

# 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 5

October 29, 2014

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1 Wednesday, 29 October 2014  
 2 (10.30 am)  
 3 MS SWARANDEEP BIRDI (continued)  
 4 Cross-examination by MR POTTS (continued)  
 5 MR JUSTICE NUGEE: Yes, good morning, Mr Potts.  
 6 MR POTTS: Good morning, Ms Birdi.  
 7 A. Good morning.  
 8 Q. Could you, please, be passed volume B and E6 and E2,  
 9 please -- and C actually, I'm so sorry. I think B is  
 10 the one you need to have immediately in front of you.  
 11 Could you turn in volume B, please, to  
 12 paragraph 549. I'm going to ask you some questions  
 13 about dividends. {B/1/128} Do you have that?  
 14 A. I have, yes.  
 15 Q. You have set out part of the shareholders' agreement.  
 16 Your understanding was that under the shareholders'  
 17 agreement, you and Mr Singh, where there were profits  
 18 available for distribution, you were entitled to have  
 19 those profits distributed subject to reserves as  
 20 required by the business; normal requirements of  
 21 businesses similar to that of the company and its  
 22 subsidiary; correct?  
 23 A. That's what this says in the shareholders' agreement,  
 24 yes.  
 25 Q. You understood that at the time?

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1 A. When I signed, obviously, I was an optician, I didn't  
 2 really look at that, I just signed it. But, yes,  
 3 I understand that now to be the case.  
 4 Q. And you were a JVP for ten years?  
 5 A. That's correct, yes.  
 6 Q. At 552 {B/1/129} you refer to being sent a report each  
 7 month and being told by financial planning as to the  
 8 amount valuable for distribution. Do you see that?  
 9 A. I do, yes.  
 10 Q. That was a bottom line report?  
 11 A. I believe so, yes.  
 12 Q. Could you have a look at E6, please, and at 1465.  
 13 {E/383/1465}  
 14 A. Yes.  
 15 Q. You can see that's an example of a bottom line report,  
 16 isn't it?  
 17 A. It is, yes.  
 18 Q. There are various numbers provided there in terms of  
 19 cash, profits, and then some options, bonuses, dividends  
 20 and so on, at the bottom of the page, saying that it's  
 21 subject to financing and distribution approval. Do you  
 22 see that?  
 23 A. I do, yes.  
 24 Q. And then some notes there as well about only current  
 25 year profit available for distribution with year end

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1 planning?  
 2 A. That's correct.  
 3 Q. So the way it would work is that you and your fellow  
 4 A shareholder would fill in a form requesting a dividend  
 5 and you would submit that to the distributions and  
 6 investments department?  
 7 A. Yes. Mr Patel would look at the figures and then he  
 8 would give me a form to sign so that we could request  
 9 the distribution.  
 10 Q. Could you --  
 11 MR JUSTICE NUGEE: Just before you leave that, do you get --  
 12 not just 1465. Do you get all the four pages starting  
 13 at 1462, when you got the bottom line, or do you just  
 14 get the last --  
 15 A. While I was a director, a big bunch was profit and loss  
 16 and balance sheet items. So it was quite a big --  
 17 MR JUSTICE NUGEE: Quite a big package?  
 18 A. A big package, yes. But I was looking at the disclosure  
 19 and they don't all seem to be there in the disclosure.  
 20 They should be. I don't know what's happened there.  
 21 MR JUSTICE NUGEE: Right, thank you.  
 22 MR POTTS: Do you have volume C? At page 93 is Mr Dyson's  
 23 witness statement. {C/9/93}  
 24 A. Yes.  
 25 Q. Could you turn to paragraph 30. He explains the

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1 practice in relation to this. He said, paragraph 30,  
 2 that: {C/9/93}  
 3 "... the Distributions and Investment Department is  
 4 responsible for calculating the amount of profit ..."  
 5 And provided that to you by way of a bottom line  
 6 report. Do you agree with that?  
 7 A. Yes.  
 8 Q. "The same rules apply to all store companies..."  
 9 They will retain some reserves and he refers there  
 10 to a profit buffer, which was £20,000 for store  
 11 companies, built up over 12 months and that might be  
 12 temporary. Were you aware of that?  
 13 A. Well, I wasn't -- I hadn't really looked at it but when  
 14 I saw this statement, I did look at some directors'  
 15 reports to kind of understand that.  
 16 Q. You are saying at the time, that wasn't something you  
 17 were aware of?  
 18 A. I knew that money -- a little bit of money had to be put  
 19 aside, but I wasn't aware of the amount, but I wasn't  
 20 aware of the term "profit buffer".  
 21 Q. Okay. 30.2 talks about also that each store builds up  
 22 a healthy retained profit to show to the outside world  
 23 that it's solvent and a buffer in case of a downturn in  
 24 profitability.  
 25 A. Sorry, I have lost myself.

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1 Q. 30.2, I'm sorry.  
 2 A. Okay, carry on.  
 3 Q. It says:  
 4 "Dartford was ... required to always keep £40,000 of  
 5 retained profit on its balance sheet."  
 6 Was that something you were aware of?  
 7 A. No, I wasn't aware of that amount, no.  
 8 Q. Do you have any reason to disagree with Mr Dyson in  
 9 relation to that?  
 10 A. Again, when I looked at that, I looked at when me and  
 11 Mr Patel bought the shares of the previous directors,  
 12 and I'm not an accountant but when I was looking at  
 13 that, it looked like there was a buffer of 30, so...  
 14 Q. Okay. Then at 30.3, he refers to: {C/9/94}  
 15 "Additional reserves may also arise due to the  
 16 circumstances of individual store companies."  
 17 For example, refurbishment works or for legal  
 18 matters, such as a claim against the company or service  
 19 company. Do you have any reason to --  
 20 A. When it says --  
 21 Q. -- challenge that?  
 22 A. When it says for refurbishment works, we had a separate  
 23 account where money was actually put into a refit  
 24 account.  
 25 Q. I think there may be a distinction, perhaps, between

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1 cash and reserves on profits. Are you aware of the  
 2 distinction between those two concepts?  
 3 A. Yes, cash is what's available at the bank.  
 4 Q. Right.  
 5 A. Reserves are the built-up profits on the balance sheet?  
 6 Q. Okay. So they may not be entirely the same thing.  
 7 I appreciate you are not an accountant, Ms Birdi.  
 8 A. No, I'm not an accountant, no.  
 9 Q. This isn't a test?  
 10 MR JUSTICE NUGEE: Nor am I, Mr Potts, and at the moment I'm  
 11 slightly bemused by the detail of it.  
 12 MR POTTS: I'm sorry, my Lord.  
 13 A. Me too.  
 14 Q. And 30.4 he also says:  
 15 "... prior to declaring a dividend, the ...  
 16 department will also complete an additional cash flow  
 17 check, to check that even if a store company has  
 18 sufficient profit, it has sufficient actual cash to make  
 19 the distribution."  
 20 He refers to cashflow availability being calculated  
 21 by looking at the bank balance over three months and  
 22 deducting a cashflow reserve equivalent.  
 23 Was that something you were aware of?  
 24 A. I think I was aware that you had to put one week's  
 25 turnover aside. Yes, that rings a bell to me.

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1 Q. But you were aware that the distribution and investment  
 2 department firstly would calculate the profit figures  
 3 and indeed whether it was possible to pay a dividend  
 4 based on those criteria, or certainly some criteria.  
 5 Maybe you didn't appreciate all the criteria?  
 6 A. Like I say, we paid a management fee so that -- and we  
 7 trusted Specsavers to do what they did, and that was  
 8 that.  
 9 Q. Okay, so you relied on them to do those calculations?  
 10 A. Yes, because I'm not an accountant; I'm an optician.  
 11 Yes, that's correct.  
 12 Q. Having checked the figures and determined whether it was  
 13 appropriate, they would approve that dividend and pay it  
 14 to you and your fellow director?  
 15 A. Say that again, sorry?  
 16 Q. Having checked the figures and determined whether it was  
 17 appropriate, they would approve the dividend and pay it  
 18 to you and your fellow director?  
 19 A. Well, I didn't look at it as that they would approve;  
 20 what we did, me and Mr Patel would send it off and it  
 21 got paid. We would sign it, we sent it off and it got  
 22 paid.  
 23 Q. You appreciated that before any dividend could be paid,  
 24 Specsavers had to approve it?  
 25 A. Actually, we thought, as directors, when we signed the

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1 form, it gets sent off, no queries were ever raised and  
 2 it was paid. Only, I believe in 2006, when the  
 3 department sent a request back because they wanted us to  
 4 put it as a dividend, rather than a bonus. That was my  
 5 understanding was it was just procedure. We both signed  
 6 it. As long as we both signed it, it got sent off and  
 7 it was paid.  
 8 Q. But you appreciate that the distribution and investment  
 9 department firstly calculated levels of profit and also  
 10 calculated whether a dividend could be paid?  
 11 A. Well, like I say, Mr Patel would look at the bottom line  
 12 accounts and then we would make an application, but we  
 13 just sent it off and it was never queried apart from  
 14 that once.  
 15 Q. You appreciated that Specsavers had responsibility under  
 16 the shareholders' agreement for all management matters,  
 17 didn't you?  
 18 A. Yes.  
 19 Q. So you also appreciated therefore that they had the  
 20 responsibility both to calculate and approve dividend  
 21 requests by you?  
 22 A. Like I say to you, when you say the word "approve", it  
 23 was distribution of profits. Both the A directors had  
 24 signed the form and we sent it off, and we just thought  
 25 it would be paid, and that's exactly what happened.

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1 Q. But you appreciated that under the shareholders'  
 2 agreement, that required agreement by the shareholders,  
 3 didn't it?  
 4 A. Like I say, as far as I was concerned, both A directors  
 5 had signed this form, it got sent off and it got paid.  
 6 Only once was it queried was when we had to change the  
 7 figure from a bonus -- the same figure but from a bonus  
 8 to a dividend. It was never my thoughts to think, "Oh,  
 9 we are applying for this, oh, SOG might reject it".  
 10 That was never my thought. Both A directors had signed  
 11 the form, it was sent off and it was paid.  
 12 Q. So you are saying it was not your understanding that  
 13 Specsavers had to approve dividends?  
 14 A. Obviously, if the money wasn't there, then it would end  
 15 up being either a loan back or it would be paid -- like  
 16 Kristina Smith said in December 2006, it will be paid  
 17 when there is cashflow there. But if you are asking me,  
 18 could I say that SOG would reject a payment, no,  
 19 I don't -- I hadn't considered that.  
 20 Q. I wasn't asking about rejection; I was asking whether  
 21 your understanding was that they had to approve  
 22 dividends?  
 23 A. No. I knew it had to go to them and then it was just  
 24 a formality to sign the form and then it got paid.  
 25 Q. Paragraph 551, {B/1/128} you talked about bonuses and

1 benefits in kind and you talk about preserving parity  
 2 there?  
 3 A. That's correct.  
 4 Q. You understood that you and your fellow A shareholder  
 5 might get some benefit from the business, which was  
 6 actually a personal matter?  
 7 A. Yes.  
 8 Q. And that might be treated as a benefit in kind?  
 9 A. That's correct, yes.  
 10 Q. And to ensure that benefits were equalised, the company  
 11 could make a payment to you or your fellow director to  
 12 match that payment; is that right?  
 13 A. That's correct, yes.  
 14 Q. And again, you would fill out a dividend request form?  
 15 A. Yes, a bonus or -- bonus request or a dividend request  
 16 form, yes.  
 17 Q. Then you would send it off to the distribution and  
 18 investment team?  
 19 A. Yes. We would both sign it, send it off and then it got  
 20 paid.  
 21 Q. And I suggest to you that by reference to Mr Dyson's  
 22 evidence, that team would check it and make sure the  
 23 company had distributable profits and available cash to  
 24 make a distribution?  
 25 A. Of course there has to be available money; otherwise, it

1 can't be paid at that moment in time.  
 2 Q. And available profits?  
 3 A. Whatever criteria they use. Obviously, to protect the  
 4 business, you don't want to drain all the money out,  
 5 but, yes, if it couldn't be paid at that time, my  
 6 understanding was that it would be paid when cash was  
 7 available.  
 8 Q. If you can have a look then at E2, please?  
 9 A. Yes.  
 10 Q. Right at the start, 201. {E/13/201}. This is a request  
 11 form sent by you and Mr Patel in September 2006?  
 12 A. That's right.  
 13 Q. And you can see at the top it says:  
 14 "By signing this form, you request the Financial  
 15 Planning department to approve the distribution value  
 16 shown in the box below..."  
 17 A. I can see that, yes.  
 18 Q. Do you see that? So you can see that you were asking  
 19 them -- you understood that you were asking them to  
 20 approve a distribution?  
 21 A. Like I said, when we got these forms, I didn't read that  
 22 small print. We put on there what money was owed, we  
 23 both signed it and we sent it off. Only on one occasion  
 24 was it queried and this was this occasion.  
 25 Q. Are you saying over a ten-year period, you never read

1 these forms?  
 2 A. No, we signed it and that's what we did. We signed it  
 3 and we sent it off and the money was paid. Apart from  
 4 this one instance when we had to refill it in and put it  
 5 as a dividend request, rather than a cash bonus request.  
 6 Q. So over a ten-year period, are you saying you never read  
 7 one of these forms?  
 8 A. I didn't read that small print, no. I just filled in  
 9 what I needed to fill in, we both signed it and Nim sent  
 10 it off -- Mr Patel sent it off.  
 11 Q. Then there is a description of what the dividend relates  
 12 to there, an equalisation bonus on credit card expenses;  
 13 you see that?  
 14 MR JUSTICE NUGEE: You describe it as a dividend, Mr Potts,  
 15 but I'm not sure this form describes it as a dividend.  
 16 This form describes it as --  
 17 MR POTTS: -- a distribution, my Lord.  
 18 MR JUSTICE NUGEE: Yes, but what they ask for is an  
 19 equalisation bonus, and it's not obvious to me that that  
 20 falls within the dividend policy. It might do, but it's  
 21 not obvious on the face of the form that it's by way of  
 22 dividend.  
 23 MR POTTS: Well, it's a reference to a distribution, isn't  
 24 it, Ms Birdi? Did you understand that the same  
 25 principles applied to this as to a formal dividend?

1 A. Yes, I mean, what we did, we took monies out of the  
 2 business, either by bonus or by dividend. And this  
 3 form -- this is a cash bonus request. It was also  
 4 a dividend request, and financial planning told us that  
 5 we could change this to a dividend request, so this is  
 6 why this one wasn't paid.  
 7 Q. But you understand that the same principles in relation  
 8 to the distribution policy applied to a bonus as well as  
 9 a formal dividend?  
 10 A. Yes. If you are asking me -- if I understand you right,  
 11 you are saying that if we were taking distribution of  
 12 profits out of the business, it was the same whether it  
 13 was bonus or dividend?  
 14 Q. Yes?  
 15 A. Yes.  
 16 Q. Thank you. And in fact, I think you say in your witness  
 17 statement, at paragraph 559, that this was rejected by  
 18 financial planning? {B/1/131}  
 19 A. Yes, like I have said, yes, because they asked us to put  
 20 it through as a dividend request, rather than as a bonus  
 21 request.  
 22 Q. Then you can see in E2, in fact a couple of months  
 23 later, on 1 November, at page 204 {E/14/204} you made  
 24 a further request. Do you see that?  
 25 A. Yes, that's the -- exactly the same amount but, like

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1 I say, it was for a dividend because financial planning  
 2 asked us to do that. So the bonus request was  
 3 cancelled.  
 4 Q. And a couple of pages before, 202, 203, you can see that  
 5 there is some number crunching which has gone on there?  
 6 {E/14/202}  
 7 A. Yes, this is something I would give to my accountant.  
 8 Q. Okay. But again, this is something -- you relied on  
 9 financial planning?  
 10 A. Yes.  
 11 Q. And you can see in the bottom right-hand side, on each  
 12 of those pages it says:  
 13 "Approved by ..."  
 14 Sorry on, on 202? {E/14/202}  
 15 A. Sorry?  
 16 Q. On page 202 you can see in the bottom right it says,  
 17 "Approved by ..." and there are various boxes to be  
 18 ticked and signed?  
 19 A. I didn't really look at this.  
 20 Q. Okay, and the same at 203? {E/14/203}  
 21 A. Like I say, I never looked at these.  
 22 Q. So to recap, you relied on financial planning in  
 23 relation to processing and telling you what could be  
 24 paid?  
 25 A. Yes, for processing it, yes, and -- yes, letting us

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1 know.  
 2 Q. You would submit a request?  
 3 A. Yes.  
 4 Q. Specsavers would check the request?  
 5 A. Yes.  
 6 Q. And they would see either approve or reject it?  
 7 A. I don't think a request was ever rejected. In regards  
 8 to the outstanding dividend, we were told that there  
 9 wasn't enough cashflow present but it would be paid. So  
 10 I have never had anything rejected, as such.  
 11 Q. But they would come back to you and tell you?  
 12 A. Yes, they would come back to us and say -- like  
 13 Kristina Smith did with the December 2006 dividend. She  
 14 said there is not enough cashflow present, spoke to  
 15 Nimesh Patel but we should distribute it in the New  
 16 Year.  
 17 Q. That's consistent with the shareholder's agreement,  
 18 which required the shareholders together to approve  
 19 dividends, didn't it?  
 20 MR JUSTICE NUGEE: You have said that twice, Mr Potts, but  
 21 I'm not sure I remember that from the shareholders'  
 22 agreement.  
 23 MR POTTS: Yes, paragraph 4.1 of the shareholders' agreement  
 24 says:  
 25 "The shareholders shall procure ..."

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1 MR JUSTICE NUGEE: Yes, that's an obligation to procure.  
 2 It's not a consent. It's not, "The shareholders shall  
 3 each consent to payment of dividends".  
 4 MR POTTS: No, my Lord --  
 5 MR JUSTICE NUGEE: It's a legal point, but if you are  
 6 putting to a witness when an agreement says, I think one  
 7 needs to be accurate about it.  
 8 MR POTTS: You are right.  
 9 MR JUSTICE NUGEE: It's a procurement obligation on the  
 10 shareholders to procure that this dividend policy is  
 11 followed.  
 12 MR POTTS: Yes.  
 13 MR JUSTICE NUGEE: With a procedure for reference to an  
 14 independent expert if there is a dispute about it.  
 15 MR POTTS: My Lord, yes.  
 16 MR JUSTICE NUGEE: That's not the same as a consent  
 17 requirement by the shareholders.  
 18 MR POTTS: My Lord, you are right. If I can rephrase the  
 19 question.  
 20 MR JUSTICE NUGEE: Yes.  
 21 MR POTTS: You understood that the shareholders together  
 22 would deal with dividends. Not just you, but it was the  
 23 shareholders collectively who had responsibility in  
 24 relation to dividends?  
 25 A. My understanding was that me and Nim -- me and

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1 Mr Patel -- if we sent a request form off, that it would  
2 be paid. It was just a formality to get it processed,  
3 if the cash was available. That's my understanding.  
4 And if it wasn't, then it would be paid when the money  
5 was available.  
6 Q. And were you aware of the provisions of the articles of  
7 association of the company -- I'm only asking you if you  
8 were aware of this?  
9 A. No.  
10 Q. I'm not going to be testing you on the law -- in  
11 relation to declaration of dividends?  
12 A. No, I never looked at the articles of association  
13 really, no.  
14 Q. Okay. And you are aware of the dispute resolution  
15 mechanism in the shareholders' agreement, which his  
16 Lordship has just referred to as well?  
17 A. I wasn't aware of it until, I think -- was it -- I think  
18 around September 2009 when Mr Moore and Mr Kidd raised  
19 it with me -- told me about it.  
20 Q. You had legal advice from much earlier on than that  
21 date, didn't you? I'm not asking you to trespass upon  
22 advice that you may or may not have been given.  
23 A. Yes.  
24 Q. But you had had legal advice for some time?  
25 A. I had, yes.

17

1 Q. And that's a mechanism that you have never sought to  
2 activate?  
3 A. I haven't, no.  
4 Q. And then at paragraph 555 of your witness statement,  
5 {B/1/129} I think this may be what you are referring to.  
6 You refer to the rules in relation to dividend and you  
7 refer to a letter. Is that the one you were just  
8 referring to?  
9 A. Yes, I believe it is, yes.  
10 Q. Could you take E8, please, 2070. {E/672/2070}  
11 A. Sorry, what number?  
12 Q. I'm sorry, 2070. It's a letter to you from Mr Kidd,  
13 Director of Legal, Corporate?  
14 A. Yes.  
15 Q. And if you turn to the second page on point 4, by the  
16 second holepunch on there, he explains that a dispute as  
17 to level of dividends can be referred to an independent  
18 expert. {E/672/2071}  
19 A. Just bear with me.  
20 Q. "Any dispute --"  
21 A. Sorry, I have lost myself.  
22 Q. Don't worry. Just above the second holepunch at the  
23 bottom of that paragraph:  
24 "Any dispute as to level of dividends, if it cannot  
25 be resolved, is to be referred to an independent

18

1 expert."  
2 A. Yes, I see that.  
3 Q. And below that he is asking -- this is in relation to  
4 the issue about your refusal to agree equalisation  
5 between you and Mr Singh, isn't it? That's the context  
6 of this letter; do you remember?  
7 A. I think it is, yes.  
8 Q. He is asking you your reasons for why you wanted further  
9 information, why you were preventing the board from  
10 going as planned on 20 August and objecting to the  
11 agenda items, and then (c):  
12 "... refusing to allow equalisation between the  
13 A shareholders and the company..."  
14 Then he says:  
15 "... unless you propose to involve the independent  
16 expert, in which case please confirm in writing."  
17 A. Okay.  
18 Q. So he was inviting you -- whether you wished to refer  
19 a dispute to an independent expert, in this letter?  
20 A. That's right, yes.  
21 Q. And you didn't take up that invitation --  
22 A. No, I didn't.  
23 Q. -- at that time?  
24 A. No I didn't and -- carry on.  
25 Q. And you didn't take up that invitation at any time

19

1 either before or after your dismissal?  
2 A. No, I mean, Specsavers hadn't been clear and transparent  
3 in -- like I have said before, in what Mr Singh's salary  
4 package was, so, even if I had decided to take up  
5 independent expert advice, I needed the information of  
6 his salary package to decide what needed to be  
7 equalised.  
8 Q. And going back to your witness statement at 553,  
9 {B/1/129} you are saying that in fact, dividends were  
10 always decided by consensus. That's a consensus between  
11 Specsavers, you and your fellow A director, isn't it?  
12 A. Like I said, when me and Mr Patel signed dividends or  
13 cash bonus requests, we both signed it, we sent it off  
14 and we never had a reason to believe it wouldn't be  
15 paid. We never thought, "Oh, is this going to be paid?  
16 Is Specsavers going to approve it or are they going to  
17 reject it?"  
18 And if there wasn't enough cashflow, like  
19 in December 2006, it would be paid when there was.  
20 Q. Ms Birdi, I'm just asking what you say in paragraph 553.  
21 I'm suggesting to you there that what you are suggesting  
22 is that dividends were decided upon by consensus between  
23 you and your fellow A director and Specsavers?  
24 A. Would you mind if I read this paragraph?  
25 Q. Of course, absolutely.

20

1 A. Yes. (Pause)  
 2 Okay.  
 3 Q. Would you accept that?  
 4 A. Could you pose the question again, please?  
 5 Q. Sorry. What I'm suggesting to you is that in  
 6 paragraph 553, dividends were decided by consensus  
 7 between you and your fellow A director and Specsavers?  
 8 A. Like I say, yes, it was sent off to say, "You two want  
 9 this money, yes, there is enough funds, so send it". So  
 10 it wasn't that I was saying -- like I say, I wasn't  
 11 saying that I ever thought that Specsavers could reject  
 12 it. By "consensus", I mean that they were saying, "Yes,  
 13 there's enough available profit there, so, yes, we can  
 14 distribute that amount".  
 15 Q. Ms Birdi, I suggest that's not the effect of 553 because  
 16 you are referring -- you are saying that there was never  
 17 a resolution to -- you never referred a dispute to an  
 18 independent expert, did you?  
 19 A. No, I didn't.  
 20 MR JUSTICE NUGEE: Can I be clear what it is you are  
 21 saying -- this is your witness statement -- what it is  
 22 you are saying in that first sentence. When you say:  
 23 "... dividends were always decided upon by  
 24 consensus."  
 25 Did you mean, "Me and Mr Patel agreed it", or did

21

1 you mean, "Me, Mr Patel and Specsavers agreed it"?  
 2 A. No, I meant me and Mr Patel agreed it, and then me,  
 3 Mr Patel and Specsavers would pay it, if there was  
 4 available funds.  
 5 MR JUSTICE NUGEE: But you go on in the second sentence to  
 6 say that Specsavers start off by telling you how much is  
 7 available and then you and Mr Patel jointly ask for it?  
 8 A. Yes, I think where I'm getting confused on this side is,  
 9 when we had the normal accounts, the bottom line would  
 10 come and we would see the figure and we would say, "Oh,  
 11 we can have this much", and we would send it off. But  
 12 I think where I'm talking about the equalisation bonus,  
 13 that's a different aspect, because Specsavers  
 14 actually --  
 15 MR JUSTICE NUGEE: But you are not talking about  
 16 equalisation. You're talking about, here --  
 17 A. No, I think I'm mixing the two things up.  
 18 MR JUSTICE NUGEE: In this paragraph you are talking about  
 19 how it was when you and Mr Patel were the partners?  
 20 A. Yes.  
 21 MR JUSTICE NUGEE: And you say it was done by consensus.  
 22 I think all counsel is asking is, when you said  
 23 "consensus" in that first sentence, who did you mean?  
 24 A. It was me, Mr Patel and available funds from the  
 25 Specsavers' financial department.

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1 MR JUSTICE NUGEE: So the procedure is, firstly, you get the  
 2 bottom line report from Specsavers --  
 3 A. That's right.  
 4 MR JUSTICE NUGEE: -- saying, "This is what's available".  
 5 A. That's correct.  
 6 MR JUSTICE NUGEE: And then you and Mr Patel say, "Okay,  
 7 this is how we will take it"?  
 8 A. That's correct.  
 9 MR JUSTICE NUGEE: I see, thank you.  
 10 I hope that answers the question, Mr Potts. It may  
 11 not.  
 12 MR POTTS: Can I just make one further question.  
 13 The reference you make to "dispute to be referred to  
 14 an independent expert", at the end there -- do you see  
 15 that? At 553?  
 16 A. Yes, I do.  
 17 Q. That's not in relation to a dispute with Mr Patel, is  
 18 it? It's in relation to a potential dispute as to the  
 19 level of reserves, and that would really be a dispute  
 20 with Specsavers, wouldn't it?  
 21 A. Having looked at that clause, I would have thought it  
 22 would be a dispute between any of the shareholders.  
 23 Q. But the dispute that you would refer would be as to the  
 24 amount of profits available for distribution; that's  
 25 what the clause says in 4.2?

23

1 A. Okay.  
 2 Q. And since Specsavers -- it wasn't Mr Patel who was  
 3 determining the amount of profits available for  
 4 distribution; that was Specsavers, wasn't it?  
 5 A. That's right, but if there was a level of dispute like  
 6 there has been with this £8,705.61, there was a dispute  
 7 between me and my fellow A director, Mr Singh, and me  
 8 and Specsavers.  
 9 Q. So again, just to put the point finally, the reference  
 10 to consensus in 553, in that paragraph, you are talking  
 11 about the need to have agreement between you, in this  
 12 case, Mr Patel, and Specsavers, in relation to  
 13 dividends?  
 14 A. Erm, me and Mr Patel, most certainly. As regards --  
 15 yes, we had to -- there had to be enough funds in there,  
 16 so, yes, financial planning had to sort of say there is  
 17 enough funds.  
 18 Q. They had to agree it?  
 19 A. Yes, they had to agree that there was enough money to  
 20 pay and if there wasn't, then it would be paid when  
 21 there was.  
 22 Q. I would suggest to you that it was open to them to  
 23 reject an application if they didn't think that  
 24 a dividend could properly be paid?  
 25 A. Well, my understanding -- that if me and Mr Patel had

24

1 signed the documents and sent it off, it would be paid.  
 2 We had never, in the seven years, ever had any issue.  
 3 Q. Moving on to 562, {B/1/132} I want to ask you about the  
 4 dividend -- you make a complaint in relation to  
 5 a dividend request from December 2006, £8,705?  
 6 A. That's correct.  
 7 Q. Is that right?  
 8 A. Yes.  
 9 Q. And you say there that you made a request -- sorry, 562,  
 10 I'm so sorry. You refer there to the resolution  
 11 approving the payment of an equalisation dividend in  
 12 £8,705; you say you faxed the resolution to the finance  
 13 department?  
 14 A. That's correct.  
 15 Q. And it was acknowledged?  
 16 A. Yes.  
 17 Q. And she would confirm by email that it had been  
 18 approved. You understood that to be an administrative  
 19 exercise?  
 20 A. I did, yes. She sent an email and then she phoned us to  
 21 say it would be paid in the New Year because there  
 22 wasn't enough cash for a distribution.  
 23 Q. You refer to that as a resolution approving the payment  
 24 of a dividend. We have looked at one of those; it  
 25 wasn't a resolution, was it?

25

1 A. Where have I said "resolution"? But it wasn't -- it  
 2 wasn't a resolution, no, it was that distribution form.  
 3 Q. It was a request, wasn't it?  
 4 A. Yes, it was that -- yes, maybe I have used the wrong  
 5 word; it was that form, request form. It wasn't  
 6 a resolution, no.  
 7 Q. Perhaps we could turn -- I apologise for the quality of  
 8 this, but if you could turn up E2/268? {E/29/268}  
 9 A. Yes, it wasn't a resolution, sorry, it was a request  
 10 form.  
 11 Q. Okay, so in this paragraph --  
 12 A. Sorry, could you tell me the number again, please?  
 13 Q. I'm sorry. Perhaps let's just deal with the witness  
 14 statement. I don't want to jump around. At 562,  
 15 {B/1/131} in the first line where you say "resolution",  
 16 you are saying that's the wrong word; it should be  
 17 "request"?  
 18 A. It should be, yes.  
 19 Q. Okay, so we will put that --  
 20 A. Sorry.  
 21 Q. No, no, that's fine. And then again, in the third line:  
 22 "I faxed the resolution..."  
 23 I faxed the "request"?  
 24 A. That's right.  
 25 Q. If we look at E2/268 -- {E/29/268}

26

1 MR JUSTICE NUGEE: Most of it is illegible, Mr Potts.  
 2 MR POTTS: I accept that; it's a very poor copy.  
 3 A. I did send another one in but I did do a transcript of  
 4 it as well. The transcript is on 269.  
 5 Q. 269? {E/29/269}  
 6 A. Yes.  
 7 Q. That's, I think, of her email, rather than the request  
 8 form?  
 9 A. Sorry, I did do a transcript.  
 10 Q. But it refers to equalisation bonus. That much is  
 11 clear. And you accept that this is a request form?  
 12 A. Are we on 268?  
 13 Q. Yes, I am.  
 14 A. Yes, that's right. These are standard forms we filled  
 15 in.  
 16 Q. Fine. In your correspondence in 2010, you and your  
 17 solicitors weren't suggesting that a request had been  
 18 approved by Specsavers; you were referring to monies  
 19 which had been requested. Is that right? Perhaps I can  
 20 take you to that. E5/1115. {E/267/1115}  
 21 A. 1115?  
 22 Q. Yes. This is a letter from you, starting at 1113, on  
 23 15 December 2007?  
 24 A. That's correct.  
 25 Q. And by the first holepunch you say:

27

1 "I am owed a £8705 dividend/bonus which was  
 2 requested on 21/12/06 ..."  
 3 A. Yes, I sent through -- it is a dividend request and(?)  
 4 a cash request, yes.  
 5 Q. Yes, so that's more in line with what you are now  
 6 saying: not a resolution, as you referred to in your  
 7 witness statement, but a request?  
 8 A. Yes, it's a request.  
 9 Q. As you now accept?  
 10 A. Yes.  
 11 Q. I think you can put E5 away. If you go back to E2/267  
 12 {E/29/267} -- maybe it's easier at 269, {E/29/269} which  
 13 is the transcript that you have prepared, if that's  
 14 easier. Do you see there, Ms Smith says:  
 15 "I have ... received your fax requesting  
 16 a distribution."  
 17 Do you see that?  
 18 A. I do, yes.  
 19 Q. And then she says:  
 20 "Once I have run the figures and had this  
 21 distribution signed by my manager I will contact you ...  
 22 to confirm it has been approved."  
 23 Do you see that?  
 24 A. I do, yes.  
 25 Q. You say it's just an administrative exercise, but she is

28



1 making clear that this is a request by you in the first  
2 line; do you see that?  
3 A. I do, yes.  
4 Q. And she is also making it clear that she has to check  
5 the figures --  
6 A. Okay.  
7 Q. -- and that it has to be approved?  
8 A. That's correct.  
9 Q. And furthermore that she would see contact you to  
10 confirm that it had been approved?  
11 A. Which she subsequently did.  
12 Q. Ms Smith didn't revert to you stating that it had been  
13 approved, did she?  
14 A. No, she did. She did. She spoke to Mr Patel and said  
15 the monies would be distributed in the New Year because  
16 there wasn't enough cashflow.  
17 Q. Is that evidence provided in your witness statement?  
18 A. It hasn't been put in my witness statement but that  
19 doesn't mean it's not true, but there is correspondence,  
20 I'm sure, that I sent to SOG. I will have to look for  
21 it, if you want me to reference it, where I have  
22 actually said that.  
23 Q. You don't plead that this was approved by Specsavers, do  
24 you?  
25 A. I didn't put it in my witness statement, I have

29

1 realised -- I didn't "plead"? I'm not sure what you  
2 mean.  
3 Q. Nowhere in your four witness statements do you say that  
4 she came back to you and approved this?  
5 A. No, I realised that when I read the witness statement  
6 but it doesn't mean it's not true, and I'm sure I have  
7 got it in letters that I sent to Specsavers, which I  
8 will have to look through to identify exactly which one  
9 they were.  
10 Q. I would suggest to you, Ms Birdi, that the dividend was  
11 never approved by Specsavers?  
12 A. Like I have said to you, Mr Potts, that is the case.  
13 She actually phoned and I'm sure it's in documentation  
14 that I sent to Specsavers. I will look through it and  
15 I can advise you which ones they were.  
16 Q. You have raised this issue with Specsavers a number of  
17 times, haven't you, over the years?  
18 A. I have, since April 2007.  
19 Q. Could you, please, have a look at E9 at 2549.  
20 {E/753/2549} I think we may have looked at this document  
21 already?  
22 A. Yes.  
23 Q. 25 November. You wrote to Mr Moore about it?  
24 A. Yes.  
25 Q. And on the first page you refer there to:

30

1 "... an equalisation bonus owed to me  
2 since December 2006."  
3 A. That's true, yes.  
4 Q. And then on the following page {E/753/2550} you set out  
5 the amounts and you ask for it to be authorised, at the  
6 top of the page, the £8,705?  
7 A. Yes.  
8 Q. Then I think you can put away E9.  
9 E10/2637. {E/807.2/2637}  
10 A. Sorry, what number, please.  
11 Q. E10/2637.  
12 A. Could you just bear with me. I have so many folders  
13 here. (Pause)  
14 Okay.  
15 Q. He says that he has discussed the matter with  
16 distribution and investments?  
17 A. Hm-mm.  
18 Q. He refers, I think, to the fact that payments had been  
19 made to you, almost £15,000. £14,942 in relation to the  
20 car?  
21 A. Yes, part of that I had been paid. There was still  
22 owing.  
23 Q. And he refers to monies outstanding to you of £3,675,  
24 £3,920: £7,595 in total?  
25 A. That's the 2006 loan back.

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1 Q. Yes.  
2 A. Okay.  
3 Q. But it doesn't indicate that any further sums are owed  
4 to you?  
5 A. That's correct.  
6 Q. So the position is that Mr Moore is saying he did  
7 investigate the dividend?  
8 MR JUSTICE NUGEE: Where does he say that?  
9 MR POTTS: He has discussed the matter with Mr Bourgaize and  
10 he says:  
11 "[I] set out the sums outstanding at this time."  
12 MR JUSTICE NUGEE: Does he deal anywhere specifically with  
13 the £8,600?  
14 MR POTTS: No, my Lord, I think that's fair. He doesn't.  
15 This is in response to your letter raising the issue of  
16 dividends, amounts outstanding to you?  
17 A. Yes. I raised it in December but Mr Moore said it's for  
18 me to sort out with Mr Singh, and this actually comes  
19 about because Mr Singh is demanding money. So then  
20 Mr Moore looks into it, but before, he told me to deal  
21 with it myself with Mr Singh.  
22 Q. Can I suggest to you that it doesn't make any sense for  
23 Specsavers to refuse to pay you this £8,700 unless it  
24 genuinely considered that you weren't owed that amount?  
25 A. If they were acting bona fide and honestly, they would

32

1 have seen that this request was sent, in December 2006.  
 2 Me and Mr Patel had signed it. Financial planning had  
 3 said they would send it. I'm more than sure that they  
 4 have a log of the calls, because they do have logs from  
 5 financial planning, so they would have known  
 6 Kristina Smith phoned me back and I was -- I don't know  
 7 what more information I could provide but the actual  
 8 signed document, and they had the figures.  
 9 Q. At the same time as this letter -- in this letter he is  
 10 acknowledging that other sums were owed to you and  
 11 indeed that other sums had been paid?  
 12 A. Yes.  
 13 Q. I would suggest to you that in that context, it doesn't  
 14 make sense for Specsavers to refuse to pay you this  
 15 amount unless it can genuinely consider that you weren't  
 16 owed it?  
 17 A. In December 2007, I actually took the documents to  
 18 Mr Raines in my disciplinary hearing and he said --  
 19 I was asked the question: "Why haven't any equalisation  
 20 bonuses been paid since 2004 to 2007?"  
 21 I explained that they were paid -- they were to be  
 22 paid in two amounts, £6,177 and £8,705 and he said, "So  
 23 I need to consider these two figures together?" and  
 24 I said, "Yes, you do".  
 25 Q. Let's go back a little bit further because Mr Moore

33

1 isn't the only person who has looked at this issue, is  
 2 he. In August 2008, Mr Le Maitre in the finance  
 3 department looked at this as well. Do you remember  
 4 that?  
 5 A. Yes.  
 6 Q. Could I ask you to pick up E6, please, at page 1557.  
 7 {E/422/1557}  
 8 A. Sorry, what page, please?  
 9 Q. 1557. Just to start the chain, he writes to you saying:  
 10 "I have been speaking with Michael Ryan who prepared  
 11 the final dividend for your ex partner, Nimesh Patel.  
 12 He has told me that the store was not in a position to  
 13 equalise yourself at the time so ... you are entitled to  
 14 the first £14,942 which is owed to you from when Nimesh  
 15 had a gift of car of the same amount.  
 16 "If you have any other queries on this please feel  
 17 free to contact either Michael Ryan or Cristina Del  
 18 Grazia."  
 19 Do you see that?  
 20 A. I do, I'm a bit confused because it says the final  
 21 dividend for your ex-partner was calculated. I don't  
 22 know what dividend he is referring to. Is he referring  
 23 to the --  
 24 Q. I think that's the car, £14,942, does that make sense?  
 25 A. Okay, yes. Because the severance dividend, obviously,

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1 that was extinguished for Mr Patel and myself.  
 2 Q. I don't accept that, Ms Birdi, but --  
 3 MR JUSTICE NUGEE: Is there evidence of a final dividend  
 4 being paid to Mr Patel?  
 5 MR POTTS: No, my Lord.  
 6 MR JUSTICE NUGEE: No. Apart from this document. So it's  
 7 unclear from this email what the final dividend of  
 8 Mr Patel is.  
 9 MR POTTS: It refers to the gift of the car.  
 10 MR JUSTICE NUGEE: I can see that that's what you are  
 11 saying, yes.  
 12 MR POTTS: Indeed, my Lord.  
 13 MR JUSTICE NUGEE: Yes.  
 14 MR POTTS: 1558. {E/423/1558} You raise the issue of an  
 15 equalisation bonus?  
 16 A. Yes.  
 17 Q. And then 1559 {E/423/1559} he suggested you speak to  
 18 Mr Ryan?  
 19 A. That's correct.  
 20 Q. You didn't raise it with Mr Ryan at that time, did you?  
 21 A. I can't remember, to be honest with you. I don't think  
 22 I did, but I can't be 100 per cent sure, but I don't  
 23 think --  
 24 Q. I don't believe that you referred in your statements to  
 25 having done so?

35

1 A. No, I don't think I did.  
 2 Q. And I don't believe that there are any documents  
 3 suggesting that you did?  
 4 A. Yes. I don't think I did but I couldn't be 100 per cent  
 5 sure of that, but I don't think I did.  
 6 Q. Okay. If you put away --  
 7 A. But in regards to that, if you look at Michael Ryan's  
 8 email sent to John Le Maitre on this issue, first he  
 9 makes the excuse that it wasn't paid because the  
 10 business had gone insolvent and then he makes the excuse  
 11 that -- when Mr Le Maitre says, "Have you got paperwork  
 12 to show that Swarandeeep has said this isn't owed to her  
 13 any more because it has gone insolvent", Mr Ryan says,  
 14 "No, there wasn't enough money to pay it so it wasn't  
 15 paid".  
 16 Q. This is later, isn't it?  
 17 A. This was --  
 18 Q. Not at this time? Can I talk to you E10. You are  
 19 rightly referring to some documents but perhaps if I can  
 20 ask you to go to E10, this might assist you. This is  
 21 18 months later, in December 2009?  
 22 A. Yes.  
 23 Q. Mr Le Maitre investigated the issue again?  
 24 A. Yes.  
 25 Q. At 2585, and you see at the bottom of the page:

36

1 {E/776/2585}

2 "We spoke the other day regarding Dartford and the

3 money that was owed to Swarandeeep Birdi, which you

4 confirmed was £14,942 and any other money owed to her

5 from the company was lost due to it going insolvent.

6 "Would you have a copy of all the paperwork that was

7 signed by her confirming she was happy with this, as she

8 is saying money is still owed to her from visa withdraws

9 that Nimesh the former director had taken out of the

10 company."

11 That's your point about -- you are alleging that,

12 aren't you? That's the £8,700?

13 A. That's right.

14 Q. And then at the top of the page, Mr Ryan says:

15 "No we don't.

16 "She did not have to agree to anything she had to

17 apply FP for a distribution, and there was no money for

18 a distribution."

19 That's what Mr Ryan says?

20 A. Yes, and I can't see how the money that I'm owed could

21 just be extinguished because there was no money in the

22 accounts and then later on the monies had totally gone

23 out because of Loss Prevention costs.

24 Q. Can I ask you to turn to your witness statement, please,

25 to see what you say about this. You set out the email

1 chain at paragraph 580, page 136. {B/1/136}

2 A. Sorry, which one are we looking at?

3 Q. I'm sorry, your first witness statement.

4 A. Yes.

5 Q. At page 135, just to deal with the context? {B/1/135}

6 A. Yes.

7 Q. At the bottom of the page you refer to the emails, which

8 I have just taken you to. Do you see that?

9 A. I do, yes.

10 Q. And the reference to that. And then at 582 you say that

11 his explanations to his colleagues were dishonest?

12 {B/1/136}

13 A. Yes, I do believe they were.

14 Q. And you also allege --

15 A. That's what I believe.

16 Q. All right. And you also allege that:

17 "... records were not lost or misplaced but

18 destroyed."

19 A. This document was sent, it was sent to head office and

20 how can the debt that's owed to me that Mr Patel has

21 taken out of the business be just extinguished?

22 Q. You are making --

23 A. There must have been paperwork there and even if there

24 wasn't, I re-sent it several times.

25 Q. You are making some serious allegations against Mr Ryan,

1 aren't you?

2 A. I am, yes. That's what I believed because it wasn't

3 being paid. I couldn't understand why it wasn't being

4 paid. All the paperwork was there for it to be paid,

5 but it was continuously being refused.

6 Q. He is saying that if you wanted an equalisation, you had

7 to apply to financial planning for a distribution.

8 That's right, isn't it?

9 A. We had to fill a form in and we sent it to make sure

10 there was enough cash available. This is what we did

11 in December 2006.

12 Q. He's saying that you had to put in a request; do you

13 accept that?

14 A. That's what they was called, yes, a dividend request or

15 a bonus request.

16 Q. And his response. He goes on to say:

17 "There was no money for a distribution."

18 That was correct as well, wasn't it?

19 A. But it doesn't mean that my debt can be extinguished.

20 Mr Patel had taken this money out of the business. So

21 I was entitled to that amount of money. If the money

22 wasn't available there, then it should have been paid in

23 the future when the cashflow was available.

24 Q. Ms Birdi, you are saying that Mr Ryan, in writing this

25 email, is being dishonest; that he is lying to his

1 colleague. Is that right?

2 A. Well, I believe so because how can you say that the

3 company has gone insolvent? It's one account that all

4 the stores put their money in, and the business didn't

5 go insolvent when it went to minus £90,000 because of

6 Loss Prevention costs into the business. So I do

7 believe that's not a correct statement he is making.

8 Q. Well, quite apart from the question as to whether he is

9 making a correct statement, you are saying that he is

10 lying?

11 A. Yes.

12 Q. He is knowingly telling an untruth in this email?

13 A. Yes, I do believe that, yes.

14 Q. What's your basis for that?

15 A. My basis is he is saying that the business has gone

16 insolvent. The business hasn't gone insolvent. And if

17 the monies -- like I say, it's because of

18 Mel McAlindon's charging of £86,000 which made the

19 business go into that financial distress, and Mr Patel

20 stealing.

21 Q. Ms Birdi, I suggest to you that he was expressing,

22 firstly, an honest view in this email; would you accept

23 that?

24 A. I don't accept that, no.

25 Q. And furthermore, I would also suggest to you that he is

1 expressing an accurate view, which was that there was no  
 2 money for a distribution?  
 3 A. But that does not mean that the debt is extinguished.  
 4 This is what I'm saying. If Mr Patel had taken that  
 5 money out, as a 50 per cent A shareholder, I was  
 6 entitled to 50 per cent of the same. That's my point on  
 7 that.  
 8 Q. And I further suggest, Ms Birdi, that you have not  
 9 adduced any evidence to suggest that Specsavers approved  
 10 this dividend?  
 11 A. Like I said, whenever we requested an equalisation bonus  
 12 or an equalisation dividend, it was always paid. No  
 13 questions asked. The only one instance was  
 14 in September 2006, when we had to change it to  
 15 a dividend rather than a cash bonus.  
 16 Q. Ms Birdi, I'll ask the question again. You haven't  
 17 adduced any evidence to suggest that Specsavers approved  
 18 this dividend?  
 19 A. No, the only thing I have told you was that  
 20 Kristina Smith phoned us up, spoke to Mr Patel and said  
 21 it would be paid in the New Year when cash was  
 22 available.  
 23 Q. I suggest to you that that's a statement which you have  
 24 made for the first time. It's not in your witness  
 25 statements at all?

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1 A. It's not, but I will find the documentation and I will  
 2 ask my legal team to produce it, because it is  
 3 documented, I'm more than sure.  
 4 Q. And Ms Birdi, in relation to the allegation, where he  
 5 says that they don't have any further documentation in  
 6 relation to this matter, which you say you don't  
 7 accept --  
 8 A. Yes, I don't accept that.  
 9 Q. -- you are alleging that he has destroyed those  
 10 documents. Do you really want to maintain that  
 11 allegation, Ms Birdi?  
 12 A. Okay, you can take the "destroyed" off, but it had been  
 13 misplaced. I can't prove that this was destroyed, but  
 14 the paperwork had been sent and I had repeatedly  
 15 requested it.  
 16 Q. Ms Birdi, you understand the difference between  
 17 suggesting that documents might have been misplaced and  
 18 that Mr Ryan is dishonest and that he has destroyed --  
 19 A. Well, I do believe he is dishonest because he is saying  
 20 the business has gone insolvent and then he is saying  
 21 that there was no money. Okay, there was no money. It  
 22 doesn't mean you can just write off a debt owed. He was  
 23 being dishonest, yes.  
 24 Q. In relation to the allegation of destroying documents,  
 25 you understand the absolutely massive distinction

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1 between saying that a document might have been lost or  
 2 misplaced and that a document has been destroyed. You  
 3 understand that distinction?  
 4 A. I do. I have just said to you, Mr Potts, you can  
 5 withdraw the "destroyed".  
 6 Q. Ms Birdi, can I put to you: it's disturbing that you are  
 7 prepared in your witness statement to make the most  
 8 serious allegations. Did you consider the seriousness  
 9 of that allegation that you were making before you  
 10 signed your witness statement, Ms Birdi?  
 11 A. Yes, I did.  
 12 Q. Can I suggest to you, you had absolutely no basis for  
 13 making that allegation --  
 14 A. Okay.  
 15 Q. -- in your statement.  
 16 A. That's how I felt. That's what I believed and that's  
 17 how I felt.  
 18 Q. I suggest to you that it was quite improper for you to  
 19 make that allegation?  
 20 A. Okay.  
 21 Q. Do you accept that?  
 22 A. You can take that away. I accept, but you must  
 23 understand from my point of view the frustration, the  
 24 disbelief that this money has just been extinguished  
 25 when it should be paid.

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1 Q. Ms Birdi, do you understand the seriousness of giving  
 2 sworn evidence under oath in court?  
 3 A. Yes, I do.  
 4 Q. Do you understand the seriousness of that allegation  
 5 that you are making in that witness statement?  
 6 A. I do. But that is what I believed at the time.  
 7 Q. Let's move on.  
 8 The issue of the dividend was also raised at the  
 9 board meeting on 23 February 2010. We looked at that  
 10 yesterday. Do you remember that?  
 11 A. I do, yes.  
 12 Q. And then E10/2725. {E/851/2725}  
 13 A. Sorry?  
 14 Q. Sorry, E10/2725. At that meeting, the board unanimously  
 15 resolved to pay you £7,595?  
 16 A. That's correct.  
 17 Q. There was also a resolution to pay you a further £25,000  
 18 by way of a further dividend; do you remember that?  
 19 A. Yes. Which page are we on?  
 20 Q. Motion 4.  
 21 A. Okay.  
 22 Q. At 2729. {E/851/2729} So that's over £32,000 being  
 23 paid in your favour?  
 24 A. That's right, yes.  
 25 Q. So when Specsavers and Mr Singh were willing to pay you

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1 those sort of sums of money, I suggest to you it makes  
2 no sense to them to have refused to pay you £8,000  
3 unless they genuinely considered that the money wasn't  
4 owed?  
5 A. The money was owed and I can't -- all the evidence  
6 I have provided, the documents that me and Mr Patel had  
7 signed, Kristina Smith's emails, I cannot believe that  
8 it wasn't being paid. And also, when I was asked to  
9 resend the documents in 2009, I told Mr Singh that  
10 financial planning were asking me to send it. So I sent  
11 it off and then he accused me of forging Mr Patel's  
12 signature, which I complained about and, obviously, no  
13 action was taken because Specsavers were not in support  
14 of me.  
15 This document was genuine and it was real and it had  
16 been sent and acknowledged and Kristina Smith had  
17 phoned.  
18 Q. 2730. {E/851/2730} You say that Mr Raines agreed at the  
19 meeting to reinvestigate the issue?  
20 A. That's right.  
21 Q. And invited you submit further documentation, didn't he?  
22 Do you see that, at about the fourth paragraph down?  
23 A. Yes, he said he would reinvestigate it.  
24 Q. He would reinvestigate it, and he said that if there was  
25 an amount owing to you, it would be paid; correct?

1 A. I don't know whether he said -- yes, it says it in  
2 there.  
3 Q. Do you remember --  
4 A. Yes, I remember he said he would reinvestigate it.  
5 Q. Do you remember that he said that if there was an amount  
6 owing, it would be paid?  
7 A. I don't remember him specifically saying that, but  
8 that's what it says here, but I don't think it's a big  
9 issue, that.  
10 Q. Is that an "I don't remember one way or another", or are  
11 you saying he didn't say that?  
12 A. I remember that he said he would reinvestigate it.  
13 Q. But the fact that you don't remember him saying the  
14 second bit, are you saying he didn't say it --  
15 A. No, he may have said.  
16 Q. He may have said it?  
17 A. He may have said it.  
18 Q. You didn't provide any further documentation to him, did  
19 you, at that time?  
20 A. Not at that time, no. There wasn't any further  
21 documentation I could provide, and I discussed this with  
22 Alison Girollet as well.  
23 Q. At 2777 --  
24 A. 27 ...?  
25 Q. ... 77, {E/860.2/2777} there is a letter from

1 Miss Girollet and at 2778, in particular, she is  
2 referring to this issue? {E/860.2/2778}  
3 A. Hm-mm.  
4 Q. She says it has been reinvestigated with Mr Bourgaize  
5 and they have reconfirmed that they cannot find any  
6 evidence of any further sums owing to you?  
7 A. That's correct.  
8 Q. Do you see that? And they were querying whether there  
9 might have been some confusion in relation to some other  
10 matters?  
11 A. I can't understand where the confusion is, because what  
12 they are saying is that I had an equalisation bonus of  
13 £6,177 in November. This request was December, to  
14 21 December 2006. Why are they referring to £6,177  
15 from November?  
16 Q. Are you suggesting that Miss Girollet, in what she sets  
17 out here, is being anything other than genuine in what  
18 she says in relation to this investigation?  
19 A. I wouldn't be sure of that. I don't know whether she  
20 was not being genuine or whether she hadn't been given  
21 the proper information. Like I have said in my witness  
22 statement, there is no confusion with the equalisation  
23 bonus of £6,177. That's a totally different amount.  
24 That was November. We are in December now. So there is  
25 no way you can confuse the two elements. And all the

1 documentation had been sent to Specsavers again in 2009.  
2 It was given in 2007, 2006, 2009. The evidence was  
3 there. There is no further evidence I could give.  
4 Q. In your witness statement, paragraph 585, you are saying  
5 that Specsavers -- {B/1/137}  
6 A. Just bear with me.  
7 Q. I'm so sorry?  
8 A. What page is it, please?  
9 Q. Page 137 at paragraph 585. {B/1/137}  
10 A. Yes.  
11 Q. You are saying that Specsavers -- in the final sentence,  
12 you are referring to this dividend and Mr Raines:  
13 "... Specsavers did not investigate the matter  
14 fairly as they were planning to use it against me for  
15 refusing to give the issue up."  
16 A. That's correct.  
17 Q. The first point is: Specsavers had investigated the  
18 issue, hadn't they?  
19 A. I don't believe they had. They had all the evidence  
20 there. I believe if somebody was impartial,  
21 independent, they would have seen that that money is  
22 owed. Yes, it was an equalisation. Maybe they hadn't  
23 told Mr Singh that this money was owed, but that is  
24 SOG's failing and it's not fair for this debt to be  
25 written off.

1 Q. Are you saying that when you were told repeatedly by  
2 a number of people that they had investigated the issue,  
3 you are saying that that was untrue by them?  
4 A. I do say that, yes.  
5 Q. The position is the matter had been investigated by at  
6 least four different people on four different occasions,  
7 hadn't it?  
8 A. The money was owed, the documentation was there,  
9 Mr Patel had signed this document, I had signed this  
10 document. It got sent off and the usual procedure was  
11 that it would be paid.  
12 Q. The position is it was investigated by Mr Ryan,  
13 Mr Le Maitre, Mr Moore, Mr Raines. Are you saying that  
14 none of them investigated it?  
15 A. I think Mr Le Maitre actually relied on Mr Ryan to look  
16 at it.  
17 Q. Are you saying Mr Ryan didn't investigate it?  
18 A. It wasn't looked at properly. That's what I'm trying to  
19 say to you. Because I cannot understand why this --  
20 this has been authorised by both A directors, and the  
21 usual procedure is it gets sent to head office. When  
22 there is available -- if there is enough available cash,  
23 it will get paid.  
24 Q. You are saying that a decision was taken not to  
25 investigate this matter fairly by Specsavers; a positive

1 decision to that effect?  
2 A. Where have I said that?  
3 Q. I'm asking: is that the effect of what you are saying in  
4 585?  
5 A. I'm saying that it wasn't looked at properly. If it had  
6 been looked at fairly and properly, then the money would  
7 have been paid to me.  
8 Q. You say this wasn't investigated fairly and you say the  
9 reason it wasn't was because:  
10 "... Specsavers ... were planning to use it against  
11 me for refusing to give the issue up."  
12 A. Yes, I do believe that, to make me look like I was just  
13 difficult. I didn't let go of historical complaints.  
14 It's the same thing as Mr Patel stealing. I'm not going  
15 to give that up because that money needs to go back into  
16 the business.  
17 Q. You are suggesting there was a conscious and improper  
18 decision taken to make use of this issue and not to  
19 investigate it properly?  
20 A. I believe that somewhere along the line, it wasn't going  
21 to be paid to me. There were people, like  
22 John Le Maitre was sincerely looking to resolve the  
23 issue, but it wasn't dealt with fairly. And it's the  
24 same thing as Mr Patel stealing. I kept asking, "When  
25 is that money going to go back into the accounts? How

1 much money did he steal?" But again, I'm being told  
2 repeatedly I'm going to be told -- Alan Goddon said it  
3 in his grievance, "We'll find out how much Nim stole and  
4 how it's going to go back in the business" -- but then  
5 it's just ignored.  
6 Q. Who are you saying made the determination on the part of  
7 Specsavers, firstly, that it shouldn't be investigated  
8 fairly, and secondly, that this issue should be used  
9 against you for refusing to give the issue up?  
10 A. I don't know, but I do believe it was to make my life  
11 difficult and just drive me out of my business. I can't  
12 specifically say this person, this person, this person,  
13 but it comes down, if you look at the whole picture,  
14 Mr McAlindon, Mr Dyson.  
15 Q. So are you suggesting that Mr McAlindon and Mr Dyson  
16 made this decision?  
17 A. No, I'm not saying that. I'm not sure -- I can't  
18 pinpoint on this dividend, but it should have been paid.  
19 It can't just be extinguished. And it was to make my  
20 life difficult and just upset me, to remove me from my  
21 business. And you can't just look at this one issue.  
22 You have to look at what's happened from 2007 to 2010 to  
23 get a true picture of all the things that were happening  
24 to me, to make my life difficult in the store.  
25 Q. You accept that in paragraph 585 you are making an

1 allegation of conscious impropriety against Specsavers?  
2 A. What else could I conclude? This money -- the  
3 documentation was there. Why wasn't it being paid?  
4 Q. I think the answer --  
5 A. It's the same as Mr Patel's stealing. That is --  
6 it's -- that word you used just now, it's the same.  
7 "Impropriety"? Is that the word you used?  
8 Q. Conscious impropriety, yes?  
9 A. Yes. Why am I not being told what Nim stole? Why am  
10 I not being told how it's going in? Why I am not  
11 getting a clear, transparent explanation of the Loss  
12 Prevention costs of £86,000?  
13 Q. I think the answer to my question is yes?  
14 A. The answer is yes.  
15 Q. What I suggest to you, Ms Birdi, is that that the issue  
16 was investigated by at least four different people on at  
17 least four different occasions. Would you accept that?  
18 A. I didn't see the investigations.  
19 Q. You don't accept that?  
20 A. I was just given letters. No, I don't accept that.  
21 Q. I suggest to you that they investigated the matter  
22 honestly and genuinely?  
23 A. I don't believe that. If they had, they would have paid  
24 the money owed.  
25 Q. And whilst you have produced a request for a dividend,

1 you have not produced any evidence to support your claim  
2 that Specsavers approved the payment of the dividend?  
3 A. I have produced enough evidence, which a fair, impartial  
4 person would have looked and said, "Yes, this money  
5 is -- we may not have told Mr Singh but, yes, this money  
6 is owed to her".  
7 Q. I suggest to you that Specsavers genuinely believed that  
8 no dividend was owed?  
9 A. I don't believe that at all. I have been raising it  
10 since April 2007.  
11 Q. And I suggest to you that the reality is that no  
12 dividend was ever approved?  
13 A. I have to disagree with you.  
14 Q. Can I move on to the position of dividends since your  
15 departure?  
16 A. Yes.  
17 Q. You make a complaint about non-payment of dividends in  
18 that regard as well?  
19 A. That's right.  
20 MR JUSTICE NUGEE: If you are moving on to a new topic, is  
21 it a convenient moment to take a break?  
22 MR POTTS: Yes, I think I might appreciate that.  
23 MR JUSTICE NUGEE: We will break for five minutes.  
24 (11.35 am)  
25 (Short break)

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1 (11.42 am)  
2 MR POTTS: Ms Birdi, I'm going to move on to the position  
3 after your departure from the business. Your witness  
4 statement, paragraph 588. {B/1/137} The allegation you  
5 make there in the final line is that Specsavers colluded  
6 with Mr Singh to avoid paying dividends; is that right?  
7 A. That's correct.  
8 Q. And then at 590 {B/1/138} your allegation is that the  
9 company made disguised distributions to Mr Singh by way  
10 of remuneration, instead of paying dividends, to  
11 prejudice you further?  
12 A. I do, yes.  
13 Q. And you are saying that that was done intentionally by  
14 Specsavers and Mr Singh?  
15 A. Yes.  
16 Q. And then at 599, {B/1/140} in the final line there, you  
17 are saying that:  
18 "... Specsavers, Dame [Mary] Perkins and Mr Singh  
19 ... conspired together to cheat and defraud me even  
20 though there were profits available for distribution."  
21 A. Yes, to the disguised distribution, yes, where it's put  
22 as employee bonuses rather than put through the proper  
23 channels.  
24 Q. Yes, but you are suggesting that Specsavers, Dame  
25 Mary Perkins and Mr Singh acted dishonestly to cheat and

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1 defraud you?  
2 A. Yes, because the resolutions were signed by these  
3 people.  
4 Q. The first point to make: Specsavers has in fact declared  
5 dividends since your departure, hasn't it?  
6 A. It has, starting from 2012, on the same day that my  
7 solicitor wrote asking why distributions were not being  
8 made and what monies were being paid to Mr Singh.  
9 Miraculously, on the same day, yes.  
10 Q. We will come to that.  
11 A. A dividend was declared.  
12 Q. A total of £271,819 has been declared in dividends since  
13 you left?  
14 A. That's correct.  
15 Q. And your share is £135,909?  
16 A. That's correct.  
17 Q. And in fact there has been a further dividend, which has  
18 been offered recently as well, of £31,000. Are you  
19 aware of that?  
20 A. I am, yes.  
21 Q. So that's more than twice the amount of dividends paid  
22 in the four years prior to your departure, isn't it?  
23 A. It is, but I think we need to look at those figures in  
24 context because we can't really consider the years of  
25 2005, 2006, 2007, and 2008 because they were exceptional

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1 years, but if we look when me and Mr Patel were  
2 functioning in the business without any thefts between  
3 2001 and 2004, I looked at the figures of dividends  
4 taken and bonuses taken, and on average, we were taking  
5 on top of our salaries about £125,000 on average.  
6 MR JUSTICE NUGEE: Each or between you?  
7 A. It was between us.  
8 MR JUSTICE NUGEE: About £60,000 each?  
9 A. That's right. On one year, we took 140 between us, yes.  
10 So on average, it was that much each on top of our  
11 salaries. So it wasn't just dividends we took, we took  
12 bonus. And I looked at the average -- I hope my  
13 calculations are right -- I looked on the average from  
14 2011 to 2014. The only assumption I took was Mr Singh's  
15 salary of 60 in 2014, and it worked out about 95/96.  
16 MR POTTS: Mr Singh's salary of £60,000?  
17 A. Yes, because in 2014 I don't know what his actual salary  
18 was, but basically what I'm saying, to cut a long story  
19 short, because I do tend to waffle, is in 2004 we were  
20 taking more money than we had been taking in 2011 to  
21 2014. But it wasn't just by dividends; it was by  
22 bonuses as well.  
23 Q. His salary wasn't £60,000 in 2014. I think it was  
24 £50,000, wasn't it?  
25 A. Well, if you look at -- when you look at the end of year

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1 accounts, it says directors' remuneration, so it would  
 2 include bonuses.  
 3 MR JUSTICE NUGEE: He got £2,500 every quarter, which makes  
 4 an extra £10,000, which makes £60,000 during the year,  
 5 I believe.  
 6 MR POTTS: I see, emoluments in total.  
 7 A. That's how it showed on the end of year accounts.  
 8 Q. Okay. The allegation you make at 602, {B/1/602} you say  
 9 that:  
 10 "... Specsavers only rushed to purport to declare  
 11 a dividend..."  
 12 Sorry, when you say "purport to declare", what do  
 13 you mean by that?  
 14 A. Were only made to declare. That's what I mean by that.  
 15 Were only made to declare a dividend.  
 16 MR JUSTICE NUGEE: Is "purport" your word?  
 17 A. It's not, no.  
 18 MR JUSTICE NUGEE: Do you know what it means?  
 19 A. My understanding is "made to declare". I think I need  
 20 a diary for Christmas -- a dictionary for Christmas.  
 21 MR POTTS: Okay, you say that was done with a view to  
 22 preventing the court taking account of the failure?  
 23 A. That's right, yes; that's what I believe.  
 24 Q. Could you turn to F1, please at page 49. I think you  
 25 referred to this earlier, your solicitor's request.

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1 {F/22/49}  
 2 A. Yes.  
 3 Q. That's a letter from your solicitors dated  
 4 28 August 2012. Do you see that?  
 5 A. I do.  
 6 Q. And then item 8. They are asking for details of the  
 7 distributable profits of the company and bonuses paid to  
 8 Mr Singh? {F/22/50}  
 9 A. That's correct.  
 10 Q. Do you see, that's the request. And you can see at the  
 11 top of the page a fax showing that it was sent at  
 12 5.43 pm?  
 13 A. That's correct.  
 14 Q. Now, in fact (inaudible) saying there was a board  
 15 meeting the same day. If you could have E15, please,  
 16 4259. {E/1084/4259} That's the notice convening the  
 17 board meeting, which you have referred to?  
 18 A. That's correct.  
 19 Q. So the board meeting itself in fact was convened on  
 20 17 August. I think that's 11 days before your  
 21 solicitor's letter. Do you see that?  
 22 A. I do. Normally, when a notice of board meetings is sent  
 23 out, they would be sent out by email. So --  
 24 Q. It's dated the 17th. Are you saying it's falsely dated?  
 25 A. I'm not sure.

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1 Q. Do you have any basis to assert that it was falsely  
 2 dated?  
 3 A. I have not, no.  
 4 Q. Okay. And then E15/4261, {E/1086/4261} those are the  
 5 minutes of the meeting.  
 6 A. Okay.  
 7 Q. Do you see that?  
 8 A. I do.  
 9 Q. And you see that there was a discussion about the  
 10 trading of the business and so on, the trading position,  
 11 item 5?  
 12 A. Yes.  
 13 Q. And the issue of dividends and profitability and costs  
 14 to be incurred and so on?  
 15 A. Yes.  
 16 Q. You see the timing of the meeting? You see that it  
 17 opened at 10.00 am --  
 18 A. Yes.  
 19 Q. -- the first hole punch, and finished at 10.44 am? You  
 20 can see that at the end of 4266? {E/1086/4266}  
 21 A. Yes, that's what it states on here.  
 22 Q. Do you have any reason to believe that those times are  
 23 false?  
 24 A. No, I don't. I have no evidence to prove that it is  
 25 false.

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1 Q. Are you alleging that it is false?  
 2 A. No, I have -- all I'm going to say is that it's a great  
 3 coincidence that on the day that my letter is sent,  
 4 a board meeting is convened and suddenly -- I have been  
 5 out of the business since December 2010 -- suddenly,  
 6 a dividend is declared.  
 7 And also I would like to say that the information  
 8 that my solicitor wanted as regards to the distributable  
 9 profits and the monies being paid to Mr Singh, that was  
 10 never given to us at that time. Even from this board  
 11 meeting it was very evident that -- I think there was  
 12 reserves of £198,000.  
 13 Q. The position is that your solicitor's letter was  
 14 received at 5.43 pm. That was after the meeting had  
 15 taken place.  
 16 A. That's what these documents show.  
 17 Q. So it's not possible for your solicitor's request to  
 18 have prompted Specsavers to procure the declaration of  
 19 a dividend, is it?  
 20 A. All I can say to you is it's a great coincidence.  
 21 Q. I don't think you have quite answered my question.  
 22 A. Okay, ask me again.  
 23 Q. It's not possible for your solicitor's request to have  
 24 prompted Specsavers to have procured the declaration of  
 25 the dividend if the letter was received after the

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1 dividend was declared?  
 2 A. That's true.  
 3 Q. And the amount of dividends declared in your favour is  
 4 considerably more than the amount of bonuses and salary  
 5 increases paid to Mr Singh; isn't that right?  
 6 A. That is true, but I don't think that makes any point on  
 7 the issue. If monies are being paid to Mr Singh that  
 8 should be distributed equally between the  
 9 A shareholders, then that's what should be done.  
 10 Q. Bonuses between 2011 and January of this year totalled  
 11 some £30,750?  
 12 A. Yes.  
 13 Q. That's less than a quarter of the amount of dividends  
 14 declared in your favour?  
 15 A. I don't think comparing that is really relevant to the  
 16 issue, really.  
 17 Q. Ms Birdi, I'm asking you to, if you wouldn't mind,  
 18 please, just --  
 19 MR JUSTICE NUGEE: You are obviously looking at some figures  
 20 and I remember seeing these figure, I think in your  
 21 skeleton. It might be fairer to ask the witness to look  
 22 at the figures, rather than just assume that she knows,  
 23 which she may do.  
 24 MR POTTS: My Lord, I made the assumption -- based on her  
 25 evidence, she seems to be very on top of matters.

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1 MR JUSTICE NUGEE: I agree, but it's difficult to keep all  
 2 the figures in one's head.  
 3 MR POTTS: It is. To be fair, could I ask pass up part of  
 4 the skeleton argument, where the figures are set out?  
 5 A. Okay.  
 6 Q. Paragraph 201, firstly. Do you have that to hand?  
 7 A. Yes, I do.  
 8 Q. That deals with the dividend, which we went through?  
 9 A. Yes.  
 10 Q. Do you accept those figures are accurate?  
 11 A. I do.  
 12 Q. And then the bonuses that I was just referring to, at  
 13 paragraph 209?  
 14 A. Yes.  
 15 Q. Do you accept those figures?  
 16 A. Yes, I do. I don't know whether any other figures need  
 17 to be added to that at the moment, I'm not sure, because  
 18 we found out some more information very recently.  
 19 Q. Then the salary increases are referred to in  
 20 paragraph 208 as well. Do you accept those as well?  
 21 A. That does seem to be the case, yes.  
 22 Q. The store's performance has improved considerably in  
 23 the recent period, hasn't it? We looked at some  
 24 accounts before, the turnover up to £1.25 million?  
 25 A. Yes, what are we comparing it to? What years are we

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1 comparing it to?  
 2 Q. Would you accept that the financial position of the  
 3 company has been good in the last few years; it's  
 4 profitable?  
 5 A. Yes, it was good when I got back to the business and  
 6 started to make the business recover from Mr McAlindon's  
 7 overcharging, yes. And in 2010 when I was there, yes,  
 8 we took, I believe, a distribution of 150 to share  
 9 between us in bonuses and dividends, yes. £150,000.  
 10 Q. Would you say in circumstances where the store's  
 11 performance has improved that modest pay rises and  
 12 bonuses to staff were appropriate?  
 13 A. I do, yes.  
 14 Q. And paragraph 602, are you saying that they rushed to do  
 15 so? {B/1/140}  
 16 A. Sorry, where are we.  
 17 Q. Paragraph 602?  
 18 MR JUSTICE NUGEE: Of your statement, your witness  
 19 statement.  
 20 A. Okay. What page is that, please?  
 21 MR POTTS: I'm sorry, page 140. {B/1/140}  
 22 A. Yes and which one, which paragraph, sorry?  
 23 Q. 602.  
 24 A. Okay.  
 25 Q. You are saying that it was only:

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1 "... with a view to preventing this court taking  
 2 account of the failure to pay dividends as a clear  
 3 breach of the shareholders' agreement."  
 4 A. I do believe so, yes.  
 5 Q. And you have seen from the shareholders' agreement that  
 6 the company is entitled to make transfers to reserves?  
 7 A. Yes.  
 8 Q. To deal with the commercial requirements of the  
 9 business?  
 10 A. That's correct, yes.  
 11 Q. In addition to these proceedings, in March 2011, shortly  
 12 after your appeal against dismissal, you commenced  
 13 employment proceedings for unfair dismissal in the  
 14 employment tribunal?  
 15 A. That's correct, yes.  
 16 Q. Your employer was Dartford Visionplus?  
 17 A. That's correct.  
 18 Q. And you also joined Specsavers to the proceedings?  
 19 A. That's correct.  
 20 Q. Proceedings were initially struck out in February 2012,  
 21 but they were restored in November 2012; is that right?  
 22 A. That's correct, yes.  
 23 Q. Before they were struck out, there was a meeting of the  
 24 board on 14 December 2011. Are you aware of that?  
 25 A. I think I have read that, yes.

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1 Q. Do you have E15, please?  
 2 A. Yes.  
 3 Q. 4230 is the start of the board meeting minutes.  
 4 {E/1076/4230}  
 5 A. Yes.  
 6 Q. 4231, {E/1076/4231} at the bottom of the page. There is  
 7 a reference to profitability being up, by Mr Singh at  
 8 the first bullet point. Do you see that?  
 9 A. I do, yes.  
 10 Q. Sales up 3.4 per cent, profitability 152 per cent up?  
 11 A. Yes.  
 12 Q. Year on year growth on bottom line up from £86,000 to  
 13 £219,000?  
 14 A. Yes.  
 15 Q. Those are goods results, aren't they?  
 16 A. They are, yes.  
 17 Q. At the bottom of the page he says:  
 18 "The company is not proposing to make any  
 19 distribution of profit to the A Shareholders at this  
 20 time, in view of anticipated legal costs which the  
 21 company will incur in the ongoing litigation."  
 22 A. I see that.  
 23 Q. Which is discussed below.  
 24 A. I'm confused on that one, because the accounts in 2010  
 25 showed -- I think it's called a contingent liability for

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1 the employment tribunal, but subsequent years, 2011,  
 2 2012, 2013, 2014, they haven't shown any liability.  
 3 And I wrote to BDO about this matter, very recently,  
 4 in fact, as well, and they said that Specsavers were  
 5 covering the majority of the costs there, so that's why  
 6 they haven't included this contingency liability in the  
 7 accounts. So, I'm not an accountant but I have been  
 8 told that it should be included. So if Specsavers are  
 9 covering the costs, why are we putting money aside?  
 10 Q. I'm asking about the position in relation to this  
 11 meeting, Ms Birdi, for the moment.  
 12 A. Okay.  
 13 Q. A claim for unfair dismissal is brought against your  
 14 employer, isn't it, in the employment tribunal?  
 15 A. Yes, but I think -- like you say, I think it was against  
 16 Specsavers as well.  
 17 Q. Yes. Would you accept that it's legitimate for  
 18 a company to put money aside to cover costs if it has  
 19 litigation coming up?  
 20 A. Yes, I do.  
 21 Q. So where there is a reference there to a proposal not to  
 22 make a distribution in view of anticipated legal cost,  
 23 do you accept that that's a genuine management decision  
 24 by the directors?  
 25 A. Yes, I think that would be a decision to make in the

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1 best interests of the business.  
 2 Q. And do you accept that that was what they did do in what  
 3 they considered to be the interests of the business?  
 4 A. That's what it says there, but I'm getting conflicting  
 5 evidence from BDO.  
 6 Q. Are you saying --  
 7 A. They are saying that Specsavers are going to cover the  
 8 costs; that's why they haven't included it in the  
 9 accounts.  
 10 Q. You are saying --  
 11 A. Which is true.  
 12 Q. I'm sorry, I don't want to talk over you; sorry.  
 13 A. Which is true.  
 14 Q. So you are saying that they didn't genuinely believe  
 15 what they were saying in the meeting; is that right?  
 16 A. Maybe they did, but you must understand it from my point  
 17 of view. It doesn't make sense to me, what BDO are  
 18 saying, and also with the ET, when it was initially  
 19 struck out and a costs orders was put against me, I was  
 20 told to pay the money to Specsavers, not to DVL. But  
 21 obviously, that was squashed when the EAT overruled the  
 22 employment tribunal.  
 23 Q. You say in your witness statements that it was  
 24 Specsavers, not Dartford Visionplus, that applied for  
 25 and obtained a costs order in the ET proceedings?

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1 A. Which paragraph are we on?  
 2 Q. I think it's paragraph 604.  
 3 A. Yes.  
 4 Q. Obviously, this is some time later, isn't it? It's  
 5 after this meeting.  
 6 A. Sorry? Say that again.  
 7 Q. The costs orders was made some time later, after this  
 8 meeting? This is December 2011.  
 9 A. Yes, that's correct, yes.  
 10 Q. Yes. You are saying it was Specsavers and not Dartford  
 11 Visionplus that applied for and obtained the costs  
 12 orders. Is that right?  
 13 A. No, what I'm saying is, when I was told to pay that  
 14 money, which obviously didn't get paid in the end, I was  
 15 told to make it to Specsavers. I wasn't told to make it  
 16 Dartford Visionplus Limited.  
 17 Q. So you were told by whom? By your -- I don't want to  
 18 prey on --  
 19 A. I'm guessing here but I think it was in the order or  
 20 when I was told to pay the monies from Specsavers' legal  
 21 people, I can't remember, but it was in some form of  
 22 documentation.  
 23 Q. Again, just in the first place no costs orders had been  
 24 made in December 2011, when the company was considering  
 25 the issue. You accept that?

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1 A. I do, yes.  
 2 Q. Second point: the proceedings that you were bringing  
 3 were against Specsavers and Dartford Visionplus?  
 4 A. Yes.  
 5 Q. I suggest to you that the costs orders were made in  
 6 favour of the respondents; it was both parties --  
 7 A. Okay.  
 8 Q. -- on the joint and several basis. Would you accept  
 9 that?  
 10 A. So are you saying that Specsavers were intending to  
 11 reimburse Dartford Visionplus?  
 12 Q. No, I'm asking you about the costs order. I think we  
 13 have a copy of it. Would you like to see a copy of the  
 14 costs order?  
 15 A. Yes.  
 16 Q. Yes?  
 17 MR JUSTICE NUGEE: Are you going to put this somewhere in  
 18 the bundle?  
 19 MR POTTS: My Lord, yes, that's a ...  
 20 MR JUSTICE NUGEE: 1 February 2012. Should we put it in  
 21 chronological order?  
 22 MR POTTS: Yes, we will find the appropriate number.  
 23 MR JUSTICE NUGEE: If you could at some stage --  
 24 MR POTTS: At some stage.  
 25 MR JUSTICE NUGEE: -- find the appropriate number.

1 MR POTTS: First of all, you are the claimant.  
 2 A. I am, yes.  
 3 Q. The respondents are both there. Do you see there  
 4 Dartford Visionplus -- on the first page -- Specsavers  
 5 Optical Group?  
 6 A. That's correct.  
 7 Q. Representation?  
 8 A. That's correct.  
 9 Q. In fact Mr Winn-Smith, your junior counsel here, and  
 10 then Mr Blake for the respondents?  
 11 A. Yes.  
 12 Q. And then, dealing with evidence, there was an issue  
 13 about you seeking an adjournment, I think, weren't you?  
 14 A. That's correct.  
 15 Q. The claim was struck out. It says on the -- I accept  
 16 this point -- the words say:  
 17 "On the application of the respondent ...  
 18 "Costs orders in favour of the respondent."  
 19 On paragraph 4. You see that?  
 20 A. I do, yes.  
 21 Q. You accept that there were two respondents, weren't  
 22 there?  
 23 A. There were, yes.  
 24 Q. Are you suggesting that it was only one of the  
 25 respondents?

1 A. I'm sure I saw some documentation where it actually said  
 2 that that money -- I think it came from -- I'm not sure,  
 3 from the legal side on Specsavers -- to say that  
 4 I should make this money to Specsavers. I think that's  
 5 the case.  
 6 Q. I would suggest to you it was not unreasonable for your  
 7 employer, who was party to litigation, to wish to make  
 8 a reserve in relation to costs of the litigation. Do  
 9 you accept that that's reasonable?  
 10 A. I accept that's reasonable but I am confused because of  
 11 what BDO say, that Specsavers are going to cover the  
 12 costs. That's why there's no contingency liability in  
 13 the accounts.  
 14 Q. Okay. And then, in terms of the pay rise and bonuses,  
 15 could I take you, please, to volume C, Mr Dyson's  
 16 statement {C/9/86}.  
 17 MR JUSTICE NUGEE: Am I going to have any evidence as to  
 18 which of the respondents did incur the costs?  
 19 MR POTTS: I'll make enquiries, my Lord.  
 20 A. Yes.  
 21 Q. At page 115 at tab 9 {C/9/115}. Could you just accept  
 22 the context of this? Your complaint is sort of twofold.  
 23 It's firstly the non-payment of dividends, but you are  
 24 saying the complaint is about the salary increase and  
 25 bonuses paid to Mr Singh as well. Is that right?

1 A. That's correct.  
 2 Q. Yes. Mr Dyson -- if you have page 114 {C/9/114}?  
 3 A. Yes.  
 4 Q. And in fact at paragraph 114 he gives some evidence in  
 5 relation to a request for an increase from Mr Singh,  
 6 which was considered by Mr Dyson. Do you see that?  
 7 A. I do, yes.  
 8 Q. Would you like to just read that paragraph?  
 9 A. Where, 114?  
 10 Q. Yes. (Pause)  
 11 A. Yes, I have read that.  
 12 Q. Do you have any reason to disagree with anything that he  
 13 says there in paragraph 114?  
 14 A. No, I don't, but I would like to point out in all the  
 15 years I was there, I never had a salary increase, and  
 16 I was told by Cristina del Grazia and Derek Dyson that  
 17 it's not unusual because directors get their money from  
 18 profits of the business, and that's documented.  
 19 Q. And then over the page at paragraph 115 {C/9/115}  
 20 Mr Dyson says that:  
 21 "[He] considered that Mr Singh [had] shown great  
 22 commitments to his role as retail JVP and in improving  
 23 the performance of the business since he had joined."  
 24 Do you accept Mr Dyson's evidence in that regard,  
 25 that he genuinely believed that?

1 A. I do.  
 2 Q. Mr Dyson considered that he was entitled to the usual  
 3 annual increase of 5 per cent from July 2010, which is  
 4 from the period that he had been running the store on  
 5 his own.  
 6 A. Yes.  
 7 Q. Do you accept that he genuinely formed that view?  
 8 A. I genuinely believe -- like I have said, there is  
 9 documents to say that when I asked for a pay rise, there  
 10 is documents to say, "You get your money through profits  
 11 of the business", so I don't think his intentions were  
 12 that good, and Mr Singh was asking for a salary increase  
 13 as well.  
 14 Q. So you are saying he didn't form that view?  
 15 A. No.  
 16 Q. So he is lying then?  
 17 A. Well, he has stated in letters, as has  
 18 Cristina del Grazia -- Mr Dyson has said in another  
 19 disclosure I have included about Uckfield, where your  
 20 salary comes from the profits of the business.  
 21 Q. He has referred to that in the previous paragraph. I'm  
 22 asking you about paragraph 115 {C/9/115}. Are you  
 23 saying that what he says as to what he considered, the  
 24 view he reached -- are you saying that he is lying in  
 25 that paragraph?

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1 A. No, it may be that he considered it on this one occasion  
 2 fairly. He may have. But I don't think it's unusual  
 3 to -- I haven't asked for the full amount. I have  
 4 accepted that, yes. Salary increases, yes, are as such,  
 5 and I have accounted for that in what I ask the court to  
 6 consider the sum to be reimbursed.  
 7 Q. And he also says in the next paragraph that Mr Dyson  
 8 considered that -- this was an unusual -- well, he says  
 9 that Specsavers wasn't in a position to recruit another  
 10 JVP at that time, so Mr Singh was tasked with running  
 11 the store entirely on his own.  
 12 A. I ran the store entirely on my own when Mr Patel left.  
 13 I wasn't given any consideration in that respect.  
 14 Q. I'm asking in relation to this decision in  
 15 paragraph 116.  
 16 A. Yes.  
 17 Q. Mr Dyson says that he considered this was a huge burden  
 18 on Mr Singh and that given this increased  
 19 responsibility, he considered this was an exceptional  
 20 case, so he agreed an increase of 8 per cent going  
 21 forward.  
 22 A. Yes, well, from--  
 23 Q. Can I --  
 24 A. I -- Mr Dyson has --  
 25 Q. I don't think I have asked a question, yet, sorry,

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1 Ms Birdi.  
 2 A. Sorry.  
 3 Q. Are you challenging that evidence as to what Mr Dyson  
 4 says he thought? Can I put it another way: are you  
 5 saying that it wasn't open to a director to form that  
 6 view?  
 7 A. No, it was open to a director to form that view.  
 8 Q. Are you saying that Mr Dyson didn't genuinely form that  
 9 view?  
 10 A. No, he probably did.  
 11 Q. So you are not challenging the truthfulness of his  
 12 evidence in paragraph 116?  
 13 A. No, but I do know that Mr Dyson doesn't give 8 per cent  
 14 pay rises. He usually -- I think what he said to  
 15 Uckfield is it's a 5 per cent increase.  
 16 Q. I just want to be clear, Ms Birdi: are you saying that  
 17 he is being untruthful in his evidence here or are you  
 18 saying -- I just want to be clear on that.  
 19 A. Yes.  
 20 Q. You are?  
 21 A. No, say it again: what's the question?  
 22 Q. Are you saying that he is being untruthful in his  
 23 evidence in paragraph 116?  
 24 A. 116?  
 25 Q. Yes, this paragraph.

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1 A. I haven't read 116.  
 2 Q. I'm so sorry, do take your time to read that. (Pause)  
 3 A. Where it says -- I do challenge where it says:  
 4 "Given that day-to-day management of the stores  
 5 would usually require two directors ... "  
 6 There is many stores that only have one director.  
 7 So that -- you know, and also Mr Singh would have had  
 8 locums covering the testing, so it's not like he was  
 9 doing the retail and then doing three or five days'  
 10 testing as well because that would have been --  
 11 a costing on to the business as well.  
 12 Q. So are you saying that Mr Dyson didn't form the view  
 13 that he says he did in this paragraph?  
 14 A. He may have formed the view. It's not an unreasonable  
 15 view to form.  
 16 Q. So you accept, firstly, that he may have formed that  
 17 view?  
 18 A. Yes.  
 19 Q. And you also accept that it's not an unreasonable view  
 20 to form?  
 21 A. I think the 8 per cent is unreasonable but the --  
 22 reviewing the salary is not unusual.  
 23 Q. Well, the decision he took was that it was an  
 24 exceptional case and so on that basis he agreed the  
 25 8 per cent increase. Do you see that?

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1 A. Yes, he said it was an exceptional case because stores  
2 are normally run by two directors, but that's not  
3 factually true.  
4 Q. I just want to be clear about --  
5 A. There are many stores who are single directors.  
6 Q. So are you saying, Ms Birdi -- I'm sorry, I'm just  
7 trying to be clear as to what your evidence is. Are you  
8 saying that he didn't form the view that he says he did  
9 in paragraph 116?  
10 A. It's a very difficult question for me to answer because,  
11 as you can appreciate, anything Mr Dyson does is very  
12 questionable by me because of all the problems I have  
13 had since 2007. So I have a very conflicting mind on  
14 this but if I'm looking -- if it was a -- it's a normal  
15 business, where people are acting fairly and unbiased,  
16 I would say that that is -- that's not an unreasonable  
17 view.  
18 Q. Okay. So the first point is you are saying you are not  
19 challenging that he genuinely formed the view which he  
20 expresses in 116? That's a question.  
21 A. No.  
22 Q. And you are not saying that that was an unreasonable  
23 view for a director to come to either?  
24 A. It was bona fide, yes, that's true. I agree.  
25 Q. Okay, so it was genuine -- when you say "bona fide", it

1 was genuine?  
2 A. Yes, if it was a genuine business decision.  
3 Q. And you are saying that this was a genuine business  
4 decision that a director could come to?  
5 A. It is a decision that somebody could come to, yes.  
6 Q. Okay. Could we move on to his second witness statement,  
7 please, paragraph 35 {C/10/125}, in relation to bonuses?  
8 MR JUSTICE NUGEE: Before you move on, I'm not entirely  
9 confident the transcript picked that up correctly. At  
10 line 8 the transcript has Ms Birdi saying:  
11 "It was bona fide, yes, that's true. I agree."  
12 But I wasn't sure that's what she meant or whether  
13 she meant, "If it was bona fide, then I agree," so  
14 perhaps we could just --  
15 MR POTTS: I heard, "It was bona fide." That's why I asked  
16 the question.  
17 MR JUSTICE NUGEE: I'm not sure that was the thrust of her  
18 evidence. I thought the thrust of her evidence was it's  
19 a reasonable decision that a director could come to if  
20 it was taken bona fide but that she had serious doubts  
21 over Mr Dyson's bona fides. Perhaps we could just --  
22 MR POTTS: I had better rewind.  
23 MR JUSTICE NUGEE: Yes.  
24 MR POTTS: I'm so sorry, my Lord.  
25 So I was asking you two questions. Firstly, I think

1 you are accepting that it was open to a director to form  
2 that view?  
3 A. That's correct.  
4 Q. And I was asking you in relation to the matters set out  
5 in paragraph 116 -- and please, if you want to re-read  
6 it again -- I don't want to rush you, I want you to  
7 understand that. I was suggesting to you that he  
8 genuinely believed what he says he believed, which is  
9 set out in paragraph 116.  
10 A. Like I have said, if it was bona fide, that's fine, but  
11 I have serious doubts on Mr Dyson.  
12 Q. When you say you have serious doubts, in --  
13 A. On his decision-making in the Dartford store.  
14 MR JUSTICE NUGEE: Can I just ask you a yes or no question.  
15 Are you accepting that Mr Dyson acted bona fide in this  
16 respect?  
17 A. No.  
18 MR JUSTICE NUGEE: No. That's what I thought the position  
19 was.  
20 MR POTTS: I am sorry, I had misunderstood the position, my  
21 Lord, yes.  
22 I put to you, Ms Birdi, that Mr Dyson did act bona  
23 fide in what he considered to be the interests of the  
24 company. He acted honestly, to use non-jargon, and you  
25 don't accept that?

1 A. I don't accept that, no.  
2 Q. And I also put to you that what he is truthful in his  
3 evidence in paragraph 116?  
4 A. No, I don't believe it was bona fide.  
5 Q. Okay. And just to be clear, you are in fact therefore  
6 asserting that he is being untruthful in what he says in  
7 paragraph 116? That's the effect of your allegation; is  
8 that right?  
9 A. Yes.  
10 Q. Okay. That's very helpful. Thank you.  
11 Could I move on to the issue of bonuses. It's  
12 paragraph 35 of the second statement.  
13 A. What page are we on?  
14 Q. Sorry, page 125. {C/10/125}  
15 A. Yes.  
16 Q. We have looked at the amounts of the bonus payments on  
17 the skeleton argument. Do you see that for the numbers;  
18 yes?  
19 A. I do, yes.  
20 Q. Paragraph 35, perhaps -- do you want to just read that  
21 to yourself? (Pause)  
22 A. Yes.  
23 Q. So Mr Dyson's position is that the board considered it  
24 was reasonable and appropriate for Mr Singh to be  
25 rewarded for his efforts, which included additional

1 duties and managing the store on his own. Do you see  
2 that?  
3 A. I do, yes.  
4 Q. Do you accept that that was something that a director  
5 could conclude, reasonably?  
6 A. I think that -- yes, I think you could, but I think when  
7 you are looking after the business, you are giving  
8 salary increases and you are giving these discretionary  
9 employee bonuses, I think it's causing an extra increase  
10 on the business. I don't think it was done bona fides.  
11 I probably didn't answer your question. Ask me  
12 again, I'm sorry.  
13 Q. Not quite. I will split it up and we will do it in two  
14 stages. The first stage is, I'm asking you that this is  
15 something that a director could conclude; a director?  
16 A. Yes.  
17 Q. And they could do so reasonably?  
18 A. They could conclude that, yes.  
19 Q. The second limb of the question is, I'm asking you  
20 whether you accept that these directors, and in  
21 particular Mr Dyson, did so conclude, as he says they  
22 did in paragraph 35?  
23 A. I don't believe that it was bona fide. I believe it was  
24 to depreciate the profits that would be available for  
25 distribution.

1 Q. So you are suggesting that Mr Dyson is being untruthful  
2 in this paragraph of his witness statement?  
3 A. I am, yes.  
4 Q. And again, in paragraph 37, where he says that the  
5 bonuses were paid because he was being rewarded for his  
6 work and performance, working on his own, and further,  
7 that the store had been profitable over the period. You  
8 are saying that Mr Dyson is being untruthful when he  
9 says that?  
10 A. It is true the performance of the business was good, but  
11 like I say, Mr -- there's many stores that have single  
12 directors and Mr Singh wouldn't have been taking on what  
13 would have been my role in that field, so he wasn't  
14 doing double the amount of work.  
15 But I do believe it wasn't a bona fide decision to  
16 give these, and when you look at the way the bonuses  
17 were given, it's very clear that it was to stop  
18 distribution of profits for the directors, because  
19 employee bonus is emphasised and Alison Girollet has  
20 made her comments on that, which are in disclosure.  
21 Q. Just to be clear, the position I think you are taking  
22 is -- you are saying that what Mr Dyson says, in  
23 paragraphs 35 and 37 here, is untrue?  
24 A. It's not bona fide and it was to decrease the profits  
25 available for me as the other A shareholder.

1 Q. I just want to be careful about the use of terms like  
2 bona fide.  
3 A. Yes, okay.  
4 Q. The question I'm asking you is -- what you say is what  
5 Mr Dyson says he decided, his evidence as to the  
6 decision, which is set out in 35 and 37 -- you are  
7 saying that that's not what he believed at all?  
8 A. Yes, it wasn't done with good intention.  
9 Q. And it wasn't done with the intention that he says it  
10 was in these two paragraphs?  
11 A. Yes.  
12 Q. I suggest to you that Mr Dyson did honestly form the  
13 opinions that he says he did in this statement and that  
14 he is not lying?  
15 A. I disagree. Like I say, you have to look at the whole  
16 picture; you can't just look at one paragraph.  
17 MR POTTS: My Lord, I have no further questions.  
18 MR JUSTICE NUGEE: Thank you very much.  
19 Ms Birdi, wait there, there may be some questions  
20 from Mr Stuart.  
21 Re-examination by MR STUART  
22 MR JUSTICE NUGEE: Could somebody check the correct place to  
23 put the employment tribunal order and judgment. I think  
24 it's E15/4236-2 and following, but if you could confirm  
25 that that's an appropriate place.

1 When you are ready, Mr Stuart.  
2 MR STUART: Yes. Ms Birdi, just before I go back to the  
3 evidence that you gave in the previous three days,  
4 I just want to ask you about one point that you were  
5 questioned on this morning, whilst it's in our  
6 recollection.  
7 You were asked about this £8,705 equalisation  
8 dividend of December 2006 this morning.  
9 A. Yes.  
10 Q. And it was put to you that when you, in your evidence  
11 today, stated that someone from financial planning had  
12 "phoned back", I think were the words you used, and  
13 spoken to Mr Patel --  
14 A. Yes.  
15 Q. -- after the equalisation dividend request had gone  
16 in --  
17 A. Yes.  
18 Q. -- and confirmed that it had been received but would  
19 "only be paid in the New Year", I think were the words  
20 you used. Do you recall being asked about that this  
21 morning?  
22 A. I do, yes.  
23 Q. It was suggested to you that that didn't appear in your  
24 witness statements and that you hadn't mentioned it ever  
25 before, and that you were making that up to support your

1 case. Could you be handed E10? Go to page 2834.  
 2 {E/885.1/2834}  
 3 A. Yes.  
 4 Q. Do you have 2834?  
 5 A. I do.  
 6 Q. Just to put it into context for you, if you go back to  
 7 page 2830. {E/885.1/2830}  
 8 A. Yes.  
 9 Q. The document starts -- if you look at the bottom, it  
 10 says page 1?  
 11 A. Yes.  
 12 Q. And 2834 is page 5 of this document?  
 13 A. Yes.  
 14 Q. So you can see that this is a document of a meeting that  
 15 you had back in February 2010 with Mr Raines?  
 16 A. Yes.  
 17 Q. Obviously, also present were Mr Butcher, Mr Singh and  
 18 yourself?  
 19 A. That's correct.  
 20 Q. And I would ask you to go to page 2834, at the bottom,  
 21 so below the second holepunch. {E/885.1/2834}  
 22 A. Yes.  
 23 Q. Do you see there is a paragraph which starts:  
 24 "SB disagreed and stated that she believed an amount  
 25 of £8,705.61 was still owed to her..."

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1 A. Yes.  
 2 Q. Do you see that?  
 3 A. Yes.  
 4 Q. Can you confirm: is that the same figure we are talking  
 5 about?  
 6 A. Yes, it is.  
 7 Q. And then it says:  
 8 "SB told MR that the outstanding amount is in  
 9 relation to the equalisation of monies taken out by  
 10 Nimesh Patel via credit card and via personal expenses  
 11 to the business during the period of October 2004  
 12 to November 2006. This equalisation was partly paid via  
 13 a distribution to SB for £6,177..."  
 14 Is that what you described as the November payment?  
 15 A. That's correct.  
 16 Q. That's November 2006?  
 17 A. That's correct.  
 18 Q. "... and the remaining amount remains unpaid for the sum  
 19 of £8,750.61 which could not be paid at the time but FP  
 20 spoke to Mr Patel..."  
 21 Can you just explain: what's FP?  
 22 A. It's financial planning.  
 23 Q. Financial planning. Do you know who that would be?  
 24 A. I believe it was Kristina Smith.  
 25 Q. Kristina Smith?

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1 A. Yes, the lady who originally sent the email.  
 2 Q. "... but FP spoke to Mr Patel and confirmed it would pay  
 3 when there was enough cashflow in the business."  
 4 A. That's correct.  
 5 Q. And then it says:  
 6 "An email was sent from FP."  
 7 A. Yes.  
 8 Q. Can you explain to the court what you meant by that?  
 9 A. An email was sent from Kristina Smith to acknowledge the  
 10 amount and say that they will look at it, get the  
 11 managers to sign it. I think it's that one email. But  
 12 then subsequent to that she phoned and confirmed it  
 13 would be paid when there was cashflow.  
 14 Q. Then carrying on, it says:  
 15 "MR believed outstanding figure in 2007 was £15K."  
 16 "MR" being Mr Raines?  
 17 A. That's correct.  
 18 Q. Just to be clear, not your husband, Mr Rehman, at this  
 19 point?  
 20 A. No, Mr Raines. {E/885.1/2835}  
 21 Q. "SB disagreed and said that she felt the sum of  
 22 £8,705.61 was still owed to her. SB explained that  
 23 Financial Planning had received the request  
 24 in December 2006, had spoken to Mr Patel and she had  
 25 only received £6,177."

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1 Do you see that?  
 2 A. I do.  
 3 Q. Is that what you were referring to this morning, when  
 4 you said to Mr Potts that this was not the first time  
 5 you had mentioned it?  
 6 A. That's right, yes.  
 7 Q. All right. You can put away E10.  
 8 I'm just going to try and take you through to  
 9 some -- not too many, a few points, and I'm going to  
 10 start back at the beginning of your evidence and take it  
 11 through in the order in which you were asked about these  
 12 things.  
 13 My Lord, I'm going to mention some transcript  
 14 references. I don't think it's necessary for the  
 15 present purposes to take Ms Birdi to the transcripts  
 16 each time; it's more for your reference. So when I say,  
 17 "You were cross-examined about this at transcript 1,  
 18 pages ..." it's really more for your Lordship's  
 19 reference to see where I'm re-examining in respect of.  
 20 MR JUSTICE NUGEE: Yes.  
 21 MR STUART: On the first day of your evidence, so transcript  
 22 day 1, pages 149 to 150 for those of us who have the  
 23 transcript, {Day1/149:1} you were asked about the shared  
 24 and group venture, the shared venture and the group  
 25 venture issue.

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1 A. Yes.  
2 Q. You were specifically asked about it because it was put  
3 to you that it wouldn't be necessary to get rid of you.  
4 Do you remember? To get you to go up to Blackpool or  
5 such things?  
6 A. That's correct.  
7 Q. And you said that there were group venture -- there was  
8 evidence of the company's intentions here.  
9 Can I ask you to be handed bundles E2 and E3. Do  
10 you have E2 to start with? Page 457 is the only one  
11 I want to ask you about. {E/100/457} You specifically  
12 mentioned Mr Neil Lunn when you were cross-examined  
13 about this.  
14 A. That's correct.  
15 Q. But you weren't able to go to specific documents. I'm  
16 asking you to go to page 457.  
17 A. Yes.  
18 Q. Can you just explain to his Lordship who Mr Neil Lunn  
19 was, in this respect?  
20 A. He was part of the shared venture division in Guernsey  
21 Specsavers.  
22 Q. This is all dated May 2007?  
23 A. That's right.  
24 Q. So this was just at the time you were being suspended?  
25 A. That's correct.

1 Q. Were you in contact with Mr Lunn at that time? Was he  
2 discussing matters with you?  
3 A. No.  
4 Q. Were you aware that the shared venture division were  
5 involved in your store?  
6 A. No.  
7 Q. Did anybody tell you that it was a shared venture?  
8 A. No, not until my back to work interview on 9/10/07.  
9 Q. We will come back to that in a moment. All right.  
10 Looking at this, Mr Lunn is initially emailing  
11 Mr Ryan. Were you dealing with Mr Ryan at this time?  
12 A. I had spoken to Mr Ryan two days after Mr Patel's  
13 departure.  
14 Q. Yes. So what was his involvement with Dartford, so far  
15 as you were aware, at that time?  
16 A. At that time I phoned him because of the car insurance  
17 issue with Mr Patel and I asked him what was happening  
18 with Mr Patel's shares, and he said they were looking  
19 for a partner already. So he was basically dealing with  
20 Mr Patel's shares.  
21 Q. Right. So Mr Ryan --  
22 A. Mr Ryan in Business Transfer, yes.  
23 Q. Business Transfer?  
24 A. That's right, yes.  
25 Q. Okay. Mr Lunn is saying to Mr Ryan: {E/100/457}

1 "Hi Mike, the latest rumour is that the Gravesend  
2 partners have been seen in the Dartford store because  
3 they are buying it."  
4 Was that a rumour that you were involved in at the  
5 time?  
6 A. No, I wasn't aware at all.  
7 Q. You weren't aware at all, okay. Then he goes on to say:  
8 "Are you aware of this? I would be keen to discuss  
9 due to the proximity to Bexleyheath."  
10 Do you know what he is referring to there?  
11 A. Yes, Bexleyheath is a shared venture store.  
12 Q. How far away is that from Dartford?  
13 A. It's not very far, it's very close. Don't ask me  
14 mileage but it's very close.  
15 Q. To travel from one to the other by car would take you  
16 roughly how long?  
17 A. 15 minutes?  
18 Q. 15 minutes. Did you know the people in Bexleyheath?  
19 A. No, I didn't, no.  
20 Q. And then Mr Ryan, do you see, he responds at the top of  
21 the email chain? Do you see that?  
22 A. I do, yes.  
23 Q. And it says:  
24 "We are not at the moment seeking buyers for any  
25 shares in Dartford.

1 "The Gravesend partners have asked to be considered  
2 if/when shares are for sale."  
3 Do you know what that's referring to?  
4 A. Erm...  
5 Q. Who are the Gravesend partners?  
6 A. Blair and Dominic. They are a joint venture store.  
7 Q. Were you aware at the time --  
8 A. I wasn't.  
9 Q. -- that they were interested in buying shares?  
10 A. I wasn't, no.  
11 Q. And Blair and Dominic, what sort of venture was their  
12 venture?  
13 A. Theirs was a joint venture.  
14 Q. And was it just the two of them or were there more than  
15 two of them involved on the A shareholder side?  
16 A. I think it's just two of them.  
17 Q. Okay. And then it says:  
18 "This is in Mel's realm at the moment."  
19 That's all that says there. Do you see that?  
20 A. I do, yes.  
21 Q. Do you know what that's a reference to?  
22 A. That's a reference to Mr McAlindon.  
23 Q. All right. You can put away E2.  
24 I hope you were handed E3. Do you have E3?  
25 A. Yes.



1 Q. Can you go to page 711. {E/185/711} It's after  
 2 page 710-6, so you may have to turn a few pages to get  
 3 711.  
 4 A. Yes, I have that.  
 5 Q. This is entitled, "Dartford Shared Venture Assessment".  
 6 Can you see that document?  
 7 A. I do, yes.  
 8 Q. Your name appears on the top left:  
 9 "Director: Swarandeeep Birdi (OO - 50 per cent).  
 10 "Trading date: 1995."  
 11 A. That's correct.  
 12 Q. And then if you go three comments from the bottom, so in  
 13 the "Total score" block?  
 14 A. Yes.  
 15 Q. The second item, the conclusion, reads:  
 16 "I would recommend that we initially attract an OO  
 17 JVP (25 to 50 per cent maximum) and due to the lack of  
 18 retailers in the south east, consider the staff venture  
 19 structure to support the OO. Staff venture would be  
 20 implemented after we have had the opportunity to  
 21 review/recruit the current staff and identify the top  
 22 team."  
 23 Do you see?  
 24 A. I do, yes.  
 25 Q. I want to ask you: were you aware of this at the time?

1 A. No, I wasn't.  
 2 Q. Did anybody discuss with you shared venture at that  
 3 time?  
 4 A. No, they didn't.  
 5 Q. All right.  
 6 MR JUSTICE NUGEE: Before you move away from that, what do  
 7 you understand by the term, "staff venture"? Or do you  
 8 understand it?  
 9 A. I don't understand it.  
 10 MR JUSTICE NUGEE: You don't understand it?  
 11 A. No.  
 12 MR JUSTICE NUGEE: Thank you.  
 13 MR STUART: Okay. Whilst we are in this bundle, I have just  
 14 got one more document to take you to, page 714, so if  
 15 you go three pages further on. {E/187/714}  
 16 This is, again, Mr Lunn. We are in August 2007, so  
 17 we have moved on a few months from his May 2007 emails.  
 18 A. Yes.  
 19 Q. And he is now addressing Mr McAlindon. Do you see that?  
 20 A. I do, yes.  
 21 Q. "Hi Mel.  
 22 "I have caught up with Derek regarding Dartford, and  
 23 Sean McLaughlin taking the reins wef 10/9/07.  
 24 "As the store is a currently (technically) a shared  
 25 venture, and likely to become a group venture ..."

1 Can you just explain to the court: what is a group  
 2 venture?  
 3 A. A group venture is when Specsavers hold 100 per cent of  
 4 the A shares.  
 5 Q. So there wouldn't be -- I don't need to ask you. Okay,  
 6 100 per cent A shares.  
 7 Was it discussed with you at that time that your  
 8 store was likely to become such a group venture?  
 9 A. No, it wasn't.  
 10 Q. Did Mr Lunn have any dealings with you at this  
 11 time, August 2007 -- so we have moved on three months?  
 12 A. No, he didn't.  
 13 MR JUSTICE NUGEE: Mr Stuart, to be fair it does say:  
 14 "... likely to become a group venture until we find  
 15 a prospective partner..."  
 16 MR STUART: Of course:  
 17 "... until we find a prospective partner..."  
 18 So, you are an existing partner, as we know?  
 19 A. That's correct.  
 20 Q. A "shared venture"; what did you understand by the term  
 21 "shared venture"?  
 22 A. Shared venture, if it was applying to me, it meant that  
 23 I would still retain my 50 per cent and Specsavers would  
 24 own 50 per cent as kind of like a silent partner, if you  
 25 like.

1 Q. Yes. But:  
 2 "... to become a group venture until we find  
 3 a prospective partner..."  
 4 What do you now understand that to mean?  
 5 A. That I would be exited from the store.  
 6 Q. It goes on:  
 7 "... I would like to discuss the Loss Prevention..."  
 8 He is addressing Mr McAlindon, who is just in the  
 9 Loss Prevention department?  
 10 A. That's right.  
 11 Q. "... charges being applied to the store, as they will  
 12 effectively be reducing SOG income as we are the  
 13 shareholder."  
 14 A. Yes.  
 15 Q. Was any of this mentioned to you at the time?  
 16 A. No, it wasn't.  
 17 Q. By Mr McAlindon?  
 18 A. No, it wasn't.  
 19 Q. Mr Ryan?  
 20 A. No.  
 21 Q. Or Mr Lunn?  
 22 A. No, it wasn't.  
 23 Q. All right. You can put away E3.  
 24 Finally on this, I just want to ask you about E4, if  
 25 you could be shown E4, page 802. {E/191/802}

1 My Lord, do you have a version of E4 which starts  
2 with 801-1?  
3 MR JUSTICE NUGEE: I do.  
4 MR STUART: Yes, so there are 37 pages -- no --  
5 MR JUSTICE NUGEE: Yes.  
6 MR STUART: I do, your Lordship does. Does the witness have  
7 it?  
8 A. Yes, I do, yes.  
9 MR STUART: I'm told Mr Potts says --  
10 MR POTTS: Sorry, could you just give me the number again.  
11 MR STUART: E4, the beginning of the bundle, 801-1. It  
12 might have been put in the back of E3, I'm thinking now.  
13 MR JUSTICE NUGEE: If you are going to ask her about 802,  
14 does it matter?  
15 MR STUART: It doesn't, my Lord, no, but I'm going to come  
16 back to 801, page 35, in a minute. So I just wanted to  
17 make sure we all had the same. Okay, fine.  
18 All right, so 802 is what I'm asking you about at  
19 the moment because we are dealing with the shared  
20 venture business/Mr Lunn. Do you see 802?  
21 A. I do, yes.  
22 Q. We have moved now into September 2007?  
23 A. That's correct.  
24 Q. Sorry, 31 August to start with, page 802. Mr Lunn is  
25 writing to Mr McAlindon:

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1 "I have caught up with Derek ... and Sean ... taking  
2 the reins ...  
3 "As the store is currently ..."  
4 So that's the previous email?  
5 A. That's right.  
6 Q. Then his response at the top, from Mr McAlindon to  
7 Mr Lunn, is:  
8 "Derek, I am currently charging Dartford the  
9 equivalent of £440 a day ... As you are aware, two  
10 reasons. First, an income stream for the department.  
11 Second and more important, because of the share value --  
12 the more the store is charged, the lower the value. Do  
13 you want me to continue charging until a compromise  
14 agreement has been agreed..."  
15 A. Yes.  
16 Q. Do you see that?  
17 A. I do.  
18 Q. Were you in discussions regarding a compromise  
19 agreement, so far as you were aware --  
20 A. No, I wasn't.  
21 Q. -- in September or late August 2007?  
22 A. No, I wasn't.  
23 Q. Were you aware that Mr McAlindon was, "second and more  
24 importantly", charging the store to lower the value of  
25 your shares?

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1 A. No, I wasn't.  
2 Q. And it says:  
3 "... until a compromise agreement has been agreed,  
4 disciplinary process completed..."  
5 Were you in the middle of your disciplinary process  
6 at this point?  
7 A. Yes, I was.  
8 Q. "... and/or all shares are bought..."  
9 Had any offer been made to buy your shares off you  
10 at that time?  
11 A. No, it hadn't.  
12 Q. Were you aware that either Mr Lunn, Mr Dyson, to whom  
13 this email was sent, or Mr McAlindon were discussing the  
14 concept of buying your shares off you whilst you were in  
15 a disciplinary process conducted by Mr McAlindon?  
16 A. No, I wasn't.  
17 Q. Just go on one page. {E/192/803} Three days later,  
18 4 September -- do you see that?  
19 A. Yes, I do.  
20 Q. Mr Lunn is replying to Mr McAlindon, so Mr Lunn has  
21 received the email that I have just taken you to?  
22 A. That's correct.  
23 Q. Which is in the middle, between the two hole punches,  
24 and he is replying to that three days later:  
25 "Hi Mel."

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1 Do you see that?  
2 A. I do.  
3 Q. "I understand from Derek that at the point where SOG own  
4 100 per cent of the shares that the loss prevention  
5 involvement will cease and my involvement will commence,  
6 therefore leaving the charging arrangements with me.  
7 I trust that makes sense. Cheers Neil."  
8 Were you aware in September 2007 that SOG were going  
9 to own 100 per cent of the shares?  
10 A. No, I wasn't.  
11 Q. Were you aware that the Loss Prevention involvement was  
12 going to continue until they did own 100 per cent of the  
13 shares?  
14 A. No, I wasn't.  
15 Q. And finally in this bundle, would you go to 911.  
16 {E/219/911}  
17 We are now into October 2007, so this is after your  
18 suspension has been lifted?  
19 A. That's correct.  
20 Q. Do you see that? You are about to have your back to  
21 work interview, which I think you mentioned, which we  
22 can see at page 915. {E/223/915} Just to put this into  
23 context with you, your back to work interview was to be  
24 on 9 October?  
25 A. That's correct.

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1 Q. But going back to 911, {E/219/911} Ms del Grazia is  
 2 being written to by Mr Singh. Do you see that?  
 3 A. I do.  
 4 Q. Obviously, nobody is suggesting that Mr Singh has by  
 5 this point become your co-shareholder. He doesn't  
 6 acquire his interest until 2008.  
 7 A. That's correct.  
 8 Q. But he is writing to her anyway on 1 October and he  
 9 says:  
 10 "Hi Cristina, re Dartford Specsavers. Please advise  
 11 if you have any further feedback on my original  
 12 proposition for acquisition of the Dartford shares, as  
 13 discussed in April 2007."  
 14 Do you see that?  
 15 A. I do.  
 16 Q. Had you been made aware of Mr Singh's interest  
 17 in April 2007?  
 18 A. No, I had not.  
 19 Q. Did either Ms del Grazia or anybody, Mr Ryan perhaps,  
 20 Mr McAlindon, Mr Lunn or Mr Dyson -- did any of them  
 21 mention the possibility of Mr Singh's interest in the  
 22 period between April 2007 and this email of  
 23 October 2007?  
 24 A. No.  
 25 Q. He says:

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1 "I am very keen on this project and have shown that  
 2 I have the skill and drive to turn around an  
 3 underperforming business. I urge the board to consider  
 4 my proposal."  
 5 At this point, obviously, you were a member of the  
 6 board?  
 7 A. That's correct.  
 8 Q. Were you, in your capacity as a member of the board,  
 9 notified of Mr Singh's interest at this time?  
 10 A. No, I wasn't.  
 11 Q. The response is at the top of the page from  
 12 Ms del Grazia and it's copied to Mr Ryan and someone  
 13 called Emma Meagher. Do you know who Emma Meagher is?  
 14 A. She is a secretary of either Mark Raines or Derek Dyson.  
 15 I'm not sure which one. I think it's Derek Dyson.  
 16 MR JUSTICE NUGEE: I think we can tell that from the email,  
 17 Mr Stuart.  
 18 MR STUART: We can.  
 19 "Hi Kam ..."  
 20 Says Cristina. Do you see that?  
 21 A. Yes, I do.  
 22 Q. "... I'm not aware of any firm plans to sell on the  
 23 shares in Dartford at this time..."  
 24 Do you see that?  
 25 A. I do.

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1 Q. You see that?  
 2 A. Yes.  
 3 Q. "... but your interest has been noted and I have passed  
 4 on your latest message below."  
 5 So my question is, did Ms del Grazia pass on  
 6 Mr Singh's message to you as a director --  
 7 A. No.  
 8 Q. -- of Dartford Specsavers Limited?  
 9 A. No.  
 10 Q. No, all right. You can put away E4.  
 11 Just a short point; day 1 of the transcript,  
 12 page 156 to 157, for your Lordship's note. {Day1/156:1}  
 13 You were asked about when Specsavers was aware that  
 14 Mr Patel was contemplating the sale of his shares. So  
 15 this is not the 2007 forced exit of Mr Patel; this was  
 16 the suggestion that when you were offered the move to  
 17 Blackpool --  
 18 A. Yes.  
 19 Q. -- that they, Specsavers, knew -- you said in your  
 20 evidence that they knew that Mr Patel was interested in  
 21 leaving?  
 22 A. Yes.  
 23 Q. And you were cross-examined about that and it was  
 24 pointed out to you that the offer from Ms Kaur didn't  
 25 come in until after the written offer -- didn't appear

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1 to come in until after the conversation that you say you  
 2 had regarding the offer to go to Blackpool. Do you  
 3 remember that?  
 4 A. I do, yes.  
 5 Q. Could you be passed E1, bundle E1, because in your  
 6 cross-examination you maintained that Specsavers would  
 7 have been aware of Mr Patel's intention to sell months  
 8 before Ms Kaur's offer and certainly before you had  
 9 your October 2006 conversation regarding Blackpool. Do  
 10 you remember?  
 11 A. I do.  
 12 Q. Could you go to the last page in the bundle, please, the  
 13 very last page, page 200. {E/12/200}  
 14 A. Yes.  
 15 Q. Is that the letter that you intended to refer to when  
 16 you gave that evidence in cross-examination?  
 17 A. Yes, it is.  
 18 Q. It is addressed to SOG in Guernsey?  
 19 A. Yes.  
 20 Q. It's dated 1 September, it's from Mr Patel and it says:  
 21 "Dear Sirs, Specsavers Dartford. I am writing to  
 22 inform you that I am contemplating a sale of my stake in  
 23 the above store either by way of a sale of its business  
 24 undertaking and assets or by way of a disposal of all  
 25 holdings of A shares. I hereby confirm as follows ..."

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1 Do you see that?  
 2 A. I do.  
 3 Q. And it seems that there has been some accountancy advice  
 4 from somebody called R&B Limited?  
 5 A. Yes.  
 6 Q. Is that the other firm of accountants that you referred  
 7 to when you were cross-examined about Mr Patel's THP  
 8 invoices?  
 9 A. That's correct.  
 10 Q. Were you aware, back on 1 September 2006, that Mr Patel  
 11 intended to sell his A shares?  
 12 A. No, I wasn't.  
 13 Q. Did Specsavers Optical Group notify you of that when  
 14 they received that letter in September 2006?  
 15 A. No, they did.  
 16 Q. So when you had your conversation where they were  
 17 offering you the opportunity to move to Blackpool in,  
 18 you say, October 2006 --  
 19 A. Yes.  
 20 Q. -- at that time, was it mentioned to you that Mr Patel  
 21 was intending to sell his A shares?  
 22 A. Yes, it was.  
 23 Q. Thank you. You can put away bundle E1.  
 24 Could you be passed E3 again; sorry to dot around  
 25 but I'm doing it in the order in which you were

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1 cross-examined.  
 2 We are now into transcript day 2 and you were asked  
 3 about the approval of Mr Patel's THP invoices. Do you  
 4 remember you were cross-examined about that in depth?  
 5 A. Yes.  
 6 Q. The approval by Carol Slark and Specsavers of payment of  
 7 Mr Patel's personal invoices?  
 8 A. That's correct.  
 9 Q. And you mentioned in cross-examination, repeatedly  
 10 actually, that you believed there was a letter from  
 11 Ms Slark, which showed that she had actually identified  
 12 the issue and then positively taken the decision to  
 13 authorise payment of those invoices. Do you recall  
 14 mentioning that?  
 15 A. That's correct.  
 16 Q. For your Lordship's note, it's pages 37 to 49 of  
 17 transcript day 2. {Day2/37:1} So could you go to  
 18 page 592 in E3. {E/141/592}  
 19 A. Yes.  
 20 Q. That's a manuscript letter dated June 2007 -- I think it  
 21 says 28 June 2007, mine is cut off slightly -- to  
 22 Mark Ramsden. Do you know who Mr Ramsden is?  
 23 A. No, I don't.  
 24 Q. "I confirm that all invoices up to and including April  
 25 for THP on behalf of Mr N Patel can be paid."

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1 Do you see that signed:  
 2 "Regards, Carol Slark."  
 3 A. I do, yes.  
 4 Q. Is that the letter you were referring to?  
 5 A. It was, yes.  
 6 Q. I can move on to a completely different subject, which  
 7 is the £20,000 reference. This was in relation to the  
 8 extent of Mr Patel's thefts?  
 9 A. Yes.  
 10 Q. You were cross-examined about this on day 2 at pages 14  
 11 to 20 {Day2/14:1} and it was specifically suggested to  
 12 you that your reference to £20,000, an entry in the  
 13 accounts that referred to £20,000 -- you were taken to  
 14 a number of documents and it was suggested to you that  
 15 actually it was clear that the £20,000 referred to your  
 16 PAYE issues, if I can call it that?  
 17 A. Yes.  
 18 Q. And that it was an entry which was to do with you, not  
 19 Mr Patel?  
 20 A. Yes.  
 21 Q. As I say, my Lord, that's transcript day 2, pages 14 to  
 22 20. {Day2/14:1} You will see the way Mr Potts put it.  
 23 MR JUSTICE NUGEE: I remember.  
 24 MR STUART: Could I ask you to take out bundle E4.  
 25 MR JUSTICE NUGEE: It must be E3.

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1 MR STUART: Sorry, you are quite right. Your Lordship has  
 2 it already. My bundle, E4/801. So at the beginning of  
 3 E4, but some may have it at the back of E3. {E/190/801}  
 4 If you would go to -- at the front we have got 801-1  
 5 to 37?  
 6 A. Yes.  
 7 Q. Do you see that? Perhaps I ought to ask you this: this  
 8 morning, you mentioned in cross-examination -- his  
 9 Lordship asked you a question about what were the  
 10 documents that were sent to you when you got the bottom  
 11 line reports?  
 12 A. Yes.  
 13 Q. Do you remember?  
 14 A. I do.  
 15 Q. And you mentioned something about a "much bigger pack"?  
 16 A. That's right.  
 17 Q. Those were the words you used this morning. Can I just  
 18 ask you to clarify: is this the pack, the sort of  
 19 pack -- not the specific one, but is this what you are  
 20 referring to?  
 21 A. That's right.  
 22 Q. So literally, in this format, with these very small  
 23 numbers on?  
 24 A. That's right. The front two pages are missing but  
 25 that's just a summary of everything, but, yes, it's this

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1 pack.  
 2 Q. Yes, so the front pages -- if you have got E3 -- keep E4  
 3 out but if you have got E3?  
 4 A. Yes.  
 5 Q. The front pages for this one are at E3, page 715.  
 6 {E/188/715} Is that what you are calling the front  
 7 pages. That's a format that we have seen --  
 8 A. Yes, these are the front pages but these September 2007  
 9 accounts, there were three sets. This is the print from  
 10 1 April.  
 11 Q. Yes.  
 12 A. But the figures are the same, I believe.  
 13 Q. Okay, except that actually, if you look, they are not.  
 14 If you look at page 801-1.  
 15 A. Yes.  
 16 Q. We are back to the version in E4 {E/190/801} and if you  
 17 go to page 35 -- so 801-35. Do you have it?  
 18 A. I do, yes.  
 19 Q. Between the two hole punches, somebody has marked a sort  
 20 of star. I'm not sure who that is. Do you know who  
 21 marked that star?  
 22 A. That was me.  
 23 Q. That's you; that's your sort of funny squiggle?  
 24 A. That is, yes.  
 25 Q. It has a date of 30 September 2007. It has got a code

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1 of 99 and then it says:  
 2 "Agree reserves re N Patel [(inaudible) 305] minus  
 3 £20,000."  
 4 Do you see that?  
 5 A. Yes, I do.  
 6 Q. Is that the reference that you were referring to, when  
 7 you were cross-examined about this £20,000 issue?  
 8 A. That's correct, yes.  
 9 Q. Just to be clear, you were actually asked by Mr Potts  
 10 about a series of emails, pages 806 and 808, so  
 11 immediately after this one? {E/193/806}  
 12 A. Yes.  
 13 Q. So we have to read them in reverse order, as Mr Potts  
 14 explained to you. So go to 808 is to start with?  
 15 {E/193/808}  
 16 A. Yes.  
 17 Q. At the bottom, it said:  
 18 "Colin, the Dartford accounts should be amended for  
 19 the director's fraudulent transactions -- have they been  
 20 signed yet? Thanks, Anne."  
 21 Do you see that?  
 22 A. I do, yes.  
 23 Q. So, going upwards in order, at the top of that page:  
 24 "John, I need to put some adjustments into these  
 25 accounts due to director's fraudulent transactions.

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1 Thanks, Anne."  
 2 Do you see that?  
 3 A. I do.  
 4 Q. And then you go back a page, top of page 807:  
 5 {E/193/807}  
 6 "Hi John, need to do quite a bit of work on this one  
 7 but I would say probably at least £20K in underpaid PAYE  
 8 et cetera. Has Cristina sent you the report on this one  
 9 yet? If not I would suggest you request it from her."  
 10 Do you see that?  
 11 A. I do.  
 12 Q. Then going back to page 806, John says -- John is at  
 13 BDO, the accountants. Do you see that?  
 14 A. I do, yes.  
 15 Q. He says: {E/193/806}  
 16 "Anne, I have had a conversation with Cristina ..."  
 17 Do you see that?  
 18 A. I do.  
 19 Q. Do you know who Cristina is?  
 20 A. Yes, Cristina del Grazia from the legal department.  
 21 Q. "... on 12 July 2007. From that I had thought we were  
 22 talking about a smaller number than that - £10/11K?  
 23 I thought it all stemmed from a director having her  
 24 husband on the payroll at £750 per month..."  
 25 What was your husband on the payroll for? How much?

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1 A. At that time --  
 2 Q. Mushtaq.  
 3 A. At that time, it was £275.  
 4 Q. £275. Anyway:  
 5 "I thought it all stemmed from a director having her  
 6 husband on the payroll at £750 per month when in reality  
 7 he did very little work for the company? Not sure how  
 8 that triggers off extra tax/notification to HMRC."  
 9 Then at the top it says:  
 10 "He is taking her share of the profit so should be  
 11 taxed at 40 per cent instead of 22 per cent. There is  
 12 more than one person involved."  
 13 These are all dated September 2007. Was any enquiry  
 14 made of you at this time regarding this entry of £20,000  
 15 in the accounts?  
 16 A. No, it wasn't.  
 17 Q. Or the amendment of the accounts to take out the £20,000  
 18 in the next version of the accounts?  
 19 A. Could you ask me that question once again, please?  
 20 Q. Did anybody ask you any questions or involve you in the  
 21 taking out of the £20,000 entry that said, "N Patel,  
 22 £20,000", in the subsequent version of the accounts?  
 23 You said in cross-examination to Mr Potts that there was  
 24 another version of the accounts for the same period,  
 25 which had removed that £20,000. Do you remember that?

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1 A. No, nobody involved me in that, but I did query it.  
 2 MR STUART: My Lord, would that be a convenient moment?  
 3 MR JUSTICE NUGEE: That would be convenient moment. We will  
 4 say 2 o'clock.  
 5 Ms Birdi, last lap, but you are still under  
 6 instructions not to speak to anybody.  
 7 2 o'clock.  
 8 (1.04 pm)  
 9 (The short adjournment)  
 10 (2.00 pm)  
 11 MR JUSTICE NUGEE: Yes, Mr Stuart.  
 12 MR STUART: Ms Birdi, just finalising what you were asked  
 13 about in relation to the matters we dealt with this  
 14 morning. Could you be given E6, page 932. {E/932}  
 15 A. No, that's not 6.  
 16 MR JUSTICE NUGEE: That's not in E6.  
 17 MR STUART: Sorry, E4. Sorry, I misread my reference. E4,  
 18 page 932. {E/230/932} 16 October 2007, a letter from  
 19 your then solicitors, Crust Lane Davis. Do you see  
 20 that?  
 21 A. I do, yes.  
 22 Q. So this is 16 October 2007, shortly after your return to  
 23 work interview. Do you remember? We saw it earlier.  
 24 A. That's correct, yes.  
 25 Q. I just want to ask you about -- you were asked about

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1 this on day 2. Go to page 934. {E/230/934} This was  
 2 Cristina del Grazia's response regarding your  
 3 solicitors' letters, where they had raised queries and  
 4 you mentioned this on a number of occasions to Mr Potts?  
 5 A. Okay.  
 6 Q. Do you see at the end of 934, so just above the second  
 7 hole punch, it says:  
 8 "Mr Patel's departure from the business ..."  
 9 Do you see that?  
 10 A. I do, yes.  
 11 Q. "... has resulted in SOG holding 50 per cent of the  
 12 A shares."  
 13 A. Yes.  
 14 Q. "The expression 'shared venture' is used internally  
 15 within the Specsavers group to describe a situation such  
 16 as Dartford's where SOG holds A shares and, therefore,  
 17 shares in the profits the business (which is still  
 18 technically a joint venture between SOG and the  
 19 remaining partner)."  
 20 Do you see that?  
 21 A. I do, yes.  
 22 Q. And then it said:  
 23 "Given Ms Birdi's recent conduct and the outcome of  
 24 the disciplinary hearing held on 20 September, SOG does  
 25 not deem it appropriate at this time to make any firm

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1 plans regarding the future structure of the Dartford  
 2 business."  
 3 A. Yes.  
 4 Q. Do you see that?  
 5 A. Yes, I do.  
 6 Q. Can you just confirm: as at the date when you went back  
 7 to work, so around October 2007?  
 8 A. Yes.  
 9 Q. What was your understanding of the nature of the type of  
 10 venture that you were now in with Specsavers?  
 11 A. I was told that it was a shared venture and Specsavers  
 12 were my partner.  
 13 Q. Okay.  
 14 All right, I'm moving on to a new topic. You were  
 15 cross-examined about Mr McAlindon's involvement and  
 16 specifically you were cross-examined about what you told  
 17 the staff when Mr Patel left in February 2007. This was  
 18 on the second day of the transcript, between pages 99 to  
 19 104. {Day2/99:1}  
 20 A. Okay.  
 21 Q. That's for his Lordship's note.  
 22 It was put to you repeatedly that you told the staff  
 23 that he had been dismissed, that he had committed theft,  
 24 et cetera. Do you recall that?  
 25 A. I do.

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1 Q. Being cross-examined about that? I want you to be shown  
 2 bundle E2, page 317 {E/49/317}. Do you have that? 317?  
 3 A. Yes, I do.  
 4 Q. This is an email dated 27 February. You are not  
 5 a recipient of this email and you weren't taken to it in  
 6 cross-examination, but I just want to ask you about it  
 7 because it records a conversation with you about which  
 8 you gave evidence in cross-examination.  
 9 A. That's correct.  
 10 Q. It's from Mr McAlindon?  
 11 A. Yes.  
 12 Q. To Mr Dyson and Mr Ryan, February 2007?  
 13 A. Yes.  
 14 Q. "I have spoken to Nimesh ..."  
 15 That would be Mr Patel, obviously?  
 16 A. That's correct.  
 17 Q. "I have spoken to Nimesh and he is going to arrange for  
 18 an email to be sent from his wife resigning with  
 19 immediate effect so that we can process her as  
 20 a leaver."  
 21 Just to be clear that was the K Patel, also known  
 22 as...?  
 23 A. Potter, it was, I think.  
 24 Q. Mrs Potter?  
 25 A. I didn't know that at the time.

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1 MR JUSTICE NUGEE: Dr Potter.  
 2 MR STUART: Dr Potter:  
 3 "I have also spoken to Swarandeeep."  
 4 So this is Mr McAlindon saying:  
 5 "I have also spoken to Swarandeeep."  
 6 This is on 27 February?  
 7 A. That's correct.  
 8 Q. "She has told the employees that Nimesh was forced to  
 9 resign."  
 10 A. Yes.  
 11 Q. My question is: did you say that to Mr McAlindon in that  
 12 conversation, or did he say that he had heard from the  
 13 employees that you had said that, or -- what was said in  
 14 that conversation?  
 15 A. No, I think I said that to him.  
 16 Q. So you told him --  
 17 A. Yes, because he had accused -- yes, he had accused me of  
 18 telling locum agencies and I said no, I had only told  
 19 the staff that he had been forced to resign.  
 20 Q. Okay:  
 21 "I have told her that her actions are a breach of  
 22 confidentiality and a breach of a legitimate management  
 23 instruction from myself, as I had explained to her not  
 24 only what she could say, but also what she could not say  
 25 to employees or anyone else. She is very apologetic.

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1 I have told her to back off, and if she has any other  
 2 questions regarding operational issues, she should come  
 3 to me and not go off around the business."  
 4 Do you see that?  
 5 A. I do, yes.  
 6 Q. Do you recall that conversation?  
 7 A. Yes, but it wasn't exactly like that, but ...  
 8 Q. What do you say was said?  
 9 A. He said to me to stop making pestering phone calls to  
 10 head office. They weren't appreciated.  
 11 Q. All right. That's fine. You can put E2 away. No, no,  
 12 actually, no I can move on to another point on E2.  
 13 Page 73 of the second day of the transcript.  
 14 {Day2/73:1} You gave evidence about the complaints you  
 15 made about Mr McAlindon. Would you go in E2 to  
 16 pages 393 to 394. {E/77/393} So bottom of 393 over to  
 17 394. This is a letter from Alison Anderson --  
 18 A. Yes, that's correct.  
 19 Q. -- on behalf of Dartford Visionplus Limited?  
 20 A. That's correct.  
 21 Q. So the employer company?  
 22 A. That's correct.  
 23 Q. And --  
 24 MR JUSTICE NUGEE: I think actually it's on behalf of  
 25 Specsavers Optical Group, who is acting as secretary of

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1 Dartford Visionplus.  
 2 MR STUART: Absolutely, yes. In full, that's the position.  
 3 So she is writing as signatory for SOG, who are company  
 4 secretary of Dartford Visionplus Limited.  
 5 A. That's correct.  
 6 MR JUSTICE NUGEE: She didn't work at Dartford Visionplus?  
 7 A. No, she didn't.  
 8 MR STUART: And she records at the bottom of 393: {E/77/393}  
 9 "We note you have made a formal complaint regarding  
 10 Mr McAlindon's conduct on 27 March 2007..."  
 11 Do you see that?  
 12 A. I do, yes.  
 13 Q. "... when the investigation team resumed its activities  
 14 at the Dartford store."  
 15 Over the page: {E/77/394}  
 16 "All complaints of this nature are taken very  
 17 seriously and we have questioned Mr McAlindon and  
 18 Mr Barnes ... We are satisfied that no inappropriate  
 19 behaviour on their part took place. Indeed it appears  
 20 from our investigation that when the Loss Prevention  
 21 team arrived at the store, you made them wait outside  
 22 until other employees had arrived, decided where they  
 23 should wait (until you were ready to talk to them) and  
 24 asked them to leave the room you had invited them into  
 25 on three separate occasions when you made a phone call.

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1 Each time they complied quietly with your requests."  
 2 Just to be clear, did she get all that information  
 3 from you, or from Mr McAlindon and Mr Barnes?  
 4 A. It was from Mr McAlindon and Mr Barnes.  
 5 Q. Did anybody ask you about the incidents in question?  
 6 A. No.  
 7 Q. Then:  
 8 "Notwithstanding the above, it would be impractical  
 9 and unrealistic at this stage of the process for  
 10 Mr McAlindon not to continue with the remaining part of  
 11 the investigation at Dartford."  
 12 Do you see that?  
 13 A. I do, yes.  
 14 Q. When you were asked about Mr McAlindon's involvement,  
 15 you said -- this is in day 2, transcript, page 73,  
 16 line 15 {Day2/73:15} -- you explained that you had made  
 17 a complaint, but that they were refusing to take  
 18 Mr McAlindon off the investigation?  
 19 A. That's correct.  
 20 Q. Is that what you are referring to?  
 21 A. It is, yes.  
 22 Q. So this letter is the letter of refusal that you are  
 23 referring to?  
 24 A. Yes; yes, it is.  
 25 Q. All right. You can put away E2.

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1 We are moving on. Near the end of day 2 of the  
 2 transcript, Mr Potts put to you a couple of sets of  
 3 accounts of Dartford Specsavers Limited, to show you  
 4 that, as he put it, between 2006 and 2012 there had been  
 5 a substantial increase in the turnover and profits.  
 6 Do you recall him asking you about that? This was  
 7 on day at pages 164 to 166 of the transcript.  
 8 {Day2/164:1} Do you see that?  
 9 A. Yes, I do remember something to that effect.  
 10 Q. You weren't taken to bundle D2, which is where we see  
 11 all the accounts. I would like you to go to the  
 12 position for the year after the problem year, so 2009.  
 13 Would you go to page 337? {D/25/337}  
 14 A. Yes.  
 15 Q. Do you see that?  
 16 A. I do.  
 17 Q. The two figures you were taken to by Mr Potts in  
 18 relation to the 2012 accounts are the turnover figure,  
 19 £1.218 million for 2009; do you see that?  
 20 A. I do, yes.  
 21 Q. And the operating profit figure, or the profit before  
 22 tax figure, so either £141,000 or £140,842.  
 23 A. Yes.  
 24 Q. Do you see that?  
 25 A. I do, yes.

1 21

1 Q. Mr Potts took you to the 2006 figure and the 2012  
 2 figure. Let me take you to the 2012 figure, which you  
 3 will find at page 422. That's the one he took you to,  
 4 page 422? {D/31/422}  
 5 A. Yes.  
 6 Q. In support of a question that he put to you about  
 7 Mr Singh having increased the profits in the period when  
 8 you weren't there, he pointed out that the turnover  
 9 figure for the 30 September 2012 was £1.226 million. Do  
 10 you see that?  
 11 A. I do, yes.  
 12 Q. And the operating profit figure was £77,000, which he  
 13 contrasted with an operating profit of just £14,000 back  
 14 in 2006. Do you recall that?  
 15 A. I knew it was a much lesser sum but I can't remember  
 16 that it was £14,000.  
 17 Q. All right. Between 2009 and 2012, you see the two  
 18 figures?  
 19 A. Yes, I do.  
 20 Q. The turnover appears to be the same and the profit has  
 21 gone down by 50 per cent.  
 22 What do you say is the explanation for that between  
 23 2009 and 2012?  
 24 A. Well, I put it down to the extra monies that were being  
 25 paid to Mr Singh.

1 22

1 Q. Just keep D2 open. You were taken by Mr Potts to D1.  
 2 The 2006 figure is at D1, page 252 {D/19/252}. He took  
 3 you to that, pointing out that back in 2006, the  
 4 turnover was £200,000 less; it was £1.03 million?  
 5 A. Yes.  
 6 Q. And the profit was just £8,000 -- or £6,750, even, if  
 7 you take the profit before tax figure. Do you see that?  
 8 A. I do, yes.  
 9 Q. So between 2006 and 2009, to what do you ascribe the  
 10 increase from £1.03 million to £1.22 million in turnover  
 11 and the increase in profit from £6,000 to £140,000  
 12 profit, between 2006 and 2009? What do you ascribe the  
 13 reason for that increase to?  
 14 A. One, because there was no stealing going on; two, we had  
 15 had a refit but we hadn't -- we'd spent £130,000 on  
 16 a refit, £130,000, but we hadn't had the benefit from  
 17 that because of all that was ... and, three, I was back  
 18 at the store and there were no Loss Prevention charges  
 19 being -- Specsavers' charges being applied.  
 20 Q. Right, thank you. Can we move on to the issue of staff  
 21 salaries and bonuses. You were asked about this on day  
 22 2 at the end, pages 172 to 173, {Day2/172:1} and then  
 23 day 3 -- that's yesterday, pages 6 to 39. {Day3/6:1}  
 24 You were asked about this at length.  
 25 Can we start with the bonus position before Ms Slark

1 23

1 introduces the new bonus scheme?  
 2 A. Yes.  
 3 Q. Do you understand what I'm talking about?  
 4 A. I do.  
 5 Q. Could you go to E1, page 78 as an example. {E/7/78} It  
 6 seems to be a document from 2005. Do you see that?  
 7 A. I do, yes.  
 8 Q. Could you just explain to his Lordship the nature of the  
 9 bonus scheme at that time, so this is two years  
 10 previously?  
 11 A. Okay. What we would do is we would print reports off  
 12 and a certain amount was given for a hard coat. I think  
 13 it was £1 was given for any hard coat that was sold.  
 14 A tint, I think was £1 as well, and then  
 15 anti-reflection, we would give £3 and put it in a pot.  
 16 MR JUSTICE NUGEE: Does "MAR" stand for "anti-reflection".  
 17 A. It does, yes. So we would put that in a pot.  
 18 MR STUART: When you say a pot, what do you mean by that?  
 19 A. It was a like a big pool where we would put the money in  
 20 and then it would be distributed to everybody depending  
 21 on how many days they worked, and we would also add to  
 22 that pot -- any turnover over £18,500 we would put into  
 23 the pot as well.  
 24 Q. £18,500 per ...?  
 25 A. Per week.

1 24



1 Q. Per week?  
 2 A. Yes.  
 3 Q. Okay.  
 4 A. So we would work out that percentage over £18,500 and  
 5 any remakes we would deduct off and then whatever was  
 6 left in the pot was distributed to every member of staff  
 7 depending on how many days they worked.  
 8 MR JUSTICE NUGEE: You said that you put a £1 in the pot for  
 9 each special coating?  
 10 A. That's right, yes -- maybe it wasn't £1.  
 11 MR JUSTICE NUGEE: If you look at the figures at 78, there  
 12 is a line saying "Total for month"?  
 13 A. Yes.  
 14 MR JUSTICE NUGEE: Are those numbers or are they pounds?  
 15 A. Erm...  
 16 MR JUSTICE NUGEE: There is one saying "Bonus for month"  
 17 underneath.  
 18 A. 146 looks like it was a total, so the bonus -- was it  
 19 £1.50?  
 20 MR STUART: 219 appears to be 1.5 times 146.  
 21 A. Yes, it was £1.50 for the hard coats.  
 22 MR JUSTICE NUGEE: So the 146 row --  
 23 A. -- is the total.  
 24 MR JUSTICE NUGEE: -- is the number of items?  
 25 A. That's right.

1 25

1 MR JUSTICE NUGEE: And then the bonus, if you multiply that  
 2 up by £1.50 for the hard coats and the tints, and by  
 3 £2.50 for the anti-reflection and the special lens. Is  
 4 that right?  
 5 A. That's right, yes. Sorry, I couldn't remember the  
 6 figures exactly.  
 7 MR JUSTICE NUGEE: Then the next bit deals with the excess  
 8 sales over the target of £18,500. So how do you do  
 9 that?  
 10 A. There was a spreadsheet and, for example, week 1, there  
 11 was £21,762 minus £18,500, I believe, and it made  
 12 £3,262? Is that correct?  
 13 MR STUART: To be clear, what you just said is, for each  
 14 week, you had a set £18,500?  
 15 A. Yes.  
 16 Q. For all 52 weeks of the year?  
 17 A. That's right, yes.  
 18 Q. And if in a given week, the turnover of the shop  
 19 exceeded £18,500?  
 20 A. Yes.  
 21 Q. That was calculated under this turnover figure; is that  
 22 right?  
 23 A. That's correct, yes.  
 24 Q. So in week 1 that month, which seems to have  
 25 been February to March 2005, in week 1 the shop exceeded

1 26

1 its £18,500 turnover target by £3,362?  
 2 A. That's correct.  
 3 Q. In week 2, it exceeded it by £83?  
 4 A. That's correct.  
 5 Q. And in weeks 3, 4 and 5, it didn't exceed it at all?  
 6 A. That's correct.  
 7 Q. But looking at that figure it doesn't look like -- if it  
 8 was under £18,500, there was no deduction, as it were?  
 9 A. That's correct.  
 10 Q. So it was a weekly target?  
 11 A. It was.  
 12 Q. And they couldn't lose money by doing worse in a week  
 13 than £18,500?  
 14 MR JUSTICE NUGEE: How much of that £3,345, which was the  
 15 excess sales in a month over the £18,500 target, gets  
 16 distributed as bonus?  
 17 A. Of that £3,345, we would deduct any remakes, so where  
 18 there is a remake there, £1,202, that would be deducted  
 19 off and then it would be 1 per cent of what was  
 20 remaining.  
 21 MR JUSTICE NUGEE: So if you take £1,202 off £3,345, you get  
 22 £2,100-odd and then you get -- it's £2,143 and do you  
 23 get 1 per cent for each member of staff? Is that right?  
 24 If you look at the practice bonus underneath?  
 25 A. Yes, it would be distributed on the days they worked.

1 27

1 MR JUSTICE NUGEE: I see. If they worked 20 days, which was  
 2 the number of working days in the month, they would get  
 3 the full 1 per cent, which is £21.43?  
 4 A. Yes.  
 5 MR JUSTICE NUGEE: But if they only worked 12 days, they  
 6 would get an apportioned amount, which is £12.86?  
 7 A. That's right.  
 8 MR JUSTICE NUGEE: Thank you.  
 9 MR STUART: So that was your existing bonus structure?  
 10 A. That's correct, yes.  
 11 Q. I just want to take an example. Let's take a reasonably  
 12 late example. If you go to page 122 in the same bundle?  
 13 A. Yes.  
 14 Q. Sorry, no, we had better go back one because that's  
 15 actually after.  
 16 The bonus is increased on page -- we have to go back  
 17 to 119, I'm sorry. 119. Do you see 119? {E/7/119}  
 18 A. Yes, I do.  
 19 Q. This is a report dated 5 April and it seems to be for  
 20 March 2007?  
 21 A. That's correct.  
 22 Q. So that's the very month when you were suspended; at the  
 23 end of that month?  
 24 A. That's correct.  
 25 Q. So here we have the list of all the staff, their basic

1 28

1 pay, a column headed "Bonus"; do you see that?  
 2 A. I do, yes.  
 3 Q. And there is obviously a separate overtime item and some  
 4 other payments; is that right?  
 5 A. That's correct, yes.  
 6 Q. And so the bonus figure, in the bonus column, are those  
 7 the figures that are taken from your bonus structure  
 8 that we have just been to?  
 9 A. Not all of them.  
 10 Q. Okay. So which ones are not?  
 11 A. For example, John Sterry, that was actually -- because  
 12 he had ad hoc hours, that's the actual figure for the  
 13 days he had worked.  
 14 Q. Okay?  
 15 A. So it's not a bonus. There might be a very small  
 16 proportion of bonus on there, but he was a Saturday boy  
 17 and then --  
 18 Q. He doesn't appear to have any basic pay at all next to  
 19 his name?  
 20 A. Yes, Mr Patel did these figures and there were different  
 21 columns, so the figure was correct but it was put in  
 22 a different column.  
 23 Q. Okay. Just whilst we are on that one, do you see, the  
 24 bottom item says "N Frondigoun"?  
 25 A. Yes.

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1 Q. We are going to hear from Ms Frondigoun in just  
 2 a minute, I think. Is that a different --  
 3 A. Yes, it is.  
 4 Q. We are going to hear from L Frondigoun.  
 5 A. Yes.  
 6 Q. Who is N Frondigoun, so we don't have any confusion?  
 7 A. N Frondigoun is L Frondigoun's daughter.  
 8 Q. Daughter, right.  
 9 So then you were asked about the new structure that  
 10 Ms Slark brought in; yes?  
 11 A. That's correct.  
 12 Q. And we find those in E2 -- could you be passed E2? You  
 13 were taken to, or you referred at least, to page 434,  
 14 which is Ms Frondigoun's email -- 433, I suppose. 433?  
 15 Do you remember? {E/88/433}  
 16 A. Yes, I do.  
 17 Q. This is the one where she is writing to Mr McAlindon on  
 18 2 May:  
 19 "Salary reviews."  
 20 At the bottom of page 433, she is saying:  
 21 "I also propose a new bonus ... clear and concise.  
 22 Again taken from a model used in the Reading and Oxford  
 23 stores.  
 24 "Sales + 10 per cent = £10.  
 25 "Sales + 20 per cent = £20.

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1 "Sales + 30 per cent = £30 and so on."  
 2 A. Yes.  
 3 Q. "This will be done on a daily calculation, so they may  
 4 not get 10 per cent up on the week but they may on the  
 5 day and therefore to keep motivation and daily interest  
 6 they will be able to calculate their own bonuses.  
 7 "The attachment is for you at the moment ... I have  
 8 been very generous here!"  
 9 Exclamation mark.  
 10 A. Yes.  
 11 Q. Then the attachment seems to be 435. {E/89/435} Do you  
 12 see that?  
 13 A. I do, yes.  
 14 Q. That first attachment is for the salary increases, to  
 15 start with. Do you see that?  
 16 A. I do, yes.  
 17 Q. That's not to do with bonus.  
 18 Perhaps I should have asked you to explain to the  
 19 court: do all your staff share in the bonus, or only  
 20 those on the shop floor, or what?  
 21 A. It's the staff who are involved in -- on the shop floor  
 22 and sort of upstairs in the office as well, who are  
 23 actually working day in, day out in the store.  
 24 Q. So it's not absolutely everybody who does any work for  
 25 the store?

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1 A. No.  
 2 Q. But it's more than just the people who work on the shop  
 3 floor?  
 4 A. Yes, that's correct.  
 5 Q. So, for example, Mrs Frondigoun, Lorraine Frondigoun --  
 6 A. That's correct.  
 7 Q. By this time, I think, in 2007, she says in her  
 8 statement she worked in admin?  
 9 A. That's correct.  
 10 Q. She was an admin assistant?  
 11 A. That's correct.  
 12 Q. What had been her role previously?  
 13 A. She had had a number of roles. She was on the shop  
 14 floor at one point and then she went up in the office.  
 15 She was doing NHS and admin and then she left and she  
 16 came back and she was doing six days a month, I think.  
 17 Q. Right. So we see her there. She is on an hourly rate  
 18 of £6.10 but her annual salary is £3,200. Is that  
 19 right?  
 20 A. I can't remember that far back but that's what it says  
 21 on the document, yes.  
 22 Q. Yes, right. So we are on the bonus then, and you were  
 23 asked both by the court and by Mr Potts to try and  
 24 explain how you understood Ms Slark's new bonus scheme  
 25 would apply?

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1 A. Yes.  
 2 Q. I don't think you were taken to page 488 {E/104/488} but  
 3 I suspect it might be what you were referring to,  
 4 because you said there was somewhere an explanation of  
 5 it?  
 6 A. Yes.  
 7 Q. Can you go to page 488. This is a memorandum:  
 8 "To: All staff."  
 9 So this is what Ms Slark actually sent out to the  
 10 staff. Do you see that?  
 11 A. I see that, yes.  
 12 Q. "New Bonus Suggestion."  
 13 "As you are aware, none of you understood how your  
 14 previous bonus was calculated..."  
 15 Can I ask you: was that correct or not? Did they  
 16 know how their bonus -- under your system?  
 17 A. Under my system, I had a notice up on the staff board  
 18 and I think it's disclosed in the disclosure. So they  
 19 were aware.  
 20 Q. Okay:  
 21 "With this in mind I suggest that we base your bonus  
 22 on a minimum growth of 10 per cent like for like sales  
 23 over last year's figures."  
 24 Are you reading that?  
 25 A. I am, yes, I have read that.

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1 Q. So:  
 2 "10 per cent = £10.  
 3 "20 per cent = £20.  
 4 "30 per cent = £30.  
 5 "With a ceiling of 50 per cent ...  
 6 "I hope that you agree to this change to your bonus  
 7 and ask that you sign acknowledgment of the attached  
 8 'Changes to terms and conditions' ...  
 9 "It is worked that you only get the bonus if you  
 10 work that day, you will not get the bonus if you are day  
 11 off/sick/holiday as the other staff that work that day  
 12 will be working extra hard when you are not there ...  
 13 this is only fair.  
 14 "Every week a sales target report will be printed  
 15 off by Jo..."  
 16 Who is Jo?  
 17 A. She became our manager.  
 18 Q. Right:  
 19 "... and then the sales target will be entered into  
 20 the excel spreadsheet on the computer which will  
 21 calculate an average based on six working days."  
 22 A. Yes.  
 23 Q. Did you understand this?  
 24 A. I think I understand it now.  
 25 Q. Okay. So can you just explain then what the £10, £20

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1 and £30 applied to? How did a member of staff on  
 2 a given day earn £10 or £20 or £30 for themselves, as  
 3 a bonus?  
 4 A. I think what was set up -- say that a 10 per cent  
 5 increase for that particular year, the figure was  
 6 £18,000, what Carol Slark did was divide it by six days,  
 7 so what's that, £3,000 a day? So if the staff hit  
 8 10 per cent, if they hit £3,000 on that day, they would  
 9 get £10 each.  
 10 Q. Sorry, take your example.  
 11 A. Sorry, I haven't -- I haven't explained that --  
 12 Q. If it was £18,000 the previous year?  
 13 A. Yes.  
 14 Q. 2006?  
 15 A. Yes.  
 16 Q. June 2006?  
 17 A. Yes.  
 18 Q. The turnover was £18,000 --  
 19 A. Yes.  
 20 Q. -- for June 2007 under this new scheme --  
 21 A. Yes.  
 22 Q. -- to earn the 10 per cent bonus --  
 23 A. Yes.  
 24 Q. -- which is £10, per staff member per day --  
 25 A. Yes.

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1 Q. -- they would have to hit what amount on that day, those  
 2 members of staff who were working that day?  
 3 A. What they would have to hit is £18,000 times 10 per cent  
 4 and then divided by six would make the daily --  
 5 Q. You mean plus 10 per cent?  
 6 A. Plus 10 per cent, yes.  
 7 Q. So that would be £19,800 for the week?  
 8 A. For the week. Then you would divide it by six days.  
 9 Q. So that would be £3,300 per day?  
 10 A. Yes.  
 11 Q. So if they did a turnover of £3,300 that day --  
 12 A. Yes.  
 13 Q. -- each member of staff on that day --  
 14 A. -- would get £10.  
 15 Q. Would get £10.  
 16 A. Yes.  
 17 Q. How many members of staff would be on an average day?  
 18 A. I would say we had 19 -- at least 10, but that's  
 19 a guesstimate.  
 20 Q. So that's the new bonus scheme, at least as far as you  
 21 understood it?  
 22 A. That's correct, yes.  
 23 Q. I see your Lordship looking slightly perplexed?  
 24 MR JUSTICE NUGEE: No, no, no, no, I understand it.  
 25 MR STUART: You do?

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1 MR JUSTICE NUGEE: At least I believe I do.  
 2 MR STUART: Yes. Can we just go back to E1 to see an  
 3 example of this working in practice. Let's take  
 4 page 123, which is a report dated 5 July 2007. {E/7/123}  
 5 So this is for June 2007.  
 6 A. That's correct.  
 7 Q. As I understand it, this is effectively the first month  
 8 of the new bonus scheme?  
 9 A. That is correct.  
 10 Q. And now, in the bonus scheme column, almost all of the  
 11 bonus scheme figures now appear to be round figure sums  
 12 ending in a zero?  
 13 A. That's correct.  
 14 Q. Ms Kinsella got £260 bonus; Miss Tidmass, £50; Fendick,  
 15 £140; McKie, £250; O'Brien, £270, Dando, £170;  
 16 Fernandes, £250. I'm not sure about Sterry. He is down  
 17 as £40 but he doesn't seem to have any basic pay?  
 18 A. That must have -- he must have worked just one day and  
 19 added a little bit of bonus on top.  
 20 Q. Okay. And Mrs Frondigoun got £50?  
 21 A. That's right. That's correct.  
 22 Q. Mrs L Frondigoun, I should make clear.  
 23 Is that how you understand those figures contained  
 24 in that schedule are calculated on Ms Slark's new  
 25 system?

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1 A. That's what I understand, yes.  
 2 MR STUART: All right.  
 3 MR JUSTICE NUGEE: Before you leave that, can I ask you what  
 4 the typical pattern was during the week of sales. Was  
 5 it much the same every day?  
 6 A. No, Saturday was very good. So everybody would usually  
 7 hit £50 unless it was coming towards Christmas. So even  
 8 if the store didn't perform well over the week,  
 9 Saturdays would always be a high bonus figure.  
 10 MR JUSTICE NUGEE: So, if you are taking about £18,000  
 11 a week --  
 12 A. Yes.  
 13 Q. -- how much of that do you take on Saturday?  
 14 A. I would say at least 4/5, at that time. 4/4.5/5.  
 15 MR JUSTICE NUGEE: And then the rest of the week, Monday to  
 16 Friday is much the same every day?  
 17 A. It did vary a little bit. I think Wednesdays was about  
 18 3.5, if my memory serves me well.  
 19 MR STUART: Is that high? Do you mean 3.5 is high or low?  
 20 Is Wednesday a good day out of the five?  
 21 A. Yes, the other days were quiet.  
 22 Q. So Monday, Tuesday, Thursday were not such good days?  
 23 A. Yes, from what I can remember.  
 24 Q. Saturday was always?  
 25 A. Saturday was usually a very, very busy day, very good

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1 sales.  
 2 Q. I think your evidence that you just gave was -- I just  
 3 want to make sure it appears correctly -- almost every  
 4 Saturday they would hit the £50. Are you referring to  
 5 Ms Slark's 50 per cent ceiling?  
 6 A. That's correct, yes. I wouldn't say every Saturday,  
 7 I just couldn't remember that, but a lot of the  
 8 Saturdays, yes, every member of staff that was in would  
 9 get a very high bonus.  
 10 Q. So if you only worked on a Saturday?  
 11 A. Yes.  
 12 Q. Let's take Mrs L Frondigoun as an example?  
 13 A. Yes.  
 14 Q. Her basic pay is low, £270?  
 15 A. Yes.  
 16 Q. On page 126, but she got a £50 bonus?  
 17 A. If she worked on a Saturday and we had a good Saturday,  
 18 yes.  
 19 Q. All right. Just whilst we are finishing on this bonus  
 20 point, you were asked about -- this is on day 3 at  
 21 page 23 for your Lordship's note {Day3/23:1} -- you were  
 22 asked about the discrepancies in the bonus figures.  
 23 Could you go to bundle E15 and we inserted at  
 24 page 4334-1 and then -2, -3, -4. {E/1111/4334} We  
 25 inserted a couple of schedules one produced by the

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1 respondents?  
 2 A. Which page, sorry?  
 3 Q. So page 4334?  
 4 A. Yes.  
 5 Q. And then after 4334 there is 4334-1, -2, -3, -4. Do you  
 6 have them? I hope you do?  
 7 A. No, I have just got 4334-1.  
 8 Q. Okay. Does your Lordship have --  
 9 MR JUSTICE NUGEE: I have -2 and -3, yes. -2 and -3.  
 10 MR STUART: Sorry, I shouldn't have said -4. There is only  
 11 -2 and -3, quite right.  
 12 So 4334-1 is a schedule produced by the respondents.  
 13 Do you see that?  
 14 A. Yes.  
 15 Q. And then it had responded to page 4334, which is  
 16 a schedule which you said your husband had produced for  
 17 you with your input. Do you remember being  
 18 cross-examined about this?  
 19 A. Yes, I do, yes.  
 20 Q. I think it's being handed up you to, pages -2 and -3.  
 21 (Handed)  
 22 Do you want to put it inside the bundle?  
 23 A. Okay.  
 24 Q. On page 4334-1, which is the respondent's schedule, on  
 25 the right-hand side column -- do you see the right-hand

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1 side column?  
2 A. Yes, I do.  
3 Q. All of the figures, those are the figures according to  
4 the petitioner's analysis, and figures, as it's put,  
5 actual payments. All of them are the same apart from  
6 the first one is £50 different. Do you see that?  
7 A. Yes, I do.  
8 Q. Do you know what is the cause of the £50 difference? If  
9 you don't know, just say you don't know?  
10 A. No, I don't know.  
11 Q. All right, fine. By contrast, on the left-hand of their  
12 schedule, page 4334-1, the figures are very different.  
13 Do you see?  
14 A. I do, yes.  
15 Q. They have got figures for bonus according to your  
16 husband's or your analysis, and then they have got what  
17 they call their actual bonus payments, which they have  
18 taken from those documents that I was just taking you to  
19 in bundle E1, those computer-generated schedules showing  
20 bonus columns. Do you remember?  
21 A. Oh, yes, yes.  
22 Q. Just a moment ago and, I think, when you were  
23 cross-examined about this, you said that there were some  
24 members of staff whose remuneration was put in the bonus  
25 column when it wasn't actually bonus?

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1 A. Yes.  
2 Q. Can you recall who those are?  
3 A. Yes, K Patel.  
4 Q. K Patel.  
5 A. M Rehman, my husband.  
6 Q. Yes?  
7 A. John Sterry.  
8 Q. John?  
9 A. Sterry.  
10 Q. Sterry, the Saturday boy?  
11 A. Yes, and Jigjidsuran.  
12 Q. Jigjidsuran?  
13 A. And Nicole Frondigoun?  
14 Q. Nicole; that's the daughter of Lorraine?  
15 A. That's correct, yes.  
16 Q. Apart from the difference to the figures caused by those  
17 five people's remuneration being put in the wrong  
18 column, one way or the other?  
19 A. Yes.  
20 Q. Do you know of any other reason for any differences  
21 between the two totals; in other words, to reach your  
22 figure.  
23 A. Yes.  
24 Q. To the extent that it is different to the figure that is  
25 shown on the computer-generated document in E1?

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1 A. Right.  
2 Q. It was put to you by Mr Potts that you must have made  
3 adjustments to that figure.  
4 Apart from those five people, do you know of any  
5 other reasons for adjustments that you made?  
6 A. We did have a second bonus in place, which was to do  
7 with attendance.  
8 Q. Attendance, yes?  
9 A. Yes. Would you like me to explain it?  
10 Q. No, all I want to know is did you include or exclude  
11 that from your bonus payment pot?  
12 A. No, we put the attendance bonus in the bonus.  
13 Q. So you included that?  
14 A. We did, yes.  
15 Q. So you included both elements of the bonus?  
16 A. Yes, we did.  
17 Q. In your left-hand figure?  
18 A. Yes, we did.  
19 MR STUART: Right, I think I have dealt with bonus?  
20 MR POTTS: My Lord, just briefly before we move on, just  
21 a query. It may be for afterwards, but just at the  
22 bottom of my friend's figure, the first two columns, it  
23 appears -- and maybe I have misunderstood --  
24 that April 2007 and April 2009 seem to sort of -- just  
25 don't -- there is a gap for them. They are not in.

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1 MR JUSTICE NUGEE: Sorry?  
2 MR POTTS: If you look on the left-hand column, it ends  
3 at March 2007. April isn't in.  
4 MR STUART: On page -2?  
5 MR POTTS: This is on my friend's --  
6 MR JUSTICE NUGEE: I see.  
7 MR STUART: On page -2.  
8 MR POTTS: Then, on the middle one, it ends March 2009 and  
9 then we go on to May 2009 but there is no April. It's  
10 not a criticism, it's just an observation and I don't  
11 know why that is but ...  
12 MR JUSTICE NUGEE: Thank you. I think it's probably not for  
13 now.  
14 MR POTTS: No, I just thought I would raise it.  
15 MR STUART: No. As your Lordship has already heard, the  
16 person who actually created -2 and -3 is Mr Rehman.  
17 MR JUSTICE NUGEE: Yes.  
18 MR STUART: Obviously, it was produced whilst Ms Birdi was  
19 in the witness box so she can have had nothing to do  
20 with it. I may just have to get Mr Rehman to explain  
21 that short point.  
22 MR JUSTICE NUGEE: Yes, thank you.  
23 MR STUART: All right. Let's move on swiftly. I just have  
24 five more things I need to cover with you.  
25 Let's deal with Mr Singh's salary and benefits. You

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1 were asked about this on day 3 of the transcript,  
2 between pages 40 and 51 {Day3/40:1} and then later at  
3 pages 95 and 103. {Day3/95:1}  
4 You can put away other bundles now and just take out  
5 E6, page 1542. {E/411/1542}  
6 A. Page, sorry?  
7 Q. Page 1542. This is the format of a document that gets  
8 sent to financial planning. Do you recall it? You were  
9 asked about it?  
10 A. Yes.  
11 Q. Sorry, you weren't asked about this document; you were  
12 asked about the concept. This includes about salary  
13 increases.  
14 A. Yes.  
15 Q. Do you see, next to the first hole punch there is  
16 a little section for salary distribution request. Name,  
17 blank, salary increase amount, percentage increase. Do  
18 you see that?  
19 A. I do, yes.  
20 Q. Just above that it says:  
21 "By signing this form, you are requesting the  
22 Financial Planning department to approve the total  
23 distribution value shown in the box below. This may be  
24 subject to SOG board approval. You can only change or  
25 withdraw this request if you all agree to do so."

1 45

1 A. Yes.  
2 Q. Who did you understand by "all"? Who is "you all"?  
3 A. Erm ...  
4 Q. Who signs these?  
5 A. Me and my co-director and the B directors, SOG.  
6 Q. Okay. Just above the second hole punch, you have to  
7 fill in the current salary of the name of the person.  
8 Do you see that?  
9 A. I do, yes.  
10 Q. And then it says:  
11 "Note: Any increases over 5 per cent will be passed  
12 to your Operations Manager/SOG Board for approval."  
13 Then it says:  
14 "Important: Before faxing, please ensure that all  
15 partners at your practice have signed this form."  
16 A. Yes.  
17 Q. You were cross-examined about the question of salary  
18 reviews; do you remember?  
19 A. Yes, I do.  
20 Q. And you gave evidence that there was no chance that you  
21 would have an upwards salary review because Mr Singh  
22 wouldn't have signed it, and that was your explanation  
23 as to why you hadn't requested one. Do you recall?  
24 A. Yes, well, he said he wouldn't sign it, so, yes.  
25 Q. He said he wouldn't sign it?

1 46

1 A. Yes.  
2 Q. Okay. All right. I don't think I need to ask you the  
3 rest of that.  
4 Can we turn to the thorny issue of testing  
5 frequency. That is the four-day weeks, et cetera.  
6 I just want to ask you about the testing resolution.  
7 So you were asked about this on day 3 between pages 145  
8 to 157 {Day3/145:1} and day 3, pages 177 to 179.  
9 {Day3/177:1}  
10 It was put to you repeatedly that the resolution of  
11 the board ordered you to test four days a week. That  
12 was put to you on a number of occasions by Mr Potts.  
13 Indeed, he took you to bundle E10. Would you pull out  
14 E10? He took you to page 2573, which was a letter to  
15 you from Mr Raines? {E/768/2573}  
16 A. Yes.  
17 Q. And, second paragraph:  
18 "As you know, at the board meeting of 20 August 2009  
19 a board resolution was passed that, with effect from  
20 20 August 2009, you are required to spend four full days  
21 ophthalmic testing per week at the Dartford store."  
22 Do you remember?  
23 A. I do, yes.  
24 Q. This was in 2009. I just want you to go to bundle E8.  
25 Put away E10 for a minute now. E8, page 2206.

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1 {E/679/2206} Do you see that? That's the minutes of the  
2 meeting.  
3 A. Yes.  
4 Q. We can pick up the testing point at page 2208 under  
5 "Agenda Item 7". {E/679/2208}  
6 A. Yes.  
7 Q. Do you see that?  
8 A. I do, yes.  
9 Q. And the motion that was therefore put is at 2209?  
10 {E/679/2209}  
11 A. Yes.  
12 Q. And despite it being put to you that the motion ordered  
13 you to test four days a week, and as set out in  
14 Mr Raines's letter that I have just taken you to that  
15 the motion ordered you to do that, the motion reads:  
16 "I would like to propose a second motion for the  
17 board to vote upon, that:  
18 "a) the A directors comply with their respective  
19 roles and responsibilities as set out in the document  
20 provided on 31 January 2009 and their respective service  
21 contracts..."  
22 A. Yes.  
23 Q. And then relevantly for our purposes:  
24 "... and b) without prejudice to resolution a)  
25 above, SB has agreed as at 12 September 2008 BRM, to

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1 commit to four full days ophthalmic testing per week at  
2 the Dartford store."  
3 Do you see that?  
4 A. I do, yes.  
5 Q. So that is a resolution that you had agreed to do  
6 something. Do you see that?  
7 A. I do, yes.  
8 Q. Have you ever seen a resolution of the board which  
9 ordered you to test four days a week?  
10 A. I don't think I have, no.  
11 Q. That's all I wanted to ask you about that.  
12 I don't think I need to ask you about those...  
13 Yes, I need to ask you about one thing.  
14 You can put away E8. Could you go to bundle E9; if  
15 you can be given E9 and E10. I just need to look at one  
16 document from each.  
17 You were asked repeatedly about a letter -- do you  
18 recall a letter which you say you said you hadn't seen?  
19 A. That's correct.  
20 Q. A 2007 letter, which you said you hadn't seen at the  
21 time.  
22 Is it 2008? I am sorry.  
23 A. Yes.  
24 Q. Do you remember a letter that you said you hadn't seen  
25 at the time?

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1 A. That's correct, yes.  
2 Q. Mr Potts took you to it?  
3 A. That's right.  
4 Q. And you said you only saw it when you were given it  
5 a year later?  
6 A. That's what I believe is true, yes.  
7 Q. I just want to take you to page 2558. {E/757/2558} This  
8 is the end of a letter of yours to Mr Goddon in 2009.  
9 A. My folder has fallen apart, sorry. Bear with me.  
10 (Pause)  
11 Could you tell me the number again, please?  
12 Q. Sorry, 2558. It's right near the back.  
13 A. Yes.  
14 Q. You say in the penultimate paragraph of 2558 -- do you  
15 have it?  
16 A. I do, yes.  
17 Q. You are complaining in 2009 that -- well, you say:  
18 {E/757/2558}  
19 "I provided evidence, which Kam did not deny, that  
20 Kam has been withholding post from me and making  
21 decisions unilaterally..."  
22 A. That is correct.  
23 Q. Can you just explain to the court: what was that  
24 allegation about?  
25 A. I wouldn't receive post and --

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1 Q. This is post addressed to whom?  
2 A. To the store, to the directors, to the store, to us. So  
3 I complained about it quite a lot and I brought it up in  
4 my grievance.  
5 Q. When you say:  
6 "... which Kam did not deny ..."  
7 What happened in that regard, then? Did you  
8 actually speak to him about it and he --  
9 A. Yes, I did speak to him about it and I think early 2009,  
10 either an email was sent -- I think an email may have  
11 been sent to go through what is best practice for the  
12 post.  
13 Q. Okay.  
14 A. So that I would see the post.  
15 Q. And what was the evidence that you are referring to of  
16 him withholding post? Do you recall?  
17 A. No, I would have to go to the information I sent to  
18 Mr Goddon.  
19 Q. Okay.  
20 A. I can't remember. It will be -- after my grievance  
21 hearing, I sent a package to him.  
22 Q. All right. The letter that I was referring you to and  
23 the one that you were asked about at length and it was  
24 suggested to you that it wasn't likely that you wouldn't  
25 have received it, is in E7. We saw a number of versions

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1 of it. It's at the beginning of E7. Do you remember  
2 Mr Potts took you to page 1672, {E/482/1672} the  
3 first -- and he pointed out that the next page seemed to  
4 be missing of this version of the letter. Do you see?  
5 A. Oh yes, I do, yes.  
6 Q. But he took you to the whole letter at page 1676?  
7 {E/484.1/1676}  
8 A. Yes.  
9 Q. That letter there, dated September 2008 -- if go back to  
10 1672, you will see the dated version with the address of  
11 where it was sent to and who it was sent to?  
12 {E/482/1672}  
13 A. Yes.  
14 Q. That letter was sent to Specsavers Opticians, 54 High  
15 Street.  
16 A. Yes.  
17 Q. Whose address is that?  
18 A. That is Dartford's address.  
19 Q. And who would open the post?  
20 A. Mr Singh.  
21 Q. Do you recall whether he showed you this letter?  
22 A. I don't recall seeing the letter until 2009.  
23 Q. Okay.  
24 Right, we are into yesterday's transcript, day 4.  
25 You were asked about the fuel allowance?

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1 A. Yes.  
 2 Q. And what you described as differential treatment between  
 3 what Mr Singh was asking for?  
 4 A. Yes.  
 5 Q. Asking for you to authorise, actually, by signing on  
 6 authorisations for payments to be made to him. That's  
 7 right? Do you recall being asked about this?  
 8 A. Yes.  
 9 Q. This was day 4, pages 37 to 48. {Day4/37:1}  
 10 If you go to bundle E10, near the back, pages 2827?  
 11 {E/885/2827}  
 12 A. Yes.  
 13 Q. Because when you were cross-examined about it, you ended  
 14 up with comments along the lines of:  
 15 "It's difficult for me to explain what I'm trying to  
 16 say."  
 17 Those were the words you used?  
 18 A. Yes.  
 19 Q. I would ask you to look at page 2827 -- I had better  
 20 take you to what this is. On page 2825 you wrote to  
 21 Mr Raines on 5 May 2010? {E/885/2825}  
 22 A. Yes.  
 23 Q. And you were correcting the minutes of the meeting, you  
 24 said there. So this is your correction to his minutes  
 25 of the meeting?

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1 A. That's correct.  
 2 Q. Do you see you say: {E/885/2825}  
 3 "I do not accept that your minutes of the meeting  
 4 are a true reflection of the meeting. Please find  
 5 enclosed a copy of my amended minutes ...  
 6 "Also please note motion 1 ... I have amended ..."  
 7 Et cetera. Do you see that?  
 8 A. I do, yes.  
 9 Q. And then, on to page 2827, dealing specifically with  
 10 this fuel cost point? {E/885/2827}  
 11 A. Yes.  
 12 Q. You have set out at page 2827 to 2828 under number 4 --  
 13 do you see that? It says:  
 14 "4. Resolution 6/Motion re equalisation of fuel  
 15 costs."  
 16 A. That's right, yes.  
 17 Q. Could you just take a minute just to read that section?  
 18 A. Yes, I will. (Pause)  
 19 Do you want me to go over the page?  
 20 Q. I think it's just the bit at the bottom of 2827; the  
 21 next bit seems to move on to another element of your  
 22 complaint but it's not about the fuel costs.  
 23 My question is simply this: is that your issue about  
 24 Mr Singh's fuel costs, or is there something more than  
 25 what is set out there?

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1 A. Yes, I wasn't understanding what I was supposed to  
 2 authorise.  
 3 Q. In the final paragraph on 2827, the first line, at the  
 4 end of it, you say:  
 5 "In the BM ..."  
 6 What do you mean by "BM"?  
 7 A. Where are we, sorry?  
 8 Q. Last paragraph --  
 9 A. Oh yes: In the board meeting.  
 10 Q. "In the [board meeting] my understanding was that  
 11 you..."  
 12 You are addressing that to whom?  
 13 A. Mr Raines.  
 14 Q. "... you told Mr Singh that he could not claim for fuel  
 15 as he was in receipt of fuel allowance."  
 16 A. Yes.  
 17 Q. So can you just confirm or not to the court whether  
 18 that's your complaint, that he is doing both, that  
 19 Mr Singh is both claiming for fuel as an expense and  
 20 receiving a fuel allowance?  
 21 A. That's correct.  
 22 Q. Is there anything more than that that you are  
 23 complaining about in relation to Mr Singh's fuel?  
 24 A. Yes. The fuel amount he was given was the notional  
 25 figure of my P11D figure, which did not make sense to me

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1 because that's not the money I had taken out of the  
 2 business at that time.  
 3 MR STUART: Okay. I don't think I need to ask you any more  
 4 questions.  
 5 Does your Lordship have any more questions for  
 6 Ms Birdi?  
 7 MR JUSTICE NUGEE: No, thank you very much, Ms Birdi.  
 8 Shall we take a break now?  
 9 MR STUART: It might be best.  
 10 MR JUSTICE NUGEE: Five minutes.  
 11 (3.04 pm)  
 12 (Short break)  
 13 (3.09 pm)  
 14 MR POTTS: My Lord, just one matter, just in terms of the  
 15 timetable.  
 16 You may recall that yesterday evening, I said that  
 17 I would consider the position in relation to Mr Rehman  
 18 overnight.  
 19 MR JUSTICE NUGEE: Yes.  
 20 MR POTTS: I informed my friend first thing this morning  
 21 that it was likely that I did not need to call Mr Rehman  
 22 for cross-examination, for the reasons that I outlined  
 23 on the first day.  
 24 MR JUSTICE NUGEE: Yes.  
 25 MR POTTS: That is my position, my Lord, so that is why

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1 I think we are moving straight on to Ms Frondigoun.  
 2 MR JUSTICE NUGEE: Thank you.  
 3 MR STUART: It's two points. There is that, my Lord, but  
 4 I am actually going to call Mr Rehman to deal with two  
 5 additional matters that arose during the course of the  
 6 evidence that has happened so far. Namely, one is that  
 7 schedule.  
 8 MR JUSTICE NUGEE: Yes, bonuses.  
 9 MR STUART: And the second is the sending of that fax.  
 10 MR JUSTICE NUGEE: Which fax?  
 11 MR STUART: Do you remember the fax which had the fax  
 12 headers?  
 13 MR JUSTICE NUGEE: There are a number of fax with fax  
 14 headers. Don't worry about it now --  
 15 MR STUART: The one with the Thursday, the Friday and then  
 16 the Monday --  
 17 MR JUSTICE NUGEE: Don't worry about it now. I'm assuming  
 18 that you would prefer to have Ms Frondigoun called as  
 19 she is here, and we can deal with Mr Rehman in the  
 20 morning?  
 21 MR STUART: Whenever, exactly. Just to mention to you that  
 22 I'm going to call him for just two short supplemental  
 23 points.  
 24 Yes, so if Mrs Frondigoun could be ...  
 25

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1 MRS LORRAINE FRONDIGOUN (affirmed)  
 2 Cross-examination by MR STUART  
 3 MR JUSTICE NUGEE: Do, please, sit down, Mrs Frondigoun.  
 4 MR STUART: Mrs Frondigoun, you gave an interview to  
 5 Mr McAlindon. Do you recall it?  
 6 A. I recall it very well, yes.  
 7 Q. Could you be passed bundle E2. If you go to page 418,  
 8 {E/86/418} I think we see the version of the note that  
 9 you signed. There is an another unsigned version but  
 10 for the purposes of my questions of you, I'm going to  
 11 use the page 418 version.  
 12 A. Okay.  
 13 Q. Do you have it?  
 14 A. I do.  
 15 Q. It's probably best if you flap all the other paper over.  
 16 Great, thank you.  
 17 I just need to ask you a couple of background  
 18 questions. We heard from Ms Birdi today that you had  
 19 had a number of different roles within the store over  
 20 a period of a number of different years?  
 21 A. Yes.  
 22 Q. Just to speed it along, is it right that you joined in  
 23 around 2000?  
 24 A. Yes.  
 25 Q. That you worked for a while as an optical assistant, so

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1 on the shop floor?  
 2 A. Yes, for about seven years.  
 3 Q. For about seven years. I think you then resigned; would  
 4 it be around late 2006?  
 5 A. Yes. My partner had been diagnosed with dementia, so  
 6 I wasn't able to continue with the days that I was  
 7 working, and then it was -- I was offered -- Ms Birdi  
 8 actually offered me the six days, to carry on doing the  
 9 NHS and the corporate, which I really appreciated  
 10 because I didn't want to leave. So that's how it  
 11 worked.  
 12 Q. I just want to try and get the timescale of that.  
 13 A. Yes.  
 14 Q. Can you recall -- just for his Lordship so that he has  
 15 got the background to it. So you were working, what,  
 16 a full time --  
 17 A. Four days a week.  
 18 Q. You were doing four days a week, until about what time  
 19 in 2006?  
 20 A. I think it must have been very late, very late in --  
 21 I don't recall the exact --  
 22 Q. Until late 2006. Then there came a point when you  
 23 couldn't do that any longer, that four days a week?  
 24 A. Yes.  
 25 Q. Was there a short while, while you didn't work at all?

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1 A. I didn't think there was, but I think there may have  
 2 been. To be honest, I had other things happening and  
 3 I can't say that I wasn't -- I thought I carried on  
 4 through.  
 5 Q. We have actually got the wage bills for all the months?  
 6 A. Okay.  
 7 Q. And we can see your name doesn't appear on it for a few  
 8 months?  
 9 A. Okay, so I didn't then.  
 10 Q. So there were a few months when you were not working at  
 11 all. Then you restarted, I think, probably around early  
 12 2007?  
 13 A. Yes.  
 14 Q. Doing, as you called it, six days -- that's six days  
 15 a month, isn't it?  
 16 A. A month, yes. That's how many days we worked out it  
 17 would take to do the job that I was going to do.  
 18 Q. Did you tend to work those days a full day at a time?  
 19 A. Yes.  
 20 Q. So you would come in on a day?  
 21 A. Every Monday.  
 22 Q. Every Monday?  
 23 A. Yes, and then the last two days of the month because  
 24 that was when we received payment for the NHS.  
 25 Q. Right. So you were in on every Monday and then you were

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1 in two days at the end of the month.  
 2 So we saw earlier -- I'm sure you will recall it  
 3 anyway -- that you were on, I think, an hourly rate of  
 4 £6.10 an hour and your total salary for a year worked  
 5 out at about £3,300. So that's about, as you say, six  
 6 days a month?  
 7 A. Yes.  
 8 Q. Roughly eight hours a day?  
 9 A. Yes.  
 10 Q. 48 hours a month. The store was open six days a week at  
 11 that time?  
 12 A. It was, yes.  
 13 Q. It wasn't open on a Sunday at that time?  
 14 A. No.  
 15 Q. No, and it was open between 9 o'clock and 5.30?  
 16 A. Yes.  
 17 Q. Would you be there for the whole day, or because you  
 18 were doing admin, you wouldn't need to be there when the  
 19 shop opened?  
 20 A. No -- well, I was there the whole day. I worked a full  
 21 day, yes.  
 22 Q. Okay. So in the period late 2006, very late 2006, you  
 23 weren't there at all for a while. The first few months  
 24 of 2007, you were there six days a month?  
 25 A. Yes.

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1 Q. Did you explain this to Mr McAlindon when he interviewed  
 2 you?  
 3 A. I don't think that arose, no, I'm not too sure --  
 4 Q. Okay.  
 5 A. -- that that question arose at all.  
 6 Q. Right.  
 7 A. How many hours, or ...  
 8 Q. Perhaps he already knew -- his department had taken over  
 9 the running of the store, hadn't they? By the time of  
 10 your interview, which is 1 May?  
 11 A. Yes.  
 12 Q. Ms Birdi had been suspended back in March; do you  
 13 remember?  
 14 A. Yes, I remember that very well because it was a Monday,  
 15 the day that I worked. Ms Birdi wasn't there.  
 16 I remember that they came in, yes, and --  
 17 Q. What I was trying get to was whether Mr McAlindon, whose  
 18 department had taken over the running of the store,  
 19 whether he was aware that you came in one day a week,  
 20 rather than five days a week?  
 21 A. Well, I guess, yes, if he had taken over the running of  
 22 the store, I guess he must have been aware, but it  
 23 obviously didn't come up in the interview.  
 24 Q. No. Okay, that's fine, that's fine.  
 25 Now, the interview then. We see it there. It

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1 lasted, according to the record, 2 hours 20 minutes?  
 2 A. It just lasted so much longer than that.  
 3 Q. Sorry?  
 4 A. That wasn't right. It lasted an awful lot longer than  
 5 that.  
 6 Q. A lot longer than that?  
 7 A. The machine was turned on, it was turned off, it was  
 8 turned on, it was turned off. It was about four hours.  
 9 Q. When you say the machine, what was the machine? How was  
 10 he recording this?  
 11 A. This thing he just had, I didn't take a lot of notice of  
 12 it. He told me it was being recorded and that was fine  
 13 and then he --  
 14 Q. But recorded, what, like a tape recorder type thing?  
 15 A. Yes, kind of an oldy-fashioned kind of thing. It  
 16 was -- I honestly didn't take a lot of notice of it but  
 17 I know he kept stopping it and then he kept saying --  
 18 Q. Saying things to you?  
 19 A. -- various things, yes. Pushing --  
 20 Q. Which were sort of off the machine?  
 21 A. Pushing and pushing and pushing.  
 22 Q. And then he would put it back on to record and then for  
 23 a short while, what you were saying would be on the  
 24 record, as it were, on record?  
 25 A. Yes.

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1 Q. And then he would turn it off again for a while?  
 2 A. Yes.  
 3 Q. And he would discuss things with you, not on the record?  
 4 A. That's right, so by the time I got to the end, I truly  
 5 didn't know if it was on or off.  
 6 Q. Understood. According to this document, a nice typed-up  
 7 version -- we don't see any handwritten notes -- you  
 8 understand I act for Ms Birdi here, so, you know,  
 9 perhaps I wouldn't see them, would I, and I wasn't  
 10 there, so I don't know.  
 11 To your recollection was he making any handwritten  
 12 notes?  
 13 A. No.  
 14 Q. No. These are your signatures, aren't they, at the  
 15 bottom of the page?  
 16 A. They are.  
 17 Q. Did he produce this to you at the end of the --  
 18 A. No.  
 19 Q. When did he produce it to you?  
 20 A. About two days later, I think.  
 21 Q. Two days later. So what he must have been doing then  
 22 was he was recording some of your answers and then he  
 23 was going to take that recording away, turn it into  
 24 a transcript of the interview and get you to sign that  
 25 as a transcript of the interview. Because he wasn't

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1 taking manuscript notes and he didn't have someone  
 2 sitting next to him tapping away, making any sort of  
 3 transcript of what you were saying?  
 4 A. No.  
 5 Q. So that's the only way he could have generated this  
 6 document?  
 7 A. Yes.  
 8 Q. Did you yourself take any notes?  
 9 A. No.  
 10 Q. No. When you went in there, did you know what the  
 11 meeting was about?  
 12 A. Yes, I was told it was going to be an interview.  
 13 Q. But about? Did you know what it was about?  
 14 A. Yes, yes, because ... yes, I did.  
 15 Q. Okay. Who told you that?  
 16 A. He did.  
 17 Q. He did, what, a few days beforehand?  
 18 A. I believe it was the same day.  
 19 Q. I see, just that day?  
 20 A. In the morning, yes, that you --  
 21 Q. You happened to be working that day?  
 22 A. Yes. As far as I recall I don't think I was called in  
 23 specifically, I think I may have been there. But I --  
 24 that may not be ...  
 25 Q. Right. And he said to you, "I want to interview  
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1 about..."  
 2 Can you recall now what he said at that  
 3 pre-interview stage; what he said it was going to be  
 4 about?  
 5 A. No, just about the -- what's happened.  
 6 Q. Right, you knew that she had been suspended by this  
 7 point.  
 8 A. Yes.  
 9 Q. Swarandeeep, I mean?  
 10 A. Yes.  
 11 Q. Did you understand it was going to be an interview about  
 12 something she had done?  
 13 A. Well, yes, just about what happened, yes. He didn't  
 14 give me any specifics. I just assumed it would be what  
 15 happened.  
 16 Q. Okay. So, you think the interview lasted an awful lot  
 17 longer than two hours?  
 18 A. I know it did, yes.  
 19 Q. You know it did, absolutely?  
 20 MR JUSTICE NUGEE: How long do you think it took?  
 21 A. About four hours.  
 22 MR JUSTICE NUGEE: Do you think it started at 12.15?  
 23 A. Yes.  
 24 MR JUSTICE NUGEE: But you think you were there until late  
 25 in the afternoon?

1 A. Until about 4 o'clock, yes.  
 2 MR JUSTICE NUGEE: Thank you.  
 3 MR STUART: What we have actually got here is obviously  
 4 Mr McAlindon's version, and it goes from page 418 to  
 5 page 425.  
 6 A. Yes.  
 7 Q. If you look at it, 425 is at the end -- your signature  
 8 and his on that one?  
 9 A. Yes.  
 10 Q. It's 265 lines, including the heading. It's seven  
 11 pages?  
 12 A. Yes.  
 13 Q. It takes roughly 15 minutes to read every word of it, so  
 14 that you if you actually spoke into a tape recorder or,  
 15 as these ladies are doing now, it takes about 15 minutes  
 16 to say the words on this sheet. So that means that on  
 17 your version, there's about three and three quarter  
 18 hours' worth of speaking which is not in here?  
 19 A. Hm-mm.  
 20 Q. When you were asked to sign this two days later, did you  
 21 not feel a bit uncomfortable about that?  
 22 A. Yes, definitely.  
 23 Q. Did you tell him that?  
 24 A. I kind of really thought I have been caught -- not  
 25 caught, it's the wrong word. I have fallen into a trap  
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1 here, but what do I do? It's on a tape. I can't say  
 2 I didn't say those things because I did say them. It  
 3 doesn't mean to say that I don't believe what I said  
 4 because I do.  
 5 Q. No, no, that's fine.  
 6 A. But there is no reason for that to be on the interview.  
 7 Q. But there is context, isn't there?  
 8 A. He continually pushed. Started out, "Tell me anything  
 9 you can think of". Turn it off. He said, "She is  
 10 a real bitch, isn't she?"  
 11 Q. He said that to you?  
 12 A. Yes.  
 13 Q. Was that his opening comment?  
 14 A. No, the first couple of pages it kind of went okay and  
 15 then he said that, "She's a real bitch", and, "That Nim  
 16 seemed like quite a nice guy to me". Turned it back on  
 17 again. But it went further and further. He was just  
 18 saying all sorts of things in between:  
 19 "Do you know what she is saying? She is saying  
 20 this. Have a look at this, have a look at that."  
 21 Q. I do understand. So basically, what's in here is what  
 22 Mr McAlindon wants to be in here?  
 23 A. Yes.  
 24 Q. That is the sum total of your evidence, is it? I do  
 25 understand.

1 You understand that I am here representing Ms Birdi  
 2 and therefore I do have to ask you about what's in here  
 3 because, as you rightly say --  
 4 A. No, that's fine.  
 5 Q. -- you have allowed these bits to stay in here?  
 6 A. Yes, because I really didn't feel I had any choice.  
 7 I knew what happened and so I signed it because it was  
 8 on recording and I couldn't say I didn't say it. It has  
 9 been recorded.  
 10 Q. That's right.  
 11 A. But the whole afternoon of what happened has not been  
 12 recorded.  
 13 Q. No. He has, in your words -- I think you use the  
 14 words -- he "slightly tricked" you into this, hasn't he?  
 15 A. Yes.  
 16 Q. Yes, he has. Let's just deal with what's in here for  
 17 the moment and then we will come at the end to what's  
 18 not in here.  
 19 A. Okay.  
 20 Q. I'm not going to ask you about absolutely everything in  
 21 here, it's not worth it, but the bits which the  
 22 respondents now rely upon start on page 419, when they  
 23 are dealing with Mushtaq. {E/86/419}  
 24 A. Yes.  
 25 Q. My concern here is that it's not clear to me, just from

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1 reading the interview, whether he has misled you into  
 2 saying a couple of things on here, or whether you said  
 3 these things but you said a lot more things?  
 4 A. That's the way it was.  
 5 Q. It's that?  
 6 A. Yes.  
 7 Q. Okay. So, for example, at line 53, we are dealing here  
 8 with his working?  
 9 A. Yes.  
 10 Q. And with his earnings. All right?  
 11 A. Yes.  
 12 Q. At line 50, you say:  
 13 "Mushtaq, yes, he is a qualified pharmacist, but he  
 14 has been lecturing at the college and is always  
 15 working."  
 16 Right?  
 17 A. Hm-mm.  
 18 Q. And then he said:  
 19 "I actually meant here."  
 20 Working here in the store.  
 21 And you said apparently:  
 22 "Oh, no, never."  
 23 That has been recorded and used later by  
 24 Mr McAlindon as evidence that your evidence is that  
 25 Mr Mushtaq Rehman never worked in the store, and that's

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1 how the case has been put from that point onwards.  
 2 Let me get it clear: there are a number of witnesses  
 3 who worked at the store who did see Mr Rehman working  
 4 occasionally.  
 5 A. Hm mm.  
 6 Q. Let me make it clear, he's not a full time employee. He  
 7 probably doesn't even work as much as you do, one day  
 8 a week, but occasionally he did work in the store, some  
 9 work in the store.  
 10 Just taken out of context, your answer, "Oh, no,  
 11 never", has been said to be you giving sworn evidence  
 12 that he never worked in the store?  
 13 A. No --  
 14 Q. That's not right, is it?  
 15 A. No, because I had already said in the previous answer,  
 16 I think when I first started here he came in  
 17 occasionally. And he did my interview.  
 18 Q. He did, exactly.  
 19 A. He interviewed me, so obviously -- but that was seven  
 20 years previous.  
 21 Q. Of course. He did a day's worth of interviewing other  
 22 people, didn't he?  
 23 A. Yes, so my "oh know never" was at that time and like  
 24 I said there, a couple of years prior to that, we hadn't  
 25 seen him.

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1 Q. At that time. This is another thing I want to come on  
 2 to. It may be that Mr McAlindon has led you -- misled  
 3 you -- into misunderstanding what period of time we are  
 4 talking about.  
 5 A. Yes, maybe.  
 6 Q. I should have taken you -- let's just get it clear  
 7 what's being said. Would you be handed up E5,  
 8 page 1299. {E/348/1299} Do you have E5/1299-5?  
 9 A. Yes.  
 10 Q. And just so -- you wouldn't have seen this document --  
 11 I certainly hope you wouldn't anyway. This is  
 12 a document that has been generated by Jacqui Mancini of  
 13 SOG, of Specsavers itself, in April 2008. So this is  
 14 after the investigation has happened and they have  
 15 actually looked into things. Do you see what I mean?  
 16 A. Yes.  
 17 Q. And what Ms Mancini and SOG have concluded -- do you see  
 18 on page 1299-5 under the heading "Conclusion":  
 19 "Whilst there are questions regarding Mr M Rehman's  
 20 nature of employment, it is clear that he performed some  
 21 duties over the period of employment. His remuneration  
 22 was low and if more time was spent, it is possible that  
 23 the store could supply evidence that his remuneration  
 24 was commensurate with the duties."  
 25 Do you see that?

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1 A. Hm-mm.  
 2 Q. If you flick down under "Remuneration", do you see, he  
 3 was at Orpington for a while and then salary at  
 4 Dartford:  
 5 "From 2003 to July 2006: Nil."  
 6 He didn't claim -- he wasn't paid any salary for the  
 7 period 2003 to 2006 at all. Not a pound?  
 8 A. No, that's right, which would probably be about the time  
 9 when I said, "Oh, no, never", because this -- in that  
 10 above question that I had said --  
 11 Q. We will come back to that in a moment.  
 12 A. -- previously.  
 13 Q. We will come back to that in a moment. The effect of  
 14 your evidence is, to deal with that period, as if  
 15 Mr McAlindon led you to believe that he was being paid  
 16 a salary over that period of time. Is that what  
 17 Mr McAlindon led you to believe?  
 18 A. Yes.  
 19 Q. Yes, all right. The truth of it was, you see, that  
 20 Mr Rehman wasn't paid a salary, didn't receive any  
 21 salary, didn't charge any salary for all those years.  
 22 So any occasional things he did for his wife at that  
 23 time, he wasn't charging for them.  
 24 It's only from July 2006 that he started to  
 25 receive -- and was put on the books, if I can call it

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1 that -- £275 a month, so that's actually less than your  
 2 one day a week, £6.10 an hour basis? You understand  
 3 that?  
 4 A. Yes I was shown that.  
 5 Q. He's a pharmacist et cetera, et cetera. So it's only  
 6 from that point onwards, July 2006 -- and you were  
 7 interviewed -- well, you stopped working in March 2007  
 8 when his wife got suspended. So it's just for that  
 9 little period that it's actually being suggested that he  
 10 was paid a salary. Do you now understand that?  
 11 A. Yes.  
 12 Q. When you answered these questions to Mr McAlindon on the  
 13 tape, did you understand that?  
 14 A. No, I don't think I did. He showed me various things,  
 15 people that -- all sorts of things, "Did you know this,  
 16 did you know that?" As I said ...  
 17 Q. All right, okay.  
 18 A. Yes, I think there was something in there that says,  
 19 "I'm going to show you this now", and it showed me  
 20 figures.  
 21 Q. Yes. Okay.  
 22 Whilst we are on this document let me just ask you  
 23 to confirm whether perhaps you would agree with it. If  
 24 you look at the bottom of the first page there:  
 25 "Facts regarding employment duties."

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1 Do you see that heading, at the bottom of page -5?  
 2 It says:  
 3 "Facts regarding employment duties."  
 4 And:  
 5 "MR not on any staff rotas. Some staff not aware of  
 6 MR or work he did. No holidays. Bonuses inconsistent  
 7 with others. Bonuses increased at start of  
 8 investigation, S Birdi said this was for installing  
 9 online booking system which could not be rewarded for at  
 10 the time due to saving for shop fit."  
 11 Do you see that?  
 12 A. Hm-mm.  
 13 Q. Do you recall Mr Rehman did assist with the software --  
 14 online booking system?  
 15 A. I don't recall, but (inaudible)  
 16 Q. If he says he did, it's quite possible, isn't it?  
 17 A. Yes, definitely.  
 18 Q. Ms Birdi herself, not the best with computers. Is that  
 19 fair?  
 20 A. Probably not.  
 21 Q. Yes. Mr Rehman by contrast a bit of a whizz with  
 22 computers?  
 23 A. Definitely more, oh, more so, certainly.  
 24 Q. Absolutely. Okay. And then over the page, Mr Rehman  
 25 states the following:

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1 "He is an employee. He has no written contract."  
 2 That's true but he is an employee -- and this is  
 3 obviously only from July 2006, let's get it clear:  
 4 "He is an employee. He performs admin duties such  
 5 as rotas, Mars statements, staff recruitment, IT and  
 6 some sickness records."  
 7 I think you would agree now, wouldn't you, that he  
 8 certainly dealt with staff recruitment?  
 9 A. In 2000 he did, yes. I didn't take a huge amount of  
 10 notice after that. I'd got my job and I was --  
 11 Q. Exactly, but --  
 12 A. He certainly interviewed me.  
 13 Q. Other staff have actually agreed that he did --  
 14 A. Yes, I'm sure he must have done.  
 15 Q. Indeed in 2006 and 2007 he was dealing with staff  
 16 recruitment, assisting her. IT. He certainly did  
 17 assist with IT.  
 18 A. Okay.  
 19 Q. Information technology, didn't he?  
 20 A. Yes.  
 21 Q. Records, rotas and things. Ms Birdi's explained how he  
 22 assisted in dealing with the rotas, getting it  
 23 computerised and things like that. If he did that at  
 24 home or wherever, that's perfectly possible, isn't it?  
 25 A. It's possible, of course it is, yes.

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1 Q. Okay. So the conclusion you see reached under the  
2 heading:  
3 "In Summary: The truth of the matter."  
4 And we will come back to what your evidence is  
5 unfortunately saying as a result of Mr McAlindon, but:  
6 "In summary, MR performed some ad hoc duties for the  
7 store over a period of time."  
8 You would agree with that? He did perform some  
9 ad hoc -- that is occasional -- duties for the store  
10 over a period of time?  
11 A. Well, I didn't know about it but I certainly wouldn't  
12 disagree with it. You know, I didn't know about it.  
13 Q. You knew some duties?  
14 A. I knew about the interview, yes, as I say. But that  
15 question was in those last couple of years and I hadn't  
16 seen him for a couple of years.  
17 Q. Yes.  
18 A. But I wasn't at his house where he may have been doing  
19 IT, all sorts of things, and I wasn't there in the  
20 evenings, so, you know ...  
21 Q. Okay:  
22 "These duties were varied and performed mainly from  
23 home in the latter years."  
24 That's entirely consistent with your, now,  
25 concession as to probably what the position was:

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1 "Some staff were not aware, others knew he did some  
2 recruitment. He did some ad hoc work."  
3 Now that we know that's the actual position, I just  
4 want to take you back to what's been put in this  
5 statement by Mr McAlindon that you have signed up to?  
6 A. Hm-mm.  
7 Q. So I'm using line numbers. That's the best way to find  
8 it in this document.  
9 Line 72:  
10 "So could he have done any form of work that related  
11 to invoicing at any time over the last few years?"  
12 Could he have done that? Now, a fair reflection of  
13 your actual evidence would have been "Yes, he could have  
14 done". That's fair, isn't it?  
15 A. Well, I suppose so. When you look at "Absolutely not",  
16 as I say --  
17 Q. Whereas it has been recorded as:  
18 "Absolutely not."  
19 A. It has, yes, it has. I mean, everything that I have  
20 said is there.  
21 Q. Hm-mm?  
22 A. Everything that he says isn't. It's kind of very  
23 difficult to explain it. The system, the way that the  
24 invoicing was done, it all kind of went on the till. As  
25 far as I was aware, what he was asking me, I was saying

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1 "No, absolutely not" -- he couldn't have done the  
2 invoicing. You had to go to the till, you had to put it  
3 through, you had to take it off. So, yes, my answer was  
4 "absolutely not" because he wasn't there.  
5 Q. But work relating to invoicing --  
6 A. Work relating to invoicing, perhaps, maybe --  
7 MR JUSTICE NUGEE: Mr Stuart, you have a tendency to cut  
8 Mrs Frondigoun off.  
9 MR STUART: I'm sorry, my Lord, I'm trying to speed on too  
10 quickly.  
11 MR JUSTICE NUGEE: Let her finish her answers.  
12 MR STUART: I will.  
13 A. As I say, I don't know what he did at home. I certainly  
14 wasn't aware of anything that was done. I knew we all  
15 had our roles and I wasn't aware of it but, yes, he  
16 certainly could have done something at home. I don't  
17 know what, but it's not impossible to think that he did  
18 something.  
19 Q. Okay. Line 78 in relation to inventory and Mars.  
20 {E/86/420} Can you explain to his Lordship what Mars  
21 is, because those of us not working in a Specsavers  
22 don't --  
23 A. Well, yes, I didn't have a huge amount to do with it but  
24 it was on the shop floor. Every frame that we had,  
25 everything had to be in a certain place. So every

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1 drawer that we kept everything in, it all had to be in  
2 a certain place. On the shelving, in the store.  
3 A frame had a place. It couldn't go anywhere else.  
4 MR JUSTICE NUGEE: Do you know what "Mars" stood for?  
5 A. I don't know, but it was ridiculous. As far as I was  
6 aware, it could only be done on the shop floor.  
7 I didn't have a lot to do with it. I did stay and  
8 help label up every single shelf and every tray, every  
9 pair of glasses and that was -- I didn't think Patrice,  
10 who is with me today, actually did the Mars, so I didn't  
11 have more of an understanding of it, but it was done on  
12 the shop floor.  
13 MR JUSTICE NUGEE: Thank you.  
14 MR STUART: Is it fair to say that what was the shop  
15 assistant's -- the optical assistant's -- their primary  
16 duty was to make sure that Mars was complied with and  
17 that everything was in its right place, but that, as is  
18 the way in a shop, there would come a point at the end  
19 of a week or at the end of a busy night of trading where  
20 it would be sensible to check, to see that everything  
21 was in its right place? Is that fair?  
22 A. Yes, I think so, but we did do that all the time on  
23 a daily basis. We weren't continuously busy every  
24 single minute of the day and we had various tasks to do  
25 when the shop wasn't busy. And one of those things was

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1 Mars, checking it continuously. Always checking that we  
 2 had all our stock out. If someone had bought a frame,  
 3 we would have to replace it so that we had a full  
 4 display, and it was done on a rolling day-to-day basis.  
 5 Q. Yes. Ms Birdi and Mr Rehman say that on occasion, and  
 6 it was only occasionally, after hours, when the shop was  
 7 closed and the checking of the Mars position was being  
 8 done, he would assist her, and other witnesses give  
 9 evidence that they saw him doing so. Would you agree  
 10 it's possible that he did, on nights when you weren't  
 11 there?  
 12 A. Yes, it's possible. I have put -- I think, on one  
 13 occasion -- but I certainly wasn't made aware by anybody  
 14 else that Mushtaq had been in. But if all the staff had  
 15 gone, then, yes, of course.  
 16 Q. Okay. 92. You were asked about him possibly having  
 17 anything to do with the arrangements for locums,  
 18 bookings of locums. Do you recall your being asked  
 19 about that? {E/86/420}  
 20 A. Yes, I do recall being asked about it. Swarandeeep did  
 21 it all the time and someone from Locum Link used to  
 22 phone up all the time for Swarandeeep, you know, through  
 23 the week, so yes, I was definitely asked about it.  
 24 Q. But their evidence and explanation was that he assisted  
 25 her, drawing up the rotas, on the computer, et cetera,

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1 at home. You have seen the conclusions reached by  
 2 Ms Mancini, that this is indeed what he was doing?  
 3 A. Hm-mm.  
 4 Q. It is possible, isn't it, that he was assisting her? It  
 5 would only have to be less than a day a week. It is  
 6 possible he was assisting her in relation to locums?  
 7 A. It is possible.  
 8 Q. Okay. But your answer is recorded as:  
 9 "Absolutely not."  
 10 MR JUSTICE NUGEE: It's not clear to me, Mr Stuart, if  
 11 that's in reference to booking of locums or in reference  
 12 to payroll.  
 13 A. No, the locums, no. My "absolutely not" was --  
 14 MR STUART: Sorry, okay. At 89:  
 15 "Locums as far as booking, Swarandeeep always did  
 16 that during the course of the day. Payroll, I think  
 17 sometimes it was Swarandeeep, she gave it all to Nimesh,  
 18 and he did it here.  
 19 "Question: So Mushtaq could not have had anything to  
 20 do with that?  
 21 "Answer: No, absolutely not, no."  
 22 A. "Locums as far as booking..."  
 23 That couldn't have been done after hours because the  
 24 locum office wasn't open. Payroll, I don't know. As  
 25 I say there, we didn't used to have laptops in the same

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1 way that we do now. Everything was kind of done on the  
 2 computers that were an internal kind of system that we  
 3 had at work. So, again, anything is possible. But, as  
 4 I believed at the time, as with all the answers,  
 5 everything was done on a Specsavers internal system.  
 6 I can't remember the name of it now but it was always  
 7 being upgraded, but it was on there. It was a huge  
 8 system we had. It wasn't on the laptop. It wasn't --  
 9 Q. Perhaps I ought to ask you: when you are speaking to  
 10 Mr McAlindon, in the four hours, not on the record, were  
 11 you saying things to him like, "Well, you know, he could  
 12 be working at home, I don't know, Mel"? Were you sort  
 13 of putting those provisos in?  
 14 A. Yes, yes I was.  
 15 Q. Yes?  
 16 A. Much more than -- it seems to absolutely emphatic here  
 17 when you read it back to me. It was all "absolutely  
 18 not, absolutely not". But, no, we did have more  
 19 conversations and I kind of gave my theory as to, well,  
 20 everything is done in the shop, on the system --  
 21 Socrates, that's what it was called. It was always  
 22 being upgraded. It wasn't the sort of thing you would  
 23 have on your laptop and take home. It wasn't possible.  
 24 It was an internal system. It wasn't even between  
 25 Specsavers' stores. You couldn't log on to another

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1 store. That was my belief, that everything was pretty  
 2 much done on that system. But, yes, you know, the  
 3 "absolutely not to do" obviously appear a huge amount  
 4 more emphatic than certainly --  
 5 Q. I don't want to interrupt you.  
 6 A. No, that's fine, I've stopped.  
 7 Q. You see, all of your answers -- At 95, "Absolutely not"  
 8 is what you say. 99 is your next answer, "No".  
 9 103, your answer is:  
 10 "Can I swear? I would say --"  
 11 A. Well, I was cross, sorry.  
 12 "Can you think of what they may be?  
 13 "No."  
 14 Well, that's a fair enough answer because I had no  
 15 idea of what assistant duties he may be doing.  
 16 "Can you think of what they may be?  
 17 "No."  
 18 That's emphatic because it was a no, I didn't know.  
 19 Q. You are right. A no is just a no. You are right. But  
 20 what about the next one?  
 21 "Can I swear? ... absolute rubbish!"  
 22 Exclamation mark.  
 23 A. Yes. He told me that he was doing all my NHS work.  
 24 That's what Mr McAlindon told me.  
 25 Q. Is that what he said?

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1 A. Yes.  
 2 Q. That's what Mr McAlindon said to you?  
 3 A. Yes.  
 4 Q. That Mr Rehman was saying that he, Mr Rehman, was doing  
 5 all your --  
 6 A. Doing my job.  
 7 Q. -- NHS work?  
 8 A. Yes, which made me really cross, because then I said,  
 9 "Absolutely not, no, of course he weren't. That's  
 10 ridiculous. How can he do that? You have to do it on  
 11 the computer and the till."  
 12 Q. Strangely, in the "on the record" bit, Mr McAlindon  
 13 doesn't seem to have written down the fact that he said  
 14 to you that Mr Rehman was saying that he did all your  
 15 work for you. He didn't seem to slip that one in. Is  
 16 that just one of the three and three quarter hours'  
 17 worth that he hadn't put in?  
 18 A. Yes, it was.  
 19 MR JUSTICE NUGEE: What was the NHS work you had to do,  
 20 Mrs Frondigoun?  
 21 A. There was the -- when people came in they had to fill  
 22 a form in if they had an NHS sight test or entitled to  
 23 an NHS voucher for various reasons. So we submitted the  
 24 forms -- I submitted the forms on a weekly basis. So  
 25 you gather all the forms they put through the till.

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1 They then came up to me in the back office. So I had  
 2 a list of them.  
 3 I had to check that I'd got them, first of all, find  
 4 out where they were if I hadn't got them. Make sure  
 5 they were correctly filled in. Sort them into optom  
 6 order, get the optoms to sign the forms for each -- what  
 7 they had done that week, and just check that every dot  
 8 had been dotted and tick had been ticked and they had  
 9 been signed and they were sent off.  
 10 MR JUSTICE NUGEE: And then the NHS paid you --  
 11 A. Paid us at the end of every month.  
 12 MR JUSTICE NUGEE: And then you had to check that you had  
 13 been paid for all the ones that you had submitted?  
 14 A. Yes, that's right. It was a lot of forms and it was  
 15 a lot of money. It's probably a quarter of the takings  
 16 each month in NHS, so it was a lot of forms.  
 17 MR JUSTICE NUGEE: Thank you.  
 18 MR STUART: There was a period of time when you were  
 19 obviously away, just for a couple of months. Do you  
 20 remember?  
 21 A. I really don't, but I obviously wasn't because I didn't  
 22 get paid.  
 23 Q. You weren't there?  
 24 A. But I did have things happening at home.  
 25 Q. Of course you did. So it seems likely that you were off

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1 for a couple of months?  
 2 A. Yes.  
 3 Q. Or so?  
 4 A. Yes.  
 5 Q. And during that period of time someone else would have  
 6 had to do the NHS work?  
 7 A. I guess so.  
 8 Q. Some admin person?  
 9 A. Yes.  
 10 Q. Okay. Line 108. The question at line 107 was:  
 11 {E/86/420}  
 12 "Rotas and Mars?"  
 13 So these were two other aspects that he said he had  
 14 assisted with, not that he was doing everything, just  
 15 that he had done some assistance. Your answer was:  
 16 "No way! How could you do Mars without being here  
 17 physically? It's impossible."  
 18 We have just been through that. Is that right?  
 19 A. Hm-mm.  
 20 Q. You accept that on the days when you weren't there, it's  
 21 possible he came in and assisted Swarandeeep? It's  
 22 possible?  
 23 A. Yes, it was possible. Sorry, yes, it is possible.  
 24 Q. That's the Mars. And on the rotas, the rotas were  
 25 actually could be done at her home, couldn't they? The

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1 rotas could be drawn up --  
 2 A. Oh, yes.  
 3 Q. -- on a computer, et cetera and printed off.  
 4 So, again that could have been done not in the store  
 5 and could have been done by him assisting her. It  
 6 wouldn't take more than -- to do all the rotas for all  
 7 the month might take, what, a couple of hours at most?  
 8 Is that fair?  
 9 A. Yes, I guess it is, yes.  
 10 Q. Anyway, what is recorded by Mr McAlindon as the  
 11 suggestion that he might have been doing some rotas and  
 12 Mars work from you is:  
 13 "No way! How could you do Mars without being here  
 14 physically? It is impossible."  
 15 A. Hm-mm.  
 16 Q. And then the noted question is:  
 17 "Is that an exaggeration, or a blatant lie in your  
 18 eyes?"  
 19 And your response is:  
 20 "It is a blatant lie."  
 21 A. Hm-mm.  
 22 Q. So you are actually making quite a serious allegation  
 23 against Ms Birdi and Mr Rehman that they have made  
 24 a blatant lie. Of course, what's not noted here, and so  
 25 I'm going to ask you, is: what did Mr McAlindon say to

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1 you that they were saying that he was doing in relation  
2 to rotas and Mars?  
3 A. Hm-mm.  
4 Q. Is it like your NHS work?  
5 A. Yes.  
6 Q. Mr McAlindon suggested to you --  
7 A. That he was doing it --  
8 Q. -- that Mr Rehman was saying he was doing it all?  
9 A. Yes, yes.  
10 Q. And so when you respond, "That's a blatant lie", you  
11 mean, "Of course he is not doing all of it"?  
12 A. Yes.  
13 Q. Okay. That explains it then. Next question was:  
14 "He also states that he has developed software for  
15 the business. Do you know anything about that?"  
16 Your answer was fair on that one -- well, the first  
17 answer was fair; the second one, I'm afraid, was not.  
18 I'm going to take you in a moment to the fact that SOG  
19 themselves knew that he was working on software and  
20 actually criticised him for incorporating their logo  
21 into the software. All right?  
22 We will come to that, but as recorded here,  
23 Mr McAlindon is putting to you, did you know anything  
24 about Mr Rehman developing software for the business.  
25 You say:

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1 "No idea."  
2 Then you say:  
3 "He is just making it all up as he goes along."  
4 A. Because I had already been told that he was doing my  
5 job.  
6 Q. Yes.  
7 A. He was doing the invoicing.  
8 Q. Yes.  
9 A. He was doing the Mars, he was doing this, he was doing  
10 that, as if he was doing it all.  
11 Q. This is what Mr McAlindon was telling you --  
12 A. Yes.  
13 Q. -- Mr Rehman was saying he was doing. What, for £275  
14 a month? All right. Okay, let's say that was right.  
15 As to the software you have said:  
16 "He is making it all up as he goes along."  
17 A. No, no, not the software. The answer.  
18 Q. You didn't answer that in relation to the software?  
19 A. No, I said I have got no idea about the software, and  
20 then I said:  
21 "He is making it all up as the goes along."  
22 Because of all the other things I had previously  
23 been told. I had no idea about the software. That was  
24 my answer to that question.  
25 Q. So really, it's the context in which you said that

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1 that's misleading about this?  
2 A. I think so.  
3 Q. That's fair. Over the page. We are on to line 114,  
4 staff recruitment. {E/86/421}  
5 You record he did your interview, which is very fair  
6 of you, 115:  
7 "I can't say what others he did ... but he did come  
8 and help Swarandeep one evening when she did some  
9 upstairs and he did some down. But it was just once."  
10 A. That I knew of, yes.  
11 Q. Was that quite recent to the interview? Was that in  
12 2007?  
13 A. I honestly can't remember that.  
14 Q. Okay, fair enough.  
15 Obviously, by this point you were only in one day  
16 a week, Monday?  
17 A. Hm-mm.  
18 Q. So unless the interviewing was taking place on a Monday  
19 evening, you wouldn't really been aware?  
20 A. No, but I would have been aware because we all told each  
21 other what was happening and we were all very good  
22 friends and we just kind of knew, "Oh, someone's being  
23 interviewed", and, "Mushtaq did that one and Nimesh did  
24 this one", so I would have been aware.  
25 Q. Okay. The next one is about other paperwork when

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1 employees were sick.  
2 "Can you think of any time you were sick and could  
3 not do sales ledger and NHS, or when John was off and  
4 could not do invoicing, or Patrice for Mars or Mushtaq  
5 stepped in?"  
6 And your answer is recorded as:  
7 "Never."  
8 That's not a fair answer, is it? You were off sick,  
9 certainly for an extended period of time in very late  
10 2006/early 2007?  
11 A. No, I don't think I was off sick.  
12 Q. Sorry, you had resigned. You are quite right. You were  
13 off?  
14 A. Mushtaq didn't do my NHS then.  
15 Q. Who did?  
16 A. Who did it? It would had to have been done in store.  
17 Q. Yes, but you weren't there, so you don't know that he  
18 came in to do it in the office?  
19 A. Well, okay, I don't know that, but as I say, I know all  
20 the others and we are always talking and everybody was  
21 in touch with me because my partner was really poorly  
22 and there were -- I mean, there were people doing --  
23 other members of staff doing those things, keeping it  
24 ticking over, you know, and like I say, Mars, Patrice --  
25 it was other members of staff doing those things.

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1 Q. Yes, but Mushtaq did your NHS work for the short period  
2 of time you weren't there. That's subsequently  
3 accepted. There is certainly evidence about it.  
4 A. Okay, well, it's accepted but it's not --  
5 Q. It's just that therefore your answer, "Never", is --  
6 A. I'm certainly not aware of it and not -- no, because  
7 I still don't know that was the case, because I did show  
8 someone else how to do. As far as I was aware, that was  
9 what was happening and when I came back it was in a  
10 right mess and I sorted it out and it had been done by  
11 a member of staff.  
12 Q. You didn't know who?  
13 A. I did know who and I can't think who it is but, yes, as  
14 far as -- it was done by a member of staff.  
15 Q. Okay.  
16 A. Because you needed all access to the patient's records  
17 and everything to do it. You would have to be in there  
18 for the patient's records.  
19 Q. That's right.  
20 A. You know, manually, so, you know, as I say -- it says  
21 "never". I would never know that he did it. No,  
22 certainly not. He states, "Can you think of any time",  
23 No, I could never think of any time. That's my answer.  
24 Q. Right, you mean you --  
25 A. I'm not saying he never did it because he says, "Can you

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1 think of any time ...?"  
2 Q. Ah, okay.  
3 A. That's what it says.  
4 Q. Yes.  
5 A. And I couldn't so, no, never, I couldn't, and I still  
6 can't.  
7 Q. So what you are answering is that you personally didn't  
8 have personal experience of Mushtaq --  
9 A. No, never.  
10 Q. -- being there?  
11 A. Never, no.  
12 Q. But you are not saying that he was never there?  
13 A. No, I'm saying never. I can never think of a time when  
14 I was sick and couldn't do it that Mushtaq stepped in.  
15 No, I could never think of a time.  
16 Q. Okay, well, now you clarify that, that's probably fair  
17 and perhaps on the -- if only we had the tape recording,  
18 we could see that perhaps when you told Mr McAlindon,  
19 "Never", you went on in your explanation to explain what  
20 you meant by that was, "No, I have never known that"?  
21 A. I don't think I needed to, to be honest with you:  
22 "Can you think of any time you were sick and  
23 couldn't do it ... and Mushtaq stepped in."  
24 No, never, I -- no. There was never a time I could  
25 think that he did.

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1 Q. Okay. But your next answer is not quite so explicable  
2 in that way.  
3 A. No, it isn't, no.  
4 Q. "What was your view on that statement?"  
5 This was his statement that he had assisted,  
6 occasionally, to cover people who were doing admin  
7 duties when they were off sick. Your answer is:  
8 "It is a lie."  
9 Again, that's a very serious allegation?  
10 A. It is, yes.  
11 Q. Especially in circumstances where your allegation is  
12 untrue.  
13 A. Hm-mm.  
14 Q. Is there some context to the way Mr McAlindon has  
15 written that? Do you now recall?  
16 A. No, I don't. I remember the interview very well.  
17 I don't recall. Say, from as it went through, my  
18 answers got more emphatic, more cross, more -- because  
19 he was stopping, he was talking to me.  
20 Q. He was encouraging you?  
21 A. More than encouraging:  
22 "Tell me anything you can think of ..."  
23 And making you angry, saying someone is doing your  
24 job, they are claiming to get paid because they are  
25 doing your job. You think, "That's ridiculous". It

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1 makes you angry.  
2 Q. Yes.  
3 A. So then the way that you answer, more emphatic because  
4 you have been made to be really cross.  
5 Q. Absolutely.  
6 A. So probably using words that are stronger in a way than  
7 maybe they should have been.  
8 Q. Fair enough.  
9 A. Because you had been made to be angry.  
10 Q. Absolutely understood.  
11 He then asked you about stocktaking. 128.  
12 {E/86/128} I want to ask you about this one because  
13 I suspect your answer will be similar about the context:  
14 "What is your view on that as an explanation for his  
15 salary?"  
16 A. Hm-mm.  
17 Q. And the answer that he has recorded is:  
18 "It is staggering really, that's my view."  
19 Let's break it down. What salary did Mr McAlindon  
20 say he was referring to at this point?  
21 A. It was a monthly salary.  
22 Q. Of?  
23 A. I can't remember the figure but it was a monthly salary.  
24 I don't think I was told how long or --  
25 Q. You don't know over what period and you don't know how

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1 much?  
 2 A. No, I don't think so. I think I -- he showed me  
 3 bonuses. Somewhere he said, "I'll show you --"  
 4 Q. What, he actually showed you a piece of paper?  
 5 A. Yes.  
 6 Q. What, with Mr Rehman's --  
 7 A. And Karina's --  
 8 Q. -- amounts?  
 9 A. -- as well.  
 10 Q. She was rather different, wasn't she? She was drawing  
 11 a salary for years?  
 12 A. I don't know.  
 13 Q. And she never did anything for the store. That's her  
 14 own case -- or her husband's, Mr Patel's. This is  
 15 rather different. Mr Rehman hadn't drawn any salary at  
 16 all until July 2006, which is only eight months before  
 17 this interview. Nothing at all. So you are asked about  
 18 the level of the salary and you say:  
 19 "It's staggering."  
 20 That gives the impression that you were shown some  
 21 high salary?  
 22 A. Oh, no, not the amount of the -- the "staggering" that  
 23 he was receiving a salary, I think was my intention, not  
 24 the amount, because --  
 25 Q. Okay, any salary?

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1 A. Yes.  
 2 Q. Even though you accepted he was doing some work?  
 3 A. I didn't accept at the time because I absolutely wasn't  
 4 aware of it. As you are asking me, I'm saying yes, it  
 5 was possible. I wasn't aware of those things.  
 6 Q. Interviewing, you knew he was doing?  
 7 A. Yes, in 2000.  
 8 Q. And 2007?  
 9 A. That's one more.  
 10 Q. The rest of it, you didn't know what he was doing?  
 11 A. No.  
 12 Q. But Mr McAlindon was giving you an impression -- more  
 13 than an impression; he was telling you that Mr Rehman  
 14 was purporting to do --  
 15 A. My job.  
 16 Q. -- your job, other people's jobs and everything else in  
 17 the store and on that basis, you felt that it was  
 18 staggering that he was --  
 19 A. Yes.  
 20 Q. Okay, fine.  
 21 Then we move on to the bonuses. Apart from his  
 22 salary, he was paid bonuses and he lists them all out  
 23 for you there. Do you remember that?  
 24 A. Yes.  
 25 Q. I had a query about this. You have just said he was

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1 referring to a document. Was he reading some of these  
 2 questions out to you?  
 3 A. The questions on here?  
 4 Q. Yes. Try and think back to the interview now?  
 5 A. Hm-mm.  
 6 Q. As he was sitting there?  
 7 A. Hm-mm.  
 8 Q. Obviously, most of the time he was just filling you with  
 9 this --  
 10 A. Talking to me, yes.  
 11 Q. -- huge amount of nonsense?  
 12 A. Yes.  
 13 Q. But there came a point where he was asking some  
 14 questions, some specific questions, weren't there? Did  
 15 he actually say, "I'm going on the record now", click,  
 16 and then ask you a question?  
 17 A. No, no, not really, no, because then I wouldn't have got  
 18 confused by the end as to whether it was on or whether  
 19 it was off anyway.  
 20 Q. So it was all just a --  
 21 A. Sometimes it was just like he was just chatting to me.  
 22 Q. Right and then he would click it on?  
 23 A. Yes.  
 24 Q. I see. It's just that you see that question there, line  
 25 130, he is recorded it as: {E/86/421}

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1 "Apart from his salary, he was paid bonuses."  
 2 Do you see that?  
 3 A. Yes.  
 4 Q. Then the next question reads:  
 5 "Clearly, in the process of having to ask you  
 6 questions relating to these payments to try and validate  
 7 the justification of them, you have become aware of them  
 8 for the first ..."  
 9 Do you see that?  
 10 By the greatest of coincidences, later that day he  
 11 interviewed your colleague, Patrice O'Brien?  
 12 A. Hm-mm.  
 13 Q. Do you recall?  
 14 A. No, I don't recall, but...  
 15 Q. No, but if you just flick on in this bundle to page 429,  
 16 {E/86/429} we have what purports to be Mr McAlindon's  
 17 alleged contemporaneous record of questions that he put  
 18 to Ms O'Brien; okay? For your reference it starts at  
 19 page 426. {E/86/426} You will see it's  
 20 a similar-looking document to yours, 426?  
 21 A. Hm-mm.  
 22 Q. And at 429, line 122 and then line 127, {E/86/429} just  
 23 have a little look at those two questions there. You  
 24 might recognise them?  
 25 A. Hm-mm.

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1 Q. Do you see that?  
 2 A. Hm-mm.  
 3 Q. "Apart from his salary he was paid bonuses ..."  
 4 Blah, blah, blah.  
 5 After she says, "None", he says:  
 6 "Clearly, in the process of having to ask you  
 7 questions relating to these payments to try and validate  
 8 the justification of them, you have become aware of them  
 9 for the first time. Having tried to discuss with you  
 10 and develop an understanding of the legitimacy of these  
 11 payments, you may have developed your own view."  
 12 It's a funny way of speaking. Do you recall him  
 13 speaking like that to you?  
 14 A. I mean, no, I don't. I don't recall --  
 15 Q. Do you recall words like "legitimacy" --  
 16 A. -- the actual way that he spoke to me. To be honest  
 17 with you, no, I don't recall that.  
 18 Q. No. Going back to your questions. At 421, line 135, it  
 19 is said by Mr McAlindon that he said to you: {E/86/421}  
 20 "Clearly, in the process of having to ask you  
 21 questions relating to these payments to try and validate  
 22 the justification of them, you have become aware of them  
 23 for the first time. Having tried to discuss with you  
 24 and develop an understanding of the legitimacy of these  
 25 payments, you may have developed your own view. Do you

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1 have one?"  
 2 Do you recall him asking you that question?  
 3 A. No, I don't, no.  
 4 Q. No. Anyway --  
 5 A. Question:  
 6 "I make that lot since August 2006 to be £8,800."  
 7 That's in under a year, (inaudible) from my  
 8 statement. So then I have put:  
 9 "It is appalling to think he has been paid ..."  
 10 It says "anything" there. Obviously I still think,  
 11 yes, that would have been a lot for what he may have  
 12 done, but I don't recall the actual questioning. As  
 13 I say, a lot of it was done in conversation.  
 14 Q. Did he explain to you that of that £8,800 figure, over  
 15 £5,000 of it, just under two thirds, related to the  
 16 software development?  
 17 A. I don't think so, no.  
 18 Q. No. All right. So those were your answers there.  
 19 I see the time. I want to get you finished, so you  
 20 can go.  
 21 If you go on to page 423. We have just got two  
 22 pages to go. You are now dealing with -- do you see at  
 23 the top?  
 24 A. Yes.  
 25 Q. I should have taken you to page 422, the very last line,

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1 the question: {E/86/422}  
 2 "Just before we move on, can I ask you, have you  
 3 ever had any conversation with either partner about  
 4 payroll?"  
 5 And the appears that you are said to have given to  
 6 that is at 423: {E/86/423}  
 7 "Yes. The day you suspended Swarandeeep. She talked  
 8 to me basically in a panic. She just said you know  
 9 Mushtaq was here and had done some work, and said that  
 10 I knew about this, which I didn't, and that Mushtaq and  
 11 Karina were on the payroll."  
 12 Do you see that?  
 13 A. I do see it, yes.  
 14 Q. How did this part of the conversation develop with  
 15 Mr McAlindon? Do you recall now?  
 16 A. No, I don't recall how it developed. As I say, a lot of  
 17 it was done in conversation. I remember that that  
 18 happened and I don't -- because it was so -- obviously  
 19 at the time it was -- it had all happened. It had  
 20 happened there and then, so I had -- obviously, that  
 21 whole situation much clearer.  
 22 I don't recall -- when I recall talking to  
 23 Swarandeeep on that Tuesday -- he came in on the Monday  
 24 and then Swarandeeep came in on the Tuesday morning and  
 25 I was actually there.

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1 Q. He was there as well?  
 2 A. Was he? Yes, he was there -- he was there on the Monday  
 3 and then he went and then on the Tuesday, Swarandeeep  
 4 came in and Mr McAlindon was outside, and he was quite  
 5 intimidating.  
 6 Q. He was quite intimidating? Intimidating towards her?  
 7 A. Just generally in his manner. He had all bruised  
 8 knuckles and cuts and stuff.  
 9 Q. Did he?  
 10 A. He was quite big.  
 11 Q. He was there with his colleague, was it r Barnes?  
 12 A. I don't know.  
 13 Q. Did you see him there with somebody else?  
 14 A. I guess so, yes, he wasn't there on his own.  
 15 Q. He wasn't intimidating you, was he? Or maybe he was?  
 16 A. No, he wasn't intimidating me but he was an intimidating  
 17 person.  
 18 Q. Yes.  
 19 A. He didn't look -- he looked intimidating. As I say, he  
 20 had some cuts and stuff and he just looked a bit heavy.  
 21 Q. Your evidence is that on the morning of the Tuesday,  
 22 when Swarandeeep was there, Mr McAlindon was outside and  
 23 he was quite intimidating?  
 24 A. He was a bit scary, yes, and Swarandeeep was frightened.  
 25 Q. She was frightened?

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1 A. Yes.  
 2 Q. When you say she was in a bit of a flap --  
 3 A. She was frightened, he was --  
 4 Q. -- perhaps that was understandable?  
 5 A. Yes.  
 6 Q. Had you had any dealings with Mr McAlindon before that?  
 7 Had you ever seen of him or heard of him?  
 8 No. And what about after that.  
 9 A. No, I don't recall -- I don't even really recall him  
 10 being there after that really. I know you said he has  
 11 taken over the running of the business but I really  
 12 don't remember that and, as I say, I was only there on  
 13 Mondays.  
 14 I think the day I gave my interview had been like  
 15 the first -- so I would have been there a couple of days  
 16 that -- because it was the end of the month, something  
 17 like that, I would have done -- I don't know. I just  
 18 don't remember the timescale.  
 19 Q. Okay. If you just go down this page, 423 at line 200  
 20 {E/86/423} you again say:  
 21 "She was just really flapping around and saying all  
 22 sorts of things."  
 23 A. Yes.  
 24 Q. "But she said to me that you know that Mushtaq has done  
 25 work here and that he and Karina are on the payroll.

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1 I said to her that if she hadn't done anything she had  
 2 nothing to worry about."  
 3 "Question: Did she do anything else at the time that  
 4 you thought was unusual?  
 5 "Answer: She had quite a large armful of various  
 6 different envelopes, she had got most of them from her  
 7 test room, and I am quite sure that she took with her  
 8 the large envelope that had arrived that morning with  
 9 the payroll slips in it."  
 10 As you probably know, Mrs Birdi absolutely denies  
 11 that she took a huge bundle of payroll slips.  
 12 Where did all this come from, your evidence here?  
 13 Was this Mr McAlindon putting this in?  
 14 A. Sorry, can I -- (Pause)  
 15 Can you ask me the question again, please?  
 16 Q. You have got a lot of detail here --  
 17 A. Yes.  
 18 Q. -- about what's inside large envelopes. I don't know  
 19 how you would know what was inside the large envelopes,  
 20 about what she was taking. At 208 you talk about:  
 21 "It was all business paperwork. She did not have it  
 22 with her when she came in but she took it going out."  
 23 So this is all detail --  
 24 A. Hm-mm.  
 25 Q. -- that is put as your words about specific things that

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1 happened that morning. And Ms Birdi denies some of  
 2 these things?  
 3 A. Right, okay.  
 4 Q. For example, when she came to the store that morning,  
 5 she said you were up on the roof?  
 6 A. No.  
 7 Q. There is an area outside --  
 8 A. Yes, before the shop opened, we were up on the roof.  
 9 Q. That's what I mean. And that therefore you wouldn't  
 10 have seen what she was carrying when she walked in?  
 11 A. I was there when Ms Birdi came in that morning. She  
 12 didn't come in before opening time. As far as  
 13 I recall -- well, I know she didn't come in before  
 14 opening time. We were on the shop floor to open the  
 15 shop and so --  
 16 Q. Do you now recall what she had with her or didn't have  
 17 with her?  
 18 A. No, I don't absolutely. I know she went out with more  
 19 than she came in with. That's, you know, (inaudible).  
 20 Q. Okay. Do you know what she had with her when she left?  
 21 Do you know what the paperwork was?  
 22 A. As far as I was aware at the time, yes, she had the  
 23 payroll.  
 24 Q. Who told you that?  
 25 A. I saw it myself.

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1 Q. What did you see?  
 2 A. It used to come in, in an envelope.  
 3 Q. Yes.  
 4 A. That's it, that envelope.  
 5 Q. You didn't see what was inside an envelope?  
 6 A. Well, it was the payroll envelope so I was aware -- as  
 7 I say, I really now, you know, seven years later ...  
 8 Q. Okay.  
 9 A. I think at the time, when I said this, that is  
 10 absolutely what I believed that she had with her.  
 11 Q. Were you led to believe some of this by Mr McAlindon  
 12 himself?  
 13 A. No, I don't think so, no.  
 14 Q. Because he was there, wasn't he, standing outside?  
 15 A. Yes, outside, yes.  
 16 Q. So he would have seen her going in?  
 17 A. Yes.  
 18 Q. He would see have seen her coming out?  
 19 A. I don't yes, maybe he would.  
 20 Q. He was overseeing what she was doing, wasn't he?  
 21 A. He wasn't with her all the time because when we spoke --  
 22 because Ms Birdi was scared because she say, "Would you  
 23 come with me?" and I said I would. She didn't want to  
 24 be on her own.  
 25 Q. That was to be the note-taker in her investigation

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1 meeting?  
 2 A. I guess so, yes.  
 3 Q. A final couple of things I need to ask you about then.  
 4 Over the page, 424. {E/86/424} You make a very serious  
 5 and false allegation of insurance fraud against  
 6 Ms Birdi. This is lines 237 down to 243.  
 7 Now, I do understand that your evidence is that  
 8 Mr McAlindon had really pumped you up by the end of this  
 9 four hours and that you were basically saying all sorts  
 10 of things which you wouldn't necessarily wish to say in  
 11 a more proper environment. But there, you did put your  
 12 name to an allegation that -- line 240:  
 13 "For example she had a car accident, she claimed for  
 14 an injury, but she wasn't injured."  
 15 Now, there were witnesses. There was a medical  
 16 report about the injury and the injury was not simply  
 17 one that couldn't be seen on the x-rays. So when you  
 18 say, "She was not injured", that is an outright lie on  
 19 your part. I'm not making any bones about it.  
 20 A. Okay.  
 21 Q. Why did you say that, or did you say that? Or is this  
 22 just Mr McAlindon?  
 23 A. I did say it, yes, I certainly said it. I didn't  
 24 believe it to be a lie.  
 25 Q. No, so why did you say it?

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1 A. Because he had just made you so cross and wound you up  
 2 and kept saying more and more and more and more.  
 3 Q. Mr McAlindon had?  
 4 A. Yes, and it was over quite a long period of time, you  
 5 know, so you just -- I don't know.  
 6 Q. Okay. Last page, 425, we are almost there. Line 249.  
 7 {E/86/425}  
 8 You refer to an incident where you didn't agree with  
 9 something that she was doing about -- she had docked you  
 10 some pay, it says there. Nim Patel did all the payroll,  
 11 didn't he, not Swarandeeep?  
 12 A. Yes, he sent it in, I believe, yes.  
 13 Q. So how did you know -- I'm not even accepting it's true,  
 14 but how did you know she docked you 15 minutes, because  
 15 that would have been Nim Patel?  
 16 A. He wouldn't have known about it unless he had been told  
 17 to do it.  
 18 Q. Unless?  
 19 A. He had been told.  
 20 Q. I see. So you have just presumed that she told him to  
 21 dock you 15 minutes?  
 22 A. Because he wouldn't have known that she was -- let me  
 23 just read it again. I don't remember this at all.  
 24 Q. Okay, he might have been there on the day. He might  
 25 have known you weren't there at 9 o'clock?

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1 Anyway, I'm not going to go too heavily into that.  
 2 Sorry, you are reading, I don't want to interrupt  
 3 you?  
 4 A. No, it's fine. (Pause)  
 5 Q. So line 256, I need to ask you about this. It's an odd  
 6 thing that you seem to have said there?  
 7 A. Hm-mm.  
 8 Q. But line 256 to 257. You have said that:  
 9 "She has told me repeatedly that he was made to  
 10 resign and sell his shares because he was caught  
 11 stealing."  
 12 A. Yes.  
 13 Q. Were those the precise words that you used to  
 14 Mr McAlindon?  
 15 A. Yes, I think they were, yes.  
 16 Q. Were those the precise words that she used to you?  
 17 A. I think they were, yes.  
 18 Q. "Caught stealing"?  
 19 A. Yes.  
 20 Q. Is it possible that she used some other phrase?  
 21 A. It's possible, but they are the words that I think.  
 22 Q. Okay. And then you say:  
 23 "She even showed me how to do it."  
 24 A. Yes.  
 25 Q. That's an odd thing for you to say in that, apparently,

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1 what he did was simply ring refunds, illegitimate large  
 2 refunds, through the till on the shop floor?  
 3 A. Right, okay.  
 4 Q. Something which -- it wouldn't be necessary to show you  
 5 how to do that, would it?  
 6 A. I -- at the time, as I say, I can't remember exactly.  
 7 There was a process by which apparently he was taking  
 8 money from the till.  
 9 Q. I'm going to suggest to you that she didn't show you how  
 10 to do it because she didn't herself know exactly,  
 11 precisely how to do it. She knew that he had put  
 12 refunds through and taken the cash, but what do you say  
 13 she showed you?  
 14 A. It was a process.  
 15 Q. What process?  
 16 A. I can't remember. It was a process on the till. It  
 17 wasn't exact, because then I could have done it myself,  
 18 but it was, like, you could do this process whereby you  
 19 could put it through in a certain way and it wouldn't  
 20 show that you had taken the money. That was the  
 21 process.  
 22 Q. Right, and she showed you that process on the till?  
 23 A. Not like -- the process was done on the till, yes,  
 24 showed me the process, and where he used to take the  
 25 money out so that it wouldn't show up. It wasn't like

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1 a petty cash withdrawal or something like that.  
 2 Q. No, it wasn't a petty cash withdrawal.  
 3 A. It was kind of a process where -- where he took -- as  
 4 I say, I cannot remember the specifics of...  
 5 Q. Okay. That's fine.  
 6 A. -- of the process.  
 7 Q. My last little line of questions. Did you discuss  
 8 salaries, that is your salary, and bonus at the  
 9 interview with Mr McAlindon?  
 10 A. I don't recall discussing it. It could have been  
 11 discussed but I don't recall it. I do remember saying  
 12 we continuously didn't sort of get a wage rise for quite  
 13 some time. We were told the business wasn't doing very  
 14 well. We had those discussions and then when you are  
 15 shown these bonuses and amounts that other people are  
 16 getting and you think, "Oh, that's ridiculous, we are  
 17 always told we couldn't have a rise".  
 18 Q. Sorry?  
 19 A. We were always being told that we couldn't have a wage  
 20 rise because the business wasn't doing well enough and  
 21 this was going on for quite a long time, and then you  
 22 get shown all these bonuses and pay that other people  
 23 were getting, especially Karina, that didn't work there.  
 24 So we discussed it in that way.  
 25 Q. So Mr McAlindon, as part of his pumping you up, was  
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1 talking about the fact that you didn't get paid properly  
 2 and that these other people were taking the money out of  
 3 the business by salary and bonuses?  
 4 A. Yes.  
 5 Q. Okay. That's him telling you that, telling you all  
 6 those things.  
 7 A. Yes.  
 8 Q. Did you say anything about your salary and bonus?  
 9 A. Well, I would have discussed the fact that we didn't get  
 10 pay rise hardly ever and sometimes we got a bonus system  
 11 and then it started working quite well. So then it was  
 12 changed. So we had those conversations. They are not  
 13 here.  
 14 Q. No, none of it is there.  
 15 A. No, loads of it isn't there.  
 16 Q. Did you tell Mr McAlindon that you were dissatisfied  
 17 with the level of your bonus?  
 18 A. No, because at that time I was working six days a month  
 19 and I was really glad to be able to come and do those  
 20 six days. I loved my job. I liked working at  
 21 Specsavers. I liked working for Nim and Swarandeeep.  
 22 I worked there from 2000 until I had to leave eventually  
 23 because Eric was too poorly. I thoroughly enjoyed my  
 24 job. I actually ended up not doing it for the salary.  
 25 I liked my job.

1 Q. You were working Mondays.  
 2 A. Yes.  
 3 Q. That, we have heard, was not a good day for -- within  
 4 the week it wouldn't be the good turnover day, would it?  
 5 A. No.  
 6 Q. It would probably be the worst?  
 7 A. Yes.  
 8 Q. Yes. So if there was to be a change to the bonus  
 9 structure, which at that stage was done on a monthly  
 10 basis, spread over weeks and everybody shared in the  
 11 pot -- including yourself, you received your share of  
 12 the bonus, didn't you?  
 13 A. Hm-mm.  
 14 Q. If that changed to only the people who were working on  
 15 the days when it hit over 10 per cent of the previous  
 16 year's average, people working on a Monday, like  
 17 yourself, you would suffer, wouldn't you?  
 18 A. Yes, obviously, yes.  
 19 Q. If you go to page 444 in this same bundle, why were you  
 20 paid a bonus of £60? {E/93/444}  
 21 MR POTTS: I hesitate to interrupt my friend but the  
 22 cross-examination is meant to be in relation to the  
 23 hearsay statement. I don't think this cross-examination  
 24 now is.  
 25 MR STUART: It is. I promise you it is. You have heard my  
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1 client's evidence, my Lord, about how the granting of  
 2 this bonus was part of Mr McAlindon's getting this  
 3 witness to give this -- I'm only putting my client's  
 4 case here. I think your Lordship has heard that case  
 5 from Ms Birdi's own mouth. So I'm asking about the  
 6 giving of this --  
 7 MR JUSTICE NUGEE: The inducement, yes. Do carry on,  
 8 Mr Stuart.  
 9 MR STUART: So I just want to know why did you get a £60  
 10 bonus given to you by Ms Slark? Do you recall?  
 11 A. No, I don't recall that at all.  
 12 Q. You must have been pleased to receive it?  
 13 A. I would always have been pleased to receive a bonus but  
 14 I don't remember this specifically. I don't remember  
 15 it.  
 16 Q. Your salary at this stage was only about £300 a month?  
 17 A. Yes.  
 18 Q. So an additional £60 bonus was obviously a windfall for  
 19 you?  
 20 A. Well, I wasn't working for the money. I was working  
 21 because I enjoyed doing it and it was brilliant to be  
 22 able to get out of the house for a while and forget  
 23 about my home worries, and I loved my job. So, you  
 24 know, I don't remember £60. My children would take more  
 25 than that off me for their lunch during the week.

1 I can't remember £60. You know, I'm not being -- I do  
 2 not remember that. It wasn't something that would have  
 3 stuck in my mind.  
 4 Q. Okay. Did you feel that Mrs Slark was a generous  
 5 person?  
 6 A. Yes.  
 7 Q. Yes. What about Mr McAlindon? Did you realise that she  
 8 worked for his department?  
 9 A. I didn't first of all --  
 10 Q. Okay. When --  
 11 A. And then I did, yes, after a while.  
 12 Q. When did you discover that?  
 13 A. Because we used to just chat with Carol and it came up.  
 14 It didn't first of all.  
 15 Q. All right, what she had said to you that she had  
 16 reported to Mr McAlindon?  
 17 A. Yes, she did eventually, yes.  
 18 Q. Yes, okay.  
 19 Yes, just because of one of the last answers you  
 20 gave, at this time, May 2007, in that period up  
 21 to March 2007 when Ms Birdi had been suspended, would it  
 22 be fair to say that you were on good terms with  
 23 Ms Birdi?  
 24 A. I think we were never the best of friends.  
 25 Q. Okay.

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1 A. But I certainly respected her, without any question.  
 2 Q. You did? Okay. She hadn't done anything towards you  
 3 which left you feeling any sort of grievance against her  
 4 at that time?  
 5 A. No.  
 6 Q. Let me make it clear that I can quite understand that  
 7 after this interview and what's happened in the years --  
 8 I think you left in 2009, didn't you? So I'm not  
 9 talking about the period 2007 to 2009, I'm only talking  
 10 about the period prior to this interview and prior to  
 11 Ms Birdi being suspended in March.  
 12 Would you agree that up to that point you had a good  
 13 working relationship --  
 14 A. Yes, definitely.  
 15 Q. -- with Ms Birdi?  
 16 A. Yes, definitely.  
 17 Q. And that, by contrast with Mr McAlindon, who is an  
 18 intimidating person, as you have just said, Ms Birdi is  
 19 not naturally an intimidating person?  
 20 A. Not to me. She certainly was to other people but not to  
 21 me. We had a good working relationship but I know that  
 22 other people were -- but not to me, no. It wasn't  
 23 something I had any issue with at all.  
 24 Q. No. So, line 254 {E/86/425} of your interview  
 25 statement?

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1 A. Which page is it, sorry?  
 2 Q. I know it's going to make you cringe slightly?  
 3 MR JUSTICE NUGEE: Page 425.  
 4 A. Okay.  
 5 MR STUART: Page 425, line 254. Mr McAlindon records you  
 6 saying:  
 7 "She is the nastiest person I know."  
 8 A. Hm-mm.  
 9 Q. That -- I know he had buoyed you up for four hours and  
 10 pumped you to that state where you were prepared to say  
 11 almost anything about her that he suggested, but that's  
 12 very unfair thing to say, isn't it:  
 13 "She is the nastiest person I know."  
 14 Given your answer that you just gave, a very honest  
 15 answer --  
 16 A. Me? She wasn't intimidating to me.  
 17 Q. She wasn't intimidating to you --  
 18 A. We had a good professional relationship.  
 19 Q. -- but she is not the nastiest person you know, is she?  
 20 He got you to say that, didn't he?  
 21 A. No, he didn't get me to say that.  
 22 Q. All right.  
 23 My Lord, I have got no more questions for this  
 24 witness?  
 25 MR JUSTICE NUGEE: Thank you very much. Mr Potts?

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1 MR POTTS: Just a couple of questions, my Lord.  
 2 Re-examination by MR POTTS  
 3 MR POTTS: Could you go back to page 424 {E/86/424}, and  
 4 I think you were asked about lines 237 down to the  
 5 bottom.  
 6 A. Hm-mm.  
 7 Q. And I think that you accepted that that's a reflection  
 8 of what you said?  
 9 A. Hm-mm.  
 10 Q. Could you just look at 239? It says:  
 11 "It is very difficult to try and put it into words  
 12 as you type."  
 13 Do you see that?  
 14 A. Hm-mm.  
 15 Q. When you say, "As you type", who do you mean? Who was  
 16 typing?  
 17 A. I don't remember anybody typing. I don't know.  
 18 Q. You weren't typing in the --  
 19 A. No, I wasn't typing. I don't recall anybody typing.  
 20 There was only me and Mr McAlindon there.  
 21 Q. Do you accept that that's --  
 22 A. It's what it says.  
 23 Q. It's what it says. Do you think it's a reflection of  
 24 what you said?  
 25 A. Well, I suppose so:

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1 " ... as you type."  
 2 I don't recall any typing.  
 3 Q. So the reference to that typing doesn't refresh your  
 4 memory in any way --  
 5 A. No, it doesn't, no.  
 6 Q. Okay. And then, if you go back to page 420 {E/86/420},  
 7 you were taken to line 103:  
 8 "Can I swear? I would say absolutely rubbish!"  
 9 Yes? Mr Stuart took you to that and you said that  
 10 this was in response to an issue that Mr Rehman was  
 11 doing some of your NHS work.  
 12 A. Yes.  
 13 Q. Could I take you back to the previous page, line 66 to  
 14 68. {E/86/419}  
 15 A. Yes.  
 16 Q. So does that reflect your recollection of what was asked  
 17 and discussed in relation to sales ledger and NHS  
 18 debtor?  
 19 A. I guess so. I mean, that -- take that 100, 101, 102, my  
 20 answer, 103:  
 21 "[It's] ... stated that he undertook work during  
 22 business hours. What's your view on that?"  
 23 And I was cross because, like I said, I hadn't seen  
 24 him in store for a good couple of years. So that's my  
 25 answer to that question there:

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1 "He also stated that he undertook work during  
 2 business hours ...  
 3 "Can I swear?"  
 4 So I was cross. No, that's rubbish. I hadn't seen  
 5 him in store for a couple of years.  
 6 So then you have taken me back to 66?  
 7 Q. 66 to 68 {E/86/419}:  
 8 A. "Could he have done any administration work or any other  
 9 form of work relating to sales ledger or NHS debtor...?"  
 10 No, because that was all on the system that we had  
 11 internally.  
 12 Q. Sorry, the only point I'm saying is that I think your  
 13 answer to his Lordship in relation to 103 was that this  
 14 was in response to Mr McAlindon saying that Mr Rehman  
 15 was doing your NHS work.  
 16 A. Well, yes, okay.  
 17 Q. Just going back to line 66 {E/86/419}, I was just trying  
 18 to show you the reference there --  
 19 A. Hm-mm.  
 20 Q. -- to what was said there by Mr McAlindon in relation to  
 21 NHS debtor.  
 22 A. No.  
 23 Q. So do you or do you not remember Mr McAlindon asking you  
 24 about whether Mr Rehman was doing NHS work?  
 25 A. Yes, and I said no, I didn't.

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1 Q. And finally can I take you back, please, to the  
 2 first page. {E/86/418} At the bottom of the page there  
 3 is a squiggle.  
 4 A. Yes.  
 5 Q. Sorry, I didn't mean that in any derogatory way?  
 6 A. That's my signature.  
 7 Q. What is that squiggle?  
 8 A. It takes a long time to write my name out in full.  
 9 That's my signature.  
 10 Q. Who wrote it?  
 11 A. I wrote it.  
 12 Q. At the top of the page there is a reference we have  
 13 seen, 1215, and then there is a number, 1434. Is that  
 14 your handwriting?  
 15 A. No.  
 16 Q. Okay. At the top of the page where it says "Lorraine"  
 17 and there is the name Frondigoun afterwards?  
 18 A. That's my writing.  
 19 Q. Is that your writing?  
 20 A. Yes.  
 21 Q. And then after that there is some numbers, 14.54?  
 22 A. 54, yes.  
 23 Q. Whose handwriting is that?  
 24 A. I don't know. Maybe mine, maybe not mine. I don't know  
 25 whose writing that is. It's in the same pen. It's

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1 probably mine. I can't remember writing it.  
 2 Q. Do you think it might be your writing?  
 3 A. It might be, it might not be, I don't know, but 14.54.  
 4 So that's -- so he has written 1434 in his pen and  
 5 I have written 14.54 there.  
 6 Q. Yes.  
 7 A. Maybe, maybe I did, I don't know.  
 8 Q. Do you remember writing that?  
 9 A. No, I don't.  
 10 Q. Do you remember what the 14.54 might have been if you  
 11 were writing that?  
 12 A. No.  
 13 Q. I have no further questions, my Lord.  
 14 MR JUSTICE NUGEE: Thank you very much, Mrs Frondigoun.  
 15 Thank you for coming.  
 16 A. Thank you.  
 17 MR STUART: Could we be clear that Mrs Frondigoun is  
 18 released? She can go now?  
 19 MR JUSTICE NUGEE: Yes.  
 20 MR STUART: Because she is here on a summons, as your  
 21 Lordship knows. She is not my witness -- she has been  
 22 cross-examined by me.  
 23 MR JUSTICE NUGEE: Yes.  
 24 MR STUART: My Lord, I see the time. Obviously, Mr Rehman  
 25 is going to be much shorter than anticipated and I'm not

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1 going to be as long with the other witnesses.  
 2 MR JUSTICE NUGEE: It's Ms O'Brien, is it?  
 3 MR STUART: Ms O'Brien next.  
 4 MR JUSTICE NUGEE: Yes, she has come this afternoon but you  
 5 don't want to start her now?  
 6 MR STUART: Yes, yes, I would. Look, if -- yes, I'll  
 7 happily --  
 8 MR JUSTICE NUGEE: Well, it's --  
 9 MR STUART: I don't think I'll finish her now.  
 10 MR JUSTICE NUGEE: Well, there's no point in starting her if  
 11 we're not going to finish her.  
 12 MR STUART: No. I don't --  
 13 MR JUSTICE NUGEE: It's just I'm concerned she has been  
 14 asked to come for today and it has been a wasted  
 15 journey.  
 16 MR STUART: My Lord, I could deal with her within half an  
 17 hour.  
 18 MR JUSTICE NUGEE: Half an hour?  
 19 Could you find out from Ms O'Brien whether it's  
 20 inconvenient for her to come back tomorrow. I think, in  
 21 fairness to the witness.  
 22 A. (Inaudible) I'd rather do it today.  
 23 MR STUART: My Lord, as I say, I'm ready to go now and I'll  
 24 cut my cloth to half an hour.  
 25 MR JUSTICE NUGEE: Does that cause you any inconvenience,

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1 Mr Potts. (Pause)  
 2 MR POTTS: My Lord, can I just make ... (Pause)  
 3 No, my Lord.  
 4 I don't know if the transcribers might like a short  
 5 break.  
 6 MR JUSTICE NUGEE: Yes, we'll take a five-minute break.  
 7 I'm doing this on the basis it's really not going to  
 8 take more than half an hour.  
 9 MR STUART: My Lord, as I say, if I've got --  
 10 MR POTTS: My Lord, obviously, I'd --  
 11 MR STUART: -- half an hour --  
 12 MR POTTS: My Lord, is that half an hour allowing me time  
 13 for re-examination as well?  
 14 MR JUSTICE NUGEE: I will allow you time for re-examination.  
 15 MR POTTS: My Lord, I'm sure your Lordship will but ...  
 16 MR JUSTICE NUGEE: We will take a break for five minutes.  
 17 (4.35 pm)  
 18 (Short break)  
 19 (4.38 pm)  
 20 MR POTTS: The only thing from experience of -- someone who  
 21 has experience of this, that if she has gone out of the  
 22 building, she won't be allowed back in by security after  
 23 4.30. I don't know if that's ...  
 24 MR STUART: My Lord, it may be that she was phoning her  
 25 employer, who is not Specsavers.

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1 MR JUSTICE NUGEE: Yes, the mobile reception in this  
 2 building is appalling --  
 3 MR STUART: It's appalling so she may have gone outside.  
 4 MR JUSTICE NUGEE: -- so she may have gone outside to try  
 5 and get some mobile reception, yes. Is she Ms O'Brien  
 6 or Mrs O'Brien?  
 7 MR STUART: I believe she is Miss -- we believe Miss.  
 8 MR JUSTICE NUGEE: While we are waiting, you were trying to  
 9 tell me earlier that you wanted to call Mr Rehman,  
 10 despite the fact that Mr Potts has indicated he doesn't  
 11 wants to cross-examine him. One was the list of  
 12 bonuses. What was the other matter?  
 13 MR STUART: My Lord, you will recall that Ms Birdi was asked  
 14 about two documents. She sent off her grievance on  
 15 a Thursday evening. Specsavers had sent to her a notice  
 16 of a meeting and had asked her to provide -- it's  
 17 E8/2048. {E/662/2048}  
 18 MR POTTS: Ms O'Brien is here.  
 19 MS PATRICE O'BRIEN (affirmed)  
 20 Cross-examination by MR STUART  
 21 MR JUSTICE NUGEE: Do, please, sit down.  
 22 MR STUART: So I should call you Mrs Dando?  
 23 A. Yes.  
 24 Q. Dando. Thank you.  
 25 Mrs Dando, would you, please, be handed bundle E2

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1 and go to page 426 {E/86/426}. Do you have 426?  
 2 A. Yes, I do.  
 3 Q. And if you go through to 431 {E/86/426}, so those  
 4 six pages, there is a record of an interview which has  
 5 got your signature on it, on every page and at the end?  
 6 A. Hm-mm.  
 7 Q. I think you were sitting in court this afternoon, so you  
 8 have heard all Ms Frondigoun's evidence?  
 9 A. Yes, I have.  
 10 Q. So I can possibly take this quite quickly.  
 11 A. Hm-mm.  
 12 Q. This is May 2007, 1 May. You had an interview with  
 13 Mr McAlindon?  
 14 A. Yes.  
 15 Q. Was it just the two of you present?  
 16 A. Yes.  
 17 Q. And were the circumstances in which Mr McAlindon made  
 18 a record of your interview -- were they the same as  
 19 Ms Frondigoun described?  
 20 A. He was just taking notes.  
 21 Q. He was actually taking --  
 22 A. There wasn't anything recorded.  
 23 Q. Was he taking manuscript notes?  
 24 A. Yes.  
 25 Q. With a pen and a pad?

228

1 A. Yes.  
 2 Q. He didn't have a tape recorder with him?  
 3 A. No.  
 4 Q. That he had with Mrs Frondigoun?  
 5 A. No.  
 6 Q. Did he have a computer with him?  
 7 A. Not that I remember. He didn't use one.  
 8 Q. No. And so these are obviously the typed-up notes,  
 9 which is fair enough. I'm sure his handwriting wouldn't  
 10 be the best.  
 11 You have signed this typed-up version. Were you  
 12 shown his manuscript notes at the time?  
 13 A. Yes.  
 14 Q. Did you sign his manuscript notes?  
 15 A. Yes.  
 16 Q. Have you seen them since?  
 17 A. Only what I received through the post -- well, from  
 18 someone who handed me them when I was summonsed.  
 19 Q. Somebody sent you his manuscript notes?  
 20 A. No, when I was given a summons; that's the last time  
 21 I remember seeing them recently.  
 22 Q. The manuscript notes?  
 23 A. Oh --  
 24 Q. The ones that he had written in pen on the pad.  
 25 A. Oh, right, no, I have not seen those since. I think

229

1 I was given back the typed version.  
 2 Q. Absolutely, you have been sent a copy of the typed  
 3 interview, which was the basis of the hearsay notice,  
 4 but I was asking about the manuscript notes --  
 5 A. Oh, sorry.  
 6 Q. Do you see?  
 7 A. Hm-mm.  
 8 Q. So you've confirmed he did make manuscript notes and  
 9 only manuscript notes --  
 10 A. Yes.  
 11 Q. -- on the day?  
 12 A. Yes.  
 13 Q. Did he get you to sign those manuscript notes on the  
 14 day; do you recall?  
 15 A. Possibly, possibly.  
 16 Q. Possibly?  
 17 A. I don't remember -- I remember receiving everything back  
 18 on the day. I don't remember being given, kind of, the  
 19 typed-up notes afterwards.  
 20 Q. Okay. So when did you get the typed-up notes on the  
 21 day? Roughly how long after the interview finished?  
 22 A. It might have been hours.  
 23 Q. A few hours later?  
 24 A. Hm-mm.  
 25 Q. Okay, and did he physically get you to sign the typed-up

230

1 version? Was it Mr McAlindon? Or did he get somebody  
 2 else to do it, or can you not recall?  
 3 A. I don't remember.  
 4 Q. You can't recall who handed you these --  
 5 A. No.  
 6 Q. No. This version isn't signed by him, but you can't  
 7 recall who physically handed you the --  
 8 A. No, I just remember the notes that he had taken --  
 9 I remember him handing them back to me after the  
 10 interview and he asked me to check them, make sure  
 11 everything was correct, and that I could make  
 12 adjustments to anything there.  
 13 Q. The manuscript ones?  
 14 A. Yes.  
 15 Q. In pen?  
 16 A. Yes.  
 17 Q. Right, so he got you to read through the manuscript  
 18 ones --  
 19 A. Yes.  
 20 Q. -- immediately at the end of the interview?  
 21 A. Hm-mm.  
 22 Q. Asked you to read it through, check that it accorded  
 23 with your --  
 24 A. Hm-mm.  
 25 Q. -- what you had said?

231

1 A. Yes.  
 2 Q. And then he took those away, and a few hours later you  
 3 weren't shown this typed-up version?  
 4 A. I assume so. I don't remember anything after. I don't  
 5 remember seeing him after or anything like that.  
 6 Q. So you can't recall who gave you this typed-up version?  
 7 A. No.  
 8 Q. Could it have been a day or two later?  
 9 A. Possibly.  
 10 Q. Possibly. Okay.  
 11 This record purports to show that the interview  
 12 lasted from 2.45 to 3.58. That's an hour and a quarter.  
 13 A. That sounds about right.  
 14 Q. Okay. It's only five pages of double line spacing.  
 15 Ms Frondigoun described how not everything that was said  
 16 during her four hours -- your one and a quarter hours --  
 17 is recorded on the notes. Is that true?  
 18 A. In my case --  
 19 Q. Is that correct?  
 20 A. In my case it seems like everything that was said, the  
 21 questions, are on there.  
 22 Q. So this is everything that was said by him and by you?  
 23 A. Hm-mm.  
 24 Q. When he was asking you questions, was he reading those  
 25 questions?

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1 A. I don't remember. He was writing and he had papers in  
 2 front of him but I don't remember him reading anything.  
 3 Q. Okay. Did he make any comments of the type that  
 4 Mrs Frondigoun described?  
 5 A. Not to me.  
 6 Q. No. So did he express any criticism of either Ms Birdi  
 7 or Mr Rehman?  
 8 A. No, he didn't to me.  
 9 Q. Okay. Can we just be clear: what were your working  
 10 hours at the time?  
 11 A. At the time it was five days a week.  
 12 Q. And you were actually on the shop floor?  
 13 A. Yes.  
 14 Q. Is that right?  
 15 A. Yes, I was.  
 16 Q. You were an optical assistant?  
 17 A. Yes.  
 18 Q. Right. Let's go to the evidence you gave -- and most of  
 19 it is not contentious -- line 34 to 36. This is the  
 20 bottom of page 426. {E/86/426}.  
 21 A. Hm-mm.  
 22 Q.  
 23 "Question: Do you know if he is or is not an  
 24 employee?  
 25 "Answer: I would assume he isn't an employee

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1 because he never came in during working hours and no one  
 2 worked alongside him."  
 3 A. Well, where I was downstairs, I never saw him working in  
 4 working hours --  
 5 Q. No?  
 6 A. -- with anybody.  
 7 Q. No. Who works on the shop floor with you: optical  
 8 assistants?  
 9 A. Yes, the opticians --  
 10 Q. The ophthalmic opticians?  
 11 A. -- I would come into contact with, yes.  
 12 Q. Presumably, Mr Nimesh Patel, the days he was there. He  
 13 was "leading from the front", as they called it. Is  
 14 that right? Nimesh Patel?  
 15 A. Yes, I wouldn't say leading from the front.  
 16 Q. All right, okay. I didn't mean to ...  
 17 And the fact that Mr Rehman wasn't doing those  
 18 things doesn't mean he couldn't be an employee of  
 19 Dartford Visionplus Limited, did it?  
 20 A. No.  
 21 Q. If he was working at home, dealing with the website,  
 22 dealing with the software, dealing with the locums, the  
 23 booking of locums, dealing with the rotas, dealing with  
 24 the admin, just assisting, for no more than a couple of  
 25 hours a week, he could have done that sort of work,

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1 couldn't he --  
 2 A. Possibly.  
 3 Q. -- without being in the store during the working day?  
 4 A. I assume so. I don't know.  
 5 Q. Fine. So I suppose my question then is: you have given  
 6 an answer to the question, "Do you know if he is or is  
 7 not an employee?" You could have said, "I don't know  
 8 that he is and I don't know that he isn't. He might be,  
 9 he might not be. All I know is he wasn't in the store  
 10 when I was there."  
 11 A. Hm-mm.  
 12 Q. You could have said that but you didn't say that. You  
 13 said:  
 14 "I would assume he isn't an employee."  
 15 Is that what Mr McAlindon wanted you to say?  
 16 A. I don't think he was leading with his questions. But  
 17 I assumed he wasn't because I never saw Mushtaq with  
 18 people or -- you know, I was on the shop floor.  
 19 Q. Yes. You heard me going through all the evidence with  
 20 Mrs Frondigoun. You know that he was subsequently found  
 21 to have been an employee, Mushtaq Rehman?  
 22 A. No.  
 23 Q. You didn't know that?  
 24 A. No.  
 25 Q. You didn't know that Specsavers had said he must be put

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1 on the payroll?  
 2 A. The only time I think I knew that Mushtaq was being paid  
 3 anything was during this interview with Mel.  
 4 Q. Okay. But what about after that? After that, did you  
 5 discover that, yes, he was an employee?  
 6 A. No.  
 7 Q. Okay. All right. Swiftly over, 427. {E/86/427} Line  
 8 47 to 48:  
 9 "Question: Have you ever seen him work in the store?  
 10 "Answer: No, never."  
 11 What about interviewing? Were you not aware that he  
 12 was involved in interviewing?  
 13 A. No.  
 14 Q. You weren't aware of it?  
 15 A. No.  
 16 Q. Do you know that a number of staff did say that he was  
 17 involved in interviewing?  
 18 A. No, I wasn't aware of that.  
 19 Q. Line 80. {E/86/428} Perhaps I should have asked you  
 20 about Mars, first of all. 61 to 63 {E/86/427}. You  
 21 deal with Mars. Mrs Frondigoun gave an explanation of  
 22 Mars. Do you agree with her explanation?  
 23 A. Yes.  
 24 Q. Yes.  
 25 MR JUSTICE NUGEE: What does "Mars" stand for? Do you know?

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1 A. Replenishment system -- something something  
2 replenishment system, possibly.  
3 MR STUART: Something to do with merchandising perhaps.  
4 A. Yes, that could be the "M".  
5 Q. All right. Is it true to say that your role is optical  
6 assistance on the floor during the shopping day?  
7 A. Hm-mm.  
8 Q. It was your task to continually ensure that the Mars  
9 system was being complied with, that things were in  
10 their right place, that there was always a set of those  
11 frames in that box whenever anybody wanted to get to  
12 them?  
13 A. Yes, I did Mars with Swarandeeep only because it was  
14 a new thing that had come in but it was everyone's  
15 responsibility to make sure that it was replenished.  
16 Q. Okay.  
17 When you went home in the evening, what time did you  
18 leave the store, roughly?  
19 A. 5.30.  
20 Q. She would still be there, presumably?  
21 A. Occasionally.  
22 Q. And I think you give evidence that he would occasionally  
23 come in the evenings?  
24 A. Yes, hm-mm.  
25 Q. She had a car, didn't she? She had her own car?

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1 A. Yes.  
2 Q. She could drive herself around if she wanted to?  
3 A. Hm-mm.  
4 Q. But on occasion he came to the store in the evening.  
5 You are not able to say, are you, what he did or didn't  
6 do when you weren't there and he was there?  
7 A. No, I am not.  
8 Q. Okay. All right, line 80 we are on to {E/86/428}.  
9 Already beyond half way. 428, line 80. This is  
10 Mr McAlindon:  
11 "Question: I have written to Mushtaq and asked him  
12 what he believes his status to be. Is he an employee or  
13 not? What is your view? Could he be classed as  
14 an employee?  
15 "Answer: If you are saying that it is to do with  
16 Mars, no."  
17 That's your point, that's your arguments, that,  
18 because he wasn't doing Mars on a daily basis, on the  
19 shop floor -- you had never seen him on the shop  
20 floor -- he couldn't be an employee on the basis of his  
21 Mars work.  
22 Did you go on to say, not recorded in his manuscript  
23 notes by Mr McAlindon -- did you go on to say something  
24 like, "But he could be doing other things"?  
25 A. No, my role was on the shop floor. I wouldn't have been

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1 aware of anything else.  
2 Q. Okay, fine. Line 86 {E/86/428}. You actually do  
3 accept, I think -- do you see line 85 to 86:  
4 "She would sometimes phone him to ask him about  
5 computers and things."  
6 This is Swarandeeep would phone Mr Rehman --  
7 A. Yes.  
8 Q. -- to ask about computers "and things". I understand  
9 computers, but what are the "things"? What other things  
10 might she ask him about of a business nature? Do you  
11 recall now or can you not recall?  
12 A. I don't really know what I meant by "things". I think  
13 that was more of, like, a flippant comment.  
14 Q. Okay, fine. Line 94 to 95 {E/86/428}:  
15 "From what I know, he wasn't here during business  
16 hours. Swarandeeep used to say that he coming to pick  
17 her up and he would arrive after we left. No one really  
18 saw him."  
19 That's the answer you have just given me: whatever  
20 he was doing after you had gone, you can't say?  
21 A. Yes.  
22 Q. Fair enough. Were you aware of his work on the website?  
23 A. No.  
24 Q. Were you aware of the website or did that not just come  
25 across your --

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1 A. No, I wasn't aware of --  
2 Q. Not really part of your remit as an optical assistant?  
3 Okay, fine.  
4 Line 103 {E/86/428}. 101 is the question:  
5 "Question: He also stated that he has developed  
6 software for the business. Do you know anything about  
7 that?  
8 "Answer: I know she was trying to set up the  
9 appointments system on the computer but I don't know if  
10 he did anything else because nothing was ever  
11 computerised here and if we needed anything, we have  
12 always used John or IT support."  
13 So you are there acknowledging he could have done  
14 something on the computer system. Is that right?  
15 A. Hm-mm.  
16 Q. But beyond the appointments system development, you  
17 weren't aware of what other computer software  
18 applications, website applications, were being done?  
19 A. No.  
20 Q. Is that fair? Okay.  
21 Did Mr McAlindon tell you what Mr Rehman was doing?  
22 A. No.  
23 Q. Or what Mr Rehman said he was doing?  
24 A. No.  
25 Q. No. All right. Recruitment, bottom of page 428

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1 {E/86/428}, line 106/107.  
 2 "Question: Has he done any staff recruitment, to  
 3 your knowledge?  
 4 "Answer: Yes, it must have been two weeks before  
 5 Swarandeeep was suspended ... "  
 6 That would have been early March 2007; yes? She was  
 7 suspended the third week of March, yes.  
 8 A. Hm-mm.  
 9 Q. "... she did some upstairs and he did some downstairs  
 10 and some people may have been interviewed by Mushtaq who  
 11 are here."  
 12 Mr Hummell, for example, Stephen Hummell? Do you  
 13 know him?  
 14 A. Hm-mm.  
 15 Q. He was interviewed by Mr Rehman, wasn't he?  
 16 A. I don't know.  
 17 Q. You don't? Okay. He could have been?  
 18 A. Possibly. I know I have put it here. I don't remember.  
 19 Q. No. Obviously, at the time you remembered that he was  
 20 involved in interviewing?  
 21 A. Must have.  
 22 Q. Okay. Line 110. {E/86/428} Mr McAlindon asked you:  
 23 "Question: Can you think of any time you were sick  
 24 and could not do Mars or Lorraine for sales ledger, and  
 25 NHS or John for invoicing and Mushtaq stepped in?"

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1 Your answer, over the page, was:  
 2 "Answer: No, I have never seen him in her filling  
 3 in ..."  
 4 Is that meant to be "in here, filling in for  
 5 anyone":  
 6 "No I have never seen him in here"? Is that what  
 7 you mean?  
 8 A. Yes.  
 9 Q. You mean again -- it's the same point.  
 10 A. Yes.  
 11 Q. "I have never seen him actually in store during the  
 12 working day", when you were there?  
 13 A. Hm-mm.  
 14 Q. Fine. Line 116, stocktakes {E/86/429}. You mentioned  
 15 that you had been involved in three stocktakes. So what  
 16 period of time are we dealing with there? How often was  
 17 a stocktake?  
 18 A. Once a year, I think it was.  
 19 Q. Once a year. You had only been there two and a half  
 20 years. Is that right?  
 21 A. Hm-mm.  
 22 Q. So you had said one had fallen half way through your  
 23 first year and then you had had one each year? Okay.  
 24 You are obviously not aware of any historic  
 25 stocktakes, before the ones where you were involved?

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1 A. No.  
 2 Q. And organising locums? What about that? Did you know  
 3 anything about locums?  
 4 A. I assumed it would be Swarandeeep doing it. You would  
 5 get phone calls from an agency and they would ask for  
 6 Swarandeeep.  
 7 Q. Yes, but to the extent that he assisted in the  
 8 paperwork, the admin of that, you just weren't aware of  
 9 it?  
 10 A. No.  
 11 Q. Okay, fine. I don't need to take you to that.  
 12 Then Mr McAlindon moved on to his salary, line 119  
 13 {E/86/429}. What is your view on that as an explanation  
 14 for his salary? Do you see that?  
 15 A. Yes.  
 16 Q. My question to you is: what salary? Because there is no  
 17 record up to that point of Mr McAlindon having told you,  
 18 apart from line 83 -- go back to line 83 {E/86/428}:  
 19 "He has stated that he received a monthly payment of  
 20 £275 for Director Assistant-type duties."  
 21 Do you see that?  
 22 A. Yes.  
 23 Q. Apart from that, there is no record of any mention of  
 24 salary.  
 25 A. Hm-mm.

243

1 Q. So what level of salary did you think Mr McAlindon was  
 2 talking to you about?  
 3 A. The £275.  
 4 Q. Okay. A month?  
 5 A. Yes.  
 6 Q. What was your salary at the time a month, roughly,  
 7 gross?  
 8 A. It would be about £1,000 a month.  
 9 Q. Okay, so about four times what Mr Rehman's -- his  
 10 salary?  
 11 A. Hm-mm.  
 12 Q. Did you consider what sort of salary -- what sort of  
 13 work was being commensurate with that salary, the £275  
 14 a month?  
 15 A. I didn't think he was working at Specsavers to receive  
 16 a salary.  
 17 Q. Okay. But if he was working at home ten hours a month?  
 18 A. It's a small amount.  
 19 Q. 275, a small amount?  
 20 A. Hm-mm.  
 21 Q. Okay, fine. Your answer was:  
 22 "I am quite surprised that he is getting paid for  
 23 doing these things because there was not enough work for  
 24 him to do to get paid."  
 25 You don't know what work there was for him to do?

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1 A. I was under the impression that he was getting paid for  
2 doing the Mars work.  
3 Q. Where did you get that impression from? Not from this  
4 interview?  
5 A. Well, on --  
6 Q. Administrative duties, interviewing, admin, computers,  
7 software, IT support, they have all been mentioned, not  
8 just the Mars work, whatever you mean by that. I don't  
9 even know what you do mean by that. What Mars work?  
10 A. On page 428 {E/86/428}, line 98, the question:  
11 "Question: He states that he was regularly given  
12 administrative work to do such as checking statements,  
13 rotas and Mars under supervision."  
14 That's what I assumed he was earning -- he was  
15 getting paid for.  
16 Q. Yes, but that includes statements, rotas -- that would  
17 be locum rotas and staff rotas -- every month; all the  
18 statements, all the financial statements; the admin.  
19 A. I didn't know that that was something that he was doing  
20 until now but I was given the impression that he was  
21 getting paid for doing Mars work.  
22 Q. What, so Mr McAlindon led you to believe that he was  
23 claiming the 275 just for Mars work?  
24 A. Yes.  
25 Q. Okay.

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1 A. That's how I --  
2 Q. Okay, then I understand your answer. Your answer is:  
3 "Well, if he is saying he is getting 275 just for  
4 Mars work, I am quite surprised."  
5 A. Hm-mm.  
6 Q. All right. Then you moved on to the bonuses. Was he  
7 reading this question to you? You were here when  
8 I asked Mrs Frondigoun about this. He asked her the  
9 identical same question, with the identical same words,  
10 for the next eight lines, from 122 down to 130 of your  
11 bundle. Page 429 {E/86/429}.  
12 A. Hm-mm. They weren't the exact words.  
13 Q. Those weren't the exact words?  
14 A. No.  
15 Q. Was he reading them?  
16 A. I don't recall that he was reading them.  
17 Q. When he was writing his notes, was he writing down what  
18 you were saying?  
19 A. Yes.  
20 Q. Or was he writing down what he was saying?  
21 A. I think he was -- well, I assume he was writing what  
22 I was saying.  
23 Q. Right. So do you think he had a checklist of questions  
24 to ask from.  
25 A. Possibly, but the interview -- the way it flowed, it

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1 didn't seem like they were written-down questions.  
2 Q. Okay, because the way this reads --  
3 A. I know.  
4 Q. -- as typed up is: question, short answer --  
5 A. Yes.  
6 Q. -- question, answer, you know? There is no flow.  
7 A. Yes.  
8 Q. It's just a question and answer all the way down. But  
9 you are saying that's probably slightly misleading?  
10 A. I don't remember being given those exact sums of money,  
11 you know, fluidly.  
12 Q. No.  
13 A. Okay.  
14 Q. So maybe, when he has come to type it up, his record of  
15 the meeting, he has used the manuscript of your answers?  
16 A. Hm-mm.  
17 Q. Yes? But he has used something else to fill in the  
18 questions.  
19 A. He could have.  
20 Q. Well, otherwise, he can't have remembered every single  
21 question, can he, and you don't recall him having a list  
22 that he was reading from?  
23 A. No, I don't remember the questions being so precise as  
24 this.  
25 Q. Like this?

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1 A. No.  
2 Q. Okay.  
3 Let's go back a stage. At the end of the interview  
4 you were asked to check through his notes. Do you  
5 remember you said?  
6 A. Yes.  
7 Q. And you checked them through to check there was nothing  
8 different. When you looked through his notes, his  
9 manuscript, handwritten notes --  
10 A. Hm-mm.  
11 Q. -- were they the notes of your answers?  
12 A. Yes.  
13 Q. Not of all the questions in every little detail?  
14 A. Probably not. I think it's unlikely.  
15 Q. But a few hours later you are presented with a more  
16 composite document, where you have got both the  
17 questions and the answers. Were you asked to check  
18 through that?  
19 A. I think I was just handed them and said, "This is the  
20 typed-up notes, can you sign it?" And I signed it.  
21 Q. Did you bother to read it?  
22 A. I don't remember.  
23 Q. No. It would have taken you a while perhaps to read it  
24 all?  
25 A. Hm-mm.

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1 Q. Perhaps you didn't want to read it -- at that time?  
2 A. I probably just trusted that that's what was said in the  
3 interview.  
4 Q. Okay. So we don't -- you haven't got the manuscript  
5 notes?  
6 A. I think they are in my bag.  
7 Q. The manuscript notes are in your bag?  
8 A. I have got the typed-up notes.  
9 Q. Not the typed-up notes.  
10 A. Sorry.  
11 MR JUSTICE NUGEE: Maybe the word "manuscript" -- when  
12 Mr Stuart says "manuscript", he means handwritten.  
13 A. Okay.  
14 MR STUART: I wonder if you might be getting confused about  
15 the thing I'm just about to come on to, which is, you  
16 had a second investigation meeting, a very much shorter  
17 one, in June 2010.  
18 A. Hm-mm.  
19 Q. If you could be taken to bundle E11, page 3082  
20 {E/942/3082}. This was not Mr McAlindon -- let me make  
21 that absolutely clear.  
22 A. Okay.  
23 Q. This was not Mr McAlindon. You will see that it refers  
24 to "DC" asking some questions and "PO" -- that's you --  
25 answering them. Do you recall these? This is

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1 three years later.  
2 A. Hm-mm.  
3 Q. You had an interview -- or maybe you don't recall this  
4 one at all.  
5 Let me just ask you the question: when you were  
6 talking about Mr McAlindon's interview in 2007 --  
7 A. Yes, this is -- yes.  
8 Q. This typed-up one?  
9 A. Hm-mm.  
10 Q. -- and you told me that he made manuscript notes,  
11 handwritten -- handwritten -- notes, you are not  
12 confusing them with these ones?  
13 A. No.  
14 Q. No? Okay, fine.  
15 MR POTTS: Sorry, I think -- I didn't mean to interrupt.  
16 I'm sorry, I thought you interrupted. Sorry.  
17 MR STUART: I thought the answer was no, you are not  
18 confusing them.  
19 A. No.  
20 Q. So there were some handwritten notes done by  
21 Mr McAlindon, which he showed you at the end of the  
22 meeting. When you came to see the typed-up notes,  
23 either a few hours later or within the next day or  
24 two -- you say you can't recall which -- you don't know  
25 whether you had the manuscript notes also available to

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1 you to check one against the other?  
2 A. No, I don't know.  
3 Q. All right, fine.  
4 Okay, finally then back on the E2 document, page 429  
5 at lines 131 to 135 {E/86/429}, you make an allegation  
6 against Mr Rehman and Swarandeeep that they are  
7 dishonest, and I just wonder whether these are your  
8 words or --  
9 A. Sorry, what line is that?  
10 Q. Sorry, 131 -- let's go back a question. So 127:  
11 "Question: Clearly, in the process of having to ask  
12 you questions relating to these payments to try and  
13 validate the justification of them, you have become  
14 aware of them for the first time. Having tried to  
15 discuss with you and develop an understanding of the  
16 legitimacy of these payments, you may have developed  
17 your own view. Do you have one."  
18 Do you see that?  
19 A. Yes.  
20 Q. That's what Mr McAlindon said the question was.  
21 A. Yes.  
22 Q. Did he speak like that?  
23 A. They are probably not his exact words.  
24 Q. No.  
25 "Answer: I don't think it is genuine, it is not

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1 fair, he is taking the credit for other people's work.  
2 I stayed back to help Swarandeeep loads to sort out the  
3 Mars and replenishment and he wasn't there, and he never  
4 helped with that.  
5 "Question: Do you think his explanation is honest?  
6 "Answer: No, I do not."  
7 The explanation is the explanation that Mr McAlindon  
8 was giving to you of what Mr Rehman was saying. Is that  
9 what you were commenting upon?  
10 A. Yes.  
11 Q. You hadn't actually heard what Mr Rehman actually was  
12 saying?  
13 A. No.  
14 Q. All right, fair enough. Is that what you meant by  
15 "dishonest" or "not honest"?  
16 A. Yes.  
17 Q. Okay. So, over the page, 430 {E/86/430}, you deal with  
18 the incident on the day when she got suspended. Do you  
19 see that, page 430?  
20 A. Yes.  
21 Q. And at line 153 Mr McAlindon asked you:  
22 "Question: Were you aware that she may have been in  
23 the store on the Monday evening?  
24 "Answer: No, I didn't know that. She came in on  
25 the Tuesday."

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1 That's right, isn't it?  
 2 A. To be honest, I don't remember now.  
 3 Q. Okay. Okay, you say at line 156 to 157 {E/86/430}:  
 4 "She didn't mention coming in on Monday night."  
 5 I'm only asking you about this because it is said  
 6 elsewhere that she told you she was coming in on Monday  
 7 night. Your interview notes say no.  
 8 A. I don't think Swarandeeep would have told me.  
 9 Q. Fine. That's all I have to ask you about on that one,  
 10 E2.  
 11 Can we just then flick very briefly to this much  
 12 shorter statement, that you gave in 2010, E11, page  
 13 3082. {E/86/942} Do you remember this interview?  
 14 A. I have not read it since there, like I have this one, so  
 15 I don't remember --  
 16 Q. As you sit here now, do you remember it?  
 17 A. Vaguely.  
 18 Q. Do you remember who was there?  
 19 A. I don't know who DC is.  
 20 Q. You don't even know who DC is?  
 21 A. Not that I can remember.  
 22 Q. Okay. Do you remember how many people were there at the  
 23 interview?  
 24 A. No, I mean, unless I read it, I wouldn't remember what  
 25 it was about.

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1 MR POTTS: My Lord, I'm sorry to interrupt. I think we were  
 2 informed that the hearsay statements had been provided  
 3 to the witnesses in advance -- this is one of the  
 4 two hearsay statements. I'm just not sure if it has  
 5 been, and if it hasn't, I think it may be a little  
 6 unfair to cross-examine on a document --  
 7 MR STUART: It has been, it absolutely has been, because my  
 8 learned friend's instructing solicitors asked about this  
 9 three or four weeks ago in correspondence. Checks and  
 10 double checks were made to ensure that it has been, and  
 11 it has been.  
 12 MR JUSTICE NUGEE: Yes.  
 13 Which page are we looking at, Mr --  
 14 MR STUART: 3082 {E/942/3082}. A two-and a half-page  
 15 manuscript note. Do you see that?  
 16 A. Yes.  
 17 MR JUSTICE NUGEE: When you were asked to come to court for  
 18 the day, did you receive a package of material?  
 19 A. Yes.  
 20 MR JUSTICE NUGEE: Did it include this? Do you remember?  
 21 You presumably looked at what it included.  
 22 A. Yes.  
 23 MR JUSTICE NUGEE: Did it include this? Do you remember?  
 24 A. I have not read it. I remember seeing this one. I have  
 25 read this one.

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1 MR STUART: You mentioned that you had something in your  
 2 bag. Could it be in your bag now?  
 3 A. Possibly. I apologise if I haven't read it.  
 4 MR JUSTICE NUGEE: It doesn't matter. You haven't read it.  
 5 Mr Stuart, you can ask her questions about it.  
 6 I will take account of the fact that she hasn't read it  
 7 and it's not necessarily very easy to read.  
 8 MR STUART: No. Just below the second holepunch on  
 9 page 3082 {E/942/3082}, we are in a section which is  
 10 said to be your words because it says "PO" on the left.  
 11 Do you see over, on the left-hand side?  
 12 A. Yes.  
 13 Q. And just below the second holepunch, the last three and  
 14 a half lines, do you see it reads:  
 15 "She also asked me how many people had left because  
 16 of Kam. I can't believe one director would ask this of  
 17 another director in the store."  
 18 Do you see that? That's what this appears to read  
 19 anyway.  
 20 A. Hm-mm.  
 21 Q. Is that what you had said at the interview?  
 22 A. Yes.  
 23 Q. So you mentioned that alleged conversation. When did  
 24 that conversation take place?  
 25 A. Well, like I said, I barely remember this interview.

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1 Q. Yes.  
 2 A. It says 22 June.  
 3 Q. Okay. Now you sit here today giving your evidence, do  
 4 you remember the conversation with Swarandeeep where she  
 5 asked you how many people had left because of Kam? Do  
 6 you remember that now, as you sit here, or do you not  
 7 recall that either?  
 8 A. She could have.  
 9 Q. She could have. But do you remember?  
 10 A. No.  
 11 Q. All right. I'm not going to ask about it then. Over  
 12 the page, 3083 {E/942/3083}. Just above the  
 13 first holepunch, the question is.  
 14 "Question: Have you ever been asked by Swarandeeep  
 15 about any grievance you may have with Kam?  
 16 "Answer: Yes, she called me into her room a few  
 17 weeks ago ..."  
 18 So this would have been mid-2010?  
 19 A. Okay.  
 20 Q. "... and said others had complaints about Kam ... "  
 21 She may have been referring to Jas and Fatima. Have  
 22 you ever heard of them?  
 23 A. I worked with them shortly.  
 24 Q. Did you know that they had complaints about Kam?  
 25 A. No.

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1 Q. You had no idea that they had made complaints about Kam?  
 2 A. I -- I think at the time I was possibly part-time.  
 3 I worked -- I can't even remember -- they were  
 4 two girls. I can't even remember which one was which.  
 5 I worked with one on Sundays, often. The other, I don't  
 6 remember working with her that often at all. So ...  
 7 Q. The question was: were you aware that they had made  
 8 complaints against Kam?  
 9 A. No.  
 10 Q. You weren't even aware of that?  
 11 A. No.  
 12 Q. It follows from that that Ms Birdi hadn't mentioned that  
 13 to you?  
 14 A. I don't think so.  
 15 Q. Okay:  
 16 " ... others had complaints about Kam and that if  
 17 I had grievances about Kam, I shouldn't feel bad about  
 18 raising them and that I should go to her if I had any."  
 19 Do you see that?  
 20 A. Yes.  
 21 Q. That's what you said in this interview?  
 22 A. Hm-mm.  
 23 Q. Do you recall that conversation with Swarandeeep now, as  
 24 you sit here?  
 25 A. Yes.

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1 Q. What was the context of the conversation? Why were you  
 2 discussing not feeling bad if you needed to make  
 3 a grievance?  
 4 A. Well, I assumed that other people had made a grievance  
 5 or had a complaint against him.  
 6 Q. Yes.  
 7 A. He was new, he did things in a different way, people  
 8 might not have liked that. I understood it as she was  
 9 probably saying, "You can speak to me if you want to."  
 10 Q. Yes. A number of people had left, hadn't they?  
 11 A. Yes.  
 12 Q. And they left in circumstances where they had perhaps  
 13 fallen out with Kam?  
 14 A. I'm aware of one person.  
 15 Q. Who was that?  
 16 A. Denise Kinsella.  
 17 Q. Okay. Was that the context in which Swarandeeep was  
 18 having this conversation with you? To put your mind at  
 19 rest about if you have got a complaint, you can make it?  
 20 A. I wouldn't say it was about anyone in particular.  
 21 Q. Okay. Okay. That's fine.  
 22 My Lord, I see the time. I think I have slightly  
 23 overshot my mark and I apologise.  
 24 MR JUSTICE NUGEE: Have you finished?  
 25 MR STUART: Yes.

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1 MR JUSTICE NUGEE: Thank you very much, Mr Stuart.  
 2 Mr Potts?  
 3 Re-examination by MR POTTS  
 4 MR POTTS: Mrs Dando, just a couple of questions. Could you  
 5 go back to E2?  
 6 A. Yes.  
 7 Q. And at 426. {E/86/426}.  
 8 A. Yes.  
 9 Q. I think you said that you accepted that this was an  
 10 accurate representation of the conversation you had?  
 11 A. Yes.  
 12 Q. Could I ask you to have a look at page 426, lines 15 to  
 13 16, where it says:  
 14 "I'm going to record this conversation  
 15 contemporaneously, which means as we speak. Once it's  
 16 completed, I will print it off and you will have the  
 17 opportunity to read it and sign to agree if it's  
 18 accurate."  
 19 Do you see?  
 20 A. Yes.  
 21 Q. And then can I ask if you could have look at -- at the  
 22 bottom of the page there is some writing, manuscript?  
 23 A. Hm-mm.  
 24 Q. Whose manuscript is that?  
 25 A. On this page?

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1 Q. On that page, yes.  
 2 A. Mine.  
 3 Q. That's your signature?  
 4 A. Yes.  
 5 Q. And at line 27 there is some manuscript?  
 6 A. Hm-mm, yes.  
 7 Q. Whose manuscript is that?  
 8 A. Mine.  
 9 Q. And over the page, 427 {E/86/427}, at line 50, is there  
 10 some manuscript there? Whose manuscript is that?  
 11 A. Mine.  
 12 Q. Does that refresh your memory in any way in relation to  
 13 how the interview was recorded and you dealt with it  
 14 afterwards?  
 15 A. Well, I don't remember him typing. I remember him  
 16 taking notes but obviously, by the look of this,  
 17 I read -- I looked through it and I made amendments.  
 18 Q. Because I think it was put to you that you were asked  
 19 about whether you had bothered to read the statement  
 20 afterwards and you said:  
 21 ""I probably just trusted that that's what was said  
 22 in the interview."  
 23 That was the answer you gave. Having seen those  
 24 manuscript amendments, does that refresh your memory as  
 25 to actually what happened?

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1 A. I probably skim-read it, hm-mm.  
2 Q. Just one moment.  
3 Oh, yes. It was also said that -- you said that you  
4 were led to believe that the salary was just for Mars.  
5 Do you remember that?  
6 A. Yes.  
7 Q. Could you have a look at line 82 to 84, please.  
8 {E/86/428} Do you see that:  
9 "He stated that he does believe he is an employee.  
10 He has stated that he received a monthly salary of £275  
11 for Director Assistant-type duties."  
12 A. Yes.  
13 Q. Then 88 to 89:  
14 "He states he was regularly given administrative  
15 work such as checking statements, rotas and Mars under  
16 supervision."  
17 Do you see that?  
18 A. Yes.  
19 Q. And then 110 to 112:  
20 "He states he did other essential paperwork when  
21 employees were sick. Can you think of any time you were  
22 sick and could not do Mars or Lorraine for Sales Ledger  
23 or NHS, or John for invoicing and Mushtaq stepped in?"  
24 Does that refresh your memory as to the breadth of  
25 the questions that you were asked about Mr Rehman's

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1 work?  
2 A. Yes.  
3 Q. Was it just about Mars?  
4 A. Yes.  
5 Q. I have no further questions.  
6 MR JUSTICE NUGEE: Thank you very much.  
7 Thank you very much for coming and for staying so  
8 late, Mrs Dando.  
9 A. Thank you.  
10 MR JUSTICE NUGEE: Mrs Dando can be released.  
11 MR STUART: Thank you, my Lord.  
12 MR JUSTICE NUGEE: Unless there is anything else --  
13 MR STUART: No, my Lord.  
14 MR JUSTICE NUGEE: 10.30 tomorrow.  
15 (5.22 pm)  
16 (The court adjourned until 10.30 am the following day)  
17  
18  
19  
20  
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22  
23  
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