

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 2

October 24, 2014

Opus 2 International - Official Court Reporters

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1 Friday, 24 October 2014
2 (10.30 am)
3 MR POTTS: My Lord, I understand that there should an
4 amended timetable, which has got --
5 MR JUSTICE NUGEE: There is. Can I be very pernickety.
6 This starts on day 1 with a pre-reading day and then
7 starts on day 2 of yesterday, which is out of sync with
8 the transcript which has day 1 as yesterday, because
9 that's the first day that has been transcribed.
10 I think, treat the pre-reading day as day 0 and then
11 the numbers of the days will be the same.
12 MR POTTS: I think my learned friend has dealt with that.
13 I'm sure that can be done.
14 MR JUSTICE NUGEE: Thank you.
15 MS SWARANDEEP BIRDI (continued)
16 Cross-examination by MR POTTS (continued)
17 MR POTTS: Good morning, Ms Birdi.
18 A. Good morning.
19 Q. Yesterday we were discussing the departure of Mr Patel.
20 Mr Patel had admitted to stealing about £4,200 and had
21 resigned. That's right, isn't it?
22 A. Yes, £4,180 he admitted to, yes.
23 Q. And his loan account of £3,752, owed by Dartford, was
24 written off and he didn't recover those monies from the
25 company?

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1 A. Yes, that was written off in 2008 but that was part of
2 his exit deal, to receive that loan back.
3 Q. So there was a near set-off of those two sums, to about
4 £450 difference. Is that right?
5 A. That's correct.
6 Q. Okay. And there had been a preliminary investigation
7 into his conduct, which you and your fellow directors
8 had authorised?
9 A. Yes.
10 Q. You signed a written resolution to agree to that?
11 A. Yes.
12 Q. If we could turn up, please, E2/287. {E/42/287} We have
13 looked at that document before. That's his letter of
14 resignation and, as you say, it was £4,180; you are more
15 precise than I was on the number.
16 It stated there the investigation costs of £15,610.
17 Those were incurred by SOS, weren't they?
18 A. Yes, I know that now, yes.
19 Q. And based on this letter the resignation, Mr Patel was
20 agreeing to meet those costs which were owed to SOS?
21 A. Yes.
22 Q. Dartford hadn't been charged for those costs, had it?
23 A. No, I haven't seen that amount charged, no.
24 Q. So, assuming that the value of the shares was £70,000,
25 if you take off -- just to round it up -- £15,000 for

2

1 the investigation costs, that's £55,000, isn't it?
2 A. That's correct.
3 Q. And that's the net sum in fact that he was paid for the
4 shares?
5 A. That's correct.
6 Q. At the time, is it right to say that you were upset that
7 the store wasn't pursuing Mr Patel for the balance of
8 £450?
9 A. £450?
10 Q. Yes, the difference between his loan account and the
11 £4,180?
12 A. No, at that time I was upset because I wasn't being told
13 how the money was going to go back into the business.
14 I didn't know how much he had stolen. This document has
15 only come to light from disclosure.
16 Q. I see. So your position is that you just didn't know
17 how much?
18 A. The figure wasn't given to me, no.
19 Q. Did you ask for the figure?
20 A. I don't believe I did ask for the figure, no, but I did
21 ask how the money would be returned to the store.
22 Q. So you didn't ask for the figure, but if you wanted the
23 company to pursue Mr Patel, you could have convened
24 a directors' meeting to put that on the agenda for
25 discussion by the board, couldn't you?

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1 A. At that time, I couldn't make sense of what was being
2 done. When I actually got a solicitor on board, when
3 I received my disciplinary package, it was then when
4 I was learning more about what I could have done, and
5 I called a board meeting for the first time when
6 Mr Singh was brought on board.
7 Q. By this point, you have been a director and shareholder
8 for this company for seven years, haven't you?
9 A. Yes, I had.
10 Q. And you accept that you were entitled as a director to
11 convene a board meeting, but you are saying you didn't
12 know that at the time?
13 A. No. I mean, to be honest with you, when documents were
14 sent to us like resolutions and things like that, me and
15 Nim would just sign the resolutions. We didn't really
16 challenge anything with Specsavers because we trusted
17 them.
18 Q. Mr Dyson's evidence was that it was he who authorised
19 the acceptance of the proposal for resignation of
20 Mr Patel, and his evidence is that he took the view that
21 this was a sensible approach to save the business
22 the costs of an investigation and ensure the swift exit
23 of Mr Patel.
24 You are aware that that's his position?
25 A. Yes.

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1 Q. Are you saying that your position was that it wasn't
 2 open to a director to take that commercial view?
 3 A. That clearly wasn't a day-to-day management
 4 responsibility and that should have been convened at
 5 a board meeting, but the resolution was to investigate
 6 and suspend Mr Patel. The company had decided on that
 7 action.
 8 Q. I'm asking about, to take the view that it would be
 9 commercial to do this, as to what he decided in terms of
 10 a director, what he thought. Are you saying that it
 11 would not have been open to a director to form that
 12 view?
 13 A. Well, to be honest with you, no, I don't think it was
 14 because he was a professional and he should have been
 15 reported.
 16 Q. I'm talking about the company pursuing him for £500?
 17 A. Well, it wasn't £500. Like I said, the loan back was
 18 only authorised -- was only written off in January 2008,
 19 after I was refusing to sign accounts off. But this
 20 loan back was originally agreed to be paid to him. So
 21 saying that, at the time when this deal was done with
 22 Mr Patel they had agreed that his money would be taken
 23 from the loan back, that's not correct.
 24 Q. He wasn't paid that loan, though, was he?
 25 A. No, he wasn't, but at the time the deal was done it was

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1 SOG's unilateral decision to pay him the loan back. He
 2 had been stealing from the business; why is the company
 3 paying him monies?
 4 Q. I think, Ms Birdi, we may be at cross purposes. That
 5 loan wasn't paid to him and it was set off against the
 6 £4,180 he agreed to pay back.
 7 A. The point I'm making here, that wasn't a decision that
 8 was made at the time of the exit deal. It was agreed to
 9 pay him that loan. This was just backtracking
 10 afterwards, in my opinion.
 11 Q. Okay. Let's move on. Paragraph 116 -- do you have
 12 volume B?
 13 A. I don't, no.
 14 Q. Paragraph 116 of your witness statement on page 23.
 15 {B/1/23}
 16 A. Okay.
 17 Q. You are saying there that you say that the real
 18 interview with Mr Patel was conducted off the record?
 19 A. Yes, I do.
 20 Q. You weren't in the room when any interview with Mr Patel
 21 was conducted?
 22 A. No, I wasn't.
 23 Q. Were you?
 24 A. No.
 25 Q. So you don't actually know that to be the case, do you?

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1 A. No, I don't, but if you look at the evidence, the
 2 meeting lasted three and a half hours and the first
 3 meeting, where he admitted stealing, was 74 lines, and
 4 if you look at the timing, I think it was about --
 5 I don't know. There was a very short period, less than
 6 an hour, for that interview.
 7 Q. This is your analysis after the event?
 8 A. No, this is after disclosure.
 9 Q. Yes.
 10 A. And the second interview fitted in -- where he makes
 11 allegations of me -- fitted in with the actual three and
 12 a half hours, although Mr McAlindon in his witness
 13 statement said that second interview happened the next
 14 day, which we know now not to be true.
 15 Q. You go on to say in paragraph 116 that: {B/1/23}
 16 "... Loss Prevention Team {were} attempting to
 17 induce Mr Patel to provide them with information that
 18 they might be able to use against me as part of the deal
 19 whereby Specsavers would protect him from prosecution
 20 and allow him to leave with a clean slate."
 21 Let me just break that down. So you are saying that
 22 Specsavers was trying to get information from Mr Patel
 23 to use against you; correct?
 24 A. Mr McAlindon was, yes.
 25 Q. Mr McAlindon. And you are saying that Specsavers knew

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1 that that information was untrue?
 2 A. Well, whether it was untrue, they shouldn't have taken
 3 it the way they should have taken it because it was
 4 coming from a thief who was in a corner when he had been
 5 caught red-handed, stealing, on CCTV.
 6 Q. So even if the information was true that he was
 7 providing, you are saying that they shouldn't have asked
 8 him for any information or should have ignored it?
 9 A. No, I'm not saying that. They could have investigated
 10 it, they could have discussed with me and I could have
 11 told them.
 12 Q. What you are saying in 116 is that in return for
 13 providing that information Specsavers would protect
 14 Mr Patel from prosecution. Is that right?
 15 A. That's what I believe so, yes.
 16 Q. And how would Specsavers protect him from prosecution?
 17 A. Well, the resolution was to suspend and investigate him.
 18 Mr McAlindon departed from the resolution and eventually
 19 I discovered that he was not going to be reported to the
 20 GOC; he was not going to be reported to the police; the
 21 company had agreed to give him the company car and the
 22 company had agreed to pay him the loan back. They had
 23 agreed to pay him a certain amount for his shares and
 24 they didn't report him to HMRC. This person was
 25 stealing from the business and yet these things -- these

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1 monetary things and things from the business were being
2 given to him. It's unheard of.
3 Q. If all those things were happening, why didn't you call
4 a board meeting?
5 A. Like I said to you, at that time I couldn't make sense
6 of what was happening. That's why I was phoning head
7 office to see what the next steps were for the business,
8 et cetera. Then I was stopped from doing that because
9 Mr McAlindon made a very threatening phone call to me
10 and told me to stop making pestering calls to head
11 office.
12 Q. We will come back to that. If we go on to paragraph 177
13 of your statement, you say in the second sentence it
14 there that you: {B/1/37}
15 "... believe the amount sold by Mr Patel was the
16 difference between their value and the knocked down
17 price of £55,000 at which Specsavers got the shares from
18 him..."
19 A. Yes.
20 Q. Firstly, just the £55,000. In fact, of course, there
21 were the £15,000 investigation costs, weren't there? So
22 £70,000 is the value of the shares, would you accept
23 that? Not £55,000?
24 A. I'll accept that.
25 Q. Okay, but you say that it's the difference -- it's about

1 £100,000, which is the difference between, you say, the
2 price -- 170 is what you say they are worth or maybe
3 a bit less, maybe it's 50, if it's 125, and you say that
4 that's the amount that Mr Patel stole from the business?
5 A. It's very difficult to ascertain how much money he did
6 steal from the business, but how did Mr McAlindon
7 convince Mr Patel to sell his shares, that Ms Kaur was
8 willing to pay 170 for, for 55?
9 Q. I want to understand what your evidence is. You say
10 here that you believe it was the different between their
11 value and the knocked down price, so you are saying it's
12 more than £100,000. Is that right? Is that your
13 evidence?
14 A. If I take what Specsavers say, that actually, they said
15 his shares were worth 70, it would be about 100.
16 Q. So that is your evidence, that Mr Patel stole £100,000?
17 A. That's what I'm deducing from looking at the
18 disclosures.
19 Q. That's a very large sum of money, isn't it?
20 A. It is, yes.
21 Q. Would you not have been aware of discrepancies like
22 that?
23 A. Well, I obviously wasn't.
24 Q. There is no evidence, is there. Other than your
25 reference to the valuation issues that you have just

1 talked about there, is there any evidence that you say
2 supports your assertion of a theft of that size, in
3 relation to the accounting records, for example?
4 A. In 2005 and 2006, the level of bonus and dividends we
5 were taking was much reduced compared to the years
6 previously.
7 Q. So you say that because the company wasn't performing
8 very well, therefore you lost a sum of money?
9 A. No, the performance was good. I mean, we had increased
10 the business from just under £800,000 to, I believe
11 £1.2 million. So the performance was good.
12 Q. In the interview with Mr Patel -- we have
13 a transcript -- the thefts which were discussed were
14 only of around £4,200, not £100,000. You are aware of
15 that, aren't you?
16 A. Yes, that was the figure that Mr McAlindon put to
17 Mr Patel, and Mr Patel had no idea he was coming in for
18 this meeting, so he just agreed to it.
19 Q. Can I ask you, please, to turn up E2 at page 282. This
20 is the transcript of the interview with Mr Patel.
21 {E/40/282}
22 A. Yes.
23 Q. I apologise because the copy isn't very good but if you
24 look down the left-hand side there are some line
25 numbers?

1 A. Hm-mm.
2 Q. Do you see that? At 54 there is a question: {E/40/282}
3 "The amount I feel can be easily attributed to you
4 totals £3,500 on Nash and Coor and in total on your
5 operator number is approximately £4,180 since 2004 when
6 you did the first one on Nash. That would tend to
7 suggest it's not financial difficulty."
8 Do you see that?
9 A. Yes.
10 Q. So the point that were being put to him was that in fact
11 there had been an analysis done by the Loss Prevention
12 department going back to refunds since 2004, and that
13 the amount totalling fraudulent refunds was £4,180;
14 correct?
15 A. That's what it states here, yes.
16 Q. And you don't put forward any evidence to show that
17 Mr Patel had in fact stolen anything more than £4,000,
18 do you?
19 A. No, I don't but, like I say, I didn't -- Specsavers
20 wouldn't even admit that Nim was a thief for over six
21 years, so I didn't have any evidence. I was requesting
22 the evidence since 2007. As early as 19 September
23 I wanted to -- I was requesting the information.
24 Q. Sorry, what date?
25 A. I think it was 19 September, the day before my

1 disciplinary hearing, 2007, because I had engaged
 2 solicitors in July when I received my disciplinary
 3 package, and then they sent a letter to ask for CCTV
 4 footage, wanting to know how much Nim stole.
 5 Q. That's six months later?
 6 A. Yes, that was when I got back to the store.
 7 Q. Could I ask to you look at E2/366. {E/64/366}
 8 A. Yes.
 9 Q. This is a document from your disclosure; you can see
 10 that from the bottom?
 11 A. Yes.
 12 MR POTTS: Right. This isn't a contemporaneous document, is
 13 it?
 14 MR JUSTICE NUGEE: Sorry, how can I tell from the bottom --
 15 MR POTTS: 1094 is the disclosure number at the bottom
 16 right, my Lord.
 17 MR JUSTICE NUGEE: Yes, how do I tell it's Ms Birdi's?
 18 MR POTTS: My Lord, I know that based on numbers and I'm
 19 asking her that it's her disclosure. It is.
 20 MR JUSTICE NUGEE: Is someone going to explain to me what
 21 the disclosure --
 22 MR POTTS: My Lord, I think the SD numbers are ours on the
 23 bottom right, and the 1094 --
 24 MR JUSTICE NUGEE: The ones without "SD" are the claimants?
 25 MR POTTS: Yes.

1 MR JUSTICE NUGEE: Thank you.
 2 MR POTTS: Ms Birdi, that's not a contemporaneous document,
 3 if you like. That's one that was produced later.
 4 A. That's right, yes.
 5 Q. It's not referred to in your witness statement, is it?
 6 A. No, this document isn't. I mean, I don't -- I'm not an
 7 accountant, I don't understand these figures that
 8 greatly, but the reason I believe this was made was
 9 because in the accounts there was a discrepancy of
 10 £20,000 and it was saying -- I can't remember exactly.
 11 It's in the bottom line accounts. It was attributed --
 12 £20,000 regarding Nim, NP, and I couldn't understand
 13 what it was, so at that time we were trying to figure
 14 out was -- was that linked to Nim stealing.
 15 Q. So who produced this document?
 16 A. It was Mr Godfrey Voss.
 17 Q. Mr Voss?
 18 A. Mr Voss from the Bognor case?
 19 Q. Mr Voss is one of the claimants in one the other
 20 actions?
 21 A. No, he is not one of the claimants, he's the husband.
 22 Q. You are quite right, he is the husband of one of the
 23 claimants in one of other actions?
 24 A. Yes.
 25 Q. I see. Is this a document you are relying on to support

1 the allegation of theft?
 2 A. No, I think this was produced because there was -- like
 3 I say, I can't remember the exacted wordings in the
 4 bottom line accounts but there was this -- my accountant
 5 queried it as well and I still couldn't understand it.
 6 There was a figure of £20,000 extra in directors'
 7 remuneration and in the bottom line accounts it was
 8 referred to, linking it with Nimesh Patel.
 9 So I was -- I had no idea what he had stolen. So
 10 I was linking that £20,000 as extra tax that should be
 11 paid for the money Mr Patel had stolen that needed to be
 12 paid back to HMRC, but then suddenly, Specsavers just
 13 took it out of the accounts.
 14 Q. This document -- if you look just above the second hole
 15 punch, it talks about:
 16 "... Estimated Fraud must have been at least
 17 £50,000."
 18 I just want to -- firstly, this isn't your document;
 19 you didn't produce it?
 20 A. No.
 21 Q. Are you relying on these calculations in support of your
 22 allegation as to the size of the alleged -- the fraud --
 23 the theft by Mr Patel?
 24 A. Like I said, I'm really stabbing in the dark with the
 25 figures because it wasn't disclosed to me and, like

1 I say, Specsavers hadn't being clear and transparent
 2 with me. They just wouldn't sort of give me any clear
 3 explanations of the management fees, nothing. And
 4 this -- like I say, Mr Voss, I told him there was this
 5 £20,000 discrepancy which was in the accounts and taken
 6 out of the accounts, so he worked backwards. Don't ask
 7 me the calculations because I don't know, I'm not an
 8 accountant, but he was working backwards from the
 9 £20,000.
 10 Q. And you are saying backwards in terms of additional PAYE
 11 of £20,000 must have meant -- at 40 per cent tax -- must
 12 have meant that he had taken £50,000?
 13 A. I think that's how he has worked it out.
 14 Q. Okay, but that's Mr Voss's position?
 15 A. That's the calculations he did, yes.
 16 Q. Can I ask you just to turn up E4, please, page 806.
 17 {E/193/806}
 18 These are an exchange of emails with BDO, who are
 19 the company's auditors, aren't they?
 20 A. They are, yes.
 21 Q. If you look at the bottom of the page, on 12 September,
 22 there is an email exchange from Anne Baldwin -- I think
 23 she is from Specsavers, isn't she? The corporate tax
 24 technical manager, and she is sending an email to
 25 Mr Mercer of the auditors. Do you see that?

1 A. I do, yes.
 2 Q. And she says: {E/193/807}
 3 "Need to do [some] work ... but I would say probably
 4 at least £20,000 in underpaid PAYE ... has Cristina sent
 5 ... the report."
 6 Do you see that?
 7 A. Yes, I do.
 8 Q. Then if you go back to 806 -- I am afraid it's email, so
 9 you have to work backwards. In the middle of page 806,
 10 Mr Mercer's response and he says: {E/193/806}
 11 "I have had a conversation with Cristina ... From
 12 that I had thought we were talking about a smaller
 13 number than that - £10/11K? I thought it all stemmed
 14 from a director having her husband on the payroll at
 15 £750 per month when in reality he did very little work
 16 for the company? Not sure how this triggers off extra
 17 tax/notification..."
 18 Then there is a further email at the top saying:
 19 "... 40 per cent instead of 22 per cent. There is
 20 more than one person involved. I would rather put the
 21 adjustments into the 2006 accounts please. Will that
 22 cause you a problem?"
 23 Do you see that?
 24 A. I do, yes.
 25 Q. So in fact, that's not a reference to theft by Mr Patel,

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1 is it?
 2 A. No, it's not but, like I say, in the bottom line
 3 accounts it actually attributed that £20,000 to
 4 Mr Patel. I can't remember the exact wordings. If
 5 you look at the bottom line accounts, it will say it in
 6 there.
 7 Q. Ms Birdi, I'm sorry, you are not answering my question.
 8 A. I'm sorry.
 9 Q. Could you answer my question, please?
 10 A. Yes, sure.
 11 Q. The reference in this document is not to a theft by
 12 Mr Patel at all, is it?
 13 A. This email, no.
 14 Q. No. It's talking about a director having her husband on
 15 the payroll at £750 per month?
 16 A. Yes.
 17 Q. In fact, that's you, isn't it?
 18 A. It is me, yes.
 19 Q. In fact, this is a reference to the investigation into
 20 you in relation to your husband and father being on the
 21 payroll and the allegation that -- they didn't have
 22 contracts, did they?
 23 A. Contracts weren't done, no.
 24 Q. They didn't have written contracts, no.
 25 A. There were no written contracts done.

18

1 Q. And the allegation was that in fact, they weren't
 2 carrying out work to justify those payments; that was
 3 the allegation, wasn't it?
 4 A. That was the allegation, yes.
 5 Q. And the allegation was that this was being done to strip
 6 profits out of the business?
 7 A. That's correct, but it was not upheld.
 8 Q. Absolutely. And in fact, Mr Raines gave you the benefit
 9 of the doubt on that point in his disciplinary hearing
 10 with you?
 11 A. That's what he says, but it wasn't upheld because it
 12 wasn't true.
 13 Q. Fine. He rejected the allegation?
 14 A. Yes, he did.
 15 Q. Yes. And he rejected that allegation on 3 October 2007,
 16 didn't he?
 17 A. That's correct.
 18 Q. These emails are before that. It's in September,
 19 shortly before that?
 20 A. That's correct.
 21 Q. On the basis that there was no allegation proven against
 22 you, there was no provision made in the accounts, was
 23 there?
 24 A. Sorry, say that again?
 25 Q. There was no provision of £20,000 in fact applied to the

19

1 audited accounts at all, was there?
 2 A. Okay. I'm not sure what you are asking me there.
 3 Q. Are you saying that a £20,000 provision was in fact
 4 applied to the accounts of the company of which you were
 5 a director?
 6 A. I'm not an accountant but I will say to you, what I saw,
 7 in the bottom line accounts for a number of months it
 8 did say £20,000 regarding N Patel. It was in the
 9 accounts and then suddenly it disappeared. So that's
 10 what I can say to you. That's what I saw.
 11 MR JUSTICE NUGEE: I think you are answering by reference to
 12 the bottom line accounts, which are the monthly
 13 statements.
 14 A. Yes.
 15 MR JUSTICE NUGEE: I think what counsel is asking you is the
 16 audited accounts, which are the year end accounts.
 17 A. Right, I see.
 18 MR JUSTICE NUGEE: Do you know whether the £20,000 appeared
 19 in the year end accounts that were audited by the
 20 auditors?
 21 A. When I got the draft accounts, initially it was in there
 22 and then some redrafted accounts were done and it was
 23 removed. I think I had three sets of accounts.
 24 I believe it was three, but minimum two. One of them
 25 had it in on the directors' remuneration. One of them

20

1 had it taken out.
 2 MR POTTS: What I'm going to put to you, Ms Birdi, is that
 3 the removal of the provision of £20,000 from those
 4 accounts is consistent with this discussion with the
 5 auditors, which in fact related not to Mr Patel but to
 6 the allegations against you. Would you accept that
 7 that's consistent with that document?
 8 A. With this document?
 9 Q. Yes.
 10 A. Yes.
 11 Q. Right, thank you.
 12 I think we can put away E2 for the moment, we don't
 13 want to be too crowded. Could you have volume A,
 14 please. This is your reply.
 15 In the middle of the page, page 89, {A/7/89} -- I'm
 16 sorry, if it helps on the tab, it's tab 7.
 17 There is a paragraph that starts 26.A.3 and about
 18 five lines down there is a sentence that starts:
 19 "It is averred ..."
 20 And the allegation is --
 21 A. Sorry.
 22 Q. Sorry. 26.A.3 in red. Do you see that?
 23 A. Yes.
 24 Q. It's just below the first holepunch in the middle of the
 25 line. It says:

21

1 "It is averred ..."
 2 A. Okay.
 3 Q. Do you want to just read that sentence to yourself?
 4 A. Yes, I will. (Pause)
 5 Yes.
 6 Q. You will be pleased to hear I'm not going to be asking
 7 you about capital gains tax, but the allegation you are
 8 making there is that you are saying that the decision by
 9 Specsavers to purchase the shares was taken with a view
 10 to reselling them at a gain. Is that right?
 11 A. That's correct.
 12 Q. Your case is that the shares were purchased in order
 13 that Specsavers could make a profit on selling them?
 14 A. From other stores that this has happened to, that has
 15 been --
 16 Q. Could you just answer my question, first?
 17 A. Yes, I do believe that, yes. That was their original
 18 plan.
 19 Q. Mr Dyson's evidence will be that the shares were
 20 purchased based on a standard calculation that
 21 Specsavers adopted in relation to fair value. You
 22 understand that that's his evidence?
 23 A. I do, yes.
 24 Q. And he says that the values that they ascribed were
 25 £70,000, against which the costs of investigation of

22

1 £15,000 were set off?
 2 A. Okay.
 3 Q. And the shares were sold on to Mr Singh for £60,000,
 4 weren't they?
 5 A. They were.
 6 Q. And Mr Dyson's evidence is that Specsavers used the same
 7 methodology to calculate the price. You understand
 8 that's his evidence, don't you?
 9 A. I understand that's his evidence.
 10 Q. So the position is in fact that Specsavers lost money on
 11 the transaction, didn't it?
 12 A. Bringing in Mr Singh was, I believe, to drive me out of
 13 the business and that was something that was given to
 14 him as an inducement, if you like, but as regards the
 15 share value, in the Bognor Regis case, day 9 --
 16 Q. I'm sorry, Ms Birdi, you haven't answered my question
 17 again.
 18 A. No, I haven't. The shares are worth 170. In the Bognor
 19 case, Mr Dyson admits that shares are worth what someone
 20 is willing to pay for them.
 21 Q. Let me ask the question again.
 22 A. Sorry, okay.
 23 Q. And then perhaps if you listen to the question, perhaps
 24 we can just focus on that.
 25 A. I will.

23

1 Q. We will get through this a lot quicker.
 2 The point I put to you is that Specsavers lost money
 3 on the sale because it had bought them at a value of
 4 £70,000 less costs of £15,000 and they sold the shares
 5 at £60,000. So in fact, that's £10,000 less than the
 6 money they had spent in total. Do you accept that?
 7 A. If that is truly what the decision was, but I don't
 8 accept that -- originally they had planned to -- the
 9 shares were worth 170, they had planned to make a gain
 10 on that.
 11 Q. You are still not answering my question. I'm asking
 12 a simple matter really of maths?
 13 A. Okay, if it is true that Specsavers truly believed that
 14 the shares were worth 70, which I do not believe was the
 15 case, and then they sold them on to Mr Singh for 60,
 16 then you could say, yes, they lost £5,000.
 17 MR JUSTICE NUGEE: I think it's £10,000.
 18 MR POTTS: It's £10,000.
 19 A. Oh, 10.
 20 MR JUSTICE NUGEE: But I think what counsel is putting to
 21 you is that as a matter of the money they got in, as
 22 opposed to the money they laid out, they did actually
 23 lose money.
 24 A. Right, okay.
 25 MR JUSTICE NUGEE: Regardless of what they had intended or

24

1 thought they were worth or otherwise, what counsel is
 2 suggesting to you was that they had lost £10,000, when
 3 you take into account what they had paid for them in the
 4 first place and what they had sold them at.
 5 A. Right, okay. Yes.
 6 MR POTTS: But if Specsavers' motivation, as according to
 7 your pleaded case, was to make a gain on the shares, are
 8 you saying that, what, the plan changed?
 9 A. The plan did change, yes, because I was frustrating the
 10 plan.
 11 Q. And when do you say the plan changed?
 12 A. I think when I was querying -- I couldn't make sense of
 13 what had happened and when I was making queries about
 14 this, and Mr McAlindon had basically told me to back off
 15 and be quiet. I think they feared that I might expose
 16 this unilateral deal that they had made.
 17 Q. So when do you think the plan changed from selling at
 18 a profit to doing something else?
 19 A. I can't pinpoint a date to you but what I can say is
 20 that on the 20th, I did tell Mr McAlindon I wasn't
 21 really happy and then I was phoning head office, and
 22 then on the 27th, that's when I got a call from
 23 Mr McAlindon, who told me -- accused -- made allegations
 24 against me of telling people Nim was a thief, Mr Patel
 25 was a thief, and then from there, disclosure shows that

25

1 he had told me to back off and I wasn't signing the
 2 share sale agreement -- the resignation, sorry, of
 3 Mr Patel from DBL and DSL. I wasn't signing the
 4 document for the loan back. They sent it to me twice
 5 and phoned me up to sign it and I was very apprehensive
 6 because Mr McAlindon in his phone call to me had said
 7 there could be tax implications if people find out what
 8 Nim was doing.
 9 So I think it was from the moment the deal was done
 10 to Mr McAlindon realising that I might expose the deal.
 11 Q. So, what, within a few days?
 12 A. Within, I think, from 20th to when he phoned on the
 13 27th. That's when he started to get concerned that
 14 I may whistle-blow, if you like, on what they had done.
 15 Q. So you are saying at that point, what, the plan changed
 16 and they weren't going to sell the shares at a profit.
 17 Is that right?
 18 A. Well, I think the plan changed to get rid of me.
 19 Q. So why sell at a loss to Mr Singh?
 20 A. Like I have said, I believe that he was induced to come
 21 to the store to get rid of me.
 22 Q. So you are saying that effectively, he is getting
 23 something on the cheap so that he acts against you?
 24 A. Absolutely. Excuse me, sorry to interrupt but could
 25 I have some water, please.

26

1 Q. Could we possibly have a jug left on the ...?
 2 MR JUSTICE NUGEE: Could you leave the jug on the witness
 3 stand. Can someone be responsible for topping it up
 4 when we take a break?
 5 MR POTTS: Can I suggest to you, Ms Birdi, that the more
 6 likely position is that Specsavers bought the shares at
 7 what it considered to be the fair value and that it sold
 8 the shares at what it considered to be a fair value?
 9 A. Mr Potts, I don't agree with that because we bought the
 10 shares at £125,000 each and at that time the store was
 11 doing about £800,000 turnover, and when Mr Patel left
 12 the business, we were doing about 1.1/1.2. The shares
 13 just couldn't be worth 70.
 14 Q. And can I also suggest --
 15 A. And we had a buyer -- sorry to interrupt. We had
 16 a buyer at 170 -- we had -- Mr Singh wanted them at 170.
 17 His sister-in-law wanted them at 170.
 18 Q. Can I also suggest to you that it's not only the more
 19 likely position, but it's the true position, Ms Birdi?
 20 A. I have to disagree with you, Mr Potts.
 21 Q. I need to cover just a couple of sort of smaller sums in
 22 relation to Mr Patel's departure, as well. These are
 23 matters which you deal with.
 24 A. Okay.
 25 Q. On 10 April 2007 Dartford Visionplus paid £1,832 in

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1 respect to charges on the company credit card. Is that
 2 right? Would you accept that?
 3 A. How much was it, sorry?
 4 Q. £1,832.
 5 A. If that's what you are putting to me. I can't remember
 6 the exact amount.
 7 Q. £1,832.
 8 A. £1,632.
 9 Q. Sorry, you are right.
 10 A. I have just seen it.
 11 Q. Very good. I am sorry for that.
 12 The credit card payments by the company, this was in
 13 relation to the period that he was a director of the
 14 company. Is that right?
 15 A. Yes, that's right.
 16 Q. And these charges were incurred before his departure?
 17 A. There are some charges on there on the day of his
 18 departure. I think there were two petrol ones and
 19 a holiday one booked on the day that he actually left.
 20 But at the time -- this went through in April when
 21 normally a February statement would go through in March.
 22 So I was confused as to --
 23 Q. Mr Dyson's position is that he considered it was
 24 appropriate for the company to pay that sum, as it
 25 related to items purchased while Mr Patel was

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1 a director. You understand that's his position?
2 A. I do, yes.
3 Q. It may be that you don't agree with that business
4 decision, but that's a management decision that
5 a director could have legitimately reached, isn't it?
6 A. Like I say, there are only small sums on that and
7 I think his credit card should have been taken off him
8 when he had left the business on the 20th -- I can
9 accept that.
10 Q. So you can accept that that's a legitimate business
11 decision by Mr Dyson, to pay that sum?
12 A. I think that -- that had gone through the business.
13 I still think that I should have been consulted on it
14 because it wasn't day-to-day business. But it has gone
15 through. I don't sort of object to that.
16 Q. Specsavers had responsibility to deal with all the
17 finances, didn't they?
18 A. They did, yes.
19 Q. And payments. So in fact, that was a matter that was
20 within Specsavers' remit, wasn't it?
21 A. That was, yes.
22 Q. Yes.
23 MR JUSTICE NUGEE: Can I ask -- can you explain to me.
24 Whose name are the credit cards in? Are they in the
25 name of Specsavers or in the name of the company or in

1 the name of the directors?
2 A. I'm not quite sure. We had our own names on the card,
3 I think.
4 MR JUSTICE NUGEE: You had your own --
5 MR POTTS: They are company credit cards, aren't they.
6 A. Yes, they are company credit cards. We had our own ones
7 though.
8 Q. So the money was owed by the company to the credit card
9 company, wasn't it?
10 A. That's right, yes.
11 MR JUSTICE NUGEE: Thank you.
12 MR POTTS: And you are not suggesting that Dartford
13 Visionplus could have refused to pay the credit card
14 company, are you?
15 A. No, I'm not.
16 Q. That's one of your allegations. The THP accounting
17 invoices?
18 A. Yes.
19 Q. There was £2,150 paid plus VAT in June 2007 to THP Total
20 Accounting. Do you remember that?
21 A. How much, sorry?
22 Q. THP Accounting, £2,150 net, £2,526 gross?
23 A. Right, okay.
24 Q. Do you remember that?
25 A. I do, yes.

1 Q. Perhaps if it assists, could I ask you to turn up
2 E1/190. {E/9/190}
3 A. What page, sorry?
4 Q. 190. If it assist your Lordship, on 189 there is
5 a corporate credit card statement that makes the point
6 about it being a company card, in fact. {E/8/189} If
7 that assists.
8 But 190, THP, and then if you look at the following
9 pages, there are copies of five invoices up to 194,
10 I think.
11 A. Yes.
12 Q. If we put E1 away, I think --
13 MR JUSTICE NUGEE: Just before you do that, Mr Potts,
14 page 189 you asked me to look at. I can't read it but
15 it looks as if it's addressed to Mr Nimesh Patel
16 Specsavers Finance.
17 MR POTTS: Yes.
18 MR JUSTICE NUGEE: Not in the name of Visionplus, but in the
19 name of the Specsavers company.
20 MR POTTS: Specsavers Finance. That's the treasury.
21 MR JUSTICE NUGEE: Yes.
22 MR POTTS: Specsavers Finance is the treasury.
23 E2, page 327. {E/57/327}
24 A. Sorry, 327?
25 Q. Yes. That's a statement of account.

1 A. That's right.
2 Q. From THP.
3 A. Yes.
4 Q. It covers five invoices?
5 A. That's right.
6 Q. And it's addressed to Dartford Specsavers Limited?
7 A. That's correct.
8 Q. Your counsel claims, in the skeleton argument filed on
9 your behalf, that THP were Mr Patel's accountants?
10 A. Yes, they were. They were business accountants and
11 personal.
12 Q. So when you say it's Mr Patel's accountants, in fact
13 that's not an entirely complete or accurate picture, is
14 it? They were the store's accountants, weren't they?
15 A. Yes, they were both.
16 Q. Indeed, there wasn't anything odd about THP invoicing
17 the company at all, was there?
18 A. That's correct.
19 Q. The position is that the store had always sought advice
20 from THP, hadn't it?
21 A. That's correct.
22 Q. In fact, isn't the position that you had sought advice
23 from THP about the accounts for nine years?
24 A. I'm not sure of the years, but it has been some time,
25 yes.

1 Q. Could you have E8, please.
2 A. Do you want me to keep this?
3 Q. Yes, please. You can close it up but perhaps just put
4 it to the side.
5 If you could turn to page 1973. {E/631/1973}
6 A. Yes.
7 Q. You are having a -- this is a later document --
8 discussion with Mr Singh?
9 A. Hm-mm.
10 Q. And if you look at 1974, the second paragraph, you say:
11 {E/631/1974}
12 "The Dartford store has always sought advice from
13 THP regarding the end of year accounts before sending
14 back."
15 A. Yes.
16 Q. You were trying to persuade Mr Singh that the company
17 should pay for that to happen?
18 A. That's right.
19 Q. Is that right? So that's over a nine-year period,
20 always?
21 A. I think at one point we were using another company as
22 well, but -- I think it was R&B(?).
23 Q. And it was the common practice of other directors in the
24 region to do the same, wasn't it?
25 A. Yes, it was.

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1 Q. And in fact at the top of 1973, in that first email, you
2 say: {E/631/1973}
3 "THP look at many of the year end accounts for many
4 of the stores in the region."
5 A. That's correct.
6 Q. Your pleaded position is to challenge all five of these
7 invoices. Is that right?
8 A. No, I did actually state this to counsel, that it was
9 actually two invoices I was -- but I think I stated late
10 to them.
11 Q. Your pleaded case is it's all five, that hasn't been
12 changed.
13 A. No, I did say that it's the two that were personally
14 addressed to Mr Patel.
15 Q. Okay. Can we go back to E1, page 19. {E/2/19}
16 A. Yes.
17 Q. That's your manuscript, isn't it?
18 A. It is, yes.
19 Q. So the point you are making there is you are only
20 challenging two of the invoices?
21 A. I am, yes.
22 Q. That you say are personal?
23 A. That were addressed to his home, yes.
24 Q. They were initially addressed to him personally, weren't
25 they, but we have seen the statement of account for all

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1 five invoices?
2 MR JUSTICE NUGEE: Mr Potts, I'm not entirely sure that
3 I understand that the statement of account you showed
4 me, which was for five invoices, each of 470, is the
5 same one as the ones that Ms Birdi is talking about at
6 paragraph 179 of her statement. {B/1/37}
7 MR POTTS: Oh, let's check.
8 MR JUSTICE NUGEE: Because five times 470 comes to £2,350,
9 which is not the figure in either of the invoices that
10 she refers to there.
11 MR POTTS: Let me just check. Can I just have a moment, my
12 Lord?
13 MR JUSTICE NUGEE: Of course. (Pause)
14 MR POTTS: In paragraph 179?
15 MR JUSTICE NUGEE: Yes, which I assumed was the paragraph
16 you were cross-examining on.
17 MR POTTS: It was, my Lord, yes.
18 Could you turn up E2, please, Ms Birdi. That's the
19 statement of account.
20 A. What page are we on, please?
21 Q. Sorry, 327. {E/57/327}
22 A. Yes.
23 Q. I think I had better check that, my Lord, over the
24 break. I'll come back.
25 Can I just deal with the second point in that

35

1 paragraph, where you refer to a second invoice -- sorry,
2 it's 179 in your statement.
3 A. Sorry.
4 Q. In your witness statement?
5 A. Do I need to see it?
6 Q. Yes, sorry, that probably would be helpful. Do you have
7 B? Could you have volume B, please?
8 A. Thank you. Yes, what page, please?
9 Q. Page 37, {B/1/37} paragraph 179. You refer in the
10 penultimate sentence to a second invoice --
11 A. Yes.
12 Q. -- of £2,555.63?
13 A. That's right.
14 Q. Mr Dyson's evidence is that that invoice was in fact
15 paid in error, but was refunded by THP. You have seen
16 that in his statement, haven't you?
17 A. I have seen that and I think it is true. I missed the
18 credit.
19 Q. So you accept that?
20 A. I accept that, yes.
21 Q. So your witness statement in that regard is incorrect.
22 A. That is, yes. I hadn't realised it had been credited.
23 Q. Can I just ask briefly about the accounts payable
24 department in terms of third party invoices. You are
25 aware that invoices from third party suppliers to the

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1 business are sent to the accounts payable department,
 2 aren't you?
 3 A. Yes.
 4 Q. And that that department of SOG processes invoices from
 5 third party suppliers on behalf of the stores?
 6 A. Yes.
 7 Q. And you are also aware that directors are only meant to
 8 submit invoices to accounts payable relating to the
 9 business, aren't you?
 10 A. No, we could -- sometimes things did get through, but
 11 usually it would be for third suppliers.
 12 Q. Let me ask the question again: you are aware that
 13 directors are only meant to submit invoices to accounts
 14 payable relating to the business, aren't you?
 15 A. Yes.
 16 Q. So if an invoice was received by accounts payable, there
 17 is no reason why they shouldn't have dealt with it on
 18 the basis that they understood it to be a business
 19 expense?
 20 A. Accounts payable, they don't just pay things, they do
 21 check them to see if they are personal. They don't just
 22 pay them.
 23 Q. But your position is that THP were the company's
 24 accountants?
 25 A. Yes.

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1 Q. And they were also accountants to lots of other
 2 Specsavers companies?
 3 A. That's correct.
 4 Q. Can I move on to --
 5 A. May I just say that accounting did actually query this
 6 particular invoice, one of them, and they actually sent
 7 it to the store when I was suspended, and said, "This
 8 isn't a Dartford business-related expense", and then
 9 Carol Slark sent it off to Hull, where I believe
 10 Mr McAlindon is based, and in June she authorised the
 11 accounts department to pay Nimesh Patel's personal
 12 invoices for THP.
 13 Mr Patel had left in February but they were
 14 authorising his personal bills, which accounts had
 15 discovered were not related to the Dartford store.
 16 Q. So are you saying that she did that with an improper
 17 purpose?
 18 A. I cannot understand how somebody who has been caught
 19 red-handed stealing on CCTV is having his bills paid
 20 from the store when he left in February and we are
 21 in June. She has done a letter writing it. I cannot
 22 make sense of that. It's not -- the Dartford store
 23 should not be incurring those costs.
 24 Q. Are you saying that she did it with an improper purpose?
 25 A. I believe, if it was sent to Mr McAlindon, then he had

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1 authorised it and it shouldn't have been authorised.
 2 Q. Are you saying that he did it with an improper purpose?
 3 A. It doesn't make any sense why a business should be
 4 paying someone's accounts -- somebody's bills when they
 5 have left the business for stealing.
 6 Q. Is the appears to my question yes? Or you just don't
 7 understand why it was paid?
 8 A. I do not understand why it was paid.
 9 Q. So you are not asserting it was done for an improper
 10 purpose?
 11 A. Well, like you know, my case is that it was an
 12 inducement, I believe.
 13 Q. So you are saying it was done for an improper purpose?
 14 A. Yes.
 15 Q. So you are saying this was a bribe, effectively?
 16 A. I think it was an inducement, yes. That's the only
 17 conclusion I can come to. I can't see why anybody would
 18 pay --
 19 Q. When you say "inducement", what you are saying is it's
 20 a payment for doing something improper, isn't it? Is
 21 that what you mean by "inducement"?
 22 A. I don't know whether it was to keep Mr Patel sweet or
 23 what, because --
 24 Q. I'm just trying to understand your use of the word
 25 "inducement", Ms Birdi.

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1 A. Yes.
 2 Q. What do you mean by "inducement"? Do you mean a payment
 3 to do something improper?
 4 A. Well, I suppose yes, because Mr Patel made allegations
 5 against me in June.
 6 Q. So when you used the word -- because you use that word
 7 quite a lot in your witness statement. This is your
 8 witness statement, isn't it?
 9 A. It is, yes.
 10 Q. So when you use the word "inducement", you mean
 11 a payment to do something improper?
 12 A. Not generally a payment. It could be other things.
 13 Q. Giving something of value to do something improper, not
 14 necessarily cash?
 15 A. Well, you could -- to do -- well, to do something ...
 16 yes, I guess, yes.
 17 Q. Let's move on to next item. I'll come back to the
 18 figures on that later.
 19 A. Okay.
 20 Q. Mercedes, paragraph 180 of your witness statement.
 21 {B/1/38} You are making an allegation in relation to
 22 a payment -- I think it's gross, I think that's
 23 including VAT -- of £369.98 for a repairs to a Mercedes?
 24 A. Yes.
 25 Q. Mr Dyson says that the car was the property of the

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1 Dartford business at the time of an accident. Do you
2 agree?
3 A. I don't know when the car was transferred over to
4 Mr Patel.
5 Q. Well, assuming that there was an accident --
6 A. Yes.
7 Q. -- which the company car had at the time that it was the
8 property of the Dartford business?
9 A. Yes.
10 Q. It would have been insured through the group scheme,
11 wouldn't it?
12 A. It would have.
13 Q. In fact, you prevented the cancellation of the insurance
14 after Mr Patel had left, didn't you?
15 A. I didn't cancel. I disagree with you there, Mr Potts.
16 I didn't -- I didn't stop it from being cancelled, no.
17 I didn't know what to do. That's why I phoned head
18 office on 22/2.
19 Q. Could you turn -- keep B there and if you could have E3.
20 Do you have E3 there?
21 A. Yes, what number?
22 Q. 535. {E/121/535} Do you see in the middle of the page
23 there is an email?
24 A. Yes.
25 Q. From Lisa Lodge, and in fact you were copied in on that.

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1 "DI Dartford" is the directors' email account?
2 A. That's correct.
3 Q. And in the middle paragraph:
4 "As is usual ..."
5 She says:
6 "... I contacted the store, spoke [to you] and [you]
7 confirmed that the vehicle that Nimesh was registered as
8 the main driver on was a company car and therefore it
9 should remain on cover at that time."
10 A. No, I didn't say that. I said to the insurance company
11 I wasn't sure and that's when I phoned head office to
12 ask, because I had no clue.
13 Q. So, Lisa Lodge, when she says that, has got that wrong,
14 has she?
15 A. Yes, that's not correct. I didn't say that. I said
16 I'll get back to them.
17 MR JUSTICE NUGEE: I'm sorry, Mr Potts, which page are you
18 on?
19 MR POTTS: 535, my Lord and it's the email -- it's in the
20 middle of the page, the paragraph starting:
21 "As is usual practice ..."
22 MR JUSTICE NUGEE: Thank you.
23 MR POTTS: Responsibility which related to a policy excess
24 fell on the Dartford business, didn't it?
25 A. It did for -- it did, yes.

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1 Q. And Ms Slark approved that payment?
2 A. She objected initially.
3 Q. Yes?
4 A. And then she approved it. But it shouldn't have been
5 approved because the deal that was done with Mr Patel
6 was that he would have the insurance removed and put on
7 his name by 31 March 2007.
8 Q. I'm not talking about the renewal of the policy, I'm
9 talking about the payment of the excess on an accident
10 which had happened whilst he was still a company
11 director?
12 A. No, that's actually not true. He wasn't a company
13 director then. He had left on the 20 February.
14 Q. And are you saying that Ms Slark was acting for an
15 improper purpose when she authorised the payment for the
16 excess?
17 A. No.
18 Q. You are not?
19 A. No.
20 Q. So you accept that that was a genuine business decision
21 taken by her?
22 A. No -- yes, from here. What my point there is, he had
23 left the business on 20/2, he was told he had to
24 transfer the insurance on to his name by 31 March, so
25 why is Dartford paying money on 23 April to Mr Patel,

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1 when the insurance should have been removed anyhow.
2 I obviously wasn't in the store to action that anyhow.
3 Q. Could you have a look at 637.
4 A. Which bundle is that?
5 Q. E3/637. {E/155/637}
6 A. Yes.
7 Q. So this is from Mr Fleming of SOG, the insurance
8 services manager, to Ms Slark?
9 A. Yes.
10 Q. Do you see that? And in the second paragraph he says:
11 "Since the vehicle was, at the time of the incident,
12 property of [SOG] and insured within the group scheme,
13 the responsibility for payment of policy excess ... is
14 the responsibility of the Dartford practice."
15 A. Yes.
16 Q. And Ms Slark acted in response to that letter?
17 A. Yes, she did, but like I said, Specsavers had made this
18 arrangement with Mr Patel, so the Dartford store
19 shouldn't have been incurring this cost. This accident
20 happened on -- 23 April he was paid these sums.
21 Q. But you are not suggesting that Ms Slark was acting for
22 an improper purpose?
23 A. No, I'm not.
24 Q. This was just a genuine business decision that she made.
25 You accept that?

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1 A. I do, yes.
 2 Q. Finally in relation to cars, you have mentioned that
 3 Mr Patel was given his existing company car; correct?
 4 A. Yes. Do I need to go anywhere?
 5 Q. No, I'm just asking you a question. You know that,
 6 don't you?
 7 A. Yes.
 8 Q. This was dealt with, so far as you are concerned, by
 9 a compensating payment to you, wasn't it?
 10 A. Yes.
 11 Q. Of an equalisation dividend of £14,942?
 12 A. Yes.
 13 Q. And you were told that you would get such a payment
 14 almost straight away, so you were told about it pretty
 15 much straight after Mr Patel's resignation?
 16 A. Yes, I actually phoned up head office to enquire what
 17 the next steps were and I was told.
 18 Q. This did originally form part of the allegations that
 19 you raised in your petition, didn't it? You initially
 20 raised an allegation about that?
 21 A. Yes.
 22 Q. But you accept that's not one of the issues which was
 23 directed for trial?
 24 A. That's correct. I think -- yes, that's correct, yes.
 25 Q. And you are not seeking any adjustment in relation to

1 the car?
 2 A. No, I'm not.
 3 MR POTTS: Thank you. My Lord, can I just have a moment?
 4 (Pause)
 5 My Lord, that might be a convenient moment for the
 6 break.
 7 MR JUSTICE NUGEE: Certainly, five minutes.
 8 (11.37 am)
 9 (Short break)
 10 (11.42 am)
 11 MR POTTS: Ms Birdi, can I just return briefly to the two
 12 invoices. Do you have E1? Perhaps you can be passed
 13 E1, please. Page 190. {E/9/190}
 14 We looked at a number of invoices there. At 190 is
 15 one which has got Mr Patel's name and then there is some
 16 manuscript with the store address. Do you see that?
 17 A. Yes.
 18 Q. And then 191 is one with just the store, no manuscript.
 19 192. And then 193, again, manuscript added and then
 20 194. Do you see that?
 21 A. I do, yes.
 22 Q. So the two invoices that you are complaining about are
 23 190 and 193?
 24 A. That's correct.
 25 Q. The total is £975 for those two, if you take it from me?

1 A. That's excluding VAT.
 2 Q. Yes.
 3 A. Yes.
 4 Q. Mr Dyson's evidence is that these came in with three
 5 other invoices to the accounts payable department at
 6 the same time. You know that? You have seen his
 7 witness statement, haven't you?
 8 A. I don't remember it all but, yes, I think I did read
 9 something on that grounds.
 10 Q. Do you have E3. Could you be passed it?
 11 A. Should I put this one away, do I need it. E1?
 12 Q. Just hold on to it for a moment. E3/589 {E/140/589}
 13 Do you see, those are some screen shots. Mr Dyson's
 14 evidence is that all the invoices were processed at the
 15 same time by accounts payable.
 16 A. Okay.
 17 Q. I put it to you that it's likely, isn't it, that
 18 accounts payable processed all of the invoices on the
 19 assumption that they were all for the store?
 20 A. There is evidence in the disclosures where the invoice
 21 of A2250 was sent back to the store with a note from
 22 accounts, saying this is not a business expense; this is
 23 not a Dartford business expense. So Ms Slark faxed it
 24 to a fax number in Hull and then the next thing that
 25 happened was these bills were authorised, so accounts

1 did pick up that it wasn't a Dartford business expense.
 2 Q. Are you saying that there was something improper --
 3 A. It shouldn't have been paid.
 4 Q. Are you saying there is something improper in accounts
 5 payable paying those invoices?
 6 A. I'm saying it was brought to whoever was looking after
 7 the store during my suspension. It was brought to them
 8 that it was not a Dartford business expense, but all
 9 invoices relating to Mr Patel during a certain period
 10 were authorised. There is a letter from Carol Slark
 11 stating this.
 12 Q. Are you saying that somebody acted with an improper
 13 motive on behalf of Specsavers in paying those invoices,
 14 those two invoices?
 15 A. I cannot understand why Dartford would be paying
 16 Mr Patel's personal bills.
 17 Q. You haven't answered my question, Ms Birdi?
 18 A. If I look at all the evidence that's presented to me
 19 now, I think that they knew it shouldn't be paid and it
 20 was authorised. I don't know why.
 21 Q. So you are saying you don't know why it was authorised?
 22 A. It shouldn't have been paid.
 23 Q. Would you accept that it might have been an error?
 24 A. From the evidence I have seen, it was purposely allowed
 25 to go through. If it hadn't been flagged up, I could,

1 yes, say accounts payable made a mistake, but here it
2 was flagged up, yet it was still authorised. And it
3 said -- the letter that Carol Slark wrote was all
4 Mr Patel's invoices up to a certain date be paid.
5 Q. So you are alleging that this was something improper?
6 A. It wasn't correct. The Dartford shouldn't have been
7 paying those sums.
8 Q. One thing is something was not correct, that a mistake
9 was made; another is to say that it was done for an
10 improper purpose?
11 A. If you are asking me if it was a mistake, I don't
12 believe it was a mistake.
13 Q. Okay. Let's move on from these invoices.
14 Do you have E2 there still? I think E3 and E1 can
15 go away.
16 These are some notes from --
17 A. Sorry --
18 Q. I'm sorry, 284. {E/41/284}
19 A. Okay.
20 Q. These are some notes of an interview with Mr Patel,
21 aren't they?
22 A. They are, yes.
23 Q. You weren't present during the interview?
24 A. No, I wasn't.
25 Q. I think it's common ground that Mr Patel made a number

1 of allegations against you?
2 A. That's correct.
3 Q. Yes. He said that your husband and your father were on
4 the payroll when neither had actually done any real work
5 for the business. He said that?
6 A. He did.
7 Q. He also said that you had falsely paid sums to
8 Mr Patel's wife, which she had returned to you by way of
9 personal cheque and that that money was used to pay some
10 Polish immigrant workers in cash for work which wasn't
11 approved by Specsavers in accordance with its policies
12 and procedures?
13 A. That's what he said, yes.
14 Q. He also made some other general allegations about your
15 conduct towards staff, testing and locum costs as well?
16 A. Yes, he did.
17 Q. The allegation about falsely putting members of your
18 family on the store's payroll and the concealed payments
19 to builders, those are serious allegations, aren't they?
20 A. Yes, they should be investigated if there was that
21 concern, but they were coming from a thief, who was
22 being reprimanded and he knew I helped catch him
23 stealing.
24 Q. But you accept that they are serious allegations and you
25 accept that they should have been investigated?

1 A. Yes, I think they should have been looked at, if it was
2 coming from a reputable person.
3 Q. Are you saying that they shouldn't have been looked at
4 if they came from a disreputable person?
5 A. If I was presented with these, I would have asked the
6 person about them. I wouldn't have just ignored it.
7 Q. Can I ask you to turn up your witness statement, please?
8 Paragraph 154 and 155. {B/1/32} You say that the
9 investigation that followed had nothing to do with the
10 interests of the company:
11 "... but everything to do with Mr McAlindon and
12 Specsavers saving their own skins."
13 And you say that the aim was to take you out; you
14 say that in 154. Is that right?
15 A. Yes, I do believe that. I believe that was
16 Mr McAlindon's intention.
17 Q. And you say "and Specsavers". Other people at
18 Specsavers?
19 A. At that time, Mr Dyson and Mr McAlindon.
20 Q. Mr Dyson. So we can add in Mr Dyson for Specsavers.
21 A. But it's Mr McAlindon who is leading it.
22 Q. If you go on to paragraph 216, you assert that
23 Specsavers was conspiring with Mr Patel: {B/1/46}
24 "... to allow false allegations of fraudulent
25 activities to be made against me."

1 Is that right?
2 A. That's right.
3 Q. When you say "Specsavers", who do you mean? Which
4 individuals?
5 A. Mr McAlindon. He was the one leading this.
6 Q. And Mr Dyson?
7 A. Mr Dyson was authorising his actions.
8 Q. And you refer to this, I think also at paragraph 74, as
9 a "grand plot"? {B/1/15}
10 A. If that's what I say.
11 Q. Mr Dyson's evidence was that it was he who authorised
12 your suspension and the investigation?
13 A. No, I don't believe that to be the case. Mr McAlindon
14 came down without any procedures. I don't believe he
15 had come down to hold any discussions with me about what
16 Mr Patel had said. He came down in a very aggressive
17 manner and I believe his intention was to scare me, like
18 he has done with many other directors, like Uckfield, in
19 fact, where they come in, they hurl allegations at you,
20 threaten that you will get struck off from the GOC,
21 hoping that you will bow down and sign your shares away.
22 Q. Let me just ask the question again, I'm not sure you may
23 have heard it properly.
24 Mr Dyson says that he and not Mr McAlindon
25 authorised your suspension and the investigation into

1 Mr Patel's allegations. Are you saying that his
2 evidence on that is incorrect?
3 A. I don't believe he did, no, because Mr McAlindon sends
4 a memo to Mr Dyson after he has suspended me and there
5 was no board resolution to suspend me.
6 Q. So are you saying that Mr Dyson is making that up in his
7 evidence?
8 A. There is no evidence to show that I have seen that
9 Mr Dyson said to Mr McAlindon, "Go down there and
10 suspend Ms Birdi".
11 Q. That isn't an answer to my question, Ms Birdi. Are you
12 saying that he is making that evidence up?
13 A. If I'm looking at procedure, there was no procedure
14 followed. If I'm looking at if Mr McAlindon had
15 a conversation with Mr Dyson over the phone, maybe he
16 did.
17 Q. I just want to be clear as to firstly, the question I'm
18 putting to you and, secondly, your answer to it.
19 A. Yes.
20 Q. Mr Dyson's position is that he authorised your
21 suspension and the investigation into Mr Patel's
22 allegations. Your position is you are saying that's not
23 the case?
24 A. He may -- I haven't seen any evidence to suggest that.
25 If that's what he is saying it may be the case, but

1 I believe it was Mr McAlindon acting unilaterally.
2 Q. Well, which is it? Are you saying that it might be the
3 case that he did authorise it?
4 A. No --
5 Q. Or are you saying that he didn't?
6 A. I believe it was Mr McAlindon because I was not bowing
7 to his threats. He was the one who actioned it.
8 Q. So you are saying that Mr Dyson did not authorise your
9 suspension and the investigation; correct?
10 A. He didn't authorise my suspension.
11 Q. Or the investigation?
12 A. After I was suspended, he may have, because I saw a memo
13 on 12 April which was sent to him to send to the board.
14 Q. And you are saying that his position on that, that his
15 evidence on that, about authorising the suspension and
16 the investigation, is untrue?
17 A. It's certainly not -- suspension-wise, it was
18 Mr McAlindon.
19 Q. In terms of Mr Dyson's motivation, you are saying that
20 he was also motivated by a desire to get rid of you?
21 A. Yes, I believe he was.
22 Q. I put it to you, Ms Birdi, that that position is false
23 and that Mr Dyson considered the allegations to be
24 serious and that they required investigation?
25 A. If they required investigation, if he looked at the

1 interests of the business, the way that no procedure was
2 followed, Mr McAlindon came in, did what he did, made
3 his threats to get me struck off from the GOC,
4 et cetera. If it was legitimate that Mr McAlindon was
5 coming down to suspend me, then procedures would have
6 been followed.
7 Q. I'm asking you about Mr Dyson and I'm suggesting to you,
8 putting to you, that in fact the position is that
9 Mr Dyson considered the allegations to be serious and
10 that they required investigation?
11 A. Okay.
12 Q. And I'm asking you whether you accept that his evidence
13 as to his state of mind is correct, or you are saying he
14 is making that up?
15 A. Are you asking me if his state of mind was correct?
16 Q. I'm asking you -- your position is that he was part of
17 the plot and he had an improper desire to get rid of
18 you. I think that's what your position, isn't it?
19 A. Yes.
20 Q. So when he says that actually, he thought the
21 allegations were serious and required investigation, ie
22 it wasn't about getting rid of you but investigating the
23 matters, you are saying that when he says that, that's
24 not true?
25 A. No, if he wanted to investigate it, fine, but procedures

1 needed to be followed.
2 Q. I'm not asking you about procedures; I'm asking you
3 about why he was doing what he was doing. I'm saying
4 that he was doing it because he thought the allegations
5 were serious and needed to be investigated. I think the
6 position that you are taking is that that's not the case
7 and he just wanted to get rid of you. Which is it?
8 A. If that's what he truly believed, then, yes, investigate
9 it.
10 Q. You were eventually interviewed by Mr Hamilton, not
11 Mr McAlindon?
12 A. That's correct.
13 Q. And you had an interview on 28 June?
14 A. That's right.
15 Q. And 6 July?
16 A. That's correct.
17 MR POTTS: Just for your Lordship's note, the 28 June
18 interview notes are E3/559 {E/135/559} onwards and the
19 6 July, E3/612 {E/152/612} onwards.
20 MR JUSTICE NUGEE: Thank you.
21 MR POTTS: Mr Hamilton interviewed you, rather than
22 Mr McAlindon, to accommodate your objections to
23 Mr McAlindon. Isn't that right?
24 A. Yes, I did make many objections and eventually he was
25 supposed to have been removed, yes.

1 Q. So can we just have a look at E2/455 {E/99/455}. Do you
 2 have that?
 3 A. I do.
 4 Q. It's a letter of 21 May?
 5 A. Yes.
 6 Q. That's a letter from Alison Anderson and the second
 7 paragraph says:
 8 "We have arranged for Neil Hamilton ... to continue
 9 the investigation and to carry out any interviews that
 10 are necessary."
 11 And if you can put E2 away, E3/661, please.
 12 {E/167/661}. Do you have that?
 13 A. I do, yes.
 14 Q. 661 is an investigation report prepared by Mr Hamilton,
 15 dated 27 July?
 16 A. That's correct.
 17 Q. Do you see that?
 18 A. Yes.
 19 Q. In fact, it had taken three months to be able to hold an
 20 interview with you, hadn't it. You were suspended
 21 in March?
 22 A. That's correct, yes.
 23 Q. And we are talking about the end of June?
 24 A. That's correct.
 25 Q. And you signed off sick on the day after suspension?

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1 A. That's not correct. I was signed off sick on the 30th.
 2 Q. Is it a couple of days then?
 3 A. Yes.
 4 Q. A couple of days. And in fact 661, if you look at the
 5 bottom of the page, it says that:
 6 "... absented herself from the process through
 7 incapacity for stress-related symptoms. It is noted that
 8 this incapacity took effect Wednesday 28 March, the day
 9 after SB was suspended."
 10 Is that right?
 11 A. That's not correct, no.
 12 Q. It's not?
 13 A. No.
 14 Q. The following day?
 15 A. I was signed off sick on 30 March.
 16 Q. A couple of days later, okay.
 17 If you turn over to 671 {E/167/671} -- in fact
 18 starting at 670 is his conclusions {E/167/670}. You
 19 have read this report, obviously, haven't you, Ms Birdi?
 20 A. I have, some time ago.
 21 Q. 671. He concluded --
 22 A. 671?
 23 Q. 671, final paragraph, he concluded that there was
 24 a disciplinary case to answer; correct?
 25 A. That's correct, yes.

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1 Q. Is your position that Mr Hamilton didn't honestly
 2 believe the conclusions contained in the report, namely
 3 that there was a case to answer?
 4 A. I don't believe Mr Hamilton was unbiased and he wasn't
 5 an impartial investigator.
 6 Q. Are you saying he did honestly believe it or he didn't?
 7 A. Well, he wasn't impartial. So I don't believe so, no,
 8 and he wasn't impartial because if you look at the email
 9 on 14 June 2007, I hadn't even met him and yet he was
 10 making comments.
 11 Q. 670. If you look at some of the conclusions, he was
 12 noting there the allegation about members of your
 13 family? {E/167/670}
 14 A. Hm-mm.
 15 Q. And says it's debatable whether they were proper
 16 employees. Debatable as to the value of their services?
 17 A. Yes.
 18 Q. Disproportionate payments. MR -- is that your husband?
 19 A. That's right, yes.
 20 Q. His role within the business is doubtful. Lack of
 21 detailed knowledge of the main terms and conditions of
 22 employment. Forms the conclusion that probably he
 23 didn't himself consider himself to be an employee, at
 24 best an insignificant role. Do you see that?
 25 A. I do.

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1 Q. So your father, husband and Mrs Patel, they were on the
 2 payroll. They weren't on any rosters, were they?
 3 A. No, they weren't.
 4 Q. None of them had written contracts or conditions of
 5 employment?
 6 A. No, they didn't.
 7 Q. They didn't have employment files?
 8 A. Well, Mushtaq did have a file, like I said, which had
 9 a sponsorship agreement in.
 10 Q. It wasn't an employment account, was it? That's later,
 11 sponsorship?
 12 A. He didn't have an employment contract.
 13 Q. He didn't have an employment file either, did he?
 14 A. He didn't have a file with a contract in that was found,
 15 no.
 16 Q. He didn't have a contract at all?
 17 A. No contract was found, no.
 18 Q. And he had been paid significant amounts from the
 19 business?
 20 A. He had, yes.
 21 Q. And he notes the similarity of the payments and their
 22 connection to the households; it raises serious doubts.
 23 Do you see that?
 24 A. I do, yes.
 25 Q. He also refers to the fact there were no receipts or

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1 invoices for the refurbishment work?
 2 A. Right, okay.
 3 Q. As well. That was another of the complaints, wasn't it?
 4 A. Yes.
 5 Q. There is also a reference -- I think there had been an
 6 issue about a dividend as well; there was an allegation
 7 about the dividend being improper as well, the £8,000
 8 payment. Mr Patel made that allegation as well, didn't
 9 he?
 10 A. I don't know about that. Is that in there?
 11 Q. There is a reference to a blue book, which you had said
 12 you would produce. Do you remember that?
 13 A. I do, yes.
 14 Q. And you said that would demonstrate that you were owed
 15 £8,000?
 16 A. That's right.
 17 Q. And you never produced that book, did you?
 18 A. No, I did not have the book on me.
 19 Q. You didn't have it -- not on you, but you didn't have it
 20 afterwards either, because you were asked to produce it?
 21 A. No, I didn't have it.
 22 Q. You didn't have it?
 23 A. No.
 24 Q. What I suggest to you is that based on those facts
 25 alone, it was open to Mr Hamilton to form the view that

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1 there was at least a disciplinary case to answer?
 2 A. If you look at the notes, his conclusions -- if you look
 3 at the notes, my husband did re-amend the notes because
 4 there's some stuff that is not quite right in here,
 5 which you will have to discuss with my husband. But the
 6 first part about his payments, I mean, that wasn't
 7 even -- that wasn't upheld.
 8 Q. I'm not asking about whether they were upheld, Ms Birdi.
 9 He wasn't making findings against you. His conclusion
 10 was that there was a disciplinary case to answer.
 11 The point I'm putting to you is that it was open to
 12 the material, I put to you, that Mr Hamilton could have
 13 formed the view that there was a disciplinary case to
 14 answer?
 15 A. I think that if we had had someone who was independent,
 16 who was fair -- Mr McAlindon was in the background
 17 throughout these processes -- I think a different
 18 conclusion would have been found. I do believe that.
 19 Q. So you are saying it wasn't open to him to form that
 20 view. Is that your position?
 21 A. I think if he had been fair, it would have been
 22 a different view, yes.
 23 Q. And I also put it to you --
 24 A. And also I don't feel that my suspension should have
 25 happened because everything on here was at head office,

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1 and head office could have seen -- there was nothing
 2 that could be changed. So the costing to the business
 3 was unnecessary. This could have been investigated,
 4 like a normal process is, and Mr Patel was investigated
 5 before they came to do an investigation with him. They
 6 should have investigated this and then they should have
 7 come in and questioned me on this and it should have
 8 been fair.
 9 Q. I put it to you that Mr Dyson's view was that the
 10 allegations were serious and that suspension and
 11 investigation were warranted, and that was his honest
 12 view. Do you accept that?
 13 A. Nothing had been presented to the board on the day I was
 14 suspended. And the allegations were coming from a thief
 15 and he made all these payments, virtually.
 16 Q. Let me put the question again. I put it to you that
 17 Mr Dyson's view was that the allegations were serious
 18 and that suspension and an investigation were warranted,
 19 and that was his honest view?
 20 A. No, suspension -- I don't believe -- if they wanted to
 21 investigate it, they could have investigated it but
 22 I would have been in the store. I couldn't hide
 23 anything. Everything was with head office.
 24 Q. Ms Birdi, I'm not asking you whether you think that
 25 something different should have been done. I'm putting

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1 to you that Mr Dyson, firstly, formed that view?
 2 A. Right.
 3 Q. Do you accept his evidence that he formed that view or
 4 do you not?
 5 A. Yes, I accept he formed that view.
 6 Q. So you accept that he formed the view that the
 7 allegations were serious and that suspension and
 8 investigation were warranted. Do you accept that he
 9 formed that view?
 10 A. That's the view he formed, yes, but --
 11 Q. And you accept that he formed that view honestly?
 12 A. No, I don't, because they had already formed the view to
 13 get rid of me before they had done any investigation.
 14 Q. How could he do both? How could he form the view that
 15 the allegations were serious and warranted
 16 investigation, and also form the view that actually, he
 17 wasn't interested in that, he just wanted to get rid of
 18 you? They are different, aren't they?
 19 A. I was suspended on 26 March -- on 27 March, okay. No
 20 investigation process had taken place at that stage.
 21 I was just thrown out of the business. If an
 22 investigation process had taken place ... I don't know
 23 what I'm saying.
 24 Q. I'll put two points to you and we will move on. The
 25 first point I put to you is that it was open to

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1 Mr Hamilton in the circumstances to form the view that
 2 he did, that there was a case to answer?
 3 A. Okay.
 4 Q. Do you accept that or do you not?
 5 A. No, I don't accept that.
 6 Q. Fine. I also put it to you that the report represented
 7 his honest opinion. Do you accept that?
 8 A. I don't feel he was impartial.
 9 Q. Do you accept it was his honest opinion?
 10 A. No, I don't.
 11 Q. Okay. Let's move on.
 12 Could you turn to page 672. {E/168/672} You were
 13 invited to a disciplinary hearing?
 14 A. That's right.
 15 Q. On 9 August. Is that right? You see that from 672.
 16 A. Yes.
 17 Q. If you just turn back to your witness statement, 159,
 18 {B/1/33} you say that the hearing was "a farce" and that
 19 the allegations were trivial.
 20 The allegations weren't trivial, were they; they
 21 were serious?
 22 A. When I was first suspended, I was told that it was
 23 because I was paying my husband money out of the
 24 business to avoid paying tax on it. This allegation
 25 wasn't upheld.

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1 Q. I'm not asking you about what was upheld. I'm asking
 2 you, at the time of the hearing before Mr Raines, the
 3 allegations were not trivial. They were serious,
 4 weren't they?
 5 A. No, I don't think they were serious, no. As regards to
 6 the contracts, it wasn't dishonesty, it was
 7 administrative issues, which wasn't even --
 8 Q. No, that wasn't just the allegation. It wasn't just
 9 that they didn't have contracts, Ms Birdi, as you know.
 10 The allegation was that you were paying people as
 11 employees, when they weren't employees and they weren't
 12 carrying out work to justify those payments?
 13 A. But they were and that was not upheld.
 14 Q. I'm dealing with the allegations, Ms Birdi, not the
 15 conclusion at the end.
 16 A. Okay.
 17 Q. Let's just work back from that.
 18 You are saying that the allegations were trivial.
 19 The allegation that you were making false payments to
 20 members of your family was a serious allegation, wasn't
 21 it?
 22 A. Yes.
 23 Q. It wasn't a trivial allegation, was it?
 24 A. That wasn't, no, but it wasn't upheld.
 25 Q. So the allegations were failing to account for personnel

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1 as required by law; yes?
 2 A. That's true, and within the business -- I know I have
 3 been told it doesn't shirk my responsibilities as
 4 a director, but that wasn't my role within the store.
 5 Q. As a director you did have a responsibility, didn't you?
 6 A. Yes.
 7 Q. In relation to ensuring that people had terms of
 8 employment?
 9 A. Yes, but I didn't check.
 10 Q. I'm just dealing with the allegations, first.
 11 Secondly, treating your father, husband and
 12 Mrs Patel in a favourable and unorthodox manner. Yes?
 13 That was another allegation?
 14 A. That was an allegation, yes.
 15 Q. Also that this was an improper mechanism for extracting
 16 money from the business by falsely representing them as
 17 employees; yes?
 18 A. That was an allegation, yes.
 19 Q. Unauthorised use of contractors, leading to health and
 20 safety exposure in relation to the kitchen works?
 21 A. Was that the allegation? I thought it was not using
 22 approved suppliers. Oh, yes, I see that.
 23 Q. Yes. And also leading to health and safety exposure as
 24 a result?
 25 A. Right, yes.

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1 Q. Yes? And also an unprofessional and irresponsible
 2 approach as a director?
 3 A. That was the allegation, yes.
 4 Q. These were serious allegations, weren't they? You may
 5 not have agreed with them but the allegations were
 6 serious?
 7 A. Okay.
 8 Q. You accept that they are serious allegations, is that
 9 right? Sorry, you just said "okay". I want to be clear
 10 that you are accepting the premise, or are you just
 11 accepting that I'm saying something? You accept what
 12 I'm saying; is that right? When you say "okay"?
 13 A. I accept that.
 14 Q. The hearing was rescheduled for over a month at your
 15 request?
 16 A. It wasn't at my request; I was very, very ill.
 17 Q. Fine. But you requested it to be rescheduled because
 18 you were ill?
 19 A. Because I was very ill, yes.
 20 Q. And the hearing was conducted by Mr Raines on
 21 20 September?
 22 A. That's right.
 23 Q. Okay. Could you turn to E4, please, page 890.
 24 {E/214.3/890} These are Mr Raines' disciplinary
 25 findings?

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1 A. That's right.
 2 Q. You have seen this document before, haven't you?
 3 A. I have, yes.
 4 Q. If you look on page 890, the first allegation, which was
 5 the failing to account for personnel as required by law?
 6 A. That's right.
 7 Q. He found that that allegation was proven?
 8 A. Correct.
 9 Q. There were no written employment contracts or conditions
 10 for Mrs Patel, your father or your husband?
 11 A. That is correct.
 12 Q. And that was in breach of employment law; correct?
 13 A. Yes, that's correct.
 14 Q. There were no stated hours or rates of pay or holiday
 15 entitlement?
 16 A. They didn't take holiday.
 17 Q. There were no stated hours or rates of pay or terms as
 18 to their holiday entitlement, as required by law?
 19 A. That's correct.
 20 Q. Yes. And that was in contrast to the other staff not
 21 connected with you?
 22 A. That's not correct. I did raise this, that there was
 23 another member of staff who didn't have a contract.
 24 Q. One other member of staff, you say?
 25 A. That's right, yes. I only found that out because I had

1 to do payroll and I didn't know what her rate was.
 2 Q. These are serious findings, aren't they? This is
 3 a serious failing?
 4 A. It's a failing but I don't think it's something that you
 5 should be suspended over. This is administrative, it's
 6 not dishonest.
 7 Q. In fact, you yourself admitted in your first interview
 8 with Mr Hamilton that your husband should have had an
 9 employment contract but did not?
 10 A. Did I? I can't remember.
 11 Q. All right. I suggest to you that you did.
 12 Third allegation, just to deal with that. That was
 13 about non-approved contractors in breach of Specsavers'
 14 policies, exposing the company to health and safety
 15 exposure. You accepted that allegation?
 16 A. I accepted it because I wasn't aware of the policy. I'm
 17 still confused about the policy because I can see that
 18 Specsavers don't have a policy, because I have been
 19 raising issues about approved suppliers regarding works
 20 gone through my business recently.
 21 Q. You had been --
 22 A. There is no policy.
 23 Q. You had been a joint venture partner for some seven or
 24 eight years by this point, hadn't you?
 25 A. I had, yes.

1 Q. And the manual, Specsavers' manual, dealt with doing
 2 building works and there were a number of approved
 3 builders for doing works, weren't they?
 4 A. Which manual is this?
 5 Q. The online manual.
 6 A. I hadn't seen that.
 7 Q. So, are you saying you weren't aware that there was
 8 a requirement to use approved builders?
 9 A. Not off the shop floor, no I wasn't. And the thing is,
 10 in the years we had been there, the seven years, we had
 11 used our own contractors, which -- you know, stores
 12 would say, "Oh, I have used him", "I have used him", and
 13 we have done lots of repairs like toilet, lab work, from
 14 companies that are not Specsavers-approved. They are
 15 just local people. They have always gone through the
 16 accounts. They have gone to head office and head office
 17 has paid them without any queries.
 18 Q. And the work which had been done was in fact so poor
 19 that it had to be remedied afterwards?
 20 A. It was not good. That's why they were never paid.
 21 Q. The fourth allegation is in terms of being inconsistent
 22 with your approach to communication with Specsavers.
 23 You see the findings, there?
 24 A. I do.
 25 Q. At 891. {E/214.3/891}

1 "... inconsistent in your approach to
 2 communication..."
 3 At the bottom of the page, "consequent delays":
 4 E/214.3/892}
 5 "Whilst I note what you say in relation to
 6 Mr McAlindon, communication since ... April has only
 7 taken place with other representatives of [Specsavers]."
 8 Do you see that?
 9 A. I do.
 10 Q. And you see that he says he has read the various letters
 11 and emails. He doesn't find the content or tone
 12 unreasonable of the Specsavers emails. Do you see that?
 13 A. I see that.
 14 Q. And that:
 15 "Communication with you has been difficult and
 16 protracted and you contributed to this by only providing
 17 responses at the last minute or past a specified
 18 deadline."
 19 A. I kind of find it very, very upsetting on this because
 20 I was extremely ill. The way Mr McAlindon had conducted
 21 the meeting when he threw me out the business was
 22 horrific and I made a formal complaint about him to head
 23 office on 12 April and asked for him to be removed and
 24 they wouldn't remove him. They didn't even investigate
 25 my complaint and follow any procedures. They just said,

1 "We have spoken to him", and they haven't done anything
 2 wrong.
 3 It was only after I wrote again, sort of weeks
 4 after, that they decided to remove him, but he was
 5 always there in the background, which I now see from
 6 disclosure.
 7 Q. There are a number of points you make there and I'll
 8 just deal with a couple of them.
 9 A. Hm-mm.
 10 Q. From the beginning of April, your communications took
 11 place with other representatives of Specsavers; correct?
 12 A. That's correct, yes.
 13 Q. And indeed, you did make a formal grievance complaint
 14 about Mr McAlindon, which was investigated in 2008?
 15 A. No, I made a formal complaint on 12 April asking them to
 16 remove him because I didn't feel he was fair, impartial.
 17 He had been very, very aggressive and threatening in
 18 that meeting and they just said he has done nothing
 19 wrong. They didn't investigate it, no.
 20 Q. In 2008 there was an investigation into Mr McAlindon --
 21 A. There was then.
 22 Q. -- on a grievance that you raised; correct?
 23 A. But I raised the grievance against him on 12 April 2007,
 24 asking for him to be removed. And the lack of support,
 25 that effect he had on me was awful. I had chest pains,

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1 went to see the doctor, they signed me off and I'm
 2 asking Specsavers to remove him because I didn't feel he
 3 was fair and impartial. They didn't remove him and
 4 I had to keep writing to them. They didn't investigate
 5 my grievance. They made me really, very, very sick.
 6 Q. You did not have to deal with Mr McAlindon thereafter,
 7 did I?
 8 A. I was told that I would be having a meeting with him.
 9 Q. You didn't have a meeting with him?
 10 A. No, on 29th -- if you can imagine, I'm having chest
 11 pains, I've been thrown out of the business I have
 12 dedicated my life to, I've been threatened that I'm
 13 going to get struck off from the GOC. I'm asking for
 14 this chap to be removed and I'm being told -- the day
 15 that they find out I'm having chest pains, a letter is
 16 sent out to me to say, "We need you to have a meeting
 17 with him".
 18 Q. Ms Birdi, I understand you may have a lot you wish to
 19 say, but please could you answer my questions.
 20 A. Yes.
 21 Q. You didn't have a meeting with Mr McAlindon, did you?
 22 A. I didn't, no.
 23 Q. Mr Raines -- going back to 892, {E/214.3/892} he also
 24 makes the point that you have been instructed to pass
 25 across documents to be considered and you ignored

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1 a reasonable instruction in relation to that provision
 2 of documents?
 3 A. Which --
 4 Q. The penultimate paragraph in this section; the third
 5 paragraph down in 892?
 6 A. What are we talking about:
 7 "... any documents that you wished to be considered
 8 at our meeting."
 9 Is that what you are referring to?
 10 Q. Yes.
 11 A. I was very ill. I find this allegation shocking,
 12 really. I was very ill. I couldn't conduct myself as
 13 I was very, very sick.
 14 Q. Right. Let's go back to the second allegation. The
 15 second allegation at the second holepunch on 891.
 16 {E/214.3/891}
 17 It was upheld, the allegation that your family
 18 members, your husband and father, were treated
 19 differently to other employees and the frequency and
 20 size of the payments made to them had not been
 21 satisfactorily explained.
 22 That was upheld, that finding?
 23 A. Right, okay.
 24 Q. Yes? And he went on to say:
 25 "I'm not entirely convinced about the motivation

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1 behind your actions and am prepared to give you the
 2 benefit of doubt. I therefore find for only the first
 3 part of the allegation ... but not the second."
 4 So Mr Raines gave you the benefit of the doubt as to
 5 your motives in treating your relatives differently and
 6 the payments that you made to other employees; correct?
 7 A. That's correct but I clearly stated what the payments
 8 were for, for my husband.
 9 Q. And in the summary at 892, {E/214.3/892} his finding was
 10 that you should be given a final written warning. He
 11 said that you had not been transparent in your
 12 treatment. You had failed to keep satisfactory records.
 13 Failed to take seriously your obligations as
 14 an employer. Disconnected from the high standards of
 15 trading requirements that Specsavers promotes across the
 16 group in order to meet the challenging regulatory
 17 environment standards for work services and health and
 18 safety.
 19 Do you see that?
 20 A. I do, yes.
 21 Q. He said that:
 22 "Whilst {it could} amount to gross misconduct,
 23 I have taken into account the fact that you have
 24 14 years service with Specsavers and I have given you
 25 the benefit of doubt under allegation 2 in terms of your

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1 motives. I believe therefore that it would be correct
 2 under the circumstances to issue you with a final
 3 written warning."
 4 To remain on your file for 12 months?
 5 A. Right.
 6 Q. Are you saying that Mr Raines didn't genuinely believe
 7 what he had concluded in his report?
 8 A. You see, if he did -- I don't know how to answer that
 9 question because I'm being held accountable for things
 10 that I know now through disclosure that Specsavers do
 11 themselves. And you know, these are admin errors. You
 12 know, like the -- as regards to approved suppliers,
 13 I have just found out in September, after my research,
 14 that Retail Covert Surveillance, which is a company,
 15 supposed to be an independent third party company,
 16 provides services for putting in cameras in our stores,
 17 is actually part-owned by one of the guys who suspended
 18 me. And also David Clark says in his letter in 2008, we
 19 don't keep any timesheets for the management cover that
 20 was put in Dartford.
 21 So it is an admin error. People do make these
 22 things.
 23 Q. Ms Birdi, I don't think you are actually answering my
 24 question. I'll put the question again: are you saying
 25 that Mr Raines didn't genuinely believe what he had

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1 concluded in his report?
 2 A. Maybe he did. I don't think he did. I don't, because
 3 I told him what all the payments were for.
 4 Q. So you don't believe he honestly believed what he said
 5 in the report?
 6 A. Well, that -- I think where I'm getting confused is
 7 because I don't believe that he should have come to
 8 those conclusions and given me a final warning. I think
 9 it was severe, the penalty.
 10 Q. If you look at your witness statement, paragraph 169 --
 11 no, let's go to 167: {B/1/35}
 12 "The final written warning that Specsavers issued to
 13 me was simply designed to set me up for dismissal at
 14 a later date."
 15 It was Mr Raines who issued you with the final
 16 written warning; correct?
 17 A. Yes.
 18 Q. So when you say "Specsavers", what you therefore mean is
 19 what Mr Raines did was simply designed by him to set you
 20 up for dismissal at a later date. Isn't that the
 21 allegation you are making?
 22 A. It is. I think they had -- from looking at the
 23 disclosures, it does seem that they had the intention of
 24 actually sacking me.
 25 Q. I'm talking about Mr Raines, because this is what your

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1 witness statement is saying here. You are saying,
 2 I think -- I put it to you that you are saying that
 3 Mr Raines was setting you up for dismissal at a later
 4 date; correct?
 5 A. Yes.
 6 Q. So what you are saying is that he didn't genuinely
 7 believe what he put in his report; he was just setting
 8 you up for dismissal?
 9 A. Yes, I do believe that. I believe that they intended to
 10 dismiss me because the disclosures show that they were
 11 intending to get 100 per cent of the A shares.
 12 Q. "They" is a bit vague, Ms Birdi. I'm talking about
 13 Mr Raines here. You are saying that Mr Raines did that?
 14 A. Yes.
 15 Q. 169. You say: {B/1/36}
 16 "... Specsavers had intended to dismiss me at this
 17 first disciplinary hearing."
 18 Correct?
 19 A. Yes.
 20 Q. Again, if we put the people in, you are talking about
 21 Mr Raines had intended to dismiss you at the first
 22 hearing; isn't that right?
 23 A. That's right, yes. I think it's Derek Dyson --
 24 Mr McAlindon was the gentleman who was pushing all of
 25 this because I was going to expose the deal that -- they

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1 thought I was going to whistle-blow on Mr Patel. And
 2 they are in the same chain. You have got Derek Dyson,
 3 I believe, and Mark Raines and Mel McAlindon.
 4 Q. So it was Mr Raines who issued you with the warning?
 5 A. That's correct.
 6 Q. You are saying he didn't genuinely believe what he was
 7 doing; he was just setting you up for dismissal?
 8 A. Yes.
 9 Q. Yes? You are saying also Mr McAlindon and Mr Dyson were
 10 a party to that plan?
 11 A. Yes, Mr McAlindon most certainly.
 12 Q. And I think you said Mr Dyson as well, didn't you?
 13 A. Yes.
 14 Q. That's your position as well; correct?
 15 A. It is, yes.
 16 Q. So you are saying that this was pre-ordained?
 17 A. Well, I believe that when I was challenging Mr Patel's
 18 departure, Mr McAlindon thought that I would expose the
 19 deal that they had done.
 20 Q. Could you just try and answer my question first. If you
 21 want to expand on it afterwards, that perhaps might be
 22 a bit clearer?
 23 A. Sorry, carry on.
 24 Q. You are saying that this was pre-ordained?
 25 A. Yes, I am.

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1 Q. So what you are saying is that he wasn't making any
2 genuine effort. This was a pre-ordained result;
3 correct?
4 A. Yes, I think they wanted to sack me, in fact.
5 Q. And you are saying --
6 A. And that's evident from the disclosure I see now.
7 Q. And you are saying that Mr Raines was acting
8 dishonestly?
9 A. Yes. I don't think I should have been held to a final
10 warning.
11 Q. It's not a question of whether he made a mistake. Your
12 allegation is that he acted dishonestly in preparing
13 this report, isn't it? That's your allegation?
14 A. My allegation -- that it was far too harsh. I shouldn't
15 have been given a final warning.
16 Q. No, no, no, Ms Birdi. This isn't a question that he got
17 it wrong. Your witness statement -- we have just looked
18 at 169 --
19 A. Hm-mm.
20 Q. -- and 167. What you are saying is that it wasn't that
21 he got it wrong; this was all set up to dismiss you?
22 A. It was, yes.
23 Q. That was dishonest, wasn't it?
24 A. Yes, I believe they wanted to -- the disclosures show
25 that they wanted to sack me before and get 100 per cent

1 of the A shares.
2 Q. But Mr Raines didn't recommend dismissal, did he?
3 A. No, he didn't.
4 Q. If he had been wanting to get rid of you, having found
5 that there were grounds for summary dismissal, why not
6 just dismiss you?
7 A. I believe it was because I was requesting all
8 documentation regarding Mr Patel's stealing and how much
9 money he stole, which they had got on 19 September.
10 Q. Mr Raines was determined to give you the benefit of the
11 doubt on the most serious allegation, didn't he?
12 A. It wasn't benefit of the doubt. Those payments were
13 legitimate payments.
14 Q. No, Ms Birdi. His report said that he was giving you
15 the benefit of the doubt as to your motives in making
16 those payments; correct?
17 A. That's correct.
18 Q. I put it to you, Ms Birdi, that that's hardly indicative
19 of someone who is improperly motivated to get rid of
20 you?
21 A. Well, disclosure showed that they were intending to get
22 100 per cent of the A shares. There's emails in there
23 in August, in September --
24 Q. Let's personalise this because we are dealing with
25 individuals here?

1 A. Okay.
2 Q. You are saying Mr Raines, who gave you the benefit of
3 the doubt --
4 A. Yes.
5 Q. -- your case is that he was acting dishonestly in
6 relation to the preparation of his report; you accepted
7 that earlier?
8 A. Yes.
9 Q. I'm suggesting to you that the fact that he gave you the
10 benefit of the doubt on the most serious allegation is
11 hardly indicative of someone who was dishonest?
12 A. Those payments were legitimate. You couldn't find any
13 other way with that.
14 Q. The written warning was only to lie on your file for
15 12 months, wasn't it?
16 A. That's correct.
17 Q. You say you were being set up for dismissal at a later
18 date?
19 A. That's correct.
20 Q. I put it to you that a written warning which would
21 expire in 12 months wasn't a very good way of setting
22 you up for dismissal either, unless you were going to be
23 dismissed very shortly?
24 A. No. You actually said in the previous trials that
25 a second written warning is a very severe penalty. It

1 was a very severe penalty. If I just made one little
2 error again, I could be dismissed.
3 Q. I'm not asking about the severity of a written warning.
4 I accept that is a serious penalty. I'm talking about
5 the expiry in 12 months?
6 A. Yes, what is your point?
7 Q. I'm saying it's not a very good way of setting you up
8 for dismissal unless they are going to get rid of you
9 within 12 months.
10 A. That's correct.
11 Q. At 169, the point you have alluded to, you are saying:
12 {B/1/36}
13 "From the disclosures that I have now seen, it is
14 clear to me that Specsavers had intended to dismiss me
15 ... They were unable to take this action because my
16 then solicitors sent a letter to Specsavers on
17 19 September..."
18 A. Yes.
19 Q. Requesting some documentary evidence:
20 "... relating to the misconduct of Mr Patel..."
21 A. That's correct.
22 Q. Just pausing there, you were legally advised throughout
23 this process; is that right?
24 A. No, I got legal advice when I received my disciplinary
25 package.

1 Q. And could we just turn up E4/838, please. {E/201/838}
2 Your solicitors were Crust Lane Davis?
3 A. At the time, yes.
4 Q. And this was a letter of 19 September?
5 A. That's right.
6 Q. And the letter made quite a large number of requests for
7 documents; correct?
8 A. That's correct.
9 Q. Personnel files and so on and so forth, documentary
10 evidence, videos in relation to Mr Patel's misconduct?
11 A. That's correct.
12 Q. And in fact those requests weren't pursued; they weren't
13 followed up, were they?
14 A. No, I have requested it -- Nimesh Patel's. I have
15 requested it repeatedly.
16 Q. Sorry, your solicitors didn't follow up those requests,
17 did they?
18 A. I'm not sure, but I certainly did.
19 Q. Can I suggest to you that one innocuous letter which was
20 not pursued is hardly a reason to defeat a plot which
21 you say had been 12 months in the making?
22 A. I had repeatedly requested this information and I was
23 repeatedly denied this information, and this deal --
24 like Mr McAlindon said, it could raise serious tax
25 implications and affect the brand, and I do strongly

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1 believe that Mr McAlindon, because there is such
2 a conflict, that he makes money out of suspending and
3 investigating, which is clearly shown in his email of
4 1/9/07, where he actually says he is overcharging to
5 make money for his department and also to decrease the
6 value of the business -- if I exposed this, you know, it
7 was affecting -- it would affect him, it would affect
8 Specsavers, so there was that malice by Mr McAlindon.
9 Q. So you are saying that --
10 A. May I also state that there was a very severe conflict
11 with Mr Phil Barnes as well because he was personally
12 taking money out of the business, when he had never said
13 that he was part of Retail Covert Surveillance and
14 pocketing money personally. There was severe conflict.
15 Q. The question I think I put some time ago was that one
16 innocuous letter which is not pursued is hardly a reason
17 to defeat a plot which was 12 months in the making. You
18 don't accept that?
19 A. No, I don't accept that.
20 Q. I suggest to you that if Specsavers had been engaged in
21 some dishonest conspiracy to get rid of you for
22 12 months, disciplinary procedure would have been the
23 perfect opportunity for them to do so.
24 A. But they were afraid of exposure of the deal.
25 Q. The fact that you weren't dismissed doesn't fit very

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1 well with your conspiracy theory, does it?
2 A. Like I said to you, I was asking for all this
3 information, which was never given to me despite
4 repeated requests, and they were -- I mean, that phone
5 call from Mr McAlindon, where he told me to basically
6 stop making pestering phone calls to head office, he
7 accused me of telling staff that Nimesh was a thief,
8 they were clearly worried in case this came out and
9 Mr Patel was saying he was going to take action because
10 he had made this deal with Specsavers and he couldn't
11 get work because locum agencies said he was a thief.
12 Q. Any call that you had with Mr McAlindon is months and
13 months earlier, isn't it?
14 A. Yes, it was but it all stems from Mr Patel and the
15 actions that Mr McAlindon and Specsavers took in regard
16 to the exit deal that they did with him, and they did
17 not want it to be exposed. So I truly believe that the
18 reason I wasn't dismissed was because of this and if you
19 look at the emails, August, they were going to change to
20 a shared venture/group venture, get 100 per cent of the
21 shares -- September again -- the evidence shows that the
22 intention was to get rid of me.
23 Q. Ms Birdi, your answers are getting longer and longer.
24 I don't want to stop you saying what you want to say but
25 I would prefer it, please, if you could try and answer

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1 my questions?
2 A. Sorry, okay.
3 Q. Could you turn up E4, please?
4 A. Yes.
5 Q. 1051 {E/263/1051}. You appealed against Mr Raines'
6 findings?
7 A. I did.
8 Q. And your appeal was heard by Mr John Perkins?
9 A. That's correct.
10 Q. And that was on 21 November?
11 A. That's correct.
12 Q. And you see at 1051 to 1058 that's his written decision.
13 A. That's correct.
14 Q. He dismissed your appeal?
15 A. He did.
16 Q. Can I just turn back to your witness statement at 169.
17 We have been looking at this.
18 A. Which --
19 Q. Your witness statement, sorry, 169. {B/1/36} I'm sorry,
20 I misspoke. Paragraph 169. You say:
21 "It's clear that Specsavers had intended to dismiss
22 me. They were unable to take this action ..."
23 And so on. You are suggesting also that Mr Perkins
24 was part -- when you refer to Specsavers, that includes
25 Mr Perkins, doesn't it?

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1 A. As regards to?
 2 Q. The intention to dismiss you?
 3 A. I don't believe Mr Perkins at this point was -- he was
 4 looking up Mr Raines' report.
 5 Q. So you are not suggesting that Mr Perkins was a part of
 6 the conspiracy?
 7 A. No, I'm not, not at this point, no.
 8 Q. Not at this point. Are you saying he was at some point?
 9 A. Yes.
 10 Q. When?
 11 A. When -- when I started making enquiries again about
 12 wanting to know all these payments that had gone through
 13 the business and the monies Mr Patel had stolen and
 14 demanding a DO director because I didn't want to be
 15 a shared venture, that was in 5 December 2007, and
 16 15 December 2007, and I was querying all these costs
 17 going through. Eventually, I was told that I would get
 18 a new director, and I then raised a grievance against
 19 Mr McAlindon on 27 February and then suddenly
 20 John Perkins got involved to make sure that the new
 21 director would be in place asap.
 22 Q. So you say that Mr Perkins got involved to get a new
 23 director in. That's Mr Singh in 2008?
 24 A. Yes, with an intention to drive me out the business.
 25 Q. I see. So you are saying that at that point he became

1 part of the conspiracy and he knew that Mr Singh was
 2 being put in with the improper purpose of driving you
 3 out of the business. Is that right?
 4 A. Yes, that's correct.
 5 Q. Okay, but at this stage, 12 December 2007, you are
 6 saying that this was an honest report --
 7 A. Yes --
 8 Q. -- so far as Mr Perkins was concerned?
 9 A. I think -- I do believe -- I think he just looked at
 10 what Mr Raines had done, but I was extremely ...
 11 Q. It wasn't just the report, was it? If you look at 1051,
 12 {E/263/1051}, he reviewed -- you provided some written
 13 grounds -- there were some written grounds of appeal;
 14 correct?
 15 A. Right, okay.
 16 Q. And he also reviewed the documentary evidence, he says.
 17 A. That's right.
 18 Q. So it wasn't just Mr Raines' report; it's documentary
 19 evidence and your submissions?
 20 A. I can't remember what I sent in.
 21 Q. That's what he says he looked at. Are you accepting
 22 that he meant what he said?
 23 A. I'll accept that, yes.
 24 Q. You are accepting that this was a genuine decision,
 25 taken by him in good faith?

1 A. I do, but I think the penalty was extremely harsh.
 2 Q. Okay, you disagree with the result but you accept that
 3 that was a genuine decision that he took?
 4 A. I do.
 5 Q. A lot of your witness statement deals with a grievance
 6 that you raised against Mr McAlindon on
 7 27 February 2008.
 8 A. Yes.
 9 Q. Correct? There is a lot of evidence in your witness
 10 statement about that.
 11 A. Okay.
 12 Q. The grievance was investigated by Mr Clark, wasn't it?
 13 A. It was, yes.
 14 Q. And he is the director of business performance.
 15 A. He is, yes.
 16 Q. You had a full day grievance hearing with Mr Clark on
 17 22 April 2008?
 18 A. Yes, I did.
 19 Q. And you were accompanied by your husband?
 20 A. I was.
 21 Q. Mr Clark also interviewed Mr McAlindon?
 22 A. He did.
 23 Q. And Mr Barnes?
 24 A. Yes.
 25 Q. If you could be passed E6, please. E6 at page 1396

1 {E/372/1396}
 2 A. Yes.
 3 Q. And that runs through to, I think, 1411.
 4 A. Okay.
 5 Q. Yes?
 6 A. Yes.
 7 Q. You are familiar with this document? You have seen this
 8 document before?
 9 A. I have seen it but I haven't read it fully.
 10 Q. You never read it fully or ...?
 11 A. I read it about three or four months ago but when I got
 12 it, I didn't even look at it properly, really, because
 13 I was so disappointed.
 14 Q. Let's get this clear, you raised this grievance?
 15 A. Yes.
 16 Q. It was investigated. You had meetings with Mr Clark?
 17 A. That's right.
 18 Q. When you received this document, you didn't bother
 19 reading it?
 20 A. I couldn't. I saw the end and I was just so shocked
 21 that they hadn't found anything against Mr McAlindon and
 22 I didn't read it properly. I think I have only read it
 23 once or twice in the last two months.
 24 Q. Did you have legal advice at this time?
 25 A. I'm not sure. I did in July 2007. I'm not sure, sorry.

1 Q. You had legal advice certainly later than that, didn't
2 you?
3 A. Yes.
4 Q. Because in terms of the appeal that you raised --
5 A. Yes.
6 Q. -- your solicitors --
7 A. Yes.
8 Q. -- they assisted you with that. I don't want to ask
9 about advice but the submissions were from them, weren't
10 they?
11 A. What dates are we talking about?
12 Q. In terms of the appeal.
13 A. Yes, I did have solicitors' advice then and that was
14 Crust Lane Davis.
15 Q. The findings were in November 2007?
16 A. That's right, yes.
17 Q. But you are not sure about -- February 2008 is when you
18 raised the grievance. Did you have legal advice at that
19 time, February?
20 A. I'm not quite sure, to be honest with you.
21 Q. Okay. Let's just have a look briefly at this document.
22 If you look at the first two pages, you can see there
23 that the allegations -- I think there are 18 different
24 allegations there? {E/372/1396}
25 A. Yes.

1 Q. There are. And that he was dealing with those
2 18 allegations?
3 A. Yes.
4 Q. In fact, notwithstanding that extensive investigation of
5 the grievance, most of these are raised in your lengthy
6 witness statements in these proceedings, aren't they?
7 A. They are, yes.
8 Q. Mr Clark's evidence is that he spent over 100 hours
9 dealing with your grievance?
10 A. Yes.
11 Q. Do you accept that evidence when he says that?
12 A. I do.
13 Q. You do?
14 A. I do.
15 Q. Are you suggesting that he didn't intend properly to
16 investigate your grievances?
17 A. Well, when I -- when I have read this over the last few
18 months and looked at my notes, things didn't match up,
19 so -- for example, in here I can't -- I can't point to
20 every single thing that didn't match up but, for
21 example, here it says it was agreed that notes were
22 taken at the -- my suspension meeting.
23 Q. Can I just ask you to focus on the question again,
24 Ms Birdi?
25 A. Yes, sorry.

1 Q. Are you suggesting that he didn't intend properly to
2 investigate your grievances -- his intention?
3 A. It's very difficult for me to answer that question
4 because there were so many errors in this compared to
5 our meeting notes and the findings were -- some of the
6 findings just didn't make any sense when you looked at
7 the meeting notes, so --
8 Q. Ms Birdi --
9 A. I would say he didn't --
10 Q. Ms Birdi, I'm not asking whether you agreed with the
11 outcome; I'm asking you whether you accept that he had
12 an honest intention in carrying out this report?
13 A. Well, I don't know what to say to that. Some of the
14 findings were very strange, so ...
15 Q. Ms Birdi, you have made a number of very serious
16 allegations against a large number of people?
17 A. Yes, I understand.
18 Q. And I want to understand what your position is in
19 relation to Mr Clark in this report. Are you saying
20 that he had an honest intention to investigate your
21 grievances or not?
22 A. Because of the findings, I would say no.
23 Q. So you are saying he didn't genuinely intend, in
24 carrying out that task, to investigate the grievance?
25 A. No. He did investigate it and did do interviews but the

1 findings are very odd.
2 Q. I'm not saying that he got it wrong, I know you are
3 saying you don't agree with the result, but I want to be
4 clear: your position is that he was not acting honestly
5 and genuinely in carrying out that task?
6 A. Well, I would say he wasn't because when I look at the
7 evidence, how he refers to me in emails, I would say he
8 wasn't impartial.
9 Q. I put it to you, Ms Birdi, that that's not the case,
10 that this was a genuine and honest attempt by Mr Clark
11 to investigate your grievances?
12 A. Okay. I think if you look at emails, you will see he is
13 referring to Birdi this, Birdi that, and saying:
14 "She is intent on wasting SOG's time."
15 So I don't believe he was fair and impartial.
16 Q. You didn't appeal his decision, did you?
17 A. I didn't, no.
18 Q. You were reminded of your right of appeal at the end of
19 his report?
20 A. I was, yes.
21 Q. But six years later, you are now seeking to re-open
22 those allegations in these proceedings, aren't you?
23 A. I am stating that, yes.
24 Q. I'm not going to ask you questions about all of the
25 18 grievances which you raise.

1 A. Yes.
2 Q. But I'm going to deal with just a couple of those, the
3 more serious allegations.
4 Going back to Mr McAlindon -- on 1 March, he
5 telephoned you?
6 A. Yes.
7 Q. In relation to what you had told staff about Mr Patel.
8 Do you remember that?
9 A. I do, yes.
10 Q. He asked you whether you had told the employees that
11 Mr Patel had been dismissed?
12 A. Absolutely, yes.
13 Q. And you said that you had?
14 A. No, I didn't say that.
15 Q. So what did you say?
16 A. I said he had been forced to resign.
17 Q. Forced to resign?
18 A. Yes.
19 Q. And you also said that you told staff that Mr Patel's
20 had stolen money?
21 A. I didn't. He was forced to resign. Mr McAlindon even
22 says this in his brief note of the conversation he had
23 with me on the 27th February, that I had told the staff
24 that he had been forced to resign.
25 Q. You are referring -- can I take you to E2/331. You have

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1 got a very good grasp of the documents, Ms Birdi. Can
2 I take you to E2/331. {E/59/331}
3 A. Yes.
4 Q. This is his case file?
5 A. Yes.
6 Q. At 331 there is a reference -- firstly, I think we did
7 discuss yesterday -- I think you accepted that he had
8 given you an instruction at the time, in February, in
9 terms of what you should and shouldn't say in relation
10 to Mr Patel's departure; correct?
11 A. Yes, he had told me that I was not to tell that Nim was
12 a thief.
13 Q. If you look on page 331, he says: {E/59/331}
14 "MM received a verbal complaint from [Mr Patel] that
15 [you] had told an employee ... that [Mr Patel] had been
16 fired for stealing."
17 A. Yes.
18 Q. "[Mr Patel] also stated that [you] had told locum
19 agencies that he had been dismissed and that as
20 a consequence he was unable to get any work. [He]
21 complained that [you] had spoken in a libellous
22 manner..."
23 This is Mr Patel:
24 "... as he had resigned from the company and had not
25 been found guilty of any misconduct ... he was

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1 considering taking legal action against SB and the
2 company for damaging his reputation, and was now also
3 considering reporting her conduct to the GOC and the
4 Inland Revenue."
5 Do you see that?
6 A. I do.
7 Q. Yes, and then on the next page he says Mr McAlindon
8 contacted you and asked you -- {E/59/331}
9 A. Sorry, where are you now?
10 Q. Three paragraphs up from the bottom:
11 "MM contacted SB ..."
12 A. Yes.
13 Q. "... and asked her if she had told the employees that NP
14 had been dismissed? She said that she had."
15 A. This is reports is full of lies.
16 Q. Let's just break it down. I understand the strength of
17 your feeling about this.
18 A. Yes.
19 Q. But I want to just go through evidence on that. You
20 said that you had. You say that's not true?
21 A. That is not true.
22 Q. And you said what?
23 A. He had been forced to resign.
24 Q. Forced to resign. And that's based on -- you have
25 a recollection of that, have you?

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1 A. Yes, I do remember.
2 Q. You can remember the conversation?
3 A. I remember that specific thing because I hadn't told the
4 staff that he had --
5 Q. Did you take contemporaneous notes of that?
6 A. No, I didn't, no.
7 Q. Did you ever take contemporaneous notes of matters?
8 A. Yes, I did, yes.
9 Q. Of meetings?
10 A. Yes, I did.
11 Q. Those manuscript notes?
12 A. Not manuscript, no. When you meant contemporaneous, do
13 you mean --
14 Q. At the time?
15 A. At the time?
16 Q. Or immediately afterwards, let's say?
17 A. There are some meetings that I had taken notes and
18 I have typed them up, yes. And they are in disclosure.
19 Q. You had taken notes -- did you take some notes at the
20 meeting, manuscript notes?
21 A. What -- if I do take notes and I want to document them,
22 what I would do is type them up.
23 Q. You say "type them up". You mean based on something
24 else before? You have a document and you then type it
25 up afterwards? Is that right?

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1 A. Yes. It's like, you know like the grievances, if I had
2 a meeting -- if staff had raised a grievance and there
3 was a meeting, I'd type it up and then the staff would
4 read it and then sign it.
5 Q. So you don't take a note at the time but afterwards you
6 go away and create and type a note as to your
7 recollection as to what had happened. Is that right?
8 A. That's right.
9 Q. It's not your practice ever to take manuscript notes in
10 meetings?
11 A. No, I can, I can.
12 Q. Well, do you?
13 A. Yes, I do sometimes.
14 Q. So you have in the past taken manuscript notes?
15 A. Yes, I have, yes.
16 Q. Can you give me an example? Obviously, from matters
17 relevant to this case?
18 A. Well, in board meetings, sometimes I have been making
19 notes then, but I haven't got them.
20 Q. You don't keep those notes?
21 A. I don't keep them, no.
22 Q. Because none have been disclosed?
23 A. No, I don't keep them, no. If they are things that I'm
24 keeping, then usually I will type them up.
25 Q. Okay. In relation to this point about the conversation

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1 with Mr McAlindon, you have got a clear recollection of
2 that conversation seven years ago?
3 A. Yes, I do remember that because I didn't say he was
4 a thief.
5 Q. And Mr McAlindon says that he asked you if you told them
6 that he had stolen money. Did he ask you that?
7 A. If he had stolen money?
8 Q. He asked you whether you had told staff that Mr Patel
9 had stolen money?
10 A. I don't recall that. All I remember is, "Have you been
11 telling locum agencies and staff he was a thief?"
12 Q. Let's just break that down. When he says here that he
13 asked you if you had told the staff that he had stolen
14 money, is your position that you might have said that
15 and you just can't remember?
16 A. No, I hadn't said that staff had been stealing money.
17 What I'm saying is I don't recall him actually saying,
18 "Have you told staff that he's been stealing money?"
19 I remember specifically him asking me, "Have you told
20 the locum agencies and staff that Nim was a thief?" and
21 I said no.
22 Q. I'm just trying to break down your recollection of the
23 conversation, Ms Birdi.
24 A. Yes.
25 Q. This purports to be his record of the conversation with

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1 you.
2 A. Yes.
3 Q. Are you saying that you just don't remember that part of
4 the conversation and it might or might not have
5 happened?
6 A. Which specific point?
7 Q. The bit about him asking you whether you had told the
8 staff that Mr Patel had stolen money?
9 A. He -- stolen money, yes, he did ask me that; have I said
10 that Nim was a thief, yes.
11 Q. To the staff?
12 A. To the staff.
13 Q. You accept that he asked you that question?
14 A. Yes.
15 Q. And you recall that?
16 A. Yes.
17 Q. He recalls that you said that you had told the staff
18 that?
19 A. That's factually incorrect.
20 Q. Are you saying that that didn't happen?
21 A. No, I didn't say that.
22 Q. Or you just don't remember?
23 A. No, I hadn't told the staff.
24 Q. And you didn't tell him?
25 A. No, I did tell him that and he actually records it. On

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1 22/2/2007 he sends an email to Derek Dyson and someone
2 else, and he actually says exactly what I said.
3 Q. Okay, and you say that he asked -- you said that you had
4 not contacted any locum agencies. Is that right?
5 A. He asked me if I had told locum agencies that Mr Patel
6 was a thief and I told him I had not.
7 Q. Okay. He said that you had ignored an instruction in
8 relation to this issue. Do you remember that?
9 A. Yes.
10 Q. And you were apologetic on the call?
11 A. I might have been apologetic but I was scared.
12 Q. I'm asking for your recollection. Did you apologise?
13 A. I don't recall apologising, no.
14 Q. Are you saying that it didn't happen, or are you saying
15 that you just don't remember that part of the
16 conversation?
17 A. If I'm thinking from a logical point of view --
18 Q. No, I'm asking for your recollection.
19 A. No, I don't recall apologising.
20 Q. When you say you don't remember that, does that mean you
21 just don't remember one way or the other, or are you
22 saying that it didn't happen?
23 A. I don't believe I would have apologised.
24 Q. But you don't remember one way or the other?
25 A. To be honest with you, no, I don't, on that issue.

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1 I just remember specifically stating that I didn't tell
2 locum agencies and the staff that Nim was a thief.
3 Q. And the tone of the conversation, it's fair to say, was
4 firm?
5 A. It wasn't firm, it was very aggressive.
6 Q. I suggest to you that given what had happened and the
7 matters that he had recounted that the tone was firm?
8 A. No, it was aggressive, it was threatening throughout and
9 it left me -- I had to go to the staff loos because
10 I was in such a state of shock and I was crying and
11 I couldn't go back on the shop floor for a little while.
12 MR POTTS: My Lord, would that be a convenient moment?
13 MR JUSTICE NUGEE: Yes, 2 o'clock. You will remember,
14 Ms Birdi, what I said to you last night. The same
15 applies over lunch.
16 A. Absolutely, yes.
17 (1.01 pm)
18 (The short adjournment)
19 (2.00 pm)
20 MR JUSTICE NUGEE: Yes, Mr Potts.
21 MR POTTS: Ms Birdi, I would like to move on to the events
22 of 26 and 27 March.
23 On 26 March, you were told by your husband that
24 three men from Loss Prevention had been at the store; is
25 that right?

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1 A. That's right, yes.
2 Q. And you spoke to Mr McAlindon on the telephone?
3 A. I did, yes.
4 Q. And he informed you that the investigation had been
5 widened to include your conduct?
6 A. Not those words, but yes.
7 Q. Yes, and he explained that there were concerns about
8 payroll, invoicing and finances generally?
9 A. That's right.
10 Q. And you went to the store that evening?
11 A. I did, yes, yes.
12 Q. In your witness statement, could you just look at
13 paragraph 112, please? {B/1/22}
14 A. On that last point, he didn't actually say to me --
15 sorry, I rushed into answering that. He didn't actually
16 say to me, "We are making allegations against you on
17 this, this, this". He just said -- he asked me for --
18 where payroll information was and where invoices were.
19 Q. Could you have a quick look, please, at E2/332.
20 {E/59/332}
21 A. Yes.
22 Q. On page 332 the case files says on the second paragraph
23 down -- do you see that? It starts:
24 "SB was on day off ..."
25 Do you see that at the top of the page?

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1 A. Yes, I do.
2 Q. Then he says:
3 "MM explained that the investigation was continuing
4 into financial irregularities by NP, but now included
5 extended to quantify her involvement if any, as NP had
6 alleged SB was an active participant."
7 He goes on:
8 "It was explained that the areas being reviewed in
9 the store with payroll, invoices and finances
10 generally."
11 Are you saying he didn't say any of that?
12 A. No, no, he didn't. He asked me where invoices were and
13 payroll information.
14 Q. So he mentioned invoices and payroll --
15 A. That's right.
16 Q. -- but you are saying he didn't say --
17 A. No, on the second phone call to him, he said -- I phoned
18 back because I couldn't understand why he was there.
19 I thought they had decided to prosecute Mr Patel and it
20 was then when he said, "We are investigating you", on
21 the second phone call I made to him.
22 Q. You are saying that he didn't mention payroll, invoicing
23 and finances generally?
24 A. No. On the first conversation, he asked me where
25 invoices were, he asked me where payroll information was

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1 and he asked me if I could get into the store that day
2 and I said I couldn't.
3 Q. So are you saying you had two conversations with him
4 that day, or one?
5 A. Two.
6 Q. He left a message for you, didn't he?
7 A. I don't recall any message. Patrice -- one of the staff
8 members phoned my home and then I phoned back. There
9 was no message from Mr McAlindon.
10 Q. This records that he left a message for you on your
11 mobile phone?
12 A. No.
13 Q. Are you saying that didn't happen or you don't remember?
14 A. No, there was no message on my phone, absolutely not.
15 The first time I found Mr McAlindon was in the store was
16 when I came home from the doctor's and my husband told
17 me and I phoned Patrice.
18 Q. So you called him after you had spoken to some staff?
19 A. That's right, yes.
20 Q. You had two conversations with him?
21 A. I did, yes.
22 Q. But there was at least a mention of payroll and
23 invoicing?
24 A. Yes.
25 Q. Okay. Could we go back to your witness statement,

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1 please, paragraph 112, {B/1/22} you say there:
 2 "When I went into the office I found that Loss
 3 Prevention had left a lot of important documents
 4 including staff payslips and an old completed
 5 dividend/bonus form for distribution of profits of over
 6 £10,000 for Mr Patel and me. We also found that they
 7 had used the shredder to shred payslips and so I emptied
 8 the contents of the shredder into a bin liner and
 9 brought it home."
 10 A. That's correct.
 11 Q. You say that you took this home?
 12 A. I did, yes.
 13 Q. You took it home because you thought it was important
 14 evidence, didn't you?
 15 A. Yes, I couldn't understand why they were shredding
 16 documents.
 17 Q. You took the view that shredding of documents was
 18 serious misconduct by the Loss Prevention department?
 19 A. I did, yes.
 20 Q. And you thought this was serious evidence, important
 21 evidence of that serious misconduct?
 22 A. At that time I didn't think, "Oh, serious misconduct".
 23 I thought, "why would they be shredding documents?"
 24 Q. Shredding documents, you took the view that that was
 25 something seriously wrong for them to do, didn't you?

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1 A. Yes, I did, because there were payroll slips in there,
 2 so I thought, "Why are they shredding documents?" So
 3 I did take them home, yes.
 4 Q. You took the view -- and you took them home because this
 5 was important evidence and serious misconduct by them?
 6 A. Well, it wasn't right, yes.
 7 Q. Did you think it was seriously wrong?
 8 A. Yes, I did think it was seriously wrong, shredding
 9 papers.
 10 Q. Did you think it was dishonest for them to shred papers
 11 like that?
 12 A. At that time, I didn't think it was dishonest, but
 13 I thought it was wrong for them to shred documents.
 14 Q. The allegation in 112 -- your position is that
 15 Mr McAlindon and his department deliberately destroyed
 16 evidence, didn't they? That's your position?
 17 A. Well, I can't -- they had access to those private
 18 documentation.
 19 Q. And you say that Mr McAlindon was intent on getting you
 20 out of the business?
 21 A. Yes.
 22 Q. So the disruption of documents was being done in order
 23 to help frame you and get you out of the business as
 24 part of that plan?
 25 A. On that particular day?

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1 Q. I'm asking for what your position is?
 2 A. When are you asking me, from now?
 3 Q. Yes, as to what you are saying in your witness
 4 statement?
 5 A. From now, I'm saying that those documents were shredded
 6 and I don't know what was in there but it shouldn't have
 7 been shredded.
 8 Have I not understood the question?
 9 Q. You take the view that the shredding of that document
 10 was seriously dishonest conduct by them, don't you?
 11 A. I do, yes.
 12 Q. You can see from the trial bundles that you weren't slow
 13 to get in touch with Specsavers if there was something
 14 you wished to complain about. That's fair, isn't it?
 15 A. Not really, because when I -- when Mr Patel was -- he
 16 had the exit deal done with him, I was phoning but
 17 I wasn't writing letters of complaints at that time.
 18 I just couldn't understand what was happening. I was
 19 phoning to make enquiries.
 20 Q. You didn't lodge a complaint about this shredding
 21 immediately, did you?
 22 A. No, I didn't, no.
 23 Q. You didn't raise it with Mr McAlindon immediately?
 24 A. I raised it with Mr McAlindon on the 27th, in the
 25 meeting. I had asked them if they had been shredding

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1 documents. They said they hadn't.
 2 Q. We will come back to that.
 3 A. I did actually tell them that how they left the office
 4 was not how they should have left it.
 5 Q. One thing is making a mess; another thing is
 6 deliberately and dishonestly shredding documents. They
 7 are quite different things, aren't they?
 8 A. Documents were shredded and they could only have come
 9 from the filing cabinet that was locked.
 10 Q. You were in touch with Specsavers numerous times over
 11 the following weeks and months, weren't you?
 12 A. Yes, I was.
 13 Q. Could you take E2, please, 441. {E/92/441} This is
 14 a letter that you wrote to Ms Anderson at Specsavers?
 15 A. Okay.
 16 Q. This was in relation to a request for some financial
 17 records from you?
 18 A. Okay.
 19 Q. Do you remember this letter? You have seen this letter
 20 before?
 21 A. Yes, I have seen the letter before but I don't remember
 22 it. I'm just reading it.
 23 Q. If you look in the third paragraph down, it says:
 24 "I note from your letter that you are again
 25 requesting the expenses booklet."

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1 That's the blue book which you say wasn't in your
2 possession?
3 A. That's correct, yes.
4 Q. Then you go on to say: {E/92/441}
5 "I note that you are requesting financial records
6 relating to the company. Please kindly clarify clearly
7 what records you require. All financial records with
8 regard to payroll were kept in a locked filing cabinet
9 at the store which Mr Mel McAlindon gained access to and
10 took in my absence."
11 Yes?
12 A. Right, yes.
13 Q. So you are specifically mentioning the payroll records
14 in the filing cabinet which he had gained access to?
15 A. That's correct. I told him they were in there.
16 Q. You don't mention, in that context, that in fact
17 Mr McAlindon had shredded payroll records, do you?
18 A. No, I didn't, no.
19 Q. Ms Birdi, if you thought that there had been improper
20 shredding of payroll records, isn't it inconceivable
21 that you wouldn't have mentioned that allegation, at
22 least at this point in your letter?
23 A. I didn't mention it. I don't know why I didn't mention
24 it but I didn't mention it.
25 Q. I put it to you the reason why you didn't mention it was

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1 because it hadn't happened?
2 A. That's not true.
3 Q. I put to you that the first time you made a shredding
4 allegation was in your first investigation meeting with
5 Mr Hamilton on 28 June, three months after the shredding
6 incident?
7 A. That's true. I mean, I was -- I broached it with
8 Mr McAlindon and Phil Barnes on 27 March and then I was
9 very, very sick and I don't know why I didn't mention it
10 there, but I brought it up when I had my first meeting
11 with Neil Lunn, you're correct.
12 Q. So, there had been what you would say was some
13 deliberate and dishonest conduct of shredding documents
14 as part of a plan to get rid of you, and you do not make
15 a formal complaint -- or indeed any complaint -- about
16 it until three months later; is that right?
17 A. That is it, but at this time, on the 27th, when I was
18 suspended from the business, at that time I didn't
19 think, "Oh, there is this plan to get rid of me". I was
20 just in a state of shock as to what had happened.
21 Q. By June you had been making complaints, very vehement
22 complaints about Mr McAlindon, hadn't you?
23 A. Yes, I did, yes.
24 Q. If we look at E3, please, 562. This is a transcript of
25 your meeting on 28 June. {E/135/562}

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1 A. Sorry, which one?
2 Q. 562.
3 A. Yes.
4 Q. If you look at the second hole punch, towards the bottom
5 of the page you see it says, "Yes":
6 "SB: Yes."
7 A. Yes.
8 Q. You say there:
9 "On 27 March I did raise a very serious concern with
10 Mel and Phil with regard to the condition the office was
11 left in. They had left the filing cabinet unlocked,
12 very confidential paperwork left on top of cabinet for
13 everyone to view and they were fully aware when they
14 came to see Nim that it was in constant use by staff."
15 Then you go on:
16 "Yes. There was staff files, salaries, sickness, all
17 director only information. This is why it is locked.
18 They agreed if they do come back they will ensure it is
19 secure. I asked if they had been shredding paperwork as
20 you can see the paper. That was from the cabinet.
21 I asked Mel and Phil about that, they said they hadn't
22 shredded it but someone has."
23 Is that right? That's the first document showing
24 you making a complaint about this?
25 A. Yes.

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1 Q. I suggest to you that the first time in fact that you
2 raised the issue of shredding was at this time in June?
3 A. I think it was the first time I raised it.
4 Q. Despite the allegation that documents had been
5 deliberately and dishonestly shredded by Mr McAlindon,
6 you didn't disclose those shredded documents in this
7 action when you gave disclosure, did you?
8 A. I didn't, no.
9 Q. Disclosure was in August 2013?
10 A. Like I said --
11 Q. Just answer my question: disclosure was in August 2013?
12 A. Yes, but I --
13 Q. In fact, the first time --
14 A. No, hold on.
15 Q. -- the documents materialise --
16 A. Oh, I see what you are saying. Hold you, you are just
17 rushing me. August disclosure of documents. Right,
18 I have got you, yes. I thought you meant disclosure of
19 shredding.
20 Q. No, I'm coming to that. Disclosure was given
21 in August 2013 and you have signed -- or a disclosure
22 statement was signed at that time?
23 A. That's right, yes.
24 Q. You didn't disclose the shredding?
25 A. No, I didn't. I had totally forgotten I had it.

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1 Q. You say you have totally forgotten you had it?
2 A. Yes.
3 Q. Your witness statement, going back to that at
4 paragraph 112 -- in your witness statement you said:
5 {B/1/22}
6 "I emptied the contents of the shredding into a bin
7 liner and brought it home."
8 A. That's right.
9 Q. So when you signed your witness statement, which was
10 in November --
11 A. Yes.
12 Q. -- you had written in your witness statement that you
13 had taken these documents home?
14 A. That's right, yes.
15 Q. Writing that in your witness statement didn't prompt you
16 to look for the documents at home?
17 A. No, it didn't.
18 Q. Why not?
19 A. Because I remembered at one point my husband had said to
20 me he was going to throw them away and I couldn't
21 remember what happened to them. I had just totally
22 forgotten it.
23 Q. This is a serious allegation, Ms Birdi, you accept that,
24 don't you?
25 A. I do, yes.

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1 Q. And you accept that you wrote in your witness statement
2 that you had the documents at home?
3 A. Yes.
4 Q. Notwithstanding the seriousness of the allegation,
5 firstly, you didn't disclose the documents in August --
6 A. No.
7 Q. -- and secondly, you didn't look for them in November?
8 A. No, and like I said to you, I had totally forgotten
9 I had them. And when my solicitor prompted me, I went
10 and searched around the house and we eventually found
11 them in the loft.
12 Q. In fact, the documents materialised -- the bags of
13 shredding materialised on 12 December 2013, didn't they?
14 That was day 9 of the trial?
15 A. If that's when I was on the witness stand, yes.
16 Q. Indeed. Yes, it was the day that were scheduled to give
17 evidence in that trial?
18 A. That's right, yes.
19 Q. And you arrived at the court on the day that you were
20 due to give evidence with two plastic bags with some
21 shredded material?
22 A. That's right.
23 Q. And you claimed that these were the payslips that
24 Mr McAlindon had shredded?
25 A. The payslips that were in the whole big bags of

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1 shredding, yes.
2 Q. Yes, and that those were documents that Mr McAlindon had
3 shredded?
4 A. That's right.
5 Q. In fact, disclosure had taken three months before your
6 witness statement in this action; correct?
7 A. That's right, yes. I would actually -- when
8 Bognor Regis said it in the courtrooms and -- exactly
9 the same thing happened to them, documents had been
10 shredded. And then Uckfield was saying that a staff
11 member told them documents were shredded. I mentioned
12 it to my solicitor and I said, "Just added(?) a flipping
13 comment, I may have them at home".
14 Q. I don't want to dwell too much in relation to the
15 conversation you had with your solicitor.
16 A. I'm just telling you what honestly happened.
17 Q. You are aware of the issue of legal privilege and --
18 A. Yes, I just told you --
19 Q. -- I don't want to inadvertently to waive privilege.
20 A. I had forgotten. I had forgotten I had them.
21 Q. You gave a short witness statement that was filed very
22 late, I think during the course of the trial, making the
23 same allegations you had earlier made --
24 A. That's right.
25 Q. -- in this action?

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1 A. That's right.
2 Q. A month or so earlier?
3 A. That's right.
4 Q. So in fact, the first time you had produced these
5 documents was during the Bognor trial?
6 A. That's correct, yes.
7 Q. You have been subject to an investigation and
8 disciplinary hearing from March 2007. Correct?
9 A. Sorry, say that again?
10 Q. You were suspended and subject to investigation and
11 disciplinary proceedings from March 2007, weren't you?
12 A. That's correct.
13 Q. You didn't produce the shredded materials at that time,
14 did you?
15 A. No, I didn't. I didn't. I brought it up and if
16 Specsavers had asked for it at that time I would have
17 given it to them, but they never, because it is Loss
18 Prevention modus operandi.
19 Q. You were legally advised during that disciplinary
20 process in 2007, weren't you, by Crust Lane Davis?
21 A. The disciplinary, yes; not the investigation, yes.
22 Q. Indeed you raised an appeal against the imposition of
23 the written warning in late 2007?
24 A. That's correct.
25 Q. You didn't produce the documents then either?

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1 A. No, I was never asked. If they had asked me, I would
 2 have given them.
 3 Q. Ms Birdi, surely your first ground of appeal would have
 4 been that the Loss Prevention department had dishonestly
 5 interfered with the investigation by shredding
 6 documents?
 7 A. I didn't bring it up.
 8 Q. And you would have made -- if they had done that, you
 9 would have made use of the documents which you had
 10 preserved?
 11 A. I was never asked for it. I brought it up in June, I was
 12 never asked for it. It is Loss Prevention's modus
 13 operandi, from what I hear from the other stores. So
 14 that's probably why I was never asked for it.
 15 Q. You made a grievance complaint against Mr McAlindon
 16 in February 2008?
 17 A. Yes.
 18 Q. You didn't produce the shredded documents then or
 19 mention that you had them in your possession, did you?
 20 A. No, I don't think I did. But I did bring up the
 21 shredding.
 22 Q. You brought employment proceedings in March 2011. You
 23 didn't produce the shreds then either, did you?
 24 A. No. If I had produced them then, then I wouldn't have
 25 not forgotten, they would have been disclosed before.

1 21

1 Q. Had you forgotten within a week, two weeks of the
 2 shredding that you had them?
 3 A. No, I had raised it in June. If Specsavers had asked me
 4 for the shredding, I would have given it to them but
 5 they never asked me for it and then, as the years have
 6 gone on, I had forgotten I had it.
 7 Q. Why did Specsavers need to ask you for these documents?
 8 You were the one who was making an allegation of
 9 impropriety against them; surely you would have produced
 10 the documents?
 11 A. Well, I didn't and I didn't feel that my meetings --
 12 I was kind of losing faith in all the meetings anyway,
 13 but I didn't produce them. I don't know why.
 14 Q. You were legally advised and you were making a serious
 15 allegation of impropriety and dishonesty against
 16 Specsavers, but you didn't produce the documents which
 17 you say were important evidence of that?
 18 A. I was legally advised when I had my disciplinary letter.
 19 You must remember, Mr Potts, I was very, very ill at the
 20 time. If Specsavers had asked me for the documents,
 21 I would have given them to them.
 22 Q. Looking at paragraph 112, where you say there that:
 23 {B/1/22}
 24 "I emptied the contents in the bin and took it
 25 home..."

1 22

1 Even then, you didn't think about looking for the
 2 documents at home?
 3 A. No -- like I said to you, I had forgotten I had them.
 4 I thought my husband had thrown them away and that's all
 5 I can say to you. I can only tell you what is the
 6 truth.
 7 Q. Ms Birdi what I put to you is that the reason why you
 8 didn't produce those documents, or why it didn't occur
 9 to you at the time, when you made that reference in
 10 paragraph 112, is because the shreds didn't exist at
 11 that time, when you signed this witness statement?
 12 A. That's not true. In Bognor, you said to me that, "You
 13 never brought it up in your witness statement", but
 14 obviously I had. Okay. The truth of the matter is
 15 those shreds were taken from the office on
 16 26 March 2007.
 17 Q. Okay, I just want you to answer the question I'm
 18 putting: the true position is that the shreds didn't
 19 exist when you signed your witness statement
 20 in November --
 21 A. The shredding didn't exist?
 22 Q. Yes?
 23 A. The shredding did exist but I had forgotten about it.
 24 Q. The true position, Ms Birdi, is that you shredded one of
 25 your old payslips and some other documents in order to

1 23

1 bolster the witness evidence which you were going to be
 2 giving in the Bognor action?
 3 A. That's a criminal act. I would never do that.
 4 I absolutely object to that.
 5 Q. Ms Birdi, you are making an allegation of criminal
 6 conduct against Mr McAlindon, aren't you?
 7 A. Well, that's the fact. They were shredded and I took
 8 that from the offices on 26 March 2007.
 9 Q. Just answer my question. You are making an allegation
 10 that Mr McAlindon committed a criminal act?
 11 A. Yes. Someone shredded those documents. The only people
 12 who had access to that locked filing cabinet were the
 13 Loss Prevention officers.
 14 Q. You are saying it was Mr McAlindon; that's your
 15 position, isn't it?
 16 A. It was Mr McAlindon and/or his team, yes.
 17 Q. The shredded documents have been subject to examination
 18 by an expert appointed by my clients?
 19 A. Yes.
 20 Q. And there is a notice to admit facts -- which is at A,
 21 tab 12, page 137 {A/12/137} -- that in fact, there is
 22 one payment statement in the shredding; correct?
 23 A. That is correct, yes; that's what your expert found.
 24 Q. The payment statement in fact was yours?
 25 A. That's correct.

1 24

1 Q. And that it was dated 5 February 2006?
 2 A. That's correct.
 3 Q. That's a year before the investigation?
 4 A. That's correct.
 5 Q. So the first point is: it's not consistent with your
 6 evidence that there was more than one payslip that had
 7 been shredded?
 8 A. Well, when you have got one massive bag of shredding
 9 documents, it wasn't just payslips, and your expert only
 10 was told to construct the payslips, nothing else in
 11 those documents. I didn't just say it was payslips that
 12 were shredded; I said documents including payslips were
 13 shredded.
 14 Q. Your witness statement said:
 15 "They used the shredder to shred payslips."
 16 Plural?
 17 A. Yes, but your expert was instructed only to construct
 18 the payslips, nothing else in those shredding documents.
 19 Q. It's not a complicated point, Ms Birdi. The first point
 20 I'm making to you is your evidence was that the payslips
 21 were shredded and in fact there was only one and it was
 22 yours?
 23 A. Right, okay. But shredded paper, as you can appreciate,
 24 Mr Potts, are -- one payslip may look like lots of
 25 payslips. So if you are just being pedantic about the

1 25

1 word "payslip" or "payslips", you know, it could be
 2 several, it could be one.
 3 Q. It's a simple question, Ms Birdi. You accept it was one
 4 payslip and that your evidence was that it was more than
 5 one?
 6 A. Well, you have constructed this after I have done my
 7 witness statement.
 8 Q. You accept that you are wrong about it being payslips;
 9 it's only one payslip?
 10 A. I do accept that, yes.
 11 Q. The main issue that Mr McAlindon had been charged with
 12 investigating was that certain family members of yours
 13 on the payroll were being paid for work that they
 14 weren't doing; correct?
 15 A. That's correct, yes.
 16 Q. There wasn't any issue in fact on the investigation that
 17 the people had been paid by the store, was there?
 18 A. No, because all the information goes to head office.
 19 Q. There was no issue as to the amounts that they had been
 20 paid?
 21 A. As regards the outcome.
 22 Q. There wasn't an issue as to the amounts that had been
 23 paid because, as you say, that information was held at
 24 head office. The issue was whether they had been
 25 supplying services to justify the payments, wasn't it?

1 26

1 A. If that's what you say. That's not what I understand
 2 from it.
 3 Q. Sorry, the allegation was that you had members of your
 4 family on the payroll?
 5 A. That's right.
 6 Q. They were being paid but they weren't actually working
 7 for that pay; correct?
 8 A. Initially the investigation was whether they were an
 9 employee, whether my husband was an employee.
 10 Q. Yes, but the allegation that Mr Patel had made, if you
 11 remember --
 12 A. Yes.
 13 Q. I appreciate that there is an issue --
 14 A. Sorry, I'm getting confused.
 15 Q. There is a difference between the allegation and
 16 the finding. I'm talking about the allegation.
 17 A. Okay.
 18 Q. The allegation was that members of your family,
 19 specifically your father and your husband, were on the
 20 payroll being paid at employees when they weren't
 21 actually working to justify that pay; correct?
 22 A. Right, okay, yes.
 23 Q. So there wasn't an issue that they had been paid.
 24 A. Right, okay, I've got you.
 25 Q. There wasn't an issue as to the amounts that they had

1 27

1 been paid?
 2 A. Right, okay.
 3 Q. When you say "okay", are you accepting my --
 4 A. There wasn't an issue about the amounts they were paid.
 5 Q. Yes.
 6 A. No, there wasn't, because they had that information.
 7 Q. Yes. The issue was about whether they were in fact
 8 supplying services to justify the payments; correct?
 9 A. Okay, yes.
 10 Q. So there wouldn't have been any purpose in shredding
 11 payslips?
 12 A. Well, I don't know why the payslips were shredded but
 13 like I had said to you, Mr Potts, my -- the bag of
 14 shredding -- I wasn't saying that only payslips were
 15 shredded. I said documents were shredded that included
 16 payslips and I could only identify the payslips because
 17 of the colour the paper.
 18 Q. And there certainly wouldn't have been any purpose in
 19 shredding your payslips, would there?
 20 A. I can't explain why they were shredded.
 21 Q. I put it to you the reason you can't explain why they
 22 were shredded is because it didn't happen?
 23 A. It did happen.
 24 Q. You made up this allegation in order to discredit
 25 Mr McAlindon, didn't you?

1 28

1 A. That's not true. I brought it up on 27th, I brought it
2 up in June. Nobody asked me for the documents. If they
3 had, I would have given them to them. It's not true.
4 Q. And you produced to court, on the day of your evidence,
5 some homemade shreds to add credibility to your
6 evidence in the trial?
7 A. That doesn't even make any sense, Mr Potts, because I've
8 mentioned it in my witness statement. I've mentioned it
9 to Mr Neil Hamilton in June 2007. So if Specsavers had
10 asked me in June, "Can we have this shredding?" I would
11 have given it. So it's not something I have made up in
12 2013.
13 Q. I suggest to you, you have done that as part of your
14 vendetta against Mr McAlindon, who you felt --
15 A. No.
16 Q. -- was acting against you?
17 A. He was definitely acting against me. I would never do
18 that, no.
19 Q. Okay, let's move on.
20 MR JUSTICE NUGEE: Before you move, on, Mr Potts, two
21 questions. You obviously know and Ms Birdi obviously
22 knows when day 9 of the Bognor Regis trial was, but
23 I don't think I know.
24 MR POTTS: My Lord, she was due to give evidence on day 9.
25 Your Lordship can have a transcript if necessary.

1 29

1 MR JUSTICE NUGEE: I don't think I need a transcript, but
2 I would like to know -- since you put to her she didn't
3 have the documents in November when she signed the
4 statement --
5 MR POTTS: My Lord, paragraph 112. This witness statement
6 was signed in November.
7 MR JUSTICE NUGEE: Yes. I don't need to know now, but at
8 some stage I would like to know when day 9 of the
9 Bognor Regis trial was.
10 MR POTTS: Oh, just the date? It was 12 December.
11 MR JUSTICE NUGEE: 12 December, thank you.
12 The other thing is, you put to her and she accepted
13 there was only one payslip, but I have looked again at
14 page 140 in bundle A, {A/12/140} which is the exhibit to
15 the forensic examiner's report, which appears to show
16 two payslips. Maybe I misunderstood the question?
17 MR STUART: My Lord, to be clear, there is one payslip but
18 it was discovered that it was in two parts. It turns
19 out -- I don't know whether your Lordship knows
20 payslips, with a sort of flimsy bit and a more papery
21 bit, so that there are physically two parts --
22 MR JUSTICE NUGEE: To the same slip?
23 MR STUART: To the same payslip. So when you tear open your
24 payslip, you can see what's inside, and you are left
25 with two pieces of paper. So it could be said to be two

1 30

1 pieces of paper or one payslip. That's my understanding
2 of what the expert --
3 MR JUSTICE NUGEE: As long as you are both agreed on that.
4 MR STUART: I think we are agreed.
5 MR JUSTICE NUGEE: Everybody seems to be agreed. It's only
6 me who doesn't understand it. Thank you.
7 MR POTTS: Let's move on to the events of the following day.
8 Ms Frondigoun was interviewed in relation to the events
9 of that day. Can I ask you to turn up E2, please, at
10 418. {E/86/418}
11 418, have you got that?
12 A. That's correct.
13 Q. Okay. This is a transcript of -- a record of an
14 interview with Ms Frondigoun. Then if you turn to 423,
15 at the top of the page she says: {E/86/423}
16 "Yes, the day you suspended Swarandeeep. She talked
17 to me basically in a panic. She just said you know
18 Mushtaq was here and had done some work, and said that
19 I knew about it, which I didn't, and that Mushtaq and
20 Karina were on the payroll."
21 Then if you look at line 200, if you read down
22 there, she says:
23 "She was just really flapping around and saying all
24 sorts of things."
25 The same sort of point:

1 31

1 "You know that Mushtaq has done work here and that
2 he and Karina were on the payroll. I said to her if she
3 hadn't done anything, she had nothing to worry about.
4 "Q: Did she do anything else at that time that you
5 thought was unusual?"
6 She refers to taking some envelopes and so on.
7 Are you saying that that's not true?
8 A. That's not true. Like I said in the Bognor case as
9 well, it's not true. And I even said that in my
10 meetings in 2007. I gave Mark Raines, Mr Raines, a list
11 of things that were not true in these statements.
12 Q. Right. Then over the page at 424 at line 224, she
13 reports: {E/86/424}
14 "The first thing in the morning when she asked me to
15 stay with her, she said that you had been through the
16 filing cabinets in the office and had left paperwork out
17 that was confidential. She had no time to find this out
18 unless she had been in the night before."
19 She doesn't report anything about you saying
20 anything about shredding, does she?
21 A. I don't recall saying to Lorraine Frondigoun that the
22 filing cabinets had all been messed up because --
23 I don't recall that at all.
24 Q. Are you saying you definitely didn't, or you just don't
25 remember one way or the other?

1 32

1 A. No, I didn't say that. I remember going up to the staff
 2 room and there were five staff there and I asked them if
 3 one of them could be a note-taker -- I may need them to
 4 be a note-taker at short notice.
 5 Q. Are you saying this definitely didn't happen or you are
 6 just not sure, you don't remember one way or another
 7 about the filing cabinet?
 8 A. No, it didn't happen.
 9 Q. No. Can I suggest to you that you did say that, but you
 10 didn't say anything about shredding?
 11 A. No, I didn't say anything about shredding, that's true.
 12 Q. And the reason you didn't say anything about shredding
 13 is because it hadn't happened?
 14 A. It had happened.
 15 Q. Could you turn on to 425, another final point, at
 16 line 256? {E/86/425}
 17 A. Yes.
 18 Q. She was asked:
 19 "What do you know about the circumstance of Nimesh
 20 resigning?"
 21 A. Yes.
 22 Q. And her answer was:
 23 "She ..."
 24 I think that's you:
 25 "... has told me repeatedly that he was made to

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1 resign and sell his shares because he was caught
 2 stealing. She even showed me how to do it."
 3 A. That's not true.
 4 Q. Then it goes on:
 5 "She first told me when I got back to work after Nim
 6 had left, then she continued telling me about it right
 7 up until she was suspended."
 8 A. That's not true. This lady, she does lie. She has made
 9 libellous accusations in here about me claiming for
 10 a neck injury, when I didn't have a neck injury and it's
 11 totally medically certified about my injury. She is
 12 a liar -- even Specsavers have got an email. 9 October,
 13 Dominic Savill actually comments on what
 14 Sean McLaughlin -- who is one of the caretakers of the
 15 store -- what he actually says about her, that she is
 16 a vindictive person.
 17 Q. The evidence that you gave to his Lordship earlier was
 18 that you denied saying anything to the staff about
 19 Mr Patel being caught stealing?
 20 A. I said he was forced to resign.
 21 Q. And you didn't mention anything about stealing?
 22 A. No, I did not.
 23 Q. So she is wrong about that?
 24 A. She is.
 25 Q. And she is wrong where she says:

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1 "She even showed me how to do it."
 2 A. To be honest with you, would I know how to do it? No,
 3 I categorically deny that I showed her. Showed her how
 4 it was done.
 5 Q. That's in relation to entering refunds through the till?
 6 A. Yes, contact lens refunds. I didn't show her.
 7 Q. Why would she make that up?
 8 A. Like I said to you, she is not a very nice person,
 9 obviously. And even Specsavers acknowledge that, in
 10 Dominic Savill's return to work interview notes, that
 11 Sean McLaughlin, one of SOG's representatives, had even
 12 said she is a vindictive -- she comes across as a very
 13 vindictive person.
 14 Q. How would she know to make that up?
 15 A. I don't know.
 16 Q. Can I suggest to you that that is in fact what happened?
 17 A. No.
 18 Q. That you did tell the staff, or certainly told her, that
 19 Mr Patel had been caught stealing and indeed you showed
 20 her how it was done?
 21 A. No, it's factually not correct; it's a lie.
 22 Q. Let's move on.
 23 MR JUSTICE NUGEE: Can I ask: do you now understand how
 24 Mr Patel stole money?
 25 A. Yes. I was told that -- when I first found out he was

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1 stealing -- that he did big refunds on the till on
 2 contact lenses.
 3 MR JUSTICE NUGEE: And then what?
 4 A. So he took the money out the till and he pocketed it.
 5 He was caught on camera doing that.
 6 MR JUSTICE NUGEE: Thank you.
 7 MR POTTS: And you were told that at that time?
 8 A. I was told that by Mr McAlindon when he caught him
 9 in December 2006.
 10 Q. Can I move on to the issue of charging by Specsavers,
 11 charges levied in 2007?
 12 A. Yes.
 13 Q. Could I ask you to turn up, please, volume A. Keep B
 14 there. That's fine, thank you. It's tab 7, page 84.
 15 {A/7/84}
 16 In paragraph 17.3 is a response to the defence in
 17 relation to the issue of charges during 2007. In 17.3
 18 you say, picking it up on the third line, that:
 19 "[SOG] was motivated by successful interest or
 20 malice in that it calculated that it would through its
 21 subsidiaries be able to extract profit or compensation
 22 for the services rendered from the company and or the
 23 third respondent to the advantage of its group and to
 24 the detriment of the petitioner's interest in
 25 distributable profits."

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1 That's your pleaded allegation. Is that right?
 2 A. That's right.
 3 Q. If you look in volume B -- you can put A away.
 4 Paragraph 213 of your witness statement on page 45.
 5 {B/1/45} Do you have that? The allegation you make is
 6 that:
 7 "... Specsavers had been defrauding the Dartford
 8 store by syphoning money out of the business by way of
 9 inflated charges for management fees. This had driven
 10 the Dartford store into an artificial trading loss with
 11 a view to defrauding me by artificially depressing the
 12 value of my shares in anticipation of their plan to
 13 force me out of the business and to convert the store
 14 into a 'group venture'."
 15 That's your evidence?
 16 A. That's right, yes.
 17 Q. Firstly, a group venture is one where Specsavers owns
 18 100 per cent of the shares. Is that right?
 19 A. That's correct.
 20 Q. Okay. And then 214, the next paragraph. You say:
 21 "My solicitors have explained to me that the false
 22 charging by Specsavers ... was not only a fraud on me
 23 and the Dartford store ..."
 24 That's two people defrauded; correct?
 25 "... but also on the Inland Revenue."

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1 Is that right?
 2 A. That's what I had been told by my solicitors.
 3 Q. Whether you had been told something, is that what you
 4 believe?
 5 A. That's what I had been told.
 6 Q. If you are reciting this in your witness statement --
 7 why are you reciting it in your statement? It's because
 8 that's the case you are putting, isn't it?
 9 A. That's what I have been told by my solicitors. I am not
 10 an accountant but that's what I have been told.
 11 Q. You have chosen to include this, an allegation of fraud,
 12 in your witness statement?
 13 A. That's the advice I had been given and that's why I put
 14 it in. I don't pretend to say I understand this but
 15 that's what I had been told.
 16 Q. You are making an allegation of fraud in your witness
 17 statement, aren't you?
 18 A. That's what I had been told by my solicitors.
 19 Q. You wouldn't choose to just report something that you
 20 had been told in your witness statement unless it was
 21 for a purpose, would you, Ms Birdi?
 22 A. It is in there because that's what I was led -- that's
 23 what I was told, yes.
 24 Q. It's what you are asserting in this court?
 25 A. That's what -- that's what I was told and I can't claim

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1 to understand it, but that's what I was told, yes.
 2 Q. So you are prepared to make an allegation of fraud, tax
 3 fraud and fraud against you and against the company,
 4 based on something which you don't understand? Is that
 5 right?
 6 A. I can say that I do understand that it was fraud against
 7 me because Mr McAlindon admits that he was overcharging
 8 specifically to make money for his Loss Prevention
 9 department and to depress the value of my shares, and
 10 there is evidence there to show that they were intending
 11 to get rid of me and then they would get the shares at
 12 a cheaper price.
 13 Q. Okay, let's turn on, please, to 335, paragraph 335.
 14 {B/1/75} Have you got that?
 15 A. I have, yes.
 16 Q. "Specsavers ... had deliberately put the Dartford store
 17 into the red by stealing from the third and fourth
 18 respondents through Mr McAlindon's, ironically named,
 19 Loss Prevention Department's practice of deliberately
 20 overcharging the store."
 21 A. That's correct.
 22 Q. Just to complete the picture, 578. {B/1/135} So you
 23 say:
 24 "The store went into a red for the period --"
 25 A. Just bear with me are. Where are we? Which paragraph?

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1 Q. 578.
 2 A. Yes.
 3 Q. "It went into the red ..."
 4 That's the store --
 5 A. 578?
 6 Q. 578. It starts:
 7 "Since ..."
 8 A. Oh, yes.
 9 Q. Then in the third line: {B/1/135}
 10 "... albeit that it went into the red for a period
 11 due to the fraudulent charges levied on the company by
 12 Specsavers' Loss Prevention department..."
 13 A. That's correct.
 14 Q. So just in terms of the allegations, we have got fraud
 15 against you; correct?
 16 A. That's correct.
 17 Q. Stealing, theft from the company; correct?
 18 A. Correct.
 19 Q. And then we have an allegation of tax fraud as well.
 20 Are you maintaining that allegation or are you going to
 21 withdraw it?
 22 A. If you are saying to me if I don't understand it, to
 23 withdraw it?
 24 Q. I'm asking you, are you going to make that allegation or
 25 are you going to withdraw it, Ms Birdi?

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1 A. Well, I don't understand it. It's just what I had been
2 told.
3 Q. Ms Birdi, I put it to you, you don't put something in
4 your witness statement, an allegation of fraud, just
5 because you want to report a conversation. You put it
6 there because you are making an assertion.
7 A. Okay.
8 Q. Are you making that assertion of tax fraud against my
9 client or not?
10 A. No.
11 Q. You withdraw that allegation?
12 A. I withdraw that allegation.
13 Q. The first point that you raise in relation to these
14 charges is that part of the charges levied on the store
15 related to the cost of the investigation into Mr Patel;
16 correct?
17 A. That's right. That's what I had thought, yes.
18 Q. You have had explanations given to you by Mr Clark on at
19 least a couple of occasions in writing; correct?
20 A. I had, which were not correct, those reports.
21 Q. There were some minor mistakes in terms of the some of
22 the numbers; isn't that right?
23 A. Considering how many times I had asked for a breakdown
24 of the Loss Prevention costs before -- it's not until we
25 have gone to High Court have I actually managed to get

1 4 1

1 some kind of explanation and again, it has been adjusted
2 a couple of times by Specsavers. So, yes, David Clark
3 did do a report but they weren't minor errors.
4 Q. There was a letter on 16 June 2008?
5 A. That's correct, yes.
6 Q. That's E6/1407, for your Lordship's note. {E/372/1407}
7 And then 8 July, E6/1490. {E/391/1490}
8 There were two letters, June and July 2008. I don't
9 want to go through those unless you want to.
10 Mr Dyson's evidence is that the costs of the
11 investigation were £15,610, which were not borne by the
12 store?
13 A. Okay.
14 Q. Do you accept that? That the £15,000 wasn't charged to
15 the store?
16 A. I accept that it wasn't charged but that has only become
17 clear from going to High Court and through disclosures
18 and through amended points of defence, et cetera.
19 Q. Ms Birdi, you understand that this case isn't about
20 whether there were some mistakes or an error in relation
21 to some figures, don't you? You understand that?
22 A. I do, I do, but the question is why was I not -- if it
23 was honest, then as a co-director, those figures should
24 have been available to me straight away.
25 Q. The allegation that you are making is in fact that the

1 4 2

1 charges were fraudulent?
2 A. Well, if Mr Patel's charges had been charged to the
3 company -- because there was an email between
4 Mr McAlindon and Mr Dyson at the beginning of October,
5 the 1st and the 3rd, where Mr McAlindon is asking
6 Mr Dyson if he can charge the investigation costs of
7 Nimesh Patel and myself to the business, and Mr Dyson
8 says yes for Mr Patel.
9 So, why is Mr McAlindon and Derek Dyson agreeing to
10 pay Mr Patel's investigation costs when they had
11 recovered it from him in February?
12 Q. Can I just go back to the question. The allegation that
13 you are making is that the charges are fraudulent. It's
14 not about whether there are mistakes in numbers. You
15 accept that, don't you? The proceedings are not about
16 mistakes in numbers?
17 A. Right, just say that question to me again?
18 Q. You understand these proceedings are not about whether
19 there was an error in relation to some numbers;
20 the allegation you are making is that these were
21 fraudulent charges?
22 A. Yes.
23 Q. You also appreciate Mr Clark's explanation. He
24 explained that the lion's share of the costs was the
25 standard daily rate for attendance at the store. He

1 4 3

1 told you that, didn't he?
2 A. He did.
3 Q. In fact, the vast bulk of the charges related to
4 a £440 per day charge that was for management cover
5 between April and October 2007; correct?
6 A. It wasn't April -- I think you need -- I need to look at
7 this letter, please.
8 Q. I'm not asking about a letter. I'm asking about the
9 charges?
10 A. I need to see the charges.
11 Q. Okay, shall we have a look --
12 A. Yes, please.
13 Q. -- at the defence, please. It's volume A, page 47.
14 {A/6/47} In 15.2.1, just in terms of figures: £65,120
15 represented emergency management cover between 29 March
16 and 26 October; correct?
17 A. That's correct.
18 Q. That's the vast bulk of the money that we are talking
19 about?
20 A. That's right, but the reason why I asked to see
21 David Clark's is because David Clark's letter went up
22 to December, I believe, the management costs. So the
23 figures just didn't add up.
24 Q. We are going to deal with it in stages. I want to deal
25 with your suspension first.

1 4 4

1 A. Okay.
 2 Q. Could you take volume C, please. Could you be provided
 3 with volume C? Could you turn right towards the back,
 4 page 184?
 5 A. Which tab is that?
 6 Q. It's tab -- I'm not quite sure -- 18, I think.
 7 {C/18/184}
 8 A. Yes.
 9 Q. Just to help you, this is a breakdown of the different
 10 periods, the months, and you will see over the page the
 11 £65,120 figure, which I have referred you to?
 12 A. Yes.
 13 Q. Okay? You have seen this witness statement before,
 14 haven't you, from Mr Dyson?
 15 A. Yes.
 16 Q. Do you accept those figure, the accuracy of those
 17 figures?
 18 A. Yes.
 19 Q. And these are £440, standard -- it says a rate of
 20 £440 per day. And you have been told by Mr Clark,
 21 haven't you, that the daily rate was £440?
 22 A. That's correct.
 23 Q. Back in June 2008?
 24 A. That's correct.
 25 Q. The first person who was in the store as emergency cover

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1 was Carol Slark, wasn't it?
 2 A. That's correct.
 3 Q. And she was there from March to July, about?
 4 A. Yes.
 5 Q. Could you turn up volume E3, please? Do you have that
 6 to hand? C can go. Volume 3, please. Ms Slark wasn't
 7 an employee --
 8 A. What am I looking at?
 9 Q. I'm so sorry, firstly just a question. Carol Slark
 10 wasn't an employee of SOG, was she?
 11 A. According to David Clark's letter, which Derek Dyson
 12 amended and changed, Derek Dyson put "SOG employee".
 13 Q. I'm not asking you whether she was or wasn't? You don't
 14 know. Okay, could I ask --
 15 A. Derek Dyson said she was.
 16 Q. Let's turn up 509, please. That's a -- sorry, are you
 17 there? 509. {E/109.2/509} That's an invoice. Do you
 18 see that, dated 30 April 2007?
 19 A. That's right.
 20 Q. And in fact, that's from Ms Slark?
 21 A. Yes.
 22 Q. To SOS?
 23 A. That's correct.
 24 Q. And she is invoicing at a daily rate of £400 a day?
 25 A. That's correct.

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1 Q. And then if you go back to 507, that's for the month
 2 of April -- she is also invoicing separately for her
 3 disbursements. Do you see that? {E/109.1/507}
 4 A. I do.
 5 Q. So she has invoiced £500; taxi, hotel, season ticket for
 6 a month?
 7 A. Yes.
 8 Q. So, the charge to SOS for that month wasn't just £400
 9 a day, was it; it was also a considerable extra sum for
 10 her disbursements as well?
 11 A. So it's, what, 514 on top of the --
 12 Q. On top of the --
 13 A. -- on top of the month?
 14 Q. Yes.
 15 A. Okay.
 16 Q. So the daily cost to SOS is more than £400 a day?
 17 A. Fractionally, yes.
 18 Q. Well, perhaps more than fractionally.
 19 SOS invoiced for her services at £440 a day;
 20 correct?
 21 A. That's correct, yes.
 22 Q. So that covers the period from March through to July?
 23 A. It does.
 24 Q. After that --
 25 A. Who has agreed these figures of £400? Who has agreed

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1 these figures?
 2 Q. Mr Dyson's evidence is that the £440 daily rate was set
 3 ten years ago from now and it was based on the annual
 4 estimated costs of the Loss Prevention department, and
 5 that that rate had been approved by the board and was
 6 applied to all store companies requiring the services of
 7 the Loss Prevention department?
 8 A. I have never, ever seen any evidence of this. These
 9 charges are excessive. They are excessive. A retail
 10 director, Mr Nimesh Patel, was getting £115 a day. So
 11 they are excessive.
 12 Q. Let's just break down the point you asked me about,
 13 Mr Dyson. Mr Dyson's evidence is that the rate was set
 14 about ten years ago from now and was based on the annual
 15 estimated costs of the Loss Prevention department. Are
 16 you saying that that evidence is incorrect? You don't
 17 accept that evidence?
 18 A. I don't accept that and nowhere has Dartford, the
 19 Dartford business, been shown that it's going to be £400
 20 a day.
 21 Q. That's not what I asked you. I'm asking you about his
 22 evidence. You have read his witness statement, haven't
 23 you?
 24 A. I have, yes.
 25 Q. And he explains that it was set as a standard rate,

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1 based on the annual estimated costs of the Loss
 2 Prevention department. Are you saying that that
 3 evidence is untrue?
 4 A. I have seen nothing to substantiate that.
 5 Q. Do you have any basis --
 6 A. As --
 7 Q. -- for saying that it is untrue?
 8 A. I think my solicitors requested the information, but it
 9 was not supplied.
 10 Q. The answer is "no" to my question, then; is that right?
 11 A. Your question is?
 12 Q. That this was a rate that had been set based on the
 13 annual estimated costs of the Loss Prevention
 14 department?
 15 A. That's what Mr Dyson asserts, but I have seen no
 16 evidence of that as a director of the Dartford store.
 17 Q. That will be his evidence to this court. Are you saying
 18 that that's untrue?
 19 A. There is no evidence to substantiate that; that's what
 20 I'm saying.
 21 Q. But you don't have any evidence the other way, either?
 22 A. No, but this is a massive cost to the Dartford store
 23 which was not approved in any board meeting or any
 24 resolution; it was just charged.
 25 Q. His evidence is that it also applied to all stores that
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1 required the services of the Loss Prevention department?
 2 A. It doesn't matter if it's applied to all stores. It
 3 doesn't mean it's correct.
 4 Q. Do you accept that it is applied to all stores?
 5 A. I don't know that. I know that Loss Prevention do
 6 charge excessive amounts, from the other stores I have
 7 spoken to who have had investigations.
 8 Q. You are not answering my question, Ms Birdi. Do you
 9 accept that this was a standard charge applied to all
 10 stores?
 11 A. I can't confirm that.
 12 Q. But you have no basis for denying it?
 13 A. I have no basis for denying that. But even if it had
 14 been approved, it wasn't passed through any board
 15 meeting, the directors certainly weren't aware of it.
 16 I certainly wasn't aware of it and it is excessive.
 17 Q. You were told by Mr Clark -- you have accepted -- back
 18 in June 2008 that this was the standard £440 daily
 19 charge, weren't you?
 20 A. It doesn't mean that I agree with it.
 21 Q. You were told that, weren't you?
 22 A. Yes, I was told that.
 23 Q. So we have dealt with Ms Slark.
 24 After Ms Slark, Imogen Collar was working in the
 25 store; correct?
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1 A. That's correct.
 2 Q. She was a direct employee of the Loss Prevention
 3 departments, wasn't she?
 4 A. That's what I understand, yes.
 5 Q. She didn't invoice SOS separately, did she?
 6 A. I have not seen any invoices, no.
 7 Q. Then after that, Mr McLaughlin was in the store?
 8 A. Yes.
 9 Q. And I'm just going to look at, firstly, the period from
 10 7 September to 26 October?
 11 A. Yes.
 12 Q. Could you have E4, please. Can I ask you to look at
 13 866. {E/207.1/866}
 14 A. Yes.
 15 Q. That's an invoice from him to SOS.
 16 A. Yes.
 17 Q. Do you see that? 923 for October, some dates
 18 in October. {E/227.1/923}
 19 A. Yes.
 20 Q. And then I think it's 943, if I can read my writing.
 21 Yes, 943, also for part of October. {E/235.1/943}
 22 A. That's right.
 23 Q. If you take it from me, that's 35 days?
 24 A. Okay.
 25 Q. If you like, the difference between the £200 and £440
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1 for that 35 days is £7,700. Do you accept the maths
 2 from me?
 3 A. I'll accept that.
 4 Q. It has been checked by someone who is probably rather
 5 better at it than I am.
 6 MR JUSTICE NUGEE: I don't accept that. The difference
 7 between £200 and £440 is £240 a day times 35 days is
 8 £8,400.
 9 MR POTTS: 35 times -- we will check the figure.
 10 I will take responsibility for that. £8,400.
 11 I apologise. Your Lordship's arithmetic is better than
 12 mine and others. £8,400.
 13 So that's the only part of the charging where
 14 Specsavers were being charged £200 a day that we have
 15 seen; correct?
 16 A. No, sorry. Say that question again, please?
 17 Q. We have looked at Ms Slark?
 18 A. Yes.
 19 Q. And she is charging £400 plus her disbursements?
 20 A. Yes.
 21 Q. Imogen Collar is an employee and isn't invoicing
 22 separately?
 23 A. She is being charged at £440 a day.
 24 Q. She is. And Sean McLaughlin, who is not an employee,
 25 who is there for 35 days during this period, between
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1 7 September and 26 October, is charging £200 but is
 2 charged out at £440?
 3 A. Correct.
 4 Q. So it's only his charges where he is charging SOS £200?
 5 A. That's correct.
 6 Q. And we have seen that Mr Dyson's explanation is that the
 7 £440 rate was a standard rate and that was the standard
 8 charge, whichever the store. Correct?
 9 A. That's what he says but I don't agree with it. It's
 10 very, very excessive. And also Carol Slark was brought
 11 in by Mr McAlindon, and Mr McAlindon's email clearly
 12 says he overcharges to keep the cashflow of his Loss
 13 Prevention department and to depreciate the share value.
 14 Q. Can I just ask you to turn to E5/1186. {E/287/1186}
 15 Page 1186. You see there is a credit note there?
 16 A. That's correct.
 17 Q. Do you see that, dated January 2008?
 18 A. That's correct.
 19 Q. And that's a credit note for £7,800 in favour of the
 20 store from the Loss Prevention department; correct?
 21 A. Yes, and this was credited when I was refusing to sign
 22 end of year accounts because of the charges not being
 23 explained.
 24 Q. But the credit was applied?
 25 A. It is a credit, yes.

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1 Q. Can I move on to another point, the need for cover. If
 2 you turn back to your witness statement, please, if you
 3 turn to your second witness statement, which is
 4 12 June 2014?
 5 A. Yes.
 6 Q. At paragraph 23 -- no, hang on, I'm sorry, that's
 7 a wrong reference. Sorry, it's the third witness
 8 statement. At page 153 {B/3/153}. Paragraph 23?
 9 A. That's correct.
 10 Q. Towards the top of the page. You have got that?
 11 A. Yes.
 12 Q. You say there:
 13 "... the store had experienced, long serving staff
 14 who could have managed the business."
 15 A. That's correct.
 16 Q. This is your suggestion that the staff could have
 17 managed the business without any A directors installed
 18 during your suspension. Is that right?
 19 A. Yes, but I shouldn't have been suspended in the first
 20 place but, yes.
 21 Q. Again, paragraph 31, you make the same point there.
 22 This is your witness statement of 12 June.
 23 A. That's right, yes.
 24 Q. So Mr Patel had resigned; correct?
 25 A. That's correct.

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1 Q. You were suspended from 27 March to 9 October?
 2 A. That's correct.
 3 Q. Six months?
 4 A. That's correct.
 5 Q. About. Mr Dyson says that he considered the choice was
 6 between closing the store, which would have been
 7 disruptive to the business, which might have resulted in
 8 staff being lost and customers, which might have made it
 9 impossible for the store, which was struggling, to
 10 re-open. That's his position.
 11 A. That's what he says, yes.
 12 Q. Are you saying that he didn't think that?
 13 A. No, I believe he didn't think that because he has --
 14 Specsavers has a duty not only as now being whether it's
 15 legitimate or not A shareholders but the B shareholders
 16 as well to look after the company.
 17 Q. So you are saying that he didn't actually form that
 18 view?
 19 A. No, he didn't form that view that the store would have
 20 to be closed.
 21 Q. And so you are saying that he didn't make that
 22 management decision?
 23 A. That the store -- I think the store might have to be
 24 closed?
 25 Q. No, that he thought the choice was between closing the

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1 store and putting in management cover?
 2 A. No, no. From what I know from other stores, no. Loss
 3 Prevention do overcharge to make money for the Loss
 4 Prevention department.
 5 Q. So you are saying Mr Dyson's evidence is untrue?
 6 A. Yes. I do not believe at all that he thought we can
 7 either close or do the other.
 8 Q. You don't mention this long-serving staff point in your
 9 first witness statement, do you?
 10 A. I don't know.
 11 Q. Or your second witness statement?
 12 A. I don't know.
 13 Q. You say you don't know --
 14 A. I can't remember.
 15 Q. I put it to you that you don't. The first mention of it
 16 is in your third statement?
 17 A. Okay. Hopefully you are correct because your maths
 18 weren't correct, so ...
 19 Q. Your counsel has the opportunity for re-examination.
 20 A. Okay.
 21 Q. The long-serving staff that you refer to, who do you
 22 have in mind that should have taken on responsibility
 23 for running a business with a £1 million turnover and
 24 20 staff for six months?
 25 A. Joanna Fendick. She was actually made the manager

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1 in December by Specsavers. And I had Denise Kinsella.
 2 She had been there for many, many years.
 3 Q. Joanna Fendick; she was a trainee DO?
 4 A. A trainee DO and she had been in the business for
 5 a number of years. Denise Kinsella had been in the
 6 business for a number of years.
 7 Q. And you are saying that a trainee DO, on a salary of
 8 £13,000, was capable of running the whole business for
 9 six months. Is that right?
 10 A. Yes, she was on £13,000 but when she qualified she was
 11 on £18,500. Specsavers certainly thought she was --
 12 they made her a manager in that year.
 13 Q. And so who else apart from --
 14 A. Denise Kinsella. She had many years experience.
 15 Q. She was a lab tech, wasn't she?
 16 A. She had done everything in the business. She had been
 17 receptionist; she had been contact lenses; she was in
 18 the lab. She had done many things in the business.
 19 And that team was a very good team, very united.
 20 They work together brilliantly, as Carol Slark says
 21 herself.
 22 Q. This idea of one of your staff managing the whole store
 23 for six months, the first time it comes out is in this
 24 witness statement, the third witness statement, isn't
 25 it?

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1 A. I don't know.
 2 Q. You didn't suggest it in your grievance complaint, did
 3 you, in February 2008?
 4 A. I don't know, I can't remember.
 5 Q. I put it to you, you didn't?
 6 A. Okay.
 7 Q. I also put it to you that you had legal advice at the
 8 time, in 2007, during your suspension, didn't you?
 9 A. Yes.
 10 Q. You didn't raise it at that time as an idea, did you?
 11 A. No.
 12 Q. If you thought that the store -- they shouldn't have had
 13 temporary management cover in and the staff should have
 14 been left to do it, why didn't you mention it at the
 15 time?
 16 A. Look, I have come back into the business in October and
 17 I have come in there and suddenly the store has gone
 18 from plus 45 to minus 45. There's massive charges
 19 incurred on the business. I didn't know what was
 20 happening in between. I couldn't see what was happening
 21 in the business; I had been suspended.
 22 Q. Your solicitors didn't raise the issue during your
 23 suspension, did they?
 24 A. No, because I wasn't aware what financially was
 25 happening in the business.

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1 Q. Are you saying you were unaware there was temporary
 2 management cover in the store?
 3 A. I didn't know there were people in the store on that
 4 occasion that were charging £440 per day.
 5 Q. You knew that there were people in the store, didn't
 6 you?
 7 A. Did I know there were people in the store? Yes, I must
 8 have known. I can't remember specifically whether I was
 9 told.
 10 Q. You didn't assume that they were doing this for free,
 11 did you?
 12 A. Well, actually, I did, because I had been thrown out of
 13 the business. I never ever dreamt that Specsavers'
 14 subsidiary, SOS, would be overcharging the business and
 15 totally destroying the profits of the business.
 16 Q. So is your position that you thought at the time that
 17 there was no charge being levied for management cover?
 18 A. I did, yes, and if charges were being levied, I would
 19 never have thought it would have been like that.
 20 Q. Well, which is it? Did you think that there were
 21 charging being levied or that there weren't?
 22 A. No, I didn't think there were charges being levied.
 23 I didn't even think about it, because I was so ill at
 24 the time. I would never have thought that that would
 25 have happened to the business.

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1 Q. So, you are saying you knew there was temporary
 2 management cover in the store; correct?
 3 A. I would have thought somebody would have been there,
 4 possibly, but I wasn't for sure.
 5 Q. And you were also in fact aware, when you came back from
 6 suspension, that Mr Sean McLaughlin continued to be in
 7 the store, didn't he, during that time?
 8 A. Yes, that's right.
 9 Q. And he was charging for his time.
 10 A. He was charging. I didn't see his invoices until
 11 January. That was the first time I saw his invoices.
 12 Q. You approved some of his invoices?
 13 A. In January, I was sent two of his invoices.
 14 Q. Your solicitors didn't at any time query the idea of the
 15 charging or the idea that the staff should have been
 16 left to manage the store during your suspension?
 17 A. To be honest with you, it's not something that crossed
 18 my mind at the time. I was very, very sick trying to
 19 dealing with the issues, but when I got back into the
 20 business, I challenged those payments.
 21 Q. I'm asking about the idea that the members of staff
 22 should have been left to manage the store by themselves.
 23 It's that point I am asking about, Ms Birdi. You didn't
 24 raise it at the time in correspondence in 2007, did you?
 25 A. No.

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1 Q. You didn't raise it in 2008 in your grievance?
 2 A. When you say I didn't raise it -- what do you mean,
 3 I didn't raise it in 2007? Sorry, I have lost --
 4 Q. Saying that the staff should have been left to run the
 5 store without management cover?
 6 A. No, I didn't raise it.
 7 Q. It's not an allegation that you have raised in your
 8 petition either?
 9 A. Okay.
 10 Q. It's not a matter which is raised in any of your
 11 pleadings, is it?
 12 A. Okay.
 13 Q. And indeed it's not even an allegation you raised in
 14 your main witness statement.
 15 A. If that is what you say.
 16 Q. The reality is that this is an afterthought, which
 17 emerges in your third witness statement?
 18 A. But I would never have thought that those charges would
 19 have been being applied to the store, and if they were
 20 being applied, it should have been at a reasonable rate.
 21 Like I say, Mr Patel was on £115 a day. £400 a day from
 22 someone whom Mr McAlindon had put in?
 23 Q. I put it to you that the idea of staff running the store
 24 by themselves is something which has occurred to you
 25 very recently and wasn't something that you ever thought

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1 at the time?
 2 A. What can I say to that?
 3 Q. Do you agree?
 4 A. I can't say I didn't think -- to be honest with you,
 5 when I was on suspension, I was too busy dealing with my
 6 own health so I don't know --
 7 Q. When did the idea that in fact the staff should have
 8 been left to run the store by themselves first occur to
 9 you?
 10 A. I don't know.
 11 Q. Was it in 2007, 2008, 2009, 2010?
 12 A. During 2007 I don't think it even occurred to me until
 13 I went back to the business. So I just -- I can't
 14 pinpoint a time when I thought the staff could have done
 15 it.
 16 Q. When earlier than 12 June 2014 when you signed this
 17 statement did the idea occur to you?
 18 A. I don't know. Maybe you are right, maybe it occurred to
 19 me then. Maybe you are right, I don't know. But the
 20 fact is -- maybe you are right, I don't know.
 21 Q. I'm asking for your evidence as to when this idea first
 22 occurred to you?
 23 A. I don't know. Maybe -- I don't know when it occurred to
 24 me. Maybe it occurred to me when they put Jo in as the
 25 manager.

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1 Q. I suggest to you that if this was actually a genuine
 2 option, it would have occurred to you at an earlier
 3 stage. The fact is it didn't and it's something you
 4 thought of at the time that you made this third
 5 statement?
 6 A. I don't know when I thought of it. I don't know.
 7 I can't pinpoint a time when I thought of it. But
 8 I know that Jo was looking after the store
 9 in December 2007.
 10 Q. The point I'm putting to you, Ms Birdi, is that the idea
 11 of some of the existing staff running the store wasn't
 12 a realistic option at all, was it?
 13 A. I think it was -- I do think it was a realistic option.
 14 Q. And if it had been a realistic option, you would have
 15 complained about it at some time in the seven years
 16 after it happened?
 17 A. No, I was complaining about the cost to the store.
 18 Q. Just in terms of the position of the store before
 19 Mr Patel's suspension, can I ask you to pick up --
 20 MR JUSTICE NUGEE: Might it be...?
 21 MR POTTS: That may be a moment.
 22 MR JUSTICE NUGEE: Five minutes.
 23 (3.14 pm)
 24 (Short break)
 25 (3.21 pm)

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1 MR POTTS: Ms Birdi, I just want to ask you a couple of
 2 questions about the financial position of the stores.
 3 Could you have a look at D1, please? Keep volume B in
 4 front of you. If you turn, please to, page 252.
 5 {D/19/252}
 6 These are the statutory accounts for Dartford
 7 Specsavers and page 252 is a consolidated P&L account,
 8 so it shows the combined position of both companies. Do
 9 you understand that?
 10 A. Yes, I do.
 11 Q. You see that for the year ended September 2006 -- so
 12 this is a little bit before Mr Patel's departure -- the
 13 turnover for that year was a little over £1 million, at
 14 the top?
 15 A. That's right.
 16 Q. But the profit, the combined profit of the business, was
 17 some £2,000 only?
 18 A. That's right. I can see that on this.
 19 Q. Could you just have a look at D2, by way of comparison,
 20 page 422. {D/31/422}
 21 422 is a P&L account -- actually, I'm not sure if
 22 that is consolidated --
 23 MR JUSTICE NUGEE: No, it's not.
 24 MR POTTS: It's not stated to be but...
 25 I think it is, my Lord. If you look at 420, this is

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1 an index to the consolidated financial statements.
 2 {D/31/420}
 3 MR JUSTICE NUGEE: Right, okay. Yes, it should be, yes.
 4 MR POTTS: And at 419, it also says it's consolidated.
 5 {D/31/419}
 6 At 422 -- and indeed, it must be consolidated
 7 because the holding company wasn't the main trading
 8 entity. {D/31/422}
 9 So you see there the turnover -- this is for 2012.
 10 A. Yes.
 11 Q. The turnover significantly increased to £1.226 million.
 12 Do you see that?
 13 A. I do, yes.
 14 Q. And the profits for the year have increased to £53,700?
 15 A. Yes.
 16 Q. So it's a significant margin of increase, yes?
 17 A. Yes.
 18 Q. And the previous year, again, you can see the comparable
 19 figures of profit, £128,000.
 20 A. Yes.
 21 Q. So the comparison of those figures show that there is
 22 a dramatic improvement, isn't there, certainly under
 23 Mr Singh's stewardship from the business before?
 24 A. From?
 25 Q. Looking back to the position, say, in 2006?

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1 A. Don't forget, this is the period when Mr Patel was
 2 stealing as well, plus(?) the venture went through to
 3 2004 to 2006.
 4 Q. The amounts that he admitted to steal were some £4,000?
 5 A. Yes, that's what he has admitted to. I did say to you
 6 earlier that we were taking a lot less dividends, but
 7 also we did use our credit cards to take money out as
 8 well on P11D expenses.
 9 Q. Are you suggesting that the auditors missed -- these
 10 accounts were audited, weren't they?
 11 A. No, no, I'm not saying anything at all. I am just
 12 saying -- comparing the two. That's all I'm saying.
 13 Q. Are you suggesting that the auditors missed £100,000
 14 worth of thefts in their audit, by Mr Patel?
 15 A. I don't think the auditors were even told that Mr Patel
 16 was stealing.
 17 Q. It's not just a question of them being told something;
 18 they audit the accounts, don't they?
 19 A. Yes, they do. I'm not an accountant. I don't know how
 20 they audit the accounts: but I do know that his stealing
 21 wasn't reported to the auditors. How would the auditors
 22 know?
 23 Q. The auditors run audit checks, don't they, Ms Birdi?
 24 A. Yes.
 25 Q. And one of the things that auditors are required to do

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1 is to take reasonable steps to see whether there has
 2 been fraud in the business?
 3 A. Okay. But how would -- I'm no accountant, anyway,
 4 but..
 5 Q. You can't really assist on that issue?
 6 A. No.
 7 Q. Okay. Let's move on briefly to camera charges. Could
 8 you look at volume C, please, Mr Dyson's statement,
 9 which is at tab 18, page 186? {C/18/186}
 10 A. Yes.
 11 Q. At paragraph 13 he deals with the level of charges for
 12 the cameras?
 13 A. That's right.
 14 Q. (a), (b), (c), (d) and (e). You have looked at those
 15 figures?
 16 A. Yes.
 17 Q. Do you accept those figures as accurate?
 18 A. I'm not sure because I have had so many different
 19 amounts, different figures, I don't know what --
 20 Q. £4,500 for the investigation into Mr Patel, which was
 21 never charged to the company, (a)?
 22 A. I would have to look at my witness statement.
 23 I'm a bit confused here, my Lord, because I have had
 24 a couple of different versions from Mr Dyson. I'm not
 25 quite sure which is correct.

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1 Q. Okay, this is his most recent statement?
 2 A. Yes, but I can't remember what the figures are.
 3 Q. Okay.
 4 A. So I would have to look at my --
 5 Q. Okay. No doubt that can be explored with Mr Dyson, but
 6 I suggest to you that those are the levels of the
 7 figures.
 8 £2,400 for the investigation into Mr Patel. That's
 9 (b).
 10 You were aware that cameras were going to be
 11 installed?
 12 A. For Mr Patel, yes.
 13 Q. You agreed to that?
 14 A. I did, yes.
 15 Q. You appreciated that there was a charge for the cameras,
 16 didn't you?
 17 A. I did, and they would be charged to Mr Patel.
 18 Q. £2,220 for the hard drives, to store the material?
 19 A. I disagree. That £2,220 was actually done when I was
 20 still in the store. I don't agree. I was speaking to
 21 an IT chap and he said £1,110 for a hard drive for
 22 a security camera is excessive. So -- and they were put
 23 in, I believe, to record me because this invoice was
 24 authorised to be charged to the Dartford store by
 25 Mr McAlindon whilst I was still in the store, I think it

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1 was about 25 February, and I think it was to record me.
 2 Q. This is about a hard drive, though; it's not for
 3 a camera?
 4 A. Well, the hard drives go into the camera and if you look
 5 at the Loss Prevention Control file, when anything
 6 happened with Nimesh stealing, they would come in, take
 7 the hard drive away, burn any information on to a disk
 8 and leave a new hard drive into the machine at work.
 9 Q. Mr McAlindon's evidence is that they were purchased in
 10 order to store the footage from the preceding period.
 11 Are you saying that was wrong?
 12 A. I don't believe that to be the case. I believe they
 13 were put in without authority to --
 14 Q. Are you saying his evidence on this it untrue?
 15 A. I am, yes.
 16 Q. Then £1,500 for a camera installed following a suspected
 17 theft from the store in April 2007. Are you aware of
 18 that charge?
 19 A. Yes, but like I say, I can't confirm these figures
 20 because I have had so many different versions.
 21 Q. Okay, but you are aware that the camera was installed
 22 following a suspected theft by a member of staff?
 23 A. I was told that when I returned.
 24 Q. Are you saying that didn't happen?
 25 A. I'm not sure. I can't say yes or no to that.

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1 Q. You have no reason to disbelieve that that didn't
 2 happen?
 3 A. That's correct.
 4 Q. And £3,000 for a suspected theft by a refund transaction
 5 by a member of staff as well?
 6 A. I can't -- I can't sort of say anything otherwise.
 7 Q. So you have no basis for challenging that that wasn't
 8 the reason for the cameras being put in?
 9 A. That's right, but I have the basis -- on looking at
 10 these costings, they are excessive again. And this is
 11 the company that I was told -- we were told in
 12 Mr McAlindon's witness statement -- was an independent
 13 third party and the person who owns this company is the
 14 other Loss Prevention chap who suspended me and he has
 15 a partnership in this company so he is benefiting from
 16 it and they are excessive.
 17 Q. You are making assertions in relation to that regard
 18 now?
 19 A. Yes, I do, because I made -- I -- me and my husband --
 20 investigated Retail Covert Surveillance ourselves
 21 in September and we discovered that this company was
 22 actually listed to Mr Phil Barnes' home address. And
 23 then we challenged Specsavers and now it has been found
 24 out, this information, which was never clear and
 25 transparent and wouldn't have been told to us had we not

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1 done our investigations.
 2 Q. Mr Dyson says that -- also the Loss Prevention -- it's
 3 not just a question of putting a camera into the store,
 4 is it? Someone has to look and work through the tapes?
 5 They have to look at the records, don't they?
 6 A. They do, yes, and they charge for that. On the invoice
 7 control file there is charges to that and even --
 8 I mean, I found this even more shocking. They put
 9 cameras in, the camera went faulty at one time when they
 10 were recording Mr Patel's thefts. They came in to
 11 correct it and they actually charged on their invoice
 12 control sheet. They put a charge on it.
 13 Q. Mr Dyson's evidence at paragraph 16, he confirms just
 14 below the first punch that: {C/18/187}
 15 "The costs relating to the investigation work by
 16 personnel from the Loss Prevention Department into
 17 Mr Patel ... or into Ms Birdi ... were never charged to
 18 [the store]."
 19 Are you saying he is mistaken about that?
 20 A. It looks like it wasn't charged, but it doesn't mean
 21 that it wasn't attempted to charge. I think I have
 22 referred to this previously, when Mr McAlindon contacts
 23 Mr Dyson in October 2007 to charge it and Mr Dyson says
 24 yes.
 25 Q. Are you saying --

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1 A. And there are some accounts in there. To be honest with
 2 you --
 3 Q. It wasn't charged?
 4 A. It doesn't seem to be charged, no. It seems to have
 5 been refunded.
 6 Q. Okay. Let me move on to another of your allegations.
 7 Your pleaded case is that the pay rises and phone uses
 8 given to staff in 2007 were motivated, not by genuine
 9 business reasons, but by malice towards you and a desire
 10 ultimately to remove you from the business. Is that
 11 right? Perhaps I'm being unfair?
 12 A. Not to -- no, not to remove me from the business.
 13 Q. Could I ask you to turn up volume A, please, tab 5.
 14 {A/5/27} There is a section dealing with increased
 15 overheads for the business. Do you see that in the
 16 middle of the page?
 17 A. What page are we on?
 18 Q. 34, I'm so sorry. {A/5/34} Paragraph 29.
 19 A. That's right.
 20 Q. You see that? It's talking about salary increases and
 21 bonuses to staff whilst you were suspended. That's
 22 in 2007?
 23 A. That's correct.
 24 Q. You say in paragraph 31, your pleaded case is breach of
 25 contract, but you also say:

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1 "... these actions were motivated not by genuine
2 business reasons but by malice towards the petitioner
3 and a desire ultimately to remove her from the
4 business."
5 That's what you believe, isn't it, Ms Birdi?
6 A. Yes, I do, yes.
7 Q. Because if you turn to the end of this document --
8 A. Yes, I do.
9 Q. On page 41, your solicitor has signed a statement of
10 truth saying that you believe the facts stated in --
11 {A/5/41}
12 A. Yes.
13 Q. You can put away A. Go back to your witness statement,
14 please. Your first statement, paragraph 17 on page 4.
15 {B/1/4} Do you have that?
16 A. I have, yes.
17 Q. You make the point about charging costs of its
18 investigation, costs of its personnel and you go over
19 the page at page 5: {B/1/5}
20 "It also awarded gratuitous increases in
21 remunerations to the staff to draw them into the
22 conspiracy, as a result of which the staff were induced
23 to join in signing a letter which falsely and
24 dishonestly accused me of bullying them."
25 That's your evidence to this court?

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1 A. That's right, yes.
2 Q. Let's me just break that down a bit. So you are saying
3 that the increases in remuneration in 2007 to the staff
4 was part of a conspiracy against you; correct?
5 A. I do believe so. It was to damage my reputation with
6 the staff.
7 Q. And you are saying that "gratuitous" means for no value?
8 A. Does it?
9 Q. What do you mean by "gratuitous"? It is your word,
10 Ms Birdi?
11 A. I meant awarded very substantially high increases.
12 Sorry, have I used the word wrongly? Sorry.
13 Q. I just wanted to understand --
14 A. Excessive. I have just told you: excessive.
15 Q. You mean excessive?
16 A. Yes.
17 Q. Excessive increases in remuneration to draw them into
18 the conspiracy?
19 A. Yes.
20 Q. And you say that this was to induce them to sign
21 a letter. That's the letter of 16 June?
22 A. That's right.
23 Q. So that's three years after these pay rises, correct?
24 A. That's right.
25 Q. And in that letter you say the six staff who sign that

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1 letter:
2 "... falsely and dishonestly accused [you] of
3 bullying them."
4 A. That's right.
5 Q. What you mean is that the contents of that letter were
6 false; correct?
7 A. No, I don't say that they were false. I do believe that
8 they were given -- the staff were given false
9 information.
10 Q. You say that the letter:
11 "... falsely and dishonestly accused [you] of
12 bullying them."
13 A. What I meant to say -- maybe I didn't word it
14 properly -- I didn't bully them. That allegation is
15 false, but the staff -- I don't know what they thought
16 at that time. The allegation is not right.
17 I don't know. I'm not making myself clear.
18 Q. The letter, which they signed --
19 A. Yes.
20 Q. -- contained a number of allegations?
21 A. Yes.
22 Q. And you are saying that in making those allegations, the
23 staff were:
24 "... falsely and dishonestly accusing {you} of
25 bullying."

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1 A. Of bullying, yes. That was false, yes.
2 Q. And dishonest, the allegation in the letter, wasn't it?
3 A. Yes.
4 Q. So the staff were making false and dishonest
5 allegations?
6 A. Of accusing me of bullying them, yes.
7 Q. Right, and you are saying that the false and dishonest
8 allegations made by members of staff were a result of
9 a gratuitous and excessive increase in remuneration in
10 2007, three years earlier; correct?
11 A. Yes, and I do believe that that actually made them feel
12 that I was underpaying them and paying all the monies to
13 my husband, so they did lose what respect they would
14 have had for me. It damaged our relationship, if that's
15 how I should put it.
16 Q. You are not suggesting here, Ms Birdi, that it had just
17 damaged your relationship with your staff?
18 A. That is what I'm saying.
19 Q. The allegation you are making in paragraph 17 of this
20 statement, the essence of it is that the staff were
21 bribed by payments in 2007 --
22 A. No.
23 Q. -- to make false --
24 A. No, no.
25 Q. Just listen to my question, Ms Birdi. The allegation

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1 which is made in this paragraph is that the staff were
 2 bribed in 2007 by pay increases to draw them into
 3 a conspiracy, which involved them making false and
 4 dishonest allegations in a letter?
 5 A. I didn't -- what I meant to say -- maybe I haven't
 6 worded it properly -- was they had been paid this money
 7 and it caused a breakdown -- a damage to our
 8 relationship.
 9 Q. That's not the evidence you gave to his Lordship
 10 a couple of minutes ago. The evidence you gave to his
 11 Lordship a couple of minutes ago was that the
 12 allegations made in the letter by the staff were false
 13 and dishonest?
 14 A. They are false and dishonest because I didn't bully
 15 them. It is false and dishonest. But it's true, the
 16 fact that I do believe that the staff -- Mr McAlindon
 17 discussed with Carol Slark about increasing these staff
 18 salaries on the day he came to interview two of the
 19 staff, and from their interview notes you can see that
 20 they have become very disgruntled, learning about the
 21 payments my husband was paid for his website
 22 application. You can see they are upset and then
 23 suddenly, Mr McAlindon is saying, "Oh, let's sort out a
 24 new bonus salary structure for them". This is put
 25 through and the staff, obviously, a normal human

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1 instinct, were being underpaid and it does damage the
 2 relationship.
 3 Q. This isn't just about damaging the relationship,
 4 Ms Birdi. The allegation you are making is that what
 5 the staff wrote in that letter was untrue and they knew
 6 it was untrue?
 7 A. Well, yes.
 8 Q. And that's dishonest?
 9 A. If an independent third party had investigated this, as
 10 they should have, taken the six-staff letter, did an
 11 investigation of it, I don't believe anything of
 12 bullying would have been found.
 13 Q. It's not what I'm asking you, Ms Birdi?
 14 A. No, the allegation of bullying is false.
 15 Q. So you are saying that the allegation of bullying that
 16 they made in the letter was untrue and that they knew it
 17 was untrue; correct?
 18 A. I think so, yes.
 19 Q. So they knew it was untrue and the reason why they made
 20 an untrue allegation is because they would have been
 21 drawn into a conspiracy by accepting excessive pay;
 22 correct?
 23 A. Not by accepting excessive pay. I'm saying that the
 24 business increased -- made these excessive increases and
 25 it was to damage my reputation with the staff. And then

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1 they made these accusations. That's what I'm saying.
 2 My reputation, myself, had been damaged in 2007 and
 3 there's emails there which show how Carol Slark and
 4 Mr McAlindon were working to damage my relationship with
 5 the staff.
 6 Q. That's not the allegation you make in this paragraph,
 7 Ms Birdi?
 8 A. That's what I'm telling you it means.
 9 Q. You say in this paragraph -- you use the "induce" word
 10 again; we have looked at that before. You are saying in
 11 this paragraph that they received gratuitous increases
 12 in remuneration and that was an inducement for them to
 13 sign a knowingly false letter?
 14 A. Where have I used the word "induce"?
 15 Q. The penultimate line.
 16 A. Well, I have just explained to you what I meant by that.
 17 Q. You have explained to his Lordship this morning --
 18 I asked you about inducement and you said you understand
 19 that inducement was the giving of some consideration,
 20 some value to somebody to do something improper?
 21 A. Yes, I think they were induced, because my reputation
 22 had been damaged with them -- obviously they had lost
 23 respect for me because I was being undermined, also with
 24 the fact of the monies, and they had lost respect for
 25 me. And maybe their inducement wasn't monetarily -- if

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1 they sign this letter, I won't return back to the store.
 2 Q. Let's move on. Paragraph 222. {B/1/47} Here you are
 3 saying that Ms Groves was working hand in hand with
 4 Mr McAlindon to poison the attitude of the staff against
 5 you; correct?
 6 A. Yes.
 7 Q. 235?
 8 A. There's emails there. If you look from 28 April 2007 --
 9 Q. Ms Birdi, I'm just asking you for what you are saying?
 10 A. Yes, the evidence is there.
 11 Q. 235, you say that: {B/1/51}
 12 "... she was working with Mr McAlindon on the
 13 project to get me out of the store by all means
 14 possible."
 15 A. Yes.
 16 Q. So your assertion is that Ms Groves/Ms Slark was also
 17 part a dishonest plan against you by Specsavers;
 18 correct?
 19 A. Yes. Ms Groves, who is Ms Slark now, yes. If you look
 20 at the email, like I say, on 28 April 2007, it is quite
 21 evident there that she wants the staff to trust her and
 22 how, "Oh, I have got evidence here you will like".
 23 She is not just a caretaker of the store; she was
 24 put in by Mr McAlindon. Her timetable was organised
 25 before he came in to throw me out and she was working in

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1 tandem with him and the emails are there.
2 Q. So she was acting dishonestly as part of a conspiracy?
3 A. She was working with Mr McAlindon, yes.
4 Q. Just answer my question?
5 A. Yes.
6 Q. She was acting dishonestly as part of a conspiracy?
7 A. Yes, she was, and you can see the emails as well.
8 Q. Can you turn to paragraph 224, please. {B/1/48} You
9 refer there to a bonus paid in May 2007, or authorised
10 in 2007, of £60 to Ms Frondigoun?
11 A. That's right, yes.
12 Q. Then there is a reference to a payroll sheet, and then
13 half way down you say:
14 "These monetary inducements given to the staff out
15 of the company's money without proper authorisation ...
16 were part of the means by which Specsavers poisoned the
17 minds of the staff who signed the 'To Whom It May
18 Concern' letter ..."
19 That's the June 2007 letter; correct?
20 A. That's right.
21 Q. "The staff will have been led to believe that I was
22 keeping all the money for myself and that they could
23 expect more of such generous treatment once I had been
24 removed."
25 A. Yes.

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1 Q. Is that right?
2 A. Yes, if I'm out of the store and suddenly they get
3 increase in salaries and massive increase in bonuses,
4 they will think, "Ugh, she wasn't paying us, was she?
5 She was keeping all the money to herself."
6 Q. In fact the pay rises which were given to the staff were
7 approved by Mr Dyson?
8 A. That's what Mr Dyson says but Mr McAlindon initiated it.
9 Q. Okay, but Mr Dyson approved the pay rises?
10 A. And he didn't have a right to approve the pay rises
11 either. It should have gone to a board meeting. It's
12 clearly day-to-day management, and he even says in this
13 email it's day-to-day management.
14 Q. I'm really asking about his intention in giving the pay
15 rises. Are you saying that he did so with the intention
16 of harming you --
17 A. Yes I did --
18 Q. -- and ultimately removing you from the business.
19 If you just listen until I have finished the
20 question?
21 A. I'm sorry.
22 Q. Don't worry. Are you saying with the intention of
23 harming you and removing you from the business?
24 A. Yes, and a member of staff from the Uckfield store gave
25 a witness statement and she said the same thing: they

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1 were offered gratuitous increases in salaries and
2 bonuses, even when the store was not performing well.
3 Their --
4 Q. So Mr Dyson --
5 A. My I -- please let me finish.
6 Mr Dyson knew the business was not in a good way and
7 why are these salaries and gratuitous bonuses being
8 given? The operating profits (inaudible) --
9 Q. I don't accept --
10 A. -- was very low.
11 Q. -- "gratuitous", but in terms of the salaries and
12 bonuses, you are saying that, in improving the pay rises
13 and bonuses, he was acting dishonestly?
14 A. Yes, I do, I do state that, yes. The business was in
15 a mess.
16 Q. So he genuinely was not having any regard to the
17 business at all?
18 A. No. There are agreements in place -- if I had been
19 informed about it, we could have made a joint decision
20 together. Actions were being taken which I believe were
21 not in the best interests of the business and should
22 have been put to a board meeting.
23 Q. I'm not asking you about the procedure.
24 A. Okay.
25 Q. I'm asking you about what he says he was doing and why

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1 he says he was doing it. You have read his evidence.
2 He says that he thought it was in the interests of the
3 business. You are saying he did not think it was in the
4 interests of the business; correct?
5 A. Yes.
6 Q. And in fact he was approving pay rises with the
7 intention of harming you and removing you from the
8 business?
9 A. Decreasing the profits of the business, yes, and
10 damaging my reputation with the staff, yes.
11 Q. Okay, could you have a look at E2 in terms of what
12 happened, E2/433 {E/88/433}. Do you have that, 433?
13 A. I do, yes.
14 Q. It's an email from Ms Groves to Mr McAlindon on 2 May.
15 Do you see that?
16 A. I do, yes.
17 Q. She says at the first hole punch:
18 "I have put together a proposal of salaries to be
19 altered in a review."
20 Do you see that?
21 A. Yes, I do.
22 Q. "As we discussed, the dedicated staff {of the} store
23 have not received a salary review over the last three
24 years and, having spoken to Susannah Hart, operations
25 manager, and using the salary scales on EyeQ, it was

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1 proved that the staff were underpaid. I have also made
 2 a phone call to Lucy, manager {at Gravesend}, again to
 3 compare salaries."
 4 A. Okay.
 5 Q. What she is saying is that, firstly, the staff hadn't
 6 received a salary review in three years?
 7 A. That's not true.
 8 Q. That's not true? She is making that up?
 9 A. They had a salary review in the middle of 2005.
 10 Q. Middle of 2005? So not for two years?
 11 A. By that time, yes.
 12 Q. Not three. So you take issue with -- you are saying
 13 it's --
 14 A. I'm just saying factually it's not correct.
 15 Q. You accept that they hadn't had a review for two years?
 16 A. That's correct.
 17 Q. She says that she has looked at salary scales on EyeQ.
 18 EyeQ is the -- if you like, is the intra--
 19 A. The internal internet system.
 20 Q. -- internal computer system, and that has the manual on
 21 and it has lots of information?
 22 A. That's correct.
 23 Q. And she is saying that there were some salary scales on
 24 there which showed that the staff were underpaid?
 25 A. That's correct.

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1 Q. Are you saying that that didn't happen?
 2 A. I don't know if it did happen.
 3 Q. Do you have any reason to believe that it didn't happen?
 4 A. No, I don't have a reason to believe that it didn't
 5 happen.
 6 Q. She also says that she has spoken to the manager of the
 7 Gravesend store to compare salaries?
 8 A. Okay.
 9 Q. Do you have any evidence to suggest that that's not
 10 true?
 11 A. No.
 12 Q. I would suggest to you that all those matters suggest
 13 a genuine attempt to see whether the staff were getting
 14 fair pay, doesn't it?
 15 A. This is the next day, after Mel McAlindon had been down
 16 to interview the two staff and he had made -- he had
 17 told them about my payments -- the payments to Mr Rehman
 18 for his website application and they were upset. So he
 19 picked on that and he says, "Let's do a salary review
 20 for the staff."
 21 That's what I truly do believe. Two, because this
 22 is his modus operandi. He did it in Uckfield and I know
 23 he did it other stores as well.
 24 Q. I'm asking about Ms Slark in this email, Ms Birdi.
 25 A. Yes.

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1 Q. We have gone through matters that she says she has done,
 2 and she says that the staff haven't had a salary
 3 review -- you say it's two years; she says it's three.
 4 A. Yes.
 5 Q. She says that she has looked at the pay scales and
 6 spoken to somebody else at another store and she has
 7 formed the view that the staff are underpaid.
 8 A. Okay.
 9 Q. I put it to you that that suggests a genuine attempt to
 10 see whether the staff were getting fair pay?
 11 A. Okay.
 12 Q. Would you accept that that suggests a genuine attempt to
 13 see if the staff were being properly paid?
 14 A. Yes, it does but then if you look at her other emails
 15 (inaudible) Mel McAlindon, where she says:
 16 "I have been very generous here."
 17 Exclamation mark.
 18 Q. In fact what she was proposing was a 5 per cent pay rise
 19 for most of the staff, wasn't it?
 20 A. It may have been but I do know that a 21 per cent pay
 21 rise was given to a member of staff.
 22 Q. I'll come on to that in a moment, but most of the
 23 recommendations she was making -- for the two staff she
 24 was recommending a higher amount, but for most of the
 25 staff she was recommending a 5 per cent pay rise.

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1 A. Okay.
 2 Q. That's not particularly generous, is it?
 3 A. When I say these increases, if you look at the bonuses,
 4 they had increased from £830 per month to £2,500 per
 5 month.
 6 Q. I'm going to break it down. I'm dealing with the pay
 7 rise first.
 8 A. Okay. I'm combining both together.
 9 Q. Basic pay: she is suggesting a 5 per cent pay rise.
 10 A. Okay.
 11 Q. That's not particularly generous, is it?
 12 A. No, but I'm talking about both figures.
 13 Q. Okay. Then she suggested some additional pay for
 14 four staff, didn't she? If you look at the next
 15 paragraph down, she says some are highlighted in yellow.
 16 She is suggesting Jo Fendick, and she says:
 17 "... that is due to a discussion with Lucy at
 18 Gravesend saying that they pay their trainee DOs £2,000
 19 over the salary of an unqualified dispensing assistant."
 20 A. Okay.
 21 Q. So she is suggesting that Jo Fendick is seriously
 22 underpaid; correct?
 23 A. That's what she is saying.
 24 Q. Because it was out of line with what a trainee DO gets
 25 paid compared to an unqualified member of staff;

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1 correct?
 2 A. That's what she is saying, yes.
 3 Q. She is not just saying it, is she? She is saying she
 4 discussed it with Lucy at Gravesend?
 5 A. Okay.
 6 Q. Do you have any reason to disbelieve that she had had
 7 that discussion with Lucy?
 8 A. No, I don't.
 9 Q. And do you have any reason to disbelieve that in fact it
 10 was underpaid compared to a comparable store and
 11 a comparable member of staff?
 12 A. No.
 13 Q. In fact Mr Dyson's evidence is that it was he who
 14 authorised the increases in salary.
 15 A. Okay.
 16 Q. You have seen his evidence on that, haven't you?
 17 A. Yes.
 18 Q. And in fact the pay rises which were authorised were not
 19 for all staff; it was for seven out of the 19 members of
 20 staff from September 2007.
 21 A. Okay.
 22 Q. Do you accept that?
 23 A. I do.
 24 Q. So there were five --
 25 A. That's for the salaries but that's not for the bonus.

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1 Q. I'll come on to the bonus in a moment.
 2 A. Okay.
 3 Q. The salaries -- so not all the members of staff got
 4 a pay rise. Five non-optician staff got a pay rise.
 5 They were Patrice O'Brien, Savio Fernandes,
 6 Darshan Jhita, Denise Kinsella and Sheila O'Brien. Is
 7 that correct?
 8 A. That's correct.
 9 Q. Their pay rises were quite modest, weren't they?
 10 A. The pay rise.
 11 Q. You accept that the pay rise was modest?
 12 A. I don't know. I can't remember the figures.
 13 Q. We can have a look at that. Can we have a look at E1 at
 14 123 {E/7/123}. That's a report dated 5 July 2007. You
 15 see S Fernandes, basic pay 869.38?
 16 A. Yes.
 17 Q. And then if you go on to page 126 {E/7/126}, which is
 18 the report dated 5 October -- so I suppose that's pay
 19 for September, isn't it? Is that right?
 20 A. That's right.
 21 Q. Yes. Fernandes, £900 basic pay.
 22 A. And then November it was £1,000. That was October
 23 payroll. It was £1,000.
 24 Q. I see, and you say that by November it had gone up to
 25 £1,000? I see. So you are saying that these are very

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1 large pay rises?
 2 A. I'm saying, combined with the bonuses, it had a massive
 3 effect on them.
 4 Q. We will deal with the bonuses. I'm just dealing with
 5 basic pay.
 6 A. My point is these -- I was a director of the business.
 7 This should have been put to me. If it was all bona
 8 fide, then why wasn't it put to me? Why wasn't
 9 I involved in this? It's day-to-day management.
 10 Q. Ms Birdi, I'm asking you just about the amounts at the
 11 moment.
 12 A. Okay.
 13 Q. Okay? Mr Dyson approved a pay rise --
 14 A. Can I put this away now?
 15 Q. Just hold it there for the moment -- for five of the
 16 non-optician staff, their basic pay, some increase; yes?
 17 A. Yes.
 18 Q. And there were two further increases, which were larger
 19 in amount: Trishna Gunamal -- she was a qualified
 20 optician, wasn't she?
 21 A. She was.
 22 Q. And she was given an increase of 21 per cent. That's
 23 from £30,000 to £36,500?
 24 A. That's correct.
 25 Q. Could I ask you to go to E6, please. Could you turn,

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1 please to, 1627. {E/462/1627}
 2 That's a partner brief for September 2008.
 3 A. That's right.
 4 Q. And if you look over the page {E/462/1628}, this sets
 5 out optometrists costs, some guidelines, and if you
 6 look, this is in fact for June 2008. Do you see that,
 7 16 --
 8 A. I do.
 9 Q. And if you look in the middle of the page:
 10 "Meridian East."
 11 That's your area?
 12 A. That's right.
 13 Q. 00 salary: 38,035.
 14 A. That's right.
 15 Q. So the market rate for a qualified optician in the
 16 Meridian East region in June 2008 was £38,000?
 17 A. That was the market rate. It doesn't mean each store
 18 paid £38,000.
 19 Q. No, indeed. Mr Dyson's view was that the staff were
 20 underpaid. That's his evidence.
 21 A. Okay.
 22 Q. And increasing Ms Gunamal's salary to £36,500, that was
 23 in line with the market rate at the time. Do you accept
 24 that?
 25 A. I don't know what the market rate was in 2007.

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1 Q. Okay.
 2 A. My optician was happy as she was.
 3 Q. Would you accept that the market rate was likely to have
 4 been in that sort of area, rather than £30,000?
 5 A. It may have been higher, but if you have got -- you can
 6 get opticians who are testing 20 minutes, you can get
 7 opticians who are testing half an hour, and their
 8 salaries will be a different rate.
 9 Q. Would you accept that Mr Dyson, when he says in his
 10 evidence that he took the view that the pay for her was
 11 below market rate and it was appropriate to increase her
 12 salary, he was making a genuine business decision?
 13 A. Maybe he was.
 14 Q. Is that a yes?
 15 A. What I know how Specsavers work and how their Loss
 16 Prevention department work, I can't -- I have no faith
 17 in what they do. Okay?
 18 Q. Mr Dyson isn't in the loss prevention department, is he?
 19 A. But I told you that Mr McAlindon reported up to
 20 Derek Dyson. For example, my suspension wasn't
 21 authorised. Mr Derek Dyson said, "Go ahead", without
 22 any board resolution, nothing.
 23 Q. Mr Dyson is the Global Retail Director for Specsavers
 24 group?
 25 A. Yes.

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1 Q. He is not a member of the Loss Prevention department?
 2 A. No, he is not, but he is his -- can we call him a line
 3 manager? Mr McAlindon's?
 4 Q. But he has responsibility for over 700 stores in the UK.
 5 A. Yes.
 6 Q. His evidence is that he took the view that it was
 7 appropriate to grant an increase of pay to Ms Gunamal
 8 because he thought she was underpaid compared to the
 9 market?
 10 A. I may have agreed with him, but what I'm saying is they
 11 should have come to me -- I wasn't suspended from my
 12 directorship duties -- and we could have decided what
 13 was in the best interests of the business, and he even
 14 acknowledges that it was day-to-day management when
 15 Mr McAlindon approaches him about increasing staff
 16 salaries.
 17 Q. I understand your complaint about procedure, Ms Birdi,
 18 but the allegation that you have made against Specsavers
 19 is that this wasn't a business decision at all but it
 20 was a malicious decision taken by Mr Dyson?
 21 A. Well, knowing how Loss Prevention operates, I do believe
 22 it was, yes.
 23 Q. So you are saying that he didn't genuinely take
 24 a decision that it was appropriate to increase her
 25 salary because it was out of kilter with market, he did

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1 it in order to harm you?
 2 A. It all comes down to Mr McAlindon, like I say again.
 3 Q. I'm not asking about Mr McAlindon, I'm asking about
 4 Mr Dyson, Ms Birdi.
 5 A. I don't know. I can't answer that question. I don't
 6 know if he did or he didn't.
 7 Q. You have made an allegation that Mr Dyson was part of
 8 a dishonest conspiracy to drive you out of the business,
 9 haven't you?
 10 A. Yes.
 11 Q. I'm asking you about his decision to increase the salary
 12 of Ms Gunamal, as to whether that was a dishonest
 13 decision that he took in order to harm you or whether it
 14 was actually a genuine business decision that he took in
 15 what he considered to be the interests of the company,
 16 to reflect what he thought was market rates of pay.
 17 Which is it?
 18 A. It may have been -- it may have been, I don't know.
 19 Q. It may have been which of the two?
 20 A. It -- he may have thought, "Yes, they are underpaid, she
 21 is underpaid, let's increase it." But, like I was
 22 saying, an optometrist that tests 20 minutes is going to
 23 get a higher salary than someone who tests 30 minutes.
 24 So you have to take those things into consideration. So
 25 whether he did or not, I don't know.

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1 Q. I'm not asking whether you think he might have got it
 2 wrong, I'm asking about his motivation in increasing the
 3 pay. The allegation that you have made is that these
 4 were gratuitous increases in pay to draw the staff into
 5 a conspiracy to get rid of you; correct?
 6 Let's just answer that point. Yes?
 7 A. Okay, let me put it like this then --
 8 Q. Could you just answer my question.
 9 A. Yes, I am. I think on this occasion maybe Derek Dyson
 10 did think of it as a business decision, but the
 11 procedure was wrong.
 12 Q. The allegation you have made is that the increases in
 13 pay were malicious and taken with the aim of driving you
 14 out the business?
 15 A. Yes.
 16 Q. The decision to increase the salary was taken by
 17 Mr Dyson.
 18 A. Mr McAlindon is the one who made the decision to
 19 increase staff salaries, and Mr McAlindon then
 20 approaches Derek Dyson and -- it's like my suspension:
 21 Mr McAlindon suspended me and then he goes to Mr Dyson
 22 afterwards. So it's basically Mr McAlindon was in there
 23 and he knew he had upset the staff. So then he goes to
 24 Mr Dyson.
 25 Q. Can I ask you to turn up volume C, please? Can you turn

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1 up page 109? It's tab 9. {C/9/109} Paragraph 94. He
 2 says that it was he who considered Ms Slark's request
 3 for salary and bonus increases; correct?
 4 A. That's what he says, yes.
 5 Q. Yes. Do you have any reason to say that that's not the
 6 case?
 7 A. No -- it wasn't -- Mr McAlindon was in tandem with
 8 Ms Slark and it was proposed to ... from the emails --
 9 Q. Mr McAlindon had passed on Ms Slark's suggestion to
 10 Mr Dyson, hadn't she?
 11 A. Yes.
 12 Q. Yes?
 13 A. Yes. I think you should look at the emails.
 14 Q. And, 95, Mr Dyson says he authorised increases ranging
 15 from 3 per cent to 13 per cent in respect of five out of
 16 the 19 employees.
 17 A. Okay.
 18 Q. We have dealt with those. Those are the non-opticians;
 19 correct?
 20 A. Yes.
 21 Q. "I considered ..."
 22 That's Mr Dyson:
 23 "I thought it was ..."
 24 It was reasonable and fair in the circumstances
 25 where they had not had salary reviews for years.

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1 A. Which is incorrect.
 2 Q. Well, they certainly hadn't had one for two years.
 3 A. Two years then.
 4 Q. So he was the one who took the decision to increase the
 5 salaries; correct?
 6 A. That's what it says in here.
 7 Q. Are you saying that he is lying?
 8 A. I don't know what you want me to say. That's what he is
 9 saying.
 10 Q. Do you have any reason to believe that when he says that
 11 he took the decisions to increase salaries, that that's
 12 not true?
 13 A. No, I don't.
 14 Q. And he says that he authorised an increase for
 15 Trishna Gunamal?
 16 A. Hm-mm.
 17 Q. Who we have looked at.
 18 A. Yes.
 19 Q. And he also increased -- a large increase, 30 per cent,
 20 for Jo Fendick, who had been a dispensing optician at
 21 the time, effective from September. Yes?
 22 A. That's what's there.
 23 Q. And in fact she qualified just before 28 August, didn't
 24 she?
 25 A. She did.

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1 Q. An increase of a trainee from £13,300 to £18,500 was
 2 hardly lavish, was it?
 3 A. No, because she had qualified, but that's my point
 4 again: I may have not had an issue with any of these but
 5 if it had been bona fide, it should have been presented
 6 to me as a director of the business.
 7 Q. He says that the purpose of the increases for those
 8 two members of staff was to bring those salaries in line
 9 with market rates at the time. That was his purpose.
 10 Are you saying that that is untrue?
 11 A. No.
 12 Q. Ms Birdi, if you accept that the decision to increase
 13 the pay was taken by Mr Dyson --
 14 A. Yes.
 15 Q. -- and that the purpose of doing so was to bring the
 16 salaries in line with market rates, I put it to you that
 17 you had no basis for then asserting that Mr Dyson was in
 18 fact motivated by malice and dishonesty towards you in
 19 increasing those salaries.
 20 A. I know from other stores and in the Uckfield case what
 21 Mr McAlindon does with the store staff. Loss Prevention
 22 go in there, say to the staff, "You have been
 23 underpaid", they increase the bonuses, they increase the
 24 salaries, even though the operating profit has
 25 diminished rapidly because of the Loss Prevention costs.

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1 This is --
 2 Q. Ms Birdi, I'm sorry --
 3 A. -- the modus operandi.
 4 Q. -- you are continually not answering my question.
 5 A. Sorry.
 6 Q. Ms Birdi, I want you to be aware that if you continue to
 7 not answer my question, I will ask his Lordship in due
 8 course to make a finding that you are unwilling or
 9 unable to answer my questions. Do you understand?
 10 A. I am able.
 11 Q. I'm going to ask you the question again.
 12 I'm not asking you about Mr McAlindon, I'm asking
 13 you about Mr Dyson.
 14 A. Okay.
 15 Q. Are you continuing to assert that Mr Dyson, who
 16 authorised these pay increases, was motivated by malice
 17 towards you?
 18 A. Yes, I do.
 19 Q. I put it to you that these were business decisions that
 20 Mr Dyson took honestly, in what he considered to be the
 21 interests of the company to make the pay in line with
 22 the market.
 23 A. Okay.
 24 Q. Do you accept that or do you not accept that?
 25 A. No, I don't accept that. He also authorised the Loss

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1 Prevention cost to go through at 440. He also --
 2 Q. I'm asking about pay, Ms Birdi.
 3 A. He also authorised Mr McAlindon's investigation of
 4 Nimesh Patel to go through, so ...
 5 Q. I'm asking about pay, Ms Birdi. You are not answering
 6 my question, are you? Let's just deal with
 7 Miss Fendick. In fact, after your return to work on
 8 9 October, she was given a further £5,000 pay rise,
 9 wasn't she? Do you remember that?
 10 A. No.
 11 Q. E1. If you look at page 130 {E/7/130}, this is pay for
 12 November, dated 5 December, page 130? Do you see
 13 Miss Fendick just over half way down?
 14 A. Yes.
 15 Q. £1,541 basic pay.
 16 A. That's right.
 17 Q. So if you look for the next month -- that's December's
 18 pay -- you were back in the store by then, weren't you?
 19 A. I had come back.
 20 Q. Yes. Her pay was increased to £1,958 per month. I'm
 21 going to hesitate some maths here with some trepidation
 22 but that's an annual increase, I would say, of £5,000
 23 a year, from £18,500 to £23,500.
 24 A. I was actually off -- I had had a miscarriage then, so
 25 I was actually not there in end of November/December, so

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1 when this decision was taken by --
 2 Q. So who took this decision?
 3 A. I don't know who took this decision. I don't --
 4 Q. Your suspension had been withdrawn three months earlier,
 5 hadn't it?
 6 A. It had but I think on 26 November my doctor had to sign
 7 me off because --
 8 Q. Are you saying that when you saw this, you challenged
 9 it, her pay rise?
 10 A. I don't even remember seeing this pay rise --
 11 Q. She continued to be employed in the store, didn't she?
 12 A. She left in August the following year, I believe.
 13 Q. Okay, but her pay was going out on a monthly basis,
 14 wasn't it?
 15 A. Yes. I don't know why -- when you told me that £5,000,
 16 it didn't even occur to me.
 17 Q. You are saying you had no idea how much your staff were
 18 getting paid?
 19 A. Maybe it has slipped my mind. I don't know.
 20 Q. You were a director of the company, weren't you?
 21 A. I know, but that -- when you said to me £5,000 on top --
 22 I remember Neil Lunn sending me an email because he
 23 wanted me to take on a manager, someone new. I don't
 24 know whether he told me then, but, no, honestly,
 25 I didn't realise that. At this moment in time I can't

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1 remember being told that.
 2 Q. Are you suggesting that you were just not aware of the
 3 pay of your staff at all?
 4 A. I don't remember being told that £5,000, no. Maybe
 5 I was. I don't know.
 6 Q. I'm not asking whether you were told about it. You are
 7 one of the two directors of the company.
 8 A. Well, I am just telling you now. Maybe I did -- on the
 9 spot here maybe I'm just tired, I don't know. I just
 10 can't remember that £5,000 difference. I don't know.
 11 Maybe I'm just tired.
 12 MR POTTS: My Lord, perhaps that's a convenient moment.
 13 MR JUSTICE NUGEE: It is quite a long day.
 14 MR POTTS: Yes, my Lord.
 15 MR JUSTICE NUGEE: Thank you very much, Ms Birdi.
 16 Just before we break, a couple of housekeeping
 17 matters. Could you tell me at some stage, Mr Potts,
 18 where I find the provision that SOG is the chairman of
 19 both companies? You don't need to do it now.
 20 MR POTTS: No.
 21 MR JUSTICE NUGEE: Table O provides that the chairman has
 22 a casting vote.
 23 MR POTTS: Yes.
 24 MR JUSTICE NUGEE: But I couldn't, at a quick glance, find
 25 the provision that says that --

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1 MR POTTS: We are the chairman.
 2 MR JUSTICE NUGEE: -- you're the chairman.
 3 MR POTTS: I think it's probably in the shareholders'
 4 agreements but I will check it.
 5 MR JUSTICE NUGEE: The other thing is, I'm not clear -- and
 6 I don't think I have seen a clear statement -- as to the
 7 respective roles of the two companies. One can see from
 8 the accounts that the bulk of the sales go through
 9 Visionplus.
 10 MR POTTS: Yes.
 11 MR JUSTICE NUGEE: But there are still quite a few sales
 12 that go through the other company and I don't understand
 13 what the role of the two companies is. Again, not now.
 14 MR POTTS: No.
 15 MR JUSTICE NUGEE: But I just thought I would tell you those
 16 points were points I would like some clarification on at
 17 some stage.
 18 Thank you very much.
 19 MR POTTS: My Lord, sorry, I can actually answer -- the
 20 first one I can do on my feet. The articles of Dartford
 21 Specsavers, which is in D1, page 172 {D/14/172} -- it's
 22 Article 5(c) -- provide that the class right is given:
 23 "To B shares the right to appoint the chairman of
 24 the board ..."
 25 MR JUSTICE NUGEE: Thank you.

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1 MR POTTS: "... and of the general meeting." 1
2 MR JUSTICE NUGEE: Yes, and it's probably the same in the 2
3 articles of the other company. 3
4 MR POTTS: I'll check that, my Lord, yes. 3
5 MR JUSTICE NUGEE: Yes, it's probably is. 4
6 MR POTTS: It's one out of two but I think the other one is 4
7 a little bit more taxing on a Friday afternoon. I'll 5
8 have to think about that. 6
9 MR JUSTICE NUGEE: Yes. Thank you. 7
10 Ms Birdi, remember what I said to you yesterday? 8
11 I'm afraid it applies for the whole weekend, which is 9
12 one of those unfortunate things, but don't speak to 10
13 anybody, including your husband and your legal team, 11
14 about the case at all, and we will see you back on 12
15 Monday morning. 13
16 Mr Potts, are we on track for the timetable? 14
17 MR POTTS: My Lord, the timetable, I think, has me finishing 15
18 on Tuesday morning. 16
19 MR JUSTICE NUGEE: It does. You have the whole of Monday to 17
20 continue cross-examination. 18
21 MR POTTS: I do. 19
22 MR JUSTICE NUGEE: And then finishing on Tuesday (inaudible) 20
23 provision for re-examination. 21
24 MR POTTS: Yes. I'm making good progress, my Lord. 22
25 I can't -- the answers that are coming out -- there is 23
24 25

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MS SWARANDEEP BIRDI (continued)1
Cross-examination by MR POTTS (continued)1

1 no criticism at all but there are some really rather
2 long answers and so I cannot guarantee that I will
3 finish by lunchtime on Tuesday, but not much --
4 MR JUSTICE NUGEE: But you are not wildly off track?
5 MR POTTS: I'm not wildly off track.
6 MR JUSTICE NUGEE: I didn't think you were but it's
7 important to keep these things under review.
8 MR POTTS: My Lord, yes.
9 MR JUSTICE NUGEE: Very well, 10.30 on Monday.

10 (4.19 pm)
11 (The court adjourned until 10.30 am on Monday
12 27 October 2014)

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