

OPUS 2

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(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 8

December 11, 2013

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1 Wednesday, 11 December 2013
 2 (10.30 am)
 3 MR BARRY GEORGE WELLER (continued)
 4 Re-examination by MR STUART
 5 MR STUART: Good morning my Lord. Mr Weller I just have
 6 some questions of you. First of all, yesterday you were
 7 asked to comment upon a plan of the store. I think you
 8 were commenting -- could the witness be passed the plan,
 9 I'm not sure what page it is. It is at the back of E7.
 10 A. Thank you.
 11 MR STUART: Does your Lordship have the plan?
 12 MR JUSTICE HILDYARD: I have it.
 13 MR STUART: I wanted to check with Mr Weller, I think you
 14 were asked about the large plan Mr Weller?
 15 A. Yes, I have got the small one.
 16 Q. I'm not sure whether into the witness's bundle
 17 the manuscript plan ever got --no it didn't.
 18 A. No.
 19 Q. So just looking at the manuscript plan, do you see that?
 20 A. Yes.
 21 Q. That was drawn by Mr Vos after he had given his evidence
 22 and been asked to produce it. My Lord, I understand my
 23 learned friend doesn't have his copy now.
 24 Well your Lordship -- has your Lordship got it?
 25 Mr Weller, I only want you to comment on the ground

1

1 floor section of this plan, I'm not bothered about
 2 the upstairs. On the ground floor section,
 3 the reception desk and the till are shown as two blobs,
 4 if I can put it that way?
 5 A. Yes.
 6 Q. Can you just identify where -- to your recollection
 7 where the reception desk and the till are or were at the
 8 material times, so 2009 to 2011?
 9 A. Yes, where I said yesterday.
 10 Q. If you could do it by reference to Mr Vos' manuscript
 11 plan, so hold it up and just show us where you would
 12 place the reception desk and the till.
 13 A. Where they are.
 14 Q. Where they are?
 15 A. Yes.
 16 Q. Just above the till blob, is shown an area?
 17 A. Yes.
 18 Q. Just above and to the left of it. What area is that?
 19 A. The dispensing desk.
 20 Q. Is there a wall between the dispensing desks and
 21 the till?
 22 A. There is a cupboard that comes out between the till and
 23 the dispensing desk.
 24 Q. Right, I don't think I need to ask any more about that.
 25 Early on in your cross-examination, this was on

2

1 the afternoon of Monday, you said that Specsavers were
 2 aware of the use of Optimisation Healthcare Group,
 3 the company?
 4 A. Yes.
 5 Q. From your time at Worthing?
 6 A. Yes.
 7 Q. How were Specsavers aware of that?
 8 A. Because Dr Poulson was doing her glaucoma clinics at
 9 Worthing and she was using Optimisation when she was
 10 getting paid for seeing those patients, because that's
 11 a private entity that she had already agreed with head
 12 office. As she said, she spoke to Doug Perkins about
 13 that. So she was collecting the money through
 14 Optimisation Healthcare at Specsavers in Worthing.
 15 Q. Did you have any involvement when you were at Worthing
 16 in the administration of matters such as that with
 17 Optimisation Healthcare Group?
 18 A. No.
 19 Q. Next you were asked about did -- following Worthing you
 20 obviously bought your shares in Bognor?
 21 A. Correct, yes.
 22 Q. You said that the need for Mr Vos to support you was one
 23 of the matters which was expressly made clear to you at
 24 the time that you were approved to take on the retail
 25 job at Bognor?

3

1 A. Yes.
 2 Q. Mr Potts put it to you that in your witness statement
 3 you don't identify the person from Specsavers who stated
 4 that it was for Mr Vos to support you in your role as
 5 retail director at Bognor?
 6 A. Yes.
 7 Q. Do you know the name of the person?
 8 A. I believe that Helle had a call from Michael Ryan and is
 9 it Tim Moyles? The one at the -- no, Chris Howarth.
 10 Q. Do you know what is his role?
 11 A. He is in the professional recruitment, he does
 12 the Skelmersdale Park, where you go for your --
 13 Q. You mentioned Skelmersdale, what is Skelmersdale?
 14 A. Skelmersdale is where you go and sit your stage 1 and
 15 where professional recruitment is based, and they decide
 16 whether or not you are approved on stage 1 to become
 17 a director.
 18 Q. So you physically go to the town of Skelmersdale?
 19 A. I went to Skelmersdale to sit my stage 1.
 20 Q. Okay. We are moving on then to the April 2008 meeting
 21 and you were taken to bundle E2. Could you pull out E2,
 22 pages 366 and 367.
 23 A. Yes.
 24 Q. You were asked about this meeting at various times in
 25 cross-examination, but essentially you were asked

4

1 about -- the point I want to ask you about, is you were
 2 asked whether Mr Rowe was insisting that Mr Vos be put
 3 onto the books as an employee of the Bognor company.
 4 Your answers weren't clear on that. Can you just
 5 say -- you were at the meeting?
 6 A. Yes, I was.
 7 Q. Was Mr Rowe insisting?
 8 A. No, he wasn't.
 9 Q. So, what was he saying in relation to putting Mr Vos as
 10 an employee?
 11 A. He was explaining that (1) he wanted to know if I was
 12 aware of the situation of Optimisation Healthcare and
 13 (2) that it would be better for Godfrey to go onto
 14 the books and Helle said, "I will talk to him about it
 15 but I can't promise anything". Then he said: okay, if
 16 you can speak to him, but he was not insistent that he
 17 was being put on the books.
 18 Q. At 367 this is their note, this is Specsavers' note, of
 19 the meeting, which you say you got a year later.
 20 A. Yes.
 21 Q. But this is their note. At 367, just between the two
 22 hole punches, do you see that? It says--- sorry at the
 23 first hole punch:
 24 "Action HO and BW to discuss in depth the future of
 25 Optimisation and to return to MR the steps to be taken."

5

1 A. Yes.
 2 Q. Do you recall that being discussed in that way at the
 3 meeting?
 4 A. It was discussed like that, so that it was discussed as
 5 Helle said, she said that she was going to talk to
 6 Godfrey about it, but she didn't say that -- and he
 7 didn't insist that he was put on the books. She would
 8 discuss with him and get back to him on it.
 9 Q. Just to be clear:
 10 "HO and BW to discuss in depth the future."
 11 Was that discussion to take place there and then,
 12 because I know there was a break at some point in
 13 the meeting, or was that to be a discussion in the
 14 future?
 15 A. In the future.
 16 Q. In the future after the meeting?
 17 A. Yes.
 18 Q. I see:
 19 "... and to return to MR the steps to be taken."
 20 A. Yes. As to what we were going to do, whether Godfrey
 21 was going to be put on the books or not.
 22 Q. Did you ever get back to Mr Rowe?
 23 A. I didn't personally, no.
 24 Q. Then:
 25 "Action: MR to collate the information and report

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1 back to SOG the steps in moving forward with
 2 Optimisation."
 3 Do you recall that being mentioned? That is that
 4 Mr Rowe is going to get back to you, it says here?
 5 A. I can't remember it.
 6 Q. You can't remember, I can't ask you about that then.
 7 Then it says:
 8 "JVPs [I think that's you] not to use Optimisation
 9 in future and will use the SOG route with the RST for
 10 support."
 11 Just explain, what is the RST?
 12 A. Where are we?
 13 Q. We are on the next line down. I'm only going to ask you
 14 about these four actions. You see the third action?
 15 A. Okay, "Retail Support Team".
 16 Q. Do you remember that being discussed, that you would not
 17 use Optimisation and you would use the SOG route?
 18 A. No.
 19 Q. You don't recall that? Then finally:
 20 "JVPs to discuss with Godfrey the best way of
 21 positing him onto the books as a result of Godfrey being
 22 an outside agent."
 23 Do you remember that being discussed?
 24 A. That was the discussion that we had, where we said that
 25 Helle would speak to Godfrey and we would get back to

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1 them as to where we were going, and ask him to go on
 2 the books. But we never made any promises that we would
 3 put him on the books.
 4 Q. Then, finally on this point, page 371 is the letter that
 5 followed up that meeting, the letter from Mr Rowe. Do
 6 you remember being taken to that?
 7 A. Yes.
 8 Q. I think it was the third main paragraph down under
 9 the heading:
 10 "Is the decision to use the Optimisation Healthcare
 11 Group as a supplier to Specsavers acting in the best
 12 interests of the business?"
 13 That is the heading. Then Mr Rowe -- do you see --
 14 you were taken to those paragraphs; do you see that?
 15 A. Yes.
 16 Q. In the main paragraph there, fourth line Mr Rowe says:
 17 "As I explained, however, Dr Helle Poulson is
 18 a director of Optimisation Healthcare Group Limited and
 19 as such there is the possibility of a conflict of
 20 interest."
 21 A. Yes.
 22 Q. Did Mr Rowe discuss that at the meeting?
 23 A. Well yes, he did discuss that, he did say that, you
 24 know, that Dr Poulson was part of it and that it wasn't
 25 clear and transparent, so that is why we changed to

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1 Godfrey Vos' services after, to make it so that it was
 2 clear and transparent and that I knew what was going on.
 3 That's why I signed the invoices after that.
 4 Q. Then the next paragraph down:
 5 "It was confirmed that W Godfrey Vos FASA was
 6 the husband of Helle Poulson and that both partners were
 7 aware of the work completed and the invoices submitted."
 8 When it says, "and that both partners were aware",
 9 who is that referring to?
 10 A. Myself and Helle.
 11 Q. "We went through the specific tasks that were completed
 12 and an invoice submitted for."
 13 Do you recall that at the meeting; going through
 14 specific tasks on an invoice?
 15 A. Yes.
 16 Q. You do:
 17 "As I explained, SOG feel that a number of tasks
 18 invoiced were inappropriate to be outsourced. I also
 19 share the invoicing team in Guernsey's concerns with
 20 the lack of detail on the invoicing."
 21 Do you remember that that was a point that Mr Rowe
 22 raised at the meeting?
 23 A. Not that there was a lack of -- no.
 24 Q. Finally, I want to take you to the last paragraph on 372
 25 of that letter, starting:

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1 "I would like to thank you for the way that you
 2 approach the business review meeting and the way in
 3 which you communicated your views. I'm now happy that
 4 we reached agreement on actions to resolve the issues
 5 discussed as a follow up to the BRM. So that we can
 6 review the actions, I would like to book a meeting on
 7 27th June 2008."
 8 Do you see that?
 9 A. Yes.
 10 Q. Do you recall was there any meeting to follow up?
 11 A. No.
 12 Q. Did you ever have any discussions with Mr Rowe after
 13 this? With Mr Rowe --
 14 A. No.
 15 Q. -- about the actions of using Optimisation or Mr Vos?
 16 A. No.
 17 Q. Right. We move on to another issue. Onto 2009. You
 18 were asked about the mystery shopper matter. We are
 19 still in E2. You were taken to these documents at
 20 page 434 in E2. I think it starts with 431, there's
 21 a letter from Mr Dyson. I think it is said attached
 22 that letter are two documents, page 434 and 436, do you
 23 remember?
 24 A. Yes.
 25 Q. First of all, 431, the letter addressed to Dr Poulson,

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1 did you see that letter? Did you see that letter?
 2 A. No.
 3 Q. You didn't see that letter. Did you discuss it with her
 4 without seeing it? Did you discuss the contents of it
 5 at the time I'm talking about, in 2009?
 6 A. Yes, I'm just reading the letter. Yes, I did discuss
 7 it.
 8 Q. Now, the two documents attached, 434 is headed:
 9 "EyeQ advice on video mystery shopping,
 10 January 2009."
 11 A. Yes.
 12 Q. Mr Potts put to you that that is the document referred
 13 to in the letter at page 432 in the fourth paragraph
 14 down where it says:
 15 "Information about the process followed in gathering
 16 the data and what happens to the data after it has been
 17 collated is published on EyeQ (copy enclosed)."
 18 Do you see that?
 19 A. Yes.
 20 Q. Mr Potts says that is page 434 to 435.
 21 A. Yes.
 22 Q. My query is this, "is published on EyeQ", this document
 23 here, it is obviously a paper version?
 24 A. Yes.
 25 Q. But is this the format of a document that would appear

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1 on EyeQ?
 2 A. Yes, it can appear like that on the computer screen.
 3 Q. What is EyeQ?
 4 A. EyeQ is a back office system that you can go into and
 5 look up different procedures and different things that
 6 Specsavers recommend that you follow.
 7 Q. Had you seen the document, the EyeQ advice on video
 8 mystery shopping January 2009 when you had your meeting
 9 about mystery shopping?
 10 A. No, I hadn't looked it up.
 11 Q. You were obviously effectively the shop floor manager of
 12 the store. You said repeatedly you were on --actually
 13 on the floor doing the -- and dealing with the staff on
 14 the floor?
 15 A. Yes.
 16 Q. Had you been notified of a change to the mystery shopper
 17 methodology to include video testing? Had that been
 18 expressly notified to you?
 19 A. It had come through, yes, on the store brief.
 20 Q. So that is the document at page 436?
 21 A. Yes.
 22 Q. That's what I was going to come onto then. So this
 23 document -- where would this document -- how would this
 24 document be sent to you? Would it be electronic or
 25 a paper copy?

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1 A. The EyeQ one?
2 Q. No 436.
3 A. That would be sent to the store.
4 Q. As a piece of paper?
5 A. Yes.
6 Q. Is that on EyeQ system?
7 A. I don't know.
8 Q. It was suggested to you that both of these were part of
9 the manual.
10 A. Yes.
11 Q. That is the manual that is referred to in your
12 shareholder agreement?
13 A. Yes.
14 Q. What was the manual?
15 A. We used to have a best practice manual that was a folder
16 and then obviously it got changed to the EyeQ system, in
17 my eyes. So the EyeQ system is what I now take to
18 believe to be the manual, which would have been
19 pages 434 and 435. 436 is, as it says, a store brief.
20 That would be set separately, it is not part, to my
21 knowledge, as the manual.
22 Q. Because we have not seen the manual or the EyeQ system,
23 is everything on the EyeQ system the manual?
24 A. Well, so I'm led to believe, yes.
25 Q. Led to believe by?

13

1 A. Mr Potts, when he referred to the manual. I didn't
2 think the EyeQ system was the manual. I thought that
3 our manual was the best practice manual that we had in
4 the shop and we still kept it. I know it was growing
5 out of date but I never really put the two together, and
6 believing that the manual was the EyeQ system.
7 MR JUSTICE HILDYARD: You say you didn't at that time regard
8 the EyeQ as being the manual?
9 A. No, I didn't.
10 MR JUSTICE HILDYARD: You regarded the manual as being?
11 A. We had a best practice manual/folder in the store and it
12 was still there when we left, and that was the guidance
13 that I had, believing that that was it. On the EyeQ
14 system, the EyeQ system is a broad spectrum, it has
15 forums on it --
16 MR STUART: What sort of forums?
17 A. It has forums on it for staff, you have got "tell Doug",
18 "ask Doug" because there is a lack of communication and
19 stuff, you could ask -- they said that you could ask --
20 "tell Doug" was an entry that they come up with, that
21 any member of staff could go on and ask a question to
22 Doug Perkins. And you have got different forums like
23 the lab forum, whereas if you couldn't do a job you
24 could go on to the EyeQ system and write: how do I do
25 this? I have got a problem here.

14

1 It was more of a discussion program as well.
2 Q. Did all the staff have access to the EyeQ system?
3 A. Yes, at different entry levels, yes.
4 MR POTTS: I'm sorry to interrupt, your Lordship posed
5 a question about the manual. I think there may have
6 been some confusion my Lord, page 20 of the transcript
7 line 8. Your Lordship may want to look at the answer
8 there because I think --
9 MR JUSTICE HILDYARD: Page 20 of yesterday?
10 MR POTTS: Yes my Lord. In relation to these documents,
11 I think. About the status of the EyeQ system and
12 the manual.
13 MR JUSTICE HILDYARD: Yes, that's why I clarified, is that,
14 just so we are entirely fair to you, Mr Weller,
15 yesterday, and when you first answered today, you
16 appeared to accept that EyeQ had become the manual. But
17 then you said -- very shortly afterwards today you said
18 that you didn't at the time think that the EyeQ system
19 was the manual, you thought that the -- at the time you
20 thought that the manual was the best practice manual
21 which was retained in the shop.
22 Because those answers were not consistent, I wanted
23 to clarify what you thought at the time was the manual.
24 A. Yes.
25 MR JUSTICE HILDYARD: What is the answer?

15

1 A. At the time is the folder in the office.
2 MR JUSTICE HILDYARD: Was that updated from time to time?
3 A. It was when we first started there and then it wasn't
4 updated at all and we just kept it there and I just
5 thought: oh well, there we go.
6 MR JUSTICE HILDYARD: Did the EyeQ stuff ever refer
7 expressly to what you, at that time, thought of as
8 the manual, being the best practice manual?
9 A. No.
10 MR JUSTICE HILDYARD: It didn't contain updates for example?
11 A. Yes, it did contain updates.
12 MR JUSTICE HILDYARD: On the EyeQ system?
13 A. On the EyeQ system it would have -- it did contain
14 updates, but I didn't envision it to be the manual as
15 such.
16 MR JUSTICE HILDYARD: I'm sorry Mr Stuart.
17 MR STUART: Not at all my Lord, this is why I was asking in
18 re-examination.
19 MR JUSTICE HILDYARD: Did the updates expressly refer to
20 the best practice manual and say: treat this as
21 an update to the best practice manual, or some such
22 direction?
23 A. No. No. They were put on there: please look at EyeQ.
24 Say you get correspondence saying: it is all on EyeQ for
25 you to review. But it was never said: oh, this is

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1 the best practice. I never got that information that
 2 this is the best practice, this is the store manual and
 3 this can be changed at any time.
 4 MR JUSTICE HILDYARD: Did you understand the best practice
 5 manual in effect to be being updated by the EyeQ system?
 6 A. No.
 7 MR JUSTICE HILDYARD: Right.
 8 MR STUART: Just arising from that, I want to be clear so we
 9 can understand what it is. The best practice manual,
 10 you describe as a file or a folder?
 11 A. Yes.
 12 Q. Like a ring binder, like one of these? (Indicates).
 13 A. Yes.
 14 Q. With sections in it?
 15 A. Yes.
 16 Q. Can you give us an illustration of what those sections
 17 are about?
 18 A. You have got things like staff in there, you have got
 19 things -- you had things like your merchandise in there,
 20 you have something like a MARS(?) folder, how to display
 21 your frames et cetera. You would have the offers put
 22 into your best practice manual, what we were doing at
 23 the time. All things like that.
 24 Q. Okay. And then on the EyeQ system, in response to his
 25 Lordship you differentiated -- you said that on the EyeQ

17

1 system there were some notifications sent through. Can
 2 we just take a step back, were the contents of the
 3 manual, what you have just described, also put onto
 4 the EyeQ system in electronic form?
 5 A. I couldn't say whether it was or not because I never
 6 looked it up.
 7 Q. Okay. These updates that you described to his Lordship
 8 that you would get notice of occasionally --
 9 A. Yes.
 10 Q. -- in what format were they? Were they in the pages
 11 that you could print off and put into your manual, or
 12 were they just --
 13 A. No, they were like the store briefing, you know, with
 14 your mystery shopper.
 15 Q. So they were like page 436?
 16 A. 436.
 17 Q. 436. You have just -- I thought your answer was that
 18 that document was sent to you in hard copy?
 19 A. Yes, because obviously the EyeQ system is that you have
 20 got a store briefing and you would have your store
 21 briefing, but similar stuff to things like that, you
 22 would get offers through saying: we are doing this
 23 promotion and you would get a store brief on what next
 24 promotion you are doing et cetera. In my belief that
 25 was part of our manual.

18

1 Q. Okay. Finally about this point, mystery shopper is
 2 obviously an item --
 3 A. Yes.
 4 Q. -- that seems to be recognised by all the staff and
 5 yourself and the management and SOG. Mystery shopper is
 6 an issue.
 7 A. Yes.
 8 Q. Was there a section in the manual, as you have described
 9 it, the hard manual, the file -- was there a section for
 10 mystery shopper?
 11 A. Yes.
 12 Q. There was okay. Was that section updated by these paper
 13 copy mystery shopper --
 14 A. No.
 15 Q. On the EyeQ system was there a section for mystery
 16 shopper, was there a separate section on the EyeQ
 17 system?
 18 A. Yes.
 19 Q. So you could go online and go to mystery shopper
 20 section?
 21 A. You could type in search words and it will bring up
 22 the relevant pages that you would need.
 23 Q. For mystery shopper?
 24 A. Yes.
 25 Q. This document here, 436 to 437 document, would that be

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1 on the EyeQ -- not the paper obviously, but with
 2 the content of what is here on paper, would that be on
 3 the EyeQ system under the mystery shopper?
 4 A. I couldn't remember to be honest.
 5 Q. All right. My Lord, I don't think I can take that much
 6 further unless your Lordship has any other questions on
 7 that?
 8 A. I don't think so.
 9 Q. In relation to that meeting then, you were taken to
 10 page 450, the minute or the note of that meeting
 11 prepared by yourselves -- Dr Poulson and yourself and
 12 obviously Mr Vos actually doing the typing, as
 13 I understand it. Do you see that?
 14 A. Mmm hmm.
 15 Q. The main point of contention in cross-examination was,
 16 it was suggested to you that you did not, here in this
 17 note or in the letter or the email that followed up
 18 the meeting, you did not say that -- when Mr Dyson
 19 threatened you, as you put it, you did not say that they
 20 would be investigating you. Do you remember Mr Potts --
 21 A. Yes.
 22 Q. If you go to page 451. The section where the alleged
 23 threat is put in. Do you see it is about ten lines
 24 down. It starts with the words:
 25 "HP said that if SOG were so unhappy with the store

20

1 directors, why did SOG not just buy them out at what
 2 they had paid for the shares?"
 3 A. Yes.
 4 Q. Derek Dyson responded as follows:
 5 "That is not the way it would work. If you do not
 6 agree, we will suspend you as directors. SOG will send
 7 a team into the store to take it over at great cost to
 8 the store. We will run it down and then issue
 9 a compulsory purchase order for the shares at nil value
 10 and you will end up getting nothing for your shares."
 11 This is what this note of the meeting says.
 12 A. Yes.
 13 Q. Now the word "investigate" doesn't appear there in that
 14 note, do you see that?
 15 A. Yes.
 16 Q. Can you just clarify with the court, did the threat
 17 include the concept of an investigation team or not?
 18 A. Yes.
 19 Q. Explain why that isn't set out in that quote.
 20 A. It is not set out. The way I see that the threat was,
 21 he said that they would send a team in to your store to
 22 investigate it and run it down.
 23 Q. The reference to suspending you as directors, did
 24 Mr Dyson explain what the basis for such suspension was
 25 to be?

21

1 A. We were told we would be put on gardening leave and they
 2 would run it down and then that's it.
 3 Q. Mr Potts asked you whether at the end of that meeting
 4 you shook hands on a friendly note. You agreed you did
 5 shake hands.
 6 A. I did, yes.
 7 Q. Were you on a friendly note with Mr Dyson after he had
 8 made that threat?
 9 A. I was a bit more sort of grovelling because I just
 10 realised that I could have had my business taken out of
 11 my hands, so I was trying to be as friendly as
 12 I possibly could because I was worried about my job.
 13 Q. The email which followed the 6th March meeting is at
 14 page 454, do you see that?
 15 A. Yes.
 16 Q. Did you know the content of that email? Were you
 17 involved in approving or agreeing the content of that
 18 email with Dr Poulson or Mr Vos at the time?
 19 A. No.
 20 Q. I won't ask you about it then. You can put away E2 for
 21 now. If you can go to E3. You were taken to
 22 page 552-27. Do you remember this was the document that
 23 was added in. Page 552-29, which was the first version
 24 of the July 2009 structure document, 552-29. Do you
 25 remember Mr Potts asked you about the fact that on

22

1 552-29 your role is put down as junior/minority in this
 2 version. We know that gets changed later.
 3 A. Yes.
 4 Q. Mr Potts suggested that you were involved in the --
 5 involved not that you drafted it yourself, you were
 6 involved in the drafting of this document and therefore
 7 you saw yourself as the junior partner.
 8 Do you see that?
 9 A. Yes.
 10 Q. My question is this, this version, we see at
 11 page 552-27 --
 12 MR POTTS: My Lord, I'm not sure I did actually put it in
 13 quite that way.
 14 MR STUART: All right. Very well. 552-27, the email
 15 attaching this version, this was from Dr Poulson,
 16 21st July 2009.
 17 A. Yes.
 18 Q. That is just after Mr North has made his recommendations
 19 on the Jena Laker grievance et cetera?
 20 A. Yes.
 21 Q. It is cc'd to you at barry.weller@ntlworld.com and
 22 obviously Mr Vos.
 23 A. Yes.
 24 Q. Were you involved in the drafting of 552-29?
 25 A. No.

23

1 Q. What were you doing at that time?
 2 A. I was on holiday.
 3 Q. You were on holiday.
 4 Mr Potts then asked you about, or suggested to you
 5 that you were fed up of the treatment of you by Mr Vos
 6 and Dr Poulson at around this time and that that, if
 7 anything, was a contributory factor towards your -- what
 8 you described as your nervous breakdown, your stress
 9 et cetera.
 10 What was Mr Vos' and Dr Poulson's attitude towards
 11 you at this time in the summer of 2009?
 12 A. Very protective. They saw how it all was and they were
 13 working with me and, you know, trying to get me back up
 14 and running as it were, is the way I saw it. They were
 15 very -- you know, very sincere and, you know, really
 16 nice.
 17 Q. How did they deal with your illness?
 18 A. They were very concerned for my health and everything
 19 that was going on and they were trying to make sure that
 20 I was able to go along with the processes and trying to
 21 take as much pressure off of me as they could at the
 22 time.
 23 Q. Mr Potts put it to you that through 2009 to 2010 you
 24 were continuing in work, as he put it. You didn't
 25 suffer a nervous breakdown because you didn't have time

24

1 off work sick.
 2 A. Right. After the Jena Laker incident and everything,
 3 I took a week -- I was quite broken and Helle and
 4 Godfrey come round my house and Helle said to me: you
 5 are in no state to go back to work at the moment.
 6 I said: no, I can't afford to be off, I need to be
 7 earning and she said: no, take it as a week's holiday.
 8 So I took a week's holiday then. But really they were
 9 just looking out for my best interest because I wasn't,
 10 in any way, shape or state of mind, ready to go back to
 11 work.
 12 Then they were trying to make it as easy as
 13 possible. Obviously I was insistent that I wanted to be
 14 at work because it was my livelihood. You know, I felt
 15 if I wasn't going to be there, I wasn't going to earn
 16 the money to pay my debts and everything. So, you know,
 17 they were supportive in that they carried me through it.
 18 Q. What steps were taken to make it as easy as possible, as
 19 you have just put it.
 20 A. Like I said, Godfrey took more of an involvement in it
 21 and took the pressure away from the staff as well,
 22 because he would get the staff -- say: come to me rather
 23 than go to Barry because I wasn't in a place to be
 24 dealing with that sort of thing. So he took a lot of
 25 the pressures. I know that we go back to -- the day to

1 day running is my responsibility, but at the time he
 2 took the rough -- all the other stuff and the pressures
 3 and everything. I had just been hit by someone making
 4 allegations against me and I have always -- as I said
 5 yesterday, I wear my heart on my sleeve and I find it
 6 very difficult not to befriend people and that's just my
 7 character and it is the way I am.
 8 So rather than having to deal with any -- deal with
 9 the staff in any context Godfrey did that and did a lot
 10 more of that.
 11 Q. What about the meetings that we have heard about,
 12 the regular meetings, the management meetings et cetera?
 13 A. Yes.
 14 Q. What happened in relation to those?
 15 A. We would have a management meeting. Obviously we would
 16 be discussing it before we went round. They were
 17 always -- it was always clear to me what was going on.
 18 I knew exactly what Godfrey was going to be saying at
 19 these management meetings. It was just to give
 20 the staff a point of call and to take the pressure away
 21 from me. So it was to push it over to him so he took
 22 the weight of everybody for that period of time.
 23 Q. Moving forward quite a long way now in
 24 the cross-examination. Near the end of yesterday
 25 afternoon you were asked about the conversation that was

1 had with the staff on the day you were suspended. Do
 2 you remember?
 3 A. Yes.
 4 Q. You were asked about the fact that -- you assert that
 5 you told the staff about what might happen, from your
 6 experience at Brighton.
 7 A. Yes.
 8 Q. Which Mr Potts got you to agree was in some time around
 9 1996, I think he said.
 10 A. Yes.
 11 Q. He asked you: if that happened why did you enter into
 12 a shareholder agreement with them in 2005?
 13 Do you remember that part of the cross-examination?
 14 A. Yes.
 15 Q. Two questions. First of all, in respect of the Brighton
 16 incident, or whatever it was, that you described at
 17 length, you said that you were paid.
 18 A. Yes.
 19 Q. How much were you paid?
 20 A. When I was taken over -- when I was with Chris Voyce(?)
 21 I was on £8,000 a year, and then when Specsavers came
 22 in, it went up to £9,500 a year.
 23 Q. Okay. Then the second part of the question is this,
 24 Mr Potts asked you to explain on what -- he put to you
 25 that you would not have entered into a shareholder

1 agreement in 2005 if you thought that there was anything
 2 inappropriate about what had happened in 1996.
 3 A. Yes.
 4 Q. My question is this, in 2005 did you consider that what
 5 had happened in 1996 was inappropriate?
 6 A. No.
 7 Q. When did you come to consider that what had happened in
 8 1996 was inappropriate?
 9 A. When I heard of -- my main one was when Shakila and John
 10 were taken out of Uckfield.
 11 Q. So roughly when was that, to the nearest year and month,
 12 what period?
 13 A. When they were taken out -- it all started in
 14 November 2010 that we were hearing -- and also then
 15 obviously the Portsmouth directors had been taken out as
 16 well before that. But we thought -- and apparently they
 17 had run off to Monte Carlo or what have you, so we
 18 thought that were in the wrong as well. And then
 19 suddenly there is more stores that keep going under and
 20 you are like: oh, this is scary.
 21 Q. Two things I need to ask you about then, the first is
 22 Mr Ferguson. You can put away E3 and take out E5.
 23 This is your interview. E5, you see, the start of
 24 your interviews, this is the first page. Do you see
 25 that?

1 A. Yes.
 2 Q. You were taken to the section around page 1122 to 1124.
 3 This is the issue about putting Mr Ferguson onto
 4 the SEP system --
 5 A. Yes.
 6 Q. -- as the handyman.
 7 Do you remember Mr Potts asked you in depth about
 8 why you hadn't said in your witness statement that you
 9 were physically present at the time when somebody from
 10 Specsavers told --
 11 A. Godfrey.
 12 Q. -- Godfrey, and whether you were saying that you were
 13 there, as it were, at the time?
 14 A. Yes.
 15 Q. If you look at page 1122 at line 1193. Do you see that?
 16 A. Yes.
 17 Q. Mr Barnes asked:
 18 "Okay, so who in accounts told you to put a handyman
 19 through the SEP system?"
 20 Do you see that?
 21 A. Yes.
 22 Q. "I can't remember the name of the person, but they told
 23 us to put it through on that way, that he would be paid
 24 in an easy way, because there was no locum button for
 25 a handyman, is there?"

29

1 Do you see that?
 2 A. Yes.
 3 Q. Then you accept at 1199:
 4 "Yes, in respect I agree, it shouldn't have been put
 5 through in that way.
 6 "Okay, do you think it is misleading the way it has
 7 been put through?
 8 "Yes.
 9 "Because he is actually set up on the system as a --
 10 "Lab.
 11 "-- as a lab tech, when in actual fact he is not
 12 a lab tech he is actually a handyman.
 13 "No."
 14 Do you see that?
 15 A. Yes.
 16 Q. It says:
 17 "He is actually set up on the system as a --"
 18 And you have proffered the word "lab". We have now
 19 seen all the documents and he is actually set up on your
 20 system as a "tech".
 21 A. Yes.
 22 Q. So where did you get the word "lab" from?
 23 A. Because I was just thinking lab technician.
 24 Q. You were thinking that?
 25 A. Yes.

30

1 Q. Did you know at the time the words that had been used on
 2 the system for Mr Ferguson?
 3 A. What, as technician?
 4 Q. Any words, I don't know.
 5 A. No.
 6 Q. You didn't know?
 7 Then at 1124 at the bottom, line 1268, Mr Barnes
 8 comes back to it --
 9 A. 1124?
 10 Q. Yes. Do you see 1268:
 11 "Because we were told to put through. In hindsight
 12 we should have done."
 13 Do you see that is said to be what you said? Well,
 14 it is what you said, this is a transcript.
 15 A. Yes.
 16 Q. Mr Barnes says:
 17 "I'm not talking about being told to put it through
 18 the SEP system, yes?"
 19 Then you said:
 20 "No, in hindsight I'm talking to you about
 21 the retention contract."
 22 I think he is talking about the -- well he is
 23 talking about the £240 a week retention et cetera. Do
 24 you see?
 25 A. Yes.

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1 Q. When you said, at 1268:
 2 "Um, because we were told to put it through."
 3 What were you referring to?
 4 A. What was it?
 5 Q. Line 1268:
 6 "Um, because we were told to put it through. In
 7 hindsight we should have done."
 8 A. Because that's where we were told by the accounts
 9 department to put it through.
 10 Q. All right. Finally you were asked at the close of your
 11 cross-examination yesterday about this incident about
 12 the assault -- what you say is the assault of you.
 13 It was suggested to you that you had -- that you
 14 were not accurately telling the court about what was
 15 said at the time when you spoke with the gentleman
 16 concerned. If we put away that file and take out B.
 17 You were cross-examined about this by reference to your
 18 witness statement itself.
 19 File B. Your witness statement is at tab 6. Do you
 20 remember? Page 143, paragraph 104, and you were asked
 21 about 103, your reference there to a paedophile. Do you
 22 remember Mr Potts suggesting to you that you were giving
 23 the impression here that your only thought was
 24 paedophile?
 25 A. Yes.

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1 Q. You did not think Specsavers and paedophile and/or
2 paedophile?
3 A. Mmm.
4 Q. Do you see?
5 A. Yes.
6 Q. You recall that?
7 A. Yes.
8 Q. I just want to get clear what it is you say happened, by
9 reference to who this gentleman was. If you could just
10 keep open B but if you could just have file F1, page 58.
11 This incident happened on the -- I think it is
12 the 4th October. We see that from page 54, a letter
13 from Akin Palmer to Specsavers, dated 4th October:
14 "We have this afternoon received a report from our
15 clients which concerns us greatly. The report which we
16 have received is that at around 6.20 pm today a white
17 male parked his motor car ..."
18 Do you see that?
19 A. Yes.
20 Q. So that is what started this correspondence that I'm
21 about to take you to.
22 A. Yes.
23 Q. It sets out there -- just read page 54, that paragraph.
24 Do you see that?
25 A. What paragraph?

33

1 Q. So that paragraph and then in the next paragraph it
2 says:
3 "As Mr Weller is not presently in dispute with any
4 person other than your company [Specsavers], and because
5 of his past experience of intimidation and harassment at
6 the hands of your investigators, which led him to suffer
7 a nervous breakdown, he has good reason to believe that
8 the gentleman in question was sent by your company or by
9 members of your staff to intimidate him."
10 A. Yes.
11 Q. That's what was said on your behalf to Specsavers on
12 4th October?
13 A. Yes.
14 Q. Now if you go to Specsavers' response, which starts at
15 page 56 --
16 MR JUSTICE HILDYARD: Mr Stuart, can I mention that I do not
17 have page 54.
18 MR STUART: My Lord, you must have page 54, it is very
19 important. Does everybody else have a 54?
20 (Document handed).
21 Does your Lordship have that now?
22 MR JUSTICE HILDYARD: Yes, I was reading 55 by error.
23 MR STUART: I was going to come onto 55 in a moment, when we
24 come onto the assertion made by --
25 MR JUSTICE HILDYARD: It is 56 now, is it?

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1 MR STUART: So 54 was the -- on the afternoon in question,
2 your solicitors send that letter. Do you see that?
3 A. Yes.
4 Q. The response from Specsavers to that is part of their
5 letter at 56. Do you see, 7th October?
6 A. Yes.
7 Q. If you go to page 57, under the heading:
8 "Your letter attached to your email sent at 18.57,
9 ie 6.57 pm, on 4th October and your letter attached to
10 your email sent at 15.42."
11 Do you see that?
12 A. Sorry?
13 Q. There is a heading half way down page 57. This is the
14 section dealing with your solicitor's letter of
15 4th October.
16 A. Yes.
17 Q. I want to take you to 58, which seems to be Mr McGowan's
18 version of events at that time. Do you see that? 58.
19 Near the first hole punch:
20 "Contrary to your assertion in your letter of
21 4th October, Mr Weller did not proceed to take
22 photographs of Mr Weller's home ..."
23 I think they must mean Mr McGowan:
24 "... did not proceed to take photographs of
25 Mr Weller's home until he was challenged by Mr Weller

35

1 and Mr Vos, whereupon he jumped into his car and
2 proceeded to drive off in great haste."
3 Do you see that?
4 A. Yes.
5 Q. Then it starts with a "rather". So this seems to be
6 Mr McGowan's version of events. Do you see that?
7 A. Yes.
8 Q. If you just scan down. I'm not going to read it all out
9 to you, what he says happened. Can you just read it
10 though?
11 Have you read that?
12 A. Yes.
13 Q. So, on Mr McGowan's version, having taken the first
14 photograph, when you are first following him, he is on
15 foot?
16 A. Yes.
17 Q. I am not sure if it was clear from the evidence you gave
18 yesterday about the description of what you were
19 following or chasing, and when he went into this girl's
20 school et cetera, whether he was in his car or on foot,
21 whether he drove into the girl's school or walked in or
22 what?
23 A. He walked.
24 Q. So he was on foot at this stage?
25 A. Yes.

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1 Q. He says not wishing to have any potential confrontation
2 he continued to walk past his own car and walking from
3 Cresswell [sic] Road into Ladydell Road. Is that what
4 you are describing as the girls' school?
5 A. Yes, it is Chesswood Road, it goes into Ladydell Road.
6 When you go down Ladydell Road there is a turning on
7 your left which takes you into Davison High School for
8 Girls.
9 Q. His version is that when he then comes back from there
10 you see he says he remained in Cresswell [sic] Road for
11 approximately another 15 minutes to avoid any
12 confrontation effectively with you, who had been
13 following him.
14 A. Yes.
15 Q. Then he comes back. After around 15 minutes had passed
16 he returns to where he had parked his car, on your road,
17 to collect his car?
18 A. Yes.
19 Q. As he approached his car Mr McGowan found that both
20 Mr Weller and Mr Vos were standing in the driveway.
21 A. Yes. Because Mr Vos lives just close to where I was.
22 Q. I was going to ask you, how close is Mr Vos?
23 A. It is about a 5/10 minute walk, 2 minutes in the car.
24 So I phoned Godfrey up and said: I'm probably feeling
25 a little bit paranoid but somebody is taking photographs

1 of my house. At that time I thought, you know, as
2 I said, I thought it was Specsavers because I couldn't
3 think of anyone else that would have taken photographs
4 of me and of my house and that, so Godfrey --
5 Q. Just stop there. If you just return then. Keep open
6 page 58 because it is important we get the chronology
7 right. If you return to your witness statement and what
8 you were asked about by Mr Potts. You see at 103 you
9 describe how you are in your house, so this is before
10 you have had this -- following him and all that
11 business. You are in your house, you see someone taking
12 a photograph.
13 A. Yes.
14 Q. Do you see that?
15 A. Yes.
16 Q. And then you write the words:
17 "We thought that this could be a paedophile."
18 A. Yes. That was my wife and myself, because my daughter
19 shouted: oh, Daddy, there's someone taking photographs.
20 My wife went: oh my God. So that is when we started
21 following him. But as I'm following him down the road
22 and everything and then he goes to the girls school and
23 everything, you have got all sorts of things in your
24 head, so --
25 Q. But at 104 you say:

1 "I telephoned Mr Vos."
2 A. Yes.
3 Q. So that is the call that you have just -- that called
4 Mr Vos to get -- he is at his house. So that is at that
5 stage.
6 A. Yes.
7 Q. "He saw how stressed I was and tried to calm me down by
8 telling me that it was probably someone from
9 Specsavers."
10 A. Yes.
11 Q. So you had a conversation about it being possibly or
12 probably someone from Specsavers at that stage with
13 Mr Vos --
14 A. Yes.
15 Q. -- before Mr McGowan comes back?
16 A. Yes.
17 Q. "Although the thought of it being someone from
18 Specsavers was equally upsetting."
19 As you put it there.
20 A. Yes.
21 Q. That's your evidence.
22 A. Yes, because why was someone from Specsavers coming
23 round taking photographs? Why were they infringing on
24 my privacy?
25 Q. "I told Mr Vos that I followed the man to Davison girls

1 school round the corner making me even more convinced
2 that he could be a paedophile."
3 A. Yes.
4 Q. So at that point did you have a view as to whether he
5 was a paedophile or a Specsavers person?
6 A. I was just concerned. It was like: oh my goodness.
7 Obviously I put in there, he has gone to a girls school
8 and he has taken photographs of my daughter outside my
9 house.
10 Q. Did you think he might be a Specsavers person rather
11 than a paedophile at that stage?
12 A. No.
13 Q. What about at the stage when Mr Vos has had
14 a conversation with you and has stressed --sorry, and
15 has told you, "It was probably someone from Specsavers"?
16 A. Yes, he calmed me down and made me think it was
17 the latter of the two.
18 Q. That's before Mr McGowan has returned to the car?
19 A. Yes.
20 Q. So now if we go back to page 58 and pick up the story of
21 Mr McGowan here:
22 "As he approached his car, Mr McGowan however found
23 that both Mr Weller and Mr Vos were standing in
24 a driveway ..."
25 Do you see that three paragraphs from the bottom?

1 A. Yes.
 2 Q. Do you agree that that was the position?
 3 A. Yes, it was an entrance to a block of flats.
 4 Q. "... close to where Mr McGowan's car was parked ..."
 5 A. Yes.
 6 Q. Is that right?
 7 A. Yes.
 8 Q. "... seemingly waiting for Mr McGowan to return."
 9 Were you and Mr Vos waiting for Mr McGowan to
 10 return?
 11 A. Yes, we were waiting.
 12 Q. "Mr Vos was speaking on a mobile phone ..."
 13 A. Yes.
 14 Q. Was that right?
 15 A. When he started walking down, yes, he was on the phone.
 16 Q. "... upon Mr McGowan walking to his car, Mr Weller
 17 approached Mr McGowan and asked him if he had taken
 18 a picture of his, Mr Weller's, house ..."
 19 Did you ask him that?
 20 A. Yes.
 21 Q. "... and also asked who Mr McGowan was."
 22 Did you ask him that?
 23 A. Yes.
 24 Q. Mr Potts put it to you that you didn't say to him
 25 the words, "Are you from Specsavers?"

1 A. Yes I did.
 2 Q. I want you to be clear in your evidence to the court,
 3 what questions did you ask Mr McGowan at this stage?
 4 A. I said, "Who are you, what company are you working for?"
 5 I didn't say, "Are you from Specsavers?" I asked
 6 what company he was working for and who he was.
 7 Q. Okay, according to Mr McGowan here:
 8 "Wishing to avoid any potential confrontation
 9 Mr McGowan simply declined to answer."
 10 A. That is right, he said, "I didn't" -- when I asked him
 11 if he had taken photographs he answered, "No, not me
 12 mate, no. No, I didn't."
 13 Q. What about in answer to the question, "Who are you, what
 14 company are you working to?"
 15 A. He just shook his head.
 16 Q. And he got into his car to leave?
 17 A. Mmm hmm.
 18 Q. At that stage, having spoken to him at least, did you
 19 have a view as to whether he was a paedophile or from
 20 Specsavers or some other?
 21 A. I was none the wiser, because Godfrey had obviously then
 22 said: he is probably someone -- that's why we asked
 23 the questions -- from the company. But like I said
 24 yesterday he could have put my mind easily at rest by
 25 saying he was from Specsavers, he could have said who he

1 was. He didn't have to do this bullying and horrible
 2 tactics to make me feel even more insecure than
 3 I already was.
 4 Q. So back to your witness statement at 106 you described
 5 that part of it:
 6 "He came back, we challenged him and asked him to
 7 explain who he was and what he was doing outside my
 8 house."
 9 Do you see that?
 10 A. Yes.
 11 Q. "The man refused to answer us and simply rushed into his
 12 car."
 13 That is what happened?
 14 A. Yes.
 15 Q. Then paragraph 108:
 16 "When Sussex police eventually interviewed me and
 17 Mr Vos, we told them what had happened and gave them
 18 the car's registration details with the description of
 19 the man. It was on this basis that the police traced
 20 the vehicle to Mr McGowan of Specsavers' loss prevention
 21 unit."
 22 A. Yes.
 23 Q. Now we have seen the letter from -- I took you to
 24 page 54, the letter from your solicitors that afternoon.
 25 A. Yes.

1 Q. "A white male parked his motor car, a silver Passat
 2 bearing registration number ..."
 3 Do you see that?
 4 A. Yes.
 5 Q. "... our clients have reported the incident to Sussex
 6 Police and a crime report number has been allocated to
 7 the incident."
 8 Do you see that?
 9 A. Yes.
 10 Q. My question is, by reference to 54 and paragraph 108,
 11 you have said there:
 12 "It was on this basis that the police traced
 13 the vehicle to Mr McGowan at Specsavers."
 14 A. Yes.
 15 Q. Did they tell you that that afternoon, or was that at
 16 a later time you learnt that?
 17 A. They --
 18 Q. That the car was Mr McGowan's, of Specsavers?
 19 A. It was later.
 20 Q. It was later?
 21 A. Yes.
 22 Q. So at the time when you reported the matter to your
 23 solicitors on page 54 --
 24 A. Yes.
 25 Q. -- did you know that it was Specsavers?

1 A. No.
2 Q. Did you believe it was Specsavers?
3 A. I didn't know who it was, no I couldn't say.
4 Q. You got your solicitors to write a letter to Specsavers?
5 A. Yes.
6 Q. Why?
7 A. Because -- yeah, because obviously there was a belief
8 that it could be Specsavers, yes.
9 Q. Finally on this, you were cross-examined on the basis
10 that you were totally exaggerating what happened, in
11 your evidence yesterday, and that you didn't have any
12 problem with your ankle et cetera and that there was
13 no -- indeed Mr McGowan's case was that there was not
14 even any contact with you at all and his car. You
15 stepped aside. Do you see that?
16 Can you go to page 55. The letter from your
17 solicitors. This is two days later, 6th October. Do
18 you see that letter?
19 A. Yes.
20 Q. It says second paragraph:
21 "Be that as it may, we understand that it has now
22 been established that the vehicle mentioned in our
23 report is one owned by your company and that the driver
24 of the vehicle is one of your staff by the name of
25 Tony McGowan, who was arrested by the Sussex Police

1 authorities this morning."
2 A. Yes.
3 Q. How did your solicitors obtain that information?
4 A. From myself.
5 Q. So you told them on -- you must have told them on
6 6th October?
7 A. Yes.
8 Q. It says there:
9 "Mr McGowan was arrested."
10 Mr Potts has put to you that he wasn't arrested, he
11 voluntarily went to the police station to answer
12 questions.
13 A. The police -- when they phoned me up they said that --
14 they were -- he was at the Bognor Regis store and they
15 would be going in there to arrest him at the store or if
16 they couldn't get hold of him they would track him to
17 his home address, and they said that he lived up north
18 somewhere, he didn't live down here. So they said they
19 had to track him but he would be arrested and questioned
20 and photoed and everything. That's what is I was told.
21 Q. So they didn't tell you that he had been arrested, they
22 said they were going to arrest him?
23 A. No, they said they had arrested him and taken him in.
24 Q. Okay. Then the next paragraph down:
25 "In the meantime it may concern you to note that

1 the hospital X-rays on Mr Weller's foot have confirmed a
2 very bad sprain of the ankle in consequence of
3 the impact from your vehicle as it was being driven by
4 your employee in the course of his ... a fracture of the
5 ankle had been feared. Mr Weller has been put on
6 medication by his GP to cope with his stress and tests
7 are to be carried out on him to check that he is not
8 having a recurrence ..."
9 Who gave your solicitors that information?
10 A. I did.
11 MR STUART: My Lord, I have no more questions for Mr Weller.
12 Does your Lordship have any questions?
13 MR JUSTICE HILDYARD: I have one or two rather miscellaneous
14 questions.
15 Just on the incident with the car, Mr McGowan says
16 that there was no contact between his car and you.
17 A. Yes.
18 MR JUSTICE HILDYARD: Was there contact, or was it simply
19 your fright causing to you step back?
20 A. No, there was contact with the car. With my leg. And
21 I was standing to the side and it went into the side
22 there and then I went back into the car behind.
23 MR JUSTICE HILDYARD: You fell back into the car behind?
24 A. Yes.
25 MR JUSTICE HILDYARD: Just so I get a picture, was

1 Mr McGowan's car parked between two cars?
2 A. I don't know if there was a car behind his car. No it
3 was, there was a car behind and then there was a car in
4 front, yes.
5 MR JUSTICE HILDYARD: So how did he eventually get away, as
6 it were?
7 A. He -- I stood in front, then -- he says I stepped out
8 the way, but I didn't, I fell back. And then he did a U
9 turn round and drove off.
10 MR JUSTICE HILDYARD: Right. Did he have to reverse or
11 what?
12 A. There was enough room there, so that when I fell back --
13 MR JUSTICE HILDYARD: He could get out?
14 A. He could go out.
15 MR JUSTICE HILDYARD: Okay. On a completely different
16 matter, I just wanted to make absolutely sure that
17 I understood your evidence with respect to that document
18 which a lot of time was spent on, at E2, 529.
19 A. Yes.
20 MR JUSTICE HILDYARD: You will remember that Mr Potts asked
21 you a number of questions on this because the date on it
22 demonstrates that it can't have been -- this version
23 can't have been in 2009.
24 A. Yes.
25 MR JUSTICE HILDYARD: Do you -- is it your evidence that you

1 signed an earlier version of this letter which you
2 understood to be in the same form in 2009?
3 A. Yes.
4 MR JUSTICE HILDYARD: So when you signed in 2011 you were
5 signing what you thought was a copy of an earlier
6 letter?
7 A. Yes.
8 MR JUSTICE HILDYARD: I see.
9 Right. Was it suggested to you in the course, or
10 before the interviews in the context of
11 the investigation that you should perhaps seek legal
12 advice or have a legal representative with you?
13 A. Before the investigation?
14 MR JUSTICE HILDYARD: Yes.
15 A. Yes.
16 MR JUSTICE HILDYARD: So you were given the opportunity of
17 having a solicitor or some other --
18 A. From Specsavers? No, they wouldn't allow it.
19 MR JUSTICE HILDYARD: They wouldn't allow it?
20 A. No.
21 MR JUSTICE HILDYARD: So these interviews were -- you knew
22 they were to be recorded?
23 A. Yes, but every time we asked to take legal
24 representation, as you can see through the bundles,
25 every time we threatened or said that we wanted legal

1 representation to be there with us, we were always
2 denied it.
3 MR JUSTICE HILDYARD: Yes. But it is my misunderstanding.
4 I thought you had asked for legal representation at
5 board meetings, but I hadn't understood that you had
6 asked for legal representation during the course of the
7 investigation and at the interviews.
8 A. Yes, we weren't allowed --
9 MR JUSTICE HILDYARD: You were not allowed. And was it ever
10 suggested to you that any of the documents now said to
11 be forgeries were forgeries? Was the word "forgery" put
12 to you during the course of your interviews?
13 A. Not to my recollection, no it wasn't.
14 MR JUSTICE HILDYARD: We can check the transcripts to see if
15 anyone sees other, but I didn't spot it myself.
16 MR STUART: My Lord, to be perfectly clear and fair, I think
17 it is Specsavers case that they didn't identify the fact
18 that these were forgeries until after Mr -- Mr Weller
19 only had one interview.
20 MR JUSTICE HILDYARD: Yes, right.
21 MR POTTS: It was -- the response was in the rebuttal
22 my Lord.
23 MR JUSTICE HILDYARD: Thank you, yes.
24 Yes, I think that that is it. I'm very grateful to
25 you. There may be questions following. Obviously

1 I give an opportunity to either of you to raise any
2 questions you wish to in light of what I have asked.
3 Further cross-examination by MR POTTS
4 MR POTTS: My Lord, yes. Just in relation to the point
5 about legal representation at the meeting.
6 MR JUSTICE HILDYARD: Yes.
7 MR POTTS: The suspension letter, because this was in
8 the context of employment investigation, made clear,
9 didn't it, that you could be accompanied to the
10 investigatory interview by a fellow employee within
11 the group, such as another JVP, correct? If it helps,
12 E3, 757. Sorry that's -- I think they are in identical
13 terms.
14 A. Yes, that's not legal representation though, is it?
15 Q. No, I'm just asking to you answer my question.
16 A. You could ask for a JVP to accompany you to
17 an investigatory meeting, but it is very hard to get
18 someone to accompany you to an investigatory meeting
19 because then they are going to feel threatened if they
20 have got to -- as we are going to hear when we get to
21 the Uckfield case, because she did take a JVP with her
22 and he felt very threatened since he came in, so you
23 don't want to put that kind of pressure on another JVP
24 that you don't know.
25 Q. My Lord, can I just have one moment about this?

1 Mr Weller, I think you gave the impression that you
2 had in fact asked for legal representation before
3 the interview. That's not the case at all, is it?
4 A. We knew that we weren't allowed. In my estimation, in
5 my belief we knew that we weren't allowed to take legal
6 representation. I am sure we did ask the question that
7 we want try and take legal representation because we
8 were in touch with our solicitors at the time.
9 Q. I put it to you that I don't believe you did make that
10 request to Specsavers. Do you remember one way or
11 another?
12 A. No.
13 Q. Right.
14 MR JUSTICE HILDYARD: You do not recall whether you --
15 A. No, we had solicitors at the time and we was
16 obviously -- because we knew about the Uckfield case so
17 we didn't go to the board meeting because we were not
18 allowed legal representation. And then it says, when
19 you get your suspension letter, for the grounds for it,
20 you are allowed to take another member of staff. But it
21 didn't say you could take legal representation.
22 MR JUSTICE HILDYARD: Any other questions?
23 Further re-examination by MR STUART
24 MR STUART: My Lord, I suppose just arising from exactly
25 what you have just asked and what Mr Potts has asked.

1 If you go to F1, you have it open there already I think,
 2 bundle F1, page 17-3. Do you see that?
 3 This is just to get the timescale in place here.
 4 This is Coole & Haddock can you confirm who were Coole &
 5 Haddock?
 6 A. They were our solicitors at the time.
 7 Q. So those are the ones you were referring to when you
 8 have just given those answers to his Lordship?
 9 A. Yes.
 10 Q. Just so we have the chronology, Mr Vos had been invited
 11 to his meeting on 1st July and the meeting was on
 12 5th July. That's E4, page 1046. You don't need to go
 13 to it. So his meeting was on 5th July?
 14 A. Yes.
 15 Q. Do you see that? This letter says:
 16 "We refer to your letters to our clients,
 17 Barry Weller of 11th July, and Godfrey Vos of 12th July,
 18 and respond in part on their behalf."
 19 Do you see that?
 20 A. Yes.
 21 Q. "We confirm that in relation to Barry Weller's letter he
 22 will attend the investigatory interview at 10 am on
 23 Thursday 14th July, even though you have still failed to
 24 provide the evidence relied upon at the board meeting on
 25 15th June, which we requested again on 22nd June and

1 given the restriction imposed upon him that a work
 2 colleague cannot attend, which represents a prejudice to
 3 Mr Weller."
 4 Do you see that?
 5 A. Yes.
 6 Q. So it appears that, according to this letter, you
 7 understood that even a work colleague couldn't attend --
 8 A. Yes.
 9 Q. -- your interview?
 10 A. Yes, because ...
 11 MR POTTS: My Lord, I'm sorry, the work colleague, that's in
 12 relation to work, because the suspension letter said
 13 that you shouldn't have contact from a work colleague
 14 from the store.
 15 A. Yes.
 16 MR POTTS: But you could have had someone else. I took you
 17 to that letter, it could have been someone else from
 18 Specsavers.
 19 A. Yes.
 20 MR STUART: I think Mr Potts is there referring to
 21 the letter in this bundle F1, at page 17. I think we
 22 have Dr Poulson's letter. I'm not sure we have your
 23 letter I may be wrong. Page 17, do you see it?
 24 MR POTTS: 14.
 25 MR STUART: That helps. Thank you. Quite right. Page 14.

1 This was the letter which was calling you to
 2 the investigation, do you see that?
 3 A. Yes.
 4 Q. If you go over the page to page 15, do you see that?
 5 Just near the first hole punch:
 6 "You will be required to attend an investigatory
 7 meeting ..."
 8 Do you see that?
 9 A. Yes.
 10 Q. "...interview with Mr Barnes in due course. Mr Barnes
 11 will confirm the arrangements for the interview directly
 12 with you. You may be accompanied at the investigatory
 13 interview by a fellow employee within the Specsavers
 14 group ..."
 15 A. Yes.
 16 Q. "... in the circumstances it would however be
 17 inappropriate for you to select as your companion any
 18 member of staff who may potentially be a witness to be
 19 interviewed as part of the investigation ..."
 20 Do you see that?
 21 A. Yes.
 22 Q. "... Further information on suspension investigations is
 23 set out in the partner guide to discipline, which you
 24 should already have."
 25 Do you see that?

1 A. Yes.
 2 Q. And that is then effectively how we get page 17-3:
 3 "We confirm that in relation to Barry Weller's
 4 letter, he will attend the investigatory interview ..."
 5 Do you see that?
 6 A. Yes.
 7 Q. "... given the restriction imposed upon him that a work
 8 colleague cannot attend, which represents a prejudice to
 9 Mr Weller."
 10 A. Yes.
 11 Q. So the issue of a solicitor attending with you --
 12 A. Yes.
 13 Q. Where did your understanding of the fact that you
 14 couldn't have a solicitor with you --
 15 A. Because it said in my letter that I was only allowed to
 16 take a member of Specsavers.
 17 Q. Okay. Just going down, it says:
 18 "In relation to your letter to Mr Vos of 12th July,
 19 Mr Vos will respond to the inaccuracies contained in
 20 your extract of the minutes of the investigatory
 21 interview under separate cover."
 22 Do you see that?
 23 A. Mmm hmm.
 24 Q. Mr Vos had already had his interview on 5th July.
 25 A. Yes.

1 Q. "We confirm that we hold two boxes of papers."
 2 This is Coole & Haddock now.
 3 MR JUSTICE HILDYARD: Page?
 4 MR STUART: 17-3 my Lord.
 5 MR JUSTICE HILDYARD: Yes.
 6 MR STUART: 17-3. You have the paragraph, Mr Weller?
 7 A. Yes.
 8 Q. "We confirm that we hold two boxes of papers. We do not
 9 have a list of items in those boxes and they have been
 10 left with us for safe keeping. We are instructed to
 11 release those boxes to you."
 12 It is a to Mr Stephen Moore, senior employment
 13 counsel, Specsavers. Do you see that?
 14 A. Yes.
 15 Q. "We confirm that our offices are open between 9 am and
 16 5 pm, we will require Mr Barnes to sign for those
 17 documents."
 18 Do you see that?
 19 A. Yes.
 20 Q. Who gave Coole & Haddock instructions in relation to
 21 that?
 22 A. We did.
 23 Q. By we you mean you and?
 24 A. Godfrey and Helle.
 25 MR STUART: Okay, fine. My Lord, those are the only

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1 questions on that.
 2 MR POTTS: My Lord, I just have one final question, may I?
 3 Further further cross-examination by MR POTTS
 4 MR POTTS: Just to clarify in relation to the legal advice,
 5 if you go back to 17-1, there is a letter from your
 6 solicitors dated 22nd June. Do you see that?
 7 A. Yes.
 8 MR POTTS: In fact, the position is that you were legally
 9 advised all the way back -- as early as 22nd June, is
 10 that right? And all the way through this period.
 11 A. Yes.
 12 MR STUART: Does your Lordship have any more questions of
 13 Mr Weller? He will be here throughout.
 14 A. I won't.
 15 MR STUART: Sorry, you have to leave.
 16 MR JUSTICE HILDYARD: Well Mr Weller, thank you very much.
 17 It has been a long haul, thank you very much indeed.
 18 A. Thank you.
 19 MR STUART: May he be released?
 20 MR JUSTICE HILDYARD: Yes. Would this be a reasonable time
 21 to break until 12 o'clock, if that would suit everybody?
 22 (11.50 am)
 23 (A short break)
 24 (12.00 pm)
 25 MR STUART: My Lord, I call Mr Yogaratnam. Mr Yogaratnam

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1 would you step up to the box.
 2 MR NIRUPAN YOGARATNAM (affirmed)
 3 Examination-in-chief by MR STUART
 4 MR JUSTICE HILDYARD: Mr Yogaratnam, do sit down. Help
 5 yourself to water, and if you need to break do let me
 6 know.
 7 A. Yes.
 8 MR STUART: Mr Yogaratnam, could you be passed bundle B,
 9 thank you very much. If you go inside there are some
 10 numbered tabs. If you go to tab 7. Do you have tab 7?
 11 If you look in the top right-hand corner there are some
 12 page numbers. It is 147. Do you have 147?
 13 A. Yes.
 14 Q. That's a witness statement made by you, which is signed
 15 at page 156. Do you see 156? Last page of that tab.
 16 A. Yes.
 17 Q. Can you confirm that that's your signature and that this
 18 is your evidence?
 19 A. Yes, that is my signature.
 20 Q. And this is your evidence?
 21 A. It is, yes.
 22 Q. And the contents of the statement are true?
 23 A. It is true, yes.
 24 Q. Mr Potts will have some questions for you. If you could
 25 keep your voice up as well Mr Yogaratnam.

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1 A. Yes, sure.
 2 Cross-examination by MR POTTS
 3 MR POTTS: Good afternoon.
 4 A. Good afternoon.
 5 Q. If you have your witness statement to hand. Just
 6 briefly, you are the brother of Shakila Parham, who is
 7 the claimant in the action after this, the Uckfield
 8 action?
 9 A. That is right.
 10 Q. Looking at paragraph 5 of your statement you say that
 11 the first time you undertook locum work at Bognor was in
 12 October 2007. Is that right?
 13 A. That is right.
 14 Q. And that was as an optometrist?
 15 A. That is right.
 16 Q. Then in paragraph 6 you say in 2009 that there was some
 17 difficulties for them to find employed optometrists in
 18 the area, is that right?
 19 A. That is right.
 20 Q. And you were approached about joining and you were
 21 offered employment in December 2009, is that right?
 22 A. That is right.
 23 Q. As a senior optometrist?
 24 A. That is right.
 25 Q. In fact you became a full-time employee in January 2010?

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1 A. That is right.
 2 Q. Then moving on to paragraph 10 of your statement, you
 3 refer to Dr Poulson. You say that you and Dr Poulson
 4 concentrated mainly on the testing of sight for
 5 patients?
 6 A. That is right.
 7 Q. And that you were an efficient and professionally
 8 successful testing team?
 9 A. That is right.
 10 Q. And you would have done this in the sight testing rooms,
 11 is that right?
 12 A. That is right.
 13 Q. Where were you? There are some at the back of the store
 14 and there are some upstairs, where were you based?
 15 A. I started off at the top actually in 2007 and 2008 and
 16 then I went downstairs into 2009 and went -- there was
 17 two rooms there, I was in the back room and then went to
 18 the front room.
 19 Q. Those are towards the back of the store, aren't they?
 20 A. That is right.
 21 Q. Okay. So just in terms of the process of that, we had
 22 some evidence about that from Mr Vos, about the customer
 23 journey in the store. Once you tested the sight,
 24 the customer would be picked up outside the room by one
 25 of the retail staff, is that right?

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1 A. That is right.
 2 Q. And they would take them off to do the retail -- selling
 3 of specs, all that sort of stuff. Is that right?
 4 A. Yes.
 5 Q. And you would deal with the next patient for testing, is
 6 that right?
 7 A. That is right.
 8 Q. Then another member of staff usually would come to pick
 9 up the next patient from you usually, because testing
 10 was rather quicker than doing the retail stuff?
 11 A. That is right.
 12 Q. So that's because the retail side was a bit longer than
 13 testing, so you needed to have possibly two people from
 14 retail to cover your customers as they came out?
 15 A. Yes, not all the time.
 16 Q. But was that the general system?
 17 A. That was the ideal. What tended to happen was that you
 18 would bring the patient out and then do a handover to
 19 an appropriate member of staff and find that member of
 20 staff, and then you would have time to go back and get
 21 the next patient.
 22 Q. Presumably you were spending most of your time -- as you
 23 say, you were doing the testing. You were not out on
 24 the general store, most of the time you were testing
 25 patients?

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1 A. That is right.
 2 Q. If you were not in the room you were not in much of
 3 a position to see who was coming in and out of the store
 4 whilst you were testing?
 5 A. That is right, yes.
 6 Q. Then, in paragraph 14 you say -- you refer to Mr Weller
 7 speaking frequently to Mr Vos on the telephone during
 8 the course of the day. Now, if you were spending most
 9 of your time testing patients and not on the shop
 10 floor -- Mr Weller was on the shop floor, wasn't he,
 11 doing retail?
 12 A. No, he was on the shop floor.
 13 Q. Yes, but you were in the room doing the testing?
 14 A. That is right, yeah.
 15 Q. So you would not have actually been in a position to
 16 observe what he was doing on the shop floor and who he
 17 was talking to, if you were in the room testing, would
 18 you?
 19 A. No, when I came out of the room, say 15 or 20 minutes
 20 later. So you would have these intervals where you
 21 would come out, hand the patient over, and I would often
 22 see Mr Weller on the phone and he would be having
 23 conversations.
 24 Q. I see. Moving on to paragraph 15, you refer to
 25 management meetings and you refer to attending a number

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1 of these. Do you have any recollection as to how many
 2 of those you went to?
 3 A. I think it was less -- maybe ten.
 4 Q. And you talk about them discussing -- for matters
 5 happening in the following week. I mean, these didn't
 6 actually occur on a weekly basis. You were not
 7 attending on a weekly basis, were you?
 8 A. No, but they were weekly.
 9 Q. Well, we have looked at the minutes actually and they
 10 suggest that they were perhaps somewhat more
 11 intermittent.
 12 A. Right.
 13 Q. Are you clear one way or another on that?
 14 A. No, I know that I didn't attend every single one.
 15 Q. Perhaps if you could pick up E2 please. No, I think
 16 actually your answer is sufficient for me.
 17 Go back to paragraph 16. You say that on a number
 18 of occasions you met after work at venues away from
 19 the store, such as local restaurants on a number of
 20 occasions. Any idea roughly how many occasions?
 21 A. Actually the meetings that we had, which were taking
 22 place on, say a monthly basis, were actually in a local
 23 restaurant, that was in the Swallows Inn.
 24 Q. So monthly you would meet at a restaurant?
 25 A. We would always meet at the same place, yes. And they

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1 would go much more regularly than I would attend,
 2 because basically I couldn't go on Tuesday after work.
 3 So that was always in the restaurant yeah, and
 4 the other restaurant meeting was at the China Palace,
 5 a restaurant in Worthing. But I only went there
 6 a couple of times.
 7 Q. Okay. Was this all work or was it sort of work and
 8 social?
 9 A. No, just work. There was no social there at all.
 10 Q. Then you refer to the issue of the sale of the shares,
 11 and paragraph 18 of your statement:
 12 "Purchased Mr Weller's shares."
 13 And the approach to you. You say you were
 14 approached by Dr Poulson and Mr Vos, asking if you would
 15 be interested in purchasing Mr Weller's shares?
 16 A. Yes.
 17 Q. It was not Mr Weller who approached you about the shares
 18 it was them, was it?
 19 A. Actually what happened was that some time earlier in
 20 2008 we all went to a restaurant and they wanted to talk
 21 about me coming on board, and then we did talk about me
 22 buying some shares, a small amount of shares. I think
 23 it was 10 per cent, and would I be interested in that.
 24 Q. Did they discuss from whom you would be buying them?
 25 A. Yes, I think I would be buying them, 5 per cent from

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1 Helle and 5 from Barry. So -- and it was always in
 2 the pipeline that I would possibly come on board to
 3 purchase the shares. So when Dr Poulson and Mr Vos
 4 approached me to buy the shares in August, there was
 5 a conversation that had been going on for some time.
 6 Q. Yes I see. Then paragraph 20 you said that you would be
 7 interested in purchasing shares. This was in
 8 August/September 2010, correct?
 9 A. That is right.
 10 Q. Did you tell them that straightaway?
 11 A. That I would -- actually --
 12 Q. When they approached you was it fairly immediate? If
 13 you look at paragraph 20 it appears to be that it was
 14 fairly shortly after that approach?
 15 A. Yes, I mean it was always in the pipeline. So we were
 16 having that conversation for some time. Firstly, as
 17 I said, it was 10 per cent of the shares and then it was
 18 getting to the position where it was going to be to buy
 19 the 40 per cent of Barry's shares.
 20 Q. This was a rather different sort of transaction.
 21 A. It had gone up a bit. I think I had said I wasn't
 22 interested in just 10 per cent.
 23 Q. So the earlier discussion was about a 5 and 5?
 24 A. Yes, and it was -- basically it was not worth it.
 25 I didn't think it was a good deal.

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1 Q. You weren't interested?
 2 A. Yes, it was too little and then, as time progressed, it
 3 was a bigger share amount, which was much more amenable
 4 to what I wanted.
 5 Q. So the first stage was the 5/5, 10 per cent. Then in
 6 August/September 2010 is the sale of the full
 7 40 per cent, but only from Mr Weller?
 8 A. That is right.
 9 Q. According to Dr Poulson you were enthusiastic about that
 10 proposal, is that right?
 11 A. Yes, I was enthusiastic about that. That was a better
 12 deal, yes.
 13 Q. If we go back to -- could you pick up please E4. At
 14 1040 just to give you the context of this. This was
 15 the interview, 1038 was the start of the interview --
 16 A. Yes.
 17 Q. -- which you had. At 1040, lines -- you were asked
 18 about -- I think there was discussion about Kumar(?) at
 19 Crawley?
 20 A. Yes.
 21 Q. And then at 92 you said you hadn't been in touch and
 22 there was a reference to Helle being in touch with Kumar
 23 if he wanted to buy the business. Then you said:
 24 "Helle and Godfrey have been offering me Barry's
 25 shares since I became employed so I was mildly surprised

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1 but not shocked. I have never really asked for
 2 the shares, but they have been grooming me to take them.
 3 I haven't spoken to Kumar for about a month."
 4 You first became employed, as we discussed, in late
 5 December/early January 2010?
 6 A. Yes.
 7 Q. So quite a long time earlier. About six months before
 8 the offer of Mr Weller's shares, which is August and
 9 September?
 10 A. Yes.
 11 Q. And is this a sort of slight conflation of the two
 12 points. The fact is there had been an earlier
 13 discussion, not about buying Mr Weller's shares but
 14 about buying a smaller stake from each of them?
 15 A. Yes, I mean the actual issue is that that part of the
 16 world, Bognor, has difficulty getting optoms, and
 17 especially optoms that want to stay and work in
 18 that environment. So initially I wasn't surprised they
 19 wanted to keep me on board and sell me a small amount of
 20 the shares. So that conversation had been going on for
 21 some time, as I said.
 22 When we got to this part when they said: look, we
 23 have always been talking about shares -- and it was
 24 always -- in the optom's case it was always a case of,
 25 you know, I wanted to see what kind of a good deal

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1 I could get; if it was a good business proposition.
 2 Q. Just going back to the point. The point is that in
 3 the interview you have been talking about, you were
 4 saying that they had been offering you Barry's shares
 5 since you became employed. I think your earlier answer
 6 to his Lordship was that at the initial stage the offer
 7 of shares wasn't Barry's shares, it was a small share,
 8 part of each of Barry's and Dr Poulson's shares. It
 9 wasn't just Barry's shares?
 10 A. Yes, that's how I understand it.
 11 Q. So there is a slight conflation of the two stages in
 12 your statement.
 13 A. Yes, that is right. I think in that room I had
 14 basically -- they had come in on the 16th. That was on
 15 the 30th. So 15 days later. And actually in between
 16 then I had been put under a little bit of pressure so
 17 that -- so, you know, when I went into that room, there
 18 might have been some things that are slightly inaccurate
 19 said.
 20 Q. It is not particularly an inaccuracy. I'm not trying to
 21 say this is a problem, I'm just trying to get clarity as
 22 to what you were saying. The point is there were two
 23 stages. The first stage is the 5 and 5?
 24 A. Yes.
 25 Q. The second stage is the 40 per cent of Mr Weller, yes?

1 A. That is right.
 2 Q. Then, paragraph 23 of your witness statement. You were
 3 told by Mr Vos at that time that you would need to pass
 4 the Specsavers stage 1 programme. That was a programme
 5 for the admittance and checking suitability of the joint
 6 venture partners, wasn't it?
 7 A. Yes.
 8 Q. This was before the approach had been made to Specsavers
 9 about the sale of Mr Weller's shares. That was in
 10 January, it was a little bit later, you were talking
 11 about it internally first?
 12 A. That is right, yes.
 13 Q. You said you found it odd, were you aware Mr Weller had
 14 done this prior to acquiring his shares, even though he
 15 had been working at other Specsavers stores for a long
 16 time?
 17 A. No, I only found it odd because in 1999 they gave me
 18 a store. I was an approved partner. I only had to say
 19 "yes" and I would have had Hove, which is quite near
 20 Brighton and Worthing, where I live.
 21 I had spoken to Chris Howarth a few times, so I was
 22 unsure whether I would have to go through the whole
 23 process again, but what I was aware of was that
 24 basically subtly -- somewhere around 2008, Specsavers
 25 had changed things and they now required partners to go

1 through a few more rigorous appraisals to be approved
 2 and that was even partners who had been approved before.
 3 Q. Going back a little bit earlier, say 2005. Mr Weller
 4 had been working for Specsavers and had been a manager
 5 for a good few years. He was required to do the stage 1
 6 as well, wasn't he?
 7 A. Everyone is.
 8 Q. You talk about the change being in 2008 --
 9 A. I didn't know what it was. I didn't -- I'm not
 10 delineating it -- I thought it was because of the crash,
 11 you know, because the economy had changed and Specsavers
 12 were getting a bit tighter on how they would employ --
 13 or what they were going to do to partners. I put it
 14 then but it might have been 2004. I did know that in
 15 1999 they had given me a store.
 16 Q. 1999, you say the position was easier, you said there
 17 was a change --
 18 A. They said you have to go and do a different programme.
 19 I did go through a programme in 1999, but it was just
 20 an interview with Tim Moyles and other persons for half
 21 an hour and it wasn't strict.
 22 Q. You say in paragraph 15 that you eventually did
 23 the programme, you passed the programme. In fact you
 24 had to have a couple of goes at this, is it that right?
 25 A. Just the one.

1 Q. Didn't you fail the course the first time?
 2 A. Yeah, basically I had to catch -- I was told that
 3 there's going to be an interview and you will have to
 4 present a case study and so I caught -- I'm wondering
 5 where it was, they said it was quite far away so I had
 6 to catch a plane to get there because it was quite early
 7 in the morning. I did the interview and we discussed my
 8 experience and how many years I had been in optics and
 9 the rest of it, and then we got to a little section at
 10 the end where I had to identify who was
 11 the underperforming person in the store. And it was
 12 pretty easy to identify who that person was and they
 13 said, "What would you do?" And I said obviously I would
 14 move that person and take someone else on and then I was
 15 told two weeks later that I had failed and I had to go
 16 to a course, my Lord.
 17 Q. So did you go and do the second course?
 18 A. Yes, in my mind I thought actually they said the course
 19 was going to be a week. It was going to be in a hotel
 20 and I would have to pay for it and so I went along
 21 because that was the only thing I could do and
 22 the course was pretty -- quite basic really. It was
 23 really reinforcing Specsavers' values and it was more
 24 team building and building -- it wasn't really
 25 autonomous kind of business ideas, it was just: this is

1 the way we do it. And this is the way you have got to
 2 do. The questions -- some of them were, you know, if
 3 you had to get your staff to, you know, move some boxes,
 4 how would you make them feel really enthusiastic about
 5 it.
 6 Q. So about team building and the Specsavers ethos --
 7 A. That is right.
 8 Q. In fact I think the way it works is you do the stage 1
 9 and then there is a pool of people who can apply for
 10 stores as they come up?
 11 A. That is right.
 12 Q. Paragraph 29 you say that you were surprised about
 13 the desire to have a retailer to replace Mr Weller
 14 rather than an optometrist. In your statement.
 15 A. Yes.
 16 Q. You refer in paragraph 29 to, "Comprehensive experience
 17 of the retail side." Gained at Vision Express, where
 18 you were a partner, back in 1999, with your wife. Is
 19 that right?
 20 A. That is right.
 21 Q. Go back to paragraph 3 of your statement, you refer to
 22 that Vision Express. That was in Worthing?
 23 A. That is right.
 24 Q. Were you a competition to the Worthing store for
 25 Specsavers at that time?

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1 A. That is right, yes.
 2 Q. You say there that:
 3 "I was responsible for the testing of sight of
 4 patients ..."
 5 And the -- your wife was responsible for
 6 the management of dispensing and sales.
 7 Is that right? That's what you say in your
 8 statement.
 9 A. Yes, that is right.
 10 Q. Your wife's role as described there, that is more of the
 11 retailer's side of the things, isn't it?
 12 A. Actually my Lord, what happened was that my wife -- we
 13 have got two children and my youngest daughter was born
 14 in January 1999, so my wife actually wasn't really in
 15 the store. I was actually running the store basically
 16 while she was looking after the children. She was only
 17 working part-time.
 18 Q. I see. It is not quite what you say in your statement,
 19 is it, at paragraph 3?
 20 A. That is right, I was just reiterating the point. I was
 21 doing the retail side.
 22 Q. You say in your statement:
 23 "I was responsible for testing of sight and my wife
 24 was responsible for the management of dispensing and
 25 sales. Together we were responsible for administration,

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1 financial duties and general management."
 2 You are saying in fact that's not accurate?
 3 A. Not 100 per cent accurate. It is accurate in the sense
 4 that she was doing those things, but she wasn't doing
 5 them on a full-time basis.
 6 Q. I see. Going back to paragraph 32 of your statement.
 7 You talk about the proposal in relation to Mr Weller's
 8 shares and the idea of coming to some kind of
 9 compromise. Because they were not very keen, they
 10 wanted -- I think you were shown some correspondence at
 11 the time, they were not convinced about the idea of
 12 having two optometrists. Is that right? Do you
 13 remember that on the correspondence?
 14 A. That was SOG, you mean?
 15 Q. Yes, SOG.
 16 A. I didn't actually have any correspondence with them at
 17 all. I was getting this information from Mr Vos and
 18 Dr Poulson.
 19 Q. Well, if you -- sorry yes. You weren't, but you saw
 20 the correspondence?
 21 A. That is right.
 22 Q. Fine. So you knew what was going on back and forth with
 23 them?
 24 A. That is right, yes.
 25 Q. In paragraph 32 you refer to a compromise with

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1 Specsavers, which would include you purchasing one third
 2 of the shares from Dr Poulsen and Mr Weller so there
 3 would be one third each, and Mr Weller remaining
 4 a partner until your wife had worked in the store for
 5 a while and passed her stage 1.
 6 A. That is right.
 7 Q. It says Mr Vos made arrangements for her to start as
 8 a locum optical assistant in the store. That would be
 9 doing retail?
 10 A. That is right. The children being older now.
 11 Q. So the idea was she would come in, pass her exams, she
 12 would then replace Mr Weller. Is that right? So
 13 the long-term plan is she would be the retail director,
 14 you would be the optical director?
 15 A. That is right, yes.
 16 Q. You say here that she would need to pass her stage 1?
 17 A. Yes.
 18 Q. I mean, didn't that seem odd to you that she had to pass
 19 that exam? You say she had been a retail director at
 20 Vision Express?
 21 A. Yeah, but she had not been offered shares with
 22 Specsavers --
 23 Q. I see?
 24 A. -- the same what I did.
 25 Q. Back in 1999?

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1 A. Back in 1999 I was offered a store. Actually I was
 2 offered a few stores then.
 3 Q. Now, the proposal of the three way split. Did that
 4 change because you actually wanted to have 40 per cent?
 5 Do you remember the discussion about 40 per cent?
 6 Rather than a third/a third/a third it was actually
 7 slightly different percentages. Do you remember
 8 a discussion about that?
 9 A. No, from my understanding it was just a question of --
 10 they were saying that they were unwilling for basically
 11 two options to be partners, and so that's where
 12 the compromise was, that it would be a third/a third/a
 13 third until Helle came on board and took the retail
 14 shares.
 15 Q. Sorry, I'm moving on from that. There was a discussion
 16 about the third/third/third. Do you remember that
 17 proposal also progressed but there was also discussion
 18 about slightly different percentages? A three way split
 19 not third/third/third, but with you having 40 per cent.
 20 Do you remember that discussion?
 21 A. No.
 22 Q. Could I ask you to take E4?
 23 A. Yeah, sure.
 24 Q. If it could be passed to you. Do you have it?
 25 A. I have got E4, yeah.

1 Q. If you could go to 905.
 2 A. 905?
 3 Q. Page 905. E4, do you have that?
 4 A. Yes.
 5 Q. Page 905, the numbering is on the top right-hand side.
 6 A. 905, yes. Yes.
 7 Q. Now, do you want to -- would it help maybe to have
 8 a quick look at that document? It is an email from
 9 Mr Ryan to Mr Raines of Specsavers.
 10 A. Yeah, I have got that.
 11 Q. I don't know if this refreshes your memory but what she
 12 says is -- obviously Specsavers still wanted to have
 13 a retailer transfer. They are still discussing
 14 the three way split. But she is saying that you wanted
 15 to have 40 per cent and so she's asking: can we do
 16 the same structure but on a slightly different
 17 percentages? Does that refresh your memory?
 18 A. Yeah.
 19 Q. And she says that she will go back -- this was your --
 20 you wanted to have a slightly different percentage and
 21 she was going to go back and discuss it with you. She
 22 says that in the fourth paragraph down:
 23 "The other parties..."
 24 I think that would include you, would it?
 25 A. That is right, yes.

1 Q. Do you remember having that discussion?
 2 A. I do vaguely, yes.
 3 Q. This email also refers to her conversation being in
 4 response to a letter from Mr Ryan. Do you see that at
 5 the top of the page?
 6 A. Yes.
 7 Q. That letter talks about:
 8 "It is my letter suggesting that she consider
 9 selling some of her shares so that we can have a second
 10 00, a third each".
 11 So that is a reference to a three-way split. Do you
 12 see that? It is 905. I will take you back to the
 13 letter in a second.
 14 A. Yes.
 15 Q. Do you have 905?
 16 A. I have got 905.
 17 Q. At the top of the page there is a reference to a letter.
 18 If you go back please to 887.
 19 A. In the same binder?
 20 Q. Same bundle, yes. Now this is a letter from Mr Ryan, of
 21 19th April, to Dr Poulson and Mr Weller. Do you want to
 22 give it a quick look over?
 23 A. Right.
 24 Q. Do you think you might have seen this letter at the
 25 time? Not sent to you obviously. You said you were

1 shown documents --
 2 A. Yes, I was possibly shown it.
 3 Q. This refers to a meeting with Mr Rowe on 17th March,
 4 yes?
 5 A. Yes.
 6 Q. At that meeting she had -- Dr Poulson indicated
 7 an intention to return to medical practice within
 8 the next two years.
 9 A. Right.
 10 Q. It goes on to suggest that -- if you see that there's
 11 a suggestion, in fact, from Specsavers that they would
 12 like to explore the idea of a three-partner structure.
 13 Do you see that?
 14 A. Yes.
 15 Q. It suggests, in fact, that the idea of the three-way
 16 split from Specsavers came from them rather than
 17 Dr Poulson and Mr Weller. Does that accord with your
 18 recollection, looking at this letter?
 19 A. I can't recollect whether they said they proposed
 20 a three-way split or Specsavers proposed a three-way
 21 split. I can't directly remember that.
 22 Q. Okay.
 23 A. At the time actually my Lord I was thinking really what
 24 I wanted to do was get 50 per cent. I was actually --
 25 this was all a flux. All I wanted really was to get

1 50 per cent ideally. So I was just really just
2 bartering a bit. This was happening pretty fluidly.
3 Q. But the chronology is that the initial proposal was just
4 Barry to come out. We have seen that?
5 A. Yes.
6 Q. Then on 19th April this letter suggests --
7 A. Actually, I was actually asking for 40 per cent of
8 Barry's shares and 10 per cent of Helle's shares;
9 50 per cent, so I would be an equal partner with Helle.
10 Actually -- so that was my -- that's what I was aiming
11 for.
12 Q. That was what you were aiming for?
13 A. Yes, and actually I didn't have all my cards on the
14 table at this time. So I was just waiting for the deal
15 basically.
16 Q. That's very fair. I'm trying to explore just how this
17 developed. What I'm putting to you is that the initial
18 proposal which they made in January, which you were
19 obviously involved in, in the background as
20 the potential purchaser, was for Mr Weller to sell.
21 That is what they proposed?
22 A. Yes.
23 Q. You see from this letter that by 19th April, having had
24 the meeting on 17th March, Specsavers come back with
25 this proposal of a three-way split, one third/one

1 third/one third?
2 A. Yes.
3 Q. Then I have taken you back -- so I took you to the later
4 document which is at 905, which is on 10th May, which is
5 consistent with what you have just said to his Lordship,
6 which was that actually you were angling for a slightly
7 higher percentage than a third, and you said: well no,
8 I'm only interested if I can have 40 per cent. And then
9 the discussion is -- in fact, what they are saying is --
10 A. Actually, like I said I was actually after 50 per cent.
11 That is what I said to Helle, yes. And I was going to
12 try to drive the price down.
13 Q. Okay, that's fine. That's the chronology. But do you
14 accept that that's -- do you think -- do you accept that
15 is a fair summary of the chronology as to how that
16 developed? Maybe in your own mind you had an idea of
17 a higher percentage. But the back and forth, do you
18 accept that?
19 A. I accept that, yes.
20 Q. Going back to your statement in paragraph 32 we were
21 discussing the compromise of a third each. Do you see
22 that, going way back to this idea of the three-way
23 split?
24 A. Yes.
25 Q. Then in paragraph 33 you say:

1 "I understand that no reply was ever received from
2 Specsavers to this proposal."
3 Now, I have just taken you through some
4 correspondence which has refreshed your memory I think.
5 In fact, it wasn't just one third/one third/one third,
6 there were subsequent discussions, weren't there, that
7 we just looked at?
8 A. Yes.
9 Q. When you say no reply was ever received, in fact
10 the proposal was evolving --
11 A. That is right.
12 Q. -- with Specsavers having involvement, and indeed they
13 had proposed the one third/one third/one third
14 initially?
15 A. Right.
16 Q. Is that fair?
17 A. That's fair, yes.
18 Q. In paragraph 39 you express -- you are moving on to
19 questions about Mr Vos' remuneration and you said you
20 considered his remuneration to be reasonable.
21 In the year January 2010 to May 2011 Mr Vos received
22 £74,000 odd by way of salary and bonuses. Now
23 Mr Weller, who was the retail director, received £59,000
24 including salary and bonuses.
25 Now -- I'm sorry not January, I mean June. It is

1 the year. June 2010 to May 2011. I'm sorry if
2 I misspoke. £74,000 as against £59,000.
3 I'm assuming you won't have been happy to replace
4 Mr Weller as retail director at that level of salary
5 when Mr Vos was receiving substantially more, would you,
6 if you were coming into the business?
7 A. Actually I had the 2010 accounts. So that is
8 the accounts I had. I didn't have 2011 accounts. So
9 I had bottom line figures for January and February.
10 Q. So you weren't aware of the figures for the subsequent
11 period?
12 A. No, I was aware of what Mr Vos' remuneration was but
13 there was an element of overtime in there as well.
14 Q. And bonuses as well?
15 A. That is right, and that hadn't been totally clear at the
16 end of 2011, I only had 2010's accounts.
17 Q. Was the position clear as to Mr Weller's salary?
18 A. I think I was fairly clear on his. So the accounts
19 I had was up until around about January 2011.
20 Q. I see. Can I move on to paragraph 40. You refer to
21 Mr Ferguson --
22 A. Yes.
23 Q. -- and you say the store was kept in an immaculate
24 state. How often did you see Mr Ferguson in store?
25 Because we have discussed the point that you spent most

1 of your day testing. How often did you actually see him
2 in store?
3 A. I couldn't really say. I mean he was a chap who --
4 I didn't know who he was really. He had a builder's
5 kind of outfit on. I would meet him upstairs doing some
6 painting, or on the roof but I couldn't really say
7 exactly how often I saw him. I do know that every so
8 often there will be bits done in the night time, you
9 know in the evening we had gone home and there would be
10 a new kind of bit of furniture put up, or bits and
11 pieces put together. So I was just assuming that
12 the handyman was coming round doing things regularly,
13 but I couldn't say exactly how often.
14 Q. Okay. Paragraph 42, which is the -- dealing with the
15 time of the suspension. You say that -- you appreciate
16 Specsavers weren't interested in the alternative
17 proposals which are being discussed, which we talked
18 about?
19 A. Yes.
20 Q. In fact, discussions -- you continued to have
21 discussions about purchasing the shares thereafter,
22 didn't you?
23 A. That is right, yes.
24 Q. Looking at paragraph 49 on that point you say that
25 Specsavers approached you in 2011, that was after they

1 had resigned -- the claimants had resigned, is that
2 right?
3 A. That is right, yes.
4 Q. You say that they continued to discuss the one third/one
5 third/one third with you. That sort of three-way split
6 proposal. Is that correct? In this case with one third
7 by you as the optical director, a third going to
8 a retail director and a remaining third held by
9 Specsavers, correct?
10 A. That is right, yes.
11 Q. So the purpose of this was for you to replace
12 the optometrist, someone else to replace Mr Weller?
13 A. Yes.
14 Q. That was in fact something which didn't change. That
15 was something which was consistent throughout
16 the discussions?
17 A. Not really, because they were now proposing that not
18 only do we have an optom, myself, a retailer but they
19 would have this ghost invisible person, which was them.
20 But that's almost worst, isn't it? At least you had
21 two optoms and a retailer. Now you have an optom and
22 a retailer, and they would take a third of the profit
23 and not be there. That was a different offer.
24 Q. The point I was putting to you was that the position for
25 Specsavers, which was consistent throughout, was that

1 Mr Weller would be replaced by a retailer and that you
2 would have the role as an optometrist, as the optical
3 director throughout?
4 A. That is right, yes.
5 Q. Now the discussions continued on that basis, then in
6 fact do you remember a Mr West being proposed --
7 A. Jonathan West, yes.
8 Q. In fact, that transaction continued to be discussed
9 through into 2012, I think; is that right?
10 A. That is right.
11 Q. In fact, sort of in April you were sent draft completion
12 documents on that?
13 A. That is right.
14 Q. Now you didn't proceed with the transaction in the end
15 and Mr West came in as the retail director in
16 June 2012 -- at the end of June 2012, is that right?
17 A. That is right.
18 Q. Now you would have been aware of this, because in fact
19 you were still working at the store at that time, is
20 that right?
21 A. Yes.
22 Q. And in fact in October 2012 an optician JVP, is it
23 Mr Samir Budev(?)?
24 A. That is right.
25 Q. He acquired a third of the shares as the optician joint

1 venture partner, is that right?
2 A. That is right.
3 Q. At paragraph 50 you say that in relation to
4 the discussions about you taking over -- acquiring
5 shares, which you didn't proceed with, was that because,
6 as you discussed earlier, that you wanted to have
7 a higher percentage -- was that --
8 A. That was exactly it, yes. I was still negotiating right
9 until the end.
10 Q. But the negotiation unfortunately didn't go your way?
11 A. Yes, it wasn't going my way. They weren't going to
12 budge on it. In fact it was a different deal altogether
13 yes. So I thought -- yeah.
14 Q. Okay no, that's fine. You say that -- you thought that
15 it was said that your position might become untenable.
16 You refer to "they" in this paragraph. But you don't
17 mention who "they" is?
18 A. That was Simon Williams on the phone. Jonathan told me
19 that. Because what they said to me, they said -- have
20 a meeting with a potential partner, you and he are going
21 to be business partners so you better get to know each
22 other. So we sat down and we had a drink in the
23 Swallows Inn, which is just around the corner.
24 Q. That is Mr West, is it?
25 A. Yes. And we had that conversation and he was --

1 the question was if you don't take this offer Niru, your
 2 job is pretty much untenable on the salary that you are
 3 getting.
 4 And Simon Williams had that phone call with me as
 5 well.
 6 Q. You don't mention his name in your witness statement.
 7 Is there a reason for that?
 8 A. What, Jonathan or Simon?
 9 Q. You say that:
 10 "They made the offer. If I don't accept it, my
 11 continued employment might become untenable".
 12 Are you suggest some kind of impropriety here?
 13 A. Not at all. It was obvious that when we went through
 14 the stages we look at the salaries and we look at
 15 performance and we look at where we would save money in
 16 the business, and with Specsavers the number one thing
 17 is to control your labour costs. So if you have got
 18 high labour costs -- because there was very few other
 19 things you could change, other than just turnover
 20 because occupancy cost was the same and Specsavers were
 21 charging the same amount for their products. There was
 22 actually nothing else you can do unless control your
 23 labour. So your ideal Specsavers partner would have
 24 a labour cost of 25 per cent, and if it was 33 per cent
 25 then that's where you were saving.

1 Q. The point is, you are saying, if the new partners came
 2 in, the amount -- for example, the costs for you, which
 3 were quite high, wouldn't fit with the business model?
 4 A. That is right, yes.
 5 Q. In fact you did actually continue working at the store,
 6 didn't you, until April of this year?
 7 A. Yes, well I had a three-month notice period.
 8 Q. You gave your notice?
 9 A. I gave my notice.
 10 Q. In fact 17 months later -- after this in fact?
 11 A. No, actually the deal is -- the final -- I couldn't get
 12 them to budge, which was round about October -- no
 13 summer 2012.
 14 Q. Summer 2012?
 15 A. Yeah, that is right.
 16 Q. But you carried on until April 2013?
 17 A. When did the optom director come in? Was it October?
 18 Samir came in October I think. Then he sat me down and
 19 said: what are you going to do Niru? And I said I will
 20 probably leave. I said it is ideal if I leave so
 21 that -- if I can go around 4th April it would be good
 22 for the tax year, so I wouldn't have to fill in
 23 a self-employed form. And that was my -- that is what
 24 we agreed and he said: fine, yeah.
 25 Q. I see. Where do you work now?

1 A. For Vision Express.
 2 Q. Right.
 3 A. It's back. There's not many people who employ opticians
 4 really. I think there was only about one, Specsavers.
 5 I'm joking, there is a few yeah.
 6 Q. Just in paragraph 44 you refer to your interview when
 7 you were asked about Mr Vos. Can I take you back to E4,
 8 1038, which was your interview. You had a discussion
 9 with Zoe Smith. If you look at the start, it took
 10 a little less than an hour. Do you remember that?
 11 A. Yes.
 12 Q. At 1038, line 35, you say:
 13 "Godfrey does everything."
 14 Do you see that? It is referring to a document
 15 about your salary.
 16 A. What line is that?
 17 Q. Sorry, towards the bottom of the page. If you start at
 18 like 28 and go down to the bottom of the page.
 19 A. All right, yeah.
 20 Q. In this context, you say -- when you gave that response
 21 you say they appeared to lose interest in your
 22 testimony?
 23 A. Yes.
 24 Q. The first point is that this discussion was actually
 25 a specific -- it was a specific point when you were

1 being asked about employment issues and about who
 2 provided you with your contract. So the reference to
 3 everything was in the context of employment matters
 4 wasn't it? That was the context of this discussion.
 5 A. That is right, yeah. But I think it did have a larger
 6 meaning actually. It did have a meaning about who does
 7 everything in the whole store, who runs the whole thing;
 8 it had a double meaning. So I think I was referring to
 9 the fact that it wasn't just this contract, it was about
 10 who runs pretty much the operation, who was actually in
 11 charge of it all.
 12 Q. I see. Then in terms of the point about the idea of
 13 losing interest in your testimony. This was on
 14 the first page of your interview. It is about a third
 15 of the way in. The discussion in fact continued, you
 16 can see, certainly for another two pages. So, if it is
 17 20 minutes a page, for another 40 minutes or something
 18 after that. It didn't bring the interview to a close,
 19 did it?
 20 A. Actually, I think after then they told me to go and get
 21 my contract because they didn't have any of the
 22 contracts for some reason, and so they asked me to get
 23 the contracts. I went out and got the contract and
 24 brought it back and then we just talked about
 25 the contracts.

1 Q. I see, but there was another --
 2 A. I had to get that contract, yeah.
 3 Q. And there was another two pages of interview that
 4 followed on afterwards?
 5 A. Yes, it didn't seem that long though.
 6 Q. Where did you get the contract from?
 7 A. I had it in my bag, I knew that they wanted to look at
 8 it.
 9 MR POTTS: Mr Yogaratnam, you make a number of comments
 10 towards the end of your statement about alleged
 11 difficulties in the store following the suspension of
 12 the claimants and Mr Vos. Now, just for the record
 13 I don't accept the accuracy of the points you make, but
 14 I'm not going to be asking you questions about those
 15 because I don't consider that they are relevant for
 16 the matters before the court.
 17 I have no further questions my Lord.
 18 Re-examination by MR STUART
 19 MR STUART: Mr Yogaratnam, I have very few questions for
 20 you. You mentioned the management meetings.
 21 A. Yes.
 22 Q. I just wanted to get clear what you are saying about
 23 that. You initially said they were weekly. You then
 24 said, "I did not attend every single one". You then
 25 referred to meetings at the Swallows Inn?

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1 A. That is right.
 2 Q. Then you mentioned the word "monthly" at one point as
 3 well. I just want to get it clear. How regular were
 4 there management meetings, whether you were in
 5 attendance or not, how regular were those?
 6 A. I was under the impression that they were weekly.
 7 Q. If you weren't there, who would attend --
 8 A. There was Helle, Godfrey, Barry, Alan and Sarah Scott.
 9 Q. Okay. You then, if you didn't attend every week, how
 10 often did you attend those meetings?
 11 A. Maybe once a month.
 12 Q. Would you be invited or would you be --
 13 A. I was always told to go, yes. I said if I could go, go,
 14 and get involved with what's going on in the business.
 15 Q. Okay. Moving swiftly on, you were taken to this
 16 interview, E4, 308. I think you may still have it open
 17 so we can deal with it swiftly.
 18 Do you see that? E4, page 1038, your interview?
 19 A. Yes.
 20 Q. When you were first taken to it in cross-examination,
 21 you said:
 22 "Actually I had been put under pressure."
 23 A. Yes.
 24 Q. Who had put you under pressure?
 25 A. What had happened was that basically the team had come

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1 on on the 16th.
 2 Q. Team from?
 3 A. Loss prevention. They came into the store and obviously
 4 there was a lot of confusion going on, and I was testing
 5 and I was doing a large amount of tests, because they
 6 had employed an optom who -- they employed another
 7 optician, my Lord, who basically wasn't able to cope, he
 8 was new. So I was working pretty hard.
 9 Then a couple -- a week later I was under
 10 investigation. So there was a lot of pressure. That
 11 investigation involved a patient complaint about
 12 a referral that I had done. I had referred the patient
 13 and she was upset because she thought that the referral
 14 was inappropriate. And so there was that -- and
 15 the loss prevention team didn't really speak to me at
 16 all for that 15-day period of time. Not at all. It was
 17 only after that that I went in. So I don't --
 18 Q. You went into this meeting, is that what you are talking
 19 about?
 20 A. Yes, that is right. What happened was I had a day off
 21 and then I was told that on that day off they had
 22 interviewed this patient who had made this complaint
 23 about the referral. In my mind I was thinking: actually
 24 I'm under a lot of pressure here, because, you know,
 25 they are investigating patients that we have seen and

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1 maybe that I was under a lot of scrutiny, yeah. So then
 2 I had that meeting on the 30th.
 3 Q. That's this one here, 1038 meeting?
 4 A. That is right, that was 15 days later.
 5 Q. You were asked just latterly about the time of the
 6 meeting. It seems -- the record shows it lasted
 7 55 minutes. Do you see that?
 8 A. Yes.
 9 Q. 126 to 221?
 10 A. Yes.
 11 Q. You say now that you -- you left the meeting for a short
 12 while to go and find a copy of the contract of
 13 employment, is that right?
 14 A. That is right, yeah.
 15 Q. The first line of the -- of this record, this computer
 16 record says:
 17 "Q: ZS discussed summary of investigation."
 18 Do you see that?
 19 A. Yes.
 20 Q. Do you recall the meeting?
 21 A. Yes, vaguely. Not lucidly, no.
 22 Q. Do you know how much time was spent on that?
 23 A. On the DS, you mean?
 24 Q. On ZS, that is Zoe Smith, I think we can assume, who is
 25 said to be senior audit consultant. Do you see the note

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1 there?
 2 A. Yes.
 3 Q. So:
 4 " ... discussed summary of the investigation".
 5 So they don't then set all that out here. That is
 6 just a note.
 7 A. Right.
 8 Q. How much of the time of the meeting was spent on
 9 Zoe Smith discussing a summary of the investigation?
 10 A. I'm not too sure.
 11 Q. You can't remember --
 12 A. I can't -- I can't say for sure.
 13 Q. You have signed at the bottom of each of these three
 14 pages.
 15 A. That is right.
 16 Q. So Zoe Smith provided you with this at the time or
 17 later?
 18 A. No, I think later.
 19 Q. Later?
 20 A. Yes.
 21 Q. Thank you. You were asked about your wife. It was
 22 pointed out to you that, at your previous store, you
 23 were the optometrist and your wife was responsible for
 24 the retail side of things, and you explained about
 25 your -- she was off on maternity leave at some point and

1 then part-time et cetera?
 2 A. Yes.
 3 Q. Were Specsavers aware of your wife's reduced involvement
 4 as you described it to Mr Potts? Is that she was only
 5 part-time?
 6 A. Yes, I think I had mentioned to him, yes.
 7 Is this in this -- yeah?
 8 Q. You gave evidence that, although your wife was
 9 responsible for the retail side and you were responsible
 10 for the optometrist side, do you remember? You had then
 11 given evidence -- Mr Potts cross-examined you about
 12 the fact that you had said that actually, from a certain
 13 point in time she had two children, she wasn't in this
 14 store for a period of time and then when she did return
 15 to the store she was only part-time.
 16 A. That is right, yes.
 17 Q. And that you were therefore taking over her role in
 18 the store on the occasions when she was not there. Do
 19 you see?
 20 A. Yes.
 21 Q. My question is were Specsavers aware that you had taken
 22 over her role when she was --
 23 A. No, I don't think they were, no. Not recently. No.
 24 I was referring to timeframes so -- I think I had
 25 conversations with Chris Howarth before I got to Bognor

1 about a store, another store. This is in 2007. And
 2 that was to take Chichester on. And Chichester was
 3 going to be two optoms, because Mike Redhead was
 4 the retiring retailer, and when I was working there he
 5 would often be upstairs asleep, so I thought it would be
 6 a good idea if the two optoms came in and the young
 7 optom who was there thought it was a brilliant idea --
 8 Q. To be clear, is that two optoms and a retailer?
 9 A. No, just two optom directors.
 10 Q. No retail director?
 11 A. Yes, because basically Mike was leaving and if he wasn't
 12 asleep upstairs, he was having prayer meetings
 13 downstairs with a local group. So me and the young
 14 optom was thinking we could do better here if we had --
 15 if we just employed a manager. And that was his
 16 proposal to me and I said: it sounds like a great idea
 17 but then things overtook -- events overtook it because
 18 I went over to Bognor. But I had spoken to Chris
 19 Howarth about that.
 20 Q. And Chris Howarth is in what department of Specsavers?
 21 A. He is in recruitment.
 22 Q. Fine. Later on you mentioned that when you did your due
 23 diligence, as you put it, when you were negotiating or
 24 considering taking over Mr Weller's shares or
 25 a percentage of shares -- this is in early 2011, yes?

1 A. Yes.
 2 Q. You said that you were aware of what Mr Vos'
 3 remuneration was from accounts?
 4 A. Yes.
 5 Q. You mentioned, I think, the audited accounts and some
 6 management accounts or bottom line --
 7 A. Bottom line figures, yes.
 8 Q. Did those figures you were looking at have details then
 9 of Mr Vos' actual payments?
 10 A. I'm pretty sure it did, yes.
 11 Q. Okay. What about Mr Ferguson, were you aware of
 12 Mr Ferguson when you were doing your --
 13 A. I was aware of it, yes.
 14 Q. You were aware of the payments that were made -- the
 15 level of payments made to Mr Ferguson?
 16 A. I was, yes. It was actually easy to see. It was
 17 self-evident from the file, yes.
 18 Q. Okay, fine.
 19 A. Actually my thinking was that the store was doing
 20 1.57 million as a turnover. I had basically got there
 21 in 2007 and when I was looking at the accounts, because
 22 Mr Vos had given me the accounts yearly and the bottom
 23 line -- I was thinking, if this can sustain
 24 profitability of £200,000 a year and still pay out this
 25 much, I could make a real fortune. That's what I was

1 thinking. If I took some of those costs out obviously.
 2 MR STUART: My Lord, I have no more questions of
 3 Mr Yagaratnam. Does your Lordship have any questions?
 4 MR JUSTICE HILDYARD: No, I do not. Thank you very much.
 5 MR STUART: Can he be released my Lord?
 6 MR JUSTICE HILDYARD: Yes of course. Thank you very much
 7 for your attendance, especially today which I know was
 8 inconvenient to you.
 9 Right. Well, we will break now until 2.00 pm and
 10 then we will probably have quite a short afternoon, is
 11 that right, in all probability?
 12 MR POTTS: My Lord, there are two matters. There is
 13 the evidence of Mrs Parham and there is the issue of
 14 the second witness statement, my Lord as well from
 15 Ms Birdi. My friend -- we informed them this morning
 16 that they are going to have to make an application and
 17 I oppose that application.
 18 MR JUSTICE HILDYARD: Yes. When is all that going to
 19 happen?
 20 MR POTTS: I think this afternoon my Lord.
 21 MR STUART: I had envisaged from what your Lordship said
 22 yesterday, after we have heard from Mrs Parham.
 23 MR JUSTICE HILDYARD: There's nothing you wish me to read
 24 over the short adjournment apart from Mrs Parham?
 25 MR POTTS: Your Lordship might want to read the second

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1 witness statement and maybe the two witness statements
 2 of Ms Birdi, but the second one de bene esse perhaps.
 3 MR STUART: If I hand it up my Lord. It is only two pages.
 4 Sorry, there is a signature on the third page. One and
 5 a half pages. I will check I have the right version.
 6 Yes. Fine. Thank you.
 7 MR JUSTICE HILDYARD: Good 2 o'clock then.
 8 (1.00 pm)
 9 (The short adjournment)
 10 (2.00 pm)
 11 MR STUART: My Lord, if I can call my next witness,
 12 Mrs Parham.
 13 MRS SHAKILA PARHAM (sworn)
 14 Examination-in-chief by MR STUART
 15 MR JUSTICE HILDYARD: Do sit down. You have some water?
 16 A. Yes, thank you.
 17 MR STUART: Mrs Parham, if you could just be passed file B.
 18 Thank you. If you go to the final divider in that file,
 19 number 10. Page 166. Do you see 166?
 20 A. Yes.
 21 Q. There is a short statement there by you. It finishes on
 22 page 167, do you see that?
 23 A. Yes.
 24 Q. Is that your statement?
 25 A. Yes.

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1 Q. Is that your signature there?
 2 A. Yes.
 3 Q. And are the contents of the statement true?
 4 A. Yes.
 5 Q. If you just wait there for a moment.
 6 Cross-examination by MR POTTS
 7 MR POTTS: Good afternoon Mrs Parham. In paragraph 2 of
 8 your statement you say that you were forced to resign
 9 from the Uckfield store. For the record, I don't accept
 10 that statement but it is not a matter to be explored
 11 now, so I make that clear.
 12 A. Sure.
 13 Q. In paragraph 4 you refer to the position, and indeed in
 14 paragraph 3, as a director of Uckfield, which you joined
 15 in November 2003, being the sole owner of the A shares
 16 at that time initially?
 17 A. Yes.
 18 Q. Now, as with Bognor, which also at one point had
 19 a single partner when it was a start up, Uckfield was
 20 also a start up venture as well, wasn't it?
 21 A. As a single.
 22 Q. As a single but it was an opened as a new store?
 23 A. Yes, that is correct.
 24 Q. With one partner, you. Bognor was also started as a new
 25 store with one partner initially?

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1 A. I am not sure about Bognor.
 2 Q. It is not uncommon for a store to be opened with
 3 a single joint venture partner, is it?
 4 A. No, it is not uncommon.
 5 Q. Now, what happened at that point was your husband came
 6 to the store at the same time as you started?
 7 A. Exactly the same time.
 8 Q. He wasn't a joint venture partner, but he worked for
 9 three years as a practice manager between 2003 and 2006,
 10 is that right?
 11 A. It was two years as a retail manager.
 12 Q. Two years?
 13 A. Two years.
 14 Q. 2003 to 2005, is it?
 15 A. Yes.
 16 Q. He was performing the retail function in the store?
 17 A. That is correct.
 18 Q. Then he in 2005 acquired some shares from you and became
 19 a director and joint venture partner?
 20 A. About 2006 he came --
 21 Q. Sorry --
 22 A. There was an overlap.
 23 Q. 2005/2006. As such, in fact, he had three years of
 24 experience in charge of retail before becoming a JVP and
 25 holding shares, is that right?

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1 A. That is correct.
 2 Q. Before becoming a JVP he went through the same formal
 3 application process as other JVPs, didn't he?
 4 A. No, he was fast tracked because, as I explained to
 5 Specsavers at the time, there was a bereavement with one
 6 of the directors in the Ealing store, which is my
 7 original home town, and he had unfortunately had
 8 an accident. He was the same age as me and had a child
 9 a baby of six months old. And I was thinking: gosh, if
 10 that happened to me, what would happen to my family? To
 11 my husband and my small young child. So I requested
 12 a letter to Specsavers asking -- I would like to sell
 13 50 per cent of my shares to my husband because the group
 14 knows that if I passed away if would go to another
 15 ophthalmic optician or a dispensing optician, it won't
 16 necessarily go to my husband, that was a manager. And
 17 we invested a lot of money on the store. So I wanted to
 18 make sure that my family were protected.
 19 Q. I see. But the process was he put in an application?
 20 A. No.
 21 Q. No application?
 22 A. No.
 23 Q. And he had an interview?
 24 A. No, because I had written this letter to the board and
 25 Chris Howarth, who originally offered me the store, was

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1 actually -- well, I felt a good colleague to me in our
 2 previous workplace and specialised -- we worked
 3 together, and Mark Raines, all the team in the SOG.
 4 Chris Howarth was the professional recruitment chap who
 5 was recruiting all the directors at the time. So
 6 I actually knew him personally. So he said it would be
 7 no problem. We will fast-track John Parham, my husband.
 8 We will fast-track him.
 9 Q. But there was a process?
 10 A. There was a process, but the process was shortened.
 11 Q. Right. Let's break that up. There was a process which
 12 he had to go through, but he went through it quickly?
 13 A. Very quickly, yes.
 14 Q. He did the stage 1 course?
 15 A. He did some CDP courses when he went to Skelmersdale,
 16 which is where Chris Howarth recruits all the directors.
 17 He had to do also a case study like my brother and
 18 a general interview. The interview was very informal
 19 because they knew of my past histories, because I had
 20 had Hammersmith previous to Uckfield. And so they knew
 21 the relationship, so it was a case of just seeing John,
 22 seeing what type of person he was and took it that his
 23 experience --
 24 Q. Sorry, I asked you a little bit earlier if he had
 25 an interview and you said no. Are you saying --

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1 A. It was very informal, it was like a chat. It wasn't
 2 like a --
 3 Q. He did have an interview, but you think it was an
 4 informal one?
 5 A. Yes.
 6 Q. He did have an interview and he did go and do some
 7 courses. We went off to Skelmersdale.
 8 A. He didn't go to Skelmersdale for the courses, he was
 9 doing them himself. Specsavers provide any employed
 10 person in the store, if they want to become
 11 a director -- you can do what they call CDP courses. So
 12 he was doing them from home.
 13 Q. Sorry. Are you saying he didn't go to Skelmersdale at
 14 any stage, or he did?
 15 A. He did go to Skelmersdale for that informal interview
 16 chat and a case study.
 17 Q. This is at the time of the application for JVP. He went
 18 to Skelmersdale, he had an interview there. You say it
 19 was an informal chat, but he had gone off to the
 20 training centre?
 21 A. That is right. They wanted to see him really. Because
 22 they have never seen my husband, they have always seen
 23 me. I got married in 1999, so they have they had never
 24 met John Parham. So they just wanted to see him by face
 25 and who they were going to be dealing with, and who was

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1 going to buy 50 per cent of my shares.
 2 Q. So he went off to Skelmersdale, he had an interview, he
 3 did some training stuff there?
 4 A. It wasn't training.
 5 Q. He did some case studies and exercises?
 6 A. It was a case study yes, a questionnaire: he had a chat
 7 with David Markham. I think he met Chris Howarth and he
 8 briefly met Mark Raines.
 9 Q. Then in July 2006 you both signed a shareholders'
 10 agreement in relation to the store, when he was given
 11 some shares?
 12 A. That is correct.
 13 Q. And that specified your roles in the same way as this
 14 action, with the retail director, your husband, and you
 15 being the optical director; correct?
 16 A. Yes, but the relationship with me and my husband was
 17 very much that I, with my product knowledge of the
 18 optical industry -- dispensing optician course, my Lord,
 19 is a three year course and I did it full-time, the final
 20 year as a clinical year, and then after that I did
 21 a contact lens course, which was two years, and then
 22 after that I did four years of optometry at university
 23 for a degree. Which is why I think Chris Howarth and
 24 Mark Raines were comfortable to give me this store as
 25 a sole director so the optical side was always --

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1 the arrangement with me and my husband was that I would
2 do the optical side of the business. I think most
3 opticians in the Specsavers throughout are not good with
4 IT, what we are best at is sight testing and being
5 a sight test machine, basically, testing all the time.

6 So my husband being an IT manager, his history would
7 be perfect for the administration side and doing all the
8 IT side of it. I felt -- the agreement between me and
9 my husband was that always I would be sorting problems
10 on the shop floor, which is all the problems patients
11 would have with glasses, not seeing clearly. John
12 always left that side to me.

13 Also you have got to remember in the optical
14 industry any child under 16 has to be seen by
15 a qualified dispensing optician, or an ophthalmic
16 optician. An ordinary optical assistant or a retail
17 manager with no qualification cannot get children
18 checked under 16 for GOC regulation.

19 Q. That's very helpful. In terms of what happened though,
20 you both signed shareholders' agreements at that time.
21 He was specified as the retail director, you as
22 the optical director. You entered into -- there was
23 an employment contract, a fresh employment contract at
24 that time as well for him and you?

25 A. That is right. I mean, I believe my shareholders'
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1 agreement was changed. I have got two contracts. I see
2 it as two employed contracts, because I have an employed
3 contract with Uckfield and I believe now -- coming more
4 to light through these proceedings -- these shareholders
5 agreements -- I have always seen it as an employed
6 contract.

7 Q. But you had a separate service agreement, an employment
8 contract as well for each of you, correct?

9 A. Yes.

10 Q. That also specified your roles, with you as the optical
11 director and him as the retail director?

12 A. Yes, on paper.

13 Q. Your brother is Mr Yogaratnam, who we have just heard
14 from and who -- to whom Mr Weller discussed transferring
15 his shares, correct?

16 A. Correct.

17 Q. Like you, your brother is an optometrist?

18 A. And a dispensing optician like me.

19 Q. Sorry, yes. In paragraph 5 of your statement you refer
20 to your state of mind in relation to discussions about
21 his possible appointment to Bognor.

22 A. Yes.

23 Q. You weren't a direct party to those discussions between
24 Specsavers and the joint venture partners, were you?

25 A. For the Bognor case you mean?

1 Q. Yes.

2 A. No.

3 Q. In those circumstances, whilst I don't accept your
4 evidence as to your state of mind, I'm not going to ask
5 you any questions about it because you weren't a party
6 to the discussions, as you understand.

7 A. Can I say something to that? The reason why I put that
8 in my witness statement, my Lord, was because I was
9 surprised because, my brother being a dispensing
10 optician and an ophthalmic optician and a previous
11 director from their rivals, Vision Express -- Specsavers
12 have always taught us, you know, it is two for one.
13 That is what they promote all the time; it is a bargain
14 getting two for one. There was no dispute that with
15 Helle and Barry Weller that his salary would be
16 et cetera and that he would take the retail position.
17 It wasn't demeaning my brother's role. It just means
18 that he could do both things. And in an area -- Bognor
19 and Uckfield were in the Meridian region and it was
20 very, very difficult -- which you will hear my Lord on
21 the Uckfield case, where we could not open Sundays -- to
22 get opticians.

23 So it is a no brainer to not take my brother on when
24 he could do both roles and then when you don't get cover
25 he can switch. If I was interviewing someone for a JVP

1 for myself, I would definitely buy into that because it
2 is a no brainer. I would not have to train him, I would
3 not have to be called out of my sight testing room to
4 check children under 16 and it would help the business,
5 make the business more profitable. And we are
6 professional opticians, we are not selling shoes or
7 anything else. But that's why I said I was surprised.
8 You know, they have always taught us two for one. Get
9 your amount of money's worth.

10 Q. Okay, thank you very much. In paragraph 6 you refer to
11 the fact that while you were at the Uckfield store you
12 had a shop fit at an approximate cost of £45,000 and you
13 refer to the invoice for your shop fit. By shop fit,
14 you mean that the whole store was subject to heavy work
15 or renovation?

16 A. We had a retro-fit my Lord. I should have mentioned
17 that clearly. But a retro-fit is like a mini fit. It
18 is just a paint over. Specsavers wanted to change their
19 brand on the front of the shop, their logo, give us
20 the new frame stands, a lick of paint and new lino.

21 It was only for the front, for patients/customers to
22 see the outlook, this didn't involve the back of the
23 store where the staff was or, you know, any areas that
24 were like the lab technician, the staff room. This is
25 what they called a mini retro-fit. Normal big shop fits

1 are in the region of a lot more money.
 2 Q. Can we maybe have a quick look at that. E3 please.
 3 A. 589?
 4 Q. 589, yes. The sum is £45,000. You see that at the
 5 bottom.
 6 A. Yes.
 7 Q. As you say, I think you said mini retro-fit. It says
 8 retro-fit at the top, which is what you just said?
 9 A. Yes, retro-fit.
 10 Q. It was a little bit more than a lick of paint, wasn't
 11 it? It was almost £11,000 on air conditioning.
 12 A. Yes, that is air conditioning isn't it? And you have
 13 got the magic mirror here that we paid for, £2,355.
 14 The magic mirror is where, my Lord, you can look into it
 15 like a television panel, put your glasses on, see
 16 a picture of yourself, see what you look like, because
 17 obviously a lot of people who are long sighted take
 18 their glasses off and can't see what they look like. So
 19 a lot was spent on equipment.
 20 Q. I have been there myself, I know what that is like.
 21 But a shop fit is different from ongoing maintenance
 22 costs like having a cupboard fixed or a toilet unblocked
 23 or something like that. It is a shop fit, it is
 24 a bigger job?
 25 A. Yes, maintenance wouldn't come under this at all.

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1 Q. This isn't maintenance, it is a shop fit.
 2 A. Yes.
 3 Q. That's what I was trying to understand. Indeed, in
 4 Bognor, maybe you are not aware of this, but you talked
 5 about a bigger shop fit. In fact, the 2002 shop fit
 6 costs were £130,000.
 7 A. I don't know about Bognor.
 8 Q. In paragraph 6 you say:
 9 "We made a distinction between shop fit and
 10 maintenance."
 11 Paragraph 6 you say that -- sorry you talk about
 12 the £2,000 a month to the shop fit account. Again, that
 13 is making clear that you build up a reserve, don't you,
 14 over time, and indeed some of that reserve on that -- we
 15 can go back to it, but that invoice -- I think some
 16 money came off the reserve to cover that?
 17 A. That is correct. We were always encouraged to
 18 accumulate funds for -- every five years, according to
 19 the shareholders' agreement, there would always be some
 20 sort of refit. So you put the money aside so it is not
 21 so painful when you have to take the money out.
 22 Q. At the end of your statement you say that from your
 23 experience:
 24 "The figures put forward as the shop fit costs for
 25 Crawley and Woking are not typical."

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1 Which figures are you referring to there?
 2 A. When I was given this, I was -- my solicitor gave me
 3 figures of £11,000 in Crawley and Woking £9,000, or
 4 the other way round. We didn't get the shop fit
 5 figures. I was told that their figures were £11,000,
 6 I think.
 7 Q. So you were told that the shop fit figures for Crawley
 8 and Woking --
 9 A. I was just told figures that Crawley was roughly about
 10 £11,000 and Woking was roughly about £7,000 or £8,000,
 11 I think.
 12 Q. When you say that they are not typical, you are saying
 13 that £11,000 for a shop fit is too little, is that
 14 right?
 15 A. Absolutely yes. Never heard of a shop fit that low.
 16 Completely. I mean, the smallest amount I have heard
 17 throughout -- well, the few directors I have spoken to
 18 was £45,000.
 19 Q. In fact, in these proceedings, just to explain, there
 20 was a question as to the on going maintenance costs in
 21 the store. There is no suggestion that the shop fit of
 22 Crawley and Woking was £11,000 or some other figure.
 23 The shop fit for those stores was significantly greater.
 24 A. Right, so that is probably why the maintenance figure --
 25 if they were maintenance figures, that's why they are so

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1 low. Because how much did they spend, then, in
 2 the Woking store for their shop fit, and how much did
 3 they spend in the Crawley store for their shop fit?
 4 Q. The issue in these proceedings isn't about -- in terms
 5 of where those figures were discussed for those stores,
 6 it was not in relation to how much the shop fits had
 7 cost it was the issue as to the ongoing maintenance
 8 costs of those stores. But your evidence doesn't go to
 9 that issue at all, does it?
 10 A. Well, how I understood it was that those two figures
 11 were put down and how -- I have replied to it thinking
 12 they were shop fit costs. If you are saying to me now,
 13 Mr Potts, that they are the maintenance costs, then that
 14 would relate to -- they are low like that, they must
 15 have had a shop fit. They must have spent a large
 16 amount of money, because even for maintenance -- if you
 17 are saying for those amount of years there is quite
 18 a low figure for maintenance, they must have had big
 19 shop fits, they must have had had a big outlay. Because
 20 I know for a fact -- my husband did the maintenance for
 21 our store and he would only bill the parts, he didn't
 22 charge for the labour at all.
 23 Q. Let's talk about your experience of maintenance for your
 24 store. What sort of level of maintenance charges --
 25 would it be fair to say the maintenance charges costs

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1 for your store, on a yearly basis, were of the order of
 2 a few hundred pounds each year?
 3 A. You would have to ask my husband that, because I could
 4 not answer that off the top of my head because he did
 5 the maintenance.
 6 Q. Roughly, was it a small or large figure? Hundreds of
 7 pounds, tens of thousands of pounds?
 8 A. We were classified as a small store. So there was
 9 always ongoing repairs at the store, and again I can't
 10 put an exact figure to it, but you would have to really
 11 ask John about that.
 12 Q. If I was to say that the figures for 2007 were £664,
 13 does that ring any bells with you for the year, for your
 14 store, for maintenance?
 15 A. Like I said, my husband dealt with all
 16 the administration side, so I don't want to say anything
 17 that I don't know.
 18 Q. Does it sound in the right sort of ballpark?
 19 A. The point I'm trying to get you to my Lord is these
 20 stores -- they picked out two. They could have just
 21 given us -- for the loss prevention -- is it the loss
 22 prevention who have given these figures for the Bognor
 23 case? Because they could have given it as a region
 24 and taken an average of all the whole maintenance costs
 25 for the whole region and that would be more accurate

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1 than picking out two stores.
 2 I mean, we are talking about the loss prevention
 3 here. My own experience with the Uckfield store, with
 4 my husband, it is very biased the information they give
 5 you, very exaggerated as well. My comments are is that
 6 it should be more accurate if they are going to do
 7 a more thorough investigation. It should be costs of
 8 the group as a region and average it across the like to
 9 like. Everything like to like: large store, medium
 10 store and small store.
 11 Q. To break that down. In terms of your experience of shop
 12 fit, what you are saying is that £11,000 for a whole
 13 shop fit is too low?
 14 A. Yes.
 15 Q. In terms of your experience -- in relation to
 16 maintenance costs from your own experience, if
 17 I suggested to you that it was of the order of a few
 18 hundred pounds in a year, you are not able to comment at
 19 all?
 20 A. No, because being Uckfield store -- I can only --
 21 Q. I'm asking about your experience. I'm asking about in
 22 your store. Let me explain. If I was to say that
 23 the maintenance figures for your own store were of the
 24 order of a few hundred pounds in a year, does that sound
 25 about right?

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1 A. Well, ours was a lot more because we did have leaks. We
 2 had lots of ongoing leaks. Where Uckfield is situated
 3 was in a flood zone area and you could guarantee a leak
 4 in our store every year. So I think it also depends
 5 like Bognor, I have heard in these pleadings today --
 6 throughout the trial, sorry, they had a lot of
 7 burglaries. We didn't have that issue, we had a lot of
 8 leaks and floods. Definitely ours would be higher with
 9 the leaks because it would be carpet all the time and
 10 I remember John having to do new tiling for the ceiling
 11 because they would leak through there, so it was a lot
 12 higher.
 13 Q. The figures we have is £600 for the year to 2007, £483
 14 for 2008 and £300 for 2009. Does that ring any bells to
 15 you?
 16 A. I haven't got these figures.
 17 Q. This is for your store. Does do those figures ring
 18 a bell with you?
 19 A. No.
 20 MR POTTS: My Lord, I have no further questions.
 21 MR STUART: My Lord, I have no re-examination. Does
 22 your Lordship have any questions for Mrs Parham?
 23 MR JUSTICE HILDYARD: I do not. Thank you very much
 24 Mrs Parham.
 25 A. Thank you.

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1 MR JUSTICE HILDYARD: Can Ms Parham be released from these
 2 proceedings?
 3 MR POTTS: Yes.
 4 Application by MR STUART
 5 MR STUART: My Lord, my only other two witness, Mrs Birdi is
 6 coming tomorrow morning first thing and Ms Rosier, who
 7 you saw yesterday, can only come on Monday. She will be
 8 here on Monday morning.
 9 MR POTTS: My Lord, I think the programme for tomorrow is --
 10 well, at the moment it is Ms Birdi first, is that right?
 11 MR STUART: Yes.
 12 MR POTTS: And then Mr McAlindon was the programme, subject
 13 to what's to come.
 14 MR STUART: I think your Lordship was going to confirm that
 15 tomorrow is a not before 10.30?
 16 MR JUSTICE HILDYARD: Yes, I have to give a judgment and
 17 there will be consequential, as far as I am aware, from
 18 that judgment. I think I start at 9.15. I think you
 19 ought to be marked not before 10.30 but it is not
 20 impossible that you will be a bit delayed.
 21 MR STUART: My Lord, the only other issue then is this
 22 witness statement of Mrs Birdi. Her second witness
 23 statement.
 24 I don't know whether you have had an opportunity
 25 just to read it over the short adjournment?

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1 MR JUSTICE HILDYARD: Yes.
 2 MR STUART: You will see, my Lord, that in essence there are
 3 two issues raised by Mrs Birdi. One is in relation to
 4 the use of the SEP system, then one is about shredding
 5 some documents.
 6 If I can deal with the first matter first. My Lord,
 7 the position is that in the defendants' witness
 8 statements, so bundle C, the references to the SEP
 9 system were -- there were some small references by
 10 Mr McAlindon, but I don't think they take matters any
 11 further. The real references were to Mrs Mancini, who
 12 your Lordship finds at tab 7.
 13 MR JUSTICE HILDYARD: Yes.
 14 MR STUART: It starts on page 123. There is a heading,
 15 "The SEP system."
 16 MR JUSTICE HILDYARD: Yes.
 17 MR STUART: Paragraph 43 onwards:
 18 "And plainly it is Specsavers' contention that
 19 the SEP system is ... "
 20 What it says it is et cetera. Actually my Lord
 21 the claimants' witnesses have accepted that that is
 22 the system. The real issue was about -- the issue that
 23 Mrs Birdi's second statement goes to really comes to
 24 matters when you go to paragraph 56 on page 125. So
 25 Mr Vos and Mr Weller, as you have seen my Lord in their
 1 2 1

1 interviews, which we have been through in detail, they
 2 say that they were told by somebody in the accounts
 3 department that they could put a technician through like
 4 this.
 5 They call it the "work around", I think is the way
 6 it was put. At paragraph 56 Mrs Mancini's evidence, as
 7 we understood it to be, had been:
 8 "I do not have first-hand knowledge of what every
 9 member of SOG's accounts department may have said or
 10 done, and therefore cannot give a categorical denial of
 11 this suggestion by the claimants."
 12 Fair enough. Now, the way that it was put to
 13 the witnesses in cross-examination appeared to us to be
 14 that it was SOG's case that it could never have been
 15 said to them by somebody in the accounts department and
 16 that they were lying about that when they said they had
 17 that conversation with the person in the accounts
 18 department. And my Lord, certainly in my submission
 19 that's a considerable step forward from paragraph 56,
 20 which appears to be a concession that: well, somebody
 21 might have said that in the accounts department, we
 22 can't say.
 23 So, as you see in Mrs Birdi's witness statement, she
 24 was present in court -- I think you have seen her,
 25 my Lord, sitting at the back -- and heard the way it was
 1 2 2

1 put, and in essence the way that the case is now being
 2 argued by Specsavers, namely that that conversation
 3 could not have happened because there is never a work
 4 around used by the accounts department or Specsavers.
 5 And she knows that there is, and if your Lordship has --
 6 you see the references. The specific references that
 7 I can take your Lordship to, just one page in each,
 8 is -- does your Lordship have E2?
 9 MR JUSTICE HILDYARD: Yes.
 10 MR STUART: The first one is 291-12?
 11 MR JUSTICE HILDYARD: Yes.
 12 MR STUART: And 11. So 11 and 12. We are in the middle of
 13 what Mrs Birdi describes as the Dartford stores'
 14 accounts for the -- these are the bottom line accounts.
 15 This is the supporting documentation for the bottom
 16 line accounts provided by Specsavers. If you go first
 17 of all to 291-11, just above the second hole punch
 18 my Lord, you will see a heading -- well somebody --
 19 I understand that to be Mrs Birdi -- has put a line
 20 around, "Self-employed optician fees", and then "Sean
 21 McLaughlan". Sean McLaughlan is a Specsavers
 22 representative.
 23 So that is the -- you see the £1,000 referred to.
 24 That is the £1,000 that is referred to in paragraph 4 of
 25 Mrs Birdi's first line.
 1 2 3

1 MR JUSTICE HILDYARD: Yes.
 2 MR STUART: And then the training element for
 3 Sean McLaughlan is over the page at 2912. Below
 4 the second hole punch somebody -- I understand it is
 5 Mrs Birdi -- has drawn around, "Training Sean McLaughlan
 6 £2,000". Then the second page, 294-1.
 7 If your Lordship goes to 294-11. (Pause). 294 has
 8 become 334-11. So 294 has become 334. So 294-11, which
 9 is 334-11. Does your Lordship have 294-11?
 10 MR JUSTICE HILDYARD: I do.
 11 MR STUART: I'm afraid that has not had a line put around
 12 it. One can see the first item:
 13 "Self-employed optician fees".
 14 Does your Lordship have that?
 15 MR JUSTICE HILDYARD: Yes.
 16 MR STUART: Then "Sean McLaughlan, Sean McLaughlan, Sean
 17 McLaughlan £2,000, £1,000, £1,000.
 18 Does your Lordship have that?
 19 MR JUSTICE HILDYARD: Yes. What do we know about
 20 Sean McLaughlan?
 21 MR STUART: I'm told he is loss prevention department, but
 22 I better check the exact job title.
 23 MR POTTS: No he is not.
 24 MR STUART: Perhaps we have him in our list of characters.
 25 Perhaps we don't have him. My Lord, I will have to
 1 2 4

1 make inquiries.
 2 MR JUSTICE HILDYARD: It is implicit in what you say that he
 3 is not a self-employed professional optometrist,
 4 audiologist, dispenser or lab technician. But you don't
 5 say what he is.
 6 MR STUART: He is an employee of Specsavers Group:
 7 "Put in by Specsavers Group."
 8 As Mrs Birdi describes it there.
 9 MR JUSTICE HILDYARD: He is not a self-employed person.
 10 MR STUART: He is not a self-employed person at all.
 11 MR JUSTICE HILDYARD: Okay.
 12 MR POTTS: He is my Lord. He is not our employee.
 13 MR STUART: My Lord, Specsavers will able to make their
 14 enquiries as to who Mr McLaughlan is.
 15 MR JUSTICE HILDYARD: That is the evidence you want to put
 16 in?
 17 MR STUART: It is evidence I wish to put in. I deemed it
 18 much better that it be put in openly and formally in
 19 advance in a short witness statement from Mrs Birdi, who
 20 is the only witness who will be able to do it, give
 21 the evidence.
 22 Mrs Birdi is going to be a witness anyway. I didn't
 23 want her just to come out with such a statement in
 24 the middle of her evidence, when we didn't all have
 25 an opportunity to see exactly what it was and how it

1 25

1 referred to documents and what precisely what was being
 2 said. So it has been put into a witness statement so
 3 that her evidence can be seen and can be checked and
 4 then she can be cross-examined about it when she gives
 5 evidence on that simple point tomorrow.
 6 The documents relating to it are in the bundle and
 7 on that basis my Lord I would ask that she be allowed to
 8 give evidence about it. I'm not sure that she can be
 9 stopped from giving evidence.
 10 MR JUSTICE HILDYARD: No. Can I ask this --
 11 MR STUART: It is a question of whether it should go into
 12 a witness statement. And there it is. That's how it
 13 has arisen my Lord. The second item she deals with is
 14 this allegation of destruction of documents, does
 15 your Lordship see that?
 16 MR JUSTICE HILDYARD: Yes.
 17 MR STUART: No, she does not here refer to any documents in
 18 that regard, so this is just her oral evidence that she
 19 is going to give about that. Again, what happened was
 20 she said this to Mr Vos, and I think it was Mr Vos who
 21 actually gave evidence, hearsay evidence that you will
 22 hear from the Dartford store that Mr McAlindon has done
 23 this et cetera.
 24 It is true to say my Lord that this allegation by
 25 Mrs Birdi of destruction of documents -- shredding of

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1 documents by the loss prevention department,
 2 Mr McAlindon, in respect of her store, is contained in
 3 her witness statement in her proceedings which was
 4 prepared and exchanged with Specsavers a few weeks ago.
 5 Her claim is due for trial next year -- early next year.
 6 Witness statements were exchanged a few weeks ago.
 7 MR JUSTICE HILDYARD: A few weeks ago?
 8 MR POTTS: 6th November my Lord. The trial is in April
 9 I think. Reply statements due 31st January.
 10 MR STUART: So the allegation has been made five weeks ago
 11 but in another case, her case. Mr Vos obviously heard
 12 about that and knew about it and he did give evidence in
 13 the witness box which was hearsay evidence, and it being
 14 the case that, as it were, the live person who told him
 15 that -- the person who told him that -- he has given
 16 hearsay evidence, the person who told him that is coming
 17 to give evidence in our case. Again, it was considered
 18 appropriate on our side that that's not proper. It
 19 should be put in a witness statement from her if she's
 20 going to say that, as being the first person rather than
 21 hearsay, and it should be put in properly and properly
 22 explained what the precise allegation is so that it can
 23 be challenged et cetera.
 24 Again, my Lord she is going to be coming to give
 25 evidence anyway, it is not a long point, it is not

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1 a point that is new to Specsavers Group. They have
 2 known about it for a while. They just don't know about
 3 it -- the relevance of it in this case. And to be frank
 4 the real relevance of it in this case, as your Lordship
 5 can see from her statement, really only occurred to her
 6 and -- only occurred to her when --
 7 MR JUSTICE HILDYARD: You say it doesn't involve any further
 8 documentary exegesis, it doesn't take them by surprise
 9 and it goes to the issue of whether it is more or less
 10 likely that the box of documents might have been
 11 doctored by the loss prevention?
 12 MR STUART: Yes, and because Mr Vos was cross-examined at
 13 length about that and came out with this as one of his
 14 answers to that that he wishes your Lordship to
 15 consider, the fact that it is being done in this other
 16 case. But he was only able to say that as hearsay, he
 17 was not there obviously. And yet we have the witness --
 18 the person who actually was involved, she should give
 19 that evidence and be tested upon it, not -- and
 20 the court would not have a full picture of the evidence,
 21 a fair picture of all of the evidence relevant to that
 22 issue without hearing that piece of evidence from her.
 23 MR JUSTICE HILDYARD: Okay.
 24 Reply by MR POTTS
 25 MR POTTS: My Lord, firstly to deal with the procedural

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1 framework as to what this application actually is, which
 2 my friend hasn't addressed, this is an application
 3 I think under part 32, part 10, just to deal with that
 4 my Lord. Does your Lordship --
 5 MR JUSTICE HILDYARD: 32.10 is it?
 6 MR POTTS: Yes my Lord, I think so. The position is witness
 7 statements in this action, which were exchanged in
 8 June of this year, which your Lordship has seen,
 9 pursuant to an earlier order, as extended by consent to
 10 June. And this is a witness statement for use at trial
 11 not served within the time specified by the court. So
 12 the witness may not be called to give oral evidence on
 13 that unless the court gives permission. I think that is
 14 the framework.
 15 Your Lordship will see from the notes below that --
 16 I think the first two paragraphs deal with the old
 17 rules. Then it is said that it was subject to case law,
 18 in the third paragraph, and it says:
 19 "The prohibition imposed by 32.10 on calling
 20 a witness whose statement has not been served amounts to
 21 a sanction in terms of 3.81, taking effect for failure
 22 to comply with a rule or court order. Accordingly
 23 a party applying for permission must apply for relief
 24 from sanction as provided for by rule 3.8 and 3.9."
 25 This is obviously -- we are well into trial. If

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1 your Lordship goes back to 3.8 and 3.9 as to the
 2 provisions of relief from sanction.
 3 MR JUSTICE HILDYARD: Yes.
 4 MR POTTS: So in particular I think it is 3.9. 2.9 talks
 5 about the framework which we just discussed. 3.9 says:
 6 "On an application, the court will consider
 7 the circumstances including --"
 8 MR JUSTICE HILDYARD: This has all been changed, hasn't it?
 9 MR POTTS: Has my White Book -- am I out of date? Sorry
 10 this has all been changed?
 11 MR JUSTICE HILDYARD: Hasn't 3.9 been changed? I think it
 12 is more vicious now actually.
 13 MR POTTS: I'm sorry my Lord --
 14 MR JUSTICE HILDYARD: I don't know, you may say it doesn't
 15 apply because the proceedings were issued before.
 16 MR POTTS: It will be the position now, it is the time of
 17 the application.
 18 MR JUSTICE HILDYARD: I think it has. I think this is part
 19 of the --
 20 MR POTTS: I'm afraid we are in your Lordship's hands.
 21 MR JUSTICE HILDYARD: I may be wrong.
 22 MR POTTS: The supplements get more frequent and fatter.
 23 MR JUSTICE HILDYARD: It is the retreat from the specific to
 24 the more general. I don't know whether you have
 25 October 2013, page 12. I mean the gist of it is,

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1 instead of having a whole list of specifics, which may
 2 or may not, to a greater or lesser extent be relevant,
 3 the rules is rules point is emphasised by including
 4 the need (b):
 5 "To enforce compliance with rules, practice
 6 directions and orders."
 7 I suppose one might interpolate "(as such)".
 8 MR POTTS: Yes my Lord. This in a sense one comes back to
 9 the old friend of the overriding objective and interests
 10 of the parties and the interests of justice and so on.
 11 MR JUSTICE HILDYARD: Yes.
 12 MR POTTS: My Lord, I thought it was right to draw
 13 your Lordship's attention to that.
 14 MR JUSTICE HILDYARD: Yes.
 15 MR POTTS: Now, my Lord, the difficulty is that, as my
 16 friend says, it is the two issues. So it must be --
 17 the application must be supported by evidence. Now
 18 Ms Birdi is a claimant in the Dartford proceedings, as
 19 I said. She is instructing the same solicitors as in
 20 this action. The witness statement, just in terms of
 21 the context, was received at 9.41 yesterday morning.
 22 As my friend says, there are two issues. The first
 23 issue is in relation to 2007 in the Dartford company as
 24 to -- about alleged payments through SEP.
 25 The second is again in the Dartford proceedings,

1 3 1

1 a different company, 2007, so some six years ago, in
 2 relation to an employment file.
 3 Now, the first issue, my Lord, it is just in terms
 4 of the explanation for the late production of this
 5 evidence which is given.
 6 MR JUSTICE HILDYARD: I'm sorry to -- I mean, the thing is
 7 that, as you know, it is not unusual even if it is
 8 a slight departure from the rules for judges to allow
 9 a little bit of extra in examination-in-chief, and they
 10 are especially relaxed about that when it strikes them
 11 as likely that the whole thing is going to come bundling
 12 out in cross-examination in any event.
 13 Without wishing to signify any laxity about
 14 the rules in general, I suppose I will be most
 15 interested to know what the prejudice to you of this is.
 16 MR POTTS: My Lord, yes. I will address the two points but
 17 my Lord I'm not trying to take a prissy point on
 18 the rules if that's the concern.
 19 MR JUSTICE HILDYARD: No.
 20 MR POTTS: My concern is, firstly, that in seeking to put
 21 this evidence, an explanation is required as to why it
 22 is put in late, and indeed that's provided in
 23 the witness statement. I do wish your Lordship to
 24 understand the context of that because you have not had
 25 the full picture and there are important points in

1 3 2

1 relation to that.
 2 The second point is in relation to the fairness of
 3 those issues and we do say, my Lord, and I will come to
 4 that in a moment, that it would be unfair in these
 5 circumstances to respond to these issues, which are
 6 particularly -- firstly I do need to deal with the point
 7 about the SEP stuff because I don't accept the way my
 8 friend has put it at all.
 9 But on the shredding point, it is a serious
 10 allegation made --
 11 MR JUSTICE HILDYARD: But it is alive, isn't it? I have
 12 heard at least twice the suggestion that there was
 13 a box, possibly even the things you plug in, what do you
 14 call it? It has gone from my mind -- the memory stick.
 15 And that the loss prevention lot had a rifle through and
 16 excluded various bits and pieces. That is merely
 17 an allegation, but it didn't strike me as something
 18 wholly new, which made me think: my, goodness that is
 19 a new one.
 20 MR POTTS: No my Lord, I agree. In a sense that is partly
 21 my point, if I may, as to why there is a concern about
 22 the way this was done, the timing and the circumstances
 23 in which it is going to be developed. Because what in
 24 fact is going to happen is this statement was
 25 produced -- intended to be on the day before Ms Birdi

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1 was going to give evidence. So I would have had, whilst
 2 obviously dealing with matters in court, 24 hours
 3 effectively to deal with it.
 4 MR JUSTICE HILDYARD: You might have then applied for a bit
 5 more time, and you got it as it is.
 6 MR POTTS: Can I address your Lordship first on
 7 the chronology?
 8 MR JUSTICE HILDYARD: I'm just hurrying you on because one
 9 of the purposes of the rules is proportionality.
 10 MR POTTS: I appreciate that my Lord, but my friend has
 11 given an explanation. I'm afraid I don't accept that
 12 explanation. I think it is fair in the circumstances
 13 where I'm being provided with incredibly late evidence
 14 that I should have a proper opportunity to respond to
 15 his application.
 16 MR JUSTICE HILDYARD: Yes.
 17 MR POTTS: My Lord, the first point is in relation to
 18 the timing. The SEP point, he says, is something which
 19 is somehow new. I think he is saying that because it
 20 comes up -- because it's changed because of our witness
 21 evidence there, that there has been a change in the way
 22 our case is put.

23 The reference to that paragraph, my Lord, makes it
 24 clear that the whole context of that section is saying
 25 that this can't have happened. So this isn't a change

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1 in the case, it is highly improbable.
 2 In terms of the SEP issue, Mrs Parham says that she
 3 was in court on Monday when this issue was raised. Now
 4 that's eight days before this statement has appeared.
 5 If your Lordship looks at the second issue,
 6 the destruction issue on her draft statement, it is said
 7 by my friend that this is because as a result of not
 8 being in court on Friday, but she was aware of the
 9 transcript that there was an issue about documents being
 10 removed or destroyed.
 11 Now, just on the first point, what my friend hasn't
 12 explained is on the SEP issue is that in fact there was
 13 some further disclosure given on this matter.
 14 Your Lordship, I don't know if the covering letter --
 15 there is a clip of what was disclosed. This was
 16 disclosed on Thursday 5th.
 17 MR STUART: My Lord, could I have a copy of that letter,
 18 whatever has been handed to you?
 19 MR POTTS: Of course. Sorry.

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20 Now, these documents were disclosed. They are not
 21 documents which are disclosed in this action and it was
 22 stated on the 5th that it was intended to insert
 23 the documents in the bundle. They are in relation to
 24 the Dartford action. There is no explanation as to why
 25 these documents have been provided. This is a trial, as
 1 I said, due for trial in April. Witness statements in
 2 reply at the end of January. And there are 72 pages of
 3 detailed ledger entries here and a couple of invoices at
 4 the end.
 5 There is no explanation for the disclosure or
 6 explanation as to the purpose, why they are being
 7 produced. In fact, it appears they were inserted in
 8 the bundle as they stated they would do.
 9 Now, on Monday Mr Vos said in cross-examination in
 10 relation to the SEP issue:
 11 "I think that evidence has been put in for Ms Birdi
 12 to attend to when it comes to her in this court."
 13 So Mr Vos volunteered in evidence on the Monday,
 14 after this documentation, which, I have to say, I had no
 15 idea what it was about. I also on Monday had absolutely
 16 no idea what he was talking about when he said that:
 17 "Evidence has been put in for Ms Birdi to attend to
 18 this when it comes to her turn in court."
 19 It now appears that what that was, in fact it was
 20 an indication that in fact a witness statement was being
 21 prepared in relation to this matter. But we had no
 22 notification of that fact.

23 On the second issue, the destruction of documents.
 24 Ms Birdi, at paragraph 6 of this statement, where she is
 25 seeking to, I think, explain -- paragraph 1 deals with

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1 the explanation on the first issue. Paragraph 6 deals
 2 with the explanation on the second issue, and she says:
 3 "I wasn't in court but I'm aware from the transcript
 4 that there was an issue about staff-related documents
 5 having been removed."
 6 Then she goes on and gives this further evidence.
 7 Now the first point. This is not an issue which had
 8 just emerged. The alleged destruction of documents has
 9 been live in this case since the -- and indeed is
 10 referred to in the rebuttal documents back in
 11 September 2011. So this is not a new issue. Indeed
 12 the issue of the documents is a pleaded issue in this
 13 case.
 14 It is also not an issue which should come as
 15 a surprise to her, or her solicitors who act in all
 16 these actions. Whilst it is not a pleaded issue in her
 17 case, it did appear for the first time in her witness
 18 statement in the Dartford action on 6th November.
 19 My Lord, the second point in relation to this
 20 explanation which my friend has just given is he is
 21 saying: well, because it came up on Friday so therefore
 22 that is why we came to it.
 23 Can I take my Lord to the transcript on Day 5. At
 24 141.
 25 MR JUSTICE HILDYARD: Sorry tab?
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1 MR POTTS: Tab 5, Day 5.
 2 MR JUSTICE HILDYARD: Page 141.
 3 MR POTTS: Perhaps on the previous page, he gives an answer
 4 about documentation. He says.
 5 "Answer: By the way ... if we look at the Dartford
 6 store ..."
 7 She has gone in and found shreds.
 8 Then returning to the theme at 153, line 3 onwards.
 9 He says:
 10 "Answer: I do not believe your client ... I believe
 11 the document was there ... if I once again can cite the
 12 Dartford case ...Mr Rehman ... the husband of Ms Birdi
 13 ... My Lord this is another case ... next year, but she
 14 is a witness in this case, she is giving evidence on
 15 this I understand".
 16 Then your Lordship asked:
 17 "Is this a matter on which you can speak?
 18 "Answer: I can speak, yes because I have spoken to
 19 her about it."
 20 And then your Lordship said:
 21 "It is not within your knowledge" ...
 22 Then:
 23 "I don't think this evidence will be admissible,
 24 I suppose --"
 25 And my response:
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1 "There is no hearsay notice, my Lord.
 2 Then your Lordship:
 3 "There is no hearsay notice".
 4 Then Mr Stuart says:
 5 "You will be hearing from Mrs Birdi anyway, so
 6 your Lordship is right to just --"
 7 Then your Lordship:
 8 "I will not be deprived of it ..."
 9 Then I say:
 10 "Her evidence ..."
 11 Based on her witness statement, my Lord, on which
 12 she is entitled to give evidence:
 13 "... does not cover this."
 14 Then in fact you might be deprived of it.
 15 MR JUSTICE HILDYARD: Yes.
 16 MR POTTS: Now the suggestion in the witness statement that
 17 this is somehow -- that the idea of putting in a witness
 18 statement is as a result of the issue having emerged on
 19 Friday is not accurate. This is an issue which has not
 20 sort of come up for the first time. There was no
 21 suggestion on Friday that in fact a witness statement
 22 was being prepared -- I'm assuming that had witness
 23 statement has -- plainly, given the production of this
 24 earlier evidence by way of disclosure some days earlier,
 25 this witness statement has been in production for some
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1 time.
 2 So the idea -- to suggest that the idea of giving
 3 evidence was prompted by reading the transcript; we are
 4 concerned about that. These are not new issues. These
 5 are documents -- we are effectively ambushed by
 6 disclosure without information. No indication of
 7 a further witness statement coming on the way. We have
 8 a witness who repeatedly indicates that evidence is
 9 going to be adduced in relation to these matters. And
 10 no explanation nor indication that, in fact, a very late
 11 witness statement is going to come.
 12 So, my Lord, that's the context of the application.
 13 It is incumbent on the party to explain why evidence is
 14 being put in late. I do have concerns about that
 15 evidence -- that explanation.
 16 The context, as I said my Lord, was this was going
 17 to be the day before she was going to give evidence, and
 18 then of course we heard she wasn't in fact turning up.
 19 Now on the issues and prejudice. The order of
 20 witnesses to come is -- we have a very, very short
 21 statement from Mrs Birdi. It is going to take moments
 22 to deal with tomorrow I hope, and then Mr McAlindon is
 23 going to be in the box.
 24 Now the issue firstly on the set point. This is a
 25 complicated point. There is a whole ream of accounting
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1 statements from events six years ago, and the idea was
 2 I was going to be expected to cross-examine on that
 3 matter with 24 hours' notice.
 4 Your Lordship has seen the clip of the accounts. My
 5 friend has now identified what that is, but this
 6 requires careful consideration and it requires a proper
 7 response, and indeed it is right that I should have
 8 a proper response to do so.
 9 MR JUSTICE HILDYARD: When was this handed up and when was
 10 this made available to you?
 11 MR POTTS: The disclosure was provided on the 5th without
 12 explanation.
 13 MR JUSTICE HILDYARD: You just thought it was a load of junk
 14 until now?
 15 MR POTTS: My Lord, I had no idea what it was about because
 16 there was no explanation. We now have the witness
 17 statement which identifies what this is about, but one
 18 has to go back into accounting records --
 19 MR JUSTICE HILDYARD: Did your solicitors ask what it was
 20 about?
 21 MR POTTS: No my Lord, it is fair to say they didn't.
 22 MR JUSTICE HILDYARD: All they could tell is it was
 23 considered to be relevant under the ongoing duty of
 24 disclosure. They received it on the 5th. Did they say:
 25 look, we are in the middle of trial, what is all this

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1 rubbish about?
 2 MR POTTS: It is fair to say my Lord, they were fairly
 3 heavily engaged, so no they didn't. There was no
 4 explanation. It was proffered and there was no
 5 suggestion, for example, that a further witness
 6 statement was going to be forthcoming.
 7 Now on the second issue, the concern is that this is
 8 an allegation -- again it is not a new point in
 9 the sense that one might say that cuts both ways. But
 10 the point is that I'm going to be required to
 11 cross-examine -- it is a point which has just come out
 12 as foreshadowed, but in fact on this witness statement.
 13 Mrs Birdi is going to go straight into the box and then
 14 Mr McAlindon is going to be subject to cross-examination
 15 on the point. It is a serious allegation. It is not
 16 one which, in the Dartford proceedings frankly we have
 17 we have been heavily --
 18 MR JUSTICE HILDYARD: Are we on SEP on or destruction?
 19 MR POTTS: No, on destruction.
 20 The SEP point is this is a matter which we would
 21 require opportunity to investigate.
 22 MR JUSTICE HILDYARD: Because you want to read through all
 23 this stuff?
 24 MR POTTS: Not just read through it, I have to go back and
 25 look through the accounts. We have to make enquiries of

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1 the accounting --
 2 MR JUSTICE HILDYARD: You say they are nothing to do with
 3 it. I thought the evidence was that it was unlikely
 4 that the accounts department had given any steer because
 5 it is not the sort of thing they do.
 6 MR POTTS: No my Lord, the point is one has to investigate
 7 the -- I mean, there are two invoices which have been
 8 put in from this gentleman. We have got to see
 9 the processes -- how, in fact, he was processed through
 10 the system, which means going back through to
 11 the accounting departments and so on, as to how in fact
 12 he was processed.
 13 It is six years ago and therefore it will take
 14 a little time to deal with.
 15 MR JUSTICE HILDYARD: Mr McAlindon is the man for that, is
 16 he?
 17 MR POTTS: No my Lord, he is not. That is the first point
 18 in relation to this. But I'm expected to cross-examine
 19 her on it tomorrow. It is not a question of him putting
 20 in -- him giving evidence on it, but I have to be in
 21 a position fairly to cross-examine her on the point. It
 22 therefore does require enquiries to be made, so I can
 23 fairly deal with the --
 24 MR JUSTICE HILDYARD: Enquiries of what sort Mr Potts? It
 25 sounds as if you have already made enquiries which

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1 reveal that the relevant person, whose name I have name
 2 I have forgotten --
 3 MR POTTS: Mr McLaughlan.
 4 MR JUSTICE HILDYARD: Mr McLaughlan isn't an employee. So
 5 you are going to say he is a sort of self-employed
 6 something. You must know something about him. Beyond
 7 that, what do you want to investigate?
 8 MR POTTS: My Lord, I'm entitled to investigate, firstly how
 9 his payments -- whether he was, in fact, put through
 10 the SEP system or not. That is the key allegation.
 11 MR JUSTICE HILDYARD: Right.
 12 MR POTTS: I have to enquire as to whether he was or he
 13 wasn't, and that requires speaking to people in the
 14 department and looking through the records in relation
 15 to how he was dealt with.
 16 MR JUSTICE HILDYARD: So when you saw, in the letter of
 17 5th December, this reference to, "Invoice
 18 Sean McLaughlan", beyond thinking, "who he?" you took no
 19 further steps?
 20 MR POTTS: Personally my Lord, I have to say I was dealing
 21 with cross-examination --
 22 MR JUSTICE HILDYARD: When I say "you", obviously I mean
 23 your team.
 24 MR POTTS: Well my Lord, I think -- I can say I think
 25 a thought process went into what is this about and it

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1 was not understood. There was not any explanation
2 provided and we do require some time to deal with it.
3 My Lord, in terms of how one deals with it, well we can
4 talk about that in a moment.

5 But in relation to Mr McAlindon, again
6 the allegation of shredding, as I have said, is
7 something which has obviously been in the offing for
8 some time, but is produced at this -- effectively
9 24 hours before I have to cross-examine. In fact now
10 would be a lot less because she is due to start first
11 thing tomorrow morning.

12 I don't have instructions on that point
13 unsurprisingly. I have been cross-examining and
14 instructions need to be taken in relation to a matter
15 which was six years ago in another company.

16 Not surprisingly, Mr McAlindon's focus is in
17 relation to the matters before the court now in relation
18 to these companies. So both in relation to dealing with
19 what is a serious allegation raised at the last minute
20 in this way, I require time -- firstly, if I were to
21 deal with this matter, I would require time in order to
22 ensure, firstly, that I am properly prepared so I can
23 fairly cross-examine her in relation to it, and secondly
24 for Mr McAlindon to have the ability to consider
25 the position. It may be he needs to refresh his memory

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1 on matters in relation to that company six years ago,
2 and he is entitled to have time to consider those
3 matters.

4 My Lord, that is why, in order to just proceed to
5 put this in now, in this way and to expect me to (a)
6 cross-examine Ms Birdi tomorrow morning on these matters
7 and (b) for then Mr McAlindon to go into the box and be
8 subject to cross-examination in these circumstances
9 would be unfair.

10 For example, in relation to the shredding allegation
11 it may be, on consideration, that the appropriate way we
12 would wish to deal with it would be for him to file
13 a short witness statement dealing with his position in
14 relation to this allegation. If this had been filed in
15 the proper way at the proper time, at the time of
16 witness statements in the action, we would have had
17 an opportunity to file witness statements in reply.

18 MR JUSTICE HILDYARD: But Mr Potts, I mean how unfair is it
19 for me to say to you that Ms Birdi is going to come out
20 with this in the course of cross-examination whatever
21 may be the nature of your questions, I betcha.

22 MR POTTS: Yes.

23 MR JUSTICE HILDYARD: And I mean, what will you say? Stop
24 it? Don't say anything like that? I mean you would
25 have to take your medicine with it and deal with it as

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1 you could, wouldn't you?

2 MR POTTS: My Lord, that's not quite how it is being done --

3 MR JUSTICE HILDYARD: It is being done in a fairer way than
4 that because if they had not done it this way, subject
5 to your point on the this, which I take -- subject to
6 that, whereupon, no doubt, there would have been some
7 effort to get this sort of stuff in -- I don't know how
8 far this is going to take us in any event, but I mean
9 there is a sort of sense of Alice in Wonderland about
10 this, isn't there? You just can't stop people saying
11 things which cause a bit of a flurry in the dovescotes.
12 Usually you don't get the advantage of someone else
13 saying three days earlier that they are going to say it.

14 MR POTTS: No.

15 MR JUSTICE HILDYARD: That is the only complaining that it
16 has been a bit -- it has been longer -- the ambush has
17 been accompanied by gongs, alarm clocks et cetera.

18 MR POTTS: I'm not sure about the gongs and alarm clocks
19 my Lord. In relation to the shredding allegation, it is
20 a serious allegation and it is one which is now put
21 fairly and squarely in a witness statement. But I must
22 be entitled my Lord -- if the court is aware that that
23 is the serious allegation which is being made, fairness
24 to my client requires that sufficient time to be
25 provided for him in order to give me instructions so

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1 I can properly cross-examine, and indeed for him, if so
2 advised, to put in a further witness statement.

3 MR JUSTICE HILDYARD: This is to remind himself whether or
4 not they destroyed documents in the context of Dartford?

5 MR POTTS: No my Lord, it is not just to remind him, but to
6 actually have a look at the context in which this
7 happened he needs to refresh his memory as to the
8 investigation, what happened six years ago in relation
9 to a question as to an employment file and so on. My
10 suggestion -- I appreciate the point my Lord. I'm
11 trying to deal with this in a way which is going to
12 cause the minimum of disruption so we can carry on and
13 get on with it.

14 My suggestion, if I can think on my feet, as to how
15 we might deal with this, is to delay Ms Birdi. We start
16 tomorrow with our witnesses, so I can take instructions
17 properly to prepare for her. In order that I can take
18 proper instructions and deal with the matter fairly,
19 that we deal with Mr Dyson tomorrow. During that time
20 I can take proper instructions, if necessary a short
21 witness statement from Mr McAlindon, if so advised,
22 could go in. Mrs Birdi will then be interposed. Deal
23 with Mrs Birdi, and then Mr McAlindon could be
24 cross-examined. That will not cause delay in the trial,
25 but it will afford me a fair opportunity to deal with

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1 these matters fairly, which involves serious
2 allegations.
3 My Lord, that is my suggestion on my feet.
4 MR JUSTICE HILDYARD: I thought you were against Mrs Birdi
5 being interposed. My memory is now fading on this
6 but -- even though it was only yesterday, which must
7 upset you all.
8 MR POTTS: No my Lord, my position is I was not keen on
9 Mrs Birdi being interposed between cross-examination and
10 re-examination.
11 MR JUSTICE HILDYARD: I see.
12 MR STUART: I don't think, my Lord, it was never suggested
13 that Mrs Birdi -- she wasn't here yesterday.
14 MR POTTS: My Lord, I hadn't also even had a chance to read
15 her second statement at that point frankly.
16 MR JUSTICE HILDYARD: How long is Mr Dyson going to be?
17 MR STUART: He is the longest witness, my Lord. He has put
18 in two witness statements.
19 MR POTTS: I think Mr McAlindon was half a day and Mr Dyson
20 a day, is that right?
21 MR STUART: I'm not sure.
22 MR POTTS: It is the other way round. Dyson half a day.
23 MR STUART: I'm just looking at their statements my Lord,
24 they are in bundle C.
25 MR POTTS: Mr McAlindon a day, Mr Dyson half a day.

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1 MR JUSTICE HILDYARD: Mr McAlindon a day and Mr Dyson how
2 long?
3 MR STUART: About half a day. But these are flexible,
4 depending how the issues play out during the course of
5 it my Lord --
6 MR JUSTICE HILDYARD: We are not in the area of fixed trials
7 yet, although apparently you all want them.
8 MR STUART: My Lord, can I just mention, my friend says that
9 the unfairness is Mr McAlindon has not had the
10 opportunity to consider this allegation from Mrs Birdi.
11 This allegation, as I told your Lordship, is made fairly
12 and squarely in a witness statement from Mrs Birdi about
13 five weeks ago. Time for the response statements to
14 those witnesses in that other matter was due to expire
15 yesterday. Due to. It has been extended, but
16 the suggestion that Mr McAlindon hasn't had any
17 opportunity to think through what his explanation is for
18 what happened in the Dartford case, is just absolute
19 nonsense.
20 MR JUSTICE HILDYARD: When has it been rescheduled for?
21 I will ask Mr Potts about this because I should have
22 asked Mr Potts about this.
23 MR POTTS: My Lord, it was rescheduled for 31st January.
24 The reason is because the parties are not in a position
25 to consider the Dartford matter now because they are

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1 dealing with these matters. So it is 31st January that
2 the witness statement replies are due to be exchanged,
3 and it is for that very reason. There isn't the time to
4 deal with two trials now -- matters in these two trials
5 and prepare witness statements for that as well.
6 MR JUSTICE HILDYARD: It is the same team is it, dealing
7 with those?
8 MR POTTS: My Lord it is, on both sides.
9 MR JUSTICE HILDYARD: Well, that's going to change Mr Potts.
10 There will be no such extensions in the future.
11 MR STUART: My Lord, can I just answer my learned friend's
12 legal argument about 32.10. I simply don't accept what
13 he says. I do not think he took your Lordship to
14 the relevant note in The White Book at the bottom of
15 page --
16 MR JUSTICE HILDYARD: It says it is very unusual to exclude
17 evidence.
18 MR STUART: It says:
19 "It will be unjust to exclude from adducing evidence
20 at trial save in very rare circumstances."
21 And it says:
22 "However, where before a trial a party requests the
23 court to exercise its powers under 3.1 to extend
24 the time for serving ..."
25 Because this is not a case where I have served no

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1 witness statement from Mrs Birdi, such that we come
2 within 32.10. 32.10 says:
3 "If a witness statement or a witness summary for use
4 at trial is not served in respect of an intended witness
5 within the time specified by the court, then the witness
6 may not be called to give oral evidence."
7 MR JUSTICE HILDYARD: I think your better point is, if I may
8 say so, that it is unusual because it is likely to be
9 unjust to exclude evidence unless there's some
10 countervailing unfairness which tilts the balance
11 the other way. As ever it is a balancing task, is it
12 not?
13 MR STUART: It is my Lord.
14 MR JUSTICE HILDYARD: So unfair, potentially, is
15 the exclusion of evidence that it will take a great deal
16 of convincing a court that it should do so. But
17 Mr Potts I sense, taking that into account, has
18 suggested another way of balancing the matter.
19 As presently advised, it would take a lot for me to
20 exclude this evidence. I also think that it would be
21 sort of perverse of me to do so because, having excluded
22 it in writing, I would then have to listen to it in
23 realtime. It would be, to use a Chancery phrase,
24 bonkers, wouldn't it?
25 MR STUART: My Lord, Mr Potts complains bitterly that

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1 the documents were disclosed last Friday in relation to
2 the document part of it. They were disclosed last
3 Friday because that's when the issue -- last Thursday,
4 I'm sorry, the documents were disclosed as to that.
5 That's when the documents were provided by Ms Birdi, who
6 is not a party in these proceedings and they were
7 provided for the purpose of these proceedings. It is
8 plain from that letter --
9 MR POTTS: The documents were held by the same
10 solicitor, Lord.
11 MR JUSTICE HILDYARD: What?
12 MR POTTS: It is the same solicitor acting for her in this
13 other action. To say that they have somehow been found
14 in the back cupboard is not the case. They have been
15 held by her solicitor for months.
16 MR STUART: These are your documents. These are copies of
17 Specsavers' documents.
18 MR JUSTICE HILDYARD: Yes.
19 MR STUART: My Lord --
20 MR POTTS: It is her disclosure, not ours.
21 MR STUART: Taylor Wessing have been drip feeding late
22 disclosure to us, including, for example, the three
23 invoices. The three Mr Ferguson invoices that form
24 the very crux of their case, they disclosed them to us
25 on Sunday.

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1 MR JUSTICE HILDYARD: Well, that's a different point, isn't
2 it? We are not really on late disclosure. These
3 documents are Dartford documents. They come from
4 the internal documentation of Dartford.
5 MR STUART: They do.
6 MR JUSTICE HILDYARD: To which Specsavers would not have
7 immediate access. They are not Specsavers' documents.
8 They are Dartford documents.
9 MR STUART: They are documents sent by Specsavers to
10 Dartford. They are accounts produced by Specsavers.
11 The bottom line account with all the back-up information
12 is sent from the Specsavers --
13 MR JUSTICE HILDYARD: But they might take the view: not
14 relevant in these proceedings.
15 MR STUART: Plainly they have, my Lord. They are seeking to
16 put forward a case to your Lordship that it is
17 absolutely impossible for a person, who is not a lab
18 technician or a self-employed optician or
19 a self-employed --
20 MR JUSTICE HILDYARD: It is arguable that, bearing in mind
21 the generality of their case, that the SEP system is
22 never used for people in the position of Mr Ferguson and
23 that the relevant accounts department never gives
24 a steer or any derogation from the specific
25 requirements. Given the generality of their case, it is

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1 possible that these should have been disclosed. That's
2 your point.
3 MR STUART: I do not even wish to make a criticism, my Lord.
4 In the general concept of what is fair in relation to
5 this trial -- and should your Lordship be excluding
6 evidence --
7 MR JUSTICE HILDYARD: I'm not going to exclude the evidence.
8 MR STUART: I know you are not.
9 MR JUSTICE HILDYARD: I'm going to allow this evidence in.
10 The only question is under what conditions.
11 MR STUART: I have got Mrs Birdi coming tomorrow. You know
12 that I had difficulties with her today. I'm mindful of
13 your Lordship's warning to me yesterday; don't take
14 any -- I simply don't know Mrs Birdi's availability for
15 Friday because I have told her: you will be giving
16 evidence first thing Thursday morning; you will be
17 the first witness, you must be here; do not not turn up.
18 If the position is going to be, as a result of some
19 request by Mr Potts, that what we are going to do is we
20 are going to hear from the whole of Mr Dyson and
21 presumably then we may not even get to her --
22 MR JUSTICE HILDYARD: I want to separate out various points,
23 if I may, with you.
24 This evidence will go in. The only question is
25 under what conditions.

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1 Mr Potts has a fair point or a prima facie fair
2 point, which you can address, that there are at least
3 two firm indications that you knew that this evidence
4 was going to be adduced in whatever form by the 5th.
5 That is partly because you send letters with, as it
6 were, documents which appear to set out some ammunition
7 for the, as he would put it, ambush, and partly because
8 Mr Vos told us that. Those are the two objective facts
9 which seem to indicate that this has been longer
10 planned.
11 MR STUART: On the 5th the issue of those documents arose
12 and in the first instance, certainly on our side, we
13 considered that the appropriate thing was immediately
14 disclose those documents to the other side. Insofar as
15 they may be relevant to an issue in this case, disclose
16 them. It is plain when you read them what they are. It
17 says Mr Sean McLaughlan and it is the Dartford...
18 Now, I accept that we didn't simultaneously then
19 send over a witness statement with her evidence as to
20 that first point. I accept that we didn't send that on
21 Friday 6th.
22 MR JUSTICE HILDYARD: Why was that?
23 MR STUART: Because initially we just wanted to get
24 the evidence -- the documents disclosed.
25 MR JUSTICE HILDYARD: Right, but you had this up your

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1 sleeve, why didn't you --
 2 MR STUART: We hadn't yet decided whether it was necessary
 3 to actually make a witness statement for her -- one
 4 paragraph saying: these are these documents, this is
 5 the point.
 6 MR JUSTICE HILDYARD: I see.
 7 MR STUART: I could have, as your Lordship has put it, just
 8 literally left it as a cross-examination ambush of
 9 somebody and said: well, these documents have been
 10 disclosed, they are in the bundle, I can put them to
 11 a witness if I want to, and I could have just allowed --
 12 MR JUSTICE HILDYARD: But she would be your witness.
 13 MR STUART: Not her, I'm saying to one of the others;
 14 Mrs Mancini walks into the box and says "It has never
 15 been done before" and I could have said, "Well, this was
 16 disclosed back on 4 December, how are you going to
 17 explain that?"
 18 But over the weekend I considered that, no, that is
 19 not the fair and proper and proportionate approach under
 20 the CPR these days. We don't just leave it for
 21 witnesses to say things in their cross-examination and
 22 then ambush by cross-examination. Let's set it all out
 23 for them and a witness statement was drafted during the
 24 course of Monday eve -- when we were working fairly hard
 25 on that case. I didn't draft the witness statement. It

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1 was drafted during the course of Monday evening and it
 2 was served first thing on Tuesday morning. I accept
 3 that.
 4 Whilst the opportunity of putting that evidence
 5 in -- Mrs Birdi also, when asked to provide this further
 6 witness statement that was to be a paragraph -- she also
 7 wished to address -- and it was felt appropriate to
 8 address in a proper form, so that it was all upfront and
 9 nobody is going to be taken by surprise -- what she
 10 wishes to say about the destruction of the documents,
 11 which, as your Lordship has been shown, was a matter
 12 which was raised, first of all, on the afternoon of
 13 the Friday.
 14 Mr Potts has taken you to that little spat and as to
 15 whether it is an issue and as to whether we will or
 16 won't be hearing about this. And for the sake of
 17 covering everything and so that nobody can be said to be
 18 taken by surprise, on our side, we deemed it appropriate
 19 to put it into a witness statement form, serve it on
 20 the other side, so that when Mrs Birdi came out with it
 21 in her evidence it didn't take anybody by surprise.
 22 Now Mr Potts seems to be suggesting that in some way
 23 that is not an appropriate way to do it. I don't accept
 24 that, my Lord. My suggestion is that we have acted
 25 perfectly proportionately and in accordance with the

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1 overriding objective.
 2 I don't accept that 3.9 applies here. We are not in
 3 a CPR 3.9 situation actually. It is open to
 4 your Lordship to allow me to put in this witness
 5 statement. I think your Lordship has acknowledged you
 6 are going to do that anyway. It is the terms upon which
 7 you are going to do it.
 8 As long as Mrs Birdi is not going to be prevented by
 9 the back door, by problems about when she may or may not
 10 be available, from giving her evidence, then I'm not too
 11 bothered. I know she is coming tomorrow and as long as
 12 she can give her evidence tomorrow then I'm perfectly
 13 prepared to agree to it. I just simply at the moment
 14 don't know whether she can come on Friday.
 15 MR POTTS: My Lord the point about -- just on the SEP
 16 stuff -- the witness statement is saying this is a point
 17 which arose on Monday 2nd, not on Friday.
 18 MR STUART: No, I said the destruction of the documents
 19 point arose in the transcript of Friday.
 20 MR JUSTICE HILDYARD: Is there anything else anyone wants
 21 to --
 22 MR STUART: My Lord, I'm told it is likely she wouldn't be
 23 available on Friday, but could be on Monday, when
 24 Mrs Rosier of course is coming. So if we had Mr Dyson
 25 and Mr McAlindon before we heard from Mrs Birdi?

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1 MR JUSTICE HILDYARD: Mr Potts is suggesting that Mr Dyson
 2 be next. Are you able to cross-examine Mr Dyson?
 3 MR STUART: If your Lordship agrees that we are going to
 4 deal with Mr Dyson next, I will leave here now and
 5 I will stop working on my cross-examination of
 6 Mr McAlindon --
 7 MR JUSTICE HILDYARD: I do not want to cause unfair
 8 dislocation or even -- I know the problems of
 9 a relatively long trial and I don't wish to impose --
 10 MR STUART: I'm just saying it does seem to me that
 11 the problem of Mr McAlindon dealing with this very
 12 short -- one paragraph of evidence from Mrs Birdi -- and
 13 if he is going to be here tomorrow, which is what is on
 14 the timetable, he will actually be able to sit here and
 15 hear her if she gives her evidence at 10.30 tomorrow and
 16 then he can step into the box and answer her.
 17 If Mr Potts wants to call him back in a few days
 18 time, when he has had an opportunity to find out some
 19 piece of evidence that he wants to, then I won't oppose
 20 that. That seems to me to be a fair way to allow any
 21 possible prejudice to Mr McAlindon's ability to answer
 22 the point, by being told about it at 9 o'clock
 23 yesterday -- actually told about it on 5th November,
 24 rather than in the witness statement in reply back in
 25 August.

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1 MR POTTS: I think you are confusing two issues, my Lord.
 2 We are talking about the SEP stuff. I'm not in
 3 a position to deal with that tomorrow.
 4 MR STUART: You have said the SEP stuff is not Mr McAlindon;
 5 it is Mrs Mancini and she is some time next week.
 6 MR POTTS: My point is -- oh well.
 7 MR STUART: The only problem, so my learned friend says, is
 8 that Mr McAlindon would have to give him instructions as
 9 to Mr McAlindon's answer to this one allegation set out
 10 in paragraphs 6 and 7 of this witness statement. As
 11 I say, Mr McAlindon has known about it since
 12 5th November.
 13 MR JUSTICE HILDYARD: Has Mr McAlindon been in court?
 14 MR POTTS: He has. He is not here today. He has been for
 15 part of the time.
 16 MR JUSTICE HILDYARD: He is available and he is in London,
 17 is he?
 18 MR POTTS: My Lord, he is here tomorrow morning. The issue
 19 in terms of Mrs Birdi and the SEP stuff is my ability to
 20 cross-examine on that tomorrow, which I'm not in
 21 a position to do. I need some time in relation to that.
 22 As I said, I'm not enamoured about the idea of
 23 changing the order of my witnesses. I changed the order
 24 for my witnesses obviously to what I thought was
 25 appropriate. But, as I said to your Lordship, I'm

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1 trying to find a way through this issue. That, I think,
 2 is the best, which would give some fairness to us, is if
 3 we can deal with Mr Dyson. But my concern is that
 4 I would like to cross examine in relation to this
 5 allegation in the ordinary way Mrs Birdi and then
 6 Mr McAlindon can follow, which was my proposal.
 7 MR STUART: But that is going to be tomorrow afternoon;
 8 Mrs Birdi.
 9 MR JUSTICE HILDYARD: I'm sorry, Mr Potts, I was thinking
 10 about something else in relation to this. What are you
 11 now proposing? What is the sequence? What do we do
 12 tomorrow on your recommendation?
 13 MR POTTS: My Lord, it is what I mentioned a few minutes
 14 ago, that we do Mr Dyson tomorrow, then I take
 15 instructions also in relation for Mr McAlindon, and it
 16 may be that we put in a short witness statement which
 17 will allow this matter to be dealt with more
 18 expeditiously in court tomorrow; we then have Mrs Birdi
 19 and then Mr McAlindon.
 20 MR JUSTICE HILDYARD: And you say to that?
 21 MR STUART: I'm looking at the chronology, does
 22 your Lordship have it? We are due to have Mr McAlindon
 23 tomorrow morning and Mr Dyson tomorrow afternoon.
 24 MR JUSTICE HILDYARD: No, Mr McAlindon was a day I thought?
 25 MR STUART: No according to our chronology, the one we are

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1 using. Does your Lordship have it?
 2 MR POTTS: Mr McAlindon on the timetable is a day.
 3 MR JUSTICE HILDYARD: That's what you told me earlier. It
 4 was meant to be Tuesday 10.00 pm and Wednesday 11.00 am.
 5 MR STUART: I'm sorry my Lord the point I was trying to make
 6 is, if we put Mr Dyson tomorrow morning, Mr Dyson is
 7 half a day according to this schedule. So we are going
 8 to get to the end of Mr Dyson, which my learned friend
 9 says is when we should put in Mrs Birdi, and that will
 10 be tomorrow afternoon.
 11 MR JUSTICE HILDYARD: He is prepared to live with that, are
 12 you?
 13 MR STUART: Yes, if that really makes a difference to him,
 14 I'm prepared to live with that.
 15 MR JUSTICE HILDYARD: That helps you, Mr Potts?
 16 MR POTTS: It does a little, my Lord. In terms of how long
 17 it will take, I am a little bit skeptical, given how
 18 things have gone in terms of witness length. I do not
 19 know if it will be that quick. It may be.
 20 Can I take instructions, my Lord?
 21 MR JUSTICE HILDYARD: I'm going to rise for 10 minutes
 22 because you are going to work out Mrs Birdi's
 23 availability. Mr Potts, I should warn you that I may
 24 very well just simply retain the same order and make you
 25 do stuff in good time, but I would like to consider

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1 the options if there's something which you are happier
 2 with than that.
 3 MR POTTS: My Lord, I have made a suggestion and that is
 4 what I would be most happy with. My Lord, it is not
 5 a question of happiness. In my respectful submission,
 6 it is a question of substantive fairness.
 7 MR JUSTICE HILDYARD: I know what you say about that.
 8 I have got a feeling that this bundle of documents,
 9 there's a lot less in it than meets the eye. But I will
 10 rise for 10 minutes and allow you to take a considered
 11 view as to how we should continue. That also gives some
 12 time for the shorthand writers.
 13 (3.30 pm)
 14 (A short break)
 15 (3.45 pm)
 16 MR STUART: My Lord, yes. The position is this: I haven't
 17 been able to get through to Mrs Birdi, but certainly my
 18 witnesses understand she is making herself available all
 19 day tomorrow. So we appear to have reached
 20 the following consensus: we should start with Mr Dyson
 21 at your not before 10.30 first witness. On our
 22 chronology Mr Dyson was due to be half a day. Even if
 23 he slips and becomes 3 o'clock, as it were, Mrs Birdi
 24 can then give her evidence tomorrow afternoon and even
 25 if my learned friend isn't moments with her but is half

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1 an hour or three-quarters of an hour with her, we will
 2 finish her tomorrow afternoon and then we will have
 3 Mr McAlindon Friday morning.
 4 MR POTTS: My Lord that was my proposal and I'm content with
 5 that.
 6 MR JUSTICE HILDYARD: Yes, thank you very much for resolving
 7 it in that way. I have heard, just by way of warning,
 8 that at my hearing tomorrow the previously represented
 9 parties are no longer represented. That sometimes does
 10 mean things take longer. I will still mark you not
 11 before 10.30 but with a cautionary note. I will try and
 12 get it all disposed of, but sometimes one's best efforts
 13 fail. I will read up Mr Dyson's witness statement and
 14 you are not unduly prejudiced by that?
 15 MR STUART: Not so much that I'm going to make any point of
 16 it at all. I will be ready for Mr Dyson at 10.30
 17 tomorrow morning.
 18 MR JUSTICE HILDYARD: Very good.
 19 MR STUART: Could I mention one thing, it is not something
 20 your Lordship needs to worry about, but I'm ever mindful
 21 of the chastisement of yesterday afternoon.
 22 MR JUSTICE HILDYARD: Yes.
 23 MR STUART: In the Uckfield case I have a witness, she is on
 24 your Lordship's chronology for the Wednesday
 25 18th December, and her name is Patricia Lofting. She is

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1 a JVP from another store and she gives a very short
 2 evidence about one point. We have had difficulties
 3 ensuring that she is coming to give evidence. I think
 4 she is the subject of a summons to get her to be here.
 5 She has notified us that she has a hospital
 6 appointment on Thursday 19th December, we, having told
 7 her to answer her summons at the moment on Wednesday
 8 18th December.
 9 My Lord, I'm just laying down the marker that come
 10 hell or high water, whatever happens between now and
 11 Tuesday 17December, I'm going to ask to have Mrs Lofting
 12 give her evidence on Wednesday 18 December and I hope
 13 that we can somehow -- I know your Lordship doesn't want
 14 to show any laxity -- somehow we can arrange matters
 15 between ourselves that she will give her evidence on
 16 that day. She is a very short statement, my Lord. It
 17 is one point. I think she will be half an hour.
 18 MR JUSTICE HILDYARD: Well, that is fair warning.
 19 MR POTTS: My Lord, if I may, I am sure that shouldn't be
 20 a problem. The only point I would make is just in
 21 relation to Mr Dyson who is giving evidence now and then
 22 is to come again. He has come over from Australia to
 23 deal with this matter. As your Lordship knows, he is
 24 a main board member. His responsibilities are in
 25 Australia.

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1 Flights back home for Christmas are difficult. He
 2 has a flight, I think, but any longer and then he
 3 doesn't get home for Christmas.
 4 MR STUART: That's fine, my Lord. What date is Mr Dyson's
 5 flight?
 6 MR POTTS: Thursday 19th.
 7 MR STUART: So we have to have heard from him by then as
 8 well. My Lord, absolutely of course we do not wish to
 9 make trouble for people either.
 10 MR JUSTICE HILDYARD: I have got him in for the 16th.
 11 MR POTTS: Indeed. I'm -- just in terms of logistics.
 12 MR STUART: We are running a little behind, my Lord, so it
 13 looks like Mr Dyson could be the 17th.
 14 MR JUSTICE HILDYARD: I see. Can I reveal two things which
 15 may clog up your schedule a little bit. One is that on
 16 17th December I have an engagement which will take me
 17 out from 12 pm until 2 o'clock and I will therefore seek
 18 to sit early on that day in order to make up as much of
 19 the hour as possible. An hour will be lost.
 20 MR STUART: Understood my Lord.
 21 MR JUSTICE HILDYARD: On the 19th, the Thursday, I have
 22 another matter I think starting at 9.15 and due for two
 23 hours. So I would mark you not before 11.15 on
 24 the Thursday. I will make enquiries as to how I can
 25 make that three quarters of an hour up in the course of

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1 proceedings.
 2 My present estimation, and you can be thinking about
 3 this and update me, is that the chances of us getting to
 4 the end of the trial or the trials this term are
 5 vanishing.
 6 MR STUART: My Lord, Mr Potts and I were just discussing it.
 7 We are pretty much convinced that we still very much
 8 hope to get through the evidence this term but, yes, not
 9 the submissions and the trial. Obviously my Lord we
 10 would separately want to try and get through
 11 the evidence if we can.
 12 MR JUSTICE HILDYARD: Yes, we must try and get the evidence
 13 done but that would be the focus I think realistically.
 14 MR POTTS: My Lord, yes. I'm obviously making enquiries as
 15 to what I can find out in terms of next term as well.
 16 MR JUSTICE HILDYARD: In that context, because it means
 17 a little bit of private arrangements but also
 18 arrangements with the court, if you want to take
 19 the offer up of the before term hearing, then
 20 the earlier we all know about that the better.
 21 MR STUART: Absolutely, my Lord. I think your Lordship said
 22 Thursday 9th.
 23 MR JUSTICE HILDYARD: That is right. Just hold on one
 24 second.
 25 Just whilst I am thinking about it and you can each

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1 say you don't wish to reply at the moment, but if you do
2 know what the answer is; beyond the Revenue's concern to
3 distinguish self-employed persons from employed persons,
4 what is the Revenue's interest in the SEP system? What
5 is their concern and interest in the SEP system? Is
6 that going to be the subject of evidence or submission
7 or what?
8 MR POTTS: Sorry, my Lord, I'm trying to decipher
9 the question. (Pause). My Lord, I don't know
10 the answer to that --
11 MR JUSTICE HILDYARD: Fine. I just park that with you then
12 as to that.
13 MR POTTS: Yes.
14 MR JUSTICE HILDYARD: Then, finally, the two cases which are
15 being heard together or consecutively; there is no
16 direction for evidence in one to be admissible in
17 the other, is there? I mean have there been any other
18 directions with respect to those two trials?
19 MR POTTS: I don't believe so, my Lord, other than they are
20 to be heard one after the other.
21 MR JUSTICE HILDYARD: Sometimes in order to save bits and
22 bobs you have such a direction, but there has been no
23 such direction nor any expectation on your part?
24 MR POTTS: No, my Lord. It is for that reason that
25 the witness statements have overlap in some. I think we

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1 agreed, my Lord, in terms of the legal submissions and
2 I think indeed in terms of cross-examination, I think we
3 had a discussion that in terms of for example
4 the general who is Specsavers, obviously that we didn't
5 need to cross-examine twice on such matters. But
6 the witness statements cover everything.
7 MR JUSTICE HILDYARD: It may be that any concurrent matters
8 can largely be dealt with by an agreed statement of
9 facts. I can't remember, it is now some time since
10 I did the reading, is there an agreed statement of facts
11 in this case?
12 MR POTTS: There is an agreed statement of the list of
13 issues, my Lord.
14 MR JUSTICE HILDYARD: Yes, but no agreed statement of facts.
15 MR POTTS: No, all that we have is a non-contentious
16 chronology for each but it is not a common document, no.
17 MR JUSTICE HILDYARD: Right, good. All right. Thank you
18 very much for resolving that matter between you and we
19 will meet again as near to 10.30 as permits. Thank you.
20 (3.55 pm)
21 (The court adjourned until 10.30 am
22 on Thursday, 12 December 2013)
23
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