

# 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 15

December 20, 2013

Opus 2 International - Official Court Reporters

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1 Friday, 20 December 2013  
2 (10.00 am)  
3 (Proceedings delayed)  
4 (10.35 am)  
5 MR POTTS: My Lord, I apologise, a slight logistical issue,  
6 I will be dressed in due course.  
7 MR JUSTICE HILDYARD: I am so sorry it didn't work as  
8 I planned, there was a freezing order issue which had to  
9 be dealt with very urgently, and we are late  
10 accordingly, I'm so sorry.  
11 MR STUART: Not at all, my Lord. My Lord, I still will try  
12 to meet the 1 o'clock deadline.  
13 MR JUSTICE HILDYARD: Thank you.  
14 MR STUART: I have absolutely taken on board your Lordship's  
15 direction to me of late yesterday afternoon. I am  
16 slightly concerned that --  
17 MR JUSTICE HILDYARD: You have lost 35 minutes, but --  
18 MR STUART: No, no, I still understand, my Lord. As I say,  
19 I am slightly concerned that your Lordship feels or has  
20 the impression that I think that the court's time is  
21 infinitely expandable and that I am not regarding the  
22 court time as important, I promise you I do understand  
23 the --  
24 MR JUSTICE HILDYARD: I don't mean to insinuate that, I mean  
25 to say that we are, as a matter of fact, well beyond the

1

1 estimate. I do myself doubt whether this was ever a 15  
2 day estimate for both cases. But there we are, we can  
3 deal with that later. I am not going to be either sort  
4 of disposed against you or in any way critical of you,  
5 I just mean to hurry you along where I reasonably can.  
6 MR STUART: Absolutely, my Lord.  
7 MR MICHAEL ROWE (continued)  
8 Cross-examination by MR STUART (continued)  
9 MR STUART: Right, Mr Rowe, I will have to ask you, I am  
10 afraid, about the evidence you gave yesterday about this  
11 disciplinary hearing.  
12 A. Yes.  
13 Q. You say it was a telephone call whilst you were on  
14 holiday?  
15 A. That's correct, yes.  
16 Q. Could you be passed the transcript bundle, please. Do  
17 you have it?  
18 A. Yes.  
19 Q. I just need to ask you to go to Day 13 --  
20 A. Tab 13?  
21 Q. Yes, that will be tab 13, I hope, which is the day  
22 before yesterday. This was Mr Raines giving his  
23 explanation as to these disciplinaries. I think you  
24 said you were present in court?  
25 A. I was present in court, yes.

2

1 Q. So no doubt you will have heard this already, so this  
2 won't come as a surprise to you. I need to check this  
3 with you. Day 13, page 75.  
4 A. Yes.  
5 Q. Line 4, Mr Raines said:  
6 "Answer: I immediately contacted HR and arranged to  
7 see these people."  
8 "These people" I think are you, Mr Deane and  
9 Mrs Hart at that stage. Those are the three identified  
10 people.  
11 A. Mm.  
12 Q. :  
13 "Answer: There were I think five emails which we or  
14 I was particularly concerned about."  
15 A. Yes.  
16 Q. Do you read it?  
17 A. Yes, yes, I can see that.  
18 Q. :  
19 "Answer: I presented to each one, I think it was  
20 Mike Rowe first, then Adrian Deane, I can't remember the  
21 sequence, but I sat in a room with these individuals  
22 separately ..."  
23 So Mr Raines' clear evidence is that he was sitting  
24 in a room with you, Mr Rowe. Is that evidence wrong, or  
25 perhaps your recollection of yesterday was wrong?

3

1 A. I can categorically say my recollection is, having been  
2 the recipient of the written warning, I took the phone  
3 call on holiday in Plymouth, I can only think that  
4 Mr Raines is referring to the fact he would have been in  
5 a room on a phone to me. I don't know, but I know  
6 exactly what happened to me, and I was the recipient of  
7 that written warning, I know what happened to me.  
8 Q. Sorry, you didn't get the written warning before the  
9 telephone call?  
10 A. No, no, no, no, no, absolutely not, no.  
11 Q. Okay, so he goes on, having sat in a room with you, he  
12 separately showed you the emails that related to you.  
13 How could he do that? You were on holiday in --  
14 A. In Plymouth, yes.  
15 Q. -- Plymouth, how could he show you anything?  
16 A. He talked -- again, I can only tell you what happened on  
17 the call with me.  
18 Q. Right.  
19 A. Mark talked me through each of the emails individually,  
20 my Lord, so he wasn't in the room showing me, but he  
21 talked me through the emails.  
22 Q. Right. Okay. If you go over the page to page 78, I was  
23 asking him as to why he didn't deal with Mrs Hart, this  
24 is page 78.  
25 A. Which line, sorry?

4

1 Q. Say line 9, he says:  
 2 "Answer: I carried out the disciplinary process  
 3 between Rowe and Mr Dean."  
 4 I think he means with you.  
 5 A. Sorry, can I just pause for a second so I can find it?  
 6 78, that is the number at the bottom, isn't it?  
 7 Q. That's it, line 9.  
 8 A. "I carried out the disciplinary", yes, I've got that.  
 9 Q. :  
 10 "Answer: I carried out the disciplinary between  
 11 [I think he meant 'with' you] and Mr Deane.  
 12 Unfortunately, due to holidays, I wasn't able to see  
 13 Susannah Hart ..."  
 14 Do you see that?  
 15 A. Yes, I do, yes.  
 16 Q. Then I, in questioning him, assumed that when he meant  
 17 holidays, he meant his holiday, that he was on holiday,  
 18 but he explained that actually it was Mrs Hart who had  
 19 a holiday problem. But you were on holiday as well,  
 20 weren't you?  
 21 A. Yes, I was, I was on holiday in Plymouth, seeing my  
 22 mother.  
 23 Q. So you are adamant that he dealt with this disciplinary  
 24 process whilst you were on holiday?  
 25 A. Absolutely, yes. And, sorry, overnight as well,

5

1 my Lord, I recalled another piece of kind of information  
 2 around it, in that we had the call, it's about a 30 to  
 3 40-minute call, we went through the detail, Mr Raines  
 4 asked me for my opinion, my advice -- not advice, my  
 5 opinion on the emails that I sent. He said to me that  
 6 he felt it was a written warning offence. He did give  
 7 me the option of going, if I wanted to take it further,  
 8 into a face-to-face formal kind of environment, and at  
 9 that time I said that I didn't want to take it down that  
 10 line because frankly I did not want to go through that  
 11 process.  
 12 In my evidence yesterday I said -- I think I was  
 13 asked whether or not he sent me the emails. I think you  
 14 asked me that afterwards.  
 15 In recollection, actually what happened was two  
 16 weeks later we had a Specsavers leadership conference in  
 17 a hotel in Heathrow, I remember it implicitly because we  
 18 had the coach of the English Rugby World Cup team there  
 19 giving us a speech, and that I had arranged to have  
 20 a conversation with Mark at that meeting, and Mark had  
 21 his daybook with him and in his daybook were copies of  
 22 those emails, and he showed me and talked me through  
 23 those emails face-to-face. It wasn't a long  
 24 conversation, we also had a conversation about the fact  
 25 that I believe Mark's father had passed away recently,

6

1 so had mine, and we talked about how we were feeling  
 2 about that. So it was just a recollection overnight,  
 3 my Lord, that we just talked through the process.  
 4 Q. So it is still your evidence that there was not a formal  
 5 disciplinary process followed?  
 6 A. No, absolutely, I can confirm, because I was the  
 7 recipient of this written warning, and I don't know if  
 8 I put it over strongly enough yesterday, this is not  
 9 a small thing for me. 28 years' worth of being  
 10 a professional, to have a written warning for four or  
 11 five emails written a long time ago, you know, was a big  
 12 thing for me. I absolutely crystal clear remember it.  
 13 It felt like a process in the sense that it was a tough  
 14 conversation for 30, 40 minutes where I was talked  
 15 through that evidence, but it was a phone call, absolute  
 16 clarity and recollection.  
 17 Q. Okay, so just over the page, then, in transcript  
 18 page 81, at the top, I was asking about whether, with  
 19 Mr Rowe, do you see, line 1:  
 20 "Question: ... with Mr Rowe and presumably others;  
 21 one doesn't go through a formal disciplinary process  
 22 without having some meetings ..."  
 23 Do you see that?  
 24 A. Mm.  
 25 Q. :

7

1 "Answer: It is right. I don't recall making any  
 2 notes. I do recall sitting down with these people  
 3 formally and showing them the", et cetera.  
 4 He was not sitting down with you?  
 5 A. Not with me, he was on the other end of a phone.  
 6 Q. If you go over to page 83, I was asking him about, as it  
 7 were, the things that there would be from such meetings.  
 8 Do you see 83, line 3, my question is:  
 9 "Question: ... there would be notes of meetings,  
 10 disciplinary meetings?  
 11 "Answer: Yes."  
 12 Have you ever seen a note, Mr Rowe?  
 13 A. No. I don't know whether Mr Raines was making notes on  
 14 the other end of the phone call but I didn't receive any  
 15 notes.  
 16 Q. Okay.  
 17 A. My Lord, can I just say that as far as I was concerned  
 18 after that phone call the matter was dealt with, I had  
 19 accepted my punishment for writing these few emails that  
 20 period ago, and I didn't push the matter any further,  
 21 I was given the option if I wanted to take it into  
 22 a more traditional formal process, but I did not take  
 23 that option.  
 24 Q. Okay, and if you go down to the bottom of 83, line 23, I  
 25 said:

8

1 "Question: Explain it now."  
 2 He said:  
 3 "Answer: As soon as I became aware of them [that's  
 4 the emails] I arranged a meeting with the individual, it  
 5 took the form of me sitting down with them, presenting  
 6 the evidence ..."  
 7 He didn't actually arrange anything with you, he  
 8 called you cold whilst you were on holiday?  
 9 A. It was -- I wasn't expecting the call, it came out of  
 10 the blue, I was on holiday, I wasn't -- otherwise  
 11 I wouldn't have been on holiday.  
 12 Q. He didn't sort of email you in advance and say, "Mike,  
 13 we have got to have a meeting by telephone" or anything  
 14 like that?  
 15 A. No.  
 16 Q. All right, fine. As I understand it, you don't know  
 17 anything about Mrs Hart's disciplinary so there is no  
 18 point me asking you about the fact --  
 19 A. No, as I said yesterday I have no interest. This was  
 20 embarrassing enough for me, let alone talking to anybody  
 21 else.  
 22 Q. Okay, fine. Okay, you can put away the transcript  
 23 bundle.  
 24 Let's go back to the actual emails so we can see  
 25 the --

1 A. Yes.  
 2 Q. I think we were in E2.  
 3 A. Do I need bundle X, because it's on the desk taking up  
 4 space?  
 5 Q. X, I don't think so, at the moment. I think we pick  
 6 matters up at E2/281, the third page of the bundle. We  
 7 are in November 2007, Mr Rowe. Perhaps before we start  
 8 this, I did ask you yesterday whether Mr Raines  
 9 investigated of you your underlying motivation for  
 10 sending these emails, and you told me he didn't?  
 11 A. That's correct. The conversation was about the content  
 12 of the emails.  
 13 Q. Yes, the misuse of the email policy?  
 14 A. That's correct, yes.  
 15 Q. The email. As I understand your evidence to the court  
 16 yesterday, it chimed with your evidence to him, which  
 17 was: you didn't even remember sending the emails, let  
 18 alone have an explanation as to your motivation for use  
 19 of such language?  
 20 A. Yeah. The conversation I had with Mark was in 2013,  
 21 these are 2007, I -- these were sent predominantly when  
 22 you get to them from my BlackBerry, they were quick  
 23 emails that I obviously hadn't thought through so yes,  
 24 I had no recollection of them when they were brought to  
 25 me. It was a real shock and surprise.

1 Q. Okay. Now you have had a chance to really think back  
 2 over matters and you have presumably been able to see  
 3 all --  
 4 A. Yes, absolutely.  
 5 Q. -- documents that were generated at times of each of  
 6 these little outbursts --  
 7 A. Yes.  
 8 Q. -- has that assisted you in recalling why it is that  
 9 you talk of Dr Poulsen in this way in these emails?  
 10 A. It certainly has helped me clarify where I was at that  
 11 period of time, and also I suppose the motivation or the  
 12 lead-up to those comments, yes.  
 13 Q. Would you agree, then, that the comments evidence the  
 14 fact that you did not intend to have a supportive  
 15 assisting role for Dr Poulsen, you were intending to go  
 16 to war with her?  
 17 A. Absolutely not, my Lord, and if I could just take  
 18 a second to explain that. My role as an RDC is  
 19 predominantly absolutely supportive but quite often  
 20 involves some challenging conversations with partners,  
 21 maybe around financial performance, customer service  
 22 performance or elements that maybe are at odds with the  
 23 brand. So I do have challenging conversations with  
 24 partners.  
 25 What you see here, in all of these emails, and

1 absolutely this is not condoning it, I totally agree  
 2 that what I put in writing was incorrect, wrong, and  
 3 I deserved having my written warning for it. But it is  
 4 a snapshot of how the team were feeling, the small team,  
 5 my RS team, myself, Adrian Deane to begin with, and  
 6 Susannah Hart. The way we worked is that we would talk  
 7 probably once a day with other members of my team, maybe  
 8 twice a day, and actually what you saw here was it fed  
 9 into an email trail. These were frustrations, and to  
 10 agree, I know the word "banter" was used earlier,  
 11 I wouldn't use that, I think there was a bit of bravado,  
 12 a bit of closeness and team coming into it. We would  
 13 often discuss the positives, the challenges, the stuff  
 14 we got wrong, the stuff that we get right, and the more  
 15 challenging conversations around maybe some of the more  
 16 challenging situations or partnerships or stores.  
 17 But what predominantly you see here is that leaking  
 18 into email, and what I hope, as we go through the  
 19 evidence, is that what you see in my real actions in  
 20 interacting with the partners is this is in-house small  
 21 team stuff, airing our frustrations, yes, but when  
 22 I actually deal and go and interact with the partners in  
 23 Bognor Regis, whether it be my initial CUPPA visit,  
 24 which was very positive, you see emails also very  
 25 positive to Lorna in marketing saying, "Actually my

1 objective is to bring them back into the fold".  
 2 Judge me by my actions, not by some quit hit and  
 3 inappropriate language in an email. For me, actions  
 4 speak louder than words and my actions -- on reviewing  
 5 my actions, Mr Stuart, absolutely I stand by my actions  
 6 because I think they demonstrate the mission purpose and  
 7 values of the business.

8 Q. Is what you are saying that how, as it were, you spoke  
 9 to Dr Poulsen to her face should not be equated with how  
 10 you were speaking about her behind the scenes to your  
 11 fellow team members?

12 A. I think I've worked for 28 years in teams, and for the  
 13 last 20 years leading regional teams, I would talk to my  
 14 team every single day. So let's take Mr Alan Moylan,  
 15 who is an RPC working for me. We would talk about the  
 16 day, maybe some challenging partners that he's had  
 17 conversations with. These are a symptom of that leaking  
 18 into emails. You know, we can't talk about sweetness  
 19 and light all the time. This is real life. We would  
 20 absolutely talk about the issues that we have on the  
 21 region. We would come up with how we are going to  
 22 approach them. Sometimes, because we are target  
 23 orientated people by definition of what we do, we would  
 24 want to get results, we can find it very frustrating.  
 25 In these emails it leaked out.

1 There is -- if there was anything in my actions that  
 2 lead to a thought that there was a conspiracy, then show  
 3 me it, because there isn't. These were just low level  
 4 conversations that I emailed through from a BlackBerry  
 5 probably in a service station somewhere without stopping  
 6 and thinking. They were emotional responses. And  
 7 I apologise wholeheartedly for them, and I apologised to  
 8 Mark on that call, and I took my punishment because they  
 9 were wrong.

10 But in answer to your question, we would have  
 11 conversations about partners, Mr Stuart, as a team, and  
 12 some of those would be challenging, but when we actually  
 13 go and face our partners and how we deal and interact  
 14 with our partners, we would play everything by the book,  
 15 and I think my actions demonstrate that.

16 Q. Okay, so you play everything by the book in what the  
 17 partners can see, play everything by the book, but the  
 18 truth of your frustrations and feelings about your --  
 19 about the partners are evidenced by what goes on behind  
 20 the scenes, such as 281. Are you saying this was sent  
 21 from your BlackBerry?

22 A. Sorry, which -- 281 was to me from Adrian Deane.

23 Q. Sorry. He said: "Go get 'em tiger!" --

24 A. Oh yes, the second --

25 Q. When you said:

1 "She will not escape!!!! Something to look forward  
 2 to!!!! I can guarantee I will upset her!!!"  
 3 A. That particular one wasn't sent from my BlackBerry,  
 4 because it would come with a tag at the bottom if it  
 5 was, and I said some of my communications came from my  
 6 BlackBerry.

7 My Lord, this is, I suppose, an example around  
 8 judging me on my actions not what I might say within  
 9 a team environment, because this is relating to me  
 10 trying to arrange a visit in Bognor Regis, to go through  
 11 the phase 1 initiatives, things like Sunday trading and  
 12 a number of initiatives. I took on the Bognor Regis,  
 13 and we shared these visits across the region out amongst  
 14 the team, because actually the perception was that this  
 15 was going to be a difficult visit based on the history  
 16 and the communication style of the partners. So I said  
 17 I would do it. I had been trying to arrange a visit and  
 18 we couldn't get down to dates. I got a date and that  
 19 date meant me taking a day off my holiday but I was  
 20 prepared to do that, because it was an important visit.

21 So, yes, it's bravado, it's me kind of letting off  
 22 a bit of steam, but nothing more than that. If you go  
 23 back to the emails that I send to Dr Poulsen, if you  
 24 have a look at what they are, they are all focused on  
 25 having a positive visit. When I interact with the

1 partners and I absolutely am professional, I sent  
 2 a letter with an agenda and set out what I wanted to  
 3 achieve. And I thought, and it's incredibly badly  
 4 worded, and I am never going to run away from that, but  
 5 my anticipation was that I was going to have a really  
 6 tough visit, and that it was going to be maybe in the  
 7 style of previous communications that I had read from  
 8 the partners.

9 When I got there, in reality, I had a great day, it  
 10 was fantastic, it was a really engaging visit, the store  
 11 standards were really strong, and we sat down and had  
 12 a really good positive conversation around these  
 13 initiatives. I left, I passed that message on  
 14 throughout the business, and there was another email  
 15 from me to marketing saying, "Got this issue that came  
 16 up from the visit. Had a really positive visit.  
 17 I really want to deal with this because I want to bring  
 18 them back into the fold", because it felt that they were  
 19 disconnected.

20 So this what you are seeing is an internal blowing  
 21 off steam within a tight, close team. When I actually  
 22 get down to doing the job face to face with partners,  
 23 absolutely, I do it professionally and to the letter.

24 So for me this is a good example of judge me on my  
 25 actions, you know, these few snatched emails are not

1 a representation of how I work with partners and how  
2 I talk about partners.  
3 Q. You said in your answer to my previous question that  
4 these are only between you and low level people. The  
5 next one we go to is page 350, Mr Rowe.  
6 A. Sorry, I didn't say low level people, these are members  
7 of my team from across the business, but I don't think  
8 I mentioned low level.  
9 Q. Did you not? Sorry, I thought you did.  
10 MR JUSTICE HILDYARD: I think you said "low level chat" or  
11 discussion.  
12 MR STUART: Low level chat, right.  
13 A. But they weren't low level people, these are my team  
14 members.  
15 Q. Yes, I thought you were trying to give the impression  
16 that it didn't escalate up, didn't --  
17 A. No, I am not trying to give the impression, these were  
18 contained within our team and we had a tight knit team  
19 who were --  
20 Q. Who is in your team, then?  
21 A. On my direct report, it's a bit of a strange structure,  
22 my Lord, it's very different to what I have worked with  
23 before, I have only one direct report which was  
24 Alan Moylan, the retail performance consultant, and he  
25 would spend all his time in stores doing the kind of

1 face-to-face with partners, mine was a bit more of  
2 a strategic role. But my role was to, if you like build  
3 the retail --  
4 Q. Mr Rowe, Mr Rowe, I asked you who was in your team.  
5 A. Okay.  
6 Q. If you are going to give us your entire witness  
7 statement every time I ask you a question, we will be  
8 here an awful long time and I am under a certain amount  
9 of absolutely justified criticism --  
10 A. I appreciate that.  
11 Q. -- for allowing my cross-examination to take longer than  
12 is necessary. So my question to you was: who are the  
13 members of your team?  
14 A. I had a retail performance consultant who reported  
15 direct to me. I had a retail communications manager,  
16 that would have been Adrian Deane and Susannah Hart,  
17 they were in my team but they reported to their own line  
18 manager. I had a retail development manager,  
19 Carina Wood, and although she was part of my team, she  
20 also had her own direct line manager, and we had  
21 ancillary members of the team, so we would have a local  
22 marketing manager, we would have a business development  
23 manager, we would have a corporate sales manager. So we  
24 had a very kind of disparate team who also reported into  
25 different people, but my role was to bring them together

1 as a team and deliver for the region and the partners.  
2 Q. Okay. Do you say Mr David Clark or Mrs Jill Clark are  
3 in your team?  
4 A. No, they are not in my team.  
5 Q. Okay, let's go to the next email, then, E2/350. Now we  
6 are into March 2008. We have gone forward about four or  
7 five months. Do you see?  
8 A. Yeah.  
9 Q. "Dave, can I talk ref the attached email? Helle is on  
10 my hit list, and this [I think the 'I' is just  
11 a typographical error] needs to be dealt with "a wild  
12 card" et cetera."  
13 A. Yeah.  
14 Q. Do you have a hit list?  
15 A. Absolutely not a hit list in the perception of how  
16 I think it's trying to be portrayed. What I did do on  
17 every single one of my regions was to separate stores  
18 into low risk, medium risk, high risk. High risk stores  
19 would be stores that were on TAPS, experiencing  
20 financial issues, it could be relationship issues within  
21 the partnership, it could be relationship issues with  
22 us, and it was just a way of getting my team focused on  
23 the stores that really mattered and making sure that we  
24 were taking the correct action.  
25 There was, however, and I am not sure if this is

1 where it relates to, I was asked to supply a list to  
2 David of stores that we might want to escalate through  
3 Sunday trading. Dave Clark's role was as business  
4 development, a business performance director, and so he  
5 would at some stage take away from an RDC any of the  
6 difficult conversations, if they needed to be dealt with  
7 separately.  
8 Q. Okay, 355, same day, later in the afternoon.  
9 A. Sorry, can I, just to put this email into context, very  
10 quickly, and I will be brief.  
11 Q. I have not asked you a question yet, Mr Rowe. If you  
12 wait for the question, you can answer the question. If  
13 you think as part of the answer you need to talk about  
14 anything, I am not going to stop you, I haven't stopped  
15 you when you spent four minutes giving us  
16 an explanation --  
17 A. I apologise, my Lord, but I was under the impression you  
18 asked me around the relationship with David Clark and me  
19 emailing David Clark. This email was asking David Clark  
20 for advice on the issue that I was experiencing.  
21 Q. Sorry, if you are giving an answer about 350, which  
22 I was moving on from to 355, then of course you must say  
23 whatever you want to, Mr Rowe.  
24 A. Thank you very much. I have finished, I have made the  
25 point. It was an email asking David for advice on how

1 to deal with the issue that the partners were refusing  
 2 to meet me for discussion of the issue, that was the  
 3 only reason I was emailing him was asking his advice,  
 4 and I had a conversation later on that day with him  
 5 where he gave me his advice and that was it.  
 6 Q. So 355, you have obviously drawn up your plan of action,  
 7 do you see at 355, 19 March:  
 8 "Hi Susannah, if you are about to give me a call  
 9 [obviously she had not yet spoken to you] next steps are  
 10 that I have forwarded it to legal, having the JVA  
 11 checked, then going to get a BRM sorted and go to war!"?  
 12 A. Mm.  
 13 Q. "Just talking to Dave C to see what he may need."  
 14 Do you see that?  
 15 A. Yeah.  
 16 Q. Now, first of all, we are to judge you on your actions,  
 17 and you are a very supportive team player whose main  
 18 role is to try to assist the JV partners; that's right,  
 19 isn't it?  
 20 A. And challenge where required.  
 21 Q. Yes, but we have not got to challenging where required  
 22 on this matter, yet, have we? Mr Weller in his evidence  
 23 kept saying "Why didn't he just phone me? If there was  
 24 an issue or a perceived issue that somehow Helle and  
 25 Godfrey and Optimisation Healthcare were putting money

21

1 through that I didn't know about, and that this was some  
 2 sort of possible issue that needed to be considered, why  
 3 didn't Mike Rowe just phone me?"  
 4 A. My Lord, I've got a very clear answer to that. At the  
 5 end of the day if you go back and look what's led up to  
 6 this, the partners have refused to meet me on  
 7 an informal basis. From my perspective, when I get to  
 8 this point, I've got -- I have a view that I am trying  
 9 to be kept at arm's-length and --  
 10 Q. By whom?  
 11 A. By the partners, because of a refusal to meet me.  
 12 I think the words were "only in the presence of our  
 13 solicitor or in a solicitor's office". I had never ever  
 14 in my career had partners do that when I am asking just  
 15 for an informal meeting to discuss the issue and to find  
 16 out. And at this point I am now looking at taking this  
 17 to a business review meeting, yes, to discuss the issue  
 18 around the invoices, my Lord, but also I am now at  
 19 a point where I need to have a conversation to  
 20 understand what's wrong with the relationship with SOG  
 21 and give them feedback on how they are being perceived,  
 22 and also the communications and style of communications.  
 23 So at this point a call to Barry wouldn't suffice. I --  
 24 as an experienced RDC, as somebody who's dealt with  
 25 a lot of stores, I am starting to wonder why they would

22

1 not want to meet with me, and that's why I would not  
 2 make a call to Barry to just ask him a question, it was  
 3 not as simple as that.  
 4 Q. You have a phone, I presume?  
 5 A. Absolutely.  
 6 Q. You could have picked up the phone to him?  
 7 A. I could have.  
 8 Q. He was in the store every day?  
 9 A. I assume so, yes, I wouldn't know that, but I assume so.  
 10 Q. So there was nothing to prevent you just picking up the  
 11 phone?  
 12 A. Nothing to prevent me apart --  
 13 Q. Just to start the process of friendly discussion, just  
 14 to start a friendly --  
 15 A. I had started that process when I did the CUPPA visit,  
 16 which even Helle recognised as an email that she felt we  
 17 had a really good visit. At this point in the process  
 18 I am starting to wonder why, I am starting to wonder why  
 19 am I being kept at arm's-length, why as a partner they  
 20 are not prepared to meet with me. I have never in my  
 21 career, I repeat never in my career have I had a partner  
 22 say to me, "I am not prepared to meet you and only in  
 23 the offices and if we do, it will be in the offices of a  
 24 solicitor." It's never happened to me in my career.  
 25 So at this point I'm thinking I need to have

23

1 a face-to-face, just a telephone conversation won't  
 2 suffice here, I need to understand what's going on.  
 3 Q. Have you ever in your career spoken of JVPs like this,  
 4 going to war with them, having them on your hit list and  
 5 this sort of thing?  
 6 A. As I say to you previously, it's language -- it's  
 7 an inappropriate word. Here, at this point, I am  
 8 thinking I am going to have a battle on my hands,  
 9 I think it's going to be a really difficult meeting, but  
 10 I am not going to be kept at arm's-length, I need to get  
 11 to the bottom of this, because the next step for this is  
 12 actually it gets escalated further. My reason for  
 13 wanting to meet with me in an informal basis on my own  
 14 was to be able to resolve this matter, and I think Mark  
 15 talked yesterday about light touch. This is how I was  
 16 taught to help partners, yeah? If they had met with me  
 17 when we, when I asked to be met with, then this issue  
 18 wouldn't have arisen.  
 19 So the answer is going to war is the wrong word, but  
 20 I did see it as "I am not going to be kept at  
 21 arm's-length, I need to have a conversation with you  
 22 about this because there are big questions to be asked,  
 23 and you know, actually I am trying my best to help you."  
 24 I couldn't understand why I was being asked to go to  
 25 a solicitor's office.

24

1 Q. You have the meeting, 367 is the middle of your note of  
 2 the meeting.  
 3 A. Sorry, which ...  
 4 Q. 367. The note starts at 365.  
 5 A. Yeah.  
 6 Q. You didn't provide that note at the time, did you?  
 7 A. 36 --  
 8 Q. -- 5?  
 9 A. The minutes of the meeting?  
 10 Q. Yes, you didn't send them a copy of the minutes of the  
 11 meeting at the time?  
 12 A. No, and absolutely if there is one element that I didn't  
 13 deliver on was to get those minutes to them. However,  
 14 I did send them a letter which gave them a full summary  
 15 of what we had agreed in the meeting.  
 16 Q. Yes. Anyway, and the meeting is all about Godfrey's  
 17 invoices, Godfrey -- well, there are two sorts of  
 18 invoices, the Godfrey invoices and the Optimisation  
 19 Healthcare --  
 20 A. Yes.  
 21 Q. -- use of Optimisation Healthcare for expenses?  
 22 A. Yes.  
 23 Q. You say it's about those two matters, not just the  
 24 Optimisation Healthcare?  
 25 A. Yeah.

25

1 Q. It's about Godfrey's invoices as well?  
 2 A. I -- this was -- I did find and submitted some pre-notes  
 3 I did before this meeting, I treated them the same.  
 4 This was a whole point around you don't have consultants  
 5 in the business. I treated all the invoices as one. We  
 6 went through in the meeting and we talked about both of  
 7 them so I could understand them, but I was -- my  
 8 objective was to stop this form of invoicing because it  
 9 wasn't in line with our working practice.  
 10 Q. Yes, so you were saying it wasn't in line with your  
 11 working practice, but there were the two categories of  
 12 invoice, one was in relation to Godfrey's services,  
 13 usually for much larger sums per month?  
 14 A. Yes.  
 15 Q. Thousands of pounds per month, and each month there was  
 16 also a separate invoice often for recharge of expenses  
 17 for the business, which you say that could all have been  
 18 done through SOG, frankly, you don't need a company to  
 19 put through ...  
 20 A. Well, from my list of services and it is, I think, shown  
 21 in my pre-notes, because I did some thorough prep for  
 22 this meeting --  
 23 Q. So we can help you, is that --  
 24 A. Sorry, I just need to finish this section, because you  
 25 did ask me the question. In those pre-notes, I listed

26

1 out all of the services, so to say it is just the  
 2 Optimisation Healthcare invoices that have the strapline  
 3 that those were the only services that SOG could deliver  
 4 isn't correct. My view was all of the services that  
 5 were delivered across all of the invoices should and  
 6 could have been delivered by either SOG's in-house  
 7 services or by the team in the store themselves. And my  
 8 predominant aim was, if Mr Vos wants to continue to  
 9 deliver the services, then put him on the payroll, but  
 10 let's stop invoicing in this way because it's really  
 11 raising some concerns in Guernsey. I didn't find this,  
 12 I was asked by the team in Guernsey to go and find out  
 13 what's going on, have the conversation. This is light  
 14 touch. I was forced into a BRM because the partners  
 15 would not see me.  
 16 Q. I think you are seeing a difference where there isn't  
 17 one between us, Mr Rowe.  
 18 A. Okay, I apologise.  
 19 Q. I am asking you to agree with me, or I am agreeing with  
 20 you. I think you are talking about your notes at X,  
 21 tab 5 --  
 22 A. Yes.  
 23 Q. Which looks thick but don't worry, it's not as bad as it  
 24 looks because it's only the first five pages, 292 to 297  
 25 of the notes, the rest is just more copies of the

27

1 invoices.  
 2 A. Okay, yes.  
 3 Q. You were raising the issue of Godfrey, looking at  
 4 page 292, your questions --  
 5 A. Yes.  
 6 Q. -- 7, do you see that, under 7:  
 7 "... go to Godfrey..."  
 8 A. No, question 7 was: what's the sign-off process?  
 9 Q. Then it says "-- to Godfrey?"  
 10 A. I started the process of trying to populate the answer  
 11 to the questions, but --  
 12 Q. Okay, I see.  
 13 A. So actually I think it was later. My understanding is  
 14 my husband was not on the payroll --  
 15 Q. That's a question that you already had lined up; yes?  
 16 A. Yeah, yeah, these were prep questions. I anticipated  
 17 it, my Lord, being quite a tough meeting and therefore  
 18 I spent, as you can see, some time preparing for the  
 19 meeting, so actually I dealt with the situation fairly.  
 20 Q. Questions 8, 8 is about what is his role, 9 is about  
 21 being on the payroll?  
 22 A. Yes.  
 23 Q. 10, what benefits does doing it that way --  
 24 A. Yeah.

28



1 Q. Having Godfrey in this way?  
 2 A. Yeah.  
 3 Q. And then so those questions are about Godfrey and his  
 4 role.  
 5 Then you have some questions about some detail, if  
 6 I can call it that?  
 7 A. Yes. Can I just make a point, though, that I didn't get  
 8 to all of these questions. This was my plan. When the  
 9 meeting moved forward, it took its own kind of  
 10 direction.  
 11 Q. Yes, okay.  
 12 A. Hopefully it demonstrates my line of thinking, going  
 13 into the meeting.  
 14 Q. Yes, so back to E2 and your note of the meeting that you  
 15 typed up.  
 16 A. Yeah.  
 17 Q. Who typed this up?  
 18 A. I am not certain but it would, I think, have been  
 19 Alan Moylan, who was the notetaker.  
 20 Q. Okay.  
 21 A. It's a long time ago and I can't rightly remember.  
 22 Q. We see on page 366 the issue about Godfrey is being  
 23 raised?  
 24 A. Yeah, I do, yeah.  
 25 Q. And then 367 was the page I wanted to take you to, the

1 actions that were agreed at the end of the meeting.  
 2 A. Yeah.  
 3 Q. Do you see just above the second holepunch?  
 4 A. Yeah.  
 5 Q. It says, the fourth action:  
 6 "JVPs to discuss with Godfrey the best way of  
 7 positing him" -- that might be "positioning him" --  
 8 A. That should be "positioning", yes.  
 9 Q. "... positioning him on to the books as a result of  
 10 Godfrey being an outside agent."  
 11 So how it was left was simply that they would  
 12 discuss with Godfrey, they didn't actually reach any  
 13 agreement with you that he would be there and then put  
 14 on the books, did they?  
 15 A. The answer to your question and to clarify it is that  
 16 point one was to stop using Optimisation Healthcare and  
 17 stop invoicing in for these services in this way, if  
 18 Godfrey wishes to continue to work in this way, he needs  
 19 to be on the payroll, so the way that the action is  
 20 written is not clear, and I recognise that, but my  
 21 understanding is simple, which is they -- I can't force  
 22 Godfrey to go on a payroll. The directors cannot force  
 23 Godfrey to go on a payroll. If he wishes to continue to  
 24 do the services, he needs to be on the payroll, because  
 25 we agreed not to invoice in the way that he invoiced.

1 So absolutely I don't think the action is  
 2 particularly clear, Mr Stuart, but that was my  
 3 recollection of the meeting.  
 4 Q. Well, it is clear, isn't it?  
 5 "Action: JVPs to discuss with Godfrey."  
 6 It is pretty clear?  
 7 A. Yes, discuss, because for me to say "JVPs to put Godfrey  
 8 on the payroll", if Godfrey says "I do not want to be on  
 9 the payroll" then we are powerless. But if he chooses  
 10 not to be on the payroll, then he stops invoicing,  
 11 because that was the agreement.  
 12 Q. Okay. Where does it say he will stop invoicing?  
 13 A. He was a director of Optimisation Healthcare, we linked  
 14 all the invoices into one, it was -- I left --  
 15 Q. But he could invoice through another company --  
 16 A. Hmm?  
 17 Q. He could invoice through another company. If you didn't  
 18 like Optimisation Healthcare because she was a director  
 19 of it, he could invoice through another company, which  
 20 is actually what he did?  
 21 A. Yes, my Lord, and how can I put this, I left with  
 22 absolute clarity from the meeting that we had got  
 23 agreement that using an outside agent, a consultant in  
 24 this way, was not conducive with the way that we work  
 25 and that we agreed to stop doing that. That if Godfrey

1 wanted to carry on, then he needed to be on the payroll.  
 2 I only found out actually during these proceedings that  
 3 actually what happened is that they stopped using  
 4 Optimisation and Godfrey Vos and they switched to  
 5 a company -- I think it was called Finestone? -- and  
 6 continued to invoice.  
 7 Now, I left, and although I did say to them I would  
 8 come back and do a review, I trusted them to have  
 9 completed it, I did not have any more challenge from  
 10 Guernsey, because from Guernsey's perspective, the  
 11 clerks doing this or these invoices clear up. If I had  
 12 found out that they had gone against, in my view, the  
 13 principle of what we had agreed, then I would have had  
 14 a conversation with Mel that said "You need to have  
 15 a look at this".  
 16 So I viewed -- yes, they did, and if you look at the  
 17 semantics of -- because this is not a -- what I was  
 18 conducting was not a forensic investigation, this was  
 19 a light touch intervention trying to help partners to  
 20 make sure that there wasn't going to be a problem in the  
 21 future. To find out afterwards that actually all they  
 22 did was move it to another company, actually I was  
 23 shocked. If I had known that at the time I would have  
 24 taken action.  
 25 Q. What's the difference? Let's say they had not used

1 a company, ie a company in which Dr Poulsen had no  
 2 interest at all, but let's say Mr Vos had simply put in  
 3 his invoices as a "trading as"?  
 4 A. Mr Stuart, I felt both in the letter I sent and in the  
 5 minutes and in the conversation that I had with them  
 6 that I absolutely made it clear that using an outside  
 7 agent of consultants in this way, whoever it is, whether  
 8 it is a husband, whether it is another accountant, is  
 9 not the way that we do business, it's not common working  
 10 practice in Specsavers. You know, that I made clear in  
 11 the meeting. So actually to find out that they had gone  
 12 and just basically -- I don't even know anything about  
 13 Finestone because I wasn't involved in that, but just to  
 14 move to another company to invoice I find quite  
 15 shocking.  
 16 Q. Your letter, page 371, made clear that the only issue,  
 17 after you have had the meeting and you thought  
 18 everything was resolved and on a much happier basis with  
 19 them, your issue, do you see page 371:  
 20 "I explained that SOG have concerns over the use of  
 21 Optimisation Healthcare Group ..."  
 22 Do you see?  
 23 "... and W Godfrey Vos fasa Accountancy Services as  
 24 suppliers to the Bognor Regis Specsavers practice and  
 25 that you should comply with the standard processes and

1 procedures for these services."  
 2 A. Absolutely.  
 3 Q. It was clear from your answers that both partners were  
 4 aware of the use of these companies?  
 5 A. Yes.  
 6 Q. So you obviously saw them as two companies?  
 7 A. Yeah. Well, actually the reason I put that in there was  
 8 that one of the points I wanted to clarify, because  
 9 during my prep I had been informed that actually Helle  
 10 was a director of Optimisation, when I looked through  
 11 the invoices, all the invoices I was supplied with only  
 12 had Helle's signature on them, and therefore there was  
 13 a possible conflict of interest. So in the meeting,  
 14 part of my meeting was to make sure that all partners  
 15 were aware and it was above board, and they confirmed,  
 16 Barry confirmed that he was aware of these invoices.  
 17 I was flagging up to the partners, again light touch,  
 18 that actually that's not -- that could not be a healthy  
 19 relationship. So that was the purpose of putting it in.  
 20 Going back to your point, though, Mr Stuart, the  
 21 point that says here that you should comply with the  
 22 standard process and procedures for these services, is  
 23 that they should be delivered by a member of the team  
 24 instore, not outsourced.  
 25 Q. "As I explained, however, as Dr Helle Poulsen is

1 a director of Optimisation Healthcare Group Limited and  
 2 as such there is the possibility of a conflict of  
 3 interest, you also confirm that there was no specific  
 4 requirement for Barry to authorise the OHG invoices."  
 5 Do you see? Do you see that?  
 6 A. No:  
 7 "You also confirmed that there was no specific ..."  
 8 So they have told me that there was no specific  
 9 requirement. However, I asked them to. Actually  
 10 I think if you look at invoicing after, and I have only  
 11 seen this through going through the trial notes, Barry  
 12 now signs the -- or was signing the invoices.  
 13 Q. The issue you were raising was that Optimisation  
 14 Healthcare Group Limited was a company in which  
 15 Dr Helle Poulsen was a director, that on the face of it  
 16 is a potential for conflict of interest and therefore  
 17 stop using Optimisation Healthcare Limited?  
 18 A. No.  
 19 Q. That's your action number 1 in this letter: stop using  
 20 Optimisation Healthcare Limited.  
 21 A. I think -- yeah. Mr Stuart, what you are doing, you  
 22 need to separate out the issues. The issue was that  
 23 they were using Optimisation Healthcare Group and the  
 24 Godfrey Vos fasa Accountancy Services, I lumped them all  
 25 together as one and treated them as one, and that that

1 was not in line with our working practice, and that we  
 2 agreed that we would stop using those companies and  
 3 outsourcing it, and we would bring those in-house, and  
 4 we would talk to Godfrey about coming on to the payroll.  
 5 Then the separate issue was about the fact that Helle  
 6 was a director of that business and was signing it off.  
 7 I am not a lawyer, this was not a forensic  
 8 investigation, this was a meeting with partners to help  
 9 them to come into line with how we work within  
 10 Specsavers, to help stop this becoming an issue in the  
 11 future. I left the meeting with absolute clarity, and  
 12 as far as I was concerned moving forward, the problem  
 13 had been resolved.  
 14 Q. Yes, so with absolute clarity you were clear that  
 15 Godfrey would be working for the practice?  
 16 A. If --  
 17 Q. With absolute clarity?  
 18 A. Absolute clarity, if Godfrey wished to continue to  
 19 deliver the services, then he needed to be employed by  
 20 the company.  
 21 Q. But that's not what you said?  
 22 A. No, but that was -- Mr Stuart, that was my understanding  
 23 of leaving the meeting, because if you are going to stop  
 24 using this, as I said, come into line with standard  
 25 processes and procedures, that doesn't mean just moving

1 to another company name and continuing to do the same  
 2 thing. If I had been aware of that, then I would have  
 3 gone back and challenged it, then I may well have made  
 4 a decision to escalate it further.  
 5 Q. Anyway, we can say with absolute clarity that by the end  
 6 of this point, so May 2008, you felt you had a better  
 7 relationship with these two, Helle and Barry, and that,  
 8 as you have just put it to us, a problem had been  
 9 resolved and you could move forward positively?  
 10 A. It was a tough meeting but it was cordial, there was  
 11 some straight talking and actually in the minutes you  
 12 will I took on a number of issues that they felt they  
 13 had with the marketing team. I spoke to Brandon Bell  
 14 and a number of people in the marketing team to resolve  
 15 those, which Barry confirmed had been.  
 16 I had an issue with a call from Helle around  
 17 charging for the BRM, but I made in an email my point  
 18 and we moved on. So as far as I am concerned at the end  
 19 of this process, you know, the relationship may not be  
 20 brilliant with me but actually all of those issues have  
 21 been resolved and from my perspective, this was business  
 22 as usual from here on in.  
 23 Q. Good, business as usual.  
 24 Your next email, page 380. 3 September,  
 25 Susannah Hart. I don't think this is coming from your  
 37

1 BlackBerry:  
 2 "Can we discuss our action plan to wipe this woman  
 3 off the face of the earth?"  
 4 A. Well, it wouldn't have come from my BlackBerry because  
 5 it was sent to me and it is from Susannah.  
 6 Q. Sorry, to you, quite right, and that responded to emails  
 7 which had raised the issue, escalating, Jill Clark,  
 8 David Clark, and now Susannah wants to discuss wiping  
 9 this woman off the face of the earth?  
 10 A. Yeah, this related to a letter that Derek Dyson sent to  
 11 them. Do you know what, I get copied into loads of  
 12 emails from an awful lot of people in Guernsey who talk  
 13 about stores. I didn't reply to it, I didn't comment on  
 14 it. I would have had a conversation with Susannah, and  
 15 this is the one that I mentioned yesterday when Mark  
 16 said to me "Mike, you should have shown some leadership  
 17 here and had a word with Susannah", I can't remember if  
 18 I did. There was no plan to "wipe this woman off the  
 19 face of the earth" and I'm sure if Susannah was here,  
 20 she too would be mortified.  
 21 I have not replied to any of this, because from here  
 22 on in, I am now running three regions, 120 Specsavers  
 23 stores dealing with X number of relocations, new store  
 24 openings, I've got more than enough on my plate. As far  
 25 as I am concerned, this is just a case of going back to  
 38

1 the partners and communicating with them. There is no  
 2 plan. I didn't even reply to it.  
 3 Q. Well, what do you say, then, you did in response to  
 4 this?  
 5 A. At this point, Mr Stuart, Bognor Regis was not at the  
 6 centre of my universe.  
 7 Q. No, but this is an email to you, it's not cc'd, it's to  
 8 you from Susannah Hart, "Can we discuss our action  
 9 plan?"  
 10 A. I would have picked up a conversation, I spoke to  
 11 Susannah three or four times a week.  
 12 Q. Do you have any notes of these conversations --  
 13 A. No, these are telephone conversations. Most of the time  
 14 I am in the car.  
 15 Q. Did you make notes about what she said?  
 16 A. I am driving on hands-free, maybe, I may be sat in  
 17 a service --  
 18 Q. After the event?  
 19 A. No, absolutely, that's not the way we work, Mr Stuart.  
 20 Q. Okay. What then happens is there is an issue about  
 21 mystery shopper and Mr Dyson seems to --  
 22 A. Which page, sorry?  
 23 Q. If you go on to page 441, you are not involved, this is  
 24 the point I want to ask you about, all this stuff about  
 25 mystery shopper, 448 there is a meeting at the  
 39

1 Gatwick Hilton. You don't appear to be involved in any  
 2 of this?  
 3 A. No, I --  
 4 Q. Were you aware of it?  
 5 A. I was aware of it because obviously I was working with  
 6 Susannah and we were having our catch-ups, and the only  
 7 bit of involvement that I did have was I remember  
 8 Susannah asking me just for a one-pager that said -- for  
 9 Mr Dyson to say what's been your involvement as an RST  
 10 building up to this point, because Mr Dyson -- I haven't  
 11 spoken to Mr Dyson about Bognor Regis at all.  
 12 Q. So did Mr Dyson speak to you at this point about it?  
 13 A. No, he didn't, no. Everything went through Susannah.  
 14 Mystery shopper, my Lord, and the mystery shop programme  
 15 is the accountability of the communications team in  
 16 Guernsey. Okay, I will deal with poor performers, and  
 17 recognise those people who are doing really well. But  
 18 actually any challenge, which this was, to the process  
 19 would go through them. I wouldn't have anything to do  
 20 with that.  
 21 Q. So that was March 2009. Then the last document in this  
 22 bundle is, that I need to take you to, 517, April 2009,  
 23 you are emailing Alan?  
 24 A. Yes.  
 25 Q. "Good news, just had a grievance letter alleging  
 40

1 bullying by the Bognor regis director."  
 2 Why is that good news?  
 3 A. Because in situations, my Lord, where we are not able to  
 4 work positively with partners or have access to the  
 5 stores or seem to be held at arm's-length, if  
 6 a grievance appears then actually we would get involved,  
 7 a member of the team would hold a hearing,  
 8 an investigation, in which case we get more of an idea  
 9 of actually what's going on at a store. At this point,  
 10 my Lord, I am not in the store. My team are continuing  
 11 to do their day job, but we are not, we don't really  
 12 have a clear understanding of what's going on.  
 13 Q. Sorry, Mr Rowe, you are saying that this is genuine,  
 14 this is not sarcastic, when you say this, you are  
 15 genuinely telling Mr Moylan that this is good news?  
 16 A. Generally, yes.  
 17 Q. No, not generally, genuinely?  
 18 A. Sorry, genuinely I am saying to Mr Moylan, "Great, we  
 19 are actually going to be able to find out what's going  
 20 on in Bognor Regis".  
 21 Q. Are you sure it's not you and Mr Moylan, your team, know  
 22 that you have a very adverse view of Dr Poulsen, and  
 23 that you would like to take every opportunity of finding  
 24 trouble for her?  
 25 A. Absolutely not, and absolutely I do not have an adverse

1 view. My Lord, I'm an RDC, I deal with lots of  
 2 difficult conversations with partners, not all our  
 3 relationships, you know, are all the time talking about  
 4 supporting, I'm having to have difficult conversations  
 5 at times, but it's water off a duck's back, I don't have  
 6 a chip on my shoulder, I intervened in Bognor around BRM  
 7 to help them, I've moved on. I don't have an issue.  
 8 Yes, I am frustrated, don't get me wrong, but I don't  
 9 have -- sorry, forgive me, the word you actually used,  
 10 but I did not have a major issue, I am off doing other  
 11 stuff now.  
 12 Q. So that's your evidence about that, and Mr Moylan's  
 13 response:  
 14 "Bullying. Man, that is the last place I would have  
 15 thought it would happen!"  
 16 Presumably you say that's not all part of the in  
 17 joke back at base?  
 18 A. I can't comment on his -- you know, what he meant behind  
 19 it, because I wasn't there. But Alan's a young lad  
 20 here, and he's -- I'd like to think I was a bit more  
 21 experienced. I don't know what he meant by that other  
 22 than probably there is a bit of tongue in cheek. You  
 23 have to remember Alan was also in the room with me at  
 24 the BRM, so there may be a bit of tongue in cheek around  
 25 what he said, but --

1 Q. Perhaps it's the same tongue in cheek that you are  
 2 using?  
 3 A. No, I penned this email, I know what I meant. Actually  
 4 having a grievance in a lot of cases has allowed us to  
 5 understand more about what goes on in the practice. And  
 6 that's what I meant by it.  
 7 Q. Were you disciplined for that email?  
 8 A. No, I was not.  
 9 Q. So which of the emails were you disciplined for?  
 10 A. I believe it was the emails up to and including the  
 11 email with Susannah Hart. So at this point for this  
 12 email I certainly don't recollect being, Mark mentioning  
 13 this one in the call or showing it to me in my  
 14 conversation with him at the leadership conference.  
 15 Q. Okay, so it was just the "going to war" email?  
 16 A. No -- sorry, you finish.  
 17 Q. Do you remember?  
 18 A. Yes.  
 19 Q. You had the "going to war email", that one was one of  
 20 the ones --  
 21 A. Absolutely.  
 22 Q. The "something to look forward to, I can guarantee  
 23 I will upset her", that email, so that's two. Then not  
 24 the one to Dave Clark "Helle is on my hit list"?  
 25 A. Not the hit list, no.

1 Q. No. So we only have the two there really.  
 2 A. No, there was also one about, I think -- I find it  
 3 embarrassing to say, but I think a worm on the hook  
 4 comment, once I had actually managed to book the initial  
 5 CUPPA visit meeting, it was an early email.  
 6 Q. Worm on the hook?  
 7 A. Yeah.  
 8 Q. Do you know, that's one even I have not seen. There  
 9 must be some more emails that we haven't seen yet?  
 10 A. I can't --  
 11 Q. Anyway, there is a "worm on the hook" email, we will ask  
 12 for that.  
 13 A. I can only comment on the email that was put into my  
 14 bundle of evidence, so --  
 15 Q. Okay.  
 16 A. So it would have been disclosed.  
 17 Q. I don't recall you referring to this at all in your  
 18 witness statement at all actually, any of these emails?  
 19 A. No, I didn't. I didn't, no.  
 20 Q. No. Right, we can put away E2.  
 21 MR JUSTICE HILDYARD: Just before you do, 517, Mr Rowe, the  
 22 four exclamation marks.  
 23 A. Yeah.  
 24 MR JUSTICE HILDYARD: What did you mean by it?  
 25 A. I can't ...

1 MR JUSTICE HILDYARD: I don't ask you to sort of --  
 2 A. No, it happens, I've looked, I don't know whether it's  
 3 just habit or whatever, but I have looked at a number of  
 4 my emails, and I seem to overuse an exclamation mark.  
 5 There is nothing meant by it, and I don't know why.  
 6 I really couldn't -- but I do recognise if you go back  
 7 in a number of the emails, it's something that I have  
 8 recognised that at that time I did. I think Mr Stuart  
 9 read a few out.  
 10 MR JUSTICE HILDYARD: Anyway, it's a sort of nervous tic?  
 11 A. I don't know, you know, yeah, I can't say, it just  
 12 happened, but it happened in a number of the emails that  
 13 I noticed.  
 14 MR STUART: Could we move quickly on to E3? I am keen to  
 15 get this over and done with, Mr Rowe. 652, we are into  
 16 June 2010, Mrs Hart is asking you about escalating  
 17 matters in relation to Helle; do you recall that?  
 18 A. Can I just read the context?  
 19 Q. Yes. I think the context is --  
 20 A. The context is around SOCRATES.  
 21 Q. Well, there were all sorts of emails that Mrs Hart was  
 22 not happy about tone and that sort of thing?  
 23 A. Yeah.  
 24 Q. I haven't got to the end of this little bit yet, I just  
 25 want to get you to the context of it.

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1 A. Yes, sorry.  
 2 Q. We have moved on a whole nine months now. So June 2010  
 3 Mrs Hart is talking about escalating action for Helle.  
 4 Do you remember?  
 5 A. No.  
 6 Q. Okay, fine. Skip on to 729 -- sorry, I've missed one  
 7 out. 689, July 2010, she is writing to you copying in  
 8 Jill Clark and Mark Raines; do you see that one?  
 9 A. Yes, I do.  
 10 Q. "Check with payroll, Godfrey is still not employed by  
 11 Bognor Regis which I believe was one of the conditions  
 12 following the last set of meetings. Should we now have  
 13 a strategy for dealing with Bognor once and for all?"  
 14 A. Mm.  
 15 Q. Do you remember that?  
 16 A. I vaguely remember it, but did nothing with it.  
 17 Q. Sorry?  
 18 A. I remember it, but I did nothing with it.  
 19 Q. Okay.  
 20 A. There is no --  
 21 Q. Were you not part of the team, Mrs Clark, Mr Raines,  
 22 Susannah Hart and you were going to start doing  
 23 something with Bognor once and for all?  
 24 A. Not -- at this time, here, I cannot recollect, apart  
 25 from in 2010 I had raised to me through a separate thing

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1 around a concern on payroll. Looking -- I saw this  
 2 email in my bundle, I actually think Godfrey was on the  
 3 payroll in 2010, but I can't be certain. But I did  
 4 nothing with this, I wasn't involved in any further  
 5 conversations with this. And actually, do you know  
 6 what, it's very much a trend, I am off running 120  
 7 stores, I wasn't involved in a lot of these emails. The  
 8 reason there is no reply is quite often I would be on  
 9 the phone to Susannah either kind of calming her down  
 10 because she has got a little bit excited about or upset  
 11 about communications. But apart from that, my view is,  
 12 you know, it's not a burning bridge, let's move on.  
 13 Q. Actually what you do do is, 724, Mr Rajan is getting  
 14 from Mr de Carteret --  
 15 A. Yeah.  
 16 Q. -- details about Mr Vos' salary, payments, et cetera.  
 17 Do you remember? Now we are into August 2010, a month  
 18 later.  
 19 A. Yeah.  
 20 Q. You then, and this one is from your BlackBerry, say:  
 21 "Thanks Jez, please" -- because he forwarded it on  
 22 to you, Riyaz Rajan forwards it to Mike Rowe?  
 23 A. Yeah.  
 24 Q. And then:  
 25 "Thanks Jez, please refer to Riyaz's comments. Yes,

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1 it is of great interest."  
 2 A. Yeah.  
 3 Q. That's because you were looking for an issue to have  
 4 a fight about --  
 5 A. No.  
 6 Q. -- with Dr Helle Poulsen?  
 7 A. Absolutely not, it's just of great interest. Because  
 8 I put the word "great" in an email does not mean I am  
 9 looking to pick a fight.  
 10 Q. Why isn't it of great interest? You knew that he was  
 11 the practice manager.  
 12 A. Because of the content from Jez, the content around the  
 13 amounts of monies, it is of interest, it is of great  
 14 interest, you know, there is nothing -- there is nothing  
 15 going on here, there is no connection to Jill's email.  
 16 I had a -- this didn't even come to me direct. Jez  
 17 contacted Riyaz Rajan, who is my RPC, Riyaz sent it on  
 18 to me: what do you think? Yes, actually, do you know  
 19 what this is of great interest. In actual fact, when  
 20 you see how I deal with this it becomes of less interest  
 21 because Mark and I decide actually at this time, you  
 22 know, there is no burning bridge with this store, we are  
 23 not going to get involved in it.  
 24 Q. Okay, and that's, just before we get to that email,  
 25 which is just coming up, in between, 729 and 735, the

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1 issue of the Sunday trading seems to be on your agenda?  
 2 A. Sunday trading was on the agenda from about 2007, it  
 3 still is.  
 4 Q. Actually putting Bognor Regis as one of the three stores  
 5 that it was seriously on the agenda for, page 735, email  
 6 copied to you?  
 7 A. Yeah.  
 8 Q. They were very much on the agenda, weren't they,  
 9 Bognor Regis?  
 10 A. Yeah, along with other stores, this is --  
 11 Q. Two others, Uckfield and one up north, I think?  
 12 A. Yeah.  
 13 Q. Presumably the one up north was nothing to do with you?  
 14 A. Yeah, absolutely not. At the end of the day, at this  
 15 period in time, we were asked to identify stores that we  
 16 felt should be open on Sundays. I had stores and still  
 17 do, until I left as an RDC, that we were comfortable it  
 18 wasn't right for them to open on Sundays. But  
 19 Bognor Regis, I was of the firm opinion that when we  
 20 could get it done we should get them open on Sundays.  
 21 Q. 734 was I think what you were referring to, in relation  
 22 to the salary issue and the fact that Godfrey was on the  
 23 books as an employee earning basic salary of, for  
 24 a 25-hour week, 35,000 a year, plus bonus, plus  
 25 overtime, all of the stuff in the email that had been

1 sent to you and was of great interest --  
 2 A. Yeah.  
 3 Q. -- your answer to that, it appears from your email of  
 4 734, you have spoken with Mark Raines about it?  
 5 A. Yeah.  
 6 Q. And you won't be taking any action about it?  
 7 A. Yeah.  
 8 Q. It wasn't an issue, was it, at that point?  
 9 A. At that particular point, the reason why I didn't take  
 10 it further I think was down to the fact that I frankly  
 11 had an awful lot of work on with my 120 stores. I had  
 12 caught up with Mark Raines, it was a breakfast meeting  
 13 before a communication meeting in front of our Anglia  
 14 partners, I went through the top line of a few issues  
 15 with Mark to get his advice and said we had this issue,  
 16 what do we think? We knew that Riyaz and Susannah were  
 17 going to be going into the stores, maybe do a bit more  
 18 kind of subtle understanding of the issue, but right now  
 19 there was no burning bridge, the store was performing,  
 20 it was profitable, for me as an RDC it wasn't a major  
 21 issue.  
 22 MR JUSTICE HILDYARD: No longer of great interest?  
 23 A. It wasn't, because at the end of the day, the store is  
 24 performing, I haven't got an issue with the turnover,  
 25 the profitability, the mystery shop, the conversion

1 rates. For me, Bognor Regis was delivering. However,  
 2 if you put that email to Mel he would say, "Why the hell  
 3 didn't you send that to me, Mike?", and that was an  
 4 error of judgment from me. But at that point in that --  
 5 it wasn't a big meeting, it was about 20 minutes in the  
 6 morning over breakfast, before Mark was going to deliver  
 7 the communication meeting.  
 8 MR STUART: Just to be clear, by this point you knew who  
 9 Godfrey was, obviously?  
 10 A. Oh yes, yes.  
 11 Q. You knew the role he was playing, had you seen the  
 12 Jason North --  
 13 A. Well, no, Mr Stuart, I didn't know the role he was  
 14 playing.  
 15 Q. Didn't you?  
 16 A. I hadn't been in store since the BRM so ...  
 17 Q. Had you not seen all the Jason North stuff?  
 18 A. Yes, I had, yes.  
 19 Q. And Jason North's report explaining Godfrey's role --  
 20 A. Yeah, yes, although -- I think he doesn't explain it in  
 21 massive detail, but I think he puts "supporting the  
 22 directors", but yes, I read that. But I hadn't been  
 23 into the store and had no awareness of the exact detail,  
 24 but I knew he was on the payroll and actually that's  
 25 what we agreed at the BRM. So --

1 Q. Were you aware, because this is the 12 months from 2009  
 2 to 2010, when Mr Weller was obviously affected by the  
 3 outcome of that and that whole grievance process, were  
 4 you aware of Mr Weller's problems at the time?  
 5 A. Not fully, no. I think in my -- as I say in my witness  
 6 statement, I was aware I think that there were a couple  
 7 of weeks where he had taken some time off for stress.  
 8 I don't get involved in that. If a partner is off for  
 9 a longer period of time, I would be, my Lord, but  
 10 I think I mentioned it in my statement.  
 11 Q. So you basically were not aware of the extent to which  
 12 Mr Vos had taken over Mr Weller's role, you just weren't  
 13 aware?  
 14 A. I wouldn't have been aware, I hadn't been in store.  
 15 Q. Okay, I won't ask you about it, then. We are now up to  
 16 January 2011. My Lord, I see the time. I have not  
 17 given the transcribers a break.  
 18 MR JUSTICE HILDYARD: Ten to.  
 19 MR STUART: Thank you, my Lord.  
 20 (11.42 am)  
 21 (A short break)  
 22 (11.50 am)  
 23 MR STUART: So, Mr Rowe, I think we have reached, if you go  
 24 to your witness statement, bundle C, page 103,  
 25 paragraph 55, we are up to your heading "The Sale

1 Proposal". C/103, there is a little heading "The Sale  
 2 Proposal".  
 3 A. Yes. Got it.  
 4 Q. As I understand your witness statement, if you would  
 5 look through 104, 105, 106, this is all your evidence  
 6 about your involvement in the sale proposal?  
 7 A. That's correct, yes.  
 8 Q. And this really is the last element in which you were  
 9 involved?  
 10 A. Absolutely, yes.  
 11 Q. So it's only this section that I need to ask you about.  
 12 A. Okay.  
 13 Q. We are in E3, the documents, you refer to 736,  
 14 5 January, Mike Ryan emails you:  
 15 "Hi Mike."  
 16 Do you see?  
 17 A. Yes.  
 18 Q. The fourth paragraph:  
 19 "I think Helle will try to contact either you or  
 20 Riyaz to discuss, and I think the danger is that she/her  
 21 husband will try to manipulate this situation to their  
 22 benefit. (I probably don't need to tell you that?) So  
 23 it is important that we take early control of this  
 24 situation. Please get back to me if you want to  
 25 discuss."

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1 Do you see that?  
 2 A. Yeah.  
 3 Q. This is the start of it, is that right, as far as you  
 4 are concerned?  
 5 A. Yeah, I wasn't aware of Barry's decision to sell by  
 6 then.  
 7 Q. Page 737 is an email from Mr Raines, he has been copied  
 8 in on the email to you; do you see?  
 9 A. Yes.  
 10 Q. His response is:  
 11 "Thanks Mike, exactly right in your assessment.  
 12 Please ensure there is good consistent communication on  
 13 this one."  
 14 Did you understand that to be good consistent  
 15 communication between the people who were copied into  
 16 this email, the team if you like?  
 17 A. Yes, I think Mark's point was that we just needed to  
 18 keep talking between us to ensure we each knew what we  
 19 were doing through the process.  
 20 Q. So did you talk to Mr Ryan then?  
 21 A. I would have had probably a couple of conversations.  
 22 I do speak to Mr Ryan quite a bit because I am dealing  
 23 with a lot of business transfers.  
 24 Q. Did you make any notes of that?  
 25 A. I wouldn't make notes, no.

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1 Q. No notes. Do you have a recollection?  
 2 A. Can I just say we would get -- it has been mentioned  
 3 before, we would get a monthly update from Michael, so  
 4 Mike would normally phone me just before that update  
 5 goes out to say: where are we, what's happening and he  
 6 would populate that update. But I wouldn't keep notes  
 7 of those conversations, no.  
 8 Q. Do you recall the conversations you had with him at that  
 9 early stage?  
 10 A. Not specifically. I think they --  
 11 Q. No?  
 12 A. -- from memory we would have probably talked around  
 13 ensuring that we got the right structure and that the  
 14 business was set up for the future. I can't really  
 15 recollect.  
 16 Q. 739, Mr Dyson is getting involved. This is not sent to  
 17 you, it's sent to your boss, Mr Raines. Do you see,  
 18 739?  
 19 A. Can I read that?  
 20 Q. Do, please.  
 21 A. Thank you. (Pause) Yes.  
 22 Q. As I say, that's not to you, but it's to your boss,  
 23 Mr Raines?  
 24 A. I hadn't seen this, I don't believe.  
 25 Q. No. Did you have a discussion with Mr Raines about

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1 Mr Dyson's instructions, as it were, to get under the  
 2 skin -- not the words, I am not talking about the  
 3 words -- but develop a plan and put her back in her box?  
 4 A. It wasn't -- no, not those words.  
 5 Q. I said not the words.  
 6 A. I think Mark would have had a conversation -- I can't  
 7 recollect an exact conversation, but in these situations  
 8 Mark would have phoned me up to ask my opinion as I am  
 9 the RDC on the ground and have known the partners and  
 10 what's my view about the store. So he would have  
 11 consulted with me to get my view and input. But, no,  
 12 nothing in relation to -- it.  
 13 Q. That's not what this email is about, is it? Do you see  
 14 it says:  
 15 "I understand her husband Godfrey is now on the  
 16 payroll at an inflated salary and does not attend!"  
 17 Do you see that?  
 18 A. He may well have phoned me and as I say -- I haven't got  
 19 any notes here and I can't remember exactly, but Mark  
 20 always used to phone me up, in situations with business  
 21 transfers, difficult ones or ones they felt there might  
 22 be an issue with, he would phone me up. So I would  
 23 say -- Mark knew that I had been involved around the  
 24 BRM, he may well have asked me my opinion, but I can't  
 25 recollect.

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1 Q. Do you recall him telling you, not the express words,  
2 but that Mr Dyson had given him some instructions to  
3 develop a plan and put her back in her box? I don't  
4 mean the words.  
5 A. No, I do not. Absolutely. I had no link to Derek apart  
6 from, you know, meeting him in the office now and again,  
7 I reported to Mark and that's who I talked with.  
8 Q. You are then mentioned at 741, Mr Raines writes to  
9 Mr Dyson, do you see that?  
10 A. Yeah.  
11 Q. The same day, a little later:  
12 "Hi, I am aware of this and it is on my agenda.  
13 Agree that the objective is to exit if possible.  
14 Mike Rowe is establishing what is actually happening  
15 here in terms of people's agendas."  
16 Do you see that?  
17 A. Yeah.  
18 Q. "Mike, can you give me an update?"  
19 I think that Mike must be you?  
20 A. Yes, absolutely. It's what I referred to earlier. Mark  
21 would have phoned me to ask my opinion about, what's  
22 going on, what's your views.  
23 Q. You were therefore then aware of the email from  
24 Mr Dyson; do you remember?  
25 A. No, as I --

1 Q. Look below.  
2 A. Okay.  
3 Q. You have been copied in to it.  
4 A. Sorry, which?  
5 Q. 741.  
6 A. 741 to -- Derek Dyson to Mark Raines?  
7 Q. At the bottom, from Derek Dyson to Mark Raines, do you  
8 see, that's the email that I just took you to?  
9 A. I didn't scan down, I read my instruction from Mark,  
10 I don't read every email trail that I get, otherwise  
11 I would be there forever. I didn't even know that that  
12 existed.  
13 Q. Mr Rowe, can we be serious for a moment? Your boss  
14 emails you into an email from the big boss, Derek Dyson,  
15 the board director, and what he does is he forwards on  
16 to you the instruction email from Derek Dyson of  
17 10 January, the one that I just took you to and you said  
18 you didn't see it at the time.  
19 A. Yes. That --  
20 Q. On the same day he forwards it to you and asks to you  
21 give him an update. You must have read the one email  
22 that he forwarded to you?  
23 A. No. I absolutely did not recollect seeing that. I do  
24 not read the bottom chains of emails. I would have read  
25 that, I knew from Michael Ryan what was going on, and

1 I would have replied probably in a conversation with  
2 Mark. Until you pointed that out, Mr Stuart, I had  
3 never even clocked that it was attached to the bottom of  
4 an email trail. So, no is the answer, I wasn't aware.  
5 Q. I will suggest to you, Mr Rowe, that you have just been  
6 caught out, you were well aware that the priority now  
7 from Mr Dyson to Mr Raines and passing down to you was  
8 to develop a plan against Dr Poulsen?  
9 A. My Lord, absolutely not. As I said, I don't read the  
10 trails on my emails, I had --  
11 Q. It's not a trail, it's one email. There is no trail,  
12 there is no email after it.  
13 A. If I -- as I access most of my emails via BlackBerry, it  
14 comes up with that's the message, I've got the message  
15 from Mark, I don't know whether I accessed it, I can't  
16 mention, but I would not sit here and say I was not  
17 aware if I was not aware. I am not aware, right, of  
18 this email. I was aware of Mark asking me to give him  
19 my views, I was aware of the issue because Michael Ryan  
20 had raised it with me and I had had conversations with  
21 Michael, but until you mentioned and pointed that out,  
22 I hadn't even seen Derek's email.  
23 Q. Well, you had. You then saw -- you then replied, 743 --  
24 A. Yeah.  
25 Q. "Hi Mark, have only just returned, but in Guernsey on

1 Tuesday, so will find out what is going on."  
2 A. Yeah.  
3 Q. So you were going to go and see Mr Dyson presumably in  
4 Guernsey?  
5 A. No.  
6 Q. Well, you weren't going to see Mr Raines in Guernsey,  
7 because he wasn't in Guernsey?  
8 A. No.  
9 Q. So who were you going to see in Guernsey?  
10 A. There is a massive support team in Guernsey, I could be  
11 going to have some time with Michael Ryan, I could be  
12 going and sitting down with the legal team, I could be  
13 going and sitting down with the accountants team,  
14 I could be meeting with Susannah, I could be meeting  
15 with the Hearcare team. I don't go to Guernsey --  
16 I don't think I've ever had or been invited to  
17 a specific meeting with Derek in Guernsey. I might  
18 knock on his door while I am there and say hi, but  
19 actually no. I went to Guernsey maybe three or four  
20 times a year.  
21 Q. Mr Rowe, listen to the question. Look at your email.  
22 A. Yeah.  
23 Q. You are telling your boss, he has passed to you  
24 Mr Dyson's direction to develop a plan, "get under the  
25 skin, develop a plan, and put her back in her box or



1 exit".  
 2 He has then told Mr Dyson:  
 3 "This is on my agenda, Mike Rowe is establishing  
 4 what's happening?"  
 5 A. Yeah.  
 6 Q. That's passed to you, and you answer:  
 7 "Have only just returned, but in Guernsey on Tuesday  
 8 so will find out what is going on."  
 9 You were obviously planning to have discussions  
 10 about what was going on in relation to this matter in  
 11 Guernsey with somebody?  
 12 A. No, well, it could have been --  
 13 Q. You say no. Okay.  
 14 A. Mr Stuart, give me a chance to answer, please. Out of  
 15 the people who would be involved in this, yes, Derek was  
 16 in Guernsey, but so is Michael Ryan in the business  
 17 transfer team, so I would have caught up with Michael.  
 18 So is Susannah Hart who is still liaising with the store  
 19 who may well have an insight into the issue. I was  
 20 going to Guernsey anyway. I was going to be in Guernsey  
 21 for another reason. So it's innocuous. I was not going  
 22 to Guernsey to see Mr Dyson. I don't even know if  
 23 Mr Dyson was available on 1 January.  
 24 Q. 10th.  
 25 A. 10th, sorry.

1 Q. 10 January. You don't mention any of these emails in  
 2 your witness statement, Mr Rowe?  
 3 A. No, when I made the witness statement I wasn't aware of  
 4 them, I completely forgot about --  
 5 Q. Okay. What you do mention is 746, 13 January; yes?  
 6 A. Yeah.  
 7 Q. 13 January seems to be the Thursday?  
 8 A. Mm.  
 9 Q. Looking at your email.  
 10 A. Yeah.  
 11 Q. So you have been to Guernsey on the 11th?  
 12 A. Yeah.  
 13 Q. You have had your discussions with whoever you have had  
 14 them with?  
 15 A. One of the things I would have done in Guernsey, yes.  
 16 Q. Now, I am just looking at your witness statement, you  
 17 see. Who was it that you had discussions about  
 18 Bognor Regis, Dr Poulsen, et cetera, with in Guernsey on  
 19 11 January 2011?  
 20 A. I don't recollect, it could have been Michael Ryan, who  
 21 sits on the floor in Guernsey, and also Susannah Hart,  
 22 it could be either of them.  
 23 Q. Did you understand that Susannah Hart was involved in  
 24 this, then?  
 25 A. Susannah Hart was the retail communications manager for

1 the region. They tend to be the kind of pivotal point,  
 2 so they kind of are closer to the ground and closer to  
 3 the stores than myself. So actually to understand  
 4 what's going on, quite often they can give me some  
 5 insight.  
 6 Q. I suggest to you that you went into Mr Dyson's open  
 7 door, as he described it to us when he gave his  
 8 evidence?  
 9 A. Mm.  
 10 Q. And you had a word with him about it?  
 11 A. I don't -- I don't recollect having a word with him  
 12 about it, no. Would I have knocked on his door, if he  
 13 was in? I might well have done, because that's  
 14 a courteous thing to do, but there was no recollection  
 15 from my mind, I can't remember going in and talking to  
 16 him specifically about Bognor -- I don't even know if  
 17 Mr Dyson was in Guernsey on that date.  
 18 Q. So you are just unable to tell us who you spoke to, let  
 19 alone what you spoke about?  
 20 A. I did not go to Guernsey specifically for this case.  
 21 I was going to Guernsey anyway, to do other stuff,  
 22 I don't know what, but I go over to Guernsey three or  
 23 four times a year to maintain relationships and speak to  
 24 people. While I was over there, I would have caught up  
 25 with people like Susannah. I think I've copied in my

1 team -- I would have spoken to Susannah, I would have  
 2 spoken to Riyaz, Steve Glass is from the team in  
 3 Guernsey, from business transfer. So I would have  
 4 spoken to people, absolutely, but I didn't go to  
 5 Guernsey specifically to do this, and I can't  
 6 recollect --  
 7 Q. I don't know why you keep saying this, I am not asking  
 8 you: did you go to Guernsey specifically to do this.  
 9 I am asking you: these conversations that you had with  
 10 people in this office in Guernsey, undocumented,  
 11 unnoted, unmentioned in your witness statement, I am  
 12 asking you: do you have a recollection of them?  
 13 A. I do not have a recollection of them --  
 14 Q. Fine.  
 15 A. They weren't official meetings, they were snatched  
 16 conversations.  
 17 Q. And you don't even recall whether you spoke to  
 18 Derek Dyson or not?  
 19 A. Absolutely not, I am not even aware if Derek was there.  
 20 Q. You may have spoken to him if he was there?  
 21 A. If he was there, I would have said "hi" because he is  
 22 the big boss --  
 23 Q. Yes. And you would no doubt have caught up about this  
 24 issue which was on his agenda now?  
 25 A. I certainly don't recollect it. I really --

1 Q. But you would have done, wouldn't you, if he was there?  
 2 A. I would have recollected it, if I had, but as I said to  
 3 you, I can't even remember if he was in Guernsey at the  
 4 time.  
 5 Q. The next document that you say you are involved in is  
 6 752 and 754. They write to you, don't they, 31 January?  
 7 A. 754?  
 8 Q. 752 and 754, there are two letters sent on the same day.  
 9 A. Yeah.  
 10 Q. Do you see that?  
 11 A. Yeah.  
 12 Q. I think Mr Raines' evidence was that he might have  
 13 actually opened these letters, I am not sure, you don't  
 14 know?  
 15 A. I can't remember, because it's addressed to  
 16 Optical Superstores Limited, it would have gone to the  
 17 offices in Skelmersdale, my Lord, and I think  
 18 Linda Weaver, the PA to Mark, would have opened the post  
 19 and probably said "Mark, you need to look at these". So  
 20 I can't comment on that. All I know is that they were  
 21 forwarded on to me immediately afterwards.  
 22 Q. Were you kept in the loop about what Guernsey were up to  
 23 in relation to Dr Poulsen at this time, late  
 24 January/February 2011?  
 25 A. At the point of receiving these letters, when you say

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1 kept -- only in the sense of the business transfer piece  
 2 from Michael Ryan.  
 3 Q. Okay, so that document where we see Bognor and the few  
 4 little entries, that sort of standard business transfer  
 5 update document, is that what you are talking about?  
 6 A. Yeah, and as mentioned before, there is emails and  
 7 conversations that I had with Michael Ryan about the  
 8 business transfer bit, I was aware of all of that up  
 9 until this point when I received these two letters.  
 10 Q. You are not aware, for example, 756, the very next  
 11 document, that in February there would be allegations of  
 12 serious financial irregularities at Bognor Regis, your  
 13 store? You weren't aware of that?  
 14 A. The point at which I became aware of them being a kind  
 15 of desktop background checks being done, actually came  
 16 after I received the two letters, the one detailing the  
 17 share sale and the other one threatening me with  
 18 personally with legal action if I didn't take myself out  
 19 of the process. Just before I went and held the meeting  
 20 with the partners around the share sale, Mark, as he  
 21 would do in any event, mentioned to me that there was  
 22 a loss prevention background check going on, but that  
 23 was it, that was the sum of it.  
 24 Q. A loss prevention background check, that is the sort of  
 25 desktop check?

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1 A. Yes, that's the desktop check.  
 2 Q. I am talking about allegations of serious financial  
 3 irregularities --  
 4 A. No.  
 5 Q. -- and suspending the directors, do you see at 756?  
 6 A. Yes, I see the letter, but I wasn't aware, and the only  
 7 time I was made aware from Mark was around the desktop  
 8 exercise, which is standard, that's what Mark would do,  
 9 just to make sure I'm kept in the loop.  
 10 Q. So 760-2, 8 February, there is a meeting between  
 11 Mr Raines and Mr Dyson, it might be by telephone, it  
 12 might be a meeting, we are not sure. "Bognor Regis Next  
 13 Steps". As a result of that, you were not given any  
 14 directions by your boss, Mr Raines, about what was to go  
 15 on here?  
 16 A. What, to go on the agenda?  
 17 Q. No, what was to go on with Bognor Regis.  
 18 A. The only instructions I had with Bognor Regis, having  
 19 had the threatening letter from the partners trying to  
 20 get me to stand down because of their perceived view of  
 21 my opinion of them, was from Mark Raines to say "Mike,  
 22 we want you to continue, we want you to go down, hold  
 23 the meeting and give us your feedback as RDC leading the  
 24 store". As is the process with every single business  
 25 transfer, I was asked to go and conduct that meeting.

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1 That was the extent of my involvement.  
 2 At this point, I was pretty shocked. I was shocked  
 3 at receiving a letter personally threatening me with  
 4 legal action if I escalated this to my bosses, accusing  
 5 me of being -- of having a grudge, "bad blood" is  
 6 I think the words used. Again, I've never experienced  
 7 it in my life. So I was shocked by that. I gained  
 8 reassurance from Mark, from Michael Ryan that  
 9 actually -- and I think I was copied into a letter where  
 10 Derek had looked at the issues, and I was asked to go  
 11 down and do my job, which is to meet with the partners  
 12 and look through their business proposal, which I did,  
 13 and then submit a report to them.  
 14 Q. Okay.  
 15 A. That was --  
 16 Q. Who were you dealing with at this point, then? This is  
 17 first half of February, before you go to the meeting.  
 18 A. I would deal with Mark --  
 19 Q. Mark Raines?  
 20 A. Mark Raines and Michael Ryan.  
 21 Q. And Derek Dyson?  
 22 A. No, I very rarely got involved with Derek --  
 23 Q. What's he doing --  
 24 A. -- because I went through Mark.  
 25 Q. 776, what's he doing writing your letters for you, then?

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1 Amending, I'd better be careful what I say, amending  
 2 your letters for you? 776?  
 3 A. Right, if I can just take a second. Which letter is  
 4 this relating to?  
 5 Q. This is the letter to Helle and Barry.  
 6 A. Mm. Okay, well --  
 7 Q. Why is Derek Dyson, the board director of SOG,  
 8 amending -- I don't mean this critically -- your lowly  
 9 Mr Rowe's letters?  
 10 A. Thank you. If you take back to this situation, my Lord,  
 11 I have been sent a really threatening letter,  
 12 threatening legal action if I escalated it. I wasn't  
 13 going to be bullied and intimidated, so I actually  
 14 straightaway sent it through to Michael Ryan and had  
 15 a conversation with Mark Raines. So those letters then  
 16 were escalated up, and Derek would have taken interest  
 17 in that and understood what was going on. So  
 18 Michael Ryan, yeah, actually drafted a letter on my  
 19 behalf to the partners and at some stage Michael would  
 20 have probably put it across Derek's desk, and I believe  
 21 that Derek had maybe changed a few bits and pieces and  
 22 that was it, and then the letter came to me. So from my  
 23 perspective, this was my top team, my directors and my  
 24 leaders of the business, showing some moral support for  
 25 me, which at the time I really, really did appreciate,

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1 because to have as a lowly RDC partners send you  
 2 a letter threatening legal action if I even talked to my  
 3 line managers, frankly out of all my communication  
 4 I think that beats it all.  
 5 Q. You were very comfortable at that stage, surely,  
 6 Mr Rowe, that your team and all the people at SOG were  
 7 all working together on this against Dr Poulsen?  
 8 A. Absolutely not. I told you, I've told you that my  
 9 involvement in this was at the business transfer stage.  
 10 I actually had to get clear in my mind about this  
 11 threatening letter, I managed to get clear in my mind  
 12 that I needed to go and do my job and prove to the  
 13 partners I could do my job, which I did, I went down,  
 14 met him, held the meeting, and I actually with  
 15 reservations, measurements and concerns suggested that  
 16 we could make their structure work. You know, I don't  
 17 know how more even-handed I can be.  
 18 Q. Well, what you could do is you could tell them that they  
 19 are under investigation for fraud and financial  
 20 irregularity?  
 21 A. But at this stage I don't know that. At this stage all  
 22 I know is it's a desktop exercise going on, there is  
 23 research going on. I didn't know any, and I wasn't  
 24 privy to any of the conversations from Derek and Mark.  
 25 I don't know what was going on at that level.

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1 Q. I am looking at your witness statement, we are on page  
 2 105, paragraph 61. There is the letter, do you see?  
 3 A. Mm.  
 4 Q. When do you say you were told about the desktop  
 5 research?  
 6 A. I think it was just before -- and it will have been  
 7 a snatched conversation from Mark because that's how we  
 8 communicated, just a telephone call. But I think from  
 9 recollection it was just before I met with the partners,  
 10 was it in March?  
 11 Q. It was in March.  
 12 A. Yeah.  
 13 Q. Do you see paragraph 62, you had the meeting on  
 14 17 March?  
 15 A. Sorry, yeah.  
 16 Q. You don't mention anywhere in this statement that  
 17 Mr Raines made you aware at that stage?  
 18 A. I just didn't put it in, sorry, but yeah, I was aware.  
 19 Q. Okay. So you can put away E3, we are now into E4.  
 20 A. Yeah.  
 21 Q. You have your meeting?  
 22 A. Yeah.  
 23 Q. And 869 you provide the feedback of the meeting?  
 24 A. Yeah.  
 25 Q. And Mr Ismail gets involved?

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1 A. Yeah.  
 2 Q. And he can't see any problem, any fatal problem with the  
 3 concept of Mr Yogaratnam?  
 4 A. Mm.  
 5 Q. And you too don't see any, in this particular unusual  
 6 store where there is difficulties getting options and  
 7 that sort of thing, you don't see it as a fatal problem  
 8 that Mr Yogaratnam is an optical person?  
 9 A. I think if you went back and you looked at my  
 10 conclusion, I think that sets it -- I am very  
 11 comfortable with my conclusion.  
 12 Q. Exactly.  
 13 A. If I read that through, my recommendation is that:  
 14 "I recommend that we allow the proposal to be  
 15 approved, however that we put in performance measures  
 16 related to service metrics and the condition of the  
 17 sale."  
 18 That's -- if we ever deviate from our standard model  
 19 in any way, we would aim to put in some measurements,  
 20 and even some elements into the contract that say: if  
 21 performance dips by a certain level, then we would put  
 22 a different structure in place.  
 23 Q. Yes.  
 24 A. Another condition of the sale was that we put a pre-reg  
 25 in, and that was a pretty, I think, sold business

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1 argument to develop options for the future.  
 2 If possible, I would also recommend following up  
 3 Helle's stated decision to return to a medical practice  
 4 and obtain some clear timelines. Now, my view, and the  
 5 reason why I recommended that we could manage this  
 6 situation was that actually this was only going to be  
 7 for a limited time and that in the future we would be  
 8 able to revert back to the optom and retailer structure.  
 9 So I think I kind of laid it out pretty clearly as to my  
 10 recommendation.  
 11 Q. Yes. If you look in X, tabs 4 and 5, do you remember we  
 12 were there earlier, you have it there already?  
 13 A. Yeah.  
 14 Q. We have your preparatory notes for your meeting back in  
 15 2008?  
 16 A. Yeah.  
 17 Q. I don't see your preparatory notes for the meeting in  
 18 2011.  
 19 A. I didn't do any.  
 20 Q. You didn't do any notes?  
 21 A. Well, I might well have done, but these, as I said came  
 22 to light, and in the statement when I was moving house  
 23 along with the bundle of invoices, I certainly don't  
 24 have any preparatory minutes, meetings, I don't keep  
 25 a daybook in the way that Mark works, I am not that

1 structured. So I might well have done, but I don't have  
 2 them, it just is a bit of luck that along with the  
 3 invoices, I retained my preparatory minutes. So I can't  
 4 tell you whether I did or I didn't, Mr Stuart, but  
 5 I assume I would have done.  
 6 Q. Your note at 859 to 862, at the beginning of E4, this is  
 7 yours, isn't it?  
 8 A. 859?  
 9 Q. To 862.  
 10 A. Sorry. (Pause). 859 to?  
 11 Q. 862.  
 12 A. No, that's a document that I hadn't seen before coming  
 13 to trial, that I think was prepared by the part -- by  
 14 Helle, Barry and Godfrey.  
 15 Q. Quite right.  
 16 A. It's not my recollection of events.  
 17 Q. Did you make any notes of the meeting?  
 18 A. I took Riyaz along, and the page that Riyaz took, which  
 19 isn't exactly I would say satisfactory, but those are  
 20 the notes of the meeting that he took and it is 864 --  
 21 Q. Those are his -- 864 are his notes?  
 22 A. Yeah.  
 23 Q. Did you take any notes of the meeting?  
 24 A. No. Well, I would have done, actually, because I would  
 25 have used those notes to prepare my report.

1 Q. That's what I was going to ask you about, 866 to 868 is  
 2 your report?  
 3 A. Yeah.  
 4 Q. Which contains information?  
 5 A. Yeah.  
 6 Q. Including, I am looking at 867, under the heading  
 7 "Retail delivery since September", I think that must be  
 8 2009, you have made a typo there?  
 9 A. Yes.  
 10 Q. "When Barry Weller was involved in a grievance process  
 11 involving another member of staff, he has taken  
 12 a backwards step and has not been fulfilling the retail  
 13 director role. This is the key driver for Barry's  
 14 decision to sell the shareholding. Godfrey (practice  
 15 manager) and Sarah Scott (ex Oxford JVP) are accountable  
 16 for retail delivery in store and have continued to  
 17 deliver the strong service measures and store  
 18 standards."  
 19 A. Mm.  
 20 Q. That's your report?  
 21 A. I wrote the report, yes. Can I talk you through how  
 22 I structured it, because I think it does bear light on  
 23 my comments, my Lord? This report, what I was asked to  
 24 do is go down and listen to the business plan and  
 25 proposal from the partners.

1 So I start with background, that's my view on the  
 2 store. I then detail their proposal, which is the  
 3 quality of the new partner, the optom/locum  
 4 availability, cost reduction retail delivery,  
 5 succession. I then put my view on that proposal and  
 6 recommendations.  
 7 That comment came directly from the partners in  
 8 store. I would not have known that because I did not  
 9 actually -- I hadn't actually been in store to see it.  
 10 So this central section here was actually their comments  
 11 and proposal that I am commenting on.  
 12 Q. The first paragraph on 866, that's your own views?  
 13 A. Background?  
 14 Q. Yes.  
 15 A. Yeah, that was a bit of a summary as to the business'  
 16 current state.  
 17 Q. So your views were: the store delivers consistently  
 18 strong customer metrics, has a reputation for very  
 19 strong store standards?  
 20 A. Absolutely.  
 21 Q. And is the top store in the region for conversion?  
 22 A. Yeah.  
 23 Q. Right.  
 24 A. I do go on to comment on the fact that:  
 25 "However, the store has struggled to grow sales in

1 the last year and the operating profit is at  
2 6.6 per cent."  
3 Our average for the region would have been around  
4 11 per cent at that time, and it was affected by high  
5 staff costs. I also openly comment that the partners  
6 are disconnected from the RST in the region and are not  
7 delivering key business initiatives. The IWDU is the  
8 illuminated window display units. A meeting was held on  
9 17th March to discuss the proposal. So I try to give  
10 an even-handed brief to -- it would have been Mark,  
11 Derek and Mike Ryan, who would have been reading it.  
12 Q. 867, then, under the heading "RDC Views on Proposal",  
13 these are all your views, not somebody else's?  
14 A. Yeah, those are my views.  
15 Q. Second paragraph:  
16 "The practice has a very strong record of customer  
17 service delivery and store standards. The practice was  
18 the only store in the region to pass the lab quality  
19 checks in every round in 2010"  
20 A. That's a matter of fact, yes, absolutely. My Lord,  
21 I think if anything demonstrates that I am playing  
22 everything as I do with Specsavers and partners with  
23 a straight bat, this report says it all.  
24 Q. You are playing it by the book here, aren't you?  
25 A. I am being honest.

1 Q. Yes.  
2 A. If there was a conspiracy, you know, my view with this  
3 is very simple, I am going to tell it as it is. The  
4 store standards in the store were good. The retail  
5 standards were good, the service delivery as a matter of  
6 fact, it was good. My frustration over the whole  
7 relationship piece was, you know, I am trying to build  
8 a team on Meridian West, the partners are working  
9 together, the guys in Bognor Regis didn't want to  
10 engage. I would have loved them to share what's going  
11 on in their conversion, how did they deliver customer  
12 service? That's how I work. That was my frustration.  
13 Q. Are you aware of the importance of Godfrey in the store  
14 at this stage, to the business I should say, at that  
15 stage? You were aware of the importance of his role?  
16 A. I was told, I was told in the meeting of his role and  
17 his importance. I can't say, Mr Stuart, because I had  
18 not been in store to see him. It was mentioned in  
19 Jason -- his role was mentioned in Jason's grievance  
20 process in 2009, and so I knew he was instore, I knew he  
21 was supporting the joint venture partners. How  
22 important his role, as I say, this is what I was told at  
23 the meeting by the partners.  
24 Q. So 869, you have given your view?  
25 A. Yeah.

1 Q. On a business by the book assessment?  
2 A. Yeah.  
3 Q. There is not a major problem with having Mr Yogaratnam  
4 buy the shares?  
5 A. I've laid it out, my recommendations, as to its  
6 conditions.  
7 Q. Absolutely. Mr Ismail tends to agree with you on  
8 page 869?  
9 A. Yes, I have copied Jack, Jack was my new boss in the  
10 sense I now reported in to Jack, who then reported in to  
11 Mark.  
12 Q. But then Mr Raines has to talk to Mr Ismail, nothing in  
13 writing from him. 870 to you, Mr Ryan --  
14 A. Yeah.  
15 Q. -- says:  
16 "No, it's all too cosy."  
17 A. That's what -- he says he's not sold on the proposal.  
18 Q. Yes, and it's all too cosy?  
19 A. That's the words he's used, yeah.  
20 Q. 872 --  
21 A. My Lord, can I just make clear, it's not unusual that,  
22 as an RDC, you are trying to find solutions, and  
23 work-arounds, it's not unusual and wasn't unusual for  
24 Mike to come back and challenge maybe a proposal that  
25 I put. The proposal is not a decision, it's my view.

1 Q. You know that the claimants' case is that there is  
2 a sort of alternative agenda going on here, on the face  
3 of your paperwork, you are having a meeting with them  
4 and they are giving you their justification and you are  
5 agreeing with them; do you see?  
6 A. Yeah.  
7 Q. But it actually turns out that behind the scenes another  
8 agenda is running, which you are not involved in?  
9 A. I played everything in my role as straight as I could,  
10 in the face of that threatening letter, so I did my job,  
11 I have recommended -- now, the only piece that I would  
12 point you to is actually when this -- my Lord, this  
13 happened quite often. When I would feed back to  
14 Mike Ryan my views on a proposal, we would have  
15 a conversation, he would go away -- and actually it was  
16 how I used to get business transfers through. Mike would  
17 go away and think about what I said. He might well say,  
18 "No, I am not keen on that right now", but he would come  
19 back with a counterproposal, and that's what he did, he  
20 came back and said "What about a third, a third,  
21 a third?" And that was the counterproposal that may  
22 well have made this work.  
23 Q. That's on the face of the record, if you like, that's  
24 what he said?  
25 A. That's the conversation, Mr Stuart, that took place.

1 Q. I would suggest to you that the conversation that took  
 2 place with you, either it is undocumented, we have no  
 3 notes of it or mention of any conversation in your  
 4 witness statement, but I suggest to you that  
 5 a conversation was had with you either by Mr Raines,  
 6 your boss, or perhaps by Mr Ryan, or even Mr Dyson, who  
 7 can say which of those top three it was, but that you  
 8 were reminded or told perhaps for the first time of the  
 9 alternative agenda which was that they were going to  
 10 start raising an issue about financial irregularity and  
 11 put some pressure on Helle Poulsen to exit in the way  
 12 that, under their terms.

13 Do you recall it being reminded to you at this very  
 14 point, where you have put in your recommendation, that  
 15 somebody from above said to you "hold on, Mike, you need  
 16 to know, off the record, that this is what we are going  
 17 to be doing"?

18 A. My Lord, absolutely not. I did know before the meeting  
 19 that there was the research going on, but as you can see  
 20 from further email trails we are progressing a share  
 21 sale of 30/30/30 as a possibility that then gets  
 22 overtaken by events. I am working at my level to do  
 23 what I was asked to do, in the face of the challenges  
 24 that I was facing with the relationship, to deliver  
 25 this, and that's what I was focusing on. I had no

1 involvement with Mr Dyson, you know, this just wasn't  
 2 something that I was involved in.  
 3 Q. The desktop research that you were told -- would that be  
 4 just the standard desktop research that takes place  
 5 when, as part of due diligence, there is a share sale?  
 6 A. I believe so, yeah.  
 7 Q. That's all you knew about it?  
 8 A. Yeah --  
 9 Q. That it was just a sort of standard due diligence type  
 10 desktop research --  
 11 A. No, what I was told by Mark, just prior to this, over  
 12 the phone, cached(?) phone call, was, as you would  
 13 automatically as part of business transfers look at the  
 14 account and make sure that there is nothing there that's  
 15 going to get in the way, but Mark took it further and  
 16 said to me that "there seems to be a possible issue and  
 17 there is a desktop piece of work that Mel is doing  
 18 behind the scenes, you don't need to concern yourself,  
 19 Mike, just go down, job the job, deliver your judgment  
 20 and we continue as is until we know what the results  
 21 are". And that's the way I was working. That's  
 22 a standard operating practice as an RDC to be made aware  
 23 of.

24 Q. Does he tell you there is a problem, then?  
 25 A. He tells me -- well, the fact that Mel is looking at it,

1 because he told me that Mel was looking at it, says to  
 2 me: there might be, because actually the standard  
 3 business transfer team would look at the accounts, so  
 4 I am not part of that team, but my understanding is that  
 5 they would look cursory at the accounts and Mel would  
 6 only get involved if there is an issue or possible  
 7 issue, and he was doing his kind of background research  
 8 to it. That's all I was aware of.

9 Q. It's not secret or anything, is it?

10 A. It's secret amongst the people that need to know,  
 11 because --

12 Q. Why?

13 A. Why? Because, you know, we are a big organisation. You  
 14 do not want too many people in a team to understand and  
 15 know that there may be an issue in the background,  
 16 because if that gets out then to the broader  
 17 partnership, this is a matter of confidentiality for the  
 18 partners as well as for us. Until there is an issue and  
 19 we know there is an issue, then, you know, we need to  
 20 keep that under wraps. That's just, I think, good  
 21 manners --

22 Q. I am going to suggest to you, Mr Rowe, that that's not  
 23 quite right. If you look at page 875, it's a run of  
 24 emails, and I know you don't read anything in a string  
 25 of emails, so I am being a little unfair on you to

1 suggest that you might have read the email at page 876,  
 2 email to you, forwarding on to you an email from  
 3 Jez de Carteret?

4 A. Mm.

5 Q. Which no doubt you didn't read, but you did write on  
 6 875:

7 "This is something we will be leaving to Mel!"

8 A. Well --

9 Q. Not: this is something that will be picked up in the due  
 10 diligence process, or something like that, "This is  
 11 something we will be leaving to Mel! However, you  
 12 cannot talk to anyone about this."

13 A. Firstly, can I correct you on something? Mr Riyaz's  
 14 email to me says "For your information, Bognor Regis  
 15 payslips", that would stimulate me to look at the next  
 16 email. That is not what Mark said in that previous one.  
 17 "for your information" means: I am forwarding you  
 18 something, I looked at it. It's to do with something  
 19 that I know Mel is involved in. Therefore I say to him,  
 20 "This is something we will be leaving to Mel", I know  
 21 Mel is looking at it, I just mentioned I knew Mel was  
 22 looking at it --

23 Q. Exclamation mark?

24 A. However -- yeah, I must have some sort of nervous tic  
 25 that puts exclamation marks after --

1 Q. And it only happens to put in an exclamation mark when  
2 it happens to be about something which in this case  
3 turns out to be suspicious; isn't that an incredible  
4 coincidence, Mr Rowe?  
5 A. I can't comment on that.  
6 Q. Why didn't you --  
7 A. Mr Riyaz puts an exclamation mark after "of course  
8 I understand". I don't know. It's a habit.  
9 Q. It's not a habit that you actually use in any emails  
10 where you are not doing something suspicious and  
11 secretive. Let's take page 870, if you want to see  
12 an example of the email that you are having at the time,  
13 playing by the book, above board. At the bottom of 870  
14 you send an email to Mr Ryan, the words are at 871:  
15 "Hi, please find attached the feedback from my  
16 meeting held on 17 March and my recommendations."  
17 There is no exclamation mark there, you seem to have  
18 lost the tic:  
19 "The meeting was very polite and there were no  
20 points of conflict."  
21 Even there you could have put in an exclamation mark  
22 if you don't use it only for your suspicious ones?  
23 A. Mr Stuart, I can't comment on when I used it, I am not  
24 consciously thinking of when I put an exclamation mark.  
25 The only thing in that one particular point you are

1 raising is that I am communicating now with senior  
2 people in the organisation, maybe I switch into a more  
3 professional mindset in structuring that email. This is  
4 an email to Riyaz, and all I am saying here is, because  
5 he is saying to me "there will be some more payslips",  
6 I am saying, "I know Mel is looking at it, we will leave  
7 it to Mel". He comes back and says, "I understand" and  
8 I think I mentioned to him that we need to keep this  
9 quiet and the reason is that Riyaz is in stores every  
10 day, I don't want this news getting out in any way,  
11 shape or form until we understand what the position is  
12 with Mel.  
13 Q. I suggest to you that the reason you are having this  
14 email correspondence at all with Mr Rajan is that you  
15 are, at this point, now, aware of the agenda of those  
16 people, that is Mr Dyson, Mr Raines, which is to use --  
17 and Mr McAlindon -- an allegation of financial  
18 irregularity to put pressure on Dr Poulsen?  
19 A. Absolutely not, the agenda is dealing with the business  
20 transfer piece. I would probably have sent 10, 15  
21 emails that day to Riyaz on various subjects. I am just  
22 responding to a point where he says "I have some more  
23 payslips". "Hey, great, Mel is dealing with it, send it  
24 off and don't talk to anybody about it because it's  
25 confidential".

1 Q. Why are they involving you at all in this part of it, at  
2 this particular moment?  
3 A. Riyaz reports to me, this is Riyaz saying to his line  
4 manager, Mike Rowe, from -- I presume Jez has sent, and  
5 Jez had previously been sending Riyaz information, Riyaz  
6 is sending it to me, that's why.  
7 Q. He has not previously been sending in information?  
8 A. Yes, he has.  
9 Q. How many occasions has he previously sent you  
10 information on?  
11 A. In 2010, in 2010 when the emails, when the issue was  
12 raised initially, Mr Stuart, about the amount of money  
13 that Godfrey was being paid, the initial communications  
14 I believe -- I may be wrong, but from memory -- came  
15 throughly Riyaz and Riyaz flagged it through me and then  
16 it started going through Susannah as well.  
17 So Jez and Riyaz had a relationship, they knew each  
18 other. I knew that because every time Riyaz went to  
19 Guernsey he bought Jez a bottle of vodka in Duty Free.  
20 They had a good relationship, that was the way they  
21 communicated. Riyaz quite rightly is saying to his line  
22 manager, "I've got these, Mike, what do you want me to  
23 do?" "I know Mel is actually conducting the desktop  
24 exercise, let's leave it to him, but it's confidential",  
25 and that is the extent of that email.

1 Q. Okay, I am looking at your witness statement, as I see  
2 it apart from receiving the letter from Dr Poulsen in  
3 April complaining about the length of time it had taken,  
4 paragraph 67 of your witness statement, do you see that?  
5 A. Yeah.  
6 Q. And responding or being party to Mr Ryan's responses  
7 about that, you don't say you play any part whatsoever  
8 at this stage?  
9 A. From my memory up until when I left the region and they  
10 recruited more RDCs so I went from three to two, I had  
11 no involvement in it. I think events kind of overtook  
12 the business transfer process. I think -- you know,  
13 obviously I would have been aware because Mr Raines  
14 would have told me what was going on, but this was  
15 a period when I was moving off to focus on Anglia and  
16 Meridian East.  
17 Q. I see, so you moved away from this area at this point?  
18 A. Yeah, we recruited more RDCs so we could give better  
19 coverage for the partners.  
20 MR STUART: My Lord, those are all my questions for Mr Rowe.  
21 MR POTTS: My Lord, I have no questions.  
22 MR JUSTICE HILDYARD: Does your Lordship have any questions  
23 for Mr Rowe?  
24 Questioned by MR JUSTICE HILDYARD  
25 MR JUSTICE HILDYARD: Mr Rowe, you referred occasionally to

1 Mr Raines' orderly habit of a daybook.  
 2 A. Yes.  
 3 MR JUSTICE HILDYARD: Was that a feature of the way he  
 4 organised himself throughout?  
 5 A. Yes, that was pretty much Mark's preferred way of  
 6 working, was to do that with actions --  
 7 MR JUSTICE HILDYARD: Characteristic?  
 8 A. You would always see him with his book, yeah.  
 9 MR JUSTICE HILDYARD: Throughout the time?  
 10 A. In my face-to-face meetings with Mark, but because Mark  
 11 is in Skelmersdale, unless I requested a face-to-face  
 12 meeting or met up with Mark similarly to the  
 13 communications meetings where he is delivering  
 14 presentations to partners, majority of our communication  
 15 was through phone, and possibly email. But when I met,  
 16 was in meetings with Mark, yes, he would keep the blue  
 17 books and make the notes.  
 18 MR JUSTICE HILDYARD: I can't remember how long you were  
 19 working together with him, but throughout the time and  
 20 continuing?  
 21 A. Mark recruited me, trained me, and I continued to report  
 22 in to Mark, even in my new role.  
 23 MR JUSTICE HILDYARD: And it's always been that way, has it?  
 24 A. Jack Ismail came in for a period of time --  
 25 MR JUSTICE HILDYARD: Sorry, his particular characteristic

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1 of --  
 2 A. His working habit, yeah, certainly in recent times.  
 3 Certainly around this time, yes. So I would say so,  
 4 I started in March 2007, so ...  
 5 MR JUSTICE HILDYARD: Yes. And nowadays?  
 6 A. I still see Mark with a blue book, yeah.  
 7 MR JUSTICE HILDYARD: Thank you. Well, I think that that's  
 8 that. Thank you very much, Mr Rowe.  
 9 THE WITNESS: Thank you very much.  
 10 (The witness withdrew)  
 11 Discussion re Ms Mancini's third witness statement  
 12 MR STUART: My Lord, it's Ms Mancini next.  
 13 MR POTTS: My Lord, before Ms Mancini, there is an issue  
 14 apparently in relation to the third witness statement.  
 15 Your Lordship, I mentioned this yesterday, a corrected  
 16 witness statement in relation to the wrong document.  
 17 That statement was provided to my friend yesterday  
 18 lunchtime. I was not aware that there was a problem,  
 19 but I am told this morning by him that he wants me to  
 20 make a formal application. I think it's opposed. If  
 21 I need to make an application, I will. I think it would  
 22 be rather more sensible for us to crack on. But I make  
 23 that application, if my friend wants me to, in relation  
 24 to that evidence. It corrects the wrong document being  
 25 exhibited, I understand. I don't know if your Lordship

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1 has seen it, it's a two-page statement.  
 2 MR JUSTICE HILDYARD: This is the one at page ...  
 3 MR POTTS: I think it's been objected to going into the  
 4 bundle.  
 5 MR JUSTICE HILDYARD: Oh, dear, I am sorry, I have obviously  
 6 overlooked it. Will you hand it up to me, please?  
 7 MR POTTS: My Lord, yes, I think it was provided yesterday  
 8 (Handed)  
 9 MR JUSTICE HILDYARD: Oh yes.  
 10 MR POTTS: It was provided yesterday lunchtime. I mentioned  
 11 it in court, your Lordship picked up on the point.  
 12 MR JUSTICE HILDYARD: Yes. Hold on one second, I am just  
 13 reminding myself of it. Everything has gone so quickly  
 14 these days.  
 15 (Pause)  
 16 Yes, you did mention this right at the end of  
 17 yesterday, I wasn't conscious of having received a third  
 18 witness statement; I am now.  
 19 MR POTTS: My Lord, as I say, it was provided to my friends  
 20 yesterday lunchtime. The explanation is given in  
 21 paragraph 4 that Ms Mancini was in court where it was  
 22 pointed out that the document was the -- the creation of  
 23 the document, so it was the incorrect document, and she  
 24 has sought to correct that by exhibiting the one to  
 25 which she refers, or intended to refer.

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1 MR JUSTICE HILDYARD: Right.  
 2 MR STUART: Which hasn't been disclosed yet.  
 3 MR POTTS: With that, yes, it was obviously the exhibit.  
 4 MR JUSTICE HILDYARD: Sorry, I am losing you again.  
 5 MR POTTS: The document she refers to is exhibited.  
 6 MR JUSTICE HILDYARD: This is the SEO from --  
 7 MR POTTS: Yes, because in fact I understand this is the one  
 8 approved in 2006 by the Revenue which is what she refers  
 9 to in her statement.  
 10 MR JUSTICE HILDYARD: Right, but it's objected to?  
 11 MR STUART: My Lord, the position is this: your Lordship  
 12 will recall how we had a good hour and a half spent with  
 13 Mr Potts objecting to --  
 14 MR JUSTICE HILDYARD: This isn't a tit-for-tat point, is it?  
 15 MR STUART: It's not a tit-for-tat point, my Lord. Mr Potts  
 16 required us to explain where documents that were  
 17 suddenly produced, in our case about five days before  
 18 the witness was eventually giving evidence, where they  
 19 came from, why they hadn't been disclosed before, and  
 20 because there might be some prejudice for Mr Potts  
 21 having to deal with it on only two or three days'  
 22 notice, our witness had to be put back and the whole  
 23 trial was derailed somewhat.  
 24 MR JUSTICE HILDYARD: Right. Are you prejudiced?  
 25 MR STUART: My Lord, I may be, in that I don't know whether

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1 there has been adequate disclosure yet. This document  
 2 that is attached, as I understand it, from the fact that  
 3 it doesn't have a little page numbering in the bottom  
 4 right-hand corner, has never been disclosed before. It  
 5 is now said that these are the very guidelines which my  
 6 client is said to have breached which forms the basis,  
 7 it is said, of the investigation report allegation of  
 8 breach of the SEO. Now, we have already had all of my  
 9 client's witness evidence about that, so my client  
 10 didn't have this document available to him when they  
 11 were cross-examined, this is Mr Weller and Mr Vos,  
 12 effectively were mainly cross-examined about this issue.  
 13 I didn't have it available to me when I cross-examined  
 14 Mr Dyson and Mr McAlindon, who made a great fuss about  
 15 breach of this SEO.

16 So, my Lord, I think it's inevitable that I have  
 17 been prejudiced by the late disclosure of this document,  
 18 and it's that that I am really objecting to. I don't  
 19 mind a witness telling us upfront that what's in her  
 20 statement is wrong, because I have pointed that out to  
 21 her in cross-examination of a previous witness. Of  
 22 course I am not objecting to that. I am objecting to  
 23 the manner in which this is being done, with no  
 24 explanation provided, yet again, for yet another piece  
 25 of drip fed important disclosure which I consider is

1 inappropriate conduct of the proceedings within this  
 2 trial procedure. That is my complaint, my Lord, and all  
 3 I merely say is that if I need to -- if some prejudice  
 4 arises from the fact that I wasn't shown this document  
 5 before yesterday afternoon, on Day 14 of a trial, when  
 6 it is so plainly a relevant document, then I reserve the  
 7 right to raise, yes, some very serious issues about  
 8 prejudice of the conduct of this trial in due course.  
 9 MR JUSTICE HILDYARD: Mr Potts, this is not an SEP  
 10 guideline, this is an SEO guideline; is that right?  
 11 MR POTTS: My Lord, that was explained in her statement,  
 12 my Lord, I think, that in the second statement, tab 7.  
 13 MR JUSTICE HILDYARD: Yes.  
 14 MR POTTS: She refers to the fact that originally said that  
 15 SEO opticians, and then it was expanded to encompass lab  
 16 technicians. The point is the same, my Lord, it hasn't  
 17 changed, the point which was made, the point in issue  
 18 which is the same, is that the system was not for use  
 19 for handymen. Nothing is new about that. It is  
 20 consistent, that's the point. This is not a new point.  
 21 All she has done is exhibited -- there is a realisation,  
 22 as she explains, that it's the earlier version of the  
 23 document. The position is exactly the same, that it's  
 24 not for use for handymen. This isn't a new point,  
 25 unlike the allegation of shredding and suchlike which

1 was being made in my friend's statement, which was --  
 2 MR JUSTICE HILDYARD: I accept that, this is a correction,  
 3 I will keep under review the question of any prejudice  
 4 which materialises. I think the point really made is  
 5 not really about the witness statement, it's why has  
 6 a document which is the foundation for the allegation  
 7 that was some breach of internal procedures not been  
 8 disclosed before now?

9 MR POTTS: My Lord, in terms of the prejudice point,  
 10 obviously Ms Mancini, if there is an issue which needs  
 11 to be revisited, is coming back in January as well.

12 MR JUSTICE HILDYARD: Yes. All other witnesses will have to  
 13 be made available as a cure to prejudice if it's  
 14 necessary and proportionate.

15 MR POTTS: Yes, indeed.

16 MR JUSTICE HILDYARD: Yes. What's the reason for this not  
 17 having emerged blinking into the daylight until now?

18 MR POTTS: My Lord, paragraph 4 is the explanation.

19 MR JUSTICE HILDYARD: Let me have a look at that.

20 MR POTTS: She says that obviously she accepts that the  
 21 incorrect document was exhibited to her first statement  
 22 and she wishes to correct it.

23 MR JUSTICE HILDYARD: Oh, that I can quite see. The  
 24 question is why the document, correct or incorrect but  
 25 plainly disclosable, was not disclosed?

1 MR POTTS: My Lord, can I take instructions? I will need to  
 2 take instructions in relation to that question.

3 MR JUSTICE HILDYARD: Yes, of course, you can do that over  
 4 the short adjournment, unless, Mr Stuart, you are --

5 MR STUART: That's fine, my Lord, I am keen to press on.

6 MR JUSTICE HILDYARD: Yes, let us press on.

7 Mr Potts, the feeling that one has as to the  
 8 liability of disclosure, notwithstanding the witness  
 9 statement, keeps on being tested. It is very  
 10 unsatisfactory.

11 MR POTTS: My Lord, your Lordship has the witness  
 12 statements, and your Lordship has seen the extent of  
 13 this exercise, my Lord. Disclosure --

14 MR JUSTICE HILDYARD: Disclosure has been difficult and you  
 15 say they could have been more proactive. But then just  
 16 as you supply me with your version of Alka-Seltzer in  
 17 the form of a witness statement, something comes  
 18 rumbling in again and it's -- yes, take instructions and  
 19 let me know.

20 MR POTTS: My Lord, I will.

21 Could I call Ms Mancini? My Lord, I don't know, can  
 22 we put this statement, the exhibit in the back of X,  
 23 my Lord?

24 MR JUSTICE HILDYARD: Yes, wherever you would like me to put  
 25 it.

1 MR POTTS: Tab 10?  
 2 MR JUSTICE HILDYARD: I think we have gone on to 11 now.  
 3 Thank you very much. I am not sure that 10 was numbered  
 4 but it can be in due course, I am sure.  
 5 MR POTTS: And my Lord, in the witness statement in the back  
 6 of volume C and we will get tabs for your Lordship.  
 7 MR JUSTICE HILDYARD: Yes, thank you very much.  
 8 MS JACQUELINE MANCINI (sworn)  
 9 MR JUSTICE HILDYARD: Do sit down, help yourself to water.  
 10 Thank you for waiting, you have been very patient.  
 11 Examination-in-chief by MR POTTS  
 12 MR POTTS: Do you have volume C, Ms Mancini?  
 13 A. I do.  
 14 Q. Take your time. Could you turn, please, to tab 7?  
 15 A. Yes.  
 16 Q. At pages 114 through to 127, do you see that?  
 17 A. Yes.  
 18 Q. Is that your first witness statement in this matter?  
 19 A. It is.  
 20 Q. At page 127, is that your signature?  
 21 A. It is.  
 22 Q. Are the contents of that statement true?  
 23 A. Subject to paragraph 46 that we have been discussing,  
 24 yes.  
 25 Q. Could you turn through, please, to the following tab,

1 tab 8?  
 2 A. Yes.  
 3 Q. From page 129 through to 133 --  
 4 A. Yes.  
 5 Q. -- is that your second statement?  
 6 A. Yes.  
 7 Q. At page 132, is that your signature?  
 8 A. It is.  
 9 Q. Do you confirm that the contents of that statement are  
 10 true?  
 11 A. Yes.  
 12 Q. If you could turn through to the back of the bundle,  
 13 I think hopefully paginated at pages 164 to 168 --  
 14 A. I have pages 170 --  
 15 Q. Sorry, wrong -- sorry, 170 to 171.  
 16 A. Yeah.  
 17 Q. Is that your third witness statement?  
 18 A. Yes, it is.  
 19 Q. At the bottom of page 171, is that your signature?  
 20 A. It is.  
 21 Q. Are the contents of that statement true?  
 22 A. They are.  
 23 MR POTTS: Thank you. Could you please try and keep your  
 24 voice up a little?  
 25 THE WITNESS: Yes, sorry.

1 Cross-examination by MR STUART  
 2 MR STUART: Ms Mancini, I am not going to ask you about  
 3 chunks of this witness statement which appear to have no  
 4 direct relevance to the case involving Bognor. I have  
 5 read your witness statement in the Uckfield, which is  
 6 the next trial, where the issue of expenses forms the  
 7 major element of the dispute.  
 8 A. Yes.  
 9 Q. And I note that it is in, for large chunks, very similar  
 10 format?  
 11 A. Yes.  
 12 Q. It may be, therefore, that it is because you were  
 13 preparing two statements and that they were to cover  
 14 both matters that we have large chunks of your statement  
 15 in here all about the detail of the expenses system, the  
 16 detail of it.  
 17 A. Okay.  
 18 Q. Is that understood?  
 19 A. Yes.  
 20 Q. So I am going to stick to what I understand to be the  
 21 issues in this case. Paragraph 6, you confirm, last  
 22 line, as far as you are concerned you don't recall your  
 23 team, the finance team, having any difficulties with  
 24 Dr Poulsen and Mr Weller, the claimants?  
 25 A. That's right. My team are the employment services team,

1 but yes.  
 2 Q. You are part of the reward and policy team?  
 3 A. That's right.  
 4 Q. Which is part of the financial side of things?  
 5 A. Yes.  
 6 Q. Paragraph 13, then, we can flick forward to. Do you see  
 7 paragraph 13?  
 8 A. I do.  
 9 Q. You say:  
 10 "In my role I advise partners about employment  
 11 status."  
 12 A. Yes.  
 13 Q. There has been for a number of years now issues in  
 14 relation to self-employed people versus employees versus  
 15 workers --  
 16 A. Yes.  
 17 Q. -- versus all sorts of employment issue, aren't there,  
 18 relating to the question of people who are truly  
 19 self-employed versus actually employees?  
 20 A. Yes.  
 21 Q. Therefore coming under the Employment Rights Act --  
 22 A. Indeed.  
 23 Q. -- having the ability to sue for unfair dismissal and  
 24 those sorts of issues?  
 25 A. Yes.

1 Q. So there is obviously an issue between people who are  
2 self-employed and people who actually, although they  
3 purport to be self-employed, they are actually  
4 employees?  
5 A. There is a potential issue if you get the status wrong,  
6 yes.  
7 Q. Okay. As I say, from paragraph 14 onwards you are  
8 talking about the expenses policy in great detail, but  
9 I note that chunk is almost identical to the chunk in  
10 your other witness statement, so I am not going to go to  
11 that.  
12 But 22, 23, 24, this is where you actually then  
13 start to deal with this case. I think the point you are  
14 making is at 24, you are saying:  
15 "In any event, and for the avoidance of doubt, my  
16 team was not in any sense conscious of the engagement of  
17 Mr Vos as a consultant to Bognor or Bognor Visionplus  
18 before June 2009."  
19 A. That's correct.  
20 Q. Just for the purposes of "my team" here, are you  
21 sweeping into that the accounts department?  
22 A. No, I am not. That's my employment services team.  
23 Q. Okay. So your team is dealing with?  
24 A. Payroll.  
25 Q. Payroll?

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1 A. Yes.  
2 Q. Yes, but are you dealing with the issue of whether  
3 Mr Vos is working for the business?  
4 A. No.  
5 Q. No. Are you in any sense linked to the team that deals  
6 with Mr Vos' invoices?  
7 A. Only if they should raise a query as a result of  
8 an invoice coming through.  
9 Q. Okay, so E1, can you be passed E1, page 154-1 through to  
10 154, there is about 45 pages of these invoices which  
11 have "W Godfrey Vos fasa Accountancy Services" all over  
12 it?  
13 A. Yes.  
14 Q. We know that these are the copies that actually went to  
15 SOG.  
16 A. Yes.  
17 Q. They have little stamps on them. As I understand what  
18 you are saying, that is nothing to do with your  
19 department?  
20 A. No.  
21 Q. That's the accounts department?  
22 A. Indeed.  
23 Q. Okay. So when you say at 24 your team was not in any  
24 sense conscious of the engagement of Mr Vos as  
25 a consultant, you are not saying that SOG was unaware of

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1 Mr Vos --  
2 A. No, I am not.  
3 Q. -- being engaged as a consultant --  
4 A. No, I am not.  
5 Q. -- and providing monthly invoices for his services, as  
6 we must call it, because he is not an employee?  
7 A. Indeed.  
8 Q. Good, okay, that's fine then. Whilst you are in E1,  
9 emails with -- let's take 239.  
10 A. Yes.  
11 Q. Is that nothing to do with your team either?  
12 A. No, that's not.  
13 Q. It seems to be part of treasury?  
14 A. That's correct.  
15 Q. So that would have absolutely no bearing on your team?  
16 A. No.  
17 Q. So to the extent to which the store was emailing into  
18 treasury and asking treasury to deal with Godfrey on his  
19 direct line, do you see in the penultimate line?  
20 A. Yes.  
21 Q. You knew nothing at all about this?  
22 A. No.  
23 Q. That's fine, I can skip on then. We can skip all the  
24 way on, I think, to 38 under the heading "Invoices".  
25 A. Yes.

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1 Q. Do you have that, page 122?  
2 A. I do.  
3 Q. You talk about the green bag system for invoices?  
4 A. Yes.  
5 Q. Then you turn to the SEP system?  
6 A. Yes.  
7 Q. This really is what your evidence, in this case, is  
8 particularly about, isn't it?  
9 A. Yes.  
10 Q. 43, you say:  
11 "There is a further online system which is relevant  
12 in this case known as the SEP (Self-Employed Persons)  
13 system."  
14 A. Yes.  
15 Q. So it's not Self-Employed Professionals, it's  
16 Self-Employed Persons, isn't it?  
17 A. It is.  
18 Q. That I think came in, in 2011, the SEP system; would you  
19 agree with that? I'll take you to the document you  
20 refer to, page 1480 in E6. Do you see that? That's  
21 called the SEP invoice process document?  
22 A. Yes.  
23 Q. It seems to go on, from the internal numbering, to  
24 page 1526?  
25 A. Yes.

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1 Q. That's the last -- it's a 47-page document?  
 2 A. It is.  
 3 Q. I read that the first version of this document is  
 4 created in August 2011?  
 5 A. Yes. Can I -- sorry, may I explain that? This SEP  
 6 system, there was a formatting change to it, which is  
 7 this document is explaining the process after that  
 8 formatting change of the system. The system has been in  
 9 place for as long as I can remember. The actual system,  
 10 the processing system of processing Self-Employed  
 11 Persons' invoices has been in place for many, many  
 12 years. This version of it, this formatting version of  
 13 it, was in place from 2011 and that's why this document  
 14 was created.  
 15 Q. But is it from 2011 that it is called the SEP system?  
 16 A. I believe --  
 17 Q. Is it prior to that it is something else?  
 18 A. No, I believe it changed to the SEP system I believe in  
 19 2010.  
 20 Q. Okay, right, we will come back to that, then. So 2010  
 21 it's called the SEP system. 1480 we see that, do you  
 22 see under the heading "Task detail" --  
 23 A. Yes.  
 24 Q. -- "SEPs are Self-Employed Professionals"?  
 25 A. Yes.

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1 Q. "Optoms, audiologists, dispensers and lab technicians"?  
 2 A. Yes.  
 3 Q. This document is generated in August 2011?  
 4 A. Yes.  
 5 Q. So that's after the claimants have been kicked out of  
 6 their store, so they couldn't possibly have seen this  
 7 document at the material times, could they?  
 8 A. No.  
 9 Q. So this whole process, this specific process as set out  
 10 here, rather than the one we are going to come to with  
 11 your latest document as disclosed --  
 12 A. Yes.  
 13 Q. -- this specific process about lab technicians, they  
 14 couldn't have seen that in 2009, could they?  
 15 A. This formal of it, this version of it, no, but the  
 16 previous version they did see.  
 17 Q. So to the extent that there are differences in the  
 18 terminology, the nomenclature, things like lab  
 19 technician being expressly stated to be one of the only  
 20 four categories of person --  
 21 A. Yes.  
 22 Q. -- that you can use this system for --  
 23 A. Yes.  
 24 Q. -- if that precise advice, saying you can only use it  
 25 for these four categories of professional, doesn't

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1 appear in the 2005, 2006, 2009 version that would be  
 2 a difference, wouldn't it?  
 3 A. It would, but I believe it is -- it does exist in the  
 4 previous versions.  
 5 MR STUART: Okay, let's have a look. My Lord, I see the  
 6 time.  
 7 MR JUSTICE HILDYARD: Tell me what your timing is.  
 8 MR STUART: My Lord, I think I will be -- I know I say this  
 9 every time -- approximately 30 minutes more with this  
 10 witness.  
 11 MR JUSTICE HILDYARD: Then we will have a break and resume  
 12 at 2 o'clock.  
 13 MR STUART: Thank you, my Lord.  
 14 (1.02 pm)  
 15 (The short adjournment)  
 16 (2.00 pm)  
 17 Discussion re disclosure matter  
 18 MR POTTS: My Lord, I don't know if you want me to deal with  
 19 the disclosure point now or later?  
 20 MR JUSTICE HILDYARD: Unless it impacts on the  
 21 cross-examination, later. But, Mr Stuart, does it?  
 22 MR STUART: I am sure it won't.  
 23 MR JUSTICE HILDYARD: You haven't discussed it?  
 24 MR STUART: No, I don't know what it is about.  
 25 MR POTTS: Well, your Lordship asked me to explain about the

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1 document.  
 2 MR STUART: If it's about the explanation for why these  
 3 documents --  
 4 MR JUSTICE HILDYARD: On you go, Mr Potts. Sorry about  
 5 this, Ms Mancini.  
 6 MR POTTS: Does your Lordship have volume A, just to see the  
 7 context of this?  
 8 MR JUSTICE HILDYARD: Yes.  
 9 MR POTTS: Which is the disclosure order. It's A, tab 7.  
 10 MR JUSTICE HILDYARD: Yes.  
 11 MR POTTS: At page 138. This is the order of Master Bowles  
 12 for disclosure which follows on from discussions between  
 13 the parties. There is a schedule to the order which  
 14 deals with disclosure obligations.  
 15 MR JUSTICE HILDYARD: Yes.  
 16 MR POTTS: We are dealing here with the electronic  
 17 disclosure, so it's paragraph 11, which is at 143.  
 18 MR JUSTICE HILDYARD: Yes.  
 19 MR POTTS: Now, the 2005 document was on IQ, which is now  
 20 obsolete. That was put out of service in early 2012.  
 21 But an electronic copy, Word copy document, which  
 22 your Lordship sees is the one which was on the  
 23 T drive -- if your Lordship looks at 11.3. 11.1 is  
 24 email, 11.3 is in terms of Word, and 11.3(c) deals with  
 25 the T drives.

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1 MR JUSTICE HILDYARD: Yes.  
 2 MR POTTS: It's not within (e), for completeness, that deals  
 3 with the invoices for the system.  
 4 The method of search is dealt with in paragraph 14,  
 5 and that was to use keywords which are set out at  
 6 paragraph 12. That keyword search did not produce  
 7 either of the two documents.  
 8 MR JUSTICE HILDYARD: Okay.  
 9 MR POTTS: So the manual search thereafter would have been  
 10 in relation to those -- subset as identified. That's  
 11 why it didn't come up on e-disclosure.  
 12 The 2012 document, which was incorrectly exhibited,  
 13 was given on disclosure, that was obtained from the  
 14 accounts payable department in Nottingham by way of  
 15 manual search beyond the scope of this, in relation to  
 16 how the SEP invoices from processed by the accounts  
 17 payable department, and that document was therefore  
 18 obtained and disclosed in February by way of standard  
 19 disclosure with our list.  
 20 In the preparation of the witness statement,  
 21 Ms Mancini refers in paragraph 46 to the SEP system  
 22 guidelines and the disclosed document was obtained and  
 23 exhibited to the statement. The error was at that stage  
 24 not to spot that the date block indicated a 2012  
 25 document.

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1 MR JUSTICE HILDYARD: Yes.  
 2 MR POTTS: Once the point was noticed in court, my Lord, on  
 3 Day 12 -- indeed by Ms Mancini, I think she says -- the  
 4 error was corrected quickly by further manual enquiries  
 5 and searches to obtain the correct 2005 document.  
 6 My Lord, the point in terms of the matter, the  
 7 fundamental principles were the same, all the way  
 8 through this, and that was what I was questioning,  
 9 asking questions about, namely it was for use for  
 10 opticians and later lab technicians.  
 11 If your Lordship sees at 443 for example --  
 12 MR STUART: I think my learned friend may be straying into  
 13 answering questions that I haven't yet asked the  
 14 witness.  
 15 MR JUSTICE HILDYARD: I think that's right, isn't it?  
 16 MR POTTS: I was not intending to.  
 17 MR JUSTICE HILDYARD: Your point is that it didn't emerge on  
 18 electronic because the interrogation of the electronic  
 19 equipment did not reveal it.  
 20 MR POTTS: Yes.  
 21 MR JUSTICE HILDYARD: That the exhibit in fact appended was  
 22 thought to be, but turned out not to be, the right  
 23 document. And when that was spotted in court by  
 24 Ms Mancini, a further manual search was undertaken which  
 25 revealed was now relied on.

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1 MR POTTS: Correct. The first document, my Lord, as  
 2 obtained on a manual search. I don't know if that is  
 3 the explanation, the issue that your Lordship was asking  
 4 about.  
 5 MR STUART: My Lord, I hear the explanation, it's wholly  
 6 unacceptable. We are talking about a hard copy.  
 7 Your Lordship will see defendants' disclosure  
 8 obligations, my learned friend took you to, paragraph 9  
 9 of the order, 142:  
 10 "The defendant will search for documents within the  
 11 date range August 2005 to February 2012."  
 12 So we were looking for documents in the range 2005  
 13 to 2012, and in paragraph 10:  
 14 "In respect of hard copy documents, the first  
 15 defendant will search for documents in the following  
 16 locations, and that would be at their premises in  
 17 Bognor Regis, at their premises in Guernsey, at the  
 18 accounts department in Nottingham, et cetera".  
 19 I do not accept that no copy of this document  
 20 existed -- my Lord, we are talking about disclosure  
 21 obligations here, even if it's now being said "Oh, well,  
 22 it existed but when we looked around for it we couldn't  
 23 find a copy of it", that's not adequate disclosure.  
 24 I don't accept that this document was not part of the  
 25 documents that were actually around in 2011. I suspect

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1 some of it -- some of it -- was. It's just -- simply to  
 2 say, "Well, I am telling you why it didn't come up on  
 3 an electronic search" simply doesn't answer the point  
 4 that the document should have been disclosed before and  
 5 it hasn't been.  
 6 MR POTTS: I am not sure I understand my friend's point.  
 7 This was a document obtained on e-disclosure. The  
 8 earlier document, it's an obsolete, if you like,  
 9 document which has been overtaken. The idea that  
 10 it's -- the document which was obtained was the  
 11 e-disclosure document, no hard copy document was  
 12 obtained.  
 13 MR JUSTICE HILDYARD: What you now put forward was obtained  
 14 on --  
 15 MR POTTS: Both documents are ... well. (Pause).  
 16 MR STUART: My Lord, I want to make clear I do not accept  
 17 that the document at E6/1480 headed "The SEP Invoice  
 18 Process" which has with it a whole load of -- well, it  
 19 has 47 pages about invoicing and --  
 20 MR POTTS: Which one are we looking at?  
 21 MR STUART: The one that you say is the only document that  
 22 was discovered.  
 23 MR POTTS: The late, the 2012 document?  
 24 MR STUART: The 2012 document called "SEP Invoice Process"  
 25 which is 46 pages all about invoicing, and it doesn't

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1 have anything about contracts of employment,  
 2 self-employed contracts, et cetera. I do not accept  
 3 that this document which has just been disclosed to me  
 4 "Specsavers Optical Group Limited Guidelines for the Use  
 5 of Self-Employed Opticians Revision Dec 2005", I simply  
 6 do not accept that the one is a later version of the  
 7 other and that by finding the 2012 one, they thought to  
 8 themselves, "Oh, that's the document we were referring  
 9 to". It's a totally different document.  
 10 MR JUSTICE HILDYARD: I think what they say is that the new  
 11 document, if I can call it that, though it is the older  
 12 document, did not emerge on e-disclosure.  
 13 MR STUART: Yes.  
 14 MR POTTS: Yes.  
 15 MR JUSTICE HILDYARD: And did not emerge on paper disclosure  
 16 presumably because it was out of date.  
 17 MR POTTS: Yes, my Lord, yes.  
 18 MR JUSTICE HILDYARD: And now that it's emerged that the  
 19 wrong reference was made by Ms Mancini to a document  
 20 which couldn't have been in the cold light of day the  
 21 right document, because you can't imagine a document in  
 22 2012 in 2006, a further e...  
 23 MR STUART: Oh, a further e-disclosure inspection has come  
 24 up with this document. (indicated)  
 25 MR POTTS: Exactly, my Lord, sorry, yes, it was a manual

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1 search of the T drive. It's e-disclosure, it's  
 2 an e-document.  
 3 MR JUSTICE HILDYARD: I think I need your explanation and  
 4 assurance that the new older document emerged pursuant  
 5 to a re-interrogation of the T drive, and what we now  
 6 receive is a printed out version of the newly  
 7 interrogated T drive, and not the sudden discovery in  
 8 the paper documents --  
 9 MR POTTS: That is what it is, my Lord.  
 10 MR JUSTICE HILDYARD: That seems to be the key.  
 11 MR POTTS: My Lord, I can give that assurance. I can do  
 12 that.  
 13 MR STUART: I hear it, my Lord.  
 14 MR JUSTICE HILDYARD: Well, that's what we are told, you  
 15 know.  
 16 MR STUART: I cannot take it any further than that, if  
 17 that's what we are told.  
 18 MR JUSTICE HILDYARD: Sorry, Ms Mancini. It's interesting,  
 19 isn't it!  
 20 Cross-examination by MR STUART (continued)  
 21 MR STUART: Ms Mancini, this is where we left off, then:  
 22 this document that you have just found, I think has it  
 23 been put in tab 12 of X?  
 24 A. Yes, I have it.  
 25 Q. This comes about from paragraph 46 of your statement?

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1 A. Yes.  
 2 Q. You start with the words, at 44:  
 3 "It is important to note that such system", I think  
 4 it's the invoicing system you are referring to?  
 5 A. I think "the system" is a word that describes the whole  
 6 system to do with self-employed people within the  
 7 business. So part of the information, the guidance, the  
 8 support that we provide to the stores is relating around  
 9 how to determine status of a worker and part of it is  
 10 enabling them to understand how the process of the SEP  
 11 payments are made. So that is "the system".  
 12 Q. Anyway, 45:  
 13 "When JVPs set up individuals on the SEP system ..."  
 14 This would have been called the SEO system in 2009?  
 15 A. Yes.  
 16 Q. "... the JVPs must indicate whether the person in an  
 17 ophthalmic optician, dispensing optician or laboratory  
 18 technician."  
 19 Not in 2009?  
 20 A. I believe in 2010 it was changed so that there were  
 21 specific boxes for those categories, yes.  
 22 Q. Exactly, exactly.  
 23 So then 46, this is what we are going to have to  
 24 correct rather a lot, aren't we:  
 25 "SOG issues guidelines on the use of the SEP

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1 system~..."  
 2 A. Yes.  
 3 Q. "... which were last updated and approved by HMRC in  
 4 2006 ..."  
 5 A. That's right.  
 6 Q. "... and which are at pages 77 to 123."  
 7 So the answer to that is: no, we can ignore the  
 8 document at page E6/1480, the 47 page document from  
 9 2011, it has no bearing on matters?  
 10 A. No, the document that I am referring to there that was  
 11 last updated and approved by HMRC in 2006 is this new  
 12 document that's just been exhibited.  
 13 Q. So that's the one that says "Specsavers Optical Group  
 14 Limited Guidelines for the use of Self Employed  
 15 Opticians?"  
 16 A. Yes, yes.  
 17 Q. Whereas the E6/1480 document -- do you want to just have  
 18 that available to you?  
 19 A. Yes, I have.  
 20 Q. You will see that the E6/1480 document, page 1481 is the  
 21 example of the invoice?  
 22 A. Yes.  
 23 Q. 1482, the SEP process guide?  
 24 A. Yes.  
 25 Q. Starts with the words:

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1 "Take a pile of the oldest invoices ..."  
2 A. Yes.  
3 Q. It's all about invoicing?  
4 A. Yes.  
5 Q. Page 1483 is all about which lines on a computer  
6 spreadsheet you would start filling in in relation to  
7 the invoicing?  
8 A. Yes.  
9 Q. That goes right through, then, as to how you insert  
10 information into each field --  
11 A. Yes.  
12 Q. -- that goes on and on and on; do you see?  
13 A. Yes.  
14 Q. And then that actually goes on to the end of the  
15 document?  
16 A. It does.  
17 Q. So even the end of the document is simply about the  
18 invoicing; yes?  
19 A. Yes.  
20 Q. So in 2011 you issued some guidance in relation to the  
21 invoicing for SEPs?  
22 A. Yes.  
23 Q. Now let's go back to what was available in 2006.  
24 A. Yes.  
25 Q. And thus 2009. Page 1 is a cover sheet. Page 2 is

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1 an index.  
2 A. Yeah.  
3 Q. I am using the internal pagination of the documents.  
4 A. Yes, yeah.  
5 Q. Page 3 is an introduction:  
6 "In deciding whether you require SEOs", that is  
7 self-employed opticians?  
8 A. Yes.  
9 Q. "... or employed optometrists, dispensers ..."  
10 Do you see?  
11 A. Yes.  
12 Q. "... you will need to make a commercial decision based  
13 on your operational needs, availability and cost, the  
14 cost of employeds, the risk of the issue."  
15 A. Yes.  
16 Q. We will come in a moment to what "the issue" is, it's  
17 the one I mentioned to you earlier, it's the issue about  
18 whether a person is employed or self-employed?  
19 A. Indeed.  
20 Q. "This is likely to be a decision best made in connection  
21 with the regional manpower plan. For further guidance  
22 and information on this issue, please contact this  
23 person."  
24 This is the guidance booklet in relation to  
25 SEO/00/DO contracts; do you see?

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1 A. Yes.  
2 Q. Then we have an overview, page 4:  
3 "When using the services of an SEO, you must guard  
4 against the self-employed worker being classed as  
5 an employee."  
6 A. Indeed.  
7 Q. And I am sure some excellent guidance is given as to how  
8 best to avoid finding that somebody that you have  
9 called -- that the store company has called  
10 a self-employed person actually is able to say "I am  
11 an employee"?  
12 A. Indeed.  
13 Q. That goes on for the whole of that page. Then there is  
14 a "Frequently Asked Questions" section at page 5.  
15 A. Yes.  
16 Q. "What does SEO stand for?  
17 "Self-Employed Optician. This may be either an  
18 optometrist or a dispenser."  
19 No mention at this point of technicians of any sort?  
20 A. No.  
21 Q. Just the two categories at this point.  
22 "What is the difference between a self-employed  
23 worker and an employee?"  
24 You give a nice little summary of the law on that.  
25 "If an SEO submits invoices and pays his own tax and

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1 NIC, does that not mean that he/she is definitely  
2 self-employed?  
3 "No, whilst the Inland Revenue may accept that this  
4 person is self-employed, an Employment Tribunal may have  
5 a different opinion. The Tribunal will base their  
6 decision on", et cetera, et cetera.  
7 A. Indeed.  
8 Q. It's all about this issue of employment status from the  
9 Employment Rights Act perspective.  
10 "Can SEOs work for different Specsavers?  
11 "Yes.  
12 "Can an SEO work for the same practice on a regular  
13 basis, eg three days per week?"  
14 Answer:  
15 "Yes."  
16 So there is no problem about an SEO working three  
17 days a week and putting in an SEO invoice for three  
18 regular days per week?  
19 A. That's right.  
20 Q. Accommodation, travel, et cetera.  
21 "Why is the full name of the SEO required on the  
22 invoice?  
23 "The invoice is an official accounting document that  
24 requests payments for goods or services provided."  
25 Do you see?

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1 A. Yes.  
 2 Q. We need the address, we need the GOC number. That's in  
 3 relation to people who have those numbers, we heard from  
 4 a previous witness. I think at the bottom is a section,  
 5 do you see:  
 6 "The contract for services refers to qualified  
 7 opticians."  
 8 A. Yes.  
 9 Q. What this is referring to, you may recall, Ms Mancini,  
 10 is that as part of this pack is sent out, at internal  
 11 page 9, is actually an example contract for  
 12 self-employed services?  
 13 A. That's right, yes.  
 14 Q. So that can then obviously be used by the store company?  
 15 A. Yes.  
 16 Q. To try and get it clear that this is a self-employed  
 17 person?  
 18 A. That's right.  
 19 Q. That goes on from page 9 through to the end, 18.  
 20 A. Yes.  
 21 Q. That is the entirety, from 9 onwards in the pack, is  
 22 simply a copy of the contract of services, and there is  
 23 obviously one for an optometrist, one for a dispenser,  
 24 but it's a contract. The point about it is --  
 25 A. Indeed, yes.

1 21

1 Q. -- you are providing them with a copy of the contract  
 2 for services?  
 3 A. Yes.  
 4 Q. Back to the question at the bottom of 6:  
 5 "The contract for services refers to qualified  
 6 opticians. What happens if I want to use non-qualified  
 7 persons such as optical assistants or lab technicians?"  
 8 That's a "such as", it's not a "limited to".  
 9 A. Mm.  
 10 Q. So non-qualified persons?  
 11 A. Yes.  
 12 Q. Now, the answer might be:  
 13 "You cannot use the SEO system for anybody other  
 14 than the two categories that we presently use it for,  
 15 namely optometrists and dispensers."  
 16 But it doesn't say that, it says, page 7:  
 17 "This will depend upon the exact circumstances of  
 18 each arrangement. In reality, it is very unlikely that  
 19 these people will be classed as self-employed. The  
 20 practical arrangements of how they work tend to point  
 21 more to employment relationship. It is possible in  
 22 theory, however, that a highly skilled lab technician  
 23 who moves regularly between different optical retailers  
 24 and who can command a reasonable fee for the specialised  
 25 services that he or she can provide, could set

1 22

1 themselves up to be self-employed. In these  
 2 circumstances, the dispensing optician's contract could  
 3 be adjusted without too much difficulty to cover the  
 4 provision of laboratory services."  
 5 So at that stage a work-around is suggested, even  
 6 though the person doesn't fit into the precise  
 7 categories that are covered at present in the SEO  
 8 system --  
 9 A. Specifically to a lab technician, yes, because --  
 10 Q. No, no, that's just an example, isn't it?  
 11 A. Yes, but in our guidance and in the industry that we are  
 12 working in, it refers to the lab technician there  
 13 because we recognise the specialised services that a lab  
 14 technician could provide.  
 15 Q. That's what you are saying now?  
 16 A. Yes.  
 17 Q. But in this particular case, we had a self-employed  
 18 person, he was a self-employed person, he had been  
 19 conducting his business --  
 20 A. Excuse me, who are you referring to?  
 21 Q. Mr Ferguson.  
 22 A. Thank you.  
 23 Q. Mr Ferguson, he was a self-employed person. He had been  
 24 putting in invoices, he's got a business, he's got his  
 25 own insurance, he's got his own premises?

1 23

1 A. Yes.  
 2 Q. Do you remember?  
 3 A. Yes.  
 4 Q. He is a builder come plumber come --  
 5 A. He is a handyman.  
 6 Q. He has his own headed paper, he has everything.  
 7 A. Yeah.  
 8 Q. He has his own National Insurance and tax as  
 9 a self-employed person. He is all set up already for  
 10 the tax purposes, he has been running as a self-employed  
 11 person for many years before this?  
 12 A. Yes.  
 13 Q. He is a self-employed person but he is not  
 14 a self-employed qualified optician, which is all that  
 15 comes within your guidance at present, in the SEO  
 16 version; do you remember?  
 17 A. Yes.  
 18 Q. Anyway, that's the guidance at 7, isn't it? That's the  
 19 guidance, that's the answer to that FAQ question?  
 20 A. It does.  
 21 Q. If I can go over the page --  
 22 A. Can I take you to a further --  
 23 MR JUSTICE HILDYARD: What about the next sentence, though?  
 24 A. Yes, can I take you to that sentence there that says:  
 25 "However, you must not treat optical assistants,

1 24



1 administrators or any other workers self-employed ..."  
 2 MR STUART: As self-employed.  
 3 A. "... no matter how short the period of time is."  
 4 Q. But the issue there is simply whether or not they are to  
 5 be treat as self-employed?  
 6 A. And --  
 7 Q. It's not about use of the system, is it?  
 8 A. I think the inference of this document, this is all in  
 9 conjunction with an awful lot of other material that is  
 10 sent out to the partners on the intranet, in the news  
 11 bulletins, if you see further in my evidence with the  
 12 prediscovered documents there, there is an awful lot more  
 13 material --  
 14 Q. I am not making myself clear. Ms Mancini, Mr Ferguson  
 15 was not an optical assistant. "Optical assistant" is  
 16 a job description in the Specsavers Group, isn't it?  
 17 A. It is, yes.  
 18 Q. We know what optical assistants are: they are people who  
 19 serve customers, aren't they?  
 20 A. Yes.  
 21 Q. In the shop, they are shop assistants, aren't they?  
 22 A. Yes, they are.  
 23 Q. And obviously you are not, the shop owners are told, to  
 24 treat those people as self-employed people because they  
 25 are obviously not self-employed, they are absolutely

1 25

1 employees, aren't they?  
 2 A. They are indeed.  
 3 Q. Similarly Administrators?  
 4 A. Yes.  
 5 Q. With a capital A. That's a role within the whole  
 6 scheme, isn't it?  
 7 A. Yes.  
 8 Q. Those people, because their work is plainly that of  
 9 an employee, they work on the company systems, they are  
 10 instructed by the boss, they get a salary each week,  
 11 et cetera, et cetera. So those people are not to be  
 12 treated as self-employed workers. But it doesn't say  
 13 that anybody else can't be, does it? It doesn't say  
 14 that --  
 15 A. It doesn't specifically say, give a number of people  
 16 that can't be, but the inference of this document and  
 17 all the guidance that we give is that other people  
 18 should not be processed through our SEP system as --  
 19 Q. SEO.  
 20 A. SEO at that time, I beg your pardon, SEP now -- system  
 21 as self-employed. It's using the system that we have.  
 22 Q. Why? Where does it say that? Where does it say that if  
 23 the person's job description doesn't quite fit, what  
 24 happens if I want to use non-qualified persons, that is  
 25 people who don't have a GOC qualification, okay, they

1 26

1 are not optometrists or dispensers, what if I want to  
 2 use a non-qualified person; do you see?  
 3 A. Yes.  
 4 Q. Such as, and then it gives examples. The answer is  
 5 "this will depend". The answer is not "no", the answer  
 6 is "this will depend", and what will it depend on? It  
 7 will depend on whether the person is genuinely  
 8 self-employed or actually employed?  
 9 A. Yes.  
 10 Q. You would agree?  
 11 A. I go back to my point, I think the inference of the  
 12 documentation and all the material that we give is that  
 13 it relates to optical workers within the store going  
 14 through the SEO system.  
 15 Q. You say "all the information that we give". As at this  
 16 point, you have agreed with me that this is all the  
 17 information, because after that, all we have then is  
 18 a copy of the example of an SEO invoice, page 8?  
 19 A. We give --  
 20 Q. And then the contract for services, there is no other  
 21 guidance, is there?  
 22 A. Yes, there is, we give plenty of guidance in the form of  
 23 tax news bulletins, other articles on the intranet,  
 24 mailings. These two documents here, this one here and  
 25 then the later document, are specific documents relating

1 27

1 to that particular time, and they are the fundamental  
 2 guidelines that are given for a process. But we  
 3 regularly update, clarify, refine information and, as  
 4 you can see, some further evidence of that is on  
 5 pages 442 onwards, as to what we then provide out to the  
 6 partners in support, ongoing support, to them.  
 7 Q. Are you saying that your written guidance that you then  
 8 give supplemental to this document, because this is all  
 9 there is in this document, I have taken you through  
 10 every word --  
 11 A. Yes.  
 12 Q. -- that your supplemental guidance makes it clear that  
 13 mere technicians, by which I mean not lab technicians,  
 14 not qualified, not people who are specifically lab  
 15 technicians --  
 16 A. We only have one understanding of the word "technician"  
 17 in our industry and our business, a technician would be  
 18 a lab technician, we don't have any other reason to use  
 19 the word "technician" in our business.  
 20 Q. What if somebody else has another reason to use it,  
 21 then?  
 22 A. It's not common within the optical industry to have any  
 23 other version or definition of the word "technician".  
 24 It would be a lab technician.  
 25 Q. What if I choose to use it, I choose to use the word

1 28

1 "technician" of somebody?  
 2 A. Sorry, may I have an example of where somebody would  
 3 choose to use the word "technician" other than for  
 4 a laboratory technician?  
 5 Q. Because the person might not just do his work within the  
 6 laboratory?  
 7 A. There wouldn't be -- from my experience of being in  
 8 Specsavers for --  
 9 Q. He might do some work in the laboratory?  
 10 A. -- 15 years, I have never come across the word  
 11 "technician" in any other role.  
 12 Q. Your evidence is that the SEO system --  
 13 A. Yes.  
 14 Q. -- cannot be used for self-employed persons other than  
 15 actual optometrists, dispensers, and that's it, isn't  
 16 it, at the time for the SEO system? Those were the two  
 17 categories?  
 18 A. That's what we tried to restrict it to, yes.  
 19 Q. You tried to restrict it to, but it's not a rule, is it?  
 20 A. It's guidance.  
 21 Q. And the guidance is in relation to what type of contract  
 22 of employment or for services you use, that's what the  
 23 guidance is about?  
 24 A. That's right, it's to determine the correct status.  
 25 Q. Okay. So in the present case, as you know -- I have

1 29

1 reached paragraph 54 of your statement, page 125 -- you  
 2 say:  
 3 "The claimants have alleged that they set  
 4 Mr Ferguson up on the SEP system as a laboratory  
 5 technician."  
 6 That's not true, is it? They never use the term  
 7 "laboratory", do they, on their SEP invoices?  
 8 A. I wouldn't know, I wouldn't have seen the SEP invoices.  
 9 Q. Where do you say the claimants alleged they set  
 10 Mr Ferguson up as a laboratory technician, why do you  
 11 say that?  
 12 A. Because as I have said before within the industry,  
 13 within our business, if somebody says "technician", it's  
 14 a laboratory technician, we don't have any other  
 15 definition for that word.  
 16 Q. You have just put in the word, you are not suggesting  
 17 that they used that word, laboratory?  
 18 A. No, that is the inference that I've got from the  
 19 information that I have had from these proceedings.  
 20 Q. Fine. They allege that someone at the accounts  
 21 department -- and you are now telling us that's not your  
 22 department?  
 23 A. It's not my department, no.  
 24 Q. -- specifically directed the claimants to do this, so as  
 25 you know they say that in mid-2009 --

1 30

1 A. Yes.  
 2 Q. -- do you remember, it gets put on to the SEP system?  
 3 A. Yes.  
 4 Q. In is it October 2009, do you remember?  
 5 A. It's around that time in 2000 -- sorry, are you talking  
 6 about Mr Ferguson going on the SEP system?  
 7 Q. This is all about Mr Ferguson going on the SEP system.  
 8 A. I understand it was around 2009.  
 9 Q. No, no, you don't understand it was around; you know,  
 10 don't you, when he went on the system?  
 11 A. I don't know the exact date he was put on the SEP  
 12 system.  
 13 Q. Okay. You say, well, you record that the claimants have  
 14 explained that they, someone in the accounts department,  
 15 directed them to do this when they phoned up?  
 16 A. That's what I understand has been said, yes.  
 17 Q. Yes, and we had better get it. (Pause). I had better  
 18 find precisely what you are referring to. Somebody will  
 19 pass it to me in a minute. I'll carry on. It was in --  
 20 I'll find you the precise date in 2009, but you will  
 21 take it from me that it was in 2009?  
 22 A. I'll take it from you, yes.  
 23 Q. (Pause). I am sure we can probably find it in the  
 24 investigation report. 23 July 2009 is when the  
 25 correspondence shows that, starts with the words:

1 31

1 "We have spoken to our accounts department in  
 2 Guernsey ..."  
 3 This is page 552 in E2.  
 4 " ... about the problem and that you cannot carry us  
 5 from a cashflow point of view, and they suggest that we  
 6 treat you on a self-employed basis."  
 7 All right?  
 8 A. I can see that letter, yes.  
 9 Q. Okay, and Mr Weller and Mr Vos say that it was that  
 10 telephone call, yes, that caused them to think that they  
 11 could put him on the SEP system -- SEO system as you  
 12 rightly say it was called then; yes?  
 13 A. I understand that yes, there was a conversation --  
 14 Q. You understand that is their assertion?  
 15 A. -- that that's why they put him on the system.  
 16 Q. Your personal response to that assertion is set out in  
 17 54 and 55 of your witness statement, and you make this  
 18 point, you say:  
 19 "They allege that someone at the accounts department  
 20 specifically directed the claimants to do this to ensure  
 21 that Mr Ferguson was paid promptly for services  
 22 allegedly provided to the store after the claimants had  
 23 complained that the payment of Mr Ferguson's invoices  
 24 were being delayed by up to four months."  
 25 Do you see?

1 32

1 A. Yes.  
 2 Q. So you take up the point that the sequence as alleged by  
 3 the claimants is: Mr Ferguson's invoices aren't being  
 4 paid?  
 5 A. Yes.  
 6 Q. These are his pre SEP invoices, his original invoices.  
 7 And that because of delays in payment of up to four  
 8 months, they then phone up, that happens around  
 9 July/August time, and then if you go to E5, page 1274,  
 10 this is in the middle of the investigation report, which  
 11 is the basis of this case, right at the bottom, do you  
 12 see it:  
 13 "Payments to JF changed from the general invoice  
 14 system to the SEP system in October 2009."  
 15 A. Yes, I see that.  
 16 Q. So he gets his payment, his first payment under the SEP  
 17 system in October 2009?  
 18 A. Yes.  
 19 Q. Now, you say, to be fair to you, that you can't be sure  
 20 what information was given to him by the accounts  
 21 department, because you are not in the accounts  
 22 department?  
 23 A. That's right.  
 24 Q. But you say, your argument at 55, is that it's not true  
 25 that payment of Mr Ferguson's invoices was being

133

1 delayed; do you see that?  
 2 A. Yes.  
 3 Q. And so your argument is that because his invoices  
 4 weren't being delayed, therefore it's unlikely that the  
 5 claimants' version of events that they phoned up because  
 6 his invoices were being delayed, could be true? That's  
 7 your point, isn't it?  
 8 A. No, I don't think I'm actually saying that it's the --  
 9 Q. Okay.  
 10 A. -- therefore, I don't believe that --  
 11 Q. All right, fine.  
 12 A. Sorry, I haven't put that in there. I think I merely  
 13 understand that they allege that the invoices weren't  
 14 being paid, and that was just the chronology of why they  
 15 then made a phone call --  
 16 Q. And that's what led them to put him on the SEP system in  
 17 October 2009? That's their assertion?  
 18 A. I understand that they are saying that they had a phone  
 19 conversation from somebody saying that that's what  
 20 should happen.  
 21 Q. You say that's not true and that you can prove it's not  
 22 true by reference to page E4/974. Would you go to that  
 23 page? Do you have it?  
 24 A. Yes, this is the list of the invoices for Mr Ferguson.  
 25 Q. This is only a list of the invoices from after he goes

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1 on the SEP system, the first invoice is dated  
 2 3 October 2009, and it gets paid on 7 October 2009, and  
 3 then the next invoice is dated -- I am sorry, it's  
 4 tiny -- 9 October 2009?  
 5 A. Yes, I can see that.  
 6 Q. You are quite right, from the time he goes on the SEP  
 7 system it looks like Mr Ferguson gets paid very  
 8 regularly and promptly?  
 9 A. Yes.  
 10 Q. You are talking, surely, about invoices before he goes  
 11 on the SEP system?  
 12 A. Yes, that's what they were alleging, that the invoices  
 13 prior to that were being delayed.  
 14 Q. Yes, so where is the proof of that?  
 15 A. I don't have any.  
 16 Q. Why have you said it, then? Why have you said "It is  
 17 not true that payment of Mr Ferguson's invoices was  
 18 being delayed" if you don't have any evidence of that?  
 19 A. I apologise, I don't have any explanation for that.  
 20 Q. No, okay, did you write this witness statement or was it  
 21 done for you?  
 22 A. It was --  
 23 Q. And then you approved it?  
 24 A. I wrote it in conjunction with somebody else.  
 25 Q. Okay, 56:

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1 "I do not have first-hand knowledge of what every  
 2 other member of SOG's accounts department may have said  
 3 or done."  
 4 Well, that's true, you are not even in SOG's  
 5 accounts department?  
 6 A. I am not in the accounts payable department based in  
 7 Nottingham, which is where it was alleged that this  
 8 phone call took place.  
 9 Q. You say you find it:  
 10 "... completely improbable that anyone would have  
 11 done so, as such a direction would fly in the face of  
 12 the SEP system's purpose ..."  
 13 A. Yes.  
 14 Q. "... the guidance on the use of the SEP system and the  
 15 basis on which it has been approved by HMRC."  
 16 Well, ignoring entirely the 2011 document?  
 17 A. Yes.  
 18 Q. By reference to that 2006 document that we went through,  
 19 where does it fly in the face of that?  
 20 A. As I have said earlier, there were various different  
 21 guidelines that we actually issue relating to the SEP  
 22 system. Some are for the partners, as you can see in  
 23 the 2006 document, and some are more for the internal  
 24 process, such as the invoicing system. So it's widely  
 25 known within SOG with various departments that there is

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1 obviously care to be taken when it comes to  
 2 self-employed status, self-employed invoices. So people  
 3 within the business across the finance function whether  
 4 it be the accounts payable, whether it be employment  
 5 services across the finance function have an awareness  
 6 about the use of self-employed invoices.  
 7 Q. Self-employed versus employed. That I understand, and  
 8 I quite see that if this person was in fact previously  
 9 on the books, for example, as an employee and they were  
 10 trying to put him on as a self-employed person or if the  
 11 person was a shop assistant who was obviously not  
 12 a self-employed person, I can quite see that it would  
 13 fly in the face of such guidance as you have just  
 14 described to allow the Self-Employed Persons system to  
 15 be used for people who were not in fact self-employed  
 16 persons?  
 17 A. Yes.  
 18 Q. But where do you say there is a guidance or a rule as to  
 19 the precise nature of the Self-Employed Persons' role?  
 20 Let's assume they are self-employed, we will take that  
 21 as a given.  
 22 A. Yes.  
 23 Q. Where do you say there is a rule or guidance that you  
 24 can only use it for a specific category of role?  
 25 A. That would be guidance that is just available, it might

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1 be verbally, it might have been that I had  
 2 a presentation or I spoke to the accounts payable team  
 3 to say: this is the system, these are the issues to do  
 4 with self-employed individuals and who should be using  
 5 the self-employed invoice system.  
 6 Q. That might have happened, as you quite rightly used the  
 7 word there. You don't give any evidence that that did  
 8 happen. You don't describe giving such a presentation  
 9 to the lady who was present in 2009, some three years  
 10 later, from the document you have provided. Are you  
 11 able to assist us with some actual -- are you able to  
 12 say today that every member of the accounts department  
 13 had been given specific guidance to limit the use of the  
 14 SEP system to a certain type of self-employed person?  
 15 A. I would suggest that it's part of their induction and  
 16 their training to understand what the SEO/SEP invoice  
 17 system is when somebody comes into our business to work  
 18 in that department. Can I produce the exact  
 19 documentation for it? It's not my department, no  
 20 I can't. But it is widely known within the business,  
 21 the importance of status and the importance of using the  
 22 SEP invoice system.  
 23 Q. I agree with everything you have just said, the  
 24 importance of status, you keep saying it, we keep  
 25 agreeing. It's all about the status, isn't it? You

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1 mustn't use this for employees, otherwise we will be hit  
 2 by the HMRC?  
 3 A. And therefore the interpretation we have within our  
 4 industry and therefore within our business, the SEP  
 5 system is solely for the invoices from optical workers,  
 6 so your dispensers, your optician, and we have allowed  
 7 the lab techs in now as specialised workers. They are  
 8 the people that can use that particular processing  
 9 system for self-employed invoices. Other invoices go  
 10 through the green bag system.  
 11 Q. But if you had a self-employed person, like Mr Ferguson,  
 12 and you wanted to try to put him through the SEP system  
 13 and you phoned up the accounts department and they said  
 14 "Well, you will have to put him down as a technician and  
 15 put it in that way", if that happened, if that happened,  
 16 it wouldn't be illegal, would it?  
 17 A. I don't think I've ever said it would be illegal, it  
 18 would be highly improbable that anybody in our business  
 19 would suggest it, but no, it's not illegal.  
 20 Q. Okay. That's all really you can say about that, okay,  
 21 so finally bonus payments. No, I don't need to ask you  
 22 about that.  
 23 The final thing I can ask you about, then, is your  
 24 pages 126 to 127, "the consequences of the claimants'  
 25 actions". I suspect we can cut this short.

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1 Paragraph 60:  
 2 "I understand from Mel McAlindon", do you see that?  
 3 A. I do.  
 4 Q. So you are just in the employment services team  
 5 effectively giving advice about status, but you  
 6 understand from Mr McAlindon that a significant  
 7 proportion of the payments made to Mr Vos and  
 8 Mr Ferguson were false?  
 9 A. That's correct.  
 10 Q. That is they did not relate to work done for Bognor?  
 11 A. That's correct.  
 12 Q. So he's told you basically that, for example, Mr Vos has  
 13 been paid a whole load of money in respect of work he  
 14 didn't do, time he didn't do?  
 15 A. It's my understanding from the investigation report.  
 16 Q. Absolutely. If that's not found to be correct, if that  
 17 premise is not found to be correct, so it's  
 18 a hypothetical in your mind I know, but let's  
 19 hypothetically presume that it be found that these  
 20 payments were for work done for the Bognor store?  
 21 A. Yes.  
 22 Q. Then your section here wouldn't apply, would it?  
 23 A. Can I just have a chance to read the rest of that  
 24 section, please?  
 25 Q. Yes.

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1 (Pause)  
 2 A. Yes, that's dealing with the way that it would be  
 3 treated in the accounts and the declarations to the  
 4 Revenue. At that time, the declarations to the Revenue  
 5 had been made in good faith for the payments that had  
 6 been made.  
 7 Q. That's all on the premise Mr McAlindon has concluded,  
 8 you think, that all this money or a large proportion of  
 9 it, there must have been some work being done, was being  
 10 paid when actually no work was being done by Mr --  
 11 A. The services weren't rendered, that's right.  
 12 Q. You then set out there that if that be right, and all  
 13 this money was being paid when no services were being  
 14 rendered, then there would be these breaches of --  
 15 A. That's correct.  
 16 Q. Absolutely. You deal then with the report in  
 17 February 2013, the corporate tax team, you are not part  
 18 of the corporate tax team, are you?  
 19 A. I am not, no.  
 20 Q. So you are just recording what is in that report?  
 21 A. Yes.  
 22 Q. You explain that, as you say at 66:  
 23 "The report is not therefore to be taken as  
 24 a comment on the merits of SOG's and Bognor's defence  
 25 and/or counterclaim in this case."

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1 A. That's right.  
 2 Q. It's on the premise of?  
 3 A. Yes.  
 4 Q. Yes. So in that case I don't think I need to ...  
 5 (Pause). Okay, yes, I suppose that is true:  
 6 paragraph 61 of your statement, this is now  
 7 an alternative point I'm putting to you, all right?  
 8 Even if you are right or Mr McAlindon is right, even if  
 9 he is right in his premise; yes?  
 10 A. Yes.  
 11 Q. You say in the second half of 61:  
 12 "By siphoning monies out of Bognor Visionplus on the  
 13 false premise that they were genuine operating costs,  
 14 the claimants caused Bognor falsely to deflate its  
 15 stated profits, resulting in Bognor making corporation  
 16 tax payments lower than they ought to have been."  
 17 Do you see that?  
 18 A. I do.  
 19 Q. Of course if tax has been paid on that money other than  
 20 by corporation tax --  
 21 A. Yes.  
 22 Q. -- there is no net tax saving, is there?  
 23 A. I think one has to take into consideration the  
 24 differential between PAYE and NIC and corporation tax,  
 25 I couldn't say off the top of my head without doing all

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1 the figurework what the net difference would be.  
 2 Q. Would you not be worse off, surely? Full PAYE, let's  
 3 take Mr Vos as an example, he is a man who is on your  
 4 version earning over the 40 per cent tax rate?  
 5 A. Yes.  
 6 Q. And he is paying NIC?  
 7 A. Yes.  
 8 Q. Yes?  
 9 A. Yes, one assumes so.  
 10 Q. Well, no, it's all being done through -- this is when  
 11 he's employed now?  
 12 A. Once he's on the payroll he's paying NIC.  
 13 Q. The allegation in relation to Mr Vos is when he's  
 14 employed?  
 15 A. Yes.  
 16 Q. On the books from October 2009?  
 17 A. Yes.  
 18 Q. May 2009. He's employed for two years, he pays through  
 19 you, through your --  
 20 A. Yes.  
 21 Q. -- PAYE department, and he pays full PAYE, full NIC?  
 22 A. We deduct National Insurance and PAYE, yes.  
 23 Q. And he is over the threshold?  
 24 A. Yes.  
 25 Q. So that's going to be more tax than the corporation tax

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1 payable on all of that money together back in the hands  
 2 of the company, isn't it?  
 3 A. It is conceivable that it could be. I can't comment  
 4 without actually doing the calculations and having them  
 5 all in front of me, but yes, it is conceivable that  
 6 a PAYE liability could be greater than a corporation tax  
 7 liability.  
 8 Q. You have presumably seen Mr Vos' short witness statement  
 9 which answered your statement, which explains, do you  
 10 remember?  
 11 A. I have done, yes.  
 12 Q. So you have had the opportunity, if you wanted to make  
 13 these calculations, to show that there is some tax  
 14 avoidance going on here?  
 15 A. Yes, I think what I am alluding to here is the  
 16 irregularity of the way that it's been declared in the  
 17 corporation tax returns, as to whether it was genuinely  
 18 for business expenses or not, as to whether actually it  
 19 should have been dealt with and declared differently  
 20 through the financial statements --  
 21 Q. Yes, it's not necessarily a net saving of any money  
 22 whatsoever, it's just how it is --  
 23 A. How it's reported to the Revenue to make sure that it's  
 24 reported correctly.  
 25 MR STUART: My Lord, I think that's all I have of

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1 Ms Mancini.  
 2 MR JUSTICE HILDYARD: Thank you.  
 3 Re-examination by MR POTTS  
 4 MR POTTS: My Lord, just one point.  
 5 Ms Mancini, do you have volume X?  
 6 A. Yes.  
 7 Q. You were taken to 428?  
 8 A. Yes.  
 9 Q. There was some discussion about the section after the  
 10 first paragraph which was underlined?  
 11 A. Yes.  
 12 Q. "However, you must not treated optical assistants or  
 13 administrators or any other workers as self-employed, no  
 14 matter how short the period."  
 15 A. Yes.  
 16 Q. I think in that context you referred to the existence of  
 17 guidelines being provided to partners and others later?  
 18 A. Indeed, yes.  
 19 Q. Which you weren't taken to. Can I take you to 442?  
 20 A. Yes.  
 21 Q. Firstly, I think it's a two-page document, just have  
 22 a quick look at it.  
 23 A. Yes.  
 24 Q. Could you please explain what that document is?  
 25 A. This is a bulletin that would be sent out from the  
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1 finance department, it's called a partners' brief.  
 2 Regularly we would send out partners' briefs to our  
 3 joint venture partners giving information or guidance or  
 4 clarification on processes and procedures.  
 5 Q. If you turn over to 443 --  
 6 A. Yes.  
 7 Q. -- could you just read that section which starts:  
 8 "Dispenser and technician invoices ..."  
 9 A. Yes.  
 10 Q. Just read that.  
 11 A. Indeed.  
 12 Q. I think it goes down to just before "store sales", could  
 13 you just read that to yourself?  
 14 A. (Pause). Yes.  
 15 Q. In relation to the issue of dispensers and technicians,  
 16 could you just explain what your understanding was of  
 17 that guidance?  
 18 A. This is where we provided for the clarity to the SEP  
 19 system, the SEP process, to enable dispensers and  
 20 technicians to be able to use that system for their  
 21 invoices, to ensure that they were paid promptly and in  
 22 the same efficiency as the optometrists that have been  
 23 in the system beforehand.  
 24 Q. And in terms of the reference to guidelines and invoice  
 25 template, is that --

1 A. That would be the guidelines that we had been referring  
 2 to, the 2006 ones, and the invoice templates that are  
 3 attached to various guidance going through, as the  
 4 templates are updated or refined, there are various  
 5 templates that are put through. Fundamentally the same  
 6 document.  
 7 Q. The invoices we have seen from Mr Ferguson in these  
 8 proceedings, on what form were those, have you seen  
 9 those?  
 10 A. Well, I understand that they have been put on -- when he  
 11 was put on the SEP system they put his details onto one  
 12 of the templates. Yes.  
 13 Q. The reference to, it says:  
 14 "All dispenser and [if you look at the third  
 15 paragraph down] technician invoices."  
 16 A. Yes.  
 17 Q. What did you understand by the reference to dispenser,  
 18 first?  
 19 A. Well, dispenser would be anybody sort of qualifying as  
 20 a dispensing optician, rather than an ophthalmic  
 21 optician, so somebody who is dispensing the prescription  
 22 that comes out of the ophthalmic test room --  
 23 Q. And what did you understand by the word "Technician",  
 24 capital T?  
 25 A. That would be a laboratory technician, it can only be  
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1 a laboratory technician in our business?  
 2 MR POTTS: Thank you. I have no further questions.  
 3 Questioned by MR JUSTICE HILDYARD  
 4 MR JUSTICE HILDYARD: Sorry to keep you longer. Presumably  
 5 with a dispenser or a lab technician, working within  
 6 a store, there is a really quite acute question as to  
 7 whether they are properly presented to the Revenue and  
 8 accounted for as employees or independent contractors?  
 9 A. Yes.  
 10 MR JUSTICE HILDYARD: That's the real thrust of all this,  
 11 that if you wandered into the store you would jolly well  
 12 think they were employees, but you have to be a little  
 13 bit careful, in other words, recharacterise them, which  
 14 would be a tax advantage.  
 15 A. We have to be very careful and that's why we issue what  
 16 we hope to be very clear guidelines to the partners and  
 17 why we work with the Revenue in making sure that our  
 18 guidelines meet with the Revenue's standards on  
 19 employment status, you are correct.  
 20 MR JUSTICE HILDYARD: That's why, for example, it's  
 21 mandatory for you to be required with their  
 22 National Insurance category, because that is going to  
 23 possibly let the cat out of the bag if truly they are  
 24 employee status?  
 25 A. It could do, it provides a unique reference number for

1 the individual so we can easily identify them, and then  
 2 when we have to provide data to the Revenue for their  
 3 regular compliance audits, they can then match up the  
 4 records as well.  
 5 MR JUSTICE HILDYARD: Yes. Where there is a chap like, say,  
 6 a handyman or a builder or a signwriter or a computer  
 7 technician or anything, there is no such acute problem,  
 8 is there, it is much easier to be relaxed, that provided  
 9 they don't smell like employees, as it were, that they  
 10 are independent contractors?  
 11 A. That's right, and then their invoices would go through  
 12 our green bag system. It's just two different systems  
 13 that we have for processing the invoices relating to  
 14 self-employed people or contractors.  
 15 MR JUSTICE HILDYARD: The concerns we have seen which are  
 16 understandable, are to protect yourselves -- SOG and  
 17 SOS, and the companies concerned -- from the system  
 18 being a method for sneaking through employees as  
 19 contractors, or the other way round? Do you see what  
 20 I mean?  
 21 A. Yes. I think the actual invoice processing system was  
 22 set up to be able to make prompt -- deal with the volume  
 23 of invoices that come through from our self-employed  
 24 workers within the business, there is a huge volume that  
 25 come through, and their payment expectations are more  
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1 frequent than an ordinary supplier invoice that normally  
 2 has a term of 30 days. So it's a system whereby we can  
 3 make more regular, more prompt payment and deal with the  
 4 volume, both from a -- the perspective of the accounts  
 5 payable team but also from the perspective of the stores  
 6 such as Bognor, to enable us to deal with their payment  
 7 instructions as quickly as we can.  
 8 When the Revenue come to identify and come to have  
 9 a look at our guidance and our system, they clearly are  
 10 obviously making sure, they want to see that we have  
 11 a process in place to clearly identify which workers we  
 12 are identifying as self-employed workers through the SEP  
 13 system from a status issue to make sure that there isn't  
 14 anybody who is being paid through that system who should  
 15 otherwise be an employee, because of the duties that  
 16 they are performing and the relationship that they have  
 17 with the store.  
 18 MR JUSTICE HILDYARD: So if you had a repeat contractor,  
 19 about him there is no real issue as to whether they are  
 20 contractors or employees, but you do know that he or she  
 21 does quite a lot of work, and you know that they are  
 22 moaning about being delayed in their payment; there is  
 23 no particular Revenue reason, is there, why they  
 24 shouldn't be included in the SEP or SEO system?  
 25 A. No, there is no Revenue reason, no.  
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1 MR JUSTICE HILDYARD: There is no issue of status raised or  
 2 any misuse of the tax regime?  
 3 A. No, it doesn't come -- it's not borne by a tax  
 4 legislation as to why we need to have two different  
 5 systems, it's purely efficiency and for us to be able to  
 6 identify clearly to the Revenue, should we need to  
 7 present any of our information as part of the status  
 8 enquiry or status review, that we are able to do so  
 9 efficiently.  
 10 MR JUSTICE HILDYARD: Yes. Thank you. I suppose, moving on  
 11 to a different matter, in light of the discussion which  
 12 interrupted your cross-examination, that I should assume  
 13 that Mel and the investigators were not aware of the  
 14 document which has now been demonstrated to be the  
 15 document of real importance, the new older document of  
 16 2006?  
 17 A. I believe they would have been aware that that document  
 18 existed, it has existed in some format ever since I have  
 19 been in the business.  
 20 MR JUSTICE HILDYARD: So you think that that would have been  
 21 available to the investigators, do you?  
 22 A. The SEP or SEO guidelines?  
 23 MR JUSTICE HILDYARD: Yes, the 2005/2006.  
 24 A. Yes.  
 25 MR STUART: My Lord, it most definitely was, it is the  
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 1 document.  
 2 MR JUSTICE HILDYARD: The 2005/2006 was available to the  
 3 investigators?  
 4 MR STUART: I believe they quote it. Wrongly, I believe,  
 5 but they quote it.  
 6 A. It would have been available to them.  
 7 MR JUSTICE HILDYARD: So that document is likely to have  
 8 been floating around, as a hard copy document, within  
 9 the organisation?  
 10 A. Let me think about hard copy document. It would have  
 11 been on the intranet, it was on the IQ intranet, and  
 12 then we would have had Word versions of it  
 13 electronically. I couldn't absolutely guarantee where  
 14 hard copy versions of it would have sat.  
 15 MR JUSTICE HILDYARD: You would have expected it to be sort  
 16 of part of the common knowledge of the investigators?  
 17 A. It's on the intranet and everybody in the business has  
 18 access to the intranet, and then those of us in the  
 19 departments that own that document, obviously would have  
 20 had access to Word versions of it.  
 21 MR JUSTICE HILDYARD: I see. Just thirdly: in your first  
 22 witness statement, the way you express it particularly  
 23 in paragraphs 59 onwards, with respect to the, first of  
 24 all, in 59, the question of delaying bonus payments --  
 25 A. Yes.  
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1 MR JUSTICE HILDYARD: -- and then subsequently what you  
2 were told by Mr McAlindon in paragraph 60, et cetera --  
3 A. Yes.  
4 MR JUSTICE HILDYARD: -- I got the impression that this was  
5 all after the event. Were you asked about this at any  
6 stage, and if so, at what stage, by Mr McAlindon or  
7 anybody else? Were you asked about the workings of this  
8 system and whether you thought that the inclusion of  
9 Mr Ferguson was compliant or anything else, at that  
10 time?  
11 A. I don't recall being asked at that time.  
12 MR JUSTICE HILDYARD: No?  
13 A. No.  
14 MR JUSTICE HILDYARD: Can you remember when first you were?  
15 A. I think it was first brought to my attention as a result  
16 of these --  
17 MR JUSTICE HILDYARD: Proceedings?  
18 A. -- proceedings within the last couple of years, yes.  
19 MR JUSTICE HILDYARD: Right, yes.  
20 Thank you very much. Are there any questions  
21 emerging from that?  
22 Further cross-examination by MR STUART  
23 MR STUART: Only the one. I suppose, Ms Mancini, just to be  
24 clear, then, the copy of the 2005/2006 document that  
25 Mr McAlindon is referring to, if he is, it didn't come

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1 from you? You didn't provide him with a hard copy  
2 document?  
3 A. I don't recall providing him with a hard copy document.  
4 The document is available on the intranet for everybody  
5 at any time.  
6 Q. You don't even recall being asked about this back when  
7 he was doing his investigation report and all that  
8 business?  
9 A. No, no, no.  
10 Q. It is only after proceedings have been issued that your  
11 team have got involved?  
12 A. Indeed.  
13 MR JUSTICE HILDYARD: And that's the 2005/2006 document we  
14 are talking about now?  
15 MR STUART: It is, my Lord, yes.  
16 MR JUSTICE HILDYARD: Yes.  
17 MR STUART: The one that was not disclosed and has only just  
18 been found.  
19 MR JUSTICE HILDYARD: Yes. Thank you very much indeed.  
20 I am sorry, you have been waiting for days now but you  
21 can be released, I think.  
22 THE WITNESS: Thank you.  
23 MR JUSTICE HILDYARD: I am afraid it's only a temporary  
24 reprieve, I think we get you back in the next case.  
25 (The witness withdrew)

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1 MR JUSTICE HILDYARD: Mr Potts, I must say that those  
2 exchanges made me uncomfortable as to the process  
3 whereby this document has emerged. If they were matters  
4 which were right at the forefront of the investigators'  
5 minds, on the question of Mr Ferguson, it is quite  
6 extraordinary to my mind that they were not searched  
7 for.  
8 MR STUART: My Lord, I ought to explain to you why I even am  
9 able to say that, and the reason is that I go to the  
10 investigation report itself, your Lordship has it, the  
11 one we are using is at 1274. 1272 in E5. I did ask  
12 Mr McAlindon, your Lordship will find it in the  
13 cross-examination, when -- indeed according to  
14 Ms Mancini's evidence it's my cross-examining of  
15 Mr McAlindon that suddenly caused her to remember this.  
16 It is when I was asking him and putting to him that  
17 that's not a document, that's a load of nonsense, I did  
18 ask him whether there was any other document and of  
19 course his answer was no, he didn't seem to have it.  
20 If your Lordship looks at this section, which is on  
21 1275, does your Lordship have it?  
22 MR JUSTICE HILDYARD: Yes.  
23 MR STUART: The SEP system.  
24 MR JUSTICE HILDYARD: Yes, I see it.  
25 MR STUART: It says:

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1 "Guidelines for the use of the SEP system are  
2 documented in Guidelines for the use of Self-Employed  
3 Opticians revised December 2005 policy as housed on the  
4 store's IQ intranet system."  
5 MR JUSTICE HILDYARD: Right.  
6 MR STUART: "Page 6 of this guide states that the contract  
7 for services (inaudible - coughing)."  
8 MR JUSTICE HILDYARD: Is that a quotation from  
9 December 2005?  
10 MR STUART: I believe that it's this document here.  
11 MR JUSTICE HILDYARD: The new document?  
12 MR STUART: Yes. This is called --  
13 MR JUSTICE HILDYARD: No, I am just asking.  
14 MR STUART: -- revised December 2005. Then what he has  
15 done is -- now that I have the document, I've never seen  
16 it before, I now note that he has taken parts of  
17 sentences out, and sought to assert that they mean one  
18 thing when they don't, and I didn't have the opportunity  
19 to cross-examine --  
20 MR JUSTICE HILDYARD: That will be a matter for you to  
21 consider whether you need Mr McAlindon back.  
22 MR STUART: He is coming back anyway, I will ask him about  
23 it next time, but I do find it wholly disconcerting and  
24 I think from my clients' point of view -- I know your  
25 Lordship quite rightly said we must get on with this,

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1 and I am not objecting in that sense, but from their  
2 point of view, I am not sure they feel that necessarily  
3 things are coming out in an appropriate way.  
4 MR POTTS: My Lord, I am not sure I can take it much  
5 further. Obviously I can see the reference here,  
6 I hadn't picked it up, it doesn't appear that my friend  
7 had picked it up at any stage prior to the matter  
8 emerging --  
9 MR JUSTICE HILDYARD: I will say no more at this stage than  
10 it is a source of surprise to me that a document relied  
11 on by an investigation which is used as the basis for  
12 alleging that people were fraudulent or dishonest is not  
13 disclosed.  
14 MR POTTS: I see that, my Lord.  
15 MR JUSTICE HILDYARD: Extraordinary. Right.  
16 MR POTTS: My Lord, the next witness is Mr McGowan.  
17 MR JUSTICE HILDYARD: Last one?  
18 MR POTTS: I think the last one.  
19 MR ANTHONY MCGOWAN (sworn)  
20 MR JUSTICE HILDYARD: Do sit down. You have yourself some  
21 water.  
22 THE WITNESS: Thank you, my Lord.  
23 Examination-in-chief by MR POTTS  
24 MR POTTS: Mr McGowan, do you have volume C?  
25 A. I do.

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1 Q. E6 can go away, perhaps. Turn up, please, tab 10.  
2 Page 156 through to 158, is that your witness statement?  
3 A. Yes, it is.  
4 Q. At 158 is that your signature?  
5 A. Yes, it is.  
6 Q. Are the facts stated in that statement true?  
7 A. Yes, they are.  
8 MR POTTS: Thank you.  
9 Cross-examination by MR STUART  
10 MR STUART: Mr McGowan, you say at paragraph 4 that you were  
11 not sent to harass him, that's Mr Weller I am talking  
12 about, and that you travelled there at Mr McAlindon's  
13 request?  
14 A. That's correct.  
15 Q. Does Mr McAlindon have something of a name for himself  
16 amongst the Specsavers organisation?  
17 A. I couldn't answer for Specsavers organisation.  
18 Q. Okay. What is your role within the Specsavers  
19 organisation?  
20 A. I am a loss prevention consultant. My role typically is  
21 two main parts. For the first part I have been with the  
22 department now for about four years, for the first two  
23 and a half years I would offer store support to stores,  
24 where directors have either moved on or currently are  
25 serving a suspension, and I would offer store support to

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1 actually -- to the store to make sure that the store can  
2 continue.  
3 Also the second part of my role is to do day-to-day  
4 NHS audits whereby we would typically visit a different  
5 store each day, so within a week we would see five  
6 stores.  
7 Q. Do you work full-time?  
8 A. Yes, I do.  
9 Q. How long have you worked for them?  
10 A. For the department?  
11 Q. Yes.  
12 A. For the loss prevention? Since 2009, so four years.  
13 Q. Okay. Always under Mr McAlindon, he was always your  
14 boss?  
15 A. No, no, no, I joined Specsavers as a store manager in  
16 2005 in Gloucester.  
17 Q. Since 2009 whilst working for the department?  
18 A. Mr McAlindon has always been my boss.  
19 Q. Okay, fine. You wanted to verify the location of the  
20 company car. This is the company car that his  
21 solicitors had written saying "It's parked outside his  
22 house"?  
23 A. I wouldn't know that, but that is the company car,  
24 indeed.  
25 Q. What do you mean you wouldn't know that? Had you been

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1 told there was some issue about where the company car  
2 was?  
3 A. I had been told there was some issue regards returning  
4 the car, because I believe at that stage I was aware,  
5 your Lordship, that Mr Weller had resigned from the  
6 company. I was led to believe obviously it was  
7 a company car, and there may well be an issue regarding  
8 insurance given that only employees of the company could  
9 drive that car.  
10 Q. You had already been involved in this investigation,  
11 that is the investigation of the Bognor Regis store, at  
12 this point, prior to going off to find out about the car  
13 on the -- beginning of October?  
14 A. I attended the store on 4 July, was when I went in, and  
15 sort of took over the day-to-day running of the store  
16 from Zoe Smith.  
17 Q. So how long were you running the day-to-day management  
18 of the store for?  
19 A. As I say, went in on July 4, 2011 until about the end of  
20 May 2012. In between which time I was also looking  
21 after, on an ad hoc basis for a couple of days a week,  
22 the store in Uckfield.  
23 Q. Right, so these two stores were obviously both under the  
24 loss prevention department's control at this point?  
25 A. That's right, I only went into Uckfield whilst being,

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1 running the Bognor store at around about  
 2 January/February 2012. However, prior to going into  
 3 Bognor in July, I had already spent about four or  
 4 five weeks in Uckfield.  
 5 Q. Apart from running the store, you were also involved in  
 6 the investigation?  
 7 A. In a very small part, perhaps. As I understand it, the  
 8 large percentage of the investigation happened prior to  
 9 me getting to the store in July 4.  
 10 Q. Did it?  
 11 A. As I understand it, yes.  
 12 Q. Okay. I was thinking about your involvement in relation  
 13 to all the documents in the store.  
 14 A. Yeah, the -- are you referring to the photograph of the  
 15 data boxes?  
 16 Q. I know you took that.  
 17 A. I didn't take it anywhere.  
 18 Q. You didn't take it?  
 19 A. No, I didn't.  
 20 Q. No, no. What was your role in relation to the --  
 21 A. I believe around about 24 to 25 August Mel had  
 22 telephoned me, so I had been in the store for some six,  
 23 seven weeks I guess.  
 24 Q. Yes.  
 25 A. Mel had telephoned me asking me, informing me: could

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1 I have a look in some boxes to see if there were  
 2 specifically any documents to do with Mr Vos, Dr Poulsen  
 3 or Barry Weller's employment status.  
 4 Q. Right.  
 5 A. I was, having been here now for quite some time, unaware  
 6 of the importance of those boxes. When they came into  
 7 the store, I don't know. Whether they were already  
 8 there when I came in in July, I really don't know.  
 9 Q. Okay.  
 10 A. And also I had literally, around about 24/25 August  
 11 I had the second and third weeks of August off on annual  
 12 leave. Whether they came back during that period,  
 13 I don't know. I just don't recall.  
 14 Q. Right. So he phoned you?  
 15 A. Yes, he did.  
 16 Q. And said "There are some boxes there, will you look  
 17 inside them and see if you can find some documents?" Is  
 18 that what you are saying happened?  
 19 A. Sorry, I didn't catch you?  
 20 Q. Is that what you are saying happened? I am just reading  
 21 off the screen more or less --  
 22 A. Sorry, I didn't hear you.  
 23 Q. Are you saying that he phoned you and said "There are  
 24 some boxes in the store"?  
 25 A. Yes.

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1 Q. "Will you go and look inside them and see if you can  
 2 find these documents"?  
 3 A. Just to see if they were there. He was asking --  
 4 Q. To see if the documents were there?  
 5 A. To see if there was anything relating to their  
 6 employment status.  
 7 Q. In the boxes --  
 8 A. In the boxes.  
 9 Q. -- that were in the store?  
 10 A. That were in the store, absolutely.  
 11 Q. Right. So you got up from your desk or wherever you  
 12 were in the store, and thought, "Right, I must go and  
 13 find those boxes that Mel has told me about"? Or did  
 14 you know immediately what he was talking about?  
 15 A. I didn't. There were two boxes, as I recall, in the  
 16 store.  
 17 Q. Okay.  
 18 A. Which I could only assume that's the ones they meant or  
 19 Mel meant --  
 20 Q. Where were those boxes?  
 21 A. As I sat at the desk, I believe over on the left-hand  
 22 side, there were three metal filing cabinets, four  
 23 drawer, I think they were on the top left.  
 24 Q. So there were three metal filing cabinets?  
 25 A. Might have been four.

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1 Q. And then two cardboard boxes next to them or above or on  
 2 top of them or whatever?  
 3 A. I think so.  
 4 Q. Separate from the filing cabinets?  
 5 A. Yes.  
 6 Q. Did you check the filing cabinets?  
 7 A. I had had cause to try and set up some filing of my own  
 8 since being in the store since 4 July, because there was  
 9 very little in there, but as the -- as my process went  
 10 through, I wanted to make sure, when I was getting  
 11 documentation, I was able to file away invoices and that  
 12 sort of thing. So I certainly hadn't seen anything in  
 13 the filing cabinets before, no.  
 14 Q. What, you hadn't seen these documents in the filing  
 15 cabinet?  
 16 A. Well, I hadn't seen many documents of anything, but  
 17 certainly not those.  
 18 Q. There were some documents in the filing cabinets?  
 19 A. There was, just typical stuff you would expect.  
 20 Q. Apart from these two boxes that you were suddenly drawn  
 21 to by the telephone call, were there any other boxes or  
 22 documents?  
 23 A. Not that I recall, no.  
 24 Q. But some other members of the loss prevention team had  
 25 been in there for about three weeks before you got

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1 there?  
 2 A. In the 4 July?  
 3 Q. Yes, you got there on 4 July?  
 4 A. Yes, I understand they started middle of June.  
 5 Q. They had been in since 15 June?  
 6 A. Yes, absolutely.  
 7 Q. Okay, and you don't know what happened in that  
 8 intervening period?  
 9 A. I have absolutely no idea. To this day I don't know  
 10 when those boxes came back from the solicitors.  
 11 Q. Right, so his request to you was: can you try and find  
 12 any documents relating to the employment of --  
 13 A. Which I took to be contracts.  
 14 Q. -- Mr Weller?  
 15 A. Yes.  
 16 Q. Dr Poulsen?  
 17 A. Yes.  
 18 Q. Mr Vos?  
 19 A. That's correct.  
 20 Q. And Mr Ferguson?  
 21 A. I have to be honest and say I don't recall being asked  
 22 about Mr Ferguson. Whether or not I was I don't know,  
 23 but I don't recall that specifically.  
 24 Q. Okay. So you, what, rummaged through the boxes to see  
 25 what you could find?

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1 A. Yes, I suppose so. I had a look through the boxes,  
 2 I couldn't find anything at all. I telephoned Mel back  
 3 and said there was nothing in the two boxes that would  
 4 relate to the three people's employment status that he  
 5 asked for.  
 6 Q. So there was a phone call, you phoned him?  
 7 A. Yes, I phoned Mel. Then whether or not I told him,  
 8 I really can't remember, but I then, having gone through  
 9 it, I thought I would list what was actually in the  
 10 boxes.  
 11 Q. Yes?  
 12 A. Purely just to say what was actually in the boxes at  
 13 that time.  
 14 Q. Which we find in bundle X, divider 8.  
 15 A. Yes.  
 16 Q. "Hi Mel, the contents of the two data boxes held in the  
 17 store (photo provided) are predominantly payroll  
 18 information, employee contracts, job application  
 19 letters, CVs and copies of invoices/statements. They  
 20 are generally dated from 2006, in no particular order.  
 21 Fuller breakdown below.  
 22 "3. Staff contracts, offers of employment and job  
 23 applications."  
 24 A. That's right.  
 25 Q. The photo we see, this is what you are talking about?

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1 A. That's correct.  
 2 Q. The upper of the two boxes seems to be very empty, to my  
 3 naked eye.  
 4 A. Yes.  
 5 Q. Not much in that one at all?  
 6 A. No, there is not.  
 7 Q. And the other one sort of three-quarters full?  
 8 A. Mm.  
 9 Q. Is this a picture after you have sort of ruffled through  
 10 everything?  
 11 A. Yes, it would have been, yes.  
 12 Q. Okay. This was 25 August, so the date of the photograph  
 13 helps you to date your conversation?  
 14 A. No, the date of the email helps me.  
 15 Q. That's what I mean, the email?  
 16 A. Yes.  
 17 Q. The email, 25 August?  
 18 A. That's correct.  
 19 Q. That's when you think he phoned you up?  
 20 A. Yes, I would have thought I would have acted as Mel  
 21 would have rang to ask me.  
 22 Q. I see it's 12.05 in the afternoon that you email him  
 23 back, so if he phoned you that morning, you would have  
 24 done it then and phoned him back?  
 25 A. I can't recall, it might have been a voice message, but

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1 I would have thought I would have had an instruction  
 2 from Mel and I would have acted on it.  
 3 Q. Okay, fine. Just returning then to your witness  
 4 statement, is that your only other involvement with the  
 5 investigation side of this, leave aside managing the  
 6 store on behalf of SOG, you have taken photographs and  
 7 checked these boxes, and you have done this business of  
 8 going to see Mr Weller?  
 9 A. Yes.  
 10 Q. Apart from that, did you have any other involvement?  
 11 A. Not that I recall. Having said that, if you had asked  
 12 me if I was part of the investigation there, I didn't  
 13 see that then, as part of the investigation, purely  
 14 because I was unaware of any kind of relevance, as I am  
 15 now.  
 16 Q. Okay, fine. So you didn't know what you were looking  
 17 for basically?  
 18 A. No, I knew exactly what I was looking for, I just didn't  
 19 understand the context that it might have been in.  
 20 Q. So 157 in the C bundle, your witness statement about the  
 21 events of October. You obviously have a different  
 22 version of events from Mr Weller's version, don't you?  
 23 A. Yes, I do.  
 24 Q. Were you here when he gave his version of events? Did  
 25 you hear it?

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1 A. I was here for a bit of the cross.  
 2 Q. I think it's the easiest way to do it, is take you to  
 3 bundle F1.  
 4 MR JUSTICE HILDYARD: Can I just ask, Mr Stuart, I am keener  
 5 than many to make sure that we finish earlier rather  
 6 than later, but how much longer do you think you will  
 7 be?  
 8 MR STUART: Five minutes.  
 9 My Lord, I have to cover this by way of  
 10 cross-examination.  
 11 MR JUSTICE HILDYARD: It was only a question of whether we  
 12 break.  
 13 MR STUART: It's not at the forefront of the case.  
 14 MR JUSTICE HILDYARD: I am not in any sense insinuating  
 15 otherwise, but I saw some signs of exhaustion.  
 16 MR STUART: I am sorry, yes, I'll take it slowly, and we are  
 17 doing it by reference to page 58, Mr McGowan. This was  
 18 a letter written on 7 October. All right?  
 19 A. Yes.  
 20 Q. This is a letter written by Specsavers, do you see?  
 21 A. Yes, I do.  
 22 Q. Back to Mr Ogun of Akin Palmer, the solicitor?  
 23 A. I do.  
 24 Q. Mr Ogun had written a letter on the day of the incident,  
 25 I think, if you go back to 54, do you see they wrote on

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1 the actual day:  
 2 "The report we have received is that around 16.20  
 3 today a white male parked his motor car ..."  
 4 That's you, isn't it?  
 5 A. Yes, it is.  
 6 Q. "... outside the home of our client. The fellow  
 7 proceeded to take photographs of our client's home ..."  
 8 Do you see that?  
 9 A. Yes, I do.  
 10 Q. "... until he was challenged by Mr Weller."  
 11 Okay? This is obviously an abbreviated version of  
 12 events, isn't it?  
 13 A. It's very abbreviated because I did not continue to take  
 14 photographs until I was challenged by Mr Weller, that's  
 15 wholly incorrect.  
 16 Q. That's right, you went off up the road, round the corner  
 17 into the school?  
 18 A. Sorry, that's wholly incorrect, your Lordship.  
 19 Q. Okay. So:  
 20 "...proceeded to drive off in great haste causing  
 21 the vehicle to make contact with Mr Weller."  
 22 A. Incorrect as well.  
 23 Q. Do you see that?  
 24 A. Yes.  
 25 Q. That's what started all of this, a sort of rushed letter

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1 out on the very afternoon that it had happened. The  
 2 response came back from Specsavers, page 56, and at the  
 3 bottom of 58 that was -- do you see that?  
 4 A. Yes, I do.  
 5 Q. That was the version of events given?  
 6 A. Yes, I do.  
 7 Q. So at the bottom of 58:  
 8 "Upon Mr McGowan walking to his car, Mr Weller  
 9 approached Mr McGowan and asked him if he had taken  
 10 a picture of his [Mr Weller's] house, and also asked who  
 11 Mr McGowan was."  
 12 A. Yes, I see that.  
 13 Q. "Mr McGowan simply declined to answer."  
 14 Yes?  
 15 A. Yes, I see that.  
 16 Q. "... got into his car to leave. Mr Vos then signalled  
 17 to Mr Weller for Mr Weller to stand in front of  
 18 Mr McGowan's car."  
 19 A. Yes, I see that.  
 20 Q. You don't mention that in your witness statement,  
 21 paragraph 6, or 5?  
 22 A. My witness statement is a rebuttal to the statements  
 23 that I was sent in regards Mr Vos and Mr Weller. But  
 24 I do make it very clear in the letter that was sent on  
 25 the 7th --

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1 Q. Okay.  
 2 A. -- in speaking to Stephen Moore.  
 3 Q. At paragraph 6 in your witness statement, it just says:  
 4 "Mr Weller stood directly in front of my car ..."  
 5 A. Sorry, could you point me to the page?  
 6 Q. Page 157 in bundle C, paragraph 6.  
 7 A. Thank you.  
 8 Q. About six lines down, five lines down:  
 9 "Mr Weller stood directly in front of my car,  
 10 approximately 10 inches from the front bumper to prevent  
 11 me from leaving. I asked Mr Weller to move away from my  
 12 car but he refused to do so."  
 13 A. That's correct.  
 14 Q. So you had a conversation with him?  
 15 A. No. As was discussed before, what I did was I think  
 16 Mr Vos accepted the point, when he was being  
 17 cross-examined, I gesticulated with my hand, shook my  
 18 head and suggested that he move away from the car, from  
 19 the front of the car.  
 20 Q. You gesticulated with your hand, moved your head?  
 21 A. Shook my head as if to say: no, don't stand there, move  
 22 away.  
 23 Q. Right. You didn't say anything to him?  
 24 A. Well, I did actually say it, because it seemed a bit --  
 25 Q. I just asked you the question and you said --

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1 A. No, to myself in the car, but I appreciate he wouldn't  
2 have heard it, but he certainly would have seen me  
3 gesticulate with my hand and also shake my head.  
4 Q. So you didn't ask him to move away from the car?  
5 A. I believe that's asking somebody to do something.  
6 Q. If you go --  
7 A. If I asked you to do that (indicated) I think you would  
8 have to accept that as an instruction or a request to do  
9 something.  
10 Q. If you ask me to do something, you are asking me to do  
11 it. If you are telling me to do something, you are  
12 telling me to do it. Do you understand the difference  
13 between the two?  
14 A. Yes, I do, I understand the difference and I understand  
15 that --  
16 Q. Good.  
17 A. Excuse me --  
18 Q. Did you ask him or did you tell him?  
19 A. Excuse me, I would like to finish. I think  
20 communication uses many different forms and I think body  
21 language and gesticulations and arm movements form part  
22 of that communication.  
23 Q. Yes, and by communicating you can ask someone to do  
24 something or you can tell someone to do something. What  
25 do you say you were doing on your now version of events?

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1 A. I was asking him.  
2 Q. You were asking him. He refused?  
3 A. Initially, yes.  
4 Q. So he understood you to be asking?  
5 A. Yes.  
6 Q. And he, what, presumably (indicated)?  
7 A. Well, he didn't move.  
8 Q. That's not refusing, is it?  
9 A. If I've asked somebody to do something and they don't do  
10 that, I will take that as a refusal to not do what I've  
11 asked them to do.  
12 Q. What if they have not heard you ask?  
13 A. He wouldn't have heard me, he would have seen me though.  
14 Q. What if he didn't see you ask?  
15 A. I would have thought he -- well, I would have thought he  
16 definitely would have seen me, he was standing a bumper  
17 away from me looking at me.  
18 Q. He might have been looking at Mr Vos?  
19 A. He was looking at me.  
20 Q. "I gently moved my car forward by about 2 inches."  
21 So he was standing there right up against your  
22 bumper?  
23 A. No, he wasn't, he was standing 10 inches away from me.  
24 Q. How could you tell how many inches away from your front  
25 bumper his leg was?

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1 A. There was plenty of space between me and him. When  
2 Mr Vos asked him to step off the pavement and in front  
3 of the car, there was quite a good bit of space. And  
4 I would estimate it, having driven for as long as  
5 I have, that he was about 10 inches away from me, from  
6 my bumper.  
7 Q. Anyway, you chose to move, the first move of your car  
8 was forward, towards him?  
9 A. Yes, by 2 inches.  
10 Q. How do you know how far your car moved forward?  
11 A. Again, by understanding how long I have been a driver  
12 for and parking so many times, it's -- I think I am  
13 a relatively good judge of 10 inches and 2 inches and  
14 how far I moved the car.  
15 Q. You then say:  
16 "My car did not at any point come into contact with  
17 Mr Weller."  
18 A. Absolutely not.  
19 Q. As you know he absolutely says it did?  
20 A. Yes, absolutely did not.  
21 Q. How do you know it didn't?  
22 A. Because after moving my car forward 2 inches Mr Weller  
23 moved away and walked back onto the pavement and moved  
24 away from the car.  
25 Q. That might be an indication that you hit his leg?

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1 A. No, certainly wasn't.  
2 Q. How can you say certainly wasn't?  
3 A. Because I know I hadn't, because I hadn't got close  
4 enough to him, in the same way that if I was to move my  
5 car to you now, I can see that it's not going to hit  
6 you.  
7 Q. Your front bumper started that far away (indicated) from  
8 his calf?  
9 A. I would say so, that's 10 inches.  
10 Q. Then you moved it forward; yes?  
11 A. Yes.  
12 Q. You are in the driver's seat, and his leg is beneath  
13 your front bumper; how can you possibly tell how close,  
14 to within that much or that much (indicated)?  
15 A. Because after I had moved it forward 2 inches Mr Weller  
16 turned round to look at Mr Vos, presumably for some  
17 further instruction, Mr Vos was on his phone by that  
18 time, and it was at that point Barry looked back at me  
19 and it was almost as if you could see him computing in  
20 his mind what to do, and he then calmly walked away back  
21 onto the pavement. I am absolutely categoric in no  
22 doubt that at no time did my car touch him, his leg or  
23 anything else. He calmly walked away.  
24 Q. He calmly walked onto the pavement; is that what you are  
25 saying?

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1 A. He did.  
 2 Q. So Mr Vos' evidence of seeing what happened, Mr Weller's  
 3 evidence as to what happened is false?  
 4 A. Yes, I believe so.  
 5 Q. The final question I want to ask you is this: they asked  
 6 you who you were?  
 7 A. Yes.  
 8 Q. Or something like "Who are you?", and what you were  
 9 doing or where had you come from or something along  
 10 those lines, they were trying to find out what you were  
 11 doing taking photographs of his house?  
 12 A. Yes.  
 13 Q. You refused to answer that question?  
 14 A. I did.  
 15 Q. If this was a purely straightforward and genuine, proper  
 16 enquiry that you were making, why not just answer  
 17 a polite question with a polite answer?  
 18 A. I had actually gone to a lot of trouble during this  
 19 whole episode to actually avoid any confrontation, and  
 20 I viewed that as standing -- because the point they  
 21 asked me I was moving towards my car to get into my car,  
 22 I wouldn't say I felt threatened by the two of them,  
 23 they say in their own statement that they hid and waited  
 24 for me to return, but I just didn't think it was  
 25 conducive to the situation to stand and have

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1 a conversation about it. I certainly don't take it as  
 2 me being evasive or even intimidating or threatening or  
 3 harassing, quite the opposite, I went to a great deal of  
 4 effort to make sure I avoided doing that, and my whole  
 5 mindset was to avoid any kind of confrontation.  
 6 Q. You had failed in that regard, they were there, you say  
 7 you weren't being evasive but they were there, they  
 8 asked you, or I think it was Mr Weller?  
 9 A. Mr Weller did.  
 10 Q. Whether you had taken photographs of his house and you  
 11 said something along the lines of "No, not me, mate",  
 12 something like that?  
 13 A. Yes, which in their own rebuttal statements they say  
 14 I refused to speak, so I don't understand their  
 15 inconsistency there.  
 16 Q. Do you agree you said to be evasive perhaps or to be  
 17 avoiding --  
 18 A. No, I wasn't being evasive, I didn't want to be  
 19 confrontational and to extend the situation. I wanted  
 20 to get myself away from that situation because at the  
 21 end of the day it didn't seem that there was any merit  
 22 to stand and debate what was going on. My entire reason  
 23 for going there was to ascertain whether the car was  
 24 where they said it would be, and therefore was it  
 25 actually being driven potentially without any insurance.

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1 That was my only reason to go there. I had no wish and  
 2 no desire to enter into any discourse or conversation  
 3 with them.  
 4 Q. When he asked you had you taken photographs, did you  
 5 say, "Yes, I have taken a photograph of your house"?  
 6 A. No, I didn't, I refused to speak to them.  
 7 Q. What, you actually said, "No, I'm not speaking to you"?  
 8 A. No, I just refused to speak.  
 9 Q. Okay. So you deny saying "No, I didn't" or "Not me,  
 10 mate" or something like that, and then when they asked  
 11 you who you were and where you were from, you refused to  
 12 tell them?  
 13 A. Yes, I just got into my car.  
 14 MR STUART: My Lord, those are all my questions of  
 15 Mr McGowan.  
 16 MR POTTS: I have no questions.  
 17 Questioned by MR JUSTICE HILDYARD  
 18 MR JUSTICE HILDYARD: Mr McGowan, tell me a little more  
 19 about how your car was parked. Was it behind one car by  
 20 about 10 inches?  
 21 A. I would say it was quite a bit more than that.  
 22 I wouldn't say -- if I was sat in my car now, and if we  
 23 are talking in relation to Barry having stood in front  
 24 of me, there was certainly a good 10 inches obviously  
 25 between my car and Barry where he was stood. I couldn't

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1 say how close the next vehicle would have been, but my  
 2 recollection of pulling out, when I came to leave, was  
 3 there was plenty of room once Mr Weller had moved away.  
 4 There was plenty of room. I certainly didn't, as is  
 5 evidenced here in their statement, do a U-turn and go  
 6 back the other way. I merely went forward, pulled out  
 7 into the road, and went forward in the direction I was  
 8 facing. At no point did I do a U-turn.  
 9 MR JUSTICE HILDYARD: Right. Was it a sort of crowded  
 10 street?  
 11 A. It wasn't actually. As I recall, there were parking  
 12 bays, but not individual parking bays, there might have  
 13 been a parking bay for eight or nine cars marked out  
 14 onto the road. I don't recall it being by then at 20  
 15 past, I think possibly some 100 yards behind me is  
 16 another school, but given the 20 past 4, it certainly  
 17 wouldn't be as busy as it might be.  
 18 MR JUSTICE HILDYARD: The school collecting time.  
 19 A. Absolutely. I am sure it does get very busy, but  
 20 I don't recall it being very busy then, and had it been  
 21 I certainly wouldn't have been trying to do a U-turn in  
 22 such a busy street after what was, you know, quite  
 23 a tense situation.  
 24 MR JUSTICE HILDYARD: Was there a car behind you? What was  
 25 the position?

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1 A. I believe there was. At no point did I need to reverse,  
 2 though. I was able to pull out straight away.  
 3 MR JUSTICE HILDYARD: There was a reasonable gap, was there,  
 4 between you and the car behind?  
 5 A. Yes, yes, absolutely. Yes.  
 6 MR JUSTICE HILDYARD: Why did you move at all forward when  
 7 you saw a man in front of you?  
 8 A. It was to show my intention that I wanted to leave and  
 9 I didn't want to enter into any discourse with them. As  
 10 I have already said I gesticulated to say, "Please get  
 11 out the way" and shook my head as if to say --  
 12 MR JUSTICE HILDYARD: You sort of waved.  
 13 A. And shook my head as if it is --  
 14 MR JUSTICE HILDYARD: Did you rev your engine or something  
 15 like that?  
 16 A. No, it's a constant source to my companions that I drive  
 17 a very poor car and I'm not in the habit of revving my  
 18 very pathetic car for anybody, and it was more a case of  
 19 being able to move my car 2 inches to show my intention  
 20 that I wanted to leave, and having done that, and having  
 21 made absolutely no contact because there was still (a)  
 22 there was, in my opinion, plenty of space between my  
 23 bumper and Barry, but also his reaction when he turned  
 24 round to have a look at Godfrey to take instruction from  
 25 Godfrey, Godfrey was still on the phone, and it was

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1 a case that then I think he understood, without any  
 2 doubt, that I wanted to leave, and he then moved out of  
 3 the way of the car and it was extremely easy for me to  
 4 pull away.  
 5 MR JUSTICE HILDYARD: But on the measurements you give,  
 6 could you not have simply reversed without moving  
 7 forward or even without him moving and then just left?  
 8 A. I suppose I could have done.  
 9 MR JUSTICE HILDYARD: You could have done that, you are not  
 10 suggesting to me that you couldn't have done that?  
 11 A. No, I am not, no. I'll be honest and say that looking  
 12 back now, that's the first time that's ever occurred to  
 13 me.  
 14 MR JUSTICE HILDYARD: Would it be fair to say you wanted to  
 15 make a bit of a point?  
 16 A. I think I wanted to make a point inasmuch as I wanted to  
 17 leave, I didn't want to make an aggressive point.  
 18 Having asked him to leave the road, and to not try to  
 19 impede me, because it's an unusual situation to be in,  
 20 and not a pleasant one.  
 21 MR JUSTICE HILDYARD: No.  
 22 A. I did want to show my intent, that I had every intention  
 23 of leaving rather than staying and debating any  
 24 conversations that he might want to have. Given that he  
 25 turned round, exchanged glances with Mr Vos, turned

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1 round, looked at me, I believe he must have seen the  
 2 intent in my eyes, in as much as "I really don't want to  
 3 debate this", he then calmly stepped away from the car.  
 4 It's for that main reason as well that I wholeheartedly  
 5 believe that at no time did I touch his leg with my car.  
 6 I would have thought, given the importance of it, of  
 7 such a situation, that there would be some medical proof  
 8 to say that some kind of sprain had happened, and I am  
 9 surprised that isn't here, to be honest.  
 10 MR JUSTICE HILDYARD: It's a bit of a hospital pass to do  
 11 this, given the bad feelings, did you remonstrate  
 12 Mr McAlindon in assigning you this task?  
 13 A. No, because I look back on it now and see it for what it  
 14 was. A very easy task to go and see if a car was parked  
 15 on a driveway. It was as simple as that.  
 16 MR JUSTICE HILDYARD: Any questions?  
 17 Further cross-examination by MR STUART  
 18 MR STUART: My Lord, only one arising. You said yours  
 19 wasn't a very good car, or not a very ...  
 20 A. Sorry, what I meant by that was I take the reference to  
 21 revving an engine as if to sort of be a bit of a macho  
 22 thing to do and you wouldn't do that in my car.  
 23 Q. So your car isn't a 2-litre injected car?  
 24 A. It is, and it's the source of an awful lot of jokes in  
 25 the department.

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1 MR JUSTICE HILDYARD: It's a what, sorry?  
 2 MR STUART: It's a 2-litre engine but an injected, so a TDi.  
 3 That's right, is it?  
 4 A. Yes. As I say, it's the source of much merriment in the  
 5 department.  
 6 MR JUSTICE HILDYARD: Automatic?  
 7 A. It is automatic.  
 8 MR JUSTICE HILDYARD: Right. Any further questions?  
 9 Re-examination by MR POTTS  
 10 MR POTTS: I am probably going to show my ignorance.  
 11 Firstly, I am struggling with the TDi bit. If the car  
 12 was -- an automatic car, you say it's a question as to  
 13 the suggestion as to revving the car, can you rev  
 14 an automatic car?  
 15 A. No, you can't, you slip it into drive and it moves  
 16 forward at an incredibly slow pace, completely managed  
 17 by the brake.  
 18 MR JUSTICE HILDYARD: Thank you very much, Mr McGowan. May  
 19 he be released?  
 20 MR STUART: Absolutely.  
 21 MR JUSTICE HILDYARD: Good.  
 22 (The witness withdrew)  
 23 Housekeeping  
 24 MR JUSTICE HILDYARD: Thank you. Does that conclude  
 25 matters?

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1 MR STUART: Yes, my Lord.  
 2 MR JUSTICE HILDYARD: I feel, and this will be a source of  
 3 disappointment and dismay to you, that I have reached  
 4 saturation point and I believe that the shafts of light  
 5 which you could promise me on Parham would be a waste of  
 6 your energies, I am afraid. That does not mean to say  
 7 that I don't quite look forward to them, but on  
 8 a subsequent occasion.  
 9 MR STUART: Absolutely, my Lord.  
 10 MR POTTS: My Lord, I agree. I had reached the same view  
 11 myself last night. My Lord, could I give your Lordship  
 12 one correction to my skeleton?  
 13 MR JUSTICE HILDYARD: Yes.  
 14 MR POTTS: In fact it's a typo, I think, which I thought  
 15 I should correct, in case your Lordship was desperately  
 16 searching for a reference on Christmas Day, perhaps.  
 17 It's the yellow tab in my authorities, page 15, I think  
 18 it's reference number 89.  
 19 MR JUSTICE HILDYARD: Right.  
 20 MR POTTS: Rather than E3, it should be F, and it's pages 3  
 21 to 9-7.  
 22 MR JUSTICE HILDYARD: E3, tab 3, pages 9 to 7?  
 23 MR POTTS: No, it says E3/397 and it should be F page 3 to  
 24 page 9-7.  
 25 MR JUSTICE HILDYARD: And you found that last night? I am

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1 most impressed.  
 2 MR POTTS: My Lord, all I was going to suggest in terms of,  
 3 if your Lordship was going to do anything in relation to  
 4 Uckfield --  
 5 MR JUSTICE HILDYARD: I will read this carefully. I do not  
 6 know what sort of work you will be doing, I hope you get  
 7 a rest because this must have been quite an exhausting  
 8 process, but if you do start working on your skeleton  
 9 arguments, it always helps me for you to identify with  
 10 great clarity the disputed facts which are required to  
 11 be resolved in order to reach a fair adjudication. That  
 12 may seem a very obvious point, but sometimes those  
 13 things get lost in the varnish of presentation.  
 14 The other thing I would like, not to give you the  
 15 impression that I won't remember the witnesses, because  
 16 I do now, but especially given the subsequent case  
 17 I would like photographs, please, if no-one has  
 18 an objection -- if they do have an objection, they must  
 19 tell me -- of each witness.  
 20 MR STUART: Understood, my Lord. Just on the witnesses  
 21 could I mention Mrs Lofting? Do you remember?  
 22 MR JUSTICE HILDYARD: Yes.  
 23 MR STUART: Your Lordship quite rightly wanted us to find  
 24 out --  
 25 MR JUSTICE HILDYARD: Quite right, thank you.

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1 MR STUART: She was in hospital yesterday, your Lordship may  
 2 recall.  
 3 MR JUSTICE HILDYARD: Yes.  
 4 MR STUART: We have received an email this morning at 0630,  
 5 and I can pass it up to your Lordship, but I'll read it  
 6 first:  
 7 "Thank you for your email. Sorry I didn't reply  
 8 yesterday but was unavailable to. My arrangements in  
 9 January are on 8 January I fly to Italy to an optical  
 10 conference combined with a skiing break which has been  
 11 given to me as a Christmas present from my parents who  
 12 will also be joining me there from Australia. I return  
 13 on 18 January. My mother had booked all of the trip,  
 14 but I can give you the flight booking."  
 15 We had asked for proof and references of what she  
 16 was up to.  
 17 "I can give you the flight booking references [and  
 18 then she gives a number with easyJet]. If hotel booking  
 19 accommodation is required I will need to get this.  
 20 I hope this information is enough. Patricia Lofting."  
 21 That's what we have. (Handed)  
 22 MR JUSTICE HILDYARD: Have you discussed this with Mr Potts?  
 23 MR STUART: No, I had forgotten about this until just now.  
 24 MR JUSTICE HILDYARD: I had certainly forgotten. What do  
 25 you want me to do?

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1 MR POTTS: My Lord, it's a bit awkward. I have been asking  
 2 for information about Mrs Lofting every day and I would  
 3 like to have the chance to consider her position really,  
 4 rather than dealing with it on the hoof.  
 5 MR STUART: My Lord, as I mentioned to my friend yesterday,  
 6 my suggestion was if it proves that she really, really  
 7 was abroad, et cetera, it might be that her evidence  
 8 appeared to me to be very short and could be dealt with  
 9 within half an hour at the beginning of the day when we  
 10 are coming for submissions, which I think is Monday the  
 11 20th on our present estimate. Does your Lordship  
 12 remember? We are hoping to get through the evidence on  
 13 about 8/9th and then 12/13/14th, perhaps have a couple  
 14 of days' break and the weekend to have got some things  
 15 to your Lordship for you to read, and then to come back  
 16 on the 20th, 21st, Monday/Tuesday, and that we already  
 17 thought might spill over into the Tuesday or Tuesday to  
 18 Wednesday. It seemed to me that there might be --  
 19 MR JUSTICE HILDYARD: She was not available today? It's too  
 20 late now.  
 21 MR STUART: Yes, that's right, she was expressly told not to  
 22 come today because her evidence was not to be considered  
 23 until your Lordship had a full view of --  
 24 MR JUSTICE HILDYARD: I see. You are quite right.  
 25 Can I leave this for you to discuss?

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1 MR STUART: Yes.  
 2 MR POTTS: Yes. What would be helpful, my Lord, was just in  
 3 terms of some sense as to the date. Your Lordship was  
 4 still making enquiries as to which days we would  
 5 actually be able to have next term, because I have  
 6 certain other parties interested as well.  
 7 MR JUSTICE HILDYARD: Yes. I know that the thing that I had  
 8 this morning is coming back to me, but I know not when.  
 9 We will meet on the 9th and 10th. You may have to put  
 10 up it with a shorter day on the 10th, though I will be  
 11 amenable to starting earlier if that is what you would  
 12 like to in effect get a full day in terms of hours.  
 13 I will sit early on the 9th if that's what you want, but  
 14 I had in mind say 10 o'clock as being a reasonable  
 15 compromise, gives us a bit longer for things that have  
 16 occurred to you over the holiday, and then to move on.  
 17 I will sit on the Monday, as I had indicated, doing  
 18 myself out of, no doubt, a very, very important meeting.  
 19 MR POTTS: That will be a full day, then, my Lord?  
 20 MR JUSTICE HILDYARD: A full day on Monday. Thereafter, we  
 21 will sit consecutive days as I understand it at present,  
 22 my clerk isn't in court, as you can see. There may be  
 23 an interruption that week for two hours or so in order  
 24 to deal with the thing that emerged this morning which  
 25 is inherently urgent, and try and get you as far along

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1 the track as is possible so that you are released.  
 2 I think that Doug Bell may be waiting or not, he may be  
 3 anticipating a call from you, Mr Potts.  
 4 MR POTTS: I think there have been calls, my Lord. The two  
 5 issues, my Lord, at either end of the process which  
 6 I was wondering about was firstly whether your Lordship  
 7 could come back on the first day when we come back,  
 8 whether your Lordship wants openings at that point, or  
 9 having done your reading we just get into the evidence.  
 10 That's the first point. The second point, my Lord, was  
 11 on the timetable, I think we did a timetable, certainly  
 12 I did.  
 13 My Lord, my recollection of the timetable based on  
 14 where I thought we were is that we would have exchanged  
 15 written closing submissions on Monday the 20th at 10 am.  
 16 Your Lordship would have the day for reading, and then  
 17 we would have, your Lordship rightly raising the point  
 18 that a day is a bit tight for oral closing, the 21st and  
 19 22nd for oral closings. My reference to that, my Lord,  
 20 in terms of trying to get some clarity as to when this  
 21 might finish is obviously (a) so I can let the Clerk of  
 22 the Lists to know, to have that, I think it's been  
 23 flagged, but also so I can get some sense in relation to  
 24 my other matter, just to get a sense as to when, and  
 25 I think your Lordship would obviously no doubt like to

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1 have a timetable for January rather than just leaving it  
 2 all to see how we go.  
 3 My Lord, that was the timetable that I gave to  
 4 your Lordship before. In fact what's happened is on the  
 5 timetable we have gained an extra day. So my idea of  
 6 the 10 am is, if anything, more realistic. We have  
 7 lost, and indeed we may have -- my preference, my Lord,  
 8 would be if we are going to have to come back during  
 9 that week for written closings, that your Lordship would  
 10 get something more useful if we are able to have the  
 11 weekend to finalise them. That accords with the  
 12 timetable I gave to your Lordship before.  
 13 (Pause)  
 14 MR JUSTICE HILDYARD: Reading days you imagine will be on  
 15 the 16th and 17th -- sorry, writing days for you.  
 16 MR STUART: On the Thursday/Friday, my Lord, yes.  
 17 MR JUSTICE HILDYARD: I only ask so that if I can get the  
 18 other matter in on those days, I won't interrupt you on  
 19 the other days. While you are slaving away --  
 20 MR POTTS: My Lord, that is of course subject to us not  
 21 overrunning to finish, but yes. That's my only concern,  
 22 my Lord, given -- well, yes.  
 23 MR JUSTICE HILDYARD: Yes. Good. Well, Mr Stuart, I am  
 24 hoping that you have covered a great deal of the ground  
 25 now in terms of the context.

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1 MR STUART: Exactly. Mr Dyson, Mr McAlindon --  
 2 MR JUSTICE HILDYARD: And that you will have extra time to  
 3 make efficient --  
 4 MR STUART: Focus.  
 5 MR JUSTICE HILDYARD: -- both sets. I don't wish the  
 6 Parhams to feel that their case is not given equal  
 7 billing. It will be given equal billing. I don't wish  
 8 to put down guillotined examination times, but I do  
 9 expect you to keep to this timing. Whilst there isn't  
 10 a guillotine, I will begin to query if we start  
 11 exceeding these times.  
 12 MR STUART: My Lord, I absolutely understand.  
 13 MR JUSTICE HILDYARD: I don't mean this nastily in any way,  
 14 but we have to try and bring form, we will be some days  
 15 over the estimate, and I have to answer for those as  
 16 well.  
 17 MR STUART: My Lord, yes. I tried today to speed things  
 18 along.  
 19 MR JUSTICE HILDYARD: You did, and well done, that was very  
 20 helpful.  
 21 MR STUART: The Parhams have sat here throughout and  
 22 understand that to the extent Mr Dyson, Mr McAlindon,  
 23 Mr Raines, and Mr Rowe, who are the key witnesses, have  
 24 already been cross-examined about all of the general  
 25 background matters, and therefore they will now be

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1 cross-examined only about the specifics of the Parhams'  
 2 case.  
 3 MR JUSTICE HILDYARD: Yes. I am grateful to be able to say  
 4 to them direct that your case will be given exactly the  
 5 same level of appreciation as the other case. The fact  
 6 that the background facts happen to have been heard in  
 7 the one does not in any way mean that they don't have  
 8 equal significance in the other.  
 9 Which brings me to the direction which you require.  
 10 You can perhaps lodge that. I understand you to be  
 11 agreed that by whatever form of words, evidence in the  
 12 one will be evidence in the other, so far as obviously  
 13 is relevant.  
 14 MR STUART: Correct.  
 15 MR JUSTICE HILDYARD: Right. Is that it?  
 16 MR POTTS: My Lord, just to get clarity, is your Lordship  
 17 agreeable to the procedure at the end of the matter in  
 18 terms of 10 am for exchange of --  
 19 MR JUSTICE HILDYARD: If you get them to me on the Friday at  
 20 10 o'clock, which is --  
 21 MR POTTS: No, I am suggesting, my Lord, we could have the  
 22 weekend, 10 am on Monday, so your Lordship has the  
 23 Monday to read, and then we have the Tuesday/Wednesday  
 24 for the oral submissions, that was on the timetable,  
 25 my Lord, I provided to your Lordship.

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1 MR JUSTICE HILDYARD: Yes, I am sorry. I thought you said  
 2 something about my having the weekend.  
 3 MR POTTS: No, my Lord, I am afraid it was the opposite, it  
 4 was for us to have the weekend. The extra two days for  
 5 us would be of great benefit to ensure that  
 6 your Lordship gets the best product.  
 7 MR JUSTICE HILDYARD: That is fine if that's what you both  
 8 want. If I had them on the Friday, you might be  
 9 released for the Wednesday, but that's entirely a matter  
 10 for you. From my point of view, if you get them to me  
 11 on the 10 o'clock on Monday and I have all of my Monday  
 12 for reading them, I am fine for Tuesday and Wednesday.  
 13 By indicating two days, I do not encourage you to take  
 14 two days.  
 15 MR STUART: I should say I am presently planning to see how  
 16 it goes for the evidence Thursday, Friday, Monday,  
 17 Tuesday, Wednesday, if we finish the evidence as per my  
 18 learned friend's schedule by Wednesday morning then  
 19 I would have thought we could have got them out by  
 20 Friday afternoon.  
 21 MR JUSTICE HILDYARD: Well, we have been optimistic before.  
 22 MR STUART: That's what I am saying. If, on the other hand,  
 23 we have not got to the end of the evidence until  
 24 Thursday lunchtime, I quite see his point that we are  
 25 rather rushing it to get them out by Friday close of

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1 play.  
 2 MR POTTS: The only other point was at the start of the  
 3 process, my Lord, in terms of does your Lordship want  
 4 openings or having had the skeletons and so on.  
 5 MR JUSTICE HILDYARD: I find it difficult responsibly to  
 6 answer because I really haven't got Parham at all in my  
 7 mind. If either one of you wishes to make some opening  
 8 statement because you think that it will help me assess  
 9 the witnesses and the relevance of their answers, then  
 10 I am perfectly agreeable to that. I wouldn't expect  
 11 either of you to go on for more than an hour, if I can  
 12 put it that way, and I will sit early on the Friday  
 13 before term begins in order to give that little bit  
 14 extra. I want to rise no later than 3, it might be  
 15 a little bit earlier, on the Friday, because I have  
 16 another domestic commitment which I was not released  
 17 from, and I will help out on sitting early on other days  
 18 if you want that.  
 19 MR STUART: Thank you, my Lord.  
 20 MR JUSTICE HILDYARD: I will try and organise that I hear  
 21 the other matter whilst you are slaving in order not to  
 22 interrupt your course. If counsel aren't available in  
 23 the other matter then, I'll have to get back to you.  
 24 MR STUART: Thank you, my Lord.  
 25 MR POTTS: Yes, my Lord.

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1 MR JUSTICE HILDYARD: Does that conclude matters?  
 2 MR POTTS: We have the affidavit your Lordship requested.  
 3 MR JUSTICE HILDYARD: Thank you.  
 4 MR POTTS: My Lord, I apologise for the lack of securing of  
 5 the affidavit, which would be ... it may be that if  
 6 your Lordship is -- if that isn't an issue for  
 7 your Lordship, that is the affidavit. (Handed) We have  
 8 copies which will be provided. I have not had a chance  
 9 to look at it, I am afraid, my Lord.  
 10 MR JUSTICE HILDYARD: Have you seen it?  
 11 MR POTTS: I am sorry, it's not the original, it's a copy  
 12 which has been sworn in Nottingham. I am sorry, of  
 13 course. Hence why it's not bound.  
 14 MR JUSTICE HILDYARD: Right. Have you seen all this?  
 15 MR STUART: Not yet, no.  
 16 MR JUSTICE HILDYARD: What I'm going to do is ask -- I am  
 17 grateful for it, but I would like it put into some form  
 18 of file, and I'll read it at some point (Handed).  
 19 MR POTTS: Yes, my Lord.  
 20 MR JUSTICE HILDYARD: If there are any points to be made,  
 21 you can always let me know.  
 22 Well, as I said, I am very grateful to the shorthand  
 23 writers for what has been a long tour of duty this  
 24 afternoon. I am very grateful to all of you, I know  
 25 this sort of trial is a very exhausting business, and

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1 I hope you all have a very good break, and I look  
 2 forward to the 9th.  
 3 (4.05 pm)  
 4 (The court adjourned until 10.00 am  
 5 on Thursday, 9 January 2014)

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