

OPUS 2

INTERNATIONAL

(1)Dr Helle Poulsen (2)Mr Barry Weller v (1)Specsavers Optical Grp. Ltd (2)Bognor Regis Visionplus Ltd (3)Bognor Regis Specsavers Ltd v (1)Shakila Parham (2)John Parham v (1) Specsavers Optical Grp. Ltd (2)Uckfield Specsavers Ltd

Day 10

December 13, 2013

Opus 2 International - Official Court Reporters

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1 Friday, 13 December 2013
2 (10.30 am)
3 MR DEREK DYSON (continued)
4 Cross-examination by MR STUART (continued)
5 MR JUSTICE HILDYARD: Good morning.
6 MR STUART: Good morning.
7 Mr Dyson, we left off yesterday afternoon, perhaps
8 you could be reminded -- can you have a transcript
9 bundle? Just yesterday. I don't know if we are into
10 a second bundle yet. (Pause)
11 So if you go to -- we are in day 9, if you go to --
12 near the back, so page 185, actually the last full page
13 of the evidence, just the last few minutes of the
14 afternoon, 185. If you could have also bundle E3
15 available to you. Do you remember we were looking at
16 the correspondence in February 2011, page 776, do you
17 see? Do you remember?
18 A. Yes.
19 Q. If you look at the transcript at 185, at line 7, I took
20 you to 776. Do you see line 7 of page 185 in
21 the transcript?
22 A. Sorry, line ...?
23 Q. Line 7 of page 185 in the transcript.
24 A. Line 7, yes.
25 Q. I took you to page 776 which was that letter that you

1

1 amended for Mr Rowe, do you remember?
2 A. Yes.
3 Q. I said, "There's the attachment", and I pointed out
4 "Derek has made the amends". Then I said to you:
5 "You seem to be awfully involved in the detail of
6 this, you are amending Mr Rowe's letters for him. You
7 told his Lordship this morning that you absolutely never
8 did anything such thing."
9 Your answer was:
10 "Answer: I told him I didn't [that is I told his
11 Lordship] I didn't write letters for other people."
12 "Question: No I asked amend as well."
13 "Answer: I do not remember you saying amend. I
14 thought the question was: do I write letters for other
15 people? To which I said definitely not."
16 I reminded you to answer the whole truth. I asked
17 you -- this is 186, line 5:
18 "Question: Did you tell his Lordship: no, I don't
19 write them for him. I amend them but I don't write the
20 whole --
21 "Answer: I didn't mention that, I said that I don't
22 write -- you were saying I asked that question, and I am
23 sure my response was: I don't write letters for people
24 like Mike Rowe."
25 Do you see that?

2

1 A. Yes.
2 Q. I said we'll have to check that. If you go back in the
3 transcript to page 67 you will see what you actually
4 said to his Lordship. 67. Do you have that? Start at
5 line 7 again. I started with a hypothetical:
6 "Question: So if a letter was going out, let's take
7 your organogram. If Ms Hart, who is two levels below
8 you, because you have got Jill Clark in between -- if
9 she's writing a letter that's going out in her name, you
10 don't get involved in that, do you --
11 "Answer: No.
12 "Question: -- the minutiae of drafting letters?
13 "Answer: No."
14 Then I said this:
15 "Question: And Mr Rowe who is two levels below you,
16 yes?
17 "Answer: Yes.
18 "Question: He is well down the chain, described as
19 the bottom of the train by Mr Potts. You don't get
20 involved in the minutiae of the precise wording of his
21 letters, do you?
22 "Answer: No.
23 "Question: Are you sure?
24 "Answer: Absolutely."
25 I reminded you to think about your answer and

3

1 I suggested that you do and that:
2 "Where it is a matter that you are personally
3 interested in, you personally want to make sure that
4 Dr Poulsen gets her comeuppance, that you will be so
5 involved that you will actually [read this carefully
6 Mr Dyson] you will actually amend and re-draft
7 a letter".
8 So it's not write the letter in the first place.
9 I made it very clear in my question to you, that it was
10 "amend and re-draft a letter that is going out in lowly
11 Mr Rowe's name".
12 Your answer:
13 "Answer: No, I have no recollection."
14 I asked you again. On oath you say 'no'.
15 You said:
16 "Answer: I'm saying no."
17 Do you see that?
18 A. Yes.
19 Q. So which is correct? Do you get involved in amending
20 and re-drafting Mr Rowe's letters if it is a matter that
21 you are personally interested in or do you not?
22 A. The answer to that would be yes.
23 Q. Okay. Why did you say no in the morning? Had you
24 forgotten about it?
25 A. Obviously I had done, yes.

4

1 Q. Do you forget what letters you write and draft or amend
2 or have input into?
3 A. I have a significant amount of letters that I do so it
4 is hard to remember every single thing that you do.
5 Q. You are trying to give a picture, aren't you, that you
6 are simply not interested and not involved in this
7 vendetta against Dr Poulsen, that's the picture you are
8 trying to create in your evidence?
9 A. That picture is because that is the truth.
10 Q. Well, it's not the truth. You have already said that
11 you are personally interested in the matter of
12 Dr Poulsen?
13 A. Can you repeat the question?
14 Q. Yes. I said that you are trying -- you were at least at
15 page 67 -- trying to create the impression that you are
16 not interested in the matter of Dr Poulsen, low level
17 matters like that. That is the general tenor of your
18 evidence and Mr Potts, the way he put the case, I took
19 you to the transcript yesterday.
20 The truth is, Mr Dyson, isn't it, that you were very
21 personally interested in Dr Poulsen and how she was
22 going to be treated?
23 A. And how she was?
24 Q. Going to be treated.
25 A. I think that being treated is wrong. Obviously, clearly

5

1 I was interested in what was going on with Dr Poulsen.
2 Q. Thank you.
3 MR POTTS: My Lord, I'm sorry to interrupt here but I'm not
4 sure this is a fair question. The point was put as
5 amending and re-drafting is the same -- with respect,
6 I think they are quite different things. One, making
7 an amendment is different from re-drafting. There is
8 a different -- a highly different level of involvement
9 in the process. This is in the context of this
10 discussion starting at 66, was about whether he wrote
11 his own letters and the question which was put at the
12 end of all of that, in terms of I'm not writing letters
13 for other people was, "Do you actually amend and
14 re-draft".
15 I think, my Lord, I'm afraid I do think there is
16 a substantive difference between making an amendment to
17 a letter and re-drafting a letter.
18 MR JUSTICE HILDYARD: He was asked both and he said no to
19 both.
20 MR STUART: My Lord, I'm grateful to Mr Potts for stepping
21 in to come up with an explanation but I would appreciate
22 being able to hear the witness's answer rather than
23 Mr Potts' submissions.
24 MR JUSTICE HILDYARD: Well, he is entitled if he feels that
25 that is something that has been unfairly put to the

6

1 witness --
2 MR STUART: Of course but I don't think he is saying it was
3 unfairly put.
4 MR JUSTICE HILDYARD: I think I can draw my own
5 conclusions.
6 MR STUART: Yes, I think so, my Lord.
7 Just before we go back to E3 and carry on just to
8 finish the chronology because we are almost at the end
9 of your evidence of the chronology. I just want to pick
10 up on a few things that you did say yesterday and I just
11 want to get clarity from you, Mr Dyson.
12 You say that you didn't write that -- sorry, that
13 you did write that note about -- do you remember
14 the note for your meeting in March '09?
15 A. Yes.
16 Q. I put it to you that it all looked a bit legalese to me
17 and that it was from the legal department.
18 You and said, "No, no, no, it was my own notes".
19 What I should have asked you perhaps: do you have
20 any legal training yourself? Because I suppose you
21 might do, you might have some?
22 A. No legal training.
23 Q. What are, as it were, your professional qualifications?
24 A. In respect of ...?
25 Q. In respect of anything, just so we have a picture of

7

1 what your background is?
2 A. I have been in retail since I was 16 years old.
3 Q. Okay, so you have worked your way up from the shop floor
4 sort of thing?
5 A. Yes.
6 Q. Do you have any professional qualifications?
7 A. A levels.
8 Q. Accountancy or --
9 A. No.
10 Q. Nothing at all, okay fine. You said yesterday, I can
11 take you to the transcript if you need to see it,
12 I think it is page 140, but I am sure you will remember
13 this, that you changed the policy in 1998 about this
14 issue of being very strict that there must be an OO and
15 a retail director for every --
16 A. I joined in 1998 and during the course of 1998 and into
17 1999 I was looking at all aspects of the business and
18 part of the change we made was we brought in a stage 1
19 process that was different than previous and that we
20 were focusing on having an OO, DO or a retailer
21 combination as the best way forward.
22 Q. Right. Was that ever put into writing anywhere? Was
23 that ever sort of issued to the JVPs as a --
24 A. I think it would have been --
25 Q. -- a guide or a edict?

8

1 A. Well, the stage 1 approval process would have been
 2 the outcome of that work that we did.
 3 Q. But that's for each individual -- every time somebody
 4 wants to sell their shares. I'm asking, were the 700
 5 JVPs, who 10 per cent of them each year, you said there
 6 might be a sale?
 7 A. Yes.
 8 Q. Were they told some time around 1999/2000 in some sort
 9 of guide or something that, "This is now our" --
 10 A. There would have been no reason to do that because they
 11 are not selling their shares.
 12 Q. Okay. I just want to take one example. You know
 13 the Dartford store?
 14 A. Yes.
 15 Q. 2008 there was a sort of this issue, one of
 16 the shareholders, do you recall?
 17 A. Yes.
 18 Q. Were you involved in that personally? I think you said
 19 yesterday you were involved whenever people --
 20 A. All share transfers come -- I'm involved in -- when you
 21 say personally, I'm part of a committee that reviews
 22 that working party.
 23 Q. Yes, and the shares for the retail partner there, that
 24 was a Mr Patel, wasn't it?
 25 A. Correct.

1 Q. Those got sold to an OO?
 2 A. Correct.
 3 Q. So that you ended up with two OOs effectively,
 4 Swarandeeep --
 5 A. No, no, the shares were sold as the retail shares and
 6 all ophthalmic opticians are also dispensing opticians
 7 and it was really clear we didn't want the new incumbent
 8 coming in to do any testing. He was there to be
 9 the retail shop floor leader.
 10 Q. Okay. Understood. In relation to this case then, where
 11 Mr Yogaratnam was the potential OO coming in --
 12 A. Yes.
 13 Q. -- but he was buying the retail shares off Mr Weller,
 14 what's the difference? Why can't he do that as well?
 15 A. Because he didn't have the retail experience that
 16 the incumbent going into Dartford did, where he had been
 17 working in store, he had been part of Specsavers for
 18 a while and he had been doing those activities in terms
 19 of the leadership of the shop floor.
 20 Q. But Mr Yogaratnam did have experience of running a shop,
 21 didn't he?
 22 A. He didn't have an any experience of running a Specsavers
 23 store which is completely --
 24 Q. So he had a Vision Express; is that what you're saying?
 25 A. I'm not sure about that but it sounds as if he was from

1 Vision Express.
 2 Q. Okay. A little point: you said that you -- your notes
 3 that you took, whenever you took notes, was just on
 4 an A4 pad that you would then shred -- I think you used
 5 the word "shred" or just throw away the sheets, as it
 6 were, so they were tear off sheets.
 7 A. Yes.
 8 Q. Dr Poulsen recalls that actually you didn't have a tear
 9 off A4 sheet with you, you had a small exercise book
 10 with like grid lines, like a maths exercise book that
 11 one might have at school when one does maths?
 12 A. No.
 13 Q. And that you had that at the meeting?
 14 A. No.
 15 Q. And that you made notes in that?
 16 A. No.
 17 Q. Have you ever had such a book?
 18 A. No, I always use A4 pads.
 19 Q. All right. On this issue about this 10 per cent per
 20 year turnover of the shares, of the A shareholders, as
 21 you -- I know it was a rough estimate. So that would be
 22 about 70 A shareholders per year?
 23 A. No, that would be 50 when there's 500 stores, 60 when
 24 there is 600 stores, 70 when there is 700 stores. It is
 25 normally about 10 per cent of the portfolio.

1 Q. Quite right, so 50 to 70 per year depending upon how
 2 many stores you had over the period?
 3 A. Yes. I don't know why that is but it always was around
 4 10 per cent.
 5 Q. Of those how many did you -- involved the loss
 6 prevention team in some sort of investigation that led
 7 to --
 8 A. A very small amount.
 9 Q. What about Brighton? Do you remember Brighton?
 10 A. I remember Brighton. I was not involved in Brighton.
 11 Q. Do you remember when the loss prevention team was put
 12 in?
 13 A. I wouldn't know. I think I was in Australia at the
 14 time.
 15 Q. Okay. Portsmouth?
 16 A. I remember Portsmouth.
 17 Q. Do you remember the loss prevention were involved there?
 18 A. Yes.
 19 Q. Something happened about the shares?
 20 A. Yes.
 21 Q. Boscombe, do you remember that one?
 22 A. No.
 23 Q. Wandsworth?
 24 A. Yes.
 25 Q. Loss prevention involved?

1 A. Yes.
 2 Q. Croydon?
 3 A. I don't know about Croydon.
 4 Q. Can't recall. Preston?
 5 A. No, I was in Australia.
 6 Q. Ellesmere Port?
 7 A. No.
 8 Q. You don't recall it or you don't --
 9 A. I suspect the ones you are reading out are not in --
 10 they are not in my time.
 11 Q. What about Worthing?
 12 A. Worthing, share sale?
 13 Q. A share sale where the loss prevention department got
 14 involved. Do you remember David Simons?
 15 A. I remember David Simons.
 16 Q. At Worthing?
 17 A. I would need to know the year. If it was
 18 pre-2012 January then I would probably have been aware;
 19 if it was post-2012 January --
 20 Q. Do you remember the incident of Mr Simons getting --
 21 A. No.
 22 Q. Okay fine. Rustington, do you remember that at all,
 23 involvement of the loss prevention team?
 24 A. No.
 25 Q. Fine, I will have to ask Mr McAlindon then.

13

1 The final thing I want to ask you about yesterday's
 2 evidence was you said -- I asked you about board
 3 meetings and calling board meetings. Do you remember?
 4 A. Yes.
 5 Q. You didn't tend to call board meetings, in my submission
 6 to you, and you agreed that, for example, in this shop
 7 you hadn't called my board meetings prior to this one in
 8 2011. You said that -- this is page 86 of the
 9 transcript if you want to have a look but I don't know
 10 that you will need to -- you said that you personally
 11 liked to talk to partners in the store. That's your
 12 general --
 13 A. I said, I'm almost certain, at meetings, at the regional
 14 meetings that we have and in store when I go into store.
 15 Q. Do you tend to hold your meetings with partners in store
 16 or do you like to hold them in hotels, away from
 17 the store?
 18 A. I think we are talking about two different things.
 19 Q. Are we?
 20 A. I'm talking about meeting the partners in their store,
 21 not having meetings with partners in their store.
 22 Q. So when you want to have a meeting with a partner, not
 23 a board meeting perhaps, but one of your one step down
 24 meetings, these informal meetings, because that's what
 25 happened here --

14

1 A. Yes.
 2 Q. -- do you tend to like to have those in a hotel
 3 somewhere, neutral ground?
 4 A. A neutral ground and maybe sort of halfway between --
 5 because we have got to travel from Guernsey so it is
 6 sort of mid-way to make it an equal traveling for
 7 the partners.
 8 Q. So now let's -- you can put away the transcript bundle,
 9 because it is a bit bulky.
 10 We had reached 18th February, 776. You had made
 11 your amends to the letter going out from Mr Rowe to
 12 the partners.
 13 Page 778 is the letter. Can you just have a look at
 14 the letter at 778, this is as you finally amended it.
 15 Do you see that? If you go to the third paragraph:
 16 "You need a detailed business plan ..."
 17 Do you see that?
 18 A. Yes.
 19 Q. "... among other things, what measurable benefits?
 20 Probably the most pressing question to be addressed is
 21 how the retail direction will be maintained/improved by
 22 having two ophthalmic partners."
 23 Then your last paragraph:
 24 "Once this business plan has been prepared my Board
 25 required it has the full unqualified support of the RDC

15

1 and the RST as the people with local knowledge before
 2 they will consider it, therefore, in the best interests
 3 of the business I'm happy to meet with you both to
 4 discuss the issues surrounding Barry's proposed sale."
 5 Do you see that?
 6 A. Yes.
 7 Q. Basically the line being put out here by SOG was, "We
 8 need a business plan. We need a meeting. We need to
 9 get everything approved. You need to make your case".
 10 A. Correct.
 11 Q. But behind the scenes, according to you, the line was,
 12 "We have got some very serious issues, dishonesty going
 13 on"?
 14 A. Behind the scenes we have got some information that
 15 suggests that something may be going wrong but until it
 16 is actually investigated then it can only be
 17 assumptions".
 18 Q. But it had already been investigated I thought you said.
 19 You already had all the information about Mr Vos'
 20 invoices, the fact that he wasn't in store, you couldn't
 21 remember who told you that but you had it.
 22 A. No. What I asked Mr McAlindon to do was those -- if you
 23 remember those three pieces of paper that I'd signed and
 24 I sent to him?
 25 Q. Yes.

16

1 A. I asked him to actually investigate that specifically.
2 Q. Why didn't you tell your fellow shareholders that there
3 was a potential problem for them? Why keep stringing
4 them along with, "We need a business plan and a meeting
5 and then I can approve it for you and we can sort out
6 the sale of your shares"?
7 A. Because we only had -- because we hadn't completed
8 the investigation from a desktop, from a distance and
9 therefore it's not factual, is it? Because we don't
10 know what we don't know. That's why Mr McAlindon has to
11 go and find out the facts.
12 Q. Why not ask them. Why not say to them, "Look, there is
13 a potential problem here with Godfrey and his payments.
14 We need an explanation from you"?
15 A. Because I thought it was so serious because of the scale
16 of it that it needed a formal investigation.
17 Q. It was the same scale -- nothing had changed between
18 the previous October, the previous August.
19 A. I wasn't aware of this arrangement until Mr Michael Ryan
20 brought that paper to me.
21 Q. So, if you can -- the next time I find your name on
22 the paperwork is 814, something called, "The business
23 transfer service update to Derek Dyson".
24 Do you see that?
25 A. Yes.

1 Q. Copied to absolutely everybody else, I'm being slightly
2 exaggerating but copied to an awful lot of very senior
3 people, including the Perkins, Jill Clark, Mark Raines,
4 David Clark, Mel McAlindon, Chris Howarth, et cetera?
5 A. Yes.
6 Q. This is from Mike Ryan yes?
7 A. Yes.
8 Q. A lot of it has been blanked out so we are not allowed
9 to see what it says but the bits that remain are on 815.
10 Do you see 815?
11 A. I do.
12 Q. "Bognor Regis", do you see that?
13 A. Yes.
14 Q. We have got the five approximate bullet points. The
15 fifth one:
16 "RR due 0910 Expect Nil Inc."
17 What is that?
18 A. "RR due ..." I have no idea.
19 Q. You have no idea, okay. Then in the next column it
20 says:
21 "Completion target."
22 Then it is all blanked out. Do you know what
23 happens after that in the document? We are not allowed
24 to see it, you see.
25 A. What will be below that will be -- these are all

1 the business transfer activities, so this will be a list
2 of stores in various phases of ... phase 1, which is
3 brought to the attention, phase two, phase three,
4 completion. All that would be underneath here will be
5 other details of stores and where each store is in its
6 progress.
7 Q. Okay. No mention here of investigations going on?
8 A. No.
9 Q. Do you like to keep, sort of, not have a paper trail of
10 your investigations until you are ready to use them?
11 A. No, this is a document that is Michael Ryan's business
12 transfer service update, which is a board report --
13 Q. Yes.
14 A. -- that goes in and he puts in here what he is dealing
15 with.
16 Q. According to you, he is at least aware of the fact that
17 in relation to this transfer --
18 A. He is aware of it --
19 Q. -- there's going to be a slight problem, isn't it,
20 because Mel McAlindon is investigating fraud.
21 A. I'm not sure I understand your question. Mike Ryan
22 produces this. This is the business transfer service
23 update.
24 Q. Yes, so in relation to the Bognor Regis transfer, as at
25 25th February 2011, if he was prepared to put it openly

1 in writing to the rest of the board, he could have said,
2 couldn't he, "Mel McAlindon's loss prevention department
3 is investigating potential fraud"?
4 A. No. This is not to the board. This is to a wide group
5 of people who will have an interest in various
6 activities of the business transfer service. It is not
7 for them to know any more than they need to know to do
8 their job.
9 Q. Surely they need to know if Specsavers is going to
10 assert that the partners are fraudulent?
11 A. They would know at the appropriate time.
12 Q. I don't then -- I can't find you mentioned in anything
13 else in this bundle, perhaps I should take you to
14 the last document just to check, 857. This is where
15 Mr Rowe is setting up the meeting. There's no mention
16 of you. You don't seem to be copied in. Am I to take
17 it that you were --
18 A. Can I just read it?
19 Q. Yes, of course. (Pause)
20 A. Yes, I have read it. Sorry what was the question?
21 Q. I just want to check this. We are into March now 2011.
22 Are you involved at this point? Do you know what is
23 going on with Mr Rowe and ...?
24 A. I think I was aware that a meeting was taking place.
25 Q. Did you speak --

1 A. I wasn't aware of this specific letter.
 2 Q. No. Did you speak to Mr Rowe?
 3 A. I think I spoke to Mr Rowe after the meeting.
 4 Q. Okay. You can put away E3 and skip to E4. The meeting
 5 is at 859. You weren't at the meeting, obviously.
 6 A. Sorry?
 7 Q. 859, the first page we see, you weren't at the meeting.
 8 Just to get the dates for you? 17 March, okay.
 9 A. Sorry, it's the first page.
 10 Q. 17 March, that was his meeting. You weren't at that
 11 meeting?
 12 A. No.
 13 Q. Then at 863 Mr Rajan, who was at the meeting with
 14 Mr Rowe, he forwards his manuscript notes of
 15 the meeting, which is 864, again there's no sign of you
 16 being involved at this point?
 17 A. No.
 18 Q. So you weren't, okay, that's fine.
 19 Then, 865, this is when the feedback from
 20 the meeting was coming out from Mr Rowe. Do you
 21 remember he does a little sort of report?
 22 A. Yes.
 23 Q. Which is at page 866. Do you see that?
 24 A. Yes.
 25 Q. Now, it doesn't say that you got this but it went to

21

1 your number twos, Mr Ryan, Mr Raines, copied to
 2 Mr Ismail, who was the man who was sort of one step
 3 above Mr Rowe but not quite as senior as Mr Raines, that
 4 is right, isn't it? Do you remember from yesterday?
 5 A. Sorry, can you say that again.
 6 Q. Mr Ismail is the person you described as one category
 7 a little bit higher than Mr Rowe --
 8 A. He was being trained and developed by Mark Raines.
 9 I couldn't tell you where he was in his training and
 10 development but he was going to be -- end up being
 11 between Mark and Mike Rowe.
 12 Q. So this is Mr Rowe's summary of the matter, page 866.
 13 Now were you involved in knowing about this, in
 14 knowing about it?
 15 A. In knowing about the content of this?
 16 Q. Yes.
 17 A. If this is the one -- I haven't read it all right now --
 18 where Mike Rowe suggests that he's then supporting it,
 19 then I was aware about it.
 20 Q. Let's help you, because this is important, 866, he sets
 21 out the background. Mr Rowe is as you have described
 22 him. He is sort of the regional manager?
 23 A. Yes.
 24 Q. So this is one of his stores, if you like?
 25 A. Yes.

22

1 Q. "Have been partners since 2005. Barry Weller wishes to
 2 sell to Niru Yogaratanam. The stores delivers
 3 consistently strong customer metrics and has
 4 a representation for very strong store standards and is
 5 the top store in the region for conversion. It has
 6 struggled to grow sales in the last 12 months."
 7 Do you see that?
 8 A. Yes.
 9 Q. "The partners are disconnected from the RST ..."
 10 So we are obviously here -- this is obviously not
 11 what the partners are saying. This is Mr Rowe's own
 12 personal views, isn't it?
 13 A. Yes.
 14 Q. "The partners are disconnected from the RST and
 15 the region and are not delivering key business
 16 initiatives such as Sunday trading, escalated to David
 17 Clark and IWDU."
 18 What's IWDU?
 19 A. I don't know.
 20 Q. "A meeting was held to discuss the proposed change."
 21 Then if you skip down:
 22 "Quality of the proposed new partner, Mr Yogaratanam.
 23 He was employed as the optom. Niru was a franchise
 24 director with Vision Express for ten years, owning
 25 the Berwick-on-Tweed and Worthing practices."

23

1 Do you see that?
 2 A. Yes.
 3 Q. "Niru is a very commercial optician. Niru passed
 4 stage 1 at the second attempt after attending boot camp.
 5 Professional recruitment described him as a steady pair
 6 of hands."
 7 That is stage 1 retail, isn't it?
 8 A. No, that is stage 1 optom.
 9 Q. Optom?
 10 A. He would -- the stage 1 tries not to -- what we are
 11 looking for is commercial skills.
 12 Q. Commercial skills.
 13 A. And those commercial skills in -- in an area of the
 14 optom will be how they manage their areas well. We are
 15 looking for retail skills to manage the retail area.
 16 Q. If we go over the page, 867. "Retail delivery", so this
 17 is Mr Rowe's view of the retail delivery:
 18 "Since September 2010, when Barry was involved in
 19 a grievance process ..."
 20 I think he has got the year wrong there, hasn't he?
 21 That was 2009.
 22 A. I couldn't --
 23 Q. Do you remember Barry was involved in a grievance
 24 process in May to September 2009?
 25 A. Yes.

24

1 Q. So since, whatever year he has got:
 2 "When Barry was involved in a grievance process
 3 involving another member of staff he has taken
 4 a backwards step and has not been fulfilling the retail
 5 director role."
 6 Do you see that?
 7 A. Yes.
 8 Q. Do you see it is part of Specsavers' case of fraud and
 9 dishonesty against Mr Vos and his wife that Mr Vos was
 10 not taking on Mr Weller's role in the store from 2009?
 11 A. No, because there was assistant managers and managers
 12 and other people in the store.
 13 Q. Well there were but who was actually directing matters?
 14 Who was performing the tasks of retail director? Who
 15 was overseeing everything?
 16 A. Who was overseeing everything? Well not being in
 17 the store I wouldn't know specifically but I would
 18 imagine that there is a big management team in here.
 19 Q. Your regional manager, Mr Rowe, was in the store, wasn't
 20 he?
 21 A. Yes.
 22 Q. He was aware and he was aware that Mr Weller had taken
 23 a step backwards from the time that he was involved in
 24 the grievance process and he was not fulfilling
 25 the regional -- the retail director role.

25

1 Did you mention all of this to Mr McAlindon when he
 2 was doing his investigation report?
 3 A. Sorry, you need to just get me to understand what
 4 question you are asking.
 5 Q. I'm asking you did you mention all of this, ie that
 6 Mr Rowe knew that Mr Weller had taken a back seat from
 7 the time of his grievance process, did you mention to
 8 Mr McAlindon when --
 9 A. No.
 10 Q. Why not? It is very fundamental to the whole
 11 background.
 12 A. Well, not in my opinion it isn't.
 13 Q. Perhaps it was an inconvenient fact for you, Mr Dyson.
 14 It doesn't quite fit with your picture here, does it, of
 15 Mr Vos' role?
 16 A. This was dated ... do we know?
 17 Q. Yes. 20 March 2011?
 18 A. So again --
 19 Q. Right at the time when --
 20 A. This is the first again that we know that Mr Weller is
 21 taking a back role in his role as a retail director.
 22 Q. No, it's not the first time at all. Mr Jason North is
 23 well aware of it and many of your team are well aware of
 24 Mr Vos' roles.
 25 A. I don't agree.

26

1 Q. You were aware, at least by reading this, which you say
 2 you were made aware of this, you were aware that
 3 Mr Rowe, the regional manager knew that Mr Weller had
 4 taken a back seat. You were aware of that.
 5 A. Only when I read this, yes.
 6 Q. But you had been having discussions with Mr Rowe about
 7 this matter, hadn't you, in the preceding two months?
 8 A. Not on this matter, no.
 9 Q. About Bognor, about Dr Poulsen, Mr Weller --
 10 A. Not about this subject, no.
 11 Q. I suggest that you must have spoken to Mr Rowe about
 12 the background of the store, you must have asked him,
 13 "Well, Mike, give me a picture of this store. What's
 14 going on there?"
 15 A. Not I can remember.
 16 Q. Anyway, Mr Rowe's summary is that Barry has taken
 17 a backward step and is not fulfilling the retail
 18 director role --
 19 A. But he also says that Sarah Scott, an ex-joint venture
 20 partner in there is involved in the running of the
 21 practice.
 22 Q. Are you deliberately omitting the first words of that
 23 sentence, Mr Dyson, because it doesn't fit your story?
 24 A. No.
 25 Q. Read the sentence out to us, please?

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1 A. "Godfrey, practice manager, and Sarah Scott, ex-Oxford
 2 JVP, are accountable for the retail delivery."
 3 Q. So you were aware that Godfrey, the practice manager,
 4 was involved in retail delivery in the store?
 5 A. I was aware of the words not that he was involved.
 6 Q. "... and have continued to deliver the strong service
 7 measures and store standards."
 8 Yes?
 9 A. That's what Mr Rowe's view is, yes.
 10 Q. "Succession. As a condition of the share sale Niru has
 11 obtained Helle's commitment to stay as a partner for
 12 a minimum of 12 months and during that time period
 13 Godfrey remains involved in the business."
 14 Godfrey's involvement in the business was to be
 15 a key part of the conditions required to possibly allow
 16 this to go through, wasn't it?
 17 A. In the case that has been set by Mr Rowe clearly.
 18 Q. Yes. So Mr Rowe obviously thought that Godfrey's
 19 involvement in the business was an important factor, not
 20 everything. Mr Vos doesn't do everything. There is
 21 Mrs Scott, quite right, but Mr Vos had an important
 22 role.
 23 A. Mike Rowe did, yes.
 24 Q. Well, Mike Rowe is the regional manager for this store.
 25 If anybody in the whole of Specsavers is going to know

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1 about it, apart from the partners themselves, it is
 2 going to be Mike Rowe, isn't it?
 3 A. It would be Mike Rowe's opinion, yes.
 4 Q. "RDC views on proposal."
 5 Now the RDC, that is effectively for these purposes
 6 Mike Rowe, is that what you are saying?
 7 A. Correct.
 8 Q. Would it also be Mr Raines, his boss?
 9 A. Say it again?
 10 Q. Would it also be Mr Raines? Because it says "RDC", that
 11 is --
 12 A. No, this is specifically Mike Rowe.
 13 Q. Personally, right, okay:
 14 "The principles of the proposal do make good
 15 business sense."
 16 Do you see that?
 17 A. Yes.
 18 Q. Next paragraph:
 19 "The practice has had a very strong record of
 20 customer service delivery and store standards."
 21 Do you see that?
 22 A. Yes.
 23 Q. The practice was also the only store in the region to
 24 pass the lab quality checks in every round in 2010?
 25 A. Yes.

29

1 Q. We would have to find out who was overall responsibility
 2 for lab quality, but if it was Mr Vos, if it was, I know
 3 it is a hypothetical and you don't know, but if it was
 4 he would appear to have done a good job?
 5 A. Nobody is saying that the store is not being run and
 6 managed well.
 7 Q. No. But Mr Weller isn't running and managing the store,
 8 see the top paragraph. Dr Poulsen isn't running and
 9 managing the store, she's the optom.
 10 A. He is certainly in the practice. He must be carrying
 11 out some functionality.
 12 Q. He is. He is on the shop floor selling contact
 13 lenses and glasses and managing his team on the store.
 14 A. So he is there, he is working, he is part of the
 15 practice as well.
 16 Q. He is definitely working and part of the practice,
 17 absolutely, Mr Dyson. But as to the question of who is
 18 carrying out the overall retail director role, including
 19 things like managing the lab quality, you don't know who
 20 that was?
 21 A. No.
 22 Q. If you drop down three paragraphs:
 23 "Concerns are that the practice is very disconnected
 24 from both the RST and SOG."
 25 That must be a reference to the communications and

30

1 the tone and Dr Poulsen and Mr Weller and Mr Vos, is
 2 that right? That's what we are talking about there?
 3 A. Yes.
 4 Q. "Has been demonstrated ... reluctant to engage and
 5 deliver SOG initiatives, eg Sunday trading. The current
 6 structure ..."
 7 Do you see that?
 8 A. Yes.
 9 Q. "... which has Godfrey in place as a practice manager is
 10 of concern as there is history associated with this
 11 individual, the invoicing issue."
 12 Do you see that?
 13 A. Yes.
 14 Q. So Mr Rowe is well aware of Godfrey's role here and
 15 the concern is that there's an invoicing issue been
 16 raised previously. Do you see that?
 17 A. Yes.
 18 Q. His recommendation is that, "We should do it; we should
 19 agree with it"?
 20 A. Yes.
 21 Q. Now, that doesn't go down well, does it, with your plan,
 22 so we get 869:
 23 "Jack Ismail, who is the man being groomed by
 24 Mr Raines to fit into the loop here, do you see that?
 25 A. Yes.

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1 Q. So this is the second email down, on 21 March .
 2 A. Yes.
 3 Q. He, having obviously received -- do you see if you go
 4 down the email chain, he has received Mr Rowe's feedback
 5 form that I have just taken you to?
 6 A. Yes.
 7 Q. I'm trying to show you the context here. Then, what
 8 Jack does is he emails Mr Raines, his boss and says:
 9 "Mark, I need to start having a view on these
 10 situations. I know most queries are still going to you
 11 but I will start to share my views with you and see if
 12 I'm 'on the right track'. Would welcome your feedback
 13 please. In this case I would approve. My reasoning,
 14 risk to the Bognor Regis business minimal. Barry is not
 15 doing much in the business anyway."
 16 Do you see that?
 17 A. Yes.
 18 Q. "Barry is not doing much in the business anyway."
 19 Everybody seems to know this apart from you,
 20 Mr Dyson.
 21 A. But this is a comment from somebody who has been in
 22 the business for not a very long time and he is taking
 23 his steer from a document. He has not been to the store
 24 and he is not aware. This is why he is on training and
 25 development and why he working --

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1 Q. How do you know this? Have you spoken to Mr Ismail
2 about this?
3 A. I spoke to Mr Ismail as part of his training and
4 development, not about this specifically --
5 Q. So how do you know what he knew about this store at this
6 time? You have just given evidence -- do you want me to
7 read it back to you -- about what Mr Ismail did and
8 didn't know about this store at this time. You couldn't
9 possibly know that, Mr Dyson.
10 A. Can I finish what I was going to say?
11 Q. Yes.
12 A. Mr Ismail is under the wing of Mr Raines and is learning
13 the ropes. He is obviously finding his way around
14 the business. He is trying to understand how we work
15 and he has obviously taken from this report a view and
16 he is supporting it.
17 Q. Yes.
18 A. That is the point I was actually making.
19 Q. Yes. Certainly he seems to be slightly out of the loop
20 of your -- of you and Mr Raines' plan that you have --
21 A. There was coughing; I didn't hear that.
22 Q. I agree with you he seems to be lightly out of the loop
23 because if we look what he says after:
24 "Barry is not doing much in the business anyway", he
25 sets out his concerns with the plan:

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1 "... ie this would leave us with two optom partners,
2 not ideal. Suggest we pursue Helle's resignation."
3 He seems to be aware of pursuing Helle's resignation
4 or perhaps he has independently come to his own view
5 that that is a good idea.
6 Do you think that is the position?
7 A. I have no idea with he was thinking, I can't comment.
8 Q. You didn't discuss with limb at the time?
9 A. No, no.
10 Q. "Thought process. Remove a disengaged partner and
11 replace with a newly appointed" -- I think that is 1 --
12 and a more motivated one. I would approve, Jack."
13 So Jack is in favour as well. He is slightly you
14 say -- he is catching up at this point?
15 A. He is learning and developing.
16 Q. Yes. Mr Raines' answer to this is short and to the
17 point:
18 "Hi, we need to talk."
19 Do you see that?
20 A. Yes.
21 Q. What Mr Rowe's approved, Mr Ismail's approved but that
22 is not really going to be consistent with your plan, is
23 it? So Mr Raines needs to talk.
24 A. You would have to ask Mr Raines why he wrote that
25 because I don't know why he wrote that but certainly

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1 Jack's analysis here is not one that I would support.
2 Q. And it doesn't fit with what was about to happen.
3 A. No, because it doesn't fit in with the process that we
4 adopt and that is that we select, we select and we put
5 people through phase -- the stage 1 process and we put
6 right people in the right store with the right skills
7 and that is the whole point of the stage 1, to make sure
8 that we've got the best partners in our stores working
9 together to drive the business forward.
10 Q. 870, Mr Ryan's response to Mr Rowe is:
11 "... it is all too cosy".
12 Do you see that, 870, second line:
13 "Personally, I'm still not sold on their proposal,
14 it is all too cosy."
15 A. No, because Mr Ryan has got 20 years of doing business
16 transfer experience.
17 Q. Absolutely, but what he actually says in his email is:
18 "I'm still not sold on their proposal, it is all too
19 cosy."
20 A. Yes, I have read that.
21 Q. You read that at the time because you were cc'd on that
22 one.
23 A. Yes.
24 Q. You reply, 872:
25 "Hi Mike, I'm not convinced either. By allowing

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1 an optom to buy the shares, who she wants ..."
2 Who is she?
3 A. Helle Poulsen.
4 Q. "... in the business, we are surrounding ground."
5 Is this part of the war?
6 A. No. It is part of, surrendering the ground is part of
7 we are in charge of the business, in terms of selection
8 of our partners and who we put into the business for
9 the benefit of the business --
10 Q. No --
11 A. -- because we hold the aces. As soon as we put two OOs
12 into that store we've then gone against everything that
13 we have been trying to achieve in the previous X number
14 of years where we are changing the model.
15 Q. No, Mr Dyson, I suggest to you that that is not
16 the meaning, the underlying meaning of what you write
17 here. What you are talking about is very personal to
18 "she". You are talking about this war that you are in
19 with Dr Poulsen:
20 "By allowing an optom to" --
21 A. Sorry, a war? Where did I say war?
22 Q. "Let's go to war", was what one of your team said,
23 wasn't it, do you remember?
24 A. No, I didn't say that and I was not aware that anybody
25 said that.

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1 Q. No, you didn't, but I have made you aware now, haven't
2 I?
3 A. Yes.
4 Q. "She wants in the business ... we are surrendering
5 ground and will lose control of the situation in which
6 currently we hold all the aces."
7 A. Correct.
8 Q. It is a very subtle way of putting it. What are you
9 talking about?
10 A. We are talking about we will put an OO with an OO and we
11 put retailers with retailers --
12 Q. Why not just say that? Why not just say, "Hi Mike, no
13 we have a firm policy, OO to OO, retailer to retailer,
14 and that's it"? Why not say that? Why all this
15 slightly odd language "... lose control of the situation
16 in which we currently hold all the aces"?
17 A. Because we will control who goes into that store, who
18 will fulfil the role of the retail manager and I was not
19 prepared to give way on any compromise in my position.
20 Q. "... will discuss with you later".
21 So this is all going to be discussed orally not by
22 emails and notes backwards and forwards; is that
23 the position?
24 A. In this situation, yes, I will discuss later with Mike.
25 Q. So page 875, we can that the plan is not to deal with

1 this matter by reference to arguments of policy about
2 OOs and ROs.
3 Do you see the bottom of 875:
4 "Mr Rowe is updating Mr Rajan re:Bognor Regis".
5 Do you see that?
6 A. Yes.
7 Q. "This is something we will be leaving to Mel. However,
8 you cannot talk to anyone about this, Mike."
9 Do you see that? Then at the top do you see what
10 Mr Rajan responds?
11 A. Yes.
12 Q. "Of course, I understand!"
13 What's going on here?
14 A. I have got no idea.
15 Q. You have no idea?
16 A. I have not seen this -- I hadn't seen this until
17 the disclosures and I have no idea. There's not even
18 any context to it.
19 Q. What seems to be going on is that the spectre of
20 an investigation regarding Mr Vos' money, invoices, pay,
21 level of pay, et cetera, and then the invoices to
22 Mr Ferguson is going to be used as part of
23 an investigation to put some pressure on Dr Poulsen.
24 That's what seems to be going on, would you agree,
25 behind the scenes of course?

1 A. What I have asked Mr McAlindon to do is to investigate
2 the situation with regard to Mr Vos, the hours that he
3 is contracted to work and the remuneration levels, which
4 are -- I have never seen a remuneration level at that
5 before, somebody who works 24 hours.
6 Q. Well, he doesn't work 24 hours. He doesn't work
7 24 hours. That's his basic contractual hours. He works
8 a lot more than 24 hours.
9 A. It is still a basic salary which is significant for
10 24 hours.
11 Q. It is. How much do you earn?
12 A. Is that a relevant question?
13 MR JUSTICE HILDYARD: I don't think there's any reason why
14 you shouldn't answer it.
15 MR STUART: You are the one who raised the issue of levels
16 of salary, all right. We have heard from Mr Vos. We
17 know the level of his experience and what he has done.
18 You have explained your experience. You have worked
19 your way up from a very lowly level to a very high
20 level. You are the Retail Global Director for
21 Specsavers. What do you earn?
22 A. 350,000.
23 Q. How many hours a week do you work?
24 A. 60 to 70.
25 Q. Okay. So on an hourly basis Mr Vos is a lot cheaper

1 than you. Is that right?
2 A. Yes.
3 Q. Okay. What then happens is we get into April. Do you
4 see that?
5 A. Sorry, what page is it?
6 Q. So 878. Dr Poulsen and Mr Weller write in to
7 the reporting team. They are raising this issue about
8 whether they can sign the -- sign-off on the accounts.
9 Were you involved in any of that?
10 A. No.
11 Q. So I can't really ask you about that?
12 A. No.
13 Q. Okay. Just so I understand, the reporting team, these
14 are the people who sign-off or ensure, sign-off on
15 the companies accounts?
16 A. Yes, I'm not an expert in this area. Remember when
17 I described the layout and there is two halves, the
18 operational and the finance team --
19 Q. Absolutely --
20 A. -- they work in that area.
21 Q. So who should I ask about that? Because you know there
22 is an issue in this case about the fact that, on the one
23 hand, Specsavers is saying that there is no fraud going
24 on. That's what it is reporting to the auditors and
25 they are reporting to the Revenue and Companies House,

1 et cetera, whilst on the other hand you are actually
 2 alleging fraud and dishonesty of directors of the
 3 company?
 4 A. I can answer questions with regard to the lists of
 5 stores that are on a year end.
 6 Q. Right?
 7 A. That list would come to me and then I would write on
 8 the -- if there was any activity in the store and pass
 9 that back to our legal team.
 10 Q. Okay. So in this particular case you know from
 11 the supplemental witness statements and everything else
 12 that there is a bit of an inconsistency in Specsavers'
 13 approach, which has been explained away as a mistake by
 14 Specsavers internally?
 15 A. Yes.
 16 Q. And that somehow some team who reports on the clean
 17 nature of companies wasn't aware that in respect of this
 18 company, Bognor Regis, there was actually allegations of
 19 fraud and dishonesty against the directors. You know
 20 the issue?
 21 A. I know the issue, yes.
 22 Q. So I'm just trying to understand so that the Court can
 23 understand. The reporting team -- this is a letter
 24 that's going to a reporting team. Do you see? It is
 25 all about the signing off of the thing.

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1 A. Yes.
 2 Q. That's not under you?
 3 A. No.
 4 Q. That is under --
 5 A. Paul Fussey.
 6 Q. But you are involved in notifying them of any issues
 7 within the stores?
 8 A. I notify them via the legal team who send me a list to
 9 say these are the year ends in whatever month it is and
 10 it would go to several people. It may go to Mel
 11 McAlindon, Mark Raines. We go through the list and if
 12 we are aware of anything then we will amend it or put
 13 a note on it and give that back to legal team so they
 14 are aware.
 15 Q. So in relation to this store at this time and
 16 subsequently actually, because it wasn't until a year or
 17 so later that somebody suddenly twigs to this, why did
 18 you not notify the legal team and they notify reporting
 19 that there's fraud and dishonesty going on?
 20 A. When that document comes to me, I would have made a note
 21 on that to say that Bognor is being investigated and
 22 I would have annotated a note on that and passed that
 23 back to the legal team.
 24 Q. Do we have that note?
 25 A. Well, no because -- I don't have it but it would be --

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1 it would only be amend the list and by default when
 2 this list goes to BDO they know that they are the only
 3 stores that they can report on that aren't under
 4 investigation so, therefore, by default any store that
 5 has got a year end in that time period must be under
 6 investigation.
 7 Q. So are you saying that in relation to Bognor Regis at
 8 this time you did actually make it -- make a point of
 9 notifying somebody within the organisation that they
 10 were to notify --
 11 A. I must admit because I have seen somewhere in
 12 the bundles and I have seen a lot of the bundles, there
 13 is a list that says that Bognor Regis is not on that
 14 list so, therefore, by default we must have communicated
 15 it.
 16 Q. I will take your answer as you can't specifically recall
 17 doing so but it must be that way because that is what
 18 the document shows.
 19 A. No, this is a regular occurrence where these documents
 20 come onto my desk, I go through them, as do other
 21 people, I mark them and I take them back to legal.
 22 Q. I will ask it once more clearly. Do you, as you sit
 23 here today, recall doing that task in relation to Bognor
 24 Regis company at this time?
 25 A. I can't say that I could do but I probably did.

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1 MR STUART: My Lord, I see the time. I'm still about
 2 half --
 3 MR JUSTICE HILDYARD: Half way.
 4 MR STUART: I'm about half way this morning. I thought
 5 I was going to be an hour but being realistic about it,
 6 I have got through about half of things I have to cover.
 7 I know I should be trying to give a break to the
 8 transcribers after about an hour, if possible, if that
 9 is a convenient point.
 10 MR JUSTICE HILDYARD: Certainly if that's convenient to all.
 11 You are about half way through.
 12 MR STUART: Yes.
 13 MR JUSTICE HILDYARD: So what is the programme for the rest
 14 of the day?
 15 MR STUART: My Lord, Mrs Birdi is coming at 2.15, 2.30. She
 16 is leaving her appointment at about 12.45 and she will
 17 get here as soon as she possibly can. It looks like if
 18 I finish at 12.30, Mr Potts said he would be 15 minutes
 19 but that could be half an hour, it could be lunchtime
 20 and then Mrs Birdi is coming at 2.15 to 2.30.
 21 MR POTTS: My Lord, I don't think I am going to be very long at
 22 all.
 23 I did want at some point today, my Lord, to raise
 24 the question of timetabling for the next week actually.
 25 I don't know when that would be a convenient moment for

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1 that, my Lord, and indeed thereafter.
 2 MR JUSTICE HILDYARD: Perhaps -- I mean I don't want to keep
 3 Mr Dyson hanging about while we discuss any of that so
 4 certainly we could do it after, once Mr Dyson has
 5 finished or once Mrs Birdi has finished, really wherever
 6 you think is most convenient, Mr Potts.
 7 I agree with you that it would be extremely helpful
 8 to have an indication of where we are and where we are
 9 going because I sense that the old timetables have been
 10 overtaken.
 11 MR POTTS: I have had a chat with my friend and so we would
 12 like to I think ventilate that with you.
 13 MR JUSTICE HILDYARD: Very good. Okay. Well you raise that
 14 with me whenever you think most appropriate.
 15 MR POTTS: My Lord, we will see how we go with Mr Dyson,
 16 there might be a moment then before lunch perhaps.
 17 MR JUSTICE HILDYARD: Yes, not too much further to go,
 18 Mr Dyson.
 19 (11.33 am)
 20 (A short break)
 21 (11.45 am)
 22 MR STUART: Mr Dyson, I just want to complete, as it were,
 23 the chronology that led up to the June suspension,
 24 June 2011 suspension.
 25 881 in E4. Do you have it?

1 A. I have.
 2 Q. You are not copied in on this one. Were you aware what
 3 was going on between Mr Rowe and Mr Raines, Mr Ryan?
 4 A. Can I read it?
 5 Q. Yes, do, it is a very short email?
 6 A. Is it only the top email you want me to read?
 7 Q. It is:
 8 "Hi Mike, my understanding was you wanted to go back
 9 to Barry and Helle regarding her intentions. Mark."
 10 A. No.
 11 Q. You were not aware of that, fine.
 12 Then 883, they seem to be corresponding by shorter
 13 and shorter emails. If you look down. 18th April?
 14 A. Yes.
 15 Q. At 14.41, so the second email down. Do you see that?
 16 "Michael Ryan ... tell me again why Mel is not
 17 paying them a visit?"
 18 Then, the answer comes back from Mr Raines:
 19 "No cover when they are suspended. Mark."
 20 Do you see that?
 21 A. Yes.
 22 Q. So, basically, the loss prevention was rather busy
 23 dealing with something else at the time; is that right?
 24 A. I have no idea what you are talking about.
 25 Q. Okay. When you suspend a director, perhaps one who

1 wants to sell their shares and you are going to start
 2 an investigation, you send in some people from the loss
 3 prevention team, don't you, to run the store? Isn't
 4 that the practise?
 5 A. It could be the loss prevention team; it could be one of
 6 other partners in development; it could be a number of
 7 people.
 8 Q. But here there was no partner in development, was there?
 9 A. Well they wouldn't be here, they could be anywhere in
 10 the country.
 11 Q. Of course but in relation to Bognor Regis the position
 12 was there was nobody else lined up, there was nobody
 13 else who could have run the store for you if you
 14 suspended them in April. That is right, isn't it?
 15 A. I don't know the answer to that question because --
 16 Q. But that would seem to fit in with what --
 17 A. It would seem to fit in with that email.
 18 Q. -- with what Mr Ryan and Mr Raines, who are in two
 19 slightly separate strands but are immediately below you,
 20 they seem to be talking to one another on that basis.
 21 I thought there was no suggestion of suspending
 22 Dr Poulsen and Mr Weller and sending in the loss
 23 prevention team until after you had -- the proper
 24 desktop audit of May 2011 led to the June 2011 decision,
 25 et cetera, et cetera, Mr Dyson. Do you remember? Your

1 sequence that we started this cross-examination with
 2 yesterday?
 3 A. I think we started by instructing Mel on 8th February
 4 and then there was a report that was produced by
 5 20-something of February. It is in my witness
 6 statement.
 7 Q. Do you not recall the relevant and only relevant board
 8 meeting of the company, June 2011, in which it was
 9 reported that as a result of a May 2011 investigation,
 10 it had been decided to suspend the directors, et cetera,
 11 et cetera, et cetera?
 12 A. Yes.
 13 Q. It appears from this that the plan to suspend
 14 the directors, put in a team to run their store and Mel
 15 paying them a visit seems to have been hatched some time
 16 before that, Mr Dyson. You would agree that appears to
 17 be what this email shows.
 18 A. It says no cover when they are suspended, yes.
 19 Q. No, it says:
 20 "Tell me again why Mel is not paying them a visit?"
 21 "Answer: no cover when they are suspended."
 22 A. Yes.
 23 Q. You must have known that the plan was to suspend them,
 24 put in Mel, put in a team, take over the store, you must
 25 have known this by this time? You personally.

1 A. I gave Mel an instruction to carry out --
 2 Q. Not Mel, I am talking about Mike Ryan and Mark Raines
 3 were discussing this?
 4 A. I have had no conversations with Mike Ryan and Mark
 5 Raines around this.
 6 Q. It is inconceivable, Mr Dyson, that you who gave the
 7 order initially in January and set up the plan, it is
 8 inconceivable that they would not have at least
 9 discussed it with you in April when they are discussing
 10 it amongst themselves.
 11 A. I was not -- I need to go to my witness statement
 12 because it is in an order that obviously as things
 13 happened, my recollection is that I instructed Mel to do
 14 the desktop on 8th February. A report would have come
 15 back which I remember reading, which then talked about
 16 Mr Ferguson and his payment and then I then instructed
 17 Mel to then carry out the full investigation.
 18 Q. I'm not talking about instructing Mel. I'm talking
 19 about suspending the directors?
 20 A. I have got -- I don't -- all I can say is those are
 21 the chronological things that happened where I gave
 22 instruction and I have not seen this or was party to it
 23 at the time so the answer then is, no, I didn't know
 24 anything about that.
 25 Q. Let's carry on just with the chronology because it is

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1 the quickest way to do it. That -- just to get it
 2 clear, the 883 little exchange of emails -- tell me
 3 again why mel isn't paying them a visit and no cover
 4 yet; that is in response -- do you see what it is
 5 response to? It is in response to Dr Poulsen having
 6 emailed in to the -- I think that is the reporting team
 7 isn't it? Mr De Carteret, he is in the reporting team?
 8 A. He is in store accounts, yes.
 9 Q. Yes, but the reporting side of it?
 10 A. Yes.
 11 Q. Because she has got an issue about the submission of
 12 companies accounts and it is this issue at 884 about how
 13 you hold -- Specsavers has this -- is it called the
 14 Treasury --
 15 A. Yes.
 16 Q. -- concept, whereby the stores themselves don't have
 17 bank accounts, if you like. You are the bank. You
 18 Guernsey, Specsavers, Treasury?
 19 A. The stores bank their money with bank books that
 20 specifically go back to them and they bank that in
 21 a local bank.
 22 Q. Yes but the money goes into an actual bank account of
 23 Specsavers Group?
 24 A. Yes.
 25 Q. They don't have their own little bank account?

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1 A. I don't know if it goes into Specsavers Group but it
 2 goes into a bank account.
 3 Q. Called the Treasury. Do you see at 884 --
 4 A. I can't answer your question to say it is called the
 5 Treasury but I know it goes into a bank account.
 6 Q. It is one, as it were, big bank account to cover all
 7 the stores, so all five hundred, 600, 700 UK stores,
 8 their money ...?
 9 A. I couldn't answer that question. It may be in more than
 10 one bank account, I simply don't know.
 11 Q. Not in 500 or 600 bank accounts. This Treasury
 12 system --
 13 A. Correct.
 14 Q. They were raising an issue about that, weren't they, at
 15 884?
 16 A. Well, they were -- well, Dr Poulsen has sent some email
 17 to Jez de Carteret.
 18 Q. About that?
 19 A. Yes.
 20 Q. I think they raised it before in some letter, do you
 21 remember? They had raised the issue about they were
 22 concerned about --
 23 A. They raised it with me when I had the mystery shopper.
 24 Q. That is right, so as far back as --
 25 A. And I gave an answer at the time.

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1 Q. You did, exactly, and now they are raising it again.
 2 And the answer is -- sorry, not the answer but behind
 3 the scenes the response is, why isn't Mel paying them
 4 a visit? No cover when they are suspended?
 5 A. I can't comment because I was not involved in the email.
 6 Q. Okay. Then you didn't write the letter at 887,
 7 I presume, Mr Ryan's letter.
 8 A. No.
 9 Q. I won't ask you about that.
 10 Then we can flick on quite a way, 905, we are into
 11 May 2011 now. This is cc'd to you, do you see 905?
 12 A. Yes.
 13 Q. It is from Mike Ryan to Mark Raines and Mike Rowe, cc'd
 14 to you and Mr Glass:
 15 "Had a conversation this morning with Helle,
 16 responding to my letter suggesting she consider selling
 17 some of her shares. Rather surprisingly, in principle,
 18 she agreed. She said Niru would be ..." et cetera.
 19 We saw this letter in relation to Mr Yogarathnam's
 20 evidence. Do you recall it?
 21 A. I wasn't in court on that --
 22 Q. Okay. Do you see that then?
 23 A. Yes.
 24 Q. What then happens is -- and there's nothing in between
 25 that from the documents that have been disclosed.

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1 That's 10th May. 26th May, just over two weeks
 2 later, page 907. Mr McAlindon is suddenly on the case.
 3 He's obviously freed himself up from whatever else he
 4 was previously doing. Do you see?
 5 "Helle and Barry, as part of the Group's
 6 requirements where shares in a store are being marketed
 7 by a business transfer the loss prevention department
 8 remotely audits such stores to demonstrate due
 9 diligence."
 10 A. Yes.
 11 Q. Do you see that? This question of due diligence, isn't
 12 it the buyer who does due diligence on you, the buyer of
 13 the shares?
 14 A. No, we carry out due diligence because we want to make
 15 sure that when any share transfers take place that there
 16 are no future liabilities that we could see that are on
 17 there, for example, a re-fit or a roof repair or -- it
 18 could be a number of things.
 19 I think we talked about this yesterday where
 20 I explained that Mike Ryan would contact different
 21 departments in order to ascertain to ascertain if there
 22 were any potential hidden liabilities for the future
 23 that he would need to know about in order to process
 24 the transfer.
 25 Q. Yes. I'm not going to go over yesterday's evidence. We

1 have little enough time as it is. Anyway, that seems to
 2 be the trigger for everything. 26th May, Mr McAlindon
 3 is now on the case, isn't he? He is onto their case?
 4 A. If you remember I had instructed Mr McAlindon on
 5 February 8 to carry out --
 6 Q. Yes, and he has done nothing for three and a half
 7 months. He has done nothing with the information for
 8 three and a half months and now on 26 May he is saying,
 9 as a result of this --
 10 A. Sorry, am I reading something different now?
 11 Q. This is 26th May:
 12 "The loss prevention department have therefore done
 13 a preliminary review of the store and in doing so have
 14 come across some unusual financial transactions."
 15 Those are the financial transactions that you sent
 16 to him in your -- and you had previously sent to your
 17 team, in your email of 10 January and you sent to him in
 18 February?
 19 A. Correct, 8th February, yes.
 20 Q. On 26 May he is writing to Dr Poulsen and Mr Weller
 21 saying, "We have come across this issue and we need to
 22 investigate". Is that right?
 23 A. That's what the letter says, yes.
 24 Q. I should have asked you of course did you have any
 25 involvement with this letter?

1 A. No.
 2 Q. Did you know about it at the time?
 3 A. Specifically that --
 4 Q. That Mel was going in, that Mel was going into
 5 the store?
 6 A. I would have been aware that he was going to make
 7 contact with the store, yes.
 8 Q. Obviously their response was at 908 but you were not
 9 involved in that.
 10 The letter of response at 910. Again, you don't
 11 appear to be copied into that or have any knowledge of
 12 that. Is that fair enough? I have to ask Mr McAlindon
 13 about this?
 14 A. Yes.
 15 Q. What about 912? Because meanwhile Dr Poulsen is asking,
 16 "What's happening about our sale and our proposal?"
 17 Were you aware that she was feeling that she had been
 18 sort of left dangling?
 19 A. I wasn't aware of this letter but I could imagine
 20 the time period that had passed she would be feeling
 21 that way.
 22 Q. Four or five months to answer a proposal is not part of
 23 your process, is it? It is not your standard process to
 24 take four to five months to deal with --
 25 A. In some case it can be but I would not say it's

1 standard.
 2 Q. Then 939, a long letter from the Claimants trying to get
 3 clarification as to what it is they are supposed to have
 4 done wrong. Presumably, you were not involved in any of
 5 this --
 6 A. No.
 7 Q. -- you were just kept out of that. Okay fine.
 8 Then what about 945? Because meanwhile, whilst all
 9 of this is going on, we have still got Sunday trading is
 10 an issue by the looks of it, which is something I think
 11 you said was under your auspices. Is that right?
 12 A. Sunday trading was a strategic initiative for
 13 the business.
 14 Q. Yes, under your -- so therefore under you?
 15 A. Under the umbrella of retail.
 16 Q. What's going on here is:
 17 "Hi Jack", so this is to Jack Ismail from Mike Rowe
 18 so we see where it first in.
 19 "Here is my feedback: Bognor Regis refused to open
 20 on Sunday after repeated challenges, escalated to
 21 DC..."
 22 That must be David Clark?
 23 A. Yes.
 24 Q. "... but again refusing. Currently LP involved in
 25 store."

1 That's loss prevention. Is that right?
 2 A. Again, I can only read it, like you. I was not involved
 3 in receiving it or ... at the time.
 4 Q. So we are into the calling of the board meeting. Do you
 5 see 949? Legal are now involved. Mr Stephen Moore. It
 6 is not somebody we have come across before. Do you
 7 remember Mr Moore? He is legal. Is he head of legal or
 8 very senior in legal?
 9 A. Yes.
 10 Q. Senior legal department. He says he is senior
 11 employment counsel. Were you involved in discussions
 12 with Mr Moore at this time, which is the beginning of
 13 June?
 14 A. Can I just read it?
 15 Q. Yes.
 16 MR POTTS: My Lord, I just hesitate, if there's going to be
 17 reference to discussions with in-house legal counsel,
 18 obviously an issue of privilege may arise. I just flag
 19 that up of course.
 20 MR STUART: That rather depends. I'm not sure what you were
 21 asking about, Mr Dyson, but yes of course if it was
 22 about prospective litigation and such things, then legal
 23 professional privilege might apply.
 24 A. Would I have been aware that Stephen was going to write
 25 this letter, yes.

1 Q. Were you involved in -- were there meetings or
 2 discussions? Because we don't see any notes of them?
 3 A. I think if you go to my witness statement. I say as
 4 Global Retail Director, based on the information that
 5 I had, that we then went -- I then asked Mel McAlindon
 6 to do the board, so that would have prompted letters to
 7 then go out for the board meeting.
 8 Q. Well, no, Mel McAlindon doesn't decide this, does he?
 9 He doesn't decide who calls the board meeting?
 10 A. No, I call the board meeting.
 11 Q. Exactly. That's what I wanted to check with you.
 12 I will take you to your statement then. We are up to
 13 paragraph 130, page 31 of bundle C.
 14 A. Yes.
 15 Q. This is the first mention of a board meeting in this
 16 stage of things. Do you see it?
 17 A. Yes.
 18 Q. "Based on this information ..."
 19 That is information -- that is the information about
 20 the payments to Vos and Ferguson, et cetera?
 21 A. The audit, yes.
 22 Q. Based on this information, SOG decided to call a board
 23 meeting of Bognor Visionplus for 15th June."
 24 Since the letter that calls that board meeting on
 25 7th June, I am presuming that -- perhaps I will remind

1 you of -- I did take you to it at the beginning, but
 2 I will remind you for the chronology, 961 in the same
 3 bundle.
 4 A. Going forwards.
 5 Q. Yes, keep your finger in 950 because that's where we got
 6 up to but I just want to be fair to you here. 961,
 7 between the two hole punches. Do you remember I took
 8 you to this yesterday morning? This is the board
 9 meeting?
 10 A. Yes.
 11 Q. This is Mr Raines, who is acting as the SOG director of
 12 Bognor Regis Limited for these purposes?
 13 A. Yes.
 14 Q. He reports as follows -- do you see? If you go down
 15 about five lines from the bottom of that section that
 16 says "MR", do you see that?
 17 A. Yes.
 18 Q. It says:
 19 "Given that shares are being actively marketed in
 20 Bognor at this time ..."
 21 Do you see that sentence?
 22 A. Yes.
 23 Q. "... SOG's loss prevention department therefore
 24 undertook in May 2011 a preliminary review of the store
 25 and in doing so came across some financial transactions

1 which they wished to discuss further with HP and BW."
 2 Do you see that?
 3 A. Yes.
 4 Q. Is that what you are referring to in paragraph 130 of
 5 your witness statement?
 6 A. Yes.
 7 Q. But you knew this information, the information about
 8 Mr Vos, his invoices, the amount of them, the question
 9 of whether he was in store or not, was he adding any
 10 value, et cetera, et cetera, you knew all of that
 11 information at least by 10 January 2011?
 12 A. No, no, we didn't. What we had was a piece of paper
 13 that said that Mr Vos was in the store 24 hours and Jez
 14 de Carteret identified that a significant amount of
 15 overtime and bonuses, et cetera, had gone through.
 16 We hadn't any proof that there was anything wrong at
 17 that time and that's the reason why we wanted to get Mel
 18 to investigate it.
 19 Q. No, but you didn't have any proof there was anything
 20 wrong at this time either. He hasn't done his
 21 investigation yet, Mr Dyson.
 22 A. No, no, he has done his desktop investigation, which is
 23 referred to in the summary, which is in 128 of my
 24 witness statement, which also identifies Mr Ferguson as
 25 also having questions around him, so based on that

1 information, we have got a lot more information now than
2 we had on 8th February.
3 Q. No, you have not got a lot more information, have you?
4 And as for the material information, you haven't got --
5 A. Well, I think if you read the report you will find there
6 is a lot of information in that report.
7 Q. There is but none of it -- but none of it most of it is
8 suspicious. There is a lot of information about
9 the companies that Dr Poulsen and Mr Vos are directors
10 of which you knew already?
11 A. Yes.
12 Q. There is a lot about the reports on those companies --
13 A. The amount of overtime, the amount of payments.
14 MR POTTS: My Lord, if my friend is going to question about
15 what is in the report I think it would be fair to the
16 witness to actually show him the report.
17 MR STUART: Of course.
18 MR JUSTICE HILDYARD: I think it is fair to the witness --
19 MR STUART: Absolutely.
20 MR JUSTICE HILDYARD: -- to set the ground work.
21 MR STUART: I'm probably rushing a little.
22 MR JUSTICE HILDYARD: And perhaps not discuss with
23 the witness but actually put questions.
24 MR STUART: So the report you are referring to, Mr Dyson,
25 is -- if you go back to page -- back at the end of E3.

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1 A. E3?
2 Q. 804. Do you see the report? Mr Potts has helpfully
3 taken me to the page number. Do you see it? 804 is
4 that right, Mr Potts? Have I got the right one?
5 A. Yes.
6 Q. This you say is the report, yes? That you are referring
7 to? Yes?
8 A. Can I just ...
9 Q. Of course. (Pause)
10 It goes on all the way through to 811. I'm not sure
11 whether that's the end of the report but anyway it stops
12 there. Our copy of it stops there, 811, paragraph 47 of
13 the report. Do you see that?
14 A. Yes.
15 Q. If you look in the bottom right-hand corner that is
16 document B000797. Do you see that?
17 A. Yes.
18 Q. Disclosed as. But Mr Dyson, that was attached to
19 page 803. It is not May, 23rd February. Three months
20 earlier you had that.
21 A. I didn't say I didn't have it three months earlier.
22 Q. No, I have asked you, paragraph 130, is it that report?
23 Are you now saying it is that report that led you to
24 decide to hold the board meeting for 15th June and
25 I have taken you -- I hope fairly -- to the chronology

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1 of correspondence which sets it up and I have taken you
2 to page 961, which is the formal record, 961, the formal
3 record, according to the board meeting of the company:
4 "SOG's loss prevention department therefore
5 undertook in May 2011 a preliminary review", and you
6 have said oh it is that document ... then we go to it.
7 But you had that on 23rd February, Mr Dyson. Your
8 chronology is not working, is it?
9 A. I am not sure that it isn't working. If you are saying
10 there is a time difference between the two, then I have
11 to say, yes, there is a time difference.
12 Q. Let's make it nice and simple for you. Do you agree
13 with me that the reference on page 961 to the loss
14 prevention department undertook in May 2011
15 a preliminary review of the store and in doing so came
16 across some financial transactions.
17 Do you agree with me that that cannot be
18 the document at page 804 because that happened in
19 February, three months earlier?
20 Do you see?
21 A. No, I don't.
22 Q. You don't see that. What's the difficulty with
23 the question? 961. Do you read that? Five lines from
24 the bottom of the section that says MR. I took you to
25 the sentence starting:

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1 "Given that shares are being actively marketed ..."
2 Do you see that?
3 A. Yes.
4 Q. "... loss prevention department therefore undertook in
5 May 2011 a preliminary review of the store and in doing
6 so came across some financial transactions."
7 A. Okay, I have now made the connection.
8 Q. Great. That cannot be the review -- the desktop review
9 of 23rd February, page 804. You would agree with me?
10 A. Yes.
11 Q. Okay. So where do we find the review of May 2011 that
12 you wish to rely upon as being the trigger for
13 the sudden decision to suspend these directors, send in
14 the loss prevention team and call a board meeting to do
15 so, et cetera? Where is the May report?
16 I don't want to answer for you but there isn't one,
17 is there?
18 A. Not -- if that's --
19 Q. I am sure Mr Potts will take you to in re-examination if
20 it is in the bundle, all right? Would you take it from
21 me that there isn't one?
22 A. I think that -- if you are saying that there isn't one
23 then I will take from you, yes.
24 Q. You are the man who made the decision, aren't you, to
25 suspend Dr Poulsen and call a board meeting?

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1 A. Yes.
 2 Q. And start the Mel McAlindon loss prevention
 3 investigation department investigation that starts on
 4 15th June?
 5 A. Yes.
 6 Q. You are the man who took that decision?
 7 A. Yes.
 8 Q. On what basis did you take the decision?
 9 A. On this report.
 10 Q. The February report?
 11 A. Yes.
 12 Q. Do we have any notes of any meetings at which you
 13 considered that report with somebody, with Mr McAlindon
 14 or Mr Raines or perhaps up to the Perkins? This must
 15 have been quite an important decision.
 16 A. No. I would have been given this report, sent this
 17 report by Mel.
 18 Q. You would have been?
 19 A. Yes.
 20 Q. Well, when?
 21 A. I can't --
 22 Q. When were you given it then?
 23 A. I couldn't give you an exact date. I know I received
 24 it.
 25 Q. Yes, when? It is very important isn't it?

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1 A. Well, I can't give you an answer to your question. But
 2 I'm saying this is the report.
 3 Q. Yeah, but you can't tell us when you got it --
 4 A. But this is the report that I based the board meeting
 5 on.
 6 Q. But we can't see any document that substantiates that.
 7 There's no evidence of you considering that report, no
 8 email between you and Mel backwards and forwards saying,
 9 "Here is the report", and you saying, "Thanks I'm going
 10 to call a board meeting"?
 11 A. You are quite right but I can only tell you this is
 12 the report.
 13 Q. So page 961 is in error then, is it? It wasn't
 14 a May 2011 review which caused you, the company --
 15 A. No, because it was this report, and the reason I know
 16 that is because it references John Ferguson, which is
 17 new information that we didn't have.
 18 Q. I'm going to suggest to you, Mr Dyson, that you are
 19 simply trying to create backwards and it doesn't work
 20 unfortunately for you, but you are trying to create
 21 an explanation as to how you took the decision --
 22 A. No, I'm not --
 23 Q. -- to call this board meeting?
 24 A. I'm saying this is the report here and it says May in
 25 the report there and May is obviously incorrect.

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1 Q. I'm putting it to you that you had decided on this plan
 2 that is to suspend the directors, send in the loss
 3 prevention team, make allegations of serious financial
 4 irregularities. You had decided on that plan back in
 5 January?
 6 A. No.
 7 Q. As evidenced by all of the email correspondence that
 8 I took you to yesterday?
 9 A. No.
 10 Q. Okay. The letter, 950 I just took you to. That's from
 11 Mr Moore but you -- had you left it with Mr Moore to
 12 deal with this then, Mr Moore and Mr McAlindon, or were
 13 you personally involved in overseeing this at this
 14 stage?
 15 A. When you say personally overseeing it, I would have
 16 instructed Mr Moore to send the letter out, as the legal
 17 team always do when we call a board meeting.
 18 Q. Okay. Let me put in simple terms. Were you managing --
 19 were you personally managing this plan, at this stage --
 20 A. No.
 21 Q. -- by the beginning of June 2000 --
 22 A. No.
 23 Q. Who had you left it to?
 24 A. I had left it to Mark Raines --
 25 Q. Mr Moore and Mark Raines?

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1 A. Mr Moore.
 2 Q. Just the two of them?
 3 A. Yes.
 4 Q. Presumably Mr McAlindon as well?
 5 A. Well, Mr McAlindon as much as he was going to be
 6 carrying out the investigation so he had to be involved.
 7 Q. But you must have briefed him on what it was you wanted
 8 him to find?
 9 A. I didn't brief him on what to find. He is going to go
 10 and do an investigation on the information which I go
 11 back to the report, I just said, that sets the scene
 12 that we have got a lot of money being paid to two
 13 individuals that are completely out of kilter with
 14 anything that we do inside the business.
 15 Q. You must have told Mr McAlindon what it was you wanted
 16 him -- the conclusions you wanted him to reach?
 17 A. No.
 18 Q. I'm putting it to you that you did --
 19 A. No.
 20 Q. -- you would have had those discussions?
 21 A. No.
 22 Q. You were the chief here and these Indians were doing
 23 what you were telling them to do?
 24 A. Mr McAlindon would go and carry out thoroughly and
 25 properly an investigation.

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1 Q. But an investigation that was aimed at finding
 2 irregularities that you could use in order to put
 3 pressure on --
 4 A. It was aimed at looking at the report that we had got,
 5 that says there were irregularities and to understand
 6 why those irregularities were taking place.
 7 Q. You were planning an exit plan. You would agree with
 8 that much? Your team were planning an exit plan for
 9 Dr Poulsen?
 10 A. No.
 11 Q. We have seen the emails where they all mention that they
 12 are planning an exit plan?
 13 A. Can you remind me? Because, you know, we have
 14 established during this that there are people having
 15 banter between themselves. I wasn't aware of that.
 16 Q. No, I'm talking about from January 2011 onwards. I'm
 17 not going back to all the old banter.
 18 A. Okay.
 19 Q. I'm talking about the plan. You give instruction, don't
 20 you? Do you remember starting on 10 January 2011, back
 21 in E3?
 22 A. Yes.
 23 Q. E3, page 739 from you to Mark Raines, 10 January:
 24 "Can you get under the skin of this and develop
 25 a plan to resolve and put her back in her box for

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1 an exit plan."
 2 Do you remember?
 3 A. That's based on, as I said, that Mike Ryan had
 4 a conversation with Helle, who then -- who during that
 5 conversation had said, "If I can't get this gentleman as
 6 my partner, I will be resigning", and this is not
 7 the first time that Helle has played the card, "I will
 8 resign", when she is confronted with things that she
 9 doesn't want to do, so if she played that card again,
 10 then, we would accept it and we would then plan her exit
 11 in line with her request.
 12 Q. Not in line with her request.
 13 Mr Dyson, look at 739. This is not in line with her
 14 request. It attaches, do you remember, the pdf document
 15 which is your manuscript suggestions on ways in which we
 16 could query her husband's payments.
 17 Do you remember? 739. It has the attachment. E3,
 18 739?
 19 A. Sorry, can you just say what you said again because
 20 I don't recognise what you are saying.
 21 Q. Right. Go to E3, 739. This is you issuing the orders.
 22 A. Yes.
 23 Q. I'm suggesting to you.
 24 A. This is a letter to Mike Ryan which clearly lays out --
 25 Q. 739. This is from Mark Raines to you, not to Mike Ryan.

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1 It is an email to Mark Raines. It attaches 0110143907
 2 pdf which we identified as being your manuscript
 3 notes --
 4 A. Correct.
 5 Q. -- on the detailed schedules of the payments to Mr Vos
 6 and your notes about 25 hours a week?
 7 A. Yes. That's "and finally". That is the third
 8 paragraph.
 9 Q. Yes.
 10 A. The paragraphs before are nothing to do with those
 11 handwritten notes. The paragraphs before are to say
 12 Helle has been on the phone and has suggested that
 13 the partner, that Barry wants to leave, although Barry
 14 never spoke to us. Helle wanted to then get involved in
 15 that and then choose the partner to go into the store,
 16 which was not going to be part and parcel of it and she
 17 has already told Mike Ryan that if she doesn't get her
 18 own way she is going to resign. So we need to say to
 19 Helle, "This is not going to happen and if you say
 20 'I want to resign', then we will facilitate her".
 21 Q. That's not what it says, is it? It doesn't say --
 22 A. It does when I read it, because I wrote it.
 23 Q. No, it doesn't. It says:
 24 "Finally, I understand Godfrey is now on the payroll
 25 at an inflated salary and does not attend."

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1 All of those facts which are just in from your mind:
 2 "If my memory is correct we have to stop him
 3 submitting, see attachments. Can you get under the skin
 4 of this and develop a plan to put her back in her box or
 5 an exit plan."
 6 A. Yes, that was --
 7 Q. That exit plan based upon --
 8 A. That wasn't to do with the issue that, finally,
 9 Godfrey -- that was to do with Helle is trying to get
 10 a person into the store that's not following our
 11 procedures, who is not a retailer and if she doesn't get
 12 her own way she is going to resign. If she does do that
 13 then he is to facilitate that.
 14 Q. So it is just a coincidence that actually what happens
 15 six months later is precisely those things which you
 16 happen to have mentioned in your email of 10th June.
 17 A. No six months later is the result of a full
 18 investigation that then actually provides information
 19 with regard to two individuals in the store.
 20 Q. An investigation which you called for and which you
 21 prompted in an email --
 22 A. Based on the report that we have just read that says
 23 there's things that -- there are things going on here
 24 that need answering.
 25 Q. Right, okay, Mr Dyson. That's your version.

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1 A. That is the truth.
2 Q. What as much as the truth as the answer you gave
3 yesterday about whether you amend Mr Rowe's letters?
4 A. I understood it to be that I wrote his letters.
5 Q. That's the truth as well? The answer you have just
6 given?
7 A. Yes.
8 Q. Fine.
9 Now, in your witness statement, we are almost at the
10 end of it, we move rather swiftly from 1.30 a board
11 meeting is called?
12 A. Sorry, what's --
13 Q. Your witness statement, 130, paragraph 130, page 31.
14 A. Yes.
15 Q. We move swiftly from 130 where, as you put it, SOG
16 decided to call a board meeting and I have asked you,
17 are there any minutes of any meetings of SOG, which --
18 at which the decision to call that board meeting of
19 Bognor Regis were made and you have told me there are
20 none?
21 A. Correct.
22 Q. So this is not something that you discussed amongst
23 the board of SOG.
24 A. I may have spoken to some of my colleagues but it
25 wouldn't have been at an board meeting if that is

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1 the point you are trying to make.
2 Q. What level of SOG board colleagues would you have been
3 talking to? Would you go up to the Perkins at this
4 point or would you just be dealing with your --
5 A. Normally John Perkins.
6 Q. Okay. So, presumably the two of you resolved that,
7 "Yes, we are going to go through with the plan of
8 calling a board meeting for Bognor Visionplus, putting
9 Mel McAlindon and his team in, suspending the JVP
10 partners and pursuing an investigation into", as you
11 call it -- I'm looking at the top of page 32 now --
12 "an investigation that the Claimants had indeed caused
13 Bognor Visionplus to make false payments".
14 A. Correct.
15 Q. You then just simply, in your witness statement here --
16 this is 131, I'm sorry, I should have said, is actually
17 you commenting on Mr McAlindon's investigation report of
18 September 2011. Do you see that?
19 A. I do, yes.
20 Q. Mr McAlindon had, as you put it, he had concluded that
21 the Claimants had indeed caused Bognor Visionplus to
22 make false payments.
23 A. Yes.
24 Q. Is that right or had he concluded -- was
25 the investigation report which was to conclude whether

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1 there was a case to answer that they had made false
2 payments.
3 A. It says:
4 "In summary I understood the investigation report
5 which I was provided with in mid-September from
6 the discussions with Mr Mel McAlindon."
7 Q. Yes.
8 A. So I read all of the investigation report.
9 Q. That's not the question I asked you. Here, do you see
10 there is a -- take a step back. There is a difference
11 between concluding that the Claimants had made false
12 payments, a finding of guilt, if you like -- do you see?
13 Do you understand that -- and simply an investigation
14 report which reaches a conclusion that there is a case
15 for them to answer as to that charge and that, "We will
16 have a disciplinary hearing and process under SOG's
17 disciplinary processes for them to answer that charge
18 and for somebody to make a decision as to whether they
19 had in fact been guilty".
20 Do you understand the two stage process that SOG
21 follows?
22 A. Yes.
23 Q. Right. In relation to Mr McAlindon's report that you
24 are referring to here, is it the first stage of the
25 process, ie, "I, Mel McAlindon, as the investigating

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1 officer, I have concluded that there is a case to answer
2 and we should move to the disciplinary proceedings
3 process"? Or is it that second stage, "I, Mel
4 McAlindon, have concluded they are guilty"? Or don't
5 you even know that there's a difference, Mr Dyson?
6 A. I do know there is a difference. I'm just working out
7 how to answer your question so that it makes sense to
8 everybody.
9 Mel McAlindon would have produced an investigation
10 report and at the end of that, when he has completed it,
11 he would have put in his recommendations. I reviewed
12 that report and concurred that his recommendations were
13 correct.
14 Q. That's not what your witness statement says. It says:
15 "He had concluded as a result of his investigation
16 that the Claimants had indeed caused Bognor Visionplus
17 to make false payments."
18 In other words: guilty, my Lord.
19 A. I'm definitely not understanding where you are going
20 with that because I can't see the difference between
21 that.
22 Q. I will take that answer. You can't tell the difference
23 between the investigating officer finding there is
24 a case to answer at disciplinary proceedings and
25 the investigating officer having concluded that they are

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1 guilty. You can't tell the difference?
 2 A. But there was no disciplinary proceedings because they
 3 refused to attend.
 4 Q. Exactly but we have not got there yet, you see, in the
 5 chronology. There were no disciplinary proceedings. So
 6 who concluded their guilt?
 7 A. Well, because they didn't attend the disciplinary
 8 proceedings we have got the investigation report --
 9 Q. No, no, no, no. Not because of them not attending
 10 the disciplinary proceedings. Have you got
 11 the investigation report? Is that how you understood
 12 it?
 13 A. We called the board meeting.
 14 Q. That is back in June. We are onto September now.
 15 I have moved on?
 16 A. We called a board meeting, the partners were suspended,
 17 the investigation takes place.
 18 Q. Yes.
 19 A. The Claimants are then asked to attend
 20 the disciplinaries, which they don't.
 21 Q. No, they are sent the investigation findings and they
 22 put in a rebuttal. Do you want me to take you to it, it
 23 is E6?
 24 A. No, I know the rebuttal very well.
 25 Q. Let's get the sequence right. They are sent

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1 the investigation findings?
 2 A. Yes.
 3 Q. September.
 4 A. Yes.
 5 Q. They put in their rebuttal. Can you be given E6.
 6 (Pause)
 7 I tell you what, to be fair to you I had better do
 8 it in the proper order because I know I will be
 9 criticized otherwise, be passed E5, page 1264.
 10 Do you have it?
 11 A. I do.
 12 Q. This is from Stephen Moore the head of -- or legal
 13 counsel. Do you remember?
 14 A. Yes.
 15 Q. He is sending to Dr Poulsen the investigation report, do
 16 you see it? It is the first attachment?
 17 A. Yes.
 18 Q. 15 September. We then have the report, 29 pages, from
 19 pages 1265 through to 1293. Do you see that?
 20 A. Yes.
 21 Q. The conclusions of that report -- if I take you to 1291,
 22 1291. I'm taking it as an example, Dr Poulsen. "HP".
 23 Do you see about -- just by the second hole punch, "HP":
 24 "For the reasons set out above I consider that
 25 a disciplinary case to answer exists against HP for

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1 alleged gross misconduct in relation to the following
 2 allegation: (1) payments to JF."
 3 That is Mr Ferguson. Over the page:
 4 "(2) Overtime payments to WV."
 5 That is Mr Vos.
 6 "(3) Non-completion of contracting hours."
 7 That's in relation to Mr Vos.
 8 (4) An attempt to interfere with evidence."
 9 Do you see that?
 10 A. Yes.
 11 Q. "(5) Submission of false or forged documents evidence",
 12 same point, it is all about the '09 letters.
 13 A. Yes.
 14 Q. Do you see that? That is the conclusion and the same
 15 applies to -- I could have taken you back to Mr Weller
 16 and Mr Vos on there.
 17 A. Yes, I have read it several times.
 18 Q. So that is the investigation report. There is a case to
 19 answer and it is recommended that she be called to
 20 a hearing. Do you see that?
 21 A. Yes.
 22 Q. 15 September, Okay?
 23 A. Yes.
 24 Q. The rest of that bundle is just more copies of that
 25 letter going out to Dr Poulsen and Mr Weller.

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1 Then we go to E6. You swiftly hold a board meeting
 2 of Bognor Regis Visionplus on 21st September having sent
 3 her the investigation report on the 15th, page 1381
 4 the first page. Do you see?
 5 A. Yes.
 6 Q. Page 1382. The meeting was held on 21st September.
 7 Poulson Weller weren't at the meeting, do you remember?
 8 A. Yes.
 9 Q. Then they put in their rebuttal document, 1390. Do you
 10 see?
 11 A. I do.
 12 Q. That's 26th September.
 13 Then, 28th September, page 1403, they resign their
 14 employment and directorships. 28th September,
 15 page 1403. Do you see that?
 16 A. Yes.
 17 Q. That is acknowledged, 1415, from Specsavers, Stephen
 18 Moore again, 1415, 30th September?
 19 A. Yes.
 20 Q. Do you see that? So by this stage you would agree with
 21 me that we have not yet had any disciplinary hearing at
 22 which they have not turned up, that is right, isn't it?
 23 A. Yes, they had been invited to them but they have not
 24 turned up.
 25 Q. There has been no meeting at which they have not turned

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1 up, a disciplinary hearing at which they have not turned
 2 up. That hasn't happened yet, has it?
 3 A. No.
 4 Q. So all we have at the moment is an investigation report
 5 recommending that there is a case for them to answer.
 6 You understand now the point I'm making to you? At this
 7 stage? You haven't yet concluded guilt, have you? At
 8 this point?
 9 A. No.
 10 Q. Fine. If you then go to -- what then happens, just to
 11 get the chronology right, is at 1446. They issue ET
 12 proceedings, Employment Tribunal proceedings. 1446-1.
 13 Do you see an email from the Claimants' solicitors
 14 attaching the documents that are then 1446-1 through to
 15 1446-82.
 16 We can skip a whole chunk of this file. Those are
 17 their Employment Tribunal claims which they issued on
 18 4th November. That's the next thing that has happened.
 19 By this stage you have not concluded guilt, have
 20 you?
 21 A. No.
 22 Q. Good. Then, we have no meetings, no minutes of any
 23 meetings. No notes of any meetings, no notes of any
 24 discussions from you and what we get is page 1447,
 25 a letter from Stephen Moore, senior employment counsel,

1 who says --
 2 MR POTTS: My Lord, just in terms of that reference to no
 3 discussions, privilege arises at this point, I should
 4 say, in terms of the -- if there is going to be in terms
 5 of the discussions.
 6 MR STUART: Is it taking legal advice? Is that
 7 the privilege that is said to attach?
 8 MR POTTS: Yes, my Lord.
 9 MR STUART: Okay, I'm not going to go there then. I was
 10 actually asking you, Mr Dyson, I was rather more
 11 interested in decisions about the guilt of the Claimants
 12 you see because this is what it is all about. So I was
 13 meaning meetings of the board of Bognor Regis Visionplus
 14 Limited or Specsavers Limited or SOG or any meetings
 15 between directors or anybody who actually concluded
 16 guilt here.
 17 We have no minutes of any such meetings and you have
 18 already confirmed that by November you still hadn't
 19 concluded guilt. A little odd but there we are, that's
 20 your evidence now. Then all that happens is on
 21 6th December a purchase notice is served on the basis of
 22 clause 19.6 and, "We will have all your shares off you,
 23 thank you very much, for £30". Do you see it? At
 24 page 1447.
 25 A. Yes.

1 Q. Haven't we missed a stage, Mr Dyson? This is all very
 2 important, isn't it? We seem to have missed out
 3 the stage of actually concluding guilt.
 4 A. I am not sure that we have. We have got --
 5 Q. I know you are struggling to answer. When did you --
 6 MR JUSTICE HILDYARD: Let him answer whether it is
 7 a struggle or not.
 8 MR STUART: I am sorry, my Lord. "I'm not sure that we
 9 have", is your answer.
 10 A. I think if we go from 131, which we say -- which is
 11 slightly confusing about the -- you know, the report is
 12 the report.
 13 Q. Which concludes there is a case to answer.
 14 A. Correct. And at 132 I don't consider that the conduct
 15 and behaviour of the individuals says that they are
 16 honest --
 17 Q. That is just a --
 18 A. -- and act with integrity. The sums that are in, so
 19 the whole of 132 and I also review their response to the
 20 aspects of the investigation report, which is
 21 the rebuttal letter at this point.
 22 Q. At what point? You have just given evidence that by
 23 November 2011 you hadn't yet concluded guilt and I had
 24 asked you at each stage, "Have you concluded guilt at
 25 this point?"

1 "No."
 2 A. I think that's down to being confused with all of the
 3 books. I'm really clear about my witness statement and
 4 that at 132 I consider all of the evidence, including
 5 the report, that is sent in, the 14 or 15 points that
 6 are on the rebuttal letter.
 7 Q. When did you consider all of the evidence?
 8 A. When I read the whole of the investigation report.
 9 Q. When was that?
 10 A. I couldn't give you a exact date.
 11 Q. Well, how do we know you did it then, apart from you
 12 saying so now?
 13 A. Because I'm on oath and I did do it.
 14 Q. Okay, where were you when you did it?
 15 A. I can't tell you exactly where I was.
 16 Q. What authority do you have to do it anyway? Who has got
 17 to conclude guilt here?
 18 A. I'm the retail director.
 19 Q. Of what company?
 20 A. Of SOG. When I'm wearing this hat, not of Bognor.
 21 Q. Where is the board meeting or SOG document recording
 22 the fact that you are concluding guilt on behalf of SOG?
 23 A. There isn't a document for that but I reviewed all of
 24 the investigation, line-by-line, went through it all and
 25 then I made the decision and I shared that decision,

1 before things were done, with a number of people. It is
 2 in my witness statement, before we made the decision to
 3 get the shares.
 4 Q. What you shared the taking of the decision with a number
 5 of people?
 6 A. I didn't say the paper, I said my conclusions.
 7 Q. Sorry, you didn't hear my question. You shared
 8 the taking of the decision. Are you saying a number of
 9 you decide this had together? The guilt.
 10 A. In terms of making the final decision I think you will
 11 find in my witness statement I had a conversation with
 12 John Perkins, Mark Raines, Mel McAlindon prior to that
 13 before we came to the decision.
 14 Q. So the four of you discussed it? You, Perkins, Raines
 15 and McAlindon?
 16 A. Yes, not all at the same time.
 17 Q. And concluded the guilt?
 18 A. And concluded item --
 19 Q. That they were guilty of fraud and dishonesty?
 20 A. Correct.
 21 Q. When did that happen?
 22 A. Prior to the letter that has been sent out.
 23 Q. Yes, when? You say it happened. When were these
 24 discussions?
 25 A. Immediately in days before the letter would have gone,

1 it wouldn't have been a long time before.
 2 Q. Why are there no notes of any of these discussions or
 3 minutes?
 4 A. Do there have to be?
 5 Q. I thought this was a really important decision. I was
 6 looking at paragraph 5 of your witness statement,
 7 Mr Dyson, paragraph 5.
 8 "The Claimants' involvement" -- this is about half
 9 way down paragraph 5 -- "in the making of such payments
 10 and their conduct in relation to the investigation that
 11 took place, caused SOG to conclude that it should
 12 exercise its option to purchase the Claimants' shares.
 13 This was not a decision that SOG took lightly", do you
 14 see that?
 15 A. Correct.
 16 Q. So this was obviously some sort of really important
 17 decision.
 18 A. It was an important decision, I have read all
 19 the investigation reports -- the Claimants had not
 20 engaged with us in the disciplinary process and the only
 21 piece of evidence which we got was their rebuttal, which
 22 I reviewed all 14 points that are in there and that did
 23 not change my decision.
 24 Q. Change your decision? So you had already made your
 25 decision had you and then reconsidered it to decide

1 whether to change it or not?
 2 A. Bad choice of words. It was taken in consideration
 3 before I reached my decision.
 4 Q. I'm going to suggest to you that the whole thing is
 5 a sham, Mr Dyson. There is no minute of any meeting.
 6 There are no meetings between you and these four people
 7 at which there was a reasoned, thought out conclusion.
 8 There is no disciplinary meeting held, is there, under
 9 SOG's process? You didn't hold a disciplinary meeting
 10 for them not to turn up to.
 11 A. They were invited to attend meetings.
 12 Q. Not a disciplinary meeting under the process?
 13 A. Okay, but you can only engage with people if they want
 14 to engage --
 15 Q. Not at all. Thousands of people are dismissed every
 16 year at disciplinary meetings at which they don't turn
 17 up. You know that, don't you?
 18 A. Yes.
 19 Q. So did you hold a disciplinary meeting at which to
 20 conclude properly on the evidence available as to
 21 whether or not --
 22 A. You can't hold a disciplinary meeting without the person
 23 who is being disciplined in front of you.
 24 Q. Why not? Let's take as an example the allegation --
 25 A. Well, I have never done it.

1 Q. Let's take the allegation that Mr Weller had not, in
 2 fact, stepped back from managing the retail side of the
 3 business and that Mr Vos wasn't doing any work for
 4 the business, that this was all a sham and that he was
 5 only working six hours a week for the business.
 6 If you had held the meeting and asked Mr Rowe, who
 7 presumably would have been at the meeting, being their
 8 regional manager, he would have given you the evidence
 9 that he gave in his summary to you, which is that Barry
 10 had stepped back from the time of the Jena Laker
 11 incident?
 12 A. I fail to understand that you can have a disciplinary
 13 meeting without the person that is being disciplined at
 14 that meeting.
 15 Q. Anyway you didn't have any meeting at all, did you, at
 16 which to conclude this?
 17 A. No, we only had the rebuttal.
 18 Q. You didn't hold a meeting of yourselves to work it
 19 through, work out whether you were going to properly
 20 conclude it, there was no meeting?
 21 A. I had conversations with Mel and with Mark Raines and
 22 a meeting with John Perkins.
 23 Q. Anything in writing? Any emails?
 24 A. No.
 25 Q. The emails dry up at this point, you see. No a single

1 email going backwards and forwards going anywhere, any
2 reason?
3 A. There was no email. I simply just walked from my office
4 to John's office to talk to him.
5 Q. That is odd, isn't it, because Mr Raines, Mr Ryan,
6 Mr Rowe, they would all be involved?
7 A. Why would they all be involved? Michael Ryan is
8 the only person selling the shares. Michael Rowe is our
9 man in the field in the UK. They are not decision
10 makers.
11 Q. I thought Mr Ryan was the man who raised with you
12 the issue of Mr Vos and his overpayments?
13 A. He did but he is not a part of the decision-making
14 process. He is the business transfer manager. He would
15 not be involved in any of that.
16 Q. All right. I have given you the opportunity to show me
17 any documents that you have but the answer to my
18 question is that there aren't any?
19 A. There are no documents but the meetings did take place.
20 Q. Not meeting, conversations you say?
21 A. Two conversations and one meeting.
22 Q. When was the meeting?
23 A. With John Perkins.
24 Q. Okay, when was that?
25 A. I could not give you the exact date but prior obviously

1 to communications going out.
2 MR STUART: I see the time. I don't know want to deal with
3 too many irrelevant things?
4 MR JUSTICE HILDYARD: What sort of meeting was that with
5 Mr Perkins?
6 A. John and I would have offices next door to each other,
7 so I would have then gone in, having considered all of
8 the information that I had got in conversation, I would
9 sit down with John and say, "This is where we are.
10 These are the headlines. Here is the report".
11 He would have been kept up to date as well as we
12 were going through it and then I would then say, "Based
13 on the information that I have got and consultation with
14 Mr McAlindon and Mr Raines and I think Mr Moore as well,
15 we had come to a conclusion that we need to take this
16 action, do you concur?" And John said he concurred.
17 MR JUSTICE HILDYARD: He would have been sent the documents
18 you had?
19 A. My Lord, I would not have sent all of the documents but
20 I am sure I would have taken documents with him to say,
21 "This is where we are and what's happened", et cetera,
22 summaries and the investigation report, yes.
23 MR STUART: Is there any reason why none of this is
24 documented? Are you trying to avoid a paper trail or
25 something? It might be perfectly innocent of you to do

1 that but is there any reason --
2 A. I'm not sure that we document this at any time, when we
3 are --
4 Q. Everything else has been emailed to each other. When
5 you email Mr McAlindon, you email Mr Raines --
6 A. I can't answer your question. There is not a deliberate
7 action here. It is just the way we do things around
8 here. It is the culture of the business.
9 Q. What, not to have anything in writing?
10 A. I think there's plenty in writing.
11 Q. Nothing in writing between --
12 A. On this particular -- there is nothing in writing on
13 that but I have just explained what happened. I can't
14 tell you anything different than that is what happened,
15 conversations and me having a meeting with John Perkins.
16 That's what happened.
17 Q. Did you take notes of your meeting on your little flip
18 pad?
19 A. No.
20 Q. Did he take any notes?
21 A. I couldn't answer the question. It was more of
22 a conversation and discussion.
23 Q. No doubt you have been involved in litigation before,
24 Mr Dyson?
25 A. Yes.

1 Q. You know the importance of not destroying any notes once
2 there's a potential for litigation to arise?
3 A. I do.
4 Q. If there were any documents, if there were any
5 documents, you wouldn't have destroyed them, would you?
6 A. No.
7 Q. You wouldn't have shredded them?
8 A. No.
9 Q. So that is really it, as far as your involvement, isn't
10 it? I'm looking at your witness statement.
11 A. Yes.
12 Q. You go off to Australasia in 2012, is that right?
13 A. That is correct, yes.
14 Q. I just want to understand about the -- it is the final
15 thing I'm going to ask you about.
16 Reporting people to the police, reporting my clients
17 to the police and reporting Dr Poulsen to GMC. Do you
18 remember?
19 A. Yes.
20 Q. Perhaps I should, to be fair to you, take you to
21 the document. The GMC letters are in E7. So this is in
22 2013 -- could you be passed E7. You can put away all
23 the other files. As I understand it, you are saying you
24 don't have any ... so in 2013 there was a reference to
25 the GMC about Dr Poulsen. You know about it?

1 A. Yes, yes, yes.
 2 Q. Were you involved in the decision to report her to
 3 the GMC?
 4 A. I would have been involved in conversations around that
 5 decision, yes.
 6 Q. Who else was involved? These conversations that you
 7 have just described. You ...?
 8 A. I would imagine Stephen Moore.
 9 Q. Stephen Moore is legal.
 10 A. It was probably --
 11 Q. Mr Perkins?
 12 A. No.
 13 Q. Anybody else at your sort of level, Raines or anybody
 14 like that?
 15 A. It was probably me and Stephen Moore.
 16 Q. He is just legal counsel, so the motivation behind it
 17 was yours, was it?
 18 A. The motivation behind it I think was that it had been
 19 identified that we had an obligation to report it.
 20 Q. What in 2013?
 21 A. No.
 22 Q. Then the reporting her to the -- well, not just her,
 23 Mr Weller as well and I suppose Mr Vos as well,
 24 reporting them to the police. This is in your witness
 25 statement --

1 A. It is, yes.
 2 Q. -- at paragraph 137. Penultimate page of your witness
 3 statement, page 33 of the bundle.
 4 You didn't report them to the police until after
 5 they had issued Employment Tribunal proceedings against
 6 you, according to your evidence.
 7 Do you remember I have taken you through
 8 the chronology of 26th September, the rebuttal, then
 9 they issue ET proceedings against you on 4th November
 10 and on 1 December you tell Mr McAlindon to report them
 11 to the police?
 12 A. Correct.
 13 Q. What was your motivation in doing that in December 2011?
 14 A. Because it was such a significant amount of money.
 15 Q. Why not do it in January 2011 when you knew about
 16 the amount of money because you made your own little
 17 notes about it.
 18 A. I can't answer the question other than it was
 19 the appropriate time for us, having considered
 20 everything, that we thought that this was a case to
 21 answer it.
 22 Q. It is not a case to answer. You are reporting them to
 23 the police for fraud.
 24 A. I think that's what I just said, yes. There was a case
 25 to answer. That's why we reported it to the police.

1 Q. Just a case to answer, right. Okay.
 2 I think I better leave it there, my Lord. It is
 3 12.55. I have overrun my estimates twice already.
 4 MR JUSTICE HILDYARD: What's your estimate now?
 5 MR STUART: None. I'm going to stop with this witness.
 6 MR JUSTICE HILDYARD: You have finished your
 7 cross-examination?
 8 MR STUART: I think so, my Lord, yes.
 9 MR POTTS: My Lord, I have a few questions to re-examine.
 10 I'm not going finish before the adjournment. I just
 11 wonder whether I can have the adjournment and deal with
 12 it very quickly afterwards. I think it would be more
 13 efficient.
 14 MR JUSTICE HILDYARD: Thank you, same rules as before.
 15 (12.55 pm)
 16 (The short adjournment)
 17 (2.00 pm)
 18 Re-examination by MR POTTS
 19 MR POTTS: Good afternoon, Mr Dyson. Could you please turn
 20 to E4 please and the transcript from yesterday. In
 21 fact, I'm sorry, it is E3 actually. Could you turn up,
 22 please, to page 772.
 23 This was a document that you were asked about just
 24 towards the end of yesterday before we finished. Do you
 25 see this is an email from you to Mr Ryan on 16 February

1 concerning the proposed sale of Mr Weller's shares.
 2 Do you remember that?
 3 A. Yes.
 4 Q. Could you please pick up the transcript from yesterday.
 5 Do you have the transcript bundle? If you keep
 6 the letter open as well and then go to day 9, page 182.
 7 Just to take you through the context. Line 17, you
 8 see the reference to 772. This is the document.
 9 A. Yes.
 10 Q. The question -- it was put to you:
 11 "They are sort of raising issues about this request,
 12 yes? You see it is forwarded to you."
 13 You say -- the first sentence is read out to you:
 14 "Mike is clearly playing a game and it is one I am
 15 not going to engage in."
 16 And then your answer "Yes".
 17 "Question: You are personally giving the orders
 18 here, aren't you? When you say, I'm not going to engage
 19 you mean I'm not going to engage."
 20 Then I think you asked for some time to actually
 21 read the document. Then:
 22 "We need to stick to the party line and agreed
 23 process. No doubt you will already be planning."
 24 "Answer: Yes."
 25 Then it looks as is if there was some sort of over

1 speaking over the next four lines. Then the question:
 2 "Question: No, no. The process you will already be
 3 planning."
 4 Then back to the document.
 5 "We will need to write to explain the roadmap and if
 6 she wants to go then so be it."
 7 The point was put to you that this ties in with
 8 getting Mr McAlindon involved, the undated February
 9 letter and suspending here on a false charge of
 10 financial irregularity.
 11 Then your response at line 4 is, you say:
 12 "I don't see the connection that you are making.
 13 Mike Ryan has informed me that we are still in the
 14 process of negotiating a different plan from the one
 15 that we are not going to go to, which is, we are having
 16 a retailer in that store with retailer shares."
 17 The question that was then put to you is:
 18 "Question: That is not a plan. That is not
 19 a process. That is not a process. That is a structure
 20 for the store. That is not a process for getting her
 21 out. That is just a -- it is just a suggestion.
 22 Anyway, you actually haven't had that conversation yet.
 23 We will come that in a minute."
 24 In fact, you were not actually -- there was
 25 a comment but you didn't -- you didn't respond to that

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1 and, in fact, you weren't -- you didn't comment on
 2 the rest of the document.
 3 Can I just take you back to the document please.
 4 I would like to just break it down -- it is 772 -- and
 5 ask you about the various things you said as to what you
 6 understood -- what you meant.
 7 You say:
 8 "They are playing a game and it is one I'm not going
 9 to engage in."
 10 What did you mean by that?
 11 A. I meant that they were trying to get a partner in to
 12 the business that they wanted into the business."
 13 Q. Then you say:
 14 "So stick to the party line."
 15 A. Stick to the party line is we want an OO and a retailer
 16 relationship, not an OO and an OO relationship.
 17 Q. What was the roadmap that you wanted Mr Ryan to explain
 18 to them?
 19 "We need to write to them explaining the roadmap."
 20 A. "We need to write to explain the roadmap ..."
 21 I think the roadmap is we are going to -- we are not
 22 going to allow this to happen and the roadmap will be we
 23 are going to have an OO and a retailer or a DO and if
 24 that doesn't suit and she wants to go then so be it.
 25 Q. Finally:

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1 "If she wants to go, then sobeit."
 2 What did you mean by that?
 3 A. I meant that we have already had Dr Poulsen resigning on
 4 more than one occasion and she seems to use it every
 5 time that she doesn't want things to happen, so if she
 6 play that had card again then I was prepared to take her
 7 resignation.
 8 Q. Fine, thank you. That's all from yesterday.
 9 MR JUSTICE HILDYARD: Can I just ask there, in "our agreed
 10 process which no doubt you will already be planning".
 11 What do you mean by ...?
 12 A. That we are not going to allow an ophthalmic optician to
 13 take the shares of a retailing or a dispensing optician.
 14 MR JUSTICE HILDYARD: But what was the agreed process which
 15 still required planning?
 16 A. The agreed process would be that we are not going to do
 17 that and then we would then have to go out and look for
 18 another partner in order to able to bring this store
 19 back-up to strength.
 20 MR JUSTICE HILDYARD: I see. So it is the process of
 21 looking for an OO/DO?
 22 A. Yes, well, retailer.
 23 MR POTTS: Now, today you were asked about reporting to
 24 the auditors and the point was put to you that, you were
 25 reporting to the auditors that there was no fraud going

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1 on whilst at the same time alleging fraud and dishonesty
 2 by the directors of the company. Do you remember that?
 3 A. Yes.
 4 Q. Your response was that there was a document which would
 5 have come to you on which you would have made a note on
 6 to say that Bognor was being investigated and that you
 7 have seen a list in the bundle that says that Bognor is
 8 not on that list and so by default the fact it was being
 9 investigated for fraud must have been communicated to
 10 BDO, to whom that list went?
 11 A. Yes.
 12 Q. Now you weren't shown the document in the bundle which
 13 you referred to. Can I take you to E4 please. If you
 14 turn please to 1082-1.
 15 A. 1082?
 16 Q. -1 and -2 and -3?
 17 A. Is it -01, is it?
 18 Q. No -1 not -10. (Pause) It is 1082-1. It has
 19 the Specsavers letterhead logo on, behind 1082-6?
 20 MR STUART: I think to help, if the witness has 1082-01, if
 21 that's where he is and goes to 1082-06, that's the end
 22 of that little clip that we inserted and then you will
 23 find 1082-1 which is the document Mr --
 24 MR POTTS: I'm sorry, it has not made it into mine. Could
 25 you just have a look at that document.

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1 A. Yes.
 2 Q. And just have a read through.
 3 A. Yes.
 4 Q. Now, was that the document you had in mind?
 5 A. This was the document I was referring to, yes.
 6 Q. Could you explain what this document signifies, so far
 7 as you are aware?
 8 A. It signifies that all of the stores that are on the list
 9 are those stores where we have no investigations or
 10 concerns so, therefore, by default if any of the stores
 11 had got the year end the same as these stores, then that
 12 is a communication to BDO that we have got
 13 investigations going on.
 14 Q. Right, thank you.
 15 My final question is concerning the process leading
 16 up to the decision to serve the post-purchase notice.
 17 I'm looking at the period from September through to
 18 the end.
 19 Now, the first point which you were taken to. If
 20 you have E5 please. At 1332 Mr Stuart sought to take
 21 you through the chronology from September and the first
 22 is you have got an email of 15 September enclosing
 23 the investigation report.
 24 A. 1332?
 25 Q. If you go to the end of that, 1361. Part of the

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1 findings I think you were shown but I am not sure you
 2 were shown the final paragraph at 1361?
 3 A. Yes.
 4 Q. Now, does that accord with your recollection as to that
 5 stage in the process?
 6 A. Yes.
 7 Q. Then what was put to you next was, in fact, that
 8 the next step in the process was their rebuttal and
 9 I think at some point some confusion arose. That is
 10 because the rebuttal wasn't the next stage in the
 11 process. That was what was put in questioning.
 12 The next stage was the board meeting, not their
 13 rebuttal. The board meeting was on 21st September.
 14 Now could you go please --
 15 MR STUART: My Lord, I believe I took next -- I'm looking at
 16 the transcript, I took after the end of E5, I took
 17 the witness straight to the first page in E6, which is
 18 the board meeting and I took him to it, so I don't think
 19 Mr Potts is right.
 20 MR POTTS: Sorry?
 21 MR STUART: I don't think you are right to say that I went
 22 directly from the sending of the investigation report,
 23 directly to the rebuttal notice. I took the witness
 24 next to the first page of E6 --
 25 MR JUSTICE HILDYARD: That is right, Mr Potts.

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1 MR POTTS: My Lord, I'm --
 2 MR JUSTICE HILDYARD: I do not stop you re-examining but we
 3 went to 1381, 1382 and then the rebuttal statement.
 4 MR POTTS: My Lord, maybe I am confused, but on page 77 of
 5 the transcript from this morning it says, "we are going
 6 through the procedure", it says:
 7 "Let's get the sequence right. They set
 8 the investigations findings.
 9 "Yes.
 10 "September?
 11 "Yes.
 12 "And they put in their rebuttal", was the next
 13 question.
 14 MR STUART: And then immediately after that I said, "Perhaps
 15 we had better go to the document".
 16 MR JUSTICE HILDYARD: I'm not going to stop you doing it but
 17 my note, for what worth it is, is that we went to 1381,
 18 1382 and then the rebuttal.
 19 MR POTTS: That's fine anyway because -- I'm sorry, for
 20 that. 13 -- which is into E6.
 21 Now, you were taken to the minutes of the meeting
 22 and it was put to you that there was -- the issue which
 23 was put was there was no disciplinary hearing.
 24 Now I think you were shown the minutes but if you
 25 look at 1385 in relation to Mr Weller, as to what was

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1 actually resolved, you can see, firstly, at the first
 2 hole punch do you see that?
 3 A. Yes.
 4 Q. There is a reference to Mr Weller. Then, in terms of
 5 the resolutions, you see those at 1387, in terms of the
 6 motions and, particularly, just read those four?
 7 A. Yes.
 8 Q. That includes authority for disciplinary proceedings, is
 9 that right? Does that accord with your recollection?
 10 A. That's right, yes.
 11 Q. Now you were then shown the rebuttal at E6, 1390. You
 12 refer to this long document, yes?
 13 A. Yes.
 14 Q. Now I think what you weren't shown is that in fact this
 15 document came under cover of a letter and you can see
 16 that -- which I don't think you were shown, which is at
 17 1403 and you can see that the rebuttal was under
 18 enclosure because if you look at 1404, the penultimate
 19 paragraph. Can you read that? It says:
 20 "We enclose our rebuttal evidence and supporting
 21 documentation."
 22 A. Yes.
 23 Q. You were not taken to this letter. Just have a look at
 24 that letter. That is a letter of resignation of
 25 directorships and employment?

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1 A. Yes.
2 Q. Now the allegation which was made -- point which was
3 made to you was that there was no disciplinary hearing.
4 Can I put that question to you again and can you say
5 why there was no disciplinary hearing, so far as you can
6 remember, following this letter?
7 A. Because they put in and said that they wanted
8 the rebuttal letter to be considered and that they
9 hadn't attended any disciplinary hearings.
10 Q. What was the reason why they hadn't attended any
11 disciplinary hearings and why were there no disciplinary
12 hearings thereafter, after this date, 28 September, with
13 them?
14 You were shown the rebuttal but you were not shown
15 the letter of resignation and the challenge was, to you,
16 as to why there was no disciplinary hearing. Now,
17 having seen the letter of resignation, does that assist
18 in the chronology that was put to you?
19 MR STUART: My Lord, again I hesitate, of course I do, but
20 page 79 of today's transcript, line 1.
21 MR JUSTICE HILDYARD: We did go the document.
22 MR STUART: On this point I took him straight to the letter
23 of resignation.
24 MR JUSTICE HILDYARD: Do you wish to answer it, Mr Dyson?
25 A. I'm not sure where the question is going, but it is to

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1 do with the truth of the matter.
2 MR POTTS: My Lord, I have no further questions.
3 MR JUSTICE HILDYARD: Mr Dyson, just one or two questions
4 where I have got myself confused. I do apologise. If
5 you are not the right person to answer you just let me
6 know.
7 This one I think probably you can answer. Do you
8 remember that document at E2, 448, you were asked
9 an awful lot of questions about it with respect to
10 the meeting which was to be without prejudice --
11 A. Yes.
12 MR JUSTICE HILDYARD: -- on 6th March 2009. Do you
13 remember?
14 A lot of questions were put to you as to whether
15 that was informed by legal advice or any discussions
16 with your legal department and I think I have got it
17 right that your answer was no.
18 A. My answer was no. I remember putting that document
19 together on my own.
20 MR JUSTICE HILDYARD: Yes. But I notice at the top that it
21 says:
22 "File note".
23 Did you have a file with internal notes of this
24 kind, be it for your own guidance or minuting meetings
25 or any such?

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1 A. No. I think this refers to -- this was handwritten and
2 in order for it not to be not available for future
3 I wrote and gave that to my secretary and said, "This is
4 a file note, this is to be put in the Bognor file".
5 Does that make sense?
6 MR JUSTICE HILDYARD: Right.
7 A. These were originally -- they would have been
8 handwritten on my pad and then I would have kept this --
9 MR JUSTICE HILDYARD: What happened to the handwritten ones?
10 A. Well, when my secretary typed these up she would just
11 dispose of them.
12 MR JUSTICE HILDYARD: But you kept no -- a lot of people
13 write notes to the file, as it were, and they then have
14 a file which is either personal or subject specific.
15 Did you have either of those within your office?
16 A. There would have been a Bognor file because we have a
17 file for all the stores.
18 MR JUSTICE HILDYARD: For each shop, yes.
19 A. And if anything comes in it will just be put that into
20 the various files that are there.
21 MR JUSTICE HILDYARD: Right. So this came from the Bognor
22 file, did it?
23 A. I assume so. I think this would have been taken out of
24 the file after I had gone to Australia, I think. I'm
25 not sure.

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1 MR JUSTICE HILDYARD: Okay. Can you give me a sense again
2 of the office. You are all -- all 550 are on this
3 single floor in this office in Guernsey, so it must be
4 very tight however big the building?
5 A. Yes, it is a huge building.
6 MR JUSTICE HILDYARD: Do you have a separate office?
7 A. I have a separate office, yes.
8 MR JUSTICE HILDYARD: Who are your sort of nearest
9 colleagues?
10 A. Richard Holmes, marketing director; John Perkins; Doug
11 Perkins and then Pauline, the HR director and Paul
12 Fussey so we are all in a line within say 50 metres of
13 each other.
14 MR JUSTICE HILDYARD: Each with a separate office or is it
15 open plan apart from the sort of high --
16 A. No, they are separate offices but with an open door
17 policy.
18 MR JUSTICE HILDYARD: Right and who gets the separate office
19 and who is open planned and what is the cut off?
20 A. It is only the main board directors who have offices.
21 MR JUSTICE HILDYARD: Yes, thanks.
22 Can I just ask you about the disciplinary
23 proceedings issue which you were asked by both counsel
24 about, just to clarify my mind.
25 Was there ever a -- did you ever try and convene

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1 a disciplinary meeting?
 2 A. I think notices were sent to each individual to come
 3 along to it and they were defined.
 4 Q. So there were notices sent, were there? I have missed
 5 those. It is my fault I am sure but I hadn't seen
 6 those.
 7 A. My Lord, I can't say I have seen them but I could
 8 imagine that following the board meeting to invite
 9 people it is normally a process that we do because we
 10 would want to talk to people.
 11 MR JUSTICE HILDYARD: You would normally send them out if
 12 you sent them out.
 13 A. Yes.
 14 MR JUSTICE HILDYARD: Because I will be corrected if I'm
 15 wrong but I don't think I have seen any.
 16 MR POTTS: My Lord, no.
 17 MR STUART: My Lord, we went through all of the documents
 18 with the witness there are.
 19 MR JUSTICE HILDYARD: You did but I just wanted to make sure
 20 I hadn't overlooked anything.
 21 MR STUART: That stage of the process never got that far.
 22 MR JUSTICE HILDYARD: Can I ask you about your policy which
 23 I think you say you firmed up to insist in all ordinary
 24 circumstances on a DO as well as an OO to cover both
 25 the, as it were, the prescription and the retail side.

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1 A. Yes.
 2 MR JUSTICE HILDYARD: Presumably that rather depended,
 3 didn't it, on the experience of the person who might,
 4 for example, have become an OO having been a DO or some
 5 such.
 6 Would it make a difference?
 7 A. I would say there are always exceptions to the rule. So
 8 that could be but I would say that that was not a major
 9 incidence. It would have been a lesser incidence.
 10 So when I joined in 1998 I was brought in because
 11 there was no retail disciplines in the business because
 12 it was being run by opticians and so I then, as I looked
 13 at the business and examined it, realised that we could
 14 be better served with people who could have front of
 15 house management and that's when I started to bring
 16 retailers in from other businesses, not necessarily
 17 opticians, because I can train them opticianry but
 18 I could not train some of the opticians retailing, if
 19 that made sense.
 20 MR JUSTICE HILDYARD: So you as a retailing man, as it were,
 21 brought that --
 22 A. Concept in and I also brought the stage 1 in to test
 23 people for commercialism, people were coming into
 24 the business and because they had money they would be
 25 given the keys to the store and then when the stores

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1 weren't successful we were surprised so I said we have
 2 to test people's commercial acumen as much as whether
 3 they are qualified to be able to be an optician or
 4 a dispensing optician so the stage 1 actually goes after
 5 that commercial acumen.
 6 If they have got it, they pass; if they haven't,
 7 then they go to boot camp because we don't say they've
 8 failed. They may be spend some time in store or go to
 9 a different store for experience and then they come back
 10 and normally most people would pass the stage 1 process.
 11 MR JUSTICE HILDYARD: So if they, having gone to boot camp,
 12 and flown through the whole thing without even having to
 13 go to boot camp that means that they have, as it were,
 14 past your test for the retailer side of the operation.
 15 A. And also for -- because we didn't just make that for
 16 the retailers, we did it also for the ophthalmic
 17 opticians as well, so we had commercial people with the
 18 various skills running the business and not people who
 19 didn't have a commercial side to them, so the store
 20 would be more successful.
 21 MR JUSTICE HILDYARD: But it was focused on retail or
 22 commercial acumen and you, with your retailing
 23 experience, felt that anyone who would have that
 24 responsibility should have passed that sort of exam.
 25 A. Yes.

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1 MR JUSTICE HILDYARD: If necessary, being sent off to boot
 2 camp for that purpose?
 3 A. Yes.
 4 MR JUSTICE HILDYARD: Thank you.
 5 Hold on. Yes, because I noticed that -- you might
 6 have a look at E4, 867. You will remember this.
 7 I think you were taken to the line but I just wanted to
 8 make sure that I had your help on it.
 9 At 867, about six lines from the bottom, under
 10 the heading "RDC views on proposal", this is where
 11 the recommendation is that Mr Yogaratnam be, as it were,
 12 approved, it says:
 13 "Rustington", which I think we have seen is another
 14 shop, "... just along the coast ..."
 15 I think that is coast. We see that problem again.
 16 A. Yes.
 17 MR JUSTICE HILDYARD: "... also runs very effectively under
 18 the same two OO proposed structure."
 19 A. Yes.
 20 MR JUSTICE HILDYARD: Any special features about Rustington
 21 that I should know about?
 22 A. Prior to 1998 and my arrival clearly there was a whole
 23 hotchpotch of different two OOs and DOs. After 1998
 24 I then tried to focus -- whenever there was a change of
 25 a new store.

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1 Now in those stores that have got that arrangement,
 2 their joint venture agreement will say these shares can
 3 only be sold to an OO so regardless of whether I want to
 4 change that, unless the partners in the store agree to
 5 it, then those shares can only be sold to an ophthalmic
 6 optician. So I don't know specifically but those could
 7 be two reasons why that persisted.
 8 Q. But the experience works, at least at Rustington, that
 9 a dual OO system was capable of working perfectly well?
 10 A. It all depends on how busy the store was as well because
 11 the busier it is the more important the retail skills
 12 are.
 13 MR JUSTICE HILDYARD: It depends on the person; it depends
 14 on the store.
 15 A. Yes.
 16 MR JUSTICE HILDYARD: Thank you. Do forgive me. (Pause)
 17 I'm not as polished on the examination process as
 18 counsel, as you can tell. Yes, you were asked lots of
 19 questions on a document at E2, 397. Do pass back all
 20 the rest of the files, please.
 21 Do you remember this? 18th September 2008?
 22 A. Yes.
 23 MR JUSTICE HILDYARD: I'm just trying to get clear in my
 24 mind how you were able to put together this letter. You
 25 bring to mind your previous letter, the previous July,

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1 and then you say:
 2 "I'm concerned to learn that once again you appear
 3 to be communicating in the same aggressive and
 4 inflammatory tone, both to members of the retail support
 5 and your regional chairman Carol Slark."
 6 How did you know and what documents did you have
 7 before you when writing that letter?
 8 A. I actually had the letter from Carol Slark and that was
 9 given to me by the communications team, probably by
 10 Jill Clark and I also had copies of supporting joint
 11 venture partners saying that this was unacceptable
 12 because they had been copied in on the correspondence,
 13 so I had actually had a copy of it when I started to
 14 write.
 15 MR JUSTICE HILDYARD: From Carol Slark and from, who were
 16 the others?
 17 A. From joint venture partners. They are in the file
 18 somewhere, so other partners who were at the meeting,
 19 they were copied in on document and they also objected
 20 to the tone of the letter.
 21 MR JUSTICE HILDYARD: Right. Then, is it right, just
 22 looking at the last paragraph:
 23 "I don't intend to respond to your specific
 24 allegations in this letter but will advise David Clark,
 25 director of business performance, to contact you to

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1 arrange a visit to discuss all your concerns relating to
 2 the partnership."
 3 Now did you have in mind a visit by him or by you?
 4 A. This was a visit by him because this is not the mystery
 5 shopper one, this is the one before, so this was
 6 concerning the hard coat on the lenses.
 7 MR JUSTICE HILDYARD: This was the hard coat, is it?
 8 A. Yes and also the letters from the regional chairman.
 9 MR JUSTICE HILDYARD: Thank you. I think that's it and I'm
 10 very grateful to you.
 11 MR STUART: My Lord, just two questions arising.
 12 MR JUSTICE HILDYARD: Yes, of course.
 13 MR STUART: Two points. I will take them in reverse order.
 14 Further cross-examination by MR STUART
 15 MR STUART: His Lordship asked you about Rustington, you
 16 mentioned Rustington prior to 1998, et cetera. Is not
 17 right that the shares in Rustington were sold in 2005 to
 18 two OOs, Mr David Simons and Rishi Patel?
 19 A. That's because Rustington was actually in
 20 the catchment -- because each practice has a catchment
 21 that they are entitled to have and so this store,
 22 I understand, I'm not a 100 per cent certain, would have
 23 been within the catchment and so David would have been
 24 given first option on it.
 25 Q. But is it right that in 2005 the shares in that store

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1 were sold to two OOs, Mr David Simons and Mr Rishi
 2 Patel?
 3 A. I can't -- I don't know but if you are saying that that
 4 is the case --
 5 Q. You would agree with it?
 6 A. -- then it sounds as if it is correct.
 7 Q. Final question, you were asked about the file note at
 8 448 and you said that it would have been put in
 9 the Bognor file.
 10 Can you just describe to us what this file --
 11 because we have not had disclosure of anything called
 12 the Bognor file. I just want to understand what is
 13 the Bognor file? Do you have a filing cabinet?
 14 A. There are filing cabinets all around in SOG.
 15 Q. Okay. So if we went to Guernsey and asked to see
 16 the Bognor file, the Bognor Regis file, your PA could go
 17 to a filing cabinet, find the Bognor Regis file, pick it
 18 out and in there would be documents about Bognor Regis?
 19 A. I don't know that now because I have not been there for
 20 two years --
 21 Q. Okay, at the time you were there?
 22 A. At the time I was there there would have been a Bognor
 23 file, yes.
 24 Q. Was it like a Manila paper -- we are talking about
 25 a paper file now?

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1 A. Yes.
2 Q. Cardboard file --
3 A. It would have anything to do with, you know, it would be
4 anything that comes in that we felt was relevant to
5 store in the file would just go in there.
6 Q. So all the stuff about Mr Vos and everything from 2008
7 and 2009, that would go into the file?
8 A. It would be, that document that you have seen would have
9 been in that file.
10 Q. That one would yes but is what you are saying everything
11 to do with that store that came by way of paperwork into
12 your offices in Guernsey?
13 A. No, no, it wouldn't be necessarily from the legal team
14 or anything, it would be more operational.
15 Q. Okay, so all the operational things then. So if Mr Rowe
16 had done a report on Mr Vos' invoices and a meeting
17 about that sort of thing, operational things --
18 A. Not from Mr Vos because he works in the UK.
19 Q. But if he had sent it over to you --
20 A. It could end up there, yes.
21 MR STUART: Thank you very much, my Lord.
22 Further re-examination by MR POTTS
23 MR POTTS: My Lord. Rustington, is that store still held by
24 two OOs.
25 A. I think now, it has now got a retailer in there. I read

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1 somewhere because I was not involved in it but I am sure
2 I have read within the files that it has now got
3 a retailer and an OO in there.
4 Q. Secondly, the stage 1 exam and the emphasis on retail.
5 If an optician goes through the course, does he come out
6 approved as a retailer or is there some streaming?
7 A. No, no, it is not because of retail, it is commercial
8 acumen so we are going to leave them in charge of
9 a business that is going to take a million pounds plus
10 so we need to make sure that both of those partners are
11 commercially aware because we wanted the best
12 performance out of the store.
13 Q. Yes, I see. Then the final point on tone, you were
14 taken to 397, by his Lordship, the letter in terms of
15 the concern about the tone from Carol Slark, is it?
16 A. Yes.
17 Q. I think you referred to fact that you had in front of
18 you documents and round robins from people?
19 A. Yes.
20 Q. Can you go back, see if this refreshes your memory.
21 Back in 383?
22 A. Sorry is this in E2?
23 Q. Sorry, E2. Page 397 is the letter of 18th September.
24 The fourth paragraph down is the reference to
25 the tone used in challenging the newsletter?

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1 A. Yes.
2 Q. I think you referred to the fact that you had had
3 a number of communications?
4 A. Yes.
5 Q. Can I just take you back to -- I'm not sure we saw all
6 of these actually -- 383. This seems to be a lot of
7 internal communications. 383 is the round robin. That
8 is from Susannah Hart. It is at the top of the page.
9 Then there is a chain down. Can you see at 384, this is
10 from Neil?
11 A. Yes.
12 Q. Let's have a look at that. Is that one documents you
13 had in mind.
14 A. Yes.
15 Q. Then 386 -- 386 is the same document we just looked at.
16 Then 394. This is one from Carol Groves(?).
17 A. Yes, this is the one from Carol.
18 Q. Actually there is one on 389 as well. In the middle of
19 the page, Carol, Rob.
20 A. Yes.
21 Q. These people are who? Who are these various people?
22 A. These are all joint venture partners.
23 MR POTTS: Yes, I see.
24 My Lord, I have no further questions?
25 MR JUSTICE HILDYARD: Please forgive me, I have just got one

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1 question. It may be too general for you to answer but
2 you are high up in the organisation obviously.
3 A. Yes.
4 MR JUSTICE HILDYARD: You need in order to perform your
5 supervisory function, you need eyes and ears. Who are
6 your eyes and ears, would you say?
7 A. From a store operational point of view?
8 MR JUSTICE HILDYARD: Yes.
9 A. The retail support team, so Mark Raines, the RDCs, RPCs,
10 the trainers, everybody that basically I think works in
11 the field in the UK and in the Republic of Ireland.
12 MR JUSTICE HILDYARD: So you rely on them, as it were, to
13 keep you informed because it is impossible for you to --
14 A. We don't actively go out to make them spies --
15 MR JUSTICE HILDYARD: No, of course.
16 A. -- because otherwise the relationship wouldn't be good.
17 We go to try to go there help and to move it forward.
18 It is only in exceptional circumstances, where people
19 are worried or concerned, that I think that would then
20 be raised.
21 MR JUSTICE HILDYARD: Yes. I think I shall want at some
22 point an organogram which is actually vouched for and
23 agreed in order that I can see the reporting lines.
24 Obviously, anyone reporting directly to you would be one
25 of your eyes and ears, that is the purpose of the

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1 reporting line, presumably?
2 A. Yes.
3 MR POTTS: We can do that, my Lord.
4 MR JUSTICE HILDYARD: Thank you.
5 MR STUART: My Lord, just for the purpose of the organogram,
6 just to get it clear.
7 Just in relation to the Bognor store -- at the
8 material time -- is Mr Rowe either the RDC or the RPC
9 for the Bognor store.
10 A. He is the RDC.
11 Q. He reports up to the RSTY, Mr Raines?
12 A. No, he reports to Mr Raines who is the director,
13 the retail director for the UK.
14 Q. That's right, who is in charge of the RST, that's the
15 team is it, the retail support team?
16 A. Yes, with Jack Ismail, I remember being trained.
17 Q. With Jack Ismail fitting somewhere into the --
18 A. He did move into that role once he had finished his
19 training and development.
20 Q. Is there anybody else -- we are going to have a very
21 broad organogram -- but I just at the moment want to be
22 clear about the Bognor Regis store and eyes and ears.
23 Is there anybody else that you can think of that we
24 should be fitting into the organogram. Mr Rowe,
25 Mr Ismail, Mr Raines, you? Anybody else?

1 21

1 A. The trainers, the RDM, but they are part of the RST so
2 there are three people in each region as a minimum
3 looking after all of the operational issues.
4 Q. They are training the staff, the trainers?
5 A. They are training the staff, yes, some of them are
6 training the staff.
7 MR STUART: Got it. Thank you very much my Lord.
8 MR POTTS: I have no further questions, my Lord.
9 MR JUSTICE HILDYARD: Mr Dyson, thank you very much indeed.
10 It has been a long haul. I'm afraid you have even more
11 to look forward to in the other matter, have you?
12 THE WITNESS: Yes.
13 MR JUSTICE HILDYARD: Thank you in the meantime, anyway.
14 THE WITNESS: Thank you.
15 MR STUART: I promised Mr Dyson much less to look forward to
16 in the other matter, my Lord, because we went through a
17 lot of the general stuff already.
18 MR JUSTICE HILDYARD: He is probably sceptical by now.
19 MR STUART: He is of course if I say that.
20 My Lord, Mrs Birdi, you saw her I think just come
21 in. So she has made her time estimate and I understand
22 we can then move on to her.
23 MR JUSTICE HILDYARD: Shall we do that and then deal with
24 any housekeeping once she had been released.
25

1 22

1 MRS SWARANDEEP BIRDI (sworn)
2 Examination in chief by MR STUART
3 MR JUSTICE HILDYARD: Thank you very much for coming and
4 reorganising your schedule.
5 A. You will have to excuse me. I have a bit of a sore
6 voice.
7 MR JUSTICE HILDYARD: Yes, I think I have spread it around
8 the place. You have some water.
9 MR STUART: Mrs Birdi, if you would be passed bundle B.
10 I see you have it already. If you will go to divider 9.
11 A. Sorry, I didn't hear that.
12 Q. Divider 9. Near the back. Do you have page 163?
13 A. Yes.
14 Q. You see the top right-hand corner is the page numbering,
15 do you see that?
16 A. Yes, I do.
17 Q. That's a statement I think that you made and it is
18 signed on page 165; is that your signature?
19 A. It is.
20 Q. Did you make that statement?
21 A. Yes, I did.
22 Q. And are the contents true?
23 A. Yes, they are.
24 Q. Hopefully if you then go right to the back of the bundle
25 at 174 ...

1 23

1 A. I don't have that.
2 Q. You don't have it.
3 I see his Lordship too, looking. Is your Lordship
4 all right?
5 MR JUSTICE HILDYARD: I will share my problems with you in
6 a jiff.
7 MR STUART: I see you have lost a C.
8 MR JUSTICE HILDYARD: On you go.
9 MR STUART: Okay. You don't have a 174?
10 A. I don't, no. (Document handed)
11 MR STUART: Does your Lordship have a 174? That's her
12 second statement.
13 MR JUSTICE HILDYARD: If you have a copy that would be
14 marvellous. (Document handed)
15 Thank you.
16 A. Thank you.
17 MR STUART: This is a short statement that you made earlier
18 this week. Do you have that?
19 A. Yes, I do.
20 Q. Is that your statement?
21 A. Yes, it is.
22 Q. And are the contents of that true?
23 A. Yes, they are.
24 Q. I think you brought with you the bags of shreds that
25 you referred to in that statement?

1 24

1 A. Yes.
 2 Q. Is that those two bags there? (Indicated)
 3 A. Yes, they are.
 4 Q. Can you just explain because even myself I don't quite
 5 understand. There are two bags. There is a big bag and
 6 there's a little bag?
 7 A. Yes.
 8 Q. Can you just explain what that is?
 9 A. Yes. Basically, it is the shredding that was in
 10 the office, found in the office on 26th March after loss
 11 prevention had been in and documents were left
 12 everywhere and I noted there was mess all around
 13 the shredder so I knew things had been shredded and
 14 I looked in the shredder and I noticed that those were
 15 pay slips and they could only have come from the filing
 16 cabinet.
 17 Q. When you say "those", what are you referring to?
 18 A. Those in the little bag.
 19 Q. You are referring to the little bag?
 20 A. Yes, they were taken out of the shredding and there are
 21 still more pay slips in there but I pulled them out to
 22 show that it is actually pay slips that had been
 23 shredded and they could only have come from the filing
 24 cabinet.
 25 Q. Just explain the "only have come from the filing

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1 cabinets". You see, we have no knowledge of your case,
 2 which I know in your case is a completely different
 3 case. You weren't rejected on grounds of fraud or
 4 dishonesty or anything like that?
 5 A. They tried.
 6 Q. I don't even want to go there, Mrs Birdi.
 7 A. Absolutely.
 8 Q. If you just explain to the Court --
 9 A. Basically, in our office we had a filing cabinet where
 10 we kept all the staff information files, all the private
 11 and confidential stuff, pay slips, payroll, and on
 12 26th March loss prevention went into the store without
 13 my knowledge, my staff phoned me to let me know.
 14 When I spoke to Mel McAlindon I thought that he was
 15 going to be investigating, re-open an investigation into
 16 my co-director who had been caught stealing but he said
 17 to me quite clearly that, "No, we are investigating
 18 you".
 19 He asked me if I could come down that day and
 20 I couldn't so I was due to meet him the next day.
 21 I went into the office in the evening to sort out
 22 a cleaner's invoice and that's when I saw all
 23 the confidential documents everywhere and I saw that
 24 things had been shredded. There was a mess all around
 25 the shredder and my first reaction was they have been

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1 shredding documents.
 2 When we looked in there we could see pay slips had
 3 been shredded so we knew that they had come from
 4 the filing cabinet because they wouldn't have been
 5 anywhere else, so I brought it home.
 6 MR STUART: Mrs Birdi, if you just wait there, Mr Potts has
 7 some questions for you.
 8 Cross-examination by MR POTTS
 9 MR POTTS: Good afternoon. Now, could I ask you to take up
 10 your first statement first and we will deal with that.
 11 Just in terms of ... in fact, this touches on some
 12 of the points. In paragraph 3 you refer to your fellow
 13 director, I think you have just mentioned, who was
 14 caught stealing?
 15 A. Yes.
 16 Q. You say he was dismissed. I think he actually resigned,
 17 didn't he?
 18 A. Well, my understanding of employment law is if you say
 19 to somebody, "If you don't resign we are going to report
 20 you to the GOC, we are going to report you to the police
 21 and if you don't sell your shares at 55 grand as opposed
 22 to 170 grand", then I consider it constructive
 23 dismissal.
 24 Q. I see, okay. I put it to you, in fact, Mr Patel
 25 resigned.

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1 A. No, he was forced to resign. Why would he sell his
 2 shares for £55,000 when they were worth £170,000? They
 3 had two willing buyers. £170,000. Why would he sell
 4 them to Specsavers, SOG, for £55,000 unless he was
 5 forced?
 6 Q. You refer to his shares being sold for an undisclosed
 7 price in your statement?
 8 A. Yes.
 9 Q. But you have just referred to a price?
 10 A. Yes, because when I was doing my disclosures I happened
 11 to see a document that stated it was £55,000 that he
 12 sold his shares to SOG for.
 13 Q. So you are saying you didn't know at the time?
 14 A. No, I didn't see it at the time, no. In fact, I queried
 15 with head office as well and loss prevention and Derek
 16 Dyson never returned my calls.
 17 Q. If I may, I am going to take you to your witness
 18 statement which you just filed on 6th November in
 19 the Dartford proceedings in relation to this. Could
 20 a copy please be provided to the witness and for my
 21 friend. (Documents handed)
 22 Can you read paragraph 90 please. Perhaps to put
 23 the context. 87 deals with the position -- this is
 24 talking about February 2007 correct?
 25 A. Yes.

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1 Q. This says, paragraph 90, at this time, this is
 2 February 2007, you spoke to Danny Blundell(?) --
 3 A. Yes, I did.
 4 Q. -- from financial planning. Is he from SOG?
 5 A. He is, yes.
 6 Q. It says:
 7 "He told me that the final sum paid was £55,000."
 8 A. Yes.
 9 Q. So --
 10 A. He did, yes. He did tell me but I wasn't quite sure if
 11 that was actually the case.
 12 Q. Well, sorry, I thought you said that you weren't told
 13 the price at the time.
 14 A. No, he said to me -- he said it was disgusting I hadn't
 15 been told. He went away to speak to somebody. Then he
 16 came back and he said, "I think they were sold for 55",
 17 and he said that. I was not quite sure so I was phoning
 18 Derek Dyson up and Derek Dyson was not returning any of
 19 my calls and then I got a call from loss prevention, Mel
 20 McAlindon, and he said to me to stop making pestering
 21 calls to head office so I was not sure, was that right,
 22 was that not right. But then when I have subsequently
 23 seen the document I know for sure it was 55.
 24 Q. I see. Your evidence to the Court was it was not until
 25 you saw disclosure that you were informed of the

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1 price --
 2 A. No.
 3 Q. -- but you were informed of the price at the time?
 4 A. No, I was not a 100 per cent sure it was 55 at the time.
 5 Q. Well, you say it just confirms what he told you at the
 6 time. Isn't that what it says in paragraph 90?
 7 A. Now I have seen the physical document I can say, yes, it
 8 was £55,000.
 9 Q. So all the document does is confirm what you were told?
 10 A. Yes.
 11 Q. Now in terms of the price, which you refer to and
 12 the price -- in fact, what happened was the shares at
 13 the time were valued for £70,000, weren't they?
 14 A. I remember -- I believe -- was it yesterday? I can't
 15 remember, my days are muddled up. Somebody had said --
 16 I don't know whether it was yourself -- that the price
 17 of the shares are what somebody is willing to pay for
 18 them. If you look in the transcripts it's in there.
 19 Now there were two buyers there who wanted to pay
 20 £170,000. One of them put in writing and the other one
 21 had written formally as well.
 22 So if the shares -- if someone is willing to pay
 23 170, the shares are worth 170. Also, we bought
 24 the shares at 125. So the turnover was much higher, so
 25 you are telling me when we bought our shares in 2000 it

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1 was now worth 70 in 2007? I don't think so.
 2 Q. The shares were sold for £60,000, weren't they?
 3 A. I don't know. I thought -- no, no, the shares were then
 4 sold to the guy who was going to buy them for 170, for
 5 60, Mr Singh.
 6 Q. So the answer to my question is, yes, they were sold for
 7 60,000?
 8 A. Not the document I have seen, it says 55.
 9 Q. So they were sold at the same price --
 10 A. Sold, sorry, I misunderstood you. Yes, they were sold
 11 at 60. Sorry.
 12 Q. In fact, what had happened was, in fact, that £15,000 of
 13 costs were incurred by the loss prevention unit in
 14 investigating misconduct which were not passed on to
 15 the store. Is that right?
 16 A. Well, in the disclosures I have seen that, yes, now.
 17 Q. So, in fact, what happened was having paid £55,000 for
 18 the shares and incurred 15,000 in cost, they were sold
 19 on for £60,000. So SOG, in fact, made a loss on
 20 the transaction of £10,000, didn't it, because it paid
 21 out 55,000 for the shares, 15,000 of costs but only
 22 recovered 60,000 on the sales?
 23 A. You see -- I mean, I didn't realise we would be going
 24 through my witness statement but if we are going to go
 25 down that route --

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1 Q. I'm just -- you made these points yourself in evidence
 2 so I'm just dealing with those points.
 3 A. Let me answer this. It says that Nim said that he would
 4 pay £15,000 for the loss prevention charges on the day
 5 he was forced to resign, shall we put it like that?
 6 And then there are in the disclosures from SOG,
 7 there is evidence to show that they were still billing
 8 the store for Nim's investigation and Derek Dyson was
 9 part of that. Loss prevention was communicating to
 10 Derek Dyson regarding that and that was months later so,
 11 the question is why is the store still being billed for
 12 Nim's charges if they were accounted for in these
 13 shares?
 14 Q. Let's move on. In paragraph 3 you also refer to
 15 the fact that no report was made to the General Optical
 16 Council in 2007 concerning Mr Patel. Now, having
 17 resigned, Mr Patel was obliged to offer his shares to
 18 Specsavers under the shareholders' agreement, wasn't he?
 19 A. Well, he was forced to resign and sell his shares for
 20 £55,000. He was stealing. He should have been
 21 reported. I was told by loss prevention they would come
 22 in, they would discuss with (inaudible) show us
 23 the evidence and then I was told he would be prosecuted,
 24 the business would not lose any money.
 25 He was not prosecuted. They ripped him off with his

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1 shares, they gave him the company car and they gave him
2 a reference.
3 Q. Just to break that down and go back to my question.
4 Having resigned, contractually he was obliged to offer
5 his shares to Specsavers under the shareholders'
6 agreement; wasn't he?
7 A. Yes, if you say so.
8 Q. If a director leaves for whatever reason, they are
9 obliged to offer their shares to Specsavers.
10 A. Well, I have been sacked and I still own the shares of
11 Dartford.
12 Q. Mrs Birdi, as you know, the exercise -- the option has
13 also been exercised in your favour as well, hasn't it?
14 Yes?
15 A. Has it? Okay.
16 Q. Well, it has and --
17 A. If you say so.
18 Q. In fact, there was an agreement between the parties in
19 relation to your action that your shares will be
20 purchased at fair value, which is in accordance with
21 the provisions of the agreement?
22 A. Yes and that was 22 months after you -- I was thrown out
23 of the store by SOG.
24 Q. The issue for trial next year is in relation to, as you
25 allege, whether there should be some adjustments to

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1 the valuation to take account of various allegations
2 that you make. Is that right? Is that your
3 understanding?
4 A. Well, that's what -- unfortunately, that is what it came
5 down to, yes, in the pre-hearing review.
6 Q. That's what the court ordered?
7 A. That is right.
8 Q. That was against your wishes, correct? You opposed
9 that?
10 A. Well, I wanted it to be expanded a bit further but --
11 Q. Okay. So, under -- so he was obliged to offer his
12 shares at fair value under the terms of the
13 shareholders' agreement, correct?
14 A. If you say so, yes.
15 Q. I can show you one of the shareholders' agreements?
16 A. That's fine, if that's what you say.
17 Q. I don't want you to accept something if you are not
18 comfortable with it. Would it be helpful to show you
19 one of the shareholders' agreement?
20 A. No, I don't want to see it. If that's what you say all
21 I know is in my case I'm still a shareholder and I don't
22 work for Specsavers so, if you say so, I will accept
23 that.
24 Q. Okay. Now, in fact, as regards reporting, at that time
25 in 2007, the Dartford company wasn't a business

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1 registrant with the GOC, was it?
2 A. That I found out very recently, actually.
3 Q. Is the answer yes to the question?
4 A. Yes. It should have been. Why it wasn't I don't know.
5 Q. In those circumstances --
6 A. That's a failing.
7 Q. In those circumstances, unlike now there was no
8 reporting obligation under the GOC code of conduct?
9 A. Oh no, there is definite reporting under the GOC
10 contract, as far as I'm concerned. If an optometrist or
11 DO was registered with a GOC is not fit to practice
12 because they are dishonest, then surely he should be
13 reported to the GOC.
14 I mean I was told that he would be reported to the
15 police. I was told that, you know, he would be
16 prosecuted. I was told that.
17 Q. Okay. Now in paragraph 10 of your statement, just to
18 move on to Mr Yogaratnam, you express surprise that
19 Mr Yogaratnam did not -- wasn't allowed to sell his
20 shares, sorry, to purchase the shares from Mr Weller.
21 You weren't involved in the negotiations for
22 the purchase of the shares, were you?
23 A. Which store are we on about?
24 Q. Mr Weller's shares?
25 A. No.

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1 Q. I'm not going ask you about that then. Now paragraph 11
2 of your statement, if you turn to that. You might want
3 to just read that. You have confirmed here that whilst
4 at the Dartford store you used the approved shopfitters
5 at Specsavers to carry out shop fits?
6 A. Yes.
7 Q. And you had a shop fit in 2005 which cost £130,000?
8 A. Approximately.
9 Q. Roughly?
10 A. Yes.
11 Q. And that was obviously quite a substantial piece of
12 work, was it? For 130,000?
13 A. Yes.
14 Q. In order to fund you were required to transfer 5,000
15 a month to a shop fit account?
16 A. That is right.
17 Q. Then you say from your experience the figures put
18 forward for the shop fit cost of Crawley and Woking are
19 not typical.
20 A. Yes.
21 Q. Now shop fit, you mean the renovation of the whole
22 store, rather than ongoing --
23 A. Yes, it was a shop fit, yes, for the renovation of the
24 store but in 2009 we had some repairs done and that cost
25 £15,000, and then we had some stairs done. That cost

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1 £5,000. Specsavers approved people and I know now that
 2 there has been a mini re-brand which has cost £80,000
 3 last year in Dartford.
 4 Q. Well, the -- were you in Dartford at the time?
 5 The £80,000, you weren't a partner?
 6 A. I wasn't at Dartford at the time, no, but I'm aware that
 7 that has been done.
 8 Q. The evidence that you give -- the conclusion that you
 9 put is in relation to the shop fit cost for Crawley and
 10 Woking. Now this evidence is in almost identical terms
 11 to the evidence given by Mrs Parham?
 12 A. Right.
 13 Q. I don't know, were you in court when she gave her
 14 evidence?
 15 A. No, I wasn't.
 16 Q. You see she indicated that the figures that she had been
 17 provided with shop fit costs for Crawley and Woking of
 18 the order of £11,000 and £7-8,000, hence her views in
 19 almost identical words, that the shop fit costs, that
 20 that wasn't consistent with her experience of the shop
 21 fit costs for Uckfield which were much higher.
 22 Similarly you refer to Dartford. 130 of shop fit costs
 23 and you say:
 24 "The shop fit costs for Crawley and Woking are not
 25 typical."

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1 In her case it appears that that was a mistake
 2 because the figures she had been provided with didn't
 3 relate to shop fit costs but for ongoing maintenance
 4 costs.
 5 A. Right.
 6 Q. You accept there is a difference between ongoing
 7 maintenance and a shop fit?
 8 A. Yes, I can -- yes.
 9 Q. Now looking at paragraph 11 it appears that what you
 10 have been told that these figures, I'm assuming the same
 11 sort of figures of £7-8,000 and 11,000 for Crawley and
 12 Woking, were you provided with those sort of level of
 13 figures?
 14 A. Well, I know -- I can't remember the exact figures.
 15 I know it was under 20.
 16 Q. Okay, but a lowish figure?
 17 A. Yes.
 18 Q. She said that she was told figures of 11,000 for Crawley
 19 shop fit and 7-8,000 shop fit for Woking.
 20 That I think is a mistake because the shop fit
 21 cost -- it is accepted that the shop fit costs for those
 22 stores would have been a lot more. The figures for
 23 £8,000 or £11,000 which are in issue in these
 24 proceedings relate to the maintenance costs of the store
 25 over a period of time, not shop fit costs?

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1 A. Okay.
 2 Q. It is not in issue in these proceedings, so my point is
 3 that it appears that, in fact, there may be a talking at
 4 cross purposes about what actually is in issue in these
 5 proceedings and what you were asked to provide
 6 an opinion on.
 7 Do you understand that?
 8 A. I understand what you are saying, yes.
 9 Q. Do you accept that your figures for paragraph 11 -- you
 10 accept that the figures -- you are expressing -- what
 11 you thought you were expressing an opinion on was
 12 the level the costs of a shop fit rather than ongoing
 13 maintenance. That's what you are doing dealing in
 14 paragraph 11 of your statement?
 15 A. I was as regards a shop fit but still even maintenance.
 16 I mean, I've just told you that we had some steps done
 17 and that was like £5,000 from Specsavers guys and then
 18 we had some little repairs done in 2009 at Dartford and
 19 that was over £15,000 and that was just little jobs.
 20 Then we had roofing done. We had a big roof problem
 21 when my ex-co-director was there. That cost us quite
 22 a lot of money as well.
 23 Q. I mean, it sounds like you are on top of the figures.
 24 The figures that I have for, for example, 2006-07 for
 25 maintenance for the store were about --

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1 A. Which store are we talking about?
 2 Q. Sorry, your store, Dartford. You were talking some
 3 figures, was £4,096.
 4 A. That was what year?
 5 Q. Does that ring a bell?
 6 A. What year was that?
 7 Q. October 2006 on October 2007. Does that ring a bell
 8 with you?
 9 A. Possibly. That might have been a steps, like I was
 10 saying, about £5,000.
 11 Q. This is for maintenance for the whole year, that sounds
 12 about right?
 13 A. To be honest with you, I really would be guessing if
 14 I said that --
 15 Q. I'm not asking for the nearest pound but to the -- in
 16 the right area?
 17 A. Look, I will be honest with you, I would be guessing.
 18 I can say you to the stairs cost £5,000.
 19 Q. Then the year October 2007 to September 2008, 2,540,
 20 does that sound in the right ballpark?
 21 A. I'm not quite sure because I know we had a massive water
 22 leak in the lab upstairs and we had a big leak in the
 23 ladies' toilet so I can't confirm that or not.
 24 Q. You can't say one way or the other?
 25 A. No, I'm sorry, I can't.

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1 Q. Then September 2008 to September 2009, £2,210 for
2 the year? Does that ring a bell?
3 A. '08/09, like I said to you I honestly can't remember
4 that. I know the staircase -- '08/09 you said.
5 Q. 08/09, yes.
6 A. Up to what time in '09?
7 Q. Sorry, October 2008 to September 2009?
8 A. How much did you say?
9 Q. 2,200 -- £2,210.11?
10 A. Going from my memory, I can't quite remember when we had
11 these repairs I was saying were £15,000, but it was in
12 2009 I am sure so that figure can't be right unless it
13 was after September 2009.
14 Q. Let's move on to your second statement. You say in
15 paragraph 2 you refer to the SEP system. In paragraph 3
16 you refer to Mr McLaughlan?
17 A. Yes.
18 Q. You say one of Specsavers representatives.
19 A. Yes.
20 Q. You say he was sent in store after you were suspended in
21 2007?
22 A. That is right.
23 Q. Then there is a reference to SEP systems. The invoices
24 you refer to and rely on in this regard are set out in
25 paragraph 4. You exhibit the invoices.

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1 A. That's a few of them, not all of them.
2 Q. Okay, well these are the ones you refer to. Just in
3 terms of the timing. In fact, you refer in your first
4 statement, if it helps, that you were suspended on
5 27th September, 2007?
6 A. No.
7 Q. Is that right?
8 A. No.
9 Q. Sorry?
10 A. 27th March.
11 Q. I'm so sorry, my fault entirely. 27th March 2007. That
12 ended on 3 October, does that ring a bell?
13 A. Let me think.
14 Q. There was a written warning was given on 3 October, if
15 that helps.
16 A. I think I went back on 10 October, I believe. I had
17 a so-called back to work interview on the 9th,
18 I believe.
19 Q. Okay, that's fine. Does the letter on the 3rd sound
20 about right, though?
21 A. Right for what?
22 Q. The right date for the letter as to when
23 the investigation and suspension was lifted?
24 A. Maybe, I can't say yes or no until I see the actual
25 document.

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1 Q. In fact, some of these figures we are talking about,
2 certainly the ones which you refer to in paragraph 4,
3 are for November and December, aren't they?
4 A. Yes.
5 Q. So is that after your suspension, in fact? After it had
6 ended?
7 A. Yes.
8 Q. So, in fact, this isn't -- the invoices you are
9 referring to are not during your suspension but after
10 you had come back to work?
11 A. Actually, what actually happened was -- I am going to
12 say it because it is already in the (inaudible)
13 anyway -- but I came back in October and I was under
14 a lot of duress. I couldn't even make a phone call
15 without being watched by Sean McLaughlan.
16 I was pregnant at the time and I had a miscarriage
17 which I truly believe was due to the stress. So I was
18 off in November and December so I didn't get back into
19 the store then until January and my doctor forced me to
20 take time off because I was so scared to be off but
21 I had to take time off.
22 Q. I don't know, my Lord, if the witness -- would you like
23 a moment?
24 A. No, carry on.
25 Q. Mr McLaughlan, in fact, he provided some cover for you

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1 both during the suspension and indeed afterwards; is
2 that right? You say while you were ill?
3 A. That's right, yes.
4 Q. For illness.
5 A. That is right.
6 Q. Mr McLaughlan, he wasn't actually employed by Specsavers
7 or SOS, was he?
8 A. Well, now this is a bit of a contention, because when
9 I was suspended we had Carol Slark in via loss
10 prevention and she was being charged at 440 a day, by
11 the way, much more than an optometrist, who is the
12 biggest expenditure for the business.
13 Then we had another lady from loss prevention,
14 Imogen Collar. Then Sean McLaughlan came along. When
15 I went back into the store none of the loss prevention
16 costs made sense to me. All I knew was £85,000-plus had
17 been taken out of the account for loss prevention costs.
18 So I kept insisting on a breakdown of these costs. I
19 was never given it. I was never given it in
20 the beginning.
21 I kept pestering and pestering. Then I raised
22 a grievance against Mel McAlindon and his team in
23 February 2008 and it was heard by David Clark.
24 Obviously, it was whitewashed. Then David Clark gave me
25 an breakdown of the costs and in that, this particular

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1 letter, was a three-page letter, I believe. He actually
 2 sent it -- I have seen now -- he sent it to Derek Dyson.
 3 Derek Dyson amended it and he said that the guys who
 4 were covering the store were SOG employees, not SOS
 5 based in UK, but SOG employees and that was amended by
 6 Derek Dyson, so as far as I'm concerned these guys were
 7 SOG employees.
 8 Q. Well Mr McLaughlan was a former JVP from the Edgware
 9 store, wasn't he?
 10 A. I believe so, I didn't know that at the time.
 11 Q. You didn't speak -- did you not meet him at all?
 12 A. I told you he was put in there and I was under immense
 13 pressure, I was being bullied, bullied and intimidated
 14 on a daily basis. I was being watched, everything I
 15 did. I couldn't even make a phone call without him
 16 being over my shoulder so, no, I would not have had
 17 a conversation, "Oh, where did you work before?"
 18 Q. So you didn't really interact with him, okay.
 19 A. No, I was very very oppressed and very scared.
 20 Q. If I was to say to you he was the former JVP of the
 21 Edgware store, he was waiting to take up a new post,
 22 that doesn't ring any bells with you?
 23 A. Like I said to you, I didn't know that, no, but I know
 24 subsequent he went to Ireland, I believe to another
 25 store, because he over-invoiced and I was told to go on

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1 recovery it from him. Contact him at the Cork store,
 2 I believe.
 3 Q. Okay, let's just break that down. So you know he did
 4 take up a position as a JVP at another store in Ireland,
 5 you say?
 6 A. Well, I believe I found that out when I said he over
 7 charged and head office didn't help me. They said,
 8 "Well, speak to Sean McLaughlan in the Cork store to
 9 recover your money.
 10 Q. So the answer to my question is, yes, he found out that
 11 he was a JVP at another store?
 12 A. Eventually.
 13 Q. Did you know he had been a JVP at stores before?
 14 A. At the time when he was there I didn't. Like I have
 15 just said.
 16 Q. He was providing his services on a consultancy basis,
 17 wasn't he?
 18 A. Well, like I said to you I kept demanding how much was
 19 being paid. I guess he was Specsavers. I don't know
 20 what. He was just brought in, like Carol Slark was just
 21 brought in.
 22 Q. He wasn't charging Specsavers. He was sending his
 23 invoices to the store, wasn't he?
 24 A. The first time I saw his invoice was when I got back in
 25 January because suddenly I was being asked to authorise

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1 his invoices by Neil Lunn(?) in shared venture because
 2 now apparently my store had been turned into a shared
 3 venture, without my approval or anything.
 4 Q. Can we just have a look at one of his invoices briefly
 5 just to see if that assists. Could you be provided with
 6 volume E2.
 7 If you go to page 291 I'm afraid there's going to be
 8 some slightly challenging pagination. It is 291-37.
 9 This is what you have exhibited to your statement, yes?
 10 Does that refresh your memory? Is that one of his
 11 invoices?
 12 A. It is, yes, which I saw in January.
 13 Q. Is that your writing on it?
 14 A. It is my writing, yes.
 15 Q. So your querying your invoice?
 16 A. Yes.
 17 Q. You can see it is not rendered by SOG or SOS. It is
 18 by -- it says Mr McLaughlan and it's got an address,
 19 maybe a home address or something. Do you see that?
 20 A. I do, yes.
 21 Q. He was providing his services on a consultancy basis,
 22 would you accept that? Based on that invoice?
 23 A. Well, can you explain to me why then Derek Dyson has
 24 amended David Clark's letter saying they were SOG
 25 employees, who were covering my store?

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1 Q. Well, the allegation you are making here is that this
 2 was going through the SEP. You are saying that this was
 3 SOG who was doing this?
 4 A. Well, my understanding is that when I was in court on
 5 that particular day, you were quite categorically
 6 telling Mr Vos that the SEP system is purely for
 7 ophthalmic opticians, dispensing opticians, audiologists
 8 and lab technicians. I do not consider Sean McLaughlan
 9 one of those. Well, he wasn't at the time.
 10 Q. Let's have look, could you turn to E2, 291-1. Which is
 11 also exhibited to your statement. This is the bottom
 12 line report and accompanying accounts that you would
 13 have -- for November 2007, I think.
 14 A. Okay.
 15 Q. Is that right?
 16 A. 291-1?
 17 Q. Yes.
 18 A. Mmm hmm.
 19 Q. You can see on the right-hand side a date,
 20 November 2007?
 21 A. Yes.
 22 Q. So on a monthly basis you would be sent one of those
 23 bottom line reports with the accounts, ledger entries
 24 behind, correct?
 25 A. Yes.

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1 Q. In your witness statement you refer in this period to
2 £1,000 being paid to him, correct?
3 A. Yes.
4 Q. Now I think we were referred to the relevant entry in
5 court on Wednesday.
6 You were not in court on Wednesday, were you?
7 A. No.
8 Q. By Mr Stuart. 291-11, I think. The relevant entry is
9 just above the second hole punch.
10 A. Yes.
11 Q. There's something which has been highlighted. Is that
12 by you?
13 A. I believe so.
14 Q. You have got Mr McLaughlan there?
15 A. Yes.
16 Q. Now the heading says:
17 "SM optician fees."
18 Then there is a number 18. That may be
19 self-employed optician fees, correct?
20 A. That is right.
21 Q. Then the column starts with "GLCP". Do you see that,
22 his entry?
23 A. Yes.
24 Q. Do you know what that is short for?
25 A. No.

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1 Q. If I said it is general ledger, centralised purchase?
2 A. Right.
3 Q. Does that ring a bell with you?
4 A. No.
5 Q. These were your accounts. It -- you don't remember
6 that?
7 A. I'm not an accountant.
8 Q. You can see another "GLCP" on the next entry further --
9 just down where there is a reference to Bagham
10 Farmhouse?
11 A. Yes.
12 Q. That would have been, what, costs for a locum or
13 something?
14 A. No. I believe that is for our trainee DO, her training
15 fees or some form of accommodation or something.
16 Q. Right, I see.
17 A. I believe. Because Bagham Farm rings a bell to me,
18 towards Canterbury I think.
19 Q. So nothing to do with Mr McLaughlan then?
20 A. I don't believe so.
21 Q. Let's see if you go over the page to 291-12. Let's see
22 if we go down to the bottom:
23 "Recruitment and ...", I can't read that actually --
24 relocation?
25 A. Hold on a moment.

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1 Q. Sorry, almost at the bottom of the page, two entries up,
2 "Recruitment and Reloc". Then it says 23AE, then you
3 have again lots of entries "GLCP". Then "Centre Locum
4 Link Limited".
5 A. Yes.
6 Q. Do you know what that was for? Recruitment costs?
7 A. Yes. That would be the actual recruitment agency fees.
8 So when you get a locum through the agency you pay
9 the agency £25 or something per day.
10 Q. Right. Then -- let's say if you turn over to 391-13,
11 property expense --
12 A. Hold on a moment.
13 Q. Sorry, 391-13. I'm so sorry, 291-13. Property
14 expenses, cleaning.
15 A. Yes.
16 Q. You have got some GLCP references there, hygienics. Was
17 that anything to do with the locums?
18 A. Not that I'm aware of.
19 Q. So what was that to do with?
20 A. That's going to be like hand tissues, toilet rolls
21 probably, things like that.
22 Q. So those would have been -- for hygienics that would
23 have been a general expense put through the green bag
24 system? It was an invoice which you would approve and
25 send off for payment?

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1 A. We'd stopped doing that a long time ago.
2 Q. So how did you get that paid?
3 A. Now you are asking me. I have been out of it for so
4 long. How did we get that paid?
5 Q. Invoices would come into the store, wouldn't they, from
6 suppliers, expenses, your cleaners and so on?
7 A. Yes, we must have -- I didn't do that you see. My staff
8 must have done that. Nim -- they must have got sent
9 off, yes.
10 Q. Didn't invoices need to be approved by JVPs?
11 A. Yes, they were approved. Nim did that at the time,
12 majority of the time, and then John -- yes, they must
13 have got sent off.
14 Q. So these would be invoices come into the store --
15 A. Then the system changed actually, I think, but I can't
16 remember it.
17 Q. Let's just work through it. The invoices would come
18 into the store. You would approve it?
19 A. Yes.
20 Q. Did you have a stamp or something like that?
21 A. You see, like I say -- I think there was a stamp. I'm
22 not sure. Because Nim used to do this with John.
23 Q. Effectively, what happened was the invoice come into
24 the store, they would be stamped and approved by the
25 JVP, whether it was you or your fellow JVP and then they

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1 would be sent off to be paid?
2 A. If you say so I can't comment on that because I don't
3 think I really did that. I may have but I can't
4 remember.
5 Q. You can't remember?
6 A. No, I can't.
7 Q. If we go back to 291-11. We see Mr McLaughlan. I put
8 to you that all of those are general expenses put back
9 through the green bag system, as I said, which were
10 approved, they were stamped by JVP and sent off for
11 payment. You don't remember?
12 A. So --
13 Q. Sorry, the hygienics one. I'm talking about the
14 hygienics one, the cleaner, which is in the general
15 ledger centralised purchase?
16 A. Right.
17 Q. I'm saying that was an invoice would come into
18 the store. One of the two JVPs would approve it and
19 then it would be sent off through what used to be known
20 as the green bag system for payment. Correct?
21 A. I think so. I can't remember. It has been a long time.
22 I think so.
23 Q. You think so.
24 A. If I did it I would know so. If I did it regularly
25 I would know so.

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1 Q. So did you never approve any invoices?
2 A. I must have. I did the locum invoices.
3 Q. Other than the locums did you do any of the --
4 A. I might have, I don't know. I can't remember. It has
5 been so long.
6 Q. Let's go back to 291-11. We see Mr McLaughlan?
7 A. Right.
8 Q. Can you go up the page to the third set of entries where
9 you have social security, 14. Bonus, next one, and then
10 you have got another entry that says:
11 "Self emp optician fees."
12 A. Yes.
13 Q. So it has the same sort of heading but then with
14 a different number. It says 14 rather than 18. Do you
15 see that?
16 A. I do.
17 Q. Then there is a number of items there listed?
18 A. Yes.
19 Q. If you look at those, firstly, let's just have a look at
20 the description. We have seen the description below for
21 Sean McLaughlan. Do you see that?
22 A. Mmm hmm.
23 Q. In these ones they all have the same description which
24 is says: "SEO processing system"?
25 A. Yes.

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1 Q. Again, we looked at the preliminary, the first heading,
2 which we have seen below was general ledger central
3 purchasing. Here it is different. It is SE and then --
4 SEO actually, SEO1?
5 A. Okay.
6 Q. So all of these are described not by a name but by
7 a description, SEO processing system. The SEO system is
8 the old name for the SEP system, isn't it?
9 A. I don't know.
10 Q. Maybe if I can help you with your recollection. Could
11 you please take up volume C, tab 7. This is
12 Ms Mancini's evidence. Obviously, you know we are
13 talking about the SEP system. That is in your witness
14 statement.
15 A. Right.
16 Q. Then here Ms Mancini in paragraph 44 talks about the use
17 of this system. She says:
18 "The system actually used to be called the SEO
19 system, which stood for self-employed opticians for this
20 reason but it was changed, the name."
21 Does that ring a bell with you?
22 A. I didn't particularly read anything that said that.
23 Q. You were using the system. You say you were dealing
24 with some of the locum systems, the SEO system though
25 were you? Did you actually process the SEO?

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1 A. No. What we used to do before, the locums would fill it
2 in and then we'd fax it off to be paid and then -- I was
3 talking to may guys about this, my colleagues. And
4 I think the system was brought in where you had to print
5 the invoice off but I honestly just can't remember it.
6 Q. Sorry, you were dealing with the optical side of the
7 business?
8 A. Yes, I was.
9 Q. So you dealt with the optician, the locums, the optical
10 locums, is that right?
11 A. I tried apart from the interference of my co-director.
12 Q. Did you process their systems(sic) through the SEP
13 system then?
14 A. Well, I honestly can't remember how I did it.
15 I remember a new system where I think you had to print
16 the invoices off but I really can't remember it. I have
17 been out of the business since 2010.
18 Q. You are giving evidence here. Mrs Birdi, just to be
19 clear, in this witness statement you are giving evidence
20 about a misuse of the SEP system. Is your evidence, in
21 fact, you can't really remember how the system worked?
22 A. No, let me explain to you. In here you have got that
23 top section, it says 14/0 --
24 Q. Could you answer my question, sorry?
25 A. No, you are saying I have made an incorrect statement.

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1 I have not made an incorrect statement, from my
 2 understanding. The 14/0 is for ophthalmic opticians
 3 costs. The 18/0 comes under dispensing costs. So it is
 4 for dispensing opticians costs.
 5 Sean McLaughlan is not a dispensing optician, as far
 6 as I'm aware.
 7 Q. I'm asking you about the use of the SEP system which you
 8 are purporting to give evidence on. I'm asking you how
 9 it worked.
 10 A. Well, this is my understanding, like I have just said,
 11 he is not a dispensing optician. He is under the SM
 12 optician fees section, so from my understanding that --
 13 why is he under the SM --
 14 MR JUSTICE HILDYARD: I think it is appreciated your
 15 evidence is you consider he was not properly put on
 16 the SEP system but I think counsel is trying to explore
 17 with you your knowledge of the SEP system.
 18 MR POTTS: My Lord, yes. I was asking you, since you were
 19 dealing with the processing of locums and you are giving
 20 evidence to the Court on the SEP system, which you
 21 operated, I'm asking you to explain how it worked?
 22 A. Well, what I used to do when we had a DO or an optician
 23 in, we would get an invoice fill it in and then fax it
 24 off to be paid.
 25 Q. You think that's how the SEP system worked?

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1 A. I can't remember how the new system work but, as far as
 2 I'm concerned, that SM optician fees there, they are
 3 dispensing opticians there. My understanding is Sunita
 4 Basan, S Sasoon(?), I believe.
 5 So Sean McLaughlan, he, as far as I'm concerned, is
 6 under SM optician fees for some reason.
 7 Q. Sorry, you still haven't answered my question. I'm not
 8 asking you about the accounts. I will come back that in
 9 a moment. I'm trying to explore with you your
 10 understanding on how the SEP system worked. It had been
 11 in operation -- in fact, the current guidance had been
 12 in operation since 2006.
 13 A. Since 2006?
 14 Q. Yes.
 15 A. Well, in 2006 what we used to do --
 16 Q. No, I'm asking from 2006 onwards until the time you
 17 left?
 18 A. I've told you what we used to do from 2006, what we used
 19 to do is we had an invoice which we would fill in and
 20 then fax it to head office to be paid.
 21 From what I can remember you had to print an invoice
 22 off the system for an optometrist. We didn't really use
 23 DOs that much. We did a little bit. Then we would fill
 24 in and then fax it off.
 25 Q. The system was the same for all these people, wasn't it?

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1 If you are using SEP, it's ophthalmic opticians,
 2 dispensing opticians or lab technicians, it's all the
 3 same system on SEP. Are you saying you did different
 4 things for different locums?
 5 A. No, I didn't do the DO invoices. That would generally
 6 be done by my co-director, Mr Patel.
 7 Q. Which ones did you usually do?
 8 A. I usually did the optometrist invoices.
 9 Q. Those were done through the SEP system?
 10 A. If that's when the SEP system is, where you actually
 11 have the computer system and you have to print
 12 the invoice from the computer and then get them to fill
 13 it in and then fax it, then yes.
 14 Q. So you did that?
 15 A. If that's what you are saying the SEP system is.
 16 Q. It is the same system for both?
 17 A. Like I said, if it is the same system for both, and --
 18 if that's what the SEP system is and for dispensing
 19 opticians you print off that invoice and you fax it off.
 20 Q. Right, so the SEP system, was there like a standard form
 21 invoice?
 22 A. Is there what, sorry?
 23 Q. Was there a standard form invoice for the SEP system?
 24 Do you remember that, when you were using it?
 25 A. You because I think you had to print it off

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1 the computer, from what I remember.
 2 Q. Sorry?
 3 A. From what I remember, you put the details in and then
 4 you print it off.
 5 Q. Just take me through from the start how you would
 6 operate the SEP system?
 7 A. If that's what the SEP system is, if that's what you are
 8 saying. From what I can remember -- it is three years
 9 ago since I was in the store but from what I can
 10 remember there was a system on the computer. You would
 11 have your locums and there and then you would print an
 12 invoice, generate an invoice and then the optician would
 13 fill it in and then we would authorise it.
 14 MR JUSTICE HILDYARD: Mr Potts, can I just ask, my
 15 understanding of this evidence which you are entitled to
 16 test, is that this witness says that Mr McLaughlan was
 17 on the SEP system but he didn't -- so she says --
 18 satisfy the conditions which your clients say qualified
 19 him to be on the SEP system.
 20 MR POTTS: Yes.
 21 MR JUSTICE HILDYARD: I don't think she claims any
 22 particular expertise on the SEP system and I don't for
 23 the moment quite understand why testing her expertise in
 24 that regard is relevant to any issues in the case?
 25 MR POTTS: My Lord, if I may. The reason is, for example,

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1 in terms of how the system works, an issue is relevant
2 in terms of the sort of invoices that the system
3 operates under. There are different invoices for SEP
4 and there are different systems for general expense
5 invoices, which we looked at.
6 I was seeking to explore with the witness the nature
7 of the invoices which were used on the system for SEP
8 and for other expenses and that will be by reference to
9 the invoices which she refers to in her statement.
10 MR JUSTICE HILDYARD: Okay.
11 MR POTTS: If I may, my Lord, if I could take my course on
12 this.
13 Can I show you the SEP -- the systems generate, you
14 say it is a computer system, the SEP, isn't it?
15 A. If what I'm saying is the SEP, where you generate
16 the invoice and print it off.
17 Q. That's your understanding of what a SEP invoice is, is
18 that right? The ones you did?
19 A. No, what I'm saying to you -- if that was the SEP
20 system -- I can't say that was the SEP system. I don't
21 know what the SEP system was. All I know is, from what
22 I can recall, we had to start printing invoices off
23 the computer. If that's what you are saying to me is
24 the SEP system ...
25 Q. Can I show you the guidelines for the process. Which is

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1 in E6. We have an example of the SEP system as to how
2 it works, 1480.
3 MR STUART: My Lord, I wonder if I can try and shortcircuit
4 it.
5 What I think Mr Potts is going to eventually get to,
6 not with this witness perhaps but with his own evidence,
7 is he is going to assert that Mr McLaughlan's invoice,
8 which is his own personal --
9 MR JUSTICE HILDYARD: I mean, I don't want to trample over
10 his cross-examination --
11 MR STUART: I do not want to, my Lord.
12 MR JUSTICE HILDYARD: -- if it goes to an issue in the case.
13 MR STUART: Yes, I'm going try and see if I can concede
14 something which can shortcircuit this.
15 I think what he is going to say is that
16 Mr McLaughlan's invoice is not in the form of a SEP
17 invoice as the ones we have seen generated by Mr Vos for
18 Mr Ferguson, and we saw them in great detail, we went
19 through them all and that Mr McLaughlan's invoices are
20 not SEP compliant invoices and have therefore been put
21 into the green bag system, the general expenses and are
22 not SEP invoices therefore and that, therefore,
23 Mr McLaughlan's invoices, whilst he may not be
24 a self-employed optician, which is what this witness
25 keeps saying, he may also not have been put through

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1 these accounts under the SEP system and since this
2 witness keeps saying "I don't know what the SEP
3 system" --
4 MR JUSTICE HILDYARD: Tell me what your concession is.
5 MR STUART: If that is the position and that's the point he
6 is wishing to make and he is somehow going to call some
7 evidence about that I will concede it. If he can call
8 the evidence --
9 MR JUSTICE HILDYARD: Is that what your point is?
10 MR POTTS: No, my Lord, I'm afraid it is rather more than
11 that, my Lord. If I may, I would like to take my own
12 course in my cross-examination.
13 MR JUSTICE HILDYARD: You are entitled to take your own
14 course if I understand what route we are following, not
15 just generally, Mr Potts.
16 MR POTTS: Of course, my Lord.
17 MR JUSTICE HILDYARD: At the moment you leave me sort of
18 swimming as to what it is that I'm meant to understand
19 from all this.
20 MR POTTS: My Lord, if I may --
21 MR JUSTICE HILDYARD: I do not want to undo you your
22 cross-examination or spoil it but I do need to know that
23 it is relevant.
24 MR POTTS: My Lord, yes.
25 This witness has given in her witness statement, she

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1 was the partner of this store, these are her accounts
2 and she has exhibited invoices to her store and she has
3 alleged that the system in her store was misused. This
4 is the allegation which is in her statement.
5 I would respectfully say that I'm entitled to ask
6 her about (a) the understanding of the system that was
7 used in her store, her accounts and her invoices in
8 relation to establishing, firstly, whether actually this
9 is a credible allegation and, secondly, as to her state
10 of mind and, thirdly, as to credit in relation to
11 the manner in which this allegation is being made.
12 My Lord, that is I think the scope that I would like
13 to explore and I would hope to do it briefly. Is that
14 allowed, my Lord?
15 MR JUSTICE HILDYARD: Yes.
16 A. Actually, this system wasn't even in place in 2007 when
17 these invoices were being done. This system didn't come
18 in in 2007, your Lordship.
19 Q. Ms Mancini's evidence is that the SEP system -- in fact,
20 the guidelines were last updated and approved by the
21 Revenue in 2006?
22 A. It might have been but the stores weren't using it. At
23 that particular time, the invoices -- I didn't see these
24 invoices, Neil Lunn or whoever in SOG was paying them.
25 I only got to see his invoices in January for the first

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1 time but this system was not used in 2007.
 2 Q. I see, so the SEP system wasn't in use in 2007, is that
 3 right?
 4 A. This system, our invoices were faxed to SOG, ophthalmic
 5 optician invoices were faxed at that time. They were
 6 paid.
 7 Q. If you are saying that the SEP system wasn't in use at
 8 this time your evidence makes the allegation that this
 9 was a misuse of a system which wasn't in operation at
 10 the time, is that right?
 11 A. No, what I'm saying is you are saying -- for my
 12 understanding the SEP system is the system which is
 13 invoices are to be paid by the optician, for
 14 an optician, a dispensing optician, an audiologist and
 15 lab technician.
 16 My understanding of the SEP system was not just this
 17 computer thing. The SEP system for me is self-employed
 18 professionals. That's what that means to me, so all our
 19 optom invoices any DO invoices any lab tech invoices
 20 were part of the SEP system and they were, accordingly,
 21 put into the accounts under lab technicians,
 22 self-employed opticians, but Sean McLaughlan was not
 23 a self-employed professional on those -- as an OO, DO,
 24 audiologist or lab tech.

25 Q. So, are you saying -- the evidence that we have been
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1 dealing with in this case has been concerning
 2 an automated system called the SEP system which involves
 3 the generation of automating invoices. Perhaps I can
 4 just work out if we are actually talking about the same
 5 system, can I take you to E6?

6 MR JUSTICE HILDYARD: Mr Potts, I have been asked whether
 7 the transcribers might have a short break.

8 MR POTTS: My Lord, of course.

9 MR JUSTICE HILDYARD: When would be convenient?

10 MR POTTS: My Lord, we can do that now.

11 MR JUSTICE HILDYARD: I do not want to interrupt
 12 torrentially.

13 May I mention I must rise by no later than 4.25, is
 14 that all right?

15 MR POTTS: My Lord, indeed of course.

16 MR JUSTICE HILDYARD: We will be back at 3.45.
 17 (3.36 pm)

18 (A short break)

19 (3.45 pm)

20 MR STUART: My Lord, just before Mr Potts resumes, we have
 21 had a discussion and if I make my concession in the way
 22 that I am about to do I understand that Mr Potts is
 23 going to accept the concession and we can move on from
 24 this point.

25 MR POTTS: I haven't heard -- let me hear the concession.
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1 MR STUART: It is as we discussed it, I promise you.
 2 My Lord, the position is this, your Lordship has
 3 the witness statement of Mrs Birdi, the second witness
 4 statement, paragraphs 3 and 4.
 5 MR JUSTICE HILDYARD: Yes.
 6 MR STUART: In paragraph 3 in the witness statement it says:
 7 "When Specsavers put one of its representatives,
 8 Mr Sean McLaughlan into my store after I was suspended
 9 in 2007 some of his fees were put through [these are
 10 the crucial words] the SEP system."

11 Mr Potts' clients are adamant that they were not put
 12 through the SEP system and I concede that
 13 Mr McLaughlan's invoices were not put through the SEP
 14 system, nor were they put through the SEO system, which
 15 was the predecessor to the SEP system. They were put
 16 through as we see on page 291-11 under the heading
 17 "self-employed optician fees" in the accounts but they
 18 were put through the GLCP system, which has otherwise
 19 been known as the general expenses or green bag system.

20 MR JUSTICE HILDYARD: The green bag.

21 MR STUART: So it was put through as an invoice not through
 22 the SEO or the SEP system.

23 I have not spoken to the witness about this and so
 24 I make that concession, as it were, on her behalf but
 25 I understand that is correct and therefore -- and
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1 I think Mr Potts would accept that that's point he was
 2 trying to get to.

3 MR POTTS: My Lord, formally, it is not just 3 and 4.
 4 I would like the withdrawal of this allegation in toto,
 5 which is paragraphs 3 to 5 of this witness statement.

6 There is an allegation in paragraph 5 that this
 7 demonstrates a willingness on the part of my clients to
 8 abuse this system. My Lord, if that allegation is
 9 withdrawn so be it, but the paragraphs should be
 10 formally withdrawn.

11 MR STUART: Well, my Lord, paragraph 4 is absolutely
 12 accurate:

13 "The bottom line accounts for November 2007 show
 14 that £1,000 of his payments was put under the S-EMP
 15 optician fees".

16 We see that at page 291-11, so that is correct. It
 17 is just that the allegation that that is the use of
 18 the SEP system or the SEO system is wrong, so
 19 paragraph 3 is wrong. Paragraph 4 is correct and
 20 accurate.

21 MR POTTS: Except, my Lord, 4 starts with the word "thus".
 22 This is part of the same allegation.

23 MR JUSTICE HILDYARD: Well, you have it on the record what
 24 you say. Do you need more than that?

25 MR POTTS: My Lord, I have to say this has been thrown at us
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1 at the last minute. Just the very page, my Lord, that
 2 your Lordship was shown -- which I took the witness to,
 3 made it absolutely clear on the face of the document
 4 itself, if it had actually been looked at with any care,
 5 that this allegation was not maintainable.
 6 MR JUSTICE HILDYARD: The allegation at 3?
 7 MR POTTS: Well, my Lord, the only purpose of making
 8 the reference to paragraph 4 is in support of this
 9 allegation. It is not a free-standing comment. This is
 10 part of a general allegation which has been made as
 11 referred to in paragraph 2 as to what has prompted this,
 12 which is the allegation, let's be square about it, is
 13 that we have abused the SEP system.
 14 MR STUART: Not abused, worked around.
 15 MR POTTS: Okay, let's call it worked around.
 16 MR STUART: That's what she says. My Lord, I simply seek to
 17 point out that the witness --
 18 MR JUSTICE HILDYARD: It seems the concession that
 19 I understood had been agreed behind the closed curtain
 20 is not sufficient.
 21 MR STUART: I'm sorry, my Lord.
 22 MR POTTS: My Lord, the purpose is -- what is the purpose of
 23 paragraph 4 save in relation to this allegation? There
 24 would be no purpose in putting this witness statement
 25 in, merely for the purpose of reciting that point.

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1 MR STUART: I'm still going to use the fact that the -- I'm
 2 going to put to Ms Mancini when she comes to give
 3 evidence about the use of the computer system and
 4 putting invoices through, not through the SEP system,
 5 I won't do that but as to how people's invoices are put
 6 under certain categories.
 7 MR JUSTICE HILDYARD: It is just a matter of description.
 8 MR STUART: It is a matter of description.
 9 MR JUSTICE HILDYARD: Mr Potts, if you think the case is
 10 going to turn on this, you must continue.
 11 MR POTTS: My Lord, can I just have a moment to have a look
 12 at this?
 13 MR JUSTICE HILDYARD: Yes.
 14 MR POTTS: May I just take instructions for one moment?
 15 MR JUSTICE HILDYARD: Yes.
 16 MR POTTS: Is paragraph 5 withdrawn?
 17 MR JUSTICE HILDYARD: Sorry?
 18 MR POTTS: Is paragraph 5 withdrawn?
 19 MR STUART: Well, my Lord, as I said going towards the issue
 20 of working around the descriptions, only the description
 21 not the SEP system, but the descriptions in
 22 the accounting system, that point -- I'm still going to
 23 put to Ms Mancini, as Mrs Birdi says in 5, third line:
 24 "I have no objection to this in principle."
 25 She is not suggesting --

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1 MR JUSTICE HILDYARD: The answer is, no, it is not withdrawn
 2 so you cross-examine as you need.
 3 MR STUART: On 5.
 4 MR POTTS: My Lord, just to get clarity so I can understand
 5 the allegation. Paragraph 2 is what frames this
 6 discussion in the paragraphs that follow.
 7 MR JUSTICE HILDYARD: Yes.
 8 MR POTTS: It is:
 9 "I was present in court when it was said that it was
 10 inappropriate for the Claimant to use payments to
 11 Mr Ferguson through the SEP system."
 12 So we are talking about the SEP system here. That
 13 is the issue which she is addressing. She says:
 14 "I do not believe this to be correct because [she
 15 says] Mr McLaughlan put his fees through the SEP
 16 system."
 17 Then she says:
 18 "Thus", ie following on from the fact that he was
 19 putting it through the SEP system, there is
 20 the reference to the self-employed optician fees. That
 21 is a reference in support of the allegation that it is
 22 SEP.
 23 MR STUART: And I'm withdrawing that allegation.
 24 MR POTTS: No, let me finish. Then paragraph 5 says:
 25 "I believe this demonstrate as willingness to use

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1 work-arounds to use an administrative system."
 2 Now the administrative system is SEP, it is nothing
 3 else, nothing less than that. Either the allegation is
 4 going to be withdrawn or it is not.
 5 MR STUART: My Lord, let me -- let's make it simple. Can we
 6 delete from the witness's evidence the whole of
 7 paragraph 3.
 8 MR JUSTICE HILDYARD: 4?
 9 MR STUART: 3, the whole of paragraph 3.
 10 MR JUSTICE HILDYARD: I mean, Mr Potts --
 11 Ms Birdi, you are not any longer contending that
 12 Mr McLaughlan's invoices were put through the SEP
 13 system; is that right?
 14 A. It is. But the reason why this may have occurred is
 15 because I was understanding the SEP system was the locum
 16 invoices for optometrists, DOs --
 17 MR JUSTICE HILDYARD: As I understand your evidence and you
 18 qualify it, is that you are not suggesting that it went
 19 on the computerised SEP system nor its predecessor
 20 the SEO system but when dealing with his invoices, he
 21 was categorised as self-employed and you do not believe
 22 he was? Full stop, is that right?
 23 A. Yes, he was categorised as a self-employed optician, as
 24 a trainer as well so basically --
 25 MR JUSTICE HILDYARD: So the description of him was

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1 incorrect in your view; is that right?
 2 A. And the posting of his costs were incorrect.
 3 MR JUSTICE HILDYARD: And the postings of his costs manually
 4 by the GLCP, green bag system, were incorrect?
 5 A. That is right.
 6 MR JUSTICE HILDYARD: That's what your evidence is?
 7 A. That is right.
 8 MR JUSTICE HILDYARD: That's it.
 9 MR POTTS: My Lord, that is a dramatic departure from what
 10 is in the witness statement.
 11 MR JUSTICE HILDYARD: Well you can make observations about
 12 that in closing.
 13 A. Like I say, with the SEP, I thought the SEP was
 14 the invoicing of DOs, OOs, audiologists and lab
 15 technicians and they were posted there.
 16 MR JUSTICE HILDYARD: If you wish to explore why the mistake
 17 arose I will give you a limited latitude to do so.
 18 Do you wish to do so?
 19 MR POTTS: My Lord, can I just have a moment? Given
 20 the answer that just been given, can I just look at what
 21 is now being said?
 22 MR JUSTICE HILDYARD: Yes.
 23 MR POTTS: So your concern is that, it was put through
 24 the green bag system and not through SEP, correct, do
 25 you accept that? But you are saying the problem is

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1 the reference to him, on the accounts, even though it
 2 didn't go through the SEP system but referring to him
 3 under a heading "self-employed optician", even if it is
 4 nothing to do with SEP is incorrect?
 5 A. Well, if this SEP system is a computer system then
 6 the computer didn't exist with this invoice was done.
 7 Q. I don't accept that, Mrs Birdi. The evidence of
 8 Mrs Mancini is absolutely clear. This is a system you
 9 were using. It was used in your store from 2006?
 10 A. No, no, no. Well, I'm telling you now optometrist
 11 invoices at that particular time were filled in by
 12 hand -- they were printed off, filled in and faxed to
 13 head office. At that time we were not printing -- using
 14 this system. They were filled in by hand and faxed and
 15 you will have evidence of that anyway.
 16 Q. I see.
 17 A. I said you will have evidence of that where the optician
 18 has signed it and I have authorised it and faxed it
 19 off -- in 2007.
 20 Q. So we have got -- back just to the accounts and I will
 21 be brief. 291-11, you have got the McLaughlan
 22 reference?
 23 A. Right.
 24 Q. Which says -- and you say, "Ah well, he is there under
 25 self emp optician fees", but you are saying the system

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1 didn't operate when you got above the same heading "self
 2 emp optician fees", at the top of the page? You accept
 3 those are SEO do you? It may help if you look at the --
 4 does that help you?
 5 MR JUSTICE HILDYARD: Have you got the right page?
 6 A. 291-11?
 7 MR POTTS: Yes.
 8 A. I don't understand what you are asking me, can you put
 9 it again.
 10 Q. What I am putting to you is that both entries have
 11 the same heading but some say "self emp optician fees",
 12 whereas some are plainly processed through the SEO
 13 system and some are not.
 14 A. Because the 18/0 is dispensing opticians; the 14/0 is
 15 ophthalmic opticians.
 16 Q. I see. But your position is you are saying that -- but
 17 they are both opticians?
 18 A. Yes, dispensing, ophthalmic.
 19 Q. So what's wrong -- if you accept that the ones at the
 20 top are put through the SEO system?
 21 A. Yes.
 22 Q. Now Mr McLaughlan is not put through the SEP system, is
 23 he? Which is your allegation.
 24 A. We have just mentioned that, haven't we? I have just
 25 told you that the locum invoices -- I didn't use

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1 the computer at that particular time. So if the SEP
 2 system is the computer system, that wasn't being used in
 3 2007.
 4 Q. I see. So it is just a reference to the description on
 5 there? That is as far as you are going? That is your
 6 only concern?
 7 A. Now that's been -- the SEP system, if that is what it
 8 is, computerised -- what I'm saying to you is that
 9 again, still, it doesn't clear the point why is
 10 Sean McLaughlan's invoices being split between
 11 self-employed dispensing optician fees and training, so
 12 that is I think needs to be explored as well.
 13 Q. Let's see if we can move on. The issue in this case or
 14 the issue that you were seeking to give evidence on as
 15 to the abuse of the computerised system. Now I think
 16 you are accepting now that there is no indication that
 17 the computerised system as abused.
 18 A. That's what my counsel is saying on that regard, yes,
 19 and regard the SEP system because that was not being
 20 used in 2007. If that is what the SEP is,
 21 a computerised system.
 22 Q. Fine. Okay, let's move on.
 23 In paragraph 6 and 7 of your statement you refer to
 24 an allegation that pay slips were shredded --
 25 A. Bear with me.

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1 Q. If you go to your second statement, I'm sorry.
2 A. Yes.
3 Q. You refer to pay slips being shredded. You say that
4 your husband's file went missing?
5 A. Yes.
6 Q. Which had been in the store in January?
7 A. Yes.
8 Q. This is at the end of March, correct?
9 A. Yes.
10 Q. You refer to your suspension on 27th March in relation
11 to an allegation of fraud and dishonesty made by
12 Mr Patel, is that right? That's what you say in your
13 statement?
14 A. Yes, okay, if that's what I say, yes.
15 Q. So you will accept that?
16 A. Well, Mel McAlindon said financial irregularities.
17 I was suspended on financial irregularities.
18 Q. Yes, sorry. The main allegation was, which Mr Patel had
19 made, that you had put your husband, that is Mr Rehman,
20 your father and the wife of Mr Patel on the books as
21 employees of the company, as a mechanism --
22 A. I had or we had?
23 Q. Well, they had been --
24 A. We had put them, no.
25 Q. -- as a method of extracting money from the business?

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1 A. No, it was not to extract money from the business.
2 Q. I'm not saying that was what happened but I'm saying
3 that was the allegation that was made.
4 Do you accept that that is ...?
5 A. Say to me again?
6 Q. That your husband, your father and the wife of Mr Patel
7 had been put on the books as employees as a mechanism
8 for extracting money from the business?
9 A. That was the allegation.
10 Q. Okay. Now, in fact, that allegation was found not
11 proven, was it, is that right, against you?
12 A. That is right.
13 Q. Now, in paragraph 5 -- in fact, that was not proven.
14 That was an investigation by Mr Raines, wasn't it?
15 A. No, the investigation --
16 Q. Sorry, the disciplinary --
17 A. -- was by Neil Hamilton.
18 Q. Sorry. It was not proven following the investigation
19 and it was Mr Raines who determined that the allegation
20 was not proven?
21 A. Yes, that's true.
22 Q. In paragraph 5 you refer to the finding that was
23 actually made against you in relation to I think
24 compliance issues as you describe them, is that right?
25 A. Sorry, where are we now?

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1 Q. It is in your first statement?
2 A. My first statement.
3 Q. You say compliance failures in terms of staff --
4 A. Just bear with me. Did you say number 5?
5 Q. Paragraph 5, yes.
6 A. Yes.
7 Q. You say that what was found against you was compliance
8 failures in terms of staff contracts and you said that
9 was a finding made against you, correct?
10 A. Yes.
11 Q. The allegation was that, in fact, the necessary
12 documentation for employment law purposes weren't in
13 place for employees such as terms and conditions of
14 contract, trading agreements and so on; is that right?
15 A. Yes.
16 Q. Going back to the allegation in paragraph 7 in your
17 second statement and, indeed, paragraph 6, what happened
18 was the loss prevention team arrived in the store on
19 26th March?
20 A. That is right, yes.
21 Q. Now at that point you hadn't been informed what they
22 might be investigating; is that right?
23 A. No, I had no idea they were coming.
24 Q. Indeed you didn't know they were even coming?
25 A. No.

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1 Q. You say that in the evening you discovered that
2 confidential documents had been left out and pay slips
3 shredded; is that right?
4 A. Well, when I went into the office, yes? Confidential
5 information was there, the filing cabinet was open which
6 contained all the staff information and their contracts.
7 Like I said to you, it was obvious things had been
8 shredded and, yes, the shredding had occurred, which
9 I brought up repeatedly with SOG.
10 Q. Formally, I'm going to put it to you that, firstly, no
11 confidential documents were left out in the store; do
12 you say that's wrong?
13 A. That's totally and utterly wrong and I brought it up
14 the next day with Mel McAlindon and Phil Barnes.
15 I brought it up in June 2007 in my first investigation
16 meeting and I brought it up in my disciplinary as well.
17 I brought it up -- I believe I brought it up in my
18 disciplinary but I definitely brought it up in my
19 grievance, my second grievance against Mr McAlindon in
20 February 2008, when my first grievance was ignored.
21 Q. Can I just break it down. I think you may possibly
22 might be conflating two points. But I want to make
23 clear, firstly, I'm putting the two points you make,
24 confidential documents being left out, first?
25 A. Yes.

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1 Q. More relevantly for our purposes, Mr McAlindon, I also
 2 put it to you that he did not shred any pay slips, as
 3 you allege.
 4 A. Well, who else would have shredded them? All
 5 the confidential documents were there and when I heard
 6 that Bognor's things had been shredded as well,
 7 I mentioned it to my solicitor again and this was put
 8 forward.
 9 Q. Can I just ask you, firstly, if Mr McAlindon -- you are
 10 saying that he was intent on destroying documents?
 11 A. Well, the documents went missing.
 12 Q. You are saying they were shredded?
 13 A. No. I said documents were shredded, including pay
 14 slips. That's what I have said. My husband's file went
 15 missing. I don't know what else went missing.
 16 Q. Can I just break down, firstly, in terms of the
 17 shredding.
 18 A. Right, okay.
 19 Q. You are saying that he was intent on destroying
 20 documents and did so by shredding, in relation to pay
 21 slips; is that right?
 22 A. What have I said here?
 23 Q. I would prefer it if you could just give your evidence,
 24 actually.
 25 A. No, let me read my statement. I think you are quoting

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1 me; I'm not sure I said that.
 2 Q. No, I'm asking you what your evidence is --
 3 A. Ask me again then.
 4 Q. -- not to read it out from your statement. I'm asking
 5 you what your evidence is. Your evidence is, is it,
 6 that he was intent on destroying pay slips by shredding
 7 them?
 8 A. Well, yes, I do believe he was, not pay slips, things
 9 went missing.
 10 Q. I'm asking about the shredding of pay slips first.
 11 A. Right. Well as regards the pay slips, they were
 12 shredded. Who would have shred those? Loss prevention
 13 had been in. They had left everything out
 14 confidentially. All confidential documents were left
 15 out.
 16 Who would have shredded them? Why would anybody
 17 shred pay slips. I don't know what else is in there.
 18 I could only pick out -- the reason why we say pay slips
 19 is because they have a specific colour and you can pick
 20 them out quite easily. They are grey and they are very
 21 easy to pick out and you can even see dates on them.
 22 Q. The allegation you make is in relation to shredding of
 23 pay slips. If Mr McAlindon -- can I just put to you, if
 24 Mr McAlindon was intent on destroying documents why do
 25 you think he would have done so in the store in such

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1 a way as to leave the evidence behind for you to
 2 discover?
 3 A. I don't know. You tell me. Why were confidential
 4 documents left out everywhere? There were dividend
 5 requests which were totally private and confidential.
 6 Staff files were left open. I mean anybody could have
 7 gone in there and look at everybody's salary, you know.
 8 Q. We have looked at it before and established that the
 9 issue -- although you didn't know it at the time -- but
 10 the issue that Mr McAlindon was charged with
 11 investigating was that employees were being paid for
 12 work not carried out, correct?
 13 A. Yes.
 14 Q. Now there wasn't an issue in the investigation about
 15 the fact that these individuals had been paid by
 16 the store or even as to the amounts they had been paid.
 17 The issue was that they were supplying services
 18 without -- they weren't giving the services to justify
 19 the payments. Is that right?
 20 A. No, say that again.
 21 Q. The issue in the investigation, although at the time you
 22 didn't know it, wasn't that people had been paid, it was
 23 the fact that they were not doing anything for being --
 24 for the payments. Correct? The three individuals.
 25 A. No. I don't think that was the case because when I had

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1 my meeting with Mel McAlindon -- if we can call it
 2 a meeting -- when I was accosted by the two loss
 3 prevention guys in the office, I was told that I had
 4 been accused of paying my husband money that should have
 5 gone to me, to avoid paying tax, which is a load of
 6 rubbish because he was a full-time worker, he paid his
 7 taxes as well.
 8 Q. So the issue wasn't that he had been paid because that
 9 was obvious. The issue was as to why he was being paid.
 10 Because you are saying that he wasn't doing the work,
 11 correct?
 12 A. No, I'm not saying he wasn't doing any work. SOG were
 13 saying --
 14 Q. No, but that was the issue. So the point being that
 15 the pay slips were irrelevant to the issue which was
 16 being investigated, weren't they?
 17 A. No, but the whole point of the pay slips -- what I was
 18 saying there was that documents had gone missing.
 19 I could see shredding had occurred. There was a mess
 20 all around the shredder and when I took the documents
 21 out -- how can you identify these things? You can't.
 22 There is paper shredded but there were pay slips in
 23 there and the reason why I bought pay slips and I said
 24 this to loss prevention as well, I said it in many of my
 25 meetings with SOG and they obviously didn't take it

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1 seriously, but I was saying look confidential documents
 2 have been shredded. But the only one I could identify
 3 was the pay slips and all of these came from the filing
 4 cabinet. I don't know what else was shredded.
 5 Q. I'm exploring with you the allegation about the shredded
 6 pay slips, which you are asserting and the point I'm
 7 making to you is that there was no -- it was irrelevant
 8 to the issue which was being investigated. You didn't
 9 know that at the time, but it had nothing to do with the
 10 matters in issue.
 11 A. Well, I'm not loss prevention. I don't think like them,
 12 thank God, but I have no idea why those documents would
 13 have been shredded. I have no clue.
 14 Q. Going back to the events of the evening of 26th March,
 15 2007. Obviously you must have been alarmed by
 16 the arrival of the loss prevention unit because you
 17 didn't know they were coming and you don't know why they
 18 were coming.
 19 A. Well, like I think, I have said this earlier, they
 20 actually came on the day. My staff phoned me to say
 21 loss prevention are here, and I was very reluctant to
 22 phone Mr McAlindon because I had had a conversation
 23 I believe with him on 1 March where he had been very,
 24 very threatening towards me and told me to stop making
 25 pestering phone calls to head office. I was very

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1 frightened, but I had to phone him and he -- I said: are
 2 you prosecuting Nimesh now? And he said: no, we are
 3 investigating you. So yes of course I was alarmed.
 4 I was really scared of this chap.
 5 I had a meeting with him. I had lots of horrible
 6 conversations with him. Of course I was frightened.
 7 Also, what he told me, when Nim was to be suspended,
 8 this document that Mary Perkins had signed the day
 9 before and it was brought for us to sign to suspend him,
 10 he told me that he would be prosecuted and, you know,
 11 nothing he said actually happened. So of course I'm
 12 going to be frightened and scared what is happening if
 13 he says I'm investigating you.
 14 Q. Going back to the following day.
 15 A. Which following day are we on about?
 16 Q. The day after 26th, so the 27th. The evening you have
 17 dealt with and the following day evidence was given by
 18 Lorraine Frondigoun, an employee of the store.
 19 A. Yes.
 20 Q. Could I pass you a copy of her statement. A hearsay
 21 notice has been given in relation to this my Lord.
 22 A. These are documents that you have just released today?
 23 You've disclosed today in this case.
 24 Q. Yes?
 25 A. Because I wasn't aware.

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1 Q. Yes.
 2 A. But that is fine.
 3 Q. This is her interview from the investigation. Do you
 4 see that?
 5 A. Yes.
 6 Q. What I would like you to do is turn through to line 188
 7 through to 213. It is a whole page. Because you were
 8 suspended the following day on the 27th?
 9 A. Yes, I was.
 10 Q. Do you want to just read through that page. The day you
 11 were suspended -- this is her evidence of the
 12 investigation. Tell me when you have got to the end.
 13 Have you got to the bottom of the page?
 14 A. I have but this document ... maybe I'm mistaken but it
 15 doesn't look like the one I received. This seems to be
 16 something -- something doesn't make sense on 208/209.
 17 Q. Well, let me ask you the questions on this document.
 18 A. Okay.
 19 Q. Now the first point that she makes is that you
 20 repeatedly told her -- because we said you didn't know
 21 what the investigation was about and you were concerned,
 22 you said, the night before -- and she says that you
 23 repeatedly told her to say that Mushtaq had done some
 24 work and that he and Karina, that is Mr Patel's wife,
 25 were on the payroll. Is that right?

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1 A. That is apparently what she said.
 2 Q. Is she wrong on that?
 3 A. She is absolutely wrong. If I had known, if I had been
 4 given at least 24 hours notice of this, when I had my
 5 disciplinary I sent Mark Raines a breakdown of things
 6 that were absolutely factually false in here. I would
 7 have submitted those in as evidence. But that is
 8 absolutely wrong.
 9 Q. Right.
 10 A. I did not do that.
 11 Q. The second point that she makes is that you picked up
 12 and left with a large armful of envelopes and she says
 13 that she is quite sure that you took with you the large
 14 envelope that had arrived that morning with the payroll
 15 slips in?
 16 A. That's absolutely false.
 17 Q. Lines 204 to 206?
 18 A. That is absolutely false. Why would I take that? What
 19 would it benefit me to take? Also may I say as well we
 20 know what loss prevention do with the staff. We've
 21 heard from Barry Weller about his increase. I can tell
 22 you categorically in my store when I was suspended
 23 Specsavers Optical Group increased all the salaries of
 24 all the staff and gave them a massive bonus, so we know
 25 exactly what happens.

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1 Q. Let's just deal with what this shows. The first point
 2 is you were aware that there was some kind of issue
 3 relating to payments to your husband and Mr Patel's
 4 wife, obviously, and that's why you are saying that they
 5 had done some work and they were on the payroll, but you
 6 didn't know precisely what it was. Is that right?
 7 A. I was told by Mel McAlindon that I apparently am making
 8 payments to my husband --
 9 Q. No, you had not been told that at this time.
 10 A. No, I was told at the meeting on the 27th, when I was in
 11 that locked room with those two people, he told me --
 12 basically he started off really calm and then he was
 13 saying these things to me and he was -- I said to
 14 him: I'm really quite nervous, I would rather have this
 15 meeting documented and I would like a companion. And he
 16 said -- he carried on. I said: look, I want
 17 a companion, I want a notetaker, I don't want continue
 18 this meeting unless it is noted, I want notes. And then
 19 he went off on one of his, like he does -- he went
 20 mental, basically, and he said: "If you've done what
 21 you've done I will report you to the GOC, you will get
 22 struck off". And he started being so aggressive with
 23 me. "This is an informal meeting. If it becomes formal
 24 we will get our solicitors involved and then it is not
 25 going to be good for you." I was terrified. Absolutely

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1 terrified. I have worked hard to get my degree,
 2 I worked hard --
 3 Q. Can I just --
 4 A. No, hold on. I have worked hard to get my degree and
 5 that is what he was doing to me.
 6 Q. You hadn't yet --
 7 A. So he had told me -- he had said: this is
 8 the allegation, you have been paying your husband monies
 9 and if this is what you have been doing, then it is
 10 financial irregularities and last person we referred to
 11 GOC and they got struck off, we will have no choice but
 12 to refer you to the GOC.
 13 So I knew that it was regarding payments to my
 14 husband.
 15 Q. At the bottom of the page, lines 211-212, the point is
 16 made there that, in fact, there were two big men who
 17 were waiting to talk to you. That included
 18 Mr McAlindon. They were still waiting to talk to you at
 19 that time, weren't they?
 20 A. Hold on. These notes -- I am sure these notes aren't
 21 the ones that I have got. These don't look right to me.
 22 Q. I can only ask you the questions on the document that I
 23 have got.
 24 A. No. But if this document is not a genuine --
 25 Q. Can you answer my questions please?

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1 A. -- If this document is not the genuine document it
 2 can't really be used, can it?
 3 Q. Can you answer my questions please? You had not yet
 4 spoken to them at this point, had you?
 5 A. No, I had spoken to them. Then when I was suspended --
 6 let me say I was escorted out of the shop in front of
 7 all of my staff, when Nim was a thief and he was not
 8 escorted out, he was allowed to leave. I had been with
 9 loss prevention. I came downstairs to get my bag, to be
 10 thrown out of the shop. Lorraine was in the field test
 11 room. Never said anything to her. And I was thrown out
 12 of the shop.
 13 Q. Can I put a couple of points to you. The reality was at
 14 this point you didn't know what precisely the issue
 15 was --
 16 A. I have just told you.
 17 Q. -- and what you were looking to do was hide or dispose
 18 of pay slips. That's what she says --
 19 A. Absolutely rubbish.
 20 Q. -- that you left with the pay slips. That is the first
 21 point I put to you.
 22 A. Hold on. Destroy pay slips? Why would I want to
 23 destroy pay slips? They can re-print pay slips for you.
 24 We put the pay on the computer system. It goes to head
 25 office. SOG. SOG pay. SOG generate the pay slips.

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1 When I went back after my suspension I asked for copies
 2 of my pay slips because they were not sent to me when
 3 I was suspended. So why would I want to destroy pay
 4 slips?
 5 Q. The second point I put to you is that Mr McAlindon could
 6 not have shredded pay slips during the previous evening
 7 when these pay slips had only arrived the following
 8 morning, as she says?
 9 A. Right. Okay. Well, I think you need to look at that
 10 shredded information in there because in an envelope,
 11 I have actually pulled some of the pay slips out, which
 12 has a date on, and I believe it is February 07. So if
 13 those were the pay slips that came when I was suspended
 14 in March, they would not be February 07 envelope that
 15 came in, that would have come in in March. That would
 16 have been March's payroll.
 17 Q. You claim that these are the pay slips. This bag of
 18 material which arrived yesterday. You say that these
 19 are the pay slips that he shredded, is that right --
 20 A. What I'm saying is that --
 21 Q. -- or that you collected up.
 22 A. I'm saying after loss prevention came in, the office had
 23 been left absolutely insecure. There was paper
 24 everywhere. There was mess all round the shredder and
 25 I was like: they have been shredding stuff; that was my

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1 first thought. When I started looking at the shredding
 2 I could identify pay slips. Those pay slips could only
 3 have come from the filing cabinet. That is a fact.
 4 They could not have come from anywhere else.
 5 Are you trying to say that I shredded those
 6 documents?
 7 Q. I'm asking you about what you say these documents are.
 8 Now, in the Dartford action you make this allegation
 9 against Mr McAlindon in one of the -- I don't know how
 10 many -- about 600 paragraphs of your witness statement;
 11 you make an allegation of shredding against him. You
 12 haven't disclosed these documents in the Dartford
 13 action, have you?
 14 A. Actually, you know -- you mean these shredding things?
 15 Q. Yes.
 16 A. I had forgotten they existed. In fact, my husband --
 17 now my solicitors said to me -- he was talking to me --
 18 I was talking to him about the shredding and he
 19 goes: have you got it --
 20 Q. I'm not sure I want to go into the discussions you had
 21 with your solicitors.
 22 A. I basically said -- my solicitor reminded me then that
 23 I may have them and I spent the whole night looking for
 24 them and then I eventually found them up in the loft.
 25 Q. Disclosure was in August of this year?

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1 A. Well I didn't realise that I --
 2 Q. Why were they not disclosed in that action?
 3 A. Which action?
 4 Q. In the Dartford action.
 5 A. I have just told you, I had genuinely forgotten.
 6 Q. In fact this is the first time since the alleged events
 7 in 2007 that you've produced these alleged documents,
 8 isn't it?
 9 A. It is. When my solicitor said if you can find those
 10 documents, I thought he was joking. I didn't think they
 11 would really be that thing after that long, but then he
 12 said they are.
 13 Q. So you had forgotten about them. You were subject to
 14 an investigation and disciplinary hearing, weren't you?
 15 A. Yes, I was.
 16 Q. You didn't produce them then, did you?
 17 A. I brought them up -- I brought it up in March.
 18 Q. Did you produce them?
 19 A. No, I did not. But they knew about the shredded --
 20 MR JUSTICE HILDYARD: You must focus on counsel's question
 21 please, Ms Birdi, because very often you go off on
 22 a tangent. I want you to focus on the question and
 23 answer it please.
 24 MR POTTS: You didn't produce them then, did you?
 25 A. When?

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1 Q. In relation to the investigation and disciplinary
 2 hearing?
 3 A. No, but I brought it up with them. They never asked me
 4 to produce them. I told them they were shredded.
 5 Q. You didn't produce the documents, did you?
 6 A. No. I wasn't asked but I had told them that these
 7 documents had been shredded and I made a big point of it
 8 many times with SOG.
 9 Q. You raised an appeal against the imposition of a written
 10 warning later in 2007. You didn't produce them then
 11 either, did you?
 12 A. No, I didn't.
 13 Q. You made a grievance complaint against Mr McAlindon in
 14 February 2008. You didn't produce them then either, did
 15 you?
 16 A. No I didn't but if they had asked me for them I would
 17 have produced them. It is such a serious allegation,
 18 like you keep saying, it is such a serious allegation,
 19 why wasn't anybody taking it seriously? I was telling
 20 loss prevention, I was telling SOG, I was telling my
 21 investigators, I was telling my disciplinary chap, I was
 22 telling legal. Nobody wanted to go into this and see
 23 who shredded these documents.
 24 Q. If it was such a serious allegation why didn't you
 25 produce the documents?

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1 A. Nobody asked me for it. Nobody was taking any notice of
 2 me whatsoever when I was saying these document have been
 3 shredded. Nobody was taking any notice of me.
 4 Q. You've only produced these documents on the day, in
 5 fact, that you've been scheduled to give evidence in
 6 this action.
 7 A. That was because I mentioned to my solicitors I may have
 8 them and he said to me: can you find them?
 9 Q. I put it to you that -- I have no idea what those
 10 documents are -- either they are not pay slips at all
 11 or, if they are pay slips or whatever they are, they are
 12 documents that you have shredded and certainly they are
 13 not ones that Mr McAlindon did?
 14 A. 100 per cent not.
 15 Q. If you had any genuine belief that Mr McAlindon had
 16 shredded those documents, you would have produced them
 17 years ago.
 18 A. No. I brought this up so many times. In fact,
 19 actually, from my disclosures it is now apparent that
 20 loss prevention put cameras in after Nim had gone,
 21 without my knowledge -- obviously because they were
 22 investigating me. So they would have had cameras there.
 23 I am sure they have got a recording of me actually
 24 collecting up those shredded documents that evening.
 25 MR POTTS: My Lord, can I have a few more minutes? I can

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1 finish I think.
 2 MR JUSTICE HILDYARD: Yes. I explained that I had to leave
 3 at 4.20, I'm afraid. Because of the interruption I will
 4 give you 5 more minutes but that is it.
 5 MR POTTS: My Lord that will be it.
 6 A. And those shredded documents were brought up many times
 7 but it was never investigated. If it had been I would
 8 have brought those to SOG. They were not bothered and
 9 I believe because they knew the usual routine is to get
 10 rid of evidence.
 11 Q. Let's go back. We've dealt with the shredding. Now
 12 the other allegation you make in your witness statement
 13 is that a file was missing.
 14 A. Yes.
 15 Q. You say you found that your husband's file relating to
 16 his engagement as a hearing aid dispense was missing,
 17 even though it had been in the store in January 2007?
 18 A. Yes.
 19 Q. So the first point is that you acknowledge that you have
 20 not seen the file for 3 months, is that right?
 21 A. I hadn't seen it since January 2007.
 22 Q. How can you say, if the file existed, that it was
 23 Mr McAlindon who had taken it, because you had not seen
 24 it for 3 months?
 25 A. I have said that the file had gone missing. It was in

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1 there in January 2007 because I remember specifically
 2 putting documents in there and then it had -- it wasn't
 3 there in March.
 4 Q. Fine. This allegation also makes no sense. By your own
 5 admission in the disciplinary process you admitted that
 6 your husband had not been issued with employment
 7 documentation to start with?
 8 A. No. No. As far as I'm aware, this is as far as I'm
 9 aware, he had a contract for his training, which Nim
 10 should have done, and I am sure he did do it but he
 11 never issued it to Mushtaq. In my meetings Mushtaq
 12 didn't have a contract. My husband didn't have
 13 a contract in his possession. Now, in that file --
 14 I can't speculate what was in that file but I can
 15 100 per cent say the sponsorship agreement was in there
 16 because in December Nim was supposed to do it. I had to
 17 rush off to Canada because my auntie was ill and then
 18 I came back in January, Nim hadn't done the contract or
 19 anything, and I knew there was such a big payment for
 20 the sponsorship, we were told we had to get
 21 the sponsorship agreement signed.
 22 So I got the documents signed and I put them in his
 23 folder and then Mushtaq came in on, I believe,
 24 17 January to collect his contract from Mr Patel and we
 25 had a flood and he dealt with that, with Mr Patel, and

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1 I had an appointment, I had to go elsewhere. So
 2 I hadn't even realised he had not been issued
 3 the contract, but he came in that day to specifically
 4 get it. But that folder -- I can't speculate what was
 5 in there -- but a 100 per cent the sponsorship agreement
 6 was in there.
 7 Q. In fact, what you say is it was his file relating to his
 8 engagement as a hearing aid to dispenser. You don't
 9 refer to sponsorship at all?
 10 A. The sponsorship agreement was part of the audiology
 11 training. So we had to get this signed.
 12 Q. Can I show you the letter please for 12th December 2007,
 13 which related to your appeal. This was the appeal --
 14 what happened was, as I said, the findings about putting
 15 people on the books for them doing no work was not found
 16 against you by Mr Raines, correct?
 17 A. Right.
 18 Q. But you were given a written warning to lie on your file
 19 for 12 months?
 20 A. Right.
 21 Q. In relation to other matters, is that correct?
 22 A. That is right.
 23 Q. You appealed against that. Now Mr Perkins dealt with
 24 that?
 25 A. Yes.

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1 Q. This is his response of 12 September. In relation to
 2 the paragraph, allegation 1, about not having
 3 documentation in place, what he says, that you see at
 4 the bottom of the page, he says:
 5 "I believe you yourself would not dispute the lack
 6 of documentary evidence associated with these particular
 7 individuals."
 8 A. Yes.
 9 Q. He says:
 10 "In particular, terms and conditions of employment,
 11 training agreement or sponsorship agreements with
 12 Mr Rehman."
 13 A. Yes.
 14 Q. Pausing there. You yourself accepted during the course
 15 of the investigation that you did not have those
 16 documents which you just referred to for Mr Rehman?
 17 A. No.
 18 Q. If you look at page 6, it says there -- what does it
 19 say? "My behaviour." So they are saying my behaviour
 20 was not befitting. It says here:
 21 "Evidence which would have had significant bearing
 22 in the context of understanding the motivation and
 23 allegation 2 which has disappeared."
 24 A. I said to you I can't speculate what was in that file
 25 but the sponsorship agreement was definitely in there

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1 because I got --
 2 Q. I'm dealing with allegation 1. You are talking about
 3 something else. I'm talking about allegation 1 on the
 4 first page.
 5 A. No, I'm saying that he is blaming me for this evidence
 6 going missing. He is saying that it never existed and
 7 I'm saying --
 8 Q. That's not what he is saying. He is saying that you
 9 accepted that you don't dispute that there was not
 10 the documentation?
 11 A. That did not have the documentation, but it doesn't mean
 12 it didn't exist.
 13 MR JUSTICE HILDYARD: Mrs Birdi, what is recorded, as
 14 I understand it, is that you yourself would not dispute
 15 the lack of documentary evidence associated with these
 16 particular individuals, who are named in allegation 1.
 17 A. As regards -- Mushtaq couldn't produce a copy of his
 18 contract, no. But there was documentary evidence in
 19 that file, which was the sponsorship agreement, but it
 20 had gone missing. It was definitely there. And I have
 21 said this in my meetings as well. It is recorded in one
 22 of these meetings as well, where I have actually said
 23 the sponsorship agreement was definitely there in
 24 January 2007 in this file.

25 MR POTTS: Mrs Birdi that is not right. If you turn to
 201

1 page 2. The bottom paragraph. In terms of mitigation
 2 you pointed out that it wasn't only family members who
 3 didn't have documentation. By way of mitigation you
 4 refer to Ms Frondigoun to make the point that it wasn't
 5 just your family that you hadn't provided documentation
 6 to.
 7 A. You are talking here about his audiology training
 8 contract, aren't you? This is what we are referring to.
 9 His contract. I'm saying to you I'm not -- like I said
 10 to you at the beginning -- in the filing cabinet he had
 11 a file. I can't say what was in that file except for
 12 100 per cent the sponsorship agreement was in there.
 13 Here we are talking about the contracts; his training
 14 contracts. He didn't have that. That's what I'm
 15 talking about. That is what he is talking about here.
 16 I don't dispute that. He didn't have an employment
 17 contract in his possession. I don't dispute that. But
 18 what I'm saying to you is he had a file. It was in
 19 the filing cabinet and I know exactly what document
 20 I put in in January, and that was the sponsorship
 21 agreement. And that file went missing. I'm not saying
 22 that file had his employment contract for this, for
 23 this, for this. Because I don't know what he had there.
 24 I know Mushtaq didn't have a contract.

25 Q. At the bottom of the first page the admission you made
 202

1 included no sponsorship agreement with Mr Rehman?
 2 A. No, he did have a sponsorship agreement. In fact, as
 3 another thing as well, all the meetings I have had --
 4 I have had investigation meetings, my disciplinary
 5 meetings, I have had two disciplinary meetings and
 6 things -- the notes are never accurate. As regards --
 7 in the Bognor case, Mike Rowe's notes that they got
 8 the following year, they weren't representative of the
 9 meeting. I have sent in meeting notes which are
 10 representative of the meetings because they are not --
 11 their meeting notes are not correct. They put in what
 12 they want to put in, they exclude what they want to
 13 exclude.

14 To be honest with you I didn't read this until about
 15 six months after because I was so destroyed by the whole
 16 procedure and at that time I was really quite poorly
 17 with my health problem which I discussed earlier.

18 Q. This isn't meetings notes, this is a letter to you from
 19 Mr Perkins recording a discussion you had had with him?

20 A. Yes, well I --
 21 Q. He clearly records that you accepted that there were
 22 none of these documents in place?
 23 A. His contracts were not in place. The sponsorship
 24 agreement was a 100 per cent there and I have it said in
 25 meetings.

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1 Q. Finally --
 2 A. That is his sponsorship agreement was there. You can
 3 say what you like; 100 per cent the sponsorship
 4 agreement was in there. Because it is written on here,
 5 on Mr Perkin's thing, which I had no input on, I don't
 6 agree with that.

7 Q. Finally --
 8 A. He definitely had a sponsorship agreement.
 9 A 100 per cent.

10 Q. This again is a new allegation. Despite making
 11 the shredding allegation in your Dartford witness
 12 statement, there is no allegation made in relation to
 13 the removal of this file, is there, anywhere in
 14 the 613 paragraphs of your witness statement?

15 A. I don't know. I can't remember what's in my witness
 16 statement now. But his file went missing.

17 Q. Would you like me to show you the statement? It is not
 18 in there. Would you accept that from me?

19 A. I would have to read it. No, I don't accept that.

20 Q. That can be produced later if you would like.

21 A. If it is not in there, then it is an error.

22 Q. I put it to you, it didn't happen --

23 A. A 100 per cent --

24 Q. -- this, just like your allegation on the SEP
 25 allegation --
 204

1 A. No, I disagree with you totally Mr Potts there.
2 Q. -- this is another example of your willingness to make
3 up knowingly false allegations against Specsavers --
4 A. Absolutely not, I wouldn't do that --
5 Q. -- in order to gain an advantage in this and your
6 litigation?
7 A. No, no. I think -- I have documented evidence where
8 I actually bring it up in my 27th March, that meeting
9 with loss prevention. I have documents where I bring it
10 up -- I have got them today actually -- where I bring
11 them up in June 2007, about the shredded documents.
12 I brought it up in my grievance, which I had to re-raise
13 against Mel McAlindon in February 2007, which I have
14 with me I believe. I have brought this up so many
15 times.
16 MR POTTS: My Lord, I have no further questions. I'm
17 grateful for your indulgence.
18 Re-examination by MR STUART
19 MR STUART: My Lord, I have one 30 second question.
20 Mrs Birdi, just in relation to the business of Nim Patel
21 and Mr Potts asked you about: he resigned and then he
22 later sold his shares for £55,000. Do you remember you
23 were cross-examined about that?
24 A. Yes.
25 Q. If you go to a copy of your witness statement in
205

1 the other proceedings. At paragraph 120 on page 24.
2 You there explain that Mr Patel, on 20th February,
3 actually at his disciplinary interview -- do you see
4 that?
5 A. Yes.
6 Q. So they came into the store to investigate him?
7 A. Yes.
8 Q. On 20th February?
9 A. They came -- well, what actually happened --
10 Q. No, just listen to the question. They came into
11 the store. You say this at paragraph 113, that
12 Mr McAlindon said they were going to come in and put
13 the matters to Mr Patel. They came in on 20th February
14 to put it to him and then, at 120, you say that actually
15 at that meeting he signed away his shares for £55,000.
16 A. Absolutely.
17 Q. And his resignation happened at that time?
18 A. Everything happened on the same day.
19 Q. So it was all one transaction?
20 A. Absolutely, yes.
21 Q. That was my only question. Does your Lordship have any
22 questions?
23 MR JUSTICE HILDYARD: I don't, thank you very much. I'm
24 sorry about the rush.
25 MR POTTS: My Lord, I'm sorry about the --
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1 MR JUSTICE HILDYARD: Now, just one or two logistics in two
2 minutes. There may have to be an X file for documents
3 which are not within the chronological sequence and
4 don't really belong to the case, aren't evidence in it,
5 but have been put to the witnesses. If you could
6 arrange that, that would be helpful.
7 Secondly, I imagine that Mr McAlindon will be
8 the next witness and that I should read his evidence
9 next; is that right?
10 MR POTTS: My Lord, yes.
11 MR JUSTICE HILDYARD: On timing, how bad is the news?
12 MR POTTS: My Lord, this is the point. Looking at the
13 timetable, I'm afraid I do not think we are -- we are
14 certainly not going to finish the evidence in the other
15 action -- in fact I think we will hardly start it at
16 all -- in the Uckfield action. My concern is, my Lord,
17 in terms of what happens afterwards. Because in terms
18 of next year, if we can't finish it this term -- I have
19 made some enquiries in terms of my position, which is
20 not quite as awful as I thought, in that the first week
21 of term, which is when my matter is listed for, there is
22 an indication from the clerks of the listing that in
23 fact it is listed that that will be a reading week.
24 So that week -- and indeed if your Lordship was able
25 to sit in the pre-term -- means that we could actually
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1 do the Uckfield evidence certainly, and possibly even
2 closing submissions, and if not closing submissions --
3 that might be just six weeks -- I can't imagine we will
4 be there all the time.
5 My Lord, my suggestion, subject to everyone's
6 diaries, is that we finish this term Bognor and do
7 Uckfield next term.
8 MR JUSTICE HILDYARD: Finish the evidence.
9 MR POTTS: Finish the evidence and do the closings
10 afterwards. My concern is that, if the matter were to
11 go off, for example, after my -- that causes a real
12 concern because you have, effectively, a three plus
13 month gap between the evidence and closing submissions
14 for your Lordship, which is really far from ideal and
15 indeed a gap between the evidence as well, potentially,
16 which is, I would respectfully say, not in anyone's
17 interests.
18 MR STUART: My Lord, can I just mention, as my learned
19 friend knows -- I know his availability from now
20 the second week of term is gone -- as he knows and
21 I have mentioned it before, I have a trial which was put
22 back to start on 14th January, where I am the counsel
23 and have been in the case from the start. It is a case
24 involving British Airways starting on the 14th.
25 MR JUSTICE HILDYARD: First day of term?
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1 MR STUART: The second I believe.
 2 MR JUSTICE HILDYARD: In this court?
 3 MR STUART: It is not in this court. It is an Employment
 4 Tribunal.
 5 MR JUSTICE HILDYARD: Well, partly because of my own timing,
 6 which has suffered, but which I take some responsibility
 7 for, in having intervened, I hoped for a short cut which
 8 took us about a hundred miles further than was required,
 9 I think -- I hear what Mr Potts says. I will make
 10 enquiries and my clerk will too during the course of
 11 Monday. I don't think it is possible at the moment.
 12 I don't think that it is fair or right, there having
 13 been arrangements made for the two cases to be heard
 14 together, to split them irrevocably, and so I would be
 15 minded to allow you the day in the vacation which
 16 I indicated, but no more, and to continue at the least
 17 inconvenient time within the first fortnight of the next
 18 term.
 19 Now, I know that that's very difficult but the fact
 20 is that this is a continuing matter and I'm afraid that
 21 you must make your own enquiries as to what should be
 22 done. I regret it, but that is the position.
 23 MR STUART: My Lord, I fully accept and acknowledge that.
 24 My point is this, I would therefore like to carry on
 25 with these two cases as is planned at the moment, so

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1 that even if we get to the end of the evidence in
 2 the Bognor case on Tuesday or Wednesday, we use up
 3 Thursday and Friday of this term.
 4 MR JUSTICE HILDYARD: You must discuss that between you.
 5 Mr Potts, there is some sense in that. I know you will
 6 do your best to accommodate, insofar as you think
 7 consistent with your client's interests, and explain to
 8 me why, if not. I'm going to leave it in your very
 9 capable and sensible hands and we will try and arrange
 10 something and I will want at some point to discuss it
 11 with you, so that I can assess in my own mind why it is
 12 that we will shoot over the estimate by quite so much.
 13 MR STUART: That's why I'm hoping we won't. I'm saying that
 14 I think maybe two or three days of next term might be
 15 enough to finish all the evidence if we keep going.
 16 MR JUSTICE HILDYARD: If I may say so, I think that time
 17 estimates usually err, but it is usually safer to err on
 18 underestimating --
 19 MR POTTS: My Lord, indeed. In fact the matter was
 20 originally listed --
 21 MR JUSTICE HILDYARD: -- I say one overestimates rather than
 22 underestimating -- sorry?
 23 MR POTTS: My Lord, in fact it was actually listed
 24 originally for two weeks and I suggested it must be
 25 extended to three and it sounds as if even that --

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1 MR JUSTICE HILDYARD: It is going to be nearer four in
 2 the end and for other reasons I shall want to explore
 3 why that was, not by way of threat to you, but by way of
 4 simply identifying the reasons why these things happen.
 5 But on Monday first thing, before Mr McAlindon, can
 6 I suggest we have another get together on the logistics
 7 and see what the least inconvenient course is and we
 8 will then try and accommodate you, insofar as that's at
 9 all possible.

10 MR STUART: My Lord, could I just remind you, just
 11 fractionally before Mr McAlindon, we have Mrs Rosier
 12 coming.

13 MR JUSTICE HILDYARD: When would you like to begin on
 14 Monday?

15 MR POTTS: 10 o'clock, my Lord.
 16 MR STUART: I will get Mrs Rosier here for 10 o'clock.

17 MR JUSTICE HILDYARD: Thank you very much.
 18 (4.45 pm)

19 (The court adjourned until 10.00
 20 on Monday, 16 December 2013)

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