

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17 July 2020

Before :

TOM LEECH QC (sitting as a judge of the High Court)

Between :

JASWANT SIDHU	<u>Claimant</u>
- and -	
DR SANGEETA RATHOR	<u>Defendant</u>
- and -	
NATIO HEALTH CARE (UK) LIMITED	<u>Additional Part</u>
	<u>20 Claimant</u>
- and -	
SAREET SIDHU	<u>Additional Part</u>
	<u>20 Defendant</u>

Hugh Jory QC and Priya Tromans (instructed by **CLP Solicitors**) for the **Claimant** and
Additional Part 20 Defendant
Nigel Hood and James Saunders (instructed by **Thakrar & Co**) for the **Defendant** and
Additional Part 20 Claimant

Hearing dates: 27-31 January, 4, 5 and 7 February, 2-6, 9 and 10 March and 4 April 2020

JUDGMENT

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

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 2 pm on 17 July 2020.

TOM LEECH QC (sitting as a judge of the High Court):

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Introduction

1. In this judgment I will refer to the Claimant as “**Jaswant**” and her daughter, the Additional Part 20 Defendant, as “**Sareet**” and where I refer to family

members of the parties I do so by their given names. I do so without any disrespect to them and on the basis that this is how they were referred in submissions and in the course of the trial.

2. In this action Jaswant makes a claim under the Partnership Act 1890 against the Defendant, Dr Sangeeta Rathor, for a declaration that they carried on business in partnership together, an order for dissolution and for the standard accounts and inquiries. Dr Rathor denies the existence of such a partnership and asserts that Jaswant and Sareet were employees whose employment was terminated for cause. She and Natio Health Care (UK) Ltd (“**Natio**”), her service company, also claim that Jaswant and Sareet took salary increases and other benefits and made payments to themselves without her or Natio’s authority.
3. At trial Mr Hugh Jory QC and Ms Priya Tromans (who is a qualified doctor) appeared for Jaswant and Sareet. Mr Nigel Hood and Mr James Saunders appeared for Dr Rathor. I am very grateful to counsel on both sides and their instructing solicitors for their assistance. I should also pay tribute to Mr Hood for completing the trial during lockdown in challenging personal circumstances and to Mr Jory for his consideration.

The Parties

4. Jaswant is married to Gurdarshin and has two children, Jasvin and Sareet. She and her husband live in the family home, 9A St Stephens Road Hounslow Middlesex TW3. In about 1985 she joined the NHS as a receptionist at a surgery in Southall and in 1987 joined the Greenford Road Surgery as practice manager. In about 1990 she obtained a Diploma in Practice Management. On 1 April 1993 the practice was dissolved and Jaswant joined one of the doctors, Dr Syed Osaf Ali, as the practice manager of his new practice called the “**Northolt Family Practice**” or “**NFP**” at 330 to 332 Ruislip Road Northolt UB5 6BG.
5. Jaswant remained the practice manager and ran the Northolt Family Practice from 1993 until Dr Rathor became a partner in the practice. On 1 August 1988 Dr Ali and she signed written terms and conditions of employment which were

updated with effect from 1 April 1993. It stated that Dr Ali was her employer and that she was employed as the Practice Manager at a salary of £13,673.92 per year (equivalent to £6.92 per hour).

6. Sareet was married to Didar between 2011 and 2015 and for some time she and her husband lived at the family home with Sareet's parents and her brother, Jasvin, and his wife and children. In 2014 she and her husband purchased a property, 10 Stanhope Heath London TW19 7PH. They carried out substantial works to the property (which are relevant to certain issues in the action) and those works were virtually complete by the end of September 2014: see the building control report dated 26 September 2014.
7. Sareet was employed by Dr Ali from about September 2011. On 1 February 2013 Jaswant (as the Practice Manager) and she signed written terms and conditions of employment which stated that Dr Ali was her employer and that she was employed as a secretary/administrator at a salary of £24,008.40 (equivalent to £12.15 per hour).
8. Dr Rathor is married to Balwant and has two children, Ranwant and Shaan, and for most of the events which the subject matter of the trial she lived at 12 Laburnum Grove Hounslow TW3 3LU with her family. On 4 October 2017 she purchased a property, 89 Station Road West Byfleet Surrey KT14 6DT with her son and it is now registered in Ranwant's name although they are jointly liable for the mortgage payments. Dr Rathor also owns a house in India called Rathor Villa in Jaipur.
9. Between 2005 and 2014 Dr Rathor was the sole proprietor of the Allenby Clinic (the "**Allenby Clinic**" or "**AC**"), first at 423 Allenby Road Southall and then from 2011 in the Grand Union Village Health Centre Taywood Road Northolt Middlesex UB5 6WL. Taywood Road is a large multi-story Health Centre which provides office space and consulting rooms for a number of different GP practices and other health care practices. From about April 2013 Dr Rathor also began working as a locum for Dr Ali at the NFP.
10. Natio was incorporated on 10 July 2014. Dr Rathor describes it has her "personal services company" and the wages and certain expenses of both

practices were paid by it (although there was a dispute whether it was to be regarded as the employer of Jaswant and Sareet). Before the incorporation of Natio, Dr Rathor used another company called Aqua Medical Consultants Ltd (“**Aqua**”). According to its filing history it was incorporated on 4 October 2010 and then dissolved on 26 August 2016. Dr Ali used Salus Health Care Ltd (“**Salus**”) for a similar purpose.

The Witnesses

11. Jaswant and Dr Rathor each made a number of lengthy witness statements (to which it will be necessary for me to refer in some detail) and each gave evidence for a number of days. Sareet has also made a number of witness statements and gave evidence for one day. In addition Jaswant called the following witnesses in support of hers and Sareet’s case:
 - i) Mr Sharnbir Sangha;
 - ii) Her husband, Gurdarshin;
 - iii) Her son, Jasvin;
 - iv) Ms Rushpal Bhandol;
 - v) Mr Kewal Sidhu; and
 - vi) Mr Nimal Fonseka, Dr Rathor’s former accountant, who practised through a company Senstone Ltd (“**Senstone**”).

12. Dr Rathor called Ms Meera Grewal to give evidence on her behalf. She did not call Mr Ebrahim Sidat of AMS Accountants Medical Ltd (“**AMS**”), which replaced Senstone as Dr Rathor’s accountants. Detailed submissions were made by both sides about the failure to call certain witnesses and I return to this below. There was initially a dispute over the authenticity of certain key documents, But in the event it was unnecessary to trouble the Court with expert handwriting evidence. The evidence of Dr Harish Kamboj (who made a witness statement on behalf of Sareet) was agreed.

Approach

13. Both parties submitted that I should assess the reliability of the witnesses against the contemporaneous documents: see the now familiar warnings of Leggatt J in *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm) at [15] to [22]. They also submitted that I should pay particular regard both to the documents and to motive: see the equally familiar guidance given by Robert Goff LJ in *The Ocean Frost* [1985] Lloyd's Rep 1 at 57. See also *R (Bancoult No 3) v Secretary of State for Foreign and Commonwealth Affairs* [2018] UKSC 3 at [100] to [103] (where Lord Kerr cited both cases).
14. In the present case, however, I have to resolve a number of key issues where the documentary footprint is a relatively small one. In deciding whose evidence to accept I found the guidance in *Simetra Global Assets Ltd v Ikon Finance Ltd* [2019] EWCA Civ 1413 at [48] and [49] particularly helpful. In that passage Males LJ cited *The Ocean Frost* and gave the following additional guidance:

“In this regard I would say something about the importance of contemporary documents as a means of getting at the truth, not only of what was going on, but also as to the motivation and state of mind of those concerned. That applies to documents passing between the parties, but with even greater force to a party's internal documents including e-mails and instant messaging. Those tend to be the documents where a witness's guard is down and their true thoughts are plain to see.....

...It is therefore particularly important that, in a case where there are contemporary documents which appear on their face to provide cogent evidence contrary to the conclusion which the judge proposes to reach, he should explain why they are not to be taken at face value or are outweighed by other compelling considerations. It is, however, striking that the judgment in this case contains virtually no analysis of the contemporary documents many of which appear to shed considerable light on the nature and purpose of the critical confirmations and the way in which they were understood.”

15. Both parties relied on the absence of documents in relation to a number of the factual issues. In *Re Mumtaz Properties Ltd* [2011] EWCA Civ 610 Arden LJ said this at [14]:

“In my judgment, contemporaneous written documentation is of the very greatest importance in assessing credibility.

Moreover, it can be significant not only where it is present and the oral evidence can then be checked against it. It can also be significant if written documentation is absent. For instance, if the judge is satisfied that certain contemporaneous documentation is likely to have existed were the oral evidence correct, and that the party adducing oral evidence is responsible for its non-production, then the documentation may be conspicuous by its absence and the judge may be able to draw inferences from its absence.”

16. Both parties also asserted that the other had failed to call material witnesses and relied on the principles set out in *Wisniewski v Central Manchester Health Authority* [1998] PIQR 324. The way in which the Court will apply the *Wisniewski* principles depends, however, on the materiality of a given witness and the scope of their knowledge on a particular issue. I bear in mind that only in very rare cases will the failure to call a witness (usually one of the parties themselves) have the effect identified by Lord Lowry in *R v IRC (ex p TC Coombs & Co)* [1991] 2 AC 283 at [300] and convert the evidence of one side into proof.
17. I agree with Dr Rathor’s counsel that where the existence of an oral agreement is the most central issue, the further observations of Leggatt J in *Blue v Ashley* [2017] EWHC 1928 (Comm) at [65] are particularly instructive:

“It is rare in modern commercial litigation to encounter a claim, particularly a claim for millions of pounds, based on an agreement which is not only said to have been made purely by word of mouth but of which there is no contemporaneous documentary record of any kind. In the twenty-first century the prevalence of emails, text messages and other forms of electronic communication is such that most agreements or discussions which are of legal significance, even if not embodied in writing, leave some form of electronic footprint. In the present case, however, such a footprint is entirely absent. The only sources of evidence of what was said in the conversation on which Mr Blue’s claim is based are the recollections reported by the people who were present in the Horse & Groom on 24 January 2013 and any inferences that can be drawn from what Mr Blue and Mr Ashley later said and did. The evidential difficulty is compounded by the fact that most of the later conversations relied on by Mr Blue were also not recorded or referred to in any contemporaneous document.”

18. The facts of the present case, however, were far removed from *Blue v Ashley* and the primary written mode of communication between the two principals was text message. They worked in close proximity and exchanged very few emails (or, at least, very few were disclosed by either party) and I was, therefore, left with a choice to prefer the oral evidence of one party to the evidence of the other in relation to conversations which were largely undocumented and took place over a long period of time.
19. For the purpose of that choice the few contemporaneous documents which were available assumed a real significance. Apart from the partnership documents, however, they fell into the category identified by Males LJ in *Simetra* and tended “to be the documents where a witness's guard is down and their true thoughts are plain to see”. Consistently with both parties’ submissions, I paid particular attention to the way in which Jaswant, Sareet and Dr Rathor dealt with those documents in evidence (as I set out below).

Jaswant

20. I found Jaswant a reliable witness. Nevertheless, I approached my assessment of her evidence with some caution for two principal reasons: first, it seemed inherently improbable that the parties would have entered into an agreement for which there was very limited paper or electronic footprint. This was a difficult evidential burden which Jaswant had to overcome. Secondly, she admitted that she had made false statements to Dr Rathor’s accountants, Mr Fonseca and AMS, when they were preparing Dr Rathor’s and Natio’s accounts. Her evidence was that she did so on Dr Rathor’s instructions and, again, it was a high evidential hurdle to overcome to satisfy the Court that Dr Rathor had given those instructions.
21. Jaswant’s evidence was, however, supported by a number of key documents. They included not only the Partnership Forms (as I define them below) but also a number of emails and texts. My principal concern about Jaswant’s evidence (and also Gurdarshin’s evidence) was whether she had deliberately failed to disclose contemporaneous records including bank statements which would have enabled Dr Rathor to prove her case in relation to the cash

withdrawals. For the reasons which I set out below, I reached the conclusion that any failure to disclose those documents was not deliberate and I was not prepared to draw the inference that she had deliberately laid a false trail by selective disclosure.

Sareet

22. I also found Sareet to be a reliable witness. Dr Rathor did not challenge parts of her evidence but for similar reasons to Jaswant, I approached her evidence with caution. I did not accept Sareet's evidence in relation to one document, a credit card application which was found on her computer, in which Sareet stated that her annual income before tax was £94,910. I deal with this document in more detail below but it led me to consider whether I should reject Jaswant's and Sareet's evidence about their salaries altogether (which would undoubtedly have undermined their overall credibility). However, the weight of the documentary evidence was in their favour and I reached the conclusion that this isolated document did not undermine Sareet's overall credibility as a witness.

Gurdarshin

23. I found Gurdarshin to be a straightforward witness although I attributed little weight to most of his evidence because he had no personal knowledge of most of the facts in issue and I did not find his recollections of oral conversations with others to be particularly reliable. The only independent evidence which he had to give related to the bank statements and a visit to India (both of which I deal with below).

Mr Fonseca

24. The Court would normally accept the evidence of a professional accountant without reserve, particularly where they were relying on the contents of their file. However, Mr Fonseca was subject to a sustained attack by Dr Rathor on his professional conduct. He accepted that he had been found guilty of misconduct and that his evidence had not been accepted by the Court in other proceedings. I accepted, therefore, the submission made on behalf of Dr

Rathor that I should approach Mr Fonseca's evidence with caution and test it against the available documents with care.

25. Nevertheless, I was not prepared to accept that Mr Fonseca conspired with Jaswant to defraud Dr Rathor or mislead the Court (as Dr Rathor suggested in evidence and was put to him). Nor was I prepared to accept that there was anything sinister about Mr Fonseca's late production of a hard copy of his file (or parts of his file). Indeed, the contents of that file largely corroborated Mr Fonseca's evidence on points of detail.

Other Witnesses

26. For the most part the other witnesses whom Jaswant called in support of her case could only provide limited evidence on the key factual issues. They gave evidence of oral conversations with her. Mr Sangha also gave evidence of oral conversations with Dr Ali. I found the guidance in *Gestmin* of particular value in relation to their evidence and attached only limited weight to their evidence where it was unsupported by contemporaneous documents.

Dr Rathor

27. I did not find Dr Rathor a reliable or convincing witness. The evidence which she gave in her first and second witness statements was inconsistent with key documents or she failed to address those documents at all. I bear in mind that she made those statements in support of an application for summary judgment and before the parties were required to give full disclosure. However, it was telling that most of those documents were within her control and she did not produce them until very late in the proceedings and only then under compulsion.
28. Dr Rathor also demonstrated a propensity to say whatever she thought would help her case and on a number of occasions she had to modify that evidence when shown a documents which was inconsistent with what she had just said. Whilst this does not mean that a witness must be dishonest, there were a number of critical points during her evidence when I had to decide whether Dr Rathor was simply mistaken or whether she was deliberately attempting to

present false evidence to the Court. I deal with those points in my assessment of her evidence on the substantive issues (below).

29. Mr Jory identified nine steps in Dr Rathor's case at the beginning of his cross-examination and this formed the structure of both his cross-examination and his closing submissions. He submitted that Dr Rathor had falsely but elaborately constructed those steps to create a false narrative and prove that Jaswant was guilty of fraud. Whilst Mr Jory was perfectly entitled to advance Jaswant's case in this way, in my judgment it would be inappropriate and potentially unfair to Dr Rathor for the Court to adopt a similar structure in deciding the issues. Nevertheless, the virtue of Mr Jory's structure was that it continually threw a spotlight on the motive of Dr Rathor in bringing these proceedings.

Ms Grewel

30. The only other witness whom Dr Rathor called was Ms Grewel, who replaced Sareet as acting Practice Manager. Her position was then made permanent. I did not find her a reliable or convincing witness either. She was prepared to support whatever Dr Rathor said. She did not reveal to the Court in her witness statement that her husband had made a loan to Dr Rathor or that there was nothing to record this loan in writing. On 9 October 2017 she and Dr Rathor also signed a statement of her main terms of employment which did not accurately record the salary which Dr Rathor had agreed to pay her and which Dr Rathor relied on before the Employment Tribunal. She also gave evidence about an oral conversation which I discuss in more detail below.

AMS

31. Although Dr Rathor served a witness statement from Mr Sidat of AMS, he was not involved in the preparation of Dr Rathor's accounts and he occupied a "quasi-expert" role to prove AMS's report and to explain what his firm had found when they carried out their investigation. Dr Rathor had already relied on his report in the Employment Tribunal and in making a witness statement to the Metropolitan Police. In the course of evidence Mr Jory made it clear

that the case which he intended to put to Mr Sidat was that AMS had assisted Dr Rathor to commit fraud or to mislead the Court (or potentially both).

32. There is no doubt that AMS could have given considerable assistance to me in deciding what Dr Rathor knew and had told them during the preparation of both the 2016 Accounts and the 2017 Accounts (as I define them below). The *Wisniewski* principles (above) had particular relevance to Mr Sidat. Dr Rathor put the AMS report to Jaswant and Dr Rathor deflected a number of questions by suggesting that they should be put to AMS. Mr Hood also gave every indication that he intended to call Mr Sidat on behalf of Dr Rathor until the end of the trial. Nevertheless, I am not prepared to draw the inference that AMS conspired with Dr Rathor to mislead the Court. However, where I indicate below, I have been prepared to make findings and draw inferences from individual documents where I would ordinarily have preferred to hear from AMS before doing so.

The Standard of Proof

33. In view of the seriousness of the allegations made by the parties against each other, Mr Jory and Ms Tromans reminded me that although the burden of proof is the ordinary civil burden, the evidence required to establish the dishonest conduct alleged must be particularly cogent. As Lord Nicholls of Birkenhead explained in *Re H and Others* [1996] AC 563, 586:

“The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury. ... Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation.

Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof required is higher. It means only that the inherent probability or

improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established.”

The Law of Partnership

Definition

34. Section 1(1) of the Partnership Act 1890 provides that partnership is the relation which subsists between persons carrying on a business in common with a view of profit. Section 2 contains a number of rules for determining the existence of a partnership. Neither party relied upon any particular statutory rules, however, and relied more on the general law.
35. Mr Jory and Ms Tromans submitted on behalf of Jaswant that for a partnership to exist three conditions must be satisfied: (1) a business, (2) which is carried on by two or more persons in common and (3) with a view to profit. They cited a passage in *Lindley & Banks on Partnership* 20th edition (2017) at 2—01 to 2—011.
36. Mr Hood and Mr Saunders submitted on behalf of Dr Rathor that there are common indicia which the Court should look for in order to establish that the parties’ relationship can properly be classified as one of partnership:
 - i) A written partnership agreement;
 - ii) Partnership accounts;
 - iii) Written records of partnership decision making processes, meetings and outcomes;
 - iv) Any records of capital contributions;
 - v) Any identification of partnership assets;
 - vi) Any identification of the “firm” as a separate entity;

- vii) Any written agreement authorising the partners to draw a salary in addition to any share of the profits;
 - viii) Any terms of agreement reached for the sharing of future liabilities;
 - ix) An agreement varying the default rules in section 24 of the Partnership Act 1890, e.g., to permit a partner to receive additional remuneration or to vary the location of the books and records of the partnership.
37. They accepted that the presence or absence of any one of these individual factors was not conclusive but they also submitted that a complete absence of any of these evidential factors would point firmly against the conclusion that the parties were not carrying on business in common.
38. In substance, there was little between the parties about the test which the Court should apply in deciding whether there was a partnership. Mr Hood and Mr Saunders did not dispute that a medical practice can be the subject of a partnership or that Dr Rathor and Jaswant were both working in that business. The real difference between the parties was the weight which the Court should attach to the evidence. Mr Jory relied on the language which the parties used and the documents which they signed. Mr Hood and Mr Saunders relied on the wider evidential features which are usually present in the case of partnerships.

Profit

39. If I find that Dr Rathor and Jaswant agreed to enter into a partnership (or, indeed, believed that they had done so), a particular issue arises out of the way in which the parties were paid. Jaswant continued to be paid as an employee through the payroll until Dr Rathor purported to suspend her on 4 October 2017. She also continued to receive part of her pay on a “self-employed” basis (on her case at the request of Dr Rathor). By the same token, Dr Rathor continued to take drawings out of the combined practices and was also recorded as an employee on the payroll of Natio (although on her case she was unaware that she and her husband were on the payroll at all).

40. Mr Jory and Ms Tromans submitted that it is for the partners to agree the basis on which profits are to be calculated as between themselves failing which section 24 of the Partnership Act 1890 would apply. (Section 24 provides that in the absence of any other agreement the partners share profits in equal shares.) He relied on the following statement by Lord Lindley set out in *Lindley & Banks* (above) at 20—43:

“Under ordinary circumstances the contract of partnership excludes any implied contract for payment for services rendered for the firm by any of its members. Consequently, under ordinary circumstances and in the absence of an agreement to that effect, one partner cannot charge his co-partners with any sum for compensation, whether in the shape of salary, commission, or otherwise, on account of his own trouble in conducting the partnership business.”

41. Mr Hood and Mr Saunders did not dispute that proposition. Indeed, one of their indicia of partnership was an agreement varying the default rules in section 24 to permit a partner to receive additional remuneration. However, they submitted that a person cannot be both a partner and an employee of the partnership at the same time. They relied on the following statement by Rimer LJ in *Tiffin v Lester Aldridge LLP* [2012] 1 WLR 1887 at [31]:

“The drafting of section 4(4) raises problems. Whilst I suspect that the average conscientious self-employed professional or business person commonly regards himself as his hardest master, such perception is inaccurate as a matter of legal principle. That is because in law an individual cannot be an employee of himself. Nor can a partner in a partnership be an employee of the partnership, because it is equally not possible for an individual to be an employee of himself and his co-partners: see *Cowell v Quilter Goodison Co Ltd* [1989] IRLR 392. Unfortunately, the authors of section 4(4) were apparently unaware of this.”

42. In *Tiffin* Rimer LJ was dealing with a very different situation, namely, whether a “fixed share” partner in a solicitors’ limited liability partnership could be an employee of the firm at the same time as being a member. This turned on the statutory effect of section 4(4) of the Limited Liability Partnerships Act 2000. In *Lindley & Banks* (above) it is also stated that the decision must be read subject to the subsequent decisions in *Bates van Winkelhof v Clyde & Co. LLP*

[2014] 1 WLR 2047 and *Reinhard v Ondra LLP* [2016] 2 BCLC 571: see 10—86 and footnote 379.

43. Mr Hood and Mr Saunders also relied upon the following passage in the judgment of Wilson LJ in *M Young Legal Associates Ltd v Zahid* [2006] 1 WLR 2562 at [33]:

“It is idle to deny that, indirectly, an employee has an interest in the profitability of the firm for the continuation of his job may well depend on it. Nevertheless the absence of a direct link between the level of payments and the profits of the firm is in most cases a strongly negative pointer towards the crucial conclusion as to whether the recipient is among those who are carrying on its business. But the conclusion must be informed by reference to all the features of the agreement. Thus, for example, provision or otherwise for a contribution on his part to the working capital of the firm will be relevant. And it will be important to discern whether, expressly or impliedly, the agreement provides not only that acts within his authority should bind the acknowledged partners but also that their such acts should bind him; for such is provided by section 5 of the Act to be a necessary incident of partnership but would, of course, be inconsistent with his status as an employee.”

44. It is unnecessary for me to consider whether there are any limitations on the application of either of these authorities because Mr Jory and Ms Tromans did not challenge either of them. I therefore accept that in law an individual cannot be both a partner and an employee of the partnership at the same time because it is not possible for an individual to be an employee of himself and his co-partners. I also accept that the absence of a direct link between the level of payments and the profits of the firm points against the existence of a partnership (although in *Zahid* a fixed share partner was held to be a partner and not an employee).

Contract

45. In addition to being satisfied that the statutory test for partnership is met, Mr Hood and Mr Saunders submitted (and I accept) that the Court must also be satisfied that there is a binding contractual relationship between the parties. In *McPhail v Bourne* [2008] EWHC 1235 (Ch) Morgan J stated as follows (at [256]):

“Section 1 of the Partnership Act 1890 defines a “partnership” as “the relation which exists between persons carrying on a business in common with a view to profit”. As Lord Millett pointed out in *Hurst v Bryk* [2002] 1 AC 185 at 194F, this definition does not refer to the existence of any contract between the partners. However, Lord Millett explained, in the same case, at 194C, that a partnership is a consensual arrangement based on agreement and it is clear from the context that Lord Millett was referring to an agreement which had contractual force and effect. Thus, it is a precondition to the existence of a partnership that there is a binding contractual relationship between the parties and the law will then determine whether that contract is a contract of partnership or creates some other relationship.”

46. This means that in most cases the Court must be able to conclude with confidence both that the parties intended to create contractual relations and also to analyse the agreement between the parties in the traditional terms of offer and acceptance: see *Blackpool and Fylde Aero Club Ltd v Blackpool BC* [1990] 1 WLR 1195 at 1202F-G (Bingham LJ). Further, the failure to agree essential terms may be grounds for concluding that no agreement was reached or that, if it was, it was not intended to be binding. In *Blue v Ashley* [2017] EWHC 1928 (Comm) Leggatt J also stated as follows (at [61]):

“Vagueness in what is said or omission of important terms may be a ground for concluding that no agreement has been reached at all or for concluding that, although an agreement has been reached, it is not intended to be legally binding. But certainty and completeness of terms is also an independent requirement of a contract. Thus, even where it is apparent that the parties have made an agreement which is intended to be legally binding, the court may conclude that the agreement is too uncertain or incomplete to be enforceable.”

47. Partnership contracts must also be supported by consideration. However, as is stated in *Lindley & Banks* (above) at 6—01, the partners often provide consideration by providing their labour or by the mutual assumption of obligations:

“An agreement to enter into partnership, like any other contract, must be supported by consideration if it is to be enforceable. However, in a normal case such consideration

can readily be found, whether in the form of a contribution of capital or a particular skill, or some act which may result in liability to third parties. Alternatively, it may (and, indeed, frequently will) be represented by the mutual obligations which the parties undertake by entering into partnership together or, in so far as consideration is required for an ad hoc variation of the partnership agreement, agreeing to remain in partnership on the amended terms.”

Dissolution

48. If a partnership arose, Mr Jory and Ms Tromans submitted that it was a partnership at will. In that event, sections 26 and 32 of the Partnership Act 1890 provide the method for dissolution. One partner may terminate the partnership by giving notice to the other partners: see section 26(1). Subject to any agreement between them, the partnership will be dissolved at the date of expiry of the notice or, in the absence of any notice period, at the date of the notice: see section 32(c). Moreover, the effect of dissolution is that the affairs of the partnership must be wound up: see *Hurst v Bryk* [2002] 1 AC 185 at 196E-F (Lord Millett).
49. Mr Hood and Mr Saunders did not dispute that any partnership between Dr Rathor and Jaswant would have been a partnership at will. Nor did they dispute any of these propositions. However, they submitted that in deciding whether there was a partnership at all I had to consider the availability and effect of dissolution. They also submitted that if Jaswant became a partner, she was entitled to terminate the partnership immediately by giving notice and that this would trigger the winding up of its affairs.
50. I accept that in some cases the Court should give weight to this factor in deciding whether a partnership has come into existence. But it will depend on the circumstances and the practical consequences of dissolution. I can well see that this might be a strong consideration where the parties have the benefit of legal advice. But it has less force in the present case where neither party took legal advice at all.

Employment Law

51. A further issues arises out of the way in which Jaswant was paid. Mr Hood and Mr Saunders submit that an individual cannot be both employed and self-employed whilst conducting the same work for the same business: see *O’Kelly v Trusthouse Forte plc* [1984] QB 90. They also submit that such an arrangement would place an employer in breach of regulation 21 of the Income Tax (Pay As You Earn) Regulations 2003 which provides as follows:

“21.— Deduction and repayment of tax by reference to employee's code

(1) On making a relevant payment to an employee during a tax year, an employer must deduct or repay tax in accordance with these Regulations by reference to the employee's code, if the employer has one for the employee.

(2) The employer must deduct or repay tax by reference to the employee's code, even if the code is the subject of an objection or appeal.”

52. Mr Jory and Ms Tromans did not dispute either of these propositions and I accept them both. Mr Hood and Mr Saunders did not specify, however, what consequence the breach of regulation 21 had on Dr Rathor’s claims against Jaswant and Sareet. It was the duty of either Natio or Dr Rathor to comply with regulation 21 not theirs. I understood, therefore, the general point to be that this was a reason for accepting Dr Rathor’s evidence that there was no agreement about the change in Jaswant’s pay in December 2016 and for finding that Mr Fonseca must have misled HMRC.

Res Judicata or Issue Estoppel

53. I also have to decide whether Dr Rathor authorised a number of pay rises for Sareet when those issues have already been decided by the Employment Tribunal in proceedings brought by Sareet against Dr Rathor. In particular, I have to decide whether Dr Rathor authorised two pay rises in August and November 2016 and a bonus of £10,000 (or a pay rise of £2,000) in May 2017. The position is also complicated by the fact that part of the decision is subject to an outstanding appeal.

Parties

54. Mr Jory and Ms Tromans submit (and I accept) that where the same relief is claimed against more than one party, then the matter remains at large even if one of those parties would otherwise be subject to an estoppel: see *Spencer Bower and Handley Res Judicata* 5th edition (2019) at 17.29. The reason is an obvious one. The Court would be in an invidious position if it had to give conflicting judgments in the same case one on the merits and one on the estoppel (particularly if it took a different view of the merits from the first tribunal).
55. It is not entirely clear whether Dr Rathor make separate claims against Jaswant and Sareet in relation to their pay rises and bonuses: see the Re-Amended Defence, Counterclaim and Additional Claim, paragraphs 39 and 40. However, there are general allegations of breach of duty, loss, unjust enrichment and unconscionable receipt which do not distinguish between Jaswant and Sareet: see paragraphs 56 to 62. Dr Rathor also claims identical relief in the prayer for relief against both of them.
56. In my judgment, therefore, the principle is engaged and the matter remains at large. The facts upon which both claims are based (and, in particular, the claim for the bonuses of £10,000 or the third pay rise) are so closely connected that it would be impossible for me to decide the claim against Jaswant if I could not also decide the claim against Sareet. It is also clear from paragraphs 56 to 62 and the prayer for relief that the claims overlap and Dr Rathor has not limited herself to separate claims against each of them.

Further Material

57. In the alternative Mr Jory and Ms Tromans submit (and I accept) that a party is not bound by a previous decision if new material which is relevant to the correctness or incorrectness of that decision has since become available to that party and they could not with reasonable diligence have adduced that material in the earlier proceedings: see *Mills v Cooper* [1967] 2 QB 459 at 468-9 (Diplock LJ) and *Arnold v National Westminster Bank Plc* [1991] 2 AC 93 at 109A-B (Lord Keith). I consider whether new material was available to Sareet in more detail below.

Background

The Medical Practices

58. Jaswant claims to be a partner in a business which consisted of two medical practices: the Northolt Family Practice and the Allenby Clinic. Both were relatively small and Dr Rathor's evidence was that NFP had a patient list of 4,200 and the AC a patient list of 1,900. Dr Ali owned the surgery at Ruislip Road himself and received the rents payable by the practice. I was taken to a schedule of the rents paid to Dr Rathor by the NHS for the Allenby Clinic and she confirmed that rent was normally payable on a "pass through" basis, i.e., that the NHS paid the rent notified to it by the practice which then passed on the rent to the landlord.
59. The Allenby Clinic was (and is) governed by a General Medical Services or "GMS" contract which is a common form of contract made directly between general practices and NHS England. This was the form of contract made between Dr Rathor's predecessor, Dr Garg, and the NHS in relation to the Allenby Clinic. The NFP was (and is) governed by a Personal Medical Services or "PMS" contract which is a local contract administered by the Ealing Primary Care Trust which later became the Ealing Clinical Commissioning Group or the "CCG".
60. In addition to funding the rent the practices also received a range of payments from NHS England. These included payments under the Quality Outcomes Framework or "QOF" and the Local Incentive Scheme or "LIS". There was an issue of fact between the parties as to how much the combined practices made after 1 September 2014 and whether that justified the payment of bonuses to Jaswant and Sareet and I return to this issue below.

Relationship with Dr Ali

61. In early 2013 and at Jaswant's suggestion Dr Rathor began to work as a locum at the NFP which was then located at Ruislip Road. At some point during 2013 Dr Ali and Dr Rathor agreed that Dr Rathor would join his practice and on 2 December 2013 Dr Rathor and Dr Ali signed a PMS Contract Variation

Agreement Form stating that Dr Rathor would join the practice as a full partner with effect from 1 April 2014. I will have to examine the terms on which Dr Ali made this agreement with Dr Rathor in detail below.

62. On 4 July 2014 Dr Rathor signed a partnership detail form stating that she was to be the sole practitioner with effect from 1 September 2014. It is common ground that Dr Ali retired from the partnership on that date although he continued to work as a locum for the NFP until May 2015 and he remained the NFP's landlord until about August 2015.
63. Until July 2014 the Allenby Clinic employed its own staff through Aqua. A P35 payroll listing for the end of the 2014 tax year shows that apart from Dr Rathor and Balwant (who was also listed as an employee), Aqua had five employees. The most important member of staff was Mrs Pamela Bradbury, the practice manager and on 4 April 2014 Dr Rathor introduced her to Jaswant and Sareet (who took minutes of the meeting). However, on 1 July 2014 Mrs Bradbury resigned and by email dated 1 August 2014 she set out the reasons for her resignation. Dr Rathor was also taken in cross-examination to the notes of the investigation meeting on 17 April 2014.
64. Dr Rathor's P60 for the year ended 5 April 2014 also shows that her earnings from Aqua for that tax year were £9,000 (or £750 per month) and the P35 year-end listing shows that Balwant's earnings as an employee were £1,104.24. The trial bundle also contained a pay slip for Dr Rathor dated 31 October 2010 showing that she had been receiving remuneration from Aqua for a number of years.
65. It is common ground that by the middle of July 2014 Jaswant began to oversee the financial affairs of Allenby Clinic (such as the payroll and banking transactions). Moreover, the joint management or merger of the two practices had become sufficiently advanced for Jaswant to write to NHS England about a proposed merger and describing herself as the business manager of Allenby Clinic.
66. On 1 September 2014 Dr Rathor became a sole practitioner operating both practices and on that date the employment of Jaswant and Sareet was

transferred from Salus to Natio. Before the transfer of undertakings to Natio, Jaswant sent payroll information to Regency Payroll (“**Regency**”), the payroll provider which was to manage the payroll of the new combined practice. Under cover of emails dated 23 July 2014 and 15 August 2014 Jaswant sent spreadsheets to Regency setting out the number of hours worked by each employee. Each spreadsheet showed that her hourly rate of pay was £34 and that Sareet’s was £22. In the email dated 15 August 2014 Jaswant wrote to Regency stating as follows:

“Also as our employer SALUS is retiring end of the month pls can you kindly do P45 for all SALUS staff and also P45 for the two remaining AQUA staff as well. Both Salus and AQUA will close and a new company called natio will be set up for september payroll and the employees of AQUA and SALUS will be employed by NATIO. I will send you the registration of NATIO which I have received from Inland Revenue.”

67. After the transfer of undertakings, the payslips issued to Jaswant and Sareet by Natio continued to show that Jaswant was paid £34 per hour and Sareet was paid £22 per hour. For example, Jaswant’s payslips dated 31 October 2014 and 30 November showed that her gross monthly pay was £5,909.20 based on 173 hours at £34 per hour. Dr Rathor and Balwant were also transferred from the payroll of Aqua to the payroll of Natio. Dr Rathor’s payslip dated 31 October 2014 showed total gross pay of £750 for that month and Balwant’s payslip dated 31 October 2014 showed total gross pay of £1,000.

68. Further, by letter dated 19 September 2014 Dr Rathor wrote to Barclays Bank plc (“**Barclays**”) confirming that Jaswant was to be a full signatory on two bank accounts. The first was account no. 53337898 which was in the name of Natio (the “**Natio Account**”). The second was account no. 83717291 identified as the “Sole Trader” account and in the name of Dr Rathor herself (the “**Sole Trader Account**”). In the letter Dr Rathor stated as follows:

“Jaswant Sidhu needs to have full access to the account and to be a full signatory on the account. I currently have internet banking and would like to link the Natio & Sole trader bank accounts to my personal business premier banking.”

69. It is common ground that Dr Ali gave notice to quit Ruislip Road at or about the end of April 2015 and that the NFP moved to Taywood Road in the middle of August 2015. Indeed, Jaswant's evidence was that the last day at Ruislip Road was 14 August 2015. It is also common ground that Dr Rathor was in arrears with the rent which she owed to Dr Ali although there was a dispute between them. By letter dated 26 June 2015 Mr Fonseca wrote to Rae Nemazee LLP, Dr Ali's solicitors, on behalf of Dr Rathor stating as follows:

“Your client is the freehold owner of the premises situated at 330-332 Ruislip Road, which is a doctor's surgery. The monthly rent which is paid by our client is in fact £3,425 and the figure contained in your letter is erroneous.

As to the remainder of the facts in your letter, please note the following:

1. The rent for April 2015 has in fact been paid. You should ask your client to check his records;
2. The rent for May and June 2015 (the latter of which has only recently fallen due) is accepted to be outstanding;
3. However, as your client is aware, he is contracted to this surgery to carry out locum GP work. Your client has in fact received £9,900 in overpayments for the work that he has carried out to date;....

.....Please note that your client has attended at the premises on a number of occasions and he has been extremely abusive and threatening to Dr Rathor, the Business Manager and other members of staff. Please ask him to refrain from doing so as a matter of urgency, failing which our client will have no choice but to seek an injunction against him.”

70. I was also taken to an email dated 1 July 2015 from Mr Michael Nelson, the Senior Primary Care Commissioning Manager for North West London, to Dr Rathor in which Mr Nelson stated as follows:

“As you are no doubt aware you are in receipt of monthly notional rent payments of approx. £3.4k. I have checked with finance and the payments have been made to you each month. I was somewhat concerned to hear from Dr Ali stating that he had not been paid any rent since April 2015. The payments that we make to you are specifically for the rent and may not be used for any other purpose.”

71. From August 2015 the two medical practices operated together from Taywood Road although they remained separate for contractual purposes. It is common ground that Jaswant became the Business Manager of the two practices and that Sareet became the Practice Manager. It was also Dr Rathor's evidence that she operated the practice with one or, occasionally, two locum doctors, a part-time practice nurse, a part-time health care assistant and five administrative staff (some full-time and some part-time).

Aqua's winding up

72. On 29 June 2015 Aqua was ordered to be wound up on the petition of HMRC. According to its filing history, the company was restored to the register and filed accounts made up to 31 October 2015. In his witness statement Mr Fonseca, who was then Dr Rathor's accountant, gave unchallenged evidence about the amounts which Dr Rathor owed to HMRC, its winding up and its restoration to the register. On 26 August 2016 it was finally dissolved.
73. There was a conflict of evidence between Dr Rathor and Mr Fonseca about who was responsible for permitting the company to be wound up in the first place. But I consider it unnecessary for me to resolve that issue because it is common ground that Mr Fonseca was instrumental in restoring Aqua to the register and that Dr Rathor ultimately paid the tax due on his advice to HMRC.

The 2015 Partnership Detail Form

74. It was Jaswant's unchallenged evidence that Mr Nelson and Ms Bernadette Johnson, who was the Primary Care Commissioning Manager at NHS England for the London Region, visited the Northolt Family Practice at Ruislip Road a number of times and suggested that the practice needed more than one partner. By email dated 5 June 2015 and timed at 14.28 Ms Johnson wrote to Ms Linda Smith, who was the Project Manager for the West London Health Partnership, requesting detailed data about the NFP. In her email she stated:

“Dr Rathor will need to provide assurance of how she intends to manage the increase in list size based on current clinical provision. Please provide information on the proposed number

of WTE clinical staff. Dr Rathor previously stated her intentions to take on a new partner. Is this still the case?”

75. On 9 June 2015 at 12.34 Ms Smith forwarded this email to Dr Rathor and at 16.58 Dr Rathor forwarded it to Jaswant. There was a conflict of evidence about the identity of the new partner referred to by Ms Johnson. Jaswant’s evidence was that Dr Rathor had told NHS England that she had agreed to enter into partnership with her and Dr Rathor’s evidence was that she told NHS England that she was considering the possibility of taking on a new GP partner (possibly her son who was training to be a doctor).
76. At all events, on 23 July 2015 at 12.08 Ms Johnson sent Ms Smith a form headed “Partnership Detail Form” which she forwarded to Jaswant and Sareet (with a copy to Dr Rathor). Under cover of an email dated 24 July 2015 and timed at 13.04 Sareet sent the form back to an email address for “Medical – PCSS (NHS England)” as instructed by Ms Johnson in her email of the previous day. In the covering email she stated: “Please see attached completed form as per Bernadette Johnson.”
77. It is common ground that this form (which I will refer to as the “**2015 Partnership Detail Form**”) was completed in Jaswant’s handwriting and it contained the following material:
- i) Paragraph 1 on the first page of the form required the partnership name, the Practice Codes and the names of the partners. Jaswant had inserted the names and codes of both the NFP and AC and her own name and that of Dr Rathor as the partners.
 - ii) Paragraph 2 on the same page required the address of the surgery and the address stamp of NFP (and possibly the address stamp of AC) had been used.
 - iii) Paragraphs 3 to 5 on the second and third pages were not completed but paragraph 6 on the third page headed “Confirmation of Existing Partnership” was signed by Dr Rathor and dated 24 July 2015.

- iv) On the fourth page Jaswant had inserted her own name and email address into the “Declaration of Banking Details” as the nominated addressee for all financial information from NHS England.
 - v) The fifth page required a signature “to be signed by All partners” and it had been signed by Dr Rathor alone and dated 24 July 2015.
 - vi) The sixth page consisted of a form under the legend “TO BE COMPLETED BY NEW PARTNER (JOINING)” and Jaswant had inserted her own personal details and put the word “Existing” next to the legend at the top of the page.
78. Jaswant’s evidence was that she took home and kept a number of documents in a personal safe including the third, fourth and fifth pages of this document (which bore Dr Rathor’s signature). I was given an opportunity to inspect the original documents which she said that she had retrieved from the safe and provided with separate copies of them.
79. By email dated 29 July 2015 Ms Astrid Zarovskis, the Senior Performer List Officer for Medical-PCSS, wrote to Sareet asking her to confirm “if Jaswant Sidhu is a non-clinical Partner”. By email dated 20 August 2015 and timed at 16.36 Ms Smith chased Sareet for the Partnership Detail Form asking for confirmation that it had been returned to NHS England. By email timed at 17.23 Sareet replied stating that it had been returned on 24 July 2015 and by email timed at 18.10 Ms Johnson asked Ms Zarovskis to confirm that she had received it. There is no evidence that Ms Zarovskis replied to this email or that anyone chased up the form until the following year.

Sareet’s Divorce

80. In 2015 Sareet became divorced from her husband, Didar, and he commenced proceedings for financial relief in the Brentford Family Court. Sareet submitted a financial statement in which she stated that her employer was Natio and declared that her gross income as shown on her P60 for the last financial year was £39,476.40. She also declared an interest in a company

called Sidhu Consultants Ltd and a rental property (stating that the expenses exceeded the income).

81. In the course of those proceedings she made a witness statement dated 10 November 2016 in which she gave detailed evidence about the assistance which her parents had given her in relation to the purchase of Stanhope Heath and the improvements to the property. In paragraph 56 she identified her builder as Mr Subash Singh and in paragraph 58 she stated that she had paid £30,000 to him herself. In paragraph 59 she also stated that cash payments totalling £36,000 were made to him from cash withdrawals from her parents' bank accounts and she produced a table of payments and cash withdrawals.
82. Jaswant and Gurdarshin both made witness statements in support of Sareet's evidence on the application. In paragraph 32 of her witness statement Jaswant stated as follows:

“I have seen the schedule of payments that have been put together by my daughter. I have never done the exercise of calculating everything that myself and my husband loaned to them but we would have sat down and worked it out, had the marriage lasted. I confirm that, as far as I can tell, the payments that she has set out are corrected [sic] and are the loans that myself and my husband made.”

83. In the course of the proceedings Sareet also prepared a spreadsheet recording payments made to her by her parents, the accounts out of which those payments were made and how they were made. The parties described this spreadsheet as the “**Mum's Loan Schedule**” and it was retrieved from Sareet's work computer.

Negotiations with Dr Lewis

84. In around April 2016 Dr Rathor became interested in acquiring another practice from a Dr Lewis. On 19 April 2016 he sent her a text message which she forwarded on to Jaswant and Sareet. I set out below his text together with the response from Jaswant followed by Dr Rathor's reply to her:

“Dr rent 2000 plus ccg rent 1875 plus any private rent plus my locum then all income yours we can start august [sic] but y

have to work from may 1 to 2 session weekly are you going away july august”

“we need to meet him and discuss”

“He thinks we are silly. Give him one off payment, his locum and rent reimbursement”

Dr Rathor’s financial affairs

85. I was taken to a number of documents which showed that after Dr Ali’s retirement Dr Rathor remained under financial pressure and that she looked to Jaswant for help in managing her affairs. By email dated 12 April 2016 Jaswant forwarded to Sareet an email dated 7 January 2016 from Mr Scott Burdon, a project accountant for Community Health Partnerships (“**CHP**”), the landlords of Taywood Road, showing that Dr Rathor owed £161,265.68 for Allenby Clinic. The schedules which he enclosed showed that the sum of £48,757. was overdue and unpaid for 2013 to 2014 and the sum of £112,508.40 was overdue and unpaid for 2014 to 2015.
86. By email dated 15 June 2016 Mr Steve Torrance of Barclays wrote to Jaswant confirming that she was set up for online banking for Natio. He gave her a membership number and informed her that she would need her debit card and “a pin sentry device” to log on. In re-examination Dr Rathor confirmed that this was a reference to a card reader.

The 2015 Accounts

87. It is common ground that in 2014 Mr Fonseca incorporated Natio on Dr Rathor’s instructions. He also continued to act as her accountant during 2015 and into early 2016 dealing with both the tax affairs of Aqua and then the preparation of Natio’s accounts for the year ended 31 July 2015 (the “**2015 Accounts**”). It is also common ground that in March 2016 he met Dr Rathor to discuss the accounts.
88. For the purposes of preparing the 2015 Accounts Mr Fonseca produced a spreadsheet containing an analysis of Natio’s bank statements. It consisted of a single summary sheet with a six page spreadsheet behind it containing a list of payments from the Natio Account for Natio’s financial year which ran from 1

August 2014 to 31 July 2015. A number of entries, most of which related to monthly cash withdrawals of £2,400 and £500, had been highlighted in yellow and then attributed to Dr Rathor in a separate column. I will refer to the summary sheet and the six page spreadsheet together as the “**2015 Payments Schedule**”.

89. The file which Mr Fonseca kept for the purposes of preparing the 2015 Accounts also included a trial balance which he later provided to AMS. It also included specimen copies of the P32 payment records which Natio submitted to HMRC. These documents showed that both Dr Rathor and Balwant had been put on the payroll records. They also showed the salaries paid to Jaswant and Sareet. For example, the P32 for 30 September 2014 showed that Jaswant was receiving a gross salary of £5,909.20 and Sareet £3,823.60 and the P32 for 30 June 2015 showed that Jaswant was receiving a gross salary of £4,431.90 and Sareet £4,692.60.
90. Mr Fonseca’s file also contained a copy of the 2015 Accounts signed by Dr Rathor on 12 January 2016. The profit and loss account showed that the turnover of Natio was £566,003 and the expenses were £485,991, that the net profit before tax was £80,012 and that a dividend was paid of £60,000. It also shows that wages and salaries were £183,645. Mr Fonseca’s file also contained a table showing a monthly breakdown of the total salaries paid and also the gross pay, tax and national insurance contributions made by both the employer and the employees.

The Contract Variation Applications

91. By email dated 23 March 2016 Sareet wrote to Ms Rachel Donovan, Assistant Head of Primary Care Commissioning for the London Region (and presumably Ms Johnson’s assistant) asking to discuss “the contract for our practice”. Jaswant and Ms Donovan must have spoken over the next few days because on 30 March 2016 Sareet wrote to Ms Donovan again stating: “Thank you for speaking to Jazz earlier. As requested please find attached partnership form. I also found the original email sent in July 2015. Please see below.” Sareet then forwarded on the email string which contained her email dated 24

July 2015 with the Partnership Detail Form attached and Ms Zarovskjs' reply dated 29 July 2015 (above).

92. On 12 April 2016 Ms Donovan sent Jaswant application forms to vary both the PMS Contract and the GMS Contract and under cover of an email dated 21 June 2016 Jaswant wrote to Ms Donovan enclosing the completed forms and stating: "Please see attached paperwork requested by yourself." The forms contained the following material:

- i) The first form was two pages long and headed "Application to vary a single-handed contract to a partnership (GMS)" (although the copy of the email attachment in the trial bundle has this heading cut off). Beneath the heading it stated: "Please provide this information to the NHS CB no less than 28 days before the requested contract variation." It also required a practice stamp and it had been stamped with the Allenby Clinic stamp.
- ii) Beneath the stamp were three questions which were asked and answered in the following way (and I underline the manuscript responses): "1) Will the partnership be a limited partnership and, if so, who is a limited and who is a general partner? No – General Partner, 2) Confirm that the proposed partner(s) is/are either i. a medical practitioner; or ii. a person who satisfies the conditions specified in the NHS Act. ii – yes. 3) Confirm that the proposed partner(s) satisfies the conditions imposed by regulations 4 and 5 of the *GMS Contract Regulation 2004* Yes."
- iii) On the second page were a fourth and fifth question which were asked and answered in the following way (and again I underline the manuscript responses): "4) Confirm the GMC number of the proposed partner(s) and name on the Performers List that the proposed partner(s) currently is/are currently on N/A 5) Give the proposed date from which you wish the contract variation to be implemented: 01st July 2016."
- iv) Beneath the typed words "Signed by current contract holder" Dr Rathor had signed her name. Beneath the typed words "Signed by the

proposed new partner” Jaswant had signed her name. Both names had been printed in capitals in full and dated 21 June 2016.

- v) The second form was three pages long and headed “Application for variation of a sole practitioner agreement (PMS/APMS/SPMS)” (although, again, the copy of the email attachment in the trial bundle has this heading cut off). Beneath the heading was a table in which the Practice Code and name of the NFP had been inserted together with Dr Rathor’s name as the sole practitioner and Ealing as the CCG.
- vi) Beneath the table were four questions which were asked and answered in the following way (and, again, I underline the manuscript responses): “1) Details of the proposed new members to your agreement: Jaswant Sidhu – Business Manager, 2) Confirm that the new members are joining you under your contractual agreement and you are not intending to become a qualifying body. Yes 3) Confirm that the proposed new members joining meet the eligibility criteria for holding a PMS agreement as set out in Regulation 4 and 5 of the PMS Regulations 2004. Yes. 4) Confirm that the premises are fit for purpose in accordance with the minimum standards set out in the 2013 GMS Premises Costs Directions or confirm that the practice has a Business Plan to achieve within no more than 12 months (attach copy of business plan to this application): Yes –CQC Visit on 7th June 2016.”
- vii) The second page contained three further questions. The fifth was concerned with service improvements and the answer “N/A” had been given. The sixth question asked for CVs of the proposed new members to be attached (and this question was left blank). The seventh question asked for the proposed date from which the agreement was to run and, again, this was completed with the date 1 July 2016.
- viii) Beneath the typed words “Signed by current agreement holder” Dr Rathor had signed her name. Beneath the typed words “Signed by proposed new member” Jaswant had signed her name. Both names had also been printed in capitals in full and dated 21 June 2016.

- ix) Although no answer had been given to the sixth question on the second form, Jaswant had enclosed a copy of her CV stating that she was a highly experienced Practice Manager and later Business Manager.
93. I will refer to these two forms as the “**GMS Application**” and the “**PMS Application**” respectively and together as the “**2016 Partnership Applications**”. It was Jaswant’s evidence that she also kept the originals of the 2016 Partnership Applications.

The GMS Contract Variation Notice

94. By email dated 26 July 2016 Jaswant chased Ms Donovan for an update. In her email she referred to the “paperwork which I sent over 8 weeks ago”. This must have been a reference to the forms which she had sent back on 21 June 2016. More importantly, Jaswant forwarded this email to Dr Rathor the following day and Dr Rathor’s computer generated a read receipt.
95. Under cover of an email dated 28 July 2016 Ms Allison Shoesmith, who was the Contract Manager for Primary Care Commissioning London Region, replied to Jaswant’s email dated 21 June 2016 (which had enclosed the 2016 Partnership Applications). She enclosed the documents set out below and in her covering email she stated:

“Further to your email below please find attached the contract variation for Allenby Clinic E85105 for signing and counter-signing. Bernadette will be in contact with you regarding Northolt Family Practice request to vary the contract.”

96. She enclosed a “Standard GMS Contract Variation Notice” together with a letter dated 28 July 2016 from Ms Julie Sands, the Head of Primary Care – NW London, addressed to Dr Rathor which stated as follows:

“Further to your notification of 21st June 2016 informing the NHS Commissioning Board (known as NHS England) that Jaswant Kaur Sidhu will be joining the partnership as a partner on the 1st July 2016, we give you notice under the National Health Service (General Medical Services Contracts) Regulations 2004 (S.I. 2004/291) that the contract shall continue with the partnership entered into by you and your partner from the 1st July 2016.

NHS England hereby issues a contract variation to replace your schedule 1 Part 2 of your GMS Contract with effect from 1st July 2016. We request you to acknowledge receipt of this notice by signing and returning the enclosed duplicate of it.”

97. She also enclosed a new schedule which was headed “SCHEDULE 1 (Partnership)” and set out the new parties to the GMS Contract. Part 1 set out the details of the NHS Commissioning Board and Part 2 set out the details of the new partnership: “The Contractor is a partnership under the name of Dr Sangeeta Rathor and Jaswant Kaur Sidhu” and gave its address as Taywood Road.
98. Finally Ms Donovan enclosed two pages headed “GMS Contract Variation Notice”. The first page stated that the names of the partners at the date of signature were Dr Rathor and Jaswant and then provided as follows:
- “The Contract is made with the partnership as it is from time to time constituted and shall continue to subsist notwithstanding (1) the retirement, death or expulsion of any one or more partners; and/or (2) the addition of any one or more partners.
- The Contractor shall ensure that any person who becomes a member of the partnership after the Contract has come into force is bound automatically by the Contract by virtue of a partnership deed or otherwise.”
99. The second page consisted of a blank notice to be signed by Dr Rathor, Jaswant and by Ms Sands on behalf of NHS England. By email dated 28 July 2016 and timed at 18.05 Jaswant wrote to Sareet stating: “Sareet can you look at this for me as I thought we had already signed this and sent it back.”
100. Under cover of an email dated 1 August 2016 and timed at 13.07 Sareet sent Jaswant the GMS Contract Variation Notice which had now been signed and dated that day by both Dr Rathor and herself and by email timed at 13.17 Jaswant forwarded this email on to Ms Shoesmith. In fact, Dr Rathor had signed the notice in the wrong place and in the space provided for Ms Sands.
101. Under cover of an email dated 2 August 2016 Ms Shoesmith returned the GMS Contract Variation Notice to Jaswant counter-signed by Ms Sands and

dated 2 August 2016. Ms Sands had squeezed her signature into the space immediately to the right of her name and below the signature of Dr Rathor.

The PMS Contract Variation Agreement Form

102. Under cover of an email dated 9 August 2016 and timed at 11.55 Ms Shoesmith sent Jaswant the form for the variation of the PMS Contract. This document consisted of a single page and was headed “PMS Contract Variation Agreement Form”. Ms Shoesmith had completed the details in the form stating as the nature of the variation as “Partnership Change” and giving as the details of the variation: “Adding non-clinical partner to the PMS Agreement”. By mistake, however, she gave Ruislip Road as the practice address in the top right hand box.
103. By email dated also dated 9 August 2016 and timed at 15.34 Jaswant wrote to Ms Shoesmith stating: “Please see attached email regarding contract variation. Thanks.” The email string contained an email timed at 15.10 from Sareet to Jaswant with no message. There were a number of versions of this email in the trial bundle but none with an attachment. I return to this below.
104. By email timed at 15.46 Ms Shoesmith replied stating: “Apologies for putting the incorrect address on the variation. Please see attached a corrected variation. Please can this be signed and returned to be countersigned”. She enclosed a version of the PMS form with the address corrected to Taywood Road in the top right hand box.
105. By email dated 10 August 2016 and timed at 09.14 Jaswant wrote to Ms Shoesmith enclosing the revised form signed by both herself and Dr Rathor and also dated 9 August 2016. The form had also been witnessed by Sareet. Under cover of an email dated 19 August 2016 Ms Shoesmith returned the PMS contract form to Jaswant counter-signed by Ms Sands.
106. There were a number of copies of the PMS Contract Variation Agreement Form amended in manuscript in the trial bundle although I was not taken to the version attached to Sareet’s email timed at 15.10. Mr Jory submitted that Dr Rathor must have deleted the attachment in order to prevent it coming to

light. But it is unnecessary for me to decide whether she did because I was shown the original.

Jaswant's Original Documents

107. It was Jaswant's evidence that in addition to the Partnership Detail Form (which the parties had signed a year earlier) she also took home and kept the originals of the following documents:

- i) The letter dated 28 July 2016 from Ms Sands with the GMS Contract Variation Notice signed and dated 1 August 2016 by herself and Dr Rathor (but not counter-signed by Ms Sands);
- ii) The PMS Contract Variation Agreement Form amended in manuscript by Dr Rathor, signed and dated 9 August 2016 by both parties and witnessed by Sareet; and
- iii) The PMS Contract Variation Agreement Form with the correct address, signed and dated 9 August 2016 by both parties and witnessed by Sareet.

108. I will refer to the GMS Contract Variation Notice and both versions of the PMS Contract Variation Agreement Form as the "**2016 Partnership Notices**". I will also refer to the 2015 Partnership Detail Form, the two 2016 Partnership Applications and the two 2016 Partnership Notices together as the "**Partnership Forms**".

109. I should add that none of the emails passing between NHS England and Jaswant (or Sareet) to which I have referred were sent to or copied to Dr Rathor apart from the email dated 26 July 2016 (which generated a read receipt). I should also add that Dr Rathor did not dispute in evidence that she signed or dated all of the Partnership Forms or, indeed, that she changed the address on the PMS Contract Variation Notice.

The 2016 CQC Quality Report

110. On 7 June 2016 the Care Quality Commission (“CQC”) inspection team carried out an “announced comprehensive inspection” at Taywood Road. In their report they gave Allenby Clinic (by which they must have meant both practices) an overall rating of “Good” and findings of good in answer to all five questions. In their detailed findings they stated (at p.11):

“The practice has one female GP partner and two male long term locum GPs working a total of thirteen sessions amongst them. The practice has a full time practice manager. The rest of the practice team consists of one part time locum practice nurse, one part time health care assistant, an assistant practice manager and five administrative staff consisting of medical secretaries, reception staff, clerks and typists.”

111. Although the reports’ authors referred to Dr Rathor as a single “partner” in this passage, they also referred to “partners” in the plural on p. 21:

“On the day of inspection the partners in the practice demonstrated that they had the experience, capacity and capability to run the practice and ensure high quality care. Staff told us the partners were approachable and always took time to listen to all members of staff.”

Negotiations with Dr Sinha

112. In early 2017 Dr Rathor also entered into negotiations to purchase another practice, this time of a Dr Sinha. By email dated 9 February 2017 she wrote to Ms Daphne Robertson, her solicitor, stating as follows:

“I asked him about surgery price. He was unable to give me any figure but clearly said that will go by valuation but did not say when. He gave me his accountants details and permission for my accountant to communicate with each other as i [sic] will need last 3 years accounts to show to my bank.

He also said that as things are going slow, the partnership may not start till another ? month/months, again did not give time but still expects me to do minimum 2 sessions per week.

I am happy to do so as far as he signs a partnership agreement which states the price of the premises and a start date for partnership and then full partnership.

My impression is that, there is only one way to move forward and that is via yourself. Therefore I am happy to start with what you said, please give account details and amount to be paid as a deposit.”

The 2017 QOF and LIS Payments

113. QOF and LIS payments appear to have been calculated annually and based on a year which ran from 1 April to the following 31 March. A report dated 12 April 2017 records that a total QOF payment of £86,381.93 was achieved by Allenby Clinic for the year ended 31 March 2017 which amounted to £23,297.65 after an adjustment for the CPI. It also recorded a total QOF payment of £74,050.42 was achieved by the Northolt Family Practice which amounted to £40,310.83 after adjustment for the CPI.
114. A similar report records that a LIS payment of £10,316.50 was achieved for the Allenby Clinic for the same period and £17,685.69 for the Northolt Family Practice. The total amount achieved by both practices under the QOF and LIS payment schemes, therefore, amounted to £188,434.54 (before the CPI adjustment) and £91,610.67 (after adjustment). The amount recorded in the 2017 Accounts (below) for the year ended 31 July 2017 was £68,601.

The 2016 Accounts

115. It is common ground that in April 2016 Dr Rathor replaced Mr Fonseca with AMS as her accountants. There was a difference of evidence about why Dr Rathor chose to replace him. It is unnecessary for me to decide this issue because it is common ground that AMS were instructed to prepare Dr Rathor's accounts for both the year ended 31 July 2016 (the "**2016 Accounts**") and the year ended 31 July 2017 (the "**2017 Accounts**").
116. These accounts consisted of personal or sole trader accounts in the name of Dr Rathor herself (the "**2016 Sole Trader Accounts**" and the "**2017 Sole Trader Accounts**") and company accounts in the name of Natio (the "**2016 Natio Accounts**" and the "**2017 Natio Accounts**"). It was unclear to me why AMS prepared two separate sets of accounts in each year where Mr Fonseca had prepared a single set of accounts for Natio. I return to this point in the context of Jaswant's employer.
117. Mr Sidat was the managing partner of AMS but Dr Rathor's relationship manager was Mr Yasin Muminovic ("**Yasin**") who was assisted by Mr

Abdullah Shah (“**Abdullah**”). It was not suggested that AMS had provided their working papers or electronic files to Dr Rathor or that she had produced them as part of her disclosure. There were, therefore, significant gaps in the documents before the Court in relation to the preparation of both the 2016 Accounts and the 2017 Accounts. However, I was able to piece together a fairly clear chronology.

118. In her tenth witness statement Dr Rathor gave evidence that at or about the end of March 2017 she met Yasin in her room at Taywood Road. On Sunday 2 April 2017 at 8.17 am Dr Rathor sent the following email to Yasin from her iphone and I set it out in full:

“Sorry to mail you on a Sunday
I could not talk to you about everything other day
You know that Jaz has not allowed me to take any profit except my minimum wages
I went to barclays yesterday
I was shocked to see some figures
My concern [sic] are as follows
1) Jas has the use of and authority of the natio card
2) I saw she gets paid £5800 per month and I guess after tax
3) there was almost £130k in natio account
I have never taken any profits
She keeps on saying that I pay for everything and there is not enough money and I will have to pay tax and somehow she will try and get 30-40k every year as my profits but when time comes
I took over practice 01/09/14
Nothing since
Where is the money
I am sure the total monthly between 2 practice is approx 50k including everything
I asked barclays to give me a mortgage of 650k
Can you please advise me if I can transfer money from natio to saving time being as it will look good
Also I believe that is my profits
Why she keeps all the money in the natio

I work 12 hrs a day for 5 days and another 10 hrs over weekend
You please need to calculate my income/profits
They both also take plenty of holidays
Jas was off sick for 6 weeks from December to January
She then took 3 weeks to go to India
Sareet went 3 weeks march
At present they both are off again since last Wednesday till this weekend and then again together in may for 1 week
They both work 4 days per week
From 7 am to 4 pm
Please advise me as much as you can
Also they stopped bank sending me messages as jas gave Sareet number
I have changed it now
Jas insisted she wants to be on account
I have requested bank to send me a card
They said I am the main name on the account
Please check how much she is taking before tax
The problem is that they can both be very notorious if you don't do what they say.
Only thing she done for me help with ?35k to pay Ali which as far as I know she has taken back
I am feeling very worried and anxious
Please find a way
Also Sareet does internet banking and can see all my accounts including personal
Can we not pay everyone by cheque
She just transfer the money
Jas thinks I can't afford another mortgage but she can
I have taken my child out of private schools
Sorry to bother but I feel very stressed"

119. On Monday 3 April 2017 at 7.47 Yasin replied stating: "Hi Dr Rathor, please give me a call when you get a few minutes." There is no record of this conversation and Dr Rathor did not address it either in her tenth witness statement or in any of her earlier statements.

120. By email dated 18 April 2017 Yasin wrote to Jaswant stating that AMS had almost finalised the 2016 Accounts and asking for certain information. In particular, he asked her to confirm the nature of a number of cheque payments which he set out in a table.
121. By email dated 19 April 2017 Jaswant replied providing the requested information and in relation to the cheques she added her explanation in the table. For example, in relation to cheque no. 100043 dated 26 August 2015 she gave the following description for a payment of £1,900 as “Railex Cabinets”. I will have to return to these descriptions in considering Dr Rathor’s counterclaim.
122. By email dated 21 April 2007 and timed at 18.22 Abdullah wrote to Jaswant following up a few final queries. He asked her to provide details of a number of other cheques. At the end of his email he stated: “We are looking to provide the final figures to Dr Rathor on Monday if you could please reply as soon as possible it would be greatly appreciated.”
123. By email also dated 21 April 2017 at timed at 18.53 (half an hour later) Jaswant replied. In relation to cheque no. 10055 she described a payment of £5,162 as for a “Locum nurse” and in relation to cheque no. 10055 she described a payment of £4,900 as for a “Locum agency”. Again, I will have to return to these descriptions in the context of Dr Rathor’s counterclaim.
124. Under cover an email dated 25 April 2017 and timed at 17.27 Yasin sent drafts of the 2016 Accounts to Dr Rathor at her NHS address and her personal email account at yahoo.co.uk. A minute or two later he sent her a drawings schedule (which he had intended to attach to the earlier email). The schedule was headed “Monthly Drawings” and showed a series of regular monthly cash withdrawals of £2,900 (and sometimes more) often as £2,400 and £500. I will refer to this schedule as the “**2016 Drawings Schedule**”).
125. At the end of his first email Yasin stated that he would like to book a conference call with Dr Rathor for the following day “to discuss the accounts in detail” and “PAYE” and also “Cheque Payments” and he asked for her availability. Dr Rathor did not disclose a reply to this email or any record of

the subsequent conversation. In cross-examination Jaswant described a conference call on 26 April 2017 (as I set out below).

126. Under cover of an email dated 23 May 2017 Abdullah sent the 2016 Accounts to Dr Rathor. AMS had signed the accountant's report for both sets of accounts and dated them 26 April 2016. The 2016 Sole Trader Accounts recorded that Dr Rathor had received monthly drawings of £195,548 for the year: see note 17. He also enclosed the 2016 Natio Accounts and a draft of the 2015 Accounts.
127. On 14 June 2017 Dr Rathor forwarded Yasin's emails dated 25 April 2017 to her mortgage broker, Mr Rishi Roda ("**Rishi**"), from her personal email account. Under cover of an email dated 22 June 2017 and timed at 18.11 Dr Rathor also sent Rishi a copy of her tax return for the year ended 5 April 2015. It stated that her pay for the year was £5,250 and that her employer's name was Natio. Again, Dr Rathor sent this email from her personal email account.
128. Under cover of a second email dated 22 June 2017 and timed at 18.59 Dr Rathor also sent Rishi a letter from HMRC dated 13 October 2016 and addressed to her at Laburnum Grove. It referred to a phone call from her agent on 12 October 2016 and it enclosed her self-assessment tax calculations for the previous three years. The tax calculation for the year ended 5 April 2015 showed that she had received £5,250 as an employee. In cross-examination Dr Rathor identified her agent as AMS. Again, she sent this email from her personal email account.

Text dated 12 May 2017

129. On 12 May 2017 Dr Rathor sent a text to Jaswant at 20:41 and on 13 May 2017 Jaswant replied at 06:34. I set out both text messages below:

"You know we saved 80. I need 130 for deposit and 40 for stamp duty. I am trying some from some one else if I can. I can always payback once I am done with barclays. You enjoy birthday first. When you come back then see. I will know more by then. You have always helped me in every way and I respect that."

“Nothing is impossible. I will always do what you want. No problem.”

AAH Pharmaceuticals

130. By email dated 10 August 2017 Ms Rowena Kipling, the Accounts Receivable Risk Assessor for AAH Pharmaceuticals Ltd (“**AAH Pharmaceuticals**”) wrote to Jaswant about an application form. She asked Jaswant to “provide me with the partners full name and date of birth or confirmation that Dr Sangeeta Rathor is the sole partner at both the Allenby Clinic & Northolt family Practice”. By email also dated 17 August 2017 Jaswant replied: “Dr S Rathor is the sole partner for both surgeries, namely Allenby Clinic and Northolt Family Practice.”

The 2017 Accounts

131. Shortly after they had completed the 2016 Accounts, Dr Rathor instructed AMS to start preparing the 2017 Accounts. By email dated 25 July 2017 and timed at 17.23 Yasin wrote to Jaswant stating that Dr Rathor had asked if AMS could make a start on the 2017 accounts “as they are required for mortgage purposes”. He asked for a number of items of financial information including: “Cheque analysis for all payments made.”
132. By email also dated 25 July 2017 and timed at 19.14 Jaswant replied (forwarding an email from Sareet) stating that she could download and provide the bank statements and PAYE information. By email dated 16 August 2017 Jaswant also wrote to Abdullah (who had asked her for further information). In particular she stated:

“I have already sent Allenby and Northolt’s statements from July 16-july 17 to Yasin recoded [sic] delivery 2 weeks ago. There is no other income or remittance to send to you. I have emailed Natio statements from julu16 [sic]-july 17 and P32 and cheque entities to Yasmin [sic] also two weeks ago....”

133. By email dated 17 August 2017 Jaswant also wrote to Abdullah enclosing a schedule of payments made by Natio. The schedule included a number of cash withdrawals from 5 August 2016 to 31 July 2017 in sums of £2,900, £2,400

and £500. The narrative for the payments of £2,900 was “Loan/petty cash”, the narrative for the payments of £2,400 was “Loan” and the narrative for the payments of £500 was “petty cash”. I will refer to this schedule as the “**2017 Payments Schedule**”.

134. On Tuesday 22 August 2017 at 13.04 Dr Rathor forwarded to Jaswant an email which she had received from Yasin attaching drafts of the 2017 Accounts. Yasin had also attached Dr Rathor’s self-assessment for tax purposes and AMS’s invoice and set out the personal tax payable by Dr Rathor herself and the corporation tax payable by Natio. Yasin had sent the email to both Dr Rathor’s personal Yahoo account and her NHS email account.
135. By email also dated 22 August 2017 and also timed at 13.04 Dr Rathor forwarded to Rishi the draft 2017 Sole Trader Accounts. The first page stated in the top left hand corner: “Draft Financial statements at 21 August 2017 at 19.49.44”. I note the following points in relation to those draft accounts:
- i) Note 16 to the accounts stated that Dr Rathor’s monthly drawings totalled £291,815.
 - ii) But after adjustments for sums paid through the Natio bank account, pensions and what was described as “Internal loun” (which must be a typographical error for “locum”) it gave a net figure of £89,923 for her drawings as at 31 July 2017.
 - iii) Note 17 broke down the individual monthly drawings which included £80,664 for March 2017 and note 18 set out Dr Rathor’s pension contributions.
 - iv) In cross-examination Dr Rathor accepted that her drawings included a sum of £80,000 paid as a dividend to Ranwant.
136. Dr Rathor also annexed a version of the 2017 Sole Trader Accounts to her Defence, Counterclaim and Additional Claim dated 8 February 2018. Note 16 to that version showed net monthly drawings of £63,097 (before pension

contributions) and £89,924 as at 31 July 2017 (a variance of £1 as against the draft prepared on 21 August 2017). The revised version did not, however, contain a note 17 (which had set out Dr Rathor's monthly drawings in the earlier version).

137. Under cover of an email also dated 22 August 2017 and timed at 13.05 Dr Rathor forwarded to Rishi a draft of the 2017 Natio Accounts. The first page also stated in the top left hand corner: "Draft Financial statements at 22 August 2017 at 09.04.11". The profit and loss account showed a profit of £129,966 for the financial year. It also showed a profit of £133,287 for the year ended 31 July 2016.

Mortgage Application

138. On 6 June 2017 Dr Rathor made an offer to purchase 89 Station Road West Byfleet in Surrey for £520,000. On 23 August 2017 an online application form was submitted to Barclays on behalf of Dr Rathor and Ranwant for a mortgage to purchase the property. The application stated that the price of the property was to be £575,000 and that the loan amount was to be £488,700. In the application form Dr Rathor relied upon her profits as shown in the Natio accounts for the year ended 31 July 2016 and 31 July 2017.

Suspension

139. It appears to be common ground that on 2 October 2017 a meeting took place between Dr Rathor, Jaswant and Sareet. Dr Rathor's evidence was that she confronted Jaswant and Sareet at a meeting called to discuss the "Ealing Standards" (a scheme run by the CCG to introduce common standards) and asked them why they had been taking such high salaries.
140. Sareet's evidence was that on 2 October 2017 she discussed the use to which Dr Rathor put her NHS card and on 3 October 2017 she raised an issue which she had raised before with Dr Rathor, namely, the signing of blank prescription forms. Her evidence was that she spoke to Dr Rathor after locating a box of signed blank blue and green prescription forms which Dr Rathor had signed. Her evidence (which Dr Rathor denied) was that she took a

photograph of them on her phone to show Dr Rathor and insisted that this practice must stop.

141. In cross-examination Dr Rathor was taken to Sareet's photographs. She accepted that blue prescription forms were for controlled drugs and methadone and that green prescription forms could also be used for controlled drugs. But she denied categorically that such a meeting took place on 3 October 2017 or that she had signed the forms.
142. On 4 October 2017 Dr Rathor suspended Sareet and either suspended or purported to suspend Jaswant. Dr Rathor's evidence was that on 3 October 2017 she contacted Peninsula, a firm based in Manchester which she had engaged to provide HR support services, and Peninsula advised her to suspend them and to carry out an investigation.
143. It was also Dr Rathor's evidence that she asked Ms Grewal to attend the interview with her and arrived early for the meeting with Jaswant and Sareet but discovered a patient waiting in the library whom she found intimidating at such an early time and in a restricted area. This patient was Mr Kewal Sidhu, who gave evidence that he had given Jaswant a lift to work, and that he knew Dr Rathor well. His evidence was that Dr Rathor asked him to go down to the waiting room and that he did so (and then left).
144. At all events, Dr Rathor did not meet Jaswant and Sareet immediately. Later that morning, she called them in to see her and handed them suspension letters (whilst on the telephone to Ms Yewande Williams of Peninsula). In cross-examination it was put to her that she asked Ms Grewal and a receptionist from another practice, Ms Parveen Mann, to be present to witness the suspension. Dr Rathor did not accept that Ms Mann was present when she handed the suspension letters to Jaswant and Sareet in the library.
145. In the suspension letter Dr Rathor stated that Sareet had been suspended whilst allegations of "gross mismanagement, bullying behaviour and failure to follow reasonable management" were investigated. In a further letter dated 4 October 2017 Dr Rathor required Sareet to return her mobile phone and laptop. It is common ground that she did not comply with those requests. By letter dated 6

October 2017 Dr Rathor informed Sareet that she would be required to attend an investigation meeting.

Letter of Claim

146. By letter also dated 4 October 2017 (the “**Letter of Claim**”) CLP Solicitors (“**CLP**”) wrote to Dr Rathor on behalf of Jaswant formally asserting that she and Dr Rathor were partners and seeking various undertakings. The Letter of Claim did not assert that Jaswant had made a loan to Dr Rathor either in connection with the existence of a partnership or at all. They stated:

“Mrs Sidhu is a partner of the Practice, and you notified the NHS Commissioning Board of that fact in or about June 2016. A Contract Variation Agreement Form was signed in August 2016 and it related to both the Northolt Family Practice and the Allenby Clinic.”

Station Road

147. On 21 September 2017 Dr Rathor exchanged contracts for the purchase of Station Road. I was not taken to the contract or transfer. On 3 October 2017 completion took place and Barclays made a mortgage advance of £489,699 to Dr Rathor in relation to the purchase of the property.

Correspondence with Mr Nelson

148. By email dated 5 October 2017 and timed at 09.25 Dr Rathor wrote to Mr Nelson asking for a copy of her contracts for both AC and NFP. In a message timed at 09.36 Dr Rathor wrote to Mr Nelson again on the Open Exeter NHS digital portal:

“Due to some unforeseen circumstances I have suspended Jaswant Sidhu and Sareet Sidhu who are my managers till further investigations. Jaswant Sidhu is an employee but she is claiming to be a partner on Northolt Family Practice which was Dr Alis [sic] before. She told me that she was always on it. She has hidden all paperwork from me and I need to see copy for both Allenby clinic and northolt Family practice please. I need for my HR team.

I also need access to open exeter as they both have access and have always denied me the access....”

149. By email also dated 5 October 2017 timed at 12.55 Mr Nelson replied enclosing the relevant contacts and directing her query about Open Exeter to a special help desk. In his covering email he stated: “Here are the contract details you requested. It very much looks like Jaswant Sidhu is a non-clinical partner on both contracts.”
150. There were nine attachments to the email. It was common ground that Mr Nelson attached at least two versions of the PMS Contract Variation Agreement Form signed by all parties. It is also common ground that he attached the GMS Contract Variation Notice signed by all parties. Finally, it was common ground that he enclosed in full the original contract made between the NHS and Dr Ali in relation to the NFP and between the NHS and Dr Garg for the AC. This is not perhaps surprising given that these were the original contracts which the variation forms were intended to be used to vary.
151. There was an issue whether Mr Nelson also attached the PMS Contract Variation Agreement Form dated 2 December 2013 which Dr Ali and Dr Rathor had signed when Dr Rathor had become a partner in the practice. I was not shown or provided with a complete set of the attachments (although I was told that they were very bulky) and the point was not pursued by either counsel.
152. I have looked closely at the list of attachments to Mr Nelson’s email and I have reached the conclusion that it is not possible to confirm whether they included that document. But looking at the descriptions of the attachments it seems to me quite likely that they did and, if it is necessary for me to do so, I find in Dr Rathor’s favour that Mr Nelson included the PMS Contract Variation Agreement Form dated 2 December 2013.
153. By email also dated 5 October 2017 and timed at 13.08 Dr Rathor responded to Mr Nelson’s email. She stated as follows:
- “I am still surprised how Jaswant Sidhu made me sign the contract [sic] variation for GMS contract as I was unaware of it. I knew about the pMS [sic] contract for Northolt Family Practice.

“Unfortunately I had to suspend her and her daughter Sareet for many irregularities [sic] in the practice. Jaswant Sidhu was an employee in the practice. Some how she has managed to get my signature on the GMS contract.

I have the HR team dealing with the issues but this is another issue to deal. I will appreciate if you can help and support me in this.”

154. By email also dated 5 October 2017 and timed at 13.54 Mr Nelson replied stating that there was not much more that he could do apart from providing her with the relevant documents confirming the contractual position. He gave some general advice and ended by stating that this was potentially a serious matter and asking whether there was a deed of partnership.
155. It is of some importance that all of the emails passing between Dr Rathor and Mr Nelson on 5 October 2017 which I have set out above formed part of a single email thread or chain (apart from Dr Rathor’s message timed at 9.36 on the Open Exeter portal). Moreover, Dr Rathor did not challenge the authenticity of this email chain. She did not, however, exhibit this email chain to her witness statement in support of her application for summary judgment and she disclosed it later following an order for specific disclosure.
156. In cross-examination she was taken to another version of her first email timed at 9.25 am and Mr Nelson’s first reply timed at 12.55 (to which he attached the contracts). She had exhibited this version to her first witness statement and had referred to it in paragraph 187. In this version the salutation and signature block had been removed from the foot of Mr Nelson’s email timed at 12.55 and as a consequence it was possible to get Dr Rathor’s email timed at 9.25 and Mr Nelson’s reply on a single sheet of A4 paper. Dr Rathor had exhibited these two emails but not her email timed at 13.08 (from which I have quoted extensively above).

Employment Dispute

157. On 9 October 2017 the password to Jaswant’s NHS email account was reset and she was no longer able to obtain access to her email account or data. On 17 October 2017 a grievance hearing took place which was conducted by Mr

Paul Baker of Peninsula. By letter dated 18 October 2017 Dr Rathor wrote to Sareet informing her that she was required to attend a formal disciplinary hearing.

158. On 30 October 2017 Sareet's disciplinary hearing took place. This time it was conducted by Mr Grant Pegg of Peninsula. Either before or at the hearing Sareet raised a number of detailed points about the fairness of the process. In particular, she pointed out that Dr Rathor had cut off her access to her email account so that she could not receive emails for the grievance hearing. She also complained that she could not understand the allegations of misconduct which she had to meet.
159. I was not taken to the formal decision letter following that hearing but it is common ground that on 28 November 2017 Dr Rathor wrote to Sareet dismissing her for gross misconduct. Following her dismissal Sareet commenced proceedings for unfair dismissal. Whilst the present proceedings progressed, Sareet's unfair dismissal claim also proceeded to a full hearing before the Employment Tribunal.
160. On 18 September 2019 the Employment Tribunal handed down a judgment with reasons. They held that Sareet had been unfairly dismissed and that Dr Rathor had made unauthorised deductions of wages of £2,668.34. However, they also found that had a fair procedure been adopted Dr Rathor would have been justified in dismissing Sareet for gross misconduct because she awarded herself pay rises without authorisation. On 14 October 2019 Sareet appealed against the decision (although Dr Rathor has not done so).

Police Investigation

161. In October 2017 Dr Rathor also reported the conduct of Jaswant and Sareet to the police, who took a witness statement from her (although she did not sign it). I was also told that as a consequence of Dr Rathor's complaint to the police, a number of Jaswant's bank accounts were frozen and she was unable to gain access to them. Shortly before trial the Metropolitan Police provided access to a number of accounts to enable bank statements to be produced.

Correspondence with Mr Fonseca

162. By letter dated 13 March 2018 Blake Morgan LLP (“**Blake Morgan**”), who were then acting as Dr Rathor’s solicitors, wrote to Mr Fonseca asking for his original files in relation to the two practices, Natio and Aqua and stating that they had a number of questions for him. By letter dated 22 March 2018 he replied stating that he had returned all of the relevant files to Dr Rathor.
163. By letter dated 26 March 2018 Blake Morgan wrote to him again stating that he did not leave any files with Dr Rathor and proposing a telephone interview. By letter dated 28 March 2018 Mr Fonseca repeated that he had returned all of the relevant files and declined a telephone interview.
164. In his witness statement Mr Fonseca stated that at the end of July 2018 Jaswant’s solicitor, Mr Arshad Mohammed, asked to come and take a witness statement from him. He also stated that in the course of giving his statement, he located a file of working papers for Natio and a small file for Aqua. He exhibited these documents to his witness statement and I have referred to a number of them above.

Rent Schedule

165. In the course of the proceedings Dr Rathor produced a spreadsheet dated 4 October 2018 which showed the amounts which Dr Rathor had received from NHS England to pay her rent and the amounts which she had paid since 2013. The spreadsheet showed that she had received £207,320.74 more than she had actually paid to CHP. In particular, it showed that she had received £96,560.77 in the financial year 2013 to 2014, had paid £45,000 to CHP and retained £51,560.77.

The 2019 CQC Quality Report

166. On 3 December 2018 the CQC inspection team carried out a further inspection and on 26 February 2019 they published their report. They described the inspection as “comprehensive” and gave the combined practice an overall rating of “Requires Improvement”. In four out of the five categories of

inspection they found that the practice required improvement and in the fifth, namely, leadership they found that that the practice was inadequate.

167. In their overall summary they found that the practice did not have clear systems and processes to keep patients safe, they found areas of concern related to safeguarding procedures, a lack of safe management of medicines and lack of monitoring to ensure that clinical staff were working within their remit. They also imposed a number of enforcement actions under the HSCA (RA) Regulations 2014.

Procedural Chronology

168. Disclosure of documents by both parties was the subject matter of a number of applications and both the statements of case and disclosure were the subject of cross-examination and submissions at trial. It is necessary, therefore, for me to set out a short procedural chronology (to the extent that it is relevant to the issues which I have to determine):

- i) On 13 December 2017 the Claim Form was issued with the Particulars of Claim. In the Particulars of Claim Jaswant did not allege that she had made a loan to Dr Rathor or rely upon it in support of her claim for relief under the Partnership Act 1890.
- ii) On 8 February 2018 Dr Rathor served her Defence and Counterclaim. She also commenced an additional claim (the “**Additional Claim**”) and served a Claim Form and Particulars of Claim on Sareet.
- iii) On 1 March 2018 Jaswant served her Reply and Defence to Counterclaim (alleging for the first time that she had made a loan of £60,000 to Dr Rathor as a defence to Dr Rathor’s counterclaim) and on 8 March 2018 Sareet served her Defence and Counterclaim to the Additional Claim.
- iv) On 4 April 2018 Dr Rathor served her Reply to Defence to Counterclaim.

- v) On 7 June 2018 Dr Rathor made her first witness statement in support of applications for summary judgment for a freezing injunction against both Jaswant and Sareet.
- vi) On 22 October 2018 Dr Rathor's applications for summary judgment and freezing injunctions were heard by Mrs Justice Falk who dismissed them both and gave directions for trial.
- vii) On 18 January 2019 Dr Rathor served her List of Documents and on 11 March 2019 Jaswant and Sareet served their Lists of Documents.
- viii) On 20 June 2019 Dr Rathor served her Re-Amended Defence and Counterclaim and Additional Claim.
- ix) On 2 July 2019 Deputy Master Linwood gave further directions (including directions for expert handwriting evidence).
- x) On 19 July 2019 Jaswant served her Amended Reply and Defence to Counterclaim and Sareet served her Amended Defence and Counterclaim to the Additional Claim.
- xi) On 2 September 2019 Deputy Master Arkush made an order by consent for specific disclosure against Dr Rathor.
- xii) On 19 September 2019 the parties exchanged the witness statements of their other witnesses in accordance with the order made by Deputy Master Linwood. The parties also exchanged further witness statements.
- xiii) On 8 October 2019 Jaswant served a Request for Further Information on Dr Rathor. Requests 5 to 9 related to the email dated 2 April 2017 (which I have set out in full above) and requests 10 to 16 related to the statement which Dr Rathor had given to the Metropolitan Police.
- xiv) By letter dated 21 November 2019 Dr Rathor (who was then acting in person) provided Replies to the Request for Further Information.

- xv) On 22 November 2019 Deputy Master Linwood made an order by consent requiring Dr Rathor to sign authorities to Blake Morgan (who were no longer acting for her), the Metropolitan Police and a number of banks to enable Jaswant to obtain further disclosure directly from those parties.
 - xvi) On 13 December 2019 I heard the PTR in this action and extended time for compliance with the order made by Deputy Master Linwood on 22 November 2019 requiring Dr Rathor to answer requests 15 and 16 of the Request for Further Information (which related to the statement to the police).
 - xvii) On 16 January 2020 I made an order for disclosure by Jaswant of bank statements and an order that each party should provide copies to each other of the documents from the “**Anexsys Disclosure**” (which I explain below).
 - xviii) On 26 January 2020 Gurdarshin made a second witness statement (following a short statement on 14 January 2020 for the disclosure applications) and on 28 January 2020 Jaswant made a third witness statement to deal with the additional disclosure which had taken place since exchange of witness statements.
 - xix) On 28 February 2020 Dr Rathor made a tenth witness statement to deal with her email to Yasin dated 2 April 2017.
169. The Anexsys Disclosure consisted of electronic documents uploaded on to the legal platform Relativity shortly before trial. They had been in the possession or power of Dr Rathor and she had originally provided them to Blake Morgan. Technical problems had arisen in getting access to the documents. However, with the assistance of Anexsys, a software support company, both parties were able to gain access to the documents and to search them and I made an order to enable the parties to search for, copy and rely on additional documents from the Anexsys Disclosure at trial.

The Issues

Loan

170. Jaswant's case was that on or about 31 January 2014 she lent £60,000 to Dr Rathor to assist her to purchase the goodwill of the Northolt Family Practice from Dr Ali for £125,000. It was also her case that in return Dr Rathor agreed to make her a partner and that she could withdraw £2,900 per month from the Natio Account as payment towards the capital sum and interest. Dr Rathor denied that Jaswant lent her this sum. She also denied that she ever agreed to purchase the goodwill from Dr Ali (or that she did so). I address Jaswant's pleaded case when I come to her evidence below.

Partnership

171. It was also Jaswant's case that she and Dr Rathor agreed to enter into partnership together and in support of her case she relied on the Partnership Forms. She also relied upon the 2016 CQC Report. In paragraph 8(a) of the Amended Reply and Defence to Counterclaim her case was pleaded as follows:

“The Claimant and the Defendant agreed in about July 2015 that they would enter into partnership in relation to both medical practices and the Claimant and the Defendant did so enter into partnership in relation to both medical practices;...”

172. In paragraph 8(b) she also pleaded that pursuant to this agreement, Jaswant and Dr Rathor signed the 2015 Partnership Detail Form. In paragraph 56(d) she also pleaded that the cash withdrawals of £2,900 would be converted into drawings once the loan was repaid:

“In mid June 2015, from the time that the Claimant and the Defendant agreed that the Claimant would be a partner, the Defendant agreed that the Claimant would continue to withdraw this sum as drawings from the partnership.”

173. Dr Rathor denies that she orally agreed to enter into a partnership and asserts that at all times Jaswant was an employee. She also denies that the Partnership Forms have any probative value. In her written evidence she initially stated that she could not recall seeing the originals and did not sign them. Dr Rathor later qualified this position and accepted that it might be possible that she

signed them. But she did not accept that the forms had been completed when she signed them.

174. Despite the nature of her case Dr Rathor did not raise or advance a defence of *non est factum*, mistake or misrepresentation to Jaswant's claim. However, Mr Jory did not suggest that I should approach the question whether there was a contract for a partnership on an objective basis and by reference only to the construction of the Partnership Forms. Nor did he argue that evidence of the subjective intention of the parties was inadmissible. Given that the partnership issue was so closely related to the loan issue, it would probably have been artificial for me to try and do so. I therefore approached the partnership issue by reference to the subjective intentions of the parties.

Schedules B and C: Salary Increases

175. Dr Rathor made a series of claims and additional claims against Jaswant and Sareet, the first of which related to their salary increases. These claims were helpfully pleaded by reference to Schedules B to F to the Amended Defence, Counterclaim and Additional Claim. Where I refer to a "Schedule" below I intend to refer to these schedules unless I state otherwise.

(i) Primary Case

176. Dr Rathor's primary case was that she had never authorised any pay increases and that Jaswant and Sareet are liable to repay all those sums which they received in excess of the salaries set out in their original written terms and conditions of employment.
177. Jaswant's defence to this claim is that she was paid £34 per hour by Dr Ali and Dr Rathor and that Dr Rathor was fully aware of this when she became the sole proprietor of the practices on 1 September 2014. It is also her case that in December 2016 Dr Rathor agreed to give her a pay rise to £40 per hour.
178. Sareet's case was that on 1 September 2014 she was paid £22 per hour and that Dr Rathor and Jaswant agreed to all of the increases in salary which she received through the payroll.

(ii) Alternative Case

179. Dr Rathor's alternative case was that from 1 September 2014 onwards Jaswant and Sareet made payments to themselves and took sums from the Natio Account over and above their salaries without her authority. She broke her case down into six categories of payment:

- i) *Additional Payments (Jaswant):* Dr Rathor claimed that Jaswant routinely made payments to herself of about £1,700 per month totalling £56,624.69 between 31 October 2014 and 30 September 2017 and that she disguised this by recording similar payments to Dr Rathor herself and Balwant on the payroll (which they never in fact received): see Schedule B.
- ii) *Additional Payments (Sareet):* Dr Rathor also claimed that Jaswant made six payments totalling £5,309.60 to Sareet over the same period and using the same device. She originally claimed for a further payment of £4,000 but this claim was withdrawn.
- iii) *Short term salary increases:* Dr Rathor also claimed that between May 2017 and September 2017 Jaswant and Sareet paid themselves an additional £2,000 each per month through the payroll without her authority. She claimed these sums together with NICs which resulted in a total sum of £22,754.40.
- iv) *Long term salary increases (Jaswant):* Dr Rathor also claimed that the salaries shown in the payroll records as paid to Jaswant and Sareet fluctuated considerably between 2014 and 2017 and these changes in salary were never agreed or authorised by her: see Schedule C.
- v) *Long term salary increases (Sareet):* Dr Rathor made a similar claim against Sareet. In September 2014 Sareet's salary was £3,823.60. For one month in January 2015 and then permanently in March 2015 her salary increased to £4,692.60. In March 2016 it increased to £4,722.49, in August 2016 to £5,214.00 and in November 2016 to £5,909.20. In

May 2017 it increased to £7,909.20 (including the £2,000 per month referred to in iii) above): see Schedule C.

- vi) *Pension contributions:* Dr Rathor also claims the pension contributions which she was required to make to the NHS pension scheme for those salary increases made through the payroll.

180. In summary, Dr Rathor claims that Jaswant's gross pay and NICs were overpaid or overstated by £68,001.89 and Sareet's gross pay and NICs were overpaid or overstated by £20,686.80. No figure was pleaded for the overpaid pension contributions although I imagine that this figure ought to be capable of agreement or ascertainment fairly easily.

181. Jaswant and Sareet admit that all of the payments set out in Schedules B and C were made. However, they deny that any of the payments were unauthorised. In particular:

- i) *Additional Payments (Jaswant):* Jaswant's case is that she was already being paid £34 per hour for a 40 hour week by September 2014 when Dr Rathor became the sole owner of both practices but that in December 2014 she agreed with Dr Rathor that she would her pay for 30 hours a week on a PAYE basis and her pay for 10 hours a week on a self-employed basis. This together with the pay rise in December 2016 explains the fluctuations in Schedule B.
- ii) *Additional Payments (Sareet):* Sareet's case is that Dr Rathor authorised four payments to her totalling £2,100 as extra salary for dealing with Allenby Clinic matters. Sareet admits that she made the final payment of £3,209.20 by mistake and accepts that she must give credit for this sum against her own counterclaim for unpaid salary.
- iii) *Short term salary increases:* It is the case of both Jaswant and Sareet that the additional payments of £2,000 per month were a £10,000 bonus which Dr Rathor agreed to pay to her as a reward for the substantial QOF and LIS payments received by the practices in April 2017.

- iv) *Long term salary increases (Jaswant):* It is Jaswant's case that Dr Rathor proposed the change in the treatment of Jaswant's salary and then agreed and authorised the pay increase.
- v) *Long term salary increases (Sareet):* It is also Sareet's case that Dr Rathor agreed and authorised each individual pay increase described above.
- vi) *Pension contributions:* It is both Jaswant's case and Sareet's case that because their salary increases were agreed by Dr Rathor she was legally obliged to pay their increased pension contributions into the NHS pension scheme.

Schedule D: Cash Withdrawals

- 182. Dr Rathor also claimed that Jaswant routinely withdrew £2,400 and £500 in cash each month without her authority from the Natio Account using the practices' bank card: see Schedule D. Dr Rathor claims that Jaswant is liable to repay her £117,280 (after giving credit for a sum of £1,500 which she accepted that she had received in cash from Jaswant).
- 183. Jaswant admitted that she withdrew £2,900 per month from the Natio Account until 22 September 2017. It was her case that Dr Rathor agreed that she could withdraw this sum as payment towards the capital and interest on the loan. It is also her case that in June 2015 Dr Rathor agreed with her that she would continue to withdraw these sums as partnership drawings once the loan had been repaid.

Schedule E: Cheque Payments

- 184. Dr Rathor also alleged that Jaswant drew a series of cheques on the Natio Account to herself, Sareet and Gurdarshin: see Schedule E. She claimed £94,218.50 (comprising £88,318.50 for cheques to Jaswant herself and Gurdarshin) and £5,900 (for cheques to Sareet).
- 185. Again, Jaswant admitted that she drew the cheques in Schedule E in favour of herself, her husband and Sareet. It was her case that she was authorised by Dr

Rathor to draw each of these cheques. It was also her case that all of these funds were used by her to pay for expenditure incurred by Dr Rathor or to reimburse her for expenditure which she had incurred on Dr Rathor's behalf.

Miscellaneous Claims

186. Finally, Dr Rathor claimed that Jaswant made a number of unauthorised purchases using the Natio bank card:

- i) *Clinica*: On 13 October 2016 Jaswant ordered Clinica products for £1,135 and on 22 November 2016 she ordered Clinica products for £1,060.
- ii) *Vitabiotics*: On or about 8 June 2017 Jaswant or Sareet ordered Vitabiotics products for £224.35 and they were delivered to Sareet's home address.
- iii) *Sun creams*: On or about 18 July 2017 Jaswant or Sareet ordered sun cream products from Boots for £123.70 and they were also delivered to Sareet's home address.
- iv) *Vitality Health*: Jaswant arranged a private health insurance policy for herself and Sareet at a total cost of £2,747 for 2016 and £1,545.04 for 2017 (until its cancellation).

187. Again, Jaswant admitted that she ordered and paid for the products set out in i) to iii) (above) using the Natio bank card. It is her case that these products were ordered at Dr Rathor's request and were either for her or for both of them. It is also her case that the Vitabiotics and sun creams were delivered to Sareet's home address because items had gone missing from the surgery. Finally, it was Jaswant's case that Dr Rathor agreed to provide her and Sareet with private medical cover and signed various forms and consulted with Vitality Healthcare over treatment.

Unpaid Salary

188. Sareet also counterclaimed against Dr Rathor for unpaid salary of £1,996 for the period between 4 October 2017 and her dismissal on 4 December 2017, £9,627.60 for salary in lieu of the three months' notice to which she was entitled, £180 for the unlawful cancellation of her mobile phone and £650 for the unlawful cancellation of her healthcare policy: see her Amended Defence and Counterclaim.
189. In closing submissions, however, she made no claim for the underpaid salary (which had been awarded by the Employment Tribunal) and limited her claim for salary in lieu of notice to six weeks: £4,813.80. She did not pursue the claims in relation to the mobile phone and health insurance.

Issue 1: Loan

190. It was common ground that the existence of the loan was the central issue in the case. In his Skeleton Argument for trial Mr Jory described it in this way and in their written closing submissions Mr Hood and Mr Saunders submitted that, if anything, he had understated the significance of this issue. They put it this way:

“There is no middle ground in this case – it is no party’s case that they just cannot recall whether a loan was made or not. The loan itself is not only relied upon by Jaswant for her case that Dr Rathor promised to make her a partner, but also as the justification for later payments/cash withdrawals of £2,900 per month which Dr Rathor claims against her and which Jaswant claims initially constituted loan repayments and then later on, partnership drawings.”

191. I therefore approached the evidence on this first issue on the basis that it was central to the case, that there was no middle ground and that the conclusion which I reached on this issue could have probative value on other issues. I also considered what weight (if any) I should attach to the partnership documents which Dr Rathor now accepts that she signed in deciding whether the loan was made.
192. In my judgment the appropriate course was to assess the evidence on the loan issue and the partnership issue separately and independently. But if I was left

in any doubt about the findings which I should make in relation to the loan issue, I was entitled to attribute probative value to the findings which I had made in relation to the partnership issue (and vice versa). In the event, I found this unnecessary.

Jaswant

193. Jaswant's pleaded case was that during the course of 2014 she lent £60,000 to Dr Rathor and Dr Rathor agreed that £2,900 per month would be withdrawn by her as payment towards the capital sum and interest: see the Defence to Counterclaim, paragraphs 56(a) and (b).

194. Her written evidence was that Dr Ali told her that Dr Rathor had agreed to pay Dr Ali £125,000 for the goodwill of the Northolt Family Practice at £20,000 per month and £5,000 in the last month. She also said that during September 2013 Dr Rathor told her that she was behind on the payments to Dr Ali (who insisted on cash) and agreed to lend Dr Rathor £60,000 in return for Dr Rathor agreeing to make her a partner within a year of taking over the practice.

195. Jaswant also stated that in September 2013 she began to take sums in cash out of her bank accounts, in November 2013 Dr Rathor told her that Dr Ali had agreed to accept a lump sum of £60,000 and on 31 January 2014 she took out the final sums of cash and handed over the entire sum to Dr Rathor who agreed to start repaying the loan within three months. In paragraph 36 of her first witness statement she gave details of the dates and amounts which she withdrew to make the loan and the relevant accounts (the "**Paragraph 36 Withdrawals**").

(i) Agreement

196. In my analysis of Jaswant's oral evidence I begin first with her evidence about the loan agreement. She was asked first about the illegal purpose of the loan:

"Mr Hood: So, now here you are claiming that Dr Ali was happy to do something illegal, demanding £120,000 cash for the goodwill of his practice. But this is the background to that, is it not? You are quite happy to suggest that, which I suggest is a baseless allegation, as the basis for you claiming you loaned

Dr Rathor £60,000 cash in January 2014. That is the truth, is it not?

Mrs Sidhu: No, Sir. Not at all. Dr, Dr Rathor and Dr Ali had this conversation with the accountant and that is what Dr Rathor had agreed and, obviously, Dr Ali did tell me at some point, when they had these discussions, that, that he had agreed the goodwill for the practice at £125,000, Sir.

Mr Hood: Told you at some point.

Mrs Sidhu: Yes, Sir, when their discussions were taking place in early '13 when Dr Rathor was locuming for us. And Mr Fonseka, Sir, when you will see him, in his evidence, he would tell you.”

197. She was also asked why there had been no mention of the loan in either the Letter of Claim or the Particulars of Claim:

“Leech J: And the point he made to you was that it does not mention the £60,000 loan there and he just, we just want to know why it is not mentioned in this document.

Mrs Sidhu: In the beginning, I, it was the partnership but when she, obviously, you know, she brought a counterclaim in on theft charges and fraud charges, that is when, Sir, I brought in the loan payment as well.

Leech J: I want to be fair to you, Mrs Sidhu, it may be that you just did not think it was relevant at this stage and, if that is the answer, then say so. But, what is, Mr Hood, is, is going to know why does it come later, why, why is it, when, when he raises, his client raises the defence and counterclaim, do you ask, do you raise it then.

Mrs Sidhu: Sir, because of the £60,000, we went into partnership. So, obviously, the partnership and the £60,000 both of them have relevance, Sir.”

198. She was asked next about the 2017 Payments Schedule which she sent to Abdullah on 17 August 2017. In particular, she was asked why the cash withdrawals were described as repayments of a loan when it was her case that it had been paid off:

“Mrs Sidhu: Sir, the conversation was with Dr Rathor when, when I spoke to her in 2016 and I said: “As a partner you’ve not given me any drawings.” She said: “Leave it as loan. We will get this sorted after the mortgage is sorted. I will deal with it [she said] don’t worry.” Because we left as, as a loan, she --

Mr Hood: When did this conversation take place?

Mrs Sidhu: Sir, it was with her some time in 2016 about the time when, you know, the loan had done and I, I remember talking to her and she said, I said to her: "The loan has been paid off." And I said, you know: "You have not paid me anything towards the partnership so far." And she said: "Just leave it as a loan [and that is what I did, Sir] and we will sort that out once the mortgage is sorted."

Mr Hood: That is not true either, is it? You are making this up as you go along now.

Mrs Sidhu: It is very true, Sir."

199. In the same run of questions Jaswant narrowed down the time at which she had the conversation about the repayment of the loan with Dr Rathor to the summer of 2016:

"Mrs Sidhu: No, Sir, in the summer of the time that was, Sir, when we had the discussion and I said: "You have not [you know] you have not paid me anything towards the partnership profits at all." She said: "Just draw that same sum as the loan." Sir. And she said, you know: "I just need my mortgage sorted, that's important." Because she was already trying to acquire a second property."

200. Jaswant was also asked about the payments of £500. She said that she withdrew £500 in cash per month for petty cash and whatever balance was unused she put towards the repayment of the loan. She was then asked about record keeping and gave evidence that she had a book in which she kept paper records of all expenditure and loan repayments:

"Mr Hood: Did the practice keep a petty cash account book?

Mrs Sidhu: No, Sir.

Mr Hood: No. So --

Mrs Sidhu: I, sorry, Sir, I used, it was not in a book, Sir, that is what I said, it was in a paper which I used to write down whatever the expenses were for that month. If I had spent a £100, £5, £10, £200, Sir, or whatever, Sir, for tea, coffees and other things, you know, when she, sometimes she used to send me to go and do the shopping, say: "Go and buy this, go and buy this, go and buy this." So, I would keep those receipts. I would put them in and they were kept in the drawer in my desk.

Mr Hood: So, you kept the receipts.

Mrs Sidhu: Yes, Sir.

Mr Hood: For every bit of petty cash expenditure.

Mrs Sidhu: Yes, Sir.

Mr Hood: And, what, a running record on a piece of paper or, well, what did you keep the running record on?

Mrs Sidhu: Sir, I, I had a different parts, it was a book which I had in my drawer and I had done like a little sheet, Sir, where I would put petty cash, the loan that I was taking out, any, like, we had, I had things like staff holidays logged in there, staff sickness logged in there. Everything was in that book, Sir. It, it was in the drawer, as I said.

Mr Hood: It was not, was it?

Mrs Sidhu: It was, Sir.

Mr Hood: So, if you had all this information in your drawer, you would have been able to actually properly set out a breakdown as to what was petty cash in reality and what was loan, would you not?

Mrs Sidhu: But I cannot show you, Sir, because, I said, Sir, I have not got any documentations to show you, it was in my drawer.”

201. In cross-examination Jaswant also stated that she and Dr Rathor agreed in principle that interest would be payable and that they would agree a rate in the future but never got round to reaching agreement. She said that she never followed it up because she had such a good working relationship with Dr Rathor.
202. Finally, Jaswant accepted that she had not described the loan repayments correctly in the 2017 Payments Schedule which she had sent to AMS. She did not accept that she had behaved dishonestly although she did accept that she was stupid and gullible:

“Mr Hood: No. So, they are misdescriptions. Why, why would you misdescribe things like that to an accountant just because Dr Rathor, you say, asked you to do so? It is dishonest, is it not?

Mrs Sidhu: Well, looking back at it now, yes, Sir. I was stupid and gullible.

Mr Hood: Well, you do not have to look back at it now to appreciate that at the time, do you?

Mrs Sidhu: Sir, I thought I was helping her. That, we were, we were very, very close, Sir, always did everything she wanted.

Mr Hood: But what about you? You were her partner, according to your case.

Mrs Sidhu: Yes, Sir, I was her partner.

Mr Hood: Were you not in the slightest bit concerned about protecting yourself when making these misrepresentations, in case someone pointed the finger at you?

Mrs Sidhu: Sir, I trusted Dr Rathor. We were good friends. We had been, we had been through thick and thin with each other. We talked to each other about everything, Sir. She asked me to do it and I did it. Like I said, Sir, looking back, you know, I was stupid and I was gullible and now ...

Mr Hood: So, did Yasin from AMS who was doing your accounts ask you anything about these particular payments?

Mrs Sidhu: None of the drawings, Sir, he always discussed the drawings with Dr Rathor. We used to have a conference call.

Mr Hood: Why did he not, why did he not include you in the discussions about drawings, given that you told him you were a partner?

Mrs Sidhu: Sir, I do not know but we would sit down, when we had a conference call, I remember, this was on 26 April when we had the conference call, he discussed it with Dr Rathor, it was a three way call. She discussed these points with him.”

203. Jaswant also gave evidence that Dr Rathor had described to her how she was financial trouble and had fallen behind with the payments to Dr Ali. She said this:

“Mrs Sidhu: Because there, Sir, there were debt collectors for the PAYE that had not been paid for the, for her Allenby Clinic and she said she had a few debts towards the accountant as well were not paid, and it was her, she had also owed money to her husband’s family.”

(ii) Payment

204. Jaswant said that she had collected £27,000 in cash by the end of October and that she spoke to Dr Rathor towards the end of November 2013 when Dr Rathor told her that she was behind in the payments to Dr Ali who was very angry and expected a lump sum of £60,000 at the end of January. She also that she had collected the balance by the end of January 2014 when Dr Rathor came to collect it from her home and she handed over the entire £60,000 to Dr Rathor in cash in bundles of £2,500 each in a carrier bag.

(iii) Bank Statements

205. In support of her case that she withdrew £60,000 in cash Jaswant relied upon four individual bank statements: two for NatWest account no. 32055757, one for Halifax account no. 01778777 and one for Santander account no.

08472284. The first two accounts were in the joint names of both Jaswant and Gurdarshin and the third account was in Gurdarshin's sole name. These bank statements provided clear evidence that the Paragraph 36 Withdrawals had been made. But they provided no evidence about what Jaswant or Gurdarshin did with the cash once withdrawn.

206. The bank statements were also incomplete. The two pages for the NatWest account were pages 1 and 2 of 6, the one page for the Halifax account was page 2 of 6 and the one page for the Santander account was page 2 of 6. Furthermore, they provided no real clue as to how Jaswant or her solicitors had been able to identify relevant payments or what other contemporaneous records of the loan might have existed.

207. In cross-examination Jaswant's evidence was that Gurdarshin made a list of payments which were made to Dr Rathor and that he might still retain it. She also gave evidence that she or her husband had only asked for bank statements for the three accounts and that it was he who went to the bank to obtain the statements. I deal with his evidence on this point below.

(iv) *The Paragraph 36 Withdrawals*

208. Jaswant was also cross-examined at length about the Paragraph 36 Withdrawals. She said that her evidence had been compiled from a list prepared by Gurdarshin which she had in front of her. This list had not been disclosed and it was suggested to her that this was an entire fabrication and she might save a lot of time if she was prepared to admit that the loan was just invention. She was then taken through each of the withdrawals:

a) *30/9/13 (£15,000)*: The statement for NatWest account no. 32055757 showed that £15,000 was withdrawn on 30 September 2013. This corresponded to a payment on the Mum's Loan Schedule and also to a sum in the table at paragraph 59 of Sareet's witness statement in the divorce proceedings. It was put to Jaswant that she lent this sum to Sareet and her husband rather than Dr Rathor. It was suggested that she had put forward a false picture because she did not think that Dr Rathor's legal team would discover the Mum's Loan Schedule and the

witness statements in the divorce proceedings. Jaswant denied this and said that Sareet had made a mistake in the divorce proceedings.

- b) *30/9/13 (£3,000)*: The statement for Santander account no. 08472284 in the name of Gurdarshin showed that £3,000 was also withdrawn in cash on 30 September 2013. This did not correspond to a payment on the Mum's Loan Schedule but it was suggested to Jaswant that this withdrawal had been included in a larger sum of £20,000 which Mr Singh was demanding to start work or paid into their NatWest account no. 04804686 seven days later. Jaswant denied both suggestions.
- c) *18/10/13 (£2,000)*: The statement for Santander account no. 08472284 also recorded that £2,000 was withdrawn in cash on 18 October 2013. This payment did not correspond to a payment on the Mum's Loan Schedule either although the schedule referred to a payment from another NatWest account which had a very similar number: account no. 32055758. It was suggested to Jaswant that this was the same sum. But Jaswant did not accept this either.
- d) *18/10/13 (£2,500)*: The statement for Halifax account no. 01778777 in the name of both Jaswant and Gurdarshin showed that £2,500 was also withdrawn on 18 October 2013. This did not correspond to a payment on the Mum's Loan Schedule and it was suggested to Jaswant that this sum formed part of a larger deposit of £3,000 into NatWest joint account no. 04804686. It was also suggested that this brought the total up to £13,477.62 and enabled Gurdarshin and Jaswant to advance £9,000 to Sareet on the same day.
- e) *18/10/13 (£2,000)*: The statement for NatWest account no. 32055757 also showed that a second tranche of £2,000 was withdrawn on 18 October 2013. This did not correspond to a payment on the Mum's Loan Schedule although (as I have said) the Mum's Loan Schedule referred to a payment of £2,000 out of another NatWest account which had a very similar account no. 32055758. It was suggested to Jaswant that the £2,000 withdrawn from NatWest account no. 32055757 was

paid back into NatWest account no. 79245188. It was then suggested that Sareet had intended to refer to this sum in the table at paragraph 59 of her witness statement in the divorce proceedings. Again, Jaswant did not accept either of these suggestions.

- f) *21/10/13 (£2,500)*: The statement for Halifax account no. 01778777 also showed that £2,500 was also withdrawn on 21 October 2013. This did not correspond to a payment on the Mum's Loan Schedule either and it was suggested that £1,500 of this sum was paid back into NatWest account no. 79245188. Jaswant did not accept this and gave evidence that this was a rental account. In re-examination she was taken back to the bank statement and confirmed that it recorded three monthly payments of £1,500 received on the 20th day of each month and that these were rent receipts.
- g) *26/11/13 (£2,500)*: The statement for Halifax account no. 01778777 also showed that £2,500 was withdrawn on 26 November 2013. This did not correspond to a payment on the Mum's Loan Schedule either and it was suggested that this sum formed part of a sum of £5,000 which was paid into NatWest account no. 04804686 on the next day and put to Jaswant that this was just a movement between accounts.
- h) *2/12/13 (£2,500)*: The statement for Halifax account no. 01778777 also showed that £2,500 was withdrawn on 2 December 2013. This did not correspond to a payment on the Mum's Loan Schedule either and it was suggested that this sum formed part of a sum of £4,000 which was deposited into NatWest account no. 04804686 on the same day. Jaswant could not recall the deposit of £4,000.
- i) *12/12/13 (£2,500)*: The statement for Halifax account no. 01778777 also showed that £2,500 was withdrawn on 12 December 2013. This did not correspond to a payment on the Mum's Loan Schedule either and it was suggested that this sum was deposited into NatWest account no. 04804686 on the same day. Jaswant denied this and asserted again that this formed part of the loan to Dr Rathor.

- j) *17/12/13 (£2,500)*: The statement for Halifax account no. 01778777 also showed that £2,500 was withdrawn on 17 December 2013. This did not correspond to a payment on the Mum's Loan Schedule either and it was suggested that this sum formed part of a sum of £4,154.53 which was deposited into NatWest account no. 04804686 on the following day. Jaswant's response was: "No, Sir, not at all."
- k) *19/12/13 (£2,500)*: The statement for Halifax account no. 01778777 also showed that £2,500 was withdrawn two days later on 19 December 2013. This did not correspond to a payment on the Mum's Loan Schedule either. It was suggested that £1,500 of this sum was deposited into NatWest account no. 79245188 on the following day. Again, Jaswant's response was: "Not at all, Sir, not at all."
- l) *31/10/14 (£10,000)*: The statement for NatWest account no. 32055757 showed that two sums of £10,000 each withdrawn on 31 January 2013. The Mum's Loan Schedule also recorded two payments of £10,000 on that day one from NatWest account no. 32055757 and one from NatWest account no. 32055758. The Mum's Loan Schedule was put to her but she denied that the two payments of £10,000 were made to Sareet:

"Mr Hood: OK. Well, the schedule says, well the schedule is mum's loan, we will ask Sareet about it obviously. But, on the same day, you say in 36(l) and (m) of your witness statement that there were two withdrawals of £10,000 which were then given to Dr Rathor as part of the £60,000 loan, but there are two £10,000 entries on the same day, both from NatWest but with one slightly different account number, both say they are cash. And you see the running total in the right hand column, you see where you see, builder 1, next to the first £10,000, it says £17,220, and then it goes up, sorry, I am having difficulty reading it as well, but it goes up to £37,000 from £17,000. There is £220 difference for some reason but it is, it looks like it has increased by £20,000, or very close to £20,000, there may be a typo there even, I do not know, cannot tell. But what I suggest is that each of those £10,000s that you record in (l) and (m) of paragraph 36 did not go into your safe, they did not go to Dr Rathor as part of the loan and that they, in fact, went to Sareet?"

Mrs Sidhu: No, Sir, they did not go to Sareet, Sir.

Mr Hood: And that, although you preface what you say in paragraph 36 of your witness statement with the words, for the sake of clarity, you set out below the money withdrawn, in fact what you were doing is attempting to present a false picture of events to the Court by reference to just four sheets of paper that suit you?

Mrs Sidhu: Not true, Sir.”

Jaswant was also taken to paragraph 31 of her witness statement in the divorce proceedings in which she stated that she would transfer money to Sareet in a number of different ways and identified three bank transfers of £10,000 which she made on 13 June 2013, 14 February 2014 and 17 February 2014. She did not refer to two payments in cash of £10,000 on 31 January 2014.

- m) *(31/10/14) £10,000*: This was the second of the two payments recorded in the statement for NatWest account no. 32055757 as withdrawn on 31 January 2013: see [5/41]. As I say, the Mum’s Loan Schedule only recorded one payment of £10,000 on that day from NatWest account no. 32055757. I have also set out Jaswant’s evidence in relation to both payments above.

Sareet

209. In her first witness statement Sareet gave evidence that at the end of November 2013 Dr Rathor gave her a large sum in cash for Dr Ali. She also gave evidence that she spoke to Jaswant later that day who told her that Dr Rathor had agreed to pay Dr Ali £125,000 for the Northolt Family Practice and that she had asked Jaswant for a loan. In cross-examination her evidence was as follows:

“That day my mother was not actually in the practice, and I interacted with Dr Rathor, because my mum had told me she was going to drop some money off at the practice. I then waited for Dr Rathor, and she dropped in on me shortly after lunch, and when I took the bag off her, there was about £5,000 or so in the bag, which I then handed on the way. Later that day, when I saw my mum, I had asked her what was going on, what the money was for, and then

she explained to me that she was arranging with Dr Rathor £60,000, because she was purchasing the practice from Dr Ali for 135,000.”

210. Sareet said that Dr Rathor gave her a supermarket carrier bag and she looked in and saw the cash in about five bundles and that she then took it to Dr Ali. It was put to her that this was pure fabrication and that she did not have the conversation with Dr Rathor and did not deliver the cash to Dr Ali at all.
211. In her first witness statement Sareet also gave evidence that she was aware that Jaswant would go to the bank and withdraw sums with the knowledge and agreement of Dr Rathor to repay the loan. In cross-examination she dealt with this issue as follows:

“Q. You go on to say: “I knew that Dr Rathor had access to the Natio bank account, and she never complained about the money that Jaswant withdrew from Natio in cash. In fact, Dr Rathor texted Jaswant on at least one occasion to ask if she was at the bank and to take cash out for her.” Presumably you are meaning cash out for Dr Rathor.

A. My mum, when she was going to the bank, she also asked if she could take cash out for her.

Q. For Doc – for Doc ---

A. And also the cash that she was taking out for the repayment.

Q. And then you go on to say: “There was at least one occasion when I was with Dr Rathor, and she telephoned Jaswant and asked her if she was at the bank and asked her to take cash out for her.” Again, to take cash out for Dr Rathor.

A. No, because the purpose of my mum going to the bank was to take out her repayment. So, Dr Rathor would be aware, for example. Sometimes she would go to the bank, as well as pick up some of Dr Rathor’s shopping. It was required that any errands that she was doing for her, she would sometimes do them in one go. So, she would know that she is at the bank. She would know that she was ready to go. I think it would be the last Friday of the month. She would normally go on the day that she was on, and then sometimes when she was at the practice, she would often basically go to the bank plus running errands at that place. So Dr Rathor was aware that she would be there.

Q. You happened to be standing around on occasions when these telephone calls took place, did you?

A. No, Dr Rathor used to come upstairs to my – where my desk is on the third floor. She would come up at lunchtimes, for example, and catch up about things during the day, about any issues that there were. So, she would come upstairs at lunchtime, or I would go downstairs to her consulting room, and sometimes when we discussed things, for example, she took it – a phone call, but there would be occasions where other conversations that she had had with people as well, that there were – that there would be things discussed in front of me.

Q. Do you say these cash withdrawals all took place at a certain time each month?

A. I do not know, but I think they would be required, possibly some days. There could be different days. I do not know.

Q. Once per month?

A. Dependent, because I think when Jas was due to go on holiday she was not there at the end of the month, then they would agree for it to be at the beginning of the following – I am not sure it is actually that.”

212. Sareet also gave evidence that Dr Rathor knew that Jaswant was taking out sums of £500 for petty cash and that she was using this sum for the purpose of the Northolt Family Practice:

“Q. How did you know that these £500 were being taken out?

A. Because from 2014, September, when Dr Rathor was going [inaudible], up until it was used. For example, this money was used for petty cash. We had to clean the practice. She would very much find use for three to five hundred pounds a month to pay for these hours that she did, so that duration, up until the summer of 2015, most of our payment would go towards the cleaning. She would want her wages weekly, because she would have come in every day at the end of the day when the practice was closed to do the cleaning, because we were an independent property.

JUDGE LEECH: So – sorry, so it was up until?

SUREET SIDHU: It was up until we moved, because the property that we were in did not have a cleaner, because to help we had to pay our own cleaners, so we had a lady that we had used for a number of years at Northolt family practice.

MR HOOD: So, it was almost always cleaned up by payments to the cleaner, was it, this £500 for that period of time?

SUREET SIDHU: I think up until about that time, yes.”

213. Finally, in her third witness statement which she signed on 28 January 2020 (and shortly before she gave evidence) Sareet dealt with the preparation of the Mum’s Loan Schedule as follows:

“2. I produced the mum’s loan schedule. I also produced a statement which was used in my divorce case. The case did not go to a final hearing and it settled, where I paid my ex husband £77,500 less court fees for a final settlement. My income and employment had nothing to do with the case.

3. I produced the Mum’s loan schedule. My parents were very upset with my decision to get divorced and I had very little help from them because they saw it as a big shame that their daughter was going to be divorced. I cannot overstate what a big shame that is and they tried to persuade me to stay married to my now ex husband.

4. It is also the case that my mother was diagnosed with possible cancer of the uterus during the period that I was trying to finalise the statement. She was not able to help me, and I took the figures that I believe they gave me in [sic] to pay my builders as best as I could looking at the bank statements.

5. I had a great deal of difficulty actually working out what was paid to the builders because there were three different builders, two which left the job incomplete.”

214. This evidence was not challenged and Sareet was not cross-examined about either the Mum’s Loan Schedule or her witness statement in the divorce proceedings. In particular, she was not asked about the payment of £15,000 on 30 September 2013, either payment of £2,000 on 18 October 2013 or either payment of £10,000 on 31 January 2014.

Gurdarshin

215. Gurdarshin could not give direct evidence that Jaswant had made a loan of £60,000 to Dr Rathor. But he gave evidence that she had told him about the loan and that it had been repaid:

“Mr Hood: What you set out there about loaning money to Dr Rathor, that did not happen, did it? What, what you, what you are doing now is just trying to support your wife’s case.

Mr Gurdashin Sidhu: No, Sir. It happened, because the previous time when Dr Rathor loaned some money it was given back and so we, my wife trusted her and took pity on her. So she loaned her the money, plus she was told that she will be made a partner in the practice.

Mr Hood: Well, that is not true, is it, Mr Sidhu?

Mr Gurdashin Sidhu: No, Sir. That is the truth.”

216. Gurdarshin did not produce the list of withdrawals to which Jaswant had referred in her cross-examination although he would have had time to do so before he was called to give evidence. He also gave the following evidence about the bank statements:

“Mr Hood: But looking at pages 40 to 43, there is just four pages of statements here. You obviously had an awful lot more besides this, did you not, at the time your statement was made? And the time your wife made her statement in September 2018?

Mr Gurdashin Sidhu: Yes, Sir.

Mr Hood: Did anyone ask you to disclose them?

Mr Gurdashin Sidhu: No, Sir. It is just, I was told to get them and I just got them. So some came in the post, majority of them that is how they came.

Mr Hood: You were just told to get them. Are you just referring to these --

Mr Sidhu: Yes.

Mr Hood: Specific four pages? Or others?

Mr Gurdashin Sidhu: Not this specific from that period when the case was started, so 20, 20, no, I cannot remember now which date it was. I cannot remember the date. It is just, if they just said I was told to get whichever was required I got them.

Mr Hood: Right.

Mr Gurdashin Sidhu: For the bank to send it.

Mr Hood: So you were told just to get statements for, for a certain period, or showing a certain thing?

Mr Gurdashin Sidhu: No, it is certain periods because, or any statements that were not, had gone missing from the whole file.

Mr Hood: Right, so any missing statements --

Mr Gurdashin Sidhu: Missing --

Mr Hood: For your accounts.

Mr Gurdashin Sidhu: That I could not account for, so get that.

Mr Hood: Right, and at that time you had quite a number of accounts. Yeah? I think you said --

Mr Gurdashin Sidhu: I did have a lot, yes.

Mr Hood: Yes, OK. So you, you managed to get together, is it fair to say, a pretty good collection of statements by the time you had got further statements from the bank? Is that right?

Mr Gurdashin Sidhu: I can, I got quite a few but I cannot remember which is which.

Mr Hood: Right, and where are those statements now?

Mr Gurdashin Sidhu: Some are still with me, some I do not know.

Mr Hood: Would any have been lost since you got these in?

Mr Gurdashin Sidhu: As I said, my filing is very bad so I do not, I might even throw them away. I cannot remember.

Mr Hood: Did anyone tell you not to throw away bank statements after these proceedings started?

Mr Gurdashin Sidhu: No, Sir.

Mr Hood: Nobody?

Mr Gurdashin Sidhu: No.”

Jasvin

217. In his witness statement Jasvin gave evidence that he recalled speaking to Jaswant a number of times about the loan to Dr Rathor and about getting the money back. He also said that there were many occasions during late 2013 and early 2014 when he talked with her about whether she should lend the money to Dr Rathor. He also gave evidence that Jaswant told him that the arrangement was that she would be repaid £2,400 per month. Although he was pressed in cross-examination, he stood by this evidence.

Mr Sangha

218. In his witness statement Mr Sangha gave evidence that Dr Ali (who had been his doctor) had told him that Dr Rathor had bought his practice for cash. In cross-examination he said that this conversation took place at the end of 2013 or in early 2014. He also gave the following evidence about this conversation:

“Mr Hood: Yeah, did not strike you as particularly a stupid man, in your opinion?”

Mr Sangha: At one of the meetings where, that is where I was chair of the patient party, the patient group, they asked me what I liked about Dr Ali and I said, he did not have to look at the computer, he remembered my medical history.

Mr Hood: All right. The reason I ask is because your evidence about Dr Ali selling the goodwill of the practice would be against the law for him to do so, it will be a criminal offence, do you understand?

Mr Sangha: Yes.

Mr Hood: Yeah, and the idea that he would sell in cash the goodwill of his practice to avoid detection, that is something that, that, that Dr Ali just would not have done, is it?

Mr Sangha: To be honest with --

Mr Hood: It is not the sort of thing --

Mr Sangha: You, I was --

Mr Hood: You would expect?

Mr Sangha: To be honest with you I was surprised and I did mention, I, because there was a bribe, I think the Bribery Act 20, 2010, or the Proceeds of Crime Act or something. I said to him, I am sure it is wrong, but it was up to him, it was not me who was going to make that decision."

219. Mr Sangha also gave evidence that Jaswant had told him that she had lent Dr Rathor £60,000 to buy the Northolt Family Practice and that she had told Dr Rathor to get a written agreement. He also said that Dr Rathor and Jaswant had told him that there was a written partnership agreement in existence in January or February 2013. Finally, he gave evidence that in June 2017 Jaswant approach him asking for a loan of about £90,000 on behalf of Dr Rathor.

Ms Bhandol

220. Ms Bhandol made a witness statement in which she said that Jaswant had told her that Dr Ali had sold his practice for £125,000 and that she had lent £60,000 to the lady GP who was buying it. In cross-examination she was hesitant but stood by this evidence. She also said that she thought that this conversation might have taken place in 2014 or 2015.

Mr Fonseka

221. In his witness statement Mr Fonseca stated that he was present when Dr Rathor agreed to make the payment of £125,000 to Dr Ali. He also stated that he learnt from Jaswant that Dr Rathor had told her that she did not have the money to pay Dr Ali and that Jaswant had lent her £60,000. Finally, he also said that he found out about the transaction in early 2014 and that Dr Rathor and Jaswant both told him independently about the loan of £60,000.
222. In his reply submissions in closing Mr Jory submitted that Mr Fonseca's evidence about being present when the agreement was made was not challenged. I do not accept this. I am satisfied that Mr Hood challenged Mr Fonseca's evidence about the loan:

“Mr Hood: And you say there that you found out that Dr Rathor had borrowed money from Jaswant and that she had borrowed £60,000 and Jaswant wanted to know if you knew anyone who could draw up a loan agreement. So was she saying she was keen to get something in writing?

Mr Fonseca: This £60,000 was in connection with her buying a share out of the partnership from Dr Ali.

Mr Hood: The question --

Mr Fonseca: *And* -- Mr Hood: Was, Mr Fonseca ...

Mr Fonseca: Yeah, sorry.

Mr Hood: From what you say there, it sounds like Jaswant was anxious to get somebody to draw up a written loan agreement in relation to the £60,000.

Mr Fonseca: Yes, they did ask me, yes.

Mr Hood: She actually sought you out and asked you --

Mr Fonseca: Well, in the course --

Mr Hood: If you knew someone.

Mr Fonseca: *She had* been seeking out, I mean, *the, in the*, one of the meetings *that* we had, yeah, she asked me. And I do not think I gave her any names.

Mr Hood: And you did not suggest Mr Pershad, for example, that has legal expertise.

Mr Fonseca: Maybe I did. I cannot honestly recall whether I mentioned *him*.

Mr Hood: OK. Again, no such conversation took place, did it? There was no reference to a £60,000 loan.

Mr Fonseca: Because I was fully aware of the loan.

Mr Hood: Did you know it was in cash?

Mr Fonseka: Yeah, *yes, I mean*, I was told. I mean, I was told it was in cash, yes.

Mr Hood: OK.

Mr Fonseka: I, I cannot vouch for what actually happened, because I was not there.”

223. In his witness statement dated 21 September 2018 Mr Fonseka gave the following evidence about the preparation of the 2015 Payments Schedule and his meeting with Dr Rathor:

“116. I have explained my methodology for preparing the accounts above. As can be seen the bank reconciliation document identified above, I highlighted in yellow the bank transactions which required further explanation. As can be seen from these pages, there were regular monthly withdrawals of cash shown on the bank statements, frequently in the sum of £500 and £2,400.

117. I then met Dr Rathor in order to go through the draft accounts and the documents. As I have explained above, this is my practice when completing company accounts. I specifically drew her attention to the amounts that were being drawn out in cash which I had provisionally allocated to her (under the heading Dr Rathor). She told me that the £2,400 and £500 per month that were being drawn out in cash were repayments of the loan that was due to Jaswant Sidhu and sometimes the £500 was repayment of petty cash.

118. I remember that she asked me whether or not there was a way that she could save money on the loan. As the loan was not made to the company but not made to her personally, I said that there was nothing could be done to mitigate the taxes that she had to pay and that these sums needed to be treated as dividends paid to her. Then she could whatever she wanted with the money.”

224. In cross-examination Mr Fonseka accepted that he would have produced a second version of the 2015 Payments Schedule after the meeting which he described as “almost an exact, this is an exact copy if this”. He confirmed that the meeting with Dr Rathor took place in March 2016 and then gave the following evidence about it (and I should say that I have corrected the figure “£502,400” (below) in the transcript to £2,400 on the basis that it is a typographical error):

“Mr Hood: In your single, 30 minute meeting with Dr Rathor-

Mr Fonseka: Yeah.

Mr Hood: At the year end, you did not go through either of these two documents with Dr Rathor, did you? There was not time, was there, to do that?

Mr Fonseka: I do not know exactly how much time it took, but *it was a*, it, it will not take long to go through this to ask her. Listen, I can say all *the*, what was, why this cash transfer every month of £502,400? And she gave me an explanation. And that relates to every single month. I did not have to ask the question 12 times. There were one or two, and then those were transfers to her, to own accounts. *I mean*, this, done, this actually could be done in ten minutes.

Mr Hood: This is the sort of information that you would have gone through with Jaswant, is it not?

Mr Fonseka: *What? I am* sorry?

Mr Hood: Well, you were dealing with Jaswant in relation to the accounts, save --

Mr Fonseka: Yeah.

Mr Hood: For the one meeting.

Mr Fonseka: She gave, she is the one who gave me all the *prime* documents for me to prepare these.

His Honour Judge Leech: She is the one who gave you ...

Mr Fonseka: The *prime* documents, the bank statements, everything. She gave me *all the details*.

Mr Hood: And you raised queries with her, did you not?

Mr Fonseka: If there was something that I needed *to refer to*, I asked *and answered her*. Yes, I did. I cannot recall whether I did it on this particular occasion. I --

Mr Hood: Sit --

Mr Fonseka: I must have, yeah, *if you want* ...

Mr Hood: Sitting here today ...

Mr Fonseka: Yes.

Mr Hood: Can you say with any confidence that you actually went through this document at page 426 and this document at page 427 to 432 with Dr Rathor?

Mr Fonseka: Yeah, yes.

Mr Hood: You did not, did you?

Mr Fonseka: I did.

Mr Hood: It is not true.

Mr Fonseca: I am sorry, but I, I answered once, and that is all I am going to answer.”

Dr Rathor

(i) Agreement

225. In paragraph 105 of her first witness statement Dr Rathor denied that she had ever borrowed money from Jaswant and described this as an “astonishing claim” and “baseless”. Her oral evidence was the same. At an early stage of her cross-examination she said this:

Q. Do you admit, Doctor, that you agreed to make Jaswant a partner in the future when she agreed to make you the loan of £60,000? A. I deny.”

226. Towards the end of her cross-examination it was suggested to her that Jaswant was the only person from whom she could borrow £60,000 to purchase the goodwill of the Northolt Family Practice:

Q. You see, Doctor, what I am going to put to you ---Mmm. Q. --- is that if you had wanted to borrow £60,000 in September 2013, you would not have found it at all easy, because you would not be able to get a loan from any bank given your financial situation, including the charging orders? A. Sir, it is - I deny it. First of all, there was no need for me to take £60,000 loan from a bank. And I never, I never took any money as a loan from Jaswant.....

MR JORY: Doctor, I am just going to suggest to you that, in fact, you did want to borrow £60,000, because you had agreed with Dr Ali you were going to give him £125,000? A. Absolutely deny it. Q. And that the only person who you could turn to, to borrow that sort of money, was Jaswant, because you said to her if she lent it to you, you would make her a partner? A. No sir, not true.”

(ii) The Aqua Account

227. Jaswant relied on an entry in the bank statement for Aqua’s business current account at Barclays for 30 September 2014. This entry recorded payment of £2,500 with the following narrative: “On-line Banking bill payment to Jazz

Ref:- LOAN”. The entry itself was not put to Dr Rathor but she accepted in cross-examination that she did have internet access to Aqua’s account and she made no claim against Jaswant for this sum. She said this:

“MR JORY: Doctor, you did have internet access to various accounts, including your personal account, did you not, and you had internet access - you had had internet access to the Aqua account.

A. That was - I said that earlier, Aqua account, yes.

Q. You had internet access to the Aqua account?

A. Well I did not have - yes.

Q. You did have it.

A. Well, Sureet - yeah.

Q. But Sureet had access because you had given her ---

A. Yeah, for Aqua.

Q. --- the details of how to get into the Aqua internet.

A. Yeah, that was for Aqua.

Q. So you accept that? So I do not have to go to the documents that show that.

A. No, Aqua - I remember Aqua - access to Aqua.

JUDGE LEECH: Just so I have got a proper note, you accept that you had internet access to the Aqua account?

A. Aqua account, yeah, which was closed, obviously, later on.”

(iii) Dr Lewis

228. Jaswant placed significant reliance upon Dr Rathor’s text in response to Dr Lewis’s proposal to sell his practice on 19 April 2016: “He thinks we are silly. Give him one off payment, his locum and rent reimbursement”. In cross-examination it was suggested to her that the “one off payment” involved the same arrangement as she had agreed with Dr Ali. Dr Rathor rejected this suggestion:

“If you look, “He thinks we’re silly, give him one-off payment, his locum and rent reimbursement.”

A. Mmm.

Q. So the one-off payment has got nothing to do with rent (inaudible).

A. No, it must be something.

Q. Yes, it must be.

A. No, I - it is to do with the rent and he must have had some discussion with me which I cannot remember.

Q. Why would it be a one-off payment for rent, doctor?

A. I do not understand.

Q. Rent is something that accrues monthly.

A. I - I really do not know, sir.

Q. It says, doctor, that this is the same as the arrangement with Dr Ali, you are going to give him a one-off payment for his patient list.

A. Absolutely not, because, sir, he - he done some work and he was renting his property to different people, so for the (inaudible) rooms or something, I cannot remember, but - but there was nothing like what Mr Jory is suggesting....”

“...Q. You see, what he was proposing to you that you thought was so silly, was that for however long you went on in those premises, in addition to the actual rent, you would pay a monthly sum of £2,000 which you would call rent but would, in fact, be a payment for his patients.

A. No, sir, not ---

Q. And that is why you respond, “Give him one-off payment.” In other words, you do not want a continuing obligation to pay instalments at £2,000, you want a one-off payment, like you had with Dr Ali.

A. No, sir, that is absolutely not true.

Q. And, as we know, this did not happen because the deal did not proceed. Correct?

A. It was not the deal that did not proceed, it just did not work out, there had been lots of ---

Q. Did not work.

A. Yes.

Q. So the negotiations came to nothing. That would be fair?

A. There were no negotiations, but (inaudible) discuss, it did not work out.”

(iv) *The 2015 Payments Schedule*

229. In paragraph 33 of her first witness statement Dr Rathor dealt with the meeting with Mr Fonseka in March 2016. She said that she had become dissatisfied with his advice because of the criminal charges against him and continued as follows:

“The final decision to switch accountants came shortly after I had a conversation with Mr Fonseka in spring 2016 (when he was starting work to prepare the next accounts due in June) when he told me that I was taking approximately £190,000 in drawings. I said to him that this could not be right because that figure was far higher than I was actually taking out of the business. But while I was having the meeting, Jaswant came into my room at the surgery as she had just realised Mr Fonseka had arrived.

She asked a series of questions of Mr Fonseca on other subjects, and Mr Fonseca also became silent and evasive when I asked about the drawings figure he had mentioned. But I now believe he knew or at least suspected more than he said. At the time I felt unhappy I was not getting answers and this encouraged me to switch accountants.”

230. In cross-examination Dr Rathor suggested that Jaswant and Mr Fonseca had colluded to defraud her (a point to which I will return). When she was taken to the 2015 Payments Schedule, Dr Rathor denied that Mr Fonseca had ever showed it to her at all. She was then asked about her account of the meeting with Mr Fonseca her evidence was as follows:

“Q. Well, Dr Rathor, what did you do after that, in order to establish to your own satisfaction why he was saying what the figure of £190,000 was being allocated to your drawings, when you did not believe that to be true. What steps did you take?

A. So first of all, this was I think, he came in around lunch time and I was with a patient, and then, as it says in the statement, Jaswant came and she – kind of got distracted – and the meeting finished. As I said, I always trusted Jaswant, OK? So I thought and I mean – if only I had known at the time – you know – to investigate it further. So basically, I did not pay attention to – as I say – I was supposed to be getting more on my practice, you know. So I thought maybe there are some other payment or something, which comes under the drawings, you know. I honestly do not know why I did not investigate it further.

Q. Well, Dr Rathor, is it not the fact that you did not investigate it further at all, when there was substantial payments that you could not account for, because you said he told you that you had taken £190,000 ---

A. That is correct.....”

“.....Q. And you did not think, I need to get to the bottom of this before I sign off the accounts? There could be an innocent explanation, but I need to know what it is?

A. Well, you are correct. I should have done that. OK? Again, I admit I was not clever or smart about this claim here. But one thing I am positive was, I did check my accounts.

Q. But you did not ask your accountants to say, oh I am not going to sign off the accounts. I am going to change the accountants and get another firm of accounts to look at this, because this is obviously wrong?

A. As I said, I should have done on the hindsight – yes, and I have learned my lesson. I should have done it, but I did not do it.

Q. Is it just a coincidence that the figure of £190,000 that you say took you so much by surprise in this meeting in spring 2016 – that £190,000 equates very closely with the figure that you took in drawings the following year, of £195,000? Did that figure of £195,000, when AMS produced it, cause you to say, “That cannot possibly be right”?

A. OK. So as – before we head off to the break – thank you for that – I cannot remember everything in that schedule, so I can see now some of the things when they might have (inaudible) but I cannot remember saying that.”

(v) Dr Rathor’s email to Yasin dated 2 April 2017

231. Dr Rathor disclosed the email to Yasin dated 2 April 2017 in response to an application for specific disclosure and in a witness statement dated 25 September 2019 she explained how it had come to light in the following way:

“I have undertaken further searches of my NHS email and personal email and identified one email to my accountant in April 2017 (six months prior to the dismissal of the Claimant and Sareet Sidhu) in which I expressed my concerns about the amount being paid to the Claimant and the lack of profits that I was receiving from the practice. I have disclosed this document and it is have been [sic] sent to CLP.”

232. After disclosure, the following sentence in the email was the subject matter of a Request For Further Information settled by Mr Jory and dated 8 October 2019: “Only thing she done for me help with ?35k to pay Ali which as far as I know she has taken back.” By letter dated 21 November 2019 Dr Rathor answered the request and for ease of reference I set out the relevant requests below together with the responses given by Dr Rathor in bold type:

“5. Whether the word “she” refers to the Claimant, and, if not, who it refers to.

5. Yes Claimant

6. Whether “Ali” refers to Dr Ali and, if not, who Dr Rathor was referring to as “Ali”.

6. Yes Dr Ali

7. On what date or dates Dr Rathor contends that “*she done for me help with ?35k*”, and all facts and matters which Dr Rathor will rely on at trial as to the basis and/or terms of agreement in relation to such “help”

7. Do not remember the day or date, all I remember is she mentioned that the practice had to pay Dr Ali his locum fee, salary and rent, she told me there was not enough money in the practice, this was a verbal conversation and have not seen any transactions.”

233. On 28 February 2020 and shortly before she gave evidence, Dr Rathor made her tenth witness statement in which she gave a more comprehensive explanation for the statement in her email about the help which Jaswant had given her. She stated that the email had been written in a hurry and a state of considerable anxiety and confusion. She referred to a complaint by Dr Ali and his solicitors about unpaid rent and unpaid locum fees. In paragraphs 13 and 14 she gave the following explanation for the statement in her email:

“13. My main concern was to deal with the complaint since according to this communication from NHS England, the Practice had been paid the rent by NHS England and that this rent we had not paid to Dr Ali. The amount which NHS England used to reimburse the Practice was £3,500 per month but the amount which I had agreed to pay to Dr Ali by way of rent for his Premises was £5,000 per month. I was also concerned about the demand letter which Jaswant had received from Dr Ali’s Solicitors.

14. I asked Jaswant how my Practice would raise the money within a short period and deal with this complaint and meet the demand for payment. She told me not to worry and that if necessary she could take care of it with her own money and if she did so, she would take the money back by paying herself back from the Practice’s bank account. I was happy with this since it would deal with the matter. I was very busy at the time with a very heavy workload and had handed the running of the finances to Jaswant and Sareet and although I now wish I had been more engaged with financial matters, given the trust I had in Jaswant I just assumed the short term cash flow problem had been overcome and I did not check what had happened. I do not know whether Jaswant had actually paid Dr Ali, but just assumed he had been paid one way or the other. The reason I put before my reference to the amount of 35k a question mark (? 35K) was because I did not know what had happened or how much (if anything) Jaswant had paid herself and then taken back. Jaswant never said to me after

that that she had paid something herself and was owed money, so I assumed she was not at that point owed anything.”

234. It was suggested to Dr Rathor that she put the question mark in front of the figure “35” because she was uncertain about the precise figure not because she was uncertain whether Jaswant had provided the promised help at all. She was then taken to the AMS report in which AMS had stated that she “has never advised us that she had taken a loan from Jaswant Sidhu.” Her response was as follows:

“Q. Well, now, let us look back at what we saw in this email, which says, “Only thing she done for me, help with? 35,000 to pay Ali, which, as far as I know, she has taken back.”

A. Mmm,

Q. That is being told, during the course of their engagement, that you had had a loan from Jaswant Sidhu, and it was a loan because the money was paid back, is it not?...

WITNESS: OK. Well, what my accountant said is true, and here, I know Mr Jory is relating this to that. But when I put a question mark, I know he is saying it is (inaudible) amount, and that is why when you come to my witness statement number 10 that I was not able to show it. It was a verbal thing where Jaswant told me that she has given this money for the rent and his wages. It is a locum thing, so I want even actually sure. And also, that time, Mr Fonseka, he was, obviously, my accountant and he has not given any paperwork to AMS, so I was not even sure if this thing happened or not, and that is the reason what I believe, is I put a question mark because I was not even sure about this thing.

MR JORY: Well, Dr Rathor, that makes absolutely no sense to the reader, because the reader is Yasin. You do not explain to Yasin that you are not sure that this happened at all, you just put the question mark in front of the amount.

A. Yes. So you can see, if you look at my email, it looks very panicky, OK, and I have missed a sentence there. It is not just a typing error, it is just my mind, you know? So I was very anxious, which I tell him there. It is true, I was worried about everything, which is true, and as I said, I mean, if I did not make myself clear, that does not mean that this means something else.

Q. Doctor, when did you tell Yasin that, that what you meant by this was not that she had lent you any money but

that, in fact, she had not lent you money because you had found out that she was saying she would pay for rent and locum but you had found out that was not true? Is that what you are trying to say you said to Yasin after you sent this email?

A. Yes. I mean, I did not write in this email but I –

Q. You have not written it anywhere.

A. But I wanted to just mention it to him.

Q. So your evidence now is, you had a conversation with Yasin, after this email, in which you corrected that statement and said, actually, she had not made a loan to you at all. Is that your evidence?

A. That is true. I have never taken, and that is the main reason I put a question mark is, because I was not even sure.

Q. So you had a conversation with Yasin after this email – this is your evidence – where you corrected what was expressed in this email and said, “Actually, you have not had a loan at all.” Is that what you said?

A. Yes, that is true.

Q. You had that conversation with him?

A. Yes.

Q. When was that conversation, Doctor?

A. I cannot remember.

235. Mr Jory then put to Dr Rathor the following explanation for the figure of £35,000 and for the question mark (?) before it:

“Q. No, Doctor. “Only thing she done for me, help with? 35,000.” The 35,000 that you are talking about here is that, from the original 60,000 that you had loaned, part that you had borrowed, part of it had been paid in the previous year, which were the Fonseka accounts, and the payments had started in October, the regular payments. So that was into the year, so you would have paid about £2,900 a month from October to July in the first year. And then in the second year that they were concerned with, you would have paid from August through to July, so it would have been a long period, and hence, of the £60,000 there was just over half that remained to be paid in the second year because just under half had been paid in the first year. That is what you are referring, is it not?

A. No, I disagree with that. I am sorry, that is not true.

Q. And anybody reading this would see that there is no doubt in your mind when you say, “The only thing she done for me” – in any questioning that she did that was – “help you with” a sum of money to pay Ali, which, as far

as you know, she has taken back. And the only question mark is what that sum of money is.

A. No, not at all.”

236. Even though Dr Rathor was not prepared to accept that this was what she had intended to say, Mr Jory suggested to her that this is how she would have been understood by Yasin:

“Q. Doctor, it makes it look as though you are telling Yasin that Jaswant lent you money which she has taken back from Natio, and that the sum of money that he is going to find she lent you for the purposes of the accounts he is doing is round about 35,000. And he needs to know that because he is about to be preparing the accounts.

A. No. Well, that is true, I just wanted to check that, was there any money if something like this happened or not. I have never taken any money from her, I have not taken any money from her.

Q. And now, you are giving evidence to the court. You had a subsequent conversation with Yasin where you told him that, actually, you did not mean that, you meant that, in fact, she had not lent you any money.

A. That is true.

Q. You had a subsequent conversation, and yet, neither you nor Yasin refer to this email, or to the supposed conversation that you have told about for the first time this afternoon, either in your witness statements – there is no mention of this email until the one served on Friday night – or in the AMS report, to which Yasin was one of the authors. It is right, is it not, Doctor, that you and Yasin knew full well what had been said in the email of 2 April and you two decided you were just going to wipe it from history?

A. That is completely not true.

Q. Because you both knew that, if the court were to see this, “The only she had done, help me? 35,000 to pay Ali, which, as far as I know, she has taken back” is absolutely spot on Jaswant’s cases that she lent you money to pay Dr Ali, namely, £60,000, and she took it back from Natio because you had authorised her to take it back from Natio.

A. That is a completely untrue explanation.”

237. At the end of her cross-examination Dr Rathor was asked about the email again and, in particular, about her evidence that the rent which she paid to Dr Ali was £5,000. It was put to her that Dr Ali’s locum fee was £5,000 per month but that the rent was £3,425 per month. Dr Rathor did not accept this

and she was then taken to the following documents which contained the following information:

- i) An email dated 26 September 2018 from Ms Donovan to Mr Stephen Schneider, Dr Rathor's former solicitor, which attached a schedule showing that the monthly rent during 2015 was £3,425.
- ii) Mr Nelson's email dated 1 July 2015 to Dr Rathor in which he stated that the monthly rent was "approx. £3.4k" and her reply dated 2 July 2015 in which she did not take issue with this statement.
- iii) Mr Fonseka's letter dated 26 June 2015 to Dr Ali's solicitors in which he stated that the rent paid by Dr Rathor was £3,425 and his email to Dr Rathor dated 2 July 2015 enclosing the letter.

238. When she was taken to these documents Dr Rathor continued to maintain that the rent which she paid to Dr Ali was £5,000 per month. It was then put to her that she had recently fabricated the claim that the rent was £5,000 to provide an explanation for her email to Yasin:

“Q. So you saw it, you said nothing and for the very first time, on the night of the last business day before you start your cross-examination, after having put in nine witness statements and never mentioned it, you come up with a story that the rent was actually £5000 a month, doctor.

A. That is the truth.

Q. And the reason you did that, doctor, is because you are trying to justify your false case that “?35,000” is not a query about the precise figure, it is a query about whether Jaswant lent any money at all.

A. Not true, sir.

Q. And the fact is, doctor, that this contemporaneous evidence, including the letter from Senstone, which we only got from Annexys, shows when compared with your evidence, that your evidence is false, does it not?

A. Not true, sir.

Q. Your evidence does not correspond with the contemporaneous evidence, doctor, does it?

A. Not true, sir.

Q. And you were trying to mislead the court with false evidence, as recently as last Friday night.

A. Not true, sir.

Q. And this, Dr Rathor, is just one example of many, where you have demonstrated wilful dishonesty ---
A. Not true, sir.
Q. --- to this court.
A. Not true, sir.
Q. And you have been caught out by access by our team to contemporaneous evidence that you sought to conceal.
A. I absolutely deny, sir.
Q. And your false narrative doctor, against my clients, designed to ruin them and their family was a dishonest act on your part, was it not?
A. Not true, sir.
Q. I have no further questions, my Lord.”

(vi) The 2016 Drawings Schedule

239. Dr Rathor did not deal with Yasin’s emails attaching the draft 2016 Accounts and the 2016 Drawings Schedule in any of her witness statements. In cross-examination she accepted that she was told about the payments of £2,400 and £500 in April 2017:

“Q. Yes. “And I trust you’re well” and he attaches an email of the following, and the 4th entry is the breakdown of drawings and he then he makes it absolutely clear, that there are the outgoings not to be treated as business expenses. In other words, they are not matters which should be included in the Natio accounts to reduce its profits. Do you understand that?

A. Yes. I do understand that.

Q. And then, we see from the upper email - apologies, is his included the attachment this time. Now, you plainly received this, not once but twice. You got two emails, because it went to two email addresses. Can you explain, why nowhere in your evidence have you mentioned that email being sent to you, attaching the drawing schedule?

A. I will be very honest. I cannot even remember seeing this thing. I know it had been sent to me and there is - it says that but I - sent to Jaswant as well, so she knew about it

Q. I am not interested in Jaswant, Dr Rathor. I am interested in what you knew. And you plainly knew this, didn’t you?

A. It does say that there are attachments there. I cannot - I honestly cannot remember.

Q. Well ---

A. So I do know about Jaswant mentioning to me about this, yes.

Q. In April 2017?

- A. Yes.
Q. You do remember that?
A. Well, he - he said to me that the costs were very high.
Q. Yes, well that is fine.
A. And that is the reason why I paid - I remember, a tax for £60,000
Q. No- wait. Let us break that down, Dr Rathor. He told you about the monthly payments of 2,900 in April 2017.
A. Right.
Q. Is that what you are saying?
A. Yes.
Q. Thank you. Why did you not say that anywhere in any of your witness statements?
A. I am only going by what I remember at that time.”

240. This evidence was consistent with Jaswant’s evidence that a conference call discussion with Yasin had taken place on 26 April 2017 (which was also the date on which the 2016 Accounts were signed). When she was asked why she took no action against Jaswant between April 2017 and September 2017, Dr Rathor gave the following answer (and I have corrected the transcript by substituting “A” for “Q” which was obviously another typographical error):

“A. I was extremely scared, and I do know Jaswant’s history. She had me, she had had me. No please, do not shake your head. I was very scared, you can see. Now, and I am sure, lots of GPs will take this lesson from me. I trusted her, OK and I was scared of her because I’m running a busy practice and I knew Jaswant was capable and this is the exact reason it took me so long and - and I can see the consequences because I challenge her I’m sitting in this witness box I should be seeing my patients, especially because of all the Coronavirus going on. So, I am sorry Mr Jory, but that is the thing. I was scared of Jaswant and I have read my statement the previous ones and there is twice I have mentioned this word, scared. It was not just only once, and I was scared of Jaswant.”

241. A little later Dr Rathor retreated from her evidence that she had seen the 2016 Drawings Schedule. She was taken to her email dated 14 June 2017 to Rishi forwarding the schedule on. It was put to her that she must have known what information the schedule contained and in answer she said:

“A. As I said to you earlier, I may not even have looked at it in detail, and just passed it on.

Q. Is that really your evidence to the court, that you did not know what your income was for the purposes of applying for a mortgage, and you just did not even have the slightest interest in seeing it – you just flipped it on to the mortgage broker?

A. No, I have looked at – all I remember is I had the – a mortgage account and I knew how much was my income and my expenses.

Q. Well, the unaudited accounts show the same figure. We have seen that. So therefore you knew that £195,000 was being treated as your drawings. So you agree that, do you?

A. Yes, I do agree that.”

(vii) Dr Rathor's text to Jaswant dated 12 May 2017

242. In a text dated 12 May 2017 Dr Rathor asked Jaswant: “You know we saved 80. I need 130 for deposit and 40 for stamp duty. I am trying some from someone else if I can.” In cross-examination it was put to Jaswant that Dr Rathor was not asking her to make a loan of £90,000 but was asking her if she knew anyone who might be able to assist. In particular, it was put to her that she had told Dr Rathor that her daughter in law, Nicola, worked for a mortgage broker.

243. In paragraph 51 of her third witness statement Dr Rathor gave evidence that in this text she was not asking Jaswant for a loan. In cross-examination she explained this text in the following way:

Q. Do you remember, doctor, your evidence to the court was that, from April 2017, you were deeply suspicious of Jaswant?

A. Mmm.

Q. Why were you sending her this email asking her to help you raise money, doctor?

A. Well, there is nothing wrong in sending such kind of emails.

Q. Why would you send it to someone you so mistrusted?

A. Yeah, because I do not want to jump to a conclusion and that was - that was my way of dealing with it.

Q. Well, you are actually asking her to provide some money for you, are you not?

A. Well, I did not - it does not really say I asked her to give me the money.

Q. Well, that is how it reads, doctor. “When you come back, then see.”

- A. Yeah.
- Q. So that is her, when she comes back, “Then see, I will know more by then.”
- A. Yeah, because I just wanted to know how much money is in the business account.
- Q. No, doctor. “I can always pay back once I’m done with Barclays.” That has got nothing to do with (inaudible) money. That’s got nothing to do with the business account, this is a separate loan you are looking for from Jaswant.
- A. No, I was not looking a loan from Jaswant.
- Q. Yes, you were, doctor.
- A. Not so.
- Q. Well, who were you looking for a loan from then?
- A. Well, I could do from my own - my own earnings.
- Q. “You’ve always helped me in every way and I respect that,” doctor. Do you see that?
- A. Yes.
- Q. “You have always helped me,” that is because you were wanting Jaswant to help you again, were you not, with the lending of this money?
- A. No, sir.
- Q. And that is why she responded, “Doc, nothing is impossible, I will always do what you want, no problem.” Do you see that?
- A. Mmm.
- Q. Because she had, in the past, always done what you wanted, had she not?
- A. I disagree with that.
- Q. And she had, in fact, lent you large sums of money before which, by this stage, you had repaid, had you not?
- A. I absolutely disagree.
- Q. And that is why you felt able to ask Jaswant to lend you money again, was it not?
- A. No, sir.”

(viii) The 2017 Payments Schedule

244. When she was cross-examined about the 2017 Payments Schedule Dr Rathor accepted that Jaswant informed AMS that the disputed payments of £2,400 and £500 related to a loan. But she did not accept that Jaswant discussed the information in the schedule with her:

“Q. Do you see that? She has specifically drawn the accountant’s attention to the fact that she is referring to the loan 2,400 and the 500 is petty cash, and the reason she does that, doctor, is because of the original instructions you had given her which was to draw it out as 2,400 and then 500 in petty cash in relation to repaying herself for the loan

of money she had made to you. That was your original instruction, was it not?

A. Absolutely untrue.

Q. And so she says to them, here, "loan." Now, the accountants are preparing accounts. Do you accept, doctor, that, if somebody had told them that some large amounts of money related to a loan, if they did not know what that loan was, they would seek clarification before they could sign off the accounts? Do you accept that?

A. This is something I cannot answer but all I know is that, all information provided by Jaswant, they believed it.

Q. Well, then, they believed it was a loan, did they?

A. They did.

Q. So they accepted it was a loan?

A. Yes, they did.

Q. And so they accepted, did they, because this is very important, that Jaswant was telling them that she had made a loan to you?

A. I do not know about that.

Q. Well, what other loan could it be?

A. I do not know.

Q. Well, doctor, since it is going on your drawings, yes? Because this is the point of this schedule, is to see what you should be paying for and what Natio should be paying for. Do you accept that, by putting "loan" on here, she is telling them that those are payments in relation to a loan that she made to you?

A. OK. So, Mr Jory, I would have expected Jaswant, as the business manager, to come and discuss with me before she filed this information, and she should have clarified with me what loan it was. She did not.

Q. Well, I am going to suggest to you, doctor, she did.

A. She did not, Sir. She did not."

245. It was also put to Dr Rathor that if AMS had been in any doubt about the purpose of the entries in the 2017 Payments Schedule, they would have asked for an explanation before completing the 2017 Accounts either from her or from Jaswant. Finally, it was suggested to Dr Rathor that AMS did not ask for an explanation but relied on the 2017 Payments Schedule in completing the 2017 Accounts. Dr Rathor did not accept any of these propositions:

"Q. And, in actual fact, the accounts were the spreadsheet was acted on, because that is the information that was contained and used for the purpose of preparing the accounts to the end of July '17, which we have looked at, and your drawing schedule in your drawings in your accounts, that went to 291, and it was acted on, doctor,

because you supplied those documents, that information, to the mortgage company so that the bank would rely on it, did you not?

A. Again, that is something you need to ask when Mr Sidat comes but, of course, if the drawings were not specified then it will go towards mine, but that doesn't happen wrongly.

Q. But it was acted upon, was it not, because those figures were then sent by you to your mortgage broker specifically so that the bank would act upon them in deciding whether to give you a mortgage?

A. Well, again, as I have said, I am not an accountant. You need to ask the accountants.

Q. Well, that is not about an accountant. That is about ---

A. Well, it is about an accountant because that is why you have an accountant, Sir.

Q. Doctor, they were acted upon because you sent them to the mortgage broker, did you not?

A. Yeah, well, they are a qualified accountant and I am sure they know what they are doing.

Q. Well, I am going to suggest to you that Yasin knew exactly what he was doing, doctor, and so did you.

A. Well, that is something you are – that is your impression.”

(ix) The 2017 Accounts

246. On 22 August 2017 Dr Rathor sent the draft 2017 Sole Trader Accounts for the financial year ended 31 July 2017 to Rishi. Note 17 stated that her total monthly drawings for the year were £291,815. In cross-examination she accepted that her drawings included a sum of £80,000 paid as a dividend to Ranwant. It was also put to her that she had inflated the drawings in the draft which she sent to Rishi to obtain a mortgage (£291,815) and reduced the drawings shown in the draft upon which her income tax was based and which she had exhibited to her original Defence, Counterclaim and Additional Claim (£63,097).

247. It was also put to Dr Rathor that AMS must have produced a schedule of drawings for the 2017 Accounts in the same way as they had done for the 2016 Accounts:

“Q Well, let me make it very easy for you. You remember the drawings schedule that AMS produced to you in April

that you have seen now and you claim you did not see before.

A Yes.

Q Right. Have you seen it now?

A Mmm, mmm.

Q And it sets out month by month ---

A Mmm, mmm.

Q --- the transactions from the bank account which they are able to identify as potentially not being for business expenses, and if they are not for business expenses, then they are treated as your drawings.

A Mmm, mmm.

Q And so they produce a list and they seek your instructions as to whether they are legitimate business expenses, or whether they are your drawings. And I am suggesting to you they did exactly the same thing to prepare the August accounts, and that is how they were able to come up with those monthly figures to the nearest pound showing how much your drawings had been month by month over the course of the year. That was a historic record from the bank accounts. And they sent those to you in order for you to approve them because you were hurrying to get them to your mortgage company; so, you approved them and then you sent them to your mortgage company.

A Mmm, mmm.

Q And I am asking you why you only paid tax on income of 63,000. You must have wondered why that was the case, given you knew what the figure had been back in August.

A As I said again, this needs to be asked by my accountants. I – because obviously I would pay the tax on something which I have taken the money out.

Q Well, doctor, you are not able to help us.

A Well, I did say I – I honestly do not know. I ---

Q So, why for the summary judgment application were you putting forward accounts which showed you had only had drawings of 63,000 and not drawing to the court's attention the fact that you had actually shown your mortgage broker accounts for the same period which showed that you had had 291,000, or whatever it was, 291,800, which included the amounts that Jaswant was claiming were repayments for the loan, or subsequently on account of the partnership.

A So, again, I cannot answer a question that I did not know the answer.”

(x) Rent arrears

248. Dr Rathor was also taken to Mr Burton's email dated 7 January 2016 setting out showing that £48,757.28 in rent was outstanding and unpaid. Initially, she tried to suggest that she had not received the money from NHS England. She was then taken to the spreadsheet dated 4 October 2018 showing that she had in fact received £96,560.77. Her evidence about it was as follows:

“Q. But, you provided this document, Doctor, to show how the surgery had debts didn't you, that was your reason for showing it?

A. Yes.

Q. So, you were relying on it to show us that the surgery had debts?

A. Yes.

Q. And you weren't saying oh it didn't have that debt, because there is a dispute about it, you were saying it did have that debt?

A. Well, the surgery still has debts to Community Health Partnerships, yes.”

(xi) Dr Rathor's cash withdrawals

249. Finally, Mr Jory put to Dr Rathor a schedule of the cash withdrawals which she (as opposed to Jaswant) had made from the Aqua account, the bank account for the Allenby Clinic and her personal bank accounts for the period from 1 September 2013 to 22 September 2014. This schedule was also annexed to his closing submissions as Schedule 12. It showed that Dr Rathor had withdrawn £49,830 in cash during that period. She was taken to a number of large withdrawals from the Allenby and Aqua accounts including the following:

- i) A withdrawal of £2,000 from the Aqua account on 1 January 2014;
- ii) A withdrawal of £2,000 from the Aqua account on 31 January 2014;
- iii) A withdrawal of £10,000 from the Allenby account on 23 May 2014;
- iv) A withdrawal of £5,000 from the Allenby account on 4 June 2014; and
- v) A withdrawal of £5,600 from the Aqua account on 28 July 2014.

250. When she was asked to explain why she had made each of these cash withdrawals, Dr Rathor said that she could not remember. It was also suggested to her that she fully understood the importance of these withdrawals:

MR JORY: Then, Doctor, if we go to the last page ---

A. Mmm.

Q. --- and see the third entry down on 28 July 2014, £5,600 being taken out of the Aqua account. Now, remember, Aqua is going to stop trading as at the end of August, because it's your service company that is going to be replaced by Natio; why did you take £5,600 out in cash from Aqua at the end of July, Doctor?

A. Sir, I cannot remember.

Q. And then you see, Doctor, I am going to suggest to you ---

A. Mmm.

Q. --- that since you have known all along, since these proceedings started, that Jaswant's case is she only put up 60,000 of the 125,000 that you agreed to pay Dr Ali - that's her case - that it would have been a matter of considerable importance to you to be able to show that the large withdrawals of cash that you were making in the period before you took over the practice from Dr Ali were accounted for in the evidence, Doctor; it would have been important, wouldn't it?

A. Not true, sir, because ---

Q. Because if I say to you, Doctor, that you gave those moneys to Dr Ali, what evidence - contemporaneous documentary evidence, doctor - do you have to show the court that you actually did something else with them?

A. As I said, sir, it was long time ago and I don't have anything."

(xii) Suspension

251. Finally, Dr Rathor was asked about the reasons why she confronted Jaswant and Sareet on 2 October 2017 and then suspended (or tried to suspend) them. In her witness statement she said that at the end of the meeting on 2 October 2017 she asked them why £2,900 in cash was being taken out of the Natio Account and why they were each drawing a salary equal to an employed NHS doctor. In cross-examination Dr Rathor conceded that she did not mention the £2,900 cash withdrawals at that meeting:

“Q. And isn’t the actual truth that because you never mentioned anything about high salaries or the 2,900, there was absolutely no reason for her to say anything like that on the 2nd of October?

A. No, I definitely talked about the high salaries. I did not talk about that 2,900, but I did talk about the high salaries and that was - that’s how this all triggered and I spoke to Peninsula the next day.”

Ms Grewel

252. In cross-examination Dr Rathor accepted that the husband of Ms Grewel, who replaced Jaswant as her practice manager, made a loan to her of £10,000 (although she was very reluctant to identify him). Ms Grewel was cross-examined on the basis of this admission and she did not dispute it.

Submissions

253. In order to do justice to the detailed argument which the parties advanced on this key issue, it is important that I summarise their principal submissions. Mr Jory and Ms Tromans placed particular emphasis on the withdrawals of £2,400 and £500 made from the Natio Account. They submitted that if Dr Rathor knew about those withdrawals then the obvious conclusion to draw was that she authorised them to repay the loan. They submitted this (in paragraph 60 of their closing submissions):

“If Jaswant did not lend Dr Rathor the £60,000 that she claims she did in January 2014, then of course it follows that she is lying when she says Dr Rathor instructed her to repay herself in monthly instalments of £2,900 after Dr Rathor took over the Northolt Family Practice in September 2014. If however, Dr Rathor knew about those withdrawals, for example because she knew as a result of drawings schedules prepared by her accountants in respect of each of the relevant three years, then the obvious conclusion is that **[she]** had authorised them, and that she must have done so in order to repay Jaswant’s loan until that was repaid, and thereafter on account of Jaswant’s entitlement to partnership drawings pending the preparation of partnership accounts as Jaswant states....”

254. Mr Hood and Mr Saunders accepted that there was a close link between the loan and the cash withdrawals: see paragraphs 29 and 30 of their closing

submissions. They made a number of submissions about the probability of such a loan being agreed or made:

- i) No reference was made to the loan in the Letter of Claim or the Particulars of Claim and it was not raised by Jaswant until she served her Defence and Counterclaim dated 1 March 2018. Even then she did not plead that Jaswant made the loan to Dr Rathor as part of an agreement for partnership.
- ii) It was inherently improbable that Dr Rathor would have agreed to enter into an illegal transaction to purchase the goodwill of Dr Ali's partnership and expose herself to the risk of striking off or a criminal prosecution. It was equally improbable that she would agree to share 50% of the profits from both practices in return for a loan to purchase the NFP with a non-clinical partner who would not be generating additional revenue.
- iii) It was also improbable that Jaswant would agree to lend Dr Rathor £60,000 when she was committed to lending money to Sareet, her own living conditions were cramped, it would have a material impact on her and her husband's retirement plans and there was not a lot of spare cash around.
- iv) It was also improbable that Dr Rathor would have agreed to the loan without insisting that the parties entering into a partnership agreement and Jaswant would lend such a large sum to Dr Rathor without keeping a record of the loan either in a formal document or in emails or text messages.
- v) It was improbable and absurd that Jaswant would accumulate £60,000 in cash over a period of four months by making thirteen cash withdrawals.

255. Mr Hood and Mr Saunders placed significant weight on the Sidhu family's financial circumstances at the time of the loan and, in particular, the evidence which they gave in Sareet's divorce proceedings. They also relied upon the

failure by Jaswant to disclose any more than a very few bank statements to prove her case and to explain how she compiled the list of Paragraph 36 Withdrawals. They then analysed each of those withdrawals and submitted as follows:

“It is an extraordinary feature of Jaswant’s account that her paragraph 36 list of cash withdrawals is supported by only 4 pages of bank statements, which were obviously carefully extracted from multiple accounts to support the Claimant’s case and, in calculated fashion, going no further. The court will be well aware of the steps required of the Defendant to obtain access to Jaswant and Sareet’s bank statements. As regards these 4 pages of bank statements, it is Jaswant’s evidence that they were obtained by her husband going to the bank to request bank statements for the purposes of these proceedings. Mr Sidhu stated that he had some of his accounts and was asked by his wife to go to the bank to get further statements [T 4/2, p.21E-23G]. Despite this, the statements disclosed are incomplete even within their limited date ranges, for example the statement at [5/43] being ‘page 2 of 6’. A statement of transactions produced on the basis of self-evidently highly restricted bank statement access should be viewed with extreme skepticism. The story set out in paragraph 36 of Jaswant’s statement is a cynical and calculated lie and an attempt to mislead the Court on the single most important factual issue in the case.”

Findings

(i) The Paragraph 36 Withdrawals

256. I find that Jaswant and Gurdarshin withdrew £59,500 in cash between 30 September 2013 and 31 January 2014. The bank statements which Jaswant exhibited to her first witness statement clearly established that £59,500 was withdrawn from the three accounts in their names and Dr Rathor did not really dispute the fact that Jaswant or Jaswant and Gurdurshin withdrew these sums in cash.
257. I am not satisfied, however, on a balance of probabilities that Jaswant lent any of the Paragraph 36 Withdrawals to Sareet or simply moved them between accounts. I say this for the following reasons:

- (a) *30/9/13 (£15,000)*: I accept that this withdrawal was included in the Mum's Loan Schedule and that Sareet included it in the table at paragraph 59 of her witness statement in the divorce proceedings. However, only two of the Paragraph 36 Withdrawals were recorded on the Mum's Loan Schedule and I accept Jaswant's evidence that the inclusion of this withdrawal in both the schedule and the statement was a mistake and that she did not lend this sum to Sareet. Sareet produced both the Mum's Loan Schedule and the table in her witness statement. The unchallenged evidence which Sareet gave in her third witness statement (which I also accept) was that Jaswant did not help her to work out what sums she had received from her parents for the reasons which she gave.
- (b) *30/9/13 (£3,000)*: This withdrawal was not included in the Mum's Loan Schedule or Sareet's statement and I reject the explanation that it formed part of a larger sum of £20,000 paid to Sareet a week later. This was pure speculation and, more importantly, it was not put to Sareet. I also reject the alternative explanation that it was paid back into NatWest account no. 04804686. The entry upon which Dr Rathor relied was not a deposit in cash but a recurring automated credit (as I pointed out in evidence).
- (c) *18/10/13 (£2,000)*: Although Mr Jory was prepared to accept that it did, this withdrawal did not appear to me to correspond to a payment in either the Mum's Loan Schedule or in Sareet's statement. But in any event I accept Jaswant's evidence that it was a different payment from a different bank account. Moreover, it was not suggested to Jaswant that this sum was paid into another account.
- (d) *18/10/13 (£2,500)*: This withdrawal did not correspond to a payment in either the Mum's Loan Schedule or in Sareet's statement and I accept Jaswant's evidence that it did not form part of a larger deposit of £3,000 into account no. NatWest account no. 04804686.

- (e) *18/10/13 (£2,000)*: This withdrawal did not correspond to a payment on the Mum's Loan Schedule. Sareet referred to a payment of £2,000 in the table at paragraph 59 of her witness statement in the divorce proceedings which was said to have been paid out of "Natwest savings". It is possible, therefore, that this was a reference to a payment out of NatWest account no. 32055757 rather than NatWest account no. 32055758 and that Sareet had made another mistake in the Mum's Loan Schedule. However, this was not put to Sareet and two other withdrawals of £4,000 and £9,000 were also made on 18 October 2013 which Sareet did record in both the schedule and her statement. I therefore accept Jaswant's evidence that the two payments were not the same.
- (f) *21/10/13 (£2,500)*: This withdrawal did not correspond to a payment in either the Mum's Loan Schedule or Sareet's witness statement in the divorce proceedings and I accept Jaswant's evidence that £1,500 of it was not paid back into NatWest account no. 79245188. In particular, I accept her evidence that this account was a rental account and that the credit for £1,500 related to a rent receipt. The bank statements for NatWest account no. 79245188 showed monthly deposits for that some on the 20th day of each month.
- (g) *26/11/13 (£2,500)*: Again, this withdrawal did not correspond to a payment in either the Mum's Loan Schedule or Sareet's witness statement and I accept Jaswant's evidence that it did not form part of a larger deposit of £5,000 into NatWest account no. 04804686 and was not a movement between accounts.
- (h) *2/12/13 (£2,500)*: Again, this withdrawal did not correspond to a payment on the Mum's Loan Schedule payment in either the Mum's Loan Schedule or Sareet's witness statement and I reject the explanation that this sum formed part of a larger deposit of £4,000 into NatWest account no. 04804686 on the same day.

- (i) *12/12/13 (£2,500)*: This withdrawal did not correspond to a payment in either the Mum's Loan Schedule or Sareet's witness statement and I accept Jaswant's evidence that this sum was not deposited into NatWest account no. 04804686 on the same day.
- (j) *17/12/13 (£2,500)*: This withdrawal did not correspond to a payment in either the Mum's Loan Schedule or Sareet's witness statement and I accept Jaswant's evidence that this sum did not form part of a larger deposit of £4,154.53 into NatWest account no. 04804686 on the same day.
- (k) *19/12/13 (£2,500)*: This withdrawal did not correspond to a payment in either the Mum's Loan Schedule or Sareet's witness statement and I accept Jaswant's evidence that £1,500 of it was not paid back into NatWest account no. 79245188 on the following day.
- (l) *31/1/2014 (£10,000)*: The Mum's Loan Schedule recorded one withdrawal of £10,000 from NatWest account no. 32055757 on 31 January 2014 but I accept Jaswant's evidence that she and Gurdarshin did not pay £10,000 or £20,000 to Sareet on that day for a number of reasons. First, Sareet did not mention either withdrawal in the table in paragraph 59 of her witness statement and it was not put to her that she had received either of these sums from her parents. Secondly, Jaswant did not mention either payment in her witness statement in the divorce proceedings either although she mentioned three other payments of £10,000 on 13 June 2013, 14 February 2014 and 17 February 2014. Thirdly, the second and third of those payments to Sareet appear on the same bank statement as the two Paragraph 36 Withdrawals. Fourthly, it would have been in Sareet's interests for Jaswant and her to mention both sums their witness statements in the divorce proceedings if they had been withdrawn and lent to Sareet. But they did not.
- (m) *31/1/2014 (£10,000)*: Only one withdrawal of £10,000 was mentioned in the Mum's Loan Schedule and I accept Jaswant's evidence that this

sum was not withdrawn and paid to Sareet for the same reasons as I have given above.

258. The real issue for me was not whether the Paragraph 36 Withdrawals could be traced to Sareet or into other bank accounts but whether I could be satisfied that Jaswant deliberately misled the Court about those withdrawals because she did not give an adequate explanation for the way in which she produced the list of payments or because she failed to give full disclosure of her bank statements and the records made by Gurdarshin. I am not satisfied that either she or Gurdarshin misled the Court for the following reasons:

- i) Jaswant's first witness statement was made in answer to Dr Rathor's application for summary judgment and she had no obligation to give standard disclosure at that stage. I cannot draw the inference, therefore, that the failure to obtain and disclose a complete set of bank statements at that stage amounted to "a cynical and calculated lie and an attempt to mislead the Court on the single most important factual issue in the case" (as Mr Hood submitted).
- ii) In her third witness statement dated 28 January 2020 Jaswant set out the detailed exercise which she had undertaken to obtain further evidence from the NatWest. This evidence was not challenged and although this exercise was undertaken very late, I accept Mr Jory's submission that this was not the behaviour of a party seeking to mislead the Court. It would have been better for Jaswant or her solicitors to ask Gurdarshin to assist them by producing any statements or documents which he had in his possession. But I accept that the failure by Jaswant to do so was not in breach of any rule or order (and it was not suggested otherwise).
- iii) But in any event Dr Rathor and her legal team were able to retrieve a substantial number of bank statements from Jaswant's personal computer before the hearing on 20 December 2019 (as Mr Hood confirmed on the first day of the trial). The Metropolitan Police also provided copies of the bank statements which they had kept to both

parties. If Jaswant and Gurdardshin had been using a small selection of bank statements to give a wholly false impression that they had withdrawn £59,500 from three accounts and then recycled the money or used it for other purposes (as Mr Hood suggested) then those bank statements could have been expected to reveal this.

- iv) However, none of these statements undermined Jaswant's case. Indeed, they tended to support it. For example, Jaswant was able to obtain bank statements for NatWest account no. 79245188 for the period 1 October 2013 to 18 June 2018 and these confirmed that Jaswant and Gurdarshin made two transfers of £4,000 shown on the Mum's Loan Schedule to Sareet on 27 November 2013 and 2 December 2013.

(ii) Acknowledgement of the loan

259. I also find that Dr Rathor acknowledged that Jaswant had made a loan to her in her email to Yasin dated 2 April 2017 in the sentence: "Only thing she done for me help with ?35k to pay Ali which as far as I know she has taken back." I accept that this sentence does not refer in terms to a loan and (leaving aside the question mark which precedes it) that the sum stated is £35,000 rather than £60,000. Nevertheless, it provides clear evidence that Jaswant had given financial support to Dr Rathor.

260. But in any event I also accept the explanation for the figure which Mr Jory put to Dr Rathor, namely, that it referred to twelve cash withdrawals of £2,900 during the year ended 31 July 2016 and that was the accounting year for which AMS were then drawing up the accounts. I make this finding and accept this explanation for the following reasons:

- i) Dr Rathor did not exhibit this email on her application for summary judgment or provide it to Jaswant on standard disclosure (despite its obvious relevance). When she finally disclosed it, Mr Jory and those instructing him saw its relevance immediately and made a Request for Further Information asking what help Jaswant had provided and when. Dr Rathor's answers to that request were partial and evasive and she

did not provide a full explanation until her tenth witness statement which was served on the Friday before she gave evidence.

- ii) Dr Rathor's explanation for the email in that witness statement was that the rent payable to Dr Ali was £5,000 per month, that Jaswant had offered to pay off the arrears of £35,000 and that when she sent the email to Yasin on 2 April 2017 she assumed that Jaswant had done so. However, that explanation was inconsistent with the statement in AMS's report that Dr Rathor had never advised them that she had taken a loan from Jaswant. When this inconsistency was put to Dr Rathor, she then said that she had another conversation with Yasin in which she had told him that Jaswant had never made the payments or made the loan. This conversation did not feature in her witness statement even though it had been served only days before.
- iii) Dr Rathor's evidence in her tenth witness statement was also inconsistent with the contemporaneous documents which showed that the passing rent for the Allenby Clinic was £3,425 per month. When these documents were put to her, she continued to maintain that the rent was £5,000 even though Mr Fonseca had written to Dr Ali's solicitors stating in terms that the rent was £3,425 and forwarded a copy of his letter to her.
- iv) I was driven to the conclusion, therefore, that Dr Rathor had made up the explanation which she gave in her tenth witness statement and, when faced with its inconsistencies, she made up the subsequent conversation with Yasin.
- v) I am also satisfied that the reason why Dr Rathor gave a false explanation in her witness statement and in her subsequent oral evidence is that the explanation which Mr Jory put to her was correct and that in her email to Yasin Dr Rathor was referring to the loan which Jaswant made to her at the end of January 2014 to purchase the goodwill of the Northolt Family Practice.

261. This conclusion is supported by the oral evidence of Sareet, Mr Sangha and Mr Fonseka who all said that Dr Rathor acknowledged the loan to them. As I have said, I attach limited weight to the evidence of oral conversations which took place many years ago given by witnesses who were not neutral. In particular, I attach very limited weight to the evidence of Mr Sangha who was clearly confused about the existence of a written partnership agreement in January or February 2014. Nevertheless, their evidence is consistent with Dr Rathor openly acknowledging the existence of the loan to Yasin.

(iii) Schedule D: cash withdrawals

262. I also find that Dr Rathor knew that Jaswant was withdrawing £2,400 per month to repay the loan and also £500 per month for petty cash and any balance left over to repay the loan. I also find that she consented to these withdrawals. I make these findings for the following reasons:

- i) Dr Rathor accepted that she met Mr Fonseka and the end of March 2016 to finalise the 2015 Accounts and that he told her that she was taking approximately £190,000 in drawings. I can see no reason why Mr Fonseka would not have shown her the 2015 Payments Schedule and asked her to answer any queries which he had about the payments.
- ii) I reject Dr Rathor's evidence that Mr Fonseka became silent and evasive when she asked about the drawings figure. I also reject her evidence that Mr Fonseka and Jaswant colluded to defraud her (and I return to this evidence in more detail below).
- iii) I therefore accept Mr Fonseka's evidence that he showed the 2016 Payments Schedule to Dr Rathor and that it showed that Jaswant had been withdrawing cash in tranches of £2,400 and £500 since October 2014. His evidence was that the meeting would have taken half an hour and that he would not have taken Dr Rathor through all of the withdrawals of £2,400 and £500. But they would have been obvious to Dr Rathor since they were highlighted in yellow and allocated to her.

- iv) Moreover, if Mr Fonseka had been evasive about the drawings figure, I have little doubt that Dr Rathor would have investigated further before approving the 2015 Accounts. She did not do so and I find that she did not do so because she knew that Jaswant was withdrawing £2,900 in cash per month to repay the loan and had agreed that she should do so.
- v) When she was cross-examined about the 2016 Drawings Schedule Dr Rathor accepted that in April 2017 Yasin told her about the monthly payments of £2,900 and despite Dr Rathor's attempt to retreat from that evidence, I find that he did. She also went on to approve the 2016 Accounts which contained the same drawings figure of £195,540.52 and to send both the schedule and the accounts to Rishi to support her mortgage application.
- vi) I also reject Dr Rathor's evidence that she failed to take action against Jaswant between April and September 2017 because she was extremely scared of Jaswant. This evidence was wholly inconsistent with her text to Jaswant on 12 May 2017 asking to borrow more money. I return to this text below. But both her text and the reply were completely inconsistent with the abusive relationship which she attempted to portray. In particular, she said: "You have always helped me in every way and I respect that". Jaswant also replied: "Nothing is impossible. I will always do what you want. No problem."
- vii) I also accept Jaswant's evidence that Dr Rathor asked her to describe the monthly payments as "loan" repayments in the 2017 Payments Schedule. I reject Dr Rathor's evidence that she did not give these instructions because she saw the drafts of the 2017 Accounts only five days later and forwarded them to Rishi. Those accounts showed drawings of £291,815.
- viii) Finally, on 30 September 2014 a payment of £2,500 was made to Jaswant out of the Aqua account with the reference "LOAN". Dr Rathor accepted that she had access to this account and it is telling that she made no claim for recovery of this sum. Whilst the figure of £2,500

was different from the later monthly withdrawals (which were all made in cash), this entry was wholly inconsistent with Dr Rathor's evidence that she never borrowed money from Jaswant.

(iv) Agreement

263. Having tested the evidence of Jaswant and Dr Rathor against the documents upon which the parties relied, I find on a balance of probabilities that Jaswant did make a loan of £60,000 to Dr Rathor on or shortly after 31 January 2014 to purchase the goodwill of the Northolt Family Practice from Dr Ali. I do so on the basis that those critical documents supported the oral evidence which Jaswant gave and undermined the oral evidence given by Dr Rathor.
264. I also reject Mr Hood's submissions that such an agreement was inherently improbable. I accept that it is unlikely that a doctor would have agreed to enter into an illegal transaction to purchase the goodwill of Dr Ali's partnership. However, in the present case Dr Rathor was also prepared to make a "one-off payment, his locum and rent reimbursement" to Dr Lewis to buy his practice. Dr Rathor could not provide a sensible explanation for the "one-off payment" and the only obvious explanation is that she was also willing to pay for the goodwill.
265. I am also prepared to accept that many, if not most, doctors would not agree to go into partnership with their practice managers. But in the present case Dr Rathor's financial position was poor and she was highly unlikely to be able to obtain a loan from a commercial lender, at least, if she was honest about the purpose of the loan. It also seems to likely to me that Jaswant would not have been prepared to lend £60,000 to Dr Rathor without the added incentive of the partnership.
266. Nor do I accept that it was improbable that Jaswant would agree to lend Dr Rathor £60,000 given her personal circumstances. Mr Hood's submission assumed that it was extremely difficult for Jaswant to find an additional £60,000 between September 2013 and January 2014. It clearly took time for her to raise that sum and set it aside. But the bank statements show that she

and Gurdarshin had significant sums available to lend to Sareet or for other purposes even after she had made the loan to Dr Rathor.

267. In their reply submissions in closing Mr Jory and Ms Tromans produced a table based only on the bank statements which Jaswant and Gurdarshin were able to disclose (or which Dr Rathor had taken from Jaswant's personal computer). It showed that they had the following balances on their accounts at the end of January 2014 and the end of March 2014.

Date	Description	Amount
22/01/2014	Gurdarshin Sidhu & Jaswant Sidhu ACC: 01778777 S/C: 110384	£1,184.78
31/01/2014	Gurdarshin Sidhu & Jaswant Sidhu ACC: 32055757 S/C: 601939	£22,695.43
31/01/2014	Gurdarshin Sidhu & Jaswant Sidhu ACC: 79245188 S/C: 601939	£3,276.01
Total		£27,293.78
Date	Description	Amount
28/03/2014	Gurdarshin Sidhu & Jaswant Sidhu ACC: 01890499 S/C: 110384	£16,692.63
04/04/2014	Jaswant Sidhu ACC: 31536870 S/C: 111626	£12,254.33
19/03/2014	Gurdarshin Sidhu & Jaswant Sidhu ACC: 01778777 S/C: 110384	£1,154.78
28/03/2014	Gurdarshin Sidhu & Jaswant Sidhu ACC: 32055757 S/C: 601939	£14,554.43
20/03/2013	Gurdarshin Sidhu & Jaswant Sidhu ACC: 79245188 S/C: 601939	£4,298.28
03/03/2014	Gurdarshin Sidhu & Jaswant Sidhu ACC: 04804686 S/C: 601939	£6,328.98
Total		£55,283.43

268. Nor do I not find the lack of formality surprising either. If (as I have found) Dr Rathor agreed to purchase the goodwill of the Northolt Family Practice from Dr Ali, she had a strong reason to avoid committing the loan agreement with Jaswant to writing. But in any event there was clear and, for the most part, unchallenged evidence that Dr Rathor borrowed substantial sums from others without entering into any formal agreement. She accepted that Ms Grewel's husband lent her £10,000 to purchase Station Road. There was no suggestion

that this loan was recorded in writing and Dr Rathor did not disclose a loan agreement or any other record of it.

269. Further, Dr Rathor originally claimed that on 17 October 2016 Sareet had made an unauthorised payment of £4,000 to herself out of the Natio Account. Sareet's evidence was that this payment was the repayment of a loan which she had made to Dr Rathor to enable her husband to carry out repairs to his car. She relied on a bank statement in which she had used the following reference for this payment: "BR CARREPAIR MONEY". In response to this evidence Dr Rathor withdrew the claim for £4,000 and Sareet's evidence on this point was not challenged at trial.
270. Finally, I reject Dr Rathor's evidence about the exchange of text messages on 12 May 2017. I find that on that date Dr Rathor asked to borrow a further £90,000 from Jaswant to purchase Station Road. Indeed, I also find that Jaswant's unwillingness to lend more money to Dr Rathor was one of the principal reasons for the breakdown in the relationship between them.

(v) *The balance of the purchase price*

271. Finally, I am satisfied that Dr Rathor withdrew substantial sums in cash from the Allenby and Aqua accounts which she used to pay the balance of the purchase price of £65,000 to Dr Ali. I am also satisfied that their principal source was the funds which Dr Rathor received from NHS England to pay the rents for Allenby Clinic. The records which she herself produced that she had received £51,560.77 which she did not pass on to her landlord and that £48,757.28 was still unpaid in January 2016. I reject Dr Rathor's evidence that she did not receive those funds from NHS England and she finally accepted that the surgery still had debts to CHP.
272. For the same reasons I also reject Mr Hood's submissions that it is highly improbable that Jaswant would have withdrawn £60,000 in thirteen instalments in cash to make the loan. Dr Rathor used the same modus operandi herself in collecting the balance of the purchase price to pay Dr Ali. Moreover, it seems to me that at the time they both belonged to what I describe as a "cash culture". For example, even assuming that Sareet mistakenly included

payments of £15,000 (or £17,000) in the table in paragraph 58 of her statement in the divorce proceedings, then Jaswant and Gurdarshin still withdrew a further £49,000 (or £51,000) in cash to give to Sareet. Indeed, Dr Rathor relied on those payments in support of her own case.

(vi) *The Letter of Claim*

273. At the beginning of the trial, I found it striking that Jaswant’s solicitors and counsel had failed to mention the loan in either the Letter of Claim or the Particulars of Claim. I was also concerned that Jaswant had been positioning herself to make a claim for some time because she had instructed solicitors who had written and served the Letter of Claim on the same day as her “suspension”. In their reply submissions in closing Mr Jory and Ms Tromans answered this point in the following way:

“Issues relating to the loan were simply not relevant until it was alleged in the counterclaim that Jaswant had in fact been guilty of misappropriating practice funds by withdrawing the money from the practices accounts. Jaswant was not sent any form of letter before action....before that case was raised against her in the Defence and Counterclaim in February 2018. It is therefore devoid of merit to say that the loan should have been raised any earlier than it was.....”.

274. I accept that submission. On 4 October 2017 Jaswant had no reason to suppose that Dr Rathor would deny the loan agreement, the loan itself or, indeed, its repayment. It is also telling that Dr Rathor accepted that she did not mention the withdrawals of £2,900 at the suspension meeting. I accept, therefore, that Jaswant’s paramount concern was to assert her rights as a partner. In my judgment, therefore, Jaswant and her solicitors cannot be criticised for failing to mention the loan in the Letter of Claim.

(vii) *The Particulars of Claim*

275. On 13 December 2017 the Claim Form was issued attaching the Particulars of Claim. The position remained unchanged at that date because Dr Rathor had not answered the Letter of Claim before proceedings were issued. In the Defence and Counterclaim dated 8 February 2018 Dr Rathor denied that she

had ever entered into a partnership or that she had ever signed the Partnership Forms. She also asserted for the first time that the cash withdrawals were unauthorised.

(viii) *Interest and payment*

276. Finally, Mr Hood and Mr Saunders were critical of Jaswant's pleaded case and her evidence that the loan was intended to bear interest but no rate was agreed or repayment date. In the context of an informal loan which was not reduced to writing I did not find it surprising that the parties never formally agreed a rate of interest or a date for repayment. However, this might have presented significant difficulties for Jaswant if Dr Rathor had failed to repay her and she had been attempting to enforce the agreement. But this was not part of her case and as far as Jaswant was concerned the loan had been repaid.
277. I accept Jaswant's evidence that Dr Rathor and she agreed that the loan had been repaid in full by the summer of 2016. I also accept that she kept detailed records of all of the repayments in her drawer, to which she would have been able to refer if Dr Rathor had disclosed and produced them. Doing practical justice between the parties, I find that the loan had been repaid in full by 1 July 2016 which was the date on which the variations to the GMS Contract and the PMS Contract took effect.

Issue 2: Partnership

Jaswant

278. Jaswant's evidence was that her employer was Natio. In cross-examination it was put to her that her employer was Dr Rathor but she did not accept this. She said that she worked for the Allenby Clinic and the Northolt Family Practice but that she was paid by Natio. She could not recall any formal agreement dealing with the identity of her employer with effect from 1 September 2014.
279. Jaswant's evidence about partnership was that in June 2015 Dr Rathor called her into her consulting room and told her that she had spoken to someone at

NHS England and was making her a partner. I set out the relevant paragraphs from her first witness statement in full:

“However, Dr Ali had given NFP a notice to quit in April 2015, and we had discussions with NHS England about moving the practice. Therefore Dr Rathor agreed that this would be the right time for me to be made a partner. I remember the conversation with her, which took place in her consulting room. She called me into her consulting room in June 2015 and told me that she had spoken to someone at NHS England and was making me a partner. She hugged me and told me that I was like a sister to her and that she could not thank me enough for everything that I had done for her. I cannot now remember the exact date in June 2015 that this happened, but I vividly recollect the conversation and the feeling of relief that she was going to keep to her promise.”

“I asked her if there was anything that we needed to do to formally make me a partner, and she said "no". I was very happy that I was being made a partner and therefore from my point of view I became a partner on that date.”

“However, from my point of view, I entered into a partnership with Dr Rathor in June/July 2015 when she and I agreed that we were formally in a partnership for both practices. She and I agreed that we were partners and that once there was sufficient income, we would share the profits. She agreed that we would tell the NHS that we were partners, and that is why we signed the Partnership Details Form and why I asked Sareet to submit it to the NHS for us.”

280. In cross-examination it was suggested to that she had fabricated this account and that it never happened:

“Mr Hood: This conversation is just invented, is it not? This never happened?

Mrs Sidhu: No, Sir, not at all.

Mr Hood: There was a moving of the practice, of course, was there not, that was at the forefront of Dr Rathor’s mind? The practice had to move, that was quite a big deal, was it not, logistically and for all sorts of reasons, it was quite a big deal?

Mrs Sidhu: Dr Ali had given us notice, we were negotiating with NHS England, trying to, they would, if they would move Northolt into the health centre.

Leech J: You said a moment ago, I think, that you thought that you were entitled to 50%.

Mrs Sidhu: Yes, Sir.

Leech J: Why did you think that?

Mrs Sidhu: Sir, I thought it was equal partnership because of ---

Leech J: I see. But were there any actual discussions between you and Dr Rathor about shares or 50/50 or equal partnership?

Mrs Sidhu: Sir, when, when I had that discussion in June with her, when she had told me her thought, and I did ask her, is there any legal paperwork that we needed to do, and she said no.

Leech J: So, there was no, you did not even discuss, well, she did not say to you, well I am giving you 50% of it, or you asked for 50% of it, there was no, nothing of that kind?

Mrs Sidhu: I have not got it in black and white, Sir. I have not got an agreement, I did not --

Leech J: I know you have not got it in writing --

Mrs Sidhu: Yes, Sir.

Leech J: I am just asking, in the course of your conversations, did you discuss a profit sharing?

Mrs Sidhu: Sir, when we signed the contract on 24 July 2015 with the NHS, I had a conversation with her, which is just before we moved into the health centre, that we would be equal partners.

Leech J: So, that is when you signed the forms?

Mrs Sidhu: Yes, Sir.

Leech J: And just before you moved into the health centre?

Mrs Sidhu: Yes, Sir, we moved into the health centre about August, Sir, and we signed the partnership in July.”

281. She was also asked why she did not insist on partnership accounts so that the parties could determine the point at which there was sufficient income to share the profits. Her answer was as follows:

“Mr Hood: Now, if there was an issue, as you mention in paragraph 135, that you would only share profits once there was sufficient income, why did you not insist on partnership accounts so you could actually determine whether or not you had reached that point and could thereafter share profits?

Mrs Sidhu: Sir, the main focus was to settle, get the patients settled, pay off all the debts and then it actually came to that amount that I would be my, the loan that I had given her, get back, and she had assured me that, when the loan repayment would have finished, she said we would sit down and we would discuss it, and we would sort it out, I was assured. But then she kept on changing her goalpost and she would always convince me, you don’t worry, she

would say, I will get it sorted, I will get it sorted, and I trusted her.”

Sareet

282. Sareet’s evidence was that a few weeks before the parties signed the 2015 Partnership Detail Form Jaswant told her that Dr Rathor had agreed to appoint her a partner for both practices. It was also her evidence that she was called down to Dr Rathor’s clinical room and that Dr Rathor and Jaswant gave her the form completed and signed and she scanned and sent it to NHS England.

Gurdarshin

283. Gurdarshin gave evidence that he agreed to make a loan of £31,000 to Dr Rathor because she had promised to make Jaswant a partner in the practice. In return to this loan below. But his evidence was that he made this loan in India to members of Dr Rathor’s family in November 2016.

Jasvin

284. Jasvin gave evidence that when the 2015 Contract Variation Form was signed the whole family went out to dinner celebrate the fact that Jaswant had officially been made a partner.

Mr Sangha

285. I have set out Mr Sangha’s evidence in relation to the loan above. He also gave evidence that he was told that there was a written partnership agreement in existence in January or February 2014. He also gave evidence that Jaswant told him that she was a partner in June 2017.

Ms Bhandol

286. Again, I have set out Ms Bhandol’s evidence in relation to the loan above. She also stated that Jaswant had told her that she had been made a partner in the practice.

Mr Fonseca

287. Mr Fonseca's evidence was that Jaswant told him that she was going to be made a partner. In cross-examination he could not recall when he was told and he said he thought it was mentioned with Dr Rathor. He also accepted that he never saw "a scrap of paper" and accepted that he did not know whether the partnership was made or was still going on. Mr Hood placed particular reliance on the following exchange:

"Mr Hood: None of what you say about these conversations with Dr Rathor and her becoming a partner with Jaswant are not true, are they? They never took place.

Mr Fonseca: Well, you can check with *them*. *That is it*. I, I would imagine NHS England, so you can ask them whether there was an application made, and that will prove whether there was one or not. To me, I mean, that is what I would do."

Dr Rathor

288. In paragraph 28 of her third witness statement Dr Rathor accepted that it might be possible that she signed some forms. In paragraph 123 of their closing submissions Mr Hood and Saunders put her case as follows:

"Dr Rathor originally assumed her signatures must have been forged, because she was not aware of the forms, but having been debarred from adducing expert handwriting evidence herself and having considered the handwriting evidence adduced by Jaswant, she took the view that instead of a forgery, she must have been distracted/tricked into signing the NHS forms. This was not a cynical change in case but a perfectly understandable one in the circumstances where a person does not recognise significant documents and has been the victim of a large scale misappropriation of funds."

289. In cross-examination Dr Rathor accepted that she had signed the PMS Contract Variation Agreement Form twice and that she had corrected the address. She was pressed to explain whether she understood the form and, in particular, whether she understood that the nature of the contract variation was a "Partnership Change" or that the details of the variation were "Adding non-clinical partner to the PMS Agreement". Her evidence was that she could not

recall signing the documents although she also said that she did not read those words:

JUDGE LEECH: So, you accept that you signed this document twice? Once amending the ---

A. Yes sir, because the address – so then, she must have told me something about the change of address or something so I have actually written by hand this one, yes.

JUDGE LEECH: So, you signed it twice. And the question that Mr Jory put to you was is it your case that you did not know – you did not read it on each of those occasions and did not see the words particularly “adding non-clinical partner to the PMS agreement”?

A. No sir, I didn’t.

Q. And do you have any actual recollection Doctor of what you thought it was or has the whole event of signing these documents gone from your recollection?

A. I cannot remember anything.

Q. OK.

A. And sir, all I would like to say is this was not only important for me, this was a very important decision for the practice and the patients.

Q. Right Doctor, let us go if we may to page – we will start at 249.

A. Sorry.

JUDGE LEECH: Can I just ask you, you said a number of times that you thought the – you have mentioned a change of address, is your evidence that you thought that this was – this piece of paper involved a change of address, is that right?

A. Yes sir.

Q. I thought Doctor, you had no recollection of signing these papers so you do not know what you thought?

A. Well, I have said I signed those papers, yes.

Q. And are you just speculating in answer to his Lordship’s question that that is what you must have thought?

A. No, because I did say it like – the date, I did not put the date so I can’t really remember when this happened.”

290. It was also put to Dr Rathor that she signed both versions of the PMS Contract Variation Agreement Form within a very short time of each other and either on the same day or within a day of each other. Her response was as follows:

“MR JORY: Yes. From the – so, Doctor, it appears you signed it twice within a very short period of time. Whether you say it was on the 9th and you signed both of them, or

whether it was the 9th and the morning of the 10th, but you were in surgery probably then.

A. OK sir, all I am saying is when I signed those papers, I signed them with the change of address and also if Jaswant was sending these attachments and emails, she actually never copied me in into these emails.

Q. I think that is some sort of submission is it Doctor that you want the Judge to infer from that, that she was actually disguising this process or concealing this process from you because otherwise she would have copied you into the attachments? But she was not copying in because she wanted to cover the tracks of what she was doing and if she copied you in that might blow it. Is that the reason you are saying that?

A. Well – yes, 100 per cent.

Q. So, that is part of your concealment and that is why I have got it as the ninth step in my series because you say she is all the time acting dishonestly and were not wanting you to know what is going on, that is your case.

A. Yes.

Q. And yet, she put this document in front of you for signing twice within 24 hours on the 9th, probably both occasions on the 9th, if not on the 9th, once on the 9th and once on the 10th. And all that time, she was taking the risk that you were actually going to read what was written immediately above your signature Doctor, was she?

A. Well, all I can say sir, that she definitely done in a disguising way. I'm a busy doctor. I've signed it but she never mentioned to me anything about a partnership or copied me into this.

Q. So, twice she managed to conceal parts of the document from you. Is that the answer?

A. That's the answer, yes.

Q. And are you able to explain how she might have concealed from you what you were signing in a way that enabled you to correct the address on one version of it?

A. That's what I'm saying, I cannot remember.

Q. Is it because it makes absolutely no sense Doctor that anybody could have concealed the relevant parts of this document from you given your handwriting in the address book box and your signature immediately below what is the critical sentence in the document.

A. If I may say sir, as far as I am concerned, as a senior partner, this process was not transparent and it's not that – Jaswant cannot add herself to a contract. I should be adding her to the contract so I should have been copied into every ---

Q. That is why you signed it Doctor.

A. No sir. No sir. This was not – this was not the correct process.”

291. Dr Rathor also accepted that she had signed the GMS Contract Variation Notice and that this was one of the documents to which she was referring in her email dated 5 October 2017 to Mr Nelson timed at 13.08. Mr Jory put that email to Dr Rathor shortly before the run of questions which I have extracted (above). He also suggested to her that she had deliberately removed the end of Mr Nelson's email timed at 12.55 to avoid disclosing her reply timed at 13.08 on the summary judgment application:

“Q. Can you explain why that has been cut off that email, and there is a little number 4 there?

A. Sorry, sir, which one is cut off?

Q. The details from “With best wishes, Michael” down to NWLPCC. Do you see the bottom of the email back from Mike at 12.55?

A. 12.55?

Q. The email at 12.55.

A. Mmm.

Q. Everything underneath “with best wishes” has been cut off. Do you see that?

A. Sorry, I am just reading it, sir. I cannot explain that.

Q. So, you cannot explain that? Well, I am going to suggest that I can, Doctor. Do you see that, in fact, if you had produced this document directly from your computer without chopping it about, it would have shown the bottom of the email above it, which I am going to take you to now. The one that is the top of the page, “I have HR team dealing with issues.” Do you see that?

A. Yes.

Q. On page 817. And, I am going to suggest, Doctor, that you were deliberately trying to conceal that email. Were you trying to conceal that email?

A. Not true, sir.

Q. Are you sure, Doctor?

A. 100 per cent sure.....

.....Q. Now, I am going to suggest to you that you deliberately concealed this from the courts, Doctor.

A. I disagree.

Q. And, we got this email after making orders for disclosure last September.

A. Mmm.”

292. Dr Rathor was then asked to explain which she had in mind when she used the following sentence: “I knew about the pMS contract for Northolt Family Practice.” Her explanation for that statement was that she was intending to refer to the contract with Dr Ali for the Northolt Practice which she

maintained was attached to that email. It was put to her a number of times that this explanation made no sense and that she must have been referring to the PMS Contract Variation Agreement Form. For instance, the following exchange took place:

“Q. And, so he sent you the contracts. Not old contracts that had nothing to do with Jaswant, but the contracts that were to do with Jaswant because that is why, on page 817, he says, “It very much looks like Jaswant Sidhu is a non-clinical partner on both contracts.” Well, it would not look like that from the contract between you and Dr Ali, would it?

A. So, that is – what he said was, I think these were the three contracts which he sent.

Q. And, I am told that the Dr Ali contract was sent by Mike Nelson, but that is not the one that the two of you are talking about, Doctor, is it?

A. All I mean in that email there is the only contract I remember signing is with Dr Ali for PMS contract.

Q. Well, you see, Doctor, “It very much looks like Jaswant Sidhu is” – that is the present tense, yes – “a non-clinical partner on both contracts.” So, that is what would have been in your mind in the 13 minutes before you responded to Mike Nelson.

A. I disagree.

Q. And, that is why you looked at it, you got straight back to Mike Nelson within a matter of 13 minutes and said, “I am still surprised how Jaswant Sidhu made me sign the contract variation for the GMS contract, as I was unaware of it. I knew about the PMS contract for Northolt Family Practice.” That is in response, directly, to the point that he has said saying it very much looks like she is a non-clinical partner on both.

A. As I said, when I responded to that email, I was referring to the PMS contract with Dr Ali, which I signed.

Q. Why did you not include that email and the explanation you have just given to his Lordship, at the summary judgment application?

A. I am unable to comment, sir.

Q. Well, you see, what was significant for anybody applying for summary judgment, is then deposing – so, that is on oath – saying to the court, there is no reason for this matter to go to trial, that they are aware of. And, if you are aware of an email, Doctor, which needs to be investigated as to which PMS contract you are referring to, that would have been a very relevant document to refer to, and then give your explanation and say why, even though you said

that at the time, you were referring to a different contract, would it not?

A. I cannot comment on this.”

293. Dr Rathor was also taken to Ms Donovan’s email dated 25 July 2016 which Jaswant forwarded to her the following day. When Dr Rathor said that she had never seen it before, she was taken to the read receipt from her email address showing that she had read it on the same day. However, Dr Rathor continued to maintain that she had never seen the email suggesting at one point that Jaswant might have had access to her computer and sent it herself.

294. Finally, Dr Rathor gave evidence that during the course of the trial she had spoken to the CQC and that she had been given the following information:

“So, if I am taking on a partner sir, number one, there has to be – you need to do criminal checks which is DBS, Disclosure and Barring Services, yeah, you have to get a certificate for that. You need two references. You need – you also need – she has to apply to CQC for a registration where the – if you look at the forms where it says “individual” because I did speak to the CQC, like a few weeks when we were here before, and I was told irrespective it’s a non-clinical partner, they have to cancel the pre-existing registration which is on an individual and that is another step you have to do. And once you have gone through all these steps then we have to sign a partnership agreement.”

Ms Grewel

295. In examination in chief Ms Grewel gave evidence that she had heard the conversation between Dr Rathor and the CQC outside court because it had been on loudspeaker. She could not recall the name of the person to whom Dr Rathor spoke or the reference number. In cross-examination she said that the conversation lasted about 10 minutes and that she thought that Dr Rather had “noted it all down”.

Findings

(i) *Jaswant’s Employer*

296. Because of the principle that it is not possible for a partner to be an employee, I must decide first whether Jaswant's employer was Natio or Dr Rathor herself. I find that Natio was Jaswant's employer for the following reasons:

- i) It was Dr Rathor's pleaded case that Natio was Jaswant's employer: see the Re-Amended Defence, paragraph 26. Her case was: "Natio became Mrs Sidhu's employer as a result of Dr Rathor taking over the Northolt Family Practice." No application was made to amend the Defence and it remained Dr Rathor's case throughout the trial.
- ii) The position reflected in Dr Rathor's Re-Amended Defence was consistent with the documents. After 1 September 2014 the employer shown on Jaswant's payslips was Natio and the monthly P32 employer payment records showed Jaswant's employer as Natio.
- iii) The 2015 Accounts prepared by Mr Fonseca recorded wages and salaries of £183,645 which must have included Jaswant's salary because he only prepared one set of accounts for Natio. Those accounts were signed by Dr Rathor on 12 January 2016 and provide strong evidence that Natio was Jaswant's employer
- iv) Mr Hood and Mr Saunders relied on the 2016 and 2017 Accounts because wages and salaries were recorded in the Sole Trader Accounts rather than the Natio Accounts. But because Dr Rathor did not call Mr Sidat or Yasin, I do not understand why they considered it necessary to prepare two sets of accounts at all or why they chose to record wages and salaries in one rather than the other.
- v) Mr Hood and Mr Saunders also relied on the fact that the Employment Tribunal found that Dr Rathor employed Sareet trading as Allenby Clinic and Northolt Family Practice rather than by Natio. However, it is unnecessary for me to decide who Sareet's employer was for the purposes of these proceedings because the Additional Claim is brought by both Dr Rathor and Natio and the counterclaim draws no distinction between them.

- vi) It is also sufficient to note that Dr Rathor's pleaded case against Sareet was (and is) different. In paragraph 27 of the Re-Amended Defence, her case was (and is) as follows:

“Sareet was also employed by Dr Rathor as a result of the acquisition of the Northolt Practice and her terms and conditions were, accordingly, those in place when Dr Rathor agreed to take over the Northolt Family Practice, alternatively when she became a partner in the Northolt Family Practice.”

(ii) The Evidence

297. In relation to the partnership issue more generally I also prefer the evidence of Jaswant and Sareet. I find that in June 2015 Dr Rathor orally agreed with Jaswant to make Jaswant a partner in the two practices and that they orally agreed that they would share the profits once there was sufficient income from the two practices. I also find that when Dr Rathor and Jaswant signed the Partnership Detail Form they agreed that they would be equal partners. I prefer Jaswant's evidence to that of Dr Rathor for the following reasons:

- i) Jaswant's evidence is supported by contemporaneous documentary evidence in the form of the Partnership Detail Form. It is also supported by the 2016 Partnership Applications and the 2016 Partnership Forms.
- ii) I reject Dr Rathor's evidence that she did not read those documents and did not understand their contents. In particular, I reject her evidence that she did not read the PMS Contract Variation Agreement Form or understand its contents on either of the two occasions on which she signed it. The first page of the form stated that the nature of the contract was a partnership change and that the details of that change were to add Jaswant as a non-clinical partner. Dr Rathor read that form carefully enough to appreciate that it stated the wrong address and to correct it herself. I do not accept therefore that she failed to read the box immediately below her manuscript amendment.

- iii) Jaswant's evidence is also supported by Ms Donovan's email dated 25 July 2016 which Jaswant forwarded to Dr Rathor. This email referred to the "paperwork which I sent over 8 weeks ago". Given that her computer generated a read receipt, I find that Dr Rathor read that email and understood that the "paperwork" to which Mr Donovan was referring were the two 2016 Partnership Applications which Jaswant had returned on 21 June 2016.
- iv) Jaswant's evidence is also supported by the exchange of emails between Dr Rathor and Mr Nelson on 5 October 2017. It is clear from his email timed at 12.55 that Mr Nelson understood Jaswant to be a non-clinical partner on both the PMS Contract and the GMS Contract. It is also clear from her reply timed at 13.08 that Dr Rathor accepted that Jaswant was a non-clinical partner in relation to the PMS Contract.
- v) I am prepared to accept that Mr Nelson attached copies of both the earlier contract with Dr Ali and the PMS Contract Variation Agreement Form dated 13 December 2013 to his email timed at 12.55 on 5 October 2017. But I reject Dr Rathor's evidence that the "PMS contract for Northolt Family Practice" to which she was referring in her email timed at 13.08 was the contract between herself and Dr Ali and I find that she was intending to refer to the contract between herself and Jaswant.
- vi) It is clear from a straightforward reading of Mr Nelson's email and Dr Rathor's response that Dr Rathor was referring to the contract currently in force and to which both she and Jaswant were parties and not the contract with Dr Ali. Her contract with Dr Ali had come to an end by 1 September 2014 when she became a sole practitioner. Furthermore, she was responding to Mr Nelson's statement: "It very much looks like Jaswant Sidhu is a non-clinical partner on both contracts." Dr Rathor was obviously referring to the same contracts in her response.
- vii) I also accept Mr Jory's submission that Dr Rathor deliberately removed her email timed at 13.08 from the sequence of emails which she

exhibited for the purposes of the summary judgment application. I find that she did so because Dr Rathor fully understood the significance of her own email and that it contained an acknowledgement by her that Mr Nelson was correct when he stated that Jaswant was a non-clinical partner on the PMS Contract. The version of the email chain which contained Dr Rathor's email timed at 13.08 was disclosed pursuant to an order for disclosure and she could offer no explanation for the difference between the two versions. It is also telling that Mr Hood and Mr Saunders were unable to provide any explanation for the obvious "doctoring" of the email chain.

viii) I also reject the evidence of Dr Rathor about her conversation with the CQC and Ms Grewel's evidence that she witnessed that conversation. There were significant differences between their accounts of this conversation and if it had taken place, Dr Rathor would have referred to it in her tenth witness statement. Moreover, Dr Rathor did not suggest that she had to satisfy these additional requirements when she became a partner in the Northolt Family Practice. For these reasons I find that Dr Rathor fabricated this conversation in an attempt to get out of the difficult position in which she found herself and that Ms Grewel then gave false evidence to support her.

298. Mr Hood and Mr Saunders submitted that the effect of the differing accounts put forward by Gurdarshin, Jasvin, Mr Sangha and Mr Fonseka was "utterly to discredit Jaswant's case that there ever was a partnership agreement". I have carefully considered their evidence in the light of this submission and I agree that it has very limited weight. The only evidence which they could give was that Jaswant had told them that they she had been made a partner. Mr Fonseka was particularly hesitant in his evidence and fairly pointed out that he had not seen a "scrap of paper".

299. I do not consider, however, that the discrepancies in evidence between these witnesses or between Jaswant and them so undermined or discredited her that I should reject her evidence given the documentary support for it. It is hardly surprising that the witnesses differed in their recollection about the dates of

oral conversations in which Jaswant told them that she had been made a partner or the context in which she did so. Indeed, it would have been far less convincing if their evidence had been identical.

300. Mr Hood and Mrs Saunders also submitted that it was sinister that Jaswant only took home the originals of three pages of the Partnership Detail Form and the Partnership Documents for safekeeping. They also made something of the way in which the documents were completed and signed. I reject the submission that Jaswant behaved in a sinister or underhand matter. If she had done so, she would not have forwarded Ms Donovan's email dated 25 July 2016 to Dr Rathor or run the risk that Dr Rathor would ask for the "paperwork" referred to in that email.
301. Finally, Mr Hood and Mr Saunders criticised the Letter of Claim and the Particulars of Claim on the basis that it did not mention an oral agreement and cited the relevant date for the agreement as from "about July 2015". I also reject that criticism. It is unsurprising that CLP felt it unnecessary to give particulars of the oral agreement in view of the Partnership Documents which provided clear documentary evidence that the parties had entered into a partnership and moreover that NHS England had accepted and recognised the parties as partners.

(iii) Contract

302. I have found that in the course of the conversation in June 2015 Dr Rathor and Jaswant made an oral agreement to go into partnership together. I find that Dr Rathor made an offer of partnership to Jaswant in the way described by Jaswant in paragraph 99 of her first witness statement and Jaswant accepted that offer in the way she described in paragraph 100. She asked Dr Rathor whether there was anything to do to formally make her partner and expressed her happiness at the answer "no". This was a sufficient acceptance of the offer.
303. I also find that it was the intention of both parties that the partnership was to take effect immediately. Dr Rathor's response to Jaswant's question was "no" there was nothing more to do and Jaswant understood that she had become a partner on that date. Further, on 24 July 2015 Sareet submitted the Partnership

Detail Form on their behalf. It was only by chance that the NHS failed to send the application forms to vary the two contracts until the following year.

304. I also find that Dr Rathor and Jaswant intended to create a contractual relationship. The 2015 Partnership Detail Form stated that it was to be completed “in all cases in which a new partnership is created or a new partner joins/leaves an existing partnership”. In my judgment, neither party would have signed the form unless they had intended to enter into a legally binding relationship.
305. Further the Partnership Forms made it very clear that their effect was to vary the existing GMS and PMS Contracts so that Jaswant became a party to them and assumed the same contractual obligations as Dr Rathor. I place particular reliance upon the GMS Contract Variation Notice the relevant parts of which I have set out above. It stated a number of times that Jaswant was now a party to the GMS Contract and that the contractor was the new partnership between Dr Rathor and Jaswant. They would not have signed and returned the notice if they had not intended their agreement to have contractual force.

(iv) Profit

306. I have also found that Dr Rathor and Jaswant agreed that they would share the profits from the two practices once there was sufficient income and that they agreed to share those profits in equal shares. But even if I had not found that they agreed to share the profits equally, I accept Mr Jory’s submission that the presumption that the parties would share the profits equally in section 24(1) of the Partnership Act 1890 would apply.

(v) Remuneration

307. Section 24(6) of the Partnership 1890 also provides that no partner shall be entitled to remuneration for acting in the partnership business subject to any agreement express or implied between the partners. I have found that Dr Rathor and Jaswant agreed that the loan had been repaid in full by the summer of 2016. In my judgment, this was an express agreement between for the purposes of section 24 of the Partnership Act 1890 and Jaswant was entitled to

receive £2,400 and the balance of £500 left over at the end of each month as drawings against her future profit share. I have also found that this agreement took effect from 1 July 2016.

(vi) Other Terms

308. There was no evidence that Dr Rathor and Jaswant agreed any other terms and I accept that in many cases the failure by the parties to agree anything more than that they intended to go into partnership together might make the contract void for uncertainty. However, in my judgment the failure to agree any other terms did not make the contract void for uncertainty for the following reasons:

- i) The business of the partnership was the two practices, the Northolt Family Practice and Allenby Clinic. The services which the partners were to supply to the NHS and the payment which they were to receive for those services were governed by the GMS Contract and the PMS Contract. It was a partnership to share the profits from those two contracts after deduction of the costs and liabilities incurred by the two practices. The parties also became personally liable to perform the obligations under both contracts.
- ii) The costs and liabilities of the two practices were also capable of being calculated without additional agreement. The principal liability of the partnership was the rent for Taywood Road. But that rent should have been paid by the NHS and “passed through” both practices to the landlord of the premises. It was unnecessary, therefore, for the parties to reach a separate agreement about the payment of the rent and the partnership could take over the existing arrangements.
- iii) Natio also paid the employees and accounted for any other additional expenditure. In practical terms, therefore, the partnership could also take over those arrangements without any further negotiation or agreement.

309. In testing this conclusion I have compared the agreement reached between Dr Rathor and Jaswant with the agreement reached between Dr Rathor and Dr

Ali. The only written contract which they signed was a PMS Contract Variation Agreement Form dated 2 December 2013. In her first witness statement she described her partnership with Dr Ali as a “notional” one. But Mr Hood and Mr Saunders did not suggest that their agreement did not give rise to a binding contract or a binding partnership.

(vii) Consideration

310. Mr Hood and Mr Saunders also submitted that the only consideration for Dr Rathor’s promise to enter into partnership with Jaswant past consideration, i.e. the loan, which was made in January 2014. I reject that submission. I have found that Jaswant agreed to lend Dr Rathor £60,000 because Dr Rathor agreed to make her a partner. But I have also found that the parties entered into an oral contract of partnership in June 2015. The consideration for Dr Rathor’s agreement to enter into that partnership was Jaswant’s agreement was to enter into the PMS Contract and the GMS Contract and to assume the obligations under each one (as the editors of *Lindley & Banks* recognise).

(viii) Indicia of partnership

311. Mr Hood and Mr Saunders also submitted that the complete absence of the indicia of partnership which I have set out above firmly points towards the conclusion that the parties did not carry on business in common. They also submitted that there was nothing in the management and operation of the two practices which would accord with or support the existence of the partnership.

312. I reject those submissions for three reasons: first, the difficulty which I have with these submissions is that exactly the same could be said about the partnership which they replaced between Dr Ali and Dr Rathor. I was not taken to any partnership deed or partnership accounts or to any books and records of any kind. Furthermore, Jaswant and the other employees were paid by Salus, Dr Ali’s service company, until 1 September 2014.

313. Secondly, Jaswant’s evidence (which I accept) was that Dr Rathor kept putting off the point at which proper accounts would be drawn up and they would begin to take a regular profit share. I also accept Jaswant’s evidence that in the

summer of 2016 Dr Rathor told Jaswant to continue taking £2,400 per month (and the balance of the petty cash of £500) in lieu of partnership drawings. Finally, I accept her evidence (which I have set out below) that in December 2016 Dr Rathor persuaded her to wait until the 2017 Accounts were drawn up to sort everything out in relation to drawings and partnership profits.

314. Thirdly, this submission fails to give any weight to the fact that the GMS Contract and the PMS Contract were novated with effect from 1 July 2016 and Jaswant became a party to them. In my judgment, that remains the position in the absence of any defence of *non est factum* or any claim by Dr Rathor to set aside the GMS Contract Variation Notice and the PMS Contract Variation Agreement Form either for mistake or misrepresentation. Mr Hood and Mr Saunders did not provide any explanation how, in practice, the parties could perform these contracts if they were not in partnership together.

(ix) Partner/employee

315. I have also found that Natio was Jaswant's employer rather than Dr Rathor. Mr Jory and Ms Tromans submitted that the fact that Jaswant was an employee of a personal service company owned by Dr Rathor which supplied services to the partnership does not prevent her from being a partner. I accept that submission. The objection to a partner being an employee which Rimer LJ identified in *Tiffin v Lester Aldridge LLP* is based on the proposition that Jaswant could not employ herself. This objection does not apply if she was an employee of Natio. Dr Rathor was an employee of Aqua when she was in partnership with Dr Ali.

(x) Dissolution

316. Finally, I attribute little weight to the fact that Jaswant could have terminated the partnership with little or no notice and triggered a winding up of the combined practice. Once the NHS had counter-signed and returned the 2016 Partnership Notices, both contracts had been novated and both Jaswant and Dr Rathor remained bound by them until released by the NHS as their counter-party. But in any event neither party was legally advised when they entered

into the agreement and signed the 2015 Partnership Detail Form and the 2016 Partnership Forms.

Issue 3: Salary Increases (Schedules B and C)

Primary Case

317. Dr Rathor's primary claim was that Jaswant and Sareet were only entitled to receive the salaries recorded in their original contracts of employment and that none of their pay increases were authorised. I reject this claim. It is clear from the spreadsheets which Jaswant sent to Regency on 23 July 2014 and 15 August 2014 that Jaswant was paid £34 per hour and Sareet £22 per hour by Salus on behalf of Dr Ali (or Dr Ali and Dr Rathor). It is also clear from Jaswant's email to Regency dated 20 August 2014 and their subsequent payslips that these salaries were transferred by Regency, the payroll provider, from the payroll of Salus to the payroll of Natio.
318. Dr Rathor did not call Dr Ali or suggest that he had not authorised pay increases. In her second witness statement Sareet's evidence was that Dr Rathor admitted to the Employment Tribunal that Jaswant was earning £34 per hour and Sareet was earning £22 per hour when she took over sole ownership of both practices. This evidence was not challenged by Dr Rathor and I accept that she made this admission. That is sufficient to deal with Dr Rathor's primary case and in fairness to Mr Hood, he did not press this case hard. I deal with the other increases in the context of Dr Rathor's alternative case.

Alternative Case

(i) Additional Payments (Jaswant)

319. The first head of Dr Rathor's alternative claim involves the allegation that Jaswant committed a complex payroll fraud by informing Regency that Dr Rathor and Balwant had received the fictitious payments in Schedule B. That schedule was prepared by AMS and the very specific allegation made against Jaswant was based on inferences drawn by AMS who stated in their report

dated 29 May 2018 that there were underlying patterns and trends which they explained as follows:

“There are underlying patterns and trends which are outlined below. This can only be seen when you look at the overpayments and underpayments on a cumulative basis, although some individual months this is also clear to see. (We reached these conclusions after examining the payroll records from Regency, which are appended to the witness statement from Mr Sidat accompanying this Report, and the bank statements for the Natio Health Care (UK) Ltd business account with Barclays, account no: 53337898 sort code 20-74-12, which statements are attached at Exhibit SR2 to the witness statement of Dr Rathor).”

320. It is strongly arguable that AMS strayed into giving expert evidence in this part of their report. But in any event Dr Rathor chose not to call Mr Sidat to prove the report and in my judgment that ought to be sufficient to dispose of the claim. If Dr Rathor was not prepared to call the witness on whose evidence such a serious allegation was based, she should not have pursued it. I also note that the claim to recover the sums in Schedule B was not advanced on the basis that Jaswant committed payroll fraud in Dr Rathor’s written closing submissions: see, in particular, paragraphs 218 to 222. Nevertheless, I go on to consider the merits of this claim.
321. Jaswant’s evidence was that Dr Rathor was in serious trouble with HMRC and that Mr Fonseka had put an action plan in place. She said that in December 2014 Dr Rathor asked her to take 30 hours as PAYE and 10 hours on a self-employed basis because it would save money for the practice:

“Dr Rathor and I met to talk about finances generally. I was concerned that I still hadn’t started to receive a larger income from the practices despite the fact that she had made me a partner in June/July 2015. I also didn’t want to continue working as hard as I had done in the past because I had become ill and I realised that I had actually missed out a great deal on bringing up my own children and taking part in their lives over the years. My grandchildren were starting to grow up and I agreed with Dr Rathor that I would reduce my hours of work. We agreed that I would start taking a higher pay of 40 per hour as part of the way of paying me towards the profits of the partnership, and we agreed that I would be paid for 40 hours per week. I was

not unhappy about this, because at least there was some significant increase in income for me at last, even though it was not what I thought that I was entitled to, which was half of the profits of the partnership. But I had no idea what the profits were at this stage, and Dr Rathor said that we would sort everything in relation to drawings and partnership profits out once the accounts for Natio had been completed in 2017.”

322. It was put to her that this was an excuse to disguise the fact that she was “skimming off” money from the Natio account:

“Mr Hood: That is simply an excuse to try to explain away your skimming off large amounts of money for yourself from the Natio account, is it not, that is what that is?

Mrs Sidhu: No, Sir, not at all.

Mr Hood: So, how would that situation benefit you unless you were thinking of ripping off the taxpayer, taxman?

Mrs Sidhu: Well, Dr Rathor suggested it and she did, Sir, whenever I asked her, she said, we will sort it out, we will sort it out. That is all she would say to me, even when I wanted to, even when we were trying at the health centre where rent was not paid from 2013 and I would keep saying to her, let us pay this off, and she would say, no, we, she would get this written off. And there came a time when the landlords actually, they were emailing us all the time. In the end, I had to said to her, we have to pay this, and we put a payment plan in, Sir, from May '16 to December '16 where we would pay round about £300,000 to the, the landlords of the, of the health centre where we were based. That was more important, Sir, for me to pay the debts off than anything else. And even when we moved into the health centre in 2015, of August, we wanted the telephones and things connected because obviously the lines were only for Allenby and we wanted to put in lines for Northolt, the telephone line communication, and the company would not do it and they said that they were owed several thousand pounds. And we agreed a monthly payment plan with them and paid both debts off then, Sir.”

323. Jaswant did not submit any tax returns or pay tax on the additional sums at the time although she has now submitted tax returns and paid tax on the relevant income. I attach very limited weight to this conduct because by the time she made these returns it was obvious to both Jaswant and her advisers that the point was likely to be taken against her.

324. Nevertheless, Jaswant's evidence was supported by Mr Fonseca who gave evidence in cross-examination that he went through Jaswant's and Sareet's salaries with Dr Rathor "quite a few times". He also recalled a conversation with Dr Rathor in which she informed him about her agreement with Jaswant:

Mr Hood: Paragraph 106, you say that Dr Rathor told you that she had agreed with Jaswant in December 2014 that part of her PA, her, part of her pay was on a PAYE basis and part of it was on a self employed basis. When do you say you had that conversation with Dr Rathor?

Mr Fonseca: I cannot recall the exact time, but, *or date*, but I told her that you, you cannot pay Ms, yeah, Ms Sidhu for self employment. *It* had to, the whole thing had to be accounted on PAYE *with her*. I recall that conversation, yes.

Mr Hood: Who do you say was present at that particular time when you had that conversation?

Mr Fonseca: I cannot recall *now*. It may be, maybe Ms, Mrs Sidhu was present. I cannot confirm *it*."

325. Mr Fonseca also produced a monthly P32 employer payment record which was accompanied by a pension sheet and a payment summary. These documents showed the monthly salaries recorded on the payroll for Jaswant, Sareet, Dr Rathor and Balwant. In his witness statement Mr Fonseca stated that he showed these documents to Dr Rathor and in cross-examination he did not retreat from this evidence although he accepted that the exercise only took a few minutes and that he did not show more than one or two of the monthly documents.

326. Mr Fonseca also produced a letter dated February 2015 from HMRC to Balwant and addressed to him at Laburnum Grove providing his tax code as an employee of Natio. In his witness statement Mr Fonseca said that he received this letter directly from Balwant and the authenticity of this document was not challenged.

327. Dr Rathor made a sustained attack on Mr Fonseca's evidence in written closing submissions rightly recognising the importance of his evidence to the salary claims. She submitted that the 2015 Accounts which Mr Fonseca prepared only recorded the salary paid to Jaswant as an employee and not the additional payments recorded in Schedule B. She relied on the figure of

£183,645 shown in the profit and loss account and the monthly breakdown of salaries on Mr Fonseca's file and submitted that and that either he deliberately misled HMRC or that no discussions could have taken place between Jaswant and Dr Rathor about the additional pay which she was to receive on a self-employed basis.

328. Dr Rathor's written evidence was that she was unaware that she and her husband were on Natio's payroll. In cross-examination she was taken to her tax return for the year ended 5 April 2015 and the tax certificate for the same year which she had sent to Rishi on 22 June 2017. She began by denying that she sent these emails at all until she was shown that they came from her personal email account at Yahoo. Nevertheless, she continued to maintain that she did not know that she was an employee of Natio.
329. When Dr Rathor was taken to her tax return, she asserted that Mr Fonseca had never properly explained its contents to her and that she was unaware that she had submitted a tax return which included the sum of £5,250 as an employee of Natio. Mr Jory then asked her whether she was prepared to withdraw the allegation of payroll fraud and this exchange took place:

"A. Sir, when you say it is paid from all employment, that is fine. I am going through – I did not go into those details from all employment £5,250. And then it says dividends, so I – as I said – I trusted Mr Fonseca, as well, and I did not know that the – this small amount came from a PAYE.

Q. Well, now, Dr Rathor, that you do know that that is where it came from, do you want to withdraw the case that Jaswant was involved in a payroll fraud?

A. No. I do not want to.

Q. Because you see, Dr Rathor, it would be a very extraordinary fraud, would it not, which is going to be so easily found out by the accountant, who is going to have a conversation with you about your tax return. It would be a very extraordinary fraud, would it not? She is going to be found out?

A. Well, they both knew each other.

Q. Yes. But you are not suggesting there was collusion to defraud you? That case was not put to Mr Fonseca? Or are you suggesting that?

A. No. They must have known.

Q. Are you suggesting that he colluded with Jaswant to perpetrate a fraud on you?

A. I am sorry, can you explain what colluded means, because I do not know that word.

Q. Colluded? Conspired with her to get together ---

A. Yes.

Q. --- to defraud you.

A. Yes.

Q. And that Mr Fonseca did that with Jaswant?

A. Yes.”

330. Jaswant did not dispute Dr Rathor’s evidence that the salaries for her and Balwant recorded in the payroll were never paid. Instead, it was put to Dr Rathor that she and Balwant took notional salaries from Aqua and this practice was then transferred over to Natio:

“MR JORY: Well, the position is, Dr Rathor, is it not, that at Aqua you had also left money in the business, you and your husband? Ascribed to you as salaries but you did not get the regular payment?

A. Because there was not even enough money in the business.

Q. Do you just left it there?

A. Well, there was – I had to pay the staff and everybody first, yes.

Q. So ---

A. We did not even take the money.

Q. So if, for a hypothetical moment, if your senior member of staff had simply transferred the same position as it existed at Aqua, into Natio, would that be an honest explanation for what happened?

A. So, as I mentioned before, it is something I was aware of. If I knew it, that was fine. But what – with Aqua I knew because my accountant was doing the payroll. But, here, the accountant was not doing the payroll – please, let me finish – and Jaswant was using an external payroll person which I did not know (inaudible) and I was unaware of it and that – that is something I am confessing, that I was not aware of her putting my husband and myself on the payroll and she never, actually, said to me, OK Doctor, there you go, you on the payroll, that is fine. But I was not aware of it.

Q. Can I go back to my question, please. Would the senior employee transferring precisely the same position as had happened at Aqua into Natio from September 2014 be the honest explanation for what happened?

A. No. Just because somebody was senior employee does not give them the right to do, because at least she should have spoken to me.

- Q. Well, let us say for a moment you are right, which I do not accept and she did not speak to you, she just did it.
A. Well, she should not have done it.
Q. Do you say that that makes her dishonest?
A. Of course.”

331. Finally, the letter from HMRC to Balwant was put to Dr Rathor. She could not explain how Mr Fonseca could have obtained a copy of the letter. But she rejected the suggestion that this letter was the reason why she had not called her husband to give evidence. Nor did she accept that it would have been highly risky for Jaswant and Mr Fonseca to put Balwant on the payroll without his knowledge if he was to receive correspondence from HMRC at home.
332. Ms Grewel gave evidence that she put before the Employment Tribunal the employment contract dated 9 October 2017 which she and Dr Rathor signed when she had replaced Sareet as acting practice manager. It provided that she was paid £16 per hour (rather than £16.50) for a 40 hour week (i.e. £640 or £2,560 per four week period). It also provided that for any approved additional hours she would be given time of in lieu rather than paid overtime.
333. Dr Rathor did not disclose Ms Grewel’s payslips in the course of these proceedings or in the proceedings before the Employment Tribunal. In cross-examination, however, Ms Grewel accepted that she was paid £4,083 for October 2017, £4,500 for November 2017 and £4,647 for December 2017. She also accepted that this was not very different from the salary of £4,655.59 which Sareet had received in September 2017, the month before she was suspended. Finally, she accepted that on an annualised basis this amounted to approximately £84,000 per annum. In re-examination she was asked about the additional pay and she said this:

- “Q. Now, was there any agreement that you be paid for those hours rather than have the time off in lieu that is mentioned in your contract?
A. No, this was discussed with Dr Rathor and she had authorised it.
Q. I see and approximately when was that? Can you recall?

- A. This was in October, because a lot of work needed to be done, so yes.
Q. In October 2017?
A. Continuously, yes.”

334. I reject Dr Rathor’s evidence that Jaswant deliberately concealed the payments in Schedule B and that she and Mr Fonseca conspired to deceive her. I do so for the following reasons:

- i) Apart from the inference drawn by the author of the AMS report (who was not called to give evidence) there was no evidence to support the allegation of payroll fraud. Dr Rathor accepted that she and her husband were paid as employees of Aqua and this evidence was confirmed by the P35 year-end tax listing for the year ended 5 April 2014. Dr Rathor also accepted that she and her husband did not take the money out of the company.
- ii) Jaswant asked Regency to put Dr Rathor and Balwant on the payroll of Natio in her email dated 20 August 2014. It was not put to her that by doing so, she was attempting to deceive Regency or that this was part of a scheme to defraud Dr Rathor and I find that it was not. All that Jaswant asked Regency to do was to transfer the employees of both Salus and Aqua over to the payroll of Natio. This was a natural and necessary step for the transfer of employees from the two separate service companies to the new one.
- iii) Further, the amount which Dr Rathor was recorded as receiving from Natio was the same amount as she was recorded as receiving from Aqua, namely, £750 per month. It seems highly likely to me (and I so find) that this was a tax mitigation device which Dr Rathor and Balwant used to reduce the amount of income tax which they paid and that they transferred it from one service company to other.
- iv) I also reject Dr Rathor’s evidence that she was unaware that she and Balwant were on the Natio payroll. The letter dated 13 October 2016 which enclosed the tax certificates which she sent to Rishi was addressed to her at home and sent by her to him from her personal

email account. It is impossible to see how Jaswant could have prevented her from reading the contents of the letter and its enclosures and I find that she did so.

- v) I also reject Dr Rathor's evidence that Mr Fonseca completed and filed her tax return without her authority or that Jaswant and Mr Fonseca conspired to defraud her. Again, she sent the return to Rishi from her personal email account and I find that she was fully aware of its contents both in August 2017 and when Mr Fonseca filed it on her behalf.
- vi) Finally, I accept Mr Fonseca's evidence that Balwant gave him the letter from HMRC with his tax code. Dr Rathor could provide no other explanation for this letter being on Mr Fonseca's file and if there had been another explanation, she could have called Balwant to provide it. I find, therefore, that Balwant was also aware that he was on the Natio payroll as an employee.

335. Because Dr Rathor gave untruthful evidence about her knowledge that she and her husband were on Natio's payroll, it does not necessarily follow that she was aware of the over-payments to Jaswant in Schedule B. Nevertheless, I have reached the conclusion that in about December 2014 Dr Rathor asked Jaswant to take 30 hours of her salary as PAYE and 10 hours as self-employed income in order to save money for the practice. I do so for the following reasons:

- i) Jaswant's evidence was supported by the evidence of Mr Fonseca. Although I approached his evidence cautiously, I have accepted his evidence that he showed the 2015 Payments Schedule to Dr Rathor. That schedule also contained the additional payments itemised in Schedule B for the period 30 November 2014 to 31 July 2015.
- ii) For example, Schedule C records Jaswant's net pay as an employee for November 2014 as £3,619.30. Schedule B records that she received a further £500 giving a total £4,119.30 and this was the figure in the 2015 Payments Schedule which Mr Fonseca showed to Dr Rathor.

- iii) I also accept Mr Fonseca's evidence that he showed Dr Rathor at least one monthly P32 employer payment record which was accompanied by a pension sheet and a payment summary. He kept those documents on his file with the 2015 Payments Schedule.
 - iv) I accept that it would not have been obvious to Dr Rathor that Jaswant had been overpaid from these documents alone because they did not break down her pay into the two elements. But in my judgment they provide documentary support for Mr Fonseca's evidence that he had an oral discussion with Dr Rathor about her agreement with Jaswant and counselled her against it. I find that he had such a discussion with her.
 - v) Further, having rejected Dr Rathor's case that Jaswant and Mr Fonseca did not conspire to defraud Dr Rathor I accept that Mr Fonseca was simply carrying out his duties as her accountant and I can find no motive for Mr Fonseca to conceal this information from Dr Rathor.
 - vi) The evidence of Jaswant and Mr Fonseca was also supported by the evidence of Ms Grewel. She gave evidence that Dr Rathor authorised very substantial payments to her in excess of her contractual salary. Dr Rathor did not produce her payslips or any other evidence to show that Natio accounted for those payments or paid tax and national insurance under the PAYE scheme (although she could easily have done).
336. Although I have reached the independent conclusion that I should accept the evidence of Mr Fonseca on this issue, I am fortified in that conclusion by the fact that the Employment Tribunal also accepted his evidence that he had raised the figures in the P32 with Dr Rathor. I return to this point below in the context of the additional payments to Sareet.
337. I have found the existence of an agreement in December 2014. I should also deal with Dr Rathor's other submission in relation to the 2015 Accounts. Because the point was never put to Mr Fonseca, I cannot accept the submission that Mr Fonseca deliberately misled HMRC. It seems to me that there are two other possible explanations which Mr Jory would have wanted to

put to Dr Rathor if the point had been raised in Mr Fonseca's cross-examination:

- i) First, it is quite possible that Dr Rathor signed the accounts after she had refused to accept Mr Fonseca's advice that she should account for Jaswant's full pay.
- ii) Secondly, the failure to treat the additional payments as part of Jaswant's salary was potentially consistent with the parties treating these additional payments as partnership drawings rather than employment income (which was part of the explanation given by Jaswant).

338. Finally, I deal with Dr Rathor's submission that the agreement between Dr Rathor and Jaswant put Natio in breach of regulation 21 of the Income Tax (Pay As You Earn) Regulations 2003. I have found that Dr Rathor asked Jaswant to take 30 hours of her salary as PAYE and 10 hours as self-employed income (and that she agreed to do so). I have also found that Mr Fonseca advised her not to do so. Even though those findings implicate Dr Rathor in a breach of the regulation as the sole director of Natio, I remain satisfied that I should accept the evidence of Jaswant and Mr Fonseca.

339. Their evidence was supported by the documents and I bear in mind that the allegations of payroll fraud which Dr Rathor made against both of them were equally, if not more, serious and that she was not prepared to call AMS to substantiate them. Since neither party relied on illegality as a defence to the claim or as an independent ground for restitution, I need not consider the breach of the regulations any further.

340. I therefore find that Dr Rathor authorised the payments to Jaswant set out in Schedule B and I dismiss that part of Dr Rathor's counterclaim. I also find that the agreement made between Dr Rathor and Jaswant in December 2016 was an express agreement between the parties for the purposes of section 24 of the Partnership Act 1890. The consequence is that Jaswant was entitled to receive 30 hours of her weekly pay as remuneration from the partnership and 10 hours as drawings in lieu of partnership profits.

(ii) Additional Payments (Sareet)

341. By trial Dr Rathor had withdrawn the claim for £4,000 and Sareet had admitted that in one month she had paid herself her salary of £3,209.20 twice by mistake. Apart from an unexplained payment of £0.40 (which was de minimis), Dr Rathor claimed at trial four payments totalling £2,100 which Natio had paid to Sareet on the following dates:

- i) 31 October 2014: £500;
- ii) 30 November 2014: £400;
- iii) 31 December 2014: £400; and
- iv) 31 March 2015: £800.

342. Sareet's written evidence was that Dr Rathor agreed to pay her £1,000 for the additional work which she performed for the two practices in September 2014, £500 for October 2014 and £400 for each of November and December 2014. It was also her evidence that Dr Rathor agreed to pay her £800 for the assistance which she gave Dr Rathor to write her appraisal during February and March 2015. Both in her witness statement and in cross-examination she gave a detailed description of the additional work which she performed.

343. In paragraph 59 of her first witness statement Dr Rathor accepted that she offered to pay Sareet £400 per month after Mrs Bradbury and the other staff left Allenby Clinic but that Sareet preferred to stay at Ruislip Road and did not earn the pay rise. She also stated that if she had earned the pay rise, it would have been recorded in the payroll records.

344. Again, I prefer Sareet's evidence on this issue to that of Dr Rathor and I do so principally because a number of contemporaneous documents supported her evidence rather than Dr Rathor's. In particular:

- i) Sareet's evidence was supported by Aqua's bank statements which recorded that on 30 September 2014 she was paid £3,566. This sum was £1,000 more than her net salary of £2,566, which was paid through

- the payroll and recorded in Schedule C. Dr Rathor did not claim repayment of this sum or challenge Sareet's explanation for this payment in cross-examination.
- ii) The bank statements for Aqua also recorded that on 30 May 2014 Sareet was paid £1,000. It was her evidence that this payment was made to her for assisting Dr Rathor to prepare her appraisal for the previous year. Again, Dr Rathor did not claim repayment of this sum or challenge Sareet's explanation for this payment in cross-examination.
 - iii) Mr Fonseca recorded all four disputed payments as part of Sareet's salary in the 2015 Payments Schedule. For example, Schedule C records Sareet's net pay as an employee for October 2014 as £2,349. Schedule B records that that she received a further £500 giving a total £2,849 and this was the figure which Mr Fonseca recorded in the 2015 Payments Schedule.
 - iv) I reject Dr Rathor's evidence that Sareet was unwilling to visit Ruislip Road and did not earn the pay rise. Schedules 10 and 11 to Mr Jory's closing submissions quoted from text messages passing between Sareet and Dr Rathor between 4 February 2014 and 24 July 2017. They showed that Sareet worked out of hours, she assisted Dr Rathor with her appraisals in 2014 and 2015 and responded promptly and efficiently to her employer's requests. Moreover, Sareet was not taken in cross-examination to a single email or text message in which she refused a request from Dr Rathor.
 - v) Given my findings in relation to the payroll fraud and her agreement with Jaswant, I reject Dr Rathor's evidence that she would have insisted that these sums be paid through the payroll. Indeed, the failure to disclose any records for the additional pay to Ms Grewel strongly suggests that Dr Rathor was not concerned to ensure that this took place.

345. I therefore find that Dr Rathor authorised the four additional payments to Sareet totalling £2,100 and set out in Schedule B and I dismiss that part of Dr Rathor's counterclaim.

(iii) Short term salary increases

346. Between May and September 2017 Natio paid both Jaswant and Sareet an additional £10,000 through the payroll. Jaswant's evidence was that in April 2017 Dr Rathor agreed to pay a bonus of £10,000 to her and Sareet over five months at £2,000 per month. In cross-examination she said that the reason for the bonus was that the combined practices had achieved QOF payments of about £160,000 and just under £30,000 on LIS payments adding up to about £190,000. Those figures correspond to the gross payments which the combined practice received for both QOF and LIS and which I have set out above.

347. Jaswant was asked to confirm when precisely these bonuses were agreed and she said that the agreement had been made in mid-April 2017. She also said that the reason why the bonus payments were spread over five months was for cashflow reasons and that the practice could not afford to pay one lump sum.

348. Dr Rathor challenged this explanation. Jaswant was taken to Natio's bank statement for April 2017 which showed that throughout that month Natio had a cash balance of about £150,000 and it was put to her that the company had no cashflow problems:

“Mr Hood: 10B. Page 485, please, Mrs Sidhu. Now you're in charge of dealings with this Natio account, aren't you? Or, sorry, weren't you, at the time? You had visibility on a very regular basis as to the financial position of the account and the balance of the account. Yes?

Mrs Jaswant Sidhu: Yes, Sir.

Mr Hood: So the cashflow problems you refer to that meant that there had to be instalment payments instead of a lump sum cheque, those obviously were known to you. Can you look at page 485? There you see the April bank statement for Natio.

Mrs Jaswant Sidhu: Yes --

Mr Hood: See --

Mrs Jaswant Sidhu: Sir.

Mr Hood: The starting balance is £123,763? And I think your answer was it was about mid April that it was decided because of cashflow problems it would be paid in instalments. Look down at the balance on 13 April. It is £119,000 odd. Yeah? It goes up to £175,000 by 18 April. Over the page. Look down the right hand column. It is in excess of £150,000 balance throughout April 2017, isn't it?
Mrs Jaswant Sidhu: Yes, Sir.

Mr Hood: So your evidence that this was because of cashflow problems is completely false, isn't it?

Mrs Jaswant Sidhu: Sir, that is what Dr Rathor asked. She said I would rather not pay it in a lump sum, I would rather you take it over the next five months. And that is exactly what we did, Sir.

Mr Hood: But your evidence was it was because of cashflow problems.

Mrs Jaswant Sidhu: Sir --

Mr Hood: This doesn't show cashflow problems, does it, this --

Mrs Jaswant Sidhu: Sir --

Mr Hood: Statement?

Mrs Jaswant Sidhu: This, looking at this, it doesn't, Sir, but that is what she had agreed with me, Sir.

Mr Hood: Why did you say cashflow problems just then?

Mrs Jaswant Sidhu: Sir, when we were talking, that is what she said. She said take it over five months and we just leave it at that. And....".

349. Jaswant repeated her evidence and then explained that the practices were gathering the money to pay the rent. She was challenged to identify the rent payments in the bank statements and she said that the practices had been in arrears since 2013 and that they were trying to catch up to pay the money which they owed to the landlord, CHP.

350. Dr Rathor's evidence was that she had never authorised these payments at all. In paragraph 69 of her first witness statement she said that in October 2017 AMS had alerted her to these payments and she had stopped them. In cross-examination, however, she accepted that she had become aware of these payments as they were going through Natio's bank account:

“Q. Yes? And as his Lordship points out, there are then, from May until September, there are five months when, on their case, you agreed that they should have an extra £2,000 by way of bonus. Do you deny that?

A. I never agreed.

Q. But you do accept, doctor, do you not, that, throughout that period when they were receiving the bonus and it was going through the bank account, you had visibility of transactions because you had the mobile banking app? So you could see, on a month by month basis, what they were taking.

A. Well, I did make it clear that, yes, I did have partial. I could see some transactions going but I have not fully investigated that.

Q. You could see all the transactions going to Jaswant and Sureet and so, if you were looking at investigating them, those would be the transactions which your eye would be drawn to most obviously, are they not? Yes?

A. Yeah. Yeah, I have seen the transactions, yes.

Q. Yes. So you saw the transactions, at the time, from May until September, where how much they were taking out each month.

A. Mmm.

Q. You saw that at the time?

A. Well ---

Q. Month by month?

A. Well, I did have – I could only see the transactions since.

Q. But you could see what they were each taking each month, at the time, over that period, yes?

A. Well, I am not even sure, at that time, if I could see who is taking what because, on the mobile app, I was just familiarising myself on the app.

Q. Doctor, we all have mobile apps these days.

A. Well, my ---

Q. The mobile app shows transactions. You can look at the transactions on a month by month basis and it says exactly what is on the bank statement, does it not? It tells you who the transaction has been paid to. So if it has been paid to them, you know that.

A. Well, that was, as I said earlier, it was the first time I had it and I was trying to familiarise myself and, also, I had to, kind of, confirm.

Q. Well, doctor, just the simple point, I think you did admit it before but, on a month by month basis, you saw the amounts of money they were paying themselves from the mobile app?

A. Yes.

Q. Yes.

JUDGE LEECH: You accept that? You saw that?

A. Well, my Lord, it was going but, as I said, I will be honest with you now, I cannot remember, but I could see the money was going from the accounts, yes.

JUDGE LEECH: To them? To Jaswant and to Sureet?

A. Again, I cannot remember, but, I think, yes.”

351. Dr Rathor was then taken to Yasin's email dated 2 April 2017 and asked about the line: "I saw she gets paid £5800 and I guess after tax". She was also taken to Natio's bank statement for March 2017 and a payment to Jaswant of £4,855.64 with the narrative "wage" on 29 March 2017. She accepted that she had seen this entry and the corresponding entry showing a payment to Sareet for £3,181.13:

Q. Well, your only evidence so far is that the manager showed you what was on the account.

A. But that was just a quick glance I had.

Q. Yes.

A. I did not go into details that I remember.

Q. But you did, doctor, because you recorded in an email the following day what you had seen was a payment to Jaswant, and what you were asking the accountant to investigate for you.

A. Well, if I'd seen it and it was, that's what I remember, that's what I wrote in the email.

Q. Exactly. So you saw that. And what you also saw on the same occasion is the entry immediately above it which is Sareet wage 3,181.

A. Yeah.

Q. So you saw that on the 1 April. Your email of the 2nd doesn't take any issue in relation to Sareet and the reason for that, doctor, is because what you were asking the accountant to look at was how much Jaswant had taken because that was relevant to considering how much she would need to have to give credit for in the calculation on the division of profits with you over the practice, wasn't it?

A. I disagree because, yeah.

Q. So you saw those salaries and it says "wage," it's absolutely clear, it says "wage." And you saw what they were taking in April. Now it's my case, as you know, doctor, that you have the mobile banking app installed on the same occasion because that's when you got the texts redirected. I know you challenge that and you say it's the 21 June.

A. Yes."

352. The bank statement for the Natio Account for May 2017 was then put to her and she was asked about payments of £4,189.19 to Sareet and £6,041.70 to Jaswant. It was suggested to her that she realised that these payments had increased because each of them had received the first instalment of their bonus. (I add that the bonus of £10,000 was a gross sum and that the net sum

which each of them received after tax and national insurance was about £1,200 or £1,300.)

353. It was then put to Dr Rathor that the reason why she wanted Jaswant and Sareet to take their bonus in instalments was because she was intending to take a dividend of £80,000:

“Q....Now doctor, you would have realised that that was more than the figures you’d seen in April. And the reason it was more is because you had told each of them to take a bonus of £2,000 per month for the next five months, hadn’t you?”

A. Not true, sir.

Q. And the reason you told them to take it in instalments is because after you had seen the amount of money in the Natio account you and Yasin decided that you were going to take out at least £80,000 towards the purchase of your new house from what was in the bank account, and so – although you didn’t tell them – you didn’t want them to take out £20,000 from that account in one go. And you wanted them to spread it over instalments, didn’t you?”

A. That’s not true.

Q. And that’s why they added £2,000 each to their wage payments for the next five months, isn’t it?”

A. I disagree.

Q. And you saw that in May.

A. I disagree.”

354. Dr Rathor was also taken to Natio’s bank statements for June and July 2017 and accepted that she had seen the payments to Jaswant and Sareet at the time. The payments to Jaswant in both June and July were £6,041.70 and, therefore, the same as in May. There was a slight variation in the payments to Sareet who was paid £4,767.19 in June and £4,655.60 in July.
355. She was then taken to the draft of the 2017 Natio Accounts which she sent to Rishi on 22 August 2017. She accepted that she understood her duties as the sole director of Natio in the preparation of those accounts. But she could not explain why she did not raise any concerns with Yasin about the payments to Jaswant and Sareet either after her email dated 2 April 2017 or during the preparation of the 2017 Accounts. This question was put to her a number of times and she had no answer although I give just one example here:

“Q. But you’re saying now that Jaswant and Sureet weren’t entitled to those wages, they were stealing money ---

A. That is true.

Q. --- from the company?

A. That is true.

Q. So why didn’t you tell your accountants that at the time?

A. As I said, the information was not given by me to them.

Q. Why didn’t you tell them that at the time since you had seen the bank statements, you saw that that’s what they had required to do the accounts and you had, you say to his Lordship, genuine concerns about the fact that you’d seen those wages going out and that you thought that they were stealing money?

A. I cannot answer it.”

356. Dr Rathor had already been taken to the draft of the 2017 Sole Trader Accounts which she sent to Rishi at an earlier stage of her cross-examination. These accounts showed total drawings of £291,815 including £80,664 in April 2017 and £67,471 in May 2017. Dr Rathor accepted that these payments included a dividend of £80,000 paid to Ranwant in two instalments of £50,000 and £30,000. She also said that she took tax advice from her accountant in relation to this dividend.
357. Dr Rathor’s written closing submissions subjected the QOF and LIS payments to a detailed analysis. This analysis was provided to counter the evidence given by both Jaswant and Sareet that they had received the bonuses because of the improved financial performance of the combined practice. The difficulty which I had with this analysis is that Dr Rathor did not call Mr Motamari, the QOF and LIS consultant, whom Dr Rathor had employed and could have assisted me to understand these figures. Nor did she call Mr Sidat of AMS upon whose report this analysis was principally based.
358. I have set out the figures for QOF and LIS payments in the documents which were put to Jaswant and Sareet in the background section to this judgment. For present purposes I am prepared to accept the figure of £68,601 set out in note 6 to the 2017 Sole Trader Accounts as the appropriate figure for the additional income which the combined practices achieved for “Quality, aspiration and achievement”. Those accounts were prepared by AMS and Dr Rathor relied upon them in her Defence, Counterclaim and Additional Claim.

359. Based on these figures I accept Dr Rathor's submission that a bonus of £10,000 for each of Jaswant and Sareet was not justified by the QOF and LIS payments alone. I also note that the figure in the 2017 Sole Trader Accounts was slightly down on the equivalent figure of £74,735 for the previous year. Nevertheless, I reject Dr Rathor's evidence on this issue and find that she was fully aware that Jaswant and Sareet were each receiving a bonus of £10,000 between May and September 2017. I have reached this conclusion for the following reasons:

- i) The sum of £10,000 was added to Jaswant's salary as an employee and recorded as part of her salary for payroll purposes. In her email to Abdullah dated 16 August 2017 Jaswant recorded that she had already sent the P32 entries to AMS. I consider it highly unlikely that she would have put this sum through the payroll or provided the figures so promptly to AMS if Dr Rathor had not authorised it.
- ii) Further, Dr Rathor had alerted Yasin of AMS to her concerns about the level of Jaswant's salary in her email dated 2 April 2017. I find it equally unlikely that Yasin or Abdullah would not have spotted or queried an increase in salary of £10,000 if it had not been authorised by Dr Rathor.
- iii) I reject Dr Rathor's evidence that that AMS only alerted her to these payments in October 2017 and that she then stopped them. She accepted that she saw the payments to Jaswant and Sareet in April, June and July 2017 but could provide no explanation for her failure to challenge them at any time before 2 October 2017.
- iv) Indeed, as soon as the draft 2017 Accounts had been prepared by AMS Dr Rathor sent them to Rishi and relied upon them herself to raise mortgage finance. In the draft 2017 Sole Trader Accounts AMS recorded staff salaries of £210,542 and total staff costs of £359,360. She did not challenge this figure either.

360. Further, although Dr Rathor complained about Jaswant's monthly pay when she sent the email to Yasin on 2 April 2017, her response was not to challenge

it but to ask Yasin for help in taking funds out of Natio to support her mortgage application:

“I asked barclays to give me a mortgage of 650k. Can you please advise me if I can transfer money from natio to saving time being as it will look good. Also I believe that is my profits. Why she keeps all the money in the natio...”

361. Dr Rathor did not call Yasin to give evidence. But I find on a balance of probability that he responded to that request by advising Dr Rathor to take a dividend of £80,000 out of Natio and that the most efficient tax treatment was to distribute the money to Ranwant rather than to Dr Rathor herself. I also find that Dr Rathor agreed to the bonuses not only as a reward Jaswant and Sareet for the financial performance of the combined practice but to avoid any argument about her taking so much cash out of Natio.
362. I also find that on a balance of probabilities that Dr Rathor authorised Jaswant and Sareet to take their bonuses over a five month period because Natio did not have the cashflow to sustain withdrawals totalling £100,000 in April and May 2017. By the end of May 2017 the balance on the Natio Account had been reduced to £32,274.85. The rent spreadsheet dated 4 October 2018 (which Dr Rathor produced) showed that Dr Rathor had failed to pass through rent of £48,561.72 to CHP in the year 2016 to 2017. Jaswant also relied on an email dated 10 July 2017 from Mr Dixon, the finance manager of CHP, requesting that the arrears be cleared.
363. I therefore dismiss this element of Dr Rathor’s counterclaim against Jaswant and this element of the Additional Claim against Sareet. It follows that I also reject Dr Rathor’s claim that Jaswant and Sareet would have continued to pay themselves an additional £2,000 per month after September 2017 if their fraud had not been detected. I return to this point in dealing with the claim against Sareet in relation to the long term increases in her salary.
364. In the light of these conclusions, it is unnecessary for me to address a number of subsidiary issues which Mr Jory and Ms Tromans raised about the tax treatment of the dividend paid to Ranwant and whether Dr Rathor was accurate in the presentation of her income to potential lenders. I also return to

the question of issue estoppel after considering the claim in relation to Sareet's long term pay rises (below).

(iv) Long term salary increases (Jaswant)

365. I have found that Dr Ali remunerated Jaswant at £34 per hour for a 40 hour week through Salus and that this salary was carried over to Natio. This accounts for her monthly salary of £5,909.20 from September 2014. I have also found that in December 2014 Jaswant agreed to reduce the amount she received on the payroll from 40 hours to 30 hours and to take 10 hours of her paid as self-employed remuneration. This accounts for the salary fluctuations in December 2014 and February 2015. Finally, I have found that Dr Rathor authorised a bonus of £10,000 which accounts for the increase in salary in May 2017.

366. Accordingly, the only remaining issue in relation to Jaswant's salary is whether Dr Rathor authorised an increase in her hourly rate from £34 to £40 in November 2016 as a temporary form of partnership drawings. I find that Dr Rathor authorised that pay increase for the same reasons. She was fully aware of Jaswant's monthly pay from 2 April 2017 onwards, neither she nor AMS challenged those figures and she approved the staff costs and salaries in the 2017 Sole Trader Accounts. I therefore dismiss this part of Dr Rathor's counterclaim.

(v) Long term salary increases (Sareet)

367. I have also found that Dr Ali remunerated Sareet at £22 per hour through Salus and that this salary was carried over to Natio. This accounts for her monthly salary of £3,823.60 from September 2014. In cross-examination Sareet gave evidence that Dr Rathor agreed to a number of subsequent pay increases for the following reasons:

“Q. Can you just tell me why they were – why you – why Dr Rathor agreed to increase your salary during the year and not at the year end?

A. There were particular things that happened in other times that my salary – that my hourly, basically, had increased. So, for the first one that was to £27 was in January 2015 and that

was because I was getting paid my normal wage for Northolt Family Practice, but I was being paid separately for the work that I was doing for the Allenby Clinic and I did not want to continue to be paid in lump sums, and when I discussed this with Dr Rathor and Jas in 2015, I was – sorry – so when I discussed it with them in January 2015, I had asked for approximately £1,000 extra per month for the burden of the extra practice and all the extra work, and we came to an agreement at £27.

Q. And, then the increase at 34,000?

A. £30, sir, was the next one.

Q. £30 was the next one.

A. That was shortly after our CQC visit. That was discussed and agreed in August 2016 and that was to £30.

Q. That was shortly after the CQC visit?

A. Yes. So, between 27 and 30 about a year and a half (inaudible). And, then the final one was discussed in November 2016.

Q. So, that is to 34, is it not?

A. Correct, and that 34 was agreed because Jas was initially on £34 an hour when she was taken over by Dr Rathor, effectively, and it was agreed because with her going off sick and not being well, and so forth, that I would be on the same pay that she was getting because, effectively, I was taking on her role as well.”

368. Dr Rathor disputed all of these pay rises. In paragraph 102 of her first witness statement she relied upon the comparable salary of £25,800 paid to Ms Bradbury. She also relied on the evidence of AMS about comparable salaries. In their closing submissions, Mr Hood and Mr Saunders also placed significant reliance upon the findings of the Employment Tribunal which found that the two increases from £27 per hour to £30 per hour and from £30 per hour to £34 per hour had not been authorised.
369. There was also a dispute between the parties about the amount of Sareet’s annual salary paid through the payroll when she was suspended and then dismissed. Sareet’s case was that her annual salary was £80,910.40. This was based on a gross monthly salary of £5,909.20 x 12 = £70,910.40 plus a bonus of £10,000 paid over 5 months.
370. Dr Rathor submitted that I should approach Sareet’s salary on the basis that she and Jaswant would have continued to pay themselves £2,000 more per month if their fraud had not been discovered and they had not been dismissed

in October 2017. On this basis her gross salary was £7,909.20 x 12 = £94,910.40.

371. In support of her case Dr Rathor relied upon a credit card application which was found on Sareet's computer. The metadata showed that Sareet had created this document on 7 August 2017 and in the application Sareet stated that her annual income before tax was £94,910. Sareet's evidence was that this included rental income as well as her salary. It was put to her that it was an extraordinary coincidence that her salary and the rental income added up to £94,910 exactly:

'MR HOOD: The figure that you saw AMS took, which was treating the five lots of £2,000 per month as continuing and forming part of your gross salary every month, that figure comes to 94,910, which is the exact figure that you put as your gross salary – or your income, I should say – on the credit card application. How does that remarkable coincidence come about?

A.I am not sure about the report, but that is where my figures came from.

Q.Right. So, you have sat down and you have added up what you made from the rental property, added that to the bonuses you actually received, but just as five bonuses and not continuing, and all that added up, by coincidence, to 94,910. That is what you did, is it?

A.I added my figures up and the figure that I put down is what I would have come to.'

372. Having heard the evidence of Sareet, Dr Rathor and Ms Grewel, I prefer Sareet's evidence on this issue and I find on the balance of probability that Dr Rathor agreed and approved all three pay rises. I do so for principally for the following reasons:

- i) I have already found that in the course of preparing the 2015 Accounts Mr Fonseka took Dr Rathor through at least one monthly P32 for the purposes of approving those accounts. I have also found that Dr Rathor approved the individual payments of £2,100 to Sareet between October 2014 and March 2015.
- ii) In the light of those findings, I also find that Dr Rathor was aware of the monthly salary which Sareet was receiving between January 2015

and March 2015 when she signed the 2015 Accounts on 12 January 2016.

- iii) I have also found that Dr Rathor was aware of Sareet's salary in April, June and July 2017 and fully understood the staff costs in the draft 2017 Sole Trader Accounts which she sent to Rishi in August 2017.
- iv) If Dr Rathor had not agreed and authorised all of Sareet's pay increases I have little doubt that Dr Rathor would have challenged those figures and refused to sign or approve the 2016 Accounts or the 2017 Accounts.

373. I also accept that the 2016 CQC Quality Report contained impressive findings for the combined practice which were not repeated in the 2019 report. Although I will not set out details of the work which Sareet performed, I am satisfied that Sareet made a material contribution to the findings in that report and that these findings provided reasonable grounds to award her a pay rise of £3 per hour in August 2016. I also agree with the finding made by the Employment Tribunal that a small rise to take account of inflation in March 2016 was unremarkable: see [48].

374. Finally, I reject Dr Rathor's evidence that the appropriate comparable for Sareet's salary was the salary which she had paid to Ms Bradbury as practice manager of the Allenby Clinic. The obvious comparable was the salary which she had agreed to pay Ms Grewel who had originally replaced Sareet on a temporary basis and then replaced her on a permanent basis. Dr Rathor provided no explanation for her failure to put this evidence before the Court either on the summary judgment application or at trial.

375. It is striking that the Natio bank statement records that in September 2017 Sareet was paid a net salary of £4,655.59 compared with Ms Grewel's salary of £4,647 in December 2017. It is also striking that Ms Grewel accepted that this was equivalent to a gross salary of £84,000 per annum. Dr Rathor had every opportunity to put Ms Grewel's payslips before the Court to demonstrate that this figure was inaccurate (and could even have done so in

re-examination). But she did not. I therefore find that this was the level of Ms Grewel's annual salary when she replaced Sareet.

376. If Dr Rathor was prepared to pay the practice manager for the combined practice £84,000 in December 2017, I can see no reason why she would not have been willing to pay the practice manager £62,568 in August 2016 and £70,910.40 in November 2016 (and also a bonus of £10,000 in May 2017) and for this reason too I find that she agreed to do so.

377. I turn now to the findings of the Employment Tribunal. The tribunal found that Sareet's first pay rise in January 2015 was "clearly sanctioned" by Dr Rathor: see [41]. Moreover, Dr Rathor has not appealed against that finding. But the tribunal then found that the second and third pay rises (and the bonus) were unlikely to have been agreed: see [50]. I deal with whether that finding gives rise to an issue estoppel below. But in assessing the evidence which was put before me, I cannot give much weight to that finding for the following reasons:

- i) Dr Rathor called Ms Grewel to give evidence before the tribunal. She accepted that her contract of employment was put in evidence but that she did not tell the tribunal how much she was actually being paid. It is likely that the tribunal would have reached a different conclusion if they had known that Ms Grewel was being paid £84,000 per annum.
- ii) Dr Rathor did not disclose to the tribunal Yasin's email dated 2 April 2017 or any of the emails passing between herself and AMS and Rishi between May and August 2017. Indeed, the tribunal was told the following (at [42]):

"In or about April 2016, the respondent changed accountants to AMS and it is not entirely clear to us why accounts for the practice were not drawn up for the period ending 31 July 2016 and the period ending 31 July 2017. Draft accounts were apparently only produced by AMS on 13 November 2017. There is a suggestion from the respondent that obstruction by the claimant and her mother prevented AMS from producing the accounts earlier. However, the least we would have expected would have been some form of evidence from the accountants of them

requesting information and being denied it. Absolutely no evidence has been provided to us of this nature.”

- iii) It is clear that the tribunal appreciated the significance of both the 2016 Accounts and the 2017 Accounts to the issue before them and expected it to be the subject of evidence. Dr Rathor did not call AMS to give evidence and it is not clear to me how the tribunal came to be told that AMS had only produced draft accounts on 13 November 2017 (although this was consistent with the evidence in paragraph 69 of Dr Rathor’s first witness statement which I have rejected).
 - iv) Whatever the explanation, the tribunal was not told that AMS had sent the signed 2016 Accounts to Dr Rathor by 23 May 2017 and final drafts of the 2017 Accounts to her by 22 August 2017 or that neither she nor AMS had raised any concerns about the level of Sareet’s salary. It seems likely that the tribunal would have reached a different conclusion if they had been provided with this information and if Dr Rathor had given disclosure of the emails passing between herself, AMS and Rishi.
378. Finally, I should make it clear that I have reached the conclusion that Dr Rathor approved Sareet’s pay rises even though I did not accept Sareet’s explanation for the figure of £94,910 on the credit card application. At first blush, therefore, this document provided cogent evidence that Sareet intended to keep on paying herself an extra £2,000 per month after September 2017. If so, this would have undermined Sareet’s evidence on a number of issues including the £10,000 bonus and her pay rises.
379. In my judgment, however, the most likely explanation for this document is that Sareet inflated her salary to obtain credit by annualising the gross salary on her most recent pay slips (which she could show to potential lenders). Whilst this was no doubt discreditable, it does not affect my conclusions on those two issues.
380. Moreover, I consider that the overall weight of the evidence on both on those and other issues was in her favour and against Dr Rathor. In particular, I am

satisfied that Dr Rathor did not give truthful evidence in paragraph 69 of her first witness statement when she said that AMS had only alerted her to the bonus payments that in October 2017.

381. For these reasons I find that Dr Rathor authorised Sareet's pay increases and dismiss that element of her counterclaim against Jaswant (who is alleged to have been responsible paying staff wages, liaising with payroll providers and for production of payslips). I also dismiss that element of the Additional Claim against Sareet.
382. I have already found that Sareet is not bound by an issue estoppel because the same relief was claimed against Jaswant in relation to both the bonus and the two pay rises in August and November 2016. But if that conclusion is wrong, it is also my conclusion that the material upon which I have relied in making my findings in relation to those issues was new material which Sareet could not with reasonable diligence have adduced before the Employment Tribunal. I reach this conclusion for the following reasons.
383. In making my findings I have relied on Dr Rathor's email to Yasin dated 2 April 2017, the bank statements for the Natio Account, the 2016 and 2017 Accounts, AMS's emails to Dr Rathor and her emails to Rishi between May and August 2017 (and their attachments). I have also relied upon Ms Grewel's evidence in cross-examination.
384. It is clear from the Employment Tribunal's judgment itself that Dr Rathor did not disclose these documents in those proceedings even though paragraph 8 of Guidance Note 2 of the Employment Tribunals Presidential Guidance – General Case Management imposed an obligation to disclose any relevant document in her possession. In their closing submissions Mr Jory and Ms Tromans pointed out that all of the documents upon which I relied were not disclosed in these proceedings until after 2 September 2019 and then pursuant to court orders: see paragraphs 11(vi), 340 and Schedule 1. Mr Hood and Mr Saunders did not dispute this in their reply submissions.
385. Even now Dr Rathor has not disclosed any documents relating to the level of Ms Grewel's pay (including her payslips and the payroll records). Ms Grewel'

contract suggested that she was earning £16 per hour for a 40 hour week with no overtime. In cross-examination Ms Grewel accepted that she earned £84,000 per year. She said that she earned so much because she was working such long hours. When she was asked why she did not tell the Employment Tribunal, she said that she was never asked the question.

386. In my judgment, it was not reasonable to expect Sareet's legal team to have obtained disclosure of documents which Dr Rathor failed to disclose until about a year later in these proceedings. It was not reasonable either to expect them to challenge Ms Grewel's evidence about the terms of her contract or to establish the true level of her pay without (at the very least) access to the bank statements for the Natio Account. Accordingly, I am satisfied that Sareet is not bound by an issue estoppel in relation to the finding in the Employment Tribunal's judgment at [50].

(vi) *Pension Contributions*

387. Because Dr Rathor agreed and authorised the salary increases and bonus paid to Jaswant and Sareet through the payroll, I find that she was also legally obliged to pay the increased pension contributions due on those sums into the NHS pension scheme. I therefore dismiss that element of the counterclaim and the Additional Claim.

Issue 4: Cash Withdrawals (Schedule D)

388. I have found that Dr Rathor knew that Jaswant was withdrawing £2,400 per month to repay the loan and then as partnership drawings. I have also found that Dr Rathor knew that Jaswant was withdrawing £500 per month for petty cash and then using any balance to repay the loan and then as partnership drawings. Finally, I have found that Dr Rathor approved and authorised those withdrawals. In those circumstances, I dismiss Dr Rathor's counterclaim for repayment of the sums set out in Schedule D.

Issue 5: Cheque Payments (Schedule E)

Introduction

389. Dr Rathor also counterclaimed against Jaswant for £94,218.50. She claimed that Jaswant wrote 32 unauthorised cheques to herself, Gurdarshin and Sareet between 17 April 2015 and 10 May 2017: see Schedule E. Jaswant accepted that she wrote those cheques but gave evidence that she did so with the authority of Dr Rathor and to repay sums which she had advanced to Dr Rathor.

390. In cross-examination Jaswant accepted that the explanations which she gave to Mr Fonseka and AMS for these payments were untrue. For instance, in relation to cheque no. 55 and no. 56 she gave the following evidence:

“Mr Hood: So 21 April 2017, Mr Shah, from AMS, writes to you, saying he’s assisting Yasin in preparing the year end accounts, and you’ve forwarded some requested information. Following on from the information you’ve provided, he has a few final queries, and you see there he sets out a number of cheques, cheque numbers.

“Could you please provide details for the below?”

Can I draw your attention to, in particular, 55 and 56, the largest two of the amounts? And you respond on the same day, in the evening, 6.55: “Hi, Abdullah.” And then you list the cheques that he’s set out down below. Do you see that? And at 55 and 56, you say to the accountants that they are payments for: “Locum nurse” And: “Locum agency”. Neither of those descriptions was true. That is correct, isn’t it? Neither were true.

Mrs Jaswant Sidhu: Yes, Sir, they were not true, but, Sir --

Mr Hood: And, and you, and you now say that cheques, or cheque 55 was your bonus for QOF/LIS work and that cheque 56 was Sareet’s bonus for the same sort of work for 2016. Yes?

Mrs Jaswant Sidhu: Yes.”

391. Jaswant suggested that this improved the fiscal position of the combined practice because it did not have to pay employer’s national insurance contributions or PAYE or pension contributions on these sums. Mr Hood suggested to her that this was a very marginal benefit for taking the risk of lying to Dr Rathor’s accountants. He also pointed out that she was giving up her own pension entitlements. She said that she had given no thought these matters. But she did say that Sareet was not happy with the way in which these bonuses had been paid and insisted that they should be paid through PAYE in the following year.

392. Jaswant gave a number of other reasons why Dr Rathor asked her to lie to the accountants in relation to other cheques. She said that Dr Rathor wanted to make payments in cash to her builder and that she wanted to treat the payments as expenses of the combined practice. For instance, it was her evidence that Dr Rathor made payments of approximately £55,000 to her builders using this method:

“Mr Hood: Do you have any bank statements or anything to show that you withdrew this sum in cash?

Mrs Jaswant Sidhu: Sir, the builders were appointed by Dr Rathor, and the works were, Sir, nearly £55,000, and I know they were to be most of the money, majority of the money she asked me to pay was in cash.

Mr Hood: Do you have any documentary evidence you want to rely on to show you handing over this cash to the builder?

Mrs Jaswant Sidhu: Sir, they were given to the builder, cash, at Dr Rathor’s instruction, Sir, because she, I was project managing the building, Sir, for her.

Mr Hood: Why did you not make a bank to bank transfer of £6,850 with the reference building work?

Mrs Jaswant Sidhu: Sir, because they wanted cash. She transferred that to me. Every occasion, Sir, they wanted cash. That was the agreement they had with Dr Rathor, Sir.

Mr Hood: Right. Two questions arising out of that. One, why didn’t you take cash out of the Natio account?

Mrs Jaswant Sidhu: Sorry, Sir?

Mr Hood: Why didn’t you just, if they, if the builders wanted cash, why did you not just withdraw cash from the Natio account?

Mrs Jaswant Sidhu: Sir, she would ask me to write a cheque out. She’ll misdescribe this to the accountant so that it goes against the expenses of the practice, Sir.

Mr Hood: Ah, this is part of the fraud, is it, that the two of you were supposedly committing?

Mrs Jaswant Sidhu: Sir, she asked me to, and that is what I did, because I trusted her.

Mr Hood: You trusted someone who’s acting that dishonestly?

Mrs Jaswant Sidhu: Sir, I would do anything for her. I would always say to her that I will always do what she wants. I just wanted to help her, Sir, because we were very, very close.”

393. Dr Rathor denied these allegations. Both she and Jaswant were cross-examined at some length about a number of the individual cheque payments and I received very detailed submissions from both parties. I must therefore

approach the cheque payments on the same basis. However, I can group some payments together because Jaswant's explanation for them was the same.

Domestic Building Works

394. Jaswant's evidence was that she wrote seven of the cheques totalling £22,850 (cheques 17, 30, 31, 38, 40, 41 and 42) to reimburse herself for payments which she made to pay for building works to Laburnum Grove on Dr Rathor's behalf. It is clear from the documents that Jaswant did make payments on Dr Rathor's behalf and that Dr Rathor did reimburse her for those payments from her own bank account. The real issue between the parties was whether any of the cheques drawn on the Natio account were legitimately used for that purpose.

395. This answer to this issue largely turned on two subsidiary issues, however. First, there was a dispute between the parties over the total cost of the works. Secondly, there was also a dispute between the parties over how much Dr Rathor paid directly to the builder herself out of her own bank accounts and how much Jaswant paid (and then repaid herself out of the Natio Account).

(i) The Total Cost

396. In paragraph 127 of her first witness statement Dr Rathor stated that in early 2015 she received £35,259 from the sale of 423 Allenby Road. She produced an estimate or quotation from a company called iDream Construction ("**iDream**") for £34,500 (dated 3 August 2014) and she stated that the proceeds of sale covered all of those works apart from some additional works for a few thousand pounds (including a bathroom) which were covered by her drawings in the usual way. In cross-examination it was put to her that she had not provided any receipts or invoices and she said that she did not have them.

397. Mr Jory produced a schedule of building costs which came to a total of £56,266 (plus bathroom fixtures and fittings) which he put to Dr Rathor. I deal with each item in the schedule in turn:

- i) £34,500: This was the original estimate from iDream to which Dr Rathor had referred in her witness statement. There was therefore no issue about it.
- ii) £850: The estimate also quoted an additional £850 for structural steel calculations and loft planning drawings which Dr Rathor accepted.
- iii) £2,750: The estimate also quoted an additional £2,750 for “Refurbish old bathroom, fit new tiles, new bath, wc etc.” However, it did not include the actual costs of the bathroom fittings themselves. Again, Dr Rathor accepted this figure.
- iv) £6,600: Dr Rathor’s bank statement for her personal every day saver account at Barclays (no. 73133710) showed a payment of £4,600 dated 22 July 2015 to Jaswant against the narrative “Pardip Wardrobe”. The statement for her Premier account no. 03583597 also showed a payment of £2,000 on 21 August 2015 against the narrative “Bill payment to Pardip”. In cross-examination Dr Rathor did not accept that she had paid Pardeep £6,600 for wardrobes. She accepted that she had paid him about £3,000 although she also accepted that she had authorised the initial withdrawal of £4,600. The following exchanges then took place:

“Q. Yes. So, you want to ask me, and you are the client, whether he, Pardeep, gave her an invoice. If Pardeep had drawn up an invoice, it would have been directed to his client. That was you, Doctor. Do you understand that? So, you answer the question rather than me. Did Pardeep give you an invoice?”

A. That is what I am saying. So, there was no invoice for 4,600.

Q. Where is the invoice that he gave you then, if you say it is not for 4,600, Doctor?

A. I did not know that this amount was paid to him.

Q. Doctor, you did not have an invoice from Pardeep because you had agreed to do a cash job with him. That was your agreement direct with Pardeep.

A. Well, all I am saying is, that 4,600 I did not authorise with Jaswant.”

“MR JORY: Now, Doctor, 21 August what we have got is – on 21st we have got another payment £2,000 coming from the children’s account ending 673.

A. Yes.

Q. Yes. And then going to pay Pardeep £2,000. Do you see that?

A. Yes, I do.

Q. So, you are not disputing that that was authorised by you?

A. I am disputing that that was authorised.

Q. OK. So, there was no authorisation to pay Pardeep £2,000?

A. No.

Q. So, you have known about this case for at least two years. You have known about the importance of arriving at the correct figure that you spent on your building works.

A. Mmm.

Q. Why haven’t you called Pardeep to come and give evidence to tell us what he was paid? That would resolve the issue very appropriately, wouldn’t it?

A. Well, as I said, I do not have the time and also, Pardeep’s phone number – I do not even have his phone number.

Q. Well, what enquiries have you made to try and find him?

A. As I said, I am really short of time and yes, in future, when I am finished with this case, I will do it.”

- v) £6,375: Dr Rathor’s bank statement for her every day saver account at Barclays also showed two payments of £3,625 dated 8 July 2015 and £2,750 dated 22 July 2015 to a company called Building Masters Ltd. After some hesitation Dr Rathor finally accepted that both payments had been made to that builder.
- vi) £2,466: Jaswant produced a delivery note and a credit card statement showing that she paid this sum to Al Murad DIY Ltd for tiles to Laburnum Grove. In paragraph 119 of her second witness statement Dr Rathor did not accept that Jaswant made this payment although in cross-examination she finally conceded that she was with Jaswant when she made the payment. She did not explain how she repaid Jaswant.
- vii) £2,725: Jaswant also produced a text message which she had sent to Dr Rathor on 18 June 2015 stating that the following additional works had

been completed at the following cost: “5 new valleys £1800 Staircase upgrade £500 Air conditioning guy charged £175 Windows upgrade £250 Total £2725”. Again, after some hesitation Dr Rathor accepted that she paid this sum.

viii) *Bathroom fixtures and fittings*: Mr Jory’s schedule did not include a figure for bathroom fixtures and fittings. But in cross-examination Dr Rathor accepted that she paid about £8,000 or £9,000. She also claimed to have the receipts although she did not produce them.

398. I reject Dr Rathor’s evidence that the proceeds of sale of 423 Allenby Road were sufficient to cover the cost of the building works apart from a few thousand pounds for the bathroom. In the event, she accepted all of the payments in Mr Jory’s schedule apart from the payments to Pardeep. Even then, she accepted that she had paid him about £3,000 rather than £6,600.

399. I find that Dr Rathor paid the full £6,600 for those wardrobes and I do so in reliance on the bank statements for her every day saver account. They provide a clear record of the amounts which Dr Rathor had agreed to pay. Pardeep would have submitted invoices or requests for payment to her and she authorised the payments from that account to Jaswant to pay him. If there had been any real doubt about this issue, she could have resolved it easily by calling Pardeep or asking him to confirm in writing the amounts paid.

400. I find, therefore, that Dr Rathor spent a total of £64,266 on the building works. I arrive at this figure by taking Mr Jory’s figure of £56,266 (on the basis that all of the sums in his schedule were agreed apart from the sum of £6,600 which I have found that Dr Rathor paid to Pardeep) and taking Dr Rathor’s lower figure of £8,000 for the bathroom fixtures and fittings.

(ii) *Payments by Dr Rathor*

401. It is common ground that on 19 May 2015 £35,259 was paid into Dr Rathor’s Metro account. It is also common ground that on 3 June 2015 and 10 June 2015 £6,700 and £28,000 was paid out in cash and on 10 June 2015 Dr Rathor paid £28,000 into her children’s savings account. Dr Rathor and Jaswant both

had a vivid recollection of Dr Rathor taking that money down the road in a carrier bag from one bank to the other. On 15 June 2015 and 23 June 2015 Dr Rathor transferred £8,541 and £6,750 to Jaswant's NatWest account no. 32055857.

402. On 29 May 2015 Dr Rathor forwarded a text from her builder, Cham, to Jaswant in which he complained that she had not kept to the agreed payment terms. Jaswant replied in two texts stating: "We gave him £5,000 on wed. He has taken £7,500 already. I think he is taking the cake. Also on wed we will give him another £3,000. That will be the third of the money." Dr Rathor was unable to explain where the money came from to make these payments:

"Q. Will you explain to me then, please, where we have seen the £12,500, where you say that £12,500 came from, that is referred to in the middle text message. "We gave him £5,000, he had £7,500 already". Where did that come from?

A. I cannot remember. All I know is that is the money which has come from my money.

Q. Dr Rathor ---

A. That is not Jaswant's money."

403. Mr Jory then reminded Dr Rathor that she had brought fraud proceedings against Jaswant and reported her to the fraud squad of the Metropolitan Police (and I add in parenthesis that her witness statement to the police contains the charge that not one of the cheques in Schedule E were written with her authority). This exchange then took place:

Q. Thank you, Doctor. My question is, those proceedings have been going on for several years, haven't they?

A. Yes, more than two years, yes.

Q. Yes. And is your evidence that in all that time, you have not been through any of the contemporaneous documents to evidence where you obtained the cash that you say you gave to the doctor – the builders? Is that your evidence?

A. To my knowledge, all the money which I paid towards my building work – it was my money.

Q. I will put the question, just the last bit again. In all that time, have you not bothered to go through the contemporaneous documentation, including the bank statements, in order to demonstrate where you got the cash that you claim you paid the builders from?

A. OK, so my answer is that I did not think there was a need because I knew it was my money and that is the reason I did not look into it.’

404. In paragraph 145 of their closing submissions Mr Hood and Mr Saunders carried out a meticulous exercise to demonstrate that Dr Rathor made rolling contributions to her builder of £42,466. I am willing to accept that this is an accurate figure. However, this still leaves a balance of £22,000 which is very close to the figure of £22,850 which Jaswant claimed to have paid on Dr Rathor’s behalf and which Dr Rathor could not (and did not attempt to) explain.
405. I accept Jaswant’s evidence that she paid Dr Rathor’s builder in cash and for the reasons which she gave. Her exchange of text messages with Dr Rathor on 29 May 2015 provided direct support for this evidence and Dr Rathor could not explain where those funds came from. I am also satisfied that Dr Rathor reimbursed Jaswant for the payments which she had made, initially by paying her directly, and then by authorising her to draw cheques on the Natio Account.
406. I reject Dr Rathor’s evidence that she made the initial payments of £15,500 to the builder herself and that she paid the balance of £22,000 herself. She was unable to explain where she got the money to do so. Moreover, when she finally accepted that Jaswant had paid Al Murad DIY Ltd for tiles she did not explain how she repaid Jaswant. I find that she repaid Jaswant by authorising her to take the funds out of the Natio Account. I conclude therefore that Dr Rathor authorised Jaswant to write cheque nos. 17, 30, 31, 38, 40, 41 and 42.

Rathor Villa

407. It is also Jaswant’s evidence that she wrote another seven cheques totalling £30,938 (cheque nos. 52, 59, 60, 67, 68, 69 and 70) to repay an advance of £31,000 which Jaswant and Gurdardshin made to Dr Rathor in 2016. In the table in paragraph 200 of her first witness statement she gave the following evidence:

“...Dr Rathor knew that my husband's father had died and that he had left my husband a significant amount of money and land in India, She asked me to lend her £33,000 in rupees and she said that she would repay me. She explained to me that she wanted to spend the money building works for her property called "Rathor Villa". I asked her to give me some money in advance of her going and she specifically asked me to write cheques to myself for the money that she would receive in India. She borrowed a total of £33,000 in cash from me before going to India in August 2016 and specifically instructed me not to take the full amount back until she told me to. She would then instruct me when to write a cheque for myself and how much. The total payments received back to me were just in short of £33,000 because of the exchange rate that we worked out.”

408. In her second witness statement Jaswant clarified the position. She made it clear that she made the advance in India in rupees and that Dr Rathor paid her back in sterling in the UK. In paragraph 33 she said: “I did not say that she would receive it in the UK and then take it to India and she knows that this was not the arrangement. The money was delivered to Dr Rathor’s family as and when it was needed over this period.”
409. In examination-in-chief Jaswant corrected her first statement by stating that the amount of the advance was £31,000 not £33,000. In cross-examination she stated that £3,000 of the money had been advanced to Dr Rathor in England and £28,000 in rupees in India and that nothing was put in writing. She also stated that the initial agreement had been made in April 2016 although she tentatively suggested that she made the initial advance of £3,000 to Dr Rathor in August 2016. She gave the same explanation for Dr Rathor’s instructions to reimburse herself out of the Natio Account:

“Leech J: I’m getting rather confused. So cheque 52 is money you took out of the account, the Natio account, isn’t it?

Mrs Jaswant Sidhu: The cheque was made to me, Sir, my ...

Leech J: And you took it out to give to Dr Rathor?

Mrs Jaswant Sidhu: But it was part of the payment that was agreed, that she, she would be given £28,000 in India and £3,000 here, Sir.

Leech J: But this was her money that was coming out of this account.

Mrs Jaswant Sidhu: Yes, Sir, but she would have put it towards the expenses, Sir, that is why she asked me to write that cheque, when it was misdescribed to the accountant, Sir.”

410. In his second witness statement Gurdarshin gave evidence that his father died in India in February 2016 and he sold some land there. He said that Jaswant asked him to give about 33 lakhs to Dr Rathor’s family and that her brother and a friend picked up the money in Moga in the Punjab. In cross-examination he gave more detail about the handover of the money.
411. In her second witness statement Dr Rathor denied that any of this happened. She she said that the only work which she had carried out to Rathor Villa was to replace a door which had been damaged by insects and that a relative paid for this (and that she repaid them).
412. Dr Rathor relied on a photograph of the property to which I was taken. It was a badly exposed photograph of the front of the property from which it was impossible to tell anything about the condition of the property. In cross-examination she accepted that it would have been very easy to instruct a surveyor to prepare a report to demonstrate that it was in a dilapidated state. But she also accepted that she had held her 25th wedding anniversary at the property in 2013 and that she had both photographs and architect’s drawings on her phone. When she was asked why she had those plans drawn up she gave this explanation:

“Q. Didn’t you think that was relevant to say in evidence, in relation to the building works that you say you did not have done, to say, “I was actually thinking of having some building works done. Here are the architectural drawings, but I can show with a report from a surveyor in India that those drawings – those works – were never done”.

A. As I said, that was just done by my brother-in-law and his friend. So it was a large work and I would have not agreed to it.

Q. Well, why did you let them go to the trouble of drawing up the plans, if you were never going to agree to it?

A. As I said, it is my own brother, my brother-in-law, they all are civil engineers and if they made a decision, it was their decision.

Q. But it is not their house?

A. Well, my brother and my family were very, very close.

Q. So you must have asked that your brother to get some drawings done. He would not have just said, "I am taking the key, because I am taking my friend round, we are going to do some plans".

A. Well, my brother had the key to my house.

Q. Your brother had the key to the house?

A. Yes, my keys are still with my sister-in-law now, yes.

Q. This is your brother? Very clear about this, your brother had the key to the house?

A. Yes, my ---

JUDGE LEECH: Sorry, I thought it was your friend of your brother-in-law he prepared the plans, this friend of your brother, is that right? I've just?

A. So my brother-in-law, my brother (inaudible) civil engineers, but one of my brother-in-law's friends, he done it, he just made the plans. It is my brother who had the keys and – but the keys are still at my mum's house, so they must have made a decision to go (inaudible)

Q. And they sent you those drawings and you showed them to Sareet, didn't you?

A. Yes, I did show to Sareet, yes.

Q. As the building works you were going to do?

A. Well, I was not really planning to do the building work when I found her.

Q. Why were you going to show them to Sareet if it was some frolic of their own that had been done by your brother and you were not going to do it?

A. Well that is, that is part of my nature."

413. Dr Rathor also accepted that the photographs of the property and the drawings were still on her phone (although a different phone) and that she had an album and a video. She was then taken to a text message which she sent to Jaswant on 24 June 2016 in which she stated: "Hope you're well You said that there may be some money for me for the house Let me know how much and when Thanks". She said that she could not remember the house to which she was referring but denied it was for her house in India. Ultimately, she gave the following explanation for the text:

"Q. So your evidence is just, let me be clear about this, you do not know what you were referring to, but you speculate that it was referring to some house you were thinking about buying?

A. Yes.

Q. Why, Doctor, wouldn't that be a matter for you to go to a mortgage broker to consider about how you were going to fund that property?

A. I need my own money for the deposit.

Q. Well, had you been to a mortgage broker to discuss this purchase, by this time?

A. I cannot remember.

Q. And if you had been looking for the deposit, you would know how much deposit you were looking for. And so, you would have referred to some money for the deposit, wouldn't you?

A. Well, as I said, I have not specified at all and I cannot even remember. So I was just trying to check if there was enough money in the account."

414. In their closing submissions Mr Hood and Mr Saunders drew my attention to a number of inconsistencies in the evidence of Jaswant and Gurdardshin. They pointed out that cheque no. 52 was dated 13 May 2015 and that Jaswant had written cheque no. 59 and no. 60 before the first payment which she claimed to have made to Dr Rathor in August 2016. They also pointed out she corrected the amount which she claimed to have advanced to Dr Rathor at trial and said in oral evidence for the first time that she had advanced £3,000 in England to Dr Rathor. They also criticised Gurdarshin for the confusion in his evidence about the timing of the partnership and a correction which he made to his witness statement. I accept those criticisms of their evidence.
415. Mr Hood and Mr Saunders also submitted that the amount which Jaswant claimed to have advanced Dr Rathor for the works to Rathor Villa included the two additional sums in paragraphs 201(c) and (d) of her first witness statement. However, I do not accept that submission. I have read and re-read those paragraphs carefully and I take the view that this submission may involve a misreading of the witness statement and that Jaswant was referring to spending money which she Jaswant provided to Dr Rathor a year later. Furthermore, the point was never tested in cross-examination and Jaswant given an opportunity to answer it.
416. On the other hand, I found Dr Rathor's evidence unsatisfactory on this issue (as on many others). She could easily have obtained a surveyor's report to make good her evidence about the condition of the property at a relatively low cost or asked a relative to take pictures of it and put a short statement before the Court. Equally, she could have disclosed her own photographs of the property and the architects' drawings or even just the album.

417. I did not accept her explanation for the architect's drawings which she showed to Sareet either. The suggestion that a friend of a relative would have made these drawings without her instructions or authority (far less without being paid) struck me as implausible and the obvious explanation was that she was showing Sareet the modifications and improvements which she planned to carry out to Rathor Villa.
418. I have to decide between these two unsatisfactory accounts. I am not satisfied that either party gave me a complete and candid explanation; but in the event I take the course which the parties urged me to do, which was decide the issues by reference to the contemporaneous documents where possible. It is clear that in her text dated 24 June 2016 Dr Rathor was asking Jaswant to lend or advance her money for "the house". The only house to which she could possibly have been referring was Rathor Villa and she could not provide a credible alternative. On the basis of that text, I accept Jaswant's explanation for the cheque payments and I find that Dr Rathor authorised her to write cheque nos. 52, 59, 60, 67, 68, 69 and 70.

Payments to Ranwant

419. It is also Jaswant's evidence that she wrote another seven cheques totalling £14,228 (cheque nos. 62, 44, 46, 47, 50, 64 and 67) to repay funds which Jaswant had provided to Dr Rathor for her son Ranwant. In the table in paragraph 200 of her first witness statement she gave the following evidence about these payments:

"Dr Rathor's son studied medicine in Romania in Bucharest. She explained to me that she had to give him €5,000 every year as his course fees in cash and also living expenses of about €500 per month. She asked me to give her cash and said that she would pay me back by cheque. He would return to university at the end of September every year and during September, I gave her in excess of £5,200 (which was to last him for his fees and a couple of months for his rent and living expenses). We agreed that I should receive this money in two cheques of £3,800. I also recall that Ranwant was going on a trip to France and that Dr Rathor needed some cash in order to give to him for this trip."

420. When Jaswant was taken to cheque no. 62 and no. 50 (and also no. 43 which I consider later), she accepted that she had given a false explanation for these payments to AMS. She told AMS that cheque no. 62 and no. 50 were for locum payments (and no. 43 was for Railex Cabinets).
421. Jaswant was also taken the bank statements for the Natio Account which showed that on 6 October 2016 a transfer of £2,000 was made directly to Ranwant's account (i.e. a few weeks after Jaswant had written cheque no. 62 and no. 44 to herself). In closing submissions Mr Hood and Mr Saunders drew this to my attention. They also showed that there was a very similar pattern for cheque no. 46 and no. 50. It is clear, therefore, that payments were made directly to Ranwant at about the same time as Jaswant wrote the disputed cheques to herself.
422. Dr Rathor denied that she had ever asked Jaswant to give her cash for Ranwant. In paragraph 80.4 of her second witness statement she stated that Ranwant's tuition fees were €3,200 and exhibited a table of fees in Romanian from a university in Arad (although the top of the document had been cut off so that it was impossible to identify its source). Dr Rathor then gave the following evidence about these cheques (although by my calculation they add up to £14,228 rather than £12,728):

“As he was studying in Romania his tuition fees were much less than in the UK – SR5, p. 1405 is a confirmation from his university in Romania that the tuition fees were 3200 Euros a year payable in 3 instalments....Given his modest tuition fees, the money he got from Natio, and the money he got from my personal account it is absurd to say there was any need for me to ‘borrow’ £12,728 from Jaswant for my son over one year living in Romania.”

“See above for Ranwant Rathor. I do not know remember (sic) exactly how much I gave him because I am aware that he text me on 30 September 2015 and asked me to transfer £2,000 to his account and to give him £2,000 in cash. My recollection is that I gave Dr Rathor more in cash for Ranwant.”

423. In cross-examination, it was put to Dr Rathor that her son had gone to the University of Medicine and Pharmacy at Carol Davila University in

Bucharest. It was also put to her that the fees for foreign students were €5,000 per annum and the fees for domestic students were €3,600. In cross-examination Dr Rathor admitted that Ranwant had originally gone to Romania to attend Carol Davila University but had been advised by an agent to change to Arad. She also said that he paid the same fees as a domestic student:

“Q. You must have told her at some point that he was studying in Bucharest. Presumably, that was when he initially was going out there. Because did he get to Romania before he realised, he was not going to study at Bucharest?

A. So, as I have said – so it was 2012. I went with him. We went Bucharest for a few days and after that he moved to Arad. So, by 2015 he was actually in Arad for a few years. He was there for three years.

Q. And you cannot explain – although you accept that the English speaking course is far more expensive than the Romanian speaking course ---

A. Yes, I agree.

Q. --- for some reason, your son who was on the English speaking course, did not have to pay the English speaking course fees, he paid the Romanian speaking fees.

A. So, again, I cannot remember (inaudible) as I said, one thing could be he had – maybe it was something – I do not know but this fee was much less and it kind of shocked me as well. But it was good for me that it was not that expensive. But, yes. He did pay this amount. It is true.

Q. Well, you see Doctor, it all sounds very peculiar.

A. Well, it may sound peculiar to you Sir. But if you actually go out to Romania and you go to one place to another, everything is peculiar there.

Q. Well, you see Doctor, I am going to suggest to you that in fact, you did tell Jaswant that his fees were €5,000 a year. And you asked her to provide cash for you for those fees. That is what you told her. Whether he spent all that money on his fees, or he did not, that is what you told her.

A. OK. So, the first part is untrue. The latter part – when I did ask her for cash because again, I did not have enough money to my account, so when I asked her if she should have taken it from the Natio account, and then that was purely because my son had to convert the euros into the Romanian money. That is the reason. And you get a better rate if you was here than I guess it was in Romania. So, it was easier for him to take euros and then convert into leu, than here.”

424. In relation to cheque no. 44 Dr Rathor also accepted that Jaswant had paid Ranwant £2,000 in cash in response to a text message from him but asserted that she made the payment from the Natio Account:

“Q. Now, this is what Jas explains against cheque 44, which was for £1498. She says, see above for Ranwant. That is to do with his university fees and living expense, etc. I do not – now, I think that should be – remember, exactly how I gave Ranwant because I am aware that he text me on 30 September 2015 and asked me to transfer £2,000 to his account. And to give him £2,000 in cash. Do you see that?

A. Yes.

Q. Do you accept that he did ask for not only £2,000 into his Metro account, but £2,000 in cash?

A. Yes. He may have asked, yes.

Q. And that Jaswant gave him that?

A. Well, it was not Jaswant should have given, she should have transferred from my account.

Q. Well, given that – let’s take it in two stages. Do you deny that she gave him the £2,000?

A. The cash?

Q. Yes.

A. That Jaswant gave me the cash, yes.

Q. Well, whichever. But she provided it, let me use a neutral term.

A. Yes. But she would have taken it from the Natio account.”

425. When it was put to her, however, Dr Rathor did not accept that she authorised Jaswant to reimburse herself by writing a cheque on the Natio Account. It was also suggested that it was very convenient for her to ask Jaswant to provide funds in this way:

“Q. Well, you see Doctor, you are making a big thing about the fact that Jaswant took cash out. But I am going to suggest to you why you lied to Jaswant to take the money out of the Natio bank in cash and put it into her account, is because it gave you a great deal of flexibility at the year end to tell the accountants what the money had been used for. Because the account itself – the Natio account did not say in relation to all these transactions, where the money was going. It was just cash. And that gave you a great deal of flexibility when it came to telling your accountants what it had gone on.

A. Untruthful.”

426. It seems to me that the first issue which I have to decide is whether Jaswant actually made payments in cash to Dr Rathor or to Ranwant. Dr Rathor’s case

in her witness statement and repeated in her closing submissions was that it was highly improbable for her to ask Jaswant to lend her cash for Ranwant but then follow this by transferring substantial sums to him out of the Natio Account.

427. In cross-examination, however, Dr Rathor accepted unequivocally that Jaswant made a payment in cash of £2,000 to her for Ranwant on or about 24 September 2015. Moreover, this was only two weeks before she made a bank transfer to him of £2,000. I accept Jaswant's evidence that she made this payment to Dr Rathor. I also accept her evidence that she made other payments in cash to Dr Rathor.

428. It also seems to me that the second issue which I have to decide is whether there was a significant difference between the amount which Jaswant claimed to have given Dr Rathor in cash for Ranwant's university fees and the amount of those fees. In relation to this issue, I have no doubt that Dr Rathor's evidence was untruthful and that when she was caught out in a clumsy lie, she embroidered a story about obtaining a concession for him to pay the fees of domestic students. She could easily have produced a statement of account (as she accepted) which would have shown the university at which her son studied and the amount of his fees. It might also have revealed whether he had paid those fees in cash.

429. I accept, therefore, Jaswant's evidence in relation to the payments to Ranwant and reject Dr Rathor's evidence. I find that she authorised Jaswant to write cheque nos. 62, 44, 46, 47, 50, 64 and 67 to reimburse herself for cash which she had given to Dr Rathor to pay Ranwant's university fees and his living expenses.

Cheque No. 19

430. I deal now with the remaining cheques individually and in order. I deal with cheque nos. 19, 48, 55 and 56 last because they were the most problematic. In relation to cheque no. 19 Jaswant's evidence was that she spent £49.76 at the post office for the surgery and gave the balance of £200 in cash to Dr Rathor, who authorised her to write a cheque for this sum to herself on the Natio

Account. Jaswant's explanation was not challenged in cross-examination and when Dr Rathor was cross-examined, she accepted that she had no involvement with the post and that Jaswant went to the post office as the practice's business manager.

431. Although the sum in issue is small, again it seems to me Dr Rathor should have taken steps to investigate Jaswant's explanation before making an allegation of fraud. She could give no positive evidence that Jaswant's account was untrue and I therefore accept that she spent £49.76 at the post office on behalf of Dr Rathor and gave her the balance in cash. I also accept that Dr Rathor authorised her to write a cheque no. 19 for £200 from the Natio Account.

Cheque No. 29

432. Jaswant's evidence was that she did Dr Rathor's shopping at Costco and that Dr Rathor asked her to take a cheque for the money which she had spent. In cross-examination Dr Rathor accepted that on one occasion at least Jaswant had shopped for her at Costco. She also accepted that she did not know exactly what had happened on that occasion. Again, I accept Jaswant's explanation that she spent £280 on behalf of Dr Rathor who authorised her to write cheque no. 29 for that sum from the Natio Account.

Cheque No. 39

433. Jaswant's evidence was that she paid £182 in cash to Aruna, Dr Rathor's childminder, and wrote a cheque to herself for that sum drawn on the Natio Account. She relied on a text from Aruna to Dr Rathor dated 3 July 2015 asking for payment of part of this sum. Dr Rathor forwarded this text to her and in cross-examination she could not explain why she had done so, if she had not expected Jaswant to pay Aruna on her behalf. I find that Jaswant paid the sum of £182 to Aruna on Dr Rathor's behalf and that Dr Rathor authorised Jaswant to write cheque no. 39 to reimburse herself.

Cheque No. 43

434. Jaswant's evidence was that she spent £418.75 on a party at the Park Grand, £431.64 on doors from Todd Doors and £204 at Screwfix on Dr Rathor's behalf. It was also her evidence that she went through her credit card statement with Dr Rathor and they agreed that Dr Rathor owed her £1,900 and that Dr Rathor told her to write a cheque to herself on the Natio Account for this sum.
435. Jaswant produced documents to evidence all of these payments. She produced an email dated 29 June 2018 confirming that the Park Grand London Heathrow had received a credit card payment from her for a party for 15 people for Dr Rathor. She also produced a credit card statement showing that on 13 July 2015 she paid £415.75 to the Grill at the Park Grand and that on 15 July 2015 she had paid £431.64 to Todd Doors Ltd and £204 to Screwfix Direct in Yeovil. She was not asked about any of these documents in cross-examination but was taken only to an estimate from Todd Doors.
436. In cross-examination Dr Rathor accepted that the payments to Todd Doors Ltd and Screwfix related to her own building works. However, she continued to deny that she had authorised the cheques and objected that Jaswant should never have used her own money and then written cheques to repay herself out of the Natio Account (although she finally accepted that Jaswant was entitled to have that money back).
437. I accept Jaswant's evidence in relation to cheque no. 43. I also reject Dr Rathor's evidence that she did not know that Jaswant was using her own credit card to pay for these items or that she would have objected at the time. I find it implausible that Jaswant and Dr Rathor would not have discussed how Jaswant was to be repaid before she settled bills exceeding £1,200 on Dr Rathor's behalf. I therefore find that Dr Rathor authorised Jaswant to write cheque no. 43.

Cheque No. 45

438. Jaswant's evidence was that she paid £994.50 for a birthday party at a restaurant called the Blue Orchid on her credit card and gave Dr Rathor some cash. In cross-examination Dr Rathor did not deny that the party took place or that Jaswant had paid for it. She denied, however, that she had authorised the

cheque and objected that Jaswant should never have paid for the party using her own card. But she ultimately accepted that she had no objection to Jaswant reimbursing herself for the payment. I accept Dr Rathor's concession and dismiss her claim in relation to cheque no 45.

Cheque No. 66

439. Jaswant's evidence was that she gave £6,500 in cash to Dr Rathor to enable her to pay Mr and Mrs Mall, a couple who provided domestic services. She produced a text dated 15 October 2016 from Dr Rathor stating: "Thanks for the money". It was Jaswant's evidence that in this text Dr Rathor was referring to this sum.

440. In paragraph 80.4 of her second witness statement Dr Rathor described this claim as "ridiculous" and in cross-examination it was put to Jaswant that Mr and Mrs Mall came on a Saturday and charged £100 per day. In cross-examination Dr Rathor accepted that she had no documentary evidence of what she paid them but she accepted that they did all her cleaning, cooking, gardening and ironing.

441. Dr Rathor was then taken to a bank statement for her Premier account no. 03583597 showing that on 15 December 2017 she paid £1,500 to Mr and Mrs Mall. She was asked about this payment:

"That is a payment to Mrs Mall and that is the monthly amount actually that you pay your domestic couple, is it not?

A. No sir, that is absolutely untrue, no.

Q. And, that is why you paid them £1500.

A. No, this was - no.

Q. Well, why did you pay them £1500, Doctor?

A. OK, because when they started with me I used to pay them like £75 like a day, and then it was increased and, somehow, what she said to me, that there was some back payment, and that's why I had to pay this amount to her.

Q. But you would have had records that would of suggested whether she had a back payment owed to her or not, would you not?

A. Yeah, but they - they kept the record and I trusted them, yes.

Q. So, they kept a record, so you could of asked for that record for these proceedings.

A. Well, if I was told then I could of asked for it.

Q. And your counsel put to Jaswant that they were only paid £100 a week.

A. That's true.

Q. And it was suggested to her, when she said by reference to the 36,000 - sorry, the 3,600, was she really suggesting they had not been paid for 36 weeks.

A. Well, there was a time when I did not pay them for a long time.

Q. Are you really suggesting that they had not been paid for 15 weeks, Doctor?

A. I am - I am really suggesting, sir.

Q. And, what evidence do you have to support that? They went on working for you for 15 weeks, which is over three months, almost four months ---

A. Yeah.

Q. --- without pay?

A. Yeah, it is true.

Q. Well, that is your evidence, it is true, is it?

A. Yes, it is, it is true.

Q. And so, where are your mobile messages from them, saying: "Doctor, could you pay us, please?"

A. They - as I said to you, sir, they did - they - they worked for me for 10 years."

442. I accept Jaswant's evidence that she gave £6,500 to Dr Rathor to pay Mr and Mrs Mall. I find it implausible that two people would have done all of Dr Rathor's cleaning, cooking, gardening and ironing on one day a week for £100 between them. I am prepared to accept that Dr Rathor paid them in cash as she did her builders. But I would have expected her to produce some record of how much she paid them and over what period. She or her solicitors could also have asked them to confirm this. I find, therefore, that she paid them £1,500 per month and that Jaswant advanced her £6,500 to pay off the arrears which she owed them. I also find that Dr Rathor authorised her to write cheque no. 66.

Cheque No. 71

443. It was Sareet's evidence that in May 2017 Jaswant wrote a cheque to her for £1,000 to repay her for £1,000 in cash which she had lent to Dr Rathor to give Ranwant when he was going back to university. In cross-examination it was put to her that this was just a convenient explanation and she could not explain why she was repaid by cheque rather than bank transfer.

444. In the final bullet point of paragraph 145 of her first witness statement Dr Rathor gave the following evidence about this cheque:

“The final cheque disclosed so far, cheque number 100071 for £1,000, which Jaswant made out payable to Sareet, came on 26 April 2017. This was at the same time I had realised the balance of the account was healthy after my trip to the bank and asked Jaswant and Sareet to transfer the £80,000 to my son (as explained above). This cheque to Sareet was made out on the 26th April, but only cashed on 10 May 2017 – the day after the final transfer for £50,000 to my son and after £15,000 had come in from NHS England via the Sole Trader Account on 9 May.”

445. In closing submissions Mr Jory drew attention to the fact that Jaswant had written two cheques to Sareet on the Natio Account which Dr Rathor did not challenge. The first was the cheque for £4,000 to repay Sareet for the money which she had lent Dr Rathor to enable her husband to repair his car (which I have considered above). The second was cheque no. 63 for £1,800. Sareet’s unchallenged evidence was that she bought two ipad pros for Dr Rathor in the USA for Christmas 2015 and she was given a cheque for £1,800 before she went.
446. It is difficult to know what to make of Dr Rathor’s written evidence about cheque no. 71. The point which she made was that Sareet’s delay in cashing the cheque was suspicious. But she also displayed a detailed understanding of the movements on the Natio Account when that cheque was written. I have found elsewhere that Dr Rathor was aware of the movements and transactions on the Natio Account in April and May 2017. I have also found that she was prepared to borrow substantial sums from Jaswant to fund her son’s university fees and living expenses. If she had not authorised cheque no. 71 she could have been expected to challenge it immediately or to raise the matter with AMS.
447. Moreover, it is clear from Sareet’s unchallenged evidence that Dr Rathor was prepared to borrow substantial sums from her as well as from Jaswant and also to repay her out of funds in the Natio Account. I therefore accept Sareet’s evidence that she lent Dr Rathor £1,000 to give to Ranwant to go back to university and that Dr Rathor authorised Jaswant to write cheque no. 71.

Cheque No. 18

448. Jaswant's evidence is that she advanced £2,500 in cash to Dr Rathor to take to Japan as spending money and that when Dr Rathor returned she asked Jaswant to write a cheque on the Natio Account to herself. In cross-examination Dr Rathor recalled that she had ordered money online. When she was asked to explain why she had not produced the relevant documents, she said that she would have tried if it had been raised before.
449. In re-examination Dr Rathor was taken to the bank statement for her Premier account no. 03583597 which showed that on 9 April 2015 she made a cash withdrawal of £2,000 at the branch in Hounslow and a cash withdrawal of £300 at Heathrow airport. It also showed that on 14 April 2014 she made a payment of 909.65 by direct debit in Hong Kong. Prompted by these documents, Dr Rathor said that she had exchanged £300 at the airport.
450. Dr Rathor made a serious allegation of fraud against Jaswant and reported her to the Metropolitan Police. Jaswant also responded to that allegation by giving an explanation which called for an answer. In my judgment, if she intended to pursue this claim it was incumbent upon Dr Rathor to disclose any documents which might have been relevant to enable the Court to decide it. If she had ordered the funds online or bought currency with cash at the airport, she ought to have been able to produce evidence of the relevant transaction.
451. If this had been the only issue which I had to decide in these proceedings, I might have been prepared to accept Dr Rathor's evidence that she bought currency using her own funds rather than borrow it from Jaswant. However, I have found on the evidence that Dr Rathor authorised Jaswant to write all of the cheques in Schedule E apart from cheque no. 18 and three others (cheque no. 48, no. 55 and no. 56) which I deal with below). In those circumstances I accept Jaswant's evidence that Dr Rathor authorised her to write cheque no. 18 and reject Dr Rathor's evidence.

Cheque No. 48

452. Jaswant's evidence was that in February 2016 Dr Rathor asked her to advance her some spending money for a trip to Venice. It was also her evidence that she and Dr Rathor tallied up the amounts which Dr Rathor had borrowed from her in early March and they agreed a sum of £2,584. Finally, it was her evidence that Dr Rathor asked her to write a cheque for that sum on the Natio Account. In cross-examination Dr Rathor strongly denied this. However, she accepted that she had not looked through her bank accounts or credit card statements to show whether she withdrew sums in cash or how she paid for her trip.
453. Again, if Dr Rathor intended to pursue this claim it was incumbent upon her to disclose any documents which might have been relevant to enable the Court to decide it. As Mr Jory put it in cross-examination, this is one of those issues which I have to decide on the basis of the oral evidence of Jaswant and Dr Rathor alone. In the light of the other findings which I have made in relation to the cheque payments in Schedule E, I accept Jaswant's evidence and reject the evidence of Dr Rathor and I find that Dr Rathor authorised cheque no. 48.

Cheque No. 55 and Cheque No. 56

454. Jaswant's evidence was that cheque no. 55 for £5,162 and cheque no. 56 for £4,900 were the bonuses which Dr Rathor agreed to pay her and Sareet respectively for the QOF and LIS payments in June 2016. As I have said above, Jaswant accepted that the payment descriptions which she gave to AMS for these cheques were false.
455. I have already indicated that I am not satisfied that the increases in QOF and LIS payments in 2017 justified the payment of a bonus. Again, if this had been the only issue which I had to decide I might well have found that Dr Rathor did not authorise this payment. However, given the findings which I have made on the evidence in relation to the cheque payments in Schedule E apart from cheque no. 18 and cheque no. 48, I accept Jaswant's evidence that Dr Rathor authorised the payment of cheque no. 55 and cheque no. 56. It follows that I also dismiss Dr Rathor's counterclaim in relation to the cheque payments in Schedule E.

Issue 6: Miscellaneous Claims

Clinica

456. In her first witness statement dated 7 June 2018 Dr Rathor gave evidence that in going back over the bank statements for the Natio Account she discovered two payments to Clinica London Ltd (“**Clinica**”) for beauty products. The first payment was made on 13 October 2016 for £1,135 and the second payment was made on 23 March 2017 for £1,060. It was also her evidence that she did not order, authorise or receive these products and that Ms Grewel had told her that they were delivered to her mother at Jaswant’s request. She also stated that “for completeness” she had previous treatments at Clinica in London.
457. In her first witness statement Jaswant gave evidence that Dr Rathor had booked a series of facial treatments at Clinica in London as a birthday present for her and that they both attended the sessions together. She did not dispute that she had made the payments for the products from the Natio Account and she confirmed this in cross-examination. It was initially suggested to her that Dr Rathor had never accompanied her to treatment sessions at Clinica but after taking instructions, the case which Mr Hood put to Jaswant was that Dr Rathor only accompanied her once.
458. When Dr Rathor was cross-examined she was taken to an entry on a bank statement for Aqua showing that on 10 July 2014 she had paid £100 to Clinica. She was also taken to an email dated 4 October 2017 from the Anexsys disclosure which confirmed Jaswant’s evidence that she and Dr Rathor had gone together to Clinica. She was also asked when she first discovered that the products had been delivered to Ms Grewel’s mother:

“Q. When did you find out that they’d gone to Meera’s mother’s house, doctor?

A. That’s when Meera told me later on.

Q. Yes, my question was when?

A. I can’t remember, sir.

Q. Well, could you give us a rough idea, was it before the summary judgment application?

A. I honestly cannot remember.

Q. Did it happen at all?

A. Yes, it did go to Meera’s mum’s house.

Q. Why didn't you, when Meera told you, say, "This is really important because I didn't know about thousands of pounds worth of product going to your mother's house, could I speak to your mother, please to find out about this"?

A. I'm sorry, sir, but I can't answer that because I didn't think there was a need for me to speak to her mother."

459. I accept Jaswant's evidence that she ordered these products from Clinica on behalf of herself and Dr Rathor and with Dr Rathor's approval. It seems to me highly likely that Jaswant would only have ordered such expensive products after she and Dr Rathor had attended Clinica and taken a course of treatment. I also accept Mr Jory's submission that it is highly improbable that Jaswant or Sareet would have asked for these products to be delivered to the house of the mother of another employee if they were attempting to defraud Dr Rathor.
460. Further, if there had been any doubt about the propriety of these payments I would have expected it AMS to raise it during the preparation of the 2017 Accounts. I would also have expected either Dr Rathor or AMS to investigate the payments and to speak to Ms Grewel and her mother before taking it further. The claim in relation to these two payments was not added by amendment until 20 June 2019 (as Mr Jory pointed out to Dr Rathor).
461. I therefore reject Dr Rathor's evidence that she did not authorise these payments. I also conclude that she was unable to explain satisfactorily when she first discovered that the products had been delivered to Ms Grewel's mother because she had known all along that Jaswant and Sareet had arranged for them to be delivered there. I therefore dismiss this element of Dr Rathor's counterclaim too.

Vitabiotics

462. In her first witness statement Dr Rathor also gave evidence that she did not authorise Sareet to order vitamins from Vitabiotics on 8 June 2017 for £224.35 and have them delivered to her home address. She also stated that she used none of the products and challenged Sareet's explanation that the products were delivered to her home address because items had gone missing from the surgery.

463. The bank statements for the Natio Account show that on three other occasions the account was used to pay for products ordered from Vitabiotics. On 17 August 2016 a payment was made to Vitabiotics for £100.60, on 13 April 2017 a second payment was made to Vitabiotics for £166.30 and on 8 June 2017 a third payment of £301.60 was made to Vitabiotics. This third payment was made on exactly the same day as the payment which Dr Rathor claimed to be unauthorised.
464. In cross-examination Dr Rathor accepted that she and her husband took vitamins but said that she did not buy them online. When she was taken to the payment on 13 April 2017 she could not explain why she had not challenged it either at the time or even by the time of the trial.
465. In her first witness statement Sareet's evidence was that there were a number of occasions on which items went missing from the surgery and Dr Rathor told her that she should arrange for deliveries to be made to her home. It was also her evidence that Jaswant told her to order the products from Vitabiotics and Boots (see below) for herself and Dr Rathor.
466. In cross-examination Sareet accepted that Dr Rathor had not instructed her to order them personally. At the disciplinary hearing on 30 October 2017 Sareet was asked whether she ever had items which she had ordered for Dr Rathor delivered to her home address. She was also asked whether she had ever purchased anything on the clinic's account to be delivered to her home address. In both cases she denied that she had.
467. I have to balance the fact that Dr Rathor did not challenge any of the other payments to Vitabiotics (including one on the same day) against the fact that Sareet did not tell the truth about deliveries to her home at the disciplinary hearing. On balance I prefer Sareet's evidence. I can find no reason why Dr Rathor would not have challenged the other three payments to Vitabiotics either before or during these proceedings if she had not authorised them and I find on the balance of probabilities that she also authorised Jaswant to instruct Sareet to order the products and make the second payment of £224.35 on 8 June 2017.

Boots

468. In her first witness statement Dr Rathor also gave evidence that she did not authorise Sareet to order specialist suncreams from Boots on 18 July 2017 for £123.70 and have them delivered to her home address. She accepted that the order related to products which she used but explained this on the basis that Sareet had asked her what products she used for her trips to India.
469. The bank statements for the Natio Account also show that on two other occasions payments were made out of the account to Boots. On 20 July 2016 (i.e. about a year earlier) the first payment of £145.13 was made and on 17 December 2017 a second payment of £169.25 was also made. In cross-examination Dr Rathor accepted that she had made a trip to India in January 2018. She also accepted that this second payment involved the purchase of sun creams for her trip although she qualified her answer by saying that she could not remember exactly what it was for.
470. Again, I have to balance the evidence of both witnesses and on balance I prefer Sareet's evidence. I can find no reason why Dr Rathor would not have challenged the payment on 20 July 2016 if she had not authorised it and only Dr Rathor could have authorised the payment on 17 December 2017. The disputed payment and the other two payments related to the same products and were for a similar amount and I find on the balance of probabilities that Dr Rathor also authorised Jaswant to instruct Sareet to order the products and make the payment on 18 July 2017 for £123.70.

Vitality Health

471. Jaswant dealt with the Vitality Health cover in her oral evidence. She was asked why no other members of staff had private health care and she said that in June 2016 Sareet had become quite ill and was taking time off to go to hospital. She said that Dr Rathor was concerned that it would be necessary for her to take so much time off and offered them private health care. She also said that the Vitality Health policy was much more reasonable in price than the BUPA policy.

472. In her first witness statement Sareet confirmed this. She said that she obtained a number of quotes and Dr Rathor authorised her to take out cover with Vitality Health because the cover was very comprehensive and the premiums for both policies (which were £357 per month at that time) were cheaper than for other policies. She also gave evidence that at the end of November 2016 Jaswant made a claim on the policy for an urgent operation.
473. In cross-examination it was suggested to Sareet that the documentation should have been sent to Taywood Road and a file kept there. It was also suggested to her that the cover was a benefit in kind which should have been declared for tax purposes. Sareet admitted that she did not know this or about benefits in kind more generally.
474. Dr Rathor's evidence was that she did not authorise Jaswant and Sareet to take out private health cover with Vitality Health and she claimed to recover premiums of £2,747 for 2016 and £1,545.04 for 2017. In paragraph 44 of her first witness statement she stated that in August 2017 she became aware of the unauthorised payments to Vitality Health for the first time (when she also became aware of the payments for sun creams and vitamins). In paragraph 149 she stated:

“The Vitality Health Insurance Policy only extended to Jaswant and Sareet, not to anyone else employed at the practices, nor to myself. It is unknown in my experience for an NHS GP surgery to pay for private health cover as part of a salary package for NHS administrative staff at this level. It is correct that, as Jaswant's GP, I signed off the forms to enable her to get treatment from Vitality, but I thought that this was a private insurance scheme she had paid for herself. I cancelled the policy as soon as I became aware of it in October 2017. Also, any benefit in kind received by employees should, of course, have been included in writing as part of their employee files and the accountants/ payroll informed accordingly – this was not done.”

475. When Dr Rathor was cross-examined about this issue she was taken to the bank statements for the Natio Account which showed that in August 2016 her monthly premiums were £419.69 and in October 2017 £456.62. When she was asked whether she paid tax on it as a benefit in kind, she did not know:

“Q. Do you accept that you didn’t pay tax on your Bupa payments?

A. Sir, I pay company tax and everything, so I’m not sure how it is calculated but it’s not my intention to hide anything from Natio which is going, you could ---

Q. I think that’s not the point that is being put to you. It is a personal tax matter, is it, that you get a benefit in kind from your employer?

A. Sir, that’s something I can check with my accountant, sir. I - I never kind of thought about it, but I would have thought so that that account is a part of my tax payments.

Q. You think this account is a part of your tax payments?

A. Yes, it should be.”

476. Mr Jory pointed out that a request had been made for disclosure of Dr Rathor’s tax returns and he repeated it again. Dr Rathor did not disclose her tax returns or call AMS to explain. Moreover, in their closing submissions Mr Hood and Mr Saunders did not provide any further information about the way in which Dr Rathor accounted for her BUPA premiums.

477. Dr Rathor was also taken to the evidence which she gave to Mr Pegg at Sareet’s disciplinary hearing on 30 October 2017 where the following exchange took place between Mr Pegg and her (and the questions on the transcript were in bold type and Dr Rathor’s answers were prefaced by “SR”):

“You mentioned about private healthcare, and I've seen evidence that Sareet's been paying something like £356.17 per month out of-, out of the clinic account. Do I recall that you mentioned about making a contribution to a healthcare, but not authorising that amount?”

SR: No, because, to be very honest, like, I can only-, I can just give you my example. So, my, my one costs maybe £70, £80 a month, okay? So, all T said to them was, if they want, like, obviously I can contribute, like, maybe £50 or whatever. But what I did not know was, I mean I only found out when I got access to the bank accounts, that Jaswant was paying around £350, and Sareet was paying around £100. So, between both of them they were paying up to £500 a month-

Wow.

SR: So I don't know what cover they had taken. It is astonishing. You know. I mean, I mean, that's equal to minimum of five to six people's healthcare, private healthcare.

I understand, and in fairness, by your surprise of it, I'm guessing, but I'd like you to confirm, did you ever authorise that level of money being taken?

SR: No, I never authorised that, no.”

478. When it was suggested to Dr Rathor that she had not revealed the true cost of her BUPA policy, she said that it had to be split between the members of her family. When she was asked to produce the policy and show the breakdown between members of her family, she prevaricated and said she was not sure. This exchange then took place:

“MR JORY: It is more or less. It is not quite the right figures, but my point isn't really what the figures are. It's what the HR consultant's being told for the grievance procedure, this disciplinary, because Dr Rathor is contrasting and saying, “Why would I agree to that sort of level of premium when all I'm paying is 70 to 80”. That's what your message is here, isn't it?

JUDGE LEECH: (inaudible) that message. Now you're paying about 450, they were - the health cover that they were getting was pretty much the same.

A. Yes, but, sir, what I'm saying is with Bupa, like, as I said, I've had it for a long time, when I said since my son came out of his policy because he was over 22, I still have to pay - let's say if I take my daughter and my husband out, I will get the cover - I have got a different level of cover with Bupa and it keeps on increasing every year. It doesn't matter if it's just me or my husband is there or not. It doesn't make that much difference. So that's the point I'm trying to make, if you take on an individual person like, for example, if Sureet had taken, it should not cost more than ---

Q. So, in principle, you were prepared to fund the cost of healthcare though, were you?

A. Well, I did say that I can contribute around whatever, between sixty and seventy pounds. That's what I said. But what I'm saying is again here that the main issue is it should have been discussed with me and then shouldn't be done.”

479. On this final issue I also prefer the evidence of Jaswant and Sareet to the evidence of Dr Rathor for the following reasons:

- i) In dealing with the bonuses of £10,000 I have also set out the passage from her cross-examination in which Dr Rathor admitted that she saw

“all the transactions going to Jaswant and Sureet” [sic] between May and September 2017.

- ii) Dr Rathor also accepted that she saw the salary payments to Jaswant and Sareet on 29 March 2017 before she wrote to Yasin on 2 April 2017 (and I have set out the relevant passage in the same context above). The bank statement for the Natio Account shows that on 21 March 2017 payments of £128.78 and £228.97 were paid to Vitality Health. These entries were also immediately above the entry for the payment to Clinica of £1,060 on 23 March 2017 (which I have found that Dr Rathor authorised).
- iii) Mr Jory did not put these two entries to Dr Rathor and so I am cannot be satisfied that she was aware of them when she wrote to Yasin on 2 April 2017. However, I am satisfied that she knew about the monthly payments to Vitality Health between May and September.
- iv) I therefore reject Dr Rathor’s evidence that she only became aware of the Vitality Health policy in October 2017 and cancelled it then. I also reject her evidence that she only became aware of the payments to Vitality Health in August 2017.
- v) I also reject Dr Rathor’s evidence that she thought that Jaswant was paying for the Vitality Health cover herself in November 2016. I find it wholly improbable that Jaswant would have asked Dr Rathor to treat her or refer her for specialist treatment in November 2016 if Dr Rathor did not know that the Vitality Health cover was being paid for out of the Natio Account.
- vi) I also reject Dr Rathor’s evidence that it was unknown in her experience for an NHS GP surgery to pay for private health cover and, by implication, that she would never have agreed to pay for private health care for Jaswant or Sareet or any of her employees. In her evidence to the disciplinary hearing she said that she would have been prepared to make a contribution to the cost of private healthcare and she admitted that again in cross-examination.

vii) Finally, Dr Rathor's evidence that she would have been prepared to pay £50 or £60 towards private health care on the basis that this is what she paid herself was disingenuous (to say the least). It was on this basis that she persuaded Mr Pegg that she had not authorised the payments. However, in cross-examination she had to admit that the total cost of her own BUPA cover was about £100 more than Jaswant and Sareet were paying, even though it extended to other family members.

480. In their closing submissions on behalf of Dr Rathor Mr Hood and Mr Saunders submitted that I should reject the evidence of Jaswant and Sareet because the policy documentation was not kept at Taywood Road and they did not pay tax on the premiums as benefits in kind. I reject that submission. Dr Rathor did not know whether her BUPA cover was treated as a benefit in kind. Moreover, Dr Rathor employed AMS as a specialist accountancy firm and there is no evidence that they gave any guidance on this issue to either of the parties.

Motive

481. Finally, I must deal with Dr Rathor's motive for bringing the counterclaim and the Additional Claim. In the same way that it is not a legal requirement to establish a motive for deceit or a dishonest breach of fiduciary duty, it is not necessary to find a motive for a party to bring a dishonest claim. However, in the present case Dr Rathor made a raft of serious allegations against Jaswant and Sareet (all of which have failed). If there was no plausible motive for Dr Rathor to advance these claims, it is far more probable that she acted dishonestly in doing so.

482. As with most of the factual issues in this case, I was faced with a stark choice in relation to motive. Either Jaswant set out to commit a systematic fraud on her employer for financial gain almost from the beginning of her employment by Dr Rathor (after years of service with Dr Ali) or Dr Rathor brought a series of false claims against Jaswant either out of spite or in order to cover up her own misconduct (or a combination of both).

483. I have no doubt that a very close relationship developed between Dr Rathor and Jaswant over a relatively short period of time. Mr Hood and Mr Saunders

submitted (and I accept) that Dr Rathor reposed significant trust and confidence in Sareet and Jaswant. Dr Rathor also agreed very generous packages of pay and benefits for them (and later did so for Ms Grewel). However, in the summer of 2017 that relationship broke down. It is unnecessary for me to determine the precise reasons for that breakdown. But it is likely that Jaswant's refusal to lend her up to £90,000 to purchase Station Road was a significant reason.

484. Again, it is unnecessary for me to determine why Dr Rathor took action when she did. In their closing submissions Mr Jory and Ms Tromans submitted that I did not have to decide whether Dr Rathor had pre-signed the prescriptions which Sareet had photographed. Given the potential consequences for Dr Rathor, I accept that submission. But whatever her reasons were and whether it was panic or premeditated action, on 4 October 2017 Dr Rathor suspended Sareet and tried to suspend Jaswant. On the same day she asked Sareet to return her mobile phone and laptop and on 9 October 2017 the password to Jaswant's NHS email account was reset. Either on that day or very soon thereafter Sareet was prevented from obtaining access to her NHS email account.
485. I doubt very much whether Dr Rathor anticipated the Letter of Claim or that Jaswant would issue proceedings to enforce her rights as a partner. But once she had done so, Dr Rathor responded by bringing a series of claims against Jaswant and Sareet and making an application for summary judgment. In their closing submissions Mr Jory and Ms Tromans make the following submission about her motive:

“If the Court concludes that Dr Rathor invented this story about Jaswant having perpetrated a sustained and complex fraud against her – indeed the sort of fraud that would have needed a criminal mastermind - then it follows that Dr Rathor must have had a motive for doing so. That motive was to disguise the fact that she borrowed £60,000 from Jaswant and in return offered her a partnership. In some way Dr Rathor had to overcome the problem that, unless she could explain how it was that she did not know that the monthly withdrawals of £2,900 that Jaswant had openly taken from the Natio account over three years and which Dr Rathor had treated as personal drawings by her, then

it was rather obvious that Jaswant would be believed in relation to her case that she had loaned £60,000 on the promise of a partnership – being the very partnership which her solicitors had mentioned in their letter of 4 October 2017 [7A/225] and which formed the basis of her claim as set out in the Claim Form.”

486. They also submitted that she relied upon her status as a doctor in order to persuade the Metropolitan Police, the Employment Tribunal and the Court that she should be believed. Mr Hood and Mr Saunders submitted that these were poor motives for Dr Rathor to take the action which she did:

237. It would be an act of considerable imprudence for Doctor Rathor to summarily dismiss Jaswant, an individual harbouring knowledge of the details of a long-standing plot to defraud the revenue, who had been privy to the illegal purchase of goodwill, and with the inevitable consequence of a loss to Dr Rathor of half of her practice profits upon dissolution.

238. To dismiss Sareet, who held video and photographic evidence of the alleged unlawful mass signing of prescriptions for controlled drugs by Doctor Rathor would have been equally imprudent.

239. To take these steps as an act of petty spite for the failure by Jaswant to extend a further loan to assist the purchase of a second home by Doctor Rathor, in circumstances where a mortgage had in fact been obtained for this very purchase and was due to complete on 4 October 2017 would have been foolish in the extreme. When the court asks what possible benefit could flow from this act of petty revenge, the only sensible answer is that there could be no benefit at all.

240. The court is also, on Jaswant’s case, being asked to believe that Doctor Rathor would extend her retributive actions to informing the police of her complaints and thereby exposing her own longstanding criminality to close scrutiny. This is extremely improbable and ultimately untrue.

241. The contrasting narrative of a Doctor who had reposed her trust and confidence in two employees for the management of her own and her practices’ financial affairs and who had discovered an abuse of this trust and chose to suspend Jaswant and Sareet to permit a full investigation of their misconduct is vastly more compelling and likely. This narrative is borne out by the clear tone of surprise in Dr Rathor’s fractured and panicked correspondence with AMS following her discoveries.”

487. These are all strong points and well made. But in my judgment, Dr Rathor had a powerful motive both for defending the claim and for bringing the counterclaim and Additional Claim. She had to defend the claim to prevent Jaswant from revealing that she had paid £60,000 to purchase the goodwill of the Northolt Family Practice and once she had to defend the claim, she had to explain the payments of £2,900 per month to Jaswant. She instructed AMS to carry out a detailed review of her accounting records and based on their evidence she made series of claims against Jaswant and Sareet and reported them to the police. She then pursued those claims vigorously.
488. I accept that this course of action involved a significant risk for Dr Rathor. But in my judgment she was prepared to take that risk because she did not expect her credibility as a doctor to be challenged or damaged. Indeed, she was sufficiently confident to apply for summary judgment. It is also my judgment that this risk might well have come off if Jaswant had not kept the originals of the Partnership Forms (or parts of them) and she and her legal team had not been able to obtain disclosure of the other key documents upon which this judgment has been based.

Sareet's Counterclaim

489. Sareet counterclaims for £4,813.80 on the basis that she is entitled to six weeks' net pay based on her April 2017 payslip (which shows that her pay was £3,281.71. She accepts that she must give credit for the payment of £3,209.20 for one month's salary. In closing submissions Dr Rathor did not dispute this claim (if the Additional Claim failed).
490. I will give Dr Rathor an opportunity to make further submissions in relation to this claim if she wishes to do so (particularly in relation to quantum). Subject to those submissions, I will give judgment to Sareet for £1,604.60. I leave it to the parties to agree interest (if possible).

Disposal

491. The findings which Mr Jory and Ms Tromans ask me to make are: first, that Jaswant lent £60,000 in cash on 31 January 2014 and that Dr Rathor promised

a partnership in return; secondly, that Jaswant was made a partner in June or July 2015; and thirdly, that the partnership at will came to an end on 4 October 2017. Subject to any further submissions on Dr Rathor's behalf about the timing of the termination of the partnership at will, I will make those findings.

492. I have made a number of findings which may be relevant to the taking of the partnership account. In particular, I have found that from 1 July 2016 Jaswant received £2,400 per month (and the balance of £500) as partnership drawings rather than as repayment of the loan. I have also found that in December 2016 she received 10 hours per week of her pay as partnership drawings.
493. There may, however, be other issues which the Court may need to determine for the purposes of taking the account. I will hear from the parties on the form of any declaration and any further directions for the winding up of the affairs of the partnership. Although I have found that from December 2016 Jaswant was entitled to receive 30 hours of her pay as remuneration and 10 hours as partnership drawings, I have not dealt with how Jaswant should account for her pay between June or July 2015 and December 2016. Nor have I have dealt with Dr Rathor's drawings from the two practices from June or July 2015 to date and how she should account for them.
494. I dismiss Dr Rathor's counterclaim. I also dismiss the Additional Claim against Sareet. Subject to any further submissions on Dr Rathor's behalf, I will give judgment to Sareet against Dr Rathor for £1,604.60. I will hear from the parties in relation to any further relief.