

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 12

December 17, 2013

Opus 2 International - Official Court Reporters

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1 Tuesday, 17 December 2013
 2 (9.30 am)
 3 MR MEL McALINDON (continued)
 4 MR JUSTICE HILDYARD: Good morning.
 5 MR STUART: Good morning, my Lord.
 6 MR JUSTICE HILDYARD: Good morning, Mr McAlindon.
 7 Cross-examination by MR STUART (continued)
 8 MR STUART: Mr McAlindon, I just need to cover a point that
 9 I think you conceded yesterday, and I just want to see
 10 how it affects your witness statement in this material
 11 part which we are up to. We were dealing, at the close
 12 of play yesterday, with the whole allegation about
 13 Mr Vos, the time that he was spending, et cetera, and
 14 your suggestion that those letters, dated May 2009, were
 15 trying to support a case which wasn't true.
 16 Would you be shown the transcript bundle for
 17 yesterday? I just want to take you to one section of
 18 the transcript, so we can just get an idea: Day 11,
 19 page 182 and page 183. Do you have it?
 20 A. I do.
 21 Q. You will remember, I am sure, this was sort of yesterday
 22 afternoon, quite near the end actually, about 30 pages
 23 from the end. Do you see you said at line 6 on
 24 page 182:
 25 "Answer: So to suggest that somebody is running the

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1 entirety on their own, I don't think is a reasonable
 2 statement. I accept without reservation that he was
 3 controlling the financial side of the business and doing
 4 other work."
 5 Then I put to you a whole load of other things that
 6 he was doing:
 7 "Question: You accept without reservation he was
 8 doing all of the human resources side of the business?
 9 "Answer: Yes.
 10 "Question: You accept without reservation that he
 11 was advising the directors about the commercial side of
 12 the business?
 13 "Answer: In some respects.
 14 "Question: Well, nobody else was.
 15 "Answer: No.
 16 "Question: And Dr Poulsen is a doctor?
 17 "Answer: Mm.
 18 "Question: And Mr Weller had taken a big step
 19 back~..."
 20 And your answer was at 25:
 21 "Answer: To the extent that you can when you are
 22 not inside the business and actively working with the
 23 people on the sales floor, yes. There is only so much
 24 you can do if you are not there."
 25 I said:

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1 "Question: Yes, and that is exactly what Mr Vos was
 2 saying he was doing?
 3 "Answer: I don't dispute that."
 4 I also took you yesterday to all the parts of the
 5 evidence of the employee staff saying all of the
 6 controlling managerial function that Mr Vos was
 7 conducting for the store; do you remember?
 8 A. Yes.
 9 Q. Can we go to your witness statement, then? This is your
 10 first witness statement.
 11 A. Which bundle?
 12 Q. Bundle C. You can put away the transcript bundle now.
 13 You can put away X. You can probably put away for now
 14 the others, and as we need them we can pull them out,
 15 otherwise you will not have much space.
 16 On page 62 of the bundle, under the heading "False
 17 payments to Mr Vos", this is a --
 18 A. Sorry, which --
 19 Q. Sorry, tab 3, your first witness statement, page 62, you
 20 have a heading "False payments to Mr Vos", and that
 21 I think goes all the way right through to page 69. So
 22 these seven pages of your witness statement are all
 23 about this issue. Do you have it?
 24 A. I do.
 25 Q. So paragraph 43:

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1 "In the course of the investigation it became clear
 2 to Mr Barnes and I that Mr Vos was not doing sufficient
 3 work to justify such payments."
 4 That is the payments for the hours, et cetera.
 5 I think you conceded yesterday that you simply don't
 6 know how much work, in terms of hours, Mr Vos was doing;
 7 you accepted that yesterday?
 8 A. I did accept that yesterday.
 9 Q. Then:
 10 "Not only this, there is little evidence to show
 11 that he was doing his 24 contractual hours a week, let
 12 alone doing any work to justify the bonus or overtime."
 13 But you now accept that he was running the whole
 14 business?
 15 A. No, I didn't accept that. I accepted that he had very
 16 strong financial control over the business, a lot of the
 17 other work that was discussed I didn't feel held a huge
 18 amount of weight in terms of the amount of work that
 19 could potentially be involved in it: for example, in the
 20 transcript, I was referred to Mr Vos controlled
 21 everything in relation to HR. The reality is that the
 22 evidence that we saw in relation to HR wasn't
 23 substantial. In the last year, up to the investigation,
 24 there were only two new employees employed, and in
 25 reality, the workload -- don't get me wrong, there is

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1 workload involved in that, but it might be a day or even
 2 two days, but that's in a year, and it's just when you
 3 say that "I am controlling HR", it sounds very grand and
 4 a lot of work to do, but there was one major grievance
 5 against Mr Weller which again would take a few days'
 6 work, then maybe, you know, in the course of events that
 7 you would want to speak to an employee about their
 8 attendance. Mr Vos wouldn't be in a position to talk
 9 about their performance in other respects. So when you
 10 are presented with "I did all this work in relation to
 11 HR", from where I am sat and my understanding of how
 12 businesses run, that really is implausible in terms of
 13 how big is the volume. It's not a big volume.

14 A similar sort of reference was made throughout to
 15 "Mr Vos goes through all these invoices", and again,
 16 yes, I don't dispute that he may well have gone through
 17 invoices, but the reality is when you understand how we
 18 purchase and the fact that 95 per cent of all invoices
 19 are electronically generated from effectively the till
 20 and what you input into the till, where lenses and such
 21 would be ordered, if you went through those invoices in
 22 detail you may find the odd anomaly. Typically any
 23 anomaly would be you were supplied on the invoice with
 24 a different lens from one that was ordered, for example.
 25 But the lens that might have been supplied from the lab

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1 would have been a similar product but not the exact
 2 product but one that was same price, same value, same
 3 performance, if you like. So you might find that there
 4 are anomalies, but financial anomalies would be
 5 minuscule, and it's illogical, when somebody explains to
 6 you that they would spend a significant amount of time
 7 on a weekly basis, week in week out, examining invoices
 8 because by the very nature of the way our invoices are
 9 electronically generated, you wouldn't really find
 10 an awful lot wrong with them. So the amount of money
 11 that you expend in examining that area against the
 12 amount of money that you would save, it's completely
 13 illogical that you would expend significant volumes of
 14 time.

15 So I don't think my statement is in any way
 16 different to how I've explained how I perceived the
 17 activities that I was being told generated all this
 18 additional work. I don't see how that could even come
 19 up to the minimum hours, if you accept what the
 20 employees are saying. And the employees are very
 21 consistent, in that the assistant manager explains that
 22 Mr Vos tightly financially controls things, when she
 23 says "I can't buy a pair of rubber gloves, I have to
 24 wait until the next day". But the day-to-day issues he
 25 couldn't manage because he is not there.

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1 So in terms of day-to-day performance, coaching,
 2 development, if he is not there and working with those
 3 people, which is what a retail director would do, it's
 4 difficult to comprehend how he could be fulfilling all
 5 of these hours outside of the business, because I can't
 6 see any activity that could generate that much work.

7 So that's how I perceive it when presented with
 8 these lists of all the activities that he does.

9 Q. In paragraph 46 you mention the CCTV footage for that
 10 two week period between the date when you sent --

11 A. Sorry, my apologies, what page?

12 Q. Paragraph 46, page 64. You mention CCTV footage for the
 13 two week period between when you wrote to the claimants
 14 saying that you were going to start investigating, and
 15 15 June, the day that you go in. So it's that two week
 16 period, isn't it?

17 A. Correct.

18 Q. The first two weeks of June?

19 A. Correct.

20 Q. Do you accept that that's not necessarily an average
 21 ordinary period of business as far as these claimants
 22 are concerned?

23 A. It would be representative of that two week period.

24 Q. Okay. Let's flick over quickly to page 65,
 25 paragraph 50:

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1 "The claimants allege that Mr Vos was completing his
 2 contractual working hours at home. On investigations by
 3 Mr Barnes, it became clear that that was simply not
 4 true."

5 Now, you accepted yesterday that you simply don't
 6 know what work he was doing at home, so that statement
 7 by you is false, isn't it?

8 A. No, it isn't. As I've said, that conclusion is based
 9 upon the evidence that was obtained both from the
 10 employees who were interviewed and their explanations of
 11 events in terms of, for example, not only his attendance
 12 inside the business but the amount of paper that they
 13 saw him leaving the business with, from Mr Vos' own
 14 explanations of, you know, the two examples that were
 15 discussed which is, "I control all of the HR and
 16 I control all of the invoicing and I check all of the
 17 bank statements", et cetera. They are implausible to me
 18 because I understand the issues surrounding those
 19 invoices.

20 Q. How are they implausible --

21 A. So for all of those reasons, I came to the conclusion
 22 that it simply wasn't true. I don't think that --

23 Q. That's just your view.

24 A. It is my view and I don't think --

25 Q. It is no longer your view because you said to us

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1 yesterday you simply don't know --
 2 A. No, it is my view, and it is my view -- I can't say
 3 categorically what he did or what he didn't do. All
 4 I can say is that from the evidence that we obtained and
 5 the explanations that Mr Vos gave of it, I found his
 6 explanations to be implausible and inconsistent with the
 7 evidence, and in light of that, I came to the personal
 8 opinion that his explanation simply couldn't be true,
 9 and I don't think that's an unreasonable conclusion for
 10 me to come to with the evidence that I had.
 11 Q. You had already been given the agenda by Mr Dyson,
 12 hadn't you?
 13 A. I'd never been --
 14 Q. And that was to find that Mr Vos wasn't doing any work?
 15 A. You used the word "agenda". I have never been given any
 16 agenda, I was given an instruction to investigate
 17 financial irregularities, which is exactly what I did.
 18 Q. The financial irregularities that you were instructed to
 19 investigate were that Mr Vos wasn't doing any work
 20 "nobody knows what he is doing", do you remember?
 21 A. I can't remember the exact words of it, but I was given
 22 an instruction to investigate.
 23 Q. Okay, 51:
 24 "Even if it could be believed that Mr Vos was able
 25 to substantial work from home without use of the IT

1 systems, he would need to be in regular contact with the
 2 employees."
 3 You say, end of 51:
 4 "It is inconceivable that Mr Vos would have been
 5 able to do any type of substantial managerial work
 6 without being in regular contact with the store."
 7 Is it still your evidence today that you are now
 8 saying that it's inconceivable that Mr Vos was doing any
 9 type of substantial managerial work? Is that your
 10 evidence?
 11 A. I think that's a reasonable statement, because I qualify
 12 it by saying "substantial", and "substantial" is
 13 a reasonable volume of work, it's not a small amount of
 14 work from home. Lots of directors do small amounts of
 15 work from home, but the vast proportion is done in the
 16 workplace, not at home. So again, I don't think that's
 17 an unreasonable statement or an unreasonable conclusion
 18 for me to come to.
 19 Q. But you are trying to take your typical, what, retail
 20 director; is that the comparison that you are making?
 21 A. No, managerial.
 22 Q. Well, who manages stores other than the retail director,
 23 in your experience?
 24 A. Retail managers --
 25 Q. You said that Mr Vos was a unique --

1 A. Retail managers, contact lens managers, supervisors,
 2 they all have managerial roles inside a store.
 3 Q. They are employed to work in the store, that's their
 4 job?
 5 A. Are you asking me a question there?
 6 Q. I am asking whether that's the comparison you are
 7 making: people who are employed to work in the store,
 8 I thought you said yesterday that Mr Vos' position was
 9 a unique one as far as you were concerned?
 10 A. I did say that, yes.
 11 Q. So we can't compare a unique practice manager, business
 12 practice manager role, we can't compare that simply with
 13 a store manager, can we, who is employed 40 hours a week
 14 to stand in front of the --
 15 A. I don't think throughout my evidence I have necessarily
 16 compared the role. What I have compared is his
 17 contractual obligations and the overtime payments that
 18 were being made to him, and looked at the activities by
 19 way of Mr Vos' explanation, and looked to see if the two
 20 are consistent with each other. And from the evidence
 21 given from the employees, and the evidence given by
 22 Mr Vos, and by my own knowledge of the systems and the
 23 financial activities, the things, the mechanics of what
 24 you need to do, it's not consistent with his contract or
 25 the hours that he was being paid. I am not necessarily

1 querying the role in itself.
 2 Q. Okay. So then you try to support your "inconceivable
 3 that Mr Vos would have been able to do any type of
 4 substantial managerial work" in some further paragraphs
 5 where you purport to cite some of the witnesses, and
 6 I didn't take you to these three, so I should have done.
 7 51.1:
 8 "Mr Morris stated that Mr Vos did not work from
 9 home."
 10 Where do you say that Mr Morris said that?
 11 A. Could you direct me to Mr Morris's statement?
 12 Q. Yes, there are two, the first is in E4/974-1, and the
 13 second is at E4 --
 14 A. Sorry, I'll just read the first one, if I can, first.
 15 Q. Okay. (Pause). Just to help you, on Godfrey I think
 16 it's at 974-2 at the bottom of the page about three from
 17 the bottom. It starts:
 18 "In terms of Godfrey's role, how often does he come
 19 in?"
 20 Do you see that? That seems to be where Mr Barnes
 21 is asking him, and Mr Morris says that he would come in
 22 four days a week.
 23 A. Yeah, I've read that.
 24 Q. Then he comes in, and do you remember we saw this
 25 yesterday, 9.30, disappeared until 4.30 --

1 A. Yeah.
2 Q. -- to 5.30.
3 A. Yeah, I've got that. Did you direct me to the other
4 statement?
5 Q. The other statement was 987 in the same bundle, E4. By
6 my reading of that entire statement, 987 to 989, the
7 issue of when Godfrey, or Mr Vos, was in the store or
8 out of the store or working from home isn't mentioned at
9 all. (Pause) Just so I can show you that I don't think
10 your statement at 51.1 can possibly be right, you are
11 suggesting that Mr Morris' evidence was that Mr Vos did
12 not work from home at all --
13 A. No, I would agree --
14 Q. If you go to 974-4, Mr Morris actually volunteers
15 an answer, just under the first holepunch:
16 "Question: Bear in mind what you said earlier, if
17 I told you that Godfrey in terms of his attendance was
18 being paid overtime, would that shock you?
19 "Answer: Yes. Unless he is taking stuff home with
20 him to work on in the evening."
21 A. Yeah. I would agree that --
22 Q. So it's obvious Mr Morris thought he was taking -- he
23 was at least working in the evenings, couldn't say how
24 much he was working, but that's just not right, is it?
25 A. My Lord --

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1 Q. Your 51.1?
2 A. I would agree that the word in its truest sense is not
3 accurate. I made the best judgment that I could on all
4 the information that I had. I don't think it
5 fundamentally misrepresents my interpretation of events,
6 but I agree that that isn't specifically accurate.
7 I agree with that.
8 MR JUSTICE HILDYARD: It's not really accurate at all, is
9 it?
10 A. No, I accept that.
11 MR STUART: Let's go to the next example you give,
12 Romie Rhoder, who worked at the store full-time, was
13 asked whether he ever saw Mr Vos -- do you have any
14 knowledge of this yourself, Mr McAlindon, or has this
15 just been written for you by somebody who doesn't know
16 who these people are?
17 A. No, I've written it as --
18 Q. Romie Rhoder is a woman.
19 A. I wrote it from the evidence with Mr Barnes, this
20 report.
21 Q. "... was asked whether he [we will take that as a she]
22 ever saw Mr Vos taking work home from the store. He
23 [she] stated that occasionally Mr Vos might be seen
24 taking a small file home."
25 That's the way you put it in your statement; do you

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1 see that?
2 A. I do.
3 Q. "... [she] stated that occasionally Mr Vos might be seen
4 taking a [so one] small file home"; yes?
5 A. I agree.
6 Q. If you go to her interview, 1028, I think it starts at
7 1027 in bundle E4. Do you see that?
8 A. Yeah.
9 Q. I think it's line 52, this is when Mr Barnes is asking
10 some, what I have suggested to you were leading
11 questions. Do you see 1028:
12 "When Godfrey does leave the business in the
13 evening", do you see?
14 MR JUSTICE HILDYARD: Line 52.
15 A. Yes, I've got that.
16 MR STUART: Line 52:
17 "Question: When Godfrey does leave the business in
18 the evening is he taking home mountains of paperwork
19 anticipate.
20 "Answer: No, he has the dog in one hand and maybe
21 one or two small files in the other."
22 A. Correct.
23 Q. So it's not just a small file, is it? It's one or two?
24 A. Correct.
25 Q. Why have you deliberately altered the evidence given by

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1 the staff to understate the amount of paperwork that
2 Ms Rhoder was saying she had seen Mr Vos taking home in
3 the evenings?
4 A. There was no intent whatsoever to deliberately
5 misrepresent anything. One or two, I don't know why
6 I wrote that at the time, but I don't feel I have
7 fundamentally misrepresented what happened in the
8 investigation report. And equally, when the
9 investigation report would have been submitted, and had
10 it gone to a disciplinary process, those issues would
11 have been challenged and corrected.
12 Q. Okay. Then your next line in relation to Ms Rhoder is:
13 "When asked whether [she, we will take that as] felt
14 it was feasible that Mr Vos could be working circa
15 60 hours overtime on average a month, Ms Rhoder said
16 this was totally impossible."
17 Well, actually, it wasn't an open question like
18 that, was it? It wasn't an open question "do you think
19 it's feasible that Mr Vos could be working 60 hours
20 overtime a month?" We see the question at 1028, don't
21 we, Mr McAlindon? The question reads at line 55:
22 "Question: If I [and this is Mr Barnes speaking, to
23 be clear to you] told you Godfrey was falling short of
24 his contracted hours by 60 hours a month, if I then told
25 you he was then claiming approximately an additional

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1 60 hours as overtime on top of this, is it possible for
 2 him to be doing these hours?
 3 "Answer: It's impossible."
 4 That's a hypothetical, isn't it? Because Mr Barnes
 5 is telling Ms Rhoder that Godfrey is falling short of
 6 his contracted hours. Not she is saying it; he is
 7 saying it.
 8 A. I agree that there are differences in the wording.
 9 Q. Then the next line in your statement says:
 10 "... and [that is she, I presume you mean] describes
 11 such a level of overtime as dishonest."
 12 Actually the question from Mr Barnes is:
 13 "Question: If he was not fulfilling these hours,
 14 that he was being paid for, then how would be describe
 15 this?
 16 "Answer: It would be dishonest."
 17 A. Yeah.
 18 Q. That's not the same thing, is it, as saying that she was
 19 describing him as dishonest?
 20 A. I don't dispute that.
 21 Q. Aren't you rather therefore misstating her evidence,
 22 Mr McAlindon, in order to try to bolster your own case?
 23 A. I don't agree with that, my Lord. I think that that
 24 investigation report would have been submitted with all
 25 of the interviews and, again, had the investigation gone

1 from an investigative stage to a disciplinary, all of
 2 those issues could have been challenged. There was
 3 transparency in the process in as far as those, the
 4 summary could be challenged at the minute level, as we
 5 are doing now, because the records of interview would
 6 have been provided to the individual involved. So
 7 I appreciate that there are differences in the words,
 8 I don't think it's reasonable to say that it's been
 9 deliberately misrepresented, and I don't think it's
 10 being fundamentally exaggerated. There are differences,
 11 and I accept that.
 12 Q. Then the next and last of the three that you use to
 13 support your argument is Sam Butler, and you say:
 14 "Sam Butler worked part-time, was asked whether she
 15 ever saw Mr Vos taking any work home, she stated that
 16 Mr Vos only took delivery notes and letters home, but
 17 nothing else."
 18 I think we see Sam Butler at 1006. Is it not right,
 19 looking at 1006, line 14, at 13 the question was:
 20 "Question: When does Godfrey attend the store?
 21 "Answer: I think he comes in about 9.45 and leaves
 22 at 11.30, though I cannot comment on when Godfrey
 23 returns, as I have already left the store."
 24 She only works in the mornings, doesn't she?
 25 (Pause)

1 Or at least she certainly doesn't work at the times
 2 when Mr Vos comes in in the afternoons; that's her own
 3 evidence?
 4 A. I don't disagree with that.
 5 Q. So first of all, she can't give any helpful evidence
 6 about the amount of time he spends in the afternoons?
 7 A. I wouldn't disagree with that.
 8 Q. She says he only works three days a week, but the other
 9 witnesses say four.
 10 A. Well --
 11 Q. Perhaps because she is not there on a certain day.
 12 A. I think all of them are speaking from their
 13 recollection. None of them are going to be exact.
 14 Q. Yes. But how can she give any helpful assistance to you
 15 about the amount of paperwork that he's taking home with
 16 him in the evening if she starts her statement by saying
 17 she's not there in the afternoons?
 18 A. We were asking the same sorts of questions to all the
 19 employees, so whether this particular individual is less
 20 helpful than other particular individuals, you know,
 21 I wouldn't necessarily disagree, she is a part-time
 22 employee, but we are simply asking.
 23 Q. These are the only three that you have taken,
 24 Mr McAlindon?
 25 A. Sorry?

1 Q. These three examples, do you see, paragraph 51 of your
 2 statement is supported by three examples, Mr Morris, we
 3 have already dealt with, you have accepted it's wrong,
 4 Ms Rhoder, we have already dealt with, and Sam Butler --
 5 A. Well --
 6 Q. -- and then it stops.
 7 A. I have accepted that there are words in there that are
 8 incorrect, I have accepted that. Do I think that the
 9 meaning within it is fundamentally incorrect? No,
 10 I don't. I think it's a relatively accurate reflection,
 11 not 100 per cent, I accept that, but it is a relatively
 12 accurate reflection of what they have said. I don't
 13 think it's --
 14 Q. Is it your --
 15 A. I don't think it's deliberately deceptive in any way.
 16 Q. Your summary of Sam Butler's evidence over the page at
 17 66 at the top, I am looking at the last line:
 18 "So [as you put it] she did not believe that Mr Vos
 19 was working from home to any significant extent."
 20 Where does it say that anywhere in her statement?
 21 A. That's clearly an interpretation that I've applied to
 22 what she's said.
 23 Q. Why are you interpreting things --
 24 A. Because --
 25 Q. -- in such a negative way when --

1 A. Because the summary of the investigation interprets how
 2 you perceive and understand the evidence at the time
 3 that you write the investigative report.
 4 Q. Okay --
 5 A. That report would become part of a compilation of
 6 evidence that would produce a final report and file and
 7 all the supporting exhibits that would go to the board
 8 of the company that would decide: is there a case to
 9 answer, and do they agree with the recommendations that
 10 are being made? They may well disagree with the
 11 recommendations that were being made, and decide that
 12 they disagree with the recommendations in terms of the
 13 conclusions that were drawn or the allegations that we
 14 believed should have been answered at a disciplinary.
 15 Those are not our decisions, we submit our findings as
 16 best as we can explain them, and it would then go
 17 through a disciplinary process where it would be
 18 challenged, and all of the evidence would be challenged
 19 in the normal way. So it's an investigative report.
 20 Q. I'm asking why you're interpreting this lady's
 21 statement, if you look, for example, at the question at
 22 line 18 on 1006:
 23 "Question: In your opinion, could someone who is
 24 responsible for the entire business [that seems to be
 25 Mr Vos] perform their duties by attending the store for

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1 only seven and a half hours per week?
 2 "Answer: No, I couldn't do my duties in that time,
 3 so no, they couldn't."
 4 You have turned that into:
 5 "So she did not believe that Mr Vos was working from
 6 home to any significant extent."
 7 It's not really a fair analysis of the general
 8 nature of her evidence, is it?
 9 A. I don't -- I don't dispute your interpretation of it.
 10 Q. Okay, fine, thank you. At 52 you start with the words:
 11 "In spite of not completing his contractual working
 12 hours ..."
 13 You accept now you don't know what working hours he
 14 completed at home? You don't know?
 15 A. I think that's a reasonable statement based on the
 16 collective responses from all of the employees.
 17 Q. You have accepted you don't know what all of the
 18 managerial stuff --
 19 A. But that's my interpretation based upon all of the
 20 statements.
 21 Q. I see, it's your interpretation.
 22 A. It is.
 23 Q. Okay.
 24 At 58 under the next heading "Actual work done by
 25 Mr Vos":

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1 "Neither I nor anyone at the loss prevention
 2 department disputed that Mr Vos did do some work for the
 3 store. According to the evidence from the employees and
 4 Mr Weller, that work related mainly to low level
 5 administrative matters."
 6 That's not fair, is it? We went through -- I am not
 7 going to go through them all again --
 8 A. It's not fair, if you continue to the first paragraph
 9 that explains, for example, that the submissions from
 10 the NHS are all processed by the employees, which
 11 involves a lot of analysis in terms of: are the claims
 12 right, are they -- all the boxes ticked off, can they be
 13 submitted for payment, and they explain that Mr Vos
 14 physically took those to the NHS. So physically taking
 15 them to the NHS, I don't think it's unreasonable to
 16 describe as a more menial administrative task compared
 17 to the scale of the administrative task in going through
 18 all the forms, checking the validity of all the claims,
 19 compiling a submission, and then submitting a submission
 20 with all the paperwork.
 21 Q. No. Mr McAlindon, your statement there at 58 is that,
 22 according to the evidence from the employees, and
 23 Mr Weller, that work -- that is the work that Mr Vos
 24 did -- related mainly to low level administrative
 25 matters, and then you give your examples of physically

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1 taking submissions relating to the NHS, doing checks,
 2 a meeting once a week; do you see?
 3 A. Mm.
 4 Q. What I am saying to you is that yesterday you
 5 acknowledged to me that all of the employee witnesses
 6 actually gave evidence that Mr Vos ran the whole
 7 business, he was not limited to some low level
 8 administrative matters?
 9 A. Again, this is my interpretation in the investigative
 10 summary, and although I make that statement, I then go
 11 on to qualify why I believe that statement to be true.
 12 Q. reason is you are trying to create a picture, you are
 13 trying to support the conclusion that you want to reach,
 14 Mr McAlindon, you have come with a predetermined answer
 15 that you want to get to, that's what's being suggested
 16 of you?
 17 A. It isn't predetermined, those conclusions are drawn from
 18 the evidence that we gathered, and that investigative
 19 report would then be submitted, and if a disciplinary
 20 process was instigated, all of that evidence would be
 21 challenged as part of that disciplinary process.
 22 Q. But it's just simply --
 23 A. So the outcome, the actual outcome comes from the
 24 disciplinary process, it doesn't come from my
 25 investigation. That's the foundation from which all the

24

1 decision-making will take place and the debates as to
 2 the rights and wrongs of the conclusions.
 3 Q. We never had a disciplinary process in this case, did
 4 we?
 5 A. No, because they resigned.
 6 Q. Okay, fine. So this is the report which Mr Dyson said
 7 he relied upon, and I am suggesting to you that your
 8 summary here in your statement about your conclusions,
 9 which is based on an assertion that the evidence from
 10 the employees was that Mr Vos' work related mainly to
 11 low level administrative matters is a complete
 12 misinterpretation of the employees' statements?
 13 A. Well, firstly, Mr Dyson made his judgment based on the
 14 entire report and the evidence associated with it --
 15 Q. I am asking you about your evidence.
 16 A. Well, you have made a statement --
 17 Q. I know.
 18 A. Okay.
 19 Q. And I am asking you about your evidence.
 20 A. Okay, sorry, can you repeat your question, then, please?
 21 Q. Yes. Your statement about the employees' evidence was
 22 that Mr Vos' work related mainly to low level
 23 administrative matters is simply a complete misstatement
 24 of their evidence?
 25 A. I don't think it is, I disagree.

25

1 Q. Claire Stewart, page 976, confirmed that Mr Vos was
 2 managing the whole practice of the business. Yes? Do
 3 you remember we had this yesterday?
 4 MR JUSTICE HILDYARD: Do you want to look at that?
 5 A. I am just going back to it, yes. (Pause)
 6 MR STUART: Go to page 979, Mr McAlindon, line 90. This is
 7 an answer given by Claire Stewart, I took you to it
 8 yesterday:
 9 "Answer: It is Godfrey who calls the shots and
 10 makes the decisions."
 11 Do you see that?
 12 A. I am nearly there.
 13 Q. Line 88 --
 14 A. I am up to 82.
 15 Q. Okay. (Pause) Start at 86, then:
 16 "Answer: I couldn't go to her and ask her something
 17 as we had to always go to Godfrey. People would view
 18 that Helle is higher than Barry, but only because of her
 19 relationship with Godfrey, and that Godfrey is viewed as
 20 the owner of the store. On all occasions when I have
 21 been to staff training or when a message has come for
 22 the business, ie when decision making is rolled down to
 23 the team, it is Godfrey who calls the shots and makes
 24 the decisions."
 25 A. Sorry, so your question?

26

1 Q. My question is that this witness, employee witness,
 2 Claire Stewart, doesn't consider that Mr Vos' role is
 3 some low level administrative function, which is your
 4 evidence, and you are hanging on to it --
 5 A. I am not hanging on to it --
 6 Q. If you just acknowledge that it is wrong, we could move
 7 on but I am going to have to --
 8 A. No, I --
 9 Q. -- take you to each one.
 10 A. -- am going back to understand the entire context, and
 11 I accept your point. I accept your point.
 12 Q. That all of the staff say that Mr Vos effectively runs
 13 the entire show?
 14 A. No, you were talking specifically about this individual
 15 and I agree with your point.
 16 Q. Okay, right, so you will accept my point on
 17 Claire Stewart.
 18 The next one is Gemma Davies, because Mr Morris'
 19 second statement here doesn't deal with it, but 991,
 20 Gemma Davies, line 17, her answer is:
 21 "Answer: Yes, definitely Godfrey controls
 22 everything and all decisions go through him. It's
 23 Godfrey's way or no way. All meetings are held by
 24 Godfrey."
 25 Do you see that?

27

1 A. I do.
 2 Q. So her evidence is not that his main -- mainly he was
 3 just doing low level administrative functions?
 4 A. No, I accept that.
 5 Q. The next one is Mr Verrell, page 997. I am not sure
 6 that he is asked specifically the issue of the nature of
 7 Godfrey's role.
 8 (Pause)
 9 We have already seen Sam Butler, I will not take you
 10 to that again. Let's take the manager, Sarah Scott,
 11 1010. Do you see? 1010, starts at line 13:
 12 "Question: Can we just discuss the management roles
 13 and responsibilities, let's start with Godfrey Vos?
 14 "Answer: Godfrey Vos is employed as the business
 15 practice manager."
 16 Do you see?
 17 A. Sorry, which line?
 18 Q. The beginning of the interview.
 19 A. Yeah.
 20 Q. :
 21 "Question: "Can we just discuss the management
 22 roles, let's start with Godfrey Vos?
 23 "Answer: Godfrey Vos is employed as the business
 24 practice manager."
 25 Line 18:

28

1 "Question: What does he do?
2 "Answer: Godfrey does anything to do with finance,
3 accounts, bills, purchases, salaries, administration of
4 employment contracts, payroll, rotas, who is doing what
5 on which day.
6 "Question: He controls the business finances?
7 "Answer: Yes.
8 "Question: He is a decision-maker in terms of the
9 finances?
10 "Answer: Yes."
11 Do you see that? He is not just a low level
12 administrative --
13 A. I would agree that on page 67 that to describe it as low
14 level administrative matters is incorrect, with
15 hindsight.
16 Q. Okay. Page 1024, just to finish it, Bonnie Curtis,
17 line 15:
18 "Question: What do you understand Godfrey's role
19 is?
20 "Answer: Godfrey is the boss."
21 A. Yeah.
22 Q. So under the heading "Actual work done by Mr Vos", why
23 not start with a sort of summary to the decision makers
24 here: Mr Vos runs the entire store?
25 A. Because I don't think that statement is correct.

1 I think Mr Vos does control all of the administrative --
2 sorry, the financial controls in respect of any form of
3 decision-making as to who can do what. He clearly
4 does -- I would accept that he does the rotas and a lot
5 of other functions, but controlling the entire running
6 of the store is not possible unless you are in the store
7 and are working in the store.
8 Q. Well, it is if you could --
9 A. No, it isn't, because --
10 Q. He could delegate down to Mr Weller --
11 A. -- a significant proportion of the role of the retail
12 director, which runs the retail side of the business
13 involves being in and on the shop floor, working with
14 the employees to understand what they are doing and how
15 they are doing it, and if you are not in the store you
16 can't perform that role or understand how all the other
17 rules, policies, guidance, training, all hangs into
18 their performance. So I don't agree that that's
19 a reasonable statement.
20 Q. Mr Vos had acting effectively under him Sarah Scott,
21 store manager, actually in the store; Barry Weller on
22 the floor, dispensing a lot of the time but also
23 overseeing staff actually on the shop floor; and he was,
24 wasn't he, responsible -- responsible -- for the
25 operation of the store? That was his role, according to

1 all of these staff?
2 A. I wouldn't terribly disagree with your interpretation.
3 Q. Yeah.
4 A. I don't think that was a fundamental issue.
5 Q. Okay, so you would accept Mr Vos was responsible for the
6 operations of the store, your --
7 A. I think he controlled the decision-making in the store
8 unequivocally.
9 Q. So he was responsible for the operations although he
10 wasn't personally on the shop floor at any time?
11 A. No.
12 Q. That's your point?
13 A. Or in the business for a period that met his contractual
14 hours or his overtime.
15 Q. You say "in the business"; you mean actually in the
16 office in the store? He can be in the business at his
17 office at home, can't he?
18 A. He can be in the business, and if the evidence
19 demonstrated that there was any evidence in volume of
20 what he was doing at home, then would there be
21 an argument in terms of the payments that were made for
22 him? Not if the amount of work that you could see
23 matched the amount of payments that were paid to him.
24 Q. Anyway, you have just accepted to me that Mr Vos was
25 responsible for the -- responsible -- operations of the

1 store. If you look, therefore, at the bottom of
2 page 67, paragraph 59 of your statement, the last
3 sentence where you say:
4 "This confirms my view reached at the time that
5 Mr Vos was not responsible for the operation of the
6 store."
7 We should delete that line, shouldn't we? That's
8 not really now your evidence, the last line of 59?
9 A. At the time I made this statement I believed it to be
10 accurate. I understand why people would now take
11 a different view of it, and had they gone through
12 a disciplinary process and that been challenged, I think
13 those points would have been accepted. I think, does it
14 fundamentally change my belief that I held then and
15 I still hold today that he didn't meet his contractual
16 hours and neither did he do work that justified the
17 payments that were made to him, despite the differences,
18 having challenged this, I still fundamentally don't see
19 a change that would alter my belief.
20 Q. Okay, paragraph 60, you deal with, he produced for you
21 a schedule trying to set out for you his explanation as
22 to the work that he did; do you remember. If you go to
23 E7, page 1673, do you see you keep contending that if
24 only he had answered this point, we wouldn't have got to
25 where we are now? But he did, didn't he? Page 1673 he

1 set out for you, as best he could, an explanation of all
 2 the time that he spent on an average basis, dealing with
 3 all the various things that comprise being responsible
 4 for all of the operations of this store. We see it at
 5 1673 through to 1675. Do you remember taking account of
 6 that?
 7 A. I think we spoke to him about it in the interview when
 8 it was produced.
 9 Q. Your evidence in paragraph 60, about six lines from the
 10 bottom, is:
 11 "The whole list seemed to be highly implausible,
 12 because it would require someone to either be at the
 13 store full-time, which was not the case, or employees
 14 would notice the constant phone calls being made into
 15 the store."
 16 Well, that's not right, is it? Many of these hours
 17 here have nothing to do with making phone calls into the
 18 store. It's just simply a complete non-logical
 19 statement by you, isn't it, Mr McAlindon, to say that
 20 looking at this list you can say it's highly implausible
 21 because there weren't a lot of phone calls into the
 22 store?
 23 A. I think the difficulty with this is that when I was
 24 presented with it at the interview it felt contrived
 25 because all of these activities would go on in the store

1 day to day, and to not do it in the store doesn't seem
 2 reasonable. There are things in here that, you know, if
 3 you really scrutinise it and you go through it, there
 4 are things in here like organising -- I don't know,
 5 there is one that I noted there -- organising a staff
 6 Christmas party, 36 hours, organising staff party,
 7 sourcing venue, visiting various venues, obtaining
 8 quotes, booking Christmas party, liaising with venue,
 9 organising evening itself, staff prizes, raffles,
 10 et cetera. However at the time we were aware that they
 11 had had the same staff Christmas party, same location,
 12 same number of people, it wasn't the huge thing -- it
 13 couldn't have been a huge thing to organise. So to take
 14 three days to organise it, as I started looking through
 15 this I started to pick things out and think -- and felt
 16 that this is a list to explain why he wasn't in the
 17 business.
 18 I also felt that --
 19 Q. That's what you were asking for, Mr McAlindon.
 20 A. I also felt that, having put to somebody that that
 21 seemed implausible, there was the opportunity to provide
 22 all of the paper trails that existed at home, all the
 23 documents that he worked with, all the letters that
 24 would support that it took an awful lot of work to, for
 25 example, organise the Christmas party, had it taken

1 36 hours there would have been letters and replies and
 2 invoices, et cetera, et cetera for somebody who, on the
 3 one hand, is purported to be so meticulous and writing
 4 very, very detailed letters, to not be able to
 5 subsequently provide not just a list but other
 6 supporting documents that would give you a sense that
 7 that list was genuine.
 8 So I don't look at that list still and feel that
 9 that list is a genuine reflection of what he did, either
 10 in the business or at home.
 11 Q. The only evidence you give about this is in 60, you say:
 12 "The whole list seemed to be entirely implausible
 13 because it would require someone to either be at the
 14 store full-time, which was not the case [Mr Vos wasn't
 15 saying he was at the store full-time, he was saying he
 16 was there part-time and did most of his work at home] or
 17 employees would notice the constant phone calls."
 18 A. There would be --
 19 Q. Let's go through it, Mr McAlindon. 1673, Sunday
 20 mornings, you are not suggesting that any of the hours
 21 written down for Sunday mornings would involve the staff
 22 hearing phone calls, because the shop was closed on
 23 a Sunday, wasn't it?
 24 A. Correct.
 25 Q. Sunday evenings, none of that would be anything to do

1 with staff receiving phone calls, would it?
 2 A. Correct.
 3 Q. Monday, Tuesday, Wednesday, Friday and Saturday, early
 4 morning telephone conversation with Barry, so that would
 5 be before the staff come in, wouldn't it?
 6 A. Correct.
 7 Q. Thursday, Friday and Saturday, 5.30 pm phone call from
 8 manager giving trading figures for the day, a quarter of
 9 an hour per week, that's four minutes for each of those
 10 four days. So it wouldn't be a huge great amount of
 11 phone calls?
 12 A. No, I accept that.
 13 Q. Thursday evenings on Barry's day off. That wouldn't
 14 have anything to do with staff phone calls, would it?
 15 A. Sorry, where are you looking?
 16 Q. The next one down:
 17 "Thursday evening on days Barry off or on holiday.
 18 Texting him with result et cetera."
 19 That wouldn't have anything to do with staff phone
 20 calls?
 21 A. No.
 22 Q. "Monday, Tuesday, Wednesday and some Saturdays, meeting
 23 with Barry in office on arrival at store and checking
 24 IQ, et cetera, checking delivery notes."
 25 None of that would have anything to do with phone

1 calls?
 2 A. No.
 3 Q. "Discussing staff overtime and sickness with Barry,
 4 emailing to myself or printing off consolidated payment
 5 advices, Specsavers invoices, bank statements."
 6 Just to be clear, all the bank statements were sent
 7 to the JV partners at their home addresses, weren't
 8 they?
 9 A. Correct.
 10 Q. So he would have those at home already:
 11 "Tuesdays or Wednesdays, meeting with Sarah to
 12 update her on operations. Half an hour a week."
 13 That would not involve telephone calls to the staff,
 14 would it?
 15 A. No.
 16 Q. "Thursday mornings, checking sales, consolidated
 17 payments, advices and SOG invoices against bank
 18 statements."
 19 That's obviously some sort of task he is doing in
 20 his office at home, isn't it, where the bank statements
 21 are?
 22 A. Correct.
 23 Q. It is nothing to do with telephone calls to the staff?
 24 A. No, no, I accept that.
 25 Q. So the whole of that first page, you can't say that it's

1 wholly implausible simply because there were not
 2 telephone calls to the staff, which is your evidence?
 3 A. In that respect, yes.
 4 Q. Okay, next page:
 5 "Thursday mornings, checking in with store to see
 6 all staff in and no problems. Call to lab to ensure
 7 there are no problems. Call to contact lens manager if
 8 any changes to rotas, half an hour a week."
 9 The lab manager did say that he spoke on occasion to
 10 Mr Vos by telephone, didn't he?
 11 A. Correct.
 12 Q. "Monday, Tuesday and Wednesday evenings."
 13 So that wouldn't be anything to do with staff
 14 noticing phone calls during their working day, would it?
 15 A. No.
 16 Q. The next item down "Reviewing Operations":
 17 "Tuesday evenings, staff meetings, management
 18 meetings, meetings with Barry and Helle."
 19 These are the meetings we heard about from
 20 Mr Yogaratnam in the restaurants and the ones we have
 21 seen mentioned in the other witness statements, that
 22 would have nothing to do with telephone calls, would it?
 23 A. No.
 24 Q. No.
 25 "Friday mornings, checking post brought back to me

1 by Sarah."
 2 Because Sarah lived in a flat that was owned by
 3 Mr Vos and Dr Poulsen; that's right?
 4 A. Correct.
 5 Q. So she was able to bring some paperwork home with her?
 6 A. Correct.
 7 Q. Nothing to do with telephone calls, you agree?
 8 A. Correct.
 9 Q. "Monday, Tuesday and Wednesday, general work,
 10 interviewing staff, staff grievances and problems, staff
 11 meetings, dealing with post and any other matters away
 12 from store."
 13 That doesn't involve telephone calls into the store,
 14 does it?
 15 A. No, but it's not entirely -- Monday, Tuesday and
 16 Wednesday you wouldn't be interviewing staff doing staff
 17 grievances every week.
 18 Q. Not every week, these are not said to be every week he
 19 does every single thing, these are averages, aren't
 20 they?
 21 A. Mm.
 22 Q. Yes.
 23 "Saturday evenings, general telephone discussion
 24 with Barry, et cetera."
 25 None of that would involve the staff hearing

1 telephone calls, would it?
 2 A. No. Well, it would involve them accepting calls into
 3 the store.
 4 Q. Not on a Saturday evening.
 5 A. No, okay, I accept that.
 6 Q. Okay, so we have got to the end of the subheading of
 7 "Repetitive routine hours per week: 24" and none of it
 8 involves the staff hearing telephone calls, does it?
 9 A. No.
 10 Q. Then we are under another heading now "Other work
 11 undertaken throughout the year"; do you see that?
 12 A. I do.
 13 Q. This is, as it were, beyond the 24 hours a week of
 14 standard work that he's explaining to you what he does.
 15 He is then dealing with additional stuff.
 16 "Organising and co-ordinating a stock take,
 17 reviewing results with directors, checking stock sheets
 18 and attachments for submission to SOG: twice per annum,
 19 in January and July."
 20 Got nothing to do with phoning the staff, has it?
 21 A. No.
 22 Q. "Meetings with Barry and Helle once a month to go
 23 through the bottom line and analysis thereof. Meetings
 24 with Barry and Helle once a month about the 11th to
 25 discuss staff performance, finalise salary, overtime,

1 bonuses, sickness, final inputting on system, sourcing
 2 optoms and staff, correspondence, emails to applicants,
 3 processing bills, organising mystery shopping,
 4 competitors, stores measurement."
 5 None of that has anything to do with telephoning the
 6 staff?
 7 A. No.
 8 Q. I am sorry, I am going too fast for the transcriber,
 9 I am sorry.
 10 MR JUSTICE HILDYARD: Sorry?
 11 MR STUART: Sorry, I am being told by my instructing
 12 solicitor that I'm going too fast for the transcriber
 13 and I must slow down.
 14 MR JUSTICE HILDYARD: Right.
 15 MR STUART: We have got to the bottom of page 1674, and so
 16 far nothing has anything to do with telephoning the
 17 staff, Mr McAlindon, does it?
 18 A. No.
 19 Q. Over the page, "Ordering stationery and consumables", he
 20 could do that from his office at home, couldn't he?
 21 A. I don't know.
 22 Q. "Arranging contracts on equipment, drafting staff
 23 contracts."
 24 He could certainly do that in his office, couldn't
 25 he?

1 A. Sorry, which line are you referring to?
 2 Q. I am on the third item down "Drafting and preparing
 3 staff contracts".
 4 A. Sorry, which page are you on?
 5 Q. Page 1675. "Ordering of stationery, arranging service
 6 contracts, drafting and preparing staff contracts,
 7 sourcing" --
 8 A. Going back to drafting and preparing staff contracts for
 9 new staff and staff correspondence, et cetera.
 10 Q. Yes.
 11 A. 18 hours.
 12 Q. A year?
 13 A. Yeah, but there was only two employees.
 14 Q. A year?
 15 A. Yeah, two employees. They are pro formas. You just
 16 print a document off.
 17 Q. "Sourcing equipment, reviewing the store, training
 18 materials, ordering the equipment", and then the item
 19 you have picked out all about the party and the raffles
 20 and everything. None of that has anything to do with
 21 telephoning the staff, does it, Mr McAlindon?
 22 A. No, I accept that.
 23 Q. So how do you make your assertion in paragraph 60 of
 24 your witness statement that the whole list seemed to be
 25 highly implausible because either he was doing it at

1 home, which is what he is saying he was doing, or
 2 employees would notice the constant phone calls? That's
 3 your entire reasoning. It's not correct, is it,
 4 Mr McAlindon?
 5 A. From this document, I don't disagree with your point of
 6 view. I think that if you are doing checks of, for
 7 example, the invoices, you will be finding anomalies
 8 with things that you would phone up the staff and ask
 9 questions of. And that wasn't reflected in what they
 10 were saying. So I don't disagree that this is a list of
 11 activities and hours, but the sense that I got from the
 12 employees was that they would have expected a lot more
 13 questions during the day, had all of the overtime hours
 14 been done.
 15 Q. But, Mr McAlindon, we have seen that all of the
 16 employees, the relevant ones, give evidence about how
 17 he, Godfrey, was dealing with every little invoice,
 18 every purchase. They all say "I couldn't buy a pair of
 19 gloves" --
 20 A. I agree.
 21 Q. -- "without going through Godfrey."
 22 A. Yeah, I agree.
 23 Q. So you are not suggesting that their evidence was that
 24 he wasn't dealing with all that financial side on that
 25 nitty-gritty level?

1 A. No, I accept that. No, I accept that.
 2 Q. But all of these items have nothing to do just with the
 3 nitty gritty level, it is all about all the rest of the
 4 running of an entire operation, isn't it?
 5 A. Correct.
 6 Q. So I suggest to you that the totality of the evidence
 7 that you had was that Mr Vos was indeed responsible for
 8 the entire operation of the store, that that is what he
 9 was doing, but --
 10 A. I think that, don't get me wrong, I accept the issue
 11 with the list without reservation, but I think that in
 12 the process of -- if this list is genuine and accurate,
 13 in the process of that you would have found, in any
 14 environment that I have been into, you would have found
 15 significant volumes of underlying paperwork that would
 16 support that that is consistent, and all of those
 17 documents we believed were being held at Mr Vos' house,
 18 but we haven't had produced the huge pile of documents
 19 that would have existed underneath all of this. So
 20 I don't accept that at face value that looks like
 21 an accurate list of activities, but we were looking for
 22 throughout the entire business evidence that would tend
 23 to support that, and we didn't find any.
 24 Q. Because it was all at his home.
 25 A. And none have subsequently been produced. Had they

1 existed, I believe that on receipt of that, if I had
2 been in receipt of that and I felt it to be
3 fundamentally wrong, as part of my rebuttal I would have
4 provided the underlying paper trail, a photocopy of
5 whatever to support it and demonstrate it to a much
6 clearer level so that that did look consistent, but
7 there is no paper been produced from their home to my
8 knowledge.
9 Q. Mr McAlindon, you are not suggesting that anyone else
10 was doing all of these tasks? Anyone else at this store
11 was doing of all these tasks that Mr Vos is describing
12 he is doing?
13 A. I am not suggesting these tasks were done or they
14 weren't done. This is a piece of paper that I am trying
15 to understand. Although somebody is saying the tasks
16 were being done, there is no evidence to support the
17 fact that they were.
18 Q. All right, let's take that suggestion. If nobody was
19 ordering stationery and consumables for the store on
20 a monthly basis, if nobody was doing that, the store
21 would cease to be able to function within about three
22 months, wouldn't it, because there wouldn't be any
23 stationery or consumables?
24 A. I don't disagree with that.
25 Q. Okay. If nobody arranged the service contracts for the

1 two new staff who had to be taken on, if nobody
2 interviewed those staff, if nobody went out looking for
3 staff, put out advertisements or contacted local
4 employment agencies, if nobody actually did the job of
5 employing new staff, the store would cease to function,
6 wouldn't it?
7 A. I don't dispute that in terms of the two employees.
8 Q. If nobody sourced the equipment that was used for the
9 store, the store would cease to function, wouldn't it?
10 It's not suggested that Dr Poulsen sourced the equipment
11 or Mr Weller sourced the equipment; Mr Vos did that,
12 didn't he?
13 A. I don't dispute that.
14 Q. If nobody managed and controlled the training side, the
15 training materials, the new SOCRATES -- I took you
16 yesterday to the evidence of SOG itself that Mr Vos was
17 overseeing the new SOCRATES system being installed; if
18 nobody actually took responsibility for managing the
19 implementation of the new SOCRATES system in this store,
20 this store wouldn't be able to function within the SOG
21 group, would it?
22 A. Erm --
23 Q. Someone has to do it?
24 A. I think the issue, when we looked at it, was more
25 around: had the tasks been performed? Was there any

1 evidence to support the fact that even a third of these
2 tasks had been performed by having other supporting
3 documents that would suggest that they have --
4 Q. Yes, so let's take that one, SOCRATES system --
5 A. Whether it be we had to order all of the stationery, we
6 had to order all of the equipment, the accessories that
7 we sell, they all come with lists that have handwriting
8 on. Where are the pieces of paper? There are no pieces
9 of paper underneath this that would help you qualify
10 that, yes, there is a consistency between the business
11 documents in the business and this summary that was
12 presented on the day of the interview. That is more of
13 the issue rather than do I dispute that some time was
14 spent on one or even more of the tasks? No, I don't,
15 but without what you would normally find in a business,
16 which is the underlying supporting documentation, it's
17 impossible to prove any degree of validity to this,
18 never mind a third or a quarter of the hours behind all
19 of this. You can't quantify or support any of it.
20 I think if you have gone into an environment and you
21 had found a quarter of it or half of it and you drew
22 that conclusion, it would probably be unreasonable, and
23 that's what you would normally find in a store
24 environment. You would be able to see people's
25 handwriting on it and quantify it. But where you have

1 nothing I don't think it's an unreasonable conclusion to
2 come to, that this is along the lines of -- and bearing
3 in mind that this was presented at the same time that
4 the letter was presented which again felt contrived
5 because it was so unusual, and as a package of documents
6 this was one that felt contrived. And we looked for
7 evidence underneath that that would either support it or
8 refute it, but there was no evidence because there was
9 no paper.
10 MR JUSTICE HILDYARD: Can I see if I have it right, what
11 I understand your evidence to be on this point? You do
12 not dispute that the list sets out things which needed
13 to be done?
14 A. Correct.
15 MR JUSTICE HILDYARD: You do not dispute that Mr Vos did
16 those things?
17 A. Some or all, I don't know.
18 MR JUSTICE HILDYARD: But you query whether the time said to
19 have been spent on doing those things was proportionate?
20 A. Correct.
21 MR JUSTICE HILDYARD: Is that really where it comes to?
22 A. I think so, yes.
23 MR JUSTICE HILDYARD: Is that a good time for a break?
24 MR STUART: It is, my Lord, yes.
25 MR JUSTICE HILDYARD: Can I just say that I must stop

1 between 20 and quarter to 12, whatever may be the
 2 excitement of the question. We will come back just
 3 before quarter to 11.
 4 (10.40 am)
 5 (A short break)
 6 (10.45 am)
 7 MR STUART: Mr McAlindon, can we move on to the next issue,
 8 on the next item in your list of matters of fraud?
 9 "False payments to John Ferguson", this is now page 69
 10 of the witness statement bundle C under the heading
 11 "False payments to John Ferguson". Do you see that?
 12 A. I do.
 13 Q. Paragraph 65 down to paragraph 71, you seem to summarise
 14 the evidence of Mr Ferguson's invoices, that is for the
 15 period up to 2009 Mr Ferguson put in actual invoices
 16 describing the work that he did, didn't he?
 17 A. Correct.
 18 Q. We see those, could I just take you to an example, at
 19 E3, page 827. In fact if you go back a page, you will
 20 see E3/826 is the email to Ben Walls where he is
 21 getting, I'll call them the historic invoices. So these
 22 are the ones prior to the SEP system. Do you see that?
 23 A. Correct.
 24 Q. As I understand your evidence, you don't suggest that
 25 the content of these invoices is all untrue or false?

1 A. I think there is clear evidence that Mr Ferguson did do
 2 work in the business at certain points.
 3 Q. Let me take an example, 832, this is his invoice --
 4 these are monthly invoices, do you see?
 5 A. I do.
 6 Q. So we have reached January 2007, so this is the invoice
 7 for the work that he had done up to 8 January 2007. The
 8 previous invoice was dated 1 December 2006, on page 831,
 9 and involved leaks, toilets. 831, do you see, item 3,
 10 "Sorting and boxes customers' files over three years
 11 old, taking them to storage facility"? Do you see that?
 12 The third item down on 831.
 13 A. Yes.
 14 Q. Then 832, the next month, we see "Repairing the leak,
 15 lab, hot water cylinder, moving records to secure
 16 lock-up, tidying lock-up, setting up system to retrieve
 17 records, repairing desk, et cetera".
 18 So this handyman, he's got tasks beyond mere repairs
 19 to the plumbing, the heating, the air conditioning, the
 20 roofs, et cetera, he is also dealing with the records,
 21 isn't he, physically the handling of the physical
 22 records that any optician shop with patients, patient
 23 records, would need to have?
 24 A. His invoices state that he handles records.
 25 Q. Yes. That seems to be part of his role. This is back

1 in 2007, long before there is any suggestion that
 2 anybody is doing anything --
 3 A. Yes, I am not disputing what's written on his records --
 4 Q. No, okay.
 5 A. -- I understand that.
 6 Q. So looking at these invoices, I will not take you to all
 7 of them given the time, he is doing a wide variety of
 8 work for which he is charging on an invoice basis, at
 9 this time, 831, £2,100 for the month of November,
 10 invoice dated 1 December; 832, £1,309 in January for the
 11 work done in December, et cetera. Do you see that?
 12 A. I do.
 13 Q. What you then say -- I am back to your statement -- is
 14 for the period from October 2009 to April 2011 -- I am
 15 at paragraph 68 of your statement -- you are saying that
 16 SEP invoices were put through rather than these type of
 17 external invoices, and that those equate to an average
 18 of about £2,000 a month. Do you see that?
 19 A. I do see that.
 20 Q. As you conclude at 72:
 21 "If Mr Ferguson had genuinely been carrying out the
 22 work that he was invoicing for, I would have expected to
 23 have seen visible results of his work in the store."
 24 Let's just take that, then. The store has been
 25 described variously in documents generated by SOG's

1 managerial staff as of a very high quality, spotless; do
 2 you recall all of that?
 3 A. I do recall that, yeah.
 4 Q. That the repairs, all the repairs, it's properly
 5 repaired, as it were?
 6 A. I don't think it says in those reports that -- it
 7 doesn't use the word "repairs", it just says it was well
 8 looked after.
 9 Q. That would involve, wouldn't it, repairing anything that
 10 needed repairing?
 11 A. Possibly.
 12 Q. Not possibly; if the hot water didn't work in the
 13 ladies' toilets, it would not be described as in --
 14 A. No, I would agree with that.
 15 Q. Right. If there was water running through the roof
 16 because it leaked, this rather old flat roof at the back
 17 there, no doubt there would be staining on the walls,
 18 et cetera, et cetera?
 19 A. I wouldn't dispute that.
 20 Q. And the decoration was plainly in good order, spotless
 21 in fact was the word used by SOG staff?
 22 A. Yeah.
 23 Q. It's a slightly cramped store, isn't it?
 24 A. I have my recollection of the store itself.
 25 Q. There is not a lot of room for storing six years' worth

1 of patient records there, and they were stored in the
 2 lock-up, weren't there?
 3 A. Some records were stored in the lock-up.
 4 Q. Yes. And it appears from, I take that example at 832,
 5 that the man going to the lock-up was Mr Ferguson?
 6 A. Sorry, from where do you get that?
 7 Q. 832, I took you to it as an example.
 8 A. On his invoices?
 9 Q. Yes. Moving records -- these are the documents you saw
 10 at the time?
 11 A. I accept that that's what he puts on his invoices.
 12 Q. So he seems to be the man that deals with that. And
 13 certainly when Mr Vos, Dr Poulsen and Mr Weller were
 14 interviewed, they said, didn't they, that Mr Ferguson,
 15 part of his role involved tidying up and taking old
 16 patient files to lock-up and that sort of thing; that
 17 was part of their explanation?
 18 A. I believe so.
 19 Q. So when you say at 72:
 20 "If he had genuinely been carrying out the work that
 21 he was invoicing for I would have expected to have seen
 22 visible results in the store."
 23 You did see visible results in the store, didn't
 24 you? The store was spotless, the store was in
 25 an excellent state of repair, and all of the files

1 weren't just lying around in the store, and all the old
 2 ones had been taken off to this lock-up store. So it's
 3 true to say that all the evidence, the visible evidence
 4 as you call it, supported the fact that Mr Ferguson was
 5 carrying out his work?
 6 A. Yeah, I think that statement comes from my
 7 interpretation having read the statements from the
 8 employees, who because it was accepted at face value
 9 that this work was purported to have been done out of
 10 hours, therefore you wouldn't see Mr Ferguson at all,
 11 but a number of the staff commented that if somebody had
 12 come in and done a substantial amount of work out of
 13 hours, you would have expected to see some changes the
 14 next day, ie smelled fresh paint or seen a new cupboard
 15 or the broken chair was fixed. My conclusion is based
 16 on that collective evidence that there wasn't anything
 17 seen in the business that would ...
 18 Q. Okay, Mr McAlindon, first of all, the staff comments
 19 that you are talking about, those were suggestions put
 20 to the staff by Mr Barnes, weren't they, with which they
 21 then agreed?
 22 A. Erm --
 23 Q. They didn't volunteer these snippets of argument, did
 24 they?
 25 A. They were asked questions. If you are asking the

1 inappropriateness of those questions, you would have to
 2 point them out to me.
 3 Q. Okay, but I am just asking you about the facts. You
 4 say, 72:
 5 "If he had been genuinely carrying out the work, you
 6 would have expected to have seen visible results in the
 7 store."
 8 Results, visible results; well, the visible results
 9 of a handyman/store keeper/general dogsbody would be
 10 that the store was spotless, in excellent decoration,
 11 didn't have leaks, had working plumbing, central
 12 heating, air conditioning, et cetera, et cetera, and
 13 that is exactly the visible signs that were in the
 14 store. You would agree with that?
 15 A. I don't dispute what you are saying.
 16 Q. Then what you deal with is you say: ah, what's highly
 17 suspicious is this -- I am over at page 70 now of your
 18 statement -- schedule that was produced to us. That you
 19 will find in E7 at page 1676. This is the document that
 20 Mr Vos turned up with when he was about to be asked
 21 questions, that you put him on notice that you were
 22 going to ask him questions about Mr Ferguson's work.
 23 That's right, isn't it?
 24 A. Correct.
 25 Q. He turned up at his interview, Mr Vos, armed with this

1 document; yes?
 2 A. Sorry, say that again.
 3 Q. He turned up at the interview armed with this document?
 4 A. Correct.
 5 Q. What you say at paragraph 75 is:
 6 "On a straightforward reading of that document,
 7 I understood it to have been prepared on or shortly
 8 after Mr Ferguson commenced providing a service."
 9 I am going to ask you to go to page 1677, which is
 10 the second page of the document. To be clear, this
 11 document goes from pages 1676 through to 1681.
 12 Page 1677 is the second page of the document, and you
 13 see the heading "General Comments"?
 14 A. Correct.
 15 Q. "When the store was taken over by Helle and Barry, it
 16 was in an appalling state. None of the equipment worked
 17 properly, decoration was very poor, there was rubbish
 18 and old shop fittings", et ceteras, et cetera.
 19 "When SOG were spoken to about this they informed
 20 the store that they would arrange a replacement but that
 21 there would also be their management charge levied, new
 22 equipment for the testing rooms was purchased and for
 23 other parts of the store. This resulted in the layout
 24 of the testing rooms having to be changed, and they had
 25 to be redecorated. The store itself had to be

1 redecorated from top to bottom, loose railings on the
 2 staircase repaired, roof leaks repaired, frame racks
 3 secured properly, et cetera. The remedial work could
 4 not be undertaken in store opening hours and was
 5 undertaken at night and on Sundays by John Ferguson over
 6 a period of time until the store was up to acceptable
 7 retail standards. Since then, there have been many
 8 problems that required attention and the store adopted
 9 a policy of constant rolling redecoration. He [that
 10 must be Mr Ferguson] has also repaired the roof on
 11 a number of occasions over the years, and the results of
 12 damage caused by any leaks."

13 Now, you say at paragraph 75 that on your
 14 straightforward reading of that document, you understood
 15 it to have been prepared on or shortly after Mr Ferguson
 16 commenced providing services:

17 "However, it became clear that this was not the
 18 case, rather it was a document created after the event
 19 for the purposes of the investigation."

20 Well, I am going to suggest to you that any
 21 reasonable person, objectively reading the second half
 22 of page 1677, would see that this was a document written
 23 after the event describing what John Ferguson did, not
 24 telling John Ferguson to his face what to do. Do you
 25 see that?

1 A. I can see that.
 2 Q. Why did you choose to read the document the other way?
 3 A. (Pause). I think I'm simply stating there that, when
 4 I was presented that document during the interview,
 5 I believed that it was a document that had been created
 6 for Mr Ferguson, probably because I had been presented
 7 it and hadn't read it cover to cover because I was
 8 presented with another number of documents at that time,
 9 but through subsequent interviewing it became clear that
 10 it was a document prepared by Mr Weller and Mr Vos and
 11 possibly Ms Poulsen to explain why. So it's exactly as
 12 you are -- I haven't chosen to describe it one way or
 13 the other, it's how I saw it at the interview and how
 14 I saw it at the end when I am proposing this file.
 15 I don't really see any problem with that statement.
 16 Q. I see, so you now accept that --
 17 A. I think I accept in the paragraph -- I think I accept in
 18 the paragraph, I am explaining there that at the time
 19 I interviewed him that's how I saw the document, it
 20 subsequently became clear that this was a document
 21 prepared -- I am simply stating a question of fact as
 22 I -- my understanding improved through the ...
 23 Q. I don't think that's quite right, is it, Mr McAlindon?
 24 First of all, if you read the document at the time,
 25 if you did, and if you read page 1677 and then you read

1 pages 1678, 79, 80, 81, "This is a summary of some of
 2 the work undertaken by John Ferguson", then if you read
 3 it at the time you must have realised that it was
 4 a document setting out expressly what John Ferguson had
 5 done?

6 A. I am clear that, you know, when I was in the interview
 7 situation, when I was presented with the documents,
 8 that's how I perceived the document. It became clear
 9 later on that it was a document that had been prepared
 10 after the event, and my initial view of it was
 11 incorrect.

12 MR JUSTICE HILDYARD: But you are not suggesting that it was
 13 presented as one thing and revealed to be another; you
 14 said you read it as one thing and then gradually
 15 understood it to be another?

16 A. Yes, I think I am qualifying that --

17 MR JUSTICE HILDYARD: Is that right?

18 A. I think I am qualifying that document because some of
 19 the other documents I did continue to believe were not
 20 genuine documents or contrived documents whereas that
 21 one, I realised later that one document wasn't.

22 MR JUSTICE HILDYARD: I think what may have caused confusion
 23 is your use of the phrase "on a straightforward
 24 reading", but I think you are clarifying that --

25 A. Yes.

1 MR JUSTICE HILDYARD: You are not meaning that it was, as it
 2 were, a deceptive document --

3 A. No.

4 MR JUSTICE HILDYARD: You are saying that you didn't really
 5 read it carefully initially.

6 A. Indeed.

7 MR JUSTICE HILDYARD: But it came to you, it dawned on you,
 8 it became apparent to you during the course of the
 9 interview that it was written after the event rather
 10 than --

11 A. Of the subsequent interviews, not necessarily Vos'.

12 MR JUSTICE HILDYARD: Yes, I see. Yes.

13 MR STUART: So then, if that's not -- that wasn't a false
 14 document in any way, the documents that you are
 15 concerned about relating to Mr Ferguson could only be
 16 the ones that were going back to E2.

17 A. No, I think this document still caused me concern.
 18 Looking at the some of the stuff that's on there and
 19 understanding, you know, the work, I did look at that
 20 and think that I didn't necessarily believe, you know,
 21 "check all air conditioners and heaters", you know,
 22 a handyman isn't an air conditioning engineer, heaters
 23 and boilers require qualified people to work on and, you
 24 know, they need certain levels of work. You know,
 25 checking doors and stuff, "ensure storage unit is safe

1 and not a fire hazard", you know, it's a container, it's
 2 hardly going to be a fire hazard. So as you read
 3 through this and you apply common sense to it, no,
 4 I don't sit comfortably with the document in any case,
 5 albeit fact that I accept that it was a document that
 6 was subsequently prepared to explain the history of
 7 Mr Ferguson. But the contents itself I don't believe to
 8 be -- I am far from comfortable with it.
 9 Q. But you read all of the invoices, the ones I took you
 10 to?
 11 A. Yes.
 12 Q. The detailed invoices. Were you not aware that he was
 13 capable of doing the plumbing and the air conditioning,
 14 the wiring?
 15 A. Well ...
 16 Q. Take page 840 in bundle E3. Plumbing. These are sort
 17 of fairly major plumbing items:
 18 "Dismantling the Saniflo system due to the bad smell
 19 through the air conditioning system, cleaning out the
 20 system, testing, reassembling the pipes, disinfecting."
 21 A. I mean, I am not -- again, it's how I felt at the time.
 22 I look at that invoice, I am not a qualified person,
 23 it's very difficult for me to comment, but a degree of
 24 common sense would suggest that, you know, yes,
 25 a plumber, a qualified plumber can deal with plumbing,

1 but air conditioning is a different type of unit, and
 2 the two are not necessarily connected. I mean, in our
 3 buildings, the air conditioning unit is a stand-alone
 4 unit bolted to the wall, they are not interconnected
 5 with a Saniflo. So when I look at that, I interpret it
 6 as not making sense.
 7 Q. You are not suggesting, are you, that Mr Ferguson didn't
 8 actually do all of this stuff?
 9 A. I --
 10 Q. Dealt with all of the plumbing?
 11 A. As I looked through all of these invoices, there were
 12 aspects within descriptions that I looked at and
 13 thought: they don't look to me to be plausible, because
 14 I cannot understand how a handyman could do them.
 15 Q. It depends how --
 16 A. It depends how qualified it is, I agree, but he is
 17 a handyman, he is not a plumber, he is not an
 18 electrician, he is not a heating engineer.
 19 Q. But he is able to deal with all of the -- are you
 20 suggesting that a heating engineer went in and did all
 21 of the work?
 22 A. No, what I am saying is that in all of our -- they are
 23 business environments and in a business environment
 24 contractors have to be approved and the reason for
 25 having approved contractors is that, in the event of

1 a disaster, so his plumbing is poor and you have a burst
 2 pipe, he has adequate insurance, he has the right
 3 qualifications or the insurance company won't pay out.
 4 So you can't just have a handyman coming into a business
 5 being Jack of all trades, master of none, because it has
 6 all sorts of commercial implications.
 7 Q. But he was, he was the handyman and he did do
 8 everything?
 9 A. I don't dispute that he was a handyman and he painted
 10 walls and he fixed furniture but there are aspects --
 11 Q. And the plumbing?
 12 A. And the plumbing, again, I am not a qualified or
 13 technical person or understand necessarily in the way
 14 that somebody from our property estate would understand,
 15 but I do know that they have to meet certain
 16 qualifications, certain requirements, so that there
 17 are -- we are covered on all the liabilities
 18 potentially.
 19 MR JUSTICE HILDYARD: Are you suggesting that he didn't do
 20 these things, or that he shouldn't have been turning his
 21 hand to doing that sort of thing?
 22 A. I don't know which of it would have been, but I looked
 23 at these and thought "I don't sit comfortably with
 24 these, they look again contrived, to justify the
 25 payments that are being made to him." It's the

1 descriptions in there that is part of what made me look
 2 at these and feel that these invoices are not truly
 3 representative of the work that was being done in the
 4 business.
 5 MR STUART: Mr Ferguson is insured, he is fully insured, he
 6 does do plumbing, doesn't he? Even his own invoices
 7 describe on the top of them, as his business, as
 8 including plumbing and carpentry and building and
 9 maintenance?
 10 A. I don't dispute what it says on his invoices, I am
 11 saying that there are aspects to his invoices,
 12 descriptions that are on there which, knowing the
 13 constraints that exist in employing contractors, and
 14 I am aware that there are legal issues surrounding them.
 15 I don't know what they are because I am not an expert in
 16 that field, but I know that there are issues surrounding
 17 that. So to see these types of descriptions caused me
 18 to have doubt as to the validity of the descriptions
 19 that were in there. That's how I felt when I read and
 20 interpreted these invoices.
 21 Q. But why would you interpret them that way? You knew
 22 that the store had an absolutely clean bill of health as
 23 regards maintenance, nobody was suggesting otherwise;
 24 isn't that right?
 25 A. I appreciate that.

1 Q. Nobody at SOG had raised an issue about, I don't know,
 2 the air conditioning being improperly maintained?
 3 A. I don't dispute that.
 4 Q. So what it looks like is Mr Ferguson is covering a wide
 5 range of tasks which, on your evidence, other stores
 6 might use individual contractors for, a specialist
 7 heating engineer, a specialist plumber, a specialist
 8 carpenter, a specialist decorator, et cetera, in other
 9 stores that you have --
 10 A. For example, a specialist roofing contractor.
 11 Q. Exactly, or a specialist roofing contractor.
 12 A. There is a good example of where I looked at the
 13 continual repairs to the same roof and the consequential
 14 leaks in the ceiling, the painting issues, et cetera,
 15 et cetera. If a proper roofing contractor repairs and
 16 replaces a flat roof, it stays fixed. So is he
 17 an appropriate contractor to be doing that? Again,
 18 I don't know, but I doubted the validity of it.
 19 I simply doubted the validity of it.
 20 Q. You don't doubt the validity of it, you are now
 21 questioning whether he was the right man for the job?
 22 A. No, what I'm doing is, from -- it's just a common
 23 sense -- the common sense perspective, looking at the
 24 descriptions in these invoices, and feeling that they
 25 are doubtful, and that was one aspect of a number of

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1 issues that made me doubt the validity of all of the
 2 invoices, but that was one aspect, the descriptions in
 3 those invoices.
 4 Q. You keep saying this generalised statement you doubt the
 5 validity of these invoices, but Mr McAlindon, from what
 6 you are actually saying, you are not seeking to tell
 7 this court that you have evidence that Mr Ferguson did
 8 not do any work, you are just querying whether the
 9 selection of Mr Ferguson to do all of these types of
 10 work was appropriate in your view?
 11 A. No, that's not what I am saying. I am being very clear
 12 about what I am saying. I don't dispute that
 13 Mr Ferguson did do some work in the business, that is
 14 reflected in some of the statements from things that
 15 employees were aware that a plug had been fixed on
 16 a heater, or, you know, there was a period in whatever
 17 year that somebody explained that the lab was
 18 refurbished and new worktops were put in. I don't
 19 dispute that some work was done. Where my concern came
 20 from, it was the volume of invoices and volume of the
 21 payments, and then when you look at the detail within
 22 that, the payments itself, the descriptions were one
 23 other aspect that didn't look right, or didn't feel
 24 right.
 25 Q. All right. Over the page you then deal with the --

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1 A. Sorry, which page, which volume?
 2 Q. Sorry, we are in C still, page 70 I was on. So over at
 3 71 at the top, we are now into the question of the
 4 off-site storage lock-up; yes?
 5 A. Correct.
 6 Q. I just want to understand what your case now is, then,
 7 on this. Do you accept that Mr Ferguson did carry out
 8 the task of archiving patient records to the place where
 9 the old patient records are kept, which is the off-site
 10 storage centre?
 11 A. I've no basis to accept or refute it. The evidence that
 12 we found, had Mr Ferguson been going as frequently as
 13 was being inferred that was part of his activities, the
 14 key fob activations would have reflected a higher rate.
 15 However, the key fob activations did reflect some
 16 attendance to the lock-up unit, so somebody attended,
 17 I don't know whether it was Mr Ferguson or not
 18 Mr Ferguson, but clearly somebody had been to that unit
 19 where that storage had been.
 20 However, the volume of attendance was not consistent
 21 with that being routine activity by him. So I don't
 22 know whether he did it or somebody else did it; I don't
 23 know who did it.
 24 Q. You say the volume of attendance, are you now talking
 25 about this alleged key fob record?

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1 A. Correct.
 2 Q. What is the record that you purport to rely upon?
 3 A. Can you point me to that record?
 4 Q. I can if you tell me what it is.
 5 A. When we went --
 6 Q. What is the record that you purport to rely upon?
 7 A. When the explanation was given to us that this was one
 8 of the activities that he performed, two of my team and
 9 one of the store managers went to the unit to look at
 10 the contents of it, because not only were we looking in
 11 relation to Ferguson and archiving patient records, but
 12 we were also looking in case there were the other
 13 business documents that would have supported the issues
 14 of concern surrounding the other matters.
 15 When they went in and searched that, there were some
 16 records in there. Whilst they were there, the owner of
 17 the storage facility explained that the business -- the
 18 unit was accessed with an electronic fob. So they
 19 asked: do you have any records of how many times that
 20 electronic fob has been used? And he said yes --
 21 Q. How do you know they asked that?
 22 A. Sorry?
 23 Q. You weren't there, were you? You are giving evidence
 24 now about --
 25 A. I spoke to Phil Barnes about it, when we compiled the

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1 evidence that we had, and it was one of the documents
2 that he presented to me. He explained the story behind
3 that document when we were discussing it.
4 Q. What did he actually ask for? That's what I want to
5 know. What records did he ask for?
6 A. As I understand it, it's the usage of the key fob to
7 access the storage unit.
8 Q. Which key fob? Because there were two, weren't there?
9 A. There were two key fobs.
10 Q. Which key fob did he ask for records for? The one that
11 he had or the one that --
12 A. I think at the time he asked the question, he would have
13 assumed that there was one key fob.
14 Q. You think at the time he would have assumed --
15 A. I mean, I am speculating. I have to say --
16 Q. -- from that I take it you don't know?
17 A. I have to say I'm speculating, no, I don't know.
18 Q. Okay, so we don't know what questions he asked?
19 A. No.
20 Q. We don't know which key fob he asked for records of?
21 A. No.
22 Q. These records, they show use of a key fob on to certain
23 locks, presumably?
24 A. I don't know, because I haven't got the document in
25 front of me.

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1 Q. I'll help you out. Is it E4, near the back of
2 E4/1082-03? Be careful, because there is a 1082-1, 2
3 and 3, which I am not asking you about. So it comes
4 before that, or possibly afterwards. Do you have it?
5 Does your Lordship have that?
6 MR JUSTICE HILDYARD: I am being ham-fisted, I am sorry.
7 MR STUART: 1082-03.
8 MR JUSTICE HILDYARD: Yes.
9 MR STUART: Do you have it, Mr McAlindon?
10 A. I am working my way there.
11 Q. 1082-03, do you see that?
12 A. I do.
13 Q. Now, that seems to be a record which I think was
14 generated by -- sorry, that's the alarm for the store.
15 A. Quite right.
16 Q. So it's not that. I think it's a document which -- I am
17 not sure where it made its way into the bundle. Perhaps
18 my learned friend will help me. Maybe it never got into
19 the bundle. It was disclosed with a letter from
20 Taylor Wessing of 10 December. Is that the one?
21 (Pause).
22 Does your Lordship have the document? It was
23 a schedule which we looked at. I am not sure it ever
24 made its way into the bundle.
25 MR JUSTICE HILDYARD: 10 December, did you say?

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1 MR STUART: As I understand it, that's the document that's
2 being referred to. Does your Lordship have a copy of
3 a letter of 9 or 10 December which has attached to it
4 three pages from a schedule?
5 A. I don't have page 1 here.
6 MR STUART: We have three pages from a schedule. (Handed)
7 MR JUSTICE HILDYARD: Thank you.
8 MR STUART: Do you have the document, Mr McAlindon? On the
9 top it says "sheet 1, sheet 1, sheet 1", and at the
10 bottom it says "page 2 of 4", "page 3 of 4", "page 4 of
11 4".
12 A. Correct.
13 Q. Is that it?
14 A. Correct.
15 Q. Is this what you are talking about?
16 A. I believe so.
17 Q. Do you not know?
18 A. I think it is --
19 Q. It will be hard to ask you questions about this if you
20 don't know what the document --
21 A. No, this is the document.
22 Q. Right. Do you know what this actually is stating?
23 A. I understand it to state an event activation log.
24 Q. Right, so event ID, we have columns, what does that
25 mean?

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1 A. I don't know.
2 Q. Event date, we can work out?
3 A. Yes.
4 Q. Event time, we can work out?
5 A. Yes.
6 Q. But query, is this 24-hour clock or what? Is this said
7 to be a time?
8 A. It is a date, time, it is a time stamp, yes.
9 Q. So the first item on page 2 of 4 is 26 January 2010?
10 A. Correct.
11 Q. 6.13 and 45 seconds. Event type, do you know what that
12 is?
13 A. I don't.
14 Q. Subtype zero, do you know what that is?
15 A. No.
16 Q. Address, do you know what that is?
17 A. No.
18 Q. Subaddress, do you know what that is?
19 A. No.
20 Q. User ID, do you know what that is?
21 A. No.
22 Q. Card number, 76800740, seems to be the card number --
23 A. The key fob number.
24 Q. Oh, that's the key fob number, is it?
25 A. I can't see any other fields that it could be, and the

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1 card number is consistent with key fob number, as
2 a header.
3 Q. Okay. How many key fobs did Mr Barnes have?
4 A. He didn't have any key fobs, the operator let him into
5 the building, I believe.
6 Q. Right. Okay. You accept there were two key fobs?
7 A. I've no reason to dispute that.
8 Q. Okay. So just looking at this schedule, taken at its
9 face from what you have just said --
10 A. Yeah.
11 Q. -- if we go to page 4 of 4, the key fob number changes,
12 but that seems to be after, in relation to June 2010,
13 which would be when Mr Barnes is investigating, wouldn't
14 it?
15 A. 6 March 2011, is that?
16 Q. I think that's 3 June, I think this is American dating,
17 do you see, because the first date was 1/26/2010?
18 A. Correct, 3 June.
19 Q. So it's 3 June and then 23 June 2011?
20 A. Yes.
21 Q. That seems to be a totally different number but perhaps
22 that is the operator, you are saying that's the storage
23 facility letting somebody in?
24 A. Yeah.
25 Q. So apart from that code, 52674854, Mr McAlindon, you

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1 seem to be accepting that the investigation certainly
2 for 23 June was when Mr Barnes was let in?
3 A. I can't remember the chronology of it, but --
4 Q. Okay.
5 A. -- if you are telling me that's the case, I accept it.
6 Q. The investigation started when?
7 A. I don't know what the -- I can't remember the date of
8 the suspension or board meeting.
9 Q. What about the dates of investigating this lock-up
10 facility, do you know when that happened?
11 A. It would have occurred after the suspensions.
12 Q. 15 June was the suspension.
13 A. Right.
14 Q. Anyway, one key fob number, 76800740, appears in all of
15 the items until we get to the last one in June?
16 A. Correct.
17 Q. Last ones in June. So if that were one key fob and if
18 there were two key fobs in use throughout the period,
19 then it would appear that we only have the records here
20 of one of the key fobs for Specsavers Bognor Regis, that
21 would appear to be the position; would you agree?
22 A. Sorry, could you repeat that?
23 Q. If there were two key fobs --
24 A. Yeah.
25 Q. -- and if those two key fobs were being used

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1 intermittently, not every day, not every week,
2 intermittently during the course of 2010, from
3 January 2010 through to May 2011 -- actually March 2011,
4 okay?
5 A. (Witness nods)
6 Q. Because we know that Mr Ferguson was off away, wasn't
7 he, April/May, holiday, do you remember?
8 A. I have a memory of that.
9 Q. Then we appear here -- if card number column is one key
10 fob, is an identity of a key fob, we appear to have the
11 record of one key fob, ie key fob 76800740.
12 A. I don't agree with that. I think that the fact that
13 a data extraction has been produced and it produces
14 another key fob, even if for example it was the
15 operator's key fob, rather than the second Bognor key
16 fob, ie one of three key fobs, it's reporting key fob
17 activity across a number, and unless there was
18 a specific query ran to pull the identity of one key fob
19 off, had that been done, it wouldn't have the one on the
20 bottom anyway. So this is the key fob activation
21 I would interpret of any key fob used to open that
22 facility.
23 Q. That's just your interpretation, we don't even know what
24 question was asked of this storage facility, do we? You
25 have accepted that.

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1 A. It's my interpretation based on I do a lot of data
2 mining and analysis, and if a package of data has
3 multiple user codes reported in it, then it's not a data
4 package about one user code. It's any user code.
5 Q. Okay. These records, if they are as comprehensive as
6 you are now suggesting they are, looking at the event
7 times for all these activations, we don't have page 1 of
8 4 I understand, that's disappeared, but looking at the
9 activations on page 2 of 4, 6 o'clock in the morning, is
10 that really right? 7 o'clock, 8 o'clock?
11 A. It could well be incorrect.
12 Q. 5 o'clock?
13 A. Clocks are not always consistent. For example, when we
14 use cameras in store, camera systems don't often match
15 EPOS system because there is always a degree of
16 slippage, depending on what system and what it was set
17 at. So, you know, this could be out, British Summer
18 Time often has an influence, I don't know.
19 Q. Look at the ones at the bottom of page 2 of 4,
20 22 February 2011, 3.13, 3.14, 3.57, 3.59?
21 A. I see your observation, I can't comment on a clock.
22 I think what I can comment on is the key fob was used on
23 that day.
24 Q. To do what, though? What door is this showing being
25 opened by key fob?

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1 A. To access the lock-up.
 2 Q. Yes, but to get to the lock-up you presumably have to
 3 get into the facility, you probably have to get through
 4 the main gate?
 5 A. I don't know.
 6 Q. Then you would have to get through the main doors of the
 7 lock-up facility owned by the storage company?
 8 A. I don't know, I've not been there so I can't --
 9 Q. Then you would have to get to the floor where your
 10 particular lock-up is situated, which might be the first
 11 floor or the second floor or the third floor of the
 12 facility?
 13 A. I haven't been to the facility.
 14 Q. Then you might -- once you have got through, as it were,
 15 the storage facility's locks, you then would get to your
 16 locker and then you might need a key to get in through
 17 the padlock you have put on the lock? You don't know?
 18 A. No, I don't.
 19 Q. What are you therefore saying about this document? Are
 20 you suggesting that this is a comprehensive record with
 21 dates and times of every occasion that anybody actually
 22 accessed the patient records lock-up?
 23 A. I think this document gives a clear indication as to the
 24 frequency that the lock-up was visited.
 25 Q. Well, only the use of a key fob to get through,

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1 presumably, some doors. This can't be -- you can't be
 2 saying that at 6.13 the lock-up -- I am looking at the
 3 first page -- at 6.13 and 45 seconds the lock-up was --
 4 A. Sorry, can I -- I need to take a couple of minutes just
 5 to refresh my memory --
 6 Q. Look at page 2 of 4.
 7 A. Sorry, can I just take a couple of minutes to refresh my
 8 memory from the statement? (Pause)
 9 Q. I think it's paragraph 80 you deal with it,
 10 Mr McAlindon. You say that:
 11 "This specifies the times and dates on which the
 12 unit had been visited."
 13 I am going to suggest to you that it's certainly not
 14 necessarily comprehensive as to that, and it looks very
 15 odd.
 16 A. I don't think ...
 17 Q. These event times can't be the times when --
 18 A. I think in my statement I am referring to another
 19 document that actually shows the open up and lock up of
 20 the facility, because I refer to specific times, as in
 21 the volume of time over a collective period, which isn't
 22 reflected in this report.
 23 Q. There was an analysis document, which I think was said
 24 to have been an analysis taken from this raw material.
 25 This is -- on disclosure this was said -- by SOG -- to

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1 be the raw material, okay, three-page schedule with the
 2 actual dates and times?
 3 A. Right.
 4 Q. Then there was a sort of summary of that, of those dates
 5 and times, on a document -- I am not sure where that is
 6 in the bundle. It's your disclosure document 984. Is
 7 that the one? (Handed) Does your Lordship have that
 8 one?
 9 MR JUSTICE HILDYARD: Yes.
 10 MR STUART: I'm not sure where that came in the general
 11 scheme of things.
 12 MR JUSTICE HILDYARD: I have it, thank you very much indeed.
 13 A. Right.
 14 MR STUART: So this is a summary, it seems, if we look at
 15 the dates, so the first item is 26 January 2010, in
 16 6.13, out 6.25, 12 minutes.
 17 A. Yeah.
 18 Q. So looking at the actual document that's been produced
 19 now, it does appear that on 26 January there is an event
 20 time at 6.13, there is one at 6.14, 6.16, 6.17, 6.22,
 21 6.24, 6.25. But surely that doesn't show out, does it?
 22 That just shows a key fob being used, you say to open
 23 the lock-up?
 24 A. Yeah.
 25 Q. If Mr Ferguson were in the lock-up at that point and

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1 then doing his sorting through of all these files or
 2 doing whatever else it is, once it's open it's open, he
 3 could be in there for hours, couldn't he? It doesn't
 4 show when he comes out, does it? We don't know when he
 5 came out, if this is even a record of him going in.
 6 A. All I can say is this is a list of key fob use -- this
 7 is an electronic system produced from the storage
 8 facility people as to the numbers of times the key fob
 9 was used. The manager clearly subsequently got back to
 10 us to give us more specific information as to the time
 11 that people went in and the time people went out.
 12 Q. No, there is no more specific in the shorter document,
 13 the more specific is in the larger document, isn't it,
 14 even on your analysis as an investigator?
 15 A. It is and it isn't. This doesn't have egress on it.
 16 The summary provided by the manager of the storage unit
 17 did.
 18 Q. No, that's not a summary provided by, this is Zoe Smith,
 19 who is Mr Barnes' colleague in the investigation, isn't
 20 she?
 21 A. Who had been contacted by the manager of the facility
 22 and gave her that information.
 23 Q. Yes, but this is her setting out what she says is the
 24 information. We don't have anything from the storage
 25 facility, do we?

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1 A. Other than this, yes, I agree.
 2 Q. This is her saying "Date: 26 January. In: 6.13. Out:
 3 6.25. 12 minutes, time spent." We simply don't know, do
 4 we, what question was asked --
 5 A. We don't know what --
 6 Q. We don't know what question was asked?
 7 A. We know that this is an electronic print-out of
 8 activations and we know that --
 9 Q. The big document?
 10 A. That document, we know that that's an electronic list of
 11 activations, and we know that that is the information
 12 that was provided to Zoe Smith by the manager, the
 13 additional information that is provided by the manager
 14 to Zoe Smith.
 15 Q. No. How do we know what time Mr Ferguson left?
 16 A. From the information that was provided by the manager.
 17 Q. My Lord, just one last question on this, I know you have
 18 to leave in 2 minutes.
 19 Apart from these two documents, this document
 20 (indicated) and this summary from Zoe Smith to
 21 Phil Barnes, apart from those two documents, do you say
 22 there is any other evidence to support your contention
 23 that the only times Mr Ferguson attended the storage
 24 facility were these funny times of the early hours of
 25 the morning?

1 A. I don't believe so, unless there is another document
 2 that I can't recall inside the bundles.
 3 Q. No, there is nothing, you haven't disclosed any other
 4 documents.
 5 A. Then these are the only two documents, you are correct.
 6 Q. So looking at these documents, both documents, the times
 7 that we are talking about in and out, and the dates, if
 8 it is a 24-hour clock, if it is, these are all, as it
 9 were, out of hours entry times?
 10 A. Correct, correct.
 11 Q. These are all before the facility might be open and
 12 staffed, when the doors might be open --
 13 A. Correct.
 14 Q. -- for people to come in. So this might show the times
 15 when the key fob was used to get into the actual storage
 16 facility?
 17 A. Correct.
 18 Q. But of course, if you didn't need the key fob to get
 19 into the storage facility during the working day, 9
 20 until 6, 9 until 8, perhaps they open late, then this
 21 key fob information wouldn't really assist us, would it,
 22 as to how many times Mr Ferguson attended at that
 23 facility?
 24 A. I've not heard any evidence to suggest that what you are
 25 speculating is the case, so I don't know.

1 Q. We don't have, you see, any record of what questions
 2 were asked, do we?
 3 A. No, indeed.
 4 MR STUART: My Lord, I see it's 11.40 and I know
 5 your Lordship has to go.
 6 MR JUSTICE HILDYARD: Well, just before I leave, where shall
 7 we put these? I am worried that they will get -- I know
 8 it sounds pernicky, but these things get lost. Do you
 9 want to put them in the X file?
 10 MR STUART: My Lord, yes.
 11 MR JUSTICE HILDYARD: Do you want to put them together in
 12 tab 7 or do you want to have them apart? What do you
 13 want to do?
 14 MR STUART: I think they can go together, my Lord, I think
 15 it is probably safer to put them together.
 16 MR JUSTICE HILDYARD: Tab 7? I have put them in tab 7. If
 17 that's bad, you can let me know.
 18 MR STUART: That's fine, my Lord, tab 7.
 19 MR JUSTICE HILDYARD: Mr McAlindon, I am sorry to interrupt
 20 your cross-examination. I am going to ask the question
 21 as to how we are doing?
 22 MR STUART: My Lord, I have about 20 to 25 minutes left of
 23 this witness.
 24 MR JUSTICE HILDYARD: Right.
 25 MR STUART: Did I understand, my Lord, we are going to start

1 at quarter to 2?
 2 MR JUSTICE HILDYARD: I can't promise to be back, I shall
 3 rush as much as I can, I will put not before quarter 2
 4 but nearer 2, I'll see how quick my legs can carry me,
 5 and then we have to finish at 20 past 4 really for me to
 6 get to another meeting.
 7 MR STUART: Yes, 20 past 4, that's right.
 8 MR JUSTICE HILDYARD: In order to make up the time I would
 9 be happy to sit early tomorrow. I haven't got anything
 10 in the morning, if you want to start early, you can
 11 discuss that amongst yourselves. I have read your
 12 timing thing, and will consider it further. I am
 13 presently making investigations from higher authorities
 14 than me, in particular my wife and the Listing officers,
 15 whether I could give you at least a three-quarter day on
 16 Friday 10th, because I share the concern that we may not
 17 be able to deal with Mrs Parham before the vacation, and
 18 I share the concern that it's a bit unsatisfactory to
 19 have someone in purdah for so long.
 20 MR STUART: Understood, my Lord.
 21 MR JUSTICE HILDYARD: Unsatisfactory to everybody, really.
 22 MR POTTS: Indeed, my Lord, they are husband and wife.
 23 MR JUSTICE HILDYARD: Well, I don't wish to suggest I doubt
 24 them at all, I just think it's uncomfortable for people
 25 to be in the midst of cross-examination.

1 MR STUART: Yes.
2 MR JUSTICE HILDYARD: So not before quarter to 2, and
3 possibly a little bit after, and then the home straight,
4 Mr McAlindon, for a little bit of time.
5 (11.45 am)
6 (The short adjournment)
7 (1.45 pm)
8 (Proceedings delayed)
9 (2.00 pm)
10 MR JUSTICE HILDYARD: I am so sorry to have kept you, it
11 took me longer to get back than I had hoped.
12 MR STUART: My Lord, Mr Potts' clients have just disclosed
13 an email from 25 August 2011, and some photographs.
14 I wonder if those could just be passed up. (Handed)
15 Both sets of photographs. If we could put these into X,
16 my Lord, we are at tab 8 now.
17 MR JUSTICE HILDYARD: X/8?
18 MR STUART: X, tab 8, yes, my Lord, please.
19 MR JUSTICE HILDYARD: 8 and 9.
20 MR STUART: Or 8 and 9.
21 MR JUSTICE HILDYARD: Which do you want?
22 MR STUART: I would say we could put them just in 8,
23 I suspect. That leaves us a 9. I'm sure there will be
24 something more that arrives.
25 MR JUSTICE HILDYARD: It doesn't really matter.

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1 MR STUART: I am sure there will be something more that
2 arrives.
3 MR JUSTICE HILDYARD: Yes.
4 MR STUART: If I could just Mr McAlindon: as I understand
5 it, if you go to C, your witness statement, paragraph 36
6 on page 61, the three loose photographs -- so not the
7 ones that are attached to the email -- are three
8 photographs of the front door of the property. Do you
9 have the three loose photographs? If you take the one
10 which is obviously a front door, and has a picture of
11 three signs in the front door; do you see that one?
12 A. Yeah.
13 Q. Then the bottom of the three signs in the front door is
14 a white sheet of paper with some -- what looks like
15 an address on the bottom, and that is the next
16 photograph. So that is taken from the front door.
17 That's a picture of one of the signs in the front door.
18 Do you see that?
19 A. I can see that.
20 Q. Then I understand that the "No Dogs Except Guide Dogs",
21 that is also in the front door, that's a sign to the
22 general public saying: don't bring your dogs into the
23 opticians. Do you see that?
24 A. I can see that, I don't know where the photograph was
25 taken.

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1 Q. No, but that's just three pictures from outside the
2 store showing the signs on the front door, the front
3 window. Whereas what I asked you about yesterday was
4 your evidence in 36 that:
5 "As is routine in an investigation conducted by the
6 loss prevention department, the first step is to check
7 the documents and records held in the store, take
8 photographs ..."
9 That, you will know, won't you, because you have
10 been doing it for many years, that means taking
11 photographs of the inside of the store, like happened in
12 Uckfield, for example?
13 A. Correct.
14 Q. We have all the photographs taken by the loss inspection
15 team, when they go into the store, to keep
16 a photographic record of the state of the store when the
17 prevention team go in?
18 A. Correct.
19 Q. We haven't been shown any of those, have we?
20 A. Not to my knowledge.
21 Q. No. A picture of the front door, that's not what you
22 are talking about there, is it, in 36?
23 A. No, no, not at all.
24 Q. So you don't know personally what's happened to the
25 photographs of the inside of the store?

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1 A. No.
2 Q. But you understand from Mr Barnes that photographs were
3 taken?
4 A. I don't know whether I understood that from Mr Barnes or
5 one of the other members of the team --
6 Q. Okay.
7 A. -- but I do recollect being told that photographs had
8 been taken.
9 Q. The second clip, ie the email attached, this is to you
10 from Tony McGowan, that's Mr McGowan who went to visit
11 Mr Weller and had the unfortunate incident with the car;
12 is that the same Mr McGowan?
13 A. It is.
14 Q. He is some sort of investigator, is he?
15 A. He is a loss prevention consultant who, his primary
16 function is NHS audit, but he also has a lot of retail
17 experience, so he does get involved in retail
18 situations.
19 Q. Right. He has photographed, by the looks of it,
20 a couple of boxes of material. We see them, do we not,
21 in the photograph attached to this email? One
22 photograph showing two boxes. One of the boxes looks
23 fairly empty, the top box, and the other one looks
24 a little fuller. Do you see the photograph?
25 A. Yes.

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1 Q. Looking at the covering email:
2 "Hi Mel."
3 Do you see the email?
4 A. I am reading it, yes.
5 Q. "Hi Mel, the contents of the two data boxes held in the
6 Bognor Regis store (photo provided to show amount)."
7 Do you see that?
8 A. I see that.
9 Q. Now, do you recall this?
10 A. Recall it in what context?
11 Q. Well, you don't mention in your witness statement about
12 August 2011, you being involved in the detail of
13 gathering information, Mr McGowan reporting to you on
14 the contents of some data boxes held in the store. You
15 don't mention any of this. I thought you weren't really
16 involved at this stage.
17 A. I can't recollect the chronology. I remember we
18 received an instruction that we could collect the box,
19 the box of information that was referred to in Mr Vos'
20 statement, which was the documents that he viewed as
21 very important and wanted to ensure that we didn't
22 tamper with it, and that box had been taken to
23 a solicitor's, we received instruction that we could
24 collect those -- that paperwork, and look at it. My
25 understanding is that Ben Walls, who is the loss

1 prevention consultant, went to the solicitor's offices,
2 collected it and brought it back to the store and
3 I believe that these are the documents that Mr McGowan
4 went through to look at what was in it.
5 Q. So you are saying these are the two boxes that were with
6 Coole & Haddock?
7 A. I don't know whether there was one box or two boxes.
8 I asked for the information from Coole & Haddock to be
9 gone through, and to be notified of anything that
10 related to Mr Vos in any way, and this was the response
11 that I got back.
12 Q. You asked for this, what, by an email of some sort, did
13 you?
14 A. I would probably have asked verbally.
15 Q. Because there is absolutely no emails at the time of the
16 investigation at all?
17 A. That would probably be because I picked up the phone and
18 spoke to the people who worked for me and asked them
19 to -- told them what to do: go and get the box and check
20 the contents. It's a phone call.
21 Q. Who went to get the box?
22 A. I've already explained, that was Mr Walls, Ben Walls.
23 Q. He gave it to who?
24 A. He brought it back into the store, and I believe
25 Zoe Smith or Tony McGowan were in the store at that

1 time, and I don't know who spoke to whom, but I got the
2 output, which was: we have collected the information,
3 this is what it looks like.
4 Q. Right, so you do think, then, that these are the boxes
5 that were collected from Coole & Haddock?
6 A. I believe so.
7 Q. What about the documents that were actually in the
8 store, then, when the loss prevention team went in?
9 A. Sorry, in what respect? What do you mean, "what about
10 them"?
11 Q. What happened to them?
12 A. Which documents?
13 Q. All the documents that were found in the store.
14 A. They would still be there, to my knowledge. There would
15 be files --
16 Q. Did anybody list them like this? Someone has done
17 a nice list here of all the things that were in these
18 two boxes.
19 A. No.
20 Q. Okay. So we don't know what the other documents, not in
21 these two boxes, are. We just don't know.
22 A. Not in that level of detail. The other documentation in
23 the store was gone through, and anything relating to
24 either Mr Vos, Ms Poulsen or Mr Weller were looked at.
25 Q. Okay, and when you say you were gone through, gone

1 through by whom?
2 A. By the people who went in the store in the first
3 instance.
4 Q. So that's Mr Barnes and Zoe Smith; is that it?
5 A. Ben Walls.
6 Q. This list here, it includes spare store keys and lock-up
7 keys?
8 A. It does.
9 Q. Spare ones?
10 A. It does.
11 Q. So does that mean that there were two sets of lock-up
12 keys?
13 A. I would assume so.
14 Q. Staff contracts, offers of employment and job
15 applications?
16 A. Correct.
17 Q. Now, as you know, the claimants are adamant that within
18 the file, or the files, the paperwork, within the two
19 boxes at Coole & Haddock, there were some documents
20 relating to Mr Vos' employment?
21 A. I was told that was not the case.
22 Q. You were told that by whom?
23 A. I don't know whether it would have been Mr Walls or
24 Mr McGowan, I can't recollect.
25 Q. You know that the allegation is that those have been

1 deliberately mislaid, if they have been mislaid they
 2 have been deliberately mislaid? You understand that
 3 allegation?
 4 A. I do.
 5 Q. What happened to the boxes after Mr McGowan has listed
 6 the contents?
 7 A. I don't know. I don't know.
 8 Q. Which members of staff had access or had contact with
 9 the boxes before this? You have already said probably
 10 Mr McGowan -- Ben Walls to start with, he picks it up?
 11 A. Ben Walls brought them to the business.
 12 Q. And then Zoe Smith and Mr McGowan?
 13 A. I don't know that, I only see Tony McGowan's response,
 14 so I don't actually know who physically went through the
 15 materials.
 16 Q. Probably Phil Barnes as well?
 17 A. I don't think so. I was under the impression that
 18 Phil Barnes had left at that stage, but I don't know.
 19 Q. Okay. Left, how do you mean left?
 20 A. Left the store.
 21 Q. Left the store?
 22 A. Correct.
 23 Q. He is conducting the investigation, isn't he?
 24 A. Correct.
 25 Q. You were obviously involved in the detail of the

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1 investigation, from looking at this email, 25 August,
 2 Mr McGowan is reporting to you, not Mr Barnes, not
 3 Ms Smith?
 4 A. He emailed me as the head of the department who was
 5 working with Mr Barnes to compile the final package.
 6 Q. Okay. In E5, just so that we can see what evidence
 7 there is of your involvement at all at this time,
 8 page 1253, this is the only other one I can find with
 9 your reference on it, Mr Gutteridge is writing to you in
 10 August 2011:
 11 "Mel, please find as requested the business review
 12 telling them to employ Vos."
 13 You have obviously spoken to Mr Gutteridge about
 14 this, haven't you?
 15 A. I've asked him a question, yes.
 16 Q. What were your conversations with Mr Gutteridge?
 17 A. I have no recollection of them. I can only assume that
 18 we were looking for this document, I don't know where we
 19 would have found out, and I would have phoned him and
 20 said "Do you have it? Can you send me a copy of it?"
 21 But that's purely guesswork on my point -- from my point
 22 of view. I don't know, I can't recollect it.
 23 Q. Page 1256, meanwhile Mr Vos has raised a grievance
 24 against you, hasn't he --
 25 A. Indeed.

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1 Q. -- concerning your conduct of his investigation
 2 interview?
 3 A. Correct.
 4 Q. That was actually the only part that you appeared to
 5 play in the whole investigation, wasn't it, interviewing
 6 Mr Vos?
 7 A. Yes.
 8 Q. There was no other sign of you being involved in this
 9 investigation?
 10 A. No.
 11 Q. No. Did you have anything to do with the grievance?
 12 Did Mr Judge --
 13 A. I can't remember whether or not I was interviewed about
 14 it.
 15 Q. Okay.
 16 A. Yeah, it says on page 1257 that I was interviewed.
 17 Q. Yes. Any notes of that interview?
 18 A. I don't know.
 19 Q. Did you make any notes?
 20 A. No. I don't -- wouldn't make notes.
 21 Q. So the very next thing we find is simply the report
 22 arrives, page 1264, Mr Moore in the legal department
 23 sends a copy of the final report.
 24 A. Yes.
 25 Q. Which we now know you drafted with Mr Barnes?

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1 A. Yes, that's correct.
 2 Q. Just give us an idea, then, of the report, 1265 through
 3 to 1293 is the report. How much of it is your work and
 4 how much is Mr Barnes'?'
 5 A. I think it's my writing, whilst sat with Mr Barnes going
 6 through each piece of paper in order.
 7 Q. Right. It must have taken you quite a long time?
 8 A. Yeah, I would have thought so.
 9 Q. Can you remember, days?
 10 A. I would have thought so.
 11 Q. A few days?
 12 A. I don't recollect --
 13 Q. You don't recollect.
 14 A. -- but I would have thought so.
 15 Q. Any minutes of any meetings between you and Mr Barnes
 16 relating to this investigation?
 17 A. No, I am sat discussing the file with him.
 18 Q. And you just came up with this final version of the
 19 report, no drafts, no files, no notes?
 20 A. I write a report electronically.
 21 Q. Yes?
 22 A. As I go through, I often print those written reports
 23 out, read them, make manual amends on them, because
 24 I notice more mistakes that I've made as I am going
 25 through it in paper, all of those bits of paper which

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1 I routinely do, I put in a pile next to my desk, which
 2 is my shredding pile, so I don't keep anything like
 3 that, I destroy it.
 4 Q. Okay. If we go quickly through the report so I can
 5 check I have covered most of the things already by
 6 reference to your witness statement, actually, because
 7 your witness statement very much chimes with this
 8 report, doesn't it?
 9 A. Yes.
 10 Q. 1267, you set out the interviews, we went through all of
 11 those, with all the staff. 1269, you reach your
 12 conclusion on the issue of Mr Vos completing work, third
 13 paragraph, 1269:
 14 "The employees' evidence does not support that WV
 15 completes a significant amount of work at home."
 16 A. Correct.
 17 Q. That's not quite right now, though, is it?
 18 A. I think that was my interpretation of all of their
 19 statements.
 20 Q. Okay. Then two further down:
 21 "The fact that the employees in store have no
 22 experience of WV contacting them during the working
 23 day ..."
 24 This is your telephones point?
 25 A. Yeah.

1 Q. "They weren't being constantly telephoned on the shop
 2 floor to ask questions or clarify paperwork again. It
 3 appears to suggest that any work completed at home, if
 4 any, by WV is minimal."
 5 That's your conclusion?
 6 A. Correct.
 7 Q. But you have agreed with me that actually almost all of
 8 the work that Mr Vos claimed to be doing at home
 9 wouldn't involve him telephoning the shop floor?
 10 A. I've accepted that point.
 11 Q. Okay, fine. CCTV footage we have dealt with. The
 12 meeting on 15 June, perhaps we haven't dealt with.
 13 I don't need to ask you much about it. As I understand
 14 it, your issue here is that they were seeking to
 15 influence the staff; is that right?
 16 A. Erm --
 17 Q. Against you. They were seeking to --
 18 A. I think having read the employees' statements and what
 19 they said about the meeting, I believed that was
 20 a reasonable conclusion to draw.
 21 Q. And that's your complaint, you think they shouldn't have
 22 done that?
 23 A. I don't think it was appropriate, no.
 24 Q. Then the next bit:
 25 "Contact between the three of them re: the

1 investigation."
 2 Again you don't think it's appropriate that the
 3 three of them, having had the allegations made against
 4 them, you don't think they should have been allowed to
 5 discuss it between them before being interviewed?
 6 A. No, because that was the terms of the suspension letters
 7 that they were given.
 8 Q. Right. So then you summarise Mr Weller's interview,
 9 Dr Poulsen's interview, Mr Vos' interview. 1272 at the
 10 bottom, under Mr Vos's interview -- after that, you are
 11 dealing now with the employment contracts, and the
 12 fourth dot:
 13 "Coole & Haddock solicitors were therefore
 14 subsequently contacted and two boxes of paperwork were
 15 returned containing, amongst other things, the
 16 employment contracts and offers of employment for the
 17 Bognor store employees. However, whilst the boxes
 18 contained the employment contracts of all other Bognor
 19 staff, neither an employment contract for WV or any
 20 overtime records for WV were present. This would appear
 21 strange."
 22 Do you see that?
 23 A. Correct.
 24 Q. Then Mr Vos produced a copy of the letter dated 1 May.
 25 Then over the page, Mr Vos also produced the letter of

1 14 May, and Mr Vos provided a letter dated 14 May, the
 2 same date as the contract.
 3 Now, this is the bit I wanted to ask you about
 4 briefly:
 5 "The evidence arising from the investigation however
 6 suggests that the letter dated the 14 May is a forgery."
 7 Forgery, that's a fierce allegation. What's your
 8 experience before you became an investigating officer
 9 here within the retail industry?
 10 A. Prior to Specsavers or prior to my --
 11 Q. Start from the beginning. What's your --
 12 A. I was in the police for a number of years.
 13 Q. You were a police officer?
 14 A. Correct.
 15 Q. Forgery, what does that mean?
 16 A. I can't recollect the definition of it these days,
 17 but --
 18 Q. No?
 19 A. No.
 20 Q. It's the allegation you make against them. If I forge
 21 your signature on a document, do you understand what
 22 that means?
 23 A. Yes.
 24 Q. That means that I write your signature purporting it to
 25 be your signature when it's not?

1 A. Correct.
2 Q. If I forge a painting by Matisse, you understand what
3 that means?
4 A. I understand what that means.
5 Q. Okay. So this letter dated 14 May 2009, which is E2,
6 page 529, and I want to be clear about this, just so we
7 can rule out all the other documents as being alleged
8 forgery. 527, the letter at 527, that's a letter signed
9 by Mr Vos and countersigned by Dr Poulsen and Mr Weller
10 as having been received. Do you see that?
11 A. Sorry, say that again?
12 Q. So the letter at 527?
13 A. Yes.
14 Q. The letter just on white paper from Mr Vos to the
15 directors of the store, a letter signed by him "Yours
16 sincerely W Godfrey Vos" on page 528 and then
17 countersigned by them as agreeing the terms, you are not
18 suggesting that's a forgery, are you?
19 A. No, a better way of describing it, I agree, would be
20 a contrived document or one created for the purpose of
21 the investigation. It wasn't what it was being
22 purported to be.
23 Q. This one you don't even say that about, do you, about
24 this one, the 1 May one?
25 A. I don't know --

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1 Q. You don't know, you simply don't know whether this one
2 is or isn't contrived or not?
3 A. I don't think it can be proved whether this is contrived
4 or not --
5 Q. Okay, that's fine.
6 A. However, one of the documents can be demonstrated to
7 have been written well in advance of the date that it
8 was generated, the material inside this letter suggests
9 that an employee would dictate to an employer their
10 terms and conditions of employment. The letter in
11 itself is very unusual, in that I've never experienced
12 a husband writing to a wife in these sorts of
13 circumstances. There are a number of reasons why, from
14 a general perspective, that document looks contrived, in
15 the same way that the document on 529 appears contrived
16 because it's on the wrong paper and it couldn't have
17 been written at the time it was being presented.
18 Q. I am going to come back to 529 because that is the one
19 that you firmly say.
20 A. Correct.
21 Q. Let me deal quickly with the others. 530, the
22 employment contract itself, you are not saying that's
23 a forgery, are you? It's signed by the employee on 538
24 and it's signed by the company. You are not saying
25 that's a forgery, that whole document is a --

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1 A. No.
2 Q. The job description at 539, being the job description of
3 Mr Vos attached to that, you are not saying it's
4 a forgery?
5 A. No.
6 Q. And the confidentiality agreement made by Mr Vos and
7 signed by him at 540?
8 A. No.
9 Q. You are not saying that's a forgery?
10 A. No.
11 Q. Okay.
12 A. What I am saying is that at the time I was presented
13 with all of these documents, having read the content,
14 I personally found them to be -- I interpreted them to
15 be a contrived document for the purposes of justifying
16 the role that he was in and the remuneration he was
17 receiving.
18 Q. But then --
19 A. And I don't think that's an unreasonable conclusion to
20 come to, when we subsequently found out that one of that
21 collection, that bundle of documents had clearly been
22 written for the purpose of the investigation, and hadn't
23 been written at the time that it was purported to have
24 been written and completed at.
25 Q. So 529 is the one you are there referring to, that's

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1 the --
2 A. Correct.
3 Q. -- letter --
4 A. Correct.
5 Q. -- which is, as we now know --
6 A. Correct.
7 Q. -- created in 2011. It is signed in 2011 by Dr Poulsen
8 and Mr Weller. It's not a forgery, is it?
9 A. It's probably an inappropriate choice of words, but --
10 Q. Yes. Okay. So just going back, then, to E5.
11 MR POTTS: My Lord, I don't know, there was a but
12 interrupted and I don't know --
13 MR STUART: I am sorry.
14 MR POTTS: It may be he had finished.
15 A. I just think they are documents that have been
16 dishonestly created to create a misleading picture.
17 MR STUART: It's just the date on it, is it, on that one
18 document that you are really bothered about? Because
19 that's dated 14 May 2009 --
20 A. Sorry, which document?
21 Q. The one that you referred to --
22 A. Sorry, which page?
23 Q. 529, that is dated 14 May 2009, we know it was actually
24 that version of it was generated in 2011 and signed by
25 the parties in 2011, but backdated effectively, if you

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1 like. Is it the date on it that is what worries you?
 2 A. It's not that it worries me, I just don't think it's
 3 unreasonable to conclude that because the letter is
 4 dated 14 May 2009, which coincides with his date of
 5 employment, when it clearly couldn't have been written
 6 because this stationery wasn't available at that time,
 7 I don't think it's unreasonable to conclude that that
 8 document was created for the purposes of justifying the
 9 role, the hours that he worked and the subsequent
 10 payroll. Something had to be provided, and this is
 11 clearly deceptive and misleading.
 12 Q. But you have already told us nothing would need to be
 13 provided to prove the level, the amount of hours he was
 14 working and his payroll, that's all on your record, so
 15 that's not --
 16 A. I agree with that. But they were produced, and
 17 I believe that they were produced in order to deceive
 18 and to mislead the real picture. They were deceptive
 19 documents. They weren't -- they didn't represent --
 20 they weren't clear.
 21 Q. Then we turn to -- I am swiftly moving on -- we have
 22 WV's contracted hours, we have already dealt with that,
 23 haven't we, and that's 1274, your summary is:
 24 "In my opinion [this is just by the first holepunch
 25 on 1274] if WV was genuinely completing the list of

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1 tasks which he stated he completed, this would require
 2 WV to either be in the store or to at least have
 3 regularly taken home a significant volume of work,
 4 spending time on the phone questioning employees re such
 5 work."
 6 A. Correct.
 7 Q. So that's the sum total of it, but you now acknowledge
 8 that that's not quite right, he could have been doing
 9 all of this work without telephoning the employees on
 10 the shop floor during the day?
 11 A. I don't disagree with the interpretation in relation to
 12 the telephone calls. However, somebody who was
 13 purporting to do the volume of work and the length of
 14 time from home and the volume of hours that were being
 15 performed, I would have thought would have generated
 16 a lot more paperwork. And when we looked at the boxes
 17 that were returned from the solicitor's, which would
 18 have been -- should have been the entire business
 19 paperwork that should be in the store, there was very
 20 little in it. There were --
 21 Q. No, there wasn't very little in it. Let's look at your
 22 list here.
 23 A. There was by comparison to the volume of paperwork that
 24 a business of that size would generate.
 25 Q. You have just said all of the paperwork that was still

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1 left in the store you didn't even bother to list and you
 2 don't mention anywhere.
 3 A. It's not that we didn't bother to list it, we didn't
 4 list it because a lot of the paperwork that's in that
 5 store is stuff that is sent in that would be kept, such
 6 as product manuals, training manuals, communications,
 7 a whole raft of stuff.
 8 Q. Looking at this list, this is only the list of the
 9 things that are said to be in the box returned, so it's
 10 not all --
 11 A. Sorry, where are you referring to now?
 12 Q. We were in X/9 or 8. X/8.
 13 A. Yes.
 14 Q. You have already agreed with me that all of the bank
 15 statements, the accounts for the store, they would all
 16 have been sent to the home address of Mr Vos anyway, so
 17 they would have been with him at home, all of those sort
 18 of financial documents. Then he is returning to you all
 19 things to do with the staff contracts by the looks of
 20 it, job applications. Do you see that?
 21 A. I do.
 22 Q. Third item down. Letters to staff, all the disciplinary
 23 matters. There are documents about the disciplinary
 24 matters; is that right?
 25 A. Yes.

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1 Q. Holidays, analysis sheets, Excel spreadsheets regarding
 2 sales. So he is obviously doing analysis of staff
 3 performance, isn't he?
 4 A. Correct.
 5 Q. Customer complaints, he is dealing with those?
 6 A. Correct.
 7 Q. Patient records, copies of meetings and agendas, so we
 8 have all the documents showing that he was having
 9 regular meetings?
 10 A. Correct.
 11 Q. Not that they are all there, but some of them are there?
 12 A. Correct.
 13 Q. Mail, partners' briefs, looks like insurance documents,
 14 Standard Life, Lombard, Norwich Union, et cetera. It
 15 looks like the insurance stuff?
 16 A. The insurance certificates that you would be sent, yes.
 17 Q. Something to do with property, disputed invoices, he
 18 seems to be dealing with those?
 19 A. Correct.
 20 Q. Banking slip, NHS matters regarding BACS payments,
 21 contact lens sales data, NHS debtor information?
 22 A. But none of that -- I accept -- again, I accept that
 23 Mr Vos did do some work. However --
 24 Q. You don't. In your 1274, you don't?
 25 A. I do accept that Mr Vos did some work. The issue was:

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1 did he meet his contractual hours, and did the volume of
 2 work that he was doing in any way equate to the volume,
 3 which was substantial, in relation to the overtime
 4 payments? Now, a lot of those documents in there are
 5 just simply documents. They are not documents that
 6 would have generated -- that he would have had to have
 7 expended a lot of time on. For example, bank giro slips
 8 are bank giro slips. Copies of Land Registry is simply
 9 a document. Once you take out partners' briefs -- are
 10 simply partners' briefs that are posted to stores to
 11 read. If you take the entirety of those documents, it's
 12 still just simply minuscule by comparison to the volume
 13 of overtime that he was paid over a substantial period
 14 of time. And therefore, although I accept that he was
 15 doing some work in relation to these documents, I don't
 16 think it's unreasonable to conclude that that doesn't
 17 reflect the amount of work that he's purported to have
 18 done and have been paid for.
 19 Q. Okay.
 20 MR JUSTICE HILDYARD: Did you go through these documents
 21 yourself at the time?
 22 A. Not myself. The people that were in store went through
 23 those documents. So a lot of --
 24 MR STUART: You don't mention them anywhere, Mr McAlindon,
 25 in the report.

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1 A. Sorry?
 2 Q. You don't mention in the report all these documents that
 3 show what he was doing at home.
 4 A. There are no documents that show what he was doing at
 5 home.
 6 Q. You have just agreed with me that this list is a list of
 7 documents showing the types of work that he was doing at
 8 home.
 9 A. No. A lot of these documents -- some of the documents
 10 he would have generated some work from. So, for
 11 example, if he has written a disciplinary letter then
 12 I don't dispute that he wrote all the letters. So there
 13 is some work within that that he would have done but
 14 copies of P45, P45 is simply a document. Holiday
 15 request form is a document that, you know, you answer
 16 yes or no to. Copies of resignation letters are copies
 17 of letters that he would have had no work particularly
 18 or substantially ... similarly with partners' briefs or
 19 SOG mail. So within all of that, yes, there are things
 20 that he would have done some work towards, and I am not
 21 disputing that at all. But it simply doesn't tie in
 22 with or is consistent with the volume of overtime
 23 payments that were made.
 24 Q. All right, I think I have asked you about that now,
 25 then.

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1 The next item you go to in the report is
 2 Mr Ferguson, page 1274.
 3 A. Have I finished with X?
 4 Q. Yes, I think you can put X away. Mr Ferguson, I've
 5 asked you about a lot of Mr Ferguson's actual work.
 6 What I have not perhaps dealt with is, just to get clear
 7 the allegation here, page 1274 in E5. You summarise,
 8 just below the second holepunch, in the period when you
 9 did have detailed invoices, so that's 2006 to 2009 --
 10 A. Sorry, where are you looking?
 11 Q. Just below the holepunch, it says:
 12 "Invoices submitted via general invoice system ie
 13 2 October 2009."
 14 A. Yeah.
 15 Q. So in the period that you had detailed invoices setting
 16 out what the work that was done; yes?
 17 A. By John Ferguson. John Ferguson's --
 18 Q. Do you remember that? We went to those. John Ferguson.
 19 They were all under John Ferguson.
 20 A. Yes.
 21 Q. For that period, the invoices were £400 to £2,700 in
 22 a month?
 23 A. Correct.
 24 Q. Then from 2009, October, to mid-2011 he was put on to
 25 the SEP system, and so we no longer have detailed

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1 explanations of all the work that he did. The amounts
 2 that he was paid as you put it at the top of 1274,
 3 an average of circa £2,000 a month?
 4 A. Correct.
 5 Q. So within the range of what he was receiving before
 6 October 2009?
 7 A. Correct.
 8 Q. About two-thirds the way down 1275, somebody has made
 9 a comparison with three similar sized stores, and this
 10 chimes with the bit of your evidence that we have not
 11 yet got to, page 72 of your witness statement bundle,
 12 C/72, paragraph 85 of your witness statement, you cite
 13 these three stores, Crawley, Worthing and Woking, as
 14 being three stores where someone has done an analysis of
 15 the accounts, what's in their accounts for maintenance
 16 charges.
 17 A. Correct.
 18 Q. You say: look, in those stores, the cost for maintenance
 19 was much smaller than the cost at Bognor?
 20 A. Correct.
 21 Q. But the only store that my clients know about, of
 22 course, is Worthing, because they were in Worthing,
 23 weren't they?
 24 A. I believe so.
 25 Q. And they know the Worthing store, don't they?

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1 Mr Yogarathnam knows it as well --
 2 A. Yes, yes.
 3 Q. -- because he was there as well.
 4 Now, in the Worthing store, of course, as you have
 5 seen the evidence from them, just before they left, so
 6 in the 2003/2004 period, that store underwent major
 7 refit works of £300,000 to £400,000, didn't it?
 8 A. I don't know, I accept that.
 9 Q. Okay. Within this period, within the 2007 to June 2011
 10 period, that store underwent a major refit in the
 11 2008/2009 period of half a million pounds. Refit. Had
 12 a complete refit. It was effectively a brand new store.
 13 Did you know that?
 14 A. No. No, I didn't. No.
 15 Q. A store that has got that sort of money in the accounts
 16 for its refit, its maintenance costs might very well be
 17 much less, mightn't they, than a store which has not had
 18 a refit for many years, was very tired when they went
 19 in, 2005?
 20 A. Erm --
 21 Q. It's possible?
 22 A. Yeah. I think that to gain -- from experience you would
 23 recognise, looking through accounts, invoices relating
 24 to maintenance, and they are infrequent, therefore when
 25 you see large volumes going through, it's unusual. In

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1 that respect, Bognor was very unusual. This is simply
 2 a comparison to four similar stores, which were
 3 subsequently disagreed with and further stores were
 4 looked at for comparison. In any comparison that we
 5 could find, the amount spent on a handyman is completely
 6 inconsistent with any store that we could find. It's
 7 very, very unusual.
 8 Q. You are again, then, comparing -- just as with Mr Vos --
 9 you can't find another store which has a Mr Vos type
 10 person in it --
 11 A. But it's not an unreasonable thing to do, to compare
 12 like for like stores. We compare sales on a like for
 13 like basis for a small store, a medium store and a large
 14 store. There are lots of comparisons that are done all
 15 the time for different stores. So I don't --
 16 Q. None of these other stores that you are comparing with
 17 had a retained handyman doing things like taking all the
 18 records off to the offsite storage centre, dealing with
 19 all of that, dealing with the plumbing because he is
 20 a plumber as well, dealing with the roof because the
 21 roof in that store happens to have an historic problem
 22 because it's a flat roof at the back and it's an old
 23 building et cetera with difficult access at the back.
 24 A. But I've already explained my view on the repairs. The
 25 evidence from the employees was that, you know, there

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1 were a number of jobs performed, refitting the lab, you
 2 know, various repairs. That -- I don't think that's in
 3 dispute. The dispute is at £2,000 a month, the
 4 employees would have seen more signs of more work being
 5 done. If you would come in in the morning and a room
 6 has been painted. If a room had been painted you would
 7 notice fundamentally it had changed and there was
 8 a smell of paint, and the experience of the -- or the
 9 views of the employees that they had explained was that
 10 they didn't see any evidence of that. And that's where
 11 there was --
 12 Q. Are you suggesting that the store wasn't kept to a very
 13 high standard of decor, painted --
 14 A. No, I am not disputing that at all.
 15 Q. So 2005 to 2011, which is the period you are talking
 16 about here, sorry, 2006 to 2011, that five-year period,
 17 obviously everything was painted, obviously all the
 18 furniture was dealt with, obviously all the plumbing and
 19 everything else was dealt with. The staff didn't notice
 20 it, you say, but it happened?
 21 A. You would notice -- well, they would see it at some
 22 point, symptoms of -- he has done ten jobs they might
 23 not notice six of them but they may well notice four of
 24 them. The volume at £2,000 a month they didn't notice
 25 constant repairs taking place, and their evidence is

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1 inconsistent with the continual payments of £2,000
 2 a month, as well as it not being consistent with the
 3 expenditure that spent in a lot of -- in most stores is
 4 significantly less than that, even though they are very
 5 well maintained stores.
 6 Q. So your next item is the SEP system point, and your
 7 point is that the SEP system --
 8 A. Sorry, where are you looking?
 9 Q. I'm on page 1275. You have a heading "SEP System", and
 10 your point is that Mr Ferguson was put on the SEP system
 11 in October 2009, he has been on there for 18 months;
 12 yes?
 13 A. Correct.
 14 Q. And he shouldn't be, because it's a misuse -- your word
 15 is, let me just get it right for you, "irregular". Do
 16 you see that, just by the second holepunch on 1275:
 17 "The fact that the SEP system was used to pay JF
 18 from October 2009 onwards is also irregular"?
 19 The irregularity is that he is a handyman, he
 20 maintains the building and does other filing and that
 21 sort of thing, and that sort of self-employed person
 22 shouldn't be put on the SEP system; is that right?
 23 A. I think the word "irregular" actually doesn't describe
 24 it to its truest extent.
 25 Q. It's your word, you wrote that.

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1 A. I know, and I am saying that I actually don't think it
2 necessarily puts it into its truest context. The only
3 people that -- I've never come across anybody who has
4 put anybody other than those normal people that are
5 instructed as to who should use them. To put a handyman
6 on the SEP system is extraordinarily unusual.
7 Q. It's unusual but --
8 A. And it's not in accordance with the instructions for
9 what that system is for, which is very specifically for
10 tax reasons to do with self-employed people.
11 Q. He is a self-employed person, let's not go too far,
12 shall we?
13 A. When I say self-employed people, I am talking about
14 locums and specifically dispensing opticians, ophthalmic
15 opticians and lab technicians.
16 Q. You are referring to page E6/1480. I don't think we
17 have been there before. This is this SEP process. 1480
18 through to 1526. All one document. Do you see it? The
19 SEP invoice process.
20 A. I do.
21 Q. It's the document you have disclosed, anyway.
22 A. Correct.
23 Q. Looking at 1480, version 1 of that document seems to
24 have been created on 25 August 2011?
25 A. Correct.

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1 Q. So this whole document didn't even exist in 2009, when
2 Mr --
3 A. I believe that the, although this is a -- I believe the
4 system changed from SEO to SEP, and this document would
5 have been around that change. But the basic principles
6 of those systems are the same.
7 Q. The basic principles are the same, you say, but
8 page 1481, third line down:
9 "Invoices submitted for any other service [ie not
10 for optometrists, dispensers, lab technicians and
11 audiologists] should be returned to the store as
12 non-compliant."
13 A. Sorry, I can't see where --
14 Q. When Mr Vos was sending in his SEP invoices in 2009,
15 which did not say "lab tech" --
16 A. Sorry, can you point me back to where you --
17 Q. 1481?
18 A. Yes. (Pause). Sorry, I can't see the point that you
19 were --
20 Q. At the top:
21 "Below is an example of an SEP invoice in all of the
22 areas it must be completed. We only process invoices
23 for optometrists, dispensers, lab technicians and
24 audiologists."
25 A. Correct.

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1 Q. "Invoices submitted for any other service should be
2 returned to the store."
3 A. Correct.
4 Q. We know that Mr Vos sent in invoices for Mr Ferguson
5 which said "technician" on them, not lab technician?
6 A. Correct.
7 Q. So they should have been returned to the store, didn't
8 they?
9 A. Correct.
10 Q. But SOG didn't return them to the store?
11 A. I don't know, I don't know.
12 Q. They didn't, you know that they didn't, your evidence
13 is, your report is that SOG processed Mr Ferguson's SEP
14 invoices from 2009 to 2011?
15 A. Correct.
16 Q. So SOG's own accounting department doesn't seem to have
17 complied with its own guidance, if there was such
18 guidance in 2009, which we don't know?
19 A. I think the people that are processing those invoices
20 are accepting the fact that a director has authorised
21 them, knowing that they comply with the rules, and
22 unless they see something very obvious, it would be very
23 unusual for an administrator in a finance office to
24 reject them back to the store. They would have to know
25 that there was something fundamentally wrong.

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1 Q. How would they? I mean, as you know, in this case --
2 A. In fairness to those people who were rejecting them, how
3 would they know, because it's being presented as a lab
4 technician's SEO invoice.
5 Q. No, it's not, you keep saying that. It's in your
6 statement ---
7 A. A technician's SEO invoice.
8 Q. Nobody has suggested he's a lab technician?
9 A. No, but everybody who uses the word "technician" would
10 automatically assume lab technician. We don't have
11 other technicians in the business. So if you get
12 presented with technician, you would assume that person,
13 anybody would assume that that person is a lab
14 technician, and therefore by inference is compliant with
15 the way the system is being used.
16 Q. Do you actually have any equivalent document for 2009,
17 so before this version 1 of this 2011/2012/2013 document
18 got created, to explain any, shall we say, limits on the
19 use of the SEP system? Do you actually have any
20 evidence that in 2009 there was such a limit?
21 A. Not to my knowledge. If it's not in the bundle, not to
22 my knowledge.
23 Q. It's not. So we can't even see that the use of the SEO
24 system in 2009, via Mr Vos and your accounts department,
25 putting this gentleman's invoice through in 2009 and

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1 2010, we can't actually see any documentary evidence
2 that that was even irregular, can we?
3 A. No.
4 Q. No, anyway, it was irregular, you say. You say there
5 would be no reason for the Bognor store to have placed
6 JF on the SEP system. You know their explanation is
7 that they were having difficulties getting --
8 MR POTTS: My Lord, I am sorry to interrupt. Just in
9 relation to this, it's said that there was no evidence
10 about the SEP system. There is Ms Mancini's statement
11 in relation to this, that document.
12 MR JUSTICE HILDYARD: About the SEP system?
13 MR POTTS: Yes, my Lord, yes. She says that the guidelines
14 were last updated and approved in 2006, and that's the
15 document she exhibits to her statement.
16 MR STUART: What's the page reference to this 2006 document?
17 Then we can go to that. Is it 2006 you are talking
18 about?
19 MR POTTS: Yes, it's the same document, 1480 to 152 --
20 that's the same --
21 MR STUART: That's not a 2006 document, that's a document
22 that was created first version in 2011 and the final
23 version 2012.
24 This is my point, Mr McAlindon, there is no document
25 in 2009, is there?

1 21

1 MR POTTS: It is her evidence, my Lord.
2 MR JUSTICE HILDYARD: It is what?
3 MR POTTS: It is her evidence. She says that the guidelines
4 were last updated and approved in 2006, and she is
5 referring to this document.
6 MR JUSTICE HILDYARD: The document does not appear, at first
7 blush, to correspond with her evidence, but no doubt
8 that will be tested with her.
9 MR STUART: Absolutely, of course I will, my Lord, I shall
10 not leave Ms Mancini without asking her about it.
11 MR JUSTICE HILDYARD: Quite.
12 MR STUART: I am asking this witness, since it's his
13 investigation report and he is seeking to say that the
14 use of this system, this sort of automatic self-employed
15 invoicing system, so that you don't have to keep sending
16 in details every week of what the invoice is about, that
17 that is irregular, as you put it, in 2009. Because
18 that's what it actually happened, wasn't it?
19 A. Yes.
20 Q. October 2009. I think your fair answer is that you
21 don't actually have any evidence about the position --
22 A. No --
23 Q. -- in 2009?
24 A. No.
25 Q. That's fine, then. CCTV we have dealt with. Alarm

1 22

1 panel, I must deal with that very quickly. The alarm
2 panel document is the one that I took you to wrongly in
3 E7 --
4 A. Are there any of these bundles that I can ditch?
5 Q. Yes, please get rid of everything apart from C and E7 --
6 sorry, keep E5, because we are just summarising your
7 report and that's the end of it.
8 I might have been slightly sent the wrong way on E7,
9 even. It could be ... (Pause). 1082 in E4, the last
10 document in E4. Sorry, my fault.
11 A. I think mine is 1082-03.
12 Q. Okay. You have got it, 1082-03?
13 A. I've got it.
14 Q. I took you to it this morning by mistake, saying it was
15 to do with a key fob. It was not, this was the alarm?
16 A. Correct.
17 Q. The point made here in the investigation report and in
18 your witness statement is that, if we take 1082-03, in
19 April 2011 --
20 A. Are you referring to my statement here or this document?
21 Q. Well, I will refer to this document, just to remind you.
22 Do you see we are in the year 2011, it says at the top,
23 "month, 2011"?
24 A. Yes.
25 Q. The month of April, we see that in the first two weeks

1 23

1 of the month of April, on the Sunday 3 April and Sunday
2 10 April the store was disarmed, if we can put it that
3 way, the alarm was turned off so there was probably
4 somebody inside?
5 A. Correct.
6 Q. From 7.35 am to 1.47 pm on 3 April, and from 7.59 am to
7 9.16 pm on Sunday 10 April?
8 A. Correct.
9 Q. That, it is said, is not consistent with Mr Ferguson's
10 invoices. I am getting this from the top of E5,
11 page 1277. This is your summary of this evidence in the
12 investigation report. You say:
13 "That is not consistent with Mr Ferguson's invoices
14 for that month, because he doesn't show himself as
15 charging for Sunday 3 April and Sunday 10 April."
16 Do you remember?
17 A. Yes.
18 Q. Now, your conclusion -- you heard from Mr Vos,
19 I suspect, when you were -- if you were in the court
20 when he gave his explanation as to this, he said that
21 the invoice wouldn't necessarily be for the day that
22 Mr Ferguson worked, it might be for the day when he
23 requested the payment, et cetera, and it was -- he
24 acknowledged that the invoice didn't show the 3rd and
25 10 April 2011 as being charged for.

1 24

1 But that's not really the point, is it,
2 Mr McAlindon, because the conclusion you reach from this
3 is that -- this is 1277 in E5:

4 "The alarm records show that the alarm was not
5 switched off for any significant period of time on these
6 days outside of trading hours."

7 Well, that's not right, is it? Page 1082-03, this
8 record shows that the alarm was switched off -- I should
9 have told you, by the way, we have to add one hour to
10 the times on your schedule. So it's 8.59 to 10.16 for
11 British Summer Time or something.

12 But the record does show, doesn't it, that the store
13 was -- the alarm was switched off outside of trading
14 hours for quite a considerable period of time, namely
15 the whole of Sunday 10 April, a very long day, 8.59 to
16 10.16, 14 hours, and on Sunday 3 April, 8.35 to 2.47,
17 another six and a bit hours?

18 So wouldn't you say that when you saw that record,
19 as you appear to have done, that it did appear to show
20 Mr Ferguson doing some work on a Sunday?

21 A. I think that I found that to be inconsistent for
22 a number of reasons. I think, firstly, I find it
23 implausible that somebody would submit invoices saying
24 they had done work on specific dates which don't
25 correlate really with the 10th, and then provide the

1 25

1 explanation that sometimes when Mr Vos, who is
2 meticulous in all of his paperwork, puts the date that
3 he happens to generate the invoice or some other date
4 and not the date that the work was done. It doesn't
5 feel like a consistent or plausible explanation. So
6 I didn't believe that as an explanation.

7 Q. We all get our dates wrong sometimes, don't we? You
8 certainly do.

9 A. I don't disagree with that, but I think that when you
10 look at the general pattern of those invoices, does it
11 match the alarm set and unset? It doesn't. And I don't
12 think that is consistent or plausible.

13 Q. We know that Mr Ferguson was away, then, went off to
14 Australia or somewhere, later in April/May time,
15 et cetera, so the items you have picked out are for
16 those first two weeks, Sunday 3 April, Sunday 10 April?

17 A. I picked out his last two invoices, and his last two
18 invoices included work done on 28, 29, 31, 1 April, 2nd,
19 4th, 5th and 6th.

20 Q. That's right.

21 A. So those were the dates that he was purporting to have
22 done work. And on those dates there aren't substantial
23 deactivations out of hours on the alarm panel.

24 Q. No, but on the Sundays, which are the points you
25 actually raise in your investigation report, there is

1 26

1 evidence that he was working for a long time on those
2 Sundays?

3 A. Nowhere does it say that he was the person that was in
4 on that Sunday. His invoice is very specific and lists
5 those dates, and on those dates there are no significant
6 activations or deactivations.

7 Q. Do you suggest somebody else was working in the store on
8 Sundays?

9 A. I am not suggesting it, and I don't know differently one
10 way or the other, and Mr Ferguson may have been in on
11 that Sunday, but it's still completely inconsistent with
12 the invoice that he submitted.

13 Q. Fine.

14 Then you deal, on 1277, with the key fob
15 activations, we dealt with that this morning, I am not
16 going to repeat it.

17 Then you deal with being put on the SOCRATES system,
18 that's the next matter which you seek to use in support
19 of a suggestion that somebody is not being honest. The
20 point you make is that Mr Ferguson was put on the system
21 on 6 June 2011; yes?

22 A. Correct.

23 Q. And the conclusion you reach is over at 1278, at the top
24 paragraph:

25 "The fact that WV and BW did so shortly after BW and
1 27

1 HP were contacted by loss prevention on 26 May appears
2 questionable."

3 Because their explanation for this is that they were
4 going to ask him to do an analysis of the contact lens
5 sales, or something?

6 A. Which I think is an entirely reasonable conclusion to
7 come to.

8 Q. But you accept that's what they said?

9 A. Yeah.

10 Q. Your counterconclusion is that, and here it comes:

11 "It may suggest this was done to make JF appear to
12 have been provided greater services to/have greater
13 involvement in the Bognor business than is actually the
14 case."

15 Now, just explain to us how putting Mr Ferguson onto
16 the system on 6 June 2011, ten days after they have been
17 told that you are coming in; yes?

18 A. Correct.

19 Q. How is that going to enable them to persuade you that,
20 for the last five years, 2006 to 2011, April 2011
21 actually because he didn't put in any invoices after
22 that, how is it going to help them to persuade you that
23 he has been doing more work? It doesn't make any sense,
24 does it, Mr McAlindon?

25 A. What doesn't make any sense at all is why you would put
1 28

1 a handyman -- regardless of his personal skills, why you
 2 would ever put a handyman onto a till system to do work
 3 in a very complex area, contact lenses, is to anybody
 4 who works instore, completely illogical. There is no
 5 reason why that would ever happen in any store. For it
 6 to have happened at a time when his activities in the
 7 store were in question and the work that he performed
 8 and was being paid for was in question, I don't think
 9 it's unreasonable to conclude that the two were probably
 10 connected in some way, because it's --
 11 Q. The way you suggest doesn't appear to have any logic to
 12 it. What were they going to say to you?
 13 A. Sorry, what was who going to say to me?
 14 Q. What were they going to use this fact that they've put
 15 him on the system on 6 June with a coding, which is all
 16 recorded on your SOCRATES system as to when he went on,
 17 what coding he was given, who he was, et cetera, how was
 18 that going to help them to, what, bluff you into
 19 believing that Mr Ferguson had been doing something on
 20 that system for the last five years?
 21 A. That was what I thought could be the only logical reason
 22 why that would actually take place. It's so -- it's
 23 such a bizarre thing to do, to put somebody on the
 24 system with managerial access, is completely and utterly
 25 illogical, unless it had something to do with the fact

1 29

1 that they were aware, because we had written to them and
 2 explained that we were wanting to question Ferguson's
 3 activities in the business, I don't think it's
 4 unreasonable to connect the two and conclude that he had
 5 been put on the system to provide some way of
 6 an explanation for it, and that's all I am saying.
 7 Q. Okay.
 8 A. It's a very, very strange thing to do.
 9 MR JUSTICE HILDYARD: I think you are really being asked
 10 what their plan was.
 11 A. Sorry?
 12 MR JUSTICE HILDYARD: What was their plan?
 13 A. I don't know. I don't know. It's --
 14 MR STUART: Are you saying it's some dishonest plan?
 15 A. I think it was -- I think he was put on the system with
 16 a view to using it, whether they did or they didn't, to
 17 mislead.
 18 Q. How? How could they mislead you?
 19 A. By saying that he did work on the system analysing
 20 figures.
 21 Q. Only from 6 June 2011.
 22 A. But they may not have known at what point you can
 23 actually check whether somebody was registered on the
 24 system.
 25 Q. Ah.

1 30

1 A. Well --
 2 Q. Mr McAlindon, do you not think that Mr Vos, who is the
 3 man you are alleging here, who we have seen in the
 4 evidence relating to the SOCRATES system was actually
 5 connected to the computer company, wasn't he, that
 6 created the SOCRATES system?
 7 A. Our company created the SOCRATES system. Our IT
 8 department runs and manages it, and I don't know of any
 9 external IT companies that Mr Vos could possibly be
 10 connected to that could have anything to do with the
 11 SOCRATES system. It's an internal EPOS management
 12 system.
 13 Q. Are you suggesting that he thought that one couldn't
 14 tell when a computer record got made on a computer
 15 record? Are you really suggesting that to the court
 16 now?
 17 A. I am suggesting that -- well, Mr Vos wouldn't have known
 18 that -- I couldn't go into a store and look at when his
 19 operator number had been added. I had to ask the IT
 20 department to look at the -- underneath the operating
 21 platform, effectively, and find out when that operator
 22 was added to the system, and that's how I became aware
 23 that the -- when that individual was put on the system.
 24 But Mr Vos wouldn't necessarily have been aware of that,
 25 and therefore could have used it to explain the

1 31

1 activities that they were performing.
 2 Q. The alternative is that they are telling the truth and
 3 they wanted him to do an administrative task -- he was
 4 au fait with the use of computers and they wanted him to
 5 do an administrative task of actually drawing off some
 6 information from the system to help them in their
 7 contact lens issue, which they were definitely raising
 8 with SOG at the time, weren't they?
 9 A. It is a possibility.
 10 Q. Yes.
 11 A. But it's an extraordinary possibility. Because, for
 12 example, they have employed a contact lens manager or
 13 assistant manager, but they have a contact lens
 14 management person who, if you wanted anything to do with
 15 contact lenses, they would be the absolute logical
 16 person to say "I need some data on contact lenses, can
 17 you get it off the system?" Because she understands
 18 contact lenses. The world of contact lenses is quite
 19 a specialist sphere and it's not that easy, it's is not
 20 as simple as just simply printing off back office
 21 reports. Anybody could print off a back office report.
 22 You would not need to put a handyman on the system to do
 23 it. It's "print".
 24 Q. The next seven pages of your report from 1278 through to
 25 1285 summarise the interviews that were had in relation

1 32

1 to Mr Ferguson; is that right?
 2 A. Sorry, say that again please?
 3 Q. From 1278 under the heading "Attempted investigatory
 4 meetings with JF, and then 1279 "Bognor Regis employees'
 5 investigatory interviews re JF" and then 1281 "HP
 6 investigatory interview re JF" and then 1282 "WV
 7 investigatory interview re JF" and 1284 "BW
 8 investigatory interview re JF". You have there sought
 9 to summarise the parts of the evidence from the
 10 investigatory meetings or interviews that relate to JF;
 11 is that right?
 12 A. Correct.
 13 Q. The conclusion that you choose to reach from those is
 14 that because the staff say they don't see him very much,
 15 that means he doesn't do the work?
 16 A. Sorry, where are you referring to?
 17 Q. Let's take 1280 at the bottom, it seems to be your
 18 summary of it:
 19 "The above accounts of JF's presence in and work
 20 done for the Bognor business do not therefore appear to
 21 support that JF has completed the volume of work for the
 22 Bognor store which he has invoiced and been paid for".
 23 A. Sorry, which paragraph are you referring -- the bottom
 24 paragraph on 1280?
 25 Q. Bottom paragraph of 1280.

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1 A. I think that's a reasonable conclusion to come to.
 2 Q. That's what you summarise from your selective reading
 3 from the interviews that we have seen?
 4 A. Correct.
 5 Q. And you then set out the explanations given by
 6 Dr Poulsen, Mr Vos and Mr Weller, pages 1281 and 1282,
 7 1283, including all the matters we have been dealing
 8 with, the CCTV, et cetera, et cetera; yes?
 9 A. Correct.
 10 Q. You reach your conclusion that we come to at page 1287.
 11 Perhaps we very briefly, then -- I have already taken
 12 you to 1286 so I will not go over that again. These
 13 were your conclusions as to Mr Vos' payments, 1286.
 14 A. Sorry, 12 ...?
 15 Q. 1286. The top section is about his overtime payments.
 16 A. Mr Vos?
 17 Q. Of Mr Vos.
 18 A. Yes.
 19 Q. The middle section is about his contractual working
 20 hours of Mr Vos and I have asked you all about this by
 21 reference to your witness statement, so I don't need to
 22 go over it all again. The bottom section is the
 23 submission of false documents. Just to be clear on
 24 that, the third paragraph down:
 25 "In particular, as set out above, the evidence

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1 suggests the letter dated 14 May is a forgery."
 2 You have now acknowledged that's not quite right.
 3 You say:
 4 "This calls into question the veracity of the other
 5 documents."
 6 But you don't actually say that the other documents
 7 are forgeries?
 8 A. Correct.
 9 Q. Over the page, we have the attempts to interfere with
 10 the evidence of the investigation, that's the business
 11 about the SOCRATES system and the meeting with the
 12 employees. I am not sure you are saying that's fraud,
 13 you are just saying that that's them trying to
 14 influence, improperly influence.
 15 Then we get to payments to Mr Ferguson, bottom of
 16 1287. Your conclusion is under the heading "Payments
 17 made to JF":
 18 "The payments made by the Bognor business to JF
 19 appear, in my opinion, excessive for the degree of work
 20 actually carried out in the period 2006 to 2011."
 21 So that's the whole five-year period, not just the
 22 one after he went on to SEP, but all of the -- even the
 23 detailed invoices we are going back to?
 24 A. Correct.
 25 Q. You say:

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1 "His work is not supported by either the employees'
 2 accounts, the burglar alarm or the CCTV."
 3 The CCTV, you only had CCTV for two weeks when
 4 Mr Ferguson wasn't there?
 5 A. I agree, but it is one aspect.
 6 Q. It's one aspect, with the key fob activations, which we
 7 have already dealt with, and the burglar alarm, which we
 8 have dealt with. Again, the burglar alarm, you don't
 9 have any burglar alarm activity for any period prior to
 10 the first week of April, do you, 2011?
 11 A. I don't know.
 12 Q. No, so you don't have anything for the previous five
 13 years showing all the times that he is there?
 14 A. No.
 15 Q. Maybe you do, maybe you could have looked back at that,
 16 but you choose not to show us?
 17 A. No. The way that that information was extracted was
 18 an alarm engineer came to the store, and with one of my
 19 team had to physically scroll back and back and back.
 20 I don't know whether that particular alarm panel, how
 21 long it holds data for. I think they pulled as much as
 22 they could off.
 23 Q. Two paragraphs further on:
 24 "From examining the physical condition of the Bognor
 25 store, ie its state of repair and decoration ..."

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1 You have already acknowledged to me three times in
2 evidence today that actually it was in spotless
3 excellent quality of decoration and repair, there was
4 absolutely no question of there being any problem with
5 it, and it had been so and recorded as such by SOG for
6 the last few years. So why, from examining the physical
7 condition, do you then consider that the actual true
8 amount of work done by JF is greatly less than that
9 which has been paid for by the last five years?
10 A. Because he has been paid on average £2,000 a month,
11 because the employees' statements don't recognise almost
12 daily work being done, because the dates of the invoices
13 are inconsistent with the opening and unopening of the
14 alarms, for all of the reasons that we have discussed.
15 Collectively, I came to the conclusion, when considering
16 all of it, that the only conclusion that you could come
17 to is he is doing less work than he's being paid for,
18 and substantially less.
19 Q. That's not the only conclusion you could react, that's
20 just the one you've chosen to reach?
21 A. Indeed.
22 Q. Over the page:
23 "Due to the lack of records kept by the Bognor
24 business of the repair work and the fact that SEP do not
25 detail the work, it's impossible to quantify exactly how

1 3 7

1 much ..."
2 They did keep all the invoices for the period 2006
3 to 2009, didn't they? You saw those, didn't you?
4 A. Sorry, say that again.
5 Q. The invoices for the period 2006 to 2009, the detailed
6 invoices showing all the work done, you did have those?
7 A. Correct.
8 Q. So you knew what work was being done for that period of
9 your five-year period, the first three and a half years
10 of it you did have detailed invoices for?
11 A. Apart from the fact that I was doubtful over all of the
12 work that was within those invoices, for all the reasons
13 we have discussed.
14 Q. Okay. So that deals with him. Then you come on to your
15 recommendations, and your recommendations are that there
16 is a disciplinary case to answer. Do you see that,
17 page 1288, under the heading "Investigation
18 Recommendations"?
19 A. Correct.
20 Q. "... consider that there is a disciplinary case to
21 answer."
22 And you do that -- I have been through all these,
23 I am not going to go through them again.
24 Then you say that the two claimants, Dr Poulsen and
25 Mr Weller, they are involved by authorising the payments

1 3 8

1 that have been made to Vos and Ferguson, and by signing
2 the letters which they say they signed?
3 A. Correct.
4 Q. Is that the end of your role in this?
5 MR POTTS: My Lord, I am sorry, I just want to be fair to my
6 friend. In relation to Mr Ferguson he is moving on and
7 I know maybe he feels under pressure, but there is at
8 1282 at the bottom three bullet points, there is another
9 matter which is the matters raised in relation to the
10 letter of 23 July. I just want to be fair to my friend
11 in case he has missed it.
12 MR JUSTICE HILDYARD: Thank you. What I will propose is
13 that we have our ten minute break now.
14 MR STUART: Yes.
15 MR JUSTICE HILDYARD: I know that you feel under pressure --
16 MR STUART: I put myself under that pressure, my Lord, yes.
17 MR JUSTICE HILDYARD: As I have always accepted this is
18 an important witness, you must have a cool, calm look at
19 what you need further to do, and we will come back just
20 before half past and resume.
21 MR STUART: Thank you.
22 (3.18 pm)
23 (A short break)
24 (3.28 pm)
25 MR STUART: My Lord, thank you.

1 3 9

1 So I am quite rightly pointed to E2, page 552, last
2 page of E2, the very last page.
3 A. Sorry, the page number again, please?
4 Q. The last page in that bundle, 552. This is the letter
5 to Mr Ferguson. Perhaps we should just be clear: you
6 accept that this was signed by Mr Weller and Dr Poulsen?
7 A. I do.
8 Q. Your point is that it's contrived by Mr Vos?
9 A. It is.
10 Q. Or rather that it may be contrived?
11 A. My feeling, having considered it with the other
12 documents, was that I felt it was contrived.
13 Q. You seem to -- I am looking in your -- I was taken by
14 Mr Potts, quite rightly, to E5 page 1282, within your
15 investigation report. Do you have 1282? Just above the
16 second holepunch there is a section which starts:
17 "For the reasons discussed above, in my opinion it
18 would also appear highly unlikely that a member of the
19 accounts department would have advised that such
20 a practice occur."
21 That's about putting him through the SEP system?
22 A. Yes.
23 Q. Then:
24 "In their interviews, they had each advised that
25 this letter, dated 23 July 2009, had been completed at

1 4 0

1 the time. However, given my opinion about the 14 May
 2 letter ..."
 3 Do you see that?
 4 A. Correct.
 5 Q. "... may be a forgery, in my opinion the authenticity
 6 of this alleged letter is also in question."
 7 So your reasoning really comes from your conclusion
 8 as to the previous letter; is that right? The 14 May
 9 letter?
 10 A. No, my conclusion of the previous letter and the content
 11 of the -- all of the other letters. I found it --
 12 MR JUSTICE HILDYARD: Sorry?
 13 A. And the content. My conclusion that this document was
 14 deceptive and prepared for the interview was not only
 15 because of the issue relating to the one document that
 16 was printed on the wrong paper, but also the content of
 17 all the documents.
 18 MR STUART: But to be fair to you, it's only a suspicion,
 19 isn't it? You can't actually say this is a forgery or
 20 a ...
 21 A. I just said it brings the letter into question.
 22 Q. Into question, okay, fine. The other thing that you say
 23 at the bottom of 1282, you raise the point about it and
 24 the other documents not being in the Coole & Haddock
 25 boxes. Do you see that?

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1 A. Correct.
 2 Q. Just on that, you know that the allegation is that they
 3 have been removed from the Coole & Haddock boxes?
 4 A. Correct.
 5 Q. Were you in court when Mrs Birdi gave her evidence about
 6 the --
 7 A. I was, yes.
 8 Q. -- loss prevention team shredding documents?
 9 A. Yes, I was.
 10 Q. And losing documents?
 11 A. Correct.
 12 Q. Do you agree that that may have happened?
 13 A. Totally disagree. Totally.
 14 Q. You weren't there, though, so you don't actually know.
 15 A. Sorry, which incident are you talking about, the one in
 16 Dartford?
 17 Q. No, the one here, this one.
 18 A. Right. No, I can't speak for there, because I wasn't
 19 there.
 20 Q. Okay. The one in Dartford, then, it might be part of
 21 the practice of your department, the one in Dartford, do
 22 you deny that the documents were shredded?
 23 A. Totally.
 24 Q. And do you deny that documents were mislaid?
 25 A. By us?

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1 Q. By your department?
 2 A. Yes, totally.
 3 Q. So Mrs Birdi is just wrong when she asserts that
 4 those -- she found those shreadings, she found them
 5 after your department had left the building?
 6 A. I find -- I found all of that evidence to be
 7 inappropriate for a number of reasons. I think firstly,
 8 the main document that was being accused of us having
 9 shredded was a payslip, and a payslip fundamentally
 10 wouldn't have any impact, there is no benefit to us
 11 shredding that document. The reality is that that
 12 document can be easily reprinted because it's from the
 13 data that's embedded in the payroll system that you
 14 cannot -- I cannot eradicate, because it's in the
 15 payroll system in Guernsey. So there is no logic as to
 16 why I would shred a document of that nature.
 17 The second point really is that the other document,
 18 that it was inferred by the fact that it had gone
 19 missing that I may have shredded, was the contract
 20 relating to her husband.
 21 The issues that we were investigating into her
 22 husband was his -- were the payments being made to him
 23 and was he actually in store doing any work. So again,
 24 shredding the contract didn't really influence the issue
 25 at hand.

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1 The third aspect that's incorrect with all of that
 2 is that we arrived into the store, "we" being myself,
 3 Mr Barnes and another former employee, Lou Samuels, and
 4 informed Mrs Birdi by phone, because she wasn't in the
 5 store that day, that we were there to follow up on some
 6 allegations that had been made by her co-director into
 7 financial irregularities. Having made her aware of
 8 this, we left the store on the Monday, and Mrs Birdi
 9 came back into the store overnight. The following day
 10 she was suspended. One of the employees' statements
 11 indicates that she saw Mrs Birdi go out with the
 12 payslips that had arrived that morning, ie the Tuesday
 13 morning, and we were only in the store on the Monday.
 14 So not only is it illogical that I would take a payslip
 15 and shred it, but equally I didn't have the opportunity
 16 because they only arrived on the Tuesday morning, and
 17 the Tuesday morning Mrs Birdi wouldn't allow us into the
 18 store until all the employees arrived, and made us wait
 19 outside, so I couldn't have accessed them in her
 20 absence. So there are inconsistencies throughout that
 21 explanation, and in any case we have never shredded any
 22 documents.
 23 Q. Okay. You would know that shredding documents when
 24 there was an investigation like that into an allegation
 25 of fraud or something like that would be wholly

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1 improper, wouldn't it?
 2 A. Absolutely.
 3 Q. Probably illegal, actually?
 4 A. Probably.
 5 Q. Okay. Just whilst we are on the question of destruction
 6 of documents and deletion of documents, one of the
 7 allegations made within your report --
 8 A. Sorry, my Lord, can I just sort of add to my previous
 9 explanation? The other, in relation to Bognor Regis,
 10 the documents it is being inferred that we may have
 11 destroyed, disposed of or whatever, have come out of
 12 a box that has just been sent to a firm of solicitors to
 13 protect and secure them so that we couldn't tamper with
 14 them. It would be extraordinarily naive to receive
 15 a box off a firm of solicitors and dispose of half of it
 16 knowing that they had been placed there for security.
 17 So it strikes me as illogical that I would even be, or
 18 even any member of my team would consider destroying any
 19 of those documents because they would have a copy or you
 20 would assume that having come from the solicitors they
 21 would have had a copy.
 22 Q. Where is the logic the other way, Mr McAlindon? These
 23 documents, on your version of events, are documents that
 24 you have already been handed.
 25 A. Have come from a firm of solicitors.

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1 Q. No, no, no, the documents that we are referring to here,
 2 the one of 23 July 2009 in relation to Mr Ferguson,
 3 Mr Vos' employment contract, the letter attaching --
 4 A. Yes.
 5 Q. -- the 1 May letter, all of these documents, which you
 6 are now trying to suggest are all concoctions and which
 7 weren't in the box, they had copies of those, had been
 8 handed to you at Mr Vos' investigation meeting back on
 9 5 July?
 10 A. I agree, and that's --
 11 Q. So there is no purpose, there is no purpose.
 12 A. All I am saying, what I am saying is that it would be
 13 illogical to go to a firm of solicitors, pick up some
 14 boxes that had been placed with the solicitors for
 15 safekeeping and then to even consider, if we were going
 16 to do it, which we never do it, but to even consider it
 17 would be something that no logical person would do,
 18 because it's just come from a firm of solicitors and
 19 a firm of solicitors would take copies of it all. So
 20 why would you take the risk -- if you were that stupid
 21 to do it in the first place, why would you even take the
 22 risk when it has come from a firm of solicitors.
 23 Q. You are not taking any risk, are you, Mr McAlindon?
 24 Your only assertion is that these documents --
 25 A. What I am saying is in relation to shredding the

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1 documents, if we have disposed of or shredded documents
 2 out of that box, it's an illogical accusation, because
 3 it's just come from a firm of solicitors.
 4 Q. There is no allegation of shredding these documents.
 5 A. I said shredding or disposing.
 6 Q. The allegation is that when you say "We can't find the
 7 documents in the boxes which we picked up from
 8 Coole & Haddock which are now in our control, and we
 9 want to make a point out of that", as at page E5/1282 at
 10 the bottom, "these documents weren't in the boxes that
 11 we have from Coole & Haddock"?
 12 A. Correct.
 13 Q. You are trying to create an argument in fact that
 14 somehow that gives rise to some inference that the
 15 documents are themselves --
 16 A. Correct.
 17 Q. -- forgeries. (a) I have asked you and you haven't
 18 explained, how does it assist them being forgeries than
 19 they are not in that box, given that you have already
 20 been handed the documents on 5 July? How does it make
 21 any difference whether they are in the box?
 22 A. Sorry, I am responding into your question: do we shred
 23 documents or dispose of documents? That's what I am
 24 responding to.
 25 Q. Okay. The point is you, in your investigatory report,

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1 have sought to argue at the bottom of 1282 that the fact
 2 that you couldn't find the documents in the boxes you
 3 picked up from Coole & Haddock is in some way
 4 suspicious?
 5 A. Sorry, which paragraph are you referring to?
 6 Q. The bottom paragraph of 1282:
 7 "It is notable that this letter to JF was not in the
 8 boxes with all the other confidential sensitive
 9 documents."
 10 Do you see that?
 11 A. Correct.
 12 Q. So you are trying to make a point about that, and the
 13 point you are trying to make is somehow that that fact,
 14 that you don't find it in the boxes, gives rise to
 15 a suspicion that it's not a genuine document?
 16 A. That the document never existed in the way that it has
 17 been explained.
 18 Q. But you already had the document in July?
 19 A. We had a copy that hadn't been written, it wasn't
 20 an original.
 21 Q. All right. And the other documents as well, this goes
 22 the same for the other documents?
 23 A. Yes, correct.
 24 Q. Yes. On the question of destroying documents, one of
 25 the allegations made by you, as I understand it, is that

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1 Mr Vos wiped documents from computers?
 2 A. Which part are you referring to?
 3 Q. Well, I'll take you back in the inspection report, but
 4 the easiest place to find it is E4/1074. This is the,
 5 as I understand it, forensic analysis report that you
 6 rely upon. This is what was put to Mr Vos anyway.
 7 A. Sorry, 1094?
 8 Q. 1074.
 9 A. Yes.
 10 Q. We can pick this up in your witness statement, in bundle
 11 C, page 79, under the heading "Deletion of computer
 12 records". Do you see that?
 13 A. Yes.
 14 Q. If you look at paragraph 120.3, and you look to the
 15 right-hand side of the page, you will see that you are
 16 referring to this report.
 17 A. Correct.
 18 Q. I just want to understand what it is you are suggesting
 19 as an allegation even because you heard Mr Vos deny that
 20 anything had been deleted apart from his own personal
 21 emails, and those of Dr Poulsen and Mr Weller, their
 22 personal emails. So emails, on their personal emails,
 23 he agrees, he deleted so that when you came in you
 24 wouldn't have access to his personal emails. But apart
 25 from that, he hasn't deleted anything, has he?

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1 A. I didn't specify any one individual, what I said was
 2 someone had downloaded a programme and somebody had
 3 deleted documents, and the report lists documents that
 4 would be -- would have been business related documents
 5 some of which --
 6 Q. No, they are all AOL mail documents, aren't they? Look
 7 at the report on 1074, just above the second holepunch:
 8 "On investigation, it appeared that an utility under
 9 the name of Uber-Uninstaller was introduced on
 10 13 June 2011. This utility is provided by AOL,
 11 an online internet service and mail provider, for
 12 removing its application."
 13 So it's all about removing the AOL email account.
 14 It's a service provided by AOL, if you want to delete
 15 your personal emails from a computer. That's what's
 16 happened.
 17 "... so for removing its application [that is the
 18 AOL mail provider application] and data from machines
 19 and is only utilised during this uninstallation process.
 20 Traces of the AOL mail client were found on the image
 21 and keyword match summary and details are in the section
 22 below."
 23 So would you agree with Mr Vos when he says that the
 24 only thing he deleted were his AOL email records?
 25 A. Yes, some of which had -- related to the business.

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1 Q. Which ones related to -- how do you know what was
 2 related to the business and what was related to his
 3 personal --
 4 A. Because in here it -- in the detail of the report, it
 5 explains, for example, that AOL mailbox, which is what
 6 you are suggesting, fragments matching John Ferguson,
 7 and it relates to the store, Specsavers Optical and
 8 Specsavers, so some of them related to the business,
 9 they were not all completely personal.
 10 Q. Well, he might have personal emails which had something
 11 to do with the business, he is an employee of the
 12 business, why couldn't he have an email which had
 13 contained within its text somewhere the word
 14 "Optimisation Healthcare Limited", or "John Ferguson",
 15 or --
 16 A. I didn't mention those names, I mentioned Specsavers.
 17 Q. Or Specsavers, he is an employee of Specsavers, why
 18 can't he have emails --
 19 A. He can, but they would tend to be work related
 20 documents.
 21 Q. No they wouldn't, they would be his personal documents?
 22 A. Some of them could be work related documents.
 23 Q. You don't know that though, do you?
 24 A. I know, because they are not available for examination
 25 because they have been removed from the laptop.

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1 Q. They are his personal emails. Are you disclosing all
 2 your personal emails, even if they relate to this case?
 3 A. No, I don't dispute your point, I am just saying that
 4 some of those documents could have been, I don't know,
 5 I accept that we don't know.
 6 Q. He is entitled to delete his personal emails before you
 7 come wading in trying to copy them.
 8 A. No, I agree with that.
 9 Q. Okay, fine, and that's all that this report suggests,
 10 that an email --
 11 MR POTTS: My Lord, I think the witness may not have
 12 finished his answer there before the interruption.
 13 MR JUSTICE HILDYARD: Yes, I think that's fair.
 14 MR STUART: Yes, absolutely.
 15 MR JUSTICE HILDYARD: I know about the time but you must let
 16 the witness, who is the most important person here --
 17 MR STUART: My Lord, I agree.
 18 MR JUSTICE HILDYARD: -- finish what he wishes to say.
 19 A. The user of the machine was utilising an email address,
 20 SpecsaversBR202. If it's a personal email, it might be
 21 melmcalindon@aol.com. That is connected to the bills,
 22 and some of the documents referred to here do have the
 23 word "Specsavers" in, and all I am saying is that some
 24 of those could have related to work. I don't know
 25 whether that's the case or not, because they couldn't

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1 recover sufficient information from the hard drive.
 2 MR JUSTICE HILDYARD: Why did you regard that as suspicious?
 3 I thought that your main point was that he hadn't shown
 4 much documents. Why are you complaining about him
 5 deleting that which would have assisted --
 6 A. No, I'm not particularly. Part of this was a general
 7 observation of: there are no documents on either
 8 computer, which are routinely used in day-to-day work.
 9 The fact that there were no documents again is
 10 exceptional because business documents would be retained
 11 on there, are in every single store that we have ever
 12 looked at.
 13 MR JUSTICE HILDYARD: Right.
 14 A. So the fact that there were no documents suggested that
 15 documents had been removed, and documents in themselves
 16 would have enabled us to much better quantify how much
 17 work people had done on what days and so on and so
 18 forth. So the existence is an important fact, and the
 19 fact that they no longer exist is significant, in my
 20 view.
 21 MR STUART: But it's only an email account.
 22 A. I don't know what else was recovered. This refers to
 23 an email account. I don't know what else was on there.
 24 Q. No, your own experts say the only thing that's been
 25 uninstalled is the AOL email uninstaller has been used

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1 to delete the AOL email account. That's all you say
 2 happened.
 3 A. It actually says that the -- there were 6,556 files
 4 deleted -- sorry, found on the disk volume. However,
 5 most of these appeared to be related to general system
 6 functions, such as our antivirus. A list of the
 7 keywords were supplied and searches carried out and the
 8 uninstaller took place, and the email. So, yeah, it
 9 does relate to email, I agree.
 10 Q. Okay, thanks.
 11 MR POTTS: My Lord, I am sorry, so the matter is fair,
 12 paragraph 122 of the statement, one is the --
 13 MR JUSTICE HILDYARD: Paragraph?
 14 MR POTTS: 122 of the witness statement, in terms of what
 15 the expert said.
 16 MR JUSTICE HILDYARD: Are they giving evidence?
 17 MR POTTS: No, my Lord, it's what was ... it's the point
 18 which was put to my ...
 19 MR JUSTICE HILDYARD: This is a point you are referring to?
 20 MR POTTS: No, my Lord, sorry. The point -- I am sorry to
 21 interrupt.
 22 MR STUART: You will have a right of re-examination, I do
 23 promise you. If that's what you want to take him to,
 24 E7/1605, Mr McAlindon, I have been asked to take you to.
 25 You had some further report done in May 2013; is

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1 that right? (Pause). Do you want to change your answer
 2 in any way from the one you gave, which was you accept
 3 that it was just the deletion of an email record that
 4 was concerning you in your investigation report and that
 5 was the basis of matters in 2011? (Pause).
 6 A. Well, it refers to 18 documents that were recovered, but
 7 I can't see any detail of it.
 8 Q. Okay. So just swiftly back to the chronology now, and
 9 I want to confirm with you: the report comes out
 10 September 2011?
 11 A. July 2011, is it? Which one?
 12 Q. Your investigation report, the one we are all relying
 13 upon, that we have been looking at, E5/1293 I think is
 14 your sign-off page where Mr Barnes signs it off on
 15 15 September 2011.
 16 A. Correct.
 17 Q. It then gets sent out to various other -- to Dr Poulsen,
 18 and then there are a couple of typographical errors
 19 which get corrected, and that's the end of bundle E5.
 20 Is that the end of your involvement?
 21 A. Yes.
 22 Q. So you have no further role to play, you and your
 23 department, because you are here for your department,
 24 aren't you?
 25 A. I believe so. We may well have been asked questions on

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1 the report or whatever, but I don't have any
 2 recollection of any other involvement.
 3 Q. You see, because it's only after that report gets sent
 4 out that this allegation of creating documents is made
 5 for the first time, isn't it, in the report? You don't
 6 put any of that to any of the witnesses --
 7 A. No.
 8 Q. -- before you send out your report?
 9 A. No.
 10 Q. You don't write to them, even, when you discover that
 11 the 14 May 2009 document was on the wrong headed paper?
 12 You don't write to them and say "We have discovered that
 13 the 14 May document is on the wrong headed paper, what's
 14 your explanation?" You don't give them an opportunity
 15 to even comment on that allegation before you do your
 16 report?
 17 A. Correct.
 18 Q. You have just said you don't have any involvement after
 19 you have done your report, so that would imply that you
 20 don't then consider the detailed rebuttal document at
 21 page -- you can put away all the files now apart from
 22 E6 -- 1390. There is a detailed rebuttal document,
 23 isn't there? By the sounds of it, you weren't aware of
 24 it at the time?
 25 A. Sorry, where am I looking?

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1 Q. 1390 in E6.
2 A. Yeah.
3 Q. They answer some of the allegations made in your report.
4 A. Correct.
5 Q. Do you see it's headed "Rebuttal to Investigation
6 Finding of Mr Phil Barnes", but we know that's actually
7 your report?
8 A. Yeah.
9 Q. So they actually put in their answer, 26 September, but
10 you say you are not involved at this point onwards, are
11 you?
12 A. I had submitted my file for consideration of the
13 recommendations, after which whoever the decision-maker
14 who would have been appointed would decide if there was
15 a disciplinary case to answer to, and a disciplinary
16 process would have been instigated. So the issues
17 surrounding the letter could have been challenged in
18 that process.
19 Q. I asked you a fair question, your answer is: I know
20 nothing about any of that because I wasn't involved and
21 I don't know anything about it?
22 A. No, I am explaining that I submitted my report and that
23 is the end of our part --
24 Q. 15 September, that's the end of your involvement?
25 A. Correct.

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1 Q. So anything that happened after 15 September, there is
2 no point me asking you about it?
3 A. I don't know whether I had an involvement in this or
4 not, I would have to refer back to my statement.
5 Q. It's quite important, and surely memorable as well,
6 Mr McAlindon. Do you really not remember?
7 A. Normally our involvement ceases at the point that we
8 have submitted the investigation report and all the
9 evidence. Having -- legal having received this, because
10 it wasn't sent to me, it has gone to legal, I may well
11 have been asked questions about it, I don't know.
12 MR JUSTICE HILDYARD: Sorry?
13 A. I may well have been asked questions about it, but
14 I have no recollection of it.
15 MR STUART: You have no recollection, okay.
16 So I can't then ask you who it was you discussed it
17 with, if you did?
18 A. If I've not made reference to it in my witness
19 statement, then that was the end of my involvement.
20 Q. I am asking you about this rebuttal document. You see
21 it at page 1390, it's dated 26 September, so it got back
22 to Specsavers within ten days of receipt of your report.
23 Do you see that?
24 A. I see that.
25 Q. Your witness statement, if you go to page 83,

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1 paragraph 140, you say:
2 "Between 5 and 15 September I and Phil Barnes
3 prepared the report with legal advice."
4 Do you see that?
5 A. Sorry, which paragraph?
6 Q. 140 on page 83.
7 A. Yeah.
8 Q. "Sent out the same day together with notice of the
9 21 September board meeting.
10 "Conclusion: the loss prevention department was
11 authorised by the board" --
12 A. Sorry, where are you looking?
13 Q. I am sorry, there are two paragraphs 140, aren't there?
14 That's what is confusing us. Page 83 in bundle C.
15 A. Sorry, yeah, it's the first paragraph.
16 Q. Sorry, okay. In the middle paragraph of the page, under
17 the heading "Submission of the investigation report", it
18 says, 140:
19 "Between 5 and 15 September I and Phil Barnes ..."
20 Do you see that?
21 A. Yes.
22 Q. That's where we are in the chronology?
23 A. Yes.
24 Q. "Conclusion", it then goes back to 139 but never mind
25 about that:

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1 "The loss prevention department was authorised ...
2 to investigate the payments. It was clear from the
3 evidence in that investigation that those payments were
4 false."
5 Do you see that?
6 A. Correct.
7 Q. 140:
8 "Given the matters which had come to light during my
9 investigation, I considered that there had been serious
10 fraud and dishonesty on the part of the claimants."
11 I thought your report was that you had considered
12 that there was a case to answer; that's what your report
13 says, isn't it?
14 A. Yes.
15 Q. "In those circumstances, in November 2011 ..."
16 So we are on to November 2011, there is no mention
17 of the rebuttal document anywhere in your witness
18 statement there; do you see it?
19 A. I see that.
20 Q. I think the only reference to it is back in
21 paragraph 135 to paragraph 137. Do you see that?
22 A. Sorry, 135?
23 Q. 135 back on 82:
24 "The claimants provided a rebuttal. In the rebuttal
25 they alleged Mr Vos' employment file ..." et cetera.

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1 A. Yeah.
2 Q. "In the rebuttal, the claimants admitted that the
3 letter ..." et cetera.
4 A. Yes.
5 Q. 137:
6 "I found this explanation incredible. I could not
7 see any rational explanation as to why it was necessary
8 to copy the letter. Their allegation that Mr Barnes
9 lost the employment file was not true. But even if it
10 were true, their solicitors could have simply provided
11 us with the letter."
12 Do you see that?
13 A. I see that.
14 Q. "I concluded that the claimants had determined to
15 provide a false document to the investigation with
16 a view to bolstering their account of Mr Vos'
17 activities."
18 Do you see that?
19 A. I do.
20 Q. Now, is there any documentary evidence of you
21 considering the rebuttal document in September or
22 October 2011?
23 A. I don't think so.
24 Q. Did you email somebody who was going to be making the
25 decision as to whether there was or was not fraud and

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1 dishonesty to tell them, "Look, I've read the rebuttal
2 document, I see what they say about this and this and
3 this, but we have an answer to that, which is this and
4 this and this"?
5 A. I think attached to the rebuttal was all three
6 individuals' letters of resignation, which --
7 Q. Yes?
8 A. And because of that, I don't think we would have
9 continued on that process. Had they not attached their
10 letters of resignation, it would have then gone to
11 a disciplinary process where the file, the investigation
12 report, and the rebuttal would have been considered.
13 But the fact that the letters of resignation were
14 attached stopped that employment process.
15 Q. And your evidence that you have given the court is that
16 you were not involved after you put the investigation
17 report in?
18 A. After I had submitted the investigation report, my
19 understanding is the next document that arrived was the
20 rebuttal, attached to which were all three individuals'
21 letters of resignation. So I can't conceive any reason
22 why I would have had further work to do.
23 Q. That's not my question, whether you had any reason to do
24 it. I am asking you to state as a fact what you did,
25 what you actually did. We want to hear what you

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1 actually did, and your evidence has been that after you
2 put in the investigation report, you had -- you and your
3 team -- had no further part to play, you didn't play any
4 part, which is presumably why we don't see any
5 documentary evidence of your team playing any part?
6 MR POTTS: My Lord, there is an issue of privilege in
7 relation to communications which I just flag up.
8 MR JUSTICE HILDYARD: Well, my understanding, but I may be
9 wrong, is that so far as you were concerned you had
10 finished your report, you had sent it, and you did not
11 envisage a rebuttal and you didn't deal with the
12 rebuttal?
13 A. No.
14 MR JUSTICE HILDYARD: Is that right?
15 A. That's correct, because the letters were attached.
16 MR JUSTICE HILDYARD: Yes. So, as counsel had put to you,
17 and I think you did accept, as from the time on
18 15 September 2011 when, together with notice of
19 a 21 September board meeting, as far as you were
20 concerned, you had done what you were required to do and
21 you did no more so far as you recollect?
22 A. In relation to the investigation.
23 MR JUSTICE HILDYARD: Yes. You didn't consider the rebuttal
24 with anyone but maybe I am --
25 A. No, not that I am aware of.

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1 MR JUSTICE HILDYARD: No.
2 MR STUART: You suggest in paragraph 140, the second
3 paragraph 140 on page 83, that you had a conversation
4 with Mr Dyson which led you, on his instruction, to
5 report these people to the police?
6 A. To refer the case to the police and ask for their
7 opinion.
8 Q. How did you put it, then, to the police?
9 A. I brought the investigation file with accompanying
10 documents down, explained our view from -- which was
11 contained in the investigation report, and said that --
12 Q. What, that there is a case to answer?
13 A. We felt there was a case to answer, and would they
14 review it, which they did.
15 Q. And they said by the looks of it, it's a civil matter,
16 we are not interested?
17 A. Correct.
18 Q. That was your only other involvement in this whole
19 matter, then, at this point?
20 A. Correct.
21 MR JUSTICE HILDYARD: I am sorry, can I clarify: in the
22 relevant documents of which you gave the police a copy
23 and to which you refer in the penultimate line on
24 page 83 of your witness statement --
25 A. Yes.

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1 MR JUSTICE HILDYARD: -- did you include the rebuttal?
 2 A. I don't honestly know.
 3 MR JUSTICE HILDYARD: Right.
 4 MR STUART: Do we have any documentary evidence of what you
 5 took to the police?
 6 A. No, the police contacted me back when they had made
 7 their decision by phone, and explained that they felt it
 8 was a civil matter, and they asked me what I wanted to
 9 do with the documents I had given them, and I said shred
 10 them because we had already got them electronically and
 11 the originals had gone to legal, that was just
 12 a duplication of all the files.
 13 Q. So we can't see what was sent to the police and we can't
 14 see what was sent back?
 15 A. What was sent to the police was the entire file, and
 16 their reply was a telephone call explaining their view
 17 on it.
 18 Q. What's the entire file? Do you mean the report?
 19 A. The investigation report with the documents that were
 20 referred to within it.
 21 Q. Which documents are attached to the investigation
 22 report, do you say?
 23 A. The invoices.
 24 Q. What, Mr Ferguson's invoices?
 25 A. Mr Ferguson's invoices.

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1 Q. All of them?
 2 A. Yes.
 3 Q. Mr Vos' invoices, all of those?
 4 A. Yes.
 5 Q. You sent all of these to the police?
 6 A. Correct.
 7 Q. Anything else?
 8 A. I don't believe so.
 9 Q. Okay, so it was the report and the two sets of invoices?
 10 A. I believe so.
 11 Q. I must ask you about one last thing to tidy up the
 12 point. The question of the funding of your department
 13 suggested that you might have some reason to run these
 14 investigations. Is it right that your department is
 15 funded, as it were, from the stores that you are put
 16 into?
 17 A. In part.
 18 Q. I note, for example -- would you go to bundle X, the
 19 last document I'm going to take you to. This document
 20 was put in by Mr Potts yesterday. X, divider 2.
 21 Do you have it? It was put in to cross-examine
 22 Mrs Birdi about. I just want to ask you about page 62,
 23 top right-hand corner, paragraph 213, where she seems to
 24 set it out for you, and perhaps you will either agree
 25 with this or not:

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1 "Mr McAlindon confirms in effect that Specsavers has
 2 been defrauding the Dartford ..."
 3 I am sure you won't agree with defrauding, don't
 4 worry, I am not going to suggest that:
 5 "... the Dartford store by siphoning money out of
 6 the business by way of inflated charges for management
 7 fees. This had driven the Dartford store into
 8 an artificial loss."
 9 She says she made that. The reply, so this is from
 10 you, said to be from you:
 11 "I am currently charging Dartford the equivalent of
 12 £440 a day for management fees. As you are aware, two
 13 reasons, first an income stream for the department,
 14 [that would be your loss prevention department] second,
 15 and more important because of the share value, the more
 16 the store is charged, the lower the value. Do you want
 17 me to continue?"
 18 Is it right that the loss prevention team
 19 effectively recovers its costs from the actual store
 20 itself?
 21 A. In some occasions, yes. The normal charging process is
 22 that there are different levels of payment, and it's
 23 based on collective costs of the department, and it's
 24 divided down -- and from that we work out how much the
 25 department cost, therefore what daily charge rate we

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1 would charge to recover the costs, so we are a cost
 2 neutral department in theory. The reality is we are not
 3 a cost neutral department, we cost the company
 4 significant costs. The charge rates are varied in that
 5 a lower rate is paid for general audit because it's
 6 proactive on the part of partners, so we try and keep
 7 that lower, to be fairer to the majority who -- the
 8 investigation costs, because it's reactive, therefore
 9 costs more money to deliver, are higher. So there is
 10 an agreed charge rate which has stayed pretty much the
 11 same for 14 years, it was only increased once, which
 12 I think was two or three years ago, and they are charged
 13 from timesheets. So it's the amount of time that people
 14 work in stores.
 15 Q. Do you personally get some sort of bonus --
 16 A. None whatsoever.
 17 Q. -- if you have a successful outcome?
 18 A. None whatsoever.
 19 Q. Like the outcome in this case, getting all these shares
 20 for nothing?
 21 A. No. Absolutely one hundred per cent.
 22 Q. No bonus for you?
 23 A. No.
 24 MR STUART: My Lord, I have no more questions of this
 25 witness.

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1 Housekeeping
2 MR JUSTICE HILDYARD: Right. Mr Potts, I am in a real jam
3 here. How long do you have in re-examination?
4 MR POTTS: Not a vast amount, my Lord, but I don't think
5 I am going to be able to deal with the points in time.
6 MR JUSTICE HILDYARD: I am so sorry, it's most unfortunate,
7 because this would have been an ideal day to stay
8 longer, but I simply can't, I am afraid.
9 MR POTTS: My Lord, it's been a long day as well.
10 MR JUSTICE HILDYARD: It's been a long day. I also have one
11 or two questions which I should like to ask.
12 Mr McAlindon, I am sorry, I misled you in thinking that
13 we were on the home straight, we were further from home
14 than I had imagined. Are you all right for tomorrow?
15 THE WITNESS: Fine.
16 MR JUSTICE HILDYARD: Do you want to start at 9.30?
17 MR STUART: Any time, my Lord, I am very happy to.
18 MR JUSTICE HILDYARD: When would you like to start?
19 MR STUART: Could we say 10 o'clock, my Lord?
20 MR POTTS: My Lord, 10 o'clock. My Lord, I don't think
21 I will be very long at all, but it will be more
22 efficient in the morning, I think.
23 MR JUSTICE HILDYARD: Yes. We will reconvene at 10 o'clock.
24 I want you to be thinking about one logistical thing
25 in two parts: one is I think you sort of promised me

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1 your recommendation to me as to how I deal with the
2 evidence in each case.
3 MR STUART: We have agreed that, my Lord.
4 MR POTTS: My Lord, I made a proposal last night which has
5 been agreed. The wording that was suggested, subject to
6 your Lordship, is that the court should be entitled to
7 have regard to the evidence given in one set of
8 proceedings in relation to the other set of proceedings.
9 I don't know if that covers it.
10 MR JUSTICE HILDYARD: I will have a think about that. I am
11 slightly worried about that at first blush, but no doubt
12 you will be able to convince me that first blush is
13 never the best way forward.
14 MR POTTS: That's our first attempt at it, my Lord.
15 MR JUSTICE HILDYARD: Yes. The other thing, and partly
16 related to that, as I say, is that I daresay this is
17 just gloom at the end of a long term, but my feeling is
18 that we will, if we scratch the surface of Parham, it
19 will be literally that. I am half minded, and we will
20 see how we are, to draw a line after this case and
21 suggest that skeleton arguments on this case, subject to
22 additions, if there is genuinely relevant evidence to
23 this case from Parham, can be bolted on. But the reason
24 for raising it is you may have all sorts of objections
25 to that. I don't know the lie of the land in Parham.

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1 If I ever did, it's certainly gone out of my mind in the
2 last few days, and I just put that forward, because you
3 will be in a better place to gauge whether or not that
4 is sensible.
5 MR POTTS: My Lord, I think our view previously was that it
6 would be sensible for your Lordship to have both sets of
7 written submissions at the same time and to deal with
8 closing at the same time, and that certainly is still my
9 view, my Lord, in relation to the matters.
10 MR JUSTICE HILDYARD: Have a think, and stress test your
11 recommendation as to the admissibility of evidence in
12 one case in another. I am not -- I will need to
13 think -- just to put my worry forward -- whether that
14 does require a direction that the evidence in one case
15 be evidence in another.
16 MR STUART: We thought we would actually try and agree
17 a direction to that --
18 MR POTTS: My Lord, yes, we are suggesting that could be
19 recorded as a direction.
20 MR JUSTICE HILDYARD: So it would be in effect
21 a consolidated set of proceedings?
22 MR STUART: Yes.
23 MR POTTS: Yes.
24 MR JUSTICE HILDYARD: Not quite consolidated, because there
25 are different claimants, but the direction would be

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1 concurrent trials, evidence in one to be evidence in the
2 other.
3 MR STUART: Yes.
4 MR POTTS: Yes, my Lord, and the another reason for that is
5 my concern about the closing submissions -- I know
6 your Lordship has to go -- is because unlike the other
7 side where there are perhaps some small witnesses, my
8 witnesses are substantively giving evidence in both
9 matters, and so in terms of --
10 MR JUSTICE HILDYARD: And the dividing line between one and
11 the other is ... well, I certainly wouldn't impose that
12 because it hasn't yet been imposed, but whatever you can
13 agree between you, so much the better.
14 MR POTTS: My Lord, we will discuss it.
15 MR STUART: My Lord, could I raise one other small matter?
16 MR JUSTICE HILDYARD: Yes.
17 MR STUART: The Bognor file that Mr Dyson referred to in his
18 evidence, do you remember?
19 MR JUSTICE HILDYARD: Yes.
20 MR STUART: He said that there was a file for Bognor Regis.
21 MR JUSTICE HILDYARD: Yes.
22 MR STUART: He described it as the Bognor file. We have
23 asked to see it.
24 MR JUSTICE HILDYARD: Yes.
25 MR STUART: According to my learned friend's instructing

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1 solicitors, Taylor Wessing, the answer to the question

2 is that that file has been returned to Guernsey -- I am

3 reading the letter, I'll show it to you if we need to --

4 so:

5 "The file was returned to the legal department in

6 Guernsey, and it was only during Derek Dyson's

7 cross-examination that the source of disclosure and

8 Mr Dyson's Bognor file in particular was raised as

9 an issue by your firm."

10 So they acknowledge that it exists, and they

11 acknowledge that it's with the legal department in

12 Guernsey.

13 MR JUSTICE HILDYARD: Right.

14 MR STUART: We have asked for it, because we would like to

15 see it.

16 MR JUSTICE HILDYARD: Yes.

17 MR STUART: Which we say is a fair request at this stage,

18 given that Mr Dyson identified it in his evidence.

19 MR JUSTICE HILDYARD: Is that objected to?

20 MR POTTS: No, my Lord, I think the point is just over the

21 page on the letter, I think the point made is that the

22 file is with the legal department, Mr Moore, who is the

23 in-house counsel, it is only he who would be able to

24 search for the file and the concern is as to

25 proportionality about sending him home now, when he is

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1 giving instructions in relation to this matter, and the

2 suggestion I think was made as to whether he could look

3 for the file over the Christmas break.

4 MR JUSTICE HILDYARD: Well, I'll let you decide this. At

5 the end of Mr McAlindon's evidence I shall wish to

6 discuss with you, especially you, Mr Potts, the

7 deficiencies which have emerged in the disclosure which

8 I presently regard as, at the very least, regrettable.

9 I think that it may be that this will be the straw which

10 breaks the camel's back as to whether the list should

11 now be sworn to, so that the court knows for sure that

12 all relevant documents, in accordance with whatever was

13 agreed, have been disclosed. I am very unsettled by the

14 drib drab of documents which in every case have been

15 documents which, subject to your arguments to the

16 contrary, appeared to me at first blush to be

17 disclosable documents.

Right, 10 o'clock tomorrow. Thank you.

(4.20 pm)

(The court adjourned until 10 o'clock on Wednesday, 18 December 2013)

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