

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 14

December 19, 2013

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Phone: +44 (0)20 3008 5900
Email: transcripts@opus2international.com
Website: <http://www.opus2international.com>

1 Thursday, 19 December 2013
2 (11.15 am)
3 (Proceedings delayed)
4 (12.40 pm)
5 Housekeeping
6 MR JUSTICE HILDYARD: I am sorry, my worst fears were
7 exceeded.
8 MR STUART: My Lord, obviously we have to finish Mr Raines,
9 but I had hoped -- I had expected, I should say -- to
10 have received the disciplinary files in relation to the
11 three people disciplined, do you remember your Lordship
12 was passed up yesterday a letter?
13 MR JUSTICE HILDYARD: Yes.
14 MR STUART: Did your Lordship get the covering letter from
15 Taylor Wessing, the one page covering letter which
16 provided the emails and the letters?
17 MR JUSTICE HILDYARD: Yes.
18 MR STUART: As it said there yesterday, the second
19 paragraph:
20 "Contacted the HR department, asked them to locate
21 as quickly as possible such relevant documents as they
22 could find. The problem that was faced was that
23 although the above three employees have personnel files,
24 the relevant documents were not on those files and wider
25 searches had to be undertaken."

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1 MR JUSTICE HILDYARD: Yes.
2 MR STUART: And in the time available yesterday afternoon
3 they hadn't got them. It's now 20 to 1, I still haven't
4 got anything, and I do need to see them. My Lord,
5 I need to see the documents.
6 MR POTTS: My Lord, the position, as my friend knows, is
7 that his solicitors have been informed this morning as
8 to the position as to the said files. The position was
9 that the searches were undertaken, as set out in the
10 letter. Further searches, instructions were given for
11 further searches to be undertaken to see what, if
12 anything else, there might be. And the confirmation has
13 already been -- my friend is saying, "Oh, we haven't had
14 the confirmation", well, he has. They have been told
15 this morning that searches of all likely areas for
16 documents have been undertaken, and all documents have
17 been disclosed.
18 MR STUART: Well, no.
19 MR POTTS: His solicitors have been informed of that this
20 morning.
21 MR STUART: My Lord, I am going to need to have that put in
22 evidence by somebody, I am sorry, because it's simply
23 not right. I can give you a long list of the documents
24 and I can tell you where they will be. It's just not
25 right. Could I take your Lordship to bundle X?

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1 MR POTTS: My Lord, if it assists --
2 MR STUART: Page 203.
3 MR POTTS: If my friend is saying he wants it confirmed, the
4 request was this morning, after 11 o'clock this morning,
5 we have made the checks, if it's a question of getting
6 confirmation, we will do it. It's not a problem.
7 MR STUART: My Lord, in the light of bundle X, page 203 to
8 204, I am going to ask that this matter be put on oath
9 by somebody, because I simply don't accept the
10 explanation being given and the explanation being given
11 is there are no other documents.
12 My Lord, just to put this in context, this is the
13 SOG's own disciplinary. Do you recall, my Lord?
14 MR JUSTICE HILDYARD: Yes. I see where this is going.
15 MR STUART: Just to be clear, my Lord, I will ask Mr Raines
16 about the previous page which explained all the things
17 that he would have to do, but importantly there is -- we
18 have at least here a nice shopping list of what the
19 things are that will be there and where they will be.
20 So, my Lord, you will see that under the heading
21 "Written Records", this is in relation to written
22 records after there has been a disciplinary finding, and
23 a disciplinary warning, the written warning that these
24 three employees --
25 MR JUSTICE HILDYARD: It's really page 203 that you are most

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1 concerned with.
2 MR STUART: Pages 203 to 204, my Lord, you will see at 204
3 that these documents must be kept for at least until the
4 warning has officially expired. Well, the one, the few
5 documents that we have been shown, show warnings that
6 have not yet expired.
7 Then the written records are -- and just to be
8 clear, the documentation relating to the disciplinary
9 process should be collated into a separate file.
10 MR JUSTICE HILDYARD: Yes.
11 MR STUART: It is expressly -- as they well know, it's no
12 good looking on the personnel file, or "personal file"
13 as it's put in the first box below "Written Records", so
14 they know that all they will find on the personal file
15 is the final written warning -- is the final version of
16 the written warning.
17 The actual documents that I am asking for and have
18 been asking for since yesterday will be collated into
19 a separate file and kept safe until it is needed later.
20 The file should contain the complaint, all
21 correspondence letters in relation to witnesses,
22 arranging interviews, asking for information, et cetera,
23 copy of any --
24 MR JUSTICE HILDYARD: I can read that. I think the issue is
25 going to be whether what was done was a disciplinary

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1 process of this sort.
 2 MR STUART: I don't think it's being suggested that it's not
 3 a disciplinary process, my Lord, I haven't heard that.
 4 MR JUSTICE HILDYARD: All right, you say that this is what
 5 their rules require them to do, it's to be assumed that
 6 they complied with their own rules, there is thus
 7 a tension between what I am told by Mr Potts and what
 8 you would have expected.
 9 MR STUART: Yes. And simply to say "We have looked on the
 10 personnel files and can't find them" really doesn't take
 11 matters any further. We are looking for three separate
 12 files.
 13 MR POTTS: That's not what I said, I didn't say we have just
 14 looked on the personnel files.
 15 MR JUSTICE HILDYARD: I don't mind what they are called.
 16 MR POTTS: My Lord, I don't know, we are happy to take
 17 whatever steps your Lordship considers appropriate in
 18 relation to this.
 19 MR JUSTICE HILDYARD: I think there are two stages. Having
 20 been reminded, might your clients have anywhere else
 21 that they would look, given that it is their own process
 22 which requires the keeping of these separate files?
 23 MR POTTS: Yes, I can certainly take instructions in terms
 24 of the HR side of things in relation to those matters,
 25 I can do that again.

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1 MR JUSTICE HILDYARD: Yes.
 2 MR POTTS: I don't know what was done on that. My Lord, can
 3 I just have a moment?
 4 MR JUSTICE HILDYARD: Yes, of course.
 5 (Pause)
 6 MR POTTS: My Lord, it may be sensible, as I said, given
 7 this, I am perfectly happy we can go back and make --
 8 I can check the extent of the enquiries that have been
 9 made. As I said, those were my instructions, I have no
 10 reason to believe that that is not the case, but my
 11 friend rightly points us on that point and obviously
 12 a matter can be confirmed.
 13 MR JUSTICE HILDYARD: Well, I think without drafting you
 14 must provide an affidavit from the responsible officer,
 15 I think. I don't know whether that's HR or it may be
 16 the board, I don't know.
 17 MR POTTS: I don't know, my Lord. The responsible officer,
 18 certainly.
 19 MR JUSTICE HILDYARD: Yes. As to what records were kept in
 20 respect of the disciplinary process; why there was any
 21 departure -- if there was -- from the internal rules; if
 22 there was a file but there no longer is a file, what has
 23 become of that file.
 24 MR POTTS: Yes.
 25 MR JUSTICE HILDYARD: I will not, I am afraid, release

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1 Mr Raines because it may be that he will have to be
 2 recalled.
 3 MR POTTS: Yes, my Lord, in fact he will be coming back.
 4 MR JUSTICE HILDYARD: He will, he will, so it won't be as
 5 ghastly as otherwise.
 6 MR POTTS: No, I mean, he is in Uckfield. Is that right?
 7 Yes, he is in Uckfield. He is a witness in Uckfield, so
 8 there is not an issue. The only question in terms of
 9 release at the end of his evidence is whether
 10 instructions can be taken from him in terms of whether
 11 your Lordship is finishing, that he will be effectively
 12 released in this action, or will he be in purdah for the
 13 Christmas period.
 14 MR STUART: I will not seek to put him into purdah, my Lord,
 15 of course not.
 16 MR JUSTICE HILDYARD: I know that Mr Raines will, guided by
 17 you, have a firm view as to if there are things he
 18 should not really discuss -- I am sure that you
 19 wouldn't. If you are in doubt, you can ask your counsel
 20 or solicitors to assist.
 21 MR POTTS: Yes, my Lord, there is no problem with that at
 22 all.
 23 MR JUSTICE HILDYARD: Is there anything else you wanted to
 24 add to the shopping list?
 25 MR STUART: My Lord, no. If they use pages 203 to 204 from

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1 bundle X as the shopping list. My Lord, your Lordship
 2 raised the possibility that it might be suggested that
 3 somehow this wasn't within the disciplinary process.
 4 Just to reiterate, my Lord, the three letters that they
 5 have disclosed to us, the three disciplinary letters,
 6 refer to the Employee Guide to Discipline and
 7 Capabilities, Grievance and Appeal. So I am only taking
 8 it from their own, what they say happened here. This
 9 was a formal disciplinary process, under this policy,
 10 and under this policy that's what there should be.
 11 MR JUSTICE HILDYARD: Yes.
 12 MR STUART: So I don't know what else there might be.
 13 MR JUSTICE HILDYARD: That's to be an affidavit which will
 14 be sworn?
 15 MR POTTS: My Lord, yes. My Lord, any idea on timing?
 16 MR JUSTICE HILDYARD: It's got to be useful. How long will
 17 it --
 18 MR POTTS: (a) it's got to be useful, it's being sworn as
 19 well so proper care needs to be taken over it, and
 20 I want to ensure that -- my instructing solicitors will
 21 want to ensure that it's all done properly.
 22 MR STUART: My Lord, the only point I would make is I am
 23 going to be cross-examining Mr Rowe next, he is one of
 24 the three people, I will be asking him about this.
 25 MR JUSTICE HILDYARD: You may be able to take the matter

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1 some distance, further distance --
 2 MR STUART: That's right.
 3 MR JUSTICE HILDYARD: Mr Rowe will be back too, won't he?
 4 MR POTTS: He will be back, my Lord, in January.
 5 MR STUART: All I am saying is if -- if -- Mr Rowe's file
 6 were found this afternoon, I would very much rather have
 7 it this afternoon than in January. As to timing, my
 8 request would be: as soon as available, just in case we
 9 get it in time for me actually to be able to put it to
 10 Mr Rowe.
 11 MR POTTS: My Lord, obviously we would like to do that. If
 12 you are asking me: is it realistic that we would produce
 13 an affidavit on this matter by the afternoon, the answer
 14 is I am afraid: of course it isn't.
 15 MR STUART: Not the affidavit, of course not. I am saying
 16 if Mr Rowe's file were found, now that somebody at
 17 a senior level is going to be asked to provide
 18 an affidavit, it's possible that these three files may
 19 appear, and I am saying if possible Mr Rowe's file could
 20 be found in time for me to --
 21 MR JUSTICE HILDYARD: All I can ask is that Mr Potts on
 22 behalf of his client assures me that all reasonable
 23 endeavours to locate Mr Rowe's file will be undertaken
 24 now in order to attempt to produce it as soon as ever,
 25 and if possible by this afternoon. I think we must

1 accept the reality --
 2 MR STUART: I do, I accept the reality.
 3 MR JUSTICE HILDYARD: -- that it is 10 to 1 --
 4 MR POTTS: And it's Guernsey.
 5 MR STUART: I accept that, my Lord.
 6 MR POTTS: My Lord, just to make it clear, I am not
 7 accepting that the file has not already been provided.
 8 MR JUSTICE HILDYARD: No.
 9 MR POTTS: Just to make that clear.
 10 MR STUART: Which file? Which of the three files?
 11 MR JUSTICE HILDYARD: What you have been provided might
 12 constitute or comprise the file.
 13 MR POTTS: Yes.
 14 MR JUSTICE HILDYARD: Mr Potts is not accepting that there
 15 are documents further to these documents but he is being
 16 reminded that this would indicate that there could be,
 17 and he has been -- his clients have been reminded where
 18 they might be, and he will give the sworn evidence with
 19 respect to that issue if there is a departure from these
 20 guidelines. I don't think I can do more than that, nor
 21 can I ask --
 22 MR STUART: I just want to understand the position, my Lord.
 23 I have identified there will be, we say, three files,
 24 separate files.
 25 MR JUSTICE HILDYARD: Yes.

1 MR STUART: These documents that have been provided to us
 2 which comprise a few emails passing backwards and
 3 forwards within the HR department, and then -- which
 4 don't relate to any of the things in the --
 5 MR JUSTICE HILDYARD: They don't look like files in
 6 compliance with this.
 7 MR STUART: No.
 8 MR JUSTICE HILDYARD: And for that reason, I have said that
 9 the affidavit must extend to explaining any differences
 10 between what is produced and what one might expect to
 11 see. But Mr Potts is simply making clear to me that by
 12 agreeing to the process he is not agreeing to there
 13 being any files still to come.
 14 MR STUART: My Lord, no, of course.
 15 MR JUSTICE HILDYARD: That's all he is saying.
 16 MR STUART: That's right, he doesn't know whether the
 17 files -- he doesn't know.
 18 MR JUSTICE HILDYARD: No.
 19 MR STUART: Understood, my Lord, that's fine.
 20 MR POTTS: My Lord, there was one other issue your Lordship
 21 raised yesterday -- I don't know if that's enough on the
 22 file -- about privilege and the board meetings.
 23 MR JUSTICE HILDYARD: Yes.
 24 MR POTTS: An issue arose about the June and September
 25 meetings, and your Lordship asked for, and we had

1 a discussion about the law.
 2 MR JUSTICE HILDYARD: Yes.
 3 MR POTTS: Your Lordship quite rightly raised the point that
 4 legal departments don't have a magic wand in relation to
 5 communications, and, my Lord, I think just two points,
 6 my Lord, firstly just in terms of the context of the
 7 communications. Can I firstly hand up also just
 8 an excerpt from Hollander? (Handed)
 9 MR JUSTICE HILDYARD: Yes.
 10 MR POTTS: I think I am reassured that what I think I said
 11 to your Lordship yesterday accords with matters.
 12 MR JUSTICE HILDYARD: Thank you.
 13 MR POTTS: My Lord, the first point is in the context of
 14 these discussions, firstly, your Lordship hasn't seen
 15 this because the solicitors' correspondence is in
 16 a separate file. By early June 2011 the claimants had
 17 instructed solicitors to act for them in relation to the
 18 investigation. Now, the witness wasn't taken to it, but
 19 there was correspondence, if your Lordship has F1, in
 20 relation to Coole & Haddock were instructed.
 21 MR JUSTICE HILDYARD: Do you want the witness to be
 22 following this?
 23 MR POTTS: I think it might be, yes.
 24 MR JUSTICE HILDYARD: All right.
 25 MR POTTS: Unless my friend has a problem with it.

1 MR STUART: No, I don't have a problem with it.
 2 MR POTTS: Page 1 is a letter of 13 June from
 3 Coole & Haddock and that is a letter from the claimants'
 4 solicitors of 13 June, and I think indeed they were
 5 instructed that the meeting was on the 15th, and they
 6 were challenging the board meeting and seeking, you will
 7 see there is no justification for convening the meeting,
 8 you see that from the second paragraph.
 9 MR JUSTICE HILDYARD: Yes.
 10 MR POTTS: So that's the context of that. Jumping forward
 11 to September, the solicitors were acting for the
 12 claimants all the way through, and by September they
 13 changed to their present solicitors, and you will see
 14 that at F/33, a letter from Akin Palmer. In fact there
 15 were two letters, one on 16 September seeking
 16 an adjournment of the meeting, this one is a couple of
 17 pages, and the adding of matters to be considered at
 18 a reconvened meeting.
 19 MR JUSTICE HILDYARD: Yes.
 20 MR POTTS: That's 33/34. Then a longer letter on
 21 20 September, which is at 39, running to five or six
 22 pages, again seeking an adjournment and raising a very
 23 large number of issues including such exciting matters
 24 as the provisions of The Companies Act, fiduciary
 25 duties, financial assistance, et cetera.

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1 So plainly the context of the communications in
 2 relation to both board meetings is that these are
 3 highly -- both sides have legal advice, and --
 4 MR JUSTICE HILDYARD: What date was the meeting?
 5 MR POTTS: It was on the 21st.
 6 MR JUSTICE HILDYARD: 21st of?
 7 MR POTTS: September, the second one. The claimants plainly
 8 were being legally advised, and plainly privilege
 9 attaches to the communication between the claimants and
 10 their lawyers, and the same respect of privilege is --
 11 accords to my clients. The fact that they have
 12 an in-house legal department doesn't change that
 13 position. We have not sought disclosure of their
 14 communications and they are not entitled to ours.
 15 Even if the case -- that aside, the fact remains
 16 that Mr Raines was receiving legal advice from the legal
 17 department as has been said in relation to the conduct
 18 of board meetings.
 19 My Lord, we had a discussion about that yesterday,
 20 my Lord, and the position is that legal advice privilege
 21 covers not only advice on matters of law but also advice
 22 on matters as to what can prudently be sensibly done in
 23 a relevant legal context.
 24 My Lord I think referred to Bank of India. I think
 25 your Lordship probably had in mind Balabel v Air India

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1 perhaps.
 2 MR JUSTICE HILDYARD: I am sorry, you are quite right.
 3 MR POTTS: The relevant excerpt -- my Lord, if you have the
 4 excerpt from Hollander, you can see that the modern test
 5 is formulated, and your lordship can see 1716 at the
 6 second holepunch, your Lordship may just want to cast
 7 an eye over that.
 8 The point is that -- the essence of the talk is that
 9 the purposes will be construed broadly, there will be
 10 a continuum of communications and meetings, and there
 11 will usually be implied into the relationship an overall
 12 expectation at each stage of tendering advice and taking
 13 it and so on. It's not confined to telling the law,
 14 advice as what can prudently and sensibly be done in the
 15 relevant legal context.
 16 Then, my Lord, if your Lordship has seen that, over
 17 the page at 1718 -- sorry, page 291, there is
 18 a reference to Three Rivers which emphasises the
 19 position on Balabel, about legal advice is not just
 20 telling the law, included advice as to what prudently
 21 and sensibly can be done in the relevant context.
 22 Then there is a reference to the House of Lords
 23 quote there. Your Lordship raised a question in terms
 24 of, for example, if advice is given to a chairman of
 25 a meeting in relation to the conduct of a meeting or so

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1 on. That is quite properly within the scope of
 2 privilege, part of that continuum, it's part of the --
 3 what can prudently and sensibly be done in a legal
 4 context.
 5 Your Lordship has seen the context here, which is
 6 that this is a contested situation over meetings. So,
 7 my Lord, I gave -- made some submissions yesterday,
 8 my Lord, both in relation to that and also the point
 9 about where particular communications are mixed and so
 10 on, there is a danger of seeking to sever part of the
 11 communication and so on of waiver of privilege there.
 12 Just so your Lordship has the context, and those were
 13 the submissions I made to your Lordship yesterday. They
 14 are on the transcript, I don't want to repeat them.
 15 Having checked them, I think they accord with what
 16 I believe is the law.
 17 I don't know if that assists your Lordship.
 18 MR JUSTICE HILDYARD: Yes, it does. I think that the
 19 question which spurred the enquiry from memory, and
 20 I may be wrongly remembering, is whether the minutes
 21 were, as it were, scripted. I don't know what the
 22 answer to that was. But that wouldn't be privileged,
 23 would it?
 24 MR POTTS: The minutes themselves are not privileged.
 25 MR JUSTICE HILDYARD: And the question whether they were

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1 scripted?
2 MR POTTS: My Lord, if assistance was taken in relation to
3 the drafting of the minutes subsequently, that would be
4 privileged.
5 MR JUSTICE HILDYARD: The toing and froings would be, but
6 the ultimate product as to whether they were scripted
7 wouldn't be, would it?
8 MR POTTS: The ultimate product of the minutes, well, the
9 minutes are the minutes.
10 MR JUSTICE HILDYARD: The minutes would plainly not be
11 privileged, but the question: did your lawyers prepare
12 these minutes? Would that be privileged?
13 MR POTTS: Well, it depends, isn't that a question of
14 probing as to the scope of advice taken? I am not sure,
15 my Lord, I think it is, isn't it?
16 MR JUSTICE HILDYARD: Anyway.
17 MR POTTS: I am not sure much turns on that point.
18 MR JUSTICE HILDYARD: I don't think it will. If it does, it
19 does in --
20 MR STUART: My Lord, can I just say two points in reply?
21 I think my learned friend's summary of it is too broad.
22 You have to look at the words that he missed out when he
23 quoted Lord Justice Taylor's quote at 1716:
24 "The test is whether the communication or other
25 document was made confidentially for the purposes of

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1 legal advice, those purposes have to be construed
2 broadly. Privilege obviously attaches to a document
3 conveying legal advice. It does not follow that all
4 other communications between them lack privilege."
5 It still has to be to do with -- advice to do with,
6 because the continuum that my learned friend referred to
7 is not just any continuum, over the page, it's:
8 "Where information is passed by the solicitor or the
9 client to the other as part of the continuum aimed at
10 keeping both informed so that advice may be sought and
11 given as required, privilege will attach."
12 So I think I asked the witness and expressly said to
13 him "I don't want to know anything about advice" but
14 I actually was asking him initially about when he had
15 received the minutes for the meeting in his capacity as
16 the director of the company who was going to hold it.
17 I asked him: we can't see any version of these coming to
18 you, no email to you or anything like that? That is
19 not -- if that is what is being sought to be privileged,
20 and I don't know whether it is, because I haven't been
21 shown it, but if that is being said to be privileged,
22 I don't accept that that is part of the continuum aimed
23 at keeping both informed so that advice may be sought
24 and given.
25 Anyway, my Lord, I am not going to take it any

18

1 further than that for the moment. No document has been
2 provided, no document has been identified --
3 MR JUSTICE HILDYARD: My preliminary view, if it becomes
4 relevant, is that the fact that a solicitor has sent
5 a document which itself is not privileged is not
6 privilege, and a question of whether in fact that
7 non-privileged document was sent by a solicitor is
8 unlikely to be privileged. Those are provisional views,
9 and if it becomes material, you can demonstrate.
10 I mean, I remember now -- thank you very much, it's
11 Balabel -- this arose in the McMillan case, and was
12 argued, I can't even remember whether we won or lost,
13 I can't remember, but there was some --
14 MR POTTS: I have some recollection of that matter, of early
15 years, as well, my Lord, yes.
16 MR STUART: My Lord, I see the time.
17 MR JUSTICE HILDYARD: Yes. Mr Raines, I'm so sorry to have
18 kept you waiting. It's seems almost greedy of me to
19 suggest lunch at this time. I think we probably should.
20 Can I just say that I just don't think we are going to
21 get on to Uckfield. I think we shouldn't even try. We
22 will be striving for an objective which will always be
23 a little bit beyond us.
24 MR POTTS: My Lord, I think I certainly accepted that
25 yesterday.

19

1 MR JUSTICE HILDYARD: You did.
2 MR POTTS: The only thing which I think could be useful, is
3 if we have any time on Friday afternoon, is I wouldn't
4 mind the opportunity of pointing you in the direction of
5 a few matters on my skeleton. I think your Lordship
6 suggested a few brief headlines for reading.
7 MR JUSTICE HILDYARD: We will see where we get to, but I may
8 just sigh deeply and suggest we do it on another day.
9 MR POTTS: Yes.
10 MR JUSTICE HILDYARD: We will see how we get to. Now, the
11 menu for this afternoon, therefore, is?
12 MR STUART: Finish Mr Raines, and deal with hopefully
13 Mr Rowe.
14 MR JUSTICE HILDYARD: And then we have to deal tomorrow with
15 Ms Mancini?
16 MR STUART: And Mr McGowan.
17 MR JUSTICE HILDYARD: We will get them done by lunchtime?
18 MR STUART: Yes.
19 MR JUSTICE HILDYARD: If you wish to start early, you can
20 discuss amongst yourselves. I have another problem,
21 haven't I? (Pause) I have another threat, a threat of
22 two hours, which I could start at 9.15, but it would be
23 11.15. You have not had a very happy experience with
24 that sort of estimate. I will see whether I can adjourn
25 it, and I'll let you know at 2 o'clock.

20

1 (1.05 pm)
 2 (The short adjournment)
 3 (2.00 pm)
 4 MR MARK RAINES (continued)
 5 Cross-examination by MR STUART (continued)
 6 MR STUART: Mr Raines, I just want to clarify a couple of
 7 things you said yesterday. Could you be passed the
 8 transcript bundle for Day 13? I forget whether we have
 9 seen this before, but the pagination is four pages to
 10 a page, and the number is therefore beneath the text.
 11 A. Yes.
 12 Q. If you will go to page 77, I was asking about the fact
 13 that you disciplined these people.
 14 A. Yes.
 15 Q. Do you see, line 22, page 77:
 16 "Question: So a number of individuals have been
 17 disciplined, formally disciplined in relation to these
 18 matters regarding Dr Poulsen and Mr Weller?"
 19 And you answered:
 20 "Answer: Yes."
 21 Do you see that?
 22 A. Yeah.
 23 Q. I asked you:
 24 "Question: Are these the matters ..."
 25 You said:

21

1 "Answer: They ... relate to the five emails."
 2 Then I asked you:
 3 "Question: [Did] you [carry] out the disciplinary
 4 process against these individuals?"
 5 You said:
 6 "Answer: No ... I carried out the disciplinary
 7 process between Mr Rowe and Mr Deane."
 8 I think you meant for Mr Rowe and Mr Deane?
 9 A. Yes.
 10 Q. And not for Susannah Hart?
 11 A. Yes.
 12 Q. You have been provided with, I think, so that you could
 13 read it whilst we were having our break, the documents
 14 that have now been provided as to those. I am not sure
 15 they have made it into a bundle yet.
 16 A. Yes.
 17 Q. I just want to ask you about a couple of these. Sorry,
 18 what I should have asked you about, if you go on in the
 19 transcript bundle to page 86, I asked you about the
 20 timing of all of this. Do you see at page 86, line 17,
 21 I said:
 22 "Question: Is there any reason that you didn't
 23 mention this ..."
 24 "This" being all these disciplinary matters. Do you
 25 have it, 86?

22

1 A. Line 17?
 2 Q. Line 17 of page 86 of:
 3 "Question: Is there any reason that you didn't
 4 mention this in your witness statement made for these
 5 proceedings?"
 6 Do you have that?
 7 Bottom left-hand corner of a page, for Day 13,
 8 page 86.
 9 A. Yeah. Which starts:
 10 "Answer: I believe everything you say ..."
 11 Q. I have a different ...
 12 A. I have an 86 right down at the bottom of the page.
 13 Q. That's it, that's the one we are looking at.
 14 A. Yes.
 15 Q. Do you see there are four pages to a page, so 86 is just
 16 the bottom left-hand chunk?
 17 A. Right, sorry, yes, I am with you now.
 18 Q. There is a 17, do you see it?
 19 "Question: Is there any reason you didn't mention
 20 this in your witness statement ..."
 21 Do you see that?
 22 "Answer: It may be that the disciplinaries took
 23 place after the witness statement was signed."
 24 A. Yes.
 25 Q. I said:

23

1 "Question: Surely you can remember, it's not that
 2 long ago?"
 3 A. Yes.
 4 Q. Your answer was "I don't recollect."
 5 A. That is correct.
 6 Q. Now, we have some documents to help your recollection,
 7 and it does appear that your witness statement was
 8 signed at the end of July of this year, whereas the
 9 disciplinaries happened, appear to have happened, in the
 10 period February, March and April of this year?
 11 A. That's correct.
 12 Q. Shortly after disclosure in this case; is that what
 13 triggered it?
 14 A. That is what triggered it.
 15 Q. So the fact that these people had written the emails at
 16 the time, anyone who knew -- you didn't know about these
 17 emails at the time?
 18 A. I had no knowledge at all, none at all.
 19 Q. Let's take, if Jill Clark knew about an email at the
 20 time she didn't raised any issues so far as you are
 21 aware?
 22 A. No. None at all.
 23 Q. Okay. So it appears in February you are being emailed
 24 about a template letter. This is the first of the
 25 documents. Do you have it?

24

1 A. Yes. Yes. Yes.
 2 Q. 14 February?
 3 A. Yes.
 4 Q. You seem to be trying to work out what the breach is, or
 5 your colleague seems to be trying to work out what
 6 breach is being alleged here against them?
 7 A. Yeah. Yes.
 8 Q. It's breach of the email policy, is what is come up with
 9 in the end?
 10 A. Yes.
 11 Q. Okay. We see the email policy, I think, attached to
 12 this email. We see a draft letter, and then an email
 13 policy page?
 14 A. Yes.
 15 Q. Then the next document produced seems to be from
 16 Jill Clark or relating to Jill Clark --
 17 A. Yes.
 18 Q. -- relating to the Susannah Hart disciplinaries, which
 19 you say you didn't have anything to do with at this
 20 point?
 21 A. That is correct.
 22 Q. So I can't ask you about those. You are mentioned on
 23 the next email, however. There is an issue as to
 24 whether these people are to get a first written warning,
 25 that's a stage 1 warning under your policy, isn't it?

25

1 A. Which ...
 2 Q. So the next email that's been disclosed, 24 April 2013,
 3 the bottom email on the front page, it says, on
 4 24 April 2013, Jill Clark wrote:
 5 "First written then please -- Mark told me it was
 6 a final, but it should be the same as Mike and Adrian."
 7 A. Sorry, bear with me. Yes, I've got you. Yes.
 8 Q. So Mark is you, that would be you?
 9 A. That would be me, yes.
 10 Q. And you have, by this time, by end of April, it looks
 11 like you have probably already dealt with Mike Rowe and
 12 Adrian Deane?
 13 A. That's correct.
 14 Q. Had Adrian Deane already left?
 15 A. Left where?
 16 Q. SO ...?
 17 A. He has not left SOG.
 18 Q. Okay, fine.
 19 A. He's still employed by the business.
 20 Q. Just whilst I'm on that, Mr Rajan --
 21 A. Yes.
 22 Q. -- to the extent that he was in the email
 23 correspondence --
 24 A. Yes.
 25 Q. -- was he disciplined about this in 2013, or had he

26

1 already --
 2 A. He decided to leave the business --
 3 Q. Last year?
 4 A. -- to pursue another career.
 5 Q. Anyway, "first written, please", so they are going to be
 6 given a first written warning, or rather Susannah Hart
 7 is, and Jill Clark is saying that you told her that it
 8 was a final but it should be the same as Mike and
 9 Adrian. So there is obviously some miscommunication
 10 there?
 11 A. I assume so.
 12 Q. Okay. There is reference above that to "the meeting
 13 that took place yesterday", so there must have been
 14 a disciplinary meeting with Susannah Hart on
 15 23 April 2013; does that look right? Do you see just
 16 above that sentence that I took you to, there is the
 17 reply:
 18 "Hi Jill, agreed, can I just check so I can include
 19 the date in the letter, whether the meeting took place
 20 yesterday?"
 21 A. Yes, yes.
 22 Q. Then we get another email "here is Susannah's letter",
 23 and then finally, the final three documents produced
 24 are, within them, are the letters.
 25 So Susannah Hart's letter is dated 24 April 2013?

27

1 A. Yes.
 2 Q. First written warning?
 3 A. Yes.
 4 Q. "I write further to the disciplinary hearing held on
 5 24 April."
 6 So it must have been 24 April she had her
 7 disciplinary meeting?
 8 A. Yes.
 9 Q. It looks like Jill Clark was the officer convening the
 10 disciplinary meeting?
 11 A. She was.
 12 Q. We can see that the Employee Guide to Discipline
 13 Capability, Grievance and Appeal applies?
 14 A. Yes.
 15 Q. The charge, looking at the second paragraph, and this
 16 chimes with the wording of your letters in a moment, but
 17 we are at this one first, is:
 18 "You exchanged personal emails with a fellow
 19 employee displaying inappropriate language. That is
 20 a breach of the company's email policy ..."
 21 A. Yes.
 22 Q. So it's the use of the language in the email that they
 23 have been disciplined for?
 24 A. Yes.
 25 Q. And that's the only thing they have been disciplined

28

1 for?
 2 A. Yes.
 3 Q. So the actual underlying --
 4 MR POTTS: The whole sentence is ...
 5 MR JUSTICE HILDYARD: It goes on:
 6 "... and which criticised one of our joint venture
 7 partners."
 8 MR STUART: I am asking the witness, I am sure he can
 9 understand the question.
 10 The thing that they have been given just a first
 11 written warning for is misuse of the email, and the
 12 language used in an email?
 13 A. Yes.
 14 Q. Not the underlying mindset that seems to be evidenced by
 15 the language used in their email. So the fact that they
 16 hold this grudge -- that Susannah Hart holds a grudge
 17 against Dr Poulsen, she's not being disciplined for; is
 18 that right?
 19 A. I don't believe so. I can't comment in terms of
 20 Susannah Hart, I didn't complete Susannah Hart's
 21 disciplinary.
 22 Q. No.
 23 A. I did in terms of Mike Rowe and Adrian Deane and --
 24 Q. Okay, well, let's come on to them, then. We have their
 25 two letters I think, the last --

1 A. Can I just finish what I was going to say?
 2 Q. Of course.
 3 A. Which is I don't believe, and, you know, I continue not
 4 to believe that there is any grudge, plan or anything
 5 that relates to those emails.
 6 Q. Well, of course by March/April 2013 that's a very major
 7 issue in this case, isn't it? Whether there was
 8 an underlying grudge, vendetta, plan, that's what this
 9 case is now all about by then?
 10 A. Yes.
 11 Q. But all these people are disciplined for is breach of
 12 the email policy. I am looking at the two letters then
 13 to Adrian Deane, 4 April 2013 signed off by somebody on
 14 your behalf, pp. Do you have it? It's the penultimate
 15 document in the little clip.
 16 A. Yeah.
 17 Q. It's the first written warning, there was a disciplinary
 18 hearing held on 20 March --
 19 A. Yes.
 20 Q. The allegation is breaching the company's email policy
 21 and the emails displayed inappropriate language which
 22 criticised one of the joint venturers?
 23 A. Yes.
 24 Q. It's the language used in an email?
 25 A. Yes.

1 Q. So again with Adrian Deane, no suggestion there that you
 2 were investigating, disciplining him for or considering
 3 his underlying motivation against Dr Poulsen?
 4 A. I did investigate it.
 5 Q. You did, okay, good.
 6 A. Yes. Thank you.
 7 Q. When was that?
 8 A. That was during the meeting that I held with him.
 9 Q. Okay, good, so were you the investigating officer as
 10 well?
 11 A. No.
 12 Q. No?
 13 A. No, I -- if I can explain what I did.
 14 Q. Yes.
 15 A. I was made aware of the emails.
 16 Q. Yes.
 17 A. I decided that there was a disciplinary case to answer.
 18 Q. Okay.
 19 A. The emails were, in my opinion, black and white in terms
 20 of the content, you know, an email is an email.
 21 Q. Yes.
 22 A. So clearly those emails had been sent by Adrian Deane.
 23 I was very keen to then understand what the context was
 24 behind those emails, why they were sent, whether in fact
 25 he recalls sending them. He didn't recall sending them,

1 he was absolutely mortified by the fact that they had
 2 been sent. I then questioned him in relation to the
 3 context of why they were sent, and I concluded --
 4 because he had, well, admitted that he had sent them --
 5 that he had breached the email policy and had used
 6 inappropriate language and criticised a joint venture
 7 partner. I then --
 8 Q. So what explanation did he give?
 9 A. The explanation he gave was he couldn't recall sending
 10 them, he couldn't recall, he expressed a frustration
 11 because Mrs Poulsen or Dr Poulsen was a difficult person
 12 to deal with.
 13 MR JUSTICE HILDYARD: Both those things he said?
 14 A. Sorry?
 15 MR JUSTICE HILDYARD: He said both? He couldn't remember
 16 it --
 17 A. He couldn't remember it, no, but he said she was
 18 a difficult person to deal with, but he couldn't
 19 remember the context in which he had sent the email.
 20 MR STUART: Mr Rowe, when he gave his explanation to you,
 21 was it in a separate meeting?
 22 A. That was a separate meeting that --
 23 Q. What was his explanation for his rather inappropriate
 24 use of language?
 25 A. It was very similar, it was he couldn't recall sending

1 or receiving the emails, and again couldn't offer any
2 justification why he had sent them or explanation.
3 Q. Anyway, I think what you are saying is that you rather
4 skipped the investigatory step in the process and you
5 went straight to the disciplinary meeting; is that fair?
6 A. That is fair, that is fair because of the email nature
7 of them.
8 Q. If you just take up bundle X.
9 A. Yeah.
10 Q. Tab 3.
11 A. Yeah.
12 Q. So we can put it into context, as I understand it, if
13 you go to page 181 --
14 A. Yes.
15 Q. -- within tab 3, there is a nice little sort of
16 diagram.
17 A. Yes.
18 Q. This was a -- turned out to be a stage 1 first written
19 warning?
20 A. Yes.
21 Q. That's the normal --
22 A. Yes.
23 Q. -- warning that you eventually arrived at?
24 A. Yes.
25 Q. Presumably you could have decided, if you thought it was

1 really serious, given them a final written warning; it's
2 possible?
3 A. Possibly.
4 Q. But you made that decision, anyway, at your disciplinary
5 meeting to go for the stage 1 first written warning?
6 A. I did.
7 Q. So if we go to 182 there is a nice little sort of
8 checklist, I think, that summarises pretty much the rest
9 of this document. We can skip the box marked
10 "Investigation", really, because you did that, and
11 I understand why you did that. As you say, it's there
12 in black and white. So you went to where it says:
13 "Has the investigation shown that there is
14 a disciplinary case to answer?", the answer was yes, you
15 believe there was?
16 A. Yeah.
17 Q. So you went straight to "Disciplinary hearing arranged"?
18 A. Yes.
19 Q. "Employee may be suspended."
20 Presumably you didn't bother to suspend them for
21 this?
22 A. No.
23 Q. No.
24 "Employ invited to a disciplinary hearing. Employee
25 may be accompanied by a single companion."

1 The two that you dealt with, Rowe and Dean, did they
2 choose to have a companion with them?
3 A. No, they didn't.
4 Q. Okay. And then we have the disciplinary hearing held;
5 is that right?
6 A. Yes.
7 Q. And we see those on two separate occasions. Who was
8 present at the disciplinary hearing apart from yourself
9 and the individual concerned?
10 A. Myself and the individual concerned.
11 Q. So no notetaker for you?
12 A. No notetaker.
13 Q. "Decision made against employee."
14 That's what you -- we go down that line, don't we?
15 A. Yeah.
16 Q. It's left-hand side "Misconduct rather than gross
17 misconduct"?
18 A. Yes.
19 Q. Good. Looking at 183, starting the formal disciplinary
20 procedure, do you see that?
21 A. Yes I do.
22 Q. We are into the disciplinary procedure. 184, there
23 should have been the three steps but you turned it into
24 two, so you got rid of the need for the investigating
25 part; is that right?

1 A. Yes.
2 Q. Who was it who decided it who was going to be the
3 disciplining officer?
4 A. I was -- I discussed that with our HR director.
5 Q. Yes?
6 A. Who is a lady called Pauline Best, and it was agreed
7 that I was the most appropriate person to be the
8 disciplining officer.
9 Q. Okay. Is that because you were Mr Rowe's line manager?
10 A. Yes.
11 Q. You weren't Mr Deane's line manager, were you?
12 A. At that time I was.
13 Q. Oh, you were, okay.
14 A. Because Mr Dyson had left to go to Australia in -- the
15 previous year, so --
16 Q. I thought Mr Deane was in the Mrs Hart/Jill Clark line
17 of --
18 A. Yes, when, my Lord, when Mr Dyson went to Australia,
19 I then effectively took over his report, some of his
20 reporting lines, namely Jill Clark.
21 Q. Right. But Jill Clark -- for some reason it was decided
22 Jill Clark wouldn't deal with Mr Deane?
23 A. Yes, it was.
24 Q. Who was going to deal with the appeal, then?
25 A. Sorry, can I --

1 Q. Of course, I am sorry. I am not trying to stop you.
 2 A. No, no, I know. It's important you understand fully
 3 what actually happened. I was scheduled to complete all
 4 three disciplinaries in terms of, it was agreed that
 5 I would. I took a decision from a timing point of view,
 6 purely from a timing point of view in terms of my diary,
 7 because Susannah Hart was based in Guernsey, our diaries
 8 and holidays didn't coincide, and I took a view that
 9 Jill Clark on behalf of me should be the person to
 10 conduct the disciplinary hearing for Susannah Hart.
 11 Q. Okay. So page 188, I think we can sort of skip to,
 12 because you are effectively giving them their chance to
 13 give their explanation at the first meeting; there is
 14 not a two stage process, not investigation and
 15 disciplinary, it is all done by you at this one meeting?
 16 A. It is.
 17 Q. So your interview with the person against whom the
 18 allegations are being made. I presume you didn't
 19 interview anybody else in relation to these?
 20 A. No, I did not.
 21 Q. Okay. I am looking at 188, do you see that?
 22 A. Yes, I do.
 23 Q. At the bottom of 188, second dot from the bottom:
 24 "After all the questions and replies had been given,
 25 the person being interviewed should be given the notes

1 to read, invited to amend and to accurately record what
 2 was said, sign they are accurate. If there is
 3 a difference of opinion", et cetera, et cetera.
 4 Do you see?
 5 A. Yes.
 6 Q. A similar methodology is used in relation -- if you go
 7 to page 191, the guide to the disciplinary hearing, so
 8 whether this was a sort of conglomerated investigation
 9 and disciplinary or just a disciplinary, it doesn't
 10 really matter, does it?
 11 A. No.
 12 Q. So you didn't have a notetaker, so you must have taken
 13 the notes?
 14 A. I took some notes, I believe, in my daybook.
 15 Q. In your daybook? Is this the 2013 daybook?
 16 A. Probably. This is where my memory gets a little bit
 17 hazy, and I've spent the last 24 hours, as you can
 18 imagine, trying to recall what actually happened. I had
 19 the disciplinary meetings with the individuals.
 20 I believe I made some notes. I cannot recollect the
 21 notes that I made. That is where I sort of draw
 22 a blank, because I can't recollect those notes.
 23 Q. You see, 181, let's take it in stages. 191:
 24 "The employee will have confirmed to him in writing
 25 the date and time of the hearing, the place of the

1 hearing, a list of the allegations, the nature of the
 2 complaint, not vague, specific."
 3 A. Yes.
 4 Q. "Copies of any documents."
 5 A. Yeah.
 6 Q. "Policies, et cetera."
 7 Do you see that?
 8 A. Yes.
 9 Q. So that must have all been provided to Mr Deane and
 10 Mr Rowe in writing?
 11 A. I provided copies of the emails in writing.
 12 Q. In advance of the meeting?
 13 A. Not in advance of the meeting, no.
 14 Q. Okay. Then "Documentation", do you see at the bottom of
 15 191:
 16 "Check the employee's file to determine", et cetera.
 17 Do you see that?
 18 A. Yes, I do.
 19 Q. Then over the page, 192:
 20 "Where necessary, ensure you have obtained a written
 21 note of the precise instruction, obtain copies",
 22 et cetera.
 23 Then "Conducting the hearing"; do you see that?
 24 A. Yes, I do.
 25 Q. "Remember to take detailed notes of the discussions, who

1 attended, what time the hearing started, finished,
 2 et cetera and conduct the hearing at the speed the
 3 notetaker can write."
 4 Do you see that?
 5 A. Yes, I do see that.
 6 Q. Obviously it's crucially important to have proper notes
 7 of a disciplinary hearing where somebody could face
 8 a final written warning, I suppose?
 9 A. Yes.
 10 Q. Do we have any notes of your hearings with these two
 11 employees?
 12 A. No, we don't, my Lord.
 13 Q. Over the page at 193:
 14 "Employee's comments."
 15 A. Yes.
 16 Q. So once you have presented the case to them:
 17 "Ask the employee to state their case."
 18 Do you see that?
 19 A. Yeah.
 20 Q. Then over the page, 194, there is a decision to be made?
 21 A. Yes.
 22 Q. You need to take time to reflect on everything else. Do
 23 you recall that?
 24 A. I do.
 25 Q. Then there will be a follow-up; do you remember?

1 A. Yes.
2 Q. I think for our purposes page 200, this is your
3 checklist?
4 A. Yeah.
5 Q. Just to get it clear to you, this is about the
6 disciplinary hearing, page 199?
7 A. Yeah.
8 Q. At the top of 200:
9 "A note should be taken of the time when the hearing
10 starts", et cetera, et cetera, et cetera.
11 A. Yes.
12 Q. Then at 203, all the records of all of this, we see what
13 you should have then done with them?
14 A. Yes.
15 Q. This is addressed to you, isn't it, the disciplinary
16 person?
17 A. Yes.
18 Q. "Place a copy of the written warning in the employee's
19 personnel or personal file, and all the rest of the
20 documentation will be collated in a separate file."
21 A. Yeah.
22 Q. Did you collate it?
23 A. No.
24 Q. Did you leave it to your PA to do it?
25 A. No. I --

1 Q. Did you leave it to HR to do it?
2 A. HR.
3 Q. Okay.
4 A. Gillian Nash-Kennell, the lady who is in the letter.
5 Q. Okay. So the correspondence would be in there, with the
6 letters? I am looking at the checklist here. From your
7 recollection, you were the person who did this.
8 A. There will not be an invite to a disciplinary.
9 Q. No?
10 A. I did not send them a letter.
11 Q. Okay.
12 A. I arranged a meeting with them when I was -- in
13 Adrian Deane's case, when I was in Guernsey, I had
14 arranged to meet him in Guernsey in a meeting room, and
15 with Mike Rowe when I was -- I seem to recollect it was
16 while I was in the -- sorry, I think it was in Guernsey
17 as well. It's either in Guernsey or at a communication
18 meeting. I can't recollect fully when that was. But
19 the meeting was on the day.
20 Q. Okay. There would at least be, if you look at the
21 second dot from the bottom:
22 "Original copies of the notes taken at the
23 disciplinary hearing plus any typed versions."
24 A. Yes.
25 Q. So those at least would be on the file?

1 A. I don't -- my recollection is that I didn't send those
2 notes to HR. I can't explain why I didn't follow the
3 correct procedure. I should have done, I appreciate
4 that. As I said, for the last 24 hours I have been
5 trying to recollect what I actually did with those
6 notes, and when I sent them. I recall having
7 a conversation with Gillian Nash-Kennell afterwards,
8 after I had taken time to consider what had been
9 presented by Mr Deane and Mr Rowe, and I had asked her
10 if she would draft a letter relating to the outcome of
11 the disciplinary hearing.
12 Q. All right. So Mr Rowe and Mr Deane's explanation for
13 why they wrote what they wrote, are you saying the only
14 note of that in writing anywhere would be your note?
15 A. I believe so, my Lord.
16 Q. They didn't put anything in writing to you, you say?
17 A. No. No.
18 Q. They didn't email you an explanation?
19 A. No.
20 Q. Okay. Did you discuss any of this with Mr Dyson?
21 A. No.
22 Q. Nor Mr McAlindon, I suppose?
23 A. No.
24 Q. No, okay. So that's as far as you can take it, then, on
25 these disciplinary notes?

1 A. I --
2 Q. There is no more?
3 A. I believe so, unless you have any other questions.
4 Q. No. Okay. Going swiftly back to your witness
5 statement, let's just finish off the last bits of your
6 evidence.
7 MR JUSTICE HILDYARD: Do you want to put the additional
8 material in X/10?
9 MR STUART: My Lord, yes, could we put it in at 10, yes.
10 MR JUSTICE HILDYARD: It's only for the sake of good order.
11 MR STUART: Tab 10. Does yours have holepunches, Mr --
12 A. Yes.
13 Q. If you could put it in the same order -- you have it
14 there -- in tab 10 in X.
15 I should have asked the final question, shouldn't I?
16 I had taken you to the transcript, I had asked you
17 yesterday why you didn't mention any of this in your
18 statement, and your answer was "it might have been after
19 the statement"; do you remember?
20 A. That's correct.
21 Q. You said, "Well, I can't actually remember". Now that
22 you do remember that this all happened in March and
23 April --
24 A. Yes.
25 Q. -- do you want to now give your explanation as to why

1 you didn't mention any of this before?
 2 A. I honestly wish I could provide an explanation, my Lord.
 3 I cannot, and again it's one of those things I have been
 4 racking my brains with, thinking why you didn't include
 5 it in your witness statement. I genuinely drew a blank.
 6 I think I may have -- to give you an insight into my
 7 thinking, I may have thought this was a matter which was
 8 around the inappropriate use of the email and
 9 inappropriate language, criticising a partner. It was
 10 an internal thing, and totally inappropriate, but
 11 I didn't relate that to this situation -- to this court
 12 case, which was -- I can't explain why I would do that,
 13 because that isn't how I would normally think or act or
 14 do. But in this situation, I have, and, you know,
 15 obviously it's something that I regret.
 16 Q. Okay, back to your statement, then. I think we are in C
 17 at page 150, paragraph 59.
 18 A. Yeah.
 19 Q. Paragraph 57 you say you have been provided with a copy
 20 of the investigation report --
 21 A. Yeah.
 22 Q. -- to review it before 21 September 2011 board meeting?
 23 A. Yes.
 24 Q. At paragraph 59 you say in the third line, do you see at
 25 the bottom of the page --

1 A. Yeah.
 2 Q. -- "I was very shocked at the scale of deceit on the
 3 part of the claimants and the lengths they had gone to
 4 to cover their tracks. For example, emails and
 5 documents had been deleted from the store's computers."
 6 A. Yeah.
 7 Q. Leave aside the emails point, which there was a report
 8 that said an email box had been deleted, what documents
 9 were you so shocked at being deleted from the store's
 10 computers?
 11 A. Well, I don't know which particular documents, but I was
 12 aware that emails and documents had been deleted.
 13 Q. Ah. Are you shocked at the deletion or the -- at the
 14 inability of yourself to provide any documents relating
 15 to these disciplinary processes that had just happened?
 16 A. Quite frankly I am shocked at myself.
 17 Q. Okay.
 18 A. Again, let me finish. Why I was shocked at the scale of
 19 the deceit, my Lord, was that having read the sort of --
 20 or it was alleged deceit at the time. Having read the
 21 investigation report, what I was reading, I have not
 22 come across before in terms of the scale of stuff. We
 23 obviously have situations from time to time where people
 24 do dishonest things, but the actual, what I was reading
 25 in the investigation report, given what I know about how

1 stores operate, the fact that I am a joint venture
 2 partner, you know, this was at a different level, and it
 3 bore no relation to the stores that I know and
 4 understand, if that makes sense, the structure of them,
 5 the handyman. You know, no store has a handyman,
 6 certainly on a retainer. The job description that
 7 was -- or the job role that was described for Mr Vos,
 8 you know, at best that's an office administrator who
 9 I would employ on £18,000 a year, and there were
 10 elements of the job that was, I would have thought would
 11 have been done by the store manager or the retail
 12 director. And they just -- it just wasn't there. It
 13 just didn't stack up, you know, and a store manager,
 14 particularly an average salary would be around 28,000
 15 for a 40-hour week. In respect of -- you wouldn't pay
 16 overtime. So the whole thing just didn't ring true for
 17 me, and that's why I put the comment in about being
 18 shocked. I was genuinely shocked. I think --
 19 Q. Mr Raines, I just want to ask you about your
 20 statement --
 21 A. You are interrupting me again.
 22 Q. Only because you are not answering my question.
 23 A. You asked me why I was shocked.
 24 Q. No, I asked you about the documents, what documents are
 25 you referring to in the sentence which starts "For

1 example, emails and documents had been deleted from the
 2 store's computers and you have given four minutes on
 3 what your view is as to what an office administrator
 4 should be paid. I didn't ask you about that. Do you
 5 understand?
 6 A. I apologise.
 7 Q. All right. So I'm asking you about your witness
 8 statements, do you see?
 9 A. Yes.
 10 Q. What you have said is that you were shocked at the scale
 11 of the deceit?
 12 A. Yes.
 13 Q. And the examples you give are, for example, emails and
 14 documents had been deleted?
 15 A. Yes.
 16 Q. And I know about the emails?
 17 A. Yeah.
 18 Q. And we now know that that is Mr Vos deleting his
 19 personal email box?
 20 A. Yes.
 21 Q. If you had known that that was what it was, a man who
 22 was just deleting his personal email box, using the AOL
 23 email deleter that you can just get online if you want
 24 to delete it from a ... that wouldn't have shocked you,
 25 presumably, must have come across that before?

1 A. No. I --
 2 Q. Okay.
 3 A. I haven't come across people deleting things off
 4 computers.
 5 Q. Even their personal emails?
 6 A. In a store environment?
 7 Q. In management of a store environment, yes.
 8 A. In a store environment, no, I haven't come across
 9 a partner, a manager or an employee deleting emails off
 10 an instore computer.
 11 MR JUSTICE HILDYARD: His or her personal emails?
 12 A. Yes, yeah.
 13 MR JUSTICE HILDYARD: You have not come across that?
 14 A. But it's on an instore computer, it is a business
 15 computer, you know, I haven't come across that situation
 16 before.
 17 MR STUART: Then the documents I've asked you about, you
 18 have said -- that's the documents deleted, you are not
 19 sure what documents are you are referring to there, you
 20 don't know what documents?
 21 A. No, no.
 22 Q. Then the final thing that you give as your example to
 23 justify your shock is: boxes full of documents belonging
 24 to Bognor had been removed from the business -- I think
 25 you mean from the store, do you?

1 A. From the store, yes.
 2 Q. -- and taken to the claimants' own solicitors. That's
 3 not quite right, is it? That's not ...
 4 A. That was my understanding at the time.
 5 Q. Surely you had read the whole report, so you knew that
 6 what happened here was that Mr Vos said he was doing all
 7 the work at home for years, and that he had confidential
 8 documents relating to the staff contracts and the like,
 9 which he kept at his office at home?
 10 A. Yes.
 11 Q. And that those documents were put into a couple of boxes
 12 at Coole & Haddock, those were the documents; not that
 13 he had gone into the store, emptied the store of all its
 14 documents, and taken them off to some separate place.
 15 You did understand the nature of what was said in the
 16 report, did you?
 17 A. I believe at the time when I wrote this statement I did.
 18 Q. Okay, so what are you referring to "Boxes full of
 19 documents being removed from the" -- you just said it,
 20 the store, it says "the business", but you mean "the
 21 store". What boxes of documents were removed by Mr Vos
 22 from the store?
 23 A. At that time, and again, I believe that materials had
 24 been taken away from the store. I knew that there was
 25 an issue around some personnel files, that they weren't

1 present --
 2 Q. No, but it's not as though they had been taken away from
 3 the store to hide them, to act dishonestly, it's said
 4 that those were not at the store, they were kept at
 5 home, and they were put in the box for Coole & Haddock?
 6 A. Yes.
 7 Q. Are you saying that you have never come across
 8 a director or somebody who has overall control of the
 9 management of a business who has an office at home and
 10 who keeps business documents at his home? You have
 11 never come across that?
 12 A. I've never come across a situation where a partner, and
 13 I include myself in that, has any need to keep any
 14 documents, particularly personnel documents, at home.
 15 There are secure environments in every store, locked
 16 filing cabinets. It just strikes me as unusual.
 17 MR JUSTICE HILDYARD: Would you regard that as dishonest?
 18 A. Keeping documents at home?
 19 MR JUSTICE HILDYARD: Yes.
 20 A. No, I wouldn't regard it as dishonest, I would regard it
 21 as highly unusual, because surely you would need those
 22 documents in the work environment to have conversations
 23 or whatever you needed to have. I think why keep them
 24 at home?
 25 MR STUART: You know in this case Mr Vos worked at home most

1 of the time?
 2 A. I believe he did do some work at home.
 3 Q. Okay, anyway, so those are the three examples you give,
 4 and you say:
 5 "I had not encountered such behaviour in the
 6 Specsavers stores previously. This was on a wholly
 7 different scale."
 8 A. Yeah, yeah.
 9 Q. It seems a bit exaggerated, Mr --
 10 A. You may draw that conclusion. At the time, and this is
 11 what I recall thinking at the time, that's why it's my
 12 witness statement, based on those updates from
 13 Mr McAlindon and Mr Dyson about what was happening, it
 14 just seemed to be one event after another, particularly
 15 in relation to the handyman and, you know, the behaviour
 16 just seemed to be very extreme.
 17 Q. I suggest to you that this is just a self-serving
 18 paragraph that you have put in here to support Mr Dyson
 19 and Mr McAlindon?
 20 A. Absolutely not.
 21 Q. And that, whether it's Mr Dyson and Mr McAlindon alone
 22 or whether you are part of it as well, you, the three of
 23 you, or the two of them, are choosing to create issues
 24 of dishonesty where none exist in reality?
 25 A. With the greatest of respect, I have seen a number --

1 not a large number, but over my years in the business --
 2 which, in this business is about 17 years, in optical
 3 retailing in senior positions -- I have not seen this
 4 level of what I now understand to be fraud and
 5 dishonesty taking place, and the measures that people
 6 had gone to to cover their tracks or allegedly cover
 7 their tracks. I haven't. I haven't witnessed that. If
 8 I had, I would say I had. You know, I don't do things
 9 for dramatic effect. That's not how I operate. This
 10 was on a different scale to anything that I had
 11 encountered in my career before.
 12 Q. This witness statement was drafted for you, wasn't it?
 13 These aren't all your words, all this statement?
 14 A. They are. They are my words. It was drafted --
 15 Q. Are they?
 16 A. Hold on. It was drafted for me, but I stand by every
 17 word in this document.
 18 Q. Of course. I am not saying you don't stand by every
 19 word, I am saying it was drafted for you?
 20 A. It was drafted for me, but I stand by every word, you
 21 know, that is what I think, that is what I believe, you
 22 know, and I am sure there are going to be errors that
 23 I have made in it, I am sure there are, but that is what
 24 I think and that is what I believe.
 25 Q. Okay.

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1 A. And that is why I signed the thing.
 2 Q. Moving swiftly on to the board meeting of 21 September.
 3 I think we can put away the other bundles and go to E6.
 4 1382 is the minute of the meeting. You don't appear to
 5 have made any note yourself about this meeting in your
 6 daybook?
 7 A. No.
 8 Q. Not even the short one that you did for the 15 June
 9 meeting?
 10 A. No.
 11 Q. Unanimous motion 1, motion 2 and that business. We have
 12 nothing about this meeting in your daybook or any note
 13 by you; is that right?
 14 A. That is correct.
 15 Q. This minute, though, you say records what happened; is
 16 that right?
 17 A. It did.
 18 Q. What happened was that Dr Poulsen and Mr Weller had
 19 asked to put matters on to the agenda and to put the
 20 meeting back by seven days, hadn't they?
 21 A. They had.
 22 Q. And you absolutely refused to put the meeting back by
 23 seven days?
 24 A. I refused to put the meeting back by seven days, I --
 25 Q. What's the rush? Why can't they have seven days? This

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1 is important for them, isn't it?
 2 A. It is important to them.
 3 Q. Aren't they the A shareholders?
 4 A. Yes, they --
 5 Q. And they are the two directors who are going to be
 6 disciplined?
 7 A. Yes.
 8 Q. It's their livelihoods, it's their whole lives at that
 9 stage, isn't it, I mean, that's all they do?
 10 A. Yes.
 11 Q. They want a seven day adjournment to the meeting. Let's
 12 just get clear, the meeting was on 21 September?
 13 A. Yeah.
 14 Q. They were given notice of it by letters -- I am looking
 15 at paragraph 60 of your witness statement -- sent by
 16 post and an email on the 15th, so they were given just
 17 six days --
 18 A. Sorry, can you --
 19 Q. C, page 151, paragraph 60 of your witness statement.
 20 They were given just six days' notice --
 21 A. Yes.
 22 Q. -- of the board meeting at which they were effectively
 23 going to lose everything, and they wanted a seven-day
 24 adjournment.
 25 A. When you say "effectively going to lose everything", the

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1 meeting was to have a disciplinary hearing and to try
 2 and understand what had actually happened and try to get
 3 to the truth. It wasn't about them losing everything.
 4 Q. It was a foregone conclusion by this point, wasn't it,
 5 21 September?
 6 A. That isn't how it works. It is what it set out to be.
 7 It is an invitation to a board meeting to discuss
 8 whether a disciplinary action or disciplinary hearing
 9 should be held.
 10 Q. So if they had come along and said "We don't think there
 11 should be a disciplinary action", you would have
 12 seriously considered that and said "Do you know what,
 13 you are absolutely right, we are not going to hold one"?
 14 Mr Raines, come on.
 15 A. Based on the fact that I have seen the investigation
 16 report, I think it is very unlikely that I would have
 17 decided not to go ahead with the disciplinary hearing.
 18 At the end of the day, all I wanted to get to was the
 19 truth, you know, what had actually happened in this
 20 situation. That was more important to me.
 21 Q. Okay. Anyway, they wanted a seven-day adjournment, they
 22 were given six days' notice of this?
 23 A. Yes.
 24 Q. They have only just had the whole 29 page investigatory
 25 report?

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1 A. Yes.
 2 Q. That investigatory report even includes allegations
 3 against them of dishonesty that hadn't even been put to
 4 them before by Mr McAlindon; do you remember?
 5 A. Yes.
 6 Q. Even though he could have done, he didn't put
 7 allegations to them except actually in the investigation
 8 report itself. They wanted seven days to deal with it,
 9 another seven days beyond the six that they had been
 10 given. Why could they not have another seven days?
 11 A. My recollection from the time, and again it's in my
 12 statement, is that not only did they want
 13 an adjournment, they also wanted to put six other items
 14 on to the agenda.
 15 Q. That's right, they did, they wanted two things, they
 16 wanted seven days' adjournment and they wanted to add
 17 some items to the agenda.
 18 A. They did. I determined that it was a reasonable length
 19 of time had been given for the notice of the
 20 disciplinary hearing -- sorry, of the agenda -- of the
 21 board meeting, and I thought six days was an appropriate
 22 length of time, and that the other items we would
 23 discuss during the board meeting as well.
 24 Q. You determined that six days' notice was sufficient,
 25 that's good for you, they had asked you for seven more

1 days, I am asking you why ...
 2 (Pause)
 3 MR JUSTICE HILDYARD: Sorry, are you chatting amongst
 4 yourselves or shall I listen?
 5 MR POTTS: I am sorry, my Lord. The question was put that
 6 they were asking for a seven-day adjournment, I was just
 7 querying, I am not sure that that is right.
 8 MR JUSTICE HILDYARD: Thank you.
 9 MR POTTS: I am sorry, my Lord.
 10 MR STUART: They wanted an adjournment?
 11 A. Yes.
 12 Q. Do you recall how long they wanted?
 13 A. No, I don't.
 14 Q. Do you recall why you decided that they couldn't have
 15 an adjournment?
 16 A. I do. It was because I believe that we had given them
 17 a reasonable length of time, notice for the meeting.
 18 Q. Was there something really urgent that had to be done
 19 that you had to get this through?
 20 A. No.
 21 Q. I am trying to see the prejudice to your side from
 22 giving them a bit more time.
 23 A. No, I believe it was a reasonable timescale.
 24 Q. All right. Did you make the decision not to give them
 25 the additional time, or was that given to you,

1 a decision given to you by somebody else?
 2 A. No, it wasn't a decision given to me. I am at this
 3 time, and I am aware that there is lots of letters going
 4 backwards between their solicitors and ... I discussed
 5 this with my legal department --
 6 MR POTTS: My Lord, again, just to ...
 7 MR JUSTICE HILDYARD: You mustn't tell us what the nature of
 8 those discussions were.
 9 A. No, but I am just telling you I discussed it with the
 10 legal department because I was very conscious this was
 11 all getting very legal, and there was lots of letters
 12 flying around and things like that, and I did not want
 13 to make a ... thing. But was it my decision? Yes,
 14 absolutely it was my decision based on the advice that
 15 I had received.
 16 MR STUART: Okay. At 62, you made your decision there not
 17 to have any further ... They had not turned up to the
 18 meeting obviously because they wanted more time. You
 19 turn to the report, 64. At 65 you recite the
 20 recommendations from the report and you summarise them.
 21 And 66 you resolve to adopt the report. What does that
 22 mean? You resolved to adopt the report. How do you
 23 adopt an investigation report?
 24 A. I agreed with Mr Barnes' recommendation.
 25 MR POTTS: It doesn't say report.

1 MR JUSTICE HILDYARD: Where are we?
 2 MR STUART: 66, my Lord.
 3 Mr Barnes' recommendations in full?
 4 A. Yes.
 5 Q. What are the recommendations of Mr McAlindon's report,
 6 that you say you are adopting in full?
 7 A. I think they are from --
 8 MR POTTS: My Lord, would it be fair to show the witness
 9 what he is referring to?
 10 MR JUSTICE HILDYARD: Sorry?
 11 MR POTTS: I just wonder whether it might be fairer to show
 12 the witness -- if he is asking about recommendations,
 13 whether actually it's in relation to a document.
 14 MR STUART: Perhaps you don't recall? Is that your answer?
 15 A. No, it's not.
 16 Q. Your counsel seems concerned that you might not be able
 17 to recall and you need to be shown some documents?
 18 MR POTTS: No, that's not fair --
 19 MR JUSTICE HILDYARD: It's just a matter of fairness. There
 20 are two issues. One is whether there was a resolution
 21 to adopt those recommendation. The second is what the
 22 recommendations were. I think counsel wants his witness
 23 reminded where each is; is that right?
 24 MR POTTS: I think it's fair to the witness, my Lord.
 25 MR JUSTICE HILDYARD: I don't think you can draw the

1 conclusion of recollection.
 2 MR STUART: My Lord, of course, of course.
 3 We will use your pagination.
 4 MR POTTS: My Lord, also he has jumped over the paragraph
 5 previously -- 64 and 65 which were jumped over before
 6 the question was put.
 7 MR JUSTICE HILDYARD: I don't think we can interrupt the
 8 form of his cross-examination.
 9 MR POTTS: No, no, that was why I raised the point, my Lord.
 10 I am sorry.
 11 MR STUART: So, Mr Raines, let's take a step back. They
 12 weren't there, Dr Poulsen and Mr Weller weren't there?
 13 A. Correct.
 14 Q. You had refused, you had made a decision early on in the
 15 meeting, and I am looking at 1383 "Motion 1". On
 16 E6/1383, you had made a decision to refuse the request
 17 that had been made in writing by their solicitors for
 18 a seven-day adjournment?
 19 A. Yes.
 20 Q. That's right, isn't it?
 21 A. Yes.
 22 Q. I know I am said to be corrected that it was not
 23 a seven-day request, but if you go to F1, the document
 24 that you referred to in paragraph 61 of your witness
 25 statement, F1/48, this is the day before the meeting,

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1 20 September, their solicitors wrote to Mr Moore. Do
 2 you see the last line on page 48?
 3 A. Yeah.
 4 Q. "The A directors have requested that the meeting be
 5 rescheduled by putting it back for one week."
 6 Do you see that?
 7 A. Yes.
 8 Q. All they were asking for was a week?
 9 A. Yes.
 10 Q. That's right, isn't it?
 11 A. Yes.
 12 Q. At motion 1 on page 1383 at E6, you refused that?
 13 A. Yes.
 14 Q. Then that was carried unanimously because you voted to
 15 refuse that and Linda Weaver --
 16 A. Yes.
 17 Q. Where did she come from?
 18 A. She's my PA.
 19 Q. She is your PA?
 20 A. PA.
 21 Q. She's now the director, acting as director of
 22 Bognor Regis Visionplus Limited?
 23 A. Yes.
 24 Q. Are you the only two people at the meeting?
 25 A. We are the only two people at the meeting.

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1 Q. You and your PA?
 2 A. Yes.
 3 Q. Was there any independent thought allowed of Ms Weaver,
 4 Mrs Weaver?
 5 A. If you met her, you would know she has independent
 6 thought.
 7 Q. I am sure, but in relation to this board meeting of
 8 Bognor Regis Visionplus Limited, she presumably simply
 9 did what you told her to do, your PA, being realistic
 10 about it for the court today?
 11 A. She is an independent person, she's ...
 12 Q. Is it your evidence, then, that Ms Weaver was
 13 independently sent minutes of the meeting in advance of
 14 the meeting so that she could consider matters?
 15 A. I believe she did see the minutes of the meeting.
 16 Q. The ones that were sent to you, or were they sent to her
 17 separately?
 18 A. I think they were sent to her and myself.
 19 Q. When was that?
 20 A. I usually receive the minutes --
 21 Q. Sorry, minutes, I shouldn't have said "minutes", should
 22 I? It should have been the agenda --
 23 A. The agenda.
 24 Q. The agenda for the meeting, I am sorry.
 25 A. About a week before or a few days --

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1 Q. Not on this occasion, because this was only, this
 2 decision to hold this meeting couldn't have been taken
 3 until after the investigation report?
 4 A. No, no, no, I say usually, usually.
 5 Q. On this occasion, when were you sent these, and she was
 6 sent independently?
 7 A. I cannot recollect.
 8 Q. Okay, I will suggest to you that Mrs Weaver didn't
 9 actually have any independent thought or part to play,
 10 other than to put her hand up when you asked her to?
 11 A. Okay.
 12 Q. That would be right, wouldn't it, being realistic about
 13 it? Or is it your evidence that, no, no, this was
 14 a completely genuine independent thinking director
 15 acting independently for the best interests of the
 16 company?
 17 A. I am sure she would have been influenced by myself and
 18 how I would had have voted.
 19 Q. Okay. Whose interests had you in mind when you held
 20 this meeting?
 21 A. Bognor Visionplus'.
 22 Q. How was it in Bognor Regis Visionplus Limited's best
 23 interests for the two operating directors and the two A
 24 shareholders not to be given a week in which to gather
 25 themselves together and answer these matters? How was

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1 that in the best interests of Bognor Regis Visionplus
 2 Limited?
 3 A. I believe that the timescale that was offered in terms
 4 of the six days was sufficient time.
 5 Q. No, no, that's not the answer to that question, is it?
 6 A. Sorry?
 7 Q. You said that, that was your reasoning.
 8 A. Sorry?
 9 Q. That was your reasoning, you say?
 10 A. Yes, that was my reasoning.
 11 Q. And I've given you every opportunity to give me some
 12 better reasoning and that's it, that's the only one?
 13 A. Okay.
 14 Q. I am asking you: how is it in the best interests of
 15 Bognor Regis Visionplus Limited not to give the
 16 directors of that company, the operators of that
 17 company, a week to gather their thoughts on
 18 an investigation report that had just been sent to them?
 19 How is it in the best interests of the store?
 20 A. I believe they had had sufficient time.
 21 Q. Okay.
 22 A. You know, I am a director of Basildon, or acting as
 23 a director of Bognor Visionplus, I believe I had
 24 sufficient time to consider the matters in the
 25 investigation report.

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1 Q. You didn't know anything about Bognor Regis store at
 2 this point, did you? Apart from what Mr McAlindon had
 3 put in his report.
 4 A. No, I knew what was in the investigation report.
 5 Q. That's what I have just said, apart from Mr McAlindon's
 6 report, you didn't know anything about the store?
 7 A. No, I didn't.
 8 Q. No, you didn't. They did. They were the two operating
 9 directors who had run the store for six years.
 10 Mrs Weaver knew nothing about the store, presumably?
 11 A. No.
 12 Q. Had she even read the full investigation report?
 13 A. I believe she had.
 14 Q. When did she read it?
 15 A. I recollect her reading it. Certainly she read it,
 16 I saw her reading it on the day of the board meeting.
 17 And I am sure she read it a few days before. I can't
 18 comment.
 19 Q. No, all right, anyway, so I was asked to take you
 20 specifically to the motion, so the motion 1 is carried
 21 by you and your PA. Motion 2, that was to add the six
 22 items to the agenda. You decided that wasn't in the
 23 best interests of the Bognor Regis Visionplus Limited,
 24 so you and your PA carried a motion not to agree to do
 25 that; is that right?

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1 A. That is correct.
 2 Q. Then agenda item 4 is to note the report of Mr Barnes?
 3 A. Yes.
 4 Q. Did you know that Mr McAlindon had actually written that
 5 report?
 6 A. I wasn't aware of that at the time.
 7 Q. So you had been discussing this with Mr Barnes,
 8 presumably, had you?
 9 A. No, I had been discussing it with Mr McAlindon.
 10 Q. Had you? When was that?
 11 A. I can't recollect. I was always kept up to date with
 12 where, not necessarily the detail of the investigation,
 13 but what was actually happening.
 14 Q. Was there any reason why Mr McAlindon's name, since he
 15 did actually draft it, he has told us now, didn't appear
 16 on the report?
 17 A. I don't know.
 18 Q. Okay. So anyway, back to the motions. After that
 19 agenda item which is to note the report, and to consider
 20 appropriate actions, the motion is -- at 1386 at the
 21 bottom -- motion 3, the recommendations in Mr Barnes'
 22 report be accepted in full?
 23 A. Yes.
 24 Q. And that the suspension of Mr Vos continued?
 25 A. Yeah.

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1 Q. And everything is to be delegated to SOG, the
 2 investigation, et cetera, et cetera?
 3 A. Yes.
 4 Q. And Visionplus Limited has to bear all the costs; that's
 5 the decision?
 6 A. Yes.
 7 Q. How is number 4 in the best interests of Bognor Regis
 8 Visionplus Limited rather than in the best interests of
 9 SOG? How did you work that one out in your mind when
 10 you were thinking it through?
 11 A. The -- again, my thought process was that this is
 12 an issue that had been potentially created within
 13 Bognor Visionplus and therefore the cost of doing that
 14 investigation should be borne by the business.
 15 Q. What if the investigation was instituted not by
 16 Bognor Visionplus but by Mr Dyson starting the ball
 17 rolling, getting Mr McAlindon involved, waiting four
 18 months, and then saying "Let's now suspend, make
 19 allegations"?
 20 A. That wasn't what happened.
 21 Q. No, it was, actually. That's Mr Dyson's evidence. The
 22 report came about as a result of, he says, him starting
 23 the process on 10 January.
 24 A. Oh, he started the investigation, yes.
 25 Q. Well, it's the costs of that that you are referring to

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1 here?
 2 A. Yes.
 3 Q. Do you see?
 4 A. Yes.
 5 Q. So if you do remember, it is actually all down to
 6 Mr Dyson's decision.
 7 A. Yes.
 8 Q. So how is it in the best interests of Visionplus Limited
 9 for Visionplus Limited to have to pay for all of this?
 10 A. Because they relate to work that has been done in
 11 Bognor Visionplus.
 12 Q. Surely it must be better for that limited company if it
 13 doesn't have to pay the, what, £100,000 worth of
 14 Mr McAlindon's fees?
 15 A. I don't know what Mr McAlindon's fees were.
 16 Q. Okay, whatever it might be, 50,000, 100,000, it must be
 17 better for Visionplus Limited, Bognor Regis Visionplus
 18 Limited, not to have to pay that money and for SOG to
 19 bear its own costs of generating this report which is
 20 then used to buy these people's shares for £30? Surely
 21 it must be in the best interests of Bognor Regis
 22 Visionplus not to pay money?
 23 A. I don't agree.
 24 Q. What, so a limited company is better off paying out
 25 £50,000 than not paying it out?

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1 A. No, if there are costs that have related to partners'
 2 activities --
 3 Q. Yes?
 4 A. -- then those, or the activities of those directors in
 5 the business, that SOG are investigating, then the
 6 company should bear the cost of those --
 7 Q. But what if it doesn't want to? What if it would rather
 8 not pay and keep the £50,000 in its profits?
 9 A. Well, again, I would have thought that the directors,
 10 had they turned up for the board meeting, could have put
 11 a challenge in to that particular --
 12 Q. They had done. One of the things they wanted to
 13 challenge was about the costs, wasn't it, and about
 14 Mr Rajan's costs that were being put through and all
 15 sorts of things. That was exactly the sorts of issues
 16 they did want to raise?
 17 A. I wish they had turned up.
 18 Q. Absolutely.
 19 A. I do. And this is --
 20 Q. Given you were the only people there, you and your PA,
 21 all the more important that you should protect Bognor
 22 Regis Visionplus Limited against the interests of SOG.
 23 What thought processes did you do to reach your
 24 conclusion that Bognor Regis Visionplus, it would be in
 25 their best interests to pay this money? Can you recall?

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1 A. No. Does this seem fair to me? It seems fair to me.
 2 Q. I am just looking at your note of the meeting, you see,
 3 but we can only really see it from the note, can't we?
 4 A. Yeah.
 5 Q. Do you see? Under motion 3 it just says:
 6 "All those in favour."
 7 And you are in favour, do you see?
 8 A. Yes.
 9 Q. I am looking back at the previous notes are presumably
 10 the discussion that you and your PA had at the time?
 11 A. Yes.
 12 Q. Relating to agenda item 4?
 13 A. Yes.
 14 Q. Which is to consider appropriate actions. So where do
 15 you discuss the issue of who is going to pay for all of
 16 this?
 17 A. I don't recall discussing it.
 18 Q. What, you just passed that motion, caused that company
 19 to pay all that money to incur the obligation, to pay
 20 all that money out without any discussion at all?
 21 A. Yes.
 22 Q. And you can't tell us what you were considering at the
 23 time?
 24 A. Did I believe that Bognor Visionplus should pay those
 25 costs? Yes, absolutely.

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1 Q. But was that in your capacity as a director of -- sorry,
 2 an employee of SOG, who had been put into the
 3 business --
 4 A. No, no, that wasn't, I was representing Bognor
 5 Visionplus when I made that decision.
 6 Q. Okay, I don't think I can take that much further, then.
 7 Motion 4 is in relation -- the same, effectively, in
 8 relation to Mr Weller?
 9 A. Yes.
 10 Q. There doesn't seem to be any additional consideration,
 11 you pass all those motions again in relation to
 12 Mr Weller?
 13 A. Yes.
 14 Q. And motion 5 is -- we are on 1387 to 1388 -- that's the
 15 same but for Dr Poulsen?
 16 A. Yes.
 17 Q. Then the last item is the grievance. Mr Vos has raised
 18 a grievance, hasn't he?
 19 A. Yes.
 20 Q. You pass a motion in relation to that grievance?
 21 A. Yes.
 22 Q. Which is that the ... (Pause). Is it that
 23 Mr David Clark is now going to be handed this? Is that
 24 effectively what the effect of that motion is? I am
 25 looking at page 1388.

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1 A. Yeah.
 2 Q. Three lines above the second holepunch:
 3 "Mr Vos appealed Mr Judge's decision by way of
 4 a letter dated 16 August. Mr David Clark, director of
 5 business performance, arranged on behalf of BRVL to meet
 6 with Mr Vos on 27 September to hear his appeal."
 7 Do you see that?
 8 A. Yes, that's correct.
 9 Q. The motion is:
 10 "The actions to date of SOG as a director in
 11 relation to hearing on behalf of the company of the
 12 grievance and grievance appeal to be ratified."
 13 A. Yes.
 14 Q. Why was it felt appropriate that Mr Clark should be
 15 dealing with this?
 16 A. It's something that he does and he's on the same level
 17 or further up than Mr Judge.
 18 Q. Were you aware -- you were aware, because I took you to
 19 how you were cc'd on emails where you and Mr Clark were
 20 cc'd on --
 21 A. Yes.
 22 Q. -- in relation to some of this. Were you not aware
 23 that Mr Clark might have some prior role in --
 24 A. Mr Clark, to the best of my knowledge, has never been to
 25 Bognor Regis, he's never had any meetings at all with

1 the directors of Bognor Regis, and he has never met
 2 Mr Vos. He seemed to be, to my mind, completely the
 3 right person and have the right level of experience and
 4 seniority to hear the appeal.
 5 Q. Hadn't things been escalated to Mr Clark?
 6 A. Things had been escalated internally, ie we knew we had
 7 an objective within, for instance, Bognor in terms of
 8 wanting the store to be open, and we had had
 9 conversations with our partners about Sunday opening,
 10 and yes, there was -- they were one of 31 stores that we
 11 would have wanted opening. And you have seen it earlier
 12 in the case, an email was sent to David Clark asking him
 13 to pick up Bognor and have discussions with them about
 14 the possibility of opening on Sundays. But I understand
 15 that Mr Clark has never had a meeting with the Bognor
 16 partners, and has never been to Bognor. His normal
 17 process in terms of assessing whether it should open --
 18 the store should open on a Sunday is to go to the town
 19 on a Sunday, a number of Sundays, and actually evaluate
 20 the -- how many retailers are open, what the potential
 21 is, et cetera. That has never taken place.
 22 Q. Okay. So we have reached, I think, the end of -- almost
 23 the end of the story. Page 153 of your witness
 24 statement, paragraph 66 is the one I was -- I took you
 25 to, and I hadn't taken you to each of the motions but

1 I have now.
 2 A. Yeah.
 3 Q. Then having notified them of what you have done, they
 4 resigned from their employment?
 5 A. Yes.
 6 Q. That's right, isn't it?
 7 A. Yes, it is.
 8 Q. But that doesn't affect their shareholding and their
 9 directorship; is that right?
 10 A. That is correct.
 11 Q. Insofar as there is to be some sort of hearing,
 12 Mr Raines --
 13 A. Yes.
 14 Q. -- I want to understand your reasoning for the next bit
 15 of what you say here. I am sorry, I am corrected that
 16 although you don't mention it in paragraph 67 -- I am
 17 sorry, you do mention it. So they resigned their
 18 directorships and employment?
 19 A. Yes.
 20 Q. But their shareholdings, the actual value of what they
 21 have here --
 22 A. Yeah.
 23 Q. -- of course they haven't resigned, you say?
 24 A. Yes.
 25 Q. You then deal, just in the next one paragraph, with the

1 decision to acquire the shares?
 2 A. Yes.
 3 Q. Paragraph 68. Now, the decision to acquire the shares
 4 is going to cost them -- for nothing, for par value --
 5 is going to cost these people £500,000 plus; yes?
 6 A. Yes.
 7 Q. You say that they have resigned as directors and
 8 employees and therefore you can't put them through
 9 a disciplinary process?
 10 A. Yes.
 11 Q. I mean, you could if you wanted to, but you decided not
 12 to put them through a disciplinary process, disciplinary
 13 process relating to their employment?
 14 A. Yes.
 15 Q. You do understand that it is possible to continue with
 16 a disciplinary process even after somebody has resigned?
 17 It is possible to do that?
 18 A. I didn't know that.
 19 Q. Really?
 20 A. But I do now.
 21 Q. Okay, you do now, that's fair enough. Anyway, let's
 22 leave aside their employment and their directorship,
 23 because it's the shares that are the value here. You
 24 are going to reach a conclusion, you say at 68, you are
 25 about to come to a conclusion, that they were dishonest

1 and fraudulent; is that right?
 2 A. That is right.
 3 Q. Now, we don't have any documentary evidence of any
 4 meeting or discussion or emails passing backwards and
 5 forwards between you and Mr Dyson, or you and
 6 Mr McAlindon, or you and Mr Barnes, because you thought
 7 it was Mr Barnes that had written this report, not
 8 Mr McAlindon. We don't have any documentary evidence
 9 showing any decision-making by you at this stage at all,
 10 do we?
 11 A. No.
 12 Q. This is an important decision, isn't it?
 13 A. Yes.
 14 Q. It's an important decision for the company?
 15 A. Yes.
 16 Q. Of which you are a director at this point, are you?
 17 Bognor Regis Visionplus Limited?
 18 A. I would still be, yes.
 19 Q. So you should still be acting in the best interests of
 20 that company, shouldn't you?
 21 MR JUSTICE HILDYARD: I think he may be in a different
 22 capacity now.
 23 MR STUART: He may be, I don't know, my Lord, that's what
 24 I am trying to just tease out of the witness.
 25 MR JUSTICE HILDYARD: Right.

1 MR STUART: I know Mr Potts would like to answer the
 2 question, but do you understand, Mr Raines, the
 3 difference between your capacity as a director of Bognor
 4 Regis --
 5 A. Yes, I do. During --
 6 Q. -- Specsavers Limited --
 7 A. Sorry, I had given you an incorrect answer. During the
 8 board meeting, I am acting as a director for
 9 Bognor Visionplus. In my normal day job I am acting,
 10 obviously representing SOG.
 11 Q. Why are you representing -- you are not a board director
 12 of SOG, are you?
 13 A. No, but I am employed by them, and I am an employee, you
 14 know.
 15 Q. You are an employee, you haven't been given the task of
 16 deciding guilt here, have you?
 17 A. No, no, I haven't.
 18 Q. So let's get it clear.
 19 A. I haven't, absolutely.
 20 Q. You didn't decide guilt?
 21 A. No.
 22 Q. And you haven't been allocated the task or authorised by
 23 the board of SOG to reach that conclusion?
 24 A. No.
 25 Q. You say that there are discussions --

1 A. Yes.
 2 Q. -- about that?
 3 A. Yes.
 4 Q. I am asking you to prove it by way of some notes.
 5 A. I cannot prove it by way of notes.
 6 Q. Okay.
 7 A. What I can tell you is what happened. I received a copy
 8 of their rebuttal, which was provided by the legal
 9 department once they had received it with the
 10 resignation. I recall a telephone conversation with
 11 Mr Dyson where we walked through the rebuttal evidence
 12 as well as obviously looking at the investigation
 13 report. He asked for my opinion on certainty issues.
 14 I recollect that I was providing him information about
 15 other store situations in regard to how other stores
 16 operate, why I found it -- the evidence in the
 17 rebuttal -- not to be credible, and we had a discussion
 18 about each of those points. I expressed a view to him
 19 at that time, which is I believe that fraud and
 20 dishonesty had taken place, based on my knowledge of how
 21 stores operate, how my store operates, and based on
 22 obviously the defence -- sorry, the rebuttal information
 23 that I had at my disposal at that time.
 24 Q. Right, Mr Raines, as you know, I am not accepting
 25 anything you have just said there; all right? Let's

1 take in stages.
 2 A. Okay.
 3 Q. First of all, you now say you had a discussion with
 4 Mr Dyson about the rebuttal document?
 5 A. Yes, I did.
 6 Q. That would be a very important thing --
 7 A. Yes.
 8 Q. -- if it were true. Just look in your witness
 9 statement.
 10 A. Yeah.
 11 Q. Explain to me why you don't mention that in paragraph 68
 12 of your witness statement? No mention of the rebuttal
 13 document, no mention of you receiving the rebuttal
 14 document. No mention of you going through -- did you
 15 say you walked through the issues with Mr --
 16 A. Yes, I did.
 17 Q. No mention of that, issue by issue, or anything like
 18 that.
 19 A. No.
 20 Q. How did you receive the rebuttal document?
 21 A. Via email.
 22 Q. From whom?
 23 A. From our legal department.
 24 MR POTTS: My Lord, we are straying into privilege
 25 territory.

1 MR JUSTICE HILDYARD: I am sorry, I was taking a note.
 2 MR POTTS: We are straying into area of privileged
 3 communications with the legal department.
 4 MR STUART: I don't accept that, my Lord, how can that be?
 5 The witness is trying to assert that he discussed
 6 a document, which I don't accept he did, the issue is
 7 whether he received the document or not, and if so when.
 8 I do not accept that. Even if matters of advice are
 9 contained somewhere, elsewhere on the email which could
 10 be redacted if necessary, I do not accept that the
 11 actual sending to him of the rebuttal document could
 12 possibly be privileged, and Mr Potts and his clients
 13 cannot assert privilege over that.
 14 MR JUSTICE HILDYARD: I think what Mr Potts is indicating
 15 is, if you want to explore the nature of the process by
 16 which -- ie what did the email itself say, that would be
 17 privilege.
 18 MR STUART: No, no, I agree.
 19 MR JUSTICE HILDYARD: The fact of it having been transmitted
 20 via the legal department is already in evidence and that
 21 is not privileged. That's the end of it, isn't it? You
 22 can't really -- they are asserting privilege as regards
 23 the communication which accompanied the sending of the
 24 document.
 25 MR STUART: So I will be allowed to see the sending of

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1 document, I will be allowed to see the email, not the
 2 content of any words.
 3 MR JUSTICE HILDYARD: I think it may be that the email,
 4 I don't know, I'll ask Mr Potts to clarify this, that
 5 the email which attached the document contained
 6 protected material.
 7 MR POTTS: Absolutely, my Lord.
 8 MR STUART: Absolutely, you have it in front of you?
 9 MR POTTS: No.
 10 MR STUART: I would like to see it, my Lord, I don't accept
 11 that. I don't accept he has even got the email to say
 12 that and I don't accept -- because it hasn't been
 13 disclosed as a privileged document, my Lord.
 14 MR JUSTICE HILDYARD: Well, I daresay it can be added to the
 15 list. Counsel is telling you that, I can ask counsel to
 16 double-check that, but I rather sense that he would not
 17 have made that point unless he had satisfied himself of
 18 that. I can ask him to double-check, but I don't think
 19 it's right to disbelieve careful assurances to me, do
 20 you?
 21 MR STUART: Not careful assurances, my Lord. My learned
 22 friend does not have Mr Marsh and Mr Moore behind him --
 23 MR POTTS: I don't need Mr Marsh, I have made --
 24 MR JUSTICE HILDYARD: He probably has the email and it
 25 probably says something.

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1 MR POTTS: My Lord, the communication is privileged, I claim
 2 that privilege, I don't lightly make comments, and I do
 3 object to my friend's --
 4 MR STUART: I am sorry, Mr Potts has claimed privilege --
 5 MR JUSTICE HILDYARD: The trouble is everyone is getting
 6 a little bit tired, heated or both, but --
 7 MR STUART: My Lord, I apologise, I am getting tired of
 8 privilege being claimed about the --
 9 MR JUSTICE HILDYARD: Well, privilege is jolly irritating,
 10 but if properly claimed, one has to keep one's
 11 irritation under control.
 12 MR STUART: My Lord, of course, and if I started straying
 13 into asking any witness any question which even
 14 suggested I was trying to seek to find out --
 15 MR JUSTICE HILDYARD: He is suggesting that, and I think we
 16 must move on to other matters, because Mr Potts has
 17 assured me of that, and I accept his assurance.
 18 MR STUART: Yes.
 19 Your copy of the rebuttal document, Mr Raines?
 20 A. Yes.
 21 Q. What did you do with it once you had received it?
 22 A. Once I received it, I had a conversation with Mr Dyson.
 23 Q. Did you print it off and put it in a file?
 24 A. I don't keep files in that way, so ... again the way
 25 I operate is I have a daybook and I will slot different

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1 papers that I receive into my daybook and carry them
 2 round with me for a while until I need them, and when
 3 I don't need them I either shred them, we have
 4 a shredder in the office in Skelmersdale, I give them to
 5 my PA to shred as soon as they ... thing. I don't have
 6 big filing cabinets, I don't have a filing cabinet.
 7 Q. So the rebuttal document that you received --
 8 A. Yes.
 9 Q. -- you had that in hard copy with you?
 10 A. Yes, I printed it out.
 11 Q. You had the investigation report?
 12 A. Yes.
 13 Q. You had all the attachments to the investigation report?
 14 A. I don't believe I had the attachments to the
 15 investigation report, I certainly had the investigation
 16 report.
 17 Q. Okay, and then you had, what, a telephone discussion?
 18 A. I had a telephone discussion.
 19 Q. With Mr Dyson?
 20 A. I recollect that.
 21 Q. Of which there is no record whatsoever in your daybook?
 22 A. No.
 23 Q. Okay, and can you tell us when this was?
 24 A. I can't. I can't tell you the exact date. I honestly
 25 can't.

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1 Q. Or the month?
 2 A. Well, the month would have been as soon as it was
 3 received, which would be shortly after 28 September. It
 4 may be a couple of days after, and maybe even that day.
 5 Q. Okay, so that would be the last few days of September or
 6 the first couple of days of October?
 7 A. I believe so.
 8 Q. And yet the only document that is generated as a result
 9 of that is in E6, page 1447.
 10 MR JUSTICE HILDYARD: This has been a very long 20 minutes.
 11 MR STUART: I know, my Lord.
 12 MR JUSTICE HILDYARD: Can I ask you how much longer?
 13 MR STUART: This is my last document, my Lord.
 14 MR JUSTICE HILDYARD: The very last document?
 15 MR STUART: The very last document on my page, my Lord.
 16 It's the last document that's referred to by this
 17 witness.
 18 MR JUSTICE HILDYARD: And then your cross-examination
 19 concludes, does it?
 20 MR STUART: Is finished, correct.
 21 So this is the last document, Mr Raines; yes?
 22 A. Yes.
 23 Q. That's the 6 December?
 24 A. Sorry, sorry --
 25 Q. 1447, 6 December.

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1 A. Yes, sorry. 1447.
 2 Q. So just over two months later, according to you?
 3 A. Yes.
 4 Q. After you have had this alleged discussion?
 5 A. It --
 6 Q. Two months later, a decision is -- well, or rather no
 7 decision is notified here. The notice is sent out.
 8 A. Yes.
 9 Q. Are there any notes or records of any meetings or
 10 discussions in the intervening period between your
 11 discussion with Mr Dyson at the end of September and
 12 this notice being issued?
 13 A. No. Shortly after, I think around about 10 October,
 14 from memory, I was -- had to leave to go to Australia
 15 for three months on work business.
 16 Q. So you weren't involved at all at that stage?
 17 A. Not at that stage.
 18 Q. You weren't telephoned?
 19 A. I seem to recollect, but again, you know, it was a crazy
 20 time in my life, I was working in Melbourne in our
 21 offices, and the situation arose where I had to
 22 basically take charge of the business in Melbourne, the
 23 Specsavers business that is, and I was working obviously
 24 long hours. I was also trying to keep my day job in the
 25 UK going as well. I seem to recollect a conversation

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1 with Mr Dyson, it would have been while I was probably
 2 in bed, believe it or not, I can recollect having
 3 a conversation, and the conversation was along the lines
 4 of: we are about to issue a purchase notice, you know,
 5 is there anything you would like to add? We are going
 6 to use clause 19.6, I think it is, how do you feel about
 7 the -- whether we have reasonable grounds to conclude
 8 fraud and dishonesty? I said, you know, I haven't any,
 9 you know, changed my opinion. I seem to remember that
 10 as a conversation with him. But again, if you ask me
 11 a specific date, I don't know. My clocks were up in the
 12 air. It was ... thing. But I do recollect having
 13 a conversation with him, as he was about to issue this
 14 notice.
 15 MR STUART: My Lord, I have no more questions of the
 16 witness.
 17 MR JUSTICE HILDYARD: Right. Well, I think we should have
 18 a break, and then re-examination.
 19 MR POTTS: I will consider the position, my Lord, but if
 20 any, it won't be long.
 21 MR JUSTICE HILDYARD: Right. I think we shall have a break
 22 anyway, I have been seeing signs of exhaustion. We will
 23 come back in ten minutes.

(3.30 pm)

(A short break)

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1 (3.40 pm)
 2 MR POTTS: My Lord, I have no re-examination.
 3 MR STUART: Does your Lordship have any questions?
 4 Questioned by MR JUSTICE HILDYARD
 5 MR JUSTICE HILDYARD: I do have one or two questions.
 6 Can I just ask, in case you can help me, Mr Raines,
 7 on document E2/397? This was about these
 8 scratch-resistant specs which were being offered as
 9 a free sort of addition in order to combat Tesco's
 10 feared erosion of your market, as I understand it.
 11 A. Most definitely.
 12 MR JUSTICE HILDYARD: I wasn't sure whether this letter, and
 13 you may not be able to answer it, and it is a matter
 14 which I should have asked Mr Dyson about, but if you can
 15 help me, so much the better, whether it was being
 16 suggested that Dr Poulsen and Mr Weller had failed to
 17 provide scratch-resistant treatment spectacles, or not?
 18 A. Yeah, well, I remember this very clearly. The
 19 background is exactly as you described, which is this
 20 was all to do with a -- Tesco and we decided that we
 21 wanted to offer a scratch-resistant treatment on all
 22 pairs of glasses to match Tesco.

23 We did a mystery shop across the entire number of
 24 stores, the 700 stores, and there was 60 stores which
 25 didn't offer a scratch-resistant treatment, and Mr Dyson

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1 wrote a letter to those 60 stores reminding them that
 2 this was part of the brand, part of the customer offer,
 3 we were advertising it nationally, and that there was
 4 a compliance issue. He's reminding them in this letter
 5 that it is something which they have to comply with.
 6 MR JUSTICE HILDYARD: If you read the last sentence, and
 7 this is what caused me uncertainty, what Mr Dyson says
 8 is:
 9 "I therefore take exception at both your explanation
 10 as to why you didn't fail [didn't fail] and more so the
 11 tone that you chose to use in your communication."
 12 It appears to have been the position of Dr Poulsen
 13 and Mr Weller that they had not failed to provide the
 14 scratch-resistant treatment specs. Can you help me at
 15 all on that?
 16 A. I can't, I am afraid. I know there were 60 stores that
 17 we wrote to, and I believe that they responded in a --
 18 sent a letter in, that's all I can remember.
 19 MR JUSTICE HILDYARD: Right. Okay. So on the face of the
 20 letter, at any rate, it appears to have been disputed by
 21 Dr Poulsen as to whether they had or hadn't, and the
 22 real point of the letter was that they had disputed it
 23 in a way which adopted a tone which Mr Dyson didn't much
 24 like?
 25 A. Yes, but I don't know whether their interpretation of

1 "fail" and our interpretation of "fail" were different.
 2 They may have been. I can't remember the specifics in
 3 relation to that, I am sorry.
 4 MR JUSTICE HILDYARD: But it wouldn't be right on the basis
 5 of that letter to conclude that they were being
 6 confronted with the possibility of escalation by
 7 reference to some failure --
 8 A. No, no.
 9 MR JUSTICE HILDYARD: -- to provide scratch-resistant
 10 treatment, it was by reference to the tone which they
 11 had adopted?
 12 A. Exactly right. At that time we were obviously working
 13 with our partners on how we could deliver this to the
 14 customers. I don't think he is suggesting there is
 15 an ongoing compliance issue at all.
 16 MR STUART: My Lord, I absolutely hesitate to rise, but
 17 I think that letter is said to be in response to 377.
 18 MR JUSTICE HILDYARD: Oh, 377, thank you.
 19 MR STUART: 377, I think you see what ...
 20 MR JUSTICE HILDYARD: Thank you, sorry, I should have --
 21 MR STUART: It's all right, my Lord.
 22 MR JUSTICE HILDYARD: I don't think we were taken to that.
 23 MR STUART: No, we weren't. We really have not got into the
 24 detail of how the rebuttal into the allegation of
 25 breaching the mystery -- et cetera. 377, not the top

1 one, my Lord, but the next one down.
 2 MR JUSTICE HILDYARD: I see, yes, I have it. That rather
 3 bears it out.
 4 MR POTTS: Also your Lordship might have a look at 379 as
 5 well, I think. It's in the same chain.
 6 MR STUART: Yes, 377 is the actual explanation of the actual
 7 event.
 8 MR JUSTICE HILDYARD: Right. That's consistent with what we
 9 have explored. Yes.
 10 Can I ask you a couple of questions, please, about
 11 the board meeting which we went through at some length
 12 at E6/1382? I am not going to go through it all again,
 13 you will be relieved to hear. But I must say, I don't
 14 think Ms Weaver said anything except "no" a couple of
 15 times and "yes" a couple of times; is that right?
 16 A. That's correct.
 17 MR JUSTICE HILDYARD: Ms Weaver, has she, to your knowledge,
 18 acted in a substantive matter as opposed to a merely
 19 procedural or unimportant meeting as a director on any
 20 other occasion?
 21 A. No.
 22 MR JUSTICE HILDYARD: Do you know whether she's acted as
 23 a director in any context before?
 24 A. No, she hasn't, my Lord.
 25 MR JUSTICE HILDYARD: So far as you are aware, she has not?

1 A. No, my Lord.
 2 MR JUSTICE HILDYARD: You were asked this, but just so
 3 I should have your evidence to its full extent: are
 4 there any factors in support of the refusal to allow
 5 a seven-day adjournment which you would like me to take
 6 into account?
 7 A. Not that I can think of.
 8 MR JUSTICE HILDYARD: It does -- what is suggested,
 9 obviously, so you should know the purpose of the
 10 question, is that it was unreasonable not to allow seven
 11 days in order that what you expressed to be your wish,
 12 which was that they should be there, might be
 13 accomplished. By refusing the seven-day adjournment,
 14 you denied yourself what you said later was your wish.
 15 A. Yes.
 16 MR JUSTICE HILDYARD: I wondered whether there was anything
 17 you would like me, in all fairness, to take into account
 18 as to what drove you to that refusal?
 19 A. I believed that they had had sufficient time, and I was
 20 quite keen to get into a board meeting with them.
 21 I accept the point that you make, that if I had, at that
 22 time, been more conciliatory, that may have resulted in
 23 them attending.
 24 MR JUSTICE HILDYARD: Did you?
 25 A. I doubt it, I really doubt it.

1 MR JUSTICE HILDYARD: Well, you never know those things,
2 that's --
3 A. But they'd -- I was desperate, and that's what I put in
4 my, the 15 June, I was desperate to get to meet them.
5 I've never met Barry Weller, I've never met -- well,
6 I've met Dr Poulsen just in maybe one or two sentences
7 at a communication meeting a number of years ago.
8 That's my only recollection of meeting her.
9 Particularly on the June one, that's why I wrote this
10 appointment in my daybook, disappointed that they didn't
11 attend, because I was dying to understand what their
12 motive, you know --
13 MR JUSTICE HILDYARD: To explain themselves?
14 A. Yes.
15 MR JUSTICE HILDYARD: Right.
16 A. What their motives were, and you know, I was -- the last
17 bit of the agenda on 15 June was around the
18 relationship, why had the relationship gone wrong? From
19 my point of view, I am really, really keen on the
20 partnership, making the partnership as strong as it is,
21 because that is what defines us as a business, having
22 a really effective partnership. And I could see no
23 reason why the relationship had reached the level of
24 deterioration that it appeared to have reached by
25 15 June. If I am honest, you know, looking at the

1 sequence of events, I think there has been three
2 sequence of events which has been the -- we discover in
3 2008 there is a meeting between Mike Rowe and the
4 partners about Godfrey Vos and some suspicious titled
5 invoices from the company, and we decided at the time --
6 and I remember having a conversation with Mike Rowe --
7 to take a really low key approach and just sort it out
8 locally. You know, we could have -- because it was
9 a breach of the joint venture agreement, we could have
10 actually decided to, you know, escalate it to a board
11 meeting or something. We decided to take a low key
12 approach.

13 The sort of next one which was the meeting with
14 Derek Dyson about a year later that was around
15 compliance, they were the one and only store in the
16 business not to have the video mystery shopping, which
17 again was in the manual.

18 Now, the only other issue there had been is this
19 allegation of Dr Vos' salary and the John Ferguson piece
20 at that time. I couldn't understand, and I was really
21 desperate to understand, why the relationship between
22 the partners and SOG had reached a level of breakdown
23 that it currently had, and it was a frustration when
24 they didn't turn up for that meeting, because, you know,
25 that's one --

1 MR JUSTICE HILDYARD: I was really asking: given that, given
2 your anxiety, your zeal to find out?
3 A. I know --
4 MR JUSTICE HILDYARD: Made it more difficult for me to
5 understand why on earth you --
6 A. I know, exactly, and now with the benefit of hindsight,
7 I would go --
8 MR JUSTICE HILDYARD: Right, but at the time you just
9 thought "Oh no" --
10 A. I thought, to be honest the time between 15 June, they
11 knew what was coming, if you know what I mean, in terms
12 of there would be a disciplinary case to answer. So
13 15 June to 21 September was a long time, you know.
14 MR JUSTICE HILDYARD: So you thought they were playing for
15 time or something, what did you think?
16 A. Well, the nature of them adding the stuff that they
17 wanted including in the agenda was not relevant to the
18 issues that we wanted to talk to them about.
19 MR JUSTICE HILDYARD: I see. I see.
20 A. It wasn't. It was playing for time, it was playing what
21 I would describe as playing silly so-and-sos in my
22 opinion. Those issues, yes, they are important issue,
23 and yes, you know, we can talk it about them at the
24 board meeting, we are quite happy to include -- talk
25 about them in the board meeting. But the key issue to

1 my mind at that -- was trying to understand, you know,
2 to move forward on the disciplinary hearing.
3 MR JUSTICE HILDYARD: All right. Focus on that: was there
4 any company urgency, looking at it from the point of
5 view of the Bognor company, which might justify
6 an immediate hearing without an adjournment which
7 I should bear in mind?

8 A. Sorry, can you repeat the question? Sorry to be
9 difficult.

10 MR JUSTICE HILDYARD: Sorry, it's a badly phrased question.
11 From the point of view of the interests of the
12 Bognor Regis company --

13 A. Yeah.

14 MR JUSTICE HILDYARD: -- was there any specific reason for
15 urgency, for having to deal with it on that day rather
16 than seven days later, which I should bear in mind?

17 A. No, other than to move the issue forward.

18 MR JUSTICE HILDYARD: And just so that I consider it with
19 a full and fair view, it is the fact, isn't it, as we
20 see from E6/1447, that it took a long time for the
21 decision to emanate which seems rather contrary to any
22 notion of real urgency from the company's point of view?

23 A. Yeah, yes.

24 MR JUSTICE HILDYARD: Anything I should bear in mind in that
25 context?

1 A. I think that was all in relation to -- I know there was
2 lots of conversations but bearing in mind I was out of
3 the country at that time, so --
4 MR JUSTICE HILDYARD: Right, the fact that you mentioned
5 about what an extraordinary time of your life it was?
6 A. Most definitely. I wasn't actively involved in those
7 decisions. I know there is a lot of debate around the
8 use of 19.6, whether it should be used in this
9 situation, not used in this situation, and I can only
10 assume that that's the reason why there is that delay.
11 MR JUSTICE HILDYARD: Okay. Well, I don't think I have any
12 other questions. Anyone got any questions?
13 Further cross-examination by MR STUART
14 MR STUART: My Lord, I very much hesitate to ask one
15 question, but it does arise from your Lordship's
16 question.
17 The answer that you have given in relation to the
18 delay, you were suggesting that they were being "silly
19 so-and-sos", as you put it, and that they were playing
20 for time; you are talking about the seven day period
21 that they were asking for. Is that right, Mr Raines,
22 that you considered they were the ones playing for time?
23 A. I think what it, again recollecting my thought process
24 at the time, which was that plus the submission -- the
25 adding the six things in the agenda, if you look at the

1 six things, that were about how the store was being run,
2 the future, all legitimate problem, you know, issues.
3 It was that, that was why I arrived at that ... thing.
4 Q. When you assessed that their request for seven days was
5 playing for time, did you take into account the period
6 from January or February 2011 through to the end of May,
7 which was the four to five month period that it had
8 taken SOG to raise the issue in the first place? Did
9 you take that into account?
10 A. No, I didn't.
11 Q. Did you take into account the fact that between the
12 15 June meeting, that the investigation report which
13 actually put the actual allegations to them, wasn't
14 actually issued to them for two months until
15 15 September? Did you take that two month period into
16 account?
17 A. No, I didn't.
18 Q. Did you take into account the fact that they had only
19 received the 29 page investigation report, with new
20 allegations in it, on 15 or 16 September?
21 A. Yes, I did take that into account.
22 Q. So five to six days earlier?
23 A. Yes.
24 Q. You took that into account?
25 A. Yes.

1 MR STUART: My Lord, those are my only questions.
2 Re-examination by MR POTTS
3 MR POTTS: My Lord. His Lordship asked you a question in
4 relation to firstly the meeting, the board meeting in
5 September.
6 A. Yes.
7 Q. The question was then raised about the time that it took
8 to give the notice in, I think, the early December.
9 A. Yes.
10 Q. Could I take you back, just to deal with what was
11 actually happening at each stage? The decision in
12 December was about what?
13 A. That was the 19.6, clause 19.6, to not give them -- to
14 buy the shares at fair value.
15 Q. What was your understanding as to the matters being
16 dealt with at the board meeting on 15 September?
17 A. That was whether or not we accept the investigation
18 findings, and proceed to a disciplinary.
19 Q. What did you anticipate would happen as a result of that
20 resolution?
21 A. That we would have proceeded to a disciplinary and had
22 presented the -- well, had a disciplinary hearing.
23 MR POTTS: Yes, I see. Thank you very much.
24 MR STUART: I think Mr Raines is coming back in the other
25 trial, my Lord.

1 MR JUSTICE HILDYARD: Right. Mr Raines, thank you.
2 THE WITNESS: Thank you.
3 MR JUSTICE HILDYARD: It has been quite a long time.
4 THE WITNESS: It has.
5 MR JUSTICE HILDYARD: I am so sorry to have kept you
6 waiting.
7 MR POTTS: My Lord, can he be formally released from this
8 matter?
9 MR STUART: Yes, my Lord, even if we are going to find some
10 documents or whatever, I am perfectly content that my
11 learned friend will act entirely properly, and his side,
12 in relation to Mr Raines.
13 MR JUSTICE HILDYARD: Mr Raines, I think the position is
14 that so far as this trial is concerned, you are
15 released, but my understanding is that despite that it's
16 possible, depending on whether further documents emerge,
17 that you will be asked about further documents which
18 will be primarily relevant to this trial, so you are
19 released in the sense that there are no longer any
20 restrictions on you, but you should I think take advice
21 from counsel as to whether there are danger areas which
22 you would be best to avoid.
23 THE WITNESS: Okay. Thank you.
24 (The witness withdrew)
25 MR POTTS: Mr Rowe is the next witness.

1 MR MICHAEL ROWE (sworn)
 2 MR JUSTICE HILDYARD: Mr Rowe, do sit down, and help
 3 yourself to water.
 4 THE WITNESS: Thank you.
 5 Examination-in-chief by MR POTTS
 6 MR POTTS: Could Mr Rowe be passed volume C, please? You
 7 have it, good. Could you turn up, please, tab 5, and at
 8 pages 92 through to 107, could you check, is that your
 9 first witness statement in this matter?
 10 A. 92 to ...?
 11 Q. I think 92 to 107, I think.
 12 A. (Pause). Yes, that is.
 13 Q. Is that your signature?
 14 A. Yes, that is.
 15 Q. Are the facts stated in that statement true?
 16 A. Yes, they are.
 17 Q. Could you turn forward one tab to tab 6, and at
 18 pages 109 through to 112 do you see that, is that your
 19 second witness statement?
 20 A. Yes, that is.
 21 Q. Is that your signature at page 112?
 22 A. Yes, it is.
 23 Q. Are the facts stated in that statement true?
 24 A. Yes, they are.
 25 Q. Do you have a tab 12?

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1 A. No, I don't. Tab 11 is the last one.
 2 MR POTTS: Does your Lordship have a tab 12?
 3 MR JUSTICE HILDYARD: No.
 4 MR POTTS: (Handed) I apologise, my Lord.
 5 Do you now have that?
 6 A. Yes, I do.
 7 Q. From pages 164 through to 168, is that your third
 8 witness statement?
 9 A. Yes, it is.
 10 Q. Is that your signature at page 168?
 11 A. Yes, it is.
 12 Q. Are the facts stated in that witness statement true?
 13 A. Yes, they are.
 14 MR POTTS: If you just wait there, thank you.
 15 Cross-examination by MR STUART
 16 MR STUART: Mr Rowe, can I ask you to just look in bundle X?
 17 A. Yes.
 18 Q. In your three witness statements that you have made,
 19 that you have just been taken to, you don't mention the
 20 fact that you have been disciplined in relation to your
 21 dealings with Dr Poulsen?
 22 A. No, I don't.
 23 Q. Is there a reason for that?
 24 A. No reason, it was an oversight, I didn't really realise
 25 it needed to be in there, it was a personal matter,

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1 my Lord, and it just didn't appear, I just didn't see
 2 the need to put it in.
 3 Q. When you say it was a personal matter, it was a business
 4 matter, wasn't it? It's not suggested you have any
 5 other contact with these people other than through your
 6 business?
 7 A. Absolutely, it is a business matter, but it is very
 8 personal to me, having never been disciplined before in
 9 all my career, absolutely I felt it has meant a lot
 10 personally to me, is how I meant that comment.
 11 Q. Of course I can see that, but you do understand that the
 12 issue in this case, insofar as -- or one of the main
 13 issues in this case -- you are involved, is that it is
 14 suggested that you are part of the people at SOG who
 15 have a vendetta against Dr Poulsen?
 16 A. Yes, I understand that allegation.
 17 Q. You do understand?
 18 A. I understand that allegation, yes.
 19 Q. Certainly in the witness statements from the claimants'
 20 side, which you purport to comment on in your second
 21 witness statement, do you remember you made a witness
 22 statement on 1 August? This is tab 6.
 23 A. Could I just go to that, please?
 24 Q. Yes.
 25 A. Thank you. Which --

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1 Q. Page 110.
 2 A. Yes.
 3 Q. Even if you hadn't, as it were, thought about the
 4 relevance of these emails in which you made these rather
 5 inappropriate -- I think is what your bosses have called
 6 them -- comments, you haven't mentioned them in your
 7 first witness statement, your main trial witness
 8 statement but this statement, this is your second
 9 statement, do you see paragraph 4 on page 110:
 10 "The purpose of this statement is to respond to the
 11 matters that had been raised by the claimants in their
 12 witness statements."
 13 A. Can I take a second to read?
 14 Q. Of course.
 15 A. Thank you.
 16 Q. Let's take it slowly. Paragraph 4.
 17 (Pause)
 18 A. Yes.
 19 Q. Do you remember? So presumably what you had done is you
 20 had read Dr Poulsen's statement, Mr Weller's statement
 21 and Mr Vos' statement?
 22 A. Mm.
 23 Q. And insofar as they related to matters relating to you,
 24 you decided to put in evidence, your evidence, as to
 25 those matters?

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1 A. Yes, I would have done that.
 2 Q. And that would include the fact that you had written
 3 these inappropriate emails about them; you must have
 4 been aware of this issue by this point?
 5 A. Yes, I was aware of the issue.
 6 Q. But you still didn't mention anything about the fact
 7 that you had, by this point, by 1 August, just been --
 8 in April, I think, so some three or four months
 9 earlier -- disciplined about the very emails that were
 10 being highlighted; do you remember?
 11 A. Yes, the disciplinary was earlier than April.
 12 Q. Was it? I am sorry.
 13 A. Yes.
 14 Q. I have that wrong. Okay, the disciplinary.
 15 A. Yes.
 16 Q. If you look now at bundle X and tab 3, we see the Guide
 17 to Disciplinary, Grievance and Appeal, and I know you
 18 say this is the first time that you have been
 19 disciplined?
 20 A. Absolutely.
 21 Q. Have you been involved in a disciplinary process on
 22 behalf of SOG, as it were, in relation to members of
 23 staff or anything like that?
 24 A. Yes, my Lord, part of my role is, on a number of
 25 occasions, taking up appeal hearings, holding grievance

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1 hearings, and disciplinary hearings at various stages of
 2 the process. So, yes, that's a part of my role.
 3 Q. So you will know, then -- were you sitting here during
 4 the course of today?
 5 A. Yes, I have been here for four days.
 6 Q. So you will know that in summary you would have been
 7 sent or provided with a charge of what it was you were
 8 facing, the allegation that you were facing?
 9 A. Well, I am absolutely -- I've got absolute clarity over
 10 my whole disciplinary because I took it very, very
 11 personally, so I can talk through that process and
 12 exactly what happened. However, as I heard from the
 13 previous witness, he didn't follow this process. But
 14 I have absolute clarity on every step, because it was
 15 a really big issue for me and my record.
 16 Q. Yes. Okay. Were the allegations ever put to you in
 17 writing?
 18 A. No, they were not put to me in writing.
 19 Q. The emails that you were being charged with, if you
 20 like, were they gathered together and put to you?
 21 A. They were sent to me after the hearing, however Mark
 22 went through them with me.
 23 Q. How many were there?
 24 A. From memory, three or four, and actually Mark also
 25 brought in the email from Susannah Hart, and had

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1 a conversation with me where he voiced his
 2 disappointment that I hadn't shown some leadership and
 3 stepped in and had a conversation with Susannah to stop
 4 those comments being made.
 5 Q. Okay. The fact that Jill Clark was certainly copied
 6 into or a recipient of at least one of the emails
 7 involving you and Mrs Hart, was that mentioned during
 8 your disciplinary that you remember so well?
 9 A. No, it absolutely wasn't mentioned, my Lord, and in
 10 reality, I know nothing of anybody else's disciplinary.
 11 This is mine, and I absolutely have got clarity on what
 12 was said in mine. But Jill Clark was not mentioned at
 13 all.
 14 Q. This disciplinary process, this happened in 2013?
 15 A. Yes.
 16 Q. And your absolute clarity as to what happened at the
 17 disciplinary process, what was your explanation that you
 18 gave at the disciplinary process for all these emails?
 19 A. Firstly, my Lord, I was shocked because I didn't
 20 actually recollect sending those emails. They were
 21 obviously a long time ago, and at a time when, you know,
 22 I just had no recollection. They were BlackBerry sent
 23 emails that tended to be quite short, one-liners, and
 24 I kind of thought that they must have been while I was
 25 on the move in between stores, and absolutely when

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1 Mr Raines spoke to me I was devastated because I had
 2 worked for a long time in Specsavers, seven years,
 3 working with partners on three regions, 120 stores,
 4 building relationships, driving the business, and I felt
 5 I had a good strong reputation for building
 6 partnerships, and to find that slipping, back in 2007
 7 and 2008, I was personally shocked. But they are
 8 emails, they are in black and white, it wasn't a case of
 9 I didn't send them, it was a case of I just didn't
 10 recollect sending them.
 11 Q. Your explanation, was it noted down by Mr Raines?
 12 A. I wouldn't know that. The --
 13 Q. Well, you were there, you were the only two people
 14 there?
 15 A. No, the meeting was held by phone.
 16 Q. The meeting was held by phone?
 17 A. That's correct.
 18 Q. The date of the meeting, the alleged meeting, Mr Rowe?
 19 A. The meeting isn't alleged, the meeting definitely took
 20 place, but it was by phone. I was on holiday, the
 21 reason I'd got such recollection is I got a written
 22 warning at the end of that meeting, but I was at home in
 23 Plymouth, I had taken my wife and my kids down to see my
 24 mum, and I had a call from Mark, and I took that call,
 25 I went outside to the top of the driveway, and took the

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1 call. It wasn't an alleged meeting, the meeting on
 2 the -- yes, it was a phone meeting, but the meeting took
 3 place via phone.
 4 Q. Is the sum total of this that the entire disciplinary
 5 process that we see in this lovely document doesn't
 6 actually apply at all to what happened to you?
 7 A. The process as written down wasn't followed, but I --
 8 Q. No part of it?
 9 A. The process in the Partner Guide to Managing Discipline,
 10 Grievance and Appeal wasn't followed, but I was on the
 11 receiving end of it. I was on the receiving end of it,
 12 I lost the 28-year completely unblemished disciplinary
 13 record because of these handful of emails a few years
 14 ago, and I took it incredibly personally, but it was
 15 a call, and it was a detailed call lasting about 30 to
 16 40 minutes.
 17 Q. But there is no allegations put to you in writing, there
 18 is no notice of a meeting, you are just called out of
 19 the blue --
 20 A. I was called out of the blue.
 21 Q. -- by your boss?
 22 A. It was a real shock and surprise that I was taken aback
 23 by.
 24 Q. There are no notes of the meetings and all we actually
 25 have, then, is you saying there was a telephone call,

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1 your boss saying there was a meeting, and this letter at
 2 the last page in tab 10 of bundle X, which I note is not
 3 signed either by him nor by you, so it's just what might
 4 be described as a draft of a disciplinary warning
 5 letter?
 6 A. No, this is the -- this, my Lord, is the letter that
 7 I received at home, and I actually supplied those
 8 letters this morning to our solicitors, and I believe
 9 they were shown to the clients. One of them I had
 10 signed, but I'll be honest, in a fit of anger and rage
 11 when they arrived, I threw them into the corner of
 12 an office room I was using in my old house. I was upset
 13 because actually it was a really big step for me, I am
 14 a proud man and to be issued with a written warning for
 15 these emails back in there did hurt. So they were
 16 issued, I did receive the letters, and actually
 17 I brought in the originals that were shown this morning.
 18 Q. So are you saying there is a signed version of this
 19 document? (Pause) Okay, I haven't seen it. Could
 20 I see what it is you are referring to?
 21 (Pause)
 22 A. Because this morning, when I gave to the solicitors,
 23 when I went home last night I brought it in with me in
 24 case it was needed, it was shown to your solicitors.
 25 I then took it back to Taylor Wessing's offices over

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1 lunchtime, and it is currently in my briefcase in the
 2 original envelope that was sent to me with the actual
 3 registered mail delivery. So it's all there, and --
 4 Q. Okay, so I can see it tomorrow morning?
 5 A. Absolutely, yes.
 6 Q. Fine, we will move on. So did you sign it and send it
 7 back?
 8 A. I didn't sign it and send it back, I signed one copy and
 9 actually I just didn't send it back. I was really upset
 10 at having received the written warning, and I threw it
 11 into the corner, I am afraid to say.
 12 Q. Did you appeal it?
 13 A. No, I didn't. At the end of the meeting, and the way
 14 that the meeting finished, after Mark had run through
 15 the emails, run through the issues related to the
 16 emails, gained my feedback, Mark said that in his
 17 opinion this warranted a first written warning, and, you
 18 know, what was my view on that? I said, at the time
 19 I wasn't happy. Mark said that "If you wanted to take
 20 this through a formal meeting and disciplinary process,
 21 then that can be arranged". And at that point I said
 22 "No, actually I'll take it and take the written warning
 23 for the emails".
 24 The emails are black and white, they are there, I am
 25 not claiming I didn't write them. What I am claiming

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1 is, my Lord, that I have no recollection and they were
 2 quick fired off emails mostly from BlackBerrys, whilst
 3 I was on the road.
 4 Q. Okay. Your last answer there was that Mark said it
 5 could go through a formal disciplinary process. That
 6 gives the impression that his call to you whilst you are
 7 on your holiday was some sort of informal discussion
 8 between you and your boss at which he was offering you,
 9 perhaps, or asking you to take a formal written warning?
 10 A. It was, it felt very formal to me, without a doubt, but
 11 I think Mark's point at the end is "if you do not feel
 12 that this warrants a first written warning, then we can
 13 arrange to meet face-to-face and go through that formal
 14 process with minutes, notes and witnesses". I felt at
 15 the time aggrieved, but very clearly the emails are in
 16 black and white, they were written, and when they were
 17 read to me by Mark, clearly I was embarrassed and quite
 18 shocked. When you read them in the cold light of day,
 19 they do -- don't make pretty reading. So I felt that it
 20 was appropriate.
 21 Q. The last question I'm just going to ask you whilst we
 22 are in X, if you go to the previous page, a few weeks
 23 later Mr Adrian Deane gets a first written warning for
 24 the same thing. We heard from Mr Raines that his
 25 explanation provided to Mr Raines was the same as yours,

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1 shock and amazement that he had written these things and
 2 no clue as to why he had done so. Did you speak to
 3 Mr Raines(sic) between 18 March and the time when he had
 4 his disciplinary process, whatever that might be?
 5 A. Absolutely not. I felt embarrassed, if truth be told,
 6 my Lord, that I was being disciplined. I actually have
 7 never spoken to Adrian Deane about this matter, because
 8 frankly I am embarrassed about the fact that I was
 9 disciplined, and I am not prepared -- you know, it is
 10 for me a private and personal matter, and I wouldn't
 11 discuss my disciplinary or anybody else's disciplinary
 12 with anyone else. So no is the answer to your question.
 13 Q. Okay, I don't need to take you to any more of these
 14 documents, then, because there are none about this
 15 disciplinary hearing.
 16 Final question for today: at the disciplinary
 17 hearing -- telephone call, sorry --
 18 A. Telephone call, yes.
 19 Q. -- apart from your use of inappropriate language on
 20 emails, did Mr Raines suggest to you that your attitude
 21 towards JV partners was itself inappropriate? Not the
 22 fact that you had sent some emails to a member of the
 23 team back in SOG, Mrs Hart, Mr Deane or whoever, but
 24 your underlying attitude, as evidenced by your words
 25 used in your emails, was wholly inappropriate?

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1 A. Mark did not use those words. The meeting focused on
 2 the language used within the emails.
 3 Q. So that was the only issue that was raised with you?
 4 A. I believe so, yes. I don't recollect anything else.
 5 MR STUART: My Lord, I see the time and I know your Lordship
 6 has promptly to go.
 7 MR JUSTICE HILDYARD: Yes, thank you.
 8 MR STUART: That is a convenient time.
 9 MR JUSTICE HILDYARD: Thank you.
 10 Mr Rowe, I am afraid you will have to come back
 11 tomorrow. Please do not discuss this matter with
 12 anybody at all.
 13 Housekeeping
 14 MR STUART: Your Lordship was going to tell us an idea of
 15 a time.
 16 MR JUSTICE HILDYARD: It's sort of mixed news, really.
 17 I have an application, it was to be down for two hours,
 18 I have given them half an hour. They are starting at
 19 9.15, and so I should be available not before
 20 10 o'clock, if that's what you would wish.
 21 MR STUART: Yes, please, my Lord.
 22 MR JUSTICE HILDYARD: I will be in the same court, so it's
 23 not really worth trying to squeeze any more than that
 24 out of the system. I just think it would be
 25 unrealistic.

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1 MR STUART: Absolutely, my Lord.
 2 MR POTTS: That's fine, my Lord. Just in terms of
 3 housekeeping, my Lord, there are two matters. One is
 4 the organogram has arrived.
 5 MR JUSTICE HILDYARD: Wonderful.
 6 MR POTTS: It's in bundle X, of course, I don't know if it's
 7 made its way into your Lordship's bundle, it's in tab 9.
 8 It may require a little bit of a walk through because
 9 there is a lot of people, but now may not be the
 10 appropriate moment.
 11 MR JUSTICE HILDYARD: Gosh.
 12 MR POTTS: Yes.
 13 MR JUSTICE HILDYARD: Yes.
 14 MR POTTS: I think it could be explained, I may need some
 15 strings attached to me to do so, but it could be
 16 explained in a couple of minutes.
 17 MR JUSTICE HILDYARD: That's very helpful, thank you.
 18 MR POTTS: My Lord, in terms of tomorrow, we have the
 19 remaining witnesses, two more after this.
 20 MR JUSTICE HILDYARD: When are you going to finish those?
 21 MR STUART: Tomorrow, my Lord.
 22 MR JUSTICE HILDYARD: Tomorrow by?
 23 MR STUART: Certainly Mr Rowe we will finish by 12, and
 24 I would hope to get, I believe it's Ms Mancini next,
 25 I would hope we could deal with her within an hour,

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1 though I am told -- I have not read it yet -- yet more
 2 disclosure is being provided to us relating to
 3 Ms Mancini this afternoon, and that a further witness
 4 statement is being prepared from her.
 5 MR POTTS: No, my Lord.
 6 MR STUART: Good.
 7 MR POTTS: There is -- partly correct -- a short witness
 8 statement. The point was picked up about the version of
 9 the SEP guidance and the date. There is an earlier
 10 version of that document exhibited.
 11 MR JUSTICE HILDYARD: Right, pre 2011.
 12 MR POTTS: Yes, and there are a couple of other documents
 13 which are exhibited which are already disclosed
 14 documents. So that's that. And it was served at
 15 lunchtime, I think.
 16 MR STUART: This new version of this document is not
 17 a disclosed document, is it?
 18 MR POTTS: No, I think I said that.
 19 MR JUSTICE HILDYARD: All right.
 20 MR STUART: My Lord, as I say, I very much hope we would get
 21 through her by lunchtime.
 22 MR JUSTICE HILDYARD: Mr Stuart, I just want you to finish,
 23 please, by the short adjournment tomorrow, unless there
 24 are very, very good reasons which will persuade me, and
 25 I want you to try and ensure that you do that. I do not

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1 wish to change the rules of the game halfway through or
2 even 90 per cent of the way through, but I do think that
3 you must regard the time of the court as important as
4 opposed to infinitely expandable, and I want you to try
5 and do this by the short adjournment tomorrow, please.
6 MR STUART: I will do that, my Lord.
7 MR JUSTICE HILDYARD: I will not be ruthless about it, but
8 I shall be tough about it.
9 MR STUART: Understood, my Lord.
10 MR POTTS: In terms of the afternoon, my Lord, I was just
11 wondering about what, if anything, we should be
12 preparing overnight for if anything.
13 MR JUSTICE HILDYARD: I am rather hoping that there will be
14 nothing in the afternoon except possibly a combined half
15 an hour blast from you to send me with a fair wind on my
16 way to the other case. On the whole, I would prefer to
17 think that we are not going to go much beyond the short
18 adjournment except for things which assist me for the
19 next phase. Does that help you?
20 MR POTTS: It does, my Lord. Your Lordship may have other
21 matters, but in terms of -- obviously for tomorrow the
22 witness statements obviously will be helpful -- the
23 afternoon, a reading of the skeletons might shorten
24 matters.
25 MR JUSTICE HILDYARD: I'll try and do that.

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1 minutes.
2 MR JUSTICE HILDYARD: Yes. Well, not before 10 o'clock
3 then.
4 (4.30 pm)
5 (The court adjourned until 10.00 am
6 on Friday, 20 December 2013)

1 MR POTTS: If that's possible.
2 MR JUSTICE HILDYARD: I have other matters in the afternoon
3 before eventually I get away.
4 MR STUART: My Lord, I understand. So that I have not
5 misled your Lordship, I know you will have it in mind,
6 but after Ms Mancini I do have to deal with the short
7 witness statement of Mr McGowan.
8 MR JUSTICE HILDYARD: I appreciate that, yes. You are
9 right, I had imagined -- that's on the car incident,
10 isn't it?
11 MR STUART: Yes.
12 MR JUSTICE HILDYARD: How long are you going to be on that?
13 MR STUART: I'll try to do it within half an hour, my Lord.
14 MR JUSTICE HILDYARD: Yes, please.
15 MR STUART: I should tell you, Mr McGowan, it turns out from
16 the late disclosure, he is also the man it seems who
17 took the pictures.
18 MR JUSTICE HILDYARD: The boxes, and the photographs of "no
19 dogs"?
20 MR STUART: I think it was the ones of the boxes.
21 MR JUSTICE HILDYARD: Right.
22 MR STUART: Do you remember, it's his email, it turns out to
23 be his email that --
24 MR JUSTICE HILDYARD: Hidden talents.
25 MR STUART: I may have to ask him about that for five to ten

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