

# 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 13

December 18, 2013

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1 Wednesday, 18 December 2013  
 2 (10.00 am)  
 3 (Proceedings delayed)  
 4 (10.05 am)  
 5 Housekeeping  
 6 MR POTTS: My Lord, before concluding Mr McAlindon's  
 7 evidence, can I just raise two matters with  
 8 your Lordship?  
 9 MR JUSTICE HILDYARD: Yes.  
 10 MR POTTS: The first one is in relation to the question of  
 11 disclosure, which your Lordship raised yesterday. The  
 12 partner for my instructing solicitors was in court  
 13 yesterday and obviously was concerned about  
 14 your Lordship's comments. He is producing a witness  
 15 statement which is just being, I think he's -- it's  
 16 being signed off momentarily, to give to your Lordship  
 17 to explain the position in relation to the disclosure  
 18 statement -- I am sorry, the process of disclosure --  
 19 MR JUSTICE HILDYARD: Yes.  
 20 MR POTTS: And what's been involved, and in relation to the  
 21 late documents. So that will be with your Lordship  
 22 momentarily this morning, just to let you know. And  
 23 I have told my friend about that.  
 24 The second point, my Lord, is timetabling just going  
 25 forward and Mrs Lofting. My Lord, I raised the question

1

1 yesterday. I understand she is here under summons.  
 2 I raised the issue with my friend after court yesterday  
 3 because the problem is on the timetable, even as  
 4 amended, we were due to have openings on Uckfield today.  
 5 MR JUSTICE HILDYARD: Yes.  
 6 MR POTTS: And then she might have been fitted in after  
 7 that. The problem is your Lordship indicated yesterday  
 8 that if you had it in your mind, Uckfield, it certainly  
 9 isn't in your mind now. I have a concern, my Lord, as  
 10 to when we are going to open that case. At the moment,  
 11 I think it's unlikely to be until probably Friday, if at  
 12 all. I have suggested to my friend yesterday that the  
 13 sensible thing would be for her to come back in January  
 14 to give her evidence in the normal place, when actually  
 15 it would be more satisfactory for everybody, including  
 16 your Lordship, to have actually an understanding of what  
 17 she is talking about.  
 18 So, my Lord, I have suggested that. I think my  
 19 friend is not so -- I am not sure quite what the issues  
 20 are, but he would like her to give evidence today,  
 21 I think. But, my Lord, I raise it now because if she is  
 22 here and if she can be released, I thought it was  
 23 sensible to raise that prospect.  
 24 MR JUSTICE HILDYARD: Yes, that's sensible.  
 25 MR STUART: My Lord, yes, on that matter, Mrs Lofting is

2

1 here. She sits in the back of the court. She gives  
 2 evidence about one matter. There is one sentence in the  
 3 defence, SOG's defence in the Parhams matter, and the  
 4 Uckfield matter, where the defendants assert that  
 5 Mr Rajan, who you have heard about, was told by  
 6 Mrs Lofting, who is a JVP in a different store, that she  
 7 had information that Mr Parham had done something; it's  
 8 to do with an expenses claim.  
 9 MR JUSTICE HILDYARD: Yes.  
 10 MR STUART: I've actually done, my Lord, literally  
 11 a half-page crib which puts the whole, entire thing into  
 12 context for you. (Handed).  
 13 MR JUSTICE HILDYARD: Right. Has Mr Potts got a copy?  
 14 MR STUART: No, I am going to give it to him now. (Handed).  
 15 All this is, my Lord, is the relevant references.  
 16 So in the pleading, it's in the defence at  
 17 paragraph 22, which is bundle A, obviously we are in the  
 18 different coloured bundles, A/454; that Mr Rajan  
 19 informed Mr Rowe that he had been:  
 20 "... informed by Trish Lofting that she had  
 21 witnessed..."  
 22 Et cetera, et cetera. We reply to that and say it's  
 23 denied that ...  
 24 MR JUSTICE HILDYARD: Yes.  
 25 MR STUART: Then the disclosed documents on it are, I've

3

1 just given you the two -- there are only three pieces of  
 2 paper. There is E1/249, which is the email from  
 3 Mr Rajan to Mr Rowe in which it's asserted that  
 4 Trish Lofting is mentioning it. Mr Rowe then refers it  
 5 up to Mr McAlindon and then that is forwarded to  
 6 Mr Barnes and Mr Gutteridge. So it's all within the  
 7 loss prevention department.  
 8 Then Ms Lofting denies that in writing, in an email.  
 9 My Lord, if it assists, just for the sake of  
 10 convenience, I have even actually just copied for  
 11 everybody those six pieces of paper into a clip.  
 12 (Handed). So you see it without having to spend time  
 13 going through all the ...  
 14 MR JUSTICE HILDYARD: Thank you.  
 15 MR STUART: Just so your Lordship sees it there, I've  
 16 actually put them together for us. You can see the  
 17 email, the first page, just top right-hand corner  
 18 numbering just copied from the bundles, my Lord.  
 19 I haven't taken these from anywhere else, just from the  
 20 bundles. Page 249:  
 21 "Hi Mike, following my recent visit to the Lewis  
 22 Store..."  
 23 That is where Mrs Lofting was.  
 24 "... Trish Lofting that..."  
 25 Et cetera, et cetera. That's then effectively

4

1 passed on up the line. If you then flick to the last  
 2 two pages of this clip, my Lord, you will see  
 3 Mrs Lofting's email of 26 January, which is also put  
 4 into the form of a document from her as well.  
 5 MR JUSTICE HILDYARD: Yes.  
 6 MR STUART: It's the same wording you will see, "To whom  
 7 this may concern", "Upon having a conversation...",  
 8 et cetera. Do you see that, my Lord?  
 9 MR JUSTICE HILDYARD: Yes.  
 10 MR STUART: So Ms Lofting actually says there:  
 11 "I would like to state I have not made any complaint  
 12 or had a conversation about any of the concerns to Riyaz  
 13 or any or member of the Specsavers team..."  
 14 Et cetera, et cetera. It's a discrete point; she is  
 15 a one-point witness.  
 16 MR JUSTICE HILDYARD: Right, yes.  
 17 MR STUART: Given that Mr Rajan isn't giving any evidence  
 18 before this court, there is no witness statement from  
 19 him, I am not really sure what cross-examination even  
 20 there is going to be of Ms Lofting.  
 21 My Lord, yes, I am keen to avoid what I will call  
 22 the Ms Rosier situation, where we spent more time  
 23 arguing about whether we should hear from Ms Rosier the  
 24 day she was here, then when she came back a week later  
 25 and was put in the box, she was cross-examined for eight

5

1 minutes, and she wasn't actually cross-examined to the  
 2 extent of anything adverse put to her. She was reminded  
 3 that in her own statement she said various things.  
 4 So I would really rather, if possible, deal with  
 5 Mrs Lofting today. She is here, as I say, and  
 6 I acknowledge that it's not ideal, I acknowledge that  
 7 your Lordship doesn't have the whole of the Uckfield  
 8 case broadly in mind when hearing her evidence. But she  
 9 is a one-point witness, and I would ask, if possible,  
 10 that we could deal with her.  
 11 MR JUSTICE HILDYARD: It's curious to interpose a witness in  
 12 a case which has not begun.  
 13 MR STUART: Yes, although, as your Lordship recalls, we are  
 14 having some form of agreed direction that the evidence  
 15 in one is -- or consolidation and/or the evidence in one  
 16 is the evidence in the other. So to an extent one might  
 17 say --  
 18 MR JUSTICE HILDYARD: But that has not happened yet, point  
 19 one. Point two, I haven't really got to grips with the  
 20 Parham case at all, really.  
 21 MR STUART: No, I do understand that, my Lord. I am not  
 22 seeking to say this is usual or this is ideal.  
 23 MR JUSTICE HILDYARD: Why is it necessary? I am sorry to  
 24 talk about these things without acknowledging your  
 25 presence, and thank you for attending, Ms Lofting.

6

1 MR STUART: My Lord, I am told by my instructing solicitors  
 2 that Mrs Lofting has explained that she is away in  
 3 January from 8 January for ten days.  
 4 My Lord, that obviously just happens to -- I think  
 5 your Lordship was possibly going to give us Thursday the  
 6 9th and the 10th, you will not be hearing from the  
 7 Parhams themselves. The rest of the evidence in their  
 8 case would be three or four days of the next week, and  
 9 then we were hoping to have the submissions.  
 10 MR JUSTICE HILDYARD: When had it been anticipated that she  
 11 would give her evidence? On Friday, this Friday?  
 12 MR STUART: No, it was anticipated that she was going to  
 13 give her evidence today. Do you remember, my Lord, she  
 14 has a hospital appointment tomorrow?  
 15 MR JUSTICE HILDYARD: Yes, I am sorry.  
 16 MR STUART: I don't know whether your Lordship recalls.  
 17 MR JUSTICE HILDYARD: No, I don't, really.  
 18 MR STUART: If your Lordship has the copy of the timetable,  
 19 she was going to be interposed.  
 20 MR JUSTICE HILDYARD: She wasn't really. This is why I have  
 21 got confused, because to be brutally frank about it, my  
 22 feeling is you are not going to get to the Uckfield  
 23 case, and I think that we are on a constant stream of  
 24 slightly optimistic assessments of how long everything  
 25 is going to be.

7

1 I daresay I should have brought more order, I don't  
 2 know. But things are as they are, and I had rather sort  
 3 of dismissed in my mind the Uckfield case, just as  
 4 a point of judicial focus.  
 5 MR STUART: My Lord, I totally accept that the focus is  
 6 entirely on the Bognor case at the moment.  
 7 MR JUSTICE HILDYARD: Yes.  
 8 MR STUART: And we have not, in any way, focused on the  
 9 Uckfield case, and there is -- that just hearing from  
 10 her out of context, out of order, interposing her today,  
 11 which is what appears in both mine and my learned  
 12 friend's chronology that was handed to your Lordship  
 13 yesterday --  
 14 MR JUSTICE HILDYARD: Yes, but according to this we would  
 15 have disposed already of Mr Raines and Mr Rowe.  
 16 MR STUART: No, I agree, I agree.  
 17 MR JUSTICE HILDYARD: And we would just be finishing  
 18 Ms Mancini and Mr McGowan, and opening speeches will  
 19 occur, and then in comes, for a short and dramatic  
 20 episode, Mrs Lofting.  
 21 MR STUART: Yes, you are right, my Lord, I accept that. We  
 22 are out of order.  
 23 MR JUSTICE HILDYARD: How are we going to do it, on your  
 24 view of things?  
 25 MR STUART: I am asking that we can hear from her because --

8

1 MR JUSTICE HILDYARD: When?  
 2 MR STUART: Some time today.  
 3 MR JUSTICE HILDYARD: Some time in the mid-flow of a witness  
 4 or when?  
 5 MR STUART: No, no of course not.  
 6 MR JUSTICE HILDYARD: Now? After Mr McAlindon?  
 7 MR STUART: Either after Mr McAlindon -- I said to my  
 8 learned friend yesterday any time today.  
 9 MR JUSTICE HILDYARD: I know, but when are you telling me?  
 10 When are you recommending to me? After Mr McAlindon?  
 11 MR STUART: After Mr McAlindon would be as good a time as  
 12 any, my Lord, if she is going to be in the witness box  
 13 for ten minutes, which is what I suspect is the  
 14 position.  
 15 MR JUSTICE HILDYARD: Well, I notice her witness statement  
 16 is quite short, and I would take five minutes at  
 17 a convenient moment to read it.  
 18 MR STUART: Of course. My Lord, if she were to be after  
 19 Mr Raines. I am definitely going to get through  
 20 Mr Raines.  
 21 MR JUSTICE HILDYARD: Where are you going to get to this  
 22 afternoon, being really gloomy about things?  
 23 MR STUART: Being really gloomy, I am being really gloomy  
 24 and very realistic about the time I will be with  
 25 Mr Raines; I will definitely be less than two hours in

1 total with Mr Raines, definitely. Probably shorter.  
 2 MR JUSTICE HILDYARD: So you will have finished by the short  
 3 adjournment with Mr Raines?  
 4 MR STUART: Yes, if we get through Mr McAlindon by  
 5 11 o'clock. Is the short adjournment at 1 o'clock  
 6 today, my Lord?  
 7 MR JUSTICE HILDYARD: Yes.  
 8 MR STUART: Yes, we will definitely finish Mr Raines by the  
 9 short adjournment.  
 10 MR JUSTICE HILDYARD: So you would propose that, subject to  
 11 her position, which you will presumably have checked  
 12 with her --  
 13 MR STUART: I have.  
 14 MR JUSTICE HILDYARD: -- Ms Lofting would be all right to  
 15 come in after the short adjournment according to her?  
 16 MR STUART: I have checked. She is available all day. She  
 17 has come up from the South Coast and she can be heard at  
 18 any time today.  
 19 MR JUSTICE HILDYARD: Thank you very much.  
 20 Mr Potts, what do you say? It's obviously far from  
 21 perfect. The worrying statistic I have been told is  
 22 that Ms Lofting is away for ten days from the 8th.  
 23 MR POTTS: Yes, that's the first I've heard of it,  
 24 obviously. But, my Lord, my concern is just on the  
 25 timetable, the point was it was on the basis that the

1 case would have been opened, your Lordship would  
 2 understand the issue. I accept her evidence is quite  
 3 short, it's not very long, but I have seen in my  
 4 friend's opening statement, they rely on this evidence  
 5 in relation to the serious allegation of conspiracy  
 6 against my clients. So it's not a sort of peripheral  
 7 issue.  
 8 Your Lordship will have to listen to the evidence  
 9 and your Lordship might want to ask questions.  
 10 Respectfully, I am not sure that your Lordship is going  
 11 to be properly in a position to understand the issues in  
 12 the case before she gives evidence, if she were to do so  
 13 today.  
 14 MR JUSTICE HILDYARD: What are we to do, bearing in mind she  
 15 is away for ten days from the 8th?  
 16 MR POTTS: My Lord, given my learned friend's suggestion,  
 17 what I would like, my Lord, is that your Lordship shall  
 18 have had a chance, firstly, also that we don't lose time  
 19 today interposing her.  
 20 MR JUSTICE HILDYARD: So you are suggesting Friday?  
 21 MR POTTS: Friday, my Lord. We can open the case on Friday,  
 22 even on my learned friend's estimate, which I think he  
 23 thinks is realistic rather than optimistic. As I said,  
 24 I think we could get to open the case on Friday.  
 25 My Lord, generally on timetabling, before the

1 vacation, that was my sense as to what might be useful  
 2 for your Lordship. We can open the case, perhaps give  
 3 your Lordship reading lists and so on for the vacation  
 4 and then we can come back and deal with the evidence.  
 5 If it means that on Friday we deal with her evidence,  
 6 I don't think it will take a huge amount of time.  
 7 MR JUSTICE HILDYARD: What do you think?  
 8 MR POTTS: I would not have thought probably more than half  
 9 an hour, I would think. It's difficult to tell, but  
 10 I think something along those lines.  
 11 MR JUSTICE HILDYARD: It sounds quite a lot, it is a very  
 12 short statement.  
 13 MR POTTS: Yes, it is. I may even be a bit less. I think  
 14 we can do it on Friday.  
 15 MR JUSTICE HILDYARD: It is a single point, isn't it, as  
 16 I understand it?  
 17 MR POTTS: Yes, it is.  
 18 MR JUSTICE HILDYARD: It is whether she did or didn't  
 19 suggest whether someone had or hadn't charged money to  
 20 his private account? Is it as simple as that, really?  
 21 MR POTTS: It is. There is a bit of a history as to how  
 22 things have emerged and who she has talked to in the  
 23 meantime, and so on. But yes, it's not a -- sensibly  
 24 accommodate on Friday.  
 25 MR JUSTICE HILDYARD: Are you in a position to cross-examine

1 this afternoon?  
2 MR POTTS: I think I am. But my concern, my Lord, is I just  
3 don't think it's a very satisfactory way for  
4 your Lordship to hear evidence in relation to a case  
5 which has not opened.  
6 MR JUSTICE HILDYARD: Yes, but the trouble is the  
7 incremental advantage of your initial openings, though  
8 it will be great, I am sure, in general terms, is  
9 unlikely to illuminate greatly this particularly  
10 discrete and small area.  
11 MR POTTS: I am not sure that's right, my Lord, because you  
12 will see from my skeleton argument, for example, maybe  
13 not from -- I think my friend's perhaps in opening,  
14 your Lordship will get the chronology of events, where  
15 it fits in in the chronology and so on, and  
16 your Lordship just won't, I am afraid, I suspect --  
17 MR JUSTICE HILDYARD: You think it will be a bit of  
18 a vacuum?  
19 MR POTTS: Yes, you are going to be looking at it in a  
20 vacuum, it is just not satisfactory, my Lord, in terms  
21 of really the administration of justice, I would say.  
22 That sounds a bit pompous, but in terms of hearing --  
23 MR JUSTICE HILDYARD: You don't think I'll get the hang of  
24 it?  
25 MR POTTS: My Lord, no, I am not suggesting that your

13

1 Lordship won't get the hang of it.  
2 MR JUSTICE HILDYARD: I know. When are we going to finish  
3 Bognor, do you say?  
4 MR POTTS: My Lord, we lost a day yesterday --  
5 MR JUSTICE HILDYARD: Yes.  
6 MR POTTS: -- because it was double time for Mr McAlindon.  
7 I will be very short with him. I have one point to  
8 raise with Mr McAlindon. Then we will have Mr Raines,  
9 and I think my friend is saying that we will deal with  
10 Mr Rowe as well.  
11 MR STUART: Mr Rowe this afternoon.  
12 MR JUSTICE HILDYARD: How long do you have for him?  
13 MR STUART: An afternoon.  
14 MR POTTS: My Lord, there is also the issue of disclosure  
15 which your Lordship wanted to canvas as well. But that  
16 means that we would hope Rowe and Raines today, and that  
17 means that tomorrow we could deal with -- I think there  
18 is two further witnesses.  
19 MR STUART: I will be shorter with them, my Lord. That's  
20 Ms Mancini, the accounts, do you remember she is the  
21 lady who --  
22 MR JUSTICE HILDYARD: How long are they going to take,  
23 roughly?  
24 MR STUART: Ms Mancini certainly will be less than an hour,  
25 because as I say, she is a ...

14

1 MR JUSTICE HILDYARD: Mr McGowan?  
2 MR STUART: An hour.  
3 MR JUSTICE HILDYARD: Right. So by your reckoning, you  
4 should be into your opening speech tomorrow afternoon?  
5 MR STUART: Tomorrow afternoon.  
6 MR JUSTICE HILDYARD: Then obviously poor Ms Lofting is  
7 sitting there hearing her future being discussed, and  
8 I've no idea whether she is available on the Friday?  
9 MR STUART: I understand she is, my Lord. Whilst Mr Potts  
10 was saying it, I asked for the question to be put, and  
11 apparently a nod came back. She is obviously not  
12 delighted to be coming back again on Friday, but could  
13 be. She is in hospital tomorrow, but Friday she will be  
14 out as it were.  
15 MR JUSTICE HILDYARD: I am terribly grateful to her. I do  
16 think, with apologies, that she has come up this way,  
17 all dressed up and nothing to do. But I think that that  
18 would be better, if you can face that, on Friday.  
19 I want to have some chance of understanding where  
20 your evidence fits into the general picture, rather than  
21 it being a bolt out of the blue, which I may  
22 misunderstand, which I don't think would be fair to  
23 anyone, including yourself.  
24 So I think it would be better to hear from  
25 Ms Lofting once you have given me your sort of best bits

15

1 on the Uckfield matter, so I know where it fits in  
2 a little better.  
3 MR STUART: Understood, my Lord. So Mrs Lofting could leave  
4 now. She doesn't need to hang around all day today?  
5 MR JUSTICE HILDYARD: She may indeed, with my thanks for  
6 your attendance today. I will see you on Friday.  
7 MR POTTS: My Lord, can we check in terms of timing for  
8 Friday? Does your Lordship have a view as to when we  
9 will start?  
10 MR JUSTICE HILDYARD: I have no view, really, because I am  
11 in your hands. I've grown sceptical about timing. When  
12 do you want to say?  
13 MR POTTS: Perhaps we could see how we go, my Lord, and we  
14 can be in communication with her, no doubt.  
15 MR JUSTICE HILDYARD: We will keep Ms Lofting updated as far  
16 as we can, so that you don't have more wasted time than  
17 is necessary. Nothing ever much runs completely to  
18 time, I am afraid. Okay?  
19 MR STUART: So Ms Lofting can go, she will be coming back on  
20 Friday, and my instructing solicitors will contact her,  
21 if we can be better as to timing on Friday.  
22 MR JUSTICE HILDYARD: Yes, we will try and be as accurate as  
23 we possibly can by a series of updates. Thank you very  
24 much.  
25 MR POTTS: I am grateful, my Lord.

16

1 My Lord, I will deal now with Mr McAlindon.  
 2 MR JUSTICE HILDYARD: Yes.  
 3 MR MEL McALINDON (continued)  
 4 Re-examination by MR POTTS  
 5 MR POTTS: There is just one matter, Mr McAlindon, from your  
 6 evidence from yesterday morning. If you could be  
 7 passed, please, volume C, and E5, please.  
 8 Turn up, please, page 65. It's paragraph 51 of your  
 9 statement. You were asked, really almost at the start  
 10 of the day yesterday, about paragraph 51 of your witness  
 11 statement, concerning the evidence on which you  
 12 concluded that it was inconceivable that Mr Vos would  
 13 have been able to do any type of substantial managerial  
 14 work without being in regular contact with the store.  
 15 Do you see that, from paragraph 51?  
 16 A. Yes.  
 17 Q. Those questions were asked by reference to subparagraphs  
 18 of your witness statement rather than the investigation  
 19 report, and you were asked in particular, just to focus,  
 20 paragraph 51.1, you were dealing with Mr Morris'  
 21 evidence, which you referred to there. You were shown  
 22 his witness statements from the investigation, and you  
 23 accepted, yesterday, that paragraph 51.1 of your witness  
 24 statement wasn't accurate in relation to his evidence,  
 25 Mr Morris' evidence to the investigation; do you

17

1 remember that?  
 2 A. Yes.  
 3 Q. If you could keep 51.1 open, and if you could actually  
 4 open the investigation report, which is in E5, at  
 5 page 1267. Now, at the first punch going down, is the  
 6 summary of employee interviews in relation to Mr Vos'  
 7 employment and time spent and so on; yes?  
 8 A. Yes.  
 9 Q. In particular, if I could ask you to look at the bottom  
 10 two bullet points in relation to the evidence of  
 11 Gemma Davies, and in particular the second bullet point.  
 12 If you could just read those to yourself and compare  
 13 them, particularly the second bullet point, to  
 14 paragraph 51.1 of your witness statement, please. Take  
 15 your time.  
 16 (Pause)  
 17 A. I've read that.  
 18 Q. Okay, and you have seen in your first witness statement  
 19 you have a matter in quotes, and so on, at the bottom of  
 20 paragraph 51.1?  
 21 A. Correct.  
 22 Q. It was put to you, and you accepted yesterday, that  
 23 paragraph 51.1 of your statement was not an accurate  
 24 summary of what Mr Morris had said.  
 25 In light of your reading of your witness statement

18

1 and these paragraphs I've just referred you to in  
 2 relation to Gemma Davies' evidence, are you able to  
 3 explain the inaccuracy which you accepted in relation to  
 4 your witness statement regarding that summary of  
 5 Mr Morris' evidence?  
 6 A. Yes. I think it's clear that I've put Mr Morris when in  
 7 fact I was referring to the statements made by  
 8 Gemma Davies.  
 9 Q. So the error is where? In the report or in the witness  
 10 statement, when you say you refer to an error?  
 11 A. I think the error is in the statement, but I would need  
 12 to look at -- I think the error is in the statement.  
 13 I think it should be Gemma Davies in the statement who  
 14 worked in the store full-time, rather than Mr Morris who  
 15 worked in the store full-time. So I think I have made  
 16 a mistake in 51.1, by putting Mr Morris when in fact  
 17 I meant Gemma Davies.  
 18 MR POTTS: Thank you very much. I have no further  
 19 questions, my Lord.  
 20 Questioned by MR JUSTICE HILDYARD  
 21 MR JUSTICE HILDYARD: I was just pondering that. I mean,  
 22 obviously a witness statement is your evidence on oath  
 23 to the court, and so it's always unsettling for a judge  
 24 to see, in the course of a few sentences, what appears  
 25 to be an error. And also I think Ms Rhoder had become

19

1 a "he" in the very next paragraph. Is there anything  
 2 you would like me to bear in mind when I am just  
 3 assessing this?  
 4 A. I don't know why I made the mistake. I just don't know  
 5 why I made the mistake. I mean, I think from here it's  
 6 clear to what I was referring to, and it is a mistake in  
 7 the name only. I appreciate that the mistake shouldn't  
 8 have been made.  
 9 MR JUSTICE HILDYARD: I would just like to be entirely fair.  
 10 And if there was something that you feel I should bear  
 11 in mind, I would like to know it.  
 12 A. Not that I can think of, my Lord.  
 13 MR JUSTICE HILDYARD: A few rather disparate questions,  
 14 a few may be repetition, and I apologise for that, but  
 15 I just want to clarify in my mind about overall things,  
 16 really. There were five of you in the loss prevention  
 17 department, were there?  
 18 A. There was myself, Phil Barnes, Les, Ben, Zoe, Dan, Tony,  
 19 Lee, Sarah. There is nine in total. There is  
 20 currently. I think there was possibly less at this  
 21 time, and those two were recruited; we had two new ones  
 22 that were recruited around that time, so somewhere  
 23 between --  
 24 MR JUSTICE HILDYARD: I ask partly because the ones I have  
 25 got down are you at the apex.

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1 A. Correct.  
 2 MR JUSTICE HILDYARD: Mr Barnes as your sort of right-hand  
 3 man, if I can put it that way, would that be --  
 4 A. In relation to the investigation side, and Zoe Smith  
 5 would do NHS governance and retail support.  
 6 MR JUSTICE HILDYARD: And Mr McGowan was sort of assisting  
 7 on the NHS side?  
 8 A. He would be under the NHS retail support side.  
 9 MR JUSTICE HILDYARD: Yes, Mr Gutteridge was not really  
 10 involved in this particular aspect?  
 11 A. No.  
 12 MR JUSTICE HILDYARD: No, but Mr Walls was?  
 13 A. Yes, and he is beneath Phil Barnes.  
 14 MR JUSTICE HILDYARD: Mr Barnes and Mr Walls are still in  
 15 the department?  
 16 A. Correct.  
 17 MR JUSTICE HILDYARD: Thank you. Now, obviously, and  
 18 especially with your police background, you know the  
 19 importance of a paper trail in the context of  
 20 an investigation where you are making judgments as to  
 21 how to proceed on the basis of what you have collected.  
 22 A. Yes.  
 23 MR JUSTICE HILDYARD: Do you, in the case of every  
 24 investigation, keep an investigation file specific to  
 25 the shop you are investigating?

21

1 A. Yeah, and that would have contained all the documents  
 2 that we referred to. Towards the end, once you have  
 3 gathered everything and you have done all the interview  
 4 statements, then the last part of that file would become  
 5 the interview report and that would be the sum of what  
 6 we would keep.  
 7 MR JUSTICE HILDYARD: And that was all kept together in this  
 8 case in a single file, was it?  
 9 A. Yes.  
 10 MR JUSTICE HILDYARD: Marked something like "Bognor"?  
 11 A. Yes.  
 12 MR JUSTICE HILDYARD: That entire file was handed over, was  
 13 it?  
 14 A. Yes.  
 15 MR JUSTICE HILDYARD: Did that file contain the inventory or  
 16 any other inventory such as the one we saw with respect  
 17 to the boxes of which we had those pretty photographs  
 18 yesterday?  
 19 A. At the time my recollection is that I phoned somebody  
 20 who was in the store and said, "There are some boxes  
 21 coming back. Can you check right through them, and  
 22 anything that relates to Mr Weller, Mr Vos or  
 23 Ms Poulsen, pull out and tell me what they are".  
 24 I didn't actually ask for an inventory to be done.  
 25 I think the inventory was done by one of the team who

22

1 did it for completeness. But it wasn't something  
 2 I specifically requested. I was requesting anything to  
 3 do with, you know, contracts, overtime, any form of  
 4 record that related to any of those three people, and  
 5 I was told that there wasn't any, so I didn't include  
 6 anything from that in the investigation report.  
 7 MR JUSTICE HILDYARD: Would it be your usual practice to  
 8 have an inventory when you go into a shop and you take  
 9 it over, and there may well in the future be  
 10 disagreements as to what was and wasn't there?  
 11 A. We wouldn't keep a manual inventory. We do go in and  
 12 the first job is they should photograph the store to  
 13 make sure there is a record of what was there, in case  
 14 an accusation ever is levied at us at a later date to  
 15 say that we have removed something, because we have the  
 16 photographs from day one. So not a written inventory as  
 17 such, because it would probably take days, but that's  
 18 why we photograph it.  
 19 MR JUSTICE HILDYARD: Things which nowadays would be quite  
 20 common, things like memory sticks or other computer  
 21 software, if you like?  
 22 A. Any memory sticks or back-up drives we would have  
 23 searched for documents, as we searched the computers,  
 24 you know. Anything electronic we would have searched.  
 25 MR JUSTICE HILDYARD: Would you keep a record or inventory

23

1 of those things, both in terms of their sort of computer  
 2 state, ie a memory stick, and the product of running  
 3 through a computer?  
 4 A. I don't think we would have kept a record if we found  
 5 a memory stick and it was a blank memory stick because  
 6 at the time it wouldn't really --  
 7 MR JUSTICE HILDYARD: But if it had something on it?  
 8 A. If there was something on it and it was relevant to the  
 9 case, yes, it would have been printed off and it would  
 10 have been included in the file.  
 11 MR JUSTICE HILDYARD: I got a little confused yesterday when  
 12 we were discussing the various documents, one of which  
 13 was the document which had the address, the wrong  
 14 address on, if I can put it that way, and the other  
 15 documents which I think you described as feeling were  
 16 contrived.  
 17 A. Yes.  
 18 MR JUSTICE HILDYARD: Did you, in respect of any of those  
 19 documents -- and just in brackets, I know that the  
 20 question of forgery didn't arise until after the  
 21 event -- but did you, as regards any of the documents,  
 22 put to Mr Vos your feeling that they were contrived?  
 23 A. I can't recollect what -- the specifics in the interview  
 24 record. I think at the time, having just been presented  
 25 with quite a number of documents, I just simply felt

24

1 uncomfortable with them.  
 2 MR JUSTICE HILDYARD: Yes.  
 3 A. I think at that time I hadn't assimilated it or thought  
 4 it through to a sufficient extent, and, you know,  
 5 perhaps with either hindsight or -- had the rebuttal  
 6 been received that said these are reasonable, perhaps we  
 7 would have re-interviewed them.  
 8 MR JUSTICE HILDYARD: Yes.  
 9 A. But I think at the time I interviewed them, I am not  
 10 sure I actually got into my head how I felt about those  
 11 documents. I had a feeling of discomfort about them,  
 12 but possibly not to the extent where I would have asked  
 13 him as many questions as I should have done, had  
 14 I thought -- had the time to think it through.  
 15 MR JUSTICE HILDYARD: So words like "contrived", they  
 16 weren't used at the time? I only ask that because when  
 17 people are accused of contriving documents or forging  
 18 documents, their mind is very much directed to what's  
 19 there, whereas your uncomfortable feeling may not -- may  
 20 have been apparent, but may not have been expressed?  
 21 A. I think that grew as we went through the file and  
 22 understood it better. But that would have probably been  
 23 after the interview with him.  
 24 MR JUSTICE HILDYARD: After the interview?  
 25 A. Mm.

25

1 MR JUSTICE HILDYARD: And informed or coloured by the  
 2 revelation as to the wrong address being on the  
 3 document, which was subsequent?  
 4 A. That would be reasonable, yes.  
 5 MR JUSTICE HILDYARD: Is that fair?  
 6 A. Yes, that is fair.  
 7 MR JUSTICE HILDYARD: In the normal course, you would, would  
 8 you, have expected to re-interview before reaching your  
 9 recommendation in your report?  
 10 A. I think in this circumstance we would have  
 11 re-interviewed because, you know, very -- the evidence  
 12 in relation to the letter was substantial, so I think  
 13 had he come back with an explanation that was  
 14 inconsistent with our interpretation of it, it would  
 15 probably be inappropriate to re-interview him before the  
 16 consideration of any disciplinary process would have  
 17 been started.  
 18 MR JUSTICE HILDYARD: Yes.  
 19 A. So it may or may not, it's difficult to say, but  
 20 certainly with hindsight I feel that more, far more  
 21 questions should have been asked, either at the time or  
 22 subsequently to it.  
 23 MR JUSTICE HILDYARD: Yes, because if you, after the event,  
 24 reached a view that a document which had been relied on  
 25 was a forgery, it's apt to sort of colour your view

26

1 really quite considerably, such as you revisit all sorts  
 2 of things that had been said and it might be fair to  
 3 revisit them with the person who told them to you?  
 4 A. Yeah, but I also think that, you know, there are  
 5 significant time pressures to get that file, you know.  
 6 The very fact that you have three people suspended  
 7 in a business and the costs involved in all of that,  
 8 there is a lot of time pressure to get that file  
 9 submitted with recommendations and, in reality, those  
 10 issues would have probably been challenged much further  
 11 through a disciplinary process, and it would probably be  
 12 more appropriate that the file was submitted, the  
 13 evidence provided and the individuals have the  
 14 opportunity through a disciplinary process, to say, you  
 15 know, "That's an unfair conclusion to draw. It's  
 16 jaundiced for the following reasons", and I think that  
 17 far more consideration would have taken place in  
 18 a disciplinary process rather than at the time that we  
 19 had the documents.  
 20 MR JUSTICE HILDYARD: Yes. It's probably an imperfect  
 21 analogy, but in what you told me yesterday, the  
 22 investigation is more like the decision to charge --  
 23 A. Yes.  
 24 MR JUSTICE HILDYARD: -- the disciplinary process is more  
 25 like a trial?

27

1 A. Correct.  
 2 MR JUSTICE HILDYARD: Is that about right?  
 3 A. That's how I see it, yes.  
 4 MR JUSTICE HILDYARD: So in making your recommendations,  
 5 whatever might have been the strength of your  
 6 conviction, you weren't sort of saying, "Right, he's  
 7 guilty". You are saying, "This really does require  
 8 further trial"?  
 9 A. Correct.  
 10 MR JUSTICE HILDYARD: "And, in the meantime, suspension."  
 11 A. Correct.  
 12 MR JUSTICE HILDYARD: "Because I am sufficiently unsettled  
 13 that this chap, or lady, ought not to be in charge."  
 14 A. Absolutely.  
 15 MR JUSTICE HILDYARD: Is that about right?  
 16 A. Very, very much, yes.  
 17 MR JUSTICE HILDYARD: Yes. You sometimes answered you  
 18 couldn't recollect, and that I understand, because  
 19 I can't, as was obvious this morning, remember things  
 20 from yesterday.  
 21 But there were a number of times when you said you  
 22 couldn't recollect, and I haven't got a good impression  
 23 of how often these sort of investigations have to be  
 24 done, point one; and, point two, in your experience over  
 25 the years you have been, how many occasions there have

28



1 been where there has been a question of dishonesty or  
 2 fraud for investigation?  
 3 A. There are -- partner investigations are not a frequent  
 4 occurrence. If I was to say there was one every other  
 5 month, I don't think it would be more frequent than  
 6 that.  
 7 The reality is that those partner investigations,  
 8 particularly over the last two years, have, if anything,  
 9 been predominantly NHS governance related and GOC  
 10 related rather than dishonesty/fraud. They are just not  
 11 a frequent occurrence.  
 12 Sorry, what was your other point, my Lord?  
 13 MR JUSTICE HILDYARD: Well, it was because if they were  
 14 infrequent, they tend to be more memorable than if one  
 15 has to -- you know, it's yet another investigation and  
 16 you can't quite remember whether it was Uckfield, Bognor  
 17 or something else.  
 18 A. Yes. I think the difference with this case from my  
 19 perspective is that after the initial allegations were  
 20 made that I was a bully and I had a history, and we are  
 21 not prepared to have any discussions with you, the  
 22 decision was taken that I shouldn't get actively  
 23 involved in either the evidence gathering or -- in  
 24 relation to the two partners.  
 25 So I took a very distant role from this

1 investigation unlike all -- this was the first time that  
 2 I had been extracted from the interview process with the  
 3 partners and therefore -- and obviously in between,  
 4 I went to Australia. So my actual hands-on involvement  
 5 was substantially less than it would have been in  
 6 a normal case with a partner. In a normal case, with  
 7 a partner, I'm far, far more involved.  
 8 So I think for that reason, although I, you know, am  
 9 very comfortable about speaking with the evidence, there  
 10 actually wasn't a lot of -- I didn't have a lot of  
 11 active involvement or conversations, and I think that's  
 12 the reason why, you know, there are times when people  
 13 said, "Did you phone somebody?" Well, I am not too  
 14 sure, because there was a lot going on and I wasn't  
 15 necessarily around.  
 16 MR JUSTICE HILDYARD: Yes. I wanted to ask you about that,  
 17 in the investigative process. You explained that you  
 18 took a contemporaneous -- you noted up your machine, you  
 19 then, as we all do, printed it off, you see errors,  
 20 which, for one reason or another, don't focus, and  
 21 I fully understand that.  
 22 But, who was really asking the questions?  
 23 A. I was asking the questions to Mr Vos, and when it got to  
 24 a section where I explained the context, if you like,  
 25 and then wanted to read out a paragraph or a few

1 paragraphs from a statement to give him the opportunity  
 2 to comment, Mr Barnes was sat with the files and  
 3 I explained, "Could you read out that section?" he read  
 4 out that section. So Mr Barnes read from the report to  
 5 present it to Mr Vos for him to comment, but I asked the  
 6 questions.  
 7 MR JUSTICE HILDYARD: Did he ask questions as well,  
 8 Mr Barnes?  
 9 A. Not to my recollection. I mean, he may well have done,  
 10 but they may have -- it would have been one or two  
 11 questions. His fundamental role on that day was to read  
 12 out and present the evidence, because there was  
 13 obviously so much of it that one of us needed to be sat  
 14 with all the files.  
 15 MR JUSTICE HILDYARD: Yes, so you had a sort of great bundle  
 16 of stuff, did you, or various bundles of stuff?  
 17 A. Yes.  
 18 MR JUSTICE HILDYARD: Right. Was Mr Vos or any of the other  
 19 interviewees sort of -- do they have copies, or if you  
 20 had a specifically important document, were they shown  
 21 it?  
 22 A. No. In the first instance, we simply presented the  
 23 evidence to him and gave him an opportunity to comment.  
 24 At the end of the interview record, Mr Vos wanted a copy  
 25 of it, and I declined. The reason why I declined to

1 give him a copy at that stage was because it was still  
 2 an investigation, there were still two more people to be  
 3 interviewed, and although, you know, clearly you can't  
 4 stop people talking, it would be -- I felt it would be  
 5 providing far too much information to give them  
 6 an actual transcript, at that stage, because obviously  
 7 they can read and go through it in great detail.  
 8 However, either, once the last interview with the  
 9 partners had been completed, if they wanted a copy that  
 10 would have been fine. But in any case, if the  
 11 investigative report came to the conclusion that there  
 12 was a disciplinary case to answer to, at that stage they  
 13 would have been provided all of the evidence,  
 14 statements, invoices, you know, the whole package. They  
 15 would have been provided that before any disciplinary  
 16 proceedings were commenced. And that was why the  
 17 investigation report was sent out to them as soon as it  
 18 was completed.  
 19 MR JUSTICE HILDYARD: Again, reminiscent of the charge/trial  
 20 analogy we were discussing.  
 21 A. Yes.  
 22 MR JUSTICE HILDYARD: Yes. A point of detail, but just for  
 23 clarification: have you got your witness statement in  
 24 volume C available?  
 25 A. The first one?

1 MR JUSTICE HILDYARD: Yes, sorry. Yes. It's page 55, as  
 2 the file is numbered, paragraph 17 of your witness  
 3 statement. I just wanted to make sure that I had  
 4 understood this.  
 5 You remember you were asked various questions by  
 6 Mr Stuart about this, and you may remember, but by all  
 7 means have a look at E3/803 to 804 to remind yourself.  
 8 E3/803 is an email attaching an investigation  
 9 summary, the one with the funny black block, which  
 10 I think you explained you didn't know quite what that  
 11 was. It's dated, this is from Mr Walls, Wednesday,  
 12 23 February. It says:  
 13 "As requested..."  
 14 At page 803 and then the actual summary is at 804.  
 15 I was just trying to clarify in my mind as to what your  
 16 evidence in this regard was.  
 17 If you go back now to your witness statement at  
 18 paragraph 17, you say:  
 19 "On 21 February, Mr Walls emailed a summary to me  
 20 and Mr Barnes, which set out his initial findings in  
 21 respect of the payments made to Mr Vos. This was  
 22 updated to include further information."  
 23 So it appears that the summary at 804 is an updated  
 24 summary; is that right?  
 25 MR STUART: My Lord, I should have dealt with this.

1 MR JUSTICE HILDYARD: I am sorry.  
 2 MR STUART: In your Lordship's bundle, do you have  
 3 an E3/802-1? A document was inserted.  
 4 MR JUSTICE HILDYARD: I am sorry.  
 5 MR STUART: No, it's my fault, my Lord. I think it was  
 6 inserted by the defendants. It was paginated as 802 --  
 7 MR JUSTICE HILDYARD: I am sorry, that answers the question.  
 8 There was a previous summary, Lord knows what the  
 9 difference between the summaries is, but I can have  
 10 a look at that.  
 11 MR STUART: My Lord, the only difference is that, if you go  
 12 to page 811, paragraphs 38 onwards, which relate to  
 13 Mr Ferguson. At page 811, you will see that if you  
 14 compare page 802-9, it's the first version, that stopped  
 15 at paragraph 37.  
 16 MR JUSTICE HILDYARD: I see.  
 17 MR STUART: So paragraphs 38 to 47 were added into the  
 18 second version.  
 19 MR JUSTICE HILDYARD: These are new, yes.  
 20 MR STUART: It's my fault, my Lord. In my hurry, I forgot  
 21 to go back to that.  
 22 MR JUSTICE HILDYARD: Yes.  
 23 MR STUART: I think that might answer your Lordship's  
 24 question.  
 25 MR JUSTICE HILDYARD: Yes, thank you.

1 MR POTTS: It was a disclosed document.  
 2 MR STUART: Yes, absolutely, it was a disclosed document.  
 3 MR JUSTICE HILDYARD: Thank you.  
 4 In the difference between 802-9 and 11, by the  
 5 addition of these further paragraphs, 38 to 47, did you  
 6 have any input into the addition of those?  
 7 A. I mean, I can only speculate. I have to say I can't  
 8 recollect, but I may well have added those paragraphs in  
 9 and also corrected Ben's text.  
 10 MR JUSTICE HILDYARD: Right.  
 11 A. As in spelling mistakes, punctuation sort of things.  
 12 MR JUSTICE HILDYARD: That's what I have to ask; there may  
 13 be further questions from counsel in consequence, but  
 14 I am grateful to you.  
 15 Re-examination by MR STUART  
 16 MR STUART: My Lord, I only had one question, and it relates  
 17 to your Lordship's first question, which relates to  
 18 Mr Potts' one question; namely, as I understand it,  
 19 Mr McAlindon, you now say that paragraph 51 -- I just  
 20 want to get it absolutely clear so that we are not any  
 21 longer confused. In 51.1 of your witness statement you  
 22 now say should read, "Gemma Davies, who worked at the  
 23 store full-time, stated that Mr Vos did not work from  
 24 home"?  
 25 A. Correct.

1 Q. And you end that little paragraph with:  
 2 "As such ..."  
 3 That should now read:  
 4 "She said she 'knew' he was not working from home"?  
 5 A. Yes.  
 6 Q. So do you say that that is in -- are you saying that's  
 7 somewhere in the Gemma Davies record of conversation?  
 8 Of course, I didn't know that that was your evidence.  
 9 A. I don't know. Could you direct me?  
 10 Q. That's in E4/991 to 995. You are now saying that it was  
 11 she who said this, she said the words:  
 12 "... she 'knew' he [that is Mr Vos] was not working  
 13 from home"?  
 14 A. Sorry, what page am I looking at?  
 15 Q. 991 in E4. I think you deal with Mr Vos and times at  
 16 993. It starts at 993 in the middle, line 129:  
 17 "In terms of other member of the management team,  
 18 and if we start with the most senior of the team, you  
 19 have Godfrey as the business practice manager. How  
 20 often does he work in the store?"  
 21 Do you see that?  
 22 A. Yeah.  
 23 Q. And then she gives an answer about the store, and him  
 24 coming into the store. Couldn't comment on a Wednesday,  
 25 she is not there. He would do no more than two hours

1 a day in store.  
 2 Then 139:  
 3 "If I told you he was contracted to do 24 hours  
 4 a week in this practice, what would you say to that?"  
 5 "Answer: Gemma starts laughing. He might do that  
 6 in a month."  
 7 Do you see that?  
 8 A. Yeah. She then goes on to say, "Gemma explained that  
 9 she was laughing as, when she has seen him, he is not  
 10 exactly under a mountain of paperwork."  
 11 Q. All I am trying to find is you are now saying that it  
 12 was Ms Davies who said that she knew he was not working  
 13 from home; that's now your evidence. I am just trying  
 14 to find it somewhere. I am taking you to this bit just  
 15 so you can see I'm not leaving you swimming. 144:  
 16 "Is it possible, in your opinion, for Godfrey to be  
 17 performing large amounts of overtime outside of the  
 18 store?"  
 19 So you seem to be dealing with -- not you, but the  
 20 questioner is dealing with the question of working  
 21 outside the store.  
 22 "Answer: Only the rotas."  
 23 So even on her own statement to Mr Barnes, she seems  
 24 to be saying he was doing the rotas outside the store,  
 25 ie working at home. Then it says:

37

1 "This is the only thing that I have seen him bring  
 2 in.  
 3 "Question: Do you see any other evidence of him  
 4 performing work at home that would add any value to this  
 5 business?  
 6 "Answer: No, because if he was performing large  
 7 amounts of overtime, then I would expect to see him take  
 8 large amounts of paperwork home and he never comes back  
 9 in with any queries, and as a full-time manager in the  
 10 business I would expect to see this if it were taking  
 11 place."  
 12 Then the meeting is adjourned.  
 13 So, do you still say 51.1, we are to amend that to,  
 14 "Gemma Davies said 'she knew he was not working from  
 15 home?'" Do you still say that that's her evidence?  
 16 A. Yeah. I don't think that should be in inverted commas.  
 17 I don't know why that's in inverted commas but clearly  
 18 the interpretation from -- from the overall comments,  
 19 I believe that it's reasonable to say that she is saying  
 20 she knew he wasn't working from home, and she qualifies  
 21 that through a number of statements in that, for  
 22 example, "Did you see any other evidence of him  
 23 performing work at home that would add any value to the  
 24 business?  
 25 "Answer: No, because if he was working at home

38

1 large amounts of overtime, I expect to see him taking  
 2 large amounts of paperwork home and he never comes back  
 3 in with any queries, and as a full-time manager in the  
 4 business I would expect to see this if it were taking  
 5 place."  
 6 So I agree that that shouldn't be in quotes, but  
 7 I don't think I am misrepresenting --  
 8 Q. She just doesn't say the words?  
 9 A. No --  
 10 Q. -- or say that she knows that he is not working from  
 11 home, she doesn't say that, does she?  
 12 A. I agree. That is an interpretation of what she is  
 13 saying in all of her explanations in relation to it. So  
 14 I agree it shouldn't be in quotes, but that's my  
 15 interpretation of what she is saying.  
 16 Q. So Mr Potts got you to amend 51.1 by taking you to the  
 17 investigation report at E5/1267. At the bottom of the  
 18 page 1267 in E5.  
 19 A. I think that's what I've just explained, my Lord. I --  
 20 Q. So that's wrong as well?  
 21 A. I agree that that shouldn't be in quotes, which infers  
 22 that it's a direct statement from her, when it is not.  
 23 It is my sense of what she was saying from all of her  
 24 explanations, because she knew from what she saw being  
 25 taken out, brought in, that he didn't work from home.

39

1 And that was the sense that we got from her.  
 2 Q. But her direct evidence I took you to, 993, line 146,  
 3 her evidence was that he did the rotas at home?  
 4 A. I don't disagree with the rotas. I still think that the  
 5 general sense of that, when I was trying to describe it,  
 6 is that she knew he didn't work from home, and in that  
 7 context a rota, in itself, is one piece of paperwork  
 8 that is -- that requires very little change on  
 9 a day-to-day basis; that is templated, it's something  
 10 that's more or less printed off. That's not really  
 11 working from home.  
 12 MR JUSTICE HILDYARD: I think I understand how you formed  
 13 your impression, but the point counsel is putting to  
 14 you, I think, as I think you understand, is that in the  
 15 note at 1267, the impression recorded is that there was  
 16 a statement, which there was not, which was sufficiently  
 17 well recorded to warrant it being quoted, which there  
 18 was not; really your evidence is that the impression you  
 19 formed, from what you had been told by Gemma Davies, was  
 20 that she felt he wasn't working at home, and that's  
 21 that, isn't it?  
 22 A. Yes.  
 23 MR JUSTICE HILDYARD: No more than that?  
 24 A. No.  
 25 MR STUART: My Lord, I am only asking a question arising,

40

1 that's it. I don't want to ask any further questions.  
2 MR JUSTICE HILDYARD: Thank you very much, Mr McAlindon.  
3 Released?  
4 MR POTTS: My Lord, yes.  
5 MR JUSTICE HILDYARD: Do we meet again?  
6 MR STUART: We do, my Lord, yes.  
7 MR JUSTICE HILDYARD: But a break, at any rate. Thank you  
8 very much, it's been a long haul.  
9 (The witness withdrew)  
10 Housekeeping  
11 MR JUSTICE HILDYARD: Would that be a good time to break, or  
12 shall we launch on?  
13 MR POTTS: The question of batting order.  
14 MR JUSTICE HILDYARD: Yes, shall we deal with that?  
15 MR POTTS: My Lord, I have not had an opportunity in  
16 relation to the disclosure issue. My preference would  
17 be if I could take some instructions in relation to  
18 that. We could press on with Mr Raines and I am keen --  
19 obviously, your Lordship has raised the point -- we will  
20 deal with it today.  
21 MR JUSTICE HILDYARD: Disclosure?  
22 MR POTTS: The disclosure point.  
23 MR JUSTICE HILDYARD: Are you in agreement as to when this  
24 document should be obtained from Guernsey?  
25 MR STUART: Apparently it's on a flight, my Lord.

41

1 MR POTTS: I forgot to mention, my Lord. The position on  
2 that is an employee is coming. He was at the airport in  
3 Guernsey at 8.30 this morning.  
4 MR JUSTICE HILDYARD: Right, and there was fog or something?  
5 MR POTTS: It wasn't the usual fog. Unfortunately the plane  
6 broke down, I am told. He is trying to get on to the  
7 next plane. We don't know whether he has or not.  
8 MR JUSTICE HILDYARD: But it's on its way?  
9 MR POTTS: It's being dealt with as quickly as humanly  
10 possible. So it will be here today, my Lord. So that  
11 deals with that, my Lord.  
12 In terms of the general stuff, I think I would  
13 prefer, if I could, to deal with that matter, perhaps  
14 see it. We can take instructions on it, and deal with  
15 it all in one go.  
16 MR JUSTICE HILDYARD: Very well.  
17 MR POTTS: So perhaps we could proceed, subject to  
18 your Lordship, with Mr Raines' evidence now.  
19 MR JUSTICE HILDYARD: Yes. Do we want to do that after  
20 a break?  
21 (11.03 am)  
22 (A short break)  
23 (11.13 am)  
24 MR POTTS: My Lord, the next witness is Mr Raines.

42

1 MR MARK RAINES (sworn)  
2 MR JUSTICE HILDYARD: Do sit down. Have you got some water?  
3 THE WITNESS: Yes, I will get some.  
4 Examination-in-chief by MR POTTS  
5 MR POTTS: If Mr Raines could be passed volume C, please.  
6 Can you turn up tab 9, please, Mr Raines, page 134,  
7 I think. Do you have that?  
8 A. Yes.  
9 Q. If you could turn from 134 through to 154, is that your  
10 first witness statement in this action?  
11 A. I believe so.  
12 Q. Could you turn to page 154, please?  
13 A. Yes.  
14 Q. Is that your signature at the end of the statement?  
15 A. It is my signature.  
16 Q. Can you confirm that the contents of this witness  
17 statement are true?  
18 A. They are true.  
19 MR POTTS: Thank you. If you would just wait there.  
20 Cross-examination by MR STUART  
21 MR STUART: My Lord, just before I start Mr Raines'  
22 cross-examination, can I just check with my learned  
23 friend: was there some additional documentation added in  
24 respect of Mr Raines into the X bundle?  
25 MR POTTS: Yes, a few pages from his daybooks.

43

1 MR STUART: That's fine.  
2 Let me deal with that very quickly. Mr Raines, if  
3 you are passed bundle X, tab 6, I think. Some time this  
4 week this was disclosed to us, Mr Raines. Do you  
5 recognise it? Tab 6, pages 349 to 356, bundle X.  
6 A. I do recognise it.  
7 Q. I think it was disclosed to us on the basis that it's  
8 some pages from something described as your daybook?  
9 A. Yes, that is correct.  
10 Q. Does that ring a bell?  
11 A. Yes.  
12 Q. Your daybook, do we have the daybook? Do you have it?  
13 A. I believe it's -- somebody from Taylor Wessing has it.  
14 Well, it's actually about five or six books.  
15 Q. Five or six books?  
16 A. I don't know, five books, something like that.  
17 Q. Okay. Is it like a diary? You keep it as a diary, it's  
18 not dated or anything?  
19 A. No, it's an A4 ordinary ruled book.  
20 Q. With a hard cover?  
21 A. With a hard spine. I am in the habit -- obviously, you  
22 know, I have lots of conversations, lots of meetings.  
23 I am of a habit of trying to capture either thoughts  
24 that I may have or details of meetings, or actions that  
25 I've agreed with people. I don't use a daybook

44

1 exclusively, I use things like post-it notes, and since  
2 about 2011 I've used an iPad, so I tend to collect  
3 information on iPad. I also use note pads as well.  
4 So I tend to use a combination of books, materials  
5 and things like that, but my daybook I always keep with  
6 me.  
7 Q. Okay.  
8 A. It's always with me, and as soon as one is finished,  
9 I then give it to my PA and ask her for another one.  
10 She then gives me another one, and she will do whatever  
11 she does with it, which is put it in a cupboard or do  
12 whatever.  
13 Q. So you have kept them, that's the main point?  
14 A. Since 1999, I was surprised to find.  
15 Q. You say these are taken from five or six of these  
16 daybooks, these pages that we see here?  
17 A. Yes.  
18 Q. So someone has been through -- I mean, each daybook must  
19 have, what, 100, 200 pages in it?  
20 A. I don't know how many pages.  
21 Q. One hundred to 200 pages, perhaps?  
22 A. Something like that, yes.  
23 Q. And someone has been through them to try to capture the  
24 entries in your daybook --  
25 A. I believe so.

45

1 Q. -- relevant to Bognor Regis?  
2 A. I believe so.  
3 Q. Have they done the same for Uckfield or not?  
4 A. I believe they may have.  
5 Q. Okay. It wasn't you, however, who has done this --  
6 A. No.  
7 Q. -- from the way you have answered that question?  
8 A. No, no, it wasn't.  
9 Q. It's not you who has gone through the daybooks to check  
10 the references or all the relevant references to  
11 Bognor Regis?  
12 A. I went through the daybooks as soon as I became aware of  
13 their existence, which was Saturday morning.  
14 Q. Okay.  
15 A. So, yeah, I had a quick, quick read of them.  
16 Q. Just taking these six, seven pages that we have here.  
17 The first one, 349, do you know when that was?  
18 A. I think I've seen a piece of paper which has some dates  
19 on it. I believe there are some dates. Forgive me,  
20 I am not --  
21 Q. It's all right. It's not your fault.  
22 A. No, no. Bear with me, I've not finished what I was  
23 going to say yet. Forgive me. I don't always write the  
24 date on the top of every page.  
25 As I said, this is where I collect my notes,

46

1 thoughts, et cetera, and so on some pages you will find  
2 that there is a date on it; on other pages you will find  
3 there isn't a date on it and so I believe you should be  
4 able to position these between the dates where  
5 I actually put down. So when I report a date, you will  
6 see some of these will fit between different periods,  
7 others may, may not.  
8 Q. So we don't have a date on it, so we will have to come  
9 back to that one perhaps. 350, we have at least a month  
10 here. I am just trying to work out what year. This  
11 looks like it's February, so this is a page from your  
12 book when you were dealing with matters in February?  
13 A. Yes.  
14 Q. And we have various February dates, 9, 10?  
15 A. I don't think this is actually -- well, it may be  
16 February or it may be January. I think this refers to  
17 Giles, I can see that, which is -- I booked a meeting  
18 with him on 9 to 10 February, or I've got something,  
19 some sort of meeting.  
20 Q. Okay.  
21 A. So these will be ...  
22 Q. I think it has not made its way into the bundle, I don't  
23 think, but I think there is a schedule that's been  
24 provided.  
25 A. Yes, that's what I was referring to.

47

1 MR STUART: Does your Lordship have the schedule of dates,  
2 the estimated dates of these documents?  
3 MR JUSTICE HILDYARD: Where would I find it, do you think?  
4 MR STUART: I don't know, my Lord. I didn't have it until  
5 I just -- I was looking in bundle X. I don't think it  
6 is in bundle X.  
7 MR POTTS: It was provided, my Lord, at the time of the  
8 disclosure. I am sorry if it hasn't got into the  
9 bundle.  
10 MR JUSTICE HILDYARD: It may have done.  
11 MR STUART: Yes, it may be it's in here somewhere. I am  
12 sorry, but I can't find it.  
13 MR POTTS: No, I am not saying it is or it isn't. But it  
14 was provided. All I can say is it was provided. I am  
15 afraid I don't have a copy, my Lord. I am sorry.  
16 Copies are being obtained.  
17 MR JUSTICE HILDYARD: When was this disclosed, this stuff?  
18 MR POTTS: On --  
19 MR STUART: I think it was the day before yesterday or  
20 yesterday.  
21 MR POTTS: -- the 16th, my Lord.  
22 MR STUART: The day before yesterday, Monday evening.  
23 MR JUSTICE HILDYARD: It was disclosed on the 16th?  
24 A. Would my Lord like some background as to why I found it?  
25 MR JUSTICE HILDYARD: Why you found your daybooks?

48

1 A. Yes. When I attended the court yesterday -- last week,  
2 obviously there is a line of questioning around how  
3 Mr Dyson keeps his notes, et cetera, et cetera, which at  
4 the time, when we were doing disclosures, I said to my  
5 PA, "Obviously disclose everything relating to Bognor,  
6 including my daybooks, et cetera, et cetera", and  
7 trusted that she got on to do the work and she said she  
8 had done the work.  
9 Then I made a phone call to her Friday afternoon and  
10 said, "Just go and check. Are there any old daybooks  
11 knocking around?" and she sort of went -- we have --  
12 I am based in Skelmersdale, which is a regional office,  
13 for want of a better expression, and we had some  
14 refurbishment work done about two years ago, and my  
15 daybooks were one of those things that were going to be  
16 thrown away, because a lot of my files were sort of  
17 thrown away, because we needed the additional space for  
18 additional desks.  
19 Anyway, so I phoned her and just sort of said, "Can  
20 you have a check? Do you have anything?" She said --  
21 she actually contacted me later and said, yes, she has  
22 found them. I said "Fine. Can I meet you on Saturday  
23 morning?"  
24 I met her on Saturday morning. She handed them  
25 across to me and I handed them across to Taylor Wessing

1 on Monday morning.  
2 MR JUSTICE HILDYARD: When was the move, did you say?  
3 A. Around about two -- it wasn't a move, actually. What  
4 they did was took a room which was a sort of storage  
5 room and converted that into office space, so the room  
6 disappeared and so did the files, if ...  
7 MR JUSTICE HILDYARD: Whenabouts was that?  
8 A. About two years ago.  
9 MR STUART: Who has done all the blanking out?  
10 A. Whoever -- well, I assume Taylor Wessing, because that's  
11 who I gave the files to.  
12 Q. Anyway, the originals of these daybooks are now with  
13 Taylor Wessing, is that what you are saying?  
14 A. Yes.  
15 Q. And they have daybooks going back to, for our purposes  
16 at least, 2008?  
17 A. That's correct.  
18 Q. And through to, by the looks of it, 2012, so beyond the  
19 date of the --  
20 A. Yes.  
21 Q. So we have five or six daybooks covering that period; is  
22 that what you are saying?  
23 A. That's what I am saying.  
24 Q. No doubt we will be able to inspect those. All right.  
25 Perhaps we will come back to those during the course of

1 my questions of you.  
2 Shall we just then go back to your witness  
3 statement, Mr Raines? I'll take matters in order.  
4 A. Okay.  
5 Q. At paragraph 6 of your witness statement, you mention  
6 that as well as being an employee of -- well, are you  
7 an employee of SOG?  
8 A. SOS.  
9 Q. So as well as being an employee of SOS, which is  
10 a subsidiary of SOG?  
11 A. Yeah.  
12 Q. And so your role is retail director -- development  
13 director, that's your SOS role. As well as that you  
14 are, as you say, the director and shareholder,  
15 presumably the retail director, in three store  
16 companies?  
17 A. I am actually the ophthalmic director.  
18 Q. You are the ophthalmic director?  
19 A. Ophthalmic director. You will notice that I am  
20 a qualified ophthalmic optician.  
21 Q. You are, you are. But we have heard evidence from  
22 Mr Dyson that some ophthalmic opticians can be retail  
23 directors.  
24 So you say you are the ophthalmic director for three  
25 stores?

1 A. That is correct.  
2 Q. If we take them in order, you have Bolton?  
3 A. Yeah.  
4 Q. Is that right?  
5 A. That is correct.  
6 Q. What's the set-up there; two directors or three, or  
7 what?  
8 A. No, there is myself and a retail director.  
9 Q. What's his name?  
10 A. Stephen, Stephen Waller.  
11 Q. Okay. So it's just the two of you are the A  
12 shareholders?  
13 A. That is correct.  
14 Q. So that's Bolton. Then the next one you say is Chorley?  
15 A. That's correct.  
16 Q. What's the set-up there? Two or three directors?  
17 A. Three directors there.  
18 Q. So, what's the structure on that one? You are the OD,  
19 the ophthalmic director?  
20 A. The share split is 50 per cent ophthalmic director,  
21 which is a gentleman called Rizwan Iqbal.  
22 Q. He is the ophthalmic director?  
23 A. He is the ophthalmic director. Stephen Waller is the  
24 retail director and I am the -- I think I am the retail  
25 director in Chorley.

1 Q. So the two of you are the retail directors in Chorley?  
 2 A. Yes.  
 3 Q. So you are the ophthalmic director in Bolton?  
 4 A. Yes.  
 5 Q. You are one of the two retail directors in Chorley?  
 6 A. That's correct.  
 7 Q. And your third one is, you say, Middlebrook; is that  
 8 right?  
 9 A. Yeah.  
 10 Q. Is that somewhere in Bolton?  
 11 A. It is.  
 12 Q. Near Bolton, anyway?  
 13 A. It's within the sort of territory or catchment of the  
 14 Bolton store. It's a satellite store.  
 15 Q. And the set-up there, is that the two or three of you?  
 16 A. That's the two of us.  
 17 Q. So again Mr Stephen Waller?  
 18 A. That's correct.  
 19 Q. He is the retail director?  
 20 A. He is the retail director.  
 21 Q. You are the ophthalmic director?  
 22 A. I am the ophthalmic director?  
 23 Q. But you are also a --  
 24 MR POTTS: My Lord, I am sorry. I just wonder if the  
 25 witness can speak up. I can see it's not making it on

53

1 to the transcript, and I am suffering as well.  
 2 A. I am sorry. Apologies.  
 3 MR JUSTICE HILDYARD: Thank you very much, Mr Potts.  
 4 MR STUART: So there are three of you.  
 5 A. Yes.  
 6 Q. Fifty per cent to Rizwan somebody, and then you and  
 7 Mr Waller, do you split the remaining 50 per cent  
 8 between you?  
 9 A. Yes, that's correct.  
 10 Q. So you are 25 per cent each?  
 11 A. That's correct.  
 12 Q. In relation to those three stores, given that you are,  
 13 what, the full-time SOS retail development director, how  
 14 much time are you able to give to those stores?  
 15 A. In terms of my day-to-day time?  
 16 Q. Yes. You see, we have heard in this case, for example,  
 17 that Mr Vos is the practice manager. There is an issue  
 18 about what that means, but I don't think you are  
 19 involved in that, and that he is getting this huge  
 20 salary, as Mr McAlindon puts it. Do you see that?  
 21 A. Mm.  
 22 Q. So I just want to see what you are getting.  
 23 A. Okay.  
 24 Q. Before I do that, I need to know what role you play in  
 25 the three stores?

54

1 A. I play no active part in the store. I have a zero-hour  
 2 contract in all of those businesses, so I don't get paid  
 3 by those businesses.  
 4 Q. No. So, who is doing all the ophthalmic directing work  
 5 in the two where you are the ophthalmic director?  
 6 A. We have a lead optometrist, who fulfils the role of  
 7 ophthalmic director.  
 8 Q. So it's possible to have somebody who is not  
 9 a shareholder director fulfilling the role of the  
 10 ophthalmic director --  
 11 A. Er --  
 12 Q. And still be within the Specsavers regime?  
 13 A. When I say fulfilling the role, doing lots of the  
 14 activities that the ophthalmic director would do.  
 15 Q. Yes. Then where you are the joint retail director in  
 16 the second of the three stores --  
 17 A. Yes.  
 18 Q. -- how much of a role do you play in that?  
 19 A. Again, I have a zero-hour contract.  
 20 Q. Do you actually carry out any of the role?  
 21 A. No. I carry out none of those roles.  
 22 Q. Okay. In relation to those three stores with your  
 23 zero-hours contract, do you receive any salary, bonus or  
 24 dividends? I know you can choose whether to take it as  
 25 bonus or dividends?

55

1 A. I receive bonus and dividends from two of those  
 2 businesses.  
 3 Q. So you receive a bonus, even though you don't have  
 4 a salary?  
 5 A. It's another way of taking dividends.  
 6 Q. I know. But that's the way you do it?  
 7 A. Yes, in -- that's in Chorley.  
 8 Q. Yes. Just give us an idea of the level of  
 9 bonus/dividends -- you can merge them together, I am not  
 10 asking you to split them up -- for each store: how much  
 11 are you getting per annum to the nearest £10,000?  
 12 A. From Bolton probably about £80,000.  
 13 Q. Yes?  
 14 A. And from Chorley about £30,000.  
 15 Q. And you are also a full-time salaried employee of SOS?  
 16 A. That's correct.  
 17 Q. For which you earn a salary?  
 18 A. I earn a salary.  
 19 Q. A proper executive salary?  
 20 A. A proper executive salary.  
 21 Q. Okay. It's it sounds like the SOS regime of having  
 22 an ophthalmic director, a retail director, just the two,  
 23 and that those two should be conducting the business of  
 24 being the directors of those stores, can be somewhat  
 25 flexible where SOG wishes it to be flexible; is that

56

1 fair?  
 2 A. I think I am quite a unique individual. I have been in  
 3 the business now for 30, 32, 33 years. I have been the  
 4 MD of a Plc, I have also retail trained as well as  
 5 ophthalmically trained. I have worked for Littlewoods  
 6 as a retailer, so I have retail skills.  
 7 Obviously my position as a retailer, it's quite  
 8 unique within this industry. In fact, one of the issues  
 9 they are having with me at the moment is how to replace  
 10 me. That's not being pompous or big headed; it's just  
 11 that my particular skills are quite unique.  
 12 You asked me about whether or not I spend time in  
 13 the stores or what role I fulfil. I was very clear  
 14 before undertaking the role of whether I wanted to  
 15 undertake the role of a partner within those businesses,  
 16 that I wanted to be part of the partnership, and play  
 17 an active role in how they run.  
 18 So for the first 12 months of buying into Bolton or  
 19 becoming a shareholder of Bolton, I spent my sixth and  
 20 seventh day, which was absolute murder, because I had  
 21 a young family at the time, I spent my sixth and seventh  
 22 day of every week of the first year working in that  
 23 store to try and understand how the store operated, how  
 24 the partnership functioned, and try to add support to  
 25 Stephen Waller, who was my partner at that time.

1 Again, that was, again, quite difficult. I visit  
 2 Bolton store every week. I speak to the store team,  
 3 I speak to the senior optom, all in my own time, which  
 4 is -- given the fact that I have a massive day job to  
 5 do -- can place tremendous strain on me in terms of the  
 6 amount of time. But I make that commitment every week.  
 7 I would be there on Saturday in the store talking to  
 8 Stephen. Once a month I will do the same with Mr Iqbal,  
 9 and go into Chorley, and I will also spend some time in  
 10 Middlebrook as well.  
 11 So that I am playing an active part or what  
 12 I consider to be an active part, rather than, you know,  
 13 just watching it, if that makes sense.  
 14 Q. Whilst we are on it, then, dealing with Mr Yogaratnam  
 15 and the possibility of he, who was an optometrist, being  
 16 the retail director in the Bognor store, where there was  
 17 a difficulty getting optometrists to come and be  
 18 optometrists and cover when Dr Poulsen wasn't available,  
 19 et cetera.  
 20 A. Yes.  
 21 Q. I mean, you would say that that's something that is  
 22 possible, because you are an optometrist who is a retail  
 23 director in one of your stores?  
 24 A. Yes, it is possible.  
 25 Q. Okay.

1 A. We -- to again give you a little bit more of  
 2 a background -- have -- as the business has evolved, we  
 3 have some ophthalmic directors who were given sole  
 4 responsibility for running not only the ophthalmic side  
 5 of the business but also the retail side of the business  
 6 and they have grown with the business and the business  
 7 has been very successful, et cetera.  
 8 The sheer size of our businesses now has become  
 9 fantastically big. At the time they were small, what  
 10 you would consider old opticians, which were  
 11 an optician, basically driven by an optician.  
 12 Now they are major high street locations, serving --  
 13 delivering hundreds of sight tests every week.  
 14 Delivering the customer experience has been critical to  
 15 this, and we have had to then go into looking at our  
 16 partnership structures and bringing the retail skills to  
 17 be able to deliver the right customer experience, to get  
 18 the staff trained and developed, to deliver that  
 19 customer experience. That's been sort of the journey  
 20 that the business has been going on.  
 21 So our preferred model is, in the majority of  
 22 situations, to have an ophthalmic director driving the  
 23 clinical agenda, the professional agenda, and a retail  
 24 partner delivering the retail skills and expertise to  
 25 make the customer experience as good as it can be.

1 There are obviously, from time to time, unique  
 2 situations, but we know that the model, if we adopt it,  
 3 which is an ophthalmic director and a retail director,  
 4 is the model that works. It's the most successful for  
 5 us.  
 6 If a store is large enough, we would also consider  
 7 three directors within the business, because again  
 8 a three-director structure can work quite well for us,  
 9 but the issue with that is: is there enough profit in  
 10 the business to support the three-director structure?  
 11 So, again, we do move away from it from time to time,  
 12 but it is usually on a case by case basis.  
 13 Q. All right. That's your role, then. Let's look at your  
 14 team. This is paragraphs 8 onwards in your witness  
 15 statement, 135.  
 16 A. Yeah.  
 17 Q. And over the page, at 136, in relation to Bognor --  
 18 because obviously you explain that you are based up  
 19 north and you have a national coverage and you explain  
 20 later, I think, that in relation to southern stores you  
 21 rather let Mr Dyson, where convenient, take over  
 22 personal involvement. Do you recall that? I'll take  
 23 you to it in a minute.  
 24 A. Yes, I do. The issue with that would be obviously  
 25 getting from Skelmersdale to the South Coast is quite



1 difficult. Getting from Guernsey to the South Coast is  
2 relatively easy, because the Guernsey flight is into  
3 Southampton. So on a case by case basis, we would  
4 decide who was the most appropriate person.  
5 Q. Looking at paragraphs 8 and 9, in paragraph 8 you seem  
6 to be keen to emphasise that your team's role is to  
7 provide support --  
8 A. Absolutely.  
9 Q. -- to the companies --  
10 A. Absolutely.  
11 Q. You are not like Mr McAlindon doing --  
12 A. Absolutely not.  
13 Q. -- investigations and loss prevention?  
14 A. From time to time, I'm sure members of my team identify  
15 things that they need to go into a store and have  
16 a conversation --  
17 Q. Of course.  
18 A. But primarily their role is to support the partnership  
19 in driving their business to be the best that Specsavers  
20 can be for our customers.  
21 Q. Yes. So your team's role is really a very positive one  
22 so far as the --  
23 A. Absolutely, absolutely.  
24 Q. -- JVPs are concerned?  
25 A. That was the way it was set up.

1 Q. Then if we look to see who the team in this regard is,  
2 I see you mention at the top of page 136, the first  
3 person you mention is Mr Rowe; he is the RDC for the  
4 region in which Bognor is situate; is that right?  
5 A. That's correct.  
6 Q. And we have heard on the organogram he is effectively  
7 one level below you?  
8 A. That's correct.  
9 Q. He reports to you?  
10 A. Yes.  
11 Q. He is the regional manager, if you like, for the  
12 Bognor --  
13 A. No. Well, you keep using the words "regional manager".  
14 I need to perhaps correct you. We don't see and have  
15 never regarded RDCs as regional managers.  
16 Q. No?  
17 A. Now, if you imagine you are in a corporate structure,  
18 you have regional managers.  
19 Q. Yes.  
20 A. The whole purpose of calling them consultants is because  
21 they are responsible for consulting and supporting our  
22 partners. It is a much different role to a traditional  
23 corporate regional manager role, where you have  
24 day-to-day accountabilities, not only for how the  
25 business is run, but the profitability, et cetera,

1 et cetera.  
2 Now, the RDC doesn't have any accountability for the  
3 day-to-day running of the store. That day-to-day  
4 accountability rests solely and firmly with the A  
5 shareholders. So it's in a consultancy, and the whole  
6 purpose when we set this up, because I was the one who  
7 set it up, along with Derek Dyson, but I am the one who  
8 delivers it, the whole concept is that we try to support  
9 our partners to make their businesses the best that they  
10 can be, both from a customer experience but also from  
11 a profitability point of view.  
12 Q. Absolutely. It's all very supportive and --  
13 A. Sorry, can I finish one thing? There is an element to  
14 their role as well which is around brand protection as  
15 well. But we obviously have to make sure that we  
16 protect the brand, and again that is an element that,  
17 from time to time, we expect the consultants in the  
18 field team to deliver.  
19 Q. So the supporting team for these JVPs was Mr Rowe, you  
20 cite?  
21 A. Yes.  
22 Q. And then you say Mr Rajan and Mr Moylan would be  
23 assisting him?  
24 A. I think Mr Rajan replaced Mr Moylan.  
25 Q. Yes, so --

1 A. They were at different stages.  
2 Q. Those not together at the same time --  
3 A. No, that's correct.  
4 Q. -- but at different times --  
5 A. That's correct.  
6 Q. -- they are in a role which is supporting Mr Rowe, to  
7 support the JVPs?  
8 A. That's correct.  
9 Q. Then the other area of the business which you  
10 particularly highlight in 9 is that you are working  
11 closely with the retail communications team as well?  
12 A. Yes.  
13 Q. So we heard from Mr Dyson that he's got, I think, 10 or  
14 11 strands to his teams, but the two strands that are  
15 working closely on supporting the Bognor Regis JVPs  
16 would be your strand, retail development, you, Mr Rowe,  
17 Mr Rajan?  
18 A. Yeah.  
19 Q. And the communications team, which is Mrs Hart, who  
20 replaced Mr Deane?  
21 A. That is correct.  
22 Q. Those are really the people who you mention as being the  
23 people involved here?  
24 A. Yes.  
25 Q. Obviously you are then feeding up to Mr Dyson?

1 A. That's correct.  
2 Q. So he is at the top of the tree for that little tree.  
3 All of those people should be supporting Dr Poulsen and  
4 Mr Weller, so you would no doubt be surprised, then, to  
5 open up bundle E2 -- and we will start the chronology  
6 back in 2008, because that seems to be the start of  
7 things. If you go to page 350, we are in 2008; do you  
8 remember?  
9 A. Yeah.  
10 Q. I think you are generally involved in overseeing  
11 Mr Rowe's issue here, because I'll just take you very  
12 briefly back to 340. I think this is the first time  
13 I see an email from you.  
14 You are emailing Mr Rowe at 340:  
15 "Ref visit and conversation ref Optical Healthcare  
16 Group."  
17 Do you see the subject title of your email at 340?  
18 Sorry, it's from Mr Rowe to you.  
19 A. Start again.  
20 Q. 340 --  
21 A. Yes.  
22 Q. -- is an email from Mr Rowe to you?  
23 A. Yeah.  
24 Q. The subject is:  
25 "Ref visit and conversation ref Optical Healthcare

65

1 Group."  
2 A. Yes.  
3 Q. We know now that should read, "Optimisation Healthcare  
4 Group." But that doesn't matter So this was the issue  
5 that was on the agenda back in 2008; do you remember?  
6 A. Yeah.  
7 Q. It looks like Mr Rowe is reporting to you that he's got  
8 the issue and what he's going to be doing about it?  
9 A. Yeah, can I read the document first, please?  
10 Q. Of course, yes. So 340, just the top email that's  
11 addressed to you:  
12 "Mark, I'm having an issue with Bognor Regis."  
13 A. Yeah.  
14 Q. Do you see that?  
15 A. Yeah.  
16 Q. He signs off:  
17 "I will call later to discuss."  
18 So presumably you spoke to him about this as well?  
19 MR JUSTICE HILDYARD: I think he wants a little time to  
20 read.  
21 MR STUART: More time? I am sorry, my fault.  
22 (Pause)  
23 A. Yes.  
24 Q. Do you see that?  
25 A. I see that.

66

1 Q. I think you refer to this in paragraph -- just to help  
2 you -- you do refer to this in paragraph 42 of your  
3 witness statement on page 105.  
4 A. Sorry, can you repeat the page, please?  
5 Q. Yes, C/145, paragraphs 42 and 43. Do you see that?  
6 A. Yeah.  
7 Q. Having mentioned the email at paragraph 42, do you see  
8 that?  
9 A. Yeah.  
10 Q. And then at 43, you say:  
11 "It's a long time ago. I don't really recall my  
12 reaction to the email."  
13 Do you see that?  
14 A. Yes.  
15 Q. You then, in paragraph 44, say you had very little  
16 interaction regarding the Bognor store or the claimants.  
17 Do you see that?  
18 A. Yes.  
19 Q. It's actually in this paragraph that you mention what  
20 I said to you a moment ago; about Mr Dyson tending to  
21 have oversight of concern. This is the last sentence of  
22 44:  
23 "Derek Dyson would tend to have oversight of  
24 concerns of store companies in the southern region,  
25 where Bognor is based."

67

1 Do you see that?  
2 A. Yes, that's correct.  
3 Q. So I understood, reading the conglomeration of those  
4 three paragraphs, that what you are really saying is you  
5 were notified of it by the email at E2/340, but that  
6 after that, you don't really recall having very much, if  
7 any, personal involvement, and that if anybody was  
8 involved above Mr Rowe, it would be Mr Dyson?  
9 A. That isn't how it worked in practice. How it would work  
10 in practice was Mr Rowe reported to me, I would have had  
11 a conversation with Mr Rowe about all matters relating  
12 to Bognor or those stores.  
13 If there had been a specific issue relating to  
14 Bognor, and we needed to visit the store, then I would  
15 have had a conversation with -- well, I may have done it  
16 myself or I may have asked Mr Dyson to do it, it depends  
17 on the specific issue.  
18 Q. Did you have any conversation with anybody about this in  
19 2008, because you haven't disclosed any pages from your  
20 daybook from this period?  
21 A. I would have to go to that file X and see. Maybe you  
22 can save me the time: are there any references?  
23 Q. The first item is 4 December 2008, much later, nine  
24 months later.  
25 A. Okay. In that case, no.

68

1 Q. No. So moving forward, then, in the chronology to 350.  
 2 I say "moving forward", not far.  
 3 That same day, 19 March, presumably after Mr Rowe  
 4 has spoken to you -- but we don't have any notes of your  
 5 conversation -- he emails Mr Clark. He escalated the  
 6 matter to Mr Clark. Do you remember 350?  
 7 A. Yes, yeah.  
 8 Q. Were you aware of this at the time?  
 9 A. No.  
 10 Q. Were you aware that Mr Rowe was saying:  
 11 "Dave, can I talk? Helle is on my hit list, and  
 12 this needs to be dealt with."  
 13 A. No, I am not --  
 14 Q. Did you know that Mr Rowe had a hit list?  
 15 A. He doesn't have a hit list and --  
 16 Q. No, he does have one. He says there, "[She] is on my  
 17 hit list"?  
 18 A. Well, I am surprised.  
 19 Q. You are surprised, okay. Anyway, he didn't share this  
 20 with you?  
 21 A. No, he didn't.  
 22 Q. Okay.  
 23 A. Can I address the issue of escalation --  
 24 Q. Yes.  
 25 A. -- because it has come up before.

69

1 Q. Yes.  
 2 A. Escalation, my Lord, when we set the RST up, the retail  
 3 support team up, which is the RDCs, the RPCs and  
 4 communication managers, one thing that we wanted to do  
 5 was to make sure that the experience for the partners  
 6 was a positive one; that the interactions in terms of  
 7 how they were supporting the stores, et cetera -- it is  
 8 not always possible to move the businesses forward.  
 9 Each year we begin the year with what we call  
 10 partner facing initiatives. Those are initiatives that  
 11 are designed to try and improve the customer experience,  
 12 so opening Sundays was a partner facing initiative.  
 13 Opening Sundays was to try and give the customers more  
 14 choice, and allow ...  
 15 Not every partner would always get on board with  
 16 every initiative, and we would try to use existing  
 17 partners to -- we would use user groups, leading partner  
 18 forums, lots of things. We would even give incentives  
 19 and things like that to try and get partners to take on  
 20 board the initiatives that we believed would move the  
 21 business forward, would deliver a better customer  
 22 experience and ultimately deliver more profits to the  
 23 partners. That was -- that is the same, and every year  
 24 annual plans are set out like that.  
 25 The retail support team are there to support the

70

1 partners to implement those initiatives. It isn't  
 2 always possible, in every situation, with every partner,  
 3 to implement the initiative there and then. So if there  
 4 are conversations that need to be had of a more focused  
 5 nature, then they sometimes go to Mr Clark, and that is  
 6 what we mean by escalation.  
 7 It doesn't mean to say that they are in a -- you  
 8 know, it's not a -- you know, we are not going down  
 9 a board meeting route or anything like that. It's just  
 10 that they are more focused conversations. David Clark  
 11 also helps stores that are underperforming, because  
 12 again we need a different type of expertise from the one  
 13 that the retail development consultants can afford,  
 14 because they have a number of stores that they look  
 15 after. They have maybe 40, 50 stores that they look  
 16 after, and they can't possibly devote the amount of time  
 17 and attention to this, whereas David Clark can.  
 18 Q. I suggest to you, Mr Raines, that, as you well know,  
 19 part of going to war against JVPs in a given store is to  
 20 escalate to Dave Clark?  
 21 A. You couldn't be further from the truth. You really  
 22 couldn't. It's --  
 23 Q. We will go to the next email, 355 on the same day?  
 24 MR POTTS: My Lord --  
 25 MR JUSTICE HILDYARD: Did you want to finish your answer?

71

1 MR STUART: I am sorry, my Lord.  
 2 MR JUSTICE HILDYARD: If I may, I know that we are anxious  
 3 to get along, but nevertheless it is so important that  
 4 witnesses feel within reason that they finish what they  
 5 wish to say.  
 6 MR STUART: My Lord, yes.  
 7 A. It's -- it's just not the way we work. It is just not  
 8 the way we work. We spend millions and millions of  
 9 pounds in terms of resource fuel, resource in  
 10 advertising, to make customers love our business, and we  
 11 want partners to be successful in their business.  
 12 Why would we possibly want to develop a reputation  
 13 where partners are not attracted to us for careers? Not  
 14 only for careers, for, you know -- to have one of our  
 15 stores? Why would we possibly want to go to war with  
 16 them? It is not the thing.  
 17 Yes, we have challenging partners. Yes, we -- we  
 18 are a broad church in terms of partners' motivation for  
 19 being partners within the business. But we don't have  
 20 a policy, never have done, and never will do, if I am  
 21 anything to do with it, of going to war with partners.  
 22 It is just not what we are about.  
 23 We set out our mission purpose and values. We are  
 24 obsessive about them, about treating each other with  
 25 respect, about the partnership is at the centre of

72

1 everything, the customer is king, or the customer is our  
 2 first thing, and supporting our local communities.  
 3 Those are our mission purpose and values. They were  
 4 not -- you know, what you are describing, you know, is  
 5 not what happens.  
 6 Q. I didn't suggest that you wished to promote a reputation  
 7 for going to war, as you just put it in your answer that  
 8 I am reading back; I am suggesting to you that your team  
 9 think they are going to war, and that as part of going  
 10 to war, they will escalate to Dave Clark. That's what  
 11 I put to you.  
 12 A. And I would deny that --  
 13 Q. Okay.  
 14 A. -- because --  
 15 Q. Then let's go to the next email, the same day, to  
 16 another member of the team that you have identified,  
 17 namely Susannah Hart, who has, by this time, taken over  
 18 from Adrian. Page 355, 19 March 2008, and now we have  
 19 reached 5.51 pm.  
 20 So Mr Rowe has emailed you at 11.19, and said he  
 21 will call you later to discuss, page 340. He's  
 22 escalated to Dave Clark at page 350 saying that Helle is  
 23 on his hit list, and now he is emailing Susannah Hart,  
 24 who you describe as the communications team, part of  
 25 this team. And he says:

73

1 "Hi Susannah, if you are about to give me a call,  
 2 next steps are..."  
 3 So he has obviously agreed some next steps with  
 4 somebody, "... that I have forwarded it to legal and  
 5 I am having the JVA checked. I am then going to get a  
 6 BRM..."  
 7 That's a business review meeting, isn't it?  
 8 A. It is.  
 9 Q. "I am then going to get a BRM sorted and go to war!"  
 10 Just talking to Dave C to check what he may need."  
 11 Do you see that?  
 12 A. I do see that.  
 13 Q. So the plan, according to Mr Rowe, as he's telling  
 14 Mrs Hart about it, appears to be to go to war, do that  
 15 via a BRM, and the escalation to Dave C. Would you not  
 16 agree that that's what it looks like?  
 17 A. I see that's what it looks like.  
 18 Q. Mr Dyson I think in his evidence, when he was shown  
 19 this, said it's wholly inappropriate; you would  
 20 presumably agree?  
 21 A. As soon as I became aware of this, through the  
 22 disclosure document, because I had not seen it prior to  
 23 that, I immediately disciplined the individuals who were  
 24 involved in sending these emails.  
 25 Q. Did you? Did you do that in writing at all?

74

1 A. Can I finish my question --  
 2 Q. Of course.  
 3 A. -- answer, please?  
 4 I immediately contacted HR and arranged to see these  
 5 people. There were I think five emails which we or  
 6 I was particularly concerned about. I presented to each  
 7 one -- I think it was Mike Rowe first, then  
 8 Adrian Deane, I can't remember the sequence -- but I sat  
 9 in a room with these individuals separately, showed them  
 10 the email that related to them. They were absolutely  
 11 mortified. They couldn't recall sending these emails,  
 12 they were mortified.  
 13 When I asked them for an explanation, they couldn't  
 14 provide one other than it was sent in the heat of the  
 15 moment. Each of them has long service within the  
 16 business. They have an exemplary employment record with  
 17 us. They are caring individuals, and they were  
 18 absolutely mortified by it.  
 19 I gave them a first written warning, which is on  
 20 their personnel files, because I was, in truth,  
 21 disgusted that these things exist. They are an internal  
 22 document, and I don't think, although I am not privy to  
 23 every conversation, that they actually reflect the  
 24 conversations that they may have had directly with  
 25 either Mr Weller or Helle Poulsen.

75

1 But, yes, they are inappropriate.  
 2 In terms of the wording, the only one I would --  
 3 obviously "going to war" is inappropriate. But in terms  
 4 of a BRM, a BRM simply means a formal meeting.  
 5 Now, if I can explain how the RDCs and RPCs work.  
 6 They will go into a store, and they will have  
 7 a conversation with a partner about some aspect of their  
 8 business; maybe it's a new initiative that we are trying  
 9 to launch or something like that. From time to time, we  
 10 need to have more formal meetings, ie outside of the  
 11 store environment, and that is what is meant by  
 12 a business review meeting. It's where there may be  
 13 an invitation that's sent to the partners saying, "We  
 14 have a serious issue that we need to discuss", and it  
 15 is -- there are minutes taken of the meeting, and you  
 16 know, it is followed up in writing. But that is what  
 17 a BRM is. Let me think.  
 18 So it is something -- we don't do a lot of them, you  
 19 know. We only do a few of them a year, but they are  
 20 part and parcel of a way of actually making sure that  
 21 the partners understand that there is a serious issue  
 22 that we need to do something about.  
 23 MR JUSTICE HILDYARD: Was Mr Clark involved in these  
 24 disciplinary matters?  
 25 A. Which disciplinary matters?

76

1 MR JUSTICE HILDYARD: The ones you have been discussing.  
2 A. No, Mr Clark wasn't.  
3 MR JUSTICE HILDYARD: No?  
4 A. Because I don't believe he has sent any emails.  
5 MR JUSTICE HILDYARD: I thought he was at 350.  
6 A. I think this is from Mr Rowe to David Clark.  
7 MR JUSTICE HILDYARD: Yes, yes.  
8 MR STUART: Mr Raines, your evidence now then is that  
9 a number of your staff have been formally disciplined  
10 for their attitude towards Dr Poulsen?  
11 A. And Mr Weller.  
12 Q. And Mr Weller?  
13 A. Yes.  
14 Q. And that attitude --  
15 A. When you say "attitude", no. Can I correct that? They  
16 have been formally disciplined for sending inappropriate  
17 emails between each other.  
18 Q. But the emails evidence their mindset, don't they? If  
19 I send an email which says I'm going to war with  
20 somebody, it indicates my feeling towards them?  
21 A. It can be. It can also be an indication of frustration.  
22 Q. So a number of individuals have been disciplined,  
23 formally disciplined in relation to these matters  
24 regarding Dr Poulsen and Mr Weller?  
25 A. Yes.

77

1 Q. Are these the matters in 2008, 2009, 2010 and 2011?  
2 A. They are the matters that relate to the five emails.  
3 Q. Well, we will, no doubt, when we see these documents in  
4 due course, we will see what they relate to.  
5 You carried out the disciplinary process against  
6 these individuals?  
7 A. No.  
8 Q. No?  
9 A. I carried out the disciplinary process between Mr Rowe  
10 and Mr Deane. Unfortunately, due to holidays, I wasn't  
11 able to see Susannah Hart, so her line manager,  
12 Jill Clark, did the disciplinary on Susannah Hart. It  
13 was a logistics thing.  
14 Q. Right. When were these disciplinary matters --  
15 A. Sorry, can I just finish? Adrian Deane and  
16 Susannah Hart are based in Guernsey. It's not always  
17 easy to arrange, when I am over. I don't spend a great  
18 deal of my time in Guernsey, probably a day a week.  
19 Q. When were these disciplinary matters, Mr --  
20 A. As soon as I became aware of the emails.  
21 Q. Just so that we can identify them when we ask to see  
22 copies of the documents relating to them, when was this?  
23 A. I can't -- I can't remember a specific date. It's  
24 a number of --  
25 Q. About a year? Let's start with a year?

78

1 A. No, it's a number of months ago. It's this year.  
2 Q. This year?  
3 A. This year, early in this year.  
4 Q. 2013?  
5 A. I believe so.  
6 Q. Not 2012?  
7 A. No.  
8 Q. So in 2013, these people have been disciplined in  
9 relation to this matter?  
10 A. Yes.  
11 Q. Have you been asked to provide any documentation  
12 regarding those disciplinary matters which relate to  
13 their treatment of --  
14 A. No, I haven't.  
15 Q. Given that the nature of the allegation against SOG in  
16 this case is that there is this vendetta, do you  
17 remember the whole case is all about a vendetta and  
18 a conspiracy amongst a number of members of staff,  
19 starting with Mr Dyson at the top, you as the next layer  
20 down, and Mr Clark, possibly Mr Ryan, and then below you  
21 Mr Rowe, Mrs Hart; do you remember?  
22 A. I remember.  
23 Q. Given that that's the nature of the allegation, a  
24 vendetta by these people, do you not think it would have  
25 been appropriate to provide these documents or mention

79

1 them?  
2 A. I ... firstly dealing with the vendetta, or allegation,  
3 you know, that is something which again I totally deny.  
4 I think --  
5 MR JUSTICE HILDYARD: I think you have been asked questions  
6 about that.  
7 A. Yeah, yeah.  
8 MR JUSTICE HILDYARD: I think the question is really  
9 directed to setting the context in which it's suggested  
10 to you that these documents might be relevant. I think  
11 that's counsel's question.  
12 MR STUART: That is it, my Lord.  
13 A. I would have thought they would be relevant.  
14 Q. But nothing has been disclosed about it this, has it?  
15 A. I am not aware. That is the --  
16 Q. And you don't mention it anywhere in your witness  
17 statement?  
18 A. Can, again, I finish, please?  
19 Q. Yes.  
20 A. The disclosure element has been -- or process has been  
21 looked after by our legal department.  
22 Q. Then if you go to bundle X, you haven't disclosed any  
23 daybook entries or notes of your own for anything after  
24 20 February 2012; that is now almost two years ago. So  
25 you haven't disclosed any of your own notes about these

80

1 meetings that you must have had with Mr Rowe and  
 2 presumably others; one doesn't go through a formal  
 3 disciplinary process without having some meetings or  
 4 discussions with people; that's right, isn't it?  
 5 A. It is right. I don't recall making any notes. I do  
 6 recall sitting down with these people formally and  
 7 showing them the emails that they relate to, and I do  
 8 recall doing that with HR support, and then following  
 9 that up in writing.  
 10 Q. Perhaps their defence was, "Mr Dyson knew all about  
 11 this, Mark"?  
 12 A. No, no, no, no. They didn't offer a defence. They were  
 13 absolutely mortified. I am a good judge of character.  
 14 I know exactly what these -- these people are trying to  
 15 build a career with you. They would not do something or  
 16 be involved in something like you are describing. It's  
 17 just --  
 18 Q. Well, their career with you, with your firm, with your  
 19 company, depends upon their main boss, Mr Dyson, doesn't  
 20 it? If Mr Dyson says something, they do it?  
 21 A. That isn't the way that it works.  
 22 Q. And if Mr Dyson says something, possibly without you  
 23 knowing about it, because you have left it to Mr Dyson,  
 24 because Bognor is in the southern region, you would not  
 25 necessarily know what was going on, would you?

1 A. That isn't the way it works. I have worked with  
 2 Derek Dyson for a number of years. I know the way that  
 3 he operates, and it is not the way that it works.  
 4 Q. Okay. Anyway, just whilst you are in the witness box,  
 5 I had better nail this down: there were, apart from the  
 6 meetings themselves, the disciplinary meetings, which  
 7 were chaired by you and Jill Clark, relating to Rowe,  
 8 Dean and Hart?  
 9 A. Yes.  
 10 Q. There were correspondence passing backwards and forwards  
 11 relating to the disciplinary matters against those three  
 12 people; is that right?  
 13 A. Can you --  
 14 Q. They would have been sent a letter?  
 15 A. Can you --  
 16 Q. No, no. You haven't disclosed anything, you see,  
 17 Mr Raines, I can't show you anything at the moment --  
 18 A. Okay.  
 19 Q. -- because at the moment the first we have ever heard of  
 20 this is about 11.50 today when you mentioned it, so  
 21 I can't show you anything.  
 22 I am asking you now to tell us honestly what  
 23 documentation there would be relating to these alleged  
 24 disciplinary matters against three people and what their  
 25 answers were when it was put to them that they were

1 acting inappropriately in this regard?  
 2 A. Right. Can I -- can you just ask me the question again?  
 3 Q. Yes. My question is: there would be notes of meetings,  
 4 disciplinary meetings?  
 5 A. Yes.  
 6 Q. There would be correspondence, for example a letter  
 7 inviting someone to a disciplinary meeting saying, "This  
 8 is the potential matter that we are investigating. You  
 9 will need to answer questions on this", something along  
 10 those lines?  
 11 A. Yeah.  
 12 Q. There may be responses back from the individuals  
 13 concerned. We don't know. There would then be -- once  
 14 your findings were made, you would then be liaising with  
 15 the HR department; is that right? Is that what you are  
 16 saying?  
 17 A. Yes, that's correct.  
 18 Q. And there would be emails passing between you and  
 19 Jill Clark and the HR department; is that right?  
 20 A. No, but I will explain the process in a moment.  
 21 Q. So no emails with the HR department?  
 22 A. Can I -- well, it is easy to explain.  
 23 Q. Explain it now.  
 24 A. As soon as I became aware of them, I arranged a meeting  
 25 with the individual. It took the form of me sitting

1 down with them, presenting the evidence, which is the  
 2 emails, because not all five related to each  
 3 individual -- Adrian Deane may have had two, Mike Rowe  
 4 maybe three, whatever -- asking them a question, "Why  
 5 the hell did you send that? What was in your mind for  
 6 sending that? That is not the way that we work",  
 7 et cetera. And obviously reminding them that that isn't  
 8 the way our business operates, advising them that  
 9 they -- I considered it a serious issue, and as such  
 10 they would be receiving a first written warning on their  
 11 personnel file.  
 12 I then passed the information to HR, who then  
 13 followed that up in correspondence with the individual.  
 14 Q. So we will no doubt see all of that. The existence of  
 15 all of this, these disciplinary matters and everything,  
 16 was presumably known to the legal team, the legal  
 17 department?  
 18 A. I presume --  
 19 MR POTTS: That might be -- I don't know if there is  
 20 privilege, I think.  
 21 MR JUSTICE HILDYARD: You must be careful not to reveal  
 22 matters of discussion between you and the legal  
 23 department. But the question of whether the information  
 24 or documents was transmitted is not privileged.  
 25 MR POTTS: No.

1 MR STUART: That's all I am really asking about.  
2 MR JUSTICE HILDYARD: I don't think, is it? It's not  
3 litigation privilege, or do you think it is?  
4 A. Obviously --  
5 MR POTTS: My Lord, it's not necessarily a litigation  
6 privilege. Advice privilege, communication for the  
7 purpose of giving or taking advice would be within legal  
8 advice privilege.  
9 MR JUSTICE HILDYARD: Do you wish to claim privilege?  
10 MR POTTS: My Lord, I don't know what --  
11 MR STUART: We have not seen Mr Marsh's statement yet, my  
12 Lord, about this disclosure.  
13 MR POTTS: My Lord, I don't know what the position is. You  
14 asked me a general question and I am responding to the  
15 general question.  
16 MR JUSTICE HILDYARD: I asked you a general question because  
17 I don't know really what the full facts are. If you  
18 wish to claim privilege, I think you have to claim it or  
19 let the witness answer.  
20 MR POTTS: Can I take instructions, my Lord?  
21 MR JUSTICE HILDYARD: Yes.  
22 (Pause)  
23 MR POTTS: My Lord, I don't think there is a claim for  
24 privilege. No, there is not a claim for privilege.  
25 MR JUSTICE HILDYARD: Be careful. If you are worried about

85

1 whether you are going to trespass into the content of  
2 discussions between you and the legal advisers, then be  
3 careful about that.  
4 A. Do you want to ask the question?  
5 MR STUART: I will not ask you about the content of any  
6 discussions or correspondence, the content of it.  
7 My only question was whether -- because we are  
8 trying to work out who knew about the existence of these  
9 disciplinary proceedings, et cetera, and we have now got  
10 your department, the HR department, you have accepted  
11 would --  
12 A. Yes.  
13 Q. -- and I am just asking you whether the legal  
14 department would have been aware of these disciplinary  
15 proceedings relating to these three people?  
16 A. I presume so, because --  
17 Q. Is there any reason that you didn't mention this in your  
18 witness statement made for these proceedings?  
19 A. It may be that the disciplinaries took place after the  
20 witness statement was signed.  
21 Q. Surely you can remember. It's not that long ago, is it?  
22 You said it was this year. We are only in December now,  
23 the trial started in November.  
24 A. You are not going to believe this, because you don't  
25 believe --

86

1 Q. I believe everything you say, Mr Raines!  
2 A. Yeah, I know, I know. You are not going to believe,  
3 I genuinely don't recollect when it was.  
4 Q. No.  
5 A. I have a massively busy agenda, I have a lot of direct  
6 reports --  
7 Q. But --  
8 A. No, listen to me.  
9 Q. No, I was just going to remind you that you told us that  
10 you couldn't deal with part of the proceedings because  
11 you were on holiday. I thought that's what you said?  
12 A. No. It wasn't necessarily -- I don't recollect I was on  
13 holiday. It may have been Susannah Hart was on holiday.  
14 There was a holiday issue. She wasn't in, and she works  
15 part-time. She doesn't work every day and it would have  
16 had to have coincided with a day when I was in Guernsey  
17 and she was in the office.  
18 Q. Right.  
19 A. And that doesn't always coincide.  
20 Q. Okay.  
21 A. But going back to the question, do I remember: I don't.  
22 I deal with projects, you know, 100 per cent of my  
23 focus or nearly 100 per cent of my focus is just driving  
24 the business, trying to land all these initiatives,  
25 trying to speak to as many partners as I can, trying to

87

1 support the business moving forward. It isn't  
2 necessarily dealing with this type of issue. This was  
3 a serious issue at the time, I dealt with it, I moved  
4 on.  
5 Q. But you made your statement, do you remember, on  
6 25 July?  
7 A. I do.  
8 Q. So we have only got August, September and October  
9 between then and November, when the trial started. Do  
10 you think it was since then that all of these  
11 disciplinary matters took place, within the last three  
12 to four months? I mean, I can remember, if I had to  
13 rack my brains, I could remember when I dealt with  
14 something in the last three to four months.  
15 A. You probably have a brain that is bigger than mine.  
16 I cannot honestly recollect when it was and I am sure  
17 when the documentation is produced, that you can see  
18 what the date was.  
19 Q. Yes. Presumably if we just had -- I see that your  
20 daybooks have been brought into court, I think. I see  
21 them there on the table. Do you see them?  
22 A. Yeah.  
23 Q. Presumably if we just take your 2013 daybook that you  
24 always had with you, we would be able to see, wouldn't  
25 we?

88

1 A. Not necessarily, because it would depend on whether  
2 I wrote something in it. As I said --  
3 Q. Why don't you --  
4 A. You won't let me finish, right?  
5 If you let me finish, I'll give you the answer to  
6 the thing. I don't always write everything that I do in  
7 my daybook.  
8 Q. No.  
9 A. As I said to you before, I have moved over to an iPad.  
10 In 2012, I bought an iPad, so I tend to use iPads as  
11 well. So sometimes I use the Post-it note in the iPad  
12 for just reminding myself of what I need to do. That's  
13 how I keep track of my thing. It may be in the daybook,  
14 it may not. I don't know.  
15 Q. Just be passed your daybook for 2013.  
16 MR POTTS: My Lord, I don't know -- there isn't a daybook  
17 for 2013.  
18 MR STUART: There isn't in court. Mr Raines has said there  
19 was a -- there is a daybook.  
20 MR POTTS: That's what we have here in court, my Lord,  
21 certainly.  
22 MR STUART: What do we have? What years do we have?  
23 MR POTTS: There isn't a 2013 daybook.  
24 MR STUART: So, where is your daybook that you are using  
25 this year, Mr Raines?

1 A. In my briefcase in Taylor Wessing's office.  
2 MR JUSTICE HILDYARD: Sorry, in the briefcase where?  
3 A. In the briefcase in Taylor Wessing's office.  
4 MR JUSTICE HILDYARD: Right.  
5 MR STUART: So we can't really take that much further, then,  
6 because you can't remember when it was and we don't have  
7 any records with us to check; is that right?  
8 A. That, at this stage, would appear to be the case.  
9 Q. Let's go back to the chronology, then. So March 2008,  
10 I've shown you 19 March 2008 and you have commented as  
11 best you can.  
12 Do I understand it from your evidence -- I did take  
13 you to paragraphs 42 and 43 and 44 -- that you  
14 personally did not get involved in -- good, Mr Marsh's  
15 statement has arrived -- the April 2008 meeting with  
16 Mr Rowe and all the business about Optimisation  
17 Healthcare and all of that; you were not involved?  
18 A. I was aware. I wasn't involved.  
19 Q. So let's move into the next issue, of course, which was  
20 then in terms of time the mystery shopper issue, wasn't  
21 it?  
22 A. It was.  
23 Q. So September 2008. I think we pick that up at page 380  
24 in E2. We can read the emails sort of from the bottom  
25 upwards to get the sequence of them. Jill Clark is

1 written to by Susannah Hart, so Susannah is writing to  
2 her boss, Jill Clark; yes name?  
3 A. Yes.  
4 Q. And she is CCing in Mr Rowe?  
5 A. Yeah.  
6 Q. And she is forwarding on some correspondence from  
7 Helle Poulsen. She says:  
8 "Do you want to respond to this as I would like to  
9 escalate this as her attitude, once again, stinks."  
10 Do you see that?  
11 A. Yeah.  
12 Q. So it looks like escalation is part of the process of  
13 going to war with JVPs whose attitude stinks, rather  
14 than, as you would have us believe, part of the  
15 supportive means of promoting the profits of the store  
16 company by getting Mr Clark involved?  
17 A. Can I read the entire thing?  
18 Q. Of course. I was going to take you to each of them.  
19 I was taking you to that one first, because in order  
20 that is the first one?  
21 A. If I can read the list of them to understand the  
22 context, that would be useful.  
23 Q. I think she's forwarding on -- so the whole document,  
24 the run of emails, goes on 381 and 382, so you can see  
25 what she is forwarding on.

1 Do you see at the bottom where it says:  
2 "From: Director be Bognor."  
3 That's from Dr Poulsen/Mr Vos?  
4 A. Yeah.  
5 Q. So the store directors at Bognor have written to  
6 Mrs Hart saying:  
7 "Are you saying that Mr Dyson has sent out  
8 a circular letter to stores having a go at the directors  
9 without knowing the full details?"  
10 It goes on and on and on about that. But the point  
11 I wanted to ask you about, you see, was the one from  
12 Mrs Hart to her boss, Jill Clark:  
13 "I would like to escalate this as her attitude, once  
14 again, stinks."  
15 And that that seems to be what escalation means  
16 within SOG; would you agree with me?  
17 A. No, I wouldn't.  
18 Q. No. Then Jill Clark responds the next morning, do you  
19 see in the middle, by the first holepunch:  
20 "Susannah -- this definitely needs escalating.  
21 I think she is on David Clark's radar, and if she isn't,  
22 she needs to be back on it."  
23 Do you see that?  
24 A. Yeah.  
25 Q. "If another letter from Derek is required, compose it



1 and we can update him."  
 2 Do you see that?  
 3 A. I do see that.  
 4 Q. Mr Dyson agreed that that would be him. There is only  
 5 the one Derek in the organisation. Do you see that?  
 6 A. Yeah.  
 7 Q. Then Mr Rowe is then forwarded that by Mrs Hart at the  
 8 top; do you see that?  
 9 A. Yeah.  
 10 Q. Same day, an hour later:  
 11 "Can we discuss our action plan to wipe this woman  
 12 off the face of the earth?"  
 13 So I do suggest to you, Mr Raines, that escalating  
 14 to Dave Clark and going to war with a JVP director and  
 15 wiping her off the face of the earth appears to be the  
 16 agenda -- should we call it a vendetta -- within the  
 17 team that you describe as being the relevant team here,  
 18 namely Mr Rowe, Mrs Hart, perhaps her boss Mrs Clark,  
 19 who of course was the lady who disciplined her for  
 20 writing that email to her in the first place; is that  
 21 right?  
 22 A. That is correct.  
 23 Q. Extraordinary. What do you say?  
 24 A. Can I explain some context? I am not going to defend  
 25 the emails. They are totally inappropriate. In terms

1 of the context behind this one: at that time we were  
 2 under a tremendous amount of pressure as a business  
 3 because Tesco Opticians and Asda Opticians had come into  
 4 our market. They started in about 2004, something like  
 5 that. At this time, which is 2008, they had  
 6 approximately 55 stores, Tesco certainly had 55 stores  
 7 at that time, and they were making a great deal around  
 8 offering free scratch-resistant coatings.  
 9 We as a business decided that we would offer free  
 10 scratch-resistant coatings which we had not done in the  
 11 past. We decided to offer free scratch-resistant  
 12 coatings. Obviously that was to respond to  
 13 a competitive threat. We marketed those to the public  
 14 through national advertising to our customers around  
 15 free scratch-resistant coatings being available at  
 16 Specsavers, ie trying to offer more value or at least  
 17 match the value that Tesco offered because, as we saw --  
 18 and again we had consulted for many months and even  
 19 years with our partners around the threat of the  
 20 supermarkets -- them coming into either the book  
 21 industry or the pharmacy industry or whatever, if we  
 22 didn't respond to them and take their threat really  
 23 seriously, we would have suffered, our businesses would  
 24 have suffered, our partners' profits would have gone  
 25 down, et cetera.

1 That's why at this time free scratch-resistant  
 2 coatings and the fact that we were promoting it  
 3 nationally meant that it was a big compliance issue for  
 4 us. It was a massive compliance issue, because we were  
 5 potentially putting ourselves at risk from Trading  
 6 Standards as well as obviously disappointing a number of  
 7 customers who would see the advert and then not be able  
 8 to obtain the product from us.  
 9 MR JUSTICE HILDYARD: I am just going to interrupt you.  
 10 A. Yes.  
 11 MR JUSTICE HILDYARD: I think the question was whether you  
 12 shared the view that it was extraordinary that the  
 13 person who was the addressee of one of the emails was  
 14 also the person responsible presumably in your absence  
 15 for disciplining the sender. That does not seem to me,  
 16 though you can correct me if I am wrong, to have  
 17 anything at all to do with scratch-resistant coatings?  
 18 A. No, I was trying to explain the context of why they had  
 19 said what they said in terms of the escalation piece, so  
 20 I was trying to explain why they felt it necessary to  
 21 escalate this issue, because it was a brand compliance  
 22 issue.  
 23 MR JUSTICE HILDYARD: Right. I see. All right, well, let  
 24 us suppose there was. I still think the question that  
 25 was requested of you -- I may be wrong and counsel will

1 correct me -- I think what his question to you was: do  
 2 you share his depiction of the position which appears to  
 3 be demonstrated, that one of the people who was party to  
 4 these rather lurid emails was put in charge of the  
 5 disciplining of the other? Is that not --  
 6 MR STUART: That's what I understand to be the position now.  
 7 MR JUSTICE HILDYARD: You asked whether you depicted that as  
 8 extraordinary and you asked the witness to answer  
 9 whether he shared that.  
 10 MR STUART: Yes.  
 11 MR JUSTICE HILDYARD: I don't know whether or not he does,  
 12 and he will tell me.  
 13 A. With respect, I thought I answered that with a "yes".  
 14 MR STUART: A simple "yes" will be fine.  
 15 A. I did say yes. I did say yes, and then I went on to try  
 16 and explain the context of why these emails -- why they  
 17 were --  
 18 Q. Okay.  
 19 A. -- why it's such a serious issue. So apologies, I  
 20 thought I answered "yes".  
 21 MR JUSTICE HILDYARD: No, I am sure I was wrong but  
 22 I understand the general context was that Tesco's had  
 23 wandered into the market, you had promoted free  
 24 scratch-resistant coatings to meet the threat, and there  
 25 was an important issue in that regard?

1 A. Yes.  
 2 MR STUART: Anyway, Mr Raines, it looks like Mrs Hart and  
 3 Mr Rowe are going to be discussing an action plan to  
 4 wipe this woman off the face of the earth; that's what  
 5 it appears to be anyway. That's 3 September.  
 6 The next document in the chronology relating to that  
 7 seems to be that that is put into action by Mr Dyson  
 8 becoming involved, page 397, on 18 September. A letter  
 9 was at least signed by him, though I suggested to him  
 10 that it was probably written by Jill Clark,  
 11 Susannah Hart or a combination of the communications  
 12 team.  
 13 A. Can I read the letter, please?  
 14 Q. Yes, do.  
 15 (Pause)  
 16 A. Okay.  
 17 Q. Just looking at the fourth paragraph of that, Mr Dyson  
 18 is chiding Helle and Barry about the tone used by them.  
 19 In the fifth paragraph, he raises the issue that  
 20 Mr Rowe had discussed concerns about Optimisation  
 21 Healthcare, and he says:  
 22 "Once again an overzealous nature of Mr Vos'  
 23 correspondence."  
 24 Do you see that?  
 25 A. Yeah.

1 Q. The sixth paragraph:  
 2 "Therefore disappointing that you have now reverted  
 3 back to this inappropriate tone of communication."  
 4 He is obviously criticising them for their tone, do  
 5 you see that?  
 6 A. Yes.  
 7 Q. My real question is: why aren't you doing this? This is  
 8 Mr Rowe, who is your report, he is the one who's  
 9 complaining, isn't he, about the tone being used? Why  
 10 not you write a letter?  
 11 A. I think in this particular situation, there were  
 12 a number of issues.  
 13 Q. Right.  
 14 A. There are issues that I know nothing about, which is the  
 15 Hearcare spoke. At this time, Derek was sitting on the  
 16 Hearcare board. I had no involvement at all at the  
 17 Hearcare board at this time. It's also relating to the  
 18 mystery shopper programme. The mystery shopper  
 19 programme -- the person who is responsible for the  
 20 mystery shopper programme is Jill Clark, one of his  
 21 direct reports. He has also obviously received the  
 22 information from Carol Slark, who is one of the  
 23 chairmen, whose partners have made a complaint and  
 24 obviously the -- that all took place within that sort of  
 25 period, which is 18 September, and the matter around

1 April is, you know, a few months before.  
 2 So it doesn't strike me as being surprising that he  
 3 would write that letter, given that context.  
 4 Q. No. So it's really Mr Clark -- sorry, Mr Dyson is  
 5 dealing with it with Mrs Hart, Mrs Clark and Mr Rowe,  
 6 and you are not personally involved?  
 7 A. Well, the majority of letters are generated in Guernsey,  
 8 you know.  
 9 Q. So that would be Mr Dyson, Mrs Hart and Mrs Clark, they  
 10 are all in Guernsey?  
 11 A. Yes, they are all based in Guernsey.  
 12 Q. To the extent that Mr Rowe is involved, he is over here  
 13 but he is in the southern region, and he would have  
 14 contact with Mr Dyson as you describe?  
 15 A. No, no. You keep trying to make that thing. Mike Rowe  
 16 reported to me. I am sure, from time to time, he spoke  
 17 to Mr Dyson.  
 18 Q. Yes, I am looking at paragraph 44 of your statement:  
 19 "Derek Dyson would tend to have oversight of  
 20 concerns of store companies in the southern region."  
 21 Paragraph 44 of your witness statement.  
 22 A. You are reading into "oversight". You are reading into  
 23 it. That is not the way that it worked. Mike Rowe  
 24 reported to me, I had responsibility for those stores  
 25 through Mike Rowe --

1 Q. Okay --  
 2 A. -- from a logistical point of view, if it -- if there  
 3 was a special situation, and this case, this relates to  
 4 Bognor, then it may be, from a logistical point of view,  
 5 ie it's easier to get to Bognor from Guernsey than it is  
 6 to get from Skelmersdale, then he may from time to time  
 7 be involved.  
 8 Q. But you weren't involved in this September 2008  
 9 correspondence at all, were you?  
 10 A. No, no.  
 11 Q. Indeed, according to your witness statement, pages C/145  
 12 to 146, at paragraph 45, you say:  
 13 "I would have been informed of the BRM that took  
 14 place in April."  
 15 Paragraph 45.  
 16 A. Yeah.  
 17 Q. Do you see that?  
 18 A. Yes.  
 19 Q. Then over the page, 46:  
 20 "I was broadly aware by way of discussions with  
 21 Mr Rowe that a BRM was being held..."  
 22 A. Yeah.  
 23 Q. That was the BRM in April:  
 24 "... to address the issue that money was being paid  
 25 to companies and individuals connected with the JVPs."

1 A. Yeah.  
 2 Q. "I consider this was a fair reason to call a BRM."  
 3 A. Yeah.  
 4 Q. Your next sentence is:  
 5 "The claimants were next brought to my attention  
 6 almost two years later."  
 7 A. Okay.  
 8 Q. So from that, it appears that you are saying that you  
 9 just simply had no knowledge or connection or attention  
 10 drawn in relation to Bognor or these people between  
 11 April 2008 and October 2010?  
 12 A. That is broadly correct.  
 13 Q. And that's why your witness statement, therefore, has no  
 14 mention of any events between those dates?  
 15 A. That is broadly correct.  
 16 Q. I am not sure that's quite right, though, is it? If we  
 17 go to page 430 in bundle E2, Mr Raines. The next step  
 18 in the vendetta, as the claimants put it, was now the  
 19 mystery shopper issue and photographing in relation to  
 20 the mystery shopper.  
 21 Of course you say you had no knowledge of this?  
 22 A. No, I didn't say that. I had no direct involvement in  
 23 this.  
 24 Q. No.  
 25 A. I was not directly involved in the mystery shopper

101

1 programme.  
 2 Q. No, no, I am not talking about the mystery shopper  
 3 programme. I am talking about dealing with  
 4 Helle Poulsen in January 2009, the Bognor director,  
 5 dealing with her.  
 6 A. Yes.  
 7 Q. You had no involvement whatsoever?  
 8 A. No.  
 9 Q. Except at page 430 we see that you, Jill Clark and  
 10 David Clark were sent by Mr Dyson his final draft of his  
 11 letter which, if you go to 433 to see the final page, is  
 12 signed off by Mr Dyson. Do you see 433?  
 13 A. Yeah.  
 14 Q. If you just go up to the penultimate paragraph:  
 15 "Your disconnection with the group's strategy is  
 16 a matter of serious concern to us. Your confrontational  
 17 and antagonistic attitude towards SOG and its personnel  
 18 is equally disconcerting."  
 19 Do you see that?  
 20 A. Yeah.  
 21 Q. "I am dismayed to note that the tone of your  
 22 communications is not one of a business partner. Your  
 23 rudeness to senior members of SOG staff is  
 24 unacceptable."  
 25 Do you see that?

102

1 A. Yes.  
 2 Q. Now, the SOG staff we are talking about is your team,  
 3 isn't it? Mrs Hart, Mr Rowe?  
 4 A. Well, Mrs Hart isn't part of my team. She reports to  
 5 Jill Clark.  
 6 Q. Quite right. She is part of the connected team of  
 7 communications, who assist your team?  
 8 A. Yes.  
 9 Q. So the threat is made to escalate it to a board meeting.  
 10 Do you see that in the last paragraph?  
 11 A. Yes.  
 12 Q. Presumably you discussed this with Mr Dyson at the time?  
 13 A. I would have done. I don't recall specifically  
 14 discussing it with him, but I was aware of the issue --  
 15 Q. You can't recall because you have given evidence, just  
 16 a moment ago, that around April 2008 and October 2010  
 17 Dr Poulsen wasn't even brought to your attention.  
 18 That's not quite right, is it? You would have spoken to  
 19 Mr Dyson about this, wouldn't you?  
 20 A. I did -- I had no direct involvement with the claimants,  
 21 ie Helle Poulsen --  
 22 Q. That's not what your witness statement says. It says,  
 23 "The claimants were next brought to my attention two  
 24 years later in October 2010."  
 25 That's not true, is it?

103

1 A. If you are saying: was I aware of the mystery shop issue  
 2 in -- whenever it was --  
 3 Q. January 2009?  
 4 A. -- January 2009, yes, I was aware of it. Have  
 5 I included that in the statement? No, I haven't.  
 6 Q. You were aware that Mr Dyson was getting personally  
 7 involved in criticising Dr Poulsen's rudeness,  
 8 confrontational and antagonistic attitude and manner of  
 9 communication?  
 10 A. Yes.  
 11 Q. And that he was calling -- threatening, sorry,  
 12 threatening to call a board meeting?  
 13 A. Yes.  
 14 Q. Right. Not only are you aware of it, Mr Raines, by my  
 15 reckoning, page 438 --  
 16 A. Of which?  
 17 Q. E2/438. You are actually part of the, shall we say,  
 18 line of command, the line of what the claimants contend  
 19 to be a conspiracy against them.  
 20 You forward on the letter to Mr Rowe, don't you?  
 21 You personally do that?  
 22 A. Yes.  
 23 Q. Would that be right?  
 24 A. It says that I forwarded it on to him, yes.  
 25 Q. Okay.

104

1 A. Because he's mentioned in the letter. It's one of his  
2 stores.  
3 Q. Yes. You must have been having discussions with Mr Rowe  
4 about this, your direct report, Mr Rowe?  
5 A. I discussed lots and lots and lots of stores with every  
6 single one of my direct reports. You know, I use  
7 telephone, email, every method I can.  
8 Q. But the only email we have from you at this time is this  
9 one forwarding on this letter.  
10 A. Yes.  
11 Q. And the only note we seem to have is X/349. This is  
12 said to be an estimated range of the 4 December to  
13 11th --  
14 A. Excuse me?  
15 Q. X.  
16 A. Yes, which tab are we in?  
17 Q. Tab 6 in X, page 349. This page here is said to be  
18 extracted from your daybook for a period 4 December 2008  
19 to 11 December 2008?  
20 A. Yeah.  
21 Q. So this perhaps has something to do with correspondence  
22 that's taking place at the end of January 2009, but  
23 perhaps not. Perhaps I am being overly optimistic.  
24 Where are we looking, then? These are your notes.  
25 What's the relevant part?

105

1 A. The bottom bit.  
2 Q. "Hearcare RST input"?  
3 A. Sorry, where are you?  
4 Q. I am on 349.  
5 A. Yes, I thought I was.  
6 Q. So the bottom bit, as you put it, "Hearcare RST input"?  
7 A. Right, no. No. I think you are actually looking at the  
8 bit slightly above that.  
9 Q. Above that, where it says, "Mike"?  
10 A. Mike. This -- I do my review -- the reviews for my team  
11 usually in December. So this would relate to some notes  
12 I was making before the meeting, at the meeting or after  
13 the meeting -- I don't recall which.  
14 Q. Okay.  
15 A. -- which were issues I was talking through with  
16 Mike Rowe.  
17 Q. So within a squiggly line, Bognor Regis has been left  
18 in?  
19 A. Yes.  
20 Q. But some things have been blanked out. What could  
21 possibly be blanked out about Bognor Regis in  
22 December 2008?  
23 A. I don't -- well, obviously I do know if I looked at it,  
24 but I don't know. As I said, these are just notes that  
25 I make to myself while I am talking to somebody, or

106

1 before I am meeting them, or whatever.  
2 MR STUART: My Lord, I wonder if I could be allowed to see  
3 this document?  
4 MR JUSTICE HILDYARD: What is the basis on which these have  
5 been blocked out?  
6 MR POTTS: My Lord, the blocking out, the redaction -- on  
7 the 16th when this was given, the redaction was given in  
8 relation to the commercially sensitive information,  
9 principally being store names and names of certain  
10 individuals, and there is also some redaction for  
11 privileged information (Handed).  
12 MR JUSTICE HILDYARD: Take the line "relationship difficult,  
13 ego power trip, keep working around".  
14 I mean, what am I to make of that?  
15 MR POTTS: The explanation I have here, my Lord, is that  
16 redaction is for names or names of individuals in  
17 relation to -- obviously there are a very large number  
18 of stores, my Lord. Relationships with the other stores  
19 are confidential and commercially sensitive potentially,  
20 and, it is said, also relevant.  
21 MR JUSTICE HILDYARD: So although it's relevant to have that  
22 "relationship difficult, ego power trip, keep working  
23 around" --  
24 A. Can I explain that?  
25 MR JUSTICE HILDYARD: Yes. You redacted it, did you?

107

1 A. No, I didn't redact it, and I don't know what that --  
2 I presume that is a store name, I presume.  
3 MR JUSTICE HILDYARD: Right.  
4 A. If you look at it from the top, Dominic Saville was one  
5 of my direct reports.  
6 MR JUSTICE HILDYARD: He was, what?  
7 A. One of my direct reports. He is an RDC. Keith Daly is  
8 an RDC, and Mike Rowe is an RDC.  
9 These would have been my notes prior to or during or  
10 after -- probably prior to, because they are all  
11 sequential, maybe not, maybe after -- just notes during  
12 their reviews, their 12-month reviews. And so this  
13 would be a store name where Keith is having difficulty  
14 with the relationship.  
15 MR STUART: My Lord, just to be clear. I am not too  
16 bothered about the one under the heading "Keith".  
17 I asked the witness which is the relevant bit and he  
18 said we are to go to the one that says "Mike", and then  
19 I asked him about, within a blobby line, the word  
20 "Bognor Regis" is written, and then around the word  
21 "Bognor Regis", within the blobby line, some things have  
22 been redacted. I would have thought at least I am  
23 entitled to see what is within the blobby line of  
24 "Bognor Regis" at the very part of the note which this  
25 witness says is the relevant part.

108

1 MR JUSTICE HILDYARD: Mr Potts, what do you say about this?  
2 Is this a matter which can be -- we are not going to  
3 finish this witness before the short adjournment, are  
4 we?  
5 MR STUART: My Lord, no. I didn't realise all of this stuff  
6 was going to come out.  
7 MR JUSTICE HILDYARD: No, I see. Is this something you can  
8 discuss between you?  
9 MR POTTS: Obviously I will need to take instructions and  
10 speak to my learned friend.  
11 MR STUART: My Lord, I am happy to look at personally myself  
12 on an undertaking.  
13 MR JUSTICE HILDYARD: I think that it may be something which  
14 can be dealt with between counsel.  
15 MR STUART: Absolutely, my Lord. I'll do it that way.  
16 MR POTTS: My Lord, we are very happy for counsel to see it.  
17 I think there is an issue about commercial sensitivity.  
18 MR JUSTICE HILDYARD: It may be completely irrelevant, in  
19 which case the balance is in favour of sensitivity; it  
20 may be marginally relevant in some way in which case the  
21 balance could alter.  
22 MR POTTS: Yes, indeed, my Lord.  
23 MR JUSTICE HILDYARD: Can you come back to that? I am sorry  
24 about that.  
25 MR STUART: I will. My Lord, that's fine.

109

1 So Mr Raines, leaving aside the blacked-out parts,  
2 you say this is a note of your meeting with Mike Rowe;  
3 is that right?  
4 A. Yes.  
5 Q. In which you are noting down matters that you are  
6 discussing with him. One of those matters seems to be  
7 Dave Clark and then a sort of dot dot dot to  
8 Bognor Regis, is that right?  
9 A. Yes.  
10 Q. Then from there, a line is drawn over to "Dave's lack of  
11 communication"?  
12 A. Yeah.  
13 Q. And then a line is drawn to some blob, and then "Dealing  
14 one of his stores"; is that right?  
15 A. That's correct.  
16 Q. Okay. So apart from that little section, is any of the  
17 rest of it relevant?  
18 A. Not that I believe so.  
19 Q. What about the last line at the bottom:  
20 "Engagement/tone [something] partners, ball's in the  
21 net."  
22 Is that anything to do with the tone of  
23 communications and the lack of engagement that Mr Dyson  
24 refers to in his letter of the --  
25 A. No.

110

1 Q. Anyway, so this is a matter that you are dealing with,  
2 then, in December 2008. This is December 2008, this  
3 note?  
4 A. Yes.  
5 Q. Somehow Mr Dyson is dealing with it by 26 January 2009?  
6 A. Dealing with what?  
7 Q. With actually writing the letter at page 431 to 433.  
8 Threatening to convene a board meeting, telling her that  
9 she's rude --  
10 A. Sorry, I am a wee bit confused. Are you relating the  
11 document in file X?  
12 Q. We are finished with that, because that's all the  
13 relevant parts of that, there is nothing else relevant  
14 to that?  
15 A. Sorry.  
16 Q. We are up to E2/431 to 433, the letter that actually  
17 gets written by Specsavers Optical Group is written by  
18 Mr Dyson, not by you?  
19 A. Yes.  
20 Q. He is the one who threatens the board meeting. He is  
21 the one who raises the issue of confrontational,  
22 et cetera, et cetera. Are you still saying that you  
23 didn't discuss these things with Mr Dyson?  
24 A. I don't recollect discussing with them. Was I aware of  
25 them? I may have been aware of them.

111

1 Q. Okay.  
2 A. We tend -- the way we tended to work was that we would  
3 have -- maybe once a week, once a month or whatever, we  
4 would try and catch up with each other and just have:  
5 what are the issues, you know, what's happening?  
6 Bear in mind a lot of my time I am in the stores,  
7 meeting with partners, and, you know, in different  
8 meetings. We would tend to just catch up whenever we  
9 could catch up, either first thing in the morning, last  
10 thing at night, not every day, not every week. So the  
11 conversation would have been: what's happening within  
12 the business? So it may have cropped up in  
13 conversation. I was aware of it, that he had visited  
14 her, and obviously I saw the output of that meeting, and  
15 I forwarded that on to Mike Rowe.  
16 Q. This is his draft letter to the store company.  
17 A. Right.  
18 Q. Not the outcome of a meeting. This is his draft letter  
19 threatening to call a board meeting.  
20 A. Right, sorry.  
21 Q. -- and that soon turns into the meeting later in  
22 March/April --  
23 A. Sorry.  
24 Q. Anyway, it's really a matter for Mr Dyson at this point  
25 rather than you?

112

1 A. Yes.  
2 Q. Yes. Okay. The meeting then takes place. We see it at  
3 448. You were not involved in the meeting, this is  
4 Mr Dyson's note at 448. Presumably you say, given the  
5 content of your witness statement, that he didn't  
6 discuss the detail of his meeting with you?  
7 A. No.  
8 Q. And Mr Rowe didn't either?  
9 A. No.  
10 Q. And 452, when Dr Poulsen complained, do you see 452 at  
11 the last paragraph of her email?  
12 A. Yes.  
13 Q. "I was very unhappy to hear Christina Del Grazia was  
14 prepared to consign us to the scrapheap, get us  
15 suspended. Request for a board meeting. Getting rid of  
16 us?? Shooting from the hip."  
17 Presumably you say you were totally unaware of all  
18 of this at the time?  
19 A. Can I just read the email?  
20 Q. Yes. (Pause).  
21 A. Okay. I was unaware.  
22 Q. You were unaware, okay, fine. I can't really ask you  
23 about that, then.  
24 What about, moving forward in time to 517. We are  
25 up now to April 2009. Just to put it into context for  
113

1 you, Mr Dyson gave evidence that as far as he was  
2 concerned after the meeting of March 2009 --  
3 A. Sorry, can you -- I suppose my brain is thinking, which  
4 is very dangerous, on these things. I just zoned out.  
5 I just can't help but look at that comment right at the  
6 top which is:  
7 "Dear Adrian, so lovely to see you again at the  
8 meeting, your wise counsel, your ability to communicate  
9 with me", et cetera.  
10 Totally at odds, obviously, with the email that he  
11 sent before, and maybe that is an indication of how  
12 Adrian actually communicated with Helle Poulsen, which  
13 was all about trust, "Trust you implicitly, appreciate  
14 your wise counsel", which is totally at odds, and  
15 probably consistent with what Adrian said to me when I  
16 did his disciplinary, which is he didn't understand, you  
17 know, why he had responded the way that he had responded  
18 in his email. So ... sorry.  
19 Q. Mr Raines, your thoughts on matters are interesting.  
20 I am trying to ask you questions.  
21 A. No, I know. But that's why -- I just explained why I  
22 zoned out a wee bit.  
23 Q. Fine. 517, Mr Dyson in his evidence had said that he  
24 considered the matters were, as it were, "resolved" was  
25 the word he used by the March meeting and that therefore  
114

1 there could be no question of the vendetta continuing  
2 after that. But at 517 we see that in April 2009 -- do  
3 you see that?  
4 A. Yeah.  
5 Q. There is an email from Mr Rowe to Mr Moylan, do you  
6 remember, you have referred to him in the team --  
7 A. Yeah.  
8 Q. -- he fits in at the sort of Riyaz Rajan level, doesn't  
9 he?  
10 A. Yes.  
11 Q. So Mr Rowe and Mr Moylan are now in email contact.  
12 Mr Rowe says, "Thanks Alan, ... your last one."  
13 He's been passed a minute of a board report. But  
14 it's the next line that's rather more disconcerting:  
15 "Good news. Just had a grievance letter alleging  
16 bullying by the Bognor Regis directors!!!!"  
17 Is that one of the matters that you disciplined  
18 Mr Rowe for, that sort of nature of that email?  
19 A. I can't recollect.  
20 Q. Mr Dyson agreed that it was wholly --  
21 A. No, I agree. It's wholly inappropriate, but of those  
22 five emails, I cannot remember whether this was one of  
23 those five emails.  
24 Q. Yes. Then Mr Moylan responds:  
25 "Bullying? Man, that is the last place I would have  
115

1 thought it would happen."  
2 I think we can read that with a touch of sarcasm,  
3 don't you, Mr Raines?  
4 A. I don't know. I wasn't --  
5 Q. Would you read it with a touch of sarcasm, or do you  
6 think that was a genuine email from Mr Moylan to  
7 Mr Rowe?  
8 A. (Pause). You can read it both ways.  
9 Q. Can you? You read it both ways, then, yes? Okay --  
10 A. I genuinely do. I read it both ways.  
11 Q. And Mr Moylan was not one of the people who was, in any  
12 way, involved in the disciplinary matters?  
13 A. No, not that I know of.  
14 Q. Because I thought you had mentioned five or six people?  
15 A. No.  
16 Q. No, okay.  
17 A. Three.  
18 Q. I see the time. I just want to finish this bundle,  
19 because I only have one more document I want to take you  
20 to in this bundle.  
21 What happens in relation to that grievance that they  
22 are so delighted to see arrive is that Mr North gets  
23 involved, Jason North. Is he part of your team?  
24 A. Yes, I think at that stage he was an RPC. He may have  
25 been an acting RDC.  
116

1 Q. So were you at all notified of or aware of page 541,  
2 which was the management structure document that  
3 emanated from, the final draft of it, Mr North's  
4 investigation of the grievance by Jena Laker?  
5 541, were you aware of this at all?  
6 A. I don't believe so.  
7 Q. No. You see, this was in midsummer 2009, and on your  
8 witness statement they are not even brought to your  
9 attention until October 2010. So I'm presuming that you  
10 just had no knowledge of any of this going on?  
11 A. No.  
12 Q. That's the end of E2. My Lord, I see the time, would  
13 that be a convenient moment? You can put away E2,  
14 Mr Raines.  
15 A. Thank you.  
16 MR JUSTICE HILDYARD: Yes. 2 o'clock. Yes, Mr Potts?  
17 MR POTTS: My Lord, two points. First of all, I am not sure  
18 if it's been signed, but I have the approved witness  
19 statement and perhaps we can provide that to  
20 your Lordship for some reading.  
21 My Lord, the second point is a request has been made  
22 for disclosure in relation to the disciplinary point.  
23 I am in your Lordship's hands as to how we deal with it.  
24 One way would be for permission to be granted to my  
25 solicitors to speak to the witness, obviously not about

117

1 his evidence, but in relation to disclosure, so that --  
2 MR JUSTICE HILDYARD: Over the short adjournment?  
3 MR POTTS: My Lord, yes. That might be a sensible way  
4 forward.  
5 MR STUART: Is it necessary to speak to the witness,  
6 my Lord? He has already said that the HR department and  
7 the legal department are aware of these disciplinary  
8 matters.  
9 MR JUSTICE HILDYARD: It's a matter for you. If you wish to  
10 pursue these documents with this witness, then despite  
11 some slippage I imagine this witness will be ended  
12 today.  
13 MR STUART: Yes.  
14 MR JUSTICE HILDYARD: If you wish to consider those  
15 documents and ask this witness about those documents,  
16 then something has to be done urgently. If you don't --  
17 MR STUART: My Lord, I just don't see why the witness needs  
18 to get involved.  
19 MR JUSTICE HILDYARD: I see.  
20 MR STUART: Surely SOG, its legal department, its HR  
21 department and its solicitors Taylor Wessing can do what  
22 they should have done some time ago, and that is provide  
23 the documents.  
24 MR POTTS: The noises from behind, my Lord, is that we would  
25 not be in a position to do so without speaking to the

118

1 witness. If the concern is --  
2 MR JUSTICE HILDYARD: Why is that?  
3 MR POTTS: Can I just take instructions, my Lord?  
4 MR STUART: For the record, yes, the concern is that  
5 conversations between SOG and its lawyers and this  
6 witness may involve all of the documents not being  
7 disclosed, as they should have been some time ago.  
8 I haven't read this witness statement from Mr Marsh yet.  
9 MR JUSTICE HILDYARD: No, none of us have yet.  
10 MR STUART: But I would like them to just do the task of  
11 giving me the documents.  
12 MR POTTS: My Lord, it was a suggestion. If my friend  
13 doesn't think it's appropriate and your Lordship doesn't  
14 think it's appropriate, we will do what we can obviously  
15 to make progress --  
16 MR JUSTICE HILDYARD: As usual, I favour pragmatism.  
17 I think you should discuss this now. At the moment,  
18 Mr Potts, I do not see why these documents are not  
19 disclosable, nor why they should not be disclosed. If  
20 there is an issue of privilege, you must share it,  
21 I think.  
22 MR POTTS: No, no, my Lord, I think it's purely the  
23 logistics of obtaining them.  
24 MR JUSTICE HILDYARD: You need this witness's help?  
25 MR POTTS: My Lord, shall we see how we get on?

119

1 MR JUSTICE HILDYARD: I think that you will find you can do  
2 it without the witness. If for some reason you can't,  
3 then I can wait ten minutes and sit ten minutes further.  
4 MR POTTS: That's fine, my Lord.  
5 MR JUSTICE HILDYARD: We will resume at 2.05, please.  
6 (1.05 pm)  
7 (The short adjournment)  
8 (2.05 pm)  
9 (Proceedings delayed)  
10 (2.25 pm)  
11 MR STUART: My Lord, thank you for the time. I have been  
12 shown, on a counsel-only basis, the specific pages that  
13 have been disclosed in the X file, and so that I can see  
14 what all the black marks are. Apart from one little  
15 point, which is that Uckfield got blacked out at one  
16 point, but I will not take a point about that. But the  
17 rest all appear to be names of other stores, which  
18 I will not go into.  
19 MR JUSTICE HILDYARD: Very good.  
20 MR STUART: I was not allowed to see any other pages than  
21 the ones that have been put into the X file of course.  
22 MR JUSTICE HILDYARD: Sorry?  
23 MR STUART: I wasn't allowed to see any of the pages in the  
24 book apart from the ones that have been blacked out. So  
25 I'll ask the witness the questions I have about those.

120

1 So, Mr Raines, we had reached the end of bundle E2,  
 2 which was 2009. Remembering that you explained at  
 3 paragraph 47 of your statement that:  
 4 "The claimants were next brought to my attention two  
 5 years later in October 2010 when Mr Rowe made me aware  
 6 of an issue with Dr Poulsen's husband, Mr Vos. I cannot  
 7 now specifically recall this meeting but having read the  
 8 email from Mr Rowe to Mr de Carteret, I consider this is  
 9 the view that I would have taken based on the  
 10 information that was available to me then."

11 You refer to page 734 in bundle E3. Can you take up  
 12 bundle E3. Just before we get to 734, I think we should  
 13 rather pick up matters, shouldn't we, at 652? This is  
 14 how this starts. Michael Rowe and Susannah Hart are  
 15 emailing again, do you see at 652?

16 Do you see, just below the first holepunch, somebody  
 17 called Don, who is obviously one of the regional forum  
 18 chairmen or something like that --

19 A. Can I just read it, please?

20 Q. Yes, absolutely.

21 (Pause)

22 Do you see it?

23 A. Yes, I am just reading it.

24 Q. There is only two lines of relevant text.

25 A. Sorry, I shouldn't read the, "Dear Don...?"

1 21

1 Q. You can do if you want to, but I will not ask you  
 2 anything about that. I will just ask you about the top  
 3 email, because that's the one between the two members of  
 4 your teams.

5 Susannah Hart emails Mr Rowe, having been sent  
 6 a message by the regional chairman, Don, "Please note  
 7 the reply from Hell."

8 Susannah Hart emails Mr Rowe, "Do we need an  
 9 escalated action?"

10 Do you see that?

11 A. Yeah.

12 Q. Were you aware of this back at that stage, June 2010,  
 13 that Susannah Hart --

14 A. No.

15 Q. Then I will not ask you about that. Then you I think do  
 16 become aware at 689 -- you have mentioned 734 in your  
 17 statement, but I think 689, so we are into July 2010; do  
 18 you see that?

19 A. Yes.

20 Q. Looking at the email chain at the top, it's to  
 21 Michael Rowe from Susannah Hart, but she is CCing in  
 22 Jill Clark and yourself?

23 A. Yeah.

24 Q. So the four of you seem to be in email correspondence  
 25 about this issue, anyway, at that time; yes?

1 22

1 A. It would appear so.

2 Q. The subject is "Bognor Regis", and she says:

3 "I've just checked with payroll. Godfrey is still  
 4 not employed by Bognor Regis, which I believe was one of  
 5 the conditions following the last set of meetings held  
 6 back in '08 or '09 with Derek. Should we now have  
 7 a strategy for dealing with Bognor once and for all?  
 8 "Kind regards, Sue."

9 When you received that email -- you don't mention it  
 10 in your witness statement -- what did you understand she  
 11 was saying, "... strategy for dealing with Bognor once  
 12 and for all"? What did you understand by that?

13 A. Other than that they were disengaged, what I would refer  
 14 to as disengaged partners --

15 Q. Yes?

16 A. -- ie they were disengaged to the brand, I don't know  
 17 what she meant by "strategy".

18 Q. I thought you were supporting, helping these people?

19 A. We do. We do support and help these partners to drive  
 20 their businesses forward in line with the Specsavers  
 21 brand. The Specsavers brand is obviously making sure we  
 22 deliver affordable eye care to every single customer  
 23 consistently.

24 Q. It doesn't seem to be Sue's agenda. She seems to be  
 25 wanting to deal with Bognor once and for all. It

1 23

1 doesn't sound like support and assistance; would you  
 2 agree?

3 A. Reading the email, yes, I would agree.

4 Q. So when you received that in July 2010, did you speak to  
 5 Mr Rowe or Mrs Clark or Mrs Hart about it, July 2010?

6 A. I cannot recollect speaking to them at all about it.

7 Q. Okay. We don't have any pages from your daybooks  
 8 between 11 December 2008 and 16 December 2010. So for  
 9 that whole two-year period that I have been asking  
 10 about, we haven't been shown, and I am not allowed to  
 11 look at, any pages from your daybooks for that period.

12 A. I can only tell you, as is in my witness statement, and  
 13 I know that you have pointed to emails that I have been  
 14 in receipt of, I receive 150, 200 emails a week.

15 I don't act on every single one of them --

16 Q. No.

17 A. -- I cannot and, you know, it's in my witness statement,  
 18 and I am under oath, I cannot recollect any what I would  
 19 describe as serious issues or a vendetta or a conspiracy  
 20 in any relation, relating to Bognor Regis.

21 Q. Okay. I suppose I just ought to ask you: have you  
 22 checked your daybooks for 2010?

23 A. Yes. Sorry, can you ask me the question again, please?

24 Q. Yes. Have you personally checked your manuscript  
 25 daybooks for 2010 to see whether, to assist you, there

1 24



1 might be some notes of some conversations that you have  
 2 had with either Mr Rowe or Mrs Clark or Mrs Hart about  
 3 this issue that they are raising with you in 2010, ie --  
 4 A. Yes, I have.  
 5 Q. You have checked the 2010 books?  
 6 A. I have checked the 2010 book.  
 7 Q. And the reason --  
 8 A. Just again to clarify, there is not a 2010 book. There  
 9 are books that as soon as I finish them I move on to the  
 10 next one, so I don't have a 2010 one, a 2011. They just  
 11 run --  
 12 Q. Fair point. So have you checked the books that cover  
 13 the whole of 2010?  
 14 A. I have checked the books that I have, and there is no  
 15 reference to this.  
 16 Q. And you have no recollection now, and so we just don't  
 17 know what you did about it, page 689?  
 18 A. No.  
 19 Q. You don't recall any discussion of a strategy with  
 20 anybody?  
 21 A. Absolutely not, absolutely. This would come under what  
 22 I would call -- or in my mind, I would think of this as  
 23 day-to-day. It's in issue, and the field team are  
 24 dealing with it.  
 25 Q. Okay.

125

1 A. Yeah.  
 2 Q. So when do you become involved personally, do you say,  
 3 in relation to Bognor Regis? Is it not until 2011?  
 4 A. I think there is a -- Mr Rowe makes me aware of a salary  
 5 concern with Mr Godfrey.  
 6 Q. Okay, we will come on to that. What about the Sunday  
 7 trading issue, and their --  
 8 A. In relation to what?  
 9 Q. In relation to Bognor Regis. They are one of the few  
 10 stores that were refusing --  
 11 A. Yeah.  
 12 Q. -- to open at this time?  
 13 A. Yes.  
 14 Q. July/August 2010?  
 15 A. Yes.  
 16 Q. I was looking at page 693. It's an email to you, isn't  
 17 it to Mark Raines?  
 18 A. Yeah.  
 19 Q. It's cc'd to lots of other people. But it's addressed  
 20 to you, because it starts, "Hi Mark".  
 21 A. Yes.  
 22 Q. Do you see that?  
 23 A. I can see it.  
 24 Q. Was it a major issue for your department, the Sunday  
 25 trading issue, in July/August 2010?

126

1 A. Yes.  
 2 Q. Okay. So presumably, then, you saw -- over on 694, we  
 3 see that Bognor Regis, 694, do you see amongst all the  
 4 blacked-out stuff?  
 5 A. Yes.  
 6 Q. We see "Bognor Regis" is named as one of the stores?  
 7 A. Yes.  
 8 Q. We then see on 695, at the bottom, there is a block  
 9 which says "September"; do you see that?  
 10 A. Yes.  
 11 Q. And the last three dots "31 additional stores", that  
 12 would appear to include Bognor Regis; yes?  
 13 A. Yeah.  
 14 Q. "Non-opening stores, escalate to David Clark"?  
 15 A. Yes.  
 16 Q. So you were aware of that, presumably?  
 17 A. Yes, yes.  
 18 Q. Nothing particular about Bognor Regis, though, that  
 19 struck you at that time, July and August?  
 20 A. Other than the fact that they weren't open, and they  
 21 hadn't been open for a number of years.  
 22 Q. Yes. Okay. So then 712, we are still in E3. This is  
 23 a document disclosed by your side and we can tell that  
 24 from the bottom right-hand corner of the page. Do you  
 25 see it, B000615?

127

1 A. I can.  
 2 Q. And it goes all the way through to page 723, the same  
 3 document?  
 4 A. Okay.  
 5 Q. What this appears to be is Susannah Hart gathering  
 6 together all the rude and threatening emails from  
 7 Helle Poulsen; do you see that?  
 8 A. I've not read -- I've not seen this document before.  
 9 Q. You still haven't seen it before?  
 10 A. I haven't seen this document, no.  
 11 Q. Ah, okay.  
 12 A. But again, I've not read it yet. I am still on 712. If  
 13 you want me to read it, I will read it.  
 14 Q. I'll just ask you, then and we can cut it short: were  
 15 you aware that Susannah Hart was collecting together  
 16 emails in relation to Helle Poulsen in  
 17 July/August/September 2010?  
 18 A. Absolutely not.  
 19 Q. No?  
 20 A. No idea at all.  
 21 Q. So it was nothing to do with you, her gathering these  
 22 things together?  
 23 A. No.  
 24 Q. And you weren't sent this at this time?  
 25 A. I cannot recall being sent it.

128

1 Q. So then the next thing that happens, having gathered  
2 together the emails, is 724, isn't it?  
3 A. Okay.  
4 Q. That is the passing on of information from  
5 Jez de Carteret to Riyaz Rajan, raising the issue about  
6 the payments; do you see that?  
7 A. Yes, can I just read it, please?  
8 Q. Yes.  
9 (Pause)  
10 A. Okay.  
11 Q. And Riyaz answers at the top, "Thanks, Jez. Yes, it is  
12 of great interest".  
13 Sorry. Michael Rowe, sorry, says, "Thanks, Jez.  
14 Yes, it is of great interest".  
15 Do you see he's been forwarded it on by Mr Rajan?  
16 A. Yeah.  
17 Q. He forwards it on to Mike Rowe, your report, and  
18 Mike Rowe says, "Yes, it is of great interest". Were  
19 you aware at that time, August 2010, that Mr Rowe was --  
20 A. Absolutely not.  
21 Q. Okay. Just whilst we are here, 729 seems to be the  
22 Sunday trading issue is still bubbling along in  
23 August 2010, and you are writing an email to everybody  
24 about it; is that right? 729.  
25 A. Yes, this was a big issue for the business at the time.

1 29

1 That's why there is lots of documentation around it. It  
2 was around this Tesco threat again, where we had worked  
3 with our partners to identify that our weakness was that  
4 we didn't open on Sundays, whereas obviously  
5 supermarkets open every Sunday.  
6 We weren't offering our customers the right level of  
7 service, and that's why you find a lot of documentation,  
8 a lot of input from the regional teams around Sunday  
9 trading.  
10 Q. Okay. What you say in your email on 729, just four  
11 paragraphs from the bottom, you say there are 31 stores  
12 who you believe should be open:  
13 "These are a priority for the next quarter. If you  
14 are struggling to gain traction, I would recommend a  
15 speedy escalation to Dave Clark."  
16 A. Exactly. And this was trying to not tie up the RDC and  
17 RPC resource on lots of conversations, because sometimes  
18 it takes lots of conversations to convince partners that  
19 they need to act on something. Not everything gets  
20 acted on straightaway. This was a day-to-day issue.  
21 Q. The objective is to try to achieve £1 million worth of  
22 turnover in Sunday sales, that was the objective, wasn't  
23 it?  
24 A. That was a target that we set for the business, yes.  
25 Q. We see that at 731. I think this is your --

1 30

1 A. Yes.  
2 Q. -- support, Mr Goddon is just setting it out. The  
3 objective on 731 is to increase the volume to £1 million  
4 Sunday sales?  
5 A. Yes.  
6 Q. The volume of the sales is going to benefit SOG, isn't  
7 it?  
8 A. And the partners.  
9 Q. Not those partners for whom it costs money to open on  
10 a Sunday, more than the profits they make from opening  
11 on a Sunday?  
12 A. That is correct.  
13 Q. Then under the "Plan" on 731, do you see it says "Plan",  
14 there are three parts to the plan?  
15 A. Yes.  
16 Q. And 2 says "Open more stores"?  
17 A. Yeah.  
18 Q. And we see Bognor Regis is the one that's not blacked  
19 out?  
20 A. Yes.  
21 Q. Over the page, 732:  
22 "Any of the 31 stores identified that has not opened  
23 will be escalated to David Clark."  
24 A. Yes.  
25 Q. Then we get to the 734, which is the document you

1 31

1 referred to at 47 in your statement. On 5 October 2010,  
2 Mr Rowe is emailing back to Mr de Carteret:  
3 "Hi Jez, I have caught up with Mark Raines ref this  
4 issue."  
5 A. Yes.  
6 Q. Which is the Bognor salaries issue:  
7 "We will not be taking action as the store is not  
8 showing signs of financial difficulty and we believe  
9 that both partners are aware."  
10 A. Yes.  
11 Q. So you have obviously told Mr Rowe that you are not  
12 going to take any action on this matter?  
13 A. If you read a little bit further down, which is:  
14 "Riyaz and Sue are in the store in a few weeks and  
15 can subtly check."  
16 I think my view, at that time, would have been: we  
17 don't have enough information on this particular  
18 subject, and again it's one of those things where we  
19 don't need to do anything. It's not -- the store isn't  
20 in financial difficulty, there isn't an NHS compliance  
21 issue or anything like that behind it. So we needed to  
22 find out a little bit more, and Riyaz and Sue were going  
23 into the store and they could just check what was  
24 actually happening. That seemed to be, in my view,  
25 a reasonable approach at that time.

1 32

1 Q. Yes. You knew what had happened back in 2008 about  
2 this, didn't you?  
3 A. I did. I was aware of that.  
4 Q. And you knew who Godfrey was?  
5 A. Yes, yes.  
6 Q. You knew he was working there?  
7 A. Yes.  
8 Q. Did you have a discussion with Mr Rowe about the detail  
9 of this, at this time?  
10 A. I -- I don't believe so. I can't recollect where the  
11 conversation took place. I do a lot of telephone  
12 conversations, I meet with people. I, you know, get  
13 asked lots of questions every single day. This one  
14 doesn't stand out as being obvious to me.  
15 Q. If you go to X, tab 6, the second of the pages that's  
16 been disclosed from your daybook is said to be from  
17 a date range 16 December -- this is 2010 -- to  
18 1 February 2011?  
19 A. Yeah.  
20 Q. But I wonder whether that's right. We don't know the  
21 date of the page, do we? There is no date of the page.  
22 A. No.  
23 Q. As you rightly said to me -- we are on page 350 of X --  
24 A. Yes, I have that one.  
25 Q. As you rightly said, if it says "Giles -- 9-10 Feb",

133

1 doesn't mean that's the date when the note is made, that  
2 could be you are going to have a meeting with Giles --  
3 A. It could be, yeah.  
4 Q. -- on 9 or 10 February?  
5 A. Exactly.  
6 Q. Then something has been blacked out, it will be the name  
7 of some store or some person?  
8 A. It is, yes.  
9 Q. Then it says:  
10 "October IT disciplinary action."  
11 A. Where?  
12 Q. Next to the big chunk of black under "Giles".  
13 A. Yeah.  
14 Q. Do you see that?  
15 A. Yeah.  
16 Q. So does that not mean that there is going to be  
17 a October IT disciplinary and you have to action it?  
18 A. (Pause). I don't -- yeah, I don't know what that refers  
19 to.  
20 Q. No. Okay. Then, as I understand it, from this page  
21 being disclosed, the only relevance is about halfway  
22 down, is it, where it says "Mike" underlined?  
23 A. Yeah.  
24 Q. So that would be -- you are talking to Mike Rowe?  
25 A. No. From my interpretation of that note, I would be

134

1 speaking to Mike Ryan.  
2 Q. Mike Ryan?  
3 A. I think.  
4 Q. I only say that because back on page 349, the only other  
5 page you have disclosed at this stage; do you see that?  
6 A. Yeah.  
7 Q. Where it said "Mike" underlined, you said that was  
8 Mike Rowe?  
9 A. Yeah, but again if you look below, I have written  
10 "Michael Rowe", so that to my mind, to not confuse me,  
11 would be I am making -- I am having a conversation with  
12 Michael Ryan. It's about a retailer, he's maybe  
13 challenged me. That blacked-out bit is probably  
14 a store, a store name. He's asked me about a retailer  
15 and asked me to check the status of it, and that would  
16 mean check with one of my team: what are we actually  
17 doing?  
18 Q. Right, it has nothing to do with this case, though?  
19 A. No, nothing to do with this case.  
20 Q. Okay.  
21 A. He will have mentioned something around Godfrey, his  
22 salary and I would have made a note "Michael, we need to  
23 investigate it". Or it may be find out what's  
24 happening, I don't know.  
25 Q. You don't know?

135

1 A. I don't know.  
2 Q. All right. So back to the E3 document, then. At this  
3 time you say, 734, you would have had a conversation,  
4 but you don't have a clear recollection of it; that's  
5 paragraph 47 of your witness statement?  
6 A. That's correct.  
7 Q. 735, you write an email about Sunday opening?  
8 A. Yes.  
9 Q. And now you are focusing, it's not 31 stores now, there  
10 are just three stores refusing to open?  
11 A. No, that isn't correct.  
12 Q. Oh, sorry.  
13 A. No. This is, if you read the email below --  
14 Q. Yes.  
15 A. -- this is David Clark asking me that he has two stores  
16 which he needs to --  
17 Q. Take on?  
18 A. -- take on, exactly. And so my reply to him is saying,  
19 "I know of three stores".  
20 Q. Okay.  
21 A. Which -- you know, "Could you go and have a conversation  
22 with these partners?"  
23 Q. Yes.  
24 A. They are what I would refer to as high profile; by that  
25 I mean they are probably large stores.

136

1 Q. Yes.  
 2 A. They have the potential to open on Sundays.  
 3 Q. Yes.  
 4 A. And obviously there are some challenging partners, in  
 5 the sense that those partners have so far -- remember we  
 6 had been trying to get some of these stores open since  
 7 about 2007 for Sunday trading, so there is a bit of  
 8 history with these conversations, and they would require  
 9 a conversation between David and the partners to try and  
 10 convince them that it is in the customers' best  
 11 interests and the business's best interests for them to  
 12 be open on a Sunday.  
 13 Q. The issue about the personality and history of the  
 14 partners is not just about Sunday opening, is it,  
 15 certainly in relation to Dr Poulsen? You are referring  
 16 to the history and the personality of these partners?  
 17 A. We have had conversations with these people before and  
 18 they have been challenging.  
 19 Q. Yes, not just about Sunday trading?  
 20 A. I think I am referring to this particular issue.  
 21 Q. All right, okay. So then we are up to 2011, thankfully.  
 22 Page 736.  
 23 A. Sorry, can you say that again?  
 24 Q. Page 736, the next page.  
 25 A. Thank you.

137

1 Q. 5 January, the whole team, Rowe, Hart, Riyaz Rajan,  
 2 yourself, Glass, are alerted by Mr Ryan to the fact that  
 3 Dr Poulsen has mentioned that Barry Weller may want to  
 4 sell his shares; do you remember this?  
 5 A. Yes, I do remember this.  
 6 Q. As he puts it, in the penultimate paragraph of his  
 7 email:  
 8 "I think Helle will try to contact either you  
 9 [Mr Rowe that is] or Riyaz, I think the danger is  
 10 she/her husband will try to manipulate this situation.  
 11 I probably don't need to tell you that? So it's  
 12 important we take early control of this situation."  
 13 Do you see that?  
 14 A. Yes.  
 15 Q. That's Mr Ryan sending that to Mr Rowe, copied to you  
 16 obviously?  
 17 A. (Witness nods).  
 18 Q. Did you understand why, "I probably don't need to tell  
 19 you that?" Was everybody in this little group aware of  
 20 Dr Poulsen and Mr Vos?  
 21 A. In terms of the fact that they could be a challenge,  
 22 yes.  
 23 Q. In terms of the fact that as you put it -- sorry, not  
 24 you, Mr Ryan puts it, "... they will try to manipulate  
 25 the situation to their benefit"?

138

1 A. I think it is extremely unusual -- and I can't comment  
 2 because I don't take these phone calls -- but from my  
 3 understanding it's extremely unusual for a fellow  
 4 partner to contact business transfer services to  
 5 actually tell Michael Ryan that their fellow partner is  
 6 selling their shares.  
 7 Q. No, I am not asking you about that, I'm --  
 8 A. So, no -- well, I thought -- I am trying to explain why  
 9 I think Michael Ryan is saying that she's trying to take  
 10 control of the situation. I think that's what is behind  
 11 his comment.  
 12 Q. And the comment, "I probably don't need to tell you  
 13 that?" In relation to "... she/her husband will try to  
 14 manipulate this situation (I probably don't need to tell  
 15 you that?)"  
 16 Do you not agree with me that that appears to be  
 17 an indication that the parties to this email have a view  
 18 about Helle Poulsen and Mr Vos?  
 19 A. I don't particularly read it that way.  
 20 Q. Don't you? How do you read it, then?  
 21 A. What Michael Ryan is doing is pointing out that there  
 22 may be a danger that if we don't have good communication  
 23 between us, they will basically try to take control of  
 24 this situation.  
 25 Q. So you don't think it's personal to her and her husband,

139

1 the comment?  
 2 A. (Pause). Not particularly.  
 3 Q. Okay. Your response is at 737, very short and sweet:  
 4 "Thanks, Mike. Exactly right in your assessment.  
 5 Please ensure there is good consistent communication on  
 6 this one."  
 7 A. Exactly.  
 8 Q. Exactly. Now, good consistent communication,  
 9 documented, you know, emails, on the record?  
 10 A. When I -- when I write something like that, it means:  
 11 beware, we need to do the right thing. Beware, we need  
 12 to do the right thing. Make sure we get the  
 13 communication between all of us right. Not because  
 14 there is a vendetta, not because there is a conspiracy,  
 15 it's basically to make sure -- because these partners  
 16 will challenge if we get it wrong. That was my "Please  
 17 ensure there is good consistent communication on this  
 18 one". Let's tell each other what we are doing so that  
 19 we get it right. Not --  
 20 Q. I suggest what it actually means is what it says. You  
 21 are saying that behind the scenes you need to  
 22 communicate well with each other?  
 23 A. Absolutely not. You couldn't be further from the truth.  
 24 That, you know, I am not --  
 25 Q. Meanwhile the direct --

140

1 A. That is not what I do. It's not what we do. It most  
2 definitely -- it isn't the way we behave.  
3 Q. No, you are a full, supportive and assisting  
4 organisation whose only interests are the best interests  
5 of your JV partners?  
6 A. I have built a career on this, right? I have built my  
7 career on this by being honourable, by being  
8 professional and making sure I do the right thing. I am  
9 not going to jeopardise this for the sake of a share  
10 transfer.  
11 Q. Nothing is jeopardised if you keep it off the record, is  
12 it, Mr Raines? As long as you communicate orally,  
13 no-one is ever going to find out, are they?  
14 Anyway, we see your instructions from your boss  
15 immediately thereafter at 739, email from Derek to you,  
16 just the two of you on this one. No consistent  
17 communication with Mike Rowe, Mr Ryan, Mrs Hart, the  
18 communications department. Nobody else gets copied in  
19 here on this particular email, this is just you and him,  
20 isn't it?  
21 A. It is.  
22 Q. "Hi Mark, following the conversation with Ryan  
23 discovered Helle Poulsen partner wants to leave which is  
24 in itself okay. I believe Helle is trying to get  
25 involved with the next appointment. This will not be

1 4 1

1 allowed. We will make the appointment of a retailer  
2 JVP. The current JVP borrowed the money from Helle, we  
3 believe."  
4 That's wrong, isn't it, by-the-by, Mr Raines, isn't  
5 it?  
6 A. I wasn't aware of that anyway.  
7 Q. "Finally I understand that her husband 'Godfrey' is now  
8 on the payroll at an inflated salary and does not  
9 attend!"  
10 Do you see that?  
11 A. Yes, I do.  
12 Q. Did any of that come from you?  
13 A. Absolutely not.  
14 Q. Absolutely not, no. Or from your number two, Mr Rowe?  
15 A. No.  
16 Q. No. Anyway, it was obviously Mr Dyson's view that  
17 Godfrey was on an inflated salary; you would agree with  
18 that? That's Mr Dyson's view of it at the time?  
19 A. Yeah, yeah.  
20 Q. And that Mr Vos didn't attend for work?  
21 A. Yes.  
22 Q. That was his view of it at the time; yes?  
23 A. Yes.  
24 Q. Either it was his view, his genuinely held view, or he  
25 was putting it forward as a possible issue to raise?

1 4 2

1 A. Yes.  
2 Q. Okay.  
3 A. Yeah.  
4 Q. "If my memory is correct, we had to stop him submitting  
5 bills in the past for advice/training. See  
6 attachments."  
7 So it was at this point that you got the version of  
8 the document with Mr Dyson's manuscript on it at  
9 page 726 to 728. It was a three-page document which  
10 Mr Dyson had written on.  
11 A. Yes.  
12 Q. Do you remember getting that from Mr Dyson on  
13 10 January?  
14 A. I obviously did.  
15 Q. I am saying: do you remember it now?  
16 A. Not particularly.  
17 Q. It seems to be Mr Dyson's main concern is to do  
18 something with this. It's the document that he's  
19 emailed you, and he's written over it, and he's even  
20 done his own little analysis. Look, if you go over the  
21 page, he's underlined Mr Vos' salary, and then over the  
22 page again at 728 he has put:  
23 "Equals 70K plus a year [underlined] for 25 hours  
24 per week. Attendance added value? Who gave authority,  
25 et cetera, JVP" et cetera. He is raising some issues

1 4 3

1 here, isn't he --  
2 A. Yes.  
3 Q. -- with Dr Poulsen?  
4 A. Yeah.  
5 Q. He's raising these in an email to you about the concept  
6 of Mr Weller selling his shares, page 739?  
7 A. Yes.  
8 Q. So did you understand that he wished to use the Vos  
9 salary payments issue as part of the plan to deal with  
10 the Weller sales -- sale of shares issue?  
11 A. Absolutely not. Absolutely not.  
12 Q. So why did you understand he put them in the same email  
13 to you?  
14 A. I don't know. I can't comment why he would do that.  
15 Q. His instructions to you are this:  
16 "Can you get under the skin of this and develop  
17 a plan..."  
18 Develop a plan, do you see that?  
19 A. Yes.  
20 Q. "... to resolve."  
21 "Resolve" is a word he has used before?  
22 A. Yeah.  
23 Q. And then he says:  
24 "... and put her back in her box."  
25 Is that a phrase that, in your supportive, assisting

1 4 4

1 30 years in the business department, that you expect  
2 your boss to use about a JVP partner? Put her back in  
3 her box, is that how you talk of people?  
4 A. Not particularly.  
5 Q. Perhaps Mr Dyson is one of the people who got  
6 disciplined for inappropriate use of language in emails,  
7 did he?  
8 A. No.  
9 Q. Looking at it now, do you think it's appropriate to talk  
10 of one of your partners in this way, putting her back in  
11 her box?  
12 A. I think Mr Dyson is trying to say that there is  
13 a concern that Dr Poulsen will be trying to steer this  
14 in a direction, and we need to remind her exactly what  
15 the process is, the BTS process, which is: we need to  
16 speak to Barry Weller to find out if he is selling his  
17 shares. If he isn't selling his shares, can he submit  
18 the thing, and make sure we end up with the right  
19 outcome for the business. I think --  
20 Q. He doesn't say any of that. He says:  
21 "Develop a plan to resolve and put her back in her  
22 box."  
23 That's what he actually says.  
24 A. Yeah. Maybe, having worked with Mr Dyson for probably  
25 12, 14 years, that is what I would interpret from that.

145

1 Q. Or maybe you know what he really meant?  
2 A. He absolutely doesn't mean what you are implying he  
3 means.  
4 Q. Right. Anyway, your response is at 741:  
5 "Hi, I am aware of this."  
6 Do you see it?  
7 A. Yes.  
8 Q. "It's on my agenda."  
9 A. Yeah.  
10 Q. "Agree that the objective is to exit."  
11 A. Yes.  
12 Q. I think it's "exit", that's just a typo?  
13 A. It is, yes.  
14 Q. "The objective is to exit if poss."  
15 A. Yes, yes.  
16 Q. I had not read the last few words of 739. It's:  
17 "Put her back in her box or an exit plan."  
18 A. Yes.  
19 Q. So she has to either agree with your way or she is out,  
20 exit?  
21 A. No, no. What this refers to is the fact that  
22 Helle Poulsen has stated that she intends to, if we  
23 don't go with her proposal, sell her shares.  
24 Q. Where does she say that?  
25 A. Well, that was the conversation, because if you check,

146

1 I had a conversation with Michael Ryan --  
2 Q. But Mr Ryan doesn't say that. At page 736, the email  
3 from Mr Ryan doesn't say that "If we don't go with her  
4 proposal, she is going to..."  
5 A. No, I had a --  
6 Q. He wasn't threatening anything. He actually uses the  
7 word in a non-threatening way?  
8 A. Helle's justification for allowing Barry to sell the  
9 shares was:  
10 "If Barry had to sell to a retailer then she would  
11 want to sell her shares as well."  
12 In the email from Michael Ryan to myself, or I was  
13 copied in on it on 5 January.  
14 Q. That's right. In a non-threatening way, she is not  
15 threatening anything, is she, according to Mr Ryan?  
16 A. Well ...  
17 Q. That's what it says, Mr Raines.  
18 A. In a non-threatening way? Okay, yes. Okay.  
19 Q. Anyway, your objective, as you rightly say, 741, is the  
20 exit alternative, get her out. You would rather she and  
21 Barry were out, rather than putting her back in her box  
22 and getting her to agree to your way?  
23 A. Right, I --  
24 Q. Is that a fair summary of it?  
25 A. At that stage, my thoughts in relation to this matter

147

1 would be: if Barry is selling his shares -- if, and  
2 there is a big if because we haven't heard from him --  
3 if Barry is selling her(sic) shares, and they want  
4 an optom in the business, then that isn't the best  
5 structure for us. Therefore, as a consequence of that,  
6 Helle will sell her shares and if she decides to sell  
7 her shares, hey, that's fine. That's absolutely fine.  
8 Would I take any proactive action to make that happen?  
9 Absolutely not. Absolutely not.  
10 Q. Why do you say then that that is your objective, the  
11 object to exit --  
12 A. Because my objective is getting the right partnership in  
13 that business, and the right partnership in my  
14 experience is always an optom and a retailer.  
15 Q. You knew, didn't you, that -- you were agreeing with  
16 Mr Dyson. His objective and now your objective, you  
17 agree, is to get rid of her?  
18 A. Absolutely not.  
19 Q. All right. You are going to see what actually is  
20 happening before you decide on the best way to achieve  
21 the objective; that's what you say, anyway, in the third  
22 line of your email?  
23 A. Yeah, that --  
24 Q. He's told you to develop a plan, page 739. You have  
25 said "Let's wait and see before deciding the best way to

148

1 achieve the objective of an exit."  
 2 A. That is about Michael Ryan speaking to these people,  
 3 partners, around what their agenda is, what they are  
 4 trying to do. At the moment, we have a conversation  
 5 between Michael Ryan and Helle Poulsen, which is not --  
 6 it's relating to Barry Weller. We have not heard from  
 7 Barry Weller. We don't know what he wants to do.  
 8 Q. So at this stage --  
 9 A. We just --  
 10 Q. -- according to you, the plan is: let's just wait and  
 11 see what happens?  
 12 A. No. It's for Mike Rowe to try and speak to the people,  
 13 the partners, to establish what is their agenda, what  
 14 are they trying to do.  
 15 Q. Exactly, so we won't take any positive steps towards  
 16 a plan, an objective, until Mike Rowe finds out what is  
 17 actually happening?  
 18 A. Yes.  
 19 Q. So your version of the plan at this stage is simply not  
 20 to proactively do anything, but we see that Mr Dyson --  
 21 when you email Mr Dyson at 748 -- do you see?  
 22 A. Yeah.  
 23 Q. You forward on Mike Rowe's report at the bottom of 748?  
 24 A. Yeah.  
 25 Q. Which is just that he's received the message, he hasn't

149

1 actually managed to contact Barry. He has been trying  
 2 to contact Barry, do you see?  
 3 A. Yeah, yeah, yeah, yeah.  
 4 Q. You say to Mr Dyson:  
 5 "For your information, update. Can you look out for  
 6 the letter and we can decide on the action to take once  
 7 aware of the content."  
 8 A. Yes.  
 9 Q. So we are going to wait, before we do anything, for the  
 10 letter?  
 11 A. Yeah.  
 12 Q. That's the letter from Barry Weller?  
 13 A. Yes.  
 14 Q. Okay.  
 15 A. Well --  
 16 Q. I think that's --  
 17 A. -- saying there is a letter from Barry Weller and  
 18 Dr Helle was on the way.  
 19 Q. I think that is the letter we see at 752 from  
 20 Dr Helle Poulsen and Barry Weller?  
 21 A. Yeah.  
 22 Q. 31 January?  
 23 A. Yes.  
 24 Q. So on this version of events, really nothing is going on  
 25 behind the scenes in January, you are just waiting for

150

1 the letter.  
 2 A. Yes.  
 3 Q. So if we heard from Mr Dyson that various things were  
 4 going on behind the scenes, that was done without your  
 5 knowledge?  
 6 A. At this moment in time, I don't believe I knew what was  
 7 happening --  
 8 Q. Okay.  
 9 A. -- behind the scenes, as you describe it.  
 10 Q. So this is the letter from -- sorry, there are two  
 11 letters, I should have told you. There are two letters,  
 12 752 and 754. The letter I think you were expecting is  
 13 the one at 754?  
 14 A. Yeah.  
 15 Q. That's the sort of open letter explaining about  
 16 Mr Yogarathnam to buy the shares, and, "Can we have two  
 17 ophthalmic partners, please", et cetera. The one at 752  
 18 was the sort of shot across the bows of Mr Rowe to say  
 19 "You shouldn't be dealing with this, we've got history"?  
 20 A. Yeah.  
 21 Q. You were presumably copied in on these two letters?  
 22 A. Yeah. The -- if you notice the address that they were  
 23 sent to, which was the Skelmersdale address, I became  
 24 aware of those I think because my PA opened the letter.  
 25 Q. Okay.

151

1 A. I seem to remember that in my mind.  
 2 Q. So you are the one who actually read these first?  
 3 A. Yeah, I will have done.  
 4 Q. I am just looking in your witness statement. I think we  
 5 have reached paragraph 51, where Mr Rowe provided his  
 6 update of 13 January; that's the one I just took you to.  
 7 A. Yeah.  
 8 Q. Paragraph 52, we are then on to 20 March. You don't  
 9 actually mention being involved in this period at all.  
 10 Were you involved?  
 11 A. I seem to recall, and it's just coming back to me, that  
 12 I was aware that this letter arrived in Skelmersdale.  
 13 Q. Right. Anyway, so you would have then actioned it,  
 14 would you, with Mr Dyson and Mr Rowe?  
 15 A. I can't recall what I did at that moment in time.  
 16 Q. No, okay. 756, some time in February somebody starts  
 17 drafting a suspension letter, and: Let's make  
 18 allegations of serious financial irregularities against  
 19 Dr Poulsen.  
 20 Were you aware of that at the time?  
 21 A. Can you show me the document?  
 22 Q. 756, the next document.  
 23 A. Sorry, 756.  
 24 Q. It's signed by Alison Girollet at 757.  
 25 A. There is no date on it.

152

1 Q. No, just February 2011. Allegations of serious  
2 financial irregularities:  
3 "You are formally suspended with immediate effect.  
4 We are sending in Mr McAlindon."  
5 Do you see that?  
6 A. Yeah.  
7 Q. Were you aware of that being part of the plan in  
8 February?  
9 A. You refer to a plan. Which plan are you referring to?  
10 Q. The plan to deal with Dr Poulsen.  
11 A. As far as my understanding at that moment in time --  
12 Q. Yes?  
13 A. -- we had a share sale issue.  
14 Q. So nothing else?  
15 A. That was -- there was no plan.  
16 Q. You must have been surprised to see this, then?  
17 A. I don't remember, recall seeing this.  
18 Q. No. Were you not kept in the loop about the generation  
19 of this, then?  
20 A. If I don't recall seeing it, I wasn't kept in the loop.  
21 Q. You might have been told "Look, don't worry, Mark, we  
22 are dealing with it down here in Guernsey"?  
23 A. I became -- no, I became aware that there was an issue  
24 some time in February.  
25 Q. I am looking at your witness statement. Where do you

153

1 say that? 51: "Mr Rowe provided an update on  
2 30 January. Said he had tried to contact Mr Weller.  
3 I understood from the email it was Mr Rowe's initial  
4 view SOG should not deviate from the usual position."  
5 52: "My view of the recommendation set out in Mr  
6 Rowe's email of 20 March was that the share sale,"  
7 et cetera.  
8 53: "Mr Dyson and I used to have a catch-up  
9 briefing..."  
10 A. Yeah.  
11 Q. "... typically each week by phone or in person."  
12 A. Yeah.  
13 Q. Could that be it?  
14 A. That was it, because it says further on:  
15 "Mr Dyson told me in a catch-up briefing in early  
16 February 2011 that he was concerned over payments to  
17 Mr Vos and asked Mr McAlindon director of loss  
18 prevention to look into it."  
19 Q. Did you make any notes of that catch-up meeting with  
20 Derek in your daybook? Because you have not disclosed  
21 any page for that period?  
22 A. No. If I haven't disclosed it, it's because I didn't  
23 make a note.  
24 Q. So he had asked Mr McAlindon to look into the matter, so  
25 you had understood he had asked Mr McAlindon to look

154

1 into it when? When had he asked him?  
2 A. I can't recall asking that specific question.  
3 Q. Okay, fine. I am over the page now in your witness  
4 statement:  
5 "I was kept informed by Mr Dyson, the loss  
6 prevention audit into the store through which I became  
7 aware that suspicious payments had been made not only to  
8 Mr Vos, also to Mr Ferguson."  
9 A. Yes.  
10 Q. You were aware about the Vos issue before, surely?  
11 A. I was aware that there was a potential issue. I didn't  
12 know what the issue was.  
13 Q. But you were aware that Mr Dyson considered the issue to  
14 be because he had sent you that three-page  
15 attachment with his --  
16 A. He had a concern over the salary levels.  
17 Q. He didn't have a concern, did he? He was setting out  
18 various points.  
19 A. Okay.  
20 Q. So then back in E3, the next email that I can find with  
21 you on it is, I think -- actually, are you on it? Oh,  
22 yes, that's right. 760-02. Do you have that?  
23 A. Yes.  
24 Q. Sorry, 760-2.  
25 A. Yes.

155

1 Q. This is a recently disclosed document, isn't it?  
2 A. Ah, right, yeah.  
3 Q. We don't have a number on it, but it's just very  
4 recently been disclosed. Apparently it's to you from  
5 Mr Dyson on 8 February?  
6 A. Yeah.  
7 Q. "Subject: Mark Raines' 8 February meeting."  
8 A. Yes.  
9 Q. Does that mean that you had a meeting with Mr Dyson on  
10 that day?  
11 A. I don't -- it may do, it may not. It may -- sometimes,  
12 because of the travel distances -- well, quite often  
13 because of travel distances he would refer to one-to-one  
14 meetings, but there would be a conference call. Sorry,  
15 not a conference call, a telephone call.  
16 Q. Okay.  
17 A. So it may be a physical meeting. It may have been more  
18 likely a telephone conversation.  
19 Q. This is the agenda for the meeting?  
20 A. Yes.  
21 Q. So he is telling you what you are going to be  
22 discussing?  
23 A. Yes.  
24 Q. What we don't see are any notes of the meeting, none  
25 have been disclosed as far as I am aware. This is

156



1 what's been disclosed, I think, 760-2.  
2 A. Yeah.  
3 Q. Is that right?  
4 A. I believe so.  
5 Q. Did you take notes of the meeting?  
6 A. I may have done, but --  
7 Q. Do you know where they would be?  
8 A. Well, they would be in my daybook if I had have done or  
9 a scrap of paper that I would use.  
10 Q. You haven't given us the page for anything between  
11 1 February and 9 March. You have only given us the page  
12 that you say is 16 December 2010.  
13 A. In which case I didn't make any notes of that  
14 conversation.  
15 Q. Would it be possible for me to see the page of your  
16 daybook, just the one page of your daybook for that  
17 month? Possibly two pages it might run onto, mightn't  
18 it, so that I could check whether there was a note?  
19 A. I don't have my daybook.  
20 Q. Fortunately we do have your daybook, because I was just  
21 shown this page.  
22 MR POTTS: My Lord, subject to checking for privilege, which  
23 would be an obstacle, on the same basis I am sure there  
24 wouldn't be a problem on the confidentiality.  
25 MR STUART: My Lord, I don't think there will be an issue of  
157

1 privilege back in February 2011.  
2 MR POTTS: I have no idea, is the answer, but obviously it  
3 just needs to be checked.  
4 MR STUART: My Lord, I wonder if that would be  
5 an appropriate moment, anyway? We could use that five  
6 minutes for me to look at the page.  
7 MR JUSTICE HILDYARD: Yes. How are we doing?  
8 MR STUART: My Lord, I have only got about ten more pages  
9 that I can take him to.  
10 MR JUSTICE HILDYARD: Okay. We will resume at twenty-five  
11 past. If you need longer, let me know.  
12 (3.15 pm)  
13 (A short break)  
14 (3.25 pm)  
15 (Proceedings delayed)  
16 (3.35 pm)  
17 MR POTTS: My Lord, thank you for the opportunity.  
18 MR STUART: So, Mr Raines, you had a meeting on 8 February,  
19 either by telephone or in person, with Mr Dyson, and at  
20 that meeting, one of the items on the agenda was  
21 "Bognor Regis, next steps".  
22 A. Yes.  
23 Q. We have no notes of the meeting. You have no notes of  
24 the meeting?  
25 A. No.

1 Q. Mr Dyson has no notes of the meeting, therefore we have  
2 no notes of the meeting. Would it be just the two of  
3 you present, on the phone or in person?  
4 A. Yes, usually.  
5 Q. Do you know, can you recall what was the decision made  
6 at the meeting regarding Bognor Regis? I don't want to  
7 know about anything else, just Bognor Regis?  
8 A. No, I cannot recall that specific meeting.  
9 Q. Perhaps the decision was "Let's get Mel McAlindon in";  
10 is that possible?  
11 A. No.  
12 Q. It seems unlikely, on your version of events, but it's  
13 possible, I suppose, that --  
14 A. I cannot recall that conversation taking place.  
15 Q. No. At 761 in bundle E3, what seems to happen on the  
16 afternoon of 8 February, there is a very short email to  
17 Mel from Derek:  
18 "We have a strong suspicion that the husband of  
19 Helle Poulsen, William Godfrey Vos, is on the payroll.  
20 Allegedly he is on a very big salary but nobody is sure  
21 of what he does. Can you do the desktop research and  
22 confirm the size of the problem, if we have one."  
23 Do you recall perhaps that was the plan now coming  
24 together?  
25 A. As I said, there was no -- no plan.  
159

1 Q. No plan, okay.  
2 A. I was aware that there was a problem, and I was aware  
3 that loss prevention had been asked to investigate or do  
4 desktop research.  
5 Q. The next involvement which might involve you might be  
6 772. There is an email to Michael Ryan from Derek on  
7 16 February. You had been copied in on the email from  
8 Michael Ryan, do you see it between the two hole  
9 punches, 16 February, an email from Michael Ryan to  
10 Derek, you and somebody called Meryl Inglefield?  
11 A. Yes.  
12 Q. I am not sure who she is.  
13 A. She is from the legal department.  
14 Q. Legal, okay. It's forwarding on Barry Weller's email  
15 that you find at 773. But it having been sent to you  
16 three at 772, we see Derek Dyson emailing Mr Ryan  
17 saying:  
18 "Mike, clearly they are playing a game and it's one  
19 I am not going to engage in. We need to stick to the  
20 party line and our agreed process which no doubt you  
21 will already be planning."  
22 So what process was being planned by SOG at this  
23 stage?  
24 A. This refers simply to the BTS process, which is the  
25 business transfer of shares process, which -- we have  
160

1 a process which Michael Ryan is a stickler for  
 2 following, and making sure that we, you know, inform  
 3 professional recruitment that we may have a partner  
 4 opportunity for a retailer, and that is what the process  
 5 is. It's the same process that we have had in the  
 6 business for a number of years.  
 7 Q. Then at page 776, you are copied in on an email about  
 8 a draft letter that's coming out from Mr Rowe, page 778?  
 9 A. Yeah.  
 10 Q. Mr Dyson makes some amends, page 776?  
 11 A. Yeah.  
 12 Q. As far as I can see, there is no mention of you making  
 13 any amends. Did you have any personal input at this  
 14 point?  
 15 A. No, none at all.  
 16 Q. Then I can't find you mentioned anywhere after that in  
 17 the bundle until we get -- we can put away E3  
 18 altogether, and we get to E4. Perhaps we should pick  
 19 up -- 865 is the first I see mention of you. I don't  
 20 know whether that's fair. 865.  
 21 A. Okay.  
 22 Q. There is an email to you from Mr Rowe?  
 23 A. Yeah.  
 24 Q. He's had his meeting?  
 25 A. Yeah.

161

1 Q. With them, the store directors?  
 2 A. Yeah.  
 3 Q. And he is sending you his feedback?  
 4 A. Yeah.  
 5 Q. Do you remember?  
 6 A. Yeah.  
 7 Q. 869, this is what then happens. So he's sent you --  
 8 A. Yeah.  
 9 Q. -- and Mike Ryan and copied Jack Ismail on his note at  
 10 866, 867 and 868?  
 11 A. Yeah.  
 12 Q. Do you remember?  
 13 A. Yeah.  
 14 Q. Then at 869 we see that Jack Ismail --  
 15 A. Yeah.  
 16 Q. -- his response to receiving Mr Rowe's note --  
 17 A. Yeah.  
 18 Q. -- is to write to you?  
 19 A. Yeah.  
 20 Q. And say:  
 21 "I need to start having a view on these  
 22 situations..."  
 23 A. Yeah.  
 24 Q. "... start to share my views with you, see if I am on  
 25 the right track. In this case, I would approve."

162

1 A. Yeah.  
 2 Q. "... risk to Bognor. Barry is not going much in the  
 3 business anyway. Suggest we pursue Helle's resignation  
 4 and seek a retail partner to replace her if there are  
 5 concerns."  
 6 Do you see that?  
 7 A. Yeah.  
 8 Q. He gives his thought process, "I would approve, Jack."  
 9 A. Yeah.  
 10 Q. Your response is rather curter --  
 11 A. Yes.  
 12 Q. -- if that's a proper word. It is certainly shorter.  
 13 You just say:  
 14 "Hi, we need to talk."  
 15 A. Yeah.  
 16 Q. That would be talk, not by email?  
 17 A. Yes.  
 18 Q. That would be: I need to speak to you about what you are  
 19 putting in emails.  
 20 A. Yes, most definitely. Most definitely.  
 21 Q. Because Mr Ismail's email really isn't very helpful to  
 22 you, is it?  
 23 A. In the context -- in answer to the question, it is  
 24 actually really helpful.  
 25 If I can explain. Jack Ismail is my successor.

163

1 I will be leaving the business at some stage, and they  
 2 have been recruiting my successor for the past couple of  
 3 years. Jack was identified as the person who was going  
 4 to replace me. He started in December 2010.  
 5 Jack is one of these really lively guys, he wants to  
 6 do everything and basically we have tried to introduce  
 7 people into the business and it's been really difficult,  
 8 because it's such a complex business. To understand  
 9 retailing is one thing, which is what Jack's background  
 10 is, but to actually understand the partnership is really  
 11 really complex, because the partnership has a number of  
 12 different dynamics to it. Unless you know what those  
 13 dynamics are, it's really difficult to get your head  
 14 round it and to be effective, and we need Jack to be  
 15 effective.  
 16 So he had quite a big induction programme, which was  
 17 three months. He went live the first -- at the back of  
 18 December/beginning of January. As he says in his  
 19 things, which is, "I need to start having a view on  
 20 these situations". I had told him to not have a view on  
 21 these situations because the complex -- the BTS bit is  
 22 probably the most complex bit of our business in terms  
 23 of making sure we get the right partners in the business  
 24 so that they can drive their businesses forward.  
 25 So my "Hi, we need to talk" was as a direct result

164

1 of me actually saying to Jack, "Do not get involved in  
 2 these situations, because you don't understand them.  
 3 It's more complex."  
 4 It had absolutely nothing to do with any plan or any  
 5 vendetta or anything like that. It's just me saying to  
 6 Jack, in the way that I could say to Jack, which is  
 7 "Let's have a chat about it, I'll talk you through it".  
 8 I used to meet with him in the evening, go for a meal  
 9 with him and walk through every single situation  
 10 relating to business transfer; why we would go for that  
 11 partnership structure, why we wouldn't go for it, why we  
 12 would go for a different type of thing, in a number of  
 13 different situations, and that is what happened in this  
 14 situation. I walked him through it.  
 15 Q. I suggest to you that the plan within those who were in  
 16 the know was not to put things into writing and to try  
 17 to keep the record of what was going on behind the  
 18 scenes as minimal as possible?  
 19 A. With the greatest of respect, I know what I was saying,  
 20 and I know what I intended from that particular email.  
 21 Q. What about your team, then? The next document, 875,  
 22 Mr Rowe and Mr Rajan. 876, just so you can see the  
 23 chain. Mr Rajan is emailing Mr Rowe some payslips about  
 24 Bognor, so obviously this whole payslip financial  
 25 irregularities issue is being run in parallel with your

165

1 correspondence relating to optom directors and retail  
 2 directors and everything else.  
 3 Do you see at the bottom of 875 Mr Rowe emails  
 4 Mr Rajan:  
 5 "This is something we will be leaving to Mel."  
 6 A. Yeah.  
 7 Q. "However, you cannot talk to anyone about this. Mike".  
 8 And the answer from Mr Rajan, "Of course.  
 9 I understand!"  
 10 It looks like people trying to cover things up,  
 11 doesn't it?  
 12 A. There is absolutely no conspiracy, no covering up,  
 13 nothing at all.  
 14 Q. No, that's your case. This does not -- you are saying  
 15 this is not evidence of people within your department  
 16 trying to cover things up?  
 17 A. No. This relates to an ongoing investigation --  
 18 Q. Yes?  
 19 A. -- in Bognor Regis into financial irregularities.  
 20 Q. It's not an --  
 21 A. -- that Mike Rowe would have been aware of.  
 22 Q. It's not an investigation which at this stage was being  
 23 put to your partners who you were trying to support?  
 24 A. I think at this stage it was probably still in that  
 25 desktop research --

166

1 Q. It was taking an awfully long time. You knew about it  
 2 on 5 January or 10 January, according to Mr Dyson. You  
 3 have had your meeting in February, 8 February. We are  
 4 now into 23 March.  
 5 A. All I can tell you is that sometimes these things take  
 6 longer. You know, I didn't have any direct contact with  
 7 how the investigation was going.  
 8 Q. Right. Mr Rowe seems to be aware.  
 9 A. I don't know if he is from there.  
 10 Q. I can ask him in a minute. So you are totally unaware  
 11 of it at that stage, are you?  
 12 A. Totally unaware of what?  
 13 Q. Of what's going on in the investigation side of it.  
 14 A. I know what is happening in -- I know the investigation  
 15 has started --  
 16 Q. Yes.  
 17 A. -- right? And I know there are other investigations  
 18 going on because in my meeting with Mr Dyson on  
 19 8 February, he raised a concern around Uckfield with me.  
 20 Q. So then I think we get to 881, that's the next email  
 21 with you. We are into April, do you see?  
 22 A. Yeah.  
 23 Q. Now 883, 18 April, the same day?  
 24 A. Yeah.  
 25 Q. Mike Ryan is saying to you:

167

1 "Tell me again why Mel is not paying them a visit?"  
 2 A. Yeah.  
 3 Q. Your answer:  
 4 "No cover when they are suspended."  
 5 A. Yes.  
 6 Q. So you seem well aware of what's going on here?  
 7 A. No, I wasn't aware, well aware of what was going on.  
 8 I knew there was investigation. I knew that it was  
 9 serious, and I knew that there would be a likelihood,  
 10 once the investigation was completed, that the partners  
 11 would be suspended given the seriousness of the  
 12 allegations that had been made.  
 13 Q. What was the seriousness of the allegations at this  
 14 point, that went beyond the allegations that in  
 15 October 2010 you had said, "No action to be taken"?  
 16 What "knew" did you know by April 2011?  
 17 A. I knew about the handyman.  
 18 Q. No.  
 19 A. Yes.  
 20 Q. No. When did you know about the handyman?  
 21 A. Mr Dyson would have told me about the handyman.  
 22 Q. When?  
 23 A. I don't know when.  
 24 Q. This is very important, you see, Mr Raines, because your  
 25 sequence of events is going to fall apart now. When do

168

1 you say you became aware of the handyman issue, because  
 2 that's the only issue beyond the Vos salaries point,  
 3 which you knew about back in October 2010, the only  
 4 additional point is Mr Ferguson?  
 5 A. Okay. I --  
 6 Q. So, when did Mr Dyson tell you about the Ferguson issue?  
 7 A. I cannot remember the exact date that he told me, but  
 8 I knew that there was some serious issues within the  
 9 store.  
 10 Q. Let's have a look your witness statement to see whether  
 11 that helps us.  
 12 A. Yes.  
 13 Q. I think it's the top of page 148 where you first mention  
 14 Mr Dyson. You say:  
 15 "I was kept informed by Mr Dyson of the loss  
 16 prevention department's audit into the store..."  
 17 A. Yeah.  
 18 Q. "... through which I became aware that it appeared that  
 19 suspicious payments had been made not only to Mr Vos but  
 20 also to a handyman, John Ferguson."  
 21 A. Yeah.  
 22 Q. Does that help you in any way to remember when you say  
 23 you became aware of these things?  
 24 A. I don't recollect the exact date that I became aware of  
 25 it.

169

1 Q. When you came to chair the board meeting of the  
 2 Bognor Regis store -- just keep E4 open, we will come  
 3 back to it, but we had better deal with this now.  
 4 I think it's 961 in this bundle.  
 5 A. Yeah.  
 6 Q. 15 June 2011.  
 7 A. Yeah.  
 8 Q. If you go to page 957, a letter is sent out.  
 9 A. Yeah.  
 10 Q. If you go to page 960, we see this is the minutes of  
 11 a board meeting on 15 June?  
 12 A. Yes, yes.  
 13 Q. You are "MR" for these purposes?  
 14 A. That is correct.  
 15 Q. Not Mr Rowe. So 961, under agenda item 5, do you see  
 16 that?  
 17 A. Yeah.  
 18 Q. "MR...", so this is what you said?  
 19 A. Yeah.  
 20 Q. "As part of the Specsavers Group's requirements where  
 21 shares in a store are being actively marketed..."  
 22 Do you see that bit?  
 23 A. Yes.  
 24 Q. "... via SOG's business transfer department, as they are  
 25 by BW in the Bognor Regis business at this time..."

170

1 A. Yes.  
 2 Q. "... SOG's loss prevention department remotely audit  
 3 such store to demonstrate due diligence."  
 4 A. Yes.  
 5 Q. "Further, this is also done to help ensure that any  
 6 prospective purchaser when making a decision are aware  
 7 of any liabilities."  
 8 A. Yeah.  
 9 Q. "Given that shares are being actively marketed in Bognor  
 10 at this time by BW, SOG's loss prevention department  
 11 therefore undertook in May 2011 a preliminary review of  
 12 the store..."  
 13 A. Yeah.  
 14 Q. "... and in doing so came across some financial  
 15 transactions which they wished to discuss."  
 16 A. Yes.  
 17 Q. Perhaps that's what you are referring to, is it?  
 18 A. Which aspect of it?  
 19 Q. You are saying that in May 2011 the loss prevention  
 20 department do a preliminary review because the store is  
 21 up for sale, as part of your standard procedures for due  
 22 diligence?  
 23 A. No, that isn't what actually happened.  
 24 Q. I know it's not, but this is what you are saying, isn't  
 25 it?

171

1 A. No. Well, can I explain what I am saying in this  
 2 paragraph?  
 3 Q. Yes.  
 4 A. Which is I know that the preliminary investigation  
 5 started in February. I don't know when that was  
 6 concluded. I believe then that loss prevention people  
 7 were unavailable because they had been pulled off to do  
 8 Uckfield. I believe they were next in a position to  
 9 pick up the Bognor investigation some time in May, you  
 10 know, and then this board meeting -- sorry, this -- yes,  
 11 this board meeting to discuss the -- or relating to  
 12 suspension was called.  
 13 Q. So are you saying that this paragraph is just wrong,  
 14 where it says:  
 15 "The LPD therefore undertook in May 2011  
 16 a preliminary review and in doing so came across some  
 17 financial transactions ..."?  
 18 A. I don't know where the preliminary review started and  
 19 finished.  
 20 Q. You are the man, aren't you, who is meant to be acting  
 21 upon all this?  
 22 A. Yes, I am.  
 23 Q. So you must be aware when it starts and when it  
 24 finishes?  
 25 A. It started in February.

172

1 Q. Why did you not say that in your statement to the board?  
2 Was it because you were trying to hide --  
3 A. No, absolutely not. Absolutely not.  
4 Q. -- the fact that this all goes back to Mr Dyson's  
5 instruction of 10 January?  
6 A. Absolutely not.  
7 Q. Why do it, then? Why make a misleading statement like  
8 that, saying (a) that this all arises just from due  
9 diligence, which it doesn't. It all arises from  
10 Mr Dyson on 10 January saying, "We need a plan and these  
11 are my points", and why say that it all starts with a  
12 May 2011 preliminary review when it doesn't, according  
13 to you now, it all starts in January or February?  
14 A. I don't know when the preliminary review was concluded.  
15 Q. Never mind about when it was concluded; when was it  
16 undertaken? You are saying now it wasn't in May 2011?  
17 A. Then plainly that is wrong.  
18 Q. This statement, this document?  
19 A. It should read:  
20 "Therefore started, undertook in February."  
21 Q. Okay:  
22 "And in doing so came across some financial  
23 transactions."  
24 A. Yes.  
25 Q. And the second of those is Mr Ferguson.

173

1 A. Yes.  
2 Q. So you say that you are notified of the Ferguson issue  
3 some time in the period after February?  
4 A. Yes.  
5 Q. But we don't have any documentary evidence of that?  
6 A. No.  
7 Q. Was it by telephone or in a face-to-face meeting with  
8 Mr Dyson?  
9 A. I cannot recollect. Most of our conversations were  
10 either a combination of telephone or face-to-face. If  
11 I was in Guernsey and Derek was in Guernsey, we would  
12 have a catch-up. But invariably he would be in lots of  
13 meetings. I would usually be in a meeting, not always  
14 in the same meeting. We had a number of telephone  
15 conversations, it's how we work together.  
16 Q. Anyway, 883. By 18 April you know they are going to get  
17 suspended, but you know that Mr McAlindon is not  
18 available to do it. So there has been an investigation,  
19 there has been a preliminary decision, there is going to  
20 be a suspension. It's just not convenient for you by  
21 April; is that right?  
22 A. I honestly don't know when the preliminary investigation  
23 finished. I don't know when it finished.  
24 Q. No, but your email, at 883, seems to show that by that  
25 stage at least you are aware that they are going to get

174

1 suspended?  
2 A. I knew that was a likely outcome of the investigation  
3 when they were in a position to finish it.  
4 Q. And the investigation -- they had not even been told  
5 that they are under investigation, have they?  
6 A. At this stage, no, they haven't.  
7 Q. And they haven't been told what the issues are?  
8 A. No.  
9 Q. And some of the issues have arisen in January, some have  
10 arisen in February; that's your case?  
11 A. Yeah.  
12 Q. And they are not told about them until Mr McAlindon  
13 first emails them at the end of May?  
14 A. Yes.  
15 Q. We can jump swiftly forward to the end of May, 905, to  
16 you, 10 May. So meanwhile, whilst they are being kept  
17 in the dark about this altogether, the partners --  
18 A. Excuse me a second while I just get to 905, did you say?  
19 Q. 905.  
20 A. Okay.  
21 Q. Do you see Mr Ryan has had a conversation with  
22 Dr Poulsen?  
23 A. Yeah.  
24 Q. That sort of conversation about selling shares and --  
25 A. Yeah, yeah, yeah.

175

1 Q. -- different options and options and retails and splits.  
2 A. Yes.  
3 Q. So that's all going on, as it were, in the open?  
4 A. Yes.  
5 Q. Meanwhile you say: By this time there has already been  
6 an investigation done, you have already reached  
7 a preliminary view that they are likely to be suspended,  
8 Mel is going to be sent in, and they are just not being  
9 told any of this?  
10 A. Yes.  
11 Q. At 907, Mr McAlindon then, 26 May, says, "Right, I am  
12 coming in". Did you have any input into that? You  
13 don't mention it in your witness statement?  
14 A. Not at all. Not at all.  
15 Q. Nothing at all?  
16 A. Nothing at all.  
17 Q. So your involvement is then the 15 June board meeting,  
18 which I just took you to.  
19 A. Yeah.  
20 Q. Why are you selected to be the new director of  
21 Bognor Regis Limited?  
22 A. Sorry, why?  
23 Q. Why are you selected, for these purposes, to be the  
24 director of Bognor Regis Visionplus Limited? You are  
25 representing the shareholder director SOG. Do you see

176

1 page 960?  
 2 A. 960, thank you.  
 3 Q. Why is it you? You personally, Mr Raines?  
 4 A. Because I have a good relationship with partners and  
 5 I am very methodical.  
 6 Q. Is it not because you are on the inside to Mr Dyson's  
 7 plan?  
 8 A. No, absolutely not. I -- it is part of my role --  
 9 Q. You are on the inside by this point, aren't you?  
 10 A. It is part of my role to do board meetings. It's  
 11 something that I do. I understand the joint venture  
 12 agreement, I understand how our business is structured,  
 13 you know, I have the experience to be able to do them.  
 14 We don't, you know -- board meetings are obviously  
 15 usually dealing with very serious issues. We don't let,  
 16 you know, the field team do them. It is usually --  
 17 well, usually it is sort of director, head of, level.  
 18 Q. Who makes the decision, anyway, to put you in?  
 19 A. Who makes the decision?  
 20 Q. Yes, is it just Mr Dyson who gets to choose who goes in  
 21 there?  
 22 A. It's probably a conversation between Mr Dyson and legal  
 23 I would imagine.  
 24 Q. Did you just get notified it was going to be you?  
 25 A. Yes.

177

1 Q. Now, when did you get notified? Where is the email or  
 2 letter to you saying, "Right, Dear Mr Raines, you are to  
 3 be appointed as the SOG director"?  
 4 A. I would have probably been contacted by our legal  
 5 department.  
 6 Q. Where do we see that?  
 7 A. I don't -- I don't know.  
 8 Q. Where were you briefed? Where do we see you being  
 9 briefed on what's to take place?  
 10 A. I don't think you can see that. That's with the  
 11 legal --  
 12 Q. No, I can't see anything in your --  
 13 A. -- that is with the legal department.  
 14 Q. Okay.  
 15 A. They will have a conversation with me, and explain what  
 16 the issue is, and they would provide advice and notes in  
 17 terms of running the board meeting.  
 18 Q. So it's all just about the board meeting?  
 19 A. Yes.  
 20 Q. Your role at a board meeting?  
 21 A. Yes.  
 22 Q. So did you have some notes, then, in your capacity as a  
 23 director of the company, there is nothing privileged  
 24 about those. Do you have some notes about the board  
 25 meeting?

178

1 A. I had advice and notes that would be provided by legal  
 2 for me.  
 3 Q. Do you have notes as to conducting the board meeting in  
 4 your capacity as director of the company?  
 5 A. When you say "notes", the notes that I took --  
 6 Q. No, you said notes.  
 7 MR POTTS: My Lord, I think the answer was "advice and notes  
 8 from legal". I think there may be an issue of  
 9 privilege, my Lord.  
 10 MR JUSTICE HILDYARD: That all the notes were provided by  
 11 legal, he had no notes, is that right?  
 12 A. It is. But on one of the -- my daybook entries, which  
 13 is in file X --  
 14 MR STUART: Yes, the fifth one, I think.  
 15 A. -- I do copy in the note --  
 16 Q. No. All we have from you is page 353 in X.  
 17 Just above the second holepunch it says:  
 18 "Bognor Regis 15-6/11."  
 19 Is that board Southampton Regis Business Centre?  
 20 A. Yeah.  
 21 Q. What's the next word under that?  
 22 A. It's, "Disappointment that Helle and Barry Weller didn't  
 23 arrive."  
 24 I was disappointed because I wanted to get to ...  
 25 MR JUSTICE HILDYARD: I am being silly. Where is that, 353?

179

1 MR STUART: 353, my Lord, just above the second holepunch.  
 2 MR JUSTICE HILDYARD: Yes.  
 3 MR STUART: This is your manuscript meeting of what happened  
 4 on the day; is that right?  
 5 A. That is, in addition to the advice and notes that I have  
 6 had from legal.  
 7 Q. We have not seen any of these other notes that you have.  
 8 MR JUSTICE HILDYARD: If they are from legal, they would be  
 9 privileged, wouldn't they?  
 10 MR STUART: I am not sure, my Lord, no, I am not sure they  
 11 would.  
 12 MR JUSTICE HILDYARD: It may not be legal advice, you mean?  
 13 MR STUART: Exactly, if it is just something to do with the  
 14 conduct of a board meeting.  
 15 MR JUSTICE HILDYARD: Mr Potts is implying that it is legal  
 16 advice.  
 17 MR STUART: Obviously if the note --  
 18 MR POTTS: My Lord, yes, legal advice.  
 19 MR STUART: So let me get it clear, Mr Raines: you have no  
 20 notes about the actual substance of what's being  
 21 discussed by the board of Bognor Regis Visionplus  
 22 Limited in your capacity as a director of Bognor Regis  
 23 Visionplus Limited for that day? There were no notes  
 24 about the substance, not legal advice about. I am not  
 25 asking about legal advice. I am asking about actually

180

1 the substance of the matters being tabled at the board  
 2 meeting.  
 3 A. The substance is -- well, there are two bits to it,  
 4 my Lord, which was: I would have had a briefing or  
 5 a discussion with the legal department about the  
 6 seriousness of the -- or the allegations, whatever the  
 7 allegations were, and the --  
 8 MR POTTS: My Lord, as I said, I am not intending to waive  
 9 privilege in relation to legal advice given from the  
 10 in-house legal counsel in relation to legal advice  
 11 concerning this meeting.  
 12 MR STUART: So we don't want to hear what legal advice you  
 13 received from the legal department of SOG, okay? We  
 14 don't want to hear legal advice. You said there were  
 15 two parts to it. You mentioned that in the first part.  
 16 The second part?  
 17 A. Would be an outline of the allegations that had been  
 18 made, which are --  
 19 Q. Where is that?  
 20 A. That's contained in 961.  
 21 Q. No, 960 and 961 is the minute of what happened at the  
 22 meeting. That's after the meeting. Do you see?  
 23 Because we can see that you have given your little  
 24 diatribe on 961 and then we see at page 963, all those  
 25 in favour --

181

1 A. Yes.  
 2 Q. And you vote in favour?  
 3 A. Yes.  
 4 Q. Mr Rajan, who is the only other person present, he votes  
 5 in favour.  
 6 A. I copied this.  
 7 Q. From?  
 8 A. From the notes and advice that I have been given.  
 9 Q. You copied it? Look in the bottom right-hand corner of  
 10 the document.  
 11 A. Yeah.  
 12 Q. Sorry, bottom left-hand corner of the document.  
 13 A. Yeah.  
 14 Q. Did you create this document? This is the minute of the  
 15 meeting that has happened.  
 16 A. No, it is created by legal.  
 17 Q. Right.  
 18 A. Right, I see it in a draft form, and I approve it.  
 19 Q. But I am asking you about, before you go to the meeting,  
 20 you must have some sort of -- in your capacity as  
 21 a director --  
 22 A. Yes.  
 23 Q. -- who is going to conduct the meeting, you need to  
 24 know about what's on the agenda for the meeting?  
 25 A. Yes.

182

1 Q. You need to know about what you are going to say about  
 2 that as a director -- not legal advice, I don't want to  
 3 know about legal advice -- and the content, the  
 4 substance of the content?  
 5 A. Yes.  
 6 Q. Did you not have available to you some sort of actual  
 7 notes, documents, et cetera, or is this literally just  
 8 a -- I'll call it a sham -- but it's just a legal  
 9 document drafted by the legal department after the  
 10 event?  
 11 A. No, no. I had the notice of the board meeting, I had  
 12 the joint venture agreements. I had all the information  
 13 that I needed to do to hold the board meeting.  
 14 Q. Okay.  
 15 A. Plus I had a list of the allegations that had been made.  
 16 Q. Yes --  
 17 MR JUSTICE HILDYARD: I think you are being asked, and  
 18 Mr Potts can think whether this is inappropriate,  
 19 whether you are entitled to answer this, I think it's  
 20 being put to you that this was a scripted meeting,  
 21 scripted by the legal department. It's not to say it  
 22 didn't take place, but simply it was on a rail.  
 23 A. No, no. That is not how we hold board meetings. I have  
 24 a framework of the issues that I run through, and  
 25 depending on the nature of the board meeting, I will

183

1 then determine how it's going to run.  
 2 In this one, to my mind, it was a simple process.  
 3 I was there to deliver a process, which was the  
 4 suspension of the partners. You know, it wasn't to go  
 5 into the investigation. It wasn't to do anything like  
 6 that. It was quite a simple thing.  
 7 MR JUSTICE HILDYARD: So it was quite a short meeting?  
 8 A. It would have been, had they turned up. Well, we did  
 9 the meeting --  
 10 MR JUSTICE HILDYARD: As it was, they didn't turn up?  
 11 A. They didn't turn up but we did the meeting anyway.  
 12 MR STUART: It took 11 minutes, didn't it?  
 13 A. Yes. It did. It's difficult if nobody turns up.  
 14 Q. Well, it took 11 minutes. So, did you actually go  
 15 through all of these things that are on page --  
 16 A. Yes, yes.  
 17 Q. -- 953?  
 18 A. I held what I determined a proper board meeting.  
 19 Q. When were you given notice of the board meeting?  
 20 A. I cannot recall. It may have been the week before, two  
 21 weeks before. I can't remember exactly.  
 22 Q. It couldn't be two weeks before, could it, because two  
 23 weeks before there wasn't going to be a board meeting,  
 24 was there? There was going to be an investigation by  
 25 Mr --

184

1 A. I don't recall.  
2 Q. You don't recall, anyway. We don't see any notification  
3 to you of this board meeting in the documents. You  
4 can't help us as to when --  
5 A. No.  
6 Q. No. Anyway, you took 11 minutes for the whole thing.  
7 How much of that time was spent by you in  
8 considering matters?  
9 A. I can't recall. Maybe two, three minutes.  
10 Q. What, the rest of it was spent just reading out the  
11 script from 961 onwards:  
12 "As part of the Specsavers Group's requirements  
13 where shares... "  
14 Et cetera, you read that out?  
15 A. No, I --  
16 Q. Or did you not bother because just you and Mr Rajan were  
17 the only people present?  
18 A. No, I did -- I did bother.  
19 Q. You read all this out, for yourself and Mr Rajan?  
20 A. No, no, no, no, I didn't. I was discussing the  
21 financial irregularities or the reason why we were  
22 having the board meeting and the need for suspension.  
23 Q. You were discussing that between you and Mr Rajan?  
24 A. Yes.  
25 Q. You were the only people there, weren't you?

185

1 A. Yes, yes.  
2 Q. So just looking at 760, this is the minute of what  
3 happened.  
4 MR JUSTICE HILDYARD: 760?  
5 MR STUART: 960, I am sorry, in E4. Do you see?  
6 A. Yes.  
7 Q. We have agenda item 1, you dealt with that?  
8 A. Yes.  
9 Q. Then you went on to agenda item 2?  
10 A. Yeah.  
11 Q. Then you went on to agenda item 3, and then 4 and 5 were  
12 slightly longer agenda items?  
13 A. Yeah.  
14 Q. On agenda item 5, this is when we have the rather more  
15 detailed exposition given?  
16 A. Yeah.  
17 Q. So my question is: did you read out from page 961 in the  
18 middle agenda item 5, did you read all of that out,  
19 where it says "MR", all the way down to page 963 at the  
20 top:  
21 "As such I propose the following motion..."  
22 Did you read all of that out?  
23 A. The answer is: yes.  
24 Q. Did you note to yourself that what you were saying in  
25 the first paragraph was wrong?

186

1 A. No, I didn't.  
2 Q. Did you correct with Mr Rajan and say "Actually,  
3 Mr Rajan, we knew about all of this back in  
4 January/February"?  
5 A. No, I didn't.  
6 Q. Was this script written for you by somebody else?  
7 A. Not in its entirety.  
8 Q. Okay.  
9 A. It's a framework.  
10 Q. Was most of it written for you by someone else?  
11 A. The majority of it was, yes.  
12 Q. And you were provided with it?  
13 A. Yes.  
14 Q. So the fact that the words used in, for example, that  
15 chunk, that block which I have pointed out to you and  
16 you have agreed is wrong, the fact that the actual words  
17 used there appear to be lifted from Mr McAlindon's  
18 page 907. Page 907, I don't know whether you were  
19 present when Mr McAlindon was giving his evidence --  
20 A. Yes, I was.  
21 Q. -- we went through this in detail and he acknowledged  
22 that the words used seemed to very much chime with, and  
23 that it was probably block copied. So all of that chunk  
24 written for you by somebody else, presumably? You  
25 didn't do that?

187

1 A. No.  
2 Q. Then all of the detail on page 962, was that all written  
3 for you by somebody else?  
4 A. (Pause).  
5 Q. Yes?  
6 A. I am still reading. (Pause). Yes.  
7 Q. Had you been aware of the board meeting of SOG that had  
8 taken place on 7 June? Were you aware of that?  
9 A. Yes, I was.  
10 Q. Were you present at that?  
11 A. No, I wasn't.  
12 Q. No. When it comes to the motions, then, 963 and 964 --  
13 A. Yeah.  
14 Q. -- had that all been scripted for you? (Pause).  
15 Presumably it must have done. You didn't make these  
16 motions up yourself?  
17 A. No.  
18 Q. Did you read them all out?  
19 A. Yes.  
20 Q. Are you sure you read out all of this and dealt with the  
21 agenda items 1 to 4 before you got on to agenda item 5,  
22 and you dealt with it all and then agenda item 6, you  
23 did it all in 11 minutes?  
24 A. Yes.  
25 Q. Reading all of it out?

188



1 A. Yes.  
2 Q. That's your witness statement. I think we are almost at  
3 the end of your witness statement now. You deal with  
4 that in paragraphs 55 through to 57 of your witness  
5 statement on page 150, do you see that?  
6 A. Sorry? Which page?  
7 Q. In your witness statement, C, pages 148 to 150,  
8 paragraphs 55 through to the end of 56.  
9 A. Yes, I have 150. So it starts on --  
10 Q. It starts on page 148 --  
11 A. Yeah.  
12 Q. -- under the heading "Board meeting of Bognor  
13 Visionplus"; do you see that?  
14 A. Yes.  
15 Q. So you dealt with all of that. We get to paragraph 57?  
16 A. Okay.  
17 Q. And it goes from 15 June, the loss prevention department  
18 start their investigation?  
19 A. Yeah.  
20 Q. A report was produced on 15 September?  
21 A. Yes.  
22 Q. "I was provided with a copy of the report at that time  
23 and reviewed it."  
24 A. Yes.  
25 Q. So that's 15 September, is that right?

189

1 A. Yes.  
2 Q. How did you receive a copy of that report?  
3 A. By email.  
4 Q. That would be -- who did you get it from, then?  
5 A. I can't recall but probably the legal department.  
6 Q. Did you provide that email to anybody in disclosure?  
7 A. Not that I am aware.  
8 MR POTTS: Again, legal advice.  
9 MR STUART: No, my Lord, I don't accept that. Being sent  
10 a copy of a report, my Lord, legal advice? I don't  
11 think so. To help you out, Mr --  
12 MR JUSTICE HILDYARD: Hold on.  
13 MR POTTS: Can I take instructions, my Lord?  
14 MR JUSTICE HILDYARD: The thing is that I worry that there  
15 is a misunderstanding permeating some of the  
16 interjections on the basis of privilege.  
17 "Legal department" as you know as well as I do,  
18 Mr Potts, does not have a magic wand that it waves over  
19 documents and so that if they emanate from it, they are  
20 privileged. The question is whether there was  
21 an exchange which constitutes legal advice in the  
22 context of, I think the case is Bank of India.  
23 MR STUART: Absolutely.  
24 MR POTTS: There are two points, my Lord --  
25 MR JUSTICE HILDYARD: I am not saying you are wrong. I am a

190

1 little surprised that the mere fact of it originating  
2 from the legal department in some way insulates it.  
3 MR POTTS: My Lord, I accept that.  
4 MR JUSTICE HILDYARD: Do you want to take instructions?  
5 MR POTTS: My Lord, I do.  
6 MR JUSTICE HILDYARD: Mr Stuart paused a bit while you do  
7 so? He was threatening to go on, I suppose, and I did  
8 not want you to be discomforted by that.  
9 MR POTTS: My Lord, no. The answer is yes, I think I would  
10 like to take instructions.  
11 MR JUSTICE HILDYARD: Do you want me to rise for five  
12 minutes or can you do it out of my hearing?  
13 MR POTTS: Can I see whether it is something we have to  
14 hand?  
15 MR JUSTICE HILDYARD: Yes.  
16 (Pause)  
17 MR POTTS: My Lord, I am afraid I'm not in a position to  
18 give you a straight answer in court, because we don't  
19 have the communication in court.  
20 The issue I would raise just in terms of legal  
21 advice generally: I am aware obviously, my Lord, of the  
22 principles in relation to giving and taking legal  
23 advice. Obviously, my Lord, there is a context.  
24 Documents communicated back and forth between, if you  
25 like, client and lawyer, obviously if it's just a purely

191

1 factual statement of sending a single document, but two  
2 issues may arise, one is there may be a mixture of  
3 issues in a document and obviously if part of a document  
4 is disclosed, there is an issue of the whole.  
5 Secondly, in terms of factual exchange, factual  
6 exchange in the context of the giving and taking of  
7 advice is also caught within privilege as well, legal  
8 advice privilege.  
9 MR JUSTICE HILDYARD: If for the purposes of taking legal  
10 advice?  
11 MR POTTS: Yes, my Lord. There are nuanced points on that,  
12 my Lord. In terms of the actual position, I am afraid  
13 I'm not able to --  
14 MR JUSTICE HILDYARD: No, I quite understand that. It is  
15 commonplace that legal departments dictate and script  
16 board meetings and other meetings. I've never heard of  
17 it being claimed to be protected by privilege, nor is it  
18 particularly interesting as a matter of fact.  
19 But I don't want in any --  
20 MR POTTS: My Lord, I may have got this wrong but I think  
21 the response was he referred to also advice, I think, in  
22 his answers.  
23 MR JUSTICE HILDYARD: Yes.  
24 MR POTTS: So the issue of mixture of documents and so on  
25 I think may arise.

192

1 MR JUSTICE HILDYARD: I well understand that you have to,  
 2 for the protection of your client, make sure that he is  
 3 not being induced to give evidence of legal advice.  
 4 I quite understand it. I quite understand from  
 5 Mr Stuart, before he even says it, that it is not his  
 6 intention to seek to induce that result.  
 7 MR STUART: Of course, my Lord.  
 8 MR JUSTICE HILDYARD: I don't want to put either of you or  
 9 the witness under difficulty. Equally --  
 10 MR POTTS: We must get it right, my Lord.  
 11 MR JUSTICE HILDYARD: Yes. What are we to do? We have not  
 12 made the progress today, Mr Stuart, that you --  
 13 MR STUART: No, we haven't. I am within five minutes of  
 14 finishing with this witness in that, as I understand it,  
 15 this is the end of his involvement and I am going to ask  
 16 him that. I just wanted to check what his involvement  
 17 was in the September 2011 meeting, and if the answer is  
 18 "It's all the subject of legal advice" --  
 19 MR JUSTICE HILDYARD: Ask your question, and Mr Potts can  
 20 determine --  
 21 MR POTTS: My Lord, I am not sure that is evidence deals in  
 22 the later period as well in relation to the exercise of  
 23 the option, his evidence in 68 does --  
 24 MR JUSTICE HILDYARD: I thought he was too, yes.  
 25 MR POTTS: So I don't think 5 minutes is going to do it if

193

1 that's the point.  
 2 MR STUART: I think it is.  
 3 MR JUSTICE HILDYARD: Is this a matter which, in reality --  
 4 focus in on reality and not what you think I might want  
 5 to hear because I am becoming more and more skeptical  
 6 about when you are trying to please me on that score.  
 7 MR STUART: My Lord, yes.  
 8 MR JUSTICE HILDYARD: Is this really a matter which, with  
 9 apologies to Mr Raines, we are likely, having regard to  
 10 re-examination as well, to need him to come back  
 11 tomorrow?  
 12 MR STUART: Yes.  
 13 MR JUSTICE HILDYARD: Is that right?  
 14 MR STUART: Yes.  
 15 MR JUSTICE HILDYARD: Mr Raines, I am sorry about that.  
 16 I think you will have to come back tomorrow, and I hope  
 17 it will be a very short road home.  
 18 MR POTTS: My Lord, indeed. If it's of any comfort,  
 19 obviously I can review the transcript overnight and it  
 20 will make any re-examination more efficient and more  
 21 brief.  
 22 MR JUSTICE HILDYARD: I think that must be right, in  
 23 fairness to you all.  
 24 MR STUART: That's fine, my Lord. I will just deal with  
 25 that last point, then. I have asked Mr Raines about he,

194

1 as the board director, being provided with the report  
 2 and he puts it that he's provided with the report with  
 3 a view to the board meeting on 21 September 2011, which  
 4 is the next and last board meeting of that company.  
 5 I have asked when and how did he get it, and  
 6 Mr Potts has quite rightly said, "I need to check  
 7 whether there is an issue of privilege as to when and  
 8 how he got it". So if there is some letter or email,  
 9 I think Mr Raines said by email, if there are some  
 10 emails sending those documents to Mr Raines, perhaps  
 11 they could be disclosed. If they are privileged, fair  
 12 enough. But if they are not --  
 13 MR JUSTICE HILDYARD: If they are privileged it will be  
 14 explained to me the basis on which they are privileged  
 15 and we will proceed.  
 16 MR STUART: That's it.  
 17 MR JUSTICE HILDYARD: Thank you.  
 18 MR POTTS: My Lord, the disciplinary.  
 19 MR JUSTICE HILDYARD: Oh yes.  
 20 MR POTTS: (Handed). I have just been handed this. I can't  
 21 say I've even ...  
 22 MR JUSTICE HILDYARD: Thank you. Is this some overnight  
 23 reading, or is this something which you want to --  
 24 MR POTTS: My Lord, I have no idea what it is, other than  
 25 I have been handed it. I think it was the matter we

195

1 were asked to -- there is a covering letter which I am  
 2 reading at the same time as your Lordship is. I have  
 3 not handed it to the witness. I don't know whether  
 4 I should.  
 5 MR JUSTICE HILDYARD: Is this a matter which I can simply  
 6 take away and read, or is it a matter which --  
 7 MR POTTS: Yes, I am told.  
 8 MR JUSTICE HILDYARD: Yes.  
 9 MR POTTS: I don't know whether it's something which it's  
 10 appropriate for the witness to see, so it can be dealt  
 11 with more efficiently tomorrow. I don't know.  
 12 (Pause)  
 13 I think if it's intended to ask any questions about  
 14 it, I would have thought fairness might dictate that he  
 15 see it.  
 16 MR JUSTICE HILDYARD: Why don't you, Mr Stuart, have a look  
 17 at this and decide whether you wish to ask any  
 18 questions. Obviously you need not disclose what those  
 19 questions should be, but if you think it's appropriate  
 20 in order to save time for the witness to see the  
 21 documents, then perhaps you could exchange emails and,  
 22 without further comment, the witness can be invited to  
 23 read the documents though not perhaps the letter, which  
 24 is purely a matter of explanation to me, I should  
 25 imagine.

196

1 MR STUART: My Lord, yes, that's fine. Can I just raise  
 2 an issue, however? I have scanned through it, and I can  
 3 see what they are. They are some emails, so all that's  
 4 been provided to us are some emails, and then the  
 5 written warning letters to Mrs Hart dated 24 April, and  
 6 to Mr Deane dated 4 April, and to Mr Rowe dated  
 7 18 March.  
 8 MR JUSTICE HILDYARD: Yes.  
 9 MR STUART: So in other words just the outcome.  
 10 MR JUSTICE HILDYARD: Yes.  
 11 MR STUART: I want to see all of the documents relating to  
 12 these disciplinary processes, including the employees  
 13 concerned, what they said when these allegations were  
 14 put to them, minutes of meetings. These must have been  
 15 disciplinary meetings; one is getting a -- well, they  
 16 are all getting proper written warnings under the  
 17 disciplinary guide.  
 18 So there must have been meetings, indeed there are  
 19 referred to meetings, so I want to see the actual  
 20 meeting notes. I don't just want to just be given  
 21 a copy of the eventual written warnings. I really don't  
 22 know how Taylor Wessing think that this is in any way  
 23 going to be anywhere near adequate disclosure.  
 24 I have seen Mr Marsh's witness statement saying, "We  
 25 have made a few mistakes in the past but we are really  
 197

1 trying our best", but I would submit they are not. We  
 2 know what this is about, and I want to see the actual  
 3 documents.  
 4 MR JUSTICE HILDYARD: Mr Potts, you have not had a look at  
 5 this and I have not had a look at this, but I have spent  
 6 enough time with it to see that it is only the  
 7 conclusion and not the process which is documented.  
 8 I can also see that in each case, I think -- certainly  
 9 in the case of Susannah Hart -- the necessary paperwork  
 10 was to go on her file and all that was after a meeting  
 11 which, bearing in mind the disciplinary nature as it's  
 12 presented to be, one would imagine was recorded and  
 13 minuted.  
 14 So I should have thought that it might be  
 15 appropriate to ensure that you are absolutely certain  
 16 that there is no further paperwork to record the process  
 17 and the reaction of the persons concerned.  
 18 MR POTTS: My Lord, I'll obviously make the enquiry.  
 19 MR JUSTICE HILDYARD: I don't think I can take it further  
 20 than that. I think that that encapsulates what you were  
 21 saying. If it hasn't I apologise and you can explain  
 22 further to Mr Potts.  
 23 MR STUART: My Lord, you have it in summary; that is what I  
 24 was trying to say and it seems to me self-evident.  
 25 MR JUSTICE HILDYARD: Yes. First of all, Mr Raines, we will  
 198

1 see you tomorrow. You must not speak about this case to  
 2 anyone, as you know.  
 3 THE WITNESS: Yes.  
 4 MR JUSTICE HILDYARD: I hope that, notwithstanding these  
 5 late entrants nevertheless we will conclude fairly  
 6 sharpish. We have a problem tomorrow. Worse news for  
 7 you, it's not before 11.15. I suppose the only glimmer  
 8 of rather paltry news is that I will be in another court  
 9 so at least you can set up in the meantime.  
 10 MR STUART: Thank you.  
 11 MR JUSTICE HILDYARD: Looking at the skeleton arguments  
 12 which have been exchanged, I have no total confidence it  
 13 will finish by 11.15. We will continue to mark it not  
 14 before 11.15, but I have a bad instinct about it.  
 15 MR POTTS: My Lord, your Lordship did flag up the issue of  
 16 disclosure. But it may be that if there are any further  
 17 issues that your Lordship would like to raise, we can  
 18 deal with them tomorrow.  
 19 MR JUSTICE HILDYARD: I think that you have, as it were,  
 20 sought to address it ahead of time by telling me exactly  
 21 what the process was. I haven't got a grip of that  
 22 process, and it may be that the recent matters may cause  
 23 that to be added to, I just don't know.  
 24 I think I'll ponder it overnight and see whether  
 25 it's a matter that I think should be taken further. Of  
 199

1 course Mr Stuart may not, as he's been cross-examining,  
 2 have had time to fully consider the letter and to  
 3 determine whether he wishes to take it further.  
 4 MR POTTS: I am talking about, my Lord, the witness  
 5 statement.  
 6 MR JUSTICE HILDYARD: I am sorry, you are quite right, the  
 7 witness statement.  
 8 MR POTTS: Yes.  
 9 MR JUSTICE HILDYARD: Mr Stuart, we were one day behind from  
 10 the estimate given two days ago, and we are now further  
 11 behind.  
 12 MR STUART: My Lord, yes. We have Mr Rowe, we are going to  
 13 finish Mr Raines in the morning, that's for sure,  
 14 starting at around 11.30ish.  
 15 MR JUSTICE HILDYARD: Yes.  
 16 MR STUART: We will get on to Mr Rowe before lunchtime  
 17 tomorrow.  
 18 MR JUSTICE HILDYARD: How long did you think for Mr Rowe?  
 19 MR STUART: Now that I am forewarned, as it were, of the  
 20 business about his disciplinary matter, I think I can  
 21 still finish him within tomorrow, so finish him tomorrow  
 22 afternoon.  
 23 MR JUSTICE HILDYARD: So by end Thursday?  
 24 MR STUART: Yes.  
 25 MR JUSTICE HILDYARD: Which leaves us Friday, Ms Mancini and  
 200

1 Mr McGowan, who you estimated two hours in total for the  
2 two of them.  
3 MR STUART: Yes, my Lord, they are obviously peripheral  
4 issues in this case.  
5 MR JUSTICE HILDYARD: So as we limp towards the Christmas  
6 holiday --  
7 MR STUART: Yes.  
8 MR POTTS: My Lord, we still have opening and Mrs Lofting on  
9 Friday as well.  
10 MR JUSTICE HILDYARD: Yes, yes.  
11 MR STUART: My Lord, I think it's plain we are not going to  
12 start Mr Parham.  
13 MR JUSTICE HILDYARD: I want you to consider whether it is  
14 sensible to --  
15 MR STUART: Draw stumps?  
16 MR JUSTICE HILDYARD: -- draw stumps after the conclusion  
17 of Bognor.  
18 MR STUART: Understood, my Lord.  
19 MR JUSTICE HILDYARD: I have a completely open mind in that  
20 regard, but I don't want to have climbed up a hill for  
21 no good reason.  
22 MR STUART: No, I understand. My Lord, if we were to draw  
23 stumps on Bognor, did your Lordship mention that we  
24 might be given 10 January?  
25 MR JUSTICE HILDYARD: Yes, I will confirm that tomorrow. My

201

1 worry is that my understanding was, from what you told  
2 me, though I understood also that Mr Potts had not been  
3 told this, which I was surprised by, is that Ms Lofting  
4 is away from the 8th for ten days.  
5 MR STUART: I was unaware of that, my Lord, until I said it.  
6 It was passed to me. We were not aware of it.  
7 MR POTTS: My Lord, I wonder in that regard, because I still  
8 do have a concern, I know it's said she is a short  
9 witness and so on, but I do still feel there is an  
10 element -- and I appreciate the time, I am sorry --  
11 MR JUSTICE HILDYARD: No, it's all right.  
12 MR POTTS: -- in terms of it being unsatisfactory for your  
13 Lordship not to have the understanding of the case  
14 before her evidence, the same point I have raised this  
15 morning, as to whether some further enquiries as to the  
16 nature of her -- she is just "away", and that covers a  
17 multitude of issues, as to precisely what the position  
18 is and see what arrangements, with actually some effort,  
19 could be made to see whether she could be available at  
20 some point in the January slot, which would be far more  
21 satisfactory, I think.  
22 MR STUART: Yes, my Lord. Could I mention one possibility?  
23 In the January slot, as your Lordship has it, as we have  
24 both put it in our schedules, on everybody's schedule we  
25 will be sitting in this case on Monday 20th/Tuesday

202

1 21st, possibly even Wednesday 22nd January. Mrs Lofting  
2 said she was away for ten days from the 8th. I know  
3 it's not ideal, but --  
4 MR JUSTICE HILDYARD: I want you to discuss this. She  
5 rather -- if I may say so, I know that she is a witness  
6 under compulsion; is that right?  
7 MR STUART: Yes, she is.  
8 MR JUSTICE HILDYARD: I know that there are more  
9 difficulties on your side, there are more processes  
10 available to the court. It was rather floated, I don't  
11 know whether ten days means ten days or, you know,  
12 I just don't know what the position is.  
13 I think Mr Potts is correct, and in fact I would  
14 myself have wanted to make the point that I think you  
15 need to bottom out in a way that you have probably not  
16 had the opportunity yet to do exactly what "away" means,  
17 and what "ten days" means, with a view to slotting her  
18 in at a convenient time, as opposed to a distorting  
19 time.  
20 MR STUART: Yes.  
21 MR JUSTICE HILDYARD: Because at the moment, we are wrapping  
22 ourselves up in knots on her account for reasons which  
23 are by no means clear.  
24 MR STUART: I understand, my Lord.  
25 MR POTTS: My Lord, I appreciate people have holiday

203

1 arrangements and so on, but I would respectfully suggest  
2 that actually commitment to provide evidence in court  
3 takes priority, it does over counsel, and it may be in  
4 relation to a witness as well. Obviously one would seek  
5 to be accommodating.  
6 MR JUSTICE HILDYARD: I would prefer to try and make sure  
7 that people's lives aren't disoriented unduly, but  
8 equally I am anxious that the process of this case and  
9 court should not itself be distorted unduly.  
10 MR STUART: I agree, my Lord. I am just saying that if  
11 Mrs Lofting's evidence is, as my learned friend  
12 estimated this morning, half an hour in total, and if we  
13 are coming back on 20/21/22 anyway, and if she really is  
14 actually away and she can show that --  
15 MR JUSTICE HILDYARD: I want you to discuss that. I have no  
16 idea whether putting her in at that point, after you  
17 would otherwise have closed your case, ie in a sequence  
18 which departs from the usual is a problem. I would hope  
19 that, as counsel, you can look for solutions rather than  
20 the problem, and see what we can do. I don't think  
21 I personally can take it further at the moment.  
22 MR STUART: My Lord, thank you.  
23 MR JUSTICE HILDYARD: You can advise me of this also, but my  
24 present feeling is that it would be better to recognise  
25 that certainly anything more than a few blasts at me to

204

1 direct my reading on Parham is unlikely to be realistic.  
2 MR POTTS: My Lord, the difference is we have a full  
3 skeleton which has been provided to your Lordship on the  
4 Uckfield case. There are references there, it may be we  
5 can highlight some particular references for your  
6 reading.  
7 MR JUSTICE HILDYARD: Yes. If you can give me a blast so  
8 that my reading is more focused, that would be terrific.  
9 MR STUART: Your Lordship recalls that I did late provide  
10 a document on the Bognor case with a sort of list of key  
11 page numbers as we saw it, chronologically through, with  
12 the issues. I can tell you that there is one of those  
13 for Uckfield as well, I just have to get it signed.  
14 MR POTTS: We have just seen it, my Lord. It's a long list  
15 of documents, we had it last night, I think.  
16 MR STUART: It just might help you.  
17 MR JUSTICE HILDYARD: That's instead of a --  
18 MR POTTS: It's the same list of documents.  
19 MR STUART: Do you remember, my Lord, when I did my canter  
20 through of Bognor I provided your Lordship with a sort  
21 of --  
22 MR JUSTICE HILDYARD: Yes. What do I have on Uckfield?  
23 MR STUART: You don't have the equivalent document on  
24 Uckfield yet, my Lord. There it is (indicated).  
25 MR JUSTICE HILDYARD: I have your skeleton.

205

1 MR STUART: You have our skeleton arguments.  
2 MR POTTS: My Lord, it's about 7 pages.  
3 MR JUSTICE HILDYARD: It's a short skeletal skeleton.  
4 MR STUART: Absolutely, my Lord.  
5 MR JUSTICE HILDYARD: You perfect that document.  
6 MR STUART: This is perfected, my Lord. This is your copy.  
7 The other side have it. (Handed).  
8 MR JUSTICE HILDYARD: Okay. I am sorry, I thought you said  
9 you had to have it checked.  
10 MR STUART: I had to check we had a copy for you. It has  
11 been passed to me and there is a copy for you, the other  
12 side has it, so now everybody has it. Your Lordship may  
13 recall the one for Bognor which is in similar format.  
14 MR JUSTICE HILDYARD: Yes.  
15 MR STUART: It gave you page references to assist in a sort  
16 of skeleton way through the documents.  
17 MR JUSTICE HILDYARD: Thank you. You will together devise  
18 a suitable form of wording to record evidence in one  
19 being evidence in the other?  
20 MR STUART: Yes.  
21 MR POTTS: The wording I recited to your Lordship, I don't  
22 know, did your Lordship consider -- you probably may not  
23 remember -- did that seem --  
24 MR JUSTICE HILDYARD: I will look back at the transcript.  
25 Yes, you are quite right, Mr Potts.

206

1 MR POTTS: My Lord, my wording was:  
2 "The court shall be entitled to have regard to the  
3 evidence given in one set of proceedings in relation to  
4 the other set of proceedings as a direction."  
5 I think that was --  
6 MR STUART: Yes, and your Lordship mentioned that perhaps  
7 one needed to have something about actual consolidation  
8 of the two files, so that it is a more formal. There  
9 may be a CPR provision.  
10 MR POTTS: I don't think it would be consolidated.  
11 MR JUSTICE HILDYARD: What I am not following is what the  
12 difference between that and what, to me, would be the  
13 new, more familiar course of simply directing that  
14 evidence in one should be evidence in the other.  
15 MR STUART: Yes, I am happy with that, my Lord, absolutely.  
16 I think that's what we agreed.  
17 MR POTTS: Could we consider that overnight?  
18 MR JUSTICE HILDYARD: Absolutely, yes. Have regard -- if  
19 there is a difference, I think I need to know what it  
20 is.  
21 MR POTTS: I can't think of it at the moment, but it's  
22 4.45 pm.  
23 MR JUSTICE HILDYARD: I am sorry that I can't be back until  
24 at the earliest 11.15 tomorrow. I will do my best and  
25 we will reconvene as soon as ever we can.

207

1 MR STUART: Thank you, my Lord.  
2 MR JUSTICE HILDYARD: By the way, because I have to go to  
3 listen to a speech, I shall have to rise early tomorrow  
4 at 4.25.  
5 MR STUART: Understood, my Lord.  
6 (4.45 pm)  
7 (The court adjourned until 11.15 am  
8 On Thursday, 19 December 2013)  
9

208

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12  
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15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

209

INDEX

PAGE

1	
2	
3	Housekeeping .....1
4	MR MEL McALINDON (continued) .....17
5	Re-examination by MR POTTS .....17
6	Questioned by MR JUSTICE HILDYARD .....19
7	Re-examination by MR STUART .....35
8	Housekeeping .....41
9	MR MARK RAINES (sworn) .....43
10	Examination-in-chief by MR POTTS .....43
11	Cross-examination by MR STUART .....43
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	

210

<p><b>A</b></p> <p><b>ability (1)</b> 114:8</p> <p><b>able (11)</b> 17:13 19:2 47:4 50:24 54:14 59:17 78:11 88:24 95:7 177:13 192:13</p> <p><b>absence (1)</b> 95:14</p> <p><b>absolute (1)</b> 57:20</p> <p><b>absolutely (39)</b> 28:14 35:2,20 61:8,10,12 61:23,23 63:12 75:10,18 81:13 109:15 121:20 125:21,21 128:18 129:20 140:23 142:13,14 144:11 144:11 146:2 148:7 148:9,9,18 165:4 166:12 173:3,3,6 177:8 190:23 198:15 206:4 207:15,18</p> <p><b>accept (5)</b> 8:5,21 11:2 190:9 191:3</p> <p><b>accepted (4)</b> 17:23 18:22 19:3 86:10</p> <p><b>accommodate (1)</b> 12:24</p> <p><b>accommodating (1)</b> 204:5</p> <p><b>account (2)</b> 12:20 203:22</p> <p><b>accountabilities (1)</b> 62:24</p> <p><b>accountability (2)</b> 63:2 63:4</p> <p><b>accounts (1)</b> 14:20</p> <p><b>accurate (3)</b> 16:22 17:24 18:23</p> <p><b>accusation (1)</b> 23:14</p> <p><b>accused (1)</b> 25:17</p> <p><b>achieve (3)</b> 130:21 148:20 149:1</p> <p><b>acknowledge (2)</b> 6:6,6 acknowledged (1) 187:21</p> <p><b>acknowledging (1)</b> 6:24</p> <p><b>act (2)</b> 124:15 130:19</p> <p><b>acted (1)</b> 130:20</p> <p><b>acting (3)</b> 83:1 116:25 172:20</p> <p><b>action (12)</b> 43:10 93:11 97:3,7 122:9 132:7,12 134:10,17 148:8 150:6 168:15</p> <p><b>actioned (1)</b> 152:13</p> <p><b>actions (1)</b> 44:24</p> <p><b>active (5)</b> 30:11 55:1 57:17 58:11,12</p> <p><b>actively (3)</b> 29:22 170:21 171:9</p> <p><b>activities (1)</b> 55:14</p> <p><b>actual (10)</b> 30:4 32:6 33:14 180:20 183:6 187:16 192:12 197:19 198:2 207:7</p> <p><b>add (3)</b> 38:4,23 57:24</p> <p><b>added (5)</b> 34:17 35:8 43:23 143:24 199:23</p> <p><b>addition (3)</b> 35:5,6 180:5</p> <p><b>additional (5)</b> 43:23 49:17,18 127:11 169:4</p> <p><b>address (8)</b> 24:13,14 26:2 69:23 100:24 151:22,23 199:20</p> <p><b>addressed (2)</b> 66:11</p>	<p>126:19</p> <p><b>addressee (1)</b> 95:13</p> <p><b>adequate (1)</b> 197:23</p> <p><b>adjoined (2)</b> 38:12 208:7</p> <p><b>adjournment (7)</b> 10:3 10:5,9,15 109:3 118:2 120:7</p> <p><b>administration (1)</b> 13:21</p> <p><b>adopt (1)</b> 60:2</p> <p><b>Adrian (7)</b> 73:18 75:8 78:15 84:3 114:7 114:12,15</p> <p><b>advantage (1)</b> 13:7</p> <p><b>adverse (1)</b> 6:2</p> <p><b>advert (1)</b> 95:7</p> <p><b>advertising (2)</b> 72:10 94:14</p> <p><b>advice (30)</b> 85:6,7,8 178:16 179:1,7 180:5,12,16,18,24 180:25 181:9,10,12 181:14 182:8 183:2 183:3 190:8,10,21 191:21,23 192:7,8 192:10,21 193:3,18</p> <p><b>advice/training (1)</b> 143:5</p> <p><b>advise (1)</b> 204:23</p> <p><b>advisers (1)</b> 86:2</p> <p><b>advising (1)</b> 84:8</p> <p><b>afford (1)</b> 71:13</p> <p><b>affordable (1)</b> 123:22</p> <p><b>afraid (5)</b> 13:16 16:18 48:15 191:17 192:12</p> <p><b>afternoon (9)</b> 9:22 13:1 14:11,13 15:4 15:5 49:9 159:16 200:22</p> <p><b>agenda (22)</b> 59:23,23 66:5 87:5 93:16 123:24 146:8 149:3 149:13 156:19 158:20 170:15 182:24 186:7,9,11 186:12,14,18 188:21,21,22</p> <p><b>ago (11)</b> 49:14 50:8 67:11,20 79:1 80:24 86:21 103:16 118:22 119:7 200:10</p> <p><b>agree (19)</b> 8:16,16 39:6,12,14,21 74:16,20 92:16 115:21 124:2,3 139:16 142:17 146:10,19 147:22 148:17 204:10</p> <p><b>agreed (8)</b> 6:14 44:25 74:3 93:4 115:20 160:20 187:16 207:16</p> <p><b>agreeing (1)</b> 148:15</p> <p><b>agreement (2)</b> 41:23 177:12</p> <p><b>agreements (1)</b> 183:12</p> <p><b>Ah (2)</b> 128:11 156:2</p> <p><b>ahead (1)</b> 199:20</p> <p><b>airport (1)</b> 42:2</p> <p><b>Alan (1)</b> 115:12</p> <p><b>alerted (1)</b> 138:2</p> <p><b>Alison (1)</b> 152:24</p> <p><b>allegation (4)</b> 11:5 79:15,23 80:2</p> <p><b>allegations (1)</b> 29:19 152:18 153:1</p>	<p>168:12,13,14 181:6 181:7,17 183:15 197:13</p> <p><b>alleged (1)</b> 82:23</p> <p><b>Allegedly (1)</b> 159:20</p> <p><b>alleging (1)</b> 115:15</p> <p><b>allow (1)</b> 70:14</p> <p><b>allowed (5)</b> 107:2 120:20,23 124:10 142:1</p> <p><b>allowing (1)</b> 147:8</p> <p><b>alter (1)</b> 109:21</p> <p><b>alternative (1)</b> 147:20</p> <p><b>altogether (2)</b> 161:18 175:17</p> <p><b>amend (2)</b> 38:13 39:16</p> <p><b>amended (1)</b> 2:4</p> <p><b>amends (2)</b> 161:10,13</p> <p><b>amount (4)</b> 12:6 58:6 71:16 94:2</p> <p><b>amounts (5)</b> 37:17 38:7,8 39:1,2</p> <p><b>analogy (2)</b> 27:21 32:20</p> <p><b>analysis (1)</b> 143:20</p> <p><b>and/or (1)</b> 6:15</p> <p><b>annual (1)</b> 70:24</p> <p><b>annum (1)</b> 56:11</p> <p><b>answer (24)</b> 32:12 34:23 36:23 37:5 37:22 38:6,25 71:25 73:7 75:3 83:9 85:19 89:5 96:8 158:2 163:23 166:8 168:3 179:7 183:19 186:23 191:9,18 193:17 answered (4) 28:17 46:7 96:13,20</p> <p><b>answers (4)</b> 34:7 82:25 129:11 192:22</p> <p><b>antagonistic (2)</b> 102:17 104:8</p> <p><b>anticipated (2)</b> 7:10 7:12</p> <p><b>anxious (2)</b> 72:2 204:8</p> <p><b>anybody (4)</b> 68:7,18 125:20 190:6</p> <p><b>anyway (25)</b> 49:19 50:12 53:12 69:19 82:4 97:2,5 111:1 112:24 122:25 141:14 142:6,16 146:4 147:19 148:21 152:13 158:5 163:3 174:16 177:18 184:11 185:2,6 204:13</p> <p><b>apart (5)</b> 82:5 110:16 120:14,24 168:25</p> <p><b>apex (1)</b> 20:25</p> <p><b>apologies (4)</b> 15:16 54:2 96:19 194:9</p> <p><b>apologise (2)</b> 20:14 198:21</p> <p><b>apparent (1)</b> 25:20</p> <p><b>apparently (3)</b> 15:11 41:25 156:4</p> <p><b>appear (5)</b> 90:8 120:17 123:1 127:12 187:17</p> <p><b>appeared (1)</b> 169:18</p> <p><b>appears (10)</b> 8:11 19:24 33:23 74:14 93:15 96:2 97:5 101:8 128:5 139:16</p> <p><b>appointed (1)</b> 178:3</p> <p><b>appointment (3)</b> 7:14</p>	<p>141:25 142:1</p> <p><b>appreciate (4)</b> 20:7 114:13 202:10 203:25</p> <p><b>approach (1)</b> 132:25</p> <p><b>appropriate (10)</b> 27:12 61:4 79:25 119:13,14 145:9 158:5 196:10,19 198:15</p> <p><b>approve (3)</b> 162:25 163:8 182:18</p> <p><b>approved (1)</b> 117:18</p> <p><b>approximately (1)</b> 94:6</p> <p><b>April (15)</b> 90:15 99:1 100:14,23 101:11 103:16 113:25 115:2 167:21,23 168:16 174:16,21 197:5,6</p> <p><b>apt (1)</b> 26:25</p> <p><b>area (2)</b> 13:10 64:9</p> <p><b>arguing (1)</b> 5:23</p> <p><b>argument (1)</b> 13:12</p> <p><b>arguments (2)</b> 199:11 206:1</p> <p><b>arisen (2)</b> 175:9,10</p> <p><b>arises (2)</b> 173:8,9</p> <p><b>arising (1)</b> 40:25</p> <p><b>arrange (1)</b> 78:17</p> <p><b>arranged (2)</b> 75:4 83:24</p> <p><b>arrangements (2)</b> 202:18 204:1</p> <p><b>arrive (2)</b> 116:22 179:23</p> <p><b>arrived (2)</b> 90:15 152:12</p> <p><b>Asda (1)</b> 94:3</p> <p><b>aside (1)</b> 110:1</p> <p><b>asked (31)</b> 15:10 17:9 17:17,19 25:12 26:21 31:5 33:5 57:12 68:16 75:13 79:11 80:5 85:14 85:16 96:7,8 108:17,19 133:13 135:14,15 154:17 154:24,25 155:1 160:3 183:17 194:25 195:5 196:1</p> <p><b>asking (16)</b> 8:25 30:22 30:23 40:25 56:10 82:22 84:4 85:1 86:13 124:9 136:15 139:7 155:2 180:25 180:25 182:19</p> <p><b>aspect (3)</b> 21:10 76:7 171:18</p> <p><b>assert (1)</b> 3:4</p> <p><b>asserted (1)</b> 4:3</p> <p><b>assessing (1)</b> 20:3</p> <p><b>assessment (1)</b> 140:4</p> <p><b>assessments (1)</b> 7:24</p> <p><b>assimilated (1)</b> 25:3</p> <p><b>assist (3)</b> 103:7 124:25 206:15</p> <p><b>assistance (1)</b> 124:1</p> <p><b>assisting (4)</b> 21:6 63:23 141:3 144:25</p> <p><b>assists (1)</b> 4:9</p> <p><b>assume (1)</b> 50:10</p> <p><b>attaching (1)</b> 33:8</p> <p><b>attachment (1)</b> 155:15</p> <p><b>attachments (1)</b> 143:6</p> <p><b>attend (2)</b> 142:9,20</p> <p><b>attendance (2)</b> 16:6 143:24</p> <p><b>attended (1)</b> 49:1</p>	<p><b>attending (1)</b> 6:25</p> <p><b>attention (7)</b> 71:17 101:5,9 103:17,23 117:9 121:4</p> <p><b>attitude (8)</b> 77:10,14 77:15 91:9,13 92:13 102:17 104:8</p> <p><b>attracted (1)</b> 72:13</p> <p><b>audit (3)</b> 155:6 169:16 171:2</p> <p><b>August (4)</b> 88:8 127:19 129:19,23</p> <p><b>Australia (1)</b> 30:4</p> <p><b>authority (1)</b> 143:24</p> <p><b>available (10)</b> 10:16 15:8 32:24 58:18 94:15 121:10 174:18 183:6 202:19 203:10</p> <p><b>avoid (1)</b> 5:21</p> <p><b>aware (63)</b> 46:12 69:8 69:10 74:21 78:20 80:15 83:24 86:14 90:18 100:20 103:14 104:1,4,6 104:14 111:24,25 112:13 117:1,5 118:7 121:5 122:12 132:8 133:10 141:24 142:3 151:6 157:4 172:6,8 178:19 142:6 146:5 150:7 151:24 152:12,20 153:7,23 155:7,10,11,13 156:25 160:2,2 166:21 167:8 168:6 168:7,7 169:1,18 169:23,24 171:6 172:23 174:25 188:7,8 190:7 191:21 202:6</p> <p><b>awfully (1)</b> 167:1</p> <p><b>A/454 (1)</b> 3:18</p> <p><b>A4 (1)</b> 44:19</p>	<p>160:14 163:2 179:22</p> <p><b>based (6)</b> 49:12 60:18 67:25 78:16 99:11 121:9</p> <p><b>basically (4)</b> 59:11 139:23 140:15 164:6</p> <p><b>basis (11)</b> 10:25 21:21 40:9 44:7 60:12 61:3 107:4 120:12 157:23 190:16 195:14</p> <p><b>batting (1)</b> 41:13</p> <p><b>bear (4)</b> 20:2,10 46:22 112:6</p> <p><b>bearing (2)</b> 11:14 198:11</p> <p><b>becoming (3)</b> 57:19 97:8 194:5</p> <p><b>begun (1)</b> 6:12</p> <p><b>behave (1)</b> 141:2</p> <p><b>believe (27)</b> 38:19 43:11 44:13 45:25 46:2,4,19 47:3 77:4 79:5 86:24,25 87:1 87:2 91:14 110:18 117:6 123:4 130:12 132:8 133:10 141:24 142:3 151:6 157:4 172:6,8 178:19 142:6 146:5 150:7 151:24 152:12,20 153:7,23 155:7,10,11,13 156:25 160:2,2 166:21 167:8 168:6 168:7,7 169:1,18 169:23,24 171:6 172:23 174:25 188:7,8 190:7 191:21 202:6</p> <p><b>awfully (1)</b> 167:1</p> <p><b>B</b></p> <p><b>back (53)</b> 2:13 3:1 5:24 12:4 15:11,12 16:19 22:21 26:13 33:17 34:21 38:8 39:2 47:9 50:15,25 51:2 65:6,12 66:5 66:16 73:8 83:12 87:21 90:9 92:22 98:3 109:23 122:12 123:6 132:2 133:1 135:4 136:2 144:24 145:2,10,21 146:17 147:21 152:11 155:20 158:1 164:17 169:3 170:3 173:4 187:3 191:24 194:10,16 204:13 206:24 207:23</p> <p><b>background (4)</b> 21:18 48:24 59:2 164:9</p> <p><b>backwards (1)</b> 82:10</p> <p><b>back-up (1)</b> 23:22</p> <p><b>bad (1)</b> 199:14</p> <p><b>balance (2)</b> 109:19,21</p> <p><b>ball's (1)</b> 110:20</p> <p><b>Bank (1)</b> 190:22</p> <p><b>Barnes (10)</b> 4:6 20:18 21:2,13,14 31:2,4,8 33:20 37:23</p> <p><b>Barry (18)</b> 97:18 138:3 145:16 147:8,10,21 148:1,3 149:6,7 150:1,2,12,17,20</p>	<p>187:15,23</p> <p><b>blocked (1)</b> 107:5</p> <p><b>blocking (1)</b> 107:6</p> <p><b>blue (1)</b> 15:21</p> <p><b>board (44)</b> 70:15,20 71:9 98:16,17 103:9 104:12 111:8 111:20 112:19 113:15 115:13 170:1,11 172:10,11 173:1 176:17 177:10,14 178:17 178:18,20,24 179:3 179:19 180:14,21 181:1 183:11,13,23 183:25 184:18,19 184:23 185:3,22 188:7 189:12 192:16 195:1,3,4</p> <p><b>Bognor (66)</b> 8:6 14:3 22:10 29:16 46:1 46:11 49:5 58:16 60:17 62:4,12 64:15 66:12 67:16 67:25 68:12,14 81:24 92:2,5 100:4 100:5 101:10 102:4 106:17,21 108:20 108:21,24 110:8 115:16 123:2,4,7 123:11,25 124:20 126:3,9 127:3,6,12 127:18 131:18 132:6 158:21 159:6 159:7 163:2 165:24 166:19 170:2,25 171:9 172:9 176:21 176:24 179:18 180:21,22 189:12 201:17,23 205:10 205:20 206:13</p> <p><b>bolt (1)</b> 15:21</p> <p><b>Bolton (10)</b> 52:2,14 53:3,10,12,14 56:12 57:18,19 58:2</p> <p><b>bonus (4)</b> 55:23,25 56:1,3</p> <p><b>bonus/dividends (1)</b> 56:9</p> <p><b>book (6)</b> 44:19 47:12 94:20 120:24 125:6 125:8</p> <p><b>booked (1)</b> 47:17</p> <p><b>books (8)</b> 44:14,15,16 45:4 125:5,9,12,14</p> <p><b>borrowed (1)</b> 142:2</p> <p><b>boss (6)</b> 81:19 91:2 92:12 93:18 141:14 145:2</p> <p><b>bother (2)</b> 185:16,18</p> <p><b>bothered (1)</b> 108:16</p> <p><b>bottom (16)</b> 18:9,19 39:17 90:24 92:1 106:1,6 110:19 127:8,24 130:11 149:23 166:3 182:9 182:12 203:15</p> <p><b>bought (1)</b> 89:10</p> <p><b>bows (1)</b> 151:18</p> <p><b>box (9)</b> 5:25 9:12 82:4 144:24 145:3,11,22 146:17 147:21</p> <p><b>boxes (2)</b> 22:17,20</p> <p><b>brackets (1)</b> 24:19</p> <p><b>brain (2)</b> 88:15 114:3</p> <p><b>brains (1)</b> 88:13</p> <p><b>brand (6)</b> 63:14,16 95:21 123:16,21,21</p> <p><b>break (5)</b> 41:7,11</p>
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42:20,22 158:13 <b>brief (1)</b> 194:21 <b>briefcase (3)</b> 90:1,2,3 <b>briefing (2)</b> 178:8,9 <b>briefings (3)</b> 154:9,15 181:4 <b>briefly (1)</b> 65:12 <b>bring (1)</b> 38:1 <b>bringing (1)</b> 59:16 <b>BRM (10)</b> 74:6,9,15 76:4,4,17 100:13 100:21,23 101:2 <b>broad (1)</b> 72:18 <b>broadly (4)</b> 6:8 100:20 101:12,15 <b>broke (1)</b> 42:6 <b>brought (8)</b> 8:1 39:25 88:20 101:5 103:17 103:23 117:8 121:4 <b>brutally (1)</b> 7:21 <b>BTS (3)</b> 145:15 160:24 164:21 <b>bubbling (1)</b> 129:22 <b>build (1)</b> 81:15 <b>built (2)</b> 141:6,6 <b>bullet (3)</b> 18:10,11,13 <b>bully (1)</b> 29:20 <b>bullying (2)</b> 115:16,25 <b>bundle (21)</b> 3:17 31:15 34:2 43:24 44:3,5 47:22 48:5,6 48:9 65:5 80:22 101:17 116:18,20 121:1,11,12 159:15 161:17 170:4 <b>bundles (4)</b> 3:18 4:18 4:20 31:16 <b>business (56)</b> 27:7 36:19 38:5,10,24 39:4 56:23 57:3 59:2,5,5,6,6,20 60:7,10 61:19 62:25 64:9 70:21 72:10,11,19 74:7 75:16 76:8,12 84:8 87:24 88:1 90:16 94:2,9 102:22 112:12 129:25 130:24 139:4 145:1 145:19 148:4,13 160:25 161:6 163:3 164:1,7,8,22,23 165:10 170:24,25 177:12 179:19 200:20 <b>businesses (10)</b> 55:2,3 56:2 57:15 59:8 63:9 70:8 94:23 123:20 164:24 <b>business's (1)</b> 137:11 <b>busy (1)</b> 87:5 <b>buy (1)</b> 151:16 <b>buying (1)</b> 57:18 <b>BW (2)</b> 170:25 171:10 <b>by-the-by (1)</b> 142:4 <b>B000615 (1)</b> 127:25	104:11 <b>calls (1)</b> 139:2 <b>canter (1)</b> 205:19 <b>canvas (1)</b> 14:15 <b>capacity (4)</b> 178:22 179:4 180:22 182:20 <b>capture (2)</b> 44:23 45:23 <b>care (1)</b> 123:22 <b>career (4)</b> 81:15,18 141:6,7 <b>careers (2)</b> 72:13,14 <b>careful (3)</b> 84:21 85:25 86:3 <b>caring (1)</b> 75:17 <b>Carol (1)</b> 98:22 <b>carried (2)</b> 78:5,9 <b>carry (2)</b> 55:20,21 <b>Carteret (3)</b> 121:8 129:5 132:2 <b>case (53)</b> 2:10 6:8,12 6:20 7:8,23 8:3,6,9 11:1,12,21,24 12:2 13:4 21:23 22:8 23:13 24:9 29:18 30:6,6 32:10,12 54:16 60:12,12 61:3,3 68:25 79:16 79:17 90:8 100:3 109:19,20 135:18 135:19 157:13 162:25 166:14 175:10 190:22 198:9,9 199:1 201:4 202:13,25 204:8,17 205:4,10 <b>catch (3)</b> 112:4,8,9 <b>catchment (1)</b> 53:13 <b>catch-up (4)</b> 154:8,15 154:19 174:12 <b>caught (2)</b> 132:3 192:7 <b>cause (1)</b> 199:22 <b>CCing (2)</b> 91:4 122:21 <b>cc'd (1)</b> 126:19 <b>cent (6)</b> 52:20 54:6,7 54:10 87:22,23 <b>centre (2)</b> 72:25 179:19 <b>certain (2)</b> 107:9 198:15 <b>certainly (9)</b> 2:8 14:24 26:20 89:21 94:6 137:15 163:12 198:8 204:25 <b>cetera (29)</b> 3:22,22 4:25,25 5:8,14,14 47:1 49:3,3,6,6 58:19 59:7 62:25 63:1 70:7 84:7 86:9 94:25 111:22,22 114:9 143:25,25 151:17 154:7 183:7 185:14 <b>chain (2)</b> 122:20 165:23 <b>chair (1)</b> 170:1 <b>chaired (1)</b> 82:7 <b>chairman (1)</b> 122:6 <b>chairmen (2)</b> 98:23 121:18 <b>challenge (2)</b> 138:21 140:16 <b>challenged (2)</b> 27:10 135:13 <b>challenging (3)</b> 72:17 137:4,18 <b>chance (2)</b> 11:18 15:19 <b>change (1)</b> 40:8	<b>chap (1)</b> 28:13 <b>character (1)</b> 81:13 <b>charge (3)</b> 27:22 28:13 96:4 <b>charged (1)</b> 12:19 <b>charge/trial (1)</b> 32:19 <b>chat (1)</b> 165:7 <b>check (17)</b> 16:7 22:21 43:22 46:9 49:10 49:20 74:10 90:7 132:15,23 135:15 135:16 146:25 157:18 193:16 195:6 206:10 <b>checked (12)</b> 10:11,16 74:5 123:3 124:22 124:24 125:5,6,12 125:14 158:3 206:9 <b>checking (1)</b> 157:22 <b>chiding (1)</b> 97:18 <b>chime (1)</b> 187:22 <b>choice (1)</b> 70:14 <b>choose (2)</b> 55:24 177:20 <b>Chorley (7)</b> 52:14,25 53:1,5 56:7,14 58:9 <b>Christina (1)</b> 113:13 <b>Christmas (1)</b> 201:5 <b>chronologically (1)</b> 205:11 <b>chronology (7)</b> 8:12 13:14,15 65:5 69:1 90:9 97:6 <b>chunk (3)</b> 134:12 187:15,23 <b>church (1)</b> 72:18 <b>circular (1)</b> 92:8 <b>circumstance (1)</b> 26:10 <b>cite (1)</b> 63:20 <b>claim (6)</b> 3:8 85:9,18 85:18,23,24 <b>claimants (7)</b> 67:16 101:5,18 103:20,23 104:18 121:4 <b>claimed (1)</b> 192:17 <b>clarification (1)</b> 32:23 <b>clarify (3)</b> 20:15 33:15 125:8 <b>Clark (38)</b> 69:5,6 71:5 71:10,17,20 73:10 73:22 76:23 77:2,6 78:12 79:20 82:7 83:19 90:25 91:2 91:16 92:12,18 93:14,18 97:10 98:20 99:4,5,9 102:9,10 103:5 110:7 122:22 124:5 125:2 127:14 130:15 131:23 136:15 <b>Clark's (1)</b> 92:21 <b>clear (8)</b> 19:6 20:6 35:20 57:13 108:15 136:4 180:19 203:23 <b>clearly (3)</b> 32:3 38:17 160:18 <b>client (2)</b> 191:25 193:2 <b>clients (1)</b> 11:6 <b>climbed (1)</b> 201:20 <b>clinical (1)</b> 59:23 <b>clip (2)</b> 4:11 5:2 <b>closed (1)</b> 204:17 <b>closely (2)</b> 64:11,15 <b>Coast (3)</b> 10:17 60:25 61:1 <b>coatings (7)</b> 94:8,10 94:12,15 95:2,17	96:24 <b>coincide (1)</b> 87:19 <b>coincided (1)</b> 87:16 <b>collect (2)</b> 45:2 46:25 <b>collected (1)</b> 21:21 <b>collecting (1)</b> 128:15 <b>colour (1)</b> 26:25 <b>coloured (2)</b> 3:18 26:1 <b>combination (3)</b> 45:4 97:11 174:10 <b>come (19)</b> 2:13 10:15 10:17 12:4 15:16 26:13 47:8 50:25 58:17 69:25 94:3 109:6,23 125:21 126:6 142:12 170:2 194:10,16 <b>comes (4)</b> 8:19 38:8 39:2 188:12 <b>comfort (1)</b> 194:18 <b>comfortable (1)</b> 30:9 <b>coming (11)</b> 15:12 16:19 22:21 36:24 42:2 94:20 152:11 159:23 161:8 176:12 204:13 <b>command (1)</b> 104:18 <b>commas (2)</b> 38:16,17 <b>commenced (1)</b> 32:16 <b>comment (11)</b> 31:2,5 31:23 36:24 114:5 139:1,11,12 140:1 144:14 196:22 <b>commented (1)</b> 90:10 <b>comments (2)</b> 1:14 38:18 <b>commercial (1)</b> 109:17 <b>commercially (2)</b> 107:8,19 <b>commitment (2)</b> 58:6 204:2 <b>common (1)</b> 23:20 <b>commonplace (1)</b> 192:15 <b>communicate (3)</b> 114:8 140:22 141:12 <b>communicated (2)</b> 114:12 191:24 <b>communication (13)</b> 16:14 70:4 85:6 98:3 104:9 110:11 139:22 140:5,8,13 140:17 141:17 191:19 <b>communications (8)</b> 64:11,19 73:24 97:11 102:22 103:7 110:23 141:18 <b>communities (1)</b> 73:2 <b>companies (5)</b> 51:16 61:9 67:24 99:20 100:25 <b>company (6)</b> 81:19 91:16 112:16 178:23 179:4 195:4 <b>compare (2)</b> 18:12 34:14 <b>competitive (1)</b> 94:13 <b>complained (1)</b> 113:10 <b>complaining (1)</b> 98:9 <b>complaint (2)</b> 5:11 98:23 <b>completed (3)</b> 32:9,18 168:10 <b>completely (3)</b> 16:17 109:18 201:19 <b>completeness (1)</b> 23:1 <b>complex (5)</b> 164:8,11	164:21,22 165:3 <b>compliance (4)</b> 95:3,4 95:21 132:20 <b>compose (1)</b> 92:25 <b>compulsion (1)</b> 203:6 <b>computer (3)</b> 23:20 24:1,3 <b>computers (1)</b> 23:23 <b>concept (2)</b> 63:8 144:5 <b>concern (15)</b> 2:9 5:7 10:24 13:2 67:21 102:16 119:1,4 126:5 143:17 145:13 155:16,17 167:19 202:8 <b>concerned (8)</b> 1:13 61:24 75:6 83:13 114:2 154:16 197:13 198:17 <b>concerning (2)</b> 17:11 181:11 <b>concerns (5)</b> 5:12 67:24 97:20 99:20 163:5 <b>conclude (1)</b> 199:5 <b>concluded (4)</b> 17:12 172:6 173:14,15 <b>concluding (1)</b> 1:6 <b>conclusion (4)</b> 27:15 32:11 198:7 201:16 <b>conditions (1)</b> 123:5 <b>conduct (2)</b> 180:14 182:23 <b>conducting (2)</b> 56:23 179:3 <b>conference (2)</b> 156:14 156:15 <b>confidence (1)</b> 199:12 <b>confidential (1)</b> 107:19 <b>confidentiality (1)</b> 157:24 <b>confirm (3)</b> 43:16 159:22 201:25 <b>confrontational (3)</b> 102:16 104:8 111:21 <b>confuse (1)</b> 135:10 <b>confused (4)</b> 7:21 24:11 35:21 111:10 <b>conglomeration (1)</b> 68:3 <b>connected (2)</b> 100:25 103:6 <b>connection (1)</b> 101:9 <b>consequence (2)</b> 35:13 148:5 <b>consider (10)</b> 58:12 59:10 60:6 101:2 118:14 121:8 200:2 201:13 206:22 207:17 <b>considerably (1)</b> 27:1 <b>consideration (2)</b> 26:16 27:17 <b>considered (3)</b> 84:9 114:24 155:13 <b>considering (1)</b> 185:8 <b>consign (1)</b> 113:14 <b>consistent (5)</b> 114:15 140:5,8,17 141:16 <b>consistently (1)</b> 123:23 <b>consolidated (1)</b> 207:10 <b>consolidation (2)</b> 6:15 207:7 <b>conspiracy (6)</b> 11:5 79:18 104:19 124:19 140:14	166:12 <b>constant (1)</b> 7:23 <b>constitutes (1)</b> 190:21 <b>consultancy (1)</b> 63:5 <b>consultants (3)</b> 62:20 63:17 71:13 <b>consulted (1)</b> 94:18 <b>consulting (1)</b> 62:21 <b>contact (10)</b> 16:20 17:14 99:14 115:11 138:8 139:4 150:1 150:2 154:2 167:6 <b>contacted (3)</b> 49:21 75:4 178:4 <b>contain (1)</b> 22:15 <b>contained (2)</b> 22:1 181:20 <b>contemporaneous (1)</b> 30:18 <b>contend (1)</b> 104:18 <b>content (7)</b> 86:1,5,6 113:5 150:7 183:3 183:4 <b>contents (1)</b> 43:16 <b>context (18)</b> 3:12 8:10 21:19 30:24 40:7 80:9 91:22 93:24 94:1 95:18 96:16 96:22 99:3 113:25 163:23 190:22 191:23 192:6 <b>continue (1)</b> 199:13 <b>continued (2)</b> 17:3 210:4 <b>continuing (1)</b> 115:1 <b>contract (3)</b> 55:2,19 55:23 <b>contracted (1)</b> 37:3 <b>contracts (1)</b> 23:3 <b>contrived (3)</b> 24:16,22 25:15 <b>contriving (1)</b> 25:17 <b>control (3)</b> 138:12 139:10,23 <b>convene (1)</b> 111:8 <b>convenience (1)</b> 4:10 <b>convenient (5)</b> 9:17 60:21 117:13 174:20 203:18 <b>conversation (30)</b> 5:7 5:12 36:7 61:16 65:15,25 68:11,15 68:18 69:5 75:23 76:7 112:11,13 133:11 135:11 136:3,21 137:9 141:22 146:25 147:1 149:4 156:18 157:14 159:14 175:21,24 177:22 178:15 <b>conversations (14)</b> 30:11 44:22 71:4 71:10 75:24 119:5 125:1 130:17,18 133:12 137:8,17 174:9,15 <b>converted (1)</b> 50:5 <b>conviction (1)</b> 28:6 <b>convince (2)</b> 130:18 137:10 <b>copied (12)</b> 4:10,18 138:15 141:18 147:13 151:21 160:7 161:7 162:9 182:6,9 187:23 <b>copies (3)</b> 31:19 48:16 78:22 <b>copy (14)</b> 3:13 7:18 31:24 32:1,9 48:15	179:15 189:22 190:2,10 197:21 206:6,10,11 <b>corner (4)</b> 4:17 127:24 182:9,12 <b>corporate (2)</b> 62:17,23 <b>correct (42)</b> 18:21 21:1,16 28:1,9,11 35:25 44:9 50:17 52:1,5,13,15 53:6 53:18 54:9,11 56:16 62:5,8,14 64:3,5,8,21 65:1 68:2 77:15 83:17 93:22 95:16 96:1 101:12,15 110:15 131:12 136:6,11 143:4 170:14 187:2 203:13 <b>corrected (1)</b> 35:9 <b>correspondence (10)</b> 82:10 83:6 84:13 86:6 91:6 97:23 100:9 105:21 122:24 166:1 <b>costs (2)</b> 27:7 131:9 <b>counsel (10)</b> 35:13 40:13 95:25 109:14 109:16 114:8,14 181:10 204:3,19 <b>counsel's (1)</b> 80:11 <b>counsel-only (1)</b> 120:12 <b>couple (1)</b> 164:2 <b>course (19)</b> 9:5,18 19:24 26:7 36:8 50:25 61:17 66:10 75:2 78:4 90:19 91:18 93:19 101:21 120:21 166:8 193:7 200:1 207:13 <b>court (17)</b> 1:12 2:2 3:1 5:18 19:23 49:1 88:20 89:18,20 191:18,19 199:8 203:10 204:2,9 207:2 208:7 <b>cover (6)</b> 44:20 58:18 125:12 166:10,16 168:4 <b>coverage (1)</b> 60:19 <b>covering (3)</b> 50:21 166:12 196:1 <b>covers (1)</b> 202:16 <b>CPR (1)</b> 207:9 <b>create (1)</b> 182:14 <b>created (1)</b> 182:16 <b>crib (1)</b> 3:11 <b>critical (1)</b> 59:14 <b>criticising (2)</b> 98:4 104:7 <b>cropped (1)</b> 112:12 <b>cross-examination (4)</b> 5:19 43:20,22 210:11 <b>cross-examine (1)</b> 12:25 <b>cross-examined (2)</b> 5:25 6:1 <b>cross-examining (1)</b> 200:1 <b>cupboard (1)</b> 45:11 <b>curious (1)</b> 6:11 <b>current (1)</b> 142:2 <b>currently (1)</b> 20:20 <b>curter (1)</b> 163:10 <b>customer (10)</b> 59:14 59:17,19,25 63:10 70:11,21 73:1,1 123:22
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<b>customers (7)</b> 61:20 70:13 72:10 94:14 95:7 130:6 137:10	110:13 111:1,5,6 123:7,11 125:24 151:19 153:22 177:15	<b>depicted (1)</b> 96:7	55:14,15 56:22,22 58:16,23 59:22 60:3,3 92:2 93:14 102:4 154:17	<b>discussing (10)</b> 24:12 32:20 77:1 97:3 103:14 110:6 111:24 156:22 185:20,23	103:17 104:7 113:10 121:6 137:15 138:3,20 144:3 145:13 150:18,20 152:19 153:10 175:22	174:10 193:8
<b>cut (1)</b> 128:14	<b>deals (2)</b> 42:11 193:21	<b>depiction (1)</b> 96:2	176:20,24,25 177:17 178:3,23 179:4 180:22 182:21 183:2 195:1	<b>discussion (4)</b> 84:22 125:19 133:8 181:5 <b>discussions (6)</b> 29:21 81:4 86:2,6 100:20 105:3	<b>draft (6)</b> 102:10 112:16,18 117:3 161:8 182:18	<b>electronic (1)</b> 23:24
<b>C/145 (2)</b> 67:5 100:11	<b>dealt (11)</b> 33:25 42:9 69:12 88:3,13 109:14 186:7 188:20,22 189:15 196:10	<b>Derek (15)</b> 63:7 67:23 82:2 92:25 93:5 98:15 99:19 123:6 141:15 154:20 159:17 160:6,10,16 174:11	192:5,8 115:16 162:1 166:1,2	<b>disengaged (3)</b> 123:13 123:14,16 <b>disgusted (1)</b> 75:21 <b>dishonesty (1)</b> 29:1 <b>dishonesty/fraud (1)</b> 29:10	<b>drafting (1)</b> 183:9 <b>drafting (1)</b> 152:17 <b>dramatic (1)</b> 8:19 <b>draw (4)</b> 27:15 201:15 201:16,22	<b>element (4)</b> 63:13,16 80:20 202:10
<b>D</b>	<b>Dean (1)</b> 82:8	<b>described (2)</b> 24:15 44:8	<b>disagree (1)</b> 40:4	<b>disparate (1)</b> 20:13	<b>drawn (3)</b> 401:10 110:10,13	<b>email (68)</b> 4:2,8,17 5:3 33:8 65:13,17,22 66:10 67:7,12 68:5 71:23 73:15 75:10 77:19 93:20 105:7 105:8 113:11,19 114:10,18 115:5,11 115:18 116:6 121:8 122:3,20,24 123:9 124:3 126:16 129:23 130:10 136:7,13 138:7 139:17 141:15,19 144:5,12 147:2,12 148:22 149:21 154:3,6 155:20 159:16 160:6,7,9 160:14 161:7,22 163:16,21 165:20 167:20 174:24 178:1 190:3,6 195:8,9
<b>Daly (1)</b> 108:7	<b>Deane (6)</b> 64:20 75:8 78:10,15 84:3 197:6	<b>describing (2)</b> 73:4 81:16	<b>disagree (1)</b> 40:4	<b>disposed (1)</b> 8:15	<b>driven (1)</b> 59:11	<b>emailed (3)</b> 33:19 73:20 143:19
<b>Dan (1)</b> 20:18	<b>Dear (3)</b> 114:7 121:25 178:2	<b>designed (1)</b> 70:11	<b>disagreements (1)</b> 23:10	<b>distances (2)</b> 156:12 156:13	<b>drives (1)</b> 23:22	<b>emailing (6)</b> 65:14 73:23 121:15 132:2 160:16 165:23
<b>danger (2)</b> 138:9 139:22	<b>December (16)</b> 1:1 68:23 86:22 105:12 105:18,19 106:11 106:22 111:2,2 124:8,8 133:17 157:12 164:4 208:8	<b>desks (1)</b> 49:18	<b>disappeared (1)</b> 50:6	<b>distant (1)</b> 29:25	<b>drives (1)</b> 23:22	<b>emailed (3)</b> 33:19 73:20 143:19
<b>dangerous (1)</b> 114:4	<b>December/beginnin...</b> 164:18	<b>desktop (3)</b> 159:21 160:4 166:25	<b>disappointed (1)</b> 179:24	<b>distorted (1)</b> 204:9	<b>driving (3)</b> 59:22 61:19 87:23	<b>emailing (6)</b> 65:14 73:23 121:15 132:2 160:16 165:23
<b>daresay (1)</b> 8:1	<b>decide (4)</b> 61:4 148:20 150:6 196:17	<b>despite (1)</b> 118:10	<b>disappointing (2)</b> 95:6 98:2	<b>distorting (1)</b> 203:18	<b>dynamic (2)</b> 164:12 164:13	<b>emails (37)</b> 69:5 74:24 75:5,11 77:4,17,18 78:2,20 81:7 83:18 83:21 84:2 90:24 91:24 93:25 95:13 96:4,16 115:22,23 122:5,8 124:13,14 128:6,16 129:2 140:9 145:6 163:19 166:3 175:13 195:10 196:21 197:3,4
<b>dark (1)</b> 175:17	<b>decided (2)</b> 94:9,11	<b>detail (6)</b> 32:7,22 113:6 133:8 187:21 188:2	<b>Disappointment (1)</b> 179:22	<b>dividends (4)</b> 55:24,25 56:1,5	<b>Dyson (71)</b> 49:3 51:22 60:21 63:7 64:13 64:25 67:20,23 68:8,16 74:18 79:19 81:10,19,20 81:22,23 82:2 92:7 93:4 97:7,17 99:4,9 99:14,17,19 102:10 102:12 103:12,19 104:6 110:23 111:5 111:18,23 112:24 114:1,23 115:20 143:10,12 145:5,12 145:24 148:16 149:20,21 150:4 151:3 152:14 154:8 154:15 155:5,13 156:5,9 158:19 159:1 160:16 161:10 167:2,18 168:21 169:6,14,15 173:10 174:8 177:20,22	<b>emerged (1)</b> 12:22
<b>date (16)</b> 23:14 46:24 47:2,3,5,8 50:19 78:23 88:18 133:17 133:21,21 134:1 152:25 169:7,24	<b>decides (1)</b> 148:6	<b>development (4)</b> 51:12 54:13 64:16 71:13	<b>disciplinary (1)</b> 86:19	<b>document (42)</b> 5:4 24:13 26:3,24 31:20 34:3 35:1,2 41:24 66:9 74:22 75:22 91:23 97:6 107:3 111:11 116:19 117:2 127:23 128:3,8,10 131:25 136:2 143:8 143:9,18 152:21,22 156:1 165:21 173:18 182:10,12 182:14 183:9 192:1 192:3,3 205:10,23 206:5	<b>emanate (1)</b> 190:19	<b>emphasise (1)</b> 61:6
<b>dated (5)</b> 33:11 44:18 197:5,6,6	<b>deciding (1)</b> 148:25	<b>development (4)</b> 51:12 54:13 64:16 71:13	<b>disciplinary (37)</b> 26:16 27:11,14,18,24 32:12,15 76:24,25 78:5,9,12,14,19 79:12 81:3 82:6,11 82:24 83:4,7 84:15 86:9,14 88:11 114:16 116:12 117:22 118:7	<b>documentary (1)</b> 174:5	<b>emphasise (1)</b> 61:6	<b>employed (1)</b> 123:4
<b>dates (7)</b> 46:18,19 47:4,14 48:1,2 101:14	<b>decision (8)</b> 27:22 29:22 159:5,9 171:6 174:19 177:18,19	<b>deviate (1)</b> 154:4	<b>disciplined (9)</b> 74:23 77:9,16,22,23 79:8 93:19 115:17 145:6	<b>documented (2)</b> 140:9 198:7	<b>employee (6)</b> 18:6 42:2 51:6,7,9 56:15	<b>employees (1)</b> 197:12
<b>date (16)</b> 23:14 46:24 47:2,3,5,8 50:19 78:23 88:18 133:17 133:21,21 134:1 152:25 169:7,24	<b>defence (5)</b> 3:3,3,16 81:10,12	<b>devote (1)</b> 71:16	<b>disciplining (2)</b> 95:15 96:5	<b>documents (39)</b> 1:21 3:25 22:1 23:23 24:12,15,19,21,25 25:11,17,18 27:19 48:2 78:3,22 79:25 80:10 84:24 118:10 118:15,15,23 119:6 119:11,18 183:7 185:3 190:19 191:24 192:24 195:10 196:21,23 197:11 198:3 205:15,18 206:16	<b>employment (2)</b> 18:7 75:16	<b>engagement (1)</b> 110:23
<b>dated (5)</b> 33:11 44:18 197:5,6,6	<b>defend (1)</b> 93:24	<b>diary (2)</b> 44:17,17	<b>disclosable (1)</b> 119:19	<b>doing (15)</b> 37:24 49:4 55:4,13 61:11 66:8 81:8 98:7 135:17 139:21 140:18 158:7 171:14 172:16 173:22	<b>encapsulates (1)</b> 198:20	<b>engagement (1)</b> 110:23
<b>dates (7)</b> 46:18,19 47:4,14 48:1,2 101:14	<b>defendants (2)</b> 3:4 34:6	<b>dictate (2)</b> 192:15 196:14	<b>disclose (2)</b> 49:5 196:18	<b>docs (3)</b> 110:7,7,7	<b>encapsulates (1)</b> 198:20	<b>engagement (1)</b> 110:23
<b>Dave (9)</b> 69:11 71:20 73:10,22 74:10,15 93:14 110:7 130:15	<b>definitely (8)</b> 9:19,25 10:1,8 92:20 141:2 163:20,20	<b>difficult (9)</b> 12:9 26:19 58:1 61:1 107:12 107:22 164:7,13 184:13	<b>disclosure (2)</b> 49:5 196:18	<b>double (1)</b> 14:6	<b>encapsulates (1)</b> 198:20	<b>engagement (1)</b> 110:23
<b>Dave's (1)</b> 110:10	<b>Del (1)</b> 113:13	<b>difficulties (1)</b> 203:9	<b>disclosure (16)</b> 1:11 1:17,18 14:14 41:16,21,22 48:8 74:22 80:20 85:12 117:22 118:1 190:6 197:23 199:16	<b>dot (3)</b> 110:7,7,7	<b>encapsulates (1)</b> 198:20	<b>engagement (1)</b> 110:23
<b>David (9)</b> 71:10,17 77:6 92:21 102:10 127:14 131:23 136:15 137:9	<b>delayed (3)</b> 1:3 120:9 158:15	<b>difficulties (1)</b> 203:9	<b>disclosures (1)</b> 49:4	<b>dots (1)</b> 127:11	<b>encapsulates (1)</b> 198:20	<b>engagement (1)</b> 110:23
<b>Davies (10)</b> 18:11 19:2 19:8,13,17 35:22 36:7 37:12 38:14 40:19	<b>delighted (2)</b> 15:12 116:22	<b>difficulties (5)</b> 58:17 108:13 132:8,20 193:9	<b>discomfort (1)</b> 25:11	<b>double (1)</b> 14:6	<b>encapsulates (1)</b> 198:20	<b>engagement (1)</b> 110:23
<b>day (27)</b> 5:24 10:16 14:4 16:4 17:10 23:16 31:11 37:1 48:19,22 57:20,22 58:4 69:3 71:23 73:15 78:18 87:15 87:16 93:10 112:10 133:13 156:10 167:23 180:4,23 200:9	<b>delivers (3)</b> 59:13 59:14,24	<b>difficulties (1)</b> 203:9	<b>discomforting (2)</b> 102:18 115:14	<b>double (1)</b> 14:6	<b>encapsulates (1)</b> 198:20	<b>engagement (1)</b> 110:23
<b>daybook (26)</b> 44:8,12 44:12,25 45:5,18 45:24 68:20 80:23 88:23 89:7,13,15 89:16,19,23,24 105:18 133:16 154:20 157:8,16,16 157:19,20 179:12	<b>demonstrate (1)</b> 171:3 171:3	<b>difficulties (1)</b> 203:9	<b>disconnection (1)</b> 102:15	<b>double (1)</b> 14:6	<b>encapsulates (1)</b> 198:20	<b>engagement (1)</b> 110:23
<b>daybooks (16)</b> 43:25 45:16 46:9,12 48:25 49:6,10,15 50:12,15,21 88:20 124:7,11,22,25	<b>denied (1)</b> 3:23	<b>difficulties (1)</b> 203:9	<b>discovered (1)</b> 141:23	<b>double (1)</b> 14:6	<b>encapsulates (1)</b> 198:20	<b>engagement (1)</b> 110:23
<b>days (11)</b> 7:3,8 10:22 11:15 23:17 200:10 202:4 203:2,11,11 203:17	<b>denies (1)</b> 4:8	<b>difficulties (1)</b> 203:9	<b>discrete (2)</b> 5:14 13:10	<b>double (1)</b> 14:6	<b>encapsulates (1)</b> 198:20	<b>engagement (1)</b> 110:23
<b>day-to-day (7)</b> 40:9 54:15 62:24 63:3,3 125:23 130:20	<b>deny (2)</b> 73:12 80:3	<b>difficulties (1)</b> 203:9	<b>discuss (12)</b> 66:17 73:21 76:14 93:11 109:8 111:23 113:6 119:17 171:15 172:11 203:4 204:15	<b>double (1)</b> 14:6	<b>encapsulates (1)</b> 198:20	<b>engagement (1)</b> 110:23
<b>de (3)</b> 121:8 129:5 132:2	<b>department (35)</b> 4:7 20:17 21:15 80:21 83:15,19,21 84:17 84:23 86:10,10,14 118:6,7,20,21 126:24 141:18 145:1 160:13 166:15 170:24 171:2,10,20 178:5 178:13 181:5,13 183:9,21 189:17 190:5,17 191:2	<b>difficulties (1)</b> 203:9	<b>discussed (5)</b> 15:7 97:20 103:12 105:5 180:21	<b>double (1)</b> 14:6	<b>encapsulates (1)</b> 198:20	<b>engagement (1)</b> 110:23
<b>deal (25)</b> 6:4,10 12:4,5 14:9,17 17:1 36:15 41:14,20 42:13,14 44:2 78:18 87:10 87:22 94:7 117:23 123:25 144:9 153:10 170:3 189:3 194:24 199:18	<b>departments (1)</b> 192:15	<b>difficulties (1)</b> 203:9	<b>discuss (12)</b> 66:17 73:21 76:14 93:11 109:8 111:23 113:6 119:17 171:15 172:11 203:4 204:15	<b>double (1)</b> 14:6	<b>encapsulates (1)</b> 198:20	<b>engagement (1)</b> 110:23
<b>dealing (20)</b> 17:20 37:19,20 47:12 58:14 80:2 88:2 99:5 102:3,5	<b>department's (1)</b> 169:16	<b>difficulties (1)</b> 203:9	<b>discuss (12)</b> 66:17 73:21 76:14 93:11 109:8 111:23 113:6 119:17 171:15 172:11 203:4 204:15	<b>double (1)</b> 14:6	<b>encapsulates (1)</b> 198:20	<b>engagement (1)</b> 110:23



<p><b>happened (8)</b> 6:18 133:1 165:13 171:23 180:3 181:21 182:15 186:3</p> <p><b>happening (8)</b> 112:5 112:11 132:24 135:24 148:20 149:17 151:7 167:14</p> <p><b>happens (6)</b> 7:4 73:5 116:21 129:1 149:11 162:7</p> <p><b>happy (3)</b> 109:11,16 207:15</p> <p><b>hard (2)</b> 44:20,21</p> <p><b>Hart (34)</b> 64:19 73:17 73:23 74:14 78:11 78:12,16 79:21 82:8 87:13 91:1 92:6,12 93:7,18 97:2,11 99:5,9 103:3,4 121:14 122:5,8,13,21 124:5 125:2 128:5 128:15 138:1 141:17 197:5 198:9</p> <p><b>haul (1)</b> 41:8</p> <p><b>head (3)</b> 25:10 164:13 177:17</p> <p><b>headed (1)</b> 57:10</p> <p><b>heading (2)</b> 108:16 189:12</p> <p><b>Healthcare (5)</b> 65:15 65:25 66:3 90:17 97:21</p> <p><b>hear (8)</b> 5:23 8:25 13:4 15:24 113:13 181:12,14 194:5</p> <p><b>Hearcare (5)</b> 98:15,16 98:17 106:2,6</p> <p><b>heard (12)</b> 3:5 10:17 10:23 51:21 54:16 62:6 64:13 82:19 148:2 149:6 151:3 192:16</p> <p><b>hearing (6)</b> 6:8 7:6 8:9 13:22 15:7 191:12</p> <p><b>heat (1)</b> 75:14</p> <p><b>held (4)</b> 100:21 123:5 142:24 184:18</p> <p><b>hell (2)</b> 84:5 122:7</p> <p><b>Helle (22)</b> 69:11 73:22 75:25 91:7 97:18 102:4 103:21 114:12 128:7,16 138:8 139:18 141:23,24 142:2 146:22 148:6 149:5 150:18,20 159:19 179:22</p> <p><b>Helle's (2)</b> 147:8 163:3</p> <p><b>help (9)</b> 67:1 114:5 119:24 123:19 169:22 171:5 185:4 190:11 205:16</p> <p><b>helpful (2)</b> 163:21,24</p> <p><b>helping (1)</b> 123:18</p> <p><b>helps (2)</b> 71:11 169:11</p> <p><b>her(sic) (1)</b> 148:3</p> <p><b>hey (1)</b> 148:7</p> <p><b>Hi (8)</b> 4:21 74:1 126:20 132:3 141:22 146:5 163:14 164:25</p> <p><b>hide (1)</b> 173:2</p> <p><b>high (2)</b> 59:12 136:24</p> <p><b>highlight (2)</b> 64:10 205:5</p> <p><b>HILDYARD (264)</b> 1:9</p>	<p>1:19 2:5,24 3:9,13 3:24 4:14 5:5,9,16 6:11,18,23 7:10,15 7:17,20 8:7,14,17 8:23 9:1,3,6,9,15 9:21 10:2,7,10,14 10:19 11:14,20 12:7,11,15,18,25 13:6,17,23 14:2,5 14:12,22 15:1,3,6 15:15 16:5,10,15 16:22 17:2 19:20 19:21 20:9,13,24 21:2,6,9,12,14,17 21:23 22:7,10,25 22:15 23:7,19,25 24:7,11,18 25:2,8 25:15,24 26:1,5,7 26:18,23 27:20,24 28:2,4,10,12,15,17 29:13 30:16 31:7 31:15,18 32:19,22 33:1 34:1,4,7,16,19 34:22,25 35:3,10 35:12 40:12,23 41:2,5,7,11,14,21 41:23 42:4,8,16,19 43:2 48:3,10,17,23 48:25 50:2,7 54:3 66:19 71:25 72:2 76:23 77:1,3,5,7 80:5,8 84:21 85:2,9 85:16,21,25 90:2,4 95:9,11,23 96:7,11 96:21 107:4,12,21 107:25 108:3,6 109:1,7,13,18,23 117:16 118:2,9,14 118:19 119:2,9,16 119:24 120:1,5,19 120:22 158:7,10 179:10,25 180:2,8 180:12,15 183:17 184:7,10 186:4 190:12,14,25 191:4 191:6,11,15 192:9 192:14,23 193:1,8 193:11,19,24 194:3 194:8,13,15,22 195:13,17,19,22 196:5,8,16 197:8 197:10 198:4,19,25 199:4,11,19 200:6 200:9,15,18,23,25 201:5,10,13,16,19 201:25 202:11 203:4,8,21 204:6 204:15,23 205:7,17 205:22,25 206:3,5 206:8,14,17,24 207:11,18,23 208:2 210:6</p> <p><b>hill (1)</b> 201:20</p> <p><b>hindsight (2)</b> 25:5 26:20</p> <p><b>hip (1)</b> 113:16</p> <p><b>history (6)</b> 12:21 29:20 137:8,13,16 151:19</p> <p><b>hit (5)</b> 69:11,14,15,17 73:23</p> <p><b>hold (3)</b> 183:13,23 190:12</p> <p><b>hole (1)</b> 160:8</p> <p><b>holepunch (4)</b> 92:19 121:16 179:17 180:1</p> <p><b>holiday (6)</b> 87:11,13 87:13,14 201:6 203:25</p>	<p><b>holidays (1)</b> 78:10</p> <p><b>home (19)</b> 35:24 36:4 36:13 37:13,25 38:4,8,15,20,23,25 39:2,11,25 40:3,6 40:11,20 194:17 88:16 174:22</p> <p><b>honestly (3)</b> 82:22 88:16 174:22</p> <p><b>honourable (1)</b> 141:7</p> <p><b>hope (4)</b> 14:16 194:16 199:4 204:18</p> <p><b>hoping (1)</b> 7:9</p> <p><b>hospital (2)</b> 7:14 15:13</p> <p><b>hour (5)</b> 12:9 14:24 15:2 93:10 204:12</p> <p><b>hours (5)</b> 9:25 36:25 37:3 143:23 201:1 41:10 210:3,8</p> <p><b>Housekeeping (4)</b> 1:5 86:10 118:6,20</p> <p><b>HR (9)</b> 75:4 81:8 83:15 83:19,21 84:12 86:10 118:6,20</p> <p><b>huge (2)</b> 12:6 54:19</p> <p><b>humanly (1)</b> 42:9</p> <p><b>hundred (1)</b> 45:21</p> <p><b>hundreds (1)</b> 59:13</p> <p><b>hurry (1)</b> 34:20</p> <p><b>husband (6)</b> 121:6 138:10 139:13,25 142:7 159:18</p>	<p><b>India (1)</b> 190:22</p> <p><b>indicated (2)</b> 2:7 205:24</p> <p><b>indications (1)</b> 77:20</p> <p><b>indication (3)</b> 77:21 114:11 139:17</p> <p><b>individual (4)</b> 57:2 83:25 84:3,13</p> <p><b>individuals (10)</b> 27:13 74:23 75:9,17 77:22 78:6 83:12 100:25 107:10,16</p> <p><b>induce (1)</b> 193:6</p> <p><b>induced (1)</b> 193:3</p> <p><b>induction (1)</b> 164:16</p> <p><b>industry (3)</b> 57:8 94:21,21</p> <p><b>infers (1)</b> 39:21</p> <p><b>inflated (2)</b> 142:8,17</p> <p><b>inform (1)</b> 161:2</p> <p><b>information (14)</b> 3:7 32:5 33:22 45:3 84:12,23 98:22 107:8,11 121:10 129:4 132:17 150:5 183:12</p> <p><b>informed (6)</b> 3:19,20 26:1 100:13 155:5 169:15</p> <p><b>infrequent (1)</b> 29:14</p> <p><b>Ingfield (1)</b> 160:10</p> <p><b>initial (4)</b> 13:7 29:19 33:20 154:3</p> <p><b>initiative (4)</b> 70:12,16 71:3 76:8</p> <p><b>initiatives (5)</b> 70:10,10 70:20 71:1 87:24</p> <p><b>input (6)</b> 35:6 106:2,6 130:8 161:13 176:12</p> <p><b>inserted (2)</b> 34:3,6</p> <p><b>inside (2)</b> 177:6,9</p> <p><b>inspect (1)</b> 50:24</p> <p><b>instance (1)</b> 31:22</p> <p><b>instinct (1)</b> 199:14</p> <p><b>instrocing (3)</b> 1:12 7:1 16:20</p> <p><b>instruction (1)</b> 173:5</p> <p><b>instructions (10)</b> 41:17 42:14 85:20 109:9 119:3 141:14 144:15 190:13 191:4,10</p> <p><b>insulates (1)</b> 191:2</p> <p><b>intended (2)</b> 165:20 196:13</p> <p><b>intending (1)</b> 181:8</p> <p><b>intends (1)</b> 146:22</p> <p><b>intention (1)</b> 193:6</p> <p><b>interaction (1)</b> 67:16</p> <p><b>interactions (1)</b> 70:6</p> <p><b>interest (3)</b> 129:12,14 129:18</p> <p><b>interesting (2)</b> 114:19 192:18</p> <p><b>interests (4)</b> 137:11 137:11 141:4,4</p> <p><b>interjections (1)</b> 190:16</p> <p><b>internal (1)</b> 75:21</p> <p><b>interpose (1)</b> 6:11</p> <p><b>interposed (1)</b> 7:19</p> <p><b>interposing (2)</b> 8:10 11:19</p> <p><b>interpret (1)</b> 145:25</p> <p><b>interpretation (5)</b> 26:14 38:18 39:12 39:15 134:25</p> <p><b>interrupt (1)</b> 95:9</p> <p><b>interview (8)</b> 22:3,5</p>	<p>24:23 25:23,24 30:2 31:24 32:8</p> <p><b>interviewed (2)</b> 25:9 32:3</p> <p><b>interviewees (1)</b> 31:19</p> <p><b>interviews (1)</b> 18:6</p> <p><b>introduce (1)</b> 164:6</p> <p><b>invariably (1)</b> 174:12</p> <p><b>inventory (8)</b> 22:15,16 22:24,25 23:8,11 23:16,25</p> <p><b>inverted (2)</b> 38:16,17</p> <p><b>investigate (2)</b> 135:23 160:3</p> <p><b>investigating (2)</b> 21:25 83:8</p> <p><b>investigation (36)</b> 17:18,22,25 18:4 21:4,20,24,24 23:6 27:22 29:2,15 30:1 32:2,17 33:8 39:17 117:4 166:17,22 167:7,13,14 168:8 168:10 172:4,9 174:18,22 175:2,4 175:5 176:6 184:5 184:24 189:18</p> <p><b>investigations (5)</b> 28:23 29:3,7 61:13 167:17</p> <p><b>investigative (2)</b> 30:17 32:11</p> <p><b>invitation (1)</b> 76:13</p> <p><b>invited (1)</b> 196:22</p> <p><b>inviting (1)</b> 83:7</p> <p><b>invoices (1)</b> 32:14</p> <p><b>involve (2)</b> 119:6 160:5</p> <p><b>involved (32)</b> 1:20 21:10 27:7 29:23 30:7 54:19 64:23 65:10 68:8 74:24 76:23 81:16 90:14 90:17,18 91:16 97:8 99:6,12 100:7 100:8 101:25 104:7 113:3 116:12,23 118:18 126:2 141:25 152:9,10 165:1</p> <p><b>involvement (12)</b> 30:4 30:11 60:22 68:7 98:16 101:22 102:7 103:20 160:5 176:17 193:15,16</p> <p><b>in-house (1)</b> 181:10</p> <p><b>iPad (5)</b> 45:2,3 89:9,10 89:11</p> <p><b>iPads (1)</b> 89:10</p> <p><b>Iqbal (2)</b> 52:21 58:8</p> <p><b>irregularities (5)</b> 152:18 153:2 165:25 166:19 185:21</p> <p><b>irrelevant (1)</b> 109:18</p> <p><b>Ismail (3)</b> 162:9,14 163:25</p> <p><b>Ismail's (1)</b> 163:21</p> <p><b>issue (76)</b> 2:2 11:2,7 14:14 41:16 54:17 60:9,24 65:11 66:4 66:8,12 68:13,17 69:23 76:14,21 84:9 87:14 88:2,3 90:19,20 95:3,4,21 95:22 96:19,25 97:19 100:24 101:19 103:14 104:1 109:17 111:21 119:20</p>	<p>121:6 122:25 125:3 125:23 126:7,24,25 129:5,22,25 130:20 132:4,6,21 137:13 137:20 142:25 144:9,10 153:13,23 155:10,11,12,13 157:25 165:25 169:1,2,6 174:2 178:16 179:8 191:20 192:4,24 195:7 197:2 199:15</p> <p><b>issues (21)</b> 2:19 11:11 27:10 57:8 98:12 98:14 106:15 112:5 124:19 143:25 169:8 175:7,9 177:15 183:24 192:2,3 199:17 201:4 202:17 205:12</p> <p><b>item (9)</b> 68:23 170:15 186:7,9,11,14,18 188:21,22</p> <p><b>items (3)</b> 158:20 186:12 188:21</p>	<p><b>J</b></p> <p><b>Jack (10)</b> 162:9,14 163:8,25 164:3,5 164:14 165:1,6,6 107:25 108:3,6</p> <p><b>Jack's (1)</b> 164:9</p> <p><b>January (28)</b> 2:13 5:3 7:3,3 47:16 102:4 104:3,4 105:22 111:5 138:1 143:13 147:13 150:22,25 152:6 154:2 164:18 167:2,2 173:5,10 173:13 175:9 201:24 202:20,23 203:1</p> <p><b>January/February (1)</b> 187:4</p> <p><b>Jason (1)</b> 116:23</p> <p><b>jaundiced (1)</b> 27:16</p> <p><b>Jena (1)</b> 117:4</p> <p><b>jeopardise (1)</b> 141:9</p> <p><b>jeopardised (1)</b> 141:11</p> <p><b>Jeze (4)</b> 129:5,11,13 132:3</p> <p><b>Jill (12)</b> 78:12 82:7 83:19 90:25 91:2 92:12,18 97:10 98:20 102:9 103:5 122:22</p> <p><b>job (2)</b> 23:12 58:4</p> <p><b>John (1)</b> 169:20</p> <p><b>joint (3)</b> 55:15 177:11 183:12</p> <p><b>journey (1)</b> 59:19</p> <p><b>judge (2)</b> 19:23 81:13</p> <p><b>judgments (1)</b> 21:20</p> <p><b>judicial (1)</b> 8:4</p> <p><b>July (5)</b> 88:6 122:17 124:4,5 127:19</p> <p><b>July/August (2)</b> 126:14,25</p> <p><b>July/August/Septem...</b> 128:17</p> <p><b>jump (1)</b> 175:15</p> <p><b>June (6)</b> 122:12 170:6 170:11 176:17 188:8 189:17</p> <p><b>justice (265)</b> 1:9,19 2:5,24 3:9,13,24 4:14 5:5,9,16 6:11 6:18,23 7:10,15,17 7:20 8:7,14,17,23</p>	<p>9:1,3,6,9,15,21 10:2,7,10,14,19 11:14,20 12:7,11 12:15,18,25 13:6 13:17,21,23 14:2,5 14:12,22 15:1,3,6 15:15 16:5,10,15 16:22 17:2 19:20 19:21 20:9,13,24 21:2,6,9,12,14,17 21:23 22:7,10,12 22:15 23:7,19,25 24:7,11,18 25:2,8 25:15,24 26:1,5,7 26:18,23 27:20,24 28:2,4,10,12,15,17 29:13 30:16 31:7 31:15,18 32:19,22 33:1 34:1,4,7,16,19 33:1 34:1,4,7,16,19 43:2 48:3,10,17,23 48:25 50:2,7 54:3 66:19 71:25 72:2 76:23 77:1,3,5,7 80:5,8 84:21 85:2,9 85:16,21,25 90:2,4 95:9,11,23 96:7,11 96:21 107:4,12,21 107:25 108:3,6 109:1,7,13,18,23 117:16 118:2,9,14 118:19 119:2,9,16 119:24 120:1,5,19 120:22 158:7,10 179:10,25 180:2,8 180:12,15 183:17 184:7,10 186:4 190:12,14,25 191:4 191:6,11,15 192:9 192:14,23 193:1,8 193:11,19,24 194:3 194:8,13,15,22 195:13,17,19,22 196:5,8,16 197:8 197:10 198:4,19,25 199:4,11,19 200:6 200:9,15,18,23,25 201:5,10,13,16,19 201:25 202:11 203:4,8,21 204:6 204:15,23 205:7,17 205:22,25 206:3,5 206:8,14,17,24 207:11,18,23 208:2 210:6</p> <p><b>justification (1)</b> 147:8</p> <p><b>JV (1)</b> 141:5</p> <p><b>JVA (1)</b> 74:5</p> <p><b>JVP (6)</b> 3:6 93:14 142:2,2 143:25 145:2</p> <p><b>JVPs (7)</b> 61:24 63:19 64:7,15 71:19 91:13 100:25</p>	<p><b>K</b></p> <p><b>keen (3)</b> 5:21 41:18 61:6</p> <p><b>keep (16)</b> 16:15 18:3 21:24 22:6 23:11 23:25 44:17 45:5 62:13 89:13 99:15 107:13,22 141:11 165:17 170:2</p> <p><b>keeps (1)</b> 49:3</p> <p><b>Keith (3)</b> 108:7,13,16</p> <p><b>kept (8)</b> 22:7 24:7</p>
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45:13 153:18,20 155:5 169:15 175:16 <b>key (1)</b> 205:10 <b>Kind (1)</b> 123:8 <b>king (1)</b> 73:1 <b>knew (24)</b> 36:4,12 37:12 38:14,20 39:24 40:6 81:10 86:8 133:1,4,6 148:15 151:6 167:1 168:8,9,16,17 169:3,8 175:2 187:3 <b>knocking (1)</b> 49:11 <b>knots (1)</b> 203:22 <b>know (149)</b> 1:22 7:16 8:2 9:9 14:2 16:1 20:4,4,11 21:18 23:3,24 24:19 25:4 26:11 27:4,5,15 29:15 30:8,12 32:3 32:14 33:10 36:8,9 38:17 42:7 44:16 44:22 45:20 46:17 48:4 54:24 55:24 56:6 58:12 60:2 66:3 69:14 71:8,8 71:18 72:2,14 73:4 73:4 76:16,19 80:3 81:14,25 82:2 83:13 84:19 85:10 85:13,17 87:2,2,22 89:14,16 96:11 98:14 99:1,8 105:6 106:23,24 108:1 112:5,7 114:17,21 116:4,13 123:16 124:13,17 125:17 133:12,20 134:18 135:24,25 136:1,19 136:21 140:9,24 144:14 146:1 149:7 155:12 157:7 158:11 159:5,7 161:2,20 164:12 165:16,19,20 167:6 167:9,14,14,17 168:16,20,23 171:24 172:4,5,10 172:18 173:14 174:16,17,22,23 177:13,14,16 178:7 182:24 183:1,3 184:4 187:18 190:17 196:3,9,11 197:22 198:2 199:2 199:23 202:8 203:2 203:5,8,11,11,12 206:22 207:19 <b>knowing (2)</b> 81:23 92:9 <b>knowledge (4)</b> 101:9 101:21 117:10 151:5 <b>known (1)</b> 84:16 <b>knows (2)</b> 34:8 39:10	<b>laughing (2)</b> 37:5,9 <b>launch (2)</b> 41:12 76:9 <b>lawyer (1)</b> 191:25 <b>lawyers (1)</b> 119:5 <b>layer (1)</b> 79:19 <b>lead (1)</b> 55:6 <b>leading (1)</b> 70:17 <b>learned (7)</b> 8:11 9:8 11:16,22 43:22 109:10 204:11 <b>leave (2)</b> 16:3 141:23 <b>leaves (1)</b> 200:25 <b>leaving (4)</b> 37:15 110:1 164:1 166:5 <b>Lee (1)</b> 20:19 <b>left (2)</b> 81:23 106:17 <b>left-hand (1)</b> 182:12 <b>legal (52)</b> 74:4 80:21 84:16,16,22 85:7 86:2,13 118:7,20 160:13,14 177:22 178:4,11,13 179:1 179:8,11 180:6,8 180:12,15,18,24,25 181:5,9,10,10,12 181:13,14 182:16 183:2,3,8,9,21 190:5,8,10,17,21 191:2,20,22 192:7 192:9,15 193:3,18 <b>Les (1)</b> 20:18 <b>letter (38)</b> 26:12 82:14 83:6 92:8,25 97:8 97:13 98:10 99:3 102:11 104:20 105:1,9 110:24 111:7,16 112:16,18 115:15 150:6,10,12 150:17,19 151:1,10 151:12,15,24 152:12,17 161:8 170:8 178:2 195:8 196:1,23 200:2 <b>letters (5)</b> 99:7 151:11 151:11,21 197:5 <b>let's (12)</b> 60:13 73:15 78:25 90:9,19 140:18 148:25 149:10 152:17 159:9 165:7 169:10 <b>level (5)</b> 56:8 62:7 115:8 130:6 177:17 <b>levels (1)</b> 155:16 <b>levied (1)</b> 23:14 <b>Lewis (1)</b> 4:21 190:17 196:3,9,11 197:22 198:2 199:2 199:23 202:8 203:2 203:5,8,11,11,12 206:22 207:19 <b>knowing (2)</b> 81:23 92:9 <b>knowledge (4)</b> 101:9 101:21 117:10 151:5 <b>known (1)</b> 84:16 <b>knows (2)</b> 34:8 39:10	<b>literally (2)</b> 3:10 183:7 <b>litigation (2)</b> 85:3,5 <b>little (16)</b> 16:2 24:11 36:1 40:8 59:1 65:2 66:19 67:15 110:16 120:14 132:13,22 138:19 143:20 181:23 191:1 <b>Littlewoods (1)</b> 57:5 <b>live (1)</b> 164:17 <b>lively (1)</b> 164:5 <b>lives (1)</b> 204:7 <b>local (1)</b> 73:2 <b>locations (1)</b> 59:12 <b>Lofting (24)</b> 1:25 2:25 3:6,20 4:4,8,23,24 5:10,20 6:5,25 7:2 8:20 10:14,22 15:6 15:25 16:3,15,19 201:8 202:3 203:1 <b>Lofting's (2)</b> 5:3 204:11 <b>logistical (2)</b> 100:2,4 <b>logistics (2)</b> 78:13 119:23 <b>long (12)</b> 7:24 11:3 14:12,22 41:8 67:11 75:15 86:21 141:12 167:1 200:18 205:14 <b>longer (4)</b> 35:21 158:11 167:6 186:12 <b>look (27)</b> 18:9 19:12 33:7 34:10 60:13 62:1 71:14,15 108:4 109:11 114:5 124:11 135:9 143:20 150:5 153:21 154:18,24 154:25 158:6 169:10 182:9 196:16 198:4,5 204:19 206:24 <b>looked (2)</b> 80:21 106:23 <b>looking (16)</b> 13:19 36:14 48:5 59:15 61:5 97:17 99:18 105:24 106:7 122:20 126:16 145:9 152:4 153:25 186:2 199:11 <b>looks (8)</b> 47:11 50:18 66:7 74:16,17 91:12 97:2 166:10 <b>loop (2)</b> 153:18,20 <b>Lord (166)</b> 1:6,24,25 2:9,18,21,25 3:10 3:15 4:9,18 5:2,8 5:21 6:21 7:1,4,13 8:5,21 9:12,18 10:6 10:24 11:16,17,21 11:25 13:2,11,20 13:25 14:4,14,19 15:9 16:3,7,13,25 17:1 19:19 20:12 29:12 33:25 34:5,8 34:11,20 35:16 39:19 40:25 41:4,6 41:15,25 42:1,10 42:11,24 43:21 48:4,7,15,21,24 53:24 70:2 71:24 72:1,6 80:12 85:5 85:10,12,13,20,23 89:16,20 107:2,6 107:15,18 108:15 109:5,11,15,16,22 109:25 117:12,17	117:21 118:3,6,17 118:24 119:3,12,22 119:25 120:4,11 157:22,25 158:4,8 158:17 179:7,9 180:1,10,18 181:4 181:8 190:9,10,13 190:24 191:3,5,9 191:17,21,23 192:11,12,20 193:7 193:10,21 194:7,18 194:24 195:18,24 197:1 198:18,23 199:15 200:4,12 201:3,8,11,18,22 202:5,7,22 203:24 203:25 204:10,22 205:2,14,19,24 206:2,4,6 207:1,15 208:1,5 <b>Lordship (44)</b> 1:8,11 1:16,21 2:7,16 4:15 6:7,13 7:5,16,18 8:12 11:1,8,9,10,17 12:2,3 13:4,14,16 14:1,15 16:8 41:19 42:18 48:1 117:20 119:13 196:2 199:15,17 201:23 202:13,23 205:3,9 205:20 206:12,21 206:22 207:6 <b>Lordship's (5)</b> 1:14 34:2,23 35:17 117:23 <b>lose (1)</b> 11:18 <b>loss (12)</b> 4:7 20:16 61:13 154:17 155:5 143:20 169:15 171:2 171:10,19 172:6 189:17 <b>lost (1)</b> 14:4 <b>lot (12)</b> 12:11 27:8 30:10,10,14 49:16 76:18 87:5 112:6 130:7,8 133:11 <b>lots (13)</b> 44:22,22 55:13 70:18 105:5 105:5 126:19 130:1,17,18 133:13 174:12 <b>love (1)</b> 72:10 <b>lovely (1)</b> 114:7 <b>LPD (1)</b> 172:15 <b>lunchtime (1)</b> 200:16 <b>lurid (1)</b> 96:4	<b>managerial (1)</b> 17:13 <b>managers (3)</b> 62:15,18 70:4 <b>Mancini (4)</b> 8:18 14:20,24 200:25 <b>manipulate (3)</b> 138:10 138:24 139:14 <b>manner (1)</b> 104:8 <b>manual (1)</b> 23:11 <b>manuscript (3)</b> 124:24 143:8 180:3 <b>March (11)</b> 69:3 73:18 90:9,10 114:2,25 152:8 154:6 157:11 167:4 197:7 <b>March/April (1)</b> 112:22 <b>marginally (1)</b> 109:20 <b>mark (11)</b> 43:1 66:12 81:11 126:17,20 132:3 141:22 153:21 156:7 199:13 210:9 <b>Marked (1)</b> 22:10 <b>market (2)</b> 94:4 96:23 <b>marketed (3)</b> 94:13 170:21 171:9 <b>marks (1)</b> 120:14 <b>Marsh (1)</b> 119:8 <b>Marsh's (3)</b> 85:11 90:14 197:24 <b>massive (2)</b> 58:4 95:4 <b>massively (1)</b> 87:5 <b>match (1)</b> 94:17 <b>materials (1)</b> 45:4 <b>matter (30)</b> 2:25 3:2,3 3:4 16:1 17:5 18:19 42:13 66:4 69:6 79:9 83:8 98:25 102:16 109:2 111:1 112:24 118:9 132:12 147:25 154:24 192:18 194:3,8 195:25 196:5,6,24 199:25 200:20 <b>matters (28)</b> 1:7 47:12 51:3 68:11 76:24 76:25 77:23 78:1,2 78:14,19 79:12 82:11,24 84:15,22 88:11 110:5,6 114:19,24 115:17 116:12 118:8 121:13 181:1 185:8 199:22 <b>McAlindon (25)</b> 4:5 9:6,7,10,11 10:4 14:6,8 17:1,3,5 35:19 41:2 54:20 61:11 153:4 154:17 154:24,25 159:9 174:17 175:12 176:11 187:19 210:4 <b>McAlindon's (2)</b> 1:6 187:17 <b>McGowan (4)</b> 8:18 15:1 21:6 201:1 <b>MD (1)</b> 57:4 <b>meal (1)</b> 165:8 <b>mean (17)</b> 19:21 20:5 31:9 35:7 45:18 58:21 71:6,7 88:12 107:14 134:1,16 135:16 136:25 146:2 156:9 180:12 <b>means (15)</b> 12:5 14:16 14:17 33:7 54:18 76:4 91:15 92:15	140:10,20 146:3 203:11,16,17,23 <b>meant (6)</b> 19:17 76:11 95:3 123:17 146:1 172:20 <b>meet (5)</b> 41:5 49:22 96:24 133:12 165:8 <b>meeting (94)</b> 38:12 47:17,19 71:9 74:7 76:4,12,15 83:7,24 90:15 103:9 104:12 106:12,12,13 107:1 110:2 111:8,20 112:7,14,18,19,21 113:2,3,6,15 114:2 114:8,25 121:7 134:2 154:19 156:7 156:9,17,19,24 157:5 158:18,20,23 158:24 159:1,2,6,8 161:24 167:3,18 170:1,11 172:10,11 174:7,13,14 176:17 178:17,18,20,25 179:3 180:3,14 181:2,11,22,22 182:15,19,23,24 183:11,13,20,25 184:7,9,11,18,19 184:23 185:3,22 188:7 189:12 193:17 195:3,4 197:20 198:10 <b>meetings (22)</b> 44:22 44:24 76:10 81:1,3 82:6,6 83:3,4 112:8 123:5 156:14 174:13 177:10,14 183:23 192:16,16 197:14,15,18,19 <b>Mel (7)</b> 17:3 159:9,17 166:5 168:1 176:8 210:4 <b>member (3)</b> 5:13 36:17 73:16 <b>members (4)</b> 61:14 79:18 102:23 122:3 <b>memorable (1)</b> 29:14 <b>memory (6)</b> 23:20,22 24:2,5,5 143:4 <b>mention (18)</b> 42:1 51:5 62:2,3 64:22 67:19 79:25 80:16 86:17 101:14 123:9 152:9 161:12,19 169:13 176:13 201:23 202:22 <b>mentioned (10)</b> 67:7 82:20 105:1 116:14 122:16 135:21 138:3 161:16 181:15 207:6 <b>mentioning (1)</b> 4:4 <b>mere (1)</b> 191:1 <b>merge (1)</b> 56:9 <b>Meryl (1)</b> 160:10 <b>message (2)</b> 122:6 149:25 <b>met (1)</b> 49:24 <b>method (1)</b> 105:7 <b>methodical (1)</b> 177:5 <b>Michael (17)</b> 121:14 122:21 129:13 135:10,12,22 139:5 139:9,21 147:1,12 149:2,5 160:6,8,9 161:1 <b>middle (3)</b> 36:16 92:19 186:18 <b>Middlebrook (2)</b> 53:7	58:10 <b>midsummer (1)</b> 117:7 <b>mid-flow (1)</b> 9:3 <b>mightn't (1)</b> 157:17 <b>Mike (31)</b> 4:21 75:7 84:3 99:15,23,25 106:9,10,16 108:8 108:18 110:2 112:15 129:17,18 134:22,24 135:1,2 135:7,8 140:4 141:17 149:12,16 149:23 160:18 162:9 166:7,21 167:25 <b>million (2)</b> 130:21 131:3 <b>millions (2)</b> 72:8,8 <b>mind (19)</b> 2:8,9 6:8 8:3 11:14 20:2,11 20:15 25:18 33:15 84:5 112:6 125:22 135:10 152:1 173:15 184:2 198:11 201:19 <b>mindset (1)</b> 77:18 <b>mine (2)</b> 8:11 88:15 <b>minimal (1)</b> 165:18 <b>minute (6)</b> 60:23 115:13 167:10 181:21 182:14 186:2 <b>minuted (1)</b> 198:13 <b>minutes (17)</b> 6:1 9:13 9:16 76:15 120:3,3 158:6 170:10 184:12,14 185:6,9 188:23 191:12 193:13,25 197:14 <b>misleading (1)</b> 173:7 <b>misrepresenting (1)</b> 39:7 <b>mission (2)</b> 72:23 73:3 <b>mistake (5)</b> 19:16 20:4 20:5,6,7 <b>mistakes (2)</b> 35:11 197:25 <b>misunderstand (1)</b> 15:22 <b>misunderstanding (1)</b> 190:15 <b>mixture (2)</b> 192:2,24 <b>Mm (2)</b> 25:25 54:21 <b>model (3)</b> 59:21 60:2 60:4 <b>moment (20)</b> 2:10 8:6 9:17 57:9 67:20 75:15 82:17,19 83:20 103:16 117:13 119:17 149:4 151:6 152:15 153:11 158:5 203:21 204:21 207:21 <b>momentarily (2)</b> 1:16 1:22 <b>Monday (3)</b> 48:22 50:1 202:25 <b>money (4)</b> 12:19 100:24 131:9 142:2 <b>month (6)</b> 29:5 37:6 47:9 58:8 112:3 157:17 <b>months (8)</b> 57:18 68:24 79:1 88:12 88:14 94:18 99:1 164:17 <b>morning (13)</b> 1:22 17:6 28:19 42:3 46:13 49:23,24
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

50:1 92:18 112:9 200:13 202:15 204:12 <b>Morris (7)</b> 17:20,25 18:24 19:5,6,14,16 <b>mortified (4)</b> 75:11,12 75:18 81:13 <b>motion (1)</b> 186:21 <b>motions (2)</b> 188:12,16 <b>motivation (1)</b> 72:18 <b>mountain (1)</b> 37:10 <b>move (7)</b> 50:2,3 60:11 70:8,20 90:19 125:9 <b>moved (2)</b> 88:3 89:9 <b>moving (4)</b> 69:1,2 88:1 113:24 <b>Moylan (7)</b> 63:22,24 115:5,11,24 116:6 116:11 <b>multitude (1)</b> 202:17 <b>murder (1)</b> 57:20 <b>mystery (9)</b> 90:20 98:18,18,20 101:19 101:20,25 102:2 104:1	199:5 <b>new (5)</b> 20:21 34:19 76:8 176:20 207:13 <b>news (3)</b> 115:15 199:6 199:8 <b>NHS (5)</b> 21:5,7,8 29:9 132:20 <b>night (2)</b> 112:10 205:15 <b>nine (2)</b> 20:19 68:23 <b>nod (1)</b> 15:11 <b>nods (1)</b> 138:17 <b>noises (1)</b> 118:24 <b>Non-opening (1)</b> 127:14 <b>non-threatening (3)</b> 147:7,14,18 <b>normal (4)</b> 2:14 26:7 30:6,6 <b>north (3)</b> 60:19 116:22 116:23 <b>North's (1)</b> 117:3 <b>note (20)</b> 40:15 45:3 89:11 102:21 105:11 108:24 110:2 111:3 113:4 122:6 134:1,25 135:22 154:23 157:18 162:9,16 179:15 180:17 186:24 <b>noted (1)</b> 30:18 <b>notes (40)</b> 45:1 46:25 49:3 69:4 80:23,25 81:5 83:3 105:24 106:11,24 108:9,11 125:1 154:19 156:24 157:5,13 158:23,23 159:1,2 178:16,22,24 179:1 179:3,5,5,6,7,10,11 180:5,7,20,23 182:8 183:7 197:20 <b>notice (5)</b> 9:15 51:19 151:22 183:11 184:19 <b>notification (1)</b> 185:2 <b>notified (5)</b> 68:5 117:1 174:2 177:24 178:1 <b>noting (1)</b> 110:5 <b>notwithstanding (1)</b> 199:4 <b>November (2)</b> 86:23 88:9 <b>nowadays (1)</b> 23:19 <b>no-one (1)</b> 141:13 <b>nuanced (1)</b> 192:11 <b>number (20)</b> 24:25 28:21 38:21 71:14 77:9,22 78:24 79:1 79:18 82:2 95:6 98:12 107:17 127:21 142:14 156:3 161:6 164:11 165:12 174:14 <b>numbered (1)</b> 33:2 <b>numbering (1)</b> 4:18 <b>numbers (1)</b> 205:11	<b>obtained (2)</b> 41:24 48:16 <b>obtaining (1)</b> 119:23 <b>obvious (2)</b> 28:19 133:14 <b>obviously (59)</b> 1:13 3:17 7:4 10:20,24 15:6,11 19:22 21:17 30:3 31:13 32:6 41:19 44:21 49:2,5 57:7 60:1,18 60:24 63:15 64:25 74:3 76:3 84:7 85:4 94:12 95:6 98:4,21 98:24 106:23 107:17 109:9 112:14 114:10 117:25 119:14 121:17 123:21 130:4 132:11 137:4 138:16 142:16 143:14 158:2 165:24 177:14 180:17 191:21,23 191:25 192:3 194:19 196:18 198:18 201:3 204:4 <b>occasions (1)</b> 28:25 <b>occur (1)</b> 8:19 <b>occurrence (2)</b> 29:4,11 <b>October (11)</b> 88:8 101:11 103:16,24 117:9 121:5 132:1 134:10,17 168:15 169:3 <b>OD (1)</b> 52:18 <b>odds (2)</b> 114:10,14 <b>offer (4)</b> 81:12 94:9,11 94:16 <b>offered (1)</b> 94:17 <b>offering (2)</b> 94:8 130:6 <b>office (5)</b> 49:12 50:5 87:17 90:1,3 <b>Oh (3)</b> 136:12 155:21 195:19 <b>okay (74)</b> 16:18 18:18 44:17 45:7 46:5,14 47:20 51:4 52:11 54:23 55:22 56:21 58:25 68:25 69:19 69:22 73:13 82:4 82:18 87:20 96:18 97:16 100:1 101:7 104:25 106:14 110:16 112:1 113:2 113:21,22 116:9,16 124:7,21 125:25 126:6 127:2,22 128:4,11 129:3,10 129:21 130:10 134:20 135:20 136:20 137:21 140:3 141:24 143:2 147:18,18 150:14 151:8,25 152:16 155:3,19 156:16 158:10 160:1,14 161:21 169:5 173:21 175:20 178:14 181:13 183:14 187:8 189:16 206:8 <b>old (2)</b> 49:10 59:10 <b>once (15)</b> 15:25 22:2 32:8 58:8 83:13 91:9 92:13 97:22 112:3,3 123:7,11 123:25 150:6 168:10 <b>ones (5)</b> 20:21,24 77:1	120:21,24 <b>one-point (2)</b> 5:15 6:9 <b>one-to-one (1)</b> 156:13 <b>ongoing (1)</b> 166:17 <b>onwards (3)</b> 34:12 60:14 185:11 <b>open (23)</b> 2:10 11:21 11:24 12:2 18:3,4 65:5 126:12 127:20 127:21 130:4,5,12 131:9,16 136:10 137:2,6,12 151:15 170:2 176:3 201:19 <b>opened (4)</b> 11:1 13:5 131:22 151:24 <b>opening (10)</b> 8:18 11:4 13:13 15:4 70:12,13 131:10 136:7 137:14 201:8 <b>openings (2)</b> 2:4 13:7 <b>operated (1)</b> 57:23 <b>operates (2)</b> 82:3 84:8 <b>ophthalmic (24)</b> 51:17 51:18,19,20,22,24 52:19,20,22,23 53:3,21,22 55:4,5,7 55:10,14 56:22 59:3,4,22 60:3 151:17 <b>ophthalmically (1)</b> 57:5 <b>opinion (1)</b> 37:16 <b>opportunity (7)</b> 27:14 31:1,23 41:15 158:17 161:4 203:16 <b>opposed (1)</b> 203:18 <b>Optical (3)</b> 65:15,25 111:17 <b>optician (3)</b> 51:20 59:11,11 <b>opticians (4)</b> 51:22 59:10 94:3,3 <b>Optimisation (3)</b> 66:3 90:16 97:20 <b>optimistic (3)</b> 7:24 11:23 105:23 <b>option (1)</b> 193:23 <b>options (1)</b> 176:1 <b>optom (4)</b> 58:3 148:4 148:14 166:1 <b>optometrist (3)</b> 55:6 58:15,22 <b>optometrists (2)</b> 58:17 58:18 <b>optoms (1)</b> 176:1 <b>orally (1)</b> 141:12 <b>order (8)</b> 8:1,10,22 41:13 51:3 52:2 91:19 196:20 <b>ordinary (1)</b> 44:19 <b>organisation (2)</b> 93:5 141:4 <b>organogram (1)</b> 62:6 <b>originals (1)</b> 50:12 <b>originating (1)</b> 191:1 <b>ought (2)</b> 28:13 124:21 <b>outcome (4)</b> 112:18 145:19 175:2 197:9 <b>outline (1)</b> 181:17 <b>output (1)</b> 112:14 <b>outside (4)</b> 37:17,21 37:24 76:10 <b>overall (2)</b> 20:15 38:18 <b>overly (1)</b> 105:23 <b>overnight (4)</b> 194:19 195:22 199:24 207:17	<b>overseeing (1)</b> 65:10 <b>oversight (4)</b> 67:21,23 99:19,22 <b>overtime (4)</b> 23:3 37:17 38:7 39:1 <b>overzealous (1)</b> 97:22 <b>o'clock (3)</b> 10:5,5 117:16	<b>Parhams (2)</b> 3:3 7:7 <b>part (29)</b> 22:4 55:1 57:16 58:11,12 71:19 73:9,24 76:20 87:10 91:12 91:14 103:4,6 104:17 105:25 108:24,25 116:23 144:9 153:7 170:20 171:21 177:8,10 181:15,16 185:12 192:3 <b>particular (12)</b> 17:19 18:9,11 21:10 57:11 98:11 127:18 132:17 137:20 141:19 165:20 205:5 <b>particularly (10)</b> 13:9 18:13 29:8 64:10 75:6 139:19 140:2 143:16 145:4 192:18 <b>parties (1)</b> 139:17 <b>partly (1)</b> 20:24 <b>partner (21)</b> 1:12 29:3 29:7 30:6,7 57:15 57:25 59:24 70:10 70:12,15,17 71:2 76:7 102:22 139:4 139:5 141:23 145:2 161:3 163:4 <b>partners (49)</b> 29:24 30:3 32:9 62:22 63:9 70:5,17,19,23 71:1 72:11,13,17 72:18,19,21 76:13 76:21 87:25 94:19 94:24 98:23 110:20 112:7 123:14,19 130:3,18 131:8,9 132:9 136:22 137:4 137:5,9,14,16 140:15 141:5 145:10 149:3,13 151:17 164:23 166:23 168:10 175:17 177:4 184:4 <b>partnership (10)</b> 57:16 57:24 59:16 61:18 72:25 148:12,13 164:10,11 165:11 <b>parts (4)</b> 110:1 111:13 131:14 181:15 <b>party (2)</b> 96:3 160:20 <b>part-time (1)</b> 87:15 <b>passed (9)</b> 5:1 17:7 43:5 44:3 84:12 89:15 115:13 202:6 206:11 <b>passing (3)</b> 82:10 83:18 129:4 <b>Pause (15)</b> 18:16 66:22 85:22 97:15 113:20 116:8 121:21 129:9 134:18 140:2 188:4 188:6,14 191:16 196:12 <b>paused (1)</b> 191:6 <b>paying (1)</b> 168:1 <b>payments (6)</b> 33:21 129:6 144:9 154:16 155:7 169:19 <b>payroll (3)</b> 123:3 142:8 159:19 <b>payslip (1)</b> 165:24 <b>payslips (1)</b> 165:23 <b>penultimate (2)</b> 102:14 138:6	<b>people (38)</b> 23:4 25:17 27:6 30:12 32:2,4 44:25 64:22 64:23 65:3 75:5 79:8,24 81:4,6,14 82:12,24 86:15 96:3 101:10 116:11 116:14 123:18 126:19 133:12 137:17 145:3,5 149:2,12 164:7 166:10,15 172:6 185:17,25 203:25 <b>people's (1)</b> 204:7 <b>perfect (2)</b> 10:21 206:5 <b>perfected (1)</b> 206:6 <b>performing (4)</b> 37:17 38:4,6,23 <b>period (10)</b> 50:21 68:20 98:25 105:18 124:9,11 152:9 154:21 174:3 193:22 <b>periods (1)</b> 47:6 <b>peripheral (2)</b> 11:6 201:3 <b>permeating (1)</b> 190:15 <b>permission (1)</b> 117:24 <b>person (12)</b> 27:3 61:4 62:3 95:13,14 98:19 134:7 154:11 158:19 159:3 164:3 182:4 <b>personal (4)</b> 60:22 68:7 139:25 161:13 <b>personality (2)</b> 137:13 137:16 <b>personally (9)</b> 90:14 99:6 104:6,21 109:11 124:24 126:2 177:3 204:21 <b>personnel (3)</b> 75:20 84:11 102:17 <b>persons (1)</b> 198:17 <b>perspective (1)</b> 29:19 <b>pharmacy (1)</b> 94:21 <b>Phil (2)</b> 20:18 21:13 <b>phone (5)</b> 30:13 49:9 139:2 154:11 159:3 <b>phoned (2)</b> 22:19 49:19 <b>photograph (2)</b> 23:12 23:18 <b>photographing (1)</b> 101:19 <b>photographs (2)</b> 22:17 23:16 <b>phrase (1)</b> 144:25 <b>physical (1)</b> 156:17 <b>pick (4)</b> 90:23 121:13 161:18 172:9 <b>picture (1)</b> 15:20 <b>piece (3)</b> 40:7 46:18 95:19 <b>pieces (2)</b> 4:1,11 <b>place (18)</b> 2:14 27:17 38:11 39:5 58:5 86:19 88:11 93:20 98:24 100:14 105:22 113:2 115:25 133:11 159:14 178:9 183:22 188:8 <b>plain (1)</b> 201:11 <b>plainly (1)</b> 173:17 <b>plan (27)</b> 74:13 93:11 97:3 131:13,13,14 144:9,17,18 145:21 146:17 148:24
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------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149:10,16,19 153:7 153:9,9,10,15 159:23,25 160:1 165:4,15 173:10 177:7	<b>post-it (2)</b> 45:1 89:11 <b>potential (3)</b> 83:8 137:2 155:11 <b>potentially (2)</b> 95:5 107:19 <b>Potts (131)</b> 1:6,10,20 2:6 3:13 10:20,23 11:16,21 12:8,13 12:17,21 13:2,11 13:19,25 14:4,6,14 15:9 16:7,13,25 17:4,5 19:18 35:1 35:18 39:16 41:4 41:13,15,22 42:1,5 42:9,17,24 43:4,5 43:19,25 48:7,13 48:18,21 53:24 54:3 71:24 84:19 84:25 85:5,10,13 85:20,23 89:16,20 89:23 107:6,15 109:1,9,16,22 117:16,17 118:3,24 119:3,12,18,22,25 120:4 157:22 158:2 158:17 179:7 180:15,18 181:8 183:18 190:8,13,18 190:24 191:3,5,9 191:13,17 192:11 192:20,24 193:10 193:19,21,25 194:18 195:6,18,20 195:24 196:7,9 198:4,18,22 199:15 200:4,8 201:8 202:2,7,12 203:13 203:25 205:2,14,18 206:2,21,25 207:1 207:10,17,21 210:5 210:10	31:22 75:6 198:12 <b>presenting (1)</b> 84:1 <b>press (1)</b> 41:18 <b>pressure (2)</b> 27:8 94:2 <b>pressures (1)</b> 27:5 <b>presumably (18)</b> 10:11 51:15 66:18 69:3 74:20 81:2 84:16 88:19,23 95:14 103:12 113:4 113:17 127:2,16 151:21 187:24 188:15 <b>presume (4)</b> 84:18 86:16 108:2,2 <b>presuming (1)</b> 117:9 <b>pretty (1)</b> 22:17 <b>prevention (12)</b> 4:7 20:16 61:13 154:18 155:6 160:3 169:16 171:2,10,19 172:6 189:17 <b>previous (1)</b> 34:8 <b>primarily (1)</b> 61:18 <b>principally (1)</b> 107:9 <b>principles (1)</b> 191:22 <b>printed (3)</b> 24:9 30:19 40:10 <b>prior (3)</b> 74:22 108:9 108:10 <b>priority (2)</b> 130:13 204:3 <b>private (1)</b> 12:20 <b>privilege (19)</b> 84:20 85:3,6,6,8,9,18,24 85:24 119:20 157:22 158:1 179:9 181:9 190:16 192:7 192:8,17 195:7 <b>privileged (8)</b> 84:24 107:11 178:23 180:9 190:20 195:11,13,14 <b>privy (1)</b> 75:22 <b>proactive (1)</b> 148:8 <b>proactively (1)</b> 149:20 <b>probably (30)</b> 2:11 10:1 12:8 23:17 25:22 26:15 27:10 27:11,20 56:12 78:18 88:15 97:10 108:10 114:15 135:13 136:25 138:11,18 139:12 139:14 145:24 164:22 166:24 177:22 178:4 187:23 190:5 203:15 206:22 <b>problem (8)</b> 2:3,7 157:24 159:22 160:2 199:6 204:18 204:20 <b>procedures (1)</b> 171:21 <b>proceed (3)</b> 21:21 42:17 195:15 <b>proceedings (10)</b> 1:3 32:16 86:9,15,18 87:10 120:9 158:15 207:3,4 <b>process (31)</b> 1:18 26:16 27:11,14,18 27:24 30:2,17 78:5 78:9 80:20 81:3 83:20 91:12 145:15 145:15 160:20,22 160:24,25 161:1,4 161:5 163:8 184:2 184:3 198:7,16 199:21,22 204:8	<b>processes (2)</b> 197:12 203:9 <b>produced (2)</b> 88:17 189:20 <b>producing (1)</b> 1:14 <b>product (2)</b> 24:2 95:8 <b>professional (3)</b> 59:23 141:8 161:3 <b>profile (1)</b> 136:24 <b>profit (1)</b> 60:9 <b>profitability (2)</b> 62:25 63:11 <b>profits (4)</b> 70:22 91:15 94:24 131:10 <b>programme (6)</b> 98:18 98:19,20 102:1,3 164:16 <b>progress (2)</b> 119:15 193:12 <b>projects (1)</b> 87:22 <b>promote (1)</b> 73:6 <b>promoted (1)</b> 96:23 <b>promoting (2)</b> 91:15 95:2 <b>proper (5)</b> 56:19,20 163:12 184:18 197:16 <b>properly (1)</b> 11:11 <b>proposal (2)</b> 146:23 147:4 <b>propose (2)</b> 10:10 186:21 <b>prospect (1)</b> 2:23 <b>prospective (1)</b> 171:6 <b>protect (1)</b> 63:16 <b>protected (1)</b> 192:17 <b>protection (2)</b> 63:14 193:2 <b>provide (10)</b> 61:7 75:14 79:11,25 117:19 118:22 178:16 190:6 204:2 205:9 <b>provided (18)</b> 27:13 32:13,15 47:24 48:7,14,14 152:5 154:1 179:1,10 187:12 189:22 195:1,2 197:4 205:3,20 <b>providing (1)</b> 32:5 <b>provision (1)</b> 207:9 <b>public (1)</b> 94:13 <b>pull (1)</b> 22:23 <b>pulled (1)</b> 172:7 <b>punch (1)</b> 18:5 <b>punches (1)</b> 160:9 <b>punctuation (1)</b> 35:11 <b>purchaser (1)</b> 171:6 <b>purely (3)</b> 119:22 191:25 196:24 <b>purpose (5)</b> 62:20 63:6 72:23 73:3 85:7 <b>purposes (4)</b> 50:15 170:13 176:23 192:9 <b>pursue (2)</b> 118:10 163:3 <b>put (37)</b> 4:16 5:3,25 6:2 15:10 18:22 19:6 21:3 24:14,22 45:11 47:5 73:7,11 82:25 96:4 97:7 101:18 106:6 113:25 117:13 120:21 138:23 143:22 144:12,24 145:2,21 146:17 161:17 165:16	166:23 177:18 183:20 193:8 197:14 202:24 <b>puts (5)</b> 3:11 54:20 138:6,24 195:2 <b>putting (8)</b> 19:16 40:13 95:5 142:25 145:10 147:21 163:19 204:16	<b>raise (8)</b> 1:7 2:21,23 14:8 142:25 191:20 197:1 199:17 <b>raised (6)</b> 1:11,25 2:2 41:19 167:19 202:14 <b>raises (2)</b> 97:19 111:21 <b>raising (4)</b> 125:3 129:5 143:25 144:5 <b>Rajan (21)</b> 3:5,18 4:3 5:17 63:22,24 64:17 115:8 129:5 129:15 138:1 165:22,23 166:4,8 182:4 185:16,19,23 187:2,3 <b>range (2)</b> 105:12 133:17 <b>rate (1)</b> 41:7 <b>RDC (7)</b> 62:3 63:2 108:7,8,8 116:25 130:16 <b>RDCs (6)</b> 62:15 70:3 76:5 <b>reached (5)</b> 26:24 73:19 121:1 152:5 176:6 <b>reaching (1)</b> 26:8 <b>reaction (2)</b> 67:12 198:17 <b>read (50)</b> 9:17 18:12 18:17 30:25 31:3,3 31:4,11 32:7 35:22 36:3 46:15 66:3,9 66:20 90:24 91:17 91:21 97:13 113:19 116:2,5,8,9,10 119:8 121:7,19,25 128:8,12,13,13 129:7 132:13 136:13 139:19,20 146:16 152:2 173:19 185:14,19 186:17,18,22 188:18,20 196:6,23 <b>reading (17)</b> 12:3 18:25 68:3 73:8 99:22,22 117:20 121:23 124:3 185:10 188:6,25 195:23 196:2 205:1 205:6,8 <b>real (1)</b> 98:7 <b>realise (1)</b> 109:5 <b>realistic (3)</b> 9:24 11:23 205:1 <b>reality (4)</b> 27:9 29:7 194:3,4 <b>really (48)</b> 5:19 6:4,19 6:20 7:17,20 9:22 9:23,23 12:20 13:21 16:10 17:9 20:16 21:9 24:6 27:1 28:7 30:22 40:10,18 61:21 64:22 67:11 68:4,6 71:21 80:8 85:1,17 90:5 94:22 99:4 112:24 113:22 146:1 150:24 163:21,24 164:5,7 164:10,11,13 194:8 197:21,25 204:13 <b>reason (11)</b> 30:8,12,20 31:25 72:4 86:17 101:2 120:2 125:7 185:21 201:21 <b>reasonable (4)</b> 25:6 26:4 38:19 132:25	<b>reasons (2)</b> 27:16 203:22 <b>rebuttal (1)</b> 25:5 <b>recall (28)</b> 60:22 67:11 68:6 75:11 81:5,6,8 103:13,15 106:13 121:7 125:19 128:25 152:11,15 153:17,20 155:2 159:5,8,14,23 184:20 185:1,2,9 190:5 206:13 <b>recalls (3)</b> 6:13 7:16 205:9 <b>receipt (1)</b> 124:14 <b>receive (5)</b> 55:23 56:1 56:3 124:14 190:2 <b>received (6)</b> 25:6 98:21 123:9 124:4 149:25 181:13 <b>receiving (2)</b> 84:10 162:16 <b>recited (1)</b> 206:21 <b>reckoning (2)</b> 15:3 104:15 <b>recognise (3)</b> 44:5,6 204:24 <b>recollect (14)</b> 24:23 28:18,22 35:8 87:3 87:12 88:16 111:24 115:19 124:6,18 133:10 169:24 174:9 <b>recollection (4)</b> 22:19 31:9 125:16 136:4 <b>recommend (1)</b> 130:14 <b>recommendation (2)</b> 26:9 154:5 <b>recommendations (2)</b> 27:9 28:4 <b>recommending (1)</b> 9:10 <b>reconvene (1)</b> 207:25 <b>record (14)</b> 23:4,13,25 24:4,24 31:24 36:7 75:16 119:4 140:9 141:11 165:17 198:16 206:18 <b>recorded (3)</b> 40:15,17 198:12 <b>records (1)</b> 90:7 <b>recruited (2)</b> 20:21,22 <b>recruiting (1)</b> 164:2 <b>recruitment (1)</b> 161:3 <b>redact (1)</b> 108:1 <b>redacted (2)</b> 107:25 108:22 <b>redaction (4)</b> 107:6,7 107:10,16 <b>ref (5)</b> 65:15,15,25,25 132:3 <b>refer (8)</b> 19:10 67:1,2 121:11 123:13 136:24 153:9 156:13 <b>reference (2)</b> 17:17 125:15 <b>references (7)</b> 3:15 46:10,10 68:22 205:4,5 206:15 <b>referred (7)</b> 17:21 19:1 22:2 115:6 132:1 192:21 197:19 <b>referring (7)</b> 19:7 20:6 47:25 137:15,20 153:9 171:17 <b>refers (6)</b> 4:4 47:16 110:24 134:18	
				<b>qualified (1)</b> 51:20 <b>qualifies (1)</b> 38:20 <b>quarter (1)</b> 130:13 <b>queries (2)</b> 38:9 39:3 <b>question (39)</b> 1:10,25 15:10 24:20 29:1 34:7,24 35:16,17 35:18 37:20 38:3 40:25 41:13 46:7 75:1 80:8,11 83:2,3 84:4,23 85:14,15 85:16 86:4,7 87:21 95:11,24 96:1 98:7 115:1 124:23 155:2 163:23 186:17 190:20 193:19 <b>Questioned (2)</b> 19:20 210:6 <b>questioner (1)</b> 37:20 <b>questioning (1)</b> 49:2 <b>questions (23)</b> 11:9 17:17 19:19 20:13 25:13 26:21 30:22 30:23 31:6,7,11 33:5 35:13 41:1 51:1 80:5 83:9 114:20 120:25 133:13 196:13,18 196:19 <b>quick (2)</b> 46:15,15 <b>quickly (2)</b> 42:9 44:2 <b>quite (28)</b> 2:19 9:16 11:2 12:11 23:19 24:25 27:1 29:16 33:10 57:2,7,11 58:1 60:8,25 101:16 103:6,18 156:12 164:16 184:6,7 192:14 193:4,4 195:6 200:6 206:25 <b>quoted (1)</b> 40:17 <b>quotes (4)</b> 18:19 39:6 39:14,21	<b>Q</b>		
				<b>R</b>			
				<b>rack (1)</b> 88:13 <b>radar (1)</b> 92:21 <b>rail (1)</b> 183:22 <b>Raines (54)</b> 8:15 9:19 9:20,25 10:1,3,8 14:8,16 41:18 42:18,24 43:1,5,6 43:21,24 44:2,4 51:3 71:18 77:8 82:17 87:1 89:18 89:25 93:13 97:2 101:17 104:14 110:1 114:19 116:3 117:14 121:1 126:17 132:3 141:12 142:4 147:17 156:7 158:18 168:24 177:3 178:2 180:19 194:9,15,25 195:9 195:10 198:25 200:13 210:9			

146:21 160:24 <b>reflect (1)</b> 75:23 <b>refurbishment (1)</b> 49:14 <b>refusing (2)</b> 126:10 136:10 <b>regard (9)</b> 33:16 62:1 83:1 96:25 194:9 201:20 202:7 207:2 207:18 <b>regarded (1)</b> 62:15 <b>regarding (5)</b> 19:4 67:16 77:24 79:12 159:6 <b>regards (2)</b> 24:21 123:8 <b>regime (2)</b> 55:12 56:21 <b>region (5)</b> 62:4 67:24 81:24 99:13,20 <b>regional (9)</b> 49:12 62:11,13,15,18,23 121:17 122:6 130:8 <b>Regis (33)</b> 46:1,11 64:15 66:12 106:17 106:21 108:20,21 108:24 110:8 115:16 123:2,4 124:20 126:3,9 127:3,6,12,18 131:18 158:21 159:6,7 166:19 170:2,25 176:21,24 179:18,19 180:21 180:22 <b>regular (1)</b> 17:14 <b>relate (6)</b> 34:12 78:2,4 79:12 81:7 106:11 <b>related (5)</b> 23:4 29:9 29:10 75:10 84:2 <b>relates (5)</b> 22:22 35:16,17 100:3 166:17 <b>relating (17)</b> 49:5 68:11,13 78:22 82:7,11,23 86:15 97:6 98:17 111:10 124:20 149:6 165:10 166:1 172:11 197:11 <b>relation (43)</b> 1:10,17 1:20 11:5 13:4 17:24 18:6,10 19:2 19:3 21:4 26:12 29:24 39:13 41:16 41:17 54:12 55:22 60:17,20 77:23 79:9 101:10,19 107:8,17 116:21 117:22 118:1 124:20 126:3,8,9 128:16 137:15 139:13 147:25 181:9,10 191:22 193:22 204:4 207:3 <b>relationship (4)</b> 107:12,22 108:14 177:4 <b>Relationships (1)</b> 107:18 <b>relatively (1)</b> 61:2 <b>released (2)</b> 2:22 41:3 <b>relevance (1)</b> 134:21 <b>relevant (17)</b> 3:15 24:8 46:1,10 80:10 80:13 93:17 105:25 107:20,21 108:17 108:25 109:20 110:17 111:13,13 121:24	<b>relied (1)</b> 26:24 <b>rely (1)</b> 11:4 <b>remaining (1)</b> 54:7 <b>remember (37)</b> 7:13 14:20 18:1 28:19 29:16 33:5,6 65:8 66:5 69:6 75:8 78:23 79:17,21,22 86:21 87:21 88:5 88:12,13 90:6 115:6,22 137:5 138:4,5 143:12,15 152:1 153:17 162:5 162:12 169:7,22 184:21 205:19 206:23 <b>Remembering (1)</b> 121:2 <b>remind (3)</b> 33:7 87:9 145:14 <b>reminded (1)</b> 6:2 <b>reminding (2)</b> 84:7 89:12 <b>reminiscent (1)</b> 32:19 <b>remotely (1)</b> 171:2 <b>removed (1)</b> 23:15 <b>repeat (1)</b> 67:4 <b>repetition (1)</b> 20:14 <b>replace (3)</b> 57:9 163:4 164:4 <b>replaced (2)</b> 63:24 64:20 <b>reply (3)</b> 3:22 122:7 136:18 <b>report (22)</b> 17:19 18:4 19:9 22:5 23:6 26:9 31:4 32:11,17 39:17 47:5 98:8 105:4 115:13 129:17 149:23 189:20,22 190:2,10 195:1,2 <b>reported (3)</b> 68:10 99:16,24 <b>reporting (1)</b> 66:7 <b>reports (7)</b> 62:9 87:6 98:21 103:4 105:6 108:5,7 <b>representing (1)</b> 176:25 <b>reputation (2)</b> 72:12 73:6 <b>request (2)</b> 113:15 117:21 <b>requested (3)</b> 23:2 33:13 95:25 <b>requesting (1)</b> 23:2 <b>require (2)</b> 28:7 137:8 <b>required (1)</b> 92:25 <b>requirements (2)</b> 170:20 185:12 <b>requires (1)</b> 40:8 <b>research (3)</b> 159:21 160:4 166:25 <b>resignation (1)</b> 163:3 <b>resolve (3)</b> 144:20,21 145:21 <b>resolved (1)</b> 114:24 <b>resource (3)</b> 72:9,9 130:17 <b>respect (7)</b> 22:16 24:18 33:21 43:24 72:25 96:13 165:19 <b>respectfully (2)</b> 11:10 204:1 <b>respond (3)</b> 91:8 94:12,22 <b>responded (2)</b> 114:17 114:17 <b>responding (1)</b> 85:14	<b>responds (2)</b> 92:18 115:24 <b>response (5)</b> 140:3 146:4 162:16 163:10 192:21 <b>responses (1)</b> 83:12 <b>responsibility (2)</b> 59:4 99:24 <b>responsible (3)</b> 62:21 95:14 98:19 <b>rest (4)</b> 7:7 110:17 120:17 185:10 <b>rests (1)</b> 63:4 <b>result (2)</b> 164:25 193:6 <b>resume (2)</b> 120:5 158:10 <b>retail (31)</b> 21:5,8 51:12,15,22 52:8 52:24,24 53:1,5,19 53:20 54:13 55:15 56:22 57:4,6 58:16 58:22 59:5,16,23 59:24 60:3 64:11 64:16 70:2,25 71:13 163:4 166:1 <b>retailer (8)</b> 57:6,7 135:12,14 142:1 147:10 148:14 161:4 <b>retailing (1)</b> 164:9 <b>retails (1)</b> 176:1 <b>reveal (1)</b> 84:21 <b>revelation (1)</b> 26:2 <b>reverted (1)</b> 98:2 <b>review (10)</b> 74:7 76:12 106:10 171:11,20 172:16,18 173:12 173:14 194:19 <b>reviewed (1)</b> 189:23 <b>reviews (3)</b> 106:10 108:12,12 <b>revisit (2)</b> 27:1,3 <b>re-examination (6)</b> 17:4 35:15 194:10 194:20 210:5,7 <b>re-interview (2)</b> 26:8 26:15 <b>re-interviewed (2)</b> 25:7 26:11 <b>Rhoder (1)</b> 19:25 <b>rid (2)</b> 113:15 148:17 <b>right (92)</b> 3:13 5:16 8:21 10:14 13:11 15:3 22:21 28:2,6 28:15 31:18 33:24 35:10 42:4 46:21 50:24 52:4 53:8 59:17 60:13 62:4 78:14 81:4,5 82:12 83:2,15,19 87:18 89:4 90:4,7 93:21 95:23,23 98:13 101:16 103:6,18 104:14,23 106:7 108:3 110:3,8,14 112:17,20 114:5 129:24 130:6 133:20 135:18 136:2 137:21 140:4 140:11,12,13,19 141:6,8 145:18 146:4 147:14,23 148:12,13,19 152:13 155:22 156:2 157:3 162:25 164:23 167:8,17 174:21 176:11 178:2 179:11 180:4 182:17,18 189:25	193:10 194:13,22 200:6 202:11 203:6 206:25 <b>rightly (4)</b> 133:23,25 147:19 195:6 <b>right-hand (4)</b> 4:17 21:2 127:24 182:9 <b>ring (1)</b> 44:10 <b>rise (2)</b> 191:11 208:3 <b>risk (2)</b> 95:5 163:2 <b>Riyaz (8)</b> 5:12 115:8 129:5,11 132:14,22 138:1,9 <b>Rizwan (2)</b> 52:21 54:6 <b>road (1)</b> 194:17 <b>role (25)</b> 29:25 31:11 51:12,13 54:24 55:6,9,13,18,20 57:13,14,15,17 60:13 61:6,18,21 62:22,23 63:14 64:6 177:8,10 178:20 <b>roles (1)</b> 55:21 <b>room (4)</b> 50:4,5,5 75:9 <b>Rosier (2)</b> 5:22,23 <b>rota (1)</b> 40:7 <b>rotas (4)</b> 37:22,24 40:3,4 <b>roughly (1)</b> 14:23 <b>round (1)</b> 164:14 <b>route (1)</b> 71:9 <b>Rowe (99)</b> 3:19 4:3,4 8:15 14:10,11,16 62:3 63:19 64:6,16 65:14,18,22 66:7 68:8,10,11 69:3,10 69:14 73:20 74:13 75:7 77:6 78:9 79:21 81:1 82:7 84:3 90:16 91:4 93:7,18 97:3,20 98:8 99:5,12,15,23 99:25 100:21 103:3 104:20 105:3,4 106:16 108:8 110:2 112:15 113:8 115:5 115:11,12,18 116:7 121:5,8,14 122:5,8 122:21 124:5 125:2 126:4 129:13,17,18 129:19 132:2,11 133:8 134:24 135:8 135:10 138:1,9,15 141:17 142:14 149:12,16 151:18 152:5,14 154:1 161:8,22 165:22,23 166:3,21 167:8 170:15 197:6 200:12,16,18 <b>Rowe's (5)</b> 65:11 149:23 154:3,6 162:16 <b>RPC (2)</b> 116:24 130:17 <b>RPCs (2)</b> 70:3 76:5 <b>RST (3)</b> 70:2 106:2,6 <b>rude (2)</b> 111:9 128:6 <b>rudeness (2)</b> 102:23 104:7 <b>ruled (1)</b> 44:19 <b>run (8)</b> 57:17 62:25 91:24 125:11 157:17 165:25 183:24 184:1 <b>running (4)</b> 24:2 59:4 63:3 178:17 <b>runs (1)</b> 16:17 <b>Ryan (27)</b> 79:20 135:1 135:2,12 138:2,15	138:24 139:5,9,21 141:17,22 147:1,2 147:3,12,15 149:2 149:5 160:6,8,9,16 161:1 162:9 167:25 175:21  <b>S</b> <b>sake (2)</b> 4:9 141:9 <b>salaried (1)</b> 56:15 <b>salaries (2)</b> 132:6 169:2 <b>salary (15)</b> 54:20 55:23 56:4,17,18 56:19,20 126:4 135:22 142:8,17 143:21 144:9 155:16 159:20 <b>sale (4)</b> 144:10 153:13 154:6 171:21 <b>sales (4)</b> 130:22 131:4 131:6 144:10 <b>Sarah (1)</b> 20:19 <b>sarcasm (2)</b> 116:2,5 <b>sat (3)</b> 31:2,13 75:8 <b>satellite (1)</b> 53:14 <b>satisfactory (4)</b> 2:15 13:3,20 202:21 <b>Saturday (4)</b> 46:13 49:22,24 58:7 <b>save (2)</b> 68:22 196:20 <b>Saville (1)</b> 108:4 <b>saw (6)</b> 22:16 39:24 94:17 112:14 127:2 205:11 <b>saying (52)</b> 14:9 15:10 28:6,7 36:6,10 37:11,24 38:19 39:13,15,23 48:13 50:13,22,23 68:4 69:10 73:22 76:13 83:7,16 92:6,7 101:8 104:1 111:22 123:11 136:18 139:9 140:21 143:15 150:17 160:17 165:1,5,19 166:14 167:25 171:19,24 172:1,13 173:8,10,16 178:2 186:24 190:25 197:24 198:21 204:10 <b>says (39)</b> 5:10 33:12 37:25 69:16 73:25 77:19 81:20,22 91:7 92:1 97:21 103:22,22 104:24 106:9 108:18,25 115:12 123:2 127:9 129:13,18 131:13 131:16 133:25 134:9,22 140:20 144:23 145:20,23 147:17 154:14 164:18 172:14 176:11 179:17 186:19 193:5 <b>scanned (1)</b> 197:2 <b>scenes (5)</b> 140:21 150:25 151:4,9 165:18 <b>sceptical (1)</b> 16:11 <b>schedule (3)</b> 47:23 48:1 202:24 <b>schedules (1)</b> 202:24 <b>score (1)</b> 194:6 <b>scrap (1)</b> 157:9 <b>scrapheap (1)</b> 113:14 <b>scratch-resistant (7)</b>	94:8,10,11,15 95:1 95:17 96:24 <b>script (3)</b> 185:11 187:6 192:15 <b>scripted (3)</b> 183:20,21 188:14 <b>searched (3)</b> 23:23,23 23:24 <b>second (12)</b> 1:24 18:11,13 34:18 55:16 117:21 133:15 173:25 175:18 179:17 180:1 181:16 <b>Secondly (1)</b> 192:5 <b>section (4)</b> 30:24 31:3 31:4 110:16 <b>see (184)</b> 4:12,16 5:2 5:6,8 13:12 16:6,13 17:15 19:24 28:3 30:19 34:13,16 36:21 37:7,15 38:3 38:7,10,22 39:1,4 42:14 45:16 47:6 47:17 53:25 54:16 54:20 52:62:1,2,14 65:13,17 66:14,24 66:25 67:5,7,13,17 68:1,21 74:11,12 74:17 75:4 78:3,4 78:11,21 82:16 84:14 88:17,19,20 88:21,24 91:10,24 92:1,11,19,23 93:2 93:3,5,8 95:7,23 97:24 98:5 100:17 102:9,11,12,19,25 103:10 107:2 108:23 109:7,16 113:2,10 114:7 115:2,3 116:18,22 117:7,12 118:17,19 119:18,25 120:13 120:20,23 121:15 121:16,22 122:10 122:18 124:25 126:22,23 127:3,3 127:6,8,9,25 128:7 129:6,15 130:25 131:13,18 134:14 135:5 138:13 141:14 142:10 143:5 144:18 146:6 148:19,25 149:11 149:20,21 150:2,19 153:5,16 156:24 157:15 160:8,16 161:12,19 162:14 162:24 163:6 165:22 166:3 167:21 168:24 169:10 170:10,15 170:22 175:21 176:25 178:6,8,10 178:12 181:22,23 181:24 182:18 185:2 186:5 189:5 189:13 191:13 196:10,15,20 197:3 197:11,19 198:2,6 198:8 199:1,24 202:18,19 204:20 <b>seeing (2)</b> 153:17,20 <b>seek (3)</b> 163:4 193:6 204:4 <b>seeking (1)</b> 6:22 <b>seen (13)</b> 11:3 18:18 37:9 38:1 46:18 74:22 85:11 128:8 128:9,10 180:7	197:24 205:14 <b>sees (1)</b> 4:15 <b>selected (2)</b> 176:20,23 <b>self-evident (1)</b> 198:24 <b>sell (7)</b> 138:4 146:23 147:8,10,11 148:6 148:6 <b>selling (7)</b> 139:6 144:6 145:16,17 148:1,3 175:24 <b>send (2)</b> 77:19 84:5 <b>sender (1)</b> 95:15 <b>sending (9)</b> 74:24 75:11 77:16 84:6 138:15 153:4 162:3 192:1 195:10 <b>senior (3)</b> 36:18 58:3 102:23 <b>sense (6)</b> 12:1 39:23 40:1,5 58:13 137:5 <b>sensible (5)</b> 2:13,23 2:24 118:3 201:14 <b>sensibly (1)</b> 12:23 <b>sensitive (2)</b> 107:8,19 <b>sensitivity (2)</b> 109:17 109:19 <b>sent (18)</b> 32:17 75:14 76:13 77:4 82:14 92:7 102:10 114:11 122:5 128:24,25 151:23 155:14 160:15 162:7 170:8 176:8 190:9 <b>sentence (3)</b> 3:2 67:21 101:4 <b>sentences (1)</b> 19:24 <b>separately (1)</b> 75:9 <b>September (11)</b> 88:8 90:23 97:5,8 98:25 100:8 127:9 189:20 189:25 193:17 195:3 <b>sequence (4)</b> 75:8 90:25 168:25 204:17 <b>sequential (1)</b> 108:11 <b>series (1)</b> 16:23 <b>serious (13)</b> 11:5 76:14,21 84:9 88:3 96:19 102:16 124:19 152:18 153:1 168:9 169:8 177:15 <b>seriously (1)</b> 94:23 <b>seriousness (3)</b> 168:11 168:13 181:6 <b>service (2)</b> 75:15 130:7 <b>services (1)</b> 139:4 <b>servicing (1)</b> 59:12 <b>set (13)</b> 33:20 61:25 63:6,7 70:2,24 72:23 123:5 130:24 154:5 199:9 207:3 207:4 <b>setting (3)</b> 80:9 131:2 155:17 <b>set-up (3)</b> 52:6,16 53:15 <b>seven (1)</b> 46:16 <b>seventh (2)</b> 57:20,21 <b>sham (1)</b> 183:8 <b>share (8)</b> 52:20 69:19 96:2 119:20 141:9 153:13 154:6 162:24 <b>shared (2)</b> 95:12 96:9 <b>shareholder (4)</b> 51:14 55:9 57:19 176:25
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shareholders (2) 52:12 63:5	skeletal (1) 206:3 skeleton (7) 13:12 199:11 205:3,25 206:1,3,16	54:13 56:15,21 sought (1) 199:20 sound (1) 124:1 sounds (3) 12:11 13:22 56:21	stated (2) 35:23 146:22 statement (75) 1:15 1:18 5:18 6:3 9:15 11:4 12:12 17:9,11 17:18,24 18:14,18 18:23,25 19:4,10 19:11,12,13,22 31:1 32:23 33:3,17 35:21 37:23 39:22 40:16 43:10,14,17 51:3,5 60:15 67:3 80:17 85:11 86:18 86:20 88:5 90:15 99:18,21 100:11 101:13 103:22 104:5 113:5 117:8 117:19 119:8 121:3 122:17 123:10 124:12,17 132:1 136:5 152:4 153:25 155:4 169:10 173:1 173:7,18 176:13 189:2,3,5,7 192:1 197:24 200:5,7	strain (1) 58:5 strand (1) 64:16 strands (2) 64:14,14 strategy (5) 102:15 123:7,11,17 125:19 stream (1) 7:23 street (1) 59:12 strike (1) 28:5 strong (1) 99:2 strong (1) 159:18 struck (1) 127:19 structure (7) 52:18 60:8,10 62:17 117:2 148:5 165:11 structured (1) 177:12 structures (1) 59:16 struggling (1) 130:14 Stuart (161) 2:25 3:10 3:14,25 4:15 5:6,10 5:17 6:13,21 7:1,12 7:16,18 8:5,8,16,21 8:25 9:2,5,7,11,18 9:23 10:4,8,13,16 14:11,13,19,24 15:2,5,9 16:3,19 33:6,25 34:2,5,11 34:17,20,23 35:2 35:15,16 40:25 41:6,25 43:20,21 44:1 48:1,4,11,19 48:22 50:9 54:4 66:21 72:1,6 77:8 80:12 85:1,11 86:5 89:18,22,24 90:5 96:6,10,14 97:2 107:2 108:15 109:5 109:11,15,25 118:5 118:13,17,20 119:4 119:10 120:11,20 120:23 157:25 158:4,8,18 179:14 180:1,3,10,13,17 180:19 181:12 184:12 186:5 190:9 190:23 191:6 193:5 193:7,12,13 194:2 194:7,12,14,24 195:16 196:16 197:1,9,11 198:23 199:10 200:1,9,12 200:16,19,24 201:3 201:7,11,15,18,22 202:5,22 203:7,20 203:24 204:10,22 205:9,16,19,23 206:1,4,6,10,15,20 207:6,15 208:1,5 210:7,11 stuff (6) 31:16,16 42:12 48:17 109:5 127:4 stumps (3) 201:15,16 201:23 subject (9) 10:10 42:17 65:17,24 123:2 132:18 156:7 157:22 193:18 submissions (1) 7:9 submit (2) 145:17 198:1 submitted (2) 27:9,12 submitting (1) 143:4 subparagraphs (1) 17:17 subsequent (1) 26:3 subsequently (1) 26:22 subsidiary (1) 51:10 substance (5) 180:20 180:24 181:1,3	183:4 substantial (2) 17:13 26:12 substantially (1) 30:5 subtly (1) 132:15 successful (3) 59:7 60:4 72:11 successor (2) 163:25 164:2 Sue (3) 123:8 132:14 132:22 Sue's (1) 123:24 suffered (2) 94:23,24 suffering (1) 54:1 sufficient (1) 25:4 sufficiently (2) 28:12 40:16 suggest (8) 12:19 71:18 73:6 93:13 140:20 163:3 165:15 204:1 suggested (4) 2:12,18 80:9 97:9 suggesting (3) 11:20 13:25 73:8 suggestion (2) 11:16 119:12 suitable (1) 206:18 sum (1) 22:5 summaries (1) 34:9 summary (11) 18:6,24 19:4 33:9,14,19,23 33:24 34:8 147:24 198:23 summons (1) 2:1 Sunday (14) 126:6,24 129:22 130:5,8,22 131:4,10,11 136:7 137:7,12,14,19 Sundays (4) 70:12,13 130:4 137:2 supermarkets (2) 94:20 130:5 support (17) 21:5,8 57:24 60:10 61:7 61:18 63:8 64:7 70:3,25,25 81:8 88:1 123:19 124:1 131:2 166:23 supporting (8) 62:21 63:19 64:6,15 65:3 70:7 73:2 123:18 supportive (4) 63:12 91:15 141:3 144:25 suppose (6) 95:24 114:3 124:21 159:13 191:7 199:7 sure (15) 2:19 5:19 11:10 13:8,11 23:13 25:10 30:14 33:3 61:14 63:15 70:5 76:20 88:16 96:21 99:16 101:16 117:17 123:21 140:12,15 141:8 145:18 157:23 159:20 160:12 161:2 164:23 180:10,10 188:20 193:2,21 200:13 204:6 surely (3) 86:21 118:20 155:10 surprised (7) 45:14 65:4 69:18,19 153:16 191:1 202:3 surprising (1) 99:2 Susannah (19) 73:17 73:23 74:1 78:11 78:12,16 87:13	91:1,1 92:20 97:11 121:14 122:5,8,13 122:21 128:5,15 198:9 suspect (2) 9:13 13:16 suspended (8) 27:6 113:15 153:3 168:4 168:11 174:17 175:1 176:7 suspension (6) 28:10 152:17 172:12 174:20 184:4 185:22 suspicious (1) 159:18 suspicious (2) 155:7 169:19 sweet (1) 140:3 swiftly (1) 175:15 swimming (1) 37:15 sworn (2) 43:1 210:9	<b>T</b>	tab (6) 43:6 44:3,5 105:16,17 133:15 table (1) 88:21 tabled (1) 181:1 take (50) 9:16 12:6 14:22 18:14 23:8 23:17 38:7 41:17 42:14 51:3 52:2 55:24 60:21,22 65:11 70:19 85:20 88:23 90:5,12 91:18 94:22 107:12 109:9 116:19 119:3 120:16 121:11 132:12 136:17,18 138:12 139:2,9,23 148:8 149:15 150:6 157:5 158:9 167:5 178:9 183:22 190:13 191:4,10 196:6 198:19 200:3 204:21 taken (11) 4:19 27:17 29:22 39:25 45:15 73:17 76:15 121:9 168:15 188:8 199:25 takes (3) 113:2 130:18 204:3 talk (9) 6:24 69:11 145:3,9 163:14,16 164:25 165:7 166:7 talked (1) 12:22 talking (11) 2:17 32:4 58:7 74:10 102:2,3 103:2 106:15,25 134:24 200:4 target (1) 130:24 task (1) 119:10 Taylor (8) 44:13 49:25 50:10,13 90:1,3 118:21 197:22 team (34) 5:13 22:25 36:17,18 58:2 60:14 61:14 62:1 63:18,19 64:11,19 70:3,25 73:8,16,24 73:25 84:16 93:17 93:17 97:12 103:2 103:4,6,7 106:10 115:6 116:23 125:23 135:16 138:1 165:21 177:16 teams (3) 64:14 122:4 130:8 team's (2) 61:6,21 telephone (8) 105:7
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133:11 156:15,18 158:19 174:7,10,14 <b>tell (16)</b> 12:9 22:23 82:22 96:12 124:12 127:23 138:11,18 139:5,12,14 140:18 167:5 168:1 169:6 205:12 <b>telling (5)</b> 9:9 74:13 111:8 156:21 199:20 <b>templated (1)</b> 40:9 <b>ten (12)</b> 7:3 9:13 10:22 11:15 120:3 120:3 158:8 202:4 203:2,11,11,17 <b>tend (8)</b> 29:14 45:2,4 67:23 89:10 99:19 112:2,8 <b>tended (1)</b> 112:2 <b>tending (1)</b> 67:20 <b>terms (25)</b> 13:8,20,22 16:7 24:1 36:17 42:12 54:15 58:5 70:6 72:9,18 76:2,3 90:20 93:25 95:19 138:21,23 164:22 178:17 191:20 192:5,12 202:12 <b>terribly (1)</b> 15:15 <b>terrific (1)</b> 205:8 <b>territory (1)</b> 53:13 <b>Tesco (4)</b> 94:3,6,17 130:2 <b>Tesco's (1)</b> 96:22 <b>tests (1)</b> 59:13 <b>text (2)</b> 35:9 121:24 <b>thank (23)</b> 4:14 6:25 10:19 16:23 19:18 21:17 34:25 35:3 41:2,7 43:19 54:3 117:15 120:11 137:25 158:17 177:2 195:17,22 199:10 204:22 206:17 208:1 <b>thankfully (1)</b> 137:21 <b>thanks (5)</b> 16:5 115:12 129:11,13 140:4 <b>thing (24)</b> 2:13 3:11 38:1 63:13 70:4 72:16 73:2 78:13 89:6,13 91:17 99:15 112:9,10 129:1 140:11,12 141:8 145:18 164:9 165:12 184:6 185:6 190:14 <b>things (35)</b> 6:3,24 8:2 8:24 9:22 12:22 20:15 23:19,20 24:1 27:2 28:19 35:11 45:1,5 49:15 61:15 65:7 70:18 70:19 75:21 106:20 108:21 111:23 114:4 128:22 132:18 151:3 164:19 165:16 166:10,16 167:5 169:23 184:15 <b>think (195)</b> 1:15 2:11 2:18,21 7:4,23 11:22,24 12:6,7,9 12:10,13 13:2,3,13 13:17,23 14:9,17 15:16,17,22,24 19:6,11,12,13,15 19:25 20:5,12,20 22:25 24:4,15,24	25:3,9,14,21 26:10 26:12 27:4,16 29:5 29:18 30:8,11 33:10 34:5,23 36:15 38:16 39:7 39:19 40:4,12,14 40:14 42:12 43:7 44:3,7 46:18 47:15 47:16,22,23,23 48:3,5,19 52:24 54:18 57:2 60:20 63:24 64:13 65:10 65:12 66:19 67:1 73:9 74:18 75:5,7 75:22 76:17 77:6 79:24 80:4,5,8,10 84:20 85:2,3,18,23 88:10,20 90:23 91:23 92:21 95:11 95:24 96:1 98:11 106:7 109:13,17 116:2,6,24 119:13 119:14,17,21,22 120:1 121:12 122:15,17 125:22 126:4 130:25 132:16 135:3 137:20 138:8,9 139:1,9,10,25 145:9,12,19 146:12 150:16,19 151:12 151:24 152:4 155:21 157:1,25 166:24 167:20 169:13 170:4 178:10 179:7,8,14 183:17,18,19 189:2 190:11,22 191:9 192:20,21,25 193:25 194:2,4,16 194:22 195:9,25 196:13,19 197:22 198:8,19,20 199:19 199:24,25 200:18 200:20 201:11 202:21 203:13,14 204:20 205:15 207:5,10,16,19,21 <b>thinking (1)</b> 114:3 <b>thinks (1)</b> 11:23 <b>third (2)</b> 53:7 148:21 <b>thought (20)</b> 2:22 12:8 25:3,14 77:5 80:13 87:11 96:13,20 106:5 108:22 116:1 116:14 123:18 139:8 163:8 193:24 196:14 198:14 206:8 <b>thoughts (4)</b> 44:23 47:1 114:19 147:25 <b>threat (6)</b> 94:13,19,22 96:24 103:9 130:2 <b>threatening (8)</b> 104:11,12 111:8 112:19 128:6 147:6 147:15 191:7 <b>threatens (1)</b> 111:20 <b>three (31)</b> 4:1 7:8 23:4 27:6 51:15,24 52:6 52:16,17 53:15 54:4,12,25 55:16 55:22 60:7 68:4 82:11,24 84:4 86:15 88:11,14 116:17 127:11 131:14 136:10,19 160:16 164:17 185:9 <b>three-director (2)</b> 60:8	60:10 <b>three-page (2)</b> 143:9 155:14 <b>thrown (2)</b> 49:16,17 <b>Thursday (3)</b> 7:5 200:23 208:8 <b>tie (1)</b> 130:16 <b>time (118)</b> 4:12 5:22 9:2,3,8,11,24 10:18 11:18 12:6 14:6 16:16,18 18:7,15 20:21,22 22:19 24:6,24 25:3,9,14 25:16 26:21 27:5,8 27:18 30:1 41:11 44:3 48:7 49:4 54:14,15 57:12,21 57:25 58:3,6,9 59:9 60:1,1,11,11 61:14 61:14 63:17,17 64:2 65:12 66:19 66:21 67:11 68:22 69:8 71:16 73:17 76:9,9 78:18 88:3 90:20 94:1,5,7 95:1 98:15,17 99:16,16 100:6,6 103:12 105:8 112:6 113:18 113:24 116:18 117:12 118:22 119:7 120:11 122:25 126:12 127:19 128:24 129:19,25 132:16 132:25 133:9 136:3 142:18,22 151:6 152:15,16,20 153:11,24 167:1 170:25 171:10 172:9 174:3 176:5 185:7 189:22 196:2 196:20 198:6 199:20 200:2 202:10 203:18,19 <b>times (4)</b> 28:21 30:12 36:15 64:4 <b>timetable (3)</b> 2:3 7:18 10:25 <b>timetabling (2)</b> 1:24 11:25 <b>timing (3)</b> 16:7,11,21 <b>title (1)</b> 65:17 <b>today (19)</b> 2:4,20 6:5 7:13 8:10 9:2,8 10:6,18 11:13,19 14:16 16:4,6 41:20 42:10 82:20 118:12 193:12 <b>told (26)</b> 1:23 3:5 7:1 10:21 23:5 27:3,21 37:3 40:19 42:6 87:9 132:11 148:24 151:11 153:21 154:15 164:20 168:21 169:7 175:4 175:7,12 176:9 196:7 202:1,3 <b>tomorrow (17)</b> 7:14 14:17 15:4,5,13 194:11,16 196:11 199:1,6,18 200:17 200:21,21 201:25 207:24 208:3 <b>tone (6)</b> 97:18 98:3,4 98:9 102:21 110:22 <b>Tony (1)</b> 20:18 <b>top (14)</b> 4:17 46:24 62:2 65:2 66:10 79:19 93:8 108:4 114:6 122:2,20	129:11 169:13 186:20 <b>total (5)</b> 10:1 20:19 199:12 201:1 204:12 <b>totally (8)</b> 8:5 80:3 93:25 113:17 114:10,14 167:10 167:12 <b>touch (2)</b> 116:2,5 <b>track (2)</b> 89:13 162:25 <b>traction (1)</b> 130:14 <b>trading (7)</b> 95:5 126:7 126:25 129:22 130:9 137:7,19 <b>traditional (1)</b> 62:22 <b>trail (1)</b> 21:19 <b>trained (3)</b> 57:4,5 59:18 <b>transactions (3)</b> 171:15 172:17 173:23 <b>transcript (4)</b> 32:6 54:1 194:19 206:24 <b>transfer (5)</b> 139:4 141:10 160:25 165:10 170:24 <b>transmitted (1)</b> 84:24 <b>travel (2)</b> 156:12,13 <b>treating (1)</b> 72:24 <b>treatment (1)</b> 79:13 <b>tree (2)</b> 65:2,2 <b>tremendous (2)</b> 58:5 94:2 <b>trespass (1)</b> 86:1 <b>trial (4)</b> 27:25 28:8 86:23 88:9 <b>tried (2)</b> 154:2 164:6 <b>trip (2)</b> 107:13,22 <b>Trish (3)</b> 3:20 4:4,24 <b>trouble (1)</b> 13:6 <b>true (3)</b> 43:17,18 103:25 <b>trust (2)</b> 114:13,13 <b>trusted (1)</b> 49:7 <b>truth (3)</b> 71:21 75:20 140:23 <b>try (21)</b> 16:22 45:23 57:23,24 63:8 70:11,13,16,19 96:15 112:4 130:21 137:9 138:8,10,24 139:13,23 149:12 165:16 204:6 <b>trying (35)</b> 33:15 37:11,13 40:5 42:6 44:23 47:10 76:8 81:14 86:8 87:24 87:25,25 94:16 95:18,20 99:15 114:20 130:16 137:6 139:8,9 141:24 145:12,13 149:4,14 150:1 166:10,16,23 173:2 194:6 198:1,24 <b>turn (6)</b> 17:8 43:6,9,12 184:10,11 <b>turned (1)</b> 184:8 <b>turnover (1)</b> 130:22 <b>turns (2)</b> 112:21 184:13 <b>twenty-five (1)</b> 158:10 <b>two (60)</b> 1:7 4:1 5:2 6:19 9:25 14:18 18:10 20:21,21 28:24 29:8,24 31:10 32:2 36:25 49:14 50:3,8 52:6 52:11,16 53:1,5,15	53:16 55:5 56:1,22 56:23 64:14 80:24 84:3 101:6 103:23 117:17 121:4,24 122:3 136:15 141:16 142:14 151:10,11,16,21 157:17 159:2 160:8 181:3,15 184:20,22 184:22 185:9 190:24 192:1 200:10 201:1,2 207:8 <b>two-year (1)</b> 124:9 <b>type (4)</b> 17:13 71:12 88:2 165:12 <b>typically (1)</b> 154:11 <b>typo (1)</b> 146:12	33:22,23 <b>updates (1)</b> 16:23 <b>upwards (1)</b> 90:25 <b>urgently (1)</b> 118:16 <b>use (14)</b> 44:25 45:1,3 45:4 70:16,17 89:10,11 105:6 144:8 145:2,6 157:9 158:5 <b>useful (2)</b> 12:1 91:22 <b>user (1)</b> 70:17 <b>uses (1)</b> 147:6 <b>usual (6)</b> 6:22 23:7 42:5 119:16 154:4 204:18 <b>usually (7)</b> 60:12 106:11 159:4 174:13 177:15,16 177:17	53:17 54:7 57:25 <b>Walls (4)</b> 21:12,14 33:11,19 <b>wand (1)</b> 190:18 <b>wandered (1)</b> 96:23 <b>want (41)</b> 11:9 15:19 16:12 20:15 35:20 41:1 42:19 49:13 54:22 71:25 72:11 72:12,15 86:4 91:8 116:18,19 122:1 128:13 138:3 147:11 148:3 159:6 181:12,14 183:2 191:4,8,11 192:19 193:8 194:4 195:23 197:11,19,20 198:2 201:13,20 203:4 204:15 <b>wanted (13)</b> 14:15 30:16,25 31:24 32:9 33:3 57:14,16 70:4 92:11 179:24 193:16 203:14 <b>wanting (1)</b> 223:25 <b>wants (4)</b> 66:19 141:23 149:7 164:5 <b>war (12)</b> 71:19 72:15 72:21 73:7,9,10 74:9,14 76:3 77:19 91:13 93:14 <b>warning (3)</b> 75:19 84:10 197:5 <b>warnings (2)</b> 197:16 197:21 <b>warrant (1)</b> 40:17 <b>wasn't (34)</b> 6:1 7:20 17:24 23:1,5,10 30:10,14 38:20 40:20 42:5 46:5,8 50:3 58:18 77:2 78:10 87:12,14 90:18,20 103:17 116:4 120:23 130:22 142:6 147:6 153:20 168:7 173:16 184:4,5,23 188:11 <b>wasted (1)</b> 16:16 <b>watching (1)</b> 58:13 <b>water (1)</b> 43:2 <b>waves (1)</b> 190:18 <b>way (49)</b> 8:8 13:3 15:16 21:3 24:14 42:8 46:7 47:22 56:5,6 61:25 72:7,8 76:20 81:21 82:1,2 82:3 84:6,8 99:23 100:20 109:15,20 112:2 114:17 116:12 117:24 118:3 128:2 139:19 141:2 145:10 146:19 147:7,14,18 147:22 148:20,25 150:18 165:6 169:22 186:19 191:2 197:22 203:15 206:16 208:2 <b>ways (3)</b> 116:8,9,10 <b>weakness (1)</b> 130:3 <b>Wednesday (4)</b> 1:1 33:11 36:24 203:1 <b>wee (2)</b> 111:10 114:22 <b>week (16)</b> 5:24 7:8 37:4 44:4 49:1 57:22 58:2,6 59:13 78:18 112:3,10 124:14 143:24
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December 18, 2013

154:11 184:20 <b>weeks (4)</b> 132:14 184:21,22,23 <b>Weller (17)</b> 22:22 65:4 75:25 77:11,12,24 138:3 144:6,10 145:16 149:6,7 150:12,17,20 154:2 179:22 <b>Weller's (1)</b> 160:14 <b>went (10)</b> 25:21 30:4 46:12 49:11 96:15 164:17 168:14 186:9,11 187:21 <b>weren't (7)</b> 25:16 28:6 100:8 127:20 128:24 130:6 185:25 <b>Wessing (6)</b> 44:13 49:25 50:10,13 118:21 197:22 <b>Wessing's (2)</b> 90:1,3 <b>we've (1)</b> 151:19 <b>whatsoever (1)</b> 102:7 <b>Whatabouts (1)</b> 50:7 <b>whist (5)</b> 15:9 58:14 82:4 129:21 175:16 <b>wholly (3)</b> 74:19 115:20,21 <b>William (1)</b> 159:19 <b>wipe (2)</b> 93:11 97:4 <b>wiping (1)</b> 93:15 <b>wise (2)</b> 114:8,14 <b>wish (6)</b> 72:5 85:9,18 118:9,14 196:17 <b>wished (3)</b> 73:6 144:8 171:15 <b>wishes (2)</b> 56:25 200:3 <b>withdrew (1)</b> 41:9 <b>witness (86)</b> 1:14 5:15 5:18 6:9,11 9:3,12 9:15 17:10,18,22 17:23 18:14,18,25 19:4,9,22 32:23 33:2,17 35:21 41:9 42:24 43:3,10,16 51:2,5 53:25 60:14 67:3 80:16 82:4 85:19 86:18,20 96:8 99:21 100:11 101:13 103:22 108:17,25 109:3 113:5 117:8,18,25 118:5,10,11,15,17 119:1,6,8 120:2,25 123:10 124:12,17 136:5 138:17 152:4 153:25 155:3 169:10 176:13 189:2,3,4,7 193:9 193:14 196:3,10,20 196:22 197:24 199:3 200:4,7 202:9 203:5 204:4 <b>witnessed (1)</b> 3:21 <b>witnesses (2)</b> 14:18 72:4 <b>witness's (1)</b> 119:24 <b>woman (2)</b> 93:11 97:4 <b>wonder (5)</b> 53:24 107:2 133:20 158:4 202:7 <b>word (7)</b> 108:19,20 114:25 144:21 147:7 163:12 179:21 <b>wording (5)</b> 5:6 76:2 206:18,21 207:1 <b>words (9)</b> 25:15 36:11 39:8 62:13 146:16	187:14,16,22 197:9 <b>work (23)</b> 17:14 35:23 36:20 38:4,23 39:25 40:6 47:10 49:7,8,14 55:4 60:8 68:9 72:7,8 76:5 84:6 86:8 87:15 112:2 142:20 174:15 <b>worked (9)</b> 19:14,15 35:22 57:5 68:9 82:1 99:23 130:2 145:24 <b>working (17)</b> 36:4,12 37:12,20,25 38:14 38:20,25 39:10 40:11,20 57:22 64:10,15 107:13,22 133:6 <b>works (5)</b> 60:4 81:21 82:1,3 87:14 <b>worried (1)</b> 85:25 <b>worry (3)</b> 153:21 190:14 202:1 <b>worrying (1)</b> 10:21 <b>Worse (1)</b> 199:6 <b>worth (1)</b> 130:21 <b>wouldn't (8)</b> 23:11 24:6 88:24 92:17 103:19 157:24 165:11 180:9 <b>wrapping (1)</b> 203:21 <b>write (7)</b> 46:23 89:6 98:10 99:3 136:7 140:10 162:18 <b>writing (9)</b> 4:8 74:25 76:16 81:9 91:1 93:20 111:7 129:23 165:16 <b>written (19)</b> 23:16 75:19 84:10 91:1 92:5 97:10 108:20 111:17,17 135:9 143:10,19 187:6,10 187:24 188:2 197:5 197:16,21 <b>wrong (14)</b> 24:13 26:2 39:20 95:16,25 96:21 140:16 142:4 172:13 173:17 186:25 187:16 190:25 192:20 <b>wrote (1)</b> 89:2  <b>X</b> <b>X (16)</b> 43:24 44:3,5 48:5,6 68:21 80:22 105:15,17 111:11 169:10 176:13 120:13,21 133:15 133:23 179:13,16 <b>X/349 (1)</b> 105:11  <b>Y</b> <b>yeah (131)</b> 22:1 27:4 36:22 37:8 38:16 46:15 51:11 52:3 53:9 60:16 64:18 65:9,23 66:6,9,13 66:15 67:6,9 69:7 80:7,7 83:11 87:2 88:22 91:5,11 92:4 92:24 93:6,9 97:25 100:16,22 101:1,3 102:13,20 105:20 110:12 115:4,7 122:11,23 126:1,11 126:18 127:13 129:16 131:17 133:19 134:3,13,15	134:18,23 135:6,9 142:19,19 143:3 144:4,22 145:24 146:9 148:23 149:22,24 150:3,3 150:3,3,11,21 151:14,20,22 152:3 152:7 153:6 154:10 154:12 156:2,6 157:2 161:9,11,23 161:25 162:4,6,8 162:11,13,15,17,19 162:23 163:1,7,9 163:15 166:6 167:22,24 168:2 169:17,21 170:5,7 170:9,17,19 171:8 171:13 175:11,23 175:25,25,25 176:19 179:20 182:11,13 186:10 186:13,16 188:13 189:11,19 <b>year (15)</b> 47:10 57:22 70:9,9,23 76:19 78:25,25 79:1,2,3,3 86:22 89:25 143:23 <b>years (17)</b> 28:25 29:8 49:14 50:8 57:3 80:24 82:2 89:22 94:19 101:6 103:24 121:5 127:21 145:1 145:25 161:6 164:3 <b>yesterday (21)</b> 1:11,13 2:1,2,7,12 8:13 9:8 14:4 17:6,10,23 18:22 22:18 24:11 27:21 28:20 48:19 48:20,22 49:1 <b>Yogaratanam (2)</b> 58:14 151:16 <b>young (1)</b> 57:21  <b>Z</b> <b>zero-hour (2)</b> 55:1,19 <b>zero-hours (1)</b> 55:23 <b>Zoe (2)</b> 20:18 21:4 <b>zoned (2)</b> 114:4,22  <b>O</b> <b>08 (1)</b> 123:6 <b>09 (1)</b> 123:6  <b>1</b> <b>1 (8)</b> 10:5 130:21 131:3 133:18 157:11 186:7 188:21 210:3 <b>1.05 (1)</b> 120:6 <b>10 (10)</b> 47:14,18 64:13 134:4 143:13 167:2 173:5,10 175:16 201:24 <b>10th (1)</b> 7:6 <b>10,000 (1)</b> 56:11 <b>10.00 (1)</b> 1:2 <b>10.05 (1)</b> 1:4 <b>100 (3)</b> 45:19 87:22,23 <b>105 (1)</b> 67:3 <b>11 (9)</b> 10:5 35:4 64:14 105:19 124:8 184:12,14 185:6 188:23 <b>11th (1)</b> 105:13 <b>11.03 (1)</b> 42:21 <b>11.13 (1)</b> 42:23 <b>11.15 (5)</b> 199:7,13,14 207:24 208:7 <b>11.19 (1)</b> 73:20	<b>11.30ish (1)</b> 200:14 <b>11.50 (1)</b> 82:20 <b>12 (2)</b> 57:18 145:25 <b>12-month (1)</b> 108:12 <b>1267 (3)</b> 18:5 39:18 40:15 <b>129 (1)</b> 36:16 <b>13 (1)</b> 152:6 <b>134 (2)</b> 43:6,9 <b>135 (1)</b> 60:15 <b>136 (2)</b> 60:17 62:2 <b>139 (1)</b> 37:2 <b>14 (1)</b> 145:25 <b>144 (1)</b> 37:15 <b>146 (2)</b> 40:2 100:12 <b>148 (3)</b> 169:13 189:7 189:10 <b>15 (6)</b> 170:6,11 176:17 189:17,20,25 <b>15-6/11 (1)</b> 179:18 <b>150 (4)</b> 124:14 189:5,7 189:9 <b>154 (2)</b> 43:9,12 <b>16 (5)</b> 124:8 133:17 157:12 160:7,9 <b>16th (3)</b> 48:21,23 107:7 <b>17 (4)</b> 33:2,18 210:4,5 <b>18 (6)</b> 1:1 97:8 98:25 167:23 174:16 197:7 <b>19 (5)</b> 69:3 73:18 90:10 208:8 210:6 <b>1999 (1)</b> 45:14  <b>2</b> <b>2 (3)</b> 117:16 131:16 186:9 <b>2.05 (2)</b> 120:5,8 <b>2.25 (1)</b> 120:10 <b>20 (3)</b> 80:24 152:8 154:6 <b>20th/Tuesday (1)</b> 202:25 <b>20/21/22 (1)</b> 204:13 <b>200 (3)</b> 45:19,21 124:14 <b>2004 (1)</b> 94:4 <b>2007 (1)</b> 137:7 <b>2008 (23)</b> 50:16 65:6,7 66:5 68:19,23 73:18 78:1 90:9,10 90:15,23 94:5 100:8 101:11 103:16 105:18,19 106:22 111:2,2 124:8 133:1 <b>2009 (11)</b> 78:1 102:4 104:3,4 105:22 111:5 113:25 114:2 115:2 117:7 121:2 <b>2010 (30)</b> 78:1 101:11 103:16,24 117:9 121:5 122:12,17 124:4,5,8,22,25 125:3,5,6,8,10,13 126:14,25 128:17 129:19,23 132:1 133:17 157:12 164:4 168:15 169:3 <b>2011 (18)</b> 45:2 78:1 125:10 126:3 133:18 137:21 153:1 154:16 158:1 168:16 170:6 171:11,19 172:15 173:12,16 193:17 195:3 <b>2012 (4)</b> 50:18 79:6 80:24 89:10	<b>2013 (8)</b> 1:1 79:4,8 88:23 89:15,17,23 208:8 <b>21 (2)</b> 33:19 195:3 <b>21st (1)</b> 203:1 <b>22 (1)</b> 3:17 <b>22nd (1)</b> 203:1 <b>23 (2)</b> 33:12 167:4 <b>24 (2)</b> 37:3 197:5 <b>249 (1)</b> 4:20 <b>25 (3)</b> 54:10 88:6 143:23 <b>26 (3)</b> 5:3 111:5 176:11  <b>3</b> <b>3 (2)</b> 97:5 186:11 <b>3.15 (1)</b> 158:12 <b>3.25 (1)</b> 158:14 <b>3.35 (1)</b> 158:16 <b>30 (3)</b> 57:3 145:1 154:2 <b>30,000 (1)</b> 56:14 <b>31 (5)</b> 127:11 130:11 131:22 136:9 150:22 <b>32 (1)</b> 57:3 <b>33 (1)</b> 57:3 <b>340 (6)</b> 65:12,14,17,20 66:10 73:21 <b>349 (5)</b> 44:5 46:17 105:17 106:4 135:4 <b>35 (1)</b> 210:7 <b>350 (7)</b> 47:9 65:7 69:1 69:6 73:22 77:5 133:23 <b>353 (3)</b> 179:16,25 180:1 <b>355 (2)</b> 71:23 73:18 <b>356 (1)</b> 44:5 <b>37 (1)</b> 34:15 <b>38 (3)</b> 34:12,17 35:5 <b>380 (1)</b> 90:23 <b>381 (1)</b> 91:24 <b>382 (1)</b> 91:24 <b>397 (1)</b> 97:8  <b>4</b> <b>4 (6)</b> 68:23 105:12,18 186:11 188:21 197:6 <b>4.25 (1)</b> 208:4 <b>4.45 (2)</b> 207:22 208:6 <b>40 (1)</b> 71:15 <b>41 (1)</b> 210:8 <b>42 (4)</b> 67:2,5,7 90:13 <b>43 (6)</b> 67:5,10 90:13 210:9,10,11 <b>430 (2)</b> 101:17 102:9 <b>431 (1)</b> 111:7 <b>433 (4)</b> 102:11,12 111:7,16 <b>438 (1)</b> 104:15 <b>44 (5)</b> 67:15,22 90:13 99:18,21 <b>448 (2)</b> 113:3,4 <b>45 (2)</b> 100:12,15 <b>452 (2)</b> 113:10,10 <b>46 (1)</b> 100:19 <b>47 (5)</b> 34:17 35:5 121:3 132:1 136:5  <b>5</b> <b>5 (10)</b> 132:1 138:1 147:13 167:2 170:15 186:11,14 186:18 188:21 193:25 <b>5.51 (1)</b> 73:19	<b>50 (3)</b> 52:20 54:7 71:15 <b>51 (6)</b> 17:8,10,15 35:19 152:5 154:1 <b>51.1 (10)</b> 17:20,23 18:3,14,20,23 19:16 35:21 38:13 39:16 <b>517 (3)</b> 113:24 114:23 115:2 <b>52 (2)</b> 152:8 154:5 <b>53 (1)</b> 154:8 <b>541 (2)</b> 117:1,5 <b>55 (5)</b> 33:1 94:6,6 189:4,8 <b>56 (1)</b> 189:8 <b>57 (2)</b> 189:4,15  <b>6</b> <b>6 (6)</b> 44:3,5 51:5 105:17 133:15 188:22 <b>65 (1)</b> 17:8 <b>652 (2)</b> 121:13,15 <b>68 (1)</b> 193:23 <b>689 (3)</b> 122:16,17 125:17 <b>693 (1)</b> 126:16 <b>694 (2)</b> 127:2,3 <b>695 (1)</b> 127:8  <b>7</b> <b>7 (2)</b> 188:8 206:2 <b>70K (1)</b> 143:23 <b>712 (2)</b> 127:22 128:12 <b>723 (1)</b> 128:2 <b>724 (1)</b> 129:2 <b>726 (1)</b> 143:9 <b>728 (2)</b> 143:9,22 <b>729 (3)</b> 129:21,24 130:10 <b>731 (3)</b> 130:25 131:3 131:13 <b>732 (1)</b> 131:21 <b>734 (5)</b> 121:11,12 122:16 131:25 136:3 <b>735 (1)</b> 136:7 <b>736 (3)</b> 137:22,24 147:2 <b>737 (1)</b> 140:3 <b>739 (4)</b> 141:15 144:6 146:16 148:24 <b>741 (2)</b> 146:4 147:19 <b>748 (2)</b> 149:21,23 <b>752 (3)</b> 150:19 151:12 151:17 <b>754 (2)</b> 151:12,13 <b>756 (3)</b> 152:16,22,23 <b>757 (1)</b> 152:24 <b>760 (2)</b> 186:2,4 <b>760-02 (1)</b> 155:22 <b>760-2 (2)</b> 155:24 157:1 <b>761 (1)</b> 159:15 <b>772 (2)</b> 160:6,16 <b>773 (1)</b> 160:15 <b>776 (2)</b> 161:7,10 <b>778 (1)</b> 161:8  <b>8</b> <b>8 (10)</b> 7:3 60:14 61:5,5 156:5,7 158:18 159:16 167:3,19 <b>8th (4)</b> 10:22 11:15 202:4 203:2 <b>8.30 (1)</b> 42:3 <b>80,000 (1)</b> 56:12 <b>802 (1)</b> 34:6	<b>802-9 (2)</b> 34:14 35:4 <b>803 (1)</b> 33:14 <b>804 (3)</b> 33:7,14,23 <b>811 (2)</b> 34:12,13 <b>865 (2)</b> 161:19,20 <b>866 (1)</b> 162:10 <b>867 (1)</b> 162:10 <b>868 (1)</b> 162:10 <b>869 (2)</b> 162:7,14 <b>875 (2)</b> 165:21 166:3 <b>876 (1)</b> 165:22 <b>881 (1)</b> 167:20 <b>883 (3)</b> 167:23 174:16 174:24  <b>9</b> <b>9 (7)</b> 43:6 47:14,18 61:5 64:10 134:4 157:11 <b>9th (1)</b> 7:6 <b>9-10 (1)</b> 133:25 <b>905 (3)</b> 175:15,18,19 <b>907 (3)</b> 176:11 187:18 187:18 <b>953 (1)</b> 184:17 <b>957 (1)</b> 170:8 <b>960 (5)</b> 170:10 177:1,2 181:21 186:5 <b>961 (7)</b> 170:4,15 181:20,21,24 185:11 186:17 <b>962 (1)</b> 188:2 <b>963 (3)</b> 181:24 186:19 188:12 <b>964 (1)</b> 188:12 <b>991 (1)</b> 36:15 <b>993 (3)</b> 36:16,16 40:2 <b>995 (1)</b> 36:10
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