anything wrong with operating a high pressure environment?
- A (Mr Fardad)** It depends on – there's a balance to be struck, if I can explain about, you know, if you're running a business, you – it's reasonable to apply some pressure to employees to drive performance. If they're behind on their numbers, you're on top of them, you tell them they're behind on numbers, you tell them they need to do better. You know, all of those things. That would be fine.

³²⁸ Day 14/p74 (XX Fardad).

That's normal, that's good, that's one way of managing performance.

But if you take that same thing and push it too far and constantly tell, you know, the same team they're underperforming, they need to do things differently, and if you take the same type of activity and do it too much, I would then say it would go beyond the line and be too high pressure.

Q (Mr Gourgey, KC) Okay. So it's becoming too demanding of the employees, is that what you're saying?

A (Mr Fardad) It's difficult to explain it. It's more the style in which you do it, how much you do it, how often you do it. Do you encourage them at the same time, as well? There's a balance to be struck with these things. It isn't pressure or no pressure.

Q (Mr Gourgey, KC) What's this got to do with an MDE clause?

A (Mr Fardad) Because, if you take it too far, it pushes into bullying and other aspects.

Q (Mr Gourgey, KC) So you were – well, were you concerned that this behaviour would get worse by him becoming racist?

A (Mr Fardad) No, I don't think that was...

Q (Mr Gourgey, KC) Or sexual harassment?

A (Mr Fardad) No. Pressure is different.

Q (Mr Gourgey, KC) So what did this have to do with an MDE clause?

A (Mr Fardad) I believe the MDE clause includes also being – includes also bullying, it isn't just sexual harassment.

Q (Mr Gourgey, KC) I'm not going to argue with you the terms of the clause, Mr Fardad. We can – maybe we'll look at it a bit later.

But in terms of sexual harassment and racism, there was no connection between what you're saying in paragraph [45]?

A (Mr Fardad) No, correct...It's

Q (Mr Gourgey, KC) So, you were concerned – is this what you're saying – that you were concerned that Peter might start bullying staff? I'm just trying to understand your evidence, Mr Fardad?

A (Mr Fardad) I appreciate that. Um...I think it was just a general feeling. It wasn't just...the feeling was: look, Pete runs the business in a high pressure environment, we need clauses to protect ourselves. And if things deteriorate, especially if things deteriorate, we were worried that his behaviour would get worse under pressure of that under-performance. And that's kind of what I am trying to put into – what I tried to put in the witness statement.

536. Freshstream were well aware that Mr Waddell constituted a potential problem; and they took steps to bolster the HR department accordingly. They were aware

that the workplace environment needed improving. Yet they did quite literally *nothing* in response to what they have subsequently characterised as unacceptable behaviour on the part of Mr Waddell. Again, this was put to Mr Fardad.³²⁹

Q (Mr Gourgey, KC) When behaviour was reported to you during the period after your investment, so after you came in in April 2022, if that behaviour was such that it gave you concerns about damage to the reputation of the business, I assume in those circumstances you did step in and talk to Peter. Would that be right?

A (Mr Fardad) I don't recollect – I mean, I don't recollect having those conversations with Peter. Yes, so clearly I didn't.

Q (Mr Gourgey, KC) Do you recollect at any time becoming – any time prior to, let's say, December 2023, do you recall any time where conduct of Peter was reported to you which gave you concerns about damage to the reputation of the business?

A (Mr Fardad) I don't remember when I discovered – I'm trying to think of certain things that happened and when they happened. It's the when that I'm trying to address your question, because you said before December '23.

Q (Mr Gourgey, KC) Let's say before the summer of '23. I don't need to make it December. In the first year that you were in the business, do you recall any – learning of any conduct on the part of Peter which gave you concerns about possible damage to the reputation of the business?

A (Mr Fardad) I don't recall, no.

Q (Mr Gourgey, KC) You spoke to Peter how many times a week?

A (Mr Fardad) A fair few.

Q (Mr Gourgey, KC) Attended meetings with him?

A (Mr Fardad) Yes.

Q (Mr Gourgey, KC) So you had frequent contact with him?

A (Mr Fardad) Yes.

Q (Mr Gourgey, KC) Every opportunity, if you were worried about his behaviour on any particular matter, to raise it with him, correct?

A (Mr Fardad) I had access to him, to raise the concerns.

Q (Marcus Smith J) And you thought it was right, in those circumstances, not to do anything?

A (Mr Fardad) But each case depends on what they were – what they were saying that Pete had done. It would be things – nothing – it wasn't anything, just to be clear, like the MDE events that we were talking about. It was more along the lines of "he's putting too much pressure on us",

³²⁹ Day 14/pp77-78 (XX Fardad).

“he’s asking us to come in on weekends”, “he’s asking me to travel from...”, you know, it would be things like that. It was pressure, as opposed to the kind of things that I discovered later.

537. A deliberate decision on the part of an employer not to proceed with an employee’s potential breach of duty tells us a lot. The decision may be indicative of (i) the fact that there was no breach at all or (ii) the fact that there was a breach but the employer was (at least tacitly) sanctioning or condoning it. Where the employer is unaware of the breach by the employee, different considerations obviously arise. That requires consideration of the grievance procedures within the organisation, and the manner in which the event comes to light. Here, however, the conduct was known about and the binary question I have articulated presents itself. Either that conduct was insufficiently serious to require action (i.e., it was not even arguably misconduct) or it was being condoned by the employer.

538. Mr Fardad, in what became a regular refrain, suggested that there was nothing that could be done about Mr Waddell’s conduct. In other words, he sought to suggest a third alternative, namely that bad behaviour was occurring, but that Freshstream and BIG were not condoning it, but simply helpless in the face of Mr Waddell’s power within the organisation. In Fardad 4, he said:

[101] Alex repeatedly came to me, Laurence and Gilles to complain about Pete’s aggressive behaviour throughout his employment. I wasn’t a go-between for Alex and Pete. Depending on the situation, sometimes I listened to the complaints Alex had and at other times I needed to judge whether I should try to make a change within my limited power. If I had been a majority shareholder, I would listen and make a decision on what changes needed to be made. As a minority shareholder, I could only tell Pete that I was not happy with the way Alex Maby was being treated and if Alex left it would not be good for business. That’s the kind of conversation I could have and did have, rather than just explain that if he continued to behave in this way we would replace him with another CEO. I didn’t have the power as a minority shareholder, so I tried to work within my powers.

539. I do not accept this evidence. I consider that a disciplinary process could – and should – have been invoked as soon as behaviour warranting that process was identified. In this case, Mr Fardad’s evidence points strongly towards the conclusion that whilst unacceptable, Mr Waddell’s conduct towards Mr Maby did not amount to bullying.

540. Insight into Mr Fardad’s and Mr Vaughan’s true attitude towards bullying can be found in their reaction to the Adam Godwin exit interview.

QQ.6. March 2023: the Adam Godwin exit interview

541. In March 2023, there was an exchange of emails between Mr Vaughan and Mr Fardad regarding the resignation of an employee of BIG (a Mr Adam Godwin) and more specifically the “exit interview” that Mr Godwin gave to Ms Duey.

542. Mr Godwin was a financial planning and analysis manager, working under Mr Maby. He was interviewed on 8 March 2023, and it is clear that he enjoyed

working at BIG, except for his relationship with Mr Waddell, who, in his view, had behaved unacceptably towards him. Asked how BIG's working environment could be improved, he is recorded as saying:

The culture within the Accounts Team and Head Office is fine. It is the way that Peter treats people that needs to be addressed.

543. In response to the question "What did you like least about your job and why?", Mr Godwin is recorded as saying:

The only reason that Adam had not been happy in the role was due to an incident that had occurred whereby Peter called him into the office within a week of him joining the Company and shouted at him for doing something that he hadn't done. Adam felt that this was not acceptable and was not a good way to run a Company. Alex had been there at the time and had tried to intervene. Adam stated that he does not want to work under these conditions and that he had considered staying on until the second part of the sale is complete, but had decided that he did not want to work for Peter or make him any more money. It is not the environment that he wants to work in.

544. The conduct of an exit interview is in line with good corporate practice. Mr Holness (the head of HR) asked for a copy of the exit interview on 21 March 2023, and was provided with it by Ms Duey on the same day, with the comment that "Adam didn't say anything that he hadn't already told Alex so there isn't anything new in there". Mr Holness passed the document on to Mr Vaughan (again on 21 March 2023), the covering email saying "As requested" without further comment. It is to be inferred that Mr Vaughan had heard about Mr Godwin's departure, and the reasons for it, probably from Mr Maby, and sought further information from Mr Holness.

545. If this was a serious matter for the organisation – and potentially it was – Mr Vaughan should have taken steps within BIG to curb Mr Waddell's behaviour. That was his function as chair. Instead, Mr Vaughan forwarded the exit interview document to Mr Fardad (again on 21 March 2023) under cover of an email stating:

Please see attached. My view is we can't go on much longer with the current structure!

546. Mr Vaughan was using the exit interview as ammunition to dislodge Mr Waddell and advance his claims as successor CEO. Mr Fardad took the view that this was not a matter to take further, responding (still on 21 March 2023):

He resigned because Pete shouted at him once?

547. There then followed the following email exchange, which I set out in the form of dialogue:

Mr Vaughan	He resigned because of bullying and a completely unacceptable culture. We need to take it seriously.
Mr Fardad	The report says one incident. I realise there is an issue.
Mr Vaughan	It was the final straw, I think. The issue is pretty huge and is in danger of extending to things like the banking relationship. There is no way we should even consider

doing Available until it's resolved. Happy to discuss when you're free.

Mr Fardad

Now?

Mr Vaughan

Can do now if you like. I've got the joy of a full day transport course tomorrow!

548. Mr Vaughan was articulating to Mr Fardad that this was an extremely serious situation. Yet that is belied by the fact that apart from communicating to Mr Fardad, Mr Vaughan did nothing to curb Mr Waddell's behaviour.

549. Mr Fardad had no specific recollection of these events. His evidence in cross-examination was as follows:³³⁰

Q (Mr Gourgey, KC) Now, did you do anything about this, Mr Fardad?

A (Mr Fardad) After I spoke to Laurence about it, I don't recollect speaking to Pete about it, no.

Q (Mr Gourgey, KC) Did you believe what Laurence said to you about it being the final straw, pretty huge, a danger of extending to things like the banking relationship?

A (Mr Fardad) To be honest, I don't recollect the conversation, so I can't say, but I would believe him.

Q (Mr Gourgey, KC) That non-intervention reflected your general practice of not going to Peter about any of these things, Mr Fardad, with the exception, when we get to it, of Mr Maby. That's right, isn't it?

A (Mr Fardad) Yes, that's fair.

550. It is clear that whilst Mr Fardad liked and trusted Mr Vaughan, he did not accept Mr Vaughan's characterisation of the seriousness of this incident. I consider that if Mr Fardad had considered this specific incident to amount to bullying, then he would have taken the matter further. He considered that Mr Vaughan was taking this particular instance out of proportion, exaggerating it so as to further his claims to be CEO. Contrary to Mr Vaughan's statement that the Available Car deal could not go ahead without the issue being resolved, the Available Car deal did in fact proceed, without this matter being resolved in any way.

551. I agree with Mr Fardad's implied conclusion that – viewed on its own – this was not a matter amounting to gross misconduct, although I consider that this should have been discussed with Mr Holness and Ms Duey (both of whom appear to have taken the view that no further action was required) and some form of action (short of summary dismissal) taken a year *earlier* than Mr Waddell's actual dismissal.

³³⁰ Day 14/pp130-131 (XX Fardad).

QQ.7. Mr Siddall KC's conclusions

552. Mr Siddall, KC considered that the allegations did not amount to an MDE,³³¹ and did not constitute harassment within section 26 because the comments did not relate to a protected characteristic.³³² He did, however, conclude that this was a case of bullying:

[170] Notwithstanding the absence of evidence from [Mr Maby] the evidence (with the exception of BG) was almost all supportive of [Mr Waddell's] treatment of [Mr Maby]. It is of note that nearly all of the interviewees who were able to speak as to [Mr Waddell] and [Mr Maby's] interactions categorised for themselves [Mr Waddell's] conduct as amounting to bullying. I find as a fact that PW made the comments alleged to AM on a number of occasions.

[171] I now turn to assess for myself if the same amounts to bullying using the definition found in paragraph 50 of FDA of "(1) offensive, intimidating, malicious or insulting behaviour or (2) abuse or misuse of power in ways that undermine, humiliate, denigrate or injure the recipient.

[172] I have no hesitation in finding that [Mr Waddell's] conduct satisfied both of those requirements and amounted to bullying. As to the second limb, I received no evidence from [Mr Maby] as to the manner in which his treatment by [Mr Waddell] made him feel but I received more than sufficient evidence that [Mr Waddell's] approach was calculated to undermine, humiliate and denigrate him.

QQ.8. Mr Waddell's evidence

553. Mr Waddell did not give evidence before Mr Siddall, KC. Mr Waddell response to the allegation as framed was as follows. To recap, the allegation was that:

PW said to or about AM (i) "You're fucking ruining my business", (ii) "You've cost me millions of pounds", (iii) "Ignore Alex, let's focus on my figures", and/or (iv) "I want that fucking CFO out of my building today" (or, in each case, similar words).

554. When considering harassment/bullying, it is important to bear in mind that it is perfectly possible to create a workplace environment that is harassing/bullying without resort to on the face of it aggressive language. Human beings are extremely adept at hiding exclusionary, discriminatory and simply horrible behaviour. Whilst the use of "bad" words or shouting is a good indicator of something going wrong, it is not by any means conclusive. Matters have to be viewed in context.

555. Mr Waddell's evidence provided *his* context:³³³

[254] Freshstream brought in Mr Maby as the CFO shortly after the deal in April 2022. He started in September 2022. Mr Maby was not easy to work with. I struggle with spreadsheets (unless it is the DOC spreadsheet I am used to). Barbara and our former finance director, Mr Titchmarsh, would always spend time taking me through a spreadsheet to make sure I understood it. Mr Maby did not do that, even though he knew I had dyslexia. He would give me a large spreadsheet and not explain it at all. I

³³¹ Siddall Final Report/[173]

³³² Siddall Final Report/[173].

³³³ Waddell 5.

would feel overwhelmed by the information. When I asked him to explain it, he said that I was not intelligent and did not know what I was doing. Mr Maby would often work from home four days a week. This was a real problem for me as I needed him to be there to support me. Sometimes I would drive all the way to the Head Office for a meeting with him only to find that he was working from home again. I sent Mr Maby many emails making clear to him that he needed to be in the office. Mr Maby also went to the retail sites very rarely – I do not believe he visited a site during his first two months on the job.

[255] There were also errors in the figures Mr Maby would circulate. In February 2023, Mr Maby had been sending emails each week saying we were on track to record EBITDA of £1.3m. But when the month-end figures for February were sent around...EBITDA was only £600,000. It turned out that Mr Maby had made a mistake, and we had recorded EBITDA of around £1.3m. Mr Fardad and Mr Gradassi were also very unhappy with this error. Because of errors like this, I lost faith in the accuracy of the figures provided by Mr Maby.

[256] Another thing Mr Maby did was change the figures in the DOC. Every month, sales staff would check the DOC and the Dashboard to see if they were on track to hit their sales target, which was tied to profit, and receive their bonus. Mr Maby was in charge of the bill list. However, he was not on top of it and would only update the bill list in the DOC late in the month. This would have the effect of reducing profit. This would demoralise the sales staff who thought they were on track to get their bonus. Sales staff would call me saying “why should we even bother trying to sell cars and get our bonus if the target is just going to increase late in the month”. It happened again despite me saying not to do it several times. I sent Mr Fardad a WhatsApp message about Mr Maby demoralising the sales team on 27 March 2023.

[257] Mr Fardad was well aware of the issues I had with Mr Maby. I was constantly complaining to Mr Fardad about him both by email and WhatsApp. I also copied Mr Fardad in on some of the emails I sent to Mr Maby expressing my dissatisfaction with his performance. Mr Fardad told me not to criticise Mr Maby in public, but he never told me to change the way I spoke to him. I also note that Mr Fardad and Freshstream were unhappy with Mr Maby’s performance. Barbara, Mr Ford and Mr Hodson were also frustrated with Mr Maby. In the end, Mr Fardad and Mr Vaughan agreed to terminate his employment in July 2023.

[258] I accept that I made the four comments to or about Mr Maby listed in the Siddall Report. Mr Maby irritated me – he would not explain things to me, he was never in the office, his figures were wrong and he was demoralising the sales staff. He also provoked me by saying that I was not intelligent and did not know what I was doing. It was this behaviour that led me to say the things I said. On reflection, I regret speaking to him that way that I did.

556. Obviously, relations between Mr Waddell and Mr Maby were bad. The problem was that Mr Maby was in the vanguard of Freshstream’s approach to modernise the practices at BIG, and he was not up to the job. Whilst Mr Waddell was prepared to tolerate change up to the time of the anticipated exercise of the Call Option, he tolerated incompetence badly (as, indeed, did Freshstream).
557. But this is no justification for bad behaviour, and I conclude (and Mr Waddell did not seriously dispute) that his conduct towards Mr Maby was unacceptable and if it was not bullying, then that was only a matter of degree. Mr Waddell accepted that the incident of his verbal abuse of Mr Maby (which was played in

court³³⁴) was not an isolated one: “We had many rows, me and Alex Maby...”³³⁵

Conclusions

558. There is no doubt that Mr Waddell’s conduct was capable of being characterised as “bullying” and I consider Mr Siddall, KC’s contingent conclusion in this regard to be entirely defensible. Mr Siddall, KC was only asked to consider MDEs and rightly concluded that this was not a case of an MDE, because no protected characteristics were engaged. But it is clear that (had Mr Siddall, KC been asked to express a conclusion) he would have concluded that summary dismissal was appropriate on the grounds of bullying. I shall explain why I reach a different conclusion.
559. The question is whether Mr Waddell’s entirely unacceptable conduct (to use Mr Fardad’s words) was sufficiently serious to amount to “bullying”.³³⁶ This is not a matter of only considering a single remark or a single episode. It is a question of the environment as a whole, although I do consider that a single remark or episode can constitute bullying.
560. I accept – as did Mr Waddell – that the BIG work environment was high intensity, and that Mr Waddell was the manifestation and source of that environment. Negatively, Mr Waddell worked people hard and did not suffer fools gladly. It is quite clear that Mr Maby was (in the eyes of Mr Waddell, Freshstream and Mr Vaughan) incompetent, not up to the job and was effectively dismissed for these reasons by Freshstream (who appointed him) and not Mr Waddell.
561. What is most telling in this case is the evidence from Mr Fardad and – to a lesser extent – Mr Vaughan. It is quite clear, particularly from the evidence in cross-examination of Mr Fardad, that he did not contemporaneously regard Mr Waddell’s conduct as bullying in the sense I have defined it. Mr Maby’s dignity does not appear to have been violated, and the environment he operated in was not intimidating, degrading, humiliating or offensive, but it may have been hostile. Given that the burden of proof rests on BIG, and given the evidence of Mr Fardad, I consider that Mr Waddell’s conduct towards Mr Maby was *not* sufficient to amount to bullying, was not gross misconduct and so could not justify summary dismissal. BIG should certainly have intervened swiftly to rein Mr Waddell in and endeavour to improve general workplace atmosphere, particularly towards an under-performing employee like Mr Maby. Instead, Mr Waddell’s conduct was tolerated, and Mr Maby effectively dismissed.

³³⁴ The allegations of workplace bullying (including but not limited to Mr Maby) were put in cross-examination on Day 7/pp80ff (XX Waddell) (including the recording: Day 7/p84 (XX Waddell)) and Day 10/pp37ff (XX Waddell). It was put to Mr Waddell, on the basis of the recording, that context was irrelevant, and that “there is no context that can justify that behaviour”.

³³⁵ Day 7/p88 (XX Waddell).

³³⁶ Our definitions differ slightly in form, but are in substance the same.

RR. INCIDENT NO 3: TALK TO THE “BROWN ONE” AND TELL HER TO GET OFF THE PHONE (31 MARCH 2023)

RR.1. The Incident

562. The Incident, as ultimately framed in the Investigation, was that:

Mr Waddell called Mr Hunt on 31 March 2023 to instruct him to “go and talk to the brown one and tell her to get off of her phone”, after having observed, via CCTV, black employee (Thushi) being on the phone.

563. The Incident came to light in a somewhat tortuous process; and nature of the allegation changed over time.

RR.2. Witness evidence of Mr Hunt

564. Mr Hunt witnessed this incident, and gave evidence. In his witness statement he said:³³⁷

[39] I didn’t like the way the CCTV was used at BIG. I could see that it was installed in all of the offices, which gave me the impression it was there out of mistrust and to keep an eye on people.

[40] I remember at one point Peter sent me screenshots via WhatsApp which he had taken from the CCTV footage of the Gillingham office. The screenshots were of a colleague, who I think was of Indian origin, called Thushi Thiru. Thushi worked in the accounting team with me and the images showed her using her phone. I think that one of them had been taken from a camera positioned behind her.

[41] As well as sending me the images, Peter called me on my mobile phone. When I initially took the call, I was in my office but as we were speaking I moved into the open plan office where the accounting team sat. I think Peter might have directed me to do that. He wanted me to order Thushi to stop using her mobile phone. The words he used were “tell the brown one to get off her phone” or “go find the brown one and tell her to get off her phone”. Although I didn’t take the call on speakerphone, Peter was speaking really loudly, so I remember feeling concerned at the time that other people in the open plan office might hear what Peter had said and be offended.

[42] On 26 March 2024 after I had spoken with Nick Siddall KC, I sent Tom Clarke, via email, screenshots of my mobile phone call log and the WhatsApp messages in which Peter sent me the images of Thushi. Reviewing [the WhatsApps] has reminded me that the images were sent to me by Peter on 31 March 2023 and that Peter sent me the CCTV screenshots and then called me immediately afterwards. At the point Peter called me, I don’t think that I had had a chance to look at the images which he had sent to me on WhatsApp. Once we were on the phone, I looked at the images. When I saw them, I remember being disturbed by the fact that Peter had been watching Thushi through the CCTV system.

[43] I was offended and in shock by what he said because I did not think that his use of language was appropriate. I have worked with many people at many different levels,

³³⁷ Hunt 1.

and I have never experienced a senior person making a comment of that nature. Peter's comment was racist language in my view.

[44] In reply to Peter, I told him that I would tell Thushi to get off her phone and then I ended the call. When I spoke to Thushi, I decided not to tell her what Peter had said. Instead, I explained in a fairly nice way that she had been seen on her phone excessively and asked if she would mind putting it away. I remember that she looked slightly frustrated when I said this to her, but when I spoke to her about it again later in the day, I found out that she had a genuine reason to be using her phone. She told me that she had an ill relative that she needed to keep in touch with, so I advised her just to be careful where and when she was using it so that she didn't antagonise Peter.

[45] At the time I thought it would have been pointless challenging Peter over his language myself. Peter didn't strike me as someone who listened to people's opinions on his conduct and so my view was that whatever I said to him would have made no difference as to how he conducted himself. Instead, I decided that I should flag what he had said to someone more senior than me because not only was what he had said morally wrong, it also posed a risk to the company because someone should not conduct themselves in that manner. I didn't want to mention it to Barbara, as she was Peter's sister, so I spoke to Alex as he was the senior person in my line of command at the time. I don't know for certain what Alex did with this information and I didn't follow up to ask. I decided to leave it up to Alex, who was more senior than me to decide.

RR.3. How the Incident came to light

565. The incident occurred on 31 March 2023 (the date when Mr Waddell sent the screenshots).³³⁸ Mr Hunt did not invoke the grievance procedure (which is what he should have done), but he did inform Mr Maby. He did not know what Mr Maby did with the information he provided.

566. The Court did not have the benefit of Mr Maby's evidence. Mr Vaughan, however, said this in his witness statement:³³⁹

Stephenson Harwood have referred me to the transcript from my discussion with Mr Siddall which has helped refresh my recollection of a comment that Alex Maby told me Pete had made. I talked to Alex a lot, particularly towards the end of his time at BIG. Quite late in his tenure, Alex called me and told me that Pete had made a comment to Alex about a member of the finance team. Alex told me that Pete had said "Tell that fucking darky to get off their mobile phone". Pete had been watching the finance team on CCTV and called Alex to flag that one of his team members appeared to be using their phone. Alex was emotionally distressed by this point because of the way Pete had been treating him and I was worried about him. He told me that his wife was in tears after hearing the way Pete yelled down the phone at Alex.

567. Asked by Mr Siddall, KC, whether he (Mr Vaughan) was aware of any racist comments made to Mr Maby (given that Mr Vaughan was Mr Siddall's first witness, this seems a surprisingly precise and leading question: I do not know what induced it). Mr Vaughan's response was:³⁴⁰

³³⁸ Hunt 1/[42].

³³⁹ Vaughan 3/[58].

³⁴⁰ Siddall Transcript/pp24-25.

The one I heard about, but this was second hand from Alex but if you speak to him I think he will be able to give you better information, but he told me that he had been in his department and received a phone call from Pete....Alex got a call, he told me, from Pete along the lines of “I have been on the cameras. Tell that effing darcy to get off his mobile phone”. I didn’t hear that but Alex told me in the context “he has just done this”.

568. Mr Vaughan considered that he was told this in Q2 2023. It is clear that this was not formally reported (the details are too wrong), that it emerged as gossip between Mr Maby and Mr Vaughan, and not as part of any formal process. Significantly, this episode did not feature in Mr Vaughan’s list of Waddell wrongdoings in December 2023. Nor did it feature in Mr Clarke’s first list of Incidents dated 1 March 2024. These will be addressed in due course, but the Incident appears to have been insufficiently serious to make it on either list.

RR.4. Cross-examination of Mr Hunt

569. In cross-examination,³⁴¹ it was put to Mr Hunt that he reported “darcy” not “brown one” to Mr Maby. Mr Hunt stuck to his version of events. He was an impressive witness and his evidence was consistent throughout. In my judgement, either Mr Maby’s or Mr Vaughan’s recollection is wrong. If some racially descriptive words were used by Mr Waddell, but the words were not “darcy” but the “brown one”.

RR.5. Interview by Mr Siddall, KC

570. Mr Hunt himself was interviewed on 26 March 2024. He had left BIG in October 2023,³⁴² largely because of Mr Waddell,³⁴³ giving feedback on exit.³⁴⁴ His main reason for leaving was that it had become clear to him that he would not be promoted. This incident was not mentioned, save that he said this of Mr Waddell:

...PW needs to be careful how he deals with people, he could be a lot friendlier and flexible...

571. Mr Hunt was asked by Mr Clarke to have a conversation with Mr Siddall, KC, which Mr Hunt agreed to do.³⁴⁵ Mr Siddall, KC elicited the following evidence from him:

Q (Mr Siddall, KC)	I have heard suggestion that there is fairly extensive CCTV coverage in all BIG premises. Is that your understanding?
A (Mr Hunt)	Yes
Q (Mr Siddall, KC)	Did Pete monitor the CCTV, as far as you are aware?
A (Mr Hunt)	He absolutely did, yes.

³⁴¹ Day 23/pp155ff (XX Hunt).

³⁴² Hunt 1/[47].

³⁴³ Hunt 1/[48]-[52].

³⁴⁴ The exit interview is dated 10 October 2023.

³⁴⁵ Hunt 1/[53].

- Q (Mr Siddall, KC)** Okay. What was the basis of your view that he was monitoring the CCTV? How do you know that?
- A (Mr Hunt)** There was one particular occasion where he phoned me up and he sent me a picture, through WhatsApp, of one of my staff members that he had taken a picture of on the CCTV.
- Q (Mr Siddall, KC)** Okay, the staff member, do you know their name?
- A (Mr Hunt)** Yes. It was Thushi. I can't remember her surname, but T-H-U-S-H-I.
- Q (Mr Siddall, KC)** Thank you so much. That is not a name I have heard before. Would I be right in inferring that this lady was from an ethnic minority?
- A (Mr Hunt)** She was, yes. She was Asian and possibly Indian, but again I am not exactly sure which area she was...
- Q (Mr Siddall, KC)** So Pete had taken a photograph of Thushi – was she away from her desk or what was it that was concerning you?
- A (Mr Hunt)** She was at her desk, on her phone. I think there are cameras positioned outside because it looked like it was through the window, in effect on to her desk.
- Q (Mr Siddall, KC)** Yes.
- A (Mr Hunt)** He could see her screen and her phone in her hand.
- Q (Mr Siddall, KC)** Okay. So he sent you the photograph on WhatsApp and then – did I hear you correctly – that he called you as well?
- A (Mr Hunt)** Yes. I believe he actually called initially and sent through the photo while we were on the call.
- Q (Mr Siddall, KC)** Okay.
- A (Mr Hunt)** He started telling me to “go and talk to the brown one and tell her to get off her phone”.
- Q (Mr Siddall, KC)** Okay. Do you recall roughly when this happened please? Do you still have the WhatsApp message by any chance?
- A (Mr Hunt)** I have the message. Sadly, the photo is not visible any more, but I can certainly send you the message, which will show the date and time, etc.
- Q (Mr Siddall, KC)** Yes, if you could take a screenshot of that and then if you could email that to Tom Clarke for him to pass on to me, I would be very grateful.
- A (Mr Hunt)** That is fine.

RR.6. The Siddall MDE Final Report

572. Mr Siddall, KC – again without the benefit of evidence from Mr Waddell – found that this Incident occurred on the facts.³⁴⁶ He did not find any

³⁴⁶ Siddall Final MDE Report/[38].

discriminatory conduct, because there had been no discrimination;³⁴⁷ nor did he find there to be harassment.³⁴⁸ He concluded no MDE Event had occurred. His conclusion in this regard was as follows:³⁴⁹

As to whether the same amounted to harassment or discrimination contrary to sections 13 and 26(1) of the Equality Act 2010, I find that it was not. The reason for my finding is that whilst the instruction is less favourable treatment and is also unwanted conduct related to race, I received no evidence from either [Mr Hunt] or Thushi which allowed me to conclude that either suffered a detriment or that the proscribed circumstances existed. I also remind myself that by operation of section 212 of the Equality Act 2010 that an act cannot be found to be both harassment and a detriment.

573. Mr Siddall, KC thus considered whether “indirect” harassing conduct (i.e., where Mr Hunt – not the subject of the comment – had been harassed because, although not the subject, he witnessed it) had occurred, and decided that it had not on the evidence before him.

RR.7. Evidence of Mr Waddell

574. In his witness statement, Mr Waddell said:³⁵⁰

[214] In early 2023, the business was having problems with the payment of invoices. Suppliers were getting paid two or three times their money, or not enough... It was always going wrong. People were calling me up about it. James Hunt, who was the Group Management Accountant, took on a payment clerk who was meant to sort out the problem, but she did not. I cannot remember her name, although I can see from the transcript of Mr Hunt’s interview with Mr Siddall that she was called Thushi.

[215] On 31 March 2023, I went on the CCTV cameras to see what the payment clerk was doing. I could see that she was scrolling on her phone, not doing any work. I sent Mr Hunt some photographs of the CCTV I was looking at together with a message telling him to sort it out. I also called Mr Hunt and said, “James, speak to the lady, and tell her to get off the phone. We need to pay these bills”. I never said “brown one” to Mr Hunt. Nobody ever raised this phone call with me while I was in the business. I also note that Mr Hunt told Mr Siddall that the photograph I sent him was no longer visible on his phone. I have found these photographs on my phone. I note that the ethnicity of the woman in the photograph is not clear from the images.

[216] Although it was not referred to by Mr Siddall in his report, I also note that Mr Vaughan said to Mr Siddall that I said “darky” to Mr Hunt during the phone call on 31 March 2023. To be clear, I did not say “darky” or “brown” or anything like that. I find this allegation insulting.

575. Mr Waddell was cross-examined on this.³⁵¹ Mr Waddell stuck to his version of events, and (when it was put to him) asserted that Mr Hunt must have been lying. There was some evidence that Mr Waddell knew the name of the employee in question (“Thushi”) *before* his communication with Mr Hunt on

³⁴⁷ Siddall Final MDE Report/[39].

³⁴⁸ Siddall Final MDE Report/[39].

³⁴⁹ Siddall Final MDE Report/[39].

³⁵⁰ Waddell 5.

³⁵¹ Day 7/pp9ff (XX Waddell).

31 March 2023,³⁵² and so he would likely have known the colour of their skin, making use of the term “brown one” more likely, even though the CCTV did not disclose this fact (as was common ground).

RR.8. Conclusion

576. This is an evidentially difficult Incident, because it was not reported by Mr Hunt at the time, and only came to light as part of the MDE Investigation, which was seeking evidence of Mr Waddell’s misconduct. It is, therefore, necessary to proceed with caution.
577. Mr Hunt’s evidence was consistent and clear. I believe him, and consider that the comment (“brown one”) was made to him, but not to Thushi (whether directly by Mr Waddell or indirectly by Mr Hunt). I do not accept the evidence of Mr Waddell, and reject his emphatic denial. It seems to me that given the language used generally by Mr Waddell in BIG, it cannot be said that such a comment was atypical of Mr Waddell.
578. If anything, this was harassment under section 26 of the Equality Act 2010, and not bullying. For the reasons given by Mr Siddall, KC this was not a case of harassment of Thushi. Although she was the subject of the remark, it was not communicated to her. Rather, what Mr Hunt communicated that that Mr Waddell wanted her to get of the phone.
579. The question is whether this Incident amounted to indirect harassment of Mr Hunt. Although Mr Hunt’s witness statement uses the words “offensive” and “in shock” to describe Mr Hunt’s reaction, this was not how he described his reaction to Mr Siddall, KC; nor is it something he mentioned on exit from BIG. I do not consider that the test for harassment in terms of impact on Mr Hunt has been passed, and I agree with Mr Siddall, KC, that this was not a case of either harassment or bullying. It was not gross misconduct justifying summary dismissal of Mr Waddell.

SS. FRESHSTREAM’S CONSIDERATION OF BIG’S FUTURE (EMAIL DATED 2 MAY 2023)

580. In a Freshstream internal email dated 2 May 2023, Freshstream discussed (very much in the manner of a majority shareholder) the future development of the business. The detail does not matter – in broad terms it concerned the expansion of the business to acquire additional sites – but the email is eloquent about the tensions Freshstream were creating within BIG:

I am in favour of spending the money and doing the work

However, I am worried that we are doing too much too quickly w BMW. Does management have the bandwidth? What is the risk we are taking our eye off our existing core business which btw is performing extremely well as it is.

³⁵² Day 7/pp22-23 (XX Waddell).

If we assume a downside case of 5m EBITDA for Available, then our pro forma run rate goes well into the 30s. At what EV are we in the money on the option? And at what EV do we start to actively think of an exit.

Also, what are the Pete/Laurence dynamics at play here? Peter wants to push up EBITDA as he wants us to execute the option. Laurence is crying foul on many fronts re Pete partly also as he wants the CEO job and also therefore also has an incentive to make this acquisition happen and talk big numbers. I know we are meeting Laurence soon...

Lastly are these all freehold sites that we would be acquiring?

581. There is nothing wrong in a minority shareholder seeking to push the company that they have invested in in a certain direction that would benefit that shareholder. But where the shareholder is thereby causing persons *owing duties to the company* to disregard those duties, or subordinate them to the interests of the minority, this is a problem for those persons. Freshstream, by their conduct, were putting Mr Fardad and Mr Vaughan in a position where they were liable to breach their primary duties to the company.³⁵³

TT. INCIDENT NO 9: STATEMENT IN A SENIOR LEADERSHIP TEAM MEETING THAT “WE GET 3 WEEKS OUT OF 4” IN REFERENCE TO FEMALE STAFF AND THEIR MENSTRUAL CYCLES (MID-2023)

TT.1. The evidence of Mr Vaughan

582. Incident No 9 is the first of several Incidents where Mr Vaughan himself gave evidence of the Incident. Mr Vaughan gave evidence as regards Mr Waddell’s conduct compendiously, which is helpful for context. It is, therefore, appropriate to set out Mr Vaughan’s evidence in regard to Mr Waddell’s misconduct quite fully, even though this Incident (Incident No 9) is considered at Vaughan 3/[53] only.³⁵⁴

Pete’s misconduct and the lead up to his suspension

[52] Before I became aware of the misconduct that emerged from the investigation to Pete’s conduct, the aspects of his behaviour which most concerned me were his misogyny, sexualised language, racism, bullying and inappropriate behaviour towards BIG’s customers and counterparties. His conduct resulted in a toxic culture in the business.

Conduct towards women and sexual comments

[53] Whilst I was not at that time aware of any suggestion that Pete was sexually harassing female staff, I was aware of concerns around his conduct with female colleagues, and I also saw him being sexist in the way he interacted with and spoke about women. Pete was disparaging and condescending towards female members of staff. I heard Pete say in an Ops Board Meeting that we “only get three weeks out of four” in relation to our female colleagues. I do not recall whether a female colleague was present in the room. I don’t think anyone else in the meeting was surprised by that

³⁵³ Put to Mr Fardad Day 14/p125 (XX Fardad).

³⁵⁴ Vaughan 3/[53].

comment from Pete: it was the kind of comment that everyone was used to hearing from him.

[54] Pete’s language was sexualised and I think he thought his comments were funny and/or that he was being clever. There was one occasion at our old Head Office when Pete and I were walking down the stairs together on our way out. We passed a junior male employee on the stairs and, out of the blue, Pete asked him whether he had “shagged” his girlfriend. The employee was visibly embarrassed and did not respond. Pete then followed up with “I thought you were gay”. Both Pete’s comments were at a very loud volume and I am sure that more people will have heard; we were on the main stairs, which had a high foot fall. The employee clearly felt uncomfortable and wanted to get out of there as soon as he could. Pete just walked on to his car as if nothing had happened.

[55] When we were trying to get negotiations with the owners of Available Cars over the line, Pete and I went up to meet them in Leeds in mid-2023. I drove up to Leeds on the morning of the meeting and I had agreed to meet with Pete about half-an-hour or so before we were due to meet the owners at a hotel next door to one of Available’s sites. Pete has asked to come and meet me there for a coffee before we went over to the Available site. I arrived on time, ordered and drank my first coffee, but there was no sign of him. Eventually, he arrived looking a bit confused. He told me that he had come up to Leeds the previous evening with his “bit on the side” and he said it had taken him this long to get out of the bedroom. I did not know what he was attempting to achieve by telling me that, but it felt grubby.

Racist comments

[56] I heard first hand Pete refer to Asian people as “Hyundais” on at least three occasions, both times in meetings where there were other employees present. I recall that one of the instances was in the board room at our old Head Office just before we moved to our new premises in Gillingham (so around autumn 2023). It was an Ops Board meeting (which would have been attended by Tom, Neil, Bob, Darren, Ben, Stewart Ford and potentially others in senior management, although I do not record precisely whom) but Pete decided to use the meeting to tell an anecdote about someone he had met from an Asian background. Pete said, “I call him a Hyundai”. I think Pete thought his comment was funny, but it was not a jocular moment to me. I do not recall anyone else in the Ops Board meeting laughing. No-one else said anything; everyone in the meeting was intimidated by Pete. I can’t recall precisely when, but I have heard him use the same phrase a couple of other times. I took the use of the term “Hyundai” to be racist. At another meeting at Head Office, I also heard him say “there’s far too many Muslims up there” which was in reference to either our Enfield or Leeds sites. Pete said this when talking about operational challenges resulting from the fact that employees may request the same religious holidays as days off work or may be observing Ramadan, but the way Pete put it was pejorative and racist in my view.

[57] Pete also made comments about employees’ backgrounds on large WhatsApp chats. I recall one message on the “Big Management Team” chat (which includes members of the Freshstream team) where Pete was sending messages trying to push that day’s sales. He referred to one employee as his “Turkey delight”. The employee replied in a professional, factual, way by saying “Peter, I’m not Turkish, I’m Afghan.” That has stuck in my mind because it was a good example of the way Pete interacted with people and categorised them by their racial background.

583. Mr Vaughan was cross-examined on this evidence. He was asked about his reaction to the words he claimed Mr Waddell had uttered:³⁵⁵

- Q (Mr Gourgey, KC)** We know you don't remember raising this with Freshstream? You say in [Vaughan 3/[53]]:
- "I don't think anyone...in the meeting was surprised by that comment from Pete. It was the kind of comment that everyone was used to hearing from him."
- So do I take it from that that you didn't notice anyone being, not just surprised, but bothered by the comment?
- A (Mr Vaughan)** I don't think I did an audit of everybody's reactions, no.
- Q (Mr Gourgey, KC)** And no-one filed a report, a complaint, following the meeting, about the comment, did they?
- A (Mr Vaughan)** Nobody filed any complaints about Pete because they were too scared of the repercussions.
- Q (Mr Gourgey, KC)** So...just answer my question...in fact...?
- A (Mr Vaughan)** I don't know if anybody had done that.
- Q (Mr Gourgey, KC)** Right, thank you.
- When you say, "It was the kind of comment everyone was used to hearing from him", was that the kind of comment that you were used to hearing from him?
- A (Mr Vaughan)** It depends what you mean. Yes, broadly, yes. I was used to similar comments, not necessarily on that topic.
- Q (Mr Gourgey, KC)** But sexist comments?
- A (Mr Vaughan)** Yes.
- Q (Mr Gourgey, KC)** Right. Did you raise that with – bring that to the attention of Freshstream?
- A (Mr Vaughan)** Ultimately, it culminated in the email I sent in December.
- Q (Mr Gourgey, KC)** Yes.
- A (Mr Vaughan)** When I raised a whole series of things.
- Q (Mr Gourgey, KC)** Yes.
- Did you raise it before then?
- A (Mr Vaughan)** I'm sure I will have mentioned it, but I can't remember specifically.
- Q (Mr Gourgey, KC)** And you regarded these matters as being of a serious nature, didn't you?
- A (Mr Vaughan)** Correct.
- Q (Mr Gourgey, KC)** So can you explain why, for example, you didn't write to Freshstream to notify them, as you did in the Godwin incident, concerning this particular incident?
- A (Mr Vaughan)** Because there was such a volume of stuff that I was almost feeling like all I did was whinge to people about

³⁵⁵ Day 19/pp81ff (XX Vaughan).

what was going on and, you know, that only takes you so far. As I said, in the end, I was thinking, “Well, what is the point of doing stuff that makes no difference?”

Q (Mr Gourgey, KC) Is the real reason that you didn’t take any steps in relation to this comment is you didn’t regard it as being of a serious nature?

A (Mr Vaughan) That’s ridiculous, it’s extremely serious.

Q (Mr Gourgey, KC) “Extremely serious”? And yet you were content to leave matters until the option was exercised?

A (Mr Vaughan) I don’t think I had much other choice.

584. Mr Vaughan claimed that he was ashamed that he failed to do more.³⁵⁶ He was asked about a bad workplace culture and what he did about it:³⁵⁷

Q (Marcus Smith J) ...it seems to me that your perception of what was a problem at BIG was less an individual or series of individual occurrences, but a culture – you’ve used the word a few times – where this form of unacceptable conduct was going on. To what extent, at the time, did you see it as a generic problem, a cultural problem, rather than a set of individual circumstances that needed to be addressed individually?

A (Mr Vaughan) I think the – I think both is the honest answer, is that I thought there was a major cultural issue. And, you know, it is one thing being at Pete’s level and what he might say to me or others, but it’s a culture that pervades through the business as a reflection of that, you know, and that’s a massive concern. But, you know, depending on the incidents, some of those were in and of themselves pretty important as well.

Q (Marcus Smith J) Now, normally, one would expect the CEO to take responsibility of the workplace culture.

A (Mr Vaughan) Yes

Q (Marcus Smith J) But here, on your evidence, Mr Waddell as CEO was part of the problem, not part of the solution?

A (Mr Vaughan) Well, I think he had a different perception of what an effective culture was going to be.

Q (Marcus Smith J) Sure, but you have a fairly strong disagreement with him that the culture was an appropriate one?

A (Mr Vaughan) Correct.

Q (Marcus Smith J) So, at least viewing it from your position as chair, he was part of the problem, not part of the solution?

A (Mr Vaughan) In that respect, yes.

³⁵⁶ Day 19/pp83-84 (XX Vaughan).

³⁵⁷ Day 19/pp100ff (XX Vaughan).

- Q (Marcus Smith J)** So it was very much your problem as chair to deal with this? Not the individual cases, but the culture?
- A (Mr Vaughan)** Yeah, we were trying to make this a – sort of a modern, progressive, business, that was capable of sustaining growth and doing a good job for everybody, and that was not compatible with that.
- Q (Marcus Smith J)** For sure.
So, I know you’ve been asked this question before, but I’ll ask it again in that particular context of a culture that is wrong.
Why didn’t you take this to the board of BIG and have it out there as an issue that was bad for business, bad for the employees, bad reputationally if it came out, but principally just bad for the employees, and make clear, not by way of a conversation, but in a formal context that certain lines needed to be laid down, and that if those lines were crossed by anyone, but including the chief executive officer, there would be consequences?
Now you may very well say, and I’m anticipating, that you could answer the general point I’m putting to you, you may say:
“Well, I’d have been outvoted.”
But a shot would have been fired across the bows of the CEO and the point would have been out there for him to address or refute, but in a minuted and formal environment. I mean, why was that step not taken the moment you perceived a cultural problem within the organisation?
- A (Mr Vaughan)** Because, more than anything, I don’t think it would have been helpful. All the other directors, excluding Pete, knew all about it, and Pete would just have seen it as an attack on him, you know, it would have just further deteriorated all the relationships.
- Q (Marcus Smith J)** Well, it would have been an attack on him...
- A (Mr Vaughan)** Yes,
- Q (Marcus Smith J)** ...and let’s not make any bones about it.
- A (Mr Vaughan)** Yes, indeed.
- Q (Marcus Smith J)** But not addressing it just leaves the problem to fester?
- A (Mr Vaughan)** I suppose it...it’s quite difficult to explain, because it...Pete was a very dominant personality in the company. I just took the view it would not have been helpful, against that background, to raise things in front of others about stuff like this with him there. I think it would have been very negative for the overall conduct of the business.

TT.2. Evidence of Ms Rather

585. Ms Rather's witness statement said this:³⁵⁸

[41] In early 2023, I was in an operations board meeting, which Peter attended. We were discussing staff holidays and how much holiday employees were allowed to take. Peter began to discuss how many days off the sales department have, which is because of their shift working patterns. One employee, Krystal Dobson, who worked in the sales department, asked for time off to spend with her daughter over the summer before her daughter went to university. Peter, in response, said something along the lines of "you know, with women, you have to be extra-sensitive with them because, you know, in a month, we only get three weeks out of four from them and they need extra loving during one week".

[42] I understood this comment to mean that Peter thought women were practically useless and didn't work during the week of their period. Peter laughed as he said this and some people, who were sat closer to Peter, such as Bob Ruprah, Ben Goodwin, Darren Miller and Nick Laphorne, nervously laughed as well; I was the only woman in the room. Tom Clarke and Andy Holness in particular seemed to shake their heads in disappointment. I recall my jaw dropping in shock when Peter made this comment and turning to Andy in disbelief. The conversation then moved on and the comment was not raised again in that meeting.

586. In cross-examination, Mr Waddell's case (set out below) was put, but Ms Rather maintained her version of events, as set out in her statement.³⁵⁹

TT.3. Evidence of Mr Hodson

587. Mr Hodson's recollection was somewhat vaguer than that of Ms Rather:³⁶⁰

[28] I also remember Peter making a comment that you only get "three weeks out of four with female employees" (or similar) in reference to their menstrual cycle. I cannot remember when this was or who else was present, but it was either during an Ops board meeting or an SLT meeting at Head Office. In addition, although I cannot recall the specific instances, I remember Peter making other comments along the lines that women were useless or lazy because they have periods. These sexist comments were regular.

[29] I did not say anything to Peter about his behaviour at these two meetings (or at all). My view was that, if I said anything to Peter, I would just get shouted at and I risked being fired.

[30] I felt that there also weren't any avenues that I or other employees could go down to report things, as all roads led back to Peter...

588. In cross-examination, Mr Hodson was unshaken in his evidence.³⁶¹

³⁵⁸ Rather 1.

³⁵⁹ Day 23/pp46-47 (XX Rather).

³⁶⁰ Hodson 1.

³⁶¹ Day 24/pp131-133 (XX Hodson).

TT.4. Evidence of Ms Butler

589. In her statement, Ms Butler made clear that she was not present at the meeting, and did not hear Mr Waddell’s remark herself. She was told about it by others:³⁶²

I was told by more than one person, including Stewart on one of our commutes to or from the head office, about another comment which Peter made about women in an Operations meeting. I wasn’t in the meeting, but I have been told that Peter said that “Women were only good for 3 weeks out of 4” (or similar). My understanding is that he was referring to women’s periods and the women who work at the BIG sites. When Stewart told me that Peter had made this comment, it did not surprise me in the slightest that this was Peter’s attitude.

590. Ms Butler was cross-examined, so that Mr Waddell’s case was put. She stood by her evidence.³⁶³

TT.5. Evidence of Mr Waddell

591. Mr Waddell addressed Incident No 9 in three witness statements. In Waddell 5:

[232] The conversation was about “handout” staff. Handout staff hand over the keys to customers when they buy a car. They are tough jobs – you are out in the rain dealing with customers, trying to make a used car a new car for them. At each site, we had two handout staff who would come in on separate shifts, one from 9am to 6pm and one from 12pm to 9pm.

[233] At this meeting, Alex Maby, the CFO appointed by Freshstream, wanted to cut the number of handout staff at each site from two to one. I said this was likely to leave us short-staffed. The majority of handout staff are women, and there was always a risk of absence if they are sick or there was a problem with childcare. I did not say anything about “three weeks out of four”. Nobody ever told me that I had said anything wrong in this meeting. Given the number of members of the senior management team in this meeting, I would have expected them to tell me if I had said something wrong.

592. Waddell 6/[83] responds to, and denies, the evidence of Mr Hodson, described above. Waddell 7/[8.5] merely makes the point that the relevant meetings would have been recorded, but that the CCTV has been deleted (a point regularly made by Mr Waddell in regard to the Incidents).

593. In cross-examination,³⁶⁴ Mr Waddell maintained that this was not a comment he made, but that if he had made it, it would have been “very sexist” and “wrong”.³⁶⁵ In the course of cross-examination, Mr Waddell betrayed his views of the intrinsic differences between men and women:³⁶⁶

Q (Mr Laddie, KC) ...Surely there is a risk of absence with sickness with men?

³⁶² Butler 1/[38].

³⁶³ Day 22/p99 (XX Butler).

³⁶⁴ Day 7/pp67-78 (XX Waddell).

³⁶⁵ Day 7/p71 (XX Waddell).

³⁶⁶ Day 7/p74 (XX Waddell).

- A (Mr Waddell)** There is, but, usually, for a man, it's usually because he was out drinking the night before. That's usually, from my experience, of seeing, that's usually what it usually is.
- Q (Mr Laddie, KC)** Right.
And with women?
- A (Mr Waddell)** It's usually if their menopause. Or sometimes with a kid. The kid will fall down or they'll get phoned up from the school to say that their kids sick, so they have to leave.

TT.6. Evidence of Mr Lapthorne

594. Mr Lapthorne claimed that he was present at the meeting (which was Ms Rather's evidence), but asserted that "I am confident that no such remark was made by Peter or anyone else during any of the SLT and operations board meetings that I attended. I do not think this is something he would say".³⁶⁷

TT.7. Conclusions

595. Although Mr Vaughan's evidence regarding a culture of sexist (and racist) comments emanating from Mr Waddell, which is relevant to the propensity of Mr Waddell to have made *this* comment, I remind myself that Mr Waddell was summarily dismissed in relation to a series of particular Incidents, as specified in the table above. I am considering matters on an Incident-by-Incident basis, and so here too.
596. The questions that I need to consider are (i) was the remark made and (ii) was it sufficiently serious to constitute harassment/bullying, as defined. Mr Siddall, KC, found the Incident established, and concluded that it was an MDE (because a protected characteristic was engaged).
597. I am satisfied that Mr Waddell made the remark he did as specified. Mr Waddell had every interest in denying making the remark, but I find such denials implausible in the face of the evidence going the other way, in particular that of Ms Rather. Ms Rather was, as I have said, an impressive witness, and her account was specific, without being so specific as to lead to the inference that her evidence was being embroidered. Ms Butler's evidence, being hearsay, is entitled to rather less weight – and I stress that that is no criticism of Ms Butler. I treat Mr Vaughan's evidence with caution, because he had an interest in succeeding Mr Waddell as CEO and (as will be seen) was an active proponent in pushing forward the MDE Investigation.
598. Although Mr Lapthorne supported Mr Waddell's evidence, and although I am satisfied that he believed what he told me, I consider that Mr Lapthorne either did not hear the remark or has forgotten that it was made.

³⁶⁷ Lapthorne 1/[65]-[66], quotation from [66]. Although Mr Lapthorne's evidence in support of Mr Waddell's version of event is short (essentially, all he could state was a negative), he was firm in that assertion. That became clear in cross-examination, where he stood unequivocally by his evidence: Day 13/pp147-149 (XX Lapthorne).

599. As Mr Waddell himself accepted, the comment was sexist and unacceptable. Even if it had occurred in the context claimed by Mr Waddell (staffing levels) the point about needing two staff at peak hours is one that could (and should) have been made in a gender neutral way. Mr Waddell's point was about staffing levels and the prejudice if a single staff member was absent. The distinction he drew in evidence between men and women showed the stereotypical way Mr Waddell saw the world and demonstrated a propensity for differentiation in relation to a protected characteristic (sex) that was unnecessary. I should say that on the question of context, I prefer the evidence of Ms Rather, but the point matters little: either way the comment was unnecessary.
600. Accordingly, section 26 of the Equality Act 2010 is clearly engaged, and the question is whether the conduct was sufficiently serious to amount to harassment. I remind myself that not every inappropriate comment relating to a protected characteristic constitutes harassment. B's dignity must be "violated" or an "intimidating, hostile, degrading, humiliating or offensive environment" for B created.
601. Often it is suggested that an inappropriate remark constituted "banter" (i.e., a bad joke). I do not consider that such labels assist. They are being used to justify something that cannot be justified. The real question is this: there is a spectrum of unacceptability, ranging from the merely unacceptable/inappropriate to the unspeakable, with the test for harassment (and, indeed, bullying as defined in this Judgment) sitting somewhere between the two. The question is thus not one of justifiability, but level of seriousness. In this case, and not without some misgiving (particularly because I am disagreeing with Mr Siddall, KC) I conclude that this Incident did not amount to harassment. I reach this conclusion because (i) this kind of comment – racist, sexist – was (unfortunately) part of the working environment in BIG, and BIG did nothing to close this sort of behaviour down, until the MDE Investigation in March 2024; (ii) the comment was an undirected one. If B had been a single, specific, person, then that would have made a material difference; and (iii) there was no adverse reaction to the remark when it was made, including by Ms Rather (who suffered in silence).
602. I appreciate that this decision is itself in danger of condoning Mr Waddell's conduct. But summary dismissal for gross misconduct is a serious matter. I am emphatically not saying that disciplinary proceedings should not have been brought against Mr Waddell. To the contrary, they clearly should have been, and a warning against repetition given.

UU. INCIDENT NO 23: INQUIRY AT A TEAM MEETING IN WIMBLEDON AS TO WHETHER MEMBERS OF THE TEAM HAD RECENTLY ENGAGED IN SEXUAL ACTIVITY (JULY/AUGUST 2023)

UU.1. Evidence of Ms Gregory

603. Ms Gregory was and is employed by BIG. She has worked for BIG since March 2022,³⁶⁸ and has been the general manager of the BIG site at Wimbledon since

³⁶⁸ Gregory 1/[2].

early 2023.³⁶⁹ Her arrival at BIG thus coincided with Freshstream's acquisition of its interest in BIG. Although Ms Gregory did not have prior working relations with other Freshstream recruits into BIG, she was part of the "Freshstream" team in BIG rather than the "Waddell" team in BIG. I take this into account when considering her evidence. I consider that Ms Gregory was doing her best to assist the court in the evidence she gave, but that there was a significant amount of "overwriting" of her experiences. In other words, her evidence was coloured and influenced by the MDE Investigation process itself. This is, I stress, not a criticism.

604. Ms Gregory was in frequent communication with Mr Waddell, particularly when she took over at Wimbledon.³⁷⁰ Mr Waddell was a "details" person, who set high performance expectations and targets. With hindsight, Ms Gregory said that "Peter set daily sales targets which, on reflection, were very high, but at the time I didn't think much of it because I was willing to work hard".³⁷¹ Ms Gregory described how Mr Waddell would make "lightning" visits to underperforming sites, or threaten to visit when targets were not being met.³⁷²

605. Ms Gregory said this about Mr Waddell's communication:³⁷³

[18] Working at BIG has always been full-on, particularly when we were setting up the new Wimbledon site, but I enjoyed it. When I was given the promotion to General Manager, I was excited by the opportunity that Peter had given me. Peter and Ben were very involved in the set-up of the site, but that was not a bad thing. They were my bosses at the time, so I did what they told me to do. If somebody is in a position above me, I will always try and respect them. Peter believed in me, and I liked the pressure of my new promotion, which was to make the Wimbledon site the best it could be. The approach I have always taken is that when a target is set for me, I do my best to beat it.

[19] Now I have refreshed my memory by looking back at some of the WhatsApp messages sent to me directly by Peter, it has reminded me that some of his messages to me were cheap and cringy. At the time, I felt that they were not the sort of thing that someone should say, but as I was working in a fast-moving and high pressured job, I got on with whatever was thrown at me. Peter was my boss, so I didn't feel like there was anything I could do about the messages. Reflecting on things now, it feels crazy to say that, but at the time I thought that there was no way of dealing with the situation other than to just overlook the messages and go along with what he was saying. Over time, I became desensitised to them.

[20] In a normal working environment, I could have reported the messages to the Human Resources ("HR") team, but at the time I did not think that was possible as Peter was very involved with them. I felt that if Peter didn't like you, then you would be out of the door. I saw that happen to one of the sales controllers. Peter told me he was going to get rid of her and shortly after she was fired. I don't remember him involving HR or having any formal meetings with her. This meant that although I knew I could do my job and I worked hard, I didn't feel safe in my job. I felt anxious and that I was walking on eggshells because of this feeling. Despite knowing that this wasn't

³⁶⁹ Gregory 1/[2].

³⁷⁰ Gregory 1/[15]-[17].

³⁷¹ Gregory 1/[17].

³⁷² Gregory 1/[25].

³⁷³ Gregory 1.

right, Peter paid my wages and so I considered I had no choice but to just get on with my job. I didn't want to report things and cause a scene.

[21] Peter also used WhatsApp to send me, and other managers, photos that he had taken from the CCTV systems. There used to be at least 2 cameras in every office in Wimbledon so this meant that he could see what people were doing, who was in and what time people would leave. Peter used WhatsApp messages and CCTV to control things. I found it weird and a violation of privacy. It also came across as threatening at the time. He would send me CCTV images via WhatsApp and would want to know such things as who people were, what they were doing or why they weren't working...

606. As I have noted, Mr Waddell's use of CCTV demonstrates his controlling tendencies. Much was made at trial over BIG's failure to retain the CCTV footage, which would have been valuable evidence in relation to a number of Incidents. Mr Waddell, in his evidence, made much of this failure. I attach very little weight to the removal, by BIG, shortly after Mr Waddell's suspension, of the CCTV system. The privacy issues – the intrusion into the workspace – are obvious, and it is obvious (from Ms Gregory's evidence) that CCTV was used intrusively. Whilst, as a counsel of perfection, the CCTV would have been removed whilst retaining the prior recorded CCTV footage, it is clear that BIG and their lawyers missed the fact that removing the cameras also deleted the footage.³⁷⁴ This was an unfortunate loss of potentially very important evidence, but it was not deliberate and I decline to draw any inferences from the deletion of this evidence. However, the consequence is that I am bound to rely on the fragile recollections of witnesses for most of the Incidents, without (in general) any documentary support, which would be intrinsically more reliable.

607. Ms Gregory's statement moves, over a few paragraphs, from an environment in which she was challenged but proud to work in to a threatening environment, in which she was "scared":³⁷⁵

...I know that sales is a pressurised environment because I've worked in it for many years but wondering whether [Mr Waddell] would turn up [at the Wimbledon site] made me feel uneasy. I felt scared because he was unpredictable. On several occasions, Peter shouted at me about issues such as the site not making enough money, salesmen not being trained properly, delays in processes like driving licence checks and hiring decisions I had made. I knew that I could do my job well, but this made me feel like I couldn't.

I consider this to be a good example of a recollection being coloured (although not rewritten) by subsequent events.

608. Ms Gregory located Incident No 23 within a broader context, and it is appropriate to set out her evidence in full in Gregory 1:

[35] The language which Peter used was often very crude. Everything was described as "fucking" or "fuck that" and I have heard him make dirty comments that have made me feel awkward and uncomfortable. Although he would often say rude things that would make me cringe, two occasions stand out to me, one being the first or second

³⁷⁴ See the evidence of Mr Bruce Smith ("Mr Smith" and Smith 1), who explained the way the system operated.

³⁷⁵ Gregory 1/[25].

team meeting we had at the Wimbledon site shortly after the showroom officially opened in July 2023. There were about 30 people at the meeting – including me, the rest of the management team (Inese Buzina and Dijle Neguzel) and the sales team (who were mainly male).

[36] We were in the upstairs boardroom at the time and Peter walked in. I remember him asking at least one of the salesman, Rashid, who I think was in his mid-twenties, “did you fuck last night?” or “did you get it last night?” (or similar). He said it in a way that was loud enough to get the attention of the whole room. When Peter walked into a room, you listened, so I assume that everyone in the room would have heard the questions. I also remember hearing Peter say “you look happy because you’re having sex” (or something like that) to Rashid. I cannot remember if he made that comment at the same meeting, or if it was on another occasion, but that is the sort of rude and inappropriate comment I’ve heard him make more than once which made me feel uncomfortable and dirty.

[37] Having reviewed pages 7 to 9 of the transcript of my conversation with Mr Siddall, I can see that I told him that Peter had asked “did you F your missus last night?” whilst pointing to people at the meeting, but I cannot now remember who else he asked that question (or something similar) to on that occasion. I do specifically remember him asking the individual called Rashid.

[38] After he asked the question, I believe he just laughed and moved on to something else, but I remember thinking “wow, what is going on?”. I believe that I also spoke with the other females in the management team (Inese and Dijle) about the comment after the meeting, but this isn’t something which I would have discussed with the rest of the team. Although I cannot remember the specifics of that conversation, I know that we all thought “wow”. Even though Inese had worked for Peter for many years, I could tell by the look on her face when Peter asked the question during the meeting that she was shocked by what he had said.

[39] The second occasion that sticks in my mind also happened around July 2023, when a group of us were sat on the chairs downstairs in an area at the Wimbledon site which we call the qualification area. I cannot remember what day of the week it was, but I think it was in the morning before the site had opened, and we were having a team meeting. I am not sure why we were having the meeting downstairs rather than in the boardroom, but Peter was there, and he referred to himself as having a “nice car and a small dick” (or similar words). Having reviewed page 18 of the transcript of my conversation with Mr Siddall, I am aware that I told him that Peter was always talking about a “big car and a little willy”. I cannot now remember which combination of these two phrases he used on that occasion because he would often refer to himself using those words or similar words. Peter making sexual comments like this was the norm. On occasions I remember thinking “here we go again” when he spoke. I found the comments embarrassing and uncomfortable to hear.

609. As in the case of Incident No 9, context is important. This particular Incident, as with many, took place in a poor work environment sanctioned by BIG and to a large extent caused by Mr Waddell (whether through his own conduct or through that conduct constituting an example to others). The difficulty in evaluating the seriousness of an individual Incident in such an environment is

illustrated by Ms Gregory’s oral evidence in relation to Gregory 1/[39], quoted above.³⁷⁶

- Q (Mr Gourgey, KC)** In your witness statement at [39] to [40]...you deal with an Incident in July 2023 in [39], where you say Mr Waddell was talking about something along the lines of “big car” and “little willy”? Yes?
- A (Ms Gregory)** Yes.
- Q (Mr Gourgey, KC)** This was an Incident, wasn’t it, of Mr Waddell joking around at his own expense? Wasn’t he? He was putting himself down as a joke?
- A (Ms Gregory)** Yes, I guess. Well, um...Doesn’t mean that he’s right to say that, I would respond to that. Just because you’re putting yourself down, like, your words are still important that you use.
- Q (Mr Gourgey, KC)** Yes. I mean, he’s describing himself as having a little willy. Yes? That’s what he was saying on this occasion?
- A (Ms Gregory)** Yes.
- Q (Mr Gourgey, KC)** So he was making a joke at his own expense, wasn’t he?
- A (Ms Gregory)** It doesn’t make it right, though. I don’t...Yes, he was saying that, but it doesn’t make it right, just because its at his own expense.
- Q (Mr Gourgey, KC)** You understand that he was trying to say this as a joke, didn’t you?
- A (Ms Gregory)** Well, I wouldn’t find it very funny, but...
- Q (Mr Gourgey, KC)** Yes, but your impression at the time was that he was trying, even if it didn’t work, he was trying to say it as a joke?
- A (Ms Gregory)** I don’t know, I couldn’t answer that, I don’t think.
- Q (Mr Gourgey, KC)** And I suggest you didn’t find that uncomfortable to hear at the time...
- A (Ms Gregory)** It wasn’t the best thing to hear.

610. I appreciate that this is not an incident in relation to which Mr Waddell was dismissed. Nevertheless, it deserves consideration. It is a good illustration as to why the “joke” or “banter” “defence” is misleading. Jokes or banter are all very well in some environments, but in a work environment (where employees are obliged to be, and are subject to direction and control) there is a *prima facie* inappropriateness. This is precisely the sort of case sitting somewhere on the inappropriateness spectrum that was described earlier. The test for inappropriateness (not, I stress, the test for harassment/bullying, which sits further down the spectrum at the more serious end) turns on respect and courtesy. In an employment context, even a joke against oneself involves imposing something on a person who has no choice but to be there.

³⁷⁶ Day 23/pp101 (XX Gregory).

611. Accordingly, I consider that Ms Gregory was right to say that this “wasn’t the best thing to hear” and that the label “joke” (or “banter”) is dangerous, because it suggests something that is not inappropriate, whereas it is inappropriate, but perhaps not so inappropriate as to amount to harassment/bullying.³⁷⁷ This is precisely why the harassment/bullying line is so hard to draw. The line is not the binary one between “appropriate” and “inappropriate” words or conduct, but between different degrees of inappropriateness.
612. The second reason this comment is worthy of consideration is because – along with the evidence of many other people, including Mr Vaughan and Ms Gregory – it shows the bad work environment within BIG.
613. Ms Gregory was cross-examined on this specific Incident by Mr Gourgey, KC.³⁷⁸ She accepted that the comment was made to the room as a whole, and that Mr Waddell was “goading” the team.³⁷⁹ She maintained that Rashid had been the specific addressee, acknowledging that this was not something she had said to Mr Siddall, KC.³⁸⁰ Going on:³⁸¹

Q (Mr Gourgey, KC) I suggest to you that your recollection of that meeting, to the extent that you refer to questions being directed at Rashid, is in error, and that Mr Rashid was not specifically confronted with the question that you identify? Do you agree?

A (Ms Gregory) No. So, obviously, I’ve remembered Rashid, so I’ve put that. But I guess the names of who was there and who it was directed at in my mind, I guess are irrelevant. It’s what was said and I know it was said to numerous people. I just can’t remember specifically the names of who was said to. Rashid would have been one of them.

Q (Mr Gourgey, KC) I suggest that what actually happened was that Mr Waddell went into the meeting and made a remark to the general meeting, “did you have sex last night?”, or words similar to that?

A (Ms Gregory) That was how it started, then it went on from there.

Q (Mr Gourgey, KC) I suggest he didn’t then put that question to particular people in the room, Ms Gregory?

A (Ms Gregory) I don’t know if I can answer like this but – I don’t know how its relevant, but I guess you know.

Q (Marcus Smith J) I think you should just answer the question, rather than observe what’s relevant.

A (Ms Gregory) Okay, fine. Can you ask that question again, sorry?

³⁷⁷ Another example of this sort of conduct is when Mr Waddell was late for a meeting with Mr Vaughan, and excused himself by saying that he had spent the previous evening with his “bit on the side and it had taken [him] this long to get out of the bedroom”. As Mr Vaughan (rightly) said this pointless comment made him feel “grubby”.

³⁷⁸ Day 23/pp110ff (XX Gregory).

³⁷⁹ Day 23/p110 (XX Gregory).

³⁸⁰ Day 23/p111 (XX Gregory).

³⁸¹ Day 23/pp111ff (XX Gregory).

- Q (Mr Gourgey, KC)** Having made that general remark, when he walked in, he didn't then go to particular people in the room and ask a particular person "Do you have sex last night?"
- A (Ms Gregory)** No, he did do that. I just can't remember specifically who.
- ...
- Q (Marcus Smith J)** Ms Gregory, Mr Waddell's version of this episode is that he was trying to energise the team and gee them up a bit? Do you want to comment on that?
- A (Ms Gregory)** That might have been his intention, but what was obviously heard on the other side for me and seeing people's responses, it's like it should never have been said.
- ...
- I just thought it was disgusting, to be honest. I was quite shocked, and I saw shock on other people's faces that I've interpreted that as.

UU.2. How the matter came to light

614. In early 2024, Ms Gregory had a "run-in" with Mr Waddell (and Mr Goodwin), which resulted in her removal from Wimbledon to the Enfield and Bluebell Hill sites.³⁸² Ms Gregory clearly – and understandably – viewed this as a demotion and possibly even a dismissal.³⁸³ Ms Gregory says this:³⁸⁴

[54] Out of nowhere, Peter then told me that I was being pulled from the Wimbledon site. He told me to go home and that they would call me, so I showed myself out of his house. At this point, it was nearly 22:00 on a Sunday night, there was a storm outside, I had worked a long shift, and I felt quite upset. I didn't really understand what had happened or what the plan was in the long term. Peter never actually explained if I had lost my job, it was all very confusing, and I felt like I had been blindsided. This was not a long conversation, but it got to the point where I wasn't even questioning what they were saying because I felt like I was going to become emotional and just wanted to go home.

[55] I think I got a call from Ben a few days later, or maybe the following week, asking how I was. I explained that I didn't feel great about the situation. Ben then told me that I was being moved to the Enfield and Bluebell hill sites to cover shifts there and to help the general managers. I didn't all ask any questions about it, I didn't see the point, and I didn't want to cause a fuss.

[56] As I mentioned above, I ended up working at the Enfield and Bluebell Hill sites from approximately late January to March 2024. I ended up working at those sites not knowing what would happen next, but I decided that I would just get my head down. I knew I had done nothing wrong, and I had really enjoyed my job with Wimbledon, so I threw myself into Enfield and Bluebell Hill.

³⁸² Gregory 1/[46]ff.

³⁸³ Gregory 1/[54].

³⁸⁴ Gregory 1.

[57] In late March 2024, Ben sat me down at the Bluebell Hill site and told me that he was going to move me back to Wimbledon. By the time I went back to Wimbledon in early April 2024, I think Peter had already left the business because I don't have any further memories of him being in charge.

615. It was at about this time that Mr Clarke approached Ms Gregory with a view to her assisting in the MDE Investigation.³⁸⁵

[58] Around the time I was asked to return to Wimbledon, Tom Clarke got in touch with me to say that an individual called Mr Siddall might want to speak with me about Peter and to ask if I was OK with that. I cannot recall the specific conversation I had with Tom, it might have been over the phone or e-mail, but Tom explained that Mr Siddall was independent and was speaking to some people in the business. Tom told me that I did not have to speak with him if I did not feel comfortable doing so, but I told Tom that I was fine to speak with Mr Siddall. I did not ask Tom a lot of questions and I respected what he told me.

[59] Although I was comfortable speaking with him, looking back now, I was probably a bit cagey when I spoke to Mr Siddall. At the time, Peter had not been permanently removed from the company, so I was wary of how open I could be. Although I answered Mr Siddall's questions about specific things truthfully, there were some events I did not tell Mr Siddall about at the time, such as the incident at Peter's house. Because Peter often dealt with things in a threatening manner, I was afraid that what I told Mr Siddall might get back to Peter.

616. Ms Gregory was pressed in cross-examination about being a "bit cagey" with Mr Siddall, KC. It was suggested, instead, that Ms Gregory was going out of her way to identify misconduct on the part of Mr Waddell.³⁸⁶

Q (Mr Gourgey, KC) [Asking about Ms Gregory's interview with Mr Siddall, KC]

It's at [transcript/p262 at the top]. Mr Siddall asks you: "Is there anything else you would like to discuss about Pete in terms of the way he conducts himself, if he is a brilliant boss, if there are any other examples which cause you disquiet."

You don't stop there and so, "No, there's nothing more I want to say", do you?

A (Ms Gregory) No I don't. No.

Q (Mr Gourgey, KC) In fact, what you then do is you volunteer the account of the "big car little willy" incident. That's right, isn't it.

A (Ms Gregory) Yes, that's right, yes.

Q (Mr Gourgey, KC) I suggest to you that the position that you were taking at this interview was not one of wanting to be cagey about what you said because it was all going to be on the transcript, but actually giving full vent to everything that you wanted to say to Mr Siddall?

³⁸⁵ Gregory 1.

³⁸⁶ Day 23/p117 (XX Gregory).

A (Ms Gregory)

No. I think it's still quite early days in the business, so I guess I felt quite intimidated by what I was saying, I guess. It was a bit awkward, as well, kind of certain words, relaying back what happened. So, no, I kind of disagree, really.

617. Ms Gregory was asked whether there was anything more and – in what would have been an intimidating process – answered Mr Siddall, KC's question. It may be that "cagey" is the wrong term, but I do not consider that Ms Gregory was gratuitously volunteering "dirt" on Mr Waddell. She was answering the questions she was asked.

UU.3. Evidence of Ms Neguzel

618. Ms Neguzel gave evidence in relation to Incident No 23 which contradicted that of Ms Gregory. I will start with the substance of her evidence, before proceeding to consider its credibility.

619. In her witness statement, Ms Neguzel said this:³⁸⁷

In Helen Gregory's interview with Mr Siddall, she refers to a team meeting in Wimbledon in July/August 2023 and says Peter was inquiring whether members of the team had recently engaged in sexual activity. As far as I can recall, Peter was only in these meetings a handful of times. When he arrived in a meeting, he was like a force of nature. He was full of energy and try to inject that energy into his team. For him, this is all about motivation. Once, in the middle of a meeting, I recalled him saying something like "have you had sex last night, you should be ready for your day". To my recollection, Peter was certainly not singling anyone out and asking them whether they had had sex. It was a rhetorical question. To me, he was telling us to approach customers with confidence. I think he was trying to project that you need to have confidence when selling cars. That is the context in which I took it, and is how I believe the comment was intended. I was not offended at all. I do not remember anyone at the meeting being offended or objecting to the way Peter made such a comment.

She maintained this evidence in cross-examination.³⁸⁸

620. Ms Neguzel's account is vaguer than that of Ms Gregory, and it is relevant that Ms Neguzel's relations with Ms Gregory were not of the best³⁸⁹ and that she left BIG under something of a cloud.³⁹⁰ Ms Neguzel was very much on the side of Mr Waddell, and her description of him as "a calm man who would come into the workplace and he would say hello to everyone, whether it was, you know, having morning meetings with us or just going round talking to people individually" is not one that I recognise.³⁹¹ I cannot attach very much weight to the evidence of Ms Neguzel.

³⁸⁷ Neguzel 1/[22].

³⁸⁸ Day 12/pp13-14 (XX Neguzel).

³⁸⁹ Day 12/p3 (XX Neguzel).

³⁹⁰ Day 12/pp4ff (XX Neguzel). The details do not matter, but concerned unauthorised absence from work to attend a wedding. Ms Neguzel was not dismissed, but resigned from BIG.

³⁹¹ Day 12/p11 (XX Neguzel).

UU.4. Evidence of Ms Buzina

621. Ms Inese Buzina (“Ms Buzina”) is a former employee of BIG, having worked there between 2014 and 2016 and 2022 until November 2024.³⁹² She was in the Mr Waddell camp, not least because when she asked for an opportunity to develop her career, she was given one.³⁹³ In early 2023, she joined the Wimbledon site as a sales manager,³⁹⁴ moving from there in late 2023 to work at sites acquired from Available Cars, ending up as the general manager at the Cannock site.³⁹⁵
622. Ms Buzina clearly admired and respected Mr Waddell.³⁹⁶

[18] When I was at the Contact Centre, Peter was always around. He was so hard working. He inspired me to work hard – he was always there, working hard, and talking to everyone. He did not act like he was bigger or better than anyone else. I’d only been there for a year when I felt comfortable enough to go up to him and ask him directly for a salesperson job. He was the CEO of the company, but he had time to speak to me about that, took an interest in my development, and I felt confident that I could just go up and raise this with him instead of having to go through other people. He was very approachable.

[19] Peter always wanted to give people opportunities. He wanted to watch people grow, and he was always proud of his staff “becoming someone”, as he would say. I think Peter appreciated the fact that I went up to him and asked him directly for a salesperson role.

[20] When I returned to big in 2022, I continued to see a lot of Peter and worked with him even more closely. By then, he had a lot of sites – West Malling, Bluebell Hill, and the Prep Centre – in addition to Enfield, but he would visit at least once or twice a week. Whenever he was in the site, he would come in early and he would bring big trays of sweets. He would let everyone know that he was around and was there to support the team. Even though he was the CEO he had time to take people out for breakfast or have a chat to them if they needed a shoulder or needed support. If he could see that our branch wasn’t doing well, he would come and visit to tell us that we could do it.

...

[23] Peter is one-of-a-kind. Not only his story and where he has come from, but how hard he works. He is relentless. He is up at 4am and starts sending messages about work, spends all his time getting cars pushed through the system and ready for sale, going around lots of different sites to solve problems and motivate people, and working until after midnight. When we were getting leads ready, Peter would sometimes get there at 12am to keep working – just relentless. I’ve never known anyone who works as hard as him. Even though he was working so much, he always had time for the team. He was very approachable, and people felt like they could approach him anytime. He never seemed too busy to listen to anyone, whether it was someone in management or, say, a cleaner who’s having an issue. He would listen to people’s problems and make sure they got addressed. He is very passionate about what he does. It is unreal to see

³⁹² Buzina 1/[1].

³⁹³ Buzina 1/[10].

³⁹⁴ Buzina 1/[16].

³⁹⁵ Buzina 1/[16].

³⁹⁶ Buzina 1.

what he has achieved. Peter was always trying to fit in. He'd always want to make people feel as though he was on their level.

[24] Peter could be direct sometimes. He would ask people direct, yes or no questions, like "Did you do that thing I asked you to do?". He would look you in the eye and ask his questions. There was nothing intimidating about that. He was the CEO, he was experienced and knew what he wanted, and he expected high standards from the people who worked for him. I think some people felt nervous sometimes, but I think that is just how Peter operates. He would be calm, he would not just start yelling or raising his voice for no reason. He would get his facts together and gather his thoughts before making a decision. I do not think that Peter is a bully. Yes, he can raise his voice sometimes, and yes, he takes his work seriously, but it is never bullying.

623. Ms Buzina's witness statement says this about Incident No 23:³⁹⁷

[37] One of the things the interviewer asked me about was whether Peter had gone around at a team meeting at Wimbledon and had asked people whether they had had sex that morning.

[38] As I tried to tell Mr Siddall, it did not happen exactly like that. When we were getting Wimbledon set up and off the ground, Peter would come to our morning sales meetings sometimes to motivate everyone and get everyone ready for a big day of sales. He would see that some of the salespeople were looking down or sad, maybe because their sales had not been that good or because they had to work on a Saturday morning. He would come in like a hurricane, trying to rev everyone up.

[39] I remember one sales meeting, maybe in June or July 2023, where he was giving us a morning motivational speech and he said something to us like: we should all be full of energy and ready to seize the day, as if we had had sex the night before. He was not asking us whether we had had sex. It was just a comment he made during his talk, it was said with a smile. I do not remember anyone making any complaints about that comment all looking uncomfortable. I did not feel uncomfortable. I have been shown the part of Helen Gregory's interview transcript which deals with this meeting...and I disagree with how she described my reaction to this kind of comment. I was not shocked by this and I do not remember looking shocked.

[40] He would also sometimes ask the salespeople what they had been up to the previous night, and if they were fresh this morning and ready to go. I did not think there was anything sexual or inappropriate about this – we had a pretty young team of sales people, and I think Peter just wanted to know whether they were ready for work (and were not hungover or partying too much).

624. Ms Buzina gave oral evidence on Day 12.³⁹⁸ Ms Buzina was a loyal but rather brittle witness, who was herself somewhat tone-deaf as to what might constitute harassment or bullying. Some months before her departure, she was the subject of a disciplinary process which was investigating her inappropriate use of the word "Paki".³⁹⁹ She was given a final written warning and sent on a diversity and inclusion course. There was a further, subsequent complaint about her bullying and racist comments, made by a departing member of staff in their exit

³⁹⁷ Buzina 1.

³⁹⁸ Day 12/pp16ff.

³⁹⁹ Day 12/pp18ff (XX Buzina).

interview,⁴⁰⁰ as a result of which she was suspended from work.⁴⁰¹ Although these allegations were not communicated to Ms Buzina, she felt that she was being forced out of the business, and felt mistreated as a result.

625. She then worked for Mr Waddell's son, Jack, in his business, a job Mr Waddell helped her to get:⁴⁰²

[110] Inese Buzina has worked for me for almost ten years. I stayed in contact with Ms Buzina after my suspension. After she was forced out of the business, I helped her get a job working for Jack at JW Autos. This was around the end of 2024. There is nothing unusual about this. I have helped many staff who have left BIG because they are unhappy with the new management find new jobs. Helping Ms Buzina get a job with Jack had nothing to do with giving a witness statement or these proceedings.

[111] Ms Buzina lives in a property that used to be owned by a trust of which Jack is a beneficiary. The address [redacted by me]. When Ms Buzina moved back to Kent to work for Jack, she needed somewhere to live. At the time, the flat was empty and on the market for sale, although there was not a lot of interest. Jack used to live in it, but he had moved out because he needed a bigger place after my grandson was born. Ms Buzina then moved into the flat. She did not pay rent (which I believe would have been about £1,000 per month), but she did pay the bills, rates and insurance, which came to around £450 per month. Ms Buzina liked the flat and was interested in buying it...

626. Ms Buzina made sure that she had a job with Mr Waddell's son before resigning from BIG,⁴⁰³ and (whilst an employee of BIG) communicated with Mr Waddell despite being told not to,⁴⁰⁴ providing information to him that she should not have done.⁴⁰⁵
627. None of these matters – working for JW Autos, staying a flat rent free, providing information to Mr Waddell, the reasons for leaving BIG – were mentioned in Ms Buzina's witness statement, and they are obviously relevant to her credibility in a factual dispute between Mr Waddell and BIG.⁴⁰⁶ I treat her evidence with a considerable degree of caution, although I do not go so far as to hold that Mr Waddell bought the evidence of Ms Buzina.
628. However, Ms Buzina's evidence was unreliable. For instance, she denied that Mr Waddell was ever rude⁴⁰⁷ (a factual assertion I reject) or ever yelled at someone (a factual assertion I also reject).⁴⁰⁸ She sought to minimise the extent of Mr Waddell's intimidating behaviour.⁴⁰⁹ In the witness box, under cross-examination, Ms Buzina sought to maintain what she said in her witness statement. I do not go so far as to say that Ms Buzina was lying, but she was

⁴⁰⁰ Day 12/pp22ff (XX Buzina).

⁴⁰¹ Day 12/p30 (XX Buzina).

⁴⁰² Waddell 6.

⁴⁰³ Day 12/p25 (XX Buzina).

⁴⁰⁴ Day 12/p26 (XX Buzina).

⁴⁰⁵ Day 12/pp27-29 (XX Buzina).

⁴⁰⁶ Day 12/pp32-33 (XX Buzina).

⁴⁰⁷ Day 12/pp34-35 (XX Buzina).

⁴⁰⁸ Day 12/pp36-37 (XX Buzina).

⁴⁰⁹ Day 12/p35 (XX Buzina). I accept that Ms Buzina did not herself find Mr Waddell intimidating, but that is not the point. Other people did, and it would be surprising if Ms Buzina had not spotted this.

devoted to Mr Waddell, and in his debt, and had every reason to soften the allegations against him. I can place little to no weight on her evidence.

UU5. Evidence of Mr Waddell

629. Mr Waddell's evidence in relation to this Incident was as follows:⁴¹⁰

[248] When I went down to Wimbledon, I could see the sales team was a bit down. I watched the general manager, Helen Gregory, lead the team meeting. It was all negative. She was critical of how the sales team had been performing. I am not like that. When I lead the meetings, I want to be positive, passionate and motivate the team to sell as many cars as possible.

[249] In one of the meetings at Wimbledon, I might have said something like, "Come on lads, I'm up for it, I'm ready, I'm a 60 year old man, I had sex last night, I'm alive. You should be too." I do not recall saying this, but if I did, it was only ever to motivate the sales team, which was mostly men. It is possible that during my motivational speech in one of the meetings, I did ask the sales team whether they had had sex. To be clear, this would have been me asking the team as a group – I was not inviting an answer. I never asked people individually if they had had sex.

[250] Ms Gregory never told me that what I said during these team meetings was inappropriate or offensive or that I should not be saying it. In my view, this is because Ms Gregory would have known full-well that I was only trying to motivate the team. Ms Gregory also cursed during meetings and used language some may consider offensive. Nobody else raised any issues with me either. If someone had raised an issue, I would have stopped these sorts of speeches. In fact, managers often requested that I lead the morning sales meeting as the staff found it very inspiring.

630. Mr Waddell's evidence in cross-examination was not particularly informative, but consistent with his witness statement.⁴¹¹

UU.6. Conclusions

631. Mr Waddell did not convincingly deny making the statement alleged, and Ms Neguzel and Ms Buzina confirmed that something along these lines was said. I find that *something* was said, and I am more inclined to accept Ms Gregory's version of events than Mr Waddell's. For the reasons I have given, I substantially discount the evidence Ms Neguzel and Ms Buzina.

632. On the other hand, the one thing that can be said with confidence about Mr Waddell is that he was – or could be – a charismatic leader, who first and foremost wanted the success of the business. This is not inconsistent with the evidence of Ms Gregory. I find that this was an off-colour attempt to motivate which may even have succeeded in at least enlivening a group. But, as the cross-examination of Mr Waddell by Mr Laddie, KC demonstrated, and as Ms Gregory's evidence tells, this was nevertheless indefensible and inappropriate conduct. It certainly was capable of being a disciplinary offence under the BIG Employee Handbook. The fact that no complaint was made is of little weight in this case: I am in no doubt that if Ms Gregory had attempted to push-back, she

⁴¹⁰ Waddell 5.

⁴¹¹ Day 7/pp124ff (XX Waddell).

would have been told in no uncertain terms that she was letting the side down in not being inspirational enough.

633. So the question is how inappropriate the conduct was. In this regard, it matters whether the conduct was directed at an individual or generally to the group. Ms Gregory was somewhat equivocal on this. My conclusion is that if – as I find – Mr Waddell was trying to motivate the group, it is unlikely that he would single out an individual, unless it was to praise or criticise individual performance. No-one suggested this and I find that the conduct was generally made.
634. In all the circumstances, I consider that (i) this was an inappropriate comment which however (ii) did not cross the line to be harassment and so (iii) was not gross misconduct.

VV. TENSIONS BETWEEN MR VAUGHAN AND MR WADDELL

635. In an email chain concerning the structuring of discussions regarding the acquisition of new sites by BIG (the details do not matter) on 10 August 2023, Mr Vaughan described his availability for a meeting:

Hi Luka

I can do the 22nd or 23rd. I think we need to give careful thought to the agenda/structure of each meeting.

636. Mr Waddell responded that “[i]t will only need my team to do this, but I reckon it needs to be done over two days. I’ll come back to you next week with dates”. Mr Vaughan commented to Mr Fardad:

Who the fxxx is his team?

637. We see here the division between CEO and chair and the hostility the latter had for the former. This was put to Mr Fardad:⁴¹²

Q (Mr Gourgey, KC) And it was apparent to you – it must have been apparent to you from this that Mr Vaughan was deeply hostile to Mr Waddell?

A (Mr Fardad) Um...yes, I mean – well, I need to see the context of the email and what the context – but the relationship between the two of them at that point was not great.

Q (Mr Gourgey, KC) Well, it was very bad, wasn’t it?

A (Mr Fardad) It was not good.

⁴¹² Day 14/p126 (XX Fardad).

WW. MANAGEMENT ATTITUDES IF THE CALL OPTION WAS NOT EXERCISED

638. In late September 2023, Mr Vaughan sent Mr Fardad a spreadsheet setting out “my view of what will happen with management if the option isn’t exercised pdq!”
639. As regards Mr Vaughan himself, the spreadsheet said “Likelihood of leaving, medium. Committed but very uncomfortable with implied sanction of [Mr Waddell] actions.” This shows that Mr Vaughan was aware of the effect of his inaction in relation to Mr Waddell’s conduct. He was condoning it. The problem, in the case of each Incident and indeed generally is precisely *what* Mr Vaughan was condoning.
640. The spreadsheet identified other members of the senior management team in danger of leaving if the Call Option was not exercised. The point being made was that the non-exercise of the Call Option could have serious consequences for the business, and this was advocacy for a change of CEO.
641. The spreadsheet was put to Mr Fardad in cross-examination:⁴¹³

Q (Mr Gourgey, KC) You didn’t share with Mr Waddell this news about staff ready to leave, did you?

A (Mr Fardad) No.

Q (Mr Gourgey, KC) No.

A (Mr Fardad) Well, some had left already, but yes I did not share...

Q (Mr Gourgey, KC) You said that at the start of your cross-examination that you were always transparent with Mr Waddell, but you weren’t, were you?

A (Mr Fardad) Transparent, but you’ve also got to consider the impact of sharing that Excel file with Mr Waddell. If I’d shared that Excel file with Mr Waddell, the consequences on the people listed on that would have been – it would have been an explosion in the business. So you’ve got to consider how you share it and what you share. It’s not as simple as being transparent and sharing everything you receive.

Q (Mr Gourgey, KC) But you weren’t transparent with Mr Waddell, were you?

A (Mr Fardad) I didn’t share that with him, no.

Q (Mr Gourgey, KC) You didn’t need to share the Excel file, you could have gone to him and had a discussion and said, “I’ve had discussions with Mr Vaughan and I’m concerned about senior management”. You could have done that, couldn’t you?

A (Mr Fardad) To be fair, around that time I did explain to him that “You’re applying a lot of pressure to the team and there are problems”. I don’t know if it was as a consequence

⁴¹³ Day 14/pp128-129 (XX Fardad).

of that Excel file, but around that time I was having a conversation with Pete that “You’re putting a lot of pressure on the team”. But yes, I didn’t go through each individual name and say “This person, you did this to and that person you did that to”.

Q (Mr Gourgey, KC) This was around this time, September ’23, you had this conversation?

A (Mr Fardad) It was around that time.

Q (Mr Gourgey, KC) Is that something you covered in your witness statement, Mr Fardad?

A (Mr Fardad) I don’t know, I don’t remember.

642. Mr Fardad’s recollection was poor, and I have some doubt as to whether this conversation took place. This is no criticism of Mr Fardad: it is very easy to create false memories when reconstructing past events. But even if this conversation took place as described by Mr Fardad, it was not enough to discharge Mr Fardad’s duties as a director of BIG. There could be two – mutually inconsistent – reasons for a person in senior management to want to leave BIG. The first: the high pressure environment created by Mr Waddell, although legitimate, was too much for them. The second: they were a victim of harassment/bullying – a high pressure environment that was illegitimate. The question for Mr Fardad was not what his duty to Mr Waddell was. The question for Mr Fardad was what should he do, acting in the best interests of BIG. This would require an exercise of judgement on the part of Mr Fardad, as to whether Mr Waddell’s conduct was legitimate or illegitimate.
643. If the conduct was legitimate, then Mr Fardad’s duty was to ensure in the interests of BIG that the concerns about important staff leaving were specifically brought to Mr Waddell’s attention, so that he (as CEO) could weigh those risks and work out what was best for the company in these circumstances. In this case, Mr Waddell might very well have taken the view that if someone could not take the heat, they should leave the kitchen.
644. If, on the other hand, the conduct was arguably illegitimate, then a very different conversation would have to take place. It was Mr Fardad’s duty not to condone wrongful conduct within BIG, particularly where that conduct emanated from the CEO, because of the risk of this conduct informing BIG’s corporate culture.
645. In short, I do not need to reach a conclusion about the nature of Mr Waddell’s conduct in order to conclude that Mr Fardad and Mr Vaughan were acting inconsistently with BIG’s best interests and BIG’s duty towards its employees. Mr Vaughan at least regarded Mr Waddell’s conduct as crossing the line into bullying (the spreadsheet refers to him being “very uncomfortable with implied sanction of PW actions”, which is suggestive of wrongdoing), but then Mr Vaughan had every reason to paint Mr Waddell’s conduct in a blacker shade.
646. So far as Mr Fardad is concerned, I consider that if he had believed that a line had been crossed by Mr Waddell, he would have been uncomfortable in standing by and condoning it. My view of Mr Fardad is that he was a man of integrity, placed in a remarkably difficult situation by Freshstream by forcing

him to serve two masters, who had what proved to be non-aligned objectives. I do not consider that Mr Fardad would have stood silently by in the face of conduct that he personally regarded as illegitimate.

XX. INCIDENT NO 24: INQUIRY IN A TEAM MEETING IN LEEDS IF THE ATTENDEES HAD HAD SEX THAT MORNING (OCTOBER 2023)

XX.1 Documentary evidence

647. There was a meeting at Leeds, at which Mr Cartwright was a “fly on the wall”. Mr Cartwright provided a detailed meeting note to Mr Fardad and others. There were a number of comments about Mr Waddell’s performance:

...As you would expect, Pete wasn’t on script and went down a few rabbit holes but he got the team asking questions and interacting. I don’t think it went down well with everyone but he managed to lighten the mood...Pete spent some time speaking with most of the site management layer to discuss operational plans and preparation...Pete communicated to the team and seems very keen to move forward quickly with the prep centre extension at Leeds – something to manage...

XX.2 Evidence of Mr Cartwright

648. In his witness statement, Mr Cartwright said:⁴¹⁴

I attended the employee consultation meeting at the Available Car Leeds site just before the deal was signed. Pete gave a speech to the Available Car staff and made some inappropriate comments. Most of his remarks were his “usual” repertoire – showing off about his money, cars, yacht, houses. I don’t recall if he mentioned it during this speech, but he would often bring up how attractive his wife was and ask peoples’ opinion. The main comment that stuck with me was that he referenced his penis at some point and that it was small, although I can’t remember in what context.

649. Mr Cartwright was cross-examined on behalf of Mr Waddell.⁴¹⁵ He was an unsatisfactory witness, going out of his way to offer points against Mr Waddell on subjects that he was not being asked about and knew little about. He was not asked about the failure to mention the Incident in his email, and the mismatch between the Incident (“have you had sex?”) and his witness statement (“penis”). Mr Cartwright’s evidence was that the comments (whatever they were) were in his view “inappropriate”. I attach little weight to the evidence of Mr Cartwright.

XX.3 Evidence of Ms Clarke

650. Ms Sophie Clarke gave evidence before Mr Siddall, KC and that evidence was adduced before me under a CEA Notice. In that interview, she described Mr Waddell as “quite bold”, “quite misogynistic” and “a very big character”, a “loud character”, “often rude”, “very boisterous”.
651. Descending to the specifics of this Incident, Ms Clarke said this to Mr Siddall, KC:

⁴¹⁴ Cartwright 1/[68].

⁴¹⁵ Day 18/pp184ff (XX Cartwright).

A (Ms Clarke)

When we were first introduced to him, the big meeting that we had at Available Cars, he came in, and Graham, who used to own Available Cars, was there. Nobody would talk. Available Car was very close knit, so nobody would talk and he was like “come on, are you all awake this morning? Smile.” We were all like, “No”. We do not understand what is going on, so no, we are not going to do that.

Q (Mr Siddall, KC)

Okay.

A (Ms Clarke)

He then went round asking people if they had had sex that morning because they would be smiling if they had had sex that morning. That was the first interaction that we had with Pete.

XX.4. Evidence of Mr Waddell

652. Mr Waddell denied the allegation:⁴¹⁶

[252] This allegation is from the day we announced to the Available Cars staff that we had acquired the Leeds and Cannock sites, which was 23 October 2023...I went up to the Leeds site to announce that BIG had acquired Leeds and Cannock. Graham Bell, the owner of Available Cars, stood up first and gave a speech. I then gave a speech after him. The speech had been put together by me, Freshstream, Mr Vaughan and DC Advisory. In the speech, I said we bought into the business because we believe in it, we believe in the people and believe in the energy. I thanked Mr Bell for being there. I might also have said to everyone from Available Cars not to be miserable and that we have a great future.

[253] I did not ask anyone if they had had sex that morning. I cannot remember saying anything like I might have said in the team meeting at Wimbledon.

653. There was some controversy about the date of the Incident, which emerged in cross-examination.⁴¹⁷ Ms Clarke’s evidence was put,⁴¹⁸ and he denied it.

XX.5. Conclusions

654. With some reluctance, I conclude (on the balance of probabilities) that this Incident did not occur. I do so with reluctance because Ms Clarke’s evidence to Mr Siddall had a compelling quality to it, which rings true. However, this was evidence adduced under a CEA Notice, and Mr Waddell’s team was not able to cross-examine.

655. Furthermore, the evidence of Mr Cartwright contradicts Ms Clarke’s account (his recollection is *very* different), as does Mr Cartwright’s contemporaneous note (which does not mention anything like this, but is quite detailed). These are points that would have been put to Ms Clarke in cross-examination – and I have no idea how she would have responded. Mr Waddell denied the Incident – but that is exactly what I would have expected him to do, and I place little weight

⁴¹⁶ Waddell 5. In Waddell 7/[8.10], Mr Waddell addresses the question of whether there was CCTV.

⁴¹⁷ Day 7/p137 (XX Waddell).

⁴¹⁸ Day 7/pp138ff (XX Waddell).

on his denial. Nevertheless, for the reasons I have given, I conclude this Incident did not occur.

YY. INCIDENT NO 6: COMMENT TO BETH MURPHY AT THE GROUP'S AMBLEY GREEN PREMISES "I BET YOU'D LIKE TO SUCK MY DICK AS WELL BUT I'M A MARRIED MAN" (SEPTEMBER/OCTOBER 2023)

YY.1. Introduction

656. This is one of the most factually contentious Incidents. There are controversies about (i) what actually happened, (ii) how the Incident came to be discovered by BIG and included in the MDE Investigation process, (iii) how the evidence regarding the Incident changed over time and (iv) why the evidence changed, this last point involving allegations that a witness (Ms Beth Murphy, "Ms Murphy") had been suborned by Mr Waddell which necessitated a warning by me to Ms Murphy that she was not obliged to incriminate herself when being asked questions in cross-examination.

657. Incident No 6 thus needs to be approached with great caution in terms of evaluating these different strands.

YY.2. Uncontroversial facts

658. There was an exchange between Ms Murphy, a cleaner at BIG's head office, and Mr Waddell outside the head office which took place in October 2023.

YY.3. Discovery of the Incident by BIG

659. Although the Incident uncontroversially occurred in October 2023, how it came to the attention of BIG (and Freshstream) was controversial.

660. Although Mr Fardad claimed that this was reported to him by Mr Clarke in his list of 1 March 2024, the Incident does not appear in that list.⁴¹⁹ Mr Fardad's reaction (as described in his witness statement) must be a false recollection:⁴²⁰

[230] I couldn't believe Pete said what he had said to Beth. He said that she was lucky that Pete was married otherwise he would want a blow job from her. I recall that there was an incident with one of the women working at the Wimbledon site where, when she bent over to pick up something, Pete said to the men in the room that that's how he likes his women.

[231] The other thing that surprised me at the time was how Pete had been saying these things for this long. There was a culture of silence in the business and at some point, people had had enough. We had to look into it properly.

661. It is important to note that Mr Fardad's description of the Incident ("otherwise he would want a blow job from her") is materially inaccurate and supported by no-one. This underlines the importance of due process, even in an internal disciplinary matter, and the dangers of behind the scenes discussion and innuendo. The manner in which BIG (and Freshstream) "investigated" this

⁴¹⁹ Day 16/p112 (XX Fardad).

⁴²⁰ Fardad 4/[230].

Incident has resulted in a great deal of confusion and what I consider to be the imposition of false recollections in both Ms Murphy and Mr Waddell. As I shall come to describe, the MDE Investigation process has resulted in what may colloquially be termed a “bollocking” or “telling off” (and, given Mr Waddell’s propensities in terms of language, the former is more appropriate than the latter) being misdescribed as either “banter” or an unwanted sexual advance.

662. The incident was brought to Mr Vaughan’s attention by an email from Mr Clarke dated 4 March 2024. Mr Vaughan forwarded the email (under the comment “And more”) to Mr Fardad. Mr Clarke’s email reads:

Laurence

Whilst it is fresh in my mind, and having just spoken to the cleaner (Bonny) about her daughter and fellow cleaner (Beth)...

There was an incident whereby Beth has parked outside of Ambley Green and Peter pulled up and reprimanded her for parking somewhere she shouldn’t. During the course of shouting at her, he said: “I bet you’d like to suck my dick!” The story goes on...But worth noting, as I am sure Beth would have no problem discussing this with an investigator in due course.

And noting the definition of harassment for the purposes of the investigation...

663. This email strongly implies that Mr Clarke had only just discovered this Incident. It is noteworthy that his description of the Incident characterises it much more as a “bollocking” than “banter” or a misplaced sexual advance. I will come to the proper characterisation of the Incident (a necessary precondition to its evaluation) in due course. For the present, it is the process of discovery that I am concentrating on.
664. Mr Clarke denied that the first notice he had of the Incident was between 1 and 4 March 2024. Mr Clarke deals with this Incident in a section of his witness statement (Clarke 1) entitled “My awareness of Pete’s misconduct”:

[34] I tried to be approachable to everybody in the business. I enjoyed having a chat with colleagues over the water machine and asking them how their holidays had been. In that context, people regularly moaned to me about Pete’s behaviour. For a long time, my approach to these matters was to reassure people and provide them with some comfort. I could bear it, and I thought other people could bear it for just a little while longer until Freshstream exercised the call option, but really for no more than that.

[35] Generally, it was the Ops Board members (Bob Ruprah, Stewart Ford, Neil Hodson, Andrew Holness, Alex Maby and Nick Lapthorne) I worked with [at] the head office who expressed their concerns to me, as well as Sophie Hazell (previously our Head of Aftersales and now Director of Customer Service) and Huma, but I also talked often to the security and cleaning staff. My office was right next to Pete’s, so people would often go through my office to get to his. That would always be an opportunity to see and hear what was going on, and people would speak to me when they passed through (although sometimes that was difficult because I was also right next to Pete).

Pausing there, I have (for the reasons given above) considerable reservations about the reliability of Mr Clarke’s evidence, and I have concluded that he is

perfectly capable of acting not only in a self-serving way (when giving his evidence), but dishonestly so. What Mr Clarke characterises as an enjoyable chat with others was not supported by other witnesses, and I consider that Mr Clarke was if anything in information gathering mode. Resuming:

[36] In the case of Beth Murphy, I think it was this approach which caused her to disclose Pete’s inappropriate behaviour to me. Beth was one of the cleaning staff at our head office. I had no reason to engage with Beth on a daily basis for my job, but I felt it was important to be polite and courteous to all my colleagues so we were friendly when we bumped into each other. One day, although I am unsure precisely when, Beth came up to me in our old head office in Ambley Green and said something like “you’ll never guess what happened, Pete said to me in reception, “I bet you’d like to suck my cock”. I think she told me within a few days of Pete making the comment.

[37] I knew that if I had gone to HR about a comment like the one that Beth shared with me, I would have been sacked immediately. Pete controlled HR. He controlled every part of the business. The HR function was led by Joanne Duey at the time and Pete’s sister, Barbara, also had a part in the HR function. Pete would have got wind of something that was reported to HR; it would have come to his knowledge how the investigation had been triggered. Had I reported something to HR so serious as some of the matters that had been reported to me (such as the comment made to Beth), and even if HR followed the right procedure, it would not have been any good for me nor, frankly, the people accusing him of the behaviour. I was aware that not only would the people subject to the behaviour be fired, but I would be too. There was one incident in 2022 where Pete had hit an employee, Tom Chapman. Tom told me that CCTV footage of that incident vanished shortly after it happened. He had tried to get the video evidence but by the time he accessed the CCTV system, the key 30 seconds of footage that showed Pete hitting him had been deleted. Tom said that he had filmed what was shown on the CCTV system on his phone (and he later shared a copy of that video with me).

665. In cross-examination, Mr Clarke stuck to his version of events as to when the Incident came to his attention:⁴²¹

Q (Mr Gourgey, KC) ...Beth Murphy’s evidence is that this took place in October 2023. So did the conversation that you were recounting here take place in October ’23 or even, let’s say, November ’23?

A (Mr Clarke) I’m not sure when it took place. I don’t know, I’m sorry.

Q (Mr Gourgey, KC) Can you help us when it took place?

A (Mr Clarke) I can’t. I only know that it took place. I can’t recall when it was.

Q (Mr Gourgey, KC) It’s just you do say in the last sentence:
“I think she told me within a few days of Pete making the comment.”
So, is that a correct record of your recollection at the date you made this witness statement?

A (Mr Clarke) Yes.

Q (Mr Gourgey, KC) Right. And has that changed?

⁴²¹ Day 24/pp12-13 (XX Clarke).

A (Mr Clarke)

No, I had the impression when she told me, she said something along the lines of “You’ll never guess when happened to me the other day”, or certainly, from the discussion I had, I had the impression it was a recent comment that had been made to her.

666. I do not accept Mr Clarke’s evidence in this regard. His recollection was extraordinarily vague and given his assertion that he contemplated reporting (but in the end, prudentially did not report) the matter, one would expect a far better recollection.
667. Furthermore, the exchanges with Mr Vaughan that are described above strongly give the sense that Mr Clarke only knew of this incident in March.⁴²² What is more, the description of the Incident in March comes far closer to what I consider happened than the (later) version in Mr Clarke’s statement.
668. Yet still further, this was not Ms Murphy’s recollection. This point needs to be treated with caution, because it is a recollection unsupported by documentary evidence in circumstances where Ms Murphy’s evidence changed over time. Ms Murphy said this in her statement:⁴²³

[11] A few months later, in March 2024, Peter was removed from the business. Sometime in mid-March 2024, shortly after Peter was removed, I was cleaning the kitchen area when I was approached by Tom Clarke. Tom said something along the lines of: “I understand that something has been said to you by Pete, could you do a statement for us? Would you talk to us and put this in writing? It would be really good for us, it would really help us and be good for the business”.

[12] I was surprised that Tom has spoken to me about this. It was unusual for Tom to speak to me directly. I can only recall one other conversation I had with Tom before this – it was in April 2023, when he overheard people wishing me happy birthday and asked me what my birthday plans were.

[13] I felt at the time that I had no option and that there was pressure throughout the business to show that you were on the right side of the fight between the management and Peter. Working as a cleaner, I spent time working in various different departments at BIG and overheard what people were saying. From what I had heard, I felt that if you were seen to be supporting Peter instead of supporting the new management team, you might be treated differently. Tom had also told me that it would be “really good for the business” if I gave a statement about Peter’s comment to me. I took this to mean that by giving a statement, I would be helping Tom and the current management team. I felt that there might be a risk I would lose my job if I did not give a statement. As a cleaner, I know I am replaceable, and in my position you do not want to say “no” to someone higher up at the business when they ask you to do something. I am a single mum, I did not want to lose my job, so I agreed to give a statement.

[14] I have been shown a copy of the transcript of my interview with the investigator, Nick Siddall, KC, dated 22 March 2024.

⁴²² In cross-examination, Mr Clarke could not explain how this Incident came to be omitted from the 1 March list, if his version of events was correct: Day 24/p15 (XX Clarke). I agree that there is no satisfactory explanation, save that there was earlier communication about the Incident.

⁴²³ Murphy 1.

[15] I do not think that Peter is a bully, I was not made to feel uncomfortable when Peter made that joke to me, and I do not think that Peter was someone to be avoided. In reality, and as I have said, I always liked Peter and got along with him. Peter was approachable, he was friendly, and he made an effort to get to know me as a person. Peter was a good boss. I told Mr Siddall that I felt “very uncomfortable” when Peter had made that comment to me in the car park because it felt like I was in an interrogation. I had never been in a situation like that and it made me feel uncomfortable and nervous. I remember that my heart was pounding. I felt like I had to tell them what they wanted to hear to keep my job. I was put under pressure to say these things and I did so – but I only did so because I feared for my job.

[16] In or around May 2024, I called Tom Clarke and told him that I wanted to change my statement. I wanted to do this as I had a guilty conscience about the way that it had come across in my meeting with Mr Siddall that I felt “uncomfortable” around Peter, as that is not how I felt. Tom told me that I would not be able to do this, but he did not even give me a reason why. He just said that it was something that could not be done.

669. Ms Murphy was resiling from the evidence she gave to Mr Siddall, KC and attacking the process by which Mr Clarke procured her evidence to Mr Siddall, KC. I therefore treat this evidence with caution, and will express my conclusions as to (i) process and (ii) change in story below. It does seem to me, however, that an approach by Mr Clarke to Ms Murphy in March 2024, rather than a conversation in October/November 2023 is intrinsically more probable. This part of Ms Murphy’s evidence I therefore accept; but it has not been material in enabling me to reach a conclusion on this point, which I have done on the basis of the documents. I disbelieve Mr Clarke, but place no weight on Ms Murphy’s contrary evidence in reaching this conclusion.

YY.4. Evidence of Mr Philpott

670. Mr Roger Philpott (“Mr Philpott”) was interviewed by Mr Siddall, KC. A witness summary, based upon Mr Philpott’s evidence to Mr Siddall, KC was provided.⁴²⁴ That provides quite wide-ranging evidence against Mr Waddell, but covers this incident.⁴²⁵

Q (Mr Siddall, KC) Did Beth describe any conversations between she and Pete?

A (Mr Philpott) Yes, but only recently, not then.

Q (Mr Siddall, KC) Okay. When you spoke to her and she described the conversation recently, how recently is recently, please?

A (Mr Philpott) I cannot quite remember exact words but it was something about Peter said “do you want to suck my dick” or play with his dick or whatever it was. I can’t remember the exact words, to be honest with you.

Q (Mr Siddall, KC) That is fine.

A (Mr Philpott) Again, it has come from a third party which Peter has spoken to, so my words could be wrong.

⁴²⁴ There was a transcript, and the interview took place on 26 March 2024.

⁴²⁵ Philpott 1 Ex/13.

Q (Mr Siddall, KC) I understand. I understand entirely. What I am keen to do is try and get, if I can, something of a timeline...

671. Mr Philpott's evidence to Mr Siddall, KC was that the comment made by Mr Waddell was mentioned to him by Ms Murphy "probably a week later in general conversation because I didn't really know her back then".⁴²⁶ This suggests an informal conversation between Ms Murphy and Mr Philpott some time in 2023.
672. Mr Philpott subsequently gave a fuller witness statement (covering a number of other matters), but including this Incident. It is appropriate to set out his fuller account here:⁴²⁷

[29] I knew Beth Murphy as a cleaner in the Ambley Green office, which was the head office at the time. I have known Beth for around three years. I used to get into the office very early, at around 06:00, so I would often chat with Beth when she was cleaning the glass areas in the offices. Beth had recovered from a serious issue with her heart and my sense was that experience had made her a strong person.

[30] I now cannot remember when this happened, but when I was working at the Ambley Green site, when walking through the foyer area, I saw Pete standing in one of the glass offices (not his office) on his phone and looking outside. At this point, I could not see what Pete was looking at outside. Sometime later (I cannot remember precisely when), in the middle of one of our usual conversations, Beth told me that Pete had asked her to sweep up leaves outside in the car park at Ambley Green. I couldn't believe that Pete had asked her to do this. Sweeping leaves was the job of a yardperson, not a cleaner. From memory, the business park that the Ambley Green site was a part of had yardspeople to do this type of work, as I remember them shovelling snow in the winter.

[31] Shortly after my conversation with Beth, I remembered that I had previously seen Pete looking outside from one of the glass offices. I looked back at the CCTV system to the time I saw Pete in the glass office, and saw on one of the CCTV cameras on the system that Pete was looking down at Beth, as she swept the leaves outside. I felt that Pete had asked Beth to do this task and watched her doing it to demonstrate his power over her, to let her know that he was the boss and to belittle her. Based on how Beth told me about this incident, she was unhappy about it.

[32] After the leaf sweeping incident (I cannot remember the exact date), I had another chat with Beth either in my office or in the kitchen area of the open plan staff room. In the middle of this conversation, Beth told me that Pete had said to her something along the lines of "do you want to suck my dick?". I was gobsmacked when she told me that. Whilst Beth is a strong person and was not visibly distressed at the time she told me, it was clear to me from the way she told me what had happened that she was unhappy and annoyed that he had spoken to her in that way. Nothing about how she told the story or the tone of her voice suggested that she felt that it was a harmless joke. Beth was not close to Pete and did not have the sort of relationship in which she might have felt comfortable about a comment like that. I cannot recall exactly what I said in response or how that conversation ended.

⁴²⁶ Philpott 1 Ex/15.

⁴²⁷ Philpott 1.

673. I accept Mr Philpott’s evidence as to what happened with regard to the leaf sweeping. The altercation between Mr Waddell and Ms Murphy that provoked the leaf sweeping is considered further below.

YY.5. Events leading to Ms Murphy’s witness statement for trial

674. Ms Murphy left BIG in the summer of 2025. The reason she did so – according to her statement – is because of the battle between Freshstream and Mr Waddell and what she perceived as hostile efforts by Mr Clarke to keep her “on side”.⁴²⁸
675. She had been interviewed by Mr Siddall, KC as part of the Investigation in March/April 2024. In May 2024, she sent a WhatsApp to Mr Waddell in the following terms:

Hi Pete, hope u don’t mind me messaging you. I had ur number saved from Amberley Green.

I’ve been thinking and something doesn’t feel right regarding my statement. Obviously, we both know what was said, but I feel like that was just your personality and there was no harm meant by it just a bit of banter and me thinking that it’s almost made you out to be some sort of predator which I know you’re not and for that reason I’m gonna be speaking to Tom to amend my statement to make sure that’s clear. I feel like I had to get it off my chest. Sorry this is out of the blue but just something isn’t sitting right with me. Hope this isn’t too strange. Regards, Beth (cleaner at head office).

676. Ms Murphy did contact Mr Clarke, who told her that her evidence to Mr Siddall, KC was what it was. Given that Mr Waddell had, by this stage, been dismissed, that was probably right thing to say: events had moved on. Mr Waddell recognised the same thing, and suggested that Ms Murphy speak to his lawyers. In the run-up to trial, both BIG and Mr Waddell sought Ms Murphy’s evidence: and Ms Murphy provided a statement for Mr Waddell. She was cross-examined, as we shall see below, on how that statement came to be given.

YY.6. The Incident itself

YY.6.1. A changing account

677. I am not only presented with conflicting accounts from different people, but also conflicting accounts from Ms Murphy herself.

YY.6.2 Mr Waddell’s evidence

678. Mr Waddell’s evidence was as follows:⁴²⁹

[224] Beth Murphy was a cleaner at the BIG Head Office. I respected Ms Murphy a lot. She did not mind what she cleaned – she just got it done. She was also a single mother who lived for her daughter. She wanted to work rather than live off the state. I went out of my way to help her. There was a time when Ms Murphy came in in tears and said that HR would not let her change her shift times, and that they wanted a fulltime cleaner. I went and spoke to HR (I believe it was Mr Holness and Ms Duey)

⁴²⁸ Murphy 1/[17]-[24].

⁴²⁹ Waddell 5.

and sorted the issue for Ms Murphy. I would see Ms Murphy around the office every month or so. We would always trade banter. We had that sort of a joking relationship. She would say things to me like, “you’ve got a big belly”. That was the sort of banter we had.

[225] In 2023, Barbara had been complaining to me that someone was parking in her reserved bay right outside the Head Office at night. One day, I pulled into the Head Office in my new Bentley and saw that there was indeed a car in Barbara’s spot. Ms Murphy was there. As I was getting out of my car, I said to her, “You know everyone in the building. Who’s car is it?” Ms Murphy said it was her car. I said, “I’m getting driven crazy by my sister because you’ve been parking your car in her space”. Ms Murphy said, “If it gets towed, I’ll just marry you because you get your girlfriends nice cars”. I think I said something like, “Well, I’m a married man, but I bet you’d like to have sex with me as well”. I cannot remember the conversation exactly, but I think it went something like that. I do not believe I said “I bet you’d like to suck my dick”.

[226] I am aware that Ms Murphy is providing a witness statement in which she says that I said “something along the lines of” the quotation reproduced above. I do not recall saying this, but if I did, I regret it. I would only have been trying to make her laugh. It was a friendly exchange. Ms Murphy did not say anything at the time which suggested she felt uncomfortable. In fact, she was laughing and joking like she always did when we traded banter. If she had told me that she did not like what I had said, I would have apologised to her. She has since told me that she only reported this incident because she was asked to do so and feared for her job.

679. Mr Waddell describes this as banter, and because he was concerned not to attack his own witness, went softly on his dispute as to what he actually said. Although it does not make much difference in terms of offensiveness (“I bet you’d like to have sex with me as well” is as a sexual proposition just a more demurely worded version of “I bet you’d like to suck my dick”, and (although no doubt there is room for subjectivity here) I treat them as equally offensive statements. However, “suck my dick” is also an insult, and it is important to bear this in mind, particularly given Mr Philpott’s evidence. In terms of Mr Waddell’s reputation as “effing Pete”, I consider the more demure version of what he is said to have said to be unlikely. Mr Waddell was (unsuccessfully) trying to tone down what he said in his evidence, and I prefer the evidence of Ms Murphy as to the form of words used.

680. I shall return to the question of “banter” in due course.

YY.6.3. Ms Murphy’s evidence to Mr Siddall, KC

681. Ms Murphy’s evidence to Mr Siddall, KC⁴³⁰ was the subject of a CEA Notice and was different to the evidence in her subsequent witness statement. Thus, when asked whether Mr Waddell was someone she saw regularly, her answer was:

He is someone that, if I am honest, if I do see him appear, I normally disappear.

682. Ms Murphy was taking the bins out when she met Mr Waddell:

⁴³⁰ Again, transcribed, the interview took place on 22 March 2024.

- A (Ms Murphy)** ...So I had come out, I think I was taking bins out. I might have even been going out to pick cigarette butts or something like that, but it would have been something involved. Pete was out the front, standing by my car.
- Q (Mr Siddall, KC)** Okay.
- A (Ms Murphy)** I went out, I saw him, I said “morning, Pete”. The first thing he said to me was “whose car is this?” I said, “that is my car”. I said “is everything all right?” He said “no, it is not, I am just about to get it towed”, like towed away. I said, “well, why?” He said, “you are not allowed to park here”. I think the conversation went something along the lines of “sorry, I didn’t know”.
- Q (Mr Siddall, KC)** You said to him “sorry, I didn’t know”.
- A (Ms Murphy)** Yes. He said it was Barbara’s spot, which is his sister.
- Q (Mr Siddall, KC)** Right.
- A (Ms Murphy)** Not that there was any name plates on it.
- Q (Mr Siddall, KC)** Okay.
- A (Ms Murphy)** Then I made a bit of a joke. I think it may be one of them things where you feel a bit confronted so you do sort of turn it into a bit of a joke.
- Q (Mr Siddall, KC)** Understood.
- A (Ms Murphy)** I was like, “well, if you get my car towed away, Pete, I will not be able to get to work”. I was like: “I will have to borrow one of your cars”.
- Q (Mr Siddall, KC)** Okay.
- A (Ms Murphy)** He was like – as I was talking to him, he was coming in. I had obviously gone to the bins, come back. We walked in together and he said, “I bet you would like to suck my dick as well, would you not?”. I was just like “ha ha”. I think it was just a nervous laugh. He said, “well, I am married”, I said “so am I”, and I just sort of laughed it off and that was literally the end of the conversation.

683. In the Siddall Final MDE Report, Mr Siddall, KC regarded the comment as one of a “sexual nature”, and concluded that it had been made.⁴³¹ I have reached the same conclusion as to the words used, but will re-visit the question of whether this was harassment or bullying or both after having considered the evidence further.

YY.6.4. Ms Murphy’s witness evidence

684. In her witness statement, Ms Murphy describes her general relationship with Mr Waddell in the following terms:⁴³²

⁴³¹ See the Siddall Final Report/64]-[66].

⁴³² Murphy 1.

[7] I liked my job and enjoyed working at BIG. I had a good relationship with Peter. Peter would always take the time to talk to me. He would ask me about my daughter, who is a similar age to his son. Peter and I come from a similar background. Like Peter, I am not posh and did not come from a fancy school. I think we were able to build a good relationship because we had similar backgrounds. No one else at the management site at BIG made as much of an effort with me as Peter. I did not really have anything in common with any of the others.

[8] Part of my relationship with Peter was informal. Peter and I would sometimes joke around with each other, or engage in “banter”. We had a good working relationship. On one occasion, Peter even helped me by moving my shift pattern to help with my workload.

685. Turning to the substance of the complaint as described in Ms Murphy’s trial statement.⁴³³

[9] One day, in about October 2023, Peter made a comment to me in the car park at BIG. I sometimes used to park my car in a spot that was reserved for someone else. Peter said something along the lines that the space was reserved and he would have to tow the car if it was not moved. I made a joke that I would have to borrow a car from Peter if he towed mine away. He then made a joke back to me – something along the lines of: “I bet you would like to suck my dick as well”, and then mentioned something about the fact that he was married. It was a bit of a crude joke but I laughed it off and went about my day in the usual way. It was clear to me that Peter had said this as a joke. He did not mean any offence by it. I did not take any offence, and I did not feel threatened by it.

[10] In fact, the only reason anyone knows about this is because I told Roger Philpot, who I was friends with at BIG, about this conversation. I told Roger about it because I had found it funny and it was just something to talk about. This was our work environment, and Roger and I used to share banter with each other and tell each other funny things that had happened at work. I was not trying to complain about this remark by telling Roger – I was sharing a funny story.

686. Clearly, this evidence is significantly different from the evidence given by Ms Murphy to Mr Siddall, KC. The difference lies not in the nature of the remark made – Ms Murphy is consistent here – but in terms of the effect that this statement had on Ms Murphy. Ms Murphy’s evidence to Mr Siddall, KC, was that comment amounted to harassment (and I consider that Mr Siddall, KC had every basis for reaching the conclusions that he did), but her evidence to me was that this was “banter” and that (in terms of her subjective reaction) this did not amount to harassment.

YY.6.5. Cross-examination of Ms Murphy

687. Ms Murphy was cross-examined – as was Mr Waddell – on the basis that Ms Murphy’s evidence had been bought. This was denied (and the warning against incrimination was given).⁴³⁴ It is easy to understand why the point was seen in

⁴³³ Murphy 1.

⁴³⁴ Mr Laddie, KC’s approach to the cross-examination of Ms Murphy was explained to me on Day 13/p2. In the event, although the warning against self-incrimination was given (Day 13/pp6-8 (XX Murphy)), Ms Murphy did not avail herself of the privilege, and answered all questions put to her by Mr Laddie, KC.

this way. Ms Murphy was, unsurprisingly, cross-examined on the basis that Mr Waddell had suggested that she perform a sexual act on him:⁴³⁵

- Q (Mr Laddie, KC)** Do you agree that in around October 2023, one morning when you were in the car park at Ambley Green, the CEO of the business, Peter Waddell, said to you:
“I bet you’d like to suck my dick too, but I’m a married man.”
- A (Ms Murphy)** There was more to that story than just that. But that was part of the story, yes.
- Q (Mr Laddie, KC)** Do you agree that in all of your previous interactions, neither you nor Mr Waddell had suggested that the other might want to perform a sexual act?
- A (Ms Murphy)** No.
- Q (Mr Laddie, KC)** You don’t agree?
- A (Ms Murphy)** There was no conversation like that or it wasn’t that sort of – that was just...
- Q (Mr Laddie, KC)** So that’s the first and only time, is it right, that a sexual act came into the discussion between you and Mr Waddell?
- A (Ms Murphy)** Yes, prior to other sort of banter, that was the first of that kind, yes.
- Q (Mr Laddie, KC)** Just for the avoidance of doubt, you did not have a sexual relationship with Mr Waddell?
- A (Ms Murphy)** No.

688. It goes without saying – but should nevertheless be said – that it is highly unfortunate for a witness to be exposed to these sort of questions. I intend no criticism of Mr Laddie, KC, who put the case he had to put courteously and concisely. It is to Ms Murphy’s very great credit that she gave her evidence clearly and robustly, and I found her an impressive witness.
689. Nevertheless – and this is no fault of either witness or cross-examiner – the cross-examination proceeded on the false basis that the Incident was sexual and not bullying in nature. Ms Murphy did seek to push back on this, but both witness and cross-examiner were constrained by the findings of Mr Siddall, KC, themselves based on evidence of Ms Murphy that she was seeking to re-characterise as “banter” as opposed to “sexual”.
690. Mr Laddie, KC asked Ms Murphy whether the Incident did not, in fact, break into two: (i) the comment and (ii) Mr Waddell’s subsequent demand that (in October) Ms Murphy sweep up the leaves in the car park.⁴³⁶ This, to the mind

⁴³⁵ Day 13/pp8-9 (XX Murphy).

⁴³⁶ Day 13/p13 (XX Murphy). This emerged out of an interview Ms Murphy’s mother had had with HR. After the meeting (which was about Ms Ferguson) had finished, Ms Murphy Senior: “Returned to the room after the meeting had concluded and stated that she wanted to point out that Barbara had always been very kind to her. When she had told Barbara about the incident that had

of Ms Murphy’s mother, was the true nature of Ms Murphy’s complaint against Mr Waddell. Ms Murphy confirmed that she told her mother and Mr Philpott about the Incident, and that this had probably occurred within days of the Incident.⁴³⁷

- Q (Mr Laddie, KC)** Mr Philpott recalls that you told him on the same day about the leaves incident, the sweeping up of the leaves incident. Does that sound about right?
- A (Ms Murphy)** Possibly.
- Q (Mr Laddie, KC)** But you told him about the suck my dick comment about a week later?
- A (Ms Murphy)** Possibly. It may have been around them days, I can’t recall exact days.
- Q (Mr Laddie, KC)** You told Tom Clarke within a few days as well?
- A (Ms Murphy)** No. That’s incorrect.

691. Ms Murphy was adamant that she had not told Mr Clarke about the Incident in 2023.⁴³⁸ She was also adamant that she was not “reporting” the matter to anyone, and was merely having a conversation.⁴³⁹

- Q (Mr Laddie, KC)** Don’t worry about the word “report”. I don’t mean report in a formal sense. I just mean the discussion you had with your Mum.
- A (Ms Murphy)** A discussion, okay, yes.
- Q (Marcus Smith J)** I mean, what did you think you were doing? “Report” is obviously a word you don’t like?
- A (Ms Murphy)** Yeah, no.
- Q (Marcus Smith J)** What word would you want to use?
- A (Ms Murphy)** Having a conversation about my day at work. Yeah? Just a general catch-up would probably be the right term to use.
- Q (Marcus Smith J)** Thank you.
- Q (Mr Laddie, KC)** When you spoke to Mr Philpott about it, you weren’t speaking to him about it on the basis that it was just a joke that Pete had made?
- A (Ms Murphy)** I think my words to Roger at the time was, “Oh, you’ll never guess what happened, you’ll never guess what joke this was”...It was – it wasn’t serious...

happened between Beth and Peter, when Beth had been told to sweep up leaves in the rain, Barbara had reacted by telling her that if any such incidents happened again, herself and Beth should report them to herself straight away so that she could intervene. She reiterated that Barbara had always been supportive and kind towards her.”

⁴³⁷ Day 13/p15 (XX Murphy).

⁴³⁸ Day 13/p16, pp18-19 (XX Murphy). She was cross-examined on her more equivocal statement to Mr Siddall, KC (Day 13/pp58-63 (XX Murphy)), but stuck to her version of events, which I accept.

⁴³⁹ Day 13/pp16-17 (XX Murphy).

Q (Mr Laddie, KC) I don't accept that. And, in fact, Ms Murphy, when I put to you when it was that you told Mr Philpott, you accepted that it was possible Mr Philpott was right when he said that you had told him about the sweeping leaves incident first...?

A (Ms Murphy) Yeah.

Q (Mr Laddie, KC) ...and you told him about the comment later. I'm going to suggest the reason for that is because you felt unnerved by the comment and you didn't feel comfortable even telling Mr Philpott about it for another week?

A (Ms Murphy) No, that's incorrect.

692. Ms Murphy was clear that Mr Clarke only approached her in March 2024, and that he wanted Ms Murphy to give evidence about the first part of the Incident – the “suck my dick” remark:

Q (Mr Laddie, KC) ... Your position is, you knew all along it was just a joke?

A (Ms Murphy) Mm-hm.

Q (Mr Laddie, KC) Mr Clarke comes and asks you to speak to an investigator about it and you don't say anything about it being just a joke? To Mr Clarke?

A (Ms Murphy) No, because I felt under some pressure to – it was drummed into me that it was not nice, it shouldn't have been said, that's not what we do.

Q (Mr Laddie, KC) Who drummed it into you?

A (Ms Murphy) Mr Clarke.

Q (Mr Laddie, KC) When?

A (Ms Murphy) In the kitchen, when he approached me to ask me to make a statement.

693. Ms Murphy was pressed on this, and agreed in her cross-examination that “drummed probably is the wrong word to use. But it was – it was – come across to me as in: that wasn't nice, it's not the right thing to do, it's not the right thing to say”.⁴⁴⁰ Although Ms Murphy accepted that she could have refused to participate in the investigation, that she was free to say what she liked, and that she told Mr Siddall, KC the truth,⁴⁴¹ I find that Ms Murphy's evidence to Mr Siddall, KC was materially affected by Mr Clarke's intervention, in that he forced his characterisation of the Incident (as sexual innuendo of an unacceptable sort, and not acceptable “banter”) onto both Mr Siddall, KC *and* Ms Murphy (i) by characterising it in this way and (ii) by omitting the significance of the second part of the Incident (sweeping leaves).

694. Ms Murphy was taken through her evidence to Mr Siddall, KC in a careful cross-examination by Mr Laddie, KC, which I will not repeat, but which makes clear the significant differences between Ms Murphy's evidence to Mr Siddall,

⁴⁴⁰ Day 13/p24 (XX Murphy).

⁴⁴¹ Day 13/pp23-25 (XX Murphy).

KC and her evidence before this Court.⁴⁴² It is important to note that what has changed is not Ms Murphy's description of the objective facts – Ms Murphy has been very consistent on these – but her description of her relations with Mr Waddell and her reactions to the comments he made.

695. Mr Laddie, KC also asked about the “sweeping leaves” incident, although his questions were premised on this being a *separate* incident, albeit one taking place on the same day.⁴⁴³

Q (Mr Laddie, KC)	I just want to ask you about the sweeping leaves incident. Is that what made it stick in your mind, because you knew the sweeping leaves incident was the same date as the comment?
A (Ms Murphy)	I knew what I was doing at that point, yes, I knew I was sweeping leaves.
Q (Mr Laddie, KC)	Right.
A (Ms Murphy)	Because I hated that job. It was...yeah, probably why it stuck out.
Q (Mr Laddie, KC)	You hated what job?
A (Ms Murphy)	Sweeping the leaves.
Q (Mr Laddie, KC)	Why did you have the job of sweeping the leaves?
A (Ms Murphy)	Because it was shovelling snow while it was still snowing. You're shovelling leaves, and they're still falling.
Q (Mr Laddie, KC)	Can I just get the sequence of events right?
A (Ms Murphy)	Mm-hm
Q (Mr Laddie, KC)	The sweeping leaves incident and the comment occurred on the same day?
A (Ms Murphy)	Yes.
Q (Mr Laddie, KC)	But they occurred the other way around, didn't they, the comment came first and then the sweeping leaves?
A (Ms Murphy)	I don't remember.
Q (Mr Laddie, KC)	Let me see if I can assist you. We'll come to the details of the comment in due course.
A (Ms Murphy)	Okay. Yes.
Q (Mr Laddie, KC)	But one of the things you told Mr Siddall, and I think you say it in your witness statement, is when you saw Mr Waddell, you said “Good morning, Pete”?
A (Ms Murphy)	Yes.
Q (Mr Laddie, KC)	Now, if you'd already seen him and he'd already asked you to sweep the leaves, that wouldn't have been what you said -

⁴⁴² Day 13/pp26ff (XX Murphy).

⁴⁴³ Day 13/p44 (XX Murphy).

A (Ms Murphy)

No -

Q (Mr Laddie, KC)

- so it makes sense that the sweeping leaves occurs afterwards?

696. Ms Murphy considered the direction to sweep up leaves a ridiculous thing to be asked to do, but not something that it was unfair to ask her to do. It was a job that had to be done.⁴⁴⁴ She denied the suggestion that Mr Waddell was making a “power play”.⁴⁴⁵ However, when questioned by Mr Siddall, KC, she had characterised Mr Waddell as a bully, at least by reputation.⁴⁴⁶
697. Ms Murphy was cross-examined on her approach to Mr Waddell two months after her interview with Mr Siddall, KC and one month after Mr Waddell had been dismissed.⁴⁴⁷ Ms Murphy’s evidence was that her evidence to Mr Siddall, KC was that “it didn’t sit right with me”.⁴⁴⁸ Given that Ms Murphy was still employed by BIG, it was a fair question to ask (and it was asked) why Ms Murphy contacted Mr Waddell at all, as opposed (say) to Mr Siddall, KC or Mr Clarke.⁴⁴⁹ Ms Murphy’s evidence was that she “felt more comfortable contacting Mr Waddell, I felt like it was the right thing to do, and if the boot was on the other foot, I’d prefer someone to contact me, so I’m just going by my morals and that’s what I felt more comfortable doing”.⁴⁵⁰
698. It was put to Ms Murphy that her email to Mr Waddell did not come out of the blue, and that she had been “put up” to approach Mr Waddell (and inferentially Mr Clarke) in order to assist Mr Waddell in his claims (and to undermine BIG and Freshstream in their defence to those claims). Ms Murphy did not accept this, but she did approach (or was approached by) Mr Waddell’s lawyers subsequently. She claimed never to have spoken to (as opposed to WhatsApped) Mr Waddell, whether directly or indirectly.⁴⁵¹
699. It was put to Ms Murphy that she had been paid to change her evidence:⁴⁵²

Q (Mr Laddie, KC)

I’m going to put my case to you and, my Lord, I’m going to ask you that you give the warning after I ask the question.

⁴⁴⁴ Day 13/p66 (XX Murphy).

⁴⁴⁵ Day 13/pp66-67 (XX Murphy).

⁴⁴⁶ Day 13/p67 (XX Murphy),

⁴⁴⁷ The communication is set out above.

⁴⁴⁸ Day 13/p78 (XX Murphy).

⁴⁴⁹ As I have noted Ms Murphy did (the day after this messages) approach Mr Clarke, who said there was nothing to be done, which in the circumstances was right. Mr Siddall, KC had reported; and Mr Waddell had been dismissed. For the same reason, approaching the investigator whose job had concluded does not seem especially painful. More to the point, Ms Murphy felt (or said she felt) that she had wronged Mr Waddell, and felt morally obliged to account to him. See Day 13/pp80ff (XX Murphy). BIG’s efforts to obtain evidence from Ms Murphy were explored at Day 13/pp90ff (XX Murphy), but these are not particularly material. It is easy to understand why Ms Murphy would not want to give evidence (for BIG or anyone else). What was rightly explored was Ms Murphy giving (different) evidence for Mr Waddell.

⁴⁵⁰ Day 13/p81 (XX Murphy).

⁴⁵¹ Day 13/p87 (XX Murphy). Mr Waddell – as I have described – used “non-legal” intermediaries (eg, Mr Adrian Foot) to “further” his case.

⁴⁵² Day 13/pp89ff (XX Murphy).

- Q (Marcus Smith J)** Okay. [To the witness] Pause when the question is asked.
- A (Ms Murphy)** Okay, yes.
- Q (Mr Laddie, KC)** You have been offered money, you have been offered, indeed have been given, money to change the evidence that you gave to Mr Siddall...
- A (Ms Murphy)** No.
- Q (Mr Laddie, KC)** ...and to give different evidence to this court.
- Q (Marcus Smith J)** You don't have to answer that question, but you can if you want to.
- A (Ms Murphy)** I'd like to.
- Q (Marcus Smith J)** You'd like to?
- A (Ms Murphy)** Yes.
- Q (Marcus Smith J)** Please do then.
- A (Ms Murphy)** Yes.
No, that's incorrect.
- Q (Mr Laddie, KC)** How much were you paid?
- A (Ms Murphy)** I wasn't paid at all.
- Q (Mr Laddie, KC)** You were given the money by Mr Foot...?
- A (Ms Murphy)** No, I was not.
- Q (Mr Laddie, KC)** ...on behalf of Mr Waddell? You told your mother about it, didn't you?
- A (Ms Murphy)** No, I didn't.
- Q (Mr Laddie, KC)** And you know that she told a security guard at the BIG company called Suleiman?⁴⁵³
- A (Ms Murphy)** That's incorrect. I was not paid any money.

700. I have already expressed the view that Ms Murphy struck me as an honest witness who would not perjure herself. I accept her evidence as it was given to me. That is in part because I do not consider that the differences between her evidence to Mr Siddall, KC and her evidence to me was (in terms of words said and acts done) particularly different. What *did* differ was the interpretation of these events, and here I consider that the process before Mr Siddall, KC and Ms Murphy's evidence to me was substantially distorted by the "evidence gathering" process conducted by Mr Clarke. Mr Clarke skewed the process before Mr Siddall, KC by collecting only evidence that would further the case he and Mr Vaughan and Freshstream were determined to present, and he made sure that these witnesses understood what the subject-matter of their evidence was. Thus, Ms Gable (as we shall see) was given to understand that her complaint involved sexual misconduct on the part of Mr Waddell, as was Ms

⁴⁵³ It should be noted that neither Ms Murphy Senior nor Mr Suleiman were called. It was perfectly proper to put these questions to Ms Murphy, but the questions themselves (as opposed to the answers) have no evidential weight.

Murphy. In the case of Ms Gable – again, as we shall see – this was correct. But it was not correct in the case of Ms Murphy, as I will come to describe.

701. I should say that it is no part of my findings that Mr Waddell was incapable of suborning evidence. As has been seen in the case of Ms Buzina, he was perfectly capable of accommodating potential witnesses by offering them jobs, and this in fact occurred with Ms Murphy, who was offered (and took for a few weeks) a job with Mr Waddell's son.⁴⁵⁴ However, I find that Ms Murphy's evidence before me was true as to events; and distorted – through no fault of her own – by subsequent mischaracterisation by the very MDE Investigation process initiated by BIG and Freshstream.

YY.7. Conclusions

702. I consider that both Mr Waddell and Ms Murphy were cross-examined on a false premise, which neither of them (understandably) was able to unpack in the witness box. The presumption was that this was at best “banter” and at worst a sexual propositioning. Ms Murphy's unease, and her changing story, is explained by this. The evidence of Mr Philpott, which I heard in the trial in the lately adduced form of Philpott 1, transformed the manner in which the Incident must be evaluated.
703. In reality, Mr Waddell had lost his temper, and was criticising Ms Murphy. He was accusing her of taking a parking space belonging to his sister (Ms Ferguson), and he was very protective of his sister. The comment was neither a “joke” nor a “sexual proposition”: it was a reprimand, crassly given, and offensive.
704. This is supported by the evidence of Mr Philpott as regards the connected leaf-sweeping episode. The tenor of Mr Philpott's evidence regarding the leaf-sweeping is clear and compelling: Ms Murphy was being punished, and Mr Waddell was watching her punishment.
705. This is, first and foremost, a case of bullying, not only because of the offensiveness of the remarks, but because of the later but related leaf-sweeping “punishment”. Mr Waddell was certainly not above using his office and his position to punish – as in the case of the use of a disciplinary process against Mr Chapman. Here, the leaf-sweeping incident is what struck Ms Murphy Senior, and it was this complaint that Ms Murphy Senior articulated to Ms Ferguson. (Incidentally, it is clear that Ms Ferguson would have reined Mr Waddell in.) Whether the language used by Mr Waddell *also* makes this a case of harassment is perhaps academic. Certainly, I consider that conduct can, at one and the same time, be both harassing and bullying, but I question whether – considering just the remark “suck my cock” in isolation as “banter” whether this would pass the threshold of harassment, particularly given Ms Murphy's disinclination to regard this – in her evidence to be – as anything other than “banter”. I conclude that this is a case of bullying, not one of harassment.

⁴⁵⁴ Day 13/pp99-100 (XX Murphy).

706. Ultimately, the best evidence of what happened in October 2023 is how the incident was reported to Mr Clarke in March 2024, before the distortions introduced by the Investigation process. This is documentary evidence that pre-dates the Investigation (or, perhaps more accurately, triggered the investigation of this Incident) and which is closer in time to the actual event than any other document. In this regard, it is well to refer back to Mr Clarke’s email to Mr Vaughan:⁴⁵⁵

Whilst it is fresh in my mind, and having just spoken to the cleaner (Bonny) about her daughter and fellow cleaner (Beth)...

There was an incident whereby Beth has parked outside of Ambley Green and Peter pulled up and reprimanded her for parking somewhere she shouldn’t. During the course of shouting at her, he said: “I bet you’d like to suck my dick!” The story goes on...But worth noting, as I am sure Beth would have no problem discussing this with an investigator in due course.

Combined with what Ms Murphy Senior told HR in May 2024 and Mr Philpott’s evidence, this is the best evidence of what happened in October 2023.

707. I conclude that Incident No 6 is a clear case of bullying. Ms Murphy was obliged to work in an environment that was intimidating, hostile and degrading. Mr Waddell quite deliberately abused his power against someone very subordinate to him for no reason other than the fact that he was displeased with their conduct in usurping his sister’s parking place. This was a case of gross misconduct justifying summary dismissal.

ZZ. INCIDENT NO 1: REFERENCE BEFORE MR VAUGHAN TO “HYUNDAIS” – “ASIAN FRIENDS, I CALL THEM HYUNDAIS, I DO” (OCTOBER/NOVEMBER 2023 AND BEFORE)

708. Although separate from Incident No 2, Incident No 1 and Incident No 2 are best considered together. Both emanated from Mr Vaughan and they are (to an extent) related. They were also – in the course of the MDE Investigation – the first and second incidents that tended to crop up for consideration. Consideration of Incident No 2 follows immediately below; and Incident No 1 is considered under that heading.

AAA. INCIDENT NO 2: STATEMENT TO MR VAUGHAN “TOO MANY MUSLIMS” (SECOND OR THIRD QUARTER 2023)

AAA.1. The Siddall Final MDE Report

709. Because these were the first two MDE matters considered by Mr Siddall, KC and the first two disciplinary matters considered in the Dismissal Letter, it is helpful to set out in some detail the consideration given to both these incidents in the Siddall Final MDE Report:

⁴⁵⁵ Quoted already, but it bears repeating.

(1) Whether the following matters occurred and if so whether they constituted discrimination or harassment by [Mr Waddell]:

(a) PW referred to people of Asian ethnicity as “Hyundais” including in front of LV when stating that he had “Asian friends, I call them Hyundais, I do” (one such occasion being in the former Group Head Office in Gillingham prior to October/November 2023).

[15] [Mr Vaughan] was the originator of this complaint. I tested his account in this regard and he gave the following information:

(i) He could not recall the exact date of this comment but it had happened more than once;

(ii) He recalled that once it had occurred in the former Group Head Office in Gillingham from which [BIG] had moved in October/November 2023, thus the comments were prior to that date;

(iii) [Mr Vaughan] considered that the comment was made by [Mr Waddell] in the context of his seeking to demonstrate that he was the least racist person he knew.

[16] [Mr Vaughan]’s account of the words used was this:

“I think he thought – in fact, it came up in one context and I do not know why he was talking about this. He was saying “I am the least racist person in the world” and seemingly as proof of that he said “I know loads of Hindus, I call them Hyundais, I do” and this was in front of other people. But it was not an isolated example, I have heard him say it two or three times. I think there are other things that I am sure you will have a look at that sort of demonstrate that was the way he talked really about matters like that. I cannot give you an exact date but I am absolutely clear I have heard it at least two or three times.”

[17] I put to [Mr Vaughan] that such a comment, if made, was plainly inappropriate. Owing to [Mr Vaughan]’s seniority and lack of dependence on [Mr Waddell], I asked why he did not challenge [Mr Waddell] in that regard. [Mr Vaughan] stated that he had challenged [Mr Waddell] but that it was not [Mr Waddell]’s approach to listen to opinions with which he did not agree. [Mr Vaughan] suggested that he may have made a joke about this in an effort to make light of matters.

[18] The only other witness who supported the making of this comment was [Ms Butler]. She said this:

“The only thing I have seen him do relating to a non-white person was when he was having a bit of a rant at one of the ops meetings about Christmas and people having time off and the fact that will all the different religions, everybody wants different times off to pray to their different Gods and things. He referred to Hindu people as Hyundais, which I didn’t think – in front of a Hindu as well, Bob.”

[19] In assessing the veracity of this allegation it is important to note that I asked all interviewees open questions as to whether they had observed [Mr Waddell]’s interactions with non-white British persons. Most of them did not raise a concern in that regard. Some gave examples of racist comments as detailed above but none of them (bar [Ms Butler]) supported [Mr Vaughan]’s account as to the making of the specific comment.

[20] Had [Mr Waddell] attended the interview with myself I would have been keen to seek his account in this regard by reason of that evidential concern. However, he did not. I was thus faced with an account from two witnesses both of whom I found credible ([Ms Butler] particularly so) that a comment of that nature was made (albeit it seemed on different occasions).

[21] I thus viewed [Ms Butler's] account as similar fact evidence of [Mr Waddell's] approach and it led me to the view [Mr Vaughan's] account of the comment was more likely than not to be correct. On that basis, I find that [Mr Waddell] did make a comment of that nature on the date alleged.

[22] The next question which I must address is if the making of the comment amounts to direct discrimination or harassment by reason of race. As is clear from the EHRC Code of Practice on Discrimination a person need not hold the relevant protected characteristic in order to be the victim of harassment or direct discrimination by reason thereof. This reflects the line of authority deriving from *Showboat v Owens*, [1984] 1 WLR 384 (see also *English v Thomas Sanderson Blinds Ltd*, [2009] 2 All ER 468).

[23] However, for direct discrimination to be made out it must be demonstrated that the alleged victim of the discrimination was subjected to detriment. In a harassment claim, it must be shown that the conduct has the purpose or effect of (i) violating the subject's dignity or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for the subject (the "proscribed circumstances"). Further, whether the proscribed circumstances have occurred is to be judged against all of the circumstances including the reasonableness of the subject's perception.

[24] The issue which arises from my investigation is that both LV and HB gave evidence that the comment had occurred but gave no direct evidence that they suffered any personal upset or disquiet by reason thereof. They also did not suggest that others had suffered the same. Other witnesses spoke of general disquiet as regards PW's language but did not link the same to this alleged comment.

[25] On that basis, whilst I conclude that the comment was made, I am unable to find that the legal elements of a claim of direct discrimination or harassment are made out. I am therefore equally unable to find that the same amounts to an MDE.

(b) During a discussion with [Mr Vaughan] in Q2 or Q3 2023, [Mr Waddell] criticised [Mr Holness] for not recruiting enough sales people at the Group's Enfield premises and stated that at Enfield there were "too many Muslims".

[26] My initial information as regards this allegation came from [Mr Vaughan]. He stated this:

- (i) This comment did occur;
- (ii) He placed it at the end of Q2 into Q3 2023. He was able to place this as he knew AH had left in November 2023;
- (iii) He was unable to recall the exact time and place;
- (iv) He felt that [Mr Goodwin] may have witnessed this comment.

[27] [Mr Vaughan] gave this account:

“I absolutely heard him say that. Again, I am a little bit vague on the date. Andy may recollect that one better than me. Again, I reckon that was the end of Q2, beginning of Q3 2023. For clarity, the context I think Pete was talking about was planning for cover in the context of religious holidays et cetera. I think that was probably what was driving his comment but it was just, in my view, a completely unacceptable thing to say in front of the team...

Mr Siddall, KC. The suggestion is that by having recruited too many Muslims there are not enough staff to cover that period; is that essentially what was being said?

Mr Vaughan. Correct. The inference was just make sure in future recruitment that you do not get any more Muslims. That was the inference from it.

[28] I asked open questions of [Mr Goodwin] as regards [Mr Waddell’s] interactions with ethnic minority members of staff. He made no reference to such a comment.

[29] I again tested [Mr Vaughan] as to why he had not challenged [Mr Waddell] in this regard and he gave a similar response to that detailed above.

[30] As previously indicated, [Mr Holness] was not willing to go on record in support of my investigation. I was also unable to speak to [Mr Waddell]. [Mr Vaughan] gave apparently credible evidence in support of the allegation. It was also arguably supported by the evidence I received from other witnesses (quoted above) of [Mr Waddell] making similar inappropriate comments as regards ethnic minority persons. However, [Mr Vaughan] stated that [Mr Goodwin] heard the comment and he did not support that fact. However, he was not asked by myself a direct question if the comment was made and I have already expressed my concerns above as to BG’s evidence generally.

[31] Weighing all of the above, I conclude (in the absence of evidence from [Mr Waddell]) that the comment was made as a matter of fact.

[32] I next turn to consider whether this amounted to harassment contrary to section 26(1) of the Equality Act 2010. I conclude that it did for the following reasons:

- (i) The comment related to those of the Muslim faith;
- (ii) The comment was unwanted;
- (iii) The evidence of [Mr Vaughan] was that he considered that this was completely unacceptable. I consider that this is sufficient to evidence the existence of the proscribed circumstances. As discussed above it matters not that LV is not himself a Muslim;
- (iv) I consider that [Mr Vaughan] was reasonable in all the circumstances in forming the view that he did in this regard.

[33] In the light of that finding, I now turn to the question of whether this conduct amounted to an MDE. I find that it did for the following reasons:

- (i) This was a breach of an applicable law or regulation by an employee;
- (ii) The law or regulation was in relation to harassment;
- (iii) The breach was in connection with [Mr Waddell’s] employment as it occurred on a working day during working hours in the purported performance of his duties;

(iv) In my assessment, the breach is reasonably likely to have a material adverse effect on the reputation of any Group Company or the Investor. If the making of such comments entered the public domain, I consider that [Mr Waddell] and [BIG] would be pilloried.

710. Mr Siddall, KC thus concluded that whilst Incident No 1 had occurred, it was not harassment under section 26 of the Equality Act (nor, more obviously, discrimination) and so not an MDE. His conclusion in relation to Incident No 2 was that the Incident had occurred and that it did constitute harassment under section 26, the person having been harassed being Mr Vaughan himself.

AAA.2. Mr Siddall, KC's probing of the reason for the MDE Investigation

711. Mr Siddall, KC, as has been seen, asked about Mr Vaughan's reactions to the Incidents. Mr Siddall, KC was also clearly conscious of the risk of a "manufactured" case against Mr Waddell. In the Siddall Final MDE Report he questioned "what had caused matters to come to a head and why it was that I was hearing of these allegations now".⁴⁵⁶ Mr Siddall, KC raised this directly with Mr Vaughan:⁴⁵⁷

I was conscious that there was every incentive for Freshstream to manufacture an issue with PW's conduct as it allowed it to take a much greater level of control of BMW without the need to pay for the exercise of its options. I noted that a number of the allegations were historic and was curious why action was being taken now and not previously. I put this point to LV and he spoke of an accumulation of concerns. He also denied that this was Freshstream's motivation in this exchange:

Mr Siddall, KC: Let me put a cynical hat on for a moment and make a point. For Freshstream to exercise the option, it was going to cost them money.

Mr Vaughan: Yes.

Mr Siddall, KC: One of the consequences if I formed the view and advised that there is a material default event here is, putting matters at their most mild, Peter's role in the group is diminished and certainly his ability to direct things is not as it otherwise would have been.

Mr Vaughan: Correct.

Mr Siddall, KC: So, cynically, and I do not think one requires the foresight of an Old Testament prophet to suggest that this might be a point that Peter seeks to urge upon me, Peter might suggest – I have no idea that he will, but I am guessing that he might, that this is just an exercise by Freshstream to cheaply seize control of the group without exercising their option.

Mr Vaughan: I do not think that passes muster because even if there has been that material default event and there is complete control obtained, they still only have a 38% economic interest in the thing. I have been very clear internally here that, look, frankly, as a team we are between two sets of shareholders here. We might not be comfortable with some aspects of conduct and all of that but the fact remains as a team our duty is to optimise returns for the shareholders, of which currently Pete is the largest

⁴⁵⁶ Siddall Final Report/[5], p47.

⁴⁵⁷ Siddall Final Report/[7], pp48-49.

shareholder. So, you know, I think in terms of - I do not think there is an element, a trace of this gives us an ability to get a better economic return out of it. It is literally the opposite of that and we can come on to a couple of more examples later on that speak to this.

Mr Siddall, KC: Yes.

Mr Vaughan: There is a major risk of this business at the moment that we will lose spectacular value for all shareholders, including Pete, if we do not correct the conduct of this business and so, actually, I would strongly argue the reason to do this is absolutely the right reason to do it, which is to safeguard the interests of all the shareholders.

AAA.3. The source of the complaint: evidence of Mr Vaughan

AAA.3.1. Witness evidence in relation to both Incidents

712. As Mr Siddall, KC noted, the primary source for both complaints was Mr Vaughan. In his witness evidence to the court, Mr Vaughan said:⁴⁵⁸

[56] I first heard Pete refer to Asian people as “Hyundais” on at least three occasions, both times in meetings where there were other employees present. I recall that one of the instances was in the board room at our old Head Office just before we moved to our new premises in Gillingham (so around autumn 2023). It was an Ops Board meeting (which would have been attended by Tom, Neil, Bob, Darren, Ben, Stewart Ford and potentially others in senior management, although I do not recall precisely who), but Pete decided to use the meeting to tell an anecdote about someone he had met from an Asian background. Pete said, “I call him a Hyundai”. I think Pete thought this comment was funny but it was not a jocular moment to me. I do not recall anyone else in the Ops Board laughing. No one else said anything: everyone in the meeting was intimidated by Pete. I can’t recall precisely when, but I have heard him use the same phrase a couple of other times. I took his use of the term “Hyundai” to be racist. At another meeting at Head Office, I also heard him say “there’s far too many Muslims up there”, which was in reference to either our Enfield or Leeds sites. Pete said this when talking about operational challenges resulting from the fact that employees may request the same religious holidays as days off work, or may be observing Ramadan, but the way Pete put it was pejorative and racist in my view.

AAA.3.2. Cross-examination in relation to Incident No 1 (“Hyundais”)

713. Mr Vaughan was cross-examined on his evidence.⁴⁵⁹ He accepted that he probably should have commenced a disciplinary investigation in relation to Mr Waddell’s comments “there and then”, but he did not because “it wouldn’t have got anywhere”. Nor for the same reason did he raise it at a board meeting.

714. As regards Incident No 1, although Mr Vaughan claimed to have regarded the Incident as serious, he did nothing about it at the time:⁴⁶⁰

Q (Mr Gourgey, KC) You regarded – well, you say at the end of [Vaughan 3/[56] – sorry, halfway down, that you “...think Pete

⁴⁵⁸ Vaughan 3/[56].

⁴⁵⁹ Day 19/pp84-88 (XX Vaughan).

⁴⁶⁰ Day 19/pp85ff (XX Vaughan).

thought his comment was funny, but it was not a jocular moment to me. I do not recall anyone else in the Ops Board meeting laughing”.

So was your impression that he was trying to tell it as a joke?

A (Mr Vaughan) I don’t know why he was doing it.

Q (Mr Gourgey, KC) Right.
Did you regard this as – well, you say, “I took [the] use of the term “Hyundai” to be racist”. So had you formed a view that Mr Waddell was guilty of racist behaviour?

A (Mr Vaughan) In some instances, yes.

Q (Mr Gourgey, KC) Right. In this–

A (Mr Vaughan) In this instance, yes.

Q (Mr Gourgey, KC) Right.
Did you report this to Freshstream at the time?

A (Mr Vaughan) I’m just trying to remember when that was.

Q (Mr Gourgey, KC) Well, it says in or around autumn 2023.

A (Mr Vaughan) I can’t remember when exactly it was raised, but that was one of the issues that gave rise to my email in December.

Q (Mr Gourgey, KC) Yes.
Why didn’t you take action in autumn of 2023?

A (Mr Vaughan) As I said before, I don’t think it would have made a blind bit of difference.

Q (Mr Gourgey, KC) Did you speak to Mr Waddell about it?

A (Mr Vaughan) That one, I don’t know if it was on that occasion, but on one occasion when he used that expression, I definitely said: “Pete, you can’t say things like that”.

715. Mr Siddall, KC had explored the same point with Mr Vaughan:⁴⁶¹

Q (Mr Siddall, KC) ...Did you challenge Peter and say “you shouldn’t be saying that” or “that is offensive to Asian persons” or anything of that nature?

A (Mr Vaughan) At one point, I did say something along those lines. I can’t remember on which occasion it was. Pete does not listen to anything people say to him unless it is in accord with what he wants to hear. I suppose I probably made a bit of a joke of it – “Come on, Pete, you cannot say stuff like that” – rather than “Let us sit down and have a disciplinary meeting”. It was trying to make light of it, I suppose.

Q (Mr Siddall, KC) Okay.

⁴⁶¹ Put in cross-examination on Day 19/pp86ff (XX Vaughan). The quote is from the transcript of the interview conducted by Mr Siddall, KC.

- A (Mr Vaughan)** Again, the context here is important because there is just so much of this stuff going on constantly, whether it is those sorts of terms or pretty vicious bullying of people that frankly you would be having a massive argument with him every minute of every day. It just got intolerable.
- Sorry, I am sure you might want to talk all about this separately but we hired what I still believe to be a very good HR director and in the end he just couldn't bear to stay here and essentially put his name to that sort of behaviour. I think he is going on – it is a guy called Andy Holness.
- Q (Mr Siddall, KC)** Oh, right.
- A (Mr Vaughan)** That is the sort of culture we ended up in, really, which precipitated this.
- Q (Mr Siddall, KC)** I am going to speak to Andy Holness. Andy Holness left [BIG], is that right?
- A (Mr Vaughan)** Yes.
- Q (Mr Siddall, KC)** I think you said one of the reasons he did that was the behaviour he had faced from Peter, is that correct?
- A (Mr Vaughan)** Yes, of three sorts. Bullying, racist comments and sexist activity.
- Q (Mr Siddall, KC)** Did he put his reasons for resignation in writing?
- A (Mr Vaughan)** No. I tried to get him to, but he was again too scared to do that. He lives locally in Kent and he just did not want to stand up against Pete. In fact, essentially, in the end, Pete was pushing him to leave because frankly he did not want anybody like that in the business. He was maybe the conscience and in the end, frankly, Pete bullied him into leaving with three month's notice even though he is entitled to six months. That is the sort of pressure people get put under really, but he can speak for himself.

716. This account only adds to the difficulties in the position being articulated by Mr Vaughan and BIG. Mr Holness left BIG in November 2023, and (if Mr Vaughan is to be believed) suffered or was exposed to extremely serious bullying, racist comments and sexist activity. In terms of the bullying, the position appears to be even less clear-cut than it was in the case of Mr Maby, where I have concluded that the management of BIG either acquiesced and so affirmed Mr Waddell's conduct or regarded it as insufficiently serious to require intervention. I have concluded that the latter, and not the former is the case.
717. But taking Mr Vaughan's evidence at face value, if the matter was as serious as Mr Vaughan describes, why did he do nothing? Either he was condoning the behaviour or it was not as bad as Mr Vaughan is suggesting. The explanation for doing nothing – that there was nothing Mr Vaughan could do – I reject. Mr Vaughan was the chair, and could and should have taken responsibility for an errant CEO. He was sufficiently close to Freshstream to discuss with them the question of Step-In to assume board control, if that had been necessary.

718. The fact that Mr Vaughan did nothing indicates that Mr Vaughan (and Freshstream) considered that it was better to wait for the Call Option to be exercised. That strongly suggests that whilst Mr Waddell was no longer a good fit for Mr Vaughan's and Freshstream's vision for the BIG, matters were not so serious as to require a disciplinary process (particularly if that required Step-In). It was better, easier, just to wait. As Mr Vaughan put it in cross-examination: "...I suppose what I was trying to do was steer a pretty difficult course of, you know, not having a big meltdown with Pete and just trying to improve things as we went along...".⁴⁶² When the Call Option was not exercised, this clearly required rethinking.

AAA.3.3. Cross-examination in relation to Incident No 2 ("too many Muslims")

719. Incident No 2 was in Mr Vaughan's eyes a racist comment, where Mr Waddell was explicitly suggesting that because of the inconvenience of days off for religious reasons, it was better to have fewer Muslims. Mr Vaughan rejected, in cross-examination, Mr Waddell's different version of events (as to which below), holding to his own evidence. The seriousness of the comment was put to him:⁴⁶³

Q (Mr Gourgey, KC) ...Do you regard that as a racist comment?

A (Mr Vaughan) The way it was put felt deeply uncomfortable to me, yes. The way to have addressed it was to talk about you know, it's important to have cover over Ramadan, rather than saying "there's too many Muslims there", I suppose is my point.

Q (Mr Gourgey, KC) Did you challenge Peter about it at the time? Did you say to him that this is not an appropriate statement to make?

A (Mr Vaughan) I don't think I did at the time.

AAA.4. Evidence of Ms Butler

720. Ms Butler also gave evidence on these Incidents:⁴⁶⁴

[28] I attended an Operations meeting with Peter, Bob Ruprah and 5 or 6 others at the former head office in Gillingham just before Christmas 2002. I cannot remember with certainty who those 5 or 6 people were, but I think Andrew Holness may have been one of them.

[29] In that meeting, while discussing staff holidays, Peter said that he wasn't happy with people, particularly at the Prep Centre, wanting to take lots of different holidays, because it meant that he couldn't just shut down the Prep Centre for three days over Christmas. The Prep Centre is BIG's biggest site in terms of the number of employees who work there, including drivers, security staff, mechanics and administrative staff. I cannot remember the exact words that Peter used, but the point he made was that because people who work at the Prep Centre follow different religions and pray to different gods at different times, this was an inconvenience as it meant that holidays people wanted to take weren't at the same time. As part of that conversation, and in the

⁴⁶² Day 19/p88 (XX Vaughan).

⁴⁶³ Day 19/pp89-90 (XX Vaughan)

⁴⁶⁴ Butler 1.

context of referring to different religions, I clearly remember him using the word “Hyundais” to describe people who are Hindu. I thought that the way he used the word “Hyundais” was casual racism.

[30] As above, Bob Ruprah, who was responsible at the time for the Prep Centre, was present in the meeting in which Peter used the word “Hyundais”. Bob is of Indian origin, and I think he is a Hindu. However, I do not recall Bob, or anyone else, reacting to Peter’s use of the word. Not reacting to uncomfortable situations like this meant that the conversation could stop, so that is typically the kind of reaction people, including me, had.

721. Ms Butler’s testimony in cross-examination added nothing and took nothing away from this evidence.⁴⁶⁵
722. It is clear that Ms Butler’s evidence was principally directed to Incident 1 (“Hyundais”), which arose out of a discussion of the logistical problems of persons of different religions taking different holidays. However, whilst not contradicting Mr Vaughan’s evidence in relation to Incident 2, Ms Butler did not support it either.

AAA.4. Mr Waddell’s evidence

723. Before having seen Mr Vaughan’s statement, Mr Waddell commented on Incident 1 in the following terms:⁴⁶⁶

“PW referred to people of Asian ethnicity as “Hyundais” including in front of LV when stating that he had “Asian friends. I call them Hyundais, I do” (one such occasion being in the former Group Head Office in Gillingham prior to October/November 2023)” (Siddall Report, p57)

[206] This has been taken out of context. It all goes back to a story with my friend, Rajiv Malhotra, who was also my accountant and did the audit for BIG.

[207] One day, about 10 years ago, I was talking with Mr Malhotra when I noticed he had a bracelet on his wrist. He explained to me that it was the “Bangle of Love”. His sister had given it to him because he had just given her some money. I then asked Mr Malhotra, “What religion are you?” I am half-deaf, and struggle with pronunciation. At the time, I thought he said “Hyundai”. I said to Mr Malhotra, “Oh, you’re Hyundai”, just to check what he had said. Mr Malhotra said, “That’s a car, you sod. I said “Hindu”!”. I apologised to Mr Malhotra and said I am dyslexic and struggle with pronunciation. We had a laugh about it as friends. Mr Malhotra often brings this story up and we have a laugh. He tells people how deaf I am. The other story he always tells people is that he saved us £300,000 the first year he did the BIG audit.

[208] One day after a board meeting or an operations meeting where we had talked about culture or religion, I told Mr Vaughan this story and the mistake I had made with Mr Malhotra. I cannot remember if it was at the old head office or the new head office. I said to Mr Vaughan, “Look, I’m not the best person for this [culture or religion]. Let me tell you a story about my accountant.” It was in this context that I told the story to Mr Vaughan and said I struggled with the pronunciation. I only remember telling Mr Vaughan this story once. I never said that “I’m the least racist person in the world” or

⁴⁶⁵ Day 22/pp95-97 (XX Butler).

⁴⁶⁶ Waddell 5.

anything like that. I have never referred to “Asian friends” or said that “I call them Hyundais, I do”. Mr Vaughan never challenged me. He never said, “come on, Pete, you can’t say that” or anything like that. There was no disciplinary complaint. No-one brought it up while I was in the business.

[209] My conversation with Mr Vaughan would have been recorded on the CCTV camera in the Head Office in the boardroom. This camera records both audio and video.

724. Thus, Mr Waddell accepted that he used the term, but his explanation was that this was misspeaking, quite possibly due to his disabilities. Mr Malhotra (whose evidence was accepted, and who was therefore not called to give evidence) said this:⁴⁶⁷

[17] I have not seen anything problematic in how Peter interacts with people from different ethnic backgrounds. Peter’s right hand man when I was working with BIG was a guy called Bob, and he also worked closely with a guy called Ching, both of whom appear to be of Indian or South Asian heritage. I would not say for one second that I have ever experienced anything racist from Peter during the more than 20 years I have known him. I am fairly thick skinned, but I have had lots of racist incidents in my life. If Peter was ever racist around me, I would have had very strong words with him and I would not have spoken to him ever again. I would not have had anything to do with Peter if I thought he was racist. He never treated me any differently based on my race. Peter has probably had his own share of racism, being Scottish.

[18] I have been told that one of the allegations against Peter is that [Peter] used the word “Hyundai” when referring to “Hindu” people. Many years ago, during the time my firm was that audit accountant for BIG, I was in a meeting with Peter and was wearing a rakhi (a string bracelet). Peter noticed that – he would often notice what you were wearing – and asked me what it was. I explained that in Hindu culture, there was a festival once a year where you exchanged rakhi with your siblings, and that it represented love and good health. Peter was not familiar with the word “Hindu”. I tried to teach it to him but he mispronounced it as “Hyundai” a few times. Initially, I was a little bit annoyed, but he explained to me that he was dyslexic and that he was having trouble saying the word. I accepted Peter’s explanation. I did not think there was anything derogatory in what Peter was saying. I do not think he would ever want to upset me – in his head, the word was “Hyundai”. I have made fun of Peter about this a few times since then. I can recall one other time when Peter was describing someone to me, he told me he thought that person “was a Hyundai as well”. I corrected him again. Again, I do not think there was anything offensive in this comment – Peter just struggled with the word.

725. As regards Incident No 2:⁴⁶⁸

“During a discussion with LV in Q2 or Q3 of 2023, PW criticised AH for not recruiting enough sales people at the Group’s Enfield premises and stated that at Enfield there were “too many Muslims”.” (Siddal Report, p59)

[210] This has been taken completely out of context as well. I did not say “too many Muslims” as a criticism. BIG is a diverse company with staff of every nationality and background – around 70% of the staff were from a different background. I was proud of all our people and how diverse we were.

⁴⁶⁷ Malhotra 1.

⁴⁶⁸ Waddell 5.

[211] The only time I remember a discussion of the Muslim religion and staff at Enfield was at an operations meeting in 2023. Andy Holness was at the meeting. I had been looking at the sales figures and I could see that performance at Enfield was down. Mr Goodwin had said that there had been staffing issues at Enfield as a result of a religious holiday. I said to Mr Goodwin, “What’s the problem with Enfield and religious holidays?” Mr Goodwin said, “Ramadan”. I said, “Ramadan? What are you talking about?” Mr Goodwin then explained Ramadan to me. He said that during Ramadan, from sunrise to sunset, you do not eat – only after dark. I listened to him and said, “What’s this got to do with Enfield?”. He then explained, “We’ve got too many Muslims there boss”. I said back to Mr Goodwin and Mr Holness, because Mr Holness is the HR director, “What do you mean too many Muslims? That’s crazy, we’re a diverse company”.

[212] I cannot remember who was at the meeting. If it was an operations meeting, Stewart Ford, Harry Butler and Ms Rather would all have been there. Mr Vaughn might have been there, maybe via video through Teams. I do not remember. Mr Holness never said there was anything wrong about what I said at the time. Nobody else did either. It was never brought up at any point when I was in the business.

[213] After the meeting, I asked Steven Tierney, who was the General Manager of Enfield, to put on meals for staff during Ramadan at my cost. I also asked him to put in a prayer room or silent room (I learned that silent room is the better name as not all religions involve prayer). I made sure this was all put in place and let the board know at the meeting on 26 April 2023.

AAA.6. Conclusions

726. The evidence of Ms Butler makes clear that the two Incidents are connected. Incident No 1 is factually uncontroversial: it is accepted by all that Mr Waddell used the term “Hyundai” in place of “Hindu”. I do not accept that Mr Waddell’s use of the term “Hyundai” in place of “Hindu” arose from a mispronunciation rooted in his dyslexia. This was, rather, an instance of Mr Waddell’s habit of using nicknames that subtly demeaned. Clearly, but for the question of seriousness, to which I will come, this is capable of constituting harassment.
727. I find that Mr Waddell used the term “Hyundai” wrongly and inappropriately to refer to “Hindus” on a number of occasions. However the term was used generally (sometimes, but not always, in the context of telling his story about Mr Malhotra) and not in reference to any specific person, whether Hindu or not.
728. This is, therefore, a case of inappropriately racist language (substituting Hyundai for Hindu is certainly derogatory), but it is insufficiently serious to constitute harassment. In this, I concur with Mr Siddall, KC.
729. It also appears to be common ground that Incident No 2 (“too many Muslims”) occurred. What is different about Incident No 2 – when compared with almost every other Incident – is that it did not arise *gratuitously*. It is quite clear, particularly from the evidence of Ms Butler, that an operational issue was being discussed – the problem of employees taking holidays at different times, instead of the “usual” break at Christmas/New Year, when the Prep Centre could close. The logistical problem was that a single closure would not enable full operation the rest of the year, and the problem was clearly a second closure at Ramadan.

730. Mr Waddell would have been extremely interested in this, not because of the religious issues of his employees, but because this was a threat to the smooth operation and profitability of BIG. In this regard, the phrase “too many Muslims”, whilst brusque, accurately describes the problem. The question is what lay behind this remark: was it a sentiment that “we have too many Muslims, let’s get rid of some” or was it that “the volume of Muslims in a working environment geared to traditional western holidays is a logistical problem”. It is clear from Ms Butler’s evidence, and the board minute referred by Mr Waddell (which refers to “[i]mproved culture at Enfield – prayer room being installed at Enfield and other sites”) strongly suggest that the logistical problem was being addressed constructively by respecting religious questions, and seeking to accommodate them.
731. I conclude that this comment was not even inappropriate, and I disagree with Mr Siddall, KC’s conclusion. Indeed, I find the conclusion that Mr Vaughan was the “victim” in this Incident almost perverse, given Mr Vaughan’s role in instigating the MDE Investigation process. I accept that Mr Siddall, KC did not know of Mr Vaughan’s interest in the CEO position: but I do, and that makes the notion that Mr Vaughan was injured within the meaning of section 26 all the less probable.
732. I find that there was no gross misconduct in relation to either Incident.

Part IV(viii): The non-exercise of the Call Option: October to December 2023

BBB. THE CONSIDERATION GIVEN BY FRESHSTREAM TO THE EXERCISE OF STEP-IN RIGHTS UP TO THE NON-EXERCISE OF THE CALL OPTION

BBB.1. Relevance and approach

733. The timing of this is highly contentious, and needs to be carefully considered because it is Mr Waddell’s case that this was a pre-planned and co-ordinated operation, whereas Freshstream contends that (i) the non-exercise of the Call Option, (ii) the exercise of the Step-in Rights and (iii) the exercise of the Investigation Rights were independent.

BBB.2. Representations as to BIG’s performance

734. Although Freshstream promised transparency when seeking to acquire an interest in BIG, transparency could never have been an absolute. I consider that Freshstream were clear about the Call Option and how it might be exercised, but were somewhat disingenuously silent about Step-In. The communications regarding the Call Option have been described. As regards Step-In, Freshstream simply ducked the issue, meaninglessly praising to Mr Waddell BIG’s performance whilst calculating whether Step-In should take place.
735. At no time prior to Step-In, did Freshstream mention that it was considering Stepping-In. Having shown Mr Fardad an internal Freshstream exchange

making clear that Freshstream at least did not regard budgetary changes as affecting the step-in parameters:⁴⁶⁹

Q (Mr Gourgey, KC) You didn't raise with Mr Waddell this point, did you? You didn't say to him, "I want you to understand that changes in the budget do not affect EBITDA targets"?

A (Mr Fardad) I didn't highlight it. I didn't think it needed to be highlighted, and no, I did not.

Q (Mr Gourgey, KC) You made no mention of step-in rights at all with Mr Waddell at any time prior to the time you stepped in?

A (Mr Fardad) No, I didn't have a conversation with Pete about it, no.

736. Mr Waddell did rely on certain reassuring statements emanating out of Freshstream that BIG's performance was satisfactory. Thus:

i) In an email from Mr Fardad to Mr Waddell on 13 June 2022,⁴⁷⁰ Mr Fardad stated:

Thanks, Pete. £2m is not bad at all, in fact very impressive...we're in a very tough customer environment

ii) In his witness evidence, Mr Fardad said this:⁴⁷¹

[109] ...It was clear that performance wasn't trending towards the £20m EBITDA number that the deal team was aiming for.

[110] Plus, there were issues arising out of the war in Ukraine and the energy crisis. Cost inflation increased dramatically at the same time. So even if we were not mathematically tracking towards £20m EBITDA, given the headwind of UK consumers spending extra on utilities, the performance was okay. The economy was not in a recession, but still conditions were difficult. I thought that even if we weren't getting to £20m EBITDA, the business was still growing and doing okay compared to its competitors in a difficult environment.

BBB.3. Freshstream's early thinking

737. As early as November 2022, it was clear to Freshstream that they were within the territory of being able to exercise Step-In Rights, if so advised. In an internal Freshstream email dated 24 November 2022, Mr Davis noted:⁴⁷²

So it looks like we will be around 15m for the year. More or less in line with IC case, so not unexpected. But well below the plan, and therefore I assume the step-in rights.

To this end, just to understand our contractual position

⁴⁶⁹ Day 15/p51 (XX Fardad).

⁴⁷⁰ Put to Mr Fardad Day 15/pp49-50 (XX Fardad).

⁴⁷¹ Fardad 4. Put to Mr Fardad day 15/pp51-52.

⁴⁷² Put to Mr Fardad Day 15/pp52ff (XX Fardad).

- Where were the step-in rights set? And when could we realistically activate them given this year and next year budget of 18m (also not far off our IC case, as it happens, but clearly below Pete’s plan)
- What rights do we get when we step in?
- Something which Pete will hate (so to be considered with this knowledge, but still worth considering) is the question about a SLB⁴⁷³ and dividend of proceeds to ourselves (which would mean we give up some of our equity). We looked at a bunch of scenarios during the deal and I recall that the conclusion was that, as long as we get the dividend back in the recycling period (so before next June, I guess – Adam when does the recycling period for this deal end), it boosts both MoM and IRR, despite giving away a bit of equity

738. Mr Waddell would undoubtedly have reacted extremely badly to Step-In; and the Step-In Notice of early March 2024 appears to have come completely out of the blue. Mr Waddell was thus, perhaps, a little naïf. Although Step-In was highly unlikely when the exercise of the Call Option was itself likely, that dynamic would change.⁴⁷⁴

Q (Mr Gourgey, KC) And at the end of 2022 and into 2023, you were continuing to hold out to Mr Waddell the likelihood, not the certainty, but at least the likelihood that the Call Option would be exercised? Correct?

A (Mr Fardad) Yes.

Q (Mr Gourgey, KC) And, of course, if the Call Option was exercised, then there couldn’t be any subsequent exercise of Step-In Rights, could there?

A (Mr Fardad) It would be irrelevant, correct.

739. In January 2023, the question of Step-In was again discussed. The initiator was Mr Davis (again), who in an email dated 14 January 2023 asked:

...are we not going to be in step-in territory very soon? 2023 EBITDA needs to be £21m? Can we move Pete to the board if this happens?

740. Mr Fardad did not like this thinking:

On the question re step-in right: let’s discuss as a group.

We may have the technical right to do this, but the company is outperforming the competition by a wide margin. Pete would see this as very hostile and it would break the relationship with Pete. He still has a lot of influence in the company and would be disruptive.

741. Similarly, Mr Gradassi:

⁴⁷³ A “Sale and LeaseBack”.

⁴⁷⁴ Day 15/pp54-55 (XX Fardad).

Agree, we can technically step in very soon, but then this is the nuclear button. And then there is the question of what would we do differently...

BBB.4. Report to investors (February 2023)

742. In an email dated 17 February 2023, Mr Davis gave the following view about BIG:

- multiple of 10x on LTM EBITDA of 15.5m
- note that the EV would need to drop to £109m before we fall below our 1.45x MoM “first out” position
- the drop in EBITDA since entry was factored into our base case, which had an EBITDA of 15.8m for this year
- we forecast this year was going to be very difficult given Russia/Ukraine. The business has in fact performed extremely strongly to hit this result, given we also had the Liz Truss disaster in the UK last year, which has had a very bad impact on trading for a couple of months
- if you are interested, I have attached a simple trading update that we prepared for a potential LP. Trading in Jan and Feb has been very strong indeed. The M&A pipeline (which is what gets us our upside) is also very strong

743. This was also Mr Fardad’s view.⁴⁷⁵ Thus, although as a matter of right Freshstream could have Stepped In,⁴⁷⁶ there was no reason do so. Throughout 2023, Mr Fardad “continued to communicate praise to Mr Waddell about the performance of the business in difficult circumstances”, and no indication to Mr Waddell was given of stepping-in or even that Freshstream considered that step-in rights existed.⁴⁷⁷ In an email exchange with Mr Waddell on 31 July 2023, Mr Fardad said that “[i]t is amazing what the company has achieved in a short time frame and in a bad macro-environment”.

BBB.5. Relationship between Step-In Rights and BIG’s business development

744. Mr Fardad was frank in expressing the view that even the mention of Step-In would imperil his relationship with Mr Waddell and impede the plans for the development of BIG’s business:⁴⁷⁸

Q (Mr Gourgey, KC)	In your communications with Mr Waddell, you deliberately steered clear of making any reference to possibility of step-in rights? That’s right, isn’t it?
A (Mr Fardad)	Yes, yes.
Q (Mr Gourgey, KC)	Because you knew that even the mention of it would damage your good relationship with Mr Waddell? Correct?

⁴⁷⁵ Day 15/p59 (XX Fardad).

⁴⁷⁶ Day 15/p59 (XX Fardad); Fardad 4/[114].

⁴⁷⁷ Day 15/pp59-60 (XX Fardad).

⁴⁷⁸ Day 15/pp60-63 (XX Fardad).

- A (Mr Fardad)** It was one of the reasons, yes.
- Q (Mr Gourgey, KC)** And it would also, by the time we get to the summer/early autumn of 2023, imperil the acquisition of Available, that was on foot at the time and which required Mr Waddell to part fund it? That's right, isn't it?
- [Pause]
- A (Mr Fardad)** Had I raised the idea that I was – that we have the step-in rights, is that the question?
- Q (Mr Gourgey, KC)** Yes.
- A (Mr Fardad)** Would that imperil the acquisition? Yes, it would have.
- Q (Mr Gourgey, KC)** As we discussed earlier, the step-in rights were provided – were inserted into the agreement on the basis that it would allow the investor to step in if the business was underperforming? Correct?
- A (Mr Fardad)** Yes.
- Q (Mr Gourgey, KC)** And your consistent message to Mr Waddell, I suggest right up and until at least October 2023, was that the business was performing well in the environment in which it was operating? Correct?
- A (Mr Fardad)** Yes.
- Q (Mr Gourgey, KC)** And you well appreciated that in circumstances where you were telling Peter that the business was performing well, he would have no expectation or even concern that the SIR rights might be implemented? That's right, isn't it?
- A (Mr Fardad)** Do you mean step-in rights?
- Q (Mr Gourgey, KC)** Sorry, the step-in rights might be implemented?
- A (Mr Fardad)** Yes, I think that's right.
- Q (Mr Gourgey, KC)** Because you knew that, in circumstances where you were praising the business and its performance, it would make no sense to think that step-in rights might be exercised in such circumstances, so far as Mr Waddell is concerned?
- A (Mr Fardad)** And myself, I did not think step-in rights should be exercised either, so...
- Q (Mr Gourgey, KC)** No. In respect of past performance?
- A (Mr Fardad)** Throughout...
- Q (Mr Gourgey, KC)** Yes?
- A (Mr Fardad)** Well, at this point in time, you're talking July '23, I did not think step-in was on the cards.
- Q (Mr Gourgey, KC)** No.
And you were still praising the business in September 2023 and into October 2023, but let's say September 2023. So in circumstances where that praise was being communicated to Mr Waddell, you knew that Mr

Waddell would assume that you were not going to be bringing in step-in rights in respect of past performance?

A (Mr Fardad)

I'd have to put myself in Pete's position, but yes, possibly. I don't know, I would be speculating what he would be thinking.

Q (Mr Gourgey, KC)

Step-in rights were intended, whatever the precise wording of the rights, to come in to be implemented where the performance had been bad, yes?

A (Mr Fardad)

Or we think the business should be run in a different way, a better way. There's something wrong in the way it is being run, basically, yes.

BBB.6. Implications

745. What is striking about the discussions within Freshstream regarding Step-In is the absence of consideration of Mr Waddell's failures as a leader, and the need to curb those failures not because it was in Freshstream's financial interest but because it was in the interests of BIG's employees. Freshstream was perfectly entitled to take so narrow a view – Step-In was a right that Freshstream could exercise entirely in its own interests – but the inference to be drawn is that Mr Waddell's good points as a leader outweighed his bad points and that the price of curbing his behaviour by taking control of the board was simply too high. Instead, Mr Fardad (the others on the Freshstream Investment Committee may well have thought differently) and Mr Vaughan decided to bide their time and await the exercise of the Call Option, which would solve any issues with Mr Waddell.

CCC. THE AVAILABLE CARS ACQUISITION

746. Available Cars was a multi-site second-hand car dealership that everyone agreed made sense for BIG to acquire. The acquisition – or more particularly, the financing of it – became an issue, resulting in a crisis in January 2024 in terms of how to pay for the acquisition which had been concluded in late 2023.
747. Various different ways of funding the transaction were considered, including on advantageous rates by Freshstream.⁴⁷⁹ It was sought to suggest (by Mr Waddell) that this was in some way relevant to the question of unfair prejudice. I do not accept this. The transaction had to be funded, and (as will be seen) there were issues that rendered this less straightforward than might have been the case. Equally, the shortfall in funding when the transaction was to complete was deployed by Freshstream and BIG as a reason for failing to raise disciplinary issues with Mr Waddell, because it was a major distraction. That, too, is a point that is unsustainable on the facts.
748. The limited significance of the Available Cars transaction is that it demonstrates just how damaging the bad relations between Freshstream and Mr Waddell were. A transaction that everyone agreed was in the interests of the company was prejudiced by this shareholder dispute. I do not, however, consider that

⁴⁷⁹ Day 18/pp96ff (XX McLain).

blame can be allocated to one side or the other, hence the essential irrelevance of the point to the issues to be determined in this Judgment.

749. The funding of Available Cars was however linked, by Freshstream, to the exercise of the Call Option:⁴⁸⁰

Q (Mr Gourgey, KC) ...In 2023, and indeed before, there were discussions between you and Mr Waddell about the exercise of the Call Option?

A (Mr Fardad) Yes.

Q (Mr Gourgey, KC) And in 2023, particularly the second half of 2023, there were also discussions between you on the Available Car transaction. Do you recall that?

A (Mr Fardad) Yes.

Q (Mr Gourgey, KC) And linkage in those discussions with the question of whether the call option would be exercised or not?

A (Mr Fardad) Yes.

Q (Mr Gourgey, KC) It was obvious to you, wasn't it, from your communications with Mr Waddell in 2023, that he was very keen that the investor should exercise its option right at the start of the option window?

A (Mr Fardad) Yes.

Q (Mr Gourgey, KC) Which was 1 October 2023?

A (Mr Fardad) Yes.

DDD. THE DECISION NOT TO EXERCISE THE CALL OPTION: THE CRITICAL OCTOBER 2023 TO DECEMBER 2023 PERIOD

DDD.1. Choices

750. The decision to exercise the Call Option could only be exercised once, and never revisited. On the other hand, a decision *not* to exercise the Call Option is one that Freshstream could revisit at any time during the First Option Period (at no prejudice to them) and during the Second Option Period (at the risk of having to pay more than £72m). The First Option Period presented a relatively narrow window of just one month – October 2023.

DDD.2. The question under consideration

751. Mr McLain was asked about the position as at October/November 2023:⁴⁸¹

Q (Mr Gourgey, KC) Now, in relation to the answers you've been giving to my Lord in relation to thinking concerning the exercise of the option and it being in the money or not in the money, the position by the time you got to October 2023 was that within Freshstream you considered that there were other

⁴⁸⁰ Day 15/p65.

⁴⁸¹ Day 18/p76 (XX McLain).

factors, beyond the pure economics of whether the option was in the money or not, which might justify exercising an option at a different price to the contractual price? That's right, isn't it?

A (Mr McLain)

Yes, and this I think is the control premium point that I was speaking about earlier. That, beyond simply the maths of are the shares that we're buying worth it, is there some additional value that arises by virtue of becoming the majority control shareholder?

As you've seen in the evidence, a range of different views, you know, from zero to some smaller other number about what that was worth.

752. Mr Fardad and Mr Vaughan understood the choice differently. They both saw the Call Option as a route to control of BIG and regarded control as extremely desirable for two reasons. First, getting control meant that the issues with Mr Waddell would go away. Secondly, they both understood that if the Call Option was not exercised in October 2023, Mr Waddell would not be pleased and it would make relations worse. Mr McLain obviously understood these points – he accepted that there was a control premium⁴⁸² – but he valued it differently.
753. It is clear from subsequent events that the majority of the Freshstream Investment Committee saw matters Mr McLain's way and not Mr Fardad's way.⁴⁸³
754. There are at least two difficulties in assessing Freshstream's thinking between October and December 2023. The first is that there is no contemporary evidence of what the Freshstream Investment Committee actually discussed and decided, because no records were kept. Of course, some inferences can be drawn from the IC Memos that were submitted, but these need to be treated with caution because their terms will have been affected by what was decided in prior Freshstream Investment Committee meetings (an unknown) and (as I will discuss) it appears that certain options or courses of conduct that must have been discussed in the Freshstream Investment Committee were not adverted to in the IC Memo preceding that discussion.
755. The second difficulty is related to the first. It is my conclusion that the reason Freshstream decided against the exercise of the Call Option was because they considered that sufficient control could be obtained over BIG *without* exercising the Call Option, by relying upon the Freshstream Minority Rights. This explains the different value placed by the Freshstream Investment Committee on the control premium element of the Call Option price. This was explored with Mr McLain (although by reference to the thinking in December 2023, when Mr Waddell was formally notified that the Call Option would not be exercised at this time).⁴⁸⁴

⁴⁸² Day 18/p77 (XX McLain).

⁴⁸³ Day18/pp79-80 (XX McLain).

⁴⁸⁴ Day 18/pp80ff (XX McLain).

- Q (Mr Gourgey, KC)** But in terms of the objects in Freshstream's mind in the growth of the business, I suggest to you these are obstacles that [not] only the deal team had in their minds, other members of Freshstream also considered these to be obstacles? That's right, isn't it?
- A (Mr McLain)** Yeah, as I was just saying, the business, in order to reach the scale that everybody wanted it to have, needed to have a more professional management team. And that's what's really reflected in all of these bullet points, I think.
- Q (Mr Gourgey, KC)** Well, there's also delay in the execution of the [Value Creation Plan]. That was another factor, wasn't it? It's one of the...it's the second of the factors that's listed here?
- A (Mr McLain)** Yes, because the business wasn't professionally run.
- Q (Mr Gourgey, KC)** Right, okay.
These factors remained in existence when the decision was made on 14 December not to make any offer to Mr Waddell?
- A (Mr McLain)** Yes.
- Q (Mr Gourgey, KC)** So the difficulties, these factors, which are the difficulties faced, in Freshstream's mind, or at least some of Freshstream's personnel's minds, in relation to taking the business forward, therefore remained in place, they remained difficulties once you got to the middle of December 2023?
- A (Mr McLain)** Yes. Just to clarify something I said earlier, those difficulties were clearly the difficulties and they continued to be. What I was objecting to was the sentence before that: there are other considerations that would make us want to exercise sooner. This is where we had a disagreement in the Investment Committee. Those difficulties are indeed the difficulties.
- Q (Mr Gourgey, KC)** Yes.
And therefore I suggest to you that Freshstream appreciated, when it refused – decided not to make an offer to Mr Waddell – that it still needed to overcome these difficulties if it was going to make a success of its investment in BIG? That's right, isn't it?
- A (Mr McLain)** In order to scale the business, yes.
- Q (Mr Gourgey, KC)** Therefore you needed to consider not only taking control of the business through Step-In, but also removing Mr Waddell as the face of the business, by which I mean from his position of CEO? That's right, isn't it?
- A (Mr McLain)** After this memo, this is the December memo, right? No, this is...
- Q (Mr Gourgey, KC)** No, this is the November memo, and I'm asking you questions about 15 December 2023.

A (Mr McLain)

Right. So after December- after 15 December 2023 – we concluded that we had to seriously consider stepping in, in order to protect the business. I think there was a general sense that there would be a path to a transition given that everybody wanted a transition to happen. The details of how that was going to happen were totally unclear at that point.

Q (Mr Gourgey, KC)

It wasn't just step-in, was it, because step-in didn't of itself remove Mr Waddell as CEO, did it?

A (Mr McLain)

There was – so, coming back to – I'm going to answer your question in three sentences, bear with me. On October 1, when we didn't exercise the option and we had the long shot across the bow message from Mr Waddell, that was the moment and that basically all moments from then onward, that I went and took legal advice, because that's my function within Freshstream. So, in the first week of October, I was speaking with the solicitors, reviewing the rights that we had available to us under the contract.

When we got to this point, mid-December, not – so plan A was: let's see if we can exercise the option. It's out of the money, unfortunately. Plan B was: let's see if we can have a negotiated solution. It became clear that wasn't going to happen either. So then we were left with a difficult situation.

It was time to begin to explore actually using the step-in rights. So mid-December, especially given Pete's reaction to the message of 14 December, everyone agreed that we needed to consider using the step-in rights. That's how far we had gotten at that point.

So your question was: Is was more than step in? No, it wasn't.

756. Mr McLain was an extremely good witness, crisp and articulate in his answers. The exchange set out above sets out clearly the importance of the three month period from start-October to end-December. I should make clear that whilst Mr McLain clearly set out the issue, I am not, in accepting the framing of that issue, accepting Mr McLain's evidence. The extent to which Mr McLain's answers are true depends upon a detailed traversing of this three month period.
757. So much for this question viewed from Freshstream's side. Mr Waddell's position was more clear-cut. Mr Waddell was interested in a phased withdrawal from BIG as a part of his plan to retire. He saw the exercise of the Call Option – whereby Freshstream would become the majority shareholder – as a critical stage in his path to retirement.
758. However, Mr Waddell also appreciated that Freshstream needed the financials to be in the right place, and Mr Fardad told him that Freshstream had

commissioned PwC to provide an independent report on the financial state of the business.⁴⁸⁵ PwC reported in the last week of September 2023.⁴⁸⁶

759. If, however, the Call Option was not exercised, then not only would Mr Waddell's retirement plans be compromised, he would also be locked into a business being run in a way he was unsympathetic to, and which he was only tolerating because of the prospect of retirement.

DDD.3. Legal professional privilege

760. Mr McLain stated that Freshstream had lawyers advising from October 2023 onwards. These lawyers were Willkie Farr & Gallagher, who also acted for Freshstream in this litigation. As time passed, other lawyers joined, notably Stephenson Harwood for BIG in 2024. A number of witnesses made reference in cross-examination to the fact that legal advice had been obtained on certain specific questions. That, obviously, raised legal advice privilege, which was not waived (save in a couple of very narrow instances, which do not matter for present purposes).
761. Counsel and the Court were careful not to invade the privilege. One of the aspects of this – perhaps the most important – is to draw no inferences from the fact of non-waiver. Obviously, the decision to waive or not waive privilege should not be pressured by the threat of adverse inference.
762. But equally, the fact that legal advice has been obtained cannot be used to justify conduct that is otherwise not justifiable. As Mr Waddell put it in written closing submissions,⁴⁸⁷ no weight can be given to the fact of legal advice either way unless the point is articulated in pleadings and the privilege waived.
763. In order to understand the thinking behind the Call Option exercise, it is necessary to go back to some events pre-dating October 2023. Also, interposed in the narrative are events relevant to other aspects of the case.

EEE. PRE-OCTOBER 2023 CALL-OPTION RELATED EVENTS

EEE.1. Dinner in April 2023

764. In April 2023, Mr Fardad had dinner with Mr Waddell and his partner. Mr Waddell described the event in his witness statement:⁴⁸⁸

[97] Mr Fardad then came to my house on 19 April 2023 and had dinner with me and Gabi. It was just us three there. Mr Fardad said to us words to the effect of “We’re doing the Call Option. Wimbledon’s done. We’re doing Available Cars. Don’t worry about it at all”. When I said to Mr Fardad that I would be “sailing off” into retirement once the Call Option was exercised, he said that I needed to stay on the Board and remain involved in the business. He said the business would be sold within five years, and that Freshstream needed me around for the sale as I would still own around a third of the Company and they could not replace my knowledge of the business. It was either

⁴⁸⁵ Day 15/p66 (XX Fardad).

⁴⁸⁶ Day 15/p66 (XX Fardad).

⁴⁸⁷ Waddell Closing/[174]ff.

⁴⁸⁸ Waddell 5.

during this conversation, or in a conversation around this time, that Mr Fardad and I discussed me transitioning to the role of Chairman. After the dinner with Mr Fardad, I became increasingly supporting of, and excited about, the Available Cars acquisition. In my mind, the next step was that Freshstream were going to exercise the Call Option and I was going to receive the £72m.

[98] Around the time of the dinner with Gabi (it was either just before or just after), Mr Fardad told me that convincing the Freshstream Investment Committee to exercise the Call Option was going to be a little bit more difficult than he had initially thought. Apparently, he said, it was because valuations of used car dealerships had fallen. But Mr Fardad again assured me that there was nothing to worry about and that we had a “story of growth” to tell. We had this conversation two or three times in 2023. During one of those conversations, Mr Fardad said that the multiples used to value car dealerships were more like 6x or 7x, not the 10x Freshstream had used. They had overpaid.

[99] Shortly after the dinner, Mr Fardad and I started to discuss how we would fund the Available Cars acquisition. One thing I offered to do was to buy the freehold for the Available Cars sites. Mr Fardad said to me this would be helpful. I was feeling confident that Freshstream was going to exercise the Call Option. Mr Fardad had come to my house and told my wife that this was going to happen. I therefore said to Mr Fardad in an email on 27 April 2023 that rather than me obtaining a loan from Coutts to purchase the Available Cars freehold, I would prefer Freshstream to exercise the Call Option early. I would then use part of the proceeds to acquire the Available Cars freehold. However, Mr Fardad said that Freshstream were not going to exercise the Call Option until later in the year and I would need to arrange funding of £10m or so from Coutts in the meantime. This unsettled me. Mr Fardad had come to my house and told my wife Freshstream were going to exercise the Call Option, but now he was here, saying I needed to raise funds from Coutts. I felt that if Freshstream were going to exercise the Call Option and pay me £72m, I should not need to borrow from the bank.

765. Mr Fardad was clear, in both his written and his oral evidence, that he would never have been so unequivocal about Freshstream’s exercise of the Call Option, whether at the dinner or on other occasions.⁴⁸⁹ Rather, Mr Fardad would have said (i) this was not his decision, but that of the Freshstream Investment Committee and that (ii) the Freshstream Investment Committee would make the decision in light of all the financials available at the time.⁴⁹⁰ Mr Fardad might, to the extent consistent with these constraints, have told Mr Waddell that the chances that the option would be exercised were high.⁴⁹¹

EEE.2. Available Cars

766. Mr Waddell sought to tie the exercise of the Call Option to the funding of Available Cars in a bid to get Freshstream to commit to exercising the Call Option.⁴⁹² However, neither Mr Fardad nor anyone in Freshstream bit on this gambit. Mr Fardad went no further than his previously articulated position:

You will speak to Coutts to arrange personal funding so that you can buy Available Car’s real estate. You are concerned that if Freshstream does exercise the option, then

⁴⁸⁹ Day 15/p68 (XX Fardad).

⁴⁹⁰ Day 15/p68 (XX Fardad).

⁴⁹¹ Day 15/pp68-69 (XX Fardad).

⁴⁹² See, for instance, Waddell 5/[99] and the documents referenced therein.

you would not have needed this funding from Coutts to buy Available Car's real estate and hence it would be wasted costs and time. We discussed that this is the cost of doing what should be a fantastic deal for BIG. We will know the response from Coutts in the next 2-3 weeks.

767. Mr Waddell nevertheless still tried to tie the purchase of Available Car's assets with the Call Option exercise.⁴⁹³ Even in July 2023, the matter was being raised in WhatsApp communications between Mr Fardad and Mr Waddell:

We won't be exercising the option till later this year so we have time. For the Available we need to document the 10m from each of us going into the company and the call option being split into minimum £60m and the rest

768. The reference to the option being split is a suggestion of linkage between the Call Option and the Available Cars transaction. Freshstream were exploring the extent to which Mr Waddell could be persuaded to vary the terms of the Call Option. Thus, an internal Freshstream document stated:

- We are not committed to exercise the Call Option as part of the Available acquisition – rather **using it as leverage to restructure the Call Option** given Peter's appetite to buy Available
- In exchange for committing to do Available, we are asking Peter to do either 1) allow us to **partially exercise the option** (gain control and keep remainder of the option for later) or 2) **provide a vendor loan** to partially fund the call option
- Without agreeing to buy Available, we are highly unlikely to be able to restructure the call option with Peter
- Irrespective of whether we restructure the call option or not – the **longer we delay the option the more frustrated management** become (risk they leave)(all else equal, the restructured option should allow us to exercise earlier)

769. Both Freshstream and Mr Waddell were using Available Cars – a transaction all wanted to do – as a negotiating device in regard to the Call Option. Mr Waddell was seeking a commitment to its exercise. Freshstream were seeking a concession on the price of the option. In the end, neither succeeded and the point goes nowhere save to highlight that both Mr Waddell and Freshstream were thinking hard about the Call Option.

770. Mr Fardad set out his thoughts about the funding of the Available Cars transaction in an email dated 13 July 2023. The email made clear that funding of about £40 million would be required. As regards the proposal for Mr Waddell to fund some of this from his proceeds under the Call Option, Mr Fardad said:

Call Option: We are not deciding [to] exercise the call option now. We will need PwC to do their FDD and I need to go back to IC to get their approval. However, we would like to agree on the following now as part of the Available transaction:

⁴⁹³ Day 15/p70 (XX Fardad).

- Split the option into two parts which together will be the same size as the current option (ie roughly 35% of the equity of the company)
- Part 1: will be sized to deliver £60 million to Peter which Freshstream can choose to exercise in the future as per the current call option arrangement. Valuation is also as per the current call option arrangement. If FS exercises this part of the call option, it will then have majority control.
- Part 2: if Freshstream exercise Part 1, then you have the option to force Freshstream to exercise Part 2 if EBITDA (by call option definition) is > £45 million, but option price would still be the same as the price paid in Part 1. Freshstream will have the option to exercise part 2 in any case (even if Pete does not force FS to exercise) and the price will be as per the current call option (10 x LTM EBITDA...etc).

771. The proposed renegotiation is one-sided: Mr Waddell gives up rights, but Freshstream only gain. In particular, there is no commitment to exercise even on this, revised, option.

772. On 13 July 2023, Mr Fardad emailed Mr Waddell as follows in an email entitled “Funding for Available”:⁴⁹⁴

As discussed earlier today, please see below the proposal for funding . This is very much in line with what we had previously discussed although there have been other structures we discussed as well which I have not set out so as to keep it simple.

1. The total funding needed for the Available transaction is roughly £40m. This breaks down into Goodwill (£13m), the stock value not covered by our stocking loan (say £10m) and FH on Leeds (£12.3m) plus £4m of buffer.

2. Funding of the £40m will be from:

a) Shareholders. Peter will provide £8m and Freshstream will provide £8m. Freshstream’s £8m goes in as pref equity pari passu with Freshstream existing pref equity. Peter’s £8m goes in as pref equity pari passu with your existing pref equity (this is as per our current shareholder agreement). If in the future the EBITDA of BIG on an LTM basis is above £42.5m, then the company has to repay the preferred equity (including the preferred return of 1.45x). The definition of EBITDA will be before stocking loan interest.

b) NatWest will provide a mortgage or other type of loan of £24m. They have already agreed to lend 15m to us, but we are now buying Leeds FH for 12.3m as well. This level of loan should be achievable but needs to be confirmed. Note that we have some buffer in our numbers and we will generate some cash so even at a lower lending level we are ok.

3. Call Option. We are not deciding [to] exercise the Call Option now. We will need PwC to do their FDD and I need to go back to IC to get approval. However, we would like to agree on the following now as part of the Available transaction...

There then followed the quotation set out at [770].

⁴⁹⁴ Day 15/pp72ff (XX Fardad).

773. It does not appear that Freshstream were seriously expecting Mr Waddell to consider this. An internal Freshstream email dated 24 July 2023 observed that “[t]hinking more about all of this, I think it is better just to park the call option part of the agreement for now. We have done enough to have the broad contours of a deal and can negotiate it properly later this year.”
774. Freshstream’s hardnosed view of the value of the Call Option is evident in email exchanges taking place on 23 and 24 July 2023. There is no need to set out the detail: it is sufficient to note that whether the option was “in the money” was a factor of considerable importance to Freshstream, and that the value attaching to control (i.e., the “control premium”) appeared to be secondary.
775. Mr Waddell, in the meantime, was becoming concerned. In Waddell 5/[103], he says:
- In my conversations with Mr Fardad, I kept trying to find out more information about the Call Option. I was receiving mixed messages and I wanted to know what was happening. If Freshstream were not going to exercise the Call Option, I needed to focus on reducing costs and increasing profit. Potential acquisitions like Available Cars were becoming a distraction for both me and the management team. There were points in 2023 where I was spending around 40-50% of my time on acquisitions. On 21 August 2023, I sent Mr Fardad a WhatsApp message in which I said that I did not think Freshstream were going to exercise the Call Option. I wanted to see how Mr Fardad would react. On the phone shortly thereafter this message, Mr Fardad said something along the lines of, “We’re doing the call option, Pete. Let’s just get Available over the line first. The lawyers don’t have the bandwidth to do both at once”. I had the feeling Mr Fardad knew that I was trying to get him to commit and did not want to put anything in writing. I was also trying to find out more information with DC Advisory as well. I knew that they had done other deals with Freshstream...and spoke to Mr Fardad often.
776. Mr Fardad could not recall this conversation, but did not consider that he would have given Mr Waddell an assurance along these lines.⁴⁹⁵
777. Viewed purely by reference to the documents, Mr Waddell’s expectation that the Call Option would be exercised at the earliest moment it could (October 2023) was ill-founded. The Call Option is what it says, an *option*. However, the failure to exercise the Call Option would – quite legitimately – have entitled Mr Waddell to re-think the operation of the BIG if he was going to continue as the majority shareholder.

EEE.3. The PwC Report (8 September 2023)

778. This was a financial due diligence report, in draft,⁴⁹⁶ for Freshstream’s eyes only. The report was in connection with “your due diligence in connection with an option to further invest in the Target” (namely BIG). The report is long on detail, short on advice (which appears not to have been sought), but certainly discloses no warning signs as regards the business. The point is repeatedly made

⁴⁹⁵ Day 15/p75 (XX Fardad).

⁴⁹⁶ There was a final version, dated 27 September 2023, but it is more useful to refer to this draft, given the emails that followed it.

that BIG operates on a “standalone” basis, distinct from its holding companies, and says this about EBITDA:

Adjusted EBITDA is lower than reported EBITDA throughout the historical period. On an adjusted basis, EBITDA (excluding stocking loan interest) has grown £6 million from £9.3 million in FY21 to £15.3 million in LTM Jul-23 period vs £3.8 million on a reported basis.

779. The point can fairly be made that the EBITDA is below what Mr Waddell (and Freshstream) wanted, but the PwC report is not a negative one. Step-In Rights were not mentioned.
780. Mr Fardad and Mr Davis did discuss the draft between themselves. There is an email chain between them. Because they have interpolated comments between themselves, it is difficult to attribute who is saying what, but nothing turns on this. What the email shows is Freshstream’s thinking. The email concludes (unbolded is Mr Davis, **bolded** Mr Fardad):

The main issue I think is simply that our option is a bit too expensive at present. If you reject 1m of exceptionals, you are at around 14m LTM. Do a run-rate adjustment for Wimbledon, and maybe you get to 16m. You can argue there is a further upside as Wimbledon matures, I guess. And if rates fall, then you could probably save some stocking loan interest. But even with a bit of this included, my fear is that at this level of EBITDA, the multiple we are paying for the option is very high. In particular for this kind of business in this market. **We will set this out in IC, but I do think we can justify a run-rate of £18 - £20 million. The challenge is that 10x is high in today’s world and it’s a low margin business so EBITDA can fall by 25% if a few things go against you.**

I think the other way of looking at the option price is the first out implied multiple. If our ambition is to sell the business for the first out and make 1.9x on a recycled basis, it may make more sense. **I think we will need to present a base case in the IC note that we are exiting in Dec 2024. I also think this is the realistic outcome. Things would need to be going very well for us to decide to take the risk of holding the business whilst all the increase in value is going to Pete. It’s possible interest rates fall next year and the 4 Available sites are doing super well and Wimbledon has turned into another Enfield and the Enfield expansion is done so Enfield has grown, [BIG] grows further, perhaps another site under discussion...we then decide to keep another year and make money on the ords.**

I would hope / expect that as the UK Macro improves, this business sees some uptick. So going into next year, with interest rates also hopefully coming down, there should be some good news ahead. And maybe Available is also done by then, to add to the sales story.

Taking Pete issues aside, the logical conclusion here would be to stretch out our exercise until we have visibility on some of this stuff. Then we do the exercise and very shortly thereafter start looking for an exit. But we minimise our risk of over-paying on the option, just in case things don’t turn out as we expect.

Question is how much damage this does to the team. I think given the direction of travel, we could tell them that we are looking increasingly positive. So maybe we keep them happy with the promise of “jam tomorrow”. But that is really one that you are closer to than anyone. **We have been running the jam tomorrow argument for a**

while...the tomorrow has arrived. We will lose some of them that would be hard to replace. I think we can stretch to December...not much further before we lose people. I think we can get Pete to give up control for 60m of the option being exercised which helps a little on the downside and funding. We also need to consider that if we want to exit in Dec 2024, we need to have Laurence as CEO for 12 months before that...can't sell this with Pete being there.

It remains a tricky decision.

EEE.4. Mr Gradassi's email (15 September 2023)

781. In an email dated 15 September 2023, Mr Gradassi described the need for a “memo” regarding the exercise of the Call Option. Mr Gradassi showed great awareness that the price of the Call Option was not the only issue. The fact was that Freshstream had paid for a substantial minority interest, and Mr Waddell remained in control unless and until the Call Option was exercised. The Call Option therefore had a value, over and above the return the shares would generate, which needed to be borne in mind:

Leaving aside the management question (which is important but should not be the key driver of our decision in my view), without any concessions from Pete, it's hard to argue economically speaking why we should exercise now. Hence, a way to look at it could be i) we exercise now and get concessions from Pete (e.g. we pay 60m vs 75m and perhaps we can pay in tranches as you suggested) and ii) we do not exercise now, wait for EBITDA to get to a level where the price of the call option is FMV, but then we have no concessions from him. I would be super curious to understand the trade-off between i) and ii) and whether the positive impact on returns from the passage in time in ii) outweighs the positive impact of the concessions we could get from Pete to exercise now. Put it another way, looking at i) vs ii) would guide us to understand what we need to get from Pete now to be neutral in terms of returns in both scenarios.

Note – I don't think staying in a minority position forever works, so this alternative is ruled out for me as explained in the memo.

782. A draft memo was attached. The memo is largely blank space, and appears to take no account of the “control” issue, save to say this in favour of exercising the option:

...the management disruption risk should Pete remain the majority shareholder for an extended period of time (which on its own is a risk material enough for us to want to get control over the business vs staying in a minority position in the long run)

FFF. MR WADDELL'S 1 OCTOBER 2023 EMAIL

783. There was no obligation on Freshstream to exercise the Call Option in October 2023 (or at all). Mr Waddell appreciated this. In a move that he had obviously been brooding over, Mr Waddell sent the following WhatsApp on 1 October 2023 (which was a Sunday):

Ok, team, some direction for October through to next year. I want us to really concentrate on the sites and head office, as this is what we do in 30 days. I'll be announcing controls to go into place ref Freshstream and Lawrence, as Freshstream are only minority shareholder and Lawrence [is] on board only as chairman. He will not be involved in running BIG, only as chairman...

784. This communication was intended to put pressure on Freshstream. Although, technically, the Call Option could have been exercised on a Sunday, the point of the communication was to signal to Freshstream the implications to them of *not* exercising the Call Option in October. It signalled a proposed reassertion of control by Mr Waddell. Clearly, Mr Waddell was doubtful that the Call Option would be exercised, but this is also a manifestation of Mr Waddell's need for control. He knew that Freshstream were free to exercise the Call Option or not, and that grated on him.
785. Freshstream characterised this as a "threat", but I do not consider that term to be justified. What Mr Waddell was doing – in typically blunt language – was spelling out the significance to *Freshstream* of control over BIG. Mr Waddell, as has been described, was prepared to hand over control. This had informed his acquiescence in Freshstream's approach to the business since March 2022. But Mr Waddell was not prepared to hand over control *for nothing*. If he was to remain majority shareholder, then his message was that he was going to act like one.
786. The Freshstream reaction was *not* one of surprise ("Pushing for us to exercise call option...trying to show us there is pain if we don't", "It's going to be a bit rough"). Mr Gradassi said "We have the nuclear button with the step in though" and "If we step in, we can tell him exactly what to do or he's in breach". Mr Fardad was less optimistic: "Yep...we won't get there".
787. These internal communications betray a sense of a decision mostly made: that Freshstream were not going to exercise the Call Option, because it was too expensive a way of gaining control, given the Step-In Rights that Freshstream had and which it could exercise entirely in its own interests. I do not, therefore, accept Mr McLain's articulation of the timing of events as he described them. Step-In was under consideration as a likely next step, in preference to exercising the Call Option, in September/October 2023. Of course, Mr Waddell was not told of this thinking: no reference was made to Stepping-In at all to Mr Waddell and Mr Waddell was given to think that the exercise of the Call Option was seriously under consideration.
788. I do not consider that Freshstream were under any obligation to disclose their thinking to Mr Waddell either as regards Step-In or as regards the Call Option. These were Freshstream rights, capable of being exercised without fetter. However, at this point, it would have been incumbent on Mr Fardad and Mr Vaughan as directors of BIG to disclose to Mr Waddell what had been going on behind his (Mr Waddell's) back in terms of succession planning. As I have described, the putting in place an agreement with Mr Vaughan to succeed Mr Waddell as CEO is perhaps defensible on the assumption that come October 2023, Freshstream would be in control. But if that was not going to happen, then it was undermining of the existing CEO (Mr Waddell) and not in the best interests of the company (BIG) to undermine the appointed CEO, who had just made it clear that unless the Call Option was exercised, he was going nowhere.

789. Notwithstanding Mr Waddell’s email, business at BIG carried on as usual – with the normal board meetings and information provision. But bad will was building up, on both sides.⁴⁹⁷

GGG. INCIDENT NO 24: INAPPROPRIATE CONDUCT ON 23 OCTOBER 2023

790. Chronologically, this is where Incident No 24 fits (comments about engaging in sexual activity in Leeds). I have considered this Incident closer to Incident No 23 at [647]ff (Sections UU and XX).

HHH. MR CLARKE’S COMPLAINT TO MR VAUGHAN

791. On 2 November 2023, Mr Clarke emailed Mr Vaughan to complain about Mr Waddell:

Laurence,

Things really have intensified with Pete’s erratic behaviour here culminating in my having to put the phone down on him this morning.

I took a call whilst driving into the office, circa 08:50am following heavy traffic (due to storm). This was with an insurance broker who Pete wishes to move over to. We are currently with Aon. He wants to go back to Jem Emirali at Howden Insurance. Alex arranged the move to Aon early on in his employment. I assisted with the administration of this move. I understand that the move triggered a saving although I am unsure as to the total amount.

We are mid renewal with Aon and have the added complication of property acquisitions, etc. However, this is all in hand with Aon and I was expecting renewal terms later this week.

Nevertheless, it looks like we are now moving to Howden, which is not a problem in any event. This will just create a lot more work at a time when the working days do not seem long enough. I am now liaising with Jem and have a meeting with him at Gillingham this afternoon.

Reason for my email is, following a call with Andy (HR), he suggested I make a note of the call/email you privately, and note the fact that Peter became significantly verbally abusive which resulted in me warning him I would terminate the call, before I did so.

792. Mr Holness – the “Andy” referred to by Mr Clarke – left BIG in around November 2023. His suggestion to Mr Clarke that private notes be kept of Mr Waddell’s misconduct is suggestive of a new or different focus on Mr Waddell’s behaviour. There was no invocation of the processes laid down in the BIG Employee Handbook, but lists were beginning to be kept.
793. Mr Vaughan emailed Mr Fardad, forwarding this email “as an example of what I’m dealing with multiple times a day. Separately, Sophie, who runs Big Assist,

⁴⁹⁷ See Day 17/177ff (XX Gradassi), where these points were put.

burst into tears when she heard the IC meeting was being delayed by a week. This position is not sustainable! Sorry to bother you but further colour”.

794. The question is *why* the focus changed. The most obvious reason would have been to persuade the Freshstream Investment Committee to reconsider their thinking about the Call Option. The best way of persuading the Committee to change their minds would be to demonstrate that the Step-In Rights that Freshstream had – whilst giving Freshstream board control – would not remove Mr Waddell from his office.

III. NOVEMBER CONSIDERATION BY THE FRESHSTREAM INVESTMENT COMMITTEE

III.1. Introduction

795. The November meeting of the Freshstream Investment Committee was – as usual – neither minuted nor otherwise recorded. Recollections of what was discussed were also vague. The meeting was important, not least because Mr Vaughan attended.

III.2. The November 2023 IC Memo

796. In November 2023, a memorandum on the question of the exercise of the Call Option was submitted. The purpose of the memo was “to get IC feedback on the conditions [that] need to be met in order for us to exercise the call option and acquire control of BIG”. Over a number of bullet points, the memo expressed the view that “BIG has continued to perform well in a challenging macro environment with significantly higher interest rates and reduced consumer confidence”. The status of the Available Cars transaction was described: the deal had been signed, and was expected to complete mid-November. The deal had been funded on the basis of an £8m loan advanced 50%/50% by Freshstream and Mr Waddell. It was noted that a sale and leaseback of BIG’s freeholds “would more than cover current net debt”. As regards Mr Waddell’s leadership:

Pete’s leadership

- Under Pete’s leadership we have progressed certain areas of the VCP (new sites, diversify supply through BYWC) but have struggled on others (finance function, optimise pricing)
- Pete’s management style has led to a lot of pressure being put on the team and creates a large number of inefficiencies, leading to frustration and regular threats of resigning should we not exercise the call option and remove Pete as CEO. Laurence is the first person the team speaks to but we have had direct conversations with the team and receive similar messages
- Since the departure of Alex Maby, we have been conducting a CFO search that has been restricted by candidates turning down the opportunity as a result of Pete’s reputation in the market. We are still interviewing candidates and aim to make an offer by the end of the year

- It is important to note that this business had a long track record of profitable growth under Pete’s leadership before we invested. His focus and high pressure style does produce results, but in our view is more time consuming and risky than needed given Pete’s ad hoc approach and change of direction. Additionally, the business has grown from 4 retail sites and one prep centre when we invested to 8 sites, 3 prep centres and BWYC operation today

797. The recommendation was that even though “[f]rom a pure financial perspective, we would not consider exercising the call option until just before the exercise price reaches the price floor of £72m. Due to the structure of the call option, we do not expect this to be until Q2/Q3 2024”. However, there were considerations in favour of an earlier exercise of the Call Option:

- Pete’s leadership style is causing severe pressure on management and risks losing key members of the team
- Pete is making decisions that are damaging to the business and delay the execution of the VCP
- Further value accretive M&A transactions will be difficult and risky with Pete as the CEO
- We will need to have Laurence in place at CEO for at least 6-12 months prior to an exit

798. The memo temporised, and suggested a variation of the option terms that would enable the option to be exercised at once, without compromising Freshstream’s financial criteria.

Purpose of the memorandum

799. The purpose of the IC Memo seems to have been to get the Freshstream Investment Committee to change its mind with regard to the exercise of the Call Option in the Second Option Period (the First Option Period having passed). The arguments deployed were (i) to emphasise the importance of the “control premium”, whilst (ii) suggesting a re-negotiation of the Call Option on better terms (for Freshstream).

800. At this stage, there was no prospect of the Call Option, as framed, being exercised. Having heard McLain’s evidence, and considering the contemporary documents, Mr Waddell’s 1 October 2023 email had no effect. The Call Option was out of the money, and that was that.

801. A re-negotiated Call Option, on terms favourable to Freshstream, would obviously have been attractive to Freshstream. But given the hard-nosed negotiation that Mr Waddell conducted during the negotiations for the Transaction, and given the bad feeling that now existed,⁴⁹⁸ it must have been obvious that negotiating a variation to the Call Option in a friendly way, would

⁴⁹⁸ Mr Fardad suggested that things had been “patched up” since the 1 October 2023 email, but tensions will have continued: Day 15/pp91-92 (XX Fardad).

never work. It might be that a change could be foisted upon an unwilling Mr Waddell – but that is a different matter.

802. All three options – (i) exercise the Call Option, (ii) do not exercise the Call Option, (iii) renegotiate the Call Option – were put to Mr Fardad.⁴⁹⁹ But they cannot have occupied the Freshstream Investment Committee for long. The IC Memo presents as a remarkably pointless document. It cannot have taken the consideration of the Committee any further. That begs the question as to what was, in fact, discussed.

III.4. What decision was made?

803. Mr Fardad was pressed on what decision was made at the meeting. All he could say was that there was a decision not to exercise the Call Option on its existing terms.⁵⁰⁰ The problem of control appears not to have been discussed. Although that seems unlikely, it may be that the November meeting was simply an effort to get the Committee to change its mind.

III.5. Mr Vaughan's attendance at the IC meeting

804. Exceptionally, Mr Vaughan attended the Freshstream Investment Committee (or at least part of it). In his witness statement, Mr Vaughan said this:⁵⁰¹

At Reza's request, I contributed to discussions around a presentation that Reza (amongst others) gave to Freshstream's Investment Committee in November 2023 about why they should go ahead and exercise the option...It was the only Investment Committee meeting that I attended prior to Freshstream exercising their Step-in Rights and Pete knew that I was attending it. I told Pete before the meeting that I would push Freshstream to exercise the option as best I could (I explain why below). The discussion in the Investment Committee was friendly, but it was pretty clear that the Investment Committee felt it was a very high price for what they would be buying. The members of the Investment Committee expressed to me in the meeting that they could not justify exercising the Call Option just because it was convenient; it needed to make sense economically. I tried to explain the value of a majority stake and that BIG was still a good opportunity, especially because exercising the option might make the whole investment look a lot better. More than anything, I supported exercising the option because it seemed like a good solution to the behavioural management issues we were having with Pete...I mentioned these issues in the meeting. I said that it was impossible to work with Pete and highlighted in particular the bullying that Alex Maby had suffered before he left...I said to the Investment Committee that, if they did not exercise the Call Option, they were risking the implosion of the business: key people would leave and their value creation plan would not be viable.

805. Mr Vaughan's role appears to have been as an advocate for exercising the Call Option. In particular, the risk of Freshstream team staff within BIG leaving if Mr Waddell stayed was emphasised. Clearly, therefore, the question of Mr Waddell's bad behaviour must have been raised – although what was said is not known.

⁴⁹⁹ Day 15/p94 (XX Fardad).

⁵⁰⁰ Day 15/pp105ff (XX Fardad).

⁵⁰¹ Vaughan 3/[47].

III.6. Communications around the time of the Freshstream Investment Committee Meeting

806. Mr Vaughan sent the following WhatsApp message to Mr Fardad on 7 November 2023:

Spoke with most of the team. Message went down very well. If everyone has signed off on exercise but some negotiation required which will take a few weeks. Bonus also discussed in general terms and was definitely a good idea! Important to include Huma also. L

807. Communication with Mr Waddell at this time were explored with Mr Fardad:⁵⁰²

Q (Mr Gourgey, KC) It's right, isn't it, that after this IC meeting, you reported back to Peter concerning the outcome of the meeting?

A (Mr Fardad) I believe I spoke to him after this IC meeting.

Q (Mr Gourgey, KC) And you told him that Freshstream were going to exercise the option, but needed time to formulate an offer? Do you recall that?

A (Mr Fardad) I think it was – it may have been something along the lines of, we – I'm trying to remember the conversation, I don't recollect the conversation I had with him, to be honest, details of it.

Q (Mr Gourgey, KC) Let me see if I can help you. If we go to the December presentation for the call option exercise...Do you see the first bullet point there?

A (Mr Fardad) Yes, yes, I see it.

Q (Mr Gourgey, KC) "We promised Pete last month we would come back to him about a proposal on the call option. We already communicated to him it would not be to exercise the option on agreed terms..."

Namely the purchase of a 35% stake for £72m. So I think you must accept then...that that's how – that's what you reported back to Mr Waddell?

A (Mr Fardad) That we would come to him with a proposal, yes.

Q (Mr Gourgey, KC) You knew that he was sort of hanging on what was going to be the outcome of – he was very keen to know the outcome of the meeting which eventually took place on 14 December, wasn't he?

A (Mr Fardad) Yes.

Q (Mr Gourgey, KC) And you must have expected that if you told him you weren't going to exercise the Call Option at all that he would react strongly in relation to that?

A (Mr Fardad) He'd be very disappointed, yes.

⁵⁰² Day 15/pp115-116 (XX Fardad).

III.7. Conclusions

808. Given the lack of recollection, the conclusions that can be drawn are limited. I make the following findings:

- i) The decision not to exercise the Call Option on its existing terms was entrenched. By this, I do not mean to say that Freshstream would not exercise the Call Option at some point during the Second Option Period. Rather, in the immediate time-frame – for the next few months – there was no prospect of the Call Option being exercised.
- ii) The Freshstream Investment Committee were given clear insight into the problems that non-exercise of the Call Option gave rise to. In particular, the issues regarding Mr Waddell’s behaviour were laid out, to the extent they were not already known, and the Committee must have appreciated that an absence of control would prejudice Freshstream’s plans to develop the BIG business according to its (and not Mr Waddell’s) lights.
- iii) Mr Waddell was given meaningless reassurances that the Call Option was still in play, when in fact there was no prospect of the Call Option *as agreed* being exercised at this time. If Mr Waddell had been willing to make the Call Option cheaper for Freshstream to exercise, so that Freshstream could obtain control of BIG consistently with their need for an “in the money” return, then that would have been a solution. But there was no prospect of Mr Waddell agreeing such a solution without the exercise, by Freshstream, of significant commercial pressure.
- iv) It therefore follows that some consideration must have been given to Freshstream obtaining control of BIG by other means. The evidence of Mr McLain set out above was that he at least had been considering Freshstream’s legal rights since early October 2023.

JJJ. INCIDENT NO 16: INAPPROPRIATE LANGUAGE (“CUNT”) IN A MEETING WITH NATWEST (28 NOVEMBER 2023)

INCIDENT NO 26: DEBANKING BY NATWEST (MARCH 2024)

INCIDENT NO 27: PREJUDICING THE RELATIONSHIP WITH BLACK HORSE

JJJ.1. Introduction

809. Incidents Nos 16, 26 and 27 are best considered together, for they are based on some of the same facts.

JJJ.2. Evidence of Mr Vaughan

810. Mr Vaughan’s witness statement records:⁵⁰³

⁵⁰³ Vaughan 3.

[62] After a meeting between Pete, David Thorley (BIG's then interim CFO following Alex Maby's departure) and NatWest (BIG's bankers) (although I do not recall when this took place), David called me to explain that Pete had used highly inappropriate language in front of NatWest, including both "fuck" and "cunt". David had said that he had been quite upset with it himself.

[93] At a similar time [Mr Vaughan was talking about Q1 2024], I sat down with NatWest, BIG's bankers. NatWest said that they had been considering debanking BIG, referencing Pete's confrontational and abrasive approach as having damaged their commercial relationship with BIG, including the meeting David Thorley attended as described at [62] above.

[94] I explained to NatWest that Freshstream had stepped in and that Pete had been suspended. The broad reasoning they gave for potentially debanking us was that NatWest told me they had escalated the issues with Pete to one level down from a main board discussion. Because Pete had been suspended, NatWest said that the situation would not be escalated any further at that time. NatWest told me that they had assumed Freshstream would take control of BIG, which is the only reason they had not taken any action themselves. NatWest felt that they did not have to take any action as soon as we informed them of the steps we'd taken. If we had been debanked, it would have had the potential to have severe consequences for the business. Not only do we have a term loan, an overdraft and mortgage facilities with NatWest (which total around £12 million), but NatWest are also the group behind one of our major stocking facility partners, Lombard, who we have a £30 million facility with, which could have become instantly repayable if NatWest had debanked BIG.⁵⁰⁴

[95] Black Horse, our largest stocking facility and financing partner, also informed me, when I sat down with them immediately after Pete was suspended, that we were the most complained about of their partners in the country and that they had already ended their relationship with the partners who were in second and third place. The complaints were serious ones. Only when BIG could not resolve an issue to the customer's satisfaction did customers tend to go to the finance company. Black Horse also raised that Pete had put pressure on them to offer favourable terms to Pete's son's business, EJW Autos, because Pete had used the big relationship as leverage. Black Horse were uncomfortable with that, too. Black Horse have recently confirmed to me that they were very close to ending their relationship with us prior to Pete's suspension.

JJJ.3. Incidents Nos 16 and 26

811. Annex 1 Item 9 to the Waddell Closing states in regard to Incident 16:

Mr Waddell accepts that he used expletives during the meeting, as recorded in Mr Thorley's note. This was an isolated reaction to a specific provocation – namely his discovery that Mr Vaughan had discussed the Superbikes acquisition and funding for it with NatWest without his knowledge. Mr Waddell apologised for his behaviour and regrets his language.

812. It is thus clear that the essential facts relating to Incident 16 are common ground, and that what matters is the context. Mr Thorley's note of the Incident – quoted in the Siddall Final MDE Report at p124 – states:

⁵⁰⁴ Evidence to similar effect is given at Vaughan 3/[187].

Present: Peter Waddell (CEO), David Thorley ((interim CFO), Iwan Jones (NatWest Relationship Manager), Tracy Watson (Assistant Relationship Director)

IJ noted that currently NatWest had a total credit limit of £75 million and the current utilisation was £40m Lombard stocking facility limit, a £10m term loan for the 2 SW cars acquisition in 2021 (current balance being repaid at £100k per month) and a £5m overdraft facility (as yet unused but in place since Freshstream investment in 2022).

IJ concluded that there was limited headroom to facilitate the £12m Leed mortgage and was not confident an overall increase could be approved.

IJ mentioned that he had been contacted by Laurence Vaughan ([BIG] chairman and also chairman of Superbikes) to discuss an investment of £5m in Superbikes and clearly stated that a choice had to be made by the company as it was “one or the other”, not a £12m mortgage for Leeds and £5m to invest in Superbikes.

PW lost his temper, stood up and declared loudly that he is going to sort out those two f***ing c***s Laurence and Reza (being Reza Fardad, partner Freshstream) and swore continually for a few minutes explaining how this was his company and no c**t speaks to the f*****ing bank without speaking to me.

When PW had calmed down the meeting continued with detailed conversations about valuations and the security available for the mortgage. NatWest indicated the timescale would be at least 6 weeks for the property report, title and legal instructions, and PW insisted approval should be sought by the 23 December 2023.

813. Mr Waddell’s loss of temper and language is regrettable and Mr Waddell regrets it. But it was not directed at NatWest – nor Mr Thorley – but against Mr Vaughan and Mr Fardad. It is easy to see why Mr Waddell would have reacted to the information regarding Mr Vaughan’s intervention with NatWest with huge concern.
814. First, Mr Waddell was in the process of negotiating a facility for the Leeds transaction. To have a competing project advanced by Mr Vaughan for the *same funds* without prior agreement between chair and CEO was damaging to BIG’s business. Secondly, NatWest must have been extremely surprised that the chair and CEO of BIG were sufficiently at odds that they did not communicate with one another. Thirdly, this was a clear example of what Mr Waddell may have suspected, namely Mr Vaughan acting behind his back, undermining his position as CEO. Fourthly, Mr Vaughan (as chair of both Superbikes and BIG) should never have involved himself in this transaction. The conflict of interest would have been obvious to NatWest and would (or should) have given rise to concerns on the part of NatWest.
815. The context – which is lacking from Mr Vaughan’s evidence – provides a great deal of justification for Mr Waddell’s outburst. Mr Vaughan was cross-examined about this context, and it is appropriate to set out his answers in some detail, because they go to his credibility as a witness. The opportunity to invest in Superbikes was first offered by Mr Vaughan to Freshstream, but the proposal then shifted to this being an opportunity for BIG.⁵⁰⁵ Discussions between Mr Vaughan and Freshstream regarding Superbikes would not give rise to an issue

⁵⁰⁵ Day 21/pp67-68 (XX Vaughan).

of conflict. But if the proposal was that BIG invest in Superbikes, then Mr Vaughan would be present on both sides of the proposed transaction:⁵⁰⁶

- Q (Mr Gourgey, KC)** Can you tell us why it then switched between 15 and 22 November to an opportunity which was now being presented to BIG?
- A (Mr Vaughan)** Because I'd – well, I don't know the fine timings, but my view was always it was a better opportunity for BIG than for Freshstream standalone.
- Q (Mr Gourgey, KC)** And you then contacted NatWest, didn't you, concerning this transaction?
- A (Mr Vaughan)** That's an exaggeration for what I did. I spoke to our relationship director, because NatWest banked both sides of this potential transaction, ie they were the bankers to both Superbikes and BIG and it was a matter of common courtesy just to tell them that we were having a discussion.
- Q (Mr Gourgey, KC)** Right. So if we go to...an email from John Howard at NatWest to you:
"I've been made aware this morning that [BIG] already have a relationship with NatWest and with that being the case, I'm now not able to have an open discussion with you on the Superbike case, instead you will need to liaise directly with the relationship team for [BIG]..."
So what discussion were you seeking to have with Mr Howard at this stage, Mr Vaughan?
- A (Mr Vaughan)** I can't remember what I was going to talk to John about back then.
- Q (Mr Gourgey, KC)** Were you looking, at this stage, for funding for a Freshstream acquisition or for a [BIG] acquisition?
- A (Mr Vaughan)** At this stage, neither.
- Q (Mr Gourgey, KC)** So why were you speaking to NatWest?
- A (Mr Vaughan)** Because NatWest were the bankers to both sides and it's appropriate that they heard it from me rather than from the rumour mill.
- Q (Mr Gourgey, KC)** Appropriate they heard what from you, Mr Vaughan?
- A (Mr Vaughan)** That there were some discussions.
- Q (Mr Gourgey, KC)** With Superbikes?
- A (Mr Vaughan)** Yes.
- Q (Mr Gourgey, KC)** Mr Waddell wasn't interested in the Superbikes deal, was he?
- A (Mr Vaughan)** I don't know.
- Q (Mr Gourgey, KC)** Sorry?

⁵⁰⁶ Day 21/pp68ff (XX Vaughan).

A (Mr Vaughan)

I don't know. Ultimately, he wasn't, albeit I don't think he ever spent any time to look at it properly. But that's a matter for him. But because of the potential issue in terms of me being compromised, I stepped out and handed it over to Pete to have a look at. He didn't want to do it, so we didn't do it.

816. Mr Vaughan was right to identify that he was conflicted. His point was that he said nothing of significance. Mr Thorley's note was then put to him. Mr Vaughan denied that he said what is there recorded by Mr Thorley.⁵⁰⁷ Mr Vaughan contended that he had been speaking about *Superbikes*' facility (also £5m) with NatWest. It is impossible to understand this evidence: given that the proposal was that BIG acquire Superbikes, any discussion would have been about BIG's facility with NatWest, not Superbikes'. I disbelieve Mr Vaughan on this point, and I find that Mr Thorley's note accurately records what was said at the meeting, and that the likelihood is that the NatWest officials at the meeting accurately reported what Mr Vaughan had said to NatWest.
817. So far as the Incidents are concerned, Mr Waddell was told what the Thorley note records, and although Mr Waddell's reaction is not to be condoned it is not harassment or bullying. The reaction, whilst over the top, is clearly not directed to a protected characteristic, was not directed to anyone at the meeting (but at persons not present) and everyone present would readily have understood Mr Waddell's concern, even if they condemned the anger through which that concern was expressed.
818. Accordingly, there was no gross misconduct. Since Incident No 16 informs Incident No 26, it follows that I conclude that Incident 26 was not gross misconduct.

JJJ.4. Incident No 27

819. Mr Siddall, KC concluded that this was an MDE, but did so in a single sentence:⁵⁰⁸

I also consider (as a result of the reactions of Blackhorse) that this conduct had in fact had a material adverse effect on the reputation of [BIG].

820. Reputational effect is a part of the MDE definition, but there must also be an infringement of a standard that constitutes an MDE Event. The nature of an MDE is closely defined in the Securityholders' Deed. There needs to be some form of misconduct within the MDE definition.
821. This is not a case of bad language at all but of alleged improper commercial dealings by Mr Waddell with Blackhorse. I do not consider that these have in any way been sufficiently clearly articulated for Mr Waddell to properly be able to rebut them – although he does deny the allegations made. I do not consider

⁵⁰⁷ Day 21/p74 (XX Vaughan).

⁵⁰⁸ Siddall Final MDE Report/p131 at [240].

that a case has been articulated for Mr Waddell to answer. This is not a case of gross misconduct.

KKK. INCIDENTS INVOLVING MS RATHER

KKK.1. The Incidents in question

822. A number of the Incidents involve Ms Rather as the target or victim of the Incident, rather than merely a witness. In other words, she is the person with a grievance, even if she did not report such grievances via the process described in the BIG Employment Handbook. Her reason for not doing so was the culture, within BIG, of condoning Mr Waddell's conduct and a fear of the consequences if the Incidents were formally reported by her.
823. I accept Ms Rather's explanation for the non-reporting and inaction. Her position was subordinate to the positions of both Mr Vaughan and Mr Fardad. It is they – and in particular Mr Vaughan – who had the responsibility for maintaining the relationship of trust and confidence between BIG and its employees, even if this involved dealing with a powerful CEO.
824. Incident No 20 has already been considered.⁵⁰⁹ It has been considered separately because it occurred when Ms Rather was being interviewed for her job, whereas these incidents all occurred when she was in employment with BIG. It would be to understate and minimise the nature of the Incidents involving Ms Rather were they to be considered separately. It is quite possible that one Incident, considered in isolation, might very well *not* be regarded as gross misconduct, whereas a series of Incidents, in fairly close succession, might be.
825. I appreciate that there is an element of unfairness to Mr Waddell, in that (because the provisions in the BIG Employee Handbook were not followed) he was not warned (if a warning was appropriate) after the first of these Incidents, so that there would be no repetition. However, given the climate within BIG, it would be even more unfair to Ms Rather not to consider the totality of the Incidents directed at her, particularly when they occurred in close succession.
826. The Incidents considered are as follow:
- i) *Incident No 5 (Nov 2023)*. On or around 17 November 2023, you stroked Huma Rather's back whilst saying: "You should be glad that I am a married man" or similar words.
 - ii) *Incident No 22 (4 Nov 2023)*. On 4 November 2023, Mr Waddell commented on Huma Rather's WhatsApp profile picture in a manner which she considered "creepy".
 - iii) *Incident No 4 (Jan 2024)*. On or around 2 January 2024, Mr Waddell said about, and in front of, Huma Rather (Compliance Officer) whilst on the phone to Ben Goodwin (Sales Director) that "I have the Iron Lady in front of me. She looks absolutely ravishing. She is wearing blue today, a Gucci scarf today. I think we pay her too much" and then said to Huma

⁵⁰⁹ At [480]ff (Section NN).

Rather of Ben Goodwin “I have got your secret admirer on the phone, he’s coming to see you” (or similar words).

- iv) *Incident No 21 (Mar 2024)*. On 5 March 2024, Mr Waddell suggested to Huma Rather and Stewart Ford that he would “bend you over the desk and then you exit that way and you are fired” or words to that effect.

KKK.2. Ms Rather’s qualities as a witness

827. I described Ms Rather’s quality as a witness when Incident No 20 was considered. That assessment was based on the totality of her evidence before me, including these Incidents. I am inclined to believe her testimony – she was an honest and capable witness, able to be on the whole objective despite the fact that she was very much aligned with the BIG/Freshstream camp, rather than Mr Waddell’s camp. I will take into account the fact that even the best witnesses’ recollection may be wrong.

KKK.3. Incident No 5 (stroking Ms Rather’s back and comment)

KKK.3.1. Evidence of Ms Rather

828. Ms Rather described this Incident in her witness statement:

[49] On 16 or 17 November 2023, I was working at the Leeds site for the day. It had reached two o’clock in the afternoon, so I went to Peter’s office to let him know that Sophie and I were leaving to drive back to London. As I have explained at paragraph [31(a)] above, if someone left without telling Peter, he would often be angry and that was a situation I would want to avoid.

[50] As I approached Peter’s office, the two doors that led to his office were both closed and he was stood just outside his office, in between the two doors. I began to explain to Peter that Sophie and I were about to leave to avoid the rush hour traffic. As I was speaking, Peter approached me and said to me “you should be glad I am a married man” and placed his hand on my back from the top down to my lower back two or three times. This made me uncomfortable, so I immediately pulled my lower back forward to stop Peter’s hand touching me. Peter then opened one of the doors to his office and gestured towards the doorway; Peter stood right behind me, so I felt like I had no choice but to walk through the doorway; Peter then closed the office door behind him as we entered the office.

[51] At this point, I was in Peter’s office but just wanted to get out of there and leave so I stayed standing. However, Peter sat down and asked me to sit down as well and I did. Peter then started to explain various things to me about Freshstream – I recall that he was speaking about how much money Freshstream owes him. He also said that he would make Laurence Vaughan, Neil Hodson and Stewart Ford come into the office every day and “drive them mad” and “drive them up the wall”. I recall trying to interject and wanting to just leave immediately and go home.

[52] Luckily, after about an hour of Peter talking at me, his phone rang and he answered it. I gestured to Peter that I was leaving and exited his office. I then found Sophie again and said something like “Sophie, just get in the car – we need to leave”.

[53] I recall driving back home in my car with Sophie and feeling disgusting. I recall the feeling of wanting to wash myself after Peter stroked my back. When I was driving

home with Sophie I called Tom Clarke on loudspeaker in my car – I have a good working relationship with Tom and he has always been very respectful and understanding, so I knew I could confide in him. I said to Tom something along the lines of “has Peter lost the plot because this is what he’s done to me today” and told him what happened. I felt that Tom was concerned about me – he always said that he would be around to support me if I needed it.

[54] After this incident, I tried to avoid being in a room alone with Peter again, because I felt so uncomfortable and I didn’t feel safe alone with him, I did not report this incident to HR, since I thought it would be pointless, for the reasons I have explained at paragraphs [32] to [33] above.

829. Ms Rather was cross-examined on differences between her version of events as given to Mr Siddall, KC and her witness statement to the court.⁵¹⁰ I do not consider these differences to be material. Most of these Incidents emerged on the hoof, when Mr Siddall, KC asked whether there was anything else that should be brought to his attention. Taken unprepared before Mr Siddall, KC, Ms Rather will have (exceptionally: evidence does not tend to improve over time) been able to improve her evidence in her witness statement by giving the events more mature consideration.

KKK.3.2. Evidence of Mr Waddell

830. Mr Waddell denied making the comment “You should be glad I am a married man”.⁵¹¹ He admitted to patting Ms Rather on the back, and thanking her for coming up to Leeds. This was done in the presence of Ms Buzina.⁵¹²
831. It is possible that Ms Rather and Mr Waddell were describing two different events, both of which happened. That, however, does seem unlikely. It is also possible that one person’s “pat” is another person’s “stroking”. That, too, seems unlikely. This is, I find, a case of irreconcilable versions of events, and I will have to identify who I believe.
832. Mr Waddell was cross-examined and Ms Rather’s version of events was put.⁵¹³ He purported to recollect what would have been to him an entirely innocuous event, which is improbable.

KKK.3.3. Evidence of Ms Buzina

833. Ms Buzina gave evidence in relation to this Incident:⁵¹⁴

[46] I have been shown the part of Huma Rather’s interview transcript where she says that Peter stroked her back and made a comment about it being lucky that he was a married man...

[47] I was at Leeds when Huma and Sophie Hazel came to visit in November 2023. I was with Huma, Sophie and Peter for lots of that day, and was there when Huma and Sophie said goodbye. I remember Huma saying that they wanted to leave to beat the

⁵¹⁰ Day 23/pp50ff (XX Rather).

⁵¹¹ Waddell 5/[223].

⁵¹² Waddell 5/[223].

⁵¹³ Day 8/pp50-54 (XX Waddell).

⁵¹⁴ Buzina 1.

traffic. I do not remember Peter touching Huma at all and I did not hear Peter make any comments to Huma about it being lucky that he was married. I can't imagine Peter making a joke like that. He respects his partner.

[48] Peter also had a lot of respect for Huma, so I can't imagine him behaving like that to her. I remember that whenever Peter mentioned Huma, he would always say "You don't want to get in trouble with Huma, she is the compliance officer". Huma was a strong lady, she would not be afraid of telling people what to do. I had a lot of respect for Huma too, but we were never really friends.

834. As I have described, Ms Buzina was partisan in favour of Mr Waddell. If Ms Rather's version of events is correct, Ms Buzina was not present, and so would not have witnessed the Incident. I reject Ms Buzina's evidence not because she is lying, but because she was not present at the material time.

KKK.3.4. Conclusion on the facts

835. I accept Ms Rather's version of events. This was, to Ms Rather, an upsetting event, as was apparent from her oral testimony. It would have stuck in her mind and – although unhappy with Mr Waddell as a boss and a person – she was an objective witness.
836. Mr Waddell, on the other hand, was a far from satisfactory witness generally, and had every reason to deny Ms Rather's version of events, because that best suited his interests. I do not find that Mr Waddell was lying, it is unnecessary to go so far, but he had at the very least persuaded himself into a false memory.

KKK.4. Incident No 22 (Ms Rather's WhatsApp picture)

KKK.4.1. Evidence of Ms Rather

837. Ms Rather described this Incident in the following terms:⁵¹⁵

[46] I recall an incident where Peter made an inappropriate comment during a phone call with me, about my WhatsApp profile picture. I recall that this incident happened on around 13 or 14 November 2023, as I was due to drive to the Leeds site on the following day.

[47] I was driving back home from the Wimbledon site in the evening when Peter rang me via WhatsApp call. On the phone call, he said that I had to be on the Leeds site the next day and was asking me various questions about guaranteed asset protection, or "GAP", insurance. He then said to me something along the lines of "you should change your profile picture back to the one it was before – you look prettier there". My old profile picture was a recent picture of me, with a full face of makeup; my new profile picture, at the time, was a picture of me as a little girl. I was taken aback at this comment from Peter – I found it sleazy. I responded something along the lines of "oh okay" but did not change my profile picture and instead blocked Peter from being able to view it because I felt creeped out by Peter's comment.

[48] I recall calling Sophie Hazell later that day and speaking to Tom Clarke on the phone the next day to tell them about Peter's comments. They both seemed sorry for me and said it was not something I should have to be facing in the workplace; but I

⁵¹⁵ Rather 1.

recall sensing that they felt helpless and that there was nothing they could do to stop Peter. As I have explained at paragraphs [32] to [36] above, I also felt there was no point in directly challenging Peter's comments or raising a complaint with HR since Peter would not listen and, given his influence in the HR department, he would not change his behaviour.

838. Ms Rather was cross-examined, but maintained her version of events.⁵¹⁶

KKK.4.2. Evidence of Mr Waddell

839. Mr Waddell had no recollection of making the comment, which is not the same as denying that it was made.⁵¹⁷ Speculating, he suggested that he "might have said to Ms Rather, "you've got the wrong picture, the other one was more professional" or "can you put a picture up of you so people know who they are talking to".

840. I find Mr Waddell's reconstructions improbable, having seen him give evidence over a number of days.

KKK.4.3. Conclusion on the facts

841. I find Incident No 22 established on the facts as stated by Ms Rather.

KKK.5. Incident No 4

KKK.5.1. Evidence of Ms Rather

842. Ms Rather described Incident No 4 in the following terms in her witness statement.⁵¹⁸

[55] On my first day back working after the Christmas break on 2 January 2024, I came into work wearing a blue top, black trousers and a scarf with a Gucci logo on. Peter called me and asked me to come to his office to speak to him. As far as I can recall, Joe Evans, who works in the part-exchange department, was also present. Peter began asking me various questions about the BIG assist department before his phone rang. He winked at me, said "one minute" and answered the phone with the words "Hi Ben" – I understood from this that he was speaking to Ben Goodwin. I offered to Peter for me to leave the room until he was finished on the phone but he asked me to stay. As far as I can recall, Joe also remained in the room with Peter and me.

[56] Peter then said on the phone to Ben, "Oh, I've got the lovely Iron Lady in front of me. She looks absolutely ravishing today in her Gucci scarf. I think we pay her too much". He then looked at me and said "I've got your secret admirer on the phone". I was mind-blown that Peter had said this to me and could not understand why he said it. I felt that Peter had objectified me just for being a woman and found his use of the word "ravishing" creepy and sleazy. I was mortified to be standing there whilst he said these things to me. Once Peter had finished speaking to Ben on the phone, the meeting then continued for a while longer, before Peter answered another phone call which,

⁵¹⁶ Day 23/pp47-50 (XX Rather).

⁵¹⁷ Waddell 5/[247].

⁵¹⁸ Rather 1.

based on what he was saying, seemed to be about his villa in Spain. I then gestured to Peter that I was leaving and exited the room.

[57] Peter regularly referred to me as the “Iron Lady”. I recall that his use of this phrase began in early 2023, when I attempted to enter the Gillingham site but my face was not recorded on the facial ID system, so I was not able to enter. By chance, Peter arrived at the office at the same time as me, so he used his facial ID to open the door. He then said “come with me” and led me to the development department. Peter said to a member of the development team “take a photo of her so she can enter the building. This is the Iron Lady, don’t you know?”. I thought at this point that it might have been a one-off comment but Peter continued to use this phrase to refer to me. On a later date that I cannot now recall, I said to Peter, “Peter, you know Iron Lady is a reference to Margaret Thatcher. It isn’t a compliment”; he responded with “I know – you rule with an iron fist”, laughed, and banged the table in front of him with his hand. Peter would continue to refer to me as “Iron Lady”, including in meetings with external stakeholders, such as with people from Oodle Car Finance and MotoNovo Finance, who seemed taken aback when Peter used this phrase.

[58] Peter knew my name but he regularly referred to me in this way. I felt that this was because Peter thought I might have similar traits to Margaret Thatcher, such as being regimented; however, I also felt that he called me this simply because I am a woman. In a male-dominated industry like the motor trade industry, it is already very difficult to prove your mettle. I felt that the use of the nickname “Iron Lady” undermined me at work and made me doubt what I was achieving. I had told Peter on several occasions that I did not find his use of that phrase complimentary, but Peter did not seem to care and continued anyway.

843. Ms Rather was cross-examined on the basis that these were light-hearted comments of no account. She did not accept this.⁵¹⁹

KKK.5.2. Evidence of Mr Waddell⁵²⁰

844. Mr Waddell substantially accepted the facts as stated by Ms Rather, but sought to place them into context:⁵²¹

[217] I have always struggled with names. I give people nicknames to help me remember them. I called Ms Rather the “Iron Lady” because I thought she was like Margaret Thatcher – efficient, ruthless and got things done. I meant it in a good way. It was a compliment. I have seen that Ms Rather said to Mr Siddall that she told me that she did not like the “Iron Lady” nickname. I do not accept this. If Ms Rather had ever told me that she did not like the nickname, I would have changed it.

[218] I cannot remember the exact words from the conversation with Ms Rather in early 2024. I might have said to Ms Rather, “nice scarf”. Something I have always done is comment on people’s clothes to make them feel better about themselves. I might say “nice tie” or “nice suit” or “nice dress”. I do it to both men and women. Nobody ever told me they did not like it or that I should not do it. If they had, I would have done my best not to do so in the future.

⁵¹⁹ Day 23/pp54-56 (XX Rather).

⁵²⁰ There was also a CEA Notice from Mr Goodwin in support. On questions like this, such evidence has relatively little weight, but I have taken it into account.

⁵²¹ Waddell 5.

[219] I cannot remember saying that Ms Rather looked “absolutely ravishing” or making a comment about a “secret admirer”. One thing I did not say is that we paid Ms Rather too much. It would have been an unprofessional thing to say, especially with Mr Goodwin on the phone. Ms Rather was also not on a huge salary – £60,000 or something. I may have said something along the lines of “if you work hard and get more bonuses, you can get another scarf”. But I never said we paid her too much.

[220] The whole time we were chatting, we were laughing and joking. Ms Rather was laughing and joking as well. That was how we were. I cannot remember what we were talking about — maybe figures, or moaning about compliance at Enfield. If Ms Rather had said to me, “don’t ever say that”, I would have said “I’m very sorry you’ve taken it badly. I was only trying to make you feel good. I won’t do it again”.

KKK.5.3. Conclusion on the facts

845. In terms of the facts, the accounts largely coincide. What matters is tone and context and perception. Such matters are considered in the general conclusions regarding all of the Incidents below.

KKK.6. Incident No 21 (“bend you over a desk”)

KKK.6.1. Evidence of Ms Rather

846. Ms Rather describes this Incident in her statement. It occurred a few days before Mr Waddell’s suspension on 7 March 2024 at a meeting in Mr Waddell’s office at BIG’s Gillingham headquarters:⁵²²

[65] I was sat in Peter’s office along with Neil Hodson and Stewart Ford. Peter was sat at his desk; I was sat to Peter’s left and Stewart and Neil were sat to Peter’s right. Josh Comrey, who is in the project development team at BIG, was also there; however, since Josh is a quiet and softly-spoken person, I cannot recall whether Josh attended the meeting remotely via video-call or if he was in Peter’s office. There may also have been other people at this meeting but, given how long ago this happened, I cannot be sure who. About half-way through this meeting, out of the blue, Peter turned on me, made direct eye contact with me and said to me something along the lines of “Iron Lady, do you know why I’ve got this desk?” He then proceeded to show me how his desk could change its height and move up and down using some buttons. I just said something like “that’s cool, Peter” in reply. At this point, I thought Peter was going to, as he often would, show off his new purchase, which he would do for his new yacht, car or similar. He then repeated his question: “Do you know why?” He then raised the desk, gestured to one of the doors of his office and said something along the lines of “you enter through here, I’m going to fuck you backwards over the table from here and then you exit that way” and pointed to the other door of his office.

[66] Having now refreshed my memory [referring to the transcript of her interview with Mr Siddall, KC], I recall that, when I spoke about Mr Nick Siddall about this incident, as part of the investigation into Peter’s conduct at the time, I recalled that Peter said something along the lines of “bend you over the desk”. Given how long ago this happened, I am now not 100% sure of the precise words Peter used. However, as far as I can recall now, the wording I have used above (“...fuck you backwards over the table from here...”) are the words I now recall Peter saying to me.

⁵²² Rather 1.

[67] I expect that Peter must have thought it was a good joke, since he was laughing as he said this. However, I recall looking over to Neil and Stewart in disbelief. The conversation then continued about car loans but, mentally, I was still shocked and was thinking about what Peter had just said to me.

[68] Luckily, a few minutes after Peter made this comment, his partner, Gabby, and his son came into the office, so I was able to slide out of the room as quickly as possible and left. Afterwards, I told Tom Clarke and Sophie Hazell separately about what Peter had said to me and how it affected me, particularly as a practising Muslim. They both seemed disgusted by it, and so was I.

KKK.6.2. Evidence of Mr Waddell

847. Mr Waddell's evidence on this point was as follows:⁵²³

[243] I had a mechanical desk in my office at the Head Office that went up and down. Mr Ruprah organised it for me to help with my arthritis. It was very expensive – Mr Ruprah said it cost something like £50,000. I could not believe that a desk could cost so much. I was fascinated by it. This is why I talked about it so often. My office was also close to the fire exit. There was a green emergency exit sign above the doorway to my office, near the desk.

[244] When people came into my office, I would tell them about the desk and demonstrate it going up and down. It was something I would talk about to try and help staff relax while they were in my office. I know it can be daunting to go into the CEO's office. To try and make staff laugh, I would tell them about a saying of mine which I called "the three Fs – fucked, fired and leaving through the fire exit". If the desk was up, you were fired and would be leaving through the fire exit. This was because if the desk was up and I was standing, it meant we would not be sitting down and it would be a short meeting. On the other hand, if the desk is down, it means we will be sitting around (maybe having a jaffa cake or whatever treat I had bought for the staff that day) and everything is fine. I would put the desk up if I was firing someone. It became well-known at BIG that it was bad news if you came into my office and the desk was up and I was standing. I would often use the "the Fs" as an "icebreaker" when staff came into my office. Staff would always laugh with me when I told them about it. I never said to anyone that I would "bend them over my desk or anything like that. The things I said were never sexual.

[245] I was only trying to make people laugh and build a culture where everyone jokes and laughs and enjoys themselves. I did not mean to offend staff when I explained the "three Fs".

KKK.6.3. Conclusion on the facts

848. It is clear that in terms of the actual facts, there is remarkably little difference between Ms Rather's account and Mr Waddell's. Indeed, Mr Waddell's account is revealing. The joke – even on Mr Waddell's sanitised and de-sexualised version – is an oppressive and bullying one. Instead of conveying a culture where everyone "jokes and laughs and enjoys themselves", I see an account of a culture where employees are one step away from summary dismissal, communicated by desk elevation.

⁵²³ Waddell 5.

849. His “three F’s” “joke” is all about him being in control, and others being subordinate to him. That, of course, is the essence of the employer-employee relationship: the employee is a “human resource”. But that only means the employer is under a duty to deal with their employee in a respectful way (consistent with the relationship of trust and confidence), whilst both sides understand that the basic function of the employee is to deliver value (defined in the contract of employment) to the employer.
850. In terms of tone and sexualised content of the Incident, where there is disagreement, I prefer the evidence of Ms Rather. It seems to me that Mr Waddell’s account is a sanitised one, that does not ring true when considering the totality of the evidence.
851. I heard other evidence on this point. It is worth referring to the evidence of Ms Butler, which was confirmatory of Ms Rather’s evidence on a number of fronts.

KKK.7. Ms Butler

852. Ms Harriet Butler (“Ms Butler”) was a straightforward and matter-of-fact witness, who gave her evidence clearly and so far as she could tried to tell an objective truth.
853. She is – relevantly – highly qualified with a degree in physics and a BCS international diploma in business analysis. She worked as BIG’s program manager between September 2022 and December 2025, when she left to pursue a better job. She was recruited into BIG by Mr Ford and Mr Hodson and was thus a part of the Freshstream “team” within BIG.
854. She recognised that how she worked as project manager was inconsistent with Mr Waddell’s way of working, which was clearly generative of tension:⁵²⁴

[14] My role was therefore more like that of a project manager, and this was because of the way that its then Chief Executive Officer, Peter Waddell, worked and the management style at BIG. Peter worked in a more reactive, spontaneous way that did not lend itself to program management. By that I mean that program management usually involves working with a senior leadership team who are looking at ways of coordinating how different initiatives within the business fit together. Peter’s way of working was very different as it was focussed on immediate issues such as what was happening on a particular day.

855. It is plain that Ms Butler did not enjoy working with Mr Waddell: his autocratic, command and control one-minute-to-the next approach grated.⁵²⁵ Ms Butler also commented on the fact that “[a]t the various meetings that I attended, there was often somebody in Peter’s firing line. That person was usually one of Alex Maby, Nick Laphorne or Andrew Holness. Occasionally, it was Ben Goodwin. They became Peter’s target. He singled them out and had a go at them in front of everyone, usually criticising something they had done, hadn’t done or were proposing to do. I know that Peter was partially deaf because he wore hearing aids, but the way Peter communicated when he was having a go at them was not

⁵²⁴ Butler 1.

⁵²⁵ Butler 1/[17]-[19].

just loud, it was also aggressive. By that I meant that he would shout and swear in an angry manner”.

856. I accept this evidence, but with a couple of nuanced qualifications. The people Ms Butler identified were in large part the Freshstream “team” (the exceptions, without trying to be exhaustive or indeed conclusive, appearing to be Mr Goodwin and Mr Laphorne). I anticipate that from October 2023 there would have been particular antipathy between Mr Waddell and the Freshstream “placements”. I would not accept that Mr Waddell was inventing shortcomings or was losing his temper for the sake of it. Mr Waddell did not strike me as manipulative *in this way*. As I have noted, he had an obsessive attention to detail and by October 2023 was on a short fuse. I am not accepting that Mr Waddell would consciously pick someone to have a go at for no reason at all. I accept that there would have been cultural friction between Mr Waddell and the Freshstream team. But Mr Waddell was a master of the business with an obsessive attention to detail and a determination to get his own way.
857. None of this is any excuse for bullying – which is where all this material leads. But it is relevant context.
858. I must also take into account that there was a degree of antipathy in Ms Butler’s statement, which colours her evidence.⁵²⁶

When Peter was having a go at someone everyone else in the meeting had to witness their humiliation. People, including me, typically sat and looked at their hands when this happened and waited for it to be over. Everyone seemed scared to put themselves in Peter’s firing line. Occasionally, the person being targeted would try to speak up for themselves and put their point forward but Peter would never respond in a way that he showed he was listening. Instead, he would keep having a go at them until they stopped trying.

859. If, by this, it is intended to suggest that every meeting was characterised by this sort of behaviour, then I reject that evidence. I find that Mr Waddell had a temper and could lose it, particularly in the face of what he perceived as incompetence or a lack of commitment. But Mr Waddell was perfectly capable of overspeaking and behaving in an overbearing manner. The exchanges in the course of his cross-examination (including exchanges with me) show that it was difficult to keep Mr Waddell’s answers short and relevant, and overspeaking was rife. I bear in mind that this was in the formal setting of a courtroom, where the court received (from all) the respect due to it. Things would have been far worse in meetings where Mr Waddell was on home ground. It is, of course, a fine line between dominating a meeting, being overbearing and bullying.
860. Ms Butler notes that instead of shouting or swearing, Mr Waddell controlled her – or tried to – using nicknames.⁵²⁷
- ...not long after I joined BIG, Peter started referring to me as “the secretary” and he would say things to Stewart like “You’ve brought your secretary today”. I remember that this went on for about three months and happened every time he saw me in a

⁵²⁶ Butler 1/[22].

⁵²⁷ Butler 1/[24].

meeting. I found it very undermining and belittling. Being a secretary is classically associated with women in an administrative role so I felt that this was a gendered and disparaging phrase...

861. Mr Ford raised this with Mr Waddell when he (Mr Waddell) was in a good mood, and told him that this nickname was not appropriate. Rather than address Ms Butler by her name, Mr Waddell switched to referring to Ms Butler as “boss lady”.⁵²⁸

862. Turning to Ms Butler’s evidence on Incident No 21, it was as follows:⁵²⁹

[31] On or around the week commencing 11 December 2023, Stewart, Josh Comery, the head of development, and I attended a meeting with Peter in his office at the head office. Someone else, maybe Neil Hodson, may also have been there, but I can’t now remember for certain. I cannot remember specifically what we were discussing, but I remember that Stewart, Josh and I were trying to explain to Peter why something happened. In response, Peter said he wanted the particular issue fixed within three days.

[32] During the conversation, Stewart, Josh and I were all sat opposite Peter at his standing desk. Peter went on to talk about the desk. He asked Josh if he could see the desk, to which Josh answered yes. Peter then asked Josh whether he liked the desk, to which Josh answered yes. Peter then said, “it goes up and down and if you don’t do this for me by Friday, and it’s not delivered, I am going to bend you over this desk and I’m going to fuck you up the arse” (or similar).

[33] When I heard Peter say this, I was in disbelief that he thought it was ok to behave in that way, but none of us pulled Peter up on what he had said. Instead, we wrapped up the meeting and left the office. My coping mechanism in this, and similar situations, was to try not to inflame the situation and to get out of it as quickly as possible.

863. Obviously, this was a different occasion to the one recounted by Ms Rather, but the similarities with Ms Rather’s Iron Lady account are clear.

KKK.8. Conclusions: Incident Nos 5, 22, 4 and 21

864. Ms Rather was the target (sometimes with others) of Mr Waddell’s conduct. Whilst it might be said that some Incidents, viewed on their own, are too trivial to constitute a grievance (e.g., Incident No 22), that would be to disregard the cumulative effect of all of these Incidents over a short period of time.

865. There was sexualised content in Mr Waddell’s language (“fuck you up the arse”, like his “suck my cock” to Ms Murphy), which equates more to bullying in order to achieve control, but there was clearly a sexualised aspect to many of his comments/conduct that brings section 26 harassment into play also. I have found that Mr Waddell has a controlling and obsessive character so far as BIG (or anything else that interested him) was concerned. Sometimes his need for control involved bullying, but there were also subtler forms of control – nicknames and sexualised (but not, I think, racialised) language and conduct. The nicknames he deployed in relation to Ms Rather and Ms Butler were not because he could not remember their names, still less were they compliments.

⁵²⁸ Butler 1/[25].

⁵²⁹ Butler 1.

They were ironic labels, intended to put down the holders of jobs that Mr Waddell thought a waste of money.

866. Taken as a whole, I find that Mr Waddell was guilty of bullying behaviour as I have defined it *and* harassment of Ms Rather. Together or separately – but I consider them together – they constituted gross misconduct.

LLL. THE EVENTS OF DECEMBER 2023

LLL.1. Introduction

867. The November meeting of the Freshstream Investment Committee made a clear negative decision that the Call Option was not to be exercised unless rewritten in Freshstream’s favour. It was recognised that Mr Waddell was not going to accede to a renegotiation, and that this was not a realistic solution.⁵³⁰
868. That left Freshstream with the problem of what to do consequent upon the negative decision it had taken. The immediate effect of the decision was that Freshstream had no means of obtaining control of BIG unless it deployed the Freshstream Minority Rights. Step-In Rights had already been considered, and Freshstream knew that it had the right to Step-In at this time. The question was whether this would achieve Freshstream’s objective of control through means other than the Call Option.

LLL.3. Mr Gradassi’s email of 8 December 2023

869. In an email dated 8 December 2023 to Mr Fardad, Mr Gradassi commented “[w]e can remove him as CEO even in case of financial underperformance? Thought it was in case of bad actor event”. The email chain of which this was part attached a draft IC memo for the 14 December 2023 Freshstream Investment Committee meeting then under consideration.⁵³¹ Mr Gradassi’s views were explored in cross-examination:⁵³²

Q (Mr Gourgey, KC) So you were drawing attention to the fact that, on your understanding, post-step-in, Mr Waddell would still be CEO and that if you wanted to remove him, it would need to be a bad actor event?

A (Mr Gradassi) So, my understanding at the time was if we were going to step-in, which was discussed at the time as one-option, it was an option [we] wanted to present to IC, Peter would still be the CEO, and my understanding is, at the time, that resorting to the bad actor event meant that he’d no longer be CEO. But I don’t think it was discussed at the time in the way I understand your question that we wanted to remove Pete as CEO. It was a general question on the legal documentation to make sure that, as we

⁵³⁰ The evidence of Mr McLain was compelling on this: see, e.g., Day 18/p64 (XX McLain), but this was the general view of the Freshstream witnesses.

⁵³¹ Day 18/p5 (XX Gradassi).

⁵³² Day 18/pp5-6 (XX Gradassi)

presented the options to investment committee, we were clear about the pros and cons of each option.

870. Mr Gradassi's email was perceptive. Although the exercise of Step-In Rights gave Freshstream control of BIG's board, it kept Mr Waddell in place as CEO. Given that one of the key problems was staff relations with Mr Waddell, this was sub-optimal from Freshstream's point of view.

LLL.3. Keeping matters under wraps

871. In an internal Freshstream email dated 11 December 2023, Mr Gradassi stated:

Please see attached a short note to discuss next steps regarding the call option exercise for BIG. Given some of the topics we'd like to cover (including Pete's behaviour), we think it makes sense to discuss the note in a restricted group (i.e., IC + deal team only) at the end of the team meeting tomorrow.

872. Before turning to the memo, it is worth noting (i) that Mr Waddell's conduct was a live topic, (ii) that it was related (in some way) to the exercise of the Call Option and (iii) that the matter was sensitive, and so needed careful (confidential) handling.

873. Later on in this email chain, Mr Gradassi said:

Adam, to your question on why we don't suggest step-in immediately, probably one to discuss live. We had some wording in the pack initially but thought we would rather discuss live.

874. This emphasis on secrecy is telling. The events of December 2023 show (as I will describe) the adoption by Freshstream of a plan to take control of BIG using all of the Freshstream Minority Rights as well as the rights that BIG had under the Waddell Service Agreement.

875. There were thus three sets of rights in play: (i) Step-In rights; (ii) BIG's right to dismiss Mr Waddell under the terms of the Service Agreement; and (iii) MDE Rights. There was, inevitably, some confusion between (ii) and (iii), which is unsurprising, but the fact that rights under (ii) were exercisable by BIG and not by Freshstream meant that certain persons within BIG had to be integrated with Freshstream actors.

LLL.4. Witness recollection and the importance of documents

876. The present recollections that the relevant witnesses had of their thinking at this time were uniformly poor. I am not going to speculate as to the reasons for this, but this means that the documentary evidence (in any event important) assumes particular importance. As was the usual practice of the Freshstream Investment Committee, its considerations were unrecorded in any document.

877. The best document to start with is the IC Memo, delivered for consideration at the Freshstream Investment Committee meeting on 14 December 2023. This is to take the document out of strict chronological order: but, as Mr Gradassi's

email makes clear, drafts of this document were circulating well before 14 December 2023.

LLL.5. The IC Memo

878. This IC memo was entitled “Big Motoring World – Call Option Exercise”. The executive summary recorded that “[t]he purpose of this memo is to get [Investment Committee] feedback on next steps regarding the call option exercise”. That is stating the purpose of the meeting too narrowly. The decision regarding the Call Option exercise had already been made. What was really under consideration was what to do next, given that decision.

879. The memo states, as regards communications with Mr Waddell:

We promised Pete last month we would come back to him with a proposal on the call option. We already communicated to him it would not be to exercise the option on agreed terms (i.e. purchase of a 35% stake for £72m). The deal team has already taken note of IC’s concerns around leveraging the business in a volatile macro environment.

Again, this is no more than articulating the position Freshstream had put themselves in, raising (but not on the face of it resolving) the difficult issue of what to do now. I am not sure whether Mr Waddell was aware, at this time, that the only option on the table was a *re-negotiated* option. The point is academic: Mr Waddell wanted the Call Option exercised according to its terms, and that Freshstream were not prepared to do.

880. The memo then set out three “scenarios”, each presenting a “different risk profile which we’d like to discuss with IC”. These were as follows:

- Option 1 – we put forward an offer to Pete on terms in line with what is presented in this memo. It is likely that Pete will reject this offer as it represents a significant deviation from the terms of the call option and what he said he would be willing to accept. We would welcome IC feedback on amendments to that structure.

- Option 2 – we communicate to Pete that we are not exercising the call option, and leave the door open for a further negotiation down the line. We would set out clear boundaries for his behaviour and should he cross them we would step in

- Option 3 – we communicate to Pete that we are not exercising the call option, and we step in to take effective control of the business. We do not believe that this is the best course of action, but set it out for completeness

881. Mr Fardad was asked about Option 2.⁵³³

Q (Mr Gourgey, KC) So this appears to be the status quo being maintained, but clear boundaries for his behaviour?

A (Mr Fardad) Yes.

Q (Mr Gourgey, KC) And the behaviour that is being referred to there is what behaviour in particular?

⁵³³ Day 15/pp119-120 (XX Fardad).

- A (Mr Fardad)** The information rights, the pressure on the team, things like that.
- Q (Mr Gourgey, KC)** So it included pressure on the team?
- A (Mr Fardad)** Yes.
- Q (Mr Gourgey, KC)** And did it include bullying?
- A (Mr Fardad)** Yes, I mean, I guess to the extent you defined it as bullying, yes.
- Q (Mr Gourgey, KC)** Racist conduct?
- A (Mr Fardad)** We weren't aware of racist conduct at that stage.
- Q (Mr Gourgey, KC)** Okay. You weren't aware of any racist conduct at that stage?
- A (Mr Fardad)** No.
- Q (Mr Gourgey, KC)** Sexual misconduct?
- A (Mr Fardad)** No.
- Q (Mr Gourgey, KC)** You weren't aware of any of that at that stage?
- A (Mr Fardad)** No.

As the narrative shows, a number of Incidents had occurred by this stage, including some involving Mr Vaughan.

882. Option 2 is a clear articulation of what BIG (through Mr Vaughan, as chair) and Freshstream should have been doing for months, not because it was in Freshstream's interests, but because it was in the interests of BIG's employees and in the interests of BIG because of BIG's obligations to those same employees. The existence of Step-In Rights at this time was a positive advantage: it could either be used as a threat (which is how Option 2 was framed) or actually deployed in which control over the board of BIG would pivot to Freshstream and Mr Waddell's power to thwart a disciplinary process against him (to the extent it existed) neutralised.

883. The memo articulated some specific risks associated with Option 2:

Choosing Option 2 (not exercising) will present some risks which IC should be aware of. We believe we can mitigate some, but not all, of these risks.

- *Management disruption* – it's very likely that certain members of the team would leave once they know we are not exercising the call option (e.g. Tom Clarke, the company secretary, Neil Hodson, the CCO). Others will become demotivated and the execution of the VCP plan would be at risk/slow down. Our recommendation here would be to set aside up to £300k to pay out retention bonuses and the deal team will also stay very close to the second-tier management in the coming months

- *Pete's behaviour* – we would like to update the IC live on the most recent developments

- *Call option period expiring* – we only have 15 months before the call option period expires in March 2025. We will need EBITDA to increase materially (> £25m) before having enough comfort on the decision to exercise the call option...

884. Mr Fardad could not assist on what “Pete’s behaviour” was;⁵³⁴ nor could Mr Gradassi.⁵³⁵ However, a clear idea of what Freshstream and BIG are likely to have known is represented by the Incidents that I have described. These Incidents unquestionably involved inappropriate behaviour best characterised as harassment/bullying. Whether this behaviour constituted gross misconduct was far more debateable. It will be noted, that I have concluded that most of the Incidents alleged against Mr Waddell up to this date did not constitute gross misconduct. But, without question, there were matters that should – long before this point in time – have resulted in some form of disciplinary process against Mr Waddell, hopefully *not* resulting in dismissal but in imposing limits on someone who was (for all his serious faults) the gifted and duly appointed CEO of BIG, as well as its majority shareholder.

885. Even at this point, Option 2 was not taken forward. Indeed. None of the three options mooted in the IC Memo were taken forward. Mr Fardad was pressed as to what in fact was done:⁵³⁶

Q (Mr Gourgey, KC) So what was your alternative plan?

A (Mr Fardad) It was set out at option 2 here, which is if – given that we delay it, we would have a conversation with Pete and say if the behaviour did not change, we would step in. That would have been the plan.

Q (Mr Gourgey, KC) But you didn’t follow that plan through, did you, in December, when you spoke to Mr Waddell?

A (Mr Fardad) Not in December, no. It was right before Christmas and it wasn’t something that I would immediately go and say.

886. Mr Fardad *was* able to find the time to communicate with Mr Waddell about the non-exercise of the Call Option. An email reporting on this conversation says:

I did not talk about behaviour to him at this stage. Will let him absorb the message from today and raise the behaviour point later.

887. The decision not to discuss limits to Mr Waddell’s behaviour thus appears to have been deliberate.

888. Mr Fardad’s explanation for the limited communication to Mr Waddell was as follows:⁵³⁷

Q (Mr Gourgey, KC) Why didn’t you discuss behaviour with him then?

A (Mr Fardad) Because he’d just received some – this news, which he would have been disappointed with, and I thought to go further than that, right before Christmas, it was unnecessary and not going to be constructive. And I wanted some time to think through how to deliver the message as well.

⁵³⁴ Day 15/p121 (XX Fardad).

⁵³⁵ Day 18/p7 (XX Gradassi).

⁵³⁶ Day 15/pp122ff (XX Fardad).

⁵³⁷ Day 15/pp124-125 (XX Fardad).

- Q (Mr Gourhey, KC)** When did you complete your thinking on that?
- A (Mr Fardad)** It was Christmas after this, so it wasn't something that I did immediately.
- Q (Mr Gourgey, KC)** In fact, you never delivered the message, did you?
- A (Mr Fardad)** No. Events took over in January...
- Q (Mr Gourgey, KC)** March 2024.
- A (Mr Fardad)** Because, before that date, between basically 1 January and 7 March, we decided we are going to step in. It isn't a debate of actually telling him he needs to change his behaviour or else we'll step in. The events in January and his reaction to the call option as well, but it changed the whole discussion. It was no longer that message to be delivered.
- Q (Mr Gourgey, KC)** When did you go away for Christmas, roughly?
- A (Mr Fardad)** I don't recollect.
- Q (Mr Gourgey, KC)** Why didn't you deliver the message at the beginning of January?
- A (Mr Fardad)** Because, I believe, when we came back in January, one of the events that happened very quickly very early in January was all of a sudden we had this liability to pay for Available Cars, which Peter told us he will deal with NatWest and we should stay out of it, and all of a sudden the company had a £12m or so liability in six weeks' time to pay the vendor of Available Cars £12m, for which it had no sources of funds other than the shareholders. So my focus shifted to that. And my concern around Pete also shifted to that.
- Q (Mr Gourgey, KC)** So just the fact that you were having this concern about NatWest meant you didn't have the bandwidth to deliver this message to Mr Waddell? Is that what you're saying?
- A (Mr Fardad)** It's no small thing. I took that liability quite seriously. That could put the company, in six weeks' time, into administration. That was a hard liability the company had. So, yes, that took all of my attention, and trying to have that conversation with Pete in that time would not have been wise.

889. I do not accept that events other than this issue overtook Mr Fardad's attention. The Available Cars issue – as I have described – was borne out of the dysfunctional relationship between Freshstream and Mr Waddell, and although there were a number of other important issues affecting BIG at the turn of the year, these did not distract Freshstream (nor, for that matter, persons in BIG) from this matter. As will be seen when we come to the events of 2024, considerable Freshstream and BIG time was devoted to the problem that was Mr Waddell. The decision not to speak to Mr Waddell about his behaviour was, from December 2023 at the latest, deliberate in the sense that Freshstream were not pursuing Option 2.

LLL.6. The conclusion of the Freshstream Investment Committee meeting

890. It is important to be clear that no conclusion of the Freshstream Investment Committee was published. My findings are based on the events of December 2023 and what happened (as I will describe) in 2024.
891. I conclude that at the meeting of the Freshstream Investment Committee on 14 December 2023 a decision was taken that Option 2 would *not* be implemented and that Mr Waddell's behaviour would be allowed to continue, unchecked, until Freshstream was in a position to cause Mr Waddell's Exclusion from BIG. At this stage, Freshstream was indifferent as to whether Mr Waddell exited BIG completely or whether he was accorded a face-saving role as "chair" without power or influence. This was a fourth option not articulated (for understandable reasons since it might very well involve prejudging a disciplinary process against Mr Waddell). I make this finding despite the denials of those involved i.e. Mr Clarke, Mr Fardad, Mr Vaughan, Mr McLain. I refer to it as "Option 4", making clear that it was never articulated in these terms by Freshstream in any document that I have seen.
892. Mr Gradassi also denied the existence of this fourth option. Mr Gradassi's denials, were honestly made, but mistaken and inaccurate. Mr Gradassi – as a junior member of Freshstream – appears to have been left out of the execution of what I am terming Option 4. His denials were genuine – but simply wrong.

LLL.7. Mr Vaughan's list of "issues" with Mr Waddell

LLL7.1. The list

893. On 13 December 2023, Mr Vaughan sent an email entitled "Pete" to Mr Fardad:

Afternoon

Sometimes the benefit of distance is perspective! See the attached notes of where I think we've ended up with Pete. I always knew he'd be difficult but it's easy to lose track of how ridiculous things have become.

Nothing you don't know about but there has to be a major risk of implosion without action.

894. The list had to be sent by email, because Mr Fardad could not open it. Mr Fardad forwarded this without comment to the Freshstream team. This email stated:

See below. Far from complete list, but I had to stop somewhere!

L

Pete

Bullied 2 directors out of office

Interim CFO close to leaving because of bullying and his conduct in front of bank (multiple c word use, etc)

Treats SMT with complete contempt

Total lack of joined up planning both operational and financial

Repeated acts of bullying sexism and racism

Doesn't listen to anyone

Restricting information to the board

Non-disclosure of extensive criminal record to the FCA and FS

Complete non-engagement with FS initiatives

Ignoring any controls e.g. around capex

All members of SMT at risk of leaving

Ignored law e.g. around TUPE

Budgeting is close to meaningless and miles behind investment thesis

Reputation makes recruitment very difficult and threatens our ability to acquire businesses

LV has multiple examples of key team members in tears because of conduct

His "brand" will make exit highly challenging.

895. This list evinces a clear understanding of the problems that Mr Waddell was causing. These problems can be categorised under two heads. First, the problems arising out of the tension between Freshstream and Mr Waddell as to the future development of BIG's business. These tensions had come to the fore since Freshstream's failure to exercise the Call Option in October and Mr Waddell's 1 October 2023 communication.
896. Secondly, Mr Vaughan obviously knew of a number of the Incidents. He was, as has been described, a witness giving primary evidence in the case of a number of Incidents: e.g., Incidents Nos 1 and 2. He also knew of Mr Waddell's role in the departure of Mr Maby (Incident No 12) and Mr Holness (not an Incident, but the "bullied 2 directors out of office" reference can only be to Mr Maby and Mr Holness).
897. The list also shows signs of Mr Clarke's efforts. The failure to disclose the full list of Mr Waddell's crimes has already been described. Mr Clarke became aware of this in circumstances he describes in Clarke 1/[29]. He ensured that the FCA was put into the picture as regards the true extent of Mr Waddell's previous convictions, which was obviously the right thing to do. What he did not do is engage with Mr Waddell, as CEO, in handling this problem.⁵³⁸

...Pete's historic convictions had not been disclosed. I did not want an application to go to the FCA with information on it which I knew to be inaccurate. In the autumn of

⁵³⁸ Clarke 1/[29].

2023, I had a sensitive discussion with Autoprotect to flag the issue. All the disclosures to the FCA were made by Autoprotect in December 2023. I did not involve Pete in making the disclosures, which I felt was the right decision because my role as Company Secretary meant I had a duty to ensure the company did not disclose incorrect information...

898. Whilst Mr Clarke was right that his duty to BIG required disclosure to the FCA, this was also a problem for Mr Waddell as CEO which required proactive handling: Mr Waddell had made a false disclosure. Instead, Mr Clarke appears to have communicated the matter to Mr Vaughan, who incorporated the point in his list. There was no discussion with Mr Waddell over a matter that concerned him.
899. It is to be inferred that around November/December 2023, Mr Clarke and Mr Vaughan were turning their mind to Mr Waddell's infractions, with a view to compiling a list of them.
900. Apart from compiling the list, Mr Vaughan did nothing, save to communicate the list to Mr Fardad. Mr Vaughan said that the matters listed were all matters of which Freshstream were already aware.⁵³⁹
901. Mr Vaughan's evidence on how the list came to be compiled was as follows:⁵⁴⁰

I was on holiday from around 4 to 15 December 2023. During my holiday, I really reflected on where we were with BIG. Stephenson Harwood have referred me to an email that I sent to Reza on 13 December 2023 where I share a note entitled "Pete", recording a list of things I had identified as being completely unacceptable. I needed Freshstream to understand that action was necessary. I shared that view with Reza, but I provided Freshstream with no opinion as to what form that action should take.

902. Mr Vaughan denied that the Freshstream Investment Committee meeting, due to take place on the day following his email, was the prompt for his list.⁵⁴¹ I do not accept this evidence. Whilst Mr Vaughan was probably not, at this stage, in the loop as regards Option 4, he was still doing all he could to indicate the problems that Mr Waddell was causing within BIG, so as to emphasise the importance of removing Mr Waddell.⁵⁴²

Q (Mr Gourgey, KC) I suggest to you that you were keen to get Mr Waddell out of the CEO position and you were sending this email to Freshstream in the hope that they would get on with that?

A (Mr Vaughan) I was keen to resolve the issues, is what I was keen to do.

Q (Mr Gourgey, KC) And those issues, in your mind, would only be resolved by Mr Waddell being removed as CEO? That's right, isn't it?

⁵³⁹ Day 19/p107 (XX Vaughan).

⁵⁴⁰ Vaughan 3/[71].

⁵⁴¹ Day 19/p109 (XX Vaughan).

⁵⁴² Day 19/pp110-111 (XX Vaughan).

- A (Mr Vaughan)** I didn't really care how it was resolved, but it needed to be resolved and I couldn't think of many other options, that's true.
- Q (Mr Gourgey, KC)** You couldn't think of any other options, could you, than his removal as CEO?
- A (Mr Vaughan)** Well, maybe some confrontation at that point might have had some effect, but I wasn't hopeful.
- Q (Mr Gourgey, KC)** But – yes, because your evidence previously, as I've understood it, is you considered whether you could do anything in advance of the exercise of the option and decided you couldn't, yes?
- A (Mr Vaughan)** Correct.
- Q (Mr Gourgey, KC)** So, if the option wasn't going to be exercised, the only route in your mind must have been Mr Waddell being ousted as CEO? That's right, isn't it?
- A (Mr Vaughan)** Well, either that or there needed to be major behaviour change, and I didn't believe in the second point.
- Q (Mr Gourgey, KC)** I suggest to you that you were keen to get Mr Waddell out because you were very keen to get this CEO job?
- A (Mr Vaughan)** Absolutely not.

LLL.7.2. Mr Fardad's knowledge of the "issues" on Mr Vaughan's list

903. Mr Fardad's written evidence about Mr Vaughan's list was as follows (Fardad 4).⁵⁴³

[224] Although I knew of Pete's difficult and aggressive behaviour in the business at the time we were considering step-in in January and early February 2024, I did not recall finding out about the MDE allegations until late February/early March 2024. Having now seen an email I received from Laurence on 13 December 2023, I can see that Laurence had brought to my attention that he had heard about allegations of racism, bullying and sexism in December 2023.

[225] The email raised lots of different issues and didn't really explain them other than at a high level. It was about how Pete was running the business and how he treated staff. I remember thinking that we needed to think about what we could do about it other than step-in. Unless employees were willing to make a statement or come out and speak up, we couldn't speak to Pete about it or do something about it.

[226] Had I heard of specific instances of this happening with people at that time in December 2023, I would definitely have looked into it and done something about it. Laurence was looking into this matter in the business since he was on the ground and receiving complaints from employees.

[227] I remember that when we were considering step-in, we looped Tom and Laurence into the process and our considerations so that it would not come as a shock to the business and we could manage it properly. Laurence was in the business a few days a week and it was important for him to be in the loop so that when step-in did take place,

⁵⁴³ Fardad 4.

he was aware of the process and our plans. He needed to know and share his views. When we were talking about step-in with Laurence, I remember that Adam said the company will need to get its own lawyers and that's when Stephenson Harwood were instructed by Laurence on behalf of the company.

[228] It was in the context of these considerations that I had discussions with Laurence about the allegations made against Pete and the complaints received by the company's HR team. I don't remember the specifics of the discussions about these matters but I remember asking Laurence to look into this further and put together the allegations being made so that we could consider how to deal with it. The company was also being advised by Stephenson Harwood at the time (over which privilege is not waived). I remember receiving a list of allegations against Pete from Tom Clarke and whilst I did not remember the date, I can now see the email was sent on 1 March 2024.

904. Again, I do not accept this evidence: Mr Vaughan sent the list to Mr Fardad, and Mr Fardad told Mr Vaughan that he could not open it, whereupon Mr Vaughan resent it. Mr Fardad was subjectively aware of the list, and I believe Mr Vaughan when he says that Mr Fardad was aware of the substance of the contents of this list before he sent it. That is obviously true (independently of Mr Vaughan's evidence) of some of the Incidents (e.g., Mr Maby).
905. The reason for Mr Fardad's denial of knowledge is that it represented an explanation for why Mr Fardad did nothing to move against Mr Waddell prior to March 2024. Yet this is inconsistent with Mr Fardad's subjective knowledge and his avowed pursuit of option 2 (which is predicated on a knowledge of Mr Waddell's infractions).
906. Mr Fardad would have had a detailed knowledge of Mr Waddell's conduct at BIG. He might not have regarded it as sufficiently serious as to require action, but that does not equate to a lack of knowledge.
907. Mr Fardad claimed he was not expecting this list. It came out of the blue:⁵⁴⁴

Q (Mr Gourgey, KC) You had a list of conduct here, didn't you, and there are a number of items?

A (Mr Fardad) Mm Hm

Q (Mr Gourgey, KC) You did not ask for any details at all, did you?

A (Mr Fardad) No, I didn't have a conversation with Laurence about this list afterwards.

Q (Mr Gourgey, KC) Were you expecting this list?

A (Mr Fardad) No.

Q (Mr Gourgey, KC) Are you sure that you didn't ask Laurence to put together a list of conduct/behaviour in respect of Mr Waddell, Mr Fardad?

A (Mr Fardad) I don't recollect doing so, no.

Q (Mr Gourgey, KC) Wasn't there discussion at the IC meeting in relation to Mr Waddell's behaviour?

⁵⁴⁴ Day 15/pp162ff (XX Fardad).

- A (Mr Fardad)** On 14 December?
- Q (Mr Gourgey, KC)** Yes.
- A (Mr Fardad)** Yes.
- Q (Mr Gourgey, KC)** Yes? So surely this list, which came in the day before, must have been discussed with the IC, Mr Fardad?
- A (Mr Fardad)** I'm sure I brought some of the topics up, but I can't – I don't recollect, to be honest.
- Q (Mr Gourgey, KC)** I mean, you're talking here about the behaviour of the CEO, the business in which you've invested £70m? Yes?
- A (Mr Fardad)** Yes.
- Q (Mr Gourgey, KC)** You seem to have a remarkably sketchy recollection of this discussion about his behaviour on 14 December? Was it because you weren't interested in his behaviour or is there another reason why you can't recollect detail?
- A (Mr Fardad)** We were interested in his behaviour. I think there's enough emails and discussion around that to demonstrate that we were concerned about the behaviour of Pete. What I don't recollect is the exact discussion around it on 14th in that IC debate, when there was a whole bunch of other stuff we were discussing during that IC also.

908. It is noteworthy that Mr Fardad did not deny bringing the list before the Freshstream Investment Committee, relying instead on an absence of recollection. It would have been very surprising if (i) the list had not been compiled for the meeting and (ii) the list had not been shown to the meeting. I conclude that both in fact occurred.

LLL.7.3. Evidence of Mr Gradassi regarding Mr Vaughan's list

909. Mr Gradassi saw Mr Vaughan's list also.⁵⁴⁵ He was asked about it:⁵⁴⁶

- Q (Mr Gourgey, KC)** Did the discussion about Mr Waddell's behaviour at the IC meeting include discussion of the conduct which is the subject of this list?
- A (Mr Gradassi)** On the overall conduct, yes, but I don't remember specific discussions about specific items in that list.
- Q (Mr Gourgey, KC)** You noted this list of misconduct at the time, didn't you, Mr Gradassi?
- A (Mr Gradassi)** Yes, I remember seeing it, yes.
- Q (Mr Gourgey, KC)** Yes.
- And as a director of the, I will just call it the BIG companies, you must have been concerned to see, for example, the reference to "Repeated acts of bullying, sexism and racism".

⁵⁴⁵ Day 18/p7 (XX Gradassi).

⁵⁴⁶ Day 18/pp8-9 (XX Gradassi).

A (Mr Gradassi) Yes, I was concerned. It's fair to say when – it was in a period where – it was just around the IC memo discussion and so it was very fast paced, we received lots of emails at the time. The list contained things like “doesn't listen to anyone”, you know, “His brand will make exit highly challenging”. There are a few things in there which I am aware of and feel like, yes, we know Pete is difficult, so its possible at the time this line item in that email is not picked up because it was in the context of very intense discussion on the numbers and the call option.

910. Although Mr Gradassi considered conduct that amounted to bullying, sexism and racism as very serious,⁵⁴⁷ he appears to have made nothing of Mr Vaughan's list:⁵⁴⁸

Q (Mr Gourgey, KC) And you regarded, at this time, conduct that amounted to bullying, sexism and racism, as very serious, didn't you?

A (Mr Gradassi) Yes, in general, yes, those are serious conduct, yes.

Q (Mr Gourgey, KC) But you did nothing, at this time, to investigate further, for example, asking Mr Vaughan for details of these repeated acts of bullying, sexism and racism, did you?

A (Mr Gradassi) As a person, no, we didn't. My focus, again, at this time, was chiefly on the call option exercise and the next steps.

Q (Mr Gourgey, KC) And to the best of your knowledge, no one else at Freshstream was seeking to get details of these allegations of bullying, sexism and racism, were they?

A (Gradassi) I don't remember, I don't know whether this list was discussed separately, but I can't remember myself...

Q (Mr Gourgey, KC) Yes, I asked to the best of your knowledge?

A (Mr Gradassi) To the best of my knowledge, no.

LLL.7.4. Evidence of Mr McLain regarding Mr Vaughan's list

911. Mr McLain was also asked about the list:⁵⁴⁹

Q (Mr Gourgey, KC) What steps did you take to find out details from – further details from Mr Vaughan of this misconduct?

A (Mr McLain) I never spoke with – Reza is the one who talked to Laurence. And so I asked Reza: can we learn more about these things? In the back of my mind, I should reiterate, at every step of the way, I took legal advice. The first thing I did every time an issue came up was take legal advice on it. And so I'm mindful of, as we spoke this morning, not going too far. But I was aware of the provisions of the MDE clause and almost all of these

⁵⁴⁷ Day 18/p12 (XX Gradassi).

⁵⁴⁸ Day 18/pp12-13 (XX Gradassi).

⁵⁴⁹ Day 18/p130ff (XX McLain).

things on this list, although they're terrible, there's very little in here that actually satisfies all the prongs of that test. So, having seen this, I don't remember, as I said to you, but I'm sure I would have asked Reza: can you tell me more about those things?

Q (Mr Gourgey, KC) You mentioned the MDE clause. Did you understand that bullying fell outside of the MDE clause?

A (Mr McLain) At this point, I knew...I'm not an employment expert.

Q (Mr Gourgey, KC) No, no, no.

A (Mr McLain) So I knew it was incredibly narrowly drafted as to which types of breach of law needed to be invoked. So I didn't know exactly what was enough and what was not enough.

Q (Mr Gourgey, KC) But on behalf of the Investor, minority shareholder in this business, were you not concerned about any inappropriate conduct...

A (Mr McLain) ...Very concerned...

Q (Mr Gourgey, KC) ...which – let me just finish – which might affect the welfare of employees and/or the reputation of the business?

A (Mr McLain) Yes, we were very concerned about the conduct.

Q (Mr Gourgey, KC) So, it wouldn't just be limited, your interest wouldn't just have been limited to whether a particular matter was an MDE matter, it would have extended to matters concerning the welfare of the staff, wouldn't it?

A (Mr McLain) If I can break that in half. Our concern, absolutely, we were very concerned about the staff, about the business, about its – these are quite grave allegations here.⁵⁵⁰ The other half is what we can do about it. And as the Investor, what we could do about it was incredibly limited. We had two very blunt tools at our disposal, which were the step-in rights, which had to do with financial underperformance of the business, and the MDE events, which were the bad actor provisions.

The company had other remedies at its disposal that were not available to us, in theory, in the terms of there's an employment contract, there's an employee handbook, et cetera.

However, the board of all of these companies was controlled by Mr Waddell, so the practical remedies of the company were less. It wasn't really directly my problem as director of the investor. But from the Investor standpoint, I only had two tools.

Q (Marcus Smith J) Well, did you hear Mr Fardad's evidence yesterday, about the concern he had that an employee might bring

⁵⁵⁰ Mr McLain later asserted that Freshstream's "first interest is in ensuring that misbehaviour, mistreatment of employees, of staff, of customers, of regulators, of counterparties, if proven, if true, stopped, because that behaviour's not acceptable. That's the first interest."

an action or make a complaint after the event arising out of this sort of stuff?

A (Mr McLain)

Yes.

Q (Marcus Smith J)

I quite understand that you, as the investor, did not have any contractual rights. But on your grid⁵⁵¹ – and please don't tell me the content of the grid – but on the grid that you had in early October, was there consideration in the abstract as to what remedies lay to BIG as against the Chief Executive Officer pursuant to the contract of service that he had entered into with BIG?

A (Mr McLain)

I'm pausing to make sure I answer the right question and I don't go beyond the bounds...No, that was not part of the grid. The grid was describing to me what rights I had as the investor.

...

I personally considered, later in January, the employment contract.⁵⁵² But investor, at that time, we did not seek legal advice about company remedies, because, as a practical matter, I didn't ask for them, because I knew there was no way to invoke any of those because Pete controlled the board.

Q (Marcus Smith J)

Well, you see, this document emanates from the chair...of BIG about the CEO.

Isn't the natural response to say:

"This is your problem, you are the chair, you've got to sort it out because it has serious effects on employees. Secondly, if you don't take steps to ensure that there's no repetition and these matters are resolved, there are consequential reputational questions. We're paying you, or rather you are being paid by BIG, quite a lot of money to be the executive or non-executive chair. Over to you, but we need this sorted."

I mean, that seems to me to be a reaction that might be indicated by an email such as this?

A (Mr McLain)

The challenge with that is that the chair's ability to do anything about it, in the governance framework that applied, was effectively zero. So, yes, it would have been wonderful if the company had acted in response to these things, that would have made my life a lot easier, but I don't think there was anything that they could do. Realistically, the – the board of the employee – the BidCo board convenes to try to investigate, suspend,

⁵⁵¹ Mr McLain had – in conjunction with his lawyers – created a "grid" setting out the Freshstream Minority Rights so that he could understand Freshstream's options. This was a privileged document, which was not before the Court. But it did originate out of Mr McLain's evidence, and is here referenced.

⁵⁵² Evidence repeated by Mr McLain on Day 18/pp14-141 (XX McLain). Mr McLain's evidence was that he specifically considered clause 16 of the Service Agreement, but in January 2024, not December 2023.

terminate the CEO, the resolution is not going to pass because Mr Waddell controls the board.

912. Mr McLain clearly had thought quite hard about the Waddell Service Agreement, and although the advice he got was in January 2024, he did think about the Waddell Service Agreement in December 2023.⁵⁵³ However, Mr McLain at no point took this up with Mr Vaughan.⁵⁵⁴ Although he did ask Mr Fardad to look into these allegations, he could not recollect Mr Fardad coming back with anything until early March 2024.⁵⁵⁵

Q (Marcus Smith J)

My understanding of your evidence earlier was that you didn't think that either 16.1 or 16.6 would operate because they would require a resolution of the board and Mr Waddell would be able to stop that resolution and thus stop the company effectively – if we take a hypothetical case – acting in its absolute discretion to choose to terminate the appointment of Mr Waddell?

Now, I don't want you to invade privilege and it may very well be that you'll say you're not an employment lawyer and you don't know the answer. But I think it's only right that this be put to you, because I anticipate it may be something that we'll be debating in the course of closing and I think it's important, given that you've made the point, and indeed Mr Fardad made the same point yesterday, that we have your evidence on this.

A (Mr McLain)

Yes, is the short answer to what you said. I remember very clearly reading this agreement again in January. So we were talking about mid-December, when I was away, a minute ago. And when I read it, before I went and got advice, which I did right away after reading it, but when I read it I understood that the company had the termination rights that are set forth in clause 16, "Termination", and I thought about how, practically, the company could invoke those rights, which person would do which thing. And I struggled to see practically how the company, when its controlled by Mr Waddell, could in fact invoke those provisions.

So the short answer to your question is, yes, my understanding was that the company would only be able to do this with the board – in my experience, when a CEO is terminated, the board makes that determination because that's the body that sits above the CEO that has the power to do it. So that was, yes, my understanding.

...

Q (Mr Gourgey, KC)

In your consideration of that, did you take into account that Mr Waddell, as the director of Topco or Bidco or both, would have been conflicted on a resolution for his removal?

⁵⁵³ Day 18/pp140ff (XX McLain).

⁵⁵⁴ Day 18/pp135-136 (XX McLain).

⁵⁵⁵ Day 18/p136 (XX McLain).

- A (Mr McLain)** I can't remember. I mean, is he conflicted? Technically, yes. So how does that work? We show up, and Reza and Laurence say "Hey, Pete, we think we're going to sack you, would you mind recusing yourself from this meeting?" I just don't see that ever being a realistic scenario in practice.
- Q (Mr Gourgey, KC)** Did you consider whether that would be the legal consequence of a resolution which concerned Mr Waddell?
- A (Mr McLain)** I don't think I got that far into the detail...I will say he has got the possibility to appoint seven directors to every group company. If we put it on the notice of the meeting: here is the agenda: suspension and termination of the CEO. He's got a bunch of ways to frustrate that meeting. He doesn't have to show up, and then there's no quorum. He can appoint six other people that he appoints that aren't him that don't have to be – there's so many ways he can frustrate the board from invoking that power. So I didn't spend a great deal of time thinking about it in detail because I just felt it was practically dead in the water.
- Q (Mr Gourgey, KC)** And no formal warning was given to him by Mr Vaughan as chairman, was it?
- A (Mr McLain)** I don't know. I don't think so.
- Q (Mr Gourgey, KC)** In fact, there wasn't a single communication, was there, after 13 December '23 of any form with Mr Waddell from Freshstream about his conduct, was there?
- A (Mr McLain)** Not to my knowledge.

LLL.7.5. Conclusions

913. Mr Vaughan's list was clearly considered by Mr McLain and Mr Gradassi. Although he denied it, I find that Mr Fardad also gave it careful consideration. It would be very surprising had it not been considered by the Freshstream Investment Committee as evidence of *prima facie* serious misconduct by Mr Waddell; and I find that it was.
914. Option 2 – as well as the requirements of trust and confidence to BIG's workforce – required that these concerns be taken forward with Mr Waddell in what would have been a difficult conversation along the lines of "change your behaviour dramatically or we step in". Yet nothing of the sort occurred:⁵⁵⁶

- Q (Mr Gourgey, KC)** ...And there's no records, are there, that have been disclosed, at least, of Freshstream, on the WhatsApp chat or in emails saying:
"We think it would be counterproductive to approach Mr Waddell about his conduct now, because he's just going

⁵⁵⁶ Day 18/p143 (XX McLain).

to make life extremely difficult for whoever he thinks made the complaint?”

There isn’t an email or a WhatsApp along those lines, is there?

A (Mr McLain)

No, I can’t remember one...

Q (Mr Gourgey, KC)

No.

A (Mr McLain)

...no, I mean, what we did was start to systematically investigate whether we could invoke either of the two contractual rights that we had.

915. Mr Gradassi was unable to explain why none of the options put before the Freshstream Investment Committee was taken forward:⁵⁵⁷

Q (Marcus Smith J)

Mr Gradassi, you said, in answer to an earlier question, that one of your objectives at around this time, and I’m not just talking December, I’m talking October, November, December, that sort of period, was to make sure you presented to the IC all of the options? Do you remember that answer?

A (Mr Gradassi)

Yes.

Q (Marcus Smith J)

Now, “options” means, in my book, a choice of [at least] two potential options to go down?

A (Mr Gradassi)

Mm Hm.

Q (Marcus Smith J)

And it seems to me that, at this time, there were a number of options which the IC probably would have wanted to have known about.

The first one, most obviously, is the option or choice to exercise the Call Option, and we’ve seen a lot of discussion there. So that was one of the things that you’d want to make sure the IC had all the data they needed in order to decide what to do.

A (Mr Gradassi)

Yes.

Q (Marcus Smith J)

The second option or choice was to step-in or not to step-in. Now, was it the understanding of those in the deal group and in the IC that you had the right to step-in, it was simply a question of whether you should or should not exercise it?

A (Mr Gradassi)

I don’t think it was all together, I think at the time the focus was we had collected numbers on the business, we had noted the concerns around management pressure, and we realised: okay, well, its better to take control to stabilise the business, so can we exercise the call option or not?

In early December, mid-December, when this discussion happens, step-in is viewed as we could do it to control or stabilise the business, but its not actively considered. The focus is really – because Pete was waiting for us to decide

⁵⁵⁷ Day 18/pp9ff (XX Gradassi).

whether we would exercise or not. And so the focus of the IC, at this point in time, was option or not, but we had to lay out for completeness, because – for the investment committee members to say, okay, were are not exercising the Call Option, but they are concerned about the management. We had to lay out for completeness the step in, but it was not at the same time, if that’s helpful.

Q (Marcus Smith J) That is helpful, but I think what you’re saying is two things. You’re saying the choice to step-in or not to step-in was one which was more theoretical than probable at this time?

A (Mr Gradassi) At this time, correct. Yes, my Lord.

Q (Marcus Smith J) But it was a choice that you could – that the IC could – exercise in the sense that there wasn’t any debate about not being able to step-in, if you chose to do it?

A (Mr Gradassi) I think that, yes, the numbers were bad enough, compared to the original business plan, but theoretically, yes, we were aware that we were in step-in territory as we called it at that time.

Q (Marcus Smith J) Fair enough. That’s helpful. So the third option or choice concerns MDE. At about this time, and I’m talking end of the year, December 2023 now, was the exercise of MDE rights similar to the consideration of step-in rights? In other words, was there a sense that you could exercise your MDE rights because of Mr Waddell’s behaviour, but it was more on the theoretical end rather than the “we’re going to do this” end?

Or was there a sense that you just didn’t have an ability to exercise the MDE rights because Mr Waddell’s conduct just wasn’t serious enough?

A (Mr Gradassi) I would go even further. I don’t think we even thought about MDE at that stage because my understanding, as a non-legal person, was the bar was very, very high to even think about it, and it was not part of the discussions at the time. It was only much later, in January, February, that it was considered, but in early December, an MDE was not even a topic of discussion.

916. It is evident that Mr Gradassi, an honest witness, was ignorant of Option 4. That is because, as the events of 2024 show, he was on the outside of the steps that were taken by Freshstream to implement that option. But Mr McLain, Mr Fardad and Mr Vaughan were all pursuing Option 4 (although this is not the label they would have used).

LLL.8. Post Freshstream Investment Committee discussions

917. There are few documents evidencing the Freshstream internal thinking at this time. One is an email chain containing the following thoughts of Mr de Graauw with Mr Fardad’s comments here rendered in **bold**:

Well done on the first step.

What is your latest thinking on the messaging around his behaviour and our potential step in.

My view/logic is the following:

- There are three possible outcomes
 1. Exercise the option
 2. Not exercise and step in
 - 3 Not exercise and leave Pete in control
- **4 Low chance: same as three, but we convince Pete that in order to sell the business he needs to go up to chairman and Laurence needs to be CEO. To help convince him, we ask one or two advisors to present what IPO/strategic/PE buyers would look at and what drives valuation. There is a chance, albeit small, that Pete agrees to this**
- **5. Low chance: we threaten the step in in order to push him to buy us out (unlikely in 2024 but we should keep this in mind)**
- The first is the best IF we can get solid conviction that we can get our 1.45x return in a short-term exit
 - Depending on the deal we can negotiate with Pete and the expected multiple at exit, we'd need to see a path to 25-30m EBITDA to get there (the structure in the IC note needed 25m and a valuation of 7.5x)
 - I don't think we'll get to that EBITDA run rate in 2024, but if trading starts to improve, I do think there's still hope we can see the path
 - (What do we do about Bristol in the meantime?)⁵⁵⁸ **[we can (i) do it separately to BIG (not my preferred option); (ii) try to convince vendor to transact with BIG; (iii) do it once we have stepped in or exercised call option. In the meantime do other deals (greenfield new sites / expansion of existing sites / vendors that are less picky (eg Available two other sites). Pete will want to do these through a mixture of greed and ego.**
 - There will always be uncertainty around this outcome, but if it feels reasonably probable, I'd rather take that risk than get stuck in the scenarios below
- The third is the worst of the three in my view **[I would agree, and so does Laurence for what its worth]**
 - Pete is not competent to grow the business beyond 20m (he can't retain proper management and business owners won't sell to him)
 - At <20m EBITDA it would take us 8+ years of cash sweeps to get to our 1.45x

⁵⁵⁸ This was another expansion by acquisition on which Mr Waddell was less keen than Freshstream.

- Along the way Pete will probably do everything he can not to pay us (including cooking the books?) **[we have the CFO, but the man is a streetfighter so wouldn't put anything beyond him]**
- So if we think exercising the option is altogether off the table, I agree we should exercise our step-in rights
 - It won't be pretty, but less bad than keeping Pete in control
- ...but as soon as we do, we definitely break the relationship with Pete and lose the chance to negotiate a reasonable deal on the option → Catch 22 **[key question: after we break the relationship by stepping in, how long and how much money will it take him to agree to participate in an exit? If we step in and grow EBITDA to £30m and deliver a buyer at 8x (I think achievable by CY25), he would get a check of roughly £130m (EV = 240, our first out in £110m and assume cash generation would have paid out the debt by then)...would he swallow his pride/sense of revenge and pocket 130m, specially if we give him the alternative of buying us out at 1.45 if he really hates it...I think he would take £130m]**

Personally I would like to keep the option on the table for at least the next 6 months and stay on speaking terms with Pete. **[This will be difficult. Laurence really is keen to get Pete out and argues that the team will not hold together. We may decide it is ok to lose some of the team (speaking to Laurence today, the people getting stick right now are: the BWYC head, general counsel, the CTO and Laurence himself. There will be others...]**

I don't mind threatening him with the step-in rights, but not to the point where it sets us on a path of no return. **[this will be difficult...one to discuss in Jan. We are setting up a meeting in January with Laurence, Neil and Tom to discuss what we should do]**

As discussed, let's find some more time to discuss this.

Don't think there's huge urgency at this stage so can do that in the new year – unless people want to set red lines around his behaviour right now **[not now, January...or after I come back from Vegas in early Feb]**

918. Clearly, the options listed in the memo were not the only ones under consideration. These discussions are no more than a snapshot of some of what would have been discussed within the Freshstream Investment Committee over the course of December.
919. Mr McLain's (necessarily after-the-event) recollection was as follows. His view was that "after 15 December 2023, we concluded that we had to seriously consider stepping in, in order to protect the business. I think there was a general sense that there would be a path to a transition given that everybody wanted a transition to happen. The details of how that was going to happen were totally unclear at that point".⁵⁵⁹ I have already indicated that Step-In in the technical sense had been under consideration for rather longer than this. But if Mr McLain

⁵⁵⁹ Day 18/p82 (XX McLain).

is taken to be referring to a *general* exercise of all available rights against Mr Waddell, then his evidence rings true.

920. Mr McLain also said that in mid-December a negotiated solution with Mr Waddell was being considered:⁵⁶⁰

- Q (Mr Gourgey, KC)** I want to start this session by looking at [McLain 1/[100]. Halfway through that, you say:
“...I remember...in mid-December...Lodewijk sent a long message making the case in favour of step-in.”
You say:
“My view at the time in mid-December was to try and find a negotiated solution to the situation with Pete.”
- A (Mr McLain)** Yes.
- Q (Mr Gourgey, KC)** There was no subsequent attempt, was there, to reach a negotiated solution with Mr Waddell?
- A (Mr McLain)** Correct, no.
- Q (Mr Gourgey, KC)** And in fact it must have been obvious to you that the chance of any – well, I think you almost said it this morning, that the chance of any successful negotiation was probably at around 1%?
- A (Mr McLain)** I didn’t say that
- A (Marcus Smith J)** I think that was Mr Gradassi.
- Q (Mr Gourgey, KC)** Ah, I’m sorry, yes.
- A (Mr McLain)** That was quite different.
- ...
- Q (Mr Gourgey, KC)** The chances of a successful negotiation with Pete were close to zero, weren’t they, at mid-December ’23?
- A (Mr McLain)** On that day, yes. But, as we’ve seen repeatedly with Pete, there are many times – he likes to negotiate, we like to negotiate. On 15 December, I would say the chance was close to zero. It doesn’t mean the chance was going to be close to zero in January or March or June.
- Q (Mr Gourgey, KC)** But, meanwhile, you needed to take steps, didn’t you, to take control of the business, given the problems you were experiencing with Mr Waddell? That’s right, isn’t it?
- A (Mr McLain)** No, it’s not right. We needed to do what I said in [McLain 1/[100]], we needed to explore whether to invoke our step-in rights or not.

That may have been right – but it would have been seen by Freshstream as improbable.

921. Mr de Graauw’s email shows that Freshstream considered all the options in December, but his email is not the last word. As the “war planning” meeting

⁵⁶⁰ Day 18/pp107ff (XX McLain).

shows (considered below), that meeting did not consider options and debate their merits, but focussed on the practicalities of removing Mr Waddell (whether through “promotion” or removal).

922. By this stage, Freshstream’s path was clear. The objective was to get rid of Mr Waddell, using all rights/powers other than the Call Option. What Freshstream ultimately did and did not do are the best indicators of what Freshstream decided at this point in time. Freshstream did not speak to Mr Waddell;⁵⁶¹ they did not in any way seek to draw redlines around Mr Waddell’s behaviour. What Freshstream did do is discussed below.

LLL.9. The Vaughan Consultancy Agreement (18 Dec 2023)

LLL.9.1. Reference to the payment to Mr Vaughan

923. A later message in the same chain containing Mr de Graauw’s thinking is from Mr Gradassi:

On a related note – for good order and as explained in the memo, could we get IC approval to set aside £300k worth of retention bonuses to retain key members of staff? We would like to pay £140k to Laurence in short order.

924. The payment of so large a sum of money can, I find, only have been linked to the decision on Freshstream’s part to pursue Option 4. This would have required assistance from BIG, including in particular Mr Vaughan. The payment was made, under cover of an agreement that will now be considered.

LLL.9.2 The agreement

925. The agreement is dated 19 December 2023 (the “Vaughan Consultancy Agreement:”). It was signed by Mr Vaughan (on behalf of Laurence Vaughan Limited) and by Mr McLain (on behalf of Freshstream). Mr McLain was, as he accepted, an experienced transactional lawyer (in a past life).⁵⁶²
926. The Vaughan Consultancy Agreement provided as follows:

Consultancy Agreement

This letter sets out the terms on which Laurence Vaughan Limited (the “Consultant”) has provided consultancy services to Bluebell Cars Holding Limited (“FS Holdco”).

The Consultant has provided consultancy services (the “Services”) to FS Holdco in connection with the following:

- The investment by FS Holdco into Bluebell Cars Topco Limited;

⁵⁶¹ As Mr Gourgey, KC put to Mr Fardad (Day 15/p151 (XX Fardad)), “[n]one of these options involves or expressly involves warning Peter about his behaviour with a threat to step in”.

⁵⁶² Day 18/p114 (XX McLain).

- Add-on acquisitions contemplated and completed by Bapchild Motoring World (Kent) Limited, including the acquisition of certain assets of Available Cars Limited; and
- Recruitment initiatives and management of staff.

In connection with the Services, a fixed fee of £145,000 (the “Fee”) is payable by FS Holdco to the Consultant in accordance with the terms of this letter.

The Fee will be exclusive of any applicable VAT which will be included as an additional item on any invoice issued by the Consultant in respect of the Fee.

The Fee shall be payable within 30 days upon presentation of the Consultant’s invoice.

The Consultant and FS Holdco are not partners or in any joint venture with each other, and nothing in this matter shall be construed so as to make them such partners or joint venture partners or impose any liability as such on either of them. The Consultant shall perform their duties under this contract as an independent contractor and not as an agent of FS Holdco.

This letter will terminate following payment of the Fees stipulated herein in respect of the Services.

There shall be no third-party beneficiaries to this letter.

Each person signing this letter represents and warrants that (where relevant) the entity for which they are signing has duly authorised this letter and has the authority to sign on behalf of such entity.

LLL.9.3. What services were in fact provided?

927. This was, as all recognised, an agreement between Freshstream and Mr Vaughan acting by way of his corporate vehicle.⁵⁶³ The difficulty with this agreement lies in articulating what, exactly, Mr Vaughan provided for a fee of £145,000 (more than the sum referenced by Mr Gradassi).

LLL.9.4. Evidence of Mr Vaughan

928. Mr Vaughan’s evidence was that he was working well in excess of his contracted hours with BIG under his Service Agreement, and this was simply remuneration for extra work done.⁵⁶⁴ There are two problems with this. First, and least importantly, Mr Vaughan’s Service Agreement stipulated that Mr Vaughan would not be paid for any extra work as chair. Had BIG agreed to pay Mr Vaughan more, this would not have been a problem, whatever the terms of the Service Agreement.

929. The problem is that BIG was not Mr Vaughan’s counterparty under this agreement. Freshstream was, and the transaction was not approved by BIG’s board, or even disclosed to BIG’s board. The second, more fundamental,

⁵⁶³ Mr McLain sought to rely on the distinction (Day 18/p116 (XX McLain)), but (whatever the technical position) the reality was that this was an agreement with Mr Vaughan through his *alter ego* or one-person service company.

⁵⁶⁴ Vaughan 3/[22]; Day 19/pp144ff (XX Vaughan).

problem is that this was an agreement whereby the chair of BIG was accepting a significant amount of money from BIG's minority shareholder, Freshstream, without disclosing this arrangement either to the majority shareholder (PWHL) or (as noted) the board of BIG.

930. It is difficult to avoid the conclusion that this was a secret profit by Mr Vaughan⁵⁶⁵ and to make Mr Vaughan more favourably inclined towards Freshstream.⁵⁶⁶

Q (Marcus Smith J) Leaving on one side the purpose of this agreement that you've been asked about, wouldn't the effect of it, the payment of £145,000 from the Investor to Mr Vaughan's service company have had the effect of Mr Vaughan, I'll put it this way, looking more favourably on the interests of the Investor in the future?

A (Mr McLain) Potentially, yes.

931. Mr Vaughan was asked:⁵⁶⁷

Q (Marcus Smith J) So, in the ordinary course of things, remuneration regarding BIG affairs coming from a third party looks odd? Would you agree?

A (Mr Vaughan) In some respects, yes.

Q (Marcus Smith J) But you didn't think that it was appropriate to ensure that BIG was formally notified of this form of payment?

A (Mr Vaughan) I suppose it depends what you mean by "BIG". I think the only person that wasn't well aware was Mr Waddell, but it was a very unusual set of circumstances where the business was effectively imploding and I was doing a load of extra work. And my position was simple, that I thought it was reasonable to be paid for all the extra time that was being put, put in and it was clear that Mr Waddell was never going to do that. So I raised the issue with Freshstream and they said "No, you're absolutely right, you should be paid", and this is the mechanism they suggested for doing it. I didn't think any more of it than that, really.

Q (Marcus Smith J) Yes. I confess I'm less concerned with the precise mechanism than with the emanation of payment from a party other than BIG.

A (Mr Vaughan) Yes.

Q (Marcus Smith J) I've got two further questions arising out of that.

⁵⁶⁵ When this point arose in closing, Mr McPherson, KC declined to address this, on the basis that it was not an issue in the proceedings. In this he was right, and I am making no finding on any issue in the proceedings. But the question goes to Mr Vaughan's state of mind at this time. For whom was he acting? This question is directly relevant to issues of breach of director's duties that *were* pleaded.

⁵⁶⁶ Day 18/p129 (XX McLain).

⁵⁶⁷ Day 20/pp3ff (XX Vaughan)

One is the concern of perceived bias away from your duty to act in the best interests of BIG. So you're getting money from someone who has, if I can put it brutally, no business in paying you. The perception might be said to be that if there was a divergence in the interests of Freshstream and BIG that – well, the payment would make that divergence apparent or make the conflict of interest apparent?

A (Mr Vaughan)

I understand the point. I'd suggest it's a perceived conflict of interest because, personally, I know that I was working very hard to do the best I possibly could for the company, which was in the interests of all shareholders, and remains the case. You know, and that, I suppose, is one point of comfort I took through this whole difficult situation, was that actually, substantially, Pete and Freshstream's economic interests were pretty closely aligned, actually, so anything that we could do that helped the company was helping both sets of shareholders and that was always my feeling.

Q (Marcus Smith J)

And that was so, even though you knew that Mr Waddell personally would not want you to receive the additional £145,000, in circumstances where – and this is the second factor – he was, through PWHL, the majority shareholder?

A (Mr Vaughan)

Again, I understand the point. But, again, by way of context, this was at a point where Pete was trying to put as much pressure on Freshstream and on me personally as possible, to saying "I want to take you down to one day a month, I want"...he was sending me messages..."You are to spend the weekend in Cannock", which was irrelevant for me to do that, but, you know, it was just his way of putting massive pressure on me. And, you know, I was just trying to stay above it, but it was a very difficult set of circumstances.

932. Mr Vaughan denied that in accepting this payment, he was putting himself in a position of conflict when it came to having regard to the need to act fairly between shareholders:⁵⁶⁸

Absolutely not. I can only reiterate, at all times, I've done my very best to do the best thing for the company, which is in the interests of all the shareholders, and, you know, maybe naively from my perspective, all I was trying to do was get paid for my time and I just went with the mechanism that was presented to me. But it made no difference to my behaviour whatsoever.

⁵⁶⁸ Day 20/p6 (XX Vaughan). At Day 20/pp9-10, Mr Vaughan repeated his denial, but added that had he been paid by BIG, this would effectively have been a payment from Mr Waddell, given his majority interest via PWHL. In this, he ignored the role played by the board, and the protections that exist for minority shareholdings.

LLL.9.5. Evidence of Mr McLain

933. It was put to Mr McLain that no services under the Vaughan Consultancy Agreement were provided to Freshstream. Mr McLain disagreed with this.⁵⁶⁹ Mr McLain also did not accept that these services simply duplicated Mr Vaughan's role as BIG chair.⁵⁷⁰ It is however difficult to relate what Mr Vaughan in fact did to the description of the services he was supposed to have provided under the Consultancy Agreement. Mr McLain sought to answer questions regarding services provided simply by referencing back to the terms of the agreement. That is circular, and was tantamount to not answering the question of what in reality Mr Vaughan was doing for Freshstream.⁵⁷¹
934. The problem is that either Mr Vaughan was being paid by Freshstream for doing his work as chair or he was being paid by Freshstream to advise the minority shareholder in circumstances where his duty was to BIG as a whole. Neither is consistent with his duty as chair and director.
935. In the end, Mr McLain suggested that Mr Vaughan had been giving advice – at the November Freshstream Investment Committee meeting – in relation to BIG's investment in Available Cars.⁵⁷² I disbelieve this evidence. Available Cars was not, on the documentary information before me, a material issue for the Committee, and my conclusion as to what Mr Vaughan contributed to the November meeting was in relation to Mr Waddell's alleged misconduct.
936. Throughout his evidence, Mr McLain was unable to identify what Mr Vaughan was being paid for:⁵⁷³

Q (Mr Gourgey, KC) Well, how much work did he have to do to come to your meeting to present to you?

A (Mr McLain) I don't know.

Q (Mr Gourgey, KC) Well, you paid him £145,000, so you must have had some idea. If it was for services he'd provided as a consultant, you must have had some idea of how much time he'd spent to come to you to do that presentation?

A (Mr McLain) It wasn't just that he came to present to us, it was in relation to the entire acquisition, where he did quite a lot of work, as has been discussed in previous days.

Q (Mr Gourgey, KC) So that was the work he did for BIG?

A (Mr McLain) It benefited everyone, the work that he did.

Q (Mr Gourgey, KC) So it comes to this, that the work he did for BIG as chairman, and you benefited from it as a shareholder in BIG? Is that what it comes to?

⁵⁶⁹ Day 18/p115 (XX McLain).

⁵⁷⁰ Day 18/p116 (XX McLain).

⁵⁷¹ Day 18/p118 (XX McLain).

⁵⁷² Day 18/pp118ff (XX McLain).

⁵⁷³ Day 18/pp123ff (XX McLain).

LLL.9.6. Conclusions

937. The only *past* value that I can identify was provided by Mr Vaughan was his attendance at the November Freshstream Investment Committee meeting.⁵⁷⁴ Whilst I can see no impropriety in the chair of BIG attending a meeting with the minority shareholder in order to inform that shareholder of certain matters, provided the chair is careful in what they say, to be *paid* for such a service is beyond the pale. Furthermore, £145,000 is too much for this, single, attendance.
938. It is impossible to discern any proper basis for this payment to Mr Vaughan. Not only are the services *actually provided* impossible to discern from the evidence, there is no explanation as to how Mr Vaughan properly navigated the duties he owed as chair to BIG.
939. My conclusion is that the payment was an illicit payment from Freshstream to Mr Vaughan to reflect the fact that, behind the scenes, Mr Vaughan was stepping up early as CEO. Or, to put it another way, it was payment for the effort that Mr Vaughan was going to have to put in implementing Option 4, the “war planning” for which began in early 2024.

MMM. “WAR PLANNING”

940. Four days before the Vaughan Consultancy Agreement, in an internal Freshstream email dated 14 December 2023, Mr Fardad said:

James

Pete wants a job description for Laurence. Is there something we have for Chairman?
Can we ask Drax if not?

Other news:

Message on call option delivered to Laurence. He will think about who should be in the war planning session. Current thinking is us, Laurence, Tom and Neil.

Laurence’s view on step in:

- People will not leave, that’s fine
- Competition from him is ok, not a big issue
- Pete will cut his nose to spite his face. He has a track record of doing this. Question if he would do this to BIG given his economic interest.
- We need to move quickly, otherwise we will lose people.
- He will think who we need to pay a little something in order to keep them. Let’s get Laurence’s invoice paid. When can we do this?

Will call DC and Pete today to say we are not exercising the call option.

⁵⁷⁴ Day 18/pp119 (XX McLain).

We should not expect much cooperation from Pete after today (e.g. MIP share buyback)

941. Most of the witnesses asserted that “war planning” was a poor choice of words. It was not. It accurately captured the fact that Freshstream and Mr Waddell were actively⁵⁷⁵ in opposition to one another:⁵⁷⁶

Q (Mr Gourgey, KC) Well, it’s your terminology, “war planning”, isn’t it, Mr Fardad?

A (Mr Fardad) Mm-hm... Yes.

Q (Mr Gourgey, KC) Or was it the words Mr Vaughan gave to you?

A (Mr Fardad) No, it was probably my terminology.

Q (Mr Gourgey, KC) Right.
And it was a war where you, Freshstream, Mr Vaughan and Mr Clarke are on one side, and Mr Waddell was on the other? That’s right, isn’t it?

A (Mr Fardad) Yes.

Q (Mr Gourgey, KC) And was Mr Hodson also on your side? It refers to “Laurence, Tom and Neil”? Was Mr Hodson also involved in the war?

A (Mr Fardad) He would have been on – yes, I mean he would have been one of the people that would have come under pressure from Pete, so yes.

Q (Mr Gourgey, KC) Mr Vaughan, Mr Clarke and Mr Hodson were the three people who formed the [BIG] Investigation Committee following the investigation notice of 7 March. That’s right, isn’t it?

A (Mr Fardad) Yes.

Q (Mr Gourgey, KC) And you’d already decided by this stage Mr Fardad, that however you were going to do it, whether by agreement or otherwise, Mr Waddell had to be replaced as soon as possible by Mr Vaughan as CEO? That’s right, isn’t it?

A (Mr Fardad) No. No, I don’t think that’s right, because this was planning of – I believe our thinking then was, when we deliver the message to Pete that his behaviour needs to change otherwise we would step in, then we need to plan for his reaction to that message. But very quickly after this we went into January and then we were in step-in territory anyway.

942. I do not accept this evidence: I have found that the decision at the Freshstream Investment Committee was to pursue the undocumented Option 4. The steps taken thereafter were consistent with this: Mr Waddell was not spoken to; a team within BIG was identified who were hostile to Mr Waddell; a meeting

⁵⁷⁵ At least so far as Freshstream was concerned. Mr Waddell remained in ignorance. “War planning” was apposite.

⁵⁷⁶ Day 15/pp132-133 (XX Fardad)

planning for the events that eventually took place on 7 March 2024 began; and the payment of Mr Vaughan’s invoice arranged for.⁵⁷⁷

943. It would be wrong to suggest that the events of March 2024 were fully planned out at this time. Working out exactly what to do was the point of the “planning”. The objective of replacing Mr Waddell with Mr Vaughan as CEO was decided. There was going to be no conversation with Mr Waddell about his behaviour with a threat of step-in because of the risk that Mr Waddell would actually change his behaviour and make his removal harder.

944. Mr McLain – who, with Mr Fardad, was most involved on the Freshstream side (the BIG protagonists being mainly Mr Vaughan and Mr Clarke) dismissed the idea of a “shared” or common Freshstream view as wrong.⁵⁷⁸

...references to “Freshstream think...everyone had different views: there wasn’t a shared Freshstream view at this point in time. And the other one was around what is the plan, you know, 17 steps into the future. The way I approached this is the way I approach everything, quite formalistically, one step at a time. So people thought about all the different decision trees and the paths of what might happen, but the only time we actually make a decision is what the very next step is.

So what Laurence was thinking, what Reza thought that Laurence was saying when he sent this email, don’t really know.

945. I accept this, up to a point. Planning is evolutionary, and a decision tree setting out all possible options from a given starting point would be complex. But, once one descends down a particular branch of this decision tree, one is committed. The combination of non-exercise of the Call Option with Freshstream’s desire to control BIG was a step that committed Freshstream down a particular course. There was then the choice of trying to work with Mr Waddell as CEO – which would involve *persuading* him of Freshstream’s plans for BIG and *telling* him to change his behaviour – or getting rid of him as CEO. That decision, which grew out of the non-exercise of the Call Option, was made in December 2023, and fleshed out – much as Mr McLain describes – in the following months.

946. Mr Vaughan agreed that a meeting had been discussed:⁵⁷⁹

Q (Mr Gourgey, KC) And that’s right, isn’t it, that you had discussed with Mr Fardad, on this call on 14 December, setting up a “war planning session”?

A (Mr Vaughan) I don’t think I had heard of the expression “war planning session”, which I wouldn’t use myself, until this email. But yes, the concept of a planning session, yes.

Q (Mr Gourgey, KC) Well, yes, the concept of a “war planning session”. In other words, a planning session which involves planning against – by one side, against another side. That’s what you were discussing?

⁵⁷⁷ The Vaughan Consultancy Agreement was after the event.

⁵⁷⁸ Day 18/p112 (XX McLain).

⁵⁷⁹ Day 19/p135-136.

- A (Mr Vaughan)** I think – yes, broadly yes. I think what Freshstream are saying is they wanted to plan for all scenarios and this looked like the most likely by this point.
- Q (Marcus Smith J)** But these scenarios were essentially adversarial?
- A (Mr Vaughan)** Yes, it’s right. I should explain that, you know, through this whole period, not just myself, but other people, like Tom and Neil, felt in an incredibly difficult position between essentially what was turning into two feuding shareholders, and we were trying to sort of take a path down the middle. And from my point of view, my main driver in all of this was to do the right thing for the company and that very much remained the case.
- Q (Mr Gourgey, KC)** So feuding between two shareholders, that’s Freshstream and Mr Waddell, yes?
- A (Mr Vaughan)** Yes.
- Q (Mr Gourgey, KC)** And you were taking the side of Freshstream in this adversarial contest, weren’t you.
- A (Mr Vaughan)** I wouldn’t characterise it like that. I was just trying to be truthful about what was going on and, you know, my ideal solution was, here, for Pete to get what he wanted, which was the option exercise. You know, so I hoped there would be a friendly resolution for everybody. Because, in particular, the last thing I wanted was lots of stuff like this, where we’ve ended today, washing dirty laundry in public, which was not going to be good for the company.

947. The parties to the “war planning” sought to keep what they were planning as secret as possible:

- Q (Mr Gourgey, KC)** In the event, was Neil Hodson involved in the war planning?
- A (Mr Vaughan)** He was consulted, but I honestly can’t remember now.
- Q (Mr Gourgey, KC)** So he was made aware of this planning going on when it started in January ’24? Is that your evidence?
- A (Mr Vaughan)** I’m just trying to remember. So, January ’24...I think he probably knew there was something going on, but I honestly can’t remember what exactly was said to him.
- Q (Mr Gourgey, KC)** Right.
Who did you tell in your senior management team, let’s say in January 2024, about the planning that was going on?
- A (Mr Vaughan)** As few people as possible.
- Q (Mr Gourgey)** Yes, okay. But could you tell me who?
- A (Mr Vaughan)** No, because I can’t remember, but I think it was essentially Tom and Neil.

NNN. INVOLVEMENT OF MR GRADASSI

948. One question important to the evaluation of Mr Gradassi's evidence is how involved he was in the "war planning" and the steps taken thereafter:⁵⁸⁰

Q (Marcus Smith J) Mr Gradassi, is it possible that you were deliberately not included in the war planning, whatever that might mean, exercise that may or may not have been going on?

In other words, looking at this email...it's not clear whether you are going to be part of the war planning group or not?

The way I read this is not?

A (Mr Gradassi) It's possible that I was. , because Reza says, "us", so "us" can mean -- I mean, it's Reza, James, myself, Alex, Adam and Victoria. So "us" means Freshstream, but it doesn't mean I'm in it, but I may be in it, but I'm -- yeah, it's possible that I'm in that session, but it's possible that I'm not, as well.

Q (Marcus Smith J) Well, that's what I want to explore, because it seems to me, and obviously recollection is hard, and you're very fairly saying you don't recall things, but could it be that you are not recalling this sort of meeting because you were on the outside, not on the inside? Or do you think it's more likely that you were involved, it's just you can't remember the detail?

A (Mr Gradassi) I would say the base case may be that I've been involved as a number 2 on the deal chain, but it's also possible, because we are a number of people, that we divided and conquered, if I may say, in terms of, you know, "We focus on that, and Gilles, you focus on other things". These two scenarios are equally plausible.

949. I consider that Mr Gradassi was "out" and not "in". Freshstream would have wanted to keep the war planning tight. Subsequent documentation allocates particular jobs to particular people, and these people do not include Mr Gradassi. This would explain why Mr Gradassi was so shocked when he saw Mr Clarke's list in early March 2024 (as to which below).

Part IV(ix): Implementation of "Option 4" – January to March 2024

OOO. INCIDENT NO 19: REMOVAL OF PLAY EQUIPMENT (AT THE TIME OF COMPLETION OF THE AVAILABLE CARS ACQUISITION)

950. Mr Waddell's evidence was as follows:⁵⁸¹

[287] When we bought the Leeds and Cannock sites from Available Cars, they came with play areas. These were more like a scaffold with poles than play areas. They were nothing fancy. We decided to get rid of the play areas because people were bringing in their kids to play on them but were not even looking at cars. The play areas also

⁵⁸⁰ Day 18/pp18-19 (XX Gradassi).

⁵⁸¹ Waddell 5.

presented a health and safety issue. I asked for one of the two play areas to be brought to my house so I could give it to a cheerleading charity I support called Vista Twisters. But they could not take it because of health and safety issues. The play area is still at my house. Mr Fardad knew about this. Everyone did. We also tried to donate the Cannock play area, but no one would take it because of the same health and safety issues. I think it ended up in the skip.

[288] Last year, some furniture of mine from the BIG Head Office was delivered to my house by James Rumble, who was the Transport Manager for BWYC, and two other men. When they came, I asked them if they wanted to take the play area back to BIG given their lorry was empty. Mr Rumble went and phoned Mr. Clarke. He came back and said that Mr Clarke had told him that the company did not want the play area. This allegation demonstrates to me how far the Company was going to try and suggest I was harming the business.

951. As the cross-examination of Mr Waddell shows, there was a great deal of factual controversy surrounding this Incident.⁵⁸² In particular, I have little or no evidence on the following points: (i) Was it in the interests of BIG to have the play equipment removed from the Leeds and Cannock site? (ii) If so, what was the most efficient, economical, way of disposing of them? (iii) What happened to the Cannock play area – did it end up in a skip? (iv) Did Mr Waddell ever have any intention of giving the Leeds play area to a charity (Vista Twisters).
952. Mr Waddell’s evidence does not enable me to answer any of these questions satisfactorily, and none of the defendants adduced any evidence material to the point. Mr Rumble did give evidence on his (former) role at BIG as transport manager, his relationship with Mr Waddell and his evidence to Mr Siddall, KC.
953. It is clear that Mr James Rumble (“Mr Rumble”) got on with Mr Waddell. Doubtless that was because Mr Waddell could see that Mr Rumble was performing what he (Mr Waddell) regarded as a useful service to BIG (unlike, say, compliance). It is worth noting Mr Rumble’s positive evidence about Mr Waddell, because it is important not to lose sight of Mr Waddell’s competence in the business. That being said, nothing that Mr Rumble said persuaded me that the other aspects of Mr Waddell’s character and behaviour were not as I have described them in this Judgment.⁵⁸³

[11] Peter is very hands on. He knows every detail of the business - he knows all the ins and outs. Unlike other CEOs I have dealt with at other large companies, Peter was very agile. BIG was not a huge ship that took a long time to change direction. If Peter could be persuaded to make a significant change to how we did things, we would get it implemented quickly.

[12] Peter is a very direct person, and can be demanding. He has high standards. Perhaps some people interpret this as rudeness, but I never did. He held people accountable, he wanted direct answers to his questions. I have been in the workforce long enough to understand that, generally speaking, your managers and the senior people at a business will only be annoyed with you if you are not doing what they think you should be doing. Peter was no different. You would see, especially at the Head Office, that if people knew Peter was coming in to visit that day they would really lift

⁵⁸² Day 8/pp41ff (XX Waddell).

⁵⁸³ Rumble 1.

their standards, try to lock in and get as much work done as possible. I think you need that in a big business.

[13] I never felt that Peter was a bully. Absolutely not. Peter was very hard working and had high standards and expectations for others to do the same. Some people did not like that and would get nervous about meeting his expectations. If things were going wrong, Peter would want to know why, and would want to know what the plan was to fix them. He would ask direct questions...I've never seen him give anyone the hairdryer treatment – shouting and screaming for no reason...

The words “for no reason” at the end of this quotation are obviously significant.

954. Mr Rumble commented on Mr Waddell’s obsessiveness and the rudeness that could emerge out of this⁵⁸⁴ and his use of nicknames.⁵⁸⁵
955. I accept Mr Rumble’s evidence as presenting the view of someone who generally saw the “acceptable” face of Mr Waddell. As I have already noted, this does not change my views as to Mr Waddell’s capacity to behave badly, nor my findings on the specific Incidents considered elsewhere in this Judgment.
956. Mr Rumble was interviewed by Mr Siddall, KC through the agency of Mr Clarke:⁵⁸⁶

[19] Tom Clarke had heard about the WhatsApp group and was asking me about it. This would have been in mid-March 2024. Tom then asked me whether I would be willing to speak to an investigator (an outside party who I think he said was going to be a barrister) about Peter. I told Tom I did not know why that would be necessary because I had nothing bad to say about Peter. I think Tom knew that I had a good relationship with Peter.

[20] Tom told me that the investigator would want to talk to me about the removal of a children’s climbing frame from Leeds, and the delivery of that play area to Peter’s home. He asked me to remember the dates on which that climbing frame was moved, and how much it would have cost the business to move the climbing frame. I then sent Tom all of this information by either email or text. I felt as though Tom was priming me to answer any questions about this issue in a negative way – that he wanted me to go away and think about all of these specific points before speaking to the investigator, to make it look like this was some huge issue when it really was not. I felt that Tom was trying to make out that Peter had stolen the climbing frame. Peter is not exactly short of cash so there would have been no need for him to steal a climbing frame.

[21] It seemed off to me that Tom had given me such a clear steer before I spoke to the investigator. It appeared that Tom knew the questions I was going to be asked. I did not understand why Tom seemed to know the questions that this external investigator, as a party from outside of the business, was going to ask me. I also thought that if Tom had all the details that he thought he needed to persuade someone that there was something wrong about Peter taking the climbing frame (because I had sent those details to him), it did not seem like he needed me specifically to go and speak to the barrister but I felt as though I had to play along at the time. I knew that Tom was aware

⁵⁸⁴ Rumble 1/[15].

⁵⁸⁵ Rumble 1/[16].

⁵⁸⁶ Rumble 1.

that I liked Peter, and I could feel that the culture in the business immediately after Peter was pushed out was very anti Peter, meaning it could be risky for me to not do what I was asked we were told explicitly that we were not to have any communication with Peter...

957. Mr Siddall, KC heard evidence about the costs of removing the play equipment from Leeds (although not as regards Cannock), but not from Mr Waddell. Mr Siddall, KC concluded that this was a breach of fiduciary duty, indeed, theft – on the part of Mr Waddell. The Siddall Final MDE Report states:

[257] Plainly this incident raised a concerning story as regards [Mr Waddell] and his willingness to misuse [BIG's] property for his own ends. I consider that the allegation disclosed a breach of fiduciary duty on the part of [Mr Waddell]. It further displayed arguable conversion and perhaps theft of [BIG's] property (again, subject to [Mr Waddell's] state of mind).

958. Mr Siddall, KC thus found the facts of gross misconduct, but concluded that these did not amount to an MDE. I agree with the latter conclusion, but am unable to agree with Mr Siddall's conclusions on the facts. That is doubtless because of the curated way in which the evidence was presented to him. It is clear to me however, that unless the questions I have set out at [951] can be answered on the balance of probabilities against Mr Waddell, this Incident is not made out on the facts.
959. I conclude that there is no misconduct on the part of Mr Waddell in the case of this Incident.

PPP. ISSUES WITH BIG'S BUSINESS (END 2023, BEGINNING 2024)

960. A number of issues arose in relation to adverse effects on BIG's business. One of these was a dramatic downward revaluation of BIG's stock of cars, bigger than had ever previously occurred at the end of 2023 (and relatedly how Mr Vaughan had re-adjusted these figures after taking over as CEO).
961. Another concerned BIG's cash flow, and ability to complete on the Available Cars deal. In early January 2024, there was an issue with BIG's cash flow and BIG hitting the limits of its overdraft facilities. Mr Waddell's view was that this was an annual phenomenon, and that it was all a storm in a teacup. He expressed himself in forthright ("...please behave yourself") terms, which offended Mr Gradassi, who emailed Mr Fardad:

Why is he behaving like this? I won't accept to be insulted.

962. It is unnecessary for me to consider these issues in any detail, although all of the parties sought to make use of them: Mr Waddell contended that the revaluation showed unfairly prejudicial conduct on the part of Mr Vaughan and a willingness on his (Mr Vaughan's part) to mislead the court at an interlocutory hearing; Mr Vaughan contended that these events showed just how precarious the business was.
963. These are all matters collateral to the issues I have to decide (and a number of issues were abandoned). Had I been obliged to decide these points, I would have

needed to hear substantially more evidence as to BIG's financial operation, and I did not hear any evidence along these lines. These points (to the extent they were maintained, and whichever party was maintaining them) all fall to be rejected as not supported by the evidence that I heard.

QQQ. INCIDENT NO 4: COMMENT ABOUT MS RATHER ("SHE LOOKS ABSOLUTELY RAVISHING") WHILST ON THE TELEPHONE WITH MR GOODWIN, AND COMMENTING TO HER "I HAVE GOT YOUR SECRET ADMIRER ON THE PHONE") (JANUARY 2024)

964. I have dealt with this Incident. Chronologically, this is when Incident No 4 occurred.

RRR. THE WAR PLANNING MEETING (JANUARY 2024)

RRR.1. Mr Potter's email

965. The best evidence of what was discussed at the meeting is contained in an email compiled by Mr Potter. It is not clear whether this email was actually circulated by Mr Potter or whether it was an aide memoire for Mr Potter himself.⁵⁸⁷ The point is immaterial: sent or unsent I find that this document, dated shortly after the meeting (5 January 2024), represents the best evidence of what was discussed, albeit from Mr Potter's standpoint. Mr McLain could not recall seeing the email, and considered it to have been private to the writer.⁵⁸⁸ However, to the extent he could recollect, it chimed with his recollection.⁵⁸⁹

966. The email reads:

- PW putting more and more pressure on the team
- Sat down with DT and PW to go through the budget – unproductive but mentioned advice he has been taking on step-in – his synopsis is that we had a deal if they reached £20m – feel we've cheated him and will do it when it suits us and not him
- Has said we will only get the £21m budget – we have said the market has softened and so the budget reflects this
- PW budget is £32m – main difference is an adjustment to chassis margin
- Planning on being as difficult as possible – has said Vicky will only work for him, Freshstream can have an hour a week, etc
- PW's understanding of step-in rights is that an expert can be appointed to help him – sees Laurence filling this role so won't have anyone else. Then have six months to rectify the situation before PW takes back control, reduces to 3 months if performance slips
- DT had to call the bank to request going over on the overdraft for a day or two – was a surprise to DT but bank alright with it

⁵⁸⁷ Day 18/pp148ff (XX McLain); Day 19/p9 (XX Potter).

⁵⁸⁸ Day 18/p144 (XX McLain).

⁵⁸⁹ Day 18/p145 (XX McLain).

- Lack of control in the prep process
- PW has taken advice from DMS (his lawyers) and corporate finance advisors
- LV 3 options
 - Exercise the option – off the table for now
 - Step-in
 - Leave PW to get on with it – only an option if we can get some control over the way he behaves – can use it as a carrot before using step-in – really only a stepping stone to option 2
- Key issues
 - Barbara
 - Barbara has control over payments and a large amount of other detailed information on the accounting side
 - She has relinquished some control over key contracts / suppliers
 - Others below her (Anthony) who has access to information – DT can work with Anthony to get what is needed
 - Assume she will do what PW tells her – likely to turn hostile
 - We could remove Barbara – don't need PW's approval from our understanding
 - Any concerns around how we pay staff / suppliers if the handover takes too long – Anthony can process payments so should be able to help
 - Bob
 - TC feels you can speak to him in confidence but unsure where his allegiances lie
 - Logistics of effecting step-in rights
 - Issues with multiple senior members of staff (Alex, Andy, etc) and poor performance recently – PW needs to step up to non-exec chairman and LV to step-in as CEO
 - Can't restrict his access to every building and he will still have a role
 - LV will need to enforce PW's change of role – PW will keep trying to push people to do things for him
 - How do we restrict PW's access to people / instruct people not to do as he asks – need to create a reporting system for every occurrence of PW making a request
 - Need to clarify that PW will not be coming back post step-in – implementation of bad actor clause can help cement this

- Can we suspend PW during an investigation
- Can threaten the bad behaviour clause – wouldn't want to be found guilty on bad behaviour from an ego standpoint
- Exercise step-in rights in order to distance PW from the business, after which we start an investigation to provide concrete evidence around bad actor clause
- Need to throw resources at finance between stepping in and Vicky joining – can FS support?

Part Privileged

- PW should have sent us a notice to tell us that we have the rights to step in
- Day 1 playbook
- Notify PW we are stepping in
- Outline of initial actions – people joining the board, personnel changes, etc
- Outline what PW should not do – contact with employees / suppliers, etc
- Send out employee communications immediately
- Inform him that we are initiating an investigation into bad actor provision / explain that we will initiate an investigation if his behaviour continues
- Inform suppliers
- Lloyds
- NatWest – want to get the mortgage in place prior to stepping in
- Arval
- Manheim
- Warranties 2000
- Auto Protect
- FCA
- Pete has rights to a number of the sites as landlord – could cause issues further down the line when lease renewals come up and he could use it to justify gaining access to sites (subject to limitations)

- Actions

Part Privileged

Part Privileged

Part Privileged

- Put together day 1 playbook – what do we do alongside the issuance of a step in notice
 - Schedule weekly catch up
 - Carshop
 - Could buy them outside of Big – would become a related party transaction which PW may be able to veto – AM to check the docs on veto powers and how they change post step in
 - Need to maintain goodwill with Sytner
 - Meeting with Sytner being arranged
 - Vicky
 - Meeting with PW – look at timing, see if we can get her comfortable to resign before meeting with PW if this takes too long
 - LV conducting references – FS happy that this will suffice for referencing
967. Viewed as a whole, the conversation recorded takes as its starting point the removal of Mr Waddell from office. This is clear from the following:
- i) The concern that Ms Ferguson might be too loyal to Mr Waddell and might have to be removed. This happened.
 - ii) The reference to Mr Vaughan replacing Mr Waddell as CEO (“PW needs to step up to non-exec chairman and LV to step-in as CEO”). This happened.
 - iii) The multiple references to the exclusion of Mr Waddell from the business (“How do we restrict PW’s access...”; “Can we suspend PW during an investigation?”) Again, this happened.
968. The tenor of the email was that the Exclusion was indeed going to happen: there is no tentativeness about the discussion (“Day 1 playbook”, “Send out employee communications immediately”; “inform him we are initiating an investigation”). The parties to the discussion were not debating *whether* something should be done, *but* how it should be done.
969. It is also clear that “step-in” was being used as a shorthand for any rights that BIG and/or Freshstream might have against Mr Waddell. The references to suspension, “the bad behaviour clause” and Mr Vaughan becoming CEO make this clear. These are not Step-In Rights.

RRR.2. Other evidence

970. The breadth of the discussion – that this was not confined to Step-In Rights – was confirmed by the witnesses.⁵⁹⁰ Mr Clarke said this in his witness statement.⁵⁹¹

[43] My first memory of hearing about step-in was after a discussion with Laurence in January 2024. I had not had much reason to communicate with Freshstream previously, apart from in relation to board matters and some ESG-related issues. I was part of some initial discussions with Freshstream where they suggested that BIG seek legal advice as regards the contractual provisions of the Securityholders' Deed from the April 2022 investment. That included the provisions of section 19 (Material Default Events), in relation to which I understood the Freshstream believed Pete's behaviour to be so bad that they were entitled to instruct the company to commence an investigation.

[44] Laurence and I met with Freshstream on 3 January 2024 at their offices. Reza Fardad, James Cartright and Adam McLain were there from Freshstream. I was invited because Freshstream wanted a view as to whether those at BIG would support them: they wanted to set some expectations and there were some tasks that the company needed to do (like seek independent legal advice). I felt quite uncomfortable being there without Pete's knowledge. It was like I was going behind his back but I had to remind myself that my duty was to the company, not Pete. I told them that things had got really unbearable in relation to PW's behaviour. I had formed the view from my conversations with them that all of those who remained on the Ops Board (at this point, me, Laurence, Bob, Darren Miller, Nick Lapthorne, Ben Goodwin and Stewart Ford) were seriously dissatisfied with the state of play, and certainly some of those people had expressed their serious dissatisfaction to me in relation to Pete's behaviour. Not only that, at this point I recall that the relationships with banks, regulators and trading standards were falling apart (which I address further below). Laurence and I concluded that BIG needed to seek legal advice as to Step-in and Pete's behaviour so, without waiving privilege, we engaged Stephenson Harwood to provide that advice.

971. Mr McLain was present, but by phone.⁵⁹² He remembered the meeting well,⁵⁹³ except for part when he multi-tasked and was listening in whilst speaking to Freshstream's lawyers on his other phone.⁵⁹⁴
972. Mr McLain disagreed with Mr Clarke's evidence that it was Section 19 (the MDE provision) that was under consideration, and considered that the primary focus of discussion was the Waddell Service Agreement:⁵⁹⁵

Q (Mr Gourgey, KC) Do you remember discussion about threatening or using the bad behaviour clause?

A (Mr McLain) I remember there were discussions about threatening, or, you know, using the prospect of an investigation, which you see in the evidence through January.

⁵⁹⁰ To the extent they had any recollection: Mr Fardad's recollection was very poor: Day 15/pp168ff (XX Fardad).

⁵⁹¹ Clarke 1.

⁵⁹² Day 18/p144 (XX McLain).

⁵⁹³ Day 18/p144 (XX McLain).

⁵⁹⁴ Day 18/pp145-146 (XX McLain).

⁵⁹⁵ Day 18/pp150-151 (XX McLain).

But that was not in relation to clause 19, that was in relation to once the control of the board had shifted, the company could then invoke the remedies under the employment contract that we spoke of a few minutes ago. The investigation in those emails, in those conversations, throughout the month of January, were in the context of company level actions that could be taken once the board control had flipped. And I say that with confidence because, at no time in January did I believe it was possible for us to invoke clause 19.

Q (Mr Gourgey, KC) Why did you think it was not possible for you to invoke clause 19?

A (Mr McLain) I'm pausing again for the same privilege related reasons we've talked about. Based on what I knew about alleged misconduct and based on the several steps of that clause, I did not feel that all of those elements were satisfied at that time.

973. Mr McLain steadfastly denied that the MDE clause was discussed.⁵⁹⁶ In this, I anticipate that both Mr Clarke and Mr McLain are right in that all of Freshstream/BIG's rights against Mr Waddell were under consideration. Given the objective – removal of Mr Waddell – a consideration lesser in scope would not make sense.

974. Mr Fardad had no helpful recollection of this meeting, which is surprising, because (as Mr Fardad readily accepted) this was an unusual thing for Freshstream to do:⁵⁹⁷

Q (Mr Gourgey, KC) It's pretty unusual, isn't it, in your experience, for Freshstream, as an investor in a business, to be seeking with senior management of the business to exclude a shareholder, director of the business, without him knowing? That's pretty unusual in your experience, isn't it?

A (Mr Fardad) Very unusual, yes.

Q (Mr Gourgey, KC) And that's exactly what you were seeking to do, Mr Fardad, from the beginning of January '24 onwards, isn't it?

A (Mr Fardad) Through step-in in the beginning of January, correct.

Q (Mr Gourgey, KC) Not just step-in, because step-in wouldn't stop Mr – wouldn't entitle you to stop Mr Waddell contacting employees or suppliers, would it?

A (Mr Fardad) No, I'm not sure that's right. From memory, step-in allowed us – I'd have to look at the shareholders' agreement, but from memory step-in did allow us to give instructions to Peter, as an employee of the company, how – what to do and what not to do. So I would have to

⁵⁹⁶ Day 18/pp152ff (XX McLain).

⁵⁹⁷ Day 16/pp9-10 (XX Fardad).

have a look, but I'm not sure I would draw that conclusion.

Q (Mr Gourgey, KC) Well, it's also saying, let's say five lines down/six lines down:

"Inform him that we are initiating an investigation into bad actor provision."

That's not something you normally do, is it, Mr Fardad?

A (Mr Fardad) Well, no.

975. Also, as Mr Fardad readily accepted, he was the Freshstream "lead" in relation to BIG, and although more junior members of the Freshstream team would have been acting (namely, Mr Potter and Mr Cartwright), they would have kept him apprised of any significant discussions and planning that was taking place.⁵⁹⁸

976. I consider that Mr Fardad was guilty of withholding evidence as to what Freshstream were up to. This is not a case where Freshstream were weighing up whether or not to step-in.⁵⁹⁹ This was a case where there was a settled decision on the part of Freshstream to rid themselves of Mr Waddell (they were prepared to consider a face-saving "non-job" for him, but that was not a necessary part of the plan) using whatever tools were at their disposal, apart from the Call Option, because that was too expensive. There was, in short, no independent consideration of whether the step-in rights should be exercised or the MDE process invoked. The consideration was how to remove Mr Waddell, and once that decision had been made (as it had been by mid-December 2023) invocation of Step-In and MDE was inevitable. The reason it was done in secret was to ensure that Mr Waddell could not thwart the process; and the price that the employees of the company paid was that their grievances against Mr Waddell went unaddressed, because to have the necessary sort of conversation with Mr Waddell would have given the game away.

977. Mr Vaughan recollected that the meeting was in person,⁶⁰⁰ and that the attendees were Mr Clarke, Mr Fardad, Mr Cartwright, Mr Potter, perhaps Mr McLain (remotely), probably not Mr Hodson, probably not Mr Gradassi.⁶⁰¹

978. Mr Vaughan says he was continuing to press for the Call Option.⁶⁰² I do not accept this evidence. The Potter email records Mr Vaughan as saying the exercise of the option is "off the table for now".

979. Mr Clarke denied that his presence at the meeting was an indication of his alignment with Freshstream and against Mr Waddell.⁶⁰³

Q (Mr Gourgey, KC) So, in January 2024, you were working with Freshstream, putting together plans which would

⁵⁹⁸ Day 16/p10 (XX Fardad).

⁵⁹⁹ This was Mr Fardad's repeated refrain. Thus, again, on Day 16/p12 (XX Fardad), Mr Fardad repeated: "On 10 January, it was about step-in. So that's what Tom would have been involved in."

⁶⁰⁰ Day 20/p15 (XX Vaughan).

⁶⁰¹ Day 20/pp15-16).

⁶⁰² Day 20/pp17-18 (XX Vaughan).

⁶⁰³ Day 22/pp15-16 (XX Clarke).

impact Mr Waddell's control and involvement in the business? That's right, isn't it?

A (Mr Clarke)

Yes. That is right.

Q (Mr Gourgey, KC)

So, at that point in time, there were two camps, there was the Freshstream camp and the Waddell camp? Or the Freshstream side and the Waddell side, if you prefer it, Mr Clarke?

A (Mr Clarke)

I think...my – my consideration at that time, which, frankly, was a very difficult time, was to look at the company, the company as a camp. That's what I was interested in. I wasn't particularly interested in a Freshstream camp or a Waddell camp. I was interested in the company and, you know, that's entirely it.

980. I do not accept this evidence either. Obviously, there were two camps. The question, at this stage, is not whether there were two camps, but whether this was improper. Mr Clarke was using the duty to act in the best interests of BIG as a justification for acting in this way. Generally speaking, for a director (or any employee) to act deliberately behind the back of a CEO is wrong; concealing it, doubly so. But in some cases this may be exactly what is required. A good example is where an organisation needs to proceed against an officer on disciplinary grounds. A properly conducted disciplinary process needs to tread a fine and difficult line in terms of what it tells the object of the process and when matters are properly disclosed. That, no doubt, is what Mr Clarke was getting at. But this was not such a case. Acting against a CEO – in the case of a disciplinary matter – is something of enormous sensitivity, because of the destructive implications for all concerned. If there needs to be consideration of whether disciplinary action is to be taken then this is highly sensitive and is a matter that should have been considered within BIG *well away from the scrutiny of a minority shareholder like Freshstream*. If it was necessary to invoke Step-In in order to begin a disciplinary process, then Freshstream would have to be involved – but it would require extraordinary care because a minority shareholder would be using its rights to begin a process against the interests of the CEO who was also the majority shareholder.

981. Here, the outcome of the disciplinary and MDE processes was presumed and the participants were not impartially seeking to deal with a difficult situation of whether a disciplinary offence had been committed. They were progressing a plan to rid themselves of a CEO they did not like using (or misusing) amongst other things BIG's disciplinary processes.

RRR.3. Secrecy and deceit

982. Mr Waddell was kept in the dark about what was going on, that Freshstream were arraying his own team against him:⁶⁰⁴

⁶⁰⁴ Day 15/p135 (XX Fardad).

Q (Mr Gourgey, KC) You didn't tell Mr Waddell, did you, that three members of his senior management team were plotting a war against him with yourselves, did you?

A (Mr Fardad) I think plotting a war...no I didn't.

Q (Mr Gourgey, KC) And you were not being transparent with him, were you?

A (Mr Fardad) But I wouldn't define it as. – I don't think transparency is the right explanation here. I think it's preparing for a likely reaction that Pete would have. That's what was happening. It wasn't plotting a war. So I wouldn't define it as plotting a war.

983. Secrecy was important, and to that end members of the war party exchanged personal email addresses.⁶⁰⁵ Mr Fardad was asked about this.⁶⁰⁶

I hadn't remembered this – I mean, I'm not party to this email – this WhatsApp exchange, as you say – I hadn't remembered that we were using personal emails and I still don't remember to be honest. I haven't... [Pause] ...I'm trying to think whether there was a recollection I've got now that there was a concern that the emails were – Pete was able to see the emails during this period that the members of the team would be sending, like Pete has access to the company's email account. But this is the first time I'm recollecting that no, but I – I – that's all I recollect about it.

984. Mr Clarke went even further in keeping the meeting a secret from Mr Waddell. The "war planning" meeting had been arranged for 4 January 2024, and Mr Clarke had an appointment with Mr Waddell on that day.⁶⁰⁷ Mr Hodson was unable to attend because Mr Waddell was keeping him "on a short leash".⁶⁰⁸ Mr Clarke gave Mr Waddell a spurious excuse about a hospital appointment in order to get out of his meeting Mr Waddell and attend the "war planning" meeting. He then suggested that the day of that meeting was 3 January not 4 January in order to cover that deception up:⁶⁰⁹

Q (Mr Gourgey, KC) Can we go to the WhatsApp I wanted to take you to, it's back to your WhatsApp exchange with Mr Waddell. And 4 January 7.14am. Do you see that?

A (Mr Clarke) Yes.

Q (Mr Gourgey, KC) At 46 seconds, you say to Mr Waddell – so this was the day you were supposed to be attending at Gillingham, right?

A (Mr Clarke) This is...

Q (Mr Gourgey, KC) We saw the email earlier which referred to the fact that you and Mr Hodson were...due to be at Gillingham [with] Mr Waddell on 4 January? Yes?

A (Mr Clarke) Yes, yes.

⁶⁰⁵ See the WhatsApp exchanges between Mr Clarke and Mr Cartwright.

⁶⁰⁶ Day 16/p11 (XX Fardad). Mr Cartwright's evidence was to similar effect: Day 18/p194 (XX Cartwright).

⁶⁰⁷ Day 22/p36 (XX Clarke).

⁶⁰⁸ Day 22/p36 (XX Clarke).

⁶⁰⁹ Day 22/pp38ff (XX Clarke).

- Q (Mr Gourgey, KC)** And what you're saying here is:
"I've been at the hospital since 3:00am due to a family emergency. I need to be off today. I've sent this to Joanne and Barbara to make sure I am not paid/holiday deducted, etc. I hope you understand".
- A (Mr Clarke)** Yes.
- Q (Mr Gourgey, KC)** Mr Clarke, the reason you needed to be off that day was you were attending this meeting on 4 January with Freshstream? That's right, isn't it?
- A (Mr Clarke)** That is right, yes.
- Q (Mr Gourgey, KC)** And you were seeking to come up with an excuse to Mr Waddell to hide the fact that you needed to be at this meeting?
- A (Mr Clarke)** I was quite uncomfortable with it, but absolutely, I had to give a different reason for not being at Gillingham...I couldn't possibly have told him I was going to a meeting at Freshstream's offices.
- Q (Mr Gourgey, KC)** No.
And so where you say "I've been in the hospital since 3:00am due to a family emergency", that was untrue?
- A (Mr Clarke)** That is untrue.

985. It was suggested that Mr Clarke has, in his witness statement, dated the "war planning" meeting as 3 January in order to avoid his deception coming to light.⁶¹⁰ he denied this, but the error in date is obvious from the documentary record.

SSS. EMAILS IN JANUARY 2024

SSS.1. Introduction

986. A number of emails show the development of Freshstream's and BIG's thinking regarding Option 4. For the most part, they speak for themselves.

SSS.2. Email of 16 January 2024

987. This is an email that may not have been sent, with an unknown author. If it was sent, it will have been internal to Freshstream. It is, whatever the position, useful as an indicator of the internal Freshstream thinking. The email is consistent with the point made above: the decision to get rid of Mr Waddell having been made, the question was how to effect this using the levers available to Freshstream (step-in and MDE and – as we shall see – the Waddell Service Agreement) given that the Call Option was not an option:

In terms of questions:

⁶¹⁰ Day 22/p52 (XX Clarke).

- Can we step in. Yes, but we need to collect the evidence with the two quarters.
- The budget does not matter at all
- Pete retains a right to a Board seat, + set of approval matters
- M&A
 - We can buy assets
 - We can sell assets – but to a point, not a material transaction. We can sell a few sites, but probably not a lot. He can try to sue us, but there won't be any damage
 - We can do a SLB, normal course of business
 - Third party managing another asset – ordinary course of business (OK), but connected and material he could fight, although there are no damages. Integrating the asset into the group later will be tricky
- New money
 - Needs to follow the waterfall, but we need to [have] his approval for ords. If he doesn't approve, then we can only issue loan notes
 - So everything we put in is loan notes at 1.45x
 - Can we put equity differently? He will get pre-emptive rights
- Bad actor
 - Very limited set of criteria where we can terminate him – if suspended
- Can't be a director
- Loses his pre-emptive rights
 - Difference is not huge between step in for economical reasons
- Breach of directors duties – shouldn't worry (trading whilst insolvent)
- Termination
 - Using employment contract
 - How can we force him

988. This email is significant because of its focus on a lever controlled by BIG, not Freshstream, namely BIG's rights under the Waddell Service Agreement. It was put to Mr Fardad that "what you were looking at, at this time...were ways to get Mr Waddell out of his position as CEO and director of BIG, that's right isn't it?"⁶¹¹ Mr Fardad denied this, asserting that all Freshstream was doing "is just

⁶¹¹ Day 16/p.16 (XX Fardad).

looking at all the different options”.⁶¹² Mr Fardad’s position was that the fact these options were being considered did not necessarily mean that this was the path down which Freshstream were going.⁶¹³ This was untrue: Freshstream had decided to rid themselves of Mr Waddell. Any lever that enabled that outcome would be pulled.⁶¹⁴

SSS.3. Email of 17 January 2024 (first)

989. An email sent by Mr Fardad to Mr Gradassi and Mr Cartwright on 17 January 2024 shows active preparation in relation to Option 4:

What we need to line up:

1. Block out some time for last week of Feb to spend with BIG team
2. List of whatsapp groups
3. Risk register:
 - a. Arval
 - b.
4. Daily action list post event
 - a. Letter to third parties (which need to be prepared beforehand)
 - b. IT changes – email, microphone, cameras...
 - c. One to one meetings with staff
 - d. Andy Holness back
 - e. Group wide communication? It will go round anyway, so we have to send email and let everyone know
 - f. Have counter-communication ready for when Pete sends his own email
 - g. Letters to the team to tell them they have to do what the CEO tells them
5. Plan for accounts department – day to day:
 - a. Barbara – letter to her not to get approvals for all transfers by David. Tell banks to give David authority
 - b. Anthony promotion
 - c. David approval on all things

⁶¹² Day 16/pp16-17 (XX Fardad).

⁶¹³ Day 16/p17 (XX Fardad).

⁶¹⁴ Day 16/p18 (XX Fardad).

6. Plan for account department – forensic investigation (can be within the first few weeks)

- a. Restructuring interim CFO
- b. People on the payroll that work out of Spain
- c. Related party transaction – JW car transactions
- d. Finance at the prep centre – way we record things are done
- e. Tom to think through initial list of where to look

7. Ben and Barbara is an issue due to loyalty to Pete

- a. Give Ben a chance. Laurence will explain. Pete is not gaining control

8. Ways to escalate with Pete as he misbehaves:

- a. Investigation
- b. JW supply of cars
- c. Change of role, firing
- d. [others?]

9. External communications control

10. Day 1 letter from the board on instructions to Pete (communication internally, reporting lines, external communications...)

Messages to Pete

- Grow and sell next year...[Laurence is lined up a couple of nice transactions with Sytner. Can specify the transactions]
- IPO is best route and Laurence would be great for this. You would not
- Need you to step up to chairman on same comp
- Laurence to step down to CEO
- Image management – LinkedIn messages, other things
- Step in needs to happen, but it can be between you and me

Pete has

- Greed
- Arrogance
- Ego

SSS.4. Email of 17 January 2024: second

990. Similarly granular is an email apparently written by Mr Cartwright dated the same date:⁶¹⁵

- Legal commercial scenarios
 - Prepare commercial scenarios requiring legal input
 - **[Part privileged]**
- Step-in
 - Prepare evidence and documentation to effect step-in
 - Script for Reza: Pete communication
 - Implement board changes
 - Board letter to Pete on role / expectations (various scenarios depending on how the conversation goes)
- PW Termination and/or Investigations
 - Evaluation of options (legal and commercial)
 - Documentation for PW termination (service agreement)
 - Understand
- Investigations
 - Understand investigation options (PW specific vs company, internal vs external)
- Restricting Pete access
 - End WhatsApp groups
 - Email access
 - Remove invasive IT (cameras and microphones)
- Internal communications
 - 1:1s with management (incl prepare messages for why PW isn't coming back)
 - Expectations from management re Pete engagement (written and verbal)(specific one for Barbara)
 - Group wide communications

⁶¹⁵ Day 18/p195 (XX Cartwright).

- FAQs for management on what to/not to say to teams
- External communications
 - 1:1s with key suppliers (and formal letter)
 - Preparation of press releases (defensive if needed)
- Management changes
 - LV to CEO
 - Return of AH
- Finance function
 - Communication of payments (signatories) and delegations of authority)
 - DT move to full time
 - BF reporting to DT
 - AH promotion to FC

991. The detail is impressive. The record discloses no drafts of the various resolutions that were deployed in early March. Someone, however, must have been preparing them, and it is to be inferred that BIG's and/or Freshstream's lawyers were engaged in the drafting processes.

SSS.5. Email of 26 January 2024

992. This is another – updated – version of the emails set out above, identifying tasks for particular people. This included an “escalation plan”, including “investigation, termination, commercial points”, preparation for litigation (including Mr McLain appointing a litigation firm – for Freshstream) and effecting management changes (Mr Vaughan to CEO; Mr Holness to HR)

993. Mr Fardad relied on the “escalation plan” to say that this was “blue sky thinking” depending on what Mr Waddell's reaction was.⁶¹⁶ I reject this evidence: the only flexibility was whether Mr Waddell went “nicely” (promoted to a figurehead role of chair) or went “badly” (termination). The immutable objective was takeover by Freshstream, with Mr Vaughan as CEO.

994. One particular workstream was:

Effect management changes (LV to CEO and AH return (RF/LV)

“LV” is Mr Vaughan; “AH” is Mr Holness (who would only return if Mr Waddell was out of office⁶¹⁷); and “RF” is Mr Fardad. Mr Fardad was asked about this:

⁶¹⁶ Day 16/p30 (XX Fardad).

⁶¹⁷ See Day 16/p30 (XX Fardad).

- Q (Mr Gourgey, KC)** So this is a proposal by Mr Cartwright as to who will be given particular roles for particular workstreams? That's right? That's how you understood it at the time?
- A (Mr Fardad)** That's how I understood it, yes.
- Q (Mr Gourgey, KC)** And it's being proposed that you and Mr Vaughan will be working together on the workstream effecting the management change of "LV to CEO"?
- A (Mr Fardad)** Mm Hm.
- Q (Mr Gourgey)** And is that the workstream that you then carried on with Mr Vaughan, Mr Fardad?
- A (Mr Fardad)** I'm not sure we did anything after this. I don't recollect, to be honest whether we carried out that action or not.
- Q (Mr Gourgey, KC)** Well, you did by 7 March, didn't you?
- A (Mr Fardad)** By 7 March, correct, but this is January.
- Q (Mr Gourgey, KC)** This was an integral part of your plan, wasn't it, the change of CEO, Mr Fardad? That's why you've got it was a workstream?
- A (Mr Fardad)** In January, as part of step in, yes.
- Q (Mr Gourgey, KC)** The change of management role – I'll ask it again – was an integral part of the plan that Freshstream was developing at this time, that's right, isn't it?
- A (Mr Fardad)** Yes, I believe it was.

SSS.6. Email of 30 Jan 2024

995. This email states: "Pete employment contract: a. Cause events – collect evidence now". This email shows that there was an appreciation that Mr Vaughan's list of December 2023 was insufficient, and required augmenting.

SSS.7. Email of 31 Jan 2024

996. This email was written by Mr Potter. Its distribution is unclear, but whether sent or not it again discloses Freshstream's thinking:

PW termination

- Giving PW a warning
 - He is currently badly advised on step in rights – can advise him on what these are in the form of a warning
 - Use Leeds FH as a catalyst for the step-in
- Cause items
 - Negligent or incompetent in the performance of his duties in the opinion of the board
 - Company has run out of money twice

- In a position to breach a material contract (Leeds)
- Failure correctly to report his criminal history to the FCA
- Warranty and fair trading?
- Available TUPE
- Failure to report to companies house in time
- Failed to give proper notices
- Put shareholder money into company accounts (Available funding)
- CFO rights and access
- JW Autos – sale of cars at a loss / buying cars from the company / Jack only paying for them once they are sold
- Inappropriate behaviour in front of suppliers / financiers
- Breach of fiduciary duty or dishonesty
 - JW Autos points from above
 - Improper use of company resources – employees working in Spain?
 - Breach of confidentiality on Available transaction
- Engage in any conduct which will bring the company into disrepute
 - Change of warranty policy
 - Swearing in front of suppliers, etc
- Disclosure of conflicts
 - Need to tell him he had breached a conflict before this can be applied
- Comply with instructions of the board
 - One to watch if we do not immediately remove him
- Comply with staff handbook
 - Ask Tom and Laurence for employee handbook
 - Relations with staff
 - Social media policy
- Comply with the law on companies house

- Company accounts submission
- TUPE
- FCA

997. This looks like a framing of grounds for dismissal.

TTT. INCIDENT NO 11: COMMENT REGARDING MS CLARKE WHEN REARRANGING FURNITURE IN LEEDS “THERE IS NOTHING MORE BEAUTIFUL IN A MORNING THAN A GIRL ON HER KNEES IS THERE” (JANUARY/FEBRUARY 2024)

TTT.1. The Siddall Final MDE Report

998. The evidence from the defendants comprised hearsay notices of Ms Clarke and Mr Kaye. These derived from the evidence they had given to Mr Siddall, KC, as a result of which Mr Siddall, KC concluded the Incident had occurred and that it was an MDE. It is therefore appropriate to start with the conclusions in the Siddall Final MDE Report:

[112] [Mr Kaye] gave a clear account of this alleged event and its occurrence. He gave it without any prompting from myself. The comment was said in the finance office in Leeds on a Saturday morning in January/February 2024 and [Mr Kaye] considered 10-15 persons were then present. He said this:

“You have got all the power sockets which are actually built into the floor. There was a young girl who worked in the finance – I think she was one of the finance admin girls, a girl called Sophie.

[Mr Siddall, KC] Can I have her surname please?

[Mr Kaye] I do not know her surname.

[Mr Siddall, KC] Okay, fine. That’s all right. Sorry. I interrupted you. Carry on.

[Mr Kaye] She was down on the floor, sort of moving the wires and stuff like that, when Pete had walked into the office and made a comment of that was the best place for her, was down on her knees.

[Mr Siddall, KC] I suspect I know the one that he did mean, but I do not want to make an assumption, so why did you interpret that he was suggesting that her being on her knees was the best place for her?

[Mr Kaye] It was quite obvious in terms of what he meant by that, in terms of – it was something along the lines of about a young girl being down on the floor was the best place for her, down on her knees.

[Mr Siddall, KC] Yes.

[Mr Kaye] It was quite obvious what he meant by that. My interpretation of it...

[Mr Siddall, KC] Forgive me. What did he mean?

[Mr Kaye] The best place for her was down on her knees and it was in a sexual manner.”

[113] **[Mr Kaye]** was clear that he had discussed the matter with **[Ms Clarke]** after the event and she had said to him that it was “water off a duck’s back”. I asked **[Mr Kaye]** how the comment made him feel. He replied as follows:

“I was shocked more than anything else that a guy you had met the week or two prior, who is a CEO of a company, to come – I found it quite outrageous. I was like “I cannot believe he’s just said that”.”

[114] I then spoke to **[Ms Clarke]**. She gave this account of the matter:

“**[Ms Clarke]** I hadn’t seen Pete that morning. He just walked into the office. So I was helping my manager Dan put the Ethernet cable into the floor because they were loose and we couldn’t quite get it to – it needed more than one pair of hands.

[Mr Siddall, KC] Understood.

[Ms Clarke] I was down on the floor on my knees, like sat on my knees trying to help Dan. I wasn’t bent over, I was not – nothing was on show. I had covered even in an outdoor coat because I never take my outdoor coat off because I just like being warm. He walked in and he says “guys, there is nothing more beautiful in a morning than a girl on her knees is there” just openly to everybody in the office.

[Mr Siddall, KC] Right.

[Ms Clarke] I just kind of turned around, and I was like – do not get me wrong, there were a couple of laughs. It was laughed off like “ha ha ha”, but then I had multiple people come up after and go “that was a bit of an inappropriate comment really, was it not?” I was like yes it was but...

[Mr Siddall, KC] Okay.

[Ms Clarke] I am not sensitive in the slightest, so it just went...

[Mr Siddall, KC] Okay.

[Ms Clarke] But it has always been – I would never forget it.”

[115] **[Ms Clarke]** was clear that the basis of Ms Waddell’s comment was sexual and she stated that he was well-known for making such comments.

[116] **[Ms Clarke]** confirmed that **[Mr Kaye]** had indeed spoken to her after the Incident and asked how she was. She also confirmed that it was possible that **[Mr Kaye]** was present at the time of the alleged comment. Her inference was that he had not been as a result of the manner of his questions, but she agreed that she was not sure on this point.

[117] I asked **[Ms Clarke]** how this made her feel. She relied as follows:

“**[Ms Clarke]** The comment in the office about being on my knees. I was a bit offended. I am quite hard skinned so I was just like “do you know what, ha ha, you are a man”. But I kind of walked around a bit for the rest of the day a bit like – not covering myself because there was nothing to cover. I was in full work uniform. Even the dresses that

we had been given, there is nothing to – the company dresses they are not tailored to do anything for you, really, to be honest.

[Mr Siddall, KC] Okay.

[Ms Clarke] And a big coat on. Yes, I probably did notice myself probably covering myself up with the coat a little more all day, just being a bit like...

[Mr Siddall, KC] The way you are holding...

[Ms Clarke] If you are thinking that when I am covered, then what – you know, yes.

[Mr Siddall, KC] The way you are holding your arms suggests that you were feeling – I am interpreting your body language, and I want to put it to you so you can tell me if I am interpreting it correctly or incorrectly. You look like you felt uncomfortable?

[Ms Clarke] Certainly, yes.

TTT.2. Evidence of Mr Waddell

999. Mr Waddell said this:⁶¹⁸

This has been completely taken out of context. One of the things we had to do at Leeds was relocate the finance staff into a new office so that there was no GDPR breach when discussing financial information with customers. As part of this, we needed to pull (feed) the cables for cameras into the new finance office. I was there when the staff were pulling cables under the flooring. I literally went down on my hands and knees to pull the cables manually to show them how to do it and to lead by example. This is what I normally do. I was joking around and trying to make them laugh. I was trying to be a more approachable CEO. I think I said words to the effect of, “I bet you’ve never seen a CEO on his knees like this before”. I might also have said something like, “there’s a girl on her hands and knees over there, if she can do it, you can too. Give her a hand”. I did not say anything like, “guys there is nothing more beautiful in the morning than a girl on her knees is there?”

TTT.3. Evaluation

1000. If this was an appeal from a decision of Mr Siddall, KC, I would have little hesitation in upholding his factual findings. However, I am obliged to make my own findings as to gross misconduct, and the evidence in the Siddall Final MDE Report is just that: evidence. Because of the process conducted by Mr Siddall, KC, the hearsay evidence before me is entitled to greater weight than hearsay evidence on a matter of factual controversy would normally receive. Nevertheless, I must bear in mind that I have not seen either Mr Kaye nor – most importantly – Ms Clarke give evidence. Nor did Mr Siddall, KC have the benefit of evidence from Mr Waddell, whereas I did.

1001. On balance, I consider that the comment, as described by Ms Clarke was made. The exchanges recorded by Mr Siddall have the flavour of truth, and Mr Waddell’s near admission (“I might also have said something like...”) is not a full-blooded denial of Ms Clarke’s story. Equally, Mr Waddell’s suggestions as to the language he might have used has a familiar sanitised quality to it which

⁶¹⁸ Waddell 5/[236]. Mr Waddell was cross-examined on Day 8/pp124-140 (XX Waddell).

rings artificial and untrue in the mouth of Mr Waddell. Mr Waddell's account also fails to factor in the role played by "Dan", who Ms Clarke was helping. Although Mr Waddell taking an active part in the cable feeding sounds like something Mr Waddell might have done, I prefer Ms Clarke's account. Mr Waddell's account did not improve on cross-examination – but he stuck to his version of events.

1002. I do not take account of the fact that Mr Waddell may (or may not) have acted similarly on other occasions. Given the way the Incidents were framed against Mr Waddell, such "cross-fertilisation" strikes me as unfair to Mr Waddell.
1003. I also discount the evidence of Mr Kaye. Ms Clarke herself was unsure whether he was present.
1004. My conclusion is that the Incident occurred. The far harder question is whether it was sufficiently serious to cross the line to harassment and so gross misconduct. This is very difficult to assess without having seen Ms Clarke in the witness box. There can be no question that this was an inappropriate comment. It is, however, clear that Ms Clarke was robust and although affected by the Incident, also said it was "water off a duck's back". She also said that this was the culture of BIG – and, as I have repeatedly noted, this was a culture that BIG did not shut down.
1005. Moreover, I must take account of the role that Mr Clarke is likely to have played in pointing the witnesses in the "right" direction. The evidence before Mr Siddall, KC was (as I have noted) curated in that only "prosecution" evidence was put forward for Mr Siddall's consideration. I detect the hand of Mr Clarke in Mr Kaye's "shock" and "outrage", and this is a matter I would have wanted to have seen explored in cross-examination. Ms Clarke, on the other hand, was far more balanced and credible in her evidence. I conclude that although this Incident is a case of misconduct which should have triggered the grievance and disciplinary processes within BIG, this is *not* a case of harassment and so not a case of gross misconduct.

UUU. INCIDENT NO 25 (RUDENESS TO OR BULLYING OF MS HAZELL, JANUARY 2024)

1006. Ms Rather gave evidence on this Incident:⁶¹⁹

[59] In around January 2024, Peter's focus appeared to turn to the BIG Assist part of the business, which is led by Sophie. He would regularly claim, whilst shouting at Sophie and gesturing towards her, that this part of the business was costing him £12m a year. The BIG Assist team deals with customer complaints, such as looking at faulty cars and taking them back into the business. During this period, Sophie would regularly call me crying, having worked from 07:30 in the morning to 21:00 at night at Peter's demand and, in response to comments I understand Peter had made her, say things like "maybe I'm not the right person for this job. Maybe I am running this business into the ground".

⁶¹⁹ Rather 1.

[60] I recall one specific meeting in the second week of January 2024, which was the week after Sophie’s birthday, in which Peter, Sophie, Bob Ruprah and I were discussing work rotas. Sophie informed Peter that she would usually work from the Snodland or Gillingham sites. However Peter responded that Sophie must be on site at different sites, every day of the week – he said “Monday in Leeds, Tuesday in Cannock, Wednesday in Peterborough” etc. Sophie explained that she could not do that, since she has a family to care for, but Peter did not listen and insisted she do as he had ordered. I recall Sophie telling me that she did, in the end, work on site more often, since she was worried that Peter would be tracking her using the various sites CCTV cameras.

[61] The following month, Sophie told me she had attended an engagement party that was hosted by Peter’s son, Jack Waddell, on 24 February 2024. A few days later, Peter called Sophie and me into his office to discuss BIG Assist, and how many vehicles were being rejected by customers. Out of the blue, just as we were getting up to leave the meeting, Peter said words along the lines of “it was nice to see you on the weekend, Sophie, having a good time, because otherwise you’re a miserable bastard”. I looked back at Peter and said something along the lines of “she’s not a miserable bastard; I don’t think that’s a very nice way of speaking to someone”. I recall that Sophie was red with embarrassment, but Peter laughed – I think he thought it was absolutely hilarious. After the meeting I suggested to Sophie that we drive to go and get some lunch. On the drive there, I spoke to Sophie about the comment, and recall her breaking down in tears, asking “Am I? Am I a miserable bastard?”

[62] I would describe Sophie as an assertive person but, in front of Peter, this disappeared. Personally, I felt awful about this and I knew that Sophie was in a very bad place when she was working at BIG when Peter was there. I did not report this incident to HR, since I thought it would be pointless, for the reasons I’ve explained at paragraphs [32] to [33] above.

1007. I understand that this Incident is not pursued.⁶²⁰ It is easy to see why. This is a gratuitous and unpleasant comment, that should not have been made. But it is not harassment/bullying and does not constitute gross misconduct.

VVV. INCIDENT NO 10: COMMENT ABOUT MS KHAN AND MS FRANKLYN WHEN ON THE FLOOR CLEANING “THAT’S HOW I LIKE MY WOMEN – ON THEIR HANDS AND KNEES” (MID-JANUARY 2024)

VVV.1. Evidence of Ms Khan

1008. Ms Ghulam-Aishah Khan (“Ms Khan”) was and is employed as a receptionist at BIG. She gave a single witness statement and was cross-examined on Day 21. She was an honest witness. When she started work at BIG, the reception team told her “avoid Pete, he’s gross”.⁶²¹

1009. Her evidence in relation to Incident No 10 was as follows:⁶²²

[13] I first met Peter on either my first or second weekend at BIG. After that first meeting, I saw Peter at the Leeds site about five times, but when he was there, I didn’t

⁶²⁰ Noted in Annex 1 to the Waddell Closing.

⁶²¹ Khan 1/[12].

⁶²² Khan 1.

speak to him much. This meant that personally I didn't have a bad relationship with Peter.

[14] I have generally always liked my job, but I do remember that when Peter was at the site, the atmosphere was very tense. Most staff at the site seemed worried about what he might say to them, or shout at them about. I thought Peter's management style was hectic, and that he did not have people skills. If he was at the site everyone expected him to pick an issue with something. I don't remember him treating staff with any kind of respect. It was just "do this, do that, don't do this".

[15] There is currently a circular bar, with a coffee machine, in the middle of the showroom at the Leeds site. After the bar was constructed, it wasn't immediately in use because things such as the water tap needed to be fitted, so when I first joined BIG, although the bar was physically constructed it wasn't in use. The site had only been open for approximately 2 months before I started working there.

[16] On my second Saturday working at BIG (3 February 2024), one of the jobs I had to help with was setting up the bar so that we could start serving customers from it the following week. Items such as cups and glasses had started to arrive and they needed unpacking and putting away.

[17] I cannot remember what time of day it was, but I remember Ebony and I being stood near the entrance to the bar because we were both setting it up. Inese Buzina, one of the Leeds managers, and Peter, walked over to us from the office. Inese told Ebony and I to "clean the bar, top to bottom, inside and out" (or similar).

[18] Straight after Inese's request, Ebony and I each picked up a cloth and spray that were nearby and walked out of the bar so that we could clean the outside of it. As the bar was circular, we agreed to each start at a different side of the bar and work our way around it to meet in the middle. Peter and Inese stayed stood at the entrance to the bar. I took the side of the bar that was on Peter and Inese's right hand side and Ebony took the left.

[19] I sat down on my knees to clean the outside of the bar. Although I was not looking at her at the time, I assume Ebony was in a similar position. Almost immediately after I knelt down, Peter said, "Oh, just the way I like my women, on their hands and knees" (or similar).

[20] I remember thinking to myself, "Have I heard that right is he talking to us?" I didn't respond to the comment, but I turned around and looked back and saw Inese and Peter laughing and looking at me. I couldn't see Ebony at this point. Because Inese was laughing I thought to myself, "what kind of a girl's girl are you?". I am aware that when I spoke with Mr Nick Siddall, KC on 27 March 2024, I described the way Inese laughed as awkward. On reflection, I would not describe her laugh as an awkward laugh. She was just laughing in a way that someone would laugh at something they thought was funny. When I spoke to Mr Siddall, I tried to play down her reaction by describing it as awkward because she was effectively my boss at the time so, so I didn't want to drop her in it.

VVV.2. Evidence of Mr Waddell and Ms Buzina

1010. Mr Waddell did not, in his evidence, go so far as to deny the comment.⁶²³

⁶²³ Waddell 5/[238]

I note that Aishah Khan and Sophie Boothman-Dove told Mr Siddall that I made another comment about women being on their hands and knees. I cannot remember this specific interaction, but I do not believe I said “That’s how I like my women – on their hands and knees” or words like that.

1011. Ms Buzina similarly could not recall the Incident, but sought to reconstruct it:⁶²⁴

I did not recall the Incident at the time but thinking back, my memory is that Peter did not say that he likes to see women on their hands and knees. I recall Peter saying something encouraging, along the lines of “They are working so hard, look, they are on their hands and knees”. He was trying to tell them that he thought they were doing a good job, it was not an inappropriate comment. If it had been the comment he is accused of making, I would have reacted and said something. But what Peter said is nothing like the comment he is accused of making.

VVV.3. Evaluation

1012. I appreciate that other evidence – beyond that of Ms Khan – was adduced to corroborate Ms Khan’s version of events. As hearsay evidence, it is of slight weight.

1013. I prefer the evidence of Ms Khan over that of Mr Waddell and Ms Buzina. I have already described the reservations I have about Ms Buzina’s evidence, and the evidence she gave in relation to this Incident was no more than a reconstruction (not a memory) that was as favourable to Mr Waddell’s case as it could be. The same goes for Mr Waddell’s evidence.

1014. I find that this was a case of both bullying conduct and harassing conduct in a toxic combination here.

1015. To start with the bullying: the Incident looks like a bullying of two workers at BIG. Thus, Ms Buzina, doubtless anxious to impress Mr Waddell, told two of her staff to do performatively demeaning work right in front of herself and Mr Waddell, which was then mocked. Of course, difficult and unpleasant work in an organisation like BIG has to be done, but my sense is that in this case the work was only being directed by Ms Buzina because of the presence of Mr Waddell. He then made a joke at their expense and for his enjoyment.

1016. The bullying clearly had a sexual element to it. There is a close similarity with Incident No 11, which was sexual in nature, and that is how Ms Khan (rightly) saw it:

When Peter made the comment, I was shocked. He was the CEO and a lot older than Ebony and me. At the time, we were both 20 years old. It felt like a derogatory and disgusting thing to say.

1017. In terms of whether the Incident crosses the line from the inappropriate to the harassing/bullying, I find that it does. This was a gratuitous and unpleasant job, done for no readily apparent reason beyond the exercise of power by a superior to an inferior (in purely organisational terms). There is a mocking flavour to the Incident as well as a gratuitous exercise of power. Not only was the wider

⁶²⁴ Buzina 1/[43].

workplace environment affected (others witnessed the Incident), Ebony left BIG shortly thereafter and although another incident intervened, there can be little doubt that this Incident contributed to her departure.

1018. This Incident constitutes gross misconduct. I appreciate that there is an obvious similarity between this Incident and Incident No 11 (involving Ms Clarke). I have reached different outcomes for the reasons given in [1000]ff.

WWW. INCIDENT NO 8: COMMENTS ABOUT MS GABLE IN FEBRUARY 2024

WWW.1. Introduction

1019. Ms Lily Gable was employed by BIG at BIG's Peterborough site between 2 January 2024 and 12 February 2024. She was, at the time, 19 years old. Her father, Mr Kevin Gable, had worked at BIG – also at the Peterborough site – since 17 January 2022.
1020. Ms Gable claimed (Mr Waddell denied the allegations) that she had been subjected to two, inappropriate, comments from Mr Waddell in February 2024.
1021. Ms Gable is the best example of the human cost of this dispute between Freshstream and Mr Waddell. Mr Laddie, KC, made the point on a number of occasions that Mr Waddell deserved criticism for putting witnesses through the emotional wringer of a trial. Although I consider this to be a criticism that can be made more generally, Mr Laddie, KC was right to point out the high human cost of the process to third parties. As I have noted, this is an explanation for the number of persons (potential witnesses), on both sides, who simply declined to give evidence for one side or the other.
1022. In Ms Gable's case, she gave evidence to Mr Siddall, KC in the course of the Investigation. That evidence was sufficiently helpful for BIG to want to call her at trial. Ms Gable declined to assist, and a witness summary was provided instead. There was also communication with Mr Waddell and his lawyers, which only increased Ms Gable's desire to remove herself from the process.
1023. The court required Ms Gable (by a witness summons) to attend to give evidence, and Ms Gable did so remotely, having produced medical evidence stating that attendance in Court would be too stressful. Although I was very reluctant – given the sensitivity and controversy surrounding Ms Gable's evidence – to receive Ms Gable's evidence remotely, other options (like emptying the court room or hearing Ms Gable in a solicitor's office, with only judge and skeleton legal teams attending) proved not practical. A remote hearing proved to be the only feasible course. Ms Gable attended a local solicitor's firm and was assisted by a neutral party to locate the necessary documents.
1024. The changes to Ms Gable's testimony over time – I shall consider the reasons for those changes in due course – meant that Mr Laddie, KC was only technically calling Ms Gable as his witness: Ms Gable was very reluctant to appear for *anybody*. I indicated *before* Ms Gable attended (remotely) that I would consider giving Mr Laddie, KC some latitude to lead, and that I would

be anticipating an application for Ms Gable to be treated as a hostile witness, but that (having given these indications) we would play matters by ear. In the end, Mr Laddie, KC did make an application to have Ms Gable treated as a hostile witness, which I refused.

1025. I will consider the evidence of Ms Gable at some length. Although Ms Gable did not give evidence for long, her evidence was important on a number of levels. First, as I have described, it showed the human cost of the Freshstream/Waddell dispute, which is important as an insight into the nature of events going on within BIG. Secondly, it provided a further example of the way in which the MDE Investigation operated. Thirdly, it was a significant allegation underpinning Mr Waddell's summary dismissal.

WWW.2. The recording of a complaint

1026. A human resources advisor employed by BIG, a Ms Daianna Pinto, had an informal conversation with Ms Gable on 7 February 2024. Her report is dated 7 February 2024, and reads as follows:

Lily came into the HR Office and wanted to speak directly with me as regards an incident that had happened that day with Peter Waddell, CEO. At this point, Lily became very upset and I asked her in her own time to tell me what had happened. Lily continued and said that she was in the Appraisal Shed talking with a colleague while they were waiting for the cars to come through to be GDPR Checked and that Peter walked into the Appraisal Shed and approached Lily and said to her "Just because you have a nice arse does not mean that you can't work".

I asked Lily if anyone else heard this and she said yes and mentioned Anna Pauka, CPC Team Leader, who was with Peter at the time when this comment was said. I then continued to ask Lily what she wanted to happen next, and Lily said, "I just want him to leave me alone and to not make these types of comments as it makes me feel uncomfortable". I then asked Lily if she wanted to take a formal action on these comments, Lily said no, she just wanted Peter to leave her alone and not to approach her. I advised Lily that I will inform Duncan Preston, the General Manager, and make him aware of the situation and will be dealt with. I consoled and gave reassurance to Lily that this matter will be dealt with by the General Manager, who was made fully aware of the situation that happened that day.

Following the conversation with Joanne Duey, Head of HR, confirmed that she had also contacted Jamie Taylor, Groups Parts Manager, who was travelling with Peter on that day and that Jamie said he would have a conversation with Peter.

Later that same day, I received an email from Kevin Gable, Parts Manager (Lily Gable's father) with regards to another situation involving another employee and Peter. After speaking with Kevin, he stated that he was informed by a third party that when Shantelle Stephenson, Parts Advisor, was at the counter with colleagues and as Shantelle bent over the counter, Peter walked past Shantelle and from behind Peter did a hip thrust and said "ooh, don't want to bump into that". At that point, I went directly to speak to Shantelle with regards to the incident and she confirmed that she did not want it to be taken further, only to inform us. Hence why no further action was taken as Jamie Taylor was to have a conversation with Peter.

1027. Ms Gable did not see this incident report at the time,⁶²⁵ but she did confirm speaking to Ms Pinto.⁶²⁶
1028. Although Ms Pinto did not give evidence before me, this incident report deserves a great deal of weight. It is contemporaneous and written by someone with no axe to grind. It is quite clear that *something* happened on 7 February 2024, and that it involved Mr Waddell. Equally, precisely what that “something” was may have been lost either through Ms Gable’s upset or in the process of recording. It is significant, for instance, that Ms Pinto records only one exchange between Ms Gable and Mr Waddell, whereas later material says that there were two, allegedly inappropriate, remarks by Mr Waddell to Ms Gable. Equally – save by reference to Ms Gable’s upset (which I accept) – it is difficult to say precisely how inappropriate Mr Waddell’s comment(s) were.

WWW.3. Subsequent treatment

1029. It is evident that Ms Pinto had at least one conversation with Ms Duey on 7 February 2024, which is how Ms Duey must have become aware of this Incident. However, Ms Pinto’s incident report, which I find to have been contemporaneous, was only sent by Ms Pinto to Ms Duey at 4:34pm on 14 March 2024. Ms Duey forwarded this email to Mr Clarke an hour later at 5:32pm the same day:

Dear Tom

Please see below email as requested.

Kind regards

Joanne

1030. It is thus clear that Mr Clarke had got wind that something helpful to the MDE Investigation had occurred, and he had requested Ms Duey to provide such material as there was. Mr Clarke obviously felt able to take the matter forward despite Ms Gable’s expressed desire for the matter to be handled informally.

WWW.4. The interview with Mr Siddall, KC

1031. I will consider, first, what Ms Gable told Mr Siddall, KC in the (transcribed) interview that took place on 26 March 2024 about the Incident itself. I will consider separately, and later, how Ms Gable came to be before Mr Siddall, KC:

Q (Mr Siddall, KC)	...So you started on 2 January and when did you leave, please?
A (Ms Gable)	I am pretty sure it was 17 February.
Q (Mr Siddall, KC)	Okay. So you certainly weren’t there very long?
A (Ms Gable)	No.

⁶²⁵ Day 22/p152 (Gable in-chief).

⁶²⁶ Day 22/p152 (Gable in-chief).

- Q (Mr Siddall, KC)** I have heard a suggestion that your Dad also works at the Peterborough site, is that right?
- A (Ms Gable)** Yes.
- Q (Mr Siddall, KC)** Thank you. There is a specific incident I am asked to speak to you about in terms of an interaction between you and Pete?
- A (Ms Gable)** Uh-huh.
- Q (Mr Siddall, KC)** Before I deal with that, how many times did you interact with Pete in the brief period you worked for BIG?
- A (Ms Gable)** I never interacted with him at all before them two occasions.

Pausing there, this appears to be the first point at which the Incident bifurcates into two. It is significant that Mr Siddall, KC was conducting the interview with great sensitivity (although I am sure that Ms Gable nevertheless found the process an ordeal) and was asking a question that assumed a single Incident. Ms Gable was thus not being led in the direction of her answer, which took Mr Siddall, KC by surprise:

- Q (Mr Siddall, KC)** So there are two occasions
- A (Ms Gable)** I never interacted with him at all before them two occasions.
- Q (Mr Siddall, KC)** So there are two occasions you interacted with him.
- A (Ms Gable)** Yes.
- Q (Mr Siddall, KC)** Fine. All right. I am not going to ask you about his reputation or anything like that, because it seems your interactions were limited and I am conscious – I do not want to make this interview any longer than it needs to be, because I dare say there are other things you would rather be doing, pleasant as no doubt it is to chat with me. There are two incidents about which you are concerned. Tell me about those? Are you able to place them in time as to when they happened, please?
- A (Ms Gable)** I would not be able to tell you the dates.
- Q (Mr Siddall, KC)** No, but roughly.
- A (Ms Gable)** It will probably be a week before the 17th was the first time he spoke to me.
- Q (Mr Siddall, KC)** Yes.
- A (Ms Gable)** He had been on site a few other times but I had kept my distance because I had heard a couple of things.
- Q (Mr Siddall, KC)** Okay.
- A (Ms Gable)** But this was unavoidable. I was walking into where his office is and Anna's office, and he was with Anna.
- Q (Mr Siddall, KC)** Right.

- A (Ms Gable)** I have come through the doors because part of my job was...
- Q (Mr Siddall, KC)** Just to pause you. Who is Anna, please?
- A (Ms Gable)** Anna, she is Duncan's – I do not know. She is Duncan's girlfriend. She works there as well.
- Q (Mr Siddall, KC)** Do you know her surname by any chance?
- A (Ms Gable)** No.
- Q (Mr Siddall, KC)** That is okay. Do you know Duncan's surname?
- A (Ms Gable)** No. I know he is the boss. He runs that site, type thing.
- Q (Mr Siddall, KC)** Okay. Fine. So Duncan is the head of the Peterborough site.
- A (Ms Gable)** Yes.
- Q (Mr Siddall, KC)** And Anna is his girlfriend.
- A (Ms Gable)** Yes.
- Q (Mr Siddall, KC)** Sorry, I interrupted. So we are about roughly the week before the 17 February. You kept your distance from Pete because you had heard things. However, you needed to go into Anna's office, and he was talking to Anna.
- A (Ms Gable)** Yes.
- Q (Mr Siddall, KC)** Please continue.
- A (Ms Gable)** He had obviously heard about me because my dad is also a manager, so he is quite well-known.
- Q (Mr Siddall, KC)** Okay.
- A (Ms Gable)** So he has obviously asked me, "You are Kev's daughter?" and I said yes. As he said that, he kind of looked me up and down, which originally, that was the first thing. It made me so uncomfortable. I just looked at him, a bit – you know, a bit of an awkward smile, a bit nervous.
- Q (Mr Siddall, KC)** Okay. Awkward smile from him or from you?
- A (Ms Gable)** From me. I kind of like, smiled at him, kind of like – because I didn't really know what else to do in that moment.
- Q (Mr Siddall, KC)** Okay.
- A (Ms Gable)** Then he asked me what my job was, and my job was VIN check and engine checks.
- Q (Mr Siddall, KC)** Okay.
- A (Ms Gable)** That entails me checking the engine, so I am inside the bonnet.
- Q (Mr Siddall, KC)** When you say "VIN", as in Vehicle Identification Number?
- A (Ms Gable)** Yes. They are in the footwells of the car, so obviously it is quite – I am crouching down quite often.

Q (Mr Siddall, KC)

Yes.

A (Ms Gable)

So obviously when I told him what my job was, he looked me up and down again and smiled and said “you have got a cute arse for that” and gave me a wink. I shot a look to Anna, because she was a woman, and she just kind of smiled at me and then smiled at Pete and was like “ha ha”. I was a bit like “oh”. So I went and told my dad, and I am pretty sure that he wrote a statement about it.

Pausing again, Mr Gable’s statement was in the record, and is referred to below. Continuing:

A (Ms Gable)

I brushed it off because I didn’t want to cause a scene. I hadn’t been there long, and this is the CEO of the company.

Q (Mr Siddall, KC)

Sure, just pausing there, that is the first occurrence?

A (Ms Gable)

Yes.

Q (Mr Siddall, KC)

You are clear it happened in Anna’s presence and Anna heard what was being said?

A (Ms Gable)

Yes.

Q (Mr Siddall, KC)

Do you mind if I ask, Lily, how old you are, please?

A (Ms Gable)

I am 19.

Q (Mr Siddall, KC)

Okay. So that was the first occurrence. You spoke to your dad and you said you think your dad wrote a statement. Did your dad do anything about this or not?

A (Ms Gable)

No. He went and spoke to Diane or Diana, who was a HR lady.

Q (Mr Siddall, KC)

Yes.

A (Ms Gable)

She wrote the statement and he told her that Anna was there and then immediately after that Anna, Duncan and Pete all had a meeting because we all see them go up in his office.

Q (Mr Siddall, KC)

Yes.

A (Ms Gable)

Then there was nothing more said about Anna. She was kind of just cut out of that when it was brought up again. She wasn’t involved.

Q (Mr Siddall, KC)

Okay.

A (Ms Gable)

Then, as far as I was concerned, nothing else was going on. The senior management were being a bit bitter towards me and my dad.

Q (Mr Siddall, KC)

Right.

A (Ms Gable)

But...

Q (Mr Siddall, KC)

Is that Duncan and Anna, when you say the senior management?

A (Ms Gable)

Yes, Duncan and Anna.

- Q (Mr Siddall, KC)** Yes.
- A (Ms Gable)** Just silly little things, like one of our friends that worked there went to Australia and my dad booked a half-day of a holiday and they declined it, but he had already spoken to Jamie, I think it was, who said that it wasn't an issue.
- Q (Mr Siddall, KC)** I see.
- A (Ms Gable)** So he got the holiday, but it was just little things like that. They were just trying to nitpick.

This is classic victimisation. Something is reported, and the administrative processes of the firm are weaponised against the complainant.

1032. That concludes Ms Gable's evidence of the first part of the Incident, which took place on 7 February 2024 and is substantially documented in the file note set out above. The second part of the Incident – not documented – was described by Ms Gable in the following terms to Mr Siddall, KC:

- A (Ms Gable)** Then the second time was the day I left. I walked out that day. I couldn't be there anymore.
- Q (Mr Siddall, KC)** Okay.
- A (Ms Gable)** I was in the appraisal shed, which is where I worked. I was at one end, helping Mario, one of my work colleagues, with his job. I was leaning on the desk, writing. I heard Pete was walking down, talking to someone. I have never seen them before.
- Q (Mr Siddall, KC)** Okay.
- A (Ms Gable)** He then said to me, he was like "oh look, it is the girl with the cute arse again", and then looked me up and down and winked again. I shot my look over – I cannot even remember who it was – to another man who was standing there. I said, "did you hear what he just said to me". I was shaking, and I just went, "No, I am not having this", I went straight up to Diane, shaking, and told her what had happened and I said "I cannot be here any more. I cannot do it"...

1033. Ms Gable resigned that day. Her father handed in her notice.

WWW.5. Evidence of Mr Waddell

1034. Mr Waddell said this:⁶²⁷

[228] I remember the first time I met Lily Gable. One day I was in the office block at the Peterborough Preparation Centre with Anna Pauka, who worked there as a Team Leader. The office block is across the road from the sheds where the cars are prepared. While I was there with Ms Pauka (who was not interviewed), a young woman walked in. She was not dressed appropriately for the office block – she was in workwear rather than office wear. So I said to her, "who are you?". She said "Lily". I asked her what

⁶²⁷ Waddell 5.

she was doing there. She said something like, “my dad works in parts, I work in prep”. She then walked out. I never said anything about her appearance. Before this, I did not know who Ms Gable was, and I could not recall her father, either.

[229] The second interaction Ms Gable described to Mr Siddall did not happen. There is a desk in the corner of the appraisal shed. If I was in the appraisal shed with a supplier or someone from outside the business, I would not have walked over to Ms Gable and talked to her. I do not remember seeing Ms Gable again after the first meeting in the office block.

1035. Mr Waddell noted that Ms Gable resigned at about this time, but denied it was anything to do with the second Incident, which he denied occurred.

WWW.6. How Ms Gable came to be before Mr Siddall, KC

1036. The report on the first part of the Incident was emailed by Ms Duey to Mr Clarke on 14 March 2024. Between 14 March 2024 and 21 March 2024, Mr Clarke must have got in touch with Ms Gable, asking to speak to her, because Ms Gable emailed Mr Clarke on 21 March 2024:

Good afternoon

My phone number is [redacted by me]

Could the phone call be Monday though please Yours Lily

1037. There then followed various emails as Mr Clarke and Ms Gable sought to find a mutually convenient time to speak.⁶²⁸ The phone call ultimately took place on 26 March 2024, the same day as Ms Gable was interviewed by Mr Siddall, KC.⁶²⁹ It is to be inferred that this call dealt with, amongst other things, the arrangements for the interview.
1038. Ms Gable had quite obviously been thinking about this interview with Mr Siddall, KC that resulting from this conversation with Mr Clarke, because she had prepared a statement on this point, which she wanted to read out at the trial. Mr Laddie, KC – rightly – stopped her:⁶³⁰

A (Ms Gable) ...The conversation I had with Mr Siddall, Tom Clarke contacted me by email, 21 March 2024, which we arranged a phone call for the 26th, just before I had the Teams call with Mr Siddall. Tom Clarke, when he answered the phone to me, stated that he was a representative of Big Motoring World. This – I thought that he was a solicitor that I was speaking to.

Q (Mr Laddie, KC) Stop. I am going to stop you. Are you reading something out?

A (Ms Gable) Pardon?

Q (Mr Laddie, KC) Are you reading something out?

⁶²⁸ Put Day 22/p153 (Gable in-chief).

⁶²⁹ Day 22/pp154-155 (Gable in-chief).

⁶³⁰ Day 22/pp130-131, p 141 (Gable in-chief).

- A (Ms Gable)** No, I'm reading the specific dates and times because I have emails from Mr Clarke, following up all of what I'm about to be saying. So I'm just reading the dates and the times so I can make sure that I am giving you the correct dates and times.
- Q (Mr Laddie, KC)** The question I asked you though was: have you read the transcripts of your interview?
- A (Ms Gable)** No.
- Q (Mr Laddie, KC)** Right. With Mr Siddall? Have you read it at any point since the interview took place on 26 March?
- A (Ms Gable)** I have not read it because I do not believe that that statement accurately represents what happened.
- Q (Mr Laddie, KC)** How do you know, if you haven't read it?
- A (Ms Gable)** Because that statement was given after the phone call with Mr Clarke and Mr Clarke had given me phrasing on what to use.
- Q (Mr Laddie, KC)** Just say that again. Mr Clarke had given you phrases of what to use in what?
- A (Ms Gable)** In the interview or the call I have with Mr Siddall.
- Q (Mr Laddie, KC)** And what phrases did he give you to use?
- A (Ms Gable)** When I spoke to Tom Clarke on the phone, which is why I did bring it up, because it is relevant. Tom Clarke has said that what Pete said to me was sexual harassment, and that when I have the phone call with Mr Siddall to use that phrasing specifically. That did influence not only my feelings on the situation but, like, everything, it influenced what I said on the phone, it influenced me feeling that I had then been sexually harassed, although prior to it I never felt that I was sexually harassed.
- Q (Mr Laddie, KC)** Is that right? You left the business, didn't you, after the second comment, didn't you?
- A (Ms Gable)** Yes.
- Q (Mr Laddie, KC)** Yes.
Let me just ask you this. Ms Gable did you tell Mr Siddall the truth or did you lie to him?
- A (Ms Gable)** I told him how I felt at the time.
...
[Ms Gable was being examined on the second Incident and was being asked about a mismatch between the evidence to Mr Siddall, KC and her evidence to the court.]
- Q (Marcus Smith J)** So, what you told Mr Siddall in the interview was that it was a direct comment by you – or, sorry, by Pete to you, that you directly heard. That's quite a big difference from, as it were, a chain of communications. Can you help me on why you gave that particular answer to Mr

Siddall and why you're giving me a much fuller version now?

A (Ms Gable)

Like I was trying to explain that, before I had the conversation with Mr Siddall, I had a phone call with Tom Clarke. This phone call is backed up by emails that I have on my phone, stating that we called that day and me following up, after this, with Mr Clarke.

If you let me read from my statement, it actually says in my statement that Mr Clarke told me to use exact language and then, if I was to do this, he would reinstate my job. I was out of work. I was in an extremely bad mental state, and I was naïve. I was completely naïve to the situation. If Tom Clarke had never told me that, I would never have agreed in the first place to give a statement to Mr Siddall. Again, I also have that on email. I had sent Mr Clarke, on 28 March 2024, an email asking him, and I've got the exact transcript here as well...

Q (Marcus Smith J)

Okay. When you're referring to "the exact transcript", this is something you've written down after the event as your memory? Is that right?

A (Ms Gable)

No, no, when I say the transcript, this is me – I couldn't – I don't have access personally to a printer, so I've written out the emails that have been sent to and from Mr Clarke and myself.

1039. Although nervous, compelled to give evidence, and doing so remotely, Ms Gable was a formidable, honest and courageous witness. As I will come to describe, Ms Gable was keen to distance herself from the evidence she gave Mr Siddall, KC. But she did not disavow that evidence. It represented – in her words – how she "felt at the time". Although Mr Laddie, KC pressed for a "was it true or was it a lie" answer, that question mistook Ms Gable's concern about the evidence she had given to Mr Siddall, KC.
1040. I have found that Ms Gable's evidence to Mr Siddall, KC to have been, as testimony of the bare facts, substantially accurate, and the best evidence of those bare facts. But we are speaking here of events of harassment and bullying and victimisation, and the emotional overlay on top of the bare facts matters.
1041. Ms Gable's concerns about the interview she had with Mr Siddall, KC, were that she had been manipulated by Mr Clarke into (i) giving evidence at all and (ii) into how the facts she described were to be characterised. That is what she resented – and rightly so, for the process run by Mr Clarke lacked integrity.
1042. Of course, Mr Clarke was not the only person to seek to control Ms Gable's evidence to the court. I shall come to Mr Waddell's own approach in due course. I will also express my conclusions on the factual matters relating to the Incident at the end of this section. All that needs to be noted now is that Ms Gable's reluctance to participate further in this process is understandable (and actually does her credit) but that this renders her evidence all the more important, provided it is understood that she is actually giving evidence about two broad areas: (i) Mr Waddell's misconduct, so far as these two instances are concerned;

and (ii) the integrity of the process by which these instances were investigated. Once this is understood, Ms Gable's evidence is both consistent and compelling.

WWW.7. Mr Gable's statement

1043. On 27 March 2024, Ms Gable emailed Mr Clarke attaching a statement from her father, Mr Gable. The statement, which was attached, read as follows:

To whom it may concern

These are events that occurred on February 6th 2024, at Peterborough Prep Centre.

This is my recollections.

My daughter, Lily, who worked in appraisal shed, called me late morning very upset. Peter, the company owner, had been in the shed and made sexual comments regarding her backside.

I was very angry at this and went to find him. I was stopped by my colleagues who told me to calm down or it may cost my job, which is the least of my concerns. I immediately went to HR and spoke to Daianna. I told her that I was livid and should I find Pete I may not be able to contain my anger. I told her I wanted to make an official complaint.

I then returned to my office, an hour or so later I had another call from Lily, who told me he had done it again. I told her to go to HR and then I will go find him.

I again went looking but had no luck finding him, I then went to HR again. Lily was already there crying and very upset. I told Daianna she needs to get the facts and forward this on, if not I would take matters into my own hands. She assured me she would do that.

I went back to my office, where the young girl who works for me was upset, when I asked what is wrong, she told me she was bending across the parts counter talking to her brother, when Pete walked past, thrust his hips and said "oh I don't want to rub myself against you" then continued on his way. I asked her to write me a statement, she was reluctant, as she said she did not want to lose her job. Eventually, she scribbled a note, which I took a picture of on my phone.

A couple of hours later, Duncan, who is the site manager, called me to one side. He said, regarding the incident that took place earlier, I have spoken to Pete and told him he was out of order, I don't know what's got into him today anyway it's been sorted.

I said telling him he is out of order is not sorting it.

He again said I've dealt with it.

Lily then told me she cannot continue to be here, whilst Peter is around, it has really upset her

1044. The detail is at times incorrect, and this is in no sense a formal statement. Nor did Mr Gable give evidence. But as Mr McPherson, KC correctly pointed out in his cross-examination of Ms Gable, Mr Gable would only have had her best interests at heart, and he would not have written this without a sincerely-held belief in its truth. It is an important piece of documentary evidence.

WWW.8. Further Clarke/Gable communications

1045. The next communication between Mr Clarke and Ms Gable is from Ms Gable to Mr Clarke, dated 28 March 2024 (time 6:07pm):

Good evening

I do apologise about bothering you again. I was wondering if you had an update on me possibly getting my job back

1046. There is no evidence of any prior communication since the Clarke/Gable conversation on 26 March 2024. I conclude that Mr Clarke made some sort of offer of getting Ms Gable her job back immediately prior to her interview with Mr Siddall, KC. Mr Clarke's response (dated 2 April 2024) was:

Lily

I have asked HR to get in touch with you.

1047. HR did get in touch, on 2 April 2024:

Good afternoon, Lily

I hope this email finds you well.

Following on from your recent correspondence with Tom Clarke, I have been asked to make contact with yourself in regards to job opportunities within the Company.

I can confirm that your previous role of GDPR checker was filled following your resignation from the Company and as such we do not have any current vacancies within this area. However, we do currently have Administration roles within our main Admin Office, if you would like to discuss the possibility of being considered for one of these vacancies could you please let me know via return email. I will then be able to make the necessary arrangements for you to visit the site in order to discuss the vacancies in more detail.

I look forward to hearing from you.

1048. Ms Gable responded:

Really I find that hard to believe as I spoke to Farhan last week he said he hadn't replaced me and the job was still available. Les is also no longer working for the company but that's no problem I will speak to my solicitor about what Peter did and I will be posting on social media

1049. Mr Gable recounted the outcome in an email on 4 April to Mr Clarke:⁶³¹

Good morning

Thank you for talking with Lily it really helped her.

It also has now made her a victim again.

⁶³¹ Ms Gable was examined on these exchanges (Day 22/pp155ff (Gable in-chief).

After discussing her returning, it was passed to Joanne, unfortunately nothing was done.

She finally contacted Lily yesterday to tell her that there are no vacancies.

Well there would not be, as they employed 2 people on Tuesday.

Strange that!!

I'm really not surprised as the rot seeps down from the top.

Peter got away with so much, as everyone seemed to be afraid to speak, for fear of losing their jobs.

That mentality will take a while to change.

Sorry to rant, I'm angry as I now have a very upset daughter again. Who feels that she has been punished yet again.

I am not sure my next course of action, but feel like seeking legal advice. Constructive dismissal? Sexual harassment? May contact Luciana who also left for similar issues.

1050. The key question is what Mr Clarke promised Ms Gable – if anything – on 26 March 2024?⁶³²

Q (Mr Laddie, KC) Your understanding was that Mr Clarke said he would see – words to the effect, he would see what he could do?

A (Ms Gable) No, I was just...

Q (Mr Laddie, KC) That's right, isn't it?

A (Ms Gable) No, it's not correct actually. I was just ridiculously polite and I thought that wording made me sound professional and made me sound courteous.

Q (Mr Laddie, KC) Okay. Let's go on to the next document.

Q (Marcus Smith J) Just pausing there. Ms Gable, sorry, am I to understand that there were conversations that you say took place between you and Mr Clarke which precede this email?

A (Ms Gable) Yeah.

Q (Marcus Smith J) In a few sentences, don't go on too long, but do you want to just summarise what was said in those conversations?

A (Ms Gable) During the phone call with Mr. Clark, he told me that if I was to make a statement, I would get my old job back with zero repercussions. They were the words he used, "with zero repercussions", which is why I even agreed to make the original statement. If those assurances had not been made, I never would have even given a statement to Mr Siddall. As far as I was concerned I'd moved on with my life.

⁶³² Day 22/pp159ff (Gable in-chief).

1051. Ms Gable persisted in seeking something back from BIG. In an email dated 17 May 2024 to Mr Clarke, she stated:

Good morning,

I'm writing today as you said I would get my job back. Not only did Joanne wait five days after you would e-mail her to respond, she filled the position the day before, then had emailed me saying it was no longer available. Secondly, the parts department had an opening for invoices. James interviewed me and offered me the job, no one will get back to us and now they're getting two people to cover that one job just to stop me from being hired. This is discrimination as I was the victim I was sexually harassed by Peter. Now Joanne, who is friends with Peter's sister has made it her mission to make sure I will not get employed. I want to know why you're discriminating against a victim. If this matter is not resolved, I'll be taking legal action against not only the company but Joanne personally.

Your

Lily Gable

1052. Mr Clarke responded formally: "I have passed this to my relevant colleague, who will be in touch". The matter was investigated, although Ms Gable could not recall this in the witness box,⁶³³ but (so the contemporary documents show) she was not pleased with the outcome.⁶³⁴
1053. There matters rested – somewhat unsatisfactorily from Ms Gable's point of view – until in the course of 2025, BIG (through Mr Clarke and then Stephenson Harwood) sought to obtain further evidence from Ms Gable for the purposes of this trial.⁶³⁵ Ms Gable was very reluctant, but persistence paid off, and Ms Gable then agreed to talk, and seemed to be prepared to provide a statement. She then however, changed her mind, and began "airing" Stephenson Harwood.⁶³⁶
1054. Ms Gable was concerned about the stresses and mental health burdens of giving evidence. But she was also approached by Mr Waddell's side.⁶³⁷

WWW.9. Ms Gable's evidence at trial

1055. Ms Gable gave evidence on Day 22. She wanted to read from a prepared statement, which had not been submitted into evidence, and quite properly Mr Laddie, KC objected to this.⁶³⁸ The first part of the examination by Mr Laddie involved putting to her the evidence she had given to Mr Siddall, KC. Ms Gable recollected that prior to the first Incident she had met Mr Waddell socially at a wedding. She was with her father.⁶³⁹

⁶³³ Day 22/pp166-167 (Gable in-chief).

⁶³⁴ Day 22/pp167-168 (Gable in-chief).

⁶³⁵ Day 22/pp169-176 (Gable in-chief).

⁶³⁶ Day 22/pp177-178 (Gable in-chief).

⁶³⁷ Day 22/p179, p182 (Gable in-chief).

⁶³⁸ Day 22/p111 (Gable in-chief).

⁶³⁹ Day 22/p118 (Gable in-chief).

1056. Her recollection of the substance of the first part of the Incident was much vaguer than it had been before Mr Siddall, KC:⁶⁴⁰

I genuinely don't remember the exact comment that was made...I think it was about my appearance. I feel like, back then, I was already in a bad mental state and I – the fact that I can't remember the comment tells me that it wasn't a comment that affected me that bad, because I do tend to remember things that offend me or send me into a mental spiral which, if that had been done, I would be able to remember it. But I can't remember what the exact...I do think it was about my appearance, but I don't think I could tell you exactly what was said.

1057. This toning down is explicable by a combination of Mr Gable feeling that her evidence before Mr Siddall, KC had been steered by Mr Clarke, both in terms of categorising it as sexual misconduct (and perhaps saying more as to the nature of Ms Gable's evidence) and in terms of providing a distorting reassurance that Mr Gable would get her job back. With the benefit of distance of time, and the fact that Mr Clarke's promises had not (in Ms Gable's eyes) been kept inclined Ms Gable towards a revisionist view of her evidence previously given. She did not revise the facts, but much more the impact that Mr Waddell's conduct had had on her. She was a truthful witness whose evidence had been the subject of external influence by Mr Clarke.

1058. The same is true about the second part of the Incident.⁶⁴¹ Ms Gable did not deny the testimony she gave before Mr Siddall, KC, but rather minimised the impact on her of these statements, even to the extent of blaming herself.

WWW.10. Conclusions

1059. Incident No 8 involves two utterly inappropriate sexualised comments made in close proximity in time by the CEO of an organisation to subordinate many layers below him who happened to be a 19 year old female. Those remarks caused massive and understandable upset in a young and vulnerable person. The fact that – looking back – Ms Gable thought that she had been *excessively* vulnerable does her credit, but in no way serves to mitigate the seriousness of the Incident.
1060. Matters were not helped by the efforts of Mr Clarke in producing Ms Gable's evidence. The job offer that never came skewed her evidence against BIG, which is understandable, and does Mr Clarke no credit at all. Whilst Mr Clarke did attempt to steer Ms Gable's evidence to Mr Siddall, KC, I nevertheless accept it. I find that the evidence she gave to Mr Siddall was true, including as to impact.
1061. This was harassment contrary to section 26 of the Equality Act 2010 and constituted gross misconduct on the part of Mr Waddell.

⁶⁴⁰ Day 22/p118, p120 (Gable in-chief).

⁶⁴¹ Day 22/p124, p125 (Gable-in-chief).

XXX. INCIDENT NO 13 (FEBRUARY 2024, BULLYING OF MR LAPTHORNE)

1062. Incident No 13 was not pursued at the trial.⁶⁴² Nevertheless, it was included in Mr Siddall's terms of reference (so it was regarded by Freshstream as meeting the referral requirement for an MDE Event). Mr Siddall concluded that the incident occurred, but that it was not an MDE, because protected characteristics were not in play.

1063. The evidence before me was simply an aside in Ms Rather's statement:⁶⁴³

...I made sure to always say hello to Peter, if he was visiting the site I was working at that day, since, on several occasions, I had seen Peter become very angry if someone had not said hello when they arrived or goodbye when they were leaving. (For example, I recall one occasion where Peter shouted something along the lines of "Where the fuck is Nick? He didn't say goodbye to me", when Nick Lapthorne had, as I understood it, left the site without letting Peter know beforehand.)

1064. This is not gross misconduct.

YYY. EVENTS OF FEBRUARY 2024

YYY.1. The February IC Memo

1065. This IC Memo's purpose was described in the following terms:

This note is intended to evaluate the decision for Freshstream to step-in at [BIG] and the associated risks and opportunities of doing so. In the event of a step in, the deal team would also like to receive feedback from IC on strategy for the business going forward.

1066. The executive summary set out the Step-In process in some detail, and the substance of the memo is concerned with the pros and cons of Step-In only. There are two, unstated assumptions: (i) complete control of BIG by Freshstream; and (ii) that Step-In will achieve such control.

1067. The document was put together by Mr Fardad.⁶⁴⁴ Mr Gradassi was involved in this process,⁶⁴⁵ but nevertheless remained on the outside of the Option 4 plan. He put the probability of Mr Waddell moving to (formal) chair of BIG at 1%.⁶⁴⁶

1068. The recommendation was to Step-In. There was no mention of misconduct. The IC Memo is completely detached from the detailed emails that evidence the planning against Mr Waddell.

1069. What is interesting about this document is what it fails to say Option 4. There are two alternatives: (i) first, that this was only about Step-in; (ii) secondly, that there was a deliberate decision to avoid discussing the non-Step-In elements of

⁶⁴² See Mr Laddie, KC's concession on Day 8/p195.

⁶⁴³ Rather 1/[31(a)].

⁶⁴⁴ Day 16/p72 (XX Fardad).

⁶⁴⁵ Day 18/pp22-23 (XX Gradasi).

⁶⁴⁶ Day 18/p24 (XX Gradassi).

Option 4. Given that Step-In would leave Mr Waddell as CEO, (i) subject to greater board control but (ii) very angry and liable to be uncooperative, it is difficult to see how Stepping-In on its own could have been seen as a viable option by Freshstream at this time. The second possibility is the more likely one, and the one that I find to be the case. Freshstream were documenting the *business decision* that was within their rights to take. The other matters – disciplinary and MDE – were subject to legal constraint and certain objective factors would need to be satisfied before these rights could be triggered. I therefore see this IC Memo as a part of a greater picture.

1070. Mr McLain was asked about this.⁶⁴⁷ McLain contended that MDE was not mentioned, because what was planned was termination through the Waddell Service Agreement. That was part of the plan, and required BIG’s cooperation (obviously without Mr Waddell being in the loop).

YYY.2. Email to Mr Clarke dated 9 February 2024

1071. This email – dated 9 February 2024 – from an unknown sender to Mr Clarke is a list of jobs, entitled “notes from our call”.⁶⁴⁸ The list reads:

JC Actions

1. M, W, F call for next 3 weeks

2. Risk register

[Part privileged]

3. TC actions

- WhatsApp – reductions (question on whether we keep some) and remove PW from all
- Dashboard – PW to read only
- CCTV – remove PW access and remove much of the CCTV (also review access for others)
- Email – redirect PW work email to LV. Question whether we can do anything on PW personal email which is the email he uses primarily for work
- Phone – probably a company phone but not sure we would have the right to the number

3. Partner communications plan

- Who we want to engage with and who at BIG is responsible

⁶⁴⁷ Day 18/pp153ff (XX McLain).

⁶⁴⁸ Put to Mr Fardad: Day 16/p78 (XX Fardad).

- Plan for when to communicate to each one and what medium
- Key messages, FAQs, written comms (if any)

4. David Thorley – any restrictions as a result of him not being employed (eg bank access etc)

5. Andy Holness – Andy probably doesn’t want to come back day 1

1072. This email is a continuation of the granular considerations going on in January 2024. The document stands in stark contrast to the IC Memo just described. Mr Fardad – who steadfastly denied the existence of the plan – was asked about this document.⁶⁴⁹

Q (Mr Gourgey, KC) As we are going into February 2024, this is an email to Mr Clarke. It’s a document that’s been disclosed by Freshstream. Have you seen this document before?

A (Mr Fardad) I don’t recollect seeing this document. Sorry, can I ask, is the date of this document September?

Q (Mr Gourgey, KC) This is all in February. It’s 9 February 2024. Do you recall that in early 2024 the plan was being developed to ensure that on the day that step in was implemented, Mr Waddell would have – as we see in point number 2:

“Remove PW from all WhatsApps, only to be able to read the dashboard, remove him from access to CCTV and redirect his work email to Mr Vaughan”

A (Mr Fardad) I don’t recollect that.

Q (Mr Gourgey, KC) Do you recollect that the planning by this period in February 2024 was proceeding on the basis that Mr Waddell would be cut out of the business from day one, day one being step in?

A (Mr Fardad) I don’t recollect being part of these conversations, so...

1073. I do not believe this blanket non-recollection. Mr Fardad’s suggestion that all Freshstream were doing was mulling over what to do instead of framing exactly how to remove Mr Waddell from office is impossible to accept.

YYY.3. 12 Feb 2024 WhatsApp

1074. In a WhatsApp communication between Mr Vaughan and Mr Clarke dated 12 February 2024, Mr Clarke said:

I know you have enough ammo, etc...but latest news, Pete is contacting people who have left poor Facebook reviews (mostly about him) and is paying them from his Coutts account!!!

⁶⁴⁹ Day 16/pp78ff (XX Fardad).

1075. Mr Vaughan asked, in response, “Have we any hard proof?” This is provided, but this is an allegation that did not become an Incident.
1076. Mr Vaughan denied that he and Mr Clarke were involved in an evidence gathering process, collecting material to be used against Mr Waddell:⁶⁵⁰

Q (Mr Gourgey, KC) I suggest to you that the reference to “[d]o you have enough ammo” was a reference to the fact that, by this time, you and Mr Clarke were tasked as part of a plan to find evidence of Mr Waddell’s behaviour that could be used in, I don’t want to get into whether it’s MDE or disciplinary, but some form of process concerning his [conduct],⁶⁵¹ whether that be MDE, disciplinary or both?

A (Mr Vaughan) There was no such tasking from anybody. However, we were receiving examples of poor behaviour at an ever increasing rate.

1077. Again, this evidence is impossible to square with what is recorded in the contemporaneous documents. Mr Clarke was *looking* for evidence; prior to the end of 2023, when evidence came to Mr Vaughan, he did nothing. The question is why his attitude changed. That is because of Freshstream’s decision in December 2023 and was a consequence of the planning arising out of the January 2024 “war planning” meeting. In his witness statement, Mr Vaughan said this:⁶⁵²

[73] I recall regularly attending meetings at Freshstream’s offices in January and February 2024, and I was in contact with Reza almost daily during that time. I have refreshed my memory by reference to [26 Jan 2024 email], which is an action list prepared by Freshstream after a meeting Tom and I had with them on 26 January 2024. At this point, I recall that Freshstream had resolved that the only way they could address the issues in the business was to exercise their Step-In Rights, which included launching an investigation into Pete’s behaviour. During the 26 January 2024 meeting, we discussed what the implications of an investigation might be. These included that, if the investigation did find serious fault with Pete’s behaviour, Pete’s employment with Bidco might need to be terminated. It was a serious possibility that we had to discuss and account for. We were also conscious of the impact any suspension or subsequent termination might have on BIG’s key relationships, including with suppliers and regulators.

[74] Pete’s worsening behaviour and the generally poor shareholder relationship dynamics put me in an extremely difficult position. After the 26 January 2024 meeting with Freshstream, and without waiving privilege, on 20 February 2024, I engaged Stephenson Harwood to advise BIG on the provisions of the SHD and employment matters regarding Pete’s service contract. Before we sought advice from Stephenson Harwood, I am not sure that I knew what the precise contractual provisions in the SHD were, or how they operated. Nor had I reviewed Pete’s service contract to identify any contractual provisions available to deal with Pete’s behaviour. However, I was aware, before that point, BIG’s directors owed duties to protect company staff and had

⁶⁵⁰ Day 20/pp45-46 (XX Vaughan).

⁶⁵¹ The transcript says “contact”, which is a mistranscription.

⁶⁵² Vaughan 3/[75]; put Day 20/p64 (XX Vaughan).

additional responsibilities given that BIG was a regulated business and I felt a duty to act.

[75] In late February and early March 2024, I worked with Tom to compile details of allegations we were aware of regarding Pete’s behaviour in order that we could seek legal advice from Stephenson Harwood. I recall that we discussed the allegations face-to-face. Those discussions were the first time I became aware of the allegations of Pete’s sexual harassment of staff, such as the incident with Beth Murphy where Pete said something like “I bet you’d like to suck my cock” and the comments that Pete had made to female staff in Leeds regarding how he liked them “on their knees”. I discussed the allegations with Reza and those allegations were the basis on which I believe Freshstream served an Investigation Notice.

1078. There is a great deal of truth in this, but fundamentally this account is false, in that the process is put the wrong way round. Freshstream, Mr Vaughan and Mr Clarke were *not* reacting to information concerning Mr Waddell that had simply come their way. They were not seeking to maintain a good corporate culture. They had known about – and condoned – the bad corporate culture within BIG for months. What they *were* doing was looking for material that could be deployed in a pre-ordained fashion to remove Mr Waddell from his position as CEO. There was an inevitability about the process that was entirely at variance with a proper investigation. Impartiality was lacking.

1079. Mr Vaughan denied that this was what he and Mr Clarke were doing:⁶⁵³

Q (Mr Gourgey, KC) In [Vaughan 3/[75]], you refer to the fact that, in late February and early March, you were working with Tom to compile details of allegations:
“...in order that we could seek legal advice from Stephenson Harwood”.

A (Mr Vaughan) Yes.

Q (Mr Gourgey, KC) The position, Mr Vaughan, is that you and Mr Clarke, some time before late February, were working to put together details of Mr Waddell’s behaviour so that it could be used to remove Mr Waddell from his position as CEO? That’s what you were doing?

A (Mr Vaughan) What we were doing is exactly what I say in the statement. We were pulling the data together to show Stephenson Harwood.

1080. I do not accept this evidence.

YYY.4. Email from Mr Cartwright (13 February 2024)

1081. This email represents a further, more detailed, planning document:

- Day 1
 - Laurence has walked through the plan for the day of the 27th with Reza

⁶⁵³ Day 20/p64 (XX Vaughan).

- Arrive pre-board with Adam and say that we are stepping in for these reasons (financial performance)
 - We would also like to give you 48 hours to think about changing your role to executive chairman – this is a decision we can make but would like to make it friendly
 - After 48 hours we make the change anyway (either with Pete consenting or we terminate)
 - We can then kick off investigations – need to think through the scope and formality of the investigation (considering need to disclose to regulators, etc)
- Industry event on 7 Mar and Pete is a “star guest” – don’t want him to attend, need to manage this
- LV needs to have visibility and be looped in on PW expectations for his new role but should primarily come from FS/Boars
- PW comms to the executive team
 - LV can communicate to executives 1:1 on the phone that FS has stepped in and change is afoot – it is BAU but if they are asked to do anything unusual they should come to LV or FS
 - Formal communication to the executive that FS has stepped in and what this means **[Part Privileged]**
- Once PW is no longer CEO:
 - Group executive meeting and 1:1s on expectations
 - Direct call to each site manager, prep manager, etc
 - All hands with head office staff
 - Group wide email (though not all have email) **(LV to draft this under 2 scenarios and potentially key messages to support all hands, etc)**
 - Visits to each site to communicate change (not on day 1) (start with PB given lower prevalence of email)
 - Q&A **(this is sitting with Tom and Andy – LV to get an update)**
 - Timing of Andy return **(Tom and LV to align with Andy – preference is not day 1 but not a month later)**
 - Bonus scheme – should we catch up any bonuses for last year as a gesture of goodwill
 - Finance function

- LV speaking to Vicki today and will come back with timing for her joining – **LV to provide an update but we won't know until she resigns**
 - David does not want to be with the business beyond April – could stretch this if needed
 - Depending on Vicki timing, consider options to bring in interim CFO, FC, etc
 - LV to have discussion with BF once he is CEO and to steer toward quick retirement – David thinks we don't need handover time but Barbara does work hard and knows a lot. Support with month then out but be available to support if needed. David is worried about the risk. **[Part privileged.]**
- PR
 - Laurence is very sceptical on the value of PR and thinks we should be shared (**GG to come back to LV on this**)

1082. As here set out, the implementation date for Option 4 was 27 February 2024.

1083. Once again, Mr Fardad had no useful recollection of events,⁶⁵⁴ but nevertheless sought to soften the evidently granular and inevitable nature of the plan:⁶⁵⁵

Q (Mr Gourgey, KC) ...Then the next bullet point:
“After 48 hours we make the change anyway (either with Pete consenting or we terminate).”

A (Mr Fardad) Okay.

Q (Mr Gourgey, KC) That was the plan you had at that time, wasn't it?
[Pause]

A (Mr Fardad) I mean, according to James' note to himself, yes, but I genuinely don't remember the details of the plan, because afterwards we went down the MDE route and just everything changed, so it just – I just don't remember the pre-plan to this, I'm sorry. But it sounds plausible, that's what we would have done.

Q (Mr Gourgey, KC) You simply don't remember, is that your evidence, Mr Fardad?

A (Mr Fardad) I don't remember what the plan was with pure step-in on a detailed, you know, give him 48 hours or give him – do it before a board meeting or after a board – I'm sorry, I just don't remember.

Q (Marcus Smith J) Mr Fardad, just looking at the “after 48 hours making the change anyway” bullet point, you reference there “we terminate”. Now, that can't be step in. What is it?

⁶⁵⁴ Day 16/p80 (XX Fardad).

⁶⁵⁵ Day 16/pp80-82 (XX Fardad).

A (Mr Fardad) I think it can be. I mean, my...No, I think it would be step-in your Lordship. If you think about it, its terminating him as an exec, like as a CEO. As a board member, following step-in, I believe we had the right to do that. If it was MDE, we wouldn't even have been talking about this, if you're going down the MDE route. If you're going down the MDE route, it's a completely different debate, we would have done what we did, which is start an investigation and terminate it. So I'm not sure this is...

Q (Marcus Smith J) But termination would be, leaving MDE on one side, informed by the terms of the service agreement?

A (Mr Fardad) I believe that would be right.

1084. Mr Fardad was, in his oral evidence, resiling from his written statement.⁶⁵⁶

My thinking at the time was that we will be able to manage some of the risks better in terms of compliance and the way Pete was treating customers and employees. I remember the feeling was, we didn't have the power to tell Pete to stop doing certain things because he was in control and we were a minority shareholder. Once we stepped-in, we would have more power and be able to influence the business to run it in a way that it would perform better. I thought the board meetings and the management team could be run better. I knew Pete would still be CEO (unless he agreed to let Laurence be CEO) but we would be able to limit some of his behaviour better because step in would give us extra rights.

Mr Fardad was unable to say whether this remained his evidence – “When I gave the witness statement, that was my recollection, but as we go through all these documents, maybe that's changed”.⁶⁵⁷

1085. The fact is that neither Fardad 4/[220] nor Mr Fardad's oral testimony gets it completely right. Fardad 4/[220] correctly describes the limits to Freshstream's Step-In Rights, but disregards the documentation put to Mr Fardad as to termination of Mr Waddell's tenure as CEO by other means. Mr Fardad's oral evidence acknowledges – as he had to, given the documents – this aspect of Freshstream's thinking.

1086. Mr Fardad had these inconsistencies put to him:⁶⁵⁸

Q (Mr Gourgey, KC) And you knew that if you wanted to terminate him as CEO, you would need to find grounds to terminate his employment contract, correct?

A (Mr Fardad) Yes, I'm sure that's right.

Q (Mr Gourgey, KC) If you wanted to remove him as director, you would need to find grounds under an MDE provision? That's right, isn't it?

A (Mr Fardad) Yes.

⁶⁵⁶ Fardad 4/[220].

⁶⁵⁷ Day 16/p83 (XX Fardad).

⁶⁵⁸ Day 16/pp83-84 (XX Fardad).

1087. As is evident from Mr Cartwright's notes, Freshstream was at this time (13 February 2024) quite prepared to give Mr Waddell the option of staying on as chair.⁶⁵⁹ In other words, they were prepared to continue publicly and overtly associating Mr Waddell with BIG, with Mr Vaughan, with the employees of the company, and with Freshstream itself. Given that part of the MDE definition is that BIG's and/or Freshstream's reputation needed to be damaged, this approach says a great deal about Freshstream's views as to the reputational damage Mr Waddell's misconduct might inflict: it does not appear to have been a material factor at this time.

1088. McLain's line was that things fundamentally changed at the beginning of March:⁶⁶⁰

Q (Mr Gourgey, KC) And what the plan involved was that on step-in, Mr [Waddell]⁶⁶¹ would be given 48 hours to move to the executive chairman role, and if he didn't, he would be terminated from that role? Yes?

A (Mr McLain) I believe so, yes. That's what it says.

Q (Mr Gourgey, KC) And the only change in that plan from the one you actually executed was that instead of giving him the 48 hours, you terminated his – or you suspended him as a CEO on day one and invoked the MDE investigation provision? That's right, isn't it?

A (Mr McLain) It's quite a fundamental change, because between this time and three weeks later, we finally got the detailed list. We got new legal advice, we changed the way that we were going to do this. We invoked both the step-in rights and clause 19 material default.

This is still talking about what I said a minute ago, the concept that once the step-in had been effected and the board had been changed, that the company would be able to suspend, investigate, terminate under the service contract.

...

So it's quite a significant change. You describe it as the only change. Perhaps, but it's a big one.

1089. Mr Vaughan (inconsistently with his previous evidence) accepted there was a plan. That plan cannot have been exercising the Call Option:⁶⁶²

Q (Mr Gourgey, KC) ...would I be right in understanding that, first of all, there was a plan for what would happen on day one?

⁶⁵⁹ Day 16/pp84-85 (XX Fardad).

⁶⁶⁰ Day 18/pp156 (XX McLain).

⁶⁶¹ Mr Gourgey, KC misspoke. The transcript correctly records "Vaughan", but the court and the witness both understood the reference to be "Waddell".

⁶⁶² Day 20/p47 (XX Vaughan).

- A (Mr Vaughan)** It would have been somewhat unwise to not plan what you would do in such circumstances, so, yes, there was a plan.
- Q (Mr Gourgey, KC)** The answer is “Yes”, thank you.
And you’d walked that through with Reza, yes?
- A (Mr Vaughan)** Yeah, I think I did, yes.
- Q (Mr Gourgey, KC)** And that was a detailed plan, covering presumably every aspect of what would be required from day one?
- A (Mr Vaughan)** I think it would have been as many aspects as people could come up with, yes.
- Q (Mr Gourgey, KC)** The plan included giving Mr Waddell, fourth bullet point:
“...48 hours to think about changing [his] role to executive chairman...”
Yes?
- A (Mr Vaughan)** Sorry, what’s the question?
- Q (Mr Gourgey, KC)** The plan included, as we can see, I suggest, on the fourth bullet point, giving Mr Waddell “48 hours to think about changing his role to executive chairman”?
- A (Mr Vaughan)** I’m not sure if that was discussed with me, but my input to this plan was much more about communication with the team, counterparties, etc, etc. It wasn’t about that aspect of it.
- Q (Mr Gourgey, KC)** Well, you must have known, Mr Vaughan, by this stage, whether the plan included trying to persuade Mr Waddell to stand down from the role of CEO? You must have known that because you were very much involved in it?
- A (Mr Vaughan)** I did – yeah, I did know that.
- Q (Mr Gourgey, KC)** Yes.
- A (Mr Vaughan)** But quite what discussions were going on about his future roles was not something I focussed on.
- Q (Mr Gourgey, KC)** And you must have known that the plan involved giving him 48 hours to make up his mind one way or another?
- A (Mr Vaughan)** I don’t remember that.
- Q (Mr Gourgey, KC)** Well, because you would have wanted to know at what point in time you were going to be stepping in as CEO to run this business? That would have been very important information for you, Mr Vaughan?
- A (Mr Vaughan)** As I say, I have no recollection of this 48 hour window.

YYY.5. Email dated 23 February 2024

1090. This email was written by Mr Cartwright.⁶⁶³ It shows active progression of the plan:

Ahead of our call this afternoon, see below an update on a few of the workstreams which management are owning:

1. Latest plan: latest plan is saved in the step-in folder – note that this is now focused only on post-step-in items with management

2. Q&A and all staff email: Laurence has prepared a short Q&A and draft email to all staff (saved down in the step-in folder) – I have provided some comments, but please add

3. Supplier engagement: Tom has provided a list of suppliers who are in the process of being tiered and key messages agreed (saved down in the step-in folder) – this is moving a bit slowly but I have provided some feedback to Tom this morning

4. PW access: Changes to PW access have been agreed with Laurence and Tom and they are ready to be implemented on CEO change (dashboard, WhatsApp groups, email monitoring, etc)

5. Andy return: Laurence and Tom has agreed with Andy that he will return on 11 Mar (1-2 weeks post change)

6. Vicky joining: Vicki resignation is imminent – Laurence expects to have visibility of timing but base case is that she will join in three months (1-Jun-[24])

Part IV(x): A foregone conclusion?

ZZZ. INTRODUCTION

1091. The essential difference between the parties as to the events of 2024 was that Freshstream and BIG (and Mr Vaughan) contended that all that was happening was that Freshstream was debating whether to Step-In – a matter within its discretion – a straightforward binary Yes/No decision. That binary decision was overtaken by the Incidents, which BIG (and Freshstream) had to investigate, and which resulted in an elision between Step-In, the disciplinary process under the Waddell Service Agreement rights and Freshstream's MDE Rights. The fact that these rights were exercised in combination was merely a coincidence of timing.

1092. Mr Waddell's contention was that, by the end of 2023 (or thereabouts: Mr Waddell's case was not always clear on dates), there was a fixed intention on the part of Freshstream and BIG to replace Mr Waddell as CEO with Mr Vaughan, using all rights and powers available *except* for the exercise of the Call Option (which would have achieved this objective but at significant financial cost). That required a combined exercise of Step-In Rights, MDE Rights and service termination rights, which is what in fact happened, and which

⁶⁶³ Put to him Day 18/p197 (XX Cartwright).

I have described by way of shorthand (and as Freshstream and BIG did not) as Option 4.

1093. The difference between the two cases is that on Freshstream's and BIG's case the investigation was *outcome neutral*. It was an impartial process, which happened to find Mr Waddell guilty of gross misconduct and various MDEs.
1094. On Mr Waddell's case, the investigation process was a foregone conclusion: Mr Waddell was going to be removed.
1095. The communications, set out at length in Part IV(ix) bear out Mr Waddell's case. The fact is that detailed planning steps were undertaken that *presupposed* Mr Waddell's dismissal. There is no other reading of these email communications.
1096. The point is a very serious one. It means that the architects of this process who gave evidence – Mr Fardad, Mr Vaughan, Mr McLain and Mr Clarke – were deliberately seeking to mislead as to what was going on in December 2023 and January to April 2024. That is the conclusion I have reached, basing myself largely on the documentary evidence that was put to the witnesses. Mr Waddell could shed no light on this: the events of 7 March 2024 came as a surprise to him, and he was not involved in the relevant events between December 2023 and March 2024 for reasons that are obvious.
1097. In addition to the documentary evidence that has been described, the following matters (already addressed) are supportive of this conclusion:
 - i) The fact that Step-In Rights were not enough to achieve Freshstream's ends.
 - ii) The Vaughan Consultancy Agreement.
 - iii) The behind the back agreement of terms with Mr Vaughan by Freshstream and the failure to disclose those discussions to Mr Waddell when it was clear that the Call Option would not be exercised.
 - iv) Mr Clarke's process of investigation during the course of the MDE Investigation – something also considered further below.
1098. The process of investigation is itself a potent indicator, and will have to be considered in some detail. Freshstream and BIG – and the witnesses called by them – placed enormous weight on the fact that the MDE Investigation had to be conducted by an Independent Investigator and was conducted independently by Mr Siddall, KC. The implication was that the Court could not accept Mr Waddell's case without in some way impugning Mr Siddall, KC's competence or integrity or both. From very early on in the trial, I was concerned that Mr Siddall, KC had not been involved by any party in this litigation, when he might very well have an interest himself.
1099. As it happens, and as is clear from the extensive reliance I have placed on the process impeccably conducted by Mr Siddall, KC, Mr Siddall conducted the

MDE Investigation with competence, skill and integrity. Yet, nevertheless, for reasons I will describe, the process *was* a foregone conclusion.

1100. This Part considers two further material indicators – apart from the factors already described – which compel the conclusion I have reached that Mr Waddell’s fate was a foregone conclusion from January 2024, when Freshstream’s December 2023 decision to replace Mr Waddell as CEO was implemented. These two indicators are: (i) Freshstream’s and Mr Vaughan’s propensity to conduct the business of BIG on the basis that Mr Waddell would be gone; and (ii) the bonus arrangements that were put in place to reward those who, in addition to Mr Vaughan, had been/were going to be instrumental in removing Mr Waddell.

AAAA. DEALING ON THE BASIS THAT MR WADDELL WAS GONE

1101. The documents referred to above contain a number of examples of this: (i) the agreement of terms with Mr Vaughan to act as CEO; (ii) the proposed re-recruitment of Mr Holness; (iii) the consideration given to the dismissal of Ms Ferguson.
1102. The CarShop transaction is an instance not mentioned in this history, but it is a clear example of this sort of conduct. The communications between Mr Vaughan and Freshstream show how they were proceeding on the basis that it was a foregone conclusion that Mr Waddell would be gone by 7 March 2024 and would not be coming back.
1103. The CarShop transaction – the details do not matter – was a transaction with Mr Vaughan’s old firm (Sytner) that Mr Vaughan was advocating, that Freshstream was keen on, but to which Mr Waddell was opposed.⁶⁶⁴ Freshstream and Mr Vaughan accordingly kept Mr Waddell out of the picture, and progressed the transaction without his knowledge.⁶⁶⁵
1104. On 29 December 2023, Mr Vaughan emailed Mr Fardad. The subject was “Carshop”:

No problem, you should get a fuller list shortly! Premature send pressing. This should give us enough to shape an offer with much more needed as part of diligence.

I’ve also been thinking a lot about strategy with Pete and exit so let’s discuss when your back.

Cheers,

L

1105. Regarding the reference to Mr Waddell’s exit, Mr Vaughan had – or claimed he had – no recollection of his thinking at this point,⁶⁶⁶ but (reconstructing) contended he was arguing for a compromise between the warring parties,

⁶⁶⁴ Day 20/pp33ff (XX Vaughan); Day 16/pp57ff (XX Fardad).

⁶⁶⁵ Day 21/p43ff (Vaughan XX).

⁶⁶⁶ Day 20/pp14-15 (XX Vaughan).

although he could not articulate what that compromise was.⁶⁶⁷ For the reasons I have given, I do not accept this.

1106. Although – given Mr Waddell’s opposition, some consideration was given to progressing the transaction outside BIG, with Freshstream as the counterparty,⁶⁶⁸ BIG’s “100 day plan” (framed without Mr Waddell’s input) had a proposed M&A by Mr Fardad and Mr Vaughan of “pursue opportunity to acquire 4 x CarShop sites (if opportunity/terms are attractive)”.⁶⁶⁹ This was all without Mr Waddell’s knowledge.⁶⁷⁰
1107. Mr Fardad and Mr Vaughan were inhibited from actually acting by Mr Waddell’s position as CEO. Mr McLain, who was asked about this, was clear that Mr Waddell would be able to block it.⁶⁷¹

Q (Mr Gourgey, KC) So, if for example, there was a dispute between you and Mr Waddell about whether a particular acquisition should be made or not, Carshop as an example, if you wanted to acquire Carshop, Mr Waddell didn’t, absent you stepping in, you weren’t in a position to require the business to enter into that transaction, were you?

A (Mr McLain) Correct, we could not force the business to do things prior to step-in of that nature. I’m not sure I agree that Mr Waddell didn’t want to acquire Carshop, but we can come back to that.

Q (Mr Gourgey, KC) No. Well, Mr Waddell only wanted to acquire one site from Carshop, didn’t he: Camberley?

A (Mr McLain) He said that in one of the emails just before Christmas, but I don’t believe him.

Q (Mr Gourgey, KC) You don’t believe him? So, when he says, “I’m only interested in one site”, he’s not telling the truth? Is that what you’re saying, he wasn’t telling the truth?

A (Mr McLain) Yeah, he knew very, very well which things were important to us in the business, and so once we’ve gotten to the position definitively where we are not exercising the option, in the next couple of weeks of communications, he’s very systematically putting pressure on the points that he knows are important to us.

...

The strategy has always been to grow through acquisitions, from the very first moment of 2021.

1108. What happened was that between late December and early March, Mr Fardad and Mr Vaughan *planned*. On 8 March 2024, the day after Mr Waddell had been

⁶⁶⁷ Day 20/p15 (XX Vaughan).

⁶⁶⁸ Day 16/pp60-61 (XX Fardad).

⁶⁶⁹ Put to Mr Fardad, Day 16/pp62ff (XX Fardad).

⁶⁷⁰ Day 16/pp63-64 (XX Fardad).

⁶⁷¹ Day 18/pp57-58 (XX McLain)

suspended, but not dismissed (this occurred on 16 April 2024), Mr Fardad and Mr Vaughan *acted*. Clearly, they were not expecting Mr Waddell to return.⁶⁷²

Q (Mr Gourgey, KC) This is an email from Mr Moorhouse of Sytner on 8 March 2024. That's the day after the step-in and other notices that were served on 7 March. It's an email to Mr Vaughan...So what's being sent to Mr Vaughan by Sytner is a letter of intent...Do you see that?

A (Mr Fardad) Yes, I do.

Q (Mr Gourgey, KC) And were you aware of that draft letter at the time?

A (Mr Fardad) Yes.

Q (Mr Gourgey, KC) I suggest to you the time of that letter that was sent...was not a coincidence...?

A (Mr Fardad) Yes...⁶⁷³

...

Q (Mr Gourgey, KC) You were looking to progress the CarShop deal once you'd got rid of Mr Waddell? That's right, isn't it?

A (Mr Fardad) Once we stepped in, we were able to pursue the opportunity of the CarShop transaction, correct.

BBBB. THE PLAN FOR BONUSES

1109. An email dated 19 February 2024 (sent by Mr Cartwright to himself and perhaps others) said:

Pay them a little bonus – all for one and one for all

Bank account from step-in -

1110. Mr Fardad was asked about this email, and who would be receiving a bonus, in particular whether recipients were to be Mr Clarke and Mr Hodson. Mr Fardad was unable to assist.⁶⁷⁴ A "PW Bonus" was paid to Mr Clarke and Mr Hobson of £15,000. The singling out of Mr Clarke and Mr Hodson out of all of BIG's employees is significant. Apart from Mr Vaughan they were the members of the MDE Investigation Committee.

1111. It is difficult to avoid the inference (and I make it) that these bonuses operated in a similar manner to the payment of £145,000 to Mr Vaughan pursuant to the Vaughan Consultancy Agreement, although the dates differed and the amounts far less. (Mr Vaughan was also later paid £100,000 bonus. The inferences that can be drawn from this are harder, given the earlier payment, and I make no findings in this regard.)⁶⁷⁵

⁶⁷² Day 16/pp64ff (XX Fardad).

⁶⁷³ I have omitted words where there was confusion about the documents being put.

⁶⁷⁴ Day 16/p102 (XX Fardad).

⁶⁷⁵ See Waddell Closing/[707]ff.

Part IV(x): Execution – March and April 2024

CCCC. INTRODUCTION

1112. This Part deals with the period between March and April 2024 and is mainly concerned with the implementation of the plan to remove Mr Waddell that I have found existed. Other events, falling within this period are also described, even though they are not directly related to the implementation of Option 4.

1113. It was Mr Waddell’s contention – as I have described already – that the “plan” was not to issue Step-In and MDE notices, but to affect the exit of Mr Waddell from BIG using all powers (apart from the Call Option) vesting in Freshstream and in BIG:⁶⁷⁶

Q (Mr Gourgey, KC) The plan that you had at this time, March ’24,⁶⁷⁷ required Mr Waddell to be not only the subject of an MDE investigation and a disciplinary investigation, but for him to be removed as a CEO and as a director? That’s right, isn’t it?

A (Mr Fardad) At that point in time, the plan was to have an investigation, which is exactly what we did.

Q (Mr Gourgey, KC) No, the plan went further than that. The plan that you had at Freshstream with Mr Vaughan and Mr Clarke required Mr Waddell to be gone from the business as director and CEO permanently? That’s right, isn’t it?

A (Mr Fardad) At the point where we started an investigation?

Q (Mr Gourgey, KC) At 6 March, before you had even issued any letters, notices. That was the plan, wasn’t it?

A (Mr Fardad) I’m not saying it was the plan, it was a plan. If the investigation finds him - an MDE events happened, we had a plan. If it doesn’t, we had a different plan. But, I agree, sitting there, looking at the list of things and the evidence, the high probability was that he would be found guilty.

DDDD. INCIDENT NO 18: INAPPROPRIATE BEHAVIOUR WITH CUSTOMERS (VARIOUS UNSPECIFIED DATES, INCLUDING COMMUNICATIONS WITH MR WHITE)

1114. This Incident is extremely widely framed, with specific reference only being made to Mr White, who gave no evidence. There was some hearsay evidence, and Ms Rather addressed the point in her witness statement at Rather 1/[31], where she gives various instances of how “Peter would also routinely treat many

⁶⁷⁶ Day 16/pp153ff (XX Fardad).

⁶⁷⁷ I have concluded that this plan was in place as from mid-December onwards – and this point was put. The importance of this passage lies in the reliance that was placed by the defendants on the independence of Mr Siddall, KC. Since neither side attacked either the integrity or the competence of Mr Siddall, KC, the process conducted by Mr Siddall, KC was relied upon by the defendants to say that the “plan” or “conspiracy” could never have existed, whether in December 2023 or in March 2024. It is that point which is under consideration here.

people in the business, including me, with disrespect and hostility, and would make comments that were highly inappropriate, demeaning and offensive”.

1115. I should say, at once, that I accept this evidence. Indeed, this material forms the substance of my consideration of the Incidents involving Ms Rather as victim, and I have found these *did* constitute gross misconduct on the part of Mr Waddell. But I do not consider that an allegation as vague as this can constitute the basis for summarily terminating Mr Waddell’s employment as CEO.
1116. Incident No 18 has all the hallmarks of an organisation that has let its culture go wrong. Doubtless Mr Waddell played a major part in this. However, the way to bring the culture within an organisation into line with lawful good practice is to follow the precepts laid down in the BIG Employee Handbook. This was not done. But I do not consider that a blunderbuss approach, describing generalised bad conduct, can justify summary dismissal without (i) a series of prior warnings, disregarded or (ii) a single incident of sufficient seriousness to constitute a repudiatory breach of contract on the part of the employee.

EEEE. MR CLARKE’S FIRST LIST: 1 MARCH 2024

EEEE.1. The list

1117. In an email dated 1 March 2024 to Mr Fardad and Mr Gradassi, Mr Clarke sent an attachment “for your discussion”. The attachment was entitled “Section 19 Material Events”, this being a reference to the relevant section in the Securityholders’ Deed.
1118. The list was as follows:

1. BULLYING/HARASSMENT (+SEXUAL/RELIGIOUS)

- 1.1 Regularly refers to Hindu people as “Hyundais”
- 1.2 Humiliation of employees in front of peers. In ops meetings/board meetings
- 1.3 Shouting/swearing and insulting staff in front of others.
- 1.4 (Unreasonable) reprimanding of staff in front of others and in unreasonable way (e.g. threatening yard staff for not safeguarding his helicopter sufficiently)
- 1.5 Employee contact out-of-hours, whilst on annual leave, unsocial hours, etc
- 1.6 Threatening messages/emails/voicemails

2. SEXUALLY INAPPROPRIATE BEHAVIOUR

- 2.1 Sexual relationships with employees (Enfield member of finance team?)
- 2.2 Discussing employee (sexual) relationships in front of staff
- 2.3 Regularly commenting on people’s appearance, both male and female
- 2.4 Selection of staff for particular duties based on their appearance

2.5 Lewd comments

2.6 Encouraging middle management to participate in parties and procure prostitutes

3. DIVERSION OF ASSETS/PEOPLE/CONFLICTS/ABC

3.1 Favourable provision of vehicles to JW Autos (son's company) and favourable payment terms

3.2 Giving JW Autos access to internal BIG systems to allow gain

3.3 BIG management required to support JW Autos (Duncan/Bob)

3.4 *REDACTED

3.5 *REDACTED

3.6 Accounts staff utilised for personal accounting in BIG working hours. E.g. Anthony How carrying out Peters Properties Kent Ltd work. E.g. Adam (property manager for Peters Properties Kent Ltd) working from BIG HQ

3.7 Andy (surname TBC) on BIG payroll yet working from Peter's villa in Marbella in excess of 6 months

4. BRINGING COMPANY INTO DISREPUTE/CUSTOMER INTERACTIONS/PUBLIC RELATIONS

4.1 Customer communications incomprehensible/threatening

4.2 Verbally threatening/inappropriate with external third parties e.g. NatWest

5. SEXISM

5.1 Humiliating women in front of others (e.g.) telling colleagues in front of others that "we get 3 weeks work out of 4") with female staff

6. USE OF LANGUAGE

6.1 Regular use of completely inappropriate language including: C, F, etc, including all members of the internal workforce and external work force

6.2 E.g. "I'll give it to them – give it to them up the arse"

6.3 Use of C word in bank meeting including in presence of female member of the banking team

7. MISAPPROPRIATION

7.1 Abstraction of electricity at Snodland (theft) i.e. theft of electricity/bypassing meter

7.2 Use of employees to carry out personal duties/tasks

7.3 Removed child play area from Leeds and installed at his house

8. ULTRA VIRES

8.1 Does not observe capex protocols – i.e truck purchases

8.2 Decision in contravention of the investment agreement – i.e. investor consent for senior management role changes, change of pay above 70k

9. PHYSICAL ASSAULT

9.1 Assault of GM at WM and subsequent deletion of CCTV etc

10. BREACH OF STATUTORY REGULATIONS

10.1 Failure to follow employment law advice i.e. TUPE/Available Car

10.2 Consumer law breaches – i.e. warranty terms and conditions, 30 day right to return not permitted

10.3 General employment procedure breaches. Unreasonable instructions e.g. working locations, unreasonable refusal of annual leave

EEEE.2. Discussion of the list

1119. Mr Fardad claimed he only appreciated the extent of Mr Waddell’s shocking behaviour when he received Mr Clarke’s list on 1 March 2024.⁶⁷⁸ He regarded the first allegation (Incident No 1 (“Hyundais”) (and others on the list) as “shocking”:⁶⁷⁹

It was clear to me when I saw this list that we had to do something about it and it could not be ignored. I knew the matter was serious – specific allegations of racism, bullying, sexism, sexual harassment and physical assault were all shocking. I knew Pete was difficult but this was something else. My recollection prior to that email was more about Pete putting pressure on people. Not that he called someone from Asia a *Hyundai* or that he said things to women like what was on that list.

He regarded the “Hyundai” usage by Mr Waddell as “deeply inappropriate” and not something he would want to happen in the business.⁶⁸⁰

1120. I do not accept that Mr Fardad would have been taken by surprise by this list.⁶⁸¹ The plan to remove Mr Waddell by reason of misconduct (whether for gross misconduct or MDE) had been going on for two months. Mr Fardad may not have known about all of these events (this particular allegation does not appear in Mr Vaughan’s December 2023 list), but Mr Vaughan and Mr Fardad spoke. Moreover, Mr Fardad was willing to let pass many Incidents which subsequently formed part of the case against Mr Waddell (eg Incident No 12 (Mr Maby).

1121. After receiving the list, Mr Fardad emailed Mr Clarke (copying Mr Gradassi), asking:

⁶⁷⁸ Fardad 4/[228]-[229]; put Day 16/p112 (XX Fardad).

⁶⁷⁹ Fardad 4/[229].

⁶⁸⁰ Day 16/p113.

⁶⁸¹ Put: Day 16/p116 (XX Fardad).

Can we have a call at some point to discuss the specifics of a few of the claims?

1122. Mr Vaughan was involved in the discussion.⁶⁸² Mr Fardad inserted a number of comments/questions into Mr Clarke's list. Mr Fardad's emendations were put to Mr Vaughan:⁶⁸³

Q (Mr Gourgey, KC) So, the format of this document, Mr Vaughan, is that we have your list – this is page 1 of the list of section 19 material events list on the left-hand-side – and then Mr Fardad has various comment boxes, which you can see...?

A (Mr Vaughan) Oh, yes.

Q (Mr Gourgey, KC) ...as RF 1, 2, 3. And then, on the right-hand-side, we have the detail of the comments? Yes?

A (Mr Vaughan) Yes. I haven't seen the comments before, specifically.

Q (Mr Gourgey, KC) So, if we look at them, and let's just look at the first one: "Regularly refers to Hindu people as "Hyundais": RF1. Then, on the right-hand-side, we see: "Laurence has heard him say this to Bob." What I suggest to you was happening in the call is that you were providing Mr Fardad with information, such as, in this instance, how you knew about the allegation, and that what this records is what you told him? Do you agree?

A (Mr Vaughan) Yeah, I can't speak to whether it's completely accurate, because I don't think it was specifically to Bob, it was just in...that one, I think, was in the context of a broader meeting that Bob was present at, certainly.

Q (Mr Gourgey, KC) In putting together this list, you and Mr Clarke searched far and wide to come up with as much as you possibly could against Mr Waddell? That's right, isn't it?

A (Mr Vaughan) No. There was no requirement to search far and wide. It was all pretty in front of us.

Q (Mr Gourgey, KC) And this was a list of the most serious alleged conduct that you could find at the time? That's right, isn't it?

A (Mr Vaughan) It was the main things that we were aware of at the time, yes.

Q (Mr Gourgey, KC) And it wasn't limited to allegations of bullying, harassment and racism, was it?

A (Mr Vaughan) Well, there were the items in Section 3.

Q (Mr Gourgey, KC) Yes.
So, if we look at the headings, in addition to – after headings 1 and 2, you've got: "Diversion of assets/people/conflicts/ABC"?

⁶⁸² Day 20/p71.

⁶⁸³ Day 20/pp71ff (XX Vaughan).

- A (Mr Vaughan)** Yes. Sorry, one correction. I haven't got it. This is a list that Tom compiled.
- Q (Mr Gourgey, KC)** I thought you "influenced...and edited it", Mr Vaughan? Do you want to change your answer from previously on that?
- A (Mr Vaughan)** No. I had seen it before, and I'm sure I passed comment on it, yeah.
- Q (Mr Gourgey, KC)** Well, you said "influenced...and edited it". Editing suggests you've read through it and made changes were appropriate. Did you mean "edited" in any different sense, Mr Vaughan?
- A (Mr Vaughan)** I think editing was perhaps the wrong word. I honestly can't remember at the time, it was a long time ago, but yeah, I saw it, and was aware of its content, yes.
- Q (Mr Gourgey, KC)** Well, this was a fairly fundamental document, Mr Vaughan, as you must have appreciated, because its detailing alleged Section 19 material events?
- A (Mr Vaughan)** Yes.
- Q (Mr Gourgey, KC)** And, as at this time, you knew that what was being contemplated was that an investigation would be commenced on the back of Section 19 events, yes?
- A (Mr Vaughan)** Yes, I think so, by this point, yes.
- Q (Mr Gourgey, KC)** Right. So you must have had a pretty good knowledge of what was in this document, Mr Vaughan, when it was sent?
- A (Mr Vaughan)** All of these matters we were living with on a day-to-day basis, so yes, I had a very good understanding of the list, yes.
- Q (Mr Gourgey, KC)** And you made sure that this list contained all the allegations of serious conduct that you were aware of, that's right, isn't it?
- A (Mr Vaughan)** Yes, I think I will have done, yes.
- Q (M Gourgey, KC)** So...let's just look at the headings for the next pages...You had:
"Bringing the company into disrepute..."
So this is customer communications. "Sexism", "Use of language". You then had "Misappropriation"?
- A (Mr Vaughan)** Yes.
- Q Mr Gourgey, KC)** Yes? Including "Abstraction of electricity at Snodland"?
- A (Mr Vaughan)** Yeah, I never really understood what that one was all about, to be honest with you.
- Q (Mr Gourgey, KC)** Why did you allow it to be included in the list?
- A (Mr Vaughan)** Because it was a live concern, so it was on the list.
- Q (Mr Gourgey, KC)** Right, so you were happy to include something in the list, even if you didn't understand what it was about?

A (Mr Vaughan)

I'm saying I didn't investigate it. I didn't know the facts around that one, is what I'm saying.

1123. The list of matters is wide-ranging, embracing a number of matters that appear subsequently not to have been pursued. The sense is less a list of matters that Messrs Fardad, Vaughan and Clarke were genuinely concerned about, and more a list of matters that (it was hoped) would have sufficient traction as disciplinary or MDE allegations. A number of the items emanated from Mr Vaughan himself. None had emerged through the BIG Employee Handbook grievance process.
1124. Mr Vaughan appreciated that this document – or one like it – would be attached to the relevant Freshstream board resolution. We will come to this, but it is important to understand that this list was, and was intended to be, an important document.⁶⁸⁴

EEEE.3. Mr Gradassi

1125. Mr Gradassi's position was that the first he knew of issues regarding Mr Waddell was when this list was sent to him. In his witness statement, referring to this email, he says:⁶⁸⁵

[94] ...I remember seeing this document at the time and being shocked and appalled by the allegations in it. I do not know the exact circumstances or discussions that led to Tom sending the Section 19 list of allegations and I do not know who prepared it, but I believe it was prepared to deal with the allegations and complaints about Pete which Tom and Laurence were receiving from staff at the time, and the discussions we had had about Pete's terrible behaviour in the business and with staff. I had not appreciated or known of the gravity of the situation until I saw this document setting out the allegations against Pete. This made it clear that the situation was extremely serious.

[95] I knew that the allegations against Pete raised an ethical and legal decision that had to be made. As a director of Topco, I received legal advice on that issue. I do not and I am not authorised to waive privilege over this advice. It was non-negotiable to me that we (Freshstream and TopCo) had to do something about it – the number of allegations and the magnitude of the issues set out in the Section 19 Material Events documents I received could not be ignored. I remember having discussions with Adam and Reza about it the first week of March. We all agreed that we could not ignore it because these allegations included illegal behaviour from Pete and because of the huge reputational risk.

1126. I accept this evidence of Mr Gradassi: as I have described, he was not on the inside track so far as the Option 4 discussions between January and March 2024 were concerned.

⁶⁸⁴ Day 20/p86 (XX Vaughan).

⁶⁸⁵ Gradassi 1.

EEEE.4. Mr McLain and the 1 March list

1127. Even though he was not in copy, Mr McLain was asked about the list in re-examination.⁶⁸⁶

Q (Mr Spalton, KC) To what extent were you aware of that discussion, were involved in it?

A (Mr McLain) So we had been planning to step in a couple of days before that, and in the final preparatory stages, we were asked, we the investor were asked: why are you not invoking Section 19? To which I replied, in short, what do you know that I don't know?

I don't feel I have any basis to invoke Section 19. I did not see this list on Friday 1st. I didn't know what was being done, but I did receive the list on the Tuesday, on the 5th. So this version of the list, I did not see. The conversation about this version of the list, I didn't know this was happening. I got the list a few days later.

Q (Mr Spalton, KC) At that point, you had your discussion with Mr Fardad? Is that right?

A (Mr McLain) Yes, so I got the list on the 5th. I was abroad. I returned to the UK in the morning of the 6th, my daughter's birthday, came to the office and talked to Reza in the afternoon.

1128. I do not accept this evidence: the planning – involving Mr McLain – has been going on for far longer than “a couple of days”, and had related to not just Step-In Rights, but dismissal under the Service Agreement and exercise of MDE rights.

FFFF. MR CLARKE'S SECOND LIST (2 MARCH 2024)

1129. Mr Clarke's second list was an evolution of his first, but taking account of comments received, including those of Mr Fardad and Mr Vaughan.⁶⁸⁷

GGGG. A WORK IN PROGRESS

1130. The list was clearly a work in progress. As Mr Clarke uncovered new material that could be deployed, it was added to the list.⁶⁸⁸ That process continued after the list had been finalised and the MDE Investigation Notice issued by Freshstream. The lawfulness and significance of this is considered further below.

⁶⁸⁶ Day 18/pp179-180 (Re-X McLain).

⁶⁸⁷ Day 16/pp121ff (XX Fardad).

⁶⁸⁸ See, for example, Incident No 6, concerning Ms Murphy. This came to Mr Clarke's notice on 4 March 2024.

HHHH. MR CLARKE'S EMAIL OF "MATERIAL EVENTS" (5 MARCH 2024)

1131. By an email dated 5 March 2024, Mr Clarke sent Mr Vaughan, Mr Gradassi and Mr Fardad an email attaching a document entitled "Board resolutions of Bidco approving PW suspension (v2)". The email stated:

Laurence/Reza/Gilles

Please find attached full unredacted copy of the material events doc to be appended to the attached Bido board resolutions, together with a copy of Peter's deed of novation...

I understand that if not already located your end, Tori will forward the service agreement later today

1132. The list was thus an important document because (when read with the resolution) it constituted those matters which Freshstream was referring to BIG for investigation as potential MDEs pursuant to clause 19 of the Securityholders' Deed.⁶⁸⁹

Q (Mr Gourgey, KC) You knew this list was going – I was just looking for the reference but I think we may not need it. You knew this list was being supplied, as it was on 5 March by Mr Clarke, to Freshstream, the Investor, for the purposes of attaching it to a board resolution for an investigation to commence?

A (Mr Vaughan) I assume so, yes.

Q (Mr Gourgey, KC) So it was a pretty important document, wasn't it?

A (Mr Vaughan) Indeed.

Q (Mr Gourgey) And I suggest to you that, to the extent that incidents, and we've looked at two incidents in relation to racial conduct, were not included in this list, it was either because those incidents, to your knowledge, had not happened or because you did not [consider] them to be serious, Mr Vaughan?

A (Mr Vaughan) Wrong on both counts.

Q (Mr Gourgey, KC) And the reason that you don't have any other instances of racist conduct in this list is because you didn't remember any other incidents of racist conduct when you and Mr Clarke put together this list?

A (Mr Vaughan) I was doing a hundred other things at this point. I should maybe have focussed on the list to make sure it was completely comprehensive. But if the question is: did those two other things happen? I believe they did, yes.

Q (Mr Gourgey, KC) ...I've now found the reference I was looking for. This is your email to Mr Clarke:
"Could you email an unredacted version of the allegations together with Pete's contract to Reza and

⁶⁸⁹ Put to Mr Fardad on Day 16/p129 (XX Fardad) and to Mr Vaughan on Day 20/pp85-86 (XX Vaughan). The transcript is from the cross-examination of Mr Vaughan.

Gilles. They need to be appended to some board minutes approving his suspension. I've got the minutes."

Yes?

A (Mr Vaughan) Yes. That's what [it] says.

Q (Mr Gourgey, KC) So the importance of this list was very clear to you at this time, wasn't it?

A (Mr Vaughan) Yes, it was.

Q (Mr Gourgey, KC) And I suggest to you that you must have taken great care in the preparation of this list?

A (Mr Vaughan) Clearly, I should have taken a bit more care because there was two things omitted at least.

Q (Mr Gourgey, KC) And that you were satisfied that the list was, to the best of your knowledge, a complete list of the serious allegations of misconduct on the part of Mr Waddell that you were aware of?

A (Mr Vaughan) We just established that I was aware of two other things that weren't on the list.

1133. I shall return to the question of how far Mr Vaughan had a bona fide belief that these matters were appropriate to raise as MDEs to be appended to a board resolution of Freshstream. This was not immediately a matter for him: under the provisions of the Securityholders' Deed, *Freshstream* needed to be satisfied that there were reasonable grounds (in the opinion of Freshstream (acting reasonably)) to suspect that Mr Waddell had breached any applicable law or regulation in relation to discrimination, harassment, or any ABC Law in each case⁶⁹⁰ in connection with their employment, appointment or engagement with BIG and that such breach is reasonably likely to have (in the opinion of Freshstream acting reasonably) or has had a material adverse effect on the reputation of BIG or Freshstream.
1134. However, Mr Vaughan – as the intended chair of the MDE Investigation Committee – would receive the Freshstream resolution, knowing exactly how the resolution, and the annex of Incidents thereto, had been compiled. To this extent, therefore, Mr Vaughan's state of mind is relevant.
1135. The Clarke list mattered for two formal but important reasons. When adopted by Freshstream (as it was in the resolution to which we will come) it represented *Freshstream's* conclusion that *these particular matters* each constituted an MDE. Furthermore, Freshstream having made that determination (acting reasonably), the list of MDEs constituted the limits of what could be investigated by the Independent Investigation. This is obvious, because any matters added would – by definition – not be MDEs referred by Freshstream to BIG.
1136. Irrespective of Mr Vaughan's subjective beliefs as to the MDEs listed, the list matters formally in these two respects and prevented further MDEs being added to the remit of the Independent Investigation. In order for that properly to occur,

⁶⁹⁰ Emphasis added.

there would have to be fresh consideration by Freshstream and new demand that BIG commission an investigation.

III. INCIDENT NO 21: COMMENT TO MS RATHER AND MR FORD THAT MR WADDELL WOULD “BEND YOU OVER THE DESK AND THEN YOU EXIT THAT WAY AND YOU ARE FIRED” (5 MARCH 2024)

1137. This Incident has been considered but – in chronological terms – occurred at this point in time.

JJJJ. THE FRESHSTREAM⁶⁹¹ BOARD RESOLUTION (6 MARCH 2024)

JJJJ.1. The resolution

1138. I shall refer to this resolution as the “Freshstream Step-In Resolution”, recognising that it resolves to do far more than just Step-In. The Freshstream “Step-In Resolution” is a long and complex and (in legal terms) significant document. It will have taken considerable drafting skill, and cannot have been produced overnight. I do not have any drafting history, doubtless because it was drafted by lawyers, and the drafts are protected by privilege. Nevertheless, this document must have been some weeks in the preparation, and I consider that its drafting will have been initiated in around mid-February 2024.

1139. This was a resolution of Freshstream made by its (only two) directors, Mr Fardad and Mr McLain, Mr McLain taking the chair. The resolution purported to exercise the Investor’s power under the Securityholders’ Deed to:

- i) Declare that a Trigger Event had occurred under the Deed, entitling the Investor to deliver a Step-In rights Notice to authorise the delivery of such a notice.
- ii) Determine that Freshstream should notify BIG to request that it commission an investigation into the conduct of Mr Waddell with the purpose of determining if a Material Default Event had occurred in accordance with the Securityholders’ Deed.

1140. It is necessary to say more about both of these aspects.

JJJJ.2. Step-In

1141. It was common ground that a Trigger Event did exist. The resolution identified the relevant quarters as Q3 2022 and Q4 2022, and it was on the basis of these quarters that the resolution to issue the Step-In Notice was passed.

1142. Mr Waddell contended that the Step-In Notice in fact made was not valid: that point will be considered when we come to the notice itself.

1143. The nature of Step-in Rights have been described. They did not extend to removing Mr Waddell as director nor to dismissing him as CEO. Of course, the shift in control of BIG’s board that *was* consequent on Step-In rendered

⁶⁹¹ Again, I am using the simplified definitions Freshstream / BIG / Mr Waddell.

disciplinary proceedings against Mr Waddell more straightforward: Mr Waddell could no longer use his built-in majority on the board to thwart such processes (to the extent he could, as to which I say nothing).

1144. Paragraph 6.2 of the Freshstream Step-In Resolution sets out a series of consequential steps to take “as soon as reasonably practicable to address the underperformance of BIG)” including:

- i) Appointing Stephenson Harwood as independent legal advisors.
- ii) Appointing Mr Vaughan as interim CEO of BIG.
- iii) Appointing Mr Vaughan and Mr Clarke as directors of various of the BIG companies.

JJJJ.3. MDE

JJJJ.3.1. The terms of the Freshstream Step-In Resolution

1145. The resolution is worded to track the terms of the Securityholders’ Deed:

[7.1] The Chair noted that pursuant to recent discussions with the chairman of TopCo, the directors have been notified of certain events, incidents and patterns of behaviour, which taken together, provide the directors reasonable grounds to suspect that Peter Waddell, the CEO of the Group and director of TopCo, has breached applicable laws and regulations in relation to discrimination, harassment or any ABC Law in connection with his employment, appointment and/or engagement with the Group (“Potential Default Events”). Given the nature and gravity of the Potential Default Events notified to the directors, the directors are of the opinion that if any or all of such Potential Default Events are ultimately (after an Independent Investigation) found to be true, these Potential Default Events are reasonably likely to have a material adverse effect on the reputation of the Group and the Investor.

[7.2] Accordingly, pursuant to clause 19(a) of the Securityholders’ Deed, the directors, acting reasonably, have determined that there are sufficient grounds to require TopCo to commission an investigation by a suitably qualified third party to investigate the Potential Default Events to identify whether a Material Default Event has occurred under the Securityholders’ Deed.

[7.3] Accordingly, the Chair noted that, pursuant to clause 19(a) of the Securityholders’ Deed, the Company is entitled to notify Topco (the “Material Default Event Notice”) to require TopCo to commission an Independent Investigation in accordance with the Securityholders’ Deed.

[7.4] The Directors discussed the consequences of a Potential Default Event(s) and RESOLVED THAT it was proper exercise of the powers of the Company, would be to the commercial advantage of the Company and would promote the success of the Company for the benefit of its members to deliver the Material Default Exercise Notice, to require Topco to investigate the Potential Default Event and to approve, confirm and ratify (to the extent necessary) any and all actions taken by or on behalf of the Company in connection with the execution, delivery and performance of the Material Default Event Notice and the implementation of the Independent Investigation by Topco (in each case, to the extent applicable to the Company).

[7.5] IT WAS THEREFORE UNANIMOUSLY RESOLVED THAT the Company should deliver the Material Default Event Notice to Topco.

JJJJ.3.2. The allegations appended to the resolution

1146. Although largely duplicative of previous drafts,⁶⁹² given that it was appended to the Freshstream Step-In Resolution and constitutes the MDE Events found by Mr Fardad and Mr McLain to exist, it is appropriate to set out this list fully. I have defined this as the “Annex to the Freshstream Step-In Resolution”):

1. BULLYING / HARASSMENT (+SEXUAL / RELIGIOUS)

- 1.1 Regularly refers to Hindu people as “Hyundais”
- 1.2 Humiliation of employees in front of peers. In ops meetings / board meetings.
- 1.3 Shouting / swearing and insulting staff in front of others.
- 1.4 (Unreasonable) reprimanding of staff in front of others and in unreasonable way (eg threatening yard staff for not safeguarding his helicopter sufficiently).
- 1.5 Employee contact out of hours, whilst on annual leave, unsocial hours, etc
- 1.6 Threatening messages / emails / voicemails.

2. SEXUALLY INAPPROPRIATE BEHAVIOUR

- 2.1 Sexual relationships with employees (Enfield member of finance team?)
- 2.2 Discussing employee (sexual) relationships in front of staff.
- 2.3 Regularly commenting on people’s appearance, both male and female.
- 2.4 Selection of staff for particular duties based on their appearance.
- 2.5 [Lewd] comments.
- 2.6 Encouraging middle management to participate in parties and procure prostitutes.

3. DIVERSION OF ASSETS / PEOPLE / CONFLICTS / ABC

- 3.1 Favourable provision of vehicles to JW Autos (son’s company) and favourable payment terms.
- 3.2 Giving JW Autos access to internal BIG systems to allow gain.
- 3.3 BIG management required to support JW Autos (Duncan/Bob)
- 3.4 Undeclared cash payments from suppliers (ie, Warranties 2000).
- 3.5 Company payments for personal assets of PW, eg security systems.

⁶⁹² Although the title referring to “Section 19” of the Securityholders’ Deed has been removed.

3.6 Accounts staff utilised for personal accounting in BIG working hours. Eg Anthony How carrying out Peter's Properties Kent Ltd) working from BIG HQ.

3.7 Andy (surname TBC) on BIG pay roll yet working from Peter's villa in Marbella in excess of 6 months.

4. BRINGING COMPANY INTO DISREPUTE / CUSTOMER INTERACTIONS / PUBLIC RELATIONS

4.1 Customer communications incomprehensible / threatening.

4.2 Verbally threatening / inappropriate with external 3 parties eg, NatWest.

5. SEXISM

5.1 Humiliating women in front of others (eg) telling colleagues that "we get 3 weeks out of 4" (with female staff).

6. USE OF LANGUAGE

6.1 Regular use of completely inappropriate language including C, F, etc including all members of the internal work force and external work force.

6.2 Eg "I'll give it to them – give it to them up the arse".

6.3 Use of C word in bank meeting including in presence of female member of the banking team.

7. MISAPPROPRIATION

7.1 Abstraction of electricity at Snodland (theft). Ie theft of electricity / bypassing meter.

7.2 Use of employees to carry out personal duties / tasks.

7.3 Removed child play area from Leeds and installed at his house.

8. ULTRA VIRES

8.1 Does not observe CAPEX protocols – ie, truck purchases.

8.2 Decisions in contravention of the investment agreement – ie investor consent for senior management role changes, change of pay above 70k

9. PHYSICAL ASSAULT

9.1 Assault of GM at WM and subsequent deletion of CCTV etc.

10. BREACH OF STATUTORY REGULATIONS

10.1 Failure to follow employment law advice, ie TUPE / Available Car.

10.2 Consumer law breaches – ie, warranty terms and conditions, 30 day right to return not permitted.

10.3 General employment procedure breaches. Unreasonable instructions, eg working locations, unreasonable refusal of annual leave.

JJJJ.4. Lawfulness of the MDE Investigation Notice

JJJJ.4.1. Preliminary points

1147. This was described, in general terms, at [14]. It was made pursuant to the Freshstream Step-In Resolution. In the Waddell Closing, the basis for the invalidity of the MDE Investigation Notice was set out.⁶⁹³ The following preliminary points were, in my judgement, correctly made. First, that the instigation of the MDE Investigation process and the service of an MDE Investigation Notice were Freshstream-only acts under the Securityholders' Deed. Freshstream was unconstrained by any particular duties owed to BIG or Mr Waddell or PWHL: the Securityholders' Deed accorded Freshstream certain rights and provided those rights were exercised according to the terms of the relevant provisions in the Securityholders' Deed, there could be no unfair prejudice to PWHL.
1148. However, secondly, assuming that the requirements for the service of a notice were *not* met, this *could* constitute unfair prejudice to PWHL. As the Waddell Closing makes clear,⁶⁹⁴ "[t]he consequences of MDE are of huge significance to PWHL *qua* shareholder. Entirely separate from the issue of whether Mr Waddell retains his employment as CEO, the effect of an MDE Notice being served is that, as *majority shareholder*, PWHL is permanently denuded of important rights to participate in the management and decisions taken in respect of [BIG] which it would otherwise have, including (1) the ability of Mr Waddell to appoint *any* director to the board of [BIG] such that PWHL permanently loses control of the business and representation on the board, and (2) reduction of the matters for which Mr Waddell's consent is required from the Key Approval Matters to the Reduced PW Approval Matters (as defined in the [Securityholders' Deed]". I say no more about unfair prejudice at this point – the question is considered and determined below – but this is how the question of the validity of the MDE Investigation Notice relates to the matters at issue in these proceedings.
1149. Thirdly, this aspect of Mr Waddell's case stands distinct from (i) the question of whether the Step-In Rights Notices were valid as a matter of process and (ii) the disciplinary processes against Mr Waddell pursuant to the Waddell Service Agreement. These are matters to which I will come in due course, but they are not considered at this point of the Judgment.⁶⁹⁵

JJJJ.4.2. Validity of the MDE Investigation Notice

1150. Mr Waddell contended that the MDE Investigation Notice was invalid because the threshold requirements for its issue had not been met. Although these

⁶⁹³ At [425]ff.

⁶⁹⁴ At [426].

⁶⁹⁵ See the Waddell Closing/[425], [427]-[428].

requirements have been set out, it is as well to repeat them. Quoting from Waddell Closing/[431]:

As is apparent from clause 19(a), [Freshstream's] discretion as to whether to require BIG to commission an "Independent Investigation" into alleged conduct of Mr Waddell under clause 19 only arises if two elements are satisfied: (1) [Freshstream] holds the opinion *acting reasonably* that there are *reasonable grounds* to suspect that he had breached any applicable law or regulation in respect of discrimination, harassment or ABC law and (2) that such breach is *reasonably likely* to have a material adverse effect on the reputation of [BIG] or [Freshstream], in the *reasonable opinion* of Freshstream or *has already had* such effect

1151. The fact that there are significant objective constraints (highlighted in italics in the quotation above) does not diminish the importance of Freshstream *subjectively* actually holding these views. In this case, I find that neither Mr Fardad nor Mr McLain had any genuine subjective suspicion that Mr Waddell had committed an MDE nor had they considered or had any subjective view as to the reputational effect on BIG or Freshstream, past or present. It follows that there was no reasonable basis for either of these conclusions and that both pre-conditions were left unsatisfied. The MDE Investigation Notice was invalid.
1152. The mere fact that the formalities appear to have been complied with (and the resolution is *formally* compliant) says nothing about the satisfaction of the substantive pre-conditions to the issuing or making of the notice. I have reached the conclusion that the MDE Investigation Notice did not meet the contractual threshold conditions for the following reasons.
1153. First, the objective pursued by Mr Fardad and Mr McLain (and others: I am here focussing on the relevant Freshstream actors, who signed the resolution) during the period January to early March 2024 was to pursue the objective agreed at the end of 2023, namely to cause the removal of Mr Waddell as CEO by any means possible (except exercising the Call Option). That included the deployment of MDE Rights (even though these could not, in themselves, effect Mr Waddell's removal as CEO) as a material element in the plan.
1154. Secondly, and as a direct result of this, Mr Fardad and Mr McLain were indifferent (they did not care) as to whether there had been conduct on the part of Mr Waddell amounting to an MDE and (logically consequently) paid no heed as to whether there was any reputational adverse effect on BIG and/or Freshstream, whether past, present or future. This is evident from the allegations in the Annex to the Freshstream MDE Resolution: (i) many are so vague and broadbrush that they cannot be understood as proper allegations at all; (ii) many were never actually investigated by the Independent Investigator, who (as will be seen) was given a new list of allegations as part of his (Mr Siddall, KC's) terms of reference. The fact that the MDEs changed, were added to, and subtracted from, is a separate point considered below.
1155. This absence of consideration was explored in cross-examination:⁶⁹⁶

⁶⁹⁶ Day 18/p163 (XX McLain).

- Q (Mr Gourgey, KC)** So prior to the passing of this resolution, had you in fact had a discussion with Mr Fardad about whether to issue an investigation notice or, as it's called here, a material default event notice?
- A (Mr McLain)** Yes.
- Q (Mr Gourgey, KC)** You haven't disclosed any notes, have you, of any discussions between you and Mr Fardad prior to the passing of that resolution?
- A (Mr McLain)** No.
- Q (Mr Gourgey, KC)** Is that because there are no notes?
- A (Mr McLain)** I don't believe there are any notes. I remember this day really, really well because of travel and so on. I returned to the office, Reza handed me the list which had been compiled, which I had only seen the day before, I think, and we held the meeting right next to my desk, in the afternoon that day.
- Q (Mr Gourgey, KC)** How long did the meeting last for?
- A (Mr McLain)** I can't remember. Five or ten minutes, I would say.

1156. Mr McLain was shown the list and confirmed that he recognised it.⁶⁹⁷ He was asked how the list was considered:

- Q (Mr Gourgey, KC)** And you didn't work through this list with Mr Fardad, determining which allegations were suspected MDEs, did you?
- A (Mr McLain)** You mean, in the meeting, did we go line-by-line and consider all...
- Q (Mr Gourgey, KC)** Yes.
- A (Mr McLain)** No, we didn't do that.
- Q (Mr Gourgey, KC)** And not only did you not go line, line, line, you didn't identify which particular allegations were MDEs, did you? Or suspected MDEs?
- A (Mr McLain)** Not in that meeting, no.
- Q (Mr Gourgey)** You didn't carry out any assessment, did you, of whether any suspected MDEs had had a material adverse effect on the reputation of BIG Group or the Investor, did you?
- A (Mr McLain)** I have a number of things to say in respect of that one. First of all, no that's not right.
But, secondly, that's not the test under the contract so...
And thirdly, again, same answer, at all stages of this, the first thing I did was take legal advice. So I'm going to try again not to waive privilege. I got the list. I discussed the

⁶⁹⁷ Day 18/p164 (XX McLain). There may have been some confusion in terms of which list Mr McLain was shown at the time of the resolution. Nothing turns on this, for the consideration was (whatever the list) entirely cursory.

list with my lawyers. I'm not going to tell you what they said.

However, we did conclude that it was appropriate to submit the investigation notice and then what I considered from a reputational standpoint, as I said in my witness statement, is both the reputation – both whether it had historically and was reasonably likely to on a forward looking basis have a material adverse effect on the company or the investor, which is what the test actually says. So it's not just historic limited to the company, as was in Mr Gourgey's question.

So what we considered was, you know, at a bunch of levels. First of all, very crude, Daily Mail test, it's a horrific list of things. It's four pages long, full of all kind of terrible, terrible behaviour. If this list appeared in the Daily Mail as, this is what the CEO of this company does, this investee company of Freshstream does, what consequence would that have for the reputation of the company or the Investor? It would be catastrophic. Our own investors would not tolerate this whatsoever. Our own employees would not accept this. The company's employees, its counterparties, what would its suppliers, its financiers think if this was the list of things that was presented.

It was very obvious to us that it was going to be adverse in a material way to the reputation of both the investor and the company.

1157. Mr McLain also accepted that some of the items on Mr Clarke's list clearly were not MDEs.⁶⁹⁸ Mr McLain was unable to say which were and which were not considered to be MDEs, because he simply could not remember.⁶⁹⁹ He did his very best to give the impression that there had been some consideration.⁷⁰⁰

It's very hard to separate the legal advice that I got, that I don't want to waive privilege over, versus what we talked about in that moment, versus, you know, the next day, etc, versus what I now know, having obviously read Mr Siddall's report. So I know that a dozen of these are material default events in the end in Mr Siddall's report. So it's very difficult for me to disentangle those...

1158. Neither Mr McLain nor Mr Fardad had put themselves in the position where they could properly issue an MDE Investigation Notice.⁷⁰¹

Q (Mr Gourgey, KC) At the time you made the assessment, you didn't know when each of the incidents occurred, did you?

A (Mr McLain) No.

Q (Mr Gourgey, KC) And you didn't know whether any particular incident had been the subject of complaint, did you?

⁶⁹⁸ Day 18/p168 (XX McLain).

⁶⁹⁹ Day 18/p168 (XX McLain).

⁷⁰⁰ Day 18/p168 (XX McLain).

⁷⁰¹ Day 18/p169 (XX McLain).

- A (Mr McLain)** No.
- Q (Mr Gourgey, KC)** And in many cases, you didn't have the details of the incident, did you?
- A (Mr McLain)** Correct.
- Q (Mr Gourgey, KC)** Without such information, you weren't in a position, were you – I suggest to you, you weren't in a position, Mr McLain, to assess whether material adverse effects on reputation in the future was reasonably likely as opposed to a mere possibility? That's right, isn't it?
- A (Mr McLain)** No, I disagree.

1159. Mr Fardad was asked:⁷⁰²

- Q (Mr Gourgey, KC)** You don't provide in your witness statement any detail, do you, of the matters that you discuss in relation to particular allegations?
- A (Mr Fardad)** With Mr McLain?
- Q (Mr Gourgey, KC)** Yes.
- A (Mr Fardad)** No, I don't.
- Q (Mr Gourgey, KC)** If we go to the list that you had at that time... Taking it in stages, so far as the items in section 1 of that list, can you tell us which of these allegations you considered might amount to an MDE?
- A (Mr Fardad)** At that point in time?
- Q (Mr Gourgey, KC)** Yes, at the time when you – I'm looking at 5 and 6 March, 6 March when the resolution was passed.⁷⁰³
- A (Mr Fardad)** Yes.
- Q (Mr Gourgey, KC)** Which of these did you think led you to suspect that there had been a breach of an MDE provision?
- A (Mr Fardad)** I don't recollect at that point in time which one of these, one-by-one, I thought would be an MDE event. But there's a few in there that were quite obviously...
- Q (Mr Gourgey, KC)** Go on, in section 1?
- A (Mr Fardad)** Oh, in section 1?
- Q (Mr Gourgey, KC)** I'm taking it one section at a time?
- A (Mr Fardad)** Okay, I mean I suspected calling someone a Hyundai would amount to something like that.
- Q (Mr Gourgey, KC)** In relation to the other items, you didn't have any real detail, did you, in relation to the other items in section 1, other than 1.1? That's the only one which had any detail as to what was said?

⁷⁰² Day 16/pp132ff (XX Fardad).

⁷⁰³ In closing, a point was taken about the relevant date being 7 March. This is a bad point, even if technically correct, given that there was no change between the 6 March and 7 March.

- A (Mr Fardad)** Yes, that is true, not on the list, no – not on this list, no.
- Q (Mr Gourgey, KC)** No.
And in relation to that 1.1, did you know when you passed the resolution when that event actually occurred?
- A (Mr Fardad)** I don't recollect.
- Q (Mr Gourgey, KC)** Did you ask Mr Vaughan?
- A (Mr Fardad)** I don't recollect.
- Q (Mr Gourgey, KC)** You know that one of the requirements for an MDE event – or did you know that one of the requirements for an MDE event is that the breach is reasonably likely to have, in the opinion of the Investor, acting reasonably, or – sorry, I'll start again.
The breach is reasonably likely to have, in the opinion of the investor acting reasonably, or has had a material adverse effect on the reputation of any group company and the investor. You're aware that was a requirement in relation to the...
- A (Mr Fardad)** Yes.
- Q (Mr Gourgey, KC)** ...a material default event?
- A (Mr Fardad)** Yes.
- Q (Mr Gourgey, KC)** So it was relevant for you to know, wasn't it, how long ago the event concerning the Hyundai took place, how long ago it took place, wasn't it?
[Pause]
- A (Mr Fardad)** Yes, it would have been relevant.
- Q (Mr Gourgey, KC)** If, for example, the event had occurred a year previously, it was relevant for you to know that if you were going to decide whether or not that event was likely in the future to have a material adverse effect on the reputation of the group of companies? Do you agree?
- A (Mr Fardad)** If it happened a year earlier, yes that would have been relevant.
- Q (Mr Gourgey, KC)** Or if it had happened five or six months earlier, that would have been relevant, wouldn't it?
- A (Mr Fardad)** I think so.
- Q (Mr Gourgey, KC)** You didn't investigate, in relation to the Hyundai allegation, whether it had in fact had a material adverse effect on the reputation of the group, did you?
- A (Mr Fardad)** We didn't investigate that? No, we didn't.
- Q (Mr Gourgey, KC)** You had no information in relation to this allegation when you came to pass your resolution than we see on this sheet? Is that correct?
- A (Mr Fardad)** No, that's not correct. As I said, I had a discussion about these with Laurence.

...

Which, you saw my notes, but not necessarily – not complete, like, on every detail. So I would have had more context than just this document.

Q (Mr Gourgey, KC)

Yes.

The only context you had, accordingly to your notes, was that Laurence had heard him say this to Bob? That's right, isn't it?

A (Mr Fardad)

Yes, that's my notes I had, but...

Q (Mr Gourgey, KC)

Well, when you came to pass this resolution, can you tell us of anything else specific that you knew about this allegation?

A (Mr Fardad)

I don't recollect now what I knew at that point versus. All the documents since, with the KC report and Siddall report. I mean, it's difficult to, in the timeline, draw lines and say: this is what I knew at this point and no further and...so I'm struggling with that, I'm sorry.

1160. In fact, thirdly, Mr Fardad and Mr McLain left it to others (Mr Vaughan and Mr Clarke) to frame the allegations against Mr Waddell, and took no steps (beyond suggesting drafting changes) to test the list that was provided by Mr Clarke and Mr Vaughan and was appended to the resolution. Yet they knew that Mr Vaughan and Mr Clarke were operating pursuant to the plan that Freshstream had decided upon, and that each had reasons to want Mr Vaughan to take over: Mr Vaughan, because he wanted the position; Mr Clarke, because he had better prospects at BIG under Freshstream than under Mr Waddell.

1161. Fourthly, until an unknown time before the events of 7 March 2024, Freshstream were considering two alternatives in the replacement of Mr Waddell: (i) to "promote" him to a meaningless position as chair; and (ii) to simply get rid of him.⁷⁰⁴ There was little or no evidence as to why Freshstream selected the latter option, rather than the former. Doubtless the view was formed that discussion of his "promotion" would give Mr Waddell advance notice of the plan to get rid of him (he would have to be given some time to consider) and, in practice, Mr Waddell was unlikely to give up his position without a fight. But the point is that Freshstream were willing to keep up Mr Waddell's association with BIG, even seeing advantage to it, which gives the lie to the reputational fears that Mr McLain and Mr Fardad purported to have.

1162. Mr Fardad accepted that he (subjectively) had no grounds for suspecting the existence of any MDE nor of appreciating the risk of any reputational damage to BIG or Freshstream.⁷⁰⁵

Q (Mr Gourgey, KC)

On the basis of this list and the information you have in this list, as regards all the item 2s, you didn't have sufficient information to reach any view as to whether there was a suspected MDE event, did you?

⁷⁰⁴ The documents of January and February 2024 bear this out. See also Day 16/p55 (XX Fardad).

⁷⁰⁵ Day 16/p143 (XX Fardad).

A (Mr Fardad) If that's all I knew, then I would – I mean, I'd want legal advice to know whether that is reasonable and what exactly the bar for reasonably likely in the future is. But that's not all I knew.

Q (Mr Gourgey) You tell me what you knew as at 6 March...?

A (Mr Fardad) I don't recollect all the – I don't want to speculate with a – what I knew at that point in time. But between 1 March and 6 March, I would have had conversations about these items with Laurence and what details were included. I wouldn't just, you know, thanks for the note, Laurence or Tom, you know, I'll let you know in six days.

And:

Q (Mr Gourgey, KC) At the time when you passed your resolution, that's on 6 March, you had no basis for forming any views as to impact, past or future, of this allegation on the reputation of the BIG Group? Do you agree?

[Pause]

A (Mr Fardad) Yes, I think that's right.

KKKK. THE “INDEPENDENT INVESTIGATION”

KKKK.1. The MDE Investigation Notice (7 March 2024)

1163. On 7 March 2024, Freshstream sent BIG an MDE Investigation Notice (defined at [14]) under section 19(a) of the Securityholders' Deed in respect of the conduct of Mr Waddell. This was done pursuant to the resolution described above. For the reasons given above, the MDE Resolution to send the MDE Investigation Notice was invalid, and it follows that the MDE Investigation Notice was itself invalid. The Independent Investigation lacked any proper basis.

1164. The consideration in the following paragraphs is on the basis (contrary to the foregoing) that the MDE Investigation Notice was in fact valid.

KKKK.2. Duties in relation to the conduct of the Independent Investigation

KKKK.2.1. The duty of good faith

1165. Where a party to a commercial contract is given the right, power or discretion to make a decision on a matter which affects two or more parties whose interests are not the same, a duty of good faith will arise. The rationale for such a duty is that such a term is necessary – not merely desirable – to prevent abuse of

power.⁷⁰⁶ The duty may be described as one of acting proportionately, in good faith, for proper purposes and not in an arbitrary, capricious manner.⁷⁰⁷

1166. Although Mr Waddell contended that such a duty applied to the decision to issue the MDE Investigation Notice itself, I find that unlikely given the constraints on Freshstream’s discretion contained in the express wording of clause 19 of the Securityholder’ Deed. However, I do consider that such a duty necessarily had to arise in relation to the Independent Investigation itself. That is despite the role of a “suitably qualified third party” – here, Mr Siddall, KC. It is necessary to consider the operation of the investigation provisions in clause 19 in greater detail, so as to understand how these duties operate in this case.

KKKK.2.2. Application of the duty in the case of this provision

1167. It is necessary to approach clause 19 in stages, beginning with Freshstream’s “right to require that [BIG] commission an investigation”.⁷⁰⁸ This confers no discretion on BIG, but rather a duty or obligation to act. No question of good faith arises. The person whose interests may be adversely affected (here: Mr Waddell) is sufficiently protected by the constraints arising in regard to the making of the MDE Investigation Notice itself.
1168. The next stage involves the delegation of powers with regard to the conduct of the investigation to “a committee of the Board”⁷⁰⁹ which shall be chaired by the Non-executive Chairman and shall contain such other independent⁷¹⁰ members of the Board and such other persons as the Non-executive Chairman may in his or her absolute discretion determine”.⁷¹¹ As will be seen – and contrary to the understanding of BIG at the time – these provisions *obliged* the appointment of Mr Vaughan as chair of the MDE Investigation Committee. But the duty of good faith existed in relation to the appointment of the other members of the Committee (reinforced by the use of the word “independent”). The extent to which the duty of good faith was complied with in the case of the appointment of the committee is considered below.
1169. The MDE Investigation Committee had a broad discretion over the Independent Investigation. The choice and appointment of the investigator is for the Committee, as are the terms of reference of the investigator.⁷¹² Again, the duty of good faith will have applied to (i) the selection of the investigator (a point not pursued further: Mr Siddall, KC was a proper appointment), (ii) the framing of the terms of reference and (iii) the manner and extent to which the Committee directed the investigator in terms of how they discharged their responsibilities.

⁷⁰⁶ *Super-Max Offshore Holdings v Malhthora*, [2017] EWHC 3246 Comm at [138]. See also *Socimer International Bank v Standard Bank London Ltd*, [2008] 1 Lloyd’s Rep 558; *Braganza v BP Shipping Ltd*, [2015] 1 WLR 1661.

⁷⁰⁷ See Petition/[79].

⁷⁰⁸ Clause 19(a).

⁷⁰⁹ Being the Board of BIG (using the simplified definitions): see clause 1 (definitions) and clause 3(a) of the Securityholders’ Deed.

⁷¹⁰ Emphasis added.

⁷¹¹ Clause 19(b).

⁷¹² Clause 19(b).

The extent to which the duty of good faith was complied with in the case of these matters is considered below.

LLLL. THE COMPOSITION OF THE INVESTIGATION COMMITTEE

LLLL.1. Introduction

1170. Following receipt of the MDE Investigation Notice, Mr Vaughan appointed an MDE Investigation Committee comprising himself, Mr Clarke (then company secretary for BIG) and Mr Hodson (defined as the Investigation Committee at [14]).

LLLL.2. The appointment of Mr Vaughan

1171. The “Non-executive Chairman” is a defined term in the Securityholders’ Deed,⁷¹³ and (apart from the fact the Mr Vaughan appears to have been acting as executive chair) would unequivocally have been Mr Vaughan.

1172. Mr Vaughan’s role as executive chair proved to be a problem of which Freshstream were well aware. It was mentioned in a WhatsApp exchange between Mr Gradassi and Mr Fardad, which appears to have been followed by a call, the content of which Mr Fardad could not recall.⁷¹⁴ In any event, Mr Vaughan was appointed to the MDE Investigation Committee as non-executive chair. He thus acted as chair in two (contradictory) capacities – “executive” and “non-executive” chair. This problem only arose because Mr Vaughan should never have acted as executive chair of BIG.

1173. Mr Vaughan says he was “informed via legal advice” of his appointment.⁷¹⁵

1174. Freshstream should have been concerned about the appointment of someone so partisan against Mr Waddell to the Committee.⁷¹⁶ The conflicts of interest under which Mr Vaughan laboured were red flags. Freshstream were aware of these.⁷¹⁷

Q (Mr Gourgey, KC) And you knew, didn’t you, that Mr Vaughan had every interest in seeing Mr Waddell removed from the company, because Mr Vaughan was going to get the permanent CEO role?

A (Mr Fardad) I mean, he would, as a matter of fact, he would get the CEO role afterwards, or continue as interim at least.

This answer betrays a great deal: Mr Fardad, even at trial, could not contemplate an outcome of the process that would result in Mr Waddell being exonerated. I consider that this reflects his mindset at the time. Going on:

⁷¹³ See under “Non-executive Chairman” in clause 1, which refers to clause 4(a)(i), which defines the Non-executive Chairman as the Investor-appointed Director appointed to act as non-executive chairman. In short: Mr Vaughan.

⁷¹⁴ Day 17/pp41-42 (XX Fardad).

⁷¹⁵ Day 20/p97 (XX Vaughan).

⁷¹⁶ In addition to the facts and matters already set out, see Day 20/pp99ff (XX Vaughan).

⁷¹⁷ Day 17/pp45-46 (XX Fardad).

- Q (Mr Gourgey, KC)** And Mr Vaughan was a key participant in the plan that had been formulated the previous weeks, which envisaged as one matter Mr Waddell being excluded from the position as CEO?
- A (Mr Fardad)** He was involved in the planning.
- Q (Mr Gourgey, KC)** So you couldn't possibly have thought, Mr Fardad, when appointing Mr Vaughan to chair the investigation committee, that Mr Vaughan would be impartial or unbiased in respect of the conduct of that investigation committee? That's right, isn't it?
- A (Mr Fardad)** No. As in I disagree with you.
- Q (Mr Gourgey, KC)** You say in [Fardad 4/[241]]:
“...It made sense for Laurence to be on it as interim CEO”
Do you see that?
- A (Mr Fardad)** Yes, I did say that.
- Q (Mr Gourgey, KC)** If you wanted the chair of the investigation committee to approach the conduct of the investigation in an impartial, unbiased way, then it made no sense at all, did it, to have Laurence Vaughan chairing that committee? That's right, isn't it?
- [Pause]
- A (Mr Fardad)** From a commercial perspective – I mean, from a legal perspective, we got legal advice, so I won't talk about that.
But from a commercial perspective, I would argue that again, my knowledge of Laurence and his character, was he able to chair an independent investigation – run by a KC, he was not the one doing the investigation, of course, he was appointing a KC with legal advice from SH, with other members of that committee? My view was that that investigation would be run in a fair and proper way. The legal side of it, you know, what the words of the shareholders' agreement says, whether he was exec or non-exec, we got advice for that.
- Q (Mr Gourgey, KC)** Having taken the steps you did to cut Mr Waddell out of business on 7 March, it would have been a disaster for Freshstream if the investigation did not result in MDE findings? Do you agree?
- A (Mr Fardad)** It would have been a difficult position. I mean, obviously, we still had the step-in as an alternative – or not an alternative, but the step in would still be there, but it would have been a difficult situation.

1175. Mr Vaughan was appointed *because of* and not *despite* these issues, in order to ensure that the “correct” outcome (the removal of Mr Waddell) was achieved. Not only did he have a direct interest in the outcome, he was the main witness

in relation to a number of MDE Events identified in the Annex to the MDE Resolution.

1176. Mr Vaughan’s appointment was made by a resolution of BIG (made by Mr Fardad and Mr Gradassi). The resolution contains a reminder (at clause 2.1) to the directors of their duties, and (at clause 2.2) a note that Mr Vaughan “is and would be subject to a conflict of interest in respect of the nature of the resolutions”. Presumably, this was a reference to the fact that Mr Vaughan was the person being appointed pursuant to the resolutions. By clause 3.1, Mr Vaughan was “appointed as Non-executive Chairman of the Company, effective immediately”, but (by clause 3.2) he was, notwithstanding this, to “remain Executive Chairman of the Company and its wider corporate group for all other purposes”.
1177. It may be that Mr Vaughan’s appointment was inevitable by virtue of the explicit provisions of clause 19 of the Securityholders’ Deed. Although the resolution appointing Mr Vaughan as non-executive chair suggests that the decision could have been made differently, I consider (given the terms of clause 19) that it would have been very difficult to appoint anyone *other* than Mr Vaughan to chair the MDE Investigation Committee.
1178. However, that underlines the importance of the discretion, which vested in Mr Vaughan, as to the appointment of the other members of the MDE Investigation Committee.

LLLL.3. The appointment of the other members of the Committee

1179. On the basis that Mr Vaughan had to be appointed as chair, the obligation of good faith obliged him to ensure that the MDE Investigation Committee was able to operate impartially. That would have involved appointing a majority of genuinely independent members to the Committee and identifying to them the nature of his own conflict of interest, namely: (i) his interest in the position of CEO; (ii) his role as a witness in the process; and (iii) his role in the promulgating of Option 4 in the period January to March 2024.
1180. Instead, the other members of the Committee were also *parti pris*. In addition to Mr Vaughan, Mr Clarke and Mr Hodson were members of the Committee. It was put to Mr Fardad that Mr Hodson played a minimal role – but Mr Fardad could not comment.⁷¹⁸ In any event, Mr Hodson was witness and victim in one Incident; and the very opposite of a passive member was required.
1181. Mr Clarke was an obviously inappropriate member of the Committee. He was an active participant in the plan to remove Mr Waddell, and had been so since early January 2024.⁷¹⁹ He had been actively gathering material to use against Mr Waddell.⁷²⁰ Furthermore, Mr Clarke had been found guilty of dishonesty by the SRA. Mr Fardad had no issue with Mr Clarke being appointed in these

⁷¹⁸ Day 17/pp47-48 (XX Fardad).

⁷¹⁹ Day 17/p49 (XX Fardad).

⁷²⁰ Day 17/p49 (XX Fardad).

circumstances.⁷²¹ He should have done. As with Mr Vaughan, Mr Clarke was appointed because of, and not despite, these issues.⁷²²

1182. The fact that Mr Vaughan had a broad discretion in selecting the other members of the committee – the standard words “absolute discretion” are used in clause 19 – does not exclude the duty of good faith, and Mr Vaughan had the ability to recruit beyond Board members, and should have done so.⁷²³

LLLL.4. Conclusions

1183. I conclude that the appointment of Mr Clarke and Mr Hodson to the Committee was a breach of the good faith obligation.

MMMM. THE SIRENS

MMMM.1. The provisions regarding exercise

1184. Clause 9(b) of the Securityholders’ Deed provides for the exercise of Step-In Rights by way of a Step-In Exercise Rights Notice (or SIREN). The Deed lays down a two-stage process:

...following the occurrence of a Trigger Event, (i) as soon as reasonably practicable and in any event within two Business Days following the occurrence of a Trigger Event, [BIG] shall notify [Freshstream] in writing of such Trigger Event (the “Trigger Notice”) and (ii) the Investor shall be entitled to give the Company written notice...of its intention to exercise Step-In rights pursuant to Section 9(c)...

MMMM.2. The first SIREN (7 March 2024)

1185. It was common ground that BIG did not serve a Trigger Notice in relation to the first SIREN. Nevertheless, on 7 March 2024, Freshstream served a SIREN under section 9 of the Securityholders’ Deed stating that Trigger Events had occurred by reason of the fact that the EBITDA of BIG failed to meet the targets in the Securityholders’ Deed for two or more consecutive quarters.
1186. There was no issue regarding the terms of the first SIREN. However, Mr Waddell contended that the failure by BIG to notify Freshstream of the occurrence of a Trigger Event was fatal to the validity of the first SIREN.

MMMM.3. Analysis: validity of the first SIREN

1187. Mr Waddell’s contention was that notification of the occurrence of a Trigger Event by BIG to Freshstream was a pre-condition to Freshstream’s right to serve a SIREN and so to exercise its Step-In Rights.
1188. I do not consider this to be an arguable construction of the Securityholders’ Deed. It would mean that BIG could thwart Freshstream in the exercise of its Step-In Rights by not notifying Freshstream of the occurrence of a Trigger

⁷²¹ Day 17/p51 (XX Fardad).

⁷²² Day 17/p51 (XX Mr Fardad).

⁷²³ Day 17/pp52-53 (XX Fardad).

Event. Indeed, on this basis, a failure to notify would cause Freshstream to lose its Step-In Rights altogether (“...in any event within two Business Days...”).

1189. BIG’s obligation to notify is intended *not* as a pre-condition to the exercise of Step-In Rights, but rather as a protection *to Freshstream* to ensure that Freshstream is notified (by BIG) of the existence of its Step-In Rights under the Securityholders’ Deed. It might be that – in the event of failure to notify – Freshstream would (if it discovered, later on, that it could have Stepped-In) have the right to issue a “backdated” SIREN. But I do not consider that it is arguable that converse proposition holds good: namely that Step-In Rights that Freshstream could have exercised are lost through BIG’s failure to notify Freshstream of a Trigger Event.
1190. I would have adopted a different construction if BIG had been obliged to notify Mr Waddell or PWHL of the occurrence of a Trigger Event. On this basis, the purpose of the provision would have been to warn Mr Waddell that he was at risk of Step-In. But that is precisely *not* what the Securityholders’ Deed says.
1191. Accordingly, I conclude that Freshstream successfully exercised its Step-In Rights pursuant to the first SIREN.

MMMM.4. The second SIREN (17 April 2024)

1192. On 17 April 2024, the Investor served a second SIREN under section 9 of the Securityholders’ Deed stating that Trigger Events had occurred by reason of the fact that the EBITDA of BIG failed to meet the targets in the Deed for two or more consecutive quarters.
1193. This was a “protective” SIREN. Given my conclusions regarding the first SIREN, I do not consider this, second, SIRE notice, further. Step-In Rights had already been exercised on 7 March 2024.

MMMM.5 Other constraints on the SIREN

MMMM.5.1. Estoppel

1194. It was contended that Freshstream was estopped from asserting its Step-In Rights. This was because Freshstream failed to say anything about the fact that Mr Waddell was at risk of Step-In. I am prepared to accept that Freshstream said nothing about the risk of Step-In. Indeed, I am prepared to assume in Mr Waddell’s favour that Freshstream gave him (Mr Waddell) a sense that they (Freshstream) were happy with BIG’s performance.
1195. Even making these assumptions in Mr Waddell’s favour,⁷²⁴ these facts are incapable of generating an estoppel or any other kind of constraint over the exercise of Step-In Rights by way of the first SIREN. What Mr Waddell must show is a clear and unequivocal representation by Freshstream that it would not exercise its Step-In Rights. The record does not disclose any such unequivocal representation, and I find that there was nothing to prevent Freshstream from

⁷²⁴ Mr Waddell’s argument appears most clearly at Waddell Closing/[383]-[384].

exercising its strict legal rights under the Securityholders' Deed in regard to Step-In.

MMMM.5.2. Force majeure

1196. It was contended that the underperformance on which the first SIREN was based was an underperformance “directly caused by a Force Majeure Event”. Given that the Step-In Rights in the Securityholders' Deed were predicated on significant economic underperformance without specifying or limiting the causes of such underperformance, this is a bold submission, and one that fails.
1197. Although an extreme version of an anticipated event can constitute force majeure, in order to do so it must escalate to a degree that makes performance legally or physically impossible, rather than just more expensive or onerous. In this case, the point of Step-In was to enable Freshstream to assume (at its discretion) a form of control over BIG, where BIG was underperforming by a substantial margin. It would take an event altogether different in quality to enable force majeure to be established. The facts and matters relied upon by Mr Waddell (see the Waddell Closing/[390]) are no more than instances of general economic issues affecting the performance of BIG. They are the sort of event that the Step-In Rights were anticipating: the point of Step-In was not to enable Freshstream to Step-In where the management of BIG was the cause of the underperformance. It was to give Freshstream the *option* of Stepping-In if it considered that it could better manage an underperformance than Mr Waddell.

MMMM.6. “Step-Out”

1198. Clause 9(e) of the Securityholders' Deed provides for an automatic termination of Step-In Rights on the satisfaction of certain pre-conditions (which were themselves controversial between the parties). Mr Waddell contended that these pre-conditions had been satisfied, that Step-In had therefore ended, and that Freshstream's failure to acknowledge this itself represented an act of unfair prejudice against PWHL.
1199. There is a high-level of unreality about this contention. In the first place, there was significant dispute about the performance of BIG (and about the criteria by reference to which such performance needed to be measured), with Mr Waddell himself contending (although those contentions were ultimately not proceeded with) that Freshstream's management of BIG had been sufficiently damaging to the company *itself* to amount to unfair prejudice. Such contentions – even if not maintained – do not support the suggestion that the pre-conditions for “Step-Out” had been met, although of course much depends upon the framing of the relevant criteria for “Step Out”. Neither side called expert evidence as to the performance of BIG in 2024 and 2025. There was no objective evidence before me as to the performance of BIG.
1200. I conclude that the failure on the part of BIG and/or Freshstream to “Step-Out” cannot be characterised as something that is relevant to the question of unfair prejudice on the facts alone.

1201. There is, however, a second reason why this point goes nowhere. As has been described, Step-In was only one of various rights that were exercised against Mr Waddell. As I will come to describe in greater detail, Mr Waddell was additionally removed as a director of BIG and summarily dismissed as CEO by virtue of Freshstream exercising its MDE Rights and BIG exercising its rights under the Waddell Service Agreement. The exclusion of Mr Waddell and PWHL from BIG was achieved using all three of these sets of rights, and the question of unfair prejudice needs to be seen in the context of the (purported) exercise of all of these rights. In these circumstances, the fact that Freshstream may or may not have been obliged to “Step Out” assumes a level of causal irrelevance that means it to be left out of account when considering the question of unfair prejudice.
1202. I reject the claim that Mr Waddell is entitled to a declaration that the pre-conditions to “Step-Out” have been met.

INFORMING MR WADDELL OF THE STEPS BEING TAKEN

1203. At 4:32pm on 7 March 2024, Mr Fardad WhatsApp’d Mr Waddell, asking “Hi Pete, are you free for a call? It’s important. Reza”. Mr Waddell was given no “heads up” as to what the call was about. Freshstream (Mr McLain) made a note of the call:

Part Privileged

Reza and I spoke with Peter this afternoon. He called Reza at 16:30 and we took the call on video in our board room. See below a summary of the call based on notes I took during the conversation which lasted just under an hour (we finished around 17:25). Apologies for the format but I wanted to get this to you in as close to real time as I could.

Reza started by saying it was a difficult topic and a confidential conversation. Board has received allegations of bullying, harassment, employment issues.

PW immediately interrupted and asked – “From who?”
RF said “We cannot say”.

Mr Waddell

This has all come from Nick.

[NB: Nick is an employee who Pete suspended and then fired in the last week.]

Mr Fardad

We have taken legal advice and it is clear that the board needs to suspend you and commence an investigation.

Mr Waddell

You can’t suspend me...I will not be getting suspended, it is not happening. I don’t bully people.

We have an HR department and HR deals with employee matters.

[He was referring to interactions with Nick, not to his own suspension.]

Mr Fardad

There will be an independent investigation. We have no choice.

Mr Waddell I'd like to see the allegations urgently.

Mr Fardad We will follow what the lawyers say about that.

Mr Waddell You are going to burn our relationship for an allegation? Then pushed repeatedly and very hard for details of the allegations. He kept coming back to Nick, over and over.

Mr Fardad We have received very clear instructions. I will ask the lawyers what I can share.

Mr Waddell I will get legal advice. Show me this bullying, you have to give me the evidence (etc)

Mr Waddell You are going to risk the business over this.

Mr Fardad At this point, he misremembered some of the detail of clause 19, he was saying that he has to be convicted by a court, and so on. We disputed this and told him that this is not what the contract says and he should take legal advice on it.

Mr Waddell You will cost the business £20-£40m

Mr Fardad We stressed that this needs to remain confidential. He said people call him all the time, and that we will lose half the staff.
We stressed again that it is important not to communicate that.

Mr Waddell You've killed our relationship.

Mr Fardad We are both still shareholders. We want to maintain the value of the business for all of us.

Mr Waddell [More talking about Nick, somewhat repetitive.] I am going to take this to my lawyers. I think you will kill the business. We have used our HR staff to do their job and now we have one man twisting facts and you are going to kill the business. I am going to go to Spain [where he has a holiday house.]

Mr Fardad At this point, he also mentioned something about we will have to buy out his shares. We said that we could talk about that at a later stage but it was not a conversation for today.

Mr Fardad He asked about process, we told him there is a clear process in the contract and we will follow it.

Mr Waddell I am going to send an email to the management team to tell them.

Mr Fardad We instructed him not to do that and told him that the board would notify senior management.

Mr Waddell What I do, I do.

Mr Fardad Let it play out. Speak to your lawyers.

Mr Waddell Ok, let the battle begin, I have to fight my corner.

Mr Waddell You will kill the company. Who pays the bill for the loss of revenue that this will cause.

Mr Fardad Directors have to work in the best interests of the company. We are not trying to damage the company.

Mr Waddell What do you want me to do? Give everything back?

Mr McLain We want you to do nothing. Press pause while the investigation happens.

Mr Waddell Who will pay for my lawyer?

Mr McLain You do.

Mr Waddell You will tell everyone.

Mr Fardad No, just senior management, important that it remains confidential.

Mr Waddell If they all walk out, you can't blame me.

At this point, he talked about the timeline, how long it will take, and was saying that at the end of it, when we ask him to come back, he might just retire. We opened the door to this also, again as a topic that we can discuss another day, but noting that we have discussed over the years the idea that there will need to be a transition at some point. But for now, we go one step at a time and follow the documents and the lawyers.

Mr Waddell This has to go to court.

Mr McLain No, it doesn't. Please read the contract and speak with your lawyers.

Mr Waddell I'm going to speak with my sister. You can't stop me from doing that...

We said technically she is an employee, but we understand **[part privileged]**

Mr Waddell He is going away to Spain and if we want to see him, he wants 48 hours notice.

1204. Mr Fardad was not surprised, particularly when these allegations had come “out of the blue”, that Mr Waddell wanted specifics. These were not, however, provided at this time.⁷²⁵ In an email sent to Mr Fardad and Mr McLain, Mr Waddell protested against being suspended on the basis of unknown allegations.

1205. The effect on Mr Waddell was devastating. That is unsurprising given the extent of his obsessive interest in BIG and the fact that these steps by Freshstream and by BIG were unexpected by him.

OOOO. THE BIG RESOLUTION OF 7 MARCH 2024 AND THE LETTER SUSPENDING MR WADDELL (7 MARCH 2024)

OOOO.1. The BIG Resolution

1206. On 7 March 2024, Mr Vaughan, Mr Fardad and Mr Gradassi approved as directors of BIG a resolution that achieved a number of things (the “BIG

⁷²⁵ Day 17/p57 (XX Fardad).

Resolution”). It was noted that the directors “have become aware of and discussed in person various allegations against one of the Company’s directors, Peter Waddell, (the “Allegations”) and the purpose of the written board resolutions (the “Resolutions”) is to approve certain matters in relation to Peter Waddell in connection with the Allegations.

1207. This can only have been a reference to the MDE Resolution (which is not, however, referred to in this resolution) and the Allegations can only be a reference to the Annex to that Resolution, i.e. Mr Clarke’s list as appended to it.

1208. In this resolution, it was resolved that:

- i) An investigation be immediately launched into the alleged conduct of Mr Waddell. This can only be a reference to the MDE Investigation that Freshstream had required BIG to conduct pursuant to clause 19 of the Securityholders’ Deed and the MDE Investigation Notice made under clause 19. The steps taken to appoint an MDE Investigation Committee have already been described.⁷²⁶
- ii) To suspend Mr Waddell immediately for the purposes of this investigation pursuant to clause 22.4 of the Waddell’s Service Agreement.⁷²⁷

OOOO.2. An elision of two processes

1209. Clause 22.4 of the Waddell Service Agreement entitled BIG to suspend Mr Waddell “for the purposes of investigating any allegation of misconduct or neglect against you”. It is clear that at this point there was an elision between the MDE Investigation that BIG was *obliged* to conduct pursuant to clause 19 of the Securityholders’ Deed and an internal disciplinary process conducted by BIG against Mr Waddell.

1210. As is noted in the Waddell Closing/[425], “[i] is important to keep well in mind the distinction between (1) the threshold requirement, process requirements and consequences relating to the MDE provisions in the [Securityholders’ Deed] on the one hand and (2) the [BIG] disciplinary process which led to the dismissal of Mr Waddell as CEO on the other. Although the investigation was conducted and relied upon for both purposes, they must be analysed separately”.

OOOO.3. The suspension letter

1211. A letter informing Mr Waddell of his suspension to this effect was sent to Mr Waddell. The letter made no reference to the MDE Investigation, and simply referenced suspension of his employment. The grounds on which Mr Waddell was being suspended were stated in a vague and uninformative manner:

⁷²⁶ See [4.1] of the resolution.

⁷²⁷ See [4.2] of the resolution. There were other resolutions regarding the terms of this suspension, but these are not material.

I am writing to confirm your suspension from Bluebell Cars Bidco Ltd (the “Company”) with immediate effect and until further notice whilst an investigation is undertaken in connection with allegations of potential misconduct against you, including, by way of example:

- That you have used discriminatory language in the course of your employment.
- That you have behaved in a way which constitutes bullying of staff.
- That you have used language and/or exhibited behaviour that constitutes harassment in the course of your employment.
- That you have demonstrated threatening and aggressive behaviour to employees and third parties such as customers and suppliers.

The above are by way of example only and the Company reserves the right to change or add to the allegations as appropriate in light of the investigation.

1212. The Annex to the MDE Resolution was not provided and at this stage Mr Waddell would not have known that the MDE processes had been invoked by Freshstream.
1213. Mr Fardad asserted that suspension had to be imposed, given Mr Waddell’s propensity to interfere.⁷²⁸ As Mr Waddell’s post-suspension conduct shows, and considering the suspension decision in isolation from the other decisions made in regard to Mr Waddell, this decision was obviously correct. In the wider context – given the findings I have already made as regards the processes of Freshstream and BIG – the suspension is obviously questionable as having been done for Freshstream’s own purposes, in order to ensure that Mr Waddell was out of the way.⁷²⁹
1214. Mr Waddell instructed solicitors, and they pressed for further information regarding his suspension. The allegations against Mr Waddell were not, however, disclosed to him until 2 April 2024, even though the Independent Investigator had been primed as to the allegations on 14 March 2024.

PPPP. INCIDENT NO 7: ALLEGED MISCONDUCT AT THE CAR DEALER LIVE EVENT ON 7 MARCH 2024

1215. I did not hear any direct evidence on this point, and Mr Siddall, KC declined to find the matter established as a matter of fact for this reason.
1216. Both Mr Vaughan and Mr Clarke gave hearsay evidence in relation to this Incident. Mr Vaughan’s evidence was as follows:⁷³⁰

I received a call from Car Dealer Magazine a couple of days after Freshstream had exercised their Step In rights. They said that they had received a complaint from the British Motor Museum in relation to a young female waitress who had been subject to sexual harassment from Pete during an event they hosted on 7 March 2024: “Car Dealer

⁷²⁸ Day 16/p131 (XX Fardad).

⁷²⁹ Put to Mr Fardad: Day 17/p62 (XX Fardad).

⁷³⁰ Vaughan 3/[92].

Live”. I asked Tom to follow up with the British Motor Museum and I recall that the waitress’s manager ultimately gave an interview to Mr Siddall, KC in the investigation. A formal complaint from the British Motor Museum against BIG in relation to the mistreatment of a young waitress by BIG’s then CEO was obviously a serious threat to the business, particularly given that it was passed on by a leading industry publication and related to a major industry event.

1217. Mr Clarke’s evidence was as follows:⁷³¹

A few days after Pete’s suspension, I also became aware of an allegation against Pete that had occurred at the British Motor Museum during an event on 7 March 2024 at which he spoke...The formal complaint was made by the Museum to Car Dealer Magazine (who were hosting the event) on 11 March 2024. Car Dealer Magazine then raised the complaint with us and Laurence asked me to deal with it. I apologised to the Motor Museum on behalf of the company and explained that Pete was not currently in the business. I asked whether they would be prepared to speak to me more about it. When I discussed the allegation with Andrea Bruneau at the Motor Museum, she explained that a waitress (who was quite young) had been subject to sexist remarks from Pete which left her visibly upset. The waitress had had to leave the event and she filed a formal complaint in relation to Pete’s treatment of her. I felt we should not just take that email on face value and that we had an obligation to investigate it as part of the investigation we were about to conduct, following service by Freshstream of the Investigation Notice.

1218. I will come to the detail of the Incident in a moment. Before I do so, it is necessary to register some concerns about the evidence of Mr Vaughan and Mr Clarke. I have found both their testimony to me and their conduct of the process against Mr Waddell to have been dishonest, and a number of the Incidents have been either concocted or exaggerated. My concern as regards this Incident is that the written communications from the BMM and the journal appear (from the accounts of Mr Vaughan and Mr Clarke) to post-date the oral notification to Mr Vaughan and Mr Clarke’s initial conversations.

1219. The chronology is as follows: the event was on 7 March 2024 and the first formal communication from Ms Bruneau to Mr James Baggott is dated 12:04 on 11 March 2024. This email (very formally written) reads:

Dear James

I hope that your event was a great success last week, it was certainly well attended!

Unfortunately I do have to draw your attention to the disappointing behaviour displayed by Mr Waddell, your keynote speaker, and I feel it necessary to make a formal complaint.

During the lunchtime service, Mr Waddell was with his colleagues and thought it acceptable to make a comment about a teenage female member of the British Motor Museum catering team ensuring she heard the comment, making her feel incredibly uncomfortable. A little later on, whilst the same young female member was clearing plates, he made a second loud and inappropriate comment to his colleagues, saying “she can’t leave me alone as she knows I have a helicopter outside”. Both of these

⁷³¹ Clarke 1/[58].

instances made the member of staff so upset and uncomfortable that she had to leave work.

I think you would agree that this represents rude and unacceptable behaviour by this individual at what was otherwise a very successful event overall for Car Dealer Live.

1220. At 15:14 on the same day, Mr Baggott responded:

Dear Andrea

Following our conversation earlier today, as promised I am following up via email.

Firstly, my apologies once again for this incident. Whilst I wasn't privy to it, I cannot condone any such behaviour and we are deeply shocked your colleague has been offended by one of our guests.

As I explained, Peter Waddell was a guest of ours, but we are not his employer. As such, the actions I can take are limited.

I have, however, taken up your complaint with two of his colleagues immediately.

Copied here are Laurence Vaughan, the Chairman of Big Motoring World, Mr Waddell's employer. Also copied is James McFarlane, the head of PR for the external PR agency of their private equity backers, Freshstream.

I have spoken to them both and told them I would be passing on your details for them to take this matter further. I will leave you to speak to them privately.

I would like to express my sincere apologies to your colleague who's upset by this matter and reiterate this is absolutely not the sort of behaviour we condone at Car Dealer Magazine.

I am assured that both Laurence and James, copied, will take this matter seriously and will be able to investigate this matter for you.

Yours sincerely,

James Baggott

1221. Mr Vaughan, who was copied in, forwarded the email chain without comment to Mr Clarke, who responded to Ms Bruneau in the following terms:

Andrea

I write in regards to the below matter which has been passed for my attention.

Firstly, may I sincerely apologise for Mr Waddell's behaviour, as described, which is abhorrent and unacceptable. As a company that takes such matters extremely seriously, it is hugely disappointing to hear of such behaviour. As you may be aware, Mr Waddell is at present, not acting within the business.

It is further alarming to hear of the impact that the behaviour has had on the member of staff, and we should like to remedy this as best we are able, although I understand we cannot undo the embarrassment and upset that she must have felt.

I should be grateful to speak with you on the phone in this regard.

1222. Mr Clarke and Ms Bruneau then spoke, but there is no record of their conversation.
1223. There is something confected about this chain of communications. It is an after-the-event formalising of a complaint, accepted without question, and then fed into the investigation process.
1224. Mr Siddall, KC had the benefit of more evidence – or better evidence – than was before me, for he was able to interview Ms Bruneau. The Siddall Final MDE Report says this:

[69] I had initially thought that this allegation was the catalyst for PW’s suspension. However on speaking to LV it became plain that this allegation played no role in that decision as BMW only found out about the allegation post suspension.

[70] Female X was unwilling to assist my investigation. It was said by AB (whom I did interview) that female ex was concerned about the effect of her speaking to me might have on her. I discovered that female X was aged 18 years and had worked for the museum for 2 years. She had never previously complained as to conduct towards her. Female X had provided the following account to AB which AB read out in interview:

“This is all in Female X’s words: “I was walking from Conference 1 to the Gallery, with two men in front of me. They stopped and one said, in a provocative manner which made me feel uncomfortable, he said “She is wearing that mini skirt because she knows I have my helicopter outside”. Later, I walked past him, clearing plates. He made another comment, “She cannot leave me alone as she knows I have my helicopter outside”. She said she just walked away and laughed because she just felt very uncomfortable and just wanted to be away from that situation.”

[71] How this allegation was known to relate to PW was explained by AB thus:

“The only reason we were able to identify Mr Waddell is because obviously he flew in, made a very big thing about coming to the site in a helicopter so he was quite a character before we got here.”

[72] AB also confirmed that Female X was wearing an above the knee skirt that was paired with thick black tights. I asked how AB became aware of the allegation and she said this:

“It was later in the day and I was told that a comment had been made to Female X and obviously I went to try and find her to find out a little bit more. I found her to be incredibly upset, in tears. I think this could have been up to an hour or so later. It wasn't immediately after the event.”

[73] In terms of Female X’s demeanour AB said this:

“So there wasn't anything specifically untoward that I would say “goodness, are you okay” above the fact she had had those comments made to her. She said she was okay at that point but, like I say, I think it was the after-effects of other people saying how that should not have happened that then compounded that and made her bit upset.”

1225. Mr Siddall, KC declined to find the Incident established. He also did not have the benefit of Mr Waddell's evidence. Mr Waddell denied that the Incident occurred.⁷³²
1226. Applying the ordinary, civil, standard, and conscious that I am disagreeing with Mr Siddall, KC (who actually heard the evidence of Ms Bruneau), I find the Incident proven. I discount the evidence of Messrs Vaughan and Clarke and the correspondence engineered by them.
1227. But I find the evidence of Ms Bruneau compelling. Although it was hearsay in terms of what Mr Waddell is alleged to have said to Female X, most of Ms Bruneau's evidence to Mr Siddall, KC was direct evidence to him (although of course hearsay to me). Thus, the evidence of Female X's clothing was nuanced and detailed (the fact that the short skirt was paired with thick tights speaks to her perception and, I think, her fairness), as was her evidence of Female X's after-the-event upset.
1228. By contrast, Mr Waddell's denial lacks credibility. I consider him perfectly capable of lying, and he has form in this regard. If this was an isolated case, then his denial would be entitled to greater weight. But this Incident bears a great deal of resemblance to Incident No 8 (Ms Gable), which I have found to have been established.
1229. I consider that the Incident constitutes an infringement of section 26 of the Equality Act: it obviously relates to a protected characteristic, and was sufficiently serious to pass the high standard. This is a case of gross misconduct.

QQQQ. INCIDENT NO 17: COMPLAINT FROM BLACK HORSE (8 MARCH 2024)

1230. This Incident was considered earlier, but in chronological terms occurred at this point in time.

RRRR. TERMS OF REFERENCE TO MR SIDDALL (14 MARCH 2024)

RRRR.1. Terms of reference

1231. The terms of reference were addressed to Ms Lucy Bone (at [14]), but in fact Mr Siddall, KC was retained. The terms of reference provided:

Appointment

[1] A committee of the board of directors of TopCo (the "Committee"), chaired by the Non-Executive Chair of Topco for this purpose (Laurence Vaughan)(the "Chair") has been convened to instruct an independent investigator to investigate certain allegations concerning Peter Waddell (the "Allegations"), the Chief Executive Officer of TopCo and Bidco (the "Investigation"). The allegations are summarised in paragraphs [10] to [13] (inclusive).

⁷³² Waddell 5/[227]. Mr Waddell maintained the denial in cross-examination: Day 8/pp195-209 (XX Waddell).

[2] The Committee is comprised of the Chair, Tom Clarke and Neil Hodson (each a “Committee Member”). The purposes of the Investigation shall be to establish the facts relevant to the Allegations and to:

[2.1] make findings on the matters detailed at paragraphs [10] to [13] inclusive; and

[2.2] conclude, on the balance of probability, whether a Material Default Event as defined in Section 19 of the Securityholders’ Deed in respect of Topco dated 4 April 2002 (the “Securityholders’ Deed”) has occurred in respect of Peter Waddell (“PW”).

The findings of fact of the Investigation shall also be considered by the Committee in relation to determining whether there is a disciplinary case for PW to answer.

[3] The Committee has reviewed the documents set out at Appendix 1 to these Terms of Reference. Each Committee Member will remain mindful of the potential for a conflict to arise and, in the case of Committee Members who are not the Chair, will notify the Chair should that occur. In the case of the Chair, he should notify another Committee Member should that occur.

Context

[4] The trading business of the group owned by Topco is Big Motoring World, a large pre-owned car supermarket with operations in 11 locations across the UK. References in this Terms of Reference to the Group shall mean Topco and its subsidiaries.

[5] PW founded the Big Motoring World business over 30 years ago. In 2022, Freshstream took a minority investment in the Big Motoring World Business via Bluebell Cars Holding Limited (the “Investor”). The Investor’s investment is governed by the terms of the Securityholders’ Deed. PW is employed by Bidco pursuant to the terms of his service agreement with Bapchild Motoring World (Kent) Limited dated 4 April 2022 which was novated to Bidco pursuant to a novation agreement dated 12 January 2023 (together the “Service Agreement”).

[6] The Securityholders’ Deed provides the Investor with “Step-in Rights” which can be exercised should certain conditions be satisfied. In summary, the effect of the Investor exercising its Step-In Rights is that it is permitted to appoint directors to the boards of directors of Topco and Bidco. The Step-In Rights are detailed in clause 9 of the Securityholders’ Deed. The Investor exercised its Step-In Rights on 7 March 2024. PW, through his solicitors, has disputed the Investor’s entitlement to exercise its Step-In Rights.

[7] In addition to any rights under the Service Agreement, pursuant to clause 19 of the Securityholders’ Deed, the Investor has the right to require Topco to commission an investigation by a suitably qualified independent third party into the conduct of any employee if there are reasonable grounds (in the opinion of the Investor (acting reasonably)) to suspect that such employee has breached any applicable law or regulation in relation to discrimination, harassment or any ABC Law (as defined in section 26(a) of the Securityholders’ Deed) in each case in connection with their employment, appointment or engagement with the Group and that such breach is reasonably likely to have (in the opinion of the Investor acting reasonably) or has had a material adverse effect on the reputation of any Group Company and/or the Investor (“Material Default Event”). The Investor has required that such an investigation is commissioned by Topco.

[8] Given the severity of the concerns raised in respect of PW which form the basis of the Allegations, Bidco took the decision to suspend PW on 7 March 2024 pending an investigation into the Allegations. A copy of the suspension letter is enclosed.

[9] The Committee understands that PW may be dyslexic and therefore adjustments may need to be made as part of the Investigation. The Committee is willing to provide support in relation to any reasonable adjustment(s) which Counsel may deem appropriate in the circumstances.

1232. The allegations to be investigated were then set out, and they are referred to as the “Terms of Reference Allegations”. They are significantly more evolved than the allegations appended to the Resolution as an Annex. Detail is added to the allegations, but (much more importantly) the list in the Annex is both added to and subtracted from. Furthermore, during the course of the Investigation, Mr Siddall, KC was asked to investigate further Incidents and also uncovered a number himself.
1233. Mr Vaughan explained that the Terms of Reference had been put together by an altogether separate process compared to the process by which the Annex to the Resolution had been compiled:⁷³³

Q (Mr Gourgey, KC) ...In terms of forming the terms of reference, who put that together from within the BIG team?

A (Mr Vaughan) It was compiled by our lawyers and reviewed by the committee and I’m sure Neil [Hodson] would have seen it.

Q (Mr Gourgey, KC) The formulation of the allegations against Mr Waddell, or the identification of the allegations to be included in the terms of reference regarding Mr Waddell, who were the people within BIG who put those allegations together?

A (Mr Vaughan) It was – I suppose I should say at all points we were taking advice from our lawyers. It was probably principally led by Tom and me, but Neil was kept in the loop.

Q (Mr Gourgey, KC) He was kept in the loop, was he?

A (Mr Vaughan) And he was very free to add any comments or other issues.

1234. The Terms of Reference then continued:

[14] The Committee has determined that an appropriately skilled and independent person will be appointed by the Committee to conduct the Investigation. That person shall be Lucy Bone (“Counsel”).

[15] Counsel shall be provided with the documentation set out at Appendix 1 to these Terms of Reference to assist her in conducting the Investigation.

⁷³³ Day 20/p106 (XX Vaughan).

[16] Consistent with the independence of Counsel, Counsel shall conduct the Investigation in the manner she deems most appropriate and consistent with the description of her role and the required outcomes set out in paragraph [2] above.

[17] In conducting the Investigation, Counsel may conduct interviews with any person deemed (by Counsel) relevant to the matters subject to Investigation. In addition, Counsel is to have access (via the Committee) to any such documents requested (by Counsel) and deemed necessary (by the Committee) for the purposes of completing the Investigation.

[18] The Committee is to oversee an Investigation into the Allegations and to liaise with Counsel in relation to the conduct of the Investigation.

[19] Should Counsel become aware of information as part of the Investigation which raises questions as to whether there are other matters that could amount to misconduct by PW or could amount to a Material Default Event in respect of PW then Counsel shall raise such matters with the Committee who reserve the right to amend these Terms of Reference in light of such information.

[20] Should the Committee become aware of information which raises questions as to whether there are other matters that could amount to misconduct by PW or could amount to a Material Default Event in respect of PW then the Committee reserves the right to amend these Terms of Reference in light of such information.

Resolution and Reporting

[21] Counsel shall report directly to the Committee from which she will take instructions and with whom she can raise issues relevant to the Investigation.

[22] The findings of Counsel in relation to the Allegations shall be presented by Counsel to the Committee in the form of a report (the "Report").

[23] Whether further action is required (and, if so, what that further action shall be) shall be determined by the Committee in relation to determining whether there is a disciplinary case for PW to answer. In reaching its determination the Committee shall have regard to, but shall not be bound by, the Report.

[24] The outcome of the Investigation may be reported by the Committee to the appropriate Regulators.

Anticipated Timeframes

[25] The Investigation should be conducted expeditiously but consistently with the need to ensure that each of the Allegations and the Investigation as a whole is considered appropriately, fairly and proportionately.

[26] So far as consistent with the matters set out above the Investigation shall be completed as soon as possible with a precise timeframe to be discussed with the Committee.

Costs and Expenses

[27] The reasonable costs and expenses incurred by the instruction of Counsel shall be paid by the Group.

RRRR.2. Varying the allegations from those contained in the Annex

1235. As has been described, MDE Events can only be referred by Freshstream to BIG with a direction to investigate (“right to require that [BIG] commission an investigation”⁷³⁴) where Freshstream is satisfied (a subjective belief, but subject to objective controls) that an event actually meets the MDE criteria specified.
1236. It follows that the most that the MDE Investigation Committee could do in relation to MDE Events referred to it was to evolve or elucidate or further particularise MDE Events that had been referred to it to investigate. In this regard, the Committee would have to act in good faith, to ensure that the intent of Freshstream was appropriately reflected in the MDE Investigation.
1237. What the Committee had no power to do was either subtract from or add to the list of MDE Events to be investigated. Subtraction was not permitted, because BIG was *obliged* to investigate those MDEs referred to it. Addition is not permitted, because the identification of what is an MDE Event is solely the province of Freshstream.
1238. The table of Incidents at [45] notes those cases where an Incident was investigated by Mr Siddall, KC when it did not appear in the Annex to the Resolution. These Incidents – *irrespective* of Mr Siddall’s conclusions – could not amount to or constitute MDE Events for the purpose of Freshstream exercising MDE Rights against Mr Waddell.
1239. I stress that this is no criticism of Mr Siddall, KC. He scrupulously followed the Terms of Reference, as he was obliged to.
1240. Given that the Committee was (as I have found) intent on ensuring Mr Waddell’s removal from BIG, and given their understanding of the process that had been followed, the integrity of the addition of new Incidents must be questioned. What the Committee were doing was seeking to improve on Mr Clarke’s efforts as they appeared in the Annex, without appreciating that they had no power to do so. I do not suggest that the Committee deliberately ignored the provisions of clause 19 of the Securityholders’ Deed, but I do consider that the framing of these additional Incidents was done for an improper purpose and *mala fide*. The intention was not to investigate Mr Waddell impartially, but to maximise the prospects of achieving a desired outcome - removal.
1241. As has been noted, the MDE process elided with the BIG disciplinary process against Mr Waddell.⁷³⁵ I can see no reason why Mr Siddall, KC’s work could not properly have been used as part of that process (provided the process itself was fairly conducted). Clearly no restriction to adding to the Incidents forming the subject matter of the disciplinary investigation existed. The restrictions were in the Securityholders’ Deed and applied to the MDE Process only.

⁷³⁴ Clause 19(a) of the Securityholders’ Deed.

⁷³⁵ See also Day 17/p72 (XX Fardad).

SSSS. INCIDENT NO 14: INAPPROPRIATE COMMUNICATIONS, AMOUNTING TO HARASSMENT, WITH MR HODSON (DECEMBER 2023 – EARLY 2024)

1242. This complaint emerges out of a WhatsApp exchange between Mr Hodson and Mr Waddell. Mr Waddell was complaining about some (perceived) failure on the part of Mr Hodson. The WhatsApps are dated 14 March 2024.

1243. The text is not especially comprehensible and is rendered as it appears (contrary to my usual practice as regards Mr Waddell’s communications):

Send me over presentation on car loan as it met to be I’ve in 14 days and when your getting bid up live and Bbuc as these thre project need to be alive in next 4 weeks you had long enough that what you was brought into company for Bbuc a failed at moment costed us around 9 million bid up million nothing. Come on you Neil need to now get on with this the hoiliday are over

1244. Mr Hodson sent this to Mr Clarke:

I don’t have much holiday but ceo has to deal with this shit not impressed

1245. Mr Clarke acknowledged receipt (“Thanks”) and Mr Hodson responded, “Hard to do like this but hope it helps”, obviously a reference to providing ammunition for the process.

1246. Two further messages from Mr Clarke:

Perfect

I’ve spoken with LV. He seemed to be of the view that this will be forthcoming once PW is dismissed.

1247. Mr Neil Hodson (who I have extensively referred to as “Mr Hodson”) served in the British military between the ages of 17 and 24, and since then has spent 35-40 years in the motor industry, which has been the focus of his career.⁷³⁶ He joined BIG after Freshstream’s investment in BIG, and was hired to help build BIG’s direct-to-customer car buying platform “BIG Wants Your Car” or “BWYC”.⁷³⁷ In his statement he describes Mr Waddell as “vocal”⁷³⁸ and records his reason to be grateful to BIG for lending him money for his wife’s medical treatment.⁷³⁹ Whilst at BIG, his interaction with Mr Waddell was more-or-less daily and he had known Mr Waddell for years.⁷⁴⁰

1248. He describes Mr Waddell in the following terms:⁷⁴¹

[15] Despite our lengthy relationship, I have always been cautious around Peter. He is a larger-than-life character who tends to dominate conversations and show off. While he occasionally acts in a supportive way, I have always tried to keep my guard up

⁷³⁶ Hodson 1/[7].

⁷³⁷ Hodson 1/[8].

⁷³⁸ Hodson 1/[10].

⁷³⁹ Hodson 1/[11].

⁷⁴⁰ Hodson 1/[12]-[13].

⁷⁴¹ Hodson 1.

because he has a fiery side. I was also sceptical about whether Peter's offers of support and motivational messages were always genuine, as he would often switch quickly to anger and criticism.

[16] Peter was often difficult to talk to and generally not a people person. He could be offensive and condescending and rarely listened to those around him. In my experience, Peter was the type of person who would headbutt his way through a wall to get where he wanted to go and he did not really care about the consequences of his actions. That said, he is very driven and I have always respected the fact that he built BIG from humble beginnings.

1249. This description accords with my findings as to Mr Waddell's character and interactions with others. Certainly, the description of Mr Waddell's obsessive determination, inability to listen, grandstanding and mercurial nature are ones that I recognise and which accord with the testimony of the other witnesses of fact that I heard from. But it would be wrong to forget that Mr Waddell was capable of charm (he was a very successful seller of cars) and had a lot to grandstand about in terms of his business acumen and what he had built from nothing.

1250. Later on in his statement, Mr Hodson said this about Mr Waddell:⁷⁴²

[19] Peter's management style was erratic. He had a unique approach to staff, both in the language he used and in the verbal abuse he directed at them, which I witnessed many times. I saw him regularly shouting and screaming, particularly during SLT meetings and at people in the BWYC team who sat with me in an open plan call centre at Head Office. This was generally his "go to" tactic if he was not happy. Peter also used nicknames for specific employees, including in front of third parties, such as suppliers or customers. For example, he referred to Huma Rather as the "Iron Lady" and called me "Papa Smurf". I had no idea why he referred to me in that way.

[20] I often overheard him shouting at the BWYC employees, making sweeping statements that they were "costing him money because they are fucking idiots" or "fucking ruining his business" or calling them things such as "lazy bastards". I thought his language was appalling. The environment felt hostile when Peter was there, especially as these were not isolated incidents but a regular occurrence. It was clear to me that most junior BWYC employees tried to keep their heads down and avoid Peter's attention when he was in the office. I knew that Peter didn't like this as he would show his frustration by claiming they were "fucking ignoring him".

[21] I also remember 1 occasion when, after shouting at BWYC employees because he thought they were ignoring him, Peter instructed someone to go to a shop to buy him either a lemon meringue pie or a cheesecake as an apology to him. The impression this gave me was that Peter saw himself as above others and expected people to follow his instructions without question regardless of whether it fell within their job responsibilities. The Call Centre Manager, Connor Wright, who I think was the person that went to the shop, was instructed to go to Peter's office to apologise and serve him the cake.

1251. Most of Mr Hodson's witness statement is a list of Mr Waddell's "bad behaviour". Mr Hodson's evidence confirms the "culture" within BIG as involving bad language, aggression and controlling behaviour (including

⁷⁴² Hodson 1.

aggression and nicknames as a means of control) and that Freshstream and the organisation (i.e., BIG and specifically its senior officers, in particular Mr Vaughan) tolerated this culture for two years (March 2022 to March 2024) without doing anything.

1252. For the present, however, I am concerned with Incident No 14, which Mr Hodson described in the following terms.⁷⁴³

[26] I also received bullying text or WhatsApp messages from Peter blaming me for things that were not my fault, like a car that had been in stock for six months, which may have caused BIG to lose money. In my experience with Peter, you could get the blame for anything and everything, even for things you were not responsible for, like pricing strategies. I would get regular messages telling me that I was losing the company money or killing BIG. I refer to messages I received from Peter in more detail at paragraph [34] below.

...

[34] I have referred to documents [set out above], which are messages between Tom Clarke and me on 13 and 14 March 2024. I recall that Tom asked me to send him examples of WhatsApp messages Peter had sent me which were abusive. Peter did a lot of communicating via WhatsApp groups. One of the messages he sent directly threatened a “witch hunt” against me due to the price that one of the calls we had acquired through BWYC had sold...I did not understand why Peter was threatening me; it made no sense. The car he was complaining about had sat on BIG forecourt for 50 days before being sold, which is nothing to do with BWYC. Peter’s messages still attacked me about it regardless. I took Peter’s message to mean that he wanted to get rid of me or use me as a scapegoat and blame losses on me. I found it unsettling and uncomfortable. I also recalled Peter telling me on multiple occasions that I was losing his business £9m, but I still do not know how he came up with that figure or how he thought I was responsible.

1253. This incident was found by Mr Siddall to be bullying but not harassment, and so not an MDE. Mr Vaughan found it sufficient to constitute gross misconduct rendering it appropriate (for this reason alone) summarily to dismiss Mr Waddell.
1254. Mr Siddall is wrong on the conclusion of bullying. The exchange is clearly insufficient to constitute bullying as I have defined it, and this was not a case of gross misconduct.
1255. This Incident is a good example of an addition to Mr Siddall’s investigation intended to ensure the “right” result.
1256. Mr Hodson’s attempts to explain away the elements of his communications with Mr Clarke suggesting that this was a stitch-up are not credible:

[35] In those same messages, Tom tried to reassure me that he had spoken with Laurence and that things would be different “once PW is dismissed” with an emoji of a thinking face. The Investigation was still ongoing at this point, so I took that to mean that whatever was “forthcoming” was still subject to the outcome of that Investigation, which is why I understood at the time that Tom included the emoji at the end of the

⁷⁴³ Hodson 1.

message. I think Tom was referring to changes in the way BWYC was run, and an end to Peter's bullying behaviour towards me such as the "witch hunt" message I describe above. My sense was that everyone breathed a sigh of relief once Peter was suspended (his behaviour had got even more erratic in the final few months before then), but it was still up to the Independent Investigator to conduct the investigation and share his findings before anything was certain.

[36] I was a member of the Investigation Committee, and I signed documents in that capacity, but I did not interview people, and I was not involved in the selection or appointment of Nick Siddall, KC or arranging for him to interview potential witnesses. My involvement in the investigation committee was limited to (i) the decision to appoint an independent person (though not their identity) to carry out the investigation and (ii) making the decision to expedite the investigation alongside Laurence and Tom. I was firmly of the view that the investigation needed to be carried out fairly and it needed to be done by someone who was impartial.

TTTT. THE INVESTIGATION PROCESS

1257. Between 21 and 27 March 2024, Mr Siddall, KC conducted transcribed interviews with 20 individuals concerning the behaviour and conduct of Mr Waddell. A further three individuals were interviewed on 4 April 2024. The process conducted by Mr Siddall, KC was fair and proper.
1258. On a number of occasions, witnesses called by Freshstream and BIG sought to suggest that because of Mr Siddall's fairness and competence, the MDE Investigation process could not be impugned. I do not accept this suggestion, for a number of related reasons. First, and as already described, the MDE Investigation Committee had significant (and illegitimate) involvement in identifying and framing the Incidents investigated by Mr Siddall, KC.
1259. Secondly, the Incidents did not emerge out of any kind of grievance process initiated by the victim of the Incident. I appreciate that employees of BIG were unlikely to use the grievance procedure in the BIG Employee Handbook, at least where the grievance concerned Mr Waddell, because they considered this would at best achieve nothing and at worst result in victimisation. Nevertheless, Mr Clarke's investigations (in particular as regards Incidents No 6 (Murphy) and No 8 (Gable)) involved dragging a story out of the victim, framing it for them and then pressuring them to give evidence before Mr Siddall, KC.
1260. Thirdly, members of the Committee were themselves witnesses before Mr Siddall, KC, Mr Vaughan in particular (see Incident Nos 1 and 2). Mr Vaughan presented himself to Mr Siddall, KC as a neutral person, holding the ring between two warring shareholders. That is consistent with his duty as chair, but Mr Vaughan was not acting in accordance with that duty. Mr Vaughan did not disclose to Mr Siddall, KC that at the time of his interview, he had negotiated terms with Freshstream to succeed Mr Waddell as BIG's CEO, which was a job (his denials notwithstanding) Mr Vaughan wanted, and which he would get on Mr Waddell's removal. Mr Vaughan did not disclose that he had been active in moving the process against Mr Waddell forward when it was clear the Call Option was not going to be exercised, and had received payment from Freshstream in breach of fiduciary duty.

UUUU. INVITATION TO AN INVESTIGATION MEETING

UUUU.1. The invitation letter

1261. On 2 April 2024, Mr Waddell was invited to attend an investigation interview at 10:00am on 9 April 2024. Although this request was ostensibly part of the BIG disciplinary process, the interview was to be conducted by Mr Siddall, KC. The letter provided:

As you are aware, your employment with [BIG] was suspended on 7 March 2024 whilst an investigation is undertaken in connection with allegations of potential misconduct. An independent investigation has since been commissioned into your alleged potential misconduct, which is being conducted by Mr Nicholas Siddall, KC (the “Investigator”).

The Investigator has informed us that he would like to interview you at 10am on 9 April 2024 via Teams (the “Investigation Interview”) as part of his investigation. A professional transcriber will also be in attendance to record a transcript of the interview. The purpose of that interview is to consider the allegations set out below. You will be able to provide any information that you consider may be relevant to the allegations and answer any questions he may have....

The requirement to attend the investigation does not constitute disciplinary action. Once the investigation has been completed we will consider if there is a case to answer and whether formal disciplinary proceedings by [BIG] are needed. If it is decided that formal disciplinary proceedings are needed you will be invited to a disciplinary hearing (at which you will be able to respond to any allegations against you and given another opportunity to set out your versions of events).

1262. Under the terms of the Waddell Service Agreement, Mr Waddell was obliged to assist in any disciplinary process. He was not told of the dual purpose of the interview (ie that Mr Waddell’s evidence would, if given, form part of Mr Siddall’s report). Mr Waddell was not obliged to cooperate in the MDE process.
1263. The letter set out 19 allegations against Mr Waddell and enclosed a bundle of interview transcripts and a bundle of other documents, the volume of which was on any view substantial. A written response was sought from Mr Waddell by 10:00am on 8 April 2024. On 4 April 2024, a letter amending the allegations and adding six further allegations was sent.

UUUU.2. Disability and the Equality Act 2010

1264. Mr Waddell contended that the MDE process and the disciplinary process were subject to the provisions of the Equality 2010 whether directly or by virtue of an implied term.⁷⁴⁴
1265. The principal significance of Mr Waddell’s contention regarding the Equality Act 2010 was that it served as a qualification to the MDE process itself. This was not because the Equality Act applied by virtue of its provisions, but because it was (according to Mr Waddell) an obvious and necessary implied term that Freshstream would not exercise any powers under clause 19 of the

⁷⁴⁴ Waddell Closing/[574]-[575].

Securityholders' Deed in a manner that would constitute and/or result in a breach of the provisions of the Equality Act 2010.

1266. I do not consider that such a term can be implied into a contract otherwise unaffected by the statutory terms of the 2010 Act, as is the case here. If Parliament had intended the 2010 Act to have so wide a scope, going well beyond its core ambit in protecting employees, then Parliament would have legislated accordingly. To imply such a term into a closely worded and commercially negotiated agreement would require necessity of a high order, and there is no need here. The provisions of the Securityholders' Deed operate perfectly well without the implication of such a term. Accordingly, I reject Mr Waddell's argument as regards the operation of the Securityholders' Deed and the Equality Act 2010.
1267. The reason I have raised the Equality Act 2010 at this juncture (and not whilst considering the Securityholders' Deed itself) is because it was suggested that BIG was guilty of infringing the Equality Act in terms of the time that Mr Waddell was given to respond to the allegations in BIG's letter of 2 April 2024.
1268. This letter came from BIG and was in relation to disciplinary proceedings brought under the Waddell Service Agreement with BIG. Mr Waddell was an employee (the CEO). To this extent the 2010 Act *did* apply.
1269. It is therefore necessary to consider whether Mr Waddell's disabilities obliged BIG to make "reasonable adjustments" given these disabilities in terms of the time that Mr Waddell needed to respond. As to this:
- i) Mr Waddell's disabilities were considered at [234]ff. Three disabilities were asserted: deafness, dyslexia and autism.
 - ii) BIG (and Freshstream) knew about the first two, but (for the reasons articulated at [249]ff) did not know and had no reasonable basis for knowing that Mr Waddell suffered from autism. Mr Waddell's autism was diagnosed *after* his dismissal, and neither he nor anyone else suspected that he might suffer from this condition. In large part that is because Mr Waddell's characteristics – in particular the ones at issue in this Judgment – are not caused by or attributable to autism.
 - iii) It follows that it was not possible for BIG (or Freshstream) to discriminate or to make reasonable adjustments in respect of something of which they were unaware. Given that BIG and Freshstream *were* aware of Mr Waddell's deafness and dyslexia, it was possible for them to discriminate or fail to make reasonable adjustments as regards these disabilities.
 - iv) Mr Waddell's deafness is not relevant to the question of discrimination or reasonable adjustments. I have made clear, for the avoidance of any doubt, that Mr Waddell's shouting, insofar as it arises in relation to the Incidents, is *not* attributable to his deafness but to his bullying and controlling behaviour. The same is true of his autism.

- v) Although Mr Waddell did suffer from dyslexia, and this certainly impaired his ability to write, it did not, as I have found, impair his ability to assimilate large quantities of documentation.⁷⁴⁵ Mr Waddell had a formidable grasp of detail, and a remarkable ability to assimilate data quickly and to retain it. Although I accept both the diagnosis of dyslexia in Mr Waddell and the fact that dyslexia can manifest itself in many different ways as a mental impairment, Mr Waddell was not so affected as far as assimilation is concerned. Mr Fardad did not appreciate that Mr Waddell would have difficulty in assimilating large quantities of data,⁷⁴⁶ and I accept that evidence in part because it accords with my own assessment of Mr Waddell.
- vi) I do not consider that Mr Waddell needed any adjustment to the time between receipt of the letter, the time for his written response, and the time of his interview *by reason of this disability*.
- vii) That being said, the time between these events was short. I consider that anyone (including a person without any disabilities) would have been hard pressed to get through this material without feeling under pressure. However, it was important for Mr Siddall, KC to conclude his investigation timeously, and that does justify a reasonably short-time frame for providing not an answer to allegation but evidence for the “Investigator” to consider as part of BIG’s disciplinary processes.

1270. To the extent that I am wrong about the ambit of operation of the Equality Act 2010 (whether by virtue of its statutory scope or implication) I do not consider that on the facts as I have found them the provisions of the Act engage.

UUUU.3. The medical certificate

1271. Mr Waddell, by his then solicitors, responded by saying that he was unable to attend for interview because he was unwell and had been signed off work for four weeks with work-related stress, anxiety and insomnia. It was requested that the interview be postponed for at least four weeks. The request for postponement was not acceded to, and Mr Waddell did not attend for interview.

1272. The refusal to adjourn the interview was not discriminatory, but it did savour of unfairness. As I have noted, it was important for Mr Siddall, KC to press on, but it was not he who made the decision, but Mr Vaughan, who expressed himself as “cynical” about medical certificates on the ground that they are often easily procured.⁷⁴⁷ The refusal to accept the medical certificate proffered on grounds that the certificate sought to excuse non-attendance work rather than formal interview in front of a KC that was being transcribed (which was the initial reason given for declining to take the medical certificate into account) was unreasonable.

⁷⁴⁵ See [247].

⁷⁴⁶ Day 17/pp3-4 (XX Fardad).

⁷⁴⁷ Day 20/p131, p166 (XX Vaughan).

1273. The question of whether the interview should be put off was one that should have been left to Mr Siddall, KC to determine.

VVVV. MR SIDDALL, KC'S INTERIM REPORT

VVVV.1. The Committee's request for an interim report from Mr Siddall, KC

1274. On 9 April 2024, the MDE Investigation Committee wrote to Mr Siddall, KC in the following terms:

We refer to our initial terms of reference date 14 March 2024 ("Initial Terms of Reference", as amended on 27 March 2024 ("March Addendum") and on 3 April 2024 confirming that we did want the supplemental allegations you referred to us included in the Terms of Reference ("3 April Addendum") (together "Amended Terms of Reference"). We adopt the defined terms used in the Amended Terms of Reference.

We also refer to the meeting between you and [Mr Waddell] that was due to take place at 10am today, but which was not attended by [Mr Waddell].

On 4 April 2024, [Mr Waddell's] solicitors provided a GP's letter dated 28 March 2024 which stated that [Mr Waddell] "is medically unfit to attend work for a period of 4 weeks from 27 March 2024" and requested that the interview scheduled for 10am today be postponed "until a date after expiry of our client's fit note or our client feels well enough to fully participate". On 5 April 2024, we requested provision of medical evidence that [Mr Waddell] was unable to attend the interview today. Such evidence has not been provided.⁷⁴⁸ In the meantime, [Mr Waddell] has been corresponding with [BIG] representatives concerning work matters both personally and through his solicitors since the date of the GP's letter dated 28 March 2024.

The Committee has concluded that delaying the conclusion of your investigation until after 24 April would expose [BIG] to intolerable risk. Accordingly, and based on: (i) the evidence that you have considered to date; and (ii) that the allegations have not been admitted by [Mr Waddell], please:

- i. Confirm today whether your conclusion is that, on the balance of probability, a Material Default Event has occurred in respect of [Mr Waddell]; and
- ii. Provide your report as soon as possible.

1275. Thus, not only were the Committee themselves determining that Mr Waddell's request for an adjournment should be refused (not leaving this to Mr Siddall, KC), they were also: (i) demanding a report as soon as possible and in any event before 24 April 2024; and (ii) requiring, in advance of the report, a conclusion *that day* as to whether there had been an MDE.

1276. The Committee had discussed this approach with Mr Fardad, and he had agreed with it.⁷⁴⁹ Neither Mr Waddell nor his solicitors were warned that the Investigation was being accelerated.⁷⁵⁰

⁷⁴⁸ Shortly after the sending of this letter, Mr Waddell's solicitors indicated that a further medical certificate would be provided.

⁷⁴⁹ Day 17/p94 (XX Fardad).

⁷⁵⁰ Day 17/p94 (XX Fardad).

VVVV.2. Provision of the initial report by Mr Siddall, KC (9 April 2024)

1277. On 9 April 2024, Mr Siddall sent to Mr Vaughan and Mr Clarke an email (timed 5:31pm) containing the Siddall Initial MDE Findings, setting out Mr Siddall, KC's initial views as to whether Mr Waddell's conduct amounted to a Material Default Event. Mr Siddall, KC addressed six of the Incidents:

Record of initial view as to whether Peter Waddell ("PW")'s conduct amounts to a Material Default Event ("MDE") as defined in clause 19 of the Securityholders' Deed (the "Deed")

Dear Tom

A Introduction

As requested in your letter of today's date, I hereby set out my initial view to the Committee as to whether PW's conduct amounts to an MDE. Prior to doing so, I make the following points:

1. I have not interviewed PW and thus have not received his account as to the allegations nor evidence from him in support of his case;
2. I have been instructed to reach a conclusion notwithstanding that fact;
3. Many of the allegations are undocumented and thus turn on the veracity of oral accounts;
4. I am unaware if PW accepts that he said some of the comments alleged and so have proceeded on the presumption that they are denied;
5. I was asked to provide an initial conclusion today, which renders it practically impossible for me to review all of the relevant interview transcripts and documentary material which I have received;
6. I have thus sought to address the allegations which seem to me to be the most stark in terms of the facts and whether they amount to an MDE;
7. I have not addressed in detail my views as to the credibility of the witnesses whom I interviewed and that is a matter which shall be addressed in my full report;
8. I have ignored the allegations in sections 2 and 3 of my TOR which relate to bullying/physical assault. This is because (as discussed below) neither bullying per se nor assault falls within the definition of an MDE.

1278. Section 19 of the Securityholders' Deed was then set out, together with Mr Siddall's construction of the relevant provisions, and his articulation of the relevant law. Mr Siddall then set out the six allegations as to which he was prepared to express a conclusion. His conclusions were preceded by the following "health warning":

I wish to make clear that this is my summary reasoning produced at speed to meet the requirements of those who instruct me. A more full and detailed analysis of my reasons shall be found in my final report. In the event of any conflict between the reasons expressed here and the contents of my final report (once prepared) the final report is to be taken as the definitive record of my reasons.

1279. The email concluded:

1280. I therefore consider that PW has performed acts which amount to an MDE in at least the above respects. I shall finalise my full report as soon as I am able.

VVVV.3. MDE Notice (10 April 2024)

1281. On 10 April 2024, the Freshstream sent an MDE Notice (defined at [14]) to BIG (i) noting that the Independent Investigation in respect of certain conduct of Mr Waddell had concluded that an MDE had occurred with respect to Mr Waddell, (ii) instructing BIG to terminate the rights of Mr Waddell to appoint any directors under the Securityholders' Deed and (iii) stating that all directors appointed by Mr Waddell were removed as directors of BIG with immediate effect.

1282. Overnight, the Siddall Initial MDE Findings had been conveyed by the MDE Investigation Committee to Freshstream as Mr Siddall, KC's findings of MDE. Freshstream had, basing itself on these findings, made the MDE Notice.

VVVV.4. Mr Waddell's contention that the MDE Notice was invalid

VVVV.4.1. No "finding"

1283. Mr Waddell contended that the MDE Notice was invalid, first because there was no sufficient finding of an MDE and, secondly, because the process by which it came to be made was in bad faith and in breach of the term described above.

1284. Clearly, an MDE Notice can only be made where there has been a "finding" of the "Independent Investigation" which can be communicated to the Committee and by the Committee to Freshstream (see clause 19(b) of the Securityholders' Deed). Freshstream was entitled to exercise its MDE Rights (enumerated in clause 19(i) where the subject of the MDE was Mr Waddell) in the following case:

In the event that there is no ongoing Proceeding in respect of the Material Default Event and the Independent Investigation concludes on the balance of probability that a Material Default Event as occurred with respect to PW...

1285. It is a necessary pre-condition for the making of a MDE Notice that it is based on a finding by a suitably qualified independent third party. In this case, the MDE Notice was not based on such a finding:

- i) For a finding to be a "finding" it must be conclusive, in the sense that the investigator cannot revisit the conclusion expressed. The need for this is obvious: a provisional finding – one that the Independent Investigation can re-visit – would be an unsound basis for making an MDE Notice exercising rights profoundly prejudicial to Mr Waddell. A provisional finding is not a finding.
- ii) In this case, Mr Siddall, KC made clear that his "findings" were provisional and liable to be re-visited. The "health warning" (set out above) bears repeating:

I wish to make clear that this is my summary reasoning produced at speed to meet the requirements of those who instruct me. A more full and detailed analysis of my reasons shall be found in my final report. In the event of any conflict between the reasons expressed here and the contents of my final report (once prepared) the final report is to be taken as the definitive record of my reasons.

- iii) Clause 19 makes no provision for multiple communications from the investigator to the Committee regarding the same MDE. The natural reading of the provision is that when once the investigator has communicated their finding to the Committee they are functus so far as that particular MDE is concerned. This is a point supportive of the reasoning at (i) and (ii), emerging out of the general wording of clause 19.
- iv) Although clause 19 does not expressly say so, the finding of the Independent Investigation must be properly independent. Clause 19 emphasises the need for the *investigator* to be independent, not the findings, but the two are closely linked. If there is sufficient interference with the process of making findings, the investigator ceases to be properly independent.
- v) In this case, Mr Siddall, KC's independence was impugned in the following ways. First, Mr Siddall, KC was constrained in the evidence that he heard. He was deprived of the opportunity to hear from Mr Waddell, and did not independently decide that he could proceed without hearing from Mr Waddell. I do not go so far as to say that any failure to hear from Mr Waddell impugned the process. That would be going far too far and would effectively give Mr Waddell a veto over the process. The point is a narrower one: it was for the Independent Investigator to determine how to evaluate the MDEs they had been tasked to consider, and it was for Mr Siddall, KC – and him alone – to decide how this task was to be accomplished. Secondly, requiring Mr Siddall, KC to provide conclusions within hours in regard to MDEs placed unreasonable pressure on Mr Siddall, KC and undermined his independence.

1286. It was suggested that, as an independent investigator, Mr Siddall, KC could and would have pushed back against improper suggestions or demands that undermined his independence.⁷⁵¹ Whilst I accept that Mr Siddall, KC was professionally obliged to disregard *improper instructions* any instruction short of this was something Mr Siddall, KC was professionally bound to follow. Mr Siddall, KC himself had this distinction well in mind.

1287. The Siddall Final MDE report recounts the demand for an Interim Report and then notes:⁷⁵²

[41] Plainly I had hoped to interview [Mr Waddell] in order to receive his version of events. However, my instructions in the above recorded letter were clear. I was not informed of the intolerable risk which [BIG] would face, and in any event, I do not

⁷⁵¹ See, eg, the evidence of Mr Vaughan: Day 20/p102, p145 (XX Vaughan).

⁷⁵² At p16.

consider that it is a matter for me to interrogate the reasons of those who instruct me. [BIG's] instruction to me did not require me to act in an unethical manner and thus, pursuant to the Bar Code of Conduct, I was obliged to follow the same.

[42] I did briefly consider rule C12 of the Bar Code of Conduct, which is in the following terms:

“You must not discriminate unlawfully against, victimise or harass any other person on the grounds of race, colour, ethnic or national origin, nationality, citizenship, sex, gender re-assignment, sexual orientation, marital or civil partnership status, disability, age, religion or belief, or pregnancy and maternity.”

[43] I concluded that my instructions did not arguably involve my being asked to breach that provision for the following reasons...

1288. Mr Siddall, KC had the point well in mind, and considered himself obliged to act. Furthermore, he does not appear to have been told *why* the Siddall Initial MDE Findings were required. Had he been told that it was to cause an MDE Notice to be made, I anticipate that Mr Siddall, KC's reservations would have increased.

VVVV.4.2. Bad faith

1289. Even where there is a finding that an MDE Event exists, Freshstream were precluded from making an MDE notice where there were “ongoing” “Proceedings”. Setting out the opening words of clause 19(i) again:

In the event that there is no ongoing Proceeding in respect of the Material Default Event...

1290. “Proceedings” are widely defined⁷⁵³ as any dispute or claim which may arise out of or in connection with the Securityholders' Deed. In the inter-solicitor correspondence at this time, there was a suggestion by Mr Waddell's former solicitors that Mr Waddell was considering imminently starting legal proceedings. Given the width of the term “Proceedings” it is likely that this would have prevented Freshstream from making an MDE Notice. That appears to have been the cause of the demand to Mr Siddall, KC that he provide – imminently – a conclusion in respect of at least one MDE.

1291. Mr Vaughan accepted that this was at least one reason for seeking the Interim Report:⁷⁵⁴

Q (Mr Gourgey, KC) Why could it not wait for a few days? Why did you need in particular to have a response from the investigator that same afternoon/evening?

A (Mr Vaughan) Time was of the essence. You know, these were really serious matters.

Q (Mr Gourgey, KC) The real reason that you wanted a quick response from the investigator was that you were concerned about the

⁷⁵³ See under “Proceedings” in clause 1 and clause 46(b).

⁷⁵⁴ Day 20/pp147ff (XX Vaughan).

impact that the proceedings which had been threatened that same morning, by CMS, you were concerned about the impact that that would have had or might have on the MDE process.

A (Mr Vaughan)

Yes, I was concerned about that, but I guess I was wrapping that up in the, in my view Pete was pretty determined to frustrate the process by whatever means necessary.

1292. Although the witnesses all suggested that there was genuine urgency apart from this reason, no other specific reason for such urgency was articulated. Mr Fardad was pressed on what the “intolerable risk” to BIG was, but was unable to come up with more than “a whole bunch of commercial reasons”.⁷⁵⁵ It would appear that Mr Waddell’s legal threat to commence proceedings was the real reason for the haste: there was a concern that if Mr Waddell issued proceedings before the Investigation was complete, this could derail the process.⁷⁵⁶

1293. Mr McLain also could not identify an “intolerable risk”. The best he could do was say this:⁷⁵⁷

Q (Mr Gourgey, KC)

Were you aware of any reason why, at 12:26pm on 9 April, [BIG] and the Committee needed to have a report with preliminary conclusions, or conclusions as set out here, the same day?

A (Mr McLain)

Was I aware? I don’t – I know that the company was concerned that the investigation was very disruptive, that there was great uncertainty in the business, there was a sense that, I think, that Mr Waddell was trying to interfere with the investigation and not willing to attend. I understand, obviously, that he’s also had the note from his doctors. He was very actively engaged still in communications with Freshstream, with the company, with employees, and the conclusion of the board, of the company, was that it was in the company’s best interests to have the preliminary report in order to bring that period of uncertainty to completion. That’s my understanding.

1294. I conclude that the process by which the MDE Notice came to be made was undermined by bad faith conduct on the part of (at least) Mr Vaughan and Mr Fardad. Threatened by a risk of the MDE Process being substantially delayed, the clear provisions of the Securityholders’ Deed were deliberately circumvented by obtaining the Siddall Initial MDE Findings from Mr Siddall, KC that undermined the independence of the investigation, meant that Mr Siddall, KC lost the opportunity to hear all of the evidence he might have wanted to, and resulted in findings of MDE that were made in haste and did not constitute “findings” in the proper sense. Those findings were then

⁷⁵⁵ Day 17/pp94-96 (XX Fardad).

⁷⁵⁶ Day 17/pp97-99 (XX Fardad).

⁷⁵⁷ Day 18/p173 (XX McLain).

communicated, overnight, to Freshstream, which – knowing the circumstances – nevertheless made the MDE Notice. This was, I find, a bad faith attempt to accelerate the MDE process against Mr Waddell. This was the only reason why the MDE Investigation Committee and Mr Fardad wanted the Interim Report from Mr Siddall, KC.

WWW. THE FINAL REPORT (16 APRIL 2024)

1295. Mr Siddall delivered the Siddall MDE Final Report on 16 April 2024, concluding that of the allegations he had considered, 22 had been made out, of which 15 amounted to acts of harassment, two amounted to acts of bullying and one amounted to an act of direct race discrimination. Thirteen of the allegations were found to amount to Material Default Events, including each of the six allegations referenced in the Initial Report.

XXXX. THE DISCIPLINARY PROCESS (NOTIFIED 10 APRIL 2024 FOR AN INTERVIEW ON 12 APRIL 2024, CONCLUDING ON 16 APRIL 2024)

1296. On 10 April 2024, Mr Vaughan sent a letter to Mr Waddell’s then solicitors requiring Mr Waddell to attend a disciplinary hearing on 12 April 2024. The letter listed 31 allegations against Mr Waddell, which form the basis for the table at [47].

1297. Mr Waddell declined to attend the disciplinary hearing on medical grounds, whilst also making the point that insufficient notice of the hearing had been given.

1298. The disciplinary process concluded on 16 April 2024, when Mr Vaughan upheld substantially all the allegations made against Mr Waddell. On the same day, a letter was sent to Mr Waddell dismissing him with immediate effect for gross misconduct, repeated material breaches of his Service Agreement, conduct bringing BIG into disrepute and breach of fiduciary duty.

1299. Mr Waddell’s employment was terminated by a letter dated 16 April 2024 . It consisted of a formal and reasoned statement of the outcome of the disciplinary hearing on 12 April 2024 which, the letter notes, “you did not attend”. The letter makes clear that Mr Vaughan was the sole decision-maker (“I have carefully considered the evidence and have reached an outcome on the Allegations” and “should confirm who made the sanction (myself)”) and that he based his decision substantially on the investigation conducted by Mr Siddall, KC.

1300. The letter sets out the findings in relation to the allegations numbered 1 to 31. The letter concludes:

I am therefore satisfied that in line with the Group’s Conducts and Standard policy the upheld allegations (both individually in relation to a significant number of Allegations, and cumulatively) constitute Gross Misconduct.

1301. The letter then refers to and in part sets out clause 16 of the Service Agreement (specifically, clauses 16.6.1, 16.6.2 and 16.6.5 are relied upon) and states:

Based on the Allegations upheld, I am satisfied that:

[1] You have committed gross misconduct and continued and repeated material breaches of your obligations under the Service Agreement.

[2] You have engaged in conduct which, in the opinion of the Board, brings or is likely to bring the Company of any Group Company into disrepute or which is likely to cause your continued employment to be detrimental to the interests of the Company or any Group Company (by way of example only I refer to upheld Allegations 7, 16, 17, 18, 26 and 27 in this regard).

[3] You have committed a breach of fiduciary duty or an act of dishonesty.

Accordingly, the Company is entitled to terminate your Appointment (as defined in the Service Agreement) with immediate effect and in light of the Allegations upheld I have decided that the appropriate sanction is summary dismissal for gross misconduct and in accordance with clause 16.6 of the Service Agreement. **Your employment with the Company therefore terminates with immediate effect today, 16 April 2024.** You are not entitled to any period of notice or payment in lieu of notice.

Whilst I have considered whether a lesser sanction would be appropriate, in light of the severity of a number of the upheld Allegations on both an individual and cumulative basis my view is that summary termination is the appropriate disciplinary sanction.

In addition to my findings in respect of the Allegations as set out above I also find that your behaviour has been a clear breach of the implied term of trust and confidence between you as the employee and the Company as the employer.

I have taken into account the mitigating circumstances you put forward including that you are dyslexic and have certain other health conditions. This does not change my decision on the Allegations which have been upheld and the decision to terminate your employment with immediate effect.

YYYY. REMOVAL OF MS FERGUSON

1302. BIG and Freshstream had, throughout 2024 been conscious that Ms Ferguson's primary loyalty would be to Mr Waddell. This would not be a problem where Mr Waddell's interests and those of BIG aligned. When they did not, there would obviously be an issue.

1303. Mr Waddell's suspension came as a shock to Ms Ferguson.⁷⁵⁸ Her response, at work that "I put my head down and tried to avoid the upsetting situation by just getting on with my work".⁷⁵⁹ She had a conversation with Mr Vaughan and Mr Clarke on 8 March 2024.⁷⁶⁰

[68] ... Later that day, I was called into a meeting with Laurence Vaughan and Tom Clarke. They were calling up all the senior people of the business for these one-on-one talks. The meeting was held in the boardroom. I went into the meeting not knowing what was going to happen. I thought they were going to kick me out because of my family connection to Peter. The meeting lasted around 15 minutes. Tom Clarke took handwritten notes during that meeting. I remember this because afterwards, I asked others if Tom had been taking notes during their meetings, and they said no.

⁷⁵⁸ Ferguson 1/[65].

⁷⁵⁹ Ferguson 1/[68].

⁷⁶⁰ Ferguson 1.

[69] At the meeting, Laurence asked me if I understood what had happened to Peter. I said no, I had not understood what was happening. He explained the Step-In process and told me that it was all to do with the financial results of the business. At that meeting, Laurence did not say anything about Peter's behaviour or conduct – absolutely nothing. It was all about the step-in Rights. I asked Laurence why the removal of Peter was done so openly – ie, why they could not have just sent Peter to his villa for a couple of weeks while everything was sorted out, or they could not have given some kind of warning so that everything could be handled cleanly. I told him that by removing Peter so abruptly, all he had done was create massive rumours among the staff. Laurence told me that they had been “trying to do this for a while but something always got in the way”. I asked Laurence what he meant, but he told me that this was not something I needed to know.

[70] Laurence then asked me who had control of the BIG online bank accounts. I told him that only me and Anthony How had access, and explained that all transactions required double approval (which is a security measure we introduced after the cyberattack). I asked Laurence whether he had a problem trusting me, and told him that I only wanted to do what was best for the business, which is also what was best for Peter given he was the major shareholder. Laurence told me that he trusted me, that he knew how hard I worked, and that he would like me to carry on in my role. I told Laurence that I was willing to do so, but that I would continue working in my role as I always worked dash by supporting the business, and supporting in managing my team.

[71] Laurence then referred to the email which had been sent around to all staff telling us all not to speak with Peter. He told me that he understood that Peter was my brother, but if I had any questions about what I was or was not allowed to say to him, I should ask Laurence or David Thorley, who was the interim CFO. I told Laurence again that I would continue to work at BIG with the best interests of the business in mind, which were also the best interests of Peter.

1304. The tensions on Ms Ferguson in doing her job in these circumstances were massive. She was – self-evidently – in a position of a considerable conflict between the business and Mr Waddell.
1305. On 22 March 2024, Ms Ferguson was emailed a letter by Mr Clarke. The letter, signed by Mr Vaughan on behalf of BIG, suspended Ms Ferguson from her job with immediate effect, pending an investigation into her conduct. The allegations “include, but are not limited to:
- that you have breached your duties of confidentiality under clause 21 of your Contract of Employment with the Company dated 1 October 2019
 - that you have failed to comply with reasonable management instructions and to cooperate with management
 - that you have acted in breach of your duties of good faith and fidelity owed to the Company.
1306. Only one of these is sufficiently specific as to be comprehensible. Whilst it may be that Ms Ferguson acted wrongly in providing Mr Waddell with emails he had already received (but could not access through technical incompetence),⁷⁶¹ this does not appear to be a major infraction of Ms Ferguson's duties. The

⁷⁶¹ Day 12/p138 (XX Ferguson).

suspension came out of the blue, and Ms Ferguson was frozen out of work access.⁷⁶² Ms Ferguson’s employment was terminated by mutual agreement by way of a settlement agreement.

ZZZZ. MR WADDELL’S APPEAL

1307. Mr Waddell instituted an appeal against the disciplinary finding, and Mr James Gilmour was nominated to deal with the appeal. However, Mr Waddell did not participate in the appeal process.

Part V: Wrongful dismissal

A. THE LAW

1308. The relevant law has been set out at Part II(ii) D ([52]ff). Wrongful dismissal and summary dismissal are closely related. Wrongful dismissal is a common law contractual claim that arises if the employer has dismissed an employee in breach of contract. Mr Waddell contends that BIG is in breach of the term in the Service Agreement entitling Mr Waddell to notice pay.
1309. That claim will fail if BIG was entitled to terminate without notice, which entitlement will arise where the employee had committed a repudiatory breach of contract. This question is a very fact specific one. Looking at all of the circumstances objectively, has the contract-breaking employee “repudiated” the contract, such that the employer can “accept” that repudiation and end the contract of employment without notice.

B. THE LETTER OF DISMISSAL

1310. In the ordinary course, a Court would place a good deal of weight on the reasons articulated by the employer – BIG – for terminating Mr Waddell’s employment summarily. That is particularly the case where the dismissal has followed an investigative process as thorough as that conducted by Mr Siddall, KC.
1311. In this case, however, I consider that I can place no weight on the reasons articulated in the Letter of Dismissal. That is because of the deliberate process pursued by Freshstream and BIG to remove Mr Waddell as CEO come what may.
1312. The culmination of that process was the Dismissal Letter, which set out Mr Vaughan’s grounds for dismissing Mr Waddell. I do not consider that Mr Vaughan had any belief in these grounds. Nor do I consider that he gave any proper consideration to whether summary dismissal was the appropriate course or not. I find that he was indifferent as to whether the reasons for Mr Waddell’s dismissal were well-founded or not.

⁷⁶² Ferguson 1/[87]-[88].

C. THE RULE IN BOSTON DEEP SEA FISHING

1313. As a matter of law, an employer can rely on conduct as a repudiatory breach where it did not form part of the reason for the summary dismissal. This is the rule in *Boston Deep Sea Fishing*, articulated Part II(ii) D ([52]ff).

D. INCIDENTS OF GROSS MISCONDUCT

1314. The table below sets out the findings I have made in respect of the Incidents. The Incident description is not repeated, and reference needs to be had to the table at [47], where the nature of the Incident is summarised or the description of the Incident itself in the body of this Judgment. Thus, the table sets out: (i) the Incident number, but the incidents are (this time) listed in chronological order (save where they are more appropriately grouped); (ii) the date (iii) the parts of the Judgment where the Incident is considered; and (iv) my conclusion as to whether the Incident constituted gross misconduct.

Incident	Date	Judgment reference	Summary	Gross misconduct?
No 15	Jul 2022	[451]ff	Slapping/punching of Mr Chapman	No.
No 20	Aug 2022	[480]ff	"Other brown friends too"	No.
No 12	Various	[499]ff	"Bullying of Mr Maby"	No.
No 3	31 Mar 2023	[562]ff	"Get the brown one off the phone"	No.
No 9	Mid-2023	[582]ff	"We get three weeks out of four"	No.
No 23	Jul/Aug 2023	[603]ff	Comments about engaging in sexual activity (Wimbledon)	No.
No 24	Oct 2023	[647]ff	Comments about engaging in sexual activity (Leeds)	No.
No 6	Sep/Oct 2023	[656]ff	"Suck my dick" comment to Ms Murphy	Yes.
No 1	Nov 2023	[708]ff	"Hyundai"	No.
No 2	Q2 Q3 2023	[709]ff	"Too many Muslims"	No.
No 24	Oct 2023	[790]ff	Inappropriate conduct on 23 Oct	No.
No 16	Nov 2023	[809]ff	"Cunt" to NatWest	No.
No 26	Mar 2024		Debanking by NatWest	No.
No 27	Mar 2024		Prejudicing Black Horse relations	No.
No 5	Various	[822]ff	Incidents involving Ms Rather	Yes.
No 22				Yes.
No 4				Yes.
No 21				Yes.
No 19	Early 2024	[950]ff	Removal of play equipment	No.
No 11	Feb 2024	[998]ff	Incident involving Ms Clarke	No

No 25	Mid-Jan 2024	[1007]	Rudeness to Ms Hazell	No.
No 10	Mid-Jan 2024	[1008]	Ms Khan and Ms Franklin	Yes.
No 8	Feb 2024	[1019]ff	Ms Gable	Yes.
No 13	Feb 2024	[1063]ff	Mr Lapthorne	No.
No 18	Various	[1114]ff	Inappropriate behaviour to customers.	No.
No 7	Mar 2024	[1215]	Female X	Yes.
No 15	Early 2024	[1242]ff	Mr Hodson	No.

1315. In each case where I have found gross misconduct, I have considered whether it can be said that BIG affirmed Mr Waddell's conduct, and in each of these cases I have concluded that there was no affirmation of the Waddell Service Agreement and no waiver of the right to terminate the agreement.

1316. I conclude that the Dismissal Letter constitutes an acceptance of Mr Waddell's various repudiatory breaches of contract, and that Mr Waddell has properly been summarily dismissed. The claim for wrongful dismissal therefore fails.

E. NOT VIEWING THE INCIDENTS IN THE ROUND

1317. With a few limited exceptions – the Incidents involving Ms Rather being the best example – I have looked at the Incidents on an incident-by-incident basis. At the conclusion of his cross-examination of Mr Waddell, Mr Laddie, KC put in broad terms the sheer volume and general seriousness of Incidents in which Mr Waddell had been involved. The picture was a deeply unattractive one. It might well be said that simply looking at the overall picture compelled the conclusion that summary dismissal was justified.

1318. Equally, Mr Laddie, KC identified in the course of his cross-examination a number of other instances where there was inappropriate behaviour on the part of Mr Waddell. I have tended not to refer to such incidents, partly to keep the ambit of this Judgment somewhat manageable, but mainly out of consideration of fairness to Mr Waddell. In my consideration, the focus must be on the Incidents I have described, in relation to which Mr Waddell had every opportunity (which he took) to defend himself.

1319. Looking at Mr Waddell's conduct in the round also has this danger. A number of Incidents were not sufficiently serious to justify summary dismissal – although there were unquestionably matters that should have been taken forward as part of a disciplinary process. In many cases – Incident No 12 (Mr Maby) is a good example – there was also a risk that condonation of an Incident might well give rise to an argument of affirmation.

1320. Accordingly, I have resisted the siren-call of the broad picture, and have instead focussed on the individual Incidents. When hearing the evidence, it was plain that in relation to a number of Incidents, Mr Waddell was very likely to have committed an act of gross misconduct justifying his summary dismissal,

notwithstanding Mr Gourgey KC's robust efforts at defending Mr Waddell's conduct.

1321. Had there been an absence of such clear-cut individual Incidents, I would have invited further submissions on the right in BIG to dismiss because of the grim totality of the picture. Such submissions were not necessary.

F. NON-CONSIDERATION OF POST-SUSPENSION INCIDENTS

1322. I have left out of account the three post-suspension Incidents (occurring after 7 March 2024). I have done so because – although Mr Waddell's conduct in relation to these Incidents is to be deprecated – BIG was itself arguably in overt breach of its obligations to Mr Waddell. Although two wrongs certainly do not make a right, the existence of unaccepted repudiatory breaches of the same contract paints a confusing picture which I do not (given the findings I have made) need to consider.

G. REVISITING THE DECISION TO DISMISS

1323. I have stressed, on a number of occasions, that an employer's duty of trust and confidence obliges that employer to grasp the nettle of the abusive co-employee and to act to protect the other employees in the business. In the cases of harassment, bullying and sexist and racist language this is of critical importance, for an otherwise valuable employee can be taught to avoid inappropriate conduct, and disciplined through warning, rather than the nuclear option of immediate termination.
1324. BIG – and Freshstream – quite deliberately eschewed this approach, and thereby put BIG in potential breach of its duties to its own employees. This approach was eschewed because neither BIG nor Freshstream had any interest in reforming Mr Waddell: they wanted him gone.
1325. It is, therefore, tempting to say that what BIG should have done is not summarily dismiss Mr Waddell in April 2024, but give him the talking to and final warning that should have occurred months previously.
1326. That is a temptation I have resisted. It was for BIG to decide whether to accept Mr Waddell's repudiatory breach of contract. Having found such repudiatory breaches to exist, the acceptance of the repudiation cannot be revisited and Mr Waddell has been summarily dismissed.

Part VII: Unfair Prejudice

A. THE LAW

A.1 Sections 994ff of the Companies Act 2006

1327. The relevant legal principles for the remedy of unfair prejudice contained in sections 994 to 995 of the Companies Act 2006 were largely uncontroversial between the parties.

1328. According to section 994(1), “[a] member of a company may apply to the court by petition for an order under this Part on the ground (a) that the company’s affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself) or (b) that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial.”

1329. Thus, there are three relevant elements:

- i) The acts or omissions of which the petitioner complains consist of the management of the affairs of the company.
- ii) The conduct of those affairs has caused prejudice to the petitioner’s interests as a member of the company.
- iii) The prejudice is unfair.

A.2. Affairs of the company

1330. The words affairs of the company have a wide import, which matters in this case. The petitioner – PWHL – is, technically, the majority shareholder and it is (at first sight) hard to understand how the majority shareholder could be unfairly prejudiced (as opposed to itself unfairly prejudicing the minority). In this case, it is necessary to look to the wider context. That context embraces the whole of the regime of ownership and control that was put in place on Freshstream’s acquisition of its minority stake and includes all of the elements of the Transaction as I have described them in this Judgment, including in particular Step-In Rights, MDE Rights and BIG’s rights under the Service Agreement.

A.3. Rights subsisting for Freshstream’s benefit

1331. A significant factor in this regard is the terms of the Securityholders’ Deed. The Deed gave rights to Freshstream over-and-above those of an “ordinary” minority shareholder. To the extent that such rights were properly exercised, even if to the prejudice of PWHL and purely in Freshstream’s interests, it is difficult to see how such exercise could be unfair, even if prejudicial. The point is that Freshstream was not fettered by any general obligation to act in the best interests of BIG as a whole and the duties of directors (set out at Part III E) take the matter no further.

1332. This gives rise to a number of subsidiary questions relating to the true scope and nature of Freshstream’s rights. These limits have been considered as they arise in the course of Part IV.

A.4. Prejudice to PWHL, not Mr Waddell

1333. The unfair prejudice remedy is for prejudice to the *member* – here PWHL. Unfair prejudice that is specific to Mr Waddell, and does not bite in relation to PWHL, does not amount to unfair prejudice in this case.

B. UNFAIRLY PREJUDICIAL CONDUCT

B.1. Aspects under consideration

1334. Leaving out of account, for the moment, acts of subsequent (allegedly) unfairly prejudicial conduct, the unfairly prejudicial conduct that falls for consideration can be categorised under the following heads:

- i) *Breaches of common understandings.* The Petition relies on breaches of common understandings of good faith and trust and confidence that are said to have existed between the parties in relation to their dealings with each other.
- ii) *Invalid or ineffective Step-In Notices.* Although declarations were independently sought in relation to the Step-In Notices, the invalidity or ineffectiveness of the Step-In Notices was also relevant to the question of unfair prejudice.
- iii) *Invalid or ineffective MDE Notice.* As with the Step-In Notices, the invalidity or ineffectiveness of the MDE Notice was independently relevant to the issue of unfairly prejudicial conduct, as well as a matter in relation to which a declaration was sought.
- iv) *Wrongful dismissal.* Once again, this is a self-standing claim that is also relevant to the issue of unfairly prejudicial conduct.
- v) *Breach of directors' duties.* This is a case that could have been put extremely broadly. It might have been said that the formation and execution of a pre-conceived and orchestrated plan which worked backwards from Freshstream's aim of achieving permanent control of, and Mr Waddell's removal from, the business *without* having to exercise the Call Option would have involved multiple and extensive breach of duty. That is not, however, how the case was put, and the breaches of directors' duties were put in relation to the following matters:
 - a) The resolution to suspend Mr Waddell.
 - b) Conduct in relation to the MDE Notice. This has various elements to it, which will be unpacked.

1335. These five aspects are considered in turn below. In most cases, they have already received consideration, and this will not be repeated. However, it will be necessary to state the findings I am making. Thereafter, the post-suspension acts of alleged unfairly prejudicial conduct will be considered.

B.2. Breaches of common understandings

B.2.1. Introduction

1336. As part of the unfair prejudice case, PWHL relied upon a number of non-contractual understandings and/or estoppels between Freshstream and Mr Waddell which (i) had been breached by Freshstream (ii) causing unfair

prejudice to PWHL. It was not suggested that establishing the breach of such non-contractual understandings was a necessary condition for PWHL's claim to succeed, but the breach of such understandings was, nevertheless, part of PWHL's case. It is appropriate, in order to have a clear understanding of the unfair prejudice to deal with these particular allegations now.

B2.2. A narrowing of the case

1337. Initially, PWHL sought to contend that Freshstream's strict legal rights (eg, to Step-In or to exercise the Call Option at its contractual discretion) had in some way been qualified by statements or assurances emanating from Mr Fardad (binding Freshstream) to Mr Waddell. The essence of the case was that Mr Fardad, acting on behalf of Freshstream, had assured Mr Waddell (i) that the Call Option would be exercised and (ii) that Step-In would not take place.

1338. These contentions could not survive the evidence at trial. In cross-examination, Mr Waddell accepted that the parties "worked to, lived and died by the terms of the legal documentation".⁷⁶³ Furthermore:

- i) There was no evidence of Mr Fardad giving any kind of unequivocal assurance that Freshstream would exercise or not exercise its legal rights in a particular way.
- ii) There was a great deal of evidence that Mr Waddell was extremely concerned that Freshstream would *not* exercise the Call Option in October 2023, and that he considered that he had no legal means of forcing Freshstream to do so. Hence his 1 October 2023 email, which was intended to put pressure on Freshstream to exercise the Call Option notwithstanding Freshstream's legal right not to.
- iii) The evidence regarding the exercise of Step-In Rights was more exiguous. Freshstream was concerned to keep relations with Mr Waddell as healthy and productive as possible, which is why Step-In was not mentioned. But I do not consider that Mr Waddell had any belief that Freshstream were inhibited in Stepping-In if a Trigger Event had occurred, and he certainly had no basis for any such belief. Equally, I do not consider that anything is to be read into (i) Freshstream's silence about its strict legal rights nor (ii) Freshstream's positive commentary on BIG's performance. I do not consider that Freshstream were trying to mislead Mr Waddell or lull him into a false sense of security regarding BIG's performance. BIG was performing well. But the Trigger Event for Stepping-In was set high because Mr Waddell was ambitious for BIG's performance, and this meant that the Trigger was something of a hair trigger in this case. There is nothing at all odd about that; and it is

⁷⁶³ Day 4/pp134ff. I have not quoted the exchanges with Mr Waddell on this point because they are lengthy and Mr Waddell went out of his way not to provide a clear answer to what was a straightforward question. Nevertheless, Mr Waddell was unable to point out any fact or matter which rendered the documentation an incomplete statement of the legal rights between the parties and I consider (viewed in the round) that Mr Waddell's answers went beyond this, and accepted the proposition that the parties worked to the terms of the legal documentation.

unsurprising that Freshstream said nothing about Step-In until actually stepping in.

B.2.3 A broader argument

1339. PWHL advanced a somewhat broader case in closing, which was that a *general* common understanding of good faith and trust and confidence existed between the parties in relation to their dealings with each other, including in respect of Freshstream’s rights under the Securityholders’ Deed.⁷⁶⁴

1340. PWHL’s argument (as set out in closing) was as follows:⁷⁶⁵

[665] ...Mr Fardad accepted in live evidence that (1) there was a common understanding between Freshstream and Mr Waddell in relation to the business of BIG that each would have trust and confidence in the other; and (2) there was a common understanding between them right from the inception of the Securityholders’ Deed that each would be transparent and honest with the other; and (3) such relationship of trust, confidence and honesty applied in respect of all prospective dealings regarding BIG.

[666] It is submitted therefore that even if (contrary to the Petitioner’s case) the co-ordinated exercise of Step-In Rights and MDE Rights by the Investor was strictly valid under the terms of the Securityholders’ Deed, it was nevertheless a clear breach of the common understandings admitted by Mr Fardad to have existed...

1341. PWHL contended that the formation and execution of a pre-conceived and orchestrated plan which worked backwards from Freshstream’s aim of achieving permanent control of, and Mr Waddell’s removal from, the business, without having to exercise the Call Option, made in secret, and drawing in BIG’s chair and others constituted a breach of the equitable constraints that bound Freshstream.

1342. It is trite that the requirement of prejudice should not be “too narrowly or technically construed”⁷⁶⁶ and that a petitioner can rely upon “any circumstances of justice or equity which affect him in his relations with the company, or, in a case such as the present, with the other shareholders”.⁷⁶⁷

1343. Accepting that the unfair prejudice remedy is a broad one informed by equitable considerations, the equitable constraints contended for in this case do not exist and do not bite on Freshstream’s conduct. More particularly:

- i) It is important that the law – including the remedy of unfair prejudice – respects the legal rights conferred on shareholders where these constitute additional conferred rights. The Freshstream Minority Rights conferred on Freshstream, by way of the Securityholders’ Deed, were conferred on Freshstream for a reason (to protect Freshstream *qua* minority shareholder). The law should be slow to qualify the terms of a

⁷⁶⁴ Waddell Closing/[664].

⁷⁶⁵ Waddell Closing/[665]ff.

⁷⁶⁶ *O’Neill v Phillips*, [1999] 1 WLR 1092 at 1105.

⁷⁶⁷ *Ebrahimi v Westborne Galleries Ltd*, [1975] AC 360.

commercially negotiated and extremely detailed document by reference to vague understandings of trust and confidence.

- ii) The same is true of the Call Option Deed.
- iii) The law should therefore be slow to constrain a party like Freshstream from the exercise of its strict contractual rights. Moreover, where such constraints do exist, they will in the first instance arise out of the proper contractual interpretation of the rights in question in the context of the instrument out of which they arise – here the Securityholders’ Deed and the Call Option Deed. It is clear from the analysis of the MDE process in the course of this Judgment that significant constraints existed on both Freshstream and BIG in how the MDE process could be used against Mr Waddell. I will return to these constraints further below, but they have nothing to do with an equitable constraint arising out of the unfair prejudice jurisdiction.
- iv) The suggestion that the individually lawful exercise of powers granted to Freshstream and BIG is to be constrained when these rights are exercised in combination is to be rejected. The case articulated by Freshstream and BIG was that they were acting together to remove a CEO who was acting not only in breach of his Service Agreement, but by his actions was causing BIG to act in breach of its own obligations towards its workforce. I have rejected this case for the reasons set out in this Judgment, but had Freshstream’s and BIG’s contentions been true, then the co-ordination in secret that PWHL seeks to enjoin would have been necessary. Mr Waddell was not only the CEO but controlled the majority shareholder PWHL and so the board. Some form of legitimate combination of Service Agreement rights, Step-In Rights and MDE Rights would have been needed to cause the removal of Mr Waddell, and much of the preparatory work would necessarily have to have been done behind Mr Waddell’s back. This is why the characterisation of Freshstream’s conduct from December 2023 is so fact heavy. It is really the difference between (i) disciplining a CEO according to due process and (ii) using the disciplinary process as a pre-determined way of getting rid of that CEO. The latter is the case here: but both processes would involve a coordination of rights that should not be subject to equitable constraints.

- 1344. The problem with the equitable restraints contended for by PWHL is that they go too far in constraining proper and legitimate conduct on the part of Freshstream and BIG which may very well be in the interests of BIG viewed as a whole.
- 1345. The answer to the Petition lies not in generalised assertions of broad equitable restraints, but in the granular operation of the more specific rights and duties that BIG and (to an extent) Freshstream were subject to. Accordingly, I reject PWHL’s case on this point.

B.3. Invalid or ineffective Step-In Notice

1346. I have concluded that Freshstream was entitled to exercise its Step-In rights at its discretion, without regard to the interests of BIG or Mr Waddell. Furthermore, Freshstream was entitled to do so in combination with the lawful exercise (or non-exercise⁷⁶⁸) of *other* rights that Freshstream or BIG may have had.
1347. However, the Step-In Rights had to be exercised *in accordance with their terms* (just as BIG's rights did, but subject to additional constraints like directors' duties). PWHL was entirely within its rights to contend that the Step-In Notices were invalid and that Freshstream had no entitlement to Step-In as a result. In my judgement, had that case been well-founded, the illegitimate exercise of Step-In Rights would have been a significant factor going to the question of unfairly prejudicial conduct.
1348. However, Mr Waddell's argument in this case failed, for reasons I have given, and the Step-In Rights were lawfully exercised by Freshstream. I have rejected PWHL's arguments regarding the SIRENS and their invalidity.

B.4. Deficiencies in the MDE process

1349. There are a number of closely related deficiencies.
1350. Both the MDE Investigation Notice and the MDE Notice were improperly made by Freshstream failing to comply with the requirements of the Securityholders' Deed. Mr McLain and Mr Fardad were subjectively not satisfied that the requirements for the existence of an MDE were met and objectively these requirements were not met. The MDE Investigation Notice to BIG was improper: Mr Fardad and Mr McLain had no belief that the matters referred in the Annex to the Resolution satisfied the threshold requirements to be MDEs.
1351. The MDE Investigation Committee then caused the Incidents the subject of the MDE Investigation Notice to be changed, removing some MDEs identified by Freshstream and adding others not identified by Freshstream. In doing so, the MDE Investigation Committee introduced a fatal defect into Mr Siddall's investigation, that what he was investigating were largely *not* MDEs at all, because they were not contained in the (admittedly itself defective) MDE Investigation Notice. The MDE Investigation Committee circumvented the MDE process by improperly changing (by addition and subtraction) the MDEs to be investigated. Mr Siddall, KC should have been asked to investigate the incidents in the Annex; he was (improperly) instructed to investigate the incidents in the Terms of Reference which was then (improperly) supplemented.
1352. Furthermore, the MDE Notice was unlawfully made. This is because there was no finding of an MDE by an independent investigator, which was a precondition to the exercise of Freshstream's MDE Rights. By demanding that Mr Siddall, KC produce his Interim Report, on the back of which the MDE Notice

⁷⁶⁸ Ie, the Call Option, which Freshstream was free to exercise or not exercise. Here, Freshstream chose to exercise its Step-In Rights and chose not to exercise the Call Option. Neither decision can be impeached.

was made, the MDE Notice was based on no MDE findings *at all* and Mr Siddall, KC's Final MDE Report deprived of all value in terms of the MDE process.

1353. It follows that, for three independent reasons, the steps taken by Freshstream and by BIG on the basis of and pursuant to the MDE Notice were unlawful.
1354. Mr Fardad and Mr Vaughan were both closely related to and knowing of these irregularities, as has been described in Part IV of this Judgment. I will return to the significance of this below.
1355. Additionally, Mr Vaughan (acting as chair of the Committee and a director of BIG) and Mr Fardad (involved as a representative of Freshstream, but also a director of BIG) improperly and mala fide intervened in Mr Siddall, KC's independence by requiring him to submit his Interim Report for an improper purpose.
1356. The reason for the need for the Interim Report was because Mr Waddell (through his solicitors) had threatened "Proceedings" which – if issued – would be "ongoing" "Proceedings" preventing the making of an MDE Notice.
1357. The bottom line for present purposes is that the MDE Notice was invalid for multiple reasons, and that consequently the exercise of MDE Rights was illegitimate and unfairly prejudicial conduct to the detriment of PWHL.
1358. These matters raise questions as to whether Mr Vaughan and Mr Fardad breached their duties as directors of BIG. That question is considered further below.

B.5. Wrongful dismissal

1359. I have concluded that Mr Waddell was not wrongfully dismissed, and that this was not "unfair" in the sense of unfairly prejudicial conduct towards PWHL. (I say nothing about the ET Proceedings.)
1360. The process by which Mr Waddell was dismissed *was* unfair. However, such matters are irrelevant to the question of dismissal at Common Law.

B.6. Breach of directors duties

1361. These chiefly arise in relation to the MDE Process. In the Waddell Closing, the point was put in the following way:

[671] In allowing the investigation into Peter Waddell to be conducted through the instructions of members of the Investigation Committee in an unfair and prejudicial manner, contrary to natural justice...and a fortiori by actively preventing a fair investigation by requiring Mr Siddall, KC to reach a conclusion before he had even read all the materials or heard from Peter Waddell, they failed to act for proper purposes or in good faith in the best interests of BIG, failed to exercise independent judgment and put themselves in a position of conflict by acting on the instructions of, and or for the benefit of, [Freshstream] (and in Mr Vaughan's case, for his own benefit).

[672] By acting on the MDE Notice sent by [Freshstream] to BIG, while knowing that the investigation was unfair...they failed to act in good faith in the best interests of BIG, by failing and failed to have regard to the need to act fairly as between the shareholders to [BIG], but instead acted in breach of duty by preferring the interests of [Freshstream].

1362. These paragraphs encapsulate very well the breaches of duty that I have found. The directors in breach of duty were Mr Vaughan and Mr Fardad (*not* Mr Gradassi). More particularly:

- i) From at the latest December 2023, but in reality long before that, Mr Vaughan aligned himself with the minority shareholder, Freshstream, against PWHL (the majority shareholder) and Mr Waddell the duly appointed CEO. As a result, when acting in the manner described above, Mr Vaughan acted when in a conflict of interest (contrary to the duty described at [135]), lacking good faith (contrary to the duty described at [138]) and failing to exercise independent judgment (contrary to the duty described at [140]). Specifically:
 - a) Mr Vaughan knew that the MDE Investigation Notice was improper because the directors of Freshstream causing it to be made could have had no belief that any MDE deserved investigation. The making of the MDE Investigation Notice was part of the unspooling of Option 4 and was a necessary and pre-determined step in achieving Mr Waddell's removal. Mr Vaughan acted in bad faith in causing the MDE Investigation to proceed (notwithstanding its superficial regularity, which Mr Vaughan knew to be superficial only).
 - b) Mr Vaughan knew – as Mr Siddall, KC did not – that Mr Siddall, KC was being required to investigate matters that were not in fact MDEs because they were not part of the MDE Investigation Notice.
 - c) Mr Vaughan improperly caused Mr Siddall to make his Interim Report, and did so for improper purposes. As a result, the “findings” made by Mr Siddall, KC were no such thing, and the Siddall Final MDE Report was rendered an irrelevance.
 - d) Mr Vaughan knew – as a result of (c) – that the MDE Notice itself was improper and should not have been acted upon by BIG.
- ii) Mr Fardad's position was more difficult, because he also owed duties to Freshstream as well as to BIG. His conflict of interest was hard for him to avoid, but he should have avoided it nonetheless. Freshstream obliged him to act as part of the Deal Team in BIG, and he assumed his position as a director of BIG as a result. But, as with Mr Vaughan, when acting in the manner described above, he acted when in a conflict of interest, lacking good faith and failing to exercise independent judgment. Specifically:

- a) Mr Fardad knew that he had no basis for causing the MDE Investigation Notice to be made because he had no belief that any MDE which deserved investigation existed. The making of the MDE Investigation Notice was part of the unspooling of Option 4 and was a necessary and pre-determined step in achieving Mr Waddell's removal.
- b) Because Mr Fardad was involved in the MDE Investigation Committee's conduct, he knew that Mr Siddall, KC was being required to investigate matters that were not in fact MDEs because they were not part of the MDE Investigation Notice that Freshstream had made.
- c) Mr Fardad was improperly involved (because he was consulted by Mr Vaughan) in causing Mr Siddall to make his Interim Report for improper purposes. As a result, the "findings" made by Mr Siddall, KC were no such thing, and the Siddall Final MDE Report was rendered an irrelevance.
- d) Mr Fardad knew – as a result of (c) – that the MDE Notice itself was improper.

1363. As has been described, Mr Waddell was (amongst other things) suspended on 7 March 2024. That suspension was effected by a board resolution of BIG made on that day. It was contended (for reasons articulated in Waddell Closing/[669]ff) that this was done in breach of duty by Mr Gradassi, Mr Fardad and Mr Vaughan.

1364. I do not accept this contention, for the following reasons:

- i) As I have described, the exercise of powers by (in this case) BIG must be considered case-by-case. In this case, the power to suspend arose out of clause 22.4 of the Waddell Service Agreement, which was widely framed:

[BIG] may at any time suspend you on full pay for such periods as shall be reasonably necessary, for the purposes of investigating any allegation of misconduct or neglect against you.
- ii) At this time, BIG was investigating Mr Waddell's conduct. As I have described, the investigation process ultimately conducted by Mr Siddall, KC served a dual purpose, as an investigation under the MDE provisions of the Securityholders' Deed *and* under the Service Agreement. At the time of the suspension, the matters under investigation were those listed in the Annex.
- iii) There is (unlike in the case of MDEs) no threshold requirement that needs to be satisfied in regard to bad conduct under the Service Agreement. Indeed, the processes and standards of behaviour laid out in the BIG Employee Handbook strongly indicate that the matters listed in the Annex should be investigated and indeed should have been

investigated earlier. Furthermore, whilst these matters may not have constituted “gross misconduct” – most did not – the Incidents recorded in the Annex were worthy of investigation as disciplinary breaches, pursuant to which Mr Waddell could properly be suspended.

- iv) In these circumstances, it is difficult to impugn the decision to suspend. Of course, Mr Waddell contended that the suspension was part of a wider plan, and so it was. But (for the reasons given above) I consider that the exercise of individual powers needs to be considered on their own terms, and on this basis, I conclude that directors’ duties were not infringed and that the decision to suspend was a proper one.

C.1. Post-suspension unfair prejudice

C.1.1. Introduction

1365. By the end of the trial, Mr Waddell’s case had narrowed significantly. Four points were maintained:

- i) That PWHL had sustained unfair prejudice in the downturn of BIG’s business post Mr Waddell’s suspension from BIG.
- ii) There had been a failure to provide information to Mr Waddell post-suspension to which he was entitled.
- iii) The conclusion of Mr Vaughan’s service contract in May 2024 was something that Mr Waddell had the right to approve, and he was not consulted on this as was his right.
- iv) Payment of bonuses to Mr Vaughan, Mr Clarke and Mr Hodson were improper and damaged BIG.
- v) There was a misuse of BIG’s money and resources in this litigation.

C.1.2. Post-suspension downturn

1366. PWHL contended that it had been unfairly prejudiced in the conduct of BIG’s business in the period after Mr Waddell’s suspension and dismissal. The point was initially pleaded as a deliberate running down or damaging of BIG’s business which – if established – would have resulted in a disproportionate (compared to other shareholders) diminution of the value of PWHC’s shareholding in BIG.

1367. The allegation of deliberation was dropped in later iterations of the pleadings, and the unfair prejudice alleged is in essence that the business has been less well run than it would have been had Mr Waddell been CEO. Mr Waddell’s witness statements are full of examples where Mr Waddell asserted that the business had been “run into the ground”. There was no expert evidence adduced to support these contentions and inevitably Mr Waddell was advancing a subjective viewpoint that was hostile to the present management of BIG in general, and Mr Vaughan in particular.

1368. Similarly, Mr Vaughan in particular (but also other witnesses) were assiduous in contending that the business was extremely badly organised and run, and that he (Mr Vaughan) got a rather more fragile business than he bargained for when he took over as CEO. In short, Mr Waddell was the cause of BIG's post-suspension downturn.
1369. The Waddell Closing/[684]ff sets out the metrics of BIG's deteriorating performance. I do not consider that these matters are capable of amounting to unfair prejudice. I am far from satisfied that Mr Waddell is right, and that BIG is being mismanaged, and that this is the cause of BIG's deterioration. It is as possible that even with Mr Waddell at the helm, BIG's position would have deteriorated; or that the deterioration is in fact due to inherent management deficiencies for which Mr Waddell is responsible.
1370. It is clear that the second-hand car business was going through a tough patch in 2023 and 2024, and that Mr Waddell and Mr Vaughan (as successive CEOs) had to deal with this on-going issue. The events at the turn of the year occurred on Mr Waddell's watch.
1371. The most that can be said is that Mr Waddell has advanced a partial (in the sense of tendentious) series of allegations, when the true picture (as put in cross-examination on Days 10 and 11 by Mr McPherson) is rather more complex.
1372. I thus do not consider that there has been any prejudice in this case, and I would require far more cogent and objective evidence to alter my position on this. In essence Mr Waddell was running a complex counterfactual argument (had he not been excluded, BIG's fortune and success would have been assured, and the present downturn avoided) without any supporting expert evidence.
1373. The position becomes even more difficult when Mr Vaughan's assertions – that the business is in fact doing rather well at the moment – are factored in. Again, I have no way of assessing whether Mr Vaughan's assertions are well-founded.
1374. Furthermore, as I have found, when Freshstream acquired its interest in BIG, the company was operating at the limits of its organisational capacity. Freshstream sought to re-organise the company, initially with Mr Waddell's (limited) cooperation, followed by his hostile non-cooperation when it became clear that the Call Option would not be exercised. Throughout this period, BIG was expanding. Re-organisations – even if well done and for good reason – tend to be adversely disruptive until they have bedded in. I have no idea how potent a factor this has been in BIG's performance post Mr Waddell's suspension.
1375. Even assuming in Mr Waddell's favour that BIG has been less well run than it might have been post-suspension, I do not consider this to be capable of amounting to unfair prejudice. Assume, in Mr Waddell's favour, that he (as CEO) was capable of making a better fist of running BIG than Mr Vaughan. That is an assumption I am perfectly prepared to make (although for the reasons given I make no findings to that effect). Mr Waddell is obviously passionate about and committed to his business and the assumption is by no means unreasonable. But as a self-standing point, this gets Mr Waddell and PWHL nowhere:

- i) If, as I have found, Mr Waddell was properly dismissed in April 2024, the fact that (had he not been dismissed) the business would have performed better is nothing to the point.
- ii) Conversely, if (contrary to the conclusion I have reached) Mr Waddell had been wrongfully dismissed, then it is again difficult to see what different this makes. Wrongful dismissal gives rise to a claim in damages, not reinstatement.

1376. It will be necessary to return to this point when considering the question of unfair prejudice generally. The defendants all contended that even if substantial parts of the unfairly prejudicial conduct alleged were made out causally this would have made no difference, and PWHL can demonstrate no unfair prejudice.

C.1.3. Failure to provide information

1377. Post-exclusion events rarely give rise, in themselves, to questions of unfair prejudice. That is particularly the case where part of the exclusion – the summary dismissal of Mr Waddell – has been found to be lawful and justified. Even assuming that the information requirements under the Securityholders’ Deed have been infringed, I cannot see how that can occasion any material prejudice to PWHL.

C.1.4. The conclusion of Mr Vaughan’s service contract

1378. I proceed on the basis that the conclusion of Mr Vaughan’s service agreement in May 2024 was a matter that required Mr Waddell’s consent. It is plain from the facts that such consent would not have been forthcoming.

1379. However, the matter does need to be seen from BIG’s perspective. BIG had lost its CEO (*correctly* summarily dismissed) and needed a new CEO. There could not – given relations at this time between Freshstream, BIG and Mr Waddell – ever have been a consensus as to who might succeed Mr Waddell. Yet the company needed leadership. I decline to find the appointment of Mr Vaughan to be prejudicial to PWHL’s interests as a shareholder.

C.1.5. Bonuses

1380. I have considered these bonuses as part of the history up to April 2024.⁷⁶⁹ What is significant is their consideration, during this period, not their payment post-suspension.

C.1.6. Misuse of BIG’s money in this litigation

1381. As a general rule, a company the subject of a section 994 petition should stay above the fray and not incur costs in defending the proceedings.⁷⁷⁰ The reason for this is that section 994 fights are about the company or the conduct of the

⁷⁶⁹ See [1109]ff.

⁷⁷⁰ See *Re Crossmore Electrical and Civil Engineering Ltd*, [1989] BCLC 137; *Re A Company (No 001126 of 1992)*, [1993] BCC 325.

company's affairs in which the company has no interest and are battles between rival interests *in* the company.

1382. Although the general rule is straightforward to state, its application in the present case is harder:

- i) The issues before the Court do not just involve the Petition. There is the wrongful dismissal claim, in which BIG is the proper defendant, and where one would expect BIG to defend itself.
- ii) Mr Waddell's wrongful dismissal claim is part of a broader plan. That was the case, whether I preferred the contentions of Mr Waddell or those of the defendants. Inevitably, defending the wrongful dismissal claim would drag BIG into other aspects of the litigation – specifically the “plan”.
- iii) There is, therefore, good reason in the present case for BIG to have had greater involvement – and to have incurred greater costs than would have been the case were matters otherwise.⁷⁷¹ In the division of labour between the Freshstream, BIG and Mr Vaughan teams, Mr Laddie, KC for BIG lead on the wrongful dismissal points which (as this Judgment, if nothing else, demonstrates) appropriately took up a great deal of Court time.
- iv) My concern relates to the involvement of Mr Vaughan. It is Mr Vaughan – separately represented by his own team – who *also* gives instructions of behalf of BIG. Clearly, this is a delicate situation, for (rightly) I have no understanding how BIG's legal team operates (both within itself and with the other teams) and I have all confidence not merely in the skill of Mr Laddie, KC and his team, but also in their integrity and professionalism. Even so, Mr Vaughan's conflict of interest is obvious;⁷⁷² and, it bears noting, that this is only the latest in a series of instances where Mr Vaughan has not only got into a conflict of interest, but succumbed to that conflict in a manner that has led to breaches of other duties.

1383. It would have been far better for BIG if Mr Vaughan's role (so far as BIG was concerned) had been limited to that of a witness; and that someone else, not associated with this unhappy history, had assumed the responsibility of “lay client”. I conclude that in this respect – because of the danger inherent in taking instructions from someone in conflict – PWHL has been unfairly prejudiced.

C.1.7. Removal of CCTV

1384. It was not clear to me whether this was relied upon as a further matter of post-suspension unfair prejudice. The BIG Written Closing treated it as such, and it is therefore appropriate to deal with point here. I have concluded that there was good reason for the removal of the CCTV as constituting a difficult to defend

⁷⁷¹ I am not going to be drawn on level of costs at this stage, nor as to the propriety of instructing Stephenson Harwood, both points made at Waddell Closing/[717].

⁷⁷² See Waddell Closing/[718] where these points are articulated fully.

invasion of privacy at the workplace (and a good example of Mr Waddell's obsessive need for control). The resultant loss of the earlier CCTV footage was unfortunate, but unintended. As Mr Waddell repeatedly emphasised, a great deal of potentially valuable material was irretrievably lost. I do not hold BIG responsible for this in any way materially affecting the Petition.

D. UNFAIR PREJUDICE

1385. I have found the formation and execution of a pre-conceived and orchestrated plan which worked backwards from Freshstream's aim of achieving permanent control of, and Mr Waddell's removal from, the business *without* having to exercise the Call Option.
1386. This plan was, in substance, successful. Disregarding, as irrelevant, the prejudice to Mr Waddell (this is not his claim), the unfair prejudice to PWHL would appear to be obvious. As majority shareholder, PWHL had an interest in BIG being operated lawfully under the direction of its properly appointed CEO, Mr Waddell. The execution of the Plan was enormously damaging to BIG, with more-or-less open warfare being conducted between the Waddell "team" and the Freshstream "team". Whilst it is difficult to quantify the extent of this prejudice, I do not need to do so. It is sufficient that PWHL was deprived of its chosen CEO; and that over a period of two years, the business was run extremely badly and in a state of conflict, some overt some covert.
1387. The defendants contended that even if the unfairly prejudicial conduct had not occurred, this prejudice would nevertheless have been sustained. It is necessary to bear in mind that I have found the first Step-In Notice to have been valid, and Freshstream did not have to exercise its Step-In Rights in the best interests of BIG. Equally, I have found that Mr Waddell was properly dismissed for gross misconduct.
1388. The defendants thus contended that taking account of conduct that may have been prejudicial, but which was not unfair, and assuming that this conduct would have happened in any event (ie, there would have been Step-In and Mr Waddell would have been dismissed in March 2024), there is in fact no or no material prejudice to PWHL and that the Petition must accordingly fail notwithstanding the findings that I have made.
1389. This is a question of what is the appropriate counterfactual through which to consider the question of prejudice. In any case of factual complexity, there are many possible counterfactual scenarios. There are two counterfactuals that I consider to be probable on the basis of the facts that I have found.
1390. The first is the case where the plan only worked as a "package". Option 4 was, on this basis the "package". In order to rid themselves of Mr Waddell, Freshstream needed to exercise multiple rights against Mr Waddell – Step-In, MDE and dismissal. Step-in alone, would be insufficient. Accordingly, even though Freshstream had the right to Step-In in late 2023, it would not have done so. Instead, Freshstream would have appreciated that Mr Waddell's conduct needed to be addressed sooner, not later, and that there was every chance of Mr Waddell reforming his behaviour, to the benefit of all. On this basis, Step-In

was a stick with which to beat Mr Waddell and the exercise of the Call Option a carrot, both causing Mr Waddell to modify his behaviour as I have found he could have done.

1391. This would have involved jettisoning Option 4. The only viable alternative to Option 4 was the exercise of the Call Option, which would have resulted in a change of control in October/November 2023. At this point, Mr Waddell would have made a voluntary exit, and Freshstream would peaceably have obtained full control of BIG.
1392. This counterfactual scenario is extremely plausible. There was a substantial body of informed opinion in favour of exercising the Call Option – Mr Fardad and Mr Vaughan, in particular – and it was the devaluing by others of the “control premium” that was the only reason why the Call Option was not exercised. But those others on the Freshstream Investment Committee did not so much *devalue* the “control premium” as consider that control could be obtained more cheaply through the exercise of Option 4. Remove Option 4, and the exercise of the Call Option becomes highly likely.
1393. Furthermore, the exercise of the Call Option was only a question of *timing*: in order to achieve an exit, and to maximise its return on exit, Freshstream would have exercised the Call Option at some point during its pendency. The Second Option Period ended on 1 May 2025. This counterfactual scenario simply assumes an accelerated date for the exercise of the Call Option.
1394. On this basis, the prejudice to PWHL is obvious. Instead of receiving £72m for its shares, PWHL has seen BIG lost to strife, with money lost on massive and commercially unproductive litigation.
1395. The second counterfactual assumes that the Call Option would not have been exercised – because, as in the real world, it was out of the money – but that BIG and Freshstream would have acted properly and in accordance with their duty, including BIG’s duty to its own workforce. This means that BIG (with the support of Freshstream) would have intervened to curb Mr Waddell’s inappropriate conduct well before March 2024. As I have found, Freshstream “saved up” Mr Waddell’s misconduct in order to deploy it in March 2024, as part of the Option 4 plan. If Freshstream had acted as it should have done, it would have engaged constructively with Mr Waddell in order to ensure that the corporate culture in BIG was as it should have been, *but without exercising the Call Option at this time*.
1396. Quite what form this intervention would have taken is difficult to say, but Mr Waddell’s early inappropriate behaviour was not gross misconduct – although it was misconduct – and I consider that if spoken to firmly and clearly enough (and, if necessary, threatened with Step-In) Mr Waddell would have ameliorated his behaviour and not been dismissed in April 2024 (or at all). I consider that Mr Waddell was able to control his behaviour, if incentivised to do so.
1397. Again, on this counterfactual, the prejudice to PWHL is obvious.

E. CONCLUSION

1398. In conclusion, I find that the Petition succeeds.

Part VII: The counterclaim

1399. The counterclaims have also narrowed over time, and can be shortly stated and determined. First, there is a dispute about personalised number plates, with BIG asserting (and then discontinuing) a claim that Mr Waddell had unlawfully retained personalised number plates and with Mr Waddell contending (but without asserting in a claim) that BIG was unlawfully retaining his personalised number plates. There is not, in this case, a *lis* to determine before the court, and I say nothing more.
1400. Secondly, there is a dispute about vehicles, which has been resolved, and need not be considered further.
1401. Thirdly, there is a dispute about the return of BIG documents to the company. To date, Mr Waddell has refused to return certain documents, on the grounds that his employment with BIG has been wrongfully terminated. I have decided that issue against Mr Waddell, and these documents should be returned to BIG in a manner that should be agreed between both parties.⁷⁷³
1402. Fourthly, and finally, there is a counterclaim in respect of Mr Waddell's association with and promotion of the business of EJW Autos, which is said to be in breach of the non-compete clauses in the Service Agreement. It would appear that this claim is academic due to the passage of time: BIG seeks no damages, but only injunctive relief, and the effective period of the non-compete clauses (12 months) has now expired.
1403. It seems to me that this issue ought not to be determined in this Judgment, but left over to the consequential hearing which (given my conclusion on the Petition) will have to take place.

Part VIII: Disposal

1404. An order should be drawn up to reflect that:
- i) The First Step-In Notice is valid, and Mr Waddell is not entitled to any declaration in regard to the unlawfulness of the Step-In Notices.
 - ii) The MDE Notice and the MDE Investigation Notice are both invalid, and there should be declarations to this effect.
 - iii) The wrongful dismissal claim fails.

⁷⁷³ Absent this litigation, the easiest course would be for the documents to be destroyed. But they may continue to be relevant for the purposes of this (and other) litigation, so destruction is not the straightforward remedy.

- iv) Mr Vaughan and Mr Fardad breached their duties as directors in the manner described.
- v) The Petition succeeds.

ANNEX 1

DEFINED TERMS

(paragraph 1 of the Judgment)

Annex to the Freshstream MDE Resolution	An annex to the Freshstream MDE Resolution setting out the MDEs that Freshstream had identified for investigation by BIG by way of an MDE Investigation.	[40(i)] [1146]
(Dr) Avgerinou	Dr Vana Avgerinou, a dyslexia expert called by Mr Waddell.	[236(i)]
BIG	Big Motoring World, a network of second-hand car dealerships built up from nothing by Mr Waddell.	[1]
BIG Closing	Written Closing Submissions of BIG	Annex 2 (Day 26)
BIG Employee Handbook	The handbook setting out amongst other things the equality, grievance and disciplinary processes within BIG.	[51(ii)]
BIG Opening	Written opening submissions of BIG	Annex 2 (Day 1)
BIG Resolution	BIG's resolution of 7 March 2024.	[1206]
Board Approval Matters	Certain matters, defined in the Securityholders' Deed, requiring approval of the BIG board.	[11]
(Ms) Butler	Ms Harriet Butler was employed by BIG as BIG's program manager.	[852]
Butler 1	First witness statement of Ms Butler dated 19 November 2025.	Annex 2 (Day 22)
(Ms) Buzina	Ms Inese Buzina was an employee of BIG.	[621]
Buzina 1	First witness statement of Ms Buzina dated 19 November 2025	Annex 2 (Day 12)
Call Option	An option entitling Freshstream to acquire a further 35% of BIG, thus obtaining majority control over BIG.	[8]

Call Option Deed	The instrument providing for the Call Option.	[9]
(Mr) Cartwright	An employee of Freshstream and a junior member of the Deal Group.	[290]
Cartwright 1	First witness statement of Mr Cartwright dated 21 November 2025.	Annex 2 (Day 18)
(Mr) Clarke	Any employee of BIG, originally Mr Waddell's PA, but ultimately the company secretary of BIG. He was a member of the MDE Investigation Committee and played a significant role in collecting evidence of MDEs and/or disciplinary infractions by Mr Waddell.	[118]
Clarke 1	First witness statement of Mr Clarke dated 21 November 2025.	Annex 2 (Day 21)
Clarke 2	Second witness statement of Mr Clarke dated 19 February 2026.	Annex 2 (Day 21)
DC Advisory	A firm employed by Mr Waddell to assist in the sale of BIG.	[2]
Deal Group	A transaction specific group within Freshstream, advising the Freshstream investment Committee and executing Freshstream's plans	[290]
Disciplinary Hearing	A disciplinary hearing, conducted by Mr Vaughan under the terms of the Waddell Service Agreement, in regard to misconduct alleged against Mr Waddell.	[29]
Dismissal Letter	A letter dated 16 April 2024 summarily terminating Mr Waddell's employment as CEO for gross misconduct.	[29]
(Dr) Donner	Dr Ben Donner, an autism expert called by Mr Waddell.	[236(i)]
Donner 1	First expert report of Dr Donner dated 21 November 2025	Annex 2 (Day 2)
Donner / Fazel Joint Report	Joint report of Dr Donner and Professor Fazel dated 6 February 2026	Annex 2 (Day 2)

ET Proceedings	Employment Tribunal Proceedings commenced by Mr Waddell, presently stayed.	[30(i)]
Exclusion	The exclusion of Mr Waddell from BIG.	[36]
(Mr) Fardad	Mr Reza Fardad of Freshstream and a director of BIG after the Transaction concluded. Mr Fardad was a member of the Freshstream Investment Committee.	[36(iv)]
Fardad 4	Fourth witness statement of Mr Fardad dated 21 November 2025.	Annex 2 (Day 14)
Fardad 5	Fifth witness statement of Mr Fardad dated 9 January 2026.	Annex 2 (Day 14)
Fardad 6	Sixth witness statement of Mr Fardad dated 5 February 2026.	Annex 2 (Day 14)
(Professor) Fazel	Professor Seena Fazel, an autism expert called on behalf of the defendants.	[236(i)]
Fazel 1	First expert report of Professor Fazel dated 6 January 2026.	Annex 2 (Day 2)
(Ms) Ferguson	Ms Barbara Ferguson, Mr Waddell's older sister, who joined BIG in 2015, chiefly running the accounts department in BIG.	[170]
Ferguson 1	First witness statement of Ms Ferguson dated 21 November 2025.	Annex 2 (Day 12)
First Option Period	The first period under which the Call Option could be exercised under the Call Option Deed, at which the price was fixed at £72m.	[9]
Freshstream	A venture capital outfit that purchased a minority stake in BIG.	[2]
Freshstream Closing	Written closing submissions of Freshstream	Annex 2 (Day 26)
Freshstream Investment Committee	The decision-making body within Freshstream, with five members: Mr Smulders, Mr Davis, Mr McLain, Mr de Graauw and Mr Fardad.	[131]

Freshstream MDE Resolution	A resolution by Freshstream dated 6 March 2024 resolving (amongst other things) to make an MDE Investigation Notice.	[40(i)]
Freshstream Minority Rights	A bundle of rights negotiated by Freshstream with Mr Waddell conferring on Freshstream various rights to protect Freshstream's minority interest in BIG.	[8]
Freshstream Opening	Written opening submissions of Freshstream.	Annex 2 (Day 1)
Freshstream Step-In Resolution	The Freshstream board resolution dated 6 March 2024.	[1138]
(Mr) Gradassi	Mr Gilles Gradassi, a principal in Freshstream's investment team.	[157]
Gradassi 1	First witness statement of Mr Gradassi dated 21 November 2025.	Annex 2 (Day 17)
(Ms) Gregory	Ms Helen Gregory, an employee at BIG.	[451]
Gregory 1	First witness statement of Ms Gregory.	Annex 2 (Day 23)
(Mr) Hodson	Mr Neil Hodson employed by BIG in respect of the "BIG Wants Your Car" initiative.	[1247]
Hodson 1	First witness statement of Mr Hodson.	Annex 2 (Day 24)
(Mr) Hunt	Mr James Hunt, an employee at BIG.	[183]
Hunt 1	First witness statement of Mr Hunt dated 18 November 2025.	Annex 2 (Day 23)
IC Memo	A generic description of documents provided to the Freshstream Investment Committee to inform its discussions.	[131]
Incident No x	The individual numbered designation of each Incident, as set out in the table at [43], which list is derived from the Dismissal Letter.	[36]
Incidents	Incidents of what BIG contended was gross misconduct, each of which was capable	[1]

	(according to BIG) of justifying Mr Waddell's summary dismissal.	
Independent Investigator	The suitably qualified independent third party conducting an MDE Investigation.	[14]
(Ms) Khan	Ms Ghulam-Aishah Khan a receptionist employed by BIG.	[1008]
Khan 1	First witness statement of Ms Khan dated 18 November 2025.	Annex 2 (Day 21)
(Mr) Lapthorne	Mr Nick Lapthorne was an employee of BIG.	[485]
Lapthorne 1	First witness statement of Mr Lapthorne dated 28 January 2026.	Annex 2 (Day 13)
(Mr) Malhotra	Mr Rajiv Malhotra, a friend of Mr Waddell's.	[723]
Malhotra 1	First witness statement of Mr Malhotra dated 18 November 2025.	Annex 2 (Day 11)
Material Default Events or MDEs	An event entitling Freshstream to order an investigation and – if the investigation established an MDE – giving rise to MDE Rights if an MDE Notice was made.	[14]
(Mr) McLain	Mr Adam McLain, a member of the Freshstream Investment Committee.	[131]
McLain 2	Second witness statement of Mr McLain dated 21 November 2025.	Annex 2 (Day 18)
McLain 3	Third witness statement of Mr McLain dated 9 January 2026.	Annex 2 (Day 18)
MDE Investigation	An investigation conducted by BIG pursuant to the provisions in the Securityholders' Deed by a MDE Investigator under the aegis of an MDE Investigation Committee.	[14]
MDE Investigation Committee	The committee within BIG tasked with overseeing an MDE Investigation.	[15]
MDE Investigation Notice	The notice made by Freshstream triggering the MDE Investigation by BIG.	[14]

		[1163]
MDE Notice	A notice made by Freshstream exercising Freshstream's MDE Rights.	[14]
MDE Rights	Rights consequent upon the establishment of an MDE, provided there is no on-going proceeding, exercised by way of an MDE Notice.	[14]
(Ms) Murphy	Ms Beth Murphy, a cleaner employed by BIG.	[656]
Murphy 1	First witness statement of Ms Murphy dated 19 November 2025.	Annex 2 (Day 13)
(Ms) Neguzel	Ms Djele Nguzel, an employee of BIG.	[608]
Neguzel 1	First witness statement of Ms Neguzel dated 20 November 2025	Annex 2 (Day12)
Option 4	The option articulated in Judgment/[891].	[891].
Part 7 Claim	A CPR Part 7 claim brought by Mr Waddell and PWHL.	[30(iii)]
Petition	An unfair prejudice petition brought by PWHL. The term refers to the proceedings or to the pleading, according to context.	[30(ii)] [35]
(Mr) Philpott	Mr Roger Philpott, an employee of BIG.	[670]
Philpott 1	First witness statement of Mr Philpott dated 16 March 2026	Annex 2 (Day 23)
PoC	The latest amended version of the Particulars of Claim in the Part 7 Claim.	[35]
(Mr) Potter	An employee of Freshstream and a junior member of the Deal Group.	[290]
Potter 1	First witness statement of Mr Potter dated 21 November 2025.	Annex 2 (Day 19)
PWHL	Peter Waddell HoldCo Limited, the company which (after Freshstream purchased its	[4]

	minority interest in BIG) was established to hold Mr Waddell's majority stake in BIG.	
(Ms) Rather	Ms Huma Rather was BIG's Compliance Officer.	[480]
Rather 1	First witness statement of Ms Rather dated 20 November 2025.	Annex 2 (Day 23)
Rather 2	Second witness statement of Ms Rather dated 30 January 2026.	Annex 2 (Day 23)
(Dr) Ross	Dr Helen Ross, a dyslexia expert called on behalf of the defendants.	[236(i)]
(Mr) Rumble	Mr James Rumble, the former transport manager at BIG.	[953]
Rumble 1	First witness statement of Mr Rumble dated 19 November 2025,	Annex 2 (Day 12)
Second Option Period	The second period under which the Call Option could be exercised under the Call Option Deed, at which the price was at least £72m.	[9]
Securityholders' Deed	The instrument providing for various of the Freshstream Minority Rights.	[10]
(Mr) Siddall, KC	Mr Nick Siddall, KC, the King's Counsel and Independent Investigator tasked with conducting the MDE Investigation.	[25]
Siddall Initial MDE Findings	Findings by Mr Siddall, KC in advance of the Siddall Final MDE Report made on 9 April 2024.	[28]
Siddall Final MDE Report	Mr Siddall, KC's findings in regard to the existence of MDEs.	[26]
Siddall Terms of Reference	The terms of reference provided to Mr Siddall, KC setting out the basis for the Investigation and describing a number of Incidents.	[37(ii)]
(Mr) Smith	Mr Bruce Smith, a security consultant retained by Mr Waddell and BIG.	[606]

Smith 1	First witness statement of Mr Smith dated 20 November 2025	Annex 2 (Day 13)
Step-In and Step-In Rights	Step-In was a Freshstream Minority Right giving Freshstream Step-In rights, most importantly effective control of the board of BIG.	[12]
Step-In Rights Exercise Notice or SIREN	The notice pursuant to which Step-In Rights are exercised.	[13]
Step-Out Event	The reversal of the effect of Step-In according to the terms of the Securityholders' Deed.	[36(ii)]
Terms of Reference	The terms of reference for the Independent Investigator for the conduct of the MDE Investigation.	[40(ii)]
Tikehau	Another party interested in acquiring BIG, rival to Freshstream.	[308]
Transaction	A collective description of the various legal instruments and agreements by which Freshstream acquired its minority stake in BIG.	[5]
Trigger Event	An event relating to BIG's financial performance that was a pre-condition to the exercise of Step-In Rights.	[13]
(Mr) Vaughan	The chair and (after Mr Waddell's dismissal) CEO of BIG.	[3]
Vaughan Closing	Written Closing Submissions of Mr Vaughan,	Annex 2 (Day 26)
Vaughan Consultancy Agreement	A consultancy agreement between Mr Vaughan's personal service company and Freshstream.	[925]
Vaughan Opening	Written Opening Submissions of Mr Vaughan.	Annex 2 (Day 1)
Vaughan 3	Third witness statement of Mr Vaughan dated 21 November 2025.	Annex 2 (Day 19)

Vaughan 4	Fourth witness statement of Mr Vaughan dated 9 January 2026.	Annex 2 (Day 19)
Vaughan 5	Fifth witness statement of Mr Vaughan dated 28 February 2026.	Annex 2 (Day 19)
Vaughan 6	Sixth witness statement of Mr Vaughan dated 3 March 2026.	Annex 2 (Day 19)
VCP	A Value Creation Plan.	[129]
(Mr) Waddell	Mr Peter Waddell, founder and former CEO of BIG. A claimant in the Part 7 Claim.	[1]
Waddell Opening	Mr Waddell's written opening submissions.	Annex 2 (Day 1)
Waddell Closing	Mr Waddell's written closing submissions	Annex 2 (Days 26 and 28)
Waddell Service Agreement	Mr Waddell's contract of employment with BIG.	[19]
Waddell 5	Fifth witness statement of Mr Waddell dated 21 November 2025.	Annex 2 (Day 4)
Waddell 6	Sixth witness statement of Mr Waddell dated 28 January 2026.	Annex 2 (Day 4)
Waddell 7	Seventh witness statement of Mr Waddell dated 5 February 2026.	Annex 2 (Day 4)

ANNEX 2

EVIDENCE HEARD DURING THE COURSE OF THE TRIAL

Day	Date Witness heard	Documentary material/evidence
Day 1 16 Feb 2026	Opening submissions of the Parties	Waddell Opening BIG Opening Freshstream Opening Vaughan Opening
Day 2 17 Feb 2026	Opening submissions of the Vaughan Defendant	The Vaughan Defendant Written Opening
	Dr Ben Donner Professor Seena Fazel	Donner 1 Fazel 1 Donner / Fazel Joint Report
Day 3 18 Feb 2026	Housekeeping, specifically dealing with amendments proposed by the Waddell Claimants. As a result, Mr Waddell's evidence was adjourned to 2:00pm on Day 4	
Day 4 19 Feb 2026	Mr Peter Waddell (in-chief and cross-examined by Mr Spalton, KC)	Waddell 5 Waddell 6 Waddell 7
Day 5 20 Feb 2026	Mr Peter Waddell (cross-examined by Mr Spalton, KC)	
Day 6 23 Feb 2026	Mr Peter Waddell (cross-examined by Mr Spalton, KC and Mr Laddie, KC)	
Day 7 24 Feb 2026	Mr Peter Waddell (cross-examined by Mr Laddie, KC)	
Day 8 25 Feb 2026	Mr Peter Waddell (cross-examined by Mr Laddie, KC)	
Day 9 26 Feb 2026	Mr Peter Waddell (cross-examined by Mr Laddie, KC)	
Day 10 27 Feb 2026	Mr Peter Waddell (cross-examined by Mr McPherson, KC)	
Day 11 2 Mar 2026	Mr Peter Waddell (cross-examined by Mr McPherson, KC)	
Not called	Mr Rajiv Malhotra was not required for cross-examination by any of the Defendants, and his evidence was admitted.	Malhotra 1
Day 12 3 Mar 2026	Ms Dijele Neguzel (cross-examined by Mr Laddie, KC)	Neguzel 1
	Ms Inese Buzina (cross-examined by Mr Laddie, KC)	Buzina 1
	Mr James Rumble (cross-examined by Mr Laddie, KC)	Rumble 1

	Mrs Jemima (Barbara) Ferguson (cross-examined by Mr Laddie, KC and Mr McPherson, KC)	Ferguson 1
Day 13 4 Mar 2026	Ms Bethany Murphy (cross-examined by Mr Laddie, KC)	Murphy 1
	Mr Nick Lapthorne (cross-examined by Mr Laddie, KC)	Lapthorne 1
	Mr Bruce Smith (cross-examined by Mr Laddie, KC and Mr McPherson, KC)	Smith 1
Day 14 5 Mar 2026	Mr Reza Fardad (cross-examined by Mr Gourgey, KC)	Fardad 4 Fardad 5 Fardad 6
Day 15 6 Mar 2026	Mr Reza Fardad (cross-examined by Mr Gourgey, KC)	
Day 16 9 Mar 2026	Mr Reza Fardad (cross-examined by Mr Gourgey, KC)	
Day 17 10 Mar 2026	Mr Reza Fardad (cross-examined by Mr Gourgey, KC and Mr McPherson, KC)	
	Mr Gilles Gradassi (cross-examined by Mr Gourgey, KC)	Gradassi 1
Day 18 11 Mar 2026	Mr Gilles Gradassi (cross-examined by Mr Gourgey, KC)	
	Mr Adam McLain (cross-examined by Mr Gourgey, KC)	McLain 2 McLain 3
	Mr James Cartwright (cross-examined by Mr Gourgey, KC)	Cartwright 1
Day 19 12 Mar 2026	Mr Alex Potter (cross-examined by Ms Littler)	Potter 1
	Mr Laurence Vaughan (cross-examined by Mr Gourgey, KC)	Vaughan 3 Vaughan 4 Vaughan 5 Vaughan 6
Day 20 13 Mar 2026	Mr Laurence Vaughan (cross-examined by Mr Gourgey, KC)	
Day 21 16 Mar 2026	Mr Laurence Vaughan (cross-examined by Mr Gourgey, KC and Mr Spalton, KC)	
	Ms Ghulam-Aishah Khan (cross-examined by Ms Littler)	Khan 1
	Mr Tom Clarke (cross-examined by Mr Gourgey, KC)	Clarke 1 Clarke 2
Day 22 17 Mar 2026	Mr Tom Clarke (cross-examined by Mr Gourgey, KC)	
	Ms Harriet Butler (cross-examined by Mr Gourgey) interposed	Butler 1
	Ms Lily Gable (examined in-chief by Mr Laddie, KC, cross-examined by Mr McPherson, KC and Mr Gourgey, KC) interposed	No witness statement. The witness attended pursuant to a witness summons

Day 23 (18 Mar 2026)	Ms Huma Rather (cross-examined by Mr Gourgey, KC) interposed.	Rather 1 Rather 2
	Ms Helen Gregory (cross-examined by Mr Gourgey, KC) interposed.	
	Mr Roger Philpott (cross-examined by Mr Gourgey, KC) giving evidence remotely, interposed.	Philpott 1
	Mr James Hunt (cross-examined by Mr Gourgey) interposed.	Hunt 1
Day 24 (19 Mar 2026)	Mr Tom Clarke (resumed) (cross-examined by Mr Gourgey, KC and Mr Spalton, KC)	
	Mr Neil Hodson (cross-examined by Mr Gourgey, KC)	Hodson 1
Day 25 (20 Mar 2026)	Dr Vana Avgerinou (cross-examined by Mr Laddie, KC)	
	Dr Helen Ross (cross-examined by Ms Barsam)	
	Mr Ben Donner (cross-examined by Mr Laddie, KC)	
	Professor Seena Fazel (cross-examined by Ms Barsam)	
Day 26 (30 Mar 2026)	Closing submissions (Mr Gourgey, KC)	Waddell Closing BIG Closing Freshstream Closing Vaughan Closing
Day 27 (31 Mar 2026)	Closing submissions (Mr Spalton, KC and Mr Laddie, KC)	
Day 28 (1 Apr 2026)	Closing submissions (Mr McPherson, KC and Mr Gourgey, KC)	