

# OPUS 2

## INTERNATIONAL

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

Day 15

November 12, 2014

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Phone: +44 (20) 3008 5900  
Email: [transcripts@opus2.com](mailto:transcripts@opus2.com)  
Website: <http://www.opus2.com>

1 Wednesday, 12 November 2014  
2 (10.30 am)  
3 MR MICHAEL CHARLES ROWE (continued)  
4 Cross-examination by MR STUART (continued)  
5 MR JUSTICE NUGEE: Yes. Good morning.  
6 MR STUART: Mr Rowe, I think you have your witness statement  
7 bundle.  
8 A. Yes, I do, yes.  
9 Q. And I think we had reached 2008, about paragraph 11 of  
10 your statement. {C/7/66} So we are into bundle E6.  
11 Could you have E6?  
12 Do you have paragraph 11 of your statement?  
13 A. Yes.  
14 Q. You refer to the email of 14 August from Mr Lunn. Do  
15 you see that?  
16 A. I do.  
17 Q. And Mr Lunn is -- can we go to 1580. {E/438/1580} You  
18 quote from that and you talk about the persistent  
19 squabbling between the parties?  
20 A. Yes.  
21 Q. If you just go back then to 1574. {E/434.1/1574} This,  
22 I think, is dated 12 August. It's the attachment to  
23 page 1573. {E/434/1573} Ms Birdi is complaining to  
24 Mr Singh about various matters, isn't she?  
25 A. Hm-mm, she is.

1

1 Q. First of all, that at the 31 July meeting, or after that  
2 meeting, he had said: {E/434.1/1574}  
3 "I was told that you will test four days and I will  
4 make sure that it is enforced."  
5 And that she felt threatened and upset. Do you see  
6 that?  
7 A. Hm-mm.  
8 Q. And that Mr Singh seemed to be treating her as if he  
9 were her line manager?  
10 A. Hm-mm.  
11 Q. And then between the two hole punches:  
12 "While we are on the subject of testing can you  
13 explain when you would be prepared to test. I was told  
14 by Michael McGonagle that you would be prepared to test  
15 as the business required and he especially mentioned  
16 walk in appointments also. However this does not seem  
17 to be the case. You refused to test a walk in..."  
18 Do you see that?  
19 A. Yes.  
20 Q. So the issue of Mr Singh doing some testing obviously  
21 being raised?  
22 A. Hm-mm.  
23 Q. Then over the page, at the top of page 1575,  
24 {E/434.1/1575} this is about Ms Birdi testing. Mr Singh  
25 was wanting her to test even more than four days a week,

2

1 wasn't he?  
2 A. He was.  
3 Q. Your evidence is he wanted her to test five days a week?  
4 A. Yes.  
5 Q. He wanted her in that test room every moment she was in  
6 the store?  
7 A. He saw the value of that, yes.  
8 Q. Yes. And she has raised the issue about -- do you see  
9 above the first hole punch she has raised the issue  
10 about:  
11 "... this store is a joint venture store not  
12 a shared venture store ..."  
13 So Mr Singh continually involving Neil Lunn and  
14 Michael McGonagle seemed to her to be wrong.  
15 A. Hm-mm.  
16 Q. She was raising that, wasn't she?  
17 A. Yes.  
18 Q. And she felt that again, this was to put pressure on  
19 her. "Undue pressure", as she puts it, "on me". She  
20 talks about having invested very heavily.  
21 And then the company car issue, between the two hole  
22 punches. She is raising that, isn't she, because he  
23 said -- do you see?  
24 A. Yes, sorry, can I just take a second to read that  
25 paragraph?

3

1 Q. Yes. So between the two hole punches: {E/434.1/1575}  
2 "... you told me ..."  
3 That's you, Kam Singh, told me, Swarandeep Birdi:  
4 "... that you had 'decided' that the company car  
5 benefit I have received since joining Dartford as  
6 a director in 2000 is no longer feasible and it would  
7 not continue. This is part of my salary package as  
8 I think you are well aware."  
9 That was her case, wasn't it? You deal with this  
10 later in your statement. She was quite clear that the  
11 company car was part of her salary?  
12 A. That was her interpretation. I think I have maybe  
13 raised doubt, that's not my understanding of company car  
14 allowances. It's a benefit in kind, a distributable  
15 profit.  
16 Q. Then below the second hole punch she deals with the  
17 question of him not being in the store for protracted  
18 periods. Do you see that?  
19 A. Hm-mm, yes.  
20 Q. She is complaining about his absenteeism, if we can call  
21 it that?  
22 A. Hm-mm.  
23 Q. Then she is dealing with -- over the page she is asking  
24 about his commitment, extended trading hours, Sundays,  
25 working on Sundays, et cetera. Do you see?

4

1 A. Yes.  
 2 Q. But she does end, doesn't she, with: {E/434.1/1576}  
 3 "I do believe, as I am sure you do, that the  
 4 Dartford store can perform exceptionally well with both  
 5 directors working together in unison and am looking  
 6 forward to getting the business back in a positive  
 7 balance and developing the business further."  
 8 So having raised all of these issues, she is, isn't  
 9 she, trying to adopt what you would suggest is a good --  
 10 A. Yes. Mr Stuart, that formed a big part of our initial  
 11 meeting in September.  
 12 Q. That's right. So, presumably, at the time you didn't  
 13 see this letter?  
 14 A. I saw -- I was copied in on a number of emails from Neil  
 15 around -- because we were coming to the point where we  
 16 were going to hand the store back to joint venture.  
 17 Neil was really keen to have the store in as fit  
 18 a possible state to hand it back. So there were  
 19 a number of emails at my desk. I can't remember going  
 20 through this attachment in detail, Mr Stuart.  
 21 Q. Okay. On the company car issue, she had sought  
 22 clarification, hadn't she, actually from the legal  
 23 department, page 1579. {E/437/1579} Ms del Grazia had  
 24 written to her in response to her query about the  
 25 company car?

1 A. Hm-mm.  
 2 Q. Do you see the second paragraph:  
 3 "... confirm that our records indicate that the car  
 4 has been available to you since at least April 2001 (our  
 5 payroll records don't go back any further) and that the  
 6 business has historically been meeting the costs of  
 7 running the car, including the cost of the fuel, via use  
 8 of the company credit card.  
 9 "Whilst the car is the property of business and the  
 10 business meets the related costs, the item is treated as  
 11 a benefit in kind to you..."  
 12 That's how it was treated?  
 13 A. Hm-mm.  
 14 Q. Do you see that?  
 15 A. Hm-mm, I do.  
 16 Q. Was that your understanding as well in relation to the  
 17 car?  
 18 A. Not at the time. I can't remember -- this was prior to  
 19 me taking over looking after the store. My  
 20 understanding of car -- company cars for directors is  
 21 that it is a benefit and that that benefit is similar to  
 22 pensions. It is treated as distributions from the  
 23 business. That was my understanding. I think I shared  
 24 that in a later meeting with Ms Birdi.  
 25 Q. But Ms del Grazia is very clear, isn't she? Read the

1 third paragraph:  
 2 "Whilst the car is the property of business and the  
 3 business meets the related costs, the item is treated as  
 4 a benefit in kind to you from a taxation perspective and  
 5 so I would agree that it is part of your overall package  
 6 of benefits."  
 7 Part of her remuneration package, isn't it?  
 8 A. That's what it seems to say, Mr Stuart, but I'm not  
 9 a member of the legal team so I can't really pass  
 10 comment. My understanding was that company cars are  
 11 part of distribution.  
 12 So salary, my Lord, is remuneration for carrying out  
 13 the role that Ms Birdi is employed for and that then any  
 14 add-on benefits, such as pensions, such as company cars,  
 15 were classified as profits and distribution of profits,  
 16 and so could be equalised. That was my understanding at  
 17 the time.  
 18 MR JUSTICE NUGEE: Are you talking about this from an  
 19 accounting and taxation point of view, or from a point  
 20 of view of equalisation between the partners?  
 21 A. Not being an expert in either case, my training at the  
 22 time and how it was explained to me in how the joint  
 23 venture agreement worked and how the structure worked is  
 24 that the company car was treated as a benefit and was  
 25 a -- classified as distribution of profits, and so would

1 need to be equalised. That was my understanding of the  
 2 situation. However, the letter is from Cristina, from  
 3 the legal department, so -- and prior to me taking over  
 4 the store. So that was my understanding.  
 5 MR JUSTICE NUGEE: Thank you.  
 6 MR STUART: Okay. Can I just check: 1585, {E/440/1585}  
 7 there is a complaint made against Mr Singh by somebody  
 8 called Leanne Browne, who is the managing director of  
 9 a business which provides locums. Were you aware of  
 10 that? Was that part of your remit as store support?  
 11 A. Not at this time, I believe, Mr Stuart. It would have  
 12 been in August prior to the handover. So Mr Lunn would  
 13 have dealt with or been informed of this.  
 14 Q. Okay, fine. So we come to you taking over the reins, as  
 15 you put it, and the direction comes from Mr Raines,  
 16 doesn't it? 1595. {E/446/1595} This little two-page  
 17 email string?  
 18 A. Yes.  
 19 Q. Do you see that?  
 20 A. Yes.  
 21 Q. You deal with this at paragraph 14 of your witness  
 22 statement {C/7/67} where you fairly say that:  
 23 "... I do not recall what I understood by Mr Raines'  
 24 comment of Mr Singh going 'native'..."  
 25 You just simply don't recall?

1 A. Yes, I interpreted it as, in reality, it was going to be  
 2 a difficult partnership to manage, with the history of  
 3 Dartford, but the word "native" for me didn't really  
 4 kind of correlate to anything other than it was going to  
 5 be a difficult partnership, Mike, so please support  
 6 them.  
 7 Q. Support them? Let's have a look at it. 1596.  
 8 A. Hm-mm.  
 9 Q. He is writing to Mr Savill because he is not aware that  
 10 Mr Savill is in a different area?  
 11 A. Yes.  
 12 Q. And it eventually comes to you?  
 13 A. Yes.  
 14 Q. And this is the email which you eventually respond to.  
 15 So: {E/446/1596}  
 16 "Hi Kam is now in the store - can you please arrange  
 17 to visit the store three times (as part of new partner  
 18 support)."  
 19 Which is what you describe, isn't it, in your  
 20 witness statement?  
 21 A. Yes.  
 22 Q. "There is a concern that Kam may go 'native' once in the  
 23 store - I am sure he won't but we need to guard against  
 24 it."  
 25 Guard against Kam going native. And you say that

1 you understood that to be a reference to difficulties in  
 2 the store?  
 3 A. Difficulties in the partnership. I had obviously sat on  
 4 the disciplinary, so I was aware of the track record of  
 5 Dartford and that it was going -- I had spoken to  
 6 Michael McGonagle, copied in on the emails from  
 7 Neil Lunn. So this was going to be potentially  
 8 a difficult partnership to support. And it's something  
 9 that we do regularly to support partners, especially new  
 10 partners going into the store, Mr Stuart.  
 11 So, although I didn't get what "native" meant,  
 12 I certainly understood that this would be a difficult  
 13 partnership to help support and make successful.  
 14 Q. But "going native" doesn't mean having difficulties; it  
 15 never has meant that and it never will mean that. Does  
 16 it?  
 17 A. I clearly state that I didn't recollect what Mr Raines  
 18 meant by "going native". I interpreted it as this was  
 19 going to be a difficult relationship to manage and  
 20 therefore, "Mike, keep a real close eye on it".  
 21 Q. What is noticeable then is:  
 22 "Kam's objective is to drive the business forward  
 23 and not let Swarandeeep impact upon that objective..."  
 24 So Mr Raines seems to be telling you, between the  
 25 lines, that his view is that Ms Birdi is going to

1 somehow try to impact negatively, I think, on the  
 2 objective of driving the business forward?  
 3 A. Hm-mm.  
 4 Q. So Mr Raines is letting you know that he has a negative  
 5 view of Ms Birdi's commitment, or however he's going to  
 6 put it, to the store/business?  
 7 A. I don't think Mr Raines meant that. Obviously,  
 8 I haven't had a conversation with him about exactly what  
 9 he meant, but in reality, Kam is coming into the  
 10 business, my Lord, to obviously -- just purchased the  
 11 business and wanted to drive it hard. It was on TAPS  
 12 and just towards the back end of that TAPS process. So  
 13 driving the performance of the business for Kam was  
 14 absolutely crucial, as I'm sure it was for Swarandeeep.  
 15 However, I believe, although I wasn't involved in  
 16 it, Swarandeeep still was communicating to the group  
 17 around the issues in 2007. And we wanted Kam to make  
 18 sure that he was focused -- as Swarandeeep, as in my  
 19 initial meeting, where I treated both partners  
 20 equally -- were focused on driving the performance of  
 21 Dartford, and anything that Swarandeeep had or any issues  
 22 that Swarandeeep had with SOG wouldn't impact on growing  
 23 Dartford's business.  
 24 Q. You didn't treat the partners equally, did you? We will  
 25 come in a moment to each and every occasion where you

1 treated the partners and I'll take you to each and every  
 2 time you deal with this store according to your witness  
 3 statement.  
 4 A. Yes.  
 5 Q. You didn't treat them equally, did you?  
 6 A. I believe I did, Mr Stuart, or I attempted to treat them  
 7 equally and to deal with the issues.  
 8 Q. I'm going to suggest to you that far from treating them  
 9 equally, you had been given the instruction by  
 10 Mr Raines, your direct line manager, that you were to  
 11 support Kam, as it says here, and you were to prevent or  
 12 not let Swarandeeep do what she wanted to do, and that  
 13 Kam needs your support; not Swarandeeep and Kam?  
 14 A. No, Mr Stuart, my brief was simple, which was to act in  
 15 the best interests of Dartford, help support the  
 16 partners to develop the Dartford business. As with any  
 17 new practice support period for a new partner, my Lord,  
 18 that was standard. We would obviously help support that  
 19 new partner because going into a new business when there  
 20 is an existing partner in place is always a difficult  
 21 position because there is a lot of change. Maybe the  
 22 new partner has new ideas, wants to change things or see  
 23 different opportunities, and the existing partner quite  
 24 often maybe can resist that, and it's about how you  
 25 manage that change process. And my advice normally is,

1 "Don't go and change everything all at once. Go in,  
 2 understand what needs to be changed, let's go through,  
 3 get good communication, do a business plan and let's  
 4 find the route to landing these improvements."  
 5 So a new partner going in, in this position, Kam,  
 6 even if it was into a store that hadn't had the history  
 7 that Dartford had had in 2010, would get this support.  
 8 So it's nothing strange for me to be asked to look after  
 9 a new partner going into the store. It doesn't mean  
 10 it's at the detriment of the other partner.  
 11 Q. You fully understood Mr Raines's instruction that you  
 12 should support Kam against Swarandeeep and you made that  
 13 clear in your email on page 1595 -- {E/446/1595}  
 14 A. Look, Mr Stuart, I don't believe -- I think I answered  
 15 that point. Up to the point, did I understand I needed  
 16 to support Kam? Yes. Against Swarandeeep? No,  
 17 categorically no. My intention, as was right throughout  
 18 this process, was, if possible, to make this  
 19 relationship work and to make Dartford as successful  
 20 business as is possible.  
 21 Q. What you actually did was you did support Kam at every  
 22 stage, didn't you?  
 23 A. I supported Kam and I supported Swarandeeep and  
 24 I supported the Dartford business to make it as  
 25 successful as possible.

13

1 Q. When you said: {E/446/1595}  
 2 "Yes, I get the situation..."  
 3 When Mr Raines has said to you:  
 4 "Great I hope you can read between the lines in  
 5 terms of my comments."  
 6 What did you understand by "read between the lines"?  
 7 A. Exactly as I said around the native piece, which is,  
 8 "Mike, you know the history of Dartford, you know what's  
 9 going on, this could be a difficult partnership to  
 10 manage and a relationship to manage", and that's what  
 11 I understood; it's simple as that.  
 12 Q. Page 1608. {E/454/1608} In the background, Mr Lunn is  
 13 still giving Mr Singh advice. Were you aware of that?  
 14 Were you aware of Mr Lunn assisting Mr Singh?  
 15 A. This was 1608. This was before my meeting when I took  
 16 over, so --  
 17 Q. Yes. It was before then?  
 18 A. Yes, it was, yes, and --  
 19 Q. Were you aware that Mr Lunn was assisting Mr Singh?  
 20 A. I think Mr Lunn -- I'm not sure at what time. Mr Lunn  
 21 did send me copies of emails and correspondence prior to  
 22 the meeting. So I'm not sure if I knew at this point or  
 23 whether it was closer to the handover, Mr Stuart.  
 24 Q. Okay. But at some point prior to the meeting, you were  
 25 aware that Mr Lunn had been assisting Mr Singh?

14

1 A. Yes.  
 2 Q. And we come on to paragraph 15 of your statement.  
 3 {C/7/67} You are dealing there with E6/1639.  
 4 Page 1639? {E/469/1639}  
 5 A. Hm-mm.  
 6 Q. This is Mr Lunn writing to you. Do you see that?  
 7 A. Yes.  
 8 Q. The second paragraph:  
 9 "Unfortunately, Swarandeeep is flatly refusing to  
 10 engage with 'shared venture'..."  
 11 This was her issue about -- she didn't trust the  
 12 shared venture people, Neil Lunn and Mr McGonagle, did  
 13 she?  
 14 A. Hm-mm.  
 15 Q. She wanted the support to come from the joint venture  
 16 team?  
 17 A. The joint venture team, yes.  
 18 Q. Your team?  
 19 A. Absolutely.  
 20 Q. Do you see the last sentence:  
 21 "It is envisaged that Swarandeeep is building a case  
 22 against Specsavers..."  
 23 Do you see that?  
 24 A. Hm-mm.  
 25 Q. Plainly, those people in those departments -- Neil Lunn,

15

1 his department, your department as it was being handed  
 2 over to you, here --  
 3 A. Hm-mm.  
 4 Q. -- the Specsavers' view was that Ms Birdi was against  
 5 you; she was building a case against you. That's right,  
 6 isn't it?  
 7 A. All -- the only time in my engagement with Neil over  
 8 this period -- that was the only time that that was  
 9 mentioned and it was in an email. I didn't have  
 10 a conversation about it. I don't know what Neil meant  
 11 by it or conversations that Neil had had, but nobody has  
 12 ever said that to me in anything other way than this  
 13 email, my Lord. It's not something that I have engaged  
 14 with.  
 15 Q. Yes. This was the handover. This was the point --  
 16 A. Yes.  
 17 Q. This is the point where his department is handing over  
 18 Ms Birdi and her store to you?  
 19 A. Yes.  
 20 Q. He is saying to you that Ms Birdi is building a case  
 21 against Specsavers, and that was the basis upon which  
 22 you took her over, wasn't it?  
 23 A. I took her over on the basis it was now a joint venture  
 24 store and that my role was to support both her/Kam and  
 25 to make the business a success. Mr Lunn has put that in

16

1 an email to me along with lots of other issues and  
2 things to be aware of in meeting with Swarandeeep and  
3 Kam. I don't know what conversations Neil has had  
4 centrally around this. I just received the email.  
5 Q. When you say "centrally" --  
6 A. So I was obviously --  
7 Q. -- you mean with Mr -- so he might have spoken with  
8 Mr Raines, his line manager?  
9 A. I don't believe Mr Raines was Neil's line manager.  
10 Q. Okay. Who did Mr Lunn report up to?  
11 A. I think at this time it might well have been Jill Clark  
12 or Derek Dyson, but not Mark.  
13 Q. So speaking "centrally", you mean Mr Dyson, really?  
14 A. I don't know. I cannot comment on that. All I know is  
15 it was put in an email to me as part of the handover.  
16 Q. Then we can perhaps also see at this handover period,  
17 1648, the email to you, the short email to you from  
18 Mr Lunn, which again perhaps displays the Specsavers'  
19 view towards Ms Birdi. Is that right: {E/474/1648}  
20 "Hi Mike/Alan.  
21 "I have not received a reply or confirmation from  
22 Swarandeeep regarding the rearranged meeting for the 12th  
23 and expect that we have called her bluff slightly..."  
24 Is this the sort of game you are playing against  
25 Ms Birdi at this stage? You call her bluff? You assist

17

1 Mr Singh against her, behind the scenes? Is this the  
2 way you are acting at this point?  
3 A. This certainly isn't the way that I'm acting because  
4 I haven't taken over looking after the store as yet.  
5 Neil is copying me in on a trail of emails around making  
6 an arrangement for a meeting. I can't comment on what  
7 Neil's view -- he has used that language. I don't know  
8 what Neil meant by it. I think there was a level,  
9 looking at the communication all the way through --  
10 a level of frustration with Neil, but certainly this  
11 isn't a word that I have used. I think I replied to  
12 this email once. I think Swarandeeep contacted me  
13 directly to arrange the meeting, and I think I replied  
14 to this, just to say, "Neil, yes, I think your gut feel  
15 was right because Swarandeeep has contacted me".  
16 So it isn't language that I have used. I can't  
17 comment on the language that Neil has used.  
18 Q. I see. So your evidence is that Mr Lunn may have felt  
19 that Swarandeeep was building a case against Specsavers,  
20 as he wrote to you. That's possible?  
21 A. He patently felt that because he put it in an email  
22 directly to me.  
23 Q. He may have felt it was appropriate to call her bluff on  
24 things and play those sorts of games, but that wasn't  
25 something you were prepared to do?

18

1 A. That was the language that Neil used and it's not the  
2 language that I used.  
3 Q. Do you use language like that in relation to JV  
4 partners, "Going to war against JV partners", for  
5 example?  
6 A. If you are referring to the previous case, Mr Stuart --  
7 Q. Have you ever used that?  
8 A. Yes, I did. My Lord, if you wouldn't mind me taking  
9 a second to explain, but back in 2007, in the previous  
10 case of Bognor Regis. There were three emails where  
11 I let my frustration within my tight RST team go over,  
12 and as I explained to Judge Hilliard at the last case,  
13 the one thing that I regret was using a few words in  
14 those emails that were inappropriate and letting my  
15 professionalism drop.  
16 However, everything that I did with the partners  
17 face-to-face was absolutely in line with mission purpose  
18 and values, and it was just pure frustration.  
19 So, Mr Stuart, in answer to your question, in the  
20 vast majority of all the emails I would send, I would  
21 not -- do you sometimes use an inappropriate word that  
22 could be misinterpreted in an environment like that,  
23 then maybe, but it doesn't portray my attitude towards  
24 joint venture partners.  
25 Q. It doesn't portray what you in your words say

19

1 face-to-face with those partners, but it does portray  
2 your attitude towards such difficult joint venture  
3 partners behind the scenes, amongst the team in SOG?  
4 A. In less than a handful of emails in 2007, dealing with  
5 a very, very stressful and difficult situation, as  
6 I said, I let my professionalism drop to a very tight  
7 knit group of individuals that worked with me and it  
8 went no further than that. And I bitterly regret  
9 allowing the use of some language that on reflection was  
10 inappropriate.  
11 And as you know, Mr Stuart, I was disciplined for  
12 that and lost a completely clean disciplinary record for  
13 three emails, where, actually, you know, I was in the  
14 face of some quite stressful positions. So it's  
15 something I bitterly regret but not -- and I don't think  
16 you could argue -- creates any track record of my  
17 attitude towards joint venture partners.  
18 MR JUSTICE NUGEE: Did you think Ms Birdi was a difficult  
19 joint venture partner?  
20 A. I think "challenging" is the word, and I work with a lot  
21 of challenging partners because the nature of the joint  
22 venture partnership is we have a lot of entrepreneurial,  
23 driven individuals that take up the opportunity. I saw  
24 Ms Birdi as challenging but not massively difficult.  
25 The Bognor Regis partners and -- not to stray into

20

1 that case -- were very, very, very combative in their  
2 communication with my team, and that's where I went over  
3 the edge. So, no way that I compare Ms Birdi to the  
4 situation that I experienced in Bognor Regis.  
5 MR STUART: That's not quite right, is it, Mr Rowe. Looking  
6 back -- we have only just got to paragraph 19 and I'll  
7 take you to the other references that you make to  
8 Ms Birdi, later but in paragraph 19 of your witness  
9 statement, even before you have taken over, you say:  
10 {C/7/68}  
11 "It was clear from Mr Lunn's emails of 14 August  
12 2008 and 2 September 2008 and Mr Raines's email of  
13 19 August 2008 ..."  
14 Do you see?  
15 A. Yes.  
16 Q. So you have obviously taken on board what you are told  
17 by the people who have been dealing with her?  
18 A. Yes, and in the -- I think in the email I point out that  
19 they were already facing difficulties in the working  
20 relationship and that's what I took from those emails.  
21 Q. Look at the next sentence:  
22 "It appeared to me from these emails that Ms Birdi  
23 was putting up barriers to developing a positive  
24 relationship..."  
25 That's a criticism of her, isn't it?

21

1 A. It's an observation and something that I felt, moving  
2 into supporting the store. It's an impression I got  
3 from the communications. It doesn't mean that I was in  
4 any way anti-Ms Birdi; it was just my observation.  
5 Q. It was an anti-observation?  
6 A. It was an observation and something that I took into  
7 account one needed to be aware of in managing  
8 a relationship, or attempting to manage a relationship.  
9 Q. You understood from Mr Raines's email, I think, even on  
10 your version of events, that it was being suggested that  
11 Ms Birdi was a difficult person and that Kam Singh would  
12 therefore have difficulties coping when he went into the  
13 store and that's what you understood by "go native",  
14 et cetera?  
15 A. I explained what I understood by "go native", which was  
16 I didn't understand what go native meant and it was  
17 going to be a challenging relationship, and I think  
18 I already explained what I understood from supporting  
19 Mr Singh and the comment from Mr Raines about Swarandeeep  
20 that was related to the other issues that Swarandeeep was  
21 progressing with SOG.  
22 Q. I'm going to suggest to you that you were given the  
23 clear instruction from Mr Raines and had it passed on  
24 from Mr Lunn that you were to treat Ms Birdi as  
25 a difficult person, and that you were to support

22

1 Mr Singh against her at every stage?  
2 A. Absolutely not, Mr Stuart. I never received any  
3 instruction.  
4 Q. All right. We move on to the 12 September meeting. Do  
5 you see paragraph 21 of your statement? {C/7/68}  
6 A. Yes.  
7 Q. You start that with the words:  
8 "I was aware before the performance review meeting  
9 with Mr Singh and Ms Birdi that the financial health of  
10 Dartford was very poor and that it had been under 'TAPS'  
11 ... since January 2008."  
12 Isn't it right that, as Ms Birdi says,  
13 from January 2008 when she returned to the store, pretty  
14 much full time, and took over sole responsibility for  
15 running the store --  
16 A. Hm-mm.  
17 Q. Mr McLaughlin no longer being the manager from that  
18 point onwards -- that from January 2008 through  
19 to July 2008 when Mr Singh arrives, third week  
20 of July 2008, the store's financial position improved  
21 dramatically?  
22 A. I'm afraid, Mr Stuart, I haven't looked at those numbers  
23 or can't recollect those numbers, but certainly the  
24 store was progressing well and I believe moved  
25 completely out of the TAPS process early the following

23

1 year, but was still within the TAPS process.  
2 Q. It was within the TAPS process but I think -- we will  
3 come in a moment to it -- even by 2 October it was off  
4 TAPS full watch, as it were. It was down to the sort of  
5 lowest level of TAPS?  
6 A. Hm-mm.  
7 Q. The point being that whereas the financial position of  
8 the store in January 2008 was that it was a negative  
9 cash position of some £60,000 plus?  
10 A. Hm-mm.  
11 Q. That had been got right down by August 2008 due to  
12 Ms Birdi's work -- down to just a few thousand pounds  
13 negative. So that's a considerable improvement, isn't  
14 it?  
15 A. Yes, it is, but I would still also classify that as  
16 poor, and, my Lord, my approach to turn around practices  
17 was very simple: whatever point they were at within the  
18 TAPS process, we treated them the same way because, just  
19 because you are progressing well and migrating and  
20 performing on a path that looks like you will take  
21 yourself out of TAPS, it's important that you drive that  
22 business as hard as possible.  
23 So the same level of support would have been offered  
24 to Dartford on TAPS Watch as it would be on full TAPS.  
25 As a retail support team, I made -- it was no different.

24

1 My role was to try and identify stores before they even  
 2 got anywhere near turn around practices and at that  
 3 time, I believe I didn't have any TAPS store in my  
 4 Meridian East store or west region.  
 5 MR JUSTICE NUGEE: What was your understanding of what put  
 6 a store into TAPS?  
 7 A. It's when -- we basically look at the debt in the  
 8 business, so when it goes into an overdraft position,  
 9 and our, if you like, central team -- the bankers, if  
 10 you like -- look at the overall performance of the  
 11 business and whether we are confident that business will  
 12 trade its way out of the position that it's in. And if  
 13 we are not confident, then it will go into a turn around  
 14 practice store.  
 15 It is not a negative -- well, it's a negative in the  
 16 sense that the business is not achieving what it needs  
 17 to achieve, but in reality the positive is that's where  
 18 the joint venture partnership kind of clicks into full  
 19 pace, because you get the full support of Specsavers to  
 20 make your business a success.  
 21 Our model is intrinsically linked with having joint  
 22 venture partners who are motivated to get out of bed, go  
 23 into the store and work hard, because they know they  
 24 will get the profit from the business. So we work hard  
 25 at making any turn around practice store fixed and

25

1 a success.  
 2 The model works. The only reason generally for  
 3 a store to be a turn around practice store would be  
 4 something maybe externally that's affecting it or that  
 5 the model isn't being implemented properly within the  
 6 partnership. So we can go in to support and fix that  
 7 store.  
 8 MR JUSTICE NUGEE: What is your understanding of when  
 9 a store moves from full TAPS to the Watch list?  
 10 A. I don't believe -- certainly now we don't have that  
 11 process; you are either TAPS or you are not TAPS. And  
 12 I can't remember that far back to understand what the  
 13 criteria was.  
 14 We have a more mathematical criteria now of what  
 15 tips a store into TAPS. At this stage it was a look at  
 16 the accounts and take a view. Now we have a very  
 17 mathematical view about calculating the turnover profit  
 18 versus debt.  
 19 MR STUART: But the position, was, wasn't it, that even by  
 20 your first meeting, as is evidenced -- are you in bundle  
 21 E7 now?  
 22 A. I'm in E6.  
 23 Q. You can put away E6. Sorry, we are into E7. If you go  
 24 to page 1674-2, there is the full version of your letter  
 25 of 16 September, which was -- {E/483.2/1674.2}

26

1 A. Yes.  
 2 Q. -- just after the meeting of 12 September. Do you  
 3 remember?  
 4 A. I do, yes.  
 5 Q. Do you see at 1674-4, on the third page you say under  
 6 the heading, "Taps Store Process" -- do you see that?  
 7 A. Yes.  
 8 Q. You said: {E/483.2/1674.4}  
 9 "As you will be aware Dartford is a TAPS store and  
 10 as such is very high profile in the group. The progress  
 11 made to date is positive and, as demonstrated by Alan's  
 12 forecasting tool with real determination and application  
 13 then we can recover the position quickly. Alan will be  
 14 working with you closely ..."  
 15 Et cetera, et cetera?  
 16 A. Right.  
 17 Q. So this store was about to move out of TAPS, wasn't it?  
 18 A. It was a store where it was still in TAPS and there was  
 19 a flight path for it to move out of TAPS, so yes.  
 20 Q. Rapidly?  
 21 A. Yes, I think full TAPS process, it came out at the  
 22 beginning of the following year.  
 23 Q. Yes. The store was actually a "goldmine", as you say on  
 24 1675? {E/484/1675}  
 25 A. Hm-mm.

27

1 Q. Go to 1675?  
 2 A. Yes.  
 3 Q. You wrote to Mr Raines that day:  
 4 "Mark.  
 5 "Just to confirm that I held our meeting with the  
 6 Dartford partners on Friday last week. The meeting went  
 7 well however there was tension under the surface with  
 8 the partners.  
 9 "I had them sign up annually to the Rpc role and  
 10 early in October Alan will be in there to build next  
 11 year's business plan. They are also going to use the  
 12 RST to help develop other areas of their business. The  
 13 store actually is a gold mine and just needs the right  
 14 focus."  
 15 A. My Lord, can I just take a second to explain my words  
 16 there? At this stage, I'm looking after over 100 joint  
 17 venture stores across three regions, so I understand the  
 18 business model very well. And obviously, having, prior  
 19 to this -- prior to this looked at the accounts for  
 20 Dartford, this type of Specsavers store, a £1 million  
 21 turnover store in a value demographic that sits very  
 22 firmly with Specsavers' brand, with a property cost at  
 23 the time of around about 5 per cent of turnover, if the  
 24 partners delivered the model, the cost of sales, the  
 25 staff costs, the conversion rates, ophthalmic

28



1 contribution -- if they delivered the model, then there  
 2 is absolutely no reason -- because Meridian East at the  
 3 time on average was delivering 13 per cent operating  
 4 profit -- or net profit, as Mr Stuart calls it; we call  
 5 it operating profit.  
 6 There is absolutely no reason why this store should  
 7 not deliver 13 to 15 per cent operating profit based on  
 8 the model, the kind of fixed costs that are there.  
 9 So, from taking a look at the store, the potential  
 10 was absolutely there, as long as the partnership  
 11 delivered the model effectively.  
 12 Q. Yes. Did you take notes of the meeting of 12 September?  
 13 A. I would have taken notes -- either myself Alan would  
 14 have taken notes. One of the two of us.  
 15 Q. Do you know what happened to those notes?  
 16 A. No, I don't, I don't keep my notebooks from that far  
 17 back.  
 18 Q. Okay.  
 19 A. I think, though, Mr Stuart, I did generate the letter  
 20 very quickly after.  
 21 Q. You did; you generated it on the Tuesday after the  
 22 Friday?  
 23 A. Yes.  
 24 Q. The letter you generated, page 1672, is, as it were, the  
 25 clean version of the letter, the actual -- with the

1 Specsavers logo on it and everything. We don't  
 2 unfortunately have the full three pages of that?  
 3 A. 1672? {E/482/1672}  
 4 Q. Yes. You see it's the same letter but this time it's --  
 5 A. Yes.  
 6 Q. And indeed, on page 1673, {E/482/1673} somebody pp'ed  
 7 for you?  
 8 A. That would have been Linda Weaver, who I sent the letter  
 9 to, to be posted.  
 10 Q. Fine. It's just sent to the store?  
 11 A. I think there is a -- I think if you look at 1674-1,  
 12 Mr Stuart, there is -- and this is my standard process.  
 13 {E/483.1/1674.1} I would generate the letter. I will  
 14 then email it to Linda Weaver, who is Mark's PA but also  
 15 PA to the RDC team, asking Linda to print it off, sign  
 16 it, because I didn't have access to the printed paper  
 17 through my printer at home. And you can see from there,  
 18 I have asked it to be sent, one copy to Swarandeeep, one  
 19 to Kam, care of the Dartford store, and Linda actioned  
 20 that.  
 21 Q. We don't know whether she actioned it; the only copies  
 22 of the document that we have seen are simply addressed  
 23 to Specsavers Opticians, 54 High Street. There is none  
 24 that is addressed to Ms Swarandeeep Birdi or  
 25 Mr Kam Singh. No separate copies addressed to each of

1 them?  
 2 A. I'm sure you are right, however, that was the  
 3 instruction I gave to Linda and Linda is a very  
 4 effective PA, so I've got no doubt she actioned my  
 5 request.  
 6 Q. She may have sent two copies, but if she addressed it to  
 7 the store, then Mr Singh might have opened both copies,  
 8 mightn't he?  
 9 A. I specifically asked her to send one to Swarandeeep and  
 10 one to Kam. So I can't comment on -- or I didn't see  
 11 the letters. Her base is in Skelmersdale. I'm based in  
 12 the southeast. So I can only trust her that she  
 13 addressed them correctly.  
 14 Q. Okay. Did you become aware later that there was an  
 15 issue about Mr Singh holding back post from Ms Birdi?  
 16 Do you remember that?  
 17 A. I can't recollect it. It has come up during the case  
 18 but I can't rightfully remember if I did or didn't.  
 19 There has been so much communication.  
 20 Q. I don't need to ask you about that, fine.  
 21 The actual what was agreed at the meeting -- we  
 22 don't have your notes of the meeting but we have this  
 23 letter that you produced shortly thereafter, and under  
 24 the heading, "Business Planning"?  
 25 A. This is on the full version at 164 -- 1674?

1 Q. 1674-3 under the heading "Business Planning".  
 2 A. Yes.  
 3 Q. The first paragraph, half way down: {E/483.1/1674.3}  
 4 "During this discussion Kam raised the issue of the  
 5 clinic structures and the number of days Swarandeeep  
 6 tests. After a detailed discussion Swarandeeep confirmed  
 7 that she would move from three and a half days' testing  
 8 to a full four days' testing."  
 9 A. Correct.  
 10 Q. Do you see that?  
 11 A. Yes.  
 12 Q. This was just a meeting, wasn't it; a meeting at which  
 13 you were trying to assist the partners in their  
 14 relationship?  
 15 A. It was, my Lord. My role as a retail development  
 16 consultant is to facilitate meetings like this, to give  
 17 partners guidance on day-to-day management of the  
 18 business and how to make the most out of their business  
 19 model, and so I was facilitating this meeting between  
 20 Swarandeeep and Kam, and that's right, Mr Stuart.  
 21 Q. This wasn't any sort of formal negotiation leading to  
 22 some sort of formal agreement in relation to any of the  
 23 matters discussed, was it?  
 24 A. In my opinion, it was a structured meeting. It covers  
 25 -- as you can see, it covers a number of points relating

1 to the Dartford store and that I facilitated the  
 2 conversation around business planning and specifically  
 3 clinics, Swarandeeep's testing. And in my view,  
 4 Swarandeeep made a very specific agreement to an action.  
 5 That's the action. If -- it isn't a board meeting, it  
 6 is a facilitated partner meeting.  
 7 Q. Nobody wrote anything down and got them to sign it or  
 8 anything like that, that this was some sort of fixed  
 9 agreement that they were to be bound by forever and  
 10 a day? There was nothing like, was there?  
 11 A. That's the not the way that we work in this type of  
 12 meeting. However, the purpose of the letter was to be  
 13 specific about the agreed actions.  
 14 Q. Yes. And Ms Birdi had said that she would be prepared  
 15 to go from three and a half days to four days. I think  
 16 you used the word later "stretch" her days, three and  
 17 a half to four days' testing?  
 18 A. Yes.  
 19 Q. That's right, isn't it? So she was showing some  
 20 flexible there?  
 21 A. Absolutely. As I mentioned in the letter, Kam started  
 22 off wanting five days, four and a half days, and so  
 23 I felt that four days was absolutely the right meeting  
 24 point for the partners that would maximise the potential  
 25 for the business.

1 Q. Paragraph 26 of your statement, {C/7/69} you mention  
 2 that:  
 3 "Mr Singh proposed that Ms Birdi increase her number  
 4 of testing days to five, which amounted to all of her  
 5 contractual time at the Store."  
 6 A. Yes.  
 7 Q. That was his opening gambit, as it were, in the  
 8 discussion, that she was to be stuck in her test room  
 9 five days out of five days a week?  
 10 A. From memory, Mr Singh was very keen that Swarandeeep  
 11 tested, that we maximise the potential of her testing  
 12 ability. And I do have a lot of partners that do test  
 13 five days a week. I have some that test six days  
 14 a week, depending on the position of the business.  
 15 But, as I go on to mention, I felt that wasn't  
 16 suitable in this scenario because I was very aware,  
 17 Mr Stuart, of the -- having sat in a disciplinary  
 18 previously, and Swarandeeep shared in the meeting that  
 19 she wanted to be able to have a day out of the test  
 20 room. And I thought that was a reasonable request  
 21 because, yes, Swarandeeep is employed as an optom  
 22 director, so as an employment contract, as an optom, and  
 23 then that secondary role, if you like, or that other  
 24 role is a director, and those director responsibilities.  
 25 So four full days' testing I felt was the right

1 route to go, and I think demonstrates that I was acting  
 2 kind of on both parties' sides there.  
 3 Q. He wanted her testing five days a week, you say. She  
 4 explained -- this is paragraph 27 of your statement, top  
 5 of page 70: {C/7/70}  
 6 "[She] was resistant to this at first. She argued  
 7 that as a director, she had other duties to fulfil as  
 8 well as testing."  
 9 That's right. Didn't she?  
 10 A. Yes.  
 11 Q. She made that clear?  
 12 A. Yes.  
 13 Q. "This included developing strategy, spending time with  
 14 staff and carrying out administrative tasks required for  
 15 the day-to-day management of the business."  
 16 A. That's correct, yes.  
 17 Q. And she had, of course, been disciplined, hadn't she, as  
 18 a result of Mr Raines's disciplinary process, which you  
 19 had been the note-taker at so you were well aware --  
 20 A. Absolutely.  
 21 Q. -- that she had been disciplined for not having taken  
 22 a hands-on role, or a hands-on responsibility for some  
 23 of the administrative tasks in relation to contracts of  
 24 employment and things like that?  
 25 A. Yes, I was aware, and that's why I felt that it was

1 a sensible business proposal to move to four days and  
 2 not five days.  
 3 Q. It was perfectly reasonable of her, wasn't it, to say  
 4 that she wanted to develop strategy, spend time with  
 5 staff. That's very important, isn't it, in a store?  
 6 A. It is, alongside, as an optom director, maximising the  
 7 time that you spend in a test room. So it's about  
 8 balancing both. It's an expensive resource and when you  
 9 do employ locums, when you could be testing yourself,  
 10 there is an impact on the profitability of the store.  
 11 Q. She was concerned, wasn't she, that Mr Singh's agenda  
 12 was to keep her in the test room away from all of these  
 13 other aspects of the director's role; keep her in the  
 14 test room, testing?  
 15 A. I don't remember her raising that as an issue at the  
 16 meeting, in the way that you've voiced it. Ms Birdi was  
 17 very keen that she -- because of the disciplinary  
 18 experience she had had, that she had the time out of the  
 19 test room to do the points that I have raised in my  
 20 statement, but she didn't put it in the way that you put  
 21 it, Mr Stuart.  
 22 Q. Mr Singh didn't put it the other way, did he? He wanted  
 23 her to test five days a week. That doesn't enable her  
 24 to spend time with the staff? His team, if you like?  
 25 A. Hm-mm.

1 Q. That's right, isn't it?  
 2 A. Mr Singh's approach was he saw the potential to reduce  
 3 locum costs, reduce costs of the business and so drive  
 4 profitability, and so he came from a position that he  
 5 would like to see an optom director test as much as they  
 6 could test. And I do have and still have partners that  
 7 do test five/six days a week. Other partners do test  
 8 four days a week. That's an agreement that the partners  
 9 would come to.  
 10 What I have done here, Mr Stuart, is facilitate  
 11 a meeting where they have come to an agreement and  
 12 I supported that and my facilitation helped get to that  
 13 agreement.  
 14 Q. Mr Singh's agenda was, as Mr McGonagle had written to  
 15 Mr Ryan three months earlier -- his agenda was to manage  
 16 Ms Birdi and communicate with her with a view to  
 17 eventually, ultimately, introducing a member of his own  
 18 family in place of her. That was his agenda, wasn't it?  
 19 A. I think you asked me the question last night, Mr Stuart.  
 20 I hadn't seen that email and it wasn't raised -- it  
 21 wasn't raised in my conversation with Mr Singh at any  
 22 point. So, you know, I'm treating this meeting on face  
 23 value. Yes, I have been given emails and information.  
 24 They have given me background, but I'm going to this  
 25 meeting in good faith to try and broker a partnership

1 that would work and allow Dartford as a business to  
 2 maximise its potential.  
 3 As I said, it's a goldmine, but the goldmine won't  
 4 be realised unless both partners work together. And  
 5 that's what I'm trying to achieve here, and that's why  
 6 I was trying to broker the deal around four-day testing.  
 7 Q. You know that it's Ms Birdi's case that her agreement to  
 8 stretch her days from three and a half to four days was  
 9 subject to the position, which was that it was in TAPS  
 10 at that time, and that it was for the period that it was  
 11 in TAPS that she was going to do that. You know that  
 12 that's now her case?  
 13 A. I have read that that's now her case, yes, but not my  
 14 recollection from the meeting, though, Mr Stuart.  
 15 Q. You know that also she says that any such agreement that  
 16 she was giving was always subject to her directorial  
 17 duties and she should have at least the power, as it  
 18 were, to change her mind, if required, if the business  
 19 needs of the business required. Do you understand  
 20 that's her case?  
 21 A. I understand that's her case, yes.  
 22 Q. You say that she didn't express those words at the  
 23 meeting?  
 24 A. No, she did not.  
 25 Q. Mr Singh did not express the contrary. He didn't say,

1 "This four day a week testing is permanent and is to  
 2 last forever"?  
 3 A. Erm, no, same thing. Same thing.  
 4 Q. You didn't yourself get involved in discussing the  
 5 period of time that this was to carry on for?  
 6 A. No, the assumption was that, as long as it is required,  
 7 we would carry on testing four days a week, and I might  
 8 point out that, actually, all I'm -- or I believe that  
 9 Mr Singh is asking for and what I have brokered is  
 10 Ms Birdi to do what is in the best interests of the  
 11 business. She is the optom director. In my view, four  
 12 day a week testing is a minimum that should be completed  
 13 if you are going to maximise the potential of your  
 14 business model.  
 15 So, Mr Stuart, this wasn't a board meeting, it  
 16 wasn't a board resolution; it was a meeting of partners  
 17 where we had come to an agreement. This, as we go  
 18 through the journey, became a real contentious issue  
 19 within the relationship.  
 20 Q. It did eventually, you are right. Mr Singh made it  
 21 a very contentious issue, didn't he? He was adamant  
 22 that she was to test four days a week?  
 23 A. Mr Singh was clear in his view that Ms Birdi hadn't  
 24 lived up to this agreement.  
 25 Q. The previous answer you gave was:

1 "The assumption was that as long it is as required,  
 2 we would carry on testing four days a week."  
 3 {Day15/39:6}  
 4 That's not very far from Ms Birdi's view, is it?  
 5 A. The -- what I have come to as an agreement here is --  
 6 this is an agreement that says four day a week testing  
 7 is in the best interests of the business to develop the  
 8 business model. And absolutely it is. And if you speak  
 9 to -- I think Mr Singh said in his evidence and at the  
 10 time we were talking about the fact that this would, in  
 11 reality, deliver probably a full day locum back, which  
 12 would be about £250 a day, on the basis that the half  
 13 day, you wouldn't be able to recruit a locum, and that  
 14 it would develop the profitability of the business.  
 15 Now, my view on this is if you are a partner and you  
 16 are in TAPS and there is a way of developing your  
 17 business and profitability, why would you then revert to  
 18 a way that would -- in the future for whatever reason --  
 19 that would incur more costs for your business. So my  
 20 view was, if you are working four days and testing four  
 21 days and week and -- you know, let's be realistic.  
 22 There's day-to-day issues in your business, so things  
 23 would happen over a year that would mean that on the odd  
 24 occasion you are not able to complete that. Well,  
 25 that's just part of trading a store. But why would you

1 go back to three and a half days if actually the way to  
2 maximise the profitability of your business and  
3 dividends that you will receive is to go back to an old  
4 way of working?  
5 So my assumption is, once you have gone to four  
6 days, that that's the right thing to do, Mr Stuart.  
7 Q. You would accept Mr Raines's evidence that such  
8 decisions between the two A directors were matters of  
9 day-to-day management?  
10 A. Hm-mm.  
11 Q. Decisions about whether the optom director should test  
12 three and a half or four days a week is an issue of  
13 day-to-day management.  
14 A. Hm-mm.  
15 Q. You would agree that?  
16 A. I would agree, yes.  
17 Q. You would agree with Mr Raines's evidence that that was  
18 a matter which could change -- their views could change  
19 over a period of time as the business needs of the  
20 business dictated? You would agree that?  
21 A. Hm-mm, I would, yes.  
22 Q. So there was nothing permanent, was there, about this  
23 talk of stretching her days to four days a week?  
24 A. At this particular time, in this meeting, the agreement  
25 would be that Ms Birdi would test four days a week.

41

1 There is nothing specifically in the notes that says it  
2 would be from here to the end of time, and things change  
3 within a business.  
4 However, I think the principle of the agreement is  
5 clear. At that particular time and moving forward, the  
6 best interests of the business would be that Ms Birdi  
7 would trade -- would test four days a week, and I still  
8 believe that that is absolutely the right thing to do.  
9 Q. There was then a meeting on 19 September, which I don't  
10 think you were party to, but you were sent copies of the  
11 notes. Do you remember? The notes are at page 1690  
12 {E/490/1690} and Mr Singh sent them to you at 1688:  
13 {E/489/1688}  
14 "Hi Mike.  
15 "We had our first directors/tactical meeting  
16 yesterday..."  
17 1688?  
18 A. 1688.  
19 Q. 1688. Mr Singh is writing to you saying:  
20 "We had our first ... tactical meeting yesterday."  
21 Do you see?  
22 A. Yes.  
23 Q. At the bottom:  
24 "The meeting was recorded and I have attached the  
25 minutes of the meeting..."

42

1 A. Yes.  
2 Q. Then Ms Birdi writes to you on 1693 -- she replies to  
3 Mr Singh, copied to you, 1693. {E/491/1693} Do you see  
4 above the first hole punch, about five lines up, it  
5 says:  
6 "The meeting notes and action points have been drawn  
7 up by you ..."  
8 That's Mr Singh:  
9 "... and I have not had an opportunity to check the  
10 details.  
11 "However having a quick glance over them I have seen  
12 a number of issues that stand out as not being confirmed  
13 or are incorrect."  
14 Do you see that?  
15 A. Hm-mm.  
16 Q. That's what you were aware the position was relating to  
17 that meeting of 18 September?  
18 A. Yes.  
19 Q. Then on the issue of TAPS, do you see 1699, an email to  
20 you? {E/494/1699}  
21 A. Hm-mm.  
22 Q. Do you see that?  
23 A. Yes.  
24 Q. And then you email Mr Moylan:  
25 "Hi Alan.

43

1 "Just a heads up that Dartford is no longer full  
2 TAPS! Good news!"  
3 Exclamation mark. And we see indeed over the page,  
4 1700, {E/494/1700} we have got the list. We have got  
5 the stores that appear to be full TAPS and there's all  
6 the figures and things for how negative their figures  
7 are, and we can see that -- all the names are blacked  
8 out. Dartford isn't one of those and you are telling  
9 Mr Moylan that as at 2 October, Dartford is no longer  
10 full TAPS. Do you see that?  
11 A. Yes.  
12 Q. And then you go on to deal with another store?  
13 A. I do, yes.  
14 Q. The issue to watch is something else?  
15 A. Yes.  
16 Q. So as regards Dartford, as at 2 October, the financial  
17 position was such -- end of September figures were such  
18 that it was no longer --  
19 A. On full TAPS.  
20 Q. -- on full TAPS. And then I think you say that it moved  
21 off TAPS entirely by January?  
22 A. I think it was early part of the following year, yes.  
23 Q. 2009, yes. Okay. So now we are into late 2008. Would  
24 you go to 1745, to November 2008 now. {E/524/1745}  
25 A. Hm-mm.

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1 Q. It's your statement. I think we are in the period  
 2 starting at paragraph 34, "Following the meeting".  
 3 {C/7/71} Do you see it says:  
 4 "After the meeting I emailed Mr Raines on  
 5 16 September..."  
 6 Then paragraph 35 you say:  
 7 "... I did not in fact meet with Mr Singh and  
 8 Ms Birdi again until 16 December..."  
 9 A. That's correct.  
 10 Q. So obviously, it's no longer a full TAPS. You have had  
 11 the discussion back in September. You are taking  
 12 a slightly less proactive role at this point?  
 13 A. No.  
 14 Q. No?  
 15 A. Mr Stuart, the process of -- following September, my  
 16 Lord, was we had -- I have a team working for me.  
 17 Mr Raines described that yesterday. I have a retail  
 18 performance consultant, Alan Moylan, and a number of  
 19 other individuals that support my team on the region,  
 20 one of whom is Clare Morse. So out of the meeting  
 21 in September, the handover meeting, we had identified  
 22 that no trading had happened in the store for  
 23 a considerable period of time. So I asked Clare to free  
 24 up her diary to be able to go and support the store and  
 25 help design a training plan.

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1 So that visit happened to support the partners in  
 2 between September and this period and I think within the  
 3 notes there is the response from Clare giving me  
 4 a heads-up that there were still obviously relationship  
 5 issues in the store.  
 6 And I received this email and I then programmed --  
 7 or put in a visit in December to meet up with the  
 8 partners to discuss the relationship further, and also  
 9 in December I believe Alan Moylan completed a business  
 10 plan visit.  
 11 So over that period, we, as a team, from September  
 12 to December, had four full meetings with the store. So  
 13 we were quite heavily involved over that period even  
 14 though the store had migrated off full TAPS.  
 15 Q. What you don't mention anywhere in this little section  
 16 of your witness statement is this issue at page 1745.  
 17 {E/524/1745} And this contrasts, doesn't it, with your  
 18 reaction when Mr Singh wrote to you on 2 June 2010,  
 19 saying that he had heard that -- or he had been told by  
 20 some staff that they might leave, some sort of threat,  
 21 if Ms Fatima Khan was re-employed. Do you remember that  
 22 issue arising? We will come to it later.  
 23 A. Vaguely, yes.  
 24 Q. And as a result of that news, in June 2010, that led to  
 25 action being taken against Ms Birdi. But here, 1745,

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1 Ms Birdi is raising with you, isn't she,  
 2 in November 2008, a very serious matter, which is -- do  
 3 you see it: {E/524/1745}  
 4 "The reason for my urgency ..."  
 5 Third line:  
 6 "The reason for my urgency is that today another key  
 7 staff member walked out of the store due to stress  
 8 following an altercation with Kam. This member is one  
 9 of my most studious, hard working individual who is the  
 10 last person I would have expected to leave the store as  
 11 he is very dedicated to the team and the practice. That  
 12 has yet again caused staff morale to plummet. This is  
 13 the third member of my team to walk out following an  
 14 altercation with Kam during the 3 months he has been at  
 15 the store."  
 16 He has only been there since the end of July. Do  
 17 you see?  
 18 A. Hm-mm.  
 19 Q. "This is very worrying for me. Over the 8.5 years  
 20 I have not had any staff member leave in this manner."  
 21 Do you see?  
 22 A. Hm-mm.  
 23 Q. Then she goes on to make complaints about Kam's actions.  
 24 That must have triggered in you very, very serious  
 25 concerns?

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1 A. I think this linked to Clare Morse's feedback on the  
 2 store visits. I think she was in store marginally  
 3 before this or just after it, and I did, and that's why  
 4 I met up with the partners in December to address their  
 5 relationship issues and try to get to the bottom of what  
 6 was going on in the store.  
 7 Q. No, but Clare -- I think you are talking about  
 8 page 1758, {E/528/1758} which we will come to in  
 9 a minute, her store visit. But this is a totally  
 10 different issue. This is the fact that three  
 11 longstanding members of staff have walked out from the  
 12 store, left the store, there having previously, for  
 13 eight and a half years, been no problems with staff  
 14 turnover, finding staff.  
 15 Three members of staff left the store in three  
 16 months following altercations with Kam. That's a very  
 17 serious matter, isn't it?  
 18 A. It could be, yes.  
 19 Q. It could be?  
 20 A. Hm-mm, yes.  
 21 Q. It was a very serious matter, wasn't it?  
 22 A. Yes.  
 23 Q. If three out of, what, eight members of staff leave in  
 24 a three-month period?  
 25 A. Hm-mm.

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1 Q. Following the arrival of a new JV partner?  
 2 A. Hm-mm.  
 3 Q. In circumstances where they leave for altercations with  
 4 that JV partner. That would indicate a serious issue,  
 5 wouldn't it?  
 6 A. As I say, Mr Stuart, it could do, yes.  
 7 Q. Yes, and yet you didn't take any steps to support  
 8 Ms Birdi in relation to this serious matter, did you?  
 9 This is perhaps the first example of you supporting  
 10 Mr Singh and not supporting Ms Birdi in relation to  
 11 serious issues in the store?  
 12 A. I will be honest with you, Mr Stuart, I can't remember  
 13 what I did after receiving this particular email, but  
 14 over this period it became obvious that there were still  
 15 significant issues and that's why I programmed the  
 16 meeting with the partners to try and get to the bottom  
 17 of it.  
 18 But, no, you are right, I didn't -- I don't believe  
 19 I went and actioned, based on this email.  
 20 Q. No. You don't mention it even in your witness  
 21 statement?  
 22 A. I didn't remember.  
 23 Q. You don't mention the issue. You don't mention trying  
 24 to support Ms Birdi regarding this issue?  
 25 A. As I said to you, Mr Stuart, I didn't -- I just don't

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1 recollect (a) getting it and (b) what I did with it.  
 2 Q. No? All right. You do eventually have the meeting.  
 3 Perhaps just whilst we are there, did you make any  
 4 enquiry as to this member of staff leaving?  
 5 A. As I said to you, Mr Stuart, I can't remember anything  
 6 around this particular time. I can't remember what  
 7 I did with that particular bit of information.  
 8 Q. Okay. Do you see page 1748? {E/525/1748} Mr John Ko,  
 9 lab technician.  
 10 A. Hm-mm.  
 11 Q. Do you remember the issue of Mr Ko?  
 12 A. I do, although I didn't deal with it. I think it was --  
 13 is this the chap that had gone to Gravesend?  
 14 Q. This is the chap who is making the complaint about  
 15 Mr Singh's manner being intimidating -- do you see  
 16 page 1748? This is the note of --  
 17 A. This was a -- was this a grievance that was raised  
 18 against Mr ...?  
 19 Q. This is Mr Ko explaining why he is leaving?  
 20 A. Hm-mm.  
 21 Q. Or rather, explaining his complaints against Mr Singh.  
 22 Do you remember?  
 23 A. Yes.  
 24 Q. For example, if you go to page 1748 -- {E/525/1748}  
 25 A. I believe, Mr Stuart, wasn't this one investigated by

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1 Robin Vernieux?  
 2 Q. It was one of the issues.  
 3 A. Yes.  
 4 Q. I'm asking whether you were aware of it?  
 5 A. I would have been aware, but I wasn't involved in the  
 6 investigation. It was given to Robin to --  
 7 Q. I'm not asking about the investigation. I'm whether you  
 8 were aware --  
 9 A. Yes, I was aware.  
 10 Q. -- in November 2008 that Mr Ko, who is a longstanding  
 11 member of staff; yes?  
 12 A. Yes.  
 13 Q. Whether he was complaining -- do you see, 1748 below the  
 14 second hole punch, as an example -- I'm not reading all  
 15 of it: {E/525/1748}  
 16 "JK felt that KS manner to JK was very  
 17 intimidating..."  
 18 Do you see?  
 19 A. Yes, I do, yes.  
 20 Q. "... more intimidated."  
 21 A. Yes.  
 22 Q. And over the page, 1749, {E/525/1749} Mr Ko was  
 23 explaining how he had felt -- this is near the top,  
 24 fourth line down:  
 25 "KS said very threateningly.

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1 "JK said he felt it was to do with ... lab manager.  
 2 "JK felt very intimidated and threatened and felt he  
 3 had to leave the lab.  
 4 "JK packed his bag and went downstairs telling staff  
 5 that he was going to leave the store now."  
 6 Do you see that?  
 7 A. Yes, I do, yes.  
 8 Q. So it is clear, isn't it, that Mr Singh was having an  
 9 adverse effect on staff morale?  
 10 A. I believe, Mr Stuart, this was investigated and was not  
 11 upheld. Is that not correct?  
 12 Q. What was not upheld?  
 13 A. I thought there was a grievance taken -- is this not  
 14 related to a grievance? I believe there was.  
 15 Q. This is Mr Ko. Are you saying that it has been  
 16 investigated and decided that Mr Ko didn't do these  
 17 things. Are you suggesting that?  
 18 A. No.  
 19 Q. No?  
 20 A. That there was an issue with Mr Singh. I'm sorry if I'm  
 21 mistaken, there was no grievance process with this and  
 22 I'm getting it mixed up, but I understood there was  
 23 a grievance process investigated and -- but that's --  
 24 I may well be wrong.  
 25 Q. Okay. Were you aware that Mr Ko had left the store

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1 because he felt intimidated and threatened by Mr Singh?  
 2 Were you aware of that?  
 3 A. I was aware of the detail of I believe what was an  
 4 official grievance but -- and a grievance that was  
 5 investigated and not upheld, Mr Stuart. That's what  
 6 I recollect from this, but I may be wrong.  
 7 Q. Okay. Were you aware of the letter that Mr Ko wrote,  
 8 page 1750 to 1751, where he set it all out in writing?  
 9 {E/525/1750}  
 10 A. That would have, I believe, been dealt with by  
 11 Robin Vernieux, I believe, who did the grievance.  
 12 Sorry, Mr Stuart, I may be -- if I'm mixing this up  
 13 with a different case --  
 14 Q. I'm not --  
 15 A. -- I believe that this was dealt with through  
 16 a grievance process.  
 17 Q. You are not answering my questions, Mr Rowe. I'm not  
 18 asking about the grievance process.  
 19 MR JUSTICE NUGEE: But the witness, Mr Rowe, is clearly  
 20 concerned whether he has misidentified this as the case  
 21 where there was a grievance, which Mr Vernieux  
 22 investigated. It would probably make life easier if you  
 23 confirmed to him whether it was the case that  
 24 Mr Vernieux investigated or not, and then you can ask  
 25 him questions about the matters you do want to ask him

1 about.  
 2 MR STUART: Page 1787, Mr Vernieux wrote on 15 January 2009  
 3 to Mr Ko. {E/547/1787}  
 4 A. Hm-mm.  
 5 Q. Do you have it?  
 6 A. I do, yes.  
 7 Q. Is that what you are referring to?  
 8 A. Yes. No, that reminds me, Mr Stuart, and the reality is  
 9 that when an investigation -- when a grievance is  
 10 raised, it is assigned to a member of the retail support  
 11 team, quite often outside, and Robin was a retail  
 12 support team member in Carlton. And so that issue was  
 13 being dealt with by Robin. So I was aware, but I wasn't  
 14 involved in that process.  
 15 Q. That's fine. I wasn't asking you about the result of  
 16 the grievance; I was asking you whether you were aware  
 17 that Mr Ko had walked out in reaction to Mr Singh's  
 18 behaviour towards him? Were you aware of that?  
 19 A. I was aware of the allegations within the grievance.  
 20 Q. You were? Okay. And these were obviously serious  
 21 matters in November 2008. What did you do to support  
 22 Ms Birdi and the store in relation to these serious  
 23 matters?  
 24 A. I believe the initial point was to investigate the issue  
 25 and to decide whether or not it was proven that Mr Singh

1 had behaved in any way that was inappropriate, and  
 2 I believe the outcome of the investigation was, no, he  
 3 hadn't. And therefore I didn't feel I needed to do  
 4 anything different with Mr Singh.  
 5 As I say, I went forward and had a meeting with them  
 6 in December, but in my view, it was investigated by  
 7 somebody external and independent, and there didn't seem  
 8 to be an issue that needed to be addressed.  
 9 Q. The result of the grievance was, of course, that, as  
 10 Mr Vernieux put it: {E/547/1788}  
 11 "... whilst there are some relevant issues which  
 12 require resolution, the issue you raise in your  
 13 grievance should have been resolved in store..."  
 14 So he wasn't denying -- Mr Vernieux didn't find that  
 15 it hadn't happened. He found that it should have been  
 16 resolved in store, rather than through Mr Ko doing what  
 17 he did. Do you remember?  
 18 A. I don't remember the detail of the outcome letter.  
 19 I would need to take time to read it.  
 20 Q. Okay. What you were aware of was that Ms Birdi was  
 21 raising with you her very serious concerns, at  
 22 page 1745, {E/524/1745} that she was losing key staff  
 23 because of Mr Singh's aggressive, threatening and  
 24 bullying behaviour. You were aware of that, weren't  
 25 you?

1 A. I was, yes.  
 2 Q. What did you do to support Ms Birdi in relation to that  
 3 concern?  
 4 A. My -- I suppose in my mind I'm thinking at this time --  
 5 I am just trying to think back to what I was thinking,  
 6 but I know Mr Singh is -- is keen to address issues in  
 7 store. So it's not just the testing issue; it's the  
 8 cost of sales issue, it's the conversion issue. And so  
 9 I suppose how I interpreted it at the time was that  
 10 Mr Singh was trying to improve performance, and that's  
 11 where these conversations were coming from. And I think  
 12 this is where the grievance of Mr Ko comes from as well.  
 13 So I had -- I had set -- I'm not sure when but I had  
 14 set this date to meet up in December. I was running  
 15 three regions, very, very busy at the time, and so  
 16 I wanted to address the relationship issues and the way  
 17 forward at that meeting.  
 18 So that was my -- what I worked for. Whether or  
 19 not, Mr Stuart, I should have dropped everything and run  
 20 at that point, looking back, I was incredibly busy  
 21 looking after 100 other joint venture stores. So that  
 22 was the decision I took at the time.  
 23 Q. We will come in a moment to your meeting.  
 24 My Lord, I see the time and I think the  
 25 transcribers --

1 MR JUSTICE NUGEE: We will take a break for five minutes.  
 2 (11.43 am)  
 3 (Short break)  
 4 (11.52 am)  
 5 MR JUSTICE NUGEE: Yes?  
 6 MR STUART: Mr Rowe, very quickly, page 1758. {E/528/1758}  
 7 This is the Clare Morse email you are referring to,  
 8 I think. So she did a store visit before you had your  
 9 meeting with the partners?  
 10 A. That's correct, yes.  
 11 Q. Just to confirm, she sent this to you and do you see the  
 12 penultimate paragraph? She had a meeting with them:  
 13 "The visit focused on trying a get Training back on  
 14 track ... Kam highlighted conversions as an area of  
 15 focus ... On numerous occasions Kam and Swarandeep began  
 16 arguing over various points. Neither would accept the  
 17 other's opinion or were willing to compromise."  
 18 That was Ms Morse's view, that they were both --  
 19 A. Yes, that's how -- that's how I read it and I think  
 20 that's what I tried to address at the December meeting.  
 21 Q. Okay. Then we come to the meeting itself. I don't  
 22 think we have any notes of the meeting, the December  
 23 meeting that I'm talking about. What we have is your  
 24 letter written afterwards --  
 25 A. These notes, yes. Similar to previously, any notes

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1 I had taken would have been destroyed, or --  
 2 Q. Destroyed, yes. If you go to page 1783, this is the  
 3 letter that you sent out to them, reflecting your  
 4 meeting. Do you recall it? {E/545.1/1783}  
 5 A. I do, yes.  
 6 Q. And you highlight in the second paragraph at the end:  
 7 "... the performance of the business could be  
 8 further improved if both partners worked together."  
 9 Second paragraph, page 1783, at the end?  
 10 A. Yes.  
 11 Q. And two paragraphs further on:  
 12 "It was agreed by both parties that communication  
 13 was the key issue..."  
 14 A. Yes.  
 15 Q. Then you did a list of behaviours and rules to be  
 16 developed?  
 17 A. I didn't do a list. We developed them together.  
 18 Q. You developed them together, absolutely, and they  
 19 include the first one:  
 20 "Be honest."  
 21 A. Yes.  
 22 Q. At the bottom:  
 23 "Put the business first."  
 24 "Respect each other."  
 25 A. Yes.

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1 Q. So: be honest; put the business first; respect each  
 2 other.  
 3 And over the page we have a list of specific items  
 4 that were discussed; yes?  
 5 A. Yes.  
 6 Q. I notice that, although in paragraph 36 of your witness  
 7 statement {C/7/71} you say that:  
 8 "... Ms Birdi's commitment to testing four days  
 9 a week was discussed again ..."  
 10 In this meeting --  
 11 A. Yes --  
 12 Q. There is no mention of it anywhere in your letter?  
 13 A. No, I think I've -- I'm not sure if I mention it in my  
 14 statement. It doesn't appear in the notes but it  
 15 definitely -- from recollection we discussed it, but it  
 16 wasn't -- it wasn't something I think -- it says here:  
 17 "... Ms Birdi gave me no reason to think that she  
 18 did not intend to uphold the agreement..."  
 19 So, for some reason I haven't included it the notes,  
 20 but I remember having -- or it coming up in  
 21 conversation.  
 22 Q. Perhaps it wasn't a central issue? Did you only note  
 23 down the really important issues?  
 24 A. I noted down from my notes in the book. I obviously  
 25 didn't make a note of that conversation.

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1 Q. No. Mr Singh's wife was on maternity leave at this  
 2 point, wasn't she?  
 3 A. I wasn't aware of that, but I am now.  
 4 Q. Did he mention, either at the meeting or to you  
 5 elsewhere around this time, that he was working one to  
 6 two days a week at his wife's store in Grays?  
 7 A. No.  
 8 Q. He is to be communicating with Ms Birdi; he is to be  
 9 honest; he is to be open; he is to put the business  
 10 first and respect her. Did he, during the meeting --  
 11 A. It wasn't --  
 12 Q. -- mention the fact that he might be working -- testing  
 13 elsewhere?  
 14 A. It wasn't raised in the meeting at all, Mr Stuart. Not  
 15 that I can recollect.  
 16 Q. Shouldn't he at least have mentioned it?  
 17 A. If he was on his day off, as I believe, working in  
 18 Grays, then I think for the good of the relationship it  
 19 would have been positive for him to mention it. Whether  
 20 he should have -- I think it would've -- as I pointed  
 21 out to him in my meeting with him later, the following  
 22 year, it absolutely should have been the right thing to  
 23 do to raise it.  
 24 MR JUSTICE NUGEE: What was the policy in relation to JVPs;  
 25 how much time did they have to devote to their store?

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1 A. They have a service contract, my Lord, so five days'  
 2 service contract and that's --  
 3 MR JUSTICE NUGEE: That's a 40-hour commitment?  
 4 A. That's a 40-hour commitment and --  
 5 MR JUSTICE NUGEE: But over and above that, are they  
 6 expected to put time in, as and when necessary?  
 7 A. If a store is underperforming or, in the case of, say,  
 8 a new store that's paying off some loans when it first  
 9 opens, it's not unusual for partners to work six days  
 10 a week, but we could never enforce that in any way.  
 11 They have a service contract and that's the minimum that  
 12 they should be completing.  
 13 So if the business is underperforming and there is  
 14 a dire need to, say, test six day a week or have six  
 15 days' cover on the shop floor, then I suppose the  
 16 expectation is that they would step up to the plate.  
 17 After all, it's their business; the more you put in, the  
 18 more you get out?  
 19 MR JUSTICE NUGEE: They don't get paid overtime?  
 20 A. They don't get paid overtime, no.  
 21 MR JUSTICE NUGEE: What's the policy about working on their  
 22 days off?  
 23 A. Well, that's -- working on their days off in another  
 24 store, you mean, rather than their own?  
 25 MR JUSTICE NUGEE: Yes.

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1 A. In another store it really comes down to: are they being  
 2 remunerated.  
 3 So if you are employed -- and this actually came  
 4 from my contacts with Legal around this matter. So if  
 5 you are employed as a -- have an employment contract,  
 6 say, for instance, in Dartford, you cannot go off and be  
 7 a locum. You are either one or the other. You can't be  
 8 both.  
 9 MR JUSTICE NUGEE: Even if it's your day off, you are not  
 10 allowed to --  
 11 A. Even if it's your day off. However, it can happen, but  
 12 the payment works in a different way. So an invoice  
 13 would need to be raised and the store at which that  
 14 person is a director would be paid. So in reality, the  
 15 store gets paid for that day's work in the other store.  
 16 The reason why that wouldn't happen is obviously  
 17 that gets split 50/50 between the two partners. So the  
 18 principle is simple: you can't be a locum and be  
 19 employed.  
 20 So the key critical fact for me was: was this day  
 21 off; was it impacting on Dartford, and was Kam being  
 22 remunerated for it as a locum, because that would have  
 23 been an issue and we would have had to put a stop to  
 24 that.  
 25 MR STUART: I'm interested in your answer, "Was it day off".

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1 Let's just get it clear what you understood to be the  
 2 days off at this point. What were Mr Singh's days?  
 3 A. I wasn't -- I think from reading various emails,  
 4 I believe Monday and Sunday, so -- were the two days  
 5 that he wasn't in store.  
 6 Q. So there was Sunday opening at this time?  
 7 A. There was at this time, yes.  
 8 Q. So the store was opening on a Sunday?  
 9 A. Yes.  
 10 Q. If he was locumming, whether it was for direct salary  
 11 locumming charges, which would have had to have been put  
 12 through Dartford --  
 13 A. That's correct, yes.  
 14 Q. Grays would have had to pay Dartford?  
 15 A. Hm-mm.  
 16 Q. And then he would have got effectively 50 per cent of  
 17 that at Dartford?  
 18 A. That's my understanding.  
 19 Q. But if he is working doing the testing -- doing the  
 20 optical testing in Grays on the Sunday, he is obviously  
 21 not in his store on the Sunday, is he?  
 22 A. Hm-mm.  
 23 Q. Then he has a day off during the week as well, the way  
 24 you are putting it?  
 25 A. Yes.

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1 Q. So that, whether it be a Monday or a Tuesday, you are  
 2 saying if he is working in Grays on that Monday or  
 3 Tuesday when he has got a day off from this store --  
 4 A. Well, he has a five-day service contract and obviously,  
 5 if it's a seven-day trading, then there's two days that  
 6 he wouldn't be in store.  
 7 My Lord, Sunday trading is something which we  
 8 launched and really were driving at this particular  
 9 time, but we were really clear with partners. It wasn't  
 10 that we were demanding that they worked on Sundays as  
 11 well, as long as the store was covered. There wasn't  
 12 a prerequisite that we either would have wanted  
 13 Swarandeeep or Kam to test; how they covered it was down  
 14 to them. But there was a big trading opportunity to  
 15 open on Sundays as a convenience for our customers.  
 16 Q. If he had explained, "Look, I'm sorry, I can't do  
 17 Sundays because I'm covering for my wife's store on  
 18 Sundays", he should have told Ms Birdi that, shouldn't  
 19 he?  
 20 A. I wasn't involved in any conversations or knowledge of  
 21 conversations that kind of existed that was trying to  
 22 get Kam to work on a Sunday. He is not -- his service  
 23 contract was for five days and as long as he was  
 24 completing that service contract, then that was fine by  
 25 us. So I'm not --

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1 Q. It was fine by who?  
 2 A. When -- when this was first raised, I emailed  
 3 Susannah Hart. Susannah Hart emailed Cristina in Legal  
 4 to check on the legalities in the JVA about what would  
 5 be a conflict of interest, and very clearly it came back  
 6 that --  
 7 MR POTTS: My Lord, I'm sorry; I'm happy for Mr -- just to  
 8 protect privilege. I'm happy for him to express his  
 9 understanding, but issues of communications with legal  
 10 advice, there is an issue of privilege.  
 11 MR JUSTICE NUGEE: Yes, there is. It's quite difficult,  
 12 Mr Rowe, but if you could confine your answers to what  
 13 you understand the position to be, without telling me  
 14 what advice you received from Cristina.  
 15 A. In relation to --  
 16 MR STUART: To assist you, perhaps if we go to 1790,  
 17 {E/549/1790} Ms Birdi raises the issue with you, very  
 18 short email. So we are into February 2009 now. This is  
 19 after your meeting in December and after your letter,  
 20 which went out in January?  
 21 A. Yes.  
 22 Q. She writes:  
 23 "Dear Mike.  
 24 "Please can you advise me where SOG stands in  
 25 relation to Directors working at other stores. I have a

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1 serious concern regarding this matter as I believe there  
 2 to be a clear conflict of interest which is not in the  
 3 best interests of the Dartford store, therefore  
 4 I approach you for your advice at your earliest  
 5 convenience."  
 6 A. Yes.  
 7 Q. She is looking for some assistance from you, isn't she?  
 8 A. Yes.  
 9 Q. Your response is at 1791 -- not your response, sorry.  
 10 What you then do is you email Susannah Hart?  
 11 {E/550/1791}  
 12 A. Yes.  
 13 Q. And you say:  
 14 "Hi Sue.  
 15 "Ref the email below.  
 16 "I assume Kam has been playing silly buggers..."  
 17 A. Yes.  
 18 Q. That's what you felt, wasn't it?  
 19 A. That was from the initial email, yes. I mean, as I said  
 20 to you, Mr Stuart, I'm trying to balance this  
 21 relationship. If Kam is doing something that is not  
 22 right, then, you know, we would look at it.  
 23 Q. Let's leave aside the 40 hours a week or, you know, five  
 24 working days in store a week. We are dealing here with  
 25 JV partners, directors of companies, whose obligations

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1 to the company are to act in the best interests of the  
 2 company?  
 3 A. Hm-mm.  
 4 Q. And JV partners who are to have the relationship that  
 5 you have repeatedly said to them they are to have?  
 6 A. Hm-mm.  
 7 Q. In the documents we have seen so far.  
 8 So if he has in fact been working regularly in his  
 9 wife's store, regularly in his wife's store for the last  
 10 few months, let's say, that is playing silly buggers,  
 11 isn't it?  
 12 A. All I'm saying here is there is a potential that Kam has  
 13 been playing silly buggers. That's the word I use.  
 14 Q. You say: {E/550/1791}  
 15 "I assume Kam has been playing silly buggers and  
 16 been working in his wife's store."  
 17 A. This is before I have had any advice from anybody. I am  
 18 thinking, "Oh, this could be an issue". So I'm not sure  
 19 of the position. I went through to Susannah. As the  
 20 retail support manager in Guernsey, she would know the  
 21 exact person to go and ask the question of. And that  
 22 went to Legal.  
 23 Q. But I'm interested in the question you ask, because  
 24 having -- leaving aside the legalities -- reached the  
 25 assumption that he is playing is silly buggers, working

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1 in his wife's store, you ask the following question:  
 2 {E/550/1791}  
 3 "... what is the party line on this? Is it strictly  
 4 forbidden in the JVA?"  
 5 So you are looking, aren't you, to find out whether  
 6 there is some way round it for Kam?  
 7 A. Absolutely not. I'm asking the same question as my Lord  
 8 asked me. I was not in a position to know exactly what  
 9 the scenario was with this and therefore I am asking for  
 10 some advice, pure and simple. I'm not looking for a way  
 11 around it. I'm asking, you know, "Is this going to be  
 12 an issue that I need to deal with?"  
 13 Q. But the way you put it is:  
 14 "Is it strictly forbidden in the JVA?"  
 15 In other words, if it's not strictly forbidden --  
 16 A. It's just semantics, Mr Stuart. I could have written,  
 17 "Is it forbidden?" "Is it strictly --"  
 18 I just phrased it as it came out. There is  
 19 nothing -- nothing meant by it.  
 20 Q. I suggest to you that it shows the way you are thinking  
 21 here, which is when Ms Birdi raises a legitimate concern  
 22 with you -- you would agree with that?  
 23 A. Hm-mm.  
 24 Q. If she has discovered that Mr Singh is off working at  
 25 the Grays store regularly?

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1 A. Hm-mm.  
 2 Q. It's perfectly reasonable of her to raise that concern?  
 3 A. Yes.  
 4 Q. But when she raises such a concern with you, rather than  
 5 supporting her and trying to assist her, what you are  
 6 really trying to do is to find out whether there is some  
 7 way that Mr Singh is allowed somehow to do this?  
 8 A. Absolutely not, Mr Stuart. All I'm trying to do is to  
 9 find out what is the party line, what do we do in these  
 10 scenarios. Because it has happened before, where I have  
 11 had partners that have gone and supported other stores.  
 12 I have had to have conversations with joint venture  
 13 partners to say, "You can't locum because that's going  
 14 to put you in issues with tax and you need to bill in  
 15 this way."  
 16 So it has happened before and it has happened since  
 17 where I have had to have other conversations. So I just  
 18 wasn't sure. That's what I'm asking for, is a bit of  
 19 advice, so I can start hopefully to deal with this  
 20 issue.  
 21 Q. Okay. We don't see what advice she gave and I'm not  
 22 going to ask you but what did do is then you wrote on  
 23 the next day, 1792; you wrote back to Ms Birdi:  
 24 {E/551/1792}  
 25 "Ref your request for advice.

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1 "Can you be more specific ... "  
 2 Do you see that?  
 3 A. Hm-mm.  
 4 Q. "SOG's position with regard to partners working in other  
 5 stores will depend on whether these are Specsavers  
 6 stores ... "  
 7 Do you see:  
 8 "... what the nature of the arrangement is and  
 9 whether it falls outside the terms of the partner's  
 10 service contract. We will need more information ... "  
 11 Do you see that?  
 12 A. Hm-mm.  
 13 Q. "There are a couple of issues eg this has to fall  
 14 outside the 40 hours that is expected in Dartford and  
 15 there must be no conflict of interest."  
 16 A. Hm-mm.  
 17 Q. What do you mean by that sentence?  
 18 A. What I'm saying is that in reality, if Kam is fulfilling  
 19 his service contract, then this may not be an issue.  
 20 That's what I'm --  
 21 Q. Not an issue at all?  
 22 A. It could not be an issue. That's what I'm saying.  
 23 I don't know at this point. I'm asking for more  
 24 information because of the advice I've had from the  
 25 legal team to -- you know, I'm trying to get more

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1 information back.  
 2 Q. I understand you are trying to get more information  
 3 about the detail of what she knows that Kam is up to,  
 4 but what you say there is:  
 5 "There are a couple of issues eg this has to fall  
 6 outside the 40 hours that is expected in Dartford ... "  
 7 What does that mean?  
 8 A. Mr Stuart, I am not a lawyer and I'm not constructing  
 9 a legal letter here.  
 10 Q. No.  
 11 A. Because there are obviously other issues. So if Kam is  
 12 being remunerated through, say, a locum rate for the  
 13 work that he is doing, then that would be an issue.  
 14 It's just the way I phrased and worded the email.  
 15 Q. Okay. Go to page 1815. {E/562/1815} Ms Birdi responds  
 16 to you.  
 17 Just to put this into context, 1814, {E/561/1814}  
 18 you had been cc'ed on some correspondence with  
 19 Ms del Grazia because Mr Singh had not been processing  
 20 Ms Birdi's expense claims, had he?  
 21 A. That's correct.  
 22 Q. So that was being resolved. Mr Singh had been told to  
 23 process the expense claims. But on 1815 {E/562/1815}  
 24 Ms Birdi is responding to your request for more detail  
 25 and she sets it out in quite a lot of detail, doesn't

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1 she?  
 2 A. She does, yes.  
 3 Q. We have read this already. I'm not going to go through  
 4 all of it. She is giving some examples of what she  
 5 believes to be a conflict of interest. Do you see?  
 6 A. Hm-mm.  
 7 Q. At number 1, on a Monday -- so that's not a Sunday, but  
 8 a Monday -- the optometrists at the Dartford store  
 9 couldn't get in because there was obviously a snow  
 10 issue. Do you see?  
 11 A. Hm-mm.  
 12 Q. And Mr Singh was unable to assist. He said that he was  
 13 not anywhere in the area and was at his in-laws. What  
 14 Ms Birdi hadn't quite realised was "at his in-laws"  
 15 meant at the Grays Specsavers, which is owned by his  
 16 wife and his sister-in-law. Do you see?  
 17 A. I see what's written here.  
 18 Q. So clinics had to be cancelled at the Dartford store  
 19 because he was unable to get there. Do you see?  
 20 A. Hm-mm.  
 21 Q. And it turned out he was there working in the Grays  
 22 store. So she has raised the issue that that has  
 23 impacted upon the Dartford store, hasn't it?  
 24 A. Yes, that's what she is saying.  
 25 Q. He has chosen to work at his wife's store even when the

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1 emergency required him, to assist the Dartford store, to  
 2 be at the Dartford store, to go to the Dartford store?  
 3 A. And that is what she has put in.  
 4 Q. Yes, and then, secondly, he works regularly on a Sunday  
 5 at the Grays store testing.  
 6 A. Hm-mm.  
 7 Q. Do you see?  
 8 A. Yes.  
 9 Q. And then she reverts to other matters, not just about  
 10 his time, but actually, whilst he is in the Dartford  
 11 store, he is using his mobile phone, managing the Grays  
 12 store; do you see?  
 13 A. Yes.  
 14 Q. And, at paragraph 4, Mondays is Ms Birdi's day off. Do  
 15 you understand?  
 16 A. Hm-mm.  
 17 Q. "Kam has repeatedly refused to commit to work regularly  
 18 on Mondays despite the need for leadership on the shop  
 19 floor ... he often works at the Grays store on Mondays."  
 20 So the Dartford store is without either of its  
 21 directors on a Monday because he is choosing to go and  
 22 work in the Grays store on a Monday rather than take a  
 23 different day off.  
 24 A. I believe that is his day off, and the way Swarandeeep  
 25 and Kam decide to kind of deal with their days off is

1 very much day-to-day management. I, from an operational  
 2 point of view, would have hoped that between them they  
 3 would ensure that one of them would have been in on that  
 4 day, but that's just common sense. Obviously, they  
 5 hadn't been able to reach that agreement, but Mondays,  
 6 was my understanding, was Kam's day off.  
 7 Q. No, did you not read this email? Mondays was Ms Birdi's  
 8 day off. Did you not understand?  
 9 A. No, I understand what's written here but from previous  
 10 evidence and emails I thought that Monday was Kam's day  
 11 off. If I am mistaken, then, fine, but we would  
 12 certainly hope that partners working together would be  
 13 able to arrange their days off so there is cover in  
 14 store. But it does happen.  
 15 Q. He hadn't told her that he was working in the Grays  
 16 store on Mondays and what he was doing was just not  
 17 committing to going in on Mondays, so that sometimes he  
 18 was there and sometimes he was not, and you recall her  
 19 emails where she complained about the fact that there  
 20 was some absenteeism issues. Do you remember I raised  
 21 it with you earlier?  
 22 A. Yes.  
 23 Q. She was complaining about that previously, before she  
 24 knew what he was up to was working in Grays. Do you  
 25 see?

1 A. Yes, I do.  
 2 Q. And then 5 and 6 are dealing with -- we have the phone  
 3 bills. So he is making calls to the Grays store and  
 4 emails dealing with issues relating to the Grays store.  
 5 So, even during his working time at Dartford, he is  
 6 assisting his wife's store, where she is off on  
 7 maternity leave. Do you see?  
 8 A. Hm-mm.  
 9 Q. And at 6 he is even dealing with locum agencies, getting  
 10 locum cover for the Grays store.  
 11 A. Hm-mm.  
 12 Q. Calls being received and dealt with whilst he is in the  
 13 Dartford store?  
 14 A. Hm-mm.  
 15 Q. It's not right, is it?  
 16 A. I think there's -- you know, as -- okay, it took a bit  
 17 longer than hoped but as -- as when I finally sat down  
 18 with Mr Singh, I said to him, "It needs to stop". I did  
 19 not -- I did -- I did not want -- and the reason why  
 20 I didn't treat this in any other way than trying to  
 21 resolve it in the best interests of the partnership,  
 22 I didn't want this to escalate into a formal grievance.  
 23 I met with Ms Birdi to talk through the issues and cover  
 24 off some other issues and then met Mr Singh, and at that  
 25 meeting, although I was of the opinion -- because

1 Mr Singh said, "Yes, I do test at Grays, I don't get  
 2 paid for that and predominantly do it on a Sunday", my  
 3 view was, "Kam, although I don't see it as a real  
 4 conflict of interest, I absolutely do feel that, in the  
 5 best interests of the partnership, you should stop."  
 6 And he stopped.  
 7 So, although I don't believe I kind of looked into  
 8 every single part or dealt with this in the format of  
 9 a grievance, I met with Ms Birdi, I met with Kam, and my  
 10 instruction to Kam was very, very simple, that in the  
 11 interests of this relationship, you need to stop, and he  
 12 did.  
 13 Q. We will come back to that in just a moment. Just to  
 14 finish this letter, over the page she explains that:  
 15 {E/562/1816}  
 16 "Following Alan Moylan's advice [she has] asked Kam  
 17 directly if he was working at Grays and he has  
 18 emphatically denied working there."  
 19 A. Hm-mm.  
 20 Q. That wasn't honest of him, was it?  
 21 A. Obviously not, and I think reflects where the  
 22 partnership was at that point.  
 23 Q. Where the partnership was or where Mr Singh was?  
 24 A. I think --  
 25 Q. He was acting in a dishonest way --

1 A. I think it --  
 2 Q. -- towards his joint --  
 3 A. I think it --  
 4 Q. -- venture partner.  
 5 A. What I'm talking about here, my Lord, is the actual  
 6 relationship and communication between the partners.  
 7 There is obviously no trust between the partners and,  
 8 yes, I totally agree that -- when asked, if this is  
 9 correct, then I would have expected a partner to have --  
 10 as you say, be honest and inform what's happening. But  
 11 I see it just as -- just as another indication of where  
 12 the relationship sat at that point.  
 13 Q. That's a very interesting way of putting it, Mr Rowe.  
 14 You just see this as another example of the problem  
 15 caused by Ms Birdi's broken relationship with Mr Singh?  
 16 A. No, Mr Stuart --  
 17 Q. You don't see it as Mr Singh lying?  
 18 A. No, two points here. Firstly, I didn't say it is  
 19 a symptom of Ms Birdi's broken relationship. I saw this  
 20 as -- absolutely as a problem relationship for both Kam  
 21 and for Ms Birdi and for the Dartford business -- and  
 22 that my expectation, when a joint venture partner is  
 23 asked a question by another joint venture partner, is  
 24 that they will tell the truth. That is my expectation.  
 25 If that didn't happen at this point -- I wasn't

1 there, I don't know what conversation took place, but my  
 2 expectation in that scenario would be that joint venture  
 3 partner would be honest with their partner. At the end  
 4 of the day, that is kind of one of the foundation stones  
 5 of partnership.  
 6 Q. You didn't do anything about it until July; is that  
 7 right?  
 8 A. I attempted to get various meeting dates in but, yes,  
 9 over a period of time -- it took a lot longer to get to  
 10 meet people than I wanted to.  
 11 As I said earlier, my Lord, I am running three  
 12 regions and was incredibly busy at the time and it took  
 13 longer than I would have wished to get around to meeting  
 14 with both individuals.  
 15 My strategy was: meet with Swarandeeep to dig into  
 16 more detail; meet with Kam, and then actually have both  
 17 partners together in a joint partnership meeting. That  
 18 was overtaken by the official grievance process.  
 19 Q. Why do you we need to go through all of that rigmarole?  
 20 Why can't you just pick up the telephone, take out your  
 21 mobile phone, phone Kam Singh and say, "Look, Kam, this  
 22 isn't right"?  
 23 A. It's how I chose to do it at the time, Mr Stuart.  
 24 I can't remember whether I contacted Kam over that  
 25 period to discuss this issue, but that's how I decided

1 to deal with it face-to-face.  
 2 Q. You don't mention in paragraphs 37 to 39 of your witness  
 3 statement {C/7/72} picking up the telephone and speaking  
 4 to Kam about this issue at that time?  
 5 A. No, I can't recollect. The only kind of conversations  
 6 I think over this period I would have had with Kam would  
 7 have been reasonably informal ones, at communication  
 8 meetings. We have about five communication meetings  
 9 a year, my Lord, where all the partners get together on  
 10 a regional basis. Kam tended to -- Kam tended to come  
 11 to those meetings. So occasionally we would have  
 12 a conversation, but I can't recollect any other ...  
 13 Q. Your response to Ms Birdi is at 1881: {E/570/1881}  
 14 "Swarandeeep.  
 15 "Hope you are well. Apologies for not getting back  
 16 to you.  
 17 "Can we organise a date to catch up ref these  
 18 issues."  
 19 She has sent you full details of what the problems  
 20 are?  
 21 A. Yes.  
 22 Q. You recognise that, if what she says is right, they are  
 23 certainly serious matters for the -- Mr Singh's  
 24 behaviour?  
 25 A. They could be; they could be.

1 Q. They must be serious matters to her?  
 2 A. To her, absolutely.  
 3 Q. If she is being lied to, if he is doing what she says he  
 4 is doing, working at the Dartford store, managing the  
 5 Grays store, dealing with all of these things,  
 6 et cetera.  
 7 Rather than deal with them, you say, "Let's catch up  
 8 and have a talk through"; is that right?  
 9 A. Yes, I wanted to (a) explore these points and also  
 10 explore where the relationship was at the time. As  
 11 I say, Mr Stuart I'm with -- yes, there are specific  
 12 issues here that have been raised, but also, what I'm  
 13 desperately trying to do here is keep things away from  
 14 a formal grievance process. My experience of partners  
 15 is once that process starts it tends to have a bit of  
 16 a cascade effect and really strikes at the heart of the  
 17 partnership.  
 18 I'm trying here to keep the partnership together and  
 19 to resolve these issues without becoming too formal.  
 20 And whether that was correct approach, looking back,  
 21 maybe not. But right now, you know, at this time, it  
 22 was -- it was the approach I took.  
 23 Q. We can see the approach you took when you eventually met  
 24 her a few months later, page 1901. {E/579/1901} To be  
 25 clear, there are two versions of this minute?

1 A. Yes.  
 2 Q. Do you remember, Ms Birdi doesn't accept that you made  
 3 this note immediately -- either at the meeting or  
 4 shortly thereafter. She says that you made this note  
 5 much later?  
 6 A. Well, it was generated on 29 September from my notebook,  
 7 where I had made notes of the meeting.  
 8 Q. 29 September?  
 9 A. I'm sure it was 29 September.  
 10 Q. Okay. So that's just short of four months later?  
 11 A. It was taken directly from my notebook. The reason why  
 12 I generated them at that point was, I think it was due  
 13 to the fact that the grievance process had started and  
 14 I was asked just to type the notes up from my meeting,  
 15 which I took from my notebook.  
 16 Q. Her note is at 1903? {E/580/1903}  
 17 A. Yes.  
 18 Q. Do you see that?  
 19 A. I do, yes.  
 20 Q. And it's rather more detailed, isn't it?  
 21 A. It is, yes.  
 22 Q. A very much more detailed explanation of all the issues  
 23 that she has arising from this fact of what Mr Singh is  
 24 up to here at Grays and in relation to Grays?  
 25 A. Yes.

1 Q. That's right, isn't it?  
 2 A. It is, yes.  
 3 Q. And we see at 1903, {E/580/1903} so her version of the  
 4 note -- do you see between the two hole punches there is  
 5 an item which says:  
 6 "M Rowe said that it would be easy to see if he has  
 7 been testing there via the IT systems ..."  
 8 That's the SOG systems; yes?  
 9 A. Yes.  
 10 Q. "... and that he would instigate investigations  
 11 regarding the days he may have been there."  
 12 A. Hm-mm.  
 13 Q. Do you see? Because obviously, if there was going to be  
 14 an issue about what days he was there -- was it Sundays,  
 15 was it Mondays, was it Tuesdays, how regularly was it;  
 16 was it days when he was off sick or on holiday  
 17 et cetera -- it would be important to get the evidence  
 18 together, wouldn't it, from SOG?  
 19 A. Erm -- yes.  
 20 Q. SOG's systems would have, if he was testing in the Grays  
 21 store, his code?  
 22 A. I'm not wholly certain because I'm not sure that when  
 23 I went back that I was able to do that. We have  
 24 a number of measurement systems but a lot of our kind of  
 25 Socrates systems aren't linked to stores. So this

1 didn't happen in the way it happened because when I met  
 2 with Kam, we identified -- then Kam says, "Yes, I have  
 3 been testing", and Kam agreed to stop, so from my  
 4 perspective, that was the issue resolved.  
 5 Q. It doesn't seem very supportive of Ms Birdi, does it?  
 6 You tell her at the meeting with her that, oh, yes,  
 7 you will instigate investigations, so that you can get  
 8 to the bottom of just how much Mr Singh has been up to  
 9 here. And then you go off and have a meeting with  
 10 Mr Singh and Mr Singh accepts the occasional Sunday, the  
 11 occasional day off, but says that it's really no more  
 12 than that, and you just accept his word for it and don't  
 13 instigate the investigations and don't pursue the matter  
 14 any further?  
 15 A. I didn't, and I did accept Mr Singh's explanation and  
 16 accept his commitment that he would cease, in the best  
 17 interests of the relationship.  
 18 My understanding is that this then progressed into  
 19 a grievance process and was investigated through that  
 20 grievance process, but that's the way I dealt with it,  
 21 Mr Stuart.  
 22 Q. Well, it wasn't investigated properly through the  
 23 grievance process because the information that you had  
 24 said you were going to collate -- do you see at  
 25 page 1905 {E/580/1905} -- at the end of the meeting, you

1 said you would:  
 2 "... have further meetings when collated information  
 3 required with KS and SB."  
 4 You didn't collate any information, did you, against  
 5 KS?  
 6 A. Well, no, and as I said to you -- and firstly I didn't  
 7 have any input into the -- and I don't know what  
 8 Mr Goddon did in the form of investigating this either.  
 9 I had met with Mr Singh. Mr Singh had confirmed  
 10 that he had been testing and committed to stop, because,  
 11 although I didn't see it as a conflict of interest  
 12 because he was meeting his service contract in Dartford  
 13 and performance in Dartford was good, he recognised the  
 14 fact that it would have a negative impact on the  
 15 relationship.  
 16 If I had come away from that meeting with Mr Singh,  
 17 my Lord, where he had been contesting it, then I would  
 18 have had to look into it in more depth, but from --  
 19 whether it's the right judgement or the wrong judgement,  
 20 in my view, I had resolved the matter and that there was  
 21 a commitment not to continue, and to focus on the  
 22 relationship.  
 23 So I'm -- right or wrong, I have made a decision not  
 24 to progress this further because I felt that I had  
 25 resolved the issue without it needing to go to any

1 further investigation.  
 2 Q. You hadn't resolved it at this point, had you, because  
 3 look at 1908. {E/582/1908} Soon after the meeting  
 4 Ms Birdi writes you a short email -- it's the day later:  
 5 "Thanks for your time yesterday.  
 6 "I am still not clear as to the official position of  
 7 the Board ..."  
 8 That would be the board of SOG, I presume:  
 9 "... in regards to conflicts of interest and  
 10 Directors working at other Practices and what procedures  
 11 exist to prevent conflicts of interest.  
 12 "Please would you get clarification and let me  
 13 know..."  
 14 A. Yes.  
 15 Q. You didn't do that, did you?  
 16 A. No, I didn't, and everything got taken over by --  
 17 because at this particular meeting with Kam, I think  
 18 there was a level of frustration on Kam's side and  
 19 I think in my note with Kam, I point out he had made --  
 20 or asked me about what further processes might be,  
 21 around grievance, et cetera, and everything was  
 22 overtaken by the grievance process, both his grievance  
 23 against Swarandeeep and then Swarandeeep's counter  
 24 grievance.  
 25 So it then went to Alan and went through that

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1 process.  
 2 Q. Okay. 1914. {E/588/1914} You are aware, by the looks  
 3 of it, that Mr Singh's behaviour is impacting even with  
 4 other joint venture partners. Do you see that, 1914?  
 5 Somebody called Janet Avery is complaining to Mr Lunn --  
 6 A. Janet, I believe, was somebody who worked in our  
 7 Guernsey office central.  
 8 Q. Okay.  
 9 A. Yes.  
 10 Q. And she was -- sorry, not a joint venture partner, you  
 11 are quite right -- a member of SOG?  
 12 A. Yes.  
 13 Q. And she was complaining about the:  
 14 "... abrupt and rude manner of the store  
 15 director..."  
 16 And we can see that it's "he" -- so it's Mr Singh,  
 17 not Ms Birdi we are talking about:  
 18 "... he put the phone down on her. I intervened and  
 19 spoke to the director ..."  
 20 Et cetera.  
 21 A. Yes.  
 22 Q. And that's forwarded on to you, isn't it?  
 23 A. Yes, it is, yes. And, my Lord, this sometimes happens  
 24 throughout the year, where sometimes partners can get  
 25 frustrated if they are not getting information quickly

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1 enough, or they are not -- if they think they are not  
 2 receiving the kind of service maybe that they would  
 3 need, sometimes they can be abrupt and sometimes rude to  
 4 members of the team in Guernsey. And the way that  
 5 I have always dealt with this is a quick conversation,  
 6 either a CM or over the phone, that says, "Look, Kam,  
 7 this just isn't good enough. We are here to support  
 8 you."  
 9 And I assume that's how I would have dealt with it.  
 10 It's not a major issue, it's a, "Let's have  
 11 a conversation because, you know, we are here to support  
 12 you. We are all part of the joint venture partnership."  
 13 That's how I would have dealt with this sort of  
 14 issue, Mr Stuart.  
 15 Q. He is a rude and abrupt person, Mr Singh, isn't he?  
 16 A. No, I have never found him to be rude and abrupt.  
 17 I have found him to be driven and I have found him to be  
 18 really clear on what he wants and what direction he  
 19 feels the business should go on, but in my experience  
 20 with Kam, I have never known him to be rude or abrupt.  
 21 Certainly never with me.  
 22 Q. The staff who left complained that he was rude and  
 23 abrupt, aggressive, harassing --  
 24 A. And all of those points I believe were investigated  
 25 through a grievance process and not upheld.

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1 Q. And Ms Birdi certainly alleged to you on many  
 2 occasions -- and to others -- that he was, to her,  
 3 bullying, rude, aggressive?  
 4 A. Those were allegations that were made through this  
 5 process and again, you know, there is no doubt in -- my  
 6 experience of this journey is that, you know, it's  
 7 a symptom of where that partnership between both  
 8 partners were. I think in both cases, you know, there's  
 9 behaviours that we would say probably didn't live up to  
 10 the joint venture partnership.  
 11 Q. So it's her fault, then, is it?  
 12 A. In both -- Mr Stuart, I said in both cases.  
 13 Q. But strangely, in your witness statement you don't say  
 14 "in both cases", do you? When you come on to describe  
 15 the two of them and the breakdown of the relationship  
 16 et cetera?  
 17 A. I think it's obvious going through here that I would  
 18 have expected Mr Singh to have mentioned to Swarandeeep  
 19 if there was an issue around Grays testing. That's what  
 20 I'm saying. It may not come over in my witness  
 21 statement but certainly, throughout the journey, you  
 22 know, I think there is probably elements that both  
 23 partners would look at and think they would do  
 24 differently again.  
 25 Q. Okay, she chases you at page 1925 {E/594/1924} for the

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1 information she has requested from you about the -- do  
2 you remember?  
3 A. Yes.  
4 Q. You didn't get the information for her, did you?  
5 A. I didn't, no. Again, as I said, at this point -- I'm  
6 not sure actually at this point whether the grievance  
7 process has commenced. But, yes, as I said, I took, in  
8 my view, reviewing this, too long to resolve this issue.  
9 Q. Page 1952. {E/616/1952} We have reached 12 July. You  
10 still haven't --  
11 A. No.  
12 Q. -- got back to her?  
13 A. I'm waiting to -- to speak to Mr Singh.  
14 Q. But she has asked you to get clarification as to the  
15 SOG --  
16 A. Yes.  
17 Q. -- policies, rules, views, et cetera, before you have  
18 any meetings. Do you remember?  
19 A. No, I don't think that was my -- she was asking for  
20 clarification, which I felt I gave at the beginning  
21 because the whole point of the clarification bit around  
22 service contract, et cetera, and payments were the key  
23 element. But I needed to see Mr Singh first to get his  
24 perspective on it before I came back to Swarandeeep.  
25 Q. What, to give him a heads-up as to what was being

1 alleged before --  
2 A. No, as I did at the meeting was to put to him the issue  
3 from Swarandeeep. So not give him a heads-up.  
4 Q. Okay. Page 1962. {E/625/1962} Do you see that?  
5 A. Yes.  
6 Q. You have now told her that you are going to meet Kam  
7 one-to-one?  
8 A. Yes.  
9 Q. And then get back to her with a date for a --  
10 A. -- for a joint meeting.  
11 Q. For a joint meeting.  
12 A. Yes.  
13 Q. Is that right?  
14 A. Yes.  
15 Q. She responds to you: {E/625/1962}  
16 "Is it possible for you to tell me what the one to  
17 one with Kam is regarding? If it is concerning my  
18 issues raised regarding conflict of interest I was under  
19 the impression that I would be informed of the Board's  
20 position on the matters of conflict before any further  
21 meeting were held."  
22 So she is making it quite clear what she understood  
23 you had agreed and --  
24 A. I was.  
25 Q. -- and she was expecting you to get back to her first?

1 A. That wasn't my understanding around what we had agreed.  
2 Q. It seems to be her understanding, though?  
3 A. Yes.  
4 Q. Okay:  
5 "Other matters have arisen which concern me further  
6 and which I believe demonstrate more conflicts of  
7 interest..."  
8 She is still waiting for your response, isn't she?  
9 A. Yes.  
10 Q. What you then do is you just go ahead with your  
11 one-to-one meeting with Mr Singh. Page 1964?  
12 {E/626/1964}  
13 A. Yes.  
14 Q. This is your note, is it?  
15 A. Yes, and they were drafted the same time as the previous  
16 notes.  
17 Q. At the ...?  
18 A. At the same date for the previous notes. So these were  
19 taken on my notepad and then, 29 September, I think.  
20 Q. So the end of September you draw this up; okay:  
21 "This was an informal one to one with Kam to get the  
22 background to his issues prior to a joint meeting when  
23 we would aim to get an agreed resolution and improved  
24 relationship. The meeting started with a recognition  
25 that the stores sales and profit performance had

1 improved significantly."  
2 A. Hm-mm.  
3 Q. Do you see that?  
4 A. Yes.  
5 Q. Was it not going to be an informal one-to-one at which  
6 you were going to raise the issue that Ms Birdi wanted  
7 raised?  
8 A. Yes, which I did. Conflict of interest was part of what  
9 we talked about on the day. Mr Singh had also  
10 communicated with me, I believe, in this period, where  
11 he had some issues that he also wanted addressed.  
12 Q. So under the heading, "Conflict of Interest", all we  
13 have is: {E/626/1964}  
14 "Kam was adamant that he was doing his full five  
15 days a week in Dartford and that he had been testing in  
16 Grays mainly on a Sunday his day off..."  
17 Do you see that?  
18 A. Hm-mm.  
19 Q. "... and was not being paid for it. He said he was  
20 doing this to support his wife as she was on maternity  
21 leave and that he got pay back through his wife's  
22 profits."  
23 Do you see that?  
24 A. Yes, I do.  
25 Q. "... he got pay back through his wife's profits."



1 So he was acknowledging that because it was his  
2 wife's store -- indeed, it was his wife and her sister's  
3 store -- that he wasn't being paid a locum day rate?  
4 A. Yes.  
5 Q. He was getting the benefit of his work, payment for his  
6 work, through sharing his wife's profits. Do you see?  
7 A. I do see what's there.  
8 Q. He was actually admitting to you that he was getting pay  
9 back through his wife's profits for the work that he was  
10 doing, optical testing. You know, actually doing the  
11 testing in Grays?  
12 A. Hm-mm.  
13 Q. Now, that is, effectively, locumming in Grays and  
14 Dartford not getting any value or benefit from that  
15 whatsoever, isn't it?  
16 A. No, I don't believe -- I think this is Kam being very  
17 open, honest, and understanding that I know the  
18 relationship of the partnership in Grays. From my  
19 perspective, these are very different entities. I think  
20 it's logical to say that by supporting -- I think  
21 Mr Singh says the half day testing on a Sunday -- that  
22 the store would benefit. I think at this stage there is  
23 also -- if not, slightly later -- some emails from  
24 Katie Miller who is the RDM, saying that Grays is  
25 struggling with his wife on maternity.

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1 But I viewed them as totally separate entities. The  
2 partners in Grays would receive the benefits, pay the  
3 tax on the benefits, and Kam would not receive anything  
4 directly. But obviously -- obviously, because there is  
5 a family relationship, the family would, to a degree,  
6 benefit slightly. But I don't see that Dartford is  
7 losing out in any way, shape or form. He is not taking  
8 a locum payment. He is not in any way in contradiction  
9 to our kind of policies around partners working in other  
10 stores.  
11 So I didn't see a conflict of interest, but Kam --  
12 in this paragraph, Kam is recognising that fact.  
13 Q. He told you he got pay back through his wife's profits.  
14 That's what he says?  
15 A. Yes, Kam is recognising the fact that -- he knows I know  
16 the structure in Grays.  
17 Q. He is being remunerated for his work through his wife's  
18 profits?  
19 A. What he is recognising, Mr Stuart, is that I know the  
20 structure in Grays. So I know that by working in that  
21 store, by helping out on a Sunday with his wife on  
22 maternity, that that would help what was at the time  
23 a struggling store, because, as you see in an email  
24 later on from Katie Miller in the RPC for Grays, that  
25 the store was struggling at the time.

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1 Q. You are --  
2 A. So, from my -- sorry, Mr Stuart. So, from my  
3 perspective, I didn't see it as a conflict of interest  
4 and I didn't see it -- because they are treated --  
5 totally separate tax entities and ...  
6 Q. If he was working for a Vision Express owned by his wife  
7 and her sister, would that be fine?  
8 A. If he was working for a Vision Express, as I mentioned  
9 in an earlier email, that would not have been fine.  
10 Working for a competitor on your day off would be seen  
11 as a brand risk.  
12 Q. Fine. So he is working in a Specsavers and, rather than  
13 being paid a locum payment -- which would have to go  
14 through Dartford, wouldn't it, under SOG's system? If  
15 his wife paid him £250 for the Sunday that he worked,  
16 that payment would have to go through the Dartford  
17 store?  
18 A. Hm-mm.  
19 Q. It would be paid to the Dartford store, wouldn't it?  
20 A. It would.  
21 Q. And this would all have to be disclosed through SOG to  
22 Ms Birdi at Dartford. She would know about it, wouldn't  
23 she?  
24 A. The way it would work is that it would appear on her  
25 accounts, yes.

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1 Q. And she would therefore become aware that he was doing  
2 a day's testing on a Sunday in Grays?  
3 A. Hm-mm.  
4 Q. But she was not aware of that, was she?  
5 A. No, she was not aware of that.  
6 Q. He acknowledged to you that he had not told Ms Birdi  
7 about this?  
8 A. Yes, that's correct, yes.  
9 Q. But paragraph 49 of your witness statement {C/7/74}  
10 completely misstates the position that he told you. You  
11 say:  
12 "At the meeting, Mr Singh and I discussed the time  
13 he was spending at the Grays store. Mr Singh was  
14 adamant that he was not being remunerated for his time  
15 at the Grays store, and that he was simply working there  
16 as a favour to his wife --"  
17 A. Yes, and that's how I --  
18 Q. "-- who was on maternity leave at the time."  
19 A. Yes, and he wasn't being remunerated. He wasn't  
20 receiving a locum payment and he wasn't invoicing the  
21 store through Dartford.  
22 Q. No, he told --  
23 A. Yes, by definition his extended family own the store and  
24 there would have eventually dripped down to the bottom  
25 line a benefit to those partners in Grays, but he was

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1 not a partner in Grays.  
 2 Q. He said to you that: {E/626/1964}  
 3 "... he was doing this to support his wife as she  
 4 was on maternity leave and that he got pay back through  
 5 his wife's profits."  
 6 You don't mention that in your witness statement, do  
 7 you?  
 8 A. It's clearly stated in here but in my -- in the  
 9 evidence, in the notes of the meeting that were  
 10 disclosed -- but I don't see pay back through the  
 11 profits of -- to his wife as remuneration. Mr Singh is  
 12 not being paid for the work that he did in Grays and,  
 13 you know, if he had been, we would have needed to ensure  
 14 it was being paid in the right way. And as you say,  
 15 Ms Birdi would have been aware of the fact that he was  
 16 testing on a Sunday in Grays.  
 17 Q. How many days was he doing? We don't see any notes of  
 18 you investigating with him how much time he was actually  
 19 spending in Grays?  
 20 A. The conversation I had with him was a lot longer than  
 21 the paragraph of the notes that I put in here, but  
 22 I can't for the life of me remember. I believe he was  
 23 saying that he was testing on a Sunday and possibly  
 24 a Monday now and again in Grays, but I can't be certain.  
 25 Q. Okay. And what was his explanation for the other

1 matters that she had raised?  
 2 A. Once I got to it in this conversation, once I got to  
 3 a -- to all intents and purposes, an admission from  
 4 Mr Singh that this was going on, I moved -- and whether  
 5 I should have gone through each individual line --  
 6 I moved straight into the fact that we needed to cease  
 7 and stop doing this because, you know, it's not good for  
 8 the relationship and that he needs to stop the work in  
 9 supporting Grays, and he agreed to do so.  
 10 So I didn't go through every single line. Once I'd  
 11 got Mr Singh to put -- and he put his hand up, right  
 12 from the word go; says, "Yes, Mike, this is what I'm  
 13 doing". And we had the conversation, quite a protracted  
 14 conversation about stopping, and he agreed to do so and  
 15 I believe he did do so.  
 16 Q. None of that is documented in your note.  
 17 A. This is --  
 18 Q. This protracted conversation?  
 19 A. Yes, it was longer than just a, what, five or six line  
 20 paragraph, so --  
 21 Q. Where does it say that he agreed to stop, or even that  
 22 you asked him to stop?  
 23 A. That -- that was the outcome of the meeting and that's  
 24 Mr Singh's evidence as well as my evidence, and that he,  
 25 I think, even in the evidence of when I was in court,

1 Mr Stuart, you said, yes, you did stop in July.  
 2 Q. I'm not saying that he didn't stop. I'm saying that in  
 3 your note of what was agreed at the meeting in relation  
 4 to this, below the second hole punch on 1964:  
 5 {E/626/1964}  
 6 "Kam was very clear that his time in Grays had no  
 7 effect on the Dartford store and that he was more than  
 8 fulfilling his service contracts."  
 9 That was his approach, wasn't it:  
 10 "We agreed that this would be dealt with at the next  
 11 joint partner meeting."  
 12 A. Hm-mm.  
 13 Q. So not, "We agreed that Kam would stop"?  
 14 A. He did.  
 15 Q. No, no, but it doesn't say that, does it?  
 16 A. No, no, it absolutely doesn't say that, but we agreed it  
 17 was going to stop and that was Mr Singh's understanding,  
 18 my understanding. That's what happened and that's  
 19 what -- one of the points, as well as equalisation of  
 20 benefit, signing off expenses and various other  
 21 issues -- that was what we were going to address at the  
 22 joint partner meeting, where I would have been able  
 23 to -- you know, if Swarandeeep wanted to challenge any of  
 24 those points in more detail, we could have gone into  
 25 them in more detail there.

1 I was of -- for right or wrong, at the time,  
 2 operationally, I felt: I have had this issue. Yes, it  
 3 has taken longer than I wanted to, but I have met with  
 4 Kam. Kam has agreed to stop. I don't believe that  
 5 there has been a conflict of interest, but he has agreed  
 6 to stop because it would be having a detrimental impact  
 7 on the relationship of the partners in store.  
 8 And that was my view at this meeting, Mr Stuart.  
 9 Right or wrong.  
 10 Q. So you are now alleging that at the meeting he agreed to  
 11 stop?  
 12 A. He agreed to stop.  
 13 Q. That's not what your witness statement says in  
 14 paragraph 51. {C/7/75} Perhaps you have forgotten.  
 15 According to you:  
 16 "Although in my view there was no conflict of  
 17 interest, I explained to Mr Singh that in order to  
 18 improve the working relationship with Ms Birdi, it would  
 19 probably be sensible for him to cease working at Grays.  
 20 Following a conversation with Mr Singh and the Retail  
 21 Development Consultant who covered the region ..."  
 22 Do you see?  
 23 A. Hm-mm.  
 24 Q. "... I was informed that Mr Singh did in fact stop ...  
 25 shortly after this meeting."

1 A. Yes.  
 2 Q. You do not mention that he agreed to stop at the  
 3 meeting?  
 4 A. That's what I meant in it would be sensible for him to  
 5 cease working at Grays. I was of the view that we had  
 6 that agreement. And when I talk about the RDC and the  
 7 RPC for covering that store, that's what they confirmed  
 8 to me. There is an email from them to say that that is  
 9 correct.  
 10 So that's what I'm saying there, Mr Stuart, is that,  
 11 at the meeting we did agree to stop, and I believe  
 12 that's Mr Singh's evidence as well.  
 13 I have maybe worded it in slightly vaguer form in my  
 14 witness statement, but that's my understanding of the  
 15 meeting.  
 16 Q. If that were true, which is not accepted, did you  
 17 deliberately not put that agreement into your note of  
 18 the meeting in 1964?  
 19 A. No.  
 20 Q. To somehow protect Mr Singh --  
 21 A. No.  
 22 Q. -- from a suggestion that he had admitted to --  
 23 A. No.  
 24 Q. So why did you not note that very important, very  
 25 important agreement --

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1 A. Sat here five years later, I can't -- I can't recollect  
 2 why I wouldn't have made that point, but I didn't. But  
 3 it's a matter of fact that Mr Singh did stop, so, you  
 4 know, that's ...  
 5 Q. That's not what I'm asking you. We know he stopped.  
 6 A. Yes.  
 7 Q. The question is: did you get him to stop? Did you get  
 8 an agreement for him to stop at the meeting?  
 9 A. Yes.  
 10 Q. And the answer is, you didn't, did you?  
 11 A. The answer is, I did, Mr Stuart, and that's -- although  
 12 I think the statement should be worded in a slightly  
 13 different way, it's obvious I had the conversation with  
 14 him about stopping and that the retail support team --  
 15 because I had -- there was an email from Katie Miller  
 16 who is the RDM for Grays and an email then from the RDC,  
 17 saying, "Grays is struggling, what's happening with the  
 18 partner from Dartford that was working on the Sunday?"  
 19 So obviously I felt that they were angling to  
 20 actually try and get him to support Grays more.  
 21 So, I think it's pretty clear, although -- I should  
 22 have put it in the notes. I didn't, for whatever  
 23 reason.  
 24 Q. Your note says quite the opposite from what you are  
 25 suggesting. It says that Mr Singh -- his response was

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1 that: {E/626/1964}  
 2 "Kam was very clear that his time in Grays had no  
 3 effect on the Dartford store and that he was more than  
 4 fulfilling his service contract."  
 5 Not he had fulfilled his service contract but from  
 6 now on he was going to stop. And you say:  
 7 "We agreed that this would be dealt with at the next  
 8 joint partner meeting."  
 9 A. Yes.  
 10 Q. You did not agree that he would stop?  
 11 A. We did. And what I'm not saying -- the reason I have  
 12 asked him to stop is not because I think it is  
 13 a conflict of interest; the reason I have asked him to  
 14 stop is it's having a detrimental impact on the  
 15 relationship, and that stopping would be the right thing  
 16 to do. And that's -- that's the conversation we have.  
 17 They're not comprehensive notes; they are notes taken  
 18 from my notebook I used at the time.  
 19 Q. You can put away E7 and be passed E8. I think we are up  
 20 to paragraph 53 of your witness statement. {C/7/75}?  
 21 A. Yes.  
 22 Q. You explain that they each lodged formal grievance  
 23 complaints against one another in July and August 2009?  
 24 A. Correct.  
 25 Q. And you say:

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1 "I was not surprised that the grievance complaints  
 2 were made, as it had become very clear that there were  
 3 significant unresolved issues between them."  
 4 Do you see that?  
 5 A. Yes.  
 6 Q. The issues you are talking about there are what?  
 7 A. Well, from Kam's perspective, the four day testing, the  
 8 various issues around equalisation and partners not  
 9 signing off expenses, and the conflict of interest and  
 10 the reams of various emails that had been flooding  
 11 through.  
 12 I suppose, having dealt with a lot of joint venture  
 13 partnerships at that time, I was desperate for it not to  
 14 happen, but I suppose I did have a perspective,  
 15 especially after the final meeting with Mr Singh -- in  
 16 my notes he actually asked me what that process was. So  
 17 to a degree I wasn't surprised, having kind of been  
 18 through the journey, that it ended up where it ended up.  
 19 Q. Okay. Mr Singh was refusing to take on the function of  
 20 supervising a staff member unless he was paid another  
 21 £5,000 in salary, wasn't he?  
 22 A. It was the contact lens trainee?  
 23 Q. Yes.  
 24 A. Yes.  
 25 Q. He wasn't prepared to do that unless he got another

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1 £5,000?  
 2 A. I think Ms Birdi had refused to act as supervisor.  
 3 There was obviously another -- and I wasn't the initial  
 4 person that was contacted through this. I think it went  
 5 through to -- to George Parker.  
 6 Q. That's right?  
 7 A. Who was an RSM initially, but -- and I'm not a, you  
 8 know, a clinically trained person, but somebody who is  
 9 under development and training as a contact lens  
 10 optician or fitter will need to be supervised in their  
 11 pre-reg period, and there was a disagreement between the  
 12 partners as to who should do it.  
 13 Certainly it would normally fall under an optom  
 14 director's remit to act as supervisor.  
 15 This was one that I didn't spend a lot of time on.  
 16 I think, in reality, all I might have done was to pick  
 17 the phone up to Mr Singh to say, "Look, just get on with  
 18 it because there's an individual that's involved here  
 19 and, you know, let's just get on and kind of do what we  
 20 need to do", but I'm not even really sure on the detail,  
 21 Mr Stuart. It's not something I spent a lot of time on.  
 22 Q. No. Ms Birdi hadn't refused. She was unable to perform  
 23 the function because she didn't have the qualification  
 24 to do so, did she?  
 25 A. As I said, I'm not clinically trained, so --

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1 Q. No, but you knew --  
 2 A. -- so reading the notes, that's what I came up --  
 3 Q. Yes, you knew that that was -- page 2043. You knew that  
 4 that was the position? {E/659/2043}  
 5 A. 2043?  
 6 Q. 2043. So, his demand for another £5,000 before he was  
 7 prepared to do that on behalf of the store --  
 8 A. Hm-mm.  
 9 Q. -- was not legitimate, was it? Hence your response at  
 10 the top of the page:  
 11 "Hi George as per voice mail this will be actioned  
 12 by Kam today without the pay rise!"  
 13 A. Absolutely. I picked up the phone and said to Kam,  
 14 "Stop playing silly buggers again and get on and do  
 15 this. It's in the best interests of the business and  
 16 this individual."  
 17 So, I'm supporting Swarandeeep, in reality, in that  
 18 action. There is a number of times where, you know,  
 19 I have had to deal with issues on both sides of the  
 20 fence. So this is an issue that has come up. I've made  
 21 the call and got it across the line, so ...  
 22 Q. What you have done there is, Mr Singh has made a wrong  
 23 demand; he has not put the business interests to the  
 24 forefront, and rather than raise that as an issue or  
 25 a complaint or anything like that, you have had

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1 a friendly call with him. Is that right?  
 2 A. No, I have picked up the phone and resolved a business  
 3 issue to move the business forward. This isn't about,  
 4 "I'm going to investigate on the basis of you claiming  
 5 for £5,000". This is a dispute between the partners and  
 6 I phoned Kam to say, "Just get on with it, Kam, because  
 7 you have got a business to run here". Pure and simple.  
 8 I have resolved a business issue.  
 9 No "friendly call". I phoned up to resolve it and  
 10 it has been resolved.  
 11 Q. Did you tell him, "Look, Kam, this is wholly  
 12 unacceptable, this behaviour; you can't do this"?  
 13 A. I can't even remember the call or the language I used,  
 14 apart from the fact of, "Just get on with it". It's  
 15 similar to -- there was a Christmas party issue, which,  
 16 frankly, me getting involved and trying to resolve  
 17 a Christmas party issue was at this stage starting to  
 18 really grate with me. So, you know, it was a quick call  
 19 saying, "Just get on with it".  
 20 Q. If you go to page 1995. {E/645.1/1995} You are  
 21 obviously -- these grievances have come in?  
 22 A. Yes.  
 23 Q. And you are now liaising with Mr Raines about this,  
 24 about the Dartford store, and you are providing him with  
 25 copies of the letters that you sent previously?

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1 A. Yes.  
 2 Q. What was Mr Raines doing, so far as you are aware at  
 3 this stage? Why are you getting involved with him?  
 4 A. Mr Raines is my line manager and I believe Mr Raines  
 5 would have seen the partner grievances. So Mr Raines is  
 6 just asking me for details of -- for details of the  
 7 interaction I have had with the partners.  
 8 Q. Hm-mm. You see, as I understand it, paragraphs 54 and  
 9 55 of your witness statement, under the heading, "Impact  
 10 of the grievance complaints", and before we get to the  
 11 2010 board meeting? {C/7/76}  
 12 A. Yes.  
 13 Q. You say that:  
 14 "The grievance complaints made ... were referred to  
 15 SOG's legal department ... Once a grievance complaint is  
 16 made by one JVP against another the role of the Retail  
 17 Support Team in mediating ... reduces..."  
 18 A. Yes.  
 19 Q. You say:  
 20 "... from July 2009 onwards, I carried out my usual  
 21 role in providing support on rolling out new initiatives  
 22 ... I was not involved in issues of communication  
 23 between Mr Singh and Ms Birdi."  
 24 Do you see that?  
 25 A. Yes.

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1 Q. "... I was kept informed of the various subsequent  
2 problems that arose ... by being copied in on emails  
3 between Ms Birdi and Mr Singh."  
4 And that's the only evidence you give as to what  
5 your involvement was at all during this period of time?  
6 A. Yes, and the normal -- I suppose what I'm trying to  
7 reflect there, my Lord, is that the normal role of the  
8 local retail support team -- because I've been  
9 intrinsically involved in meetings and trying to resolve  
10 these issues, that the people that deal with the  
11 grievances would tend to be people who are independent  
12 from that -- those people who had been close to the  
13 coalface with this relationship.  
14 So they -- I would take more of a backward --  
15 backward step and not be involved. I might get asked  
16 for information or asked to be sent copies of  
17 communications, but that was -- that was it.  
18 Q. What you were actually doing then was having discussions  
19 with Mr Raines at around this time, briefing him on the  
20 position. He was asking you matters, was he?  
21 A. He was asking me about and -- through email. I didn't  
22 -- I can't remember any specific conversations he was  
23 asking me for minutes of or -- of meetings or notes of  
24 meetings, letters I had sent to the partners  
25 from September through to the latest interaction. So he

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1 was just asking for background, in reality.  
2 Q. Okay. You were obviously speaking to him. Page 2003.  
3 {E/648/2003} You write to Mr Savill saying that you had  
4 spoken with Mark. "Mark" would be Mark Raines, wouldn't  
5 it? There is no other Mark?  
6 A. Yes, as I said to you, you know, obviously, Mark being  
7 my line manager, we would have catch-ups. So, yes,  
8 I have obviously spoken to Mark last night. But it  
9 might well have been just to see whether I had sent  
10 everything through. I don't know. I can't remember  
11 that conversation.  
12 Q. Okay. And then 2005, you write to Mr Raines, saying:  
13 {E/649/2005}  
14 "I have attached the documents from Alan Moylan's  
15 files."  
16 A. Yes.  
17 Q. Do you see that? And we can see the attachments.  
18 A. Yes.  
19 Q. There is the business plan?  
20 A. At this stage, Mr Moylan is -- Alan Moylan is down in  
21 Australia, my Lord, so I had his files on my laptop. So  
22 I was able to just to pull those across.  
23 Q. Okay. Did you raise with Mr Raines your view as to  
24 where the fault lay between these two grieving parties,  
25 because they had both raised grievances against each

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1 other?  
2 A. At this time I don't remember having any detailed  
3 conversations with Mark about the nature of the  
4 relationship. I had forwarded on all the information  
5 I had. I might well have had a conversation if he had  
6 asked me some background on meetings, but nothing jumps  
7 to mind, Mr Stuart, specifically.  
8 Q. Okay. And if you go to 2052, {E/664/2052} you are  
9 emailing Mr Vernieux in reply to his email to you at the  
10 bottom. Do you see?  
11 A. Yes.  
12 Q. He says:  
13 "Hi Mike, [for your information], I was just  
14 wondering if in your dealings with Dartford if there has  
15 been any more evidence of Kam's role in Grays? From  
16 these reports there is a suggestion that the JVP is  
17 struggling a bit."  
18 Do you see?  
19 A. Yes.  
20 Q. Your response is:  
21 "Hi Robin ..."  
22 Just to be clear, Robin is what, at this stage?  
23 He's not investigating?  
24 A. Robin Vernieux is a retail performance consultant for  
25 Carlton South.

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1 Q. Right. So he is looking into Grays?  
2 A. Hm-mm.  
3 Q. Into the Grays store's performance?  
4 A. He looks after Grays.  
5 Q. Okay. He is passing on to you Ms Miller's report from  
6 her store visit. Do you see?  
7 A. That's correct.  
8 Q. And then over the page we see what she said of her store  
9 visit. She said: {E/664/2053}  
10 "I was in Grays today for their first store visit  
11 for years. As you are now probably aware the set up is  
12 quite strange."  
13 Do you see that?  
14 A. Hm-mm.  
15 Q. And then just above the first hole punch:  
16 "Niki ..."  
17 That would be Niki Kaur, wouldn't it?  
18 A. I assume so. I don't know, I have never met her.  
19 I know of her.  
20 Q. She is now the joint venture partner with Mr Singh's  
21 wife in the Grays store:  
22 "Niki is struggling a bit at the moment as her  
23 partner director has been off for over 12 months on  
24 maternity leave and she has a completely new team  
25 including the manager and lab manager."

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1 Do you see?  
 2 A. Hm-mm.  
 3 Q. "She is doing her best but not enough hours in the day  
 4 for her to do two directors jobs, support a new manager  
 5 and try to temporarily cover the roles of all the ISSs  
 6 whilst her new staff get to grips with basic optics."  
 7 A. Yes.  
 8 Q. Do you see?  
 9 A. Mr Stuart, can I just -- just so as you understand the  
 10 context about the strange set-up. Grays did have  
 11 a strange set-up. Although it's a Carlton South store,  
 12 the RDM for Meridian East covered it. So it wasn't  
 13 covered by the RDM for Carlton South. So when Katie is  
 14 referring to a "strange set-up", it's because she is  
 15 looking after a store for a team that she doesn't  
 16 actually work within.  
 17 So that's the kind of Grays strange set-up piece.  
 18 Certainly that's my interpretation of her comment.  
 19 Q. This is how your email arises; do you see?  
 20 A. Yes.  
 21 Q. You have had this passed on to you.  
 22 A. Yes.  
 23 Q. Mr Vernieux is asking you: {E/664/2052}  
 24 "Hi Mike ... I was just wondering if in your  
 25 dealings with Dartford if there has been any more

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1 evidence of Kam's role in Grays?"  
 2 A. Yes.  
 3 Q. Do you see? And your response is illuminating, isn't  
 4 it. Look at the top:  
 5 "Hi Robin.  
 6 "This is a big bone of contention. Kam has told me  
 7 that he only tests in Grays one day per week on a Sunday  
 8 as a favour as his wife is on maternity. Kam does  
 9 fulfil his service contract in Dartford and he claims he  
 10 does not get paid for the day in Grays. Swarandeeep is  
 11 very anti this and sees it as a conflict of interest."  
 12 Do you see?  
 13 A. Hm-mm.  
 14 Q. The way you write that, that's the continuing position.  
 15 You don't say, "By the way, I have told him to stop"?  
 16 A. Well, I do in the next line:  
 17 "Kam should not play any JVP type role in Grays as  
 18 this will muddy the water even more."  
 19 I hadn't specifically laid out in there that I have  
 20 told him to stop, but I already had. My interpretation  
 21 of what Robin is fishing for here is Katie is saying  
 22 that the store is struggling. Robin is trying to find  
 23 out if there is any more support that we get can be  
 24 gilded (sic) from that and what I'm saying is, you know,  
 25 it's not going to happen in reality, you know, because

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1 we resolved it.  
 2 Q. "Kam should not play any JVP type role..."  
 3 You don't say he can't work there?  
 4 A. I've already made that -- that decision with Kam and had  
 5 that agreement with Kam.  
 6 Q. "Kam should not play any JVP type role in Grays as this  
 7 will muddy the waters even more."  
 8 What waters are being muddied?  
 9 A. The waters that are being stirred up with both  
 10 grievances that have been raised, I believe.  
 11 Q. No.  
 12 A. I'm not sure of the timing, it's ...  
 13 Q. What you are doing here is covering Kam, aren't you?  
 14 A. No, I'm trying to stop Robin from trying to encourage  
 15 somebody else to spend more time in the Grays store.  
 16 It's obviously struggling, but I don't want Kam to be  
 17 drawn into that because, as I say, we have made the  
 18 agreement. He did stop working in July and that was --  
 19 that was the way I wanted to keep it because of the  
 20 nature of the relationship. It would muddy the water.  
 21 It was obviously an issue for Swarandeeep and it would --  
 22 it would damage the relationship even more.  
 23 Q. We don't know when he stopped, do we? You don't know  
 24 when he stopped working in Grays?  
 25 A. Only that I know in July he did. That's his evidence,

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1 I think, to the court, but I -- I can't specifically  
 2 tell you.  
 3 Q. At the time, you didn't check to see whether he was  
 4 working in Grays?  
 5 A. I was aware. I can't remember how.  
 6 Q. My Lord, I see the time.  
 7 MR JUSTICE NUGEE: Yes. We will resume at 2 o'clock.  
 8 (1.01 pm)  
 9 (The short adjournment)  
 10 (2.00 pm)  
 11 MR JUSTICE NUGEE: Yes?  
 12 MR STUART: So, Mr Rowe, have you got E8 open?  
 13 A. I have got E8 open.  
 14 Q. You can put that one away. Could you be shown E9.  
 15 Just briefly on E9, if you go to page 2494.  
 16 {E/745/2494} Just to get the context for you, we are --  
 17 do you have 2494? We are into November 2009?  
 18 A. 15th, yes.  
 19 Q. And in your witness statement, as I say, I think we are  
 20 on -- we are sort of on paragraph 55, I think, {C/7/76}  
 21 where you say you are still the retail development  
 22 consultant. You have been copied in on emails,  
 23 including disagreements between the two of them?  
 24 A. Hm-mm.  
 25 Q. And we see here, do we -- is this an example? 2494?

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1 Ms Birdi emailing you: {E/745/2494}  
 2 "Dear Mike,  
 3 "My understanding from our emails communications was  
 4 that you were to re-arrange the meeting that was  
 5 originally scheduled for 13 July to discuss these  
 6 issues."  
 7 A. That's correct, yes. This was the -- I was due to have  
 8 a joint partner meeting after the meeting with Kam, if  
 9 I remember rightly.  
 10 Q. Kam's was on 14 July, around there?  
 11 A. Yes. My understanding is this has been superseded by  
 12 the grievance, the grievance investigation.  
 13 Q. Right. So as far as you were concerned, because they  
 14 had each raised grievances against each other, one  
 15 in July and one in August --  
 16 A. That was being dealt with by Mr Goddon.  
 17 Q. And you wouldn't get involved at all?  
 18 A. I wouldn't get involved in this, no.  
 19 Q. Were you asked by Mr Goddon for either your views or  
 20 your evidence about what had happened?  
 21 A. I can't remember any specifics. Certainly not  
 22 officially, I don't believe, but I may well have had  
 23 a phone call from Mr Goddon, but nothing that I can  
 24 recollect.  
 25 Q. Okay. You don't mention anything in your statement, do

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1 you?  
 2 A. No, there is nothing that jumps out that I can  
 3 recollect.  
 4 Q. You think you might have had, what, a sort of  
 5 off-the-record sort of chat with him?  
 6 A. Not so much off-the-record, but Alan and I were in the  
 7 same team of RDCs, so I knew Alan socially. We would  
 8 meet each other at an RDC meeting. So I'm not sure if  
 9 over a coffee a conversation was had. I really, really  
 10 can't remember.  
 11 Q. Okay. We have Mr Goddon's decision at page 2501.  
 12 {E/748.1/2501} Do you see that?  
 13 A. Yes.  
 14 Q. And were you kept in the loop on that? You are  
 15 obviously the RDC. He has reached his conclusions as to  
 16 the two sets of grievances?  
 17 A. I would have seen the end of the report, the outcome of  
 18 the grievance, yes.  
 19 Q. Okay. Did he discuss with you his suggestions?  
 20 A. I believe he probably would have, but I can't remember  
 21 it happening. I assume he would have, or certainly  
 22 would have sent it to me to read.  
 23 Q. Okay. Obviously, a number of the allegations raised by  
 24 Ms Birdi against Mr Singh relate to his bullying of her.  
 25 Do you recall?

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1 A. Yes.  
 2 Q. An example is at 2512. {E/748.1/2512} It is under the  
 3 general heading of grievance number 4:  
 4 "Unfair treatment at work by KS."  
 5 Do you see?  
 6 A. Hm-mm.  
 7 Q. And then there are sort of subsets of that, if you go in  
 8 a row, and the second one down on page 2512 is:  
 9 "SB states that KS is rude and bullying towards  
 10 her."  
 11 And he sets out all these examples. Do you see?  
 12 A. Yes.  
 13 Q. I mean, you had had experience of Mr Singh, hadn't you,  
 14 and his rude and bullying behaviour?  
 15 A. I had been involved in this journey with them, but not  
 16 of that behaviour, no, but certainly of the journey that  
 17 the partnership had been on.  
 18 Q. Okay. You were aware that other people had suggested  
 19 that Mr Singh was rude?  
 20 A. Yes. There was an email, yes.  
 21 Q. You were aware of what Ms Birdi was saying about  
 22 Mr Singh's rudeness and the examples?  
 23 A. Hm-mm.  
 24 Q. That had happened throughout the course of your journey  
 25 with them?

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1 A. Hm-mm.  
 2 Q. But Mr Goddon didn't make any investigation of you,  
 3 their local RDC, who was the man charged by Specsavers  
 4 with maintaining the relationship?  
 5 A. I certainly don't remember having a detailed  
 6 conversation with Mr Goddon about it.  
 7 Q. Okay, can we just go back to grievance number 1 on  
 8 page 2504. {E/748.1/2504} The first and principal  
 9 grievance. This is Ms Birdi's grievance against  
 10 Mr Singh, just to be clear to you.  
 11 2504. Do you see it's the conflict of interest one,  
 12 and him working in the Grays store?  
 13 A. Hm-mm.  
 14 Q. And the subsets of that are all set out. Do you see?  
 15 A. Hm-mm.  
 16 Q. And it includes all the things which had been raised  
 17 with you and a few extra things. Do you remember,  
 18 Ms Birdi had said in her email to you, "I have got some  
 19 other things"?  
 20 A. Hm-mm.  
 21 Q. But all of the things that she had raised with you are  
 22 set out here. We have got the February 2009 snow  
 23 incident. Do you see on page 2054? {E/748.1/2504}  
 24 A. Hm-mm.  
 25 Q. Page 2505, {E/748.1/2505}?

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1 A. Hm-mm.  
 2 Q. That when he was off sick, he was in fact working in  
 3 Grays; that he is conducting the day-to-day operations  
 4 of the Grays store. Do you see?  
 5 A. Hm-mm.  
 6 Q. Using the mobile phone on the shop floor to do things,  
 7 and all those sorts of things. Those are matters which  
 8 had been raised with you and which you had had your  
 9 discussion with Mr Singh about?  
 10 A. Hm-mm.  
 11 Q. A much more lengthy and detailed discussion than your  
 12 little note, you have told the court, but he would have  
 13 given his version of events, made any admissions to you  
 14 that were to be made, et cetera. To you, wouldn't he?  
 15 A. As I said, we had a conversation about it, so, yes.  
 16 Q. Yes. But you are saying that Mr Goddon didn't even ask  
 17 you to provide him with the information and evidence as  
 18 to what Mr Singh had said to you about these things when  
 19 you had first put them to Mr Singh at that meeting?  
 20 A. All I was asked to provide were the documents and the  
 21 examples of the interaction, and I really can't remember  
 22 if -- if there was a great deal -- deal more in my  
 23 interaction, really, with Alan. I can't remember  
 24 a great deal about it. As I say, I might have had  
 25 a conversation with him but nothing detailed that jumps

1 21

1 to mind, I am afraid, Mr Stuart.  
 2 Q. No. So you don't mention it anywhere in your witness  
 3 statement --  
 4 A. Yes, it wasn't something that sticks in the mind that  
 5 I had a great deal of input into.  
 6 Q. What about the issue of investigating -- your promises  
 7 to investigate the matter that you had made to Ms Birdi,  
 8 and obviously you hadn't followed through with. You  
 9 hadn't actually investigated --  
 10 A. At that point, yes.  
 11 Q. Yes, and then you stopped altogether after you spoke to  
 12 Mr Singh?  
 13 A. After the grievance, yes.  
 14 Q. After you spoke to Mr Singh?  
 15 A. Yes.  
 16 Q. What about all of that? Were you asked either by  
 17 Mr Goddon or by anybody else in SOG to have your input  
 18 into the evidence gathering?  
 19 A. I'm really sorry, Mr Stuart, it's the same answer as  
 20 before. I don't recollect a great deal around this --  
 21 this grievance. All I know is that Alan took on the  
 22 grievance. As I say, I forwarded all my information on.  
 23 I might well have had a telephone conversation at some  
 24 time, but nothing that sticks in the memory, I'm afraid.  
 25 I can't recollect anything specific.

1 22

1 Q. Okay. If we go on to complaint number 2, page 2506:  
 2 {E/748.1/2506}.  
 3 "KS not acting in the best interest of the store."  
 4 Do you see? That's complaint number 2 in general  
 5 terms, and then the subdivisions include, over on  
 6 page 2507, the issue about this CL pre-reg supervisor  
 7 role and the £5,000 demand?  
 8 A. Hm-mm.  
 9 Q. Do you see that item?  
 10 A. Hm-mm. Yes.  
 11 Q. And that complaint is not upheld by Mr Goddon.  
 12 You were aware of what had happened there, weren't  
 13 you?  
 14 A. As I said prior to lunch, I was aware at a top level and  
 15 just had a quick conversation with Kam to say, "Get on  
 16 with it".  
 17 Q. Hm-mm. Well, we don't know -- you can't recall quite  
 18 what you said?  
 19 A. I think from the email it kind of shows I didn't have  
 20 a long conversation with him. It was quite abrupt.  
 21 Q. Did Mr Goddon investigate that with you?  
 22 A. As I said previously, Mr Stuart, I really don't  
 23 recollect a lot about this -- this time, this  
 24 investigation. I probably wouldn't have spent a lot of  
 25 time on it, so ...

1 23

1 Q. Over the page, 2508. {E/748.1/2508} This is still  
 2 within this general grievance number 2. Do you see the  
 3 item:  
 4 "KS is rude towards suppliers."  
 5 Examples: the locum agency. Do you see that?  
 6 A. Hm-mm.  
 7 Q. "Complaint not upheld."  
 8 You were aware of complaints about these rumours,  
 9 weren't you?  
 10 A. The one email from the lady who worked in Guernsey,  
 11 I was, yes.  
 12 Q. And the locum agency, Leanne?  
 13 A. That was, I think, copied into me at some stage.  
 14 Q. So you were aware of those?  
 15 A. I was aware of those, yes.  
 16 Q. Okay. But he didn't ask you -- and you didn't have any  
 17 input into this investigation --  
 18 A. Not that I can recollect, I am afraid.  
 19 Q. -- whatsoever. No. You must have been quite surprised  
 20 when you read this report to find that all of the  
 21 complaints, effectively, were not upheld?  
 22 A. Erm, I just took it as Alan must have investigated it  
 23 thoroughly and it's Alan's decision. It's independent,  
 24 so ... I wasn't -- I can't remember being surprised or  
 25 any other emotion with it, really. It was -- it had

1 24



1 been dealt with and we move on.  
 2 Q. He hadn't investigated it so thoroughly even to ask the  
 3 RDC whose patch this store was in for the last two  
 4 years?  
 5 A. Well, as I said, I can't recollect, Mr Stuart, whether  
 6 or not I had a conversation with Mr Goddon or not. I'm  
 7 not saying that I didn't. I'm just saying I can't  
 8 remember.  
 9 Q. Hm-mm.  
 10 A. I genuinely cannot remember whether I was involved or...  
 11 Q. Okay, 2509, {E/748.1/2509} there is the allegation about  
 12 his behaviour to staff resulting in the four staff  
 13 resigning, one of which SB convinced to return. This  
 14 harks back, do you remember, to the complaint that she  
 15 had raised with you about three staff resigning in three  
 16 months.  
 17 A. Hm-mm.  
 18 Q. Do you remember that; John Ko and all that business?  
 19 A. Hm-mm.  
 20 Q. We have got the details there. We have got Sharon  
 21 Hollands; do you see?  
 22 A. Yes. My understanding is, as I say, all of those were  
 23 dealt with through the grievance process and resolved.  
 24 That was my understanding but ... I presume that's where  
 25 he would have got that information.

1 25

1 Q. Yes, but you were aware, weren't you, for example, as to  
 2 what happened to John Ko? You were aware that he had  
 3 resigned?  
 4 A. Yes, I was.  
 5 Q. And the reasons why he said he had resigned?  
 6 A. Yes, and the grievance was raised and I believe was  
 7 dealt with by Robin.  
 8 Q. Yes, and then there is this further one, Lianne Mckie.  
 9 You can see there, again, the complaints not upheld.  
 10 A. Hm-mm.  
 11 Q. You must have been surprised when you saw that because  
 12 you knew that at least three members of staff had  
 13 resigned?  
 14 A. Hmm. I mean, I haven't read this recently in detail but  
 15 I do notice from the previous page, Alan does say he had  
 16 a conversation with me on 10/11, but I don't remember  
 17 that conversation, I'm afraid.  
 18 Q. No. And you haven't documented it?  
 19 A. No.  
 20 Q. We can't see what it is you might have told him that  
 21 enabled him to dismiss all of these grievances? Yes.  
 22 Okay.  
 23 And then what about 2518: {E/748.1/2518}  
 24 "KS ..."  
 25 That's Mr Singh:

1 26

1 "... lies to SB."  
 2 Were you not aware of Mr Singh having lied to  
 3 Ms Birdi?  
 4 A. I think before lunch, when we touched on the Grays  
 5 issue, I passed comment that I would have expected  
 6 a joint venture partner to have -- have -- have kind of  
 7 answered truthfully and be honest with their partner  
 8 but, as I say, previously, I must have had  
 9 a conversation with Alan around this at some stage  
 10 because he mentions it in the report. But I can't  
 11 recollect the detail.  
 12 Q. No. All right. So your evidence is effectively, as per  
 13 paragraph 55, you didn't have any role to play? {C/7/76}  
 14 A. I had no role to play.  
 15 Q. Page 2545, {E/751/2545} you are not, on the face of it,  
 16 on the email stream between Mr Goddon and Mr Raines at  
 17 this point?  
 18 A. Hm-mm.  
 19 Q. Were you discussing the matter with Mr Raines?  
 20 Obviously, as I understand your evidence, Dartford was  
 21 still your store?  
 22 A. Yes.  
 23 Q. Mr Goddon was just brought in, as it were, as a third  
 24 party, to conduct this grievance. He obviously reported  
 25 to Mr Raines because he was at the same level as you.

1 27

1 Is that right?  
 2 A. Yes, that's correct.  
 3 Q. But it was still your store. So what discussion were  
 4 you having with Mr Raines or Mr Goddon about your store,  
 5 Dartford, at this stage, November 2009?  
 6 A. I can't recollect any specific conversations. The  
 7 grievances had been investigated, the decision was out.  
 8 I might well have caught up with Alan afterwards at one  
 9 of our meetings but I can't remember a specific  
 10 conversation with Mark. The store was performing  
 11 reasonably well at that time from memory. So it was:  
 12 move on. It wasn't any big conversation with Mark that  
 13 I can remember.  
 14 Q. Okay. In his discussions with you, was he generally of  
 15 a similar line to what he has written here: {E/751/2545}  
 16 "I believe we have flushed out most of her  
 17 complaints and do not uphold the majority of them."  
 18 Is that the way he spoke about it?  
 19 A. No, well, the only phrase that I can clearly remember in  
 20 my conversations with Alan after the meeting was that he  
 21 said to me, "Mike, if they had taken your advice right  
 22 at the beginning, around the communication, working  
 23 together, then I don't think this would have happened".  
 24 That's all I can remember as a kind of link in my mind.  
 25 Q. Okay. You can put away E9. Take out E10. 2582.

1 28

1 {E/773/2582} You are back in your role now just  
 2 supporting the store. Is that right? December 2009?  
 3 A. Yes, we were -- just continued to do our day job. So  
 4 the support of the store, landing any new projects, any  
 5 RDM visits or RPC visits; yes.  
 6 Q. Okay. As you record there in the second line:  
 7 "The Partner issues are still impacting on the  
 8 running of the store and although the sales numbers are  
 9 very strong..."  
 10 A. Sorry, which page am I on?  
 11 Q. 2582. Did I say that?  
 12 A. 2582.  
 13 Q. Yes.  
 14 A. Sorry, 2582.1, yes? Okay.  
 15 Q. No, I was looking at 2582. Your email.  
 16 A. Oh right, the email. Sorry, I was looking at the  
 17 document.  
 18 Q. "Hi All.  
 19 "Please find attached the notes and actions from my  
 20 visit last Friday. The Partner issues are still  
 21 impacting on the running of the store and although the  
 22 sales numbers are very strong the actual standards in  
 23 store are very poor..."  
 24 A. That's correct, yes.  
 25 Q. "... and we now need to get in there and make

1 29

1 a difference."  
 2 A. Yes.  
 3 Q. Your penultimate paragraph:  
 4 "As an RST can we please ensure that we make excuses  
 5 to get in there as often as possible and feedback on  
 6 what you find."  
 7 A. Yes.  
 8 Q. What was the purpose of that? Was that just to improve  
 9 standards?  
 10 A. If -- well, I suppose it's -- it's the way that we  
 11 worked as a retail support team, my Lord. It's -- we  
 12 have got quite a disparate group of people that go into  
 13 stores for different reasons, and that if the stores are  
 14 on our radar for whatever reason, maybe sales  
 15 performance or store standard or even relationship  
 16 issues, what we are keen on is if you get into the  
 17 store, feed back to the rest of the people on how it's  
 18 going. So I have copied the RST in on my visit actions.  
 19 Although the store was performing well, the store  
 20 standards were frankly the worst store standards that  
 21 I have seen in a Specsavers store, due to lack of  
 22 investment, and there was a reason for that because  
 23 there was a renewing of the lease due mid-2010. But  
 24 I wanted the team to kind of feed back to me on, "Have  
 25 we actually seen any progress on the actions?" So it's

1 30

1 purely a case of -- you know, we all get into the stores  
 2 at different times. I can't be in there every week,  
 3 neither can Riyaz. If somebody is in there every month,  
 4 they can feed back on what progress has happened.  
 5 I think further on, there is an email from Riyaz,  
 6 giving me some feedback on an unannounced visit that he  
 7 made.  
 8 MR JUSTICE NUGEE: When you say store standards, you mean  
 9 the physical appearance?  
 10 A. Yes, in this particular store, it was the fascia was  
 11 looking really grubby and the paintwork, the interior,  
 12 retail floor was really poor. There was no doors on the  
 13 cupboards behind the cash point. The repairs desk was  
 14 really poor; the test rooms were incredibly poor and  
 15 there was one particular ophthalmic seat with a rip in  
 16 the seat. And if you are a customer going in for  
 17 a test, which, in reality, is a medical check-up, then  
 18 you expect high clinical standards.  
 19 So my view was, even though we have got to wait for  
 20 this re-lease renewal, we need to do some work now, even  
 21 if it's a splash of paint, or putting some doors on  
 22 a cupboard. Give the customers a really good clinical  
 23 and retail experience. So that's what I was trying to  
 24 push through. That was it.  
 25 MR STUART: Okay. 2618 {E/797/2618} There are issues

1 31

1 arising at Christmas time, 2009?  
 2 A. Hm-mm.  
 3 Q. You get copied in on them. I think there is another  
 4 email to you, 2617 {E/796/2617} is an email directly to  
 5 you. I don't want to go into any detail on this, but is  
 6 this what you are referring to earlier in your evidence,  
 7 where you said you were frankly getting a bit  
 8 frustrated?  
 9 A. I was getting frustrated with both Kam and Swarandeeep  
 10 because for me to have to intervene to resolve  
 11 a Christmas party issue, I felt was -- was something  
 12 that they shouldn't need me to do.  
 13 I did. I contacted -- tried to contact Kam, and  
 14 I think I did reply in an email to them both, saying,  
 15 "Look, hey, come on, get this sorted. It shouldn't be  
 16 something that I get involved in."  
 17 But I think in an email, Kam -- Swarandeeep also said  
 18 she was acting on my advice. So I obviously was  
 19 liaising with Swarandeeep and with -- and trying to get  
 20 Kam to resolve this issue.  
 21 Q. You could see that at 2617 {E/796/2617} she was  
 22 complaining about him. At the first hole punch:  
 23 "I have to face Kam undermining me on a daily basis,  
 24 and now I'm being undermined by an ex-locum because of  
 25 Kam's instruction ..."

1 32

1 Do you see all of that?  
 2 A. Yes, I think it was Kam had invited someone to  
 3 a Christmas party, I believe.  
 4 Q. You understood that she was continuing to complain about  
 5 his behaviour towards her?  
 6 A. Yes, I think -- I actioned the email in trying to  
 7 resolve the issue and that's what I did with it, but,  
 8 yes, I can see that interpretation.  
 9 Q. Okay. He then issued his letter, 2631. {E/805.1/2631}  
 10 You don't mention it in your witness statement but  
 11 I presume, as the RDC for the area, for this store, you  
 12 would have been made aware of this by SOG? This is his  
 13 letter of 7 January -- this is Mr Singh's letter to SOG.  
 14 Do you see?  
 15 A. I more than likely would have at some stage been made  
 16 aware of it.  
 17 Q. Okay, if you go over to page 2632? {E/805.1/2632}  
 18 A. Sorry, my eyes are starting to go a bit fuzzy.  
 19 Q. All right. 2632, above the first hole punch, it says:  
 20 "On a final note, I don't believe Miss Birdi is the  
 21 right person to lead the Dartford store. There is a  
 22 major disconnect between her and the majority of the  
 23 team. She is very abrasive with the team and I find  
 24 myself having to constantly console team members after  
 25 they have been mistreated by her. I feel Miss Birdi's

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1 actions and behaviours to both me and the team are  
 2 counter productive."  
 3 Do you see?  
 4 A. Yes, as I said, I would have been made aware. I'm not  
 5 sure when.  
 6 Q. And his last line of the next paragraph:  
 7 "So I do not think that this business will continue  
 8 to flourish, with the continued employment of  
 9 Miss Birdi."  
 10 So you became aware of that in -- around this time,  
 11 sort of beginning of 2010?  
 12 A. I would, I'm sure, have had some communication from  
 13 somebody, maybe through Legal or somebody else, to say  
 14 that we have received this letter, but I can't remember  
 15 who, why or when. I wasn't copied into the letter  
 16 anyway. It was just, I believe I would have had a call  
 17 from somebody, but I can't recollect who or when.  
 18 Q. Okay. 2633. {E/806/2633} The issue of the four-day  
 19 testing. We are now into January 2010. So we are going  
 20 back to a discussion you had in September 2008?  
 21 A. Hm-mm.  
 22 Q. But anyway the issue of the four day testing is being  
 23 escalated by Mr Moore, the employment counsel of  
 24 Specsavers. Do you see, it's going to now go to a board  
 25 meeting?

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1 A. Yes.  
 2 Q. Were you involved in that decision?  
 3 A. No, I was not.  
 4 Q. To escalate it up to board meeting-type --  
 5 A. No, I was not.  
 6 Q. All right. 2669. {E/826/2669} You are one of the  
 7 recipients of Mr Rajan's email -- we are  
 8 into February 2010 now?  
 9 A. Yes.  
 10 Q. This is all this stuff about the maintenance. Is that  
 11 right?  
 12 A. Yes, Riyaz has popped in to see the store unannounced  
 13 and, as I asked in that previous email, has fed back on  
 14 the actions and where the store was performing and the  
 15 standards in store.  
 16 Q. Okay. And so looking at the first paragraph:  
 17 {E/826/2669}  
 18 "We also visited Dartford. This was an unannounced  
 19 visit as a follow-up to Mike's visit in December. Kam  
 20 had gone home as his child was taken ill, and this is  
 21 a recurring theme, as I was told by Ruth ..."  
 22 That would be Ruth Wotton, wouldn't it?  
 23 A. Hm-mm.  
 24 Q. One of the signatories to the letter?  
 25 A. Yes, I am sure you're right was.

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1 Q. And:  
 2 "Swarandeep was unaware that Kam had left..."  
 3 Do you see that?  
 4 A. Yes.  
 5 Q. She was testing. She is in the room testing, isn't she?  
 6 A. Yes.  
 7 Q. Did you get involved at all, yourself, in trying to  
 8 manage this store at this stage?  
 9 A. I'm trying to remember. Again, I can't accurately  
 10 remember what I did with this email, apart from, at this  
 11 stage, because we were into board meetings, talking  
 12 about the issues in the relationship and the  
 13 partnership. My advice to my team was we just keep on  
 14 doing the day job, having the right conversations and  
 15 trying to deliver a successful Dartford business.  
 16 I would have tried, I assume, to follow up on this  
 17 but I don't know how. I haven't seen anything in the  
 18 notes to show how.  
 19 Q. All right. The board meeting you are talking about is  
 20 2725. {E/851/2725} Mr Raines is there and Mr Butcher.  
 21 Do you know Mr James Butcher?  
 22 A. Yes, I do.  
 23 Q. What's his role?  
 24 A. He is a retail performance consultant in the Granada  
 25 region. 2725.

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1 Q. 2725. I'm interested: you weren't chosen to be the  
2 director at this meeting?  
3 A. No, I wasn't.  
4 Q. Is it usual for Mr Raines to go along personally when it  
5 has escalated to board meeting?  
6 A. It can be a selection of people, but Mark does do and  
7 does chair boards meetings. I think it all depends on  
8 who is involved or who is available at the time.  
9 Q. Yes, so how many boards meetings have you chaired -- had  
10 you chaired, let's say, between -- you took up the  
11 cudgels is 2008, really, didn't you?  
12 A. Well, it was back end of 2007 and probably from that  
13 time, three or four, across my three regions. So --  
14 Q. In the seven years since then?  
15 A. Oh, since then?  
16 Q. Yes?  
17 A. Probably around about 20? 15 to 20.  
18 Q. Okay?  
19 A. Quite often I'm holding a board meeting to do with  
20 signing off of accounts and partners aren't there and  
21 disciplinary issues, disciplinary reports, as it was  
22 with this case. So we do, as an RDC, get involved in  
23 chairing board meetings. Not on a regular basis because  
24 we don't go to board meetings regularly, but over --  
25 over time.

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1 Q. So between 2007 and 2010, when you eventually get to do  
2 your August board meetings, which we are coming to in  
3 paragraph 56 of your statement, {C/7/76} so in that  
4 three-year period, prior to going along to the Dartford  
5 Specsavers meeting, how many board meetings did you  
6 attend as the director?  
7 A. I really -- I can't give you a specific because I don't  
8 have that record, but I had had -- I had done board  
9 meetings as chairman before.  
10 Q. Would it be a handful?  
11 A. And I had attended -- sorry, Mr Stuart -- and I had  
12 attended board meetings in, like, a note-taker-type  
13 role, not as the chairman before. So I was -- I did  
14 understand and understand how the process worked and  
15 understand how to manage a board meeting.  
16 Q. Apart from board meetings which were just purely  
17 procedural -- approving accounts in circumstances where  
18 the JV partner was away or something, you were standing  
19 in for them and those sorts of things -- how many board  
20 meetings had you attended as a director? Not as  
21 a note-taker; as a director? Not of the purely  
22 procedural type. So ones where decisions, actual  
23 decisions were actually going to be discussed and then  
24 decided upon? In that period, 2007 to 2010?  
25 A. So things like a disciplinary report-type meeting?

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1 Q. Yes, one where a disciplinary report is being considered  
2 and a decision is going to be made as to what are we  
3 going to do; what are we, the company, going to do?  
4 A. I would probably think a couple.  
5 Q. A couple?  
6 A. Yes.  
7 Q. Before this one?  
8 A. Yes. Without sitting, reflecting and going back over  
9 notes, I can't be specific, Mr Stuart, but from memory,  
10 there would be at least a couple of examples of where  
11 I did this.  
12 Q. Okay. So you weren't chosen for the February meeting,  
13 2725? {E/851/2725}  
14 A. No, I wasn't, no.  
15 Q. Were you told of it?  
16 A. I would have been aware that there was a board meeting.  
17 Q. Right?  
18 A. I assume. Again --  
19 Q. But from whom?  
20 A. It could be a telephone conversation, a catch-up with  
21 Mark, or it could be when I was in Guernsey and sat with  
22 the legal team. It could be any route. I have got no  
23 recollection of how it happened because I wasn't  
24 involved in the meeting, but I certainly was aware of --  
25 that it happened.

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1 Q. Okay. Would you perhaps be speaking to Mr Raines, your  
2 boss, about it?  
3 A. I might well have had a conversation with Mark, but then  
4 I had a catch-up on a regular basis with Mark.  
5 Q. 2749 {E/859/2749} is an email of March 2010, in which  
6 Mr Rajan reports that the communication between the  
7 partners seems to be improving. 2749? That's right,  
8 isn't it?  
9 A. That's Riyaz's view, yes, absolutely.  
10 Q. And you didn't have any counter view?  
11 A. No.  
12 Q. Not that I have seen in your witness statement or  
13 anywhere in any document whatsoever?  
14 A. That's Riyaz's view of that business -- business  
15 planning meeting.  
16 Q. Okay. April 2010, 2785. {E/864/2785} You are copied in  
17 on Ms Birdi's detailed email, raising various issues.  
18 Do you see?  
19 A. Yes.  
20 Q. Including, at the bottom of the page, she is complaining  
21 that he is leaving work early; not coming into work on  
22 most occasions; not having communicated with her, et  
23 cetera, et cetera.  
24 A. Hm-mm.  
25 Q. She even lists all the days when he didn't come to the

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1 store when he was supposed to and hadn't arranged cover?  
 2 A. Hm-mm.  
 3 Q. Yes? And/or hadn't arranged cover, sorry. 2786?  
 4 {E/864/2786}  
 5 A. Hm-mm.  
 6 Q. Do you see all of that?  
 7 A. Yes.  
 8 Q. That must have concerned you, to see that Mr Singh  
 9 wasn't pulling his weight here?  
 10 A. I don't recollect a great deal about this email, looking  
 11 back now, Mr Stuart, because it was from Swarandeep to  
 12 Specsavers Dartford, so I should think this is a  
 13 communication directly to Kam that she is addressing and  
 14 I was blind copied into it along with the RST.  
 15 So I -- I may well have read it in detail or may  
 16 well have taken the opinion that we are at board meeting  
 17 level with this and we do the day-to-day job. So  
 18 I can't remember taking any action on the basis of it,  
 19 but I tend not to if I'm blind copied into emails.  
 20 Q. We are not board meeting level in relation to  
 21 allegations against Mr Singh, are we?  
 22 A. Hm-mm, no, we are not.  
 23 Q. The board meeting level is his allegations against her,  
 24 relating to the four-day testing and the equalisation;  
 25 nothing else is being escalated to board level?

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1 A. No.  
 2 Q. So I don't think you can say that you didn't deal with  
 3 this because you thought it was escalated to board  
 4 level, can you?  
 5 A. At that stage, there were board meetings that had  
 6 happened surrounding Dartford so, again, all I would  
 7 say, Mr Stuart, I didn't do anything with it. It was  
 8 blind copied in to me. It was sent to Kam. So if I had  
 9 read it and there was a concern that I would have  
 10 registered that, but I didn't take any action on the  
 11 basis.  
 12 Q. I thought you were supposed to be supporting her just as  
 13 you were supporting him?  
 14 A. We were at this stage really focusing on doing the day  
 15 job within Dartford and doing the business planning  
 16 meetings, supporting and driving the performance of the  
 17 business.  
 18 Q. Okay.  
 19 A. Maybe I should have done something separate with this  
 20 but I didn't.  
 21 Q. I suggest to you that, due to the discussions you had  
 22 had with Mr Raines, and you have accepted you probably  
 23 did have some discussions with him, you knew that at  
 24 this stage -- so we are in April 2010 -- the process had  
 25 started towards exiting Ms Birdi from the store?

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1 A. Absolutely not, Mr Stuart.  
 2 Q. And that had started with the escalation to a board  
 3 meeting for the issue about the four day testing and it  
 4 was eventually going to lead to her facing disciplinary  
 5 sanction and dismissal?  
 6 A. Absolutely not, Mr Stuart. I am just trying to do the  
 7 day job. My attempts at facilitating the partnership  
 8 had not been successful with the grievance process,  
 9 et cetera, and I suppose I was resigning myself to the  
 10 fact that I'll support the store doing the day job piece  
 11 and support where I can.  
 12 It's blind copied. I didn't action it so ...  
 13 Q. We have finished with that bundle. Could you be passed  
 14 E11. We are now back to your witness statement because  
 15 you pick up the story at paragraph 56, don't you?  
 16 {C/7/76}  
 17 A. I do.  
 18 Q. 2 June 2010?  
 19 A. Yes.  
 20 Q. Do you see that? It's 2951, I think. {E/915.1/2951}  
 21 Another "Dear Partners" letter from Mr Singh. Do you  
 22 see that?  
 23 A. Hm-mm.  
 24 Q. Just to be clear, in that period, then, from January  
 25 to June 2010 -- or February, when there was the board

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1 meeting, 2010, to June 2010 -- did you do anything in  
 2 relation to Dartford, either to support Ms Birdi --  
 3 A. My team would have done, through either business  
 4 meetings, RDM meetings, but nothing specifically that  
 5 I can recollect.  
 6 Q. Okay. Were you aware about the issue of the grievances  
 7 that had been raised by Fatima Khan and Jas Khunkhuna?  
 8 A. I was aware grievance had been raised and I believe  
 9 Karina would initially -- was looking into it and then  
 10 Riyaz, who worked for me -- that's my retail performance  
 11 consultant -- took over the ... So I was aware it was  
 12 happening but I wasn't involved in it.  
 13 Q. So Riyaz Rajan, does he report to you, or is he sort of  
 14 on the dotted line?  
 15 A. No, Riyaz is my retail performance consultant. So he  
 16 reports directly for me and looks after Meridian East  
 17 and Meridian West.  
 18 Q. So he reports to you. If we saw a chain of command, he  
 19 would report to you, you would report to Mr Raines?  
 20 A. That's correct.  
 21 Q. So why did you consider it appropriate that he, somebody  
 22 at that level, should be the person who was dealing with  
 23 these very serious allegations by Ms Khunkhuna?  
 24 A. I didn't. It was -- the grievances were obviously  
 25 received through to Legal and Legal made the call as to

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1 who would -- who would hear the grievance. So I didn't.  
2 Q. So you had no part to play in the selection of Mr Rajan?  
3 A. I don't believe so.  
4 Q. Okay. Were you aware of the issue about Ms Khan,  
5 Fatima Khan, and how she was leaving also?  
6 A. Hm-mm.  
7 Q. Having raised a grievance -- or a complaint, let's put  
8 it that way. And then 2949, Alison Girollet had given  
9 some advice about that and about -- do you see at the  
10 bottom of 2949: {E/915/2949}  
11 "Whilst the grievance procedure is still ongoing, it  
12 is probably better for the employee to remain in her  
13 employment at Dartford."  
14 Do you see that?  
15 A. Hm-mm.  
16 Q. Were you aware of that?  
17 A. I wasn't -- I don't believe I was aware of this letter.  
18 I was -- I believe I would have been aware of the issue  
19 with the grievance, but at this stage, this is -- and  
20 the way it works in Specsavers, this kind of had  
21 gravitated to our legal team, who would be doing  
22 communication and organising who would be hearing the  
23 grievance. So I wouldn't automatically have been  
24 brought totally up to pace. I'm sure I would have been  
25 aware but not a detailed --  
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1 Q. I see, so it would rather have been left to the legal  
2 team to deal with --  
3 A. Yes, that's the way it works, yes.  
4 Q. -- this sort of stuff. So at 2949 we can see the legal  
5 team setting out there what they have told Ms Birdi in  
6 a telephone call regarding Fatima Khan? {E/915/2949}  
7 A. Yes.  
8 Q. You then refer to page 2951, the "Dear Partners" letter  
9 from Mr Singh, which starts: {E/915.1/2951}  
10 "I was shocked to learn that Ms Birdi would like to  
11 re-employ Fatima Khan, an employee who resigned and left  
12 work yesterday..."  
13 Do you see all of that?  
14 A. Hm-mm.  
15 Q. You say in paragraph 56 of your witness statement  
16 {C/7/76} that the content of this letter and  
17 specifically the fact that he was suggesting that five  
18 of the retail staff had threatened to resign -- do you  
19 see that?  
20 A. Hm-mm.  
21 Q. And that Ms Birdi was considering re-employing  
22 Fatima Khan. You say:  
23 "The risk of approximately two-thirds of the Store's  
24 retail staff leaving was one of the reasons for  
25 commencing the investigation into the actions of  
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1 Ms Birdi and Mr Singh towards each other and the  
2 Dartford business..."  
3 Do you see that?  
4 A. That's my understanding, yes.  
5 Q. That's your understanding?  
6 A. Hm-mm.  
7 Q. Were you not involved, then, in this?  
8 A. As I said, I would have been kept briefed at a top level  
9 without getting involved in the detail, because Legal  
10 would have done that, but certainly that was my  
11 understanding of this letter and the situation.  
12 Q. I see, but you yourself weren't asked for your input as  
13 to the decision as to what should happen here?  
14 A. No, this was going through Legal.  
15 Q. No. Did you even see this letter at the time?  
16 A. I don't think I saw the content. I really can't say.  
17 I certainly was aware of it but not the detail.  
18 Q. No. We don't see any emails to or from you --  
19 A. No, as I say, the way grievances quite often work or  
20 these sort of situations work is that it will go through  
21 to our legal team and our legal team will coordinate  
22 things. Our day is -- day job -- day to day management  
23 and helping the regions perform, rather than getting  
24 embroiled in this work if we can avoid it.  
25 Q. Okay. Would you be having any discussions with  
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1 Mr Raines at this time?  
2 A. Apart from our normal catch-ups, nothing specifically  
3 around Dartford that jumps to mind.  
4 Q. If you go back to page 2948 {E/914/2948} there's  
5 Mr Raines's notes and he is unclear as to who he was  
6 necessarily speaking to about this, but on 3 June,  
7 Dartford.  
8 Do you recall having any conversations with  
9 Mr Raines about your store, Dartford, in your region?  
10 A. No, I can't -- well, I have got no recollection.  
11 Q. No recollection; all right, fine.  
12 So what then happens is, according to paragraph 56  
13 of your statement, {C/7/76} you understand that  
14 Mr Raines put your name forward to chair the board  
15 meeting?  
16 A. That's correct, yes.  
17 Q. He didn't seem to have any such recollection yesterday?  
18 A. Hm-mm.  
19 Q. When I asked him about this?  
20 A. Yes.  
21 Q. Where do you get the information --  
22 A. I get the information from Stephen Moore in Legal.  
23 Q. Oh, I see, okay.  
24 A. And -- yes, okay. That would be privileged.  
25 Q. Did you discuss it with Mr Raines?  
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1 A. No, I didn't, actually.  
 2 Q. So you had these catch-ups?  
 3 A. Yes.  
 4 Q. You were about to be sent to be the board director of  
 5 the meeting at which something pretty serious is about  
 6 to happen to Ms Birdi?  
 7 A. Hm-mm.  
 8 Q. Not to anybody else?  
 9 A. Yes.  
 10 Q. And you don't even discuss the matter with Mr Raines?  
 11 A. No, it is pretty common occurrence that when I would get  
 12 an email from Legal to do with an investigation,  
 13 a grievance, a disciplinary or a board meeting, where it  
 14 may say that, "Mark has volunteered you for this, Mike",  
 15 and that would be it and I would take all my guidance  
 16 from Legal from there on in.  
 17 My catch-ups with Mark, they weren't weekly. We  
 18 would maybe catch up once a month because Mark said he  
 19 doesn't like to micromanage. He likes to recruit good  
 20 people and then get them to do the job after a good  
 21 briefing. So there is certainly no reason why I would  
 22 have needed to talk directly to Mr Raines because  
 23 I could get all of my information, and did, from the  
 24 legal team.  
 25 Q. Hm-mm. Did you speak to Mr Dyson?  
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1 A. No.  
 2 Q. To get SOG's views on matters from him?  
 3 A. Over this period, no. I'm not even sure Mr Dyson was in  
 4 the UK at this point. Was he in Australia? I'm not  
 5 sure.  
 6 Q. No, I think it was the UK.  
 7 A. But, no, I didn't.  
 8 Q. Or any other board director of SOG?  
 9 A. No, I didn't.  
 10 Q. Either Mr Perkins or --  
 11 A. No, as I said, Mr Stuart, I took all of my guidance  
 12 through the legal team.  
 13 Q. I'm not sure asking to know what your guidance from  
 14 Legal was. I'm asking you whether you spoke to any of  
 15 the directors?  
 16 A. No.  
 17 Q. Or had any emails from the directors?  
 18 A. No.  
 19 Q. Or memos from the directors, telling you what SOG's  
 20 position was --  
 21 A. No.  
 22 Q. -- in relation to this?  
 23 A. No.  
 24 Q. No? Okay. Were you aware of the outcome of the Rajan  
 25 investigation into the KhunKhuna and the Khan  
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1 grievances?  
 2 A. I believe so. I think Riyaz, as a matter of course,  
 3 tends to copy me in on just about everything that he  
 4 sends. So I think he did copy me in on some emails. So  
 5 I would have been aware of the outcome, yes.  
 6 Q. Okay. You can put away E11. E12, quickly. We have  
 7 reached the board meeting.  
 8 A. Yes.  
 9 Q. The notice of the board meeting, I think we find at  
 10 3243. {E/980.3/3243} Is this all done by Legal or do  
 11 you have any part to play?  
 12 A. It's all done by Legal.  
 13 Q. Okay. You don't sign anything or do anything except  
 14 just turn up at the meeting, armed with the information  
 15 that I'm going to come to?  
 16 A. Yes, I am supplied with a pack in advance of the meeting  
 17 with all the information that I need to read through  
 18 prior to the start of the meeting, so -- and most of the  
 19 documents I believe need to be signed at the board  
 20 meeting, apart from some, I believe, declarations from  
 21 Dame Mary or whoever in Guernsey. But I have all the  
 22 information well in advance of the board meeting.  
 23 Q. Okay. You say at paragraph 57: {C/7/76}  
 24 "I believe that I was asked to chair the board  
 25 meeting not only because it was within the remit of my  
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1 role, but also because I had not been involved in the  
 2 investigation and was based locally to the Store."  
 3 A. Yes.  
 4 Q. You are talking about Mr Clark's investigation?  
 5 A. Yes.  
 6 Q. Is that right?  
 7 A. Yes, and I hadn't actually, I don't think -- I'd been  
 8 involved in trying to keep the relationship together but  
 9 not involved in any of the investigations. So  
 10 Mr Clark's, yes.  
 11 Q. So it is your evidence that Mr Clark's investigation  
 12 that led to this board resolution and was considered,  
 13 you had no part in that investigation?  
 14 A. I wasn't interviewed, I don't believe, by David.  
 15 Q. No?  
 16 A. At all, so -- and I was asked to complete this. So I --  
 17 knowing that I was free, I didn't question that. I was  
 18 asked to do it.  
 19 Q. Did you not consider it was odd that you hadn't been  
 20 interviewed by Mr Clark in relation to his  
 21 investigation? You know what his investigation was  
 22 about?  
 23 A. Hm-mm.  
 24 Q. Do you?  
 25 A. Yes, well, I've read the -- I wasn't involved, but I did  
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1 read the investigation notes prior to -- prior to the --  
 2 prior to the meeting.  
 3 Q. Yes.  
 4 A. But did I see it as -- it didn't really cross my mind,  
 5 Mr Stuart.  
 6 Q. No, what was Mr Clark's investigation about? Do you  
 7 recall?  
 8 A. Well, it was -- from -- well, firstly, I wasn't involved  
 9 in the investigation, so I read -- I read through the  
 10 investigation notes.  
 11 Q. You said that already. My question was --  
 12 A. Yes, I'm just trying to explain --  
 13 Q. -- what was Mr Clark's investigation about. Do you  
 14 recall?  
 15 A. Do I recall? From memory, it was to do with the  
 16 breakdown in the relationship between Swarandeeep and  
 17 Kam.  
 18 Q. Hm-mm?  
 19 A. And you know, I was given that report prior to the  
 20 meeting. I read the report. I wasn't involved in it.  
 21 I made a decision at the board meeting and moved  
 22 forward.  
 23 But I haven't -- I haven't, if you like, kept the  
 24 content in my mind, Mr Stuart, as it was a period of  
 25 time ago.

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1 Q. I will take to you it in a minute but I'm interested,  
 2 you see, because, according to your evidence here, you  
 3 are going to make a decision in a moment in this board  
 4 meeting?  
 5 A. Yes.  
 6 Q. And you don't give us any indication of anybody else  
 7 having given you a steer as to what SOG's view is. So  
 8 it is your personal view that caused you to vote as you  
 9 did?  
 10 A. I took all of my information and guidance from the legal  
 11 team, Mr Stuart. So that --  
 12 Q. I don't want --  
 13 A. If they got guidance from someone else, I can't comment,  
 14 but I took all my guidance from the legal team.  
 15 Q. Well, if you are saying that you were given some advice  
 16 or guidance by the legal team itself, then I'm not  
 17 asking about that, but if you are simply saying that the  
 18 legal team sent you a piece of guidance from above, ie  
 19 from the directors of SOG, then I will ask you about  
 20 that.  
 21 A. I wouldn't know whether they did or didn't. All I took  
 22 was my guidance from Legal, which was, you know, around  
 23 the --  
 24 MR POTTS: Communications are privileged, my Lord, just to  
 25 be clear.

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1 MR JUSTICE NUGEE: I understand that but I think Mr Stuart  
 2 is right that if all Legal is doing is acting as a post  
 3 box, passing on something from somebody higher up in the  
 4 organisation, then it's not privileged. There may be an  
 5 argument to run.  
 6 MR POTTS: I think there may be an argument about it.  
 7 MR JUSTICE NUGEE: Yes.  
 8 MR STUART: I can see it depends upon -- if there is an  
 9 email from the Head of Legal, saying --  
 10 MR POTTS: My Lord, the position is, the ebb and flow of  
 11 communications has to be viewed in the totality and  
 12 a one-off communication doesn't in fact, as a matter of  
 13 privilege, get taken out of context and ceases to be  
 14 privileged, because you look at the ebb and flow and  
 15 back and forth.  
 16 MR JUSTICE NUGEE: I understand that, but in the end, the  
 17 privilege is for legal advice, not for acting as a post  
 18 box.  
 19 MR STUART: All right. So let's just -- as I understand it,  
 20 you say here that you had not been involved in  
 21 Mr Clark's investigation?  
 22 A. Absolutely.  
 23 Q. Mr Clark's investigation -- the report of the  
 24 investigation is at 3273 {E/988/3273} and ends at  
 25 page 3288. {E/988/3288} 15 pages. Do you see it?

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1 A. Hm-mm.  
 2 Q. That's what you are referring to, isn't it?  
 3 A. Yes.  
 4 Q. And we can see, if you go to page 3278, {E/988/3278} in  
 5 respect of Mr Singh, he says:  
 6 "As part of my investigation, no evidence of  
 7 a disciplinary case to answer against KS has arisen."  
 8 That's him?  
 9 A. Hm-mm.  
 10 Q. Clear. But then we come on to Swarandeeep Birdi, do you  
 11 see. It says:  
 12 "In relation to SB, the following matters have  
 13 arisen from my investigation."  
 14 Do you see?  
 15 A. Hm-mm.  
 16 Q. And the first is:  
 17 "Actions towards [Mr Singh]/Actions destructive of  
 18 the working relationship with [Mr Singh]."  
 19 A. Hm-mm.  
 20 Q. I'm interested to hear that, that being the first  
 21 allegation on the charge sheet, you, the RDC for their  
 22 store and the man who had been involved in all of these  
 23 meetings -- noting these meetings; input into the  
 24 meetings; witnessing their working relationship and  
 25 where it was breaking down or not; witnessing how both

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1 of them -- to be fair to you, in your witness  
 2 statement -- both of them had been acting in certain  
 3 ways at certain times, different times. I'm interested  
 4 that Mr Clark didn't investigate that issue with you?  
 5 But that's your evidence?  
 6 A. That is my evidence. It didn't happen and --  
 7 Q. No, all right. Over the page, {E/988/3280} we have then  
 8 got:  
 9 "Actions towards store staff."  
 10 That's the second charge. And it's --  
 11 A. Sorry, which page are we on?  
 12 Q. 3280, number 2:  
 13 "Actions towards store staff."  
 14 Do you see it? That's the second charge?  
 15 A. Hm-mm.  
 16 Q. And that is broken down into:  
 17 "Encouraging staff to raise formal grievance  
 18 complaints against [Mr Singh]."  
 19 And then over the page at 3281 {E/988/3281} under  
 20 the heading:  
 21 "Inappropriate behaviour towards store staff.  
 22 "Preferential treatment of Fatima Gulamali and Jas  
 23 Khunkhuna."  
 24 Do you see that?  
 25 A. Yes.

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1 Q. And then over the page, 3283, {E/988/3283} other  
 2 behaviour towards staff, and he cites some quotes from  
 3 various interviews with some of the staff?  
 4 A. Hm-mm.  
 5 Q. Do you see that?  
 6 A. Yes.  
 7 Q. Again, were you aware from your going into the store, or  
 8 from your line report, Mr Rajan, going into the store --  
 9 were you aware of the staff's views of Mr Singh and  
 10 Ms Birdi?  
 11 A. Over which particular -- from right from --  
 12 Q. In that period, 2008, when he joins the store, through  
 13 to 2010, when Mr Clark is reaching his conclusion that  
 14 it's all down to Ms Birdi?  
 15 A. I think I've, over the journey of correspondence and  
 16 emails, then, various points have been raised, naming  
 17 grievances et cetera around the staff and how they have  
 18 been involved in this process, but nothing --  
 19 Q. But he didn't ask you about that?  
 20 A. No, he didn't, no.  
 21 Q. Then over the way, we have got the third charge, which  
 22 is: {E/988/3285}  
 23 "Failure to comply with instructions or Board  
 24 resolutions."  
 25 A. Yes.

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1 Q. Which turns out to be to do with the signing off of the  
 2 pension and the expenses?  
 3 A. Hm-mm.  
 4 Q. You knew that Mr Singh was tit for tatting her on this,  
 5 wasn't he?  
 6 A. Hm-mm.  
 7 Q. He wouldn't sign her expenses because she wouldn't sign  
 8 his equalisation on the car or the pension. This is  
 9 right, isn't it?  
 10 A. Yes, it was.  
 11 Q. And you were aware that Mr Singh had demanded £5,000  
 12 before he would do something, et cetera?  
 13 A. Yes.  
 14 Q. None of that gets inputted into this investigation?  
 15 A. I wasn't involved in the investigation, so --  
 16 Q. No, you weren't.  
 17 A. -- that's all I can say, Mr Stuart.  
 18 Q. No, so Mr Clark hadn't asked you about any of this?  
 19 A. No.  
 20 Q. All right. Finally, charges 4 and 5 seem to go  
 21 together: {E/988/3286}  
 22 "Actions destructive of the working relation with  
 23 SOG."  
 24 And 5: {E/988/3287}  
 25 "State of working relationship."

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1 Do you see that? Mr Clark's investigation report,  
 2 this is page 3286: {E/988/3286}  
 3 "In my opinion, any working relationship  
 4 (particularly one between equal JVP business partners)  
 5 requires business partners to be willing to compromise  
 6 on matters between them and/or 'move on'..."  
 7 Do you see that?  
 8 A. Yes.  
 9 Q. "The evidence suggests SB has however consistently  
 10 demonstrated a refusal to do so."  
 11 A. Hm-mm.  
 12 Q. Mr Singh also. He had refused, as you fairly say in  
 13 your evidence. He had refused to move on in relation to  
 14 the four days' testing; he was going to stand firm on  
 15 that, wasn't he?  
 16 A. He had that view, yes.  
 17 Q. {E/988/3286} "Similarly, in the event of a dispute  
 18 arising (for example, a grievance ...) it is vital that  
 19 a JVP accept the outcome of the dispute resolution  
 20 process..."  
 21 Do you see that?  
 22 A. Sorry, which line?  
 23 Q. This is the second paragraph under:  
 24 "Refusal to accept compromise/outcomes and move  
 25 forward..."

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1 Do you see that?  
 2 A. No, sorry. My eye sight --  
 3 Q. 3286.  
 4 A. Yes, got that, yes.  
 5 Q. Just below the first hole punch?  
 6 A. Okay.  
 7 Q. Do you see that?  
 8 A. Yes.  
 9 Q. And so he is saying that Ms Birdi and Ms Birdi alone,  
 10 not Mr Singh, is refusing to accept outcomes of dispute  
 11 resolution processes?  
 12 A. Hm-mm.  
 13 Q. Do you see that?  
 14 A. Yes.  
 15 Q. And then his examples that he gives are the mediation,  
 16 item (a). Do you see that?  
 17 A. Hm-mm.  
 18 Q. The fact that she was making allegations against  
 19 Mr Singh of bullying in (b). She was still doing that;  
 20 that she is still making those allegations?  
 21 A. Hm-mm.  
 22 Q. (c) is also bullying. (d) is alleging that KS had acted  
 23 inappropriately towards Denise Kinsella. (e) is:  
 24 "... SB persisted in alleging that KS had acted  
 25 inappropriately towards a John Ko."

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1 Do you see?  
 2 A. Hm-mm.  
 3 Q. And it goes on over the way.  
 4 Now, you were aware of Mr Singh continuing to make  
 5 allegations against Ms Birdi also, weren't you?  
 6 A. I had been copied in all various emails --  
 7 Q. On all of these ones that we have seen, and I have taken  
 8 you to them.  
 9 A. -- all the way through, yes.  
 10 Q. But you weren't asked by Mr Clark to have any input into  
 11 this --  
 12 A. No.  
 13 Q. -- investigation. And then:  
 14 "State of working relationship."  
 15 So the summary of it is on page 3287. Do you see  
 16 that? {E/988/3287}  
 17 A. Hm-mm.  
 18 Q. "It is vital for the sustained success ... that the  
 19 [partners] have a working relationship..."  
 20 A. Hm-mm.  
 21 Q. "... trust and confidence with each other..."  
 22 Do you see that?  
 23 A. Hm-mm.  
 24 Q. Vital that they have trust and confidence with each  
 25 other:

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1 "... this is simply not happening in the Dartford  
 2 business."  
 3 Do you see his sentence?  
 4 A. Hm-mm.  
 5 Q. I think that was probably also your view, wasn't it,  
 6 that they didn't have trust and confidence in each  
 7 other?  
 8 A. Hm-mm.  
 9 Q. And you knew that one of the main things that Ms Birdi  
 10 was raising at this point was that Mr Singh had been  
 11 moonlighting in Grays and doing all those things and had  
 12 lied to her. You knew that that's what she was saying?  
 13 A. That's what she was saying.  
 14 Q. And you knew that the underlying facts were supportive  
 15 of that, that he was playing silly buggers, working at  
 16 his wife's store in Grays?  
 17 A. Mr Singh said that he was working on the Sundays, yes.  
 18 Q. And he had not told Ms Birdi --  
 19 A. And he had not told...  
 20 Q. The relationship of trust and confidence had not been  
 21 complied with by Mr Singh in that regard, had it?  
 22 A. As I said in my evidence, I would have expected more.  
 23 Q. That's right. So you knew those things. Mr Clark  
 24 appears not to have done. He doesn't mention them  
 25 anywhere in his report. But, of course, you say he

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1 hadn't even spoken to you during the course of his  
 2 investigation?  
 3 A. That's my recollection, yes.  
 4 Q. Okay, fine. So your --  
 5 A. He would, I assume, have had all the notes that I would  
 6 have forwarded, to the previous investigations and  
 7 grievances and the meetings. So I assume he would have  
 8 had the written information that we see in the bundles.  
 9 Q. Only the notes that you had provided to Mr Raines,  
 10 the two letters --  
 11 A. Yes, yes, absolutely, yes.  
 12 Q. -- that you had sent in and only --  
 13 A. The letters.  
 14 Q. -- your notes of the meetings?  
 15 A. Hm-mm, yes.  
 16 Q. Your version of the notes, including, of course, a very  
 17 short version of the notes.  
 18 A. Yes.  
 19 Q. What he wouldn't have is all those emails that we have  
 20 been through, showing how you know the things that  
 21 I have just taken through.  
 22 So according to your evidence, paragraph 57, you get  
 23 this pack; is that right? {C/7/76}  
 24 A. Yes.  
 25 Q. And the pack contains Mr Clark's report that I have just

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1 taken you through?  
 2 A. It does, yes.  
 3 Q. And presumably, the formal stuff, that is the board --  
 4 A. Yes, various resolutions and notices and staff  
 5 signatures.  
 6 Q. And the resolutions. I'm interested to know about the  
 7 resolutions?  
 8 A. I was supplied with notes and guidance from our legal  
 9 team, which is normal.  
 10 Q. I don't want to know about the guidance you are given by  
 11 the legal team. What I want to know is, at the board  
 12 meeting -- at the board meeting, you are the chairman?  
 13 A. Yes.  
 14 Q. Linda Weaver --  
 15 A. Yes.  
 16 Q. -- I think is the only other SOG person there?  
 17 A. She is, yes.  
 18 Q. And it's all in your hands. The conduct of the meeting  
 19 is in your hands?  
 20 A. It is, yes.  
 21 Q. And so if anything happens at the meeting -- and we can  
 22 see what happens at the meeting, I think, at page 3254?  
 23 {E/988/3254}  
 24 A. Yes.  
 25 Q. Anything that happened at this meeting is down to you,

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1 basically?  
 2 A. Yes.  
 3 Q. Ms Weaver simply says "yes" when required to do so?  
 4 A. Ms Weaver has had the pack previously as well and has  
 5 read it through.  
 6 Q. Okay. Just keep your finger in 3254, so we can see what  
 7 actually happened at the meeting. If we look at the  
 8 notice of the meeting, 3210, {E/979.2/3210} this is what  
 9 is sent out before the meeting. It has an agenda on it,  
 10 do you see?  
 11 A. Yes.  
 12 Q. And items 1, 2, 3, 4, 5 are really just formal items  
 13 about appointing you and Ms Weaver and noting any  
 14 declarations of interest. So what we are really dealing  
 15 is agenda item 6: {E/979.2/3210}  
 16 "To note the written report of Mr David Clark in  
 17 relation to his investigation in respect of Mr Kam Singh  
 18 ... and Ms Swarandee Birdi ... and to consider  
 19 appropriate actions arising in light of such report."  
 20 A. Hm-mm.  
 21 Q. On the face of it, that's a very open agenda item. The  
 22 appropriate actions arising from that report could be  
 23 all sorts of things, couldn't they? Mediation?  
 24 A. Yes, although Mr Clark has made recommendations --  
 25 Q. Of course he has.

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1 A. -- so that's what I understood as the review, and it was  
 2 to look at those considerations and decide whether to  
 3 adopt them.  
 4 Q. So your understanding was that you were merely there to  
 5 decide whether to put into place Mr Clark's  
 6 recommendations?  
 7 A. No, we were there to read through, review the report.  
 8 If there was any challenge to that, to have those  
 9 conversations. If Ms Birdi had been there and there was  
 10 a different challenge, then we would have had a -- maybe  
 11 a more in-depth discussion of those issues and the  
 12 recommendation or the resolution may well have been  
 13 different. But the reality is, the point was to go  
 14 through, read the report and to decide on those  
 15 recommendations.  
 16 Q. Okay. But if it's not recommended by Mr Clark, you are  
 17 not going to consider it, then?  
 18 A. No, I was there to consider whatever came up in the  
 19 meeting and absolutely had the flexibility as chairman  
 20 to make that decision.  
 21 Q. Okay. I don't think we need to deal with 7, 8 or 9,  
 22 those are the formal ones, the sort of things you must  
 23 have done at other board meetings? Approving annual  
 24 audited reports --  
 25 A. As I said to you, Mr Stuart, I dealt with similar

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1 disciplinary reports as well.  
 2 Q. Absolutely. We come to 3254 -- do you see 3254?  
 3 {E/988/3254}  
 4 A. Yes, I have got there.  
 5 Q. We see you are there with Ms Weaver. Have you discussed  
 6 the matter with Mr Raines?  
 7 A. No.  
 8 Q. You must have had a chat with him?  
 9 A. No.  
 10 Q. What, his PA is coming along to the Novotel?  
 11 A. Yes.  
 12 Q. You are going along?  
 13 A. Hm-mm.  
 14 Q. You are going to decide what's going to happen to  
 15 Ms Birdi?  
 16 A. No, I --  
 17 Q. That's what you are there to decide?  
 18 A. We were there -- we were there to decide on the report  
 19 from David Clark.  
 20 Q. Which was about what was to happen to Ms Birdi?  
 21 A. Yes.  
 22 Q. It's an investigation into Ms Birdi --  
 23 A. Yes, absolutely.  
 24 Q. -- because he rules out Mr Singh right from the start?  
 25 A. Yes.

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1 Q. And you didn't even discuss it with Mr Raines?  
 2 A. No, I didn't. I took all my guidance from Legal.  
 3 Q. You keep saying that, but --  
 4 A. Yes, that's what happened.  
 5 Q. All right. And so, as far as you are concerned, neither  
 6 Mr Raines, nor Mr Dyson, nor any of the other directors  
 7 at SOG gave you any direction or --  
 8 A. No.  
 9 Q. -- view as to what was to occur whatsoever, whether  
 10 directly or indirectly?  
 11 A. Directly, nobody spoke to me. Indirectly, I can't  
 12 comment on. I took all my guidance -- all my  
 13 conversations were with the legal team in Guernsey.  
 14 Q. Yes, but if the legal team said to you, "Mr Dyson, the  
 15 global retail director of SOG, directs you to do this",  
 16 that is Mr Dyson telling you to do it? Even though you  
 17 haven't spoken to Mr Dyson and you haven't received an  
 18 email from Mr Dyson?  
 19 A. And categorically I can tell you that that conversation  
 20 did not happen.  
 21 Q. No. And no other director of SOG is directing you or  
 22 telling you or --  
 23 A. No.  
 24 Q. -- indirectly telling you what to do?  
 25 A. No.

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1 Q. So you are just left with, you say, a complete free  
 2 hand. You can decide whatever you like; it's your  
 3 decision?  
 4 A. As chairman, and as I said to you, from my conversations  
 5 with Stephen Moore in Legal I was given guidance and  
 6 notes on how to deal with this issue. If there was a --  
 7 if the conversations went in a different direction or  
 8 there was a higher level of challenge, then, yes, I had  
 9 the clearance to make different decisions.  
 10 Actually, if that had happened, my Lord, what  
 11 I would have done would be to call an adjournment and  
 12 probably have had a bit more legal clarification on  
 13 where to take it next, but it didn't.  
 14 Q. Okay. What happens is 3255, {E/988/3255} on agenda  
 15 item 6 -- I asked Mr Singh, and I think he thought  
 16 perhaps you were reading this out; he couldn't be sure.  
 17 I'm going to suggest to you that you were simply  
 18 reading something out?  
 19 A. All I had was some guidance notes, as I say, from Legal.  
 20 They were contained within the pack that I received --  
 21 Q. I didn't ask you what you had, I said --  
 22 A. That's what I based my conversation within the meeting  
 23 on.  
 24 Q. It's not a conversation --  
 25 A. It would have been -- Mr Stuart, sorry -- it would have

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1 been a combination of the guidance notes that I would  
 2 have been given and my own comments.  
 3 Q. It's not a conversation. Under item 6:  
 4 "It was noted that this item was to consider ..."  
 5 Do you see that?  
 6 A. Sorry?  
 7 Q. Page 3255, agenda item 6:  
 8 "It was noted that item was to consider ..."  
 9 Do you see that?  
 10 A. Yes.  
 11 Q. Then "MRO", that's you?  
 12 A. That is me, yes.  
 13 Q. This is purporting to be, as I understand it, a note of  
 14 what you said.  
 15 A. Hm-mm.  
 16 Q. Is that right?  
 17 A. Yes, it is, yes.  
 18 Q. These are your meeting notes --  
 19 A. It is.  
 20 Q. -- so I presume this is what you said?  
 21 A. These notes were taken by Linda, yes.  
 22 Q. You say the notes were taken by Linda. Are you saying  
 23 that she typed this out herself or was this taken from  
 24 what you were reading out?  
 25 A. No, she was in the meeting and I believe her role was

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1 as secretary. "Acting as secretary", it says on the  
 2 front page. So Linda would have been taking minutes of  
 3 the meeting.  
 4 Q. All right. I am going to suggest to you that that next  
 5 chunk there, where it says "MRO" and there are two  
 6 paragraphs, I'm suggesting to you that that was a script  
 7 that you read out?  
 8 A. What I'd say, Mr Stuart, is it is a combination of the  
 9 guide notes that I was given and the conversation that  
 10 I had.  
 11 Q. What conversation that you had?  
 12 A. The -- well, the statements that I was making in the  
 13 meeting.  
 14 Q. I'm suggesting to you, you were reading it out?  
 15 A. As I said to you, Mr Stuart, it's a combination of the  
 16 guidance notes that I was given and the words that I am  
 17 using.  
 18 Q. Which bits did you read out and which bits are your own  
 19 words?  
 20 A. I really can't remember.  
 21 Q. Okay. And then at the end, you say:  
 22 "Can you confirm that you have had an opportunity to  
 23 read the report?"  
 24 Mr Singh says:  
 25 "Yes."

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1 That's the conversation?  
 2 A. Yes.  
 3 Q. And then you move on to the next bit:  
 4 "As set out in his report, Mr Clark's  
 5 recommendations arising from his investigations were..."  
 6 1, 2, 3, do you see that?  
 7 A. Hm-mm.  
 8 Q. I'm going to suggest to you that that's just a script  
 9 that you have been given to read out?  
 10 A. Those are recommendations that he made within the  
 11 report, I believe, and I -- I, again, would have taken  
 12 the guidance notes from Legal and a combination of my  
 13 own words, and that's what was stated at the meeting and  
 14 recorded by Linda.  
 15 Q. And the next bit, which starts:  
 16 "MRo: I do not propose to discuss the detail of  
 17 Mr Clark's report in this meeting. The investigation  
 18 had been concluded and report issued. Accordingly it  
 19 now falls to the Board of the Company (KS and SB both  
 20 being employees of the company) to consider appropriate  
 21 actions arising in light of the investigation findings  
 22 and recommendations. In the circumstances, I consider  
 23 it appropriate that procedures be instigated against SB  
 24 to consider whether disciplinary action (which may  
 25 potentially include dismissal) should be taken against

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1 her and/or whether dismissal for some other substantial  
 2 reason is warranted."  
 3 I'm going to suggest to you that's a script that you  
 4 read out?  
 5 A. Again, Mr Stuart, all the way through this it's  
 6 a combination of the guidance that I have been given and  
 7 my own words. Where one stops and the other starts,  
 8 I can't tell you, but it's a combination of both.  
 9 Q. As you say there, you are not going to discuss the  
 10 detail of Mr Clark's report. You don't actually read it  
 11 all out, do you?  
 12 A. We didn't read -- read it all out, though I had read the  
 13 report thoroughly prior to the meeting, so had Ms Weaver  
 14 and Mr Singh. If Ms Birdi had been at the meeting, then  
 15 I'm absolutely certain we probably would have needed to  
 16 go into the report in more depth.  
 17 Q. More depth? You didn't discuss the contents of the  
 18 report at all, did you?  
 19 A. We were satisfied that it had been -- I was satisfied  
 20 absolutely that it had been carried out in line with all  
 21 the processes and procedures and was thorough and that  
 22 recommendations were reasonable.  
 23 Q. You knew it wasn't thorough; you knew that -- if you had  
 24 read the report. If you had --  
 25 A. I had -- I did read the report, Mr Stuart.

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1 Q. If you had, you would have known that it didn't cover  
 2 a number of the matters that you had personal knowledge  
 3 of?  
 4 A. I read the report and my decision and the way that  
 5 managed that meeting is the honest way that I felt at  
 6 the time. So you raise that now, having gone through  
 7 all of the evidence. I obviously did not have that  
 8 opinion at the time.  
 9 Q. I suggest to you that this is simply you reading out  
 10 a script and that you didn't actually address your own  
 11 mind with the knowledge of the facts that you personally  
 12 had from your personal involvement. You didn't address  
 13 the content of the report and you didn't address the  
 14 issues arising?  
 15 A. Mr Stuart, I was very comfortable that the report had  
 16 been carried out in the correct manner by Mr Clark,  
 17 following the processes and procedures that we lay down.  
 18 It was a thorough piece of work and certainly I was more  
 19 than comfortable that as there was no challenge to the  
 20 content of the report or the recommendations, that we  
 21 would adopt those recommendations. So I had no issue at  
 22 the time to challenge it in any way.  
 23 I absolutely, probably, think that if Ms Birdi had  
 24 attended the meeting and raised specific queries on that  
 25 report, then we would have needed to go into more depth

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1 to explore those, and I was more than prepared to do so,  
 2 but Ms Birdi had decided not -- and had excused herself  
 3 from the board meeting.  
 4 Q. And then finally on this issue -- you then put forward  
 5 five parts of motion 1. I suggest to you those were  
 6 drafted out for you in advance and you simply read them  
 7 out?  
 8 A. Again, it would have been part of the guidance notes  
 9 that I had, so a bit of both.  
 10 Q. A bit of both? What, you started playing with the  
 11 wording of the motion?  
 12 A. As I said to you, Mr Stuart, with the notes that I was  
 13 given from our legal team, it did give me, you know, the  
 14 flexibility to do what I needed within the meeting.  
 15 Which bits were from the bits that I added or which  
 16 bits were specifically from the guidance that I'd had  
 17 from Legal, I couldn't tell you.  
 18 Q. The motion, I suggest to you, you read out. You then  
 19 asked who was in favour. Everybody said -- the three of  
 20 you -- you, Ms Weaver and Mr Singh said yes?  
 21 A. Yes.  
 22 Q. And you then moved on to agenda item 7?  
 23 A. I did, however, note Ms Birdi's view that she had sent  
 24 in, in her letter, at the end. Although I wasn't able  
 25 to take into account the vote because she wasn't

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1 attending the meeting, we did note her intentions.  
 2 Q. Yes. You didn't count her as a vote, as it were?  
 3 A. No.  
 4 Q. Then you move on to agenda item 7?  
 5 A. Hm-mm.  
 6 Q. And then finally we have what appears, at least, to be  
 7 an actual discussion; is that right? By contrast with  
 8 the previous two pages, we are now seeing you saying  
 9 things, Mr Singh replying, you saying things, Mr Singh  
 10 replying -- this goes backwards and forwards like  
 11 a discussion?  
 12 A. Yes, because Mr Singh had points to input and to raise  
 13 and it was a discussion on performance of the business.  
 14 Mr Singh was -- had read and was comfortable with the  
 15 report.  
 16 MR STUART: My Lord, I see the time. I'm finished with the  
 17 meeting. I have just got to deal with the last item so  
 18 I will be just a couple more minutes?  
 19 MR JUSTICE NUGEE: Yes. We will take a five-minute break.  
 20 (3.16 pm)  
 21 (Short break)  
 22 (3.22 pm)  
 23 MR JUSTICE NUGEE: Yes?  
 24 MR STUART: Mr Rowe, you can put away that bundle and just  
 25 take out E15, the last of the E bundles. Could you go  
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1 to page 4191. {E/1067/4191} The "4" might be blacked  
 2 out so you might need to find 4190 and then the next  
 3 page.  
 4 A. 4191?  
 5 Q. 4191. This is from Mr Raines's day books and he  
 6 mentions -- do you see underneath the big black stripe  
 7 on the left-hand side, it says: {E/1067/4191}  
 8 "Dartford - Mike message to Kam. Action."  
 9 It would be around -- it looks like 9 March 2011  
 10 now?  
 11 A. Yes.  
 12 Q. And if you then look at page 4191-1, there is an email  
 13 to you from Mr Raines, same date? {E/1067.1/4191.1}  
 14 A. Yes.  
 15 Q. Do you see? And below the big black bit, it says:  
 16 "Dartford.  
 17 "Appeal decision is being issued shortly.  
 18 "Mike - can you meet with Kam and deliver the  
 19 following message and discuss the rebrand."  
 20 Then over the page, the message includes:  
 21 "2. There are no shares available at this moment  
 22 - KS needs to focus on driving the performance..."  
 23 A. Yes.  
 24 Q. Do you see that?  
 25 A. I do.

1 Q. And Mr Singh, I think, if you go to page 4200,  
 2 {E/1069/4200} around this same time Mr Singh was  
 3 emailing you, explaining how he wanted to become the  
 4 sole A director at Dartford?  
 5 A. That's correct, yes.  
 6 Q. Do you see that?  
 7 A. I do, yes.  
 8 Q. And you are now being talked to by Mr Raines and  
 9 Mr Singh, not in your capacity as a director of Dartford  
 10 Visionplus or Dartford Specsavers Limited --  
 11 A. As the RDC.  
 12 Q. But just as the RDC?  
 13 A. Yes.  
 14 Q. That's right, isn't it?  
 15 A. That's correct.  
 16 Q. You were no longer in a directorial capacity whatsoever  
 17 at this point?  
 18 A. This isn't at a board meeting, no.  
 19 My Lord, just to put some background to this, the  
 20 two points. Firstly, Dartford, because of the store  
 21 standards, was overdue the rebrand. It really was in  
 22 need of upgrading. It was probably the worst Specsavers  
 23 store I had seen. So that happened -- I believe it  
 24 happened at the back end of 2011.  
 25 Kam had approached me at a communications meeting to  
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1 say, "Look, I have had a real, real rough ride with the  
 2 partnership over the last few years and actually, what  
 3 I would like to do is put forward a proposal that  
 4 actually I become the sole partner in Dartford".  
 5 And Mark's kind of response to that was very clear  
 6 there, that "(a) the shares aren't available, and (b)  
 7 let's kind of look at it in the future once they are,  
 8 but keep doing the right things by the business".  
 9 And Kam was keen to push the message by putting  
 10 forward a proposal and in giving reasons why he thought  
 11 that would be a good idea.  
 12 MR JUSTICE NUGEE: Do you have stores where all the A shares  
 13 are held by one person?  
 14 A. Yes, we do have a small number. It is not the preferred  
 15 option. Our model works best with a retailer and  
 16 an optom, but historically, there are a few stores where  
 17 we do have a sole partner in charge of that store, yes.  
 18 MR STUART: Just picking up on this -- so Mr Singh was  
 19 plainly -- he was basically wanting to, in his mind,  
 20 receive the full value from the profits of the store  
 21 because he felt he was producing the full value from the  
 22 profits of the store?  
 23 A. From memory of the conversations, two things: He felt  
 24 (a) he had the capability to run the store as a sole  
 25 partner, but also his experience of the previous or

1 that -- not previous, because I think Swarandeeep was  
 2 still a shareholder, but the relationship issues over  
 3 the past.  
 4 So it's purely him putting that to us, and Mark  
 5 coming back to say, "Look, there are no shares. It's  
 6 irrelevant. Just keep doing the right thing and we will  
 7 look at it at the time."  
 8 Q. You were obviously having discussions with Mr Singh?  
 9 A. Mr Singh was having discussions with me. He had  
 10 approached me at a communications meeting to voice this.  
 11 It wasn't something that I was driving or something that  
 12 I engaged significantly in.  
 13 Q. Okay. If you go to 4207, by August 2011 he is writing  
 14 to the directors. 4207-1, I am sorry. {E/1072.1/4270.1}  
 15 A. Yes.  
 16 Q. He is writing to the directors. Do you see, just by the  
 17 second hole punch there is a sentence that starts:  
 18 "As Miss Birdi is still a shareholder ..."  
 19 A. Hm-mm.  
 20 Q. "As Miss Birdi is still a shareholder, I am advised that  
 21 it may be difficult for there to be a distribution of  
 22 profits from the business. However, I understand, it is  
 23 possible for the directors of the business to agree to  
 24 an increase in my remuneration."  
 25 A. Hm-mm.

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1 Q. Were you aware that that was his plan at the time?  
 2 A. No. Throughout this kind of whole process, any of the  
 3 salary questions or bonus questions were directed  
 4 through Alison Girolet, I believe, and dealt with that  
 5 way. It wasn't something that I got involved in.  
 6 Q. It's not really in your remit, is it, to start deciding  
 7 on things like --  
 8 A. Exactly.  
 9 Q. -- salaries for directors?  
 10 A. Exactly.  
 11 Q. Or distributions for directors or --  
 12 A. If -- no, it's not in my remit. If it's a new store,  
 13 I might well be involved in agreements of what the new  
 14 salaries would be, but not --  
 15 Q. Okay, so you weren't asked for your views or --  
 16 A. No, this was all --  
 17 Q. So when at page 4225, {E/1073/4225} SOG gives him a pay  
 18 rise backdated to July 2010 -- two pay rises, in fact?  
 19 A. 4225?  
 20 Q. Yes. Do you see that?  
 21 A. Yes.  
 22 Q. "... please arrange to pay the following salary  
 23 increases to the following director Kamaljit Singh.  
 24 "Pay rise backdated from July 2010..."  
 25 And then another one from July 2011. So he has had

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1 a couple of pay rises?  
 2 A. Hm-mm.  
 3 Q. You had no part to play in any of that?  
 4 A. No recollection of having communication with Alison --  
 5 didn't -- wasn't asked my opinion, I don't believe.  
 6 Q. Okay, and it wasn't you who advised him regarding,  
 7 "Because she is still a shareholder, you can't have  
 8 distributions, but you can do it this way"?  
 9 A. No.  
 10 Q. No, okay. So in your witness statement -- we are at the  
 11 last chunk -- page 79, under the heading: {C/7/79}  
 12 "Dividend payments to Ms Birdi."  
 13 A. Which page?  
 14 Q. Page 79 of the witness statement bundle. So  
 15 paragraph 66, under the heading:  
 16 "Dividend payments to Ms Birdi."  
 17 Do you see?  
 18 A. Yes.  
 19 Q. This is the last issue that you deal with in this  
 20 statement. And you say at paragraph 67 you chaired the  
 21 board meeting on 28 August 2012. This is obviously  
 22 after these proceedings have been issued?  
 23 A. Yes.  
 24 Q. And we go to page 4261. {E/1086/4261}  
 25 A. Yes.

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1 Q. This is just you and Mr Singh present as directors?  
 2 A. That's correct. James Peck was there as company  
 3 secretary.  
 4 Q. He was just taking a note and being the company  
 5 secretary?  
 6 A. Yes, James was a retail development -- or is a retail  
 7 development consultant.  
 8 Q. Yes. So you have been appointed, as it were, twice  
 9 over. You are representing both B shareholders?  
 10 A. Yes.  
 11 Q. Or both B shareholder directors. So you have  
 12 effectively two votes?  
 13 A. Yes.  
 14 Q. Why have you been selected to do this job?  
 15 A. On this occasion, I don't know. I just had an  
 16 instruction from Legal that this is what I was required  
 17 to do.  
 18 Q. Okay. Having discussed item 5, being the trading  
 19 position, the real crux of it comes at page 4263. The  
 20 motion that's put forward is that Mr Singh is going to  
 21 get a company car? {E/1086/4263}  
 22 A. Yes.  
 23 Q. Did you know what the value of the car was going to be?  
 24 A. I knew that it was going to be similar to Ms Birdi's  
 25 car, between £30,000 and £40,000.

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1 Q. Okay. This is Ms Birdi's car, what, from some time  
2 previous?  
3 A. Yes.  
4 Q. She hadn't been in the store for --  
5 A. Absolutely.  
6 Q. -- a few years?  
7 A. Hm-mm, that's correct.  
8 Q. Okay. The decision as to whether he was to have a car  
9 and other decisions regarding dividends and bonuses and  
10 things, had you got some instruction from SOG as to what  
11 their position was on this?  
12 A. Again, I only took my instructions through the legal  
13 team on this.  
14 Q. I do understand that. I don't --  
15 A. Yes, carry on?  
16 Q. I don't want to pry into any legal instructions or  
17 advice or anything. But this is now a commercial  
18 matter, isn't it?  
19 A. Hm-mm, it is.  
20 Q. This is actual money of the actual company?  
21 A. Hm-mm.  
22 Q. And it's one thing for SOG to appoint you and say,  
23 "Right, there you are, Mike, you go along to the board  
24 meeting and you decide what he is going to get, whether  
25 he is going to get a car, whether he is going to get

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1 money, what level of car, what level of money. We will  
2 leave it up to you, Michael, in your discretion, to  
3 decide those things at the meeting and you can just vote  
4 on our behalf."  
5 That's one thing. It's quite another, commercially,  
6 if they have given you some indication, commercially --  
7 and I'm not talking about legal issues now --  
8 commercially, about what is the position relating to  
9 Mr Singh's requests, which he was making for various  
10 things, but including, at this point, the car -- and we  
11 will come on to some other things?  
12 A. Hm-mm.  
13 Q. So did you have some direction on the commercial side as  
14 to what you were to do?  
15 MR POTTS: I'm sorry, I'm a little uncomfortable with this  
16 line of questioning. Mr Rowe is there as, if you like,  
17 a corporate representative of SOG.  
18 MR JUSTICE NUGEE: Yes.  
19 MR POTTS: He is not there in a personal capacity. He is  
20 there as the representative of SOG, which is the  
21 director. Mr Rowe is not the director. Communications  
22 which he receives and legal advice and communications  
23 back and forth with Legal are privileged, as indeed  
24 are --  
25 MR JUSTICE NUGEE: Well, legal communications are, but this

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1 is the point we touched on before. If a decision is  
2 made by, say, Mr Dyson, that Mr Singh can be given  
3 a company car up to £30,000, and that is communicated --  
4 that's a decision made by Mr Dyson, not a legal  
5 decision -- but it's communicated to Mr Rowe through  
6 somebody in the legal department, it doesn't attract  
7 privilege.  
8 MR POTTS: I accept that, my Lord, if there is a straight  
9 line through.  
10 MR JUSTICE NUGEE: Yes.  
11 MR POTTS: I accept that.  
12 MR JUSTICE NUGEE: If Mr Dyson consults Ms del Grazia and  
13 Ms del Grazia says, "You could do this or you could do  
14 that", then that's legal advice.  
15 MR POTTS: I agree, which overlaps with the commercial  
16 question -- it's legal advice in relation to  
17 a commercial question but it's still legal advice.  
18 MR JUSTICE NUGEE: Yes, but the point that Mr Stuart  
19 is trying to ask Mr Rowe is whether he was told what to  
20 do. Not by the legal department, who give him advice as  
21 to what his legal duties are, but by somebody who was  
22 making a commercial decision -- whether it be Mr Dyson  
23 or Mr Raines or Mr Perkins or anybody else -- who told  
24 him what to do.  
25 MR POTTS: I accept that, my Lord, I just want to clarify

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1 the scope of -- there is -- the line becomes difficult.  
2 I want to just clarify, because I don't want to carry on  
3 interrupting my learned friend.  
4 MR JUSTICE NUGEE: Mr Rowe, there is a difference between  
5 the legal department giving you legal advice -- as to  
6 what you can and can't do legally or what you should or  
7 shouldn't have in mind when making decisions -- and  
8 a decision from somebody who is senior to you in the  
9 organisation commercially -- Mr Dyson or Mr Raines or  
10 Mr Perkins, or anybody else -- who tells you what to do  
11 or gives you parameters as to what you can properly do.  
12 I think what Mr Stuart is trying to ask you -- he  
13 doesn't want to hear any legal advice you received from  
14 the legal department, but I think he wants to discover  
15 whether the decisions you made in relation to pay rises,  
16 company cars and so on were decisions that you made  
17 yourself, or whether they were decisions where somebody  
18 gave you instructions as to what decision to take.  
19 Does that adequately encapsulate it?  
20 MR STUART: That's it, my Lord. That's all I am try to find  
21 out.  
22 MR JUSTICE NUGEE: Does that cause you any difficulties,  
23 Mr Potts?  
24 MR POTTS: My Lord, I think the issue is the question as to  
25 the somebody. I think if your Lordship is talking about

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1 a director above, I have no problem with that.  
 2 MR JUSTICE NUGEE: Yes, that's what I mean. When I say if  
 3 somebody gave you instructions what to do, not the legal  
 4 department, but the legal department is passing on to  
 5 you instructions from somebody senior to you in the  
 6 organisation, who has made a commercial decision as to  
 7 what you should do with Mr Singh's requests.

8 Do you understand?

9 A. The only caveat, my Lord, is -- I understand that  
 10 clearly. However, if -- the only instructions I have  
 11 are from my legal -- from the legal team, therefore I do  
 12 not know if any instructions have come from anyone else.

13 All I'm giving you is the fact that I took all of my  
 14 advice, notes, just from our legal team. That's just  
 15 a point of clarification for me.

16 MR JUSTICE NUGEE: Well, what about this question. I'm  
 17 going to suggest a question, but I am going to wait for  
 18 Mr Potts to see if Mr Potts objects to it.

19 When you were making these decisions on behalf of  
 20 SOG at this board meeting, were you making decisions  
 21 yourself or were you doing what you had been told to do?

22 Mr Potts, do you have an objection to the question  
 23 in that form?

24 MR POTTS: Can I take a moment just to think about it?

25 MR JUSTICE NUGEE: Yes, I mean, this is quite difficult --

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1 MR POTTS: It is difficult.

2 MR JUSTICE NUGEE: -- but it's not an irrelevant line of  
 3 questioning.

4 MR POTTS: My Lord, no, certainly not, but what I'm  
 5 concerned about is defining the parameters of legal  
 6 advice privilege, which is ...

7 MR JUSTICE NUGEE: I understand.

8 MR POTTS: My learned friend's client has the benefit of  
 9 legal advice throughout this and I'm not seeking to  
 10 trespass on that. The fact that it's an in-house legal  
 11 department makes no difference whatsoever --

12 MR JUSTICE NUGEE: No, no.

13 MR POTTS: -- and as a corporate representative he is  
 14 entitled to that advice and to the shield of privilege.

15 So, I hope I'm not appearing -- I'm not trying to be  
 16 obstructive --

17 MR JUSTICE NUGEE: No, no, no.

18 MR POTTS: -- but I am entitled to protect my client's  
 19 privilege.

20 MR JUSTICE NUGEE: No, that's why I gave you the  
 21 opportunity. (Pause)

22 MR POTTS: My Lord, I just want to check your Lordship's  
 23 question.

24 MR JUSTICE NUGEE: Yes, it's line 18 on page 189.

25 {Day15/189:18}

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1 MR POTTS: Yes. (Pause) I don't have any objections.

2 MR JUSTICE NUGEE: I will read you the question again,  
 3 Mr Rowe.

4 When you were making these decisions on behalf of  
 5 SOG at this board meeting, were you making decisions  
 6 yourself, or were you doing what you had been told to  
 7 do?

8 A. My Lord, I had been given guidance from the legal team  
 9 that with the financial position of the business there  
 10 was no issue --

11 MR POTTS: We are -- he has just said he has been given  
 12 guidance and he is then about to discuss -- I think he  
 13 is about to discuss the guidance he was given and that  
 14 is privileged.

15 MR STUART: Mr Rowe, to be clear, I'm not asking you  
 16 about -- and I don't think his Lordship is asking you  
 17 about --

18 MR POTTS: It may be -- if it's possible to say without  
 19 discussing the nature of the guidance that was given.

20 MR JUSTICE NUGEE: Yes.

21 MR POTTS: Perhaps I'll let your Lordship do the question.  
 22 It's not my cross-examination or indeed my question.

23 MR JUSTICE NUGEE: It's becoming a collective  
 24 cross-examination, Mr Potts.

25 Without discussing the guidance that you have been

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1 given by the legal department, are you able to give me  
 2 any help as to whether you were making a decision within  
 3 a range of possible decisions, or whether you were told,  
 4 "This is what we want you to do"?

5 A. My Lord, I was given an indication as to the way  
 6 forward. However, if the meeting had progressed in  
 7 a different way, I had the flexibility to make different  
 8 decisions, which actually, within the minutes of the  
 9 meeting, I did. But I was given guidance. I don't know  
 10 if that helps.

11 MR STUART: That's fine. Arising from that and the way you  
 12 have put it -- and I'm not asking you to say anything  
 13 about any legal advice or guidance that you were given,  
 14 but I'm just dealing now with the question of a budget,  
 15 a figure, because this is what this is really all about,  
 16 isn't it? It's the money of Dartford Specsavers  
 17 Limited?

18 A. Yes.

19 Q. That you are spending by allocating it to Mr Singh?

20 A. Yes.

21 Q. And it comes out to Mr Singh, not as a distribution of  
 22 profits, which would be equalised with his  
 23 co-shareholder, Ms Birdi -- you understand that?

24 A. Hm-mm.

25 Q. So this is not the declaration of a dividend or

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1 a distribution of profits; it's coming out in  
 2 a different way, isn't it? He is getting a £30,000 to  
 3 £40,000 company car?  
 4 A. Hm-mm.  
 5 Q. Yes?  
 6 A. Hm-mm.  
 7 Q. The budget for that is Dartford Specsavers Limited's  
 8 budget, isn't it? That's coming out of the profits of  
 9 Dartford Specsavers Limited?  
 10 A. Which was in a healthy financial position and able to  
 11 afford such a motion.  
 12 Q. Absolutely. And insofar as bonuses, so not  
 13 distributions of profits but employment bonuses are paid  
 14 to Mr Singh -- insofar as employment bonuses are paid to  
 15 Mr Singh, that's coming out of the budget of Dartford  
 16 Specsavers Limited, out of its profits?  
 17 A. Although I believe that there were no bonuses discussed  
 18 at this meeting and I wasn't involved in any of those  
 19 discussions around the employment bonus for Mr Singh.  
 20 So I don't know how they were accounted for.  
 21 Q. Were you aware that he was receiving bonuses?  
 22 A. I think I was aware. I think --  
 23 Q. I hope you were.  
 24 A. -- I had been copied in by Alison but all of these went  
 25 through Alison Girollet in Legal.

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1 Q. The budget for the entire remuneration package that  
 2 Mr Singh is receiving, including his salary increases?  
 3 A. Hm-mm.  
 4 Q. His bonuses, his quarterly bonuses on top -- that's his  
 5 employment bonuses -- his company car and any other  
 6 remuneration, not distribution of profits, which are  
 7 equalised between the two A partners -- the entire  
 8 budget for that, for the package that he is getting, is  
 9 coming out of Dartford Specsavers Limited's profits,  
 10 isn't it?  
 11 A. Yes, it is.  
 12 Q. As I understand your evidence, and the way it's put in  
 13 paragraph 66 through to 71 -- 71 -- {C/7/80} you are  
 14 dealing specifically with the meeting, with that  
 15 meeting, the one that you are the chairman at?  
 16 A. Yes.  
 17 Q. Is it your evidence that apart from what was decided at  
 18 that meeting, you have had no part to play in all of  
 19 those issues about his package?  
 20 A. Absolutely. The car was the only issue.  
 21 Q. Right. So it's just this one issue that you are --  
 22 A. Absolutely.  
 23 Q. Okay. You took the decision --  
 24 A. Hm-mm.  
 25 Q. -- at this meeting in the light of the "indication" --

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1 that was the word you used in your evidence -- the  
 2 indication that you had been given, commercially, from  
 3 above, the indication. That's right, isn't it?  
 4 A. As I mentioned, yes.  
 5 Q. Yes. In what capacity were you making that decision,  
 6 the one that you rely upon in paragraph 66 through to 71  
 7 of your witness statement {C/7/80} and that we see at --  
 8 to help you -- page 4261 of the bundle? {E/1086/4261}  
 9 A. Well, my capacity is as chairman and ultimate director  
 10 for Miss Mary Perkins.  
 11 Q. Yes?  
 12 A. And I had been provided with a full pack of information  
 13 on which to make the judgements that I made in that  
 14 meeting.  
 15 Q. What, a full pack of commercial information, the store  
 16 profits, the store ...?  
 17 A. Similar to other board meetings, my Lord, I would have  
 18 had a chairman's file. That file would have  
 19 contained --  
 20 Legal argument  
 21 MR POTTS: Sorry, I am going to interrupt. My Lord, the  
 22 issue of the chairman's file -- we are going back over  
 23 this. This is an issue which arose in the previous case  
 24 and the point was raised and discussed them. The  
 25 chairman's file -- it's a matter that is legally

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1 privilege and privilege is asserted in relation to it.  
 2 I know my friend is having another go --  
 3 MR STUART: No --  
 4 MR POTTS: -- at making the same application --  
 5 MR STUART: It's not the same application --  
 6 MR POTTS: -- he made before and failed on in relation to  
 7 the chairman's pack for a meeting. He is there on  
 8 behalf --  
 9 MR STUART: It's a different chairman's pack.  
 10 MR POTTS: It's a different chairman's pack --  
 11 MR STUART: It's a different meeting and it's a different  
 12 issue that was being dealt with in that other case. It  
 13 was an issue about --  
 14 MR JUSTICE NUGEE: Hold on, Mr Stuart, let me understand  
 15 from Mr Potts.  
 16 MR POTTS: He is entitled -- he is there as the  
 17 representative of SOG. He receives advice from SOG.  
 18 There is legal advice, privilege is asserted in relation  
 19 to that pack. He is there in exactly the same capacity  
 20 as my friend made an application in relation to. Yes,  
 21 it was a different board meeting, of course it was,  
 22 a different company, but in exactly the same capacity,  
 23 privilege is asserted.  
 24 The chairman acting on behalf of his appointor, SOG,  
 25 is entitled to legal advice. He is entitled to the

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1 privilege in relation to that legal advice.  
2 MR STUART: My Lord, to be clear, I don't wish to go behind  
3 assertions of legal privilege in relation to legal  
4 advice contained in that pack.  
5 MR POTTS: My Lord, he does, because I have been told just  
6 outside court that --  
7 MR STUART: No, I don't.  
8 MR POTTS: -- an application is being made for the  
9 production of the chairman's pack.  
10 MR STUART: Any legal advice to be redacted, that was made  
11 clear. Any legal advice, any legally privileged  
12 material within that pack to be redacted, but merely  
13 because -- if I hand over a pack -- let's say this is  
14 a pack -- and within it this all contains legal advice,  
15 et cetera, et cetera, but this is the accounts of the  
16 company, the commercial -- the bottom line accounts and  
17 other commercial documents which, in his capacity as  
18 director of Dartford Specsavers Limited --  
19 MR JUSTICE NUGEE: But he is not a director of Dartford --  
20 MR POTTS: He is not.  
21 MR STUART: He is.  
22 MR JUSTICE NUGEE: No, SOG is the director, isn't it?  
23 MR STUART: Yes, and it, in its capacity, acting through him  
24 as its nominee, is acting as a director of Dartford  
25 Specsavers Limited at this meeting of the directors of

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1 Dartford Specsavers Limited. Page 4261 is a board  
2 meeting of Dartford Specsavers Limited. {E/1086/4261}  
3 MR JUSTICE NUGEE: I understand that.  
4 MR STUART: So he is chairman of that board on that board  
5 meeting and he is purporting to take decisions --  
6 MR JUSTICE NUGEE: Do sit down, Mr Potts.  
7 MR STUART: He is purporting to vote as director appointed  
8 by -- nominated as B director, appointed as B director,  
9 by the B directors of Dartford Specsavers Limited.  
10 MR JUSTICE NUGEE: Well, as I understand the formal  
11 position, the director is SOG; a director of Dartford  
12 Specsavers Limited is SOG.  
13 MR STUART: Correct.  
14 MR JUSTICE NUGEE: Obviously a company can only act through  
15 human agents.  
16 MR STUART: Exactly.  
17 MR JUSTICE NUGEE: So Mr Rowe is appearing on behalf of SOG.  
18 MR STUART: In its capacity as a director.  
19 MR JUSTICE NUGEE: And SOG is director of Dartford  
20 Specsavers.  
21 MR STUART: That's right, and similarly Mrs Mary Perkins --  
22 or Dame Mary Perkins -- is a director of Dartford  
23 Specsavers Limited and she too has appointed him --  
24 MR JUSTICE NUGEE: No, I think --  
25 MR STUART: -- to represent him.

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1 MR JUSTICE NUGEE: -- I think she has appointed SOG to be an  
2 alternate director for her, has she not? Isn't that  
3 what it says?  
4 MR STUART: Yes, all right, and then it is acting by him.  
5 MR JUSTICE NUGEE: Yes.  
6 MR STUART: Alternate to her. So the two B directors of  
7 Dartford Specsavers Limited, who are SOG and  
8 Dame Mary Perkins, have directly and indirectly through  
9 SOG appointed Mr Rowe --  
10 MR JUSTICE NUGEE: To act as representative of SOG?  
11 MR STUART: In its capacity as directors of Dartford  
12 Specsavers Limited, so what he is doing here is he is  
13 acting -- when he then goes on to do what he is doing  
14 here, he is doing it in the capacity of director -- not  
15 he personally as the director, SOG is the director; he  
16 is the personal embodiment of SOG at the meeting, as  
17 a director of Dartford Specsavers Limited.  
18 MR JUSTICE NUGEE: Right. Let me understand. Is your --  
19 are you making an application for disclosure?  
20 MR STUART: Of the chairman's pack --  
21 MR JUSTICE NUGEE: You are, right.  
22 MR STUART: -- but, of course, subject to the redaction of  
23 any properly legally privileged material. And I don't  
24 accept that merely because one includes within a file  
25 some legally privileged material, legal advice or the

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1 like, and some commercial material -- I don't accept  
2 that the entire file thereby automatically all becomes  
3 privileged --  
4 MR JUSTICE NUGEE: Let me understand the point you are  
5 taking. Is the point you are taking the capacity in  
6 which Mr Rowe received this or is the point you are  
7 taking that within that pack some things are legal  
8 advice and some things are not legal advice. It's the  
9 latter?  
10 MR STUART: It's the latter and then --  
11 MR JUSTICE NUGEE: So I'm not really concerned about what  
12 his capacity is.  
13 MR STUART: I don't believe so, not as the primary argument.  
14 MR JUSTICE NUGEE: You accept that the pack is prepared by  
15 the legal department? That's the evidence --  
16 MR STUART: No, absolutely.  
17 MR JUSTICE NUGEE: -- I've got.  
18 MR STUART: Yes, that's the evidence, absolutely.  
19 MR JUSTICE NUGEE: I think the question comes down to this,  
20 if I have understood it correctly -- and tell me if this  
21 is wrong: if a lawyer advises his client and sends  
22 a letter saying, "This is my advice to you," and  
23 encloses with that letter ten documents which the lawyer  
24 has not created but has collected from here, there and  
25 elsewhere, which contain information, does privilege

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1 attach to the enclosures to the letter? Is that the  
2 question?  
3 MR STUART: If that is the basis upon which privilege is  
4 asserted in relation to those ten documents, that it is  
5 merely because it is in the same pack as a letter which  
6 contains legal advice, then that's the question, yes.  
7 Because I don't accept that that is right.  
8 MR JUSTICE NUGEE: Let me say to you, Mr Stuart, that my  
9 instinct -- but I'm going to give you an opportunity to  
10 argue this. My instinct is to say that if a lawyer  
11 gives advice, documents he encloses with the advice,  
12 even though other copies of those documents might not be  
13 privileged -- you know, accounts are not privileged  
14 documents, board resolutions are not privileged  
15 documents -- the copies enclosed with the advice are  
16 privileged, just as the enclosures to your brief are  
17 privileged, because they betray the tenor of the advice.  
18 That's my instinctive reaction to that submission. It's  
19 not a ruling, I'm going to let you argue it, but if  
20 that's what's being argued, then that's my starting  
21 point.  
22 MR STUART: If the documents are attached to a letter of  
23 legal advice or a -- whatever, then I accept that,  
24 insofar as they are attached to that document, because  
25 they are part of that advice and they are referred to in

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1 the document or they form the basis of the advice  
2 (inaudible) within the document, the legal advice,  
3 I accept that the letter is not just the letter itself,  
4 it's the letter and attachments to the letter, but what  
5 I'm saying is, just because the lawyer provides a copy  
6 of his letter of advice, with attachments referred to in  
7 that advice, in a plastic wallet and also in that  
8 plastic wallet are documents, which are not the legal  
9 advice and not provided for the legal advice -- they are  
10 provided in a separate way, just happen to be in the  
11 same plastic file but are commercial documents provided  
12 to the commercial person who is commercially taking  
13 a decision on behalf of a company, the fact that they  
14 happen to be in the same plastic wallet as the legal  
15 advice and its attachments doesn't mean they have  
16 privilege.

17 That's my point. You can't simply say that  
18 everything in a pack is privileged merely because there  
19 are things within the pack which are privileged.

20 MR JUSTICE NUGEE: On the basis of the evidence I have  
21 heard, both from Mr Rowe and from Mr Raines, so far  
22 I think I would assume that where an individual such as  
23 Mr Raines or Mr Rowe is going to act on behalf of SOG in  
24 its capacity as chairman of one of the store companies,  
25 what they will receive in preparation for that meeting

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1 is a pack compiled by the legal department, and I would  
2 imagine -- I don't know what it says and I don't think  
3 I'm entitled to know what it says, but I imagine it  
4 would say, "Dear Michael, you have been selected to act  
5 as chairman on behalf of SOG at a meeting at the Hilton  
6 Dartford on 2 August 2012. Here is the agenda and here  
7 is our guidance to you on each of the agenda items.  
8 Agenda item 4. You will see that this is a question  
9 blah, blah, blah. We suggest that blah, blah, blah.  
10 And here are all the materials you will need for that  
11 purpose."

12 MR STUART: I agree and accept that if there is that sort of  
13 advice coming from the legal department -- it doesn't  
14 matter that they are in house, rather than a lawyer. If  
15 that's the sort of advice -- that is, legal advice being  
16 given to that gentleman who is receiving it and it's  
17 referring to those documents as part of that legal  
18 advice -- I accept that is privileged.

19 MR JUSTICE NUGEE: Well then, what is left? Because at the  
20 moment I have not understood what else there is likely  
21 to be, and an application for specific disclosure, which  
22 is what this is, has to lay some ground for thinking  
23 that there are documents which should have been  
24 disclosed which have not.

25 What basis is there for my thinking that there is

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1 likely to be or may well be effectively  
2 two communications which the chairman receives, one  
3 being legal advice plus enclosures and one being  
4 something else, which is not part of that legal advice?

5 MR STUART: Because this is a purely commercial decision  
6 that is being taken in this particular case. In another  
7 case it might be that the decision being taken was  
8 a legal decision about disciplinary process or such  
9 thing and therefore the very decision that was being  
10 made at the board meeting --

11 MR JUSTICE NUGEE: Take the example where the decision is  
12 ultimately taken to dismiss Ms Birdi. Clearly, that is  
13 going to be hedged around with a very large amount of --

14 MR STUART: Absolutely.

15 MR JUSTICE NUGEE: -- legal advice.

16 MR STUART: Exactly. That's what I'm agreeing, so I accept.  
17 But where, as in this case, the only decision being  
18 taken is about the awarding of a company car to  
19 a director, a commercial decision between the  
20 shareholders --

21 MR JUSTICE NUGEE: Why don't I assume that the same applies,  
22 that what the legal department sends to Mr Rowe is,  
23 "This agenda item concerns whether Mr Singh should be  
24 given a company car. The relevant considerations are as  
25 follows: does the company have the resources to afford

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1 it; is it an appropriate way to remunerate Mr Singh,  
 2 blah, blah, blah. Our advice to you is -- see enclosed  
 3 accounts -- one, that there is enough money; two, that  
 4 it's an appropriate thing to do." Why is that not all  
 5 legal advice?  
 6 MR STUART: No, that is. That is again the lawyer saying,  
 7 "In your capacity as the director, these are your  
 8 obligations and the matters that you must take into  
 9 account." This is all legal advice and, "These are the  
 10 factors to be taken into account when you decide upon  
 11 that, and we consider," as your Lordship put it, "that  
 12 the following matters -- " that is all part of that  
 13 advice, and if that's all that's in the pack, if that --  
 14 MR JUSTICE NUGEE: But what I'm trying to elucidate is what  
 15 reason do I have to think that there is anything other  
 16 than that sort of package from the legal department? So  
 17 far, the only evidence I have is that the chairman's  
 18 pack -- not the chairman's pack, but there is a pack  
 19 prepared for the chairman by the legal department  
 20 because Mr Rowe has told me in black and white terms  
 21 that everything has come from a legal department.  
 22 MR STUART: I accept that physically it appears that  
 23 everything here is coming out of the legal department,  
 24 I accept that, but the reason why I submit that it is  
 25 likely that there is something else beyond merely what

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1 the legal department thinks, which is what your  
 2 Lordship's hypothetical is: "We think that the following  
 3 are the matters that you should take into account,  
 4 including these documents here" -- the reason I say that  
 5 it's unlikely that it's merely down to the legal  
 6 department to have provided its views and its advice,  
 7 supported by its documents, is that this is a purely  
 8 commercial decision where it is highly likely that in  
 9 reality the decision as to whether or not to award these  
 10 large sums of money was made by one or all of the  
 11 directors of SOG, not the legal department.  
 12 MR JUSTICE NUGEE: Suppose the legal department says this:  
 13 "The question is whether you should let Mr Singh have  
 14 a company car; this involves financial considerations,  
 15 it involves considerations of your duties to act in the  
 16 best interests of the business", and, having discussed  
 17 it with Mr Dyson and Mr Raines, they think it's a good  
 18 idea. Is that somehow separate from the legal advice?  
 19 Even if it says, "And here is a document, an email, in  
 20 which Ms del Grazia says to Mr Raines and Mr Dyson  
 21 Mr Singh at Dartford wants a company car, we don't see  
 22 any objection; do you see any objection?" and they both  
 23 write back and say, "No, it seems a good idea," does it  
 24 cease to be legal advice when it's being passed on in  
 25 that fashion?

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1 MR STUART: No, if --  
 2 MR JUSTICE NUGEE: This is all speculative, of course --  
 3 MR STUART: No --  
 4 MR JUSTICE NUGEE: But I'm trying to elucidate where your  
 5 line is.  
 6 MR STUART: -- I would accept that if the document that we  
 7 are considering is an exchange of emails between the  
 8 directors that I'm talking about, the real directors,  
 9 the Perkins/Dyson level of directors, and the legal  
 10 director, in which questions are put backwards and  
 11 forwards and they express their views to that legal  
 12 director and then the legal director is then the only  
 13 person who actually provides any actual  
 14 instructions/guidance to Mr Rowe, and what she does is  
 15 refer to the fact or copy in copies of the  
 16 communications between the legal department and his  
 17 directors -- I would accept that the communications  
 18 between the legal department and the directors  
 19 themselves are privileged.  
 20 MR JUSTICE NUGEE: What else is there likely to be? Because  
 21 I imagine that if Mr Dyson had sent an email to  
 22 Mr Raines, with no input from the legal department, just  
 23 independently, saying, "I gather that Mr Singh wants  
 24 a car; isn't this a fantastic idea?" and Mr Raines  
 25 writes back and says, "Yes," then it would have been

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1 disclosed.  
 2 MR STUART: It should have been.  
 3 MR JUSTICE NUGEE: It should have been, yes, but this is --  
 4 MR POTTS: My Lord, I'm sorry, is my friend -- if he's  
 5 asserting that there has been a failure of --  
 6 MR JUSTICE NUGEE: No, no.  
 7 MR POTTS: I hope he is not.  
 8 MR JUSTICE NUGEE: No, no.  
 9 MR STUART: I don't know what's in the pack, do I, so ...  
 10 MR JUSTICE NUGEE: But the problem is that you start with  
 11 the position that internal emails, which don't go  
 12 through the legal department, should have been  
 13 disclosed, and we can see that a large number of emails,  
 14 some of which you have placed a great deal of reliance  
 15 on in cross-examination because they are embarrassing to  
 16 the individual who wrote them, or you say they are, have  
 17 been disclosed. So always start from the assumption  
 18 that the disclosure process has been carried out  
 19 properly.  
 20 MR STUART: Yes.  
 21 MR JUSTICE NUGEE: Your only basis for saying it hasn't is  
 22 you know there is a document, which is the chairman's  
 23 pack, which has not been disclosed. You know the basis  
 24 on which it has not been disclosed, which is legal  
 25 privilege has been claimed for.

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1 MR STUART: Over the entire contents of it.  
 2 MR JUSTICE NUGEE: Yes. Since the entire contents of it  
 3 accompany what I am told is the legal department's  
 4 advice to the chairman as a chairman's pack -- "This is  
 5 the meeting you are holding and these are the decisions  
 6 you have to make and here is the guidance you are being  
 7 given" -- I'm trying to put this as neutrally as  
 8 possible -- "as to what decisions to make" --  
 9 MR STUART: Yes.  
 10 MR JUSTICE NUGEE: Mr Rowe has fairly clearly indicated that  
 11 he got quite a firm steer as to what to do. But what is  
 12 left of the suggestion that there are documents in the  
 13 pack which fall outside the legal professional privilege  
 14 protection, because the discussion I have had with you  
 15 tends to suggest to me that the only documents which  
 16 might fall outside that are documents which should have  
 17 been disclosed independently of them being within the  
 18 pack.  
 19 Do you see what I mean? You don't get cover for  
 20 an email between Mr Raines and Mr Dyson by subsequently  
 21 including it in a pack which is sent by the legal  
 22 department.  
 23 MR STUART: No, exactly.  
 24 MR JUSTICE NUGEE: But you don't lose protection for stuff  
 25 that is being sent under cover of the pack simply

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1 because you can say, "Oh, well, this bit of it isn't  
 2 quite advice", because it all comes under the cover of  
 3 legal advice.  
 4 MR STUART: No, and I'm not suggesting --  
 5 MR JUSTICE NUGEE: No, and you are not suggesting that.  
 6 MR STUART: I am not suggesting that, merely because the  
 7 document contains some things which are not all advice,  
 8 that that loses the protection.  
 9 MR JUSTICE NUGEE: No.  
 10 MR STUART: No, I'm not suggesting that at all.  
 11 MR JUSTICE NUGEE: So why --  
 12 MR STUART: My Lord, it may be that I can go no further than  
 13 to have asked Mr Rowe what I have asked him.  
 14 MR JUSTICE NUGEE: Yes.  
 15 MR STUART: He has given the answers he has given; on the  
 16 basis of those answers, privilege is asserted over the  
 17 entire pack --  
 18 MR JUSTICE NUGEE: Yes, it is.  
 19 MR STUART: -- still --  
 20 MR JUSTICE NUGEE: And prima facie I think at the moment I'm  
 21 not persuaded that privilege is wrongly claimed over the  
 22 entire pack.  
 23 MR STUART: Until I can show, which I may never be able to  
 24 do, a document of the category that we have between us  
 25 arrived at as being potentially capable of existing --

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1 MR JUSTICE NUGEE: I haven't heard from Mr Potts. These are  
 2 just my current views but ...  
 3 MR STUART: If there were such a document -- that is,  
 4 a document which was in the pack but not in the pack for  
 5 the reasons that your Lordship has explained, namely  
 6 attached to letters of advice, emails, et cetera -- if  
 7 there were such a document -- and I can't assert there  
 8 is because I haven't seen any such documents and I don't  
 9 have a basis for that -- then, obviously, that would not  
 10 necessarily be privileged merely by having been put into  
 11 the pack which was provided to Mr Rowe on this basis.  
 12 I accept that.  
 13 MR JUSTICE NUGEE: I understand that. Mr Potts, do you want  
 14 to --  
 15 MR POTTS: My Lord, I think my friend has answered his own  
 16 question, firstly.  
 17 MR JUSTICE NUGEE: Yes. You have heard the way in which  
 18 I would approach this. Is --  
 19 MR POTTS: My Lord, can I just very briefly --  
 20 MR JUSTICE NUGEE: Yes.  
 21 MR POTTS: The first point is, my friend seems to have moved  
 22 off the assertion, but he was asserting that the basis  
 23 that there was no entitlement to privilege was because  
 24 he was acting as a director of the company.  
 25 MR JUSTICE NUGEE: No, no, that wasn't the basis on which it

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1 was put; it was put on the basis that there was  
 2 material --  
 3 MR POTTS: That changed.  
 4 MR JUSTICE NUGEE: -- that didn't attract privilege -- yes.  
 5 MR POTTS: It wasn't the basis on which I understood the  
 6 application was being made, but he has changed on that,  
 7 that's fine.  
 8 In terms the second point, my Lord, my clients and  
 9 their solicitors and I take my professional obligations  
 10 in relation to disclosure --  
 11 MR JUSTICE NUGEE: But sometimes people get it wrong  
 12 perfectly honestly --  
 13 MR POTTS: They do.  
 14 MR JUSTICE NUGEE: -- and if you and your solicitors had  
 15 thought that, simply by being included in a pack,  
 16 a document that wasn't otherwise privileged became  
 17 privileged, then I would disabuse you of that notion.  
 18 MR POTTS: Well, my Lord, the first point is my solicitors  
 19 don't think that.  
 20 MR JUSTICE NUGEE: Good.  
 21 MR POTTS: The second point is, one the reasons why they  
 22 don't think that is because this very same argument was  
 23 run in the last trial. The matter was looked at.  
 24 I referred the court to the decision of *Balabel v*  
 25 *Air India*. It's exactly your Lordship's point about the

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1 continuum of communications and you can't sort of split  
 2 out --  
 3 MR JUSTICE NUGEE: Is that Lord Taylor?  
 4 MR POTTS: I think it is, yes.  
 5 But I agree with your Lordship's approach, that you  
 6 can't sort of separate out the continuum of the  
 7 communication. You are entitled to take advice in  
 8 relation to a commercial question. The fact that it's  
 9 a commercial question doesn't mean that you are not  
 10 entitled to take legal advice.  
 11 MR JUSTICE NUGEE: As I have said, my understanding of the  
 12 law has two aspects to it. One is that if you give  
 13 legal advice, what documents you enclose with that is  
 14 also a privileged matter --  
 15 MR POTTS: Of course, absolutely.  
 16 MR JUSTICE NUGEE: -- because it betrays the tenor--  
 17 MR POTTS: It betrays the terms --  
 18 MR JUSTICE NUGEE: On the other hand --  
 19 MR POTTS: Yes, I take your Lordship's point.  
 20 MR JUSTICE NUGEE: -- a document which is not privileged --  
 21 MR POTTS: You don't get a shield by -- of course not --  
 22 MR JUSTICE NUGEE: -- does not become privileged --  
 23 MR POTTS: No.  
 24 MR JUSTICE NUGEE: -- by being copied and put in a brief or  
 25 sent --

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1 MR POTTS: No.  
 2 MR JUSTICE NUGEE: -- to counsel or sent by a solicitor to  
 3 his client.  
 4 MR POTTS: My Lord, that is a point that my instructing  
 5 solicitors are aware of. The privilege is claimed; it  
 6 is properly claimed.  
 7 MR JUSTICE NUGEE: Mr Stuart, I am not sure that we can take  
 8 it any further.  
 9 MR STUART: I don't want to take it any further, my Lord,  
 10 that's fine. I want to try and just finish Mr Rowe off.  
 11 MR JUSTICE NUGEE: Yes, of course.  
 12 MR MICHAEL CHARLES ROWE (continued)  
 13 Cross-examination by MR STUART (continued)  
 14 MR STUART: I'm pretty much there.  
 15 Paragraph 73 of your statement, Mr Rowe. {C/7/80}.  
 16 So you've explained that, apart from the issue about  
 17 the car, you played no part in relation to the  
 18 remuneration that's being paid to Mr Singh --  
 19 A. That's correct.  
 20 Q. -- or his benefits of any kind. Then at paragraph 73  
 21 you deal with dividends. Is the position again that you  
 22 personally don't have any involvement at all in the  
 23 dividends.  
 24 A. No, this was a conversation that I had from -- with  
 25 Mr Moore from our legal team, just updating me on where

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1 we were with the dividends in the business.  
 2 Q. What has it got to do with you, I suppose is my  
 3 question.  
 4 A. It's for information, so I just understand what the  
 5 situation in Dartford is, nothing more than that.  
 6 Q. In your capacity as RDC? You are not acting here as  
 7 a director of any --  
 8 A. My capacity as RDC. This isn't within the meeting.  
 9 Q. No.  
 10 A. I'm an RDC (inaudible).  
 11 Q. Okay. And then again paragraph 74. {C/7/81} I'm not  
 12 sure -- is this again just what you have been told and  
 13 this is just for information purposes? Is that what you  
 14 are saying? You didn't have any role to play?  
 15 A. No, no role to play. It's information that I have been  
 16 told. I understand, since -- since me writing this  
 17 statement, it was clear it was right at the point of  
 18 writing it, but I understand that dividends have now  
 19 been claimed.  
 20 Q. Just very briefly your second witness statement, which  
 21 is very short, pages 82 to 85 of our bundle. Do you see  
 22 that? {C/8/82}  
 23 A. Yes.  
 24 Q. You deal with, over on page 83, the grievance against  
 25 Mr Singh by Mr Ko, Ms Khan and Ms Khunkhuna? {C/8/83}

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1 A. Hm-mm.  
 2 Q. And you say in paragraph 6 to 8 -- you deal with Mr Ko,  
 3 Mr Ko's grievance. Do you see that?  
 4 A. Hm-mm.  
 5 Q. And that also related to Denise Kinsella, didn't it,  
 6 paragraph 7 of your statement?  
 7 A. Yes.  
 8 Q. Is that right?  
 9 A. Yes.  
 10 Q. So there was a sort of connection between those two, as  
 11 far as you were aware?  
 12 A. Yes.  
 13 Q. And, paragraph 9, you say that the grievance against  
 14 Mr Singh was not upheld. Do you see that? {C/8/84}  
 15 A. Yes.  
 16 Q. "To the best of my knowledge, Mr Ko did not appeal the  
 17 finding ... "  
 18 Were you involved at all in relation to Mr Ko's  
 19 grievance?  
 20 A. No, I wasn't involved. That was Robin Vernieux. But  
 21 I was made aware of the outcome and, to the best of my  
 22 knowledge, I believe Mr Ko did not challenge or appeal  
 23 against that decision.  
 24 Q. Okay. And then you express a view in paragraph 10 that  
 25 Mr Ko's grievance was handled properly. {C/8/84} Do you

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1 have any knowledge of how --  
 2 A. I know Robin very well. He is a very thorough  
 3 individual and I saw the report into it. So I was more  
 4 than comfortable that Robin conducted himself properly.  
 5 Q. You are now comfortable. Are you saying that you read  
 6 it at the time?  
 7 A. It wasn't that far afterwards, and if there is  
 8 a grievance hearing within one of my stores, I would  
 9 have had a conversation with Mr Vernieux.  
 10 Q. Okay, and then you deal with Ms Khan and Ms Khunkhuna.  
 11 Again you say in paragraph 11, last sentence, {C/8/84}  
 12 Mr Rajan was dealing with it and you were kept informed  
 13 as to the grievance process.  
 14 A. Yes, as I mentioned, Mr Stuart, Riyaz, because he  
 15 reported directly to me in his role as retail  
 16 performance consultant, he tended to copy me in on just  
 17 about everything.  
 18 Q. So when you say you were informed, that's by Mr Rajan?  
 19 A. Yes.  
 20 Q. Because you are his line manager?  
 21 A. Yes.  
 22 Q. And again you say:  
 23 "Mr Rajan's investigations were thorough ... "  
 24 A. Yes.  
 25 Q. "... as demonstrated by the comprehensive Internal

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1 Management Reports into the grievance which he  
 2 produced."  
 3 A. That's correct.  
 4 Q. Do you know he produced them?  
 5 A. I know how these reports are produced, in that --  
 6 because I have been writing them myself -- is that we  
 7 would obviously do the investigation, draft up the  
 8 report, the report would go to legal, be fine-tuned,  
 9 sent back for our alterations and agreements. So it was  
 10 Riyaz who would have had the final sign-off of that  
 11 report.  
 12 Q. So you know that he and legal draft that report, he  
 13 having the final say?  
 14 A. Mr Rajan would have signed off the report as a -- as  
 15 correct.  
 16 Q. Yes. And then finally you deal with the company car.  
 17 Do you see in paragraph 15 you say: {C/8/84}  
 18 "Prior to the meeting Mr Singh requested that  
 19 Dartford provide him with the company car on similar  
 20 terms as had been provided by Dartford to Ms Birdi."  
 21 A. Yes.  
 22 Q. You say:  
 23 "... I considered that this was a reasonable  
 24 request. The request was considered ... "  
 25 Do you see that?

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1 A. Hm-mm.  
 2 Q. You say that:  
 3 "The company was going to acquire a company car for  
 4 Mr Singh to use to a similar value and under similar  
 5 arrangements as was provided to Ms Birdi."  
 6 A. Yes.  
 7 Q. What are the arrangements you are talking about?  
 8 A. The arrangements were the value of the car, the down  
 9 payment and the period with which the car would be paid  
 10 for.  
 11 Q. So it's the financial arrangements?  
 12 A. So it's the financial arrangements.  
 13 Q. I understand. And, just to be clear, I had asked you,  
 14 when you were dealing with the August 2012 board  
 15 meeting -- do you remember? The one that caused the  
 16 little hiatus, the one we were at at page 4261?  
 17 {E/1086/4261}  
 18 A. Yes.  
 19 Q. And at that board meeting you were dealing with the car.  
 20 Do you remember?  
 21 A. That's correct, yes.  
 22 Q. And I asked you about the other benefits, the other  
 23 remuneration.  
 24 A. Hm-mm.  
 25 Q. Bonuses, for example.

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1 A. Hm-mm.  
 2 Q. And you said, "No, no, we didn't deal with the bonuses."  
 3 But you did, didn't you? Page 4266-1. Do you have  
 4 that? {E/1086.1/4266.1}  
 5 A. I am sorry, yes, I completely forgot.  
 6 Q. So you were dealing with, not just his car, but also his  
 7 bonuses?  
 8 A. Yes, I completely forgot, Mr Stuart, about the follow-on  
 9 to that meeting. These were both --  
 10 Q. And when you were considering that matter at the meeting  
 11 and you were voting upon it --  
 12 A. Hm-mm.  
 13 Q. -- on what basis did you consider it in the best  
 14 interests of Dartford Visionplus Limited to give  
 15 Mr Singh all of these things: a £30,000 to £40,000 car;  
 16 he had already had salary increases; now he is getting  
 17 bonuses.  
 18 A. Firstly, the financial performance of the business was  
 19 strong and the reserves in the business were strong.  
 20 Q. Yes, but he is sharing those reserves with --  
 21 A. And, Mr Stuart, as at this point he is carrying out the  
 22 role of A shareholder on his own. I am, within this,  
 23 considering the bonus structure. As I say, all of those  
 24 requests went through Alison Anderson. It wasn't  
 25 something I dealt with in my RDC role but was, if you

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1 like, discussing it and ratifying it at this particular  
 2 meeting.  
 3 Q. You weren't ratifying it, Mr Rowe; on your evidence you  
 4 were deciding it. Do you remember?  
 5 A. Hm-mm.  
 6 Q. Not ratifying. Perhaps you thought you were ratifying  
 7 it.  
 8 My question is: on what basis do you suggest that  
 9 it's in Dartford Visionplus's best interest to pay more  
 10 and more money to Mr Singh, given that he is already  
 11 going to share the profits of Dartford Specsavers  
 12 Limited and thus its subsidiary, Dartford Visionplus,  
 13 with his fellow A shareholder, Ms Birdi?  
 14 A. Hm-mm.  
 15 Q. So he is already going to get his fair share of the  
 16 profits. He has already had salary increases. I took  
 17 you to them.  
 18 A. Yes.  
 19 Q. He has now had a company car, £30,000 to £40,000, and  
 20 yet now you are even paying him more bonuses on top.  
 21 Why?  
 22 A. It's, I figure, a fair reflection on the work that  
 23 Mr Singh is having to carry out as the only director in  
 24 Dartford at that time. So when you say a fair  
 25 distribution of profits, the reality is he is doing all

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1 of the work and driving the performance of Dartford at  
 2 this time. So I felt that was -- certainly a fair  
 3 decision.  
 4 Q. That's fair to him, is what you are saying: He is doing  
 5 more work, so it's only fair to him to receive more  
 6 money?  
 7 A. In his employment role.  
 8 Q. Yes.  
 9 A. It was recognition of his performance.  
 10 Q. Right. But you are acting for the best interests of  
 11 Dartford Visionplus Limited. You are not there  
 12 representing Mr Singh, are you?  
 13 A. Absolutely. It's, in my view, in the best interests of  
 14 Dartford Visionplus to keep Mr Singh motivated and to  
 15 keep him delivering at the level that he is delivering  
 16 at.  
 17 Q. Did you have any suggestion that he was not motivated?  
 18 A. I think over this journey, Mr Singh had, as you might  
 19 imagine maybe, I suppose, not -- "wobbles" is the wrong  
 20 word, but he would maybe be questioning, "Hang on  
 21 a minute, I'm doing all the work but not getting any of  
 22 the rewards."  
 23 Q. He is getting some of the rewards. He is now up to  
 24 £50,000 salary. Do you see, at 4266-2,  
 25 {E/1086.1/4266.2} his basic salary is up to £50,000 now?

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1 A. Hm-mm.  
 2 Q. You have just awarded him a company car worth £30,000 to  
 3 £40,000?  
 4 A. Hm-mm. On equal terms to the car that Ms Birdi had  
 5 previously.  
 6 Q. Had previously had, not that she has one now.  
 7 A. Hm-mm.  
 8 Q. You are not equalising him up with some benefit she's  
 9 getting now.  
 10 MR POTTS: In fact, I think she still does, actually.  
 11 MR STUART: What?  
 12 MR POTTS: She is still holding on to the car.  
 13 MR STUART: It's not worth £30,000 to £40,000 -- and not in  
 14 her capacity as an employee. So his salary is up to  
 15 £50,000, he has got a company car; yes?  
 16 A. Hm-mm.  
 17 Q. He is not saying, "I'm going to leave, I'm giving up on  
 18 this, I've had enough," or anything like that, is he?  
 19 He just wants more and more money out of the business  
 20 before the distribution of profits stage.  
 21 A. Mr Singh is working incredibly hard at this point to  
 22 maintain the performance of Dartford. In reality, a  
 23 £50,000 salary is at the top end of our salary band but  
 24 there are, my Lord, plenty of examples of partners that  
 25 do have that salary band and also take a company car.

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1 The performance of the business actually allowed that to  
 2 take place. I was comfortable with that award.  
 3 Q. And then you are going to award him a quarterly bonus on  
 4 top of that, another £10,000?  
 5 A. That's correct.  
 6 Q. Right. I have asked you about it; I don't think I can  
 7 ask you any more.  
 8 My Lord, I have no more questions of Mr Rowe.  
 9 MR JUSTICE NUGEE: Thank you very much.  
 10 Mr Potts, do you want to -- how long do you think --  
 11 MR POTTS: I have a few questions, my Lord. I think, if  
 12 your Lordship is prepared to give me maybe ten minutes,  
 13 I think I can probably finish this evening --  
 14 MR JUSTICE NUGEE: If you can do it in ten minutes, that's  
 15 fine. If it's going to be half an hour, I think it will  
 16 probably be a bit long.  
 17 MR POTTS: Shall we see how we go in ten minutes and we will  
 18 see. I'm hopeful.  
 19 Re-examination by MR POTTS  
 20 MR POTTS: Mr Rowe, you were asked this morning -- it was  
 21 put to you that you were given an instruction by  
 22 Mr Raines to support Mr Singh and to prevent or not let  
 23 Ms Birdi do what she wanted to develop the business. Do  
 24 you remember that?  
 25 A. Hm-mm.

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1 Q. And I think your reply was you denied receiving any such  
 2 instruction and you said that you were looking to  
 3 support them both and to help them grow the business.  
 4 Do you remember that?  
 5 A. Hm-mm.  
 6 Q. Could you take E7, please, at page 1675. {E/484/1675}  
 7 This is an email dated 16 September, following the  
 8 meeting you had had on 12 September. Do you remember  
 9 that?  
 10 A. Yes, I do.  
 11 Q. You were taken to the first two paragraphs of that. Do  
 12 you see that? But you weren't taken to the  
 13 third paragraph, where it says:  
 14 "As an RST we will be keeping a very close eye on  
 15 them ... "  
 16 Then it goes on:  
 17 "... as a TAPS store we will be following the TAPS  
 18 process."  
 19 In relation to the first part of that:  
 20 "As an RST we will be keeping a very close eye on  
 21 them."  
 22 What did you mean by that?  
 23 A. What I meant was that we would be keeping a real close  
 24 eye on both partners in the relationship and how that  
 25 was developing.

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1 Q. In relation to the second part:  
 2 "... as a TAPS store we will be following the TAPS  
 3 process."  
 4 What did you mean by that?  
 5 A. That's the enhanced support that a TAPS store will get  
 6 to ensure that they recover their position.  
 7 Q. Thank you. If you go on in E7 to 1783, this is the  
 8 letter that you sent following on from the meeting on  
 9 16 December 2008. {E/545.1/1783}  
 10 A. Correct.  
 11 Q. And you were referred by my learned friend to a list of  
 12 behaviours and rules at the bottom of the page, which  
 13 I think you said they developed with your assistance?  
 14 A. Yes, that's correct.  
 15 Q. One of those refers to "stick to agreements". What was  
 16 the context which led to their agreement to that rule of  
 17 behaviour; do you recall?  
 18 A. Not specifically, but if you went back to the original  
 19 meeting we had in September, a lot of -- what seemed  
 20 like the agreements made at that meeting weren't being  
 21 delivered. Whether that be four-day testing or other  
 22 agreements made, he didn't seem -- so, for instance, the  
 23 agreement to meet on a regular basis to carry out the  
 24 partnership meetings, to do the roles and  
 25 responsibilities, hadn't been delivered.

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1 Q. Okay. Turning over the page and talking of roles and  
 2 responsibilities, at the hole punch, the first hole  
 3 punch, it says:  
 4 "Completion of the roles and responsibilities  
 5 document."  
 6 And then it says:  
 7 "It was agreed ref Kam testing that this was only  
 8 ever going to be in a dire emergency and that Kam's  
 9 primary role is that of the retail director. Kam was  
 10 happy with that answer."  
 11 Is that an accurate reflection of what was agreed at  
 12 the meeting?  
 13 A. It absolutely was. In my view Kam is retail director,  
 14 and the shop floor needed a lot of direction, so I was  
 15 comfortable with that.  
 16 Q. And in relation to the issue of testing then, in  
 17 relation to Kam testing, was there discussion in  
 18 relation to Ms Birdi's role in relation to testing at  
 19 the meeting as well?  
 20 A. There was. Although it doesn't fit here, there was  
 21 a discussion around four-day testing. I think  
 22 I mentioned it in my statement.  
 23 Q. Thank you.  
 24 Then, finally, in relation to your typing of your  
 25 notes, you were asked about when you typed up the notes

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1 of your meeting with Ms Birdi. You had a meeting with  
 2 her on 2 June 2009 and I think you said that you typed  
 3 the notes up -- I think you said on 29 September?  
 4 A. I think I might have got that month wrong but I'm not  
 5 sure. I was asked for copies by Mark and sent them  
 6 over. So it may well have been sooner than that.  
 7 Q. Okay. Can I take you, please, to E8, firstly, E8/2230.  
 8 {E/689/2230} This isn't a letter that you sent, it's  
 9 a letter of 1 September 2009 from Mr Kidd to Ms Birdi.  
 10 Do you see that?  
 11 A. Yes.  
 12 Q. And item 3 says:  
 13 "Meeting notes from meeting on 2 June 2009."  
 14 Firstly, just on that question of meeting notes, you  
 15 are referred to the fact that you prepared meeting notes  
 16 which were provided to Ms Birdi. I think you were also  
 17 taken to some meeting notes of some meetings by  
 18 Ms Birdi. Were you ever provided with --  
 19 A. No, I wasn't.  
 20 Q. -- those notes by her?  
 21 A. No.  
 22 Q. Right. Can you just go back to E8/2005. {E/649/2005}  
 23 This is an email which is from you, dated 29 July 2009,  
 24 and if you just look, just below the first hole punch it  
 25 talks about:

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1 "The notes I have from the one-to-ones ..."  
 2 A. Hm-mm.  
 3 Q. Could you just read that? You see:  
 4 "... written in my notepad and I will now type them  
 5 up."  
 6 Does that refresh your memory in any way as to when  
 7 you typed up the notes?  
 8 A. It must have been earlier than September. I can  
 9 remember looking at my computer at home and looking at  
 10 the date it was created but I can't absolutely specify  
 11 that here and now, but it must have been earlier  
 12 than September.  
 13 Q. Thank you very much. I have no further questions, my  
 14 Lord?

15 Questions by THE JUDGE

16 MR JUSTICE NUGEE: I have one question, Mr Rowe. Company  
 17 car. When a JVP is provided with a company car, is that  
 18 part of their remuneration as an employee or is it part  
 19 of a distribution of profits?  
 20 A. I think -- I'm not the experts, I am afraid, in this,  
 21 but my --  
 22 MR JUSTICE NUGEE: No, no, well, I thought you might not be  
 23 but you --  
 24 A. But it seems to have been treated in different ways  
 25 because certainly the provision of a company car can

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1 also be treated as a benefit, and therefore  
 2 distributable profit could be equalised.  
 3 MR JUSTICE NUGEE: That's what I was wondering about because  
 4 one of the things when Mr Singh joined the business was  
 5 that Ms Birdi had an outstanding claim for equalisation  
 6 because Mr Patel had received a company car.  
 7 A. Hm-mm.  
 8 MR JUSTICE NUGEE: So at that stage it looks like something  
 9 which has to be equalised.  
 10 A. Hm-mm.  
 11 MR JUSTICE NUGEE: But when you decide in August 2012 that  
 12 Mr Singh should have a company car, it looks like he is  
 13 being given it as part of his remuneration package,  
 14 which doesn't get equalised to Ms Birdi, does it? Have  
 15 I understood that correctly.  
 16 A. I believe so, my Lord, but I'm not the expert on it.  
 17 I know I was taken to a letter from Cristina del Grazia  
 18 around how Ms Birdi's company car was being treated, but  
 19 I think Cristina indicated that it was part of the  
 20 package. But it has confused me a bit now, sat here.  
 21 MR JUSTICE NUGEE: So in August 2012, when you were agreeing  
 22 that Mr Singh should have a company car, you regarded  
 23 that as part of his employment --  
 24 A. I did, yes --  
 25 MR JUSTICE NUGEE: -- package?

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1 A. -- I believe so.  
 2 MR JUSTICE NUGEE: So I don't know if either of you want to  
 3 ask anything out of that.  
 4 MR POTTS: I think not, my Lord, no.  
 5 MR JUSTICE NUGEE: Thank you very much, Mr Rowe.  
 6 A. Thank you.  
 7 MR JUSTICE NUGEE: Yes. Can I mention one point, which is  
 8 that there is reference in the documents to something  
 9 called "The roles and responsibilities document" --  
 10 MR POTTS: Yes.  
 11 MR JUSTICE NUGEE: -- dated 31 January 2009.  
 12 MR POTTS: Yes.  
 13 MR JUSTICE NUGEE: It took a time for it to be completed but  
 14 it was eventually completed?  
 15 MR POTTS: My Lord, I think the position is, we have seen in  
 16 the evidence some manuscript notes referring to roles  
 17 and responsibilities, I think under cross-examination --  
 18 it is something that has been explored and we have both  
 19 taken witnesses to -- if your Lordship remembers, there  
 20 was the manuscript notes in September, I think. Roles  
 21 and responsibilities, various matters, were agreed and  
 22 then there was a matter to refer to SOG. I don't know  
 23 the minutiae, the highways and byways of the evidence,  
 24 but that was evidence which I think was explored.  
 25 In terms of answering your final question in terms

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1 of the dated January document, I think the position is  
 2 that a search has been made for that document and  
 3 neither side been able to disclose it.  
 4 MR JUSTICE NUGEE: That's what I was going to say:  
 5 I couldn't find it in --  
 6 MR POTTS: No, your Lordship is right not to have been able  
 7 to find it, but I think the matter -- not the final  
 8 document, but roles and responsibilities is a matter  
 9 which you have seen at the various meetings -- on the  
 10 documents -- as a sort of evolution of drafting.  
 11 MR JUSTICE NUGEE: It was a matter which took quite a long  
 12 time to be agreed, over a period of months --  
 13 MR POTTS: My Lord, yes.  
 14 MR JUSTICE NUGEE: -- but it did end up with a final  
 15 version, agreed on 31 January, and what you are telling  
 16 me is we don't have that?  
 17 MR POTTS: I think that's the position. Let me just check  
 18 that.  
 19 My Lord, that is the position -- on either side.  
 20 MR JUSTICE NUGEE: Well --  
 21 MR STUART: My Lord, can I just say my clients' instructions  
 22 to me are also that, so far as she is aware, there isn't  
 23 such a finalised document.  
 24 MR JUSTICE NUGEE: There isn't one? The reason I raise it  
 25 is because the four-day testing resolution, which I have

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1 heard quite a lot of evidence about, was a resolution  
 2 that the A directors comply with their respective roles  
 3 and responsibilities as set out in the document provided  
 4 on 31 January 2009.  
 5 MR POTTS: Yes.  
 6 MR JUSTICE NUGEE: Which suggests that Mr Raines, who was  
 7 the chairman of that meeting and responsible for  
 8 promulgating that motion --  
 9 MR POTTS: Yes.  
 10 MR JUSTICE NUGEE: -- had a particular document in mind.  
 11 MR POTTS: I think that's a reasonable premise, my Lord,  
 12 yes.  
 13 MR JUSTICE NUGEE: Yes, but neither of you can point me to  
 14 what that document is?  
 15 MR POTTS: I think the answer is not. I'll take further  
 16 instructions overnight, but my understanding is that  
 17 a search has been made and the document has not been --  
 18 MR JUSTICE NUGEE: One might have thought that might be  
 19 a document which would have been in his chairman's pack  
 20 for that meeting.  
 21 MR STUART: And would not attract legal privilege just  
 22 because it got put into the pack.  
 23 MR JUSTICE NUGEE: Exactly.  
 24 MR POTTS: My Lord, this is not an issue of asserting  
 25 privilege; we don't have the document.

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1 MR JUSTICE NUGEE: So, either the pack has disappeared or it  
 2 wasn't in the pack. That is precisely the sort of  
 3 thing, where it finds its way into the wording of  
 4 a motion --  
 5 MR POTTS: Yes.  
 6 MR JUSTICE NUGEE: -- that I would have expected him to have  
 7 that document before him. I'm not expecting you to  
 8 produce it out of a hat now, Mr Potts.  
 9 MR POTTS: No.  
 10 MR JUSTICE NUGEE: But in the light of some of the  
 11 questioning, it may be that it's significant to know  
 12 what it actually says.  
 13 MR POTTS: My Lord, obviously, if we have it --  
 14 MR JUSTICE NUGEE: Yes.  
 15 MR POTTS: If we had it, it would have been disclosed, I'm  
 16 confident.  
 17 MR JUSTICE NUGEE: If you had had it and found it.  
 18 MR POTTS: And found it, we would have --  
 19 MR JUSTICE NUGEE: Yes. Very well. I will leave it at  
 20 that.  
 21 We will say 10.30 tomorrow morning.  
 22 MR POTTS: My Lord, yes --  
 23 MR JUSTICE NUGEE: Thank you very much for coming, Mr Rowe.  
 24 MR POTTS: My Lord, just brief -- timetabling. Maybe we  
 25 should revisit -- there is -- I'm somewhat concerned

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1 about --  
 2 MR JUSTICE NUGEE: Yes --  
 3 MR POTTS: -- where we are getting.  
 4 MR JUSTICE NUGEE: -- you are quite right. I did mean to  
 5 mention that.  
 6 MR STUART: My Lord, we have got Mr Clark next.  
 7 MR JUSTICE NUGEE: We still have three witnesses, I believe.  
 8 MR STUART: We do, but Mr Howarth, as I keep saying, is one  
 9 and a half pages.  
 10 MR JUSTICE NUGEE: Yes.  
 11 MR STUART: He has only got three paragraphs.  
 12 MR JUSTICE NUGEE: But nevertheless Mr Clark, Ms McIntyre  
 13 and Mr Howarth --  
 14 MR STUART: It's true.  
 15 MR JUSTICE NUGEE: -- is going to take you a whole day, I  
 16 think. I think we are about a day behind the latest --  
 17 MR STUART: I think so, my Lord.  
 18 MR JUSTICE NUGEE: Yes.  
 19 MR STUART: I assure we will finish tomorrow the evidence.  
 20 MR JUSTICE NUGEE: Right.  
 21 MR STUART: Because I've prepared the cross-examination for  
 22 Mr Clark and Ms McIntyre and Mr Howarth and --  
 23 MR JUSTICE NUGEE: It won't take more than a day?  
 24 MR STUART: It will not.  
 25 MR JUSTICE NUGEE: So the question then is, if we look at

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1 your latest timetable.  
 2 MR STUART: Yes.  
 3 MR JUSTICE NUGEE: That was going to have been finished by  
 4 the close of business today. It's now going to finish  
 5 by the close of business tomorrow.  
 6 MR STUART: Yes.  
 7 MR JUSTICE NUGEE: The question is when you now want,  
 8 between you, to lodge closing submissions.  
 9 MR STUART: Yes, my Lord.  
 10 MR JUSTICE NUGEE: And I wondered whether it is more  
 11 sensible to have them 10 am on Monday, which would push  
 12 the whole timetable back one day.  
 13 MR STUART: My Lord, on my side it would help.  
 14 MR JUSTICE NUGEE: Yes.  
 15 MR STUART: It would be my preference because obviously --  
 16 well, it would assist me to be able to have the weekend  
 17 to finalise it all, rather than get it to you by --  
 18 MR JUSTICE NUGEE: Yes.  
 19 MR STUART: -- let's say, Friday. Of course, I'm your  
 20 Lordship's hands. If your Lordship says, "No, no,  
 21 I would be much better off having it on Friday afternoon  
 22 because I will spend the whole weekend reading it," then  
 23 I would do what I could, but if your Lordship would  
 24 allow us until 10 o'clock Monday, that would assist.  
 25 MR POTTS: My Lord, I think firstly the question is as to

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1 your Lordship's diary next week. Obviously, I think we  
2 would be keen to complete this matter -- we are already  
3 overrunning --  
4 MR JUSTICE NUGEE: I'm --  
5 MR POTTS: We would be happy with Friday.  
6 MR JUSTICE NUGEE: Yes but, to be fair, Mr Stuart has been  
7 on his feet for a long time.  
8 MR POTTS: I'm well aware of that, my Lord.  
9 MR JUSTICE NUGEE: Yes, and it's difficult to prepare  
10 written submissions while you are preparing  
11 cross-examination. I think, realistically, it makes  
12 little difference whether I get them 4 pm on Friday or  
13 10 o'clock on Monday because I will want to have time  
14 other than the weekend to consider them in any event.  
15 MR POTTS: My Lord, yes.  
16 MR JUSTICE NUGEE: So I think I will say 10 am on Monday.  
17 That's not an invitation to make them longer, rather  
18 than shorter.  
19 MR POTTS: No, I think your Lordship did, though, indicate  
20 that your Lordship wanted full, I'm sure not verbose,  
21 written submissions in this case.  
22 MR JUSTICE NUGEE: Well, yes, I would like to be able, when  
23 writing a judgment, to look at the submissions, oral and  
24 written, to have a real idea of what each party's case  
25 is on each of the issues I'm meant to decide.

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1 MR POTTS: Yes.  
2 MR JUSTICE NUGEE: That's the purpose of them and if it's  
3 not in there, then I won't take account of it. That's  
4 the reality.  
5 MR POTTS: My Lord, yes.  
6 MR JUSTICE NUGEE: But, yes, I will say 10 o'clock on Monday  
7 for --  
8 MR POTTS: And then, my Lord, Monday being a reading day and  
9 we start Tuesday?  
10 MR JUSTICE NUGEE: We resume on Tuesday.  
11 MR POTTS: Thank you, my Lord.  
12 MR JUSTICE NUGEE: Thank you very much.  
13 We will say 10.30 tomorrow morning.  
14 (4.37 pm)  
15 (The court adjourned until 10.30 am the following day)

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