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

Day 16

November 13, 2014

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1 Thursday, 13 November 2014
 2 (10.30 am)
 3 MR JUSTICE NUGEE: Yes, Mr Potts.
 4 MR POTTS: My Lord, the next witness is Mr Clark.
 5 MR JUSTICE NUGEE: Yes.
 6 MR DAVID JOHN CLARK (affirmed)
 7 Examination-in-chief by MR POTTS
 8 MR JUSTICE NUGEE: Do, please, sit down, Mr Clark.
 9 A. Thank you.
 10 MR POTTS: Good morning, Mr Clark.
 11 A. Good morning.
 12 Q. Do you have volume C in front of you?
 13 A. I have.
 14 Q. Excellent. Could you turn, please, to tab 3?
 15 A. Yes.
 16 Q. Then from pages 30 through to 41, is that your first
 17 witness statement? {C/3/30}
 18 A. It is.
 19 Q. Excellent. I understand there are a couple of
 20 typographical errors that you would like to correct.
 21 I understand the first one is at paragraph 16 and the
 22 final sentence on page 34. {C/3/34} It's the final
 23 sentence, which says:
 24 "On 14 June 2008, I sent each of the directors ..."
 25 A. Yes, sorry. It does say 2008 and that should read 2010.

1

1 Q. And that's twice, is it?
 2 A. That's twice, yes.
 3 Q. Okay, thank you. Then paragraph 34 in the first
 4 sentence? {C/3/38}
 5 A. Yes, that's the same mistake.
 6 Q. And that's both --
 7 A. July 2010.
 8 Q. And then also 22 June 2010 as well?
 9 A. Yes.
 10 Q. So those two dates. Thank you. Then paragraph 40 in
 11 the final sentence? {C/3/39}
 12 A. And that's the same. 2008 should read 2010.
 13 Q. Thank you. Could you turn to the final page, 41. Is
 14 that your signature at the end of the -- {C/3/41}
 15 A. It is, yes.
 16 Q. Subject to those three changes, can you confirm that the
 17 contents of that statement are true?
 18 A. Yes.
 19 Q. And then if you could turn on to the next tab?
 20 A. Yes.
 21 Q. Pages 42 through to 45. That's your second statement?
 22 {C/4/42}
 23 A. It is, yes.
 24 Q. And then at paragraph 5, I understand there is
 25 a correction that you would like to make?

2

1 A. There is.
 2 Q. Four lines up?
 3 A. It says: {C/4/43}
 4 "I also recall asking Ms Birdi and Mr Rehman ..."
 5 That should actually read "Mr Singh".
 6 Q. Thank you. At page 45, is that your signature? {C/4/45}
 7 A. It is.
 8 Q. Subject to that correction, can you confirm that the
 9 contents of the statement are true?
 10 A. They are.
 11 MR POTTS: Thank you, if you could just wait.
 12 Cross-examination by MR STUART
 13 MR STUART: Mr Clark, could you go back to your first
 14 statement, so that's tab 3.
 15 A. Okay.
 16 Q. You summarise on the first page your role. {C/3/30} You
 17 are based in the Skelmersdale office with Mr Raines. Is
 18 that right?
 19 A. No, that's wrong. I'm based from home.
 20 Q. You are based from home; but your business address is
 21 the Skelmersdale office?
 22 A. For postal purposes, yes.
 23 Q. Okay. So can you just explain to the court your lines
 24 of management at the material times of these two
 25 investigations that you conducted?

3

1 A. Certainly. 2008, I reported in to Mr Dyson. 2010 was
 2 kind of a transition period. Mr Dyson was going over to
 3 Australia at that time. Mr Raines was in the process of
 4 taking over from him and there was quite a period of
 5 time where I effectively reported in to both of them.
 6 Q. Okay. Let's deal then with the 2008 grievance first.
 7 Could you be given E5. We pick up the story at
 8 page 1258, I think. {E/334/1258}
 9 A. Okay.
 10 Q. And this is paragraph 8 of your witness statement, the
 11 2008 grievance. You said you first became aware of
 12 Ms Birdi in 2008. She had sent in the grievance on
 13 27 February, in relation to what Mr McAlindon had been
 14 up to? {C/3/31}
 15 A. Hm-mm.
 16 Q. Do you recall?
 17 A. I do, yes.
 18 Q. So that's what this was about. You say you can't recall
 19 exactly how you came to first hear about Ms Birdi. It
 20 is likely to be Mr Dyson who told you, and the situation
 21 at Dartford?
 22 A. Sorry, where are you reading from.
 23 Q. Paragraph 8 of your witness statement?
 24 A. Sorry.
 25 Q. Do you see?

4

1 A. Yes, sorry, I was looking at 1258.
 2 Q. Have 1258 open, but I am just setting the scene for
 3 you --
 4 A. Okay.
 5 Q. -- from your witness statement. You are saying you
 6 heard about it probably from Mr Dyson, and you say:
 7 {C/3/32}
 8 "[He] informed me about her and the situation of
 9 Dartford, including the allegations of financial
 10 irregularities which Mr Patel ... had made against
 11 her..."
 12 Do you see?
 13 A. I do.
 14 Q. And obviously it was those allegations that Mr McAlindon
 15 was investigating and it's his investigation of her and
 16 the circumstances in which Mr McAlindon did the deal
 17 with Mr Patel on 20 February 2007 that was the basis of
 18 her grievance, which you were tasked with dealing with.
 19 That's right, isn't it?
 20 A. That's a small element of it. The grievance had
 21 a number of elements. I think that there were nine
 22 elements to the grievance.
 23 Q. Okay.
 24 A. So -- yes, that was one of them.
 25 Q. But the grievance was about Specsavers, SOG, and/or

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1 Mr McAlindon, the Loss Prevention department, and the
 2 way that they had dealt with Mr Patel and Mr Patel's
 3 departure and the deal with Mr Patel, and then the
 4 investigation into Ms Birdi which followed on from
 5 Mr Patel and finished at the end of 2007. That's what
 6 she was grieving about at that time?
 7 A. Yes.
 8 Q. Page 1258, you are writing to Mr Ryan, so presumably you
 9 had -- well, you can see you had -- do you see it says:
 10 {E/334/1258}
 11 "On the most recent BT update I notice there was
 12 a meeting planned at Dartford earlier this week. Do you
 13 know the outcome?"
 14 "BT" is business transfer?
 15 A. That's right.
 16 Q. "Reason for asking is that I'm hearing a grievance from
 17 Swarandeeep Birdi next week. I've also heard rumours
 18 that she isn't happy about Kam Singh becoming the new
 19 JVP."
 20 A. Hm-mm.
 21 Q. Where did you get all of that from?
 22 A. I don't recall, but the only person that I would have
 23 spoken to at that time about Dartford would have been
 24 Derek Dyson.
 25 Q. Right. Okay. That's fair enough. So probably it was

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1 Derek Dyson who told you about these matters?
 2 A. I don't recall any conversation. I know I had
 3 conversations regarding Dartford with Mr Dyson, but
 4 I don't recall the content.
 5 Q. Okay. Do you make any notes of any of your calls or
 6 meetings?
 7 A. Not generally.
 8 Q. What's your practice? Do you have a notebook like
 9 Mr Dyson, or do you tend to have a dictaphone or --
 10 A. No, no, I don't keep a day book as in the day book that
 11 Mark Raines kept.
 12 Q. Sorry, Mr Raines; you are quite right.
 13 A. What I tend to do is have an A4 line pad with detachable
 14 pages and I don't make notes. I make notes of actions.
 15 So I would write a list of actions. Once they are
 16 completed, I strike them out with a highlighter pen;
 17 once the page is completed, it gets thrown away.
 18 Q. Okay. Mr Raines's notebook. If you go back three
 19 pages, 1256, {E/332/1256} there is a page from his
 20 notebook at more or less the same time. It seems to be
 21 around -- 14 April is the date that we see on it. 1256?
 22 A. Okay.
 23 Q. Do you see it?
 24 A. Yes, a handwritten page, yes.
 25 Q. Do you recall speaking to Mr Raines at all about

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1 Dartford at around this time? Does that help to jog
 2 your memory?
 3 A. I don't think I did, no.
 4 Q. No.
 5 A. The situation was that I had joined Specsavers in the
 6 middle of December 2007.
 7 Q. Hm-mm.
 8 A. I spent until the end of 2007 working in stores, just to
 9 become familiar. I then spent three months on my
 10 induction. I had met Mr Raines at that time, but
 11 I think only once or twice, so I certainly hadn't
 12 discussed anything regarding a Dartford business with
 13 him.
 14 Q. So it's probably Mr Dyson and perhaps Mr Ryan -- you are
 15 emailing Mr Ryan, so is it possible you might have had
 16 some discussions with Mr Ryan?
 17 A. I don't think so. I had had meetings with Mr Ryan but
 18 basically that was just an introduction to his
 19 department. So he put me on a circulation list for his
 20 business transfer report. I had read that. I can't
 21 remember what the entry was regarding Dartford. It
 22 didn't mean anything to me at that stage.
 23 Q. Okay. Mr Ryan's response to you is at 1259:
 24 {E/335/1259}
 25 "Hi David."

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1 He copies in Mr Dyson, do you see?
 2 A. Yes.
 3 Q. "Hi David.
 4 "Michael McGonagle met with Swarandeeep on
 5 Tuesday..."
 6 Do you see that?
 7 A. Yes.
 8 Q. That would have been the Tuesday of that week, probably
 9 15 April 2008. Do you see?
 10 A. Hm-mm.
 11 Q. "... and although I have spoken to him I'm not clear
 12 what the outcome was, apart from she is still sticking
 13 to her guns about only testing 4 days per week. I've
 14 asked Michael to do a summary of the position, hopefully
 15 today, so that Derek can consider it before he goes on
 16 hols."
 17 Do you see?
 18 A. I do.
 19 Q. "I don't think she is particularly unhappy with Kam -
 20 she is just unhappy full stop, seemingly very negative
 21 to anything SOG suggests."
 22 Yes?
 23 A. Hm-mm.
 24 Q. "Kam is going to try to persuade her to test 5 days per
 25 week for 6 months, to turn the business round, although

9

1 Michael says that the cost of this extra day
 2 is relatively small in the great scheme of things. I'm
 3 forward a copy of Michael's report when I get it."
 4 Do you see that?
 5 A. Yes.
 6 Q. "I am becoming more persuaded that the big win in all of
 7 this is to sell Kam the shares, and accept that she will
 8 test 4 days, and work on the shop floor for the other
 9 day, perhaps, as Michael suggests, with Kam doing
 10 a day's testing to cover the 5th day. In cashflow terms
 11 this would have the same outcome.
 12 "Cheers."
 13 That's Mr Ryan signing off. Do you recall receiving
 14 that?
 15 A. Not specifically, no, but obviously I did do.
 16 Q. Okay, good. We then see Mr McGonagle's report in
 17 a couple of formats. There is page 1260, where he seems
 18 to be emailing it to himself from his wife's email
 19 address. {E/336/1260} The actual memo we have been
 20 using is at 1262. {E/337/1262} Do you see it
 21 18 April 2008?
 22 A. I do.
 23 Q. This is Mr McGonagle reporting on the meeting at
 24 Dartford?
 25 A. Hm-mm.

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1 Q. Go to the bottom of the page, below the second hole
 2 punch. Do you see: {E/337/1262}
 3 "The biggest issue at present would appear to be the
 4 ulterior motives of the two individuals."
 5 Do you see that?
 6 A. I do.
 7 Q. And then:
 8 "SB does not want to be managed and appears to be
 9 putting KS off, in the belief that she will either be
 10 offered the shares or introduce someone to the business
 11 that she is comfortable with.
 12 "KS ..."
 13 That's Mr Singh, do you understand?
 14 A. I do.
 15 Q. "... acknowledges the business potential and ultimately
 16 wants to introduce a member of his own extended family,
 17 and will manage and communicate with Swarandeeep
 18 accordingly."
 19 Do you see that?
 20 A. I do.
 21 Q. So were you aware of that at the time?
 22 A. No, absolutely not. The grievance hearing was the first
 23 project that I had effectively taken on since the
 24 completion of my induction and I wasn't familiar with
 25 any of this background really.

11

1 Q. But Mr Ryan had said that he would provide you with
 2 a copy of Mr McGonagle's report. I suggest to you that
 3 you must have been aware that there was a report coming
 4 in and that this was the report?
 5 A. Okay. I accept that. The email that I sent to Mr Ryan
 6 regarding the business transfer update was just
 7 a general enquiry and as I said on it, I'm due to hear
 8 a grievance.
 9 Q. That's right. You were due --
 10 A. Due to hear a grievance. I saw Dartford mentioned on
 11 the business transfer report and it was a general
 12 enquiry in my mind: is there anything I should be aware
 13 of. But certainly I wasn't aware of the background with
 14 Kam and whatever else was going on at that time. There
 15 is no reason why I would be aware.
 16 Q. I suggest to you that certainly once you had seen this,
 17 you would be aware, wouldn't you?
 18 A. Once I had read that report, yes.
 19 Q. Okay. Then you have your grievance meeting, page 1266?
 20 {E/341/1266}
 21 A. Okay.
 22 Q. That's right, isn't it. Do you see that?
 23 A. Yes, 22 April.
 24 Q. Let's just go to the sort of nub of -- some of the
 25 issues here. If you go to 1272. {E/341/1272}

12

1 A. Okay.
 2 Q. 1272?
 3 A. Hm-mm.
 4 Q. Just above the second hole punch?
 5 A. Okay.
 6 Q. You say: {E/341/1272}
 7 "From my experience of these matters when
 8 a partner/director is being investigated it is not
 9 normal practice to have the other partners present at
 10 the interview."
 11 Do you see that?
 12 A. Yes.
 13 Q. And Ms Birdi replies:
 14 "As a director I should not have been excluded from
 15 the decision making as re to that date that LP [Loss
 16 Prevention] would reprimand NP."
 17 Do you see?
 18 A. Yes.
 19 Q. That's Mr Patel: {E/341/1272}
 20 "The business interests were at the forefront of my
 21 mind."
 22 Her complaint was not about being excluded from the
 23 investigatory interview, where Mr McAlindon was going to
 24 put the evidence to Mr Patel and then get him to comment
 25 upon on it or admit it, which, of course, he did; it was

1 as to the decision-making. It was the element of the
 2 discussion between Mr McAlindon and Mr Patel, where
 3 Mr McAlindon made an offer to Mr Patel that Mr Patel
 4 could have a way out. Do you remember?
 5 A. Yes, I do, yes.
 6 Q. So did you understand the difference between the
 7 interview and the discussion regarding the way out?
 8 A. I did during this interview here, yes.
 9 Q. Okay.
 10 A. Well, I understood what the complaint was.
 11 Q. You understood --
 12 A. I understood what Ms Birdi was asking for.
 13 Q. If you just go above that, just below the first hole
 14 punch, you said: {E/341/1272}
 15 "Loss Prevention department represent interest of
 16 both A and B shareholders and act in what they consider
 17 to be in the best interest of the business."
 18 Do you mean that the Loss Prevention department acts
 19 in what the Loss Prevention department considers to be
 20 in the best interests of the business?
 21 A. No.
 22 Q. No? What do you mean then:
 23 "The Loss Prevention department represent interest
 24 of both A and B shareholders and act in what they
 25 consider to be in the best interest of the business."

1 A. I guess what they have been instructed is the best
 2 interests of the business.
 3 Q. Okay. But instructed by the A and B shareholders; not
 4 just the B shareholders, SOG?
 5 A. Well, they are acting in the best interests of the
 6 A shareholders, if they are performing audits.
 7 Q. Audits, of course they are.
 8 A. That sort of thing; if they have uncovered theft from
 9 the business -- so they are acting certainly in the best
 10 interests of the A shareholder.
 11 Q. In uncovering theft, plainly they are?
 12 A. Yes.
 13 Q. But I'm talking about at this Loss Prevention department
 14 meeting, where Mr McAlindon met with Mr Patel, after the
 15 interview stage, and started offering Mr Patel a way
 16 out, agreeing terms as to the basis upon which he could
 17 leave, and agreeing not to report him to the police for
 18 admitted theft, which you understand is what Ms Birdi
 19 was actually complaining about?
 20 A. Hm-mm.
 21 Q. You have just told us. So in that aspect of it, did you
 22 understand that they were -- the Loss Prevention
 23 department, Mr McAlindon, was representing both Ms Birdi
 24 and SOG, or just SOG?
 25 A. Well, I can't comment on that because I wasn't there at

1 the meeting and I didn't know the full facts of the
 2 meeting that Mr McAlindon had had with Mr Patel.
 3 I didn't know the detail of that meeting.
 4 Q. Okay. And then if you go over the page to 1273, you see
 5 just above the first hole punch, you are continuing with
 6 this discussion. Mr Rehman has chipped in, but you say:
 7 {E/341/1273}
 8 "I don't agree that this is an abuse of power due to
 9 the nature of the LP [Loss Prevention] work and that
 10 events can move very quickly and unpredictable. It is
 11 my belief that the LP department are acting as
 12 representative of the B shareholders and have the
 13 authority to enter the business and carry out the
 14 investigation."
 15 So now you seem to have moved your position
 16 slightly; you are now acknowledging that Mr McAlindon
 17 was only representing SOG?
 18 A. Well, unfortunately, this was one of Mr Rehman's many
 19 interventions into the meeting. Do I feel this was an
 20 abuse of power? I think on reflection now, had I been
 21 more experienced with the company, I would have told him
 22 to be quiet.
 23 Q. I'm not really asking about your views of Mr Rehman; I'm
 24 asking about your understanding -- because you were
 25 dealing with this grievance, you see? This grievance

1 was about what Mr McAlindon was doing on that day and on
2 what basis he was doing it. So you must have had some
3 understanding about the position regarding what
4 Mr McAlindon was doing on this day and on what basis he
5 was doing it. Here you say: {E/341/1273}

6 "I don't agree that this is an abuse of power due to
7 the nature of the LP work and that events can move very
8 quickly and unpredictable. It is my belief that the LP
9 department are acting as representative of the
10 B shareholders and have the authority to enter to the
11 business and carry out the investigation."

12 A. Okay, so the context is -- the complaint is that it was
13 a change of date. So the Loss Prevention department
14 were originally planning to go in on the 27th; they
15 changed their minds, they went in on the 20th: is that
16 an abuse of power.

17 And I say I don't agree. Loss Prevention work and
18 events move quickly. They are unpredictable. It's down
19 to the diaries of the Loss Prevention department. Yes,
20 I said they were acting as a representative of the
21 B shareholder, have the authority to enter the business
22 and carry out the investigation.

23 I mean, I would say that they are acting in the best
24 interests of the business carrying out the investigation
25 as early as possible. They had identified some theft

17

1 that was going on and I think at that point they were
2 also aware that Mr Patel was trying to sell his shares.
3 They needed to get into the business at the earliest
4 opportunity.

5 Q. So you are dealing only with the question of them
6 investigating the theft. Is that what you are saying,
7 rather than the next stage, which is that they do a deal
8 with Mr Patel, giving him a way out?

9 A. Well, the context is, the complaint is that they had
10 changed the date, on the previous page.

11 Q. Okay. I note in your witness statement that that is the
12 only complaint that you really refer to.

13 Paragraph 11 of your witness statement, {C/3/32} so
14 under "2008 Grievance". Having just literally reported
15 what happened --

16 A. Hm-mm.

17 Q. -- the only complaint that you actually refer to is the
18 one about the change of the date from 27th to 20th. Did
19 you understand Ms Birdi's grievance to be all about
20 that, just changing the date?

21 A. No, it was one element of it.

22 Q. Yes.

23 A. But obviously I knew that this whole interview had been
24 disclosed and I can't reproduce the whole interview in
25 my witness statement.

18

1 Q. No, I'm not asking you to.

2 A. No, no.

3 Q. All right. Let's move away from the change of the date.

4 A. Okay.

5 Q. And deal with the basic fundamentals. You understood
6 that Ms Birdi was complaining about the fact that she
7 had been excluded from the decision-making regarding
8 letting Mr Patel out?

9 A. Hm-mm.

10 Q. You understood that?

11 A. I understand that was one of her complaints, yes.

12 Q. And Mr McAlindon is the man who did that; he was
13 physically in the room with Mr Patel. Do you recall?

14 A. I accept that. Obviously, I wasn't there.

15 Q. Okay. Is it your understanding that he was there acting
16 on behalf of the A and B shareholders or just the B
17 shareholders, SOG, so that if SOG told him to do that,
18 he was empowered to enter into that agreement with
19 Mr Patel?

20 A. I couldn't comment because I didn't know the details of
21 the agreement that he had carried out.

22 Q. How could you deal with Ms Birdi's grievance in
23 a comprehensive, unbiased and fair manner if you didn't
24 even understand something as basic as that?

25 A. Because I then had to go away and speak to Mr McAlindon.

19

1 I had to investigate the allegations. I wasn't aware of
2 them previously. All of this had happened before I had
3 even joined Specsavers.

4 Q. Yes. But if you don't understand the basis upon which
5 Mr McAlindon is acting, how can you deal with Ms Birdi's
6 grievance, which is about that he was acting in breach
7 of his authority and that he was acting improperly in
8 excluding her, the A director, from the discussion with
9 Mr Patel?

10 A. Up to that point, I don't know what discussions
11 Mr McAlindon had had with Mr Patel and I don't know what
12 he had disclosed to Ms Birdi.

13 Q. Okay. If you go over to page 1274, {E/341/1274} right
14 at the foot of the page?

15 A. Hm-mm.

16 Q. Ms Birdi sort of summarises there, really, doesn't she,
17 the crux of her complaint about this aspect of it:

18 "I was excluded from the meeting and any decision
19 making."

20 Do you see that bit?

21 A. Yes.

22 Q. Foot of the page?

23 A. I understood that that was normal for -- when Loss
24 Prevention interview a JVP, they don't invite the other
25 JVP into the meeting.

20

1 Q. But that's the investigatory interview, isn't it?
 2 A. Hm-mm.
 3 Q. We have passed that, because: {E/341/1274}
 4 "DC: Then you were called back in at the end to be
 5 told the outcome."
 6 And she said:
 7 "I was excluded from the meeting and any decision
 8 making. I was not informed of the exact nature of what
 9 had been agreed..."
 10 All right? It's all about the agreement aspect of
 11 the meeting:
 12 "... even though assets from the company ..."
 13 That would be Dartford Specsavers:
 14 "... had been given to [Mr Patel] despite him being
 15 a thief. I was told we would be prosecuting the next
 16 thing. I knew we were not. The only info MM gave me
 17 was NP admitting to stealing and that NP had agreed to
 18 sell his shares to SOG and be severely out of pocket.
 19 He would not be prosecuted as it had serious tax
 20 implications. I was told that was the final decision
 21 and that was that. Again it was the manner in which
 22 I was told."
 23 That's a summary, isn't it, of what she was
 24 complaining about?
 25 A. That's Ms Birdi's version, yes.

1 Q. And then your response is over the page: {E/341/1275}
 2 "The complaint is decisions were made that okay you
 3 should have been involved in and one manner in which
 4 these decisions were given to you was unacceptable."
 5 Do you see that?
 6 A. I do. I'm summarising her complaint.
 7 Q. You are.
 8 A. Yes.
 9 Q. You are. You went on to find that that grievance was
 10 not upheld, didn't you? You didn't uphold any of her
 11 grievance?
 12 A. Could you take me to that?
 13 Q. Do I need to? Do you not know what the result of your
 14 own grievance decision was? You are only here to give
 15 evidence about this grievance decision and the next one
 16 that you did two years later?
 17 A. Yes, you are going to ask me some detailed questions
 18 about --
 19 Q. No, I'm not.
 20 A. Okay, all right.
 21 Q. I'm going to ask in very general terms. You did not
 22 uphold any of her grievance, did you?
 23 A. Erm, not entirely, no.
 24 Q. So you didn't uphold that grievance there that you have
 25 summarised. She has set it out for you; you have

1 summarised it. You didn't find that Mr McAlindon
 2 excluded her from the decision-making process, that she
 3 had been told that Mr Patel was going to be prosecuted,
 4 and then the next thing she is told he is not going to
 5 be prosecuted?
 6 A. Okay.
 7 Q. Given that that is exactly what did actually happen --
 8 we know that that is what happened, Mr McAlindon admits
 9 that that is what happened; he did not involve Ms Birdi
 10 in the process -- on what basis do you conclude that her
 11 grievance is not correct?
 12 A. I think I would need to see the text of it.
 13 Q. You would need to ...?
 14 A. See the text of my response.
 15 Q. Did you write your response or was it drafted with the
 16 assistance of the legal department?
 17 A. I wrote my response over six years ago.
 18 Q. Yes.
 19 A. When I was -- just shortly after I had completed my
 20 induction into the company. So if you take me to it,
 21 I'll try and answer your question.
 22 Q. It's a simple question, Mr Clark: did you write it
 23 yourself or did you write it with the assistance of the
 24 legal department? Everybody else seems to have had some
 25 assistance from the legal department when writing their

1 documents?
 2 A. I wrote it and then it was sent into the legal
 3 department so there would have been an element of
 4 assistance.
 5 Q. Okay. All right. I will take you to your decision in
 6 a moment. I just need to deal with matters in sequence,
 7 whilst we are in this bundle, you see, because the next
 8 thing you do is you interview Mr McAlindon. If you go
 9 to page 1306. {E/354/1306}
 10 A. Hm-mm.
 11 Q. Do you see that?
 12 A. Yes.
 13 Q. Did you have any notes or anything with you, preparation
 14 for this interview with Mr McAlindon?
 15 A. I did because throughout it I refer to the investigation
 16 meeting -- the meeting with Ms Birdi.
 17 Q. I see, so you had the notes of your meeting with
 18 Ms Birdi?
 19 A. Yes.
 20 Q. Had you made any notes for yourself as to what the
 21 issues were, how you were going to deal with matters
 22 with Mr McAlindon?
 23 A. My normal practice -- and I can't remember to be honest
 24 whether I did this or not. My normal practice would be
 25 to take the typed-up notes from the meeting with

1 Ms Birdi and then I would have handwritten comments on
2 them.
3 Q. Right. Okay. So we can see the way in which you carry
4 out this meeting. It appears -- go to point 1 on
5 page 1306? {E/354/1306}
6 A. Hm-mm.
7 Q. What you do -- what you do here, at least -- is that for
8 the next three pages, you have just set out the meeting
9 note from the meeting with Ms Birdi?
10 A. Yes, basically, what I'm doing, I'm reading out chunks
11 of the grievance or the alleged --
12 Q. No, I think it's the meeting note itself. It's the
13 document I was just taking you through.
14 A. Yes, the notes of the meeting with Ms Birdi. So what
15 I've --
16 Q. That's right, where Mr Rehman is there?
17 A. Yes.
18 Q. And literally, so from page 1306, the middle of the
19 page, where it says: {E/354/1306}
20 "MR: It was agreed on 14 February..."
21 Then:
22 "MR: I believe ..."
23 "DC: Loss Prevention ..."
24 Do you see? This is literally just the meeting note
25 quoted all the way through to page 1308 at the bottom?

25

1 {E/354/1308}
2 A. That's correct, I was just about to explain that.
3 I took the meeting notes from my meeting with Ms Birdi,
4 broke those notes down into the individual points and
5 then read out at length the transcript from the meeting
6 with Ms Birdi, and then at the end of each point, asked
7 Mr McAlindon to comment.
8 Q. Okay.
9 A. Which you can see at the bottom of 1308. {E/354/1308}
10 Q. Yes. So I wanted to understand: that's the structure of
11 your meeting with Mr McAlindon. You read out your notes
12 from the meeting with Ms Birdi and then he gives a few
13 lines of comment?
14 A. Yes.
15 Q. Okay. On that first point, his first comment is, at the
16 bottom of 1308: {E/354/1308}
17 "I had reason to believe that Nimesh Patel was
18 attempting to sell his shares and it was necessary to
19 act as quickly as possible."
20 Do you see that?
21 A. I do.
22 Q. Did you take that seriously, that somehow the urgency
23 was to stop Nimesh Patel selling his shares?
24 A. Yes.
25 Q. But Nimesh Patel couldn't sell his shares, could he? He

26

1 couldn't bring in another SOG person -- a DO into this
2 shareholder agreement and sell his A shares. He
3 couldn't do that without SOG, could he?
4 A. That's correct.
5 Q. So SOG had control over the transfer of shares, the
6 shares certificate, they were the company secretary of
7 Dartford Specsavers Limited?
8 A. Hm-mm.
9 Q. So there was no way that Mr Patel could sell his shares
10 without SOG knowing about it?
11 A. That's correct.
12 Q. So that explanation by Mr McAlindon for the bringing
13 forward of the meeting and dealing with things as
14 quickly as possible, that wasn't right, was it?
15 A. That was one of the reasons, but I think if you go
16 through the statement, that's also dealt with later on.
17 Q. Okay.
18 A. In -- throughout the statement, the issue of the theft
19 is dealt with.
20 Q. Okay. So the second point, you start on page 1309
21 {E/354/1309} and you have quoted some of the bits that
22 I have just quoted back to you. So do you see, for
23 example on, 1309, by the second hole punch:
24 "SB: I was excluded from the meeting and any
25 decision making. I was not informed of ..."

27

1 Do you see page 1309, the second hole punch?
2 A. I've got that.
3 Q. You are reciting to Mr McAlindon the very points that
4 I was reciting to you?
5 A. Hm-mm, that's right, yes.
6 Q. And you do some others of them as well but you have
7 plainly highlighted the real crux of the complaint from
8 Ms Birdi. Yes?
9 A. On this second point, yes.
10 Q. On this second point. And you also cited her grievance
11 letter. Do you see above the first hole punch:
12 {E/354/1309}
13 "On 20 February 2007, the day that Mr Patel was
14 confronted for his stealing and subsequently resigned,
15 Mr McAlindon acted in a way completely contrary to what
16 he informed me as to what would happen. Instead of me
17 being involved in all aspects I was asked to leave the
18 office at the beginning after signing a form and later
19 he would not give me any information as to what had
20 happened except that one of the Company cars was being
21 given to Mr Patel."
22 Do you see that?
23 A. I do.
24 Q. And then, as I say, you recite some of the parts of the
25 interview. Mr McAlindon's answer to that, which you

28

1 have recorded on page 1310? {E/354/1310}

2 A. Yes, I'm reading that.

3 Q. The bit in bold is the Mr McAlindon response to that.

4 Is that right?

5 A. Yes.

6 Q. And he just said: {E/354/1310}

7 "Normal LP procedures were followed throughout. SB

8 was not treated in any way differently to another

9 Director in this type of situation. It is not our

10 policy to include a Director in an LP interview with

11 a partner/director.

12 "I was unable to give SB any details after the

13 interview as allegations had been made against both her

14 and her husband."

15 That doesn't actually address the point that

16 Ms Birdi was making, does it? It doesn't --

17 A. I think it addresses it exactly. I wasn't able to give

18 any details because there was an implication now that

19 Ms Birdi had also been involved in wrongdoing and that

20 allegations had been made against her and her husband.

21 Q. But that's not a reason for not telling her about the

22 deal, selling the shares, or giving Mr Patel a way out?

23 That's got nothing to do with that, has it?

24 A. It's all linked. It's all tied in, obviously.

25 Q. Is it, all obviously linked? Mr McAlindon says it's not

1 linked at all?

2 A. I would say that that was linked. That's what

3 Mr McAlindon has given as his response.

4 Q. I know it is. And you don't probe him or challenge him

5 or put the case to him about that element of the

6 discussion that Ms Birdi was actually complaining about;

7 you don't question him as to his answer whatsoever, do

8 you?

9 A. No, I accepted his response.

10 Q. This must have been quite an odd interview. You are

11 reading out chunks of a previous interview with

12 Ms Birdi?

13 A. Hm-mm.

14 Q. He then gives you a three- or four-line answer and

15 that's it. You don't question him. You don't probe

16 with him. You don't discuss it with him to try and

17 understand what he is saying?

18 A. I think the second sentence of his response there is

19 perfectly acceptable.

20 Q. It's not even the explanation he now relies upon,

21 Mr Clark. It's plainly not acceptable, is it? How does

22 the fact --

23 A. At the time I thought that that was a reasonable

24 explanation, that he wasn't going to give any details

25 after the interview as allegations had been made against

1 both her and her husband.

2 Q. In a separate recorded interview. You knew that, didn't

3 you? There was a separate interview recording in

4 relation to the allegations by Mr Patel against

5 Ms Birdi?

6 A. I don't recall if I knew that at the time or not.

7 I just don't recall.

8 Q. Had you not got the interview records of the very

9 interview that you were hearing a grievance about?

10 A. I would have had, but ...

11 Q. But? You didn't bother reading it?

12 A. No, I'm assuming I would have had. I can't recall. As

13 I say, six and a half years ago.

14 Q. Okay. But can you explain to his Lordship why you

15 didn't question Mr McAlindon about the point that

16 Ms Birdi was making, which was about the deal that was

17 done with Mr Patel. The deal, you know: the way out;

18 the purchase of his shares; the letting him off without

19 being reported to the police and all those sorts of the

20 things. That's what she was really complaining about,

21 wasn't it?

22 A. Well, I was looking at it as a package and I accepted

23 Mr McAlindon's explanation, as I have said.

24 Q. I see. He gives that explanation and you just accept

25 it?

1 A. I did.

2 Q. That doesn't seem much of a grievance investigation?

3 A. To me at the time it seemed like a perfectly reasonable

4 response.

5 Q. It appears to be just simply going through the motions

6 of you putting the allegations to Mr McAlindon. He has

7 already pre-prepared a response, hasn't he? He handed

8 that to you before the meeting, page 1324, appendix 1.

9 {E/354/1324} So he has pre-prepared his response in

10 writing?

11 A. Yes, he did.

12 Q. You put the allegations to him; he gives you a sort of

13 formulaic answer, "Normal LP procedures were followed

14 throughout", and you simply don't question or challenge

15 that in any way; you just accept that, hook, line and

16 sinker and say, "Well, there you are, that's the answer

17 to the grievance".

18 A. At the time I accepted it.

19 Q. All right. Then point 3 you recite the grievance letter

20 and then you read out from the grievance interview. Do

21 you see?

22 A. Hm-mm.

23 Q. And this is all about Specsavers. Do you see that? And

24 I think you end your quote from the interview at 1313,

25 at the bottom: {E/354/1313}

1 "SB: No, I think it is all in there."
 2 And Mr McAlindon's answer is:
 3 "As with point 2 at this stage S Birdi was
 4 implicated by a very serious misconduct allegation,
 5 I could not give her any details without compromising
 6 the investigations that would have to be carried out
 7 into these further allegations."
 8 Do you see that?
 9 A. I do.
 10 Q. Have you any idea what that's about?
 11 A. Well, it goes on to tell you.
 12 Q. He goes on then to deal with her husband also being
 13 implicated in the allegation. It's a different point,
 14 isn't it?
 15 A. No, the allegation is that her husband:
 16 "... was receiving payment for work that he was not
 17 doing, this potentially could have tax and money
 18 laundering implications."
 19 So obviously, if her husband was involved, then
 20 Ms Birdi was aware of it and she was being investigated
 21 for condoning that.
 22 Q. Yes, but, point 3 from the grievance was: {E/354/1310}
 23 "I did not get any answers from Mr McAlindon.
 24 I tried to get some answers from the SOG board as to
 25 what Mr McAlindon had agreed with Mr Patel..."

1 A. Hm-mm.
 2 Q. That's what it was about, wasn't it?
 3 A. It's the same point as number 2, isn't it?
 4 Q. Yes, exactly. The answer from Mr McAlindon is:
 5 "See my answer to 2 above."
 6 A. Yes, and then he goes on to give a much more detailed
 7 explanation than he gave in point 2.
 8 Q. But that explanation he gives doesn't answer the
 9 complaint, does it?
 10 A. {E/354/1314} "I could not give her any details without
 11 compromising the investigation..."
 12 Q. Okay. Point 4 from the grievance is a nice short one so
 13 we can perhaps see that more clearly. 1314 between the
 14 two hole punches: {E/354/1314}
 15 "On 26 March 2007 Mr McAlindon started an
 16 investigation into me. The accusations made against me
 17 by Mr Patel were not security related so why he was
 18 investigating I do not know."
 19 And then you have set out -- and then Mr McAlindon's
 20 answer is: {E/354/1315}
 21 "The allegations were clearly crime related."
 22 A. Okay.
 23 Q. Is that right?
 24 A. Yes.
 25 Q. You just accepted that?

1 A. Sorry?
 2 Q. You just accepted that answer. You didn't question him
 3 about it; you didn't challenge him; you didn't take him
 4 to any of the points?
 5 A. I didn't need to. We had just been there, top of 1314.
 6 He'd explained in detail what the allegation was and in
 7 his opinion -- was it, money laundering, tax evasion?
 8 So...
 9 Q. Okay. Point 5 from the grievance letter is about
 10 Mr McAlindon turning up on 26 March; do you remember?
 11 A. Yes.
 12 Q. We have moved from the Patel incident and we are on to
 13 the investigation into Ms Birdi and Mr McAlindon's
 14 conduct in that regard; do you recall?
 15 A. I do.
 16 Q. She had a grievance about his conduct and that of his
 17 staff in the Loss Prevention team?
 18 A. That's right.
 19 Q. It includes -- do you see by the first hole punch there
 20 is a sentence starting: {E/354/1316}
 21 "Subsequent to LP's visit to the store, private and
 22 confidential documents were left insecure with the
 23 locked filing cabinet open and vital private and
 24 confidential documents left out on top of the filing
 25 cabinet..."

1 Do you see that?
 2 A. I do.
 3 Q. {E/354/1316} "All the staff information files were in
 4 the filing cabinet, including private staff information
 5 ... and these were left accessible ... also confidential
 6 documents which could only have come from the previously
 7 locked cabinet were found in the shredding."
 8 Do you see that?
 9 A. I do.
 10 Q. Those were quite serious allegations against a Loss
 11 Prevention investigator, weren't they?
 12 A. Yes, they were.
 13 Q. And you then recited a little bit from the meeting notes
 14 about that, about the keys and such like?
 15 A. Hm-mm.
 16 Q. And then you ask for his answer and it's at page 1317?
 17 {E/354/1317}
 18 A. Okay.
 19 Q. Can we see it?
 20 A. Yes.
 21 Q. It says:
 22 "S Birdi had already signed a Directors resolution
 23 for me to carry out an investigation in the store."
 24 You would agree that that doesn't really answer the
 25 point, does it? She wasn't saying he couldn't carry out

1 an investigation; she was saying the manner in which he
 2 had done it and he had left all these documents,
 3 et cetera. Do you recall?
 4 A. Sure, okay.
 5 Q. Okay:
 6 "As I was acting in the best interests of the
 7 company it was imperative this I acted quickly to secure
 8 evidence.
 9 "The filing cabinet was unlocked when I found it.
 10 "S Birdi had no dealings with me up to that time
 11 other than the Mr Patel investigation.
 12 "Why would LP shred any documents, especially
 13 payslips. We went there to secure evidence for the
 14 investigation, that was the evidence we needed. Why
 15 didn't S Birdi raise the issue and ask LP about the
 16 shredding when she claims to have become aware of it?"
 17 That's his answer.
 18 A. It is.
 19 Q. So did you test him on that answer? Did you challenge
 20 him? Did you put any of the evidence to him? There is
 21 no note of it.
 22 A. I've read all of this out. So that was the challenge.
 23 That was his response.
 24 Q. And you accepted that?
 25 A. I did.

1 Q. Yes.
 2 A. However, I did interview Phil Barnes as well, who was
 3 also present at the time. I interviewed Phil Barnes
 4 separately. He was present in the store at the time and
 5 he corroborated the evidence that Mr McAlindon had
 6 given.
 7 Q. Okay. Point 6 is that on the 27th, when she arrived,
 8 she was intimidated by Mr McAlindon. Do you remember,
 9 threatening behaviour, scared?
 10 A. I don't believe that that was the case.
 11 Q. No, that's her grievance.
 12 A. Okay, that's the grievance.
 13 Q. Point 6 of the grievance. Do you see it?
 14 A. Yes.
 15 Q. It's on page 1317. {E/354/1317}
 16 A. Yes.
 17 Q. Do you see that?
 18 A. I do.
 19 Q. And you then recite the meeting notes. It's all about
 20 when he was outside there, he was aggressive,
 21 intimidating, et cetera. Do you see that?
 22 A. Sorry?
 23 Q. Page 1318, you are quoting from your notes with
 24 Ms Birdi's interview? {E/354/1318}
 25 A. Okay.

1 Q. It's all about that morning, the 27th?
 2 A. It is, yes, yes.
 3 Q. And Mr McAlindon's response to all of that, after you
 4 have quoted it all to him, is at page 1320.
 5 {E/354/1320} Do you see?
 6 A. I do.
 7 Q. His response was:
 8 "S Birdi now says she felt intimidated but LP both
 9 waited outside ..."
 10 Et cetera, and it goes on.
 11 Did you make any investigation of the staff who were
 12 present on the day, to try and see whether there was
 13 some independent evidence as to whether he was
 14 intimidating or not?
 15 A. I didn't, no, I interviewed both Mel McAlindon and
 16 Phil Barnes, as I have said.
 17 Q. Yes, but you have got Ms Birdi on the one hand saying he
 18 was intimidating, aggressive, et cetera.
 19 A. Hm-mm.
 20 Q. You have got them saying, "No, we are not"?
 21 A. Hm-mm.
 22 Q. They would say that, wouldn't they?
 23 A. I found their explanation quite reasonable. They had
 24 stayed outside of the store until ten past nine, having
 25 been waiting outside the store before Ms Birdi arrived.

1 Q. Yes.
 2 A. So they completely complied with what she had asked them
 3 to do. They went up to the office where she had asked
 4 them to go and wait. They gave a very credible
 5 explanation of where they were sitting within the office
 6 and Mel described the layout of the office. The fact
 7 that they left the office when they were asked to, when
 8 Ms Birdi received a phone call.
 9 Q. Hm-mm.
 10 A. So yes, I was struggling to see any intimidation there
 11 or aggressive behaviour.
 12 Q. Okay.
 13 A. In fact, as part of it, Ms Birdi sat down with
 14 Mr McAlindon and Mr Barnes and started recounting about
 15 how she felt intimidated by Mel McAlindon and clearly at
 16 that time, she didn't even realise that she was talking
 17 to him.
 18 Q. That's Mr McAlindon's version of it?
 19 A. It's Phil Barnes's version of events as well. So they
 20 are the three people in the room so ...
 21 Q. But Mr McAlindon and Mr Barnes, they are a team, aren't
 22 they?
 23 A. They are.
 24 Q. I'm asking whether you -- because in your witness
 25 statement now you say that you wanted to investigate

1 this matter comprehensively and in an unbiased and
 2 proper manner?
 3 A. Hm-mm.
 4 Q. Did you interview the staff who were present on the day,
 5 for example, Mrs Frondigoun? We know she was there.
 6 A. I didn't, no.
 7 Q. Why not?
 8 A. No, but -- particularly with this part -- element of the
 9 allegation, it took place in an office. There was
 10 nobody else in there.
 11 Q. No, no, no, it starts outside the office, doesn't it?
 12 And it's the whole morning --
 13 A. It starts outside the store but ...
 14 Q. Outside the store and then it goes on --
 15 A. And again, there was nobody else there at that time.
 16 Q. There was, Ms Frondigoun was there. We know, she has
 17 given evidence --
 18 A. No, not outside the store at that time. Mr Barnes and
 19 Mr McAlindon were the first people there, as
 20 I understood it.
 21 Q. So you don't think Mrs Frondigoun was there that
 22 morning, when they were standing outside the store,
 23 being intimidating?
 24 A. That's a very subjective view, isn't it? Looking
 25 intimidating?

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1 Q. It's her view, isn't it? You know that Ms Frondigoun
 2 has given evidence to this court?
 3 A. I know that she has, yes.
 4 Q. And that her evidence was that Mr McAlindon was
 5 intimidating?
 6 A. Subjective.
 7 Q. Subjective. Quite right. Quite right.
 8 A. Wasn't there some -- from my recollection, "Mr McAlindon
 9 had bruised knuckles"? Wasn't that part of her reason
 10 for finding him intimidating?
 11 Q. You don't want to find any of these grievances proven,
 12 do you? You are keen to find reasons as to why they
 13 shouldn't be upheld?
 14 A. Absolutely not.
 15 Q. All your answers that you are giving to this court, and
 16 of course your explanation in your decision-making, it's
 17 simply accepting what Mr McAlindon says and saying, on
 18 the basis of that and without investigating matters at
 19 all, "I don't think I should uphold these grievances"?
 20 A. You are incorrect because it wasn't just Mr McAlindon,
 21 it was Mr Barnes as well that I was speaking to.
 22 Q. Okay. Your decision is at 1366. {E/363/1366} Is that
 23 right? Back of this bundle?
 24 A. Okay.
 25 Q. Is that right? 1366?

42

1 A. Yes.
 2 Q. Are you saying you drafted most of this document or --
 3 MR POTTS: My Lord, I'm sorry to interrupt. I think this is
 4 a draft. I'm not sure it's the final version of the
 5 report.
 6 MR JUSTICE NUGEE: Yes. I think that's probably right.
 7 MR STUART: That is right, I'm sorry, you are quite right.
 8 This is a draft. The final version, we don't get until
 9 the next bundle.
 10 MR POTTS: Yes.
 11 MR STUART: This version of the document, Mr Clark, do you
 12 recognise it at all?
 13 A. Obviously I have not just read the detail of this so
 14 I don't know the difference between the draft and the
 15 final version.
 16 Q. Right?
 17 A. As a draft, this would have been submitted to the legal
 18 department.
 19 Q. Yes.
 20 A. I'm surprised it's not privileged because I would have
 21 submitted it for advice and second opinions and a sanity
 22 check.
 23 Q. I thought you were the person tasked with dealing with
 24 Ms Birdi's grievance?
 25 A. That's correct.

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1 Q. And, therefore, any documents or notes that you make as
 2 part of your decision-making of that grievance are part
 3 of your decision-making of that grievance. Do you
 4 understand that?
 5 A. Yes.
 6 Q. All right. Do you recognise this document?
 7 A. No.
 8 Q. You don't; all right. I won't ask you about it. That's
 9 fine.
 10 A. I recognise the final version of it.
 11 Q. Okay. You don't recognise this version. All right,
 12 I won't ask --
 13 A. As I have explained, I don't know the difference between
 14 this and the final version.
 15 Q. Go to E6 then, put away E5.
 16 You are still making some investigations at this
 17 point, I think, at the beginning of E6, 1381? Do you
 18 see 1381? {E/368/1381}
 19 A. Yes, I'm sorry, whereabouts are you looking on? I'm
 20 there.
 21 Q. At the top, you are writing to Ms Birdi on 12 June. Do
 22 you see: {E/368/1361}
 23 "Dear Swarandeeep.
 24 "The response to your grievance and the breakdown of
 25 Loss Prevention charges ..."

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1 Because one of the issues that she was asking about
2 was the Loss Prevention charges?
3 A. That's right.
4 Q. The £80,000-odd that would have been rung up in the
5 period. You say they: {E/368/1361}
6 "... are now complete. I am just finalising
7 a summary of the other charges (Neil Hamilton, hotel
8 rooms et cetera) and hope to have this completed later
9 today."
10 Do you see?
11 A. I do.
12 Q. And that's because Ms Birdi had been chasing you, at the
13 bottom, hadn't she: {E/368/1361}
14 "Dear David.
15 "I have not received a response from my grievance
16 and was wondering if it has been completed."
17 Do you see?
18 A. That's -- well, yes, 9 June, yes.
19 Q. If we go to page 1385 {E/370/1385} there is another
20 version of that email and it has got an attachment,
21 1386. {E/371/1386} Do you see? Which is the list of
22 the £86,000 et cetera?
23 A. 1386?
24 Q. 1386. Do you see it?
25 A. I do.

1 Q. Do you recognise that document, 1386?
2 A. I do.
3 MR POTTS: My Lord, I don't think that is an attachment at
4 all, actually.
5 MR STUART: It's not an attachment?
6 MR POTTS: No.
7 MR STUART: Okay. Do you recognise the document at 1386,
8 Mr Clark? I think it's one document that goes from 1386
9 through to 1395.
10 A. Okay.
11 Q. Do you recognise that document?
12 A. I believe that this was the original document that was
13 sent to Ms Birdi.
14 Q. Hm-mm.
15 A. Or something very similar.
16 Q. Did you prepare this or did somebody else prepare this,
17 this schedule of all these charges?
18 A. No, I didn't prepare this, no.
19 Q. You didn't? So where did you get it from? Where did
20 you get the information from?
21 A. I believe that Alison Anderson at the time was acting as
22 an intermediary, so she compiled it.
23 Q. I see, Alison Anderson. I see, fine. So you can't
24 really speak to the figures there or the accuracy of
25 them or the basis for them?

1 A. I knew the basis in terms of Loss Prevention charging
2 £440 a day for a consultant in there.
3 Q. Right.
4 A. But certainly things like SLIN documents for
5 surveillance, then, no, I didn't procure those.
6 {E/371/1386}
7 Q. No. Okay. So now we finally do reach your
8 decision-making document, 1396. {E/372/1396} Do you see
9 that?
10 A. I do.
11 Q. That's what you referred to as your decision, isn't it?
12 I showed you the version this E5?
13 A. I'm just looking for a signature on this. Is this the
14 final version?
15 MR JUSTICE NUGEE: Go to 1411, Mr Clark. {E/372/1411}
16 A. 1411. Yes, okay, I have signed that.
17 MR STUART: Yes. So this is the final version of the
18 decision, the grievance decision; yes?
19 A. Yes.
20 Q. The previous document that I have shown you, pages 1366
21 to 1372 of E5, was obviously only a six-page document?
22 {E/363/1366}
23 A. Okay.
24 Q. Or a seven-page document. This is now, from 1396
25 through to 1415 -- this is a 20-page document?

1 {E/372/1396}
2 A. Hm-mm.
3 Q. Yes?
4 A. Yes.
5 Q. The additional 14-odd pages worth of text, is that what
6 has been inserted by the legal department, or have you
7 written it?
8 A. A combination. I would write most of it.
9 Q. Hm-mm.
10 A. So. It wouldn't have happened in one go. It would have
11 gone backwards and forwards.
12 MR POTTS: My Lord, it seems a little like groundhog day
13 from yesterday, I am afraid, my Lord. I think we are
14 straying.
15 MR STUART: I'm not sure we are, my Lord. I have made
16 a mistake, though, it's not 1415, it's 1411. So it's
17 actually 16 pages, not 20. So it's an additional ten
18 pages of text.
19 MR JUSTICE NUGEE: Mr Stuart, I think there is an objection.
20 If a document is part-drafted by a lawyer, are you
21 entitled to ask which bits have been drafted by a lawyer
22 and which bits have been drafted by the client? I'm not
23 sure you are. I think you are entitled --
24 MR STUART: I think I am, my Lord, because this is
25 a disclosed document. There is no privilege attaching

1 to this document. I'm entitled to ask anything about
2 this document that I want to. I'm not allowed to ask
3 about legal advice that was given.
4 MR JUSTICE NUGEE: Yes, but if there is a particular
5 sentence -- if you had said, "Who put those words in,
6 was that you or the lawyer?" then to answer that
7 question is disclosing the legal advice that has been
8 received.
9 It's not a question of disclosure; it's a question
10 of what questions you are allowed to ask.
11 MR STUART: My Lord, I suggest that I'm entitled -- given
12 that Mr Clark is giving evidence that this is his
13 document -- and I'm suggesting that it's written for
14 him, it's not his thoughts, it's not his genuine,
15 independent, unbiased, comprehensive thoughts; it's
16 written for him by somebody else -- I must put that to
17 him and give him the opportunity to comment.
18 If he decides he doesn't want to comment, I will
19 stop asking the questions, but I don't see that I can be
20 prevented from asking that question.
21 MR JUSTICE NUGEE: I'm not sure you can ask which bits he
22 wrote and which bits were written for him.
23 Mr Potts, what is your position?
24 MR POTTS: That's exactly -- my Lord, it's straying. It's
25 plainly straying into what is advice, what is legal

1 advice. It's just not appropriate.
2 MR JUSTICE NUGEE: You couldn't, could you, Mr Stuart, ask
3 to see a draft that he had sent to the lawyer and what
4 came back from the lawyer saying, "We suggest you insert
5 these words"?
6 MR STUART: No.
7 MR JUSTICE NUGEE: No. What is the difference between that
8 and looking at the final product and saying, "Now tell
9 me, which of these words did you write and which ones
10 were written for you"?
11 MR STUART: The difference is that this document is not
12 a privileged document.
13 MR JUSTICE NUGEE: No, it's not suggested to be.
14 MR STUART: So I'm asking him, not about the privileged
15 communication between himself and his lawyers; I'm
16 asking him about a document he is putting forward as an
17 unprivileged document in this court case, which he is
18 seeking to rely on, and which he is seeking to say in
19 his witness statement is his unbiased, fair,
20 comprehensive decision on the grievance, which he
21 carried out as the grievance decision-maker.
22 MR JUSTICE NUGEE: But I'm still troubled by the idea that
23 in asking questions about that, you are entitled to ask
24 him which bits of this document were drafted for you by
25 a lawyer. I don't see any difference between that

1 question and saying, "Can I see the draft as it went to
2 the lawyer and the draft as it came back?" They seem to
3 me to be exactly the same question.
4 MR STUART: They are not, my Lord, because if I'm asking to
5 see the drafts going back and forwards, I'm asking to
6 see privileged documents. This is not a privileged
7 document.
8 MR JUSTICE NUGEE: Yes, but the scope of legal professional
9 privilege is not confined to documents. It extends to
10 questions.
11 MR STUART: Yes.
12 MR JUSTICE NUGEE: I can't ask you what advice you have
13 given your client, even if it's not in a document.
14 MR STUART: That's right.
15 MR JUSTICE NUGEE: Equally, you can't ask Mr Clark what
16 advice SOG's legal department gave him.
17 MR STUART: And I haven't asked him that question and
18 I won't ask him that question.
19 MR JUSTICE NUGEE: No, but you if you ask, "Look at
20 page 1396, did you write those words or did you receive
21 them from the legal department?" that seems to me to be
22 tantamount to asking the same question.
23 MR STUART: It may be tantamount to asking the same question
24 but I'm not asking him about the legal advice that he
25 has received, I'm not asked him as to what legal advice

1 he was given; I'm asking him about the document that he
2 himself is putting forward and I must be entitled to
3 challenge him and to test his evidence regarding the
4 independent and unbiased nature of this document.
5 And he keeps referring back to this document.
6 I can't ask him about anything else because he doesn't
7 refer to anything else.
8 MR JUSTICE NUGEE: The fact you are asking about a disclosed
9 document doesn't change the nature of the questions you
10 are allowed to ask about it.
11 MR STUART: It's not the fact that it has been disclosed, my
12 Lord. The document itself is it not a privileged
13 document.
14 MR JUSTICE NUGEE: No, I accept that.
15 MR STUART: And therefore --
16 MR JUSTICE NUGEE: That doesn't mean you can ask whatever
17 I like about it.
18 MR STUART: I can't ask, "Did you receive advice from the
19 legal department about this document, what advice did
20 they give you about it?" I can't ask that, I accept
21 that.
22 MR JUSTICE NUGEE: No, but to say, "Were those words yours
23 or were they given to you by the legal department?" is
24 asking, "What legal advice did you have on the drafting
25 of this document?" It seems to me to be exactly the

1 same question.
 2 MR STUART: If your Lordship is ruling that I'm not entitled
 3 to ask him about that document, that's fine.
 4 MR JUSTICE NUGEE: No, you can ask him about the document.
 5 MR STUART: That's all I have asked him so far.
 6 MR JUSTICE NUGEE: You can say, "Why did you do --" as you
 7 did with (inaudible): "Why did you conclude this? Why
 8 did you conclude that?" You can put to him that such
 9 conclusions as expressed weren't justified by the
 10 evidence or didn't indicate that he had really thought
 11 about it properly or the like. What you can't do -- and
 12 I am ruling on this -- what you can't do in my ruling is
 13 to ask questions, the purpose and effect of which is to
 14 identify which words of the document were his own words
 15 and which words of a document were suggested to him by
 16 the legal department.
 17 MR STUART: I understand.
 18 MR JUSTICE NUGEE: And that's my ruling.
 19 MR STUART: Mr Clark, this document at page 1396 through to
 20 1411. {E/372/1396}
 21 A. Yes.
 22 Q. Is not the same as the document at page 1366 to 1372.
 23 {E/363/1366} It's a completely different document.
 24 A. You are talking about the draft which we have just put
 25 away?

1 Q. We have, yes.
 2 A. Well, I have not got the draft in front of me but
 3 I believe that a lot of the difference here is that
 4 I have inserted text from the original interview, the
 5 original letters.
 6 Q. Yes.
 7 A. From Ms Birdi.
 8 Q. All right. You are looking at 1396; yes? {E/372/1396}
 9 Do you have 1396?
 10 A. Yes.
 11 Q. You say in the third line of your letter:
 12 "Since then I have formally interviewed Mr McAlindon
 13 and Mr Barnes of the Loss Prevention team. I have taken
 14 into account notes made at or around the time of the
 15 investigation, correspondence between yourself and SOG
 16 and the interviews..."
 17 What are the notes made at around the time of the
 18 investigation? What were you referring to that you have
 19 looked at as part of your determination?
 20 A. Handwritten notes that I'd made when I interviewed
 21 Mr Barnes and Mr McAlindon.
 22 Q. So you are referring to your own notes of your own
 23 investigation, not notes made at or around the time of
 24 the investigation by Mr Barnes and Mr McAlindon?
 25 A. Yes, my investigation.

1 Q. So what notes are these? I haven't seen those notes?
 2 A. I wouldn't have kept them.
 3 Q. I see.
 4 A. They would have been handwritten notes, which I have
 5 then typed up into the -- well, we've been through it.
 6 Q. We have been through what?
 7 A. Mr McAlindon's responses. So where the responses were
 8 written in bold text, they were my notes.
 9 Q. Hm-mm. All right. Coming on to your findings, we start
 10 with number 1. It's on page 1398: {E/372/1398}
 11 "Procedure not followed."
 12 Do you see that?
 13 A. I do.
 14 Q. And your comment is at 1399. {E/372/1399} Do you see
 15 that?
 16 A. I do.
 17 Q. You say:
 18 "From the content of the letters exchanged between
 19 yourself and Alison Anderson, it is clear that your
 20 concerns were investigated and the result of that
 21 investigation was communicated to you in writing. It
 22 was also clear from your letters that you were unable to
 23 attend any meeting..."
 24 Do you see that?
 25 A. Hm-mm.

1 Q. And then at the bottom of the page: {E/372/1399}
 2 "Besides the above, I note that Mr McAlindon did not
 3 have any personal contact with you after 28 March 2007
 4 and also was not involved in the investigatory interview
 5 with your husband Mr Rehman."
 6 Do you see that?
 7 A. Yes.
 8 Q. You knew that Mr McAlindon was still carrying on the
 9 investigation into Ms Birdi after March and April? He
 10 was the man who had interviewed Mrs Frondigoun and
 11 Ms O'Brien. You were aware of all of that, weren't you?
 12 A. I knew that he had interviewed Mrs Frondigoun and
 13 Ms O'Brien. I don't recall the dates that he did that
 14 on.
 15 Q. All right. The second item -- so you don't support this
 16 element of the grievance.
 17 The second item on page 1400 is the conflict of
 18 interest, impartiality of Mr McAlindon? {E/372/1400}
 19 A. Okay, yes.
 20 Q. And your findings are:
 21 "In addition to Loss Prevention issues, the
 22 Specsavers Loss Prevention department also carry out
 23 audit and investigations where required. They have
 24 a wide remit as investigating officers..."
 25 "It is my opinion in a the investigation was

1 security related. It involved money being removed from
 2 the business in a way that could be dishonest."
 3 Do you see all of that?
 4 A. I do.
 5 Q. And just below the second hole punch: {E/372/1400}
 6 "There has not been any evidence provided which
 7 shows that Mr McAlindon was biased in any way."
 8 Do you see that?
 9 A. I do.
 10 Q. Had you interviewed Ms Frondigoun?
 11 A. No.
 12 Q. Ms O'Brien?
 13 A. No.
 14 Q. Anybody other than Mr McAlindon and his colleague,
 15 Mr Barnes?
 16 A. It was a very factual investigation. Was Mr Rehman on
 17 the payroll, was he doing work in this business.
 18 Likewise Mrs Patel. So I was satisfied that he was --
 19 there was no conflict of interest there.
 20 Q. But the biased nature of Mr McAlindon, that was the
 21 thrust of what she was complaining about, wasn't it,
 22 that Mr McAlindon was biased against her right from the
 23 start? That's the thrust of it?
 24 A. No, the thrust of it to my mind was that she was
 25 complaining that Mr McAlindon had a conflict of interest

1 and should not be investigating her because he had
 2 already investigated Mr Patel.
 3 Q. Hm-mm. That's how you understand her complaint, is it?
 4 A. Yes.
 5 Q. Okay. Then 1401, at the top, you don't support that
 6 grievance. {E/372/1401}
 7 The third issue is the unprofessional,
 8 inappropriate, aggressive, intimidating and bullying
 9 behaviour. That would be of Mr McAlindon, wouldn't it?
 10 A. It would be.
 11 Q. You then give a quote, which is about the incident back
 12 on 20 February. Do you see that?
 13 A. I do.
 14 Q. Is that what you understood to be the unprofessional,
 15 inappropriate, aggressive and intimidating and bullying
 16 behaviour that we are talking about?
 17 A. That was part of it because we continue and we -- it's
 18 covered in different points.
 19 Q. Hm-mm?
 20 A. So we go on to cover the additional points in the
 21 office, the waiting outside, et cetera.
 22 Q. Yes. "Findings and Comment". Your findings, third
 23 paragraph by the second hole punch:
 24 "At our meeting of 22 April you asked several times
 25 if this was 'exclusion' and 'a misuse of power'. In my

1 opinion Loss Prevention were acting completely within
 2 their power when they bought the interview date with
 3 Mr Patel forwards."
 4 Yes?
 5 A. Yes.
 6 Q. But what about the matter of when they went on, on
 7 20 February, to exclude Ms Birdi from any discussion or
 8 knowledge of the negotiations with Mr Patel, giving him
 9 a way out and doing a deal with him, whereby Dartford
 10 Specsavers' stolen money was dealt with? What about
 11 that?
 12 A. I am sorry, I think we covered that, didn't we, about
 13 15 minutes ago, exactly that?
 14 Q. No, but where is it in your findings? Is it over the
 15 page, 1402, between the two hole punches: {E/372/1402}
 16 "It isn't normal or necessary for a partner to be
 17 present when the other is being investigated."
 18 A. It's actually the next paragraph.
 19 Q. {E/372/1402} "When Loss Prevention interviewed Mr Patel
 20 serious allegations were made about yourself, therefore
 21 it was not possible to discuss the detail of the
 22 interview with you. Loss Prevention were, under the
 23 circumstances, only able to share with you the limited
 24 information arrive this is confirmed by some of the
 25 comments which you have made."

1 Where do you get that from?
 2 A. And the next paragraph.
 3 Q. {E/372/1402} "You agreed at our meeting however that it
 4 was the manner in which Mr McAlindon informed you rather
 5 than the content of the information."
 6 That's not even true, is it? That wasn't her
 7 complaint? You are completely misstating her complaint
 8 and completely avoiding the issue, aren't you?
 9 A. No, I don't agree with that. I'm just quite happy with
 10 Mr McAlindon's explanation that once allegations --
 11 which seemed quite credible at the time, and which were
 12 later upheld largely that -- the allegations made by
 13 Mr Patel -- I feel that Mr McAlindon's explanation of
 14 why he didn't give her the information was justified.
 15 Q. Okay. So you set out in the rest of this letter all of
 16 the reasons why you reject all of Ms Birdi's grievances,
 17 don't you?
 18 A. I do.
 19 Q. And you have explained to the court what investigations
 20 you had made --
 21 A. That's correct.
 22 Q. -- in relation to all those grievances?
 23 A. Yes.
 24 Q. There is nothing further -- there are no other
 25 investigations that you made with any witnesses or any

1 documents. That's right, isn't it?
 2 A. I think right at the beginning I refer to documents.
 3 Q. Yes --
 4 A. The first page. {E/372/1396}
 5 Q. I took you to that?
 6 A. Yes.
 7 Q. And you told me that the document that you are referring
 8 to is the notes made at or around the time of the
 9 investigation. That means your notes of your meeting
 10 with Mr McAlindon and Mr Barnes?
 11 A. Hm-mm.
 12 Q. Correspondence between Ms Birdi and SOG?
 13 A. Yes.
 14 Q. You take that into account. And the interviews with the
 15 staff at the Dartford store. You have already his
 16 Lordship that you didn't interview anyone at the
 17 Dartford store, so what you must therefore be referring
 18 to are the interviews done by Mr McAlindon?
 19 A. Yes.
 20 Q. Yes. My Lord, I see the time?
 21 MR JUSTICE NUGEE: Yes, we will take a five-minute break.
 22 (11.46 am)
 23 (Short break)
 24 (11.53 am)
 25 MR JUSTICE NUGEE: Yes.

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1 MR STUART: Mr Clark, just a couple of further queries on
 2 your findings. 1407, {E/372/1407} just above the second
 3 hole punch, do you see, you say:
 4 "I believe that the investigation conducted by Loss
 5 Prevention was both fair and professional."
 6 Do you see?
 7 A. I do.
 8 Q. And you say, next paragraph:
 9 "There is nothing to suggest that members of staff
 10 were encouraged to make false statements."
 11 Do you see that?
 12 A. I do.
 13 Q. And at the bottom of the page:
 14 "The charges made by the Loss Prevention Department
 15 for their involvement in this matter are consistent with
 16 those applied other stores. In essence the costs that
 17 have been charged to Dartford are as follows."
 18 A. Yes.
 19 Q. You set out some figures?
 20 A. Yes.
 21 Q. Were you aware of Mr McAlindon charging these sums for
 22 reasons connected with reducing the share value on
 23 Ms Birdi's shares? Were you aware of that?
 24 A. Absolutely not, and I don't think that that was the
 25 case. I don't think -- I have not seen anything at all,

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1 either at that time or since, to suggest that that was
 2 the case and at that time, I don't think Mr McAlindon
 3 would have had any reason to try and devalue the shares.
 4 Q. Hm-mm. In relation to "members of staff weren't
 5 encouraged to make false statements", you hadn't,
 6 obviously, interviewed Mrs Frondigoun; in fact, you
 7 hadn't interviewed any members of staff, so you couldn't
 8 make that comment, could you?
 9 A. There hadn't been any evidence provided to me to suggest
 10 that they had made false statements.
 11 Q. Okay. Ms Birdi had challenged the evidence contained in
 12 the Frondigoun witness statement, hadn't she, in detail?
 13 Do you remember?
 14 A. I don't know.
 15 Q. All right. And then finally on this question of the
 16 charges, you know this document that I took you to
 17 earlier, 1386 through to 1395, which -- {E/371/1386}
 18 A. That was the list of charges?
 19 Q. That's right. It was clarified that that was not an
 20 attachment to an email?
 21 A. Okay.
 22 Q. That list of charges was not provided to Ms Birdi, was
 23 it? Certainly not by you, anyway?
 24 A. Not in that format, no.
 25 Q. No. Did you obtain your figures that you have set out

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1 at 1408 from that document? {E/372/1408}
 2 A. I don't recall if it was that document or a different
 3 one.
 4 Q. Okay. All right. If you go to 1460. {E/382/1460}
 5 A. Yes.
 6 Q. You are emailing Derek Dyson on 26 June:
 7 "Subject: Loss Prevention costs."
 8 Do you see that?
 9 A. 1460?
 10 Q. Yes?
 11 A. Yes, sorry.
 12 Q. The email at the top from Derek Dyson to David Clark:
 13 "Subject: Loss Prevention costs."
 14 Yes?
 15 A. Yes.
 16 Q. You say:
 17 "Derek.
 18 See below, Birdi seems intent on wasting as much
 19 SOS/SOG time as possible."
 20 Is that fair? Her store has been charged
 21 £85,000-odd?
 22 A. I think it's completely fair because she had been
 23 provided with a breakdown of the costs, a summary
 24 breakdown of the costs, and then we started getting
 25 emails back demanding further details, some of it to

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1 a ridiculous level, like, for example, she wanted to see
 2 an hourly log of the Loss Prevention staff who had
 3 attended the store. Well, we don't keep hourly logs and
 4 I would expect her to be aware of that. In fact, it's
 5 actually in this paragraph: {E/382/1460}
 6 "I am responding with reasonable detail..."
 7 So, okay, I thought she was wasting my time but
 8 I did respond, I did go back with a lot more detail.
 9 Q. We will come to that in a moment. 1460. She has asked
 10 you under the heading:
 11 "Dear David.
 12 "Re Security Expenses.
 13 "Please could you kindly obtain the following
 14 information for me in relation to the security expenses
 15 charged to the business as I need a more detailed
 16 breakdown of costs."
 17 A. Yes.
 18 Q. That's because at 1408 you had just simply said:
 19 {E/372/1408}
 20 "Daily costs of a person to manage the daily running
 21 of the store."
 22 Do you see:
 23 "The standard daily charge ... is £440 a day.
 24 168 days of attendance should have resulted in a charge
 25 of £73,920..."

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1 A. Okay, and now she is asking for a list of all the days
 2 and the names of the person that covered the store on
 3 those particular days, including their hours at the
 4 store.
 5 Q. Yes, but would the list of the days that she is being
 6 charged for and the name of the people that were
 7 allegedly there, would that be fair? Would that be
 8 a reasonable request?
 9 A. I guess a list of the days, yes.
 10 Q. Yes. So that she could check whether these people
 11 actually were there. Do you see?
 12 A. A list of the days, you know, these people were working
 13 a normal working week and I did provide that.
 14 Q. Who was working a normal working week?
 15 A. The Loss Prevention staff who were covering the store.
 16 Q. Well, who were they then, working this normal working
 17 week for that period of time?
 18 A. From memory -- well, we have been through that. There
 19 was Carol Slark and various others.
 20 Q. Well, there was Carol Slark. She invoiced for
 21 particular days; we have seen those.
 22 A. Hm-mm.
 23 Q. Not difficult to find the days that she was charging for
 24 and that she was the person in store. Then there was
 25 the internal member of staff, wasn't there? Was it

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1 Imogen?
 2 A. Okay.
 3 Q. And then there was Mr McLaughlin, wasn't there?
 4 A. There was.
 5 Q. And not difficult to work out what days he was charging
 6 for because, again, he would invoice £200 a day for
 7 those, wouldn't he?
 8 A. I believe so.
 9 Q. Okay.
 10 A. I don't think I was aware of that at the time.
 11 Q. And they didn't all work all the days, did they?
 12 A. At some point -- I can't remember the full detail of
 13 this but I analysed a four-month period, I believe.
 14 That has been disclosed; it's in the evidence somewhere
 15 that I analysed a four-month period and done a breakdown
 16 of the individual days.
 17 Q. Okay. It's not unreasonable for Ms Birdi to want to
 18 just check this £73,920 figure, to see how it is that
 19 she has been charged such a huge sum. It's not
 20 unreasonable, is it?
 21 A. I think it's reasonable for her to ask for a list of the
 22 days when somebody was in the store, but then to start
 23 demanding the name of the person who was there on that
 24 particular day, the hours that they worked, where is the
 25 log sheets. I don't think that's particularly

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1 reasonable or relevant. I think it's a distraction.
 2 Q. You think that SOG can just charge her these huge sums,
 3 £440 a day, regardless of whether the person was in the
 4 store for an hour, or a day, or regardless of whether
 5 the person was there at all?
 6 A. I didn't say that at all, Mr Stuart. And the other
 7 point I would make is a vast amount of this period of
 8 time is when Ms Birdi was off ill as well, rather than
 9 suspended.
 10 Q. So that gives you the right to just charge these sums,
 11 whether they were there in the store or not?
 12 A. I didn't say that. You are putting words in my mouth.
 13 I said it's reasonable to ask for a list of all the days
 14 that there's somebody there. I said it's unreasonable
 15 to start demanding the name of the person and the hours
 16 that they worked. We don't keep log sheets of hours.
 17 Q. Do you keep log sheets of the days?
 18 A. In this instance I couldn't answer that because they are
 19 reporting into Loss Prevention so I don't know.
 20 Q. So how can we know what days the internal members of
 21 Loss Prevention worked or didn't work at this store?
 22 A. Because Loss Prevention keep that log. I don't.
 23 Q. I see. So Mr McAlindon then had a log of the days that
 24 his staff member worked in the store. That's your
 25 evidence?

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1 A. I thought that was his evidence.
 2 Q. No. No.
 3 A. It's not?
 4 Q. No. Is it your evidence that he had a log of the days
 5 that his internal member of staff worked in the store?
 6 A. I can't speak on Mr McAlindon's behalf. I did believe
 7 that.
 8 Q. You believed that? Okay, fine.
 9 MR POTTS: My Lord, I have to say -- I may be wrong but my
 10 recollection is that Mr McAlindon's evidence, I think,
 11 was that he doesn't now have the timesheets from that
 12 far back. I think that was his evidence, rather than
 13 that he never had the timesheets.
 14 MR JUSTICE NUGEE: If it's a matter of significance, we will
 15 need to look at the transcript because I don't have
 16 a clear recollection now of precisely what the evidence
 17 was.
 18 MR POTTS: I'm not saying with certainty but my friend put
 19 the point strongly and I'm not sure --
 20 MR STUART: I don't think I did put it that strongly, even.
 21 I said: {Day16/69:3}
 22 "Is it your evidence that he had a log of the days
 23 that his internal member of staff worked in the store?"
 24 It's an open question?
 25 A. I believed that to be the case.

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1 Q. You believed it to be case but you haven't actually seen
 2 the log yourself, for example?
 3 A. I think -- my recollection is that I have seen a summary
 4 table derived from the log.
 5 Q. Okay. Then the next item that she is asking about is
 6 the cameras; that's the third item on your list on
 7 page 1408, isn't it: {E/372/1408}
 8 "Camera surveillance. Seven invoices totalling
 9 £9,120..."
 10 A. Yes.
 11 Q. "Five invoices relate to work prior to 20 February
 12 2007... Two invoices ... relate to post 20 February 2007
 13 when it was suspected a member of staff was stealing
 14 from lockers."
 15 Do you see that?
 16 A. Yes.
 17 Q. And she is just asking for the dates when the cameras
 18 were installed, after 20 February, and how the costs
 19 were determined and who authorised them?
 20 A. Hm-mm.
 21 Q. That would have been at a time when she wasn't there, so
 22 she is just asking for some back-up evidence, isn't she?
 23 A. Okay. I understood that we provided that.
 24 Q. I'm not saying you didn't.
 25 A. Okay, fine.

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1 Q. I'm just saying when you write to Mr Dyson, you see, you
 2 say: {E/382/1460}
 3 "... Birdi seems intent on wasting as much ... time
 4 as possible."
 5 A. Sorry, I thought you were going to complete the
 6 paragraph:
 7 "I am responding with reasonable detail but we don't
 8 keep a log of hours at the store and what could she do
 9 with it anyway? These expenses were for personnel
 10 covering Birdi whilst she was suspended and concurrently
 11 off sick."
 12 Q. Yes?
 13 A. There you go.
 14 Q. She is not intent on wasting as much time as possible,
 15 is she? She is asking some perfectly legitimate
 16 questions about the £85,000-odd that you have summarised
 17 for her in half a page on your letter?
 18 A. Yes, she'd had a breakdown of the costs and she has come
 19 back asking for further detail, and some of the detail
 20 I accept is reasonable. A lot of the detail I would
 21 suggest is pointless.
 22 Q. The third item that she is asking about is the second
 23 item on your list at 1408, the Loss Prevention
 24 department's fees themselves. So that's not the
 25 manager's fees, but this is actually Mr McAlindon and

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1 his colleagues? {E/372/1408}
 2 A. Okay.
 3 Q. £14,700-odd?
 4 A. I have got that, yes.
 5 Q. Of which £7,800-odd is relating to the investigation
 6 into Mr Patel. Do you see?
 7 A. I do, yes.
 8 Q. And then £6,943 relates to the work post the 20th. So
 9 that's what she has been charged for -- for herself --
 10 and she is asking for a breakdown of the hours and the
 11 work done. That's fair enough, isn't it? If you are
 12 told, "Pay us £7,000 for work that we have done," you
 13 are entitled to ask, "Could you just give me a breakdown
 14 of how that was made up?" It's a reasonable request,
 15 isn't it?
 16 A. Yes, and again that was provided.
 17 Q. And then the fourth item is SOS personnel expenses,
 18 total £4,185, and she has asked for the dates and the
 19 expenses incurred. So again that's a reasonable
 20 request, isn't it?
 21 A. I think I'm a bit borderline on that.
 22 Q. Okay. Anyway --
 23 A. The number of days, yes, but then I'd start asking for
 24 dates, what their accommodation expenses were. Why not
 25 just accept it if she has been told what they are?

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1 Q. Why not just provide her with information rather than
2 suggesting that she is intent on wasting as much time as
3 possible?
4 A. I did provide her with the information.
5 Q. So why suggest she is intent on wasting as much time as
6 possible? Is that just your view of her? Do you think
7 she's a very difficult --
8 A. Well, no, in relation to this subject and her challenge,
9 then, yes, that was my view.
10 Q. Do you think she is a difficult person?
11 A. Erm, I think at this time I did not have that particular
12 view one way or the other. I thought she was asking for
13 too much detail.
14 Q. Okay. And obviously Mr Dyson is getting personally
15 involved at this stage. Is that right?
16 A. I believe from memory that we agreed to provide
17 a considerable amount of additional information,
18 breaking down the costs, and that those costs were
19 inserted into a letter, which was sent to Ms Birdi --
20 Q. Yes.
21 A. -- which is in the disclosures.
22 Q. 1483? {E/389.1/1483}
23 A. And that also Mr Dyson -- I originally composed the
24 letter.
25 Q. Yes?

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1 A. Sent it to Cristina del Grazia -- yes, that's the one.
2 And 1484?
3 Q. That's right, yes?
4 A. Mr Dyson made some manuscript comments, which -- it's
5 fine, I agreed with all of them. He was just -- I think
6 essentially he was clarifying what I had written.
7 Q. Why is Mr Dyson, the SOG director, getting involved in
8 this sort of detail in relation to Ms Birdi?
9 A. You would have to ask him.
10 Q. I'm asking you.
11 A. I don't know.
12 Q. It's your letter.
13 A. He is my line manager. He is my line manager at the
14 time and I guess, as we had received challenges from
15 Ms Birdi at this point, that I was making Mr Dyson
16 aware, as I had done in my email, and I was now making
17 Mr Dyson aware of my response.
18 Q. Okay, I suggest to you that basically Mr Dyson was
19 directing you as to what you should and shouldn't do in
20 relation to Ms Birdi's grievance and her request for
21 information.
22 A. No, absolutely not the case.
23 Q. And that Mr Dyson had explained to you what the SOG plan
24 was in relation to Ms Birdi at this time.
25 A. I don't believe there was any plan. No, he most

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1 definitely did not explain any plan.
2 Q. Okay.
3 A. Neither did anybody else.
4 Q. All right. Were you aware of the shared venture
5 documentation? Were you involved in any of that?
6 A. I don't believe so.
7 Q. No.
8 A. I think this early on after me joining Specsavers I was
9 only vaguely aware of shared venture really. I knew
10 what it was, I had met Neil Lunn, but not really had any
11 interaction with him.
12 Q. Okay. 1533. {E/408/1533} Finally, Mr Singh has been
13 appointed. I presume you didn't have anything to do
14 with that? You don't mention it in your witness
15 statement.
16 A. No, absolutely not.
17 Q. Did you know anything about Mr Singh?
18 A. No.
19 Q. No. You report to Mr Dyson that Mr McGonagle did the
20 introduction of Kam Singh.
21 A. Yes.
22 Q. Because:
23 " ... the store was still shared venture -- it has
24 now passed to Mike Rowe ... no problems ..."
25 Why are you overseeing this part of matters? What

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1 has it got to do with you?
2 A. I wasn't overseeing it.
3 Q. No?
4 A. Not at all.
5 Q. So why are you reporting to Mr Dyson about what
6 Mr McGonagle or Mr Rowe are doing?
7 A. I think from my perspective this was just kind of
8 an email to say, "Yes, it's wrapped up as far as -- you
9 know, I'm not involved."
10 Q. You are effectively the troubleshooter in this
11 organisation, aren't you? When there is a problem,
12 a serious problem, they call you in to resolve it?
13 A. They didn't at this time.
14 Q. They didn't? Did that become your role?
15 A. No.
16 Q. No?
17 A. It became a small element of my role. My role primarily
18 is to assist TAPS store, underperforming stores, and
19 turn the businesses around.
20 Q. Okay. This was a TAPS store at this point, wasn't it?
21 We see page 1549? {E/417/1549}
22 A. It was a TAPS store but I hadn't been involved at all.
23 Q. Okay, 1549. This is the August 2008 TAPS email.
24 A. Okay.
25 Q. You are a recipient of the email. Do you see just above

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1 the "cc", two lines up: "David Clark"?

2 A. Yes.

3 Q. So you are on the TAPS committee or whatever it is that

4 is running the TAPS system; yes?

5 A. There is no committee as such.

6 Q. The team?

7 A. There is not even -- well, these are all -- these are

8 a wide variety of people, so various different

9 departments within SOG. So I guess I was copied in on

10 the TAPS list, but at this stage -- where are

11 we? -- August 2008?

12 Q. Yes.

13 A. I think I had only just started working with a small

14 number of the TAPS stores at this stage, and the TAPS

15 stores that I was being given to work with were the more

16 serious ones, the ones in the greater difficulty. I was

17 never asked to do any work with Dartford.

18 Q. Okay.

19 A. And I think on the basis that -- I have not got the

20 figures in front of me but presumably the business was

21 improving: it was coming off TAPS -- I think that has

22 been the evidence in the case so far -- and that the

23 local RST were confident that they could deal with it.

24 So no need for me.

25 Q. In your witness statement I think we have reached

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1 paragraph 15, the 2010 investigation. {C/3/33} So, as

2 I understand, your evidence is that, apart from being

3 involved in the initial investigation that we have just

4 been through this detail, the 2008 investigation --

5 A. Yes.

6 Q. -- you then didn't have any role to play or knowledge of

7 what was going on in relation to Dartford until 2010.

8 A. Okay.

9 Q. Is that right?

10 A. That's right.

11 Q. Obviously, I think in 2009 -- you can put away E

12 whatever you have got there.

13 A. E6.

14 Q. Just pull out E8 very briefly. In E8 there was some

15 suggestion that you might get involved in Mr Singh's

16 grievance.

17 A. Where are we?

18 Q. Go to page 2027 {E/650.1.2027}. This is in April 2009.

19 A. Hm-mm.

20 Q. It's all about issues that he has got with Ms Birdi?

21 A. Yes.

22 Q. At the bottom -- but the reference to you is at the top.

23 Do you see? It says:

24 "Neil ..."

25 That's Mr Lunn.

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1 A. Yes.

2 Q. "Please see message from Kam below. How would you like

3 to deal with this? Is it a Dave Clark job perhaps?"

4 So by April 2009 were you the troubleshooter. You

5 know, if an issue arose, was it ...

6 A. I wouldn't describe myself as a troubleshooter but I did

7 assist in dealing with issues, grievances, complaints,

8 yes.

9 Q. Okay. But on this one you weren't involved in fact. Is

10 that right?

11 A. I wasn't.

12 Q. Nobody asked you and nobody got you involved?

13 A. No, in fact I don't recall seeing that. I wasn't copied

14 on that email.

15 Q. Okay. You can put away E8 and go to E10.

16 A. Okay. Page?

17 Q. 2631. {E/805.1/2631} So now we are into January 2010.

18 A. Okay.

19 Q. And, as I said, in your statement I think you say you

20 didn't have any material involvement until June 2010.

21 That's paragraph 15 of your statement, but obviously the

22 background to that starts a bit earlier. {C/3/33}

23 In January 2010 Mr Singh wrote a "dear partners" letter

24 to the board of Specsavers.

25 A. Okay.

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1 Q. Just to give you the context of it, you will see over

2 the page at 2632, above the first hole punch, he says:

3 {E/805.1/2632}

4 "I do not believe Ms Birdi is the right person to

5 lead the Dartford store."

6 In the penultimate paragraph he says:

7 "I do not think this business will continue to

8 flourish with the continued employment of Ms Birdi."

9 Do you see?

10 A. I do.

11 Q. Were you aware of Mr Singh's letter or, if you weren't

12 aware of the actual letter, were you aware that he was

13 raising this question with the SOG board --

14 A. No.

15 Q. -- Specsavers board?

16 A. No, not at this point no.

17 Q. No discussion with you?

18 A. Not at this point.

19 Q. Okay. You can put away E10 then.

20 A. I think if I'd had that, it would have been in one of my

21 reports.

22 Q. I think we can then flick to E11. Do you have E11?

23 A. Yes. Page?

24 Q. Let's start around 2970 {E/921/2970}, which is the

25 suspension letter.

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1 A. Right, I'm there.
 2 Q. So that's just to put it into context for you and the
 3 dates. Do you see?
 4 A. 8 June, yes.
 5 Q. In your witness statement you say -- paragraph 15.
 6 {C/3/33} Do you have it?
 7 A. Yes.
 8 Q. "I did not have any further material involvement until
 9 June 2010, when Mark Raines, who had replaced Mr Dyson
 10 as my line manager, explained to me that there had been
 11 ongoing issues with Mr Singh and Ms Birdi."
 12 Do you see that?
 13 A. Yes.
 14 Q. "I was not surprised ... On instruction from Mr Raines,
 15 Stephen Moore of SOG's legal department requested that
 16 I investigate the actions of Ms Birdi and Mr Singh
 17 towards each other and the business, the state of their
 18 working relationship and whether either or both had
 19 failed to act in the best interests of the business ..."
 20 Do you see?
 21 A. Yes:
 22 " ... and/or failed to comply with instructions of
 23 the Dartford board and/or board resolutions."
 24 Yes.
 25 Q. "On 3 June, Ms Girollet left some documents on my chair

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1 in my office relating to Dartford for me to review as
 2 part of my investigation. I then liaised with Mr Moore,
 3 who asked me to visit the store on 8 June to inform
 4 Ms Birdi and Mr Singh that they were both formally
 5 suspended. Mr Moore prepared the suspension letters for
 6 me to deliver. Accordingly, I visited ... the store
 7 ..."
 8 Do you see?
 9 A. Yes.
 10 Q. That's your evidence as to the background of it. Did
 11 you speak to Mr Raines before you went to the store?
 12 A. I think very shortly before I went to the store.
 13 Q. Yes. If you go back to page 2948, we have Mr Raines's
 14 day book entry for 3 June? {E/914/2948}
 15 A. Okay. Yes.
 16 Q. Which happens to be the date when you have some
 17 documents left on your chair. Do you remember?
 18 A. If the documents were left on my chair, then I must have
 19 been visiting Guernsey on that day.
 20 Q. Right. Do you see, Mr Raines's note is:
 21 "Dartford.
 22 " -- agreed.
 23 -- DC to suspend next week."
 24 "DC" is you?
 25 A. It is.

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1 Q. "DC to investigate relationship breakdown."
 2 A. Yes.
 3 Q. "One of Pauline's team to carry out disciplinary
 4 hearing, which is the relationship breakdown, plus the
 5 not testing ... "
 6 Pauline's team -- that's the HR team, isn't it?
 7 A. It is.
 8 Q. Pauline Best, the HR director?
 9 A. Correct.
 10 Q. One of her team would turn out to be Ms McIntyre,
 11 wouldn't it?
 12 A. Yes.
 13 Q. Who did the disciplinary hearing?
 14 A. That's correct.
 15 Q. Do you recall a discussion with Mr Raines along these
 16 lines --
 17 A. No.
 18 Q. -- at around this time just before ...
 19 A. No.
 20 Q. No.
 21 A. There was no discussion along these lines.
 22 Q. Oh, okay.
 23 A. That's in his day book. The discussion I had with
 24 Mr Raines, probably in the previous week, was just
 25 a very top line discussion about the problems that had

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1 been encountered within the store --
 2 Q. Hm-mm.
 3 A. -- and the fact that he wanted me to carry out
 4 an investigation, and then I think it was passed over to
 5 Mr Moore.
 6 Q. Okay. So the discussion with Mr Raines -- so far as you
 7 are concerned, did it fill you in on the background to
 8 what had been going on or did it just say you, "David,
 9 I'm going to put you in charge of the investigation."
 10 A. It was more than put me in charge of the investigation
 11 but it was very, very high level; it was just, "There is
 12 a problem with the two partners. They are unable to" --
 13 I don't recall the conversation word for word but it
 14 would be just very, very high level.
 15 Q. Okay. Do you see the next item on Mr Raines's note at
 16 least is:
 17 "Off the record with Kam re suspension."
 18 A. Okay.
 19 Q. I just want to check with you. We can see that Kam's
 20 mobile number appears a little bit further down the
 21 page.
 22 A. Hm-mm.
 23 Q. Do you see? I just want to check with: you given that
 24 you were the man who was actually being tasked with the
 25 job of suspending them, weren't you --

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1 A. That's correct.
 2 Q. -- were you the person who was going to have the off the
 3 record with Kam regarding his suspension?
 4 A. I don't know anything about that.
 5 Q. You don't know anything about it? Are you sure?
 6 A. I'm sure.
 7 Q. Okay. Mr Singh came into the store to be suspended on
 8 a day when he was actually on holiday.
 9 A. I don't know that that's correct. I don't know if he
 10 came into the store to be suspended but, as I have said
 11 in my evidence, I had no contact with Mr Singh, so
 12 I can't comment.
 13 Q. Okay. So if somebody had an off the record with Kam
 14 regarding suspension, it wasn't you?
 15 A. It wasn't, no.
 16 Q. And you don't know who it was?
 17 A. No idea. I don't know even know if it happened.
 18 Q. Right. But did perhaps you know that Mr Singh was going
 19 to be forewarned that whilst he and Ms Birdi were going
 20 to be suspended, her suspension was going to lead to
 21 a disciplinary hearing, to be carried out by one of
 22 Pauline's team, whereas his suspension was going to be
 23 relatively short-term because you were going to lift it
 24 as soon as you had gone in and interviewed him?
 25 A. Absolutely not. In fact that's not the case because my

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1 investigation wasn't influenced in any way at all, and
 2 the dates for lifting either party's suspension wasn't
 3 discussed with me. So, no, I don't believe that to be
 4 the case at all and I certainly wasn't involved.
 5 Q. I'm not suggesting the precise date that you were to
 6 lift the suspension was necessarily discussed with you.
 7 I don't know whether it was or it wasn't. But certainly
 8 Mr Singh was given to understand that he wouldn't, in
 9 the end, be facing any disciplinary action, was he?
 10 A. Can you point me to that?
 11 Q. I can't point you to what I haven't seen.
 12 A. I haven't seen it either. I don't believe it's the
 13 case.
 14 Q. You don't believe it's the case? All right.
 15 A. Absolutely not.
 16 Q. And you have no idea what this off the record with Kam
 17 re his suspension was?
 18 A. I don't. I can assure the court that my investigation
 19 was completely independent and that there was no
 20 influence to fight(?) one way or the other or to
 21 unsuspend partners at any time.
 22 Q. Okay. You go along and suspend, 2970 {E/921/2970}
 23 A. I did.
 24 Q. You are doing that because you have been given that
 25 power to suspend by SOG. Is that right?

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1 A. I had with me an additional letter --
 2 Q. 2974? Do you mean the directors' written resolutions?
 3 {E/923/2974}
 4 A. That would be the one.
 5 Q. Yes. Yes? You had that with you?
 6 A. Yes.
 7 Q. Did Ms Birdi agree to do that?
 8 A. No, she refused.
 9 Q. So you weren't relying on that document, were you? When
 10 you suspended them, you weren't relying on that
 11 document?
 12 A. The suspension was retrospectively ratified at a board
 13 meeting shortly after because Ms Birdi refused to sign
 14 the written resolution.
 15 Q. Hm-mm. I'm asking you, when you suspended them -- that
 16 was on 8 June, before any meeting or ratification. You
 17 go along armed with this written resolution, which you
 18 think, if they will sign it, gives you the power to
 19 suspend them?
 20 A. Okay.
 21 Q. Is that right?
 22 A. Yes.
 23 Q. That was your intention, when you turned up that
 24 morning; you were going to do --
 25 A. It was the intention to ask them to sign the document,

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1 yes.
 2 Q. And if they had signed it, that would then give you the
 3 authority to do what it says at (b): {E/923/2974}
 4 "Specsavers Optical Group be unconditionally
 5 delegated the authority to suspend
 6 Mrs Swarandeeep Birdi..."
 7 Do you see?
 8 A. I do.
 9 Q. And you were acting at the instruction and for and on
 10 behalf of Specsavers Optical Group. That's right, isn't
 11 it?
 12 A. It is.
 13 Q. And therefore if they had signed it, that would have
 14 given you the authority to suspend them?
 15 A. Yes.
 16 Q. But they didn't sign it?
 17 A. Mr Singh signed it.
 18 Q. Right. Ms Birdi didn't sign it.
 19 A. She refused.
 20 Q. I'm interested that Mr Singh should sign it. Presumably
 21 he signed it because he wasn't worried about being
 22 suspended?
 23 A. I can't speak for Mr Singh, can I?
 24 Q. I don't know. You are the man who spoke to him that
 25 morning. You said, "Kam, sign here please, suspend

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1 yourself?"

2 A. I showed him what the document was, I showed him the

3 suspension letter. I explained why there was

4 a requirement for suspension so that an investigation

5 could be done without any interference from the partners

6 towards the store staff. So I explained all of that.

7 And Mr Singh was happy to sign it.

8 Q. He was happy to sign it. Did that suggest to you that

9 he was aware that he was about to be suspended, before

10 you walked in the door?

11 A. Not at all.

12 Q. Did that suggest to you that perhaps he was comfortable

13 at what was about to happen?

14 A. Not at all. I think he could only draw comfort from the

15 fact that he didn't believe that he was at fault. But

16 that would be -- I can't confirm that.

17 Q. Of course, if he had had an off the record chat with

18 Mr Dyson or -- sorry, Mr Raines, or with somebody that

19 Mr Raines had tasked with having an off the record chat

20 with him, he would have comfort, wouldn't he?

21 A. It's speculation. How can I comment on that?

22 Q. Okay. So when Ms Birdi didn't sign that document and

23 therefore you didn't have the directors' written

24 resolution --

25 A. Hm-mm.

1 Q. -- on what basis did you suspend them, in your own mind?

2 A. At that point I would have phoned our legal department

3 and taken advice. Off the top of my head, I can't

4 remember what I was told.

5 Q. Okay. You then move on to the interviews?

6 A. Okay.

7 Q. Mr Singh's interview, I think, is at page 2983.

8 {E/930/2983} Is that right?

9 A. It is.

10 Q. And by coincidence, that very same day a letter had been

11 written. Page 2982. {E/929/2982} That's right, isn't

12 it?

13 A. Yes, I'm familiar with that, yes.

14 Q. Did you think that was a coincidence, that on the day

15 that you were interviewing Mr Singh, six members of

16 staff should provide a letter giving reasons as to --

17 A. Well, I didn't at all because I didn't receive the

18 letter on the day that it was written. So at the time

19 of interviewing Mr Singh, I didn't know anything about

20 the letter. So the answer is no.

21 Q. When you got the letter the next day, did you think it

22 was a coincidence that you had been interviewing him the

23 previous day and that very same day, the staff had taken

24 it upon themselves to write a letter saying why they

25 didn't want to lose him from the store and setting out

1 various allegations against Ms Birdi?

2 A. I didn't think it was a coincidence, no. I think at

3 that point Mr Singh had been absent from the business

4 for around a week and -- yes, no reason for me to link

5 the two dates.

6 Q. Okay. You were in the store on the 8th, when you

7 suspended them. What did you tell the staff about the

8 two suspensions?

9 A. Absolutely nothing. I didn't speak to the staff.

10 Q. You didn't speak to the staff. So who communicated to

11 the staff the fact that their two bosses had been

12 suspended and that they weren't to talk to their bosses

13 and their bosses weren't to talk to them?

14 A. I don't know if the staff were ever told that the

15 partners had been suspended because when that

16 conversation happened, I wasn't there.

17 Q. Right.

18 A. But the person involved would be Zoe Smith.

19 Q. Right, so she might have told the staff?

20 A. I don't know, it's speculation. I have got no idea.

21 I don't know what she said to the staff. I left.

22 Q. Yes. Okay. Can we just go to the staff then, the staff

23 who signed that letter?

24 A. Yes.

25 Q. Because when we come to your decision later, you very

1 much rely upon this letter, don't you, and the contents

2 of it? Your decision on this disciplinary

3 investigation?

4 A. No. I don't think that's correct. The letter played --

5 the investigation covered a wide range of things. I had

6 been left a large number of documents, as we have

7 already agreed, including minutes of board meetings,

8 various correspondence from the two partners to SOG,

9 mainly to the legal department, a lot of to-ing and

10 fro-ing.

11 This letter came part way through the investigation.

12 Obviously, I treated it very seriously. There were some

13 very serious allegations there in the letter. In

14 respect of actually determining the -- the outcome of my

15 investigation, I think I relied more on the interviews

16 that I had with the staff -- I mean, I'm not saying that

17 the letter is irrelevant; it's a very serious letter;

18 there's some very serious points made in it. But

19 I think, taken in the overall context of what was going

20 on, the fact I was reviewing reports from board

21 meetings, et cetera, that -- this was a part of it. So

22 I think it's completely unfair to suggest that my

23 decision was based on this letter.

24 Q. You said it was a very important part of your decision.

25 I took that from your own witness statement, Mr Clark?

1 A. It's an important document. I have just repeated that.
 2 Q. Yes.
 3 A. But it didn't -- it wasn't -- this wasn't 90 per cent of
 4 my decision.
 5 Q. No. All right. Would you be passed the transcript
 6 bundles for days 1 to 6.
 7 A. What page?
 8 Q. So if you go to tab 6, day 6 of the transcript.
 9 A. Okay.
 10 Q. Have you got day 6?
 11 A. Yes.
 12 Q. If you go to page 6 -- so it's day 6, page 6.
 13 {Day6/6:1} And just so you are aware, do you see this is
 14 Mrs Tidmass. If you go back to page 4, this is
 15 Mrs Tidmass giving her evidence. {Day6/4:1} All right?
 16 A. Yes.
 17 Q. Page 4 in the middle. So this is Mrs Tidmass?
 18 A. Yes.
 19 Q. So if you go back to page 6, we start dealing with the
 20 letter. If you go to the question at line 16.
 21 {Day6/6:16}
 22 "Question: Did you know that Kam Singh knew about
 23 the letter?"
 24 Do you see that bit there?
 25 A. Yes.

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1 "Answer: We discussed about writing a letter before
 2 this was actually written.
 3 "Question: Okay.
 4 "Answer: But we didn't know how to go ahead about a
 5 grievance or anything.
 6 "Question: Right. So you asked who?
 7 "Answer: We asked Kam --
 8 "Question: Right.
 9 "Answer: -- if we could put in a grievance, how do
 10 we go about it. His words were ..."
 11 This is in inverted commas, so she is quoting when
 12 Mr Singh said to them:
 13 "'You can put in a grievance but I have to have
 14 nothing at all to do with it. You have to go through
 15 head office.'
 16 "Which is what we did."
 17 Do you see that?
 18 A. I do.
 19 Q. And then further on down the page at page 7 you get
 20 clarity as to when this happened. Do you see at
 21 line 13: {Day6/7:13}
 22 "Question: Just to be clear, my question was: in the
 23 period between the conversation with Kam Singh, which
 24 you say you were a party to -- is that right? Have
 25 I got this right? You were a party to a conversation

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1 with Kam Singh?
 2 "Answer: There was a big -- all of us after work,
 3 all the team after work had -- we went to the pub, which
 4 we often did."
 5 A. Okay.
 6 Q. Do you see that?
 7 A. Hm-mm.
 8 Q. And over the page, page 9, his Lordship has asked at the
 9 bottom of the page as to when --
 10 A. Sorry, where are you? Page 9?
 11 Q. So page 9. I asked the question: {Day6/9:7}
 12 "Question: But anyway, it was within the week prior
 13 to 16 June?
 14 "Answer: Yes, I would have said that, yes.
 15 "Question: So that's some time from 9 June to
 16 16 June, but you can't be more precise?
 17 "Answer: No, I can't, I'm sorry."
 18 Do you see that?
 19 A. I do.
 20 Q. And then further on down it's clarified that:
 21 {Day6/9:23}
 22 "Question: It was you six and Kam who were
 23 discussing it?
 24 "Answer: Erm --"
 25 Do you see?

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1 A. I do.
 2 Q. So presumably, when you spoke to Mrs Tidmass, as you
 3 eventually did, she explained this to you, did she? As
 4 to how this letter had been written? Because you made
 5 investigations about this very important letter, didn't
 6 you?
 7 A. I did.
 8 Q. So presumably that's what she explained to you?
 9 A. She didn't explain about a meeting in a pub, no.
 10 Q. No. Maybe she did, but maybe you didn't note it down
 11 because it didn't really fit your agenda, did it?
 12 A. Sorry, you are completely wrong, there. I think my
 13 notes from the meetings were very accurate and in fact,
 14 when you look at the handwritten notes and you look at
 15 the style they have been written in, I think it's fairly
 16 clear that they have been written as I have been
 17 speaking. So, no, you are wrong.
 18 Q. Okay. Let's just go to another witness then. Sorry,
 19 just whilst we are with Mrs Tidmass -- we will come back
 20 to the point in a minute. But whilst we are here, so we
 21 don't need to keep dotting around, would you go to
 22 page 33 of the transcript, day 6. {Day6/33:1}
 23 A. 33, okay. I'm there.
 24 Q. This is on the issue of whether the staff were actually
 25 threatening to resign --

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1 A. Hm-mm.
 2 Q. -- if Ms Fatima Khan was to come back?
 3 A. Yes.
 4 Q. Do you remember that was one of the bases -- you were
 5 very concerned here for Mr Singh that the staff were
 6 threatening to resign. Do you remember?
 7 A. I became aware of that during the interview but I didn't
 8 know anything about Fatima Khan prior to that interview.
 9 I didn't know anything about -- at that time I didn't
 10 know anything about the grievance that she had made.
 11 Q. All right. You knew that Mr Singh was saying that the
 12 staff were threatening to resign because Ms Birdi had
 13 said that she was going to bring Fatima Khan back?
 14 A. I found out about that later. That was the letter from
 15 Mr Singh to Alison Girollet, I believe.
 16 Q. Okay. Look at 33 anyway. This is Mrs Tidmass's
 17 evidence?
 18 A. Okay.
 19 Q. Do you see line 4. {Day6/33:4}
 20 "Question: So you were told that she had resigned
 21 and that Swarandeeep Birdi wants her back? You were told
 22 that?
 23 "Answer: No, I wasn't told that.
 24 "Question: No, you weren't? Okay. So you couldn't
 25 have reacted by a unified show of defiance, because you

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1 weren't even told that, were you?
 2 "Answer: No.
 3 "Question: And you didn't make a threat of
 4 resignation. Who are the -- are you a member of the
 5 'top team'?
 6 "Answer: I don't know, I wouldn't like to say that.
 7 "Question: Okay, fine."
 8 Do you see that?
 9 A. I do. Sorry, the top team is something completely
 10 different.
 11 Q. Okay. Anyway, if you go down a page after an
 12 explanation as to what her role is, do you see the
 13 question at line 21: {Day6/33:21}
 14 "Question: You were discussing with him, in chats,
 15 rather than in formal meeting of any sort, the fact that
 16 Fatima had resigned?
 17 "Answer: I've never spoken to Kam about Fatima
 18 resigning. The conversation has never taken place with
 19 Kam."
 20 Do you see that?
 21 A. I do.
 22 Q. And then I recite Mr Singh's letter, do you see, on
 23 page 34? Do you remember the letter of 2 June?
 24 Page 34. If you just read page 34? {Day6/34:1}
 25 A. I'm just looking at it. (Pause)

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1 It's Ms Birdi's letter, not Mr Singh's letter.
 2 Q. Yes, that's right.
 3 A. Sorry, I thought you just said it was Mr Singh's letter?
 4 Q. I meant the letter about Mr Singh.
 5 A. Okay.
 6 Q. The letter of 2 June.
 7 A. Okay. Yes, I mean, before my involvement with this
 8 case, so...
 9 Q. Very shortly before your involvement. You are involved
 10 by 3 June. Is that right?
 11 A. It's correct, yes.
 12 Q. That's roughly when you were called in to do the job, on
 13 8 June?
 14 A. Okay.
 15 Q. Anyway --
 16 A. Yes, okay.
 17 Q. So I set out there what is suggested and I ask over on
 18 page 35: {Day6/35:3}
 19 "Question: Were you one of the people that he spoke
 20 to, one of the staff members?
 21 "Answer: No."
 22 Do you see that?
 23 A. I do. So she is working one day a week; yes? Okay.
 24 Q. Right. So that's Mrs Tidmass's evidence. Let's just go
 25 to Mr Hummell. He is on the same transcript, day 6. Do

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1 you see page 132. 132 in the same day? {Day6/132:1}
 2 A. Sorry, where are you now.
 3 Q. 132?
 4 A. 132.
 5 Q. In the same day.
 6 A. Okay, yes. I'm there. What was the question?
 7 Q. Just look at page 132.
 8 A. Yes.
 9 Q. At the top, line 1: {Day6/132:1}
 10 "Answer: Yes, I remember going to the pub."
 11 Do you see?
 12 A. I do.
 13 "Question: And are you able to help us as to
 14 roughly when that was by comparison with the date of the
 15 letter?"
 16 That's the 16 June letter. Do you understand,
 17 Mr Clark?
 18 A. Hm-mm.
 19 "Question: So how long before the letter?
 20 "Answer: Again, I can't be absolutely 100 per cent
 21 certain. It might have been a week before. It might
 22 have been a bit before that. I'm not absolutely sure."
 23 Do you see?
 24 A. I do.
 25 Q. So presumably when you interviewed Mr Hummell, he too

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1 told you that a week or so before the letter, there had
 2 been a discussion in a pub which had led to the letter
 3 and that Kam Singh had come into the pub and been party
 4 to that discussion?
 5 A. No.
 6 Q. If you had known that, would you have concluded that
 7 Mr Singh had no role in encouraging his staff to write
 8 that letter? If you had known this evidence, for
 9 example?
 10 MR POTTS: I'm sorry, if he is putting Mr Hummell's
 11 evidence, I don't think that is a complete or fair
 12 summary of Mr Hummell's evidence, because he went on, on
 13 147 and 148. {Day6/147:1}
 14 MR JUSTICE NUGEE: What's the point of your --
 15 MR POTTS: My Lord, he doesn't remember Mr Singh being in
 16 the pub and he draws an issue about the extent of --
 17 well, firstly -- mainly that point. Also, about whether
 18 it was a discussion of a letter. He is not clear on
 19 that either.
 20 MR JUSTICE NUGEE: Mr Stuart?
 21 MR STUART: My Lord, there are a number of parts of
 22 Mr Hummell's evidence in which he contradicted himself
 23 on a number of occasions but --
 24 MR POTTS: He is not contradicting himself --
 25 MR STUART: He was.

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1 MR POTTS: -- he is contradicting the evidence in the
 2 matter, which Mr Stuart is putting the witness. He is
 3 contradicting the part of the evidence which he has just
 4 put to the witness. And I haven't mentioned the other
 5 witness, but no doubt Mr Stuart will get on to it as
 6 well -- or perhaps not.
 7 MR STUART: I'm entitled to put those parts of the evidence
 8 to this witness that I want to.
 9 MR POTTS: My Lord, I am not --
 10 MR STUART: I think it's for Mr Potts in re-examination, if
 11 he wants to, to take him to any other parts of the
 12 witness that he wants to try and refresh the witness
 13 with.
 14 MR POTTS: My Lord, I'm sorry, the question should be fairly
 15 put.
 16 MR STUART: I fairly put the question.
 17 MR JUSTICE NUGEE: What you put at page 100, at line 23, is:
 18 {Day16/100:23}
 19 "... when you interviewed Mr Hummell, he too told
 20 you that a week or so before the letter, there had been
 21 a discussion in a pub which had led to the letter and
 22 that Kam Singh had come into the pub and been party to
 23 that discussion?"
 24 MR STUART: Yes, and the answer was no, he didn't.
 25 MR JUSTICE NUGEE: Yes, but was that part of Mr Hummell's

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1 evidence, that Mr Singh had come into the pub and been
 2 party to that discussion? It is important that when you
 3 are putting things to witnesses, you state accurately
 4 the effect of evidence that you are summarising. Is
 5 that part of when Mr Hummell said?
 6 MR STUART: Mr Hummell certainly agreed in some places that
 7 the discussion -- that he had had a discussion with
 8 Mr Singh -- that as part of the discussion, Mr Singh was
 9 party. I think he became --
 10 MR POTTS: 147, my Lord is the ...
 11 MR STUART: He gave different evidence as to whether he
 12 could or couldn't recall whether it was in the pub that
 13 he had discussions with Mr Singh.
 14 MR JUSTICE NUGEE: At the moment I'm not persuaded that it's
 15 a fair summary of his evidence that: {Day16/100:23}
 16 "... there had been a discussion in the pub which
 17 had led to the letter and that Kam Singh had come into
 18 the pub and been party to that discussion."
 19 MR STUART: The evidence was of a discussion in the pub.
 20 Were you aware of that at all?
 21 A. No.
 22 Q. The evidence of Mrs Tidmass was that Mr Singh had been
 23 party to that discussion. Were you aware of that at
 24 all?
 25 A. I don't think that was her evidence from the transcript.

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1 I thought Mr Singh had excused himself from the pub
 2 gathering because --
 3 Q. Do you? You don't think that she gave evidence about
 4 Mr Singh --
 5 A. Sorry, just from reading the transcripts, I understood
 6 that when they started discussing grievance letters or
 7 whatever, that Mr Singh excused himself and left. Isn't
 8 that the case?
 9 Q. No.
 10 A. Okay.
 11 Q. Did you investigate with the staff members that you
 12 interviewed, who included Mr Hummell and Mrs Tidmass --
 13 did you investigate with them whether they had had any
 14 discussions with Mr Singh, either in a pub or outside
 15 a pub, regarding the allegations that were contained in
 16 this letter?
 17 A. At the interviews, as I have recorded, I asked all of
 18 the signatories to the letter if they had been
 19 influenced or coerced, whatever, whatever the
 20 terminology was that I used, into signing that letter.
 21 So, yes.
 22 Q. What, you asked them about what role Mr Singh had played
 23 and whether they had had any discussions with Mr Singh
 24 about this letter?
 25 A. I asked whether Mr Singh had influenced the letter.

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1 Q. What did you mean by that question?
 2 A. If he had influenced them into signing the letter.
 3 Q. Does that include encouraging them?
 4 A. I guess that depends how they determine their -- or
 5 treat my word "influence".
 6 Q. Okay.
 7 A. I mean the response from all of them was negative.
 8 I think there was responses such as, "No, no", and,
 9 "Absolutely not".
 10 Q. "No, no", as in no influence?
 11 A. Yes.
 12 Q. Did you investigate with them whether Mr Singh knew
 13 about the letter when it was being drafted?
 14 A. I don't recall asking that question, if he knew about
 15 it.
 16 Q. All right. Did you ask them whether the content of the
 17 letter, since they had signed it and it refers to "we",
 18 you know, "We believe this", and, "We know that". Did
 19 you ask them whether it was their own knowledge that
 20 they were referring to in the letter?
 21 A. I asked that when I did the second round of interviews.
 22 Q. Okay.
 23 A. Sorry, no, I think I'm incorrect there. I think on the
 24 first round of interviews I did as well. We have got
 25 the transcripts of all the letters -- the interviews.

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1 Q. We have. We will come to that now, then.
 2 So you interview, as I understand it -- if you go to
 3 E11/3082? {E/942/3082}
 4 A. Yes.
 5 Q. Here, you are interviewing Ms O'Brien?
 6 A. Hm-mm.
 7 Q. She wasn't a signatory to the letter, was she?
 8 A. She wasn't, no.
 9 Q. But you were asking her, I think, about matters that
 10 were in the letter. Is that fair?
 11 A. It is.
 12 Q. Page 3083, you are effectively quoting from the letter,
 13 aren't you? {E/942/3083}
 14 A. Hm-mm.
 15 Q. You even say:
 16 "Referring back to the letter ..."
 17 Just below the second hole punch. Why were you
 18 asking Ms O'Brien to join in with the comments of the
 19 letter, or whether she agreed with the comments of the
 20 letter?
 21 A. Yes. The intention was to interview the signatories of
 22 the letters and we were in the Hilton Hotel in Dartford.
 23 And I think I had arranged with Daniel Laing that the
 24 people -- the signatories to the letter come to the
 25 hotel individually for a brief interview and -- I mean,

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1 you are quite correct, Patrice O'Brien wasn't
 2 a signatory. She wanted to come. She wanted to say her
 3 piece. But I didn't ask her.
 4 Q. What, so she came to be interviewed, what, because --
 5 how did she know to be interviewed? I thought you were
 6 investigating. Were you not deciding who to interview
 7 and who not to interview?
 8 A. I had phoned Dan Laing at the store and asked if the
 9 people who had signed the letter could come for
 10 interview.
 11 Q. Yes?
 12 A. I think one of them was on holiday still, and
 13 presumably, the other members of staff told
 14 Patrice O'Brien that -- I mean, I don't know, I don't
 15 know who told Patrice O'Brien. I'm assuming that it was
 16 another member of staff. She wanted to come. So if she
 17 wanted to come and say something, I was happy to speak
 18 to her.
 19 Q. I see. All right. So that's her. Then we have got
 20 3085. We have got Ruth Wotton. {E/943/3085}
 21 A. Okay.
 22 Q. Do you see, you start:
 23 "I need to ask you about a letter you have ..."
 24 A. "... a letter we have received..."
 25 Q. Sorry:

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1 "... a letter we have received from the store."
 2 A. "... from the staff."
 3 Q. "... from the staff."
 4 Do you see that?
 5 A. I do. Again, I'm reading that. (Pause)
 6 Q. What was the purpose of you interviewing her about the
 7 letter?
 8 A. The purpose, as with all of the staff who'd put their
 9 names to it, was to investigate further.
 10 Q. Hm-mm.
 11 A. So I started off by asking why she hadn't signed it.
 12 She explained that she had been on holiday. In fact,
 13 what she actually said is:
 14 "No, I was on holiday and will sign it now."
 15 So I didn't even ask her to sign it, she volunteered
 16 to.
 17 Q. So you got her to sign it there and then?
 18 A. Yes, and these were notes that were taken at the time by
 19 an RDC, who was accompanying me.
 20 Q. The way that these notes read, the questions that you
 21 are asking, you are basically asking her to confirm
 22 what's in the letter to you?
 23 A. To an extent, yes. But then if you go about a third of
 24 the way down: {E/943/3085}
 25 "Did anybody put pressure on you to sign the letter

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1 or has Kam influenced you to sign it?"
 2 So that's just going back to your previous question:
 3 "No one has influenced me to sign the letter at
 4 all."
 5 Q. Hm-mm. And then you get her to agree with the contents
 6 of the letter?
 7 A. Well, to --
 8 Q. And give you further details?
 9 A. -- to expand upon it.
 10 Q. To expand upon it, all right. Then you interview
 11 Mrs Tidmass, page 3088? {E/944/3088}
 12 A. Okay.
 13 Q. She too hadn't signed the letter?
 14 A. So I ask her if she is familiar with the letter:
 15 "Yes I am, I didn't sign it before as I was on day
 16 off, I can sign it now."
 17 So again she has volunteered to sign the letter
 18 before -- or without being asked to sign it.
 19 Q. Okay. Do you ask her about being influenced to sign it?
 20 A. I don't think I did at that point. I have reinterviewed
 21 Mrs Tidmass a couple of weeks later.
 22 Q. Hm-mm.
 23 A. I think at that point I asked her. I would have to go
 24 back to the individual notes of that meeting to look.
 25 But anyway, she is sat in the room with me, volunteering

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1 to sign it, so ...
 2 Q. And then Ms Hornby is at 3091. {E/945/3091}
 3 A. Okay.
 4 Q. You ask her by the first hole punch:
 5 "You weren't under pressure to write this."
 6 Do you see that?
 7 A. Yes, okay, I phrased it differently.
 8 Q. No, that's fine, you ask that and by the second hole
 9 punch you say:
 10 "Can you confirm that Kam hasn't influenced this?"
 11 A. That's right, yes. That's the person I was quoting
 12 before, when I said, "No, no".
 13 Q. That's right. And then finally Mr Hummell, page 3095:
 14 {E/946/3095}
 15 "Question: Did Kam influence this letter at all?
 16 "Answer: No, no, he didn't."
 17 You didn't actually ask as to the circumstances in
 18 which this letter came to be written at all, did you?
 19 A. I didn't, no.
 20 Q. Because you weren't interested, were you?
 21 A. I think by asking if Kam had influenced it that that was
 22 a pretty reasonable thing to do during an investigation.
 23 It was fair. So I didn't delve into the background
 24 prior to the start of the investigation, no.
 25 Q. No. Okay. We can flick on to 3140 -- almost finished

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1 this bundle. 29 June. {E/954/3140}.
 2 Mr Laing, he is in the store, managing the store,
 3 isn't he?
 4 A. He is.
 5 Q. And he is writing to you asking whether there is an
 6 update on your investigation?
 7 A. Yes.
 8 Q. And he is copying in Mr McAlindon. Why is that?
 9 A. Because he works for Mr McAlindon.
 10 Q. Yes. But what has Mr McAlindon got to do with this --
 11 A. "Am I ... doing a handover ..."
 12 He says:
 13 "Just need to know in advance so I can plan my
 14 diary."
 15 So he reports in to Mr McAlindon. Mr McAlindon
 16 hands work down to him. So quite reasonably he is
 17 copying Mr McAlindon in so that he knows when he is
 18 going to finish the time in Dartford, so that he can
 19 resume other activities.
 20 Q. Yes. Mr Laing is the man who has passed the letter to
 21 you, isn't he?
 22 A. He did, yes.
 23 Q. Back on 17 June. He works for Mr McAlindon?
 24 A. Yes, we have agreed that.
 25 Q. Yes. And were you giving him any instruction as to what

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1 to do when he was in the store, or was it Mr McAlindon
 2 who was giving him the instruction? What was the level
 3 of management -- what was the line of management in
 4 relation to his tasks?
 5 A. Okay. Two questions there. One, I didn't give him any
 6 instruction. He doesn't reports to me. I don't think
 7 I had ever met him or come across him before Dartford.
 8 Q. Okay?
 9 A. If Mr McAlindon was giving him instruction, well, how
 10 would I know? I can't answer that.
 11 Q. You don't know?
 12 A. Well, no.
 13 Q. 3147. {E/959.1/3147} Mr Moore reports that in
 14 a conversation yesterday, 1 July, you have lifted the
 15 suspension on Mr Singh?
 16 A. That's correct.
 17 Q. As at 1 July, you haven't completed your investigations,
 18 have you?
 19 A. I had largely completed the investigations and I think
 20 I had completed the investigations as far as Mr Singh
 21 was concerned. I hadn't found any reason to continue
 22 his suspension. Having both partners suspended was
 23 detrimental to the wellbeing of the store.
 24 Q. Hm-mm.
 25 A. It wasn't in the best interests of the store to have

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1 Dan Laing there, rather than a director, so I was keen
 2 to get a director back in the business as soon as
 3 possible.
 4 I mean, the purposes of suspending a partner are so
 5 that they can't influence the investigation, I think.
 6 I did not have any reason to continue to suspend
 7 Mr Singh at that point.
 8 Q. Well, you hadn't yet completed your investigations, had
 9 you? Indeed, 3157, {E/965/3157} on 9 July, a week
 10 later, Ms Birdi is being written to and it's said that
 11 you wish to hold the investigatory interview with her.
 12 Do you see?
 13 A. Yes.
 14 Q. In order to discuss comments about the letter -- that is
 15 the letter that supported Mr Singh -- and which has
 16 caused you, having done your further interviews, to
 17 decide that you are going to lift the suspension on
 18 Mr Singh. So you haven't even yet had the investigation
 19 with Ms Birdi about that, have you, because you didn't
 20 deal with that in your first meeting with her?
 21 A. That's correct.
 22 Q. So your investigations haven't even got to the level of
 23 interviewing Ms Birdi about those matters, but you are
 24 already deciding you are going to lift the suspension on
 25 Mr Singh and he can go back in the store and talk to the

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1 staff and say what he likes to them?
 2 A. No reason at that point to continue with his suspension.
 3 Q. Because you have already decided what's going to happen
 4 here?
 5 A. No.
 6 Q. You must have done?
 7 A. I had carried out the majority of interviews with the
 8 staff. I needed to go back and just re-interview
 9 a couple of them at the store. There was a couple of
 10 telephone interviews, with members of staff who hadn't
 11 signed the letter, but during my investigation to that
 12 point, I hadn't -- I didn't have any reason to continue
 13 with Mr Singh's suspension.
 14 Q. Okay. And 3148, isn't that another example?
 15 {E/960/3148} You haven't even interviewed Ms Storey yet.
 16 You say you are investigating the working relationship
 17 between the two directors. That's on 2 July. On 1 July
 18 you have already lifted his suspension?
 19 A. I wasn't just investigating the working relationship
 20 with the directors.
 21 Q. You weren't?
 22 A. No, I said I wasn't just.
 23 Q. No, not just, but that's what you purport to be doing
 24 when you do that -- that's your note, isn't it? 3148?
 25 A. It is, yes.

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1 Q. So on the one hand, your investigations are continuing.
 2 We see another one at 3159. {E/966/3159} Your
 3 interview with Mr Felix. That doesn't take place until
 4 10 July. That's right, isn't it?
 5 A. Yes, Mr Felix was a Saturday-only member of staff.
 6 Q. Yes.
 7 A. And as it turned out, he didn't add any value to the
 8 investigation.
 9 Q. He didn't add any value to the outcome you wanted?
 10 A. Well, no -- no, no --
 11 Q. Because he didn't support the suggestion that Ms Birdi
 12 was acting improperly, did he?
 13 A. That wasn't the outcome I wanted. I was doing an
 14 investigation, so I did not have a pre-determined
 15 outcome. So as you can see, if you read it:
 16 {E/966/3159}
 17 "Can you describe your relationship with
 18 Kam Singh...?
 19 "And your relationship with Swarandeep Birdi...?"
 20 Q. That's funny, because you have already decided that
 21 Kam Singh has no case to answer and you have lifted his
 22 suspension?
 23 A. That's a completely impartial way of conducting an
 24 interview. If I had said, "Tell me about all the
 25 problems with Swarandeep Birdi and what do all the other

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1 staff think of her?" then I would agree I was biased,
 2 but I didn't do that.
 3 Q. By this point, you had already lifted the suspension on
 4 Mr Singh and told him he had no case to answer. I'm
 5 going to suggest to you, Mr Clark --
 6 A. No, I had lifted his suspension.
 7 Q. -- that that was your --
 8 A. No, I had lifted his suspension.
 9 Q. Are you in the course of lifting suspensions against
 10 people, where those suspensions are to prevent there
 11 being any suggestion of tampering with evidence or
 12 liaising with members of staff, letting them back in and
 13 then interviewing the staff after you have let the
 14 person back in? Is that the way you work?
 15 A. No.
 16 Q. No.
 17 A. As I said, this is a Saturday-only person. I had
 18 interviewed the majority of the staff. I interviewed
 19 11 members of staff in total and this person was not
 20 able to add any value to the investigation anyway. But
 21 as I say, after interviewing 11 members of staff, and
 22 putting into context the fact that the relationship was
 23 only one small part of the investigation, there were
 24 board minute meetings, failure to follow resolutions,
 25 et cetera, I considered at that point that I hadn't

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1 uncovered anything that was keeping Mr Singh's
2 suspension active.
3 MR STUART: My Lord, I see the time. I still have to just
4 deal with the actual decision and also there is one
5 meeting that I think Mr Clark gets involved with. Would
6 that be an appropriate moment?
7 MR JUSTICE NUGEE: That would be a convenient moment. We
8 will say 2 o'clock.
9 Mr Clark, you have no doubt been told this but since
10 you are in the middle of giving your evidence, don't
11 discuss your evidence or the case with anyone over
12 lunch.
13 A. I won't.
14 MR JUSTICE NUGEE: 2 o'clock.
15 (1.03 pm)
16 (The short adjournment)
17 (2.00 pm)
18 MR JUSTICE NUGEE: Yes?
19 MR STUART: Mr Clark, just one point I had forgotten to ask
20 you about in E11. Could you be passed E11.
21 A. I have got it.
22 Q. In your first interview with Ms Birdi, which I think you
23 will find -- the page I want to ask you about is 3108.
24 {E/948/3108} The interview note starts at 3099.
25 {E/948/3099}.

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1 So this is 22 June interview with Ms Birdi, the
2 first of your two. Do you recall it?
3 A. First of two?
4 Q. You were planning to have a second one.
5 A. She refused to turn up.
6 Q. Yes. You were planning to have a second interview?
7 A. No, there was only --
8 Q. This is the first interview, 22 June?
9 A. Yes, there was only one.
10 Q. Yes. At 3108, just above the second hole punch?
11 A. I'm there.
12 Q. She raised the issue with you. Do you see, it says:
13 {E/948/3108}
14 "SB: I've got a couple of things to raise. I have
15 concerns regarding [something] the conditions of
16 Mr Singh's supervision."
17 I think that means "suspension". Okay?
18 A. Yes.
19 Q. "On our day of suspension he was talking to staff at
20 reception and the next day he was on the High Street by
21 the store around 6 pm."
22 Do you see?
23 A. Hm-mm.
24 Q. "He lives nowhere near the store. On my suspension
25 I was told Zoe would be looking after store."

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1 Do you see that?
2 A. Yes.
3 Q. Ms Birdi raised with you, didn't she, the issue that she
4 felt that Mr Singh had been in breach of the terms of
5 his suspension; had been at or near the store on 9 June.
6 Do you recall her raising that with you, anyway?
7 A. I do, yes -- well, she says he was on the High Street.
8 Q. Yes, but you can see why she is saying that?
9 A. Yes.
10 Q. It's to do with the fact that he was talking to staff?
11 A. Hm-mm.
12 Q. I showed you the evidence of Mrs Tidmass, earlier. Did
13 you investigate with the staff whether Mr Singh had
14 spoken to them on 8 or 9 June, during his suspension?
15 Did you investigate that allegation, that Ms Birdi made
16 to you?
17 A. I didn't, no.
18 Q. No. Was there any reason for that?
19 A. No.
20 Q. Okay, you can put away E11 then.
21 A. Okay.
22 Q. I think we come to E12. The first is the letter of
23 12 July 2010.
24 A. Do you have a page number?
25 Q. 3161, the first page of the bundle.

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1 A. Okay, sorry. {E/967/3161}
2 Q. That's the letter you referred to at paragraph 26 of
3 your statement. {C/3/36} Paragraph 26 of your
4 statement? Essentially, the point she was making there
5 was that the staff letter of 16 June --
6 A. Hm-mm.
7 Q. -- was a matter which should be dealt with by way of
8 a grievance process against her?
9 A. Yes.
10 Q. Rather than as part of your investigation, which was an
11 investigation that you had been authorised by SOG, back
12 before 8 June, to conduct, hadn't you?
13 A. Correct.
14 Q. And was supposed to be an investigation of the matter
15 that you said you were investigating; that is the
16 breakdown of the relationship?
17 A. That's one of many elements. Also the relationship of
18 the A shareholders to the business; the business would
19 include the staff.
20 Q. So you felt that you could, as it were, encompass
21 anything about Ms Birdi into your investigation?
22 A. I didn't say that.
23 Q. If it related to the business?
24 A. I didn't say that.
25 Q. No.

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1 A. But certainly when I read that letter -- the letter
 2 wasn't actually set out as a grievance. It was a "To
 3 whom it may concern" letter. I felt that it was quite
 4 proper and correct to incorporate that into the
 5 investigation.
 6 Q. Okay. At page 3161 at the bottom, she deals with the
 7 letter? {E/967/3161}
 8 A. Okay.
 9 Q. Doesn't she? She says:
 10 "The letter lacks any detail or any evidence...
 11 I believe the staff have clearly been misled,
 12 misinformed and coerced into putting their names to the
 13 statements made in the letter..."
 14 Do you see that?
 15 A. I do.
 16 Q. "Also during the recent grievance investigations against
 17 Mr Singh, Mr Singh was having private meetings with
 18 staff I believe discussing the grievances raised."
 19 Do you see that?
 20 A. I see it.
 21 Q. And then over the page, about four lines down, do you
 22 see, she says: {E/967/3162}
 23 "I also believe Mr Singh has been in contact with
 24 staff during his suspension."
 25 So she again makes that allegation, in writing this

1 2 1

1 time. She had made it in the meeting with you, hadn't
 2 she? I just took you to it:
 3 A. Yes.
 4 Q. "On the day of his suspension shortly after he was
 5 suspended, despite the instruction we were given not to
 6 speak to staff, he was seen talking to Ruth ..."
 7 That would be Ruth Wotton:
 8 "... and others at the reception desk and the day
 9 after his suspension he was seen on the High Street in
 10 close proximity to the store at the store's closing
 11 time. He does not live in Dartford. I have informed
 12 SOG representatives of what I believe is witness
 13 tampering. However if issues raised in this letter are
 14 the perceptions of these individuals then these issues
 15 can easily and simply be resolved by informal means ..."
 16 Et cetera. Do you see that?
 17 A. I do. Do you need me to respond?
 18 Q. According to your witness statement, you read that
 19 letter?
 20 A. The 12 July letter, yes.
 21 Q. Because you say you found her position to be completely
 22 unjustified. So you must have read the letter. Is that
 23 right?
 24 A. Yes.
 25 Q. The letter contains a number of further matters relating

1 2 2

1 to Mr Singh and his undermining of her.
 2 After you had received the letter, did you
 3 investigate the issue of whether Mr Singh had been in
 4 breach of his suspension, talking to staff on or around
 5 9 June, which could have led them to write that letter?
 6 Did you investigate that?
 7 A. I did not, no.
 8 Q. No.
 9 A. I would have investigated it further with Ms Birdi, had
 10 she attended the second interview. Mr Singh being on
 11 the High Street, I know that he is a member of the gym
 12 because he used to leave the store to go to the gym. So
 13 there are many reasons why he may be in the area.
 14 I certainly didn't witness him talking to the staff on
 15 the way out, after I had suspended him.
 16 Q. How did you know he was a member of the gym? Because he
 17 was leaving the store to go to the gym? How did you
 18 know that on 12 July?
 19 A. That was one of the complaints from Ms Birdi.
 20 Q. Hm-mm.
 21 A. To Alison Girollet?
 22 Q. That? That he went to the gym?
 23 A. Yes, extended lunch hours or non-attendance.
 24 Q. Right. Did you know where the gym was?
 25 A. No.

1 2 3

1 Q. No. So you didn't know it was on the High Street, so
 2 you didn't know that his explanation for being on the
 3 High Street was going to be, "Oh, I went to the gym"?
 4 A. I knew that he nipped out at lunchtime.
 5 Q. This wasn't lunchtime. This was the day after he had
 6 been suspended and he was meant to be keeping away from
 7 staff?
 8 A. No, I'm answering your question, "Where was the gym?"
 9 I didn't know it was on the High Street but I knew it
 10 was local.
 11 Q. How local? Did you know whether he went to drive there
 12 or walk there?
 13 A. I don't.
 14 Q. Mr Clark, I suggest to you, you are just making these up
 15 now, these explanations for not investigating a serious
 16 allegation about the very piece of evidence that you
 17 were largely relying upon. It's made to you on 22 June
 18 by Ms Birdi. Now it's made in writing?
 19 A. And?
 20 Q. And yet you don't even investigate?
 21 A. Well, my investigation would have started by questioning
 22 Ms Birdi and asking for any evidence. And she refused
 23 to attend the interview.
 24 Q. Why could you not have asked the staff?
 25 A. I could have gone back and asked the staff. I would

1 2 4

1 have spoken to Ms Birdi first.
 2 Q. But you chose not to ask the staff?
 3 A. I didn't consciously make a choice. I didn't ask the
 4 staff.
 5 Q. Even when you interviewed Ms Hilton -- go to page 3181
 6 {E/969/3181} -- the next day, on 13 July. So she is
 7 there, in an interview with you?
 8 A. Yes.
 9 Q. You didn't ask her about this, did you?
 10 A. I probably didn't have this letter at that point; it was
 11 only written on 12 July. It would only have been
 12 received by Mr Moore, 13th, 14th, I don't know, and
 13 I interviewed Ms Hilton on 13 July, 10.45, suggesting
 14 that I left my home in north Cheshire 5 am, 6 am, to get
 15 to Dartford. So there is pretty well no chance at all
 16 that I had seen that letter at that time.
 17 Q. So you are saying that you were not aware of Ms Birdi's
 18 letter until after you had interviewed all the staff?
 19 A. I didn't say that. You pointed me to Tracey Hilton.
 20 Q. Sorry, she is the first, 10.45. You then interview
 21 Helen Tidmass, 12.20, page 3187? {E/971/3187}
 22 A. Okay, I don't know how --
 23 Q. You then interview --
 24 A. Sorry, I don't know how Mr Moore received this letter.
 25 I mean, it doesn't have a fax header on the top, so

1 2 5

1 I don't know if it came by email. I don't know what
 2 time it was sent. If it was sent by post, then it
 3 certainly wouldn't have arrived before the interviews.
 4 So I'm afraid it's speculation, but I certainly don't
 5 recall seeing this letter prior to the interviews.
 6 Q. Okay. But you had had the allegation made, hadn't you?
 7 A. Well, we covered that before lunch, yes.
 8 Q. No, after lunch I asked you. 22 June. Do you remember
 9 I took you to it. At her interview with you --
 10 A. Okay, yes.
 11 Q. -- she squarely made the allegation that on the day
 12 after he was suspended, she was concerned that he was
 13 talking to staff and that he had been seen in the
 14 vicinity of the store that evening. She had made that
 15 allegation to you?
 16 A. She had made an allegation that he was on the High
 17 Street.
 18 Q. And she made it in the context of an allegation that she
 19 thought he was tampering with the staff?
 20 A. Hm-mm.
 21 Q. That's right, isn't it? Talking to staff during his
 22 suspension? All right? I took you to that just
 23 a moment ago and you agreed with me that that was --
 24 A. Yes, yes, that's her allegation.
 25 Q. Now, you are interviewing these staff on 13 July?

1 2 6

1 A. Hm-mm.
 2 Q. And you don't raise with any of them -- any of them --
 3 this allegation. You don't want to investigate this
 4 point, do you?
 5 A. I previously asked all of the staff if Kam Singh had
 6 influenced the letter in any way.
 7 Q. But now you know that it's being alleged that he was
 8 actually there during his suspension, some seven days
 9 before the letter was written. You now know that's the
 10 allegation being made?
 11 A. The allegation was that he was on the High Street so ...
 12 Q. Are you telling his Lordship you didn't accept that it
 13 was an allegation that he was talking to the staff
 14 during his suspension? Is that your evidence, Mr Clark?
 15 A. No, I accept that there was an allegation that he was on
 16 the High Street and in Ms Birdi's view -- she says
 17 witness tampering.
 18 Q. Yes. But you didn't ask any of the staff about it?
 19 A. I didn't.
 20 Q. And I'm going to suggest to you that you had already
 21 decided what you were going to do here, from 8 June:
 22 Mr Singh was going to be given a clean bill of health
 23 and Ms Birdi was going to be escalated up to
 24 a disciplinary process to be carried out by one of
 25 Pauline Best's team and she was eventually going to be

1 2 7

1 exited from the store by way of a dismissal on some
 2 ground or another?
 3 A. I am sorry, Mr Stuart, you have put that to me
 4 previously and as I said before, that's completely
 5 incorrect.
 6 Q. Okay. I just want to understand what you are saying
 7 about the circumstances of the meeting, then, on
 8 13 July?
 9 A. Can you point me to that?
 10 Q. The meetings with the staff. You were going to have an
 11 investigatory meeting on 13 July. That's your
 12 paragraph 24 of your witness statement. {C/3/36} And on
 13 the day before, Ms Birdi sent this explanation as to
 14 why --
 15 A. Sorry, I'm just finding that.
 16 Okay, so I wanted to ensure that she had fair
 17 opportunity to comment on it before I made any firm
 18 conclusions.
 19 Q. Yes, and she says in this letter of 12 July:
 20 {E/967/3161}
 21 "I will not be attending this further interview..."
 22 A. That's the letter to Stephen Moore, yes.
 23 Q. That's right. You must have been aware that she wasn't
 24 going to be there by 13 July?
 25 A. Wasn't there previous correspondence to this 12 July

1 2 8

1 letter, whereby she was -- yes, of course there was
 2 because it says:
 3 "Thank you for clarifying the purpose ..."
 4 That's the opening sentence. So Ms Birdi had
 5 previously written to Mr Moore asking for clarification
 6 of the interview and this is the first occasion, this
 7 12 July letter, whereby she actually said, "I will not
 8 be attending the interview", as far as I'm aware.
 9 Q. Yes, and you were aware that she wasn't going to be
 10 attending the interview, weren't you?
 11 A. At what point? By 16 June I was aware, probably
 12 15 June.
 13 Q. No, no, July. This is the 13 July interview?
 14 A. Sorry, right. Okay, yes. Sorry --
 15 Q. So on 13 July --
 16 A. -- just give me a second -- sorry --
 17 Q. -- you came down to Dartford, you interviewed the three
 18 staff. Do you remember?
 19 A. Sorry, I'm just trying to ... (Pause)
 20 I'm just trying to get my dates in order. So the
 21 proposed date of the second meeting with Ms Birdi --
 22 Q. -- was 13 July?
 23 A. Okay, yes.
 24 Q. You were going to interview the staff, presumably, and
 25 Ms Birdi on the same day because that would be more
 1 2 9

1 convenient for you if you are coming down from
 2 Lancashire. Is that right?
 3 A. Okay, yes.
 4 Q. So you were aware, on 13 July, that Ms Birdi wasn't
 5 turning up?
 6 A. Not at the point of interviewing the staff, I wasn't.
 7 I have said already, I don't know exactly what time
 8 I was made aware, but certainly at that -- certainly in
 9 the morning I wasn't aware.
 10 Q. So you thought she was coming along at 1 o'clock?
 11 A. Yes, I believe so.
 12 Q. Okay?
 13 A. As I say, I don't know what time I was told that.
 14 Q. All right. Returning briefly to your witness statement
 15 then, we are at paragraph 27 {C/3/36} through to 41.
 16 {C/3/40}
 17 A. Okay.
 18 Q. Your decision is 3211. {E/979.3/3211}
 19 A. Okay, I'm there, yes.
 20 Q. Do you have it?
 21 A. I do.
 22 Q. And this is your report. If you look at the bottom, it
 23 goes on for 15 pages and ends on 3225. {E/979.3/3225}
 24 A. Okay. Yes, that's signed by me.
 25 Q. It is signed by you.

1 3 0

1 A. Hm-mm.
 2 Q. Is this a letter which you drafted with assistance from
 3 somebody else? I say "letter"; it's a report really,
 4 isn't it?
 5 A. It is.
 6 Q. Is this a report which you drafted with the assistance
 7 of somebody else?
 8 A. The final version, yes, and that would have been with
 9 our legal department. So, as I explained previously,
 10 I would write up my initial report and then really, for
 11 a sense check, to make sure that I had reached
 12 reasonable conclusions, which other people would find
 13 reasonable, I would send it to Legal.
 14 Q. Okay. Would you go back to page 3196? {E/975/3196}
 15 A. Yes.
 16 Q. First of all, do you see the numbering on the left-hand
 17 side? Somebody has written in handwriting some numbers.
 18 Is that your handwriting?
 19 A. It is.
 20 Q. As I understand it, this is a document that you would
 21 have had available to you when you were carrying out the
 22 interviews with the staff that start at page 3181?
 23 Tracey Hilton? {E/969/3181}
 24 A. You are talking about 13 July?
 25 Q. Yes, the 13 July interviews that you were having with
 1 2 3 1

1 the staff.
 2 A. Yes.
 3 Q. Do you see?
 4 A. I do, yes.
 5 Q. Have I got that right? Is this document, this page --
 6 which is page 8 of a document -- is this a page of
 7 a document that you had with you at the interviews with
 8 the staff on 13 July?
 9 A. This particular page, yes.
 10 Q. This particular page, yes.
 11 A. So these are all quotations that have come out of the
 12 early -- the first interviews.
 13 Q. Right?
 14 A. And what I was looking for was first hand corroboration
 15 and I think you will find that in the witness
 16 statements. I was quite specific in asking -- here you
 17 are: {E/969/3181}
 18 "I want you to talk about the events that you have
 19 actually witnessed rather than hearsay which is things
 20 that people have told you about second hand."
 21 And really, the only reason for having this document
 22 that you have taken me to on 3196, it was just to be
 23 able to pick quotations out and ask staff if they had
 24 actually witnessed that.
 25 Q. That's what I thought you were doing.

1 3 2

1 A. What I was doing was verifying people's statements. I'm
 2 looking for --
 3 Q. You are looking for supporting evidence. So where there
 4 is a statement against Ms Birdi, such as the ones that
 5 you have listed at numbers 1 to 10 on page 3196,
 6 {E/975/3196} these are all the piece of evidence that
 7 you want to use against her in support of one of the --
 8 actually, this is in relation to one of the allegations
 9 against her, number 2 allegation.
 10 You have got 10 quotes that you have picked out from
 11 other members of staff and then what you do is you read
 12 that quote out to a different member of staff -- either
 13 Tracey Hilton or Ruth Wotton or Helen Tidmass -- at
 14 their interviews on 13 July and you say, "Do you agree
 15 with that?"
 16 A. No, I don't. I say:
 17 "Have you ever witnessed that first hand?"
 18 Which I think is a perfectly sensible thing to do
 19 because this morning I was criticised for not
 20 corroborating people's witness statements. So rather
 21 than take everybody's allegation just as face value,
 22 I actually went back to Dartford and re-interviewed
 23 members of staff, said, "Look, did you actually see
 24 this?"
 25 Q. You don't say that, do you?

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1 A. I do, I have just read it to you.
 2 Q. No, you said at the beginning -- as an introductory
 3 paragraph, you said: {E/969/3181}
 4 "I need to speak to all of the staff and confirm, or
 5 otherwise, the allegations made in the letter - that's
 6 the staff who signed the letter and those that didn't.
 7 I want you to talk about events that you have actually
 8 witnessed rather than hearsay which is things that
 9 people have told you about second hand."
 10 A. Okay.
 11 Q. That's the point you make. But then what you do is you
 12 quote from this list of quotes that you have taken from
 13 other people?
 14 A. Hm-mm.
 15 Q. Do you see?
 16 A. I do.
 17 Q. Let's take an example. At 3182, between the two hole
 18 punches it says:
 19 "DC: Quote 'SB took sides with them and there was
 20 a real them against us attitude. The level of support
 21 she gave to Fatima and Jas was much more than she ever
 22 gave to any of the longer serving staff'. "
 23 A. Okay.
 24 Q. You don't then question the witness; you don't put
 25 a question to the witness. According to -- this is your

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1 record. We don't know what you actually said to the
 2 witness because this is just your record of it, but you
 3 don't put a question to the witness. You quoted someone
 4 else's evidence and then you are trying to get the
 5 witness to simply agree and support that evidence,
 6 aren't you?
 7 A. No, I wasn't. I was trying to determine whether that
 8 witness had actually seen the allegation or had she
 9 heard -- just heard about it, in which case, you know,
 10 I wasn't interested. So that was the purpose of second
 11 paragraph: {E/969/3181}
 12 "I want you to talk about the events you have
 13 actually witnessed rather than hearsay ..."
 14 And those events were allegations made from the
 15 first round of interviews and my opinion at the time --
 16 and it still is -- is that it was perfectly sensible to
 17 justify those, or to get additional proof that those
 18 happened.
 19 Q. Rather than just simply ask an open question and leave
 20 it to the witness to decide what they did or didn't want
 21 to say, what you do to each witness here is simply to
 22 quote to them each of the ten quotes that you have
 23 listed there, on that document at 3196, and then you
 24 have recorded the witness's reaction as a support of
 25 that quote.

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1 It's all aimed one way, isn't it, Mr Clark?
 2 A. It's not, because as I have already explained, I was
 3 looking for corroboration rather than just taking all of
 4 those statements at face value.
 5 Q. You are looking for support for what has been said by
 6 others against Ms Birdi?
 7 A. No, that's incorrect. As I have just explained, I'm
 8 looking for corroboration that more than one person had
 9 witnessed these events and, as you go through the
 10 interviews, there are many, many examples where people
 11 tell me, "No, I didn't witness it, I never saw it". In
 12 fact, in my report, I even included several interviews
 13 where witnesses say, "Actually, I have got no problem
 14 with Swarandeeep. She has been fine with me. I don't
 15 have any issues."
 16 Q. You disregard that evidence, don't you?
 17 A. No, I don't, actually, because it's all in the
 18 investigation reports.
 19 Q. No, you mention it but you disregard it for the purpose
 20 of your conclusion, which is that you are going to put
 21 Ms Birdi through a disciplinary process and Mr Singh has
 22 a clean bill of health?
 23 A. My conclusion or my objective at the start of this
 24 process was to determine whether there was
 25 a disciplinary -- or possibly a disciplinary case to

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1 answer. And as I went through the process, then
 2 I reached the conclusion that there was a case for
 3 Ms Birdi to answer and I didn't find enough evidence
 4 that there was a case for Mr Singh to answer.
 5 So, way into the process, on a second round of
 6 interviews, all I'm doing here is simply asking for
 7 people to corroborate what has already been said to me.
 8 Q. I have asked you about what you were doing there, but
 9 now I want to ask you about the document itself.
 10 3196. {E/975/3196} What is this document that you
 11 had available to you at these interviews that we see
 12 page 8 of, of your numbers 1 to 10?
 13 A. Yes, clearly it's an early draft of my report.
 14 Q. So you had already drafted your report before you
 15 interviewed --
 16 A. No, I had started.
 17 Q. Before you have interviewed Ms Birdi?
 18 A. I'd started drafting up -- well, I write up my notes
 19 straight away and start drafting my report, yes.
 20 Q. We haven't been shown the rest of this draft --
 21 A. Sorry, how do we know that this is before I have
 22 interviewed Ms Birdi, anyway, when I have written this?
 23 Q. Because you told me you had this available to you when
 24 you were talking to the staff on the morning of 13 July,
 25 and you told his Lordship that you thought you were

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1 about to interview Ms Birdi on the afternoon of 13 July?
 2 A. For the second time?
 3 Q. Yes.
 4 A. Yes, so I had already -- you are telling me that I have
 5 written this before I have interviewed Ms Birdi. I have
 6 interviewed her.
 7 Q. You have interviewed her on 22 June?
 8 A. Correct.
 9 Q. You are about to interview her on 13 July?
 10 A. Yes.
 11 Q. You haven't reached any conclusions yet, have you, on
 12 your disciplinary process, your investigation?
 13 A. Absolutely not.
 14 Q. You shouldn't have reached any conclusions at this
 15 point, should you?
 16 A. Absolutely not, but that doesn't prevent me from
 17 starting to write a report up.
 18 Q. Starting to write? We are on to page 8 of the report,
 19 aren't we, at this point?
 20 A. We are on page 8, yes.
 21 Q. Yes, and it's in almost identical terms to the final
 22 version of the report, isn't it?
 23 A. This page is, because, quite clearly, these are direct
 24 quotations taken out of witness statements. So why
 25 would they change?

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1 Q. These are the selected quotations that you have taken
 2 for the purpose of your final report; yes? At the
 3 bottom of this page we even see it's not just the
 4 quotations. Your summary of an issue: {E/975/3196}
 5 "As referred to above, there has been a long
 6 standing issue regarding KS's pension from the business
 7 being set up. KS is a joint partner with SB in the
 8 business..."
 9 Do you see that?
 10 A. I do.
 11 Q. All right. So by this time you had already pretty much
 12 drafted your report, hadn't you? Or you and the legal
 13 team had pretty much drafted it?
 14 A. As I said before, there were many drafts and this is the
 15 status I was at with it.
 16 Q. I'm going to suggest to you that this entire
 17 investigatory process was something of a sham, Mr Clark,
 18 and you had already determined what you were going to
 19 do, certainly by the time that you start actually
 20 interviewing people?
 21 A. Okay, I think this is the third or fourth time now, but
 22 absolutely not.
 23 Q. Okay.
 24 A. There is no sham. If you read the report in full -- I'm
 25 sure you have done -- I mean, to my mind and re-reading

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1 it a few years later, this is actually a pretty good,
 2 balanced report and the conclusions I draw are the
 3 conclusions that any reasonable person could draw.
 4 Q. It's a report which is entirely supportive of Mr Singh
 5 and against Ms Birdi, isn't it?
 6 A. No.
 7 Q. It doesn't balance the role that they both had to play
 8 in the breakdown of this relationship?
 9 A. Unfortunately, Ms Birdi chose not to turn up to the
 10 second interview, so had she done so, I would have had
 11 a lot more evidence from her to include in the report,
 12 but she chose not to do that. Not through sickness or
 13 anything. She refused to attend the interview. At that
 14 point, she had even been given 16 June letter.
 15 Q. You didn't make any investigations of Mr Rowe. We heard
 16 from him yesterday. He was the RDC who dealt with their
 17 relationship for two years?
 18 A. That's correct.
 19 Q. You didn't take a witness statement from him?
 20 A. I didn't.
 21 Q. You didn't consider it helpful to your process to find
 22 out from an SOG staff member, whose job it was to manage
 23 their relationship -- you didn't consider it appropriate
 24 to find out from him what his view was as to their
 25 respective culpability for the breakdown of the

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1 relationship?
 2 A. Okay, I don't think it was particularly Mr Rowe's job to
 3 manage the relationship. I'm very familiar with how
 4 an RDC operates. So going back to Mr Rowe's evidence
 5 yesterday, he looks after more than 100 stores. He
 6 deals with strategic projects. I think he mentioned
 7 Sunday trading that he was rolling out. There was
 8 a fundus camera project going on at the same time. So
 9 in the normal course of events, a store may not see
 10 Mr Rowe for more than a year.
 11 So, the amount of primary evidence that Mr Rowe
 12 would have would be pretty limited. I think most of the
 13 evidence and -- certainly my thought process at the time
 14 was that most of the evidence that Mr Rowe would have
 15 would have been gained second-hand and rather than do
 16 that, I actually had 11 primary witnesses, who worked in
 17 the store day in, day out; spent time in the staff room;
 18 spent time in the back office; were primary witnesses to
 19 whose going on in the store, and those were the people
 20 I interviewed.
 21 Q. Can I just very briefly take you through -- you have
 22 summarised what you say were your conclusions. Page 37
 23 of the witness statement bundle. So paragraph 29, it
 24 starts. You are dealing with the five general points --
 25 A. Sorry, where are we?

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1 Q. Paragraph 29 of your witness statement. {C/3/37}.
 2 Under the first heading, the first of the five
 3 matters that you are summarising -- do you have it?
 4 It's page 37 of the witness statement bundle?
 5 A. Okay.
 6 Q. Paragraph 29.
 7 A. Yes, right, I am there, sorry:
 8 "The interviews I conducted..."
 9 Q. That's it. If you look above, the sentence above, you
 10 say:
 11 "I expanded upon five matters that arose from my
 12 investigations..."
 13 A. Okay.
 14 Q. And you explain them briefly below, So you are dealing
 15 with the five main matters, as far as I can understand.
 16 Do you see?
 17 A. Yes.
 18 Q. The first is:
 19 "Actions towards Mr Singh/Actions destructive of the
 20 working relationship with Mr Singh."
 21 Do you see that?
 22 A. Hm-mm.
 23 Q. About the fourth line you say:
 24 "I found that Ms Birdi was rude and uncooperative.
 25 Ms Birdi seemed to instigate hostility..."

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1 A. Sorry, yes, but you have started half way through
 2 a paragraph there: {C/3/37}
 3 "It was also evident from the correspondence between
 4 the two directors, I found that Ms Birdi was rude and
 5 uncooperative."
 6 So this is in the correspondence between the two of
 7 them. They had given up speaking to each other and were
 8 batting emails backwards and forwards at all times of
 9 the early morning and evening, outside trading hours.
 10 Q. That's right. The two of them --
 11 A. Yes.
 12 Q. -- were batting -- we have seen these with Mr Rowe
 13 already and Mr Raines?
 14 A. Yes.
 15 Q. They were both sending such rude and aggressive emails
 16 to each other, weren't they?
 17 A. To an extent. There was a lot of tit for tat. It was
 18 all, to my mind, very petty and low level.
 19 Q. But you choose to cite that as a basis for finding
 20 against Ms Birdi, rather than against Mr Singh?
 21 A. Yes, because I found that hers were significantly more
 22 rude and uncooperative and, as an example of that,
 23 I would cite the first meeting that they had, I believe
 24 straight after an RST meeting they met for four hours;
 25 I think that was the occasion.

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1 They actually appeared to have a pretty productive
 2 meeting. They agreed a lot of actions and then
 3 apparently, later on in the evening, Ms Birdi sends an
 4 email and just says:
 5 "Actually, all those things we've agreed, I'm
 6 changing my mind. I'm not doing them now."
 7 Q. I don't want to debate matters with you.
 8 A. No, well I'm just giving you an example.
 9 Q. I want to give you the opportunity in your evidence to
 10 his Lordship to concede, if you are prepared to concede,
 11 that Mr Singh was rude and uncooperative in his
 12 correspondence with Ms Birdi as well? But you are not
 13 prepared to concede that?
 14 A. Well, I said partially. I said it's tit for tat.
 15 I found that Ms Birdi's were certainly more extreme in
 16 terms of being rude or uncooperative.
 17 Q. Where in your investigation report do you mention that
 18 it's tit for tat, but on balance, you find it's slightly
 19 more her responsibility than his? Where do you say
 20 that?
 21 A. I don't.
 22 Q. No?
 23 A. I just found the whole thing petty and -- I received
 24 a whole bundle of emails from Mr Singh, as you are
 25 aware, and I have not made reference to them because --

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1 low level and petty. You know, I didn't regard that as
 2 a game changer.
 3 Q. Paragraph 30 you say: {C/3/37}
 4 "Ms Birdi was unwilling to compromise..."
 5 A. Yes.
 6 Q. You don't mention Mr Singh being unwilling to compromise
 7 over the four day a week testing issue? Or anything
 8 else that he grieved and complained about in his many
 9 letters, "Dear Partners". You don't mention Mr Singh's
 10 inability to compromise?
 11 A. I can't think of any more examples other than the four
 12 day a week testing, which had previously been agreed...
 13 Q. Okay. Then you say: {C/3/37}
 14 "For example, in my interview with Ms Birdi she
 15 often repeated historic allegations that had previously
 16 been investigated, such as the allegation that Mr Singh
 17 had a conflict of interest in relation to his dealings
 18 with the Grays store."
 19 She was raising that, wasn't she, not for you to
 20 redetermine a grievance that had happened, but to
 21 explain to you the basis upon which she was defending
 22 the case against her, the case against her being, "It's
 23 all your fault, Ms Birdi". And she was seeking to
 24 explain to you, as her defence, that actually, Mr Singh
 25 and SOG -- Mr Dyson, Mr Raines, et cetera -- had an

1 4 5

1 agenda against her right from the start. And one of the
 2 examples she gave was that even when she caught him
 3 moonlighting in Grays, nothing was done against him?
 4 A. My point being that the allegation was investigated --
 5 and this is just one example; there were several. The
 6 allegation was investigated. I can't comment on the
 7 outcome of the investigation, whether that's correct or
 8 not because it wasn't my decision but it was
 9 investigated. It wasn't upheld. It was then appealed.
 10 Q. Yes.
 11 A. The appeal wasn't upheld and this happened several
 12 times, as I say. So from that I think it's pretty
 13 reasonable for me to accept that when Ms Birdi re-raises
 14 these allegations, that she is not able to put them
 15 behind her.
 16 Q. Mr Clark, are you unable to understand the logic of
 17 a simple point? She is saying that the very fact that
 18 when she raised these allegations they were dismissed by
 19 SOG, and then when she appealed it was just dismissed by
 20 SOG -- she was raising that to try to show you why she
 21 had the view that she had about SOG and Mr Singh being
 22 in cahoots together. She wasn't asking you to
 23 redetermine those issues; she was putting it forward as
 24 her case.

Why can't you consider that as part of your

1 4 6

1 reasoning? Why can't you consider that she may well
 2 have felt that, by reason of the fact that her
 3 allegations of moonlighting were simply dismissed, and
 4 then the appeal dismissed and nothing done to Mr Singh:
 5 no penalty, no disciplinary action, no warning? Why --
 6 A. Because the allegations were not simply dismissed. They
 7 were thoroughly investigated. There was a report
 8 written up.
 9 Q. Nobody investigated the amount of time he had been
 10 spending at Grays, the work he had done --
 11 A. I can't comment on that --
 12 Q. Okay, well then how can you --
 13 A. -- because I don't know.
 14 Q. Then how can you dismiss it as a point that she was
 15 entitled to raise with you --
 16 A. What I'm dismissing is the fact that the grievance had
 17 been investigated, the appeal to the grievance had been
 18 investigated, they hadn't been upheld and this, as
 19 I say, had happened on several occasion. So there were
 20 several grievances and appeals that had not been upheld
 21 and yet Ms Birdi continues to raise them. She raised
 22 them -- or she insisted on raising them as part of the
 23 mediation process, when she refused to vote in favour of
 24 mediation unless SOG was prepared to include every
 25 grievance going back to 2007.

1 4 7

1 You know? It says it for itself, doesn't it? She
 2 is not able to put things behind her.
 3 Q. Are you saying that when she is facing a disciplinary
 4 process, where you are about to dismiss -- not you
 5 personally but SOG for whom you act -- are about
 6 to dismiss her that she is not allowed, as part of --
 7 A. You have pre-judged that. Who said we were about to
 8 dismiss her? I'm here carrying out an investigation to
 9 determine whether there is a disciplinary case to
 10 answer. Nothing more. I wasn't going to do any
 11 dismissal. So --
 12 Q. Mr Raines's note I have taken to you already, haven't I?
 13 3 June, disciplinary process to be conducted by one of
 14 Pauline Best's team?
 15 A. I think I have explained myself there. I haven't seen
 16 that note.
 17 Q. What I'm asking you is: are you suggesting that as part
 18 of her meeting the allegations against her -- those
 19 being allegations about her relationship with Mr Singh
 20 and the working relationship -- you are saying that she
 21 can't, as part of her defence to those allegations,
 22 refer to anything if that thing has already been
 23 decided, in a grievance process against her, that there
 24 won't be any penalty for Mr Singh for what he did?

You are saying she can't even mention it as part of

1 4 8

1 her defence, according to your thinking?
 2 A. No, she can -- she can mention it. And it's not just
 3 the allegations against Mr Singh. She wants everything
 4 back to 2007; she wants the allegations against
 5 Mel McAlindon reinvestigating.
 6 Q. Of course, because you understood, didn't you, that that
 7 was her explanation as to why she felt the way she did?
 8 She felt that Mr Singh had an agenda, didn't she?
 9 A. Mr Singh, SOG --
 10 Q. Yes.
 11 A. -- Mr McAlindon --
 12 Q. Yes.
 13 A. -- you know, this is all this dreamed-up theory.
 14 Q. I think it's for his Lordship to decide whether it's
 15 a dreamed-up theory or not.
 16 A. Sorry, my Lord.
 17 Q. Isn't it, Mr Clark?
 18 A. Okay, I have just apologised.
 19 Q. So it may prove to be a dreamed-up theory or it may not
 20 prove to be a dreamed-up theory.
 21 A. Okay.
 22 Q. She felt that Mr Singh had an agenda to get rid of her
 23 right from the start, didn't she? She felt that?
 24 A. She may have done. I can't say what she was thinking.
 25 Q. As part of her explanation to you as to why she felt

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1 that -- you questioned her about this in the interview
 2 you had with her and she has brought up these historical
 3 allegations which she said were examples to show you
 4 that there was a basis for asserting that Mr Singh and
 5 SOG were in it together, as she saw it. That's how that
 6 all arose in the discussion, wasn't it?
 7 A. She may have thought that. As I say, I can't comment.
 8 I didn't agree with her and as I was part of previous
 9 investigations and as I had seen board minutes from
 10 various other meetings, where she was continually trying
 11 to resurrect these issues that I thought were settled,
 12 that's how I came to reach my conclusion here.
 13 Q. If the matters that she was still talking about actually
 14 were correct -- if her allegations were correct and the
 15 findings of Mr Raines when dealing with her original
 16 disciplinary process and then her grievance in 2008 --
 17 A. Hm-mm.
 18 Q. -- which you had been involved in?
 19 A. Yes.
 20 Q. And then the subsequent 2009 issues?
 21 A. Mr Goddon.
 22 Q. Exactly. And going right back to Mr McAlindon's
 23 involvement, right from the start in February 2007 -- if
 24 all of those matters were actually as she said they
 25 were -- if they were, which I know you don't accept?

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1 A. Hm-mm.
 2 Q. But if they were, it would be legitimate for her to
 3 raise those issues with you, wouldn't it?
 4 A. She is free to raise whatever she wants.
 5 Q. Fine. Okay, the next issue was: {C/3/37}
 6 "Encouraging staff to raise formal grievance..."
 7 You deal with that in one short paragraph.
 8 What about Mr Singh encouraging the staff to write
 9 their letter or to raise a grievance with head office?
 10 A. I didn't find any evidence that he had done that.
 11 I think we have been there earlier today, haven't we,
 12 when I started every interview and asked each member of
 13 staff, "Have you been influenced by Kam Singh in terms
 14 of writing this agree -- this letter".
 15 Q. You are talking about that letter. But you haven't
 16 investigated her allegation that he was indeed
 17 influencing staff on 8 or 9 June; you didn't investigate
 18 that, did you?
 19 A. 8th or 9th -- well, I asked every member of staff about
 20 the letter.
 21 Q. You didn't ask them about 8 or 9 June, did you? You
 22 didn't ask them at all?
 23 A. I asked them about the 16 June letter.
 24 Q. You didn't ask them about the 8 or 9 June incident at
 25 all, did you?

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1 A. No.
 2 Q. No:
 3 "Inappropriate behaviour towards Store staff."
 4 You say here -- this is an oft-repeated allegation:
 5 "The Dartford employees also complained that
 6 Ms Birdi showed preferential treatment towards
 7 Ms Khunkhuna and Ms Gulamali..."
 8 A. Hm-mm.
 9 Q. "Furthermore, the preferential treatment was detrimental
 10 to the working environment..."
 11 What's the preferential treatment that you are
 12 referring to there? It's your statement, so what
 13 preferential treatment?
 14 A. Yes, it's the fact that these two individuals frequently
 15 turned up for work -- certainly one of them did on
 16 a very regular basis. It upset the remainder of the
 17 staff.
 18 The other members of staff, if ever they turned up
 19 late, they would get their pay docked or they would have
 20 to work through their lunch hours or breaks, and this
 21 individual didn't have to.
 22 Apparently the feeling amongst the rest of the staff
 23 was that they could walk in whenever they want and there
 24 would be no penalty.
 25 Q. That's the preferential treatment then: not getting

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1 docked for being late?
 2 A. Well, that was one, there were other smaller ones, in
 3 that --
 4 Q. Who was responsible for the staff on a day-to-day basis
 5 as between Mr Singh and Ms Birdi? Who was in charge of
 6 the team of which Ms Khunkhuna and Ms Khan were members?
 7 On a day-to-day basis?
 8 A. Jointly.
 9 Q. No, it was Mr Singh. Do you recall? Ms Birdi was in
 10 the testing room three and a half days a week. Do you
 11 remember?
 12 A. I remember that.
 13 Q. Okay. So did you investigate the issue that that
 14 wasn't -- if that's the one item that you are referring
 15 to, that that preferential treatment wasn't entirely
 16 down to Ms Birdi at all?
 17 A. I just said that wasn't the one item. There were other
 18 items.
 19 Q. What items?
 20 A. There were -- within the witness statements there is
 21 a member of staff who mentioned that one of these two
 22 ladies had gone straight on to dispensing -- varifocals,
 23 I think it was, where he hadn't been allowed to. Was
 24 that Stephen Hummell? It's in there. It has all been
 25 disclosed.

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1 Q. Who is the dispenser? Who is in charge of dispensing in
 2 this operation, Mr Singh or Ms Birdi?
 3 A. Mr Singh is in charge of dispensing, but in reality,
 4 when the optician brings a patient out, she will select
 5 a dispenser to hand over to.
 6 Q. Only of those who are the dispensers on that day, who
 7 are acting in the capacity of dispensers as determined
 8 on the rota by Mr Singh?
 9 A. Yes, but whoever is there. And I would also point out
 10 that the allegation of favourable treatment in terms of
 11 time keeping, that wasn't just made by one person; that
 12 same allegation was made several times.
 13 Q. Over the page, the next issue is: {C/3/38}
 14 "Behaviour to Store staff."
 15 You say that:
 16 "...[the] letter also stated that 'Swarandeeep can
 17 make you feel very intimidated and pressured and we have
 18 been frightened...'"
 19 I asked those of the staff who gave evidence to his
 20 Lordship about that letter whether they were talking
 21 about themselves being frightened and very intimidated,
 22 themselves, or whether that was someone else and they
 23 just put their name to the letter.
 24 Did you ask the staff whether they themselves were
 25 very -- let's take Mr Hummell as an example -- whether

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1 Mr Hummell was very intimidated himself and very
 2 frightened himself?
 3 Did you ask the staff those sorts of questions?
 4 A. I believe I did. I would have to go back to the actual
 5 individual statements, though, to look.
 6 Q. The ones at E11?
 7 A. E11?
 8 Q. The 22 June interviews, do you mean, of E11, round about
 9 page 3080? 3082 we have got Ms O'Brien. {E/942/3082}
 10 Tidmass is at 3088. {E/944/3088} Hornby at 3091
 11 {E/945/3091} and Hummell's at 3095. {E/946/3095} Is
 12 that what you mean?
 13 A. It is.
 14 Q. Let's take Mr Hummell as an example because I think
 15 I asked him the question straight and he very fairly
 16 answered the question, actually. Mr Hummell is at
 17 page 3095. {E/946/3095}
 18 A. Okay.
 19 Q. So this allegation of Ms Birdi being very intimidating
 20 and frightening them?
 21 A. Hm-mm. Fourth line down:
 22 "She dismissed me and said she was busy."
 23 Q. That's not frightening, is it? To be fair to
 24 Mr Hummell, he accepted that he personally wasn't
 25 frightened or very intimidated. He felt that that was

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1 something that other people --
 2 A. Okay, I'll take to you 3084. {E/942/3084}
 3 Q. 3084?
 4 A. "I make a mistake, she will tell you off in front of
 5 customers and make you feel stupid."
 6 Q. That's Patrice O'Brien. She wasn't a signatory to the
 7 letter, was she?
 8 A. She wasn't, sorry, no. I'm going through these as we're
 9 speaking.
 10 Q. Okay. I was just looking at your paragraph 33 where it
 11 says: {C/3/38}
 12 "... the 16 June Letter stated that 'Swarandeeep can
 13 make you feel very intimidated and pressured and we have
 14 been frightened...'"
 15 I asked the staff members whether they themselves
 16 were very intimidated by Ms Birdi or very frightened,
 17 and that didn't seem to be their evidence. I'm just
 18 asking whether you asked them, since you were going to
 19 refer to it in your report.
 20 Did you ask Mr Hummell whether he was very
 21 intimidated by Ms Birdi or frightened?
 22 A. You have got the transcript.
 23 Q. I have got 3095 to 3097, which is the note made at the
 24 meeting with Mr Hummell. There's nothing that I can see
 25 in there about her attitude towards him being

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1 frightening and very intimidating.
 2 It's quite a serious allegation, isn't it?
 3 A. Hm-mm.
 4 Q. If we take Mrs Tidmass -- I don't want to spend too much
 5 time on this. Mrs Tidmass at 3088? {E/944/3088}
 6 A. Okay.
 7 Q. I asked her the same questions in cross-examination and,
 8 again, she very fairly gave answers conceding that she
 9 wasn't talking about herself personally. And again, in
 10 your interview with Mrs Tidmass, there is no mention of
 11 her being frightened by Ms Birdi or very intimidated by
 12 Ms Birdi.
 13 You saw Mrs Tidmass. She was neither frightened nor
 14 very intimidated by Ms Birdi. You don't ask her about
 15 that?
 16 A. She put her name to the letter.
 17 Q. Well, that's my point. It appears that all these
 18 people's names have been put -- four of them have signed
 19 it and the other two have had their names put to the
 20 letter. But when one actually asks them about the
 21 content of the letter in a proper way, in a way which is
 22 designed to find out what they really personally knew
 23 and experienced, one doesn't get the answers in the
 24 letter?
 25 A. Okay. I'll take to you 3196. {E/975/3196}

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1 Q. 3196. Can we put away E11 then?
 2 A. If you want.
 3 Q. Okay. 3196, yes.
 4 A. So where you see my handwriting, number 3:
 5 "If you sort of take Kam's side of the argument, she
 6 (SB) will cut you off dead. I feel very intimidated by
 7 SB. If I make a mistake she will tell you off in front
 8 of customers..."
 9 So there is one person at least who feels very
 10 intimidated.
 11 Q. Yes. One person.
 12 A. At least.
 13 Q. Yes, that's not one person who signed the letter.
 14 That's Patrice O'Brien, I think. You are just referring
 15 to the same quotes that you have just referred to.
 16 So there is one person that says that,
 17 Patrice O'Brien, you have just said there, but not --
 18 A. There was the incident with Lorraine and the NHS
 19 so-called fraud.
 20 Q. All right, Mr Clark. Is it correct that you did not ask
 21 all of the signatories to the letter about their
 22 personally feeling either very intimidated or very
 23 frightened by Ms Birdi. Is that fair? You didn't
 24 actually ask them about that?
 25 A. I think I asked the majority because certainly when you

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1 went to the second round of interviews, I was quoting
 2 off this 3196 sheet.
 3 Q. Okay. And then --
 4 A. We have got item 9 as well: {E/975/3196}
 5 "... her behaviour is shocking..."
 6 Okay. Carry on.
 7 Q. 35. {C/3/38} You mention that some of the staff you
 8 interviewed were not negative about Ms Birdi. You talk
 9 about Mr Reeves, Ms Storey, Ms Dolan, Mr Anthon-Felix?
 10 A. Exactly. I mean, I would hold this up as an example of
 11 where I was trying to fair and balanced.
 12 Q. You note that. You note that those four people didn't
 13 give you evidence to support Mr Singh's allegations, but
 14 your decision doesn't in any way rely upon that, does
 15 it? You just ignore that for the purposes of your
 16 decision, because you come to the conclusion that
 17 Ms Birdi is guilty of all the things that Mr Singh
 18 alleges against her?
 19 A. I haven't said that. Can you point me to that?
 20 Q. What, your report?
 21 A. No, can you point me to the section or the line where it
 22 says:
 23 "I uphold everything ..."
 24 Whatever you just said there?
 25 Q. You uphold the allegations?

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1 A. I uphold the allegations, but I don't say that I agree
 2 with everything that Mr Singh has said. I think you
 3 just said.
 4 Q. No, you uphold the allegations made against Ms Birdi by
 5 Mr Singh. You uphold them, don't you?
 6 A. Overall, yes.
 7 Q. The next one is:
 8 "Failure to comply with instructions or Board
 9 resolutions."
 10 You deal with a couple of points. You deal with the
 11 pension?
 12 A. Correct.
 13 Q. We know that Ms Birdi has her explanation for what
 14 happened; Mr Singh has his explanation. You accept
 15 Mr Singh's explanation. Is that fair? About this
 16 pension form and everything else?
 17 A. The board instruction was that Mr Singh -- sorry, that
 18 Ms Birdi sign Mr Singh's form.
 19 Q. Hm-mm.
 20 A. Ms Birdi, in my interview with her, agreed that she
 21 produced her own version of it.
 22 Q. When you say "her own version of it", it was an SOG
 23 form; it was a standard form?
 24 A. It was, but you had to fill in the amounts of your
 25 pension.

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1 Q. But you fill in the amounts; so she had to check the
2 amount; yes.
3 A. From memory I believe that was for a smaller amount.
4 Q. No. You say that, you see, in paragraph 36 of your
5 statement, but that's not right, is it? {C/3/38}
6 A smaller amount than her or a smaller amount than he
7 was asking for?
8 A. That would be a smaller amount than he was asking for.
9 Q. Ah, okay. Well, if he wasn't entitled -- if he wasn't
10 entitled to the amount that he was asking for and he was
11 only entitled to the amount the same as her, wouldn't it
12 be fair for her to print off the SOG form and fill in
13 the right figures?
14 A. No, it wouldn't.
15 Q. Wouldn't that be a fair thing to do?
16 A. No, no, no. The pension comes out of distributable
17 profits.
18 Q. Yes.
19 A. Either partner can choose whatever size pension they
20 want, as long as it forms part of those distributable
21 profits and the business can afford it. So one partner
22 may not want a pension at all; another may want £50,000
23 a year. And if the business can afford it and that's
24 part of the distributions, there is no reason why that
25 shouldn't happen. So, it's entirely for Mr Singh to ask

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1 for whatever size pension he wants, as long as the
2 overall pot of money is distributed equally.
3 Q. But that wasn't the basis for the dispute between them,
4 that he was saying, "Look, I'll take a little bit less
5 in my dividend this year or in my bonus or in my other
6 form of distribution, but I want this amount to go into
7 my pension". That wasn't what had caused the hiatus in
8 signing off of the form, was it?
9 A. I believe it was. But anyway, whatever the reason, the
10 fact is that there were two board meetings held. There
11 was a legitimate instruction given to Ms Birdi from the
12 board of the company and she ignored it.
13 Q. She didn't ignore it, did she?
14 A. Well, she did. She didn't sign off Mr Singh's form.
15 Q. No, the instruction -- you have written it at 36
16 {C/3/37} -- the instruction was to authorise a pension.
17 She didn't ignore that. According to you, she in fact
18 produced her own form. What you mean is she printed off
19 an SOG form, pension form, distribution form. She
20 didn't ignore it. She printed off the form, she filled
21 it out, she provided it to Mr Singh.
22 Now, that's not ignoring the authorisation of
23 a pension, is it? She could have just done nothing.
24 She could have just said, "I'm not going to do
25 anything"?

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1 A. Mr Singh denies that he ever received it.
2 Q. I started this little line of questioning with the
3 proposition that they both had different versions of
4 events and I said you just simply accepted Mr Singh's
5 version and not hers. That's what has happened here,
6 isn't it?
7 A. Mr Singh provided his form. Ms Birdi agrees that she
8 produced her own but, at the end of the day, as I say
9 here, Ms Birdi was instructed twice by the chairman of
10 the meeting to authorise Mr Singh's pension by signing
11 the relevant form. Even on 22 June Ms Birdi
12 acknowledged that she had still not signed the form
13 completed by Mr Singh.
14 Q. You had her explanation but you rejected it. Is that
15 fair?
16 A. The explanation I was given was that she produced her
17 own form, Mr Singh denied that he had received it. So,
18 whichever way you look at it, she hadn't signed the
19 form.
20 Q. In paragraph 39 you deal with:
21 "Actions destructive of the working relationship
22 with SOG." {C/3/39}.
23 So this is no longer between her and Mr Singh; this
24 is now with SOG. Is that right?
25 A. Sorry, are we not going to discuss the other items,

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1 then?
2 Q. We just have.
3 A. Expense claims, the additional source of revenue that
4 Mr Singh had identified?
5 Q. No, I don't need to discuss those with you.
6 A. Okay.
7 Q. You have set out what you want to say there.
8 A. Okay.
9 Q. You said that she complied with the instruction, the
10 first one, the expense claims. You totally ignore the
11 fact that Mr Singh had wrongly refused, tit for tat, to
12 sign off her expenses, hadn't you?
13 A. No, you see, I hadn't ignored that. I was fully aware
14 that there was some tit for tat going on and there was
15 board meeting held to sort it out and at that board
16 meeting, they were both instructed to sign each other's
17 pensions. At some point, Mr Singh did so, Ms Birdi did
18 not, and then, after quite some period of time Ms Birdi
19 starts trying to justify her refusal to sign it by
20 introducing mileage issues, petrol expenses, but that
21 still ignores the fact that she was given a legitimate
22 instruction by the board of the business to sign it and
23 she didn't do it.
24 Q. No, they didn't instruct her --
25 A. That's -- you know, I'm not trying to say --

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1 Q. You have misstated the instruction. The instruction
 2 wasn't to sign it. The instruction was to approve each
 3 other's expenses?
 4 A. Okay.
 5 Q. She doesn't have to approve improper expenses. That's
 6 not what the board instructed her to do, was it?
 7 A. The board instructed her to approve --
 8 Q. Legitimate expenses.
 9 A. No, to approve the expenses.
 10 Q. So you are saying you understood that to be the board
 11 telling her to approve his illegitimate expense claims?
 12 A. No, I didn't say that.
 13 Q. Right.
 14 A. There was a board instruction to approve each other's
 15 expenses. Mr Singh complied with that, Ms Birdi did
 16 not. That's all I'm saying.
 17 Q. She approved those parts of the expenses which were
 18 legitimate, and she had issues about the mileage and --
 19 A. Yes, but I'm not determining that.
 20 Q. Good. Paragraph 39, you say: {C/3/39}
 21 "The evidence from my investigation indicated
 22 Ms Birdi was unwilling to compromise or move forward in
 23 the interests of the business."
 24 That seems to be a repetition of your previous
 25 point. Is that fair?

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1 A. It is, yes.
 2 Q. "Ms Birdi refused to accept the previous grievance
 3 procedures that had taken place."
 4 A. Hm-mm, we have discussed that.
 5 Q. We have dealt with that, and then you deal with this
 6 external mediation. You say:
 7 "As noted in the minutes of that meeting, Ms Birdi
 8 stated that she would only agree to mediation if SOG
 9 would address as part of the mediation all the issues
 10 from 2007."
 11 A. Okay.
 12 Q. That was fair enough, wasn't it? Even Mr Raines agreed
 13 that that would be okay. Within the mediation, SOG will
 14 be a party and will deal with the issues that Ms Birdi
 15 wishes to raise, which go right back to 2007 and
 16 Mr McAlindon?
 17 A. No, I don't think Mr Raines did say that.
 18 Q. Okay.
 19 A. Mr Raines said that the mediator would determine which
 20 issues were to be raised and looked at, I think.
 21 Q. You would know with your experience that a mediator
 22 can't "determine" things. A mediator's role is to
 23 mediate between two parties and to try to get them to
 24 agree -- or three parties here -- get them to agree as
 25 to a way forward. And Ms Birdi wanted that discussion

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1 to include discussion about what had gone on right back
 2 to 2007, and include SOG. That's what she wanted,
 3 wasn't it?
 4 A. And at this point in time -- well, I can't speak for the
 5 mediator, whether he would be prepared or think it
 6 relevant to go back to 2007, or whether the mediator
 7 would just say, "We can't do anything about these now,
 8 these have been resolved, they have been investigated,
 9 they have been appealed", et cetera, et cetera. To my
 10 mind the mediator looks for the way forward, not to keep
 11 resurrecting historical issues.
 12 Q. So, what actually happened with regard to the mediation
 13 was that Mr Raines withdrew his suggestion of mediation,
 14 didn't he?
 15 A. He did, for a very good reason, because mediation
 16 involves all parties agreeing to the process.
 17 Q. That's right.
 18 A. So you have to have a unanimous vote in favour.
 19 Q. Yes.
 20 A. SOG voted in favour.
 21 Q. Yes?
 22 A. The chairman did.
 23 Q. Yes.
 24 A. Mr Singh voted in favour.
 25 Q. Yes.

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1 A. Ms Birdi voted against, so she effectively scuppered the
 2 process.
 3 Q. No, she voted -- as you put it: {C/3/39}
 4 "[She] stated she would only agree to mediation if
 5 SOG would address as part of the mediation all the
 6 issues from 2007."
 7 You have written it there yourself?
 8 A. Yes, she is putting her own conditions on it, and
 9 that --
 10 Q. If SOG would agree to that -- if SOG would agree --
 11 obviously Mr Raines would not agree to that and so he
 12 withdrew the suggestion of mediation.
 13 A. Hm-mm.
 14 Q. But if SOG would have agreed to that, there would have
 15 been a mediation?
 16 A. Mr Raines's point was that it wasn't for him to agree
 17 that; it was for the mediator to determine what needed
 18 to be included.
 19 Q. Then finally, you deal with: {C/3/39}
 20 "State of working relationship."
 21 You sought the views of Mr Raines about the working
 22 relationship. Do you mean the working relationship
 23 between the two A directors, under this heading?
 24 A. Not exclusively, no. The working relationship between
 25 the two A directors and then also the working

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1 relationship between the A directors and the B director.
 2 Q. So is this not just literally -- the first of your
 3 items, which is:
 4 "Actions towards Mr Singh/Actions destructive of the
 5 working relationship with Mr Singh."
 6 And the last of your items that I have mentioned,
 7 which is:
 8 "Actions destructive of the working relationship
 9 with SOG."
 10 Is this just a repetition of that, a combination of
 11 those two?
 12 A. Yes, this is asking for Mr Raines's -- who had
 13 first-hand -- who had witnessed this. So, again,
 14 a primary witness of the behaviours at board meetings.
 15 Q. But Mr Raines is the man who has given you the task of
 16 doing this, hasn't he?
 17 A. He has, yes.
 18 Q. And you have had your chat with Mr Raines before the
 19 process starts. That's right, isn't it? So you know
 20 what Mr Raines wants you to do here?
 21 A. No, there was no chat to -- about anything like that.
 22 Q. Okay. You didn't ask for Mr Rowe's input?
 23 A. I have explained why. Mr Rowe wouldn't really be
 24 a primary witness. He would have limited information
 25 that he would have gathered from elsewhere.

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1 Q. Okay and then finally, 41, last sentence: {C/3/40}
 2 "I did not find any evidence to suggest Mr Singh had
 3 done anything but act in the best interests of the
 4 business."
 5 That's a very sweeping approval of everything that
 6 Mr Singh has done.
 7 A. Just point me to the line, sorry?
 8 Q. Yes, 41, last sentence under the heading, "Conclusion".
 9 A. Yes.
 10 Q. You have recommended Ms Birdi go through a disciplinary
 11 process and then you say: {C/3/40}
 12 "... I did not believe Mr Singh had a disciplinary
 13 case to answer. I did not find any evidence to suggest
 14 that Mr Singh had done anything but act in the best
 15 interests of the business."
 16 So you are saying everything Mr Singh did that you
 17 were aware of -- from 2008, even before he has bought
 18 his shares, through to 2010, when you conduct this
 19 investigation into him -- everything he did was just in
 20 the best interests of the business.
 21 You must be one of the only people who believes
 22 that. Even Mr Rowe and Mr Raines were prepared to
 23 caveat their disapproval of Ms Birdi by saying, "Yes,
 24 Mr Singh was not exactly helping matters?"
 25 A. Okay, I could have possibly phrased that -- I could have

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1 added on to that sentence something to the effect:
 2 "... aside from some tit for tat/petty goings-on."
 3 Q. What about the evidence from Mr McGonagle that even
 4 before he started, Mr Singh's plan is to get his family
 5 member into the business and that he is going to
 6 communicate with and manage Ms Birdi accordingly? What
 7 about that?
 8 A. I wasn't aware of that document.
 9 Q. Well, you must have spoken to Mr McGonagle?
 10 A. I don't believe I did, no.
 11 Q. No? Or Mr Rowe?
 12 A. Well, half way through 2010?
 13 Q. Yes?
 14 A. No.
 15 Q. No? All right.
 16 My Lord, I have got just two very small points to
 17 deal with. I will deal with them in less than five
 18 minutes?
 19 MR JUSTICE NUGEE: Let's take a break now. We will take
 20 a five-minute break.
 21 (3.14 pm)
 22 (Short break)
 23 (3.19 pm)
 24 MR JUSTICE NUGEE: Yes?
 25 MR STUART: Mr Clark, just two final points then. Page 40

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1 of the witness statement bundle, paragraph 42, you deal
 2 with the issue of the costs of your investigation.
 3 {C/3/40}
 4 A. Okay.
 5 Q. And you say:
 6 "The costs I incurred in the investigation were
 7 charged to Dartford Visionplus. These costs were based
 8 on my daily rate of £800."
 9 Do you see that?
 10 A. I do.
 11 Q. Would you be shown bundle E6, page 1491. {E/391/1491}
 12 A. Yes.
 13 Q. This is the letter that -- do you remember, Mr Dyson did
 14 some manuscript revisions at page 1484? {E/389.1/1484}
 15 A. That's right.
 16 Q. This is the final version of the document as it went
 17 out?
 18 A. Yes.
 19 Q. Obviously, Ms Birdi has raised these you say
 20 unreasonable requests for more and more and more,
 21 wasting your time?
 22 A. Yes.
 23 Q. And you have wasted some time and spent some time in
 24 producing a detailed record for her. Do you see 1490?
 25 A. 1490?

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1 Q. At the beginning of the letter, you are answering her
2 email request about the breakdown? {E/391/1490}
3 A. That's right.
4 Q. And then on 1491 --
5 A. Yes.
6 Q. -- at the second paragraph you say: {E/391/1491}
7 "I am not prepared to examine every single month, to
8 provide you with this information, as the exercise is
9 extremely time consuming and I cannot see the purpose."
10 Do you see?
11 A. That's right.
12 Q. You are somewhat frustrated with her by this point,
13 aren't you? Is that fair?
14 A. I felt that there was no value in --
15 Q. Yes:
16 "If you are not prepared to accept that SOG acted in
17 the best interest of the business and that personnel
18 were in attendance at any time during this period please
19 let me have a detailed explanation of your concerns.
20 Any further time spent on this investigation will be
21 charged to the Dartford store at my normal daily rate of
22 £450."
23 Your witness statement says £800?
24 A. Okay, you have not read the complete witness statement.
25 So £450 I was charging at the time and I would have

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1 charged that for working at home or for any time working
2 on that particular project. So it was quite similar to
3 the way that Loss Prevention were charging.
4 By the time we get to the 2010 investigation, the
5 £800 that I charge is customer-facing time only and
6 actually, given the amount of time that I spent on this
7 investigation, it probably ended up at £100 a day.
8 I only charged for the -- sorry, a bit more than £100
9 a day, but I charged for the customer-facing time.
10 So in terms of this whole investigation, three trips
11 to Dartford, all of the documents that I had to read and
12 absorb -- and I charged four days at that price.
13 £3,200. I would say that's pretty good value for money.
14 Q. Mr Clark, I can see you want to try and justify the
15 amounts that you are charging. My question was a simple
16 one. In your witness statement, you have said that your
17 daily rate is £800. In your letter to her you said that
18 your normal daily rate is £450?
19 A. I have just explained --
20 Q. Either you are just making up daily rates as you go
21 along or something has happened between July 2008 and --
22 A. Exactly. Two years have passed.
23 Q. Two years have passed?
24 A. And I've now got a different method of charging.
25 Q. You have gone up from £450 to £800 a day?

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1 A. No. I charge for customer-facing days only.
2 Q. Okay?
3 A. Previously, I would have charged for administration days
4 as well. I have explained that. Actually, in terms of
5 the Dartford investigation, the 2010 investigation, this
6 works out at considerably less than £450 a day, so
7 I think it's a bit of a moot point.
8 Q. You don't have a daily rate of £800 and never have had,
9 have you?
10 A. I have.
11 Q. Well, only when it's Ms Birdi.
12 A. Absolutely not. Absolutely not.
13 Q. Okay. Finally then, you don't mention it in your
14 witness statement but you were the director appointed by
15 SOG to conduct a board meeting of Dartford Visionplus
16 Limited.
17 Would you be shown E15. You can put away the other
18 bundles. E15?
19 A. Yes. Page?
20 Q. Page 4230. {E/1076/4230}
21 A. Okay, I'm there.
22 Q. We are into December 2011.
23 A. Yes.
24 Q. This was at a time when no dividends were being
25 distributed to Ms Birdi.

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1 A. Okay.
2 Q. Over on page 4231, under agenda item 5 -- {E/1076/4231}
3 A. Sorry, isn't it the case that there were no
4 distributions being given to either of the A directors,
5 not just Ms Birdi?
6 Q. Yes. Because dividends weren't being paid out -- by
7 this stage, Ms Birdi was only a shareholder?
8 A. That's right.
9 Q. So all the salaries and bonuses and the additional
10 benefits that were coming out to Mr Singh by way of pay
11 rises, bonuses, et cetera, he was getting those as part
12 of his employment?
13 A. That's correct. I was just clarifying for the court
14 because you said no dividends to Ms Birdi and it's no
15 dividend to either of the A directors. I just wanted to
16 clarify that.
17 Q. Yes. Because there were no dividends coming out of the
18 company --
19 A. Okay, yes.
20 Q. -- ms Birdi was getting nothing out of the company at
21 all. At this stage.
22 A. Okay.
23 Q. At page 4231 under agenda item 5, you note -- "DC" is
24 you, isn't it? {E/1076/4231}
25 A. It is.

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1 Q. Do you see the second paragraph down? You note that:
 2 "In October the business had a reserve of £178K.
 3 Cash in bank is around £129K."
 4 A. Hm-mm.
 5 Q. So there seemed to be plenty of cash and reserve
 6 available to pay a distribution of profit. The
 7 explanation that you give for not distributing any
 8 profit is at the bottom of page 4231. Do you see above
 9 the blacked-out bit? I don't know what the blacked-out
 10 bit is, but let's leave that. You say: {E/1076/4231}
 11 "As referred to above, whilst the Company has
 12 a healthy capital reserves at this time, the Company is
 13 not proposing to make any distribution of profit to the
 14 A shareholders at this time, in view of anticipated
 15 legal costs which the company will incur in the ongoing
 16 litigation (discussed under Agenda Item 6 below)."
 17 A. Okay.
 18 Q. Unfortunately, agenda item 6 is then entirely blanked
 19 out so we have no idea what you are talking about.
 20 A. That's it.
 21 Q. But at that time, there may have been the Employment
 22 Tribunal litigation, ET/EAT, for which reserves of
 23 £30,000 had been suggested. You will see that at
 24 page 4264, just next to the right-hand hole punch.
 25 {E/1086/4264} This was by August 2012, so later?

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1 A. Sorry?
 2 Q. 4264.
 3 A. Yes, which punch?
 4 Q. The first hole punch. This is a later board meeting,
 5 which Mr Rowe is chairing.
 6 A. Yes.
 7 Q. And a £30,000 reserve in relation to the EAT/ET
 8 proceedings is put in there.
 9 A. Hm-mm.
 10 Q. And if it's not the ET/EAT proceedings, I suppose it
 11 might be these High Court proceedings that we are in at
 12 the moment, but I don't think that's an explanation for
 13 a reserve, because at page 4361, {E/1118/4361} when we
 14 asked for details about the costs in the High Court
 15 proceedings, at 4361 we got a response that was sent to
 16 us from the company's accountants.
 17 A. Yes.
 18 Q. Explaining that the costs of the High Court proceedings
 19 are being paid by SOG, not by Dartford Specsavers
 20 Limited, which is fair enough?
 21 A. Sorry: {E/1118/4361}
 22 "We understand that Specsavers Optical Group is
 23 primarily responsible ..."
 24 Not entirely. I have not seen this document before.
 25 I'm just reading it now for the first time. It clearly

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1 says "primarily". It does not say "entirely
 2 responsible".
 3 Q. Yes. You were chairing the board meeting, at page 4231?
 4 {E/1076/4231}
 5 A. Yes.
 6 Q. I have taken you to the evidence that I can find?
 7 A. Yes.
 8 Q. That is relevant to the potential issue of reserves?
 9 A. Yes.
 10 Q. You have got £178,000 in reserve?
 11 A. Hm-mm.
 12 Q. You have got cash in bank of £129,000. But as you put
 13 it at the bottom of 4231: {E/1076/4231}
 14 "... the Company is not proposing to make any
 15 distribution of profit..."
 16 A. Okay.
 17 Q. I'm going to suggest to you that you were instructed not
 18 to distribute profit to the shareholders and that this
 19 is just a fairly flimsy reason for not doing so, given
 20 the amount of money that was in the company at that
 21 time?
 22 A. No, actually you are incorrect. I wasn't instructed.
 23 However, I don't recall the content of the blacked-out
 24 area, item 6. I mean, it does clearly state in the last
 25 line of item 5:

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1 "... (discussed under Agenda Item 6 below)."
 2 I presume that's legally privileged. It has been
 3 blacked out.
 4 Given that this is some years ago now, I can't
 5 recall exactly what -- well, I can't remember at all
 6 what agenda item 6 was. I have no recollection of that.
 7 Q. No, I'm not asking you about agenda item 6. I'm asking
 8 you why you didn't approve some distribution of profits,
 9 given that Ms Birdi hadn't had any profits out of the
 10 company for quite a while at that point, and she wasn't
 11 receiving any other income from the company because
 12 Mr Singh was the only person getting remuneration from
 13 the business?
 14 A. Yes. The justification is in agenda item 6. I can't
 15 see it.
 16 MR STUART: Okay. My Lord, I have got no more questions
 17 Mr Clark?
 18 MR JUSTICE NUGEE: Thank you. Mr Potts?
 19 MR POTTS: Just a couple of question, my Lord.
 20 Re-examination by MR POTTS
 21 MR POTTS: In relation to your report, you were asked about
 22 Ms Birdi raising old grievances?
 23 A. Yes.
 24 Q. Do you remember that? Your response was that you
 25 thought that they were settled.

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1 Could you be passed, please, volume E10 and turn,
 2 please, to page 2726. These are the minutes of a board
 3 meeting on 23 February 2010. {E/851/2726}
 4 A. 2726, I'm there.
 5 Q. If you look at the bottom of 2726, "Motion 1".
 6 This was a meeting at which Ms Birdi was present.
 7 Do you see the resolution there?
 8 A. Yes.
 9 Q. "That the actions to date of SOG as a Director of the
 10 Dartford business in relation to the grievances made by
 11 Swarandeeep Birdi against Kamaljit Singh and vice versa
 12 ... be ratified as being in the best interests of the
 13 business and in compliance with Dartford's internal
 14 procedures.
 15 "Motion carried unanimously."
 16 A. Yes.
 17 Q. When you refer to, "thought they were settled", when you
 18 said that to the court, can you just explain what you
 19 meant?
 20 A. I thought they had been settled, in that they had been
 21 investigated and on appeal and agreed, and here we are
 22 with a motion that's ratifying it and Mark Raines,
 23 Kam Singh and Swarandeeep Birdi are all present.
 24 Q. And the second matter is, you referred to the pension.
 25 You said that you thought that she had the form and the

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1 figures and refused to sign it?
 2 A. Yes.
 3 Q. Could you turn to E11, please, 2906. {E/896/2906}
 4 A. 2906?
 5 Q. Yes. In your evidence you referred to the board meeting
 6 as being matters which you considered as part of your
 7 investigation. Is that right?
 8 A. It's correct, yes.
 9 Q. Okay. So this document -- minutes of these meetings,
 10 were those documents that you saw?
 11 A. I have seen this one, yes.
 12 Q. 2906, towards the bottom of the page -- this is
 13 a discussion about the pension. You see that from the
 14 top of the page? {E/896/2906}
 15 A. Yes.
 16 Q. And if you look at the penultimate entry. Do you want
 17 to just read that to yourself?
 18 A. Yes. (Pause)
 19 Okay.
 20 Q. Does that refresh your memory in relation to the
 21 evidence you gave --
 22 A. It does, yes. So Ms Birdi actually had the form.
 23 MR POTTS: My Lord, I have no further questions.
 24 MR JUSTICE NUGEE: Thank you.
 25 Thank you very much, Mr Clark.

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1 A. Thank you, my Lord.
 2 MR JUSTICE NUGEE: Yes, Mr Potts.
 3 MR POTTS: My Lord, the next witness is Ms McIntyre.
 4 MR JUSTICE NUGEE: Yes.
 5 MS DAWN MCINTYRE (affirmed)
 6 Examination-in-chief by MR POTTS
 7 MR JUSTICE NUGEE: Do, please, sit down.
 8 A. Thank you.
 9 MR JUSTICE NUGEE: Is it Ms McIntyre or Mrs?
 10 A. Mrs McIntyre.
 11 MR POTTS: I'm sorry, Mrs McIntyre. Could you take
 12 volume C, please.
 13 A. Yes.
 14 Q. And at tab 5?
 15 A. Yes.
 16 Q. Pages 46 through to 60. {C/5/46} Is that your first
 17 statement in this matter?
 18 A. Yes, it is.
 19 Q. At page 60, is that your signature? {C/5/60}
 20 A. It is.
 21 Q. Are the contents of that statement true?
 22 A. They are true.
 23 Q. The next tab at tab 6, page 61 through to 63. {C/6/61}
 24 Is that your second statement?
 25 A. It is.

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1 Q. At page 63 is that your signature? {C/6/63}
 2 A. It is.
 3 Q. And could you confirm the contents to be true?
 4 A. The contents are true, yes.
 5 MR POTTS: Thank you.
 6 Cross-examination by MR STUART
 7 MR STUART: Ms McIntyre, just before we move to the issue of
 8 your decision in 2010, can we just deal with the
 9 preliminary parts of your witness statement. This is
 10 your first statement.
 11 A. Yes.
 12 Q. You say in paragraph 9 that you first heard about the
 13 issues regarding Ms Birdi in April 2010 -- {C/5/48}
 14 A. Yes.
 15 Q. -- when the issue of possible mediation arose. Would
 16 you go to bundle E10, page 2792 {E/867/2792} Do you
 17 have that?
 18 A. Yes.
 19 Q. That's an email, I think, from Pauline Best to you.
 20 A. Yes.
 21 Q. Pauline Best is the SOG board member, isn't she?
 22 A. She is.
 23 Q. She is actually on the board with Mr Dyson --
 24 A. Yes.
 25 Q. -- and Dame Mary Perkins and Mr Perkins, et cetera. You

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1 are the SOS human resources/personnel level?
 2 A. Yes.
 3 Q. So you are one layer below Ms Best. Would that be fair?
 4 A. Yes, I report in to her.
 5 Q. Mrs Best, is it?
 6 A. Mrs Best.
 7 Q. Yes.
 8 A. And I report in to her.
 9 Q. You report to her.
 10 Anyway, she is writing to you:
 11 "Hi Just a quickie -- I meant to mention it to you
 12 on the phone earlier ... there is a raft of actions
 13 following the call this morning (Stephen can brief you
 14 more fully) ... "
 15 Do you see that?
 16 A. Yes, I do.
 17 Q. So you had obviously had -- you had had some sort of --
 18 was it a call with Mrs Best or was it more of a sort of
 19 conference call about Dartford?
 20 A. No, there was no call about Dartford that I recall.
 21 I had an email from her, saying, "Do you know about a --
 22 mediation companies?"
 23 Q. Okay. Were you on the call when they were discussing
 24 what to do about Dartford?
 25 A. No.

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1 Q. Do you know who was on the call?
 2 A. No.
 3 Q. No, all right. So she is saying to you:
 4 "Mark ..."
 5 That would be Mr Raines, I think:
 6 "... took my suggestion to try mediation (we are not
 7 sure whether it will work but will provide another level
 8 of comfort in the event that it goes legal and, if it
 9 does work, then fantastic."
 10 Do you see that?
 11 A. Yes.
 12 Q. Did you discuss this with Mrs Best at that time, the
 13 possibility of mediation and what the purpose of it was?
 14 A. I don't recall having a discussion prior to this email.
 15 Q. Okay. All right. Did you have any discussions after
 16 this but before the board meeting at which Mr Raines
 17 brought up the issue of mediation and --
 18 A. Yes -- no.
 19 Q. -- we have heard a lot about?
 20 A. Yes, yes.
 21 Q. How that discussion --
 22 A. No.
 23 Q. -- went. Were you involved at all?
 24 A. No, no, I simply provided the name of the company I have
 25 used before.

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1 Q. Okay. So we can move to paragraph 10 of your witness
 2 statement. {C/5/48} You had little further involvement
 3 with Dartford until August 2010, when Mrs Best asked you
 4 to chair the disciplinary hearing?
 5 A. Yes.
 6 Q. Had you done this sort of role before in Specsavers?
 7 Chairing disciplinary hearings where it's a JVP?
 8 A. I had only done -- I had done one before and it was
 9 a grievance.
 10 Q. It was a grievance?
 11 A. Yes.
 12 Q. Okay. So you hadn't done any disciplinary hearing,
 13 where somebody might get dismissed?
 14 A. Oh, yes, just not partners.
 15 Q. Not partners?
 16 A. Yes.
 17 Q. Okay.
 18 A. Yes.
 19 Q. So you had done staff --
 20 A. Oh, yes, yes.
 21 Q. -- but not partners? Who would --
 22 A. I've done directors.
 23 Q. Who would --
 24 A. I've done all levels, sorry.
 25 Q. Right. Who would usually do it for the director/partner

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1 level, if not you, or were there not very many occasions
 2 in your experience when --
 3 A. Well --
 4 Q. -- this ever happened.
 5 A. Well, we were only called upon on a few occasions, so
 6 I'm aware that two of my colleagues also did partner --
 7 had asked to be involved in partner disciplinarys or
 8 grievances.
 9 Q. Okay. I presume from the fact you say that you only
 10 started to be involved in August 2010, you weren't aware
 11 of the process at the time when Mr Clark was involved
 12 and the suspension --
 13 A. No.
 14 Q. -- and all of that sort of stuff. You just weren't
 15 involved --
 16 A. No.
 17 Q. -- in any of that?
 18 A. None of that.
 19 Q. Okay. So I think we can put away E10 and just take out
 20 E12 go to page 3302. 20 August? {E/993/3302}
 21 A. Yes.
 22 Q. This is a letter from Mr Moore to Ms Birdi, informing
 23 her of the requirement to attend a hearing on
 24 1 September, and that was obviously going to be your
 25 hearing, wasn't it?

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1 A. Yes.
 2 Q. Do you see what is set out there, the allegations --
 3 A. Yes.
 4 Q. -- that are going to be considered? Were you involved
 5 in the setting of the allegations?
 6 A. No, my understanding was these allegations were taken
 7 from the board meeting.
 8 Q. Okay.
 9 A. I did -- I was aware of this letter before it went out.
 10 Q. Yes.
 11 A. Yes.
 12 Q. But you play no part in, as it were, framing the wording
 13 of the allegations?
 14 A. No, I didn't.
 15 Q. Your role was merely to decide upon the allegations, as
 16 it were: investigate the allegations as a disciplinary
 17 process and decide upon them?
 18 A. Yes.
 19 Q. Was it to be your role also to decide upon the
 20 disciplinary sanction?
 21 A. My role was to make a recommendation to the Dartford
 22 board.
 23 Q. Okay. So you weren't to decide finally anything; you
 24 were merely to recommend a disciplinary sanction that in
 25 your view was the appropriate one --

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1 A. Yes.
 2 Q. -- in the light of your findings?
 3 A. Sorry, I was -- my understanding was my remit was to
 4 decide on a disciplinary sanction. If that sanction was
 5 dismissal, that had to go back to the board.
 6 Q. I see. If you had determined that a sanction short of
 7 dismissal was appropriate, you felt you had the
 8 authority to do that anyway?
 9 A. Yes.
 10 Q. Okay. So prior to the hearing which, as you have
 11 explained in the paragraphs of your witness statement
 12 from 11 onwards, the -- it had to be put off a number of
 13 times? {C/5/49}
 14 A. It did.
 15 Q. So I'm not going to ask you all about that. It doesn't
 16 seem to take matters much further.
 17 I know you said you didn't frame these allegations,
 18 but you do recite them in paragraph 10 of your
 19 statement. Do you see in paragraph 10, line 6, you say:
 20 {C/5/48}
 21 "The purpose of these proceedings ..."
 22 That's your disciplinary proceedings that you are
 23 conducting?
 24 A. Yes.
 25 Q. " ... was to consider an allegation that Ms Birdi had

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1 refused to comply with the resolution that had been
 2 passed at the Dartford board meeting on 20 August 2009,
 3 which stipulated that Ms Birdi complete four full days
 4 of sight testing a week (the "Testing Resolution")."
 5 Would you just be passed E8. You can put away E12;
 6 we have finished with E12. Just be passed E8 before we
 7 move on to E13. Page 2209. {E/679/2209}
 8 A. Yes, I have it.
 9 Q. This is the testing resolution. If you go back three
 10 pages, 2206, you will see what this is. This is the
 11 minutes of the meeting of 20 August?
 12 A. 2009, yes.
 13 Q. Yes. So at 2209. Just above the first hole punch we
 14 have the motion, which has become in your phrasing the
 15 "Testing Resolution", as you put it in your witness
 16 statement.
 17 A. Yes.
 18 Q. Do you remember?
 19 A. Yes.
 20 Q. And you say that:
 21 "The testing resolution was a resolution that had
 22 been passed at the Dartford board meeting, which
 23 stipulated that Ms Birdi complete four full days'
 24 testing a week."
 25 I don't know whether you have been here at all and

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1 heard discussion about this resolution before now.
 2 Could you just have a look at the resolution. You may
 3 have looked at it very carefully anyway.
 4 A. Yes.
 5 Q. I'm hoping you have.
 6 A. Yes.
 7 Q. And it says:
 8 "I would like to propose a second motion ...
 9 "(a) "The A directors comply with their respective
 10 roles and responsibilities as set out in the document
 11 provided on 31 January 2009."
 12 We understand nobody can find that document but
 13 I presume you have never seen that document?
 14 A. No.
 15 Q. You don't know what that's about?
 16 A. No.
 17 Q. But (b) -- (b) is the part of it which you were
 18 determining:
 19 "Without prejudice to resolution (a) above, SB has
 20 agreed as at 12 September BRM 2008 to commit to four
 21 full days' ophthalmic testing per week at the Dartford
 22 store."
 23 That's the resolution.
 24 A. Hm-mm.
 25 Q. That doesn't actually order her to test four days a week

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1 from 20 August 2009, does it?
 2 A. Well, that's how I -- that's I interpreted it, that, as
 3 a result of that meeting, there was a commitment to full
 4 day -- four days of testing.
 5 Q. You may interpret it anyhow you want to. Did you even
 6 think of this at the time that you were doing your --
 7 A. No -- well, that's how I interpreted it in the meeting
 8 as well, not just how I'm interpreting it now.
 9 Q. Okay, so you looked at it. You thought to yourself,
 10 "Ah, it doesn't actually say the words, 'You shall
 11 compete four full days' testing,' but that's what it
 12 means."
 13 A. Yes, I interpret to commit to four full days' testing,
 14 and then I looked at the other information, and when
 15 I spoke to Swarandeeep in the disciplinary meeting, we
 16 talked about four-day testing, so I understood that to
 17 be her interpretation, and we talked about how she felt
 18 about it and why she, you know, wasn't going to do
 19 four days' testing. So that was my understanding, that
 20 that had been agreed.
 21 Q. That's fine. But what you purport to go on to do is
 22 make a finding of gross misconduct against Ms Birdi for
 23 having failed to comply with the terms of a board
 24 resolution stipulating that she shall complete four full
 25 days' testing a week at the store. But the actual

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1 resolution doesn't actually stipulate that she shall do
 2 that, does it; you have just implied that?
 3 A. Well, that is my interpretation of it. I genuinely
 4 thought that that was the board resolution, with the
 5 intention that she should test for four days, and when
 6 I spoke to Swarandeeep about that in the disciplinary,
 7 I felt that that was her interpretation because we
 8 talked about why she wouldn't and, you know, her views
 9 about not been comfortable about doing four days'
 10 testing.
 11 Q. Right. I am interested that you should say that. Are
 12 you suggesting then that you did identify this issue
 13 about the wording here? It doesn't quite say what it
 14 should say. Mr Raines gave his evidence and said, "It's
 15 not worded right." But did you identify the issue about
 16 the wording of the resolution, either before or at your
 17 meeting with Ms Birdi?
 18 A. No.
 19 Q. No?
 20 A. No.
 21 Q. Did you discuss with her the wording point, either
 22 before or at the meeting?
 23 A. No.
 24 Q. The wording point?
 25 A. No, I didn't discuss it.

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1 Q. No?
 2 A. And I didn't discuss it or look into it because she
 3 didn't raise it.
 4 Q. She might not have identified it herself; she had other
 5 problems in her life at this stage, didn't she?
 6 A. Yes.
 7 Q. But you are here, supposedly, as the independent,
 8 unbiased HR director, chairman of the disciplinary
 9 process. Isn't it important that you should bring to
 10 bear your knowledge and experience and actually look at
 11 what is alleged against her and see whether she is
 12 actually, literally, in breach of a board resolution or
 13 not?
 14 A. And I genuinely thought at the time when I read that
 15 that she was in breach.
 16 Q. But you didn't identify to yourself that there was
 17 a potential argument on her behalf that she might be
 18 able to run -- not that she did run it because she
 19 didn't identify it, you say.
 20 A. Hm-mm.
 21 Q. But you didn't identify the possibility that there was
 22 a problem here with the wording of the resolution, that
 23 she was going to be found guilty of breaching that
 24 resolution?
 25 A. No, I didn't identify that. My interpretation was to

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1 commit to four days' testing. That's what she had
 2 committed to doing. That's what the resolution was.
 3 Q. No, but the resolution says:
 4 "Without prejudice to resolution (a) above ... "
 5 We can forget those words, they don't add anything.
 6 So the resolution is:
 7 "SB has agreed as at 12 September 2008 BRM to commit
 8 to four full days' testing."
 9 So the resolution simply is that she had agreed to
 10 that. I mean, I can say you have agreed with me, you
 11 can agree that you have agreed with me, it doesn't mean
 12 that you have to agree with me for the rest of time,
 13 does it?
 14 A. No, no.
 15 Q. So there is something quite different between
 16 a resolution which asserts you have agreed something and
 17 a resolution which says, "From now on for the rest of
 18 time you have got to do something." Those are two
 19 different things, aren't they?
 20 A. Yes, but having read the information, I came to the
 21 conclusion that she was being expected to test for
 22 four days; people were expecting her to do that based on
 23 her commitment.
 24 Q. In employment-type situations that you are familiar with
 25 we get all sorts of occasions where people are expected

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1 to do things.
 2 A. Yes.
 3 Q. Mr Singh was expected to notify Ms Birdi if he wanted to
 4 go and work in Grays. According to Mr Rowe, he was
 5 expected to do that. But, going to his contract of
 6 employment, is there actually a clause which says, "You
 7 must notify your JV partner if you intend to work a day
 8 in another store." There is no such clause.
 9 So, arguably, he is not committing an act of gross
 10 misconduct because he is not in breach of his contract,
 11 but is he doing something which he is not expected to
 12 do, as -- is he not doing something which he is expected
 13 to do? The answer is, yes, he is. Is it potentially
 14 gross misconduct? Yes, it is actually potentially gross
 15 misconduct, but not necessarily, and you might not be
 16 able to pull him up for it as his employer.
 17 These issues arise all the time, don't they, in
 18 employment matters?
 19 A. Yes.
 20 Q. And you must have had experience of them. So you would,
 21 when an employee is facing gross misconduct, potential
 22 dismissal, how important it is to analyse carefully what
 23 the contractual term is that's being broken, and I'm
 24 going to suggest to you that you either saw the problem
 25 and deliberately didn't mention it or you didn't see the

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1 problem.
 2 A. I didn't see the problem.
 3 Q. No.
 4 A. I thought it was clear and, when I spoke to Swarandeeep,
 5 I felt that she had the same understanding as me; there
 6 was an expectation in the best interests of the business
 7 that she test for four days.
 8 Q. Did you take her to the board resolution during your
 9 meeting: "Let's have a look at this resolution. Let's
 10 look at what you agreed to do, Swarandeeep." Did you do
 11 that?
 12 A. I don't recall taking her to the notes of the actual
 13 resolution. We did talk about it being an instruction
 14 under day-to-day management, relating it to her JVA and
 15 service contract.
 16 Q. But that's testing. Testing is a day-to-day management
 17 issue?
 18 A. Yes.
 19 Q. You agree that it is a day-to-day management issue. So
 20 does Mr Raines.
 21 A. Yes.
 22 Q. All right. You can put away that resolution. We can
 23 move swiftly on to bundle E13. This is your process.
 24 Would you go to E13/3691 {E/1001/3691}. Do you have
 25 3691?

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1 A. 3691, yes. The 1 September letter?
 2 Q. 1 September, that's right. As well as the testing
 3 resolution, obviously there were other allegations that
 4 were set out in this charge sheet, if you like.
 5 A. Yes.
 6 Q. Bottom of 3691 -- and basically it was what's in
 7 Mr Clark's report.
 8 A. Yes.
 9 Q. You see, item 2 is:
 10 "The allegations set out in Mr Clark's investigation
 11 report ... ie.
 12 "a. Actions towards Kam Singh ...
 13 "b. Actions towards store staff ...
 14 "c. Failure to comply with [the] [instructions of
 15 the board]
 16 "d. Actions destructive of the ... relationship
 17 with SOG ... "
 18 That's not with Mr Singh, but with SOG, and then.
 19 "e. State of working relationship."
 20 It's literally all the things we have just had with
 21 Mr Clark?
 22 A. Yes.
 23 Q. Is it right that you understood that it was basically
 24 the four-day testing issue and Mr Clark's findings?
 25 A. Yes.

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1 Q. That was really what you were --
 2 A. Those were the allegations to look into.
 3 Q. Yes. You knew that she was ill and genuinely so. You
 4 fairly say in your witness statement, at paragraph 15,
 5 that by September she was still unwell. {C/5/50} And so
 6 the meeting gets put off into October?
 7 A. Yes.
 8 Q. And then, paragraph 16, she is enclosing a certificate
 9 from her doctor? {C/5/50}
 10 A. Yes.
 11 Q. And so you were aware of the fairly long-term and
 12 serious illness that Ms Birdi was suffering from?
 13 A. I was aware that she was suffering from stress.
 14 Q. Severe stress?
 15 A. Severe stress, yes.
 16 Q. And anxiety?
 17 A. Yes.
 18 Q. And insomnia. Do you remember page 3710 as an example?
 19 {E/1007/3710}
 20 A. Yes, I was aware from her doctor's certificate.
 21 Q. Yes, severe stress, anxiety and insomnia was on that
 22 doctor's certificate.
 23 Then there came a point where eventually she does
 24 turn up. Paragraph 17. She finally attended. {C/5/50}
 25 A. Yes.

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1 Q. But on that day she was still not feeling well, was she?
 2 A. Yes, that's right.
 3 Q. I think there had been some problem with the trains?
 4 A. There had been.
 5 Q. But also she could certainly complain to you that she
 6 really, really didn't feel well, and you say at
 7 paragraph 17 that she could either continue or submit
 8 her representations in writing. So, in other words, "We
 9 are not adjourning again. We are here how now --
 10 A. Let's try --
 11 Q. -- we either carry on --
 12 A. Yes.
 13 Q. -- despite your feeling not very well or you can always
 14 put everything you want to in writing to me and we don't
 15 need to have a hearing at all."
 16 You say in your next sentence:
 17 "I felt Ms Birdi was being purposefully difficult."
 18 Isn't that an unfair comment? People sometimes do
 19 feel very ill and stressed when facing this sort of
 20 matter, don't they?
 21 A. Yes, and what I was meaning by that was I was really
 22 keen to understand whether she wanted to go ahead with
 23 the meeting, because she said she wasn't feeling well
 24 and I asked her a number of times, "Should we proceed?
 25 Should we go ahead with the meeting? Do you feel well

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1 enough?" Each of her answers were, "I have to stay
 2 here, if I must stay ..." And I wasn't getting a clear
 3 indication from her about whether she truly felt well
 4 enough to continue, and she was laying out her folders
 5 and getting ready.
 6 What I mean by "difficult", I do think that she
 7 wasn't feeling very well, I genuinely believe that, but
 8 I think that she was also focused on not giving me
 9 a clear answer at all about whether we should proceed or
 10 not. So that's why I recommended, "Let's try, let's see
 11 how we go." I felt that if she didn't want to continue,
 12 she would tell me. So that's why I recommended we
 13 start.
 14 Q. She was feeling very unwell and she was somewhat
 15 confused. Is that fair? Confused in her approach to
 16 what was going on?
 17 A. I'm not sure I would say confused but she didn't look
 18 well and she said she didn't feel well.
 19 Q. Okay. But nevertheless, rather than adjourn the matter,
 20 as I think she asked you to do, didn't she --
 21 A. Yes.
 22 Q. -- you decided, no, you weren't going to adjourn the
 23 matter, it was going to be now or she could put it in
 24 writing?
 25 A. My words on the day was, "I recommend we at least start.

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1 So let's see how we go." Because she had phoned me en
 2 route to say, "I'm still coming. I'm a bit late but I'm
 3 still coming." You know, laying out her folders,
 4 getting ready. I felt I was getting mixed messages. So
 5 I felt at the time, let's see -- let's start the meeting
 6 and clearly, if she is not well enough, we will stop it.
 7 Q. Okay. Would you just turn to page 3739 in this
 8 bundle 13. Right near the back, 3739. {E/1019/3739}
 9 Shortly before the meeting she had raised the issue of
 10 the witnesses, hadn't she?
 11 A. She had, yes.
 12 Q. Six staff witnesses --
 13 A. Yes.
 14 Q. -- who she wanted to have the opportunity, didn't she,
 15 to question them?
 16 A. Yes, she wanted us to call six staff members --
 17 Q. Yes.
 18 A. -- to the meeting.
 19 Q. And when you say, "We call", this is a disciplinary
 20 meeting against a store director. Although it's being
 21 held by you, you are acting for and on behalf of
 22 Dartford Specsavers Limited and Dartford Visionplus
 23 Limited, the subsidiary who was her employer. That's
 24 right, isn't it?
 25 A. Yes.

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1 Q. And the six members of staff she is talking about all
 2 work for that store?
 3 A. Yes.
 4 Q. And obviously their evidence, both in the terms of their
 5 letter and in the terms of their witness statements that
 6 they have given to Mr Clark, formed very much the
 7 backbone of Mr Clark's report, where he had taken quotes
 8 from all their interviews or from their letter, and we
 9 have seen it already today.
 10 A. Yes.
 11 Q. He continually re-referred to what they were saying. So
 12 their evidence against her was fundamental to the case
 13 against her -- of that second aspect, wasn't it? The
 14 Clark report assessment.
 15 A. Yes, it was important information.
 16 Q. And she wished to challenge the staff about what they
 17 were saying --
 18 A. Yes.
 19 Q. -- because she felt that it was not correct and she
 20 also, as you know, felt that they had been somewhat
 21 influenced into writing (a) the letter and (b) giving
 22 this sort of evidence by Mr Singh?
 23 A. Yes.
 24 Q. Who, obviously, was the cause of all of this in the
 25 first place.

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1 As the chairman of the disciplinary process -- it
 2 was your process -- were you involved in deciding that
 3 she was not to be allowed to test them?
 4 A. Yes, I was part of that -- I made that decision.
 5 I spoke to Alison about that.
 6 Q. Right. Why did you think that was a fair and reasonable
 7 way of proceeding with this very, very important
 8 disciplinary process?
 9 A. Yes, I did understand her requirement to talk to the
 10 staff and I knew it was important to her. For me there
 11 are two things. In our guidelines we talk about calling
 12 a witness. My interpretation of that, and of the ACAS
 13 guidelines, is those witnesses are in support of your
 14 case. That's my interpretation and my view, and that
 15 was certainly the view that I got from Legal as well.
 16 I also just looked at how reasonable it would be to
 17 call six members of the Dartford team to their
 18 director's disciplinary, for them to be, for want of
 19 a better word, I guess, cross-examined by their
 20 director, and I thought that would be a very unfair
 21 position to put them in. I don't think it would have
 22 helped the ongoing relationship that they would be
 23 having with Swarandeeep. So that's why we made the
 24 decision.

25 So it's not how I interpret our guidelines or the
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1 ACAS guidelines, and I just thought it would be really
 2 unfair for the staff to be put in that position. And in
 3 our guidelines we do say if you don't agree with the
 4 witnesses' statements, that you have an opportunity in
 5 the meeting, and Swarandeeep would have that opportunity
 6 and, if necessary, I would go back and speak to those
 7 staff. So that's the information I gave back to her and
 8 that was my decision.

9 Q. But you knew how vehemently she felt about this because
 10 she wrote again, didn't she, at 3744, {E/1021.1/3744}
 11 again raising the same issue and complaining, "Hang on
 12 a minute, what I'm seeking here is an opportunity to
 13 test their evidence."

14 A. Yes.
 15 Q. There had been no problem Mr Clark interviewing them in
 16 this process against Ms Birdi. There had been no
 17 problem about that, had there?

18 A. No, no.
 19 Q. There was no worry that they might feel uncomfortable
 20 that they were giving evidence against Ms Birdi at that
 21 stage. No problem with that, was there?

22 A. No, the meetings with Mr Clark were positioned as, you
 23 know, "I'm here gathering information," rather than, "We
 24 are calling you to be cross-examined," you know, "about
 25 your information by your director."

1 Q. What their letter was, effectively, was raising
 2 allegations or a grievance by them against her, wasn't
 3 it?
 4 A. Hm-mm.
 5 Q. In the ordinary course of events, under the ACAS scheme,
 6 if somebody makes an allegation against somebody else
 7 and that second person faces a disciplinary process as
 8 a result, the person facing the disciplinary process is
 9 allowed to question the person making the allegation
 10 against them. These are not mere witnesses in some
 11 independent allegation, are they? These are people who
 12 are making allegations against her. That's right, isn't
 13 it?

14 A. Yes, in some of their -- some of their -- in their
 15 letters some of the allegations were against Miss -- you
 16 know, Swarandeeep as their director, but I felt that she
 17 would have opportunity in the disciplinary hearing -- we
 18 do say it that in our guidelines: "You will have
 19 opportunity if you don't agree with the witnesses'
 20 statements." And I felt that she would have that
 21 opportunity and I would go back and challenge if
 22 necessary.

23 I think it is the right decision. I think -- to
 24 have pulled six of them in and for them to sit in front
 25 of their director and be cross-examined, I think would
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1 have been really unfair -- to put them through that.
 2 Q. You are just looking at it from their point of view,
 3 aren't you? You are not taking account of the
 4 defendant's position?

5 A. No, because I was also looking at how this may impact
 6 the ongoing relationship that they would have with
 7 Swarandeeep.

8 Q. The ongoing relationship is going to be difficult
 9 already; they have made allegations against her, they
 10 have then given evidence against her to Mr Clark?

11 A. Yes.
 12 Q. Twice, some of them?
 13 A. Well, some of them have. Some of them were in support.

14 Q. No, the six --
 15 A. The six, yes.
 16 Q. The six members of staff.

17 A. Yes.
 18 Q. She only wanted to question the six members of staff who
 19 had written these false allegations, as she saw it.

20 All right. You can put away E13 and we are on to
 21 E14. We have the disciplinary meeting at 3750.
 22 {E/1024/3750}. That's right, isn't it? Ms Matthews is
 23 taking the notes?

24 A. Yes.
 25 Q. 3750?

1 A. Yes, got it, yes.
 2 Q. Ms Matthews is taking the notes. Mr Rehman is the
 3 companion.
 4 A. Yes.
 5 Q. And then those are then typed up at 3783? {E/1025/3783}
 6 A. Yes.
 7 Q. Within this meeting -- obviously, you have to reconvene
 8 a number of times -- you ask some questions, she gives
 9 you her answers. Did you feel that she genuinely
 10 believed that, first of all, Mr Singh was seeking to
 11 undermine her? Did she genuinely believe that?
 12 A. I think that was a genuine belief that she held.
 13 Q. Yes. And did she have a genuine belief that SOG were
 14 unfairly supporting Mr Singh against her over a period
 15 of time? Did she believe that?
 16 A. I think she believed that, yes.
 17 Q. And did she believe that all of this between SOG and
 18 Mr Singh went right back to the beginning of the
 19 relationship with Mr Singh, at least, so when he joined?
 20 Did she genuinely believe that it was from the start, as
 21 it were, that he came with an agenda?
 22 A. Well, her reference to me was going back to Nimesh Patel
 23 so ...
 24 Q. No, I'm going to come back to --
 25 A. Okay.

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1 Q. -- SOG, going back even further.
 2 A. Okay.
 3 Q. But, as regards Mr Singh, did she genuinely believe that
 4 it went right back to the time he joined, in mid 2008?
 5 A. Yes.
 6 Q. That was her genuine belief, as far as you could see it?
 7 A. Yes.
 8 Q. You were sitting in sort of judgment upon her, so you
 9 must have been assessing whether what she was saying was
 10 just being made up or whether she genuinely believed it
 11 but it might not be true -- correct?
 12 A. Yes.
 13 Q. It might not be correct?
 14 A. Yes.
 15 Q. But it is your evidence that she did genuinely believe
 16 these things that she was saying?
 17 A. Yes, I think she had a very deep-rooted thought around
 18 the whole thing was a conspiracy.
 19 Q. Yes, and as you rightly say, if we go back to SOG,
 20 rather than Mr Singh alone, that goes right back to
 21 February 2007, the Nimesh Patel matter?
 22 A. Yes.
 23 Q. The Mr McAlindon business, the investigation by
 24 Mr McAlindon in 2007, Mr Raines's disciplining of her as
 25 a result of that, and then her grievance in 2008 not

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1 being upheld by Mr Clark. All of that. She genuinely
 2 believed that that was SOG having an agenda against her?
 3 A. Yes.
 4 Q. Okay. Given that that was the position, paragraph 19 of
 5 your witness statement. {C/5/51} You say you found it:
 6 "... very difficult to progress the issues on the
 7 agenda because throughout the hearing Ms Birdi kept
 8 referring to historical grievances."
 9 And this was point that Mr Clark had put into his
 10 report as well?
 11 A. Yes.
 12 Q. And I asked him about it, but you put it slightly
 13 differently. You say:
 14 "For example, Ms Birdi referred to the allegation
 15 she had been wrongly suspended ... "
 16 Do you see that?
 17 A. Yes.
 18 Q. And you say:
 19 "I tried to explain to Ms Birdi that these were not
 20 relevant for the purpose of the current hearing."
 21 We know that Mr Clark held that view for whatever
 22 reason, but you are coming to this afresh, aren't you,
 23 when you are approaching this hearing? You are
 24 deciding, first of all, her guilt -- or not -- you say,
 25 on the issue of whether she has acted improperly --

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1 gross misconduct -- on the issues set out in Mr Clark's
 2 report.
 3 A. Yes.
 4 Q. I'm not dealing for the moment with the four days'
 5 testing because I think on the four days' testing you
 6 rather felt that that had been dealt with, didn't you?
 7 That had been determined, as you put it later. I'll
 8 come to it in a moment.
 9 A. Okay.
 10 Q. Anyway, on the Mr Clark issues you knew that you were
 11 determining whether she was acting, by way of gross
 12 misconduct, in the way that she was alleged to have done
 13 by Mr Clark in his report. Mr Clark's report was all
 14 about the relationship with Mr Singh: that Ms Birdi was
 15 the cause of the breakdown, that she had acted
 16 unreasonably in relation to Mr Singh, that she had acted
 17 unreasonably in relation to SOG, that she had been the
 18 cause of a breakdown of the working relationship with
 19 SOG. Then there were various examples given, but those
 20 were the allegations.
 21 Given that you have accepted that she genuinely
 22 believed, from what you could see, that there was this
 23 conspiracy -- that Mr Singh did want her out right from
 24 the start, that SOG wanted her out from even before
 25 then, from 2007 -- surely those matters and her belief

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1 in them was relevant to the question of whether she was
 2 guilty of gross misconduct by the way she reacted to SOG
 3 and Mr Singh. Surely that was relevant for you to
 4 understand her --
 5 A. Her perspective.
 6 Q. -- her perspective on all of that?
 7 A. Yes, and in order to explain this -- and it's in the
 8 notes for the -- from the disciplinary meeting --
 9 I think there is almost two areas. Swarandeeep made it
 10 very clear that she wanted to explain the historical
 11 issues. I think right from the beginning we started
 12 with Nimesh, which was fine and actually it was useful
 13 to hear that background, but in amongst all of the
 14 history both her husband and Swarandeeep were putting in
 15 questions around, "You need to look at this, you need to
 16 question that. That's not fair."
 17 So I felt there was a mixture of background and
 18 points that I didn't think were relevant because
 19 I couldn't influence them because they had already been
 20 dealt with in a grievance or disciplinary.
 21 So that's what I meant by difficult to progress the
 22 points. And if you look at the notes, we didn't
 23 actually get to the first allegation until about half
 24 past two on that day because we were covering the
 25 history, even though -- you know, there was a fair

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1 amount of that that I probably couldn't influence.
 2 So I did allow her -- so I did find it difficult to
 3 progress the allegations. We didn't actually start
 4 until half past two, but I did allow Swarandeeep to cover
 5 all of the history. It was clearly important to her.
 6 And also I think that what you will see in the
 7 disciplinary as well is, how I like to run
 8 a disciplinary is to try and keep it very logical and go
 9 through the allegations, keep it very clear, so we can
 10 work through it. And Swarandeeep had prepared a report
 11 for me that actually didn't go through them in a logical
 12 way and we stopped my approach and allowed her to run
 13 through her report.
 14 So I actually sort of amended my way of working to
 15 allow her to go through her report, which was a mixture
 16 of very relevant information, the allegations, and then
 17 a mixture of history. So whilst I'm saying it was
 18 difficult to progress, I did allow her to -- we spent
 19 a considerable amount of time on historical issues.
 20 Q. That's fine, Ms McIntyre, but the way you put it in your
 21 paragraph 19 {C/5/51} -- and I'm going to suggest to
 22 you the way in which your entire decision was then
 23 framed -- was that these historical issues were not
 24 relevant. You are trying to justify your decision to
 25 find gross misconduct against her on the basis that it's

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1 not open to her to talk about these historical issues.
 2 They are not relevant, you say:
 3 "[You] tried to explain to Ms Birdi that these were
 4 not relevant for the purpose of the current hearing.
 5 [She] disagreed and argued that they were relevant ...
 6 However, these issues had already been investigated in
 7 the past in accordance with the grievance procedure and
 8 the purpose of the hearing was not to revisit and
 9 re-investigate, all over again, these issues but to deal
 10 with specific allegations set out in Mr Clark's report."
 11 That's false logic. I don't know who has given you
 12 that logic but, whoever has, it's false logic, isn't it,
 13 because you have recognised that her belief in these
 14 allegations is relevant to the way in which she deals
 15 with her joint venture partners. You have accepted
 16 that. It's relevant.
 17 A. Yes, but I think what I was trying to focus in the
 18 meeting were the allegations, which were the truly
 19 relevant points that I was there to review, and to talk
 20 with her.
 21 Q. But, Ms McIntyre, let's take an allegation at random.
 22 Let's take not authorising Mr Singh's expenses. That's
 23 one of Mr Clark's allegations.
 24 A. Yes.
 25 Q. He says that's an example of Ms Birdi not acting in

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1 a proper way towards her joint venture partner,
 2 Mr Singh. But if Ms Birdi's explanation for how she
 3 reacted and dealt with that issue -- and that specific
 4 issue -- was for her to explain to you the background
 5 and why she felt that SOG were backing up Mr Singh at
 6 every stage, SOG were biased against her, that Mr Singh
 7 had an agenda to get rid of her, et cetera -- if that
 8 was her explanation for why she had acted in that
 9 specific way that Mr Clark had said, that would go to
 10 the issue of whether or not it was gross misconduct,
 11 wouldn't it?
 12 A. I think the trouble is you can say everything will
 13 contribute to the decision.
 14 Q. Well, as long as it's referable to the relationship
 15 between them.
 16 A. Because at the beginning of the disciplinary meeting,
 17 you know, we started on four-day testing, but the
 18 response to, "Let's look at four-day testing," is, "No,
 19 I need to talk to you about some money I'm owed," going
 20 back to, you know, Nimesh Patel's days. So I think
 21 that's what I was trying to say. That point is not
 22 relevant to four-day testing. It's not a point I can
 23 influence and therefore I really want to focus on
 24 four-day testing and, having tried that a number of
 25 times, I realised that actually it was really important

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1 that she wanted to give me the history, so I allowed her
2 to do that.
3 Q. You want to take the four-day testing as an example?
4 Leaving aside the points about the actual resolution, on
5 the issue of four-day testing it was being put that her
6 failure to test four days a week and only to test three
7 and a half -- half a day a week difference between being
8 in the test room and out of it -- you were going to say,
9 "That's gross misconduct for you not to do that half day
10 a week." That's what you were going to come on to find.
11 A. Well, in our discussions we talked about her doing
12 three days' testing. I'm not aware of three and a half
13 days.
14 Q. Well, all of the evidence that we have seen is it was
15 three and a half days' testing that she was testing and
16 had agreed to test.
17 A. Well, at the time of the meeting I was only aware of
18 three days. We only talked about three days' testing.
19 Q. Okay. Leave that to one side.
20 A. Yes.
21 Q. Her explanation for why she was not testing four days
22 a week and was testing three and a half days but saying
23 that she would test as and when required, that she was
24 to keep the day-to-day management issue -- control of
25 that issue, et cetera -- her explanation for that was

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1 all of the background, wasn't it? It was that she
2 believed that Mr Singh, from the start, had decided to
3 use that issue of four-day testing as a means of getting
4 at her to get her out. That was her explanation.
5 A. Well, that was her explanation, as well as other things,
6 because actually her explanation, to start with, on the
7 four-day testing was to talk about some money that she
8 was owed from Nimesh. So I'm not saying that she didn't
9 talk about Mr Singh, but actually she was talking about
10 a large number of things over the years, in -- having
11 spoken about four-day testing.
12 I was purely trying to get her to focus on the
13 allegations. I wasn't completely cutting off any of the
14 history. I was trying to get some focus on the
15 allegations.
16 MR STUART: My Lord, I see the time. I'm --
17 MR JUSTICE NUGEE: You are not going to finish --
18 MR STUART: I'm don't think I'm going to finish --
19 MR JUSTICE NUGEE: No.
20 MR STUART: -- in five minutes.
21 MR JUSTICE NUGEE: No.
22 MR STUART: I'm not going to be much longer but I'm not
23 going to finish in five or ten minutes.
24 MR JUSTICE NUGEE: Well, no. Very well, we will break until
25 10.30 tomorrow.

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1 Ms McIntyre, you have no doubt been told, while you
2 are giving evidence, not to speak to anybody about your
3 evidence or the case, and we'll see you at 10.30
4 tomorrow morning.
5 A. Yes.
6 (4.21 pm)
7 (The court adjourned until 10.30 am the following day)

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