

OPUS 2

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

Day 17

November 14, 2014

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1 Friday, 14 November 2014
2 (10.30 am)
3 MRS DAWN MCINTYRE (continued)
4 Cross-examination by MR STUART (continued)
5 MR JUSTICE NUGEE: Yes?
6 MR STUART: Mrs McIntyre, would you have E14. We have dealt
7 with the interview. Paragraph 20 of your witness
8 statement explained that the interview lasted five
9 hours. {C/5/51} And there were notes made, so we need
10 E14. We have got the manuscript note at 3750.
11 {E/1024/3750}
12 A. Yes, I have got that.
13 Q. And then those were typed up and we find those at 3783?
14 {E/1025/3783}
15 A. Yes.
16 Q. That's right. And then Ms Birdi considered that those
17 notes were not comprehensive, didn't she, and she sent
18 you -- if you go to 3902, {E/1035.1/3902} she marked up
19 the Word version of those notes? 3902?
20 A. Yes, I have got that.
21 Q. Do you recall?
22 A. Yes, I do.
23 Q. We can see there is bold and paler writing, and the
24 paler writing is what she has inserted into the
25 original?

1

1 A. Yes.
2 Q. Can I just take an example and just ask you about one
3 matter, for example. If you go to 3918, {E/1035.2/3918}
4 just above the first hole punch, do you see there is an
5 item which she has added:
6 "My investigation interview was extremely thorough
7 but KS was not."
8 That would be Mr Singh's interview?
9 A. Sorry?
10 Q. She is talking about Mr Singh's interview by Mr Clark?
11 A. Oh, my investigation with -- okay.
12 Q. Yes: {E/1035.2/3918}
13 "My investigation interview was extremely thorough
14 but KS was not. Eg failure to mention or ask KS as to
15 why [he was] talking to staff after suspension despite
16 his promises and failed to ask KS why he was outside the
17 store the following day, despite me telling him."
18 That's despite Ms Birdi telling Mr Clark about that
19 point. Do you see?
20 A. Yes.
21 Q. So you also were plainly aware that she had concerns
22 about Mr Singh talking to staff whilst they were meant
23 to be suspended and basically encouraging the staff,
24 which shortly thereafter led to the letter. You were
25 aware of that, weren't you?

2

1 A. Well, I was aware of her allegation.
2 Q. Yes. Did you investigate that?
3 A. No, I didn't investigate that further. I looked at the
4 information as a whole in terms of the investigation
5 report but I didn't pick out that particular point --
6 Q. No.
7 A. -- for further investigation.
8 Q. You had Mr Clark's investigation report?
9 A. Yes.
10 Q. With what he wanted to put into that. You had your
11 interviews with Ms Birdi?
12 A. Yes.
13 Q. You had her further documents, which I think you refer
14 to at paragraph 23 of your witness statement, {C/5/52}
15 which you have on page 3871. {E/1033/3871} She sent it
16 in to you, didn't she -- or she sent it in to
17 Alison Girollet, who forwarded it on to you. You
18 explain in your paragraph 23 that Ms Birdi provided
19 these documents?
20 A. Yes, these were only some of the documents she provided.
21 Q. Only some of? So there were others?
22 A. Yes, I had about 380 pieces of paper.
23 Q. Okay.
24 A. All told.
25 Q. Okay. And obviously she was here -- she has got one

3

1 example of Kam not being truthful. She has got examples
2 of him not working in the best interests of the
3 business. She has got examples of his unilaterally
4 changing the processes that they were adopting in the
5 business -- undermining her, effectively. And she has
6 got the failure of him to work with her in a positive
7 fashion, and she had examples and evidence to support
8 those. And fifthly, examples of compromises -- that's
9 of her compromising because the allegation of Mr Clark
10 was that she refused ever to compromise?
11 A. Yes.
12 Q. So she provided you with all of that material and that's
13 all you had. You didn't then go off and investigate
14 yourself? You didn't interview any staff?
15 A. No, I didn't interview any staff. What I did following
16 the meeting, I gathered all the information together.
17 I did have further conversation with Mark Raines and Kam
18 and David Clark. I didn't speak to any of the staff.
19 I didn't feel it was necessary in terms of reviewing all
20 the information. But I did make some further
21 investigation based on all the information I had.
22 Q. So you interviewed Mr Singh?
23 A. I had a telephone call with Mr Singh.
24 Q. Right. I'm not sure you mention that in your witness
25 statement, do you?

4

1 A. No, I don't think I go into that detail, but I did have
2 a telephone call with him and I reference a call --
3 Q. Do you have any notes of what was said in that telephone
4 call?
5 A. No, I have a day book, similar to Mark Raines, and the
6 notes would have been in there. I cross through that
7 day book and then I shred them.
8 Q. What, so since December 2010, you have shredded the
9 notes of your call with Mr Singh?
10 A. I can only assume that the notes were in my day book.
11 We had a brief conversation.
12 Q. Okay. And you had a conversation with Mr Raines?
13 A. Yes.
14 Q. Where you investigated some of the issues that she was
15 raising, did you?
16 A. I spoke to Mr Raines about the points around why we
17 hadn't taken disciplinary action earlier. Swarandeeep
18 raised that in terms of the four-day testing.
19 Q. And do you have notes of your conversation with
20 Mr Raines?
21 A. No.
22 Q. You are chairing the disciplinary process?
23 A. I know.
24 Q. As you know, under the Specsavers policy, it's important
25 to keep notes, isn't it, of any parts of that process,

5

1 especially if you are the chairman of the process?
2 A. Yes.
3 Q. It's important to keep notes of relevant conversations
4 that you have with the protagonists --
5 A. As I said, those --
6 Q. -- but you didn't keep any notes of that either?
7 A. I would have made notes, I think, in my day book.
8 Q. Yes, and you have shredded that?
9 A. I have.
10 Q. And you also had discussion with Mr Clark, did you?
11 A. I can't recall --
12 Q. No? Sorry --
13 A. No, I did have a conversation Mr Clark. I can't recall
14 whether I had a conversation with Mr Clark before or
15 after the meeting, but I do recall having a conversation
16 with him.
17 Q. Any notes of that meeting?
18 A. No.
19 Q. Or discussion?
20 A. No, that was a telephone conversation.
21 Q. Right. I see. And this happened in the period after
22 you had received her 15 November document and all the
23 detail that she was providing to you to support her
24 case?
25 A. I can't recall when they -- when specifically those

6

1 calls took place.
2 Q. Okay.
3 A. But it would have been during that time.
4 Q. All right. You don't mention any of those discussion in
5 your witness statement, as far as I know?
6 A. No, I refer to a conversation with Mark Raines in my
7 outcome letter.
8 Q. Right?
9 A. I refer to having spoken to Mark Raines.
10 Q. Let's go to your outcome letter. 3985. {E/1041/3985}
11 Just to put it into context, at 3984 there was a little
12 exchange of emails with Ms Birdi about her getting in
13 any final submissions that she wanted to?
14 A. Yes.
15 Q. And: {E/1040/3984}
16 "If you did have any further submissions, these must
17 be received by 5pm on Monday 6 December 2010 at the very
18 latest.
19 Mrs McIntyre has confirmed that she expects to be
20 able to advise you of her decision within the next seven
21 to ten days."
22 Do you see that?
23 A. Yes, I do.
24 Q. And then 3985 {E/1041/3985} is your decision letter.
25 Did you have assistance in drafting this 28-page letter?

7

1 A. No, I spent many hours writing and typing this letter.
2 When I had finalised it, I did send it to Legal for
3 comments.
4 Q. Okay. So we see at page 3985, for example, where you
5 have got:
6 "The allegations relating to the above are:"
7 Do you see that? And then we have got the little
8 list of the allegations?
9 A. Yes.
10 Q. In, I think, identical format to the letter that was
11 sent out --
12 A. On 20 August.
13 Q. That's right. Is that right? You would block copy
14 chunks of text from previous letters, where relevant?
15 A. Well, where relevant.
16 Q. Yes, that's fine.
17 A. I think it's important to be consistent.
18 Q. Absolutely. Then 3986, after setting out the
19 allegations, you say between the two hole punches:
20 {E/1041/3986}
21 "In setting out my findings and decision relating to
22 each allegations, I have commented where relevant on
23 statements made by you in the disciplinary hearing
24 and/or documents submitted by you following the
25 hearing..."

8

1 Do you see?
 2 A. Yes.
 3 Q. {E/1041/3986} "Further, the hearing itself was
 4 extremely lengthy ... I have therefore not commented
 5 below on every single document submitted ... or on every
 6 single statement made ... I have however carefully
 7 considered all documents submitted by you, and
 8 statements made by you. Rather, I have commented below
 9 on your statements and/or the documents which I consider
 10 particularly relevant..."
 11 Do you see that?
 12 A. Yes.
 13 Q. And then you go into each of the issues, and on the
 14 first allegation, the testing resolution allegation, at
 15 page 3989 {E/1041/3989} just below the second hole
 16 punch, you find this allegation proven. Do you see?
 17 A. Yes.
 18 Q. Obviously, there is nothing in your written decision
 19 document about the issue of the drafting of the
 20 resolution and whether the resolution actually ordered
 21 her to do anything. By the time you had drafted your
 22 decision document, had you picked up on the point?
 23 A. No. As I said yesterday, I felt it was clear that there
 24 was an expectation following the motion from the board
 25 meeting, and I believe that was Swarandeeep's expectation

1 as well.
 2 Q. Hm-mm?
 3 A. Or understanding, that this -- you know, this had been
 4 going on for a couple of years. I felt that it was very
 5 clear between her and I, in terms of that discussion,
 6 that there was an instruction to test for four days, and
 7 that was my response.
 8 Q. All right. I'm most interested in what you have done at
 9 the bottom of the page -- I presume it was you but maybe
 10 it wasn't; maybe this was one of the alterations done by
 11 somebody else.
 12 At the bottom of page 3986, {E/1041/3986} when you
 13 set out the board meeting motion, do you see?
 14 A. Yes, I do.
 15 Q. You have altered the words and you have inserted some
 16 brackets. Did you do that deliberately or --
 17 A. Can you just explain specifically?
 18 Q. Yes. Perhaps you ought to have available to you the
 19 board resolution. So it's the board resolution of
 20 20 August 2009, which is in E8. Do you remember? You
 21 had it yesterday?
 22 A. Yes.
 23 Q. We were looking at it at page 2209. {E/679/2209}
 24 A. Sorry, 2209.
 25 Q. This is the actual board resolution, Ms McIntyre. Do

1 you remember?
 2 A. Yes.
 3 Q. It starts on page 2206, {E/679/2206} the minutes, and
 4 they are signed by Mr Raines on page 2210. {E/679/2210}
 5 So this is the actual resolution and this is the
 6 document that has existed ever since 2009. And it says:
 7 {E/679/2209}
 8 "b) without prejudice to resolution a) above, SB has
 9 agreed as at 12th Sept 2008 BRM, to commit to four full
 10 days ophthalmic testing..."
 11 But you have written: {E/1041/3986}
 12 "b) Without prejudice to resolution a) above,
 13 Swarandeeep Birdi (as agreed as at
 14 12 September 2008 BRM), to commit to four full days
 15 ophthalmic testing..."
 16 You are trying to turn the resolution into a direct
 17 instruction to Ms Birdi to commit to four full days'
 18 testing. And in your version of the draft, the:
 19 "... (as agreed as at 12 September 2008 BRM)..."
 20 You have changed:
 21 "... has agreed as at 12 September 2008 BRM ..."
 22 To:
 23 "... (as agreed as at...)"
 24 And then you have inserted a bracket. Do you see?
 25 A. Yes, I do.

1 Q. You have done that deliberately -- or someone has?
 2 A. No, I haven't done it deliberately.
 3 Q. You must have done?
 4 A. I haven't done it deliberately.
 5 Q. Ms McIntyre, I suggest you must have done. You can't do
 6 that by accident. It's a deliberate attempt to reword
 7 the resolution to support your finding that she has
 8 committed gross misconduct because she has failed to
 9 comply with an instruction made by a resolution. You
 10 have deliberately done that, Ms McIntyre?
 11 A. I haven't deliberately done that at all. I had --
 12 Q. All right, you explain to his Lordship how you do it?
 13 A. I don't know why there are brackets here. I can't
 14 remember why I put brackets. There is no deliberate
 15 intention to change this at all. I had no reason to
 16 change this because in the meeting I felt that this was
 17 a very clear instruction. There wasn't a requirement
 18 for me to change the wording to make it clear
 19 following -- because in the discussion with Swarandeeep,
 20 I was very clear, she was very clear.
 21 There was no discussion in the disciplinary meeting
 22 where she was saying, "The reason I'm not complying with
 23 this is because it's not a clear instruction. If you
 24 look at the board resolution it's not clear."
 25 That conversation didn't take place. So in the

1 meeting --
 2 Q. That's right. The issue hadn't even arisen,
 3 Ms McIntyre.
 4 A. Yes, so in the meeting I felt it was a clear instruction
 5 and I felt that Swarandeeep felt it was a clear
 6 instruction.
 7 Q. That's not what I'm asking you about, is it? I'm asking
 8 about your drafting of this letter, which you say you
 9 drafted. I asked you earlier: had you by the time you
 10 wrote this letter identified the issue of the problem
 11 with the drafting, and you told his Lordship you had
 12 not. I had previously asked you whether you had
 13 realised the issue before the meetings with Ms Birdi and
 14 you said you had not. I then asked you whether you had
 15 realised it during the meetings with Ms Birdi and you
 16 said you had not.
 17 So on your version of your evidence that you have
 18 given to his Lordship up to this point, you had not
 19 identified any issue about the wording, and yet you
 20 changed the wording in a way which suits your decision,
 21 because for gross misconduct, she needs to have breached
 22 an instruction given by a board resolution?
 23 A. This is one of many allegations. I'm not changing this
 24 wording to rely on this allegation.
 25 Q. I suggest you are.

13

1 A. Well, I don't agree.
 2 Q. Where did you get this wording from? Did you lift it
 3 from a document?
 4 A. I thought I lifted it from the resolution.
 5 Q. I have shown you, you didn't.
 6 A. That's what I thought I did.
 7 Q. So you didn't -- because I can't find this version of
 8 the wording in any previous document; any letter to
 9 Ms Birdi setting out the allegation; anything from
 10 Mr Clark; anything -- I can't find this version, this
 11 alteration, anywhere prior to you doing it here. So
 12 I wonder where you got this version from with brackets:
 13 {E/1041/3986}
 14 "... (as agreed as at 12 September ...) to
 15 commit..."
 16 Swarandeeep Birdi to commit. Where did you get it
 17 from?
 18 A. I don't know. All I can -- I have no idea in terms of
 19 the changing. All I know is that my intention is to
 20 reiterate the board motion.
 21 Q. You haven't managed it, have you? What you have managed
 22 to do is to create a resolution which orders her to do
 23 something, and then you go on to find, over on
 24 pages 3987 to 3989, {E/1041/3987} that she is in breach
 25 of that instruction -- page 3989 {E/1041/3989} by the

14

1 second hole punch -- and you therefore find the
 2 allegation proven, the allegation being as set out in
 3 number 1?
 4 That's your finding, isn't it?
 5 A. Yes, that's my finding based on the discussion we had.
 6 Q. You did not raise the issue with her about the wording
 7 at the meeting, did you?
 8 A. No, no, because I hadn't identified it.
 9 Q. There must have come a point where you identified it, in
 10 order to make the alteration?
 11 A. No, not at all.
 12 Q. And yet you deliberately chose not to give her the
 13 opportunity to address that issue and use it in her
 14 defence. You deliberately withheld that from her,
 15 didn't you?
 16 A. No, because I had not identified it.
 17 Q. All right. Were you under instruction as to the result
 18 that had to be reached, here?
 19 A. No.
 20 Q. From Mr Raines? You had a discussion with Mr Raines
 21 that you hadn't documented and you destroyed the only
 22 notes of it?
 23 A. I had a discussion with Mr Raines around Swarandeeep's
 24 feedback on the disciplinary action around four-day
 25 testing.

15

1 Q. In your discussion with Mr Raines, did he make it clear
 2 to you that you were to find her guilty?
 3 A. No. No one has ever told me what the outcome of
 4 a grievance or disciplinary will be and no one will ever
 5 tell me what the outcome of a disciplinary or grievance
 6 will be that I chair.
 7 Q. I suggest to you that you had been instructed what was
 8 to happen to Ms Birdi and she was going to be exited,
 9 and your disciplinary process was part of the process of
 10 exiting her?
 11 A. I totally disagree with that.
 12 Q. Let's move on to Mr Clark's allegations. These start at
 13 3990. This is the second aspect of your finding.
 14 {E/1041/3990} Sorry, just before we do that, which is
 15 paragraph 33 of your statement, {C/5/54} I should have
 16 asked you one point.
 17 Paragraph 28, the last sentence of paragraph 28 of
 18 your witness statement. {C/5/53} Do you see
 19 paragraph 28? We are still on the four days' testing?
 20 A. Yes.
 21 Q. And this is your justification for concluding that
 22 Ms Birdi shouldn't be doing what she believed she should
 23 be doing. So at the top of 28 you say: {C/5/53}
 24 "Ms Birdi stated ... that she believed she should
 25 spend more time on the shop floor in order to provide

16

1 strong leadership."
 2 Do you see?
 3 A. Yes, I do.
 4 Q. "I did not agree with this. Ms Birdi had been spending
 5 one day a week on the shop floor, three days a week
 6 sight testing and one day a week in the Store's office
 7 doing NHS administrative tasks."
 8 That's not actually accurate. I don't know where
 9 you got that information from. She was doing one full
 10 day of NHS admin every week? Who told you that?
 11 A. Well, that's my recollection from our meeting.
 12 Q. Is it in the notes of the meeting that she said she was
 13 doing one full day's NHS admin?
 14 A. Let's find the notes.
 15 Q. The first meeting or ...?
 16 A. Probably the first meeting.
 17 Q. Okay. If you go to 3918 {E/1035.2/3918} just so you can
 18 pick it up. If you go to 3918. This is her fuller
 19 note, just so there is no confusion.
 20 3918, in the middle of the page, do you see there
 21 was a break for lunch and you reconvened at 1.30 and you
 22 said: {E/1035.2/3918}
 23 "Propose we go back to the letter focusing on
 24 allegations, as we have not done this as yet."
 25 So I think it would be from this point onwards that

17

1 you would be dealing with the four-day testing and the
 2 NHS?
 3 A. Yes.
 4 Q. All right. Allegation 1 you set out there and then she
 5 says -- do you see on page 3918 above the second hole
 6 punch?
 7 A. Yes.
 8 Q. She says: {E/1035.2/3918}
 9 "SB: Day to day management issue delegated to the
 10 A director. I am an A director.
 11 "DM: Specific, not appropriate as this is a day to
 12 day issue?
 13 "SB: It is not right for me to be forced to test
 14 4 days, it's day to day management?"
 15 Do you see that?
 16 A. Yes.
 17 Q. That was her sort of day-to-day management point. And
 18 then you are into a discussion about the four-day
 19 testing. She is saying she has been forced to do it.
 20 That's all on page 3919. {E/1035.2/3919} Do you see on
 21 3919, between the two hole punches:
 22 "SB: 4 days?
 23 "DM: Answer my question.
 24 "Why are you choosing not to do 4 days?
 25 "I can summarise from details: I have seen that you

18

1 say it is about leadership/presence on shop floor.
 2 "Why in the interest is 3 days testing okay?
 3 "SB: Leadership - SOG highlighted the need for
 4 leadership on the shop floor by the Directors at RCMs
 5 and in many SOG correspondence to the directors for
 6 a number of years now.
 7 "Do believe on KS day off I should be on shop floor
 8 as we do not have a manager.
 9 "As a director am I not entitled to know what is
 10 going on, as KS does not share information."
 11 Then she says her brain is getting foggy. She is
 12 still feeling unwell, isn't she, during the course of
 13 the day. Do you recall?
 14 A. Yes.
 15 Q. And then she talks about the position with Mr Patel and
 16 she goes into detail about ... et cetera. Then there is
 17 a bit of an argument about the discussion. She leaves
 18 the room because she is not feeling well, she got upset.
 19 Do you see that? She gets upset, doesn't she, in the
 20 middle of 3920: {E/1035.2/3920}
 21 "SB got upset and left the room."
 22 A. Yes.
 23 Q. Back to the process. And then at 3921 you say:
 24 {E/1035.2/3921}
 25 "DM: Is 4 days of testing a reasonable request?"

19

1 "SB: SOG is a partner not employer..."
 2 Do you see that? 3921, you go back to the issue of
 3 four days' testing. Her answer just above the second
 4 hole punch:
 5 "SB: I have legitimate fears and concerns and
 6 business reasons not to test 4 days. Previous
 7 experience when things go wrong SOG has demonstrated it
 8 will take action and did act on allegations of a thief.
 9 I need to be aware of what is happening in the business
 10 day to day. It is unreasonable of SOG to expect me to
 11 test 4 days. What is point of investing in JVP if going
 12 to be told by my partners what I must do on a day to day
 13 basis?"
 14 Do you see that? Then at the bottom of 3921:
 15 {E/1035.2/3921}
 16 "SB: As rightly said SOG should come between JVPs as
 17 mediators..."
 18 She said:
 19 "Previously we had Jo who helped as DO/Shop Manager,
 20 she is no longer there.
 21 "As a director of store am I not entitled to be on
 22 shop floor especially when no one there to lead from the
 23 front?
 24 "I take risks as a Director what is the value of
 25 investing in a JV partnership..."

20

1 Do you see?
 2 A. I'm just trying to find it. We definitely had
 3 a discussion around NHS administration.
 4 Q. You would agree that these pages we are looking at 3920,
 5 3921, 3922, 3923 --
 6 A. Well, I think we also talked about it on the second day.
 7 We definitely talked about three days' test, one day
 8 leading the shop floor and one day doing NHS admin.
 9 Q. What, that she was saying she had been doing one day NHS
 10 admin every week?
 11 A. She said she was doing director -- NHS and director --
 12 NHS admin and director duties in the office.
 13 Q. That's not all NHS admin, then, is it? Director duties,
 14 that's quite a lot of things, we have seen that. That's
 15 plans for the business; interviewing staff; dealing with
 16 locums; rotas; dealing with Mr Singh; dealing with SOG.
 17 All sorts of things?
 18 A. Well, how it was --
 19 Q. That's not NHS admin?
 20 A. Well, how it was presented to me was that she was
 21 required in the office doing NHS. We talked about the
 22 importance of the NHS business. I just can't find it.
 23 Q. She did not say that she was wanting to do one full day
 24 NHS admin every week, did she?
 25 A. I just -- I can't find it.

21

1 Q. The reason you can't find is because she has never said,
 2 has she, that she wants to do one full day NHS admin?
 3 She has said she has other things to do. Directorial
 4 duties. As well as being on the shop floor for one day
 5 and testing, certainly for at least three to three and
 6 a half days, she has got other directorial duties, and
 7 that's what she said to you repeatedly, throughout this
 8 interview, isn't it? We have seen it?
 9 A. No, I don't think she has repeatedly said that she had
 10 directorial duties. We talked about -- we definitely
 11 talked about NHS. I just simply can't find it. But
 12 there is no reason for me to make that up. She
 13 definitely talked about NHS. And there had been
 14 reference in other meetings --
 15 Q. I'm not suggesting that there is no mention of NHS. I'm
 16 suggesting that the way you have put is that the reason
 17 she is giving for not testing four days a week is, as
 18 you put it -- do you see at the end of paragraph 28, you
 19 say: {C/5/53}
 20 "Ms Birdi's point about providing leadership on the
 21 shop floor did not support her case for spending a day
 22 each week in the Store's office doing NHS administrative
 23 work. I concluded that Ms Birdi should not be spending
 24 one day a week doing NHS administrative tasks which
 25 could be done by a more junior member of staff."

22

1 This is just a repetition of an argument that has
 2 been put previously and you are just adopting it. But
 3 nobody has suggested that she is going to be doing just
 4 the NHS admin that a junior admin clerk could be doing.
 5 That's not what she wanted to be doing for a day a week?
 6 A. Well, that was my understanding from our discussion.
 7 Q. I suggest to you that what you are doing here is you are
 8 just simply misstating her case in order to support your
 9 conclusion that you are going to exit her from the
 10 business?
 11 A. I totally disagree.
 12 Q. Okay. All right, let's move on quickly to the second
 13 set of allegations, the Clark allegations. This is
 14 paragraphs 33 onwards of your witness statement {C/5/54}
 15 and page 3990? {E/1041/3990}
 16 MR POTTS: My Lord, I'm sorry, but before my friend moves
 17 on, just in terms of that line of questioning, he hasn't
 18 actually put to the witness what it is he says Ms Birdi
 19 had presented to Ms McIntyre at the meeting.
 20 MR STUART: I have; I said Ms Birdi said repeatedly that she
 21 wished for time on directorial duties.
 22 MR JUSTICE NUGEE: Directorial duties.
 23 MR STUART: I'm simply not going to take any longer.
 24 MR POTTS: I see, well, he hasn't taken her to any reference
 25 in the transcript where that has been --

23

1 MR JUSTICE NUGEE: No, no.
 2 MR STUART: I have. I have taken her to page 3920, 3921,
 3 3922, mentions of directorial duties. There are
 4 countless others and I am not going to -- I'm sure my
 5 learned friend can take Ms McIntyre to the reference
 6 that she says is there, in which Ms Birdi is alleged to
 7 have said that she wants to do one full day a week
 8 sitting in the office doing NHS admin.
 9 It didn't happen, Ms McIntyre.
 10 A. That was my understanding of our discussion.
 11 MR STUART: All right.
 12 3990 in your decision letter, we are in E14/3990,
 13 {E/1041/3990} the allegations set out in Mr Clark's
 14 investigation report. And this really is
 15 a regurgitation of Mr Clark's investigation report,
 16 isn't it?
 17 A. No, this is my response to the allegation, which does
 18 make some references from the investigation report.
 19 Q. Well, as I understand it, you have not interviewed any
 20 of the staff yourself?
 21 A. No.
 22 Q. You have not obtained from those staff any written
 23 responses to all of Ms Birdi's points?
 24 A. Ms Birdi's points in the meeting was that she simply
 25 felt it was untrue. That was all the information she

24

1 had given me.
 2 Q. But she has then given you five documents listing --
 3 against each of the items, she has given you documents
 4 listing matters that she says are evidence of why it's
 5 untrue, and then she has given of 380 pages, you say, of
 6 documents to support those assertions?
 7 A. Not -- yes, but that's the whole case.
 8 Q. Absolutely. That's her case?
 9 A. Not the specific allegations for staff and that's why
 10 I didn't feel it was necessary to re-interview the
 11 staff.
 12 Q. I'm taking this as an example. All you have done is you
 13 have taken elements of Mr Clark's investigation report
 14 and you have set them out in answer to Ms Birdi's
 15 assertions. Her assertions, you have simply summarised
 16 in a line?
 17 A. That's because that was her feedback on the day.
 18 Q. For the reasons -- why was that her feedback on the day?
 19 Was she complaining that she was feeling unwell? Was
 20 she complaining that you were rushing her? Was she
 21 complaining repeatedly about the way in which you were
 22 conducting this hearing? Do I need to take you to the
 23 references?
 24 A. She was saying that she was unwell. I don't agree that
 25 we were rushing through the information. In fact,

1 I flexed the whole approach to work for Ms Birdi.
 2 I allowed her to talk and share with me the history that
 3 she wanted to. I repeatedly tried to focus on the
 4 allegations. She had put a lot of work into her report
 5 and wanted to talk through that. So I allowed -- we
 6 stopped looking at the allegations and I allowed her to
 7 work through her report.
 8 So I appreciate it was difficult meeting for her,
 9 but I tried to work with her in a way that supported her
 10 in the way that she wanted to get her information
 11 across.
 12 Q. All right. Dealing with -- this is the first issue you
 13 have come to: {E/1041/3990}
 14 "Undermining of KS."
 15 A. Yes.
 16 Q. And you have set out some elements of Mr Clark's report
 17 from the evidence that he has gathered.
 18 A. Yes, I have used that.
 19 Q. You yourself have not gone off to try and find any
 20 further evidence?
 21 A. No, I didn't think it was necessary.
 22 Q. No. As part of her answer to this point, she also
 23 raised the point that Mr Singh was undermining her,
 24 didn't she? That was her --
 25 A. Yes, she did. She gave us some examples.

1 Q. -- principle argument, and you deal with that over the
 2 page at 3991 just below the first hole punch:
 3 {E/1041/3991}
 4 "At the hearing, you provided high level details of
 5 other instances (locum cover/arrangements, expenses,
 6 holiday notice, four day testing) which, in your view,
 7 are examples where KS has undermined you."
 8 A. Yes.
 9 Q. So she was dealing with the issue, the undermining
 10 issue, undermining between the two JV partners; yes?
 11 A. Yes, at that point she was providing information and
 12 I looked into that information --
 13 Q. No, you didn't.
 14 A. -- that she provided. I did look into it because that's
 15 how I found that -- where those had been previously
 16 raised in grievances.
 17 Q. No.
 18 A. So I --
 19 Q. What you did was you said: {E/1041/3991}
 20 "All these points (with the exception of 4 day
 21 testing) were covered in your grievance in 2009 and,
 22 therefore, have already been addressed, (your grievance
 23 complaint against KS regarding locum cover/arrangements
 24 being not upheld, and your grievance complaints re
 25 expenses and holiday notification only being partially

1 upheld), so I will not be responding to these."
 2 In other words, because they were dealt with in
 3 a previous grievance against Mr Singh, you are not
 4 prepared to accept -- or whoever has drafted this letter
 5 is not prepared to accept that they are potentially
 6 relevant in dealing with her defence to the allegations
 7 of gross misconduct made against her now. That's your
 8 reasoning, isn't it?
 9 A. Well, first of all, I drafted this letter. I did look
 10 into the allegations that she gave me, but they had
 11 already been dealt with through the internal process,
 12 through the grievance and the appeal process.
 13 So I did take them into consideration but they had
 14 already been dealt with in terms of the decisions around
 15 those. And that's the point I was making.
 16 Q. So, having dismissed all her points because they had
 17 been dealt with in grievances, you then, at 3992 at the
 18 top, find that allegation against her proven?
 19 {E/1041/3992}
 20 A. Yes, I didn't dismiss her points. I considered her
 21 points and looked at where they had been previously
 22 dealt with.
 23 Q. Right. There is then a little chunk of text with dots,
 24 do you see?
 25 A. Yes.

1 Q. And some quotes?
 2 A. Yes.
 3 Q. And the quotes are in italics, and then the person who
 4 made the quotes or the source of the quote is in
 5 brackets. Did you lift these from Mr Clark's report?
 6 A. Yes.
 7 Q. Then we move on to: {E/1041/3992}
 8 "Failure to work with KS in a positive fashion..."
 9 Do you see that?
 10 A. Yes, I do.
 11 Q. And page 3993: {E/1041/3993}.
 12 "In the hearing [Ms Birdi] asserted that, in fact,
 13 it was [Mr Singh] who had been rude and
 14 confrontational..."
 15 And she gave examples of emails, et cetera, didn't
 16 she?
 17 A. Yes, she did.
 18 Q. And your response to that is just above the first hole
 19 punch:
 20 "Having reviewed the documents provided and email
 21 correspondence dating back to 2008 sent by both you and
 22 KS, it is clear that this is an extremely difficult
 23 relationship and you have both struggled to agree on
 24 your respective roles and basic store operational
 25 processes."

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1 Do you see that?
 2 A. Yes, I do.
 3 Q. "In my opinion, the balance of evidence shows that from
 4 the outset you have not accepted KS as your equal
 5 business partner..."
 6 You had analysed all of the evidence, had you, and
 7 you had reached the conclusion that, on balance, it was
 8 Ms Birdi who wasn't accepting that there was an equal
 9 business partnership here?
 10 A. I had significant amounts of information provided to me
 11 that showed the way the partners were communicating, and
 12 I did acknowledge that they weren't speaking to each
 13 other; they were communicating by emails. Not all Kam's
 14 emails, you know, were good, and Swarandee's were bad.
 15 You know, you looked at all -- you looked at them and
 16 there were times where you thought Kam could have
 17 improved the way he spoke to Swarandee and vice versa.
 18 I had huge amounts of information and what I needed
 19 to do was pull all that together and step back and look
 20 at the overall balance of evidence, because there was so
 21 much detail. And I did think on the balance that
 22 Swarandee's communication and her emails were more
 23 challenging and, you know, challenging, you know --
 24 decisions and authority from Kam's.
 25 So I'm not saying his communications were perfect;

30

1 it was a very difficult situation and it's not ideal
 2 when two partners are not talking to each other. But
 3 I did have to step back and say: on balance, you know,
 4 who is at fault here.
 5 Q. You seem, therefore, to have just simply ignored all of
 6 Mr Singh's agenda?
 7 A. No, no, I wasn't ignoring -- as I have said, and I put
 8 here, between the two of them they were having
 9 a difficult relationship and I have said they have both
 10 struggled to agree their respective roles and they are
 11 both struggling on basic store operations.
 12 MR JUSTICE NUGEE: In circumstances where there are two
 13 A partners, two JVPs to whom day-to-day management is
 14 entrusted, if they have a fundamental disagreement about
 15 something, they are not going to work positively with
 16 each other. It doesn't matter whose fault it is, does
 17 it?
 18 A. Yes.
 19 MR JUSTICE NUGEE: Because if they take a different view --
 20 how do you expect that to be resolved?
 21 A. Well, I think that's where we can help from an SOG
 22 perspective and try and help them work through their
 23 fundamental issues that they have got, that prevent them
 24 from working, you know, in the way that we want them to
 25 work together.

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1 So I understand that it will prevent them from
 2 working in a positive fashion. But what I'm saying here
 3 is, when I looked at the evidence, I felt that
 4 Swarandee was contributing more to the breakdown of
 5 that relationship.
 6 MR JUSTICE NUGEE: Did you think Mr Singh was working
 7 positively with Ms Birdi?
 8 A. Not -- not -- on occasions, no. I think there were
 9 numerous examples where he wasn't working positively
 10 with her. And I think, you know, from very early on,
 11 they both resorted to email communications, from a very
 12 early stage, which is only going to make a really
 13 difficult relationship -- and they both chose to
 14 communicate in that way.
 15 MR STUART: Did you know that from even before he had bought
 16 the shares, he was telling SOG, Mr McGonagle, that his
 17 plan was to replace Ms Birdi with a member of his own
 18 family and that he was going to communicate with her and
 19 manage her -- manage her -- he was going to manage her
 20 accordingly. Did you know that?
 21 A. I have no knowledge of that.
 22 Q. Is it appropriate for one JVP partner to "manage" the
 23 other?
 24 A. No, the whole premise of the partnership is that they
 25 work together.

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1 Q. That's right. That seems to be the premise of your
2 report, 3993. {E/1041/3993} You are saying that "you
3 are equal business partners" and you are suggesting that
4 it's Ms Birdi who wasn't accepting equality, as if she
5 was trying to say she was somehow at a higher level than
6 him?
7 A. I'm not saying that she didn't accept equality.
8 Q. Okay.
9 A. I think it's more the behaviour between them, and the
10 way she behaves I felt impacted the relationship
11 negatively.
12 Q. But the way she behaved, according to her -- and she
13 explained it all to you, didn't she, both at the meeting
14 and in the emails -- she behaved towards him because she
15 was reacting to his treatment of her. He was treating
16 her in a very high-handed way, she felt, didn't she?
17 A. That's her view, yes.
18 Q. She genuinely felt that, didn't she?
19 A. I don't know whether she genuinely felt that.
20 Q. You sat for ten hours listening to it. Did you not get
21 some impression as to whether she genuinely felt it or
22 not?
23 A. I think she -- I think that was her belief.
24 Q. Right. And that had happened from the point in 2008
25 when he joined, or shortly before, and she gave specific

1 examples to back up why she felt the way she did?
2 A. Yes, yes.
3 Q. And you weren't aware of the McGonagle document?
4 A. No.
5 Q. Nor even of the underlying plan. Did Mr Raines not
6 mention to you --
7 A. No.
8 Q. "Look, Mr Singh --"
9 A. I had no conversations with Mark until I rang him about
10 the disciplinary meeting.
11 Q. All right. Anyway, so the sum total of the drafted
12 document here is at the bottom. You find that
13 allegation proven as well. In other words, you blamed
14 her for failing to work with Mr Singh in a positive
15 fashion. You blame her.
16 The third one is:
17 "Refusal to accept compromise."
18 That's 3994? {E/1041/3994}
19 A. Yes.
20 Q. Which you say is interrelated to the points below. Do
21 you see that?
22 A. Yes, I do.
23 Q. And you say -- you don't go into it here; you just say:
24 "I find this allegation proven."
25 Then we have got: {E/1041/3994}

1 "Actions towards store staff."
2 Encouraging staff to raise a grievance -- I'm
3 interested:
4 "Encouraging staff to raise formal grievance
5 complaints against KS."
6 You didn't believe that she had encouraged
7 Ms Khunkhuna or Ms Khan or Mr Ko, people who had raised
8 formal grievances against him in 2010?
9 A. No, I was working on the information provided in the
10 investigation report.
11 Q. You are just going on what was in the Clark report?
12 A. Yes.
13 Q. I see. Were you aware that Ms Birdi was suggesting that
14 Mr Singh had encouraged his team, his six team members,
15 to raise the grievance letter of 16 June 2010 against
16 her? Were you aware of that?
17 A. Not at the time of this meeting.
18 Q. Okay.
19 A. I'm trying to recall. I think -- no, she made me aware
20 that she felt that he had put the staff up to producing
21 the letter.
22 Q. Yes.
23 A. Yes. At that stage.
24 Q. And you obviously weren't aware of any evidence about
25 a meeting in the pub?

1 A. No.
2 Q. You weren't aware of that? You weren't aware of the
3 precise details of how the letter came to be drafted?
4 A. No, apart from the information that I was given, that
5 the --
6 Q. By Mr Clark?
7 A. -- that Tracey and Helen had drafted it and the others
8 had agreed and signed it.
9 Q. So anyway, so you find that allegation proven as well.
10 Is that right? {E/1041/3994}
11 A. Yes.
12 Q. I'm interested in -- one of the bases for doing that is
13 at 3995, just above the first hole punch. You say:
14 {E/1041/3995}
15 "In the hearing, in general you accepted that you
16 produce letters/memos for staff to sign, and that some
17 of these letters/memos had been about KS. You however
18 denied seeking to encourage staff to raise grievances or
19 complaints against KS. Rather, you state that you
20 produce letters/memos for staff to sign simply in order
21 to substantiate or record conversations. I do not
22 accept your assertion. I do not consider that by
23 producing letters/memos for staff to sign about KS you
24 were simply looking to record conversations with
25 staff..."

1 Do you see that?
 2 A. Yes.
 3 Q. In circumstances where the two of them had this
 4 difficult relationship -- they were arguing about
 5 day-to-day management decisions and tit for tat they
 6 were each alleging that the other wasn't telling the
 7 truth about things and that they couldn't be trusted?
 8 A. Hm-mm.
 9 Q. What is wrong, where an issue arises and needs to be
 10 documented or recorded so that there can't be an
 11 argument about it in the future -- what's wrong with one
 12 of the directors producing a record, or a document or
 13 a memo, and asking the people who are affected by it to
 14 sign it? What's wrong with that?
 15 A. I think the concern here is how it made the staff feel.
 16 So I think they were feeling that they were being drawn
 17 into the difficulties in the relationship. They were
 18 being asked to sign documents that were recording
 19 difficult conversations and that they were being, you
 20 know, drawn into that -- in that environment and
 21 being --
 22 Q. Only some of the staff?
 23 A. Yes, some of them, some of them.
 24 Q. Namely the ones who supported Mr Singh?
 25 A. Well, the ones that wrote the letter.

1 Q. They didn't write it but four of them signed it, two of
 2 them had their signatures put on when Mr Clark got them
 3 to?
 4 A. They volunteered --
 5 MR POTTS: I don't think that's fair, my Lord. I'm sorry,
 6 I haven't interrupted yet. There has been a number of
 7 those kind of things.
 8 MR STUART: "The six who wrote the letter", I don't think is
 9 correct and I am going to correct it.
 10 MR JUSTICE NUGEE: There are six signatures on the letter,
 11 Mr Stuart.
 12 MR STUART: There are eventually. There are four in the
 13 version --
 14 MR JUSTICE NUGEE: There are six signatures eventually on
 15 the letter. I don't think that comments in the course
 16 of cross-examination help --
 17 MR STUART: Understood, my Lord.
 18 MR JUSTICE NUGEE: -- the cross-examination.
 19 MR STUART: There were -- I'll increase it to seven. There
 20 were seven members of staff, the six who signed the
 21 letter and Patrice O'Brien, who didn't. So of all the
 22 staff interviewed, there were seven who, as it were,
 23 supported Mr Singh on this. But there were others,
 24 weren't there?
 25 A. Yes.

1 Q. Four or five others who did not, who had also been asked
 2 to sign memos but did not suggest that they were being
 3 put in a difficult position or anything else. So they
 4 were not part of Mr Singh's team. That's right, isn't
 5 it?
 6 A. Yes, I need -- I would need to look at the detail but
 7 from reading information, I felt that the staff were
 8 feeling in a difficult position and being brought into
 9 the difficulties of Swarandeeep and Kam's relationship by
 10 being asked to sign memos, sign conversations that had
 11 taken place.
 12 Q. But you are a very experienced HR executive. You
 13 understand that in situations like this, staff can take
 14 sides, can't they?
 15 A. Yes.
 16 Q. In a case where two managers are having a dispute, the
 17 staff can take sides?
 18 A. Yes, they can.
 19 Q. And certainly, if one of the managers goes and regularly
 20 drinks in the pub with six or seven members of staff on
 21 a regular basis, it's not unusual for those members of
 22 staff to side with him. It's not unusual, is it?
 23 A. Well, I don't know whether they did go to the pub
 24 regularly. I think my point here is that by asking
 25 people to sign memos and letters, which I understand was

1 a reassurance to Swarandeeep, the impact -- I believe the
 2 impact on the staff was that they were feeling that they
 3 were drawn into that difficult relationship and that
 4 they were being put in a difficult position.
 5 Q. All right. But from the answer you have just given, you
 6 seem to accept that, in her mind, she was doing it to
 7 protect herself against arguments in the future, or
 8 whatever, but what you are saying is that whatever was
 9 in her mind, the staff themselves were being put in
 10 a difficult position by doing it?
 11 A. Yes.
 12 Q. That's not the way you put it in this letter, if you
 13 drafted it. You say: {E/1041/3995}
 14 "Rather, you state that you produce letters/memos
 15 for staff to sign simply in order to substantiate or
 16 record conversations."
 17 In other words, exactly what you have just said.
 18 And then you say:
 19 "I do not accept your assertion."
 20 But you have just told his Lordship you do accept
 21 that?
 22 A. No, what I was saying is that she was putting things in
 23 writing to reassure herself.
 24 Q. She was doing it to substantiate or record conversations
 25 to reassure herself. Whereas what you sought to

1 conclude is, "No, no, you have done that in order to
 2 encourage staff to raise grievances or complaints
 3 against KS."
 4 A. Well, in some of her conversations around, "Do you want
 5 to raise a grievance?" that was also part of that.
 6 Q. I suggest you have been highly selective. You have just
 7 taken Mr Clark's selective view of evidence. You have
 8 been wholly one-sided and it's just to support your
 9 finding to exit her from the business?
 10 A. I don't agree with that. I haven't been one-sided.
 11 I feel that I have portrayed a balanced view. I have
 12 talked about things that Kam may have done differently.
 13 I have talked about it's a joint relationship and
 14 partnership. I have acknowledged Swarandeeep's points in
 15 the allegations. I have acknowledged things that she
 16 had said and that I think, you know -- you know,
 17 I upheld points. I have noted when she said things she
 18 thinks are untrue.
 19 Q. The next issue is 3996: {E/1041/3996}
 20 "Inappropriate behaviour towards store staff."
 21 Preferential treatment of Fatima and Jas?
 22 A. Yes.
 23 Q. Yes. We know from Mr Clark that the first point was the
 24 time keeping issue, which you have at the second hole
 25 punch:

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1 "In relation to the time keeping issues, you stated
 2 that there is a process within the store whereby staff
 3 take reduced breaks or their lateness is noted on the
 4 rota and KS will then make a deduction via payroll."
 5 {E/1041/3996} She was explaining that it wasn't --
 6 A. Yes.
 7 Q. -- even her role to do the payroll?
 8 A. Yes.
 9 Q. Then:
 10 "In the hearing, you therefore sought to describe
 11 your relationship with Jas and Fatima as a fairly
 12 distant one..."
 13 Do you see?
 14 A. Yes, I do.
 15 Q. Over the page you selected a chunk from Mr Clark's
 16 report, same format again, with the dots and --
 17 {E/1041/3997}
 18 A. With the quotes, yes, but I have then gone on to
 19 acknowledge that she is testing and that she can't --
 20 you know, the visibility of lateness probably wasn't
 21 there because she has been testing. So, I am
 22 acknowledging her points. I'm trying to reflect what
 23 she is telling me in the response, but I am also saying
 24 that I don't think it was -- from the evidence I was
 25 given -- that it was a distant relationship. Trying to

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1 get the balance of what I think the situation is.
 2 Q. But this balance -- you didn't even bother to
 3 investigate for yourself, this, by asking any members of
 4 staff?
 5 A. No, because I think there wasn't a point -- the point --
 6 there wasn't a point of dispute. The points -- the
 7 information was adding up. So it was -- you know,
 8 Swarandeeep was saying, "Actually, you know, I'm not
 9 going to be around, so I won't see this preferential
 10 treatment around absence", and I have acknowledged that.
 11 I didn't need to go and re-investigate it.
 12 Q. You didn't ask any of the non-signatories, any of the
 13 staff members who are not signatories to the supporting
 14 letter for Mr Singh -- you didn't ask any of those
 15 members of staff about the suggestion that Ms Birdi had
 16 too close a relationship/preferential treatment of
 17 Fatima and Jas. You didn't ask anybody, did you?
 18 A. No, because there was strong evidence from all the --
 19 from the interviews. All the comments were aligning.
 20 Q. And then the next item is -- again, this is a rehash of
 21 Mr Clark's report, isn't it? 3998: {E/1041/3998}
 22 "Inappropriate behaviour towards store staff.
 23 "Behaviour towards store staff.
 24 "As set out in David Clark's investigation
 25 report..."

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1 A. Well, the quotes are. The rest is my opinion/view.
 2 Q. Yes. That's seems to be most of it. You say, 3999:
 3 {E/1041/3999}
 4 "I recognised that in their interviews Gladstone,
 5 Lorraine, Alexandra and Samuel did not raise concerns
 6 about your behaviour..."
 7 That's the same proviso that Mr Clark inserted into
 8 his letter, wasn't it?
 9 A. Yes, because we were acknowledging that there were some
 10 good relationships there.
 11 Q. Yes. And so your conclusion is: {E/1041/3999}
 12 "... the balance of the evidence discloses numerous
 13 examples of you inappropriately challenging staff..."
 14 Do you see that?
 15 A. Yes, I do.
 16 Q. On what basis do you suggest that challenging staff is
 17 inappropriate?
 18 A. Well, it was some of the quotes here, in terms of them
 19 feeling -- I don't think challenging staff is an issue.
 20 I think it's about how they feel when they are
 21 challenged. So people were talking about feeling
 22 intimidated and belittled, and I think that's what I was
 23 meaning by "inappropriate".
 24 Q. I suggest to you --
 25 A. And upsetting people.

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1 Q. Sorry.

2 A. And using words like "bully" and "upset". That's what

3 I was referring to as inappropriate.

4 Q. I suggest to you that you have simply lifted Mr Clark's

5 summary and his chosen conclusion and then, having done

6 that -- you have ignored all the evidence that doesn't

7 agree with your point of view and at the top of

8 page 4000, you then just find this allegation proven?

9 {E/1041/4000}

10 A. No, I looked at all the evidence. I looked at the

11 balance of the evidence. There was an overwhelming

12 amount of evidence from the staff to support that.

13 Q. Flick over to 4001. {E/1041/4001} You deal with the

14 expenses issue?

15 A. Yes.

16 Q. As far as I'm aware, you haven't yourself investigated

17 the point about these expenses?

18 A. I looked at all the information. I had got a lot of

19 information on expenses.

20 Q. From Mr Clark's report?

21 A. Erm --

22 Q. You haven't told us that you asked for or received any

23 further information or documentation from any other

24 source before reaching your conclusion?

25 A. No, but I did have a lot of it -- I had a pack sent to

1 me, obviously, from Legal before I did the disciplinary.

2 There was a lot of information around this already.

3 Q. Your conclusion on that, I think we see at 4002 above

4 the first hole punch. You say: {E/1041/4002}

5 "I, therefore, fail to see why you did not authorise

6 KS's fuel claims and keep a record so that at the end of

7 the year these could be equalised? I do not accept that

8 you continued to be genuinely 'confused', as you state

9 in your letter ... I consider that you chose to continue

10 to question KS's entitlement of these individual

11 payments..."

12 Do you see that?

13 A. Yes, I do.

14 Q. This is just, what, your subjective view as to what

15 Ms Birdi's motives were here?

16 A. No, this was me looking at the information that I had

17 been given. There had been numerous discussions around

18 signing off the expenses. I know that neither of them

19 had been signing off each other's expenses and then it

20 had gone to board meeting.

21 I then looked through the board meeting minutes and

22 Mark Raines had referred to the fact that they could

23 equalise their payments -- that they should sign off

24 each other's expenses and that they could equalise their

25 benefits at the end of the year. And that had been

1 discussed a number of times.

2 Q. Yes. And Ms Birdi was explaining to you that she

3 authorised -- she agreed to authorise some of the

4 expenses that were on his list but she was concerned

5 about the fuel?

6 A. The three --

7 Q. Fuel element?

8 A. Yes. But that had been discussed. Those three had been

9 discussed in the board meeting.

10 Q. Yes.

11 A. And Mark Raines had suggested they talk to the financial

12 team, but he has also explained that they could equalise

13 their benefits at the end of the year.

14 Q. What about Mr Singh?

15 A. So it was a sum of £500 that she just needed to sign

16 off.

17 Q. Yes, it was a relatively small amount?

18 A. It was a small amount that could have been equalised at

19 the end of the year, instead of being an ongoing issue.

20 Q. What about Mr Singh tit for tatting her? At one point

21 he was --

22 A. Hm-mm, yes.

23 Q. -- refusing to authorise her expenses for no reason

24 other than that she wouldn't authorise an issue

25 regarding his pension?

1 A. Yes.

2 Q. Which was a matter which was being

3 disputed/investigated. Were you aware that there was

4 this tit for tat?

5 A. Yes.

6 Q. You were aware? Okay.

7 A. Well, I was aware that neither of them were signing of

8 their expenses. I was aware that that went to a board

9 meeting, and in the board meeting -- I think it was the

10 February board meeting -- they agreed that they would

11 sign off each other's expenses.

12 Q. All right. So you find that allegation proven as well,

13 of course.

14 PCT funding you don't find proven, so we can leave

15 that one.

16 So we are on to 4004: {E/1041/4004}

17 "Actions destructive of the working relationship

18 with SOG."

19 So now, this is not with Mr Singh?

20 A. Yes.

21 Q. This is now with SOG; do you see?

22 A. Yes.

23 Q. You say:

24 "As previously mentioned I have combined my response

25 for points responded to this point and point a.iii.

1 "As a senior manager, and Director, of the Dartford
2 business, you have a duty to act in the best interests
3 of the business at all times. It is inevitable that in
4 any working relationship, the parties will not always
5 agree 100 per cent on every single issue. As such, any
6 working relationship (particularly one between equal
7 'A' directors) requires each party to be willing to
8 compromise..."
9 Do you see that?
10 A. Yes, I do.
11 Q. "Similarly, where a defined process has been used (eg
12 the company's grievance procedure ...) and an outcome
13 issued, it is incumbent on senior managers and/or
14 Directors in any business to accept that the matter has
15 been considered under the relevant procedure..."
16 Do you see that?
17 A. Yes, I do.
18 Q. "If they do not, but instead eg simply persist in making
19 allegations which have found to be untrue..."
20 I'm not sure which allegations have been found to be
21 untrue. Are you talking about the allegations against
22 Mr Singh, where he was moonlighting in Grays?
23 A. I'm talking about the previous grievances.
24 Q. What, so her grievances about Mr McAlindon?
25 A. No, there was -- the grievance issues that had already

1 been worked through. I think Alan Goddon did the
2 grievance where -- so a specific point within that,
3 I think, was Swarandeeep saying she was being bullied.
4 Q. Yes?
5 A. And I understand that that was not upheld.
6 Q. Do you mean Mr Goddon's --
7 A. Yes.
8 Q. -- investigation?
9 A. Or -- I can't recall the detail, but that's -- my
10 reference is to allegations that have gone to the
11 internal procedures.
12 Q. Okay.
13 A. Grievance procedures, where the allegations have not
14 been upheld.
15 Q. Right. So the basis for the finding that you are about
16 to make, which is the allegation of refusing to accept
17 compromise, outcomes and move forward in the best
18 interests of the business, is that?
19 A. No, no.
20 Q. Is that she is still raising the issues that have been
21 dealt with in grievances?
22 A. And also some of the issues, obviously, that she raised
23 within the disciplinary with me, which also linked to
24 the grievances.
25 Q. But she was only doing that to defend herself, wasn't

1 she? Is an employee not allowed to defend herself in
2 a disciplinary process?
3 A. Yes, yes, absolutely.
4 Q. But because she does so, you are using that against her
5 as a basis for saying, "You are refusing to accept
6 compromise/outcomes"? That seems wholly unfair, doesn't
7 it?
8 A. No, I think what she has -- in my view, what she is
9 refusing to accept are allegations -- when an allegation
10 has gone through grievance procedure and has gone
11 through an appeal and it is found not to be upheld, for
12 that person to continue with those allegations, I think
13 demonstrates that they are not moving on from that.
14 Q. Anyway, she then deals with the question of -- you set
15 out all her -- she has given you detailed examples of
16 her compromising and agreeing things?
17 A. Yes.
18 Q. You set them all out and you basically take the view
19 that these are not examples of her compromising. For
20 example, because they are historical, that's not a sign
21 that she has moved on? I'm looking at 4005.
22 {E/1041/4005}
23 A. What Swarandeeep said to me was that she would send me
24 some really robust examples of the last couple of years,
25 where she had really demonstrated compromise, and

1 I didn't think that these were robust examples. Most of
2 them were 2008 and some of them were issues. So that
3 was my view. She was saying, "I can send you some
4 really good examples of where I have absolutely
5 demonstrated that I have made compromise", and I didn't
6 think --
7 Q. You say these were examples going back to 2008 and
8 therefore you don't accept that they are relevant? But
9 surely that's completely hypocritical of you, because,
10 on the one hand, you are saying because she is raising
11 things from 2008, that is to be held against her, but
12 when she wants to give you examples from 2008 of her
13 accepting things, you say, "Oh, no, that's too long
14 ago"?
15 A. No, I'm not saying that, because some of them are --
16 were outcomes, I understand, from BRMs. So they were
17 decisions made by all three directors as opposed to
18 Swarandeeep saying, "I feel really, really strongly about
19 this but I'm going to compromise". And some of them
20 were almost issues between them.
21 Q. All right. Then you raise some -- the same examples,
22 actually, that Mr Clark raises in his report, save for
23 the one example about Mr Clark, which is at the bottom
24 of 4006. {E/1041/4006} You say:
25 "Similarly, in your investigation interview with

1 David Clark, I note that you repeatedly persisted in
 2 making a number of allegations against KS, despite these
 3 allegations having already been investigated under the
 4 grievance procedure ... and found to be untrue."
 5 I'm not sure that's right, is it? Untrue? They
 6 hadn't been found to be untrue, had they? These are the
 7 allegations against Mr Singh --
 8 A. Well, they hadn't been upheld.
 9 Q. They hadn't been upheld, but it wasn't untrue that he
 10 had been working in a store, the Grays store, that he
 11 hadn't told Ms Birdi about it, that he had actually lied
 12 about it when she put it to him? None of that was found
 13 to be untrue, was it?
 14 A. No, that should be "upheld", is what I meant by that.
 15 Q. That's not what you have written. All right.
 16 So over the page, this goes on and on, and you
 17 therefore find that allegation proven as well, and that
 18 then supports your allegation at (e) on 4009
 19 {E/1041/4009} through to 4011. {E/1041/4011}
 20 Under "State of working relationship", you conclude
 21 that there is such a breakdown --
 22 MR POTTS: My Lord, I'm sorry. Just on the last point, my
 23 friend made a number of points but actually, what is
 24 being dealt with at the bottom of 4006 -- there is no
 25 reference there at all to the Grays store. {E/1041/4006}

1 MR JUSTICE NUGEE: There is no reference to what?
 2 MR POTTS: To the Grays store matter at the bottom of 4006.
 3 The points that are referred to there, it's about an
 4 allegation that he had bullied staff out of the store.
 5 MR STUART: That's an example:
 6 "For example, you asserted that KS had 'bullied
 7 staff...'.
 8 If you go back to the investigatory interview with
 9 Mr Clark, which is there being referred to, and you go
 10 back to the notes of the interviews with Ms McIntyre,
 11 you will find that the allegations against KS that were
 12 then dealt with in the investigation under the grievance
 13 procedure start with the Grays store.
 14 So you will find that it does include the Grays
 15 store, doesn't it, Ms McIntyre? It was including the
 16 issues about the Grays store?
 17 A. Sorry, can you clarify the question?
 18 Q. Ms Birdi was raising with you, amongst other things, the
 19 issue that she had with Mr Singh --
 20 A. Yes.
 21 Q. -- at the Grays store? And you were pointing to the
 22 fact that in her interview with Mr Clark, she had also
 23 been raising all the matters, actually, that were in her
 24 grievance?
 25 A. Yes.

1 Q. Including the first matter on her grievance: the Grays
 2 store?
 3 A. Yes.
 4 Q. Thank you. All right. Swiftly, 4011. {E/1041/4011}
 5 Having found everything else proven you then go on to
 6 conclude, between the two hole punches on 4011 -- do you
 7 see?
 8 A. Yes, I do.
 9 Q. {E/1041/4011} "It is my view that as a consequence of
 10 your actions/behaviours (ie the actions/behaviours which
 11 I have found proven above) your working relationships
 12 with KS and SOG has completely broken down..."
 13 Plainly, that's a view that you say you have come
 14 to. Would you accept that if the relationship had
 15 broken down as a result of actions of Mr Singh and SOG
 16 against Ms Birdi -- if it had, and I know that's not
 17 your conclusion; you conclude it's all her fault?
 18 A. No, my conclusion is, on balance, coming to this
 19 decision.
 20 Q. Yes?
 21 A. I'm not saying it is totally her fault. We can -- I'm
 22 sure Kam could have done some things differently and I'm
 23 sure SOG could have done things differently. However,
 24 I did find the allegations proven and I did find on
 25 balance that she had contributed to the breakdown --

1 significantly contributed to the breakdown in the
 2 relationship.
 3 Q. Where do you balance the two?
 4 A. Well, that was -- I came to that in my conclusion.
 5 Q. Well, this is your conclusion. Do you see, the letter
 6 ends at page 4012? Where do you --
 7 A. Yes, but I'm saying, "As a consequence of your actions
 8 and behaviours"; you said I had said it was totally her
 9 fault.
 10 Q. I'm asking you to say -- if it says anywhere on this
 11 letter, just point to us where it is that you balance
 12 the two and note that it's not all Ms Birdi's fault,
 13 it's a little bit Mr Singh's fault, perhaps even
 14 a little bit SOG's fault. But you think it's mainly
 15 Ms Birdi's fault and therefore -- it takes three to have
 16 an argument, sort of thing -- and on balance, you find
 17 that she is more to blame than the two of them. So that
 18 you have got this nice balanced view going on.
 19 Where do you say that?
 20 A. Well, I reference that through the document. At the
 21 end, obviously, this is my conclusion.
 22 Q. Yes, but where do you reference that Mr Singh is at
 23 fault, that SOG are at fault?
 24 A. My response -- my response about balance was in response
 25 to your point around I'm saying it's totally her fault.

1 Q. Well, that's because you do blame her for the breakdown
 2 of the relationship and because of that, you say she is
 3 to be dismissed?
 4 A. Yes.
 5 Q. So you don't anywhere in this conclusion say that it's
 6 a joint fault case, but that Ms Birdi is more to blame
 7 than others? You don't say that, do you, in your
 8 conclusion?
 9 A. No.
 10 Q. No. But you now accept that that is actually the
 11 position, according to you?
 12 A. No, what I was responding to was when you were saying it
 13 was totally her fault, which I felt intimidated that I saw
 14 no blame whatsoever for SOG and for Kam.
 15 Q. Okay.
 16 A. I do think it's as a consequence of her action and
 17 behaviours that the relationship has broken down.
 18 Q. Let's go back to my original question on this last
 19 point, which is that if her reactions and her actions
 20 were caused by reacting to Mr Singh acting improperly
 21 and/or SOG acting improperly -- if they were caused by
 22 that -- would you agree that it would be inappropriate
 23 to discipline her -- on an employment disciplinary
 24 basis, which is all you are doing -- to discipline her
 25 for that? If she were justified in reacting?

1 A. So hypothetically?
 2 Q. Hypothetically?
 3 A. Hypothetically, if that's her view.
 4 Q. Yes, and that certainly was her view, wasn't it, because
 5 you have actually recited her view in the little bit
 6 above. Do you see? If you go to the bottom of
 7 page 4010 {E/1041/4010} and the top of page 4011
 8 {E/1041/4011} you have got four dots and you have there
 9 sort of summarised her explanation for what has gone on,
 10 haven't you?
 11 A. Yes.
 12 Q. And her explanation is that -- the first dot:
 13 "... as I have stated in many of my letters, SOG's
 14 continual bias and unilateral support of KS and actions
 15 and KS's grievances only serves to reinforce the belief
 16 that he [KS] has been put in [to the Dartford business
 17 by SOG] as a tool to bully me, undermine me and reduce
 18 my authority at work..."
 19 That's the first point she was making?
 20 A. Yes.
 21 Q. And she genuinely believed that, you have agreed?
 22 A. Well, no, that's her belief.
 23 Q. So she genuinely believed it; whether it's correct --
 24 A. And genuine, I don't know.
 25 Q. You believed that she was genuinely believing that,

1 after ten hours of seeing her?
 2 A. I understand that to be her belief.
 3 Q. And then the second one was:
 4 "... you stated you 'believe that SOG forced
 5 Mr Singh on to the Dartford store as an implement to
 6 bully me...'. "
 7 The third one is the 2007/2008:
 8 "From this point that I believe SOG has been trying
 9 to remove me from the business."
 10 And the fourth one is:
 11 "... you stated ... 'fundamentally SOG is not being
 12 fair to you' and that SOG has 'sided with KS'. "
 13 That in summary is --
 14 A. Is her view.
 15 Q. Is (a) her view and (b) her explanation as to why she
 16 has acted as she has in the specific cases that you have
 17 brought up during the course of your disciplinary
 18 process?
 19 A. Yes, and fundamentally the fact that she feels all of
 20 that is a planned conspiracy.
 21 Q. Yes. And you conclude, "No, that's not right. SOG
 22 doesn't act like that, Mr Singh doesn't act like that,
 23 and therefore it's your fault and so you are going to be
 24 dismissed."
 25 That's a summary of your conclusion?

1 A. That's a summary of the conclusion.
 2 MR JUSTICE NUGEE: Is that a convenient moment?
 3 MR STUART: My Lord, I literally have to just show Ms -- I'm
 4 finished but for showing her one line --
 5 MR JUSTICE NUGEE: Yes.
 6 MR STUART: -- because I have been assisted on the issue of
 7 the NHS testing and the admin day.
 8 Would you go to 3971. A search has been made to try
 9 and find the reference to --
 10 A. In E14?
 11 Q. Yes, same file, E14/3971. At the top do you see:
 12 {E/1035.3/3971}
 13 "SB: This is the what is impacting on the
 14 relationship ... Leadership is key, I agree. For
 15 Dartford it is different and I must test four days."
 16 You then said:
 17 "DM: But that is split up isn't it into three days
 18 testing, one day leadership and one day NHS admin and
 19 directorial duties?"
 20 Do you see?
 21 A. Yes.
 22 Q. So I don't think you did believe -- even you believed --
 23 that she was suggesting that it was one full day just
 24 doing NHS admin, did you?
 25 A. That is what I believed.

1 Q. Oh?
 2 A. I believed --
 3 Q. But that is what you said?
 4 A. Yes, that's what I said but what I believed was that she
 5 was wanting to spend a day in the office, largely doing
 6 NHS.
 7 Q. Right, that was the only ...
 8 MR JUSTICE NUGEE: We will take a break for five minutes.
 9 (11.49 am)
 10 (Short break)
 11 (11.56 am)
 12 Re-examination by MR POTTS
 13 MR POTTS: Ms McIntyre, I have just got one issue. In
 14 relation to your understanding of Ms Birdi doing one day
 15 NHS admin, could I take you to E14/3930 at the bottom of
 16 the page. These are Ms Birdi's amended notes. Do you
 17 see the final entry: {E/1035.2/3930}
 18 "I was doing 3 days testing 1 on floor, 1 upstairs."
 19 What did you understand her to be doing upstairs?
 20 A. I understood her to be in the office for that day,
 21 largely doing NHS admin.
 22 Q. Could I also then take you back -- you referred this
 23 morning to the minutes of a board meeting on
 24 23 February 2010 in another context. Could you have E10
 25 at 2733. {E/851/2733}

1 A. Yes.
 2 Q. If you look just above the second hole punch, this is
 3 a conversation at the board meeting:
 4 "MR questioned SB about her 5th working day where SB
 5 spends her day on NHS admin and asked SB as to how that
 6 fitted in with her 'leading from the front' principle?
 7 "SB responded that she did NHS control and was
 8 always 'monitoring' NHS since KS had had Loss Prevention
 9 in. SB and KS now worked through the NHS admin
 10 together.
 11 "MR challenged SB as to her inconsistency of her
 12 principles in relation to 'leading from the front' as
 13 she spent one day every week in the office performing
 14 the job a junior member of the team could do (ie the NHS
 15 admin)."
 16 So can I ask you again: what was the basis of your
 17 understanding that she was doing one day a week on the
 18 NHS admin?
 19 A. From the discussions I had with her and reading the
 20 information that she was doing NHS admin for a full day
 21 and that that had been challenged in terms of the
 22 appropriateness of it, because it could be done by
 23 a junior member of staff.
 24 MR POTTS: I have no further questions.
 25 MR JUSTICE NUGEE: Thank you very much, Mrs McIntyre.

1 A. Thank you.
 2 MR POTTS: My Lord, we have reached the final witness,
 3 Mr Howarth.
 4 MR JUSTICE NUGEE: Mr Howarth, yes.
 5 MR CHRIS HOWARTH (sworn)
 6 Examination-in-chief by MR POTTS
 7 MR JUSTICE NUGEE: Do, please, sit down, Mr Howarth.
 8 A. Thank you.
 9 MR POTTS: Mr Howarth, I don't know if volume C is there.
 10 A. I have it, yes.
 11 Q. Excellent. Could you turn, please, to tab 15.
 12 A. Yes, got that.
 13 Q. And at pages -- do you have page 177 there? {C/15/177}
 14 A. I do.
 15 Q. And pages 177 through to 179 --
 16 A. Yes --
 17 Q. Is that your witness statement in this matter.
 18 A. It is.
 19 Q. And at page 179, is that your signature? {C/15/179}
 20 A. It is.
 21 Q. And can you confirm that the contents of that statement
 22 are true?
 23 A. They are.
 24 Q. Thank you.
 25 Cross-examination by MR STUART

1 MR STUART: Mr Howarth, just a few points. Paragraph 4 of
 2 your statement.
 3 A. Yes. {C/15/178}
 4 Q. You are referring to the October 2006 call and you
 5 fairly say you have no recollection of that
 6 conversation, line 3. Do you see that?
 7 A. Sorry, you are referring to 4?
 8 Q. Yes, paragraph 4, line 3?
 9 A. Line 3, yes.
 10 Q. You are dealing in paragraph 4 with the conversation --
 11 A. Yes, I'm with you.
 12 Q. -- which Ms Birdi said that she had with you, whereby
 13 you told Ms Birdi that Mr Patel was selling his shares
 14 in the Dartford store.
 15 A. Yes.
 16 Q. You go on in paragraph 6 to go on to the rest of the
 17 discussion. But you say in paragraph 4:
 18 "I have no recollection of this conversation ... "
 19 Do I understand from that that you are not denying
 20 that it had happened, you just can't recall it and
 21 therefore -- you don't recall.
 22 A. I have no recollection of the conversation taking place
 23 and I can think of no reason why I would have held such
 24 a conversation. I have never held a conversation of
 25 that nature with anybody in the business previously. So

1 ...
 2 Q. Well, you say you are the director of professional
 3 recruitment. Your role is to source potential new
 4 partners?
 5 A. That's correct.
 6 Q. So that is to source new partners where vacancies arise?
 7 A. Correct.
 8 Q. SOG doesn't go round trying to source new partners if
 9 there is no vacancy.
 10 A. Could I provide some context to this, if it helps? The
 11 way that my department works, and always has worked, is
 12 that we do not recruit specifically for specific
 13 vacancies. So my function effectively is to personally
 14 deliver a stream of potential new partners for future
 15 vacancies and then work closely with my colleague in
 16 business transfer and business development whenever
 17 a vacancy develops.
 18 Q. Yes, but in this particular case a vacancy was about to
 19 develop, wasn't it? If you could have bundle E1, the
 20 last page.
 21 A. The very last page?
 22 Q. The very last page, page 200 of E1. {E/12/200} On
 23 1 September Mr Patel wrote to SOG explaining that he was
 24 contemplating selling his stake in the Dartford store.
 25 A. Yes, I see that.

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1 Q. Do you see? So that would have been roughly when SOG
 2 got to know that he was at least contemplating, perhaps
 3 planning, to sell his stake in the Dartford store. That
 4 would give rise, wouldn't it, within SOG to the need,
 5 the potential need, to source a new partner to replace
 6 him?
 7 A. Potentially, but I might not necessarily have known
 8 about that.
 9 Q. You might not have done but you might have done?
 10 A. I'm unlikely to have known about it at this stage. I'll
 11 explain why, shall I?
 12 Q. Okay.
 13 A. This letter in itself will clearly, I think, have gone
 14 to -- I'm thinking Mike Ryan in business transfer, and
 15 that would have started a process which Mike Ryan always
 16 put into train, which was to then follow through with
 17 documentation that would be sent to Mr Patel. My
 18 understanding is he would have then completed that
 19 paperwork and I think -- and I say I think -- then had
 20 to provide a cheque, I think, as a deposit for the
 21 process, and only when that entire process had been
 22 completed, would Mike Ryan inform me there was
 23 a vacancy.
 24 Q. Hm-mm. I'm going to suggest to you that you might have
 25 known about it by October 2006.

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1 A. I think it's highly unlikely. Can I explain why it's
 2 highly unlikely?
 3 Q. Of course.
 4 A. It's highly unlikely because at this particular point in
 5 time, in fact most of the time, is under significant
 6 time pressure. So we would be recruiting in a given
 7 year possibly as many as, you know, 200 -- 150 to 200
 8 potential future partners by quite an intensive
 9 selection process and probably be dealing with dozens of
 10 vacancies at any one point in time, and in essence
 11 Mike Ryan and myself had a very clear understanding that
 12 I would work to vacancies provided by him at the point
 13 in time what he was convinced there were a vacancy.
 14 So actually, my view on this would be I would be
 15 very keen not to know this information at this point in
 16 time because it would have been a distraction on the
 17 work that we had to do.
 18 MR JUSTICE NUGEE: So he is responsible for working out
 19 whether there are vacancies and you are responsible for
 20 recruiting people as a pool?
 21 A. That's exactly, correct, yes. So we would create
 22 a database of potential future partners and then
 23 Mike Ryan, in charge of business transfer, and
 24 Ian Thomas, in charge of business development, which was
 25 new store openings, would regularly inform where were

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1 the vacancies and, to be blunt, one of the challenges
 2 always in my particular part of the business is not to
 3 waste resource on opportunities that were never going to
 4 ultimately materialise.
 5 So, you know, I would always be very keen with Mike
 6 to be clear that this was a vacancy and to be clear with
 7 business development that it was a vacancy and because
 8 we were, you know, under pressure. We had lots of
 9 situations to deal with at any one point in time and not
 10 the biggest team in the world to deal with it.
 11 MR STUART: The way you put it is you can't be sure but you
 12 don't think you would have known about it.
 13 A. I can't remember whether I knew about it or not.
 14 Q. Fine. As you know, Ms Birdi says that you did tell her
 15 about this. It is right, isn't it, that if you are
 16 sourcing a new partner for a store, which is your role,
 17 you say --
 18 A. Hm-mm.
 19 Q. -- obviously, you would have had to know that the
 20 potential vacancy was coming up --
 21 A. Yes.
 22 Q. -- in order to do that?
 23 A. Yes.
 24 Q. And I think in other matters you have been involved in
 25 offering people the opportunity to move to a certain

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1 store, for example, Mrs Parham in the Uckfield store.
 2 You were involved in sourcing her to join the Uckfield
 3 store. Do you recall?
 4 A. I had some involvement in that.
 5 Q. That's right. So we are just moving on now to
 6 paragraph 6 {C/15/178} of your statement, because the
 7 other aspect of it is that Ms Birdi recalls that you
 8 told her that if she wanted to move back up north, to be
 9 closer to her family -- you mentioned the store in
 10 Blackpool. Do you remember? That's her evidence
 11 anyway.
 12 A. Yes, so I understand.
 13 Q. Again, as I understand it, you do not recall -- this is
 14 the third line from the end of paragraph 6. {C/15/178}
 15 You do not recall ever making that offer to her or
 16 seeking to persuade her to purchase shares in the
 17 Blackpool store, and you say that you understand from
 18 the BTS department that the shares have never even been
 19 for sale?
 20 A. Correct.
 21 Q. But she is quite clear in her recollection that you did
 22 mention the possibility of going to the Blackpool store.
 23 Is it possible that it may have been a potential
 24 opportunity, which didn't actually occur? Perhaps the
 25 people in the Blackpool store changed their mind?

1 A. To be clear, I have been in this role for 15 years and
 2 I happen to know the partnership in Blackpool and it
 3 hasn't changed in all that time. So she may have had
 4 a recollection but there was no reason why I would have
 5 offered her shares in a store where shares were not
 6 available.
 7 Q. Can you now recall whether shares might have become
 8 available?
 9 A. I have no recollection of shares ever being available in
 10 Blackpool.
 11 Q. Okay. Then in paragraph 7 you make the following
 12 argument. You say: {C/15/178}
 13 "I can't recall this call ..."
 14 That Ms Birdi describes:
 15 "It's not uncommon for JVPs to ask me whether there
 16 are alternative partnership options elsewhere. It is
 17 likely that if Ms Birdi had asked me this, I would have
 18 told Ms Birdi the same thing I tell any other JVP, which
 19 is that she could not be considered for another
 20 partnership option until she was well advanced in the
 21 process of selling her existing shares."
 22 You make the point that given the distance between
 23 them, she couldn't possibly have fulfilled JVP
 24 obligations in both stores.
 25 A. Hm-mm.

1 Q. That's obvious; you can't be in Dartford and Blackpool
 2 in a given week working simultaneously. But the logic
 3 that you put there is -- as I understand it, what you
 4 are saying is if an existing JVP partner phones you up
 5 and says, "I want to move to Scotland," you would say,
 6 "Well, before you can consider moving to Scotland, you
 7 have got to sort out selling your existing shares in
 8 Land's End."
 9 A. Correct.
 10 Q. That's because they have phoned you up and said, "I want
 11 to move to Scotland. I'm in Land's End at the moment,
 12 I want to move to Scotland." And that would be your
 13 advice: "Deal with the sale of your Land's End shares,
 14 get that progressing first, before you can even be
 15 considered for Scotland?"
 16 A. Correct.
 17 Q. But that wasn't what was happening here, was it?
 18 Ms Birdi wasn't phoning you to say, "I want to move to
 19 Blackpool."
 20 A. That's my recollection. She called me on a couple of
 21 occasions around that time. I cannot remember exactly
 22 when. I can't remember the nature of the -- exact
 23 detail of the call but it was certainly my recollection
 24 that she had asked me if it was possible for her to
 25 relocate to another part of the country.

1 Q. You see, as you know, her evidence is that you are the
 2 one who raised the issue of going to Blackpool.
 3 A. That's just not the case. That's counter-intuitive to
 4 what my role would involve.
 5 Q. But if you had done that -- and I know you say, to be
 6 fair to you, you can't recall.
 7 A. No, I didn't do it.
 8 Q. But if you had done that, if it had been you approaching
 9 her, as it were, then the logic of your paragraph 7
 10 wouldn't apply, would it, because if it was, "There's
 11 a place for you in Blackpool --"
 12 A. I never told her --
 13 Q. -- we are considering you --
 14 A. -- there was a place in Blackpool.
 15 Q. I know, but this is the hypothetical, that Ms Birdi's
 16 version of the conversations is correct. If you were
 17 saying, "There is a place for you up north" -- leave
 18 aside Blackpool -- "up north," then she would be being
 19 considered for a place up north before she has even
 20 mentioned selling her shares in Dartford, wouldn't she?
 21 A. She wouldn't be considered for a place anywhere else
 22 until she sold the shares. She was talking to the wrong
 23 person. She should have been talking to business
 24 transfer about progressing the sale of her shares and
 25 then that would have become a formal vacancy that

1 I would have been informed of.
 2 Q. All right, so you say you don't recall these
 3 conversations as she describes them? You don't actually
 4 recall any conversations at all but this is what you
 5 would have said --
 6 A. I do --
 7 Q. -- if you had had conv --
 8 A. I do recall that she rang me -- I don't know how often,
 9 I don't know exactly when -- around about this time and
 10 asked if there was a possibility to relocate to the
 11 Midlands or the north. I don't remember exactly where
 12 she said she wanted to go to but I do recall that she
 13 asked me that question and I, in my recollection, gave
 14 her that advice.
 15 Q. You can't recall what advice you gave her but you would
 16 have given her the same advice you give other people --
 17 A. Absolutely.
 18 Q. -- is what you are saying, yes.
 19 I have one last question for you. It doesn't relate
 20 to that at all. You are in E1. Would you go to
 21 page 199. There is a letter from you. It's about
 22 another member of staff.
 23 A. That's right towards the end, isn't it, 199?
 24 Q. Yes, just literally, go back four pages.
 25 A. Yes, I've got it, yes.

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1 Q. Page 199. {E/11/199} Do you see, back in May of that
 2 year there had obviously been an issue with a certain
 3 self-employed optometrist currently working in your
 4 area. Do you see that?
 5 A. I do.
 6 Q. And at the bottom of the page you say -- well, at point
 7 number 2 you say:
 8 "I also spoke at length to Mel McAlindon and
 9 described to him your findings and general intent. Mel
 10 remains of the opinion that the evidence available is
 11 too scant to guarantee any kind of victory in a legal
 12 forum. He also feels that the police might view the
 13 evidence as insubstantial, in that it could be claimed
 14 to be accidental. I would suggest we accept his opinion
 15 on this."
 16 Do you see?
 17 A. I do, yes.
 18 Q. "I hope this update ..."
 19 The penultimate paragraph:
 20 "I hope this update helps. I believe that we should
 21 comply with Mel's opinion. He feels that a lost court
 22 case could be far more damaging to the brand than we
 23 have allowed for and he may be right."
 24 Do you see that?
 25 A. Yes, I do.

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1 Q. Do you remember this incident?
 2 A. Very, very vaguely. My recollection of the incident was
 3 that the individual in question, I believe, had sent in
 4 duplicate invoices for work done. That's my
 5 recollection.
 6 Q. Right. And Ms Birdi had obviously raised the
 7 possibility of some sort of legal action involving the
 8 police or something?
 9 A. I believe so.
 10 Q. And you spoke to Mr McAlindon?
 11 A. Correct.
 12 Q. And you are here passing on Mr McAlindon's views, which
 13 are, "Don't involve the police because there may not be
 14 enough evidence; it's not clear cut evidence."
 15 A. Yes.
 16 Q. Yes. And, very finally, you say in paragraph 8 of your
 17 witness statement -- paragraph 8? {C/15/179}
 18 A. Sorry, yes.
 19 Q. You say, fourth line:
 20 "I am not aware of SOG ever wanting to make Dartford
 21 a shared venture."
 22 Do you see that?
 23 A. I do, yes.
 24 Q. Could you just be passed bundle E3, page 711.
 25 {E/185/711}

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1 A. Am I done with E1?
 2 Q. You can get rid of everything else, yes. E3, page 711.
 3 A. This is a shared venture assessment. Is that right?
 4 Q. That's right. In your capacity as director of
 5 professional recruitment, would you have any input into
 6 SOG's shared venture plans?
 7 A. No.
 8 Q. Ever?
 9 A. Never.
 10 Q. I see. So if they are looking to attract an OO JVP, for
 11 example, into a store which they were planning to go to
 12 shared venture --
 13 A. Yes.
 14 Q. -- or if they were looking to take it into group venture
 15 but were looking to hire an employed optometrist, for
 16 example, would you be involved in that, in the finding
 17 of the OO JVP?
 18 A. At the appropriate point in time, yes.
 19 Q. You would? So it would only be after the shared venture
 20 decision or group venture decision had been taken would
 21 they come to you and say, "Now, Mr Howarth, we are
 22 looking for --
 23 A. Yes, and that would come through the previous two routes
 24 that I reference. So it would either come through
 25 Mike Ryan or it would come through Ian Thomas, if it was

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1 a new business to be opened.
 2 Q. So if it was a business transfer-type situation, it
 3 would be likely Mr Ryan?
 4 A. It would always be Mr Ryan.
 5 Q. Always be Mr Ryan?
 6 A. Yes.
 7 Q. So when you gave your witness statements and said:
 8 "I'm not aware of SOG ever wanting to make Dartford
 9 a share venture."
 10 A. Hm-mm.
 11 Q. Were you aware of this shared venture assessment that
 12 was taking place?
 13 A. I have never seen one of these forms in the wild, so to
 14 speak.
 15 Q. Right, but whether you have seen the form or not, were
 16 you aware that in August 2007, late August 2007, someone
 17 was doing an assessment? Do you see it now?
 18 A. I see the form, yes.
 19 Q. You will see the top two items. I'm not going to read
 20 them out; you can read them to yourself.
 21 A. Yes.
 22 Q. The bit I do want to read out to you is at 9,
 23 "Professional availability". Do you see? {E/185/711}
 24 A. I see that.
 25 Q. That would seem to me to be your remit.

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1 A. Yes, it would ultimately become my remit.
 2 Q. You are the man who knows about sourcing optometrists,
 3 JVP DOs and everything else?
 4 A. Correct.
 5 Q. So it says:
 6 "Professional availability. Zero. The southeast is
 7 an area where our existing Shared Venture stores
 8 (Bexleyheath & Bromley) experience difficulties in
 9 securing consistent OO cover. A focused OO director
 10 will greatly benefit this business."
 11 You are saying nobody approached you at the time to
 12 ask you about finding an OO director for this store?
 13 A. No. I think it's probably worth pointing out that I'm
 14 not the only person in Specsavers who is aware of the
 15 problems in supply of professional staff. So I think
 16 some parts of the country -- in some parts of the
 17 country the problems with supply are well-known.
 18 Q. And this was an area where there was such a problem?
 19 A. Yes.
 20 Q. Just go to the bottom, under "Total Score". Do you see
 21 at the bottom in the shaded bit?
 22 A. I do.
 23 Q. It says:
 24 "Shared venture assessment. This opportunity is
 25 conservatively positive. The issue of ophthalmic cover

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1 has affected the other SV stores in the area and I would
 2 expect that in the short term this would apply to
 3 Dartford as they have only one, relatively
 4 inexperienced, employed OO.
 5 "I would recommend that we initially attract an OO
 6 JVP (25 to 50 per cent maximum) and due to the lack of
 7 retailers in the southeast consider the staff venture
 8 structure to support the OO. Staff venture would be
 9 implemented after we had had the opportunity to
 10 review/recruit the current staff and identify the top
 11 team.
 12 "In summary, the Dartford store is a good comparison
 13 to the potential turnaround of the Weymouth store.
 14 Previous performance was questionable, and a single OO
 15 director on a 60/40 split was introduced. The store now
 16 regularly turns over £20K+ and has operating profit of
 17 approximately £200K.
 18 "(As a contingency, I know that both the Gravesend
 19 store partners and the Bexleyheath store partner are
 20 interested in buying into this store, with Gravesend
 21 being the preferred option from these two.)"
 22 You are involved, aren't you, where JV partners from
 23 one store wish to go to another store?
 24 A. No, not directly. As I said, that would always be
 25 a factor of an outcome of a business transfer service

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1 process.
 2 Q. Yes?
 3 A. So you know, my involvement in that kind of situation
 4 might be to backfill, where a move has taken place, with
 5 a new partner.
 6 Q. I see. So if the Gravesend people moved to Dartford,
 7 you might be asked to find someone for Gravesend?
 8 A. Correct.
 9 Q. Yes, I see. Anyway, you say you weren't aware of any of
 10 this at the time?
 11 A. No, I've never seen this document.
 12 Q. And you still weren't aware of it perhaps when you wrote
 13 your witness statement, where you said:
 14 "I'm not aware of SOG ever wanting to make Dartford
 15 a shared venture."
 16 A. No, I have never seen this document before.
 17 Q. I'm sorry, there is one last email then, a one line
 18 email: E2/325. {E/55/325} This doesn't seem to quite
 19 now fit with what you are telling the court.
 20 A. 325?
 21 Q. Yes, E2/325. This is email from Mr Dyson's PA,
 22 Emma Meagher. Do you know her?
 23 A. Emma Meagher? Yes, I do.
 24 Q. That's Mr Dyson's PA and she is emailing you
 25 in March 2007. So this is after Mr Patel has been

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1 exited from the store in February 2007. Do you see?
 2 A. Yes, I do.
 3 Q. But before the negotiations with Mr Singh start. Did
 4 you find Mr Singh?
 5 A. No.
 6 Q. No. Anyway, do you see what it says. It says, 8 March:
 7 "Chris ... "
 8 That's you?
 9 A. Correct.
 10 Q. ... Derek has asked for an update on your recruitment
 11 plans. Also, can you advise [me] if you have any
 12 partners on the books who may want to work together in
 13 Dartford ... "
 14 A. Hm-mm.
 15 Q. So in March 2007 Mr Dyson is asking you whether you have
 16 got a pair of partners?
 17 A. Correct.
 18 Q. An OO and a DO or an OO and a retailer to take on
 19 Dartford.
 20 A. Hm-mm.
 21 Q. That's right, isn't it?
 22 A. It is.
 23 Q. You would say, "Well, that's not shared venture." Is
 24 that right? "Because, shared venture, we only need
 25 one director; we are the other A shareholder."

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1 A. Correct.
 2 Q. But isn't it right that in shared venture, "shared
 3 venture" just actually refers to the shareholding? You
 4 can have an OO and a DO --
 5 A. Yes.
 6 Q. -- and Specsavers as an A shareholder?
 7 A. Yes, you could, yes.
 8 Q. So perhaps in March 2007 there was a suggestion, wasn't
 9 there, of a shared venture, when Mr Dyson was --
 10 A. I have no idea why Derek asked me this question.
 11 I think it's probably fair to point out that it
 12 wasn't -- it wouldn't have been an uncommon type of
 13 question or email for Derek to ask, and I would just
 14 have interpreted that as Derek making sure he understood
 15 all of his options in terms of contingencies, what if
 16 scenarios.
 17 Q. Yes. If we are going to get rid of Ms Birdi -- we have
 18 already got rid of Mr Patel; he has left in February,
 19 just to put you into context.
 20 A. So I understand.
 21 Q. If we are going to get rid of Ms Birdi, there is going
 22 to be a need for a pair of partners in the Dartford
 23 store. So when it says, "may want to work together in
 24 Dartford", he is asking you whether there is an already
 25 existing pair?

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1 A. Yes, he is clearly asking that question, yes.
 2 Q. Yes. All right. And then final question, sorry, not
 3 relating to a document. When you are finding a new
 4 partner -- you said you didn't find Mr Singh, you
 5 weren't involved at all. Is that right?
 6 A. I actually don't recall. I took it -- I took your
 7 question to mean did I source him for Dartford. No, I
 8 had no involvement with that.
 9 Q. Yes, that's what I did mean. Did you source Mr Singh
 10 for Dartford?
 11 A. No.
 12 Q. Were you involved in Mr Singh's selection for Dartford?
 13 A. No.
 14 Q. Approval for Dartford?
 15 A. No.
 16 Q. That seems unusual.
 17 A. No, it's not actually. It's not remotely unusual. My
 18 primary purpose is to find new partners, not to deal
 19 with existing partners who move between businesses.
 20 That's somebody else's job.
 21 Q. But if there is a vacancy at Dartford -- Mr Patel has
 22 sold his shares, SOG are holding them temporarily under
 23 a shared venture and they are looking for a new partner
 24 for Ms Birdi, all right?
 25 A. Hm-mm.

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1 Q. We know that she would like to meet the new partner
 2 first and see whether she gets on with them, et cetera,
 3 but if SOG were looking for a new partner for Ms Birdi,
 4 just openly looking for a new partner, without any
 5 preconceived ideas as to who it's going to be, they
 6 would ask you, wouldn't they?
 7 A. It was Derek who has suggested here -- he has asked me
 8 if on the books there are any -- he says here, doesn't
 9 he: "any partners on the books". When he refers to the
 10 books, he is referring to the potential new partner
 11 database, not to existing partners.
 12 Q. That's fine. If they were looking for a new partner to
 13 go into the Dartford store to be Ms Birdi's new partner,
 14 they would come to you?
 15 A. If they were looking for a new partner, yes.
 16 Q. So does it follow that they were never looking for a new
 17 partner -- a new partner -- because they never came to
 18 you and you were never asked --
 19 A. I would have to see Mike Ryan's -- Mike Ryan's direction
 20 on that. You know, at this point in time my involvement
 21 with Dartford was zero, to be frank, so --
 22 Q. That's my question. If they weren't asking you at all
 23 whether there was a potential on the books person to
 24 join Ms Birdi --
 25 A. Yes, I'm not aware that there was a formal request from

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1 business transfer to fill a vacancy in Dartford at this
2 point in time.
3 Q. No, or at any point in time? You were not --
4 A. Not unless you can point me to somebody --
5 Q. -- involved at all. Nobody ever asked you --
6 A. -- who asked me to do it, no.
7 Q. So SOG were never looking for a new partner for
8 Dartford, so far as you are aware?
9 A. As far as I'm concerned, I was not requested to find
10 a new partner for Dartford, no.
11 Q. Right.
12 My Lord, I have no more questions Mr Howarth.
13 MR JUSTICE NUGEE: Mr Potts?
14 MR POTTS: Can I just take one moment? (Pause)
15 Re-examination by MR POTTS
16 MR POTTS: Could I ask one question. In relation to a store
17 such as Dartford and the position that Dartford was in
18 at that time, would it be common for such a store to be
19 offered to a new partner?
20 A. Would it be common? I think that would depend --
21 I really couldn't comment on whether it would be common
22 or not; it would depend entirely on the circumstances
23 that pertained in the business at the time.
24 Q. Fine, thank you.
25 MR JUSTICE NUGEE: Thank you very much, Mr Howarth.

1 A. Thank you.
2 MR POTTS: My Lord, I think that completes my witnesses,
3 certainly.
4 MR JUSTICE NUGEE: Yes. That completes the evidence.
5 MR STUART: It does, my Lord.
6 MR JUSTICE NUGEE: Well, the programme at the moment has you
7 delivering written submissions by 10 o'clock on Monday.
8 MR POTTS: My Lord, yes.
9 MR JUSTICE NUGEE: And unless either of you tell me
10 otherwise, I will assume that that is still what you are
11 working towards.
12 MR STUART: Absolutely.
13 MR POTTS: Yes.
14 MR JUSTICE NUGEE: We will resume at 10.30 on Tuesday.
15 MR POTTS: My Lord, yes.
16 MR JUSTICE NUGEE: Is there anything else that either of you
17 wish to raise at this time?
18 MR POTTS: No, my Lord.
19 MR STUART: My Lord, can I just clarify? Obviously, we are
20 starting at 10.30 on Tuesday, it's flexible as to how
21 long we go on, but is it envisaged that it will probably
22 be Tuesday into Wednesday and then finished on
23 Wednesday?
24 MR JUSTICE NUGEE: I wouldn't expect it to go beyond
25 Wednesday.

1 MR STUART: No.
2 MR JUSTICE NUGEE: I wouldn't be at all surprised if it goes
3 into Wednesday.
4 MR STUART: That's all right.
5 MR POTTS: I think we have form for that, my Lord, yes.
6 MR JUSTICE NUGEE: That rather depends both on you and on
7 me, and although I don't ask very many questions during
8 the evidence, I do tend to ask quite a few questions
9 during the submissions because I want to understand what
10 your respective cases are.
11 Thank you very much. We will see you at 10.30 on
12 Tuesday.
13 (12.28 pm)
14 (The court adjourned until 10.30 am on Tuesday,
15 18 November 2014)

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