

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 14

November 11, 2014

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1 Tuesday, 11 November 2014
 2 (10.30 am)
 3 MR JUSTICE NUGEE: Before we resume, today being
 4 11 November, there will be an announcement at 11 o'clock
 5 and the proceedings will be interrupted for two minutes,
 6 during which I will stand and then we will resume after
 7 the two-minute silence.
 8 MR STUART: My Lord, thank you. Just whilst we are on,
 9 shall we say, timetable matters --
 10 MR JUSTICE NUGEE: Yes.
 11 MR STUART: Can I pass up the latest iteration that Mr Potts
 12 and I have got to. We are getting close to the end,
 13 obviously, in terms of the number of witnesses.
 14 MR JUSTICE NUGEE: Yes, a constantly receding target.
 15 MR STUART: Receding, yes, slightly. We are obviously on
 16 day 14 today.
 17 MR JUSTICE NUGEE: Yes.
 18 MR STUART: And the evidence that's left is Mr Raines to
 19 conclusion, then Mr Rowe.
 20 MR JUSTICE NUGEE: Yes.
 21 MR STUART: Who I have got down for this afternoon; then
 22 Mr Clark, who I have got down for tomorrow morning;
 23 Ms McIntyre, who goes to some issues but a limited
 24 number of issues, and Mr Howarth, who is very, very
 25 short. He is the one-page statement. That, at the

1

1 moment, is where we are.
 2 MR JUSTICE NUGEE: Right, thank you.
 3 MR POTTS: I was going to say just -- obviously we have made
 4 some proposals in relation to --
 5 MR JUSTICE NUGEE: Submissions, I can see that.
 6 MR POTTS: -- submissions.
 7 MR JUSTICE NUGEE: Those at the moment look sensible.
 8 MR POTTS: But we will see how we go.
 9 There is just one other matter. Your Lordship asked
 10 to be kept up-to-date on the question of meta data and
 11 expert evidence.
 12 MR JUSTICE NUGEE: As I say, if you and Mr Stuart are agreed
 13 what the evidence reveals --
 14 MR POTTS: We are, my Lord. Can I just give -- for your
 15 Lordship's note.
 16 MR JUSTICE NUGEE: Yes.
 17 MR POTTS: Volume A/312 and 313, there are some notices to
 18 admit and they are in relation to the two transcripts of
 19 Mr Patel's interviews.
 20 MR JUSTICE NUGEE: These are new notices?
 21 MR POTTS: New notices. I just draw it to your Lordship's
 22 attention. I think the particular point, my Lord, is,
 23 if you remember, we were looking at the key data.
 24 MR JUSTICE NUGEE: Yes.
 25 MR POTTS: I think what is new or may be somewhat clearer is

2

1 that that is the last date modified. That equates to
 2 when the file was last modified. So that was the matter
 3 which I was asking about and that is admitted, that the
 4 key data is the last dates modified for those two
 5 documents. I don't know if that makes it any clearer or
 6 less.
 7 MR JUSTICE NUGEE: I may have to revisit this because
 8 I don't recognise those times. But let's not --
 9 MR POTTS: The times, my Lord, you can see the first one,
 10 the 9.48. We were dealing with when the interview had
 11 concluded.
 12 MR JUSTICE NUGEE: I see, I'm looking at the wrong notices,
 13 I'm sorry.
 14 MR POTTS: Ah. 312 is the first interview and you will see,
 15 "Last modified 9.48", which we looked at on a different
 16 document as key data.
 17 MR JUSTICE NUGEE: Yes. I remember.
 18 MR POTTS: It may have been somewhat unclear as to what key
 19 data meant. Hopefully that's clarified and, again, in
 20 relation to the later one at 3.13, it's 11.21, the last
 21 modified.
 22 MR JUSTICE NUGEE: Yes. Thank you. That's very helpful.
 23 Thank you very much.
 24 MR POTTS: My Lord, yes.
 25 MR JUSTICE NUGEE: Yes, Mr Stuart.

3

1 MR MARK RAINES (continued)
 2 Cross-examination by MR STUART (continued)
 3 MR STUART: Mr Raines, just before we move on I just need to
 4 tidy up a couple of points from yesterday, very briefly,
 5 on the issue regarding Mr Rehman and his work on the
 6 online software booking system.
 7 A. Yes.
 8 Q. And you gave evidence yesterday that you thought you
 9 might have been on the board, a board that would have
 10 had to consider such --
 11 A. Yes.
 12 Q. And therefore since you don't recall being notified of
 13 the existence of this --
 14 A. Yes.
 15 Q. -- work, you weren't prepared to accept that SOG were
 16 notified of the existence of the work at the time or
 17 prior to --
 18 A. Yes.
 19 Q. -- prior to the disciplinary process starting
 20 in March 2007.
 21 I do need to take you to just two points therefore.
 22 In reverse order: would you be shown E4, page 886, which
 23 is just a page from your disciplinary meeting with
 24 Ms Birdi -- {E/214.2/886}
 25 A. Yes.

4

1 Q. -- of 20 September 2007. If you go to page 879
2 {E/214.2/879} you will see, to put the context of it,
3 this is your disciplinary hearing. Do you recall it?
4 A. Yes.
5 Q. At 886, just above the first hole punch, you deal with
6 this question of Mushtaq building the website. Do you
7 see? Just above the first hole punch on 886, it says:
8 {E/214.2/886}
9 "MR: Not just minor works also Mushtaq building the
10 website as JVP agreement not day to day."
11 Do you see that?
12 A. Yes.
13 Q. "MR" in this case is you. Ms Birdi said:
14 "We went to meetings - think of ways to push our
15 business forward - M came up with idea of on line
16 booking - we invited M to present - we thought a great
17 idea - we told M how we wanted it to work."
18 "M" in these circumstances is Mushtaq, obviously.
19 A. Yes.
20 Q. "Commissioned to do it I contacted Michel Khan..."
21 Do you know Michel Khan?
22 A. He was the IT director at that time.
23 Q. That's right, for SOG?
24 A. Yes.
25 Q. "Commissioned to do it I contact Michel Khan face to

5

1 face. Mushtaq phoned (MK) ..."
2 "MK" is obviously now Michel Khan:
3 "... and invited to present to MK. MK bogged down
4 with SOG issues. In the meantime we tested it - SOG
5 phoned and told us to take away then SOG said keep it
6 going. I said no leave it off and speak to Michel.
7 Then got bogged down to do refit and then it just wasn't
8 progressed."
9 That's what Ms Birdi told you about --
10 A. Yes.
11 Q. -- at your disciplinary hearing. Then, you can put away
12 E4.
13 A. Yes.
14 Q. And can you just be shown E3?
15 A. Thank you.
16 Q. E3, page 617, {E/152/617} and again, just to put this
17 into context for you, this is Mr Hamilton's
18 investigatory meeting with Ms Birdi?
19 A. Yes.
20 Q. It starts on page 612 {E/152/612} so you can see what it
21 is. So 617. "NH "is Mr Hamilton and you can see, again,
22 just above the first hole punch on 617.
23 A. Yes.
24 Q. Mr Hamilton says:
25 "You do realise that you are obliged to inform SOG

6

1 of any agreement including expenditure of such
2 a significant sum.
3 "SB: we spoke to Michel Khan (MK). MR was an
4 employee and we paid for the work he had done.
5 "NH: You agreed in advance what you would pay him?
6 But you didn't think in necessary to inform SOG.
7 "SB: He was an employee and we paid him for the
8 work he did."
9 Then there was a break and then Mr Hamilton said:
10 "NH: Okay what was the timing, I believe it was you
11 who approached MK..."
12 That would be Mr Khan:
13 "... about MR ..."
14 That would be Mr Rehman:
15 "... doing the work."
16 "SB: It was between 2003 or 2004.
17 "NH: MK recollection..."
18 So that's Mr Khan's recollection; do you see?
19 A. Yes.
20 Q. "... is that his impression at the time because it was
21 an internet based system it would not be compatible with
22 SOCRATES."
23 A. Yes.
24 Q. Do you see?
25 A. Yes.

7

1 Q. And then:
2 "SB: My understanding MR ..."
3 That's Mr Rehman:
4 "... spoke to MK initially he wasn't too sure but
5 asked him to show it to his team I don't know what the
6 conversation was."
7 And it goes on and on. Do you see that?
8 A. Yes, I do.
9 Q. So, do you accept that it appears clear that Mr Khan,
10 the IT director of SOG, was aware that Mr Rehman was
11 doing work at the time that Mr Rehman was doing the
12 work?
13 A. It would appear so.
14 Q. And therefore the fact that you personally, as you said
15 yesterday, hadn't heard of it at a board meeting
16 wouldn't necessarily prove anything?
17 A. No.
18 Q. Thank you. You can put away E3 as well.
19 Right. Do you have your witness statement?
20 A. I do.
21 Q. You can put away E4 -- sorry, did I just say that? E3
22 and E4 can go away now.
23 A. Thank you.
24 Q. We were in your witness statement in the section that
25 started on page 158 of the bundle, under the heading,

8

1 "Mr Singh and Ms Birdi's respective roles"? {C/13/158}

2 A. Yes.

3 Q. Do you recall?

4 A. Yes.

5 Q. You are dealing here largely with the question of the

6 friction that had arisen, as you call it -- you use the

7 word "friction" in paragraph 33 -- the friction that had

8 arisen between them?

9 A. Yes.

10 Q. In these paragraphs 33 {C/13/159} through to, well,

11 initially, 41, {C/13/161} you fairly clearly place the

12 blame for that friction upon Ms Birdi, don't you?

13 A. I don't believe I do.

14 Q. Okay. Let me just take you to some of the things you

15 say. Paragraph 34. Do you see 34? {C/13/159}

16 A. I do.

17 Q. You say that Mr Rowe met with Ms Birdi on

18 12 September 2008. This is the crucial meeting, isn't

19 it?

20 A. Yes.

21 Q. And if you could have bundle E6?

22 A. Yes.

23 Q. The immediate background to that meeting, I think we can

24 pick up at page 1595. {E/446/1595}

25 A. Okay.

1 Q. 1595?

2 A. Yes.

3 Q. Do you see that little --

4 A. I do.

5 Q. -- run of emails? So this is on 19 August 2008.

6 A. Yes.

7 Q. About three weeks before the meeting. You are talking

8 to Mr Rowe by email?

9 A. Yes.

10 Q. And I think the sequence of the emails, we have to start

11 at page 1596, {E/446/1596} don't we, because we are in

12 reverse order?

13 A. That's it.

14 Q. And it starts with you writing to Mr Savill. Do you

15 see?

16 A. Yes.

17 Q. "Hi Kam is now in the store - can you please arrange to

18 visit the store three times (as part of new partner

19 support). There is a concern that Kam may go 'native'

20 once in the store - I am sure he won't but we need to

21 guard against it."

22 That's an odd way of putting things, isn't it?

23 A. Not in the language that I use.

24 Q. Right. If you go to your witness statement?

25 A. Yes.

1 Q. Paragraph 33. {C/13/159}

2 A. Yes.

3 Q. Which is where you appear to be trying to suggest is the

4 build-up to this meeting -- this is the meeting at

5 which -- rather than Dominic Savill, it is Mr Rowe who

6 eventually gets the job?

7 A. Yes, I was mistaken. I thought Dartford was in Carlton,

8 not Meridian East.

9 Q. That's fine.

10 A. Yes.

11 Q. But we know this is the build-up to Mr Rowe's meetings

12 with them?

13 A. Yes.

14 Q. And at paragraph 33, you explain it's common practice

15 for the retail support team to have meetings?

16 A. Yes.

17 Q. And you say: {C/13/159}

18 "Given my previous experience in dealing with

19 Ms Birdi at the disciplinary hearing in 2007, I was

20 concerned that there might be friction between her and

21 Mr Singh..."

22 A. Yes.

23 Q. "... or indeed with any new director introduced to the

24 Store. I was therefore very interested to hear how

25 these facilitation meetings went."

1 A. Yes.

2 Q. That's not quite right, is it, if we look at your actual

3 email at the actual time. You weren't concerned, as it

4 were, that Mr Singh and Ms Birdi were not going to hit

5 it off; you were actually concerned that Mr Singh and

6 Ms Birdi were going to hit it off and he was going to go

7 "native"?

8 A. That is absolutely not the case. I know why I wrote

9 this and I know what was in my head at the time of

10 writing this and I'm absolutely clear about it. At the

11 time -- if I relate back to 2007, Ms Birdi was

12 particularly challenging in an evasive -- in 2007 at the

13 disciplinary hearing. That was the only time that

14 I basically encountered her, but --

15 Q. Evasive? I thought you said she had admitted things?

16 A. No, if you check the thing, I found her quite difficult

17 during the meeting.

18 Q. Yes, but you purported to make findings against her on

19 the basis that she had admitted certain --

20 A. No, she admitted one thing.

21 Q. Only one?

22 A. She admitted the minor works.

23 Q. Yes?

24 A. The other issues, she was evasive, and, again, that was

25 in my disciplinary hearing.

1 Q. Okay.

2 A. In terms of -- so it was obvious she was a challenging

3 individual. I was obviously aware at that time she had

4 also objected to Kam Singh's appointment. Again I was

5 aware of that and in my mind at that time, Swarandeeep

6 seemed to be really obsessed with the issues dating back

7 to 2007, and what I didn't want Kam to do was to get

8 caught up in Swarandeeep's agenda, whatever her agenda

9 was, and that was basically it.

10 What I wanted him to do was concentrate on the

11 store, concentrate on the store team, make sure the

12 store team were delivering great customer service and

13 just drive that business forward because it had

14 financial difficulties; it was -- it wasn't where it

15 needed to be, both in terms of service levels and also

16 performance. So that was what I meant by that comment.

17 Q. But, Mr Raines, going native doesn't mean that, does it?

18 A. My understanding of it -- and again, I have not checked

19 a dictionary -- but it is when somebody adapts to the

20 environment. So if the environment was where Swarandeeep

21 was continually talking about issues relating to 2007,

22 that would become a distraction for Mr Singh. That was

23 what --

24 Q. I'm going to suggest to you that the meaning is the

25 obvious meaning and the usual meaning, namely that you

1 believed that you -- that is SOG and Kam Singh -- had an

2 understanding between the two of you?

3 A. You couldn't be further from the truth. You honestly

4 couldn't. The thing -- the thing around this is and why

5 we do this new partner support is that when we put

6 partners together, they sometimes come from different

7 backgrounds. They have different objectives. So what

8 we try to do is introduce the retail support team member

9 who will then sit down with them and actually talk about

10 their objectives for the business. And the business is

11 the focus. It is how can we improve the business; how

12 can your respective roles drive that business forward.

13 And that's why we do the new store partner PSP.

14 We have partners who don't get on in the business

15 and we have those today, but they run successful

16 businesses because they focus on the business itself.

17 That becomes their sole focus, not issues that relate

18 back to previous history. And that's what I meant by

19 that comment.

20 Q. I suggest to you that you were concerned, as you say,

21 that Mr Singh might not pursue the agenda that SOG were

22 wishing to pursue and might change his mind and might

23 change his attitude towards Ms Birdi once he was in

24 store?

25 A. There was no agenda. Nothing would have made me happier

1 than this partnership to have worked. I was the one in

2 2007 who gave her a second chance. I wanted this

3 partnership to work. You know. I'm quite clear on what

4 my motives were at that time.

5 Q. We can see your motives, I think, from paragraph 34.

6 Paragraph 34. Do you have that? {C/13/159}

7 A. Yes.

8 Q. Mr Rowe has reported to you that there is an underlying

9 tension between the partners?

10 A. Yes.

11 Q. And your immediate reaction to that, it appears from the

12 way you put this in your witness statement, is:

13 "This was not a surprise to me since Ms Birdi had

14 made it clear that she wished for her husband,

15 Mr Rehman, to replace Mr Patel..."

16 You are going back to matters in 2007, aren't you?

17 A. Yes.

18 Q. "... as her partner in the Store and also she had voted

19 against the appointment of Mr Singh."

20 That was back in March 2008?

21 A. Yes.

22 Q. "Therefore, I was aware that there may be some initial

23 difficulties."

24 A. Yes.

25 Q. So you are blaming Ms Birdi's motives for the initial

1 difficulties in the relationship?

2 A. No, what I'm saying there is there is baggage in this

3 relationship.

4 Q. You don't mention the baggage of Mr Singh?

5 A. There is baggage in this relationship. I believe

6 Mr Singh went into this business wanting the business to

7 be a success.

8 Q. Yes?

9 A. And, you know --

10 Q. But A success for whom?

11 A. A success for himself and Swarandeeep.

12 Q. Or a success for himself and his family member that he

13 was planning to put in?

14 A. No, a success for him and Swarandeeep. Swarandeeep is the

15 partner. I wanted that partnership to succeed.

16 Q. You keep saying that. Could you be passed bundle E5

17 again, page 1262.

18 A. Sorry, what was the --

19 Q. 1262. {E/337/1262}

20 A. Yes.

21 Q. You see, this whole section of your witness statement is

22 about Mr Singh's and Ms Birdi's respective roles and

23 their relationship?

24 A. Yes.

25 Q. We can see what Mr Singh's view of his role and

1 relationship were, potential relationship were, at
 2 page 1262, can't we?
 3 A. Okay.
 4 Q. This is Mr McGonagle, who was -- of course, back at that
 5 time, April 2008, it was a shared venture, but it was
 6 about to become Mr Singh's joint venture. Do you
 7 recall?
 8 A. Yes, I do recall.
 9 Q. And so Mr McGonagle said: {E/337/1262}
 10 "I visited Dartford to discuss the structure and
 11 roles/responsibilities when or if Kam joins the team."
 12 So obviously that's what --
 13 A. Can you just identify that to me?
 14 Q. Right at the top. I'm starting from the beginning:
 15 "I visited Dartford --"
 16 A. Oh, yes.
 17 Q. "-- to discuss the roles and/or responsibilities when or
 18 if Kam joins the team. SB is happy to work five days,
 19 four of them testing. She wants a day to be on the shop
 20 floor working with the team and engaging with customers.
 21 She feels she needs to be aware of the retail side of
 22 the business and says she can add value, be more aware
 23 and informed and also more confident when she is on her
 24 due to holidays, sickness et cetera. SB also commented
 25 that she was criticised during the disciplinary

17

1 proceedings for not being aware of the retail side of
 2 the business."
 3 A. Yes.
 4 Q. That was you, wasn't it? Those were your disciplinary
 5 proceedings, where you had disciplined her for her
 6 failings in relation to what Mr Patel had been up to?
 7 A. That's her interpretation of what I had said. Where
 8 I was in the disciplinary hearing, what I referred to
 9 was she should be more aware of things like the
 10 contracts, in terms of employment. That's not
 11 necessarily, "Get on the shop floor and drive -- you
 12 know, drive the retail side of the business".
 13 Q. No, but --
 14 A. Although -- if I may finish -- I do support the notion
 15 that partners should be -- have an involvement in the
 16 retail side of the business. Absolutely.
 17 Q. Yes. You yourself, you are an OO, aren't you?
 18 A. I am an optician, yes.
 19 Q. And presumably in some or all of your three stores, you
 20 are the OO director?
 21 A. Yes.
 22 Q. You yourself don't actually test in those stores four
 23 days a week?
 24 A. No, I don't.
 25 Q. You wouldn't have enough days in the week to do that and

18

1 you presumably involve yourself in all aspects of the
 2 business?
 3 A. I do.
 4 Q. So it was perfectly reasonable of her to have that
 5 desire --
 6 A. Absolutely.
 7 Q. -- especially considering the fact that she had been
 8 disciplined, hadn't she? She was on a final written
 9 warning?
 10 A. Yes.
 11 Q. I know you say that's more the administrative side of
 12 her responsibilities as a director --
 13 A. Yes.
 14 Q. -- that you were dealing with. And so there are sort of
 15 three aspects -- is that what you are saying? You are
 16 saying there is the optical testing?
 17 A. The clinical side, yes.
 18 Q. There is the shop floor, customers, teamwork, amongst
 19 the team of staff?
 20 A. Yes.
 21 Q. And there is the administrative side --
 22 A. Yes.
 23 Q. -- covering everything from contracts of employment
 24 through to finance?
 25 A. Yes.

19

1 Q. And a proper OO has to do all of those things. Mainly
 2 optical testing, that's her main day-to-day activity;
 3 but the other two -- a bit of the other two. That's how
 4 you see --
 5 A. Yes, as a director of the business, I would expect her
 6 to have an overview of all -- an involvement in all
 7 three areas.
 8 Q. Yes. And she is right, isn't she, that on days where
 9 Mr Singh -- for example, if he took his holidays. He
 10 would have had, what, is it five or six weeks holiday
 11 a year?
 12 A. Yes.
 13 Q. During those periods she would be expected to take up
 14 the reins?
 15 A. If that's what they agreed between them, yes.
 16 Q. All right. So that's what she told Mr McGonagle back
 17 in April 2008?
 18 A. Yes.
 19 Q. Do you see that?
 20 A. Yes.
 21 Q. And she said she confirmed she would test on the fifth
 22 day if it was urgent, sickness, et cetera?
 23 A. Yes.
 24 Q. She believes she is owed money. She believes that.
 25 Now, Kam. So he is also speaking to Kam:

20

1 "Kam is of the view that SB should test five days to
 2 reduce SEO costs."
 3 Do you see?
 4 A. Yes.
 5 Q. "He did initially agree that four days would be
 6 acceptable. There is an opportunity for Kam to test on
 7 SB's 'retail day' which will keep Kam involved in the
 8 clinical aspect of the business and assist his CET
 9 et cetera."
 10 Kam was also an optician, wasn't he, an ophthalmic
 11 optician?
 12 A. He was, yes.
 13 Q. "If KS were to test one day a week, that would replace
 14 SB's retail day cost. In addition, KS should be able to
 15 test when SB was on holiday ..."
 16 Et cetera, et cetera. So in other words, they can
 17 fill in for each other when they are away on their
 18 holidays or sickness?
 19 A. Agreed.
 20 Q. "... per day (by this time the DO ...)"
 21 Et cetera. Miss out the next two paragraphs, which
 22 are about figures. Do you see: {E/337/1262}
 23 "The biggest issue at present would appear to be the
 24 ulterior motives of the two individuals."
 25 Do you see that?

21

1 A. Yes.
 2 Q. "SB does not want to be managed and appears to be
 3 putting KS off, in the belief that she will either be
 4 offered the shares or introduce someone to the business
 5 that she is comfortable with.
 6 "KS ..."
 7 That's Mr Singh:
 8 "... acknowledges the business potential and
 9 ultimately wants to introduce a member of his own
 10 extended family, and will manage and communicate with
 11 Swarandeep accordingly."
 12 Do you see?
 13 A. Yes.
 14 Q. So they both had ulterior motives?
 15 A. According to Mr --
 16 Q. -- McGonagle.
 17 A. McGonagle.
 18 Q. Who had spoken to both of them. They had both agreed to
 19 be flexible and it appeared Ms Birdi had said she would
 20 agree to test four days a week. She could do her other
 21 duties on the other day. And he had agreed to test one
 22 day a week to cover her for the day, et cetera.
 23 In paragraph 34 of your witness statement you --
 24 A. I don't think Mr Singh agrees to test one day a week.
 25 Q. Right.

22

1 A. It says:
 2 "If Kam Singh were to test one day a week ..."
 3 It doesn't say that he has agreed that.
 4 Q. It does.
 5 A. Where does it say that?
 6 Q. "Kam is of the view that SB should test five days to
 7 reduce SEO costs. He did initially agree that four days
 8 would be acceptable. There is an opportunity for Kam to
 9 test on SB's 'retail day' which will keep Kam involved
 10 in the clinical aspect ... If KS were to test one day
 11 per week, that would replace SB's retail day costs."
 12 A. Okay, so where does it say, "Kam Singh agreed to test
 13 one day a week"?
 14 Q. It says that he is agreeing that she will test four days
 15 a week. Do you see?
 16 A. Yes, yes.
 17 Q. And then it sets out how he will cover her "retail day",
 18 in inverted commas?
 19 A. Okay, I don't read it the same way.
 20 Q. You don't?
 21 A. No, I don't.
 22 Q. Do you read it as him saying he would be prepared to
 23 test a day a week?
 24 A. Could you repeat the question, sorry?
 25 Q. Do you read it that he is telling Mr McGonagle that he

23

1 would be prepared to test one day per week?
 2 A. No, the way I read this is Michael is setting out how it
 3 could work within that partnership, going back to April.
 4 Q. Okay. You do agree that Mr Singh had the ulterior
 5 motive of wanting to get a member of his own extended
 6 family in?
 7 A. According to Michael McGonagle.
 8 Q. And that Mr Singh is going to manage and communicate
 9 with Swarandeep accordingly?
 10 A. Yes. I think the reason I believe that Kam Singh --
 11 that paragraph, it's in the other bits because -- in the
 12 paragraph after -- because Michael is looking at what
 13 the opportunity is within the business in terms of the
 14 saving. (Pause)
 15 Q. Mr Raines, we were dealing with the foot of page 1262,
 16 the fact that Mr Singh had explained that his plan was
 17 to introduce member of his own extended family and that
 18 he was going to manage and communicate with
 19 Miss Swarandeep accordingly. Do you see that?
 20 A. Yes.
 21 Q. I was just asking you about paragraph 34 of your witness
 22 statement, {C/13/159} where what you have said is that:
 23 "... Ms Birdi had made it clear that she wished for
 24 her husband, Mr Rehman, to replace Mr Patel..."
 25 A. Yes.

24

1 Q. "... I was aware there may be some initial
2 difficulties."
3 A. Yes.
4 Q. I'm just suggesting to you that your explanation for the
5 difficulties appears very one-sided, given that both of
6 them appear to have had their ulterior motives?
7 A. I wasn't aware of this memo from Michael McGonagle to
8 Michael Ryan and I certainly wasn't aware that there was
9 an ulterior motive to introduce a member of his own
10 family.
11 Q. So you weren't aware that he planned to communicate with
12 Swarandeeep and manage her accordingly?
13 A. Absolutely not.
14 Q. If you had been aware -- you are saying nobody reported
15 this up to you?
16 A. Yes.
17 Q. Either Mr Ryan, Mr McGonagle, nor anybody who spoke with
18 them from your teams?
19 A. Yes.
20 Q. If you had been aware that Mr Singh had said this to
21 Mr McGonagle, even before he joined but at a time after
22 he had been -- this was April 2008, so this is after he
23 has been told by Specsavers that Specsavers have chosen
24 him. If you had been aware that he had been saying
25 this, would you have had a word with Mr Singh?

25

1 A. It would have caused me concern, but I don't know what
2 "manage and communicate with Swarandeeep accordingly"
3 means.
4 Q. No, but that's the end of the sentence which reads:
5 {E/337/1262}
6 "... ultimately [he] wants to introduce a member of
7 his extended family, and will manage and communicate
8 with Swarandeeep accordingly."
9 And that's under a heading which is concerns, to
10 Mr McGonagle, about ulterior motive. So it's obviously
11 not a positive thing, is it?
12 A. No, it's not a positive thing.
13 Q. So if you had known about it, you fairly say that you
14 would have been concerned by that?
15 A. I believe I would be.
16 Q. Yes. Okay. So back to your statement. You refer to
17 12 September -- you can put away E5.
18 A. Yes, thank you.
19 Q. We are in E6.
20 A. Yes.
21 MR JUSTICE NUGEE: Just before you do that -- sorry.
22 MR STUART: Sorry, my Lord.
23 MR JUSTICE NUGEE: Oh, no, we are back in E6. Ignore that.
24 Yes, carry on.
25 MR STUART: We were in this little run of emails, which, as

26

1 I say, started with you -- the go native email.
2 {E/446/1596}
3 A. Yes.
4 Q. Mr Savill says:
5 "Not sure if you know, but this is one of Mike's
6 stores..."
7 As you say, you have made a mistake, it is
8 Mr Rowe's, so we go over there.
9 So then we go back to 1595. {E/446/1595} You
10 clarify that at the bottom and you ask Mike to action
11 the email?
12 A. Yes.
13 Q. At the bottom. Then Mr Rowe replies to you in the
14 middle:
15 "Hi Mark.
16 "I discussed this with Neil Lunn last week and the
17 store will now be handed back to the Meridian RST.
18 There is a final meeting planned for 10 September..."
19 Do you see that?
20 A. Yes.
21 Q. "I had to tell Neil it was now time to hand it over.
22 "All in hand will keep you updated."
23 And then I'm interested in your comment back to
24 Mr Rowe:
25 "Great I hope you can read between the lines in

27

1 terms of my comments."
2 That's presumably reading between the lines of your
3 comments in your email that you had wrongly sent to
4 Mr Savill?
5 A. Just in terms of, "Watch this one really closely". You
6 know, I think Mike's answered it in his reply.
7 Q. "... Kam may go 'native' once in the store..."
8 A. Yes, "Just keep your eye on this one". You know, "This
9 one is one that has the potential to spin out of
10 control". That's what I meant.
11 Q. Hm-mm. I'm interested in the way you worded it, though,
12 at the end of 1596; the one at 1596. {E/446/1596}
13 A. Yes.
14 Q. "Kam's objective is ..."
15 Having said the go native part and:
16 "... I'm sure he won't but we need to guard against
17 it."
18 You say:
19 "Kam's objective is to drive the business
20 forward..."
21 That would be Swarandeeep's objective also, of
22 course?
23 A. Yes.
24 Q. You do not mention Swarandeeep. Is that right,
25 Mr Raines?

28

1 A. Yes.
 2 Q. Perhaps we are to read between the lines, are we, the
 3 fact that you don't mention her?
 4 A. No, not at all. I know what I meant by that comment.
 5 Q. Yes, you meant:
 6 "Kam's objective is to drive the business forward
 7 and not let Swarandeeep impact upon that objective - Kam
 8 may need your support."
 9 Not Swarandeeep, then? She doesn't get any support
 10 from your department?
 11 A. We provide support to both partners. That's what the
 12 practice support period is. It's designed to try and
 13 get both partners working together to the benefit of
 14 business.
 15 Q. Yes, but you don't mention in your email that Swarandeeep
 16 has this objective or that Swarandeeep may need your
 17 support. It's all "Kam needs your support", and,
 18 "I want you to help Kam"?
 19 A. I have regarded it at the time as Kam was going into
 20 a difficult situation, a challenging situation, because
 21 Swarandeeep still had issues relating to 2007 that may
 22 distract Kam from actually focusing on the business.
 23 What I didn't want to get involved through the practice
 24 support period was starting to go back and revisit
 25 issues relating to 2007. I wanted both partners to be

29

1 supported by Mike Rowe to focus on the business, agree
 2 how the business would operate and to drive customer
 3 service and get the team settled, et cetera. They had
 4 been through a really difficult period. That was my
 5 only motivation at that time.
 6 Q. Well, you had some motivation that was to be read
 7 between the lines?
 8 A. I watch this one closely. You know, keep your eye on
 9 it.
 10 Q. I suggest to you that the between the lines motivation
 11 was that you wanted Mr Rowe to support Mr Singh against
 12 Ms Birdi?
 13 A. Absolutely not.
 14 Q. All right. So back to your witness statement. We are
 15 in paragraph 35. {C/13/159} You refer to the meeting,
 16 Mr Rowe's meeting with them, which we see at -- do you
 17 see 35?
 18 A. Yes, I do.
 19 Q. Can I just check: page 1608. {E/454/1608}
 20 A. 1608?
 21 Q. Yes. Mr Lunn, Mr Singh and Ms del Grazia are in an
 22 email chain there. Were you aware that Mr Lunn was
 23 still involved, 21 August; that he was communicating
 24 with Mr Singh on Mr Singh's private email address?
 25 A. I don't know what the official handover date was because

30

1 Mike or Dominic would have had conversations with
 2 Michael and they would have agreed a handover date.
 3 I don't know what the official handover date was.
 4 Q. No, but were you aware that Mr Lunn and Mr Singh were in
 5 email correspondence --
 6 A. No.
 7 Q. No?
 8 A. Not at all.
 9 Q. Okay. Page 1616 is your day book for this period,
 10 I think? {E/457/1616}
 11 A. Yes. Yes.
 12 Q. Can you just explain that entry to us? It says -- do
 13 you see it's by the first hole punch:
 14 "Dartford."
 15 A. Yes.
 16 Q. I'm not quite sure what -- it says at the top:
 17 "ROI - conference call."
 18 And then there is a pin number. Could you explain
 19 to his Lordship what you are doing here?
 20 A. ROI, Republic of Ireland, conference call. One of the
 21 projects that I had was to look after the Irish --
 22 Ireland plan, work with the partners and -- thing. So
 23 this was just a conference call that I was on relating
 24 to Ireland.
 25 Q. Okay. So that's probably a different conversation?

31

1 A. Yes.
 2 Q. Okay. So is it:
 3 "RDC/RPC update."
 4 A. Yes.
 5 Q. So who are you discussing this with?
 6 A. I have no idea. That may have been for me to update
 7 something. I don't know.
 8 Q. Okay. And then you have written:
 9 "Dartford."
 10 "Best offer ever."
 11 What's that?
 12 A. No, no. The "best offer ever" is a promotion that we
 13 ran.
 14 Q. Okay. So that has nothing to do with it?
 15 A. Nothing to do with it at all.
 16 Q. No. So what was "Dartford" on your agenda?
 17 A. I have no idea, I have no idea. I have no idea.
 18 Q. Okay.
 19 A. It was clearly on my mind at that moment in time. But
 20 I have no idea why it was.
 21 Q. All right. I think we can put away E6. Can you be
 22 passed E7? At the beginning of E7 there is a part of
 23 a letter; we haven't got all of the letter at this
 24 stage. We have got it in a moment. Don't worry, we
 25 will come to it and this is the letter I think that you

32

1 are referring to in paragraph 34. The last sentence of
2 34: {C/13/159}
3 "The letter noted that Ms Birdi had agreed to
4 conduct sight tests four days a week."
5 Do you see that? We find another copy of it --
6 A. Yes, I think I may be more familiar with the other copy.
7 Q. Yes, the full copy is at 1676. {E/484.1/1676}
8 A. 1676. Yes, I have seen this one.
9 Q. And I think you are referring to 1677 under the heading
10 "Business Planning"?
11 A. Yes.
12 Q. Do you see that?
13 A. Yes.
14 Q. And also 1678, which we will come to in a moment?
15 A. Yes.
16 Q. Just to be clear, you weren't a party to any of these
17 meetings or conversations?
18 A. Not at all.
19 Q. You are just here --
20 A. We had --
21 Q. -- reciting what's in this letter?
22 A. We had a business -- sorry, a practice support period
23 agenda. It was -- we did it with all partners. So it
24 was about just sitting the partners down and talking
25 about the business, roles, responsibilities, how they

1 saw the business running together, what their objectives
2 were, you know. It was just basically getting them
3 focused on the thing. So I didn't need to be involved
4 because I knew Mr Rowe would know what to do.
5 Q. Okay. Do you see at 1677, by the first hole punch?
6 A. Yes.
7 Q. We have got "Business Planning"? {E/484.1/1677}
8 A. Yes.
9 Q. And it says:
10 "After a detailed discussion Swarandeeep confirmed
11 that she would move from three and a half days' testing
12 to a full four days' testing."
13 A. Yes.
14 Q. "Swarandeeep did confirm that she wished to have one full
15 day out of the test room to keep up to date with all her
16 other roles and responsibilities. This was agreed by
17 the parties."
18 A. Yes.
19 Q. Do you see that?
20 A. Yes.
21 Q. You know that Ms Birdi states that that is
22 a simplification of what was agreed?
23 A. Yes.
24 Q. And she says that what was whilst the store was in TAPS?
25 A. Yes.

1 Q. And it was subject to, you know, the day-to-day
2 requirements of the store, her duties as a director,
3 et cetera. That's what she says?
4 A. Yes.
5 Q. Over the page, 1678, we see TAPS store process:
6 {E/484.1/1678}
7 "As you will be aware Dartford is a TAPS store and
8 as such is very high profile in the group."
9 A. Yes.
10 Q. "The progress made to date is positive and, as
11 demonstrated by Alan's forecasting tool with real
12 determination and application then we can recover the
13 position quickly. Alan will be working with you closely
14 and will be reporting regularly on the progress made in
15 the TAPS reports..."
16 Do you see that?
17 A. Yes.
18 Q. It does appear that, as at that time, it was still
19 a TAPS store, though I think you would say by this time
20 it was down to the lowest level of TAPS?
21 A. TAPS Watch, yes.
22 Q. TAPS Watch, yes. And then "Summary of Actions":
23 "Swarandeeep to move to four day testing by
24 1 October."
25 Is what has been put in there?

1 A. Yes.
2 Q. You obviously weren't a party to that actual
3 conversation; you are just going on what Mr Rowe tells
4 you?
5 A. Yes.
6 Q. Okay. Paragraph 35. {C/13/159} You seek to sort of
7 analyse this issue of the four day testing, going from
8 three and a half to four days. Do you see paragraph 35?
9 A. Yes.
10 Q. And you say -- this is half way down 35:
11 "The locum costs were very high and Mr Singh was
12 understandably keen to reduce these, especially since
13 Ms Birdi was suitably qualified and able to do the job
14 herself."
15 Can you see?
16 A. Yes.
17 Q. We are talking about half a day's testing a week?
18 A. Yes.
19 Q. For the 48 weeks that she might be in the store in
20 a year?
21 A. Hm-mm.
22 Q. We have heard -- we have seen it agreed that a locum is
23 £250 a day at that time. So half a day is £125 worth of
24 locumming a week for 48 weeks a year. That's £6,000.
25 That's right, isn't it?

1 MR POTTS: My Lord, I'm sorry, I don't think that was the
 2 effect of Mr Singh's evidence as a whole, in fact.
 3 MR JUSTICE NUGEE: I'm not sure that I have remembered what
 4 the point is. What is the point, Mr Stuart?
 5 MR STUART: The point is that Mr Raines is seeking to say
 6 that this was a very important issue. We come to it in
 7 a moment and it's going to be such an important issue
 8 that he is going to hold three board meetings and
 9 eventually Ms Birdi is going to face certain drastic
 10 action because of this issue, increasing from three and
 11 a half to four days a week.
 12 In paragraph 35 of his statement, he is seeking to
 13 start the argument regarding the extent to which
 14 Ms Birdi doing that is going to change the locum costs
 15 of this store, and I want to put to him that what he is
 16 talking about here is a tiny, tiny sum.
 17 MR POTTS: My Lord, the point is that the point was put to
 18 Mr Singh and Mr Singh explained -- the point which has
 19 been put is it's only £125 a day. Mr Singh's evidence
 20 was it's not just that; there are wider issues and wider
 21 costs into the business. He didn't accept that the only
 22 cost was £125 and I have been concerned about that.
 23 I haven't been interrupting but I have been
 24 concerned about the way references to transcripts have
 25 been made -- and that happened yesterday again, in

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1 relation to a matter which my friend put in terms of,
 2 for example, Mr Rehman's charging and when he was an
 3 employee and when he started charging.
 4 Me having put it in re-examination, my learned
 5 friend went back to it again, and I am concerned about
 6 that, my Lord. I'm sorry.
 7 MR JUSTICE NUGEE: Mr Stuart, I think you can put to
 8 Mr Raines that the locum costs weren't actually that
 9 high, but I don't think you should put it on the basis
 10 that the evidence establishes that because there is
 11 obviously a dispute as to what the evidence does
 12 establish.
 13 MR STUART: What, that locum costs were £250 a day?
 14 MR JUSTICE NUGEE: No, that the overall cost of moving to
 15 four day testing was about £6,000 a year.
 16 MR STUART: I haven't used the term "overall cost". I'm
 17 looking at my question. I haven't said "overall cost".
 18 I have said that we have heard, we have seen that locum
 19 is £250 a day at that time, and I was referring to --
 20 there is actually documentary evidence of that evidence.
 21 So we have seen it agreed that locum is £250 a day
 22 at that time. I haven't mentioned Mr Singh's evidence.
 23 I haven't mentioned the transcript. I have no idea
 24 where Mr Potts's interruption comes from, save to give
 25 Mr Raines an answer to the question, and I don't agree

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1 with it.
 2 MR JUSTICE NUGEE: Right. Put to Mr Raines that the locum
 3 costs were £250 a day.
 4 MR STUART: Yes.
 5 Do you agree, Mr Raines, that at that time, in
 6 general, locum costs in that area were around £250
 7 a day?
 8 A. Yes.
 9 Q. So that half a day's worth of locum costs a week, by
 10 Ms Birdi agreeing to move from three and a half to four
 11 days a week, saves the store, on the face of it,
 12 initially, £125 a week?
 13 A. Yes.
 14 Q. And that over 48 weeks of a year that she would be
 15 testing four days rather than three and a half days
 16 a week, that could save the store, initially, just in
 17 the locum tests alone, £6,000?
 18 A. Yes.
 19 Q. A year?
 20 A. Yes.
 21 Q. £125 a week?
 22 A. Yes.
 23 Q. In the scheme of things, that's not a very large sum, is
 24 it? In the scheme of the costs of this store, which we
 25 know to be --

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1 A. No, but it's not as simple as that. And the reason it's
 2 not as simple as that is because, my Lord, you want your
 3 optom director to be driving the clinical side of the
 4 business and that means in terms of performance. So you
 5 want your optom director to be the best converter, ie to
 6 convert sight tests into --
 7 MR JUSTICE NUGEE: Sales.
 8 A. Sales, basically. You also obviously want them to be
 9 leading from the front of that clinical team, making
 10 sure the other locums are performing at the right level.
 11 So one of our business measures is around making sure
 12 that our clinics are as productive as they can be
 13 without, obviously, compromising on professionalism and
 14 getting -- performing accurate sight tests.
 15 So there is something --
 16 MR JUSTICE NUGEE: Does that mean trying to get them done in
 17 20 minutes, rather than 25 minutes?
 18 A. It may do. It depends on the optician because the
 19 opticians decide how they want to test.
 20 MR JUSTICE NUGEE: In the end, they are a professional and
 21 have to apply professional standards?
 22 A. Absolutely, but in terms of, say, things like
 23 pre-testing, where you pre-test a patient, take some
 24 tests before they go into the consulting room, there are
 25 ways of having that -- it's a delegated function thing.

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1 So it's not just a pounds, shillings and pence
 2 issue, this. This is around having the optom director
 3 driving that clinical team and driving the performance
 4 of them and them therefore leading by example.
 5 So, you know, it's -- if you were to just say, you
 6 know, "Let's get locums in and run our business with
 7 locums", we wouldn't need optical optician partners. We
 8 wouldn't need them. We do, because it's an important
 9 point, and, you know, my view was that at that time
 10 I would have expected Ms Birdi, or Swarandeeep, to, you
 11 know, be driving that, driving that side of the
 12 business, maybe testing five days a week, maybe even six
 13 days a week if it was required, because that's what our
 14 joint ventures partners do and that's why we are
 15 a successful business.
 16 But, as I say right at the end, I was pleased to see
 17 that they had actually found a resolution because that
 18 wasn't part of -- you know, that's not part of our
 19 job -- SOG's job, to get involved in, unless obviously
 20 it has to.
 21 MR STUART: You have already agreed that you yourself are
 22 the OO director in stores and you don't do the testing,
 23 do you?
 24 A. No, but I employ a principal optometrist, who takes my
 25 role.

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1 Q. Yes?
 2 A. In my other store, I have a fellow optom director.
 3 Q. Okay. Whilst she was not testing on this extra half day
 4 when the locum was covering for her, she would see still
 5 be in the store, wouldn't she?
 6 A. Yes.
 7 Q. Driving the team?
 8 A. Yes.
 9 Q. You don't even mention driving the team and the other
 10 aspects in your paragraph 35, do you?
 11 A. No, no, I don't.
 12 Q. The only issue you raise is: {C/13/159}
 13 "Optom costs were very high and Mr Singh was
 14 understandably keen to reduce these, especially since
 15 Ms Birdi was suitably qualified and able to do the job
 16 herself."
 17 A. Because this was ultimately to become one of the big
 18 issues within this situation.
 19 Q. It was, and this is the point I want to come to. This
 20 is turned into, by Mr Singh -- he raises a formal
 21 grievance, which then leads to various things. This is
 22 turned into an absolutely massive issue by Mr Singh,
 23 isn't it?
 24 A. I don't believe that is the case.
 25 Q. Well, who did turn it into this enormous issue?

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1 A. I believe as we go further through the evidence that you
 2 will see that there are a number of issues that
 3 demonstrate that this partnership wasn't working
 4 effectively, but we are not there yet.
 5 Q. I was asking about this issue. Do you agree that
 6 Mr Singh turned this issue of whether she should test
 7 four days, rather than three and a half days a week --
 8 turned it into a big issue?
 9 A. It seems to me from this that Mr Singh has agreed that
 10 four days' testing is right, you know? They have
 11 reached an agreement.
 12 Q. You know what Ms Birdi says about that agreement. She
 13 agrees that she used the term "four days' testing"; she
 14 agrees that whilst in TAPS, subject to her other
 15 directorial duties and the day-to-day management
 16 requirements of the business, that's what she agreed to.
 17 She is not saying there was no agreement in the sense of
 18 no discussion and that the two of them didn't agree on
 19 a way forward, but her point is, as you know, that this
 20 was a matter of day-to-day management to be decided
 21 between the two A shareholders?
 22 A. Yes.
 23 Q. And that she had made clear the basis upon which she was
 24 agreeing to do it?
 25 A. Yes.

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1 Q. And that therefore when, later, Mr Rowe and Mr Singh and
 2 you, by your resolution, turn it into a matter of
 3 discipline and misconduct against her, you are not
 4 applying the agreement that she agreed to. You know
 5 that that's her case?
 6 A. I do appreciate that is her position.
 7 Q. And you understand that, in her own mind, at least,
 8 that's one of her grievances against SOG?
 9 A. At this moment?
 10 Q. No, no, later, when you come to do that to her?
 11 A. Yes, yes.
 12 Q. When you, Mr Singh, Mr Rowe use that --
 13 A. I have to pick you up on your language. I haven't done
 14 anything to her.
 15 Q. Okay, we will come to that. I think you passed
 16 a resolution which you say did do something to her. It
 17 ordered her to do something?
 18 A. Yes.
 19 Q. Which you agree is otherwise day-to-day management?
 20 A. And I will explain my actions when we get there.
 21 Q. Okay. So you did do something to her about this, didn't
 22 you, in due course?
 23 A. No, the board passed a resolution.
 24 Q. The board being, for these purposes, you and Mr Singh,
 25 who voted at that board?

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1 A. We were the directors who were present at that meeting.
2 Q. Okay. So we are into paragraph 36. You say: {C/13/159}
3 "Mr Rowe remained involved..."
4 A. Yes.
5 Q. And we are into December 2008. Is the store coming off
6 TAPS around this time?
7 A. I can't recall the exact time it came off. I thought it
8 was early 2009 but I could be wrong.
9 Q. Okay. Was the level of TAPS Watch reducing or not?
10 A. Yes, the overdraft was reducing.
11 Q. In fact, it was probably positive by this point, wasn't
12 it, December 2008?
13 A. I don't recall.
14 Q. Okay. All right. Would you go to -- no, I don't need
15 to deal with the September meetings. I presume that you
16 weren't a party to the other September meeting?
17 A. No.
18 Q. And, therefore, all you can do is really recite what
19 Mr Rowe told you?
20 A. Yes.
21 Q. Okay, fine.
22 So paragraph 37, you say we are into 2009?
23 {C/13/160}
24 A. Yes.
25 Q. Between September 2008 and 2009, what was your actual

1 involvement in relation to Dartford?
2 A. I don't believe I had any direct relation with Dartford.
3 There was probably correspondence that was passed --
4 going backwards between Swarandeeep and Legal. I may
5 have had a conversation at some stage, but I can't
6 recollect any involvement at all between that period.
7 Q. Was --
8 A. I may have had -- sorry, if I can just finish?
9 Q. That's all right. Go on.
10 A. I may have had -- read about it, read about Dartford in
11 a board paper, because the retail team produce board
12 papers from time to time, but I can't recollect having
13 any direct involvement in Dartford up until 2009.
14 Q. Okay. So would it be fair to say you left it to
15 Mr Rowe --
16 A. Yes, yes.
17 Q. -- to deal with and it really didn't come up on your
18 radar?
19 A. No, I was doing my day job.
20 Q. The fact that it didn't come up on your radar, does that
21 imply that so far as you were aware, Mr Rowe considered
22 matters were proceeding --
23 A. I believe --
24 Q. -- reasonably?
25 A. I believe so.

1 Q. He hadn't escalated anything to you; let's put it that
2 way?
3 A. No, not that I believe.
4 Q. Okay. Were you aware about the issue of Ms Birdi
5 discovering that Mr Singh was carrying out activities at
6 his wife's store in Grays?
7 A. No.
8 Q. In early 2009?
9 A. No, I wasn't aware of that.
10 Q. Okay. Your team obviously were. If you go to
11 page 1791, {E/550/1791} we are into February 2009?
12 A. Yes.
13 Q. Do you see, February 2009, Ms Birdi is talking to Mike
14 Rowe or emailing Mike Rowe about her concern. There is
15 a clear conflict of interest?
16 A. Yes.
17 Q. Then Mr Rowe emails Ms Hart.
18 A. Yes.
19 Q. Is Ms Hart reporting to you at this point or not?
20 A. No, she reports in to Jill Clark who reports in to
21 Derek Dyson.
22 Q. Mr Dyson. So that's a different strand of recording?
23 A. Yes.
24 Q. So you weren't aware, when Mr Rowe was writing to
25 Ms Hart:

1 "Hi Sue, ref the email below. I assume Kam has been
2 playing silly buggers and been working in his wife's
3 store. So what is the party line on this? Is it
4 strictly forbidden in the JVA?"
5 You weren't aware of this issue arising at all?
6 A. No, not at all.
7 Q. When did Mr Rowe raise that issue with you, at all,
8 then?
9 A. From recollection I can only recall hearing about it
10 when Swarandeeep raised her grievance, which was some
11 time in July.
12 Q. Okay. You were aware of the one-to-one meetings. If
13 you go to page 1901 in this bundle -- we have almost
14 finished this bundle -- Mr Rowe is having one-to-one
15 meetings. Were you aware of those? {E/579/1901}
16 A. No, no.
17 Q. So Mr Rowe wouldn't report these matters to you as part
18 of your, I don't know, weekly, monthly, catch-up on, you
19 know:
20 "How is Dartford going?"
21 "Oh, well, this is what's happening at Dartford."
22 A. If he had -- it doesn't -- I tend to be one of those
23 people who, once I have agreed how the job works, I just
24 let them get on with it.
25 Q. Okay.

1 A. You know, I don't micromanage people.
 2 Q. All right. Obviously, the store was, certainly by this
 3 time, off TAPS Watch, wasn't it, by June 2009?
 4 A. I would imagine it was.
 5 Q. So it wasn't even on that side of your radar?
 6 A. No, no.
 7 Q. All right. You can put away E7 and be passed E8.
 8 A. Thank you.
 9 Q. If you go to 2011. {E/649.3/2011}
 10 A. Yes.
 11 Q. So the directors, the A directors, were having one of
 12 their meetings. Do you see that?
 13 A. Yes.
 14 Q. That was the note of the meeting. The issue about their
 15 meetings was raised, wasn't it, by Mr Rowe with you. If
 16 you go back to page 1995, he was forwarding on to you --
 17 {E/645.1/1995}
 18 A. Yes.
 19 Q. Do you see that?
 20 A. Yes.
 21 Q. {E/646/2001} "I have attached the two letters sent to
 22 the partners with the actions from our two joint
 23 meetings. I will type up my written notes from the one
 24 to ones I held over the last few month and have them to
 25 you by Thursday."

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1 A. Yes.
 2 Q. As part of that, he is then attaching the --
 3 A. Yes, what this was, was I hadn't any involvement. By
 4 this time, I think Kam Singh had submitted a grievance
 5 and I was keen to find out what had happened in the
 6 intervening sort of nine months or so.
 7 Q. Yes.
 8 A. And so I sent an email, I think to Michael Rowe, to
 9 Dominic Savill and to Neil Lunn, just trying to build
 10 a picture, to try and understand the background of what
 11 was happening in relation to Kam Singh's grievance that
 12 he had raised.
 13 Q. That's the one you refer to at paragraph 37 in your
 14 statement, the 23 July grievance? {C/13/160}
 15 A. Yes.
 16 Q. Page 1977? {E/633.1/1977}
 17 A. Yes.
 18 Q. That grievance, just have a look at it again. 1977,
 19 five issues raised?
 20 A. Yes.
 21 Q. Equalisation, pension, the testing?
 22 A. Yes.
 23 Q. Something about an NHS overclaim?
 24 A. Yes.
 25 Q. Which, in your statement in a moment, you say is

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1 a matter potentially of fraud. Is that right?
 2 A. Erm.
 3 Q. Mr Singh didn't seem to suggest he was suggesting any
 4 sort of fraud on Ms Birdi's behalf?
 5 A. Well, we have a very high sensitivity to NHS.
 6 Q. Of course. Okay. And then the supervision of the CLO?
 7 A. Yes, yes.
 8 Q. So those were the five issues.
 9 A. Sorry, I think Mr Singh raised the issue of fraud:
 10 {E/633.1/1978}
 11 "I am concerned that this voucher was claimed
 12 incorrectly by a director and is a fraudulent claim."
 13 So I think he raised the issue.
 14 Q. When I asked him about it in evidence he didn't seem to
 15 be pressing it as a matter of fraud.
 16 A. Okay, I am just telling you what it says in the --
 17 Q. So you believe he was alleging fraud against her?
 18 A. No, no, I'm not saying that at all.
 19 Q. Okay.
 20 A. He is saying there is a issue and we need to find out
 21 what the issue is.
 22 Q. All right. Why are you getting involved in this
 23 grievance? It's written to Cristina del Grazia,
 24 obviously?
 25 A. Because it was referred on to me, that is, in my

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1 position as director of retail operations. I'm
 2 responsible for everything that relates to the
 3 operations of how the stores operate.
 4 Q. What, including grievances?
 5 A. Yes.
 6 Q. By one JVP against another?
 7 A. Including grievances, yes. That's part of my role.
 8 Q. So do you deal with all grievances, where one JVP raises
 9 a grievance against another?
 10 A. At this time, I would probably deal with all of them.
 11 And, again, if I can explain to my Lord why that is the
 12 case, what we try to do is keep the RDCs, if we can, try
 13 to keep them free from anything that is going to impact
 14 on their relationship with the partners because they
 15 have got to develop a working relationship beyond that.
 16 Q. You are dealing with these grievances on behalf of SOG,
 17 so as B shareholder?
 18 A. At this stage, I am.
 19 Q. You are?
 20 A. Yes.
 21 Q. And you have been, what, appointed by SOG to deal with
 22 grievances of JVPs against each other?
 23 A. When you say "appointed", it's part of my role. It's
 24 what I do and I work for SOG.
 25 Q. Right. You work for SOS.

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1 A. Okay, I work for SOS, who are owned by SOG.
2 Q. Okay. So was this referred to you automatically then,
3 just because of your position, or did Mr Dyson make
4 a decision or some other -- or Mr --
5 A. No.
6 Q. Or Mr Perkins?
7 A. No, no, it is quite normal for me to be dealing with
8 these issues.
9 Q. Okay. In paragraph 38 of your statement -- {C/13/160}
10 A. Yes.
11 Q. Actually I see the time, my Lord. I don't know
12 whether --
13 MR JUSTICE NUGEE: Yes, we will take a five-minute break.
14 (11.42 am)
15 (Short break)
16 (11.48 am)
17 MR JUSTICE NUGEE: Yes?
18 MR STUART: So, Mr Raines, the end of paragraph 38. You
19 have said: {C/13/160}
20 "It was standard practice in Store Companies for the
21 full time Optician JVP to test at least four days
22 a week. There was in my view no good reason why
23 Ms Birdi should act any differently."
24 Do you see that?
25 A. Yes.

1 Q. Do you accept that in her mind, in her mind, she
2 believed that she had reason to spend perhaps one and
3 a half days a week, rather than one day a week, doing
4 her other duties?
5 A. In her mind, yes, obviously.
6 Q. Yes, okay. Paragraph 39. {C/13/160} You explain that
7 you escalate this -- or you deal with this, rather --
8 not through the grievance process but through the board
9 meeting process?
10 A. Yes.
11 Q. Do you see that? I think if we go to page 2002 -- do
12 you have E8, 2002? {E/647/2002}
13 A. Yes.
14 Q. There is an email from you to Mr Lunn, who you are
15 actually asking for some information.
16 A. Yes.
17 Q. You say:
18 "Hi Kam has submitted a grievance this week in which
19 he states that he is not satisfied that Swarandeeep is
20 not agreeing to an equalisation of benefits..."
21 Do you see that?
22 A. Yes.
23 Q. "... despite this being agreed between the two
24 partners..."
25 "After discussion with Legal and given the previous

1 history of partner issues we have decided the most
2 appropriate course of action is to go straight to
3 a Board meeting."
4 A. Yes.
5 Q. You were taking that step in what capacity; you were
6 taking that decision?
7 A. In my capacity as director of retail operations for SOG.
8 Q. SOS.
9 A. SOS, sorry.
10 Q. Okay. At this stage, did you consider yourself a board
11 director of Dartford Specsavers Limited or Dartford
12 Visionplus Limited?
13 A. Not at this moment in time, no.
14 Q. No. So the board meeting is called. We can flick on to
15 page 2048. {E/662/2048}
16 A. Yes.
17 Q. And this is obviously quite unusual, isn't it, because
18 you say at paragraph 40 of your statement {C/13/161}
19 that you only actually have five board meetings a year
20 across the whole Specsavers group. These are all the
21 store companies?
22 A. That's correct.
23 Q. They might only have five between them. I mean, there
24 are -- how many is it, 700, did we say?
25 A. Something like that.

1 Q. Something like that. So of the 700 stores, perhaps only
2 five a year have a board meeting?
3 A. Yes.
4 Q. Everything is really done, not through the board meeting
5 way; in the usual course.
6 So calling this board meeting was an unusual step?
7 A. Yes.
8 Q. Although that letter is dated the 4th -- that's the
9 letter on page 2048 -- {E/662/2048}
10 A. Yes.
11 Q. -- we can see that actually, the notice of the board
12 meeting at page 2049 wasn't even signed for and on
13 behalf of Specsavers Optical Group until the 12th. Do
14 you see 2049? {E/662.1/2049}
15 A. I do see that.
16 Q. The notice of the meeting. So that notice of that
17 meeting didn't go out until the 12th at the earliest?
18 A. Yes.
19 Q. Do you see that?
20 A. I do see that.
21 Q. And might have been received on the 13th, let's say?
22 A. Yes.
23 Q. And the meeting was to be held on the 20th?
24 A. Yes.
25 Q. Seven days forward; yes?

1 A. Yes.
 2 Q. At paragraph 41 of your witness statement you record the
 3 fact that Ms Birdi had herself raised a grievance
 4 against Mr Singh? {C/13/161}
 5 A. Yes.
 6 Q. Do you see that at 2063 to 2065? {E/668.1/2063}
 7 A. Yes.
 8 Q. So her grievance was -- do you see at the bottom of
 9 2063, at number 1, the conflict of interest because of
 10 his work in the Grays store?
 11 A. Yes, yes.
 12 Q. Number 2: {E/668.1/2064}
 13 "[He] has not been conducting the management of the
 14 Dartford store in the spirit of partnership..."
 15 A. Yes.
 16 Q. "He has refused to commit to a structured timetable of
 17 work..."
 18 A. Yes.
 19 Q. "... he has been inflexible in responding to the needs
 20 of the store..."
 21 Et cetera?
 22 A. Yes.
 23 Q. And 3:
 24 "In his relationship with me, Mr Singh has been
 25 high-handed, condescending and unsupportive."

1 She sets out some examples and she refers to
 2 bullying. Do you see that. Rudeness, bullying?
 3 A. Yes.
 4 Q. And the way in which he communicates with her. Do you
 5 see that?
 6 A. Yes.
 7 Q. Do you accept that Ms Birdi had a genuine sense of
 8 grievance, at least, at the way in which she felt
 9 that --
 10 A. Absolutely.
 11 Q. Absolutely?
 12 A. Yes.
 13 Q. Fine. If you had known that Mr McGonagle had spoken to
 14 Mr Singh even before he had arrived and that Mr Singh
 15 had mentioned about how he was going to manage and
 16 communicate with her accordingly, that might have raised
 17 some concerns with you?
 18 A. Yes.
 19 Q. About her grievance?
 20 A. Yes.
 21 Q. Okay. So what happened was, paragraph 42, {C/13/161}
 22 you attend the board meeting?
 23 A. Yes.
 24 Q. And you said that:
 25 "[She] was unable to attend the meeting due to

1 unmovable hospital appointments."
 2 I'm not sure that's quite accurate, is it?
 3 A. I believed that at the time.
 4 Q. Okay. If we go to 2206, {E/679/2206} 2206 is the
 5 minutes of the meeting. Do you see that?
 6 A. Yes.
 7 Q. What gave you the impression that she was unable to
 8 attend the meeting because of booking her hospital
 9 appointments?
 10 A. It was from recollection.
 11 Q. Oh, okay. She had also raised the issue, hadn't issue,
 12 about not having sufficient time to prepare?
 13 A. Yes.
 14 Q. Do you remember?
 15 A. Yes.
 16 Q. If we go back to page 2067. {E/670/2067}
 17 A. Yes.
 18 Q. This is to Mr Kidd. He is acting legal
 19 secretary/director, isn't he?
 20 A. Yes.
 21 Q. Who is the one who sent her the notice?
 22 A. That's correct.
 23 Q. Dated 1 August. And she writes back this email here.
 24 Do you see that?
 25 A. Yes.

1 Q. "Dear Andrew.
 2 "Thank you for... the notice..."
 3 Do you see, she asks for more details of the agenda
 4 points, especially point 6, 7 and 8. That's her
 5 point 2, just below the second hole punch?
 6 A. Yes, sorry, yes.
 7 Q. And just to help you, if you go back to page 2049, the
 8 agenda item 7 was: {E/662.1/2049}
 9 "To establish clarification and confirmation of the
 10 roles and responsibilities of the Company's Directors,
 11 including attendance, ophthalmic testing and pre-reg
 12 supervision in the business of the Company."
 13 A. Yes.
 14 Q. And item 6 had been equalisation and distribution of
 15 profits?
 16 A. Yes.
 17 Q. So she has asked Mr Kidd for more details of the agenda
 18 points?
 19 A. Yes.
 20 Q. And the issues raised in Mr Singh's grievance, so that
 21 she is able to take part actively?
 22 A. Yes.
 23 Q. And she has asked for various other documents and
 24 clarification about the informal --
 25 A. Yes.

1 Q. Then she says at the end of her letter, 2068:
 2 {E/670/2068}
 3 "I now know that these issues ..."
 4 That's the issues that she has raised about
 5 Mr Singh:
 6 "... I raised some time ago are now being discussed
 7 on the Board's agenda points 6 and 7, I believe as
 8 Mr Singh's grievances, which has taken me by surprise."
 9 Do you see that?
 10 A. Sorry, can I --
 11 Q. So she says -- end of 2068. Penultimate paragraph.
 12 A. Yes.
 13 Q. And so in summary at page 2067, when she actually asks
 14 for -- 2067, just above the second hole punch:
 15 {E/670/2067}
 16 "In regards to the Board meeting please re-arrange
 17 with the expected notice period as in accordance with
 18 the Companies Act as referred to in the Articles of
 19 Association. I believe that a notice period of 21 days
 20 needs to be given. Also I have some very important
 21 hospital appointments to attend which cannot be
 22 re-arranged. I would be grateful if you would kindly
 23 suggest a few dates that would be mutually convenient to
 24 all of us."
 25 Do you see that?

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1 A. Yes.
 2 Q. As she explains in her witness statement, what that
 3 actually meant was that she had some hospital
 4 appointments between or before the 20th, which she
 5 couldn't re-arrange.
 6 A. Okay.
 7 Q. She was actually working on the 20th, but she wouldn't
 8 have time to address time to this important board
 9 meeting, which is highly unusual, in the period between
 10 17th and 20th?
 11 A. Yes.
 12 Q. The response came back from Mr Kidd, on page 2070, on
 13 the 18th. {E/672/2070} There has obviously been
 14 a telephone conversation and he has received that fax of
 15 the 17th?
 16 A. Yes.
 17 Q. Were you involved in telling Mr Kidd how to respond to
 18 Ms Birdi's request for a longer period of notice for
 19 this important meeting and for more details of what was
 20 going to be --
 21 A. No, I was aware that she couldn't attend.
 22 My Lord, if I could explain my thought process at
 23 the time, which was, having -- as soon as I received
 24 Kam Singh's grievance, I asked for all the documentation
 25 from Michael Rowe, et cetera, et cetera, to try and

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1 understand what was happening.
 2 It appeared that there were two issues of
 3 longstanding, the first one being around the pension and
 4 distributions, and obviously this was causing Mr Singh
 5 quite a lot of distress. I also knew that
 6 Cristina del Grazia sent a letter to Swarandeeep Birdi
 7 asking her to sign off the equalisation of distributions
 8 and pension, because that was his entitlement, and yet,
 9 according to Kam Singh's grievance, that hadn't
 10 happened.
 11 And I also knew that the four day testing had been
 12 agreed before. It was in Mike Rowe's notes and even --
 13 irrespective of whether it had been in TAPS or not in
 14 TAPS, Ms Birdi hadn't complied with what she had
 15 actually agreed on the 4th of -- thing. Not even when
 16 it was in TAPS.
 17 So to my mind, I'm thinking: I don't want to get
 18 involved in the grievances. Let somebody else
 19 investigate the grievances. But the two issues around
 20 the pensions, the distributions, which is a contractual
 21 right, and also the testing, I thought, you know, if
 22 I deal with those through the board meeting process,
 23 which I believe I had sufficient notice to give, which
 24 is a meeting of the directors, I believed it was right
 25 to just deal with those issues and just say, "This is

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1 SOG's position on those two issues. Just sort them out
 2 because if you don't sort them out, this is going to
 3 damage the partnership moving forward."
 4 And what I was trying to do was almost send a bit of
 5 a message which is, "Just sort these issues out. These
 6 shouldn't be issues. They are not -- they're
 7 day-to-day. We shouldn't be involved in them. You
 8 know, he is entitled to his pension -- his distribution
 9 and his pensions, and equally, you have agreed to test
 10 four days. I can understand the logic of why Mr Singh
 11 would be upset about that."
 12 And so that was the intention that I had behind
 13 holding that particular board meeting. It was done
 14 knowingly and I believe I did have the authority to do
 15 that as director of retail operations, because at the
 16 end of the day, what I was trying to do was act in the
 17 best interests of the business and sort this issue out
 18 which was clearly -- thing.
 19 There was a staff grievance as well that I think
 20 Robin Vernieux had investigated and at that time it had
 21 all the hallmarks in my mind of a partnership that
 22 wasn't working. And again, when Swarandeeep's grievance
 23 came in, that just reconfirmed, you know, that those two
 24 partners were having real issues and I thought the board
 25 meeting, in my way of thinking, was a positive step.

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1 I know that may have not been how Swarandeeep may have
2 seen it, but in my regard, I saw it as a positive step
3 to take.

4 SOG's view on this is: pay the distributions, get
5 that out the way, stop that being a barrier to you
6 partners getting on and the testing -- SOG's position is
7 you should comply with the four days. Stop that being
8 a barrier and you two start talking to each other.

9 That was my thought process.
10 Q. That would be fine if Ms Birdi were able to attend the
11 meeting and you could say these things to her. It's
12 obviously a very important meeting. You don't hold
13 these sort of meetings other than once in a blue moon?

14 A. No.

15 Q. So from her perspective, all the things you have just
16 said would surely be potentially important, if she were
17 there?

18 A. Well, can I just comment on why I didn't believe that
19 that was necessary? Because the thing about the
20 pensions and distributions, that is his entitlement.
21 That didn't require Swarandeeep to approve it. She
22 didn't have to approve it. That's what he was entitled
23 to. So her input -- and I believe, based on his
24 grievance, that the reason she didn't believe, or wasn't
25 signing off his pension and distribution was because she

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1 didn't -- her financial adviser had told her he wasn't
2 entitled to it.

3 That wasn't, in my mind, a reason to open up
4 a debate with Swarandeeep as to whether he was entitled
5 to it or not. It was a matter of fact. He was.

6 Q. You are --

7 A. Sorry.

8 Q. No, go on?

9 A. Then in relation to the testing, it was something that
10 she had actually agreed to and, yes, I can understand
11 her reasons for not doing it because I think they would
12 have been communicated, but I didn't -- I thought -- my
13 thing was: try to move the blockage in this partnership,
14 which was the four day testing and the distributions
15 issue.

16 Q. No. What you were seeking to do was simply to press on
17 with the formal process of directing her to do what
18 Mr Singh wanted her to do in relation to these issues.
19 That's what you decided to do, wasn't it?

20 A. I know exactly what I was doing and why I was doing it,
21 and it is as I have just explained to you.

22 Q. I'm asking you to explain exactly why you made the
23 decision that when she asked for a longer period of
24 time, you said -- you, SOG said -- no?

25 A. Because the issues, as I explained to you -- the pension

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1 and distribution thing, which is what I dealt with, that
2 was well-known, that had been going on for nine months.
3 These issues around testing had been going on for nine
4 months and it was clear that those two issues were at
5 the heart of why this partnership wasn't working; why
6 I had got a grievance from both directors; why we had
7 had grievances from staff members. You know, my mind
8 was this partnership is in trouble and I felt that it
9 was right to deal with it in the way that I dealt with
10 it.

11 Q. She had things she wanted to say about these issues,
12 didn't she?

13 A. Yes.

14 Q. And these were issues which were basically against her?

15 A. Yes.

16 Q. They were grievance issues, actually. They had been
17 raised by way of formal grievances against her?

18 A. Yes.

19 Q. She was the subject of the grievance. And she was
20 asking for some time because she had immovable hospital
21 appointments. I think you knew that she had a difficult
22 pregnancy situation. That's right, isn't it?

23 A. I didn't know she had a difficult pregnancy situation.

24 No, I didn't know that.

25 Q. Okay. But you knew that she had immovable hospital

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1 appointments and that she was asking for some more time?

2 A. I didn't get into -- in the board meeting I didn't get
3 into the grievances deliberately because she would have
4 the opportunity at a more convenient time to talk about
5 her grievances.

6 Q. I'm talking about the grievances against her?

7 A. Yes, exactly. Kam Singh raised grievances and that
8 wasn't dealt with at this board meeting.

9 Q. You say the two things that were dealt with were the
10 four day testing, that was one of his grievances, and
11 the equalisation, that was another of his grievances?

12 A. And I deliberately left everything that was -- there was
13 five grievance areas that we have already identified.
14 I dealt -- I felt I could deal with two of them through
15 the board meeting process, and the other three I felt
16 would fit under the grievance process, which
17 I acknowledged needed to be investigated.

18 Q. Okay. Did you believe that she was unable to be there
19 because of immovable hospital appointments, as set out
20 on page 2070 between the two hole punches? {E/672/2070}
21 Specsavers' letter back to her, Mr Kidd saying he is
22 sorry that she had immovable hospital appointments on
23 the day set for the meeting.

24 Did you understand that that's why she couldn't be
25 there?

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1 A. Yes, I do.
 2 Q. And even then you weren't prepared to put the meeting
 3 off?
 4 A. As I said to you before, Mr Stuart, in my own way I felt
 5 it was a positive step and in the interests of the
 6 business to take away those two issues of pension
 7 distributions and sight testing.
 8 Q. Without giving her the opportunity to say anything about
 9 those two issues?
 10 A. She could have sent in some written submissions. She
 11 chose not to send in any written submissions.
 12 Q. All right. So if we flick on to the meeting itself,
 13 2206. {E/679/2206}
 14 Mr Singh, of course, was there. He had gone up to
 15 the Novotel in St Pancras. He had taken some time off
 16 work that week, hadn't he? Did you know that?
 17 A. I didn't know that.
 18 Q. At short notice, he had taken that week off?
 19 A. I didn't know that week; I didn't know that.
 20 Q. Leaving Ms Birdi to have to manage things in between her
 21 hospital appointments. Did you know that?
 22 A. No, I didn't know that, no.
 23 Q. Who did you think was running the store?
 24 A. I didn't know; a manager or a supervisor?
 25 Q. Okay. All right. So we come to your agenda item and

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1 the testing resolution, as you call it?
 2 A. Yes.
 3 Q. Agenda item 7, 2208, {E/679/2208} and the resolution
 4 that you propose, 2209, a motion? {E/679/2209}
 5 A. Yes.
 6 Q. Do you see that?
 7 A. Yes.
 8 Q. You have obviously -- page 2208, you have given Mr Singh
 9 the opportunity to say what he wants to say about it,
 10 about the eye testing issue?
 11 A. Yes, I was keen to understand what had happened and get
 12 his version of events.
 13 Q. You weren't so keen to get her version of events that
 14 you would give her the opportunity to be present at the
 15 board meeting, and you believed she was off in hospital
 16 at this stage, and so you just heard from him?
 17 A. I believe that she had agreed to test four days a week,
 18 and that was what Mike Rowe's meeting in September --
 19 you know, I had the notes and I knew that.
 20 Q. Did you know how she felt about that alleged meeting,
 21 that alleged agreement?
 22 A. No, I didn't.
 23 Q. Okay. I mean, what happened back in September 2008, at
 24 a time when the store was in TAPS Watch, et cetera, are
 25 you saying that what happens then has to apply for the

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1 rest of time?
 2 A. No, but I think the issue -- the thought process that
 3 I had at the time was that this is something that is
 4 discussed almost on a daily basis between Swarandeeep
 5 and -- between Kam Singh. It's a real point of
 6 contention. There is a real sense of disagreement.
 7 I didn't know all the ins and outs of those
 8 conversations because, obviously, I wasn't present. But
 9 I knew it was a real issue and if I could in some way
 10 try to move that issue forward, ie take it away from the
 11 partners almost and say, you know, "SOG's view on this
 12 is you should comply with the four days' testing",
 13 I thought that would help, you know -- in a way, help
 14 move the situation forward.
 15 Q. I'm just wanting to understand. You do accept that the
 16 number of days' testing, whether it be three and
 17 a half/four, or whatever, is a matter of day-to-day
 18 management. You do accept that?
 19 A. Absolutely, absolutely.
 20 Q. So it is for the two A directors?
 21 A. Absolutely.
 22 Q. To discuss it, agree with it?
 23 A. Absolutely.
 24 Q. You also accept that their discussion/agreement about
 25 that issue can change from time to time?

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1 A. Absolutely.
 2 Q. So that at some points, three days' testing might be
 3 appropriate; at some point, five might be appropriate?
 4 A. Absolutely, absolutely.
 5 Q. So that what was agreed or not quite agreed --
 6 A. Yes.
 7 Q. -- in September 2008 --
 8 A. Yes.
 9 Q. At a time when the store was negative, in TAPS Watch?
 10 A. Yes.
 11 Q. Mr Singh had just arrived?
 12 A. Yes.
 13 Q. Et cetera -- might not necessarily be the same
 14 circumstances by August 2009?
 15 A. Yes.
 16 Q. You do understand that?
 17 A. I do understand that.
 18 Q. The directors are allowed to change their minds, aren't
 19 they?
 20 A. Absolutely. Absolutely.
 21 Q. You and your fellow store directors in your stores must
 22 occasionally -- things must move on year on year and you
 23 make different decisions about day-to-day management?
 24 A. Absolutely.
 25 Q. All right. So the position here, surely, was that

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1 Mr Singh was raising a formal grievance?
 2 A. Yes.
 3 Q. That is what you had decided should go to this board
 4 meeting, rather than go down the grievance route. His
 5 grievance was Ms Birdi hadn't done what she said she had
 6 agreed to do back in September 2008?
 7 A. Yes.
 8 Q. And that's all his grievance was, wasn't it?
 9 A. Yes.
 10 Q. But you then, having heard from him and not from her,
 11 you then propose a motion; 2209? {E/679/2209}
 12 A. Yes. Can I just come back, if I may, in terms of --
 13 I agree with everything you said in terms of it's day to
 14 day, people can change their minds, et cetera, but the
 15 key to me is they could not agree on this issue. They
 16 could not agree. And therefore I viewed SOG's role in
 17 this was to try and move it forward. If the partners
 18 could agree -- if they changed their minds, that's
 19 absolutely fine, but they couldn't. They couldn't move
 20 forward and so my -- I believe that SOG's role in terms
 21 of action in the best interests of the business was to
 22 try and remove that blockage to, you know, instead of
 23 getting them to agree, which they clearly can't, that we
 24 were the only people -- or SOG was the only people who
 25 could have actually tried to get an agreement. So

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1 that's why I raised that motion.
 2 Q. And the motion that you raised -- can you read it? Do
 3 you see at 2209, {E/679/2209} there are two parts to
 4 your second motion:
 5 "a) The A directors comply with their respective
 6 roles and responsibilities as set out in the document
 7 provided on 31 January 2009 and their respective service
 8 contracts."
 9 A. Yes.
 10 Q. But that is not specifically the four days a week
 11 testing, is it?
 12 A. No.
 13 Q. That is that they both cooperate and do all the things
 14 that they should do as directors; both of them?
 15 A. Yes.
 16 Q. So that's not the one in issue, but the one is issue is
 17 b) and the motion you put is this:
 18 "Without prejudice to resolution a) above, SB has
 19 agreed as at 12 September 2008 BRM ..."
 20 She has agreed as at that date, BRM:
 21 "... to commit to four full days' ophthalmic testing
 22 per week at the Dartford store."
 23 A. Yes.
 24 Q. That's your resolution?
 25 A. Yes.

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1 Q. That she has agreed, as at that date, to commit to that?
 2 A. Yes.
 3 Q. That's your resolution?
 4 A. Yes.
 5 Q. And that's passed by the two of you?
 6 A. Yes.
 7 Q. You both put your hands up and say, "Yes, we both agree
 8 that Ms Birdi has agreed as at 12 September BRM to
 9 commit to four full days' ophthalmic testing", and that's
 10 all you resolve?
 11 A. Yes.
 12 Q. You do not there, do you, direct that she must do four
 13 days a week testing for the rest of time?
 14 A. I think this motion, with the benefit of sort of
 15 forensic evidence and reviewing it there, actually, you
 16 know, yes, it's badly worded. It doesn't say -- like,
 17 I put the September 2008 as that was my reference point.
 18 That's when I knew it was first agreed. But in terms
 19 of, did everybody understand, including Swarandeeep, what
 20 it actually meant, I believe she did.
 21 Q. What does it mean?
 22 A. Well, it means that she -- under her service contract,
 23 she has to do as the board of Specsavers -- carry out
 24 her duties, et cetera, as directed by the board of
 25 Dartford Specsavers Limited, and if the board of

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1 Specsavers Dartford Limited deem that she should test
 2 four days a week because she has agreed to test four
 3 days a week, then she should comply with that.
 4 Q. But it doesn't say that. It doesn't say the board of --
 5 A. No, it doesn't.
 6 Q. -- Dartford Specsavers Limited hereby --
 7 A. It doesn't, but that was --
 8 Q. -- direct that Ms Birdi shall?
 9 A. That was the intention that I had.
 10 Q. You didn't put that intention into effect, did you, in
 11 your formal meeting that Ms Birdi wasn't present at?
 12 A. No, I didn't. It could have been worded better.
 13 Q. It could have been worded differently, if that's what
 14 you wanted to actually do. Are you saying that really
 15 was your intention, to direct her to test four days
 16 a week for the future, for the future, regardless of the
 17 requirements of the business?
 18 A. No.
 19 Q. Her directorial duties?
 20 A. No, what I was trying to do, Mr Stuart, was trying to
 21 unblock a point -- a major point of disagreement between
 22 the two partners that had been present in the business
 23 for nine months that was starting to impact on the way
 24 that that business was performing, and if I didn't act
 25 decisively, it may be that we go through another six

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1 months without finding a resolution.
 2 Q. All you have actually done is to support Mr Singh, isn't
 3 it? You know that he wants her to test four days a week
 4 and she wants to test three and a half days a week?
 5 A. I have an opinion, because I am, as you quite -- keep
 6 reminding me, an optician. I understand how this
 7 business operates. I also believed it was in the best
 8 interests of the business to agree with some of the
 9 points that Mr Singh was raising.
 10 Q. Okay. Paragraph 49 of your statement. {C/13/163} You
 11 say:
 12 "I fully expected that Ms Birdi would comply with
 13 the Testing Resolution..."
 14 A. Yes.
 15 Q. How is she to comply with b)?
 16 A. Well, I think she knew what it actually meant.
 17 Q. Hm-mm.
 18 A. And I think there is -- there are letters from her, so
 19 I think it was -- even though it's badly worded, it was
 20 quite clear what was intended by that motion.
 21 Q. We will come to those letters in a moment. I think
 22 those letters, you will find, are the letters in which
 23 she raises the point that she doesn't consider that
 24 matters of day-to-day management going forward are open
 25 to you, SOG, to determine at board meetings because

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1 under 3.1 of the shareholders' agreement, day-to-day
 2 management is a matter for A shareholders, not B?
 3 A. I agree totally with you, Mr Stuart. It wasn't around
 4 the day-to-day management; it wasn't around -- this is
 5 a disagreement between two partners. They cannot agree.
 6 It is going to impact on this business. So, you know,
 7 I do not want to, nor do we ever try to, get involved in
 8 day-to-day management, but I have to get involved if
 9 there is a situation where I have got two partners who
 10 can't seem to agree on a fundamental issue within the
 11 business.
 12 Q. What power do you say you have to decide a matter of
 13 day-to-day management like this, whether she is to work
 14 three and a half or four days in the testing room? What
 15 power do you say you have to do that?
 16 A. At this stage I was the chairman of Dartford Specsavers
 17 Limited.
 18 Q. Yes.
 19 A. And therefore I have the power to put a board motion to
 20 the board and if the directors of the business vote in
 21 favour of it, then I can do that.
 22 Q. Yes, but all you have resolved is that as at the
 23 12 August 2008 BRM she committed to four full days'
 24 testing. She is telling you that as a matter of fact
 25 that's not right, that's not quite right; she committed

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1 to four days' testing whilst in TAPS, subject to her
 2 directorial duties, et cetera, et cetera.
 3 A. Yes.
 4 Q. And that's just a disagreement between the two of you as
 5 to what was or wasn't agreed. There is no power here to
 6 tell her what to do.
 7 A. As I said, it's not worded in the way that it was
 8 intended.
 9 Q. Okay. Finally on this board meeting, you decide, at
 10 page 2210, the other grievances -- {E/679/2210}
 11 A. Yes.
 12 Q. -- are going to be investigated and disciplinary matters
 13 dealt with by SOG.
 14 A. Yes.
 15 Q. Is that right?
 16 A. Yes.
 17 Q. You know that some of her grievances were actually
 18 effectively against SOG, weren't they?
 19 A. Yes.
 20 Q. You were acting here, I'm sure, in the best interests of
 21 Dartford Specsavers Limited; yes?
 22 A. Yes.
 23 Q. So on what basis did you decide that a grievance raised
 24 by Ms Birdi against SOG should be investigated and
 25 determined -- her grievance should be determined by SOG?

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1 A. Because I felt SOG were the best placed people to
 2 investigate this.
 3 Q. Is the person who is actually involved in the grievance
 4 allegation -- is that ever going to be the best person
 5 to determine a grievance in any employment situation?
 6 A. I think within any company you have people who are
 7 independently minded, who will be able to investigate
 8 these grievances, and, you know, I was comfortable that
 9 those people existed within SOG.
 10 Q. You could have moved a motion that those grievances,
 11 insofar as they involved allegations effectively against
 12 SOG, should be investigated by some independent
 13 third party, couldn't you? A solicitor or an accountant
 14 or a consultant. Some independence could have been
 15 brought to bear on all of this.
 16 A. Hypothetically, you are correct.
 17 Q. But instead you decide, no, SOG -- Specsavers Optical
 18 Group -- will act on the company's behalf?
 19 A. I think, looking at the grievances and looking at the --
 20 I think it was the decision I made, which was this can
 21 be investigated internally by SOG.
 22 Q. Okay, you can put away that bundle.
 23 MR JUSTICE NUGEE: Mr Raines, you said in answer to one of
 24 counsel's questions that under her service contract she
 25 was obliged to comply with directions from the board.

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1 A. Yes.
 2 MR JUSTICE NUGEE: Which company was her service contract
 3 with?
 4 A. With Dartford Visionplus.
 5 MR JUSTICE NUGEE: Did that service contract, as you
 6 understood, oblige her to comply with directions of the
 7 board of Dartford Specsavers?
 8 A. I think by default it does because obviously Dartford
 9 Visionplus is owned by Dartford Specsavers Limited and
 10 therefore by default it does. That was my
 11 understanding.
 12 MR JUSTICE NUGEE: Thank you.
 13 MR STUART: Right. Could you take out E9 -- can you be
 14 given E9? I just want to deal briefly with this
 15 question of the equalisation because one of the issues
 16 that you decided was that there was to be equalisation
 17 between the two of them, hadn't you?
 18 A. Yes.
 19 Q. Would you go to page 2281. {E/712/2281}
 20 A. Yes.
 21 Q. This was 11 September.
 22 A. Yes.
 23 Q. Kelly McCarthy was writing to you. She is down as
 24 Finance Customer Response Agent --
 25 A. Yes.

1 Q. -- whatever that is. She is something in the finance
 2 department. Is that right?
 3 A. I believe so.
 4 Q. Yes, and she wants your input on the details of
 5 Swarandeeep's car in the accounts?
 6 A. Yes.
 7 Q. Is that right? What is your role in relation to this
 8 then?
 9 A. I don't know where she got my name from, maybe because
 10 I was involved with Dartford at the time.
 11 Q. What is your role in equalisation and car issues?
 12 A. None, usually.
 13 Q. No. I wouldn't have thought it has got anybody to do --
 14 A. No, no.
 15 Q. -- with somebody as high up as you?
 16 A. No, I wouldn't. I wouldn't.
 17 Q. Do you know why you were being involved?
 18 A. No, I don't know. Maybe this is a clerk who has asked
 19 somebody a question about Dartford. I have no idea.
 20 Q. Okay. If you go back a few pages, 2268, {E/707/2268}
 21 had you been aware that Ms Birdi had written in in
 22 response to receiving the board meeting notes? She had
 23 written in to Mr Kidd. In your capacity as chairman of
 24 Dartford Specsavers, were you aware of this?
 25 A. Possibly.

1 Q. She has raised again, hasn't she, the question of why
 2 was the meeting so urgent and why couldn't she have
 3 an opportunity to be involved?
 4 A. Yes.
 5 Q. Did Mr Kidd or anybody else ask for your input in
 6 relation to responding to her -- as the board of
 7 directors?
 8 A. I cannot recall.
 9 Q. You can't recall? Okay, fine.
 10 2416 then. {E/726/2416} We come to what you did
 11 write to her. 2416?
 12 A. Yes.
 13 Q. Do you have that?
 14 A. Yes, I have got that, sorry.
 15 Q. You say:
 16 "I refer to the board meeting of the 20th, in
 17 particular the resolution passed by the board at that
 18 meeting that with effect from 20 August you are required
 19 to spend four full days' ophthalmic testing."
 20 A. Yes.
 21 Q. Could you show me where on the board meeting minutes
 22 there is a resolution that, with effect from 20 August,
 23 Ms Birdi is required to spend four full days' testing?
 24 A. You are obviously referring to the motion that we have
 25 discussed that wasn't worded as correctly as it was.

1 But if you --
 2 Q. I don't know. Is that what you are referring to?
 3 A. That's what I'm referring to in this.
 4 Q. That doesn't say anything about, "From 20 August you
 5 must do" this, that or the other.
 6 A. No, 20 August was when the board meeting was.
 7 Q. Yes.
 8 A. Yes.
 9 Q. So when you write this here:
 10 "... in particular the resolution passed by the
 11 board at that meeting that with effect from 20 August
 12 you are required to spend four full days' ... testing."
 13 A. Yes.
 14 Q. Did you write that or did somebody write that for you
 15 or...?
 16 A. That was -- will have been written by legal and I would
 17 have authorised it.
 18 Q. Okay. You go on:
 19 "We understand that you may not be acting in
 20 compliance with this instruction and resolution."
 21 A. Yes.
 22 Q. So we have got an instruction and a resolution?
 23 A. Yes.
 24 Q. Where is the instruction?
 25 A. Is that not implied by the resolution itself, that it

1 was passed?
 2 Q. I don't know. That's what you meant?
 3 A. That's what I meant.
 4 Q. Okay:
 5 "As chairman of the board meeting, I'm therefore
 6 writing to formally instruct you that as both a director
 7 of Dartford Specsavers Limited and employee of Dartford
 8 Visionplus Limited you are required to comply with the
 9 above board resolution."
 10 A. Yes.
 11 Q. That's all you direct her: she is to comply with the
 12 board resolution?
 13 A. Yes.
 14 Q. "Should you fail to do so, further action may be taken
 15 against you, including potentially disciplinary action."
 16 Do you see that?
 17 A. Yes.
 18 Q. And she responds at page 2498. {E/747/2498} Would you
 19 go to that? Do you see that?
 20 A. Yes.
 21 Q. "Dear Mr Raines ..."?
 22 A. Yes.
 23 Q. "I refer to your letter dated 8 October."
 24 Do you see that?
 25 A. Yes.

1 Q. And she sets out here her response, doesn't she --
 2 A. Yes.
 3 Q. -- to your letter?
 4 A. Yes.
 5 Q. And she says:
 6 "'The idea' of me having to test four days a week
 7 came from my co-director, Kam Singh.
 8 "I wrote to the board on 9 September with my
 9 objections to it."
 10 Do you see that?
 11 A. Yes.
 12 Q. "Mr Singh is bullying me." And it's:
 13 "... because I have made complaints about the
 14 conflict of interest which I think he has."
 15 That's a reference to the Grays issue.
 16 A. Yes.
 17 Q. "Despite my repeated complaints you have not dealt with
 18 the conflict of interest issue."
 19 Do you see that?
 20 A. Yes.
 21 Q. That's right, wasn't it?
 22 A. Yes, because that's being dealt with through the
 23 grievance process.
 24 Q. Right. Did you not think that was a serious matter for
 25 the board if Mr Singh, a director and employee of

1 Specsavers Dartford -- Specsavers and Dartford
 2 Visionplus -- an employee of Dartford Visionplus -- was
 3 moonlighting in Grays, where his wife owned the store?
 4 A. But that would be dealt with through the grievance
 5 process.
 6 Q. Why couldn't it be dealt with at a board meeting, like
 7 the matter of Ms Birdi not complying with an agreement
 8 that she reached back in September 2008 to do an extra
 9 half a day a week testing? That's so serious it has to
 10 go to a board meeting but his activities are not so
 11 serious?
 12 A. As I said, I was quite deliberate about what I did with
 13 the setting up of the board meeting in August, which was
 14 try to take away those barriers that the partners
 15 couldn't agree on. The other issues, they needed more
 16 detailed explanation -- sorry, investigation, which
 17 could take place using the grievance process. That's
 18 how I decided that -- what the best approach was.
 19 Q. Okay, go back to 2498, where she is responding to your
 20 letter. {E/747/2498} She says:
 21 "I will continue to perform my duties at the store
 22 to the best of my ability, as I have always done but
 23 I will not be bullied into testing four days a week ..."
 24 Do you see that?
 25 A. Yes.

1 Q. "... just because Kam Singh demands it. I do strongly
 2 believe that leading from the front is key ... and
 3 I will continue to do this ... "
 4 Do you see that?
 5 A. Yes.
 6 Q. "... as and when necessary, as well as performing all my
 7 other directorial duties. I'm very disappointed that
 8 you have taken this line of action telling me how to run
 9 the day-to-day management of the store, when it totally
 10 contradicts the whole essence of what the joint venture
 11 concept is based upon and also contradicts the
 12 information given by SOG. (I have enclosed a copy of
 13 a letter sent to the board which I believe clearly sets
 14 out my position to Kam Singh's grievance ..."
 15 A. Yes.
 16 Q. "... regarding four days' testing and leadership on the
 17 shop floor)."
 18 Et cetera. Do you see that?
 19 A. Yes.
 20 Q. "In the best interests of the Dartford business,
 21 I suggest that the conflicts of interest which I believe
 22 Kam has and his lack of commitment to any sort of
 23 timetable be looked at to enable consistent leadership
 24 on the shop floor."
 25 A. Yes.

1 Q. So she is telling you that she has committed to perform
2 her duties at the store to the best of her ability?
3 A. Yes.
4 Q. She is not going to be bullied and she is not going to
5 be told what to do by Kam Singh. That's her response to
6 your letter, isn't it?
7 A. That is her response.
8 Q. What's the matter with that? That's a very reasonable
9 response, surely?
10 A. It wasn't Kam Singh who was telling her to test
11 four days a week.
12 Q. Nor were you.
13 A. Well, the board -- Dartford Specsavers Limited were.
14 Q. Well, they weren't, were they? The resolution didn't
15 say, "You shall test from 20 August."
16 A. That was clearly her understanding.
17 Q. You are implying her understanding now.
18 A. This was an issue -- the testing four days had been
19 an issue for, at this time, over 12 months.
20 Q. Yes, and things move on, as you rightly have accepted.
21 A. They do.
22 Q. What might have been the position in September 2008 is
23 not necessarily the position in November 2009.
24 A. But the thing that didn't move on, Mr Stuart, was the
25 fact that neither of the partners could agree on what

1 the appropriate amount of testing was within the
2 Dartford business. That had not moved on.
3 Q. That's right. Ms Birdi was saying, "It's a matter of
4 day-to-day management for us to decide and what I'm
5 going to do is I'm going to perform my duties to the
6 best of my ability and I'll do such testing as
7 I consider is appropriate and I won't be bullied by
8 Mr Kam Singh."
9 A. Yes.
10 Q. And that was fair enough, wasn't it, for her to say
11 that?
12 A. It was fair enough for her to say that but that's her
13 point of view.
14 Q. Okay. If you go to page 2521, {E/749/2521} Mr Goddon
15 has become involved --
16 A. Yes.
17 Q. -- in relation to the grievance; yes?
18 A. Yes.
19 Q. And he is obviously keeping you up-to-date -- if you go
20 to 2521, there is an email to --
21 A. Yes.
22 Q. That's to your PA and to you --
23 A. Yes, yes.
24 Q. -- setting out him dealing with the grievance?
25 A. Yes.

1 Q. Were you in contact with Mr Goddon? Discussions with
2 him about what he was or wasn't to be doing here?
3 A. No, absolutely not, absolutely not.
4 Q. If you go to 2543 -- {E/750/2543}
5 A. Yes.
6 Q. -- I presume you are saying you had no part to play in
7 Mr Goddon's grievance decision-making whatsoever?
8 A. Absolutely.
9 Q. So I can't ask you about that?
10 A. Absolutely not.
11 Q. That's fine. You just get copied in on a copy of his
12 report?
13 A. Yes.
14 Q. But 2543. Do you see that? {E/750/2543}
15 A. Yes.
16 Q. Obviously at the bottom we have got the:
17 "Hi Linda
18 "Please can you send recorded delivery the relevant
19 letter and a copy of the internal management report ..."
20 A. Yes.
21 Q. Mr Goddon -- does he report to you?
22 A. Yes, he does.
23 Q. So he is beneath you in the scheme --
24 A. Yes, he is an RDC.
25 Q. He is just an RDC?

1 A. Same as Mike Rowe, Dominic Savill.
2 Q. All right. Considering the seriousness of the
3 allegation, the grievance allegations, that were being
4 raised --
5 A. Yes.
6 Q. -- here, did you really consider it appropriate that
7 those grievance issues should be dealt with by somebody
8 at that low level?
9 A. Personally, I do. The decision to appoint Alan Goddon
10 would have been made by legal. They would use an RDC to
11 investigate this type of grievance.
12 Q. Whatever the seriousness of the allegations being made
13 and against whom they were being made?
14 A. You know, I'm not going to comment on legal and how
15 they -- how they make that decision. It certainly
16 wasn't my decision to appoint him.
17 Q. You see, when it's Mr Singh making a grievance against
18 Ms Birdi, you immediately become involved, don't you,
19 the retail director of SOS?
20 A. No, I became involved because there were substantial
21 issues -- we had pensions and distributions and benefits
22 and four-day testing -- that I thought could be best
23 addressed through a board meeting. I hold board
24 meetings. It's part of my role.
25 Q. Do you remember, before we got to you deciding to do it

1 through a board meeting, at which she wasn't present --
 2 A. Yes.
 3 Q. -- you agreed that, because the JV partner had raised
 4 a grievance against a fellow JV partner, it comes to you
 5 and then you have to decide how you are going to deal
 6 with it?
 7 A. I dealt with aspects of the grievance that Mr Singh had
 8 raised, two of the aspects, that I thought could have
 9 been dealt with most appropriately through a board
 10 meeting.
 11 Q. Yes, but when it's Ms Birdi who is raising allegations
 12 against him -- just to see the summary of the
 13 allegations, go to page 2525. {E/749.1/2525} The actual
 14 grievances are summed up in a line on the left-hand
 15 column?
 16 A. Yes.
 17 Q. 2525. So the first grievance against him is about these
 18 conflicts of interest, the Grays store and all those --
 19 A. Yes.
 20 Q. I'm not going to go into all the details of it, but we
 21 know it's a very serious allegation?
 22 A. Yes.
 23 Q. Over to 2527, {E/749.1/2527} the second grievance is
 24 that he is not acting in the best interests of the
 25 business. And again, there are a number of detailed

1 allegations within that but it's basically alleging that
 2 he is not complying with his duties as a director to act
 3 in the best interests of the business?
 4 A. Yes.
 5 Q. Page 2532. {E/749.1/2532}
 6 A. Yes.
 7 Q. The third allegation is that he is not authorising her
 8 expenses?
 9 A. Yes.
 10 Q. Just as he had said to you, "She is not authorising my
 11 equalisation and my pension" --
 12 A. Yes, yes.
 13 Q. She was saying, "He is not authorising my expenses"?
 14 A. Yes, yes.
 15 Q. 2533, {E/749.1/2533} her fourth allegation is serious
 16 allegations of unfair treatment at work by him,
 17 bullying -- do you remember the bullying, the rudeness?
 18 A. Yes, yes.
 19 Q. Various allegations of bullying. Withholding post from
 20 her; these are all subparts of that fourth allegation?
 21 A. Yes.
 22 Q. He is high-handed -- page 2536 {E/749.1/2536} --
 23 bullying, more bullying and then finally, the fifth
 24 allegation -- sorry, no, we don't have a fifth
 25 allegation; these are all subsets of four.

1 A. Right.
 2 Q. So those allegations, rather than being dealt with by
 3 you in this way that you have dealt with his allegations
 4 against her -- she is not testing half a day and she is
 5 not doing my equalisation and my pension -- when he
 6 makes allegations, you just get one of your RDCs to deal
 7 with that. It doesn't seem very equal treatment, does
 8 it?
 9 A. Well, I didn't authorise or instruct Alan Goddon to do
 10 the investigation into the grievances. That was done by
 11 Legal deciding who the most appropriate person was.
 12 Q. I suggest to you that -- shall we just go back then to
 13 the page I took you to, 2545? {E/751/2545}
 14 A. Yes.
 15 Q. So at the bottom you have written to Mr Raines:
 16 "Hi a comprehensive investigation and report. It
 17 obviously took a considerable amount of your time,
 18 please ensure all these costs are billed to Dartford."
 19 A. Yes.
 20 Q. Again, you are very keen that, where she is raising
 21 matters and they are being dealt with, it's being billed
 22 to Dartford?
 23 A. Yes. As I explained yesterday, that's almost like a PS
 24 postscript that I put on things, which is, if it's
 25 something that is billed, can we bill it please.

1 Q. Okay. Anyway, above Mr Goddon perhaps discloses the
 2 true rationale and scheme here:
 3 "Hi, thanks.
 4 "I believe we have flushed out most of her
 5 complaints..."
 6 Do you see that?
 7 A. Yes.
 8 Q. Was that really what was going on here? You were just
 9 wanting to get her complaints out so that you could
 10 then --
 11 A. No, no.
 12 Q. -- not agree any of them, reject all of them and move on
 13 with the concept of what you were interested in, which
 14 was forcing her to do what Mr Singh said she was to do?
 15 A. Absolutely not.
 16 Q. That appears to be Mr Goddon's thinking, "flushing out
 17 her complaints"?
 18 A. I wouldn't have used those words.
 19 Q. He seems to think that's appropriate to say to you and
 20 perhaps that's what you discussed with him?
 21 A. Well, no. You know, I think you can see my intent,
 22 which is a comprehensive investigation and report, ie,
 23 you know, "You have got underneath all of the issues
 24 that have been raised within those two grievances".
 25 Q. Right. Finally in this bundle, 2556, {E/757/2556}

1 Ms Birdi appeals against Mr Goddon's decision, doesn't
 2 she?
 3 A. She does.
 4 Q. Ground 1: her grievance had been against SOG and
 5 Mr Singh, hadn't it?
 6 A. Yes.
 7 Q. Ground 2: he hadn't even investigated certain items.
 8 That's on page 2557? {E/757/2557}
 9 A. Yes.
 10 Q. Ground 3: the allegations haven't been fairly
 11 investigated. Do you see that?
 12 A. Sorry?
 13 Q. All complaints --
 14 A. Sorry, can you just go backwards, please?
 15 Q. Yes?
 16 A. Where would you like me --
 17 Q. 2557 we are on.
 18 A. Yes, I have got that.
 19 Q. So ground 2 of her appeal had been that Mr Goddon hadn't
 20 even -- he had refused to investigate certain items.
 21 She was complaining about that.
 22 A. Yes.
 23 Q. Ground 3, do you see between the two holepunches?
 24 A. Yes.
 25 Q. {E/757/2557} "The complaints I have made have not been

1 fairly investigated. Out of a total of 26 complaints,
 2 none were wholly upheld and three, alone, were partially
 3 upheld. There is no evidence you made any independent
 4 inquiry. Thus all complaints that Kam denied outright
 5 were not upheld and only the three instances that Kam
 6 made a partial admission ... were upheld."
 7 In other words, she is pointing out that everything
 8 she alleges, if Kam Singh denies it, it's rejected, and
 9 if he has do admit it -- he does have to admit some
 10 things -- there is a partial upholding. It all seems
 11 very one-sided; do you see?
 12 A. I do see that.
 13 Q. When you read his report, did you think it was
 14 one-sided?
 15 A. I -- my recollection -- I didn't. You know, I didn't.
 16 I can't think why I didn't but from recollection now,
 17 I didn't.
 18 Q. It has "flushed out all her complaints". It has
 19 rejected all of them apart from three partial ones where
 20 Kam had to admit minor transgressions. But you
 21 considered it was a wholly independent and --
 22 A. I know the individual and I know how he conducts himself
 23 and, you know -- and I look at the quality of what he
 24 did, ie, you know, the amount of time that he will have
 25 taken and, to my mind, it seemed a comprehensive report.

1 You know, maybe I'm at a -- of a benefit in that I know
 2 the individual.
 3 Q. It reached the conclusions that you hoped he would
 4 reach, namely all her grievances, save for a few minor
 5 partial ones, were rejected?
 6 A. No, that isn't true. All I -- my only motive at this
 7 time is to get that partnership working. You know, to
 8 get that partnership and try to move everybody on.
 9 That's all I wanted to do. It wasn't a case of he is
 10 right, she is wrong, he is right -- you know, by this
 11 time, both partners are probably not acting in the right
 12 way towards each other, not how I would expect them, as
 13 directors of a business, to be able to act.
 14 Q. Last page of that letter, 2558, {E/757/2558} she
 15 mentions the fact that:
 16 "I provided evidence, which Kam did not deny, that
 17 Kam has been withholding post from me and making
 18 decisions unilaterally..."
 19 Did you read that and think that's very serious,
 20 a director doing that?
 21 A. I viewed it in terms of this tit for tat thing that they
 22 seemed to get themselves into, which is, you know, there
 23 is tit for tat on all of these things. It's just
 24 a demonstration that the partnership is not working.
 25 Q. Mr Singh was no doubt -- not telling you that the

1 partnership wasn't working, was he?
 2 A. I think his grievance was exactly that: the partnership
 3 isn't working.
 4 Q. Ah, but you had upheld the two aspects of his grievance
 5 that he was particularly interested in, the equalisation
 6 in his pension and the making her test four days a week.
 7 You say you had upheld that at the board meeting,
 8 effectively?
 9 A. Yes.
 10 Q. Dealt with that, done?
 11 A. Well, no, I had issued two resolutions.
 12 Q. And that was the end of those grievances, as far as you
 13 were concerned?
 14 A. Well, no, they still had to be implemented.
 15 Q. No, you are saying your decisions had to be implemented.
 16 But his grievances -- so he was alleging that --
 17 A. Oh, yes, yes, sorry.
 18 Q. -- she had not complied with the agreement and she
 19 wasn't equalising, et cetera?
 20 A. Sorry, we are at cross purposes.
 21 Q. He was making complaints against her. You had dealt
 22 with those two complaints?
 23 A. Yes.
 24 Q. At the board meeting.
 25 A. Yes.

1 Q. She hadn't had an opportunity to speak about them at the
2 meeting and you had accepted everything Mr Singh said
3 about those things and you had made resolutions on the
4 basis of what he said?
5 A. Yes.
6 Q. So he was happy with that, no doubt?
7 A. I don't know. You would have to ask him.
8 Q. Did he appear happy at the board meeting, when the two
9 of you agreed that this was what was going to happen?
10 A. I can't -- I can't reflect. He appeared stressed, I'll
11 tell you that.
12 Q. Yes, you say that in your witness statement, you thought
13 he appeared stressed. What about her? Did you not
14 think she might be a bit stressed?
15 A. I don't know, I hadn't met her. I'm sure she -- I'm
16 sure she would have been. Everybody would have been
17 stressed by the whole situation. It must have been
18 intolerable for both of them, you know, to actually work
19 in a situation where -- thing -- and that's not how our
20 partnerships function. They function with people
21 getting on with each other, focusing on the business.
22 It must have been intolerable for both of them.
23 Q. Obviously, he has had his two resolutions passed at the
24 board meeting and then all the grievances apart from the
25 three partial ones that he admitted have all been found

1 against her, so they have been rejected.
2 What have you done to support her? You and your
3 team?
4 A. I don't -- me personally? I didn't do anything.
5 Q. Or your team?
6 A. I don't know. I assume Mike Rowe and Alan Moylan and
7 Riyaz Rajan were still going into the store, trying to
8 support the partners and having meetings with them and
9 trying the best they could.
10 Q. You mean support Mr Singh, your direction to Mr Rowe
11 and -- it was clear?
12 A. No, no, support the partners. Support the partners in
13 meetings with both partners.
14 Q. Your email had said, "Support Mr Singh", hadn't it?
15 That's right, isn't it?
16 A. Which email are you referring to, Mr Stuart?
17 Q. The one we went to this morning, where you set in motion
18 your team supporting this store. You didn't say,
19 "Support this store"; you said, "Support Kam Singh"?
20 A. Yes, with a motive to making sure that the business
21 turns round and performs.
22 Q. All right. You can put away E9. Swiftly on to E10. We
23 are into the end of 2009/beginning of 2010 now.
24 Page 2573, near the beginning? {E/768/2573}
25 A. Yes.

1 Q. You write to Ms Birdi on 4 December?
2 A. Yes.
3 Q. I think you refer to this in paragraph 51 of your
4 witness statement? {C/13/163}
5 A. Yes.
6 Q. You refer to the board meeting:
7 "As you know, at the Board Meeting ... a Board
8 resolution was passed ..."
9 Just another recitation of the same words. Is that
10 right?
11 A. Yes.
12 Q. "... you are required to spend 4 full days ophthalmic
13 testing..."
14 Instruction repeated and then you say:
15 "I understand that, despite my letter of 8 October,
16 you are still not acting in compliance with this
17 instruction..."
18 So had you been speaking to Mr Singh?
19 A. Erm, no.
20 Q. No? Had you been speaking to somebody who had the
21 records of all the testing days done by all the
22 opticians, including Ms Birdi?
23 A. No.
24 Q. Had you done some investigation yourself?
25 A. In this -- I don't -- I can't recall doing any

1 investigation. It may have come up in a conversation
2 with Michael Rowe. I don't know.
3 Q. It may have been in a conversation with Michael Rowe?
4 A. It may have been. I don't recall.
5 Q. Is there any note of this? Do you have it in a day
6 book?
7 A. No. I don't write all my conversations in day books.
8 Q. No, so you are saying Mr Rowe had a conversation with
9 Mr Singh --
10 A. I can't recollect --
11 Q. No.
12 A. -- today, you know, but I was aware that Swarandeep had
13 not complied with the instruction.
14 Q. And how were you aware?
15 A. As I said, I can't recollect how I was, but it may --
16 I'm surmising that it may have been in a conversation
17 with Michael Rowe.
18 Q. All right. Did you check that before you wrote this
19 fairly fierce letter to her, making -- a formal letter
20 and telling her that: {E/768/2573}
21 "... you will be called to a disciplinary hearing
22 for your failure to do so."
23 If you continue. Do you see that?
24 A. Yes, I do see that.
25 Q. Did you check with anybody what the position was --

1 A. As I said --
 2 Q. -- before you wrote that letter?
 3 A. As I said, I may have checked with Michael Rowe.
 4 I can't recollect.
 5 Q. Okay. Perhaps you didn't even write this letter? Did
 6 you write this letter, or would this be written for you?
 7 A. No, this was written by Legal but I knew it was -- well,
 8 I asked for it to go out.
 9 Q. Yes.
 10 A. So I instructed it to go out but, yes, it wasn't
 11 written -- I didn't actually physically write it, but
 12 I instructed it to be written.
 13 Q. Okay. If you flick back three pages, were you aware of
 14 the fact that Mr Singh had alleged that Ms Birdi was
 15 forging signatures now? {E/766/2570}
 16 A. No, I had no knowledge of that.
 17 Q. No, okay. So you make this threat in 2573 at the end?
 18 {E/768/2573}
 19 A. Yes.
 20 Q. You say you are formally instructing her, and you are
 21 doing this, as, you say, director of retail development?
 22 A. Yes.
 23 Q. Of Specsavers. I suppose that is SOS/SOG. Is that
 24 right?
 25 A. Yes.

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1 Q. So did you think SOG was formally instructing Ms Birdi
 2 what she had and hadn't to do in relation to testing?
 3 A. No, I'm still in my role as chairman of the Dartford
 4 Specsavers Limited.
 5 Q. Okay. And you were the chairman of that company at this
 6 date, were you? 4 December 2009?
 7 A. Well, I was under the impression that I was because it
 8 was sort of me chasing up on behalf of the meeting that
 9 I held -- the board meeting that I held with her.
 10 Q. Okay. Who actually made the decision to threaten her
 11 with this?
 12 A. What do you mean, threaten her with it?
 13 Q. You can see what it says. If says:
 14 "If you fail to do so by Monday, 14 December ..."
 15 You are giving her basically a week to comply?
 16 A. Yes.
 17 Q. "If you fail to do so ... (ie that by Monday 14th
 18 December you have not commenced testing 4 full days per
 19 week, and continue to test 4 full days per week
 20 thereafter) you will be called to a disciplinary hearing
 21 for your failure to do so."
 22 A. This is me, at this moment in time, trying to get some
 23 resolution on this issue.
 24 Q. Well, some resolution which involves: do what I say or
 25 you are going straight to a disciplinary hearing?

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1 A. Yes.
 2 Q. Is that right?
 3 A. Yes.
 4 Q. And did you reach that decision to threaten her with
 5 a disciplinary hearing before or after you had raised it
 6 at a board meeting of Dartford Specsavers or Dartford
 7 Visionplus Limited?
 8 A. Sorry, can you repeat the question?
 9 Q. Did you make that decision to threaten her with calling
 10 her to a disciplinary hearing before or after raising
 11 that plan at a board meeting of Dartford Visionplus
 12 Limited, her employer, or Dartford Specsavers Limited,
 13 the company of which she was a director and shareholder?
 14 A. Right. Sorry, I'm not being awkward. I'm just trying
 15 to understand your question a little bit more. You
 16 introduced Dartford Visionplus. Can you --
 17 Q. As I understand it, you said -- you actually used the
 18 words there; do you see in the second line of that
 19 paragraph?
 20 A. Yes.
 21 Q. You are saying this -- do you see, you are writing to
 22 her?
 23 A. Yes.
 24 Q. As both a director of Dartford Specsavers Limited?
 25 A. Yes.

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1 Q. And an employee of Dartford Visionplus Limited?
 2 A. Yes, yes.
 3 Q. So you are presumably acting as Dartford Visionplus
 4 Limited, her employer?
 5 A. Yes.
 6 Q. And as Dartford Specsavers Limited, the company in which
 7 she is a director?
 8 A. Yes.
 9 Q. And you are telling her, for those two companies --
 10 A. Yes.
 11 Q. -- you are telling her, "If you do not do this by next
 12 Monday, you are going to a disciplinary hearing"?
 13 A. Yes.
 14 Q. Did you raise that decision, that idea, that plan to put
 15 her to a formal disciplinary process, with the board of
 16 either of those two companies?
 17 A. Not at that stage.
 18 Q. Your day book, 2579. {E/770/2579} I say your day book;
 19 I think this is your day book?
 20 A. It is.
 21 Q. Some of the writing doesn't look like yours, but the one
 22 at the bottom does, doesn't it?
 23 A. Yes, it is.
 24 Q. It's just below the second hole punch. It says
 25 "Artford" but we can believe that's Dartford. Just

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1 below the second hole punch?
 2 A. Yes.
 3 Q. "Discuss" something?
 4 A. That's "with".
 5 Q. "With legal/respond - action."
 6 A. Yes.
 7 Q. Is this a note to yourself, or is this a discussion you
 8 are having with Mr Dyson or --
 9 A. No, no, that's a note to myself. It means I should ring
 10 legal and discuss --
 11 MR JUSTICE NUGEE: Is it the "C" with a line over it?
 12 A. Yes, that's "with".
 13 MR JUSTICE NUGEE: Medical abbreviation?
 14 A. I don't know. That's how I write "with". It may well
 15 be actually; maybe it's my training.
 16 MR STUART: Okay. Do you recall what that was about, that
 17 note to yourself?
 18 A. No.
 19 Q. No?
 20 A. No.
 21 Q. Okay. Would you go on to 2623. {E/799/2623} Ms Birdi
 22 responds to your threat, doesn't she?
 23 A. Yes.
 24 Q. She says:
 25 "As you know, the insistence that I should spend

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1 4 full days ophthalmic testing per week at the Dartford
 2 store forms part of the grievance that I have taken
 3 against SOG and Kamaljit Singh as an incident of
 4 bullying and high handedness. As you know I have lodged
 5 an appeal against SOG's decision on my grievance..."
 6 Do you see that?
 7 A. Yes, I do.
 8 Q. So what she was saying was that this issue, this four
 9 days' testing issue, this was the matter about which she
 10 had a grievance?
 11 A. Yes.
 12 Q. For the reasons set out in all the grievance letters,
 13 which I have been through. And therefore it would seem
 14 inappropriate for you to be threatening her with
 15 disciplinary action for not complying, whilst her
 16 grievance about that very same issue with SOG hadn't yet
 17 been finally resolved?
 18 A. Yes.
 19 Q. That's fair enough, isn't it?
 20 A. Yes.
 21 Q. Good. But your response to that, I think, is at 2629.
 22 Is that right? {E/804/2629}
 23 A. Yes.
 24 Q. "Dear Ms Birdi..."
 25 Further to your letter:

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1 "As you know, at the Board Meeting of 20 August
 2 2008, a Board resolution was passed that ..."
 3 Just the same wording again?
 4 A. Yes.
 5 Q. "I understand from your letter dated 1 December 2009
 6 that, notwithstanding the above, you do not intend to
 7 comply, at least at this time, with the above
 8 instruction and resolution.
 9 "This issue will therefore be discussed at a further
 10 Board Meeting..."
 11 A. Yes.
 12 Q. So you are escalating it up to a board meeting again?
 13 A. What I'm trying to do is go: okay, we are not getting
 14 anywhere now. Let's get back in the room. Let's have
 15 another board meeting and let's decide where we go.
 16 Q. Okay. And just very quickly, she responds to you on
 17 2648. {E/814/2648}
 18 A. Yes.
 19 Q. Doesn't she? 2648.
 20 A. Yes.
 21 Q. Do you see that?
 22 A. Yes.
 23 Q. And she says:
 24 "My letter of the 24th December was to deal with
 25 your threatening me with disciplinary action..."

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1 A. Yes.
 2 Q. "I have made my position on this instruction very clear.
 3 The decision to impose 4 full days testing on me was
 4 taken at a board meeting that I asked you to
 5 reschedule --"
 6 A. Yes.
 7 Q. "-- to allow me to attend so that I could explain my
 8 objections. You refused even though as I said in my
 9 letter ... there was nothing in the agenda for that
 10 meeting that could not have waited. You could have even
 11 postponed a decision ...
 12 "I have made it clear that I will not be complying
 13 with the instruction, because I believe that as
 14 a Director I have a responsibility for day to day
 15 management of the business and it is for me and my
 16 co-Director to agree when I should test and when
 17 I should delegate the task to others. I made this clear
 18 in my letter..."
 19 That was her response, wasn't it?
 20 A. Yes.
 21 Q. And that was a fair enough response, wasn't it?
 22 A. Yes.
 23 Q. My Lord, I see the time. I'm almost there but I'm not
 24 finished yet.
 25 MR JUSTICE NUGEE: We will say 2 o'clock. I will remind you

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1 not to speak to anybody over lunch, Mr Raines.
 2 A. Yes.
 3 (1.02 pm)
 4 (The short adjournment)
 5 (2.00 pm)
 6 MR JUSTICE NUGEE: Yes?
 7 MR STUART: So, Mr Raines, you have bundle E10?
 8 A. Yes, I have.
 9 Q. Yes. We have reached the 23 February 2010 board
 10 meeting?
 11 A. Yes.
 12 Q. Go to page 2676. {E/829/2676} That's the notice of the
 13 board meeting?
 14 A. Yes.
 15 Q. Who was it who decided upon this agenda?
 16 A. It was myself. By this time I had -- we had obviously
 17 reach a bit of a stalemate. We weren't getting
 18 anywhere. And so I decided that the way I wanted to
 19 structure the meeting was to sign off the grievances.
 20 The grievances process had been complete at that time.
 21 I wanted to get the partnerships to make a commitment to
 22 each other in terms of how they would move forward, and
 23 then I wanted to talk about the store operations, almost
 24 celebrate some success, because the business was doing
 25 really well, although I was aware that there were a few

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1 issues around cash and banking which concerned me.
 2 And then I wanted to try and introduce some money
 3 into the partnership. So, almost do away with all this
 4 distributions and thing and I know I was aware at the
 5 time that Swarandeeep had some monies that was
 6 outstanding to her. So I thought: if I get the money
 7 flowing into the business, that's going to change the
 8 mindset of the, sort of, people. But I also realised
 9 I still had the thorny issue to address of the four day
 10 testing and so I structured the meeting in that way. So
 11 I pulled this agenda together.
 12 Q. Okay. Flick on to page 2712, the day before the
 13 meeting. {E/848/2712}
 14 A. 2712, yes.
 15 Q. 2712.
 16 A. Yes.
 17 Q. There is a string of emails. If you go to 2714,
 18 {E/848/2714} at the bottom you see the day before the
 19 meeting at 10 o'clock in the morning, Ms Birdi explained
 20 that she had been off sick?
 21 A. Yes.
 22 Q. "I am still not feeling 100 per cent. I am hoping to be
 23 well enough for tomorrow's meeting."
 24 A. Yes.
 25 Q. "If I am not well enough to travel tomorrow will it be

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1 okay for me to attend via conference call..."
 2 A. Yes.
 3 Q. Do you see that?
 4 A. Yes, I do see that.
 5 Q. That seems reasonable, doesn't it?
 6 A. Given how I had structured the agenda, which I explained
 7 a few moments ago, I wanted to go through some figures
 8 with her, with Kam as well, in terms of how the business
 9 was performed. It isn't something that I thought we
 10 could achieve through a conference call.
 11 Q. Okay. So you instructed Miss Girollet to answer as per
 12 2712? {E/848/2712}
 13 A. Yes.
 14 Q. "Dear Swarandeeep,
 15 "It is not acceptable for you to attend tomorrow's
 16 board meeting by conference call. Your presence in
 17 person is required."
 18 A. Yes.
 19 Q. This contrasts with when she wanted time for the
 20 previous board meeting to be put back for a short while
 21 whilst she was off sick, you were happy to go ahead,
 22 even without her at all?
 23 A. Yes, but as I mentioned previously, what I wanted to try
 24 and do with this one is to say: we have got a stalemate
 25 situation here. Let's try to get everyone in the room,

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1 try to resolve the issues that are causing this
 2 partnership to fail. And with everybody in the room, we
 3 would hopefully move the business forward and the
 4 partnership forward.
 5 Q. Okay. 2723. {E/850/2723} These are your day book notes
 6 for this --
 7 A. Yes.
 8 Q. -- meeting. Is that right?
 9 A. Erm, no -- yes. These were -- yes, they were related to
 10 that. I don't know which were pre-meeting and which
 11 were post meeting -- sorry, not post meeting, during the
 12 meeting, because again I suspect some of my scribbles
 13 were the ones that were -- would come up during the
 14 meeting.
 15 Q. What's the line at the top, for example:
 16 "[Something] is not showing your fellow director any
 17 respect at all."
 18 A. Where is that one?
 19 Q. The first line on page 2723: {E/850/2723}
 20 "[Something] is not showing your fellow director any
 21 respect at all."
 22 A. I don't think that actually relates to Dartford because
 23 where I have drawn the line -- or relates to Dartford.
 24 That must have been another meeting or whatever. It
 25 said:

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1 "Meeting closed."
 2 It may be another meeting I was doing.
 3 Q. Okay. The stuff above that, that is Dartford,
 4 presumably:
 5 "Swarandeeep was off Friday/Sat."
 6 A. Yes, where I have drawn a line, that relates, obviously,
 7 to Dartford.
 8 Q. All right. So you can't recall whether this is your
 9 notes at the meeting or beforehand?
 10 A. No, it's a combination of both, as I said, which is
 11 stuff that I -- was written probably beforehand, as
 12 a reminder to me.
 13 Q. Hm-mm?
 14 A. And other stuff that came up during the conversation
 15 that we were having.
 16 Q. So do we understand that the end of the meeting is 2724,
 17 the top two lines. After that, it has got nothing to do
 18 with this meeting? {E/850/2724}
 19 A. 2724?
 20 Q. Yes, the next page:
 21 "Inability to move on."
 22 A. Yes.
 23 Q. "Acting in the best interests of the business ..."
 24 A. Yes.
 25 Q. "... and all those employed in the business?"

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1 A. Yes.
 2 Q. "Inability to move on", is that a note that you had made
 3 for yourself; that's what you were going to say to her?
 4 A. Maybe, maybe not. I can't --
 5 Q. All right. Let's --
 6 A. Actually, I don't think it was, because this:
 7 {E/850/2723}
 8 "Mr Singh not leading from the front - upstairs on
 9 the laptop/phone."
 10 That was something that I may have added during the
 11 meeting itself.
 12 Q. Okay?
 13 A. And that inability to move on might have been -- well,
 14 I suspect it was during the meeting. It's a thought
 15 I was having.
 16 Q. Let's go to the minutes of the meeting itself. 2725?
 17 {E/851/2725}
 18 A. Yes.
 19 Q. And you deal with this in paragraph 55 of your witness
 20 statement? {C/13/164}
 21 A. Yes.
 22 Q. 54 and 55. You say:
 23 "Mr Singh confirmed his commitment ..."
 24 Top of page 164. You had asked for Ms Birdi and's
 25 Mr Singh's personal commitment to work together:

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1 "Mr Singh confirmed his commitment, but Ms Birdi was
 2 hesitant, saying that she believed she was being bullied
 3 in the work place."
 4 A. Yes.
 5 Q. And that was right, wasn't it? She did believe she was
 6 being bullied by Mr Singh?
 7 A. She did believe that, but in the grievance that --
 8 just -- we have had two grievances. That process had
 9 been completed and that wasn't proven.
 10 Q. You wouldn't expect her to agree unconditionally to work
 11 together with Mr Singh if she believed that she was
 12 being bullied by him at the time; you wouldn't expect
 13 that, would you?
 14 A. No, but, as I said -- what I would have expected was
 15 that in the spirit of Glasnost, trying to move this
 16 thing forward, you know, both of them would make
 17 a commitment to each other without reservations.
 18 Q. We will put past issues to one side?
 19 A. Yes.
 20 Q. Was that your --
 21 A. Exactly, and that's when it says in the minutes.
 22 Q. Hm-mm, but the past issue that Mr Singh was refusing to
 23 move on from was that he was saying that she had agreed
 24 back in September 2008 to test four days a week, and he
 25 wouldn't let that go, would he?

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1 A. I think if you -- well, if you recall, there is still
 2 the outstanding issues of distributions and pensions.
 3 Q. There is that as well?
 4 A. Which, you know, has still not moved forward. So
 5 there's two --
 6 Q. It had moved forward a little, hadn't it?
 7 A. A little, but, again, you know, he still had issues and
 8 their working relationship at the time, as it mentions
 9 in the minutes, is in a really poor place at this stage.
 10 Q. Yes, but it is right, isn't it, Mr Singh would not let
 11 go of the issue of four day testing?
 12 A. It was an issue for him, yes. Yes.
 13 Q. And she wouldn't let go of the allegations of bullying
 14 and harassment?
 15 A. Yes.
 16 Q. Agenda item 7, page 2727? {E/851/2727}
 17 A. Yes.
 18 Q. In the middle of the page, you are trying to get the two
 19 of them to work together; is that right? Is that what
 20 you are saying?
 21 A. Absolutely right.
 22 Q. And:
 23 "SB and KS both agreed to this suggestion."
 24 A. They did. I think this was the announcement -- making
 25 an announcement to the staff because at this stage the

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1 staff were getting involved.
 2 Q. That's right. So it was about their relationship and
 3 their working roles --
 4 A. Yes, yes, showing a united front.
 5 Q. A united front.
 6 A. Yes.
 7 Q. And they both agreed to that?
 8 A. They did.
 9 Q. So at the bottom of page 2728, {E/851/2728} the end of
 10 that item is:
 11 "KS/SB both agreed to follow up on the reports."
 12 You put the motion:
 13 "That following today's Board meeting the 'A'
 14 Directors will hold a meeting to agree actions to
 15 address concerns from this meeting..."
 16 A. Yes.
 17 Q. And that's banking procedures, mystery shopper,
 18 investigation, et cetera.
 19 So item 8 then, 2729. {E/851/2729} Do you see that?
 20 A. Yes.
 21 Q. It's about distributions of profits?
 22 A. Yes.
 23 Q. And there was an issue about £7,956 being paid to SB;
 24 that's your motion number 3?
 25 A. Yes.

1 21

1 Q. That's because that had been held up, hadn't it?
 2 A. I believe so.
 3 Q. For quite a long time, actually?
 4 A. Yes.
 5 Q. And then motion 4, there was going to be a distribution
 6 of the profits. That's right, isn't it?
 7 A. That is correct. The business was in a much better
 8 financial position at this stage.
 9 Q. Yes. And at the top of the page 2730, {E/851/2730}
 10 Ms Birdi disagreed with this, but only on the basis that
 11 she believed there was an amount of £8,705.61 still
 12 outstanding to her?
 13 A. Yes.
 14 Q. Beyond the £7956 figure that you had already agreed to
 15 pay?
 16 A. Yes.
 17 Q. And this is the December 2006 Mr Patel's equalisation
 18 issue. So she has raised that there, hasn't she? She
 19 thinks there is still £8,000 owing to her?
 20 A. Yes.
 21 Q. And then motion 5, an immediate cash distribution per
 22 month. Do you see that?
 23 A. Yes, yes.
 24 Q. And that's carried unanimously.
 25 A. Yes.

1 22

1 Q. So that seems to have resolved that issue?
 2 A. Yes.
 3 Q. Motion 6 is not a difficult one and it's carried
 4 unanimously. Then we move to the thorny issue of
 5 item 9, testing? {E/851/2732}
 6 A. Yes.
 7 Q. And you refer to the previous board meeting. She
 8 produced the letter. Do you see, 2732, she produced the
 9 letter with her reasons?
 10 A. Yes, yes.
 11 Q. The way you deal with this in pages 164 to 165 of your
 12 witness statement? {C/13/164}
 13 A. Yes.
 14 Q. I think I'll just take you to paragraph 61 on page 165?
 15 {C/13/165}
 16 A. Yes.
 17 Q. You have asked them to have a break and discuss it and
 18 then they reconvene?
 19 A. Yes.
 20 Q. Which is at the end of the page 2735 in the bundle.
 21 {E/851/2735} And then they come back and you say -- 61
 22 in your statement. Do you have it? {C/13/165}
 23 A. Yes.
 24 Q. "When the meeting reconvened, I was extremely
 25 disappointed when Ms Birdi reiterated again that she

1 23

1 would not test four days a week..."
 2 A. Sorry, where are you?
 3 Q. Paragraph 61 of your witness statement.
 4 A. Yes, got it, sorry.
 5 Q. "When the meeting reconvened, I was extremely
 6 disappointed when Ms Birdi reiterated again that she
 7 would not test four days a week and that she did not
 8 consider that this was needed."
 9 A. Yes.
 10 Q. You are referring to page 2736, at the top? {E/851/2736}
 11 A. 2736?
 12 Q. Right at the top of the page. Do you see it says:
 13 "MR asked SB and KS how they had got on..."
 14 This is after the adjournment?
 15 A. Yes.
 16 Q. And:
 17 "... and if they had found a resolution or
 18 compromise around 4 day testing?
 19 "KS confirmed that whilst he believed SB should test
 20 4 days a week, SB did not and therefore they had been
 21 unable to agree and had not found a solution or
 22 compromise.
 23 "SB confirmed she would not test 4 days a week and
 24 asked why KS could not test?"
 25 Do you see?

1 24

1 A. Yes.
 2 Q. "MR asked that, although they had not found a resolution
 3 to the 4 day testing, had they been able to explore the
 4 admin day, and the possibility of taking on a junior so
 5 that more time could be spent testing?
 6 "SB reconfirmed that she did not believe 4 days
 7 testing was needed."
 8 That's what she said, wasn't it?
 9 A. Well, she did --
 10 Q. According to the note?
 11 A. She did say that but you would have to read the
 12 discussion, because the discussion went on for about
 13 an hour, maybe even -- with the half an hour break that
 14 I gave them to try and resolve their issues, it went on
 15 for about an hour and a half. So it was quite a robust
 16 thing.
 17 I think Ms Birdi's position at the time was that she
 18 produced a letter which said she would actually test
 19 anything from 0 to 5 days a week. Now, I found that to
 20 be quite alarming, that someone -- if it was agreed that
 21 she could test 0 days, you know, how can you run
 22 a business where the optical optom director could
 23 basically say, "I'm not going to test at all"?
 24 The whole business model is an optom director --
 25 most of them test five days a week as standard, you

1 25

1 know, all of their hours, because they are all on
 2 a contract, all of their time. And so I thought that
 3 was quite an unusual position to take, which is, "I will
 4 only test from 0 to 5".
 5 You know, I had a degree of sympathy for Mr Singh in
 6 terms of: how can you run a business if your partner is
 7 saying she can only test 0 days, you know, or decides
 8 she will only test 0 days from time to time or one day
 9 or two days.
 10 So I let that one sort of ride, as it were, and then
 11 we then explored the management support, because if one
 12 of the barriers was that she didn't believe there was
 13 management support on the sales floor while she was
 14 testing, could we actually put more management support
 15 in so she could then concentrate on the testing side of
 16 it.
 17 And then, when -- one of the issues that -- or one
 18 of the things that I felt particularly strongly about
 19 was that Swarandeeep had quoted Mary Perkins saying,
 20 "Leading from the front". Ie get out on the shop floor
 21 and lead from the front. And when I actually asked
 22 Swarandeeep what she was doing on her fifth day, she
 23 said, "I'm in the office doing an admin role, doing NHS
 24 work".
 25 Now, almost every business does not have an optom

1 26

1 director doing NHS work for a full day. It's, like,
 2 this is form-filling. This is filling in forms,
 3 submitting them to the NHS for payment. So that was
 4 inconsistent in my mind with, "I want to be out there
 5 leading from the front". It was -- and I used the
 6 word -- "disingenuous". I felt it was disingenuous.
 7 So why I expressed extreme -- what was the phrase
 8 you used? -- "extremely disappointed". I was, because
 9 I felt we had had a really good debate. I thought we
 10 had tried to explore all the issues and I was hopeful
 11 when I gave them half an hour's time, just, say, "Sort
 12 this out, please", I was hopeful that they would come
 13 back and go, "Do you know what?" -- and particularly on
 14 Swarandeeep's point that she would compromise slightly.
 15 But she wouldn't compromise. And that's why I was
 16 extremely disappointed.
 17 Q. She had said that she wanted to lead from the front?
 18 A. Yes.
 19 Q. For one day, didn't she? She had also said that she did
 20 do some of the NHS admin work and that that could be
 21 reduced. Do you remember?
 22 A. Well --
 23 Q. The amount of time that she spent on it could be
 24 reduced?
 25 A. I remember the discussion was around her doing a full

1 27

1 day of NHS admin and I just thought: that isn't the
 2 model, that's not how the business works. And that's
 3 why I -- thing.
 4 If they could have agreed that that was the best use
 5 of Swarandeeep's time, well, so be it. All I was looking
 6 for was an agreement.
 7 Q. She was not dictating or demanding that she be entitled
 8 to do one day's NHS admin, was she? She wasn't saying
 9 that at all?
 10 A. Erm...
 11 Q. She placed no condition upon what she would or wouldn't
 12 be doing on the one and a half days when she wasn't
 13 testing?
 14 A. No, this was how she was spending her time at that
 15 moment.
 16 Q. That's something quite different, isn't it, to what she
 17 wanted to the position to be? She wanted not to be tied
 18 to four full days' testing because she might be needing
 19 to lead from the front on the shop floor for one full
 20 day.
 21 A. Yes.
 22 Q. She only works five full days a week, she is entitled to
 23 a day off. Therefore, if she was committed to four full
 24 days in the test room and one day, namely Mr Singh's day
 25 off, when she was on the shop floor, she would have no

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1 time to do all her other directorial duties, would she?
 2 All the ones that you had reminded her of, her
 3 admin-style duties, back in 2007?
 4 A. Yes.
 5 Q. So she wanted the flexibility to determine her duties in
 6 line with the requirements of the business. That's what
 7 she was actually asking to do?
 8 A. Yes, yes.
 9 Q. Fine. But what you say in paragraph 61 is that -- so do
 10 you see, you say: {C/13/165}
 11 "I was also concerned that her reasons for not
 12 complying with the Testing Resolution were, in my view,
 13 not good enough; in essence Ms Birdi wanted to spend one
 14 day doing administrative jobs which any junior assistant
 15 could do."
 16 That wasn't true, was it? She didn't want to do one
 17 day of administrative jobs that a junior could do?
 18 A. No, according to these minutes, she would -- she could
 19 reduce some of the time, but there wasn't a firm
 20 commitment there. There wasn't a plan of how that would
 21 look.
 22 Q. One day of her five-day week was to be on the shop
 23 floor, leading from the front. This was going to be the
 24 day when Mr Singh wasn't there?
 25 A. Yes.

1 29

1 Q. So that's one day. She is agreeing to do three and
 2 a half days' testing?
 3 A. Yes.
 4 Q. So that's four and a half days of her five day week?
 5 A. Yes.
 6 Q. So there remained just half a day --
 7 A. Yes.
 8 Q. -- where she would deal with all the admin duties -- not
 9 just the ones that a junior could do but all her
 10 directorial duties?
 11 A. Yes, yes.
 12 Q. Things to do with contracts of employment and dealing
 13 with staff issues, et cetera. That's right, isn't it?
 14 A. Yes.
 15 Q. So your argument in paragraph 61 is simply not correct,
 16 is it? {C/13/165}
 17 A. Well, my disappointment was that I still didn't have an
 18 agreement with the partners in the business on how we
 19 could move this issue forward.
 20 Q. But that was as much caused by Mr Singh demanding that
 21 she had to agree to four full days' testing every week.
 22 Regardless of the requirements of the business and
 23 everything else she was talking about, she had to commit
 24 to being rota-ed to be in that test room four full days
 25 a week, otherwise he was going to make it an issue.

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1 That was his issue, wasn't it?
 2 A. It was his issue. I actually agreed with him.
 3 Q. He was showing as much inflexibility on that issue as
 4 she was?
 5 A. Yes, and I wished they could have both got themselves in
 6 a position where they agreed it and therefore I did not
 7 have to have a board meeting with them.
 8 Q. Nowhere in your witness statement or in the minutes do
 9 you express the fact that Mr Singh was equally to blame
 10 for this complete deadlock?
 11 A. I didn't, and I still don't believe that he was
 12 unreasonable. And in my head, one of the reasons I gave
 13 for that was if -- if the situations were reversed and
 14 Mr Singh was to say, "I will get in a locum retail
 15 director for two days a week", you know, I would have
 16 had exactly -- while he sits in the office -- I would
 17 have had exactly the same issue with him, which is, "Why
 18 are you paying somebody for doing your job?"
 19 Q. Okay. So that's the end of that meeting. We move on
 20 to -- the issue of mediation came up, didn't it? If you
 21 go on to page 2794. {E/869/2794} We are into April. Do
 22 you see that?
 23 A. Yes, I do.
 24 Q. And you were obviously having some discussions behind
 25 the scenes about mediation?

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1 A. Well, I had got to a position where we still had an
 2 issue. The partners were not behaving as a partnership
 3 as I understand it. They were -- there was issues --
 4 I was really concerned about the staff because there was
 5 banking issues in the store; they were putting the staff
 6 at risk. There were -- you know, it's just a bad
 7 situation.
 8 And I spoke to the HR director in our business,
 9 a lady called Pauline Best, and just basically said,
 10 "Can you help me? I have reached -- the approach that
 11 I have been using hasn't worked. I have not been able
 12 to resolve the relationship issue. Is there anything
 13 you can suggest?"
 14 And she was the lady who then suggested that
 15 mediation may help and that she had used it in one of
 16 her previous roles -- sorry, one of her previous
 17 companies.
 18 Q. And that was raised at the next board meeting?
 19 A. Yes.
 20 Q. Which we find the notice of at 2798?
 21 A. Yes. {E/871.1/2798}
 22 Q. Again, the meeting was to be on 13 May. The notice of
 23 28 April, did you set the agenda?
 24 A. Yes, again, the headline was mediation.
 25 Q. Okay, and together with that notice of meeting, you

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1 actually sent Ms Birdi the letter at 2799?
 2 {E/871.2/2799}
 3 A. Yes.
 4 Q. Do you see that?
 5 A. Yes.
 6 Q. And she is commenting on your board meeting in her
 7 previous letter, which I'm not going to go through.
 8 A. Yes.
 9 Q. Page 2800, third paragraph, just above the first hole
 10 punch: {E/871.2/2800}
 11 "As stated at the board meeting, both yourself and
 12 Mr Singh must now move on from all historical
 13 issues/complaints..."
 14 Do you see that?
 15 A. Yes.
 16 Q. "... and accept that the outcome of the grievance and
 17 appeal process is final."
 18 You know that Ms Birdi was contending that Mr Singh
 19 was continuing to bully and harass her, making these
 20 allegations against her, in 2010. You are aware of
 21 that, aren't you?
 22 A. Can you take me to a document --
 23 Q. For example, do you remember the issue about the
 24 allegation of forging the signature that happened after
 25 the previous --

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1 A. Yes. I don't know how that relates to bullying.
 2 Q. Were you aware --
 3 A. I wasn't aware of that signature issue.
 4 Q. Okay. Were you aware by April 2010 that Ms Birdi was
 5 continuing to suggest that Mr Singh was continuing to
 6 act in a bullying and harassing way?
 7 A. She was making that allegation.
 8 Q. Those allegations of this continuing bullying and
 9 harassment, they could not have been dealt with at the
 10 old grievance process, could they, the previous
 11 grievance process, because those things hadn't happened
 12 yet?
 13 A. If it was a new allegation around bullying, of course.
 14 You would have to start a new process.
 15 Q. Of course. So when you say here that you have got to
 16 "move on from all historical issues/complaints", you
 17 don't mean the present complaints she is having about
 18 Mr Singh's current actions?
 19 A. At the time of writing this, I wasn't aware of any fresh
 20 allegations.
 21 Q. Okay. Was Mr Singh to move on from his historical issue
 22 about the agreement of September 2008?
 23 A. In relation to ...?
 24 Q. You passed a board resolution that she had agreed to
 25 commit to four days' testing as at 12 September 2008.

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1 He was going on about that agreement and that she wasn't
 2 doing what she had agreed to do?
 3 A. It was -- I still viewed that as being a fundamental
 4 reason why the partnership wasn't working.
 5 Q. Okay. And then at page 2802 you deal with the mediation
 6 suggestion. {E/871.2/2802}
 7 A. 28 ...?
 8 Q. 2802, agenda item 9?
 9 A. Yes, I do.
 10 Q. And then just between the two hole punches:
 11 "As such, we are now in a position where the
 12 disciplinary procedure could be initiated against you.
 13 However, in one final effort to avoid initiating the
 14 disciplinary procedure against you I propose that both
 15 yourself and Mr Singh participate in an external
 16 mediation process..."
 17 A. Yes.
 18 Q. So you were suggesting, just the two of them go off with
 19 a mediator and have an external mediation; just the two
 20 of them?
 21 A. At that stage, yes, that was what I was suggesting.
 22 Q. If we then come on to the meeting itself?
 23 A. Yes.
 24 Q. Just before we get there, were you aware of page 2811?
 25 A. 2811? {E/873/2811}

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1 Q. The grievance raised by -- the allegations raised by
 2 Ms Khunkhuna?
 3 A. I believe I was.
 4 Q. And when you became aware of that, did you consider it
 5 appropriate to suspend Mr Singh immediately, pending
 6 investigation of these serious issues?
 7 A. No.
 8 Q. No. All right. So the board meeting -- we can put away
 9 E10. Actually no, sorry, just the last page. 2829, on
 10 the issue of mediation. {E/885/2829} She responds to
 11 your letter?
 12 A. Yes.
 13 Q. And the last page of her letter?
 14 A. Yes.
 15 Q. The last page is about mediation?
 16 A. Yes.
 17 Q. She says: {E/885/2829}
 18 "I will participate in the mediation if you confirm
 19 that the Dartford Board is prepared to accept an outcome
 20 to the mediation that does not involve my testing 4 days
 21 a week otherwise the exercise will be a waste of time."
 22 A. Yes.
 23 Q. I don't know how you read that, or how you say you read
 24 that sentence?
 25 A. In terms of?

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1 Q. In terms of, did you think she was making it
2 non-negotiable that she wouldn't be testing four days
3 a week, or was she making it non-negotiable that the
4 board should be prepared to accept that, if that's what
5 the mediation outcome was?
6 A. The latter.
7 Q. Yes. So you recognised that at a mediation, anything
8 can happen?
9 A. That's the point of mediation.
10 Q. That's right, and it may well be that the mediator and
11 the two parties --
12 A. That would have been absolutely fine.
13 Q. -- are able to reach an agreement that she didn't have
14 to do four days a week testing, and if that had
15 happened, as long as the Dartford board was prepared to
16 accept that outcome, that would have been fine, wouldn't
17 it?
18 A. That would have been fine.
19 Q. Okay, good. You can put away that bundle. Swiftly to
20 E11. 2903 {E/896/2903} This is the meeting.
21 A. Yes.
22 Q. Perhaps we can skip on to page 2906. Mr Singh's pension
23 issue was raised, wasn't it? And Ms Birdi -- 2906?
24 {E/896/2906}
25 A. Yes, yes.

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1 Q. At the bottom. This is all about whether she had the
2 form or not and signed it, and whether she was delaying
3 this pension, et cetera?
4 A. Yes.
5 Q. You said:
6 "You had the form and the figures at the board
7 meeting ... and you were instructed to sign it. You
8 haven't signed it."
9 Do you see that?
10 A. Yes.
11 Q. And then you go on there, and then she replies:
12 {E/896/2906}
13 "I am getting extremely upset by your (MR)
14 unilateral biased support of KS. I told KS specifically
15 and honestly to bring me the form to sign. You (MR) are
16 saying I have not asked KS, you were not there, it is
17 not fair. If you (SB addressing KS) give me the form
18 I will sign it. I have no objections, I don't want to
19 be here, you are saying I am being untruthful."
20 Do you see?
21 A. Yes, I do.
22 Q. There is obviously a difference between them as to the
23 version of what happened --
24 A. Yes.
25 Q. -- regarding this form?

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1 A. Yes, I believe Ms Birdi had the form, had the figures
2 and could have signed this. You know, I -- there wasn't
3 a unilateral biased support of Kam Singh. I was trying
4 to just move the partnership forward to get over these
5 barriers that there were ... yes.
6 Q. Okay. Moving on to the mediation issue then, 2908,
7 agenda item 7? {E/896/2908}
8 A. Yes.
9 Q. At the bottom of the page, penultimate paragraph, you
10 refer to the fact that in your letter you proposed
11 external mediation?
12 A. Yes.
13 Q. And then over the page, page 2909, just above the first
14 hole punch, Ms Birdi: {E/896/2909}
15 "Two questions:
16 "1) Does SOG agree to be party to the mediation..."
17 A. Yes.
18 Q. So she want the company to be involved?
19 A. Yes.
20 Q. "... to allow all issues to be resolved since 2007..."
21 A. Yes.
22 Q. So she has still got this ongoing grievance in her own
23 mind, hasn't she?
24 A. Yes.
25 Q. Which you want her to put in the past, all the issues of

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1 2007 and 2008?
2 A. Yes.
3 Q. That's right, isn't it?
4 A. Yes.
5 Q. And she is just asking that at least those matters be
6 dealt with at the mediation, as part of the mediation
7 process?
8 A. Yes.
9 Q. Because in her own mind, that is all part of what she
10 sees as you and Mr Singh working together?
11 A. Yes.
12 Q. That would be sensible then, wouldn't it?
13 A. Yes.
14 Q. Good. You say:
15 "What is your stance on mediation?"
16 She says:
17 "Mediation is a good thing."
18 A. Yes.
19 Q. She is obviously positive about it. She is hoping that
20 everything is going to be discussed and hopefully
21 resolved?
22 A. Yes.
23 Q. All right. And then by the second hole punch:
24 "MR: SB, are you saying you won't enter into
25 mediation without these questions being answered?"

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1 "SB: I am happy to enter into mediation if SOG can
2 address the issues from 2007. I need a clear yes or no
3 if SOG will discuss the issues from 2007."
4 A. Yes.
5 Q. A mediation is only a discussion after all, isn't it?
6 A. Yes.
7 Q. Nobody is determining anything?
8 A. No.
9 Q. And she says again:
10 "SB: I am still not clear on mediation. It will
11 only work if we can discuss all the issues pending back
12 to 2007."
13 She wants everything discussed?
14 A. And I'm agreeing with her.
15 Q. Absolutely. And then over the page, 2910, at the top,
16 third item: {E/896/2910}
17 "SB: Can I make it clear that SOG should be part of
18 the mediation..."
19 A. I have already made that clear about four pages before.
20 Q. I agree with you, but you can see that that's what she
21 was saying. She was obviously -- in her own mind this
22 was an important thing, wasn't it?
23 A. It was, it was.
24 Q. And you say there:
25 "SOG will be included ..."

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1 In the mediation. So then we come to the motion,
2 page 2911? {E/896/2911}
3 A. Yes.
4 Q. And the motion you put is:
5 "That both 'A' Directors, Swarandeeep Birdi and
6 Kam Singh, and SOG (on behalf of the 'B' Directors)
7 participate in formal external mediation, through
8 CEDR..."
9 A. Yes.
10 Q. "... to seek the following issues."
11 I think that must mean to seek to resolve the
12 following issues?
13 A. Yes.
14 Q. "a) Swarandeeep Birdi 'A' Director compliance with the
15 resolutions..."
16 That's the four day a week testing?
17 A. Yes.
18 Q. "b) the ongoing working relationship difficulties
19 between the two 'A' Directors of the company..."
20 That's Birdi and Singh?
21 A. Yes.
22 Q. You don't at that stage mention c), Ms Birdi's
23 grievances relating to the issues that date back --
24 pending back to 2007?
25 A. No, but in the discussion that we have had, it's clear

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1 that those will be included -- if the mediator decides
2 that that's where they want to go. Because I'm not
3 a mediator; I wouldn't want to pre-judge what the
4 mediator -- how he would interpret all the information
5 that has been provided for him and then decide how best
6 to resolve it.
7 Q. Yes, but if Ms Birdi wants to discuss those issues --
8 you have already agreed that it's reasonable that she
9 should say that?
10 A. Yes, yes.
11 Q. You have already agreed in your discussion that she
12 can --
13 A. Yes.
14 Q. -- go to mediation on that basis, that there will be
15 a discussion of the issues?
16 A. Yes.
17 Q. But when it comes to your motion, you are limiting the
18 issues to her four days a week testing and the
19 Birdi/Singh relationship. So she then votes against the
20 motion?
21 A. Can I just -- again, I was aware this was a big issue.
22 That's why I gave them 15 minutes to have a think about
23 it, digest what I had actually said.
24 Q. Yes.
25 A. That's why I then read out the motion and asked for

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1 a vote.
2 Q. I know you did. But the motion you read out doesn't
3 appear on its face to deal with her issues going --
4 discussion about her issues going back to 2007 with SOG.
5 On its face it doesn't appear to, does it?
6 A. No, but the fact that SOG is involved in the mediation
7 and that I have said in all the debate, which was
8 probably a 30/40-minute debate, saying SOG will be
9 involved, SOG will be part of the mediation and if the
10 mediator decides to go to 2007, to go through those
11 issues, if the mediators decides on four-day testing,
12 you know, quite happy to have all those conversations
13 with the mediator and try and arrive at resolution.
14 Q. So when you call for a vote on your motion she says
15 "against" and she says: {E/896/2912}
16 "My reasons against are that I think mediation is
17 a good way forward but mediation needs to look at all
18 three parties and this is not included in this
19 motion..."
20 So she is pointing out to you that, despite the
21 discussion that you have had, in which you had appeared
22 to agree that she could deal with issues going back to
23 2007 and her issues with SOG, as well as just her issues
24 with Mr Singh, she is pointing out that the precise
25 motion you have put doesn't include that?

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1 A. I think it's quite clear. It says:
 2 "That both 'A' directors, Swarandeeep Birdi and
 3 Kam Singh, and SOG (on behalf of the 'B' Directors)
 4 participate in formal external mediation, through CEDR
 5 Solve to seek the following issues/resolutions."
 6 Q. Her response to that was she wanted mediation, didn't
 7 she?
 8 A. She did.
 9 Q. And she wanted mediation to include SOG?
 10 A. Yes.
 11 Q. And she wanted the mediation that included SOG to
 12 include discussion of her issues that she had with SOG
 13 going back to 2007?
 14 A. Which were included in the motion.
 15 Q. So there was really nothing between you, was there? If
 16 you had clarified that, "That's what is intended to be
 17 in my motion, Ms Birdi --"
 18 A. Which was a complete surprise why she said no.
 19 Q. Is it a complete surprise? She said it there:
 20 "My reasons against are that I think mediation is
 21 a good way forward but mediation needs to look at all
 22 three parties and this is not included in this
 23 motion..."
 24 A. Yes.
 25 Q. So she is misunderstanding your motion. That's right,
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1 isn't it?
 2 A. I don't know what her reasons were for voting against
 3 the motion.
 4 Q. She said it there. How much simpler does she need to
 5 make it? Perhaps go back a page and it's even simpler
 6 for you. At 2911, just above the first hole punch you
 7 read out the proposed motion? {E/896/2911}
 8 A. I did.
 9 Q. She said:
 10 "I will vote on mediation but the motion does
 11 involve SOG."
 12 You said:
 13 "You have an issue with SOG and that is not helping
 14 you to move forward."
 15 A. Yes.
 16 Q. "You also have an issue with Kam and the relationship."
 17 A. Yes.
 18 Q. She said:
 19 "I have issues, many issues our relationship, SOG's
 20 relationship."
 21 You said:
 22 "It is the issues between your relationship (KS/SB)
 23 we are most interested in as customer service in this
 24 store is being compromised."
 25 She said:
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1 "That is not the only issue - our (KS/SB)
 2 relationship is also impacting on the store's team.
 3 "I cannot vote on this resolution until SOG are
 4 involved in the mediation. The whole triangle. The
 5 motion doesn't say this."
 6 So she was making it very clear, wasn't she, that
 7 she did want mediation but she wanted you, SOG, to be
 8 involved and she wanted her issues with you to be
 9 included. That was the only reason she voted against
 10 that motion?
 11 A. Yes.
 12 Q. Could you not simply have amended the motion and added:
 13 "c) And Ms Birdi's issues with SOG."
 14 A. Had I thought about it at the time -- I don't think this
 15 sort of -- I don't think this -- this was clear at the
 16 time because re-reading some of these things, I was
 17 trying my best to say, you know, "We are involved, SOG
 18 are involved. You know, we are prepared to go back to
 19 2007, if the mediator wants to, prepared to go back to
 20 the sight testing."
 21 Q. So paragraph 72 of your witness statement? {C/13/167}
 22 A. Yes.
 23 Q. "Mr Singh voted in favour of the motion. Given
 24 Ms Birdi's unwillingness to participate in a mediation
 25 process, I withdrew the motion..."
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1 A. I did.
 2 Q. That's somewhat unhelpful, isn't it? She was willing to
 3 participate in mediation, wasn't she?
 4 A. Yes, and then -- she said that at the beginning and then
 5 she put caveats in place, "Would you do this?", "Would
 6 you do the other?"
 7 Q. Not this and the other; she wanted the mediation to
 8 cover her relationship with SOG?
 9 A. Yes, and the four days' testing, would we consider any
 10 other outcome other than her testing four days. The
 11 answer was absolutely yes.
 12 Q. That was before the meeting. You are talking here about
 13 the meeting?
 14 A. Before which meeting?
 15 Q. Before this meeting she had raised the issue -- I took
 16 you to that letter -- where she said, "Can we just get
 17 it clear that if the resolution of the mediation is that
 18 I don't have to do four days' testing, will the board be
 19 prepared --"
 20 A. No, we discussed it in the meeting, which is, "In
 21 relation to four days' testing, I can't predict --"
 22 This is when we talked about the four days' testing
 23 issue.
 24 Q. Yes, but she wasn't saying she wouldn't be involved in
 25 mediation for anything to do with the four days'
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1 testing, was she? That wasn't a reason given by her not
2 to be involved in mediation?
3 A. No.
4 Q. No, so the only issue she had --
5 A. It was a condition that she put in place of her voting
6 in favour of mediation.
7 Q. The only reason she gave for voting against the motion
8 was on 2912, item 3? {E/896/2912}
9 A. Yes.
10 Q. That's the only reason?
11 A. Yes.
12 Q. And you could have dealt with that easily enough, but
13 you chose not to. Instead, you chose to say, "Right, in
14 that case, right, no mediation, I'm withdrawing the
15 motion".
16 Were you getting a little frustrated?
17 A. I wasn't frustrated. I was quite clear because I had
18 had a 15-minute break, which time -- thing. There was
19 no frustration. This was just, "Do you vote in favour
20 or not?"
21 Q. Okay. At this meeting -- go back to the beginning of
22 the meeting notes, 2903. {E/896/2903}
23 A. Yes.
24 Q. The people present at this meeting were you?
25 A. Yes.

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1 Q. Your secretary or PA?
2 A. Yes.
3 Q. She is now a director of -- she is appointed as
4 a director of this store company?
5 A. On that day.
6 Q. Yes.
7 A. I actually -- I actually thought it would help having
8 another female in the room.
9 Q. Okay.
10 A. Because the issue was around mediation, I just thought
11 having another female may actually change the dynamic of
12 the meeting.
13 Q. Hm-mm. It didn't seem to change the dynamic very much
14 in that, so far as I can tell -- I have gone through the
15 entire document -- the only time I can see any entry
16 from her, any action, is on page 2912 by the first hole
17 punch? {E/896/2912}
18 A. Yes.
19 Q. You say:
20 "Linda, how do you vote?"
21 A. Yes.
22 Q. And she says:
23 "In favour of the motion."
24 A. Yes.
25 Q. Presumably, you had told her to vote in favour of the

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1 motion?
2 A. No, I didn't.
3 Q. Presumably, she understood that if you voted in favour
4 of the motion, your PA was to vote in favour of the
5 motion also?
6 A. No, that isn't the case.
7 Q. Apart from that, I can't see that she actually played
8 any part in the meeting at all. Is that right?
9 A. That is correct, other than taking the notes.
10 Q. Oh, she took the notes, okay. Had you given her any
11 instruction as to what was to happen at the meeting,
12 your PA?
13 A. No, I had run through the agenda with her.
14 Q. Right, and had you told her how she was to vote on the
15 agenda items?
16 A. No.
17 Q. So you are suggesting that she, what, has some
18 completely independent mind and that she was making her
19 own decisions at the meeting?
20 A. Yes, she did.
21 Q. What did she say then at the meeting that gave you that
22 impression?
23 A. She was listening to the argument and she would have
24 decided whether she wanted to vote or not.
25 Q. What are her qualifications?

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1 A. She is a PA. Beyond that, I don't know.
2 Q. And what did she know about all the issues in this
3 rather complex dispute that was going on between
4 Ms Birdi and Mr Singh?
5 A. Very little.
6 Q. Okay. Your day book, 2914.
7 A. Yes.
8 Q. This is after the meeting. {E/897/2914} Do you see
9 that?
10 A. Yes.
11 Q. We see at the end of the meeting, 2913 at the end,
12 {E/896/2913} Ms Birdi had raised the issue about what
13 had gone on with Ms Khunkhuna and Fatima Khan?
14 A. Yes.
15 Q. And that had sort of just not been discussed at the
16 meeting, had it?
17 A. I think --
18 Q. Is that right?
19 A. I think that -- I think that date may -- I don't know.
20 Q. Okay. Your note, 2914, {E/897/2914} this is the note of
21 the meeting?
22 A. Yes, yes.
23 Q. I presume we are just looking at the section just above
24 and just below the first hole punch?
25 A. Yes.

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1 Q. Everything from "UK Board 19/5/10", that's something
2 else, isn't it?
3 A. Yes.
4 Q. So this is your entire note of the meeting?
5 A. Yes.
6 Q. To yourself at least, or was this a preparatory note?
7 A. I think it's not a preparatory note because the issue of
8 costs came up. And I think that came up during the
9 discussion.
10 Q. Okay, so you think these are notes you made at the time?
11 A. I think so and I think maybe the date is wrong.
12 Q. The date? No, the date is right. 17 May.
13 A. Oh, the date is right, sorry.
14 Q. That's the perfectly right date.
15 A. Sorry.
16 Q. So under the item -- you have got "KS" and you have set
17 out his three concerns. Then you have got:
18 "SB - SOG party to the mediation - since 2007.
19 "SOG prepared to accept an outcome other than 4 days
20 testing."
21 A. Yes.
22 Q. So those were her concerns?
23 A. Those were her concerns, yes.
24 Q. Were you involved at all in the issue regarding Mr Singh
25 that then fills the rest of this bundle, which is all

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1 about the investigations into him, the allegations
2 against him by Ms Khunkhuna and Ms Khan?
3 A. I believe -- Ms Khunkhuna, no, I have no recollection of
4 that.
5 Q. You don't mention anything, you see, in your witness
6 statement. I think we have reached paragraph 73. We
7 are almost at the end of it. 73? {C/13/168}
8 A. No, I believe there was a case review.
9 Q. Yes.
10 A. A little bit later.
11 Q. Okay. But you weren't involved?
12 A. In what?
13 Q. In anything to do with the allegations against Mr Singh?
14 A. No, nothing.
15 Q. What you do refer to in 73 is the letter from Mr Singh
16 to the board of SOG?
17 A. Yes.
18 Q. This is page 2951. {E/915.1/2951}
19 A. Yes.
20 Q. Where he is raising issues about Ms Khan?
21 A. Yes.
22 Q. Do you see that?
23 A. Yes.
24 Q. And it says:
25 "Dear Partners,"

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1 Board of directors -- was this addressed by you or
2 were you by this stage back in the UK and it would be
3 addressed by somebody else, Mr Perkins or Mr Dyson?
4 A. I think by -- obviously it's to Legal, so I don't know
5 who Legal would have spoken to in relation to this.
6 Q. Were you involved. That's my question?
7 A. Was I involved in terms of the Fatima Khan --
8 Q. In terms of the fact that Mr Singh was effectively
9 raising issues against Ms Birdi about Fatima Khan?
10 A. I have no recollection of that.
11 Q. No.
12 A. I don't think I was involved.
13 Q. Okay. In paragraph 73 of your witness statement
14 {C/13/168} you cite this letter that I have just taken
15 you to. Do you see it?
16 A. Yes.
17 Q. And you say:
18 "Given how serious the situation had clearly become
19 (to the extent that members of staff were threatening to
20 leave) ..."
21 This is the allegation by Mr Singh that members of
22 his staff were going to leave because Ms Birdi had said
23 something about re-employing Ms Khan.
24 A. Yes.
25 Q. "... both Mr Singh and Ms Birdi were suspended from

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1 work..."
2 A. Yes.
3 Q. I'm trying get to the bottom of who made that decisions,
4 you see?
5 A. Ah, well, as I said, there was a case review, which
6 I mentioned -- a thing, which I recall having with
7 Pauline Best and Legal, once we had received this letter
8 from June -- 2 June.
9 Q. So who made the decision? You? You were sitting in
10 a room or on a telephone call with?
11 A. It was in a room.
12 Q. With?
13 A. Pauline Best, the HR director.
14 Q. Yes?
15 A. And Legal, representatives from Legal.
16 MR POTTS: My Lord, I think this is going to stray into,
17 possibly, I think, a privileged issue.
18 MR STUART: I don't want to stray into privileged issues but
19 I am just trying to get to the bottom of who made the
20 decision to --
21 MR JUSTICE NUGEE: Yes, well, don't --
22 MR STUART: I am not asking about any legal -- let me be
23 clear, Mr Raines. If you are talking about discussions
24 you had with the legal department about legal issues,
25 I'm absolutely not asking you about that. Do you

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1 understand?
 2 If you go to page 2948, your day book entry for what
 3 looks like 3 June. {E/914/2948}
 4 A. Yes.
 5 Q. That would be the next day?
 6 A. Yes.
 7 Q. I don't know how quickly, if at all, you saw that 2 June
 8 letter.
 9 A. I have no recollection.
 10 Q. No recollection, okay. Anyway, it says:
 11 "Dartford - agreed."
 12 A. Yes.
 13 Q. Is that right?
 14 A. Yes.
 15 Q. And then:
 16 "DC to suspend next week."
 17 Would that be Dave Clark to suspend next week?
 18 A. It may well be.
 19 Q. "DC to [something] investigate relationship breakdown."
 20 A. Yes.
 21 Q. "One of Pauline's team to carry out disciplinary
 22 hearing..."
 23 A. Yes.
 24 Q. Is that the disciplinary hearing into Ms Birdi or --
 25 A. The relationship breakdown.

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1 Q. Disciplinary hearing against Ms Birdi, or against
 2 Mr Singh, or against both of them?
 3 A. It depends what the investigation threw up.
 4 Q. So potentially against both of them?
 5 A. Potentially.
 6 Q. Okay:
 7 "... which is the relationship breakdown plus the
 8 not testing 4 days."
 9 That's obviously only against Ms Birdi, that last
 10 bit?
 11 A. Yes.
 12 Q. "Off the record with Kam re suspension."
 13 A. Yes.
 14 Q. I'm going to suggest to you that what you are agreeing
 15 here is for Mr Clark to suspend them next week -- we can
 16 see it happens in a minute -- that you are going to have
 17 an off the record conversation with Mr Singh to let him
 18 know, "Don't worry, Kam, your suspension is only
 19 a temporary step and we will be getting on to the real
 20 meat of the business in a moment when we get rid of
 21 Ms Birdi". That's why you were having an off the record
 22 with Kam re suspension.
 23 Would that be fair?
 24 A. That isn't my reading of it but ...
 25 Q. You are not having an off the record with Swarandeeep re

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1 suspension?
 2 A. No.
 3 Q. You are having an off the record with Kam re suspension?
 4 A. I don't know whether I actually made a call.
 5 Q. No, but this was what was agreed that you would do, or
 6 this was your plan, at least?
 7 A. It was being considered.
 8 Q. What were you going to tell him off the record regarding
 9 his suspension that Mr Clark was about to hit him with?
 10 A. I don't recall because I don't recall having the
 11 conversation with him.
 12 Q. Whether you had the conversation or not, subsequently --
 13 and I am going to suggest you did. Whether you had the
 14 conversation or not, what was your plan when you wrote
 15 this note on 3 June:
 16 "Off the record with Kam re suspension."
 17 A. I don't recollect -- I don't recollect what it was. You
 18 know, I don't.
 19 MR JUSTICE NUGEE: Looking at it now, what do you think you
 20 might have been referring to?
 21 A. I think we -- there's obviously some next steps
 22 involved, and it was being considered whether or not it
 23 would be appropriate to have an off the record with Kam.
 24 Now, it's whether it was appropriate or not. I don't
 25 recall because I don't recall having that conversation.

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1 MR STUART: Is it appropriate for you to be having off the
 2 record conversations with directors, JV partner
 3 directors, about their suspension?
 4 A. I didn't have the conversation with him.
 5 Q. I didn't say you did. I said, is it appropriate?
 6 A. It would be inappropriate if I had have done.
 7 Q. It would be inappropriate. That's quite right. So I'm
 8 going to suggest to you that you were making a note to
 9 yourself of something which you must have known would be
 10 inappropriate. But you were going to do it. You were
 11 going to have an off the record conversation with him
 12 because you wanted to give him some comfort --
 13 A. No.
 14 Q. -- that although he was going to be suspended at the
 15 same time as Swarandeeep, he was going to be fine --
 16 A. No, this is --
 17 Q. -- and she was going to be out?
 18 A. This is a note of what was being considered during that
 19 meeting. This isn't to say that this was what was going
 20 to happen or did happen.
 21 Q. The rest of the things did happen:
 22 "DC suspend next week."
 23 We see at page 2970, 8 June, "Dear Kam, you are
 24 suspended". {E/921/2970} Do you see that?
 25 A. Sorry, can you --

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1 Q. 2970 -- I have simplified somewhat:
 2 "Dear Kam,
 3 "Specsavers Optical Group Limited, as Chairman of
 4 DVL's board and 'B' Director of DVL, considers that it
 5 is necessary that investigation be undertaken into the
 6 actions of the 'A' directors, yourself (Retail Director)
 7 and Ms Swarandeeep Birdi (Ophthalmic Director) (whom
 8 together have day to day management responsibility...)"
 9 Do you see that?
 10 A. Yes.
 11 Q. "This letter therefore confirms that you are formally
 12 suspended ... The investigation will be completed by
 13 Mr David Clark..."
 14 A. Yes.
 15 Q. At that stage, nothing about suspending him for the
 16 allegations that have been made against him by the
 17 junior members of staff. That's right, isn't it?
 18 A. It is.
 19 Q. And on the same day, 2972, {E/922/2972} Ms Birdi gets
 20 the same letter -- not quite the same, but close enough.
 21 It starts the same:
 22 "Specsavers Optical Group ..."
 23 Second paragraph:
 24 "This letter therefore confirms that you are
 25 formally suspended..."

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1 A. Yes.
 2 Q. Do you see? Hers has the additional item about the four
 3 days a week testing. Do you see?
 4 A. Yes.
 5 Q. So going back to your note on 2948, {E/914/2948} they
 6 were both suspended. It was to be DC -- that's
 7 Dave Clark -- investigating the relationship breakdown.
 8 That's right, isn't it?
 9 A. Yes.
 10 Q. And the not testing four days is added in to the
 11 suspension against Ms Birdi letter?
 12 A. Yes.
 13 Q. So all of those items are actioned. So I'm going to
 14 suggest to you that "off the record with Kam re
 15 suspension" was also actioned. There is no reason why
 16 it wouldn't have been?
 17 A. Absolutely not.
 18 Q. And you let him know that, despite the fact that he was
 19 under suspension, he was going to be fine; he was not
 20 going to be exited from the business and Ms Birdi was?
 21 A. Absolutely not.
 22 Q. All right. Can we go to page 3206? {E/977/3206}
 23 A. 3206.
 24 Q. Sorry, we are in E12.
 25 A. Sorry. Thank you.

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1 Q. You did confirm to me, didn't you, that you had no part
 2 to play at all in the actual investigation process?
 3 A. Mr Clark asked my opinion on the partnership
 4 relationship.
 5 Q. Yes.
 6 A. And I provided some words.
 7 Q. So, do you have E12?
 8 A. Yes.
 9 Q. You are ahead of me. 3206? {E/977/3206}
 10 A. Yes.
 11 Q. 21 July we are up to now?
 12 A. Yes.
 13 Q. 2010?
 14 A. Yes.
 15 Q. Memo to Mr Clark from you.
 16 A. Yes.
 17 Q. You set out below:
 18 "... my views on the present state of the working
 19 relationship between the partners..."
 20 Yes?
 21 A. Yes.
 22 Q. You say you have:
 23 "... chaired, on behalf of SOG, a number of Dartford
 24 board meetings with both Kam and Swarandeeep over recent
 25 months."

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1 A. Correct.
 2 Q. Obviously at the first of those board meetings, she
 3 wasn't there; that's right, isn't it?
 4 A. That is correct.
 5 Q. And we have seen the meeting that she was at; yes?
 6 A. Yes.
 7 Q. "From such board meetings no significant issues re the
 8 state of the working relationship between Kam and SOG
 9 arose. However, my view on the state of the working
 10 relationship between Swarandeeep and SOG is that the
 11 relationship between Swarandeeep and SOG has severely
 12 broken down."
 13 Do you see?
 14 A. Yes.
 15 Q. So effectively, what you are saying is SOG and Kam Singh
 16 see eye to eye, as far as you are aware, but
 17 Swarandeeep Birdi and SOG do not?
 18 A. Yes.
 19 Q. "I have discussed in Dartford board meetings the need
 20 for the partners ... to let go of/move on from any
 21 previous issues ... and instead concentrate on working
 22 together..."
 23 A. Yes.
 24 Q. "Whilst of course Swarandeeep is entitled to raise issues
 25 and queries, many of the comments from Swarandeeep in

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1 Dartford board meetings, or the numerous letters from
 2 her, nevertheless seem aimed more at 'blaming' her
 3 fellow directors (SOG and/or Kam), or trying to re-open
 4 past/closed issues..."
 5 A. Yes.
 6 Q. What were you referring to there?
 7 A. Can I just read that again?
 8 Q. Yes. (Pause)
 9 A. In terms of blaming her fellow directors, I think
 10 Swarandeeep blamed SOG for 2007 and the issues relating
 11 to Nimesh Patel's departure. Clearly she feels that we
 12 have sided with Kam in terms of the testing resolution.
 13 That is what I'm referring to.
 14 Q. All right. If you go to paragraph 64 of your witness
 15 statement.
 16 A. Yes.
 17 Q. You had said: {C/13/165}
 18 "On 10 April 2010, Ms Birdi sent her response to
 19 Ms Girollet's letter ... Ms Birdi reverted to
 20 complaining about SOG's behaviour towards her since the
 21 resignation of Mr Patel in 2007 and alleged that SOG had
 22 forced Mr Singh upon Ms Birdi."
 23 A. Yes.
 24 Q. Is that in essence what you are talking about?
 25 A. Yes, that would be part of it.

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1 Q. Okay. You say there:
 2 "... alleged that SOG had forced Mr Singh upon
 3 Ms Birdi."
 4 You don't deny that, do you?
 5 A. Erm.
 6 Q. SOG accepts it forced Mr Singh upon Ms Birdi, doesn't
 7 it?
 8 A. We -- we found an appropriate partner for the Dartford
 9 store.
 10 Q. She objected; you outvoted her at the meeting?
 11 A. That is how --
 12 Q. That's how it works.
 13 A. That is how it works, yes.
 14 Q. You found that partner without her involvement?
 15 A. Which is the same for all the other partnerships within
 16 the business.
 17 Q. Some partners seem to get pre-decision interviews with
 18 their prospective JV partners to see whether they are
 19 compatible, but not Ms Birdi. She wasn't to be
 20 involved, was she? To see whether he was compatible
 21 with her?
 22 A. In terms of compatibility, to my mind -- and this is the
 23 way the business views it -- compatibility is: do they
 24 have -- have they passed a stage 1. Are they -- have
 25 they got the experience and the skills required for that

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1 size of business. And, you know, are they trustworthy
 2 individuals.
 3 Do we want them to get on as best friends? That's
 4 probably unlikely.
 5 Q. I'm not talking about best friends. I am just saying,
 6 you say she: {C/13/166}
 7 "... alleged that SOG had forced Mr Singh upon
 8 Ms Birdi."
 9 A. That is what --
 10 Q. She certainly had alleged that to you?
 11 A. She had.
 12 Q. And she wasn't far off the mark, was she? SOG had
 13 decided upon Mr Singh, she had objected, and you had
 14 said, "No, it's going to be Mr Singh"?
 15 A. SOG had decided that Mr Singh was the most appropriate
 16 person to be the retail director in that partnership.
 17 Q. Against her wishes?
 18 A. Against her wishes.
 19 Q. Fine. So that allegation was perhaps correct. She may
 20 not have been entitled to complain about it, because you
 21 say you have the power to do these things, but it was at
 22 least correct that you had done that?
 23 A. Yes.
 24 Q. The other one was the events surrounding the resignation
 25 of Mr Patel. That's all Mr McAlindon and all that

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1 business back in 2007?
 2 A. Yes.
 3 Q. Is that right?
 4 A. I believe so.
 5 Q. So she was raising those issues, she was complaining
 6 about those matters, and you felt that that is her
 7 blaming her fellow directors, SOG and/or Mr Singh. Is
 8 that right?
 9 A. I do. I did feel that.
 10 Q. Obviously, in relation to Mr Singh, she was dealing with
 11 the point from 2008 onwards, when he had become
 12 a director?
 13 A. Yes.
 14 Q. And she was making lots of allegations against him
 15 regarding Grays, you know, his work at Grays, his
 16 bullying, et cetera, et cetera. So she was blaming him
 17 to that extent for all the reasons set out?
 18 A. Yes.
 19 Q. So when you said that to Mr Clark, were you seeking to
 20 suggest to Mr Clark that that was wrong of her to do
 21 that?
 22 A. No, I was making a statement of fact of how I felt about
 23 the partnership.
 24 Q. Okay. And is the conclusion to that that where a woman
 25 like Ms Birdi, a JV partner like Ms Birdi, is raising

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1 those sorts of issues against you, SOG, 2007/2008, and
 2 against Mr Singh, her only other JV partner, that that
 3 is such a breakdown in the relationship that it's not
 4 going anywhere?
 5 A. Can you -- again, just repeat the question?
 6 Q. He has asked you for your views on the relationship
 7 between Dartford -- the partners of Dartford and SOG?
 8 A. Yes.
 9 Q. You said there is absolutely no problem with Mr Singh,
 10 so far as SOG is concerned?
 11 A. Yes.
 12 Q. But as for Ms Birdi, she is blaming SOG and Mr Singh for
 13 matters going back to 2007/2008 --
 14 A. Yes.
 15 Q. -- and Mr Singh?
 16 A. Yes.
 17 Q. You are saying that, because of that, because she is
 18 blaming you, SOG, and Mr Singh, you cannot have
 19 a working relationship with her?
 20 A. No, I'm not -- I'm not saying that. I'm saying that it
 21 hasn't moved forward.
 22 Q. Okay. You say: {E/977/3206}
 23 "In my dealings with her she has appeared incapable
 24 of letting go of an issue..."
 25 A. Yes.

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1 Q. I mean, that's not true of all issues, is it? She had
 2 let go of some issues?
 3 A. No, but the ones that mattered to this partnership, ie
 4 the ones that stopped the partnership from working, she
 5 couldn't let go of them.
 6 Q. Well, neither could Mr Singh?
 7 A. Mr Singh, you know, was doing stuff that, you know,
 8 or was getting caught up in a thing. He didn't sign
 9 expenses off when he should have done. You know, there
 10 was a lot of -- they were focusing on each other, rather
 11 than focusing on the business.
 12 Q. He was doing the same thing. He actually admitted it to
 13 his Lordship?
 14 A. Yes, yes he was.
 15 Q. He was sort of tit for tat; because she wasn't doing it,
 16 he wouldn't do her expenses?
 17 A. There was some tit for tat.
 18 Q. You don't mention that in this unbiased assessment that
 19 you are giving to Mr Clark?
 20 A. No, no I don't.
 21 Q. Okay. What you say is: {E/977/3206}
 22 "In my dealings with her she has appeared incapable
 23 of letting go of an issue, or accepting an outcome of
 24 an issue, if that outcome is anything other than
 25 100 per cent agreement with whatever her own point of

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1 view is."
 2 Are you there referring to her grievances that she
 3 raised against Mr Singh and because they weren't found
 4 100 per cent --
 5 A. Not -- not in particular, no.
 6 Q. No. They weren't found 5 per cent in her favour, were
 7 they?
 8 A. No.
 9 Q. No:
 10 "Indeed, in her comments in board meetings and her
 11 letters, Swarandeeep has made repeated reference to the
 12 fact that her views of SOG are now at the point where
 13 she believes that SOG is constantly biased against
 14 her..."
 15 And she had reason to believe that, didn't she?
 16 A. Based on what I knew about it, I didn't believe she did.
 17 Q. Well, we can see your views. You are very anti her,
 18 aren't you? You have written it here?
 19 A. No, to be perfectly honest, my Lord, I have never had
 20 a personal view on Swarandeeep. Nothing at all. All
 21 I want is that business, that partnership, to absolutely
 22 work. You know, I have heard throughout this trial
 23 around conspiracy. If there was a conspiracy in 2007 or
 24 if I had taken against her, I would have done that at
 25 the disciplinary hearing.

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1 I found her very difficult. I found her very
 2 challenging. I found it very difficult to move her
 3 forward. And yes, on occasions, the meetings would
 4 be -- would frustrate me because I couldn't understand
 5 why she wouldn't leave stuff behind and just sort of, in
 6 the interests of the business, just move forward.
 7 And so, yes. I stand by those words. That is what
 8 I felt at the time in terms of the relationship. I felt
 9 she was pretty much to blame, in my opinion, for the
 10 breakdown of that relationship, and that isn't saying
 11 that Kam was a -- you know, unblemished in all of this.
 12 Quite the reverse. I wish some of his behaviours had
 13 been better. But I do believe that Ms -- Swarandeeep
 14 didn't really allow this partnership to succeed, when it
 15 had every right to, given that -- you know, both parties
 16 had exactly the right skills you would want from a joint
 17 venture partner.
 18 Q. Mr McAlindon definitely had an adverse view of her,
 19 didn't he, to your knowledge?
 20 A. I don't know what Mr McAlindon's view of her was.
 21 Q. Mr Dyson had an adverse view of her?
 22 A. I don't believe he did.
 23 Q. You knew about his plans to remove her and have her
 24 replaced by other people?
 25 A. There has never been a plan to remove her from the

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1 business.
2 Q. You certainly had an adverse view of her by this point?
3 A. By this time I thought she was responsible for the
4 breakdown of the partnership. Her personally, you know,
5 I don't have any -- any issue with Swarandeeep at all.
6 Q. My Lord, I see the time.
7 MR JUSTICE NUGEE: Yes. We will take a five-minute break.
8 (3.12 pm)
9 (Short break)
10 (3.17 pm)
11 MR JUSTICE NUGEE: Yes?
12 MR STUART: So, Mr Raines, we had got to paragraph 74 of
13 your statement. {C/13/168} That's your reference to
14 that document I just took you to?
15 A. Yes.
16 Q. You giving Mr Clark -- investigating matters. And the
17 rest of your first statement deals with the equalisation
18 bonus, which I will come back to in a moment.
19 A. Yes.
20 Q. You don't, anywhere in this statement, refer to how
21 matters progressed and your involvement in that; namely,
22 the board meetings that took place which resulted in the
23 disciplinary process against Ms Birdi, and the board
24 meeting --
25 A. I played absolutely no role at all.

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1 Q. Well, that can't be right, can it? If you look at --
2 which one have you got there? E12?
3 A. E12, yes.
4 Q. So the next stage in the process is page 3254?
5 A. 3254. {E/988/3254}
6 Q. The 9 August board meeting?
7 A. Yes.
8 Q. And this is the one where -- if you go to page 3256
9 {E/988/3256} the motion is -- do you see? It's to adopt
10 Mr Clark's recommendations to continue suspending
11 Ms Birdi; to pursue the formal disciplinary process
12 against her?
13 A. Yes.
14 Q. Do you see?
15 A. Yes.
16 Q. And you sent along to that meeting your PA,
17 Linda Weaver?
18 A. I didn't send her along. Linda runs her own diary. She
19 is a senior person, in terms of PAs, within our
20 business. She attends board meetings. She runs her own
21 diary. She decides what she is doing. I had no
22 involvement in that. In fact, I'm surprised to see her
23 name there.
24 Q. Mr Raines, she is your PA, isn't she? She deals with
25 your post, your emails, your diary?

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1 A. She does.
2 Q. You must have known that this very difficult dispute,
3 which was now coming to a conclusion -- the conclusion
4 of exiting Ms Birdi -- was going to involve at least
5 one -- in fact two board meetings. You must have known
6 that?
7 A. I genuinely stepped out of the process.
8 Q. When?
9 A. As soon as I had put the pen down or typewriter down
10 from Dave Clark's, I believe I stepped out of the
11 process.
12 Q. Why?
13 A. Because I clearly hadn't been successful in turning --
14 in making this partnership a success. I didn't want to
15 be involved any more and that's how it works.
16 In terms of Linda, Linda is a senior PA. She has
17 been in the business a number of years. She does attend
18 board meetings. She runs her own diary. So, you know,
19 what she does is down to herself.
20 Q. No, Mr Raines, she reports to you and only to you,
21 doesn't she? She is your PA?
22 A. She does, yes.
23 Q. She is nobody else's PA, is she?
24 A. No, she isn't -- well, she is, actually. She is the PA
25 to all the people who work with me as well.

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1 Q. To the people who work for you?
2 A. My direct reports, yes.
3 Q. So the Skelmersdale office?
4 A. Yes.
5 Q. Including Mr Rowe. He reports directly to you, doesn't
6 he?
7 A. He would do.
8 Q. He is the local man on the ground --
9 A. Yes.
10 Q. -- for SOS in that region?
11 A. Yes.
12 Q. And the people who are tasked with making this crucial
13 decision on behalf of Dartford Visionplus Limited and/or
14 Dartford Specsavers Limited as to what's going to happen
15 to Ms Birdi are your PA and your direct report, Mr Rowe,
16 the local man on the ground. They are given that task.
17 Do you see?
18 A. I have no knowledge of this.
19 Q. It's inconceivable, Mr Raines, that you wouldn't know
20 that your PA and your direct report, who we have seen is
21 constantly reporting to you about Dartford --
22 A. Trust me, I've had enough of Dartford by the time I get
23 to the end of David Clark's thing. I had stepped out of
24 the process completely.
25 Q. I suggest to you --

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1 A. I have not seen this document. I wasn't aware
2 Linda Weaver was attending that meeting.
3 Q. Okay. We are not going on hear from Ms Weaver, are we;
4 she is not coming to give evidence?
5 A. No, no.
6 Q. Who do you say gave Ms Weaver direction as to SOG's
7 wishes in relation to --
8 A. I have no idea.
9 Q. -- Dartford Visionplus Limited?
10 A. I have no idea. I wasn't at the meeting.
11 Q. Who could it be apart from you? It could be Mr Dyson,
12 I suppose. She might have phoned Mr Dyson?
13 A. No, no.
14 Q. Mr Perkins?
15 A. No.
16 Q. Dame Mary Perkins herself?
17 A. No, no.
18 Q. No, no, no. Okay, so it's not Mr Dyson, it's not you,
19 it's not Dame Mary Perkins, it's not Mr Perkins. Who,
20 from SOG's board, for example, is giving some direction
21 to how Dartford Visionplus Limited's business is going
22 to be dealt with in these important board meetings?
23 A. I can't answer the question. I was not involved.
24 MR JUSTICE NUGEE: Could I ask you, Mr Raines --
25 A. Yes, of course you can.

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1 MR JUSTICE NUGEE: -- who decides, when there is going to be
2 a board meeting like this, which individuals represent
3 SOG?
4 A. It's usually done by Legal. Legal will make the
5 decision.
6 MR JUSTICE NUGEE: Thank you.
7 MR STUART: And once Legal has chosen two people -- here,
8 Mr Rowe and Ms Weaver, by the looks of it -- how do
9 those two people -- who are not themselves directors of
10 any board, in this case, are they? It's not like you
11 turning up and you are able to say, "I'm on a board of
12 SOS" -- how are those people to know what SOG's views
13 are.
14 A. Well, they do represent SOG.
15 Q. Only because they have been selected by Legal, you say?
16 A. Yes, they have.
17 Q. Not by you?
18 A. Not by me, no.
19 Q. Not by Mr Dyson?
20 A. No.
21 Q. Not by Dame Mary Perkins or John Perkins or
22 Doug Perkins?
23 A. No.
24 Q. Perhaps they get an email note? Is that the usual way
25 it works?

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1 A. There is usually a chairman's file.
2 Q. A chairman's file?
3 A. Yes.
4 Q. I see. So the chairman here is Mr Rowe?
5 A. Yes.
6 Q. So he would have a file --
7 A. Yes.
8 Q. -- which would explain to him what he is going to be
9 doing?
10 A. And I'm sure he would have spoken to Legal.
11 Q. I'm not asking you to tell me what he would spoken to
12 them about or indeed what he was written to by Legal?
13 A. No, no, I'm sure he would have consulted with Legal.
14 Q. I don't want to know anything about Legal's involvement.
15 A. No, I know.
16 Q. I want to know about the board of SOG, or somebody on
17 the board of SOG, telling Mr Rowe what SOG's position is
18 in relation to this, the breakdown of this relationship,
19 the future of this company and what's going to happen to
20 poor Ms Birdi and her shares?
21 A. I don't know who it was in SOG who consulted with Legal.
22 As I said, by this time I have stepped out of the
23 process completely.
24 Q. Okay. You have done this role for how many years?
25 A. Up to the present day, probably about 18.

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1 Q. 18 years?
2 A. Yes.
3 Q. Have you ever seen -- you haven't seen many of these
4 occasions where there are board meetings even. You told
5 us maybe five a year?
6 A. Something like that.
7 Q. So that might be 100 board meetings in the time you can
8 go back?
9 A. Yes.
10 Q. And obviously not all those board meetings are board
11 meetings of this sort of seriousness, involving, you
12 know, the JVP is going to get disciplined --
13 A. Yes.
14 Q. -- and in the next board meeting we are going to see
15 what happens to her. But apart from this case, have you
16 ever seen a case where it's just the local RDC and a PA
17 as the only board members from SOG?
18 A. I can't --
19 Q. Have you ever heard of that?
20 A. Off the top of my head I can't -- I'm sure there have
21 been, but I can't recollect any specific --
22 Q. No.
23 A. I can only deal with the board meetings that I hold.
24 Q. Yes. You have three JV partner businesses, don't you?
25 A. I do.

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1 Q. With Specsavers. Have you ever had any board meetings?
 2 A. No.
 3 Q. Oh, okay. You have been involved in a number of matters
 4 where there have been board meetings in the last few
 5 years?
 6 A. Yes, yes.
 7 Q. At those board meetings SOG doesn't tend to just leave
 8 it to the local RDC to decide everything, does SOG?
 9 A. No.
 10 Q. Not at a board meeting. Obviously --
 11 A. Most of them, as I said to you before, I would tend to
 12 chair.
 13 Q. Yes. Mr Rowe, his actual role. Surely he was there to
 14 support, wasn't he?
 15 A. Yes.
 16 Q. He is an RDC?
 17 A. Yes.
 18 Q. Who goes round to each of the stores supporting them.
 19 It's not part of his role, is it, to start making
 20 decisions himself about SOG's decisions?
 21 A. He is employed by SOG.
 22 Q. Yes.
 23 A. And, you know, he is representing SOG here. So, yes, he
 24 is obviously --
 25 Q. Ms Weaver is representing SOG here; she can stand up and

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1 say, "I vote yes", or, "I vote no"?
 2 A. Yes.
 3 Q. But she is not the one who is actually determining SOG
 4 policy, is she?
 5 A. No.
 6 Q. Nor is Mr Rowe determining SOG policy?
 7 A. I don't know. He may have been briefed.
 8 Q. But not by you?
 9 A. But not by me.
 10 Q. So briefed as to SOG policy -- I'm not talking about
 11 legal issues now -- as to SOG policy about, you know,
 12 "Are we going to discipline Ms Birdi? Are we going to
 13 put her through a disciplinary process?"
 14 That's obviously a big issue, isn't it? It is for
 15 Ms Birdi, anyway?
 16 A. Well, it's down to the directors of the business to
 17 make -- of the -- which is this, Dartford Visionplus?
 18 It's down to them to make --
 19 Q. This is a board meeting of Dartford Visionplus.
 20 A. Yes, it's down them to make the decision.
 21 Q. Of course it is. But, for example, who decides on what
 22 the motion is going to be? I don't just mean the
 23 drafting of the nice legalities, I mean the actual
 24 policy decision of the motion. Who is going to decide
 25 what motions to put --

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1 A. That's usually done by the chairman in consultation with
 2 Legal.
 3 Q. In this case, that's Mr Rowe?
 4 A. Yes.
 5 Q. You are not suggesting that it was up to Mr Rowe, in his
 6 own mind -- just leaving it to him, leaving him to
 7 exercise his own good judgement, without any supervision
 8 or control or advice from above?
 9 A. As I said to you, Mr Stuart, I don't know, I wasn't
 10 aware, I had completely stepped out of this process by
 11 then.
 12 Q. Okay. You are quite surprised even to see that this is
 13 the position; that there wasn't somebody from SOG of
 14 a more senior level?
 15 A. No, I'm not saying that. I'm not commenting on that one
 16 way or the other.
 17 Q. Okay. Well, try commenting now. Do you think that is
 18 surprising, that somebody -- Mr Clark, or Mr Dyson, or
 19 yourself -- I know you weren't there but somebody of
 20 your status -- wasn't there to decide these crucial
 21 issues about poor Ms Birdi?
 22 A. I would have thought Mr Rowe would have had the
 23 capability and seniority within the organisation to hold
 24 this meeting.
 25 Q. What's his seniority in the organisation?

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1 A. Well, he is a key executive within the organisation.
 2 Q. What is his executive? What executive is he?
 3 A. When I say "executive", what I mean is he is of the what
 4 I would call -- again, it's terminology, but we have As,
 5 Bs, Cs and Ds. He is a B. He is at B level.
 6 MR JUSTICE NUGEE: You are an A, are you?
 7 A. I'm an A level, yes.
 8 MR JUSTICE NUGEE: How many As are there?
 9 A. The main board and the UK Ops Board. Probably about --
 10 if you include other areas within retail, probably about
 11 five, something like that.
 12 MR JUSTICE NUGEE: And then Bs are the regional --
 13 A. Regional manager sort of level. About 12 or 13.
 14 MR STUART: He wasn't a manager, was he? He was just
 15 an RDC, just a consultant?
 16 A. He was a -- yes, that's the terminology we use. We
 17 don't have --
 18 Q. Who was he managing?
 19 A. No, we don't --
 20 Q. According to you?
 21 A. I said he was the equivalent of what you would
 22 understand in a corporate structure to be a regional
 23 manager.
 24 Q. Who is he managing? He is not managing these people's
 25 business, is he?

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1 A. No, no. No, absolutely not. His role is as
2 a consultant, but I was trying to help his Lordship by
3 explaining the sort of level he was at.
4 ^spell checked .
5 Q. How many people below him in his team?
6 A. The RPC, probably three, and then he has a -- what we
7 call a dotted line to the communication managers and the
8 RDMS, which are regional retail -- Retail Development
9 Managers. So there is probably about five or six people
10 which he has a direct or dotted line accountability for.
11 Q. You simply don't know how your PA and Mr Rowe came to be
12 here?
13 A. No.
14 Q. And you played no part and have no knowledge of what the
15 instructions to them were?
16 A. Absolutely.
17 Q. Okay. And that explains why you don't mention any of
18 this in your witness statement. Is that right?
19 A. Absolutely.
20 Q. And then you can put away E12. If you pull out E13,
21 there is only one piece of paper I want you to look at.
22 Page 3732. {E/1017/3732}
23 A. Yes.
24 Q. Mr Rowe is emailing your PA with his charging for
25 attending that board meeting.

185

1 A. Okay.
2 Q. Do you see that?
3 A. Yes.
4 Q. £500. Were you aware of that?
5 A. No.
6 Q. Were you involved at all in the issue?
7 A. No.
8 Q. No. Does Linda charge for attending the meeting --
9 Linda Weaver?
10 A. I don't know.
11 Q. Okay. You can put away E13. We skip E14; I don't think
12 there is anything in it relating to you. So we come
13 finally to E15.
14 A. Yes.
15 Q. Do you have it?
16 A. I do.
17 Q. At the beginning of E15, first page, just to set the
18 scene, we have now got the December 2010 board meeting.
19 A. Yes.
20 Q. Do you see that?
21 A. Which page are we looking at?
22 Q. So the first page, 4043? {E/1043/4043}
23 A. Yes.
24 Q. Mr Moore sending Mr Singh, actually, a notice of the
25 agenda of the board meeting of Dartford Visionplus?

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1 A. Okay, yes.
2 Q. You weren't invited to that board meeting?
3 A. No.
4 Q. Did you know anything about it?
5 A. Not from recollection, no.
6 Q. I'm not quite sure why it's in here but at 4072 I find
7 a page of your day book. {E/1044/4072}
8 A. Okay.
9 Q. So it comes immediately before an email of
10 20 December --
11 A. Yes.
12 Q. -- to Miss Girollet. The only dates I can see on here
13 are February's but those might be dates about what's
14 going to happen in February. Do you see that, 4072?
15 A. Yes, what year are we in?
16 Q. It looks like we are either at the very end of 2010, so
17 December 2010 ...
18 A. Yes.
19 Q. That's when all the documents in this bundle are at this
20 stage.
21 A. Yes.
22 Q. Or perhaps we might have gone into the beginning of
23 2011. So that could be February 2011. I'm not sure.
24 A. I don't know.
25 Q. Okay. Can you just have a look at the note?

187

1 A. Yes.
2 Q. Under the heading, "Dartford"?
3 A. Yes.
4 Q. You have got a line?
5 A. Yes.
6 Q. And there is an arrow going up to 21 February. Is that
7 right?
8 A. Yes.
9 Q. That's your little ...?
10 A. Yes.
11 Q. Then what does it say:
12 "RDC [something]."
13 What is that?
14 A. "Note-taker", I think.
15 Q. "Note-taker Dartford"?
16 A. Yes.
17 Q. And then beneath "Dartford", we have got:
18 "[Blacked out] October IT ..."
19 Does that have anything to do with Dartford.
20 A. I have no idea what that is. No, I don't think they are
21 related at all.
22 Q. Right. So probably the only item relating to Dartford
23 on this whole sheet is the word "Dartford" and then that
24 arrow?
25 A. Yes.

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1 Q. Is that fair?
 2 A. Yes.
 3 Q. Do you recall what this note was about?
 4 A. I have absolutely no recollection of this at all.
 5 Q. Okay.
 6 A. None at all.
 7 Q. Then we see the actual meeting itself, page 4077.
 8 {E/1047/4077}
 9 A. Yes.
 10 Q. Somebody called Mr Edmonds, who is representing
 11 Specsavers.
 12 A. Yes.
 13 Q. And it's just him and Mr Singh present?
 14 A. Yes.
 15 Q. Do you see that?
 16 A. Yes.
 17 Q. And we see at 4079 {E/1047/4079} the motion is carried.
 18 The motion is at the bottom of 4079:
 19 " ... in accordance with Ms McIntyre's
 20 recommendation, Ms Birdi be dismissed ... "
 21 So she is going to get dismissed that day with
 22 immediate effect?
 23 A. Okay.
 24 Q. Mr Edmonds: where does he come into things?
 25 A. He's the chairman of the UK Ops Board.

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1 Q. Okay. Do you report to him?
 2 A. No.
 3 Q. No?
 4 A. I sit on the same board.
 5 Q. You sit on the same board?
 6 A. We are at the same level.
 7 Q. The same level, fine. Did you know anything about
 8 this --
 9 A. No.
 10 Q. -- at the time?
 11 A. No.
 12 Q. Did you know that they were going to sack Swarandeeep?
 13 A. I didn't -- as I said, I stepped out of the process.
 14 Q. Okay. So, as far as you are concerned, all those
 15 decisions to sack -- the eventual decisions to put her
 16 through a disciplinary and then sack her, those were all
 17 done without your knowledge or involvement whatsoever?
 18 A. From my recollection, yes.
 19 Q. Okay. Did Mr Dyson mention anything to you about this?
 20 A. I don't recollect as I'm here today.
 21 Q. Did it come as a surprise to you when you found out
 22 about this?
 23 A. It wasn't a total surprise. No, I can't say it was
 24 a surprise.
 25 Q. Had Ms McIntyre made any investigations of you?

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1 A. I don't believe so. But I can't recollect --
 2 Q. You see, Ms McIntyre was dealing with the investigation
 3 into Ms Birdi and the disciplining of her --
 4 A. Yes.
 5 Q. -- the issues being the breakdown of Ms Birdi's
 6 relationship --
 7 A. Yes.
 8 Q. -- with SOG and with Mr Singh.
 9 A. Hm-mm.
 10 Q. Surely you were a party to all of that, weren't you?
 11 A. Yes.
 12 Q. As to what had happened?
 13 A. Yes, yes.
 14 Q. So isn't it extraordinary that Ms McIntyre, in her whole
 15 disciplinary process, didn't even come and ask you any
 16 questions?
 17 A. She may have done, I can't recollect. I genuinely
 18 cannot recollect a conversation.
 19 Q. You don't mention anything in your witness statement
 20 about anything.
 21 A. No, and that's because I can't recollect anything.
 22 Q. Okay. You would recollect, wouldn't you, if you had had
 23 a conversation in which Ms McIntyre had said, "Do you
 24 know, we are now investigating Ms Birdi and I would like
 25 to have your comments on the following?"

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1 A. You know, there are bits relating to this that
 2 I recollect like it was yesterday. There was other bits
 3 I don't recollect.
 4 Q. Is the position here, Mr Raines, that you simply did
 5 what you were told to do at the stages you were told to
 6 do it and you didn't get involved other than that?
 7 A. That's absolutely not the case. I am -- every action
 8 that I took, I did -- it was a deliberate step that
 9 I took. Whether it's right or wrong, I don't know, but
 10 my motivation for doing everything I did -- and I wasn't
 11 told to do anything, you know. I don't -- that isn't
 12 who I am.
 13 Q. Hm-mm.
 14 A. I did everything I could to try and make this
 15 partnership work. And, no, I'm nobody's puppet.
 16 Q. But, according to you, you then stepped out of matters
 17 in July and then they got on and did what they did?
 18 A. I -- at that stage, do you know what, I had had enough,
 19 Mr Stuart.
 20 Q. Hm-mm.
 21 A. I haven't been successful, you know, in making that
 22 partnership work.
 23 Q. Okay. If you flick on to page 4191 -- the "4" might be
 24 a bit obliterated with black -- there is your day book
 25 from March 2011? {E/1067/4191}

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1 A. Yes.
 2 Q. Obviously, at this stage --
 3 A. 491 ...?
 4 Q. 4191?
 5 A. Yes.
 6 Q. You knew, I think, that there had been an appeal?
 7 A. I --
 8 Q. I'll help you. If you go over the page --
 9 A. I can't recollect.
 10 Q. If you go over the page, 4191-1, there is an email from
 11 you? {E/1067.1/4191.1}
 12 A. 49 ...?
 13 Q. 4191-1, the next page after that.
 14 A. Okay.
 15 Q. There is an email from you to Mr Rowe.
 16 A. Yes.
 17 Q. Do you see? 9 March, which is the same date as your day
 18 book entry, the page before, and under the heading,
 19 "Dartford", at the bottom, do you see:
 20 "Appeal decision is being issued shortly.
 21 "Mike -- can you meet with Kam and deliver the
 22 following message and discuss the rebrand."
 23 Et cetera. So at that stage you were obviously back
 24 in the loop somewhat. Is that fair?
 25 A. I can't recollect this document or this day book entry.

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1 Q. You can't recollect it? You did write it?
 2 A. Yes, I did write it. I write lots of emails. You know,
 3 it's what I do. Obviously, I have had a meeting with
 4 Michael Ryan, who's the guy from business transfer.
 5 Q. That's right.
 6 A. We have agreed quite a few things. I don't know what
 7 they are because they are blacked out.
 8 Q. Yes.
 9 A. And we must have had a conversation about Dartford. He
 10 must have told me that there's an appeal issue -- sorry,
 11 there's an appeal decision been issued.
 12 Q. And you knew what the decision, obviously, was?
 13 A. No, I didn't.
 14 Q. You must have done in order to send Mike Rowe the
 15 following message, to tell Kam:
 16 "... need to progress the Dartford rebrand ... "
 17 None of it is going to involve Ms Birdi, is it? She
 18 is not coming back, is she?
 19 A. I have no recollection of this.
 20 Q. You were aware that Ms Birdi wasn't coming back?
 21 A. Apparently, according to what I have written here, yes.
 22 Q. That was on 9 March. And do you see the next document,
 23 page 4192 to 4199? That's Mr Dyson having decided the
 24 appeal. {E/1068/4192}
 25 A. Yes.

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1 Q. So I'm going to suggest to you that you were having
 2 conversations with Mr Dyson about Dartford?
 3 A. It's obvious I was still talking about Dartford but
 4 I have no recollection and certainly, when I did my
 5 witness statement, I had no recollection because, as far
 6 as I was concerned, I had stepped out of the whole
 7 process.
 8 Q. I suggest to you that Mr Dyson told you what he was
 9 doing regarding Dartford and that you were then passing
 10 on to Mr Mike Rowe instructions so that Mr Singh could
 11 be kept abreast of matters?
 12 A. I honestly can't recollect it.
 13 Q. Okay. Right. I just need to return very briefly to
 14 a couple of these financial issues and I just want to
 15 check whether you actually have any personal knowledge
 16 of this.
 17 Would you go to your first witness statement,
 18 paragraph 75, under the heading "equalisation
 19 dividends". {C/13/168}
 20 A. Yes.
 21 Q. You then deal with that through to paragraph 90: 75
 22 through to 90.
 23 A. Yes.
 24 Q. Do you see?
 25 A. Yes.

195

1 Q. Paragraph 79, for example. {C/13/169} You do fairly
 2 say:
 3 "I do not recall having any real involvement in this
 4 matter until the board meeting on 23 February 2010."
 5 A. That's correct.
 6 Q. That's quite late on and obviously, according to you,
 7 then stepped out of matters shortly, later -- in about
 8 April 2010?
 9 A. Yes.
 10 Q. So you didn't have much involvement with this matter,
 11 very much at all, in your personal knowledge?
 12 A. No.
 13 Q. Is this stuff about -- this is about the £8705.61
 14 equalisation dividend --
 15 A. Yes.
 16 Q. -- that Mr Patel, before he left, back in December 2006,
 17 had signed an authority?
 18 A. Yes.
 19 Q. On Ms Birdi's case there wasn't cash available in the
 20 business at that time and she was told by the finance
 21 department or whoever it is, financial --
 22 A. Planning.
 23 Q. -- financial planning, that they had received the signed
 24 authorisation but that it would have to be actioned only
 25 if and when there was money available. You know that

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1 from Ms Birdi's case.
 2 Do you have any personal knowledge about what
 3 actually happened about that £8,705.61 equalisation
 4 dividend?
 5 A. As it says in my witness statement, I asked Mr Moore to
 6 investigate.
 7 Q. Yes.
 8 A. And he came back to me with the statements that are in
 9 this -- in my statement.
 10 Q. Yes, and at paragraph 83 you say what Mr le Maitre had
 11 said? {C/13/170}
 12 A. Yes.
 13 Q. And at paragraph 84 {C/13/170} you say what Mr Bourgaize
 14 had said?
 15 A. Yes.
 16 Q. And they had obviously done some investigations into
 17 matters --
 18 A. Yes.
 19 Q. -- in December 2009 and 2010?
 20 A. Yes.
 21 Q. But they themselves weren't involved back in 2006,
 22 December 2006 --
 23 A. Yes.
 24 Q. -- when the whole issue had arisen in the first place.
 25 Yes, I see. So, save what you have been told by other

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1 people, you do not have any personal knowledge?
 2 A. No.
 3 Q. Okay. In paragraph 85 you say: {C/13/170}
 4 "This also corresponded with the information that
 5 Mr Singh was given upon joining."
 6 Again, how do you know what --
 7 A. I think that is what I have been told.
 8 Q. That's what you have been told? All right, fine.
 9 Again, paragraph 87, you seem to be confusing
 10 a payment that was made in November -- so there was
 11 a payment made in November?
 12 A. I think there was some confusion about that and it's
 13 the --
 14 Q. Yes, and then -- go on.
 15 A. No, after you.
 16 Q. No, no, I mustn't interrupt you.
 17 A. It's the difference between a distribution and a bonus.
 18 Obviously, a bonus is paid through payroll, so tax is
 19 taken off it, whereas a distribution is paid gross --
 20 Q. Yes?
 21 A. -- and the person then pays the tax separately. So
 22 I think there was confusion around whether a payment was
 23 actually put through as a bonus, I think. I don't --
 24 I don't understand. Again, I wasn't directly involved.
 25 Q. You weren't involved, okay. But you are referring there

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1 to a payment which was actually made in November 2006.
 2 You have actually referred to the date of the payment
 3 made, et cetera?
 4 A. I believe so.
 5 Q. Whereas what Ms Birdi was talking about was
 6 an authorisation by Mr Patel that he signed in
 7 December 2006. So after that payment is made, a further
 8 £8,705.61, she says --
 9 A. Yes.
 10 Q. -- was authorised?
 11 And then paragraph 90, the last paragraph on that.
 12 You say: {C/13/171}
 13 "[You] have learnt from Mr Moore during the
 14 preparation of this witness statements that in late
 15 December 2006/early 2007 Dartford had no funds to make
 16 any distributions, further indicating that Ms Birdi's
 17 December 2006 request was not accepted."
 18 Do you agree from what you know of the whole
 19 Specsavers' scheme and process that if there wasn't cash
 20 available at that time but that an authorisation for
 21 an equalisation had been signed off by the fellow JV
 22 partner and the request had gone into Financial
 23 Planning, that it might happen that the payment was
 24 actioned later, when cash became available?
 25 A. It depends whether Financial Planning have approved

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1 the --
 2 Q. Equalisation?
 3 A. No, the application. You know, you put a form in as
 4 a partner --
 5 Q. Yes.
 6 A. -- and it's there for approval. If it's not approved,
 7 then it doesn't get paid.
 8 Q. Yes.
 9 MR JUSTICE NUGEE: Can I be sure I understand what you say
 10 about the difference between a bonus and a distribution?
 11 If you have one of two JVPs using their company credit
 12 card for personal expenditure --
 13 A. Yes.
 14 MR JUSTICE NUGEE: -- so they run up £8,000 of personal
 15 expenditure --
 16 A. Yes.
 17 MR JUSTICE NUGEE: -- then the other JVP is entitled to
 18 £8,000 to equalise?
 19 A. It's sort of a bit of a grey area. A lot of partners
 20 don't use their personal -- sorry, their business credit
 21 card for personal expenditure.
 22 MR JUSTICE NUGEE: Right. But some people do?
 23 A. And some people do, and if they do, then those partners
 24 sort of do a bit of a --
 25 MR JUSTICE NUGEE: Equalisation?

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1 A. Yes, but again they may include other things as well,
 2 maybe extra hours that they have worked. They come to
 3 an arrangement. One might have a better car than the
 4 other. They will sort it out amongst themselves as to
 5 what is paid and then, obviously, it requires both
 6 signatures of both directors to put the application in
 7 to Financial Planning, and then generally, if the money
 8 is there, it is then approved.

9 MR JUSTICE NUGEE: But if the two partners agree --
 10 A. Yes.

11 MR JUSTICE NUGEE: -- that because partner A has used the
 12 credit card for £8,000 of personal expenditure,
 13 partner B should get £8,000 from the business to
 14 equalise it --

15 A. Yes.
 16 MR JUSTICE NUGEE: -- is it your understanding that that
 17 would be put through as a distribution or as a bonus?

18 A. You can tick a box saying either distribution or bonus,
 19 from memory. I think you can make a request because
 20 obviously one requires you to keep a record of it and
 21 then pay tax at the year end, whereas the other just
 22 puts it through the payroll and you pay tax through
 23 PAYE.

24 MR JUSTICE NUGEE: Right, and if they tick a box saying
 25 "distribution", what is SOG's role, the Financial
 201

1 Planning role? Is it just to see whether there is
 2 enough money to afford it --

3 A. Yes.
 4 MR JUSTICE NUGEE: -- or does it have a general, "I think
 5 this a good idea," or "not a good idea"-type decision?

6 A. No, no, no, it's usually if there is enough money within
 7 the account --

8 MR JUSTICE NUGEE: Right.
 9 A. -- and obviously the normal financial levels of making
 10 sure there's enough of a buffer in there for working
 11 capital, that type of thing, and they can pay
 12 corporation tax and all those other things.

13 MR JUSTICE NUGEE: I think Mr Stuart asked you a little
 14 while ago that if there wasn't enough money, would it be
 15 the case that the decision would be, "We can't authorise
 16 it now but once there is enough money, then it will go
 17 through"?

18 A. I'm not an expert in Financial Planning, with the
 19 greatest of respect.

20 MR JUSTICE NUGEE: Thank you.
 21 A. Sorry.

22 MR STUART: Okay, that is fine. Can we just very briefly
 23 turn to your second statement --

24 A. Yes.
 25 Q. -- where you deal with two matters really. Do you have

1 it? Tab 14, page 174? {C/14/174}
 2 A. Yes.
 3 Q. Page 173 it starts. {C/14/173}
 4 Page 174, between paragraphs 4 and 5 you have
 5 a heading, "Dividend of £15,794 to Mr Singh."
 6 A. Yes.
 7 Q. This is in relation to the car, isn't it?
 8 A. It is.

9 Q. Again, my question to you is: did you have any personal
 10 knowledge or involvement in relation to this?

11 A. No.
 12 Q. No. So you have set out what Mr Rowe has said in his
 13 witness statement but you really can't add anything of
 14 your own --

15 A. No.
 16 Q. -- to his Lordship to explain anything about this?
 17 No, okay. I don't need to ask you about that then,
 18 and then over the page, just to go back to this question
 19 of the attendance at the board meeting on 23 February,
 20 she had asked for a conference call. {C/14/175} You'd
 21 said no --

22 A. Yes.
 23 Q. -- and you make it clear in paragraph 10 that it was
 24 you -- you made that decision. It's you who felt -- I'm
 25 looking at just by the second hole punch:
 203

1 "I felt that Ms Birdi was well enough to attend. It
 2 was not suitable for her to attend by telephone."
 3 Do you see that?

4 A. I did, and there are bits that you remember and bits you
 5 don't remember. I remember having this telephone call
 6 with the -- Mrs Giroillet.

7 Q. Okay. And did you know that what Ms Birdi had actually
 8 said in her letter was, "If I don't feel well enough to
 9 be able to attend in person, by getting myself up there,
 10 because I've been ill ..." She had been quite ill at
 11 that time, so, "If I'm not well enough to get there, can
 12 I be involved by telephone?" That's what she had
 13 actually written in her letter.

14 A. Yes.
 15 Q. But I don't think you had seen that letter, had you?
 16 A. No, it was probably read out to me by Mrs Giroillet.

17 Q. Okay. So was it still your position that if she was not
 18 well enough to get there in person, then she couldn't
 19 attend by phone?

20 A. Yes, that was my situation.

21 Q. So she just --
 22 A. Because of what I --

23 Q. She would just be absent.

24 A. If she'd come to -- if she didn't turn up on the day --
 25 Q. Yes.
 204

1 A. -- say, I would have rescheduled that one because I had
2 decided what I was going to do and I needed her to be at
3 the meeting.
4 MR STUART: I have no more questions, my Lord.
5 MR POTTS: My Lord, I have no questions.
6 MR JUSTICE NUGEE: Thank you very much, Mr Raines.
7 A. You are welcome. Thank you.
8 MR POTTS: My Lord, the next witness is Mr Rowe.
9 MR JUSTICE NUGEE: Yes.
10 MR MICHAEL CHARLES ROWE (sworn)
11 Examination-in-chief by MR POTTS
12 MR JUSTICE NUGEE: Do, please, sit down, Mr Rowe.
13 A. Thank you very much.
14 MR POTTS: Perhaps -- tidy away -- perhaps we will do a
15 little -- there's not too much out, but E15 -- do you
16 have volume C? E15 can go, I think. Clear things away,
17 for the moment at least.
18 Do you have tab 7, at page 64 through to 81.
19 {C/7/64}
20 A. Yes.
21 Q. Is that your first witness statement?
22 A. It is.
23 Q. And at page 81, is that your signature? {C/7/81}
24 A. It is.
25 Q. And can you confirm that the contents of the statement

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1 are true?
2 A. They are.
3 Q. And can you turn on to the next tab, and pages 82
4 through to 85. {C/8/82} Is that your second statement?
5 A. It is.
6 Q. And at page 85, is that your signature? {C/8/85}
7 A. It is.
8 Q. And can you confirm that the facts stated in that
9 statement are true?
10 A. They are.
11 Q. Thank you. Could you just wait there.
12 Cross-examination by MR STUART
13 MR STUART: Mr Rowe, if we start with your first statement
14 then --
15 A. Hm-mm.
16 Q. -- page 65? {C/7/65}
17 A. Yes.
18 Q. In paragraph 5 you say:
19 "Between 2007 and 2011 I was the retail development
20 consultant responsible for the Meridian West, Meridian
21 East and East Anglia regions."
22 A. Yes.
23 Q. At paragraph 8 you say that your first involvement with
24 the store was in September 2007. Do you see that?
25 {C/7/65}

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1 A. Yes.
2 Q. Were you just not involved with that area prior to that
3 or was it because other departments were dealing with
4 it?
5 A. No, Mr Stuart, I was on induction. I joined the
6 business in March 2007, so for a big proportion of that
7 time I wasn't live on the region. We were given
8 three months to, if you like, work our way round the
9 business, get under the skin of Specsavers and do
10 a thorough induction before you go live. So my
11 first involvement was supporting Mr Raines as
12 a note-taker in the disciplinary hearing.
13 Q. Okay. Would you be given E3. Would you go to page 711
14 in E3. {E/185/711}
15 A. Yes.
16 Q. Do you have that?
17 A. Yes.
18 Q. Right at the back?
19 A. Hm-mm.
20 Q. So this is August 2007.
21 A. Hm-mm.
22 Q. We think it is anyway. The previous document is dated
23 28 August and the next document is dated 31 August. Do
24 you see it?
25 A. Yes.

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1 Q. This was something called a "Shared Venture Assessment".
2 At that time, August 2007, SOG owned half the A shares?
3 A. Yes.
4 Q. And this shared venture assessment is completed -- it's
5 not suggested by you, let me make that clear; you
6 weren't in the shared venture team?
7 A. Hm-mm.
8 Q. But you were, by this point, were you not, the local RDC
9 for that --
10 A. I had just started hitting the ground at Meridian --
11 Q. You had just started?
12 A. Yes, at Meridian East.
13 Q. So were you aware that the shared venture team, who had
14 half the shares, were looking at the shared venture
15 prospects of this store -- of one of your stores?
16 A. No, I wasn't, I wasn't consulted in the creation of this
17 document. So, no, I wasn't, Mr Stuart.
18 Q. Okay. Did you have any contact with Mr Lunn?
19 A. Mr Lunn was head of shared venture at this time, yes.
20 Q. Yes.
21 A. Not at this time. My first real involvement with
22 Mr Lunn was following year, the handover, when it came
23 back to joint venture.
24 Q. Okay. Even if you didn't speak to Mr Lunn or anyone in
25 his team, did you speak to anyone in your team or in any

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1 other team who might have fed information into the
 2 shared venture department?
 3 A. No, Mr Stuart. As far as we were concerned, once
 4 a store is in a position where it's -- it's undergoing
 5 investigation, being supported by the Loss Prevention
 6 team, we don't get involved in the store. So I wasn't
 7 involved at all in the support of Dartford at this
 8 point.
 9 Q. Fine. Okay. Put away E3. Take out E4. You say in
 10 your witness statement this is when you become involved,
 11 I think, page 843. {E/203/843}
 12 A. Yes.
 13 Q. This is your first real knowledge at all of this store
 14 and its issues?
 15 A. Yes.
 16 Q. Is that fair enough?
 17 A. Yes.
 18 Q. You are only there as the note-taker?
 19 A. Yes.
 20 Q. But it enables you, presumably, as the RDC to at least
 21 get some context as to what's going on in the store?
 22 A. It certainly did help me to understand, but also to
 23 understand how these processes were handled within
 24 Specsavers as a disciplinary process. So it's a good
 25 learning experience for me.

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1 Q. So you had only just joined literally? You hadn't come
 2 from any other Specsavers?
 3 A. No, I joined in March. I was a regional manager working
 4 for WH Smith, running the large airports. So although
 5 I was used to doing disciplinaries, every business has
 6 a different way of handling them. So it was an
 7 interesting experience.
 8 Q. Do we take it from your paragraph 8 {C/7/65} that
 9 although you took the notes and you got the background
 10 from that, you absolutely didn't play any part in either
 11 the disciplinary decision making or in advising
 12 Mr Raines?
 13 A. Absolutely not. My role was totally just to take notes.
 14 Q. Okay. You say that you felt that Ms Birdi was hostile
 15 to the questioning of Mr Raines?
 16 A. That would -- sorry.
 17 Q. No, go on?
 18 A. That was my overall impression, walking away, just from
 19 the way that the meeting was conducted and Ms Birdi's
 20 response to the questioning. That was just how I felt
 21 at the time.
 22 Q. Okay. I mean, certainly at page 850 you made the
 23 note -- 850, just at the second hole punch: {E/203/850}
 24 "SB: Would like to know why I have been singled out
 25 and discriminated against reference wives and husbands

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1 working together it is a common practice."
 2 Do you see that?
 3 A. Hm-mm.
 4 Q. So she is alleging that she is being discriminated
 5 against. Is that right?
 6 A. Hm-mm.
 7 Q. And the page before, at 849, by the second hole punch:
 8 {E/203/850}
 9 "... I am on medication and receiving counselling
 10 due to inappropriate and unreasonable behaviour I was
 11 subject to."
 12 Do you see that?
 13 A. Yes.
 14 Q. "[I'm here] today to put an end to what I can describe
 15 as mental suffering. I have been threatened, bullied,
 16 uninformed and unsupported -- phone calls ignored,
 17 instructed by Mel McAlindon to stop pestering calls to
 18 head office ... I was told I would have no say on the
 19 new director. I have no support or investigation into
 20 my grievance ... all allegations stemming from Nimesh
 21 who is a fraudster a liar and I really cannot believe
 22 SOG would conspire with him ..."
 23 Et cetera, et cetera. So when you say your
 24 first impression of her was that she was hostile to
 25 questions, wasn't your first impression that she was

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1 a lady who had quite a number of grievances against how
 2 she had been treated for the last six months; that is,
 3 from February 2007 to this meeting on 20 September?
 4 A. Yes, I don't think that I was referring to the
 5 chronology of how the interview went. When I said
 6 "first impressions", Mr Stuart, when I walked away from
 7 the meeting, I suppose, my Lord, that was my overall
 8 impression at the time. That was just how I felt
 9 walking away from the meeting.
 10 Q. Yes, but you did have a sense, didn't you, that Ms Birdi
 11 held those grievances in her own mind?
 12 A. Yes, I did, yes.
 13 Q. Whether they are right or wrong and whether SOG is right
 14 or wrong and Mr McAlindon did what he is alleged to have
 15 done, et cetera, is another matter but in her own
 16 mind -- you were there, you heard her say those things?
 17 A. Hm-mm.
 18 Q. She believed them, didn't she?
 19 A. In my mind she did, yes.
 20 Q. Yes. Good. So now we can move on to 2008, I think.
 21 A. Hm-mm.
 22 Q. Is that right? In paragraph 9 you explain that you
 23 hadn't been involved in the purchase of Mr Patel's
 24 shares. Do you see? {C/7/66}
 25 A. Hm-mm.

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1 Q. You record the fact that it was a shared venture and
2 your colleague in the shared venture retail support team
3 was Mr McGonagle?
4 A. That's correct.
5 Q. And you go straight then on to June 2008. Do you see
6 that?
7 A. Hm-mm.
8 Q. So you can put away bundle E4 for the moment and just be
9 shown E5. Do you have E5?
10 A. I do, yes.
11 Q. So go, for example to, page 1162. {E/274/1162} We are
12 in January 2008. Mr Lunn is writing to Mr Perkins,
13 Mr Ryan and Mr Dyson's secretary/PA.
14 A. Hm-mm.
15 Q. And it says:
16 "Without getting into the history, since returning
17 to work, Swarandeeep has not displayed the actions of
18 someone that is committed to the partnership, the
19 specifics of this comment can be supplied via
20 Sean McLaughlin and Michael McGonagle."
21 I think you probably knew, didn't you, that
22 Mr McLaughlin had been put in as a manager?
23 A. I think I was aware at the time he was supporting the
24 store.
25 Q. Yes. In your paragraph 9 of your witness statement, are

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1 you saying that really it was Mr McGonagle who did all
2 of the RDC-type work at this time? {C/7/66}
3 A. Yes, my Lord. With the shared venture structure versus
4 a joint venture structure, they were a completely
5 separate support team. So, Mr McGonagle, because he
6 plays a more involved role because he basically
7 represents an A shareholder within the business, he
8 works in a difference way to maybe the way that I do as
9 a retail development consultant within the joint venture
10 structure. So Michael was solely responsible for the
11 support of Dartford store and not me or my team in joint
12 venture.
13 Q. Fine. So you literally would have no part to play at
14 this stage, until Mr Singh buys the shares and it turns
15 back into a JV partnership?
16 A. That's correct, yes.
17 Q. I'm just going to ask you about one document in this
18 bundle then, 1262, Mr McGonagle's memo regarding his
19 meetings with Ms Birdi and Mr Singh. {E/337/1262} This
20 is in the period before Mr Singh has actually purchased
21 the shares in July?
22 A. Hm-mm.
23 Q. Okay? But it's after Mr Singh appears to have been
24 selected as being the person who is going to buy the
25 shares by SOG.

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1 A. Hm-mm.
2 Q. Can I just check with you: did you play any part? Were
3 you asked for your views about whether Mr Singh was an
4 appropriate person?
5 A. Absolutely not, my Lord, it was all done and dusted by
6 the time I came into the picture.
7 Q. Okay, fine. So this memo here, which records
8 Mr McGonagle's interviews with -- have you ever seen it
9 before?
10 A. Not until these proceedings, no.
11 Q. Okay. Did you have any discussions with Mr McGonagle at
12 the time of your handover?
13 A. At the time of the handover, yes. I would have --
14 I think from memory I had one telephone conversation
15 with Mr McGonagle.
16 Q. Okay, and did he report to you any of the things that
17 are in here? I'll just pick out two of the things.
18 Between the two hole punches there is a paragraph which
19 starts:
20 "Kam is of the view ..."
21 Do you see that?
22 A. Yes, I do.
23 Q. "Kam is of the view that SB should test five days ... He
24 did initially agree that four days would be acceptable.
25 There is an opportunity for Kam to test on SB's 'retail

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1 day', which will keep Kam involved in the clinical
2 aspect of the business and assist his CET, et cetera.
3 If KS were to test one day per week, that would replace
4 SB's retail day cost. In addition, KS should be able to
5 test when SB was on holiday ... possibly five weeks per
6 year (by this time the DO acting manager would be much
7 more experienced to stand in for Kam)."
8 That's one issue that he has raised there, and the
9 second issue, if you go down to the bottom of the page,
10 below the second hole punch it says:
11 "The biggest issue at present would appear to be
12 ..."
13 Do you see that?
14 A. Yes.
15 Q. "... the ulterior motives of the two individuals:
16 "SB does not want to be managed and appears to be
17 putting KS off in the belief that she will either be
18 offered the shares or introduce someone to the business
19 that she is comfortable with.
20 "KS acknowledges the business potential and
21 ultimately wants to introduce a member of his own
22 extended family and will manage and communicate with
23 Swarandeeep accordingly."
24 When you had the handover, did Mr McGonagle raise
25 with you either of these two matters, ie the four days'

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1 testing issue?
 2 A. Hm-mm.
 3 Q. Or, shall we call it, the ulterior motives/different
 4 agendas of the two JV partners, Ms Birdi wanting
 5 somebody that she selected and Mr Singh perhaps wanting
 6 some member of the extended family. Did he raise those
 7 with you?
 8 A. My Lord, from recollection, we did talk about possible
 9 relationship issues in the partnership. That was raised
 10 to me as something that I would need to look out for.
 11 But I certainly don't remember going into the detail and
 12 I don't remember Mr McGonagle talking about either of
 13 those individual issues in depth. But he did mention
 14 the fact that he felt the relationship was one that
 15 would need to be managed and watched very closely.
 16 I'm not sure at what stage I became aware of Kam's
 17 desire to have Swarandeeep testing. Certainly, it was
 18 covered, and covered quite heavily, when we did the
 19 handover in detail, and it comes out, I believe, in some
 20 emails from Neil, and we covered off that in our
 21 introductory meeting.
 22 But I can just remember having a conversation and a
 23 general overview that Michael gave me of the store,
 24 which was actually, "Do you know what, this is a pretty
 25 good store, with great, great potential to deliver

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1 a strong bottom line for the partners. However, Mike,
 2 you are going to have a relationship issue to manage
 3 here." But he didn't go -- I certainly don't recollect
 4 him going into this detail.
 5 Q. Okay. Just one other page, just the next page.
 6 {E/338/1263} I suppose Mr McGonagle reports to Mr Lunn.
 7 Would that be fair?
 8 A. Yes, that's right.
 9 Q. Mr McGonagle is the RDC?
 10 A. And he reports to Mr Lunn, that is correct.
 11 Q. Mr Lunn is writing to Mr Ryan, who is the business
 12 transfer man. Do you remember?
 13 A. Yes, I do.
 14 Q. On the same day actually:
 15 "Dartford
 16 "Hi Mike
 17 "In relation to the monies that SB believes the
 18 business is owed by SOG ..."
 19 The business being Dartford:
 20 "... loss prevention fees and store support fees of
 21 approximately £80,000! for managing the store whilst her
 22 partner was suspended and she was off sick!"
 23 Exclamation mark:
 24 "Likelihood of her seeing these fees returned?
 25 About the same as Elvis personally handing them over!"

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1 Exclamation mark. When you had your handover with
 2 the shared venture team, did they mention to you this
 3 issue of Ms Birdi's complaints about the fact that there
 4 was £80,000 of fees, which she was saying had been
 5 improperly taken from the store? It's obviously quite
 6 a big issue, isn't it?
 7 A. I can see it is. I obviously wasn't aware of this email
 8 or --
 9 Q. No, no.
 10 A. -- or how Neil has phrased it, but when we took over the
 11 store, obviously it was still in financial difficulties,
 12 although it was improving, and obviously I was aware
 13 that one of the reasons and influencing factors for that
 14 was the Loss Prevention charges. But that was about as
 15 much as my involvement is. I was focused on how can we
 16 make this store, moving forward, as profitable for
 17 partners as it can do, trade it out of the position it's
 18 in, and deliver it to the profitability that it should
 19 be delivering.
 20 Q. All right. That's all I have to ask you about E5.
 21 My Lord, I was about to move on to E6 --
 22 MR JUSTICE NUGEE: That's probably an convenient moment.
 23 MR STUART: -- but would that be an appropriate moment?
 24 MR JUSTICE NUGEE: Yes.
 25 We will say 10.30 tomorrow.

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1 Mr Rowe, you have probably been told this but now
 2 you have started giving evidence, don't talk to anybody
 3 about your evidence or the case.
 4 A. Okay.
 5 MR JUSTICE NUGEE: And we will see you back at 10.30
 6 tomorrow morning.
 7 A. Thank you.
 8 (4.15 pm)
 9 (The court adjourned until 10.30 am the following day)

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