

**SHERIFFDOM OF SOUTH STRATHCLYDE DUMFRIES AND GALLOWAY AT  
AIRDRIE**

[2019] SC AIR 28

AIR A163/17

JUDGMENT OF SHERIFF DEREK O'CARROLL

in the cause

JOANNE MURRAY

Pursuer

against

AMANDA DONALDSON

Defender

**Act: Ms MacDonald, solicitor, Burness Paul  
Alt: Ms Turley, solicitor, Trainor Alston**

**AIRDRIE, 26 March 2019**

The Sheriff, having resumed consideration of the cause:

**MAKES THE FOLLOWING FINDINGS IN FACT:-**

1. That the defender was employed by the pursuer as a personal assistant between February 2014 until her dismissal in April 2017.
2. That the principal duties of the defender were to deal with the professional and business side of the pursuers writing and associated business activities. Only occasionally would the defender also be asked to carry out personal errands for the pursuer.
3. That the defender had use of a business credit card in her name which was to be used only for authorised expenditure in connection with the pursuer's business or professional activities or when instructed specifically, in connection with the pursuer's

personal needs. At all times the defender knew and understood these legitimate uses to which the business credit card could be put.

4. That the business credit card was not to be used by the defender for her personal benefit.  
At all times the defender knew and understood that.
5. That each month the defender was required to check each item of expenditure on the business credit card statement and indicate to the pursuer's accountant whether each transaction was for the business use or personal use of the pursuer. That was done by her in writing against each transaction.
6. That by making a transaction using the business card and giving the written indication against each entry on the credit card statement, the defender was making a representation that the expenditure was either for the pursuer's business use or the pursuer's personal use and was authorised.
7. During her employment, the defender used the business credit card to make unauthorised cash withdrawals for her own use on a number of occasions, amounting to a total of £1,160. She fraudulently misrepresented to the pursuer that the expenditure was for the pursuer's business use or for the pursuer's personal use.
8. That during her employment, the defender used the business credit card to make a very large number of unauthorised purchases for her own use in a large number of retail outlets amounting to a total of £9,832. She fraudulently misrepresented to the pursuer that that expenditure was for the pursuer's business use or for the pursuer's personal use.
9. That the defender's employment duties included the use of the pursuer's bank accounts to purchase foreign currency to provide a cash float for the expenses of the pursuer's security detail when the pursuer was abroad.

10. The defender had the principal responsibility for obtaining the foreign currency, seeing that the foreign currency was allocated to the pursuer's security detail, recovering the balance of the foreign currency following the conclusion of the trip, accounting for the sums thus obtained and storing any unused foreign currency in a safe in a room adjacent to her office to which only she had access.
11. That on several occasions during her employment, the defender used said bank accounts to purchase foreign currency, fraudulently misrepresenting that the foreign currency was for the pursuer's personal or business use, and misappropriating for her own use the Sterling equivalent of £7,742.
12. That in total, during her employment, the defender obtained from the pursuer by means of her fraudulent misrepresentation a total of £18,734.

**FINDS IN FACT AND IN LAW:-**

1. That the defender having obtained £18,734 from the pursuer by means of her fraudulent misrepresentation is bound to repay that sum to the pursuer.

**THEREFORE:-**

Repels the defender's pleas-in-law; Sustains the pursuer's third, fourth and fifth pleas-in-law; Grants decree in favour of the pursuer against the defender for payment of the sum of £18,734 together with interest at the rate of 8% from the date of citation until payment; Reserves meantime all questions of expenses.

**NOTE:****Introduction**

[1] In this case, the pursuer claims that the defender defrauded her of over £23,000 while the defender was personally employed by the pursuer as a personal assistant. The defender commenced her employment in February 2014, was suspended in February 2017 and dismissed in April 2017. The pursuer seeks repayment of the money that she says she has lost as a result of the defender's fraudulent misrepresentation. It is relevant to note that the pursuer, who sues in her married name, is a well-known author who has written many books, including the Harry Potter novels under the name J K Rowling.

[2] She claims that the defender carried out the fraudulent misrepresentation in four ways. First, she used a business credit card to purchase goods for her own use. Second, she used a business credit card to withdraw cash for her own use. Third, she withdrew sums from the pursuer's business bank accounts to buy foreign currency which she kept for herself. Fourth, she removed Harry Potter merchandise from the pursuer's Edinburgh office for her own use. The defender denies any form of fraud or dishonesty. She contends that every purchase and cash withdrawal was for authorised business use or for the personal benefit of the pursuer. She also contends that every foreign currency purchase was authorised and was spent during foreign trips by the pursuer, her family and security staff or was retained by the pursuer or her family. Finally, she denies responsibility for the missing Harry Potter merchandise.

[3] The parties led evidence over five days spread between October and December 2018. The court heard evidence from the pursuer herself, Steven Simou (chartered accountant), the pursuer's husband Dr Neil Murray (who acted as a manager of the pursuer's Edinburgh office for some of the relevant period), Fiona Shapcott (nanny to the pursuer's children and

part-time administrative assistant), Diane (“Di”) Brooks (office manager), and Angela Milne (secretary to the pursuer). For the defender, the court heard evidence from the defender herself and Colin Rowley, (the defender’s current line manager, Group Managing Director, Dron & Dickson). The parties thereafter lodged written submissions and spoke to them on 31 January 2019. Thereafter I made avizandum.

### **The evidence summarised**

[4] It is unnecessary to summarise here the whole of the evidence given by each of the witnesses. The evidence was recorded and all concerned have taken detailed notes. The submissions of the parties, taken together, contain extensive reference to the evidence of the witnesses. All that I need do here is to summarise the principal elements of each witness’s evidence. I will then provide my conclusions on the law, the credibility and reliability of the witnesses and state what matters I find proved in relation to each head of claim together with my reasons before then providing my final conclusions.

[5] *The pursuer.* The defender was employed as a personal assistant to deal principally with the professional and business side of the pursuer’s activities. Her principal duties were administrative tasks concerning contractual matters, dealing with agents and other professionals in connection with the pursuer’s business activities and so on. Occasionally the defender would be asked to carry out personal errands for the pursuer. The defender was based in the Edinburgh office and worked in a small team there. Her role was office based. She had her own office, with a room off containing a safe. Simon Brown was also employed as a personal assistant but he had the separate and distinct responsibility of dealing with the pursuer’s personal and family matters. The pursuer personally carried out the defender’s

induction. It was an essential requirement of the defender's position that she was trustworthy. Until towards the end of the defender's employment, the pursuer did trust her.

[6] The pursuer gave the defender a business credit card in the name of the defender. She told the defender that it was to be used for business purposes and, occasionally, to purchase items for the pursuer's own use if specifically instructed to do so. The card was not to be used by the defender for her personal benefit. The defender was in no doubt as to the proper use of the card. The monthly credit card statements went directly to the defender. The defender then had to note against every entry whether the purchase was for business use (in which case VAT could be reclaimed and the expenditure could be set against tax as regards the pursuer's business activities) or was for the pursuer personally (in which case VAT was irrecoverable and could not be set against tax). The marking was done by marking B or P against each entry. It was of the greatest importance to the pursuer that her tax affairs were fully in order and legally compliant at all times especially as regards the division between personal and business expenditure. She told the defender this and the defender understood it. The defender sent the credit card statements to Mr Simou (the accountant dealing with that aspect of the pursuer's financial affairs). The pursuer herself did not get a copy of the statements. That arrangement had worked well and without incident in respect of the defender's predecessor for many years. Simon Brown, her other personal assistant who also uses a business credit card, has used it throughout his employment without any difficulties arising.

[7] It was not until the beginning of 2017 that the pursuer had any indication that the defender had been acting improperly concerning the credit card. Unusual activity on the credit card account had been identified and on further investigation, additional irregularities were discovered. The defender was suspended while the investigation was completed. This

was an enormous shock. The investigation revealed that the defender had used the credit card to buy thousands of pounds worth of goods without authorisation. These goods were not bought for the use of either the pursuer or the business. In addition, the credit card was used to withdraw large sums of cash which were not for the use of either the pursuer or the business. Furthermore, thousands of pounds worth of foreign currency was purchased by the defender using the pursuer's bank accounts which had then disappeared.

[8] The pursuer was then taken in detail through lengthy and detailed financial records detailing all impugned transactions on the credit card by the defender. Those records also included at 5/1 a detailed analysis of every transaction on the credit card over the defender's period of employment grouped alphabetically by the supplier of the goods (the "transaction analysis"). The transaction analysis separately identifies all transactions which were not authorised by the pursuer and which were not for either her personal use or for business use. The pursuer's belief is that all those transactions were carried out by the defender using the business credit card for the personal benefit of the defender while pretending that the expenditure was properly incurred. That is, she accuses the defender of defrauding her of the sums represented by those transactions. The pursuer was at pains throughout her evidence to emphasise that in forming that view, she has taken as generous an approach to the spending as she could so that any doubt was resolved in favour of the defender. The pursuer also emphasised that there were a small number of occasions where she did ask the defender to make some personal purchases and full account is taken of those transactions. Thus, the sums which are now claimed from the defender represent the most conservative estimate of the alleged fraudulent misrepresentation.

[9] The transaction analysis shows that there were a number of suppliers of goods who were repeatedly visited by the defender principally during the period 2015 and 2016 and the

early part of 2017, prior to the defender's suspension. It was notable, said the pursuer, that during the first year of the defender's employment in 2014 there were very few unauthorised transactions but thereafter, the number of unauthorised transactions began to increase steadily before then accelerating in number and magnitude up to the point just before her suspension. That demonstrates, she said, that the defender knew from the outset what the credit card was to be used for and that she understood at least at the beginning what was authorised and what was not authorised. It demonstrates also that as time passed, the spending by the defender using the credit card increased to a point where it was almost out of control, which was when the irregularities came to the attention of the pursuer's husband and her accountant and urgent investigations were commenced. The transaction analysis also demonstrates another pattern being that whenever the pursuer, exceptionally, asked the defender to make a purchase from any given supplier, the defender would then behave with the credit card as if the pursuer had opened an account at that supplier and the defender would then begin to shop at that supplier at an increasing rate without any further purchase having been requested by the pursuer. Some suppliers used by the defender have never been authorised by the pursuer.

[10] The suppliers concerned were as follows: Bibi Bakery; Boots the Chemist; Costa Coffee; Jo Malone; John Lewis; Marks & Spencer; Marcus Wareing; Molton Brown; Paper Tiger; Patisserie Maxime; Sainsbury's; Starbucks; Waterstones; WHSmith. The unauthorised amounts varied from £25 (cookery book) to £3,629 (Molton Brown). Total expenditure between these extremes varied. For example, £2,139 was spent in Paper Tiger and £1,636 in Starbucks. The number of transactions at each supplier ranged from just one (Marcus Wareing) to about 120 (Starbucks).



[11] As regards each supplier, the most significant parts of the pursuer's evidence were as follows.

[12] Bibi Bakery and Patisserie Maxime. The total spent on cakes and baked goods of £823 staggered her. The defender was never asked to buy cakes. Occasionally the pursuer noticed cakes when at the Edinburgh office but it was not the defender's job to buy cakes for meetings. In any event, there were no more than six meetings which she attended at which cake was bought. Meetings were not weekly. It is possible the defender might have purchased some cakes for birthday parties but that would have been very occasional. The defender helped out at two staff birthday parties which she attended in three years. As regards Costa Coffee and Starbucks expenditure, there was no reason for her to buy coffee in an Edinburgh coffee shop. Although the defender says that she needed to have business meetings, that was utter nonsense. The defender had her own ample office. There was also a nice meeting area within the Edinburgh office and coffee was always freely available in the office. The defender must have well understood that the pursuer would not expect her business affairs to be discussed in a public place. Although the defender would occasionally bring in a Starbucks coffee made to her particular taste when she visited the office for pre-planned meetings, that did not begin to account for the huge sums spent in Starbucks. The pursuer emphasised that she had not raised this legal action because of unauthorised expenditure on cake and coffee. If that had been all there was to it, she would have been surprised and she would simply have spoken to the defender to remind her of the proper use of the credit card. The significance of that expenditure is that it is part of a wider pattern of behaviour which became much more marked as time went on.

[13] Some of the expenditure was for Marks & Spencer pre-prepared meals. She had never asked the defender to buy any meals from Marks & Spencer. There was no possible

business reason for purchasing that food. Di Brooks, the office manager, was solely responsible for buying food supplies for the office. As for the Sainsbury's food purchases amounting to £176, she had never asked the defender to buy them and nor was there any business need to do so. The Marcus Wareing signed cookbook was classified by the defender as being for the pursuer's personal use. She had never asked for it or seen it.

[14] The expenditure on Molton Brown toiletries of £3,629 was extraordinary. The pursuer had never asked the defender to buy these toiletries. She does not like them. She finds them overly-perfumed. Furthermore, her husband, Dr Murray is allergic to strong perfumes and so she would never buy them for home or office use. In any event, it is not the defender's job to buy supplies for the Edinburgh office. That is the office manager's job. The office has four toilets with seven people working there in total. It is ludicrous to suggest that over £3,000 worth of products were needed. Anyway, the office manager obtained and supplied toiletries.

[15] As regards the Jo Malone expenditure, she did once ask the defender to purchase one or two large candles at £250 each. She did not ask the defender to buy anything else. After the defender was suspended, there was a search made of the office and almost no Molton Brown toiletries were found and no Paper Tiger products. She found it most upsetting that during the investigation, the defender attempted to blame the cleaner, Dani, for missing supplies of the Molton Brown products, who was then investigated before being cleared.

[16] The defender bought a Dualit Espresso machine from John Lewis. The defender had never been asked to buy that and in any event, the office already had a coffee machine. The defender bought various other items there, said to have been gifts for business use, amounting to hundreds of pounds. These gifts were not bought for the pursuer or authorised by her for business use. There is one John Lewis receipt for two identical Lego

Creator items. One of them had been authorised but two turned up in the office. The second one disappeared and was unaccounted for.

[17] She did not authorise any purchases from Liberty. However, she remembered that she was once given a present of a Liberty notebook by the defender for a Christmas present. The credit card entry tallies with that item and the date. So, she paid for the defender's Christmas present to her.

[18] The defender had no general authorisation to purchase and give gifts to anyone on behalf of the pursuer. On one occasion, the pursuer asked the defender to buy a present for a business associate. That did not give her carte blanche to do that unbidden. The defender claims that the defender bought a large number of items for business associates on behalf of the pursuer, but the pursuer has never received any thank-you cards or any other type of acknowledgement from any business associate for gifts which the defender claims were sent on her behalf.

[19] As regards Waterstones, the pursuer has no recollection of asking the defender to go to Waterstones. It was very rare that the office did not have a complete set of Harry Potter books. On the very rare occasions that supplies ran out, she would ask Angela Milne, who kept the inventories, to do that, not the defender. Similarly with WH Smith. As regards Boots expenditure, she did not ask the defender to buy any items from Boots. She would not ask someone else to buy personal items, such as make-up.

[20] As regards Paper Tiger, she said the total amount spent by the defender of £2,460 was extraordinary. She would not have needed any stationery to be bought for her or for the office from Paper Tiger. She has her own specially printed personal stationery which she uses to write to her fans. She very rarely uses cards, rather she writes personal letters. Her previous personal assistant spent no more than about £100 per year on stationery items. The

office stationery is bought by the office manager. The defender was responsible for writing only to one child fan. The mailroom deals with her fan mail. She did not ask the defender to buy wrapping paper. As regards gifts for fans and children, a supply of books and merchandise is kept in the office which is on occasion sent to some fans in special circumstances. There is simply no need for the defender to have purchased any significant amount of material from Paper Tiger. A number of the receipts were for chocolate. The pursuer does not eat chocolate and she would never send chocolate or foodstuffs to fans. She would not have authorised or had any use for the various items of Halloween merchandise. Neither does she need Christmas cards bought for her. She has Christmas cards specially made up for her and her family each year and does not purchase any. She would never ask any personal assistant to buy cards to send on her account. She would choose gifts for her children personally. Some of the receipts were for gifts bought in doubles which were not for her but she believed were destined for the defender's sister's twins. The giddy limit was reached when taken to receipts for Valentine's cards. The pursuer has never in her life asked anyone to buy her Valentine's cards or Valentine's gifts yet it was apparent from the receipts that quite a number of cards and gifts had been purchased around Valentine's Day. On many occasions no receipt was provided. At 5/2/3 (31 January 2017), a credit card payment of £105.59 at Paper Tiger, the defender has simply stated "card machine error no receipt". There is no attempt to explain what was bought or why a manual receipt was not provided. She was after all in a shop full of pens and paper. In the pursuer's view that transaction, like the rest, was also fraudulent.

[21] In her opinion, the figures show a clear and escalating pattern of fraudulent behaviour which she would classify as brazen. It was darkly comical to suggest that the things the defender bought were what she would want or need. She was staggered that the

defender thought she would not be caught. She had had a great deal of trust in the defender and hitherto had no reason to believe that the defender was not using the credit card as she ought to have done. Her impression was that the defender eventually threw caution to the wind. She was eventually caught after office employees saw the defender loading bags of Paper Tiger merchandise into the back of her car one day. The defender's fraudulent spending, wrongly marking items of expenditure as business expenditure and thus enabling (if the transaction were legitimate) VAT recovery and setting off against tax, left her open to serious reputational damage. The defender had never during her employment said that she did not know what the card was to be used for. She could have had no doubt as to the use to which it could legitimately be put.

[22] As regards cash withdrawals, from the transaction analysis, she pointed to the sum of £2,360 of cash withdrawals. It was not clear what they were for. One withdrawal in particular was of some significance: that was for £400, see 5/1/2, which the defender had indicated was for business expenses. On the bank receipt from the defender dated 12 December 2016, the defender had marked the words "lunch deposit". The pursuer's accountant, Simon Simou and her husband, Dr Neil Murray investigated this transaction. The defender changed her story about what the £400 was for. At first she said the money was in order to purchase two kittens on behalf of the pursuer. However, the date of the cash withdrawal did not tally with that purchase. So the defender changed her story. The story the defender settled on was that the £400 was used as a deposit for the Christmas 2016 staff lunch, held at the Castle Terrace restaurant in Edinburgh. That restaurant, the pursuer said, had been used on number of occasions by her for various events. She was well known there. It is a high-class restaurant and has a Michelin star. Never in the past had the restaurant asked for a cash deposit in advance of a meal. The cash deposit that the defender says she

gave the restaurant was not deducted from the bill. Neither did the defender get a receipt for the £400. Her husband phoned Castle Terrace. The restaurant said that no deposit had been asked for and no deposit had been given. The defender then sent an email to Simon Simou apparently forwarding an email from the restaurant manager Aisling Finnerty (5/15/1) which apparently confirmed the defender's account. The restaurant was asked to verify that email. It was false. The pursuer concluded that the email had been concocted by the defender to cover her tracks. The email even referred to a pretended call between the defender and that office manager which later enquiries showed was enacted in front of another employee apparently in order to bolster the credibility of the content of the email. In fact, the restaurant confirmed that the call never took place. The conclusion she came to is that the £400 in cash did not go to the restaurant; it went into the defender's pocket.

Furthermore, in an attempt to cover up her fraudulent behaviour, she concocted the email, involved her employee and the manager of the restaurant in a deception, lied about her part in the whole business and implied that someone in the restaurant was responsible for dishonestly appropriating the £400. That behaviour shows, the pursuer said, that the defender was highly manipulative, has different sides to her personality and is dishonest.

[23] Of the £2,360 withdrawn in cash, the pursuer accepted some was withdrawn for legitimate purposes but as regards the balance, there was quite a bit of explaining to do, including the £400 so-called restaurant deposit.

[24] As regards purchase of foreign currency, she had never asked the defender to purchase foreign currency for her. The only reason for foreign currency to be purchased by the defender was to provide a float for day-to-day incidental expenses incurred by her security detail. The pursuer gave evidence with regard to the amounts supplied to her security detail and the size of the security detail which would be unwise to narrate in this

public document. It suffices to say that her evidence is that the amounts of foreign currency withdrawn in Euros, US dollars and Norwegian kroner (equivalent to a total of about £10,097) could not come close to being accounted for by the expenses of her security detail on the few foreign trips she took over the relevant period. The audit carried out by her accountant in conjunction with her office staff, which is found at 5/47, shows that a total of £7,742 was unaccounted for and missing. All that money was withdrawn by the defender from business bank accounts in that foreign currency. The defender was responsible for accounting for that and for keeping any unused amounts in her safe which was located in a room accessible only from her own office. She was the only one who had the code for that safe.

[25] The pursuer emphasised on more than one occasion that the reason why she was pursuing this action against the defender was not in order to recover the financial losses, which of course she could comfortably afford. Rather, the litigation is a response to the huge disruption to her small highly valued office team she values extremely highly. The defender after investigation had tried to blame others for the discrepancies or to implicate them in other ways. She implied that the missing money was taken by others working in the office. Furthermore, as an employer, she cannot permit a situation where an employee can defraud her of significant sums of money without taking action. The pursuer believed that given the way in which the defender had carried out her fraudulent activity in her business, she might then do the same with another employer which, if it were a small business, might be capable of being brought down. If that were to happen, that would be on her conscience. She said she had no motive for misrepresenting the defender's former employment relationship with her. If what the defender had said and done was true and honest, she would not be in court.

[26] In the relatively brief cross-examination, there was little attempt to challenge the pursuer on the detail of the impugned transactions. Instead, a number of more generalised contentions were put to the pursuer. In response, the significant parts of the pursuer's evidence were as follows. The defender had bought a few personal items on her behalf but not beyond what one would expect a busy personal assistant to buy. There were only a few occasions on which the pursuer specifically asked the defender to make purchases on her behalf. The overwhelming part of the defender's job was administration and not shopping. The defender understood what her role was and the use to which the credit card should be put. The pursuer told the defender that the credit card was for booking flights and accommodation and for necessary business expenditure. The card was not for personal expenditure for the defender's own use.

[27] At the beginning of the defender's employment, there was weekly contact between the pursuer and the defender face-to-face in the office or at the pursuer's home. She clearly explained to the defender what her role was which is that of personal assistant dealing with the business side of her personal relations. After about three or four months, the meetings were much less regular. Her husband, Dr Murray took over some management functions. She accepted that to an extent, she relied on the defender to use her initiative if matters were urgent. However, she would generally be available by email or text if there was an emergency and the defender needed to speak to her about something. She would not have expected the defender ever to have bought and sent gifts on her behalf without specific instruction from her. The pursuer said that she was not a corporation but rather was a writer with a small team and was not in the business of sending out hundreds of gifts. While the defender claims that she bought a large number of items as gifts, the pursuer had no idea where these gifts were supposed to have gone. Even during the disciplinary process



interviews, the defender gave no answer as to where the gifts supposedly bought for business purposes had been sent. The pursuer denied wholeheartedly that the defender had authorisation to make purchases on her behalf not specifically authorised but made in the light of what the defender believed the pursuer would have wanted.

[28] As regards the missing foreign currency, during the disciplinary process, the defender asserted that other staff had access both to the safe and the spreadsheet recording foreign currency expenditure. The defender did not explicitly blame others for the loss. Rather the defender's position was that 'I did not do it but others have access to the safe' leaving the implication that other members of staff were responsible for the loss of the money. The pursuer did not accept that others could have been responsible for the missing money. Di Brooks had worked for the pursuer for 16 years and had proven herself to be eminently trustworthy as had Fiona Shapcott. It was not the job of Simon Simou, the accountant, to police the spending of the defender. His task was not to catch fraudulent spending. His job was to provide the accounting for the spending that had been carried out by the defender, categorised by the defender as business or personal use of the pursuer. Therefore, there was an exploitable margin created which was taken advantage of by the defender. There was no problem with credit card spending in the first year of employment and there ought to be no need to explain that the card was not to be used in a criminal fashion. The defender was plausible and brazen and was caught relatively quickly. The defender did buy coffee for her from Starbucks on the days that she was in the office for meetings, which she regarded as nice. However, the expenditure from Starbucks was vastly in excess of what could be accounted for by those meetings. While the pursuer could not recall ever having given instructions to the defender to buy birthday cakes for staff, she would have had no difficulties with that if she had been asked. However, the figures show

hundreds of pounds of expenditure from cake shops without any birthday cakes identified in the receipts. She had no motive for misrepresenting her relationship with the defender. If the defender's account was true, there would have been no litigation.

[29] *Steven Simou*. The witness is a chartered accountant and is a partner in a firm of accountants based in London since about 2003. He is a member of the Institute of Chartered Accountants in England and Wales and has been qualified since 1990. He is the pursuer's personal accountant. His normal role as regards transactions on the credit card was limited to receiving information and passing it down the line for accounting purposes. The information was received from the defender and mostly consisted of monthly credit card statements marked up by the defender together with vouching and receipts provided by the defender. Very often receipts were missing and for about half of all entries on the credit card statement there was no identification of what had been bought. It was not part of his role to scrutinise the purchases made by the defender. He did not receive copies of bank statements.

[30] In mid-February 2017, he first became aware of alleged irregularities following a telephone call initiated by Di Brooks who had noticed the defender returning from a shopping trip during working hours carrying several Paper Tiger shopping bags and placing them directly into her car. That triggered an investigation into the defender's spending on the credit card. He was then taken in evidence to a large number of productions relating to expenditure on the credit card by the defender including the summary of expenditure contained at 5/1 which had been prepared by him from the primary materials being the credit card statements and receipts. He confirmed the accuracy of the summary of expenditure in that document. A large number of those receipts and other relevant documentation were lodged by the pursuer and can be found at 5/2 to 5/47. He noticed a

large number of irregularities from the expenditure including high expenditure at Costa Coffee, Starbucks and unexplained expenditure with Marks & Spencer. He discussed his initial findings with the defender. The defender explained that she had used a Marks & Spencer cafe at Edinburgh airport on her return from a business trip. The witness told her there was no such cafe at Edinburgh airport. The defender was then shown the receipt. Her explanation then became an assertion that all the items on the receipt had been put through by the cashier without her knowing. The defender had marked that expenditure as being expenditure personal to the pursuer. He did not accept her explanation.

[31] An analysis of the expenditure incurred by the defender on the credit card from the beginning of her three-year employment revealed the following patterns. For the first year, there were no particular difficulties identified. Thereafter in year two and year three, the pattern was of an increasing rate of suspicious purchases and cash withdrawals, increasing both in terms of quantity and total amount. So, for example in 2014 there were no cash withdrawals, in 2015 there was one cash withdrawal and in 2016, there were 10 cash withdrawals. Similarly, in Molton Brown, there were two purchases in 2014, six in 2015 and nine in 2016. In Paper Tiger, there were four purchases in 2014, 10 in 2015 and 28 in 2016. In Starbucks, there were five purchases in 2014, 22 in 2015 and about 80 in 2016. Towards the end of 2016, there was a purchase at Starbucks almost every working day.

[32] The witness said that in his initial investigation, he investigated two cash withdrawals, one for £250 and another for £400, in late 2016. The defender initially stated that the £400 was withdrawn to pay a tailor for alterations to the pursuer's clothing and the £250 was withdrawn as a cash deposit for the staff Christmas lunch in December 2016. The witness queried that since the £250 had been withdrawn after the lunch had taken place. The defender then changed her version. She said that the £400 was withdrawn for a lunch cash

deposit and the £250 was to pay a tailor. There were no receipts for either. He was very surprised that any restaurant was asked for a cash deposit especially this particular restaurant which was the Castle Terrace restaurant in Edinburgh at which the pursuer was a regular and well-known customer. No cash deposits had ever been asked for or made in the past. He asked the defender for further details. 5/15/1 is an email from the defender to him in which she purported to incorporate an email which the defender said she had received from Aisling Finnerty at Castle Terrace which appeared to confirm that the restaurant had received a deposit of £400 for the Christmas lunch. The witness asked the defender if he could see the Aisling Finnerty email on her laptop. The defender did not show that to him and never gave any explanation to him for not doing so. He then spoke to Aisling Finnerty at Castle Terrace. She stated that she had not sent that email. She also confirmed that no deposit of any amount had ever been asked for and no such deposit had ever been received by Castle Terrace, which explained why there was no deduction shown on the lunch bill to account for the alleged £400 deposit. In his opinion, it was clear that the £400 was not used as a deposit. He concluded that the incorporated email was created by the defender by typing over some other previous email to cover her tracks.

[33] He widened his investigation. He created document 5/47 which is a summary of withdrawals made from the pursuer's bank accounts to pay for foreign currency prepared from the principal records. He looked only at the period from September 2016 onwards and instructed an investigation with the pursuer's office staff (Fiona Shapcock and Di Brooks) to work out whether any foreign currency was missing. The foreign currency was held in a safe which was in the defender's office. The defender had responsibility for it. They did not have access to the safe. He had to obtain the code for the safe from the defender herself. He passed to code to Fiona Shapcott and Di Brooks to. He confirmed the accuracy of all the

figures contained within 5/47 and that in total £7,742 was missing from the safe and was unaccounted for. In his view, that missing foreign currency was taken by the defender for her personal use.

[34] Considering the financial records, the use by the defender of the credit card and the pursuer's bank accounts, the total sum claimed by the pursuer was a conservative estimate of the total amount fraudulently obtained by the defender from the pursuer.

[35] In cross-examination, again, there was little attempt to focus on the detail of the impugned transactions. Rather, the thrust of the cross-examination was again to attempt to establish more general propositions. Challenged on his overall assessment that the defender had been acting in a fraudulent manner, he maintained his position stating that he had reached this view based not on the amount spent but how the defender had spent it. The pursuer had explained to the defender the manner in which all transactions on the credit card should be allocated to either business expenditure or expenditure directly on the part of the pursuer and the defender could have been in no doubt that those two categories were the only authorised categories. He spoke to the defender frequently about this and the defender sometimes consulted him as to which of the two categories expenditure should be classified. She must have known that the card was not for her own personal use and it was unnecessary that she have been explicitly told that since it is inherent in the normal employee/employer relationship. It is a general business concept.

[36] As regards the expenditure on foreign currency, he could not rule out simple human error playing a part. He accepted that the count of the money in the safe took place after the defender was suspended and that apart from the evidence he had given in chief, he could not speak to the other circumstances in which the safe might have been opened. He was told that only the defender knew the code but he could not say for certain that no others knew

the code. However, it was his belief that no one else apart from the defender had access to the safe. The defender was suspended on 19 March 2017. He met the defender on 20 March 2017 in connection with his investigation. The audit of the foreign currency including the opening of the safe took place on 22 March 2017. The defender was dismissed on 28 April 2017.

[37] As regards expenditure for the security detail on the New York trip, he spoke directly to the security detail and their expenditure and what was handed back. The money withdrawn by the defender was way in excess of what was needed for the trip and neither the pursuer nor her husband were given any cash from that sum for that New York trip. There was a substantial shortfall in what was found in the safe.

[38] *Dr Neil Murray.* The witness is the pursuer's husband. He is a general practitioner who during the period in question had been on extended leave. He had a management role together with the pursuer and co-managed the defender. The defender was employed as personal assistant to the pursuer entirely to deal with the pursuer's business and professional matters. Her principal duties included management of contractual matters, dealing with professional contacts, diary maintenance and travel arrangements. Very occasionally, she might conduct personal errands for the pursuer. She was based at the Edinburgh office. The defender had use of a business credit card for business expenditure. However, he never saw the credit card statements at any stage. Those statements went directly to the defender for her to annotate and were then sent to the accountant and would be scrutinised for accounting and tax purposes. It was not part of the accountant's job to check whether expenditure had been properly incurred. The pursuer had given the defender instructions for the proper use of the credit card. Although there was no explicit written policy on the use of the credit card, the proper use of the business credit card had been

explained to the defender and all staff. That is, it was to be used to facilitate their doing their job. All other employees having use of a business credit card were clear about it. The credit card statements however show hundreds of entries where the defender used the card to buy things for herself.

[39] He first became aware of a problem with the defender's use of the credit card on 28 February 2017. He received that day an email from Mr Simou and met him two days later. Among the problematic entries on the credit card statement were two cash withdrawals made in December 2016, one for £400 and the other for £250. There were no receipts or invoices for either. He understood that the defender had been involved in an email exchange with Steven Simou in which the defender contradicted herself on more than one occasion with regard to the purpose of those withdrawals. The defender ultimately settled on the story that the £400 was for a lunch deposit at Castle Terrace.

[40] He interviewed the defender about these withdrawals. He found that interview to be an astonishing encounter. He had known the defender for three years but what he witnessed during that interview was a completely different personality. The defender was calm, closed down and focused. In his view, she lied about the money being given to the restaurant and other things. He said to the defender that he thought it was odd that Castle Terrace had asked for a cash deposit. The defender said she thought it was odd too. He asked her why no receipts had been obtained and she simply stated that the restaurant did not give her one. He then checked directly with the restaurant: see 5/16/1-4. He spoke directly to the manageress. They said that they would never take a cash deposit and none was deducted from the bill. He had strong suspicions that the email that the defender produced was fraudulent and challenged her on that but she asserted that the email was accurate. He did not believe her and was convinced the defender was lying.

[41] As regards the heavy expenditure on Molton Brown, he was particularly struck by that. He had conducted an annual appraisal in September 2016 with the defender, the office manager, Di Brooks and another employee. During that appraisal, the defender raised a concern about buying office supplies. The defender said that she was unhappy with how Di Brooks was looking after the office and wanted his permission to buy products for the office. The witness responded in what he characterised as an absolutely clear and explicit manner that the office manager was responsible for all purchases for the office and that the defender was to stick to her role: that is, personal assistant to the pursuer. Thus, when interviewing the defender as part of the investigation in February 2017, he was struck by the amount that the defender had spent on Molton Brown products ostensibly for office use. He asked the defender for an explanation as to this expenditure and her response was simply that 'she needed to buy those items for the office'. £3,600 approximately was spent by her on Molton Brown products. That figure included a total of £1,052 spent on Molton Brown products on just one day on 12 January 2017. Not only was this spending not authorised, she was specifically told that she was not to buy office supplies. Furthermore, it is inconceivable that the office would require an expenditure of anything like that amount even if she had been authorised to buy such products. There are no more than seven employees using that office. During the investigation no trace was found of Molton Brown products in the office. In his view, the vast majority of those purchases were for the defender and were either sold or gifted by her to her friends and family.

[42] As regards the substantial purchases made in Starbucks and Costa Coffee, there was no business need for those purchases. She did not have meetings for business purposes in those cafes. She had her own office with a kitchen attached and office supplies and there was no reason for her to conduct business elsewhere.



[43] He believed that the defender had discovered that although purchases made by her on the credit card were marked up every month by the defender, he did not scrutinise the statements to check that each transaction was properly authorised. He learned during the investigation that on one occasion all of the office employees were out for a social meal which the defender then offered to pay for using the pursuer's credit card explaining that the staff did "not need money because Neil does not check the credit card expenditure".

[44] There was no proper business explanation for the Paper Tiger expenditure. Neither was there any business use for purchases from supermarkets; nor did he, the pursuer or his family eat the kind of food recorded on the receipts.

[45] As for the foreign currency expenditure, neither he nor his wife had made any foreign trips during the period of investigation. Neither he nor, he believed, his wife had been given any foreign currency by the defender directly or indirectly.

[46] This legal action had been raised as a matter of principle. The defender had dishonestly taken a large amount of money and Harry Potter merchandise but had consistently denied it. He believed that the pursuer had a duty to bring this matter to a conclusion to protect future employers. The defender during the investigation had sought to blame her colleagues for the missing items and the pursuer had a duty to their staff. It had been a troubling time for all concerned since the defender had blamed other staff leading to an air of suspicion which was regrettable, shocking and which upset those blamed by the defender.

[47] In the relatively brief cross-examination, it was put to the witness that since he was not in the office full-time, he could not be certain how matters were organised there. His response was that the neither the office nor staff were large, meetings were infrequent and he was pretty sure how the office worked. He did not accept that the office had a "manic"

atmosphere. He had contact with the defender most weeks in one form or another. He had a pretty good idea of the defender's role, which was personal assistant to his wife dealing with his wife's professional and business obligations. Di Brooks was the office manager and dealt with all matters relating to the running of the office and Simon Brown was his wife's personal assistant dealing with her personal organisation and needs. Previously, all three roles were performed by one person. The defender had a lot of time on her hands. Following his appraisal of the defender in September 2016, he sent an email to all staff clarifying responsibilities including confirming that the office manager was responsible for all office issues. That was not, he said, evidence of confusion. Everyone else was clear about their roles. The only person who raised an issue about roles was the defender. At the time, he trusted the defender and took at face value whatever she told him. What he had seen of the defender was two apparently different personalities, comparing how she appeared before her dishonesty was discovered and after. In his view, the defender was prepared to look him straight in the face and completely lie against the facts.

[48] *Fiona Shapcott*. She was originally employed as nanny to the pursuer and Dr Murray's children and had worked for them for 16 years. She had a very good relationship with them both which was important to her. Latterly, she spent some time working in the Edinburgh office for 2 to 3 days per week in addition to her childcare duties. The pursuer was a good and generous employer. When in the Edinburgh office, she would assist Dr Murray and the defender doing routine office tasks such as filing, archiving and photocopying. She described her duties there as a Girl Friday. On the instructions of the defender, she occasionally would mark-up the defender's business credit card statements . As regards the Marks & Spencer expenditure on food at 5/5/1, the pursuer would never buy such food. She does the weekly family shop and it is not the kind of food she would buy.

[49] As regards foreign currency, the security team would get an expenses float. They would then return the balance. She only ever dealt with foreign currency with the defender present. She did not have the code for the safe. The defender did. The defender was the only person who had that code so far as she was aware. It was only after the financial problems came to light that the foreign currency in the safe was counted and accounting was done. She and Di Brooks counted the money in the safe. They did not have the code for it and obtained it from Steven Simou. She created a spreadsheet to keep account of money going in or out, which was done with the defender. All of the figures entered on the spreadsheet came from the defender. She spoke to the summary at 5/47. Those figures were correct. She had regarded the defender as her friend until the defender turned round and accused her of stealing the foreign currency. She said she never had access to the safe and, so far as she was aware, only the defender had access.

[50] *Di Brooks*. She is the office manager for the pursuer's Edinburgh office. Prior to that, she was the pursuer's security consultant and before that she was a military investigator in the military police. Her primary role was to run the office, deal with fan mail, control stationery and maintain office stock supplies. Her line managers were the pursuer and Dr Murray. They are very good employers and very generous. She has worked with them for 14 years and most of the staff employed by them have worked for that sort of period.

[51] She did not have much involvement with the defender. The defender was not very busy in her job. In early 2017, she saw the defender place a number of Paper Tiger shopping bags in her car which caused her concern. She then raised that concern with Steven Simou. That in turn led to the investigation, the defender's dismissal and to this court action.

[52] She commented on production 5/1. She was surprised by the amounts spent in Paper Tiger and on the items bought. It was her responsibility to reply to mail from fans. There

was no requirement for the defender to use Starbucks. There are coffee making facilities in the office. Occasionally Starbucks might be used when out of the office but the defender had no meetings out of the office. She was not out of the office on business. The defender would come in most mornings with a Starbucks coffee. There is no business reason for Starbucks coffee expenditure so far as she can see. If the pursuer came into the office, it was either her or her colleague who would get the coffee for the pursuer. In total, she would estimate that no more than six purchases of coffee in Starbucks could be explained per annum on business grounds. The defender had her own office. There was also in the building a conference room. Office stationery is purchased from Viking. The pursuer does not use greetings cards when writing to children. That would be done on her own personal paper in the office. Any items sent to fans would always be Harry Potter merchandise, although on one occasion that she can recall a set of crayons was bought outside. Foodstuffs are never sent. As regards 5/28, the office would never send out Halloween chocolate or cards. There was no Halloween party in the office.

[53] It was her responsibility to buy office supplies. By that is meant anything needed to keep the office functioning which included soap. Before the defender began her employment, the office had good soap. However the defender claimed that the pursuer had said she particularly liked Molton Brown products. The witness however refused to buy that. But the defender insisted on buying Molton Brown products so she left her to it. She was not the defender's line manager. She could not understand how £3,600 could be spent on Molton Brown products. Since the defender left the pursuer's employment in March 2017, the office has used a total of eight products between the four toilets. The annual amount spent on soap and toiletry products before the defender began her employment was £150 per year. The office does not get many visitors. The office location is kept very discreet.

[54] Concerning 5/13, that shows a John Lewis order for a Lego set. Before Christmas 2016, she saw a Lego set in the defender's office. The defender told her that she had ordered one Lego set for a sick child but John Lewis had sent two in error. This was not usual. Usually, gifts were Harry Potter items although on one occasion crayons were sent. The defender told the witness that she would return this extra Lego set. The witness offered to send it through the mailroom but the defender refused that offer. The Lego set remained in the defender's office for one or two weeks and then it disappeared. The witness does not know where it went but it did not go through her mailroom. She did see a Lego set among some items which were returned by Dr Callum McCue, the defender's former boyfriend of the same kind as the one she saw in the defender's office.

[55] There were not monthly meetings in the office at which the defender purchased cakes. Occasionally there were PR meetings for the pursuer but on those occasions only muffins from Starbucks were purchased, not cakes. The defender was not tasked with organising coffee. That was the witness's responsibility.

[56] She manages the petty cash which is kept in a safe in a communal office. She has access to that as does Angela Milne. No foreign currency is kept in that safe. Foreign currency is kept in a separate safe which is located in a back room which is only accessible through the defender's office. Only the defender had access to that safe. Following the defender's suspension, the witness accessed the safe on Steven Simou's instructions using the code provided to him by the defender.

[57] The witness stated that it was her role to arrange for memorabilia to be sent to fans, not the defender's. Incoming letters and emails and so on were only rarely addressed to a particular person. Most such communications were directed to the pursuer. The witness was responsible for dealing with them. Sometimes gifts would be sent to fans. All those gifts

were Harry Potter and Fantastic Beasts merchandise. She kept a stock of merchandise. Office staff were not permitted to take that merchandise for themselves. Initially there was no database for the stock. However, from the end of 2015, it was thought that some items were going missing and so a database was implemented. An audit was done in the early part of 2016 and it was discovered that some items were missing. The witness spoke to productions 5/18-21 being screenshots of certain Harry Potter merchandise taken from the Amazon website. Those items were, said the witness, representative of certain items of memorabilia which were discovered to be missing. These items were apparently returned to the office (at some unspecified time) by Dr McCue (for an unspecified reason) but were no longer giftable. The total value of those three items was about £2,300.

[58] As regards expenditure at Waterstones and WHSmith of £446, she was not aware of any books having been purchased for the office or any reason why there needed to be any expenditure at those shops for office reasons.

[59] In cross-examination, she denied that she had made her initial disclosure to Stephen Simou for spiteful reasons or out of dislike of the defender. She had a business-like relationship with the defender. When the defender began her employment in 2014, she knew the code at that time. She handed over the code and the contents of the safe to the defender at that time. However, foreign currency was not then part of her remit and never became so. She never accessed the safe thereafter and neither did she know the code thereafter. She did not know why items had been returned by Dr McCue. She believed that Dr McCue had also been given books for him and his family which had been signed by the pursuer. It was possible these items were in his possession before his relationship began with the defender. She accepted that the items returned by Dr McCue may not have been given to him by the

defender. One book, being a Marcus Wareing cookbook, was also returned by Dr McCue at the same time as the other items.

[60] *Angela Milne*. She is the pursuer's secretary, has worked nearly 16 years for the pursuer and is based at the Edinburgh office. Her job is to respond to emails and fan letters and to organise responses to sick children. She works with Di Brooks and Ross Milne. The pursuer is a good and generous employer. She got on very well with the defender initially but as time went on, she noticed that the defender was quite self-obsessed and was not interested in others. She was not busy in her job and was out of the office a lot: at the gym, having her nails done and shopping during working hours. She was not privy to what the defender's role was. The defender would say she was popping out and that she had an appointment. It could have been work. The witness responded to fan mail using standard cream paper. If sending merchandise it would be Harry Potter merchandise. On only one occasion was non-Harry Potter merchandise sent, which was by her when she bought four packs of crayons from Paper Tiger. She could see no reason for expenditure of over £2,000 by the defender at Paper Tiger. Harry Potter fans do not want anything except Harry Potter merchandise. The witness would see the defender coming back from Paper Tiger and putting bags into her car. There was only one fan who wrote directly to the defender.

[61] She believed that birthday cakes might be bought on staff birthdays if authorised by the pursuer. However, she did not eat cake and no birthday cake was bought for any of her birthdays. On one occasion, Di Brooks suggested that the staff go out socially, to get a pizza. The defender said they could use the corporate credit card to pay for the meal saying: "It is okay, Dr Murray does not check that."

[62] In cross-examination, she accepted that she did not have a precise understanding of the defender's role but thought it was to facilitate the pursuer in her business dealings and

correspondence with other parties for business reasons. She did not open any mail sent addressed to the defender and could not say what mail went to the defender. The witness dealt with mail from sick children together with Di Brooks and sometimes Ross Milne. It was unlikely that sick children would write directly to the defender since they would use a generic address. Only one child did so. Business letters go out on standard business stationery. That stationery was obtained from Viking and Di Brooks was responsible for buying all stationery.

[63] *The defender.* The defender is presently employed as a personal assistant. She was previously in the Royal Navy for 12 years “in a top secret section”. She started working in early 2014 for the pursuer. She was a personal and business assistant to the pursuer. She had applied for the office manager role which was then given to Di Brooks who then made it clear to her that she had wanted the defender’s position. Di Brooks was constantly looking for an argument with her, she interacted with her daily and there was lots of crossover between Di Brooks’s role and her own. She received mail delivered directly to her. She would have contact, on behalf of the pursuer, with one sick child on a weekly basis and a couple of others. Communication with those children was by card. Latterly, the parents had her telephone number and she would keep in touch by text if ever the child was unwell. One particular child had received nearly every item of merchandise and that having been done, she would improvise and get gifts for the child of her own choosing.

[64] Her role included organising travel, business correspondence, organising personal appointments for the pursuer, liaising with her contacts, maintaining her diary, dealing with contractual matters, licensing matters and liaising with professionals such as accountants. In addition she would liaise with sick children when asked. She was very busy which is why she had an assistant, Fiona Shapcock. She would work evenings and weekends and would



have to go and meet other people. Initially the pursuer was easily contactable but latterly, the defender would have to make her own decisions about what was best for the business, using her initiative. The office administration was initially a real mess and it took her two years to get everything organised, assisted by Fiona Shapcock and Simon Brown.

[65] She said she was not solely responsible for foreign currency. Orders for foreign currency would come either to her or Di Brooks. The code for the safe was printed from Di Brooks's computer. The code never changed. Sometimes the batteries for the lock in the safe needed changing and Di Brooks did that. The spreadsheet was only maintained by Fiona Shapcock. She had no access to it. She was not asked by Steven Simou to provide the code for the safe during the investigation.

[66] The pursuer would ask to carry out personal errands such as picking up something for a friend or obtaining a special bottle of whisky, obtaining clothing alterations. That was frequent. Initially the pursuer came weekly into the office. There were also monthly PR meetings. PR meetings would also take place in London. She was asked by the pursuer to provide muffins from Starbucks for those attending, usually about eight. She would also collect a latte for the pursuer from Starbucks. Her tasks were not all office based. She was out quite a bit and Fiona Shapcock would pick up things in her absence. She did not have many dealings with Dr Murray. She did have an appraisal with Dr Murray in October 2016. She did not accept she lied to Dr Murray ever. During that appraisal, she told Dr Murray she was ordering stationery and toiletries for the office and that it was not part of her role but that the pursuer wanted her to do it. Dr Murray did not tell her that she should not be doing such duties. In fact he said to her if you are happy to continue doing that you should do it. So she did. She told Dr Murray the brand of hand soaps that she was buying, being Molton Brown. She always ordered the Molton Brown produce online from Molton Brown. She

always bought it in bulk. Simon Brown would then ask her to buy some extra for the downstairs bathroom. He was responsible for maintaining the downstairs toilets. If there was a Molton Brown promotion, she would order extra.

[67] She was never told what she should use the credit card for. There was no written policy for use of the card. She had to make a decision each time she used it based on the pursuer's business need and the nature of the task. She would then send the credit card statements to Steven Simou and indicate whether each purchase was P or B. She was never told exactly what P or B meant and so she would have to make her own decision. Sometimes there were grey areas so she might mark a transaction P/B. No problems were ever raised with her about using the credit card. She would speak to Mr Simou weekly and would give him a narrative if needed.

[68] She was however clear at all times that the credit card was only to be used for the personal needs of the pursuer or business use and was not to be used for her own personal use. She never used the card for her personal benefit, ever.

[69] As regards cash withdrawals, she would sometimes take out £250 or £300 at the time to use for cash transactions, for example to buy cats for the pursuer, to give to Fiona Shapcock as reimbursement and to pay for the Christmas lunch deposit in December 2016. She withdrew two or three amounts for the purchase of the cats. She was frequently asked to do tasks for the pursuer and her family. On two occasions she took out cash to use for clothing alterations for the pursuer. Other personal tasks were carried out for the pursuer, on her instructions, such as to make appointments for health care and doctors, purchase of pain relief at Boots as well as nail glue. She would also buy things for birthdays on behalf of the pursuer. All purchases from Boots were for office use or personally for the pursuer, on her instructions, and never for herself.

[70] On every staff birthday and also for PR meetings she bought cakes from Patisserie Maxime. Purchase of cakes was authorised by the pursuer and she would always check if unsure. The pursuer was sometimes there when the cakes were presented and consumed. She was never challenged about those purchases at the time and in fact the pursuer asked her for the name of the baker because she was so pleased with the cupcakes.

[71] The pursuer was very generous but not approachable. The pursuer was not always contactable and then the defender would have to make decisions about spending money in the best interests of the business. She always told the pursuer after she bought cakes and muffins for the office and she would always approve her purchases. She was very careful. All the gifts that she bought were also for business use. They were gifts sent out on behalf of the pursuer to assist her business reputation.

[72] It was not true to say that the pursuer would always deal with gifts personally. Sometimes the pursuer might say a person had a 50<sup>th</sup> birthday and tell her to deal with it. If there was a present to buy for a sick child she would do that and she would tell the pursuer afterwards and she would be pleased. The defender would buy a variety of cards and send them to the pursuer using her driver for the pursuer to choose from. These cards were all bought from Paper Tiger and were never bought for her own purposes. Every time she met the pursuer she would always ask her if there was anything that she did that she wanted changed or if there was anything she wanted her to do so there was always an occasion for the pursuer to ask how the cards she bought were used. She denied ever used the credit card fraudulently.

[73] She did not gift Dr Calum McCue anything from the pursuer's office. He was a huge Harry Potter fan before she left the pursuer's employ. When asked how it came to be that Dr Calum McCue delivered Harry Potter items to the pursuer's solicitors, she responded

that they must have been in contact with him and that he was on the witness list. She did not know how Dr Calum McCue came into possession of the items of Harry Potter merchandise referred to in the evidence. She said that he had been to Harry Potter events and there had been no contact between them since they separated.

[74] Concerning the £400 deposit for the restaurant, the defender was asked by the restaurant to pay a cash deposit. She was surprised at that because the pursuer was a regular customer. She went to the restaurant by taxi with two boxes of Christmas crackers before the lunch. She gave the crackers and the deposit to somebody in the restaurant and assumed that the £400 would come off the bill. She did not know who she gave the money to and she did not get a receipt. After this matter was raised by Stephen Simou, she phoned the restaurant about it and followed that up with the email at 5/15. She denied that she had forged that part of the email which appeared to have been written by Aisling Finnerty, general manager of the restaurant. She said she phoned Aisling Finnerty and passed on her response, which was referred to in her email. The defender could not explain why the restaurant said they had never asked for a deposit. She did not know what happened to the £400. She did not check the bill after the lunch to see whether the deposit had been taken off the total price. The email at 5/16 from Castle Terrace to Dr Murray stating that no deposit had been asked for or received was something she could not explain.

[75] If she was out of the office for several hours, she would then buy food and drink on the credit card. She believed that was authorised. She would use the credit card when meeting party planners for example. She would also have meetings with clothing designers. She took party designers off-site a couple of times, and for lunch a couple of times, to discuss "sensitive things". Lunches outside were agreed by the pursuer.

[76] The defender remembered the meeting with Dr Murray in February 2017. The reason why she reacted the way that she did was that she was shocked at the absurd accusations. Even with hindsight she would not have changed anything except that she would not have worked for the pursuer.

[77] She ordered all her own stationery. The office manager told her to carry on doing that.

[78] As regards Molton Brown hand soap, when Stephen Simou came to the office for the investigation, there were 60 sets of hand soap in her office and lots of cards and gift labels in cupboards. The items were all there in the office. The Jo Malone expenditure was a personal request for candles by the pursuer and she gave them to the pursuer's driver who delivered them. The pursuer was sometimes very particular about which shops she would go to.

Sometimes she was not; but Jo Malone was the place for candles.

[79] As regards receipts for expenditure, mostly she would get receipts but some went missing. She kept the receipts in her purse and then in a wallet in the office until the statement arrived. Then line by line she would match the credit card entries with the receipts and annotate them. Fiona Shapcott would help her. The defender was confident that all of the transactions carried out on the credit card were appropriate.

[80] Taken to a Marks & Spencer receipt for £45.60 (5/5) for various items, she explained that the items were gifted to a person who she worked with and the fruit was for working late in the evening with Simon Brown. The shortbread biscuits were sent to employees at the Savoy Hotel in London. Another gift was sent to a sick child as a thank you gesture.

[81] She denied having made the statement ascribed to her by Angela Milne with regard to Dr Neil Murray not checking credit card statements. She did not know whether Dr Neil Murray checked the statements. The credit card statements were not sent to him but were

sent to Stephen Simou. Dr Neil Murray had never had a discussion with her about how the credit card was to be used. The pursuer knew what she was using the card for. However there were no written policies for the use of the card.

[82] So far as foreign currency was concerned, the defender said that she would receive a request from the security team or the pursuer and the pursuer would tell her what to order. She then carried out that instruction. She was taken to the documents at 5/42 to 5/46 being receipts and bank statements concerning foreign currency withdrawals. She agreed that she made them and confirmed the handwritten entries were hers. She was also taken to 5/47 being the summary of foreign currency unaccounted for which had been spoken to by Steven Simou in his evidence. She agreed that she had marked the items on the bank statement 5/43 with her own handwriting using P and B, or B/P to indicate mixed use. It was the pursuer who asked her to order foreign currency. She ordered it and gave the pursuer \$4,000 for the New York trip in September or October 2016. The pursuer never gave her anything back. As regards the £2,040 worth of US dollars referred to in 5/47, that would have been sent to the pursuer for the security team. When asked why it was missing, she said that if the security team have any money remaining that it should be returned to her but if the pursuer's family had it, the money would not be returned to her. As regards the Norwegian kroner bought on 8 January 2017, the foreign currency would have been dispatched to the pursuer by her driver. As regards the £712 worth of Norwegian kroner missing, she could not explain that, commenting only that Fiona Shapcott had created the appendix. As regards the total of £7,742 found to be unaccounted for in 5/47, which ought to have been found in the safe, she could give no explanation. She said however that office staff including Angela Milne and Di Brooks used the safe as well. It was Fiona Shapcott who populated the spreadsheet. The defender said she never took any currency for her use and never asked

Fiona Shapcott to do any work on the currency spreadsheet except on one occasion. If any foreign currency was returned, it would be put in a tray and Fiona Shapcott would place it in the safe.

[83] As regards Paper Tiger, she was familiar with all of the receipts referred to at 5/24 to 5/42. Her explanation for all of the purchases was that they were either for business use, authorised expressly by the pursuer before or after the event, or were for the pursuer herself at her request. The purchases included gift items for a sick child together with wrapping paper. Other items were bought to give as presents to those associated with the pursuer's business, to uphold the business relationship. Chocolates were sent to the lady who helped the pursuer with her travel arrangements. The purchases included a number of birthday cards as there was always a stock of birthday cards kept in the office and the pursuer always wanted them topped up. The pursuer would look through them periodically to see if the stock was sufficient. Halloween gifts and cards were sent to sick children the defender had relationships with. One child she wrote to every week with presents and various tokens and other gifts were sent to other children. The pursuer was aware of her activities and was pleased with them. The birthday cards at 5/29 were sent to the pursuer's house at her personal request and comprised boxes of Christmas cards. The defender sent cards on behalf of the pursuer to business contacts at the request of the defender. As for the items bought on 23 November 2016 listed at 5/30, the defender believed there would have been text requests from the pursuer herself to send these items. Those items, being over 30 in number costing £115.76, included a large number of cards, present wrapping, chocolate coins, Christmas tags and a small quantity of Chartreuse liqueur chocolate. The pursuer's driver came to the office every day and she would give the things she had bought to the driver for delivery to the pursuer at home. There was even a special chair in the pursuer's hallway for these things

to be put down. She had never been told that she had bought too much or of the wrong kind. Occasionally she would get a text from the pursuer asking her where the items were. As regards 5/38, a receipt dated 12 January 2017 for items including the following: 'x1 Love Goes on Dog Valentines Tri card'; 'x1 I'll Love You Forever card'; 'x1 You Are Out of this World card' and 'x1 I Long for You' card, the defender said that she did not recall being asked to buy Valentine's cards and that in fact this receipt was not for Valentine's cards. These cards were either part of the office stock or they had been sent out. There were not for her personal use. The items at 5/39 (photo frame, red ribbon, spring hearts wrapping paper) were specifically asked for by the pursuer to buy for a birthday occasion. The items at 5/40 ('x1 bashful dino', 'x1 bashful dragon', 'x3 blue ribbon', 'x 1 garden fails soft book', 'x1 leaving card', 'x2 thank you rainbow cards', 'x3 wrapping owls dark red paper') were requested by the pursuer a few days later to buy for a sick child.

[84] The purchases from the Bibi Bakery and similar were also for staff and not for her. The purchases from Boots were specific requests by the pursuer for her nanny's daughter. The pursuer's nanny also requested things for her daughter. She bought items at Costa Coffee when she was on business, which was authorised. She bought lots of items from Molton Brown when there was a promotion. On 12 January 2017, she made two separate purchases from Molton Brown totalling £1,052. The whole amount was for reed diffusers. She ordered them in bulk for the offices and toilets and corridors in the Edinburgh office. She told Dr Murray about this at an appraisal and he authorised it. Expenditure of £1,636 at Starbucks and Costa coffee was because of monthly PR meetings when she would often buy a latte for the pursuer and 8 muffins for the team at the team meeting. Coffee and muffins were also bought at other times for the office staff. The expenditure at WH Smith and



Waterstones was because the pursuer had specifically asked her to buy books which were then delivered to the pursuer.

[85] As regards the Harry Potter merchandise, the defender denied having taken any merchandise from the office or giving any merchandise to her ex-boyfriend. She denied ever gifting Harry Potter merchandise to friends or relatives.

[86] In cross-examination, during which the defender was taken in some detail through a large number of transactions and receipts, the defender largely maintained her account given in chief, though providing more detail. She said that she bought things for the pursuer's family such as school uniform, cleaning items, candles, 50<sup>th</sup> birthday gifts, gifts for personal friends of the pursuer and gifts for PR people. She was unable to provide all the names for all the people that she gave gifts to because there were so many. The pursuer would not always tell her the name of the person who was to receive the gifts that she was asked to buy. Since the Molton Brown soap and similar items were on display in the office, she believed the pursuer knew that she was buying them using the credit card. The defender had in fact made a complaint about always having to buy soap for the office stating that it was the office manager's job. She also raised this complaint at the appraisal with Dr Neil Murray. It was, she said, part of her job to uphold relationships and contacts with many people on behalf of the pursuer. This included hotel workers, airline workers, travel workers, the pursuer's driver, the PR team, the pursuer's agents and everybody who was used regularly by the pursuer. She was unable to name more than three such people.

[87] As regards Stephen Simou's evidence concerning the Marks and Spencer receipt, he was lying and her evidence was true. The tin of shortbread from Marks & Spencer was for the hotel employees at the Savoy and Fiona Shapcott helped her wrap it. She accepted that she had marked the Marks & Spencer receipt at 5/2/7 as being for the personal use of the

pursuer even though her evidence was that the food was for office use. That was a mistake, made because she was busy. She bought chocolate coins and chocolate Brussels sprouts for sick children, which was part of her job. That was so even though the pursuer had insisted that children would never be bought foodstuffs. As for the Chartreuse chocolate, that was in fact for the mother of the child with whom she corresponded.

[88] 5/29/2 was for an anniversary card. This request was made by the pursuer. Although the receipt states that the card was a 'Love You to the Moon and Back' anniversary card, that was incorrect. She bought it for the pursuer to send to a couple but she did not know who they were. Contrary to the evidence of the pursuer and Dr Murray, she was requested on many occasions by the pursuer to buy Christmas cards. She asked her to buy big boxes of Christmas cards for her children to send. When taken through itemised receipts from Paper Tiger for items which it was suggested were rather unlikely to be sent to business contacts, she was insistent that these items (including items such as a snowflake candle, fruit candy, alpha books) were sent to business contacts. The 'money wallets' purchased from Paper Tiger were kept in the office supplies. The office maintained a supply of cards for sending to business contacts. The pin badge with the message "Cute Hotdog" was sent to a business contact, Sonia who had a dog. When the pursuer's staff had babies, cards and presents were sent by the defender on the pursuer's behalf.

[89] 5/36 was a receipt from Paper Tiger dated 20 December 2016 for various purchases made for the pursuer. The items included 'x2 Scotland Lion Thistle chocolate coins'; 'x2 Happy Birthday to You Shakies cards'; 'x2 Absolutely Loads of Birthday Wishes Shakies cards', 'x4 sheet wrap Christmas collage', 'x6 scarlet red ribbons' and 'x2 Money Wallet Christmas Magic': for a total of about £40. The defender maintained that the pursuer had specifically asked her to buy these items. The defender accepted that she had a sister in

England who had twins but denied that the reason why there were two of everything (or multiples thereof) was connected with that fact.

[90] With regard to the purchases of Valentine's cards at 5/38 (as stated in the itemised receipt), she maintained that although the cards may have come from the section within the shop where Valentine's merchandise was sold, and despite what the receipts recorded, she did not buy Valentine's cards. What she bought may have been classified by the shop as Valentine's cards but in fact they were not. The cards may have had hearts on them. She was repeatedly asked why she had bought them. She thought she may have bought them to top up the stock of cards in the office. No one asked her to buy them. She denied sending out any Valentine's cards. She marked these all as being business purchases. She accepted that in doing so she potentially implicated the pursuer in a VAT fraud.

[91] She accepted that she was responsible for buying foreign currency which was sometimes delivered to the office or sometimes collected by her from the foreign currency provider. She insisted (contrary to the evidence of the pursuer, Dr Murray and Fiona Shapcott), that foreign currency was purchased not only for the security detail but also for the pursuer, Dr Murray and their family. Concerning the Norwegian kroner, she accepted that following cancellation of the Norwegian trip, the kroner should have been in the safe.

[92] As regards very numerous instances in which her description of the purpose of purchases conflicted with the way in which she had marked the purchase on the credit card statements (B instead of P or vice versa) she repeatedly explained them by saying that some categories of expenditure could be ambiguous, that there were grey areas, that there can sometimes be a crossover and an item might be marked either business or personal or a bit of both.

[93] She insisted that when she received thanks from the recipient of the gifts, she passed that on to the pursuer at their next meeting.

[94] Concerning the £264 spent in Boots, she regularly bought boxes of tissues there for use in the office. She accepted this should have been the office manager's job, said that she had raised this at her appraisal and had mentioned that to the pursuer regularly. She was asked to buy painkillers frequently by the pursuer. It was put to the defender that since almost all of the Boots expenditure was not receipted, the reason for the absence of receipts was precisely so that one could not tell what was bought. The defender denied that; it was just a coincidence there were almost no till receipts.

[95] Concerning Starbucks, she accepted that expenditure there had risen from a few pounds in 2014, to £237 in 2015, to about £1,400 in 2016. She explained that increase by saying that she did not start buying muffins until 2015. Also, she bought coffee outside with colleagues and so on which she had already explained in evidence.

[96] As regards the £400 deposit for the Castle Terrace lunch, she called the restaurant about the booking in order to confirm numbers and was told that a cash deposit of £400 was required. The restaurant, she accepted, was well-known and upmarket and frequently used by the pursuer and had never before asked for a cash deposit. She did not tell anyone she had been asked for a £400 deposit. She accepted that the email from Aisling Finnerty at 5/16 sent to Dr Murray on 23 March 2017 stated that the reservation for lunch was made by telephone with the defender on 31 August 2016 and that credit card details were provided on 7 December 2016 to settle the bill on that day. The email also stated that the total amount of the bill was charged to the credit card on 14 December 2016 with no other deduction or charges and that no cash deposit was taken.

[97] The defender accepted that she had provided credit card details to the restaurant on the day of the lunch on 7 December 2016 but could not explain why the restaurant had then asked for a cash deposit. She accepted that on her account she, as a professional personal assistant, had passed over £400 to an unknown person without a receipt. She assumed that the deposit would be noted on the final receipt. She did not query the absence of the £400 on the bill received that day as she had not noticed the absence of the £400. She did not know why she had handed over the money without a receipt.

[98] Taken to 5/15/1 she accepted that she had written that email on 24 February 2017 to Steven Simou incorporating an email which she said was from Aisling Finnerty to herself dated 23 February 2017. That incorporated email appeared to acknowledge receipt of the £400 cash deposit. She said that Aisling Finnerty was lying when she denied sending that email to her. She accepted that if the email from Aisling Finnerty was what it appeared to be, then one would expect an apology and refund from the restaurant and it was odd that had not been done. She also said Aisling Finnerty was lying in her email at 5/16/1 dated 23 March 2017 where she said her last correspondence with the defender was 14 December 2016 (and not 23 February 2017) and that she had not written the email of 23 February 2017 which the defender had incorporated in her email. That email of 23 March 2017 stated also that no cash deposit was taken for the lunch reservation. The defender denied having taken the £400 and having forged the Aisling Finnerty email to cover her tracks.

[99] *Colin Rowley*. This witness was led by the defender as a character witness. He is the group managing director of Dron Dickson, Stirling. He has overall responsibility for the group. He employs the defender as his personal assistant, has known her for five years and has employed her since April 2018. Her duties include making purchases on a corporate credit card and on his personal credit card; so the defender has access to his bank details.

She also has full access to his email and maintains client relationships on his behalf. He has never had any issues with that access or any concerns with regard to her duties. The allegations made against the defender have shocked him.

### **Final submissions**

[100] *Pursuer's final submissions.* The parties' representatives prepared helpful written final submissions which they then spoke to at a hearing on 31 January 2019. Those submissions are lodged in process and it is therefore not necessary to repeat them in full. It suffices for present purposes to summarise the respective contentions of the parties as follows.

[101] The basis of the pursuer's claim is the common law delict of fraudulent misrepresentation. The authority for that is *Derry v Peek* (1889) 14 App Cas 337, an English case where it was held, (per Lord Herschell at page 374) that a fraud is proved where it is shown that a false representation has been made knowingly or without belief in its truth or at least recklessly or careless whether the representation be true or false. If a fraud be proved, the motive is immaterial. That dictum was cited with approval by Lord Atkinson in the well-known Scottish case of *Boyd & Forrest v Glasgow and South Western Railway Co* 1912 SC (HL) 93, 99. In *Robinson v National Bank of Scotland* 1916 SC (HL) 154, 157, the House of Lords treated *Derry* as part of Scots law. It was submitted that during the course of her employment, the defender made false representations to the pursuer and other individuals employed by the pursuer regarding the use of the business credit card. The defender carried out various point-of-sale transactions which were unauthorised by the pursuer but were represented by the defender as having been authorised. She carried out cash withdrawals for purposes entirely unconnected with the pursuer or her business but which were represented as having been authorised by the pursuer. She obtained foreign currency,

representing that the foreign currency was for the purposes of the pursuer's foreign trips. However, the majority of those sums were not used that way and the defender kept the balance for her own use. She knew that she was not authorised to carry out those transactions using the business credit card and the pursuer's bank accounts. In the knowledge that the spending was unauthorised, the defender knowingly and falsely made statements to conceal her fraudulent activity. Her activities can only fairly and correctly be characterised as misrepresentational and deceitful. Those activities include the misappropriation of the Harry Potter merchandise.

[102] The pursuer's agent invited the court to find all of the pursuer's witnesses credible and reliable in all respects, being frank, direct and coherent and to reject entirely the evidence of the defender as being evasive, contradictory and inherently implausible.

[103] As regards the evidence on the point of sale transactions, the evidence showed a pattern of the defender using a small number of genuine instructions to legitimise her fraudulent spending activity and thereby conceal her illicit activities from the pursuer. The fraudulent activity began in 2015, escalated in 2016 to the point in 2017 where the fraudulent activity was so extreme and blatant that her fraudulent activity was discovered. On the face of it, the spending by the defender with various suppliers is impossible to explain legitimately for the reasons given by the pursuer and her witnesses. The evidence of the defender attempting to explain and account for the type and level of expenditure at each supplier was incredible.

[104] As regards the precise quantification of the fraudulent use of the credit card by way of fraudulent point-of-sale transactions, in the pursuer's submission, the evidence showed the following. The starting point was the evidence relating to the summary of the point-of-sale transactions at the various suppliers which is found at 5/1 of process. A total of £1,003

was spent at Bibi Bakery and Patisserie Maxine. The evidence was that a small amount of that expenditure was legitimate, being about £100 for two years, producing a figure for fraudulent expenditure there of £803. For Starbucks and Costa Coffee, the total expenditure was £1,751 of which no more than £132 was legitimate producing a figure for fraudulent expenditure of £1,619. For the supermarket expenditure, none of it was legitimate producing a figure for fraudulent expenditure of £293. For Boots, none of it was legitimate producing a figure for fraudulent expenditure of £264. In Molton Brown, the total figure spent is £3,629. Looking at matters generously from the point of view of the defender, it might be said that £150 per annum might possibly be described as legitimate. If so, that produces a figure of fraudulent expenditure of a minimum of £3,179. The figure for total expenditure in Jo Malone was £1,482. Deducting £500, which the pursuer accepts may have been legitimately spent, produces a figure for fraudulent expenditure of £982. None of the expenditure from Paper Tiger of £2,139 was authorised; it was all fraudulent expenditure. Although the pursuer accepted that a small amount of legitimate expenditure might have been spent on a few cards, that is accounted for by the expenditure with Paper Chase and the pursuer does not make any claim in respect of that expenditure. As regards expenditure in Waterstones and WH Smith, all was unauthorised amounting to a total sum of £446. Finally, although there was significant expenditure at John Lewis, some of which was difficult to understand, the pursuer restricted her claim in respect of that retailer to the amount spent on the duplicate Lego set in December 2016 being the sum of £107. In total therefore, the total amount fraudulently spent by the defender as established on the evidence is conservatively stated as £9,832.

[105] As regards expenditure on foreign currency, it was clear that a substantial amount of foreign currency had been purchased by the defender (which the defender accepted) but



was largely missing. The defender, as part of a fraudulent scheme, purchased currency in excess, falsely annotated the bank statements as business or personal purchases for the pursuer and then appropriated the balance, once the pursuer's security team had deducted their float, or kept the whole amount where the trip did not take place. The court should reject the defender's false assertions that the missing money was taken by the pursuer for her use and that of her family.

[106] As regards the precise quantification of the amount fraudulently obtained, the evidence shows (see 5/47/1) that after deducting the maximum lump sum possible on the evidence for the security detail for the USA trip, the equivalent of £3,200 was missing. There was only one trip during the relevant period to New York in the autumn of 2016 but yet the pursuer bought US dollars twice, keeping most of it for herself. On the evidence, there was no trip made to Norway and accordingly the whole of the Norwegian kroner bought, or its equivalent, ought to have been retained but most was missing. As regards Euros, the most that would have been required was €120. Accordingly, the sum fraudulently obtained by the defender is the sum brought out at 5/47/1, being £7,742.

[107] As regards cash withdrawals using the credit card, the evidence relating to the lunch deposit £400 was stark. The £400 went missing and the defender's explanation was utterly implausible. Not only did the defender pocket the £400 but she then lied about it, blamed Castle Terrace staff for the missing money, created a false email from Castle Terrace management and involved another member of the pursuer's staff in her deceit. That was an egregious example of the way in which the defender used the credit card to make cash withdrawals for her own use. Most but not all of the cash withdrawals were unaccounted for in a legitimate fashion and the conclusion must be that the defender acted fraudulently in withdrawing most of those sums.

[108] As regards the precise quantification of the fraudulent cash withdrawals, the document at 5/1 shows that the defender withdrew a total in cash of £2,359 (including additional charges referable to the credit card being used for cash withdrawals). The pursuer accepts that £850 was legitimately withdrawn by the defender for payment for the kittens in 2016. That leaves a balance of £1,509 which was fraudulently obtained.

[109] As regards the missing items of Harry Potter merchandise, there was only a limited amount of evidence concerning that. It was conceded that there was no direct evidence of deceit or misrepresentation on the part of the defender in relation to the missing merchandise, unlike in relation to the other heads of claim. It was also accepted that the evidence relating to the circumstances in which, apparently, some Harry Potter merchandise was passed to agents for the pursuer by the defender's ex-boyfriend, was somewhat lacking. It was however suggested that there was nonetheless sufficient from which it could be inferred that the defender was responsible for the merchandise going missing, being part of an overall fraudulent scheme carried out by the defender for her benefit.

[110] The value of that merchandise according to the productions at 5/18 to 5/22 was £3,213, if bought. Since the items, though eventually returned via the defender's ex-boyfriend, were now ungiftable, the loss is that amount.

[111] In total therefore, totalling these four heads of claim, the total loss to the pursuer caused by the defender's fraudulent misrepresentation established by the evidence is £22,296. Decree in that sum was sought together with expenses.

[112] *Defender's final submissions.* There was no significant dispute as to the substance of the relevant law as set out by the pursuer. It was said by the defender (without however any reference to authority) that common law fraud in Scotland is committed when someone achieves a practical result by means of a false pretence. The pursuer must prove that the

defender has done something that she would not otherwise have done if it were not for the deceit for which the defender was responsible. The pursuer must prove on the balance of probabilities that the defender intentionally set out to deceive the pursuer by misappropriating the use of the business credit card, concealing this by knowingly marking the bank statements, wrongly taking currency for her own personal use and concealing this by altering the spreadsheet. All representations made by the defender must be shown to be false and dishonestly made and intended to be relied on and that the pursuer has suffered damage as a result.

[113] So far as the submissions on the evidence, consistent with the line taken in cross-examination of the pursuer's witnesses, there was very little attempt made to deal with the detail of the alleged misuse of the business credit card by the defender. Rather, the thrust of the submissions for the defender was directed at a number of general propositions. It was submitted that the defender was authorised by the pursuer to use the credit card to purchase all the items on her behalf and that the defender carried out her duties as personal assistant to the pursuer, including the purchases with the credit card, entirely within the scope of her employment. Similarly with the purchase of foreign currency. The defender wholly denied any intention to deceive the pursuer including by the use of the business credit card. The defender's use of the business credit card was authorised by the pursuer and therefore pursuer has suffered no loss. The defender did not personally gain from the use of the business credit card.

[114] As regards the witnesses for the pursuer, nothing at all was said about the credibility or reliability of the pursuer's evidence. Concerning Stephen Simou, it was suggested that he had every reason to lie to the court in his evidence insofar as his evidence supported the pursuer. Furthermore, Steven Simou was not an auditor and did not deal with any of the

bank statements or receipts except as a purely bookkeeping exercise. As regards the foreign currency misappropriation, his evidence is unreliable since all of the evidence relating to the preparation of his audit came from other employees of the pursuer. The court was invited to conclude that the evidence of Dr Neil Murray was completely unreliable and incredible since he was not regularly in the office and was not properly aware of the defender's role. All that was said with regard to the evidence of Fiona Shapcott was that it should be accepted as regards withdrawing of cash to buy kittens. It was submitted that the evidence of Di Brooks was exaggerated and fuelled by her dislike of the defender. The evidence of Angela Milne was of limited use since she could not and did not speak to the use of the credit card and was not privy to any discussions between the pursuer and the defender with regard to the role of the defender. By contrast, it was said that the evidence of the defender was both credible and reliable and her evidence should be preferred to that of the pursuer and her witnesses. In particular, the court should prefer the evidence of the defender to the pursuer about the authorised use of the business credit card and the foreign currency matters. The court should also accept all her explanations about the reasons for the various point of sale purchases and her purchasing of items as gifts for sick children and business associates. Finally, it was said that the evidence shows there were no regular reviews of the appropriacy of the defender's spending and that the defender therefore must reasonably have believed that she was using the card within her authority and that there was no intention on the part of the defender to deceive the pursuer. The defender did provide monthly accounting for her expenditure on the credit card which went unchallenged for years. The defender submitted that the court should grant decree of absolvitor with expenses.

## Discussion of the law and the evidence

### *The Law*

[115] There was no significant difference between the parties as to the relevant law. The pursuer proceeded on the basis that the relevant common law delict, fraudulent misrepresentation, was authoritatively stated in *Derry v Peek, supra*. There was no serious disagreement by the defender with that proposition. I proceed on the legal basis founded on by the pursuer which I set out at paragraph [101] above.

[116] Accordingly, the pursuer requires to prove fraud on the part of the defender. To prove fraud, the pursuer must prove that the defender has made a false representation. Further, that false representation must have been made by the defender knowing that the representation was false. Alternatively, the representation must have been made by the defender without belief in its truth. That in turn may be proved by conduct showing that the representation was done with a reckless or careless disregard for whether the statement was true or false. It follows that if a statement is proved to be false, it will not be fraudulent if there be an honest belief in its truth. Further, if fraud is proved, the motive of the guilty person is immaterial. So it matters not if there had been no intention to harm the person to whom the statement was made. To recover payment, the pursuer must show that as a result of the fraudulent misrepresentation, she has suffered a loss and must prove the quantum of that loss. The burden of proof lies on the pursuer and proof must be to the usual civil standard that is on the balance of probabilities. So, the pursuer must demonstrate that it is more likely than not that the defender has wronged her by the making of fraudulent misrepresentations. The criminal standard of proof, proof beyond reasonable doubt, has no application in a case such as this.

*Reliability and credibility of the witnesses*

[117] I now turn to explain briefly my conclusions as to the credibility and reliability of each of the witnesses generally and in relation to the principal issue of fact before then stating my conclusions on the evidence.

[118] The pursuer herself was the first witness. She gave evidence over the first two days of this proof. Accordingly, I had ample opportunity to observe her demeanour, consider the content of her evidence and the way in which she gave it. I have also carefully considered her evidence against the background of the rest of the evidence in this case. The pursuer gave her evidence in a thoughtful, considered, measured, accurate, honest and reliable fashion. I detected no trace whatsoever of any attempt to mislead the court, exaggerate her evidence or in any way to gild the lily. On the contrary, my impression of her evidence was that she was at pains to ensure that her evidence was as honest and accurate as she could possibly make it. Where she was unclear in her memory she made that clear and did not attempt to embellish her evidence to compensate. Where there was in her mind any doubt in favour of the defender, she readily gave her the benefit of that doubt. Her evidence as to the proper use of the credit card, the defender's knowledge of the proper use of the credit card, the rarity of any direct requests by her to the defender to make particular purchases and her refutation that she had authorised, explicitly or implicitly, in advance or retrospectively, the great majority of the impugned expenditure on the credit card I found impressive, credible and reliable. I accepted her evidence also as regards the use to which foreign currency was put and her denial that surplus amounts of foreign currency found its way to her or members of her family. I had no doubts about the reliability and credibility of her evidence.

[119] As for the evidence of Dr Neil Murray, equally, I had no hesitation in finding him to be a credible and reliable witness. He gave his evidence in a wholly measured, temperate

and considered fashion, making no discernible attempt to exaggerate or invent details or otherwise give anything other than a wholly honest and reliable account of the events in question. In particular, his evidence as regards his line manager duties concerning the defender, the instructions he gave to her and the authorised use of the credit card was wholly credible and reliable. I also had no difficulty in accepting his denials that he had received any surplus from foreign currency transactions and his evidence as regards the manner in which the investigations were made into the defender's activities in 2017. I considered carefully whether his evidence might have been affected to any degree by his relationship to the pursuer and I reject that possibility. I had no doubts about the reliability and credibility of his evidence

[120] Stephen Simou gave his evidence in a careful and measured fashion and appeared to me to be careful not to overstate his understanding, knowledge or conclusions. He clearly explained that he did not have any responsibility at the time for verifying whether expenditure incurred by the defender was authorised or not. I accepted that evidence. His evidence as regards the investigations that he carried out and in particular his conclusions as regards the total spending on the credit card and the impugned transactions was obviously accurate and reliable. He was suitably qualified by virtue of his profession and his many years' practice to carry out the analysis of those transactions and to give his opinion on their nature. Similarly as regards his analysis of the foreign currency transactions and his conclusions as to the missing amounts. I accepted his evidence that the transactions both in relation to point of sale and in relation to foreign currency appeared to be fraudulent for the reasons he gave and that he was suitably qualified to reach that view. He was a credible and reliable witness in my opinion. I had no doubts about the reliability and credibility of his evidence.

[121] Di Brooks gave her evidence in a thoughtful, measured and clear fashion throughout, without any discernible attempt to embellish or dissimulate. My impression was that she gave her evidence as straightforwardly and clearly as she could and made no attempt to claim greater knowledge than she directly possessed. I carefully considered whether there was anything to the defender's claim that this witness was and had always been antagonistic to her and if so whether that might have slanted or otherwise affected her evidence. I rejected that possibility. I accepted this witness's evidence to the effect that while there was something of a personality difference between her and the defender, Di Brooks did not allow this to interfere with her professional relationship with the defender which she maintained properly and consistently throughout the time of their employment together. Thus also, I rejected the contention by the defender that the initial report made by this witness which sparked the investigation, leading eventually to the dismissal of the defender and this court action, was in any way motivated by malice or personal dislike or anything of that kind. Rather, I accepted her evidence that she dealt cautiously with her initial suspicions about the defender's activities precisely so as to avoid any suggestion that her concerns were anything other than genuine. I accepted her evidence as entirely credible and reliable.

[122] As regards Fiona Shapcott, her evidence was limited in scope. I had no difficulty in accepting the whole of her evidence which was not in any event seriously challenged by way of cross-examination. She was an honest and accurate witness. I had no doubts about the reliability and credibility of her evidence.

[123] Finally, as regards Angela Milne, likewise her evidence was limited in scope. Similarly, I had no difficulty in accepting the whole of her evidence which was also not seriously challenged. I had no doubts about the reliability and credibility of her evidence.



[124] Turning then to the evidence of the defender, that was given over the course of about two days. I had ample opportunity to observe and take account of her demeanour and to carefully consider her evidence as well as the way that she gave it. My impression is that she gave her evidence in a highly controlled and unemotional way. She appeared able to supply answers to difficult questions with supple ease, not least when attempting to explain apparent contradictions in her evidence, oddities or apparent implausibilities. Where further inconsistencies or contradictions then emerged, she appeared to have no difficulty with supplying a further explanation. Those answers and explanations did not ring true. She calmly denied all wrong-doing, all the while liberally casting direct or implied allegations of falsehood, in an understated way, against all those who had given evidence against her. Frequently, she would make assertions about matters concerning the pursuer and her witnesses which had never been put to them while they gave evidence. She appeared quite unperturbed by the strange content of some of her own explanations as to how and why a given expense was incurred. To accept her evidence would mean that the pursuer, Dr Murray, Mr Simou, Di Brooks, Fiona Shapcott and Angela Milne were all untruthful to this court or were at least badly mistaken. Indeed, the defender expressly alleged that most of them lied in their evidence. To accept most of her evidence would mean, (although the defender did not put it this way expressly), that the pursuer and all those witnesses colluded to a greater or lesser extent in falsely accusing her of fraudulent misrepresentation.

[125] I do not accept that. I did not find the defender to be either credible or reliable. Her demeanour and her evidence were conscious fabrications in my opinion. In my opinion, she was not honest in her evidence. I explain further the basis for these conclusions shortly. I did not accept her evidence on any matter unless independently verified or it was against interest.

[126] Finally, as regards the evidence of Colin Rowley, I had no reason to doubt the veracity of his evidence, so far as it went. However, this witness had no direct knowledge of the events leading to this litigation and his evidence is of no assistance to the court in determining the respective contentions of the parties. I say no more about it.

### *Discussion of the evidence*

[127] It is important to note that the defender accepts without qualification that she was not permitted to use the business credit card at any time for her own personal needs. She accepts that the card was only ever to be used to purchase items for the pursuer's business or for the pursuer herself in her personal capacity. In that, her evidence accords with that of the pursuer. Her defence is simply that every time she used the card it was to buy things for the pursuer, or for the pursuer's business, and not for any other purpose and that all such purchases were authorised. Similarly for the purchase of foreign currency. It is also important to note that it is common ground that for each and every transaction made using the business credit card, and the pursuer's bank accounts, the defender made a written representation that the expenditure was for the business or personal needs of the pursuer or both.

[128] *Cash withdrawals.* As I have noted at paragraph [2] the pursuer's claim is that the defender carried out the fraud in four ways. I deal first with the claim that the defender used the credit card to withdraw cash for her own use. It was that type of use, the withdrawal of £400 on 12 December 2016, which initiated the investigation of her use of the credit card in 2017. The evidence about that is mainly found above at paragraphs [22], [23], [32], [39], [40], [69], [74], [96] to [98]. To accept the defender's evidence concerning her admitted cash

withdrawal of £400 using the pursuer's credit card on 12 December 2016 involves accepting all the following features of the defender's account.

[129] First, someone from the Castle Terrace restaurant phoned her a few days before the lunch and asked for a cash deposit for the forthcoming Christmas lunch for the pursuer's staff at this Michelin starred restaurant which she then gave. The court is asked to accept that account even though: (a) the defender did not take the name of the person who phoned her asking for the deposit; (b) the pursuer was a frequent and well-known customer there; (c) the pursuer was obviously wealthy enough to meet the bill without difficulty; (d) no such deposit had ever been asked for before; (e) the restaurant already had the pursuer's credit card details; (f) the defender did not obtain the name of the restaurant employee to whom she later gave the £400; (g) she did not get a receipt for the £400; (h) she settled the whole bill using the credit card immediately after the meal without checking to see the £400 deposit had been taken off; (i) there was no such deduction made then or since; (j) that following subsequent enquiries by Dr Murray, the restaurant denied any such deposit was asked for ever, or taken. In my view, the defender's account, her having been a professional personal assistant for many years, is highly implausible. But defender's account does not stop there.

[130] Second, during Dr Neil Murray's investigation, the defender said she would get confirmation from the restaurant that the £400 was paid. She then sent Stephen Simou the email at 5/15/1 dated 24 February 2017 apparently incorporating the text of an email dated 23 February 2017 sent to her by Aisling Finnerty, the reception manager at the restaurant, that text referring to a telephone call that is supposed to have taken place between the defender and Aisling Finnerty on 23 February 2017 and appearing to confirm that the £400 deposit was paid. Dr Neil Murray checked this directly with Aisling Finnerty soon after receipt. She says that no such email was ever sent by her and that she had no such call with

the defender. The defender says Aisling Finnerty must be lying. She does not dispute Dr Murray's account though. So, to accept the defender's further account would require the court to accept that: (a) Aisling Finnerty agreed in an email to the defender dated 23 February 2017 that the restaurant received the £400 cash deposit and said the complete opposite to Dr Murray personally and in an email to him soon afterwards; (b) that Aisling Finnerty lied to Dr Murray when denying sending the email to the defender; (c) that the court should accept the veracity of the Aisling Finnerty 23 February 2017 email even though the defender has never shown the original; (d) that Aisling Finnerty lied when denying a telephone call with the defender on 23 February 2017; (e) though the restaurant, on the defender's account, admits receiving the £400, no refund was ever made to the pursuer of that sum or apology for not taking account of it in the lunch bill and the restaurant has therefore wrongly profited by £400 from the pursuer without any right. This further part of the account is as incredible as the first part in my view. I also take into account that that this was not the first explanation given by the defender. The first was that the cash was withdrawn to pay for cats but the defender changed that explanation when it was demonstrated that the dates did not tally.

[131] I conclude that the defender withdrew the £400 for her own use fraudulently misrepresented that the cash was for business use, then persistently lied about that to the pursuer, Dr Murray and Stephen Simou and this court. Further, the defender accused others of lying, implied that Castle Terrace staff members were responsible for misappropriating the £400, implicated Fiona Shapcott in an attempted cover up and invented an email from Aisling Finnerty as part of the same cover up. She was not honest with the court in my opinion when describing this episode. In my view, this episode reveals the defender to be

capable of persistent brazen dishonesty. This finding informs my assessment of the whole of her evidence on all matters where credibility and reliability are in question.

[132] When considering the rest of the evidence in relation to cash withdrawals, it is apparent that the defender did not provide receipts for any of the many cash withdrawals that she made although on all occasions she claims that the withdrawals were for the pursuer's business. She can only give two unvouched explanations for the cash withdrawals: purchase of cats and dress alterations. I do not accept her denials of improper withdrawals unless otherwise verified. The pursuer accepts that she gave instructions on two occasions to pay for purchases in cash: being part payment towards the cats (£850) and also for clothing alterations (£350), a total of £1,200. She denies that the defender was authorised to withdraw any other cash sum or that such withdrawals were spent for her benefit or that of the business. I accept the pursuer's evidence to that effect and reject that of the defender to contrary effect. Deducting the sum of £1,200 of authorised withdrawals from the total brought out in 5/1 for all cash withdrawals of £2,360 produces a figure of £1,160 obtained by the defender by fraudulent misrepresentation. This is less than the sum claimed in final submissions because those submissions omitted to take account of the pursuer's evidence that it was possible that clothing alterations could have accounted for one withdrawal of £350.

[133] *Point-of-sale purchases.* Turning now to the use of the credit card to purchase goods, I accept the evidence of the pursuer that the great majority of the items bought with the credit card from the suppliers referred to in paragraph [10] above were not authorised by her, expressly or impliedly, were not for her personal or business use and that neither she nor her business benefitted from those purchases. The pursuer's witnesses' evidence regarding that is mainly found at paragraphs [8] to [21], [30], [31], [38] to [44], [51] to [55], [60] to [62].

That of the defender is found at paragraphs [63] to [95]. I find the pursuer's assessment of the pattern of fraudulent spending fits well with the rest of the evidence. I accept her evidence that it is inherently unlikely that the impugned expenditure was spent on her personally, her family or her business. I accept the evidence of the other witnesses for the pursuer supporting those contentions. I much preferred the evidence of the pursuer and that of her witnesses to that of the defender. I reject the oft-repeated evidence of the defender that the pursuer repeatedly and frequently asked her to buy things and that the pursuer repeatedly thanked the defender for items that she bought. The defender has shown herself capable of acting utterly dishonestly in relation to cash withdrawals using the credit card (see paragraph [131] above) and that finding significantly affects my conclusions on the reliability and credibility of her evidence on this chapter.

[134] Among the evidence supporting the pursuer's contentions is the following. Some of the defender's evidence was inherently implausible or occasionally quite bizarre. For example, her claim that £3,600 on Molton Brown products was all spent on office supplies was quite unbelievable considering that, as I accept, it was the office manager's job to supply such products and not hers, the annual cost of supplying the office with suitable products was only about £150 per year and she was specifically told by Dr Neil Murray that it was not her job to buy such products. Similarly her evidence that on one day she spent £1,052 in Molton Brown on reed diffusers for office use is utterly implausible. Her denial that she bought Valentine's cards and her explanations as to why the purchase receipts clearly referred to such items I found bizarre. Almost none of the goods she says she bought for the office were found there on a search being made and I reject her evidence to the contrary. I find her evidence that she bought a "hot dog" badge, a snowflake candle, fruit candy and alpha books, to name but a few, as business gifts highly unlikely. Similarly, I could not

accept that the defender was expressly or impliedly authorised to buy large quantities of chocolates and frivolous gifts, including a liqueur chocolate, for child fans of the pursuer, or their parents. Her explanations as to the large and increasing amounts spent in coffee shops and bakeries was highly unlikely in my view, not least because she had her own well-equipped and stocked office to work in and no regular need to meet anyone in Edinburgh outside her office. There was no sound explanation as to why purchases from Boots were mostly unreceipted; that was not a coincidence in my view. She was seen loading large filled Paper Tiger bags into her car during working hours, which allegation though not denied, was never satisfactorily explained. She gave contradictory accounts of her spending, for example the supposed Marks & Spencer airport café spending. I accept the evidence of Mr Simou, an experienced chartered accountant, that the pattern and scale of expenditure was indicative of unauthorised and fraudulent spending.

[135] I conclude that the reason why the defender so frequently wrongly categorised spending as B or P (Business or pursuer's Personal expenditure) was not for the reasons she gave. If that spending had truly been authorised for the purposes that she claimed, there should have been no difficulty in categorising the expenditure properly as B or P. In my view, the frequency of erroneous categorisation was because the impugned spending could not properly be categorised as either P or B. Instead, the impugned expenditure was for her own use. That explains the apparently random nature of the defender's categorisation in a large number of cases. It is yet further evidence of fraudulent use of the credit card on her part.

[136] I also take into account the remark made by the defender at a social staff outing to fellow employees to the effect that she would use the credit card to pay for the dinner and that she knew that Dr Neil Murray did not personally check the credit card statements. I

draw two conclusions from that. First, the defender was prepared on that occasion to use the credit card to pay for a meal for herself, and other staff members even though that expenditure was not authorised, not being for business purposes or the personal benefit of the pursuer. Second, the defender had discovered that Dr Murray did not scrutinise her spending on the card and that therefore unauthorised expenditure could be incurred without fear of detection. It is indicative of conscious misuse of the card, exploiting a known weakness in the pursuer's financial management system. I conclude on all of the evidence that the pursuer has well-established her case that the defender fraudulently used the business credit card to purchase a very large number of items for the defender's personal use over a lengthy period.

[137] As regards the loss that the pursuer has thereby incurred, the pursuer's solicitor submitted that on the evidence (see paragraph [104] above for the full breakdown), a conservative estimate of the fraudulent point-of-sale spending was £9,772. I accept that figure. I also accept that this figure has been calculated on a conservative basis and that the true loss might well have been somewhat larger.

[138] *Foreign currency.* I accept the evidence of Stephen Simou summarised at paragraph [33] onwards as regards the quantification of the foreign currency losses established by him following investigation by him on the defender's other fraudulent activities being discovered. I accept the information given to him by the pursuer's staff members to enable him to complete his investigation was true and accurate. I accept his analysis of the foreign currency transactions and the resultant figures contained in the table at 5/47 of process as well as the accuracy of the corresponding vouching at 5/43 to 5/46 of process. The defender did not dispute that she was responsible for the purchase of the foreign currency identified in those documents which totalled £10,097.06. The defender does dispute however that she



was responsible for misappropriating \$6,374, 17,400 Norwegian kroner and €1,010, being the sums that Stephen Simou calculates ought to have been left over after the security details had been given their expenses. She asserts that the missing sums were either given to the security detail or retained by the pursuer or Dr Murray for their personal use.

[139] I find that it is much more likely than not that the defender was responsible for the missing sums for the following reasons. Although a large amount of Norwegian kroner was purchased by the defender, in two transactions, that visit never took place on the evidence of the pursuer and Dr Murray, which I accept. All the kroner ought to have been found in the safe, but most of it disappeared. As for the US dollars and Euros, I accept the evidence of the pursuer and Dr Murray that they never received any of the currency and that they would have had no need of it in any event: the currency was only intended to provide for expenses for the security detail and not for the personal use of the pursuer or her family. All but \$1,000 and €120 was missing and unaccounted for, a total sum equivalent to £7,742. I accept that sum, all of which was admittedly withdrawn by the defender is unaccounted for. I accept the evidence on behalf of the pursuer that all unused foreign currency would be returned to the defender who would then be expected to keep that secure in a safe in a room accessible only from her office and to which only she has the code. I accept the evidence of Stephen Simou that before he could conduct his investigation, he needed to open the safe and that the defender was the only person in the office who had that code. That only the defender possessed the code was also the evidence of Di Brooks Fiona Shapcott and Dr Murray which I accept. I reject the defender's evidence in so far as it does not coincide with that of the pursuer and her witnesses. I reject also the insinuation by the defender in her evidence that other members of the pursuer's staff could have taken the currency. I accept the evidence of those members of staff that they were not responsible and the

pursuer's evidence of their trustworthy character. While Fiona Shapcott did assist the defender in maintaining a record of the foreign currency on a spreadsheet, the data were always provided by the defender who remained responsible for accounting for and safeguarding the foreign currency. Thus the defender had at all relevant times responsibility for the handling and accounting of foreign currency. The sums withdrawn by the defender were far in excess of that which would be required for the security detail and transactions were twice duplicated within weeks of each other without any explanation. I take into account also all the other proven instances of dishonest conduct on the part of the defender when assessing the likelihood of the defender's account and her denials being true. I conclude that the defender withdrew at least the Sterling equivalent of £7,742 between September 2016 and February 2017, knowingly representing that the foreign currency was for the personal or business needs of the pursuer when, as she well knew, those sums were not required for either, and did then misappropriate that sum for her own use and did thereby obtain that sum from the pursuer by her fraudulent misrepresentation.

[140] *Harry Potter merchandise.* There was limited evidence about this aspect of the pursuer's claim. What there is, Di Brooks', may be found summarised at paragraph [57] and

[59] There was little evidence from the pursuer or Dr Neil Murray about this aspect for the simple reason that neither had any direct knowledge of that aspect. Neither it seems did any other witness for the pursuer. The pursuer's agent's submissions were rather sparse on this chapter. The defender denied being responsible for any misappropriation of Harry Potter merchandise. The defender's evidence on this aspect is found at paragraphs [73] and [85] above. I found the reference in Di Brooks's evidence to Dr McCue and the return of merchandise by him to solicitors for the pursuer (not the firm engaged in this proof) rather mysterious since that reference was not further developed and neither was there any

evidence from Dr McCue, which might have given some weight to this part of the case, even though his name did appear on the witness list. At its highest, the contention seemed to be that Dr McCue, a former partner of the defender, had passed some Harry Potter merchandise (which is mass produced) to agents for the pursuer which was of a similar kind to that which had gone missing from the office. That by itself, does not take one far. While I accept the evidence of Di Brooks that she believed that some Harry Potter merchandise had gone missing from the office during late 2015 and 2016, the database compiled by her was not produced and neither was there any attempt made to pin down more precisely when the merchandise had gone missing. Neither was there any evidence about what merchandise was stored, where, the security arrangements or the way in which the defender was alleged to have been responsible for the merchandise going missing. In addition, and importantly, considering that the legal basis for the pursuer's case is fraudulent misrepresentation, there was no evidence at all of any representation made by the defender, fraudulent or otherwise, in connection with the missing merchandise.

[141] While it is understandable, given the evidence as to the defender's persistent dishonesty concerning other aspects of this claim, that the pursuer believes the defender was responsible for Harry Potter merchandise going missing, in my view, the evidence on this chapter does not prove to the requisite standard that the defender was culpable or that there was a loss of that material through the defender's fraudulent misrepresentation. I therefore reject that aspect of the claim against the defender.

*Conclusion on the law and evidence.*

[142] I find it proved that as a result of the defender's fraudulent misrepresentation the pursuer has been defrauded of £1,160 (cash withdrawals), £9,832 (point-of-sale purchases)

and £7,742 (foreign currency); a total loss of £18,734. The defender is liable to repay that sum in full with interest. I will grant decree accordingly.

### **Expenses**

[143] I have not been addressed on the question of expenses and accordingly I reserve that question. The parties are at liberty to enrol a motion to fix a hearing to determine that question in due course.