

# 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 7

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1 Tuesday, 10th December 2013  
2 (10.40 am)  
3 MR BARRY WELLER (continued)  
4 MR POTTS: My Lord, before I continue with Mr Weller, there  
5 is a little bit of housekeeping, if I may.  
6 Your Lordship yesterday raised the question of layouts  
7 and such like.  
8 MR JUSTICE HILDYARD: Yes.  
9 MR POTTS: There is a document -- a map which is a scale  
10 plan, which is agreed, I think, subject to one point.  
11 And it may be I can explore this briefly with Mr Weller,  
12 as to a possible issue about the change in, I think,  
13 the reception desk. Can I pass it up to your Lordship?  
14 MR JUSTICE HILDYARD: Yes thank you.  
15 MR POTTS: It is in A3, so hopefully that will assist on  
16 the eyes.  
17 MR JUSTICE HILDYARD: Thank you.  
18 MR POTTS: So that -- so we have the ground floor and then  
19 the upstairs.  
20 There's another document -- I'm not sure this has  
21 been paginated yet, we will put in after that one.  
22 Perhaps we can hand that to your Lordship -- which is  
23 a manuscript document --  
24 MR STUART: Prepared last night by Mr Vos.  
25 MR POTTS: Yes, it is a manuscript document. So we can hand

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1 that up as well.  
2 MR JUSTICE HILDYARD: Where do you go in?  
3 MR POTTS: I'm sorry my Lord. If you look at the bit with  
4 the hole punch, you see before you get -- if I point it  
5 out to your Lordship it may be easier. Here. That's  
6 where you come in. (Indicates).  
7 MR JUSTICE HILDYARD: Over-door heaters.  
8 MR POTTS: That is the front door. Then you see there are  
9 double doors. Then you have the front area, display  
10 area and I think there may be a question mark as to  
11 whether at some point the reception desk was moved into  
12 the front bit. And then you have got the back area and  
13 then --  
14 MR JUSTICE HILDYARD: The ovals are fitting tables, are  
15 they?  
16 MR POTTS: No my Lord.  
17 MR JUSTICE HILDYARD: So sorry, yes.  
18 MR POTTS: I will be corrected if I get this wrong, which is  
19 quite likely, I'm not very good on plans. There may be  
20 some tables, it is possibly display tables or something.  
21 You see where the reception is?  
22 MR JUSTICE HILDYARD: Yes.  
23 MR POTTS: There may be a question as to some point that  
24 moving further forward. Then, on the left-hand side as  
25 you are going through the store, there are three -- it

2

1 says "dispensing areas."  
2 MR JUSTICE HILDYARD: Yes.  
3 MR POTTS: That's where the dispensers sit in the non-square  
4 chairs facing forward, and there are three or four of  
5 those. I think one of them faces out at the back. In  
6 fact there are four.  
7 Then at the back of the store you have two test  
8 rooms and pre-test.  
9 MR JUSTICE HILDYARD: What are "fields"?  
10 MR POTTS: I have no idea. Testing fields of vision  
11 I think.  
12 A. It is the pre-testing area.  
13 MR JUSTICE HILDYARD: Pre-testing?  
14 A. Yes.  
15 MR JUSTICE HILDYARD: It is all part of the pre-testing.  
16 MR POTTS: Then at the bottom of the page you have  
17 the stairs up. Then upstairs -- that deals with  
18 downstairs. Upstairs you come out of the stairs, there  
19 is a waiting room and it says something like "contact  
20 lens teach."  
21 A. It is our contact lens area.  
22 MR POTTS: Would it be sensible my Lord for me to give  
23 a copy to Mr Weller?  
24 MR JUSTICE HILDYARD: Yes, please. Mr Weller, good morning.  
25 Thank you very much.

3

1 MR POTTS: So we have got -- upstairs we have got  
2 the waiting area "contact lens teach". Then you have  
3 the office in the corner. Then the test room. The lab  
4 off the waiting area and then there are the toilets and  
5 the staff room.  
6 A. They are down a few flights of stairs.  
7 MR POTTS: Yes, we can see that in fact.  
8 A. So it is a split level.  
9 MR POTTS: Maybe I can ask Mr Weller. One point which  
10 I think -- I think the other maps are the same. Just in  
11 terms of the reception area downstairs, am I right those  
12 ovals are sort of display things?  
13 A. The oval in the front there, yeah, is a free-standing  
14 floor unit.  
15 Q. Then what about the reception desk?  
16 A. The reception desk has been changed since that map. It  
17 is more forward and it is two podiums rather than  
18 a reception desk.  
19 Q. Could you indicate roughly where --  
20 A. The first podium would be three squares more forward.  
21 Q. So into the front?  
22 A. Into the front. That display stand has gone more  
23 towards the window.  
24 Q. I see. So the display stand has shifted towards  
25 the front -- to the windows at the front?

4

1 A. Yes. Then we have got a podium that's right pretty much  
2 where you have got the X there, by the display stand.  
3 Q. Which one? The furthest one?  
4 A. So, you know where you have got the first -- the display  
5 area? This, half way down, by the display area where  
6 there's second box in, there's a cross there, pretty  
7 much where the first podium is, and the back podium is  
8 by where it says "till" pretty much.  
9 Q. Where it says?  
10 A. "Till" on the reception desk there, it says "till".  
11 Q. I see. So you have got two -- it is sort of split?  
12 A. So one podium is facing the front of the shop floor and  
13 the other one is facing into the shop.  
14 Q. I see. Apart from that do you think is this accurate?  
15 A. Well, the display stands have changed, but yeah.  
16 Q. In terms of where people are sitting on dispensing  
17 areas, is that right?  
18 A. Yes, it looks correct to me.  
19 Q. Good. Does that assist your Lordship?  
20 MR JUSTICE HILDYARD: Is there any other entrance than  
21 the over-door heaters entrance?  
22 A. No, you can only come in that way.  
23 MR JUSTICE HILDYARD: That's the only entrance.  
24 A. Yes. There is a back door on the -- on the split level  
25 floor there where it says "fire exit". That takes you

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1 out onto the patio and then there is stairs that would  
2 lead you onto what is now Wilkinsons, on a fire exit,  
3 which will also lead you to the roof. So quite often or  
4 not you could go up there and you could find people  
5 coming in the back door because they climb on the roofs  
6 and they come in through the back.  
7 MR POTTS: But not members of staff.  
8 A. No, not unless this were going up there --  
9 Q. To have a cigarette?  
10 A. Right.  
11 Q. Does that assist my Lord?  
12 MR JUSTICE HILDYARD: That's very helpful. Thank you.  
13 MR POTTS: My Lord, the second matter is just in terms of  
14 some disclosure. I think firstly there was a request  
15 for yesterday by the claimants' solicitors for  
16 underlying records relating to the storage unit access.  
17 I haven't seen those but I think they have been provided  
18 and, my Lord, we will get those to your Lordship.  
19 Secondly, my Lord, there's a further document.  
20 Your Lordship will remember that Dr Poulson in  
21 re-examination referred to a job description document  
22 which had been changed by reference to references to  
23 junior partners. We saw one, which is in the bundle  
24 next to the contract, which is undated and Dr Poulson  
25 gave some evidence on that. As a result of her

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1 re-examination we found the version, I think, that she  
2 may have been talking about.  
3 MR JUSTICE HILDYARD: Right.  
4 MR POTTS: So that has been provided. Finally there was  
5 also a reference, I think in Mr Vos' evidence, to some  
6 form submitted to the payroll department. There's no --  
7 there isn't an issue about this, in the sense it is  
8 clear that he went onto the payroll on 6th June, but  
9 I think he referred to a document going off the payroll.  
10 As a result of his evidence we have found  
11 a manuscript form document. It wasn't within the scope  
12 of the search terms and didn't come up on disclosure,  
13 but as a result of his evidence a manual search has  
14 taken place and we have obtained that document. So that  
15 has also been provided. We will update your Lordship's  
16 bundle perhaps at lunchtime in relation to those or at  
17 a convenient moment.  
18 MR JUSTICE HILDYARD: Thank you.  
19 MR POTTS: My Lord, the final issue is just a question of  
20 orders of witnesses. We will see how we go. In the  
21 sense it may or might arise.  
22 Sorry, there is a final issue my Lord. We have also  
23 received this morning -- I haven't had a chance frankly  
24 to consider it -- a second witness statement from  
25 Ms Birdi, who is the claimant in another action. Not

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1 the one after this, a Dartford action -- it is  
2 a different form of action, it is a shareholder  
3 dispute -- next year. But she is a witness in these  
4 proceedings as well and she has produced a further  
5 witness statement.  
6 I would like at this stage to reserve my position on  
7 that because I haven't had a chance to look at it, as to  
8 what our position is on that.  
9 MR JUSTICE HILDYARD: Right.  
10 MR POTTS: My Lord, the fourth point I think is just  
11 a question of order of witnesses. We were told  
12 yesterday that we had to have Mr Yogaradnam today  
13 because he has taken the day off.  
14 MR JUSTICE HILDYARD: Yes.  
15 MR POTTS: I think we found out this morning that in fact he  
16 is not coming today, but Ms Rosier is coming today  
17 instead. It is slightly different from what we  
18 understood the position to be, but we will see how we go  
19 in those respects. I'm not taking -- there is no  
20 criticism intended in relation to that.  
21 MR STUART: Just so your Lordship has it, hopefully  
22 your Lordship got an email, or your Lordship's clerk got  
23 an email at 9.09 just to explain that having made  
24 further enquiries of Mr Yogaradnam we managed to put him  
25 off, because we didn't want him. So he is now coming on

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1 Wednesday. He is not going to be here today on any  
 2 basis, but he will definitely be here tomorrow.  
 3 Ms Rosier simply cannot come any other day other than  
 4 today and she is here. She is a very short witness  
 5 my Lord, and I really very much hope that we will  
 6 somehow be able to hear from her later today.  
 7 MR JUSTICE HILDYARD: Okay. Thank you very much.  
 8 Cross-examination by MR POTTS (continued)  
 9 MR POTTS: Good morning.  
 10 A. Good morning.  
 11 Q. Can I ask you -- move on to ask you a couple of  
 12 questions about the Sunday trading. Do you have  
 13 volume B? At paragraph 49 you say the relationship with  
 14 Specsavers -- sorry do you have that? I will give you  
 15 a moment. Tab 6 is your statement. It is page 131.  
 16 (Pause).  
 17 I think we discussed the VAT matter. Moving on  
 18 to -- in your statement you then move on to discuss  
 19 Sunday trading. You say:  
 20 "The relationship with SOG was strained by pressure  
 21 to agree to trade on Sundays."  
 22 Indeed, in fact further forward at paragraph 82, you  
 23 say that they wanted you out of the business because of  
 24 a refusal to open on Sundays.  
 25 A. Yes.

1 Q. Now, Specsavers was keen to encourage stores to open on  
 2 Sunday. It was part of the -- we talked about the phase  
 3 one initiative to deal with supermarkets, didn't we?  
 4 A. Yes.  
 5 Q. I think you were in court -- I say we, you were in court  
 6 when we discussed that before. As a phase one  
 7 initiative it is an optional -- it is not in the manual,  
 8 it is optional rather than mandatory, correct?  
 9 A. It was never felt that way. It was never put across  
 10 that way.  
 11 Q. You weren't convinced about the sense of opening on  
 12 Sundays, correct?  
 13 A. Correct.  
 14 Q. Now, you refer to an internal email about a push forward  
 15 at E2, 515. Do you see that?  
 16 A. I'm just reading it, yes.  
 17 Q. Of course.  
 18 A. Yes.  
 19 Q. The second paragraph refers to the fact that the Sunday  
 20 trading is on the agenda. It says:  
 21 "It will take a number of years to achieve."  
 22 It also says:  
 23 "It is recognised it is not suitable for all  
 24 stores."  
 25 Correct?

1 A. Yes.  
 2 Q. It doesn't suggest that Sunday trading is mandatory,  
 3 does it, this email?  
 4 A. It doesn't say it is not. When it says that it is not  
 5 suitable for all stores, the majority of the stores that  
 6 aren't open on a Sunday are ones that are in places that  
 7 can't possibly open on a Sunday. It is my belief.  
 8 Q. It doesn't say -- the email doesn't suggest that  
 9 Specsavers wants to get rid of people if they don't open  
 10 on Sundays, does it?  
 11 A. The email doesn't suggest that, no.  
 12 Q. No.  
 13 A. Because the email is outlining -- saying we want to get  
 14 you up to this amount of ours and then you get  
 15 the pressure of: oh, we revert to the email, we have got  
 16 to apply to this, hence we ended up opening 8.30 am and  
 17 closing at 6 pm just to try to compete and just to try  
 18 to get them on side, to say: look, we are doing our best  
 19 here. But we always felt that Sundays was never a good  
 20 opportunity to do in Bognor Regis. But we were never  
 21 told -- we -- never in one time did I get a call or  
 22 a thing to say: actually, do you know what? You are  
 23 right. Okay, we will listen to you as a partner or  
 24 whatever you want to call us, we will listen to you, you  
 25 are in the store, you are running the business. We

1 never got that. We just got: oh, we need to extend our  
 2 opening times, we have got to challenge the competition  
 3 of Tesco's and Asda and all this lot and it is about --  
 4 beat the competition was a big thing and we was giving  
 5 our suggestions and they were just -- in my terminology,  
 6 they were just thrown back at us. You know: where do  
 7 you get these figures from? We tried to produce figures  
 8 to say that it won't be profitable for to us open on  
 9 Sundays and again we got: well, where did you get these  
 10 figures from? Obviously they did come from Mr Vos. He  
 11 had worked out an analysis of what staff we would need  
 12 and what we would need to work -- to open and how much  
 13 we would need to take on a Sunday to make it worth our  
 14 while, but you see that's where it becomes inconclusive  
 15 because they get their money on the actual turnover. So  
 16 it doesn't matter -- if we are taking that money extra  
 17 on turnover, it doesn't mean that it's going to be  
 18 profitable. So we was looking at the profitable options  
 19 and not the turnover options.  
 20 Q. You referred in your answer at some point to the fact  
 21 that there were a number of stores that didn't open on  
 22 Sunday, I think around 150 stores of the 700 didn't open  
 23 on Sundays. Now you say that you think that  
 24 the majority are in places where they can't, is that  
 25 right?

1 A. Yes.  
2 Q. But there are plainly not all of them, certainly there  
3 are stores that don't apply to that, where they didn't  
4 open, correct?  
5 A. I haven't seen that so I can't comment.  
6 Q. I think you said the majority --  
7 A. The majority of the stores is that I can't -- you know  
8 places that can't open Sundays. In advertising now for  
9 Specsavers -- it's got big adverts in most of the press,  
10 "Open on Sundays". That's only just been put on there  
11 in the last year.  
12 Q. In relation to this issue there wasn't a board -- you  
13 talked about board meetings being -- I think it has been  
14 referred to as, "Being called to the headmaster's  
15 office". There was no board meeting convened by  
16 Specsavers at which Sunday trading was discussed and  
17 pushed, was there?  
18 A. No, because they didn't want to hold a board meeting  
19 because that would show they were pushing us into  
20 opening on Sunday. They didn't want to do that, it is  
21 their tactics, it is their game.  
22 Q. You had a meeting with Mr Dyson, didn't you in March  
23 2009 about mystery shopper?  
24 A. Correct.  
25 Q. There wasn't a discussion about Sunday trading at that

13

1 meeting, was there?  
2 A. I can't recall it.  
3 Q. He didn't raise it at that meeting either. Surely if  
4 this was such a big issue that they were forcing you to  
5 do, wouldn't that have been a perfect opportunity to  
6 raise the issue?  
7 A. I think there were other things on the agenda, so it  
8 wasn't an opportunity to raise that issue, no.  
9 Q. Well, he could have put it on the agenda if he was  
10 concerned about it, couldn't he?  
11 A. He didn't.  
12 Q. Now, you personally were relaxed about the mystery  
13 shopper issue, is that right?  
14 A. Yes.  
15 Q. In her evidence Dr Poulson accepted that you were  
16 contractually required to implement this if the mystery  
17 shopper was in -- it was in the manual and therefore it  
18 wasn't a matter delegated to you under  
19 the shareholders --  
20 A. Sorry, I missed you there.  
21 Q. In her evidence -- if you like I can take you to it,  
22 let's see if I can do it shortly -- she accepted that  
23 the mystery shopper was in the manual, you were required  
24 to do things in the manual, it wasn't a matter which was  
25 delegated to you to choose, and she accepted that. Do

14

1 you accept the same points?  
2 A. The manual -- are you -- what manual are you referring  
3 to? Are you doing best practice manual or are you doing  
4 our shareholders' agreement or our maintenance  
5 agreement?  
6 Q. Okay. Let's have a look, if it assists, at E2.  
7 A. Sorry.  
8 Q. No problem. Let's deal with this in stages. 431, E2.  
9 Do you remember -- maybe actually let's deal with  
10 the context perhaps. If we go back to 428, just in  
11 terms of the context, before we get to the documents.  
12 The mystery shopper programme initially wasn't  
13 videoed?  
14 A. Correct.  
15 Q. It then came in but was put in as an optional extra?  
16 A. Yes.  
17 Q. And then a decision in January 2008 -- sorry, January  
18 was voluntary, then it was determined to become  
19 mandatory. Correct? Is that the chronology?  
20 A. Yes, that's my understanding.  
21 Q. In 428 was an email sent in January 2009. Actually it  
22 wasn't -- just from Dr Poulson?  
23 A. Mmm hmm.  
24 Q. Did you see it at the time?  
25 A. Yes.

15

1 Q. You knew that that was Dr Poulson's issue?  
2 A. Yes.  
3 Q. In fact, at 426 was sent through by Dr Poulson a copy of  
4 the notice --  
5 A. Yes.  
6 Q. -- which was being displayed in the store?  
7 A. Yes.  
8 Q. You remember that. Then go forward to 431. There's  
9 a letter -- having set out her concerns -- in fact,  
10 Mr Dyson wrote this three page letter in response to  
11 her.  
12 Do you remember seeing it at the time, this letter?  
13 Was it discussed with you?  
14 A. Can I just read it?  
15 Q. Of course, absolutely.  
16 A. Sorry. (Pause).  
17 Q. Well, the first question is, just having a look at it,  
18 was this a letter which you recall from the time? Take  
19 your time. (Pause).  
20 A. I didn't see the letter, but I do recall talking about  
21 it.  
22 Q. Can I just deal with -- he deals with -- he sets out --  
23 there's quite a long explanation about the two issues of  
24 data protection and professional ethics, which was  
25 the two -- I think that is really the two concerns that

16

1 she raised. Do you see that?  
 2 A. I'm just reading through it, sorry.  
 3 Q. Of course. (Pause).  
 4 A. Okay.  
 5 Q. So, let me show you, 436. Let's take it. There are  
 6 a couple of enclosures. Firstly 434 is:  
 7 "EyeQ advice on video shopper, January 2009."  
 8 Do you see that? 434.  
 9 A. Yes.  
 10 Q. Then there's reference to it being video and then  
 11 there's an explanation of how it works, the benefits,  
 12 how it would be used, whether it is legal, debriefing  
 13 staff. Then -- you can see it. Then there is a store  
 14 brief:  
 15 "Mystery shopper, 2008."  
 16 Do you see that? 436?  
 17 A. Sorry I'm just reading this again. (Pause).  
 18 Q. Okay.  
 19 A. Okay sorry 436.  
 20 Q. 436 is the store brief. This talks about -- it also  
 21 makes clear, and we can see it from the third word, that  
 22 it is videoed. It makes it clear it is going to be  
 23 videoed, yes?  
 24 A. Mmm hmm.  
 25 Q. Then what is set out here is what is expected of each

17

1 stage of I think it is referred to as, "The customer  
 2 journey", apart from the clinical process itself. You  
 3 see that, section 1: answering the telephone, staff and  
 4 approach, acknowledging each customer within 3 minutes  
 5 of entering the store. Do you see that? Section 3:  
 6 "Registration, pre-testing and waiting."  
 7 When you are meant to register them and so on, yes?  
 8 A. Yes.  
 9 Q. Section 4 is the eye test. Seven points, is that --  
 10 this is how many points you get on your mystery shopper?  
 11 A. Yes.  
 12 Q. Then the frame selection. Dispensing, section 6.  
 13 Fitting and collection of glasses. Then the action  
 14 list. Yes? So there's quite a detailed process in that  
 15 document.  
 16 A. Yes.  
 17 Q. So that is Specsavers saying: this is what we expect of  
 18 you in terms of the customer journey?  
 19 A. Yes.  
 20 Q. As checked on the mystery shopper. Now, this was put to  
 21 Dr Poulson, I think in fact in re-examination, and she  
 22 said: well, I'm not quite sure what its status is and so  
 23 on.  
 24 Can I take you back please to 433, which is  
 25 the covering letter. The second paragraph there, which

18

1 she wasn't shown in re-examination, said:  
 2 "I must remind you of the contractual provision  
 3 under the shareholders' agreement."  
 4 So he enclosed a copy of it with the letter,  
 5 according to this, yes?  
 6 A. Yes.  
 7 Q. "The agreement requires partners to operate a store in  
 8 accordance with the manual. The manual is very clear  
 9 about the purpose and use of mystery shopper programmes.  
 10 I enclose the relevant page of the manual which can be  
 11 found on EyeQ."  
 12 Now, isn't that the store brief?  
 13 A. No.  
 14 Q. Which is it?  
 15 A. It is not the store brief. The manual is EyeQ, it is on  
 16 an EyeQ system that you can get from your SOCRATES  
 17 system.  
 18 Q. Are you saying it is the first one, the 434 document?  
 19 A. No, it's -- EyeQ -- yeah, that says EyeQ, so that must  
 20 be the document that would have been on EyeQ.  
 21 Q. Well, except if you go back to 434 it says:  
 22 "Information about the process followed in gathering  
 23 the data and what happens is published on EyeQ."  
 24 A. Yeah, that is 434.  
 25 Q. That's 434. That's referred to at 432, if you see that?

19

1 A. Sorry 432.  
 2 Q. Yes, it says:  
 3 "Information about the process followed."  
 4 A. Yeah, and that's what is 434.  
 5 Q. He goes on, over the page at 433, saying:  
 6 "I enclose the relevant page of the manual."  
 7 Now --  
 8 A. The manual is the EyeQ system, which can be changed at  
 9 any point on the EyeQ system. And that's if you can  
 10 reach the EyeQ system because half the time you couldn't  
 11 ever get on it because it was always -- there was  
 12 a problem with it or what have you. You never really  
 13 went onto EyeQ that often. And so, yes he has put in  
 14 here:  
 15 "The EyeQ advice for mystery shopper, 2009 --"  
 16 Q. 2008 I think, isn't it?  
 17 A. It says 2009 there.  
 18 Q. I see, that one, 434?  
 19 A. That's the EyeQ one.  
 20 Q. Then 436?  
 21 A. 436 is the store brief for 2008. So this is different  
 22 to what's on 2009, isn't it?  
 23 Q. Okay, but it is referring to -- the two are together.  
 24 This is something which was sent to you, the store  
 25 brief?

20

1 A. The store brief would have been sent to us, yes.  
 2 Q. Under the shareholders' agreement, what it says is:  
 3 "The manual is any specification notified to the  
 4 store, either in written or electronic form or other  
 5 medium."  
 6 Now this document, 436 is setting out in detail what  
 7 is expected in terms of the customer journey, correct?  
 8 A. Sorry, which one are you saying?  
 9 Q. 436.  
 10 A. 436 isn't the manual, no.  
 11 Q. But it is --  
 12 A. That's the store brief. That is a store brief.  
 13 The manual is EyeQ which is 434.  
 14 Q. Sorry, let's take it in stages. The definition under  
 15 the shareholders' agreement is:  
 16 "Any specification notified either in written or  
 17 electronic form".  
 18 Now, there are detailed specifications as to what  
 19 the customer journey should be in 436.  
 20 A. Which is a store brief, which isn't the manual.  
 21 Q. Well, it is something in writing which was notified to  
 22 you, was it not?  
 23 A. It was notified to us, but can I say Mr Potts, I'm  
 24 confused, because on -- you are saying on our  
 25 shareholders' agreement that the EyeQ manual can be

1 updated at any time, so we have got to apply to changes  
 2 that they make without -- I know we have signed them --  
 3 the shareholders' agreement, we signed that, and  
 4 I signed in good faith because I didn't really realise  
 5 what I was signing until now. But I have signed that  
 6 and so I have signed to say that we can change the rules  
 7 at any time.  
 8 Q. So you accept that?  
 9 A. That's what they have done, isn't it? They are changing  
 10 the rules at any time. They are putting in documents  
 11 without an argument, we have got to agree to without  
 12 actually stating our point.  
 13 Q. Right. So let's break it down. The first point is you  
 14 are accepting that they were contractually entitled to  
 15 change from time to time the specification as to what  
 16 they required of you?  
 17 A. No, I'm not accepting. But you are saying --  
 18 Q. Contractually?  
 19 A. Because you are saying I have signed it -- I have not  
 20 read it so I can't say I can accept it. I have  
 21 obviously signed it, and if it is in there then  
 22 obviously I am accepting it, because that is what is  
 23 written down. But what I'm not accepting is that you  
 24 can put a document in onto the back office computer,  
 25 which is an EyeQ system, which I didn't have any

1 relevance to think it was any part of our shareholders'  
 2 agreement. I might have taken more notice if I was  
 3 aware of the situation, but I wasn't aware of the  
 4 situation that it was part of our shareholders'  
 5 agreement to take everything that was on EyeQ. I just  
 6 thought EyeQ was an information board that was shared by  
 7 the rest of the staff as well. Everyone was party to  
 8 the EyeQ system and I just thought that, you know, that  
 9 the mystery shopper -- yes, I completely agree with the  
 10 mystery shopper programme, I completely agreed with it.  
 11 But I also agreed with Dr Poulson when she said she  
 12 didn't find it professional or -- I can't get the word  
 13 out --  
 14 Q. Ethical?  
 15 A. That is the word, thank you. Ethical to be testing  
 16 the test room. Given that she is a doctor and a pillar  
 17 of society, I felt obliged to agree with her. She was  
 18 my business partner and I agreed with what she was  
 19 saying. I didn't personally -- I already said I didn't  
 20 mind the mystery shopper programme, I didn't mind being  
 21 videoed, and I said that to Mr Dyson, but I did agree  
 22 with Dr Poulson when she said, "I don't think that's  
 23 professional." So I said: okay, I'm working with my  
 24 business partner but we were never given the opportunity  
 25 to argue. So now I'm told, today, that the EyeQ

1 system -- I should have been more aware and that's my  
 2 fault, I don't know, but now I'm told that the EyeQ  
 3 system is part of our shareholders' agreement. And  
 4 that's my thing on it.  
 5 Q. Okay, this letter, 433, is making clear from Mr Dyson's  
 6 point of view that Specsavers considers that this is  
 7 within your -- you are contractually obliged to carry  
 8 this out because it is part of the specification that  
 9 they have required, and he is concerned about  
 10 the non-participation in the mystery shopper programme,  
 11 which he considers to be a breach of the shareholders'  
 12 agreement.  
 13 He also -- and he is making clear, he is setting  
 14 out -- he gives you the written documents setting out  
 15 what the specification is.  
 16 A. Yes.  
 17 Q. He is also making clear that there is a concern about  
 18 disconnection from group strategy, which he considers to  
 19 be serious, and also an issue about tone of  
 20 communications. So it is on that basis that he convenes  
 21 as board meeting. So obviously this was a serious  
 22 matter wasn't it, you must have thought?  
 23 A. From the letter, yes.  
 24 Q. This was a serious matter, did you see the letter at the  
 25 time?

1 A. It wasn't addressed to me. No, I didn't see the letter.  
 2 Q. But you talked about it?  
 3 A. I talked about it with Dr Poulson and she informed me  
 4 that, you know, Mr Dyson wanted to call a board meeting  
 5 and she said that, you know, that she didn't agree with  
 6 it professionally. So I thought as we are having this  
 7 board meeting, the way I presumed it to be was that we  
 8 would able to give our points across in a fair analogy  
 9 of it [sic] and take it from there and discuss  
 10 the issue.  
 11 Q. I see, but you are saying that actually at the time she  
 12 didn't share this letter with you?  
 13 A. No, I didn't see the letter we just spoke about it.  
 14 I didn't feel I needed to see the letter.  
 15 Q. Well, this was convening a board meeting, which is quite  
 16 a serious matter. Surely you would want to see  
 17 the communication?  
 18 A. Can I say Mr Potts, if it was convening a board meeting,  
 19 shouldn't I have received the letter myself as well?  
 20 Q. Can you answer the question I asked? If the convening  
 21 of a board meeting was a serious matter, you knew she  
 22 had received a letter about it, did you not ask to see  
 23 the letter?  
 24 A. No, because we spoke about the letter, she covered  
 25 the grounds, but I didn't receive a letter from Mr Dyson

1 saying: your partner here is doing this, I -- are you  
 2 aware of it? Again, I wasn't informed, you know,  
 3 personally, myself, that this was going on. I can't --  
 4 you know, Helle speaks to me about it and she was  
 5 probably trying to protect me by not showing me  
 6 the letter about how severe it was.  
 7 Q. But you were joint partners?  
 8 A. And so was Mr Dyson, and you say we are all joint  
 9 partners, so should he not have sent me a letter  
 10 personally?  
 11 Q. To be fair to you, I think I have slightly overstated  
 12 it. This wasn't actually convening a meeting, I am  
 13 sorry if I gave you that impression. 433 at the bottom,  
 14 it says:  
 15 "SOG will be convening a meeting and will advise you  
 16 by proper notices."  
 17 A. Then that takes it back, doesn't it?  
 18 Q. Well, still the point stands that this was an important  
 19 issue but she didn't show you the letter itself?  
 20 A. She didn't show me the letter itself. She told me about  
 21 the issue but she didn't show me the letter herself and  
 22 I didn't receive the letter.  
 23 MR JUSTICE HILDYARD: Did you receive a copy of the letter  
 24 at any time when the board meeting was called?  
 25 A. No.

1 MR POTTS: My Lord it wasn't called.  
 2 MR JUSTICE HILDYARD: I know, but was it ever convened?  
 3 MR POTTS: No my Lord.  
 4 MR JUSTICE HILDYARD: It was never convened?  
 5 MR POTTS: No.  
 6 I'm sorry, actually that's not entirely accurate  
 7 my Lord. 442. They requested detail, in the middle of  
 8 the page:  
 9 "Will you confirm whether you are available to  
 10 attend?"  
 11 So there was a discussion about that. I'm sorry  
 12 my Lord.  
 13 Then what happened at 441 was that an email was sent  
 14 to -- that was a joint email account wasn't it,  
 15 storedirectors@sukspeccavers?  
 16 A. Yes.  
 17 Q. In fact Ms Del Grazia said, in the second paragraph when  
 18 she said she had a discussion with -- because in fact  
 19 I think you had gone back talking about -- in fact, over  
 20 the paging, talking about: we will also address legal  
 21 representation at the meeting and so on. And there were  
 22 various issues you wanted to add to the agenda?  
 23 A. Yes.  
 24 Q. Then she says:  
 25 "It is Mr Dyson's objective to attempt to find

1 a resolution to the situation which plainly amounts to  
 2 a dispute which is only likely to become more heated  
 3 distracting us all from our primary duties. To that end  
 4 he would like the opportunity to talk to you directly  
 5 and clear up the apparent misunderstandings over mystery  
 6 shopper. We are still prepared to proceed with the  
 7 meeting of the board but are hoping that a more fruitful  
 8 meeting may be one of a less formal nature between the  
 9 two of you and Mr Dyson. You can also discuss the other  
 10 concerns you have mentioned below."  
 11 Those are the ones in the email below which I just  
 12 took you to. I think you wanted to discuss the dual  
 13 company position, banking arrangements and mystery  
 14 shopper I think; is that right?  
 15 A. Yes, as the email says.  
 16 Q. She says:  
 17 "The intention is to find an amicable way forward as  
 18 business partners Mr Dyson doesn't agree to legal  
 19 representation as it will not assist the objective of  
 20 the meeting."  
 21 So that is the email. Now, his position is -- you  
 22 say, sorry, that Specsavers backed off from the formal  
 23 board meeting after you had asked for the three matters  
 24 to be added, yes?  
 25 A. Yes.



1 Q. In fact -- I mean the email is making clear that you can  
2 discuss the other concerns that you have, isn't it?  
3 A. Yes.  
4 Q. Now, this allegation is the same one that was originally  
5 made in Dr Poulson's witness statement. How does that  
6 allegation fit with the point which you have accepted,  
7 which is that the email says you can discuss what you  
8 want at the meeting?  
9 A. Because, my Lord, what happens is that every time we get  
10 to a point where they don't agree with us, we don't  
11 agree with them, we get told: we are going to escalate  
12 this, it will form into a board meeting and then there  
13 would be disciplinary procedures, blah blah blah.  
14 We would get a phone call or an email to say -- as  
15 you can see, we were threatened with -- or suggested  
16 that we hold a board meeting because we weren't  
17 complying with the mystery shopper, or Dr Poulson didn't  
18 feel freely that she wanted it videoed. And by  
19 escalating this -- and obviously, you know,  
20 Specsavers -- SOG as people want to call it -- are meant  
21 to be our support office. So in my eyes, you know  
22 I paid all this money for my shares, I paid -- I bought  
23 into the business, into that support office and  
24 I believed that what they aim to be is a support office.  
25 When you go to them and you know say: well, we are not

1 happy with that; then you get hit with a board meeting  
2 and then suddenly they are not a support office, they  
3 are your boss. They are your boss and they are going to  
4 tell you what to do and you are going to do it and then,  
5 when you bring in any other things, like the VAT or what  
6 have you, the questions that we were never getting  
7 answers to, suddenly it lapses back from a board meeting  
8 to a meeting to try to sort -- sort this out.  
9 Like I keep saying, I always felt that, you know,  
10 there's always a telephone, we go on about  
11 communication. At many directors' seminars there's --  
12 we have got to make sure communications keep up to --  
13 I remember my first seminar I went to I was so excited  
14 and so pleased that I had made it as a director and  
15 I wanted to go in there and everything and the tone  
16 in -- what the other directors were like was that -- one  
17 of the questions I was asked was: we are too scared to  
18 ask questions because you slap us down.  
19 You know that was my first -- I was like: no, they  
20 don't do that, they listen. Quite evidently, as  
21 the years went on, I found that they don't, and they  
22 change it and they go: okay, well, back on the board  
23 meeting, then we are off of the board meeting then we  
24 are back to just a general meeting. To me, you know,  
25 the threats are there.

1 Q. The point I asked, and I think it may have got slightly  
2 lost in your response, the point I was making was  
3 that --  
4 A. Sorry.  
5 Q. No, no. The point I was making was that the email here  
6 indicates clearly, it says:  
7 "You can discuss the other concerns that you have."  
8 A. Yes it does, and our response is -- our response at the  
9 time, I remember me and Helle speaking about it and  
10 thinking: okay, at least it is not a board meeting, at  
11 least we can just go there and discuss this, because at  
12 the time, you know, you get a board meeting, you  
13 automatically think: oh, my goodness, what are they  
14 going to do to us? So you take the lesser of the two  
15 evils.  
16 Q. She accepted that in fact she wasn't being shut out.  
17 This email made clear she wasn't being shut out from  
18 raising the issues that she wanted to discuss at the  
19 meeting. You say that that's wrong?  
20 A. No. We were able to raise those issues at that meeting,  
21 but if it is not a board meeting and it is a general  
22 chat, it is not so official, is it? And if we were  
23 going for a board meeting, then, obviously there would  
24 need to be a prior agenda and it would have to be  
25 resolved there and then. But when we went for

1 the meeting, when we were asking about the bank  
2 situation and everything, we didn't really receive all  
3 the facts that we were asking for. All we got told was,  
4 you know: if you don't do the mystery shopper programme,  
5 if you don't oblige by this -- then Helle said: well,  
6 buy our shares back then and we will go.  
7 They said: that is not the way it works. We will  
8 put you on gardening leave, we will run your business  
9 down so that the shares -- and we buy them back on  
10 par value. I freaked out. I was absolutely freaked out  
11 by it because I have got a family to provide for;  
12 I can't take that sort of punishment. So I was pleading  
13 with Dr Poulson: let's do the mystery shopper, let's  
14 just carry on, I can't afford to lose my livelihood and  
15 I can't afford to put my family at risk.  
16 Q. Mr Dyson's position is that he was trying to find  
17 an amicable way forward to resolve the mystery shopper  
18 issues and he didn't think a formal setting would be  
19 conducive to that. Do you accept that?  
20 A. Like I said, my way is that it was the lesser of the two  
21 evils.  
22 Q. The meeting took place on 6th March. Could you turn  
23 please to paragraph 61 of your witness statement:  
24 "I was shocked and horrified when he warned us that  
25 if we refused [that is to deal with the mystery shopper]

1 we would be pulled apart. He said that Specsavers would  
 2 put us on gardening leave while they investigated  
 3 the store and we would be left with nothing."  
 4 Can I just break that down a little bit. Did he use  
 5 the words "pulled apart"?  
 6 A. That's my interpretation of it. I can't recall  
 7 the actual meeting, it is some time ago, but when I come  
 8 out of there, my stomach was in absolute bits. I had  
 9 just been into a board meeting, I had just found out  
 10 that you could take my business away and take my  
 11 livelihood away for me not letting a camera go into my  
 12 store, and videoing someone testing.  
 13 To me you see -- as I said to you, Mr Potts, I was  
 14 always in favour of the mystery shopper programme,  
 15 I understood the mystery shopper programme, but you  
 16 know -- but I also understood my business partner,  
 17 Dr Poulson's, side of what she wanted to achieve and she  
 18 didn't feel it was clinically or professionally correct  
 19 to do it. So I was in agreement with her because she is  
 20 an ophthalmologist, she is a pillar of society. She has  
 21 worked in many hospitals, she has done lots of things.  
 22 I'm not going to argue with her, sorry.  
 23 MR POTTS: My Lord, I'm sorry, it might help, Mr Weller, if  
 24 you actually listen to the question I ask and then  
 25 answer the question. My Lord, I'm not sure if it is

1 appropriate for me to direct in this regard?  
 2 MR JUSTICE HILDYARD: What counsel is saying is what you  
 3 have to try to do Mr Weller, I know --  
 4 A. Sorry, I have got so much --  
 5 MR JUSTICE HILDYARD: You have got other things you wish to  
 6 say and at an appropriate moment, of course it is right  
 7 you say them. But the thing is to focus very carefully  
 8 on what counsel is asking, answer the question he is  
 9 asking and if you want to expand on that, explain why  
 10 you want to do so and then, if that's appropriate,  
 11 expand on it.  
 12 A. Sorry.  
 13 MR JUSTICE HILDYARD: Otherwise the problem is if your  
 14 answer to every question is what you wish to say rather  
 15 than responsive, we will be here an awfully long time.  
 16 A. Correct my Lord, sorry.  
 17 MR POTTS: My Lord. The question I asked was: did he use  
 18 the word -- your statement says he warned you that if  
 19 you refused, you would be "pulled apart", yes?  
 20 I asked you whether he used the words "pulled  
 21 apart", and I think at the start of your answer --  
 22 perhaps you could just answer that question?  
 23 A. Okay. To my acknowledgment that's what I believe he  
 24 said.  
 25 Q. I think your previous answer was you couldn't remember

1 the meeting?  
 2 A. That's why I'm saying -- I'm trying to answer it  
 3 quickly.  
 4 Q. So let's focus on the question. Are you saying that you  
 5 think he did say it?  
 6 A. To my acknowledgment, I have written that down, yes.  
 7 Q. If you look at -- you see it doesn't appear in  
 8 Dr Poulson's note of the meeting. Do you have E2?  
 9 A. Yes, what page?  
 10 Q. At 450 and 451. You can scan through the whole note but  
 11 those words don't appear in the note Mr Weller.  
 12 A. Okay.  
 13 Q. Mr Dyson denies saying that. His position is that he  
 14 said that Specsavers was not interested in taking over  
 15 Bognor or in purchasing your shares. You can see that  
 16 in fact even in the note at 450. Do you see below  
 17 the second hole punch?  
 18 A. In E2?  
 19 Q. Yes, at 450. There may be some slight difference over  
 20 colour, but even in this note it stated that DD said --  
 21 well, it says in this instance that they did not want to  
 22 get rid of her and BW, hence this meeting.  
 23 So he is making clear at the meeting that  
 24 the purpose of the meeting is that they are not -- they  
 25 don't want to get rid of you. Do you accept that he

1 said that at the meeting?  
 2 A. Yes, I do. He said he wanted to come to an amicable  
 3 arrangement to move forward with the business, but he  
 4 also said that if we didn't comply to it, this is what  
 5 would happen and that's when he used the word -- you  
 6 know: we will run your business down. And perhaps, you  
 7 know, he said: we will run your business down, we will  
 8 take you out of the store, we will put you on gardening  
 9 leave, we will put a team in to run it down and then we  
 10 will buy your shares back at par value and then you will  
 11 be left with nothing. Because that's not how it works.  
 12 Because Dr Poulson said if we can't come to agreement,  
 13 then buy our shares back, and that's when he said that  
 14 part.  
 15 Q. Shall we break that down, because it is quite a long  
 16 answer again.  
 17 A. Sorry.  
 18 Q. Don't worry. He is saying he is trying to diffuse  
 19 the situation so you can all move on. I think you said  
 20 that yourself?  
 21 A. Yes.  
 22 Q. In fact it was Dr Poulson who raised the issue of  
 23 selling her shares, because she was quite upset about  
 24 the mystery shopper issue, wasn't she?  
 25 A. Yes.

1 Q. In fact it was her who raised the issue of selling her  
2 shares, not Mr Dyson, correct?  
3 A. Correct.  
4 Q. Whilst you were quite relaxed about the issue of mystery  
5 shopper, she wasn't; she was upset?  
6 A. Yes.  
7 Q. Isn't the position that in fact what she said -- she was  
8 quite worked up, she said Mr Dyson wasn't listening to  
9 her in asking her to implement the programme and that  
10 maybe she should just resign and sell her shares.  
11 Did she say something like that along those lines?  
12 A. I can't remember.  
13 Q. You see that's Mr Dyson's position as to what happened.  
14 A. Right.  
15 Q. Do you disagree with that or you can't remember?  
16 A. I can't remember.  
17 Q. You see Mr Dyson made it clear that he wasn't looking  
18 for anyone to resign but he was simply trying to explain  
19 the parties' respective responsibilities under  
20 the shareholders' agreement. Do you remember that?  
21 A. Yes, I remember him producing the mystery shopper  
22 programme at the meeting.  
23 Q. And the shareholders' agreement referring to the manual  
24 and so on, do you remember that?  
25 A. It must have been there surely.

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1 Q. You don't --  
2 A. To be honest, you know, I was so taken aback when  
3 Dr Poulson did say: I want to buy the shares -- if you  
4 can't agree with it then just buy my shares back and  
5 I will be gone. And that's when he said: we are not  
6 here to buy your shares back, we don't want you gone but  
7 that's not how it works either, if you don't apply to  
8 this then we will take you down, we will pull your  
9 business apart pretty much and you will be left with  
10 nothing. So at that point I was at panic stations  
11 because I'm thinking: oh, my goodness.  
12 Q. If she were to resign, the shareholders provided for  
13 an option for Specsavers to purchase them at  
14 a independent fair value, didn't it? You were aware of  
15 that, weren't you?  
16 A. No.  
17 Q. Then at 61, going back to your statement, you say:  
18 "He said that Specsavers would put us on gardening  
19 leave whilst they investigated the store and we would be  
20 left with nothing."  
21 A. Yes.  
22 Q. Why would the store need to be investigated if you  
23 didn't comply with the mystery shopper requirement?  
24 A. Exactly.  
25 Q. Well, it doesn't make any sense, does it?

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1 A. Exactly.  
2 Q. If you go back to 450, Dr Poulson's note doesn't mention  
3 an investigation either. Will you take it from me?  
4 A. Okay, I take it from you.  
5 Q. So the suggestion in your witness statement about  
6 an investigation effects your case now -- based on what  
7 subsequently happened, because there was  
8 an investigation -- doesn't it?  
9 A. But also Mr Dyson said: we will put people into  
10 the store to investigate it and run your business down  
11 so that you will be left with nothing.  
12 Q. In relation to running the store down, if Specsavers  
13 wanted to get the shares, why would they want to run  
14 down the store? Surely if the idea was on to sell  
15 the shares on at a profit they would need the store to  
16 be profitable, wouldn't they?  
17 A. If they are going to give us nothing for it, are they?  
18 If they are going in there, as they have done, if they  
19 go into a store and run it down, then your shares are  
20 worth nothing even if you get them at par value, because  
21 obviously the business isn't worth what it was because  
22 the business has been run down. Then they then sell it  
23 on and they can build the store back-up again.  
24 Q. Isn't the true position that the reference to being left  
25 with nothing, like the reference to the investigation

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1 and being pulled apart, that is later reconstruction  
2 based on what subsequently happened, because there was  
3 an investigation, you were suspended?  
4 A. No.  
5 Q. Did you mention some financial concerns relating to your  
6 salary level to Mr Dyson. Do you remember that?  
7 A. Yes, I do.  
8 Q. Did he suggest that you should liaise with Mr Deane  
9 about that?  
10 A. Yes, he did.  
11 Q. Did you do that?  
12 A. I tried to get hold of Mr Deane when I returned to the  
13 store. I left him a couple of messages and he never got  
14 back to me.  
15 Q. You did chase him up then?  
16 A. I chased him twice, three times. At that point, because  
17 things had gone all over the place, by the time we got  
18 back from the meeting I didn't chase it further.  
19 Q. The meeting ended on a friendly note, you shook hands?  
20 A. I did, yes.  
21 Q. At paragraph 63 you said that Dr Poulson was shocked  
22 because you said that you should give it a try. I mean  
23 that's because -- can you give me one second.  
24 453. You say there wasn't any response from  
25 Mr Deane. In fact, Mr Deane wrote to the -- by email on

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1 9th March, didn't he? So you were in contact with him.  
 2 He wrote to you.  
 3 A. He wrote to us on that and I tried to communicate back  
 4 with him by telephone.  
 5 Q. But not by email?  
 6 A. No.  
 7 Q. You didn't drop him an email, did you?  
 8 A. No, it wasn't my thing. I'm more of a talker Mr Potts.  
 9 Q. No comment.  
 10 Now, paragraph 63 of your statement, you say that  
 11 Dr Poulson was shocked because you said that you should  
 12 give the mystery shopper a try.  
 13 Isn't that what he suggested to you as well; he  
 14 said: why don't you give an it a try and see how it  
 15 goes?  
 16 A. Yes.  
 17 Q. As we discussed, you weren't that bothered about it.  
 18 I understand you understood her concerns, but you  
 19 personally weren't bothered about it?  
 20 A. It didn't alarm me as much as it did Dr Poulson, no.  
 21 Q. You say that the drive home was:  
 22 "... really frosty because Dr Poulson told me I had  
 23 let her down by saying ..."  
 24 What you had:  
 25 "... and Dr Poulson and Mr Vos were so disappointed

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1 that they were not talking to me, I felt very bad."  
 2 Yes?  
 3 A. Yes.  
 4 Q. Isn't the position that Dr Poulson expected you to do  
 5 and say what she told you to?  
 6 A. No. I don't believe she did, no. Obviously with any  
 7 business partnership you have times when you get on and  
 8 you agree and you disagree, as with Specsavers and us  
 9 and so forth. But on this occasion she wasn't impressed  
 10 with what I had agreed to. You know, she was adamant  
 11 she didn't want to be tested in that testing room and  
 12 very cross with the suggestion that I said can we give  
 13 it a try.  
 14 There was me, in my position I'm going to challenge  
 15 it, because I am thinking -- I wasn't going to walk out  
 16 of there thinking that they are going to pull my  
 17 business apart and take all my shares away, run  
 18 the business down and destroy me. I couldn't live with  
 19 that. I have got a family. My family are my main  
 20 priority. And, you know, we didn't agree on it and she  
 21 felt I had obviously let her down in -- my ways is that  
 22 I wasn't strong enough to think actually we can take  
 23 this any further. I just felt: oh, goodness, I can't do  
 24 that.  
 25 Q. The position is that she, and indeed Mr Vos, were upset

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1 with you because you had not towed the line; isn't that  
 2 the case?  
 3 A. They were upset because they could see that I wasn't  
 4 strong enough to take on the challenge of Specsavers and  
 5 take it any further. Dr Poulson wanted to take it  
 6 further but I couldn't justify putting my family at risk  
 7 and going on gardening leave and running the business  
 8 down over a mystery shopper. So that is why I agreed to  
 9 it. But unfortunately Helle and Godfrey were not in  
 10 agreement with my decision.  
 11 Q. In fact any discomfort that you felt at the time was  
 12 really with them, rather than with anything done or said  
 13 by Mr Dyson, wasn't it?  
 14 A. No, not at all. On the contrary, it was because of what  
 15 Mr Dyson had said that made me go, if you like -- not  
 16 against, but go with what his thoughts were because --  
 17 in my eyes he had my money in his hand and he is saying  
 18 actually if you don't agree with this, there you go  
 19 (indicates) it's gone.  
 20 Q. You see, Mr Dyson's position is that he made no threats  
 21 at all in relation to this, as you allege, about driving  
 22 the store down and taking shares for nil. And indeed it  
 23 makes no sense, does it?  
 24 A. No, it quite clearly -- it is how you perceive it. When  
 25 you have got a family at home and you are trying to

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1 provide and you have got -- I have got business loans,  
 2 I am mortgaged up to the hilt and someone is saying that  
 3 actually we don't just buy your shares, you will get  
 4 them par value or anything at all, it's scary, would you  
 5 not agree Mr Potts?  
 6 Q. No, I don't Mr Weller. The point is that this  
 7 discussion about the shares was not originated by  
 8 Mr Dyson, it was Dr Poulson who talked about resigning,  
 9 wasn't it?  
 10 A. It was, and to that point I didn't have any indication  
 11 that they would be able to run your store down and do  
 12 that. I couldn't believe what I was hearing, when you  
 13 are told: if you don't go along with it, you will be put  
 14 on gardening leaving and we will run your store down.  
 15 I couldn't believe it.  
 16 Q. The position is that Mr Dyson was making it clear that  
 17 he wanted to sort things out, give the mystery shopper  
 18 a try and move on.  
 19 A. That is why I agreed to the mystery shopper.  
 20 MR POTTS: My Lord, I wonder if that may be an appropriate  
 21 time for a break?  
 22 MR JUSTICE HILDYARD: Yes, if that's convenient to you all,  
 23 11.55 am please.  
 24 (11.46 am)  
 25 (A short break)

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1 (11.55 am)  
 2 MR POTTS: Mr Weller, before the break we were discussing  
 3 the aftermath of the meeting with Mr Dyson on 6th March  
 4 and we talked about the frostiness and not talking to  
 5 you. On 6th April Ms Laker made a complaint about you.  
 6 Could you turn up E2, 519.  
 7 A. Yes.  
 8 Q. Do you remember that? Do you remember the complaint?  
 9 A. Yes.  
 10 Q. If you could turn on to page 521. She's reciting --  
 11 sorry, maybe I should deal with this, 519. She says:  
 12 "Here is a sample of the diary I have kept."  
 13 Yes? She refers there at 519. Then there's  
 14 a number of incidents recorded. Do you see that?  
 15 A. Yes.  
 16 Q. Okay. Then on 521 she refers to 9th March. Now  
 17 the meeting was on Friday 6th with Mr Dyson?  
 18 A. Yes.  
 19 Q. Then on Monday 9th she says:  
 20 "In the morning meeting Barry told us Rhonda had  
 21 been signed off for a further two weeks. At about 9.15  
 22 Barry told me the only reason he knew this was because  
 23 of a very nasty text message he had received from  
 24 Godfrey."  
 25 Do you remember the text at this stage that you had

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1 received from Mr Vos?  
 2 A. No.  
 3 Q. Then on 11th March, the next entry down, she says:  
 4 "Barry kept making comments about Helle today,  
 5 stating that they were not talking due to Barry not  
 6 sticking up for Helle at the meeting they had with head  
 7 office."  
 8 So that was consistent with your --  
 9 A. Yes.  
 10 Q. So by Wednesday they were not talking to you?  
 11 A. It was minimal. The relationship was not as strong as  
 12 it was before the meeting, yes.  
 13 Q. Right. Then she says that:  
 14 "He also said in passing that Helle might not be  
 15 around for much longer, saying, 'How good would that  
 16 be?'"  
 17 The reference to her possibly not being around for  
 18 much longer was because she, but not you, had threatened  
 19 to resign at the meeting with Mr Dyson; isn't that  
 20 right?  
 21 A. She had threatened, yes, that is correct.  
 22 Q. You don't express any concern that you might be leaving  
 23 the business, only that she might?  
 24 A. That is correct.  
 25 Q. Indeed here you don't appear to be too upset about

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1 the idea?  
 2 A. That's how it says it in there, but at the same time  
 3 Jena didn't obviously like Dr Poulson, so I was frantic,  
 4 wound up, stressed, fraught with everything that had  
 5 gone on and I wasn't in my own mindset. As is apparent.  
 6 Q. But it is hardly consistent with the idea that Mr Dyson  
 7 had threatened to get rid of you both and pay nothing  
 8 for your shares, is it?  
 9 A. I had the meeting with Mr Dyson and it is the first time  
 10 I come across the fact that you could go -- have your  
 11 business taken away from you. I was not in any good  
 12 mindset at all and the thing is -- the bottom line of it  
 13 is that I had been told this by one partner and then  
 14 I had got the hand in your face by the other partner, so  
 15 I felt quite alone; quite vulnerable at the time.  
 16 Q. So the point is I think you are accepting the accuracy  
 17 of this conversation. And the point I'm putting to you,  
 18 which I'm not sure you have quite answered, is that  
 19 those comments are not consistent with the idea of  
 20 Mr Dyson threatening to get rid of you both and pay  
 21 nothing for your shares?  
 22 A. My answer to that is they are consistent because I felt  
 23 on my own. I wasn't in the right mindset. We had been  
 24 told: you could have this happen to you. You then you  
 25 get told -- then you get in a car after the meeting

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1 where you have been told this, where you have gone with  
 2 Specsavers on it, because I was too scared not to go  
 3 with Specsavers on it, then to have my other business  
 4 partner say: well, why didn't you stick up for me? Then  
 5 to feel like I'm in a situation where what's going on,  
 6 I don't know. I'm not leaving the business, I couldn't  
 7 afford to leave the business, Mr Potts. That is my  
 8 whole point of why I didn't say -- go with Dr Poulson,  
 9 I couldn't afford to not be carrying on, I couldn't  
 10 afford to be thinking I am not going to be here.  
 11 Q. I put it to you that what you were saying was consistent  
 12 with Mr Dyson's account of the meeting, which was that  
 13 it was Dr Poulson who threatened to resign, there was  
 14 nothing in relation to you leaving the business, and,  
 15 frankly, you weren't too unhappy about the idea of her  
 16 going, as expressed here?  
 17 A. No, that's not true.  
 18 Q. Isn't the position that in fact you were fed up with  
 19 them -- the treatment you were getting after  
 20 the meeting, and indeed the treatment you were getting  
 21 more generally, with them telling you what to do and  
 22 telling to you tow the line?  
 23 A. No, that's not true.  
 24 Q. Now looking at this letter, the grievance that she  
 25 raised -- this is Ms Laker -- was actually rejected.

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1 The allegation was one of bullying, wasn't it?  
 2 A. Yes.  
 3 Q. That was rejected, wasn't it?  
 4 A. Yes.  
 5 Q. In fact, if you turn to E2, which you have still got.  
 6 551 is an email from Dr Poulson to Mr North. It was  
 7 Mr North who did the investigation, wasn't it?  
 8 A. It was, yes.  
 9 Q. Dr Poulson wrote to Mr North saying:  
 10 "Thank you for the result of your investigation into  
 11 the grievance. I think you have arrived at the correct  
 12 conclusion. I thank you for the professional manner in  
 13 which you and the solicitors have dealt with the case  
 14 and for the very detailed and accurate report which you  
 15 produced."  
 16 Now, did you see or discuss that email with  
 17 Dr Poulson at the time?  
 18 A. No.  
 19 Q. The position was Specsavers was obliged to investigate  
 20 a formal grievance under the shareholders' agreement,  
 21 wasn't it?  
 22 A. Yes.  
 23 Q. You were aware of that. Now the report was sent to you  
 24 on 15th July, I think, and indeed to her. Could we go  
 25 back to E3. 553 is the covering email. There's

1 a letter to her relating to the grievance, which was to  
 2 reject it.  
 3 There is a reference there to the report. Then  
 4 there is the report at -- which starts at 556. Now, in  
 5 that there are some references -- we saw for example at  
 6 564 -- of discussions that Dr Poulson had had,  
 7 expressing concerns that your relationship with other  
 8 members of the team was too friendly.  
 9 Do you remember having those discussions with her?  
 10 A. Sorry?  
 11 Q. 564. If you turn it sideways, it is the penultimate  
 12 paragraph. Indeed, in fact, about five lines down as  
 13 well. 564. Does it start:  
 14 "GM confirms"?  
 15 A. Yes.  
 16 Q. Then if you go down a couple more lines:  
 17 "HP and BW confirm that comments between them have  
 18 been conveyed to Jena. BW has accepted that it was  
 19 inappropriate to become too friendly with her."  
 20 Then, down the page to the penultimate paragraph:  
 21 "HP and GV [that is probably Mr Vos] indicate that  
 22 BW's relationship to Jena and other team members was too  
 23 friendly, and they therefore refute any allegation of  
 24 bullying or harassment."  
 25 Indeed that was the allegation which was rejected,

1 correct?  
 2 A. Mmm hmm.  
 3 Q. They state:  
 4 "If highlighted BW being too friendly with team  
 5 members is an issue."  
 6 First point, do you remember that they had expressed  
 7 concern that your relationship was too friendly?  
 8 A. Yes.  
 9 Q. Now, in paragraph 17 of your statement -- if you keep  
 10 that open, it is page 136 in the bundle.  
 11 A. No.  
 12 Q. 137 sorry. Paragraph 70 of your statement, which you  
 13 refer to above:  
 14 "The recommendation from the letter implemented ...  
 15 it was a humiliated as I now had to work under close  
 16 supervision."  
 17 Yes?  
 18 A. Yes.  
 19 Q. The idea of working under close supervision, that wasn't  
 20 actually a recommendation in the report, was it?  
 21 A. In the report -- I was under the impression that  
 22 Dr Poulson had spoken to Jason North and he had -- this  
 23 is what I was informed by Dr Poulson, that he confided  
 24 in her to say that he felt that my relationship with  
 25 the staff -- that staff member was inappropriate and

1 that if she wanted to they could take the matter  
 2 further, putting disciplinary procedures on myself, and  
 3 they would work to resolve it to take me out of the  
 4 business. That is what Dr Poulson instructed me.  
 5 So, it was left that when he came back in -- it  
 6 wasn't Jason North actually. Someone had gone to see  
 7 Jena for the second time to see if they could follow up  
 8 on her grievance complaint and he came into the store  
 9 and he said, you know: you got to be careful with -- he  
 10 sat in the office, it was just general discussion  
 11 actually. He said: you have to be careful how you  
 12 conduct yourself with other staff, you can't muck  
 13 around. There was never anything untoward in my eyes.  
 14 I'm just a playful sort of guy and it just got  
 15 misconstrued into something it wasn't.  
 16 But on the professional grounds of that complaint,  
 17 it shocked me so I was like: oh my goodness. I have  
 18 got -- work is work, business is business and  
 19 unfortunately I have always worn my heart on my sleeve  
 20 and I didn't abide by those rules at the time.  
 21 So when -- after seeing the report and everything  
 22 that had gone on in those couple of months I just went  
 23 along, you know, with the fact that, yeah, I did need  
 24 supervision. Dr Poulson was told by Jason North that  
 25 I needed supervision. I agreed actually, because there

1 was Riyaz Rijan coming into the store, and he said: you  
 2 need to have more guidance on it and you can take Helle  
 3 as your -- and Godfrey as your person -- your -- and we  
 4 will move forward from there.  
 5 Q. Just looking at your witness statement. Your witness  
 6 statement in paragraph 70 refers to the letter. You say  
 7 that the recommendations were then implemented?  
 8 A. Yes.  
 9 Q. Now the recommendation, as indeed you accept -- and they  
 10 were saying that there were some issues which were  
 11 inappropriate in relation to your management style.  
 12 The recommendation was for there to be a follow up  
 13 review for training and development?  
 14 A. Yes.  
 15 Q. I think you said that the suggestion that it was -- it  
 16 wasn't Specsavers who told you about this, it was  
 17 initially Dr Poulson who said that you needed  
 18 supervision; is that right?  
 19 A. No. Because on the review meeting when Jason North --  
 20 not Jason North, sorry. When Riyaz Rijan come back down  
 21 and he said: this is your review meeting and we have  
 22 highlighted some areas that need to be looked at and you  
 23 need supervision and guidance on the following.  
 24 So it backed up what Dr Poulson had told me on  
 25 the areas of the -- of what she had spoken to -- by

1 Jason North.  
 2 Q. Now, as part of this interview we have seen that  
 3 Mr North had a discussion with, obviously, you and other  
 4 people including Dr Poulson and Mr Vos, yes?  
 5 A. Yes.  
 6 Q. Now if you go to E3, 556. So you initially met with  
 7 her. You see that at the top of the page at 556. Do  
 8 you see that:  
 9 "Meeting with Jena Laker, 7th May."  
 10 A. Yes.  
 11 Q. "Following the meeting a date was set to interview the  
 12 persons named by her."  
 13 I think that's including -- that was Mr Vos, wasn't  
 14 it?  
 15 A. Yes.  
 16 Q. And others. And that was agreed for 9th June?  
 17 A. Yes.  
 18 Q. "Unfortunately due to an unexpected, unplanned absence  
 19 by him the meetings were postponed and re-scheduled."  
 20 Do you see that?  
 21 A. Yes.  
 22 Q. So Mr Vos was scheduled for interview on 9th June,  
 23 correct? You can see that. We have discussed that.  
 24 Now, on 6th June Mr Vos went onto the payroll, didn't  
 25 he, of the company?

1 A. Yes.  
 2 Q. Now, in fact -- we have seen in fact he was interviewed  
 3 on 24th because of the rescheduling, and indeed I think  
 4 Mr Vos in his re-examination pointed out that he was  
 5 asked by Mr North during the interview if he was  
 6 employed, and he confirmed that he was employed by  
 7 the store.  
 8 A. Right.  
 9 Q. Do you remember that? Because if you remember, one of  
 10 the issues that she had raised was a concern as to not  
 11 understanding people's roles?  
 12 A. Yes.  
 13 Q. So, was Mr Vos in fact put onto the payroll at that time  
 14 because you were all aware that an issue was going to  
 15 come up, through Mr North, as to what Mr Vos' role in  
 16 the store was and it was important for him to say he was  
 17 an employee?  
 18 A. No.  
 19 Q. Well the timing -- I mean, he is put onto the payroll on  
 20 the Saturday before the interview, which is due to take  
 21 place the following week. So is that just  
 22 a coincidence?  
 23 A. Yes.  
 24 Q. Now on Day 5, I think you were in court, Dr Poulson  
 25 referred in re-examination to a document which was --

1 which had been generated showing work roles and there  
 2 was a reference to it initially showing junior roles,  
 3 and there was a change to it. Do you remember that  
 4 discussion?  
 5 A. Yes.  
 6 Q. The document which we have seen in the bundle --  
 7 MR STUART: It is 541 in E2.  
 8 MR POTTS: I'm grateful. Now 541, have you seen that  
 9 document? This was a document which was in the bundle.  
 10 It is in the run with the employment contract and indeed  
 11 I think it is actually -- yeah, it is marked as document  
 12 142, which is the same as the employment contract. If  
 13 you go back to 530; in the manuscript at the top.  
 14 A. Right.  
 15 Q. This says it is an employment contract dated  
 16 14th May 2009. Do you see? Employment from 6th June?  
 17 A. Yes.  
 18 Q. Then if you go on to 541, this is still showing the same  
 19 document number but this is a management structure  
 20 document. Do you see that?  
 21 A. I don't --  
 22 Q. 541.  
 23 A. This one here --  
 24 Q. Sorry, I'm just saying -- the first point is that it is  
 25 shown as being part of the same document in the

1 manuscript numbering, but if we go to the page --  
 2 A. All right. So you have got 541 --  
 3 Q. I am just trying to put the context.  
 4 Now, this shows you -- and I think this was  
 5 a document which was discussed -- this draft of this  
 6 document showed Dr Helle Poulson as senior  
 7 director/partner, then there is you as the retail  
 8 director and there is reference to Mr Vos. And then  
 9 further down the page you have got Sarah Scott,  
 10 Mr Verrell, Mr Butler, Mr Morris?  
 11 A. Yes.  
 12 Q. Now, this was a document which you drew up together?  
 13 A. It was a document that was discussed and drawn up by  
 14 Godfrey, yes.  
 15 Q. Now, in fact I think it came out through discussions --  
 16 from Dr Poulson that in fact this was a later version of  
 17 an earlier document, because there had been a discussion  
 18 with Mr North about this, and he was unhappy about some  
 19 of the things in the earlier document. Do you remember  
 20 that?  
 21 A. Yes.  
 22 Q. Okay. Could we go through to the earlier document,  
 23 which I think is now in E3 at page 552-27. I'm afraid  
 24 this is going to get confusing. (Pause).  
 25 That is the covering email. Let me just show you

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1 the document and I will go back to the covering email.  
 2 552-29 is the document. The one we have looked at isn't  
 3 dated, but this one -- do you have it? 552. Could you  
 4 please look at 552-29.  
 5 A. Oh, 29?  
 6 Q. Yes.  
 7 A. Yes.  
 8 Q. The first point is this document is dated and it is  
 9 dated 22nd July 2009.  
 10 A. Yes.  
 11 Q. So the first point we can make by reference to the  
 12 earlier document we have just looked at, given that we  
 13 understand this to be the one that was first in time,  
 14 was that the later document can't have been produced in  
 15 May, it must have been produced after 22nd July. Would  
 16 you agree with that?  
 17 You might want to -- this is the one at 541. Indeed  
 18 you can see from the covering email which is at the  
 19 middle of the page at -27 that it was sent on 21st -- by  
 20 Dr Poulson on 21st July, to Mr North.  
 21 A. Yes.  
 22 Q. So we looked at the version in the other bundle, do you  
 23 remember? And Dr Poulson's position was that this was  
 24 later version of the two and this -- we didn't have it,  
 25 but there was an earlier version.

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1 A. Right.  
 2 Q. So the point I'm making is that the one we have just  
 3 looked at in the other bundle, which was the one we were  
 4 looking at next to the contract, although it is not  
 5 dated, must have been produced after 22nd July, because  
 6 this was the earlier one.  
 7 A. Okay.  
 8 Q. Do you accept that?  
 9 A. I can't look into that -- I can't from what's written  
 10 here.  
 11 Q. Let's have a look at this document. Now this was  
 12 a document which again was produced between the three of  
 13 you.  
 14 A. What, the first one?  
 15 Q. Look at 552-29.  
 16 A. It was discussed -- I think you will find I was actually  
 17 away, so Godfrey phoned me up and he said that we needed  
 18 to do this and he said this is what it would be.  
 19 Q. And you were cc'd into this email, weren't you?  
 20 A. Yes.  
 21 Q. She says that:  
 22 "For the avoidance of doubt we have re-informed  
 23 everybody of these roles and responsibilities."  
 24 The point she was making was everybody understands  
 25 the roles and the responsibilities of the people, yes?

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1 A. Yes.  
 2 Q. Now, let's have a look. So this is the document which  
 3 you produced, if you like, without input from Mr North  
 4 because Mr North then came back and said: actually, I'm  
 5 not entirely happy with this document, and that's why  
 6 the second one was produced. Do you remember that?  
 7 A. Like I said -- I know you say I was copied into  
 8 the email, it was because I was off. Godfrey phoned me  
 9 and said we need to do this. So he copied me into  
 10 the email and copied me into this.  
 11 Q. Let's just have a look. Firstly on this document you  
 12 have Dr Poulson. So the senior majority joint venture  
 13 partner?  
 14 A. Yes.  
 15 Q. Responsibility is managing overall running of the store?  
 16 A. Yes.  
 17 Q. And then there's some stuff about clinical governance,  
 18 managing the sight testing et cetera, professional staff  
 19 and ensuring compliance with standards required under  
 20 the joint venture obligation, yes?  
 21 A. Yes.  
 22 Q. So you were aware that there are the procedures and so  
 23 on which we have been talking about under the joint  
 24 venture agreement?  
 25 A. Yes.

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1 Q. Then there's your position. You are stated to be  
 2 the junior minority joint venture partner/retail  
 3 director.  
 4 A. Yes.  
 5 Q. You are responsible for running the retail store on  
 6 a day-to-day basis?  
 7 A. Yes.  
 8 Q. Then there is a difference about retail staff  
 9 management, training, retail standards and mystery  
 10 shopper standards are maintained, customer satisfaction,  
 11 dealing with complaints, yes? Maximising sales  
 12 potential of the store, motivating retail staff,  
 13 ensuring compliance with standards under the joint  
 14 venture obligations. Because you were also obliged to  
 15 comply with the manual and such other matters, correct?  
 16 A. Correct.  
 17 Q. And reporting to the ophthalmic director.  
 18 A. Yes.  
 19 Q. So this is showing that in fact that you were reporting  
 20 to her?  
 21 A. On that one, yes. But can I say that this was removed  
 22 from Jason North's email, removed and this went up while  
 23 I was on holiday and when I come back from holiday  
 24 the other one was up.  
 25 Q. The point being that the changes which were made were by

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1 reference to the fact that he said that that wasn't  
 2 fair. But this reflects how you yourselves viewed  
 3 yourselves internally before his involvement, correct?  
 4 A. I don't understand, sorry.  
 5 Q. Well this is a document produced internally setting out  
 6 how you yourselves viewed your roles.  
 7 A. No, that's not the impression I got. I got told that we  
 8 had to put this down in writing for the staff to know,  
 9 so that there would be no confusion as to who did what,  
 10 when and why.  
 11 Q. Well, Dr Poulson was making it clear that everybody  
 12 understands the roles, everybody signed this and this is  
 13 the respective roles of everybody. And this shows you  
 14 as the junior minority retail director reporting to her.  
 15 A. Yes.  
 16 Q. Now, yesterday, if you remember, I pointed out to you  
 17 that she had been your boss for a long time at Worthing,  
 18 do you remember that, seven years?  
 19 A. Yes, I do.  
 20 Q. You were flattered to be asked to join her?  
 21 A. Yes.  
 22 Q. I asked you whether you continued to feel she was senior  
 23 to you in the hierarchy, and you said no.  
 24 A. That is right, I didn't at the time.  
 25 Q. Now this document makes absolutely clear that the way

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1 you viewed yourselves at the time was that, in fact, she  
 2 was still your boss, doesn't it?  
 3 A. No. Because what had happened was we had had the  
 4 Derek Dyson meeting, that had gone down like a lead  
 5 balloon, and we had gone on to suddenly get hit with  
 6 the Jena Laker grievance and complaint. So not only did  
 7 I feel that I had let Dr Poulson down on the meeting,  
 8 but I had also then got a grievance complaint. You can  
 9 imagine how I felt. At the time I was a mess.  
 10 I completely -- I was broken down. I couldn't sleep,  
 11 I couldn't eat, I couldn't do anything. I didn't know  
 12 which way to turn. I just didn't know where I was.  
 13 So in that instance, at this particular time, after  
 14 all the procedures had gone on, I felt that I couldn't  
 15 fulfil as an equal joint partner. I felt that I was  
 16 being led by Dr Poulson at this time, in July, because  
 17 of -- the fact is I had gone to this meeting, I had felt  
 18 let down, I have got a family at home, I'm -- I was  
 19 a broken man. I put my hand on heart, I can honestly  
 20 say it was probably the pinnacle [sic] bit of my life.  
 21 Suddenly I have gone from this really nice career path  
 22 to suddenly feeling like I'm worthless and not worth  
 23 anything, and being made to feel like that through  
 24 different entities and everything felt like it was on  
 25 top of me. So, no, before that no, I didn't. But then

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1 that's why I had to take into account my stature and how  
 2 I felt and I led the way from there.  
 3 Q. The reality was that following two complaints from  
 4 members of staff you did feel under great pressure, but  
 5 from Dr Poulson and Mr Vos. Isn't that the case?  
 6 A. No, they were a contributing factor but obviously it is  
 7 her business as well and it is my business, and she is  
 8 looking out for me. We have known each other for some  
 9 time, we had been in partnership for some time, I did  
 10 see the errors of my ways and I was trying to protect my  
 11 interests, her interests and Specsavers' interests.  
 12 I was trying to protect everyone's best interests in  
 13 moving forward, and at the time I didn't feel I was in  
 14 control of my own destiny, let alone anyone else's, so  
 15 I took a back seat my Lord.  
 16 Q. Dr Poulson had been your boss for years at Worthing and  
 17 never stopped treating you as though she was your boss;  
 18 isn't that the case?  
 19 A. No.  
 20 Q. She regarded you as the junior partner reporting to her.  
 21 A. She didn't. Even at the start of the case we didn't  
 22 even discuss that I was the minority shareholder. With  
 23 everybody that was employed by us, all the staff knew  
 24 that we were just equal partners. It was only after  
 25 this Jena Laker instance that it came out that I was

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1 a minority shareholder and I think I shared obviously  
 2 with Sarah Scott at one point that I was a minority  
 3 shareholder.  
 4 Q. This document and the covering email was not stating  
 5 that this was a statement as to what should happen in  
 6 the future. This was a response to the allegation by  
 7 Jena Laker -- we see this on page 27 -- that she was  
 8 confused. This was before, that was the grounds for her  
 9 complaint; she was saying that she was confused.  
 10 This response is saying; look, these are  
 11 the respective responsibilities and roles, nobody is  
 12 confused and everyone signed this. It wasn't a  
 13 statement as to what the future should be, it was  
 14 a statement as to what the existing position was, wasn't  
 15 it?  
 16 A. No, because what had happened is during the meeting --  
 17 obviously I had not fulfilled what Helle expected of me  
 18 at the Dyson meeting. So when I come back from  
 19 the meeting I was trying to adhere to everything Helle  
 20 was doing to try and make up for fact that I felt like  
 21 I had let her down.  
 22 So if you look at the grievance complaint it follows  
 23 on from the actual meeting that, you know, I was just  
 24 trying to adhere to Helle to get her back on side so  
 25 that we could get back onto the business. But at the

1 same time my mind was all over the place because of what  
 2 had happened and then to be double hit with  
 3 the Jena Laker situation, I was a mess. I lost loads of  
 4 weight, I just didn't know where I was going.  
 5 Q. The reality was that they viewed you as the junior  
 6 partner and they bossed you around and told you what to  
 7 do; that was how things worked, wasn't it?  
 8 A. No.  
 9 Q. Isn't the reality that you eventually got fed up of  
 10 this, you were stressed by all of this as well, and you  
 11 had had enough of that treatment; isn't that  
 12 the reality?  
 13 A. No.  
 14 Q. Now, do you have your statement?  
 15 A. Yes.  
 16 Q. If you turn to paragraph 74 of your statement.  
 17 A. Yes.  
 18 Q. You say that both you and Dr Poulson, in April 2009,  
 19 noticed that you had developed a lump and you had  
 20 previously had some non-Hodgkin's lymphoma, is that  
 21 right?  
 22 A. Yes.  
 23 Q. You noticed the lump then and surgery in fact took place  
 24 on 11th March the following year?  
 25 A. Yes.

1 Q. Almost about a year later, is that right?  
 2 A. Yes.  
 3 Q. And you also postponed the surgery from January 2010 to  
 4 March 2010 because you were busy in store?  
 5 A. Yes.  
 6 Q. During this period you carried on working?  
 7 A. Yes.  
 8 Q. The only time off that you refer to during this year is  
 9 in relation to the operation, in paragraph 75 I think it  
 10 is?  
 11 A. Yes.  
 12 Q. You had a couple of weeks off after the operation?  
 13 A. Yes. Three weeks, yes.  
 14 Q. So, whilst no doubt obviously this can't have been  
 15 a pleasant thing, the operation was re-scheduled at your  
 16 request and it was something -- you were able to carry  
 17 on working with this?  
 18 A. Yes. I had had it previously. I first had it in 2001.  
 19 I had had a non-Hodgkin's lymphoma then and they said  
 20 there was a risk of it coming back and always check your  
 21 neck and, like you are when you have an illness like  
 22 that, you get a little bit paranoid and being that Helle  
 23 is a doctor I was always going: can you feel something  
 24 there? And so again, when in April I thought perhaps  
 25 I'm being paranoid, no I'm not and she is like: no, it

1 does feel like it is more of a lump than scar tissue --  
 2 sorry I have lost my place.  
 3 Q. That's fine. So have I, I think. I think the point  
 4 I made was --  
 5 A. I'm so sorry. I find it quite difficult because it is  
 6 quite an upsetting time, because it was like everything  
 7 going on all at once.  
 8 Q. The point was you took a couple of weeks off for  
 9 the operation but you were able to work in the year --  
 10 it was not causing you to stop -- not to be able to  
 11 work. I think you accept that?  
 12 A. Yes. No, I didn't stop work because obviously I was  
 13 thinking my world is falling apart, I have just had  
 14 a dreadful meeting, then I have got Helle and Godfrey  
 15 against me, I have got a grievance meeting, now I have  
 16 got a lump on my neck. I'm trying to pay the bills,  
 17 I am trying to survive and everything and then,  
 18 hey presto, I have got that again. It was a mountain of  
 19 things that was just too much.  
 20 Q. As we discussed, you carried on attendance at work and  
 21 carried on your functions as retail director through  
 22 the whole period, correct?  
 23 A. I tried my best to do my best.  
 24 Q. Now Dr Poulson and Mr Vos say that Specsavers' actions  
 25 caused you to have a nervous breakdown. You don't

1 mention having a nervous breakdown in your evidence, do  
2 you?  
3 A. No I don't, because do you really want to admit that you  
4 are broken? Do you really want to admit that you can't  
5 actually cope with anything any longer and you can't  
6 carry on and everything seems to be just too much on top  
7 of you? You are not going to admit to that. You know  
8 how you feel. You know how it was at the time and  
9 I find it is still a very difficult time to talk about  
10 that particular time, because it was just too much.  
11 Q. The position is that you did carry on working through  
12 this whole year?  
13 A. I did, yes.  
14 Q. Your witness statement does not refer to you having  
15 a nervous breakdown?  
16 A. No.  
17 Q. There's no medical evidence disclosed of a nervous  
18 breakdown, is there?  
19 A. No.  
20 Q. If you had had a nervous breakdown -- you do refer to  
21 illness and you refer in your statement to  
22 the non-Hodgkin's lymphoma. If you had had a nervous  
23 breakdown you would have said so, wouldn't you?  
24 A. Why would you say that? Then I go to the hospital, and  
25 part of the non-Hodgkin's lymphoma is it can be brought

1 on again by stress. And that was discovered and that is  
2 in my medical reports. So nervous breakdown, stress,  
3 I didn't want to admit to any of it.  
4 Q. Mr Weller, there is a difference. Stress is one thing,  
5 a nervous breakdown is another.  
6 A. I stand to correct you then Mr Potts, because the way  
7 I felt, I don't think I could have felt any lower than  
8 what I was. The way I was -- I had to take a week  
9 off -- I did take a week off after the Jena Laker  
10 incident. I took a week off, Dr Poulson came round to  
11 my house and she could see how broken I was and she  
12 said: look, you need to take time out, get over this.  
13 So I took it as a week's holiday, I didn't take it as  
14 an illness, I just took it as a week's holiday. At the  
15 end of the day, I am not going to admit to a nervous  
16 breakdown, I am then going to be signed off for work,  
17 I'm not going to be able to pay my bills, I'm not going  
18 to be able to do what I feel to be my duty as the father  
19 of my children and with my wife on my side; to  
20 protecting them. And I can't be broken any further if  
21 I was to do that.  
22 Q. Mr Weller, I'm not asking you -- I appreciate that you  
23 may have been under stress at the time. I'm not asking  
24 you about what you did at the time, I am pointing out to  
25 you that in your witness statement -- despite Mr Vos and

1 Dr Poulson saying that you suffered a nervous breakdown,  
2 you make no mention of having suffered a nervous  
3 breakdown in your statement.  
4 A. No, because I did not want to admit to it. I'm not  
5 going to admit to a nervous breakdown. I don't know  
6 whether it was a nervous breakdown, but I'm just telling  
7 you the way I felt at the time. Obviously the way  
8 Mr Vos and Dr Poulson saw it was that I had had  
9 a nervous breakdown. She is the doctor, I'm not  
10 a doctor, I'm just going to tell you what my symptoms  
11 were at the time.  
12 MR JUSTICE HILDYARD: I think his answer was that he felt  
13 broken.  
14 MR POTTS: My Lord, I think I have taken the point as far as  
15 I can. Can I move on to E5 please. 1246. Do you  
16 remember this is the letter of 9th August to you. Do  
17 you want to have a look at it?  
18 A. Yes.  
19 Q. Now you refer to this in paragraph 77 of your statement?  
20 A. Yes.  
21 Q. You say this was the final straw?  
22 A. Yes.  
23 Q. Now, looking at the letter, this is a routine letter  
24 sent to all stores who aren't participating in  
25 the business improvement training programme -- turning

1 up to those training sessions, isn't it?  
2 A. Okay.  
3 Q. You weren't being treated any differently from any other  
4 store that didn't participate in this letter?  
5 A. Okay.  
6 Q. Specsavers were entitled to ask you to turn up to this  
7 training because it is mandatory under the shareholders'  
8 agreement, isn't it?  
9 A. Again, with the shareholders' agreement -- I didn't know  
10 what clause 1 was, let alone what clause 13 was of the  
11 shareholders' agreement. I signed it on the belief that  
12 I was going -- obviously if you have got training  
13 requirements and you are going to do a training course  
14 and it is going to benefit the business, then great.  
15 But, you know, on some of the courses we were chucking  
16 eggs off buildings and all sorts. The cost of these  
17 courses was always going to be taken out of your  
18 business. So you had to be supplied with an invoice  
19 of -- I don't know how much this one, I can't  
20 remember -- but there were always like £1,000, £500; it  
21 is a lot and that is straight out of your profits.  
22 And if you take out -- if you go on these courses  
23 and you do all these things then you have got to get  
24 locums in. For Dr Poulson you have to get locums in.  
25 Obviously I had the staff, I could probably go, but you

1 have to arrange days off et cetera. It is not good.  
2 I wanted to be at the forefront of our business.  
3 I wanted to be there. I don't want to be off on courses  
4 and I didn't want to be paying for courses that I didn't  
5 agree with. And then, again, we are going to start up  
6 the argument: oh, if you don't do this we are going to  
7 have a board meeting, we are going to do this, we are  
8 going to do that. And then it is back to square one  
9 again. So for me, it was the final straw.  
10 Q. Let's break that down a little bit.  
11 A. Sorry.  
12 Q. The first point, paragraph 3 of the -- third paragraph,  
13 it reminds you of your contractual obligations. You  
14 were obliged to do that, weren't you? To turn up --  
15 A. Exactly. It reminds us at every step of the way, in  
16 every correspondence, it reminds us of our shareholders'  
17 agreement that we have signed, that I signed and all  
18 I had to think about was the shareholders' agreement is  
19 just a way of bullying you into doing things you don't  
20 really want to do, and if you ask them or question it  
21 you just get the same responses.  
22 Q. What's wrong with your fellow shareholder reminding you  
23 of your contractual obligations?  
24 A. What's wrong with my shareholder picking up the phone  
25 and talking to me?

1 Q. As I have said, this is a standard letter sent out to  
2 people who weren't attending. In terms of the  
3 consequence, it is saying that it is specified by  
4 Specsavers that you are required to attend:  
5 "Failure to attend may result in action being taken  
6 against you and your store/company including recovery of  
7 losses and costs."  
8 That is the only consequence, the recovery of losses  
9 and costs related to non-attendance, isn't it? It is  
10 hardly suggesting that it is the end of the world.  
11 A. It is the end of the world. Recovering losses and  
12 costs. I haven't -- it is like someone going into my  
13 bank account and saying: actually you are not doing  
14 that, here you are, we are going to take 50 quid off of  
15 you because you are not doing it. It is a fine. It is  
16 like I've got a parking ticket and I have not paid it.  
17 Q. In paragraph 76 of your statement you are referring to  
18 this letter in the context of an allegation of continued  
19 harassment.  
20 A. Paragraph sorry?  
21 Q. 76. During the period from July 2009 to August 2010,  
22 I think. We looked at 77 of your statement.  
23 A. 77, yes. Then you are saying 76?  
24 Q. 76, just the context of this is you are talking about  
25 coming back to work and you were talked out of

1 a decision --  
2 A. It is --  
3 Q. 75, you have talked about wanting to sell your shares,  
4 you were talked out of it, but the harassment from  
5 Specsavers continued.  
6 Now you came back to work in April 2010, yes? And  
7 so you are saying that in April 2010 you talked about  
8 wanting to sell your shares?  
9 A. Yes I did.  
10 Q. Then you are going on to say that the harassment from  
11 Specsavers continued through -- continued on, yes?  
12 A. Yes.  
13 Q. Now, the reference -- I think that you do make  
14 a reference to withholding bonuses. That's the only,  
15 I think, tangible suggestion -- reference to harassment.  
16 You find that at paragraph 75.  
17 A. I took time off work for my operation.  
18 Q. "I returned ... I had lost the will for the job,  
19 especially with Specsavers continuing to withhold our  
20 bonuses and cashflow."  
21 A. That is not 75. What's that one?  
22 Q. Do you have that?  
23 A. Paragraph 75?  
24 Q. Of your witness statement. I'm sorry, are you looking  
25 at your witness statement?

1 A. Yes, this is my witness statement. I have got 75:  
2 "I took time off work for the operation."  
3 Q. Yes, right:  
4 "I returned in April, but I had lost the will for  
5 the job, especially with Specsavers continuing to  
6 withhold our bonuses and the cashflow problems that came  
7 with it."  
8 A. Yes.  
9 Q. Do you see that?  
10 A. Yes.  
11 Q. "Immediately I came, Dr Poulson and I went to sell my  
12 shares."  
13 A. Yes.  
14 Q. Then you refer to continued harassment and the last  
15 straw being this letter of 9th August.  
16 A. Yes.  
17 Q. Now, apart from the reference to the bonuses, you don't  
18 refer to any other harassment in your statement. Was  
19 there anything else, or was that -- the issue which was  
20 troubling you was cashflow?  
21 A. The cashflow was a major contribution to it because, you  
22 know, again I don't put in my witness statement that we  
23 had asked for the cost of sale on our contact lenses,  
24 being that it had gone from 30 odd per cent to  
25 51 per cent and I had no record as to why it was

1 escalating and no real hard facts as to why it was  
2 costing us so much. I feel sorry for the directors who  
3 are left in Specsavers at the moment, because I read now  
4 you can get glasses, contact lens check free and  
5 everything. So it would be even less.

6 The other thing is that there were so many  
7 implications with the cost of the glasses, because  
8 obviously we had had the recession, so the pound against  
9 the dollar with the frames was resulting in frames  
10 costing more, you know, things like this. Instead of  
11 increasing the retail prices of the glasses they  
12 weren't, they were keeping it the same, which is fine,  
13 it is competitive, I understand that.

14 I take on board why they did, but obviously you have  
15 got all these costs, we are in a recession, you have got  
16 to keep costs down, so then you have got courses here:  
17 oh, you need to do the top team there, you need to be  
18 doing that there. It is all about spending our money  
19 and it just got too much.

20 I used that letter as a final straw, and I used  
21 the bonuses because obviously the bonuses is our profit  
22 and if you have got all these things coming out of it at  
23 every turn and corner, it takes the profit down. And  
24 our profit -- operating profit was really good and then  
25 it suddenly started to decline down. So the operating

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1 profit was going down and down all the time and so  
2 obviously there's less bonuses there. So I wasn't  
3 taking anywhere near what I was taking prior to 2007.  
4 It was really good -- I have got to say it was amazing.

5 Q. Prior to 2007 was good.

6 A. 2007 was great, and then -- obviously we then had  
7 the tax implications and they started draining the money  
8 out of us then.

9 Q. Could you take up E7 please. Sorry, it is 1735 do you  
10 have that table?

11 A. Yes.

12 Q. "This shows our request for dividends or bonus  
13 payments."

14 You remember we discussed that profits were paid at  
15 your election either as bonuses or dividends?

16 A. Yes.

17 Q. And those were based on the bottom line reports and your  
18 management accounts?

19 A. Yes.

20 Q. In fact, perhaps you can take the maths from me, I know  
21 that may be dangerous. Between 11th November 2009 and  
22 5th March, bonuses of £58,800 were paid, this shows.

23 Okay?

24 A. Okay.

25 Q. Now, Ms Mancini's evidence is that there were 64

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1 requests for bonuses made or dividends and in fact 52 of  
2 them were paid in the amounts requested and that 10 only  
3 were paid in the low amount because the store didn't  
4 have sufficient cash or profits to cover  
5 the distributions and only two were rejected, correct?

6 A. Correct.

7 Q. Now, the position is you were only entitled to bonus and  
8 dividends as agreed by Specsavers, they had -- under  
9 your shareholders' agreement, correct?

10 A. Correct.

11 Q. This table doesn't suggest the constant rejection of  
12 payments by them, does it?

13 A. No.

14 Q. To talk about cashflow problems; you had a loan to  
15 service, didn't you?

16 A. Yes.

17 Q. In fact that loan was guaranteed by Dr Poulson, we  
18 discussed --

19 A. Only up until 2009.

20 Q. Then what happened?

21 A. Then we changed it from -- we went to the bank and they  
22 took Dr Poulson's name off of it and just put it solely  
23 into mine.

24 Q. Do you remember when in 2009?

25 A. It was probably late on, September/October.

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1 Q. So after the complaint, the Laker complaint?

2 A. Yes, but it was --

3 Q. Later in the year?

4 A. It was later in the year but -- yeah.

5 Q. So you were worried about meeting your payments under  
6 the loan in the later payment?

7 A. I was worried about meeting my loan payments ever since  
8 I took it on, yes.

9 Q. The position is that in the later period the bottom line  
10 reports didn't show sufficient profits to allow you  
11 always to take the dividends or bonuses at the levels  
12 that you wanted. You can see that in items 11 onwards.  
13 11 to 15 for example. From March 2010 --

14 A. Yes.

15 Q. But in fact the rejection -- it wasn't a rejection,  
16 these were just adjustments. For example 15, £9,000 was  
17 paid when you requested £12,000. 14, £11,000 paid when  
18 you requested £12,000. 13, £6,000 when £10,000 was  
19 requested.

20 A. Yes.

21 Q. 12, £9,000 requested, £8,000 paid?

22 A. Yes.

23 Q. 11, £16,000 requested, £14,800, yes?

24 A. Yes.

25 Q. And then in September there was an insufficient profit

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1 there.  
 2 A. Yes. If you look in 2007 and 2008, there was no --  
 3 there was only one, which was January 2008, where we  
 4 were probably being a bit crafty, but apart from that  
 5 none of them were rejected or altered.  
 6 Q. That was the period, 2007/8, when you were building up  
 7 the VAT reserve?  
 8 A. I said to you in 2007 was -- until 2007 there was no  
 9 problems at all, and you can see there there is no  
 10 problem.  
 11 Q. And all the way through 2008 and 2009, largely there  
 12 weren't any problems either, were there?  
 13 A. Reduced due to insufficient funds. Reduced due to  
 14 insufficient cash. All through 2009, yes there was.  
 15 And in 2008 we were still growing the business and we  
 16 were still doing okay, but the point of the matter is  
 17 that the money was going over and it was getting less  
 18 and less.  
 19 Q. Well, from March 2008 all the way through March 2009,  
 20 for example, they were all paid in the amounts you  
 21 requested, weren't they? Do you see that? That is  
 22 numbers 28 through to 42.  
 23 A. Yes.  
 24 Q. During the period from June 2009 to 2011 -- this is  
 25 a period during which Mr Vos received over £135,000 --

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1 if you take the maths from me?  
 2 A. Sorry between?  
 3 Q. June 2009 and June 2011, after Mr Vos came onto  
 4 the books as an employee --  
 5 A. He was claiming before that.  
 6 Q. I'm asking you about this period first. But during this  
 7 period £135,000 and in the 12 months to June 2010 to  
 8 2011, he was paid £74,352, including bonus.  
 9 A. Mmm hmm.  
 10 Q. You, during that period, were only paid £59,000 odd,  
 11 195, including your bonuses.  
 12 A. In what year sorry?  
 13 Q. This is between June 2010 and June 2011. Yes, to 2011.  
 14 A. Mmm hmm.  
 15 Q. So during that period he was getting more out of the  
 16 business than you were?  
 17 A. Yes.  
 18 Q. From October 2009, the SEP system was introduced and  
 19 Mr Ferguson got -- a further £35,000 was paid to him?  
 20 A. Yes.  
 21 Q. So if all these monies were not taken out of the  
 22 business, there would have been significantly more money  
 23 for distribution, wouldn't there?  
 24 A. There would have been money for distribution, yes,  
 25 exactly. But the thing is we were putting the business

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1 first. I got value for money in what those guys did.  
 2 They weren't the issue as to why, in my eyes, we weren't  
 3 getting the money. We were getting our value for money  
 4 from Godfrey and Mr Ferguson, I wholeheartedly agree  
 5 with it, if I didn't agree with it I would have said  
 6 something. As you just said, it is my money, why would  
 7 I pay them more than me if I didn't feel -- if I didn't  
 8 think it was right for the business?  
 9 Q. Isn't the reality that you got fed up of Dr Poulson and  
 10 Mr Vos telling you what to do, treating you as  
 11 a subordinate and stripping the company in this way?  
 12 A. No.  
 13 Q. The people to blame for your cashflow problems were  
 14 the people artificially depressing the profits, not  
 15 Specsavers?  
 16 A. No.  
 17 Q. The person -- the people who were doing that were  
 18 Specsavers. Sorry, not Specsavers it was Dr Poulson and  
 19 Mr Vos, wasn't it?  
 20 A. You was right in the first one.  
 21 Q. Sorry, could you answer my question? This is a serious  
 22 issue Mr Weller.  
 23 A. Sorry.  
 24 Q. That wasn't Specsavers, it was Dr Poulson and Mr Vos?  
 25 A. No.

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1 Q. Hadn't you had enough of being treated like that?  
 2 A. Treated like what?  
 3 Q. She was treating you as if she was your boss, continuing  
 4 to do so, bossing you around and not giving you fair  
 5 financial rewards from the business.  
 6 A. No, she don't that. She treated me like an equal. She  
 7 has been a friend and a confidante on top of being  
 8 a business partner. So no.  
 9 Q. Let's move on to Mr Yogaradnam. You had decided that  
 10 you had had enough, you wanted to sell your shares.  
 11 A. Yes.  
 12 Q. These were your shares, weren't they?  
 13 A. Yes.  
 14 Q. Why was it that it was Dr Poulson who was touting your  
 15 shares around and talking to Specsavers about them?  
 16 A. Because she was going to be left in the business and  
 17 I was the one going, so she wanted to have a partner  
 18 that she could rely on and trust upon and she was  
 19 helping me look for a buyer without having to pay  
 20 the £10,000 in search fees to find a buyer for your  
 21 shares.  
 22 Q. Why weren't you talking to Specsavers about this, they  
 23 were your shares, not hers?  
 24 A. Because I was wanting out of the business. She was  
 25 the one who was going to be remaining there. I just

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1 wanted to leave it in the best way I could and that was  
 2 the best way I could see it going.  
 3 Q. I understand the point about you saying that she was  
 4 going to be left in the business, but surely the person  
 5 who had the interest in (a) selling the shares (b)  
 6 getting the best price for them was you, not her?  
 7 A. Yes.  
 8 Q. So why weren't you doing that task, why was she doing  
 9 it?  
 10 A. Because she knew -- I had said what I wanted from  
 11 the shares and she said okay, and, you know, she said  
 12 I will speak to some people. And the thing is she  
 13 wanted to have a partner that she could rely on and  
 14 trust upon, not someone that Specsavers choose for her.  
 15 Q. Wasn't this again just another example of her taking  
 16 control and treating you as her subservient in this  
 17 matter?  
 18 A. No.  
 19 Q. Now Mr Yogaratnam is an optometrist, is that not right?  
 20 A. Correct, yes.  
 21 Q. He had started by doing some locum work from time to  
 22 time from October 2007, doing eye testing?  
 23 A. Yes.  
 24 Q. Then he became an employee?  
 25 A. Yes.

1 Q. His role was to do eye testing. In fact he said he  
 2 concentrated mostly on testing sight?  
 3 A. Yes.  
 4 Q. So a sale by you to Mr Yogaratnam would have meant there  
 5 were two optometrists in the store?  
 6 A. Correct.  
 7 Q. No retail director.  
 8 A. But then Mr Yogaratnam has retail experience, he was a  
 9 DO for many years before he qualified as an OO. So in  
 10 fact you are getting a two for one deal there, because  
 11 you are getting a retail and an OO in the one store that  
 12 was struggling with an OO partner.  
 13 Q. Sorry, you lost me with the DOs and the OOs.  
 14 A. Dispensing optician is what Specsavers refer to as  
 15 a retail person because they run the shop front. They  
 16 don't test eyes, they are a dispensing optician. So he  
 17 qualified as a dispensing optician before he qualified  
 18 as an ophthalmic optician and this was clearly stated  
 19 when we put the offer to Specsavers, that he had  
 20 the experience of working on the shop floor and actually  
 21 being able to go out and solve patients' problems  
 22 et cetera. And also he was an OO. The problem with  
 23 Bognor is that we suffered dreadfully in getting  
 24 opticians into the store.  
 25 Q. You say you had a shortage of opticians in the store?

1 A. Yes.  
 2 Q. He was recruited as an optician?  
 3 A. He was recruited as an optician, yes.  
 4 Q. And he spent his time, as you have accepted, doing sight  
 5 testing?  
 6 A. Yes.  
 7 Q. So he was not a retailer at the store, he was  
 8 an optician?  
 9 A. At the store, yes.  
 10 Q. We discussed before there are about 700 Specsavers  
 11 stores in the UK?  
 12 A. Yes.  
 13 Q. The usual model, it is not universal, but the usual  
 14 model, and indeed the large majority, is to have  
 15 an optician JVP and a retail JVP. Do you accept that?  
 16 A. That's what the model is now, yes.  
 17 Q. That reflects that the business has two halves; optics  
 18 and retail?  
 19 A. It is what they want now, yes.  
 20 Q. It is also what they wanted at the time you entered  
 21 the shareholders agreement.  
 22 A. No, because when I entered the shareholders' agreement,  
 23 at the same time Rustington opened with two OO partners.  
 24 Throughout my career with Specsavers there has been  
 25 plenty of times when you have got just one OO or one

1 retail director. My old boss, Rob Lofting, who has got  
 2 Bexhill and Hastings, he has got that on his own. He is  
 3 not an OO, he is just a dispensing optician.  
 4 So my estimation -- and I went through the list,  
 5 the store list, before I was told -- when they come back  
 6 and said that, I went through this list and there is  
 7 over 100 stores in Specsavers that have got either of  
 8 one retailer, one OO, two OOs, or what have you,  
 9 there's -- not throughout the consistency of the  
 10 Specsavers umbrella is there one retail, one optician.  
 11 Q. Let's break that down into a couple of points.  
 12 The first point is I was asking you about what was  
 13 expected at the time of entering into your shareholders'  
 14 agreement. Now, your shareholders' agreement provided  
 15 for two JVPs, an optician JVP, Dr Poulson.  
 16 A. Yes.  
 17 Q. And a retail.  
 18 A. Yes.  
 19 Q. And the shareholders' agreement also provided that  
 20 amongst the matters -- I can show you if you like --  
 21 provided that in seeking consent, Specsavers had a right  
 22 to consider who they wanted to be in and one of the  
 23 issues but not the only one they could have regard to  
 24 was whether the person coming in fitted into the same  
 25 roles, retail and optical, and with the relevant

1 experience for each role. Do you accept that?  
 2 A. If that's what it says --  
 3 Q. I don't want you to accept something --  
 4 A. No that's fine. I accept what's in the shareholders'  
 5 agreement.  
 6 Can I say we bought the practice from just a retail  
 7 person, so that subsequently was not how I perceived it  
 8 to be. We bought the store from Marcus Halsey, who was  
 9 a retailer. Helle bought 60 per cent of those retail  
 10 shares then and I bought 40 per cent of the retail  
 11 shares. Then I saw Rustington being bought at the same  
 12 time, so when I come to sell my shares I didn't think --  
 13 looking what was best for the business -- that putting  
 14 an OO who had retail experience, passed his stage 1,  
 15 would be such a problem.  
 16 Q. Now in relation to the 100 stores, your witness  
 17 statement doesn't say anything like this at all,  
 18 does it? It doesn't refer to 100 stores, does it?  
 19 A. No.  
 20 Q. In fact, the example is given -- there are three  
 21 examples given in your witness statement, and indeed  
 22 the same in Dr Poulson's, of stores which you say don't  
 23 fit the model.  
 24 A. Yes.  
 25 Q. If there were hundreds, why didn't you refer to

1 hundreds?  
 2 A. I didn't think it was relevant. You put a gloss -- a  
 3 thing in there you say: here is three stores that we  
 4 live locally by and you can put hand on heart are there.  
 5 The other stores are from the book, the store guide that  
 6 says who the directors are and what their titles are.  
 7 So, yes, I could have -- perhaps in hindsight,  
 8 I should have put in the Rob Lofting, I should have put  
 9 in Hove, I should have put in all the stores. But  
 10 I didn't think to put in all the stores, I just gave  
 11 a reference of three.  
 12 Q. I explored with Dr Poulson in cross-examination that in  
 13 fact the examples that she had given were not very good  
 14 ones. We can go through the transcript, but  
 15 the position in relation to Rustington; that went to the  
 16 traditional model, didn't it?  
 17 A. It has now.  
 18 Q. Dartford was the traditional model?  
 19 A. Right.  
 20 Q. Correct?  
 21 A. Yes.  
 22 Q. And Worthing was different because in fact it had three  
 23 to four partners, but at all times it did have a retail  
 24 partner, correct?  
 25 A. Sorry?

1 Q. Worthing was different in that it didn't have two  
 2 partners, it had three or four partners?  
 3 A. It had three.  
 4 Q. In fact I think it had four --  
 5 A. Then it went back to three.  
 6 Q. But at all times it had a retail partner.  
 7 A. No, it had Mike Laurie, the lab technician. That is not  
 8 retail.  
 9 MR POTTS: My Lord, I don't know if that's a convenient  
 10 moment?  
 11 MR JUSTICE HILDYARD: Yes. 2 o'clock.  
 12 (1.02 pm)  
 13 (The short adjournment)  
 14 (2.00 pm)  
 15 MR STUART: My Lord, just before Mr Potts starts, I did  
 16 mention to him before the short adjournment that as  
 17 I had mentioned this morning I do have one witness who  
 18 is here, Ms Rosier, at bundle B tab 8.  
 19 MR JUSTICE HILDYARD: Yes.  
 20 MR STUART: She cannot be here tomorrow, Thursday or Friday.  
 21 The next time she could be here is Monday next week,  
 22 which is obviously not ideal as it would sort of fall  
 23 somewhere in the middle of the defendant's witnesses.  
 24 She has been sitting here all day today, being the day  
 25 which, according to the timetable that Mr Potts assisted

1 in agreeing to as of Friday, we were supposed to get  
 2 through Mr Weller --  
 3 MR JUSTICE HILDYARD: I think he indicated that he was  
 4 likely to be most of the day with Mr Weller yesterday.  
 5 MR STUART: Yes.  
 6 MR JUSTICE HILDYARD: That may be so still, I don't know.  
 7 MR STUART: I have asked Mr Potts and he says he will take  
 8 most of the rest of the afternoon but he can't tell of  
 9 course, which I do understand. I just raise the point  
 10 now my Lord. If there's any way in which we can hear  
 11 from Ms Rosier today, even if that means before having  
 12 Mr Weller's re-examination, for example, if we reached  
 13 a point -- a convenient point at a time when Ms Rosier  
 14 could be heard after the cross-examination and before  
 15 re-examination, I would ask that I be allowed to call  
 16 her then.  
 17 MR POTTS: My Lord, I'm afraid I'm not very happy with this.  
 18 What happened was I was notified this morning of the  
 19 intention to seek to interpose her. The position, as we  
 20 were told yesterday, was that the witness who was going  
 21 to come next was Mr Yogaratanam, and indeed there was  
 22 some reference to his being the only difficulties to  
 23 accommodate.  
 24 So to try to swap the witnesses around on short  
 25 notice -- I am sure this isn't intentional, but I'm



1 afraid it starts to smell like it is an ambush. I'm not  
 2 in a position. I was told to prepare Mr Yogaratnam and  
 3 not Rosier. This was sprung at the last minute. I'm  
 4 also -- I think it would be not fair, either to me or  
 5 indeed to the witness, who is an important witness, to  
 6 interrupt his evidence in this way.  
 7 Thirdly, as I said, I'm just not in a position to  
 8 deal with her on the basis of what I had been told by my  
 9 friend as to the order of witnesses, because he has just  
 10 swapped them around. And if she has to come back,  
 11 obviously I -- of course the availability of witnesses  
 12 and their convenience is of course a factor, but where  
 13 they themselves are just changing the order right at the  
 14 last minute, I'm afraid I'm not sure that that's fair on  
 15 my clients for it to be dealt with in that way.  
 16 In any event I need to carry on with Mr Weller to  
 17 see how far we get. I'm hoping to finish him today but  
 18 it depends, we have had some quite long answers this  
 19 morning.  
 20 MR JUSTICE HILDYARD: You were hoping to finish him today,  
 21 but probably not leave much for anything else, is  
 22 that~..?  
 23 MR POTTS: I don't think there's going to be a huge amount  
 24 of time. There are some important matters I need to  
 25 deal with.

1 MR JUSTICE HILDYARD: Mr Stuart, I have a certain sympathy  
 2 with Mr Potts on this, partly because, as at least until  
 3 7.05 last night, and in my case until this morning from  
 4 the point of view of programming my own reading --  
 5 accepting of course that these things change, it is  
 6 difficult for counsel and solicitors sometimes --  
 7 nevertheless it was Mr Yogaratnam next and Ms Rosier on  
 8 some subsequent occasion, but not today.  
 9 So to be -- I hesitate to use the words sprung with:  
 10 it is now or never -- well not never, but now or not  
 11 until Monday for Ms Rosier is a change.  
 12 MR STUART: My Lord, it is a change from -- we wrote at --  
 13 we made enquiries as best we could and the position up  
 14 until 7.05 yesterday was that I still had both of them  
 15 potentially coming today. They were planned to come  
 16 today and I was going to have to contact them.  
 17 I believed that Mr Yogaratnam absolutely had to be heard  
 18 today and I didn't have any contact with Ms Rosier, she  
 19 is not a family member -- Mr Yogaratnam is Mrs Parham's  
 20 brother.  
 21 So I didn't have any contact with Ms Rosier, and so  
 22 I was -- up until 7.05 the position was that I didn't  
 23 know what the position was with Ms Rosier, she was still  
 24 potentially going to come today but I was going to  
 25 try -- on the basis I was going to try to get

1 Mr Yogaratnam here today, I was going to try and put  
 2 Mr Rosier off, given that my learned friend made it  
 3 clear yesterday afternoon that we were unlikely to have  
 4 time to have two witnesses as well as finish Mr Weller.  
 5 So that was the position as of 7.05, and that's why  
 6 we wrote as we did at 7.05. We then got through to  
 7 Ms Rosier and she explained that she could not come  
 8 tomorrow, Thursday, Friday and that she could come  
 9 today. Meanwhile Mr Yogaratnam had said he would able  
 10 to come on Wednesday, so I put him off until Wednesday.  
 11 And then, yes, Mr Winn-Smith sent out an email at 9.09  
 12 this morning confirming that late night discussion of  
 13 yesterday. We have re-arranged Mr Yogaratnam.  
 14 MR POTTS: My Lord, that was not confirming anything to us.  
 15 As far as we were concerned until 9.05 this morning we  
 16 understood the intention being that he was seeking to  
 17 interpose Mr Yogaratnam.  
 18 MR JUSTICE HILDYARD: Yes. You accept that. I mean  
 19 the thing is, absent a witness summons, obviously  
 20 the court has to be flexible to a certain degree. I'm  
 21 very grateful to Ms Rosier's attendance today and  
 22 grateful for her confirmation that she would attend on  
 23 Monday. But the fact is that these pieces of litigation  
 24 are important and expensive and not to have, as it were,  
 25 warned the witness that in the normal course of things,

1 as you yourself twice mentioned to me, things tend to  
 2 slip, is disappointing in a way, isn't it, because one  
 3 would expect Ms Rosier to have been warned that today  
 4 was fairly unlikely as far as you could see at 7.05  
 5 yesterday and presumably before then, and that if she  
 6 had a difficulty then perhaps she should have gone in  
 7 front of Mr Weller, or whatever it was. Some  
 8 contingency planning, I think, would have been at the  
 9 very least desirable.  
 10 MR STUART: My Lord, I believe the position was that as per  
 11 the chronology that, as I say, was agreed on Friday, my  
 12 learned friend had got down that Mr Weller would finish  
 13 his evidence on Monday.  
 14 Now, the fact that my learned friend has spent  
 15 already a day --  
 16 MR JUSTICE HILDYARD: Mr Stuart, I don't want to get into  
 17 this and that but -- and I quite understand  
 18 the reasons -- but your re-examinations have been  
 19 unusually lengthy, I will say no more than that. No  
 20 timetable that I had envisaged would have catered for  
 21 that. I don't mean it critically, I mean it as  
 22 an objective fact.  
 23 MR STUART: My Lord, we have a transcript of the times so  
 24 the objective facts of the amount of time I have spent  
 25 in re-examination compared with the length --

1 MR JUSTICE HILDYARD: I do not want to argue with you. What  
 2 I'm saying is that I'm not going to interpose Ms Rosier.  
 3 I would ask whether any -- by any conceivable chance --  
 4 I know she is in court and I'm grateful to her -- it  
 5 might be possible for her to see whether she could,  
 6 simply for the orderly conduct of proceedings which  
 7 involve a great many people and a great deal of  
 8 expenditure.  
 9 Of course she is not a party and she attends by  
 10 goodwill and I'm very grateful for it. But it does have  
 11 an impact on a lot of people. That's all I will say.  
 12 But I won't presently interpose her. If by chance we  
 13 make swimming progress during the course of the  
 14 afternoon I will have another look at that, but I think  
 15 if Mr Potts says that at 7.05 he arranged his  
 16 cross-examination in a certain way and he is not in  
 17 a position, understandably to put his best foot forward  
 18 in cross-examination of her today, then I think that is  
 19 a fair point.  
 20 MR STUART: My Lord, let's see whether we come to it. If we  
 21 come to it I may need to --  
 22 MR JUSTICE HILDYARD: Yes indeed. I only mention it  
 23 actually because if Ms Rosier took the view, or you did  
 24 and wanted 2 minutes, that however interested she may be  
 25 she could be getting on with other things she would

1 prefer to be doing this afternoon in the reasonably  
 2 confident expectation that today will not be her day,  
 3 then, I feel I ought to give her the opportunity.  
 4 MR STUART: She lives in West Sussex my Lord. Could I have  
 5 one minute?  
 6 MR JUSTICE HILDYARD: Would you like me to go or do you  
 7 mind?  
 8 MR STUART: If your Lordship would stay here (Pause).  
 9 MR JUSTICE HILDYARD: Yes of course. (Pause).  
 10 MR STUART: My Lord, I'm told it is a matter purely of  
 11 childcare. Ms Rosier has a three year-old child, she  
 12 has made what arrangements she can for him to be looked  
 13 after today. The only other person who can look after  
 14 him are her in-laws, who return from their holiday  
 15 abroad on Sunday, so that is why she will be able to be  
 16 here on Monday because they will be able to look after  
 17 her three year-old son on Monday. She has tried as best  
 18 she can, she simply cannot find any alternative  
 19 childcare on Wednesday, Thursday, Friday this week. She  
 20 tells me that is her position and there's not much  
 21 I can --  
 22 MR JUSTICE HILDYARD: Such are the complexities of life and  
 23 I well understand the position. But we will see how we  
 24 go but if she wishes to to return to West Sussex --  
 25 MR STUART: She is getting a lift back to West Sussex, so

1 she is going to stay here.  
 2 MR JUSTICE HILDYARD: I will leave it at that. We will get  
 3 on. I'm so sorry Mr Weller.  
 4 MR POTTS: Mr Weller can you take up E3 please.  
 5 We were just discussing the sale of your shares  
 6 before lunch. 736 is an email referring to a telephone  
 7 conversation with Dr Poulson on 5th January, where she  
 8 had indicated that you had wanted to sell your shares.  
 9 A. Yes.  
 10 Q. Why didn't you get on the phone? These were your  
 11 shares.  
 12 A. Because she was going to be going forth, like I said  
 13 before lunch. She was still going to be staying in the  
 14 business, she knew who Mike Rowe was, she had had more  
 15 interaction with Mike Rowe -- not Mike Rowe,  
 16 Michael Ryan, sorry. She had had more interaction with  
 17 Michael Ryan, she said that she would deal with it. So  
 18 I was like: okay, cool.  
 19 Q. Then this was followed up by two letters, I think from  
 20 you both, on -- and those -- you can see they start at  
 21 752 on 31st January. There is one at 752 and another  
 22 one at 754.  
 23 Now the formal application is at 754. Do you want  
 24 to have a quick look at that?  
 25 Do you see that?

1 A. Mmm hmm.  
 2 Q. There is your letter of 31st January, a joint letter.  
 3 A. Yes.  
 4 Q. Who drafted that letter?  
 5 A. Godfrey.  
 6 Q. Mr Vos? Okay.  
 7 Going down the page it talks about -- the proposal  
 8 is -- you can see that your joint opinion was it would  
 9 be more advantageous to have two ophthalmic partners.  
 10 Do you see that?  
 11 A. Yes.  
 12 Q. Then there is a reference to Mr Yogaratnam. You say:  
 13 "Better to have two permanent opticians."  
 14 A. Yes.  
 15 Q. So, the reference to retail, the emphasis on retail  
 16 wasn't on Mr Yogaratnam but the emphasis was on  
 17 the strength of having two ophthalmic partners, which  
 18 was put forward at that point.  
 19 A. Yes.  
 20 Q. Then, at the same time, there was another letter sent at  
 21 752. You signed that as well, didn't you? 753.  
 22 A. Yes.  
 23 Q. This one has the bold heading. To Mr Rowe, strictly  
 24 confidential, personal and confidential and so on.  
 25 Do you see that?

1 A. Mmm hmm.  
 2 Q. You accused him of making unjustified and insulting  
 3 allegations. Do you see that, on the first page, by  
 4 the second hole punch?  
 5 A. Yes.  
 6 Q. Was it your idea to send this letter?  
 7 A. No.  
 8 Q. Whose idea was it?  
 9 A. It was between myself, Helle and Godfrey.  
 10 Q. What did you hope to achieve by sending this letter?  
 11 A. That the sale of my shares would go through.  
 12 Q. By accusing a member of SOG staff of unjustified and  
 13 insulting allegations and seeking to remove him from  
 14 the process; is that right?  
 15 A. Yes.  
 16 Q. Isn't the reality of this that this was Mr Vos' idea,  
 17 wasn't it?  
 18 A. No, it was between the three of us. We decided that  
 19 they -- there was no trust there any longer with Mr Rowe  
 20 and so we thought it best in the process to go through  
 21 with someone else.  
 22 Q. Who drafted the letter?  
 23 A. Godfrey.  
 24 Q. Isn't the reality that you went through with this  
 25 because you were told to do this and you signed what you

1 were told to?  
 2 A. No.  
 3 Q. The response came at 778 in the same bundle. That  
 4 letter made the point that it was the policy of  
 5 replacing departing shareholders with similarly  
 6 qualified and approved people, yes?  
 7 A. Yes.  
 8 Q. Indeed, we have discussed that that was actually  
 9 a provision of the shareholders' agreement. That was in  
 10 the shareholders' agreement.  
 11 A. Yes.  
 12 Q. It also talked about how, in their long experience:  
 13 "... stores benefit from having complimentary skills  
 14 of a strong retail partner rather than duplicating  
 15 the professional skills of two ophthalmic partners."  
 16 Do you see that in the penultimate paragraph?  
 17 A. Yes.  
 18 Q. That's a direct response to the points which are being  
 19 made in your letter about the idea that there should be  
 20 two ophthalmic partners, wasn't it?  
 21 A. Yes.  
 22 Q. There was then a meeting that you attended with Mr Rowe  
 23 and Mr Rajan, Dr Poulson and Mr Vos on 14th March, do  
 24 you remember that?  
 25 A. Yes.

1 Q. In fact, it was during that meeting that Dr Poulson  
 2 mentioned that she was proposing to sell her shares as  
 3 well in about two years time. Do you remember that?  
 4 A. Yes.  
 5 Q. Was it fair to say the meeting was polite?  
 6 A. Yes.  
 7 Q. Now you chased Mr Rowe up after the meeting and there  
 8 was a proposal at E4, 887.  
 9 Do you want to read -- you take your time to read  
 10 that Mr Weller. (Pause).  
 11 A. Okay.  
 12 Q. So in the second paragraph there is a reference there to  
 13 the points that you had made in your first letter, and  
 14 indeed perhaps at the meeting about the availability of  
 15 optometrists in the area. Do you see that?  
 16 A. Yes.  
 17 Q. But Specsavers still had concerns about the proposal,  
 18 that an experienced front of house retail partner,  
 19 that's you, be replaced by an ophthalmic partner who, by  
 20 definition, would likely spend the majority of his time  
 21 in the test room. Do you see that?  
 22 A. Yes.  
 23 Q. That's what Mr Yogarathnam did, on your evidence.  
 24 A. Yes.  
 25 Q. So they said they didn't feel it would be in

1 the interests of the business to waive the requirement  
 2 to replace like with like. Do you see that?  
 3 A. Yes.  
 4 Q. Then there is a reference to the meeting and the idea of  
 5 Dr Poulson returning to medical practice.  
 6 A. Yes.  
 7 Q. But they are exploring -- they come to explore with you  
 8 the potential to be structured differently; to have  
 9 a second OO partner, that is optical, as well as  
 10 the replacement retail partner for you, and then:  
 11 "Structure of a third each allowing securing of  
 12 ophthalmic cover, whilst retaining within the  
 13 shareholding partnership the retail and customer service  
 14 skills required."  
 15 And this could allow her to sell her shares in two  
 16 tranches, which was a preferable route as well.  
 17 So the position is that Specsavers hadn't refused to  
 18 countenance the sale of your shares at all, had they?  
 19 A. I don't remember receiving this letter.  
 20 Q. You don't remember receiving this letter?  
 21 A. No. We didn't hear any more correspondence from after  
 22 the meeting with Mike Rowe. We kept chasing it up.  
 23 Q. Can I just take one moment, please.  
 24 Well, first of all, Mr Weller this is from your  
 25 disclosure not ours. Do you see? It is not a file

1 note. I think I explored this with Dr Poulson and she  
 2 accepted having seen it.  
 3 A. Right.  
 4 Q. So she accepted she would have seen it.  
 5 A. Okay.  
 6 Q. Surely you would have discussed this with --  
 7 A. We discussed the possibility of myself selling  
 8 20 per cent of my shares to Helle -- to Niru, and Helle  
 9 selling 20 per cent of her shares, so we would be there  
 10 and for Niru's wife to come in as the retail partner in  
 11 it. But we never heard back as to whether this would  
 12 have been agreed.  
 13 Q. This is the first stage of that proposal.  
 14 A. All right, okay.  
 15 Q. Do take your time, because I don't want you to -- do you  
 16 want a bit more time to re-read the letter again. Does  
 17 that help you?  
 18 A. No, that's fine.  
 19 Q. This is talking about -- this is a few weeks after  
 20 the meeting in March. They are coming forward talking  
 21 about this tripartite structure.  
 22 A. Yes.  
 23 Q. Now do you recall that there was some discussion about  
 24 the tripartite structure?  
 25 A. Yes.

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1 Q. And with Specsavers?  
 2 A. Yes.  
 3 Q. Do you think it is fair that this is likely that what  
 4 you were discussing is the basis in this letter?  
 5 A. Like I said, I said that we had discussed me going down  
 6 to 20 per cent shareholding, Helle having 40 and Niru  
 7 having 40.  
 8 Q. I will take you through it. In fact what happened was  
 9 this was the initial proposal. Are you saying you  
 10 definitely didn't receive this letter, or you just can't  
 11 remember now?  
 12 A. I can't remember, so ... I remember speaking about  
 13 the third thing but I can't remember the letter.  
 14 Q. It is a proposal which -- as I said this document comes  
 15 from your disclosure?  
 16 A. Okay.  
 17 MR JUSTICE HILDYARD: You don't remember -- just so we are  
 18 entirely fair with the witness, I can't quite remember  
 19 what Dr Poulson actually said about this letter.  
 20 MR POTTS: My Lord, could I have a moment?  
 21 MR JUSTICE HILDYARD: It is at page 93 of Day 4. At 94 she  
 22 says she was almost hypnotised by that letter.  
 23 "Answer: It was a letter I had been waiting for and  
 24 waiting for, I hadn't seen it before, I had to read what  
 25 it actually said."

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1 I just don't want a false premise to be put.  
 2 MR POTTS: I'm sorry my Lord. I have to say my recollection  
 3 is a little hazy as to the discussion. We did have  
 4 a discussion about this with her -- I did have  
 5 a discussion about this with her and I think we  
 6 discussed that there was an initial one third/one  
 7 third/one third.  
 8 A. Yes.  
 9 Q. Then the idea was that, in fact, there was interest in  
 10 that proposal of the three parts so in effect what would  
 11 happen is that Mr Yogaratnam's wife would come in as  
 12 well?  
 13 A. Yes.  
 14 Q. Then what would happen over time is that we would be  
 15 left -- you would exit?  
 16 A. Yes.  
 17 Q. Dr Poulson would exit?  
 18 A. Yes.  
 19 Q. Then you would be left with Mr and Mrs Yogaratnam?  
 20 A. Correct.  
 21 Q. Indeed, I think Mr Yogaratnam, in fact, discusses that  
 22 in his witness statement on your behalf?  
 23 A. Right.  
 24 Q. The point being that the initial structure which was  
 25 talked about, which came as a proposal from Specsavers

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1 here, was the one third/one third/one third. Then there  
 2 was a discussion back saying: well, we are interested in  
 3 that but we need to sort of -- we would like to change  
 4 the numbers a bit.  
 5 A. Right, okay. I always thought it was the 40/40/20.  
 6 Q. Okay. So you do remember the 40/40/20?  
 7 A. I do.  
 8 Q. And here is a letter to you saying a third/a third/a  
 9 third.  
 10 A. Yes.  
 11 Q. Do you think it is possible that this is the first one  
 12 and it changed?  
 13 A. I don't know, I can't answer that.  
 14 Q. But the reality is, I put to you, that they were not  
 15 refusing here to countenance the sales of your shares,  
 16 but they were proposing a revised structure with three  
 17 partners and that would have allowed you an exit under  
 18 that structure. Do you accept that that's what this  
 19 letter suggests?  
 20 A. Yes, but then we heard no more and then the next thing  
 21 I know is that I'm here.  
 22 Q. And it is the case indeed that this was overtaken by  
 23 the investigation that subsequently followed?  
 24 A. Yes.  
 25 Q. Now, can I just return briefly to your case in relation

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1 to the conspiracy by Specsavers. Your case is that, as  
 2 pleaded -- perhaps to be fair I can show you. If you  
 3 take volume C. I'm sorry I have given you completely  
 4 the wrong bundle. It is A actually. I'm sorry my Lord.  
 5 Tab 5. 127. This is the reply to the defence and  
 6 counterclaim filed on your behalf. Do you have  
 7 paragraph 64.1?  
 8 A. Yes.  
 9 Q. If you want to just read the first -- you can perhaps  
 10 just read that paragraph. (Pause).  
 11 A. Yes.  
 12 Q. So you say that Specsavers were motivated to get rid of  
 13 you both and to lock you into a relationship until such  
 14 time as they could assert a claim to seize your shares  
 15 at par before profiting from its conduct by on selling  
 16 it at full value.  
 17 Why do you think Specsavers needed to do all this  
 18 when both you and both Dr Poulson had both expressed  
 19 a desire to sell your shares?  
 20 A. We did indeed. Obviously I phoned up in January, we got  
 21 stage 1 approved, we got somebody that was an OO and he  
 22 had retail experience, had you -- had they phoned us and  
 23 said -- well, they would have known when you've had  
 24 taken Niru, stage 1 what his capabilities are, you would  
 25 have handed in a CV showing that he had done his DO

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1 course et cetera. And then we hear -- instead of being:  
 2 okay, here you go, you have got stage 1. In my eyes --  
 3 this is my eyes and my interpretation of it, I found  
 4 someone who was willing to buy my shares at the price  
 5 I wanted to sell them for, I put to Guernsey -- well,  
 6 Helle put to Guernsey, if you like, that this was okay  
 7 with her. I thought because he was stage 1 approved it  
 8 would be okay with you. And then to go down all this  
 9 different avenues to say: well, actually we need  
 10 a retail director in here, we need a retail director in  
 11 here and then there is other stores that haven't got  
 12 a retail -- a retail partner or an OO partner in these  
 13 stores, I just thought, you know, all you have done  
 14 is -- I said I wanted to sell and because the breakdown  
 15 in communication and because of our aggressive tones, as  
 16 it were, that is the feeling I got made, that you  
 17 thought: okay, let's get them for this.

18 And as it happens there's subsequent emails that  
 19 have been disclosed by your clients that showed: let's  
 20 get her, let's bring her down, let's do this, let's do  
 21 that. It is all a case of -- what has happened at the  
 22 end of the day is I went to sell my shares at £250,000  
 23 and you have taken my shares away on a company that  
 24 doesn't, as you said in the opening speech, doesn't need  
 25 the money. You turn over £1.5 billion, yet you are

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1 quite happy to take shares away from me when I have done  
 2 nothing wrong.  
 3 Q. Let's break that down. The first point is -- I have  
 4 taken you through the correspondence in relation to the  
 5 negotiations about the sale of your shares.  
 6 A. But again, the negotiations weren't there. We had to  
 7 keep pressing -- or should I say Godfrey kept having to  
 8 write his letters in an aggressive tone to get  
 9 a response because we weren't hearing anything from  
 10 them; it was going on and on and on. I thought that,  
 11 you know, when I purchased the shares -- we put  
 12 the offer in in June, we was in the store by August.  
 13 This had gone on since the beginning of January and we  
 14 are now into April, and the correspondence wasn't  
 15 exactly: we need to talk about this, how about this  
 16 option? How about that option? It was left for  
 17 a while, it was hanging out. In my eyes it was a case  
 18 of let's hang this out until we can find anything to get  
 19 into your store and to take it away from you.  
 20 Q. The points which were made in those letters which we  
 21 have just looked at in relation to Mr Yogaratnam, such  
 22 as, for example, that he was going to be spending his  
 23 time doing the testing, as he had done in the past and  
 24 they said that they thought that wasn't a good way to  
 25 go. You didn't suggest in your answers to me that there

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1 was anything exceptional about the approach which was  
 2 taken by SOG in that regard?  
 3 A. I had explained to Mike Rowe as well that obviously we  
 4 had employed Gemma Davies, who is the manager of the  
 5 Crawley store. She had been employed to the Bognor  
 6 Regis store to make sure that -- with Sarah Scott and  
 7 the front of house management team -- that there would  
 8 be good support in the retail areas to lead from  
 9 the front and to be able to deliver the service in to  
 10 protect the brand at all costs.  
 11 Q. But they were interested and they wanted to have  
 12 a retail partner. That was the point they made in the  
 13 letter.  
 14 A. But we gave evidence to say that is good on the one hand  
 15 but we can get managers, we can get retail people in  
 16 there, you can't find a good OO to stay in the store.  
 17 Mr Yogaratnam was employed, he had a good customer base.  
 18 He had a clientele coming back to him on a year-on-year  
 19 basis, and then, when we come out of the store -- when  
 20 you take the shares away from me, you offer the shares  
 21 to him.  
 22 Q. Dealing with Specsavers itself, you say it had about 700  
 23 stores in the UK and you refer to the turnover. So it  
 24 didn't need the money, did it; the idea of making a turn  
 25 on these shares?

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1 A. That's what I find surprising, because then why do it to  
2 me? Why break my livelihood up, bring me down to this,  
3 when you didn't need to? I was willing to sell my  
4 shares. Why didn't they just say: okay Mr Weller, here  
5 you go, here's your money, off you go.  
6 Q. I agree Mr Weller, it is surprising. The point is it  
7 doesn't make any sense for them to do that. That is  
8 the point I put to you.  
9 A. Yeah, it doesn't.  
10 Q. With over 30,000 staff employed within the group and a  
11 group turnover of £1.5 billion, are you seriously  
12 suggesting that Mr Dyson, who made this decision,  
13 a member of the global board, was motivated to concoct  
14 a conspiracy against you in order to allow the purchase  
15 of your shares on the cheap?  
16 A. Partly, yes.  
17 Q. Who do you say was a party to this?  
18 A. I said "partly" I didn't say "party". Partly the reason  
19 they wanted us --  
20 Q. I was putting you to the position as to Mr Dyson, who is  
21 the person who made the brief. Are you saying he was  
22 a party to this conspiracy?  
23 A. I didn't say "party", I said that was partly the reason  
24 why they took our shares. You know, they made money on  
25 it. The other reason why they took our shares is they

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1 didn't like our tone and the way we run things.  
2 MR JUSTICE HILDYARD: I think counsel is asking you: do you  
3 think Mr Dyson was one of the people involved in the  
4 conspiracy you suggest?  
5 A. Yes.  
6 MR POTTS: He is a member of the board of the whole group.  
7 You think that he, despite being responsible for a board  
8 with over 30,000 staff employed, you think that that  
9 was -- his motivation was to deal with you?  
10 A. Yes.  
11 Q. Isn't it more likely that Specsavers was genuinely  
12 concerned that the information revealed as a result of  
13 the investigation showed fraud and dishonesty and that  
14 this was something which had to be dealt with?  
15 A. No.  
16 Q. So who else, apart from Mr Dyson, do you say are  
17 the parties to this conspiracy from Specsavers?  
18 A. Specsavers as a whole. You know, we look at SOG, they  
19 are a team, they work together. So everybody knows  
20 what's going on. Everyone knows -- in SOG they don't  
21 communicate, that's obvious by the disclosures that have  
22 been given.  
23 Q. It is a large organisation, you accept that?  
24 A. Yes.  
25 Q. It acts through individuals, it doesn't have some

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1 separate -- it can't act amorphously, it acts through  
2 people, doesn't it?  
3 A. Yes.  
4 Q. You are saying that Mr Dyson was a party to  
5 the conspiracy?  
6 A. Yes.  
7 Q. Is there anyone else, or was it down to him?  
8 A. No, I can't say -- it is not just down to him, no.  
9 Q. Who else?  
10 A. Who else -- whoever dealt with the emails. You have got  
11 Mike Rowe there, you have got Michael Ryan, it is all in  
12 the disclosures as to the people who were talking.  
13 Q. You are making some serious allegations against my  
14 clients Mr Weller, and I'm just asking you to identify  
15 who it is that you say was a party to this conspiracy?  
16 A. I can't identify offhand.  
17 Q. The only -- you identified Mr Dyson?  
18 A. Yes.  
19 Q. Can we go back please to E4 at page 950. I'm not going  
20 to ask you lots of detailed questions about this. I'm  
21 just trying to set out the chronology for you. But this  
22 is a letter of 7th June and you are aware that there was  
23 some previous correspondence which began on 26th May  
24 raising the concerns. Do you remember that?  
25 A. Yes.

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1 Q. Again, this letter reiterated -- if you look at the  
2 penultimate paragraph, you have written -- making some  
3 comments. It is said that this came as a result of  
4 an audit activity, as part of due diligence and so on,  
5 which gave rise to the unusual financial transactions  
6 coming to light, and those are the ones which are  
7 referred to over the page at 951; payments to Mr Vos and  
8 to Mr Ferguson.  
9 A. Yes.  
10 Q. He sets out the matters which they wished to discuss  
11 with you, and a board meeting was convened, and you see  
12 that from 952, for 15th June. Do you see that?  
13 A. Yes.  
14 Q. You didn't attend that meeting?  
15 A. No.  
16 Q. But you were notified of the resolution being passed to  
17 carry out the investigation and the suspension?  
18 A. Yes.  
19 Q. In fact there was an email which was sent following  
20 the meeting.  
21 A. Yes.  
22 Q. And you received an email which set out both the minutes  
23 of the meeting and an email copy of your letter of  
24 suspension?  
25 A. Yes.

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1 Q. And those were followed up by copies of those by  
2 recorded and normal post?  
3 A. Yes.  
4 Q. Now the investigation was carried out by the loss  
5 prevention department?  
6 A. Yes.  
7 Q. There are a couple of issues I want to explore, not  
8 absolutely everything. Let's start with 15th June.  
9 Could you pick up please E5.  
10 Firstly I am going to explore with you what happened  
11 on 15th June. At 1083 is the transcript of your  
12 interview. Do you see that? If you want to have  
13 a quick look, the first page in E5.  
14 A. All right, yes.  
15 Q. Now there's some apologies about the machine and so on.  
16 You see this is an interview -- you can see at  
17 lines 15 -- which was recorded because you had -- they  
18 had asked you if that was okay and you agreed to it  
19 being recorded, correct?  
20 A. Yes.  
21 Q. Then if you turn forward to 1186. At line 3131, he is  
22 talking about what happened on the day, that is of  
23 the suspension.  
24 A. Where am I?  
25 Q. You see on the left-hand side there are some line

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1 numbers. 3131 at the bottom of the page. You refer to  
2 going to the store and:  
3 "... told the staff there was a disagreement between  
4 ourselves and SOG."  
5 Told the staff. Do you see that?  
6 A. Yes.  
7 Q. Then you go over the page, 1181, and you were asked:  
8 "Who did the announcement?"  
9 "Godfrey."  
10 "So you just sat there?"  
11 And you confirmed that you sat there.  
12 A. Mmm hmm.  
13 Q. But you didn't speak to the staff collectively?  
14 A. No.  
15 Q. It was Mr Vos who was doing the announcements, yes?  
16 A. Yes.  
17 Q. And you confirmed that he did the talking?  
18 A. Yes.  
19 Q. Now, if you go on to 1190 at 3237, because one of the  
20 things that Mr Vos said, you can see there, which was  
21 reported back by staff, was:  
22 "Were the staff told this was all about Sunday  
23 trading and this was just Guernsey's way of trying to  
24 get the shares out of them and bullying you into Sunday  
25 trading?"

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1 And you confirmed:  
2 "They were told that, you know, that we had not been  
3 there as directors. We have always said no to Sunday  
4 trading."  
5 Then you say:  
6 "Barry, if Godfrey had done the announcement, he  
7 knew it had nothing to do with Sunday trading."  
8 Then you responded initially:  
9 "No".  
10 Looking at the response it says:  
11 "That isn't fair, isn't it?"  
12 If you go on to 1191 at the bottom of the page. It  
13 is not entirely clear what was said there.  
14 Then at 3293, at the bottom of the page:  
15 "Do you believe that Godfrey accurately told  
16 the staff what the investigation was all about?"  
17 Then over the page:  
18 "The staff ... it was read out pretty much what was  
19 said at the meeting."  
20 "Okay."  
21 "Anything the staff said, you are agreement? The  
22 staff aren't lying?"  
23 And then:  
24 "There are a couple of idiot things a couple of  
25 staff have said that I wouldn't agree with, most of it

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1 the majority."  
2 "Okay ...(Reading to the words)... money."  
3 So you are disagreeing with that. Then you go back  
4 to opening Sunday. You say:  
5 "Opening Sunday? Yes, it was pretend. And that --  
6 the thing is -- we will hand you -- it probably comes  
7 from myself more than anyone else is the matters in  
8 Brighton."  
9 Just in terms of -- what you are doing there, isn't  
10 it, is you are confirming that Mr Vos had said to  
11 the staff that the investigation was about Sunday  
12 trading?  
13 A. No. No I'm not.  
14 Q. You say, "Opening Sunday? Yes, it was pretend".  
15 A. That is the excuse they gave. The motives as to why  
16 they are coming in to take ... so they are pretending  
17 that it is all to do with Sunday trading. Guernsey are  
18 saying they are going to come in, in the sense that, you  
19 know, half the reason is that we wouldn't open Sundays.  
20 Q. The first point is you are confirming that Mr Vos did  
21 say it was about Sunday trading to the staff?  
22 A. He mentioned Sunday trading, yes.  
23 Q. That is the first point.  
24 What you go on to say is you say, "Yes it was  
25 pretend." I see, your point is that you were saying

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1 that that was a pretence by Specsavers?  
 2 A. Yes.  
 3 Q. Not by Mr Vos?  
 4 A. Yes.  
 5 Q. But the letter which you had received didn't say  
 6 anything about Sunday trading, did it?  
 7 A. No, but there's the black cloud over us that we didn't  
 8 open Sundays and, you know, you get to the point where  
 9 you know what everything is about, our tone or  
 10 undertone, if we raise questions and we say: oh, no we  
 11 don't want to open Sundays -- then obviously we knew  
 12 part of the reason was because we wasn't towing the line  
 13 and opening Sundays.  
 14 Why would they not accept the money from my  
 15 shares -- let Niru come in. But why else would they do  
 16 that? Because they wanted to get people in there who  
 17 would tow the line better, not ask questions and  
 18 literately get on with the job in hand as an employee  
 19 rather than a director or owner of the business. They  
 20 didn't do that. They wanted people to do yes and no  
 21 games, which you say I did with Helle, but I didn't with  
 22 Helle, and I didn't with Guernsey either, with SOG.  
 23 The main reason is that they didn't like the way we  
 24 were that we stood up for ourselves and tried to put  
 25 the business first and they didn't like the fact that we

1 21

1 would say no.  
 2 Q. But you hadn't had the matter of Sunday trading  
 3 escalated you didn't have a discussion when Mr Dyson met  
 4 with you, Sunday trading wasn't mentioned?  
 5 A. It was always mentioned: have you thought about Sundays?  
 6 We would go to a RDF meeting: oh, we are planning to put  
 7 staff members from SOG into your store if you are  
 8 willing to open on a Sunday. Can we get you to open on  
 9 Sunday? Every time we went to a RDM, or if Helle went  
 10 to a RDM: oh, we are offering the RDECs to come in and  
 11 work on a Sunday, we are going to try and open on a  
 12 Sunday and make a record Sunday.  
 13 A lot of it was down to Sunday trading. It just  
 14 might not have been in emails to and fro to the store,  
 15 but as a whole and a collective, Sunday was a big push.  
 16 And it shows it was a big push because now in their  
 17 advertisements it says "Open on Sundays" in nice big  
 18 letters.  
 19 Q. I think you have not quite answered my question but let  
 20 me just break that down. The first point you are  
 21 making, I think, is that at meetings such as group  
 22 meeting, RDMs, there was a sort of encouragement about  
 23 the idea of opening on Sundays. Is that correct?  
 24 A. Yes.  
 25 Q. The point I asked you about was that Mr Dyson -- you had

1 22

1 a meeting, which had started as a possible board  
 2 meeting, but was then ended up as an informal meeting.  
 3 That was the most senior meeting that you had had with  
 4 somebody from Specsavers for a long time, wasn't it?  
 5 A. Yes.  
 6 Q. Because Mr Dyson is on the main board?  
 7 A. Yes.  
 8 Q. But at that meeting he didn't mention Sunday trading,  
 9 did he? That was the point I asked you.  
 10 A. No, because he didn't add it to the list and we didn't  
 11 add it to the list.  
 12 Q. If he had wanted to add it to the list he could have  
 13 done, couldn't he?  
 14 A. He could have done but he was mostly interested that we  
 15 would tow the line with the mystery shopper. So he was  
 16 not going to kill us with two stones, was he?  
 17 Q. The other issue you were asked about during this --  
 18 because two of the members of staff suggested Mr Vos had  
 19 said something about Specsavers offering money to the  
 20 staff, pushing them into the corner and so on. Do you  
 21 remember that?  
 22 A. Yes I do.  
 23 Q. Your response initially on that is at 3299, where you  
 24 said you disagreed about that:  
 25 "The only bit I wouldn't agree with is the comment

1 23

1 they made about offering you money and stuff."  
 2 A. Mmm hmm.  
 3 Q. So you were denying that that was said?  
 4 A. No, I was denying that Godfrey had said it, because  
 5 I had said it.  
 6 Q. I see. So the only point you were saying that you had  
 7 said it?  
 8 A. Yes.  
 9 Q. So what did you say actually to the staff?  
 10 A. I said that when I started in the Brighton Specsavers,  
 11 that a similar thing had happened with -- it started off  
 12 with Rob Lofting and Christopher Voyce(?). They then  
 13 had a disagreement, if you like, and Rob Lofting sold  
 14 his shares to George von Davis(?). George von Davis  
 15 came in and fell out with Chris Voyce.  
 16 I don't know what happened there, he gave us  
 17 a speech in the morning and said, "I can't work with  
 18 this man any longer, I'm gone." So he was gone. So we  
 19 had just Chris Voyce in and then a few months later --  
 20 all the way back in those years -- we get someone in  
 21 from Guernsey by the name of Gary Soaf(?) who came in.  
 22 Then on Chris' day off, on the first time he was like:  
 23 I need to interview on this. Nothing is going to  
 24 happen, we want your opinion. What does Chris do? What  
 25 does he do here? Et cetera. And: don't worry about it,

1 24



1 your job will be safe, you will be fine, you know, we  
 2 have got to get you on the correct salary, you are not  
 3 on the correct salary at the moment. And it was all  
 4 offered, you know, that: don't worry, we will protect  
 5 you as long as you grass Chris up.  
 6 Q. And you said all of that to the staff, did you?  
 7 A. No, I told them that you would be offered money and  
 8 incentives to say things against us. But I'm just  
 9 telling you my recollection of the story.  
 10 Q. Sorry, that wasn't the question I asked. The question  
 11 I asked you was what you said to the staff.  
 12 A. I said that you would be offered incentives and  
 13 everything to say things against us.  
 14 Q. Did you think it was appropriate to make that sort of  
 15 comment to the staff in the context of an investigation?  
 16 A. I always wear my heart on my sleeve and I always see  
 17 the staff -- I always have done, as you are well aware,  
 18 I have become too friendly et cetera. I have always  
 19 thought it is best to be nice and truthful and let them  
 20 know: don't worry about it, but you have got to stay  
 21 firm to your word.  
 22 Q. This is an event which you allege happened before 1996,  
 23 some 15 years earlier, correct?  
 24 A. Correct.  
 25 Q. The loss prevention department didn't exist at that

1 25

1 time?  
 2 A. No, that's why I said -- I didn't say it was loss  
 3 prevention, I said it was -- a man called Gary Soaf was  
 4 the equivalent of their loss prevention at that time.  
 5 Q. Furthermore, if you thought that there was something  
 6 improper about SOG as an organisation as a result of  
 7 something that had happened in 1996, you wouldn't have  
 8 bought your shares in 1995, would you?  
 9 A. No because when I was -- in 1996 when that happened,  
 10 when you are sitting there with SOG in front of you and  
 11 they are saying this, that and the other -- and my  
 12 salary did go up and everything, and they say: he did  
 13 this wrong -- you know, I was led to believe that he was  
 14 putting pay into his bank account or keeping it in  
 15 the account and not paying us on the day he should have  
 16 paid us, which was the 28th, and he was paying us on  
 17 the 5th. And we was told that he had been misleading us  
 18 as staff in not paying us on the 28th. So, at the time,  
 19 we thought: oh dear, good I'm getting paid on the 28th  
 20 now.  
 21 Q. Let me ask the question again. Let's have another go at  
 22 it. What I asked you was that if this had happened in  
 23 1996 and you thought this was improper, in relation to  
 24 Specsavers as a company, you wouldn't have bought your  
 25 shares in 2005, would you --

1 26

1 A. No.  
 2 Q. -- if you thought Specsavers was the sort of company  
 3 that acted in this sort of way?  
 4 A. No, I wouldn't.  
 5 Q. But you did buy your shares?  
 6 A. Yes, because I believed in Specsavers. In 1996  
 7 I believed what they were telling me and I believed in  
 8 the whole Specsavers concept. I wouldn't have worked  
 9 for them for 20 years if I didn't believe in them.  
 10 Q. To get the chronology right, you are suggesting in 1996  
 11 when you were in Brighton that something improper --  
 12 an improper proposal was made to you by somebody at that  
 13 stage by Specsavers, correct?  
 14 A. Yes.  
 15 Q. You bought your shares in 2005?  
 16 A. Yes.  
 17 Q. The point I'm making to you is that if you thought  
 18 Specsavers was the sort of organisation that would act  
 19 in an improper way like this, why did you buy your  
 20 shares in 2005, and indeed why did you carry on working  
 21 for them in the intervening period?  
 22 A. Exactly.  
 23 Q. I'm asking the question.  
 24 A. No, I thought they were a great company.  
 25 Q. I put it to you that you did think it was a great

1 27

1 company, and indeed you didn't think anything improper  
 2 had happened in 1996, otherwise you wouldn't have  
 3 carried on working for them?  
 4 A. Of course you do. Anyone is easily bought.  
 5 Q. I am sorry, I didn't catch your answer.  
 6 A. Anyone is easily bought. You know, at the time it was  
 7 1996, I was 18/19 years old. I was like: yeah, this is  
 8 great, I have got an extra -- you know, Chris is out of  
 9 it, I'm getting paid now on the 28th, Specsavers are in  
 10 here, they are going to do all the training, they are  
 11 going to build my confidence up. And they did.  
 12 Q. I put it to you that if you had thought there was  
 13 something improper as Specsavers as an organisation, you  
 14 would not have invested your money in 2005 on the basis  
 15 that you did?  
 16 A. If I had thought that Specsavers was -- yes, I would  
 17 never have invested.  
 18 Q. I also put to you that if -- whether it was you or  
 19 Mr Vos who made this comment about alleged events some  
 20 15 years earlier, that that was an improper attempt to  
 21 influence the staff in relation to a legitimate  
 22 investigation.  
 23 A. No.  
 24 Q. Mr Vos, with your approval, then went on apparently to  
 25 remind -- using his words -- the staff of a list of

1 28

1 matters that Mr Ferguson had done at the store?  
2 A. Yes.  
3 Q. That happened, didn't it, as well?  
4 A. Yes.  
5 Q. That also was an improper attempt to influence  
6 the investigation, wasn't it?  
7 A. No.  
8 Q. It was Mr Vos who did all the talking really, wasn't it;  
9 you left all that sort of thing to him?  
10 A. Apart from what I said, yes.  
11 Q. Now you were used to dealing with disciplinary issues in  
12 the context of staff, being a retail director for  
13 a number of years, weren't you?  
14 A. Yes, since 2005.  
15 Q. You know that in the context of an investigation and  
16 suspension you don't seek to influence the course of  
17 that by talking to the other staff.  
18 A. Yes.  
19 Q. You knew that?  
20 A. Yes.  
21 Q. But notwithstanding that, that's precisely what you did  
22 on the 15th?  
23 A. We had not been suspended at that point.  
24 Q. You knew you were about to be suspended or at least  
25 suspected you were about to be suspended?

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1 A. Suspected but didn't know.  
2 Q. You then received letters with a standard instruction  
3 saying you should not discuss the matter with other  
4 employees, correct?  
5 A. After that meeting took place.  
6 Q. But you did do that, didn't you?  
7 A. With Dr Poulson and Mr Vos, yes.  
8 Q. They were employees?  
9 A. It said in the letter: do not talk to employees at the  
10 store. Dr Poulson and Mr Vos weren't at the store.  
11 That was my business partner. If you are going to have  
12 a business partner -- I didn't class her as an employee,  
13 I classed her as my partner. So I felt that we were in  
14 this together and we needed to, you know, discuss what's  
15 going on. You are not going to sit there on your own  
16 and not talk to your director, your main shareholder,  
17 that you bought your shares with, are you?  
18 Q. The instruction was not to discuss the matter with any  
19 member of staff who works at the store, correct?  
20 A. Yes, at the store.  
21 Q. You were an employee, weren't you?  
22 A. Yes.  
23 Q. Dr Poulson was an employee?  
24 A. Yes.  
25 Q. Mr Vos was an employee?

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1 A. Yes.  
2 Q. Why did you think it was appropriate to discuss matters  
3 with Mr Vos?  
4 A. Because he was with Dr Poulson and he was cast, in my  
5 eyes, as part of the elite force.  
6 Q. They even drove you to your interview, didn't they, and  
7 waited outside?  
8 A. Yes.  
9 Q. They took you back home?  
10 A. Yes.  
11 Q. Did you discuss all the matters that were going to be  
12 raised at the investigation with them in advance of  
13 the interviews?  
14 A. We went over what had been discussed, yes.  
15 Q. And what was going to be discussed?  
16 A. We didn't know what was going to be -- obviously there's  
17 the outline of what was going to be discussed, yes.  
18 Q. Now, in terms of Mr Vos' working hours, you stated in  
19 interview that, certainly from January 2011 you thought  
20 he was only in the store three and a half hours a day,  
21 three days a week. Do you remember saying that? And  
22 you also -- perhaps if I can take you -- if you go to  
23 E5, 1096, line 409. You were asked about what he was  
24 doing when he wasn't on site.  
25 Page 1096, do you see that? Line 409.

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1 A. Yes.  
2 Q. "He is working from home."  
3 You say he has got a home office.  
4 A. Yes.  
5 Q. Then, if you go over to 1097, you were asked at 425:  
6 "If he is working off site and you are working at  
7 the store have you got any way of assessing what doing?  
8 "Only by way of the paperwork."  
9 Is what you say.  
10 A. Yes.  
11 Q. You don't say: because he was on the phone to me all the  
12 time during the day, do you?  
13 A. No.  
14 MR STUART: That is an unfair question by my learned friend  
15 since he has not taken the witness to those very words,  
16 four lines further down, page 430:  
17 "He phones up and speak to him throughout the day."  
18 I do think that is a slightly unfair question.  
19 MR POTTS: I'm sorry my Lord, I hadn't seen that.  
20 In terms of the paperwork in relation to that, none  
21 has been disclosed has it; this paperwork which he was  
22 producing?  
23 A. All the emails had been disclosed and the correspondence  
24 that he is writing. We have admitted he writes those  
25 letters.

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1 Q. You then ran through a number of things you said he was  
2 doing in the following pages of this. You refer to  
3 staff grievances for example?  
4 A. Yes.  
5 Q. There weren't that many of those, were there?  
6 A. No.  
7 Q. There were two?  
8 A. Yes.  
9 Q. Now, the Laker complaint was investigated by Mr North,  
10 wasn't it?  
11 A. Yes.  
12 Q. So Mr Vos might have had some involvement in one  
13 grievance?  
14 A. No, we had involvement with the Jena Laker case, because  
15 obviously he had to testify, come up with all  
16 the evidence as well for his own answers on that  
17 himself.  
18 Q. Well, he was asked about it but he wasn't conducting  
19 the investigation, was he?  
20 A. He wasn't conducting the investigation, no.  
21 Q. Isn't the reality that the sort of things that you were  
22 referring to were not matters which would take up a huge  
23 amount of time for Mr Vos?  
24 A. There was loads of matters. When you were asked in  
25 an investigation meeting that: oh, what do you do? You

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1 are put on the spot. You say relevant things; emails,  
2 this, that and the other. But you don't take into  
3 account at the time everything he is doing. If I had  
4 any concerns for the amount of work he was doing I would  
5 raise it with you guys or those guys. If I thought  
6 I wasn't getting a fair deal, I would say something.  
7 Q. Did you discuss with him and Dr Poulson what you were  
8 going to say about this in advance of the interview?  
9 A. No, not about his working hours, no.  
10 Q. Did you have any discussion, for example, about the work  
11 schedules that he produced as to what he was doing? You  
12 didn't talk that through with him?  
13 A. Yes we did.  
14 Q. So the answer is you did discuss questions about what he  
15 was doing with his time?  
16 A. We discussed the schedules, yes.  
17 Q. And that was what he was doing during the day?  
18 A. Yes.  
19 Q. So the answer to my question is yes to the original  
20 question, isn't it? Do you accept that?  
21 A. Yes.  
22 Q. The investigation also considered the CCTV footage for  
23 the period of 1st to 14th June, correct?  
24 A. Yes.  
25 Q. That was the only available footage because that was

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1 what was kept on the hard drive?  
2 A. Yes.  
3 Q. That only indicated him in store for 13 hours and  
4 43 minutes in total over that 2 week period.  
5 A. Yes.  
6 Q. Do you accept that?  
7 A. Yes.  
8 Q. His contractual hours were 48 hours for that period. So  
9 it was significantly light, wasn't it; more than  
10 34 hours light?  
11 A. For not being in the store.  
12 Q. For his contracted hours.  
13 A. His contracted hours were not set out to say that he had  
14 to be in the store for 24 hours.  
15 Q. Let's just break it down. In terms of the time, he was  
16 48 hours just contracted. On top of that -- he was  
17 charging for an average of 15 hours of overtime as well  
18 on top, wasn't he?  
19 A. Yes.  
20 Q. More than 700 hours of overtime in 12 months in fact.  
21 A. Right.  
22 Q. So the amount of time that was shown in store was very  
23 significantly light compared -- in terms of the store  
24 was significantly light compared to his contracted  
25 hours, let alone the overtime. Do you accept that?

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1 A. Yes.  
2 Q. So there was a difficulty, wasn't there, because  
3 the evidence from the CCTV, and indeed what the staff  
4 would say would show that he wasn't in store very much  
5 at all?  
6 A. He was in store and those two weeks prior to that  
7 obviously we had this investigation coming up and all  
8 this lot, so we were in talks quite a lot of the time  
9 not on the premises because we didn't want the staff to  
10 be included in that. So we were in talks quite a lot of  
11 the time. And when you have got that pending upon  
12 you -- no, he wasn't in the store in those two weeks  
13 prior to it because we had a lot of issues going on. We  
14 were being hounded by Specsavers to go to this, that and  
15 the other, do this, somersault there.  
16 You know, you are not going to be concentrating on  
17 the business when you are getting so much stuff through,  
18 he is going: oh, this is going to happen, that is going  
19 to happen. We were working with Niru, we just heard  
20 from Niru himself about his sister, Shakilah(?) the one  
21 after this, what had happened. So yes, there was a lot  
22 of things going on at that time. But yeah, he wasn't in  
23 the store.  
24 Q. It wasn't just in that two-week period, was it? Because  
25 your evidence, even in the investigation, was that, at

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1 least through 2011, he wasn't in more than three days a  
 2 week and was doing about three and a half hours per day?  
 3 A. Yes.  
 4 Q. It wasn't just the last two weeks, was it?  
 5 A. The last two weeks, no. You know, he did those hours in  
 6 the morning et cetera. I didn't take a tab on it.  
 7 I didn't clock him in and out, we don't do that, you  
 8 just think: oh, actually it is about that time.  
 9 Q. In relation to administrative tasks and the processes,  
 10 most of the systems of the store are computerised,  
 11 aren't they?  
 12 A. A lot, yes.  
 13 Q. They use an electronic system?  
 14 A. Yes.  
 15 Q. To access that from home he would have to have remote  
 16 access, which he didn't have.  
 17 A. Correct.  
 18 Q. In fact his access was only on average 13 minutes  
 19 a month?  
 20 A. Right.  
 21 Q. On top of that the store had a part-time store manager,  
 22 Sarah Scott. Two full-time assistant managers,  
 23 Ms Davies. There was also a full-time supervisor and  
 24 two full-time joint venture partners, yourself and  
 25 Dr Poulson?

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1 A. Correct.  
 2 Q. The relevance of the evidence of the relevant employees  
 3 was firstly he couldn't be doing very much in store, and  
 4 secondly he could not be doing very much at home. That  
 5 was the evidence of the staff.  
 6 A. But he was doing the evidence at home, I was round there  
 7 quite often, a lot of meetings. We have gone through  
 8 when you examined Mr Vos. He was doing it. I had no  
 9 reason to doubt that work wasn't being done. [sic]  
 10 I could see it quite clearly I was in meetings all the  
 11 time. They weren't. I was the joint venture partner.  
 12 It was my money being paid to him. Why would I pay him  
 13 that money if he wasn't doing the work?  
 14 Q. Can I ask you to turn up E2, 541. We have looked at  
 15 this document this morning and we have looked at another  
 16 version of it. Just to place the document, you remember  
 17 we looked at this this morning. This is the one that  
 18 came after the contract. We looked at that this  
 19 morning.  
 20 A. Mmm hmm.  
 21 Q. We also looked at a earlier version of this document, do  
 22 you remember?  
 23 A. Yes.  
 24 Q. We say this was a later version of that, which still  
 25 refers to Dr Poulson as senior director partner but

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1 there was some changes in relation to references to you,  
 2 as to junior partner and reporting. Do you see that?  
 3 A. Yes.  
 4 Q. This lists a number of staff, doesn't it? It lists  
 5 management structure?  
 6 A. Yes.  
 7 Q. You have got Poulson, Weller, Vos, Scott, Verrell,  
 8 Butler, Morris.  
 9 A. Yes.  
 10 Q. Now all of these people were interviewed, weren't they,  
 11 during the course of the investigation?  
 12 A. Yes, I think --  
 13 Q. Yes they were. In fact 12 people were interviewed  
 14 including all of these named people.  
 15 A. Mmm hmm.  
 16 Q. The managers and the optical assistants are the ones, if  
 17 you like, who are the front of house, facing people,  
 18 aren't they?  
 19 A. Yes.  
 20 Q. All their evidence was to the effect that Mr Vos was not  
 21 doing very much in store and they saw little -- there  
 22 was no evidence that he was really doing very much at  
 23 home either, correct?  
 24 A. They can only really say on the evidence in store  
 25 because they are not seeing them at home, are they?

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1 Q. In terms of the details from home, they were reporting  
 2 to the fact that not much documentation -- he wasn't  
 3 taking much home and he wasn't in touch with them, and  
 4 he would have needed access to the computer records for  
 5 example?  
 6 A. But they were calling him all the time throughout  
 7 the day, with queries on references, on what to do.  
 8 Q. That wasn't their evidence.  
 9 A. No, I'm saying that that's what they did because it is  
 10 in Sarah Scott's -- one of them it says that: oh, no --  
 11 Sarah Scott said: we had to ask permission to -- Barry  
 12 was never available to -- I think it was in my  
 13 investigation interview that they said the staff -- it  
 14 was quoted to me that the staff said that they were not  
 15 allowed to put through an invoice or make a payment, or  
 16 order frames without Godfrey's consent and they had to  
 17 phone him for consent. If we had someone phoning in  
 18 with a complaint, that had to be followed through. Also  
 19 they had to say that Godfrey was out of the office and  
 20 to give him on call and they did throughout the day.  
 21 They was always in touch.  
 22 Q. Can you turn in E5 to 1286. If you look at 1286, in  
 23 the middle of the page this is the conclusion of the  
 24 investigation in relation to this issue.  
 25 The paragraph in the middle, by the star says:

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1 "The employees' evidence."  
 2 It concludes that:  
 3 "He was not completing 24 hours in store during  
 4 the week. In fact the evidence was it was significantly  
 5 less."  
 6 The three of you were saying that he was doing  
 7 the work at home, but you point out:  
 8 "There is little evidence, if any, that if he was  
 9 completing any significant amount of work from home."  
 10 It was pointed to the fact he didn't have remote  
 11 access to the IT systems. The employees report having  
 12 no experience of him contacting them on a regular basis  
 13 during the working day and particularly for example  
 14 about the lab, a key area which he asserted he manages.  
 15 And also he was not taking much paperwork home.  
 16 Is your position that Mr McAlindon and Mr Barnes  
 17 couldn't have genuinely formed the view which is  
 18 reflected there?  
 19 A. Yes.  
 20 Q. I put to you it was plainly open for them to come to  
 21 that conclusion based on those matters alone?  
 22 A. No.  
 23 Q. I also put to you that based on that evidence you were  
 24 aware Mr Vos was not completing his contracted hours and  
 25 you sought in your interviews to create the impression,

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1 which was false, that he was doing more hours than he in  
 2 fact was?  
 3 A. No.  
 4 Q. Now, when the loss prevention team arrived at the store  
 5 they couldn't find staff employment records or other  
 6 documents, could they?  
 7 A. Correct.  
 8 Q. Now, apparently there were two boxes which were later  
 9 recovered from solicitors. They were your solicitors,  
 10 weren't they?  
 11 A. All of ours, yes.  
 12 Q. The boxes didn't include any employment contract or  
 13 overtime records for Mr Vos, did they?  
 14 A. They did, yes.  
 15 Q. Well, they were not in the boxes when they were  
 16 recovered.  
 17 A. I know. As Dr Poulson and Mr Vos had said, they must  
 18 have been removed.  
 19 Q. Did you see the boxes before they went to the  
 20 solicitors?  
 21 A. No. Apart from packing it up and putting it in the box.  
 22 Q. So you didn't know what was in the box?  
 23 A. Well, I didn't look through the box, we put all  
 24 the staff files in there and everything went.  
 25 Q. Mr Vos produced a number of documents at his interview.

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1 There was a letter of 1st May.  
 2 A. Yes.  
 3 Q. A letter of 14th May.  
 4 A. Yes.  
 5 Q. A contract of employment.  
 6 A. Yes.  
 7 Q. Did you discuss with Mr Vos his proposal to produce  
 8 these documents at interview?  
 9 A. He always takes it along with him. He didn't discuss  
 10 it, no.  
 11 Q. You didn't discuss that at all?  
 12 A. To take along to his interview? No. He would have  
 13 taken those along.  
 14 Q. I know you didn't. We have discussed that you discussed  
 15 with him the schedules in relation to the time that he  
 16 was spending doing work.  
 17 A. Yes.  
 18 Q. Did you discuss the schedules in relation to  
 19 Mr Ferguson?  
 20 A. The sheet, yes we did.  
 21 Q. Did you discuss what you were all going to say at the  
 22 interviews as well?  
 23 A. No. Not really. It was just discussed on what was  
 24 done, so we knew what was done is it --  
 25 Q. You discussed what was -- you discussed the response in

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1 relation to the matters which were in issue in  
 2 the investigation?  
 3 A. Yes.  
 4 Q. Did that include the production of these documents at  
 5 interview?  
 6 A. Of what documents?  
 7 Q. The documents I have just referred you to. The letters,  
 8 the contract.  
 9 A. No.  
 10 Q. Did you discuss that in advance?  
 11 A. He didn't discuss that he was going to take those along  
 12 with him, no.  
 13 Q. Let's have a look please at E2, 527. Do you see that?  
 14 A. Yes.  
 15 Q. That is the letter of 1st May.  
 16 A. Yes.  
 17 Q. You countersigned this letter, didn't you?  
 18 A. Yes.  
 19 Q. When did you do that?  
 20 A. Then, 1st May.  
 21 Q. Do you remember we were when you signed it?  
 22 A. Yes, round Helle and Godfrey's house.  
 23 Q. Is that where you generally signed documents together?  
 24 A. Yes.  
 25 Q. If you look at the letter, it starts by saying:

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1 "I'm sorry to hear that you have had pressure from  
 2 head office regarding my employment status. They are  
 3 not happy about me continuing to act as a consultant to  
 4 you. You have informed me they require that for me to  
 5 continue to be involved in the company I need to be  
 6 placed on the payroll."  
 7 Now that's clearly a statement giving the impression  
 8 that the pressure had just been applied and that he has  
 9 just heard about it, isn't it?  
 10 A. Yes, because of -- the fact is we got the minutes of the  
 11 meeting from the Derek Dyson meeting -- the 2008 meeting  
 12 with Mike Rowe. And that, at the time, I had had so  
 13 much pressure put on me, and because of my illness and  
 14 everything it was just discussed that actually -- you  
 15 know, we had had the Jena Laker grievance come up, so it  
 16 was discussed that actually, rather than that let's go  
 17 through it, let's put it on the record and get it done.  
 18 He wanted to make sure I was aware of what was going on,  
 19 because obviously at the time I wasn't 100 per cent  
 20 myself.  
 21 Q. The pressure, if you want to call that, in relation to  
 22 his consultancy and employment arrangements had come at  
 23 the BRM, hadn't it, in April 2008, not in 2009?  
 24 A. The minutes of the meeting, yes, that is correct.  
 25 Q. No, not the minutes of the meeting. The pressure in

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1 relation to the consultancy and employment arrangements  
 2 was at a meeting which you attended in 2008?  
 3 A. Yes. We were asked to put him on, Helle said she would  
 4 speak to him, as we discussed this morning. Then we got  
 5 the minutes of the meeting with Derek Dyson. Then,  
 6 obviously with the Jena Laker situation and everything  
 7 else gone on, we just put it on to record about those  
 8 meetings so it was full and final and I knew exactly  
 9 what was going on and that it was because of  
 10 the pressure that Specsavers had applied that he was  
 11 coming on board.  
 12 Q. All that happened, on your case, in 2009; you had  
 13 a meeting with Mr Dyson in 2009?  
 14 A. Yes.  
 15 Q. That had nothing to do with Mr Vos, did it?  
 16 A. The meeting had nothing to do with Mr Vos, no.  
 17 Q. It was about mystery shopper.  
 18 A. Yes, and we requested the minutes of the meeting in  
 19 2008, with the Mike Rowe situation, which we received at  
 20 the meeting with Derek Dyson.  
 21 Q. Even if you had, as you say, just received the minutes  
 22 from a meeting which had taken place, that meeting had  
 23 taken place in April of the previous year, hadn't it?  
 24 A. I don't know the date of the meeting of the previous  
 25 year, but --

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1 Q. 18th April.  
 2 A. Yes.  
 3 Q. So the pressure was by Mr Rowe, on your case, in  
 4 April 2008, wasn't it; not by Mr Dyson at a meeting in  
 5 March 2009?  
 6 A. No, I didn't say it was Mr Dyson who put the pressure  
 7 on. We had received the minutes of the meeting, and  
 8 with everything that had gone on, we just evaluated  
 9 everything and Godfrey put it in a letter so it was  
 10 clear and transparent to me what was happening, why he  
 11 was going on the books. (1) for my health reasons, to  
 12 help him out, (2) because obviously we were getting  
 13 the pressure and that. We had been left alone for the  
 14 year, but we knew that it was going to start up again,  
 15 so we put him on the books.  
 16 Q. Let's go back to the issue I asked you about. The first  
 17 paragraph is making the point, which I think you accept,  
 18 that it is giving the impression that this pressure has  
 19 just occurred.  
 20 A. Yes.  
 21 Q. In fact the pressure had not just occurred because  
 22 the pressure, as you call it, had been applied in  
 23 April 2008 by Mr Rowe.  
 24 A. And it carried on being pressure, so we thought we would  
 25 take the pressure away by putting him on the books.

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1 Q. Sorry, you said the pressure had carried on to put him  
 2 on the books?  
 3 A. So we carried on paying the system the other way, but  
 4 you know you are going to get a backlash again on  
 5 something else, it is whatever you can catch up on.  
 6 Q. Sorry, I didn't catch that, you said, "Playing  
 7 the system the other way"?  
 8 A. No, I said by paying him in the system the other way, by  
 9 invoicing -- it was going to come back to bite us. It  
 10 was just like: actually a couple of minutes, it  
 11 re-jogged our memory, let's get him on the books.  
 12 Q. You are accepting that you did know that you were told  
 13 in 2008 to put him on the books, correct?  
 14 A. We were under the impression, and I still stand by this,  
 15 that Dr Poulsen said: we will speak to Godfrey. Then we  
 16 got the minutes a year later and it's got on the minutes  
 17 there to say we will put him on the books. And rather  
 18 than come up against anything, we did put him on  
 19 the books.  
 20 Q. And your answer earlier was you knew it was going to  
 21 come back to bite you?  
 22 A. If we didn't put them on the books you can guarantee  
 23 they will look into it and say: why isn't Godfrey on the  
 24 books? And we will get the same questions.  
 25 Q. But that was an issue raised in 2008.

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1 A. Yes.  
2 Q. I put it to you that the pressure from head office,  
3 which you returned to in paragraph 2, was pressure which  
4 had been applied in 2008. This letter was inaccurate.  
5 It sought to give the impression the pressure had just  
6 been applied, but in fact the pressure was in 2008.  
7 A. No.  
8 Q. When do you say the pressure was applied?  
9 A. The pressure was applied, because the fact is --  
10 Q. When --  
11 A. The pressure was applied -- in 2008 we had the meeting  
12 to discuss about putting Godfrey on it and then we had  
13 the pressure from the board meeting -- from Derek Dyson  
14 to say that if we didn't do the mystery shopper then  
15 this is going to happen. Then we had the grievance  
16 complaint, then on top of it all we get the minutes and  
17 you see actually it doesn't say that Helle would speak  
18 to Godfrey about putting him on the books, it says we  
19 will put him on the books.  
20 So rather than count anything else, the pressure  
21 that we had back in 2008 was still apparent. It was  
22 still there and so we put him on the books then.  
23 Q. You go on to say about pressure, your answer in  
24 paragraph 2:  
25 "I'm not very happy about this."

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1 At the end of the paragraph:  
2 "... you have advised me that you have informed your  
3 head office of this and they still insist that I should  
4 become an employee."  
5 Yes?  
6 A. Yes.  
7 Q. Who is "you" in that context?  
8 A. Me and Helle.  
9 Q. Now Dr Poulson confirmed that she hadn't gone back to  
10 Specsavers about this point, had you?  
11 A. Gone back to Specsavers about what point?  
12 Q. It says here:  
13 "You have advised me that you have informed your  
14 head office of this [that he would be more expensive]  
15 and they still insist on it".  
16 So had you informed head office of this point?  
17 A. Me personally, no.  
18 Q. Well, who had?  
19 A. I was under the impression Helle had.  
20 Q. Her position was that she had gone, I think ostrich-like  
21 in relation to this issue and this is a statement --  
22 this is your letter, isn't it?  
23 A. Yes. No this isn't, sorry --  
24 Q. Sorry it is a letter from him to you. The "you" is  
25 the two of you --

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1 A. Yes.  
2 Q. But you hadn't?  
3 A. No.  
4 Q. So what was your basis for understanding that she had?  
5 A. Because she told me she had.  
6 Q. When?  
7 A. At the time of this meeting.  
8 Q. Which meeting?  
9 A. The meeting that we are having, to discuss putting  
10 Godfrey on, at the end of April, beginning of May.  
11 Q. I put it to you, Mr Weller that you are making this up.  
12 Her evidence to his Lordship was that she said she  
13 hadn't gone back to head office.  
14 A. Well, I thought she had.  
15 Q. There was no conversation about head office at all --  
16 about this for your part, was there?  
17 A. Not for my part, no.  
18 Q. In fact, her evidence was that the discussion that she  
19 had had about employing her husband took place in 2008  
20 not 2009.  
21 A. Well, that's something you need to talk -- I can't say  
22 what she said but I was under the impression she had  
23 spoken to head office.  
24 Q. Just like the first paragraph of this letter,  
25 the reference in the second paragraph makes no sense

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1 other than in the context that you were giving  
2 the impression that this had all just happened, whereas  
3 in fact you had forgotten the meeting had taken place in  
4 April 2009.  
5 A. When we said --  
6 Q. Sorry 2008.  
7 A. When we spoke to Godfrey about going on the books in  
8 2008, he said he would be more expensive. So at that  
9 point, yes it was 2008 that that was spoken to.  
10 Q. He is stating this is what is happening now:  
11 "I am not very happy ..."  
12 It is not, "I was not very happy about this", he is  
13 saying this is the position in 2009, isn't he?  
14 A. He is reiterating what had happened, yes.  
15 Q. He doesn't say that here. It doesn't give that  
16 impression at all. It doesn't say: I told you in  
17 2008 --  
18 A. No, it doesn't.  
19 Q. -- and I have advised you that I'll be more expensive,  
20 but you have advised me that they are insisting on it.  
21 The clear impression given is this has just happened  
22 isn't it, if you look at that paragraph?  
23 A. No, he is going on what had happened, not what had just  
24 happened.  
25 Q. Let's look at the some of the other contents of the

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1 letter. Remarkable coincidence that this was produced  
2 at interview when it was clear that the hours that  
3 Mr Vos had worked were in issue, particularly because it  
4 was clear he wasn't spending time at the store. And  
5 that's precisely the sort of points that this letter  
6 deals with.

7 You see paragraph 5 over the page. The reference to  
8 meetings after hours. Paragraph 6, a review at the end  
9 of the day. A review in the morning. And 7.

10 Do you see that?

11 A. Yes.

12 Q. Isn't the true position that this document wasn't  
13 produced in 2009, but was in response to the  
14 investigation in 2011?

15 A. No.

16 Q. It was an attempt to bolster your combined story about  
17 the number of hours worked and where he was working  
18 them.

19 A. No.

20 Q. He didn't need to write a letter to you like this  
21 either, did he?

22 A. Yes, Godfrey is always one to cross the t's and dot  
23 the i's. At the time I wasn't in a very good state of  
24 mind, and so he likes to put everything down on record,  
25 I would often, you know -- he would often write, as has

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1 been confirmed with the emails and everything, even with  
2 myself included, if he wanted to make sure I was aware  
3 of the situation at all times. He wanted to make sure  
4 that I knew what was going on and that I had full  
5 understanding of what we were doing.

6 MR JUSTICE HILDYARD: Is that a reasonably convenient  
7 moment, I think it has been quite a swift set of  
8 exchanges. Would that suit you?

9 MR POTTS: My Lord, yes indeed.

10 MR JUSTICE HILDYARD: We will reconvene just after 3.30 pm.  
11 (3.23 pm)

12 (A short break)

13 (3.33 pm)

14 MR POTTS: Mr Weller, could you take up please E2, 529.

15 This is the letter dated 14th May 2009.

16 A. Yes.

17 Q. Do you have that? Now this opens with the same  
18 self-serving statement about it resulting from head  
19 office being unhappy.

20 A. Yes.

21 Q. This document was produced by Mr Vos at his meeting?

22 A. Yes.

23 Q. You discussed that with him -- this letter with him  
24 before he produced it at his interview, didn't you?

25 A. When are you saying we discussed it?

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1 Q. Before his interview.

2 A. At the time of his employment, yes.

3 Q. No, not his employment, his interview.

4 A. I only went round when they said that he hadn't got  
5 a copy. Helle had already been down to the solicitors,  
6 picked up this letter and then photocopied it onto this  
7 and then called me up to come round to sign it.

8 Q. So you went over to sign it.

9 A. Yes.

10 Q. Did you ask why you were being asked to sign this  
11 document?

12 A. Yes.

13 Q. What did they say.

14 A. That Godfrey hadn't got a copy of his original one, so  
15 he had been down to the solicitors, got a copy of it,  
16 photocopied it and I signed it.

17 Q. Did you understand that this was something which was  
18 going to be produced in some way to the investigation?

19 A. He then said, yes, he was going to be taking it with him  
20 to the investigation.

21 Q. So when I asked you earlier -- I went through  
22 the documents, just before the break and you said that  
23 you didn't know that he would be taking these documents  
24 to the interview.

25 A. I didn't know he would take the May 1st one. You asked

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1 me on the May 1st one, I didn't ask a question on that  
2 one. But I knew this one because I had signed it, so  
3 I knew he was going to take it.

4 Q. Did you discuss that he was going to take some other  
5 material down to the interview as well?

6 A. No I just didn't, we didn't discuss it, I just signed it  
7 and he said: yes, I'm going to take this along to the  
8 interview.

9 Q. But nothing else was discussed?

10 A. I literally went in, signed the letter and went home  
11 again.

12 Q. It was printed on the letterhead of Bognor Visionplus,  
13 but in fact on the wrong letterhead, wasn't it?

14 A. Yes.

15 Q. Because it had not moved to that one until October 2009.

16 A. Yes.

17 Q. So was impossible that this letter could have been  
18 written in May 2009 in this form, correct?

19 A. This was a copy of the letter written in 2009.

20 Q. You signed this document after your suspension in  
21 June 2011.

22 A. Yes.

23 Q. Do you remember what date?

24 A. No.

25 Q. Had Dr Poulson just come back from anywhere, or what

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1 were the circumstances in which you signed this  
2 document?  
3 A. I got a phone call to say Godfrey hadn't got the letter  
4 in his file -- in his personal file and could I come  
5 round and sign another copy.  
6 Q. When was that call?  
7 A. I can't remember. I didn't take a date.  
8 Q. Do you remember what time of day?  
9 A. No, I can't recall.  
10 Q. Did you go straight over when they called you?  
11 A. I don't understand where this is going. I can't  
12 remember. It was like: yeah -- I didn't think twice of  
13 it. So of course I just went round.  
14 Q. The admission that this was a recent production only  
15 came after you saw the findings of the investigation  
16 report.  
17 A. Right.  
18 Q. This is a manufactured document, seeking to give  
19 the impression that it was signed on 14th May.  
20 A. The original letter is 14th May, this one wasn't signed  
21 on 14th May.  
22 Q. Are you saying that an earlier version of this document  
23 was produced to you at this time, or just this document?  
24 A. No, in 2009 --  
25 Q. No, I'm asking you about 2011, when you signed this.

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1 A. When I signed this one?  
2 Q. Yes.  
3 A. This is the one that I signed.  
4 Q. That is the only one you saw at the time in 2011?  
5 A. Yes.  
6 Q. You must have appreciated, in the context of  
7 an investigation, that you sign documents on the date  
8 that they are created -- on the date you sign them, you  
9 date them when you sign them, don't you?  
10 A. This is a copy of his record.  
11 Q. This was signed --  
12 A. I was given the impression Mr Potts, sorry to interrupt  
13 you, that Godfrey wanted to take a full listing of his  
14 employment contracts and everything down and he wanted  
15 it all signed and sealed. So I just went round there  
16 and signed this form. Because of -- the fact is it had  
17 already been written. I didn't see what the relevance  
18 of it was. I wouldn't have thought, oh, put down 2011,  
19 I just didn't think that that was the done thing.  
20 Q. If you thought that there was a file copy of this  
21 letter, why didn't you tell him: why don't you just take  
22 that along?  
23 A. Because they had already returned it to the solicitors  
24 and that was in the bundle with all the staff records.  
25 Q. You haven't answered my question. If you thought it was

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1 in the file, they could have just produced that  
2 document, couldn't they?  
3 A. That is what I said, when I asked him I said: why can't  
4 they have the file record? And he said: I want a copy  
5 for myself and the other record was in the file at the  
6 solicitors.  
7 Q. But this wasn't a copy he was just having for himself,  
8 it was one which you knew he was going to produce to the  
9 investigation.  
10 A. Yes, because he wanted to show for reference what the  
11 employment contracts were.  
12 Q. Didn't you appreciate that, in the context of  
13 a investigation concerning his employment terms, it  
14 would be quite wrong to manufacture a document to be  
15 produced to the investigation?  
16 A. No.  
17 Q. This document was fabricated. That was misleading, and  
18 deliberately so, wasn't it?  
19 A. No.  
20 Q. Did you sign it at the same time as Dr Poulson?  
21 A. Her signature was already on it when I got round there.  
22 Q. Having been caught out for using the wrong letterhead,  
23 as notified in the investigation report on the 15th, you  
24 provided a rebuttal on the 26th.  
25 Can you turn up E6 please.

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1 A. Can I get rid of any of these?  
2 Q. Keep that document open, please.  
3 A. How about E5?  
4 Q. Yes, that can go.  
5 A. E6 sorry?  
6 Q. Yes. 1390 is produced on your behalf.  
7 A. Right.  
8 Q. It is a rebuttal filed on your behalf, amongst others,  
9 correct?  
10 A. Yes.  
11 Q. You reviewed its contents before it was sent?  
12 I am not asking you a detailed question about  
13 the contents. But you know the document Mr Weller, did  
14 you review the contents before it was sent?  
15 A. Not fully, no.  
16 Q. Not fully?  
17 A. No. That was sent on 26th September, after we had  
18 handed in our resignation letters, so I would have gone  
19 through this with Dr Poulson and Godfrey at the time.  
20 Q. So is the answer -- I'm not sure -- is the answer to my  
21 question that you did review it with them before it was  
22 sent then?  
23 A. We reviewed it then, but I can't say I read it word for  
24 word.  
25 Q. You didn't read it word for word at the time?

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1 Mr Weller, an allegation had been made against you  
 2 in the report that you have been a party to forging  
 3 documents. That was a very serious allegation, wasn't  
 4 it?  
 5 A. Yes.  
 6 Q. This response was being sent on your behalf in response  
 7 and you are saying you didn't read it?  
 8 A. Yes. You know, we had our solicitors and legal team and  
 9 Helle and Godfrey at the time. So I went with it. You  
 10 know, we know what the truth is, and we discussed that.  
 11 Q. It is not a question of what you knew to be the truth,  
 12 this is what you were saying back in response to these  
 13 allegations. I put it to you that it is absolutely  
 14 extraordinary and incredible to believe that in relation  
 15 to those serious allegations, you would have allowed  
 16 a response to be sent without reading it?  
 17 A. I think I did read it, I just can't recall it.  
 18 Q. That is different to the answer you had previously  
 19 given. Do you want to have a final go at it?  
 20 Did you read it or didn't you? Given its  
 21 seriousness?  
 22 A. Yes.  
 23 Q. You think you did?  
 24 A. Yes.  
 25 Q. Or is the suggestion that perhaps you might not have

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1 bothered reading it, because you left these things to  
 2 Mr Vos?  
 3 A. No.  
 4 Q. Is that your hesitation?  
 5 A. No, my hesitation is because some of the letters we  
 6 discussed rather than -- you know, we would sit and go  
 7 through points rather than read the whole thing. But  
 8 yes, I did read this.  
 9 Q. Now, you know in giving your answer that I explored  
 10 the inconsistencies of this document with Mr Vos. You  
 11 were in court on that?  
 12 A. Yes.  
 13 Q. Is that the reason why you are hesitant that you accept  
 14 you read it in advance?  
 15 A. No.  
 16 Q. I put it to you that that is precisely the reason why  
 17 you are reluctant to accept that, because you know that  
 18 there are inaccuracies in this document.  
 19 A. No.  
 20 Q. Let's turn to 1391, paragraph 3. Do you want to read  
 21 paragraph 3 to yourself? (Pause).  
 22 A. Yes.  
 23 Q. Okay. Now, the first issue which was addressed in here  
 24 was as to what documents were obtained from your  
 25 solicitors at the time. Okay?

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1 A. Yes.  
 2 Q. You remember that?  
 3 Now Mr Vos' witness statement suggested that it was  
 4 only the 14th May letter which his wife took from  
 5 the solicitors.  
 6 A. Yes.  
 7 Q. She gave no evidence on this in her witness statement,  
 8 but in cross-examination confirmed that she had actually  
 9 taken the whole file.  
 10 A. Yes.  
 11 Q. That statement is inconsistent with the rebuttal. Do  
 12 you see that? It talks about "some of the file."  
 13 A. Right.  
 14 Q. Then Mr Vos in cross-examination contradicted his own  
 15 witness statement and the rebuttal in order to  
 16 corroborate his wife's story. You were in court for all  
 17 of that, correct?  
 18 A. Yes.  
 19 Q. Did you discuss this with them at the time this document  
 20 was prepared, as to what had happened?  
 21 A. As to what had happened?  
 22 Q. In terms of what had happened with the solicitors and  
 23 getting the file?  
 24 A. On the phone, yes. Like I said, I went round there to  
 25 sign just that form. They had already been to the

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1 solicitors, collected it and Dr Poulson had already been  
 2 back and taken it back.  
 3 Q. I'm talking about at the time of this rebuttal. Did you  
 4 discuss with the two of them as to what documents had  
 5 actually been obtained?  
 6 A. No.  
 7 Q. You didn't want to run through it with them --  
 8 A. No.  
 9 Q. -- when this is being sent on your behalf in relation to  
 10 an allegation of forgery?  
 11 A. Because it was just a letter. As far as I was concerned  
 12 I signed the letter, I didn't ask them: what was in  
 13 the file, did you take the whole file, did you not take  
 14 the whole file? I didn't feel I needed to ask that  
 15 question.  
 16 Q. I'm not asking you about the time of the -- before your  
 17 interview, I'm talking about in preparing this rebuttal  
 18 document?  
 19 A. No. Again, I didn't see the two differentiations.  
 20 I didn't see "I took some of it", or "I took the whole  
 21 file". I didn't see the relevance -- I didn't see that  
 22 two were different.  
 23 You asked this with Dr Poulson and Mr Vos and they  
 24 both said the same answer. As far as I could see, when  
 25 I was sitting in court they both said: well, she said

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1 that they took the whole file, he said she took some of  
 2 the copies. So, you know, to me whole file --  
 3 I don't -- I think -- to me it is splitting hairs.  
 4 Q. My question to you is: in preparing this rebuttal were  
 5 you a party to discussions between the three of you as  
 6 to what documents had actually been obtained?  
 7 A. I was aware that this document had been taken out of  
 8 staff file for Mr Vos. I didn't ask questions as to  
 9 what other files had come out from Mr Vos, I just knew  
 10 about this letter.  
 11 Q. I do not think you answered my question. I will try  
 12 another go. My question is that in preparing this  
 13 rebuttal document were you a party to discussions among  
 14 the three of you as to what documents had actually been  
 15 obtained from the solicitors? In preparing this  
 16 document.  
 17 A. It was written down. No, we didn't discuss that because  
 18 it was something that Helle and Godfrey had been a party  
 19 to, I wasn't there so I didn't see the necessity to put  
 20 my view on it because I didn't know what the view was.  
 21 Q. Let's look at the second point. The second matter which  
 22 is incorrect is the reference, do you see at the bottom  
 23 of the page, to the solicitors photocopying the file?  
 24 Do you see that? Do you want to read the final  
 25 sentence:

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1 "As the solicitors photocopied that file for legal  
 2 counsel and placed it in the box, they will be in  
 3 a position to testify that the file was in one of the  
 4 boxes among the self-employment files when it was  
 5 collected."  
 6 A. Yes.  
 7 Q. Now, Mr Vos in cross-examination accepted that that  
 8 final sentence was untrue and that solicitors would not  
 9 be able to testify to that fact.  
 10 You were in court for that, do you remember?  
 11 A. Yes.  
 12 Q. These were your solicitors, weren't they?  
 13 A. Yes.  
 14 Q. You received the investigation report on 15th September  
 15 by email.  
 16 A. Yes.  
 17 Q. This was on the 26th, 11 days later?  
 18 A. Yes.  
 19 Q. Is it your case that you hadn't taken the trouble to  
 20 confirm with the solicitors that they actually had  
 21 copies of the documents which you were representing in  
 22 this rebuttal that they had?  
 23 A. We was in the process of changing our solicitor, and  
 24 I had presumed that the photocopies had been done.  
 25 Q. I put it to you, Mr Weller that in the face of such

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1 a serious allegation, one of forgery, you would have  
 2 been straight down to your solicitor's office, wouldn't  
 3 you? You would have wanted to see the copies of the  
 4 documents that they were apparently telling you that  
 5 they had.  
 6 A. No, I wouldn't. No. Because we were taking a lot in at  
 7 the time. In the investigation report we replied to  
 8 this, we had just had the thing to say we --  
 9 the investigation -- it had taken three months or  
 10 whatever -- we were suspended in June, by this time we  
 11 were in September. I had are a lot of other things  
 12 going on as well. You know, we put this in because  
 13 I believed that that was truth at the time.  
 14 Q. This was the most serious allegation which was going to  
 15 be made in that report. It was an allegation that you  
 16 were a party to the forging of documents. You would not  
 17 have just allowed that to run. You would have been  
 18 straight down to your solicitor's offices and would have  
 19 wanted to see the documents, wouldn't you?  
 20 A. No, there was no fraud. So I didn't think it would come  
 21 of anything because we didn't fraudulently do anything.  
 22 Q. You would not have been content to just make a statement  
 23 like this. The obvious thing would have been to get  
 24 down to your solicitors and send Specsavers copies of  
 25 the documents from the file to make them realise how

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1 wrong they were.  
 2 A. Mr Potts, I'm not a lawyer, I'm not that way inclined.  
 3 I wear my heart on my sleeve, I just thought: what's  
 4 wrong? So I didn't -- you know -- when we -- you say,  
 5 no that's wrong, because you know it is not right.  
 6 Q. What you are in fact doing in this document, apart from  
 7 rebutting the allegations that you had been forging  
 8 the documents, was to make the allegation that they had  
 9 destroyed documents. Isn't that the right?  
 10 A. That is the only explanation for it, if they have gone  
 11 missing.  
 12 Q. So if you are making an allegation that they have been  
 13 destroying documents, you would want to satisfy  
 14 yourselves that you did, in fact, have the documents or  
 15 copies of the documents which you say you had destroyed?  
 16 A. I didn't think of it at the time.  
 17 Q. Mr Weller, I put to you that that is absolutely  
 18 incredible. This was a most serious allegation that was  
 19 being made against you.  
 20 A. There was a lot of allegations being made against us  
 21 which were wholly untrue, but unfortunately at the time  
 22 I didn't think: oh, I must run down to the solicitors  
 23 and find out where the photocopies are. I didn't think  
 24 it.  
 25 Q. I put it to you that you were a party to the production

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1 of these false documents.  
 2 A. No.  
 3 Q. There were certainly good grounds for Mr McAlindon and  
 4 Mr Dyson to conclude that the letter, which we have just  
 5 been looking at, of the 14th, was a fabrication and that  
 6 your involvement, and that of Dr Poulson, in it was  
 7 dishonest.  
 8 A. No.  
 9 Q. And that this was a conspiracy amongst the three of you  
 10 to put in false documents.  
 11 A. No.  
 12 Q. The same goes for the contract.  
 13 A. No.  
 14 Q. These were all documents that you signed in 2011 for  
 15 the purposes of the investigation.  
 16 A. No.  
 17 Q. Let's move on to Mr Ferguson. Now, Mr Ferguson, you  
 18 knew, had carried out work on properties for Dr Poulson  
 19 and Mr Vos over the years; correct?  
 20 A. He had painted their house from what I believe, the  
 21 inside of their little two bedroom terrace house.  
 22 Q. So the answer to my question is yes?  
 23 A. Yes.  
 24 Q. And it was Mr Vos who introduced Mr Ferguson to the  
 25 business?

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1 A. Yes.  
 2 Q. Can we look at E2, 552 please. It is the last document  
 3 in the bundle. Do you remember this one?  
 4 A. Yes.  
 5 Q. This was another document produced by Mr Vos at his  
 6 interview.  
 7 A. Yes.  
 8 Q. Signed by you.  
 9 A. Yes.  
 10 Q. Do you still maintain that this document was signed by  
 11 you on 23rd July 2009?  
 12 A. Yes.  
 13 Q. This document begins by saying it was taking a long time  
 14 to get his bills paid, and there's the reference to the  
 15 SEP system, correct?  
 16 A. Yes.  
 17 Q. And also that he be described as a technician?  
 18 A. Yes.  
 19 Q. That's what it refers to. It talks about calling him at  
 20 inconvenient times, yes?  
 21 A. Yes.  
 22 Q. 120 days -- per day, 240 a week?  
 23 A. Yes.  
 24 Q. Again, can I put it to you that this is a very odd  
 25 document. Just like the other documents it just so

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1 happens to cover the very uncomfortable points that you  
 2 are having to deal with in the investigation.  
 3 A. No.  
 4 Q. For example, you are having to explain why you had put  
 5 Mr Ferguson through the SEP system.  
 6 A. No.  
 7 Q. Well it was seeking to explain that, wasn't it?  
 8 A. It lays it all out. Like I said we had -- everything  
 9 was documented, Godfrey was vigorous with that. That's  
 10 what explains all the work he did. He was always making  
 11 sure that we crossed the T's, and dotted the i's and we  
 12 all knew where we going and we all knew where we were  
 13 every step of the way.  
 14 Q. The SEP system was only implemented for self-employed  
 15 opticians, dispensing opticians or lab technicians,  
 16 wasn't it?  
 17 A. Yes.  
 18 Q. It was approved by the Revenue?  
 19 A. So it has become apparent with their --  
 20 Q. There were guidance notes in relation to it, weren't  
 21 there?  
 22 A. I never saw those guidance notes, but I have only become  
 23 apparent [sic] to that since the --  
 24 Q. But you appreciated that Specsavers relied on you to  
 25 supply honest and accurate returns, do you accept that?

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1 A. Yes.  
 2 Q. Now, entering Mr Ferguson in this way constituted  
 3 a misrepresentation, didn't it? You were certifying  
 4 that he was a self-employed lab technician, which he  
 5 wasn't?  
 6 A. We didn't certify as a lab technician. As Mr Vos quite  
 7 rightly said he was certified as a technician. But we  
 8 were instructed to do so by the accounts department.  
 9 Q. Could you turn up E5 please. If you look at lines 1201  
 10 to 1202. 1122, I'm so sorry.  
 11 A. Yes.  
 12 Q. You agreed at 1198 that this wasn't the correct  
 13 procedure, putting through:  
 14 "Yes I agree, it shouldn't have been put through  
 15 that way."  
 16 "Do you think it was misleading the way it was put  
 17 through?"  
 18 "Yes"  
 19 So recording in that way was misleading, that is  
 20 what you accepted in interview, wasn't it?  
 21 A. But if you read on, I explain myself.  
 22 Q. What do you say?  
 23 A. I do say in there that we were told by the accounts  
 24 department --  
 25 Q. I'm not asking you about that. I'm saying that

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1 reporting him as a technician when he was the handyman  
2 was misleading.  
3 A. It was misleading, but the accounts department knew  
4 about it, they had advised us how to do it.  
5 Q. The first point was that it was misleading, you have  
6 accepted that?  
7 A. Yes.  
8 Q. This was a way of hiding payments you were making,  
9 wasn't it?  
10 A. No.  
11 Q. You had to explain it in that way, and that's why this  
12 letter dated purportedly in July 2009 was written?  
13 A. No.  
14 Q. Because you know the SEP invoices don't have any details  
15 about what work was carried out.  
16 A. No.  
17 Q. And referring to him as a lab technician would hide  
18 the fact that these were payments to a handyman?  
19 A. No.  
20 Q. Sorry, do you accept the point that putting him through  
21 in that way would not show that, in fact, these were  
22 payments to a handyman?  
23 A. But I was under the impression, my Lord, that they did  
24 know, that the accounts department had instructed us to  
25 do this way because there was no handyman button. And

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1 so, yes, it does look misleading, as I said in my  
2 investigation report, and yes, it is misleading but  
3 that's the way we were told to do it. I didn't do it on  
4 the emphasis of try and hide anything. I did it because  
5 that's the way we were told to do it. And that's  
6 the way we did it and he did all the work that we wanted  
7 him to do. He was paid for what he did. I didn't see  
8 the problem in it.  
9 Q. If you go up the page as you say at 1193, that records  
10 that you say that somebody in accounts told him to put  
11 him through in this way?  
12 A. Yes.  
13 Q. You were asked about that. You asked who it was and you  
14 say:  
15 "I can't remember their name because there is no  
16 locum button for a handyman."  
17 Yes?  
18 A. Yes.  
19 Q. That is consistent with your witness statement in these  
20 proceedings as well, isn't it?  
21 A. Yes.  
22 Q. Because you don't identify the person there.  
23 A. No.  
24 Q. And again similarly you say "we."  
25 A. Yes, because I was there when Godfrey was on the phone

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1 trying to sort out the payments because he hadn't been  
2 paid.  
3 Q. Can you turn up your witness statement please now?  
4 A. Okay.  
5 Q. Paragraph 26 is where you deal with this in your witness  
6 statement. Your evidence to his Lordship is that you  
7 were with him at this time?  
8 A. Yes.  
9 Q. Your evidence there is that:  
10 "We agreed that Mr Vos should speak to the finance  
11 department ..."  
12 Yes?  
13 A. Mmm hmm.  
14 Q. "... and that's when the finance department told Mr Vos  
15 of this fact."  
16 A. Yes.  
17 Q. You don't mention being a party to this conversation in  
18 your witness statement, do you?  
19 A. I was not a party to it, he was on the telephone to  
20 the accounts department and I was in the office at the  
21 time.  
22 Q. Were you actually in the room at the time?  
23 A. Yes.  
24 Q. If you were in the room at the time why didn't you say  
25 so in paragraph 26?

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1 A. Because I'm just a lay person. We discussed the problem  
2 in the usual way and Mr -- should speak to the finance  
3 department and discuss how to get the -- then I say  
4 "we". I presume we -- I didn't think to put it: oh,  
5 I was in the room at the same time as Mr Vos as he made  
6 the call. I didn't --  
7 Q. This is stating, in that second sentence, that  
8 the finance told Mr Vos that?  
9 A. Yes, they did tell Mr Vos that, because he was the one  
10 speaking to them on the phone.  
11 Q. If you were seeking to confirm that this indeed had  
12 happened to Mr Vos and that you were present, you could  
13 have corroborated that by saying, "I was there at the  
14 time". That would have been an important matter to  
15 raise, wouldn't it?  
16 A. Well, sorry, Mr Potts, I believe in my testimony, my  
17 interview and in my witness statements that that was  
18 what I was trying to get across.  
19 Q. And in your interview you similarly don't say: well,  
20 actually yes, I was there at the time when this  
21 happened.  
22 A. I don't say I was there at the time, but do I say "we".  
23 Q. Indeed, in the rebuttal, despite this issue having been  
24 raised in the report, you don't mention who told you to  
25 put him on -- or indeed you don't mention this issue at

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1 all in the rebuttal, do you?  
 2 A. No.  
 3 Q. Do you remember who in the finance department told you  
 4 to put him on?  
 5 A. No, because they didn't tell me, they told Godfrey.  
 6 I was there at the time in the room. I only would have  
 7 believed it -- no.  
 8 Q. I think Mr Vos referred to a lady called Teresa?  
 9 A. Yes, he said that yesterday, didn't he?  
 10 Q. Was that something that came from you?  
 11 A. No, I was trying to remember her name. I said I am sure  
 12 it is something like Teresa, because she did give her  
 13 name at the time, but I can't remember what it was.  
 14 Q. But you can't identify that person?  
 15 A. No, I would not like to say to my Lord what name that  
 16 was, I'm sorry.  
 17 Q. I put it to you that your vagueness about who was  
 18 a party to the conversations and who told you is because  
 19 this conversation didn't happen?  
 20 A. Yes, it wholeheartedly did happen. I definitely know it  
 21 happened because I even spoke to a member of staff from  
 22 another store that had a handyman, it was her husband.  
 23 She said, "I can't put the invoices through." I said,  
 24 "Well, we got told by the accounts department you put it  
 25 through under lab technician."

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1 Q. Who was that?  
 2 A. Sorry?  
 3 Q. Who was it you spoke to?  
 4 A. I spoke to a girl at Fleet.  
 5 Q. What was her name?  
 6 A. I'm trying to think now. You had Tara and you had  
 7 the other one -- Tara and -- it is the other director --  
 8 there was Tara and Kirsty.  
 9 Q. When did that conversation happen?  
 10 A. That happened at the seminar, the main seminar.  
 11 Q. What date? What year? Month?  
 12 A. That would have been the same year, 2009. I think that  
 13 was the one I went to. Which I think I did.  
 14 Q. Going back to the letter, in E2, 552.  
 15 A. Yes.  
 16 Q. The letter also refers, down near the second hole punch,  
 17 to him looking after the storage unit.  
 18 A. Yes.  
 19 Q. Removing matters from storage, destruction of records,  
 20 yes?  
 21 A. Yes.  
 22 Q. Monitoring the storage unit.  
 23 A. Yes.  
 24 Q. So there's quite a lot about the storage unit, isn't  
 25 there?

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1 A. Yes.  
 2 Q. In fact, actually, it is hardly the most important thing  
 3 to do with the store, is it, the storage unit? This is  
 4 a lock up, isn't it, somewhere?  
 5 A. Yes.  
 6 Q. Isn't it odd that this letter, which is apparently  
 7 setting out what he is being expected to do, that in  
 8 fact the most discussion in the whole letter about  
 9 matters is about this storage unit. It is the longest  
 10 paragraph, isn't it?  
 11 A. Yes, it is the longest paragraph.  
 12 Q. I put to you that that again is a very odd and  
 13 self-serving statement to try to explain away the fact  
 14 that it would plainly become apparent in the  
 15 investigation that Mr Ferguson wasn't spending much time  
 16 in the store. You had to explain what else he might  
 17 have been doing.  
 18 A. Not at all.  
 19 Q. The problem is that you were a party to the preparation  
 20 of the schedules, weren't you --  
 21 A. Yes.  
 22 Q. -- relating to Mr Ferguson? The problem is that they  
 23 also had a lot of stuff about the storage units as well,  
 24 didn't they?  
 25 A. Yes.

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1 Q. The problem is that when preparing the schedules, and  
 2 indeed this letter, you failed to appreciate that it  
 3 would have been possible to check the entry times to the  
 4 unit?  
 5 A. No. We didn't know about the lock up storage times.  
 6 Q. So you didn't appreciate that is the answer to my  
 7 question?  
 8 A. Yes.  
 9 Q. And in fact what happened is that you were caught out  
 10 about that because you thought this would be a good way  
 11 to deal with this issue by referring to work carried out  
 12 on that unit when in fact that was exposed as well  
 13 because they were checked.  
 14 A. They were checked and I was handed a piece of paper  
 15 showing me that he had been there for some 8 hours or  
 16 1 minute or 7 hours, 61 minutes, at the time of my  
 17 investigation and, you know, I agree that at the time  
 18 when Phil Barnes said to me: look, here is the piece of  
 19 paper that says on this time he has been to the lock up.  
 20 I was quite flabbergasted to say that in a year and  
 21 a half he had only been there nine times and he said to  
 22 me: don't you think this is fraud? And I said yeah --  
 23 so he said: so you are you saying it is fraud?  
 24 I said: no because of the fact that I need to look into  
 25 it further and further investigate it.

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1 You can't be -- in the back of my head I'm thinking,  
 2 no, he went to the storage times -- more times than that  
 3 and I am sure of it. And I would not want to pay  
 4 somebody for work they weren't doing. The thing is with  
 5 the invoicing and the dates that you say the burglar  
 6 alarm went off et cetera. You can quite clearly see he  
 7 was there on Sundays. He was there the majority of the  
 8 time. I was going into work and as I said to  
 9 Phil Barnes, I could see the work he was doing. At one  
 10 point he come down from the roofs to the staff and they  
 11 were: Who is he? What is he all about? He had been on  
 12 the roof for six hours doing the tarpaulin and  
 13 everything. They don't seem to take into account that  
 14 this invisible guy is actually around the store. But  
 15 the majority of the time he was coming in after hours or  
 16 when the business was closed on a Sunday because we  
 17 weren't open and in your records it has got that he went  
 18 in on a Sunday.  
 19 Q. I put it to you that this letter of 23rd July, like  
 20 the other documents produced by Mr Vos, which you were  
 21 a party to, were forgeries produced for the purpose of  
 22 dealing with difficult issues in the investigation  
 23 Mr Weller?  
 24 A. No, Mr Potts.  
 25 Q. There is one other item I need to deal with you,

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1 Mr McGowan and your company car.  
 2 A. Horrible experience.  
 3 Q. I'm sorry?  
 4 A. Horrible experience.  
 5 Q. You resigned on 28 September 2011?  
 6 A. Yes.  
 7 Q. You didn't return your company car at the time?  
 8 A. No because they were refusing to pay us a bonus that  
 9 they had originally agreed to, so we put a lien on the  
 10 cars until we received our bonus payments that they had  
 11 refused to give us.  
 12 Q. So you knew at the time that they were after the car  
 13 back because they were asking for it?  
 14 A. They were asking for it and our solicitors were dealing  
 15 with it and saying that the cars would be returned once  
 16 we received our bonus that they had agreed to, so our  
 17 solicitors put a lien on the cars to say they would sit  
 18 on our drive until the time that the bonus had been  
 19 paid.  
 20 Q. So the position is, firstly, you kept the car?  
 21 A. Yes.  
 22 Q. Secondly, they were chasing the car? They were asking  
 23 for it back?  
 24 A. Yes.  
 25 Q. And, thirdly, you were saying: no you can't have it?

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1 A. We advised them we hadn't had our money. They were  
 2 keeping our money, so I was keeping my car.  
 3 Q. Now if we go back to your statement. If you turn to  
 4 paragraph 103.  
 5 A. Yes.  
 6 Q. So, in fact, the juxtaposition of these two events of  
 7 Mr McGowan's visit was that, in fact, the very next day,  
 8 after your solicitor said that they were not going to  
 9 give the cars back, you say that you saw a man across  
 10 the road?  
 11 A. Can I give you my account of it? Is that okay?  
 12 Q. No, I'd prefer it if you could answer my question,  
 13 please.  
 14 A. First he drove up across my drive, was the first  
 15 sighting of Mr McGowan and then --  
 16 MR JUSTICE HILDYARD: I think, although eventually you may  
 17 wish to amplify --  
 18 A. Okay. Yes. I saw a man across the road.  
 19 MR JUSTICE HILDYARD: -- I think counsel would prefer that  
 20 you answer his questions.  
 21 A. Yes.  
 22 MR POTTS: And that was the day after, in fact, the letter  
 23 from the solicitors in relation to the car; correct?  
 24 A. Yes.  
 25 Q. Did you not think that this might have something to do

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1 with the car at the time?  
 2 A. Yes.  
 3 Q. You did?  
 4 A. Yes, I did think it might have something to do with the  
 5 car.  
 6 Q. At no time during this event -- firstly you don't  
 7 mention that in your witness statement?  
 8 A. No.  
 9 Q. You don't mention -- did you ask him at any time whether  
 10 this was anything to do with the car?  
 11 A. Yes, I did.  
 12 Q. You did?  
 13 A. Yes, I did ask him. He come across from the drive --  
 14 I'm going to give you a full account of what happened  
 15 because I think it is relevant.  
 16 He come across the car of my drive and I live  
 17 opposite a school and I thought: oh no someone is  
 18 blocking the drive again. Then I thought I saw a flash  
 19 and I thought, no, it is my imagination, it can't be  
 20 that someone has just taken a photograph of my house.  
 21 So then the car drove off and I thought nothing more  
 22 of it and then the next minute my daughter was upstairs,  
 23 in the front room window, and she said: oh, daddy, did  
 24 you see that man take that picture? Which I was in  
 25 the lounge and they did see him. He was pretending to

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1 be on the phone, on the opposite side of the road, and  
 2 he went bang and took another picture.  
 3 So I was a bit shaken up, a bit panicky, so I  
 4 thought I've been working for the mafia by this point.  
 5 So I followed him out of my house. I followed him down  
 6 the road and then I saw his car parked on the opposite  
 7 side of the road. It was parked there by the flats and  
 8 I knew that car because I had seen it parked across my  
 9 drive. I then followed him. He went down Ladydell Road  
 10 which is next to Chesswood Road and went along into  
 11 Davison High School for Girls. So I was like: Who is  
 12 this man? Why is he going into schools and taking  
 13 photographs?  
 14 So I come back. I was a bit shaken up. At that  
 15 point I thought -- I'm hoping that it's something to do  
 16 with Specsavers. I come back, got my phone. Mr McGowan  
 17 come back up the road. I wanted to question him but  
 18 I thought no I can't, I'm not brave enough to do so.  
 19 He went back-up Ladydell Road, along Chesswood Road.  
 20 I ran back, got my phone, called Godfrey up and  
 21 said: I think it might be Specsavers, I might be  
 22 paranoid but there's someone definitely taking  
 23 photographs at my house.  
 24 So Godfrey come round and we stood by the car and  
 25 waited for him to return. When he returned

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1 I said: excuse me, I saw you taking photographs of my  
 2 house. He said: no, not me mate, no not me. I said:  
 3 yes, I did, I saw you taking photographs of my house.  
 4 He went: no, not me. I said: who are you working for?  
 5 Where are you from? He just shook his head and  
 6 said: no, no. Got in the car. At that point he could  
 7 have replied to me that he had been working for  
 8 Specsavers and that he was just taking care of looking  
 9 at the car. He didn't.  
 10 He then got in the car and I said: stop. I stood in  
 11 front of the car; not to get him away. Godfrey  
 12 said: I'll call the police. So he went on the phone to  
 13 call the police. Then Mr McGowan in his car went like  
 14 that (indicates) to say get out of my way. I stood in  
 15 front of it, put my hand up, saying: stop, do not go  
 16 anywhere, we are calling the police. And he reversed  
 17 his car, then it brought it forward, knocked me out the  
 18 way, did a U turn and run off.  
 19 Q. Now, can we go back to the question I asked which was  
 20 the issue about whether you thought he might have been  
 21 from Specsavers?  
 22 A. Yes.  
 23 Q. And whether you asked him whether he was?  
 24 A. Yes.  
 25 Q. I think you said you did ask him whether he was from

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1 Specsavers somewhere in all of that.  
 2 A. I said: who are you working for? I didn't ask if he was  
 3 working for Specsavers. I just asked: who are you  
 4 working for?  
 5 Q. None of this, about asking him who he works for or  
 6 thinking that he might have been from Specsavers appears  
 7 in your witness statement, does it?  
 8 A. No, because it is in the police report when I filed it  
 9 to the police.  
 10 Q. You are giving evidence to this court, to his Lordship,  
 11 about the circumstances of this event?  
 12 A. That is correct.  
 13 Q. What you say in paragraph 103 is you thought he could be  
 14 a paedophile.  
 15 A. Yes.  
 16 Q. You don't say that you also thought that he might have  
 17 been from Specsavers, do you?  
 18 A. No.  
 19 Q. You are quite quick to make an allegation that he might  
 20 have been a paedophile without allowing for the  
 21 possibility of an honest and a more straightforward  
 22 explanation that he was from Specsavers.  
 23 A. Sorry, I don't agree that that can be honest when you  
 24 are going round taking photographs outside of someone's  
 25 house. There's no privacy there. What company would do

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1 that to somebody? What company would go round and take  
 2 photographs and then not explain themselves when they  
 3 were asked. Yes, at that point, I did think they were  
 4 from Specsavers but when he gave me no answer I started  
 5 to think the worse.  
 6 Q. Mr Weller, in your statement in paragraph 103, there is  
 7 no doubt about this. There is no mention of Specsavers  
 8 or that it has crossed your mind that it might be  
 9 Specsavers. The only thought that crossed your mind  
 10 according to your witness statement is that he could  
 11 have been a paedophile?  
 12 A. He could have been a paedophile, yes.  
 13 Q. All of this reference to Specsavers is completely new.  
 14 It doesn't come in your evidence in any way, does it?  
 15 A. Yes it does.  
 16 Q. Where in your witness statement --  
 17 A. In the police report.  
 18 Q. -- does it suggest that you thought he might have been  
 19 from Specsavers?  
 20 A. It says in my witness statement that the police report  
 21 is available and so I did think he was a paedophile and  
 22 I didn't say that I thought he was from Specsavers  
 23 because at the time I thought, oh perhaps he is from  
 24 Specsavers. Then I thought, oh my God, he is not owning  
 25 up to saying -- he only had to say, Mr Potts, that he

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1 was from Specsavers and that would have been it. But  
 2 then your mind gets carried away with you because he is  
 3 not owning up to anything.  
 4 Q. In that screed of evidence that you have just given to  
 5 his Lordship, you also say -- initially I think you did  
 6 say you asked him whether he was from Specsavers -- but  
 7 you also say you asked him who he was working for?  
 8 A. Yes.  
 9 Q. That's also not mentioned in your witness statement  
 10 either, is it?  
 11 A. No.  
 12 Q. You say who he was. You don't say: who are you working  
 13 for?  
 14 A. We did ask him who he was as well.  
 15 Q. Your witness statement doesn't mention you asking him  
 16 who he works for.  
 17 A. But I did ask him who does he work for.  
 18 Q. I appreciate that -- the point is, if you were  
 19 suggesting to him that you had -- the reason for asking  
 20 him who he was working for would be because you thought  
 21 he might be working for Specsavers; correct?  
 22 A. Yes.  
 23 Q. Your witness statement does not mention in any way  
 24 asking him who he was working for; correct?  
 25 A. Correct.

1 Q. Because the clear tone of your witness statement is you  
 2 are keen to ensure that, in fact, the impression that  
 3 you had at the time was single minded, which was  
 4 a concern that he was a paedophile?  
 5 A. After leaving the incident, yes.  
 6 Q. No, not after leaving the incident. At the incident.  
 7 A. At the incident, yes. Because he didn't say who he was  
 8 from. So I'm left with the impression: what's this guy  
 9 doing? He has gone to a girls' school. He is driving  
 10 over my thing. He is taking photographs with my  
 11 daughter in the front window. What would you think,  
 12 Mr Potts?  
 13 Q. I'm putting it to you, Mr Weller, that this witness  
 14 statement is grossly misleading because it is seeking to  
 15 give the impression that you had the single minded  
 16 thought he could be a paedophile, not that he could be  
 17 from Specsavers trying to find out what had happened to  
 18 the car which belonged to them.  
 19 A. Mr Potts, I say to you that it was so damaging to have  
 20 someone come round and invade your personal space and  
 21 not to mention, he had plenty of opportunities to say he  
 22 was from Specsavers. He did not do so. He proceeded  
 23 with the fact he wouldn't let me know anything about  
 24 him, drove into me, drove off. What sort of person does  
 25 that? What sort of company does that?

1 Q. And your evidence at 103 is that your concern was that  
 2 he appeared to be taking photographs of your home and  
 3 children?  
 4 A. Yes, my daughter was in the front room window. Upstairs  
 5 there was a landing window and she was there, she saw  
 6 him take the photograph.  
 7 Q. Your car was it parked in the front drive?  
 8 A. Yes.  
 9 Q. Did you not think at the time that perhaps he was taking  
 10 a photograph of the car?  
 11 A. Why would you think that someone would come round to  
 12 your house and take a photograph of your car that has  
 13 a lien on? Why would anyone -- that I have ever spoken  
 14 to is like: What, they come round to your house? That's  
 15 bad enough in itself, Mr Potts.  
 16 Q. That is a very different explanation though, Mr Weller.  
 17 The point is that the day before your solicitors had  
 18 told Specsavers that you would not be returning the car.  
 19 A. That is right.  
 20 Q. So it would hardly be surprising if they actually wanted  
 21 to check that the car existed?  
 22 A. Why would they -- you know -- what's that saying?  
 23 Q. Your evidence in this witness statement does not suggest  
 24 that the thought crossed your mind that it might have  
 25 been from Specsavers after the car?

1 A. Because you wouldn't expect someone to come round your  
 2 house and take photographs. You just don't expect.  
 3 Show me one person you say on this (inaudible) that we  
 4 have, that would say, oh yeah, that is a good thought  
 5 process, we think, you know, that's acceptable to go  
 6 round someone's house and take photographs. It is not.  
 7 Then, when they don't say anything -- all you have to do  
 8 is say: I'm from Specsavers. But he didn't.  
 9 Q. You've just contradicted yourself again, Mr Weller.  
 10 because you suggested in your evidence earlier that you  
 11 did contemplate this was from Specsavers and now you are  
 12 saying that you didn't. Which one is it?  
 13 A. Because at the time, when he took the photographs I was  
 14 getting a bit shaky. Then I didn't cross-examine him.  
 15 I thought, oh God, no, this can't be for real. You  
 16 can't seriously believe that Specsavers are going to  
 17 come round and take photographs of my house.  
 18 Then the fact that there was that -- well, perhaps  
 19 this is such a ruthless company, perhaps they are doing  
 20 this. So that is why I called Godfrey round. Then  
 21 I was too scared to challenge him on my own, so I waited  
 22 until he got back and then challenged him, but the fact  
 23 that he didn't answer my question when asked: who are  
 24 you working for? He could have said and he denied even  
 25 taking the photographs. He denied taking

1 the photographs. He said: no, not me mate.  
 2 So then I'm thinking well he definitely took those  
 3 photographs, I definitely know he took those  
 4 photographs. He denied taking those photographs. Why  
 5 would anyone deny taking photographs if he (inaudible) a  
 6 car.  
 7 Q. So you called Mr Vos because you thought this might have  
 8 something to do with Specsavers, is that right?  
 9 A. I did yes.  
 10 Q. You don't say that in your witness statement at all, do  
 11 you?  
 12 A. No.  
 13 Q. Now, Mr McGowan says -- you said earlier that you said  
 14 you saw him go into a school, is that right?  
 15 A. Yes, that is right. He walked round to a girls' school.  
 16 Q. Walking round to a school is different from what you  
 17 told his Lordship.  
 18 A. Sorry.  
 19 Q. You said he went into the school.  
 20 A. That's the school's premises. I class that as the field  
 21 that you go up to. Not into the actual school, my Lord.  
 22 He didn't go into the school.  
 23 Q. Are you saying he went into the school premises?  
 24 A. Yes.  
 25 Q. Your witness statement doesn't say that either. It says

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1 at 104 that you followed him to the school round the  
 2 corner -- I see - you say into which he disappeared.  
 3 That's fine.  
 4 Now, Mr McGowan denies certainly taking pictures of  
 5 your children. He says that he took a photograph of the  
 6 car from the other side of the road and he was intent on  
 7 avoiding confrontation with you.  
 8 A. He first took a photograph in his car when he pulled  
 9 across my drive. He then took a photograph across  
 10 the road, which would give him even more leverage to  
 11 make it look like it was taken from the upstairs window,  
 12 because if he was on the same side of the road as my  
 13 house, he would have only got down to the bottom, but  
 14 from the other side of the road you can get the whole  
 15 house in.  
 16 Q. You say at paragraph 107 that he started to rev his  
 17 engine "... and before I knew it he drove his car" --  
 18 sorry let's go back to 106.  
 19 You say you challenged him and asked him to explain  
 20 who he was and what he was doing?  
 21 A. Yes.  
 22 Q. Your evidence now to his Lordship is that you ask him  
 23 who he was working for, is that right?  
 24 A. Where are you from, who are you working for? Yes.  
 25 Q. You don't mention the who are you working for?

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1 A. Yes, I did, in -- not in -- no.  
 2 Q. You say he refused to answer and got into his car?  
 3 A. Yes.  
 4 Q. Mr Vos was on the phone calling the police?  
 5 A. Yes.  
 6 Q. He told you to stand in front of the car, did he?  
 7 A. Yes.  
 8 Q. You say he revved his engine and drove his car into you?  
 9 A. Yes.  
 10 Q. Nothing else happening, he just drove straight into you?  
 11 A. No he went, get out of the way. He sort of signed. He  
 12 didn't say it, he just went like that (indicates) to  
 13 move.  
 14 Q. You don't mention that either in your statement, do you?  
 15 You just say:  
 16 "He revved his engine. Before I knew it he drove  
 17 his car into me."  
 18 A. That is right.  
 19 Q. That suggests it immediately happened.  
 20 A. I was going: stop, we are calling the police, and then  
 21 the next thing I'm back, he has done a U turn and drove  
 22 down the road.  
 23 Q. The impression clearly given in 107 is that he revved  
 24 his engine and drove straight into you without any  
 25 pause. You don't mention the fact that he remonstrated

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1 with you to get out of the way, do you?  
 2 A. No because that is the way I recall it.  
 3 Q. So you don't recall him asking you to get out of the  
 4 way?  
 5 A. He went like that (indicates) to say get out of the way.  
 6 Q. You don't mention that in your statement?  
 7 A. No, I don't.  
 8 Q. Because you are trying to give the impression he just  
 9 drove you down?  
 10 A. He did drive me down.  
 11 Q. Mr McGowan's evidence is that you did stand in front of  
 12 his car?  
 13 A. Yes.  
 14 Q. You don't mention that he asked you to move -- that he  
 15 asked you move and that you refused to do so. He says  
 16 that that is what he did. That he did remonstrate with  
 17 you and asked you to move.  
 18 A. He went like that (indicates), yes.  
 19 Q. A matter which is not in your evidence but is in his.  
 20 He says he edged forward by about 2 inches, at which  
 21 point you moved and allowed him to drive away?  
 22 A. No, I fell back because he'd moved into me and I fell  
 23 back into the car behind me.  
 24 Q. He says that the car didn't make any contact with you?  
 25 A. Yes, he did.

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1 Q. You didn't fall over or backwards?  
2 A. Yes, I did.  
3 Q. And there was no indication that you were injured?  
4 A. Well, he didn't stay around to find out. He had gone.  
5 Q. Now you refer in your statement to going to see your GP?  
6 A. Yes, I did.  
7 Q. When was that?  
8 A. That was the next day. He sent me up to A&E because he  
9 thought -- there is a tiny bone in your ankle that if  
10 you go backwards on it -- he thought that was broken.  
11 Q. When did you go up to A&E?  
12 A. The same day.  
13 Q. Did you get a report?  
14 A. I got an x-ray on it because they x-rayed it and said it  
15 was sprained and just to keep the weight off of it.  
16 Q. You have not disclosed any medical records?  
17 A. No, I haven't.  
18 Q. Why not?  
19 A. Because -- I can't answer that one to be honest.  
20 I don't know why we haven't.  
21 Q. You made the most serious allegation that you were run  
22 over?  
23 A. Yes.  
24 Q. But you don't disclose any documents indicating  
25 an injury?

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1 A. No.  
2 Q. You also say at paragraph 108 --  
3 A. A letter was sent to my doctor to ask for medical  
4 records but it didn't get taken any further. My  
5 solicitor Mr Hogan, wrote to my -- and I took it in.  
6 Mr Holmes was aware that we may be asking for disclosure  
7 on everything because, obviously, I was in a lot of  
8 shock after what had happened. So I was put on  
9 anti-depressants and also given some sleeping tablets  
10 because I was quite shaken by the events which had taken  
11 place. But since speaking to the solicitor, I said: why  
12 didn't we go for that? And I haven't got an answer for  
13 you --  
14 Q. Let's go back to the GP. Sorry I didn't catch your  
15 answer. Let's go back to your GP. Was it the same day  
16 or the next day?  
17 A. The next day.  
18 Q. And the A&E?  
19 A. The same day as the doctor.  
20 Q. So you have got these records, have you?  
21 A. I haven't got the records, no.  
22 Q. Where are they?  
23 A. With the doctors in the hospital.  
24 Q. You said you had an X-ray?  
25 A. Yes.

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1 Q. But you didn't ask for a copy of it?  
2 A. No.  
3 Q. You also say in paragraph 108 that Mr McGowan was  
4 arrested?  
5 A. Yes.  
6 Q. Mr McGowan has confirmed in his evidence he voluntarily  
7 attended at the police station, he was not arrested and  
8 the police informed him that there was no case to answer  
9 and that the file would be closed.  
10 A. That's not what I was told by the police at all.  
11 Q. The position is that the evidence that you have given in  
12 this witness statement is grossly misleading. It seeks  
13 to give the impression that you were the victim of a  
14 vicious assault in relation to someone who you thought  
15 was a paedophile, when the reality, in your evidence  
16 given to his Lordship, is that you accept for the first  
17 time that this -- you actually suspected this might have  
18 been someone from Specsavers?  
19 A. Up until the point when he wouldn't give his name and  
20 then I thought, oh my goodness, he is a paedophile. So  
21 that was my last impression of what he was. It wasn't  
22 my first impression. My first impression was he could  
23 be someone from Specsavers, but my last impression was  
24 that he was a paedophile because why would you deny or  
25 why not just say: I'm working for Specsavers?

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1 Q. I put it to you that this story has been exaggerated in  
2 order for you to try and create yet another claim  
3 against Specsavers?  
4 A. Not at all.  
5 Q. You know that the story you have given in this statement  
6 is grossly inaccurate?  
7 A. Not at all.  
8 Q. And exaggerates what had happened, which was simply  
9 an attempt to find out what had happened to your car?  
10 A. Not at all, my Lord. It is no exaggeration at all. It  
11 is as it is. I could even get my daughter up here, that  
12 saw the photographer and saw what an emotional wreck  
13 I was when I had to go back into my house after being  
14 knocked down, having to go to the police, being  
15 completely upset about the whole incident and  
16 thinking: my goodness me, who have I been working for  
17 for the last ten years, the blooming mafia? Why are  
18 they coming round doing this to me?  
19 All they have done is they have destroyed my life,  
20 they have taken my shares away from me and they have  
21 come and run me over.  
22 Q. I put it to you the true position is that this was, at  
23 most, a misunderstanding as to the reason why he was  
24 taking a photograph of your car?  
25 A. Then why not tell me he was from Specsavers?

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1 Q. I also put it to you that he did not drive his car into  
 2 you?  
 3 A. He did.  
 4 Q. Your account of this is misleading and inaccurate and  
 5 knowingly so?  
 6 A. It is not.  
 7 Q. You felt upset, to put it at its lowest, with Specsavers  
 8 and were looking to exploit that to your own personal  
 9 advantage?  
 10 A. Not at all.  
 11 Q. And in doing so you have given dishonest evidence to  
 12 this court?  
 13 A. Not at all, Mr Potts.  
 14 MR POTTS: My Lord, I have no further questions for this  
 15 witness.  
 16 MR JUSTICE HILDYARD: Well now, what are we going to do?  
 17 How much re-examination have you got Mr Stuart?  
 18 MR STUART: My Lord, I'm guessing -- given your Lordship's  
 19 non-criticism -- I'm being facetious --  
 20 MR JUSTICE HILDYARD: You must re-examine as you wish to  
 21 re-examine.  
 22 MR STUART: I think genuinely I would be 45 minutes to  
 23 an hour probably.  
 24 MR JUSTICE HILDYARD: Please understand I'm not criticising  
 25 you for --

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1 MR STUART: My Lord, I'm sorry.  
 2 MR JUSTICE HILDYARD: I do criticise you for criticising  
 3 Mr Potts for taking more time, given that I think each  
 4 of you may have underestimated how long all this is  
 5 going to take.  
 6 MR STUART: Quite accepted my Lord.  
 7 MR JUSTICE HILDYARD: I don't think we should do this this  
 8 evening. I think that the witness has had a long day in  
 9 any event. What time do you wish to start tomorrow?  
 10 MR STUART: My Lord can I mention something?  
 11 MR JUSTICE HILDYARD: Yes.  
 12 MR STUART: If your Lordship has the timetable of where we  
 13 are, just so that we can see where we are.  
 14 MR JUSTICE HILDYARD: Yes, I had a peek at it. We are a day  
 15 behind.  
 16 MR STUART: Your Lordship will see that we are -- I think  
 17 your Lordship told us that today and Thursday were  
 18 the days when you were going to start early. I have  
 19 a note 9.15 am on Thursday, one and a half hours not  
 20 before 10.30 for us.  
 21 MR JUSTICE HILDYARD: My clerk isn't here. I thought that  
 22 I said that on Thursday I have a 9.15 start in another  
 23 matter giving judgment.  
 24 MR STUART: That's what I said my Lord. You have a 9.15  
 25 start on another matter which is listed for an hour and

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1 a half, and you would give us a listing of not before  
 2 10.30.  
 3 MR JUSTICE HILDYARD: Sorry, that's on the 12th.  
 4 MR STUART: So we are on Tuesday 10th today. That was due  
 5 to be Yogaratnam, Birdi and Parham and Rosier and we  
 6 filled that with Weller cross-examination.  
 7 So into Wednesday the 11th is now going to have to  
 8 fit Mr Weller re-examination and then it should have  
 9 been Yogaratnam, Birdi, Parham and Rosier. Now I have  
 10 already told that you Ms Rosier is definitely not  
 11 coming. She confirms to me she is definitely not  
 12 coming. I'm told and I have told you Mr Yogaratnam is  
 13 definitely coming. We have re-arranged him for  
 14 tomorrow. So he will be here. Mrs Parham, she was here  
 15 just a while ago, and she confirmed to me she will  
 16 definitely be here tomorrow.  
 17 MR JUSTICE HILDYARD: Yes.  
 18 MR STUART: But I'm now told that Mrs Birdi, who is  
 19 an optician, is not able to cancel her clinic for  
 20 tomorrow and will not be here. I have said: can we get  
 21 her here and the answer is no, she will not be here. So  
 22 I'm just mentioning that Mrs Birdi won't be here  
 23 tomorrow.  
 24 MR POTTS: My Lord, Mrs Birdi is the one who we had a new  
 25 witness statement from this morning.

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1 MR STUART: That is true, my Lord. So, the witnesses that  
 2 I have left for tomorrow, if I can just explain that, is  
 3 Mr Weller re-examination and then Mr Yogaratnam next.  
 4 I will be calling him next in order. Then I will call  
 5 Mrs Parham, because she is the last of my witnesses who  
 6 I have available. I don't know how long my learned  
 7 friend intends to be with Mr Yogaratnam or Mrs Parham.  
 8 MR POTTS: My Lord I have to say this is again shifting  
 9 sands. The timetable had envisaged that we would deal  
 10 with all these small witnesses effectively of a morning.  
 11 Now, they are being chopped and changed.  
 12 Witnesses have been changed -- I think this is  
 13 the third or fourth change in the order of these  
 14 witnesses and now we are told that in fact we are only  
 15 going to have two of the four witnesses who are listed  
 16 to be here tomorrow.  
 17 I have an issue in relation to the further statement  
 18 of Ms Birdi, filed incredibly late, and I haven't had  
 19 a chance to consider it yet. But I do take objection to  
 20 the suggestion that witnesses just can't turn up. This  
 21 is a matter which has been listed for a long time.  
 22 A timetable has been issued. Of course there is changes  
 23 and overlap and things don't happen quite when they are  
 24 due to, but on any basis it was clear that these  
 25 witnesses were going to be required tomorrow.

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1 Certainly by today it was clear they were going to  
 2 be required tomorrow and now we are -- in fact when was  
 3 Ms Birdi's difficulty? When did that --  
 4 MR STUART: She is not here today and I have been notified  
 5 today that she is not going to be here tomorrow.  
 6 My Lord, I'm telling you and Mr Potts that that is  
 7 the position I'm in. I can't change the facts.  
 8 The facts are that Mr Yogaradnam will be called next,  
 9 which is not a change to the order. I don't know why my  
 10 learned friend keeps on about it. Mr Yogaradnam was  
 11 always going to be the next witness after Mr Weller and  
 12 he will be, but that Mrs Birdi will not be immediately  
 13 after him. It will be Mrs Parham because Mrs Birdi is  
 14 simply not going to be here tomorrow and obviously  
 15 I will need to make some -- when I have got --  
 16 MR POTTS: When will she be?  
 17 MR STUART: I understand she can be here the next day.  
 18 MR JUSTICE HILDYARD: So she will be here on Thursday?  
 19 MR STUART: Yes, she will be here on Thursday.  
 20 MR JUSTICE HILDYARD: This is a difficult one, Mr Stuart.  
 21 In the old days, not long ago, judges were extremely  
 22 fierce about witnesses who for one reason or another  
 23 didn't do their duty, as it were.  
 24 I well understand professional engagements and  
 25 I have indicated that I would not be fierce as judges

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1 were in the old days, but I do not want that to be  
 2 converted into encouragement to witnesses to turn up if  
 3 they feel like it or when they like. Your solicitors'  
 4 obligation -- and it does lie on your solicitors, if  
 5 I may say so -- is to make sure that their witnesses  
 6 turn up and are available in order that the trial can  
 7 proceed efficiently.  
 8 Your job is to tell your solicitors or remind them  
 9 that trials never go to plan. That's the one thing you  
 10 can know for sure, no trial has ever gone to plan.  
 11 MR STUART: Correct. I accept that my Lord.  
 12 MR JUSTICE HILDYARD: And if time is wasted, it is wasted  
 13 because the efficiency has been denied and in the old  
 14 days you would have had to pay the costs.  
 15 Now, I will leave that over to see where we get, but  
 16 I want it absolutely understood that my apparent  
 17 accommodation to witnesses is because I respect people's  
 18 other lives, but is not to encourage them to take  
 19 advantage of this and does not exclude your solicitors'  
 20 obligation to do all that they can to make sure that  
 21 witnesses attend the right time and if this goes on they  
 22 will be in serious risk of costs. Do I make myself  
 23 entirely plain?  
 24 MR STUART: My Lord you absolutely do and you say "if this  
 25 goes on", to this point in the trial only my witnesses

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1 have appeared. All of them have appeared. They have  
 2 all appeared on time.  
 3 MR JUSTICE HILDYARD: Yes.  
 4 MR STUART: The only person who has, as it were, not been  
 5 able to be on time is now Ms Rosier, who has turned up  
 6 today in the hope we could put her on today, and for  
 7 personal reasons is saying she can't come tomorrow.  
 8 MR JUSTICE HILDYARD: Ms Rosier has made plain to me her  
 9 commitments and the other witness --  
 10 MR STUART: Mrs Birdi --  
 11 MR JUSTICE HILDYARD: Yes, has made plain that she has  
 12 professional commitments. I understand the fact of  
 13 those and I do not criticise them. My concern is lest  
 14 an apparent flexibility being converted into a sort of  
 15 pitch up if you can attitude. The history of this  
 16 matter is that yesterday I was given one version of  
 17 events at 7.05 and another version of events trundled  
 18 through the email at 9 o'clock today, subverting my  
 19 preparation and for reasons which I didn't fully  
 20 understand.  
 21 I don't wish to sound excessively harsh or pompous,  
 22 I don't wish the claimants to feel that their  
 23 substantive case is imperilled by this, but I do wish to  
 24 convey the firm message that a case in the High Court is  
 25 not a sort of general I will turn up if I can, I don't

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1 know about this or that, because this has been alerted  
 2 for a long time.  
 3 MR STUART: My Lord, absolutely.  
 4 MR JUSTICE HILDYARD: I hope your solicitors take this on  
 5 board. It's unacceptable. It is as simple as that. It  
 6 is just not acceptable that trials should be derailed in  
 7 this way. I don't suggest that it is being derailed  
 8 because the time will be short. It may not even be in  
 9 existence. I'm not going to make any formal sanction or  
 10 anything else, but I'm worried that by flexibility  
 11 I give encouragement to the wrong end. This goes for  
 12 the respondents as well. If they have some witness  
 13 problems they will find me sensitised to the  
 14 difficulties and the more alert to criticism.  
 15 MR POTTS: My Lord my only concern is -- your Lordship has  
 16 mentioned your own preparations of witnesses, my concern  
 17 is also, I'm afraid, in relation to my client's case and  
 18 my preparation as well.  
 19 MR JUSTICE HILDYARD: Well you know the diet for tomorrow.  
 20 The menu is a slimmer feast than we had imagined. It  
 21 sounds to me as if 10.30 is probably the start time  
 22 because we have got a shorter day in any event and that  
 23 will give time for Mr Potts to do his prep as well. So  
 24 I would have thought, unless Mr Potts urges otherwise,  
 25 that 10.30 is probably right because it sounds as if we

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1 may go short anyway.  
 2 MR POTTS: My Lord, yes. Just in that regard we have got  
 3 Mr Yogaratnam, as I understand it, Ms Parham?  
 4 MR STUART: Yes, she will be here.  
 5 MR POTTS: And that's it. Now what happens after that  
 6 because under the timetable we are now due to deal with  
 7 my client's witnesses? What's going to happen about  
 8 that?  
 9 MR STUART: My Lord, since it is my side who has caused  
 10 the potential loss of some time by Ms Rosier not being  
 11 here and Mrs Birdi not being here; so whatever time that  
 12 would have been spent on them is the time that we are  
 13 losing, I'm certainly not going to assert any positive  
 14 desire, requirement or anything. I'm entirely in  
 15 the court's hands and in Mr Potts' hands.  
 16 If he estimates that if Mr Weller is 10.30 to 11.30,  
 17 at an estimate, and if he estimates that Mr Yogaratnam  
 18 will be 11.30 until lunchtime-ish, and that Mrs Parham  
 19 will be 2 o'clock to sometime in the afternoon-ish and  
 20 that therefore there might be an hour left of the  
 21 afternoon; if he says, well, wouldn't it be better to  
 22 start the defendant's witnesses in the morning, so  
 23 your Lordship has an opportunity to read their witness  
 24 statements perhaps tomorrow afternoon at the end of  
 25 Mrs Parham's case, then I could certainly see that.

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1 Equally if your Lordship says, no, no, no, if we get  
 2 to Mr McAlindon at 3 o'clock or 3.15 or 3.30, let's  
 3 start Mr McAlindon and we will have an hour with  
 4 Mr McAlindon, equally I can be ready and will be ready  
 5 to start Mr McAlindon's cross-examination tomorrow  
 6 afternoon.  
 7 I don't seek any comfort or favour here, but I'm  
 8 perfectly happy that -- I quite understand Mr Potts'  
 9 witnesses will want to know what is likely to be  
 10 the position and therefore if Mr Potts says, well,  
 11 I think we are listed, let's start our witnesses on  
 12 Thursday morning and give your Lordship the opportunity  
 13 to read tomorrow afternoon their witness statements,  
 14 perhaps might be a sensible option.  
 15 MR POTTS: My Lord, we have two other witnesses who will  
 16 still be outstanding from the other side. One of whom  
 17 on this basis, Ms Birdi, in this witness statement,  
 18 which has just arrived -- and I have to say at the  
 19 moment I take grave exception to the late production of  
 20 that statement -- makes some serious allegations in  
 21 relation to destruction of documents against my client.  
 22 The idea that my clients should be required to give  
 23 evidence before her -- and I reserve my position in  
 24 relation to opposing that witness statement -- I haven't  
 25 frankly had a chance to even read it properly, just to

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1 scan it. With all due respect my Lord this frankly is  
 2 shambolic and it is not fair on my clients.  
 3 MR JUSTICE HILDYARD: It is my fault because I raised  
 4 the temperature. Let us get back to the realities.  
 5 The realities are that Ms Rosier will not be  
 6 available for reasons I understand until Monday and will  
 7 therefore have to be interposed in any event. I have  
 8 the sense from reading her witness statement that that  
 9 is not a real problem.  
 10 MR POTTS: I'm not suggesting it is.  
 11 MR JUSTICE HILDYARD: The problem highlighted by the fact of  
 12 this debate about the second witness statement is  
 13 Ms Birdi.  
 14 MR STUART: Mrs Birdi, yes.  
 15 MR JUSTICE HILDYARD: Mrs Birdi. Mr Potts, cutting through  
 16 the theories, would prefer that she were cross-examined  
 17 as part of your case rather than interposed in  
 18 the sequence of his.  
 19 MR STUART: My Lord, I absolutely acknowledge the point and  
 20 I suggest and ask that, given the options we are  
 21 thinking about, is starting Mr McAlindon some time  
 22 tomorrow afternoon realistically for an hour or not and  
 23 perhaps having a little argument about  
 24 the admissibility -- perhaps we could use at least half  
 25 of that hour to argue about any issue of admissibility

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1 relating to Mrs Birdi's second witness statement. But  
 2 anyway it would seem to me she is definitely going to be  
 3 here on Thursday.  
 4 MR JUSTICE HILDYARD: What we will do I think is that we  
 5 will conclude Mr Weller tomorrow, then Mr Yogaratnam and  
 6 Mrs Parham and we will then deal with any housekeeping  
 7 matters or inquiries and we will then take a break,  
 8 which will enable me to refresh my memory of  
 9 the defendant's witnesses and possibly do some work on  
 10 the other case.  
 11 We will then have Mrs Birdi first thing on Thursday  
 12 after my other matter and we will then move into  
 13 the defendant's witnesses, I assume in the same order or  
 14 such other order as you alert me to with the only  
 15 exception being interposing Ms Rosier on Monday.  
 16 That should not dislocate the proceedings too much  
 17 and so my comments are more a concern, as I have sought  
 18 to indicate, that my flexibility should be misconstrued,  
 19 which I would not wish. Right.  
 20 Well, Mr Weller after that spat, please remember  
 21 that you are not to discuss this case with anybody else  
 22 whilst you are in the witness box and I'm sorry that you  
 23 will have to return tomorrow but the light in the tunnel  
 24 being not for as long as today.  
 25 A. Thank you.

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1 MR JUSTICE HILDYARD: 10.30 tomorrow then. Thank you.  
 2 (4.50 pm)  
 3 (The court adjourned until 10.30 am  
 4 on Wednesday, 11 December 2013)

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