

OPUS 2

INTERNATIONAL

Ms Swarandeeep Birdi v (1) Specsavers Optical Group Limited (2)
Mr Kamaljit Singh (3) Dartford Visionplus Limited (4) Dartford
Specsavers Limited

Day 1

October 23, 2014

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Phone: +44 (20) 3008 5900
Email: transcripts@opus2.com
Website: <http://www.opus2.com>

1 Thursday, 23 October 2014
2 (10.30 am)
3 (Proceedings delayed)
4 (10.47 am)
5 MR JUSTICE NUGEE: Yes.
6 Housekeeping
7 MR STUART: My Lord, I appear on behalf of the petitioner,
8 Mrs Birdi, together with my colleague Mr Winn-Smith, and
9 Mr Potts QC and Mr Rivett appears for the respondents.
10 MR JUSTICE NUGEE: Yes.
11 MR STUART: My Lord, I hope that you have -- I'm sure you
12 have -- got both sets of materials, as they have been
13 put in the bundles. That is skeleton arguments,
14 together with attached materials, which are common to
15 the two sides.
16 MR JUSTICE NUGEE: Yes. I did, thank you. I have read both
17 the skeletons and I spent yesterday reading as much as
18 I could of the other stuff on the reading list. I don't
19 pretend to have a comprehensive grasp of all the detail
20 but I have a fair idea of what the case is about.
21 MR STUART: My Lord, yes.
22 If I can just deal with some housekeeping matters
23 first, your Lordship will have seen a proposed trial
24 timetable.
25 MR JUSTICE NUGEE: I saw that.

1

1 MR STUART: I have discussed this with Mr Potts. I think we
2 are both of the view that it would be beneficial to get
3 into the evidence as soon as possible.
4 MR JUSTICE NUGEE: Yes.
5 MR STUART: On the trial timetable -- we are at day 2 now
6 because obviously day 1 was reading.
7 MR JUSTICE NUGEE: Yes.
8 MR STUART: We have down for this morning housekeeping
9 matters, opening -- my opening, Mr Potts' opening -- and
10 then that possibly running into this afternoon, and then
11 Mrs Birdi starting her evidence this afternoon.
12 MR JUSTICE NUGEE: Yes. Now that we know when we are
13 starting, it would be helpful to have a timetable with
14 days on it.
15 MR STUART: Yes, my Lord.
16 MR JUSTICE NUGEE: Thank you.
17 MR STUART: My Lord, whilst we are on that timetable, one of
18 the issues of housekeeping that arises are the staff
19 members, the short witnesses, who you see on day 5 of
20 the timetable.
21 MR JUSTICE NUGEE: Yes.
22 MR STUART: And I don't know whether your Lordship has had
23 an opportunity to see the context in which these
24 witnesses are being called, but essentially these are
25 members of staff of the store who signed up to a letter.

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1 MR JUSTICE NUGEE: These are the six signatures to the
2 letter?
3 MR STUART: That's right, and/or were interviewed by
4 Specsavers as part of the investigation into grievances,
5 et cetera, and Specsavers served hearsay notices in
6 relation to the letter and their interviews.
7 MR JUSTICE NUGEE: Yes.
8 MR STUART: Effectively, therefore, requiring us, if we
9 challenge the evidence contained in those --
10 MR JUSTICE NUGEE: The statements of fact which the letter
11 and the interviews contained?
12 MR STUART: Correct. To cross-examine them. We applied for
13 permission to cross-examine them, we obtained that
14 permission and so they are here, by reason of the fact
15 that we have served witness orders --
16 MR JUSTICE NUGEE: Yes.
17 MR STUART: -- requiring them to be here.
18 MR JUSTICE NUGEE: There are no witness statements from them
19 but their evidence is the hearsay statements contained
20 in --
21 MR STUART: -- the letter and their interview notes.
22 MR JUSTICE NUGEE: So you will be cross-examining them on
23 the statements in those documents?
24 MR STUART: Just on the statements in those documents.
25 There are two points of housekeeping about that. If

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1 your Lordship has the little list for day 5,
2 Darshan Jhita, the second of the listed, we have been
3 unable to serve her with the witness summons and so, so
4 far as we know, she is not going to be here.
5 MR JUSTICE NUGEE: Right.
6 MR STUART: So we can effectively cross her out.
7 Then jumping two down in the list, Ruth Wotton.
8 MR JUSTICE NUGEE: Yes.
9 MR STUART: She was served but wrote on a number of
10 occasions, especially as this trial has been delayed
11 over the course of the last couple of weeks -- it was
12 due to start a week last Monday -- and she has written
13 on a number of occasions to us and basically expressed
14 dismay and just -- as she put it, an inability to
15 comply, et cetera, et cetera. We have therefore taken
16 the decision --
17 MR JUSTICE NUGEE: You are not going to put --
18 MR STUART: We are not going to put her to the trouble. She
19 is one of many and if we can't do the job of challenging
20 the evidence by reference to the others, then she
21 wouldn't add very much at all.
22 MR JUSTICE NUGEE: Yes.
23 MR STUART: So she has been served with the summons but we
24 have written to her, agreeing that we do not press the
25 summons against her and agreeing that she will not be

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1 coming.
 2 So technically, so as to avoid any suggestion that
 3 she is in breach of any summons, I asked for the summons
 4 against her to be withdrawn.
 5 MR JUSTICE NUGEE: Very well, I will allow you to withdraw
 6 that summons.
 7 MR STUART: So we can cross her off the list of the
 8 timetable.
 9 As to the remaining six, we wrote to the six saying
 10 that, because of the delays, et cetera, and in order to
 11 avoid unnecessary difficulties for them, we would write
 12 to them notifying them of the date that they needed to
 13 turn up.
 14 MR JUSTICE NUGEE: Yes.
 15 MR STUART: We are not quite sure why, but the first two
 16 have, so far as we understand, complied with that and
 17 they are not here this morning, but they are going to
 18 attend and we are going to tell them when it comes to
 19 their -- a day or two in advance of their day,
 20 et cetera.
 21 MR JUSTICE NUGEE: By the first two, you mean --
 22 MR STUART: Lorraine Frondigoun and Patrice O'Brien.
 23 MR JUSTICE NUGEE: Yes.
 24 MR STUART: The other four, Helen Tidmass, Lucy Hornby,
 25 Stephen Hummell and Tracey Hilton sit to my left, so

1 they have turned up. We were not actually expecting
 2 them because we had written them the same letter that we
 3 wrote to those two, but they have turned up, which, of
 4 course, is perfectly proper of them to want to do so,
 5 but I would ask that they can be released this morning,
 6 obviously still subject to their summons, to come back
 7 when we notify them that they are due to come back.
 8 MR JUSTICE NUGEE: Yes, I will do that.
 9 Thank you for coming. You don't need to attend
 10 today. You are perfectly at liberty to stay and listen
 11 if you want to because it's a public proceeding, but if
 12 you have other things to do you can go and come back
 13 when you are notified by the petitioners' solicitors
 14 that you are required. Thank you very much.
 15 MR STUART: So, then, your Lordship will see, other than
 16 that, the timetable that we have jointly proposed.
 17 MR JUSTICE NUGEE: Yes.
 18 MR STUART: I don't know whether your Lordship has had
 19 a chance to review it and considers it's appropriate or
 20 not appropriate, or -- can we just leave it under
 21 continuing review as the trial --
 22 MR JUSTICE NUGEE: It should be reviewed as we go along.
 23 MR STUART: Yes.
 24 MR JUSTICE NUGEE: But it looks reasonably sensible insofar
 25 as I'm able to express a view at this stage.

1 MR STUART: Thank you, my Lord.
 2 My Lord, other -- if I can call them housekeeping
 3 matters.
 4 MR JUSTICE NUGEE: Before we go any further, technology.
 5 I understand that the respondents have this all singing,
 6 all dancing Opus2 Magnum system. Am I right in thinking
 7 that you don't?
 8 MR STUART: No, I think we do.
 9 MR JUSTICE NUGEE: You do?
 10 MR STUART: Yes.
 11 MR JUSTICE NUGEE: So, everybody has it. I have got two
 12 screens. I have managed to log on to one screen, which
 13 is producing a transcript, but I understood that I would
 14 have one screen for documents and one for a transcript?
 15 MR POTTS: I think that is possibly some confusion. Both
 16 sides have the LiveNote transcript.
 17 MR JUSTICE NUGEE: Yes.
 18 MR POTTS: There is also --
 19 MR JUSTICE NUGEE: The document management.
 20 MR POTTS: The document management system of the trial
 21 bundle has been scanned and is available electronically.
 22 The other side didn't want that. So we have a hard copy
 23 bundle. If your Lordship finds it easier to use the
 24 electronic version, your Lordship can use the electronic
 25 version, but the other side don't have it. I'm not

1 proposing to use it myself in court either. So there
 2 are hard copies for the witnesses and for the other
 3 side. If your Lordship has access to it, the bundle has
 4 been scanned. If your Lordship finds it easier to work
 5 virtually, then it is available.
 6 MR JUSTICE NUGEE: I'm very grateful, but my question was a
 7 more basic one, which is that I thought I was going to
 8 get a transcript on this screen and have this one for
 9 the documents. I don't think it's probably a question
 10 for you.
 11 Do carry on, I can listen at the same time,
 12 Mr Stuart.
 13 MR STUART: My Lord, I'll deal with something which I hope
 14 is not, for the moment, too contentious.
 15 The issue has arisen about Mr Justice Hildyard's
 16 potential judgment in two associated matters that were
 17 associated to each other.
 18 MR JUSTICE NUGEE: Yes, two other Specsavers stores and he
 19 had a 25-day trial earlier this year, I think.
 20 MR STUART: It ended in January. It went over the Christmas
 21 break.
 22 MR JUSTICE NUGEE: He is due to hand down a judgment
 23 shortly.
 24 MR STUART: He is.
 25 MR JUSTICE NUGEE: Were you -- same parties?

1 MR STUART: Yes, the entire same teams are --
 2 MR JUSTICE NUGEE: And overlap of witnesses? Some
 3 witnesses?
 4 MR STUART: There was an overlap of witnesses, Ms Birdi gave
 5 evidence and --
 6 MR JUSTICE NUGEE: Mr McAlindon.
 7 MR STUART: Mr McAlindon, Mr Dyson, Mr Raines, Mr Rowe ...
 8 I would say 80 per cent of the witnesses on the
 9 respondent's side are common.
 10 MR JUSTICE NUGEE: Yes.
 11 MR STUART: Only -- well, you will see, we only have two
 12 witnesses, Ms Birdi and her husband, and Ms Birdi gave
 13 evidence at that trial about a relatively limited issue,
 14 I should say, and it related to the matters that she
 15 knew about in this case.
 16 MR JUSTICE NUGEE: Yes.
 17 MR STUART: But there was some overlap then.
 18 MR JUSTICE NUGEE: Where were the other stores?
 19 MR STUART: Bognor Regis and Uckfield.
 20 MR JUSTICE NUGEE: Right.
 21 MR STUART: To be clear, the central issue in those two
 22 cases was not exactly the same as the one in this case.
 23 In those two cases, Specsavers had sought to acquire the
 24 store owners' shares at par value, effectively at nil,
 25 alleging that the store owners --

1 MR JUSTICE NUGEE: 50p a share?
 2 MR STUART: Exactly -- alleging that the store owners were
 3 themselves guilty of the dishonest conduct which
 4 justified the taking of those shares at nil. I'm, of
 5 course, summarising --
 6 MR JUSTICE NUGEE: Mr Potts is shaking his head very
 7 eloquently. Let me cut this short. I obviously don't
 8 know the detail of those proceedings but I have seen
 9 both your notes. It doesn't seem to me that it's
 10 something that I have to make any decisions about at the
 11 moment. At the moment, there isn't a judgment.
 12 MR STUART: That's right.
 13 MR JUSTICE NUGEE: Once there is a judgment, then either/or
 14 both of you can make submissions to me as to whether
 15 I should or shouldn't look at it for any particular
 16 purposes.
 17 I understand entirely the Hollington v Hewthorn
 18 point which Mr Potts made in his note. I also
 19 understand the point that you made that if there are
 20 decisions on points of law, which are common points of
 21 law, then I can clearly be shown what
 22 Mr Justice Hildyard has said about the points of law.
 23 So far as use in cross-examination is concerned, I think
 24 I would need a bit more help with reference to
 25 a particular passage in the judgment as to whether that

1 is something which could be deployed in
 2 cross-examination.
 3 I'm not proposing to express any views now. I can
 4 see that there are arguments both ways.
 5 MR STUART: My Lord, you have the position, which is it's
 6 all, at the moment, hypothetical anyway because we don't
 7 know what might be in the judgment or not in the
 8 judgment, and therefore even I don't know whether it
 9 might or might not be --
 10 MR JUSTICE NUGEE: It might not be any help to you.
 11 MR STUART: It might not be any help to me; it might not be
 12 that there is anything that can be said on either side.
 13 I don't know. All I'm saying is that it is an issue
 14 which has arisen; it has rather unfortunately,
 15 I believe, caused the delay of this trial since last
 16 Monday.
 17 MR JUSTICE NUGEE: I don't know anything about that and it
 18 doesn't matter. We are where we are.
 19 MR STUART: Exactly. We put that to one side as well.
 20 The only other housekeeping matter -- and there is
 21 no application that I'm asking you to rule upon -- is
 22 the issue of ongoing disclosure.
 23 There are three categories of document that the
 24 petitioner has sought disclosure of and the
 25 correspondence about that has continued right up until

1 the last few days at least. I'm not going to go into
 2 the detail of it because I don't think it's helpful. We
 3 haven't issued any application at present. We are
 4 considering the latest position and if and when we seek
 5 to make any further application in relation to those
 6 three elements, then, of course, I'll do so.
 7 MR JUSTICE NUGEE: Yes.
 8 MR STUART: But for the moment, it is the position that
 9 I make no application this morning about disclosure and
 10 I'm going to try and proportionately limit what I'm
 11 asking for and see if we can't deal with it in some
 12 other way before troubling your Lordship with it.
 13 MR JUSTICE NUGEE: Yes.
 14 MR STUART: My Lord, I think those are all the housekeeping
 15 matters.
 16 MR JUSTICE NUGEE: I have got one housekeeping matter. In
 17 my experience, the transcribers like a break mid-morning
 18 and mid-afternoon of five minutes. Could you ask your
 19 junior to keep an eye on the time and if I don't say
 20 anything, prompt me at about 11.40 and at about 3.10.
 21 I should say that normally I understand
 22 a five-minute break is long enough. If both sides would
 23 prefer it, I'm amenable to having a 15-minute break
 24 which gives you time to go and have a cup and coffee,
 25 and to sit 15 minutes earlier each day and to finish at

1 4.30 rather than 4.15, but I'm not going to impose that
2 on you if you don't want it. So you can discuss it with
3 Mr Potts and see how you all prefer to do it.
4 MR STUART: My Lord, we will do that, thank you.
5 So, my Lord, if I can move into an opening.
6 MR POTTS: Just one point. I did mention it to my friend.
7 Formally, my Lord, I do need permission to adduce --
8 there are two witness statements, the third witness
9 statements of Mr Dyson and third witness statement of
10 Mr McAlindon were served later. I think there is
11 a reference to it in our skeleton. They were served
12 after we did some amendments to the defence of some
13 figures. The reply, we say, went a lot further. We put
14 in short witness statements to -- rather than applying
15 to strike out, we put in short witness statements to
16 deal with those matters.
17 There isn't permission as yet for those.
18 I understand my learned friend doesn't object to them,
19 but I do formally need permission.
20 MR STUART: I don't object.
21 MR JUSTICE NUGEE: If it's not objected to I'll give you
22 permission.
23 Opening submissions by MR STUART
24 MR STUART: If I can move into an opening, given that your
25 Lordship has had a chance to read certainly the

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1 skeletons and some of the evidence, the witness
2 evidence -- is that correct? You have been able to read
3 some --
4 MR JUSTICE NUGEE: I did read through Ms Birdi's first
5 statement. As I say, I can't pretend to have taken on
6 board the detail, but I have an idea of the broad thrust
7 of the nature of the claims.
8 MR STUART: My Lord, in those circumstances, I plan just to
9 open it on the basis of just covering the ambit of the
10 trial, because it does seem to me important that your
11 Lordship knows what it is you are doing here. This is
12 not a trial of everything.
13 MR JUSTICE NUGEE: No. Can I be clear that I have
14 understood that you are both agreed -- and I think your
15 skeleton referred to some correspondence to this
16 effect -- that the first respondent, SOG, will purchase
17 Ms Birdi's shares at a valuation to be decided on by an
18 independent valuer at a fair value, and that the purpose
19 of this trial is to feed into the valuation whether
20 there should be -- well, I think, if I have got the way
21 you have put it in your skeleton correctly, for each of
22 the six issues, (a) whether you establish there has been
23 a breach of legal duty, contractual or fiduciary duty,
24 as alleged, and (b) whether that warrants an adjustment
25 to the valuation.

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1 So what you expect from it at the end of the day is
2 issue 1: (a) no breach, (b) doesn't arise; issue 2: (a)
3 there is a breach, the effect is that X thousand pounds
4 which should have been in the profits of the company for
5 the year Y is not there and that warrants an adjustment
6 to the valuation.
7 That's what you are expecting and that's the purpose
8 of it.
9 MR STUART: Yes.
10 MR JUSTICE NUGEE: I haven't looked at any of the documents.
11 I haven't seen the terms of the agreement between you
12 for the purchase. Do I need to look at that?
13 MR STUART: My Lord, if you have been able to read my
14 skeleton, I deliberately sort of went into it at some
15 length on that little section, perhaps more than
16 I should have done, just to drum home really how the
17 agreement came about and where we have got to, and
18 I believe that it justifies the conclusion you have just
19 said, which is that that is the task that we believe you
20 are conducting.
21 MR JUSTICE NUGEE: Yes. Is there any question as to whether
22 there is a discount for the fact it's only a 25 per cent
23 shareholding? Is that something that's agreed or ...?
24 MR STUART: As I understand it, it's agreed that there is no
25 discount for a minority shareholding or for non-majority

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1 shareholdings.
2 MR JUSTICE NUGEE: Non-majority shareholdings.
3 MR STUART: So that side of it is certainly not in issue.
4 MR POTTS: My Lord, that's right. The contract provides for
5 a straight line valuation.
6 MR JUSTICE NUGEE: You have actually exercised a right under
7 the shareholders' agreement.
8 MR POTTS: We have.
9 MR JUSTICE NUGEE: And it's accepted that that exercise is
10 valid and is the process that the valuer is going to be
11 asked to undertake?
12 MR POTTS: Certainly the process is accepted, my Lord, yes.
13 MR STUART: Just to be clear, my Lord, the sequence of
14 events was that no purchase notice -- no notice was
15 exercised for a long period of time. Pre-action
16 protocol letters were written on our side; still no
17 notice was served. We say, "You are keeping us in but
18 we are prejudiced". We, therefore, issued a petition
19 in December 2011, at which point no notice had been
20 served and so we sought the remedy --
21 MR JUSTICE NUGEE: You sought a number of alternative
22 remedies by way of relief, including an order that the
23 respondents purchase your shares.
24 MR STUART: Exactly.
25 MR JUSTICE NUGEE: And it was in response to that that they

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1 said --
 2 MR STUART: Approximately three months later, just before
 3 the first hearing of the petition in the usual way, they
 4 purported to serve a notice under the shareholder
 5 agreement.
 6 MR JUSTICE NUGEE: Yes.
 7 MR STUART: And that is when the correspondence started
 8 effectively saying on both sides that we are both
 9 seeking the same end result. We say we are entitled to
 10 it as a remedy of a petition; they are saying it happens
 11 pursuant to a contractual process.
 12 MR JUSTICE NUGEE: But it doesn't matter. It might go to
 13 costs at the end of the day.
 14 MR STUART: Exactly.
 15 MR JUSTICE NUGEE: It certainly doesn't matter for the
 16 purposes of anything I have to decide.
 17 MR STUART: No, it probably only goes to the costs up to the
 18 point of that agreement, which in the unfortunate scheme
 19 of this case, because it has gone on now for almost
 20 three years, the costs of that are a tiny fraction of
 21 the costs that have run up. So it's not the costs -- we
 22 are not here arguing about the costs of the petition up
 23 to that point.
 24 MR JUSTICE NUGEE: No.
 25 MR STUART: It is agreed and it is part of the order of

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1 Deputy Registrar Briggs that you will determine that
 2 costs issue, as well as determining the costs of the
 3 trial.
 4 MR JUSTICE NUGEE: I'm not going to determine it in the
 5 course of the trial. I'm only going to determine it at
 6 the end.
 7 MR STUART: At the end.
 8 MR JUSTICE NUGEE: Yes. Can I ask another stupid question,
 9 which is I have not quite understood what the third
 10 respondent's role in these proceedings is. My
 11 understanding of the Companies Act is that a member of
 12 a company can complain that the affairs of the company
 13 have been conducted in a way which unfairly prejudices
 14 members. I don't think Ms Birdi is a member of the
 15 third respondent, is she?
 16 MR STUART: No. The relief sought in what is now left of
 17 this trial of these issues is not sought against R3. So
 18 it is just a party to the petition. It is not
 19 a respondent against whom relief is sought.
 20 MR JUSTICE NUGEE: And the role of the third respondent in
 21 the organisation is that it was the employer, pursuant
 22 to the service agreements of the A directors, and there
 23 are separate employment tribunal proceedings, presumably
 24 against R3?
 25 MR STUART: Yes.

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1 MR JUSTICE NUGEE: I'm not concerned with any employment law
 2 question, am I?
 3 MR STUART: No, those employment proceedings were initially
 4 struck out by the employment tribunal but on appeal that
 5 striking out was reversed and they presently stand
 6 stayed.
 7 MR JUSTICE NUGEE: Yes, but I don't have to consider the
 8 relationship of employment between Ms Birdi and R3 in
 9 any sense at all?
 10 MR STUART: No.
 11 MR JUSTICE NUGEE: I'm simply concerned with the value of
 12 the shares in R1?
 13 MR STUART: That's it -- sorry, in R4. We call Specsavers
 14 R1. The parties tend to call R1 Specsavers. R4, or the
 15 company, tends to be called Dartford, because that is
 16 the Dartford Specsavers company. That is the company
 17 that owns the business of the Dartford store. Dartford
 18 Visionplus Limited, ie R3, is owned by Dartford
 19 Specsavers Limited and by SOG, one share by SOG.
 20 MR JUSTICE NUGEE: It's a subsidiary of the company?
 21 MR STUART: It's effectively a subsidiary of the company, in
 22 that the company owns 99 per cent, let's say, and SOG
 23 owns 1 per cent.
 24 MR POTTS: The 1 per cent actually, my Lord, is on trust for
 25 Dartford as well. The legal owner is Specsavers.

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1 MR JUSTICE NUGEE: Thank you.
 2 MR STUART: It's effectively an operating company for the
 3 purpose of employing people. This is R3. The control
 4 of that company, R3 --
 5 MR JUSTICE NUGEE: Rests with the board of the company.
 6 MR STUART: -- rests with the board of the company.
 7 MR JUSTICE NUGEE: And Specsavers has a casting vote as
 8 chairman of the board of directors?
 9 MR STUART: That's it, and by reason of the fact that
 10 Specsavers has 50 per cent of the shares of the company,
 11 Dartford, and one share in R3 itself.
 12 MR JUSTICE NUGEE: Yes.
 13 MR STUART: SOG has one share in R3. The company has the
 14 remaining 99 per cent of R3, therefore, effectively, SOG
 15 has a controlling interest in R3.
 16 MR JUSTICE NUGEE: But it does in any event because it
 17 controls the board of the company. But --
 18 MR STUART: It does, yes.
 19 MR JUSTICE NUGEE: I'm not sure having the 1 per cent -- if
 20 it's a nominee for the company, I'm not sure that that's
 21 any different from it just being a 100 per cent
 22 subsidiary, is it, or is it different?
 23 MR STUART: I agree, the effect of it is no different.
 24 So that's R3 dealt with.
 25 My Lord, I won't go into the remit of the trial any

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1 further than that. I think your Lordship has where we
 2 are and what it is we understand you are going to be
 3 doing at the end of this trial.
 4 MR JUSTICE NUGEE: Yes.
 5 MR STUART: My Lord, can I just go to the background that is
 6 the shareholders' agreement because it is obviously
 7 probably the most important aspect.
 8 MR JUSTICE NUGEE: Yes, that would be quite helpful.
 9 MR STUART: If your Lordship would pull out bundle
 10 {D/15/177}.
 11 MR JUSTICE NUGEE: Yes.
 12 MR STUART: This is the shareholder agreement in the form,
 13 the effective form, mid-July 2000, where Ms Birdi and
 14 Mr Nimesh Patel were then the A shareholders.
 15 MR JUSTICE NUGEE: I think they acquired the A shares
 16 in March.
 17 MR STUART: That's right.
 18 MR JUSTICE NUGEE: But there was a replacement shareholders'
 19 agreement in July; is that right?
 20 MR STUART: That's it. So this is the one that has --
 21 MR JUSTICE NUGEE: And this is still in force subject to the
 22 fact that Mr Singh has adhered to it in place of
 23 Mr Patel; is that right?
 24 MR STUART: Yes, that's right.
 25 So, just to take your Lordship through the structure

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1 of it, we see that the parties are obviously Specsavers
 2 and then an optician, who is Ms Birdi, and a dispenser,
 3 who is Mr Patel.
 4 MR JUSTICE NUGEE: I think I ought to -- I'm sure everybody
 5 else in court knows this but I don't understand what
 6 a dispenser is. I understand what an optician is. It's
 7 someone who conducted eye tests --
 8 MR STUART: That's right.
 9 MR JUSTICE NUGEE: -- in the testing room at the back of
 10 a store.
 11 MR STUART: Yes.
 12 MR JUSTICE NUGEE: What does a dispenser do?
 13 MR STUART: When one goes into a Specsavers store, or
 14 a Vision Express or other optician stores, certainly the
 15 larger stores, where you are not just dealing with one
 16 individual person throughout, the eye testing takes
 17 place first. You go in -- as you say, you get taken to
 18 the back of the store, taken to a little room and the
 19 optician does that eye testing.
 20 MR JUSTICE NUGEE: And an optician -- that is a registered
 21 medical qualification and governed by the General
 22 something Council?
 23 MR STUART: Of Opticians.
 24 MR POTTS: My Lord, it's an ophthalmic optician --
 25 MR STUART: General Optical Council, the GOC.

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1 MR JUSTICE NUGEE: Okay. So, Ms Birdi is a qualified
 2 professional with the title of ophthalmic optician. Is
 3 that right?
 4 MR STUART: Yes, she's an ophthalmic optician.
 5 MR JUSTICE NUGEE: Ophthalmic just means eyes. It's just
 6 Greek for optician. How can you have an optician that's
 7 not ophthalmic?
 8 MR STUART: That's a good question, my Lord, I don't know.
 9 That's just a description that they call themselves.
 10 MR JUSTICE NUGEE: Right, but that is the person who does
 11 the eye testing?
 12 MR STUART: That's right.
 13 MR JUSTICE NUGEE: What is a dispenser?
 14 MR STUART: They too can be opticians, of course, they may
 15 be qualified opticians, but in this structure they are
 16 the people who, when the glasses or the contact lenses
 17 are being actually dispensed to the customer, they are
 18 dealing with that part of the transaction and the
 19 scheme.
 20 MR JUSTICE NUGEE: Do they need to be medically qualified?
 21 Is that a qualification?
 22 MR STUART: No, they don't need to be medically qualified.
 23 Of course they are trained --
 24 MR JUSTICE NUGEE: Presumably the result of the eye test is
 25 the ophthalmic optician gives the client a prescription.

23

1 MR STUART: That's it.
 2 MR JUSTICE NUGEE: Saying, "What you need is this particular
 3 strength of lens".
 4 MR STUART: That's right.
 5 MR JUSTICE NUGEE: And then --
 6 MR STUART: And then the dispenser, rather like a dispensing
 7 chemist if one uses the analogy, takes the prescription
 8 and literally ensures that the glasses or the contacts
 9 lenses, which are then sold to the customer, are in
 10 accordance with the prescription.
 11 MR JUSTICE NUGEE: Right, because there was some suggestion
 12 in one of the documents -- I can't remember where it
 13 was -- that there is a difference between a dispenser
 14 and a retailer, and I have not understood that.
 15 MR STUART: Yes. According to the evidence, various
 16 Specsavers stores around the countries -- and there are
 17 hundreds of them -- are run sometimes on different
 18 structures.
 19 MR JUSTICE NUGEE: Yes.
 20 MR STUART: Some of the terms become a little
 21 interchangeable, retailer, so that depending upon the
 22 structure of the way in which the people actually
 23 physically are able to work and wish to work, it may be
 24 that the person who owns the A shares, half the
 25 A shares -- not the optician A shares -- is not at all

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1 a dispenser.
 2 MR JUSTICE NUGEE: May not be qualified?
 3 MR STUART: Just may not have the appropriate
 4 expertise/experience to dispense. They simply, as it
 5 were, run the management of the store, rather as
 6 a retail manager.
 7 Indeed, some of the witnesses for the respondent in
 8 this case, they own A shares in their own stores, but
 9 they don't go to the store and actually dispense glasses
 10 or any such thing; they just oversee the management of
 11 the retail side of the store, often not even going to
 12 the store.
 13 So there are different structures in place in
 14 different shops around Specsavers UK.
 15 MR JUSTICE NUGEE: Yes.
 16 MR STUART: There tend to be these structures where there is
 17 an optician and a dispenser. The examples where there
 18 is an optician and just a retailer who is not dispensing
 19 are the minority, the vast minority.
 20 MR JUSTICE NUGEE: Thank you. And again, to betray my
 21 ignorance, is it a legal requirement to be an ophthalmic
 22 optician to conduct eye tests or can anybody do it?
 23 MR STUART: It is a legal requirement.
 24 MR JUSTICE NUGEE: And what about to dispense prescriptions?
 25 MR STUART: I'm instructed that a pure retailer, who is not

25

1 a trained dispenser, cannot dispense to children or
 2 complex matters.
 3 MR JUSTICE NUGEE: I see.
 4 MR STUART: Where the client needs some complex form --
 5 MR JUSTICE NUGEE: I see.
 6 MR STUART: So in other words, if it was just your Lordship
 7 who walked into a Boots and wanted to buy off the shelf,
 8 as it were, you knew your prescription and wanted to --
 9 that wouldn't involve a dispenser.
 10 MR JUSTICE NUGEE: I see, thank you.
 11 In any event, Mr Patel was a dispenser.
 12 MR STUART: Yes.
 13 MR JUSTICE NUGEE: Yes.
 14 MR STUART: So the shares in the company are split. There
 15 are 200 shares, 100 A shares and 100 B shares.
 16 Specsavers always owns the 100 B shares and the A shares
 17 are owned by the optician and dispenser, in this case.
 18 I say "always"; Specsavers only owns the B shares. Your
 19 Lordship may have seen some reference within the
 20 paperwork to what are described as "shared venture
 21 stores".
 22 MR JUSTICE NUGEE: Yes.
 23 MR STUART: Those are stores where, for whatever reason,
 24 Specsavers has itself taken on ownership of some
 25 A shares, thus sharing in the profits of the store. I'm

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1 going to come to that in a moment. It's the A shares
 2 who receive the profits, the trading profits.
 3 MR JUSTICE NUGEE: Yes.
 4 MR STUART: There are no loans here.
 5 Management fee at clause 5. 6.5 per cent of gross
 6 sales. So this is Specsavers -- we will come to it in
 7 a moment at clause 5. Specsavers, as it were, get their
 8 money out of the store and the business here by
 9 a management fee.
 10 MR JUSTICE NUGEE: Yes.
 11 MR STUART: A fixed percentage of gross sales. So if the
 12 sales of the business are £1 million in a year, they
 13 receive 6.5 per cent of that. If the gross sales of
 14 £2 million, they receive 6.5 per cent of that. One can
 15 see from that that the actual net profit does not
 16 reflect upon Specsavers and they don't share in the net
 17 profit of the store.
 18 MR JUSTICE NUGEE: No.
 19 MR STUART: We can flick over now to the definitions
 20 clause 1. Your Lordship will see that, half way down
 21 the page, 178, {D/15/178} the directors are the
 22 A directors and the B directors.
 23 MR JUSTICE NUGEE: Yes.
 24 MR STUART: The A directors are all the registered holders
 25 of the A shares, in this case, obviously, Ms Birdi and

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1 Mr Patel. The B directors are any persons who may
 2 include Specsavers itself, nominated by Specsavers from
 3 time to time, so that there will always be an equal
 4 number of A and B directors.
 5 MR JUSTICE NUGEE: Yes.
 6 MR STUART: So in other words, Specsavers nominates two of
 7 its own to be the B directors for the Dartford company.
 8 MR JUSTICE NUGEE: Yes.
 9 MR STUART: Shareholders are defined as: {D/15/178}
 10 "The A directors and Specsavers or the duly
 11 registered holder for the time being of any of their
 12 respective shareholdings."
 13 And that's probably sufficient for the clause 1.
 14 Clause 2 simply deals with the formation of the
 15 company. I don't think there is anything particular
 16 there. So it's really clause 3, which is on page 180 of
 17 bundle D1, {D/15/180} where the material issues really
 18 begin to arise. Under the heading "management", 3.1:
 19 "The directors hereby delegate all their powers of:
 20 "3.1.1 day-to-day management of the business of the
 21 company..."
 22 That is of the Dartford store company:
 23 "...and any subsidiary..."
 24 "Subsidiary" is defined as being a subsidiary of --
 25 I should have taken you to that page 179. {D/15/179}

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1 MR JUSTICE NUGEE: That would include Dartford Visionplus?
 2 MR STUART: It would:
 3 "...to the A directors."
 4 So here to Mr Patel and Ms Birdi:
 5 "Signing all cheques bank or group treasury mandates
 6 transfers of funds and other instructions to the bankers
 7 of the Company and any Subsidiary or the group treasury
 8 to the B Directors."
 9 So Specsavers has complete control over the finances
 10 of the company. Does your Lordship see that?
 11 MR JUSTICE NUGEE: Other than petty cash?
 12 MR STUART: Yes.
 13 MR JUSTICE NUGEE: Yes.
 14 MR STUART: 3.2:
 15 "Without prejudice to the generality of the above,
 16 the shareholders and directors agree and declare that
 17 the following matters are not matters of day-to-day
 18 management."
 19 So this is now a list of not day-to-day management.
 20 Obviously the issue of shares, the issue of any shares
 21 or the grant of any right or option to take up shares or
 22 disposal of any shares, acquisition of shares, giving of
 23 security. 3.2.5, any bank account.
 24 The store/company, doesn't actually have a bank
 25 account in the sense of a NatWest Bank account or

1 anything like that. The banking is all done through the
 2 group treasury system of SOG.
 3 MR JUSTICE NUGEE: Yes.
 4 MR STUART: "The appointment of any director of the
 5 company."
 6 MR JUSTICE NUGEE: There is a dedicated company which
 7 fulfils a treasury function, which is a finance company?
 8 MR STUART: Yes.
 9 MR JUSTICE NUGEE: In Guernsey, I think.
 10 MR STUART: In Guernsey. The appointment of any director,
 11 3.2.6. 3.2.8 is important: {D/15/180}
 12 "The employment or dismissal of officers..."
 13 Obviously, that would include the directors:
 14 "... or staff at salaries or rates of pay in excess
 15 of £10,000 per annum, with this figure being increased
 16 each year in line with any change in the [retail price
 17 index]."
 18 3.2.9, any property, purchase or:
 19 "... disposal of any property or asset otherwise
 20 than in the otherwise course of business or any property
 21 or fixed asset having a value in excess of £1,000."
 22 Again, to be increased with the retail price index.
 23 Entering into contracts, professional advisers,
 24 et cetera.
 25 So those are not day-to-day management.

1 MR JUSTICE NUGEE: Yes.
 2 MR STUART: Those are not delegated to the B directors under
 3 3.1.2.
 4 MR JUSTICE NUGEE: No.
 5 MR STUART: So they are, as we will see at 3.3:
 6 "All matters save those expressly delegated in
 7 clause 3.1 above shall be determined at a duly convened
 8 meeting of the board of directors or general meeting of
 9 the company or the relevant subsidiary in accordance
 10 with the articles of association of that company."
 11 So that's the delegation of the various aspects of
 12 the business of the company.
 13 MR JUSTICE NUGEE: The practicality of Specsavers having
 14 a casting vote as chairman of the board is that all
 15 those matters which are not day-to-day management
 16 ultimately are under the control of Specsavers?
 17 MR STUART: Yes.
 18 MR JUSTICE NUGEE: Yes.
 19 MR STUART: As directors.
 20 MR JUSTICE NUGEE: So, of course, they have to act in the
 21 best interests of the company.
 22 MR STUART: Exactly. That's the crucial point, we say.
 23 MR JUSTICE NUGEE: No, no, understood.
 24 MR STUART: It is true to say that because they have the
 25 casting vote at the board, they effectively may make

1 decisions, so long as they have gone through the due
 2 process and have had a board meeting and as long as they
 3 are complying with their duties properly.
 4 MR JUSTICE NUGEE: Acting properly as directors of the
 5 company, yes.
 6 MR STUART: That's it.
 7 Dividend policy. This is important as to a couple
 8 of the issues: {D/15/181}
 9 "If in respect of any accounting period the company
 10 shall have profits available for distribution (as
 11 defined in the Companies Act) and all the loans have
 12 been repaid ..."
 13 Your Lordship will remember the loans --
 14 MR JUSTICE NUGEE: There aren't any loans.
 15 MR STUART: -- are zero pounds:
 16 "... in full the shareholders shall procure ..."
 17 That includes Specsavers, all of the shareholders:
 18 "... that all such profits shall be applied in the
 19 payment of cash dividends to the maximum level to the
 20 holders of the A shares after making any transfers to
 21 reserves consistent with normal commercial requirements
 22 of businesses..."
 23 My Lord, obviously, the business of the Dartford
 24 company would include having to make provision for
 25 refits, maintenance and the like.

1 MR JUSTICE NUGEE: Yes.
 2 MR STUART: Therefore, of course, the cash in the bank
 3 doesn't all get paid out to the A shareholders
 4 immediately after the close of the financial year.
 5 MR JUSTICE NUGEE: And if you can see that you have got
 6 litigation coming up, which is going to cost the company
 7 money, you can put money in reserve as well.
 8 MR STUART: A reserve. Proper reserves consistent with
 9 normal commercial requirements can be kept back but
 10 otherwise, cash dividends to the maximum level.
 11 MR JUSTICE NUGEE: Yes. I think I saw in the evidence
 12 somewhere that in practice, Specsavers produce a bottom
 13 line report which says, "This is the amount available".
 14 MR STUART: Yes, and they do that on a more regular basis
 15 than once a year. That comes out monthly so that
 16 effectively, on account requests for dividends are made
 17 by the A shareholders and then approved or not by the
 18 Specsavers finance office, and then the money is paid
 19 out during the course of the year.
 20 MR JUSTICE NUGEE: I think there was a suggestion in
 21 Ms Birdi's evidence that in practice, that meant that
 22 the amount of dividends was under Specsavers' control,
 23 but if you look at 4.2, there is a provision where it
 24 can be taken to an independent expert if there is
 25 a dispute about it.

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1 MR STUART: That's right, my Lord. It's under their control
 2 in the sense that all financial matters are under their
 3 control, as you have seen. They run the entire bank
 4 account of the --
 5 MR JUSTICE NUGEE: Yes, but just reading this, if Specsavers
 6 one year said, "I can see there is £100,000 profit but
 7 we are going to transfer all that to reserves", and
 8 actually there were no normal commercial requirements,
 9 it would be open to the A shareholders to say --
 10 MR STUART: To challenge them.
 11 MR JUSTICE NUGEE: -- "I want that taken to an independent
 12 expert, that is not an appropriate reserve". So it's
 13 not within the whim of Specsavers as to how much is
 14 distributed; they have to comply with 4.1.
 15 MR STUART: Yes. So that is obviously how the
 16 A shareholders, as it were, earn a substantial part of
 17 their interest from this business --
 18 MR JUSTICE NUGEE: Not the entirety, because they get paid
 19 a basic salary from Dartford Visionplus under the
 20 service agreement, but this entitles them to 50 per cent
 21 each of the profits.
 22 MR STUART: Exactly.
 23 MR POTTS: Just for your Lordship's note, in terms of the
 24 experts, 7.8 deals with the mechanics for appointment of
 25 the expert. {D/15/183}

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1 MR JUSTICE NUGEE: Thank you. There wasn't any reference to
 2 an expert in this case?
 3 MR STUART: Not in this case, no.
 4 MR JUSTICE NUGEE: No.
 5 MR STUART: So that's how the A shareholders, as it were,
 6 get beyond their salaries. Obviously their salaries are
 7 expenditure of the business so that is factored in, but
 8 then if there are any trading profits left, the
 9 A shareholders get it.
 10 Clause 5, the management fee. This is how
 11 Specsavers make their money out of this business.
 12 {D/15/181}
 13 MR JUSTICE NUGEE: 6.5 per cent on turnover?
 14 MR STUART: On turnover.
 15 MR JUSTICE NUGEE: Which means that Specsavers doesn't have
 16 a direct interest in whether the business is profitable
 17 or not, but it does have an interest in the business
 18 prospering in the sense of selling more rather than
 19 less?
 20 MR STUART: Absolutely, oh, yes. Specsavers will make more
 21 money, the more turnover the store makes.
 22 MR JUSTICE NUGEE: Yes.
 23 MR STUART: It's as simple as that.
 24 So just briefly, clause 9 is the group treasury
 25 clause. {D/15/183} I don't think anything particularly

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1 rests upon it but just to note it. Your Lordship will
 2 see it's there in clause 9. Effectively, everything
 3 financial under the control of Specsavers.
 4 And then I think we can then skip --
 5 MR JUSTICE NUGEE: Presumably -- it doesn't say so here but
 6 presumably there is some mechanism for getting cash over
 7 and above the requirements of the business into the
 8 hands of the treasury company?
 9 MR STUART: Yes; yes, obviously a lot of the money is dealt
 10 with electronically, to start with, but --
 11 MR JUSTICE NUGEE: Yes, but any retail business is going to
 12 generate cash.
 13 MR STUART: Absolutely. So there is banking that goes on,
 14 but the money is banked into an SOG account, not into an
 15 account owned -- ie a NatWest Bank account in the name
 16 of Dartford Specsavers Limited.
 17 MR JUSTICE NUGEE: Yes, I see. Yes?
 18 MR STUART: I think we can then skip over to the transfer of
 19 shares and purchase notice provisions, which is page 186
 20 of the bundle. {D/15/186}
 21 Clause 15. So there is a restriction on the
 22 transfer or disposal of shares:
 23 "An A director shall not transfer or dispose of all
 24 or any of his A shares or any interest in any of them to
 25 any other person except in accordance with clause 16

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1 unless such person has first been approved by Specsavers
 2 as being an acceptable transferee. Such approval not to
 3 be unreasonably withheld if:
 4 "15.1.1 such person is an individual who is
 5 registered with the General Optical Council or anybody
 6 replacing it as an ophthalmic optician or if the
 7 A director in question is a dispenser as a dispensing
 8 optician or if the A director in question is described
 9 ... as a retailer, such person who Specsavers considers
 10 to reasonably possess the appropriate retailing skills."
 11 MR JUSTICE NUGEE: Yes.
 12 MR STUART: "Such person covenants with Specsavers --"
 13 MR JUSTICE NUGEE: That they have to adhere.
 14 MR STUART: Yes. So, 16 is the purchase notice:
 15 "The recipient of a notice pursuant to this clause
 16 ... shall be obliged to sell and the giver of a purchase
 17 notice shall be obliged to buy all the recipient shares
 18 free from encumbrances at fair value ... within 28
 19 days...
 20 "Specsavers may serve a purchase notice on any other
 21 shareholder..."
 22 So the power to serve the purchase notice is with
 23 Specsavers. They are the server of a purchase notice,
 24 not the other A shareholders, for example.
 25 MR JUSTICE NUGEE: And 16.2.5 includes if you cease to be

1 employed?
 2 MR STUART: That's right. So by removing an A director as
 3 an employee of the Visionplus company, that would
 4 trigger the right in Specsavers to then serve a purchase
 5 notice and buy out that director at fair value.
 6 MR JUSTICE NUGEE: Yes and there is a definition of that in
 7 16.5, {D/15/187} which makes it clear it's a rateable
 8 proportion of the total value of all the issued shares
 9 without discount.
 10 MR STUART: Without discount.
 11 MR JUSTICE NUGEE: Yes. So it's 25 per cent of the value of
 12 the company?
 13 MR STUART: Yes.
 14 MR JUSTICE NUGEE: 25 per cent of the total value of all the
 15 issued shares of the company, if that's any different.
 16 I'm not sure that it is.
 17 MR STUART: So that's clause 16. As I say, no purchase
 18 notice was served in this case on Ms Birdi until after
 19 the petition was issued in March. The purchase notice
 20 was served in March 2012.
 21 MR JUSTICE NUGEE: But there wasn't any obligation on
 22 Specsavers --
 23 MR STUART: Absolutely.
 24 MR JUSTICE NUGEE: -- to acquire the shares. There is
 25 a restriction under 16.4 if a shareholder dies to

1 require service of a notice, but there is not a right
 2 simply by ceasing to be employed to require Specsavers
 3 to buy you out.
 4 MR STUART: That's right.
 5 MR JUSTICE NUGEE: And so, so far as the shareholders'
 6 agreement is concerned -- leave aside the remedies the
 7 court can give -- Specsavers was entirely within its
 8 rights to leave Ms Birdi as a shareholder receiving such
 9 dividends as were generated?
 10 MR STUART: Correct, she having been dismissed
 11 in December 2010, they were perfectly within their
 12 rights not to serve a purchase notice on her for the
 13 whole of 2011, as they didn't do.
 14 MR JUSTICE NUGEE: But she remained a shareholder. She
 15 could have complained -- in fact, I think she did
 16 complain -- about the dividend policy.
 17 MR STUART: That's right.
 18 MR JUSTICE NUGEE: And ultimately, had the right to refer
 19 the question of dividends to the independent expert and
 20 so on and so forth.
 21 MR STUART: That's right.
 22 MR JUSTICE NUGEE: But when she complained, Specsavers
 23 resumed a policy of distributing dividends.
 24 MR STUART: Some little while afterwards.
 25 MR POTTS: My Lord, there is an issue about that timing but

1 I'll come to that.
 2 MR JUSTICE NUGEE: I don't think I'm concerned with that at
 3 the moment; I'm just trying to understand the general
 4 rights.
 5 MR STUART: Exactly, I'm trying to give you an overview
 6 rather than get right into the detail of every little
 7 part for the moment.
 8 MR JUSTICE NUGEE: Yes.
 9 MR STUART: Obviously, there are some general provisions
 10 which are potentially relevant to the issue of implied
 11 terms, et cetera, page 188. {D/15/188} Does your
 12 Lordship have clause 20?
 13 MR JUSTICE NUGEE: I do.
 14 MR STUART: 20.1, agreement binding on all the parties and
 15 its successors.
 16 20.2, in the event of any conflict between the
 17 agreement and the memorandum --
 18 MR JUSTICE NUGEE: Sorry, why is it relevant that it's
 19 binding on their successors?
 20 MR STUART: No, not --
 21 MR JUSTICE NUGEE: It's not; not particularly.
 22 MR STUART: No. 20.2 is potentially relevant in that the
 23 provision --
 24 MR JUSTICE NUGEE: It overrides the Mem & Arts.
 25 MR STUART: The Mem & Arts. 20.3 is important to the

1 extent --
 2 MR JUSTICE NUGEE: -- it's not a partnership.
 3 MR STUART: It's not a partnership. And 20.4:
 4 "The directors and shareholders will exercise all
 5 voting rights and other powers of control available to
 6 them in relation to the company and any subsidiary so as
 7 to procure so far as they are able by the exercise of
 8 such rights and powers that the company and the
 9 subsidiary shall at all times strictly comply with their
 10 respective obligations contained in this agreement."
 11 A forbearance clause at 20.5; no prejudice for
 12 forbearance. 20.6, no variation --
 13 MR JUSTICE NUGEE: -- save in writing.
 14 MR STUART: Save in writing.
 15 MR JUSTICE NUGEE: It's governed by English law.
 16 MR STUART: It's governed by English law. And 20.8:
 17 {D/15/189}
 18 "This agreement supersedes any previous agreement or
 19 any of them in relation to the matters..."
 20 MR JUSTICE NUGEE: Entire understanding.
 21 MR STUART: "... and represents the entire understanding
 22 between the parties in relation thereto."
 23 MR JUSTICE NUGEE: Yes.
 24 MR STUART: Just whilst we are in this bundle, as you
 25 rightly say --

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1 MR JUSTICE NUGEE: -- there is a deed of adherence --
 2 MR STUART: -- by Mr Singh in 2008. So Mr Patel is found to
 3 be stealing in February 2007. He sells his A shares to
 4 Specsavers in circumstances which are part of the
 5 dispute.
 6 MR JUSTICE NUGEE: Yes.
 7 MR STUART: Specsavers do not sell on those shares for
 8 Mr Singh until 2008 and then he signed the Deed of
 9 Adherence. That's pages 190 to 192. {D/16/190}
 10 MR JUSTICE NUGEE: Is that a convenient moment to take
 11 a break?
 12 MR STUART: It is. I see the 11.40.
 13 MR JUSTICE NUGEE: Yes. Five minutes.
 14 (11.40 am)
 15 (Short break)
 16 (11.45 am)
 17 MR JUSTICE NUGEE: Yes, Mr Stuart?
 18 MR STUART: So, my Lord, if I could, having taken you
 19 through those provisions, summarise as part of this
 20 opening what we say the effect of those provisions is.
 21 MR JUSTICE NUGEE: Yes.
 22 MR STUART: Can I do it by reference to paragraph 20 of my
 23 skeleton argument, if your Lordship has that? It's
 24 probably convenient.
 25 MR JUSTICE NUGEE: I meant to check with you. You have both

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1 helpfully provided bundles of materials. Each contains
 2 a list of issues, non-contentious chronology and list of
 3 characters. Am I right in thinking they are identical?
 4 MR STUART: Yes, they are agreed.
 5 MR JUSTICE NUGEE: I can throw one copy away, but you will
 6 each get upset if I throw away your copy?
 7 MR STUART: Not at all; they are exactly the same document.
 8 They are electronically the same document. They have
 9 been agreed between the parties.
 10 MR JUSTICE NUGEE: Thank you, that's what I thought.
 11 MR STUART: And indeed the timetable as well, I think.
 12 MR JUSTICE NUGEE: Yes, thank you.
 13 MR STUART: So, my Lord, as I say, if I could take you to --
 14 MR JUSTICE NUGEE: Paragraph 20 of skeleton.
 15 MR STUART: On page 12 of the skeleton. We say these are
 16 important effects of this structure, of this particular
 17 type of shareholder agreement. Obviously, we are
 18 dealing here, we say, with a contractual relationship,
 19 yes, but a contractual relationship with the following
 20 features.
 21 MR JUSTICE NUGEE: Yes.
 22 MR STUART: That the A shareholders are the A directors.
 23 MR JUSTICE NUGEE: Yes.
 24 MR STUART: And the B, ie Specsavers, obviously are the
 25 B directors.

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1 MR JUSTICE NUGEE: Does it follow from that that Ms Birdi is
 2 still a director of the company today?
 3 MR STUART: My Lord, I had better check on that.
 4 MR JUSTICE NUGEE: Mr Potts, is Ms Birdi a director of the
 5 company?
 6 MR POTTS: I don't believe she is. I think if you cease to
 7 be an employee, you cease to be a director, but I will
 8 check that.
 9 MR JUSTICE NUGEE: I didn't see that in the shareholders'
 10 agreement.
 11 MR POTTS: It's not in the shareholders' agreement. I'll
 12 check.
 13 MR STUART: My Lord, if you are still in bundle D1, I don't
 14 know if you still have it open, you will see that --
 15 MR POTTS: My Lord, it's under the service agreement.
 16 MR JUSTICE NUGEE: Under the service agreement. So your
 17 paragraph 20(a) should really say:
 18 "The A shareholders are the A directors subject to
 19 the provisions of a service agreement under which they
 20 resign if dismissed as an employee."
 21 MR STUART: Yes.
 22 MR JUSTICE NUGEE: Yes, thank you.
 23 MR POTTS: It's 10.2, my Lord. {D/3/17}
 24 MR STUART: I believe it's in that same bundle, D1, page 17.
 25 MR JUSTICE NUGEE: That's the service agreement, is it?

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1 MR STUART: Yes, that's the service contract. At page 15,
2 you will see the front sheet of the -- {D/3/15}
3 MR JUSTICE NUGEE: Yes: {D/3/17}
4 "Resigning a position in or office of the
5 Company..."
6 MR STUART: That's it.
7 MR JUSTICE NUGEE: But the company there is presumably the
8 employer, Visionplus, is it?
9 MR STUART: Yes.
10 MR JUSTICE NUGEE: But it's an associated company,
11 presumably?
12 MR STUART: Yes.
13 MR JUSTICE NUGEE: Yes.
14 MR POTTS: Subsidiary, my Lord.
15 MR JUSTICE NUGEE: No, I'm looking at 10.2, the obligation
16 is to:
17 "Resign any position in or office of the Company..."
18 That's Visionplus.
19 MR POTTS: I see, sorry. No, you are right.
20 MR JUSTICE NUGEE: Dartford is not a subsidiary of
21 Visionplus, it's the other way around, so it's an
22 associated company.
23 MR STUART: It is, my Lord, yes.
24 MR JUSTICE NUGEE: Yes, thank you.
25 MR STUART: Just to be clear, if one goes to 228 of this

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1 bundle, {D/17/228} you have the latest annual return for
2 the period after the dismissal. Does your Lordship have
3 that annual return to June 2013? And you will see --
4 MR JUSTICE NUGEE: Yes, there are only three directors.
5 MR STUART: You will see that there are now only the three
6 directors; Ms Birdi is no longer a director.
7 MR JUSTICE NUGEE: Yes.
8 MR STUART: Back to my paragraph 20:
9 "(b) all powers of day-to-day management are
10 delegated to the A directors only."
11 MR JUSTICE NUGEE: Yes.
12 MR STUART: And therefore the A directors, who have to be
13 the A shareholders, have an obvious expectation to
14 control the day-to-day management themselves, without
15 interference from Specsavers.
16 MR JUSTICE NUGEE: Yes.
17 MR STUART: (c), a matter which we touched on a little
18 earlier:
19 "The non day-to-day managements issues must be
20 considered at a full board meeting and SOG cannot
21 determine those matters themselves without first
22 convening a meeting."
23 Of course, my Lord, we would go on to say that at
24 that meeting the directors of a board meeting must act
25 as directors.

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1 MR JUSTICE NUGEE: Yes.
2 MR STUART: (d) as to how the parties obtain their money out
3 of this business, obviously, I have explained SOG is not
4 interested in the net profits. An important point is
5 that the words used are that the 6.5 per cent -- do you
6 recall it, my Lord, clause 5?
7 MR JUSTICE NUGEE: I do, yes.
8 MR STUART: Is expressly stated to be for the services and
9 support provided by SOG and its subsidiaries. So to the
10 extent that in this case there came a point where
11 Specsavers started charging and/or causing to be charged
12 costs and charges to Dartford for support and services
13 of management, we say that's not legitimate.
14 And then (b) --
15 MR JUSTICE NUGEE: Well, does the shareholders' agreement
16 specify what services Specsavers is to provide?
17 MR STUART: No. No, it doesn't, no. Not the management --
18 let me just take you to the provision.
19 MR JUSTICE NUGEE: It's 5.1 on page 181. {D/15/181}
20 MR STUART: Yes.
21 MR JUSTICE NUGEE: I just wondered if anywhere else in the
22 bits of the shareholders' agreements that you didn't
23 specifically take me to, there was anything specifying
24 what level of service and support A shareholders had
25 a right to expect from Specsavers.

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1 MR STUART: My Lord, there is 11 on page 184 under the
2 heading "Training". Does your Lordship have that?
3 {D/15/184} That's a reference, at least, to:
4 "Specsavers shall:
5 "provide or cause to be provided to the company such
6 advice know-how and guidance relating to the management
7 promotion and approved methods of operation of its
8 business as Specsavers ... thinks fit."
9 MR JUSTICE NUGEE: Yes. I should say that it's not entirely
10 obvious to me at the moment that it follows from the
11 wording of 5.1 that Specsavers can never make a charge
12 to the company for any service or support supplied,
13 however out of the ordinary that service or support
14 might be. I can see your submission, but it's not one
15 which at the moment I regard as entirely obvious. You
16 might need to go back to that in due course.
17 MR STUART: My Lord, yes.
18 So returning to (e), the distributable profits
19 point. I think we have probably covered that.
20 MR JUSTICE NUGEE: Yes.
21 MR STUART: Obviously the effect here is that any costs or
22 expenditure that are put upon the company, on Dartford,
23 are effectively coming out of the net profits of the
24 A shareholders.
25 MR JUSTICE NUGEE: They reduce the profit, yes.

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1 MR STUART: So, my Lord, I think that deals with the
 2 shareholder agreement.
 3 MR JUSTICE NUGEE: Thank you.
 4 MR STUART: My Lord, you have read Mrs Birdi's statement, as
 5 you have explained, and without wishing to -- I don't
 6 think there is any purpose in me going through for hours
 7 all the tiny detail of what is said there and how it
 8 ties in to everything. If I can just give you a very
 9 broad overview of the highlights of the series of events
 10 which we say are relevant.
 11 MR JUSTICE NUGEE: Yes.
 12 MR STUART: And how they tie into the six issues.
 13 MR JUSTICE NUGEE: That would be very helpful, thank you.
 14 MR STUART: My Lord, can we just go to the issues first of
 15 all, just so that we can remind ourselves of the issues.
 16 So you have that in the list of principal issues
 17 document behind either skeleton.
 18 Issue 1 is an issue about: is there an implied duty
 19 here; an implied term.
 20 MR JUSTICE NUGEE: This is an implied term in the
 21 shareholders' agreement, is it?
 22 MR STUART: Yes. I have dealt with it in fairly
 23 considerable length at paragraph 124 of my skeleton
 24 argument under the heading "Implication of a term".
 25 This is all under the law and issue 1, but I don't

1 intend to go through all the law with your Lordship in
 2 opening.
 3 MR JUSTICE NUGEE: No.
 4 MR POTTS: I will put down a marker, my Lord. It's not
 5 pleaded as an implied term; it's pleaded as an
 6 allegation of quasi partnership.
 7 MR JUSTICE NUGEE: I hear you, Mr Potts. If you are going
 8 to take a pleading point --
 9 MR POTTS: I'm not trying to take a pleading point, my Lord,
 10 but in terms of --
 11 MR JUSTICE NUGEE: It's a 15-day trial and if it's going to
 12 be a pleading point, there will be ample opportunity for
 13 Mr Stuart to apply to put something expressly on the
 14 pleading. Let me hear what Mr Stuart wants to say about
 15 it.
 16 I have read the passage in his skeleton as putting
 17 it on the basis, really, of Attorney General v Belize,
 18 that it's what you understand from the nature of the
 19 agreement as a whole.
 20 MR STUART: Yes. In the context in which the agreement is
 21 entered into --
 22 MR JUSTICE NUGEE: Yes. Is it dependent upon my finding
 23 that the relationship between the shareholders is
 24 a quasi partnership? That is an allegation you make.
 25 MR STUART: It's not dependent upon that. We say that the

1 construction of the term of the agreement or the
 2 implication of the term arises from the nature of the
 3 relationship here --
 4 MR JUSTICE NUGEE: Yes.
 5 MR STUART: -- being one of the factors, one of the central
 6 factors giving rise, and so this is a relational
 7 contract.
 8 MR JUSTICE NUGEE: I'm not sure I know what a relational
 9 contract is.
 10 MR STUART: No. I said I didn't want to get into the law
 11 too much.
 12 MR JUSTICE NUGEE: No, no.
 13 MR STUART: But I do want to show your Lordship what I'm
 14 talking about. So this is paragraph 131 of my skeleton,
 15 and the reference to Yam Seng, the Yam Seng case, which
 16 your Lordship will find in -- does your Lordship have
 17 the two agreed bundles of authorities?
 18 MR JUSTICE NUGEE: Yes.
 19 MR STUART: If you go to the second bundle, tab 24.
 20 MR JUSTICE NUGEE: This is Mr Justice Leggatt's --
 21 MR STUART: Leggatt, that's right. If your Lordship goes to
 22 page 1350.
 23 MR JUSTICE NUGEE: I'm sorry, Mr Stuart, the bundle is not
 24 behaving.
 25 MR STUART: Would your Lordship like another lever arch

1 file?
 2 MR JUSTICE NUGEE: If you have an unmarked file, yes,
 3 I think I would.
 4 MR STUART: I'm told all three copies are marked.
 5 MR JUSTICE NUGEE: I'm not surprised.
 6 MR STUART: We can certainly replace the plastic bundle if
 7 that would help.
 8 MR JUSTICE NUGEE: It's the typical thing with lever arches
 9 that the arch doesn't meet, which makes it difficult to
 10 read. If somebody could sort that out over the short
 11 adjournment, I would be very grateful. At the moment,
 12 I will do my best with tab 24.
 13 MR STUART: My Lord, obviously -- I say "obviously" -- this
 14 discussion by Mr Justice Leggatt is in the context an
 15 argument about the implication of a duty of good faith.
 16 MR JUSTICE NUGEE: This is a long-term arrangement, is it?
 17 MR STUART: Yes. Oh, the circumstances here? Yes, this was
 18 a supply agreement, effectively a distribution agreement
 19 case.
 20 MR JUSTICE NUGEE: Yes.
 21 MR STUART: Toiletries and the like were being distributed.
 22 So it was a supply agreement, that particular case, but
 23 Mr Justice Leggatt does deal with other examples, as he
 24 puts it, of relational contracts and that's what I want
 25 to just take you to so that you understand what I'm

1 saying by relational contract.
 2 MR JUSTICE NUGEE: Yes, where are we?
 3 MR STUART: The context of the discussion starts at 1348 at
 4 (c). We are talking about implying a duty of good
 5 faith.
 6 MR JUSTICE NUGEE: Thank you. Would you like me to read
 7 that passage?
 8 MR STUART: I think probably, my Lord, you can read -- yes,
 9 if you read 121:
 10 "The general view among commentators appears to
 11 be..."
 12 Et cetera. And then 124 gives you the context:
 13 "In refusing, however, if indeed it does refuse to
 14 recognise any such general obligation of good faith,
 15 this jurisdiction would appear to be swimming against
 16 the tide."
 17 As he puts it. But then we really start -- and this
 18 is the really relevant part. It starts at paragraph 131
 19 on page 1350.
 20 MR JUSTICE NUGEE: To where?
 21 MR STUART: Through to end of paragraph 142.
 22 MR JUSTICE NUGEE: Right.
 23 MR STUART: So 131 to 142.
 24 MR JUSTICE NUGEE: Do sit down, I will read those
 25 paragraphs. Is there anything else you wants me to read

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1 in those, Mr Potts?
 2 MR POTTS: I think that's quite enough for the moment, my
 3 Lord, I'm sure.
 4 MR JUSTICE NUGEE: Thank you. (Pause)
 5 Yes, I have read that, thank you.
 6 MR POTTS: My Lord, I hesitated, I'm sorry, could your
 7 Lordship read 160 to 163, that short section on
 8 page 1356.
 9 MR JUSTICE NUGEE: Thank you.
 10 (Pause).
 11 Yes, I have read that, thank you.
 12 MR STUART: So, my Lord.
 13 MR JUSTICE NUGEE: I now understand what relational contract
 14 means, thank you.
 15 MR STUART: So the use of the term "quasi partnership",
 16 which for many years was argued about backwards and
 17 forwards, in answer to your Lordship's question, do
 18 I have to get you to make a finding that there was
 19 a quasi partnership, I submit I don't have to get you to
 20 make that. There are relational contracts that are not
 21 quasi partnerships that are still relational contracts
 22 and may give rise to such duties as might be implicit in
 23 such relational contracts, and if you did find that it
 24 was a quasi partnership in the classic quasi partnership
 25 sense, then it might well be easier for you to reach the

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1 conclusion that this particular relational contract,
 2 being of a quasi partnership nature, involved the
 3 specific duty that we plead at paragraph 8 of the
 4 amended points of claim. That is that the
 5 expectation -- the talk in Mr Justice Leggatt's judgment
 6 is about the expectations of the parties and the
 7 expectation was that both parties would abide by the
 8 rules set out in the shareholders' agreement, including
 9 in particular the division of responsibilities in
 10 clause 3.1, in the spirit of mutual trust and confidence
 11 and that neither party would seek to use any powers
 12 conferred upon it purely to advance its own interest at
 13 the expense of the other without just cause.
 14 That's how it's pleaded and that's what we say is
 15 the effect of this agreement and/or an implied term of
 16 this agreement. It does not matter which way one
 17 addresses the issue of the construction.
 18 My Lord, I think, as far as I'm concerned, at least,
 19 you can put away the authorities bundle.
 20 MR JUSTICE NUGEE: Yes.
 21 MR STUART: And we will get it fixed over the short
 22 adjournment.
 23 MR JUSTICE NUGEE: Thank you.
 24 MR STUART: So, my Lord, we got on to that because I took
 25 you to the list of issues.

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1 MR JUSTICE NUGEE: Yes.
 2 MR STUART: I think I have dealt with one -- or certainly my
 3 skeleton deals with one on a sort of legal basis, rather
 4 than -- but addressing those factual elements.
 5 So then turning to the more specific issues of
 6 breach that are alleged, so these are issues 2.1 through
 7 to 2.5, the first of those, 2.1, relates to --
 8 MR JUSTICE NUGEE: These are five specific issues. Mr Potts
 9 identified six in his skeleton. Is there a simple
 10 explanation of why?
 11 MR POTTS: One is split into two.
 12 MR JUSTICE NUGEE: Thank you.
 13 MR POTTS: 2.1, I think, is two issues.
 14 MR STUART: Yes, it's true to say that although it's in the
 15 list of issues as 2.1, there are two elements to this
 16 first issue. Again, if your Lordship has my skeleton
 17 argument, you will see that I too split this issue into
 18 two. Does your Lordship have page 16 of my skeleton
 19 argument, paragraph 27?
 20 MR JUSTICE NUGEE: Yes.
 21 MR STUART: So there are two elements to this. There is the
 22 fact that the costs of the theft by Mr Patel of money
 23 from the company -- so Mr Patel stole money from
 24 Dartford, not from SOG, not from Ms Birdi, but
 25 effectively from Ms Birdi, we say, because she was

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1 entitled to the profits of Dartford.
 2 MR JUSTICE NUGEE: Yes.
 3 MR STUART: So I suppose it could be said he stole
 4 50 per cent from himself and 50 per cent from her. So
 5 he stole money from Dartford.
 6 As part of his departure that was arranged by SOG,
 7 without Ms Birdi's input, he, Mr Patel, was able to
 8 leave the business without actually repaying any sum to
 9 the company.
 10 MR JUSTICE NUGEE: I think it's said that
 11 £3,000-and-something of that was effectively recouped by
 12 writing off a loan?
 13 MR STUART: That's correct. That's what's argued and that
 14 would leave some further element of theft. There is an
 15 element that he admitted to --
 16 MR JUSTICE NUGEE: Yes, it's not suggested that the entirety
 17 was recovered that way, but one is talking a few hundred
 18 pounds in relation to that.
 19 MR STUART: On that side of it, £1,000, something like that.
 20 Then, in addition to, as it were, not recouping sums
 21 that he stole -- and we say that includes both
 22 an element of sums which he admitted to stealing and
 23 sums which -- who knows what he actually stole because
 24 the investigation went no further than the first meeting
 25 with him, at which Mr McAlindon put various --

1 MR JUSTICE NUGEE: You are not going to ask me to find that
 2 he stole particular sums before that date?
 3 MR STUART: No, no I can't. Ms Birdi, of course, has no
 4 knowledge of what exactly he stole.
 5 MR JUSTICE NUGEE: Yes.
 6 MR STUART: But what we do say, and what she says in her
 7 witness statement very clearly, is that one can perhaps
 8 get an impression of the level of his stealing from the
 9 fact that he was prepared to sell his shares, the
 10 £55,000, those being shares which three months earlier
 11 he had been offered and agreed to sell to Ms Kaur, who
 12 was another Specsavers person at a different store -- in
 13 fact at the store where Mr Kam Singh eventually came
 14 over from.
 15 MR JUSTICE NUGEE: In Grays?
 16 MR STUART: In Grays, a family member of Mr Singh. She had
 17 agreed and was prepared to buy them off Mr Patel for
 18 £170,000. Three months later, on the day that it is put
 19 to him that he has been stealing, he agrees to sell them
 20 for £55,000 to Specsavers. We say that is an indication
 21 of the level of guilt and potentially the level of
 22 damage that has been done. And who has the damage been
 23 done to? Not to SOG, who get the shares for £55,000,
 24 but to the company, Dartford.
 25 MR JUSTICE NUGEE: And hence to Ms Birdi.

1 MR STUART: Which is then to Ms Birdi. Let's just stick to
 2 the company, Dartford, for the moment. Let's just keep
 3 that analysis, that formal analysis.
 4 The company is the person that has suffered that
 5 loss of the thefts. It also turns out it is intended to
 6 be the person who suffers the cost of investigating
 7 Mr Patel, which is another element of what is said to be
 8 Mr Patel's reason for only getting £55,000; that he has
 9 in some way agreed to pay the cost of the investigation
 10 into him. That's fine, but insofar as it was intended
 11 to charge such costs to the company -- the loss and the
 12 cost are being suffered by the company; the benefit of
 13 the sale at the massive discount is with the purchaser
 14 of the shares. Who is that? SOG.
 15 So, that's where we say that the circumstances of
 16 that purchase of Mr Patel's shares is unfair -- unfair
 17 prejudice, I'm using in general terms here.
 18 MR JUSTICE NUGEE: What is the power that you say is being
 19 abused? Because I don't see the shareholders' agreement
 20 as entitling Ms Birdi to have any say on the terms on
 21 which Mr Patel sells his shares to Specsavers.
 22 MR STUART: No. Well, the company, Dartford, has a claim
 23 against Mr Patel.
 24 MR JUSTICE NUGEE: Yes. It has two claims: one for
 25 recoupment of the money he has stolen, and it has

1 another claim for damages, for the costs which it has
 2 been put to.
 3 MR STUART: That's right. And we say that the negotiation
 4 of an agreement to settle those claims, those perfectly
 5 justifiable claims, is a matter which should, under the
 6 shareholders' agreement, be a matter in which she, as
 7 the innocent A shareholder --
 8 MR JUSTICE NUGEE: Has a say.
 9 MR STUART: Has a say.
 10 MR JUSTICE NUGEE: At a board meeting.
 11 MR STUART: At a board meeting or a general meeting, if
 12 necessary, but a board meeting would have been
 13 immediately doable.
 14 MR JUSTICE NUGEE: It's not a matter of day-to-day
 15 management.
 16 MR STUART: It's plainly not a matter of day-to-day
 17 management.
 18 MR JUSTICE NUGEE: But it's a matter that you say concerned
 19 the company.
 20 MR STUART: Absolutely. It's the company's claims; it's the
 21 company that is losing money here and SOG is just
 22 purporting to exercise its power as, what, director of
 23 company, to forego those claims as part of its agreement
 24 with Mr Patel.
 25 MR JUSTICE NUGEE: Have those claims been formally released?

1 MR STUART: Yes. They are released by the agreement with
2 Mr Patel.
3 MR JUSTICE NUGEE: I don't think I have seen that. I know
4 I haven't.
5 MR STUART: Let me take your Lordship to it. So, my Lord,
6 if you pull out E2 -- the bundles are in fairly strict
7 chronological order.
8 MR JUSTICE NUGEE: Yes.
9 MR STUART: If you start at 287, that's the manuscript, the
10 initial manuscript. Does your Lordship have that? 287?
11 {E/42/287}
12 MR JUSTICE NUGEE: Yes.
13 MR STUART: And there is then -- so one can see from 287
14 that Mr Patel is purporting to sign something which says
15 that:
16 "I would also like to pay for investigation costs of
17 £15,610 [and] stolen money of £4,180. I would also like
18 to transfer my shares to SOG and would ask that the
19 above funds be deducted from the share value."
20 MR JUSTICE NUGEE: Yes.
21 MR STUART: Then at 290, {E/43.2/290} you have the actual
22 stock transfer form that's eventually ... and then the
23 share sale agreement itself is at 291. {E/43.2/291}
24 MR JUSTICE NUGEE: Yes.
25 MR STUART: And the executed version is at 298. {E/43.3/298}

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1 MR JUSTICE NUGEE: Yes.
2 MR STUART: And Dartford's own explanation of "the deal" is
3 at page 308. {E/45.1/308}
4 MR JUSTICE NUGEE: There is nothing in the share sale
5 agreement which amounts to a waiver of claims by the
6 company. The company is not a party to the share sale
7 agreement.
8 MR STUART: No.
9 MR JUSTICE NUGEE: Yes.
10 MR STUART: So there is no express clause within the share
11 sale agreement releasing all and any claims of the
12 company, but --
13 MR JUSTICE NUGEE: But as I understand it, you are going to
14 invite me to infer that the price which SOG agreed with
15 Mr Patel was calculated by taking into account the
16 figures at page 287, which come to about £20,000, and to
17 that extent the price payable was £20,000 less than it
18 would otherwise have been.
19 MR STUART: That's SOG's case. SOG's own case is that it
20 took into account those figures and we say on top of
21 that it took into account --
22 MR JUSTICE NUGEE: A whole lot of other things.
23 MR STUART: A whole lot of other things. Those are the
24 figures that were put to him by, we say, SOG as being
25 what you -- what we can prove you stole and he admitted

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1 it.
2 MR JUSTICE NUGEE: Yes.
3 MR STUART: We say that on top of that there is a further
4 element because otherwise the difference between
5 170,000, as being the market value of those shares just
6 three months earlier, and, let's say, 70,000, being the
7 55 plus those two figures, 75,000, is £100,000.
8 MR JUSTICE NUGEE: Yes.
9 MR STUART: And, my Lord, as to the question of release,
10 Ms Birdi did -- you will have seen in her evidence she
11 did raise at the time or shortly after this the issue of
12 what was to happen about claims that the company might
13 have against Mr Patel and was told by Specsavers, "We
14 are not going there", "We are not pursuing that". So
15 whether it was by an expressly documented release/waiver
16 of all claims or whether it was just a term that was
17 agreed between them -- that is, between SOG and
18 Mr Patel -- we weren't a party to, that is what
19 happened, that is what SOG caused to happen. Mr Patel
20 was not pursued for any further sums.
21 MR JUSTICE NUGEE: Right.
22 MR STUART: So that's two elements of issue ...
23 MR JUSTICE NUGEE: That's the 20,000, as I call it?
24 MR STUART: That's the 20,000 plus some unidentifiable
25 element, which we say can only be, as it were,

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1 inferred --
2 MR JUSTICE NUGEE: I see.
3 MR STUART: -- from the difference between 170,000, as to
4 which --
5 MR JUSTICE NUGEE: Yes, there was an offer from Ms Kaur.
6 MR STUART: -- you won't have seen the evidence but it's at
7 page --
8 MR JUSTICE NUGEE: I remember Ms Birdi's evidence that
9 Ms Kaur had made an offer of 170,000.
10 MR STUART: That's right.
11 MR JUSTICE NUGEE: Then the other limb of this issue is the
12 management costs charged to the company by SOG during
13 Ms Birdi's suspension.
14 MR STUART: Yes, so --
15 MR JUSTICE NUGEE: That does seem to be a different issue in
16 terms of analysis.
17 MR STUART: It's certainly a different head of -- exactly,
18 and the slight confusion or -- not confusion, the
19 putting together of the two is caused really by the fact
20 that it's not at all clear what this £86,000 --
21 MR JUSTICE NUGEE: No, there seems to be quite a lot of
22 confusion --
23 MR STUART: There's a lot of confusion and, therefore --
24 MR JUSTICE NUGEE: Yes, and I have not got my head round.
25 MR STUART: No, for the moment. I'm sure that's a matter

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1 which your Lordship will need to get your head round
 2 during the course of the evidence.
 3 MR JUSTICE NUGEE: But it's not disputed that during
 4 Ms Birdi's suspension temporary managers were put in.
 5 MR STUART: Yes, that's not disputed.
 6 MR JUSTICE NUGEE: And the cost of that was charged to the
 7 company, by which I mean Dartford, by Specsavers, and
 8 I think you have an allegation that Mr McAlindon was
 9 charging £440 a day but the actual cost to Specsavers
 10 was --
 11 MR STUART: The evidence appears to be that the actual daily
 12 rate being charged doesn't appear to be at all clear
 13 that it is the rate that was caused to be paid by the
 14 company for that management day. There appears to be
 15 evidence that the rate should be £200 a day, according
 16 to some invoices, and yet it appears that the rate that
 17 has been charged is £440.
 18 MR JUSTICE NUGEE: Yes. Again I think I'll need some help
 19 at some stage with the analysis of which power it is
 20 that Specsavers are exercising which is said to have
 21 been exercised improperly in relation to that.
 22 MR STUART: Okay.
 23 MR JUSTICE NUGEE: Because I think one needs to keep
 24 distinct its role as shareholder, its role as director
 25 and its role as supplier of services outside its

1 capacity as owner or director of the company.
 2 MR STUART: Yes.
 3 MR JUSTICE NUGEE: And I don't think I have got a clear
 4 ideas of the analysis yet.
 5 MR STUART: Understood, my Lord. I have noted that down.
 6 MR JUSTICE NUGEE: I think Ms Birdi in her witness statement
 7 says that there shouldn't have been any costs at all
 8 because the suspension was something that shouldn't have
 9 happened.
 10 MR STUART: Yes, she says that the decision to suspend her
 11 is one which should properly have been made by the
 12 company because it's not day-to-day management.
 13 MR JUSTICE NUGEE: In general meeting or a board of
 14 directors.
 15 MR STUART: Or a directors' meeting, at least a meeting at
 16 which she was able to ... and thus that the Specsavers
 17 directors should only have done that for the bona fide
 18 reason of the interests of the company. That's her
 19 allegation.
 20 MR JUSTICE NUGEE: Yes. Yes.
 21 MR STUART: So it's use of a power as directors of the
 22 company to --
 23 MR JUSTICE NUGEE: To suspend her.
 24 MR STUART: -- take management decisions.
 25 MR JUSTICE NUGEE: Yes.

1 MR STUART: The failure to comply with the board meeting
 2 requirements, et cetera, the extent to which what was --
 3 MR JUSTICE NUGEE: Suppose I accept that this was a decision
 4 that's properly a decision of the company and that it
 5 should have been dealt with at a board meeting and that
 6 there was no board meeting and Specsavers did it
 7 unilaterally but, had there been a board meeting, I find
 8 as a fact Specsavers would have exercised its casting
 9 vote to have done exactly the same thing and that that
 10 would have been something that they could properly form
 11 the view was bona fide in the interests of the company;
 12 does that mean that the point doesn't go anywhere?
 13 MR STUART: No, my Lord, we wouldn't accept it goes nowhere;
 14 there would still be breaches of the shareholder
 15 agreement in those circumstances. Whether the effect of
 16 those breaches --
 17 MR JUSTICE NUGEE: It wouldn't have any financial
 18 consequences is what I mean by "going nowhere"?
 19 MR STUART: It may not have the same financial consequences.
 20 I'm not sure it would have no financial consequences;
 21 there would be arguments about, if they had done it the
 22 right way, what would have happened.
 23 MR JUSTICE NUGEE: Suppose I find as a fact that, had they
 24 gone through a formal convening of the board meeting,
 25 Ms Birdi had come along and said, "Don't suspend me",

1 and Specsavers directors would have voted for the
 2 suspension in any event and that would have been
 3 something that was proper in their role as directors.
 4 MR STUART: Yes.
 5 MR JUSTICE NUGEE: There is a lot of ifs in that.
 6 MR STUART: There's a lot of ifs --
 7 MR JUSTICE NUGEE: If you get to that stage --
 8 MR STUART: If you get to that stage, then a further if is
 9 if within that hypothetical sequence Ms Birdi had had
 10 the opportunity at least to put her case at the board
 11 meeting in the way in which it would have been done, to
 12 have looked the directors in the eye, explained to them
 13 why what they were doing was wrong, et cetera, et
 14 cetera, would she then have been off work for the huge
 15 amount of time that she was off work --
 16 MR JUSTICE NUGEE: I see.
 17 MR STUART: -- suffering from the stress that she was
 18 suffering from and/or from the extended suspension, thus
 19 were all these costs, these months and months and months
 20 of costs, which were all just being paid away here by
 21 the company -- would those have happened, as a matter of
 22 causation, on this hypothetical version of what should
 23 have happened? I say that it's not as simple as simply
 24 saying oh, well, they could have ratified it, they could
 25 have done that. They didn't do that and if they didn't

1 do it, that may have caused loss to the company, cost to
 2 the company --
 3 MR JUSTICE NUGEE: Yes.
 4 MR STUART: -- prejudice to Ms Birdi in her capacity as
 5 shareholder --
 6 MR JUSTICE NUGEE: Okay, let me --
 7 MR STUART: -- et cetera.
 8 MR JUSTICE NUGEE: Let me ask another question because
 9 I will need some help on this at some stage. Suppose
 10 I find in your favour on this point and find that
 11 £86,000 was improperly taken from the company -- in
 12 2007, I believe. What impact does that have on the
 13 valuation of the shares now -- well, firstly, I suppose
 14 I ought to ask: what is the date at which the
 15 independent valuer is going to value Ms Birdi's shares?
 16 Is it the date on which he does the exercise or is it
 17 the date on which the purchase notice was served or what
 18 is the date?
 19 MR STUART: At the moment, as we understand it, it will be
 20 the date when he does the exercise because there is no
 21 agreement -- certainly there is no agreement as to --
 22 MR JUSTICE NUGEE: The shareholders' agreement doesn't
 23 specify when fair value is to be taken out?
 24 MR STUART: No.
 25 MR JUSTICE NUGEE: So let's suppose that this trial lasts

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1 three weeks. Let's suppose it then takes me, I don't
 2 know how long, to produce a -- let's say 1 January next
 3 year you get a judgment -- unlikely -- but for the sake
 4 of convenience, and let's suppose that within two weeks
 5 thereafter the valuer is sitting down receiving written
 6 submissions as to the value; what impact on the
 7 January 2015 value of the company does the fact that
 8 I have found on this assumption that £86,000 of costs
 9 was improperly charged to the company in 2007 have?
 10 MR STUART: Very little on the value.
 11 MR JUSTICE NUGEE: Isn't that the only question I'm
 12 interested in?
 13 MR STUART: No, because what we are seeking within the
 14 petition and within the points of claim and within the
 15 issues that are being determined at this trial is an
 16 adjustment to the price to be paid. The value is
 17 one element of it but, as I have set out in my skeleton,
 18 to the extent that you found that £86,000 of profits --
 19 let's remember that -- of what would otherwise be
 20 profits because it has just been taken out as, on your
 21 Lordship's hypothetical, illegitimate expenditure.
 22 MR JUSTICE NUGEE: Yes.
 23 MR STUART: That £86,000 would have been available to pay as
 24 dividend to Ms Birdi back in 2007.
 25 MR JUSTICE NUGEE: Subject to the fact that in fact the

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1 company made a loss in 2007, some of it would go to --
 2 MR STUART: It would but eventually, because the company's
 3 fortunes certainly got to a stage where dividends were
 4 being paid -- 2008, 2009, et cetera -- the company's
 5 balance sheet would be 86,000 better off, and it's
 6 effectively the balance sheet position because it's
 7 distributable profits that are left. So there comes
 8 a point where the whole company's position is buoyed by
 9 £86,000, if your Lordship so finds.
 10 MR JUSTICE NUGEE: Yes.
 11 MR STUART: Obviously, arguably, Ms Birdi is only
 12 50 per cent entitled to the profits, so it might only be
 13 £43,000 that might have been available to her if that
 14 act of unfairly prejudicial conduct had not happened,
 15 et cetera, and therefore that £43,000 might be
 16 an adjustment to the price to be payable to compensate
 17 Ms Birdi as part of the --
 18 MR JUSTICE NUGEE: Am I being asked to decide that? I think
 19 I ought to be very clear as to quite what issue it is
 20 I'm deciding. I thought I was deciding the extent to
 21 which it would affect the valuation, but you tell me
 22 that's wrong, is it?
 23 MR STUART: Let's take you to -- this is why I wanted to --
 24 MR JUSTICE NUGEE: It's Deputy Registrar Briggs' order, is
 25 it not?

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1 MR STUART: Tab 3 -- bundle A.
 2 MR POTTS: Page 23, my Lord.
 3 MR JUSTICE NUGEE: I see: {A/3/23}
 4 "Such as to warrant an adjustment to the price."
 5 MR STUART: Absolutely. The price payable.
 6 MR JUSTICE NUGEE: You say if I find there was a breach of
 7 duty which caused loss to the company, then I should
 8 adjust the price by a straight 50 per cent of loss to
 9 the company.
 10 MR STUART: Certainly you can do that, yes. You would have
 11 to decide whether that is the appropriate thing to do
 12 but, yes, we definitely do say -- in the circumstances
 13 of this case, where it is as simple as saying the
 14 profits of the company are paid out under the clause
 15 that I have shown you -- are paid out to the
 16 A shareholders each year, then it is a simple -- for
 17 that item, for that item -- as saying £86,000 of
 18 illegitimate expenditure put through. She has lost
 19 £43,000.
 20 MR JUSTICE NUGEE: Right, and then I think I understood from
 21 your skeleton that you have a second limb, which is that
 22 if you write back a notional £86,000 into the company's
 23 profitability for that year --
 24 MR STUART: Yes.
 25 MR JUSTICE NUGEE: -- it might have an impact on the

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1 valuation.
 2 MR STUART: Yes, but I can see that the more historic the
 3 writing-back, so the 2007 expenditure, issue 1, here --
 4 MR JUSTICE NUGEE: That depends on how the valuer goes about
 5 it.
 6 MR STUART: Of course.
 7 MR JUSTICE NUGEE: And valuers value businesses in a whole
 8 lot of different ways.
 9 MR STUART: Absolutely. So all your Lordship will be able
 10 to do, I submit, is to give a judgment and decision
 11 about what the position was and should have been,
 12 whether there was a breach, et cetera, and that will
 13 then be reflected in the valuer's thinking. He may well
 14 say, "Well, to be honest --"
 15 MR JUSTICE NUGEE: It makes no difference.
 16 MR STUART: "-- I'm valuing it in 2014. Whether the company
 17 made profits or losses or £1 million in 2007 is neither
 18 here nor there to me, because I take the last three
 19 years' profits and I aggregate those three and multiply
 20 by ..."
 21 Whatever he might do.
 22 So I do concede that that is unlikely because it is
 23 so historic, in my experience of valuations of this
 24 type.
 25 MR JUSTICE NUGEE: But it's all historic. If I have

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1 understood the facts correctly, Ms Birdi left the
 2 company's employment and ceased to be a director in --
 3 MR STUART: December 2010.
 4 MR JUSTICE NUGEE: -- December 2010.
 5 MR STUART: That's right.
 6 MR JUSTICE NUGEE: Which is now almost four years ago.
 7 MR STUART: It is.
 8 MR JUSTICE NUGEE: When does the company's accounting year
 9 end?
 10 MR STUART: September.
 11 MR JUSTICE NUGEE: So it might have an impact on the year
 12 ending September 2011, but only a little bit.
 13 MR STUART: Yes.
 14 MR JUSTICE NUGEE: It's largely going to have an impact on
 15 earlier years.
 16 MR STUART: Yes.
 17 MR JUSTICE NUGEE: I'll say that I feel some scepticism as
 18 to the extent to which historic rewriting-back of
 19 profits at that date is going to have any impact -- if
 20 it's right, that the valuation is to be carried out at
 21 the date the valuer looks at it.
 22 MR STUART: I agree, my Lord, I agree and the only reason
 23 I'm being careful not to make any absolute concessions
 24 to your Lordship's point is that the date of valuation,
 25 so far as I'm aware, is not yet an agreed date.

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1 MR JUSTICE NUGEE: Okay.
 2 MR STUART: I'm saying that in the absence of anything else,
 3 it should be the date when the shares are going to be
 4 sold, or the date of the valuation, and the shares are
 5 going to be sold within 28 days of the valuation. There
 6 is no real difference between those two, but I can't say
 7 that there has been a concession as to that from the
 8 other side.
 9 MR JUSTICE NUGEE: No.
 10 MR STUART: And so, in case the other side were subsequently
 11 to argue, "Oh, no, one must value the shares at some
 12 early date, perhaps 2010 or 2012, when we issued the
 13 notice --"
 14 MR JUSTICE NUGEE: I would have thought they would have
 15 difficulty pushing it back before the purchase notice.
 16 MR STUART: Yes, March 2012. So they might seek to go back
 17 that far, which would then --
 18 MR JUSTICE NUGEE: Your point is if they do, then these
 19 things might or might not be relevant.
 20 MR STUART: If they do that, then expenditure incurred in
 21 2010 would certainly, probably, form part of it.
 22 MR JUSTICE NUGEE: Not certainly. My experience, which is
 23 limited, of the valuation of businesses is what the
 24 valuer is trying to get at is the sustainable profit.
 25 And for that purpose you strip out all one-off items

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1 because they don't have a long-term effect on the value
 2 of a company. When you buy a business, you are saying,
 3 how much do I have to pay for a stream of future income
 4 which looks at the extent to which the profits are
 5 sustainable in the future, and there are lots of
 6 different ways of doing it but that's essentially what
 7 you are doing.
 8 One-off costs -- take these managements costs --
 9 while there is a suspension are unlikely to be repeated
 10 in the future and even if it was immediately before the
 11 valuation, the valuer might well say, "That's a one-off
 12 cost, I'm taking no account of that".
 13 MR STUART: Absolutely, my Lord and I'm not -- again, of
 14 course, when it comes to that valuation exercise, on our
 15 side we will be arguing that one-off costs must not be
 16 taken into account as part of the proper evaluation
 17 exercise.
 18 So I'm certainly not wishing to make any concession
 19 here that we are not going to argue that. We certainly
 20 are.
 21 MR JUSTICE NUGEE: Right.
 22 MR STUART: But just in case the valuer does not agree that
 23 that's, et cetera, we need to have factored in the
 24 potential for your Lordship to have made a determination
 25 on these issues.

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1 MR JUSTICE NUGEE: Understood. But does it follow from all
 2 that, which is very helpful, that your primary aim in
 3 pursuing these matters is to have an -- it's not pound
 4 for pound, it's 50p for pound -- adjustment to the price
 5 by way of compensation for breaches of duty,
 6 effectively?
 7 MR STUART: Yes.
 8 MR POTTS: My Lord, sorry --
 9 MR JUSTICE NUGEE: I don't think I had understood that very
 10 clearly.
 11 MR POTTS: Could your Lordship just have a look at --
 12 because that's not the case -- paragraph 40 of my
 13 friend's pleading. We have been over this ground
 14 before. At paragraph 52 of the claim, the allegation of
 15 a claim for compensation was struck out.
 16 MR JUSTICE NUGEE: He is entitled to an adjustment to the
 17 price. That's what Deputy Registrar Briggs --
 18 MR POTTS: My Lord, yes, but the claim was put.
 19 MR JUSTICE NUGEE: When you say "pleading", do you mean the
 20 petition?
 21 MR POTTS: No, my Lord, I mean the points of claim at tab 5,
 22 starting at page 27. {A/5/29} These were the points of
 23 claim that were served pursuant to the order of the
 24 registrar.
 25 MR JUSTICE NUGEE: Yes.

1 MR POTTS: And the claim for compensation at the end --
 2 MR STUART: Yes, the price to be paid --
 3 MR POTTS: It was put that there should be a pound for
 4 pound, if you like, compensation -- your Lordship just
 5 asked my friend, "Are you seeking compensation for
 6 breach of duty?" to which he said, "Yes". That doesn't
 7 fit with the first line, which was struck out.
 8 MR JUSTICE NUGEE: Sorry, which --
 9 MR POTTS: Paragraph 52 on page 40, my Lord. {A/5/40}
 10 MR JUSTICE NUGEE: Well, we will have to come back to this.
 11 At the moment I'm trying to investigate the ambit of
 12 what it is that I have to decide, and I have understood
 13 very clearly from Mr Stuart the way in which he puts it.
 14 You say that's not open to him. I don't think I'm going
 15 to resolve that at this stage. You can put down
 16 a marker and you can address me in opening on what you
 17 say I should be deciding, but I'm certainly not going to
 18 decide at the moment that the way Mr Stuart puts it is
 19 right or wrong.
 20 As I say, I find that a very helpful understanding
 21 of the way you put your case. Whether or not it's open
 22 to you is something we may have to have a debate about
 23 later.
 24 MR STUART: I don't want to enter into that debate now, my
 25 Lord.

1 MR JUSTICE NUGEE: No.
 2 MR STUART: You plainly have it that that is our case.
 3 MR JUSTICE NUGEE: You are not seeking an order for damages;
 4 you are seeking an adjustment to the price but the
 5 adjustment to the price you seek is half the profits
 6 that you say the company would otherwise have made,
 7 which has not been made as a result of the breach of
 8 duties which you rely on, and you say half those profits
 9 would have come to Ms Birdi by virtue of the dividend
 10 policy, and that in assessing the price payable for her
 11 shares, it is possible and appropriate to add that to
 12 the sum that would otherwise be payable.
 13 I'm not for one moment going to say whether you are
 14 right or wrong about that, but have I understood
 15 correctly, that is what you are saying?
 16 MR STUART: In relation to all those items where it's all
 17 about excess expenditure: costs, charges, salaries paid
 18 to staff, et cetera.
 19 MR JUSTICE NUGEE: Yes.
 20 MR STUART: That is what we say.
 21 MR JUSTICE NUGEE: Yes, thank you.
 22 MR STUART: The other way in which we put it and/or it comes
 23 in is, of course, the question of the dividend, the
 24 non-payment of dividends, so this is issue 2.5.
 25 MR JUSTICE NUGEE: Do you want to go through, just so I have

1 got --
 2 MR STUART: Yes, I had better go through --
 3 MR JUSTICE NUGEE: 2.1, I have understood is really two
 4 issues. There is the £86,000, whatever that may be, and
 5 there is --
 6 MR STUART: Mr Patel --
 7 MR JUSTICE NUGEE: -- the consequences of Mr Patel's theft,
 8 if we can put it like that; yes.
 9 MR STUART: Issue 2.2 the question of the staff salaries and
 10 bonuses --
 11 MR JUSTICE NUGEE: Excess salaries and benefits.
 12 MR STUART: -- in the 2007 period when Ms Birdi was
 13 suspended, SOG effectively took over the management of
 14 the store, and awarded those bonuses.
 15 MR JUSTICE NUGEE: Yes. Do you say that was a day-to-day
 16 management matter which should have been given to the
 17 A shareholders?
 18 MR STUART: Well, either it was a day-to-day management
 19 matter for the A shareholders, small staff salary
 20 increases and/or bonuses, or, if it's said to be beyond
 21 day-to-day management, then it should have been done --
 22 MR JUSTICE NUGEE: -- at board.
 23 MR STUART: Ms Birdi was certainly a director of the company
 24 at that time, 2007. She was suspended from her
 25 employment whilst they were investigating --

1 MR JUSTICE NUGEE: It didn't stop her being a director.
 2 MR STUART: It certainly didn't stop her being a director
 3 and she was certainly entitled to the protection of the
 4 shareholder agreement provisions, which say that any
 5 non-day-to-day management matters are to be dealt with
 6 at a board meeting.
 7 MR JUSTICE NUGEE: Right.
 8 MR STUART: So either way, we say she should have had some
 9 involvement.
 10 MR JUSTICE NUGEE: Had it been something which should have
 11 been decided by the A shareholders, the A shareholders
 12 during 2007 were Ms Birdi and Specsavers?
 13 MR STUART: Correct.
 14 MR JUSTICE NUGEE: So how would you resolve that?
 15 MR STUART: We would say she should have been involved in
 16 the decision-making between her and her fellow
 17 A shareholder, A director, and -- not of course that
 18 Specsavers is a dispenser, so the extent to which it can
 19 properly act as an A director, dispenser director, is
 20 not accepted.
 21 This is not what they did anyway. All of this is
 22 something of a hypothetical argument. I'm not wishing
 23 to be critical of your Lordship but it's a little
 24 artificial when one actually sees what they actually did
 25 here, which was they completely overrode and ignored --

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1 MR JUSTICE NUGEE: You say they ignored the corporate
 2 structure which they had set up.
 3 MR STUART: They ignore the corporate structure and they
 4 effectively take it upon themselves to do what they want
 5 to do, and what they want to do, it appears, is to
 6 increase the overheads of the company. Because they are
 7 not bothered about the overheads of the company for
 8 themselves, in their personal capacity as the
 9 B shareholder, earning their 6.5 per cent management
 10 charge, but equally, what they are not doing is taking
 11 proper account of the interests of the company.
 12 MR JUSTICE NUGEE: At some point, Mr Stuart -- this is
 13 probably not the right point but I'll just mention it
 14 now so that you can think about it -- one of the points
 15 Mr Potts makes in his skeleton argument is that your
 16 case, Ms Birdi's case, is put very high, that there is
 17 a conspiracy to get her out.
 18 MR STUART: Yes.
 19 MR JUSTICE NUGEE: And to depress the value of her shares
 20 and so on. And he says that unless you persuade me of
 21 that, then you don't get any relief.
 22 Suppose -- I mean, this is an example. Suppose
 23 I reject the conspiracy theory and say that Specsavers
 24 had no malicious, malign aim in mind, but nevertheless,
 25 entirely innocently, failed to operate the correct

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1 procedure.
 2 MR STUART: Yes. We say that's still a breach of the
 3 contractual duties.
 4 MR JUSTICE NUGEE: Yes. You would still be entitled -- you
 5 don't have to make out your conspiracy theory to obtain
 6 relief?
 7 MR STUART: Exactly.
 8 MR JUSTICE NUGEE: It's very clear from Ms Birdi's witness
 9 statement that she passionately believes that this is
 10 all --
 11 MR STUART: -- motivated by malice and/or a desire to make
 12 money purely for themselves.
 13 MR JUSTICE NUGEE: Yes.
 14 MR STUART: But my case, I say, does not stand or fall on
 15 that finding of motivation of malice; it's an element of
 16 it, of course. If your Lordship were to find malice, it
 17 would be very easy -- almost automatic -- to find that
 18 the exercise of these powers was a breach of the
 19 obligation to only exercise powers for their proper
 20 purpose.
 21 MR JUSTICE NUGEE: Proper purpose.
 22 MR STUART: But even if you don't find the malice, we have
 23 still got the breaches of the shareholder agreement duty
 24 that we say.
 25 MR JUSTICE NUGEE: Yes, yes.

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1 MR STUART: Obviously, they absolutely deny that, and that's
 2 another issue.
 3 MR JUSTICE NUGEE: Yes, thank you.
 4 MR STUART: I see the time. I would like, if possible, to
 5 wrap up.
 6 2.2 is the staff and salaries. 2.3 --
 7 MR JUSTICE NUGEE: This is Mr Singh's salary.
 8 MR STUART: This is Mr Singh. What Ms Birdi says is,
 9 effectively, right from the start, Mr Singh is brought
 10 into this company by Specsavers for Specsavers. He is
 11 sold the shares at this huge discounted figure to
 12 himself, £60,000. He was prepared to pay £170,000
 13 himself for them not a year beforehand, but he gets them
 14 for £60,000. On top of that, Specsavers then say he is
 15 going to get a salary of £42,000. We say Mr Singh
 16 himself was prepared to pay what his relative, Ms Kaur,
 17 was prepared to pay and that he had actually --
 18 MR JUSTICE NUGEE: We will have to look at the evidence on
 19 that, yes.
 20 MR STUART: Yes, absolutely. That will be a part of the
 21 evidence of Mr Singh.
 22 So we say, here he is, he is brought in, he gets
 23 these shares at an incredible discount, £60,000 for
 24 shares which entitle him to a dividend -- as it has
 25 turned out, very substantial dividends. He is given

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1 a salary rate £12,000 higher than Mr Patel had --
 2 Mr Patel was on £30,000, he is just given £42,000 -- and
 3 he is not even doing all the things that Mr Patel was
 4 doing, we say.
 5 Therefore, Ms Birdi asserts that these levels of
 6 payments to Mr Singh are not legitimate and are part of
 7 the illegitimate, inappropriate exercise of powers by
 8 Specsavers. They did this. They had the power to
 9 control the company as the directors of the company, and
 10 that company then gave him these benefits and/or they
 11 allied to the benefits they had already --
 12 MR JUSTICE NUGEE: So that's 2.3.
 13 MR STUART: 2.3.
 14 2.4, we are moving into the 2009/2010 incidents and
 15 your Lordship will have seen that, basically, what
 16 happened was, between Mr Singh coming on board in 2008
 17 and 2009, it becomes clear that Mr Singh and Ms Birdi
 18 are not compatible. Grievances are raised one against
 19 the other. Ms Birdi says, "Specsavers blatantly just
 20 support Mr Singh and don't support me. When I make
 21 grievances about him, they are rejected. When he makes
 22 grievances about me, they are upheld. There is no
 23 proper, independent acting as directors of the company
 24 for the benefit of the company. It's just all entirely
 25 biased in favour of Mr Singh and entirely against me."

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1 MR JUSTICE NUGEE: Does that mean that in the course of this
 2 trial, I'm going to have to review all the disciplinary
 3 findings made by Specsavers and decide whether
 4 Specsavers was right or not?
 5 MR STUART: Not all of them, my Lord, no. But you have seen
 6 from Ms Birdi's witness statement how she -- and I think
 7 I put in the skeleton. We don't say you go into the
 8 entire detail of absolutely everything, but to the
 9 extent that there are elements that she points you to
 10 and shows you to be indicative of a complete sham nature
 11 of this grievance process, or indicative of a completely
 12 one-sided, biased approach, complete approach to the two
 13 of them, we say that that is part of the circumstances
 14 of the 2008/2009/2010 -- crucially the 2010 events,
 15 which are of course that she is suspended and she gets
 16 dismissed. And was that in the best interests of the
 17 company? We say no and they were acting --
 18 MR JUSTICE NUGEE: Actually, I don't think the question for
 19 me is whether it was in the best interests of the
 20 company, but whether it was bona fide taken as being in
 21 the best interests of the company. That's
 22 a different --
 23 MR STUART: Of course, my Lord, I mustn't slip into the
 24 shorthand, no, I accept that.
 25 MR JUSTICE NUGEE: I certainly don't think I'm going to

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1 decide who was right in making decisions, and I don't
 2 think I'm entitled to.
 3 MR STUART: No, no and that's not the way it's put, my Lord,
 4 either in the points of claim or in the skeleton.
 5 But that, in essence, is what that element of issue
 6 2.4 is all about.
 7 MR JUSTICE NUGEE: Yes, I see.
 8 MR STUART: And then finally, 2.5 is the dividends issue.
 9 MR JUSTICE NUGEE: There are two issues wrapped up in that.
 10 One, they weren't paying you dividends, and secondly,
 11 you complain of the fact that Mr Singh's salary and
 12 bonuses were increased, which has the effect of reducing
 13 the profits available for dividend.
 14 MR STUART: That's right, and also that he received benefits
 15 which were not equalised -- does your Lordship have the
 16 concept of the equalisation?
 17 MR JUSTICE NUGEE: I do, but I don't think I have the detail
 18 of it.
 19 MR STUART: No, I'm not going to go into the detail of it,
 20 but just the general --
 21 MR JUSTICE NUGEE: There is a question which I had, which I
 22 don't think I know the answer to, which is that there is
 23 a historic equalisation question, some £8,000 dating
 24 from 2006.
 25 MR STUART: Yes.

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1 MR JUSTICE NUGEE: Is that part of this trial?
 2 MR STUART: I think it's still part of this trial.
 3 MR JUSTICE NUGEE: Which of these issues does it come into?
 4 MR STUART: I thought it came into this issue, but I had
 5 better check.
 6 Certainly we have put it into the failure to pay
 7 dividends and disguised distributions to Mr Singh. It
 8 would be an equalisation dividend. Failure to pay it
 9 falls within that category.
 10 MR JUSTICE NUGEE: Okay. I may have to look at the
 11 pleadings to understand that --
 12 MR STUART: My Lord, if you look at paragraph 48 of the
 13 amended points of claim.
 14 MR JUSTICE NUGEE: Yes.
 15 MR STUART: Page 39 in bundle A. If you go back to page to
 16 page 39 under the heading, "Failure to Pay Dividends".
 17 MR JUSTICE NUGEE: Yes.
 18 MR STUART: Over at 48: {A/5/40}
 19 "Further, in the event that it applies, the failure
 20 to make dividends payments at all (including the
 21 dividend of £8,705.61 referred to in the preceding
 22 paragraph)..."
 23 MR JUSTICE NUGEE: But 48 is not one of the paragraphs
 24 specified in Registrar Briggs' order.
 25 MR POTTS: I think you are confusing -- that's the petition.

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1 MR JUSTICE NUGEE: I'm sorry.
 2 MR STUART: Everything in the points of claim that has been
 3 allowed to stay in, so that hasn't been deleted, is in
 4 this case, is in this trial. So this is within the
 5 order.
 6 MR JUSTICE NUGEE: I see.
 7 MR STUART: And your Lordship will see that paragraph 47 is
 8 that £8,705.61 equalisation dividend dating back to --
 9 MR JUSTICE NUGEE: This is all under the heading of "Failure
 10 to Pay Dividends".
 11 MR STUART: It's all under that heading and this is
 12 a specific item that is included within that.
 13 MR JUSTICE NUGEE: I see, thank you.
 14 MR STUART: So, my Lord, I think in essence that really is
 15 a very thumbnail summary.
 16 MR JUSTICE NUGEE: That's very helpful.
 17 Since you are on your feet, can I raise two
 18 housekeeping matters with you that I should have raised
 19 earlier.
 20 Firstly, my copy of the last page of Mr Singh's
 21 witness statement, which has his signature on it, is
 22 a very poor copy and I can't read it.
 23 MR STUART: Yes, my Lord, we will get you another copy.
 24 MR JUSTICE NUGEE: It doesn't need to have the signature.
 25 I need to be able to read the words.

1 Secondly, there is a notice to admit in relation to
 2 some shredded documents. Is that of any relevance any
 3 more, or is it purely historic?
 4 MR STUART: I think it's of little or no relevance now, as
 5 I understand it. I hesitate to get into the shredded
 6 documents because it causes a lots of heat and not much
 7 light.
 8 MR JUSTICE NUGEE: The reason I asked it is it seems to have
 9 generated a bit of controversy in the past.
 10 MR STUART: It certainly did.
 11 MR JUSTICE NUGEE: The question I'm asking is: is it
 12 something I'm going to have to form any view about at
 13 all, or is it something which is now all water under the
 14 bridge and is really of no relevance to these
 15 proceedings?
 16 If it is relevant to these proceedings, the notice
 17 to admit says it exhibits a colour copy, but the copy
 18 I have is not in colour. So if there is any relevance
 19 to that, I ought to have a colour copy.
 20 MR STUART: You will certainly get a copy of that and there
 21 is a possibility that the issue of the shredding may
 22 arise --
 23 MR JUSTICE NUGEE: -- in cross-examination; I entirely
 24 understand that.
 25 MR STUART: And therefore I suspect that it's important that

1 your Lordship has the documents.
 2 MR JUSTICE NUGEE: If it's important I have the documents,
 3 it would be nice to have a colour one.
 4 MR STUART: We will do that.
 5 MR JUSTICE NUGEE: Since someone has gone to the trouble of
 6 doing it in colour.
 7 MR STUART: Has your Lordship just left out the bundle of
 8 authorities that has broken?
 9 MR JUSTICE NUGEE: I was just looking for that. Yes, it's
 10 there and you will see the problem. I will hand that
 11 down.
 12 MR POTTS: Is the other one all right, my Lord?
 13 MR JUSTICE NUGEE: I have got to check that. At the moment,
 14 the other one is all right but these bundles have
 15 a habit of coming apart.
 16 MR STUART: My Lord, just to save a bit of time, that is the
 17 colour copy.
 18 MR JUSTICE NUGEE: Perhaps if you could hand it in.
 19 MR STUART: A, tab 12. You will see the pagination is in
 20 the top right-hand corner; I think 138 is where it
 21 starts. {A/12/138} (Handed)
 22 MR JUSTICE NUGEE: Thank you very much.
 23 MR STUART: So, my Lord, subject to any other questions your
 24 Lordship has, I would propose to say that's my opening.
 25 MR JUSTICE NUGEE: No, I'm very much obliged. Thank you.

1 We will say five past two.
 2 (1.05 pm)
 3 (The short adjournment)
 4 (2.05 pm)
 5 MR STUART: My Lord, hopefully you have got the bundle of
 6 authorities?
 7 MR JUSTICE NUGEE: Yes. Thank you.
 8 MR STUART: I believe that you have the final page of the
 9 canvassing statement as well.
 10 MR JUSTICE NUGEE: Actually, that's -- no, I think I have
 11 now got two bundles 1 and no bundle 2.
 12 MR STUART: What you handed down to us was literally taken
 13 out of the bundle and put into a plastic bundle.
 14 MR JUSTICE NUGEE: Oh, right. No, I think you are right,
 15 I think it is bundle 2.
 16 MR STUART: It may be that the index --
 17 MR JUSTICE NUGEE: The index has bundle 1. Yes, what was
 18 the other thing.
 19 MR STUART: And the Kam Singh last page of the statement,
 20 I believe, has now been inserted in a legible format
 21 into your bundle.
 22 MR JUSTICE NUGEE: Thank you. Yes.
 23 MR STUART: And on the housekeeping issue of breaks,
 24 Mr Potts and I have had a word and for the moment,
 25 I think we would slightly prefer the shorter breaks and

1 finish promptly-ish at about 4.15 and start at 10.30.
 2 MR JUSTICE NUGEE: Yes.
 3 MR STUART: If it really does become an issue or problem,
 4 can we keep it under review?
 5 MR JUSTICE NUGEE: It's not a problem for me. It's a matter
 6 for you.
 7 Mr Potts?
 8 Opening Submissions by MR POTTS
 9 MR POTTS: Your Lordship has our skeleton argument, which is
 10 obviously a fairly full document and I am certainly not
 11 going to go over all of that.
 12 Just a couple of points I might raise in opening.
 13 The first one, my friend gives some chronology at the
 14 start in relation to how we get to where we are in terms
 15 of remit of the trial, and reading that section of my
 16 friend's skeleton, you might get the impression that it
 17 was Ms Birdi who was seeking to limit and control the
 18 issues for this trial. I'm afraid that couldn't be
 19 further from the truth.
 20 MR JUSTICE NUGEE: I don't think I'm particularly interested
 21 in how we got to where we are. I'm interested in where
 22 we are.
 23 MR POTTS: My Lord, yes. Can I just show your Lordship
 24 the terms of the offer, because it ties in with the
 25 valuation point, my Lord, and also, in terms of the

1 chronology which you were given by my friend, what was
 2 omitted is the employment tribunal proceedings, just to
 3 mention. The dismissal in December --
 4 MR JUSTICE NUGEE: 2010?
 5 MR POTTS: Yes. She appealed against dismissal. That was
 6 dismissed on 17 March 2011.
 7 MR JUSTICE NUGEE: That was an internal --
 8 MR POTTS: Internal appeal, yes.
 9 MR JUSTICE NUGEE: Yes.
 10 MR POTTS: She then commenced proceedings in front of the
 11 employment tribunal on 17 March 2011 and it's important
 12 that your Lordship should understand that in those
 13 proceedings, she was seeking reinstatement as one of her
 14 remedies.
 15 MR JUSTICE NUGEE: Yes. Presumably the dismissal didn't
 16 take effect until after the appeal, is that right? Or
 17 did it take effect in December 2010?
 18 MR POTTS: I think it took effect in December, but
 19 obviously, it is subject to appeal.
 20 MR JUSTICE NUGEE: I see.
 21 MR POTTS: She then initiates the ET. I'm not sure an
 22 employment expert, but I'm assuming that one has to deal
 23 with one's appeal first before the ET commencement.
 24 So, she commences ET on the 17th, seeking
 25 reinstatement. The petition is presented on

1 20 December 2011, with a return date on 28 March 2012.
 2 The ET claim with the claim for reinstatement was
 3 struck out on 1 February 2012, and then we have the
 4 initial offer, which is on 14 March 2012, together with
 5 the purchase notice.
 6 My Lord, could I just show your Lordship the offer
 7 briefly.
 8 MR JUSTICE NUGEE: Yes, of course.
 9 MR POTTS: If your Lordship has bundle F1.
 10 MR JUSTICE NUGEE: F is correspondence, is it?
 11 MR POTTS: F is correspondence and it's page 10. {F/5/10}
 12 And you will see there are some references to our
 13 understanding on page 11 of the matters that she was
 14 alleging to have caused some loss. {F/5/11} There is
 15 a reference to the exhortation in O'Neill v Phillips by
 16 Lord Hoffmann, trying to avoid expense of money and
 17 time, et cetera.
 18 This is the offer which accords with contractual
 19 rights in any event and there are the terms of an offer.
 20 It's the 25 per cent shareholding, independent valuation
 21 and then at 3(e) over the page: {F/5/12}
 22 "... taking into account such matters as set out in
 23 paragraph 5 below as the court determines constituted
 24 breaches of fiduciary duty ... which ought to be taken
 25 account of in determining the valuing of [the] shares."

1 So that was the way we put it.
 2 MR JUSTICE NUGEE: Yes.
 3 MR POTTS: Then there is the purchase notice at page 15, my
 4 Lord. {F/5.1/15}
 5 MR JUSTICE NUGEE: I'm just looking at paragraph 5, before
 6 we get there.
 7 MR POTTS: Yes.
 8 MR JUSTICE NUGEE: And that is --
 9 MR POTTS: That's the trial of the issues. We said
 10 effectively that there should be a trial of issues.
 11 This was done. We referred to -- or certainly I did --
 12 Rotadate(?) at the point about limiting issues in the
 13 context of 994.
 14 MR JUSTICE NUGEE: Yes.
 15 MR POTTS: And we thought that those were the matters that
 16 we understood to be.
 17 There was some back and forth, Akin Palmer -- there
 18 was a counter-offer of some kind at page 22/23 {F/10/22}
 19 on 10 April. I think it's paragraph 5 deals with --
 20 MR JUSTICE NUGEE: Sorry, which page on you are?
 21 MR POTTS: The offer starts at page 23 and then 24,
 22 paragraph 5, {F/10/24} deals with the separate trial and
 23 there is a slightly different formulation there, in
 24 terms of value and value of claims.
 25 MR JUSTICE NUGEE: Yes.

1 MR POTTS: And then there is some back and forth, but then
2 page 33 on 17 April is my solicitors, {F/13/33}
3 a revised offer. And what one sees is we have the same
4 formulation in 3(e) {F/13/34} as to the value that takes
5 account of such matters and so on.
6 MR JUSTICE NUGEE: Yes.
7 MR POTTS: Then there is an expansion in paragraph 5 to add
8 in a few additional paragraphs to the petition.
9 What then happened, just to be clear, is that in
10 fact, by 24 April, the other side's position, the
11 petitioner's position, was that the entire petition
12 should be proceeded with and they were saying that there
13 should be general directions in relation to the petition
14 generally.
15 MR JUSTICE NUGEE: Yes.
16 MR POTTS: We had the application before
17 Deputy Registrar Briggs, which was contested --
18 MR JUSTICE NUGEE: Yes.
19 MR POTTS: -- for the trial of these issues. We were
20 successful in the face of opposition and that is
21 reflected in the fact that they were ordered to pay the
22 costs of the application.
23 MR JUSTICE NUGEE: Yes.
24 MR POTTS: So it was opposed root and branch, my Lord.
25 The reason I make -- I'm afraid my friend's skeleton

1 doesn't explain that in any way at all. The chronology
2 just needs to be made clear.
3 The other reason why I take your Lordship to it is
4 to see the terms of the offer. Your Lordship determines
5 whether there are breaches of duty such as to be taken
6 into account in determining the value, and then the
7 valuer will go off and look at them.
8 Your Lordship rightly raises the issue of: what are
9 we actually arguing about and the six issues that we
10 have. There are two themes, my Lord, which I just want
11 to briefly touch on. The first one is the scope of this
12 dispute and the attempts to widen it in a way which is,
13 well, inappropriate, and frankly the entire dispute is
14 grossly disproportionate.
15 Obviously, there will be some dispute as to the
16 value of Ms Birdi's shareholding but we take the view
17 it's somewhere between £100,000 and £200,000.
18 The adjustments which we are arguing about are of
19 negligible value, we say, perhaps might be measured in
20 some tens of thousands of pounds perhaps.
21 MR JUSTICE NUGEE: Can I ask you, as I asked Mr Stuart, what
22 date it is to be valued at? Has that been discussed at
23 all?
24 MR POTTS: It hasn't been discussed and your Lordship is
25 right to raise it. There would theoretically be three

1 possible dates, I suppose. One would be the date of
2 dismissal; one would be the date of the service of the
3 purchase notice or present value as at the date of
4 valuation.
5 MR JUSTICE NUGEE: And the shareholders' agreement doesn't
6 say?
7 MR POTTS: The shareholders' agreement doesn't say. No one
8 is contending for the date of dismissal, so we are
9 really between --
10 MR JUSTICE NUGEE: Purchase notice --
11 MR POTTS: -- purchase notice and today. I don't think we
12 have a final view on that issue. It may be an issue
13 which your Lordship, perhaps at judgment, might be asked
14 to give some view on. It's not one of the issues for
15 trial.
16 MR JUSTICE NUGEE: If I'm going to be asked to give a view
17 on it, I will have to have it argued. I am not going to
18 give a view off the top of my head, but it doesn't seem
19 to me to be part of this trial.
20 MR POTTS: It's not part of this trial and in the usual way,
21 my Lord, usually the issues as to the terms of the order
22 -- if this were a full 994 petition, that would usually
23 be a matter for, if you like, firstly determine
24 liability --
25 MR JUSTICE NUGEE: I can see that if the court is deciding

1 relief. But where the parties have agreed that there
2 will be a purchase at a valuation, it's a question of
3 what they have agreed.
4 MR POTTS: My Lord, yes, I think that may be right.
5 Although I think there may be some question -- my friend
6 seems to be saying, yes, it's under the shareholders'
7 agreement, but there is also some question of
8 repudiation. I don't know whether that's -- that's not
9 an issue for this trial but he may say it's not
10 a valuation under this contract.
11 Anyway, that's the issue, but as your Lordship said,
12 on any basis it's not 2007, it's not 2010; it's either
13 2012 or now.
14 MR JUSTICE NUGEE: 2015.
15 MR POTTS: Or 2015.
16 Just looking at the claims that we have, firstly
17 they say the costs incurred during the suspension in
18 2007 -- I think they put that at £86,000 of excessive
19 costs.
20 Just in relation to that, obviously she has got
21 a 25 per cent shareholding. It's some seven years ago.
22 Query what, if any, impact it would have on valuation.
23 MR JUSTICE NUGEE: You say a 25 per cent shareholding; she
24 has a 50 per cent interest --
25 MR POTTS: 50 per cent of the As.

1 MR JUSTICE NUGEE: -- in the profits.
 2 MR POTTS: 50 per cent of the profits, yes. But the
 3 valuation mechanism -- it talks about pro rata
 4 valuation, but, yes, that may be an issue for the valuer
 5 as to whether the rights attached to the shares are
 6 a matter that he would take account of, but that's
 7 a matter for the valuer.
 8 MR JUSTICE NUGEE: Oh, I see, yes, okay.
 9 MR POTTS: Secondly, the second claim is the increase in
 10 salaries and bonus to staff in a six-month period in
 11 2007. It's a very, very small amount of money, a matter
 12 of a few thousand pounds, if that.
 13 MR JUSTICE NUGEE: You have skipped over the failure to
 14 recoup the costs --
 15 MR POTTS: Yes, well --
 16 MR JUSTICE NUGEE: -- and the amounts stolen by Mr Patel.
 17 MR POTTS: Yes, well, the amounts stolen by Mr Patel -- we
 18 will come to this in the evidence -- £4,200 is what he
 19 admits to.
 20 MR JUSTICE NUGEE: Yes. It is said on behalf of Ms Birdi
 21 that actually he was stealing for longer than that and
 22 that the discrepancy between the price that Ms Kaur was
 23 willing to pay for the shares and what he was willing to
 24 accept for them is some indication of the extent to
 25 which --

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1 MR POTTS: That's a matter I will explore.
 2 MR JUSTICE NUGEE: Yes.
 3 MR POTTS: But there is no evidence --
 4 MR JUSTICE NUGEE: I can see that there is a paucity of
 5 evidence, but in the nature of things, there would be.
 6 MR POTTS: Yes, I suppose that may be right, but it's
 7 a matter to be explored in cross-examination. There it
 8 is, there is that point.
 9 Then, the excessive salary of Mr Singh is £12,000
 10 a year. They say that's the difference from what
 11 Mr Patel was paid.
 12 Then the costs of investigating Ms Birdi in 2010,
 13 that is a pleaded amount, it's £17,544.
 14 MR JUSTICE NUGEE: Yes.
 15 MR POTTS: Then finally we have the dividends point. There
 16 is one dividend going back to 2006 of £8,705.61,
 17 allegedly, and then a complaint of failure to pay
 18 dividends after her dismissal.
 19 The failure to pay a dividend in itself doesn't
 20 affect value at all because the profits are just going
 21 up; they are just staying in the company. What might be
 22 said to be an allegation is that effectively of
 23 disguised distribution, which diminishes.
 24 MR JUSTICE NUGEE: Yes. I think Mr Singh's salary went up
 25 to £50,000 and in addition he is getting £2,500

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1 a quarter by way of bonuses, so effectively he is
 2 getting £60,000 a year.
 3 MR POTTS: I think it's over a period of time.
 4 MR JUSTICE NUGEE: Yes.
 5 MR POTTS: But I think the disguised distributions, I think
 6 some £30,000 is the bonuses and then there is his
 7 increase in salary.
 8 So the point one would make is that on any basis,
 9 these are sums which we would say could be measured in
 10 tens of thousands of pounds, if that, and this is to be
 11 set against a three-week witness action. We have four
 12 witness statements by Ms Birdi running to
 13 800 paragraphs, a history of attempts -- we have had
 14 three successful applications to confine the trial,
 15 strikeout and so on, and disproportionate costs.
 16 Your Lordship should be aware that my sides' costs
 17 of disclosure alone were quarter of a million pounds and
 18 our costs to date are over a million.
 19 MR JUSTICE NUGEE: Yes, I can see that it's an expensive
 20 action to fight.
 21 MR POTTS: It is.
 22 MR JUSTICE NUGEE: But I don't think there is anything I can
 23 do about that at this stage, apart from try it.
 24 MR POTTS: Absolutely, and I'm not asking your Lordship to
 25 do anything other than that, but that's the context in

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1 which it's set.
 2 My Lord, we say that that context really sets out
 3 what the problem with this action is, which is that we
 4 have referred to the Re a Company decision of
 5 Sir Richard Scott about 994 being used to dredge up --
 6 MR JUSTICE NUGEE: It's an old-fashioned divorce.
 7 MR POTTS: It's an old-fashioned divorce and that's not what
 8 this case should be.
 9 So we have these six issues, but even on these six
 10 issues there are attempts in my friend's skeleton to
 11 seek to expand those. I will just highlight a couple of
 12 them briefly just for your Lordship's note.
 13 Paragraph 12 of my friend's skeleton in relation to
 14 the dividends. He is seeking both what he refers to as
 15 a compensatory adjustment for non-payment of dividends
 16 and an adjustment of the price. So that's in
 17 paragraph 12.
 18 Well, quite apart from the fact it's double
 19 recovery, it's also an attempt to rerun the argument,
 20 which I showed your Lordship on the pleading, which had
 21 been struck out, that there is no entitlement to seek
 22 compensatory payments in this claim.
 23 MR JUSTICE NUGEE: This is a point which I think may be of
 24 some considerable practical importance.
 25 Take the £86,000.

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1 MR POTTS: Yes.
 2 MR JUSTICE NUGEE: If I was fully accepting of Ms Birdi's
 3 allegations that your clients siphoned off £86,000,
 4 which they never should have done, it does seem to me
 5 that it's going to make a very significant practical
 6 difference to the relief whether what I'm doing is
 7 saying simply that that is a fact that can be reflected
 8 by the valuer to the extent that he thinks is
 9 appropriate, in the current day value or 2012 value of
 10 the shares, because Mr Stuart really accepted that the
 11 likelihood of that having any continuing impact on the
 12 value was quite small.
 13 MR POTTS: Yes.
 14 MR JUSTICE NUGEE: It can't dismissed as irrelevant but it's
 15 unlikely to be very significant.
 16 Or, whether it is competent within the scope of this
 17 trial for me to say, I'm quite satisfied that had that
 18 £86,000 been properly reflected in the accounts, there
 19 would have been extra distributable profits of £86,000
 20 and £43,000 of them would have found their way to
 21 Ms Birdi and I can direct that that should be taken
 22 account of; that warrants an adjustment to the price.
 23 MR POTTS: My Lord, firstly, the pleading makes it clear
 24 that compensatory payments are outside the scope of this
 25 because we struck that out. They tried to run that

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1 point, it was struck out.
 2 MR JUSTICE NUGEE: That's a claim for damages, and I'm not
 3 hearing a claim for damages. You will say, "Oh, but
 4 it's the same thing in a different guise", but the way
 5 Mr Stuart put it -- and at the moment, I make it
 6 perfectly clear I haven't formed any view as to whether
 7 you might or might not be right about this and I am not
 8 sure I am going to today. In fact, I rather think I am
 9 not.
 10 I don't think it affects the evidence that's called
 11 or decisions on the factual findings I make, but it may
 12 have a very significant impact on the relief that is
 13 granted at the end of the day.
 14 Of course, if you are right on the facts, it doesn't
 15 arise, but if Mr Stuart succeeds in establishing
 16 breaches of duty, it will become significant as to
 17 whether it is open to me on the wording of the scope of
 18 this trial to direct that there be an adjustment to the
 19 price, in effect to compensate Ms Birdi for failure to
 20 pay her dividends she was entitled to.
 21 MR POTTS: My Lord, firstly, briefly, your Lordship is
 22 absolutely right, you don't need to determine that right
 23 now; it's a matter to be developed and it won't affect
 24 the evidence. But what I would say very briefly on it,
 25 firstly, I have shown you the scope of the offer. The

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1 offer makes clear it is the former, not the latter.
 2 Your Lordship will say, "Yes, this is a matter which the
 3 valuer should have regard to in determining the value of
 4 the shares".
 5 MR JUSTICE NUGEE: Yes.
 6 MR POTTS: And secondly -- I obviously refer your Lordship
 7 to the pleading -- this was an attempt to run it in that
 8 way and that was struck out and it's an issue for the
 9 valuer.
 10 The point is that we would say it's not a question
 11 for your Lordship to do calculations; it's to say: was
 12 there a breach of fiduciary duty? Is it such as to
 13 warrant -- effectively to be taken into account by the
 14 valuer? And that's it. That's as far as your Lordship
 15 needs to go. That's our position on it.
 16 MR JUSTICE NUGEE: I'm not sure it's quite as simple as
 17 that. It's an unusual company where a shareholder has
 18 a right to a dividend of the entire distributable
 19 profits, but that is the structure that you have got.
 20 MR POTTS: Yes, subject to reserves.
 21 MR JUSTICE NUGEE: Subject to reserves, yes.
 22 MR POTTS: It's a contractual dividend policy, yes.
 23 MR JUSTICE NUGEE: Yes. It follows from that that if there
 24 is less money in the company than there ought to be but
 25 for a breach of duty, the shares are, therefore, less

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1 valuable than they ought to be because they ought to
 2 carry with them a right to a dividend, which they don't,
 3 because the money is not in the company.
 4 MR POTTS: My Lord, we would say, yes, absolutely, all those
 5 points can be made in submissions to the valuer, that
 6 each side --
 7 MR JUSTICE NUGEE: No, no, there are two different points.
 8 This is where I think the double-counting may or may not
 9 come in.
 10 Take a PLC, which declares two dividends a year on
 11 1 January and 1 July. If I buy it on 30 June, it comes
 12 pregnant with a dividend that's about to be declared and
 13 that's something which affects value regardless of the
 14 underlying profitability of the company. You buy
 15 a company dividend or ex-dividend and that will affect
 16 how much you pay for it and how much you get for it.
 17 If it's known that a dividend is going to be worth
 18 £100 a share then prima facie if you buy it with the
 19 right to a dividend, it's worth £100 more per share.
 20 That has got nothing to do with what the business is
 21 worth; it's just that you are buying the right to
 22 a dividend that's about to be declared.
 23 Take the £86,000. Why can't Ms Birdi say, "The
 24 company ought to have another £86,000 in it. I ought to
 25 have another £43,000 by way of dividend, so the value of

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1 my shares ought to reflect the missing dividend as well
 2 as the underlying profitability of the company."
 3 MR POTTS: My Lord, I think I'm saying really that whatever
 4 points she wishes to make on valuation by way of
 5 submissions to the valuer --
 6 MR JUSTICE NUGEE: Are valuation points.
 7 MR POTTS: -- are valuation points. She can make those
 8 points. I'm not seeking to debar her from making
 9 valuation points, but the mechanism of the offer is
 10 that --
 11 MR JUSTICE NUGEE: It goes to value.
 12 MR POTTS: -- it goes the value. That's the point.
 13 In a sense, your Lordship doesn't have to form
 14 a view as to what difference it makes to the valuation
 15 because, with all due respect to your Lordship, as your
 16 Lordship I think accepted, your Lordship is not
 17 a valuer.
 18 MR JUSTICE NUGEE: Not only am I not a valuer, I'm not going
 19 to try and value these shares. I'm grateful not to have
 20 to do that.
 21 MR POTTS: My Lord, indeed. Unfortunately you have spent
 22 a great deal of time dealing with shareholder disputes
 23 where that is an issue and you have expert reports and
 24 the dark arts of valuers are portrayed before the
 25 courts, and so on.

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1 MR JUSTICE NUGEE: The problem is, you can value businesses
 2 in any number of different ways.
 3 MR POTTS: Discounted cashflow, net assets, earnings,
 4 maintainable earnings and so on. But all those points
 5 are for the valuer.
 6 The point I'm making is what they are seeking to do
 7 here is to say, "You should do this, you should do that,
 8 you should make an order for compensation". No.
 9 MR JUSTICE NUGEE: I'm not going to make an order for
 10 compensation.
 11 MR POTTS: Or indeed that there should be a pound for pound
 12 payment of any kind, if you like, on the price.
 13 MR JUSTICE NUGEE: I wonder to what extent there is now
 14 really a disagreement between you, because is all I'm
 15 going to say, "I find that in this respect there was
 16 a breach of duty. I find that £86,000 was, in breach of
 17 duty, taken out of the company. It is a matter for the
 18 valuer what impact that has on the value of the shares."
 19 MR POTTS: Yes, I think that is right, my Lord. Obviously
 20 there is a point -- for example, your Lordship raised
 21 the issue of contractual breach and, if you like,
 22 effectively of causation as to whether -- for example,
 23 if there was a procedural breach.
 24 We would say that as part of your Lordship's find,
 25 even if your Lordship were to say that there was

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1 a procedural breach of some kind, a breach of contract,
 2 that's not such as to warrant any adjustment because it
 3 wouldn't have made any difference. If you were to apply
 4 a pure contract approach, there is no loss that flows
 5 from the breach.
 6 Indeed, if you wanted to look at it in more
 7 traditional equity terms under 994, the court will not
 8 act in relation to procedural breach which could be put
 9 right which would not have made any difference.
 10 So that's perhaps a different gloss on it, but to
 11 answer your Lordship's point, yes, your Lordship will
 12 find: was that a breach of fiduciary duty? If so, you
 13 set out what the scope -- if you like, my Lord, this is
 14 the typical issue that comes up on 994, on O'Neill v
 15 Phillips offers. One usually tries to get rid of the
 16 whole thing.
 17 MR JUSTICE NUGEE: Yes, yes.
 18 MR POTTS: The problem is, if there is an issue of mixed law
 19 and fact which is not suitable for a valuer to
 20 determine, then it's shoved off to the judge; the judge
 21 has to determine the mixed law and fact, and then it
 22 goes back to the valuer who can then do his magic.
 23 That's really what the scope of that offer was about.
 24 MR JUSTICE NUGEE: Yes.
 25 MR POTTS: And so that's the scope of the offer and that's

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1 the scope of your Lordship's task.
 2 I hope that assists; that's our position in relation
 3 to that point.
 4 MR JUSTICE NUGEE: Yes, thank you.
 5 MR POTTS: My Lord, briefly, as I said, there are a number
 6 of issues. There are also paragraphs 31 and 32. It's
 7 saying that the price that Specsavers paid for
 8 Mr Patel's shares represents a benefit which Specsavers
 9 was obliged to pass on to Dartford, to the company.
 10 Apart from the fact that it's not pleaded, I'm
 11 afraid that's misconceived. The idea that the price at
 12 which shares of a company are sold, that's not an asset
 13 of the company itself -- it's not a pleaded issue. It's
 14 put as a claim in my friend's skeleton. I don't
 15 understand it. I think it's conceptually --
 16 MR JUSTICE NUGEE: We may need to explore this but I think
 17 what I thought lay behind that was the suggestion that
 18 if Specsavers takes advantage of the fact that Mr Patel
 19 has been caught stealing, which is potentially very
 20 damaging to him, they could have sacked him and they
 21 could have had him prosecuted, but that would have made
 22 it impossible for him to work again.
 23 So, I think what is suggested is they did a cosy
 24 deal with him whereby they wouldn't prosecute him and
 25 they wouldn't sack him, but they would let him carry on

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1 working as an optician and in return, he would sell them
 2 his shares at a considerable undervalue, that undervalue
 3 taking account of all the loss that he had caused the
 4 company.
 5 You can see that that is to the financial prejudice
 6 of Ms Birdi. If the company has a perfectly good claim
 7 against Mr Patel, but instead of the company pursuing
 8 that claim, the benefit of it accrues to Specsavers, one
 9 might well think there was some legal mechanism by which
 10 Specsavers, who is a director of the company and ought
 11 to be acting in the interests of the company, is
 12 accountable for that benefit.
 13 MR POTTS: I have to say it's nothing even close to that on
 14 the pleadings -- I don't want to take pleadings points,
 15 but I'm afraid I am entitled to know the case I have to
 16 answer.
 17 MR JUSTICE NUGEE: Yes, of course.
 18 MR POTTS: There is nothing close to that on the pleaded
 19 case.
 20 MR JUSTICE NUGEE: Okay.
 21 MR POTTS: Nothing close. We will obviously have to explore
 22 some of the evidence on that in due course, but I don't
 23 accept that that is conceptually accurate. When your
 24 Lordship sees how it's put in the skeleton, it doesn't
 25 make any sense.

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1 Also at paragraph 34, there are the two unpleaded
 2 issues about a tax liability and some issue about market
 3 and book value of a car, but I don't think they are
 4 actually proceeded with by way of relief, as
 5 I understand it, but they are raised again. Again, it's
 6 just a widening of the scope of this trial and I don't
 7 accept that those are properly within the scope of this
 8 action.
 9 My Lord, just in terms of the scope of the issues,
 10 can I just briefly touch on my friend's pleaded case
 11 from this morning. I'm not going to spend long on the
 12 law but I think it may just be worth briefly --
 13 obviously, my skeleton doesn't address in any great
 14 detail the idea of the alleged implied term, which is
 15 not surprising because none is pleaded.
 16 MR JUSTICE NUGEE: It's not pleaded as an implied term.
 17 MR POTTS: It's not pleaded as an implied term.
 18 Can I just briefly first show your Lordship what is
 19 pleaded and then perhaps I will just give you some
 20 initial thought on it.
 21 MR JUSTICE NUGEE: It's pleaded as a quasi partnership under
 22 that title.
 23 MR POTTS: Yes. That's right, my Lord. If your Lordship
 24 has paragraph 8 at page 29 of volume A, the heading is
 25 a bit of a hint: {A/5/29}

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1 "Quasi-partnership".
 2 MR JUSTICE NUGEE: Yes.
 3 MR POTTS: There it is said that this was an agreement:
 4 "... to operate the joint venture in the spirit of
 5 quasi partnership on the terms set out in the
 6 shareholders' agreement. The expectation was that both
 7 parties would abide by the rules ... in particular, the
 8 division of responsibilities in clause 3.1, in the
 9 spirit of mutual trust and confidence, and that neither
 10 party would seek to use any powers conferred upon it
 11 purely to advance its own interest at the expense of the
 12 other without just cause."
 13 Then we get paragraph 9. The company is a quasi
 14 partnership but on the basis of personal relationship
 15 involving mutual confidence and so on.
 16 So the allegation is not one of an implied term, as
 17 put, and it's now said, no, it is an implied term.
 18 I think what was originally said was that the quasi
 19 partnership -- there is a direct fiduciary duty owed.
 20 That's the essence of quasi partnership.
 21 MR JUSTICE NUGEE: Is this Westbourne Galleries?
 22 MR POTTS: Yes, Westbourne Galleries, but quasi partnership
 23 -- effectively that there are legitimate expectations --
 24 unwritten agreements and understandings which in equity
 25 bind in conscience. But really, that there are

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1 obligations akin to partnership and so the partnership
 2 obligation is that of a direct fiduciary duty, rather
 3 than a duty -- obviously, fiduciary duties are owed by
 4 directors to the company.
 5 MR JUSTICE NUGEE: Yes, but this is as between shareholders.
 6 MR POTTS: This is an allegation that -- well, this is how
 7 I thought it was being put, that there was an allegation
 8 of direct fiduciary duties being owed by reason of this
 9 being a quasi partnership.
 10 My friend is -- I'm not sure, I don't know, shifting
 11 sands. It may be he is still saying that, but I think
 12 he is also seeking to say that this is an implied term.
 13 I think he is actually saying, "No, it's not a fiduciary
 14 duty, it is a term to be implied in the contract". He
 15 doesn't actually use the words, he doesn't say "implied
 16 term", but I think he is seeking to imply the term and
 17 I think it is worth just looking at, if he is going to
 18 be running that point.
 19 He is saying that:
 20 "Neither party would seek to use any powers
 21 conferred upon it purely to advance its own interest at
 22 the expense of the other without just cause."
 23 Let's just break that down and try to understand
 24 what the case is. So, he is not contending, I don't
 25 think, for a general duty of good faith or an implied

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1 general duty of good faith, but he hasn't sought to
 2 plead that.
 3 He referred to Yam Seng and I'll mention briefly
 4 something about Yam Seng in a moment, but he is not
 5 going for just a general implied fiduciary obligation or
 6 indeed an implied general contractual duty of good
 7 faith. It is a specific duty that neither -- if I was
 8 going to put some quote marks:
 9 "Neither party would seek to use any powers
 10 conferred upon it purely to advance its own interest at
 11 the expense of the other without just cause."
 12 That begs a few questions. The first one: powers.
 13 What powers are we talking about? Your Lordship
 14 identified this: in the context of 994, when you talk
 15 about the conduct of the affairs of the company, you
 16 have to say: what is the conduct of the affairs of the
 17 company that you are talking about?
 18 Now, you can have fiduciary duties as a director and
 19 obviously we do have powers as directors and I would
 20 accept that you have a fiduciary -- if you were to, say,
 21 exercise your fiduciary powers as a director purely to
 22 advance your own interest at the expense of your fellow
 23 director without just cause, that would be a breach of
 24 fiduciary duty. I would accept that, because you are
 25 not acting bona fide in what you consider to be the

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1 interests of the company. You are acting for an
 2 improper purpose.
 3 So it doesn't add anything. It's not a valid
 4 implied term in relation to fiduciary powers as
 5 a director. It's not needed; it's not necessary; you
 6 don't need it.
 7 What are the powers we are talking about?
 8 MR JUSTICE NUGEE: Sorry to interrupt you. Page 32, 19.2
 9 and 19.3. {A/5/32} I think those are now statutory
 10 duties, aren't they?
 11 MR POTTS: Absolutely.
 12 MR JUSTICE NUGEE: And you don't dispute?
 13 MR POTTS: Of course not, absolutely.
 14 MR JUSTICE NUGEE: They are sort of fundamental as to what
 15 directors are doing.
 16 MR POTTS: They are part of section 172 of the
 17 Companies Act, they have been codified and the
 18 codification of the common law duties are now in
 19 statute. Absolutely.
 20 MR JUSTICE NUGEE: Did section 172 change the common law
 21 duties of directors at all?
 22 MR POTTS: No.
 23 MR JUSTICE NUGEE: There was some suggestion at one stage --
 24 MR POTTS: No, the test in terms of the bona fide "in the
 25 interests of the company", it says the existing common

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1 law is relevant as to application.
 2 MR JUSTICE NUGEE: There was a bit of tweaking about
 3 stakeholders.
 4 MR POTTS: My Lord, I think in this case, that is not
 5 an issue that is going to trouble your Lordship about
 6 stakeholders.
 7 MR JUSTICE NUGEE: Thank you.
 8 MR POTTS: But the basic bona fide "in the interests" -- and
 9 what the directors considers to be the interests of the
 10 company test is the same as the duty to promote the
 11 interests of the company. That has not changed. In
 12 fact, as your Lordship will see, I think we have pleaded
 13 it out by way of -- in the defence.
 14 MR JUSTICE NUGEE: By way of the statutory provisions.
 15 MR POTTS: The statutory provisions.
 16 MR JUSTICE NUGEE: And the statutory provisions have been in
 17 force --
 18 MR POTTS: -- since 2006.
 19 MR JUSTICE NUGEE: 2007, I think.
 20 MR POTTS: Yes, 2007, I think. Certainly during this entire
 21 period.
 22 MR JUSTICE NUGEE: Maybe not in February when --
 23 MR POTTS: Oh, maybe not in February. 1 October 2007, yes.
 24 MR JUSTICE NUGEE: Yes, so technically speaking, when it
 25 comes to dealing with Mr Patel's theft, one is looking

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1 at the common law.
 2 MR POTTS: Yes, I think that's right, my Lord, although I'm
 3 happy to accept that the test is no different, if that
 4 assists.
 5 MR JUSTICE NUGEE: That's very helpful, yes.
 6 MR POTTS: We have set that out in our skeleton. The basic
 7 test is, it's not for the court to second guess
 8 directors.
 9 MR JUSTICE NUGEE: No, no, I have got that.
 10 MR POTTS: All of that. All those principles still apply.
 11 So, powers. What powers are we talking about:
 12 director powers? No, that's covered by fiduciary
 13 duties; you don't imply a term in relation to that.
 14 So what else is it? Powers conferred upon it: what,
 15 as a shareholder, as a supplier of services or as your
 16 proprietary rights to acquire shares? I don't know,
 17 it's not specified, but if one goes wider and says in
 18 terms of shareholder powers that those are proprietary
 19 rights, those are personal rights -- but even if you go
 20 on to look at it and say, what is it that you mustn't
 21 do? He is not saying that you have a duty, the
 22 fiduciary, the Bristol v Mothew position. It's not said
 23 we have to suborn our interests in favour of Ms Birdi.
 24 It's said that we can use our powers -- what we can't do
 25 is use it purely to advance its own interest at the

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1 expense of the other. Okay.
 2 Then it says "without just cause".
 3 MR JUSTICE NUGEE: That does beg a question.
 4 MR POTTS: What does that mean?
 5 MR JUSTICE NUGEE: Yes.
 6 MR POTTS: With all due respect to my friend, it's utterly
 7 meaningless.
 8 MR JUSTICE NUGEE: I don't think it's meaningless. You can
 9 say that it's difficult --
 10 MR POTTS: It's difficult -- I would certainly say in terms
 11 of -- if you are looking to use the test that it goes
 12 without saying, necessity, whichever Belize Telecom test
 13 you are looking at, it's difficult to see what that
 14 actually applies to. And if the term that is being
 15 sought to be implied makes little or no sense, that's
 16 a pretty good starting point to say it's not going to be
 17 implied.
 18 My Lord, just briefly in relation to the Yam Seng
 19 point.
 20 MR JUSTICE NUGEE: Yes.
 21 MR POTTS: My friend referred to Yam Seng and I have showed
 22 your Lordship the bit at the end.
 23 MR JUSTICE NUGEE: Do you want me to turn it up?
 24 MR POTTS: The bit about the particular facts of the case.
 25 MR JUSTICE NUGEE: 160 to 163?

1 21

1 MR POTTS: Yes, the bit about how this was a contract which
 2 was very slim; it didn't flesh out obligations and so
 3 on.
 4 Yam Seng has been considered -- and we will do
 5 a note for your Lordship. Yam Seng has been considered
 6 in at least three cases since. And all three have said,
 7 including Court of Appeal, that it's a case on its
 8 facts. There is no legal principle. The English law
 9 has not been altered in favour of some sort of
 10 favouritism towards the idea of implying a duty of good
 11 faith into contracts.
 12 There is one case I might just refer your Lordship
 13 to, if I may briefly, which is TSG v South Anglia.
 14 Perhaps I could hand out the copies. We will develop
 15 this my Lord, briefly.
 16 MR JUSTICE NUGEE: Shall we put this somewhere --
 17 MR POTTS: We could, yes. (Handed)
 18 My friend will be familiar with this because he ran
 19 exactly the same point in the other two actions, but in
 20 exactly the same way, didn't cite the authorities after
 21 Yam Seng.
 22 MR JUSTICE NUGEE: Where do you suggest we put it?
 23 MR POTTS: My Lord, we could perhaps put it ...
 24 MR JUSTICE NUGEE: It's quite a slim supplemental list.
 25 MR POTTS: We could put it into our supplemental bundle of

1 22

1 authorities?
 2 MR JUSTICE NUGEE: At the back.
 3 MR POTTS: At the back there.
 4 MR JUSTICE NUGEE: I suspect in a trial of this length,
 5 there will be a few --
 6 MR POTTS: There will be a few more.
 7 MR JUSTICE NUGEE: Yes.
 8 MR POTTS: My Lord, the discussion starts, I think, on the
 9 implied duty of good faith at paragraph 43 and there is
 10 a reference -- and I think I can go over this reasonably
 11 quickly.
 12 MR JUSTICE NUGEE: Do you want me to read some of it?
 13 MR POTTS: I will, briefly, yes, but the context is this is
 14 where it dealt with the (inaudible) duty of good faith.
 15 There is a reference to well-known authorities, which
 16 I won't trouble your Lordship with, BP Refinery and
 17 Attorney General v Belize. Then there is a reference to
 18 Equitable Life v Hyman and the discussion goes on and
 19 then at 45 is the reference to Yam Seng.
 20 MR JUSTICE NUGEE: Yes.
 21 MR POTTS: And your Lordship has seen some of the citation
 22 there.
 23 Then over the page, first cases, it picks up the
 24 reference to Belize and so, and then context.
 25 My Lord, really, it's just paragraph 46 I would draw

1 23

1 to your Lordship's attention. Perhaps your Lordship
 2 would read that.
 3 MR JUSTICE NUGEE: I will just read that. (Pause)
 4 I have read that, yes.
 5 MR POTTS: The point is, there is no general duty of good
 6 faith. Indeed, my friend isn't contending for a general
 7 duty of good faith. He is contending for a particular
 8 one and we would say that is to be judged by some
 9 particular circumstances such as -- your Lordship saw
 10 that there was an entire agreement clause in this
 11 contract.
 12 MR JUSTICE NUGEE: I saw that. Entire agreement clauses
 13 don't necessarily prevent implication of terms. There
 14 is a decision to that effect.
 15 MR POTTS: There is, yes, it's not a complete slam dunk
 16 point, I agree. But in the context where my friend is
 17 saying quasi partnership, there are unwritten agreements
 18 and understandings. The existence of a detailed
 19 shareholders' agreement, which is -- it's a lengthy
 20 document, it's a full contract. You have got bespoke
 21 articles of association, you have got detailed
 22 shareholders' agreement, you have got detailed services
 23 agreements. The idea that the parties have left room
 24 for some nebulous understandings or agreements -- and
 25 the understanding or agreement which he is contending

1 24

1 for is the one in that quote.
 2 So obviously, we can expand on that, my Lord, but we
 3 say there is no such; no room for that sort of
 4 implication.
 5 My Lord, the final point I would like to mention is
 6 just to draw attention to the nature of the allegations
 7 that are being made.
 8 MR JUSTICE NUGEE: Yes.
 9 MR POTTS: Your Lordship, I think, has this point already
 10 but we deal with it in our skeleton argument in --
 11 MR JUSTICE NUGEE: This is the conspiracy theory.
 12 MR POTTS: Yes. Regrettably, it is not just a conspiracy
 13 theory.
 14 MR JUSTICE NUGEE: No, that's shorthand for a large number
 15 of serious allegations about the motivations of your
 16 client in the actions it took.
 17 MR POTTS: My Lord, yes. Let's just be clear about this, in
 18 terms of my client, what this means.
 19 The pleaded allegation is a malicious breach of
 20 fiduciary duty.
 21 MR JUSTICE NUGEE: Yes.
 22 MR POTTS: So these are allegations of intentional
 23 impropriety. We have set out the decision in Paragon as
 24 to that being a distinct cause of action, of breach of
 25 fiduciary duty.

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1 And this is not just an allegation against an
 2 organisation, because you cannot make an allegation of
 3 intentional impropriety merely against a company,
 4 because a company is an artificial entity. There are
 5 human actors.
 6 MR JUSTICE NUGEE: Yes.
 7 MR POTTS: So again, it's a large number of SOG and SOS
 8 personnel. It's against Mr Singh as well. And just to
 9 be clear, it is also allegations against a number of
 10 members of staff at the Dartford store. There are
 11 allegations of dishonesty made against members of staff
 12 at the store as well.
 13 MR JUSTICE NUGEE: I don't think I had picked that up. Is
 14 this the letter signed by the six members?
 15 MR POTTS: Yes.
 16 MR JUSTICE NUGEE: I thought the suggestion was that they
 17 had been suborned in some way.
 18 MR POTTS: My Lord, there is an allegation that they had
 19 been bribed, I think is the case, and the allegation is
 20 that what they said in the letter was dishonest.
 21 MR JUSTICE NUGEE: Knowing it to be untrue.
 22 MR POTTS: Dishonest. In fact, the word used
 23 is "dishonest". So, that is an allegation of bribery
 24 and an allegation of dishonesty.
 25 Just to be clear, these points are picked up in my

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1 learned friend's skeleton. This is my friend's case.
 2 It's not just something that Mrs Birdi thinks. Ms Birdi
 3 is his client, he is putting her case and, for example,
 4 in paragraph 46 of my friend's skeleton:
 5 "SOG had a secret agenda to drive her out of the
 6 business at the lowest possible cost."
 7 MR JUSTICE NUGEE: Yes.
 8 MR POTTS: 54, on the salaries, this is malicious:
 9 "The motivation was malicious and based on an
 10 improper desire to go on and support so they could be
 11 counted on to bat(?) against her."
 12 Mr Singh's salary at 62:
 13 "They were effectively plotting together
 14 thereafter."
 15 That is the language of conspiracy, and let's just
 16 be clear. The allegation of conspiracy:
 17 "An unlawful means conspiracy is a combination or
 18 understanding between two or more people, an intention
 19 to injure another, concerted action consequent upon the
 20 combination, and use of unlawful means as parts of
 21 concerted action resulting in damage."
 22 MR JUSTICE NUGEE: I'm not trying a claim for the tort of
 23 conspiracy.
 24 MR POTTS: You're not, my Lord, but this is an allegation of
 25 conspiracy.

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1 MR JUSTICE NUGEE: I understand the general thrust of
 2 Ms Birdi's complaint, which is that your clients were
 3 determined to get rid of her and all the things she
 4 complains about were all pursuant to that agenda.
 5 MR POTTS: Yes. It's obviously Mr Singh as well. Mr Singh
 6 is my client as well.
 7 MR JUSTICE NUGEE: Yes. He was, according to her, your man
 8 on the inside and furthering the same agenda.
 9 MR POTTS: Absolutely. Just to be clear, though, the
 10 additional allegation is not just the plot. There are
 11 allegations of fraud made against my client. The
 12 bonuses are said to be a conspiracy to cheat and defraud
 13 Ms Birdi. There are four allegations of bribery.
 14 Mr Patel was induced by SOG to make false allegations
 15 against Ms Birdi. Secondly, the pay rises and bonuses
 16 to staff during 2007 were inducements. That, I think,
 17 is an allegation of bribery. Mr Singh himself was given
 18 inducements to do SOG's bidding. That's an allegation
 19 of bribery. And finally, the staff are again alleged to
 20 be subject to bribery because they were drawn into
 21 a conspiracy as a result of which they were induced to
 22 join in signing a letter which falsely and dishonestly
 23 accused Ms Birdi of billing them.
 24 Those are quotes.

25 MR JUSTICE NUGEE: Yes.

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1 MR POTTS: So that's four allegations of bribery.
 2 The letter by the six staff we will take your
 3 Lordship to, and then there are also allegations of
 4 stealing, theft. There is an allegation of tax fraud
 5 made against individual members of the board of SOG.
 6 MR JUSTICE NUGEE: I haven't quite understood the allegation
 7 of tax fraud. I'm conscious that your client is
 8 resident in Guernsey. Incorporated?
 9 MR POTTS: Yes, my Lord.
 10 MR JUSTICE NUGEE: Incorporated and resident in Guernsey?
 11 MR POTTS: Yes.
 12 MR JUSTICE NUGEE: And as such, presumably doesn't pay UK
 13 corporation tax?
 14 MR POTTS: The operating company which supplies services,
 15 which is SOS, is an English company and that's resident
 16 here.
 17 MR JUSTICE NUGEE: So it does pay corporation tax, to the
 18 extent it makes any profits?
 19 MR POTTS: Yes.
 20 So my Lord, we would say that regrettably, the theme
 21 that runs through this case is that effectively anybody
 22 who has disagreed or taken a different view from
 23 Ms Birdi -- there is no possibility of legitimate
 24 differences of opinion or management decisions; everyone
 25 is dishonest.

1 29

1 That is the case that is put and that is the case
 2 which I will meet, but if that case is not made good,
 3 then the allegations of breach of fiduciary duty fail,
 4 because that is the way the allegation is put.
 5 MR JUSTICE NUGEE: You heard me ask Mr Stuart about this.
 6 MR POTTS: Yes.
 7 MR JUSTICE NUGEE: And I think I do want to press you on
 8 this.
 9 MR POTTS: Yes.
 10 MR JUSTICE NUGEE: I have got clearly in mind that that's
 11 your submission, but let's take a concrete example, as
 12 I did with Mr Stuart.
 13 Suppose the case is that I find that the increase in
 14 salaries and the bonuses given in 2007 to the staff were
 15 not motivated by a secret agenda to drive down the value
 16 of Ms Birdi's shares as part of a plot to get rid of her
 17 as cheaply as possible, but nevertheless were a breach
 18 of one duty or another because it wasn't the correct
 19 process, it was something that shouldn't have been done
 20 in that way, et cetera, et cetera, or it wasn't
 21 something -- let's take Mr Singh's salary. Your defence
 22 to that is it was done for perfectly legitimate and bona
 23 fide reasons and you needed to pay him that much to
 24 induce him to come over from Grays. Suppose I find that
 25 actually, although you had no hidden agenda motivation,

1 30

1 there was a breach of duty in doing it.
 2 MR POTTS: My Lord, it begs a question. The question is:
 3 what duty? Because that must be the issue. The
 4 question is: what are the allegations of breach of duty?
 5 You can't say, "Well, it's just all out there". The
 6 question is: what is the breach of duty.
 7 A breach of fiduciary duty allegation is made, but
 8 the allegation of breach of duty is one. There is one
 9 allegation of breach of fiduciary duty qua director made
 10 and that is malicious breach of fiduciary duty in order
 11 to harm her. That's the only pleaded allegation of
 12 breach of fiduciary duty.
 13 MR JUSTICE NUGEE: But that's motive. Isn't it? If it's
 14 a breach of duty to pay Mr Singh £42,000, does it matter
 15 why you did it?
 16 MR POTTS: My Lord, yes, because the issue -- let's just
 17 break it down. We are talking about fiduciary duties as
 18 a director.
 19 MR JUSTICE NUGEE: Yes.
 20 MR POTTS: And I have taken your Lordship to it in terms of
 21 what the cause of action is. The cause of action is an
 22 intentional breach of fiduciary duty, malicious breach
 23 of fiduciary duty. That's the allegation. It's the
 24 only allegation of breach of fiduciary duty which is
 25 made, which is pleaded.

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1 It is: that's the pleaded case.
 2 MR STUART: I'm sorry, my Lord, I hesitate but this is such
 3 nonsense. We have had all this out before. You were
 4 taken to paragraph 19 of the amended points of claim.
 5 MR JUSTICE NUGEE: Yes.
 6 MR STUART: Your Lordship will recall that everything within
 7 this points of claim is within this trial today.
 8 MR JUSTICE NUGEE: Yes.
 9 MR STUART: And I don't in any way restrict myself to one
 10 breach of fiduciary duty only, and nor does
 11 Deputy Registrar Briggs, when he orders the trial of the
 12 issues, restrict it to one fiduciary duty only. There
 13 are listed there a number of breaches of various duties,
 14 all of which are said to give rise to -- at
 15 paragraph 20:
 16 "As a result of these breaches ..."
 17 Et cetera, et cetera. So it's not one breach of one
 18 duty which is solely dependent upon us proving this
 19 conspiracy.
 20 I know Mr Potts is desperate that the conspiracy is
 21 the sum total of this case because he hopes that the
 22 burden of proof in proving such a conspiracy will be
 23 beyond us. But that is not my case; never has been my
 24 case; it's not pleaded as my case; it's not argued as my
 25 case in my skeleton argument, nor in the extensive

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1 reply; nor has it ever been the limit of my case. So
 2 the fact that he keeps on saying that doesn't actually
 3 take matters any further.
 4 MR POTTS: I'm sorry, my Lord, the 26.5 -- I accept my
 5 friend doesn't just have an allegation of breach of
 6 fiduciary duty.
 7 MR STUART: You just said he did.
 8 MR POTTS: He is alleging breach of contract and he is also
 9 alleging a breach of this implied contractual duty.
 10 MR JUSTICE NUGEE: Yes.
 11 MR POTTS: I accept that. But I'm talking about fiduciary
 12 duty as director. And the allegation, for example -- in
 13 the case of each of the list of issues, the matters that
 14 we allege -- I have set them out, my Lord, if it
 15 assists, in my skeleton argument as to what the
 16 pleadings are in relation to each of these. If you look
 17 at paragraph 155.
 18 MR JUSTICE NUGEE: Of your skeleton?
 19 MR POTTS: Of my skeleton, that sets out there -- this is
 20 just by reference to the pleadings.
 21 In respect of each of the six matters that we are
 22 dealing with --
 23 MR JUSTICE NUGEE: Yes.
 24 MR POTTS: -- in each case we have got: motivated by malice;
 25 motivated by self-interest or malice; desire to profit

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1 or reward at the expense of the petitioner.
 2 The same point is raised in relation to each of the
 3 pleaded matters. They are all alleged as intentional
 4 impropriety.
 5 I'm dealing with the allegation of breach of
 6 fiduciary duty as a director. I accept that my friend
 7 is also running -- there is a pure breach of contract
 8 point which if you like is saying matters done in breach
 9 of the shareholders' agreement because of procedural
 10 matters.
 11 MR JUSTICE NUGEE: Yes.
 12 MR POTTS: I accept that. We will deal with that
 13 separately.
 14 In terms of fiduciary duties as directors, if you
 15 like, the management decisions, the allegation is
 16 malice. That is the pleaded allegation.
 17 MR JUSTICE NUGEE: Let's take an example. One of the
 18 complaints is that during Ms Birdi's suspension, the
 19 company was charged so much a day for the services of
 20 a manager.
 21 MR POTTS: Yes.
 22 MR JUSTICE NUGEE: As I understood the evidence, it is said
 23 that that was charged at some £400 a day, whereas the
 24 actual manager cost was £200 or something a day.
 25 It is possible that if I find those to be the facts,

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1 then the reason that Specsavers extracted £400 a day
 2 when it was only costing £200 was deliberately to drive
 3 down the profits of a company in order that Ms Birdi's
 4 shares could be acquired cheaply. I think that is what
 5 is suggested.
 6 MR POTTS: Not just what is suggested. That is their
 7 pleaded allegations, your Lordship. Sub (2).
 8 MR JUSTICE NUGEE: But it is possible that I find that I'm
 9 not satisfied that that serious allegation is made out
 10 but I am still nonetheless satisfied that it was a wrong
 11 thing to do for Specsavers to charge £400 a day when it
 12 was only costing the company --
 13 MR POTTS: My Lord, the question is: wrong thing to do. In
 14 terms of -- that's not the pleaded case.
 15 MR JUSTICE NUGEE: Putting its own interest above that of
 16 the company; not acting bona fide in the interests of
 17 the company -- not because it's motivated by malice.
 18 MR POTTS: My Lord, that's the allegation. If my friend had
 19 wanted to plead an alternative case, it's open to him to
 20 do so. I have taken your Lordship to Paragon.
 21 MR JUSTICE NUGEE: Paragon is a slightly different case.
 22 It's a pleading point, which says you can't smuggle in
 23 an allegation of fraud on the back of a pleading which
 24 at the moment doesn't allege fraud.
 25 MR POTTS: Your Lordship is right. It was also concerned

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1 with limitation and so on. Absolutely.
 2 MR JUSTICE NUGEE: Yes, it is, and it is clearly adding
 3 a new level of seriousness by adding an allegation of
 4 actual fraud.
 5 MR POTTS: But the point is made that they are distinct
 6 causes of action. He does make that point. There is
 7 an allegation of intentional breach of duty as
 8 a distinct cause of action from one just of
 9 straightforward breach of fiduciary duty.
 10 That's not the case that is pleaded against me. The
 11 case which is pleaded against me is, on that point,
 12 sub(2) -- I have set it out -- it was motivated by
 13 self-interest or malice, calculated that they would be
 14 able to extract profit or compensation to the advantage
 15 and to the detriment of the petitioner's interests in
 16 distributable profit.
 17 MR JUSTICE NUGEE: Yes.
 18 MR POTTS: That is the pleaded case.
 19 MR JUSTICE NUGEE: Again, I'm not going to decide this
 20 today. I'm going to find the facts in the course of the
 21 trial.
 22 MR POTTS: Yes.
 23 MR JUSTICE NUGEE: But it is a point we may have to come
 24 back to --
 25 MR POTTS: My Lord, yes.

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1 MR JUSTICE NUGEE: -- when we get to closing. Yes.
 2 MR POTTS: My Lord, we have set out there the nature of the
 3 pleadings and just in terms of the allegations, my Lord,
 4 one shouldn't I'm afraid lessen its import by suggesting
 5 it's a grand conspiracy, because there are a number of
 6 very serious allegations, indeed, of criminal conduct,
 7 made against a large number of individuals.
 8 MR JUSTICE NUGEE: I fully have the point, but you have to
 9 proceed -- you will seek to persuade me at the end of
 10 the day, as you have done in your written opening, that
 11 unless I accept the conspiracy theory -- which I'm using
 12 as a shorthand for all these allegations -- then the
 13 claim has to fail. But you have heard what Mr Stuart
 14 says, that even if he doesn't get home at that level of
 15 seriousness, he can still establish breaches of duty --
 16 MR POTTS: Actually, he referred to contractual breaches of
 17 duty.
 18 MR JUSTICE NUGEE: Well, yes.
 19 MR POTTS: That's what he said. I agree that there are two
 20 other allegations I have to meet. One is breach of
 21 contract (inaudible) and then there is this implied
 22 term.
 23 MR JUSTICE NUGEE: Which is also put as a breach of
 24 contract, I think.
 25 MR POTTS: It is, absolutely. It's a breach of contract,

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1 a breach of an implied term, absolutely.
 2 MR JUSTICE NUGEE: Yes.
 3 MR POTTS: I don't think I need to say anything else in
 4 opening. I would just like to make one further point
 5 before Ms Birdi is called. Your Lordship has seen there
 6 are four witness statements. They are very extensive.
 7 In those statements, with all due respect, there are
 8 numerous examples of speculation about events and
 9 meanings of documents in which she wasn't either the
 10 sender or the recipient of those documents, or indeed
 11 the events.
 12 Mr Rehman's statement is significantly shorter but
 13 he does the same thing.
 14 There are also matters of evidence given on matters
 15 which, I would respectfully say, are wholly unrelated to
 16 the matters for determination at trial.
 17 There is a timetable, so I just put down a marker
 18 that my side take the view that quite a lot of what is
 19 in the statement is not evidence at all and I'm not
 20 proposing to cross-examine --
 21 MR JUSTICE NUGEE: You want me not to hold it against you if
 22 you don't cross-examine every single allegation which is
 23 contained in the witness statements?
 24 MR POTTS: My Lord, yes, I put that marker down.
 25 MR JUSTICE NUGEE: Yes, well, again, I'm not going to form

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1 any view but I fully understand why you have taken that
 2 view and we will have to see what is said about
 3 everything at the end of the day.
 4 It's not my practice to tell experienced leading
 5 counsel how to cross-examine witnesses in advance.
 6 MR POTTS: No, no, I wasn't asking for a ruling, my Lord,
 7 I was just giving an indication.
 8 MR JUSTICE NUGEE: No, I'm obliged. Thank you.
 9 MR POTTS: Unless there are any other points I can assist
 10 with or matters that are troubling your Lordship --
 11 MR JUSTICE NUGEE: There are lots of matters troubling me,
 12 but I'm not sure this is the most appropriate time to
 13 raise them.
 14 MR POTTS: My Lord.
 15 MR JUSTICE NUGEE: I don't know whether it would be
 16 convenient moment to --
 17 MR POTTS: My Lord, yes, that might be. Then perhaps we
 18 could deal with Ms Birdi.
 19 MR JUSTICE NUGEE: Yes. We will take a five-minute break.
 20 (3.07 pm)
 21 (Short break)
 22 (3.15 pm)
 23 MR STUART: My Lord, can I call Ms Birdi up to give
 24 evidence.
 25 MR JUSTICE NUGEE: Yes.

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1 MISS SWARANDEEP BIRDI (sworn)
 2 Examination-in-chief by MR STUART
 3 MR JUSTICE NUGEE: Do sit down, please.
 4 A. Okay.
 5 MR STUART: Ms Birdi, perhaps you would just confirm your
 6 full name and address to the court.
 7 A. Yes. It's Swarandeeep Birdi, 3, The Russets, Maidstone,
 8 Kent, ME16 0NQ.
 9 Q. Thank you. And if you would pull out bundle B --
 10 I think somebody is going to assist you. Do you have
 11 bundle B?
 12 A. Yes, I do.
 13 Q. Yes, you do. We find there four witness statements of
 14 yours. Will you just go first of all to tab 1, your
 15 main witness statement, dated 6 November 2013. Do you
 16 see that statement? {B/1/1}
 17 A. I do, yes.
 18 Q. Hopefully you have a signed copy on page 143? {B/1/143}
 19 A. Yes, I do.
 20 Q. Can you just confirm: is that your signature?
 21 A. It is.
 22 Q. And are the contents of that statement true?
 23 A. Yes, they are.
 24 Q. Then if you go to tab 2, there is a much shorter
 25 statement dated 12 June 2014. Do you have that?

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1 {B/2/144}
 2 A. I do.
 3 Q. And at page 147 of our bundle, there is a signature. Do
 4 you have a signed copy there? {B/2/147}
 5 A. Yes, I do.
 6 Q. And can you just confirm: is that your signature and are
 7 the contents of that statement true?
 8 A. Yes, it is.
 9 Q. Thirdly, a third witness statement of yours, tab 3. Do
 10 you have that? {B/3/148}
 11 A. I do.
 12 Q. Same date. Signed on my page 183. Bottom corner. Do
 13 you have that? {B/3/183}
 14 A. Yes, I do.
 15 Q. Can you confirm that the contents of that statement are
 16 true?
 17 A. Yes, they are.
 18 Q. And that's your signature?
 19 A. Yes.
 20 Q. And finally your last witness statement, 30 July,
 21 a short statement at tab 4. Page 185 it starts. Do you
 22 have that? {B/4/185}
 23 A. I do.
 24 Q. Signed on page 191? {B/4/191}
 25 A. Yes.

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1 Q. And can you confirm the contents of that statement are
 2 true?
 3 A. Yes, they are.
 4 MR STUART: Would you just wait there. Mr Potts will ask
 5 you some questions?
 6 A. Okay.
 7 Cross-examination by MR POTTS
 8 MR POTTS: Good afternoon, Ms Birdi.
 9 A. Good afternoon.
 10 Q. Could I ask to you turn up your first statement?
 11 A. Yes.
 12 Q. At paragraphs 37 and 38, you deal with the position
 13 between 2000 and 2007 and you say that during that
 14 period, seven years, your relationship with SOG, with
 15 Specsavers, was very good? {B/1/8}
 16 A. Yes, it was.
 17 Q. SOG is a very large organisation, isn't it?
 18 A. Yes, it is.
 19 Q. With 700 stores in the UK alone?
 20 A. I believe so, yes.
 21 Q. And Dartford was one of those stores?
 22 A. Yes.
 23 Q. And your evidence is that you had no issues with
 24 Specsavers over their conduct of the affairs of the
 25 company during that period. Is that right?

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1 A. No -- yes, it is right, sorry.
 2 Q. And also you had no problems with Mr Patel. That's your
 3 evidence as well?
 4 A. No.
 5 Q. You say at paragraph 37 that your working relationship
 6 with Mr Patel was very good? {B/1/18}
 7 A. Yes.
 8 Q. It's fair to say that that's not a view which is shared
 9 by Mr Patel or his wife, is it?
 10 A. Well, if you are asking after he was caught stealing, he
 11 obviously knew I was -- I helped him to be caught
 12 stealing, so I think that's just human nature.
 13 Q. Okay. Could I ask to you take up volume E3, please.
 14 Keep volume B open on the desk. Don't worry, we will go
 15 back to it, and then just E3. 502. {E/108.2/502}
 16 Have you seen this document before?
 17 A. Yes, I have.
 18 Q. Okay. This is a letter from Dr Potter. That's
 19 Mrs Patel, isn't it?
 20 A. I knew her as Karina Patel.
 21 Q. Okay, but you see at the bottom it says:
 22 "Dr KN Potter (Patel)." {E/108.2/503}
 23 A. Yes, right.
 24 Q. She says, if you look at the last paragraph:
 25 {E/108.2/502}

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1 "The last seven years for Nimesh have been a very
 2 harrowing, stressful experience which we all, as
 3 a family have endured. His relationship with SB was
 4 such ..."
 5 That's you, isn't it:
 6 "... that she was constantly undermining his
 7 authority and made spiteful remarks to him on a very
 8 regular basis."
 9 Then it goes on. In the second paragraph she refers
 10 to him suffering extreme ill-health and depression. Do
 11 you see that?
 12 A. Hm-mm.
 13 Q. And then there's a number of points made.
 14 So it's fair to say that it's possible that Mr and
 15 Mrs Patel at least didn't share the view that you now
 16 express in relation to your relationship. Do you accept
 17 that that's fair?
 18 A. Well, like I said, no issues were ever raised between us
 19 until Mr Patel was exited from Dartford and when his
 20 shares were purchased for 55. So obviously they were
 21 very upset. But I don't share this view.
 22 MR JUSTICE NUGEE: Is there a date on this document?
 23 MR POTTS: My Lord, I'm not sure if there is. It's
 24 after June 2007, I think.
 25 MR JUSTICE NUGEE: Right.

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1 MR POTTS: Let me just see if I can assist your Lordship on
2 the date. (Pause)
3 MR JUSTICE NUGEE: Don't worry, Mr Potts.
4 MR POTTS: My Lord, I have got 2 June in my note.
5 MR STUART: My Lord, if it helps, I think possibly page 499
6 is the email which is said to attach "Letter of
7 allegation from Karina Patel." {E/108/499} I think that
8 is Mrs Potter.
9 MR JUSTICE NUGEE: I see, yes.
10 MR POTTS: It's June 2007.
11 MR JUSTICE NUGEE: Thank you very much.
12 MR POTTS: Moving on, you have a section about, "The offer
13 for me to relocate north", paragraph 40 onwards on your
14 first statement. {B/1/9} Your evidence is that
15 Mr Howarth called you out of the blue in October 2006?
16 A. That's correct, yes.
17 Q. And you say that he informed you that Mr Patel was
18 selling his shares and Mr Howarth offered you the
19 Specsavers store in Blackpool on terms that you sell up
20 in Dartford, and that was an offer you declined. Is
21 that right?
22 A. That's correct.
23 Q. And this was before the concerns over Mr Patel's conduct
24 had been raised with you; is that right?
25 A. That's correct.

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1 Q. Your evidence is that the real reason for that offer --
2 that's paragraph 46 -- {B/1/10} was that Specsavers
3 already had evidence that Mr Patel had been stealing and
4 they were planning to force him out before he could sell
5 his shares. Is that right?
6 A. That's what I believed, yes.
7 Q. And so you say the real reason for Mr Howarth's offer
8 in October 2006 was that Specsavers was thinking beyond
9 Mr Patel's departure; is that right?
10 A. That's correct, yes, because they had been made aware
11 that Mr Patel wanted to sell his shares on
12 1 September 2007.
13 Q. Well, in fact, they are saying that they already had
14 evidence that he had been stealing. That's your
15 evidence, isn't it?
16 A. That's what I believed after looking at -- that's what
17 I believed.
18 Q. That's your evidence, isn't it?
19 A. Yes, that's what I believed.
20 Q. You are saying that Specsavers had already identified
21 the store as a shared venture; is that right?
22 A. That's what I believed when I looked at disclosures.
23 Q. And a shared venture, just to be clear, that's a store
24 in which Specsavers holds some of the A shares as well
25 as the B shares. Is that right?

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1 A. That's correct.
2 Q. So it gets a share of profits as well as management and
3 other charges?
4 A. That's correct.
5 Q. And you say that you thought, naively, that Mr Howarth
6 had been looking out for your interests when he called
7 you?
8 A. Yes.
9 Q. You are saying that because you are saying he wasn't
10 actually looking out for your interests at all?
11 A. That's what I believe.
12 Q. So what you are saying is that -- you say that he was
13 aware at that point that SOG had evidence that Mr Patel
14 had been stealing. That's right, isn't it?
15 A. That's what I believed, yes.
16 Q. And your evidence is that Mr Howarth was aware that they
17 were planning to force Mr Patel out before he could sell
18 his shares?
19 A. Have I stated that? I don't think I specifically stated
20 that Mr Howarth knew that was going to happen.
21 Q. Ms Birdi, I would say that's the inference of what you
22 are saying in 46 and 47? {B/1/10}
23 A. No, I believe Specsavers knew that. Whether Mr Howarth
24 knew ...
25 Q. I think you are saying that Mr Howarth -- there was

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1 a secret agenda to get rid of Mr Patel by that point,
2 weren't you? Is that right?
3 A. That's what I believed, yes.
4 Q. And you said that you thought naively that Mr Howarth
5 was looking after your interests?
6 A. Yes.
7 Q. The inference is that you are saying that actually he
8 wasn't looking after your interests, that he was, in
9 effect, a party to that plot or that plan to force
10 Mr Patel out and that's what he was trying to do by
11 feeling you out as well?
12 A. No, I think -- what I believed when I looked at
13 disclosures was that Specsavers knew that. I'm not sure
14 whether Chris Howarth would have known that, but I think
15 that their plan was to get me out of the business. I'm
16 not saying illegitimately at that stage, but by offering
17 me another store and then that store could have joined
18 the other three stores in that region, which are
19 a shared venture. There was an email to that effect.
20 Q. I think what you say is that -- you thought naively that
21 he was looking after your interests. The inference is
22 you are suggesting that in fact he wasn't looking after
23 your interests; he had some other agenda. Is that
24 right?
25 A. I believe that Specsavers may have had another agenda,

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1 but Chris Howarth, maybe, maybe not. I can't definitely
 2 say that.
 3 Q. So you are suggesting that he may have had no idea --
 4 A. He may not have but he -- I'm sure that he was offering
 5 me another store so that they could have that store,
 6 whether they wanted to convert it into a shared venture.
 7 Q. So you are suggesting that someone had told Mr Howarth
 8 to make this call?
 9 A. Obviously he would have been informed that Mr Patel was
 10 selling his shares in September.
 11 Q. But you are also saying that Specsavers in fact were
 12 aware of the thefts by this point as well?
 13 A. That's what I believed. When I have looked at
 14 disclosures, that's what I believed.
 15 Q. So you are saying, even by this time, then, Specsavers
 16 have had a plan to effectively persuade you to leave the
 17 store as well. Is that right?
 18 A. They've probably -- like I've said, there were three
 19 other shared venture stores in that region and there is
 20 an email in -- I don't know if it's 2007 or 2008 --
 21 where they were saying if they make Dartford a shared
 22 venture, then they can visit all four stores at one
 23 time. So that's probably what they thought at the time.
 24 If they could offer me another store, then they can add
 25 that to their portfolio of shared venture stores.

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1 Q. If they are going to get rid of Mr Patel, a shared
 2 venture is not one where Specsavers has all the
 3 A shares; it's where they have some of the A shares,
 4 isn't it?
 5 A. Yes, but -- shared venture, yes. Group venture is where
 6 they own 100 per cent.
 7 Q. So, shared venture. So why do they need to get rid of
 8 you if they are going to get Mr Patel's shares?
 9 A. Because if you look in 2007 -- I think
 10 it's August 2007 -- there are disclosures there where
 11 they are talking about -- Neil Lunn from shared venture
 12 in Specsavers is talking about converting the store into
 13 a group venture by getting my shares and then possibly
 14 making it a shared venture again. So, I don't know what
 15 their plans were.
 16 Q. The allegation you are making though in this part of
 17 your statement is in relation, not to a group venture
 18 but a shared venture. And what I'm trying to explore
 19 with you is, if they get rid of Mr Patel, why do they
 20 need to get rid of you as well in order to have a shared
 21 venture?
 22 A. Maybe they were looking to make it -- maybe I should
 23 have put shared venture/group venture there.
 24 Q. So, are you saying your statement is inaccurate in that
 25 regard?

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1 A. I am just saying shared venture/group venture. They
 2 could have made shared venture. Maybe they wanted --
 3 they knew someone who wanted to come into that area.
 4 I don't know.
 5 Q. So in paragraph 46 where you say: {B/1/10}.
 6 "Naively I believed that when Mr Howarth called me
 7 with the offer of the opportunity, effectively to
 8 transfer up north to Blackpool Specsavers he was looking
 9 out for my interests.
 10 What you are saying there is Mr Howarth wasn't
 11 looking out for your interests at all?
 12 A. If he was -- if they were planning -- if he was aware
 13 that they were planning to make it a shared
 14 venture/ground venture.
 15 Q. The inference, I put to you, Ms Birdi, of what you are
 16 saying in your statement at least, is that he was
 17 pretending to be concerned about you and your wish to
 18 move back north when in fact he was thinking about
 19 a secret agenda which was about getting rid of Mr Patel.
 20 Isn't that the inference of what's said in paragraph 46?
 21 A. I think Mr Howarth knew that Mr Patel was leaving, but,
 22 like I have said just a moment ago, I'm not sure whether
 23 he would have known that he was stealing but I believe
 24 Specsavers knew.
 25 Q. And you are saying that there was already -- by this

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1 time, though, there was also a plan to get rid of you
 2 from the store as well?
 3 A. Well, not get --
 4 Q. Or persuade you to leave, shall we say?
 5 A. Yes, to offer me another store, which they did do, which
 6 Mr Howarth did do.
 7 Q. And do you have any evidence as to who it was who
 8 initiated this plan on behalf of Specsavers; which
 9 individuals?
 10 A. I don't know for that. I do know for mine.
 11 Q. Sorry, can you just keep -- partly because I have got
 12 a cold and partly for the transcribers, could you keep
 13 your voice up a little?
 14 A. Sorry, I do mumble. Sorry.
 15 I don't know. From this point, I can only talk from
 16 my own point of view, from what has happened to me.
 17 Q. So the answer is, you don't know who at Specsavers was
 18 behind this plan at that time?
 19 A. No, no, not behind Mr Patel.
 20 Q. Can I just put to you a couple of points in terms of the
 21 way you are putting this. There is some difficulty with
 22 this, Ms Birdi.
 23 The first point is if Specsavers was looking to have
 24 a shared venture and they had a basis for getting rid of
 25 Patel, they didn't need to get rid of you as well, did

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1 they?
2 A. No, like I have said there, shared venture/group venture
3 or maybe they -- shared venture or group venture.
4 Q. Second point is that Mr McAlindon says that Specsavers
5 only became aware of an issue over refund transactions
6 around 20 November 2006 and Mr Dyson's evidence is to
7 the same effect, which is well after the time of this
8 conversation.
9 A. Sorry, you said 20 November?
10 Q. November.
11 A. Okay.
12 Q. Are you saying they are incorrect in that evidence?
13 A. Yes, I am saying they are correct in that because
14 Susannah Hart from Specsavers rang me on 16 November to
15 let me know that somebody was stealing.
16 16 November 2006. And they suspected Mr Patel. So
17 obviously, Mr McAlindon saying the 20th contradicts
18 that.
19 Q. Yes, that's right. It's around the 16th you say there
20 was a call, but this conversation took place some time
21 earlier than that in October, didn't it -- that's your
22 evidence -- with Mr Howarth?
23 A. That's right, it was in October.
24 Q. Which is certainly well after the conversation that you
25 had, you say, on 16 November -- whether it's the 16th or

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1 the 20th -- but certainly some weeks earlier?
2 A. Yes, it was in October some time. But it wasn't -- you
3 actually put to me Mr McAlindon said he was aware of
4 stealing on the 20th.
5 Q. I said around the 20th?
6 A. You said the 20th.
7 Q. No I didn't --
8 A. Okay, that's fine.
9 Q. If I misspoke, it was around the 20th.
10 A. Okay.
11 Q. But not in October. So you are saying that evidence is
12 incorrect?
13 A. Which evidence is that?
14 Q. That they learned about an issue over refunds around
15 20 November and not in October?
16 A. I don't know if they knew about it in October. But
17 I knew about it, that someone was stealing from the
18 store on 16 November 2006.
19 Q. The point I'm making, Ms Birdi, is that if they didn't
20 know about the stealing at the time of your conversation
21 with Mr Howarth, then the stated motivation that you say
22 they had did not exist?
23 A. Just repeat this for me again.
24 Q. Yes. You say that at the time of the conversation
25 in October with Mr Howarth?

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1 A. Yes.
2 Q. Specsavers was already aware of the thefts and had no
3 intention of allowing a sale to go through and in effect
4 they were going to get rid of Mr Patel. The point I'm
5 putting to you is that in fact at that time, their
6 evidence is that they didn't know about the thefts. So
7 the motivation that you say they had does not make any
8 sense.
9 A. Okay, but it is fact that Mr Howarth did call me
10 in October and offer me the Blackpool store.
11 Q. I have put it to you that their evidence is correct on
12 this and that they did not know about Mr Patel's
13 misconduct at the time that you say you had a call from
14 Mr Howarth. You don't accept that. Is that right?
15 A. I don't accept that, no.
16 Q. Okay. The third point I put to you is that in fact
17 Specsavers were made aware of the proposal by Niki Kaur
18 on 6 November 2006, which was after the conversation
19 that you say you had with Mr Howarth.
20 Could I ask you to pull out E2 -- keep B open, thank
21 you. 214. {E/16/214}. That's a letter dated
22 6 November from Ms Kaur to Michael Ryan. Do you see
23 that?
24 A. I do.
25 Q. Notifying of an acceptance of an offer for the

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1 shareholding, and then at 215 {E/16/214} is again
2 6 November, a formal offer from Ms Kaur to Mr Patel for
3 the shareholding?
4 A. Yes.
5 Q. And then at 224 {E/21/224} is a letter from Mr Ryan back
6 to Ms Kaur, dated 27 November. Do you see that?
7 A. Yes, I do.
8 Q. And in that letter he makes clear that Specsavers'
9 consent is required to the sale and they are considering
10 the matter?
11 A. Yes.
12 Q. Do you see that?
13 A. Yes, I do.
14 Q. So that indicates correspondence, not in October, over
15 the sale to Specsavers, but in November, which again is
16 after the time of the conversation with Mr Howarth?
17 A. Hm-mm, I agree.
18 Q. So if Specsavers was unaware of the sale, or proposed
19 sale, in October, so was only aware of it in November,
20 then again your suggestion of a surreptitious plan makes
21 no sense either, does it?
22 A. But Mr Patel had approached Specsavers on
23 1 September 2006 to sell his shares.
24 Q. I see. To Specsavers itself?
25 A. No, to say that he wanted to sell his shares. There is

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1 disclosures in there if you actually -- I'm sure there
 2 is the disclosure --
 3 Q. I see. You say there is a document on that?
 4 A. I think there is.
 5 MR STUART: E1/200. {E/12/200} It's referred to in the
 6 witness statement.
 7 MR POTTS: The fourth point to put to you, Ms Birdi, is that
 8 Mr Howarth's position is that he doesn't believe he had
 9 any conversation with you about Mr Howarth selling his
 10 shares. You are saying he is wrong on that?
 11 A. He is wrong on that, yes.
 12 Q. You are saying he is making that up?
 13 A. He definitely called me and I actually noted it in
 14 a letter that I sent to the board when I asked them to
 15 not keep the Dartford store as a shared venture but give
 16 me a dispensing optician as a co-director. I actually
 17 mentioned the conversation there.
 18 Q. You see, firstly, this doesn't make any sense because
 19 his role was to source potential new partnerships, not
 20 to notify existing ones of a fellow JVP wishing to sell.
 21 Do you understand that?
 22 A. Yes, I do, but he definitely did do that and I know that
 23 he was involved with transferring Shakila Parham at the
 24 Uckfield store, from her old store to -- he actually
 25 sourced the Uckfield store and I think there is

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1 a disclosure in for that as well.
 2 Q. His evidence is that he did not initiate any
 3 conversation with you but in fact you called him on
 4 a number of occasions at around that time stating that
 5 you wanted to move north for family reasons?
 6 A. No, he actually called me and I said I would get back to
 7 him, because my geography is not very good. So I spoke
 8 to my husband about the position at Blackpool to my
 9 family in the north and it was too far. So I did call
 10 him back to say Blackpool would not be suitable, you
 11 know, it's too far north for me.
 12 Q. As I said, his evidence is that he didn't initiate
 13 a conversation with him, but you called him?
 14 A. No, he definitely called me and, like I say, I refer to
 15 it in a letter I sent to the SOG board on
 16 5 December 2007.
 17 Q. Furthermore, you suggest that he offered shares in the
 18 Blackpool store to you. Is that right?
 19 A. That's correct, yes.
 20 Q. His evidence in fact is that the shares in the Blackpool
 21 store had never been for sale.
 22 A. He definitely phoned me and he definitely offered me
 23 that store. I went home and discussed it with my
 24 husband and it was too far north. So that's why
 25 I phoned Mr Howarth back to decline it.

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1 Q. You also say that you suggested that you asked
 2 Mr Howarth about the possibility of your husband
 3 becoming a JVP.
 4 A. Yes, I did.
 5 Q. Was that in the same conversation in October?
 6 A. I can't remember if it was in that one conversation when
 7 he rang me to tell me that Nimesh was selling his
 8 shares. I don't know whether it was that first
 9 conversation or whether it was when I phoned him back.
 10 I honestly can't remember.
 11 Q. Okay. Because, looking at paragraph 41, 42 -- and 40
 12 indeed -- you seem to be referring to one conversation.
 13 You talk about the same conversation:
 14 "He went on to say that Specsavers were aware that
 15 I wanted to move north. He offered me the Specsavers
 16 store. I declined the invitation."
 17 And then you say:
 18 "I asked Mr Howarth if there was a possibility of my
 19 husband being considered as a JVP since he had a lot of
 20 management and retail experience."
 21 That seems to read as it's all in one conversation?
 22 A. No, like I said to you just a moment ago that I didn't
 23 know where Blackpool was; my geography is terrible. So
 24 I didn't know how far Blackpool was to Nottingham. So
 25 I actually had spoken to my husband and then I phoned

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1 him back to decline Blackpool. I didn't decline
 2 Blackpool on the first conversation with him. So,
 3 looking at that, I couldn't have mentioned Mushtaq in my
 4 first --
 5 Q. I see, so you think it was -- in terms of geography, you
 6 have worked, not just in Nottingham, you've worked in
 7 Bradford as well, haven't you?
 8 A. Yes.
 9 Q. But you weren't sure about Blackpool?
 10 A. It's a big sticking point because my husband is very
 11 good in geography.
 12 Q. But how far apart were these conversations?
 13 A. They weren't too far apart. They would have been,
 14 I would say -- let me think, October ... It must have
 15 been within, I would say -- I'm guessing here --
 16 probably a couple of weeks.
 17 Q. I'm not asking to you guess, Ms Birdi, I'm asking you
 18 for your recollection of conversations. Is the reality
 19 you don't have a good recollection of the conversations
 20 at all?
 21 A. No, I have a recollection of the conversations, like
 22 I have just told you, Mr Potts, but I can't say to you
 23 I phoned him back three days after or I phoned him back
 24 five days after. It was within a short period of time.
 25 Q. So the two conversations, him making you the offer and

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1 then you phoning him back to say, "No thanks"?

2 A. There were definitely two conversations, but I must have

3 spoken to him at some other time because he then sent

4 out forms to fasttrack my husband for directorship.

5 Q. But you don't have a recollection in fact of when the

6 conversation took place and precisely what was said?

7 A. No, but there are disclosures where he actually sends

8 letters out to my husband, I believe in November. So it

9 must have been in, you know, quite a short period of

10 time.

11 Q. Ms Birdi, try and concentrate on your recollection,

12 rather than reconstruction.

13 A. It's not reconstruction, I am just telling you.

14 Q. You are referring to some documents but I'm asking you

15 for what you can remember.

16 A. It would be between October/November.

17 Q. Okay. In fact if you look at E2 --

18 A. Yes.

19 Q. -- at 223 {E/20/223}, that's a letter dated 21 November,

20 with Mr Howarth sending your husband an information

21 pack. Is that right?

22 A. That's correct.

23 Q. It says here that it's sent further to him expressing

24 an interest, and it says:

25 "Further to your initial contact ..."

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1 In the second paragraph. Had your husband spoken to

2 Mr Howarth or had you?

3 A. No, I had spoken to Mr Howarth initially. To be honest

4 with you, I'm not sure, you will have to ask my husband

5 if he spoke to Mr Howarth, but I definitely spoke to him

6 about my husband being fast tracked.

7 Q. But either way this isn't saying a fast track, this is

8 just a standard letter sending out an information pack,

9 isn't it?

10 A. It is, but there are disclosures where it actually

11 refers to being fast tracked.

12 Q. Could you answer my question? This letter is just

13 a standard letter enclosing information, isn't it?

14 A. That's right, yes.

15 Q. If you turn on to page 230 {E/25/230}, that's Mr Howarth

16 acknowledging receipt of the application on 19 December.

17 A. That's correct.

18 Q. And that's a standard letter, isn't it?

19 A. That is.

20 Q. The application was at an early stage. It talks about

21 progressing an interest in the joint venture partnership

22 concept.

23 A. That's correct.

24 Q. There is no suggestion in the letter that the

25 application was in any way a mere formality, is there?

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1 A. Sorry?

2 Q. There is no suggestion in this letter this his

3 application was a mere formality?

4 A. What do you mean by that, please?

5 Q. That effectively it was just a formality that he needed

6 to put it in and he would be made a joint venture

7 partner?

8 A. I don't believe I have ever said that.

9 Q. So the answer to the question is you accept that then?

10 A. Okay.

11 Q. Mr Howarth didn't encourage you or your husband to think

12 that he had good prospects of becoming a JVP, did he?

13 A. No, he didn't.

14 Q. Could you turn on to page 311 {E/47/311}. This is

15 moving on to February, and below the second punch he is

16 recording a conversation where he says that you had

17 proposed your partner, your husband, as a prospective

18 buyer of the shares and asked to do a fast track

19 stage 1, and Mr Ryan is reporting, saying that the board

20 had considered the request for Nimesh and this had been

21 turned down and they require a DO replacement, and then

22 at the top of the page Mr Howarth says:

23 "We have agreed to do a stage 1 on April 2 but

24 I have already prepped her that he will fail without

25 substantial optical management experience -- which he

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1 hasn't got."

2 Stage 1 is the assessment process that Specsavers

3 undertakes to assess individuals, to understand whether

4 they have got the relevant optical management skills to

5 become a JVP and run a store. Is that right?

6 A. That's correct.

7 Q. So you had been told that without substantial optical

8 management experience, which he didn't have, he would

9 not succeed?

10 A. Well, I wasn't told like that. I was told that, because

11 he hasn't -- yes, not all of that. He had management

12 experience but he didn't have optic experience, but

13 I was told that they would fast track him but it's

14 not -- there wasn't a high possibility he would get it.

15 Q. So you say fast track the application but not the --

16 A. I don't know.

17 Q. -- not the acceptance?

18 A. No, I wasn't led to believe that he would be accepted,

19 that's correct.

20 Q. In fact it said here that you were prepped that he would

21 fail without substantial optical managerial experience,

22 which he didn't have?

23 A. No, he had a high degree of management experience.

24 Q. If you perhaps just have a look at 311.

25 A. That's what it says there, but I wasn't told that.

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1 Q. Are you saying you weren't told that?
 2 A. No, I can't remember the exact words but, because he
 3 didn't have optics experience, I was told it was
 4 unlikely, but they would fast track him to see if he is
 5 suitable. But I did know that would probably be
 6 unlikely but they were going to fast track him.
 7 Q. Fast track him to apply, not to succeed?
 8 A. I don't know. What does "fast track" mean? You will
 9 have to ask Mr Howarth what does "fast track" mean.
 10 Q. I'm asking you what you understood.
 11 A. What I understood was that they would interview him and
 12 see if he was suitable.
 13 Q. But you understood that it was unlikely that he would be
 14 successful because of his lack of optical managerial
 15 experience?
 16 A. I was told that, because he didn't have optics
 17 experience -- he had management experience, so that
 18 wasn't the issue, because he had been a pharmacy manager
 19 for many years.
 20 Q. But you were told that it was unlikely that he was to be
 21 approved as a JVP?
 22 A. I wasn't told it definitely won't happen because if it
 23 wasn't going to happen, why would they be wasting their
 24 time sending letters out? So there was a likelihood
 25 that he might but --

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1 Q. Ms Birdi, sorry, I don't think you are quite answering
 2 my question.
 3 A. Sorry.
 4 Q. I asked you: you understood it was unlikely that he
 5 would be successful in his application?
 6 A. Yes, it was low probability, yes, but he might;
 7 otherwise, they wouldn't waste their time, you know,
 8 interviewing him.
 9 Q. And in fact your husband failed that stage 1 assessment,
 10 didn't he?
 11 A. No, he didn't because when I got suspended, he withdrew
 12 his application.
 13 Q. I see. Can I move on to matters in February 2007. We
 14 are going to look at the detail of the investigation in
 15 a moment into Mr Patel, but just sort of stepping back
 16 on a broad overview, the position is that Specsavers
 17 suspected that Mr Patel was stealing from the store;
 18 correct?
 19 A. That's correct, yes.
 20 Q. And, with your knowledge and approval, they started
 21 looking into that allegation. Would you accept that?
 22 A. Yes.
 23 Q. And indeed that view was vindicated because it was shown
 24 that there was evidence that Mr Patel had taken money
 25 from the store through refunds?

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1 A. Yes.
 2 Q. So Specsavers' judgment in that respect was spot-on;
 3 they had acted on a serious concern and had been proven
 4 correct?
 5 A. That's correct.
 6 Q. Turning to some of the detail, you say that around
 7 16 November you were informed that there was a suspicion
 8 that Mr Patel was stealing from the business.
 9 A. Could you tell me where you are reading from?
 10 Q. I'm asking you about your evidence?
 11 A. Okay.
 12 Q. Do you remember that?
 13 A. Yes.
 14 Q. Around 16 November?
 15 A. Correct.
 16 Q. And you agreed with Mr McAlindon for hidden cameras to
 17 be installed?
 18 A. I wasn't asked but I was told that cameras would be
 19 installed. But, obviously, knowing someone was stealing
 20 from the store, putting cameras in seemed the logical
 21 thing to do.
 22 Q. And so you did agree with that?
 23 A. Yes.
 24 Q. Right. Then there was an interview with Mr Patel on
 25 20 February?

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1 A. That's correct.
 2 Q. You say in your witness statement -- and I think in
 3 paragraph 68, 69 {B/1/14} -- that you were told on
 4 16 February that the meeting would be on the 20th and
 5 that Mr McAlindon confirmed this on the morning of the
 6 19th.
 7 A. That's correct.
 8 Q. Your pleaded case in your reply -- I can take you to it
 9 if you like but, just briefly, the pleaded case is you
 10 say that you agreed with Mr McAlindon that the meeting
 11 would take place on 27 February, which they unilaterally
 12 brought forward to inconvenience you?
 13 A. Yes, what had happened is Mr McAlindon had phoned me
 14 initially to say he was coming down and I had asked him
 15 to make it the 27th because we had interviews to do on
 16 the 20th, but on the 19th he rang me to say, "We are
 17 coming down on the 20th." So I had asked him if he
 18 could change it because we were both doing the
 19 interviews and they were already pre-arranged. But he
 20 said. "No, we are coming down on the 20th."
 21 Q. Just dealing first with the point about the 27th, there
 22 is an inconsistency here because your reply is talking
 23 about an agreed meeting for the 27th but you don't
 24 mention that at all in your witness statement, do you?
 25 A. About the 27th?

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1 Q. Yes.
 2 A. If it's not mentioned in there, it doesn't mean it
 3 didn't happen. It's mentioned in my grievance against
 4 Mr McAlindon.
 5 Q. I'm just trying to explore your evidence for this trial,
 6 Ms Birdi. Your evidence doesn't refer to that and it
 7 refers to a meeting having been agreed only for the
 8 20th. There is an inconsistency. I just want to
 9 understand which is correct, the statement or the reply?
 10 A. This is in documentation, like I said. Originally
 11 I said to Mr McAlindon, "Can you come on the 27th
 12 because the 20th we are doing interviews." But then he
 13 phoned me on the 19th to say he is coming on the 20th.
 14 Q. Can I refer you to -- you can keep volume B open -- do
 15 you have E2?
 16 A. I do.
 17 Q. Excellent. 277. {E/36/277}
 18 A. Yes.
 19 Q. You see, there is a text message on the 16th?
 20 A. Yes.
 21 Q. And it's referring to the 20th?
 22 A. Yes.
 23 Q. The text messages from Mr McAlindon only refer to
 24 a meeting on the 20th, not the 27th. Are you saying
 25 that's wrong?

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1 A. No, like I said, he had said he is coming on the 20th
 2 and I asked if he could change it to the 27th because we
 3 had interviews on the 20th, and then he phoned me on the
 4 Monday to say that he is coming in on Tuesday, the 20th.
 5 Q. But none of that is mentioned in your witness statement?
 6 A. It's not, no.
 7 Q. My friend, I'm sure, will --
 8 MR STUART: My Lord, I'm just slightly nervous about
 9 Mr Potts saying none of that was mentioned in the
 10 witness statement, whereas, if the witness is allowed to
 11 read paragraph 68 {B/1/14} of her witness statement, it
 12 says:
 13 "I told Mr McAlindon that although I wanted the
 14 security matters sort out quickly, the Tuesday was
 15 awkward as we were interviewing that day."
 16 That was the evidence she just gave, to which
 17 Mr Potts then replied:
 18 "None of that's in your witness statement".
 19 MR POTTS: No --
 20 MR STUART: I think that's a slightly unfair --
 21 MR POTTS: I'm sorry, my friend is -- if you are going to
 22 interrupt, my cross-examination is going to take
 23 a long -- my friend can re-examine. That's not the
 24 point I was putting.
 25 MR JUSTICE NUGEE: I think, Mr Potts, to be fair, you put

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1 a composite, saying, "None of that is mentioned in your
 2 witness statements," and one of the things that Ms Birdi
 3 mentioned is, "He phoned me on the Monday to say he is
 4 coming in on Tuesday." And that is there, in
 5 paragraph 69. {B/1/14}
 6 MR POTTS: My Lord, I'm sorry, the point I was making was
 7 about --
 8 MR JUSTICE NUGEE: But I do have the point that there is
 9 nothing in the witness statement saying, "Can you come
 10 on the 27th", let alone him agreeing to the 27th.
 11 MR POTTS: Indeed, my Lord, that was the point I was trying
 12 to put. I'm sorry if the question wasn't sufficiently
 13 tight, but that was the point I was trying to put. As
 14 I said, my friend can re-examine if the question is
 15 unfair.
 16 In terms of the 20th, you were present on the 20th
 17 when Mr McAlindon arrived; correct?
 18 A. That's correct.
 19 Q. And you appreciated that Mr Patel would be interviewed
 20 separately and you wouldn't attend that interview?
 21 A. What I had been told, when they first caught Mr Patel
 22 stealing, in December 2006, was that Loss Prevention
 23 would come down and we both needed to be there, and they
 24 would put the allegation to Mr Patel, they would show us
 25 the CCTV footage -- because even then I still didn't

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1 believe Mr Patel was stealing -- and then he would be
 2 interviewed and then I would go back and they would
 3 discuss what had happened and what's going to happen.
 4 Q. This would be an investigatory interview, wouldn't it,
 5 with Mr Patel? It's an investigation?
 6 A. Yes, I suppose, yes, it is.
 7 Q. And you wouldn't expect to be present whilst an
 8 investigatory interview was conducted with him?
 9 A. What I'm saying is what I was told by Mr McAlindon is
 10 exactly what I have just said to you.
 11 Q. Could you answer my question? You wouldn't expect to be
 12 present while an investigatory interview was conducted
 13 with Mr Patel?
 14 A. Well, I wasn't told on the time Mr McAlindon said he was
 15 coming to do an investigatory interview with Mr Patel.
 16 He just told us to both be there and he would show us
 17 the evidence, and then they would interview Mr Patel and
 18 then I would be called back in. So from that,
 19 obviously, I wasn't going to be in the interview when
 20 they were actually questioning him.
 21 Sorry, I did mumble a little bit there, sorry.
 22 Q. No, I think it came on to the transcript. That's fine.
 23 Mr McAlindon informed you at about 1.30 that
 24 Mr Patel had resigned and in those circumstances there
 25 wouldn't be a disciplinary action and that Mr Patel was

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1 selling his shares. Is that right? Was going to sell
 2 his shares?
 3 A. That's correct.
 4 Q. You say that Mr McAlindon said that Mr Patel was going
 5 to sign over his shares at a loss to avoid being
 6 prosecuted and struck off by the GOC. Is that right?
 7 Is that your recollection?
 8 A. Yes, he was selling his shares -- I actually asked how
 9 would the money go back in the business and he -- during
 10 that conversation he said yes, that he would be selling
 11 his shares at a loss, so he would be out of pocket.
 12 Q. To avoid being prosecuted and struck off by the GOC?
 13 Did Mr McAlindon say that?
 14 A. I don't know whether it was in that same sentence, but,
 15 yes, he said to avoid him being prosecuted.
 16 Q. Ms Birdi, can I suggest that doesn't make any sense?
 17 A. Hm-mm.
 18 Q. I firstly put to you it wouldn't make any sense for
 19 Mr McAlindon to confess to you that Specsavers had been
 20 able to buy Mr Patel's shares on the cheap, would it?
 21 A. Well, that is exactly what he said to me.
 22 Q. If he had said that to you, you would have complained
 23 about it immediately, wouldn't you?
 24 A. I did complain, not that Mr Patel was getting his shares
 25 at a reduced price; I complained about the fact that

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1 I was told that he would be reported to the police and
 2 he would be prosecuted, and I did complain -- I did ask
 3 about how the money would be put back into the business.
 4 Q. So you are saying you didn't complain about the fact
 5 that the shares were being, you say, you had been told
 6 were being bought on the cheap?
 7 A. No, I didn't know how cheap -- he didn't give me a value
 8 at that time. He just said he will be at a loss.
 9 Q. Can I suggest that you would have complained about that
 10 at the time, particularly in light of the fact that you
 11 had in mind for your husband to be a JVP?
 12 A. No, that's not true.
 13 Q. In fact the arrangements that we have seen were for the
 14 shares to be bought at fair value less certain
 15 deductions, including investigation costs. Isn't that
 16 what was said?
 17 A. Sorry, say that again.
 18 Q. The arrangement was for the shares to be bought at fair
 19 value less various deductions, including investigation
 20 costs.
 21 A. No, he said to me that Mr Patel will be out of pocket.
 22 Q. And I also suggest to you that Mr McAlindon didn't say
 23 that the shares were bought on the cheap to avoid him
 24 being prosecuted?
 25 A. He did say he -- he will be at a loss and he did say to

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1 avoid him being prosecuted.
 2 Q. I also suggest to you that Mr McAlindon didn't say that
 3 the settlement was to avoid Mr Patel getting struck off
 4 by the GOC.
 5 A. He did say to prevent him from being prosecuted.
 6 Q. So you are saying he didn't mention being struck off by
 7 the GOC?
 8 A. No. Sitting here at this moment in time, under this
 9 pressure, I can't remember whether he said the GOC, but
 10 I did raise the fact of the GOC with Mr McAlindon.
 11 Q. Well, your witness statement says, paragraph 76
 12 {B/1/15}, that it was to avoid being prosecuted and
 13 struck off by the GOC, but your evidence to this court
 14 is that you don't remember that?
 15 A. It's probably because I'm under a lot of pressure
 16 sitting here. That's why.
 17 Q. But your answer to the question is you don't remember it
 18 now?
 19 A. No, obviously, when I was doing this not under pressure,
 20 obviously that is what was said to me. That is because
 21 it's obviously there. My witness statement is factual.
 22 Q. I'm asking for your recollection.
 23 A. Right, okay. So there is my recollection. He said he
 24 will be at a loss and to avoid him being prosecuted, to
 25 get struck off, he is selling his shares at a loss.

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1 Q. But you don't remember anything about the GOC?
 2 A. No, obviously not sitting here because I'm under a lot
 3 of pressure, but obviously they did say that because
 4 it's written there and that is my recollection.
 5 Q. Which is it, Ms Birdi? Your evidence to his Lordship is
 6 that you do not remember it?
 7 A. I do. I don't remember it sitting here, but, yes.
 8 Sorry, okay, I'll just calm down.
 9 Q. I suggest to you that if you had felt so strongly that
 10 Mr Patel should have been reported to the GOC, you could
 11 have done that yourself, couldn't you?
 12 A. I did feel strongly and I did raise the issue with
 13 Mr McAlindon on the day and it has taken me six and
 14 a half years -- just over six years to get Specsavers to
 15 admit that Nimesh Patel was a thief and they just
 16 admitted that in 2013, April, after we sent information
 17 to them.
 18 Q. Can I ask the question again? Let's have another go at
 19 it.
 20 A. Okay.
 21 Q. I suggested to you that if you felt that Mr Patel should
 22 be reported to the GOC, you could have done that
 23 yourself, couldn't you?
 24 A. I did not have any evidence. I did request the evidence
 25 but I didn't have any evidence.

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1 Q. You were a registrant with the GOC at the time, weren't
2 you, unlike the store?
3 A. Yes, I was.
4 Q. So if you felt that the GOC should be told something,
5 you in fact had a professional obligation to inform the
6 GOC?
7 A. Yes, I did, but at the time I had no evidence and also
8 I could not make sense of what was happening, and I was
9 making enquiries.
10 Q. Can we just turn up E2/287, please {E/42/287}. That's
11 a letter of resignation. Do you see that?
12 A. I do.
13 Q. And that refers to paying investigation costs and paying
14 for stolen monies of £4,200, and also to selling shares
15 at reasonable value. There is nothing about a discount
16 in there, is there?
17 A. No, there isn't.
18 Q. You say that prior to the meeting you had been assured
19 that he would be prosecuted, that any money he had
20 stolen would be recovered and returned to the store. Is
21 that right?
22 A. That's correct.
23 Q. That's paragraph 77 {B/1/16} of your witness statement.
24 You don't actually refer to who told you that.
25 A. What's in 77?

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1 Q. Yes:
2 "I had been assured he would be prosecuted."
3 A. That's Mr McAlindon.
4 Q. When did that happen?
5 A. That was the first time they caught -- hold on, so what
6 are you asking me? When was I told --
7 Q. I'm asking you when were you assured that Mr Patel would
8 be prosecuted and any money he had stolen would be
9 recovered and returned to the store?
10 A. Let me think. December, when they first caught him;
11 that's when I was told what the procedure would be.
12 Q. So you are saying in December Mr McAlindon told you
13 this?
14 A. Yes, it was Mr McAlindon.
15 Q. Was he at the store? Do you have a recollection?
16 A. When?
17 Q. How did he tell you?
18 A. He phoned me to let me know that they had seen some
19 action on CCTV and it was Mr Patel pocketing money from
20 the till.
21 Q. But this was before they had even had a meeting with
22 Mr Patel or completed their investigation?
23 A. No, if you look at the -- the Loss Prevention Control
24 file, where he is invoicing, he actually put the cameras
25 in on, I believe, 22 November, and then they saw

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1 activity in December, and that's logged on that invoice
2 control file, that they came in to change the CCTV, to
3 take the hard drive away, and it was then they told me
4 they caught him for the first time.
5 Q. I'm going to put it to you that there was no such
6 assurance that he would be prosecuted given to you at
7 that time?
8 A. There was.
9 Q. And I put it to you that would make no sense for such
10 an assurance to be given before an investigatory meeting
11 had even taken place, let alone an investigation
12 completed?
13 A. Well, they had caught him and that's what I was told,
14 that he would be prosecuted.
15 Q. Mr McAlindon on 20 February told you that, on the basis
16 that Mr Patel had resigned, no disciplinary action had
17 been instigated, given that there was no finding of
18 gross misconduct. That's right, isn't it?
19 A. No, he didn't say that to me. He told me Mr Patel --
20 they were going to buy shares at a loss and that he had
21 been given the company car.
22 Q. He didn't mention anything about no disciplinary action
23 being instigated.
24 A. He did say that he wouldn't be prosecuted and reported
25 to the GOC and I actually questioned him about that.

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1 Q. When you say "prosecuted", do you mean prosecuted by the
2 police?
3 A. By the police, yes.
4 Q. Criminal prosecution?
5 A. Yes.
6 Q. I suggest to you that Mr McAlindon referred to there
7 being no further disciplinary action by the company
8 because he had resigned?
9 A. No, that's not true.
10 Q. And I also suggest that he also said that that was
11 because there was no finding of gross misconduct that
12 had been made against him.
13 A. No. Mr McAlindon had done a deal with Mr Patel to avoid
14 him being prosecuted and reported to the GOC.
15 Q. That's just your assertion, isn't it?
16 A. No, it's not my assertion.
17 Q. You weren't present at any meeting where that was said?
18 A. Mr McAlindon said to me, Mr Potts, that he will be out
19 of pocket and they are not going to report him to the
20 police.
21 Q. And Mr McAlindon told you that on that basis the staff
22 should simply be told that Mr Patel had decided for his
23 own reasons to leave the store?
24 A. No, I was coming up the stairs and they were coming
25 down -- because I had an interview to do -- and all they

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1 said to me was, "Don't tell the staff Mr Patel is
 2 a thief."
 3 Q. It is right, isn't it, that Mr McAlindon explained that
 4 telling the staff that Mr Patel had been dismissed for
 5 stealing might be viewed as slander and might expose the
 6 company to claims. Is that right?
 7 A. No, he didn't. He said I wasn't to tell staff that
 8 Mr Patel was a thief. That was on 20 February 2007.
 9 Q. But you accept you were given instructions not to say
 10 that he had been dismissed for stealing?
 11 A. He had told me that, yes.
 12 Excuse me, I'm sorry to interrupt but is it possible
 13 to have some water.
 14 Q. Yes, of course, I'm so sorry.
 15 A. Thank you.
 16 Q. You subsequently spoke to Mr Ryan on 22 February to ask
 17 about the sale of Mr Patel's shares. Is that right?
 18 A. Yes, I asked what the next steps were for the business.
 19 Q. And you asked whether you would have a say in the choice
 20 of to whom Specsavers sold the shares which had been
 21 held by Mr Patel?
 22 A. I did.
 23 Q. And Mr Ryan said that that wasn't your decision?
 24 A. He said I wouldn't have -- that was Specsavers'
 25 decision. Yes, you are correct.

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1 Q. Yes, and you also told Mr Ryan that you proposed that
 2 your husband should purchase the shares. Is that right?
 3 A. I did inform him that Chris Howarth was looking at my
 4 husband being a shareholder, yes.
 5 Q. Is that a yes to my question?
 6 A. Yes, it is. Sorry, I'm a waffler.
 7 Q. Let me put the question again: You also told Mr Ryan
 8 that you proposed that your husband should purchase the
 9 shares?
 10 A. I told him I was in talks with Chris Howarth, yes.
 11 Q. About your husband purchasing --
 12 A. Absolutely, yes.
 13 Q. And Mr Ryan told you that he said this wasn't going to
 14 be acceptable as Specsavers wanted Mr Patel to be
 15 replaced by a dispensing optician, a DO.
 16 A. No, I asked him when the shares were for sale and he
 17 said they were for sale now but I don't remember him
 18 making any comment about them going to a DO. The
 19 first time that was mentioned, that my husband wouldn't
 20 get the shares for definite, was when Mr McAlindon made
 21 his very aggressive phone call to me on
 22 27 February 2007.
 23 Q. You accept that Specsavers had a right under the
 24 shareholders' agreement to acquire Mr Patel's shares if
 25 he ceased to be an employee?

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1 A. Under the purchase notice.
 2 Q. If they had given a purchase notice, yes.
 3 A. I understand that, yes.
 4 Q. And indeed that they could purchase his shares generally
 5 and you had no right of veto in relation to a sale?
 6 A. Sorry, could you say that again to me, please?
 7 Q. Yes. You understood that they could purchase his shares
 8 and that you had no right of veto under the
 9 shareholders' agreement?
 10 A. I know that now but at the time -- I know the norm
 11 within Specsavers was that they would consult with the
 12 existing director -- and I know this from the Ashford
 13 store and the Orpington store -- so that there was
 14 compatibility between the new director and the existing
 15 director. So I can't --
 16 MR JUSTICE NUGEE: I think you might be at cross purposes.
 17 Mr Potts, were you asking about whether she had
 18 a veto --
 19 MR POTTS: Yes.
 20 MR JUSTICE NUGEE: -- on Specsavers purchasing Mr Patel's
 21 shares --
 22 MR POTTS: Correct.
 23 MR JUSTICE NUGEE: -- or on the sale of the shares?
 24 MR POTTS: No, on purchasing.
 25 MR JUSTICE NUGEE: I think it might have been slightly

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1 ambiguous.
 2 MR POTTS: I'm sorry: on purchasing the shares from
 3 Mr Patel.
 4 A. Say that again.
 5 Q. You didn't have a veto, a right to stop Mr Patel selling
 6 his shares to Specsavers, did you?
 7 A. No.
 8 Q. Could I ask you, just on the point you just made
 9 a moment ago, E2/311 {E/47/311} -- we looked at this
 10 document before. 311?
 11 A. Yes.
 12 Q. Mr Ryan is reporting to Mr Howarth a conversation with
 13 you and there it is said that Mr Ryan asked you if your
 14 husband was a DO?
 15 A. Okay.
 16 Q. And you said that it had been turned down:
 17 "[He] said it was my understanding that we would
 18 require a DO replacement."
 19 So I think that's contrary to the evidence you gave
 20 to his Lordship. Are you saying that's wrong; you
 21 weren't told that?
 22 A. I don't recall him saying that to me. The first time
 23 I was told that my husband wouldn't get the shares is
 24 when Mr McAlindon phoned me on 27/2, when he said,
 25 "I understand your husband wants to buy shares. Is he

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1 a DO?" I said, "No." He goes, "They are DO shares and
2 they will only go to a DO. Do you understand?"
3 Q. Let's just break this down. Let's look at the
4 second email. He is reporting a conversation with you:
5 "Do I get a say ... ?"
6 Et cetera. So you were asking about that?
7 A. Yes, I was.
8 Q. You told him that you had proposed that your husband
9 should be a prospective buyer for the shares; correct?
10 A. Yes, I have said that, yes.
11 Q. And had asked Chris -- that's Mr Howarth -- to do a fast
12 track application?
13 A. That's correct.
14 Q. Mr Ryan says that he asked you if your husband was a DO:
15 "And she said not."
16 Are you saying that didn't happen?
17 A. I don't recall that. And it also says:
18 "15 hours per week according to the wage sheets."
19 Q. Yes.
20 A. I don't know where he has got that from either. So
21 I don't recall that.
22 Q. You don't recall him asking you that?
23 A. No, the only conversation I had where I was told my
24 husband wouldn't get the shares, like I have said, is
25 Mr McAlindon's phone call.

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1 Q. Let's go on:
2 "I said ..."
3 I think to you:
4 "... that the board had already considered the
5 request from Nimesh to be able to sell to a retailer and
6 that this had been turned down."
7 Are you saying he didn't say that or you just don't
8 remember one way or another?
9 A. I actually don't remember.
10 Q. So he might have done, it's just you don't remember
11 one way or another?
12 A. Yes.
13 Q. Or are you saying he didn't?
14 A. He might have.
15 Q. Then he said:
16 "... my understanding that we would require a DO
17 replacement."
18 He is reporting that he said that to you. Are you
19 saying he didn't say that to you or are you saying you
20 can't remember one way or the other. You just can't
21 remember?
22 A. I can't remember.
23 Q. He might have done?
24 A. He might have done.
25 Q. Okay. What you say is that in fact --

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1 MR JUSTICE NUGEE: Mr Potts, I notice the time. I don't
2 know if --
3 MR POTTS: My Lord, one final question and --
4 MR JUSTICE NUGEE: Certainly.
5 MR POTTS: -- then I will break, my Lord.
6 You describe that Specsavers were dishonestly
7 playing the system, paragraph 200 {B/1/42} of your
8 witness statement. Are you saying that it was dishonest
9 for Specsavers to purchase any A shares? Is that right?
10 A. Well, my shareholders' agreement allowed for two A -- to
11 have a dispensing optician and an ophthalmic optician
12 within the business and we shared the profits. It
13 didn't allow for Specsavers to be an A shareholder and
14 be in effect a silent partner. So I thought yes: if
15 they were just doing a warehousing thing or they were
16 just getting them and they would sell them on, for
17 example, to Niki Kaur, that would be different.
18 Q. Okay, but you say this was dishonest?
19 A. I think getting the profits from the A shares -- because
20 disclosure show they actually were going to keep it as
21 shared venture/group venture, in 2007; the disclosure is
22 there. So, looking at their intention of keeping it as
23 a shared venture or turning it into a group venture
24 afterwards, I felt it wasn't right that they were silent
25 partners and benefiting from the profits.

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1 Q. What I put to you, Ms Birdi, is that Mr Patel was
2 entitled to sell his share to SOG under the
3 shareholders' agreement, wasn't he?
4 A. Well, my understanding is the shareholders' agreement --
5 I would have a dispensing optician and an ophthalmic
6 optician. They didn't say that your shareholder's
7 agreement -- I know you are saying that they had a right
8 to do it under the purchase order but now I know all
9 this legal stuff a bit better, at that particular time
10 ...
11 Q. Ms Birdi, this isn't about at this particular time, this
12 is now. You are making an allegation of dishonesty in
13 your witness statement. The position is that they had
14 a contractual option to purchase his shares.
15 A. Which they didn't invoke.
16 Q. No, but even if they hadn't exercised an option, they
17 were entitled to purchase his shares under that
18 agreement, weren't they?
19 A. Under the ...?
20 Q. Shareholders' agreement. There was no obstruction, no
21 veto, on the sale of his shares.
22 A. Actually, I'm not quite sure about that on the
23 shareholders' agreement. I know you did put that to me
24 before. I don't think there is anything in the
25 shareholders' agreement which says they can't, but

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1 I know there is a purchase notice (inaudible). 1
2 Q. You accept there is nothing in the shareholders' 2
3 agreement that says that they can't do it and you had no 3
4 right under the shareholders' agreement to purchase the 4
5 shares yourself -- you didn't have option to purchase, 5
6 did you? 6
7 A. No. 7
8 Q. And you didn't have any right to veto their purchase 8
9 under the shareholders' agreement either? 9
10 A. For me to answer that, could we just go to the 10
11 shareholders' agreement? 11
12 Q. If you like. The point I'm putting to you, Ms Birdi, is 12
13 that you are making an allegation of dishonesty here. 13
14 A. Yes. 14
15 Q. And I'm trying to understand the basis upon which you 15
16 say that it was dishonest? 16
17 A. Well, I'm saying that the joint venture concept I had 17
18 signed up to was that there would be a dispensing 18
19 optician director and an ophthalmic optician director. 19
20 We would build the profits of the business and we would 20
21 share it 50/50, and Specsavers was the B shareholder. 21
22 By keeping on to the A shares and being a silent 22
23 partner, it's not what I signed up for. So they were 23
24 getting profits from the business and their management 24
25 fee as well. 25

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1 MR POTTS: My Lord, that would be a convenient moment.
2 MR JUSTICE NUGEE: Thank you very much. We will start again
3 at 10.30 tomorrow.
4 Ms Birdi, you may well have been told this before,
5 but since you are in the middle of giving your evidence,
6 you shouldn't speak to anybody about the case.
7 A. Okay.
8 MR JUSTICE NUGEE: That includes your husband, I'm afraid.
9 It's a difficult thing to do but those are the rules and
10 it's important you stick to them. Until you have
11 finished giving your evidence, regard yourself unable to
12 speak to anybody about the case.
13 A. Okay.
14 MR JUSTICE NUGEE: And we will see you back at 10.30
15 tomorrow.
16 A. Okay.
17 (4.23 pm)
18 (The court adjourned until 10.30 am the following day)
19
20
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