

OPUS 2

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

Day 10

November 5, 2014

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1 Wednesday, 5 November 2014
 2 (10.30 am)
 3 MR MEL MCALINDON (continued)
 4 Cross-examination by MR STUART (continued)
 5 MR JUSTICE NUGEE: Yes, good morning, Mr Stuart.
 6 MR STUART: Good morning, my Lord.
 7 Mr McAlindon, would you have your witness statement,
 8 so that's bundle C, tab 11, and could you also have E2
 9 and E5.
 10 I had asked you about the sequence of these
 11 interviews, when one finished and one had started,
 12 et cetera. That's where we closed yesterday evening.
 13 Do you recall?
 14 A. Yes.
 15 Q. And your evidence now is that you had the first
 16 interview, as you call it, in which you put to Mr Patel
 17 the allegations and the evidence relating to that, and
 18 at the end of it, or during the course of it, he
 19 admitted it?
 20 A. Correct.
 21 Q. And that interview was then closed?
 22 A. Correct.
 23 Q. You then say you had the second interview, which is the
 24 one in which he makes allegations against Ms Birdi?
 25 A. Correct.

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1 Q. On the interview notes. And only at the end of that did
 2 you then have the initial off the record conversation
 3 with him, which then developed into him agreeing that he
 4 wanted to exit, resign, sell his shares. That was the
 5 third part of the conversation and that's not
 6 documented, as we know, in a recorded interview?
 7 A. I think I said that I haven't got a direct recollection
 8 of which point I discussed in principle what he wanted
 9 to do after he had made his admissions, whether it was
 10 before or after the first -- sorry, the second
 11 interview, but my normal process would be not to have
 12 that discussions until all the conversations had
 13 finished. So I believe it was after the second
 14 interview, but I don't have a direct recollection of it.
 15 Q. I entirely misunderstood your evidence then. Could you
 16 be shown the transcript bundle of literally the last
 17 couple of pages of last night's transcript. Day 9,
 18 page 220, line 2. {Day9/220:2}
 19 Perhaps we should go up so that you can see that
 20 I wasn't getting this question from nowhere. Go to your
 21 last answer on 219, line 22. Your answer was:
 22 {Day9/219:22}
 23 "Answer: No, the second interview was completed
 24 before any discussion was taken in relation to what we
 25 would do next. So all interviews were done, finished,

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1 before we then started on the next stage, which was
 2 discussing how we were going to resolve it.
 3 "Question: Oh, I see. So the offer for a way out
 4 was only made after the second interview?
 5 "Answer: Yes..."
 6 Do you see that?
 7 A. Yes. What I'm saying is that I don't have a very clear
 8 memory of the actual conversations, because it happened
 9 seven years ago. It would be illogical and unusual for
 10 me to have those discussions in between the two
 11 interviews and that's what I have just said. I believe
 12 that I wouldn't have had that conversation until all
 13 conversations had finished, but I don't have a direct
 14 recollection of it.
 15 Q. I see. So the answers that you gave that I just read
 16 out to you aren't perhaps quite accurate. The real
 17 answers are, "I can't recall but it would have been this
 18 way"?
 19 A. Yes, I would accept that.
 20 Q. Okay. All right.
 21 MR JUSTICE NUGEE: I think to be fair to Mr McAlindon,
 22 that's what he says in his very last answer of the day
 23 on page 221: {Day9/221:19}
 24 "Answer: I don't think I would have had those
 25 discussions before this interview but I don't recall it

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1 specifically. But I think it's unlikely."
 2 MR STUART: Yes. So whilst all this is going on, Ms Birdi
 3 is in the store?
 4 A. Yes.
 5 Q. I asked you to have E5 out. Would you go to E5/1308.
 6 {E/354/1308} It's a convenient summary. Just to put
 7 this into context with you, if you go back to page 1306,
 8 {E/354/1306} do you recall in May 2008, Mr Clark
 9 conducted an investigation into Ms Birdi's grievance?
 10 A. Yes.
 11 Q. And that's a meeting with you. Do you see that?
 12 A. I do.
 13 Q. And so "MM" is you?
 14 A. Yes.
 15 Q. Right. So if you go to 1308, between the two
 16 holepunches. {E/354/1308} Just by the first holepunch,
 17 there had been an issue about the change of the date of
 18 the meeting and I think in your witness statement you
 19 fairly say that you actually now can't recall. At
 20 paragraph 22 of your witness statement you say:
 21 {C/11/131}
 22 "I do not recall whether the meeting was re-arranged
 23 or not..."
 24 A. No.
 25 Q. Which is fair enough. But the complaint then goes on --

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1 do you see where it says "SB"? That's Ms Birdi?
 2 A. Yes.
 3 Q. It says: {E/354/1308}
 4 "We were losing a director. I need to support my
 5 staff. MM ..."
 6 That would be you:
 7 "... told me on the day of the meeting, both myself
 8 and NP ..."
 9 That's Mr Patel:
 10 "... had to be there and NP would be confronted for
 11 his actions and we would be shown the evidence. I would
 12 be asked to leave the room they would question NP call
 13 me back to discuss what happened and the next steps
 14 which potentially could have meant there would be nobody
 15 to do any interviewing as one of the issues on the day
 16 I have no way of contacting the interviewees as NP has
 17 the paperwork."
 18 Do you see that?
 19 A. I do.
 20 Q. Do you agree that that is what you told Ms Birdi would
 21 be the process?
 22 A. I don't think that what I said -- what she's saying
 23 would be significantly different to what I was saying.
 24 I would have told her that we needed to meet initially,
 25 all three of us, in order to sign the resolution.

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1 I would also have said to her that we would then go into
 2 an interview with Nimesh Patel, and once the process of
 3 investigating had been discussed and the case had been
 4 dealt with, I would come and see her and explain what
 5 the next steps were.
 6 Q. All right. If you just skip down to your response to
 7 this -- it's in bold where it says "MM"?
 8 A. Yes.
 9 Q. Do you see that? You say:
 10 "I had reason to believe that Nimesh Patel was
 11 attempting to sell his shares and it was necessary to
 12 act as quickly as possible. The timing was not raised
 13 by S Birdi as a major issue at the time."
 14 I think you are there answering the issue of: why
 15 did you have the meeting brought forward or at short
 16 notice, rather than: on the day in question, why did you
 17 wrap everything up without referring back to her. I'm
 18 not sure whether your answer was intended to meet one or
 19 other of those?
 20 A. Would you mind saying that again?
 21 Q. Yes, there are two issues being raised by Ms Birdi. One
 22 is that the interview was supposed to take place on the
 23 27th but got brought forward to the 20th by a text that
 24 she got on the 19th?
 25 A. Yes.

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1 Q. So the day before?
 2 A. Yes.
 3 Q. So it was all rather rushed, from her perspective?
 4 A. Yes.
 5 Q. That's one issue.
 6 A. That's fine.
 7 Q. But the other issue that she has actually raised there,
 8 that I have just read out to you on page 1308, is her
 9 fundamental complaint, which was that she was led to
 10 believe that she would be involved in the
 11 decision-making process once Mr Patel had been
 12 questioned by you privately in an investigation meeting.
 13 A. Erm...
 14 Q. Do you see those two points?
 15 A. I understand those two points.
 16 Q. Right. What you actually say at the bottom of 1308 is:
 17 "I had reason to believe that Nimesh Patel was
 18 acting to sell his shares and it was necessary to act as
 19 quickly as possible."
 20 A. Yes.
 21 Q. What were you there trying to explain?
 22 A. I was trying to explain to Dave Clark that there are
 23 a number of reasons why we would react as quickly as we
 24 could and clearly I had an awareness -- although I don't
 25 have a recollection of it -- that there was an issue in

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1 relation to his share sale, so expediency would be
 2 important. But also the fact that, once we have the
 3 evidence, we need to react as quickly as we can because
 4 the department deals with a number of issues and it's
 5 a very reactive service and you have to fit it in when
 6 you can.
 7 So the availability of people to go and deal with
 8 that case was a priority.
 9 Q. So it was an explanation as to why you had -- if you
 10 had -- brought the interview forward to 20 February?
 11 A. Yes.
 12 Q. Right. So it didn't really address the central point --
 13 you can see the central point again. If you go over the
 14 page at 1309? {E/354/1309}
 15 A. Yes.
 16 Q. Mr Clark says:
 17 "Point 2.
 18 "From grievance letter.
 19 "On 20 February 2007, the day that Mr Patel was
 20 confronted for his stealing and subsequently resigned,
 21 Mr McAlindon acted in a way completely contrary to what
 22 he informed me as to what would happen. Instead of me
 23 being involved in all aspects I was asked to leave the
 24 office at the beginning after signing a form and later
 25 he would not give me any information as to what had

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1 happened except that one of the company cars was being
 2 given to Mr Patel."
 3 That's her complaint, isn't it?
 4 A. I appreciate that.
 5 Q. This must have been at the point where you got her to
 6 sign the resolution that we saw yesterday?
 7 A. No, I think she is referring to afterwards, when we'd
 8 finished dealing with Nimesh Patel.
 9 Q. No, she is not. She is saying that:
 10 "I was asked to leave the office at the beginning
 11 after signing a form..."
 12 The only form you got her to sign was the initial
 13 resolution?
 14 A. Yes.
 15 Q. You got Nimesh Patel to sign and her to sign?
 16 A. Correct, but it would be perfectly reasonable of me to
 17 say, "Could you now leave the room please because I'm
 18 going to interview Nimesh Patel".
 19 You wouldn't involve a director in a situation where
 20 there are usually very high emotions and she has worked
 21 with him for a very long period of time and for her to
 22 be involved in that interview would be -- would put her
 23 in a very difficult position and it would put him in
 24 a very difficult position.
 25 Q. She is not suggesting that she should be involved in the

1 interview. She is not complaining about not being
 2 involved in the interview, is she, Mr McAlindon? What
 3 she is complaining about is that after that, she had no
 4 involvement at all. You didn't go back to her, as you
 5 said you would after you had confronted Mr Patel, and
 6 you wouldn't even give her information as to what had
 7 happened?
 8 A. I don't agree with that. I think the decision-making
 9 process, I believe, and from practice is that -- and
 10 instructions that I've received from the board -- that
 11 the decision-making process of what to do in those
 12 situations is something that I should refer and take
 13 instruction from the SOG board, which is what I did.
 14 When we finished dealing with that, and if that's
 15 what she is referring to, that she wasn't involved in
 16 the decision-making process of how do we come to
 17 a resolution and what resolution should we come to, then
 18 no, she wasn't. But I don't -- my understanding is that
 19 that is something that is not a day-to-day management
 20 issue and it's something that the B shareholder would
 21 deal with. It's my understanding from practices that
 22 the board would make those decisions.
 23 Q. Number 1: do you accept that she was told that after the
 24 formal part, the interviewing, you putting the
 25 allegations, et cetera -- she was told that she wouldn't

1 be allowed to be involved in the discussions with
 2 Mr Patel?
 3 A. No, no, no.
 4 Q. All right. Fine.
 5 A. No, I'm very clear that I told her that we would explain
 6 what would happen after the interview. So at that
 7 stage, when I first spoke to her, I had no understanding
 8 of what the likely outcome would be. Nimesh Patel could
 9 have denied everything or he could have provided
 10 explanations that he felt were justifiable, that may
 11 have been -- that may have pointed towards a different
 12 outcome.
 13 So once it was clear what had happened and we had
 14 dealt with the issue, I said I would come and explain
 15 everything that happened, and I did. I sat with her
 16 afterwards and explained to her what outcome -- what he
 17 had said in the interview, what outcome had been agreed
 18 by the board, and I explained to her everything that he
 19 had admitted and all of the evidence.
 20 So I didn't not involve her. I didn't try to
 21 exclude her. I followed what I have always been
 22 instructed is the right way to deal with that sort of
 23 situation.
 24 Q. No, you only had a conversation with her after the first
 25 interview had finished, the second interview had

1 finished, you had your conversation with him about in
 2 principle, you had gone off and got the deal done, and
 3 then you spoke to her?
 4 A. That's correct.
 5 Q. But the deal done is a deal done for and on behalf of
 6 her company?
 7 A. Correct.
 8 Q. So why did you not involve her in the discussion at that
 9 stage? She is there in the store, isn't she?
 10 A. Correct.
 11 Q. You have told her in advance that you are going to
 12 involve her in that part of the discussion?
 13 A. Correct.
 14 Q. And --
 15 A. I didn't -- I didn't --
 16 Q. -- yet what you do is you go on and you just do the deal
 17 deliberately excluding her from the conversation?
 18 A. No, I didn't deliberately exclude her. I followed what
 19 has been normal practice in all the time that I have
 20 been in the company where that decision-making process
 21 is taken by the board and I take instructions from the
 22 board and we deal with the case and then once the case
 23 has been dealt with, I would then go and explain why we
 24 did what we did and what was going to happen going
 25 forward. And that's how I have always taken my

1 instruction -- I have been given those instructions and
 2 that's what I followed. I didn't deliberately exclude
 3 her from anything.
 4 Q. If you go down 1309 there is a block of text between the
 5 two holepunches. Mr Clark is clarifying the grievance
 6 point. Do you see point 2? He says: {E/354/1309}
 7 "I was given on a number of occasions what would
 8 happen on the day..."
 9 He is obviously quoting from Ms Birdi here?
 10 A. Correct.
 11 Q. "... what would happen on the day when NP was
 12 confronted. I was excluded from the meeting and I was
 13 told LP ..."
 14 That would be Loss Prevention:
 15 "... would come in sit with both of us, confront NP,
 16 shown the evidence then I would be asked to leave the
 17 room. I was excluded from the meeting once I had signed
 18 the suspension letter."
 19 So that's the first element. Do you see that?
 20 A. Yes.
 21 Q. Then Mr Clark said:
 22 "Then you were called back in at the end to be told
 23 the outcome?"
 24 Ms Birdi says:
 25 "I was excluded from the meeting and any decision

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1 making. I was not informed of the exact nature as to
 2 what had been agreed even though assets from the company
 3 had been given to NP despite him being a thief. I was
 4 told we would be prosecuting. The next thing I knew we
 5 were not. The only info MM ..."
 6 That's you:
 7 "... gave me was NP admitting to stealing and that
 8 NP had agreed to sell his shares to SOG and he would be
 9 severely out of pocket. He would not be prosecuted as
 10 it has serious tax implications. I was told that that
 11 was the final decision and that was that."
 12 That is roughly what happened, isn't it?
 13 A. It is roughly what happened.
 14 Q. Okay.
 15 A. But --
 16 Q. Who made the decision not to prosecute him?
 17 A. I think -- I think it is roughly what happened.
 18 However, there are words in there that I wouldn't
 19 necessarily agree with. So, for example:
 20 "I was excluded from the meeting."
 21 I didn't exclude her from anything. I followed the
 22 normal protocols and instructions that I received and at
 23 the end of the job, I called her back. So there wasn't
 24 a deliberate exclusion. She was not in the meeting but
 25 I wouldn't say that she was excluded from the meeting.

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1 Q. Okay, sorry, I thought your explanation was that the
 2 initial part of the meeting which you asked her to leave
 3 was to be the investigation, the Loss Prevention
 4 investigation into Mr Patel and putting allegations to
 5 him?
 6 A. I think it's dealing with him from start to finish.
 7 Q. All right. Your first interview, record of interview,
 8 deals only with that, doesn't it; putting the
 9 allegations to him and getting him to answer them? He
 10 admits them, you conclude the interview?
 11 A. No, the process of dealing with him is not something
 12 that you can predict and very easily stop and start.
 13 The --
 14 Q. No, I'm not suggesting you predicted that. I'm saying
 15 the record of interview that you provided -- we have
 16 been through it?
 17 A. Yes.
 18 Q. That first interview, as you keep calling it?
 19 A. Yes.
 20 Q. That concluded at just before 10 o'clock on your version
 21 of events?
 22 A. Yes.
 23 Q. That interview concluded then?
 24 A. Yes.
 25 Q. That was an interview of the sort at which you say it's

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1 not appropriate to have fellow members of staff present?
 2 A. No.
 3 Q. You had asked her to leave the room for you to conduct
 4 that interview?
 5 A. Yes.
 6 Q. You then have your second interview which, again, you
 7 say that arose during the course of the first
 8 interview -- he started to make allegations of some sort
 9 against her?
 10 A. Yes.
 11 Q. And plainly you didn't think it appropriate to call her
 12 back in to be present whilst he was giving those
 13 allegations against her?
 14 A. Absolutely.
 15 Q. That I understand.
 16 A. Absolutely.
 17 Q. But on your version of events, we then have something
 18 else. Not an interview that you have documented?
 19 A. No.
 20 Q. But a discussion about him exiting the business?
 21 A. Correct.
 22 Q. That element, that third element, the discussion
 23 element, on what basis do you say it was not appropriate
 24 for her to be involved in that element? It's not an
 25 interview; it's just a discussion?

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1 A. Because I believed that the decision-making, by the
 2 instructions that I have always been given, that that
 3 decision-making process is something that I should take
 4 to the SOG board and ask them what to do. It's not
 5 something that you would sit down collectively with
 6 people and necessarily have a debate with.
 7 It was discussed with the board as to what was the
 8 best outcome for both Swarandeeep and the SOG board --
 9 sorry, and the -- and for Dartford Specsavers, and the
 10 board took that decision that that was the best outcome
 11 for Swarandeeep and I think that --
 12 Q. When did you have that discussion with the board?
 13 A. I had the discussion with -- this is the situation that
 14 we are faced with. He is making -- he has admitted
 15 everything. Do I put to him, you know -- you could have
 16 taken either road, either the commercially best in my
 17 opinion and the opinion of others, the best route, which
 18 would be to put into his mind the opportunity of
 19 resigning and resolving the issue by selling his shares
 20 and resolving it --
 21 Q. I hesitate to interrupt you, Mr McAlindon, but we are
 22 going to try to get through your evidence relatively
 23 quickly. The question was: when did you have that
 24 discussion with the board. You have given a ten line
 25 answer which is about the nature of the discussion which

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1 you are now alleging that you had. The simple question
 2 that I would like you to answer is: when did you have
 3 this discussion with the board that you are now
 4 asserting you had?
 5 A. Erm, I think after the first interview I went out and
 6 phoned Derek Dyson on the balcony, after he had made his
 7 initial discussions, and it was at that time that
 8 I'd explained the case in principle to Derek and said to
 9 him, "What would you like me to do? The guy is
 10 admitting everything, it's a fairly open case."
 11 And we discussed it and Derek said, "Well, if he
 12 chooses to resign, we would do it on the following
 13 terms, and if he chooses not to resign, follow the
 14 normal process, which would be complete your
 15 investigation, submit a file to the board, and we will
 16 then instigate disciplinary proceedings". But, from his
 17 point of view, if the individual chose to resign, that
 18 was commercially a better route to take because it
 19 involved protracted disciplinary processes and then
 20 subsequent arbitration on share values. So -- during
 21 which period he would have continued to have been
 22 employed and up to the point he was dismissed, when he
 23 would have continued after that being a shareholder. So
 24 throughout all of that, he would have continued to be
 25 able to take money out the business, which I don't think

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1 is fair.
 2 So if he took that other option, actually, that's
 3 very much in Swarandeeep's interests because it's far --
 4 she doesn't lose as much money.
 5 So I don't think anything untoward has happened.
 6 I think people have acted in Swarandeeep and Dartford's
 7 best interests.
 8 Q. Mr McAlindon, I'm going to suggest to you that you are
 9 just simply making up your evidence as you go along.
 10 You seem to have failed to recall the evidence that you
 11 gave to his Lordship yesterday. If you go to day 9,
 12 page 207, line 5: {Day9/207:5}
 13 "Question: You can't even recall whether you had
 14 this conversation with Mr Dyson on that day or some
 15 previous day?
 16 "Answer: No, that's correct..."
 17 Do you remember? Your evidence yesterday was you
 18 couldn't actually recall whether you had spoken to
 19 Mr Dyson or not. Now, today, you are giving detailed
 20 evidence about a conversation you say took place on
 21 a balcony, between the first interview and the second
 22 interview, you have now got it pitched. You are making
 23 it up, Mr McAlindon, aren't you?
 24 A. Sorry, can I just read the text in context? (Pause)
 25 I think what I'm saying in that answer is that

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1 I have these types of conversations with Derek fairly
 2 frequently, not just necessarily in relation to
 3 Dartford, but what I'm explaining is that I understand
 4 his thought processes and I understand that his view
 5 would have been an expedient solution would be good.
 6 I don't think that's ...
 7 Q. Mr McAlindon, the question was: {Day9/207:5}
 8 "Question: You can't even recall whether you had
 9 that conversation with Mr Dyson on that day or some
 10 previous day.
 11 "Answer: No, that's correct, but I had these
 12 discussions with him regularly, and I know, you know,
 13 how people feel about it."
 14 So your evidence yesterday was that you couldn't
 15 recall -- you couldn't actually recall having the
 16 conversation with Mr Dyson, but it was the sort of
 17 conversation you had had on other occasions and you knew
 18 his thoughts.
 19 Now, this morning, your evidence is that after the
 20 first interview -- so this would be about just before
 21 10 o'clock -- you went out on to the balcony, as you put
 22 it, and had a detailed conversation, which you then set
 23 out, with Mr Dyson?
 24 MR POTTS: Just to be fair to the witness, the transcript
 25 from yesterday, at the bottom of page 207, 22 onwards,

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1 there is a further answer there, which I think it might
 2 be worth considering for completeness. {Day9/207:22}
 3 MR STUART: My Lord, I'm sure Mr Potts is able to re-examine
 4 as he wishes. The fact that Mr McAlindon's version of
 5 events for the day has changed, by my reckoning five
 6 times, isn't in my submission something that I need to
 7 go over and over. I have put to him his clear evidence
 8 regarding the --
 9 MR JUSTICE NUGEE: Well, I can see what's on the transcript.
 10 MR STUART: You can, absolutely.
 11 MR JUSTICE NUGEE: And I can see the answer he has given to
 12 you this morning.
 13 MR STUART: All right.
 14 Mr McAlindon, just reverting finally then to
 15 page 1310. {E/354/1310} Your answer to all of this at
 16 the grievance meeting -- do you see in bold it has got
 17 "MM"? Do you see that?
 18 A. I do.
 19 Q. So at the top of the page 1310, Ms Birdi has sort of
 20 again summarised her complaint, which is:
 21 "It was, he basically ignored requests for info.
 22 All I got was that NP would be severely out of pocket
 23 and he was given the company car. I did ask how much
 24 money NP had stolen and I did ask if he had admitted to
 25 other credit card refunds on bank statements and they

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1 did not respond except to say they had not asked about
 2 the suspected visa card thefts."
 3 Do you see that?
 4 A. I do.
 5 Q. "I do strongly believe if I had been more aggressive or
 6 a man I would have got more information out of him."
 7 That's out of you, do you see?
 8 A. I do.
 9 Q. And your answer is:
 10 "Normal LP ..."
 11 That's Loss Prevention:
 12 "... procedures were followed throughout, S Birdi
 13 was not treated in any way differently to another
 14 Director in this type of situation. It is not our
 15 policy to include a Director in an LP interview..."
 16 That's a Loss Prevention interview:
 17 "... with a partner director."
 18 A. Yes.
 19 Q. "I was unable to give S Birdi any details after the
 20 interview as allegations had been made against both her
 21 and her husband."
 22 A. Yes.
 23 Q. That's the response you gave Mr Clark?
 24 A. It is, but there is -- again, I have no recollection of
 25 the subsequent conversations but there is absolutely no

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1 reason why in those circumstances I would not have given
 2 her a detailed explanation and shown her all of the
 3 evidence and explained to her in detail what his
 4 admissions were and explained to her in detail what had
 5 been agreed and how the issue would have been settled,
 6 both in terms of her shares and the fact that somebody
 7 in accounts would account for the money, both in terms
 8 of the investigation and in terms of the money that was
 9 stolen.
 10 There was no reason why I would have withheld that
 11 from her. It would be illogical to do so regardless of
 12 the allegations that Mr Nimesh Patel was making.
 13 Q. No, Mr McAlindon, although you fairly say you have no
 14 recollection, she has a recollection. She has set it
 15 out there for you and her assertion is that when she
 16 asked you what had happened, you limited it to what you
 17 said there. So you didn't go through in detail with her
 18 all of the evidence, all of the allegations and all of
 19 the admissions?
 20 A. I don't agree with that at all.
 21 Q. This was your opportunity to tell Mr Clark what was your
 22 answer to her complaints and you did not say to
 23 Mr Clark, "But, David, I told her all these things on
 24 the day"?
 25 A. I answered the question and he didn't come back with

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1 another question. I mean, I just answered his
 2 questions.
 3 Q. Yes, and the answer you gave did not mention or suggest
 4 that you had in fact involved her in these very
 5 important discussions or in providing her with
 6 information in detail?
 7 A. I don't know why. I mean, I have no recollection of the
 8 interview, other than its vaguest terms, and what I said
 9 was what I said. I don't dispute that's what I said but
 10 why I didn't say more, I don't know, because I don't
 11 recollect my thinking at the time of that interview.
 12 Q. I suggest to you the reason you didn't say any more was
 13 because you were deliberately trying to exclude her from
 14 the process at this point?
 15 A. I don't agree with that at all.
 16 Q. You and Mr Dyson had decided, either on the day or a few
 17 days previously, what you were going to do, and what you
 18 were going to do was to get Mr Patel's shares for
 19 £55,000?
 20 A. I don't agree with that at all and further to that, had
 21 Swarandeeep given an indication that she wasn't happy
 22 with the outcome and she wanted to take it further and
 23 she wanted it to go to the police and have her pound of
 24 flesh, again, not my decision to make, but I would have
 25 referred her to the legal department or to the board and

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1 I would have put that in writing for her. You know,
 2 it's not my decision to make but I would have raised
 3 those objections for somebody to consider. But those
 4 objections were not raised with me.
 5 Q. Surely the issue of whether the company -- the employer
 6 company and the store company that's running the
 7 business whose money was stolen -- the decision as to
 8 whether those two companies should report their director
 9 for his serious crimes, that was a decision for the
 10 board of Dartford Visionplus and Dartford Specsavers?
 11 A. I don't know the legalities of that; I took my
 12 instructions from the board.
 13 Q. Of?
 14 A. Of the SOG board, from Derek Dyson.
 15 Q. Okay. At some stage you became concerned that Ms Birdi
 16 was basically asking too many questions and getting
 17 beyond herself, wasn't she?
 18 A. I believe that at the time I had a series of phone calls
 19 from people and I got back in contact, but I really have
 20 no recollection, given the passage of time, as to the
 21 detail of those conversations. But I know that she was
 22 asking a lot of questions and people were trying to
 23 respond to them.
 24 Q. Well, no, you wanted her to back off, didn't you? You
 25 wanted her to keep quiet. "Quieten down", I think was

25

1 the way you put it?
 2 A. No, I had explained to her that if she had issues with
 3 the decision-making that had gone on, the right way to
 4 do that was to put that in writing to the centre and
 5 what wasn't the right thing to do was to then -- I think
 6 at the time she wanted her husband, Mushtaq, to become
 7 the partner, and there is a process for people becoming
 8 partners, which is a stage -- they have to go through
 9 the stage 1 process and be approved and all the rest of
 10 it. And there was a lot of phone calls going into
 11 business transfer at the time and I had explained to her
 12 repeatedly that, you know, "If that's what you want,
 13 that's fine, but there is a process for doing that and
 14 you have to follow that process. There is no point
 15 phoning people constantly in different departments,
 16 because that's not where those issues are dealt with.
 17 They are dealt with in that other format and that's
 18 where you need to go."
 19 So if Mushtaq wants to become a partner of Dartford,
 20 he should go through the stage 1 process, because that's
 21 what I was being told by other people: "Look, for
 22 goodness sakes, there is a process to follow and she has
 23 to follow it".

24 So I was trying to get her to understand that and if
 25 necessary, you know, follow those processes, but, you

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1 know, the calls were frequent and difficult for people
 2 because everybody was repeatedly explaining this.
 3 Q. If you go to E2, page 308, we can pick up the timescale.
 4 {E/45.1/308} This is now 22 February, so two days later.
 5 This is a business transfer department memo, which
 6 purports to set out what the deal is, okay?
 7 A. Yes.
 8 Q. If you go to the second holepunch, we see the deal
 9 involves Mr Patel selling SOG 50 shares for £55,000 in
 10 total; the completion date was 20 February:
 11 "Company agrees to gift leased Mercedes to NP.
 12 "Company agrees to repay NP Directors loan."
 13 Do you see that?
 14 A. I see it.
 15 Q. You don't explain anywhere in your witness statement how
 16 and when you convey to SOG what deal you have actually
 17 done with Mr Patel?
 18 A. No.
 19 Q. So when did you convey to SOG the deal that you actually
 20 had done with Mr Patel on 20 February?
 21 A. Having got agreement in principle, having spoken to
 22 Derek, I would have calculated the costs of the
 23 investigation and the money stolen and I would have
 24 either phoned Michael Ryan in business transfer or
 25 Cristina del Grazia or Alison Anderson -- I don't know

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1 who was there at the time, but both of those people work
 2 in the legal department. And I would have said that,
 3 you know, "In principle, it's fair value for the shares.
 4 Less the costs and the money stolen, those are the
 5 figures. Can somebody take that into account and
 6 process?"
 7 I'm not involved in that, I don't understand how it
 8 works, but one or the other would have sorted that out.
 9 At that time, when we were with Nimesh, he expressed
 10 a desire to keep the company car. Whether that be to
 11 buy it or whatever, he wanted to keep the car. So as
 12 well as giving whoever I gave those numbers -- and
 13 I don't recall who I gave those numbers to -- I also
 14 told them that he wanted to keep the company car.
 15 So people in other areas made the decisions around
 16 that. I don't recognise this document. I wasn't
 17 involved in any of the processes surrounding it. But
 18 I fed that information in and my understanding was that,
 19 one way or the other, somewhere in the accounts, that
 20 was accounted for.
 21 Q. Did they come back to you and say, "Right, these are the
 22 terms that you can agree with him"?
 23 A. They came back to me with the documents that were
 24 emailed to me that I was to get him to sign, which were
 25 the share transfer form and the -- and another document.

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1 So I just got the documents back saying that this had
2 been taken into account in these equations; "This is
3 what you need to get him to sign".
4 Q. Those documents don't mention anything other than
5 purchasing the shares for £55,000?
6 A. I know, but I don't know anything about it. I got given
7 the documents back having fed that information into it.
8 That information, as I understood it, had been taken
9 into account in whatever calculations they went through,
10 and I was sent the documents back and said, "This is how
11 we are going to deal with it". They would deal with the
12 accounting side of it, which is over in Guernsey, and
13 I was to get him to sign those documents. So that's all
14 I know about it.
15 Q. Okay. But the value of the shares was £70,000. You say
16 that you think you got that impression from Mr Ryan?
17 A. I'd accept -- I have no reason to dispute that.
18 Q. Right. Your costs were £15,600, the thefts were £4,100
19 and something. So that would be over £20,000?
20 A. Yes.
21 Q. To be deducted from £70,000. So the purchase price, if
22 that was just the deal, would be £50,000.
23 A. Erm...
24 Q. He should get £50,000 --
25 A. I don't --

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1 Q. -- not £55,000?
2 A. Okay. But I don't understand how -- there was a loan
3 that he had an entitlement to, as I understand it.
4 That's for them to sort out, those figures, and I don't
5 know what entitlements he had, whether he had an
6 entitlement to a loan to be repaid or whether he had
7 entitlement to, you know, distributions. That is what
8 the business transfer department deal with. So when
9 they --
10 Q. But they didn't have any --
11 A. -- when they came back to me with a figure, my
12 understanding was that they had taken into account all
13 of his entitlements, his actual share value, what had
14 been stolen, and had come up with a figure and -- but
15 that had taken into account all of those issues. That
16 is all I know.
17 And from that I got the paperwork back and said,
18 "That's the paperwork you need to get him to sign", and
19 that's really as far as my understanding goes. I have
20 no understanding of share valuations or loans or
21 dividend entitlements or whatever. It's not something
22 I get involved with. But those people are the experts
23 in that field and, having fed them the information,
24 I believed that they had taken those issues into
25 account.

30

1 Q. I'm going to suggest to you that as at 20 February,
2 these specific terms hadn't actually been discussed by
3 you with Mr Patel and agreed at all; these are just
4 things that SOG arranged with Mr Patel afterwards?
5 MR JUSTICE NUGEE: I think you should be more specific about
6 "these specific terms".
7 MR STUART: So terms relating to the company -- that is
8 Dartford Visionplus or Specsavers Limited -- gifting
9 Mr Patel his Mercedes.
10 A. I have no knowledge of that at all.
11 Q. So do you know how it came about that he got his
12 Mercedes?
13 A. It came about because whilst we were discussing his
14 settlement, what he said was he wanted to keep the car.
15 So I told whoever I told, Business Transfer or Legal,
16 that that was the case and these are the factors that
17 need to be considered in the equation.
18 So having provided them with the information that
19 they needed, they would do their job and I would get
20 a set of forms back to fill in. And that's what I did.
21 Q. So you did discuss with him that he would get his car as
22 well as the £55,000?
23 A. No, I didn't. He expressed the view that he wanted to
24 keep his car. It has nothing to do with me. I passed
25 that information on and somebody somewhere sorted that

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1 out. But I didn't say he would get anything because
2 I didn't know the share value; I didn't know whether he
3 was entitled to distributions; I didn't know whether or
4 not he had a loan that he would be entitled to have
5 repaid, and I didn't know whether, you know, anybody --
6 how they would sort out the car, whether they wrote
7 a cheque for it or gifted it.
8 It's not my decision-making and I wasn't involved in
9 any of it and I have no knowledge of it. I simply
10 agreed the terms in principle, which was fair value,
11 less the costs and less the money that he stole, and
12 somehow he wanted the car taking into account. But
13 I didn't suggest to him that he would get anything.
14 Q. But what seems to have resulted from your discussion,
15 which -- you thought the deal was he gets the fair
16 value, which we know SOG say is £70,000, minus the money
17 he stole, four-and-a-bit thousand pounds, and minus the
18 £15,500 worth of --
19 A. The only thing I can say is, having fed that information
20 into the centre, I got a set of forms back that I was
21 instructed to get him to sign, and I got him to sign
22 those documents.
23 Q. That's right and under that document, the only
24 transaction is, he sells his shares for £55,000. There
25 is no mention of car; there is no mention of director's

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1 loan; there is no mention of theft monies; there is no
 2 mention of your investigation costs. It's just
 3 a straightforward share purchase: £55,000 for 50 shares?
 4 A. It is.
 5 Q. That's the only form you got him to sign?
 6 A. Correct.
 7 Q. But somehow, as part of the deal, he gets the £55,000
 8 but he also gets his car. You know that happened in the
 9 end?
 10 A. I don't -- I believe so. I don't know.
 11 Q. He doesn't pay the company back its stolen money. You
 12 know that that happened?
 13 A. No, I don't know how they accounted for that in the
 14 centre, but my understanding is that they accounted for
 15 that in the calculations that they have made and how
 16 they accounted for it in the accounts.
 17 MR JUSTICE NUGEE: Do you have any recollection of being
 18 told how the £55,000 was calculated?
 19 A. No.
 20 MR JUSTICE NUGEE: No. But you had told the centre, whoever
 21 it was, that your costs were £15,600 and the amount that
 22 you had agreed that he had admitted stealing was £4,100?
 23 A. Correct.
 24 MR JUSTICE NUGEE: Did you assume that that had been taken
 25 into account in reaching the £55,000 figure?

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1 A. Yes, yes.
 2 MR JUSTICE NUGEE: But you weren't ever told how it had been
 3 calculated or how they had got to that figure?
 4 A. No.
 5 MR JUSTICE NUGEE: You were just given the figure?
 6 A. The calculations and the accounting processes are quite
 7 complicated and with all the best will in the world,
 8 I wouldn't have understood them.
 9 MR STUART: All right. We will move on. Page 312.
 10 {E/48/312} There is just a short matter I need to ask
 11 you about. This is you sending on to SOG some more of
 12 Mr Barnes's covert invoices?
 13 A. Yes.
 14 Q. And in answer yesterday, you said that these invoices
 15 would have been sent to you by Mr Barnes to your home
 16 address, paper copies; you would have then scanned them
 17 in and sent them on to SOG. Do you remember that answer
 18 yesterday?
 19 A. I do.
 20 Q. These documents that you have attached here are ".xls"
 21 documents, aren't they?
 22 A. They are.
 23 Q. Do you know what that is?
 24 A. Excel spreadsheet.
 25 Q. That's right. So, it looks like you didn't have these

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1 documents as a PDF scanned-in document; it looks like
 2 either they had been emailed to you, or actually, you
 3 yourself created them on your own computer and then
 4 emailed them off to SOG. I'm going to suggest to you
 5 it's the latter?
 6 A. I have no recollection.
 7 Q. Do you have any explanation as to how you are able to
 8 email xls invoices to SOG in circumstances where,
 9 according to you, you have only ever received paper
 10 copies?
 11 A. Well, I meet with Phil Barnes on a regular basis.
 12 I don't know whether or not he -- where those documents
 13 were created, but we work together regularly. So
 14 I don't know where we were the following day. I have no
 15 idea. It's too long ago.
 16 Q. Okay. Moving on, 317, {E/49/317} we can see what your
 17 actual attitude towards Ms Birdi was at this time. This
 18 is 27 February. Do you remember? You emailed
 19 Derek Dyson. Do you see that?
 20 A. Yes.
 21 Q. "I have spoken to Nimesh and he is going to arrange for
 22 an email to be sent from his wife resigning with
 23 immediate effect so that we can process her as a leaver.
 24 I have also spoken to Swarandeeep. She was told the
 25 employees that Nimesh was forced to resign."

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1 Do you see that?
 2 A. I do.
 3 Q. Is it fair to say that, given that you wrote that at the
 4 time, 27 February, that that is likely to be what
 5 Swarandeeep did tell you?
 6 A. Yes.
 7 Q. "I have told her that her actions are a breach of
 8 confidentiality..."
 9 What confidentiality?
 10 A. Erm, a -- we had reached an agreement with
 11 Nimesh Patel --
 12 Q. You had. Is there a confidentiality clause?
 13 A. No.
 14 Q. No.
 15 A. No, but I felt that I had explained to her that there is
 16 a degree of a trade-off between somebody resigning and
 17 not being found guilty through a disciplinary process,
 18 and that is a good outcome for her. And because of
 19 that, the normal -- my normal instruction, it would be
 20 that you would tell somebody -- if you wanted to tell
 21 the employees why that individual had left, you would
 22 say they have resigned to go on to other things. You
 23 wouldn't give specific details because they haven't gone
 24 through a disciplinary process to be found guilty of
 25 gross misconduct.

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1 So my understanding from the advice that I had been
 2 given was that we should tell the employees that
 3 Nimesh Patel had phoned me up subsequently and
 4 complained that the staff had been told of something to
 5 the contrary.
 6 But having explained it to Swarandeeep, I felt that
 7 if she disagreed with that and she wanted to tell all
 8 the staff or anybody else that Nimesh was thief, that
 9 she should come and discuss it before she did it,
 10 because I had given her a very clear instruction that
 11 she shouldn't do that.
 12 Q. Let's break that down. She has told employees that
 13 Nimesh was forced to resign?
 14 A. Yes.
 15 Q. He resigned after admitting theft?
 16 A. Correct.
 17 Q. Those are the circumstances of this particular case, not
 18 your hypotheticals of other cases.
 19 In this particular case, he admitted to the company,
 20 acting through you as the investigator authorised by the
 21 board of the company, Dartford Visionplus Limited --
 22 during the investigation process, he had admitted the
 23 thefts, hadn't he?
 24 A. Yes.
 25 Q. He was then, you say, given the option to resign.

1 That's right, isn't it?
 2 A. Yes.
 3 Q. The alternative being, "If you don't resign, we are
 4 going to continue with this process, which could involve
 5 you being reported to the police, GOC, et cetera"?
 6 A. Correct.
 7 Q. Is it the use of the words "was forced"; is that what
 8 you didn't like? He had resigned. He was guilty. Are
 9 you suggesting she shouldn't have told the staff that he
 10 was forced to resign?
 11 A. Yes, my -- the instructions that I have always been
 12 given in these cases, from advice with the legal team,
 13 is that in these circumstances you should be very
 14 careful what you say, because he hasn't gone through
 15 a disciplinary process and you should simply tell the
 16 employees that he has gone on to do other things or
 17 whatever. But you shouldn't give details of, you know,
 18 the investigations that went on, that ended up in the
 19 situation that we were in.
 20 So that's always been the advice that I have been
 21 given and I explained that to Swarandeeep.
 22 Q. When did you explain this to her, prior to this --
 23 A. After all the documents had been signed and Nimesh had
 24 gone, I met up with Swarandeeep and we had a discussion
 25 about all of the outcome, and at that time I explained

1 to her -- I believe she asked me, you know, what she
 2 should tell people, and I explained it to her and
 3 I explained the reasons why.
 4 Q. You said she wasn't to say that he had been dismissed,
 5 because he hadn't been dismissed?
 6 A. Correct.
 7 Q. You said she wasn't to say that he had been found guilty
 8 of theft, because he hadn't been found guilty of
 9 anything?
 10 A. Correct.
 11 Q. But you didn't tell her that she couldn't say he was
 12 forced to resign, because he had actually resigned --
 13 A. Although I have --
 14 Q. -- and he had effectively been forced to resign?
 15 A. Although I have put "forced to resign" in this email, my
 16 understanding was that she had explained to employees
 17 that he had been stealing. So, yes, these are my words
 18 in this email, but my understanding was that she had
 19 gone further than that.
 20 Q. Okay. Well, he had been stealing and he had admitted it
 21 to the company?
 22 A. He had, absolutely.
 23 Q. So she is a director of the company; why can't she use
 24 that information if she wishes to?
 25 A. Because the advice that I had been given by the legal

1 department was that that would be inappropriate, which
 2 I explained to her, and I think if she disagreed with
 3 it, and I explained it to her, she should come back and
 4 say, "Actually, I don't agree with that. I want to tell
 5 the staff that he's been stealing and I want to tell
 6 them all about it."
 7 There would have been a discussion then between
 8 Legal and other people. It's not my decision to make,
 9 but I was acting on the instructions that I had received
 10 from the legal department.
 11 Q. You say there:
 12 "She is very apologetic."
 13 Do you now recall the conversation?
 14 A. Not really.
 15 Q. No. You then say:
 16 "I have told her to back off..."
 17 That's what you are telling Mr Dyson you have told
 18 her?
 19 A. Yes.
 20 Q. "... and if she has any other questions regarding
 21 operational issues, she should come to me..."
 22 A. Yes.
 23 Q. What gives you the right to deal with operational issues
 24 for this store?
 25 A. Erm, I don't necessarily think I was referring to

1 day-to-day -- you know, employee -- you know,
 2 staff-related issues or selling or whatever. I'm
 3 thinking -- my thinking is much more in terms of the
 4 situation about the partner exit and any questions in
 5 relation to that, because I would direct her to the
 6 right place.
 7 So what I was saying to her is that, you know, "If
 8 you've got a load of questions about this, the best
 9 thing to do is to come to me and I will direct you to
 10 the right person to have those questions answered",
 11 whether it be queries that, you know -- having her
 12 understand that there are legal issues surrounding, you
 13 know, what you tell employees.
 14 "If you ask me about that, I will point you to the
 15 right person", which would have been the legal
 16 department. Had it been something to do with her
 17 husband wanting to become a director, then I would have
 18 directed her to the right person for that.
 19 So what I was trying to do was to suggest that, you
 20 know, anything relating to the difficult situation
 21 surrounding Nimesh, I would point her in the right
 22 direction.
 23 Q. You then refer to -- you say:
 24 "... she should ... not go off around the business."
 25 So you seem to be talking about operational issues

1 to do with the business, not to do with your
 2 investigation?
 3 A. I think I was referring to phone calls to various parts
 4 of the business and people. I think it was to do with
 5 her husband becoming a shareholder and a director and
 6 I was ensuring that she went to the right place, and not
 7 all -- and not sort of made loads and loads of phone
 8 calls to people who couldn't give her the right answers.
 9 Q. In the next part of your email to Mr Dyson, you refer to
 10 that:
 11 "I also spoke to her about her partner."
 12 That's Mr Mushtaq Rehman?
 13 A. Yes.
 14 Q. "She realises that he will not be given the shares, but
 15 wants an input into who the new partner is."
 16 Do you see that?
 17 A. I see that.
 18 Q. "I explained that this issue was linked to a raft of
 19 legal and investigative processes that are ongoing and
 20 that she is to drop the issue..."
 21 That's the issue of who is going to be the new
 22 partner.
 23 A. Yes.
 24 Q. Is that right?
 25 A. Yes.

1 Q. "... someone will contact her in due course as this
 2 after is progressed."
 3 Do you see that?
 4 A. Yes.
 5 Q. You then move on to your final sentence:
 6 "Hopefully she will quieten down for a while at
 7 least..."
 8 Is that what you wanted her to do, quieten down
 9 a bit?
 10 A. In respect of phone calls going off to a whole range of
 11 people that couldn't provide her the answers that she
 12 was seeking. So, yes, it was to --
 13 Q. Why couldn't they provide her with the answers she was
 14 seeking to questions like, "What deal have you done with
 15 Nimesh Patel?"
 16 A. Well, I answered those questions, but questions in
 17 respect of Mushtaq and, "He would like to buy the shares
 18 and I want to phone business transfer about that", is --
 19 you are not going to get the answers that you need. You
 20 need to speak to the right people, which in those
 21 circumstances would have been -- off the top of my head,
 22 I don't know, but there are other departments that deal
 23 with recruitment and -- Chris Howarth, it would have
 24 been, the Director of Professional Services, who would
 25 deal with partner recruitment stage 1s, and that type of

1 stuff.
 2 Q. Yes. So this sentence here is not to do with her
 3 questions about the deal that has been with Patel and
 4 all that stuff?
 5 A. Yes.
 6 Q. It's to do with who is going to be the new
 7 shareholder --
 8 A. I think so.
 9 Q. Okay.
 10 A. It was to dampen the phone calls that were going to all
 11 sorts of people who couldn't answer those questions.
 12 Q. Questions about the new --
 13 A. And to ensure that she was being directed to people that
 14 could answer the questions.
 15 Q. Questions about who is to be the new A shareholder and
 16 whether or not it would be her husband?
 17 A. I believe so, yes.
 18 Q. All right. The sentence reads: {E/49/317}
 19 "Hopefully she will quieten down for a while..."
 20 And we now know that you say that's the context of
 21 what you meant there, at least:
 22 A. Yes.
 23 Q. "... but I suspect we need to go back for a second stage
 24 investigation into the remaining payroll concerns."
 25 So you are linking going in for an investigation

1 against her now to quietening her down to do with her
 2 wanting to have some input into who the new shareholder
 3 a going to be?
 4 A. I'm not necessarily linking the two. It's just
 5 a continuing sentence.
 6 Q. Yes. So in one sentence, you are addressing the issues
 7 of quietening her down, about her request to be involved
 8 in who the new shareholders are going to be, with you
 9 going in for another investigation into her?
 10 A. Okay.
 11 Q. That's right, isn't it?
 12 A. I don't think I'm necessarily linking the two and
 13 I don't really see what the problem with the sentence
 14 is.
 15 Q. I'm suggesting to you there is no problem with the
 16 sentence, now that we know the context and what you
 17 meant. You were linking the two, and from that point
 18 onwards the investigation into her --
 19 A. They are very separate issues. The reality is that
 20 these are very, very separate issues and although I have
 21 linked them in a sentence that I have written, they are
 22 very, very separate issues.
 23 Q. The answer came back from Mr Dyson, page 318: {E/50/318}
 24 "Thanks Mel, good work.
 25 "On the recruitment front, she will have the

1 opportunity to meet the new partner, however, she will
 2 not be part of the decision making."
 3 At this point, by 28 February, you were aware of the
 4 allegations that Mr Patel had made against her; you had
 5 documented them in a recorded interview, hadn't you?
 6 A. Sorry, can you say that again.
 7 Q. You were aware of the allegations that you now say are
 8 very, very serious?
 9 A. I'm not saying they are very, very -- well, they are
 10 serious, yes.
 11 Q. You said yesterday they are very, very serious: gross
 12 misconduct, fraud and deceit?
 13 A. I didn't quite emphasise it to the extent that you have
 14 just emphasised it, but I accept what you are saying.
 15 Q. You had had that conversation on the 20th. You had
 16 reported it to Mr Dyson, so the two of you are aware of
 17 the allegation?
 18 A. Yes.
 19 Q. You had your formal interview, signed by Patel, so you
 20 had your evidence against her. And yet you are speaking
 21 here, between the two of you, as though she is going to
 22 continue to be the partner in the business, aren't you?
 23 A. Yes.
 24 Q. On the recruitment front, she is going to have the
 25 opportunity to meet the partner, but she won't be part

1 of the decision-making?
 2 A. Yes.
 3 Q. So plainly, as between the two of you, as at that point,
 4 you hadn't reached any sort of view that it was
 5 inappropriate to deal with matters of recruitment of the
 6 new partner pending your investigation into Ms Birdi?
 7 A. Sorry, can you say that again?
 8 Q. At that point on 28 February, you and Mr Dyson were not
 9 of the view that the recruitment of a new partner to
 10 join Ms Birdi needed to be held up by the investigation
 11 into her?
 12 A. I can't comment on that. That's Derek's view to me. He
 13 is just telling me what the score is.
 14 Q. You must have discussed it with him?
 15 A. I don't think so. He was sending me an email.
 16 Q. Thereafter you must have discussed it with him?
 17 A. Discussed what with him? The fact that she wouldn't be
 18 involved in the new partner?
 19 Q. The fact that she was going to be the partner but -- you
 20 see, at some point, that whole side of things gets
 21 stopped and you start running an investigation towards
 22 getting her dismissed?
 23 A. I think at this stage, you know, we were already
 24 investigating by going into look for it in the accounts,
 25 so that was already ongoing, and it was an

1 investigation. It wasn't "to get her dismissed", as you
 2 infer. It was an investigation into the allegations
 3 that had been made by Nimesh Patel.
 4 Q. All right. If we go to your witness statement, we can
 5 pick up the thread, page 134. {C/11/134}
 6 Do you see under the heading, "The investigation
 7 into Swarandeeep Birdi".
 8 We have already been through paragraph 33 because
 9 you have amended that, or sought to. Do you remember?
 10 A. Yes.
 11 Q. I'm not going to go over all that again because we have
 12 dealt with that. But at paragraphs 34 and 35 you set
 13 out the allegations that Mr Patel had made. Do you see?
 14 A. I do.
 15 Q. Paragraph 35. You say:
 16 "Mr Patel also made a number of further
 17 allegations..."
 18 Which is about conduct towards employees, including
 19 Mr Patel. Is that bullying? Is that the allegation
 20 made by Mr Patel?
 21 A. Erm, I don't think he used the word "bullying".
 22 Q. No. So what was the allegation or allegations made
 23 against Ms Birdi regarding her general conduct towards
 24 other employees, including Mr Patel himself? What was
 25 Mr Patel telling you in the second interview about that?

1 A. He was saying that she generally didn't treat them
2 appropriately.
3 Q. "... her reluctance to conduct sight tests..."
4 So the testing issue?
5 A. Yes.
6 Q. Did you understand that to be an allegation of
7 misconduct against her?
8 A. No, I think I'm just repeating what he said. I don't
9 know -- at that stage I wouldn't have known what the
10 rights and wrongs of that were.
11 Q. When did he tell you this?
12 A. Well, everything that he told us at the time were either
13 during that second interview or through the subsequent
14 letter that he wrote into the centre and the verbal
15 comments that he made after the second interview that
16 I'm repeating.
17 Q. Okay.
18 A. So that's the only time that he's ever -- that I've ever
19 actually spoken to him or received information from him.
20 Q. You had spoken to him just before you emailed Mr Dyson,
21 hadn't you. Do you remember: {E/50/318}
22 "I have spoken to Nimesh..."
23 A. He phoned me up, yes. That was to do with --
24 Q. You seem to be in contact with Nimesh at this point?
25 A. No, he phoned me up once, to my recollection, to

1 complain about the fact that people had been told that
2 he was stealing and it had affected his work.
3 Q. Anyway, these other issues about alleged bullying or
4 whatever it is, conduct towards employees, the sight
5 testing, et cetera, none of those formed part of any
6 investigation into Ms Birdi, did they? You didn't
7 pursue any of those matters?
8 A. Well, no, I was taken off the investigation, so ...
9 Q. SOG didn't pursue any of those matters?
10 A. I don't know what Neil Hamilton investigated or what he
11 didn't. I wasn't involved in it.
12 Q. That's not right, is it? You weren't taken off until --
13 taken off. You weren't, on the face of the record,
14 taken off until after you had conducted the interviews
15 with Mrs Frondigoun, at least, in May?
16 A. That's correct.
17 Q. So certainly during March, April and May, you were on
18 the case, weren't you?
19 A. Erm, yes. Yes.
20 Q. Right. You say at 36 there were two key matters that
21 did require investigating by your team, and that was the
22 work done at the premises and the issue of Mr Rehman's
23 payments?
24 A. Yes.
25 Q. 37. You say: {C/11/135}

1 "At this stage, I had no view on whether the
2 allegations made by Mr Patel against Ms Birdi were
3 accurate or not."
4 That's not what you told Mr Dyson, was it?
5 A. I don't know. Can you point me to what I said to
6 Mr Dyson?
7 Q. You led him to believe that there was evidence against
8 Ms Birdi that showed that she was dishonest?
9 A. Erm, there was evidence insofar as -- it was clear work
10 had been done in the store, for example, and we couldn't
11 find anything in the invoice system that would support
12 the fact that it had been done properly and openly
13 through the accounts. So in that respect, the fact that
14 that didn't exist tended to support the allegation that
15 Nimesh Patel had made.
16 Q. So had you formed a view or hadn't you formed a view?
17 A. I had formed a view that there were questions to ask and
18 that there was -- there was consistency in the
19 allegations that Nimesh Patel had made.
20 Q. Okay.
21 A. Some of them, anyway.
22 Q. You spoke to Mr Dyson about this?
23 A. About what?
24 Q. About the matter about Ms Birdi, about what you were
25 going to do with her?

1 A. I had conversations with him.
2 Q. These are unminuted, unrecorded, undocumented
3 conversations that you had in this period; this is the
4 period end of February/beginning of March 2007?
5 A. Correct.
6 Q. Is there any reason why you don't take notes of
7 important conversations about investigating JV partners?
8 A. I think if we took notes of every single conversation
9 that we had -- I don't really see the purpose of taking
10 a conversation when you are discussing a case and trying
11 to get an understanding how my manager felt about --
12 about the case. If I wrote notes on every single case
13 or every discussion that I had, you'd be swamped in
14 paper.
15 Q. You could have just put it on your log?
16 A. It's just not realistic or practical.
17 Q. You could have put it on the log:
18 "Had a call to Derek. Derek told me to commence
19 a formal investigation into Swarandeeep Birdi."
20 A. To what purpose? I knew that I had been given the
21 instruction. Why would I write it down?
22 Q. Transparency?
23 A. To whom?
24 Q. To people who might want to see whether it had happened
25 at all?

1 A. Well, they could ask Derek, and Derek -- either in
2 writing or verbally -- and Derek would respond to
3 whether or not that conversation took place. But if
4 every single conversation was written down, you would
5 have paper mountains.
6 Q. Not everything single conversation; an important
7 conversation where a decision is made --
8 A. But one could argue that --
9 Q. -- to commence a formal investigation --
10 A. But one could argue --
11 Q. -- into a JV partner?
12 A. With the best will in the world, one could argue that by
13 the nature of what I do, every single conversation that
14 I have falls into that category, and if I wrote every
15 single conversation that I have down, I would be swamped
16 in paper mountains. And to what end, and to what
17 benefit -- I don't think there is a purpose, an end or
18 a benefit to documenting every single phone call. It's
19 unrealistic.
20 Q. Anyway, you agree that you did speak to Mr Dyson on
21 a few occasions on the telephone --
22 A. Yes.
23 Q. -- at this stage about what was going to happen with
24 Ms Birdi?
25 A. Yes.

1 Q. End of February 2007/beginning of March 2007; you have
2 agreed to that?
3 A. Yes.
4 Q. Go to page 325. {E/55/325} I know you are not a party
5 to this email but I'm just going to suggest to you that
6 during these conversations that you had at that time,
7 you and Mr Dyson reached the conclusion that you were
8 going to be getting rid of Ms Birdi?
9 A. Sorry, where are you referring to?
10 Q. Page 325?
11 A. In bundle E2?
12 Q. Yes, E2. I'm sorry. E2, page 325. I am going to
13 suggest to you that in the conversations you had with
14 Mr Dyson, you reached the plan that you were going to
15 get rid of Ms Birdi, and that is why Mr Dyson's PA is
16 writing to Mr Howarth, the recruitment guy, who you
17 referred to not five minutes ago, and asked him whether
18 there were some partners who would wish to work together
19 in Dartford.
20 The plan was to get rid of Ms Birdi, having got rid
21 of Mr Patel, and sell the shares to a pair of partners,
22 wasn't it?
23 A. I think, first and foremost, I have no knowledge on that
24 email and I wasn't copied into it but a lot of people in
25 the background, being aware of the potential outcomes,

1 could well have been putting things in place to account
2 for a disaster situation. You know, people do prepare
3 for eventualities that may never come to the -- to an
4 outcome that, you know, could potentially happen.
5 So, you know, people are considering in advance,
6 knowing that the situation was potentially a serious
7 one. I don't think there is anything wrong in doing
8 that. It's normal proactive management. It doesn't
9 mean that that is going to be the outcome and as it
10 happens, it wasn't the outcome.
11 Q. It was the planned outcome of you and Mr Dyson, wasn't
12 it?
13 A. Absolutely not.
14 MR STUART: My Lord, I see the time. Should the
15 transcribers have their break?
16 MR JUSTICE NUGEE: Yes, take a five-minute break.
17 (11.42 am)
18 (Short break)
19 (11.50 am)
20 MR JUSTICE NUGEE: Yes?
21 MR STUART: So we had got bundle E2, and we have reached the
22 suspension day. Page 328, 27 March. {E/58/328} Do you
23 have 328? It's the letter of suspension.
24 A. Yes.
25 Q. In your witness statement -- we are at paragraph 38.

1 {C/11/135} This is about the previous day, 26 March.
2 You say:
3 "Following authorisation from Mr Dyson on behalf of
4 SOG, as B director of Dartford Visionplus ..."
5 Do you mean that?
6 A. Yes.
7 Q. Do you know what that means? What is a B director?
8 A. The B director -- the B director is the B director.
9 They are the controlling director within the overall
10 company, as I understand it.
11 Q. Which company?
12 A. Specsavers. Specsavers Dartford.
13 Q. Dartford Specsavers, not Dartford Visionplus?
14 A. I don't know the differences between all the different
15 companies but I understand that to be Specsavers
16 Dartford.
17 Q. Okay:
18 "... I, along with Lew Samuel (Loss Prevention
19 Consultant) and Mr Barnes, attended the Store on
20 26 March 2007."
21 Yes?
22 A. Yes.
23 Q. So three of you turn up. Ms Birdi wasn't there that
24 day. You rang her on her mobile. You left a message.
25 She called back and you said that:

1 "... the investigation into Mr Patel had widened to
2 include an investigation into her conduct ... financial
3 irregularities..."
4 Do you see that?
5 A. I see that.
6 Q. "I explained that our concerns lay with payroll,
7 invoicing and finances generally."
8 Do you see that?
9 A. Yes.
10 Q. So you have told her on the telephone that she is being
11 investigated. And then 39:
12 "The following day, Mr Barnes and I arrived at the
13 Store..."
14 Where do you get this recollection from? Is it from
15 your log, E2, page 332? {E/59/332} The wording seems
16 very similar to me.
17 A. That's my recollection of it.
18 Q. Is it based -- it's seven years later?
19 A. Yes.
20 Q. Is it based upon your log?
21 A. I remember going into the store and her not being there
22 and I remember speaking to her -- no, I have
23 a reasonable recollection of it. I wouldn't say my
24 recollection goes to the extent that I can recollect the
25 exact words of the conversations that we had and such.

1 Q. Okay. How is this log drawn up? Can you explain to his
2 Lordship?
3 A. In what respect?
4 Q. We have got on the left-hand side a column which has got
5 dates in, but I think you have agreed with me that those
6 are just the dates when the events took place; that is
7 what that date is meant to be?
8 A. Yes.
9 Q. Reading some of these entries, it's plain that they are
10 drafted after the event. They are not drafted --
11 A. They are written at some point shortly after the event.
12 Q. What, within a few days?
13 A. It could be immediately -- the following day or, yes,
14 within a day or two.
15 Q. Okay. And who drafts them up? This would be you,
16 presumably?
17 A. They are my notes.
18 Q. These are all your notes?
19 A. Yes.
20 Q. Okay. You see, in the log, but not in your witness
21 statement at this point, there is a little more detail,
22 isn't there, as to what you actually did that day? This
23 is the 26th now, the day before you suspended her?
24 A. Yes.
25 Q. And we see from the log at page 332, {E/59/332} she said

1 she was unable to come in. Do you see that bit?
2 A. Yes.
3 Q. Which ties in with the last sentence of paragraph 38 of
4 your statement: {C/11/135}
5 "Ms Birdi then went on to state that she would be
6 unable to come into the Store that day."
7 Then you just go on, paragraph 39:
8 "The following day..."
9 A. Yes.
10 Q. But actually, we can see from the log, can't we, that
11 you and your colleagues then set about investigating
12 matters at the store in her absence, didn't you?
13 A. We started looking at the paper records of the business,
14 yes.
15 Q. And you presumably opened up filing cabinets and drawers
16 of desks and you started looking through the paperwork?
17 A. Yes.
18 Q. Did you shred any documents?
19 A. No.
20 Q. Are you sure?
21 A. 100 per cent.
22 Q. Is it possible that one of your colleagues shredded some
23 documents, Mr Samuel or Mr Barnes?
24 A. They would have absolutely no reason to.
25 Q. So if Ms Birdi found some shreds --

1 A. Yes.
2 Q. -- at some point, you are saying that couldn't possibly
3 have been any of your doing?
4 A. No. I think at this stage, my Lord, we were in
5 a position where whistle-blowing allegations have been
6 made against a director, and probably in at least
7 50 per cent of cases where whistle-blowing allegations
8 are made against a director, we actually find evidence
9 that supports the fact that the allegations are untrue.
10 So, you know, at this stage we were look for
11 paperwork, but it could go either way and we are simply
12 looking through to see whether there was evidence that
13 would either support or contradict the allegations that
14 he had made.
15 So at that stage we would have no reason to shred
16 any paperwork because we often find in favour of the
17 partner that the allegations are wholly untrue by the
18 paperwork that we find. We wouldn't shred it.
19 Q. Okay. Anyway, what you did do is you opened up the
20 filing cabinet?
21 A. Yes.
22 Q. According to this log. You removed paperwork and you
23 spent the day examining it?
24 A. I don't think we spent the whole day but we were there
25 for a good few hours.

1 Q. I'm just reading your log, you see, page 332?
2 A. Yes.
3 Q. Then you left with some of the documentation. So you
4 took away the documentation with you?
5 A. Yes, I don't know what documentation we took.
6 Q. It would be important, wouldn't it, to know, if one is
7 testing whether your investigation were a fair and
8 unbiased one -- it would be important to know what
9 paperwork you found and what paperwork you took away?
10 A. Yes, that's correct.
11 Q. And you say it's:
12 "... to prepare an investigation file."
13 Do you see the last words on that entry on 332?
14 {E/59/332} What has happened to this investigation file?
15 A. Erm, I think there was an email where I explained to
16 Neil Hamilton that I would either post it or have it
17 taken to the Skelmersdale offices, which -- I don't know
18 how we got the files to him but the files were sent to
19 him.
20 Q. What's in the investigation file?
21 A. I don't know.
22 Q. Do you know what happened to it after that?
23 A. No, I don't know.
24 Q. Okay. Then on 332, for 27 March there is a very
25 detailed note that runs to four pages, first of all of

1 the events of the day, when you met Ms Birdi at the
2 store, and then a conversation with somebody else; yes?
3 A. Sorry, the conversation with somebody else? Who?
4 Q. Yes, page 334? {E/59/334}
5 A. Oh, right, yes.
6 Q. You have got a detailed conversation?
7 A. Yes.
8 Q. That's from a tape, is it?
9 A. I was in my office when this gentleman phoned me and
10 my -- in my office, I have a bluetooth earpiece on to
11 a phone that has recording on it, so -- you can't take
12 the recording off it. When I realised what it was,
13 I pressed record on it, and then straight after that,
14 I made a transcript of that conversation into this
15 document and the recording was deleted, because you
16 can't recover it from the phone. So, yes, it was
17 recorded.
18 Q. Let's go back to the events of the 27th, though, as set
19 out on page 332 to 333? {E/59/332}
20 A. Yes.
21 Q. When did you draft this section?
22 A. Erm, I don't recall, but I was -- I wasn't comfortable
23 with Swarandeeep's reaction to the situation so I felt it
24 was important to make a record of it. So I think
25 because of the fact that I felt it was important, it

1 would have been fairly shortly afterwards, but I don't
2 recall.
3 Q. You don't recall when you made it?
4 A. No.
5 Q. Did you have some notes from which to make it? Did you
6 make some manuscript notes as the day went on?
7 A. I don't make manuscript notes. I would have typed it
8 straight into the document.
9 Q. Okay. Did you have any sort of tape recording?
10 A. No.
11 Q. Or bluetooth phone recording of events that had
12 happened?
13 A. No.
14 Q. So this is just your recollection, as at the date when
15 you made the entry, of what happened on the day?
16 A. Yes.
17 Q. All right. She had explained to you, by the looks of
18 it -- page 332 at the bottom -- that she felt threatened
19 and intimidated by you, didn't she? She made that
20 complaint direct to you?
21 A. She explained to me that she had been threatened and
22 intimidated by Mel, and at that point I thought, "Well,
23 you clearly don't know who I am", so I explained to her
24 that I was Mel.
25 Q. Had you not explained that when you met --

1 A. Yes. Yes, absolutely.
2 Q. This was the first time you had met her personally, was
3 it?
4 A. Yes, absolutely.
5 Q. You had spoken to her on the telephone, obviously?
6 A. Yes.
7 Q. The first thing you did, presumably, was you said, "Good
8 morning, I'm Mel McAlindon, I'm the Head of the
9 Investigation Department with Specsavers"?
10 A. Correct, I would have done. I have no idea why she had
11 that confusion. It struck me as odd.
12 Q. Okay. But she did complain to you personally that she
13 felt threatened and intimidated by you?
14 A. Yes.
15 Q. At the top of page 333, you suggest that you apologised
16 if she perceived it that way? {E/59/333}
17 A. Yes.
18 Q. She wasn't the only one who thought you were
19 intimidating, was she? Mrs Frondigoun thought you were
20 intimidating?
21 A. Yes.
22 Q. She was there at that time?
23 A. At which time?
24 Q. That morning?
25 A. I don't know, but I would accept it if that's what you

1 say.
 2 Q. Okay. Then the issue of the blue book arose. This is
 3 half way down page 333, by the second holepunch:
 4 {E/59/333}
 5 "... the conversation was drawn to a close. MM
 6 asked SB for the A5 blue book that NP alleged had
 7 records of equalisation payments."
 8 A. Yes.
 9 Q. "She told MM that it was at her home, and that if he had
 10 told her yesterday, she would have brought it in."
 11 Do you see all of that?
 12 A. Yes.
 13 Q. "MM explained that he would need to recover the book and
 14 would either send someone to her home, or would arrange
 15 to meet with her to collect it..."
 16 Do you see that?
 17 A. Yes.
 18 Q. "MM handed her a letter of suspension..."
 19 That's the letter at 328. {E/58/328} Is that right?
 20 A. Yes.
 21 Q. The next entry in your log says:
 22 "MM ..."
 23 Same day -- or is it the same day? That's my
 24 question. You may have written these entries so many
 25 days later that you couldn't work out what the days of

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1 the week were or the dates, but the previous entry was
 2 Tuesday, 27 March and now the next entry is Wednesday,
 3 27 March?
 4 A. Yes. And by that time I was back in my office at home.
 5 Q. But this entry took place -- when did you draft this
 6 entry. It must have been that day, mustn't it?
 7 A. I don't know.
 8 Q. You have just described how you made the bluetooth
 9 recording --
 10 A. I remember -- I remember recording the conversation and
 11 I remember shortly afterwards transcribing that into
 12 here.
 13 Q. That day?
 14 A. I couldn't say with 100 per cent certainty.
 15 Q. Okay. Ms Birdi's brother on the phone, here?
 16 A. Yes.
 17 Q. He has explained to you that she had been extremely
 18 unwell with chest pain?
 19 A. Yes.
 20 Q. This has obviously arisen from what she perceived to be
 21 the harassment and intimidation of you and your
 22 colleagues?
 23 A. I can't offer an opinion on that. I don't agree with it
 24 particularly but ...
 25 Q. What, you don't agree that she was unwell?

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1 A. Erm, no, that it was caused by harassment or bullying or
 2 aggressive behaviour.
 3 Q. Okay. But you understood that she had gone to the
 4 doctor and that she did have chest pains?
 5 A. That's what I was being told.
 6 Q. Yes, and you didn't have any reason to believe that was
 7 untrue?
 8 A. No.
 9 Q. All right, fine.
 10 We move swiftly on. There is a big chunk of your
 11 surveillance fees then in the bundle. We are probably
 12 moving out of order here but whilst we are there, do you
 13 see page 340, {E/62/340} all the way through, including
 14 page 365, {E/63/365} there are lots of invoices and
 15 these consolidated invoices. 340 -- {E/62/340}
 16 A. Yes.
 17 Q. -- is what's described as a "consolidated invoice"; is
 18 that right?
 19 A. Yes, I don't know where these documents come from, but,
 20 yes.
 21 Q. I see. You don't have any part in the creation of these
 22 documents?
 23 A. No. The consolidated invoice on 340?
 24 Q. Yes.
 25 A. No.

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1 Q. By way of example.
 2 What about -- take page 345 as an example.
 3 Page 345. {E/62/345} This is a consolidated invoice
 4 sent to Dartford Specsavers Limited. Do you see?
 5 A. Yes.
 6 Q. And the second item down is:
 7 "Loss Prov Jun07."
 8 Do you see that?
 9 A. I see.
 10 Q. And it's a sum of £9,680?
 11 A. Yes.
 12 Q. That's a lot of money, isn't it?
 13 A. Correct.
 14 Q. For a store whose profits for the year in the absence of
 15 any loss prov are only £40,000 or £80,000, £10,000 worth
 16 of loss prov fees for one month is a huge amount, isn't
 17 it?
 18 A. It's a lot of money, yes.
 19 Q. And the figure is £9,680:
 20 "Loss Prevention Dept Fees for June 2007/Loss
 21 Prevention Management Costs 1.06.2007 to 1.07.2007/Any
 22 queries please contact Mel McAlindon..."
 23 So basically you provided a figure; it gets charged
 24 to the store?
 25 A. Correct.

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1 Q. Any queries, ask you?
 2 A. Yes.
 3 Q. How do you come up with these figures?
 4 A. Erm, the -- about 12 years ago, we had a discussion
 5 about how to charge the costs for reactive services to
 6 stores, and there are a number of ways you can do it.
 7 You could either do it by charging the actual cost,
 8 which would be, administratively, a huge job because you
 9 would have to get the expenses from the ebis system,
 10 which is the cash claiming system, which people would
 11 claim their petrol, for examples, or parking fees.
 12 You'd also have to get all their monthly credit card
 13 statements, where they would pay all the large bills
 14 like hotel bills, and then you would have to break
 15 everybody's transactions down at transactional level to
 16 allocate every single line to every single job.
 17 So the practicalities of charging at a very early
 18 stage an actual cost of providing reactive services
 19 would have been very difficult to administer.
 20 MR JUSTICE NUGEE: When you say "reactive services"...?
 21 A. I'm talking about either investigations, where we have
 22 to drop everything and go, or interim management costs,
 23 where I have to take somebody out of the equation and
 24 send them down to a store and put them in. As compared
 25 to -- for example, we get -- in those days, we were

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1 getting requests for audits, which is quite -- it is
 2 proactive on the part of the partners to get their
 3 businesses audited and get advice on how to minimise
 4 risk, and we charged those at a loss rate to encourage
 5 partners to use those services and take that advice.
 6 So we -- myself and Derek -- discussed the best way
 7 and the fairest way to charge that because it does
 8 fluctuate wildly, and it was agreed that we would --
 9 I worked out the average cost of providing the interim
 10 management service over a year and worked it out and it
 11 was -- we decided to charge an average blended figure,
 12 which was £440 a day, which represented an average
 13 charge.
 14 That cost does fluctuate significantly and
 15 I appreciate in these cases we did use two people on
 16 a consultancy basis for a period of time and in one of
 17 their cases it was significantly lower than £440. But
 18 at other times, providing that service was significantly
 19 higher. For example Carol -- sorry, not Carol.
 20 Imogen Collar's credit card, which has a £2,000 a month
 21 limit, bounced and she had to claim the £450 bill
 22 herself and claim it through the cash expense system and
 23 I had to increase her card to £3,000.

24 So there are points where it's very difficult to
 25 provide those services and if that individual had

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1 gone -- we couldn't predict how long he was going to
 2 stay there. The people that were available to me were
 3 Imogen, who lived in Bury; Dan Laing, who lives up in
 4 Newcastle; Zoe Smith who lives north of Chester, and the
 5 costs of getting those people to that store are
 6 significantly higher.
 7 So when we made that decision 12 years ago, it was
 8 decided that the fairest way of doing it was to charge
 9 a blended cost. So that's where the £440 a month figure
 10 comes from.
 11 Throughout that period, the store was covered five
 12 days a week, so -- Carol Slark during the period that
 13 she was there had a number of commitments. She was
 14 there, I think, most of the time, at least four days
 15 a week, but on the occasions when she wasn't there,
 16 where she had other commitments, they were filled in by
 17 one of the other members of the team from wherever they
 18 were in the country, whoever was available.
 19 And so I charged the store Monday to Friday, which
 20 is when we had people in, for each week of the month, so
 21 if there were 21 days per month, it would have been
 22 21 days times £440, and that's where the figure -- the
 23 figures here come from.
 24 MR JUSTICE NUGEE: Thank you.
 25 MR STUART: Although this says "consolidated invoice", this

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1 is actually the invoice, isn't it?
 2 A. I believe so.
 3 Q. And what appears to have happened here is that on
 4 31 July 2007, you have started an invoice and you
 5 backdated your invoices for the periods going right
 6 back.
 7 So if we look at page 345, {E/62/345} we see the
 8 £9,680 figure is for the period June, 1 June to 1 July?
 9 A. Yes.
 10 Q. You then flick on to -- we can see the internal invoice,
 11 if you like, at 347. {E/62/347}
 12 A. Yes.
 13 Q. If we then flick on to page 348? {E/62/348}
 14 A. Yes.
 15 Q. Do you have it?
 16 A. Yes.
 17 Q. Do you see -- I'm looking at the large figures. So
 18 £10,120 is also invoiced on the same date, 31 July?
 19 A. Yes.
 20 Q. And that's now your Loss Prevention charges at this £440
 21 rate that you decided to charge. That's for July?
 22 A. Yes.
 23 Q. So we have had --

24 MR JUSTICE NUGEE: I'm sorry, Mr Stuart, I haven't
 25 understood. The 31 July being the same date as what?

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1 MR STUART: As the consolidated invoice date. The whole
2 consolidated invoice is itself dated 31 July.
3 MR JUSTICE NUGEE: Yes, but the £9,680 has a date of
4 26 July.
5 MR STUART: It does, it does.
6 MR JUSTICE NUGEE: Yes, I see.
7 MR STUART: So you have got a 26 July invoice, which is on
8 the consolidated invoice for 31 July, five days later,
9 and that's for the period 1 June to 1 July 2007?
10 A. Yes.
11 Q. That's £9,680. Then page 348, {E/62/348} in the same
12 consolidated invoice of 31 July, you have got the
13 reference to the 31 July invoice for the July period.
14 That's now £10,120 as well?
15 A. Yes.
16 Q. And then if you keep -- and we see that invoice at
17 page 349. {E/62/349} Then if you go on to page 350,
18 {E/62/350} on the same consolidated invoice, 31 July, do
19 you see it says -- this is half way down the invoice.
20 It says:
21 "31 July, Loss Prev May 2007, £9,680"
22 A. Yes.
23 Q. "Any queries please contact Mel..."
24 A. Yes.
25 Q. And:

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1 "Loss Prevention Management Costs 1 May 2007 to
2 31 May 2007..."
3 A. Yes.
4 Q. So the first one seems to be from 28 March to 30 April?
5 A. Yes.
6 Q. And then from 1 May to 31 May. So you are charging
7 another £9,680 and another £9,240; yes?
8 A. I see that.
9 Q. And then there is a heading, "Tax Total". £3,311? Do
10 you know what that is?
11 A. No idea.
12 Q. No idea? Okay. I haven't taken you to the tax totals
13 on the previous invoices but it's not just the £9,680
14 that is invoiced for on page 345; it's £9,680 plus the
15 tax on that. So it's over £11,000 for June on page 345?
16 {E/62/345}
17 A. Correct.
18 Q. It's £12,000 for July on page 348, {E/62/348} and then
19 it's another £22,000 for April and May on page 350.
20 {E/62/350}
21 You have got about £45,000 worth?
22 A. I don't disagree with that.
23 Q. That you slap in -- you invoice all of them on either
24 26 or 31 July?
25 A. Yes.

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1 Q. When did you and Derek Dyson agree that it would be
2 appropriate to charge this store £45,000 for what you
3 had done between 28 March and 31 July?
4 A. I don't think I would have had -- I don't know whether
5 I had a discussion with Derek about it or not. I have
6 no recollection of it at all, but my instructions are
7 that where we provide interim management costs -- sorry,
8 interim management support, that we charge it at £440
9 a day and that's what I have done.
10 So I don't think there was necessarily a discussion.
11 That is the way that -- that's what we have always done
12 when we have supplied interim management to stores. We
13 charge them at that rate.
14 Q. You say that's what you have always done but you haven't
15 been able to provide us with any evidence, have you,
16 that that's what you have always done? There is no
17 disclosed evidence of you charging £440?
18 A. It would relate to other stores.
19 Q. Okay. And more importantly, you didn't even charge this
20 store at the end of April. You didn't put in an invoice
21 for £440 a day for the last month?
22 A. Are you suggesting I should have charged more?
23 Q. No, I'm suggesting that if it was a genuine, normal
24 process, then at the end of April, once you had done
25 a month's worth of what you say are services, you would

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1 have put in an invoice for your work?
2 A. If I was invoicing at that time.
3 Q. Yes.
4 A. I do my invoicing --
5 Q. You didn't invoice in April; you didn't invoice
6 in May --
7 A. No, and --
8 Q. -- and you didn't invoice in June?
9 A. No, there are some times when our invoicing is late and
10 it would depend on whatever work I was doing at the time
11 and where it came in the list of priorities.
12 Q. Okay, we will come back to that when we get there in the
13 chronology.
14 Do you have any explanation as to why you didn't
15 invoice in April or May or June?
16 A. No.
17 Q. No, okay. I have already taken you yesterday to the
18 issue of Ms Birdi raising complaints against you,
19 page 367 in bundle E2. {E/65/367} Do you remember? And
20 371? {E/67/371}
21 A. Sorry, which page?
22 Q. 367 and 371. Do you remember, we had it yesterday?
23 I took you to the complaints that she was raising -- she
24 was raising formal grievances, complaints, about you,
25 wasn't she?

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1 A. Yes.
 2 Q. What we didn't look at was page 373. You wrote an email
 3 on 12 April to Mr Dyson {E/68/373}. Do you remember?
 4 Enclosing your Loss Prevention department memo?
 5 A. Yes.
 6 Q. And the memo starts on page 374 {E/68.1/374}. Yes?
 7 A. Yes.
 8 Q. What was the purpose of this memo?
 9 A. The purpose -- I'm just looking. (Pause)
 10 The purpose of this memo was to get instruction from
 11 the board as to how they wanted to proceed. I think we
 12 had reached a point where -- I felt that we had reached
 13 a point where we required decisions to be made. So I'm
 14 writing to Derek to say, "Look, this is the situation
 15 that I'm in." You know? "Here is some suggestions of
 16 what could potentially be a direction that you could
 17 take. Can you give me advice on what you want me to
 18 do?"
 19 Q. Right. So it was just an unbiased, information-style
 20 memo: "Please let me know what you want to do." That
 21 was your purpose, was it?
 22 A. I think so.
 23 Q. Okay. Go to page 374 at the bottom: {E/68.1/374}
 24 "Nimesh also admitted that he and Swarandeeep had
 25 been paying his wife, Karina Patel, and her husband,

1 Mushtaq Rehman, a salary through the business but that
 2 they did not do any work."
 3 Do you see that?
 4 A. I do.
 5 Q. That's the allegation, isn't it:
 6 "He recognised that this could be tax evasion, false
 7 accounting and tax evasion."
 8 I don't know what you meant by that. Was that
 9 just --
 10 A. It's patently obvious it's a typing mistake.
 11 Q. Okay:
 12 "He stated that Karina was paid a fixed agreed
 13 amount each month and over the years this totalled ..."
 14 So that's all set out, what Karina was paid.
 15 A. Yes.
 16 Q. "Mushtaq was paid a total of £8807.67 ... "
 17 You set out there what I presume are years. Is that
 18 right?
 19 A. Yes.
 20 Q. So in the year 2003 to 2004, £200, and in the year 2004
 21 to 2005, £2,063, and in the year 2005 to 2006, £6,543.
 22 Do you see that?
 23 A. Yes.
 24 Q. "However, on the Birdi side of the family prior to this
 25 Swarandeeep's father was paid the shortfall and he did no

1 work either."
 2 Number 1: apart from the fact that that's not right,
 3 is that you saying that or are you trying to say that
 4 that's what Nimesh Patel was alleging?
 5 A. I'm saying that that's the facts of the case that have
 6 been established so far. Those allegations have been
 7 made and we couldn't find any evidence either way to
 8 support or refute it. There should have been paperwork
 9 in the business that would have enabled us to refute the
 10 allegations if they were wrong or to support them if
 11 they were right, and those would have been things like
 12 attendance logs, rotas, documents, the blue book --
 13 would have shed an awful lot of light on the situation,
 14 but we couldn't find any documents that would support or
 15 refute it. So I'm simply explaining the facts as I see
 16 them and that have been alleged.
 17 Q. We don't know what information or documentation you had
 18 to support or dispute it because you have been into the
 19 store, taken away all the records.
 20 A. I'm actually -- I don't send an exhaustive pile of
 21 investigation files on every single case to Guernsey for
 22 the board to read. What I do is I send them an email
 23 and say, "Look this is where we are at. This is what
 24 I believe our choices are that are open to you. I need
 25 some guidance on what you want me to do."

1 Q. Yes, but the point I'm making, Mr McAlindon, is that
 2 there is a difference between you having conducted your
 3 investigation by 12 April -- you have done part of your
 4 investigation. You have been into the store, you have
 5 swept up all the documents you want to look at, you have
 6 taken them away with you to create this investigation
 7 report, which we haven't seen. Okay?
 8 There is a difference between you, the independent
 9 investigator, reaching conclusions on the evidence
 10 available to you as to what's happened here, and what
 11 Nimesh Patel, a thief, alleges.
 12 A. Yes.
 13 Q. And I'm asking you whether in your memo -- you started
 14 with the words:
 15 "Nimesh also admitted that he and Swarandeeep had
 16 been paying his wife, Karina Patel, and her husband,
 17 Mushtaq Rehman ..."
 18 Do you see it?
 19 A. I see that.
 20 Q. "... through the business but that they did not do any
 21 work."
 22 A. I think the start of the memo says it all. I'm writing
 23 a memo to Derek and the board saying that we have
 24 reached a stage in the investigation where I require
 25 some direction. So I am simply setting out what

1 I believe the facts -- the facts as I know them to be
 2 and I'm asking them for direction on what they want me
 3 to do about it, because I had reached the point where
 4 I couldn't see -- I needed somebody to make a decision
 5 on what they felt was the appropriate way to approach
 6 it.
 7 Q. Okay. These figures, for example, the £24,623 paid to
 8 Karina. Do you see that?
 9 A. I see that.
 10 Q. Did you calculate those figures?
 11 A. I would have picked those figures from the payroll
 12 system.
 13 Q. Okay. And then, over the page: {E/68.1/375}
 14 "Mushtaq [has been] paid £8,807."
 15 Do you see that?
 16 A. I do.
 17 Q. "However, on the Birdi side the family prior to this
 18 Swarandeeep's father was paid the shortfall."
 19 Are you suggesting that Swarandeeep's father was paid
 20 £16,500 -- 16,000 and something pounds, the difference
 21 between 88 ...
 22 A. I don't know.
 23 Q. ... and 24,623?
 24 A. I don't know.
 25 Q. No. What were you suggesting here?

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1 A. I have no recollection of what I meant when I wrote he
 2 was paid the shortfall. I think at the time, if that
 3 hadn't been clear to either Derek or the board, they
 4 would have asked me what I meant and I would have been
 5 able -- in a position to answer it, but, looking at it
 6 seven years later, I don't know what I meant at the
 7 time.
 8 Q. Okay. Had you investigated what these payments were
 9 actually for, the payments to Mr Rehman?
 10 A. I had tried to by going into the store and looking at
 11 the records of the business, and I had tried to by
 12 repeatedly asking for the blue book, which had, from my
 13 understanding from Nimesh or from the discussions that
 14 I had with Swarandeeep -- had records of payments to
 15 people and equalisations, and I think that had we had
 16 that information, we would have been able to see
 17 a clearer picture, but I didn't have any other
 18 paperwork.
 19 Q. You didn't have any of the paperwork?
 20 A. I didn't have the normal paperwork that would have
 21 existed in a business, that would have enabled me to
 22 either say this allegation looks true or this allegation
 23 looks false because the paperwork wasn't there and that
 24 was the paperwork --
 25 Q. You say the paperwork; all of the payments made to

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1 Mr Rehman were made by SOG, weren't they?
 2 A. They were.
 3 Q. And they were made against either salary requests from
 4 the point where he became a salaried member of staff,
 5 in June 2006, or, if they were of an unusual nature,
 6 beyond his £275 a month salary, they were paid by SOG
 7 against documented requests for payment, explaining what
 8 they were for, weren't they?
 9 A. Yes.
 10 Q. And those requests for payment were not consistent with
 11 Mr Patel's allegation, were they?
 12 A. In what respect?
 13 Q. Well, Mr Patel's allegation was that he did no work at
 14 all for the business -- Mr Rehman.
 15 A. Mr Patel's allegations were that there were people being
 16 paid through the payroll system who hadn't worked in the
 17 business. So the very nature of his allegation is such
 18 that there would have been paperwork that had been sent
 19 to SOG, that SOG would take at face value and would have
 20 made the payments on that basis. The paperwork that he
 21 is referring to is the blue book, that would show their
 22 personal accounting for how they decided what was
 23 appropriate and what wasn't, that they would then put
 24 through the payroll system even though people allegedly
 25 weren't working.

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1 Q. The blue book, according to your explanation, was to do
 2 with equalisation payments.
 3 A. Yes.
 4 Q. But I'm talking about the payments that were made to
 5 Mr Rehman, which were the ones you referred to here?
 6 A. Yes, but in Mr Patel's evidence what he was saying was
 7 that the equalisation process was because of the
 8 payments that were made to different people.
 9 Q. Okay. Further on down 375 {E/68.1/375} you set out the
 10 choices to the board. Is that right?
 11 A. Yes.
 12 Q. The first of which is:
 13 "Take no action.
 14 "Consideration could be given to either doing
 15 nothing or taking some form of disciplinary action
 16 falling short of a termination of the relationship."
 17 A. Yes.
 18 Q. "However ..."
 19 And you put this in bold:
 20 "However, Nimesh has stated that Swarandeeep is
 21 wholly responsible for the destruction of his life, both
 22 financially and in terms of his mental health. He has
 23 expressed the view that in the event of her not being
 24 dealt with equally to him ..."
 25 What does that mean, equally to him? You wrote

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1 this?
 2 A. He had expressed the point of view that she was -- had
 3 behaved in a dishonest way in the same way that he had.
 4 That was his allegation.
 5 Q. He had been caught taking cash out of the till?
 6 A. Correct.
 7 Q. That's not the same thing, is it?
 8 A. I'm not saying it is.
 9 Q. No.
 10 A. What I'm saying very clearly is that he is saying that
 11 she is guilty of the same scale of dishonesty that he is
 12 and he felt and expressed the point of view to me that
 13 she should be dealt with and investigated properly and
 14 dealt with in the same way. That was his opinion, that
 15 he was passing to me.
 16 Q. What he actually wanted you to do was to -- well,
 17 I don't know whether he said this or not; there is no
 18 evidence that he actually said any of these things prior
 19 to you writing this letter but what you're --
 20 A. But I think that's clearly reflected in his
 21 second interview and I think it's further reflected in
 22 the written letter that he sent in to SOG.
 23 Q. Are you saying in the second interview he says:
 24 "Unless she is exited from the business, I'm
 25 going --

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1 A. No, I'm not saying that's in the second interview at
 2 all.
 3 Q. No.
 4 A. But I'm saying, in terms of his broad allegations ...
 5 Q. I'm asking you about this threat:
 6 "He has expressed a view that in the event of her
 7 not being dealt with equally to him and if she were to
 8 remain in the business ..."
 9 It's quite clear what he means, if he had this
 10 conversation with you, which I don't accept. But what
 11 you are putting to the board is that Mr Patel had made
 12 a threat that if she were not exited from the business,
 13 he will make a confession to the tax authorities. And
 14 I'm going to suggest to you he made no such threat. It
 15 would make no sense for him to do so.
 16 A. I think it's a very self-destructive threat to make but
 17 he expressed those points of view to me. I'm not saying
 18 that they are appropriate but he expressed those points
 19 of view to me.
 20 Q. Before or after you offered him the option of a way out?
 21 A. It would have been afterwards, not before.
 22 Q. But once you have offered him the way out, the whole
 23 purpose of the way out is for him to avoid being
 24 referred to the police, being referred to the Revenue,
 25 being referred to the GOC. That's the purpose of the

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1 way out, isn't it?
 2 A. Correct.
 3 Q. He is going to accept only £55,000 for his shares --
 4 £70,000 if we take account of the thefts and
 5 investigation -- shares which he had thought to himself
 6 were worth £170,000 because that's what he had been
 7 offered a month earlier. So he was accepting a very,
 8 very low price for his shares but in exchange he was
 9 getting his life, wasn't he?
 10 A. He was.
 11 Q. A professional career?
 12 A. I don't say that I think his views are logical or
 13 sensible. My own personal point of view is I think they
 14 are foolish because, you know, he ended up with
 15 a good -- with the best outcome that he could possibly
 16 have expected under the circumstances. So do I think he
 17 is behaving illogically? Yes, he is, but the fact is
 18 that that's what he said to me. He was making those
 19 threats, whether they are completely empty threats or
 20 not, and I think my reasoning for including that in this
 21 document is to make sure that the board is aware of that
 22 and the fact that, whatever we do, we have to be
 23 transparent.
 24 Q. So when did he make those threats?
 25 A. I don't recollect.

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1 Q. Why didn't you record them in your log?
 2 A. I don't know. It may well have been because, you know,
 3 I kept a log up to the point at which I stepped out of
 4 the investigation and Neil Hamilton took over. I don't
 5 know whether or not these allegations came by phone call
 6 at a later date or not. I have no recollection of when
 7 it actually happened.
 8 Q. What phone call is this now? I have asked you about
 9 your discussions with Mr Patel, I have put it to you
 10 that you were in contact with him. You said, "No, there
 11 was one phone call in which he --"
 12 A. I believe there was one phone call. I don't have
 13 a detailed recollection of the -- I don't have any real
 14 recollection of the phone call, other than, you know,
 15 what I have written down subsequently. This is what
 16 I wrote at the time so I believe that is what he said to
 17 me at some point and that's why I put it in the
 18 document.
 19 Q. Well, I'm going to suggest that you have made no record
 20 anywhere, no note?
 21 A. I have in this memo.
 22 Q. Yes, this is what you are reporting on.
 23 A. Yes.
 24 Q. But you don't record anywhere a conversation with
 25 Mr Patel in which this happened?

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1 A. No, but I have explained to you why I don't record every
 2 single conversation that comes my way.
 3 Q. Okay.
 4 Anyway, so what you set out there is your
 5 justification for turning down option 1, which is to
 6 take no action against Ms Birdi or some action short of
 7 termination of relationship. That's option 1, isn't it?
 8 A. Yes, option 1 is to submit a file, consider if there is
 9 a disciplinary case to answer to and progress that to
 10 whatever outcome it is, and I don't feel that doing
 11 nothing -- I didn't feel that doing nothing was
 12 appropriate.
 13 Q. No, option 1 is:
 14 "Take no action."
 15 A. Yes.
 16 Q. Which you describe as:
 17 "Consideration could be given to either doing
 18 nothing or taking some form of disciplinary action
 19 falling short of a termination ... "
 20 A. Yes.
 21 Q. But then you set out reasons why that is not, in your
 22 view, in the best interests of SOG, because if you do
 23 that, whether you do nothing or whether you take
 24 disciplinary action falling short of termination, that
 25 will mean that Ms Birdi is still in the business, and

1 then Mr Patel has made this alleged threat.
 2 A. Yes.
 3 Q. Option 2 is, "Civil":
 4 "We are currently following due process by
 5 attempting to properly investigate the allegations with
 6 a view to quantifying if there is a disciplinary case to
 7 answer ... On the evidence that is currently available,
 8 it appears to be highly likely there is a case of gross
 9 misconduct to answer to.
 10 "However, Swarandeeep has shown that she is not
 11 prepared to hand over the company documents ... "
 12 That's not fair, is it? She was unable to hand over
 13 the blue book.
 14 A. The blue book is a very key piece of documentation that
 15 would have either supported the fact that the
 16 allegations had truth in them or would have refuted the
 17 fact that the allegations had truth in them. It was a
 18 very important document.
 19 Q. Okay.
 20 A. In fact it was a key document to actually unravelling
 21 what was really going on.
 22 Q. That's one document, a blue book?
 23 A. Yes.
 24 Q. But you say:
 25 "Swarandeeep has shown that she is not prepared to

1 hand over the company documents ... "
 2 Where had she shown you that? Where had she said,
 3 "I'm not handing over the company documents?"
 4 A. By that I was referring to the blue book, which
 5 contained a -- which I understood from both of them
 6 contained detailed manuscript notes of payments to and
 7 from various people and how they equalised the profit
 8 distributions, and that would have answered a lot of the
 9 questions that had been raised by the allegations that
 10 Nimesh Patel made.
 11 Q. You've exaggerated her approach here, haven't you?
 12 A. No, there were repeated letters sent to her. I made
 13 a number of calls, which is where she subsequently says
 14 that I had harassed her, leaving messages saying, "This
 15 document is a really important document," or set of
 16 documents, because it's a book full of information.
 17 That was followed up by a series of letters from the
 18 legal department, repeatedly asking for that book,
 19 because it's a very important document in this
 20 situation -- set of documents.
 21 Q. Mr McAlindon, that letter, requiring her to hand over
 22 the document, is page 368. {E/66/368} Is that what you
 23 are referring to?
 24 A. Sorry, it's page ...?
 25 Q. Page 368 {E/66/368}.

1 A. Yes, I think that's one of the letters that had --
 2 I think it was repeated in a number of letters that, "We
 3 still require the blue book".
 4 Q. That's right. You did still require the blue book.
 5 A. Hm-mm.
 6 Q. If it's only the blue book:
 7 "You are therefore instructed to comply with the
 8 handover of financial information as detailed in our
 9 letter..."
 10 But actually, the letter was page 336, which said:
 11 {E/60/336}
 12 "You are required to hand this book to the Loss
 13 Prevention team for their inspection as soon as
 14 possible."
 15 A. Yes.
 16 Q. So there is only one document. It's this blue book,
 17 isn't it?
 18 A. Yes, it is, it's --
 19 Q. She didn't have all the financial documents of the store
 20 in her possession, did she?
 21 A. No, I agree, but the blue book would have answered a lot
 22 of questions and it would've -- it would've put us in
 23 a position where it would've been much easier to
 24 backtrack the payments and look at the justification of
 25 the payments and either dispute Nimesh Patel's

1 allegations, because you could have seen the
2 transparency of the payments, or demonstrate that his
3 allegations were correct.
4 Q. You keep saying the same things, Mr McAlindon?
5 A. I know I do.
6 Q. I'm asking about what you have written here in your
7 report to the board, where you have purported that
8 Ms Birdi has shown that she is not prepared to hand over
9 the company documents.
10 That's an exaggeration, isn't it? She hadn't yet
11 answered your letters of the 29 March and 12 April --
12 A. I don't think that's an exaggeration at all.
13 Q. Okay. The letter of 12 April -- that's the same day
14 that you are writing this memo. So she hasn't even got
15 that letter yet. She can't have, can she?
16 A. I think there are a number of written requests and
17 I don't know what the chronology of those written
18 requests are, but there are a number of them.
19 Q. Not prior to 12 April. There is one written request?
20 A. Well, then there is one written requests, and there are
21 a number of verbal requests by myself.
22 Q. When did you speak to her?
23 A. I left messages on her phone and I had a conversation
24 with her relative, but there were a number of requests
25 stressing the importance of this document and I don't

1 feel that what I have said in this memo is exaggerated.
2 Q. You say:
3 "However, Swarandeeep has shown that she is not
4 prepared to hand over the company documents ... has gone
5 off sick and is not prepared to communicate."
6 Are you intending to get across to the board that,
7 as far as you are concerned, you consider her sickness
8 is somehow deliberate?
9 A. No, it's a statement of fact. She had gone off sick.
10 Q. Okay:
11 "Her brother has contacted MM and indicated that she
12 has seen an employment lawyer, who has advised her not
13 to say anything until they have reviewed her position in
14 detail. Her brother also indicated that she intends to
15 fight SOG every step of the way."
16 So had you got the impression by this point, you
17 personally got the impression, that Ms Birdi was no
18 longer a partner of SOG; she was now an enemy?
19 A. Not at all.
20 Q. Okay. So you say:
21 "It therefore appears likely that this course ..."
22 By "this course", you mean the due process course?
23 A. Yes.
24 Q. Option 2 is actually following the proper process?
25 A. Correct.

1 Q. Right. Option 3 is "Criminal":
2 "Consideration could also be given to preparing
3 a case to present to the police..."
4 You told me yesterday that quite frankly,
5 involvement of the police has nothing to do with you?
6 A. Correct. Well, I didn't quite say it's got nothing to
7 do with me; what I said is it's a decision that would
8 have to be taken by the board. So all I'm saying here
9 is that that is a decision that could be taken.
10 I haven't expressed an opinion. I've just raised the
11 issue to -- as part of this memo to say, you know,
12 "There are a range of options and which would you like
13 me to go down?"
14 Q. Okay. You say:
15 "The incident that relates to the payments that were
16 used to pay for a kitchen is a strong example that would
17 support an allegation of false accounting..."
18 That's the work that's done by somebody other than
19 an approved SOG supplier, isn't it?
20 A. That's right.
21 Q. And you say:
22 "... and her only defence would be to produce the
23 company documents she is deliberately withholding."
24 What documents is she deliberately withholding?
25 A. I'm referring to the blue book, which contains a lot of

1 information about payments.
2 Q. No, the blue book contains information about the
3 equalisation of payments between her and Mr Patel?
4 A. Correct, and that also, where Mr Patel is referring in
5 his allegations to payments that were made to his wife
6 and Mushtaq Rehman that were then removed from their
7 personal accounts and he repaid it back to Swarandeeep.
8 What he is saying there is that that's how this stuff
9 was paid for. It's paid for through the payroll system,
10 not through the invoice system.
11 Q. That's a different issue.
12 A. Sorry, why is it different issue?
13 Q. Because you are talking about now the issue of the
14 payment for work done on the kitchen?
15 A. Yes, correct, and what Mushtaq Rehman is saying is that
16 it has been falsely accounted for through the payroll
17 system --
18 Q. Not Mushtaq Rehman; you mean Mr Patel?
19 A. Sorry. Mr Patel is alleging that it had been falsely
20 accounted for by paying -- to avoid any authorisation
21 process by paying it through the payroll system rather
22 than openly declaring the expenses in the invoice
23 system.
24 So that's his allegation. The evidence that we had
25 at that point was consistent with his allegation and I'm

1 simply repeating that in the memo.
 2 Q. You are doing more than simply repeating it; you are
 3 saying that she is deliberately withholding documents.
 4 A. And I felt --
 5 Q. There are three parts to that: deliberately?
 6 A. Yes, I felt that she was deliberately withholding
 7 documents.
 8 Q. On what basis?
 9 A. On the basis that repeated requests had been made and
 10 she wouldn't produce the documents.
 11 Q. No -- not she wouldn't.
 12 A. She hadn't.
 13 Q. Had you spoken to her?
 14 A. I couldn't speak to her.
 15 Q. She was off sick, wasn't she?
 16 A. Yes.
 17 Q. You accept that?
 18 A. Correct.
 19 Q. She had been written to on 29 March?
 20 A. She had been written -- I think there were many
 21 exchanges, communications.
 22 Q. No, there weren't. Look, this is 12 April you are
 23 writing this. You only saw her on 27 March.
 24 A. Yes.
 25 Q. So prior to that, there were no communications?

1 A. Yes.
 2 Q. On 27 March she mentions the book?
 3 A. Yes. Sorry, on 27 March?
 4 Q. When you speak to her on 27 March, she mentions the fact
 5 that she has got the book at home?
 6 A. The first -- the first mention of the blue book being
 7 at home was the day we suspended her and if that's the
 8 27th -- if that's the date you refer to, that's correct.
 9 But the first discussion --
 10 Q. We know that's 27 March, don't we? That's the day you
 11 suspended her; do you remember?
 12 A. Yes, okay. No, not particularly, but, yes, I accept
 13 what you are saying.
 14 Q. 27 March, the day you suspended her.
 15 A. Yes.
 16 Q. You have the conversation, according to your log?
 17 A. Yes.
 18 Q. In which she says the blue book is at home?
 19 A. Yes.
 20 Q. That was your log; I took you to it earlier.
 21 A. Yes.
 22 Q. 29 March, there is a letter goes out to her, saying,
 23 "That blue book, hand it over. Please make arrangements
 24 to hand it over to the Loss Prevention team."
 25 Okay?

1 A. Yes.
 2 Q. She has not yet responded to that letter of 29 March;
 3 no one has spoken to her or her brother after 29 March?
 4 A. I had made repeated attempts -- at the time I wrote
 5 this, I felt that she was deliberately withholding the
 6 book. Now --
 7 Q. I'm going to suggest to you that you were exaggerating
 8 the position in order to paint an unfair picture against
 9 Ms Birdi to the board of SOG, because there might be
 10 some members of that board who would need to be
 11 persuaded?
 12 A. I don't agree with that at all. I felt that at the time
 13 and I put it into this report. I don't feel that I was
 14 exaggerating. That was what I thought at the time.
 15 Q. Okay. Let's move swiftly on. Page 402, 23 April.
 16 {E/81/402} So it's about 11 days later.
 17 An unconnected issue arises. It's nothing to do
 18 with Ms Birdi, but you are seeking from Derek Dyson
 19 authority in relation to the incurring of some
 20 expenditure? Is that fair?
 21 A. Erm, yes. I wouldn't necessarily say "authority".
 22 I think in those situations I would have viewed
 23 Carol Slark as being the person responsible for managing
 24 the day-to-day running of that business, on behalf of
 25 whoever, but she was the person that I viewed as

1 the person responsible and accountable for decisions.
 2 She had asked me for some help and, in the normal way of
 3 working, if people had asked me that question, that's
 4 what we would have done.
 5 However, because Swarandeeep was suspended at the
 6 time and she is a director, a shareholder of the
 7 business, I felt it appropriate to run that past Derek
 8 to see whether or not he had any issue with it.
 9 So I wasn't necessarily seeking authorisation
 10 because what I was actually doing is consistent with
 11 what we would do in any store in those situations. But
 12 I felt it was appropriate to make sure that Derek was
 13 informed and could speak out if he disagreed with what
 14 we were doing.
 15 Q. Did you effectively think that you were in charge of the
 16 running of the store at this point?
 17 A. No, I was responding to a request for an A shareholder
 18 in the store.
 19 Q. Sorry, so you were responding to ...?
 20 A. I was responding to a request from somebody who was
 21 running the day-to-day management of that store.
 22 Q. Yes. She was working for you, wasn't she?
 23 Carol Groves --
 24 A. She was, but she was the person on the ground and she
 25 was asking me about how to resolve a situation.

1 Q. Yes?
2 A. That is the normal course that we would follow, but
3 because of the fact that Swarandeeep was suspended,
4 I felt it appropriate to ensure that Derek was informed
5 and if he disagreed with it, give him the opportunity to
6 disagree with it before we took action.
7 Q. Fine. Mine is a simply question. Carol Groves is the
8 person on the ground that you have appointed; you found
9 her, didn't you?
10 A. Yes.
11 Q. You appointed her?
12 A. Yes.
13 Q. Was there any sort of contractual agreement with her?
14 A. No, not as such.
15 Q. No? Nothing in writing?
16 A. No.
17 Q. And you just -- you are the one who spoke to her, not
18 Mr Dyson?
19 A. Yes.
20 Q. Not the legal team or anything like that?
21 A. Correct.
22 Q. You were the only conduit between her and SOG?
23 A. Absolutely, and that's why I referred it to Derek Dyson,
24 because I didn't feel it would be appropriate to not
25 inform somebody at a more senior level because of those

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1 circumstances.
2 Q. Yes, but you have appointed her to manage the store.
3 That's what you have done up to this point?
4 A. Yes.
5 Q. Does it follow from that that you believed -- you, the
6 Loss Prevention team, shall we say, or you, the head of
7 the Loss Prevention team -- that it was your task to
8 manage the store?
9 A. I believed it was Carol Slark's responsibility to manage
10 the store and, yes, I employed her, but in my own mind
11 she was the person responsible and accountable as the
12 decision-maker on site.
13 Q. Was she accountable to you or was she accountable to
14 Dartford Visionplus, or properly, Dartford Specsavers
15 Limited, the business that owned the store?
16 A. I think she is responsible and accountable to both
17 Dartford and to SOG as the A shareholder.
18 Q. What about to the other A shareholder, Swarandeeep Birdi?
19 A. Well, I said Dartford.
20 Q. I see. So Dartford is Swarandeeep Birdi --
21 A. Well --
22 Q. -- and SOG is the other A shareholder?
23 A. Dartford is whoever is the shareholder of that business.
24 The bottom line here is that because -- because I had
25 picked and put in place Carol Slark, I felt it was

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1 appropriate to go to a higher authority. So I sent this
2 email to Derek Dyson to say, you know, "This is the
3 situation I'm faced with, this is what we would normally
4 do, but I need to make you aware in case you disagree
5 with the course of action", because of the situation
6 that I had employed her to go into that store and manage
7 the day-to-day. I'm seeking -- I'm making sure that
8 somebody of a higher authority is aware.
9 Q. My question is this: you have suspended Ms Birdi from
10 her employment duties, Dartford Visionplus?
11 A. Correct.
12 Q. You handed her the letter of suspension?
13 A. Correct.
14 Q. She is still the shareholder, isn't she?
15 A. Correct.
16 Q. It is still her business unless and until she is found
17 guilty, sacked and then had her shares taken off her?
18 She is still the shareholder of this business?
19 A. Correct.
20 Q. It's her business?
21 A. Correct.
22 Q. Jointly with the other A shareholder?
23 A. Absolutely.
24 Q. The other A shareholder by this point is SOG, because
25 you bought the shares off Mr Patel?

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1 A. Yes.
2 Q. So SOG and her are the people interested in the
3 business?
4 A. Yes.
5 Q. She is suspended, you say, pursuant to the disciplinary
6 process, and she is suspended because you don't want her
7 interfering with evidence. That's the justification you
8 have given for suspending her?
9 A. Yes.
10 Q. That's understood. If she were in the store, she might
11 speak to the staff, get them to say things, or tamper
12 with the documents or the computers or something. So
13 there might be some interference with the evidence?
14 A. Yes.
15 Q. And so for that reason, she was removed from the store
16 and she is put on paid suspension: "Stay at home"?
17 A. I understand what you are saying.
18 Q. But she is still the owner of the store, isn't she, the
19 joint owner of store? It's still her money that's being
20 spent?
21 A. I'm not disputing that. It's --
22 Q. Why did you not revert to her on matters of day-to-day
23 management, which have nothing to do with the
24 investigation, nothing to do with the evidence, nothing
25 to do with tampering with documents or computers or

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1 trying to inveigle people into saying things which she
 2 shouldn't inveigle them into.
 3 When it's matters of the day-to-day management of
 4 store, decisions about large items of expenditure for
 5 the store or appointing Carol Slark rather than somebody
 6 else, those sorts of management decisions for the
 7 day-to-day management of the business of the store, on
 8 what basis do you suggest that you can simply -- you and
 9 Derek can decide what goes on and that she is to have no
 10 involvement?

11 A. Erm, I guess because the way that we -- various people
 12 would take advice from Legal. I don't purport to
 13 understand all of those discussions. The practice in
 14 that sort of situation, where a partner had been
 15 suspended from the business and there was something
 16 unusual that's not normal day-to-day, which, you know,
 17 having one employee stealing from another isn't, I would
 18 refer that for a higher decision and that's all I have
 19 done. I don't really -- I can't really say anything
 20 more than that, other than I felt it was appropriate to
 21 refer it to Derek and I did.

22 I think if Derek had've said, "Hang on a minute,
 23 there are legal issues surrounding who is a shareholder
 24 of what company and the legalities of suspension versus
 25 whatever", I think he would have gone away and taken

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1 legal advice if he thought what I was doing was wrong
 2 and he would have expressed that point of view to me.

3 I don't understand those issues, so I would have
 4 referred it to him to make --

5 Q. I'm not asking you about legal issues; I'm just asking
 6 you about basic concepts. You told his Lordship that
 7 she was suspended from her employment in order to
 8 prevent her from interfering -- or from there being any
 9 suggestion of interference with evidence, which is
 10 understood.

11 But decisions of management, decisions of management
 12 which are to affect the finances of this company, of
 13 which she owns 50 per cent of the profits, those have
 14 nothing to do with the reason for her suspension. And
 15 so I'm asking you why you considered it appropriate to
 16 revert only to Mr Dyson and to make all the decisions
 17 between the two of you --

18 A. Because Mr Dyson is a main board director. He is the
 19 representative of SOG as the A shareholder.

20 Q. Yes.

21 A. He is also the representative of SOG as the
 22 B shareholder, and that would be my normal course of
 23 action, is to refer anything that I thought needed to be
 24 referred -- I would refer it to him and take
 25 instruction.

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1 Q. I see. So you are effectively saying that this is the
 2 way you do it and this is the way you do it?

3 A. Absolutely.

4 Q. All right. Page 416 {E/85/416} We are up to
 5 28 April -- well, I'm not sure it is 28 April. This is
 6 a slightly odd email. Do you have 416? I know you
 7 didn't send the email, but you did receive it?

8 A. Yes.

9 Q. It purports to say:

10 "Saturday 28 April, 9.12 pm."

11 That seems to be the date on the email. I don't
 12 know whether that's a date received by you, so that's on
 13 your received email, or whether that's as sent by
 14 Mrs Groves?

15 A. Well, it says "sent".

16 Q. I know it is sent, but I don't know whether this copy of
 17 it that we have is as received by you on your email
 18 account, your computer, and it has been printed off, or
 19 whether this is her email sent item, printed off. So
 20 it's not clear to me whether that date and time is
 21 representative of her email address or yours, okay? Her
 22 computer or yours. But:

23 "Good morning fine sir!"

24 That doesn't sound right, does it, if it was sent at
 25 9 pm in the evening on a Saturday?

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1 A. I don't know what you expect me to say about that. She
 2 has written an email to me. It's her words.

3 Q. Okay. At the bottom of page 416 it says:

4 "Hope you had a good weekend..."

5 So that would appear to indicate that she sent it at
 6 the end of the weekend?

7 A. I have no idea what she is referring to.

8 Q. She is referring to your weekend. She is saying:

9 "Hope you had a good..."

10 She is obviously expressing friendly --

11 A. Yes, absolutely. I don't know which weekend she is
 12 referring to but -- I have no idea what she is referring
 13 to.

14 Q. It would only be this weekend, wouldn't it? You hadn't
 15 had any other contact with her?

16 A. I have no idea.

17 Q. You have no idea; all right, fine. What had you been
 18 saying to Mrs Groves about what you were looking for
 19 against Ms Birdi?

20 A. Sorry, let me just read the entire email. Is it this
 21 email that you are referring to?

22 Q. Yes:

23 "Good morning fine sir!"

24 Exclamation mark:

25 "Spoke with Lorraine yesterday when she was in and

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1 mentioned that I had told you about the till line
 2 refunds she had explained to me and that Swarandeeep had
 3 told her not to mention it to anyone. Lorraine said she
 4 is more than happy to talk to you about it.
 5 "There could be more you know!"
 6 Exclamation mark.
 7 It seems that you and Ms Slark are in on some sort
 8 of agenda. Would that be fair?
 9 A. No, utterly unfair, completely inappropriate. She has
 10 sent me an email out of the blue and this is her words
 11 and these are her opinions.
 12 Q. Not entirely out of the blue, is it? Because if you go
 13 down -- miss the next two paragraphs about what she is
 14 saying. It says:
 15 "I genuinely believe that if you
 16 investigate/interview her you may get what you need."
 17 You have obviously discussed with her what you need,
 18 haven't you?
 19 A. Erm --
 20 Q. You have told Carol Slark:
 21 "I am looking --"
 22 A. No, that's her opinion and her words and her language.
 23 She has sent me an email. She knows what I'm
 24 investigating. She knows that we are looking for
 25 records of the business that will either support or

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1 refute the allegations and she is making a statement
 2 there. There is no grand plan. I have not had detailed
 3 conversations with her, but she knows roughly why we are
 4 there.
 5 Q. I'm going to suggest you had had detailed conversations
 6 with her --
 7 A. No.
 8 Q. -- and that's why she is so apparently friendly towards
 9 you in these emails, the method of language she uses.
 10 It's clear that you and she ...
 11 A. The reality is that I have, personally, next to no
 12 knowledge of this individual.
 13 Q. Who, Carol Groves?
 14 A. Carol Groves. My team dealt with her in her previous
 15 store. I don't think I had particularly got involved in
 16 that and I don't have a huge amount of knowledge to her.
 17 I think she is an individual who talks in this way but
 18 I have had very little dealing with her.
 19 Q. I suggest you had -- certainly by 28 April, or perhaps
 20 it's the 29th, or the morning of the 30th, who knows --
 21 you had had plenty to deal with her because she is aware
 22 of what you are looking for and she's --
 23 A. Well, she would by the nature of the fact that she's in
 24 that business in those circumstances.
 25 Q. What have you told her?

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1 A. I have told her that there's an investigation. She
 2 would have been aware of what records we are looking
 3 for.
 4 Q. What have you told her about the allegations?
 5 A. Specifically, I've no recollection of what conversations
 6 I had with her.
 7 Q. There is a danger here of corruption of evidence, isn't
 8 there? If you have told her what the allegations are
 9 that you are trying to prove, and then you put her in
 10 charge of the witnesses, who are the employees, and then
 11 you get her to speak to them about what they would say,
 12 and then you go along and interview them three days
 13 later, isn't there going to be a suggestion that you
 14 have influenced, through Carol Slark, what the witnesses
 15 are going to say?
 16 A. I haven't given her detailed information about what we
 17 were looking at.
 18 Q. You plainly have, because she is telling you that:
 19 "I genuinely believe that if you
 20 investigate/interview her you may get what you need."
 21 A. She may well have been aware of the personal -- of
 22 the general circumstances but she wouldn't have been --
 23 had a greater awareness than that.
 24 Q. You should have kept it confidential, surely?
 25 A. I don't think I gave her any information that should

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1 have been kept confidential that wasn't.
 2 Q. Do you agree you should have kept it confidential?
 3 A. I don't think -- I have no reason to believe that I have
 4 given her any information that wasn't -- that was
 5 confidential.
 6 Q. Do you agree that you should have kept confidential the
 7 details of the allegations against Swarandeeep?
 8 A. I agree with that, and I'm also saying that I didn't
 9 breach that confidentiality.
 10 Q. All right.
 11 We have dealt at length with the actual interviews,
 12 so I'm not going to go through those again.
 13 We have also dealt with page 433, which is the email
 14 to you about the salary reviews?
 15 MR JUSTICE NUGEE: If you are looking for a new point,
 16 Mr Stuart, maybe --
 17 MR STUART: I was going to try and end this bundle but, yes,
 18 I see the time.
 19 MR JUSTICE NUGEE: Yes. I will say 2 o'clock.
 20 Mr McAlindon, I remind you not to speak to anybody over
 21 lunch.
 22 (1.01 pm)
 23 (The short adjournment)
 24 (2.00 pm)
 25 MR JUSTICE NUGEE: Yes?

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1 MR STUART: Mr McAlindon, we had reached 2 May. I said
 2 I had dealt with 2 May, which I did at length with you
 3 yesterday, but there is one question I do have to just
 4 put to you. Do you remember page 433? {E/88/433}
 5 A. Yes.
 6 Q. This is the email of 2 May, where Ms Slark emails you
 7 and you suggested yesterday in your evidence that this
 8 helps you to recall that it was on 2 May, and must have
 9 been on 2 May, that you were in the store doing the
 10 interviews with Mrs Frondigoun and Ms O'Brien, because
 11 of the words at the top:
 12 "Mel,
 13 "Nice to finally meet you today."
 14 A. Yes.
 15 Q. You know that it is Mrs Frondigoun's evidence, at least,
 16 that you met on one day and that she was interviewed one
 17 day, and then you came back the next day or the day
 18 after that?
 19 A. Yes.
 20 Q. Within a day or two.
 21 As I understand it, you are suggesting that because
 22 Mrs Groves -- Ms Slark says:
 23 "Nice to finally meet you today."
 24 That shows that you weren't in the store on the
 25 Tuesday, 1 May?

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1 A. Erm... I believe so.
 2 Q. Okay.
 3 A. But in any case I'm clear on the fact that I did do
 4 those interviews on one day.
 5 Q. I know you keep saying that and you know the evidence
 6 that has been put against that. But there is one piece
 7 of evidence which I need to put to you, then.
 8 Whilst you keep that page open, could you be passed
 9 bundle E3 and could you go to page 509. {E/109.2/509}
 10 On 30 April, Ms Slark sent you her invoice and she
 11 sets out the days that she worked at the store --
 12 A. Yes.
 13 Q. -- in April. Do you see that?
 14 A. I do.
 15 Q. If you then go to page 512. {E/110.1/512}
 16 A. Yes.
 17 Q. That's her invoice at the end of May and it sets out the
 18 days she worked in the store in May?
 19 A. Yes.
 20 Q. From which we can see that she didn't work on 1 May.
 21 She wasn't in the store that day, do you see? Indeed,
 22 that week she was only in the store on the 2nd and the
 23 3rd. She wasn't there on the 4th, 5th, 6th, 7th, 8th or
 24 9th either. Do you see that?
 25 A. Yes.

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1 Q. She was only there on Wednesday, 2nd, and Thursday, 3rd?
 2 A. Yes.
 3 Q. So the fact that she met you on Wednesday, the 2nd, is
 4 not inconsistent, is it, with you having been there at
 5 the store on Tuesday, 1 May, interviewing Ms Frondigoun
 6 and Ms O'Brien, because Ms Slark wasn't there on that
 7 day, was she? On 1 May?
 8 A. She clearly wasn't there.
 9 Q. No. So you could have been there on 1 May?
 10 A. I only attended the store on one day.
 11 Q. That's your evidence now?
 12 A. That's my evidence from recollection is I only went
 13 to --
 14 Q. From recollection, yes?
 15 A. In terms of doing interviews, I know I did go back to
 16 the store and had a conversation with the lady who was
 17 a dispensing optician at some point -- I don't know when
 18 that was -- but in terms of the interviews, I only
 19 attended the store on one day to conduct interviews.
 20 Q. To conduct interviews. I'm not disagreeing with that
 21 either. You went on 1 May to conduct the interviews,
 22 you then typed up your records of interviews on 2 May,
 23 and you went a back to the store on 2 May with those
 24 typed-up interviews, got them signed off by the staff
 25 members concerned, and on that day met Ms Slark. It's

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1 all consistent, isn't it?
 2 A. No, I don't agree.
 3 Q. It's consistent with the evidence, at least?
 4 A. No, it's not consistent with the evidence, because
 5 Patrice O'Brien is clear that she got the notes the same
 6 day.
 7 Q. No, she wasn't at all clear. She recalled that she had
 8 the manuscript notes?
 9 A. I don't do manuscript notes.
 10 Q. She recalls them.
 11 A. She recalls -- well, she also signed the record and made
 12 a number of amendments to it. So I think she was
 13 mistaken and I think when she gave evidence, I think she
 14 was mistaken about manuscript notes because I don't do
 15 manuscript notes.
 16 Q. Anyway, the point is Ms Slark wasn't there on 1 May. So
 17 if you were there, if the court decides you were there
 18 on 1 May interviewing these two ladies, you wouldn't
 19 have met Ms Slark, would you?
 20 A. I only attended the store on one day to conduct those
 21 two interviews.
 22 Q. 1 May?
 23 A. No, I dispute that.
 24 Q. Yes. Okay. So on page 444?
 25 A. Bundle?

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1 Q. Same bundle, E2. Keep E3 ready because we are about to
2 get there. E2, right near the back, page 444.
3 {E/93/444}
4 A. 444?
5 Q. Yes. For some reason, Mrs Frondigoun is getting a £60
6 bonus. I asked her about this and she thought it was
7 generous but she didn't know why she was getting it.
8 Did you have any role to play in that?
9 A. No.
10 Q. No. Did Ms Slark run it by you?
11 A. I have no recollection of this.
12 Q. No. On that same day, 16 May, in the evening, page 445,
13 {E/94/445} she writes to you, Ms Slark. Do you see
14 that:
15 "Hi Mel,
16 "I have worked with the figures and based the
17 suggestion of salary increases on the fact ..."
18 Et cetera, et cetera. Do you see that?
19 A. Yes.
20 Q. So that evening, she is sending you her potential salary
21 review document for the second time. This is amended
22 now?
23 A. Yes.
24 Q. We had seen it on page 433, {E/88/433} she had sent it
25 to you on 2 May, and now two weeks later, she had sent

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1 it to you again. Do you see?
2 A. I do.
3 Q. You revert -- page 447 -- back to Mr Dyson? {E/95/447}
4 A. Yes.
5 Q. In which you said:
6 "Following our interviews, salaries were identified
7 as being an issue..."
8 A. Yes.
9 Q. Who do you say identified salaries as an issue?
10 A. I don't say who. I just say salaries were identified as
11 being an issue.
12 Q. Okay. How do you now say identified salaries as being
13 an issue?
14 A. Carol Slark clearly identified salaries as an issue.
15 Q. Right. Before or after your interviews with the staff?
16 A. I have no idea.
17 Q. It depends when the interviews took place, doesn't it,
18 because --
19 A. No, not at all.
20 Q. -- if the interviews took place on 1 May --
21 A. No, not --
22 Q. -- then she identified it on 2 May?
23 A. No, I totally disagree. She could have found that out
24 over a long period of time.
25 Q. Okay. You had asked Carol to review these salaries,

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1 hadn't you, as you said to Derek?
2 A. Yes.
3 Q. And the purpose of that was what?
4 A. She believed it was an issue, so I said, "Well, if you
5 think it's an issue, look at it and submit a paper and
6 I'll forward it on".
7 Q. Okay. I suggest that by this stage, certainly, having
8 heard what you said to Mrs Frondigoun about Ms Birdi on
9 2 May --
10 A. I dispute that.
11 Q. 1 May, you dispute?
12 A. I dispute inappropriate comments to her, full stop.
13 Q. All right. By this stage you had certainly formed
14 a view about Ms Birdi?
15 A. To a degree, yes.
16 Q. And the plan was to exit her from the store through
17 a disciplinary route?
18 A. No, the plan was for -- to finish an investigation
19 process and submit a file for consideration. That's
20 other people's decisions to make. There wasn't a plan,
21 as you describe it.
22 Q. You had asked the board to give you an indication of
23 whether they wanted to go option 1, option 2 or
24 option 3?
25 A. Correct.

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1 Q. Option 1 is do nothing or end up with a --
2 A. Yes, I understand.
3 Q. -- disciplinary finding but short of dismissal?
4 A. Yes.
5 Q. Option 2 is civil but dismissal?
6 A. Yes.
7 Q. And that won't have the effect of Mr Patel raising his
8 threats because she will be exited from the store.
9 Option 3 is criminal?
10 A. Yes.
11 Q. And you decided to go down option 2?
12 A. The board decided that.
13 Q. The board decided that?
14 A. Or gave the instruction that that's what they felt was
15 appropriate.
16 Q. Okay. But option 2 is exiting her through the --
17 A. Not --
18 Q. -- through the disciplinary process route?
19 A. Well, it's not reaching a conclusion before
20 a disciplinary process has been gone through. It's down
21 to the disciplinary chairman to make that decision and
22 I believe they did and she wasn't exited.
23 Q. Okay. I'm going to suggest to you that by this point,
24 the plan was to exit her and that you needed the
25 goodwill and assistance of the staff to join with you

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1 against Swarandeeep Birdi in giving evidence?
 2 A. Well, there's two parts to that. Firstly there wasn't
 3 a plan to exit her; there was a plan to go through
 4 a disciplinary process. A disciplinary chairman would
 5 make the decision, which they subsequently did, and it
 6 was not to dismiss Swarandeeep. So there wasn't a plan
 7 to dismiss; there was a plan to go through a process and
 8 that process was going through.
 9 In relation to the salaries, she identified it as
 10 an issue. From her knowledge as a retail -- as
 11 a director, a regional chairman, she had a view on it.
 12 She passed me those views and I passed them to Derek to
 13 consider.
 14 Q. You are still managing this process at this point, you
 15 personally?
 16 A. Erm, in what respect am I managing?
 17 Q. Well, I can't see anybody else managing the process from
 18 the documents, at this point?
 19 A. I'm acting as a gateway for Carol Slark through to the
 20 rest of the business on issues that were beyond my skill
 21 set to make decisions on. So in that respect, yes,
 22 I was managing.
 23 Q. You were not only managing the business through
 24 Carol Slark, you were still managing the investigation?
 25 A. I don't know at what point I relinquished all

1 21

1 responsibility for that, but there was a point in time.
 2 Q. I'm looking at your witness statement. We are up to,
 3 I think, about paragraph 45. First witness statement,
 4 page 137 of bundle C. {C/11/137}
 5 You have raised the point about having the three
 6 options, the paper that you sent to -- which we know is
 7 12 April. And then at 45 you say:
 8 "I was informed by Mr Dyson that he had decided that
 9 the best course of action was to continue with the
 10 investigation."
 11 A. Yes.
 12 Q. Did he say that the SOG board had considered this?
 13 A. I have no idea.
 14 Q. You don't seem to say so in your statement. It's all
 15 down to Mr Dyson, according to this?
 16 A. Yes.
 17 Q. Did you speak to any other members of the board?
 18 A. No.
 19 Q. Dame Mary Perkins, for example?
 20 A. No.
 21 Q. Or anybody else?
 22 A. No.
 23 Q. And then you say:
 24 "The Loss Prevention Department's efforts to
 25 conclude the investigation as quickly as possible were

1 22

1 seriously hampered by Ms Birdi's refusal to cooperate.
 2 She refused on a number of occasions to meet for
 3 investigatory interview..."
 4 Is that the period when she was signed off sick?
 5 A. Erm, probably.
 6 Q. Okay. And then you refers to the letters at pages
 7 E2/328 onwards -- and we will come to some of the later
 8 ones. So this is the period of time we are talking
 9 about, isn't it?
 10 A. Yes.
 11 Q. It's the sort of April, May, June period?
 12 A. Yes.
 13 Q. At 46 you make the point that:
 14 "... Ms Birdi also refused to be interviewed by
 15 me..."
 16 Do you see that?
 17 A. Yes.
 18 Q. Then you say:
 19 "In spite of the fact that it made most sense for me
 20 to interview her, Mr Dyson and I agreed that
 21 Neil Hamilton, a Retail Development Consultant, would
 22 interview her."
 23 Do you see that?
 24 A. I do.
 25 Q. It is clear from the way you put it there that

1 23

1 Mr Hamilton was doing the interview?
 2 A. Yes.
 3 Q. Not the investigation; he is not running the
 4 investigation, is he?
 5 A. Erm, no, but effectively that was the last point at
 6 which I had any active involvement.
 7 Q. Well, that's what I'm going to come on to. That appears
 8 to be what you are seeking to suggest in this witness
 9 statement, but I'm going to suggest to you that as head
 10 of the loss investigation department, you continued to
 11 have significant behind-the-scenes involvement
 12 throughout this matter?
 13 A. Okay.
 14 Q. Would you agree with that?
 15 A. No, I don't agree with that.
 16 Q. Behind the scenes?
 17 A. No, I don't agree with that.
 18 Q. Not so that Ms Birdi could see you doing it --
 19 A. I have said it twice: I don't agree with that.
 20 Q. All right. What we have in relation to this is at 457
 21 -- let's just go back to that one page.
 22 At 455 {E/99/455} Ms Anderson writes to Ms Birdi on
 23 21 May. Do you see that:
 24 "Although we do not agree with your comments
 25 regarding the conduct of Mr McAlindon, as there is on

1 24

1 clear business need to progress matters as expeditiously
2 as possible, we have arranged for Neil Hamilton,
3 Regional Development Consultant, to continue the
4 investigation at the Dartford store and to carry out any
5 interviews that are necessary."

6 A. Yes.

7 Q. Interviews?

8 A. Yes.

9 Q. "We note from your latest medical certificate dated
10 11 May 2007 that you remain incapacitated for work
11 purposes until 25 May 2007. As we have deferred on the
12 matter of Mr McAlindon, we are hopeful that you will ...
13 be able to attend an investigatory interview with Neil
14 Hamilton..."

15 In June. Do you see that?

16 A. I see that.

17 Q. Page 457 then. A few days later, 23 May. Do you see
18 that? {E/100/457}

19 A. Yes.

20 Q. Mr Ryan is the man who is in business transfer; he is in
21 the room next door to Mr Dyson. Mr Dyson described how
22 he could walk into his room as easily as that. Do you
23 remember?

24 A. Yes.

25 Q. He is in Guernsey with Mr Dyson?

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1 A. He is not actually in a room. Mr Ryan just sits in an
2 open plan area in front of his room.

3 Q. Outside Mr Dyson's office?

4 A. Yes, correct.

5 Q. He is responding to an enquiry from Mr Lunn, which said:

6 "Hi Mike,

7 "The latest rumour is that the Gravesend partners
8 have been seen in the Dartford store because they are
9 buying it?!

10 "Are you aware of this? I would be keen to discuss
11 due to the proximity of Bexleyheath."

12 Neil Lunn is in the shared venture group?

13 A. Correct.

14 Q. The answer is:

15 "Hi Neil,

16 "We are not at the moment seeking buyers for any
17 shares in Dartford.

18 "The Gravesend partners have asked to be considered
19 if/when shares are for sale.

20 "This is in Mel's realm at the moment."

21 Do you see that?

22 A. I see that.

23 Q. Everybody in Specsavers Optical Group in Guernsey knows
24 what that means, don't they. They mean you,
25 Mel McAlindon, are dealing with this?

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1 A. That would depend on whether or not he had an awareness
2 of what was going on in the communications from the
3 legal department and Swarandeeep in relation to the
4 appropriateness of me being involved in the interview
5 and I don't think there is any reason why he would have
6 been aware of that.

7 I think his comment in that email reflects not that
8 it's me necessarily actively involved but, "It's in
9 Mel's realm", as in it's in the process of being
10 investigated. It's part of the Loss Prevention
11 investigation. So that's an assumption on his part.
12 I don't think he is aware of all the communications that
13 were going on.

14 Q. No, but even if he were aware, she has been told that
15 Mr Hamilton is going to be interviewing her. No one is
16 suggesting that you are not still in charge of the
17 investigation; nobody is suggesting that, are they?

18 A. It's suggested far more in the letter from
19 Alison Anderson than it is --

20 Q. Where is it suggested that you are no longer in charge
21 of the investigation?

22 A. "... we have arranged for Neil Hamilton, Regional
23 Development Consultant, to continue the investigation at
24 the Dartford store and carry out any interviews that are
25 necessary." {E/99/455}

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1 Q. Yes, he is to carry out the interviews?

2 A. Yes.

3 Q. There is a next step, isn't there, after the interviews?

4 A. Correct.

5 Q. Someone -- or a number of people -- in the investigation
6 department, the Loss Prevention department, has to draw
7 up a report, don't they?

8 A. That would be the normal process but it wasn't the case
9 in this situation. In this situation, because

10 Neil Hamilton had dealt with the interviews, he wrote
11 the investigation report. At that point in the process,
12 I didn't continue to deal with those issues.

13 Q. Did he write the investigations report?

14 A. I believe so, but I certainly didn't.

15 Q. No, okay. Did you have some input into the
16 investigation report?

17 A. No.

18 Q. Okay. Anyway, what we see from page 458 {E/101/458} is
19 on Thursday 24 May you are emailing Mr Hamilton and
20 Mr Barnes. Do you see that?

21 A. I do.

22 Q. And you are sending him the contemporaneous records
23 documents that you have drawn up for
24 Ms Lorraine Frondigoun and Patrice O'Brien?

25 A. Yes.

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1 Q. The contemporaneous records of interviews that you have
2 drawn up for Mr Patel and the second interview with
3 Mr Patel on the same day?

4 A. Yes.

5 Q. Two documents you have drawn up. The Dartford case file
6 sheet, 18 April 2007. I'm not sure -- is that the log?

7 A. Yes.

8 Q. Okay. And Dartford investigation, Swarandeeep Patel,
9 23 March 2007. What's that?

10 A. I have no idea.

11 Q. You sent it?

12 A. I know that I did but I sent it seven years ago and
13 I can't recollect what it is.

14 Q. "Some light reading for you Neil!"

15 Exclamation mark. You have obviously had a word
16 with Neil before this. You must have spoken to him
17 about it?

18 A. I have no recollection of speaking to him and it doesn't
19 infer that from the email so I really don't know.

20 Q. Is it likely you would have had a word with him about
21 it? He was going to continue the investigation, you
22 say, do the interview?

23 A. I'd say it's unlikely because I'm explaining to him
24 that, you know, these are the documents, and I'm
25 explaining to him that Phil is fully aware because he

1 29

1 was involved in it and he would be able to answer any
2 questions.

3 I think if I had had a conversation with
4 Neil Hamilton before I sent this email, I don't think
5 I would have had a need to put that in the email. So
6 I don't think I did discuss it with him before I sent
7 that email.

8 Q. Okay. We are told that the three pages that are all
9 blacked out, that the content of all of that blacking
10 out, we are told, is legally privileged information.
11 Are you aware of that?

12 A. No.

13 Q. No. All right, fine, I can't ask you about it then.

14 We have then got -- do you see page 461? You might
15 recognise this? {E/101.1/461}

16 A. Yes.

17 Q. We have got a version of the records. Do you see?

18 A. Yes.

19 Q. Which is not quite the same as the versions that we have
20 previously seen because in the "time started" and "time
21 record commenced" bit on page 461, there is no "time
22 concluded" in there, is there?

23 A. No.

24 Q. Do you know how that document came to be created, this
25 version of this document?

1 30

1 A. I think that's the original Word version before it was
2 printed and signed with corrections in it.

3 Q. I see. So you still had that on your computer on
4 24 May, when you are emailing it to Mr Hamilton as
5 a ".doc"-style document?

6 A. I must have done, because that's the document.

7 Q. And similarly for the Patrice O'Brien document at
8 page 475? {E/101.2/475}

9 A. Yes.

10 Q. Hm-mm. Right. The case file sheet is page 476.

11 {E/101.3/476} We have got the case file that goes after
12 that. That's the log.

13 I wonder, would page 484 be the document, "Dartford
14 Investigations Swarandeeep Patel"? {E/101.4/484}

15 A. It could be. I don't recollect.

16 Q. You don't know. My question on this one is: whose
17 document is this? Have you any idea what this document
18 is?

19 A. Erm, no.

20 Q. Okay.

21 A. It could be mine.

22 Q. It could be yours?

23 A. It could be mine, it could be Phil Barnes's, I don't
24 know.

25 Q. You see, on this one, under number 2, "Payroll", we have
1 31

1 got Mr Patel and Mr Rehman, and then it says:

2 "December 2005 Nimesh alleges Swarandeeep paid her
3 husband £4,000 for overtime done during the refit. This
4 needs to be corroborated as no time sheets could be
5 located and Nimesh refutes."

6 Does that mean "Mushtaq refutes"? Nimesh can't be
7 refuting what he is alleging?

8 A. It could be, it's clumsily worded. I suppose you could
9 read it either way.

10 Q. Okay. My question is: who is corroborating? Who is
11 actually investigating to see that actually, what
12 Mr Rehman was paid £4,000 for at around that time was
13 all his work on the software/website development, which
14 all went through SOG. All the documentation went
15 through SOG and all the payments went through SOG, and
16 SOG even wrote to him to say, "Look, when you are doing
17 this work, don't misuse our intellectual property".

18 So who was corroborating this allegation?

19 A. I don't know, because I'm not sure who the author is and
20 I'm not sure of the circumstances in which the document
21 was created.

22 Q. Hm-mm. Okay. Did you send any instructions to
23 Mr Hamilton as to what he was supposed to be doing in
24 this investigation?

25 A. No, my email is transparent.

1 32

1 Q. This one is.
 2 A. Yes, that's the --
 3 Q. But there must be some other --
 4 A. No.
 5 Q. -- some other instruction to him to tell him what he is
 6 to be doing?
 7 A. No, not that I'm aware of.
 8 Q. You are the head of the Loss Prevention team. You are
 9 in charge of the investigation at this point. He has
 10 been given the task of interviewing Ms Birdi, hasn't he?
 11 A. Correct.
 12 Q. He must be at least advised as to what he is supposed to
 13 be interviewing her about?
 14 A. I have provided him with the documents. I have provided
 15 him with a contact, Phil Barnes, should he have any
 16 questions about it, and I felt that under the
 17 circumstances, that was about as much as I should get
 18 involved.
 19 Q. Okay. The "whole files" that you were sending to his
 20 home address, what were they? {E/101/458}
 21 A. They were the paper documents that we had, that we
 22 collated over that period of time.
 23 Q. Yes. So beyond the four records of interview that you
 24 yourself had created?
 25 A. Yes.

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1 Q. Two with Nimesh Patel and one with Frondigoun and one
 2 with O'Brien, beyond those and your case log that we
 3 have seen?
 4 A. Yes.
 5 Q. Which sort of describes what happened on a given
 6 occasion when you went to the store and all that
 7 business?
 8 A. Yes.
 9 Q. And that one sheet of paper that I have shown you at
 10 484, {E/101.4/484} headed "Dartford Investigation", (1)
 11 Invoicing and (2) Payroll -- beyond those documents,
 12 what documents did you send to Mr Hamilton?
 13 A. With the passage of time I don't recollect. They would
 14 have been all the documents that we had printed off. So
 15 it would have been things like printouts of payroll
 16 sheets and that type of stuff. I don't recollect
 17 specifically what was inside that file.
 18 Q. Was it one file or a few files?
 19 A. I have no recollection.
 20 Q. Okay. Page 488, the new bonus schemes comes into
 21 operation. You must have authorised Ms Slark to do
 22 this? {E/104/488}
 23 A. No, I -- when she gave me her paper, I referred it
 24 through to Derek Dyson, and I think Derek Dyson got
 25 other people to look at that to make the decisions on

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1 it. So I had no involvement in the decision-making as
 2 to whether it was appropriate or inappropriate.
 3 Q. My question was: you must have authorised her to do
 4 this? She has written to you and said, "I need
 5 authorisation before doing this". We see no
 6 documentation whereby somebody tells you or somebody
 7 else tells her that she is authorised to do this. You
 8 must have authorised her to implement the new bonus
 9 suggestion at the end of May 2007?
 10 A. I don't think that's the case, and I don't think that's
 11 the case because what was finally agreed was
 12 substantially less than she had originally put forward
 13 and I think other people within the operations team or
 14 Derek, would have got back to her directly. I don't
 15 have any recollection of going back to her and saying,
 16 "You are authorised to do this". I don't think I had
 17 any involvement in that.
 18 Q. Who do you say did?
 19 A. I don't know.
 20 Q. Well, Mr Dyson doesn't suggest that he spoke to her
 21 about it?
 22 A. I don't know.
 23 Q. So it wasn't him. Who else is there in the scheme of
 24 things?
 25 A. There are people within the retail support unit who

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1 Derek could have instructed. I don't know who they
 2 were, I wasn't involved in that and I have no knowledge
 3 of it.
 4 Q. I see. So you have no knowledge of Carol Slark actually
 5 being told, "Yes, you can implement this new bonus
 6 scheme now"?
 7 A. I say "no knowledge"; that's probably the wrong way of
 8 describing it. I have no recollection whatsoever of it
 9 and I don't see that I would necessarily have been the
 10 person to give her that instruction.
 11 Q. Okay. Page 493. {E/104/493} Did you know anything
 12 about the bonus scheme or did you just literally merely
 13 act as a post box here?
 14 A. No, I'm a post box, and I wouldn't really have any
 15 understanding of the rights and wrongs of the bonus
 16 schemes. I don't get involved in those. I have no
 17 understanding of them.
 18 Q. Okay. So this document, which appears to be from
 19 Carol Slark, this wasn't sent to you reporting to you on
 20 what she had been up to?
 21 A. Erm, I don't know.
 22 Q. Okay. At page 494 {E/105/494} we see the interview with
 23 Ms Birdi is arranged. Is that right?
 24 A. It would appear so.
 25 Q. And we can put away bundle E2.

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1 On your evidence, as I understand it, you are now
 2 saying that from that point onwards, you played no part
 3 whatsoever in the investigation, in the disciplinary
 4 process?
 5 A. No, I don't believe I did.
 6 Q. Would you take out E3. What we do see, of course, is
 7 you -- page 506. {E/109/506} Well, first of all,
 8 page 502. {E/108.2/502}
 9 Dr Potter, who is Mrs Patel, Karina Patel, she is
 10 writing to you:
 11 "Dear Mel."
 12 A. Yes.
 13 Q. Did you know her?
 14 A. No, never met her.
 15 Q. Never met her. How does she know to write to you:
 16 "Dear Mel"?
 17 A. I have no idea.
 18 Q. How did you receive this document?
 19 A. I can't recollect. It certainly wouldn't have been
 20 posted to me individually. It would have -- it must
 21 have come through the centre because she wouldn't have
 22 known where I was based or what my address was.
 23 Q. That's what I was going to say to you. We don't see an
 24 address or anything on this?
 25 A. She wouldn't know my address, so I can only assume it
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1 came from the centre somewhere.
 2 Q. Perhaps you -- obviously, they had your telephone number
 3 because they had contacted on you the telephone, you
 4 say?
 5 A. Yes.
 6 Q. Nim Patel?
 7 A. Yes.
 8 Q. So you could have spoken to her and/or Nim?
 9 A. I didn't speak to her; I've never spoken to her in and
 10 I --
 11 Q. In this period and said, "Can you send me a letter?"
 12 A. I've never met her; I've never spoken to her.
 13 Q. Maybe you spoke to him and you said, "Look, can you get
 14 your wife to send me a letter"?
 15 A. No.
 16 Q. Or --
 17 A. This was an unsolicited document that came into the
 18 business.
 19 Q. Hm-mm. And you can't recall when or how you received
 20 this document?
 21 A. No.
 22 Q. Okay. When you did receive it, page 503, did it have
 23 the manuscript parts on the bottom of page 503?
 24 {E/108.2/503}
 25 A. I believe that that's her writing.
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1 Q. Hm-mm.
 2 A. I don't know because I don't know her and I have never
 3 seen anything that she has read but I only assume that
 4 that's her additional writing.
 5 Q. Okay. Then 504, this is what you described as
 6 Mr Patel's formal list of matters. {E/108.3/504} Did
 7 you receive this at the same time, or can you not recall
 8 how you received this letter?
 9 A. I don't recollect how I received it.
 10 Q. Had you spoken to him at all?
 11 A. No.
 12 Q. During the period?
 13 A. Erm, certainly not in relation to this. I had one
 14 conversation that I can recall, which was when he was
 15 making a complaint about staff being told as to the
 16 circumstances that he left, but I didn't have
 17 a conversation with him about this. This just arrived
 18 in the centre.
 19 Q. When you say "in the centre" --
 20 A. I'm talking about in Guernsey, SOG.
 21 Q. It got sent to SOG, in Guernsey?
 22 A. Well, if it wasn't SOG, it would've been an S --
 23 a Specsavers Optical Superstore office address, which
 24 would have been Nottingham or Southampton, but it
 25 certainly didn't come to me. I don't know which route
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1 it came into the company but I would have thought it
 2 would have come through Legal in Guernsey.
 3 Q. Okay. Do you have any recollection of receiving it from
 4 Guernsey, then?
 5 A. No.
 6 Q. I see. Do you actually recall seeing this document at
 7 the time?
 8 A. Yes.
 9 Q. At the time?
 10 A. Erm, not at the time. I recall seeing this document at
 11 some point. It's familiar to me. So I did receive it
 12 and I did read it. How it actually came to me, I don't
 13 recall.
 14 Q. Okay. 506. {E/109/506} You are sending in
 15 Ms Groves's/Slark's invoices. Do you see?
 16 A. Yes, I do.
 17 Q. And that's 5 June 2007:
 18 "These invoices are for work carried out at the
 19 Dartford store for managing the day to day management of
 20 the business whilst the Director is suspended. Can you
 21 please charge them to my income budget..."
 22 "My income budget"; do you see:
 23 "... as I am invoicing the store £440 day for her
 24 services."
 25 A. Yes.
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1 Q. "The net effect is slightly positive as I invoice
2 slightly more than she is being paid per day to account
3 for additional expenses such as hotels."
4 A. Correct.
5 Q. That's an interesting way to put it, isn't it, because
6 according to your sworn evidence to his Lordship, you
7 are invoicing £440 a day, not by any reference at all to
8 Carol Slark's fee, not by any reference at all to £400
9 plus a bit, but simply because you say there is an
10 undocumented agreement that you are able to charge every
11 store £440 a day since 2003.
12 So that's a very odd way of putting it when you are
13 writing into the accounts department at SOG, isn't it,
14 Mr McAlindon?
15 A. No, not at all. She was the individual who I sent all
16 our invoices to and I'm writing to her -- it is
17 an unusual set of circumstances because normally, the
18 people that are charged are people from within the team
19 who are employed by SOS. In this case it was different
20 and I don't think that was a set of circumstances that
21 had happened before. So I was trying to explain to her
22 that one was offsetting the other and she should be
23 aware that this relates to the charges that were being
24 put through on the daily blended rate for interim
25 management store -- costs for that store.

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1 So I don't think it's odd at all.
2 Q. No, you used the words, "to account for". So:
3 "The net effect is slightly positive as I invoice
4 slightly more than she is being paid per day to account
5 for additional expenses such as hotels."
6 In other words, "I'm invoicing the store £440
7 because Carol Slark invoices me £400 and additional
8 expenses such as hotels. That's why I'm invoicing it.
9 It's to account for the additional expenses."
10 That is a very odd thing for you to say in
11 circumstances where you now say you charged £440 a day
12 to everybody, although we in the court aren't allowed to
13 see any document that shows that.
14 Would you agree it's an odd way of putting it?
15 A. I agree, with the level of scrutiny that's now being
16 applied to it, you know, you could describe it as odd,
17 but we have always charged £440 a day for interim
18 management costs, in the way that I have always done it,
19 and I'm simply explaining to her why there are sets of
20 costs in different areas because, although we are
21 charging £400 and that's going into the income budget to
22 offset the other part, the other costs are in different
23 areas of the departmental accounts, which would be in
24 the expenditure budget.
25 So I'm just giving her an understanding because she

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1 manages those accounts, where the different monies are
2 coming from, and that the net effect is that it is
3 costing about the blended rate.
4 MR JUSTICE NUGEE: Which department is she in?
5 A. She is an accounts payable and is the individual who
6 I would email -- is it Kelly Turian? Yes,
7 Kelly Turian -- that I would email our invoicing through
8 to on a normal basis.
9 MR STUART: I suggest to you, Mr McAlindon, that as at
10 5 June, you hadn't actually yet invoiced anybody, had
11 you. The first invoice for the £440 a day comes on
12 26 July?
13 A. I don't know, but I have charged --
14 Q. I have shown you the documents.
15 A. I don't know but what I'm saying is that I have always
16 charged in line with the instructions that I've received
17 from the board.
18 Q. I suggest to you that you have arrived at the figure of
19 £440 a day at around this time, upon seeing Ms Slark's
20 invoices, and that even when Ms Slark stopped working at
21 the store and you were either using one of your in-house
22 people or using Mr McLaughlin, who charged you £200 a
23 day, you just carried on charging £440 a day because it
24 helped your internal budget?
25 A. No, I totally disagree. I think one offsets the other.

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1 Sometimes figures are up, sometimes figures are down.
2 It's a blended cost, and normally it is not
3 a cost-making department.
4 Q. Not only did it help your budget, but it had the added
5 benefit of stripping the money out of Dartford
6 Specsavers Limited?
7 A. No. We have always, from 12-odd years ago, always
8 charged a blended rate for the services, for these types
9 of services, and I was following the instructions that
10 I was given as a way to charge for these services, which
11 I have already explained in detail.
12 Q. And since it stripped the money out of Dartford
13 Specsavers Limited at the expense of Ms Birdi, who was
14 the only A shareholder at this time, it would reduce the
15 value of her shareholding at that time in Dartford
16 Specsavers Limited, wouldn't it?
17 A. Yes, it would.
18 Q. And the plan at this time was to exit her through the
19 process, which you have used, you say, before -- you
20 used it with Mr Patel, of course -- of putting her
21 through a disciplinary process and then getting her to
22 sell you the shares at a discounted price?
23 A. No, I totally disagree with that.
24 Q. And if she didn't agree to sell the shares at
25 a discounted price, then you would eventually dismiss

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1 her. That would trigger the entitlement because her
 2 employment had been terminated -- that would trigger the
 3 entitlement to buy her shares forcibly off her at a fair
 4 price under the shareholders' agreement and therefore
 5 the fair price of those shares would be considerably
 6 lower because you were stripping the value out of the
 7 company?
 8 A. I don't agree with that at all, my Lord. We have always
 9 charged all stores £440 and I've explained the blended
 10 rate.
 11 The reason why the costs in this case were so high
 12 was because the whole process was so protracted and it
 13 is a unique situation.
 14 There wasn't a plan to dismiss Swarandeep Birdi and
 15 she did go through a process and she wasn't dismissed.
 16 So there was never a plan to take the road that's being
 17 suggested; it was transparent and it followed all of the
 18 rules that had been agreed numbers of years ago.
 19 Q. All right. If we move swiftly on to page 546.
 20 {E/128/546} Do you see 546?
 21 A. I do.
 22 Q. That's 13 June. I suppose I should have -- we have just
 23 missed an event but you say you weren't involved in it.
 24 12 June was the date of the investigatory interview,
 25 wasn't it?

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1 A. I would accept that. I don't know.
 2 Q. The first investigatory interview, the one with
 3 Mr Rehman? Page 538? {E/124/538}
 4 A. Yes.
 5 Q. Do you see that?
 6 A. Yes.
 7 Q. And present at that interview -- you weren't there but
 8 Mr Hamilton was there and then Bina Tailor. Who is
 9 Bina Tailor?
 10 A. She is an employee who works for the retail support
 11 team.
 12 Q. Okay. And then, obviously, Mr Rehman is answering the
 13 questions. Do you see that?
 14 A. Yes.
 15 Q. How was that interview recorded?
 16 A. I have no idea; I wasn't there. I had no involvement in
 17 this whatsoever.
 18 Q. Okay. How was the investigation meeting note drawn up?
 19 A. I have just said to you, I had no involvement in this
 20 whatsoever. I have no idea how it's recorded.
 21 Q. Okay. When did you first see the document?
 22 A. Erm, I don't think I saw it until these proceedings were
 23 commenced. I think the first time I have seen it is in
 24 these bundles.
 25 Q. Okay. Page 546, {E/128/546} the next day, the day after

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1 the interview, Mr Hamilton is getting his costs back and
 2 they are to be attributed to the Dartford store, aren't
 3 they?
 4 A. That's what his email says.
 5 Q. Yes. Do you see his comment at the end:
 6 "I'd screw 'em for everything!!!"
 7 Three exclamation marks:
 8 "Regds, Neil."
 9 A. I do.
 10 Q. And Ms Weaver says:
 11 "I agree ha ha."
 12 A. I do.
 13 Q. As far as you were aware, is that the way that the
 14 people involved in this investigatory process were
 15 considering the matter?
 16 A. I had no involvement in this.
 17 Q. You had involvement in the investigatory process. I'm
 18 asking whether you were aware --
 19 A. I wasn't aware of -- I think somewhere further down the
 20 line it said I'm about to go on holiday. I had no
 21 involvement in any of this.
 22 Q. You certainly had involvement at page 549, six days
 23 later. Do you see? You are emailing your lieutenant,
 24 Mr Barnes: {E/131/549}
 25 "You'll like this!"

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1 Exclamation mark:
 2 "I did ask if he was a defence lawyer or a doctor?"
 3 This is in relation -- should I make it clear, or do
 4 you need to have it made clear to you, Mr McAlindon --
 5 this is in relation to the fact that Ms Anderson had
 6 written to you, to Mr Hamilton, to Ms del Grazia and to
 7 Mr Raines, saying:
 8 "We are still awaiting a response to my last letter
 9 and a new sick note however we received the attached
 10 from SB's Doctor!"
 11 And that's page 550. {E/131.1/550} So on 18 June,
 12 a doctor's report had come in to explain how Ms Birdi
 13 was still subject to anxiety, depression and distress,
 14 palpitation, fatigue, sleeplessness:
 15 "Her distress at the process of the investigation
 16 and the nature of the communication between Specsavers
 17 representatives. These experiences have left her afraid
 18 and fearful of the forthcoming meeting."
 19 Do you see that?
 20 A. Yes.
 21 Q. I won't go through the whole of it but anyway, that gets
 22 sent through to you, Mr Hamilton, Ms del Grazia and
 23 Mr Raines with an exclamation mark comment:
 24 "... awaiting ... a new sick note however we
 25 received the attached from SB's doctor!"

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1 A. Sorry, where are you referring?
 2 Q. Page 549. {E/131/549}
 3 A. Yes.
 4 Q. And you, who said you had absolutely no part to play at
 5 this point -- I can't really see why you were getting
 6 involved at all, Mr McAlindon, but anyway, you forward
 7 that on to Mr Barnes with the comment:
 8 "You will like this! I did ask if he was a defence
 9 lawyer or a doctor?"
 10 That means, I presume, you have been discussing
 11 this, either with Mr Hamilton or Ms Anderson or
 12 Ms del Grazia or Mr Raines?
 13 A. No, I got circulated in the communication. I forwarded
 14 it on to Phil Barnes because -- my reference there is
 15 actually to the conversation I had with
 16 Swarandeeep Birdi's brother who told me he was
 17 a cardiothoracic surgeon and was arbitrating on behalf
 18 of Swarandeeep and I found the entire conversation
 19 bizarre and that's what my comment is in relation to.
 20 Q. No, no, your comment is in relation to
 21 Dr Gabrielle Berman?
 22 A. No, it isn't; it is in relation to Swarandeeep's brother.
 23 Q. What has that got to do with SB's doctor, Dr Berman's --
 24 A. It hasn't got anything to do with Dr Burns.
 25 Q. I'm suggesting to you, it does. It plainly does?

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1 A. I don't think it does.
 2 Q. "You will like this! I did ask if he was a defence
 3 lawyer or a doctor?"
 4 A. Yes.
 5 Q. Is this a sort of in-joke between --
 6 A. It was a joke between me and Phil, yes.
 7 Q. So you and Mr Barnes are obviously still involved in --
 8 A. No, I'm not involved.
 9 Q. -- in knowing -- behind the scenes --
 10 A. No, I'm not involved.
 11 Q. Knowing what's going on in relation to Ms --
 12 A. No, somebody copied me in this communication and I did
 13 forward it on.
 14 Q. Why are you copied in, then? What has it got to do with
 15 you?
 16 A. I don't know.
 17 Q. I suggest to you that you are copied in because this is
 18 still your investigation, you are the head of the
 19 department, and "the whole thing is in Mel's realm", and
 20 you are still behind the scenes, conducting affairs?
 21 A. No, I think Alison Anderson was copying it to the people
 22 that she felt should be aware and by that point, I had
 23 already separated myself entirely out the process, so
 24 I'm simply receiving an email that she felt I should be
 25 copied in on.

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1 Q. Okay. The investigation meeting with Ms Birdi. That's
 2 page 559, {E/135/559} 28 June 2007.
 3 What conversations or email correspondence had you
 4 had with Mr Hamilton regarding this matter prior to
 5 that?
 6 A. I don't think I had any involvement with Mr Hamilton in
 7 this process.
 8 Q. So what did you understand the position to be at this
 9 point?
 10 A. I think I had gone on holiday by this point. I didn't
 11 have any involvement in it.
 12 Q. I think you had been on holiday and come back, hadn't
 13 you, at this point?
 14 A. I don't know.
 15 Q. We saw about three to four weeks earlier, you had said:
 16 "... I'm on holiday this week, Neil..." {E/101/458}
 17 A. Yes.
 18 Q. Next week. "Speak to Phil in my absence"?
 19 A. Yes.
 20 Q. You are plainly back from holiday by the date you are
 21 sending off that email?
 22 A. Yes.
 23 Q. To Phil Barnes?
 24 A. No, that would be right.
 25 Q. So you are back by the end of June, aren't you?

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1 A. Correct.
 2 Q. So I'm going to suggest to you that behind the scenes,
 3 you were dealing with Mr --
 4 A. I had no further discussion, to my recollection, with
 5 Neil Hamilton about the process that he then followed.
 6 Q. Okay. Page 581. {E/137/581} On 28 June you are writing
 7 and you are telling Carol, copying in Derek -- Carol has
 8 written to you asking for some advice on something. It
 9 has got nothing to do with the case. But it's:
 10 "Carol."
 11 This is your email at the top:
 12 "I need to have a discussion with Derek first in
 13 relation to your replacement before I can indicate who
 14 that is likely to be. However, in relation to their
 15 concerns about Swarandeeep ..."
 16 This is purported staff conditions, do you see?
 17 A. Yes.
 18 Q. "... the investigation is ongoing, but we have been
 19 unable to reach a conclusion because she is off sick
 20 with stress, related to the investigation. It is not
 21 possible to give any indication as to the outcome of
 22 this process. However, I would advise the staff to hang
 23 in there ...
 24 "I'll try a discussion the issue of your replacement
 25 with Derek today, and will let you know the outcome as

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1 soon as I can."
 2 So you were obviously being kept informed as to what
 3 the status of the investigation was?
 4 A. Erm, I don't know. I'm trying to give her an indication
 5 as to what's happening and I'm pointing out to her that
 6 there is an ongoing process. I don't -- I have no
 7 understanding at that time of where they were in that
 8 process, how many people they had interviewed, but I was
 9 telling her that, you know, it's an open-ended journey
 10 at that point and to try and reassure the staff. So I'm
 11 simply responding to the questions and concerns that she
 12 is raising.
 13 Q. I'm not sure that's quite right, is it, because look at
 14 page 588, same day, 28 June. 7.24 am, half an hour
 15 later? {E/139/588}
 16 A. Yes.
 17 Q. "Derek,
 18 "Thought you might be interested in this email,
 19 Carol Groves very happy. Not bad for me either as she
 20 has seen the other side now and appreciates the work we
 21 do in dealing with bad eggs..."
 22 The "bad egg" here is Ms Birdi; is that right?
 23 A. No. What I'm referring to there, my Lord, is that on an
 24 ongoing basis and historically, whenever you are dealing
 25 with these difficult situations, there are a lot of

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1 rumours that start firing round the business and people
 2 get a very distorted perspective of what happened, why
 3 things happened, what the decisions that were taken were
 4 and what individuals did wrong. And those records can
 5 never be straight and that can be very frustrating at
 6 times, because if people actually heard the entire
 7 picture, rather than just a small, select version of
 8 events, they would probably have a very different view.
 9 So it is a sort of frustration to me and -- but we
 10 can't put the record straight, if you like, because it
 11 would be inappropriate, and what I'm referring to here,
 12 when I say "bad eggs", I'm actually talking about all
 13 the other cases that we have dealt with, where there is
 14 conflict, difficult situations. I'm actually not
 15 referring not only to Swarandeeep, but I'm actually not
 16 referring to Nimesh Patel, even though he admitted to
 17 stealing and -- but I am referring generally to the fact
 18 that it's good that somebody has some degree of
 19 involvement from the partnership community and has
 20 a different perspective, having had an involvement in
 21 the store.
 22 And that's in exactly the same way that I would say
 23 that it's good that when people come into the interview
 24 situations that they bring another joint venture partner
 25 because it ensures that, you know, people don't

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1 necessarily get a jaundiced view from very limited
 2 explanations.
 3 So that's what my reference is to and my word of
 4 "bad eggs" might be a bad thing, but I think Derek would
 5 understand exactly where I'm coming from.
 6 Q. The next stage is page 612. {E/152/512} The second
 7 investigation interview with Ms Birdi occurred at the
 8 Ramada Hotel in Maidstone. I presume you are suggesting
 9 you had no part to play and that you had not spoken to
 10 Mr Hamilton or anybody else about this matter in the
 11 intervening period?
 12 A. No, because my own mindset was that I was no longer
 13 responsible for this.
 14 Q. Is it not all still part of your Loss Prevention
 15 department's role, to investigate this matter?
 16 A. No, because I was taken off the case and Neil Hamilton
 17 was put in place.
 18 Q. You personally were taken off the case but your
 19 department is still billing this store, aren't they?
 20 A. For a completely separate issue, which is the interim
 21 management and the support of that store, which is not
 22 to do with this.
 23 Q. Not just the costs of the interim management but also
 24 the costs of the investigation?
 25 A. That we had incurred at a previous point in time. I'm

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1 not billing anything for this.
 2 Q. So you say you had no part to play, come July. Is that
 3 right?
 4 A. No.
 5 Q. Okay. Then 643. {E/157/643}
 6 A. Yes.
 7 Q. You are sending to Laura -- who is Laura Breban?
 8 A. Somebody in accounts.
 9 Q. Yes:
 10 "This is the spreadsheets that I email for
 11 invoicing. I emailed them to Kelly Turian, and can dig
 12 out the email if I need to. However, I have checked the
 13 attached and my list does not match the quotes you give
 14 but I cannot see that I have made any mistake."
 15 That's in response to an email from Laura Breban.
 16 Do you see below?
 17 A. Yes.
 18 Q. "Variance versus budget."
 19 Do you see that?
 20 A. I do.
 21 Q. It looks like your budget -- if you look at the third
 22 paragraph of her email:
 23 "According to our records we have only been
 24 instructed to invoice £48,638.75 in May and nothing
 25 for June so far. Can you please confirm when and to who

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1 you sent the requests to."
 2 Et cetera. Do you see that?
 3 A. Yes.
 4 Q. So this is presumably a reference to your department
 5 invoicing stores, and so far only £48,000 has been
 6 invoiced to stores by your department in May, and
 7 nothing in June?
 8 A. It would seem like invoices -- because I'm saying that
 9 I've checked the email for invoice and I did email them
 10 to Kelly Turian who would normally process them.
 11 So it seems like the emails that I've sent through
 12 for some reason haven't been charged to stores and
 13 somebody was trying to find out why, because I had sent
 14 them in to the accounts teams.
 15 Q. Does that figure sound about right? About £50,000 worth
 16 of your department invoicing stores? It's across the
 17 country, isn't it, so we know £10,000 or £11,000 of that
 18 was going to Dartford, don't we?
 19 A. I don't know.
 20 Q. I took you to it. It was roughly -- if you took the tax
 21 into account, it was roughly £11,000 a month?
 22 A. I appreciate that, but in terms of the £48,000, I have
 23 no idea what the breakdown of that is.
 24 Q. Okay, but does that sound about right, that you would on
 25 average be invoicing five stores a months?

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1 A. No, it can be many, many stores. We also do audits in
 2 stores.
 3 Q. Yes.
 4 A. One day audits, and there could be 30 or 40 of those.
 5 Q. So this covers all of your invoicing?
 6 A. Yes.
 7 Q. Daily audits?
 8 A. Yes.
 9 Q. Fine. Anyway, the question of your budget has obviously
 10 arisen at that point and you are having to answer
 11 questions about it?
 12 A. Only in as far as it -- it seems to me from this email
 13 that I had emailed two months' worth of invoicing that
 14 hadn't been processed by accounts for some reason, and
 15 I think somebody is querying why the income budget
 16 looked short, and I have checked my emails and said,
 17 "Well, there shouldn't be because I sent those emails".
 18 So she's querying a process that's happened within
 19 the accounts teams, is my reading of that.
 20 Q. Okay. I think probably the answer to all of that is at
 21 page 648, the beginning of email chain. {E/158/648}
 22 12 July. She writes to you just a very short email.
 23 The subject is:
 24 "Variance versus budget."
 25 "Hi Mel,

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1 "Please find attached a spreadsheet detailing the
 2 significant variances between budgeted and actual
 3 figures for [period 2004] (June) for SOS."
 4 Do you see?
 5 A. Yes.
 6 Q. So obviously you had a budget, you provided a budget,
 7 and then the actual figures for June had come in
 8 significantly different from the budget that you had --
 9 A. Yes.
 10 Q. -- previously given her and so she is asking you to
 11 provide her with an explanation of the variances?
 12 A. Yes.
 13 Q. Right. If you go to page 650, {E/160/50} Carol Slark
 14 leaves. Do you remember?
 15 A. I'm on the wrong page.
 16 Yes.
 17 Q. You are still managing her, at least; even if you are
 18 not managing the investigation, you are still involved
 19 in the management of her?
 20 A. Yes.
 21 Q. Okay, fine. And if you go to page 652, {E/162/652} and
 22 653 {E/163/653} and onwards, we have got some invoices.
 23 The first one, 652, I don't think is relevant; it's
 24 an NHS audit, so that's the daily rate for the whole
 25 audit to be done?

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1 A. That's correct.
 2 Q. For an NHS audit, £330.
 3 The next one -- is that June 2007 fees for £9,680?
 4 Do you see it? {E/163/653}
 5 A. I do.
 6 Q. And behind that then, we have the July invoice of
 7 Ms Slark, 654 {E/164/654}. And then at 655 are her
 8 expenses for the month. {E/165/655} Do you see that?
 9 A. I do.
 10 Q. And she is sending you those, I think, on 656?
 11 {E/166/656}
 12 A. Yes.
 13 Q. How do you calculate your invoice without having had her
 14 invoices?
 15 A. Because I charge on a daily rate, which is the blended
 16 rate of providing those services for the number of days
 17 that an individual was in store.
 18 Q. But, for example, let's take July. Do you see her
 19 invoice at page 654? {E/164/654} She was only in the
 20 store in July for seven days?
 21 A. Yes.
 22 Q. So, no, you weren't providing any manager at the
 23 store --
 24 A. Yes, I was.
 25 Q. Not on the 11th?

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1 A. Not according to her invoice.
 2 Q. You weren't -- you don't say you were?
 3 A. Not according to her invoice. One of my team filled in
 4 the days that she was unable to attend the store. The
 5 store was covered five days a week, Monday to Friday,
 6 and when I invoiced, it was for the five days -- it was
 7 for the Monday to Friday during -- however many of those
 8 were during the month.
 9 Q. Who do you say was running the store for the periods
 10 that Carol Slark was invoicing -- for the periods, so up
 11 until 21 July, page 650. {E/160/650} That's the day she
 12 leaves. Who do you say was running the store on the
 13 days that she wasn't there in July?
 14 A. I don't know but a member of my team was there.
 15 Q. I suggest to you that a member of your team wasn't
 16 there?
 17 A. You would be wrong. A member of my team was in the
 18 store on the days that she wasn't there.
 19 Q. Who could that possibly have been?
 20 A. I don't know the dates when different people joined, but
 21 the people in my team would have been -- I know that
 22 Imogen Collar provided quite a -- she was in there for
 23 quite a while during the gap between the first and the
 24 gentleman that took over, but I also had other people at
 25 the time, at that time, which would have been

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1 Lew Samuel, Dan Laing, Zoe Smith. I don't know what
 2 their recruitment dates were but if there were there and
 3 employed at that time, they would have been used. But
 4 I don't recollect who specifically went in, but a member
 5 of my team was always tasked with covering the gaps.
 6 Q. You do not mention that in paragraph 54 of your
 7 statement. You say: {C/11/140}
 8 "... Imogen Collar ... took over the running of the
 9 store ... from 23 July 2007 to 7 September 2007."
 10 A. But she was around during the period before that, when
 11 there were days when Carol Slark had other commitments
 12 and somebody needed to fill in.
 13 Q. Do you have any record of these people that you are now
 14 alleging -- you see, you have charged for these days --
 15 A. Yes.
 16 Q. -- at £440 a day?
 17 A. Yes.
 18 Q. This has got nothing to do with the investigation, you
 19 say; it's merely for the service, so you say, of
 20 managing this store, so you say?
 21 A. Yes.
 22 Q. Do you have any records of these people managing the
 23 store?
 24 A. Not seven years later, no.
 25 Q. I haven't seen a single email from a single one of them,

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1 these people, managing the store?
 2 A. I don't know.
 3 Q. To you, saying, "Dear Mel, I'm dealing with the store
 4 this week whilst Carol is off sick", or, "Carol is away
 5 on holiday", or, "I'm dealing with the store
 6 Thursday/Friday because Carol is not here and this, that
 7 and the other"?
 8 A. Hm-mm.
 9 Q. So are you sure that these people were in there?
 10 A. I'm positive.
 11 Q. Anyway, these are internal people --
 12 A. I think, my Lord, at one point, if you actually look at
 13 the invoices, there were periods where there were
 14 substantial gaps, where Carol hadn't been in. You know,
 15 periods of up to a week, and there is just no way that
 16 we would have left a store unattended for that period of
 17 time. So I know that in the background, people were
 18 talking to each other and covering the store.
 19 Q. Yes, but people talking to each other and covering the
 20 store, that's just members of SOS or SOG. It might be
 21 the retail development team, or it might be anybody
 22 else, popping in occasionally and make sure everything
 23 is okay?
 24 A. No, that's not the case. People in my team were charged
 25 with making sure that that store was covered with

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1 Carol Slark.
 2 Q. I'm going to suggest to you that you simply make up
 3 these invoices. You multiplied £440, from the time that
 4 you came up with that figure in June 2007 -- you
 5 multiplied that figure by the number of days that you
 6 want to charge for in the month, regardless of whether
 7 or not Carol Slark or anybody else happens to be in the
 8 store for that number of days that month?
 9 A. That's not --
 10 Q. You have just made up the figures?
 11 A. That's not the case at all.
 12 Q. All right. The interview happens on 27 July, page 661.
 13 {E/167/661} 27 July; what was your involvement at this
 14 point?
 15 A. The same as it was before; I had already been out of the
 16 equation.
 17 Q. You are entirely out of the equation? You had nothing
 18 to do with it?
 19 A. No.
 20 Q. Okay. Did Mr Hamilton speak to anybody -- sorry, this
 21 is the investigation summary, this is not the meeting.
 22 We have had the meeting already. I have got that wrong.
 23 This is the summary. So this is the report, if you
 24 like?
 25 A. Yes.

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1 Q. As I understand it.
 2 A. Yes.
 3 Q. This report does not have an author. Look at page 671.
 4 {E/167/671}
 5 A. Yes.
 6 Q. The last page of the report. This is very important
 7 because this is the report which is said to justify the
 8 disciplinary process?
 9 A. Sorry, the...?
 10 Q. The disciplinary process, which is the next stage in the
 11 process of what's going to happen to Ms Birdi at this
 12 point?
 13 A. Correct.
 14 Q. The report doesn't have an author; do you see?
 15 A. I do.
 16 Q. It just says:
 17 "Specsavers Optical Group Limited.
 18 "27 July 2007."
 19 And the actual conclusion is written in the third
 20 person, if you like. If says:
 21 "In conclusion, there is a disciplinary case for SB
 22 (and possibly MR, if found to be an employee) to
 23 answer."
 24 A. Where are you referring?
 25 Q. Page 671, the last line:

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1 "In conclusion, there is a disciplinary case for SB
 2 (and possibly MR, if found to be an employee) to
 3 answer."
 4 A. Yes.
 5 Q. So that is the conclusion, the end of the conclusion.
 6 The beginning of the conclusion is on page 670, under
 7 the heading "Conclusion" do you see it? {E/167/670}
 8 A. I do.
 9 Q. And again, it's all written in the impersonal way. So,
 10 for example, from the bottom paragraph of 670:
 11 "It is noted that ..."
 12 Do you see?
 13 A. I do.
 14 Q. Who do you say drafted this document?
 15 A. I don't know, but I believe it was Neil Hamilton. But
 16 I don't know.
 17 Q. And when do you say he drafted it?
 18 A. I don't, because I don't know.
 19 Q. Okay. Did any members of your team have any input --
 20 A. Not at all.
 21 Q. Mr Barnes?
 22 A. No.
 23 Q. So Mr Hamilton didn't speak to either you or any member
 24 of your team --
 25 A. Sorry, I thought you were referring to drafting this

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1 document. In respect of drafting this document, no,
 2 they had absolutely no involvement.
 3 Q. No involvement.
 4 A. If -- I don't know whether Neil Hamilton spoke to any
 5 members of my team or not. I'm unaware of it. I have
 6 no knowledge of it.
 7 Q. I suggest to you that it's inevitable he would have
 8 spoken to members of your team, because you are the Loss
 9 Prevention department who is charged with investigating
 10 Ms Birdi. This is the investigation summary.
 11 A. I don't agree with that because their involvement, like
 12 my involvement, ceased at an early stage and the vast
 13 proportion of this document relates to their
 14 explanations through the interviews that Neil Hamilton
 15 did.
 16 Q. Okay.
 17 A. So he would have no need to go back to them for further
 18 questions unless it related to the documents that
 19 I emailed him early in the -- early in the process.
 20 Q. We are not going to hear from Mr Hamilton, are we?
 21 A. I don't know.
 22 Q. We are not; he's not one of the witnesses in the case.
 23 When it's written, page 662, for example, just next
 24 to the second holepunch, it says: {E/167/662}
 25 "In the opinion of Neil Hamilton, SOG's

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1 representative conducting the meeting, MR was
 2 deliberately vague throughout the meeting."
 3 A. Sorry, where -- oh, yes, I have got that.
 4 Q. The second holepunch?
 5 A. Yes, got that.
 6 Q. Would you agree with me that that indicates that the
 7 person who is drafting this document is not
 8 Neil Hamilton himself? It doesn't say:
 9 "In my opinion MR was deliberately vague."
 10 A. Yes.
 11 Q. So it appears that Neil Hamilton has provided his views,
 12 his opinions, about that particular investigation
 13 meeting --
 14 A. Yes.
 15 Q. -- to the author of this document?
 16 A. Yes.
 17 Q. Mr Hamilton, of course, he only came in from 23 May in
 18 this investigation, didn't he?
 19 A. Yes.
 20 Q. All he did was conduct the interview with Mr Rehman and
 21 the two interviews with Ms Birdi?
 22 A. Yes.
 23 Q. What he didn't do was do the complete analysis of all
 24 the evidence and make investigations of SOG's
 25 departments -- finance departments, et cetera -- to find

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1 out what was actually going on here?
 2 A. I don't know that. He could well have sent his
 3 documents in, asking for legal advice on them. I don't
 4 know.
 5 Q. Hm-mm. There is more in the opinion of Neil Hamilton
 6 over on page 663. {E/167/663} Do you see?
 7 A. Yes.
 8 Q. But then under "6. Findings" on page 663: {E/167/663}
 9 "Payroll/Employment."
 10 Somebody has done some sort of analysis, some sort
 11 of investigation with the payroll and employment
 12 departments, or those departments who are in charge of
 13 payroll and employment, and then they have even done
 14 two nice little tables on page 664. {E/167/664} Do you
 15 see that?
 16 A. I do.
 17 Q. Are you suggesting Mr Hamilton did all this?
 18 A. I'm not suggesting anybody about it. I'm telling you
 19 that I don't know who did it.
 20 Q. Okay. I'm suggesting to you that it was your team.
 21 A. I've already --
 22 Q. Either you or members of your team?
 23 A. No, no, I have already answer that very clearly. We had
 24 no involvement in this.
 25 Q. All right.

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1 Anyway, I see the time, my Lord, should there be
 2 a quick break?
 3 MR JUSTICE NUGEE: Okay, a five-minute break.
 4 (3.13 pm)
 5 (Short break)
 6 (3.20 pm)
 7 MR STUART: So, Mr McAlindon, we have reached August 2007.
 8 The July 2007 report recommends disciplinary action.
 9 I have just taken you to it?
 10 A. Yes.
 11 Q. Did you have any part to play in the decision to move to
 12 that next step?
 13 A. No.
 14 Q. Did Mr Dyson ask you for your views?
 15 A. No.
 16 Q. Did you have any discussion with any member of the board
 17 of SOG or Dartford Visionplus Limited or Dartford
 18 Specsavers Limited about putting Ms Birdi into
 19 a disciplinary process?
 20 A. No.
 21 Q. Okay. August 2007. Page 711, whilst you are at the
 22 back of E3 {E/185/711}.
 23 The shared venture department is now interested in
 24 this store; do you remember?
 25 A. Yes.

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1 Q. Obviously, you think you are running this store, as the
 2 Loss Prevention department, with your manager,
 3 Imogen Collar, by this point?
 4 A. Right.
 5 Q. Because this is between Carol Slark leaving in July and
 6 Mr McLaughlin starting in September?
 7 A. Yes.
 8 Q. So August 2007, you have got your own person in there,
 9 Imogen Collar?
 10 A. Yes.
 11 Q. That's paragraph 54 of your witness statement,
 12 {C/11/140} and 57:
 13 "As Ms Collar already worked for SOS there are no
 14 external invoices."
 15 A. Yes.
 16 Q. So, shared venture are involved. Do you see page 711?
 17 {E/185/711} I presume you would not have been party to
 18 any shared venture assessments or information?
 19 A. No.
 20 Q. Would you have been asked to feed into it? Looking it
 21 at the second item down:
 22 "Reasonable SOG shareholding."
 23 Do you see that, number 2?
 24 A. Yes.
 25 Q. And then it says:

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1 "Score: +2."
 2 "100 per cent of shares should be available once the
 3 Loss Prevention situation has been concluded."
 4 Do you see that?
 5 A. I do see that.
 6 Q. You are the Loss Prevention situation, aren't you; you
 7 are the Loss Prevention department?
 8 A. Yes.
 9 Q. Obviously the shared venture department believed that
 10 you were going to be able to get them 100 per cent of
 11 the shares by the time you have concluded your
 12 situation?
 13 A. That's somebody's opinion.
 14 Q. Is that what you told Mr Dyson?
 15 A. Not at all. That's -- I don't even know who the author
 16 is of this document.
 17 Q. Yes, we don't know the author. It seems to be from the
 18 shared venture team. According to Mr Dyson, it's
 19 somebody in the share venture team?
 20 A. But they would have been aware of what's going on. They
 21 may have formed views of what they thought was probable.
 22 I don't agree with their views but that's somebody's
 23 personal view. It's nothing that I've discussed with
 24 anybody.
 25 Q. Okay. What you did discuss, though, was you discussed

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1 with the man from the shared venture department, and
 2 Mr Dyson, the Dartford store and the question of what
 3 was going to happen in it?
 4 A. Yes, that's right.
 5 Q. Page 714. {E/187/714} Mr Lunn from the shared venture
 6 department. Do you remember him?
 7 A. I do.
 8 Q. He emails you on 31 August:
 9 "Hi Mel.
 10 "I have caught up with Derek regarding Dartford, and
 11 Sean McLaughlin taking the reins [with effect from]
 12 10/9/07."
 13 A. Yes.
 14 Q. "As the store is currently (technically) a Shared
 15 Venture, and likely to become a Group Venture ..."
 16 That means, "We are going to get all the A shares",
 17 doesn't it?
 18 A. Yes.
 19 Q. A group venture means Ms Birdi has been exited --
 20 A. Yes.
 21 Q. -- from the business?
 22 A. Correct.
 23 Q. "... likely to become a Group Venture until we find
 24 a prospective Partner I would like to discuss the Loss
 25 Prevention charges being applied to the store, as they

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1 will effectively be reducing SOG income as we are the
 2 shareholder."
 3 Do you see that?
 4 A. I see that.
 5 Q. So obviously, he is coming at this from a different
 6 angle to you, isn't he? You are the Loss Prevention
 7 team; you have got your own budget and the requirements
 8 that we have seen to try and match that budget, and he
 9 has got his shared venture portfolio, which he is trying
 10 to run for a profit?
 11 A. And I think additionally he is making assumptions in
 12 there that are incorrect.
 13 Q. Okay. So:
 14 "... the Loss Prevention charges being applied to
 15 the store, as they will effectively be reducing SOG
 16 income ...
 17 "Can we please agree that Sean McLaughlin charges
 18 the store directly for his days, and the store accounts
 19 are therefore a true referrals of the business
 20 performance."
 21 Because, of course, if Sean McLaughlin charges the
 22 store £200 a day for running the store --
 23 A. Yes.
 24 Q. -- but you are busy charging £440 a day --
 25 A. Correct.

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1 Q. -- just for running the store; not for your
 2 investigation costs, because you keep telling us that's
 3 a completely separate matter?
 4 A. Yes.
 5 Q. -- then the £440 a day is simply an artificial profit
 6 made by your department, isn't it?
 7 A. It's only an artificial profit once the -- you know, if
 8 you are charging on that basis. We were charging on
 9 a blended cost on a daily rate. There is no -- Neil is
 10 making assumptions in here that he can't guarantee and
 11 those assumptions are that Sean McLaughlin would stay
 12 there for an indefinite period of time. It also makes
 13 the assumption that the process would end at a known
 14 point in time.
 15 He doesn't take into account the fact that
 16 Sean McLaughlin, who was a partner awaiting for a new
 17 commercial opportunity, might relocate in two, three,
 18 four, five, six weeks, and we would then have to resort
 19 to a very expensive solution and the actual costs could
 20 have been higher than the final costs that were charged
 21 on a blended basis.
 22 So there are all sorts of assumptions in there that
 23 he is making and I don't agree that it was either his
 24 position or my position to make a decision on that. So
 25 I referred the situation to Derek and said, "What do you

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1 want us to do?"
 2 Q. That's not what you did, actually; we will come to what
 3 you did in a moment.
 4 Mr Lunn seems to be unaware of the fact that you are
 5 entitled to charge £440 a day; he seems to think that
 6 it's a matter of discretion to be determined as to
 7 whether the charges are directly to the store for his
 8 days, or whether you are going to continue your Loss
 9 Prevention charges being applied to the store. That
 10 seems to be his position?
 11 A. You could conclude that from that email.
 12 Q. So he seems to be unaware of this business-wide rule
 13 that you can charge £440 a day whenever there is an
 14 ongoing investigation?
 15 A. He may well be unaware of the fact that we charge
 16 a blended cost, which is the average cost of providing
 17 that service for a year. So he may well be unaware of
 18 how, 12 years ago, it was agreed that that would be
 19 a fair, practical and appropriate way to charge. Yes,
 20 he could well have been unaware of that.
 21 Q. More importantly perhaps, is Ms Birdi still suspended?
 22 A. Erm, I don't know.
 23 Q. You don't know? You are the one who suspended her and
 24 you are the one who is purporting to charge these
 25 charges whilst she is suspended. You say you can charge

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1 £440 a day, five days a week, whilst she is suspended?
 2 A. Whilst those services are being provided, yes.
 3 Q. But you can only -- you, the Loss Prevention team can
 4 only do it whilst you are investigating, surely?
 5 A. My instructions are that if we are providing the interim
 6 management to the store that we would charge that on
 7 a daily rate of £440 a day.
 8 Q. Right. I'm going to suggest -- no. I have already
 9 suggested to you that that's not right.
 10 But anyway, you say that that is the simple answer
 11 to Mr Lunn's email; it's to say:
 12 "Neil, as you should know, five years ago ..."
 13 Because this is 2007 and you say the agreement took
 14 place in around 2002/2003, when you joined?
 15 A. Yes.
 16 Q. So it must have been 2003, I think; that's when you
 17 joined, wasn't it?
 18 A. I think I have been here 14 years.
 19 Q. 14?
 20 A. I think.
 21 Q. I misread your witness statement, I'm sorry.
 22 A. Maybe it's less.
 23 Q. Yes, you said in 2014, paragraph 6: {C/11/128}
 24 "I joined SOS 12 years ago..."
 25 So I guess from that that you joined in 2002?

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1 A. I don't know, but I'll accept that.
 2 Q. Anyway, by 2007, five years later, the simple answer to
 3 Mr Lunn would surely have been:
 4 "Neil, we are entitled to charge £440 a day. We are
 5 charging £440 a day because that's what has been agreed
 6 with SOG board, because that is what the cost is to us,
 7 the SOG Loss Prevention department, to provide these
 8 services."
 9 That should have been your answer, shouldn't it?
 10 A. I wouldn't agree it should --
 11 Q. It's a blended charge --
 12 A. I wouldn't necessarily agree that it should have been;
 13 it could have been.
 14 Q. You can put away E3 now. Actually, your answer came at
 15 E4, page 802. {E/191/802}
 16 What other files have you got out there? We might
 17 be able to get rid of that one.
 18 A. That's E5.
 19 Q. You can put that one away for now.
 20 A. The transcript bundle?
 21 Q. You can put that one away.
 22 A. Sorry, what page number?
 23 Q. 802. {E/191/802}.
 24 The next day, Saturday, you email Neil and Derek.
 25 Do you see?

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1 A. I do.
 2 Q. And so he has emailed you:
 3 "I have caught up with Derek ..."
 4 The email I have just read to you. And then your
 5 response is this:
 6 "I am currently charging Dartford the equivalent of
 7 £440 a day for management fees."
 8 What do you mean by "the equivalent of"?
 9 A. I mean the blended £440 charge that has been agreed by
 10 the board.
 11 Q. You say "the equivalent of". Are you sure that's not
 12 some reference -- because you added tax, didn't you, to
 13 this £440 a day? I don't know why you were adding tax.
 14 A. I'm not personally adding tax, I'm just accounting for
 15 it, £440 a day. So when I put --
 16 Q. So when you are sending in the invoices --
 17 A. When I put in the invoices, I put in £440 a day.
 18 I don't know why accounts add VAT to it; I don't
 19 understand VAT.
 20 Q. Oh, it's VAT?
 21 A. I don't know whether it's VAT or tax.
 22 MR JUSTICE NUGEE: It's apparent from the invoice that the
 23 tax is VAT at 17.5 per cent.
 24 MR STUART: Were you, the Loss Prevention department,
 25 charging SOS, the company to whom you were sending

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1 invoices -- were you charging them VAT?
 2 A. I just put my invoices in at £440 a day.
 3 Q. Invoices addressed to whom?
 4 A. I say "invoice". I put a timesheet and they create
 5 an invoice from my timesheet, so I would calculate, you
 6 know, 15 days at £440 equals that amount of money. They
 7 create an invoice from that.
 8 Q. So you give them a figure, 22 times £440 is £9,160?
 9 A. Yes.
 10 Q. And you would say, "For July, I'm invoicing £9,160"?
 11 A. Yes.
 12 Q. And then they would put into the consolidated invoice
 13 £9,160 and then the tax on that, the VAT?
 14 A. I have no knowledge of how that works. I just put the
 15 figures in.
 16 Q. Okay, I won't ask you about it, then:
 17 "Derek,
 18 "I am currently charging Dartford the equivalent of
 19 £440 a day for management fees. As you are aware, two
 20 reasons."
 21 Two reasons will be, number 1, that's what we all
 22 agreed and that's what we apply to everyone else.
 23 Number 2, that's the blended charge that covers not just
 24 the actual cost of the person, but their expenses
 25 et cetera?

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1 But, no, you actually say:
 2 "Two reasons. First, an income stream for the
 3 dept."
 4 That would be your department?
 5 A. Correct.
 6 Q. So you need a bit of an income stream?
 7 A. I don't need a bit of an income stream, I'm instructed
 8 to invoice stores for the services that are provided.
 9 Q. Okay:
 10 "Second and more important ..."
 11 So that's not the real justification. The "more
 12 important" is:
 13 "... because of the share value..."
 14 A. Correct.
 15 Q. "... the more the store is charged, the lower the
 16 value."
 17 A. Correct.
 18 Q. The share value we are talking about is the
 19 A shareholder's shares, obviously?
 20 A. Correct.
 21 Q. Specsavers B shares never get sold, never get valued.
 22 A. No.
 23 Q. They don't have a value. So we are talking about the
 24 A shareholders' shares. So the second and more
 25 important reason for charging the equivalent of £440

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1 a day is because of the share value:
 2 "... the more the store is charged, the lower the
 3 value."
 4 A. Yes.
 5 Q. And you are pointing that out to Derek and also to Neil,
 6 because you are addressing your email to Neil and Derek.
 7 A. Correct.
 8 Q. I suggest to you that that is exactly why you were
 9 charging -- at Mr Dyson's authority -- such enormous
 10 sums, £10,000 to £12,000 a month when you take into
 11 account the tax. That's why you were charging
 12 Ms Birdi's store company such enormous sums?
 13 A. I totally disagree with that, my Lord. I think that
 14 when I wrote this email I was slightly irritated because
 15 I felt that Neil was being slightly pushy, but what
 16 I was doing in that email was stating the points of
 17 fact, which are that it does affect the share value and
 18 Neil's -- it was agreed that there is a -- that the
 19 costs of providing those services should be charged to
 20 the store, so -- and that does affect the share value.
 21 It's a question of fact. But I then go on to say -- you
 22 know, I haven't expressed a personal opinion in here.
 23 I have just stated a point of fact and I finish the
 24 email by saying, "Or do I not charge anything at all?"
 25 So I am pointing out the facts as I see them to

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1 Derek and I'm not expressing a personal opinion at all,
 2 anywhere in that email. And I'm getting Derek to
 3 adjudicate Neil's proposals because I think Neil had
 4 been a little bit sly emailing me when I actually think
 5 he knows perfectly well he should be speaking to Derek.
 6 So I wasn't offering personal opinions and included
 7 in that is, "Do you want me to not charge anything to
 8 this store?"
 9 I'm giving Derek the call.
 10 MR JUSTICE NUGEE: That's what you are doing in the last
 11 sentence?
 12 A. Yes.
 13 MR JUSTICE NUGEE: I think the sentence that counsel is
 14 asking you about is the one before, where you have
 15 explained, as I understand it, the reasons why you
 16 charged that amount.
 17 A. Yes.
 18 MR JUSTICE NUGEE: And you give, as the more important
 19 reason, the impact it has on the share value.
 20 A. Yes, but because I'm holding those figures in my sort of
 21 debtor ledger, if you like, and those figures are there
 22 because that's the costs that we have incurred one way
 23 or the other, whether it comes through the travel costs
 24 or the payroll costs or whatever, the £440, the way of
 25 accounting for it, is held in my account. And at some

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1 point or other, I would either have to write that off or
 2 charge it to the store.
 3 And the problem is that if I don't charge those to
 4 the store and further costs are incurred, at some point
 5 in the future, had we reached a situation where it was
 6 a share transfer situation with Swarandeeep and
 7 valuations were being done, it wouldn't accurately
 8 reflect all of the costs because I'm still holding all
 9 of these costs in other areas.
 10 So that would involve -- if Derek didn't want to
 11 charge those to the store, that would involve him
 12 writing those off and accounting for them by way of
 13 saying, "The Loss Prevention department has incurred
 14 these costs and they are going to carry the costs".
 15 What I am saying to Derek is, if you then
 16 retrospectively charge it, then the valuations, if
 17 people were doing them, could well be very significantly
 18 out of line from reality because the store has incurred
 19 those costs, because the services had been provided to
 20 those costs -- to those stores.
 21 MR STUART: Mr McAlindon, I'm not making it clear. I'm not
 22 suggesting that you are here trying to justify the
 23 entire amount of £440. We are talking here about the
 24 difference between what you as a department are actually
 25 incurring -- which we know, for example, with

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1 Mr McLaughlin is going to be £200 a day; that's what you
 2 incur as a cost. But what you charge the store is £440
 3 plus VAT per day?
 4 A. I agree, but as I've said --
 5 Q. So you are making a profit --
 6 A. I agree, but --
 7 Q. -- of £240 a day?
 8 A. I agree but as I've said, only for the period that
 9 Mr McLaughlin was in. There is no guarantee that he is
 10 going to stay there for more than a few weeks. He could
 11 stay there for a few months or he could stay there for
 12 a few weeks. And after that period, another person
 13 would have to be put in place that would have cost
 14 significantly more.
 15 So the costs being charged are a blended charge to
 16 reflect the fact that the costs of it is unpredictable,
 17 and it's an average cost, and that was the instruction
 18 that I was given; that was the instruction that I was
 19 following.
 20 My instruction was not to charge actual costs
 21 because, you know, it varies significantly depending on
 22 the individuals involved and there are no guarantees
 23 here; it's interim management; it's crisis management.
 24 And I was following the instructions that were given.
 25 I don't think it's either my decision or Neil Lunn's
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1 decision to alter that. And in this email, I feel that
 2 I have laid out the facts and I feel that I have
 3 given -- I haven't expressed a personal opinion and
 4 I feel that I've given Derek the opportunity to say what
 5 should or shouldn't happen, which is appropriate.
 6 Q. You suggest that if Mr McLaughlin wasn't there charging
 7 you £200 a day, the alternative would cost even more.
 8 But that's not right, because the alternative, the
 9 interim position between Ms Slark and Mr McLaughlin, was
 10 your in-house person. So all you were doing was
 11 providing one of your own members of staff,
 12 Imogen Collar?
 13 A. Correct.
 14 Q. Imogen Collar. What is her job description/job role/job
 15 title. Job title would do?
 16 A. I can't recollect. I think she was an NHS auditor.
 17 Q. Okay, and she worked in your department?
 18 A. She did.
 19 Q. Roughly what was her salary, to the nearest £10,000?
 20 I'm not asking you tell me her exact salary.
 21 A. Erm, probably about 30?
 22 Q. Okay. At £200 a day, five days a week --
 23 A. Yes.
 24 Q. -- that's what you say you were providing -- that would
 25 be £1,000 a week. That would be £52,000 a year.
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1 So if the cost to the company of paying her salary
 2 was £30,000, at £200 a week you would be getting in
 3 £52,000 in income -- plus VAT of course, but in income.
 4 So you would be making a profit of £22,000 a year if you
 5 just kept Ms Collar in for the whole time?
 6 A. If you conveniently ignore the big cost, which is
 7 actually all the other costs of getting her to and from
 8 that business, staying in hotels, food, subsistence,
 9 parking, petrol costs, et cetera, et cetera. There are
 10 a lot more costs than purely her salary involved in that
 11 equation --
 12 Q. To be clear --
 13 A. -- and the price of £440 came from working out what we
 14 had spent over a 12-month period on providing those
 15 sorts of services and dividing it by the number of days.
 16 MR JUSTICE NUGEE: Can I understand: the £440, which you say
 17 was agreed in 2002 at board level and was a blended
 18 rate.
 19 A. Yes.
 20 MR JUSTICE NUGEE: That was the figure at which you would
 21 charge out to individual stores your employees in your
 22 department, is it?
 23 A. It was for -- it was for reactive sort of services, so
 24 that would be either interim management or
 25 investigations, and I was asked to work out the entire
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1 cost of providing that service and then figure out what
 2 it was on average for the number of working days in that
 3 year.
 4 MR JUSTICE NUGEE: Yes, but would the norm be that you would
 5 provide someone like Imogen Collar, who was an employee
 6 of the Loss Prevention department, to go and provide
 7 those reactive services? Is that what the £440 is for?
 8 A. Yes, it would be for whoever I got to go from wherever
 9 in the department.
 10 MR JUSTICE NUGEE: Right.
 11 MR STUART: Okay. But the figure that I gave you where, on
 12 a salary of £30,000 a year, you would make a profit of
 13 £22,000, that was if you charged £200 a day. If you are
 14 charging £440 a day, five days a week, that's £2,200
 15 a week, 52 weeks a year. Do you see what I mean?
 16 That's £115,000 that you are charging the store. The
 17 cost to you is the salary of Ms Collar, £30,000 and
 18 a bit of expenses, if she happened to --
 19 A. Well, it's not just a bit of expenses. Her vehicle, for
 20 example, cost £8,800 a year. So, you know, there are
 21 a whole range of costs and can I give you an exhaustive
 22 list of them? No, I can't. But that was analysed and
 23 I provided those figures to the board and that was what
 24 the board decided. And I'm following those
 25 instructions.
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1 MR STUART: Of course, I don't accept that. There is
 2 absolutely no documentary evidence to suggest you did
 3 any such thing, but how do you possibly get to £90,000
 4 worth of expenses plus her salary £30,000? How can you
 5 possibly say that you calculated the £440 by looking at
 6 the cost of putting a manager into a shop five days
 7 a week: £115,000 a year?
 8 A. I don't know -- I can't figure out your costs, but there
 9 are costs of hotels -- they are not small in London;
 10 there is the cost of travel and the time that's
 11 involved. There are a whole raft of factors. They were
 12 considered and calculated and they were ratified by the
 13 board and the board made that decision. I am following
 14 the board's instruction.
 15 Q. I suggest to you, you are not. There is no evidence of
 16 that and you are making it up as you are going along.
 17 A. I totally disagree.
 18 Q. And the truth of the matter is reflected in your email
 19 to the very man whom you claim to have given you this
 20 authority in the first place. It's extraordinary you
 21 didn't mention it to him in the email, nor to Mr Lunn,
 22 who you say you are trying to make a point against. You
 23 don't mention any of that. What you say is, the more
 24 important reason is the share value.
 25 A. I don't think that I would need to explain that to

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1 Derek Dyson. He understands where those charges came
 2 from and why those charges were being applied. He was
 3 fully aware of that.
 4 Q. The reason for this is because of the share value and
 5 the more the store is charged, the lower the value.
 6 It's obvious you wanted a low value on those shares, you
 7 and Mr Dyson did.
 8 A. No, I don't agree.
 9 Q. So did Mr Lunn. We can see from his --
 10 A. I totally don't agree to that assertion because in there
 11 I have given every option that was available, including
 12 charging the store nothing at all, and I gave that
 13 decision to Derek without expressing an opinion. I was
 14 following very clear instructions on how to account for
 15 time and expenses and the costs and I was following that
 16 instruction.
 17 Q. The only options you give are these:
 18 "Until a compromise agreement has been agreed ..."
 19 That's a compromise with Ms Birdi, isn't it?
 20 A. Correct.
 21 Q. That's what you are talking about. Exiting her by a
 22 compromise agreement?
 23 A. Correct.
 24 Q. Or through the disciplinary process?
 25 A. Correct.

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1 Q. Or by a share purchase, so all shares are bought --
 2 and/or all shares are bought?
 3 A. Correct.
 4 Q. So that share purchase could either be as part of the
 5 compromise agreement or as a consequence of the
 6 disciplinary process or separate to those things?
 7 A. And the disciplinary process would include multiple
 8 possibilities that don't necessarily include her exiting
 9 from the business. But what I'm saying there is that
 10 for whichever route that eventually the course takes,
 11 the end in sight is not clearly defined.
 12 Q. No, you are not saying that. What you are saying is --
 13 A. Well, that's what I'm inferring to Derek, is that, you
 14 know, "This is an uncertain situation and it's your
 15 decision."
 16 Q. No, what you are saying is:
 17 "Do you want me to continue charging?"
 18 You are going to continue charging. It's not up for
 19 a debate and as to whether you are. It says:
 20 "Do you want me to continue charging --"
 21 MR JUSTICE NUGEE: I don't think that's a fair question,
 22 Mr Stuart, if you read the whole sentence, because the
 23 last option is stop charging.
 24 MR STUART: I agree, my Lord, the last alternative is:
 25 "Stop charging to improve store performance."

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1 A. Correct, which is what Neil Lunn is referring to.
 2 Q. What about just charging what you are actually
 3 incurring? What about the option of the honest and fair
 4 thing to do? That is, charge £200 a day if that's what
 5 Mr McLaughlin is charging you. How about that option?
 6 A. I think I have hammered that one to death in terms of my
 7 responses and I'm being very clear about where the £440
 8 a day comes from, that those are the instructions under
 9 which I have been instructed to operate and I don't feel
 10 that it's within my pay grade or Neil's to make
 11 a decision to the contrary, and I don't think that in
 12 that email I have expressed any personal opinion.
 13 I have included the fact that we wouldn't charge them at
 14 all and although -- again with a scrutiny that one
 15 wouldn't expect seven years later -- perhaps I could
 16 have crafted a much better email, but without the
 17 benefit of this experience, I didn't do that. But
 18 that's what it intends to put forward to Derek.
 19 Q. Plainly, the plan was to exit her one way or the other,
 20 wasn't it?
 21 A. I totally disagree.
 22 Q. What, you don't agree that when you were putting forward
 23 those three alternatives in the bit about charging --
 24 A. Disciplinary includes multiple options and it doesn't
 25 necessarily include dismissal. That's for the

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1 disciplinary chairman to decide and that is what
 2 happened.
 3 Q. Mr Dyson seemed to have thought that you were going to
 4 exit her and you were going to get all the shares
 5 because look at page 803, {E/192/803} email to you from
 6 Mr Lunn in response:
 7 "Hi Mel
 8 "I understand from Derek that at the point where SOG
 9 own 100 per cent of the shares that the Loss Prevention
 10 involvement will cease and my involvement will commence,
 11 therefore leaving the charging arrangements with me."
 12 So Mr Lunn has spoken to Mr Dyson and the position
 13 is clear, isn't it? You are going to exit Ms Birdi from
 14 the store and he is going to take over?
 15 A. No, I don't agree. Part of my frustration with
 16 Neil Lunn's first email, let alone his response, is that
 17 I feel that Neil can on occasions be -- let's call it
 18 persuasive, and I think Neil's response is a further way
 19 of trying to persuade. I don't agree with his views.
 20 They certainly weren't views that I held and I don't
 21 know they were views that Derek held. That's a response
 22 from Neil.
 23 Q. All right. Running in parallel to all of this business
 24 about the charging, we have got the disciplinary process
 25 continuing, and, of course, it's in the hands of

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1 Mr Raines now, isn't it?
 2 A. Where are you referring?
 3 Q. The disciplinary process.
 4 A. I know. What page are you referring to?
 5 Q. Let's go to your witness statement. {C/11/139}.
 6 Paragraph 50:
 7 "The investigation report recommended that
 8 disciplinary proceedings be commenced against Ms Birdi,
 9 and the board ..."
 10 Do you see that?
 11 A. Yes.
 12 Q. "I prepared a file and handed over the matter to
 13 Mark Raines, who would conduct the disciplinary
 14 hearing."
 15 So you seem to have taken over the file. You seem
 16 to now be back on the scene, which is odd, isn't it?
 17 A. Erm ...
 18 Q. Haven't you rather forgotten your involvement,
 19 Mr McAlindon? Do you remember I asked you just before
 20 the break whether the investigation report that you said
 21 you didn't have anything to do with --
 22 A. Yes.
 23 Q. -- and you said you didn't know who drafted it --
 24 A. Yes.
 25 Q. -- and I asked you whether you had had any involvement

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1 at that stage, when that was drawn up, end of July -- do
 2 you remember? And then I took you to August and I said,
 3 "Did you have any involvement at that time?" And you
 4 said, "Absolutely nothing at all to do with me."
 5 A. No, I wasn't the author of that document.
 6 Q. No, I didn't ask -- the document has gone, the document
 7 has happened. It's dated July 2007. If you remember?
 8 A. Yes.
 9 Q. And then we moved into August and I asked you whether in
 10 this period of time you were now involved in the process
 11 and you said, "No, I was not involved at all."
 12 A. Yes.
 13 Q. That's not right, is it?
 14 A. No, because, I mean, I don't know why I put that in my
 15 statement and it may well be incorrect. I, at some
 16 point after the investigation report had been written,
 17 was sent a copy of that investigation report.
 18 Q. That's right.
 19 A. I don't know whether that is what I'm referring to in my
 20 statement, that I passed that to Mark Raines --
 21 Q. No, it's not that.
 22 A. -- but I was sent the investigation report and asked to
 23 review it.
 24 Q. Yes.
 25 A. I didn't make any corrections to it.

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1 Q. No.
 2 A. And I don't know what -- I don't know whether that's
 3 what I'm referring to in my statement.
 4 Q. The report is for the investigation department. That's
 5 your Loss Prevention department.
 6 A. It's not the investigation -- sorry, no.
 7 Q. The Loss Prevention department: you are the ones who are
 8 investigating at that stage?
 9 A. No, Neil Hamilton was investigating and that report was
 10 written on the basis of his findings and documents.
 11 Q. No, it was the Loss Prevention department's
 12 investigation report and it was --
 13 A. Sorry, which report was the Loss Prevention department's
 14 investigation report?
 15 Q. Let me take you back to it so that you cannot have
 16 any -- go back E3/661. {E/167/661}
 17 A. Yes.
 18 Q. 27 July.
 19 A. Yes, that is not a Loss Prevention department
 20 investigation report.
 21 Q. I suggest to you --
 22 A. That was a report that has arisen from Neil Hamilton's
 23 investigation findings, where he has communicated -- and
 24 I am guessing, but I think that he would have done this
 25 with legal and produced a report with his documents and

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1 legal. I can only speculate that that's the case but
 2 what I can say with clarity is that that is not my
 3 report and I have no input into that at all and neither
 4 has anyone else in my department.
 5 Q. You do have input in the sense that it's sent to you for
 6 review --
 7 A. Correct.
 8 Q. -- before it goes to the board?
 9 A. Correct, and I made no corrections to that.
 10 Q. I don't know whether you did or didn't.
 11 A. Well, I didn't make any corrections to it.
 12 Q. All right, but it's sent to you for review because you
 13 are in charge of the process of investigating Ms Birdi.
 14 You are the head of the Loss Prevention department,
 15 which is charged with investigating Ms Birdi.
 16 A. I think I was one of a number of people that that report
 17 was being sent to.
 18 Q. It was sent to you because you were in charge. You were
 19 then to review it and then recommendations were to be
 20 made to the board as what to do --
 21 A. I don't agree.
 22 Q. -- based upon it.
 23 A. I don't agree. I was sent that and I don't know
 24 whether -- who sent it, whether it was Alison Anderson
 25 or not, but people would have probably assumed that

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1 I should be involved in that process.
 2 Q. Of course because you were in charge.
 3 A. The fact that I didn't respond to that or make any
 4 corrections is why I say that I wasn't involved in the
 5 creation of that document.
 6 Q. We don't know whether you --
 7 A. I had no input into that document.
 8 Q. We don't know, do we, whether you made any corrections
 9 or what your response to it is because you haven't
 10 disclosed to us any email or other correspondence
 11 sending you that report. How did you receive the
 12 report?
 13 A. I'm guessing, but it was from legal people, and there
 14 may be privileged documents, but I didn't express any
 15 views on that particular report.
 16 Q. I suggest it's not conceivable that you wouldn't have
 17 expressed some view to Mr Dyson, who had set you on this
 18 course in the first place, that you didn't at least have
 19 a call with him and say, "So, Derek, look, you can see
 20 what the position is. We can now put her through the
 21 disciplinary process."
 22 A. I don't think that's the case because other people by
 23 this time had much more active involvement and it would
 24 be legal that would decide, with discussions with
 25 Neil Hamilton, as to whether or not there was

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1 a disciplinary case to answer to. They had far more
 2 involvement and had listened to their explanations in
 3 detail through the interviews that Neil Hamilton did.
 4 Q. I suggest to you that that investigation report said
 5 what you wanted it to say, that you directed the
 6 conclusion it was to reach.
 7 A. The interview report relies heavily on the explanations
 8 provided by the people that were interviewed, ie Mushtaq
 9 and Swarandeeep. So, as I was not involved in those
 10 interviews, it would be very difficult to weave my
 11 opinions into this document. I did not have any active
 12 involvement into those interviews.
 13 Q. In paragraph 50 you say: {C/11/139}
 14 "The investigation report recommended the
 15 disciplinary proceedings be commenced against Ms Birdi,
 16 and the board of SOG, being B director of Dartford
 17 Visionplus, agreed."
 18 Were you at the board meeting?
 19 A. No.
 20 Q. How do you know they agreed?
 21 A. Sorry, where are you referring?
 22 Q. Your paragraph 50. {C/11/139} It's your witness
 23 statement. I don't know where you get this information
 24 from.
 25 A. I'm just asking you where you are referring --

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1 Q. Paragraph 50. It's a short paragraph:
 2 "The investigation report recommended that
 3 disciplinary proceedings be commenced against Ms Birdi,
 4 and the board ... agreed."
 5 Do you see that?
 6 A. Yes.
 7 Q. You say you weren't at that board meeting where the
 8 board came to that conclusion, that agreement, so how do
 9 you know they agreed?
 10 A. I would have been told.
 11 Q. By?
 12 A. I don't know.
 13 Q. The report itself doesn't actually say what you say it
 14 says. It doesn't say, "Recommend disciplinary
 15 proceedings be commenced." Page 671. {E/167/671}
 16 Remember, I took you to it. All it said is:
 17 "There is a disciplinary case for SB and possibly
 18 MR, if found to be an employee, to answer."
 19 That is all it said. It didn't recommend, "Let's
 20 start disciplinary proceedings against this woman".
 21 A. I don't see the two are significantly different.
 22 Q. Okay. You say now that you were told by the board to
 23 commence the disciplinary proceedings and that you
 24 prepared a file and handed over the matter to
 25 Mark Raines. What is this file?

200

1 A. I don't know.
 2 Q. What do you mean you don't know? That's your witness
 3 statement.
 4 A. I know, I appreciate that and I don't know.
 5 Q. Did you draft this witness statement or was it drafted
 6 for you?
 7 A. No, I drafted this witness statement.
 8 Q. Okay.
 9 A. But I don't recollect what files I would have handed to
 10 Mark Raines.
 11 Q. Was there some sort of summary by you as to what
 12 Mr Raines was to find?
 13 A. No, the summary that Mark Raines used, I believe, is the
 14 investigative report that was clearly drafted by
 15 somebody in the legal department or with Neil Hamilton.
 16 Q. Okay. So, apart from that investigatory report, in this
 17 file that you prepared and handed over, did you hand
 18 them to him personally?
 19 A. No -- well, I don't recollect preparing a file.
 20 Q. You don't recollect preparing a file?
 21 A. No.
 22 Q. So we had better delete the words, "I prepared a file."
 23 This is your sworn evidence, you see.
 24 A. I appreciate that.
 25 Q. We should delete that perhaps?

201

1 A. I would agree with that.
 2 Q. And just it should read:
 3 "I handed over the matter to Mark Raines."
 4 A. Yes.
 5 Q. I see. So do you have any idea what documents Mr Raines
 6 had and where he got them from when he started on this
 7 process?
 8 A. Not with the passage of time, no.
 9 Q. No. Apart from handing over to Mr Raines, what was your
 10 involvement? Did you assist him?
 11 A. No.
 12 Q. Were you interviewed by him?
 13 A. No.
 14 Q. Were any of your team interviewed by him?
 15 A. Not that I recall.
 16 Q. Were you asked about the documents that you had removed
 17 from the store on 26 March, the payroll and other
 18 documents that you had removed from the store? Were you
 19 asked about that?
 20 A. Not that I recall.
 21 Q. Were you asked about your alleged conversations relating
 22 to the A5 book?
 23 A. I don't recall being asked anything.
 24 Q. I see. So Mr Raines's disciplinary proceedings, as far
 25 as you are aware, didn't make any enquiries of anyone in

202

1 your department, including yourself?
 2 A. Not that I'm aware of it.
 3 Q. We see the interview itself at page 843 in bundle E4.
 4 Do you see that? 843. {E/203/843}
 5 A. Yes.
 6 Q. We see his manuscript notes starting at page 840.
 7 {E/202/840} I know you weren't part of any of this,
 8 were you? 840, his manuscript notes of the meeting.
 9 A. Yes.
 10 Q. Ms Birdi then wrote, page 853, {E/204/853} after the
 11 meeting -- she provided some amendments and also some
 12 notes relating to some of the issues that had been
 13 raised. Do you see?
 14 A. Yes.
 15 Q. And some of those notes included, if you go to page 855
 16 {E/204.1/855}, 856, 857 -- she was making some serious
 17 allegations of falsity in relation to the interviews
 18 conducted with Ms Frondigoun and Ms O'Brien. Do you
 19 see?
 20 A. I don't really know what she means in that.
 21 Q. It seems she had a copy of your interview notes. I'll
 22 take the Lorraine Frondigoun one, page 855
 23 {E/204.1/855}. It says:
 24 "Lorraine Frondigoun interview.
 25 "Statement number."

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1 Then it has a number, 46. And if we go to line 46
 2 of your interview record for Lorraine Frondigoun --
 3 A. Yes.
 4 Q. -- you will see that that comment there points out -- it
 5 says "false", so she is commenting that
 6 Lorraine Frondigoun's interview record note is, to the
 7 extent it says what it says at line 46, is false, and
 8 then she sets it all out. Do you see that?
 9 A. I do.
 10 Q. And she obviously says "false" about most of the
 11 comments made?
 12 A. Yes.
 13 Q. And then similarly for Patrice O'Brien's statement on
 14 page 857 to 858? {E/204.1/857}
 15 A. Yes.
 16 Q. And then the Nimesh Patel allegations. Do you see?
 17 A. Yes.
 18 Q. I don't think that relates to your interview record;
 19 I think that relates to the manuscript document --
 20 A. Yes.
 21 Q. -- because it's item numbers rather than line numbers.
 22 A. Yes.
 23 Q. But certainly the first two relate to your interview
 24 records.
 25 A. Yes.

204

1 Q. Did Mr Raines ask you about those interviews?
2 A. Not that I recall.
3 Q. You are not involved at all at this point, are you,
4 because we are into September 2007. Are you involved
5 even in the management of the store at this point?
6 A. I don't know.
7 Q. Okay. Page 872. {E/213/872}
8 A. Yes.
9 Q. Do you see at the bottom:
10 "Derek ..."
11 This is 1 October:
12 "... I have a couple of outstanding invoices.
13 Dartford - £14,781.25."
14 So you are going to bill them another £14,500; yes?
15 "This excludes the 8,800 management costs that are
16 being charged monthly and is purely the investigation
17 costs re both directors in May."
18 A. I see that.
19 Q. You weren't investigating Mr Patel in May, were you?
20 Mr Patel, he left, do you remember, on 20 February?
21 A. I think at some point in time there was a mistake that
22 occurred, where I spoke to Derek and asked about the
23 investigation costs being charged. He told me to go
24 ahead. I don't think they actually got charged.
25 I think somebody in legal thought they had been double
205

1 charged and they applied a credit. So there was
2 a mix-up that went on here that was picked up somewhere
3 within the people that were involved in the case. So
4 there were some mix-ups.
5 Q. Your understanding as at 1 October was you had a couple
6 of outstanding invoices:
7 "Dartford, £14,781."
8 An invoice for £14,781 --
9 A. Yes.
10 Q. -- to Dartford store from your department?
11 A. Yes.
12 Q. "This excludes the £8,800 management costs ... "
13 This is not Mr McLaughlin or Imogen Collar or
14 whatever. So it excludes that:
15 "... that are being charged monthly and is purely
16 the investigation costs re both directors in May."
17 A. Yes.
18 Q. This is your email. So this was your understanding at
19 the time?
20 A. Correct.
21 Q. You thought you were charging £14,500 to Dartford for
22 investigating costs?
23 A. I think that related to all of the costs in relation to
24 both directors, and I think that I had forgotten at the
25 time that I wrote this email that somebody should have
206

1 accounted for the 7,000 whatever it was payroll costs in
2 relation to Nimesh. So that did include Nimesh and it
3 shouldn't have been charged. I don't think it was
4 subsequently charged.
5 Q. I thought the investigation costs to Nimesh were
6 £15,610.
7 A. The payroll costs, I said.
8 Q. Payroll costs?
9 A. I said the payroll costs.
10 Q. I see. So the £15,610 is not all the costs of the
11 investigation?
12 A. No, I think I explained that at the time. Some of it
13 was the camera costs, which were incurred as
14 a consequence of what he was doing. So the cost of
15 dealing with him was a combination of the camera
16 costs --
17 Q. I agree, yes.
18 A. -- and the payroll costs.
19 Q. Yes, but all of the costs of the investigation into
20 Mr Patel --
21 A. Yes.
22 Q. -- according to you, were being paid by Mr Patel?
23 A. Correct. That's what I have just said. When I wrote
24 this email, half of the payroll costs in here actually
25 didn't relate -- shouldn't have been charged because
207

1 they had already been taken into account previously.
2 I made a mistake when I wrote this email and this email
3 wasn't acted on.
4 Q. Okay. I'm not quite sure I understand. So that's your
5 explanation for that. But this is to Derek:
6 "Do you want this invoicing ..."
7 So that's the invoicing for the £14,781.25 and/or
8 the £8,800 managements costs that are being charged
9 monthly:
10 "Do you want this invoicing before any discussions
11 take place re share valuations?"
12 So, obviously, you and Derek have discussed the
13 matter and there are going to be some discussions taking
14 place about share valuations.
15 A. I don't know because I can't see the context in which
16 I then go on in the email because it's blacked out.
17 Q. I'm told that that black-out is because the next
18 reference is nothing to do with Dartford at all.
19 A. Right.
20 Q. It's another store and is therefore confidential to that
21 other store.
22 A. Okay, I understand.
23 Q. So when you say, "a couple of outstanding invoices",
24 there is Dartford and then there is another store.
25 A. Yes.
208

1 Q. That's what we are told.
 2 A. Yes.
 3 Q. That's all you say about Dartford?
 4 A. Yes.
 5 Q. What I'm suggesting to you is that it's clear from that
 6 email that there was a plan in place to exit Ms Birdi
 7 and to buy her shares and that there were going to be
 8 discussions about the share valuation for those shares.
 9 A. I don't think so. I think in that email and at that
 10 point in time I would have held a view that there was
 11 a high probability that she would be found guilty of
 12 gross misconduct. It doesn't necessarily say that --
 13 you know, that wasn't my decision and that decision was
 14 subsequently taken by Mark Raines.
 15 Q. Obviously, in your minds, you and Mr Dyson's minds --
 16 A. It's not Mr Dyson's mind, it is in my mind.
 17 Q. We are coming to his response in a moment.
 18 A. Right.
 19 Q. I suggest to you in your mind the concept of causing
 20 Dartford to incur these very substantial amounts of
 21 money by way of costs, whether it be management costs or
 22 investigation costs, that was going to be used as part
 23 of the discussions to take place re the share
 24 valuations.
 25 A. No, it's not connected to that. What I'm saying is, "Do

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1 you want these invoicing before that process comes to
 2 an end." And Derek has obviously -- I mean, in saying
 3 that, I am saying that in my opinion there was
 4 a probable outcome. What Derek is very clearly replying
 5 on is that he didn't feel that there was a probable
 6 outcome and we should not do that until the outcome of
 7 the disciplinary.
 8 Q. What he says is:
 9 "Dartford -- put through the first charge now
 10 (Nimesh)."
 11 A. Yes.
 12 Q. That would seem to be very unfair, wouldn't it?
 13 I thought Mr Nimesh Patel was supposed to be paying for
 14 all the investigation charges relating to Mr Nimesh
 15 Patel?
 16 A. I think I have already explained that quite clearly.
 17 Q. You haven't.
 18 A. I have actually explained it, if you go back in the
 19 transcript. The 14,000 that I've referred to here, I've
 20 mistakenly included both sets of payroll costs for
 21 Nimesh's investigation and Swarandeeep's, and I was
 22 incorrect in saying that, and at some point further down
 23 the line, after these emails, people realised that that
 24 should have already been taken into account and
 25 accounted for centrally. So --

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1 Q. You have given that explanation. My question was about
 2 Mr Dyson's response to you, which you received and must
 3 have understood, and it was:
 4 "Dartford -- put through the first charge now
 5 (Nimesh)."
 6 So you were under a misunderstanding. He heard your
 7 misunderstanding from reading your email and, rather
 8 than say to you, "Hold on a minute, Mel, Nimesh was
 9 meant to be paying all the costs in relation to Nimesh",
 10 he says:
 11 "... put through the first charge now --"
 12 A. I think --
 13 Q. -- (Nimesh)."
 14 A. Yes, I think that, with the passage of time, he had
 15 forgotten that that had already been dealt with in the
 16 share transfer process and, as I have said to you, the
 17 fact -- this misunderstanding that is going on here is
 18 reflected by the fact that those costs weren't charged
 19 to the store after this email trail.
 20 Q. That, of course, begs the question: you say that the
 21 £55,000 is the £70,000 minus the £15,610, possibly plus
 22 or minus the £4,180, but there is no actual evidence to
 23 support that, is there?
 24 A. I don't know.
 25 Q. I have taken you through it all and so as at this point,

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1 October 2007, there is no indication that the costs,
 2 investigation costs, of Mr Nimesh Patel, have been borne
 3 by Mr Nimesh Patel. There is no evidence of that, is
 4 there?
 5 A. I believe it was taken -- accounted for in the share
 6 transfer process at the day that we did -- we sat down
 7 and Mr Patel arose. This email is purely an error on my
 8 part, that never reached fruition, because, although
 9 I thought I needed to charge these charges, I had
 10 forgotten that it had already been accounted for, and
 11 the issue was corrected and it was never charged to the
 12 store.
 13 Q. Let's move on from that. Mr Raines reaches his
 14 decision, page 890, 3 October {E/214.3/890}, and
 15 Ms Birdi is not going to be dismissed. Do you remember?
 16 A. Sorry, 890?
 17 Q. 890. That's his decision on the disciplinary hearing?
 18 A. Yes.
 19 Q. And in summary, 892. The summary? {E/214.3/892}
 20 A. Yes.
 21 Q. We see, bottom three lines, there is going to be a final
 22 written warning, the warning to remain on file for
 23 12 months, and then some terms as to what she has to do?
 24 A. Correct.
 25 Q. He also refers to the grievance that has been raised

212

1 against you, page 893. Yes? {E/214.3/893}

2 A. Yes.

3 Q. But the question I want to ask you is this: as at that

4 point she is no longer suspended, is she?

5 A. I think there was a return to work meeting at some point

6 after that.

7 Q. That's right, but she is not suspended any longer. The

8 investigation is over, the disciplinary process is over,

9 she is no longer suspended?

10 A. Yes.

11 Q. That's 3 October 2007. You should stop charging at that

12 point, shouldn't you, you the Loss Prevention

13 department, because you no longer have a role, formal or

14 informal role, to play, the Loss Prevention department?

15 A. If there is nobody in that store -- I don't know whether

16 there was continued sickness, but if there is nobody in

17 that store and an individual had been sent to that store

18 to caretake it, we would continue to charge those

19 charges until Swarandeeep Birdi's return to work.

20 Q. What has it got to do with your department? I can see

21 it might have something to do with the retail support

22 team or --

23 A. Because the people that were supplied were from my

24 department.

25 Q. No, they weren't. By this time it's Mr Sean McLaughlin,

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1 who is an independent, third party supplier of services.

2 A. Yes.

3 Q. He doesn't work for your department whatsoever?

4 A. No, that's just an administrative issue.

5 Q. It may be to you, but not to the store who is being

6 charged £440 a day for a person who is only charging

7 £200 a day. It's more than an administrative issue,

8 isn't it?

9 A. It's an administrative issue insofar as, although my

10 department was charging it, we were providing interim

11 management services, and he was one of the people

12 that -- in between the people that we used who were from

13 my department. You know, it was easier to have all the

14 interim management charged in one location, because to

15 split it up, where would you account for him? Would you

16 account for him as an employee for Shared Venture or

17 would you account for him as an employee of somewhere

18 else, and he was working on a consultancy basis to fill

19 a small gap.

20 Q. She has made a formal grievance against you, various

21 allegations. You know of that, page 893 {E/214.3/893},

22 so does SOG. I have shown you that -- hasn't she?

23 A. Sorry?

24 Q. She has made a formal grievance against you?

25 A. Yes.

214

1 Q. Allegations against you. Do you see?

2 A. Yes.

3 Q. She is no longer suspended, so there is no reason for

4 you to have any part to play whatsoever in Dartford

5 Specsavers, you personally.

6 A. Until I receive instruction to stop charging because the

7 store is back on an even keel and the RST are now taking

8 over -- that would be the point at which I would stop

9 charging.

10 Q. And when did that happen?

11 A. I don't know.

12 Q. Mr McAlindon, you are using this as an income stream,

13 aren't you?

14 A. No.

15 Q. Whether you are entitled to or not, you do not care

16 because Mr Dyson says you can do it.

17 A. I'm not using it as an income stream. I'm following

18 a set of instructions on how to administer the services

19 that we provide. Until somebody tells me to the

20 contrary, that is what the instructions were that I had

21 to follow.

22 Q. But you don't recall ever being given such instruction

23 to say, "Stop charging," so you just kept on doing it.

24 A. I don't recollect, seven years on, the point at which

25 I was told, "This is now the remit of somebody else."

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1 But at some point in time there would have been a point

2 reached where Swarandeeep Birdi would have been returned

3 to work and the store would have been, you know, back to

4 normal management, and at that point you would pull out

5 and normal management would resume.

6 Q. When did that happen, according to you?

7 A. I don't know but it would be the point at which

8 I stopped invoicing.

9 Q. When was that?

10 A. I don't know but it's in here somewhere.

11 MR JUSTICE NUGEE: Did somebody ask you to make sure that

12 Mr McLaughlin covered once Ms Birdi was given the

13 written warning and reinstated or was that something

14 that you just carried on doing because you hadn't been

15 told to stop?

16 A. I think it was because I carried doing because I hadn't

17 been told to stop.

18 MR STUART: But she is back. She may occasionally be off

19 sick, but then Mrs Slark wasn't always there.

20 A. No, I appreciate that.

21 Q. There's a deputy manager in place --

22 A. I appreciate that --

23 Q. -- who can deal with the odd day.

24 A. I appreciate that but, with the passage of time, it's

25 very difficult to know at what point I received what

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1 instruction. But I would have received an instruction
 2 at some point in time that it is now no longer any of my
 3 responsibility and somebody else is now taking on
 4 responsibility for those -- that store, and at that
 5 point I would cease.
 6 Q. I suggest to you that you just carried on and on and on.
 7 We can see Mr McLaughlin charging you, page 943. For
 8 example, there is his invoices for October.
 9 {E/235.1/943}.

10 A. Yes.

11 Q. And page 1043, there is his invoice for November?
 12 A. 1043?

13 Q. Yes. {E/258/1043}

14 A. Yes.

15 Q. My question to you is: We can see from those
 16 invoices -- and 1048, there is his invoices
 17 for December. {E/261/1048}. Do you see that?
 18 A. I do.

19 Q. You say that you were invoicing the store; yes?
 20 A. Yes.

21 Q. You were doing the calculations?
 22 A. Yes.

23 Q. Were you still charging your £440 or not?
 24 A. I would have always --

25 Q. Did you recalculate?

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1 A. No, I would have always charged 440 unless instructed to
 2 do so otherwise by Derek Dyson.

3 Q. All right. As I understand it, apart from the invoicing
 4 and being the recipient of Mr McLaughlin's invoices and
 5 doing the calculations for invoicing, in this period of
 6 time -- we are talking about September, October --
 7 especially October, where she is no longer suspended and
 8 it's all over -- October, November, December onwards, as
 9 regards disciplining her or the management of the store,
 10 you personally played no part whatsoever?

11 A. No.

12 Q. That's why there is nothing in your statement regarding
 13 that period?

14 A. Mark Raines dealt with that.

15 Q. Mark Raines dealt with ...?

16 A. The whole of the disciplinary process.

17 Q. Yes, but that's over by 3 October. I'm talking about
 18 the period after that.

19 A. Yes.

20 Q. Did you play any part?
 21 A. In what?

22 Q. Anything, after 3 October 2007?
 23 A. Not that I recollect.

24 Q. No. Obviously, what happens in 2008 is there is then
 25 the grievance process, isn't there?

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1 I haven't dealt with that yet, my Lord.

2 MR JUSTICE NUGEE: How much more do you think you have,
 3 Mr Stuart?

4 MR STUART: About half an hour max, but I might even make it
 5 less if I have a bit of time to think about it and cut
 6 it down overnight.

7 MR JUSTICE NUGEE: Yes.
 8 Mr Potts, how much re-examination do you think you
 9 have?

10 MR POTTS: Erm ...

11 MR JUSTICE NUGEE: A little bit?

12 MR POTTS: A little bit, yes, my Lord, I think, given the
 13 time of day, more than we would finish today.

14 MR JUSTICE NUGEE: Yes. If it was going to be 10 or
 15 15 minutes, I would encourage you to finish Mr McAlindon
 16 but in the circumstances -- it has been quite a long
 17 day -- I think we will start again at 10.30 --

18 MR STUART: Thank you, my Lord.

19 MR JUSTICE NUGEE: -- and finish Mr McAlindon in the
 20 morning.

21 MR STUART: Definitely, my Lord.

22 MR JUSTICE NUGEE: Yes.

23 MR STUART: We are almost at the end of that statement and
 24 his other statements just deal with --

25 MR JUSTICE NUGEE: Yes.

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1 MR STUART: -- a couple of little issues.

2 MR JUSTICE NUGEE: Very well. We will say 10.30.
 3 Mr McAlindon, I'll remind you again not to speak to
 4 anybody overnight about the case or your evidence.
 5 10.30.
 6 (4.22 pm)
 7 (The court adjourned until 10.30 am the following day)

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