

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 13

November 10, 2014

Opus 2 International - Official Court Reporters

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1 Monday, 10 November 2014
 2 (10.30 am)
 3 MR KAMALJIT SINGH (continued)
 4 Cross-examination by MR STUART (continued)
 5 MR JUSTICE NUGEE: Yes, good morning, Mr Stuart.
 6 MR STUART: Good morning, my Lord. So, Mr Singh, we are in
 7 your first witness statement. We have almost reached
 8 the end. If you go to paragraph 86. {C/1/20} Do you
 9 have that?
 10 A. Yes.
 11 Q. Could you also have bundle E11. Could that be passed to
 12 you, so we are in the right timeframe. Do you have E11?
 13 A. Yes.
 14 Q. You have? Great.
 15 So in paragraph 86, you refer to being suspended.
 16 If you go to page 2970. {E/921/2970} Do you have that?
 17 A. Yes.
 18 Q. So you were suspended on 8 June. Do you see that?
 19 A. Yes.
 20 Q. If you go to 2975, {E/924/2975} the next day. Do you
 21 see there is an email from Ms Birdi, the next day? Do
 22 you see that?
 23 A. Yes.
 24 Q. Ms Birdi is obviously suspended at the same time. So
 25 you are both suspended and she is telling Specsavers

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1 that she has been suspended and therefore she cannot
 2 contact the member of staff who might need to have some
 3 contact. Do you understand that?
 4 A. I haven't read this document before.
 5 Q. No, but you understand you were both suspended on the
 6 same day and you were both supposed to stop talking to
 7 staff at that time?
 8 A. Yes.
 9 Q. And that's because on the letter of suspension at 2970
 10 it said so in the penultimate paragraph, on 2970:
 11 {E/921/2970}
 12 "In addition, during the investigation you should
 13 not contact any member of staff who normally works at
 14 the Dartford store..."
 15 Do you see?
 16 A. Yes.
 17 Q. Do you see the photographs on page 2975-1 through to
 18 2975-3?
 19 A. Yes.
 20 Q. These were photographs taken by Mr Rehman, Ms Birdi's
 21 husband, on 9 July. That is the day after your
 22 suspension. Do you see those?
 23 A. Yes.
 24 Q. And this perhaps ties in with the staffs' evidence;
 25 Mrs Tidmass, Mr Hummell and Ms Hornby, who gave

2

1 evidence. I don't know, were you in the court when
 2 those three members of staff gave evidence?
 3 A. I was.
 4 Q. I think it was day 6, for your Lordship's note.
 5 Could you be passed the transcript bundle for day 6.
 6 Page 40 on day 6. {Day6/40:1}
 7 MR JUSTICE NUGEE: Mr Stuart, you said the photographs were
 8 taken on 9 July.
 9 MR STUART: Have I got that wrong?
 10 MR JUSTICE NUGEE: Did you mean June?
 11 MR STUART: June, of course I did; 9 June.
 12 A. Page 40 of day 6?
 13 MR STUART: Page 40 of day 6, and this is Mrs Tidmass giving
 14 evidence, okay? Page 40, bottom right-hand corner of
 15 the page and if we start at the top of page 40:
 16 {Day6/40:1}
 17 "Answer: It wasn't a meeting -- it wasn't an
 18 arranged meeting at a pub. We went over to the pub."
 19 Do you see? That's what Mrs Tidmass said. And then
 20 I said.
 21 "Question: Yes?
 22 "Answer: And we discussed between us regarding
 23 a grievance.
 24 "Question: And he came in?
 25 "Answer: He came in, when he finished work he came

3

1 in, and he said, like I said earlier, 'You have to go
 2 through head office. You can put in a grievance but
 3 I cannot have anything at all to do with this'.
 4 Do you see that?
 5 A. Yes.
 6 Q. And the other witnesses also gave evidence about
 7 a meeting in a pub. Do you think the meeting in the pub
 8 happened on 9 June?
 9 A. No.
 10 Q. Do you recall going back to the area of the shop on
 11 9 June, the day after you were suspended?
 12 A. I didn't go -- I went to Dartford. The photos that you
 13 are looking at there are my car, but this is a public
 14 car park. It's also a car park for the gym I used to
 15 attend, which I used to go regularly to.
 16 Q. Okay, so you think you went to the gym that day?
 17 A. Yes.
 18 Q. Did you go to the pub afterwards and meet the staff?
 19 A. No.
 20 Q. No. When do you think the meeting in the pub happened,
 21 roughly, compared with the 8 June, when you were
 22 suspended?
 23 A. I refer to it in my witness statement. In February.
 24 Q. That's February. That's a long time before. That's
 25 before you have even written your April 2010 complaint

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1 letter. We are talking about a discussion in a pub,
 2 where you say that you can have nothing to do with this
 3 and that they can put in their grievance?
 4 A. Yes, I'm referring to the one in -- the original one
 5 I have written in the statement.
 6 Q. But all of the staff seemed to think that the meeting
 7 happened some time in the period shortly before they
 8 wrote the letter in the middle of June, so not four or
 9 five months earlier. They all thought it was -- some
 10 said a week before the letter, some said around then.
 11 So you must have been in the pub in early June?
 12 A. I don't know if I was in the pub early June. All I can
 13 say, I didn't meet the staff on that day.
 14 Q. Okay. But you could have been in the pub in early June.
 15 Maybe it was after work one day, shortly before you got
 16 suspended?
 17 A. Possibly.
 18 Q. Fine. And you told them that if they were to write
 19 their letter to head office, you could have nothing to
 20 do with it?
 21 A. The only time I remember saying that to staff is
 22 in February.
 23 Q. Okay. You knew they were going to write a letter,
 24 though, didn't you?
 25 A. No.

1 Q. All of the staff seem to recall you being there, not for
 2 the whole of the event, but being there in the pub, when
 3 they were discussing the writing of the letter?
 4 A. No, the only time I have -- as I said, the only time
 5 I have had a conversation with staff is around February
 6 time, when they had raised their issues and I said,
 7 "This is the process that you need to go through if you
 8 want to raise an issue or raise a grievance".
 9 Q. What grievance did they have back in February? They
 10 didn't have a grievance about Fatima Khan back
 11 in February, did they?
 12 A. They had -- well, they had a lot of issues with
 13 Ms Birdi. So I don't know -- it wasn't necessarily
 14 referring to Fatima Khan. I'm saying they had issues
 15 with the way Ms Birdi treated them and it was just one
 16 of the those days where they felt they needed to vent
 17 something out. So they had a discussion with me and
 18 I told them, "This is the proper route". It may have
 19 been --
 20 Q. You were encouraging them to make a grievance against
 21 Ms Birdi then?
 22 A. No, not at all. I said -- they had -- they all
 23 raised an issue and they were a bit disgruntled. So
 24 I said this is -- "If this is a serious issue that you
 25 want to take up, this is the formal route", but apart

1 from that, I didn't say anything else to them.
 2 Q. So their collective recollection of having discussed it
 3 with you in the pub is wrong. Is that right?
 4 A. We discussed it in the pub but you are referring
 5 to June 9th. I did not meet the staff or have contact
 6 with my staff during my suspension period.
 7 Q. I'm not asking about whether it was actually on the 9th.
 8 You have given your answer as to that. I'm asking as to
 9 whether it was shortly before they wrote their letter?
 10 A. As I said, the only time I can remember meeting the
 11 staff and having this discussion is around the February
 12 time.
 13 Q. Okay. The letter itself, page 2982. {E/929/2982} Are
 14 you saying that they didn't even tell you that they were
 15 writing this letter?
 16 A. No.
 17 Q. Did they tell you that they had written it, after they
 18 had written it?
 19 A. No.
 20 Q. So when did you first learn of its existence?
 21 A. I learned of it when I came back to the store.
 22 Q. Who told you about it?
 23 A. I think one of the staff must have done. I can't
 24 remember who.
 25 Q. Why -- you can see the date of it, 16 June?

1 A. Yes.
 2 Q. Whilst the two of you are off suspended?
 3 A. Yes.
 4 Q. Had you told them that you were suspended, the staff?
 5 A. They knew that we were suspended.
 6 Q. They knew? Do you know who told them?
 7 A. Well, they came to -- we got suspended on the 8th and
 8 somebody else took the store over as a caretaker, so
 9 I think it was pretty -- I don't know if anyone told
 10 them, but I think it was pretty obvious that we were
 11 suspended because we weren't in the business.
 12 Q. You may have heard, the evidence of at least one of them
 13 was that she thought Ms Birdi had been suspended but
 14 that you had taken a step back and weren't suspended?
 15 A. I don't know.
 16 Q. All right. So your evidence is that you hadn't
 17 contacted them at all by telephone?
 18 A. No.
 19 Q. They knew nothing, from you, of your suspension, nor of
 20 the need to get this letter in to support you?
 21 A. No.
 22 Q. Did you speak about this with Mr Rajan?
 23 A. Mr Rajan?
 24 Q. Yes. Riyaz Rajan? Because he was investigating the
 25 serious allegations against you, wasn't he?

1 A. Yes.
 2 Q. Mr Clark was investigating the other side of things, but
 3 Mr Rajan was investigating Ms Khunkhuna's allegations,
 4 for example?
 5 A. Yes.
 6 Q. Did you discuss with Mr Rajan the fact that the staff
 7 were supporting you?
 8 A. No.
 9 Q. Okay. What discussion did you have -- in paragraph 86,
 10 you said you were suspended. Do you see? Paragraph 86
 11 of your witness statement? {C/1/20}
 12 A. Yes.
 13 Q. In paragraph 87 you refer to the investigatory interview
 14 with Mr Clark. Paragraph 87, do you see that?
 15 A. Yes.
 16 Q. I believe that's page 2983. {E/930/2983} There are some
 17 manuscript notes going through to 2996. {E/930/2996}
 18 That's Mr Clark investigating Ms Birdi, isn't it? Do
 19 you remember?
 20 A. This is the investigation interview, isn't it?
 21 Q. That's right, but it's the investigation interview with
 22 Mr Clark. Do you see: "David" is David Clark; Kam is
 23 you?
 24 A. Correct.
 25 Q. Just to help you, go back to 2977. {E/926/2977} Do you

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1 see he has asked you to attend -- you went to a hotel,
 2 I think, the Thistle Hotel?
 3 A. Yes.
 4 Q. "This has been arranged to discuss the issues detailed
 5 in your suspension letter."
 6 Do you see that?
 7 A. Yes.
 8 Q. "Please note that this is NOT a disciplinary hearing."
 9 Do you see that?
 10 A. Yes.
 11 Q. So he is not dealing with the allegations made by
 12 Ms Khunkhuna, is he?
 13 A. No.
 14 Q. He is dealing with the breakdown between you and
 15 Ms Birdi?
 16 A. Yes.
 17 Q. As set out in page 2970, the letter of suspension. Do
 18 you see? {E/921/2970}
 19 A. Yes.
 20 Q. It's the state of the A directors' working relationship,
 21 et cetera, et cetera. So Mr Clark is just dealing with
 22 the issue of the relationship between you and Ms Birdi.
 23 Do you see?
 24 A. Yes.
 25 Q. Did you discuss with Mr Clark the fact that the staff

10

1 were supporting you and were going to write a letter for
 2 you?
 3 A. No.
 4 Q. You discussed the fact that the staff were supporting
 5 you, I think, if you go to page 2995. {E/930/2995} Do
 6 you see, at the top Mr Clark says:
 7 "Question: Six members of staff approached you.
 8 "Answer: Yes, staff talking about her, put up with
 9 it. Asked them to not discuss her after she's not in
 10 room, but advised if they wanted to do something about
 11 it, they had to."
 12 Do you see that?
 13 A. Yes.
 14 Q. Is that you telling the staff if they want to do
 15 something about Ms Birdi, they all have to write to head
 16 office, make a letter against you? Is that what you are
 17 saying there?
 18 A. No, this -- again, this -- I'm referring to the earlier
 19 meeting I remember having with the staff where I had
 20 this conversation in February.
 21 Q. So it's a sheer coincidence that on the day that you are
 22 having your investigation meeting with Mr Clark about
 23 the state of the relationship between you and Ms Birdi,
 24 your six members of staff produce a letter that day in
 25 the store and get it into SOG. It's a coincidence?

11

1 A. Yes.
 2 Q. Can we just go to the end of that interview. 2996.
 3 {E/930/2996} Do you see 2996?
 4 A. Yes.
 5 Q. Just by the first hole punch:
 6 "In a nutshell, clear she's never wanted me there."
 7 Is that right? That's what you wanted to get across
 8 to Mr Clark?
 9 A. I can't remember the exact conversation, but if that's
 10 the notes that were taken.
 11 Q. Yes. Were you trying to get Ms Birdi exited from the
 12 business at this stage?
 13 A. I think at this stage there is a complete breakdown of
 14 our relationship.
 15 Q. Okay. So you are trying to get rid of her?
 16 A. I'm not trying to get rid of her. I want -- we are
 17 going through a formal process now, trying to get
 18 a resolution. And I don't know what that looks like.
 19 That's down to the investigating officer and whoever
 20 makes the decision thereafter.
 21 Q. Okay. All right. Paragraph 88. You say: {C/1/21}
 22 "A few days later, on 17 June ..."
 23 That would be a day later, wouldn't it, the day
 24 after your meeting with Mr Clark. You say Mr Rajan
 25 informs you -- that's page 3010. {E/936/3010} Mr Rajan

12

1 writing to you -- in fact, it's Mr Moore writing to you,
2 copying Mr Rajan, but it says:
3 "Please find attached letter from Mr Riyaz Rajan..."
4 Is that right? That's what you are referring to
5 there? This is Mr Rajan dismissing the grievances made
6 against you by the two junior members of staff.
7 A. Yes.
8 Q. Had you discussed this with Mr Rajan, the outcome of his
9 grievance findings?
10 A. No.
11 Q. Not at all?
12 A. No.
13 Q. What about Mr Clark?
14 A. No.
15 Q. All right. Do you accept all of these findings?
16 Perhaps you haven't read them. 3011 {E/936.1/3011} all
17 the way through to 3024. {E/936.1/3024}
18 Have you read it?
19 A. I can't remember the document now.
20 Q. Okay.
21 MR JUSTICE NUGEE: Do you remember receiving the document?
22 A. I remember receiving the document but it was quite
23 a while ago so ...
24 MR JUSTICE NUGEE: Did you read it at the time, do you
25 think?

13

1 A. Yes, I would have read it at the time.
2 MR STUART: I said 3024. Of course, it finishes on
3 page 3017 and then there is just another copy of it. So
4 it's a six-page document, 3011 to 3017. Do you see it?
5 A. Yes.
6 Q. I don't think you told Mr Rajan that you thought that
7 the whole thing had been concocted -- that is, all the
8 actual factual allegations had been concocted by
9 Ms Birdi, did you?
10 A. No, I don't believe I did, no.
11 Q. No. All right. Do you see the recommendations of
12 Mr Rajan, although he doesn't find the -- if you go to
13 page 3016. {E/936.1/3016}
14 A. Yes.
15 Q. He is there -- that is Ms Khan, Fatima Khan, or
16 Gulamali, "FG". Her grievance was about your
17 victimising her for being the friend accompanying
18 Ms Khunhuna and he finds that -- do you see the
19 summary? He says: {E/936.1/3016}
20 "... I do not upheld FG's grievance that the
21 extension of her three month probation period was
22 unfair."
23 Do you see that?
24 A. Yes.
25 Q. But he does make recommendations. Do you see

14

1 "Recommendations":
2 "Whilst I have not upheld the grievance, I would
3 however make the following recommendations..."
4 Do you see that?
5 A. Yes.
6 Q. Reviews to be documented.
7 You hadn't documented the review. That's right,
8 isn't it?
9 A. No, I believe there is documents in there that show that
10 me and Ruth Wotton had discussions around Ms Khan at the
11 time -- Ms Gulamali.
12 Q. Mr Rajan recommended that you should document things.
13 That's right, isn't it? That's his recommendation. His
14 first recommendation. Yes?
15 A. That's what it says here, yes.
16 Q. And then in relation to Ms Khunhuna's grievance, that
17 starts on page 3019. {E/937.1/3019} Do you see that?
18 A. Yes.
19 Q. And his conclusions are on page 3024. {E/937.1/3024}
20 He doesn't uphold her grievances, finding no evidence to
21 support her allegations about the inappropriate conduct.
22 Do you see that?
23 A. Yes.
24 Q. But again he makes some recommendations to you, doesn't
25 he? He says: {E/937.1/3024}

15

1 "Whilst I have not upheld the grievance, I would
2 however making the following recommendations ...
3 "That the partners (KS and SB) ensure that a minimum
4 of four people are present during cashing up/end of day
5 procedures daily on every occasion in order to comply
6 with security..."
7 Do you recall that?
8 A. Yes.
9 Q. So you hadn't suggested to Mr Rajan that either of those
10 grievances were concocted by Ms Birdi, had you?
11 A. I can't remember the actual investigation interview but
12 if you ask me now, I don't -- I don't recall it at this
13 moment.
14 Q. Okay. Moving swiftly on to the last section of your
15 witness statement, under the heading,
16 "Post-investigation". {C/1/21} You are dealing now with
17 the period after June 2010. Do you see it,
18 paragraph 89?
19 A. Yes.
20 Q. Paragraph 90. That's not quite right any more, is it,
21 paragraph 90? You are dealing with the letter. You are
22 saying -- do you see the fifth line:
23 "I do not recall exactly when I found out about this
24 letter, but I was not aware of it whilst I was suggested
25 from work."

16

1 That remains your position but you say:
 2 "I certainly had not, in any way, encouraged these
 3 individuals to send the letter."
 4 Whereas your evidence now is that you had to an
 5 extent encouraged them, but it was long ago, back
 6 in February. Is that right?
 7 A. Sorry, could you just repeat that question to me?
 8 Q. Yes. You say there:
 9 "I do not recall exactly when I found out about this
 10 letter, but I was not aware of it whilst I was suspended
 11 from work."
 12 This is the letter from the staff, the 16 June
 13 letter?
 14 A. Yes.
 15 Q. "I certainly had not, in any way, encouraged these
 16 individuals to send the letter."
 17 But you had, hadn't you, back in what you described
 18 as the February pub incident, that the staff recall as
 19 being early June. You had encouraged them to send
 20 a letter?
 21 A. No, I didn't encourage them. I told them that the
 22 proper channels -- what they need to do -- I didn't
 23 encourage them to send a letter.
 24 Q. What were the proper channels you told them about?
 25 A. In these circumstances, the proper channels are what you

17

1 have to do if you want to raise a grievance.
 2 Q. Is?
 3 A. To -- you can ring up head office or you can write
 4 a letter to them.
 5 Q. Okay, so you sort of encouraged them perhaps to write
 6 a letter?
 7 A. No. As their director, I was giving them information
 8 about what the proper channels are. That's different
 9 from encouraging them actively to write a letter, isn't
 10 it.
 11 Q. How often did you go to the pub with the staff?
 12 A. We used to go -- well, we still do, we go regularly.
 13 Q. Was Ms Birdi invited along, or was it just the seven of
 14 you? The six staff and you?
 15 A. Ms Birdi was always welcome but she never came.
 16 Q. When you were sitting in the pub regularly, would that
 17 be, what, at least once a week, sort of thing?
 18 A. It varied. Once a fortnight, or if we had done
 19 particularly well on a day, then I would treat them out,
 20 take them for a drink.
 21 Q. Okay. So in that period of February to June 2010, you
 22 must have been to the pub a number of times with them?
 23 A. Possibly, yes.
 24 Q. And during those occasions, you were discussing Ms Birdi
 25 and her conduct?

18

1 A. No, I can only recall that one time that we had this
 2 conversation.
 3 Q. Paragraph 92. {C/1/21} You return to work, don't you?
 4 So they lift your suspension. Is that right?
 5 A. Yes.
 6 Q. You can put away E11 -- sorry, just before you do that,
 7 I have just seen one reference I should have taken you
 8 to. Right at the back of E11, 3113. {E/952/3113}
 9 24 June. Do you see that?
 10 A. Yes.
 11 Q. You are writing to Mr Clark on 24 June. Do you see
 12 that? It's a two-page email actually. The attachments
 13 are so long that they fill the whole of page 3113, so to
 14 see your email, you need to go to 3114: {E/952/3114}
 15 "Hi David.
 16 "Please find attached all the emails I have to and
 17 from SB.
 18 "You may need to sift through them to find which
 19 ones are of benefit. Any questions just contact me."
 20 Do you see? That's 24 June?
 21 A. Yes.
 22 Q. What was your purpose in sending those emails on
 23 24 June?
 24 A. This was in relation to ...
 25 Q. What was it in relation to?

19

1 A. This was in relation to the investigation meeting. So
 2 where I had -- obviously the meeting was about our
 3 relationship. The investigation. And Mr Clark asked me
 4 if I had any emails to show what kind of -- what state
 5 our relationship was in and I provided him all the
 6 emails that I had.
 7 Q. When did he ask you that? Are you saying he asked you
 8 at the meeting or afterwards?
 9 A. I don't recall when he asked me.
 10 Q. Were you speaking to Mr Clark? Outside of the confines
 11 of the meeting, were you telephoning him or was he
 12 telephoning you in this period?
 13 A. No, no.
 14 Q. Are you sure?
 15 A. Yes, I'm pretty sure.
 16 Q. Look at this email:
 17 "Hi David ..."?
 18 A. Yes.
 19 Q. "Any questions just contact me."
 20 Are you sure you didn't speak to Mr Clark?
 21 A. No, I don't recall it. This is information that he has
 22 asked for, email communication that we have had, and all
 23 I have done is sent all the emails that I had on record.
 24 Q. Okay. And so then your suspension was lifted,
 25 page 3147. {E/959.1/3147} Is that right? 3147?

20

1 A. Yes.
2 Q. Just look at that:
3 "I write further to SOG's letter of 8 June and your
4 telephone conversation with David Clark yesterday..."
5 You obviously spoke to him then, didn't you?
6 A. I must have done, yes.
7 Q. "As advised to you verbally yesterday by Mr Clark,
8 I write to confirm on behalf of SOG ... that your
9 suspension is lifted and you hereby free to return to
10 work."
11 What did Mr Clark say to you on 1 July?
12 A. I don't recall the conversation.
13 Q. You must have been mightily relieved; your suspension
14 has been lifted. Presumably he said to you, "Your
15 conduct is no longer the subject of any scrutiny
16 whatsoever; you are not being investigated any longer"?
17 A. I don't recall the actual conversation we had but it's
18 clear he was telling me that, you know, I can come back
19 to work.
20 Q. How did that come about, do you know? Do you have any
21 idea how you are allowed back to work, your suspension
22 is lifted, but Ms Birdi is not? You have both been
23 suspended for the same thing -- at least this
24 suspension. This is nothing to do with Ms Khunhuna and
25 that business. This is to do with your working

21

1 relationship suspension, 8 June. How did it come about
2 that you are allowed back, your suspension is lifted,
3 and she is not?
4 A. You would have to ask Mr Clark that question.
5 Q. So it was just Mr Clark's decision, was it?
6 A. Yes, as far as I'm aware, yes.
7 Q. Okay. Perhaps you didn't realise at the time that
8 Ms Birdi was still suspended. Did Mr Clark say to you,
9 "Kam, good news, you are coming back, she is not coming
10 back"?
11 A. I don't -- again, I don't recall the conversation but
12 when I came back to the store, it was quite clear that
13 Ms Birdi wasn't there so I assumed that she was still
14 suspended.
15 Q. Right. You must have discussed it with Mr Clark?
16 A. No, I don't recall having a conversation about it.
17 Q. Or with Mr Dyson?
18 A. No.
19 Q. Or anybody else at SOG?
20 A. No.
21 Q. Did you not think it was odd, then, that your suspension
22 had been lifted? The investigation process hadn't
23 actually yet completed?
24 A. No, I didn't think it was odd.
25 Q. No?

22

1 A. I didn't think I had done anything wrong, so ...
2 Q. Right, now you can put away bundle 11 because we have
3 finished with that. We are on to E12.
4 We are at paragraph 90 of your witness statement.
5 {C/1/21} You skip from 2 July to 23 July. Do you see?
6 The next thing, according to you, is that Mr Clark
7 provides you at page 3209, I think, in E12, with the
8 investigation undertaken. {E/979.1/3209} Do you see
9 that?
10 A. Yes.
11 Q. What discussions had you had with Mr Clark since your
12 return to the store on 2 July?
13 A. I don't recall having any conversation with Mr Clark.
14 Q. Okay. Had you had any discussions with SOG? With
15 Mr Raines?
16 A. No.
17 Q. Or Mr Dyson?
18 A. No.
19 Q. If you go to page 3206 there is a memorandum dated two
20 days earlier. Do you see that? {E/977/3206}
21 A. Yes.
22 Q. Mr Clark is being written to by Mr Raines. He is asking
23 for his views on the present state of the working
24 relationship and he sets it out there. Do you see that?
25 A. Yes.

23

1 Q. Did you speak to Mr -- are you sure you didn't speak to
2 Mr Raines?
3 A. No.
4 Q. So nobody asked you for what was your position, now that
5 your suspension had been lifted?
6 A. No.
7 Q. Okay. Had you expressed to them already the fact that,
8 as far as you were concerned, Ms Birdi had to go?
9 A. No.
10 Q. No? Okay. Paragraph 92, you say you: {C/1/21}
11 "... used the opportunity provided by Ms Birdi's
12 absence to implement the changes that [you wanted]."
13 Do you see that?
14 A. Yes.
15 Q. What led you to believe that you had the power to do
16 that? She was obviously suspended from work, wasn't
17 she, just as you had been suspended from work, from
18 8 June to 2 July. But she wasn't suspended as an
19 A director with you, was she? She was still your
20 co-shareholder and director?
21 A. Yes.
22 Q. Did you not consider that matters that were the decision
23 of the A directors, matters of day-to-day management,
24 et cetera -- did you not consider that you should be
25 discussing those with her and agreeing them with her in

24

1 the usual way?
 2 A. She wasn't in the business at that time, so ...
 3 Q. She was excluded because there was an investigation?
 4 A. Yes.
 5 Q. She was suspended from work and she wasn't allowed to
 6 contact the staff?
 7 A. Or myself.
 8 Q. Or yourself. So are you suggesting that that entitled
 9 you to -- as you put it -- take the opportunity and
 10 implement all the changes you wanted to?
 11 A. I just did what was in the interests of the business and
 12 made some changes that were positive for the business.
 13 Q. I'm going to suggest to you that by this stage, you knew
 14 she wasn't coming back?
 15 A. No, I disagree. I didn't know that at all.
 16 Q. I'm going to suggest that you implemented these changes
 17 and basically acted as though you were the sole
 18 A director from this point onwards, because you knew
 19 that you and SOG were going to ensure that she was going
 20 to be exited?
 21 A. I disagree.
 22 Q. When did you say that you finally realised she wasn't
 23 coming back?
 24 A. When the -- when she was dismissed.
 25 Q. When she was dismissed. What, that's much, much later

1 then?
 2 A. Yes, up to that point I didn't know.
 3 Q. Okay. The board meeting she referred to in -- the first
 4 one, paragraph 94, 9 August? {C/1/22}
 5 A. Yes.
 6 Q. She wasn't at that meeting, was she?
 7 A. No.
 8 Q. And can you just go to page 3254, which is the note of
 9 the meeting. {E/988/3254} Do you see it?
 10 A. Yes.
 11 Q. If you go back one page, there is a letter from
 12 Ms Birdi. Do you see that? {E/987.1/3253}
 13 A. Yes.
 14 Q. Were you aware of that letter?
 15 A. No.
 16 Q. Was there any discussion at the meeting about Ms Birdi's
 17 absence?
 18 A. I don't recall it, no.
 19 Q. Okay. Was there any discussion at the meeting -- if you
 20 just look at the note, look at page 3255, this is agenda
 21 item 6, which is the main one. Do you see:
 22 {E/988/3255}
 23 "... this item was to consider the Written Report of
 24 Mr Clark ..."
 25 Copies of the report circulated. Mr Rowe -- do you

1 remember Mr Rowe is now acting effectively as
 2 a director?
 3 A. Yes.
 4 Q. A B director?
 5 A. Yes.
 6 Q. And do you recall -- was Mr Rowe reading something out?
 7 Was he reading out ...?
 8 A. I don't recall it.
 9 Q. Do you have any recollection of this meeting at all?
 10 A. I don't --
 11 Q. Do you remember being at a meeting with Mr Rowe and
 12 Linda Weaver?
 13 A. Yes, I remember being at the meeting.
 14 Q. Who is Linda Weaver?
 15 A. I don't know.
 16 Q. The three of you were there. It was in a Novotel in
 17 St Pancras. Do you remember that? Perhaps you do not
 18 remember where it was?
 19 A. Yes, Novotel.
 20 Q. I'm interested in the discussion, you see; how did the
 21 discussion go. I can see large chunks of text that
 22 appear to be what Mr Rowe is saying, and I'm interested
 23 in whether this is what he said. Did he read this out?
 24 Was it a sort of formal type thing; he sat there and
 25 read something out and he said:

1 "Can you confirm that you have had an opportunity to
 2 read the report?"
 3 And you said:
 4 "Yes."
 5 That's your only answer there. Then he says a load
 6 of things?
 7 A. He may have had some paperwork in front of him. I can't
 8 recall it though.
 9 Q. I see. Okay. And then he proposes a motion, 3256. Do
 10 you see that? {E/988/3256}
 11 A. Yes.
 12 Q. Had you had notice of that motion beforehand? Had he
 13 told you in advance, or had somebody else told you in
 14 advance that this is what they were going to do?
 15 A. I don't believe so, no.
 16 Q. So things were moving rather fast. Ms Birdi wasn't
 17 there. That's right, isn't it? And you were moving
 18 from -- noting the item was to consider a report from
 19 Mr Clark, you were moving to five motions:
 20 "1. That the investigation undertaken by Mr David
 21 Clark ... hereby ratified as being carried out in
 22 accordance with the company procedures...
 23 "2. That the recommendations of Mr David Clark's
 24 report be accepted in full, and that procedures
 25 therefore be instigated against Ms Birdi to consider ...

1 disciplinary action ..."
 2 Including dismissal. Do you see that?
 3 A. Yes.
 4 Q. Suspension of Ms Birdi to continue.
 5 The lifting of your suspension, that hadn't been
 6 discussed at a board meeting, had it, so far as you are
 7 aware?
 8 A. No, I don't think so.
 9 Q. No. Anyway, so she is to remain suspended. She is
 10 going to undergo disciplinary action and potentially
 11 dismissal and then you delegate the authority to conduct
 12 those procedures. I think that must mean all the
 13 dismissal procedures, the investigation -- sorry, the
 14 disciplinary procedures, dismissal procedures. That's
 15 all delegated to Specsavers Optical Group. And the
 16 costs of all of that in relation to the investigation
 17 and such procedures, so past and future costs, all going
 18 to be borne by Dartford. Do you see that?
 19 A. Yes.
 20 Q. Do you remember the discussion at all? There doesn't
 21 seem to be much discussion. That's proposed:
 22 "All those in favour?"
 23 Yes, yes, yes.
 24 There is no note of any discussion about these
 25 things.

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1 A. I didn't feel I needed to discuss any of those points.
 2 Q. Okay. What about on behalf of Ms Birdi? Did nobody
 3 think, "We should discuss whether it's right to start
 4 passing motions in her absence", which plainly affect
 5 her, don't they? It's whether she is going to be
 6 disciplined and then dismissed and whether her company
 7 is going to pay for it?
 8 A. She wasn't present at the meeting, so how could she
 9 discuss them?
 10 Q. No, okay. Your recollection is then that the discussion
 11 was as short as that. Mr Rowe said, "All those in
 12 favour?" and you said yes, yes, yes. That's it. That
 13 was the only discussion?
 14 A. Yes.
 15 Q. Okay. Then item 7. {E/988/3256} We do seem to have
 16 a discussion. Is that right? Details of you discussing
 17 it; Mr Rowe?
 18 A. Yes.
 19 Q. Okay. All right. We are on to the penultimate page of
 20 your statement. Paragraph 96. {C/1/23} We are
 21 into December 2010 now. Do you see that? And
 22 Ms McIntyre has conducted the disciplinary process that
 23 you have just authorised by your August board meeting.
 24 Do you remember?
 25 A. Yes.

30

1 Q. Did you speak to Ms McIntyre in the investigation?
 2 A. No, I don't believe I did.
 3 Q. The investigation was regarding the allegations that
 4 Mr Clark had been looking at, which were the
 5 allegations, effectively, that you were making against
 6 Ms Birdi, weren't they? You were alleging that the
 7 breakdown in the relationship was caused entirely by her
 8 behaviour. You even say it again in paragraph 96:
 9 {C/1/23}
 10 "... due to the complete breakdown of the working
 11 relationship between me and Ms Birdi for which her
 12 actions and behaviour were responsible."
 13 Do you see?
 14 A. Yes.
 15 Q. That was what Mr Clark was investigating and he had
 16 referred his investigation on, and you had authorised
 17 that to be turned into a disciplinary case against
 18 Ms Birdi, hadn't you? That's what you understood the
 19 disciplinary case to be about?
 20 A. I was -- Mr Clark's investigation -- investigating the
 21 breakdown of our relationship.
 22 Q. Yes?
 23 A. And obviously I have got one version, my side, where
 24 I believe the problems lie, and Ms Birdi has got her own
 25 so ...

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1 Q. Yes, but I'm interested -- your recollection is that
 2 when it came to the actual disciplinary process in
 3 relation to that, you are saying that Ms McIntyre didn't
 4 involve you at all?
 5 A. No.
 6 Q. Didn't ask you any questions?
 7 A. Not that I can recall, no.
 8 Q. Didn't ask -- because, I mean, Ms Birdi, on her side,
 9 she had asserted that it was all down to you, hadn't
 10 she, the breakdown in the relationship? Do you
 11 remember? The allegations about alleging that she had
 12 forged Mr Patel's signature and all those sorts of
 13 things?
 14 A. Okay.
 15 Q. Do you recall, Ms Birdi's case was squarely that you had
 16 an agenda and that you had caused the breakdown in the
 17 relationship right from the start?
 18 A. Yes.
 19 Q. So I'm interested: are you saying that Ms McIntyre did
 20 not investigate any of Ms Birdi's allegations that were
 21 against you, with you?
 22 A. I don't recall having a conversation or meeting with
 23 Ms McIntyre.
 24 Q. And you don't mention it anywhere in your witness
 25 statement, your involvement?

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1 A. Yes, I'm pretty sure I did not have any meetings with
2 her or ...
3 Q. Okay. Did you not think that odd, given that the whole
4 case was about the breakdown in the relationship between
5 the two of you, allegedly?
6 A. No, because it has been thoroughly investigated by
7 Mr Clark.
8 Q. Are you suggesting that Mr Clark's investigation was the
9 end of the investigation then? There was to be no
10 further investigation by Ms McIntyre at all?
11 A. From my understanding of employment law, and I'm not an
12 expert at it, I thought the procedure is you have an
13 investigating officer and then you have a -- somebody
14 that makes a disciplinary decision after that.
15 Q. Okay. You can put away the bundles now. We have moved
16 into E15.
17 As I understand your evidence, you play absolutely
18 no part in the decision-making of Ms McIntyre or of SOG
19 in reaching the conclusion that Ms Birdi was guilty of
20 misconduct?
21 A. No.
22 Q. Gross misconduct, I think?
23 A. No, I didn't meet with Ms McIntyre.
24 Q. You played no part whatsoever. Is that right?
25 A. That's right, yes.

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1 Q. Okay. So you say -- this is paragraph 97 {C/1/23} --
2 you attend the board meeting, 4077 {E/1047/4077} -- do
3 you have E15? You can put away all the other bundles.
4 Just have E15 and your witness statement bundle,
5 obviously.
6 Do you have E15?
7 A. Yes.
8 Q. Good. Right at the front of E15, you are being sent
9 notice of the meeting. That's right, isn't it?
10 The December 2010 meeting?
11 A. Yes.
12 Q. 4077. Ms Birdi not at the meeting. That's right, isn't
13 it?
14 A. Yes.
15 Q. And again, go back three pages, 4074, you can see the
16 letter from Ms Birdi? {E/1045.1/4074}
17 A. Sorry, 40 ...?
18 Q. 4074. So Mr Moore has sent out, on 14 December, the
19 decision and the note of the meeting. Do you remember?
20 A. Yes.
21 Q. The meeting is going to take place on 21 December and on
22 the 19th, Ms Birdi writes to say:
23 "Since D McIntyre has stated that I have no right to
24 appeal against her recommendations I see no point in
25 attending the meeting.

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1 "For what it is worth I wish for it to be recorded
2 that I do not agree with her recommendations and besides
3 this there are factual inaccuracies in her report.
4 "I therefore would like to request that the
5 Chairman, Mr G Edmonds act as my proxy and formally
6 includes my vote against D McIntyre's recommendations
7 for my dismissal."
8 Do you see that?
9 A. Yes.
10 Q. Presumably you were aware of that at the meeting,
11 page 4077? {E/1047/4077}
12 A. Yes.
13 Q. Mr Edmonds and you are the only two people present; is
14 that right?
15 A. Correct.
16 Q. Again, in the Novotel in St Pancras?
17 A. Yes.
18 Q. Do you remember the meeting well?
19 A. Erm, I remember the gist of it, yes.
20 Q. According to this note of the meeting, you didn't say
21 very much. From what I can see, on the top of
22 page 4078, you said the word "No". That's in relation
23 to whether you had any declarations of interest. Do you
24 see that?
25 A. Yes.

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1 Q. And then you appear on page 4079 to say the word "Yes",
2 when asked whether you had read a copy of Ms McIntyre's
3 report. Do you see that? {E/1047/4079}
4 A. Yes.
5 Q. You made no reply when asked whether you had any
6 comments on the report. And then, when the motions are
7 put -- that is to dismiss Ms Birdi -- you voted for the
8 motion?
9 A. Yes.
10 Q. And then under "Any other business", you replied, "No".
11 {E/1047/4080} So your entire involvement in this meeting
12 was to say the words, "No", "Yes", stick your hand up
13 and then say the word "No". Do you recall it like that?
14 A. Yes.
15 Q. Was there any actual discussion about whether it was in
16 the company's best interest to dismiss Ms Birdi?
17 A. No.
18 Q. No?
19 A. I think the discussion that was there is in front of
20 you.
21 Q. Hm-mm. Perhaps you had discussed it beforehand with the
22 other directors, Mr Dyson or Mr Raines or Mr Rowe?
23 A. No. No.
24 Q. You had had no discussion with them whatsoever?
25 A. No.

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1 Q. Or with Ms McIntyre?
 2 A. Nobody.
 3 Q. Neither before nor after she had reached her
 4 conclusions, Ms McIntyre?
 5 A. No.
 6 Q. Nobody discussed with you, the A director, whether it
 7 was in the best interests of the company to sack
 8 Ms Birdi?
 9 A. No.
 10 Q. No. I had better just check: Mr Clark?
 11 A. No.
 12 Q. Any discussions with him? No.
 13 You must have been quite pleased? You had finally
 14 got rid of Ms Birdi?
 15 A. I was pleased that this -- you know, after, what, two
 16 years, this is finally coming to an end because I had
 17 couldn't see it working any other way.
 18 Q. Right. And could we just go to page 4200. {E/1069/4200}
 19 Shortly thereafter. So we are into March 2011 now. Is
 20 that right?
 21 A. Yes.
 22 Q. And Ms Birdi is still A shareholder, isn't she?
 23 A. She is, yes.
 24 Q. This is to Mr Rowe from you. Do you remember this?
 25 A. I don't remember it but I'll -- it's obviously an email

1 written.
 2 Q. You did write it though, yes?
 3 A. Yes, this -- well, it says it has come from me.
 4 Q. And as we can see there, in the penultimate paragraph:
 5 "As discussed the other day ..."
 6 So you have obviously been talking to Mr Rowe; is
 7 that right:
 8 "As discussed the other day, I do believe adding
 9 a new director to this business will not increase the
 10 performance or reduce costs."
 11 Do you see that?
 12 A. Yes.
 13 Q. So what you are basically suggesting is that either this
 14 becomes a shared venture between you and Specsavers and
 15 you are going to be the sole A director, or, presumably,
 16 you and some member of your extended family are going to
 17 be the two A directors, ie people who you can be sure
 18 are going to get on. Is that the substance of your
 19 suggestion?
 20 A. No, if you -- the first line says:
 21 "... supporting my application to become sole
 22 A director..."
 23 Q. Yes. So what had you in mind, as to the running of the
 24 store?
 25 A. Well, I had been running the store now since,

1 what, June 2010.
 2 Q. Yes?
 3 A. On my own -- or June or July -- and the business is
 4 improving.
 5 Q. Hm-mm?
 6 A. You know, this is the first time the business has
 7 settled down. The staff were very happy and it's all
 8 positive. So, you know -- and the last thing -- going
 9 through the turmoil that I had been through for the last
 10 two years, two or three years, I didn't want any more
 11 upheavals in the business. So I was just putting it out
 12 there to SOG -- I know that Ms Birdi is still
 13 a shareholder but I was saying, "Look, you know, I don't
 14 really want to go through this again, so -- as an
 15 A director of the business".
 16 Q. Okay. Just go forward seven pages, 4207-1.
 17 {E/1072.1/4207.1} It's now on the issue of your salary.
 18 You and SOG wished to disguise your distributions as
 19 salary, didn't you, in order to cut Ms Birdi out from
 20 sharing the profits?
 21 A. No.
 22 Q. Do you remember? Do you see this letter -- do you
 23 remember you sent this?
 24 A. Yes.
 25 Q. And if you go to the fourth paragraph, it starts:

1 "As Ms Birdi is still a shareholder ..."
 2 Do you see?
 3 A. Yes.
 4 Q. "As Miss Birdi is still a shareholder, I am advised that
 5 it may be difficult for there to be a distribution of
 6 profits from the business."
 7 What's difficult about it? She is entitled her half
 8 share, you are entitled to your half share. You are
 9 getting a salary, she is not. What's difficult about
 10 it? This is by August 2011. She has been out of the
 11 business since 8 June 2010, suspended initially?
 12 A. Yes.
 13 Q. Latterly dismissed. Yes? You say that you have been
 14 able to improve the business's profits and that has
 15 resulted in a large amount of profit ready for
 16 distribution. That's right, isn't it?
 17 A. Yes.
 18 Q. So what is difficult, for there to be a distribution of
 19 profits?
 20 A. At this time, you know, we have got a lot of money put
 21 aside for, you know, different legal things that are
 22 going on. That's what I was referring to. So --
 23 Q. Are you talking about the High Court litigation?
 24 A. No, I'm referring to the employment tribunal.
 25 Q. Okay. Who is paying the costs of that?

1 A. The business is.
 2 Q. And how much are we talking about that was put in the
 3 accounts -- just for the employment tribunal to start
 4 with?
 5 A. I don't know the figure. I think it was around £30,000.
 6 Q. Okay. That's only £30,000 out of your profits. What
 7 sort of level of profits are you on by now, the store?
 8 A. I can't recall.
 9 Q. No. And even having made that provision, there are
 10 still substantial profits available for distribution,
 11 aren't there?
 12 A. Yes, there is, yes.
 13 Q. Yes. And the costs of the litigation, they are being
 14 borne by SOG, are they not? Not the employment tribunal
 15 proceedings alone, but the rest of the litigation;
 16 that's being borne by SOG. That's right, isn't it?
 17 A. Yes.
 18 Q. Yes. So please explain to his Lordship: why is it
 19 difficult for there to be a distribution of profits? Or
 20 is the truth of it that what you mean is it's difficult
 21 to distribute profits to you and not to her?
 22 A. No, not at all. And we have -- whenever we have
 23 distributed profits, you know, as far as I'm aware,
 24 there's profits going to Ms Birdi as well.
 25 Q. But you didn't distribute profits during this period,

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1 did you?
 2 A. Like I said, you know, my understanding was that it
 3 would be difficult to distribute profits at the time
 4 because of all the different -- the employment tribunal
 5 going on. I know that's a cost that has been put aside
 6 to it but, you know, without going through the actual
 7 tribunal, you don't know what the costs are going to be.
 8 Q. You didn't distribute any profits at the end of 2010;
 9 you didn't distribute any profits in 2011. That's
 10 right, isn't it?
 11 A. I don't know off the top of my head, but --
 12 Q. And what you are saying is: {E/1072.1/4207.1}
 13 "However, I understand, it is possible for the
 14 directors of the business ..."
 15 That would now be you and SOG. Is that right? Not
 16 Ms Birdi?
 17 A. Yes.
 18 Q. Your understanding:
 19 "... to agree to an increase in my remuneration."
 20 So instead of a distribution of profits to the two
 21 A shareholders, what you are saying is, "Let's start
 22 paying me". And we see what you are suggesting. You
 23 are suggesting increasing your basic salary to £84,500.
 24 Basic salary. Is that right?
 25 A. Yes, that's what I requested.

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1 Q. And then backdate that as well. So in other words,
 2 strip out all the money from the business by paying you
 3 more remuneration, leaving nothing left for distribution
 4 of profits?
 5 A. No, there would still be money left. You know, that's
 6 what I -- at that time, that's what I requested because
 7 I had been running that business on my own. At that
 8 time --
 9 Q. Who had advised you --
 10 A. -- I thought it was fairly justifiable.
 11 Q. You say in that letter:
 12 "I am advised that ..."
 13 You are obviously discussing this with somebody at
 14 SOG. Who were you discussing this with at SOG?
 15 A. No, I didn't -- I haven't discussed this with anyone at
 16 SOG. This is -- the people I discussed this with is my
 17 fellow -- my family. My wife and my sister-in-law.
 18 Q. What, your wife is telling you about distributions of
 19 profits from the business and how it may or may not be
 20 difficult to do so in these circumstances?
 21 A. Yes, she is a director of another business, so she knows
 22 about these things as well.
 23 Q. Okay. Had you had some conversations with anyone at
 24 SOG?
 25 A. No.

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1 Q. About getting the money out other than through
 2 distributions of profits equally to the shareholder?
 3 A. No.
 4 Q. So you just thought that this would be the way forward,
 5 just in your mind?
 6 A. Yes, this is -- I felt -- I felt because I put that
 7 effort into the business, running it myself, that's what
 8 I requested. But it is a request, you know, and it was
 9 down to SOG to see if they agreed to it or not.
 10 MR JUSTICE NUGEE: I'm sorry, Mr Singh, I haven't quite
 11 understood what you were saying in this letter. The
 12 fact that Ms Birdi is still a shareholder, why does that
 13 make it difficult to distribute profits? I understand
 14 the point you were saying about, "We have to reserve
 15 costs for the employment tribunal proceedings", but why
 16 does the fact that she is still a shareholder make it
 17 difficult to distribute profits?
 18 A. I don't know, I don't know why I have written that in
 19 there. It doesn't -- you know, I shouldn't have written
 20 that in there. It doesn't really make sense for me to
 21 write that in there, but the reason why, as I referred
 22 to back when I just said is -- it's to do with the costs
 23 and the fact that we are putting the money aside for an
 24 employment tribunal.
 25 So, yes, looking back on this letter, you know,

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1 I probably shouldn't have written that in there because
 2 it doesn't -- it's not relevant really.
 3 MR JUSTICE NUGEE: And why, if you are having to reserve
 4 money and keep it back in the business, would it be
 5 appropriate to increase your salary?
 6 A. Because I think Mr Stuart said, quite rightly -- it has
 7 just come back to me -- that I didn't take any dividends
 8 until 2011. You know, I had been running this business
 9 now since 2008 and only on a basic salary. So I just
 10 felt that the amount of work I was putting into the
 11 business, I felt it was justifiable at that time.
 12 MR JUSTICE NUGEE: Thank you.
 13 Is that a convenient moment, Mr Stuart?
 14 MR STUART: My Lord, I think I'm just about to finish. Can
 15 I just ask one last question and then I'm done with
 16 Mr Singh?
 17 MR JUSTICE NUGEE: Yes.
 18 MR STUART: Insofar as you did then receive bonuses --
 19 £2,500 a quarter, for example?
 20 A. Yes.
 21 Q. Increases in your salary; a company car, I think you
 22 got, didn't you?
 23 A. Yes.
 24 Q. How much was that valued at, the company car that the
 25 company purchased for you? Roughly, to the nearest

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1 £10,000?
 2 A. I think it was £35,000 to £40,000.
 3 Q. A £35,000 to £40,000 car. All of those decisions were
 4 taken by whom? The decisions to give you the car, to
 5 give you the bonuses, to give you the salary; who took
 6 those decisions?
 7 A. They were requests I made and we go through the normal
 8 channel of putting it through Financial Planning.
 9 Q. Who? So who was it who authorised you to get all of
 10 these benefits?
 11 A. I don't -- as I said, we just submit a form to -- or we
 12 do it online now. We put a request on through our ebis
 13 system and then it gets approved or not.
 14 Q. Surely some directors of the company must have approved
 15 these things?
 16 A. I don't know.
 17 Q. It wasn't you, then? You didn't approve them?
 18 A. No, I simply requested it.
 19 Q. Right. It wasn't Ms Birdi, was it?
 20 A. No.
 21 Q. She was a shareholder by this time. It wasn't you and
 22 she as shareholders. You didn't have any shareholder
 23 decision-making around these things?
 24 A. No.
 25 Q. You knew that she was actually complaining about them?

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1 A. No, I didn't know.
 2 Q. Okay. So far as you are aware, was it Mr Dyson?
 3 A. As I said, I don't know who made the decision.
 4 Q. Who were the other directors, in your mind?
 5 A. The other director is SOG.
 6 Q. True, but which persons?
 7 A. I don't know who made the decisions about my pay
 8 increases or the company car. All I do, like every
 9 other director would do in the business, is submit
 10 a request through Financial Planning and then wait for
 11 an approval. If it's -- you know, if the business can
 12 afford it.
 13 Q. And they have just been approved by somebody; you don't
 14 know who it is?
 15 A. Yes.
 16 Q. Sorry, just arising from that answer then, you had
 17 better -- you are in bundle E15, aren't you? Yes. It
 18 won't take long.
 19 Let's take page 4311-1. These discretionary bonuses
 20 that you keep awarding yourself. Do you see 4311-1?
 21 {E/1106.1/4311.1}
 22 A. Yes.
 23 Q. That's a directors' resolution:
 24 "In recognition of Mr Singh's personal efforts in
 25 completing these additional duties over the quarter ..."

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1 This is your quarterly £2,500, do you remember?
 2 A. Yes.
 3 Q. "... Mr Singh be paid by the Company a discretionary
 4 one-off employment bonus..."
 5 That seems to have been signed by you. Is that
 6 right?
 7 A. Yes.
 8 Q. Also signed by Mary Perkins and somebody else, I don't
 9 know who it is. So do you recall -- you were signing
 10 off your own payments?
 11 A. Yes, I recall that now, yes.
 12 Q. Yes. And the car, that was you?
 13 A. Erm, I don't know. The car -- the car -- I think it was
 14 resolved through a motion in a board meeting, I believe,
 15 if my memory serves me correctly.
 16 Q. Yes, at which you were the --
 17 A. Yes.
 18 MR STUART: My Lord, I have got no more questions for
 19 Mr Singh.
 20 MR JUSTICE NUGEE: No. Well, let's take a five-minute
 21 break. Do you have any re-examination, Mr Potts?
 22 MR POTTS: I have a few questions, but not very many.
 23 MR JUSTICE NUGEE: Yes. Let's take a five-minute break now.
 24 (11.42 am)
 25 (Short break)

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1 (11.48 am)
 2 MR JUSTICE NUGEE: Yes, Mr Potts.
 3 Re-examination by MR POTTS
 4 MR POTTS: Mr Singh, one matter from this morning. Do you
 5 have E12, please? Do you have that to hand or could
 6 that be passed up?
 7 If you could turn, please, to page 3253
 8 {E/987.1/3253} and 3254. {E/988/3254} You were asked
 9 about whether there was any discussion of Ms Birdi's
 10 absence from the board meeting. Could you have a look
 11 at 3254, just below where it says:
 12 "Apologies."
 13 And then below there, it says:
 14 "MRo Noted..."
 15 Do you see that?
 16 "... Noted that a letter ..."
 17 A. Yes.
 18 Q. Does that refresh your memory as to what discussion
 19 there was about Ms Birdi's attendance or non-attendance?
 20 A. No, we must have -- Mr Rowe must have mentioned it but
 21 I don't remember any further.
 22 Q. Okay, you don't have a recollection.
 23 Then, if you could just keep a finger in there, you
 24 weren't shown the agenda at 3243. {E/980.3/3243} Could
 25 you just read item 6 to yourself? (Pause)

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1 A. Yes.
 2 Q. And then could you also go back, please, to 3230. This
 3 is Mr Clark's report. {E/980.1/3230} Do you see the
 4 recommendations there?
 5 A. Yes.
 6 Q. 1, 2, 3. Could you just read those. (Pause)
 7 A. Yes.
 8 Q. So if you could go back to 3243. {E/980.3/3243} When
 9 you received the notice of meeting in item 6, which
 10 referred to the business including:
 11 "... to consider appropriate actions arising in
 12 light of such report."
 13 What did you understand from agenda item 6 to be the
 14 kind of appropriate actions that might arise in light of
 15 his report?
 16 A. A disciplinary or dismissal.
 17 Q. Fine. Thank you. We can put that away.
 18 I would like to go back to your evidence which began
 19 on Thursday. Could you be passed, please, D2.
 20 This is at the start of your evidence. You were
 21 asked some questions about the audited accounts of the
 22 companies; do you remember that?
 23 A. Yes.
 24 Q. One matter that was explored with you was how the costs
 25 of sales had reduced after you had become retail

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1 director of Dartford. Do you have a recollection of
 2 those questions?
 3 A. Yes.
 4 Q. And it was put to you -- for your Lordship's note, day
 5 11, page 157 {Day11/157:1} that you did not have any
 6 control of the sale prices of your stock.
 7 Could I ask you to turn up D2/373. {D/27/373} These
 8 are some figures for the year ended -- this is the
 9 consolidated trading P&L account for September 2010. If
 10 you see the second major item, "Costs of Sales". Do you
 11 see that?
 12 A. Yes.
 13 Q. And you can see that the largest cost in fact is lenses?
 14 A. Hm-mm.
 15 Q. As retail director, are you able to exert any control
 16 over how much you spend a year on lenses, when you make
 17 glasses up for customers?
 18 A. You can, by way of monitoring how well the lab performs
 19 in terms of productivity.
 20 Q. So what impact does the way you run the lab have in
 21 relation to the cost of sales there?
 22 A. So, if you manage the lab properly and reduce the number
 23 of breakages and waste, it will reduce the costs.
 24 Q. And that's on frames. What about in relation to lenses?
 25 A. Sorry --

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1 MR JUSTICE NUGEE: I think he was answering in relation to
 2 lenses.
 3 MR POTTS: I'm sorry, my Lord. What about in relation to
 4 frames?
 5 A. The same with frames. If you overstock the store you
 6 will have a higher cost or if you break -- you know, in
 7 the production of the glasses, if you break glasses; or
 8 theft will have an impact on the cost.
 9 Q. In relation to frames, as retail director do you have
 10 any control over the frames that are purchased in
 11 the store and your stock?
 12 A. Sorry, in the sense ...?
 13 Q. As retail director do you have any control over which
 14 frames you purchase in the year and your stock?
 15 A. It's done through a merchandising system. So they are
 16 automatically replenished.
 17 Q. I see. You were also shown some selected figures in
 18 relation to the profitability of the business and,
 19 I don't know if you remember, Mr Stuart suggested to you
 20 on a couple of occasions that the business should
 21 reasonably expect to achieve profits of £150,000 a year
 22 to be split between the partners. Do you remember that?
 23 A. Yes.
 24 Q. It's day 11, page 167. {Day11/167:1} Could I just ask
 25 to you look at some of the profit figures for the

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1 business. D2/309. {D/23/309} I'm not sure you were
 2 shown these.
 3 MR JUSTICE NUGEE: I think Mr Singh was shown these.
 4 MR POTTS: Maybe he was. September 2008. Do you see the
 5 bottom line figure, the profit or loss for the financial
 6 year after tax?
 7 A. Yes.
 8 Q. At the bottom of the page, do you see that £5,094?
 9 A. Yes.
 10 Q. You can see the comparable figures for the previous year
 11 of a loss of £58,000. Do you see that?
 12 A. Yes.
 13 Q. What I think you might not have been shown -- could you
 14 have D1 as well? And if you could turn, please, to
 15 page 252. {D/19/252}
 16 We have looked at 2008, 2007. Then we have got here
 17 2006. Do you see there, profit for the year at the
 18 bottom of the page, £2,019. Do you see that?
 19 A. Yes.
 20 Q. And you have got the comparable year for 2005: profit of
 21 £28,283?
 22 A. Yes.
 23 Q. If you average out the four years of accounts -- and
 24 I hesitate here as usual -- that is an average loss of
 25 £6,514 a year. In your mind, how does that compare to

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1 Mr Stuart's reasonable expectation of achieving profits
 2 of £150,000 a year?
 3 A. Yes, it's nowhere near, is it?
 4 Q. If you ignore the year ended September 2007, as
 5 Mr Stuart suggests, the average is a profit of £10,799.
 6 Again, in your view -- I think you said that you looked
 7 at the company on what it was actually doing. How did
 8 that compare against Mr Stuart's reasonable expectation
 9 of £150,000 profit a year?
 10 A. Sorry, could you repeat that?
 11 Q. Yes. You said that you looked at the business on the
 12 terms of what it was actually doing. How does how the
 13 business was actually doing compare to, in your mind,
 14 Mr Stuart's reasonable expectation of £150,000 profits
 15 a year?
 16 A. It wasn't -- it wasn't doing that.
 17 Q. And you were asked by Mr Stuart about the accounts
 18 ended September 2012 and there was a reference to the
 19 operating profit down and you referred to legal
 20 expenses, I think, in your answer. Could be shown,
 21 please, volume F2 at page 488. {F/223/488} Perhaps we
 22 should start, to see the context, at 487. {F/223/488}
 23 This is a letter from Taylor Wessing, your
 24 solicitors, of 7 October 2014 and it's in response to
 25 some queries in relation to items on the accounts:

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1 "... 'Non Prop Legal and Professional Fees'..."
 2 Could I direct your attention, please, to item 2.
 3 It's dealing with 2011/2012 accounts. Do you see that
 4 on page 487? {F/223/487}
 5 A. Yes.
 6 Q. And then over the page, (b)(vii) refers to: {F/223/488}
 7 "Bond Pearce/Bond Dickinson legal fees incurred by
 8 DVL in defending your client's employment tribunal claim
 9 against DVL: £39,103.65."
 10 A. Yes.
 11 Q. In relation to the following year's accounts, do you see
 12 there items (viii) and (ix) of further incurred costs of
 13 £9,000 and a provision of anticipated future costs of
 14 £20,000?
 15 A. Yes.
 16 Q. Does that refresh your memory in relation to the legal
 17 fees which were incurred at that time?
 18 A. Yes.
 19 Q. Does that sound about right?
 20 A. Yes.
 21 Q. Moving on to Friday, on Friday you were asked by
 22 Mr Stuart about the investigation into issues at this
 23 Grays store. Do you remember that?
 24 A. Yes.
 25 Q. And you said that this was in about 2003 to 2004, before

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1 your wife became a JVP. Do you remember that?
 2 A. Correct.
 3 Q. And at that time, your brother was the retail director
 4 and you were the testing director, testing five to six
 5 days a week. Do you remember saying that?
 6 A. Yes.
 7 Q. You said that he had implemented some practices in the
 8 business which were not compliant with SOG policies and
 9 he left the business as a result. Do you remember your
 10 answer there?
 11 A. Yes.
 12 Q. Mr Stuart put it to you that you were investigated but
 13 were given a clean bill of health by Specsavers, which
 14 you accepted. I just want to clarify: did you receive
 15 any disciplinary sanction as a result of the
 16 investigation?
 17 A. Yes, I got a final written warning.
 18 Q. Was the final written warning based on any findings of
 19 dishonest conduct on your part?
 20 A. No.
 21 Q. Can you explain what the findings related to?
 22 A. The findings related to, basically I should have had
 23 a better understanding of the business and understanding
 24 of the other side of the business as well.
 25 Q. Fine, thank you very much. Moving on to your salary at

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1 Grays, on day 12 it was put to you by Mr Stuart that
 2 there was no documentary evidence of your basic salary
 3 as at 2008 or July 2008. Do you remember that?
 4 A. Yes.
 5 Q. For your Lordship's note, day 12, page 34, lines 11 to
 6 16. {Day12/34:11} Could you have a look please -- do
 7 you have F2 still there?
 8 A. Yes.
 9 Q. Page 510. Do you have that? {F/231/510}
 10 A. Yes.
 11 Q. If you have a look, there is a reference there at the
 12 second hole punch, the paragraph beginning:
 13 "On 27 June 2014..."
 14 Do you see that?
 15 A. Yes.
 16 Q. Could you just read those two paragraphs to yourself.
 17 (Pause)
 18 A. Yes.
 19 Q. So the first paragraph refers to a payslip, which is in
 20 the bundle at E6/1647, {E/437/1647} which was disclosed
 21 in June 2014, a payslip of yours. Your final payslip as
 22 at August 2008 was £3,432, which amounts to £41,193
 23 a year. I'm grateful, someone else did that
 24 calculation. Does that accord with your memory of your
 25 salary as at August?

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1 A. Yes.
 2 Q. And then the next paragraph again refers to another
 3 piece of disclosed information at E16/1618, {E/458/1618}
 4 which shows pay between April and August and basic pay
 5 again showing an equivalent of £41,193 per month.
 6 Does that accord with your recollection of your
 7 salary as at April 2014?
 8 A. Yes.
 9 Q. The next matter, Mr Stuart suggested to you on Friday
 10 that you had agreed in April 2008 to test on one day
 11 a week. Do you remember that point? For your
 12 Lordship's note, day 12, page 67, lines 12 to 16.
 13 {Day12/67:12} And again it was put to you that a memo
 14 from Mr McGonagle stated that you had agreed to one
 15 day's testing. Do you have a recollection of that
 16 evidence you gave?
 17 A. Yes.
 18 Q. Perhaps if you may have the transcript -- it may be
 19 worth just having a look at this -- at day 12, page 79.
 20 It's a question starting at line 6 through to 17.
 21 {Day12/79:6} And it's particularly at line 9.
 22 {Day12/79:9}
 23 Do you see there, it was put to you by Mr Stuart
 24 that Ms Birdi, Mr McGonagle, Mr Ryan, Mr Clark and
 25 Mr Dyson understood that you were going to be doing one

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1 day's testing a week and you denied that you had agreed
 2 to one day's testing but said that you would step in, in
 3 an emergency. That was your evidence. Is that right?
 4 A. Yes.
 5 Q. Could you put that transcript bundle aside and if you
 6 could have look at, please, E5. You were shown this
 7 memo at 1262. {E/337/1262}
 8 A. Yes.
 9 Q. And you see there it says at the top of the page in the
 10 second line:
 11 "SB is happy to work five days, four of them
 12 testing."
 13 I think you were taken to that and then there is
 14 a reference in the next paragraph:
 15 "SB has confirmed she would test on the fifth day if
 16 it was urgent, sickness et cetera."
 17 A. Yes.
 18 Q. What was your understanding as at April 2008 as to what
 19 Ms Birdi had agreed in terms of testing at that time?
 20 A. She had agreed to four days' testing.
 21 Q. The note goes on to deal with your position and to note
 22 that you were of the view that she should test five days
 23 a week. Is that right? In the paragraph in the middle
 24 of the page:
 25 "Kam was of the view ..."

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1 A. Yes.
 2 Q. Then it says: {E/337/1262}
 3 "There is an opportunity for Kam to test on SB's
 4 'retail day' ... If KS were to test one day per week,
 5 that would replace SB's retail day cost."
 6 Do you see that?
 7 A. Yes.
 8 Q. What was your understanding as at April 2008 as to what
 9 you had agreed in terms of testing?
 10 A. I hadn't agreed any testing. The only thing I had
 11 agreed was emergency cover.
 12 Q. Fine. Can we turn on, please, to E6. You can put away
 13 E5. At page 1554 {E/420/1554} it was suggested to you
 14 by Mr Stuart that you were going to force Ms Birdi to
 15 test four and a half days a week. That was day 12,
 16 page 71. {Day12/71:1} Do you remember that line of
 17 questioning?
 18 A. Yes.
 19 Q. And if you look at the second hole punch, there is
 20 a line that says: {E/420/1554}
 21 "I will forward the email I sent her..."
 22 Do you see that?
 23 A. Yes.
 24 Q. "... asking her ... to start testing 4.5 days a week."
 25 What did you understand that you had done at the

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1 time in relation to her testing?
 2 A. Sorry?
 3 Q. What did you understand that you had done at the time in
 4 relation to her testing? It was put to you that you
 5 were seeking to force her to test, in relation to four
 6 and a half days a week.
 7 A. Sorry?
 8 Q. The question that was put to you was that you were going
 9 to force her to test four and a half days a week.
 10 A. Yes.
 11 Q. I have taken you to the email at 1554 and your note at
 12 that time in relation to the email that you had sent
 13 her. The question is: did you understand that, in
 14 relation to four and a half days' testing, that was
 15 something that you were forcing her to do, or something
 16 otherwise?
 17 A. No, I was asking her to reduce the costs and start
 18 testing what we had agreed.
 19 Q. Okay. Could you turn on to 1562. {E/427/1562} You were
 20 taken to this email at page 74 in the transcript and you
 21 were taken to the paragraph starting:
 22 "Secondly ..."
 23 Do you see that?
 24 A. Yes.
 25 Q. And it was put to you that you were trying to say that

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1 you only bought the shares for £60,000 and a salary of
 2 £42,000, plus, plus, plus just because she agreed to
 3 three and a half to four days testing a week. Do you
 4 remember that line of questioning?
 5 A. Yes.
 6 Q. And I think you denied that that was the case. You
 7 weren't taken to the next passage where, going down the
 8 page, it says:
 9 "I spoke to Swarandeeep and she refuses to change."
 10 Do you see that, towards the bottom of page? The
 11 final paragraph on that page:
 12 "I spoke to Swarandeeep ..."
 13 A. Yes.
 14 Q. If you go three lines down, can you read -- it says:
 15 "Swarandeeep has said to me that she has tested for
 16 the last 8 years and does not want to carry on testing.
 17 I just don't think this is a good enough reason, this is
 18 what she is employed to do."
 19 A. Yes.
 20 Q. So firstly, what had Ms Birdi said to you?
 21 A. In relation to this?
 22 Q. Does that reflect --
 23 A. Yes.
 24 Q. -- what she said?
 25 A. Yes, she didn't like testing.

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1 Q. Can you explain your comment that you didn't think it
 2 was a good enough reason?
 3 A. It wasn't in the interests of the business and the way
 4 that -- the structure of the businesses where you have
 5 an optom director and a retail director.
 6 Q. Thank you. If you could turn to E7; E6 can go away.
 7 You were taken to 1694. {E/492/1694} Just to put this
 8 in context, I think you were first taken to some notes
 9 of a meeting -- if you pick it up at 1690. {E/490/1690}
 10 This is after your meeting with Mr Rowe in
 11 early September and then you had a meeting on
 12 18 September, which is at 1690. Do you see that?
 13 A. Yes.
 14 Q. And you referred, I think, to the bottom of the page.
 15 A. Yes.
 16 Q. Yes. And then you were then taken to 1694, {E/492/1694}
 17 which are some manuscript notes of a meeting between the
 18 two of you, in relation to which I think there are both
 19 your manuscripts. On 25 September. Do you see that?
 20 A. Yes.
 21 Q. And you were taken to part of that note, but I don't
 22 believe you were taken to the top of the page at 1694.
 23 Is that your handwriting?
 24 A. Yes.
 25 Q. It says:

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1 "Roles/Responsibilities."
 2 A. Yes.
 3 Q. Could you just read out what it says because it may be
 4 it's clearer for you to read it?
 5 A. Okay:
 6 "KS Retail director, role not as sight testing, have
 7 many responsibilities. Not here as an optom. I will
 8 test as and when I feel it's necessary."
 9 And:
 10 "SB doesn't see what difference it makes. SB says
 11 she will remove herself from the DO or dispensing and
 12 will do it as required."
 13 Q. Then below:
 14 A. "KS we agreed.
 15 "SB okay."
 16 Q. So could you just explain what that note reflects?
 17 A. So, I'm stating here we had a conversation regarding our
 18 roles in the business and we agreed that I wasn't there
 19 to do test -- sorry, to do sight testing and also that
 20 Ms Birdi would take away from the retail side or the DO
 21 side of the business.
 22 Q. So in terms of -- what did you understand your role to
 23 be?
 24 A. As a retailer or a DO director.
 25 Q. And what was your role in relation to sight testing?

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1 A. I agreed to just do emergency cover as and when
2 required.
3 Q. What did you understand Ms Birdi's agreement to be in
4 relation to your role at that time?
5 A. To my role? As a retail director.
6 Q. And in relation to sight testing?
7 A. As and when required.
8 Q. Fine, thank you. And then you were taken to the section
9 at the bottom of the page about who should have
10 responsibility for employing locums. Do you remember
11 that?
12 A. Yes.
13 Q. And then if you could turn over -- that goes on over the
14 page and you were taken to those sections. But you
15 weren't taken to some manuscript notes at 1697.
16 {E/492/1697} Do you see that?
17 A. Yes.
18 Q. That's also -- whose manuscript is that?
19 A. Most of it's mine.
20 Q. Okay. And it's dated 25 September and again it says:
21 "Roles/Responsibilities."
22 A. Yes.
23 Q. At the top, item 1. Is this your handwriting?
24 A. Yes.
25 Q. And so could you just read perhaps again, it may be

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1 easier. Could you read out what it says?
2 A. Yes:
3 "Action. Document needs to be completed.
4 "We don't agree on locum cover roles.
5 "Get SOG involved.
6 "SB to call Mike."
7 And then we both signed it.
8 Q. So who is Mike?
9 A. Mike Rowe.
10 Q. And what was the issue that you couldn't agree, about
11 locum cover roles and which you agreed to involve SOG
12 in?
13 A. This is around booking of locums and who decides that.
14 Q. And why did you agree to refer the issue to SOG?
15 A. Because we couldn't agree on who had the responsibility
16 of doing that.
17 Q. Okay. And finally, at day 12 it was put to you that the
18 store was out of full TAPS, I think, by -- I'll just
19 check. I can't remember the precise month. I think it
20 was September, I think -- late October.
21 Could I ask you to take E8, please, page 2005.
22 {E/649/2005} There is an email from Mr Rowe to
23 Mr Raines. Do you see that? And can you see in the
24 middle of the page between the hole punches it says:
25 "The business very quickly started ... and came out

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1 of TAPS in early 2009 with a very healthy bank balance."
2 Does that refresh your memory as to when the store
3 came out of TAPS?
4 A. Yes.
5 Q. When do you think it was?
6 A. It may have been February/March -- sorry, in February,
7 around that time.
8 Q. Okay, thank you very much.
9 My Lord, I have no further questions.
10 MR JUSTICE NUGEE: Thank you very much, Mr Singh.
11 MR POTTS: My Lord, may Mr Singh be formally released?
12 MR JUSTICE NUGEE: He is a party, I don't think he needs to
13 be released. I very much doubt he has been summonsed to
14 appear at his own trial. If he wants to go, he can go,
15 but he has an interest in the outcome.
16 MR POTTS: Yes, my Lord. The next witness is Mr Raines.
17 MR STUART: I thought we were going to deal with Mr Rehman.
18 MR POTTS: Oh, yes.
19 MR STUART: Mr Rehman is here, he has taken time off work.
20 So, if I could --
21 MR POTTS: Of course, I'm sorry. You are quite right.
22 MR JUSTICE NUGEE: Let's deal with Mr Rehman.
23 MR POTTS: Can I just have a moment to just tidy away.
24 (Pause)
25

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1 MR MUSHTAQ REHMAN (sworn)
2 Examination-in-chief by MR STUART
3 MR JUSTICE NUGEE: Do please sit down, Mr Rehman.
4 MR STUART: Mr Rehman, would you just confirm your full name
5 and address to the court.
6 A. Mushtaq Rehman, 206 Maidstone Kent.
7 Q. Could you put away all those bundles? Have you got rid
8 of them? That's it. You will need your witness
9 statement, I suspect, bundle B, tab 5. {B/5/192}
10 A. Yes.
11 Q. Can you just confirm that is your witness statement? It
12 finishes on page 197. Is that your signature? {B/5/197}
13 A. That's correct.
14 Q. And are the contents of that statement true?
15 A. True, yes.
16 Q. And then I just need to ask you about three further sets
17 of documents. Could you be passed E11. If you go to
18 page 2975-1 through to page 2975-3, there are three
19 pages of photographs?
20 A. Hm-mm.
21 Q. Can you just confirm what these are?
22 A. These are pictures that I have took of Mr Singh's car on
23 9 June at the end of the day, when I was finishing my
24 clinic at Dartford store.
25 Q. Okay. You can put away E11. Can you be given bundle

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1 E8. Do you have E8?
 2 A. Yes.
 3 Q. You do? All right. If you go to page 2048.
 4 {E/662/2048} Do you have 2048?
 5 A. Yes.
 6 Q. And 2049. {E/662.1/2049}
 7 A. Okay.
 8 Q. This is all one document.
 9 A. Hm-mm.
 10 Q. 2048 to 2049. Do you see at the top of that document
 11 there is a fax header?
 12 A. Yes.
 13 Q. Do you recognise that fax header?
 14 A. Yes.
 15 Q. Can you explain to the court what it is?
 16 A. Okay. That's -- it's our fax machine. I'm faxing this
 17 document off to someone.
 18 Q. And where is that fax machine?
 19 A. At home.
 20 Q. Okay. And then would you go to page 2061-1 --
 21 MR JUSTICE NUGEE: Before you do that, Mr Rehman, the number
 22 on the fax header, what is that number?
 23 A. 01275 ... I believe that's our old fax machine when we
 24 used to live in Bradford.
 25 MR JUSTICE NUGEE: In Yorkshire?

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1 A. In Yorkshire, yes.
 2 MR JUSTICE NUGEE: When did you move from Yorkshire?
 3 A. 2000.
 4 MR JUSTICE NUGEE: And you moved to Maidstone?
 5 A. Yes.
 6 MR JUSTICE NUGEE: Thank you.
 7 MR STUART: So would you go to 2061-1 {E/667.1/1} Do you
 8 see that?
 9 A. Yes.
 10 Q. Can you explain what that email is?
 11 A. Okay. That's the email from Swarandeeep to me asking if
 12 I could fax her grievance off for her because she was
 13 having -- obviously, from reading it, she was having
 14 some difficulty with the work fax machine and she is
 15 asking me if I could do it for her.
 16 Q. Okay. And then 2061-2 perhaps we ought to see first.
 17 What is that? {E/667.1/2}
 18 A. I think that's that attachment to that email.
 19 Q. That's the attachment to 2061-1?
 20 A. Yes, that's correct.
 21 Q. And then 2062. {E/668/2062} Do you have that?
 22 A. Yes.
 23 Q. Can you explain what that is?
 24 A. That's the attachment that I faxed.
 25 Q. That you faxed, did you say? Sorry, I didn't catch

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1 that?
 2 A. Yes, yes, I faxed that one.
 3 Q. Yes. Who did you fax that to?
 4 A. I believe I faxed that to Specsavers.
 5 Q. Okay. And then 2063 {E/668.1/2063} seems to be, looking
 6 at the top right-hand corner -- it goes on to 2605.
 7 {E/668.1/2605} Do you see that?
 8 A. Hm-mm.
 9 Q. So what is that document?
 10 A. That's Swarandeeep's grievance against Specsavers and
 11 Mr Singh that I'm faxing off to Specsavers.
 12 Q. Okay. And then if you go to page 2067. {E/670/2067} Do
 13 you see that's a document with a fax dated -- I think
 14 it's 17 August 2009?
 15 A. Hm-mm.
 16 Q. 14:00?
 17 A. Hm-mm.
 18 Q. Do you see that?
 19 A. Yes.
 20 Q. Do you recognise that document?
 21 A. Erm, yes, I remember that one, yes.
 22 Q. What is that?
 23 A. Okay. It looks like a letter to Specsavers requesting
 24 information.
 25 Q. Do you know whether you had any part to play with that

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1 fax?
 2 A. No, I can't remember this one.
 3 Q. Okay. Fine. You can put away E8. And finally E15,
 4 bundle E15. Could you go to page 4334. {E/1111/4334}
 5 A. Hm-mm.
 6 Q. Do you have 4334?
 7 A. Yes, 4334. Yes.
 8 Q. And do you recognise that document?
 9 A. Yes, I do.
 10 Q. Can you explain to the court what is that?
 11 A. Okay. This is a part of a spreadsheet that I created
 12 with figures given to me by Swarandeeep and this is the
 13 figures I was given for the bonuses for a period of
 14 time. The bit in the green is the section -- that's the
 15 new bonus section. And some of my analysis of it.
 16 Q. Okay. Then do you have a page 4334-1, which is
 17 a document I think Mr Potts provided?
 18 A. Yes, I have got that next page.
 19 Q. Do you see that?
 20 A. Hm-mm.
 21 Q. Do you have a 4334-2?
 22 A. Yes, I do.
 23 Q. Do you recognise that document, 4334-2?
 24 A. Yes, I recognise that.
 25 Q. What is that?

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1 A. That's one I created last week after I saw this one,
2 4334-1. When I saw that, I said that wasn't
3 a reflection of -- so did another one. So hopefully it
4 would be a better understanding to explain to people how
5 the bonus system worked.
6 Q. Okay, and then 4334-3. That appears to have been
7 provided as part of the same document as number 1290?
8 A. Yes, it's just my analysis.
9 Q. Yes. My Lord, I have got no more questions for
10 Mr Rehman.
11 MR JUSTICE NUGEE: Thank you.
12 Cross-examination by MR POTTS
13 MR POTTS: Just a couple of questions. Do you have E8,
14 please, still?
15 A. No.
16 Q. Okay. Could you have E8, please? Thank you. 2048,
17 I think was the first document {E/662/2048}. No? You
18 said that you faxed this off to someone?
19 A. Hm-mm.
20 Q. Who did you fax it to?
21 A. Our lawyer.
22 Q. Okay. Who was that?
23 A. Dele Ogun.
24 Q. Mr Ogun, okay. When was this letter received?
25 A. This letter, I think when I came home from work,

1 I believe, looking at this, it would have been on the
2 13th.
3 Q. On the 13th?
4 A. Yes.
5 Q. Who opened the envelope?
6 A. Me.
7 Q. Sorry?
8 A. Me.
9 Q. You opened it? Okay. It was addressed to your wife?
10 A. Yes.
11 Q. Okay and you opened it. Did you read it?
12 A. Yes I had a quick read of it, yes.
13 Q. And you saw that it referred to a formal
14 grievance/complaint against your wife by Mr Singh and
15 the reference to a board meeting. You saw that from
16 2048 {E/662/2048} and 2049? {E/662.1/2049}
17 A. Yes.
18 Q. I presume you discussed that with your wife?
19 A. Not at the time, no.
20 Q. You didn't phone her up?
21 A. No.
22 Q. It was quite an important matter, wasn't it?
23 A. Well, the whole issues are important, yes.
24 Q. This was the first grievance your wife says that she has
25 received. So I assume it was an important matter. Did

1 you not think that it was appropriate to raise it with
2 her?
3 A. Not at that moment, no, I didn't.
4 Q. When did you discuss it with her?
5 A. I believe I recall it the next day we might have had
6 a discussion by then, when she came back from work.
7 Q. So did your wife come home on that evening, the 13th?
8 A. Thinking about it, I can't remember. I think she might
9 have come back late, I'm not 100 per cent sure.
10 Q. Do you have a recollection one way or another?
11 A. No.
12 Q. Okay. And you are saying you don't recall discussing it
13 with her or giving her the letter?
14 A. Not on the day. I don't recollect exactly when I first
15 had a discussion about it.
16 Q. You appreciated that this was an important letter,
17 didn't you?
18 A. Probably, yes.
19 Q. Would you accept that it was likely that you would have
20 discussed it with her and given her a copy of the letter
21 promptly?
22 A. At that particular moment in time?
23 Q. Yes.
24 A. No, she was out. I would assume -- she has been going
25 through a stressful moment in time. If she has been out

1 with friends, I didn't want to disturb her. Even if
2 I did ring her, maybe, if she didn't hear me ring,
3 I wouldn't have bothered her with it at that moment in
4 time.
5 Q. But you appreciated it was something important?
6 A. Yes.
7 Q. I suggest to you that, given its importance, you would
8 have raised it with her that evening.
9 A. I didn't.
10 Q. Are you saying you definitely didn't or you didn't
11 remember one way or the other?
12 A. I definitely didn't.
13 Q. You definitely didn't give her a copy of the letter that
14 evening?
15 A. No, I definitely didn't.
16 Q. So when do you say you gave her a copy of the letter?
17 A. I believe she saw it the next day.
18 Q. When the next day?
19 A. When she came back from work.
20 Q. So over a day later? So you didn't think it was
21 appropriate to draw it --
22 A. No, she --
23 Q. -- to her attention?
24 A. No, because, obviously, the next day I would have gone
25 off to work early, she would have gone off to work

1 early. Or if she didn't come back, if she travelled
 2 from there, then, if she was -- if she's stayed out with
 3 friends, she would have come back the next day -- from
 4 work.
 5 Q. I think your evidence was you had no recollection of her
 6 actually staying out that night. Is that --
 7 A. Yes, I'm just --
 8 Q. -- just a guess?
 9 A. Yes, that's what I'm saying. If she had stayed out,
 10 then I would have shown it to her the next day.
 11 Q. Does she commonly stay out during the week?
 12 A. She has stayed out, yes.
 13 Q. Does she commonly do so?
 14 A. No, she -- not commonly, no.
 15 Q. And you are saying that you didn't raise it with her
 16 either that evening or at any time during the following
 17 day?
 18 A. No.
 19 Q. I suggest to you, Mr Rehman, given the importance of
 20 this letter, you would have been bound to have either
 21 given it to her or raised it with her so she was aware
 22 of it at the earliest time?
 23 A. No.
 24 Q. You are saying that's not likely?
 25 A. I didn't do it on that moment, like you suggest.

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1 Q. Mr Rehman, you do not seem to have any actual
 2 recollection of what you did, where your wife was or
 3 anything that happened. How can you be so certain that
 4 you didn't raise it with her?
 5 A. No.
 6 Q. Your evidence was you don't seem to remember what
 7 happened in terms of your wife returning that evening;
 8 how can you be so certain that you didn't raise it with
 9 her?
 10 A. Because, obviously, the emails she sent me, she said
 11 like, "Can you fax it?" It looks -- looking at that
 12 email, I recollect that she wasn't coming back that
 13 evening, or she was coming back late.
 14 Q. So which email are you referring to? This is the newly
 15 disclosed email?
 16 A. Yes.
 17 Q. That one?
 18 A. Yes.
 19 Q. Let me see if I can find it. (Pause)
 20 So this is 2061-1? Is that the one?
 21 {E/667.1/2061.1}
 22 A. Yes.
 23 Q. And in fact if you look at 2061-3 -- do you see that?
 24 That's the email, is it? From Mushtaq --
 25 A. No, I was referring to --

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1 Q. Sorry, maybe it's confusing. Looking at the hole punch:
 2 "On Thursday, 13 August 2009, 17 --
 3 A. Which one are you looking at.
 4 Q. 2061-3.
 5 A. 2061-3?
 6 Q. Do you see that? This shows she sent an email to you at
 7 7.08 pm in the evening. Do you see that?
 8 A. Hm-mm.
 9 Q. Sorry, I just want to make sure. Do you see that?
 10 A. Yes, 2061... yes.
 11 Q. 7.08. And then, going back to 2048 {E/662/2048}, the
 12 header is at 7.05, three minutes earlier. Can you
 13 explain that?
 14 A. What do you want me to explain?
 15 Q. She is sending you an email at 7.08, saying, "Can you
 16 fax the grievance off," because the fax at work is
 17 playing -- I think it's the fax which you say is at work
 18 is playing up. And then, going back to 2048
 19 {E/662/2048}, the fax that you say was sent -- which
 20 I think your wife in her evidence says she had sent but
 21 you now say you had sent -- at 7.05, which is
 22 three minutes earlier. Can you explain --
 23 A. Okay.
 24 Q. -- how that happened?
 25 A. Let me explain to you. Looking at 2061-1,

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1 {E/667.1/2061.1}, it looks like it's 18.08 that she
 2 sent an email. Then, looking at 2048 {E/662/2048},
 3 I had -- 19.05, I have sent that to my solicitors.
 4 Q. But how do you explain the timing at 2061-3?
 5 A. 2061 ...? -3?
 6 Q. Actually, I think I can hazard a guess. Is it possibly
 7 an issue between British Summer Time, an hour's
 8 difference? Do you think that might be possible?
 9 A. I don't know.
 10 Q. Okay. Why does that email draw you to conclude that
 11 your wife didn't come home, or might not have come home,
 12 that evening. It doesn't say anything to that effect at
 13 all, does it?
 14 A. Well, there is no other reason why she would ask me to
 15 do this.
 16 Q. Well, the reason that she says she's asking you to do it
 17 is not because she is not coming home, it's just because
 18 the fax at work is playing up, isn't it?
 19 A. Then it would make sense for her to come home and do it
 20 herself.
 21 Q. I would suggest to you that you would have raised this
 22 with your wife at the time because it was important, and
 23 you appreciated it was important -- in terms of the
 24 grievance from Mr Singh, I'm talking about?
 25 A. Well, no, that's not true because, obviously, she is

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1 going through a very difficult time at the moment and,
 2 obviously, on the occasion that she went out I wouldn't
 3 want to disturb her because she has been through a very
 4 stressful moment. She is going out for a night out to
 5 relax. I didn't want to disturb her and ruin her
 6 evening, so it makes sense to me for agreeing not to do
 7 that.

8 Q. But you don't actually have any recollection of her
 9 going out for an evening at all at that time, do you?

10 A. No. I mean, like you say, this became an issue when you
 11 brought it up last week. So then I (inaudible) look
 12 into the matter.

13 Q. Yes, but your evidence to his Lordship, I think, was
 14 that you had no recollection as to whether she came back
 15 late that evening or not?

16 A. Yes. That's true.

17 Q. So that's just reconstructional guesses.

18 A. Yes.

19 Q. Can I ask you to turn to page 2067. {E/670/2067} If you
 20 look at point 1 on that letter, your wife says:
 21 "I received your letter on the evening of 14 August,
 22 when I returned home from work."

23 A. Okay.

24 Q. Can I suggest to you that your wife must have been aware
 25 of the contents of the letter, not having seen it, when

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1 she returned home on the 13th, not the 14th?

2 A. Okay. No.

3 Q. Finally, can I move on to the final point about the
 4 table. E15. We don't need to look at them in detail.
 5 E15?

6 A. E15.

7 Q. The tables we have looked at?

8 A. Which tables?

9 Q. The tables that you produced.

10 A. Yes, right.

11 Q. Your wife was a director of the store at the time; you
 12 weren't.

13 A. That's correct, yes.

14 Q. Your evidence was that she provided the figures with
 15 which you compiled the table?

16 A. That's true.

17 Q. It was her knowledge?

18 A. Yes.

19 Q. Therefore, I can't ask you really anything about the
 20 figures, but you appreciate your analysis isn't accepted
 21 by my clients. You understand that?

22 A. No, I didn't understand that.

23 Q. Okay. Well, I put it to you that is the position.

24 A. Okay, fair enough.

25 MR POTTS: My Lord, I have no further questions.

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1 MR JUSTICE NUGEE: I have one question while we are looking
 2 at that table, E15, 4334-2. We have three columns. We
 3 start May 2005 to March 2007, which is 23 months, and
 4 then the next column starts May 2007 to March 2009, and
 5 the third column, May 2009. Was there any particular
 6 reason for missing out the April figures?

7 A. Not really. I think I wanted to compare like for like.

8 MR JUSTICE NUGEE: Thank you.

9 MR STUART: My Lord, I have no re-examination for Mr Rehman.

10 MR JUSTICE NUGEE: No. Thank you very much, Mr Rehman.
 11 Yes?

12 MR POTTS: The next witness is now Mr Raines.

13 MR JUSTICE NUGEE: Yes.

14 MR MARK RAINES (sworn)
 15 Examination-in-chief by MR POTTS

16 MR JUSTICE NUGEE: Do, please, sit down, Mr Raines.

17 A. Thank you.

18 MR POTTS: Mr Raines, let's just tidy away a bit. Do you
 19 have volume C? But everything else -- I think the other
 20 two can go away at the moment -- or three, actually.
 21 Mr Raines, could you turn, please, to tab 13,
 22 page 151 {C/13/151} running through to 172. {C/13/172}

23 A. Yes.

24 Q. Is that your first witness statement in this matter?

25 A. I believe so.

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1 Q. I understand there is one amendment that you wish to
 2 make in relation to paragraph 19? {C/13/155}

3 A. Yes, there is:
 4 "In preparation for the disciplinary hearing,
 5 I reviewed the shareholders' agreement, the
 6 investigation file provided by ..."
 7 "SOG's Legal department", not "Loss Prevention
 8 department".

9 Q. Thank you?

10 A. And the SOG investigation report, not Loss Prevention
 11 department's report.

12 Q. And SOG's --

13 A. Investigation report.

14 Q. Thank you. At page 172 is that your signature?
 15 {C/13/172}

16 A. Yes, it is.

17 Q. Subject to that amendment, are the contents of that
 18 statement true?

19 A. I believe so.

20 Q. Could you turn on to the next tab, please, your
 21 second witness statement, 173 {C/14/173} through to 176?
 22 {C/14/176}

23 A. Yes.

24 Q. Is that your second statement?

25 A. It is.

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1 Q. At 176, is that your signature?
 2 A. It is.
 3 Q. Can you confirm that you believe the contents of the
 4 statement to be true?
 5 A. Yes, they are.
 6 Q. Thank you.
 7 Cross-examination by MR STUART
 8 MR STUART: Mr Raines, can I just deal with that correction
 9 that you made first of all, paragraph 19 of your first
 10 witness statement {C/13/155}. You are now calling these
 11 documents, not the investigation file provided by the
 12 Loss Prevention file, but the investigation file
 13 provided by SOG's legal department. And you are calling
 14 what you had previously called the Loss Prevention
 15 department's investigation report, you are now calling
 16 that just the investigation report. Is that right?
 17 A. Yes.
 18 Q. What makes you correct those two descriptions?
 19 A. I think I realised I made a mistake. They actually came
 20 from SOG's legal department.
 21 Q. But at the time did you believe that they were from the
 22 Loss Prevention department?
 23 A. At the time --
 24 Q. At the time when you received them?
 25 A. -- when I was doing the statement, obviously, because

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1 that's what the words say.
 2 Q. At the time you received the investigation report, did
 3 you believe it had come from the Loss Prevention
 4 department?
 5 A. No.
 6 Q. Because the Loss Prevention department usually produces
 7 the investigate report?
 8 A. No, I didn't, I believed it came from SOG's legal
 9 department.
 10 Q. Who did you think drafted it, though?
 11 A. A combination of Cristina del Grazia with input from
 12 Neil Hamilton.
 13 Q. So nobody from the investigation department at all, from
 14 the Loss Prevention department?
 15 A. I don't believe so.
 16 Q. So you believe that that report had been compiled
 17 without input from the Loss Prevention department?
 18 A. I think there was input right at the beginning, when
 19 Mr Patel was interviewed.
 20 Q. Hm-mm.
 21 A. So I think there are elements of Loss Prevention
 22 involvement in it at the outset, but they were taken off
 23 it.
 24 Q. They were taken off it? What, the Loss Prevention
 25 department was taken off what?

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1 A. No, I believe Mr McAlindon was taken off the
 2 investigation -- sorry, the investigation itself.
 3 Q. When?
 4 A. I think very shortly after -- well, very early on.
 5 I can't remember the exact date. But certainly a few
 6 days after the investigation into Nimesh Patel.
 7 Q. That was February?
 8 A. Yes.
 9 Q. Who did you think had carried out the investigation into
 10 Ms Birdi, let's say at the beginning of May, that's
 11 three months later, when the staff members are being
 12 interviewed by somebody?
 13 A. They were interviewed by Neil Hamilton.
 14 Q. The staff members at the beginning of May,
 15 Ms Frondigoun, Patrice O'Brien --
 16 A. I --
 17 Q. You thought they were interviewed by Neil Hamilton?
 18 A. Sat here today, that's what I believe.
 19 Q. We will come back to it, Mr Raines. So you thought
 20 Mr McAlindon had no part to play in any of this from
 21 some time shortly after Mr Patel left the business?
 22 A. That's what I believe today.
 23 Q. All right. We will come back to it.
 24 Your first witness statement. We start with the
 25 background. Your role, paragraph 9 {C/13/153} through

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1 to -- well, 9 is probably the main one. You report to
 2 Mr Dyson?
 3 A. That's correct.
 4 Q. That's what you say there?
 5 A. That's correct.
 6 Q. For these purposes. Obviously, you have your own other
 7 businesses that you are -- you are actually a Specsavers
 8 joint venture partner in three other Specsavers stores?
 9 A. That's correct.
 10 Q. And in that regard you don't report to Mr Dyson?
 11 A. That's correct.
 12 Q. But insofar as you are conducting your SOS Director of
 13 Retail Development role, you report to Mr Dyson?
 14 A. That's correct.
 15 Q. And Linda Weaver?
 16 A. Yes.
 17 Q. She is your --
 18 A. PA.
 19 Q. PA. And you got her to be a director at one of these
 20 board meetings?
 21 A. Yes.
 22 Q. Is that usual, that your PA act as director?
 23 A. She -- she has performed that role before, as well as
 24 note-taking.
 25 Q. You have given a description of the retail support team

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1 in paragraph 12. {C/13/153} You say it's to give retail
 2 and commercial support to the store companies and the
 3 JVPs. Do you see that?
 4 A. Yes.
 5 Q. And basically it's a constructive role that your
 6 department plays?
 7 A. Absolutely.
 8 Q. And it's aimed at supporting the partners, the
 9 JV partners, wherever they are throughout the UK?
 10 A. Absolutely.
 11 Q. Would you just be shown bundle E3, page 696. {E/179/696}
 12 A. 696?
 13 Q. Just to show you where we are, we are in the store
 14 policy manual. Do you remember it?
 15 A. Yes.
 16 Q. Page 700 is the foreword to that, drafted by
 17 Doug Perkins? {E/179/700}
 18 A. Yes.
 19 Q. And the core values on page 700 are honesty?
 20 A. Yes.
 21 Q. Not ripping off people/customers; respect?
 22 A. Yes.
 23 Q. Treating people as we would wish to be treated
 24 ourselves?
 25 A. Yes.

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1 Q. "Partnership: Our objective is to make our partners
 2 successful."
 3 A. Yes.
 4 Q. "Professionalism: We will be the leading authority in
 5 eyecare."
 6 So honesty, respect, partnership with your joint
 7 venture partners, professionalism. Is that right?
 8 A. Absolutely.
 9 Q. And just to get that further demonstrated, would you go
 10 to -- keep E3 for the moment but just pull out E15. If
 11 you go to page 4368. I don't know whether your copy is
 12 very legible. You may have a very dark copy because the
 13 actual original is a piece of flimsy paper, so it's
 14 quite difficult to read.
 15 A. Yes.
 16 Q. Does your Lordship have a difficult to read version as
 17 well?
 18 MR JUSTICE NUGEE: Yes.
 19 MR STUART: There is a copy of 4368 where a white sheet has
 20 been put behind the flimsy. Can I just pass that up.
 21 One for the witness, one for your Lordship.
 22 MR JUSTICE NUGEE: That would be helpful. (Handed)
 23 MR STUART: Perhaps you could put that into the bundle at
 24 that page.
 25 A. Yes, no worries.

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1 MR JUSTICE NUGEE: Thank you.
 2 MR STUART: And you will see at page 4368, you see what it
 3 document is. It's a document called "Success Through
 4 Partnership". Do you recall it, Mr Raines?
 5 A. I have seen it.
 6 Q. Yes.
 7 A. I don't know in what context I have seen it.
 8 Q. Okay. And the introduction is from Doug Perkins again?
 9 A. Yes.
 10 Q. And he says that:
 11 "Successful relationships are based on trust,
 12 understanding and a mutual respect. These are the
 13 criteria on which we established the Specsavers
 14 opticians joint venture concept."
 15 A. Yes.
 16 Q. So that is essentially the nature of the relationship
 17 between Specsavers and the joint venture partners.
 18 Yourself, for example: you are a joint venture partner
 19 in three stores, aren't you?
 20 A. I am.
 21 Q. All right. You can put away E15 but just go back to E3,
 22 whilst we have got E3 available.
 23 A. Yes.
 24 Q. I need to ask you about page 546. {E/128/546} Do you
 25 have 546?

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1 A. Yes.
 2 Q. I don't know whether this is you or your PA -- but
 3 I presume it's your PA because it doesn't say "Mark"?
 4 A. Yes.
 5 Q. Sometimes emails come out, they are from the PA's email
 6 mail address, do you understand?
 7 A. I do.
 8 Q. We have seen Mr Dyson's PA sometimes sends out emails
 9 from her email address and similarly, Ms Weaver.
 10 Linda Weaver, she was your PA, wasn't she?
 11 A. Yes.
 12 Q. This is in 2007. They are dealing with the question of
 13 charging the Dartford store for Neil Hamilton's charges.
 14 Do you see?
 15 A. Yes.
 16 Q. There was an email from him to Ms Weaver. I'm not quite
 17 sure why he would be emailing her? What has it got to
 18 do with her, the charges for the Dartford store
 19 in June 2007?
 20 A. Because Neil Hamilton reported to me.
 21 Q. Right.
 22 A. And Neil Hamilton is confirming to Linda what his costs
 23 are.
 24 Q. Yes.
 25 A. And Linda keeps a spreadsheet of the costs.

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1 Q. Right. So Neil Hamilton reports direct to you?
 2 A. He reports directly to me.
 3 Q. I see. And so he says at the bottom:
 4 "Also if you need the cost of my room/food and ...
 5 Then there is the car hire.
 6 "I would screw 'em for everything!!!"
 7 Exclamation mark, and your PA writes back:
 8 "I agree ha ha."
 9 Is that having respect for others and showing
 10 professionalism and honesty and all the other things
 11 that you trumpet so loudly in your --
 12 A. No, it's obviously not.
 13 Q. No.
 14 A. And I haven't seen this email before.
 15 Q. Okay. I mean, that's your direct report, Neil Hamilton,
 16 conversing by email with your PA?
 17 A. Yes.
 18 Q. Is that the sort of way that the three of you perhaps
 19 speak about joint venture partners behind their backs?
 20 A. Well, I wasn't involved in this three-way conversation,
 21 as you call it.
 22 Q. No.
 23 A. Because it's between Linda and Neil.
 24 Q. Okay.
 25 A. And in all honesty, I have known these people for

1 a number of years and I'm really surprised that I'm
 2 actually reading this, because it isn't typical of the
 3 type of ways in which they convey themselves.
 4 Q. Okay.
 5 A. There is obviously some reason for it, whether it's
 6 a frustration or -- I don't know.
 7 Q. There shouldn't be any frustration at that stage,
 8 though, should there? I mean, this was at the beginning
 9 of the --
 10 A. I don't know. I know there was a number of meetings
 11 that were cancelled at the last minute.
 12 Q. Right?
 13 A. And maybe it relates to one of those meetings that was
 14 cancelled. I don't know.
 15 Q. Okay. All right. You can put way bundle E3 and just go
 16 back to bundle E2. We can pick up your involvement --
 17 and your day book entries. Could you go to E2,
 18 page 326. {E/56/326}
 19 A. 326, okay.
 20 Q. Just so that we understand these day books, whenever we
 21 see a page like this, this is your manuscript writing,
 22 I think, isn't it?
 23 A. Yes.
 24 Q. And your practice was to have a sort of A4 hardback --
 25 A. That's correct.

1 Q. -- book and you basically take a note, more or less any
 2 time you have a meeting or a proper conversation with
 3 somebody on the telephone?
 4 A. Not on every occasion, no.
 5 Q. Not on every occasion?
 6 A. No.
 7 Q. But more or less, that was your practice?
 8 A. Yes -- well, again, if I could explain to my Lord,
 9 I always kept day books, I have done ever since I have
 10 been in senior management, and basically I write either
 11 notes to myself of things that I need to do, or it may
 12 be a conversation, or it may be a meeting that I'm in,
 13 or it may be preparation for a meeting that I'm in.
 14 So I tend to just write -- or it may be that
 15 somebody has just said something to me and then, if it's
 16 something that is relevant, ie something I'm thinking of
 17 doing something with, I would scribble "Action" at the
 18 side, meaning I was -- I would do something. It would
 19 be a prompt, a reminder. And then if you see a tick at
 20 the side of it, that usually means that I have done the
 21 action, but I didn't always go back and tick them. It
 22 depends how -- you know, I'm not one of those -- I'm
 23 ultra-disciplined, I'm not. I'm very organised and
 24 I know what I'm doing but I'm not necessarily, you know,
 25 not everything in my life is in here.

1 But again, I have got a busy job and it sort of
 2 helps me to keep on top of my role.
 3 Q. Right. In paragraph 15 of your statement {C/13/154} you
 4 explain that you are:
 5 "... kept informed of any major developments in the
 6 Store Companies..."
 7 A. Yes.
 8 Q. "... either by way of reports from various departments
 9 within SOG ... or often by Derek Dyson."
 10 Who is, for these purposes, your line manager?
 11 A. That's correct.
 12 Q. You say:
 13 "I was therefore aware of Nimesh Patel's
 14 resignation..."
 15 A. Yes.
 16 Q. That, we know, was in February 2007?
 17 A. Yes.
 18 Q. When you say you were aware of it, when do you say you
 19 became aware of it?
 20 A. I cannot recall.
 21 Q. No. Were you involved at all -- from Derek, I presume,
 22 from Derek Dyson -- were you involved in the
 23 decision-making as to how to deal with Mr Patel?
 24 A. Absolutely not.
 25 Q. No?

1 A. Absolutely not.
 2 Q. So is it fair to say that you knew nothing about
 3 Dartford or its troubles, really, until after Mr Patel
 4 had resigned?
 5 A. I believe so, I can't -- I can't recollect completely.
 6 Q. No, okay. You then say -- I'm still in paragraph 15 --
 7 you are also informed of: {C/13/154}
 8 "... the subsequent investigation by ... [the] Loss
 9 Prevention department into Ms Birdi's conduct at the
 10 store..."
 11 A. Yes.
 12 Q. You say:
 13 "Prior to that, I had only visited in the store ...
 14 in about 1998, although I [don't] recall who I spoke
 15 to... My direct involvement with the Store arose
 16 in July 2007, when Alison Girollet ... approached me and
 17 asked me to chair a disciplinary hearing..."
 18 A. Yes.
 19 Q. That disciplinary hearing obviously arose after the
 20 investigation process has run its course?
 21 A. Yes.
 22 Q. And it said, "There is a case to answer, let's have
 23 a disciplinary?"
 24 A. Yes.
 25 Q. What were you told of the Loss Prevention department's

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1 investigation? Were you told that by Mr Dyson?
 2 A. Probably, but very, very little.
 3 Q. Okay?
 4 A. The Loss Prevention department has nothing to do with
 5 me.
 6 Q. No.
 7 A. So it's not necessary that I know anything.
 8 Q. Presumably, though, if you thought or if Mr Dyson
 9 thought that Ms Birdi might be exited from the business,
 10 she being the sole remaining A shareholder at that
 11 time, March 2007, then that is something that he would
 12 have raised with you?
 13 A. No, he didn't. He told me that Nimesh Patel had
 14 resigned.
 15 Q. Yes. What about the fact that there was a plan to exit
 16 Ms Birdi?
 17 A. Well, there was never a plan, no plan that I would
 18 recognise as a plan, and that was never our intention.
 19 Q. Okay. So if you go to page 325 in bundle --
 20 A. Yes.
 21 Q. Hopefully you have got E2 there?
 22 A. Yes.
 23 Q. 325, 8 March. {E/55/325} So this is about two and
 24 a half weeks after Mr Patel's departure?
 25 A. Yes.

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1 Q. 8 March. Emma Meagher -- that's Mr Dyson's secretary?
 2 A. Yes, that's correct.
 3 Q. She is writing to Chris Howarth who is in the -- do you
 4 know Chris Howarth?
 5 A. Yes, he's professional recruitment. He works for
 6 Mr Dyson.
 7 Q. That's right, and he is asking:
 8 "Derek has asked for an update on your recruitment
 9 plans.
 10 "Also can you advise him if you have any partners on
 11 the books who may want to work together in Dartford
 12 (this is very urgent)."
 13 Do you see that?
 14 A. Yes, I do see that.
 15 Q. And then over the page, 326 this, I think, is the first
 16 day book entry that we see from you? {E/56/326}
 17 A. Yes.
 18 Q. So I presume from that that you are saying that any
 19 prior day book entries don't have any reference to
 20 Dartford in them?
 21 A. I wouldn't have a day book entry with Dartford in it
 22 because I had no involvement before that.
 23 Q. Yes, so this is 15 March?
 24 A. Yes.
 25 Q. Top left-hand corner. This is a review with Derek?

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1 A. Yes, that's correct.
 2 Q. And we see "Dartford"?
 3 A. Yes.
 4 Q. Is the first item on the review?
 5 A. Yes.
 6 Q. And somebody called Dominic is going to get involved; is
 7 that right?
 8 A. That's correct.
 9 Q. And what's the one below that? What's the item below
 10 that?
 11 A. DRS, diabetic retinal screening.
 12 Q. Yes?
 13 A. That's where we take a picture -- a photograph of the
 14 back of people's eyes who have got diabetes.
 15 Q. Okay. So that has nothing to do with Dartford?
 16 A. Nothing -- absolutely not.
 17 Q. No. So the only item that relates to Dartford is
 18 "Dominic"?
 19 A. That's correct.
 20 Q. So what was Derek Dyson telling you on 15 March about
 21 Dartford and Dominic's involvement?
 22 A. Well, this is -- I can't recollect the conversation.
 23 Q. Okay.
 24 A. From what it appears is I have obviously got to tell
 25 Dominic that there is an investigation going on in

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1 Dartford, or something like that.
 2 Q. Who is Dominic?
 3 A. Dominic Savill is the RDC for Dartford.
 4 Q. Yes.
 5 A. My Lord, the way it works is the RDCs each have
 6 a geographical region and Dominic Savill is, therefore,
 7 the RDC that looks -- that Dartford is in his
 8 geographical region. He is a retail development
 9 consultant.
 10 MR JUSTICE NUGEE: And the geographical region is Meridian
 11 East?
 12 A. Well -- yes, it is Meridian East. I'm a bit confused
 13 and you will see, maybe a bit later on, that I get
 14 confused between Mike Rowe and Dominic. So Dominic
 15 started first and then Mike Rowe came on later but
 16 Dominic is responsible for Carlton and, sort of, Grays
 17 is in Carlton, but Dartford is in Meridian East and they
 18 are sort of next to each other, so there is a bit of an
 19 overlap.
 20 MR JUSTICE NUGEE: Right.
 21 MR STUART: All right. So as far as you are concerned, you
 22 weren't involved in any decision-making or discussions
 23 regarding any plans that there might or might not have
 24 been regarding Dartford at this time?
 25 A. That's correct.

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1 Q. And you don't become involved until July 2007, when you
 2 are called upon --
 3 A. I think I may have an involvement in terms of I knew
 4 Nimesh Patel had left and therefore, Dominic, one of his
 5 roles would have been to have a look and support
 6 Chris Howarth in terms of the recruitment piece -- the
 7 way recruitment works within our business, the way we
 8 get new partners in, is that Chris Howarth looks after
 9 a database of people who have expressed an interest and
 10 they go through the stage 1 process that I know you know
 11 about, but Dominic would know people locally who may be
 12 interested. So it's a combination of Dominic and
 13 Chris Howarth who would be trying to, you know, find
 14 a new partner to replace Nimesh Patel.
 15 Q. Okay. But at this time, Specsavers wasn't looking to
 16 replace Nimesh Patel, was it?
 17 A. I think they would have always -- were always looking
 18 for contingency plans depending on whatever the
 19 different scenario is. So a partner has left our
 20 business, we would be looking to come up with
 21 alternative partners to take that position. Whether or
 22 not we would appoint them or not is another issue.
 23 Q. If you go to page 457 in bundle E2?
 24 MR JUSTICE NUGEE: Mr Stuart, when you find a convenient
 25 moment.

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1 MR STUART: Yes, I'll just take you to this document and
 2 then -- just to check your answer on this last question.
 3 A. Yes.
 4 Q. Do you see that?
 5 A. Yes.
 6 Q. 457, May 2007. {E/100/457} One of the recipients is
 7 Chris Howarth?
 8 A. Yes.
 9 Q. "Hi Neil.
 10 "We are not at the moment seeking buyers for any
 11 shares in Dartford...
 12 "This is in Mel's realm at the moment."
 13 Do you see?
 14 A. Yes.
 15 Q. So it looks like by May 2007, you are not looking to
 16 replace Nimesh Patel at that time, and the issue of
 17 Dartford is in Mel McAlindon's realm at that stage?
 18 A. Okay.
 19 Q. Do you agree with that?
 20 A. Erm, I do -- well, obviously, I wasn't copied in on it
 21 so I have not seen it. My reading of that would be, by
 22 this time, obviously, there is an investigation into
 23 Swarandeeep. Nobody knows what's going to happen in
 24 terms of the outcome of that and we -- our policy would
 25 be while there's -- everything's up in the air, that we

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1 wouldn't make any appointments of anybody. So even if
 2 we had people, we probably would sort of not make
 3 a decision on that.
 4 MR STUART: My Lord, would that be a convenient moment?
 5 MR JUSTICE NUGEE: Yes, we will say five past two.
 6 Mr Raines, now you have started giving your
 7 evidence, don't speak to anybody over lunch about the
 8 case or your evidence.
 9 A. Okay, I promise.
 10 (1.05 pm)
 11 (The short adjournment)
 12 (2.05 pm)
 13 MR JUSTICE NUGEE: Yes, Mr Stuart.
 14 MR STUART: Mr Raines, I think we were in bundle E2. Do you
 15 have E2?
 16 A. Yes.
 17 Q. Whilst we are there, can you go to page 418. {E/86/418}
 18 A. Okay.
 19 Q. Do you remember this interview record? Mrs Frondigoun?
 20 A. I'm sure I have seen it before.
 21 Q. It formed the basis of your decision?
 22 A. Yes, yes, yes, that's why I will have seen it before but
 23 I'm not that familiar with you.
 24 Q. Okay. It formed the basis -- you say it formed the
 25 basis -- this and the interview with Patrice O'Brien and

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1 the notes from Mr Patel, that Mr Patel gave to
 2 Mr McAlindon -- formed the basis of your decision to
 3 discipline Ms Birdi. Do you remember?
 4 A. Yes, there was lots of evidence that I used to form
 5 that -- arrive at that decision.
 6 Q. Okay. Anyway, whilst we are in the bundle here, because
 7 we haven't got to your decision yet, it was
 8 Mr McAlindon, wasn't it, who was conducting the
 9 investigation?
 10 A. Say so, yes.
 11 Q. So you were mistaken when you thought it was
 12 Mr Hamilton?
 13 A. Yes.
 14 Q. Okay?
 15 A. I knew Mr Hamilton interviewed some of the -- well,
 16 I think he interviewed Swarandeeep, from memory.
 17 Q. Yes, that's all he did, wasn't it?
 18 A. Yes.
 19 Q. And 426, an interview with Ms O'Brien? {E/85/426}
 20 A. Yes. That's correct.
 21 Q. Also Mr McAlindon did that?
 22 A. That's correct, yes.
 23 Q. And if you go to page 482, {E/101.3/482} this is inside
 24 a document called the "Specsavers Loss Prevention Case
 25 File". I don't suppose you would have ever seen one of

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1 these?
 2 A. No, never.
 3 Q. If you go to page 482, this is a record made by
 4 Mr McAlindon, or one of his staff. All right?
 5 A. Okay.
 6 Q. Do you see down at the bottom, "Tuesday 8 May"; there is
 7 an interview for Tuesday, 8 May?
 8 A. Yes, got that.
 9 Q. And it looks like Mr McAlindon attended the store on
 10 that day. So this is a week after he has interviewed
 11 Mrs Frondigoun and Ms O'Brien?
 12 A. Yes.
 13 Q. And do you see, the second to third line of the entry
 14 for 8 May: {E/101.3/482}
 15 "An employee stated that one employee was concerned
 16 about the investigation and that she wanted to speak to
 17 me. I invited her to the administration room and
 18 explained that I understood she had some concerns.
 19 I explained that if she wanted anyone with us for the
 20 conversation, she could get another employee in.
 21 However she was fine.
 22 "The employee (trainee DO) ..."
 23 I think her name is Ms Fendick. Have you ever heard
 24 of her?
 25 A. No.

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1 Q. "The employee (trainee DO) was concerned that there was
 2 witches hunt against Swarandeeep, and that she was
 3 getting all the blame. I asked her why she had got that
 4 impression, and she explained that I ..."
 5 Probably Mr McAlindon himself:
 6 "... I had only interviewed two employees, and not
 7 all of them, and that was unfair."
 8 Do you see that?
 9 A. I do see that.
 10 Q. When you eventually reached your conclusions, were you
 11 aware that some of the staff thought that Mr McAlindon
 12 was undertaking a witch hunt?
 13 A. No.
 14 Q. Were you aware that some of staff felt it was unfair
 15 that only two members of staff had allegedly been
 16 interviewed?
 17 A. No.
 18 Q. No. You obviously didn't see this file then?
 19 A. No.
 20 Q. No. Page 484. {E/101.4/484} There is a very, very
 21 brief document, it just says "Dartford investigation".
 22 1, invoicing; 2, payroll. I just want to check with
 23 you: this isn't your document, is it?
 24 A. No.
 25 Q. And it didn't form any part of your decision-making?

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1 A. No.
 2 Q. Fine. Would you go to 485. {E/1202/485} Do you see the
 3 sick note there?
 4 A. Yes.
 5 Q. And there were a number of these sick notes, weren't
 6 there?
 7 A. There were.
 8 Q. And you did presumably take some account of these sick
 9 notes?
 10 A. I did -- I was -- yes, I did look at them.
 11 Q. This one is for work-related stress and then there is
 12 actually a letter that goes with it on 487. {E/103/487}
 13 A. Yes.
 14 Q. Is that right? And just whilst -- get rid of --
 15 A. Sorry, where is the -- 487?
 16 Q. At 487 there is a letter from Ms Birdi saying --
 17 A. Oh, right.
 18 Q. "I have seen my GP and would like to inform you that my
 19 GP does not consider me fit and well to attend any work
 20 related issues at this present time, and she has signed
 21 my off sick until my next appointment..."
 22 Do you see?
 23 A. Yes.
 24 Q. Okay. So Ms Birdi was providing medical evidence,
 25 wasn't she, that she was genuinely off sick and

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1 shouldn't be dealing with these issues at that time?
 2 A. She was providing evidence that she was off sick.
 3 Q. Yes, and the reason for it.
 4 A. Yes.
 5 Q. Can I just check with you, whilst we are there, 488,
 6 {E/104/488} all these issues about -- a lady called
 7 Ms Slark had taken over the management of the store?
 8 A. Yes.
 9 Q. We have heard from Mr McAlindon that she was effectively
 10 working under the supervision, shall we say, of
 11 Mr McAlindon. Can I just check: you and your department
 12 didn't have any role to play in managing --
 13 A. Absolutely not.
 14 Q. Fine. Okay. You can put away E2.
 15 We come to E3, which is your disciplinary process
 16 and we have reached here, I think -- paragraphs 15 to 17
 17 of your witness statement, under the heading,
 18 "2007 investigation"? {C/13/154}
 19 A. Yes.
 20 Q. And, end of 15, you say your direct involvement was
 21 in July 2007, when Alison Girolet approached you and
 22 asked you to chair a disciplinary hearing?
 23 A. Yes.
 24 Q. And paragraph 17 you say that:
 25 "... the Loss Prevention department prepared

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1 a report following its investigation..."
 2 And you refer to a document which we will come to in
 3 a minute at E4. But just before we get there then, do
 4 you see, if you go to E3/672?
 5 A. 672?
 6 Q. 672. {E/168/672}
 7 A. Yes.
 8 Q. That is the letter that you are referring to. That's,
 9 as it were, the start of your disciplinary hearing
 10 process; do you see that?
 11 A. Yes.
 12 Q. And we can see there, through to page 677 is the letter;
 13 676 is the letter itself and then at the end -- on 676,
 14 just above the first hole punch, do you see in bold it
 15 says: {E/168/676}
 16 "Documents which relate to the above allegations are
 17 enclosed."
 18 Do you see that?
 19 A. Yes.
 20 Q. And then at page 677 there is an email which says:
 21 {E/169/677}
 22 "A package of documents has been sent to you by DHL
 23 courier tonight."
 24 A. Yes.
 25 Q. This is for Ms Birdi, and then 678 is the schedule of

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1 documents. {E/170/678}
 2 A. Yes.
 3 Q. I just want to get clear then, paragraph 17 of your
 4 witness statement. {C/13/154}
 5 A. Yes.
 6 Q. If you just keep E3, page 678? {E/170/678}
 7 A. Yes.
 8 Q. All right? So that's what was sent out to Ms Birdi.
 9 You refer to bundle E4, so could you also be given E4?
 10 A. Yes.
 11 Q. Page 822. {E/196.1/822}
 12 A. Yes.
 13 Q. I think it goes on to page 832. {E/196.1/832} That's
 14 certainly where we have seen it before. 822 to 832.
 15 A. Yes.
 16 Q. Which is a document signed off at the end, "Specsavers
 17 Optical Group Limited"?
 18 A. Yes.
 19 Q. And is entitled, "Dartford Investigation Summary"?
 20 A. Yes.
 21 Q. Do you see that?
 22 A. Yes, I do.
 23 Q. Now, you say in paragraph 17: {C/13/154}
 24 "The Loss Prevention Department prepared
 25 a report..."

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1 And you cite these pages, this summary report?
 2 A. Yes. I think I have amended my witness statement on
 3 paragraph 19.
 4 Q. You did, yes. You haven't amended 17?
 5 A. No, sorry, I should have amended 17; apologies.
 6 Q. Okay. So what do you want to amend 17 to?
 7 A. That the SOG's legal department provided an
 8 investigation report, or file and report.
 9 Q. But who prepared -- in 17 you are talking about
 10 preparing the report. Who do you say prepared the
 11 report?
 12 A. I believe Neil Hamilton prepared the report.
 13 Q. What makes you think that?
 14 A. Because he basically worked for me.
 15 Q. Hm-mm?
 16 A. And I know he was preparing the report, which he then
 17 sent through to Legal.
 18 Q. He sent it to Mr McAlindon first for his comments,
 19 according to Mr McAlindon?
 20 A. I have no -- no knowledge of that.
 21 Q. Okay. So that's the investigation summary --
 22 A. Yes.
 23 Q. -- that you are referring to in 17?
 24 A. Yes.
 25 Q. We will come back to 18 in a moment where you seek to

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1 summarise the four allegations. And then 19, you say:
 2 {C/13/155}
 3 "In preparation for the disciplinary hearing,
 4 I reviewed the Shareholders' Agreement ..."
 5 A. Yes.
 6 Q. We know you have amended this now to the investigation
 7 file provided by SOG's legal department?
 8 A. Yes.
 9 Q. And you there refer -- immediately after that bit you
 10 refer to pages E3/678 to 681, {E/170/678} which is
 11 actually the schedule of documents sent to Ms Birdi?
 12 A. You are going to have to remind -- E3/678, this list?
 13 Q. That's why I said keep that open.
 14 A. Yes, I have got that.
 15 Q. You are calling that the investigation file?
 16 A. Yes.
 17 Q. And you received that when?
 18 A. It would be some time -- I have no recollection when
 19 I received it but some time after 30 July, clearly.
 20 Q. Okay. And how did you receive it? It must have been
 21 quite a big -- are you saying that you received the
 22 whole pack?
 23 A. Well, there's two ways that this would work and I can't
 24 remember which it was, but if I'm doing this type of
 25 activity, sometimes I'm across in Guernsey and I would

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1 take the investigation file with me; other times it
 2 would be couriered to my office, which is in
 3 Skelmersdale.
 4 Q. Okay. And you can't recall how you got this?
 5 A. No, not at all, no.
 6 Q. And looking at 678 to 681, are you saying that you
 7 received everything that is listed here in some sort of
 8 file?
 9 A. I believe so.
 10 Q. Okay. Section A is "Investigation Report"?
 11 A. Yes.
 12 Q. So what document was that?
 13 A. That would be the one that's on E4/822. {E/196.1/822}
 14 Q. Okay. Did you receive that electronically or did you
 15 just receive the file?
 16 A. I can't recall.
 17 Q. Did you receive anything electronically? I haven't seen
 18 any email sending it to you electronically?
 19 A. I can't recall.
 20 Q. No.
 21 A. I'm not trying to be awkward.
 22 Q. No, no.
 23 A. I just cannot recall how I received it. But do
 24 I recognise the document? Absolutely. Is this the
 25 document I used? Absolutely.

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1 Q. You used it for what purpose?
 2 A. Well, for the basis of the interview with Swarandeeep and
 3 obviously arriving at the decision when I arrived at my
 4 decision.
 5 Q. When you arrived at the decision; are you saying that
 6 you incorporated some elements of the investigation
 7 report into your decision?
 8 A. No, I used it as the basis for the questioning with
 9 Swarandeeep and to try and get a clear understanding of
 10 what had actually happened in this situation.
 11 Q. Okay. All right. In paragraph 19 you say you:
 12 "... also spoke to Mel McAlindon..."
 13 A. Yes. I did.
 14 Q. Was that before or after you received the file and the
 15 report that's in the file?
 16 A. I think it's after I received the file.
 17 Q. Okay. In paragraph 19 you say that the investigation
 18 report contained comments from Mr Patel; that's
 19 Nimesh Patel?
 20 A. Yes.
 21 Q. Which looks like item B1?
 22 A. Yes.
 23 Q. Lorraine Fraser. I don't know who that is. Do you mean
 24 Lorraine Frondigoun?
 25 A. Probably, yes.

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1 Q. Okay. And Patrice O'Brien?
 2 A. Yes.
 3 Q. So that's items B2 and B3?
 4 A. Yes.
 5 Q. "... the latter two being employees of Dartford
 6 Visionplus at that time. I also spoke to
 7 Mr Mel McAlindon..."
 8 A. Yes.
 9 Q. What you don't there mention is everything else that's
 10 in the file, like the comments of Mr Rehman, Ms Birdi's
 11 two interviews, items 4 and 5. Was there any reason why
 12 you only mention Mr Patel, Lorraine Frondigoun and
 13 Patrice O'Brien as being the only three you mention?
 14 A. No.
 15 Q. No? Do you think you based your decision fundamentally
 16 on what those three had said?
 17 A. No, absolutely not.
 18 Q. Okay.
 19 A. No, absolutely not.
 20 Q. When you spoke to Mr McAlindon, so this would be after
 21 you had received the file but before you have the --
 22 A. Yes.
 23 Q. -- probably before you start the process, is it?
 24 A. Yes. Well, before I have the meeting with Swarandeeep.
 25 Q. Yes, because the meeting got adjourned a few times,

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1 didn't it?
 2 A. It did.
 3 Q. So would you have spoken to him before the first
 4 anticipated meeting?
 5 A. Yes, I would imagine I did.
 6 Q. So that would have been in the period -- it must have
 7 been around the beginning of August 2007?
 8 A. Possibly, yes.
 9 Q. And what did you know of SOG's plans at that
 10 time, August 2007? SOG's plans for Dartford?
 11 A. For Dartford? I don't believe there were any plans for
 12 Dartford. I'm not aware of any.
 13 Q. Okay, are you in bundle E3?
 14 A. E3, yes.
 15 Q. Page 711. {E/185/711}
 16 A. Yes.
 17 Q. Would you have been aware of the shared venture people
 18 having their interest in Dartford?
 19 A. I wasn't aware, but it doesn't surprise me.
 20 Q. Okay.
 21 A. We had -- my Lord, if I may. We had a policy at that
 22 time that any business transfer situation, any at all,
 23 would always undergo a shared venture assessment, to see
 24 whether or not it was actually going to be of any value
 25 to be in shared venture. So this was pretty much what

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1 I would consider business as usual. But, no, the shared
 2 venture department sort of ran separately to my
 3 department. I'm joint venture.
 4 MR JUSTICE NUGEE: But you were familiar with this type of
 5 assessment?
 6 A. No, I have never seen --
 7 MR JUSTICE NUGEE: This type of assessment?
 8 A. Yes, I was aware that it used to happen.
 9 MR JUSTICE NUGEE: Right.
 10 A. But I don't know the basis on which it used to have --
 11 the criteria that are put here. I had no input in that
 12 at all.
 13 MR STUART: Okay. Let's just -- because there is a couple
 14 of comments which I'm going to have to pick up with you
 15 in some of your manuscript notes. If you go to the top
 16 of the document, it says: {E/185/711}
 17 "Resident partner 'promise'. Score +2. Due to an
 18 ongoing Loss Prevention investigation..."
 19 As at that point, that means your disciplinary
 20 process, doesn't it?
 21 A. No, I think that means the Loss Prevention
 22 investigation.
 23 Q. Okay. So what Loss Prevention investigation was going
 24 on at this point? I thought you told us the Loss
 25 Prevention department had been taken off it?

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1 A. I have no idea. I never wrote it. I have never seen
 2 it, so...
 3 Q. Okay:
 4 "... there is no current promise regarding the
 5 future structure of the store. Partners from
 6 Bexleyheath and Gravesend have expressed interest in the
 7 opportunity..."
 8 You were or of that, weren't you?
 9 A. I wasn't aware of Bexleyheath. That's new to me.
 10 Q. Okay.
 11 A. Gravesend, I think I recall somewhere that they had
 12 expressed an interest but I don't know the timing of
 13 that.
 14 Q. Okay. Would that be through your Mr Rowe or
 15 Dominic Savill at the time?
 16 A. I don't know. I don't know.
 17 Q. Okay. And then obviously the next one down is:
 18 "Reasonable SOG shareholding."
 19 A score of +2:
 20 "100 per cent of shares should be available once the
 21 Loss Prevention situation has been concluded."
 22 You are the person concluding that --
 23 A. Yes.
 24 Q. -- task at the time, aren't you?
 25 A. Yes.

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1 Q. So had you given, or been given, either an instruction
 2 from Mr Dyson or an indication from him that what they
 3 wanted was to get hold of the shares?
 4 A. Absolutely not. And it doesn't work like that. I am my
 5 own person. I make my own decisions. You know, I make
 6 the right call. It's -- you know, somebody has
 7 obviously taken a flyer here.
 8 Q. Or you might have touched base with Mr Dyson?
 9 A. No, no.
 10 Q. Or Mr McAlindon? You had spoken to Mr McAlindon, hadn't
 11 you, around this time?
 12 A. I spoke to Mr McAlindon, yes.
 13 Q. Yes, he told you what it was that his conclusions were?
 14 A. The -- I spoke to Mr McAlindon because I was interested
 15 to know about the reason he was taken off the
 16 investigation and what had actually happened -- and my
 17 recollection of it is very shaky because it was
 18 a telephone conversation, I do remember that much, and
 19 it was -- I was interested in why -- basically why he
 20 was taken off, what had happened that made Dartford go
 21 so badly wrong, if that's the right expression.
 22 He made -- his view was that he felt Swarandeeep's
 23 reaction was a little bit disproportionate to what
 24 actually happened on the day, and then he also
 25 mentioned -- because I do recall this -- he mentioned

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1 that he'd had a challenging conversation with
 2 Swarandeeep's brother. But he didn't really go into much
 3 detail. There is nothing -- I just felt, as
 4 a disciplinary chairman, I should make a call to
 5 Mel McAlindon and find out from his point of view what
 6 had actually happened, but I didn't draw any conclusions
 7 from that, and certainly not in relation to this
 8 document.
 9 Q. If you go to the bottom of the document, the boldened
 10 bit under the total score. Do you see --
 11 A. Yes.
 12 Q. We won't go through all of it. Let's just go to the
 13 last line:
 14 "(As a contingency I know that both the Gravesend
 15 store Partners and the Bexleyheath store Partner are
 16 interested in buying into this store, with Gravesend
 17 being the preferred option from these two.)"
 18 A. Yes.
 19 Q. Were you aware of somebody reaching a conclusion as to
 20 which of two --
 21 A. As I said, again, I have not seen this document.
 22 I don't know who it's produced by. I assume it would be
 23 produced by somebody like Neil Lunn. I assume but
 24 I don't -- I don't know that. It could equally have
 25 been Michael McGonagle, who is the shared venture RDC.

1 2 1

1 Q. Okay. You were discussing the matter with Mr Dyson,
 2 though, at around this time, weren't you?
 3 A. No, Mr Dyson would give me updates on where we were.
 4 I wasn't -- you know, the phrase, "Discussing it with
 5 him", that sounds overelaborate. It wasn't. I would
 6 get an update from him. You know, I have got a busy job
 7 doing all the other stuff I do.
 8 Q. Just go to page 714, three pages further on. 31 August?
 9 A. Hold on, sorry, are we still in E3?
 10 Q. Yes.
 11 A. Yes.
 12 Q. 31 August. {E/187/714} Mr Lunn is writing to
 13 Mr McAlindon, but the important point is that he has
 14 caught up with Derek. That would be Derek Dyson, do you
 15 see?
 16 A. It would be, yes.
 17 Q. And Sean McLaughlin is taking the reins:
 18 "As the store is currently (technically) a Shared
 19 Venture, and likely to become a Group Venture ..."
 20 Do you see that?
 21 A. Yes.
 22 Q. It's only likely to become a group venture if Ms Birdi's
 23 shares are acquired by SOG. You would agree with that?
 24 A. Well --
 25 Q. It's not a joint venture unless they get her shares?

1 2 2

1 A. Yes, I know. Technically you are right but at that
 2 time -- and I'm not great on dates, but I know around
 3 that time we actually did away with all group venture
 4 stores because they didn't function; they didn't work.
 5 Q. Hm-mm?
 6 A. So the only group venture store we had was Plymouth,
 7 which, again, became a shared venture store on around
 8 that time. So there wasn't a policy to create group
 9 venture stores. So I don't know whether he meant group
 10 venture or joint venture or -- I have no idea what he
 11 meant.
 12 Q. Even if the group venture was only temporary, whilst you
 13 acquired -- like getting Mr Patel's shares, that was
 14 something of an emergency --
 15 A. Yes, yes.
 16 Q. -- you see, according to Mr McAlindon. Suddenly SOG had
 17 acquired these shares. They didn't want them in the
 18 first place, so he says. But similarly here, if at the
 19 end of your disciplinary process that you were
 20 conducting at this time?
 21 A. Yes.
 22 Q. Do you see?
 23 A. Yes.
 24 Q. August 2007. If you had and Mr Dyson had come to the
 25 conclusion that Ms Birdi was going to be exited, and

1 2 3

1 that SOG would acquire her shares, then however
 2 temporary, that would become a group venture, wouldn't
 3 it? You would agree with that, as a hypothetical?
 4 A. As a hypothetical, yes, you are right.
 5 Q. You were talking to Mr Dyson at the time but you say you
 6 did not discuss with him what was going to happen to
 7 Ms Birdi?
 8 A. Absolutely. And again, you are going to have to
 9 understand the relationship that I had with Derek Dyson.
 10 He drove his agenda, I drove my agenda, and the two
 11 were, for most occasions, completely separate. And
 12 certainly in relation to this one, they were separate;
 13 it was my decision. I was the one doing the
 14 disciplinary hearing and we may have had conversations
 15 about Dartford but I can bring none of them to any --
 16 recollect any of them at the moment.
 17 Q. You can't recollect them; okay, that's fine.
 18 Paragraph 20, {C/13/155} you refer to the fact that
 19 Ms Birdi was unable to attend the first meeting with you
 20 because of her stress.
 21 Just whilst we are in E3, would you go to page 682.
 22 {E/171/682} The position was that Ms Birdi had provided
 23 a doctor's certificate saying:
 24 "Severe work related stress and anxiety."
 25 A. Yes.

1 2 4

1 Q. By that stage, hadn't she?
 2 A. Yes.
 3 Q. And we have already seen the previous sick notes. So
 4 that was the position; that's why she could not
 5 attend --
 6 A. I appreciate that.
 7 Q. -- the grievance -- a disciplinary process, where she
 8 might face -- well, dismissal, mightn't she?
 9 A. Hm-mm.
 10 Q. It was threatened -- there was a possibility of
 11 dismissal by you. All right.
 12 If you put away bundle E3 and go to bundle E4. You
 13 might already still have it out?
 14 A. Yes, I have.
 15 Q. You mention in paragraph 20 {C/13/155} of your witness
 16 statement the letter from Crust Lane Davis regarding the
 17 stress.
 18 A. Yes.
 19 Q. Were you also aware that Crust Lane Davis had asked for
 20 information from SOG?
 21 A. I wasn't.
 22 Q. You weren't aware of that?
 23 A. No.
 24 Q. All right. Paragraph 21 we are up to in your statement
 25 and this is the hearing itself, as I understand it?

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1 A. Yes.
 2 Q. And you refer to page 879. {E/214.2/879}
 3 A. Yes.
 4 Q. Which is obviously the typed-up version of the
 5 disciplinary hearing of 20 September?
 6 A. Yes.
 7 Q. If you go to page 843. I think we have got the --
 8 another version of that document. 843. {E/203/843}
 9 I only take you to 843 because it's more convenient for
 10 me then to go to your actual notes?
 11 A. Okay.
 12 Q. Which, as I understand it, are three pages prior to
 13 that, page 840? {E/202/840}
 14 A. Yes.
 15 Q. Do you see that?
 16 A. Yes.
 17 Q. And the document immediately prior to that is the
 18 correspondence I was just asking you about from
 19 Crust Lane Davis, where they were making all sorts of
 20 requests for documents and information regarding the
 21 matters?
 22 A. Yes, okay.
 23 Q. Do you remember?
 24 A. No. I remember you have just taken me there, but...
 25 Q. Yes, so does this help to remind you that perhaps you

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1 did know of --
 2 A. No, never seen it.
 3 Q. Never seen it?
 4 A. No.
 5 Q. But her solicitors were asking for information which may
 6 have assisted her defence to some of your allegations,
 7 mightn't it?
 8 A. Can I just read it?
 9 Q. Yes. (Pause)
 10 A. And this is the day before?
 11 Q. This is the 19th, yes?
 12 A. The day before the hearing?
 13 Q. That's right.
 14 A. Okay.
 15 Q. She is signed off sick, isn't she? Do you remember,
 16 I just took you to it?
 17 A. Yes, yes, yes.
 18 Q. And --
 19 A. But that doesn't mean to say that she is incapable of
 20 getting a solicitor to write a letter before the 19th.
 21 Q. No, well, she may or may not be medically advised to be
 22 dealing with matters --
 23 A. Okay.
 24 Q. -- relating to this but on the 19th, they write, don't
 25 they?

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1 A. Yes, yes, yes.
 2 Q. And so far as you are aware, you were not aware that she
 3 was asking for this information and documentation?
 4 A. No, no, I wasn't.
 5 Q. Ms Anderson didn't refer the matter to you?
 6 A. No.
 7 Q. And you didn't speak to Ms Anderson about it?
 8 A. No.
 9 Q. Was there any reason why Ms Birdi couldn't have all
 10 these documents? Let's look at the list. On page 839
 11 {E/201/839} she would like to have, number 10, the
 12 personnel file of Mushtaq Rehman. That would obviously
 13 help, wouldn't it? 12, the personnel file of
 14 Karina Patel. That would obviously help, wouldn't it,
 15 in relation to the allegations against her, the serious
 16 ones that were about payments to Karina Patel and
 17 Mushtaq Rehman?
 18 A. Yes.
 19 Q. And the allegations against her regarding whether those
 20 people had contracts of employment or written terms
 21 somewhere, written in a document. It would obviously
 22 assist to see these files, wouldn't it?
 23 A. If they existed.
 24 Q. Did you look for these files?
 25 A. No, I didn't.

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1 Q. Did you do anything other than look at the documents
2 that the Loss Prevention department/legal department,
3 depending on which version of your statement you are
4 dealing with, provided to you?
5 A. Other than provide my notes of my questions, no.
6 Q. That was what was I was going to come on to. So all you
7 had was the pack, the file, that you were sent?
8 A. It was comprehensive.
9 Q. Well --
10 A. It was a large file.
11 Q. I'm not saying it wasn't, but the question is did it
12 have in it all of the documents which would have
13 assisted you in reaching your conclusion?
14 A. I believe it did.
15 Q. All right.
16 A. I believe it -- I felt as prepared as I've ever felt.
17 Q. But you didn't actually request any further documents
18 from any other department to investigate any of
19 Ms Birdi's arguments by way of defence?
20 A. No, the only other documents that were provided to me
21 were the ones that Ms Birdi sent to me after the
22 hearing.
23 Q. Yes. This page 840 document, it looks like it's pages
24 from your book again? {E202/840}
25 A. It is.

1 29

1 Q. Your day book?
2 A. It is.
3 Q. But can you just explain to his Lordship what this is?
4 A. Yes, by all means. The way I tend to prepare for the
5 disciplinary hearing is to just focus on what I think
6 the key issues are, rather than all the he said/she said
7 stuff that goes on. So I'll read everything and I will
8 then try and consolidate it down to what I think they
9 are. And obviously they relate to the allegations as
10 well, so I knew what the allegations were.
11 I then tried to think of questions that I can then
12 put to Swarandeeep in terms of trying to gain a clear
13 understanding of what has actually gone on and how it
14 has all played out.
15 So what you see on the first few pages are some
16 rough questions that I'm thinking of asking. I don't
17 know why it has got 2 and 3. I think they are probably
18 in relation to which allegation. So which of the
19 allegations, was it 1, 2, 3 or 4. And then, when you
20 get to, probably -- I can't recall when -- how many
21 I wrote on the day, but if Swarandeeep is giving me her
22 feedback, that may then prompt me to write another
23 question down. So you will see that my writing becomes
24 a little bit more -- what's the word? -- frenetic or not
25 as well written, and that might be because Swarandeeep

1 30

1 has actually said something and it has triggered me to
2 write down another question because I don't want to
3 interrupt her. I want her to get on and, you know, give
4 a full account of herself.
5 So these are my questions that I would have used.
6 There's some that I probably didn't ask and if I didn't
7 ask them they probably don't have a tick at them, but
8 most of them I would have asked. Some I wouldn't have
9 asked because maybe there are comments. So, for
10 instance, number 10: {E/202/840}
11 "Experienced JVP -- knows better."
12 That may have come up in the conversation or it may
13 have come up during the interview, so -- or I maybe even
14 asked it.
15 Q. Okay. So do I understand you are saying that you
16 prepared all of these three pages before the meeting?
17 A. Absolutely.
18 Q. Okay.
19 A. That's what I -- that's what I do.
20 Q. I just need to ask you about some of the entries then.
21 Number 6, for example:
22 "Importance of having transparent dealings."
23 You put there?
24 A. Yes.
25 Q. Is that an important aspect of matters on all sides?

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1 What are you talking about there, what's "transparent"?
2 A. I'm obviously relating to the allegations and obviously
3 the payroll and all of that. There were family members.
4 So this was around the importance of being -- ensuring
5 that all the records were there and there was
6 transparent dealings in terms of hour overtime and
7 holidays and all of that was -- thing. So that was me
8 making a note to myself that that was an important issue
9 and to ask Swarandeeep about it or make sure that it came
10 up in the conversation that I was having with her.
11 Q. Transparency between who and who?
12 A. Well, her, in her role as a director of Dartford
13 Vision -- Dartford Specsavers Limited. You know, she is
14 an employee -- sorry, an employer -- sorry -- of
15 Dartford Visionplus and she is a director of that
16 business.
17 Q. Yes. So what's the transparency issue that you are
18 talking about?
19 A. Because I didn't believe that the way that the bonuses
20 were being paid or the holidays or the employment
21 records or the -- anything like that was being dealt
22 with in a transparent way; it wasn't obvious what was
23 happening.
24 Q. Holidays -- Mr Rehman didn't get any holiday pay?
25 A. No.

1 32

1 Q. No. Bonuses, you are talking about the money that he
2 was paid for the --
3 A. No, well, it was Karina Patel. It was also Mr Birdi,
4 her father, and obviously Mushtaq Rehman as well.
5 Q. Right, but the transparency of those payments; all those
6 payments were made by SOG, weren't they?
7 A. They were made by SOG, yes.
8 Q. And all the paperwork to evidence those payments and to
9 evidence the requests for those payments to be made to
10 Mr Rehman, for example, when he received payments, that
11 was all done openly, wasn't it, transparently, by
12 Ms Birdi sending off requests and by SOG then paying
13 them?
14 A. Yes.
15 Q. For example. So what's the lack of transparency that
16 you are talking about?
17 A. Because if you would go into the majority of stores,
18 they would have personnel files which would have bonus
19 details, how things were being paid. The amounts just
20 looked really funny, if I'm honest. And, you know,
21 I sort of looked at the amounts and thought, they are
22 always the same amounts to the same people, or to
23 different people but it's the same, and they were always
24 round amounts.
25 So it was just -- if I -- if I employ -- and

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1 I employ my daughter in my business -- I keep actively
2 away from everything to do with her because I wouldn't
3 want anybody to think that I was not being transparent
4 in my dealings with her and it's the same -- I would
5 expect exactly the same of a director of our business --
6 sorry, a director of one of our stores. To make sure
7 that they keep accurate records. That's all it was.
8 Q. I see. So it's the lack of accurate records for the
9 hours worked --
10 A. It's accurate records and transparency because why
11 expose yourself to something you don't need to expose
12 yourself, ie misinterpretation.
13 Q. Yes. Okay. Item 11 on your list:
14 "Lots of information -- difficult to assess the wood
15 from the trees."
16 A. Yes.
17 Q. Is that how you felt about it? Is that, what, you were
18 making a note to yourself?
19 A. That was it. That was a note to myself and there was
20 lots of information and that's why I decided to try and
21 keep my questions as focused as I possibly could on what
22 I believe were the key issues in the thing.
23 Q. I see. So this wasn't something you were putting to
24 her; that's just a note to yourself?
25 A. No, that's a note to myself.

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1 Q. Okay. 13:
2 "Why commit to the purchase of an online software
3 when in breach of JVA ..."
4 A. Yes.
5 Q. "... 3.29/3.210..."
6 A. Yes.
7 Q. "... 3.211.
8 "Specsavers Manual [and] Employment law."
9 What are you talking about there?
10 A. Erm, this was about the online software, which I didn't
11 believe -- basically -- bear this in mind: I have not
12 yet put any of this to Swarandeeep herself. So this is
13 me reading the things and going, "what is the issue?"
14 And I'm looking at it and thinking, "It looks really
15 dodgy, this". I didn't understand what was happening
16 and there was a possibility because, again, whether
17 Mushtaq Rehman was employed or acting as a consultancy,
18 that was all unclear. I have not got Swarandeeep's
19 version of events. So there was a potential that she
20 could be in breach of her joint venture agreement
21 because there was no authority to go out -- or provided
22 to her, based on what I knew at that time, to go out and
23 create -- or get Mushtaq Rehman to create an online
24 software appointments system.
25 Q. You didn't know what authority the A directors and/or --

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1 A. Hence --
2 Q. -- the A directors and SOG had agreed to --
3 A. Hence the reason I was going to ask her the question.
4 Q. So what was the basis of your suggestion that this was
5 all in breach of these provisions?
6 A. Because it potentially was.
7 Q. Yes, but who told you that?
8 A. I had read the notes. I had read the file.
9 Q. You had read -- oh, I see, the summary, then, from
10 whoever wrote the summary?
11 A. The investigation report.
12 Q. Yes. But that hadn't provided the other side of the
13 story, had it? It hadn't provided all the SOG documents
14 that they had, relating to their knowledge of this --
15 A. Absolutely. I hadn't put any of this to Swarandeeep.
16 When I wrote this, this was for my own personal
17 questions, to get the questions as focused as I could
18 and to get her version of events and give her ample
19 opportunity to --
20 Q. Why didn't you make some investigations of SOG? If they
21 knew about this online software issue and they knew that
22 he had been asked to do it and then they knew that they
23 had been requested to make payments to him through the
24 SOG system --
25 A. Maybe I'm at a slight advantage in that I know the way

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1 that SOG work and that it is inconceivable that they
 2 would have ever asked somebody from a store to develop
 3 an online appointments system. Our Socrates system is
 4 a monster, in terms of the complexity behind it. I also
 5 sit on the UK Ops Board and I sit in the room with
 6 Michelle Palm(?) who is the IT director. If it had been
 7 happening, if it had been authorised by SOG, I would
 8 have been fully aware of it because it would have been
 9 debated and discussed because it is something which was
 10 on our agenda to do at some stage. We still haven't
 11 done it, incidentally, although we have done it in
 12 Norway, but I knew that it wasn't something that was
 13 sanctioned by SOG.

14 Q. Over the page, 15: {E/202/841}
 15 "Trademarks 14.1/14.2."

16 I presume you are there referring to the
 17 shareholders' agreement. Clause 14 is trademarks?

18 A. I believe I am.

19 Q. Who suggested to you that you should raise the issue of
 20 trademarks?

21 A. Erm, as I said to you before, I was looking through the
 22 shareholders' agreement, which I had a copy of. I had
 23 also been speaking to Legal, you know, about the issues,
 24 the allegations.

25 Q. Hm-mm.

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1 A. I don't believe --

2 Q. You had been speaking to Legal? Okay. Okay. So you
 3 had been speaking to Legal after you had got the pack
 4 but before you had this meeting?

5 A. I don't know when I spoke to -- when I spoke to them.

6 Q. It must have been after you got the pack but it must
 7 have been before you -- because you are saying that one
 8 of your explanations for this is you had been speaking
 9 to Legal. So you told us that you hadn't spoken to
 10 anyone before you got the pack?

11 A. No. Legal also provide advice notes as well.

12 Q. Okay.

13 A. And it would have been one of the issues that was --
 14 come out of the advice note.

15 Q. Okay. All right, top right-hand corner of that page?

16 A. Yes.

17 Q. What does that mean at the top:

18 "Tape recorder."

19 A. Tape recorder. That was a note to myself, which was
 20 I understood that from previous interviews that a tape
 21 recorder had been used.

22 Q. Yes?

23 A. And I just wanted to ensure that the meeting wasn't
 24 being taped. And the next one, which was "Breaks", was
 25 to make sure that when I am holding the disciplinary

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1 hearing, I give Swarandeeep enough breaks, give her the
 2 opportunity to consider what has been said. So it's
 3 just a note to myself.

4 Q. Okay. If you go down to 26.

5 A. Yes.

6 Q. You are asking about the detail in which he is acting,
 7 whether he is an employee or a consultant when he
 8 developed the software?

9 A. Yes.

10 Q. What did you mean by that? What was the purpose of that
 11 question?

12 A. I think -- I'm led to believe -- and again this is from
 13 memory but I think the software was actually produced in
 14 2004 and it's -- some of his payments to related to
 15 2006. So what I was trying to understand was what was
 16 the relationship; was he a true employee or was he
 17 a consultant? That's ...

18 Q. What does it matter?

19 A. Well, if he is a consultant, then Swarandeeep and
 20 Nimesh Patel, who presumably were -- had instructed him,
 21 there should be some form of commercial relationship
 22 with him. I would have expected that. And also he --
 23 yes, the whole thing they shouldn't have been doing
 24 anyway, but what I'm trying to understand is what has
 25 actually happened here. Was it done as a commercial

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1 thing or was he an employee working in the business.

2 Q. Over the page finally, 28. {E/202/842}

3 Lorraine Frondigoun and Patrice O'Brien. Is it "Disp A"
 4 you have written above that?

5 A. Yes.

6 Q. I don't know what that means.

7 A. Dispenser A? Dispenser -- I don't know from memory.

8 Q. What does it say in the top right-hand corner:
 9 "Comments ..."

10 A. "...show..."

11 Q. "... the investigation..."

12 A. "... was ..."

13 Something.

14 Q. Was what?

15 A. I don't know. I can't read that.

16 Q. So that's a note to yourself recording the investigation
 17 by Mr McAlindon. Is that right? And that
 18 Ms Frondigoun's comments and Patrice O'Brien's comments
 19 show that the investigation was something?

20 A. I have no idea what it says.

21 Q. No. It might be chopped off, so could it be the
 22 beginning of "cond...?"

23 A. No, no.

24 Q. No, I was going to think "conducted"?

25 A. That's definitely "C-O-N-D".

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1 Q. That's what it looks like.
 2 A. But I don't know what the remainder of it is.
 3 Q. Okay. But were you aware of how Mr McAlindon had
 4 interviewed Mrs Frondigoun?
 5 A. No. In terms of -- when you say, "how he had
 6 interviewed her" --
 7 Q. Yes, how he had interviewed her?
 8 A. -- you mean how he had interviewed her?
 9 Q. Yes, were you aware of how he did it?
 10 A. In terms of?
 11 Q. In terms of tricking her, putting pressure upon her,
 12 encouraging her to make more and more outlandish
 13 comments?
 14 A. Clearly, no, I wasn't.
 15 Q. You weren't?
 16 A. But I don't agree that he would have done that anyway.
 17 Q. How can you possibly know? I thought you were an
 18 independent person --
 19 A. Well, I couldn't have known but I -- I couldn't have
 20 known.
 21 Q. Right, so he might have done, mightn't he? It's
 22 possible?
 23 A. Everything's possible.
 24 Q. Were you in court or have you heard or read
 25 Ms Frondigoun's evidence where she describes what

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1 actually happened in this investigation which led to
 2 your disciplinary action?
 3 A. I was not in court. I have read elements of people's
 4 evidence, but I've not -- I can't say I've read that or
 5 understand what it's actually -- what you are referring
 6 to.
 7 Q. Do you know what I'm referring to?
 8 A. No --
 9 Q. Mrs Frondigoun's evidence to this court?
 10 A. No, I'm waiting for you to tell me.
 11 Q. All right. So are you aware that Ms Frondigoun says
 12 that she was tricked into what she said on this record
 13 by Mr McAlindon?
 14 A. I think I was aware that she was unhappy with the
 15 interview but, again, I can't remember the detail behind
 16 it.
 17 Q. Okay. When did you become aware that she was unhappy
 18 with the interview?
 19 A. As I've said, I have been reading some of the
 20 transcripts.
 21 Q. Okay. You had better have day 5. Could you be passed
 22 the transcript bundle for day 5.
 23 A. Yes.
 24 Q. So I'm not going to read them out. They have been read
 25 out too many times already but would you go to page 163

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1 on day 5? {Day5/163:1}
 2 A. Yes.
 3 Q. Perhaps you would read down -- page 163 and the
 4 beginnings of 164, down to line 5?
 5 A. Sorry, can you say that again? 163?
 6 Q. Page 163.
 7 A. Yes.
 8 Q. If you read page 163 and down to the first five lines of
 9 164. {Day5/163:1} (Pause)
 10 Do you see that?
 11 A. Yes.
 12 Q. Okay. Then if you go to page 167, line 16, down to 168,
 13 line 1. {Day5/167:16} (Pause)
 14 Have you read that?
 15 A. Down to line...?
 16 Q. Just line 1 of the next page, 168?
 17 A. Yes.
 18 Q. And then line 8 of 168 {Day5/168:8} down to the bottom?
 19 A. Starting at "Yes"?
 20 Q. Starting at:
 21 "Answer: He continually pushed. Started out, 'Tell
 22 me anything you can think of'. Turn it off. He said,
 23 'She's a real bitch, isn't she?'"
 24 That's the answer.
 25 A. I've read that. I've read that one.

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1 Q. You have read all that down to the bottom of --
 2 A. No, I've -- sorry, that was 167, was it?
 3 Q. 168.
 4 A. 168 I've got, sorry.
 5 Q. Line 8 down.
 6 A. Sorry, I was reading that before. Apologies.
 7 Q. And then over the page, page 169, line 5 down to line
 8 15. {Day5/169:5} Do you see that?
 9 A. Yes.
 10 Q. And then page 173, line 5, {Day5/173:5} down to 174,
 11 line 16. {Day5/174:16} (Pause)
 12 A. Okay.
 13 Q. Have you read that? And then page 184 at the bottom,
 14 line 23 of 184? {Day5/184:23}
 15 A. Yes.
 16 Q. Over to page 185, line 18, just above his Lordship
 17 coming in? {Day5/185:18}
 18 A. Okay, sorry, you are going to have to do it again.
 19 Q. 184, line 23?
 20 A. 23, yes, got it.
 21 Q. Over to 185, line 18?
 22 A. So that begins:
 23 "There was ..."
 24 Q. It starts with:
 25 "Answer: Yes. He told me that he was doing all my

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1 NHS work. That's what Mr McAlindon told me.
 2 "Question: Is that what he said?
 3 "Answer: Yes."
 4 A. You have lost me, I am afraid.
 5 Q. Okay, page 184 at the bottom, line 23?
 6 A. "Yes. He told me..."
 7 Yes, yes.
 8 Q. Ms Frondigoun said:
 9 "He told me that he was doing all my NHS work."
 10 Do you see?
 11 A. Yes.
 12 Q. Just read that over to the next page at line 18, before
 13 his Lordship.
 14 A. Okay. (Pause)
 15 Q. Okay?
 16 A. Yes.
 17 Q. Then if you go over to page 195?
 18 A. Yes.
 19 Q. From line 8, where I'm quoting in a question. I'm
 20 quoting: {Day5/195:8}
 21 "Question: 'It is a lie.'"
 22 A. "It is a lie", yes.
 23 Q. From there down to the next page, 196, line 9.
 24 {Day5/196:9} (Pause)
 25 A. Okay.

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1 Q. And then finally page 204?
 2 A. Yes. Whereabouts?
 3 Q. From line 2. {Day5/204:2}
 4 A. "Was he?"
 5 Q. Yes:
 6 "Was he?"
 7 Down to the bottom of the page and then the answer
 8 over the page:
 9 "Yes."
 10 A. Yes (Pause)
 11 Okay.
 12 Q. I haven't taken you to every single relevant part but
 13 you get the gist of what Mrs Frondigoun was saying?
 14 A. Yes, I do.
 15 Q. As to how Mr McAlindon was winding her up into these
 16 answers and not recording everything that was said and
 17 all these sorts of things. You understand the general
 18 gist of it?
 19 A. I think so.
 20 Q. Would you be just passed bundle E8?
 21 A. Yes.
 22 Q. Do you have E8? You were carrying out the disciplinary
 23 process under the "Partner guide to managing discipline,
 24 grievance and appeal", weren't you?
 25 A. I was.

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1 Q. Which we find at page 2075, it starts. {E/673.1/2075}
 2 A. Okay, yes.
 3 Q. And we can see at page 2089 the investigation and
 4 interview process -- {E/673.1/2089}
 5 A. Yes.
 6 Q. -- referred to, which no doubt you had in mind when you
 7 were interviewing Ms Birdi?
 8 A. It was.
 9 Q. But you would also have had in mind, when it was
 10 suggested to you by Ms Birdi in the interview that you
 11 had, that Mr McAlindon was biased and hadn't conducted
 12 a fair investigation. Do you remember?
 13 A. Yes.
 14 Q. It was one of the things she put directly to you.
 15 On page 2089 under, "Carrying out an investigation"?
 16 {E/673.1/2089}
 17 A. Yes.
 18 Q. Next to the second hole punch:
 19 "Main witnesses to the event (care! - do not carry
 20 out a 'witch hunt')."
 21 That's right, isn't it?
 22 A. Yes.
 23 Q. And over the page, some examples of the way in which
 24 things should be done? {E/673.1/2090}
 25 A. Yes.

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1 Q. By the first hole punch, under "Investigatory
 2 interviews", second line:
 3 "Avoid accusatory or leading questions."
 4 A. Yes.
 5 Q. Now, I know you said earlier that Mr McAlindon would not
 6 have done it. That's your evidence to this court. But
 7 if he did do what Ms Frondigoun gave evidence that he
 8 did -- if he did do that, do you accept that he was
 9 biased against Ms Birdi?
 10 A. In a hypothetical case, yes, but I don't accept that
 11 that was, in this case, what actually happened.
 12 Q. And how can you reach that conclusion, when you yourself
 13 haven't investigated at all, have you?
 14 A. No, I -- no, I haven't.
 15 Q. Let's clear up a bit. You can put away the transcript
 16 bundle now.
 17 A. Yes.
 18 Q. If you go back to the actual disciplinary hearing that
 19 you conducted, we know that Ms Birdi -- she was very
 20 concerned, wasn't she, about these interview notes,
 21 these Frondigoun and O'Brien interview notes?
 22 A. Yes.
 23 Q. She even sent you a document, page 855? {E/204.1/855}
 24 A. Yes.
 25 Q. 856, 857, 858?

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1 A. Yes.
 2 Q. She challenged most of what was in those records, didn't
 3 she?
 4 A. Yes, yes. Yes.
 5 Q. Did you not think it would be sensible, as part of your
 6 fair and unbiased and independent disciplinary process,
 7 to go and ask the witnesses concerned, Ms Frondigoun and
 8 Ms O'Brien, about their evidence? Given that Ms Birdi
 9 was challenging almost everything they said, or that was
 10 recorded as being said, did you not think it appropriate
 11 to just do a little bit of delving?
 12 A. At the time, no, I didn't.
 13 Q. Did you make any investigations, either documentary or
 14 of the witnesses, after hearing from Ms Birdi with all
 15 the points she wished to raise?
 16 A. I read this, I referred it to the statement. I felt
 17 I had a good grasp on all the issues in this particular
 18 case and I felt I had all the information that I needed
 19 to make a decision.
 20 Q. I see. You are in bundle --
 21 A. E4.
 22 Q. E4?
 23 A. Yes.
 24 Q. Good. So she send you the email with the attachments at
 25 853? {E/204/853}

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1 A. Yes.
 2 Q. You felt you already had sufficient information upon
 3 which to reach a conclusion in relation to all of her
 4 points. Is that what you are saying?
 5 A. Yes.
 6 Q. And when did you reach your decision? Just to help you,
 7 do you remember the interview was on 20 September?
 8 A. Yes.
 9 Q. She sends you this on 24 September?
 10 A. Yes.
 11 Q. And just to help you, if you go to page 873, about
 12 20 pages later, by 4 October? {E/214/873}
 13 A. Yes.
 14 Q. The legal department -- sorry, not the legal department.
 15 Alison Anderson --
 16 A. Yes.
 17 Q. -- is sending out the result?
 18 A. Yes.
 19 Q. So when did you reach your decision?
 20 A. Some time in between that date.
 21 Q. We don't see any notes?
 22 A. No, I -- it's because I didn't make any.
 23 Q. You didn't make any notes at all?
 24 A. Not that I can recall.
 25 Q. You conducted this entire investigation --

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1 A. No, there may be -- there may be notes but -- there may
 2 be notes that I may have returned to Legal. I don't --
 3 I don't know. I can't recall. But I definitely made my
 4 decision.
 5 Q. Well, do you remember, transparency is the crucial
 6 thing, Mr Raines; transparency in everything, so that we
 7 can check whether you really did make your decision or
 8 whether somebody else made it for you?
 9 A. I understand transparency; I understand openness,
 10 honesty; that's how I live my life.
 11 Q. Yes.
 12 A. So, you know, I get those principles.
 13 Q. Okay, so where are your notes?
 14 A. If they are not in this bundle, I don't know where they
 15 are. And I can't recall whether I made any notes. As
 16 I said, I looked at the big -- looked at Swarandee's --
 17 the meeting notes; reviewed what she had said, what --
 18 had a look at the information that she had sent in the
 19 form of the witness statements, and then I tried to look
 20 at what I thought were the big issues.
 21 Were there employment files: yes or no? You know,
 22 did she have a duty to make sure they weren't -- you
 23 know, rather than getting involved in all this he
 24 said/she said-type thing, there was an allegation where
 25 she admitted it, in terms of the building works. So

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1 there was absolutely no -- you know, that's a case of
 2 admission.
 3 The one that I was unsure of, I was unsure of, was
 4 the -- did she -- the first part of it was did she treat
 5 Mushtaq Rehman, Mr Birdi and Karina Patel in an
 6 unorthodox sort of manner, and again, absolutely she
 7 did, but then, was that a way of extracting money out of
 8 the business?
 9 Now, I thought at the time -- and I remember
 10 thinking this, I remember thinking the image that -- or
 11 the answers that Swarandee has given and the image that
 12 she portrays is one of, "I was in the consulting room,
 13 it wasn't my responsibility". But equally, based on all
 14 the evidence that I had read, she has got a vice-like
 15 grip on the financial side of that business. She knows
 16 everything that's happening.
 17 It would be impossible -- there was a killer piece
 18 of information in my head, which was the fact that
 19 Karina Patel -- Nimesh Patel had said she does nothing,
 20 she never goes to the store and nobody could see her in
 21 the store. But she was paid a massive amount of bonus.
 22 And it was the same amount of bonus that was paid to
 23 Mushtaq and Mr Birdi. And I just thought, you wouldn't
 24 allow -- she wouldn't allow that -- my interpretation of
 25 having met her -- again, because I had not met her

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1 before -- but having met her, I thought, I can't believe
 2 that you would allow that payment to go through if it
 3 wasn't sort of balanced off with Mushtaq Rehman and
 4 Mr Birdi.
 5 So -- and part of her defence -- and I remember it
 6 as if it was yesterday. Part of her defence -- and she
 7 mentioned it a couple of times -- was along the lines
 8 of, "There's other partners who are doing this as well".
 9 And I thought, "Well, that's not really a defence. You
 10 know, if you know it's wrong and somebody else is doing
 11 it, why are you doing it?"
 12 So I couldn't prove it and I thought -- I always go
 13 to this thing in my head, which is, "Has there been
 14 a fundamental breakdown of the trust between SOG and
 15 Swarandee Birdi?" And, do you know, I thought, no,
 16 there hasn't.
 17 By her own admission, she said, "I have learnt a lot
 18 of things". I was really impressed with Deepru Gill(?),
 19 the companion. She made a really good plea for
 20 Swarandee, which is, "She has never been in trouble
 21 before, she has never done anything, give her the
 22 benefit of the doubt", almost, and I thought, "I will
 23 do". I don't need another -- I don't need to lose
 24 a partner in this business. The business isn't doing
 25 well. The whole Specsavers model is about having

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1 partners in the business, them driving the business
 2 forward and benefiting from the rewards of their hard
 3 labour.
 4 And so I remember thinking at the time -- I remember
 5 thinking you could call this two ways, you know, because
 6 there was something going on. There was definitely
 7 something going on, but did I have enough proof?
 8 I didn't feel as if I did and that's why I left that one
 9 to be unproven. But on balance, with all four of the
 10 allegations, I thought, "It's a gross misconduct, and
 11 hopefully she has learned her lesson and she can move
 12 forward".
 13 And that was my sole motivation, which is it's
 14 better to do a remedial solution than it is to do
 15 a dismissal, and if we do a dismissal, we are then going
 16 to create an even bigger issue in Dartford and I didn't
 17 want to do that.
 18 Q. My Lord, I see the time. I didn't want to stop
 19 Mr Raines?
 20 A. Sorry.
 21 MR JUSTICE NUGEE: No, no, not at all. We will take a break
 22 for five minutes.
 23 (3.17 pm)
 24 (Short break)
 25 (3.22 pm)

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1 MR JUSTICE NUGEE: Yes, Mr Stuart.
 2 MR STUART: Mr Raines, just before we come on to your
 3 decision letter, I just want to get clarification from
 4 you as to the -- you have got the four allegations.
 5 A. Yes.
 6 Q. Could you just go to your notes, so 843? {E/203/843}
 7 A. Yes.
 8 Q. On page 846 -- {E/203/846}
 9 A. 846, yes.
 10 Q. -- you are at this stage in the middle of dealing
 11 with -- we will call it allegation 1, which sort of
 12 combined all the allegations about Mushtaq Rehman, her
 13 husband, et cetera, et cetera?
 14 A. Oh, yes.
 15 Q. As supported by the evidence of Lorraine and Patrice.
 16 Okay?
 17 A. Yes.
 18 Q. And so on 846, do you see just below the first hole
 19 punch, Ms Birdi said: {E/203/846}
 20 "Nimesh - allegations have come from him - he said
 21 M..."
 22 That would be Mushtaq:
 23 "... no work done - he has lied due to the fact he
 24 knows I helped LP ..."
 25 That would be Loss Prevention:

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1 "... catch him. He hates me."
 2 That's in essence what she was saying?
 3 A. Yes.
 4 Q. Then:
 5 "You made a statement L ..."
 6 That would be Lorraine:
 7 "... L statement is inaccurate."
 8 Ms Birdi said:
 9 "It is heartbreaking to read - on medication - the
 10 statement is very vindictive."
 11 That's the Lorraine Frondigoun statement; do you
 12 understand?
 13 A. Yes.
 14 Q. You said:
 15 "Why would Pat ..."
 16 That would be Patrice O'Brien.
 17 A. Yes.
 18 Q. "... and L..."
 19 That's Lorraine Frondigoun:
 20 "... say these things?"
 21 Do you see that?
 22 A. Yes, yes.
 23 Q. And then Ms Birdi gave her answer. And then you said:
 24 "Why did L and P make a statement?"
 25 Then Ms Birdi gave an answer. Do you see that? She

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1 gave three answers in fact?
 2 A. Hold on, I'm still reading.
 3 Q. Yes. (Pause)
 4 A. Yes.
 5 Q. So she gave three answers about that, including that it
 6 was vindictive and that she had made false allegations,
 7 et cetera, and then you said again:
 8 "What is her motive?"
 9 That is, what is Lorraine Frondigoun's motive for
 10 making these allegations, and she said:
 11 "No idea."
 12 Do you see that?
 13 A. Yes, yes.
 14 Q. You were obviously very interested in these two staff
 15 witness statements, weren't you?
 16 A. It was some questions I was asking, yes.
 17 Q. That was allegation 1. If we turn to allegation 2,
 18 page 848? {E/203/848}
 19 A. 848, yes.
 20 Q. Just above the first hole punch.
 21 A. Yes.
 22 Q. You say:
 23 "We will do as requested and focus on allegations.
 24 Allegation 2 - store focus ref allocation of bonuses."
 25 So this is the bonuses?

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1 A. Yes.
 2 Q. And Ms Birdi gave her explanation, didn't she?
 3 A. Yes.
 4 Q. And then at the bottom of the page, 848, allegation 3,
 5 this is to do with the minor works on the kitchen and
 6 the Polish builders, et cetera?
 7 A. Yes.
 8 Q. And her response was:
 9 "We did have minor works in kitchen - unaware of
 10 policy..."
 11 A. Yes.
 12 Q. And she repeated that, didn't she, over the page?
 13 A. Yes.
 14 Q. Just above the first hole punch: {E/203/849}
 15 "Had no idea thought minor work - we didn't know."
 16 A. Yes.
 17 Q. So you were putting to her that this was in breach of
 18 the policy. She had to get SOG formal authorisation and
 19 her explanation was, "It was minor work and I didn't
 20 know the policy"?
 21 A. Yes.
 22 Q. And then on allegation 4, the general one:
 23 "Behaviour as a Director."
 24 A. Yes.
 25 Q. Do you see that?

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1 A. Oh yes, yes.
 2 Q. Between the two holepunches?
 3 A. Yes.
 4 Q. You say:
 5 "Expect to act in best interests of the business,
 6 how you behaved in an irresponsible and unprofessional
 7 manner during investigation."
 8 And you pick this up in your witness statement in
 9 a moment; I'll come to it.
 10 A. Yes.
 11 Q. So you are actually asserting that her behaviour during
 12 the investigation has been improper?
 13 A. Yes.
 14 Q. And she then explains to you how she has been very ill,
 15 doesn't she?
 16 A. Yes.
 17 Q. And she has been signed off sick, very sick, and she has
 18 been bullied and threatened?
 19 A. Yes.
 20 Q. And she sets that out in detail just from the second
 21 hole punch downwards. Do you see that? {E/203/849}
 22 A. Yes.
 23 Q. So that was her explanation for how she has acted during
 24 the investigation?
 25 A. Yes.

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1 Q. So that, in summary, was her defence to the four
 2 allegations, wasn't it?
 3 A. Yes.
 4 Q. We have dealt with each of the four.
 5 A. Yes, I think there are some other questions and answers
 6 but ...
 7 Q. They are not part of the allegations, are they, so
 8 I don't have to go through them unless --
 9 A. Okay.
 10 Q. Now, in your witness statement?
 11 A. Yes.
 12 Q. You deal with these at paragraphs 23 to 26? {C/13/156}
 13 A. Yes.
 14 Q. The four allegations?
 15 A. Yes.
 16 Q. At 23 you deal with the first allegation; yes?
 17 A. Yes.
 18 Q. And your conclusion is that the terms and conditions of
 19 those people were unclear?
 20 A. Yes.
 21 Q. They didn't have written terms and conditions.
 22 A. Yes.
 23 Q. Their hourly rates of pay weren't clear and the bonuses
 24 weren't clear?
 25 A. Yes.

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1 Q. Do you see that?
 2 A. Yes.
 3 Q. You say: {C/13/156}
 4 "Even if (as Ms Birdi alleged) Mr Patel had been
 5 responsible for issuing written terms and conditions and
 6 completing the payroll ..."
 7 Et cetera, et cetera, et cetera.
 8 Why do you say "even if"? You knew that part of
 9 Mr Patel's role as retail director here -- part of it
 10 was to deal with the administration of the staff, wasn't
 11 it?
 12 A. Yes.
 13 Q. Including ensuring that there were contracts of
 14 employment and that national minimum wage requirements
 15 were met, et cetera. So why are you still trying to put
 16 that on to Ms Birdi?
 17 A. Because I think she should have been aware whether
 18 contracts were present for those people, particularly as
 19 they were family members and some of them were her
 20 direct reports. They reported directly to her.
 21 Q. But the lack of knowing that, is that gross misconduct?
 22 A. No.
 23 Q. No, all right.
 24 A. In isolation, no, it isn't.
 25 Q. Okay. At the bottom of that paragraph you talk about:

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1 "... Ms Birdi had contracted Mr Rehman to develop
 2 the online booking system..."
 3 That's Ms Birdi and Mr Patel had done that, hadn't
 4 they?
 5 A. Erm...
 6 Q. You only mention Ms Birdi there, but you knew it was the
 7 two of them that had done it?
 8 A. I didn't -- I don't believe -- well, I didn't question
 9 Nimesh Patel on his involvement with the online booking.
 10 Q. No. What evidence did you have about the online
 11 booking, do you recall?
 12 A. Well, I knew there was an online booking system.
 13 Q. Hm-mm.
 14 A. I knew it hadn't been authorised by SOG, otherwise
 15 I would have been aware of it, and I knew the payments
 16 relating to it were what I would call dodgy,
 17 particularly as it was completed in 2004 and wasn't paid
 18 for later, and integrating into the Socrates system
 19 would never have been -- you know, it was outside the
 20 remit of the day-to-day management for a partner, and
 21 also the logo had been used, which -- again, that's
 22 outside of the day-to-day management of a partner.
 23 Q. So the use of the logo by Mr Mushtaq Rehman in the work
 24 that he was doing for the store, you are saying that
 25 that somehow is itself to be brought into account when

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1 dealing with the actual allegation that this lady was
 2 facing?
 3 A. I think I gave you about four things there.
 4 Q. Hm-mm.
 5 A. It wasn't just the logo; it was the other three things
 6 as well.
 7 Q. Can I suggest to you the logo had nothing to do with it?
 8 A. In my head, as a disciplinary chairman, it did.
 9 Q. Well, it did have something to do with, didn't it,
 10 because it showed that SOG were aware of it?
 11 A. Well, no, the logo could have been cut and pasted from
 12 anywhere. It wasn't as if we had provided a logo
 13 because, again, we are very -- again, you are going to
 14 have to understand this: we are very anal about the logo
 15 and it's the right pantone and the right colours and all
 16 of that, so we're very conscious of it not appearing
 17 where it shouldn't appear.
 18 Q. What investigations had you made with SOG as to what
 19 they knew about this?
 20 A. I hadn't, but, as I said to you before, I would have
 21 known had it been authorised because I sit on the UK Ops
 22 Board and -- thing. And you know, if Swarandeeep would
 23 have said, "Here is a letter from the IT director
 24 authorising this piece of work", I would have gone, "Do
 25 you know what, thanks a lot". You know? It would have

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1 helped.
 2 Q. What if there was something from the IT director saying,
 3 "Here is this piece of work, this is wrong, you
 4 shouldn't be using our logo"?
 5 A. I don't believe I saw that.
 6 Q. No, I'm not asking whether you did or didn't. I'm asked
 7 if there had been such a piece of evidence?
 8 A. She should have presented it at the time of the
 9 disciplinary hearing.
 10 Q. Did you give her an opportunity to present all of her
 11 evidence at the time of the hearing?
 12 A. I believe I did, Mr Stuart, because I asked her in -- or
 13 Alison Anderson asked her beforehand to come and
 14 bring -- or to provide to me before I got to the
 15 disciplinary hearing any documents at all. What
 16 happened was she actually turned up on the day with
 17 documents which, again, I had not had a chance -- I took
 18 those documents, I went back and had a look at them.
 19 So I believe I had enough information on which to
 20 base my decision in relation to this matter.
 21 Q. Okay. We will come in a moment to your decision.
 22 Paragraph 25, {C/13/157} as to the third
 23 allegation -- that's the building work -- you say she
 24 admitted that she had not follow the correct procedures?
 25 A. Yes.

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1 Q. You omit to say, "But she explained that she didn't
 2 realise they applied to this minor work"?
 3 A. I didn't write that down.
 4 Q. Is there any reason for that?
 5 A. There was -- there was actually a reason for that, and
 6 I can remember it. This was all related to -- even if
 7 she hadn't have realised, she has had a shop fit done;
 8 she has been in the partnership for the last seven
 9 years; she knows that there is a department called
 10 business development and works go through business
 11 development.
 12 I had the impression -- and again, basically the
 13 fact that it was a bodge job et cetera, et cetera, what
 14 they tried to do was do something on the cheap and to
 15 try and avoid the thing. And the evidence tended to
 16 indicate that to me because I remember thinking at the
 17 time, she should have known better.
 18 If I was talking about a partner who had been in the
 19 business seven months or -- it would have been
 20 different. This is somebody who has been in seven
 21 years. It's not as if we don't have policies on things.
 22 We do have policies on things, particularly things like
 23 minor works.
 24 Q. But she was unaware of the policy?
 25 A. I took that into account.

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1 Q. All right, fine. Finally, 26. {C/13/157} The fourth
 2 allegation you found proven. This was the one of not
 3 acting in a directorial way in relation to the
 4 investigation itself?
 5 A. Yes.
 6 Q. And you say:
 7 "Communication ... had been difficult and
 8 protracted."
 9 I mean, she had been signed off sick, hadn't she?
 10 A. Yes.
 11 Q. For almost all of the period that you are talking about?
 12 A. Yes.
 13 Q. You say:
 14 "Ms Birdi had been regularly absent due to illness
 15 and her responses to SOG letters were often delayed."
 16 A. Yes.
 17 Q. How do you assert that that is not acting in
 18 a directorial way? If you are off sick with severe
 19 stress caused by the very thing which is the subject
 20 matter of this process, how is it a breach of the
 21 directorial duties?
 22 A. I think it was a number of things.
 23 Q. Hm-mm. How is it a breach of directorial duties to be
 24 suffering from illness?
 25 A. No, it obviously isn't and obviously I sympathise with

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1 anybody who suffers with stress and you never want to
 2 have people in that situation. I accept that.
 3 Q. All right. Further on in that paragraph, about half way
 4 down the page, so just below half way in the paragraph,
 5 do you see there is a sentence that starts:
 6 "For example, Ms Birdi refused to consider that
 7 SOG's decision in allowing Mr Patel to resign without
 8 facing a disciplinary hearing had been in the best
 9 interests of the Dartford business."
 10 Do you see that?
 11 A. Yes.
 12 Q. Were you aware of the circumstances in which Ms Birdi
 13 had been completely excluded from that decision?
 14 A. Erm, I wasn't aware of all the circumstances, no.
 15 Q. So on what basis do you say that her "refusal to
 16 consider that SOG's decision in allowing Mr Patel to
 17 resign without facing a disciplinary hearing" was in
 18 some way her being difficult and not acting in
 19 a directorial way in her capacity as a director of
 20 Dartford Visionplus Limited? How is that an example of
 21 it?
 22 A. I -- my only thing is that was another challenge that
 23 Swarandeep was putting to the business and I took the
 24 view -- and, again, it's a view I took at the time --
 25 which was that was -- the -- removing Mr Patel was

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1 a pragmatic solution for efficiency and, you know, that
 2 was it.
 3 Q. That's fine for you to say that, but has your JV partner
 4 ever stolen from you in any of the three stores that you
 5 are in?
 6 A. No.
 7 Q. No. If one of them did steal from you, stole money
 8 effectively out of your pocket because it's half your
 9 money in that till?
 10 A. Yes.
 11 Q. Would you have no view on that?
 12 A. I think I would have a view.
 13 Q. Right. Is it potentially reasonable for such a JV
 14 partner to hold the view that that person, who stole
 15 from them, should be reported to the police? Is that
 16 potentially a reasonable view?
 17 A. It is a reasonable view, depending on, obviously, the
 18 circumstances.
 19 Q. Of course. If it was over a long period of time,
 20 happened on repeated occasions and was only discovered
 21 when Mr McAlindon's Loss Prevention department went in
 22 and discovered it -- so not by the person concerned
 23 admitting it and coming up with their explanation first
 24 but only once proven -- would it be reasonable for the
 25 person in Ms Birdi's position to hold the view that

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1 Mr Patel should be reported to the police? Would that
 2 be a potentially reasonable view?
 3 A. That would be a reasonable view.
 4 Q. And similarly, if your joint venture partner happened to
 5 be regulated by the General Optical Council, the GOC,
 6 and had committed acts of theft in relation to the
 7 business, to the actual business, optical business,
 8 would that be a matter on which a joint venture partner
 9 like Ms Birdi could take the view that it should be
 10 reported to the GOC?
 11 A. I don't believe Mr Patel actually had a disciplinary
 12 hearing or a disciplinary verdict against him.
 13 Q. He admitted it.
 14 A. He admitted it?
 15 Q. Yes, he had a hearing, the first investigatory hearing.
 16 A. Yes.
 17 Q. And he was shown -- or he was told of --
 18 A. And he --
 19 Q. -- the camera evidence.
 20 A. And he resigned.
 21 Q. No, then, first of all he admitted it.
 22 A. Hm-mm.
 23 Q. He said, "I admit stealing". Then a figure was put to
 24 him as to how much he had admitted stealing, £4,500 over
 25 a period of time in relation to a number of -- and he

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1 admitted that. And then there came to be a conversation
 2 about how he was going to be exited from the business.
 3 But in relation to that conversation, you understand
 4 Ms Birdi wasn't allowed to be involved.
 5 A. I --
 6 Q. And that was her gripe, wasn't it?
 7 A. Yes.
 8 Q. That was her complaint?
 9 A. Yes.
 10 Q. She actually made it to you during your investigation
 11 meeting?
 12 A. Yes.
 13 Q. But you give that as an example of her acting in breach
 14 of her director's duties and as being an example of
 15 allegation 4.
 16 Shall we turn now to your actual -- your result
 17 letter, page 890?
 18 A. Yes.
 19 Q. Go to 891 under allegation 4 at the bottom.
 20 {E/214.3/891}
 21 A. Yes.
 22 Q. "I find the allegation proven. It is a fact that you
 23 have been certified as unfit for work by your Doctor for
 24 almost 6 months. However notwithstanding the nature of
 25 your incapacity, I find that you have been inconsistent

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1 in your approach to communication with your business
 2 partner, SOG..."
 3 A. Yes.
 4 Q. Had SOG been consistent in their approach to
 5 communication with Ms Birdi?
 6 A. I think they were trying to get lots of information from
 7 her.
 8 Q. Ah, at this stage they were, but when she was asking for
 9 information from them, when they were talking about
 10 getting rid of Nim -- or had got rid of Nim Patel and
 11 she wanted to know the details of what she was paying
 12 away, they refused to provide it to her. Was that SOG
 13 being open with information?
 14 A. I wasn't involved in that chain of information.
 15 Q. Okay. Over the page you say: {E/214.3/892}
 16 "Whilst I note what you say in relation to
 17 Mr McAlindon ..."
 18 So you are obviously aware of the allegation --
 19 A. Sorry, can you ...?
 20 Q. We are over on page 892.
 21 A. 892, yes.
 22 Q. "Whilst I note what you say in relation to
 23 Mr McAlindon..."
 24 So you are obviously aware of her allegations
 25 against Mr McAlindon?

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1 A. Yes.
 2 Q. Is that right?
 3 A. Yes, yes.
 4 Q. "... communication since the beginning of April has only
 5 taken place with other representatives of SOG."
 6 A. Yes.
 7 Q. "Having read the various letters and emails, I do not
 8 find the content or tone unreasonable."
 9 You are talking about the tone of letters from
 10 Alison Anderson; is that right?
 11 A. Yes.
 12 Q. And then the next paragraph:
 13 "I also note that on the day of the disciplinary
 14 hearing you presented several documents for me..."
 15 A. Yes.
 16 Q. "Unless these documents only became available a few days
 17 prior to the hearing, this is another example of the way
 18 you choose to communicate with SOG on your terms and
 19 ignore reasonable instructions given to you."
 20 A. Yes.
 21 Q. Is that really what you are disciplining her for, giving
 22 you the information shortly before --
 23 A. To be honest I didn't believe that Swarandeep cooperated
 24 with the investigation and there are a number of
 25 examples of that. She made it more difficult than it

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1 needed to be and, again, with -- based on the experience
2 that I have of doing these -- and it's not as if I deal
3 with them every day because I don't -- but they were
4 inconsistent with how people usually behave in this
5 situation.

6 Yes, people go off with stress for, you know,
7 a period of time. But most of them, the stress is
8 actually related to the fact that they have got this
9 sword of Damocles hanging over their head and the best
10 thing to do is to actually bring that -- get the
11 situation resolved and get it moved forward and I just
12 felt, based on reading the correspondence, based on
13 quite a lot of issues, that she hadn't cooperated in the
14 way that I would expect a director, who is innocent of
15 the charges, to have behaved.

16 I would have thought, you know, in order for her to
17 move on, she would have -- thing. And I accept the fact
18 that she felt bullied and intimidated, you know, and
19 I put in my note to her, which is, "You know, if you
20 feel you want to raise a grievance..."

21 But she then made it a statement in her thing about,
22 "If this had been a white male, you know, it wouldn't
23 have happened", and I just at the time felt that she
24 didn't necessarily understand what her duties were in
25 terms of cooperating with this investigation. She was

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1 making lots of statements about how discriminated she
2 was but I couldn't see any evidence based on what I had
3 read to actually -- for me to not arrive at that
4 conclusion.

5 Q. You yourself didn't investigate her allegations, did
6 you?

7 A. No, I had a conversation with Mel McAlindon, which
8 I have --

9 Q. After you had spoken to --

10 A. No, no.

11 Q. No?

12 A. That was the one that I had before.

13 Q. I am sure he didn't raise with you her allegations.

14 A. No.

15 Q. So, after you had heard her allegations about
16 Mr McAlindon?

17 A. Yes.

18 Q. And about how she felt bullied throughout the whole
19 process --

20 A. Yes.

21 Q. -- and there are complaints right from February 20th
22 onwards.

23 A. Yes.

24 Q. And her illness, stress, et cetera?

25 A. Yes.

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1 Q. You didn't make any investigations into any of those
2 things, did you?

3 A. No, I invited her to make a grievance, if she wanted to
4 make a grievance, but I didn't believe, when I arrived
5 at my decision, that that was a fundamental -- something
6 I should alter my decision based on.

7 Q. You are on 892. {E/214.3/892} Just below the
8 second hole punch there is a paragraph starting:

9 "It is a legal requirement that as a company
10 director you exercise ..."

11 Do you see that?

12 A. Yes, I do.

13 Q. "... reasonable care, skill and diligence ..."

14 A. Yes.

15 Q. "... avoid any conflicts of interest and where any
16 persons connected to you are involved in the business,
17 all transactions and dealings are visible and
18 transparent. It is also necessary that you use your
19 best endeavours to maintain a strong relationship with
20 your business partners."

21 A. Yes.

22 Q. Do you accept that that obligation, to maintain a strong
23 relationship with their business partners, also applies
24 to SOG insofar as they are acting as a director of --

25 A. Absolutely.

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1 Q. -- this company.

2 A. Absolutely.

3 Q. So they owe such a duty to Ms Birdi?

4 A. Absolutely.

5 Q. Good. At the bottom you issue a warning; yes?

6 A. Yes.

7 Q. And then you set out various conditions to be attached
8 to the warning?

9 A. Yes.

10 Q. Do you see all of those things? Did you discuss those
11 conditions with anybody?

12 A. I discussed my judgment of what I thought with legal.

13 Q. Okay. Did you yourself draft this letter or was that
14 part of a joint --

15 A. I drafted some of it.

16 Q. You drafted some of it?

17 A. Yes.

18 Q. Yes? And who else drafted some of it?

19 A. I had some help with Legal.

20 Q. Legal? Okay. So not Mr McAlindon?

21 A. No.

22 Q. Or Mr Dyson?

23 A. No.

24 Q. Just you and Legal drafted it?

25 A. Absolutely.

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1 Q. Okay. Right. We can move on to paragraph 31 of your
 2 statement. {C/13/158} New heading. Under the heading
 3 "Mr Singh and Ms Birdi's respective roles" -- do you see
 4 it? --
 5 A. Yes.
 6 Q. -- you explain that in July 2008 Mr Singh joined
 7 Dartford.
 8 A. Yes.
 9 Q. Between the issuing of your decision on
 10 3 October 2007 -- do you remember? I just took you to
 11 it: Page 890? {E/214.3/890}
 12 A. Hold on.
 13 Q. Do you see that?
 14 A. Yes.
 15 Q. -- and July 2008, when Mr Singh joins Dartford --
 16 A. Yes.
 17 Q. -- what was your involvement?
 18 A. You will have to be a bit more specific.
 19 Q. Okay. Did you play any part in relation to Dartford
 20 between October 2007, when you issued her with her final
 21 written warning and conditions, and Mr Singh joining?
 22 A. I can't recall personally playing any part. I may have
 23 had conversations with people like Derek Dyson,
 24 Michael Ryan, Dominic Savill, maybe even Cristina from
 25 Legal, about Dartford.

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1 Q. Right.
 2 A. But in terms of did I play an active part, I don't
 3 think -- I don't believe I did.
 4 Q. Okay. If you go to page 912 in the bundle --
 5 {E/220/912}
 6 A. Sorry, sorry, sorry, I did. I organised the return to
 7 work with Dominic Savill.
 8 Q. Right.
 9 A. Dominic Savill was the RDC who I mentioned before, who
 10 worked for me. I wanted to get Swarandeeep back into the
 11 business in the best way. So I made sure that
 12 Dominic -- because Dominic was one of these really
 13 happy, cheery-type guys. I wanted to try and get
 14 Swarandeeep integrated back into the business in
 15 absolutely the right -- she had been out of the business
 16 for a long time, I was really conscious of that, so
 17 I organised a return to work with Mr Savill.
 18 Q. Right. Go to page 912. {E/220/912} I think this is the
 19 next of your pages from your day book.
 20 A. Yes.
 21 Q. And we think it must be somewhere around the first week
 22 of October 2007 --
 23 A. Yes.
 24 Q. -- because we have got a date, just below the hole
 25 punch, of "Corporate 8/10/07".

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1 A. Yes, yes.
 2 Q. Then "Board 9/10/07". So it looks like it's around that
 3 week.
 4 A. Yes, yes, yes.
 5 Q. The first item, under "Derek" -- so you are obviously
 6 having a conversation with Derek Dyson. Is that fair?
 7 A. Yes, that's fair.
 8 Q. And the first item is "Andrew" somebody -- Adams?
 9 A. Andrew Adams, yes.
 10 Q. Nothing to do with Dartford?
 11 A. No, he used to work for us in the corporate --
 12 Q. That's fine, and then the next item is:
 13 "Dartford -- Gravesend premature."
 14 A. Yes.
 15 Q. So what did you know about Gravesend, the Gravesend
 16 partners buying the shares?
 17 A. I believe at that time they had made an approach.
 18 Q. Yes.
 19 A. But I knew nothing about it. This may be Derek telling
 20 me -- I don't believe it was me telling him; it may be
 21 him telling me. I don't know.
 22 Q. So were you discussing the future of Dartford with
 23 Mr Dyson at around this time?
 24 A. Clearly I was.
 25 Q. Can you recall what Mr Dyson was telling you about what

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1 was to happen?
 2 A. No, I can't.
 3 Q. If you go to page 932 -- {E/230/932}
 4 A. Yes.
 5 Q. -- SOG sends a letter -- actually, Cristina del Grazia,
 6 the director of the legal department --
 7 A. Yes.
 8 Q. -- she sent a letter to Ms Birdi's solicitors. Do you
 9 remember that was Crust Lane Davis --
 10 A. Yes, I do.
 11 Q. -- the people who had asked for all that information
 12 some time previously?
 13 A. Yes.
 14 Q. It's over the page, 934, I wanted to ask you about.
 15 {E/230/934} Do you see the last main paragraph, just by
 16 the second hole punch:
 17 "Given Ms Birdi's recent conduct and the outcome of
 18 the disciplinary hearing held on 20 September, SOG does
 19 not deem it appropriate at this time to make any firm
 20 plans regarding the future structure of the Dartford
 21 business."
 22 Do you see that?
 23 A. Yes.
 24 Q. Were you involved in those discussions?
 25 A. Not that I'm aware of.

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1 Q. Okay. Page 935 is an email exchange between you and
 2 Dominic. {E/231/935}
 3 A. Yes.
 4 Q. Well, it's actually an email exchange. It starts from
 5 Dominic to Alison Anderson, Neil Lunn,
 6 Michael McGonagle, Cristina del Grazia -- they seem to
 7 get it.
 8 A. Yes.
 9 Q. You are cc'ed on it.
 10 A. Yes.
 11 Q. And Mr Savill explains that he used a checklist covertly
 12 to make sure he covered all the topics. Do you see
 13 that?
 14 A. Yes.
 15 Q. And you are answer:
 16 "Hi
 17 "Well done an excellent piece of work.
 18 "regards
 19 "Mark.
 20 "PS Make sure you invoice the store for your time."
 21 A. Yes.
 22 Q. Why were you so keen that he should invoice the store
 23 for his time? Why make a special point about saying
 24 that?
 25 A. You may find this throughout the bundle. It's almost

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1 a bit of a thing. The RDCs -- well, I have -- I had
 2 seven of them at the time. The RDCs, their primary role
 3 was to actually open new stores and so there was never
 4 any charge to any store partner in relation to their
 5 time. So they would be having conversations with the
 6 partner about doing -- opening new stores, business
 7 support, anything at all like that, and again that
 8 wasn't a chargeable thing, and we took the view as
 9 a business that, despite it being something like
 10 £1.2 million costs or something, that that was money
 11 well spent in terms of how we allocated that resource,
 12 that we would get the benefits through the management
 13 fee.
 14 However, it then became a budgeted item. I think
 15 it's round about 2005, if I'm not mistaken. There was
 16 a case of the business decided to look at the RDC role
 17 and say, you know, "We are doing lots of work. Is it
 18 always work that is around new stores, around support,"
 19 et cetera, et cetera, and, "Would it be possible to
 20 raise an income stream?" which I think the income over
 21 the year was about £25,000. Compared to the size of the
 22 budget, it was absolutely infinitesimal, but it was
 23 about trying to make sure that the RDCs understood that
 24 when they are doing stuff that is not -- ie on SOG's
 25 agenda per se, that they invoiced the store for it, and

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1 this is just me reminding him to invoice the store.
 2 It's nothing more, nothing less than that. It was
 3 a store-related cost. That's how I saw it.
 4 Q. Okay. But ordinarily the store wouldn't have been sent
 5 an invoice, would it, for support --
 6 A. No, no.
 7 Q. -- from its RDC?
 8 A. Exactly. If it was an RDC visit -- and we do lots of
 9 RDC visits -- and I know Mr Rowe did a lot -- we put
 10 that in terms of let's develop the business, develop the
 11 partnership, and it's all just done for nothing.
 12 Q. But this lady, she is going to get charged?
 13 A. No, Dominic.
 14 Q. Yes. Ms Birdi is going to be charged.
 15 A. The Dartford business is getting charged.
 16 Q. It's her business at that stage; the only A shareholder
 17 is her?
 18 A. Yes, yes.
 19 Q. Was that something you discussed with Mr Dyson?
 20 A. No, no, it wasn't.
 21 Q. Were you aware of the issues relating to Mr McAlindon's
 22 continued charging of huge sums of money to the Dartford
 23 store?
 24 A. I was not aware of that but obviously I was aware that
 25 he had put store support in there because that's what we

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1 do when a partner leaves.
 2 Q. Okay. You can put away E4.
 3 A. Thank you.
 4 Q. There was obviously an appeal, wasn't there, against
 5 your decision?
 6 A. I believe so.
 7 Q. You don't mention any involvement in your witness
 8 statement. Did anybody make any enquiries of you?
 9 A. No.
 10 Q. Did anybody ask you any questions at all about the
 11 process, what information you had relied upon?
 12 A. Not that I can recall.
 13 Q. All right. Could you be passed E5, page 1161.
 14 {E/273/1161}. We have reached January 2008.
 15 A. Okay, January 2008. Okay.
 16 Q. Do you see it?
 17 A. Yes, I do see it.
 18 Q. There is an email. You are the first-named on the email
 19 string but lots of other people are on it. It's from
 20 Mr Southwell.
 21 A. Yes.
 22 Q. And it's about TAPS, isn't it?
 23 A. Yes, it is.
 24 Q. Just to be clear on TAPS, is it right that there were
 25 different levels of TAPS?

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1 A. Yes.
 2 Q. You could be on the sort of long TAPS list, the long
 3 list, but you might not necessarily have the whole TAPS
 4 scheme directed at you. So you could come down from
 5 one level of TAPS to another?
 6 A. Yes, that is correct. What TAPS was, it stands for
 7 "Turn Around Practices", and there are a small number of
 8 stores -- I can't remember without looking but probably
 9 about 10 or 12, I would imagine, maybe 15, and we had
 10 what we called full TAPS, which was those stores that
 11 had an overdraft or a level of borrowings that we were
 12 really uncomfortable with. And then you had TAPS Watch,
 13 and TAPS Watch was either you were coming out of TAPS,
 14 ie your situation was improving, or, alternatively, you
 15 were potentially going into TAPS, and that's what TAPS
 16 Watch was, and the reason my name is at the top of it is
 17 because part of my role is to manage that group of
 18 stores -- sorry, not manage them, that's the wrong word:
 19 support that group of stores with RDC and RPC resource.
 20 So I took a particular interest in TAPS stores. It was
 21 one of my measures of -- for my role.
 22 Q. Okay. So, looking at this then, the fourth paragraph
 23 down it has:
 24 "I have mentioned in the last couple of monthly
 25 emails ..."

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1 Do you see that?
 2 A. Yes.
 3 Q. Between the two hole punches:
 4 "... that Dartford was beginning to show the strain
 5 of the recent partner/disciplinary issues --
 6 A. Yes.
 7 Q. -- and this has now reached the kind of level where
 8 formal action is required, so it is added to the list."
 9 A. Yes.
 10 Q. Is that the list of TAPS Watch or is that moved from
 11 TAPS Watch --
 12 A. We only had --
 13 Q. -- up to TAPS?
 14 A. We had only one list and it was TAPS, and then there's a
 15 different section saying "TAPS Watch" below it.
 16 Q. I see.
 17 A. So there wasn't two lists. There was just one list --
 18 Q. Yes.
 19 A. -- and then underneath it was TAPS Watch.
 20 Q. Okay.
 21 A. And I have probably give you the wrong impression in
 22 terms of TAPS. I provided the support, but the person
 23 who drove it, who was responsible for it, was
 24 John Southwell, who was -- he was for the bank. He ran
 25 the banking process, so he basically made decisions

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1 based on, you know, the overdraft situation, and my job
 2 was, once I got that information, to make sure we put as
 3 much support and help into the partners as we possibly
 4 could, to try and turn that situation around.
 5 MR JUSTICE NUGEE: And on average how many stores would be
 6 full TAPS and how many on the watch list?
 7 A. It was probably about five or six on full TAPS and
 8 probably about a similar amount on TAPS Watch. We are
 9 quite fortunate as a business that, particularly at this
 10 time, most of our stores perform really well, unlike
 11 most retailers, who maybe have 10/15 per cent of their
 12 estate on some sort of TAPS thing.
 13 It's just that that's how the joint venture partner
 14 works. It's a successful business model, and, provided
 15 the partners are doing the right things, there is no
 16 reason why they should appear on the TAPS thing.
 17 I will give you a bit of background, and again
 18 apologies if I'm taking up too much time.
 19 Sometimes they are on TAPS because they are a new
 20 store which has opened. So it's not necessarily that
 21 there is a problem in the store; it maybe just that it's
 22 a new store that's not hitting its targets. So, you
 23 know, the reasons for TAPS can be very varied.
 24 Sorry.
 25 MR STUART: It's all right. Go to page 1177. {E/281/1177}

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1 We see the next of your day book entries. We must at
 2 this stage be in January 2008. 1177.
 3 A. Yes.
 4 Q. And we see, just above the first hole punch:
 5 "Derek ..."
 6 So you are obviously having another conversation
 7 with Derek Dyson. Would be that fair?
 8 A. That would be fair.
 9 Q. And the first thing that you mention is Dave Clark's
 10 induction. Is that right?
 11 A. That's it.
 12 Q. He has joined the organisation, and then, four items
 13 down:
 14 "Dominic-Dartford."
 15 I don't know, would that be a conversation with
 16 Derek Dyson about Dartford or would that be a new
 17 conversation; you are now speaking to Dominic?
 18 A. I don't know.
 19 Q. It says -- this is your writing, I think:
 20 "Dartford. (Plan) -- Action."
 21 What does that mean? Was it plan of action?
 22 A. No, that would be find a new partner.
 23 Q. Find a new partner?
 24 A. Yes, yes. The way it would work would be Dominic and
 25 Chris Howarth have people who they would have on

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1 their -- either their database or they would know, the
2 directors had expressed an interest, it was
3 stage 1-approved. So I would be saying to Dominic,
4 "What is your plan for Dartford? What partnership
5 structure are we going to put in place there?"
6 Q. At the time the man who seemed to be managing Dartford
7 from SOG's point of view was Mr Lunn, wasn't it, in the
8 shared venture operation?
9 A. At that moment in time it was.
10 Q. Yes, because you were still the owners of the shares,
11 the A shares?
12 A. Yes.
13 Q. So were you discussing matters with Mr Lunn, or were you
14 getting Dominic to do that or ...?
15 A. Well, I wasn't getting anybody to do it. You know?
16 I was making -- I wasn't involved in that at all.
17 Q. You weren't getting involved at all?
18 A. Not at this stage.
19 Q. You were obviously talking to somebody about something?
20 A. Yes.
21 Q. Dartford-(Plan)- Action."
22 A. Yes, I was talking to Dominic: "What partnership
23 structure are we going to put in there."
24 Q. What was your conclusion? What partnership structure
25 are you going to put in there?

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1 A. Well, when I say partnership structure, we would always
2 divert to the proven model, one retailer, one optom: an
3 optometrist who tests eyes and a thing. So who do we
4 have who can do the retail bit, and by "retail", it
5 means DO as well. It's just a -- you know, the
6 two roles are the same role.
7 Q. Okay. Did you yourself or Dominic within your team have
8 any role to play in actually managing Dartford at that
9 time?
10 A. No.
11 Q. No. Okay. Fine.
12 I think we can then flick on to 1256 of your day
13 book entry. {E/332/1256}
14 A. 1256, yes.
15 Q. Do you have it?
16 A. Yes.
17 Q. Do you see the item -- just next to the first hole
18 punch, "CK"?
19 A. Yes.
20 Q. Does that say:
21 "CK -- accurate notes ... "
22 A. Yes, it does:
23 Q. "... briefing - Dartford - Action."
24 What's that about? What's "CK"?
25 A. CK is -- we have, my Lord, the RDC structure, which is

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1 the almost regional manager level thing. Below that we
2 have RPC, which is the retail performance consultants,
3 and one of them was a young lady called Cheryl Keedy,
4 who had just been promoted from an RDM up to an RPC, and
5 Cheryl Keedy was a -- going to take the notes in one of
6 the meetings with Dartford, and I'm a bit of a stickler
7 about notes, and it was to have a conversation with her
8 and go, you know, "Make sure you take accurate notes.
9 Listen to the gist of the conversation. Make sure you
10 capture it," et cetera. And that's what it would have
11 referred to. You know, I look out for all the people
12 who work for me.
13 Q. Okay. This is April 2008. Do you see?
14 A. Yes.
15 Q. The date of this. Were you aware of the negotiations
16 that were going on with Mr Singh?
17 A. I may have been aware. I wasn't involved in it.
18 Q. Okay. Surely it was an important part of the process,
19 if Mr Singh had been decided upon?
20 A. Yes.
21 Q. He is now the chosen one?
22 A. Yes.
23 Q. He is going to get the shares, he is going to be
24 appointed. How did that come about?
25 A. I believe it was Mr Ryan. That's what Mr Ryan's job is.

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1 Q. Mr Ryan made the decision?
2 A. No, Mr Ryan does the business transfer thing, so he gets
3 new partners in.
4 Q. Yes, but we have seen your previous notes and matters
5 and how your side of things is involved in this part of
6 it. You must have been part of the decision to appoint
7 Mr Singh?
8 A. I don't -- I know it sounds strange: I don't honestly
9 believe I was part of the decision.
10 Q. Okay, so was it --
11 A. I may have been asked -- I may have been asked my
12 opinion and I can't recall -- I can't recall the
13 conversation relating to that, but I definitely wasn't
14 part of the decision.
15 Q. Okay. Would it be Mr Dyson who would have the ultimate
16 decision?
17 A. I don't know. It may be Mr Dyson, it may be Mr Perkins.
18 I don't know.
19 Q. Probably Mr Dyson or Mr Perkins because somebody has to
20 make this decision in the best interests of Dartford,
21 haven't they?
22 A. Yes.
23 Q. That's your evidence, that you --
24 A. Yes.
25 Q. -- must always take these matters in the best

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1 interests --
 2 A. Yes.
 3 Q. -- of the store company?
 4 A. Yes. The thing with finding new partners is there isn't
 5 a waft of partners for any opportunity. Usually one,
 6 maybe two people. Because people don't tend to move
 7 around that much.
 8 Q. But you already knew of a number of people who were
 9 interested: Bexleyheath, Gravesend?
 10 A. No, no, it doesn't work like that. It doesn't work like
 11 that. Because Gravesend and Bexleyheath have their own
 12 directors. They would have to sell their shares in
 13 order to become a partner within --
 14 Q. So does Mr Singh. He is in Grays.
 15 A. Yes, yes, but they may have wanted to do that but they
 16 may not have done. I don't know.
 17 Q. I thought you were aware of that.
 18 A. No, I don't know what the motives for the Gravesend
 19 partners were. They may have wanted to -- and again I'm
 20 surmising. They may have wanted to take on Dartford as
 21 a second store. Again that wouldn't be what was right
 22 for us because what we want is a retailer to drive the
 23 customer service experience and a clinician to drive the
 24 clinical experience.
 25 Q. Anyway, your evidence is you were not involved in the

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1 decision and you don't know who it was but it could have
 2 been Mr Dyson and/or Mr Perkins, if anybody took the
 3 decision?
 4 A. Yes.
 5 Q. Is that right? Okay. Page 1365 {E/362/1365}. Almost
 6 at the back of this bundle.
 7 A. Yes.
 8 Q. Do you have it?
 9 A. Yes, I do.
 10 Q. TAPS has moved on now. We are into June 2008.
 11 A. Yes.
 12 Q. Fourth paragraph down:
 13 "[Blank] is, I understand, changing ownership so
 14 I feel a bit more comfortable with that one now.
 15 Dartford is progressing well."
 16 Is that right?
 17 A. It appears to be, yes.
 18 Q. Do you recall, was Dartford now on the watch list or was
 19 it full TAPS?
 20 A. I don't know.
 21 Q. You don't? All right, fine. You can put away bundle
 22 E5?
 23 A. Thank you.
 24 Q. Can you be passed E6. Page 15 --
 25 A. Sorry, just bear with me. I seem to have a file

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1 malfunction. (Pause)
 2 E6?
 3 Q. E6. Just see where we are here. We are in June 2008;
 4 okay?
 5 A. Yes.
 6 Q. And there comes a point where there are various
 7 meetings. It's all to do with Mr Singh being taken on.
 8 A. Yes. Show me where.
 9 Q. I'll come in a moment to the document --
 10 A. All right. Okay.
 11 Q. -- I want to take you to. I wanted to ask you whether
 12 you played any part in the, shall I say, board
 13 discussions regarding Ms Birdi's objections to Mr Singh?
 14 A. Absolutely not.
 15 Q. None at all? Okay, fine.
 16 You are not on the SOG board, are you?
 17 A. No, I'm not.
 18 Q. You work for SOS, the UK --
 19 A. Yes.
 20 Q. That's right, isn't it?
 21 A. Yes.
 22 Q. All of this stuff we are talking about is in your
 23 capacity as director of SOS?
 24 A. Yes.
 25 Q. Yes.

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1 A. Well, no --
 2 Q. Sorry, no, tell his Lordship what --
 3 A. Yes. Sorry, it doesn't quite work like that. SOS is
 4 the company that employees people who are basically in
 5 the UK. So the board that I was referring to before,
 6 which -- there is a -- sorry, I'll go backwards. So
 7 I work for SOS --
 8 MR JUSTICE NUGEE: You are based in Skelmersdale?
 9 A. I'm based in Skelmersdale.
 10 MR JUSTICE NUGEE: Which is in Lancashire?
 11 A. Which is in Lancashire.
 12 MR JUSTICE NUGEE: So you are employed by SOS?
 13 A. I'm employed by SOS, as are --
 14 MR JUSTICE NUGEE: And are you a director of the board of
 15 directors of SOS?
 16 A. No, I'll come to that in a second.
 17 MR JUSTICE NUGEE: Right.
 18 A. The vast majority of people are employed by SOS. Like,
 19 the RDCs are all field-based, the RPCs, et cetera. So
 20 all the field teams are SOS employees.
 21 The SOG main board has people who are based in
 22 Guernsey, and they tend to be the Derek Dysons and the
 23 Pauline Bests and the Paul Fusesys, et cetera, and then
 24 there is an operating board for the UK, which was the
 25 one I was referring to before, which is -- has members

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1 of the main board on it but it also has people who are
2 SOS-based, so people like myself.
3 So we sit on the UK ops board, it's called. It's
4 like an executive board, you know; it deals with the
5 day-to-day stuff.
6 MR JUSTICE NUGEE: But it's not the board of directors in
7 a corporate sense?
8 A. No, not at all.
9 MR JUSTICE NUGEE: Thank you.
10 A. Not at all.
11 MR STUART: And you are saying you just weren't involved in
12 any discussion about Dartford, Mr Singh, at this time,
13 with anybody who was on that board, like Mr Dyson -- on
14 the actual board: Mr Dysons Mr Perkins? It didn't
15 involve you at that time?
16 A. Not directly, no.
17 Q. Nor indirectly?
18 A. Well, indirectly -- I probably had an idea what was
19 happening but nobody asked me my decisions or my input.
20 Q. Okay. So would you go to 1549. We can just pick up the
21 TAPS position. {E/417/1549}
22 A. Yes.
23 Q. I think it's the bottom paragraph:
24 "[Something] and [something] have been removed from
25 the formal reporting cycle and Dartford moves down to
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1 the Post-watch category in view of the progress now
2 being seen following the appointment of a new partner."
3 A. Okay.
4 Q. So that's by 1 August?
5 A. Yes.
6 Q. By 1 August they are moved down from full TAPS down
7 to -- I don't know if it's even watch or "post watch",
8 as it's called. Is that the sort of --
9 A. Yes, it's a watch --
10 Q. -- really the minimal level of --
11 A. Well, the minimal level is not to be on there at all.
12 Q. Of course. If you are on TAPS at all, it's now the
13 minimal level?
14 A. Yes, it is the minimal level.
15 Q. That's happened by 1 August in circumstances where
16 Mr Singh -- I think he has only been there about a week.
17 A. Yes.
18 Q. So merely finding Mr Singh and putting him in, before he
19 has even had a chance to do anything, is sufficient to
20 get this store down to the lowest level of TAPS. Is
21 that fair?
22 A. No, I wouldn't say that was fair. I don't think
23 Mr Singh's appointment and it moving down -- there has
24 been obviously been progress that has been made in the
25 last six months.

1 Q. That has all been done by Ms Birdi?
2 A. Well, Ms Birdi and the support team.
3 Q. And your support team?
4 A. And they've been -- they'd have been in there.
5 Q. Absolutely.
6 A. Yes.
7 Q. So you and she have turned the store around in terms
8 of --
9 A. No, I haven't.
10 Q. No?
11 A. No, I haven't, and again, while it's in the support
12 phase, that is under shared venture.
13 Q. Yes.
14 A. So they are the ones who are supporting the store.
15 Q. So Mr Lunn and his shared venture team --
16 A. Mr Lunn and his team.
17 Q. -- and Ms Birdi --
18 A. And Ms Birdi.
19 Q. -- who have been in the store for --
20 A. Been in the store --
21 Q. -- a good six months.
22 A. -- and the situation has improved.
23 Q. Sufficiently to move you down to this lowest level?
24 A. Yes.
25 Q. And so the reference to progress now being seen
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1 following the appointment of a new partner, that's
2 perhaps a little oversimplification of things --
3 A. I would --
4 Q. -- by Mr Southwell since the new partner --
5 A. Yes.
6 Q. -- has only been in store for --
7 A. I would --
8 Q. -- a week.
9 A. I would definitely think it was.
10 Q. Yes, that's fair enough.
11 A. If it was that simple, I would --
12 Q. No, no, that's fine. Then page 1553 {E/419/1553}.
13 A. Yes.
14 Q. Just to get the date of it, go back to the previous
15 document, 1 August. So it must be around August. We
16 see a reference to 18 August, just above the first hole
17 punch?
18 A. Yes.
19 Q. And your entry is:
20 "Dartford ..."
21 At the top. Do you see, "Dartford"?
22 A. Yes.
23 Q. "... joint venture -- Michael McGonagle -- action (Drive
24 business forward)."
25 Does that say?

1 A. That does say that, yes.
 2 Q. So what was the plan of action at this point then?
 3 A. I think at this moment in time Dartford was currently
 4 still a shared venture or under shared venture
 5 management, which was Michael McGonagle. But,
 6 obviously, we had got joint venture partners in there
 7 now, so Mr Singh and Ms Birdi, and they would now go
 8 away from shared venture into the joint venture thing,
 9 ie the normal -- you know, 90 per cent of our stores are
 10 joint venture or whatever the percentage is, but the
 11 majority. So it's pretty much business as usual.
 12 MR STUART: My Lord, I see the time. I'm about to move on
 13 to an important little run of emails just at the end of
 14 this, about going native. So rather than start, can
 15 I start in the morning?
 16 MR JUSTICE NUGEE: Yes. We will resume again at 10.30
 17 tomorrow morning.
 18 I'll remind you again, Mr Raines, not to speak to
 19 anybody overnight about your evidence or the case.
 20 A. I promise.
 21 MR JUSTICE NUGEE: 10.30 tomorrow.
 22 (4.17 pm)
 23 (The court adjourned until 10.30 am the following day)
 24
 25

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