

OPUS 2

INTERNATIONAL

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

Day 8

November 3, 2014

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1 Monday, 3 November 2014
 2 (10.30 am)
 3 MR JUSTICE NUGEE: Yes, good morning, Mr Stuart.
 4 MR STUART: Good morning, my Lord. Your Lordship may have
 5 seen, I have just handed up --
 6 MR JUSTICE NUGEE: A proposed revised timetable.
 7 MR STUART: A proposed revised timetable. There is just one
 8 issue that I just need to bottom out, which is that
 9 Mr Rehman, Ms Birdi's husband --
 10 MR JUSTICE NUGEE: Yes.
 11 MR STUART: We have put him in last thing on Friday because,
 12 as Mr Potts said to me, it seemed silly to come back on
 13 Monday for him, because that had been where we had put
 14 him, because my instructions had been that Mr Rehman is
 15 not available this week.
 16 I have checked with Ms Birdi this morning and she is
 17 sure that he won't be able to be here on Friday because
 18 he is lecturing that day. So he can't, as it were, get
 19 a substitute in. But it may be that we can get some
 20 availability for him on Thursday or even late on
 21 Wednesday or something, so if we need to slot him in, we
 22 are going to try and slot him in --
 23 MR JUSTICE NUGEE: He is not going to be very long.
 24 MR STUART: He is not.
 25 MR JUSTICE NUGEE: And he can be slotted in when it's most

1

1 appropriate.
 2 MR STUART: Yes.
 3 MR JUSTICE NUGEE: Thank you.
 4 MR POTTS: My Lord, you will see some proposals in relation
 5 to closing -- subject of course, to your Lordship. We
 6 have put in some slightly revised proposals on the
 7 assumption that the evidence finishes on Friday.
 8 MR JUSTICE NUGEE: Friday this week?
 9 MR POTTS: Yes, that Monday would be spent preparing some
 10 written closing submissions. Those would be exchanged
 11 at 10 am in the morning on Tuesday. Your Lordship would
 12 then have the day to read those.
 13 MR JUSTICE NUGEE: And a day for oral submissions.
 14 MR POTTS: Then a day, effectively half a day each, on the
 15 Wednesday, so we would complete within our 15-day
 16 allocated time.
 17 MR JUSTICE NUGEE: Yes, that seems reasonably sensible.
 18 This is quite a fact-heavy case.
 19 MR POTTS: It is.
 20 MR JUSTICE NUGEE: And it may be that, when we come to
 21 closing submissions, you might want more than half a day
 22 each. As far as I'm concerned, if it goes over for
 23 another day, it doesn't cause me personally any
 24 inconvenience. You might want to think about that.
 25 MR POTTS: I think, my Lord, it's a sort of toss-up between

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1 how much time for written, as opposed to oral --
 2 MR JUSTICE NUGEE: If we finish by Friday, you lucky people
 3 are going to have the whole weekend as well as Monday
 4 and Monday night, if necessary.
 5 MR POTTS: Indeed.
 6 MR JUSTICE NUGEE: I agree that it's helpful, in a case
 7 where there is a lot of detail, to put things down in
 8 writing because then there is a clear record of them,
 9 but I do find it helpful to have quite full oral
 10 arguments.
 11 MR POTTS: That's helpful.
 12 MR JUSTICE NUGEE: Because there is a lot of factual
 13 dispute. There is also, I think, going to be some
 14 dispute about the law as well, and I will benefit from
 15 oral argument.
 16 MR POTTS: Yes.
 17 MR JUSTICE NUGEE: Yes, Mr Stuart.
 18 MR DEREK DYSON (continued)
 19 Cross-examination by MR STUART (continued)
 20 MR STUART: Good morning, Mr Dyson.
 21 A. Good morning.
 22 Q. Could you have your witness statement bundle, so that's
 23 C. Could you also have E2 and could you also be given
 24 the transcript bundle just for Friday, just for
 25 Mr Dyson's own evidence on Friday. I think that's

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1 day 7, if they are in tabs.
 2 So, Mr Dyson, just before I move on to the next part
 3 of your witness statement, and I think we have got up to
 4 around about paragraph 65, but just before I move on to
 5 66, I just do need to go over with you once more one
 6 point which you were adamant about on Friday, and I just
 7 need to give you an opportunity to comment on it one
 8 last time.
 9 If you go to your transcript bundle -- do you
 10 remember the pagination is four pages to the page?
 11 A. Yes.
 12 Q. If you start on page 99, line 13, {Day7/99:13} the
 13 thorny issue of whether it was the plan, as I was
 14 suggesting to you, and that the plan, before
 15 Mr McAlindon went to the store on 20 February, involved
 16 you buying Mr Patel's shares off him and fixing a price,
 17 and Mr Ryan's department fixing that price before the
 18 20th, or whether it all occurred, as you asserted on
 19 Friday, after Mr McAlindon telephoned you. Do you
 20 remember that issue?
 21 A. I do.
 22 Q. And if you will just look at -- I'm not going to read
 23 them out this time, but if you just look at page 99,
 24 lines 13 to 20? {Day7/99:13}
 25 A. Yes.

4

1 Q. And then over the page, page 101, lines 4 to 8.
2 {Day7/101:4} (Pause)
3 A. Yes.
4 Q. And then page 102, lines 3 to 16. {Day7/102:3} (Pause)
5 And especially lines 10 to 13 of that chunk?
6 {Day7/102:10}
7 A. Yes.
8 Q. Then page 103, lines 22 to 25. {Day7/103:22} (Pause)
9 A. Yes.
10 Q. And carrying on to page 104, lines 1 to 3. {Day7/104:1}
11 (Pause)
12 A. Yes.
13 Q. I think that will probably do it. So you recall your
14 evidence, very clear evidence?
15 A. I do.
16 Q. That the sequence was that there was no plan at all to
17 buy Mr Patel's shares, value those shares, until
18 20 February when Mr McAlindon went to the store and,
19 upon Mr Patel admitting things, Mr McAlindon phoned you;
20 you then set in train Mr Ryan and/or his department
21 valuing those shares?
22 A. Correct.
23 Q. And I suggested to you that it might perhaps have been
24 done on the Friday before, the 16th, and you said,
25 "Absolutely not"?

5

1 A. Correct.
2 Q. Would you just take a look at this document. Just one
3 sheet of paper. My Lord, there is a copy for you there.
4 (Handed)
5 MR JUSTICE NUGEE: Can we decide -- there are a number of
6 loose bits of paper.
7 MR STUART: Yes.
8 MR JUSTICE NUGEE: And at some stage, not necessarily now,
9 decide where you put them. Maybe at the end of the day.
10 MR STUART: My Lord, this one I'm happy to put in somewhere
11 because it hasn't made its way into the trial bundle but
12 it is, as you will see from the bottom right-hand
13 corner --
14 MR JUSTICE NUGEE: It's a disclosed document.
15 MR STUART: -- it's a Specsavers' -- the respondent's
16 disclosed document.
17 MR JUSTICE NUGEE: Yes.
18 MR STUART: And it's dated, just in the bottom line, so we
19 know where we can put it, which is in bundle E2 at
20 page 275A.
21 Do you recall, Mr Dyson -- if you would have
22 page 275 open as well in E2. Do you remember I asked
23 you about this, page 275 in E2? {E/34/275} The email
24 to your assistant, Emma Meagher, from Mr McAlindon at
25 7.40 in the morning of Friday 16 February? Do you

6

1 recall:
2 "Could you ask Derek to give me a call re Dartford
3 this morning ... need to have a chat with him on how he
4 wants us to deal with this in case it does not go to
5 plan."
6 Do you see that?
7 A. Yes.
8 Q. "I will be speaking to Cristina first thing as well to
9 get papers drawn..."
10 Do you see that:
11 "... for suspension, right to investigate, et cetera
12 but want to know if Derek is prepared to go the whole
13 hog..."
14 Do you see that?
15 A. I do.
16 Q. The document I have just passed you is part of your
17 disclosure. It's one of Specsavers' own internal
18 documents. Do you see it?
19 A. I do.
20 Q. It's dated 16 December 2007; that's the Friday. Do you
21 see that? Right at the bottom?
22 A. Yes.
23 Q. And it's prepared by a Mr Steve Glass, who, according to
24 the agreed list of characters -- page 5 for your
25 Lordship's reference -- page 5 of the agreed list of

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1 characters, second item, Steve Glass. He is in the
2 business transfer team, so he works for Mr Ryan, doesn't
3 he?
4 A. Correct.
5 Q. Do you know Mr Glass?
6 A. I do.
7 Q. Does he work in Guernsey?
8 A. He does.
9 Q. Yes. If we see this, it says:
10 "Dividend Dartford Specsavers Limited."
11 Do you see that, at the top?
12 A. Yes.
13 Q. But actually when one reads down -- and I'll give you
14 a chance to go through it -- it's actually a valuation
15 exercise. Do you see the word:
16 "Valuation based upon past profits assuming
17 purchaser is not a bona fide employee and as such that
18 future distributions of profits for the purpose of
19 supporting borrowing can only be paid by dividend."
20 Do you see that?
21 A. No, I don't know we are you are looking at, Mr Stuart.
22 Q. Right at the top of the page under, "Dividend Dartford
23 Specsavers", it says:
24 "Valuation based upon past profits ..."
25 A. Got it; I have it now.

8

1 Q. So this is a valuation exercise being done by somebody
2 in the business transfer department on 16 February and
3 it's valuing Mr Patel's 50 per cent shareholding.
4 Let me take through it. We have got the three
5 years' worth of accounting information; do you see?
6 A. Yes.
7 Q. Years to September 2006, September 2005 and
8 September 2004. We have got the sales and the profit.
9 Then the way he does it is to add back in the directors'
10 remuneration as per the accounts. Of course, that
11 includes both bonuses and other remuneration, doesn't
12 it?
13 A. It does.
14 Q. And then deduct the normal emoluments, salary, so the
15 basic salary, £72,500. That's for the two of them. Do
16 you see that?
17 A. Yes.
18 Q. And that then gives him a sort of net profit figure for
19 each year. Do you see those? 44, 91 and 178 in reverse
20 order?
21 A. Yes.
22 Q. Then there is the weighting, which you described to his
23 Lordship when he asked you about whether you understand
24 how it was done, and you described the weighting. It
25 looks like it's weighted times three for the immediate

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1 year, times two for the year before, and times one for
2 the earliest year. Do you see that?
3 A. I do.
4 Q. And then those three figures are added together and then
5 divided by six. So you get a weighted average of the
6 last three years' profits. Do you see that?
7 A. I do.
8 Q. So that seems to tie in with what you described to his
9 Lordship as being the exercise that Mr Ryan and his team
10 would do, when you went into his office on the 20th and
11 said, "Mike, we need a valuation on Dartford".
12 And then it says:
13 "2006 figures are annualised management accounts
14 from ..."
15 I think that says "PL", profit and loss or
16 something. Would that be right? I suppose I ought to
17 have asked you.
18 A. I think that says, "period 12".
19 Q. "Period 12". I'm wrong and you are right. I should
20 have asked you: do you recognise the writing, "P12", and
21 the 80K and the 125K?
22 A. No.
23 Q. You do not recognise that?
24 A. No.
25 Q. Okay. So then we have a valuation range between two and

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1 three times for a practice of this age and maturity. So
2 the profits, the weighted average profits of 82, are
3 then multiplied by 2, 2.5 or 3. So I think that again
4 chimes with what you told his Lordship would be the
5 methodology for valuing the A shares?
6 A. Correct.
7 Q. When you are buying them from the purchaser, or you are
8 selling them to somebody else.
9 Then it says:
10 "Sales shares as a percentage of total
11 A shareholding, 50 per cent."
12 So obviously, in this case Mr Patel had 50 per cent
13 of the A shares?
14 A. Yes.
15 Q. And so suggesting:
16 "The sale shares..."
17 That's obviously a sale of the shares, Mr Patel's
18 shares:
19 "... would be worth ..."
20 And then we have got three figures depending upon
21 the multiplier. Whether it's 2, 2.5 or 3, the shares
22 are either worth 82-and-a-bit, or 103, or £123,500. Do
23 you see?
24 A. I do.
25 Q. So getting Mr Patel's sale shares for £55,000, as per

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1 the share sale agreement that Ms del Grazia had drafted,
2 that would fall within a figure significantly lower than
3 the business transfer department's valuation of those
4 shares on the Friday, one working day before
5 Mr McAlindon goes to see Mr Patel?
6 A. I do.
7 Q. So that's the shares, and then there is what looks to me
8 like a calculation of terminal dividend.
9 Do you want to just have a look at that next chunk
10 which starts:
11 "Assuming the average profit remains at current
12 year's level for the foreseeable future ..."
13 Do you see that?
14 A. I do.
15 Q. And then it seems to be that a calculation is done,
16 netting down the dividend, which then equates to
17 a monthly repayment over five years of £974.
18 MR JUSTICE NUGEE: Mr Stuart, it doesn't appear to me that
19 it's a calculation of terminal dividend. What it says
20 it's a calculation of is the maximum capital value of
21 the loan, which is a rather different thing.
22 MR STUART: Yes, but there is a -- yes.
23 The loan is not the directors' loan that's sitting
24 in the accounts of the company at that time, is it,
25 Mr Dyson?

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1 A. I have no idea.
 2 Q. This is -- it says:
 3 "Profits attributable to purchaser's
 4 A shareholding."
 5 And we can see that the figure is £22,252. Do you
 6 see?
 7 A. I do.
 8 Q. Which is exactly 50 per cent of the figure under
 9 management accounts, the profit figure, of £44,504. So
 10 £44,504 are the profits, the accrued profits?
 11 A. Yes.
 12 Q. Do you see? And exactly 50 per cent of that is £22,252.
 13 So this appears to be a calculation in relation to the
 14 profits for the year, doesn't it?
 15 A. It would appear so.
 16 Q. And that share of the profits that is attributable to
 17 Mr Patel's A shareholding is 50 per cent. He is
 18 entitled to 50 per cent of that profit. That's right,
 19 isn't it?
 20 A. Correct.
 21 Q. And then what the figures seem to show is that the tax
 22 has been deducted from that. Do you see?
 23 A. Yes.
 24 Q. £6,675 deemed tax has been deducted from that to produce
 25 a net dividend -- I think that's why I used the

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1 "dividend" word, which his Lordship has picked up. It
 2 seems to me to be a calculation of a net dividend, which
 3 is then to be repayable over a period of time. Do you
 4 see that?
 5 A. I do.
 6 Q. Is that a fair summary of it, that chunk?
 7 A. Yes, it looks like that.
 8 MR JUSTICE NUGEE: Can I ask you, Mr Dyson, do you recognise
 9 a calculation of this type?
 10 A. No.
 11 MR JUSTICE NUGEE: And why it's done?
 12 A. No.
 13 MR JUSTICE NUGEE: No. So you are looking at this document,
 14 trying to make sense of it. You are not drawing on your
 15 knowledge of what this type of calculation is done for
 16 or how it's done?
 17 A. No, I have no knowledge of it.
 18 MR JUSTICE NUGEE: Thank you.
 19 MR STUART: We are not going to hear from Mr Ryan or
 20 Mr Glass in this case, are we, Mr Dyson?
 21 A. No.
 22 Q. Or anybody else from the business transfer team who were
 23 involved in valuing these shares?
 24 A. No. Mr Ryan no longer works for the company.
 25 Q. Yes.

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1 MR JUSTICE NUGEE: Mr Stuart, let me make it clear I have no
 2 objection to you asking questions as to what he can
 3 derive from a document, but there is a difference
 4 between deriving something from a document and deriving
 5 it from your experience.
 6 MR STUART: I understand, my Lord; I do understand.
 7 So Mr Dyson, I'm going to suggest to you that in the
 8 light of that document -- and it's dated 16 February
 9 2007; do you see?
 10 A. I do.
 11 Q. Prepared by the business transfer team on that Friday,
 12 coincidentally the same day that Mr McAlindon has
 13 emailed you at 7.42 in the morning asking to catch up
 14 that day to discuss the plan; yes?
 15 A. Yes.
 16 Q. I'm going to suggest to you that your evidence that you
 17 gave on Friday, where you were absolutely adamant on the
 18 five occasions I have shown you from the transcript that
 19 there was no plan to consider buying Mr Patel's shares
 20 or to value those shares until after Mr McAlindon had
 21 telephoned you on the 20th -- I'm going to suggest to
 22 you that that evidence is not correct?
 23 A. My evidence is true.
 24 Q. Do you have any explanation as to why --
 25 A. I have never seen this before. I have got no

15

1 explanation for it at all, no.
 2 Q. Even looking at this document now, you don't wish to
 3 amend your evidence?
 4 A. I don't, no.
 5 Q. Right. Let's move on.
 6 As I say, I think we have got to paragraph 65 of
 7 your first witness statement. {C/9/103} Can we pick up
 8 the story at paragraph 66, where you start now dealing
 9 with the disciplinary process which was to be conducted
 10 by Mr Raines. Do you see that?
 11 A. I do.
 12 Q. Can I just ask you: does Mr Raines report to you?
 13 A. He does, yes.
 14 Q. He is the director of retail operations at SOS, as you
 15 say?
 16 A. Right.
 17 Q. That's what you say in paragraph 66?
 18 A. Yes.
 19 Q. Could you just explain to his Lordship the difference,
 20 for these purposes, between SOS and SOG?
 21 A. SOS is Specsavers Optical Group based in Guernsey and
 22 Mark Raines works for Specsavers Optical Superstores,
 23 which is our UK business that provides the services and
 24 support to the stores.
 25 Q. I think, just for the sake of the record, I think you

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1 just made an innocent error. You meant SOG is
 2 Specsavers Optical Group, based in Guernsey.
 3 A. Yes.
 4 Q. And SOS?
 5 A. Is Specsavers Optical Superstores.
 6 Q. Which is a UK company?
 7 A. Which is a UK company.
 8 Q. Who owns SOS?
 9 A. SOG.
 10 Q. Right. So it's a UK subsidiary, if you like?
 11 A. Correct.
 12 Q. The disciplinary process, you say, was conducted by
 13 Mr Raines and you say you had no input in Mr Raines's
 14 decision-making?
 15 A. That's correct.
 16 Q. Who chose Mr Raines?
 17 A. I have got no idea. I wasn't involved in that
 18 decision-making process.
 19 Q. Right. But I thought you and only you were the person,
 20 the natural person, who was making the decision to go
 21 through the disciplinary process?
 22 A. I had instructed people to carry out the investigation
 23 and a report obviously was produced, and Legal would
 24 have contacted Mr Raines and asked him to carry out the
 25 disciplinary process.

17

1 Q. Yes. But my point: why Mr Raines?
 2 A. Because he is the most senior person below me and would
 3 be the natural person, I would have thought, of choice.
 4 Q. Okay. We have obviously moved from Mr McAlindon doing
 5 his investigation; yes?
 6 A. Correct.
 7 Q. To Mr Raines doing the disciplinary part of the process?
 8 A. I think it was Mr McAlindon and Mr Neil Hamilton who
 9 were involved in the investigation.
 10 Q. Yes. But taking the step from investigation, McAlindon
 11 and Hamilton, to disciplinary, that's obviously an
 12 important step, isn't it?
 13 A. It is, yes.
 14 Q. Who do you say took that decision?
 15 A. I don't actually know but -- if I said it, I would just
 16 be guessing.
 17 Q. Okay.
 18 A. But certainly the legal team would have been involved in
 19 that selection process.
 20 Q. Right. If we go to the actual documents at this
 21 point -- this is E2/393. {E/77/393}
 22 A. 393?
 23 Q. 393. This is April 2007. Do you remember Ms Birdi had
 24 complained about Mr McAlindon being involved?
 25 A. Sorry --

18

1 Q. Do you remember Ms Birdi had complained about
 2 Mr McAlindon's involvement and bullying/intimidation.
 3 Do you remember? We saw that last week.
 4 A. I don't remember that. I remember that we discussed
 5 that there was a grievance raised by Ms Birdi.
 6 Q. Yes. About Mr McAlindon?
 7 A. Correct.
 8 Q. Okay. That's fine. So you understand the context of
 9 this letter and you will see in the third paragraph:
 10 "In the Dartford situation, the investigation is
 11 carried out through the specialised services of the
 12 Specsavers Loss Prevention & Audit department."
 13 A. Correct.
 14 Q. "If, on receipt of the investigation report (and without
 15 prejudging the results of the current ongoing
 16 investigation at Dartford or assuming that any
 17 disciplinary action will actually be necessary), it is
 18 considered that there is a case to answer, then you will
 19 be invited formally for a disciplinary hearing."
 20 Do you see that?
 21 A. I do.
 22 Q. That seems to be the thought process of SOG. And then
 23 at the bottom of that page:
 24 "We note that you have made a formal complaint
 25 regarding Mr McAlindon's conduct..."

19

1 Do you see that?
 2 A. Correct.
 3 Q. Over the page: {E/77/394}
 4 "All complaints of this nature are taken very
 5 seriously and we have questioned both Mr McAlindon and
 6 Mr Barnes as to the events of that day."
 7 Do you see that?
 8 A. I do.
 9 Q. This is the day when Ms Birdi was suspended, 27 March,
 10 okay?
 11 A. Okay.
 12 Q. Which is the day when Mrs Frondigoun says that
 13 Mr McAlindon was there, intimidating Ms Birdi.
 14 A. That's her evidence, yes.
 15 Q. So:
 16 "All complaints of this nature are taken very
 17 seriously and we have questioned both Mr McAlindon and
 18 Mr Barnes as to the events of that day."
 19 Who is "we"?
 20 A. I understand that Mr Clark was the gentleman who did the
 21 investigation.
 22 Q. Okay:
 23 "We are satisfied that no inappropriate behaviour on
 24 their part took place."
 25 Who is the "we"? Is that Mr Clark also?

20

1 A. Mr Clark would only present his findings.
 2 Alison Anderson is the authorised signatory for
 3 Specsavers Optical Group, so I assume that she is saying
 4 "we" is Specsavers Optical Group.
 5 Q. Who is the director at Specsavers Optical Group, who is
 6 taking that decision? Is that you?
 7 A. I have got no recollection of it. It could have been me
 8 but I have no recollection.
 9 Q. Okay. Could you think of anyone else it might have been
 10 apart from you?
 11 A. It doesn't spring to mind, Mr Stuart.
 12 Q. Okay. Then the next paragraph is the response to the
 13 complaint, if you like. It says:
 14 "Notwithstanding the above, it would be impractical
 15 and unrealistic at this stage of the process for
 16 Mr McAlindon not to continue with the remaining part of
 17 the investigation..."
 18 So SOG has decided that Mr McAlindon is going to
 19 continue to carry out the investigation; do you see
 20 that?
 21 A. I do.
 22 Q. "However, to show respect for your feelings and
 23 comments, Mr McAlindon has agreed to be accompanied by
 24 a senior person appointed by this office to act as an
 25 independent observer at the investigatory interview."

21

1 Do you see that?
 2 A. I do.
 3 Q. Were you involved in that decision at all?
 4 A. I have got no recollection at all of any of this.
 5 Q. Do you know who the senior observer was?
 6 A. I don't, no.
 7 Q. All right. If you just go back to your witness
 8 statement then, 66. You say that you had no input into
 9 Mr Raines's disciplinary process. {C/9/103} Is that
 10 right?
 11 A. Absolutely not.
 12 Q. Just to be clear, did you have input into appointing
 13 Mr Raines -- input into appointing Mr Raines, or not?
 14 A. I don't remember, but I may have done.
 15 Q. Okay. We don't seem to have any documents showing your
 16 input, any meeting or notes of a telephone call or
 17 a conversation or anything. Is that right?
 18 A. That's correct.
 19 Q. Okay. By this time, have you taken over day-to-day
 20 management of the store?
 21 A. When you say "by this time", Mr Stuart, can you give me
 22 a point --
 23 Q. So April 2007. Ms Birdi was suspended on 27 March 2007?
 24 A. Yes.
 25 Q. Mr Patel had obviously left in February.

22

1 A. Correct.
 2 Q. So by this time, April 2007, have you taken over
 3 day-to-day control?
 4 A. Yes, we must have done.
 5 Q. Yes. Are you doing that as A shareholder because you
 6 own Mr Patel's A shares, or are you doing that as
 7 B shareholder, because there are no
 8 A shareholders/A directors available?
 9 A. My recollection at the time is because we were
 10 A shareholder.
 11 Q. Okay. To the extent that all that then happens -- and
 12 we are coming to it now, "Emergency management cover"
 13 onwards in your statement -- are matters of day-to-day
 14 management of the store, was there any reason why you
 15 wouldn't involve Ms Birdi, at least in joining you as an
 16 A director?
 17 A. Ms Birdi was suspended.
 18 Q. From her employment only?
 19 A. But I also would understand from that she was suspended
 20 from her duties as an A director until the investigation
 21 was completed.
 22 Q. Okay. One of the things that seems to happen at this
 23 stage, so May 2007, is obviously that Mr McAlindon is
 24 sent in to pursue further investigations with two
 25 members of staff, Lorraine Frondigoun and

23

1 Patrice O'Brien. We find that at E2, page 418, 1 May,
 2 the interviews. {E/86/418} The first is with
 3 Lorraine Frondigoun, 418 and then Patrice O'Brien is
 4 426. {E/86/426} Do you see that?
 5 A. I do.
 6 Q. Did you have any input yourself as the A director or
 7 controlling A director -- you are SOG, aren't you? You
 8 are the director of SOG who is conducting the --
 9 A. Investigation.
 10 Q. Did you have any personal input into sending
 11 Mr McAlindon in on 1 May to get these interviews?
 12 A. When you say "personal", what does that mean?
 13 Q. Did you speak to Mr McAlindon and he said to you,
 14 "Right, I want to try and get some evidence against
 15 Ms Birdi; I'm going to go in and speak to two members of
 16 staff"?
 17 A. No.
 18 Q. Did you know he was going in on 1 May?
 19 A. Not particularly, no, but I knew that Mr McAlindon was
 20 going to be carrying out an investigation.
 21 Q. Yes. Under what authority was he carrying out that
 22 investigation by this point, 1 May 2007?
 23 A. He was under the authority of SOG, who is
 24 a B shareholder and entitled to carry out the
 25 investigation into serious matters.

24

1 Q. From your answer, do I gather that you are suggesting
2 that the authority comes through the B shareholding;
3 because you are a B shareholder and a B director, you
4 can send him in?
5 A. We can -- with the powers that we have under the
6 B shareholding, we are entitled, when it is of a serious
7 nature, to carry out an investigation.
8 Q. Okay. Do you say that's in the shareholder agreement?
9 Because in the shareholder agreement, everything other
10 than the day-to-day management, which goes to the
11 A directors, and the financial payments, which goes to
12 the B shareholders -- everything else is not day-to-day
13 management and has to be the subject of a duly convened
14 board meeting. Do you remember?
15 A. But this is an emergency and we have -- my understanding
16 of the rights as the B shareholder -- to carry out an
17 investigation when there is a threat to the business,
18 threat to profitability and just, you know, things that
19 are very serious.
20 Q. There is no emergency by 1 May, is there? Ms Birdi has
21 been suspended on 27 March. She is out of the store.
22 On your version of events, she can't doing anything at
23 all. So what's the emergency?
24 A. I'm slightly confused, Mr Stuart, as to -- could you
25 repeat the original question because my understanding

1 was that this investigation is continuing throughout
2 a long period of time that has been going on.
3 Q. It's no longer an emergency then, is it? If it's going
4 on over a long period of time, it's not an emergency?
5 A. What's not an emergency?
6 Q. The steps being taken at this point in time.
7 A. No, it's due process now.
8 Q. Right. But the due process under the shareholders'
9 agreement requires you to call a duly convened board
10 meeting to authorise matters such as this, which are
11 outside day-to-day management matters.
12 A. I understand that.
13 Q. And you could have called a board meeting?
14 A. We could have done, but we didn't.
15 Q. Yes. Why?
16 A. I'm not sure I know the answer to that question. What
17 I do know is it was within our gift to rectify that
18 position at a later time by ratifying the actions we
19 took through a board meeting, of which we would have
20 been chairman and we would have had casting vote.
21 Q. But you don't know what breaches of fiduciary duty you
22 might have committed to allegedly ratify?
23 A. Well, we will know at the end of the investigation.
24 Q. Okay. The next issue that arises is salary reviews,
25 because Mr McAlindon says that after he spoke to the two

1 staff, the issue of their salaries arose. If you go to
2 page 433, do you see that? {E/88/433}
3 A. I do.
4 Q. And Ms Slark, or Mrs Groves, has been tasked with the
5 job, by Mr McAlindon, of looking at the salaries and
6 bonuses. Do you remember?
7 A. I think Ms Slark was there to manage the day-to-day.
8 Q. She was, but in relation to salaries and bonuses, she
9 had been tasked by Mr McAlindon to look at this issue?
10 A. Where is that reference?
11 Q. I think it's in Mr McAlindon's own witness statement,
12 actually?
13 A. I'm not aware of that.
14 Q. You are not aware. Okay. So you do not know how it
15 came to be that Ms Slark produced these figures?
16 A. No.
17 Q. This proposal?
18 A. No.
19 Q. If we look at page 434, {E/88/434} Ms Slark writes to
20 Mr McAlindon at the end. Do you see the penultimate
21 sentence:
22 "The attachment is for you at the moment, let me
23 look at working against accounts to see if you can then
24 take it to the board for approval.
25 "I have been very generous here!"

1 Exclamation mark. And then the attachments are
2 these salary increases; do you see?
3 A. I do.
4 Q. If we go to page 450 -- actually, we should pick it up
5 at 447. {E/95/447}
6 On 16 May, so that's two weeks later, Ms Slark
7 writes to Mr McAlindon; the bottom email, do you see:
8 "Hi Mel.
9 "I have worked with the figures and based the
10 suggestion of salary increases on the fact that staff
11 have not had even a salary review in line with inflation
12 for years..."
13 Do you see that?
14 A. I do.
15 Q. That's how many years? Do you know?
16 A. My understanding it was two or three years.
17 Q. Okay. Then she explains what she has done and she says:
18 "Please could you look at this suggestion going to
19 board level..."
20 Do you see that?
21 A. Correct.
22 Q. Ms Slark is working in her capacity there as managing
23 the Dartford Specsavers, isn't she?
24 A. Correct.
25 Q. So the board level that she is talking about is the

1 board of Dartford Specsavers and/or Dartford Visionplus,
 2 its subsidiary, who was the actual employer that
 3 employed all of these people and would have been giving
 4 them their salary increases and bonuses?
 5 A. You can make that assumption. I don't know for a fact,
 6 but that's probably what Carol was doing.
 7 Q. Yes. But you didn't put this to the board, did you, of
 8 Dartford Visionplus or Dartford Specsavers, because
 9 Ms Birdi would have been on that board, wouldn't she?
 10 She was a director of those two companies?
 11 A. Sorry, that -- can you just repeat that because I think
 12 you have jumped a step here. This is a proposal --
 13 Q. That's right, and she asks --
 14 A. -- that comes through to me.
 15 Q. That's right, and she asks that the suggestion goes to
 16 the board level. So she wants board level approval for
 17 these salary increases and bonus increases?
 18 A. Yes.
 19 Q. She is actually in position, running the store?
 20 A. But at this point in time, this is not -- hasn't come to
 21 me.
 22 Q. We are just about to see it come to you --
 23 A. Okay, then I think then it's relative --
 24 Q. -- a couple of hours later?
 25 A. -- at that point that it comes to me to answer the

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1 question, but at this point in time, it's going through
 2 a process.
 3 Q. The process is: she has come up with some figures as
 4 requested of her by Mr McAlindon?
 5 A. Yes.
 6 Q. She has sent them to Mr McAlindon, 16 May, and then on
 7 17 May at 7.15 in the morning, Mr McAlindon forwards
 8 them on to you?
 9 A. Correct.
 10 Q. And forwards that email to you, the one that says:
 11 "Please could you look at the suggestion going to
 12 board level."
 13 A. Correct.
 14 Q. And says:
 15 "Derek.
 16 "Following our interviews, salaries were identified
 17 as being an issue..."
 18 The only interviews that we have evidence of are
 19 interviews on 1 May, the ones I took you to with the
 20 interview notes. Do you remember?
 21 A. Sorry, can you say that again?
 22 Q. "Derek,
 23 "Following our interviews, salaries were identified
 24 as being an issue..."
 25 That's Mr McAlindon telling you that --

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1 A. It is --
 2 Q. -- at the interviews --
 3 A. -- but you were saying it was just those interviews.
 4 I don't know whether it's those interviews or other
 5 interviews.
 6 Q. Okay. Do you know of some other interviews that
 7 Mr McAlindon had at that time?
 8 A. He was doing an investigation, so he would have been
 9 conducting interviews.
 10 Q. With whom? I'm interested to hear?
 11 A. I have got no idea.
 12 Q. You have no idea? Okay. If we don't have interview
 13 notes from his interviews, are we to presume that there
 14 are no such interviews?
 15 A. Yes, that infers that.
 16 Q. Okay, I have taken you to the two interview notes that
 17 he has provided, one for Mrs Frondigoun and one
 18 Mr Ms O'Brien. Those are the two interviews?
 19 A. Okay.
 20 Q. "Following our interviews, salaries were identified as
 21 being an issue, which I asked Carol to review."
 22 Do you see?
 23 A. Okay.
 24 Q. So it does look like you knew that it was Mr McAlindon
 25 who was the person who had started the ball rolling with

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1 Carol Slark about these salary reviews?
 2 A. Only at the point I received the email.
 3 Q. Yes. And Mr McAlindon says:
 4 "Her proposals seem appropriate and reasonable, and
 5 I feel should be approved. Could you authorise this,
 6 should I pass the proposal to someone else to review or
 7 should we leave it on hold?"
 8 That's just to you, personally. Do you see?
 9 A. Correct.
 10 Q. And you reply at page 450. {E/97/450} It appears that
 11 initially, there was some problem sending the
 12 attachment, but if you go to the top, it looks like the
 13 attachment has got through and you write:
 14 "Mel.
 15 "Thanks for the email.
 16 "I agree with Carol's sentiments but we need to
 17 discuss the proposals with Legal ... so no action yet."
 18 Do you see?
 19 A. Correct.
 20 Q. "We may need Directors approval for this sort of action
 21 (day to day business)."
 22 A. Correct.
 23 Q. So coming back to it, these salary increases, Ms Slark
 24 wanted board approval. I have suggested to you that's
 25 board approval of the employer company or its --

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1 A. Well, there is a step in between that, because I then
2 went to Cristina del Grazia.
3 Q. Yes.
4 A. And spoke to her about this.
5 Q. Yes.
6 A. Following that consultation, I was happy that I could
7 continue as the A director representing Dartford
8 Visionplus and could make those decisions. So it didn't
9 need to go to board.
10 Q. So you now as the A director of Dartford Visionplus?
11 A. Correct.
12 Q. I have taken you to this at length and you seemed to
13 acknowledge that Dartford Visionplus doesn't have an
14 A director -- doesn't have A shareholders and
15 B shareholders?
16 MR JUSTICE NUGEE: It doesn't have A shareholders; it has
17 A directors, does it not?
18 MR STUART: Not A directors, A and B directors. It has
19 directors. The shares of Dartford Visionplus Limited
20 are not A and B shares, my Lord.
21 MR JUSTICE NUGEE: No, I understand that.
22 MR STUART: And so there are no A directors --
23 MR JUSTICE NUGEE: There are no A shareholders and
24 B shareholders, but I'm not sure that it follows that
25 there are no A directors and B directors. (Pause)

1 If one looks at 3.1.1 -- this may not be the right
2 moment to be having this debate, but 3.1.1 of the
3 shareholders' agreement says -- {D/15/180}
4 MR STUART: Which company, my Lord?
5 MR JUSTICE NUGEE: The shareholders' agreement.
6 MR STUART: That's the shareholder agreement for a different
7 company.
8 MR JUSTICE NUGEE: Yes. It says:
9 "The Directors hereby delegate all their powers of:
10 "3.1.1 day to day management of the business of the
11 Company and any Subsidiary to the A directors."
12 MR STUART: Of the -- the A directors are different.
13 MR JUSTICE NUGEE: The A directors are just people.
14 MR STUART: Yes, but the A directors are the A directors of
15 Dartford Specsavers Limited.
16 MR JUSTICE NUGEE: They are the registered holders of the
17 A shares in Dartford Specsavers Limited, agreed.
18 MR STUART: Yes.
19 MR JUSTICE NUGEE: But what the shareholders' agreement
20 seems to say is that those people delegate their powers
21 of management of the subsidiary to the people described
22 as A directors.
23 MR STUART: That's right. The A directors of Dartford
24 Specsavers Limited, who at this time are Ms Birdi and,
25 according to Mr Dyson, SOG, those are the A directors of

1 Dartford Specsavers Limited. They, the A directors of
2 Dartford Specsavers Limited, have powers of day-to-day
3 management of the subsidiary.
4 MR JUSTICE NUGEE: Yes. We may be at cross purposes. I'm
5 not sure that it matters. My understanding is that what
6 Mr Dyson has told me is that in this respect, following
7 a conversation with Ms del Grazia, he took the view that
8 in his capacity as A director -- that is, on behalf of
9 SOG, which was then the A director of Dartford
10 Specsavers Limited, because it was the A shareholder --
11 he could take day-to-day management decisions on behalf
12 of Dartford Visionplus.
13 MR STUART: That seems to be what he is saying.
14 MR JUSTICE NUGEE: Yes.
15 MR STUART: Yes.
16 MR JUSTICE NUGEE: And you were suggesting to him --
17 MR STUART: No, I was asking him, "A director of which
18 company?" to see whether he actually had any actual
19 understanding of what he was doing at all, because
20 I don't accept that he does, but I wanted to just
21 clarify with him what he meant by the A directors.
22 Is his Lordship correct: what you meant by the
23 A directors is the A directors of Dartford Specsavers
24 Limited?
25 A. Correct.

1 Q. Those A directors were SOG, acting through you, you say?
2 A. Correct.
3 Q. And Ms Birdi?
4 A. Who was suspended. And her duties were suspended as
5 well.
6 Q. What duties?
7 A. As the A director of day-to-day.
8 Q. How do you say you suspended her from her duties as
9 a director of Dartford Specsavers Limited?
10 A. My understanding was that once she was suspended as an
11 employee, she was also suspended of her powers in terms
12 of day-to-day management and therefore was not active as
13 an A director. That is my understanding.
14 Q. Where did you get that understanding from?
15 A. Through consultation with Legal.
16 MR POTTS: I think that's likely to stray into privilege, my
17 Lord.
18 MR JUSTICE NUGEE: He just said it's through consultation
19 with Legal.
20 MR POTTS: I just want to make clear there is no way --
21 MR JUSTICE NUGEE: Yes.
22 MR STUART: All right. And then page 457; do you see 457?
23 {E/100/457}
24 A. Yes.
25 Q. 22 May, Mr Lunn. Now, which department is Mr Lunn --

1 A. 22 May?
 2 Q. Yes, the bottom email on page 457. You have to read
 3 them in reverse order.
 4 A. Oh, sorry. I'm at the bottom, yes.
 5 Q. Mr Lunn on 22 May is writing to Mr Ryan. Mr Lunn is in
 6 which department?
 7 A. Mr Lunn is the manager of the shared venture.
 8 Q. He's shared venture portfolio. And Mr Ryan is in
 9 business transfer; we have already had him today?
 10 A. Correct.
 11 Q. "Hi Mike.
 12 "The latest rumour is that the Gravesend partners
 13 have been seen in the Dartford store because they are
 14 buying it?!"
 15 "Are you aware of this?"
 16 Do you see that?
 17 A. I do.
 18 Q. And then Mr Ryan replies to Mr Lunn on the top and he
 19 copies in Mr Glass, who is the man who did that
 20 valuation, isn't he?
 21 A. Correct.
 22 Q. And Mr Howarth; which department is Mr Howarth in?
 23 A. Partner recruitment.
 24 Q. And Mr Markham; which department is he in?
 25 A. Partner recruitment.

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1 Q. Okay. So we have the business transfer team and partner
 2 recruitment and the shared venture department in this
 3 email and there, Mr Ryan is saying to Mr Lunn:
 4 "Hi Neil.
 5 "We are not at the moment seeking buyers for any
 6 shares in Dartford."
 7 Do you see that?
 8 A. I do.
 9 Q. So it would appear that SOG's position as at 22 May, or
 10 23 May at least, was that you are not selling the Patel
 11 shares that you have acquired three months earlier?
 12 A. Not at this time, no.
 13 Q. "The Gravesend partners have asked to be considered
 14 if/when shares are for sale.
 15 "This is in Mel's realm at the moment."
 16 The only thing in Mel's realm at that moment,
 17 22 May, would be Ms Birdi's position, wouldn't it?
 18 A. Well, Mr McAlindon is still continuing with the
 19 investigation. Mr Ryan is, at the moment, not bringing
 20 those shares for sale because it's not a really good
 21 time. It's inappropriate. We don't know what the
 22 outcome is going to be, and introducing other partners
 23 in at this time, I would imagine that Mr Ryan is saying,
 24 "We need to get clarity on the outcome and the process
 25 that's currently going on", is the way that I would

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1 understand it.
 2 Q. Okay. Perhaps I should have asked you: did you have any
 3 knowledge of this at the time? You were overseeing --
 4 A. No --
 5 Q. -- all of these departments and --
 6 A. -- I had knowledge of this email, no, or this
 7 correspondence.
 8 Q. Or this decision, this decision that you are not selling
 9 at this moment. Were you aware of that?
 10 A. I was aware that Mr Ryan and I had discussed whether it
 11 was appropriate and that's what I just said: we decided
 12 that until this was properly investigated and resolved,
 13 we weren't doing anything with the shareholding.
 14 Q. So when you say it was properly resolved, the only thing
 15 to be resolved was the investigation into Ms Birdi? You
 16 have already told the court that you stopped the
 17 investigation into Mr Patel on 20 February, after
 18 speaking to Ms del Grazia?
 19 A. Yes, and what I have just said, Mr Stuart, is that at
 20 this moment in time, with what was going on, the
 21 disruption in the store, it was not the right time to
 22 start having another director being brought into this
 23 business when we have got another director in the
 24 business being investigated.
 25 Q. And I'm going to suggest to you, Mr Dyson, that the plan

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1 at this time was for Mr McAlindon to create a case to
 2 get rid of Ms Birdi so that you, Specsavers Optical
 3 Group, could then have all of the A shares and you could
 4 do what you pleased with the store. That is, either put
 5 it into group venture, shared venture, or sell the
 6 shares that you acquired from Mr Patel and you were to
 7 acquire from Ms Birdi, at a significant profit to SOG?
 8 A. No, that's not correct.
 9 MR JUSTICE NUGEE: Can I ask you: do I understand from the
 10 answers you have just given to Mr Stuart that at this
 11 date, one of the possible outcomes which you foresaw to
 12 Mr McAlindon's investigation was that Ms Birdi would
 13 lose her position in the store and that you would then
 14 have all the shares available?
 15 A. I think there's two things, my Lord. One is what you
 16 have just said and that is, there was a possibility that
 17 the outcome could result in Ms Birdi not being there;
 18 but equally, there was also the situation that the store
 19 obviously had been through quite a lot of turmoil. We
 20 did not want to introduce another partner into
 21 a business that had those matters outstanding that
 22 hadn't been dealt with or resolved.
 23 So we weren't talking to anybody about the shares in
 24 Dartford, and those were, you know, people interested in
 25 Mr Patel's shares. We parked that until we got the

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1 investigation and the disciplinary completed.
 2 MR JUSTICE NUGEE: Thank you.
 3 MR STUART: Was group venture a possible outcome for this
 4 store at this stage?
 5 A. Of course it -- it must have been because we don't know
 6 what the decision was going to be made by Mr Raines.
 7 Q. Was the acquisition of Ms Birdi's shares, at a price
 8 following the disciplinary investigation, and then the
 9 sale of both sets of shares to a new set of joint DO and
 10 OO, so a JV partnership -- was that a possibility at
 11 this stage?
 12 A. They are all possibilities because we don't know the
 13 outcome of the investigation or the disciplinary action.
 14 Q. But you did have an idea of Mr McAlindon's view of the
 15 outcome of the disciplinary, didn't you, by this stage,
 16 because you told his Lordship on Friday that
 17 Mr McAlindon had told you that she was guilty, in his
 18 view?
 19 A. I don't remember that at all, I'm afraid.
 20 Q. All right. Did you have a view as to the likelihood of
 21 her guilt at this stage?
 22 A. No, I knew that the allegations were very serious but
 23 I had no view on the outcome.
 24 Q. Okay. So finally in this bundle -- and I would like to
 25 be able to put it away -- you deal with the bonus, or

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1 rather I don't see you dealing with the bonus. The
 2 bonus comes in at page 488. {E/104/488}
 3 Do you remember Ms Slark had suggested not only
 4 salary increases to certain members of staff, but also
 5 a complete new bonus structure. Do you remember?
 6 A. I do.
 7 Q. Did you approve this complete new bonus structure?
 8 A. I did.
 9 Q. So when did you do that?
 10 A. When I was -- at the point when I was considering the
 11 salary increases, because it was part of the
 12 communication around that time.
 13 Q. Was it? Where do you say you communicated that the
 14 bonus structure should be amended in this fundamental
 15 way? I don't think you were here on the day, but we
 16 went through the evidence to see the difference between
 17 the old type of bonus structure and the new bonus
 18 structure. It's a completely different structure, isn't
 19 it?
 20 A. It's a bonus structure, yes. We have lots of different
 21 bonus structures. They change all the time within
 22 Specsavers. Each store has their favourite of how to
 23 motivate their staff. This happens to be one that had
 24 been used in another store that Ms Slark had
 25 obviously -- Mrs Groves had been involved in.

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1 Q. Okay. Did you understand that the effect of this bonus
 2 structure might be that the store could actually perform
 3 worse than it had --
 4 A. And whose opinion is that?
 5 Q. Sorry?
 6 A. Whose opinion is that?
 7 Q. It's the analysis that I think has been agreed upon.
 8 A. I have not agreed any analysis.
 9 Q. Okay.
 10 A. This is a bonus structure which is motivating staff --
 11 same day last year -- to drive the sales forward. If
 12 they drive the sales forward by working together as team
 13 they will get 10 per cent -- they will get £10 for
 14 a 10 per cent increase. It's self-funding. It's
 15 a self-funding bonus scheme.
 16 Q. Okay, but did you understand that it works this way: the
 17 calculation is done by taking a week, sales for a week.
 18 Do you understand that?
 19 A. I'm listening to you, yes.
 20 Q. And then dividing the week's sales figure -- let's say
 21 £18,500 from the previous year -- dividing that by
 22 six -- not weighted to take account of the fact that
 23 Saturdays always have hugely more turnover than Mondays,
 24 but simply a straight division by six. So you take the
 25 £18,500, you divide it by six and you get £3,085 for one

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1 day and then, if the store does better than £3,085 -- do
 2 you understand?
 3 A. I do understand, Mr Stuart. I'm just looking for
 4 a reference point where what you are saying is the bonus
 5 structure.
 6 Q. This is the bonus suggestion. Did you understand how
 7 this bonus was to work?
 8 A. I haven't seen this document until you have taken me to
 9 it now, so --
 10 Q. So what bonus scheme did you approve, because you are
 11 the man who approved the new bonus scheme?
 12 A. My understanding at the time was that this would be same
 13 day last year, and that would become the target for the
 14 day and everybody was then charged with trying to
 15 improve that turnover for that day by either 10 per cent
 16 or 20 per cent, in order to earn a bonus.
 17 Q. I see. So you thought the store records for 1 June 2006
 18 would have a turnover for that day, and then on
 19 1 June 2007, under the new bonus scheme, one would
 20 simply compare the turnover for 1 June 2007 with
 21 1 June 2006 and if --
 22 A. Same day last year.
 23 Q. Same day last year -- and if the turnover had gone up by
 24 20 per cent, then each of the members of staff who were
 25 on the team would get £20?

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1 A. That was my understanding, yes.
 2 Q. That is not actually how the bonus worked.
 3 A. At the time, I didn't have this. I didn't know that
 4 this was the scheme. I understood it, at the time
 5 I approved it, to be the one I have just described.
 6 Q. Okay. So what documents relating to a bonus scheme did
 7 you have available to you when you made that decision?
 8 A. I can't remember.
 9 Q. You see, I have taken you to page 447. {E/95/447} Do
 10 you remember? And the salary review, ie the page 448,
 11 {E/95.1/448} that you did have. It's an attachment --
 12 A. Yes.
 13 Q. -- to an email to you. Do you see that?
 14 A. Yes.
 15 Q. I can't see that you had any notice of or input into the
 16 new bonus scheme?
 17 A. I was aware of it because I can remember it. How
 18 I became aware of it -- I can't answer your question,
 19 Mr Stuart.
 20 Q. Okay. Do you have any notes of your decision-making
 21 process in reaching this --
 22 A. No.
 23 Q. Did you discuss it with any other members of the board,
 24 of any company?
 25 A. No.

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1 Q. Did you not think it would be appropriate to at least
 2 involve Ms Birdi in this element, because this bonus
 3 scheme would apply when she returned, wouldn't it?
 4 A. It would have applied when she returned, yes, but
 5 I didn't consider it, no, because Ms Birdi was suspended
 6 from her employment and as far as I understood, she also
 7 didn't have the power of the A share director for the
 8 day-to-day responsibility that I did through SOG.
 9 Q. But it's her money you are authorising to be paid away,
 10 isn't it?
 11 A. Well, no, at this time we are also shareholders, the
 12 A shareholders, in this store.
 13 Q. Yes, you were paying half your own money and half her
 14 money away?
 15 A. Correct.
 16 Q. As an A shareholder, did you not consider it would be
 17 appropriate to at least canvass her opinion as to
 18 whether a fundamental change to the whole bonus scheme
 19 that was to apply to all her staff hereafter --
 20 A. No, I didn't.
 21 Q. No?
 22 A. No.
 23 Q. Why? She's suspended from --
 24 A. Because we were in charge of the day-to-day. It was
 25 a bonus scheme replacing another bonus scheme. It was

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1 self-funding, so it was actually not going to cost the
 2 business any more money because if they didn't take the
 3 10 per cent or the 20 per cent, there was no payout.
 4 Q. The previous bonus structure was based on a weekly
 5 basis -- actually a month, but -- and all the members of
 6 staff who were involved in the bonus, they got their
 7 percentage of the overall bonus --
 8 A. I understand that, Mr Stuart.
 9 Q. -- that was recovered, depending upon the month's
 10 turnover. Under this scheme, it could be the case in
 11 a given week that in days 1, 2, 3, 4, 5 of the week, the
 12 turnover was up by 30 per cent. So every member of
 13 staff who worked for those five days would each get £30
 14 a day. So that's £150 bonuses for each member of staff,
 15 on average?
 16 A. I understand.
 17 Q. So how many members of staff might there be? Eight
 18 working on a given day?
 19 A. I couldn't answer that question. I don't know the
 20 structure.
 21 Q. Okay. But it could be bonuses of £1,200 or more earned
 22 for those five days, and then on the sixth day, there
 23 might have been a bad Saturday -- let's say Saturday was
 24 the sixth day?
 25 A. What I do understand, Mr Stuart, is if you motivate

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1 people every day, rather than giving them a figure that
 2 has been calculated on a month and then broken down, by
 3 talking to the staff every day, raising the challenge of
 4 the day, motivating them, you have got more chance of
 5 achieving your objectives than you have by just simply
 6 saying, "If we do something, you will get something".
 7 This was about, each day, members of staff being
 8 really focused about helping to drive the business
 9 forward, and I don't consider that that's a bad thing,
 10 and if they did it, it was self-funding. And in your
 11 scenario, where some days it might not have happened, it
 12 may not have happened, but overall in my opinion -- and
 13 I've been involved in retail and in Specsavers and
 14 bonuses for a long time -- it sounded to be like
 15 a really good scheme.
 16 Q. If the net effect of it was that if, in a given month,
 17 very substantial bonuses -- thousands of pounds -- could
 18 be payable to the staff, but for that month, the overall
 19 turnover actually went down compared with the previous
 20 year --
 21 A. If that had happened, bearing in mind we are in charge
 22 of the day-to-day as the A shareholder/the director in
 23 the store, and it was costing us too much money and it
 24 actually hadn't worked, we would have stopped it because
 25 we would have examined the performance of the bonus

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1 scheme. These are not set in stone and it doesn't mean
2 that you can't change them.
3 Q. All right. You can put away that bundle.
4 My Lord, I see the time.
5 MR JUSTICE NUGEE: Yes.
6 MR STUART: Is that --
7 MR JUSTICE NUGEE: Yes. We will take a five-minute break.
8 (11.41 am)
9 (Short break)
10 (11.49 am)
11 MR JUSTICE NUGEE: Yes, Mr Stuart.
12 MR STUART: Mr Dyson, from paragraph 67 onwards to about 87,
13 about the next 20 paragraphs of your first witness
14 statement, {C/9/103} you deal with the issue of what you
15 describe as "Emergency management cover" and these very
16 substantial costs that got charged to Dartford. Do you
17 remember? Said to be for the management cover for the
18 Dartford store. Do you remember that?
19 A. I remember the cost of the emergency management cover,
20 yes.
21 Q. There are two elements to it. There is the emergency
22 management cover itself, so the people like Ms Slark or
23 Mr Sean McLaughlin, who came in later, there is a cost
24 or charge that is applied in relation to their input.
25 And then there are other costs and charges relating to

1 the investigation into Ms Birdi, including the
2 disciplinary process, Mr Raines, et cetera. So there
3 are those two elements to it.
4 Would you just be taken to bundle E3. Start at
5 page 506. {E/109/506} Do you have that?
6 A. I have.
7 Q. You are cc'ed on an email from Mr McAlindon to
8 Kelly Turian. Do you see?
9 A. Yes.
10 Q. Is Kelly Turian -- do you know where she is?
11 A. I have no idea. I have no idea who she is.
12 Q. Okay. Anyway, the subject is:
13 "Consultancy Invoices Dartford."
14 Do you see that?
15 A. Yes.
16 Q. "Kelly.
17 "Could you please arrange for payment of these
18 invoices, and take this email as authorisation for
19 payment?
20 "Mel."
21 Do you see that?
22 A. I do.
23 Q. "These invoices are for work carried out at the Dartford
24 store for managing the day to day management of the
25 business while the Director is suspended."

1 Do you see that?
2 A. Yes.
3 Q. If we could just take one step back, there are two
4 directors, A directors, of the Dartford store at this
5 point, according to you. One is Ms Birdi?
6 A. Correct.
7 Q. She is suspended, you say. And the other is SOG/you?
8 A. Correct.
9 Q. You have told his Lordship -- just in the last hour the
10 evidence you were giving was that you were taking these
11 decisions and doing all of this as your day-to-day
12 management. You were taking over the day-to-day
13 management of the store, as an A --
14 A. I'm not sure that I said that. What I said was that in
15 respect of the wages, which is what we were talking
16 about, then that definitely was under the day-to-day
17 management decision.
18 Q. But you were taking over the day-to-day management of
19 the store, you say, including the wages and the bonuses
20 and anything else that might have happened, and you were
21 doing that as A shareholder. Capital "A" shareholder.
22 A. Correct.
23 Q. Now, as A shareholder, you are not entitled to charge
24 for that, are you?
25 A. Charge what?

1 Q. Charge the store for carrying out the day-to-day
2 management; that is the obligation of an A shareholder
3 under the shareholder agreement?
4 A. The cost of all day-to-day management in the
5 shareholders' agreement is the responsibility of the
6 store. So the payment of it is for the store to pay
7 those costs, my understanding.
8 Q. Why?
9 A. Because that's what it says in the shareholders'
10 agreement.
11 Q. Where?
12 A. I don't know exactly where, but I do know there is
13 a reference to it in the shareholders' agreement.
14 Q. I had better take to you it because I would like to see
15 it. D1, page 177 is the shareholder agreement.
16 {D/15/177}
17 A. Sorry, can you give me the reference again, Mr Stuart?
18 Q. 177 is the beginning of the shareholder agreement.
19 There is a power of management, delegated by 3.1 on
20 page 180. {D/15/180} So:
21 "... all their powers of:
22 "3.1.1 day to day management of the business of the
23 Company and any Subsidiary to the A directors."
24 So, the two A directors have all the powers of
25 day-to-day management; do you see?

1 A. No, I don't see. Which --
 2 Q. Page 180?
 3 A. I have got that.
 4 Q. At the top, 3, management?
 5 A. Yes.
 6 Q. 3.1:
 7 "The Directors hereby delegate all their powers
 8 of...
 9 "3.1.1 day to day management of the business of the
 10 Company and any Subsidiary to the A directors."
 11 So that is a delegation of all the powers of
 12 management to the two A directors. Do you see that?
 13 A. I do.
 14 Q. And then under 3.2 there is a list of things which are
 15 not day-to-day management, so you can't be doing this as
 16 an A director, simply as an A director. Not day-to-day
 17 management includes:
 18 "3.2.8 the employment or dismissal of officers or
 19 staff at salaries or rates of pay in excess of £10,000
 20 per annum..."
 21 Just whilst we are on the figures, £440 a day --
 22 A. Correct.
 23 Q. -- five or six days a week is between £2,200, five days
 24 a week, or £2,640, six days a week. 52 weeks a year.
 25 It's somewhere between £110,000 and £150,000 a year.

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1 A. On an extrapolation it is, yes.
 2 Q. In this case it's not -- as it turned out, it's not even
 3 much of an extrapolation, but, yes. Per annum it's --
 4 A. When the emergency management cover went into here, we
 5 could never have envisaged it would take us six months
 6 in order to get the investigation and the disciplinary
 7 completed, and there's a number of reasons for that, in
 8 terms of cancellation of meetings, Ms Birdi being
 9 incapacitated through illness, et cetera, et cetera.
 10 So although the figure ends up at £65,000, when we
 11 start off on the journey in order to provide emergency
 12 management cover, we believe at that time it would be
 13 for a much shorter period of time.
 14 So the £65,000 is a big number, but it's because of
 15 the amount of time that we are having to cover the
 16 emergency management cover in the store.
 17 Q. About seven or eight months' worth?
 18 A. Yes.
 19 Q. So per annum, £100,000 --
 20 A. I understand the point you are making and that's the
 21 extrapolation for a year, yes.
 22 Q. Well, no, I'm just applying this. This says:
 23 "The employment or dismissal of officers or staff at
 24 salaries or rates of pay in excess of 10,000 per
 25 annum..."

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1 If you are going to pay somebody £440 a day, they
 2 are going to incur £10,000 -- not per annum; they are
 3 going to incur £10,000 in less than a month.
 4 A. Sorry, this point is around the employment or dismissal
 5 of staff.
 6 Q. Yes.
 7 A. This is -- this point here is not covering the cover of
 8 emergency management cover.
 9 Q. Okay. So I'm asking -- fine, so you say it's not under
 10 that part that you are exercising some power or role or
 11 right to appoint this emergency management cover that
 12 you have done.
 13 So where is it? This is where we started this
 14 little section. I asked you where did you get that
 15 power from; you said it's in the agreement; I said, no,
 16 it's not.
 17 A. The day-to-day management of the business of the
 18 company. So all -- that is for the day-to-day
 19 management of the company and therefore I take it that
 20 all costs for day-to-day management of that company
 21 would be charged to the company.
 22 Q. So you are now saying that the appointment of
 23 Carol Slark and then Mr McLaughlin and all of that is
 24 day-to-day management?
 25 A. It has to be, because it's managing the day-to-day --

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1 it's emergency management cover.
 2 Q. No, they are themselves managing the day-to-day business
 3 of the company?
 4 A. I understand that.
 5 Q. But to install them, to install that layer of management
 6 into the business, is not itself a matter of day-to-day
 7 management, is it?
 8 A. It's not a matter itself of day-to-day management?
 9 Q. If Ms Birdi wanted to put in a consultant into the
 10 business, paying that consultant £5,000 a month to carry
 11 out some of the day-to-day management functions that she
 12 would otherwise herself have to do because she is an
 13 A director, that consultant is doing the work of
 14 day-to-day managing the business, but the decision to
 15 appoint that person to carry out that task, that
 16 decision is not day-to-day management, is it?
 17 A. No, it's not.
 18 Q. No, nor do you suggest that it is. So we come back to:
 19 if it's not day-to-day management, the decision to put
 20 in Mrs Slark at £440, or at any price, and it's not
 21 day-to-day management and it's not 3.2.8, the employment
 22 of officers or staff, where do you say you have the
 23 power to do this and impose this £110,000 a year cost on
 24 a business whose profits in the previous year were
 25 £46,000?

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1 A. The store is now without the A director that we have
 2 dismissed and without the other A director, Ms Birdi,
 3 who is suspended.
 4 Q. But it has you. You have ridden to the rescue; you have
 5 purchased Mr Patel's shares and you are now the
 6 A director?
 7 A. I understand that, so we have to provide cover to run
 8 the store for day-to-day, so somebody who leads the
 9 activities of the store.
 10 Q. Yes, you could go there yourself?
 11 A. And my understanding is that all activities that are to
 12 do with the running of the store under the day-to-day
 13 management, which effectively they are carrying out, is
 14 charged to the store.
 15 Q. Yes, but why?
 16 A. Because it needs leadership and it needs the focus of
 17 somebody in the store on a daily basis, leading the
 18 teams.
 19 Q. You are the A director?
 20 A. I understand that.
 21 Q. You need to give the focus and the leadership. You have
 22 suspended Ms Birdi from being able to give the
 23 leadership and the focus. That's a decision you have
 24 made, just you, not the company; that's right, isn't it?
 25 A. Can you say that again, Mr Stuart?

1 Q. You have made a decision to suspend Ms Birdi so she can
 2 no longer give the leadership --
 3 A. Correct.
 4 Q. -- in the store?
 5 A. Correct.
 6 Q. You have to give the leadership in the store, the other
 7 A director, SOG. What gives you the right to charge the
 8 store £110,000 or £120,000 a year for delegating your
 9 leadership function to a nominee, Ms Slark or
 10 Mr McLaughlin or anyone else you choose to do it? What
 11 gives you the right to put that cost against the store?
 12 A. Because we are looking after and protecting the
 13 interests of Dartford store, and as a shareholder,
 14 B shareholder, then we have taken the decision to put
 15 that cover in there in order to make sure that we are
 16 looking after the business and acting in the best
 17 interests of the business. And the way that we do that
 18 is by the methodology we have used, because these are
 19 the best people available to us, so we have made that as
 20 the decision on how to continue for this store to run.
 21 Q. All right. Looking at page 506 then, Mr McAlindon, who
 22 is the investigation department -- {E/109/506}
 23 A. Sorry, 50...?
 24 Q. 506. He is the investigation department, isn't he?
 25 A. Yes.

1 Q. He is not you. He is not SOG. He is the investigator.
 2 What he wants to do is he wants:
 3 "Can you please charge them to my income budget..."
 4 A. He wants to charge the right that we have agreed at
 5 board for Mr McAlindon's team in providing the services.
 6 Q. Hm-mm. You say that in your witness statement, that
 7 this rate of £440 was agreed at the board?
 8 A. Correct.
 9 Q. By which you mean the board of SOG?
 10 A. Correct.
 11 Q. Can you produce any evidence of that?
 12 A. I understand that we tried to find that but I was there
 13 on the day that I proposed that to the board. I was
 14 there when the board accepted it.
 15 Q. But there is no minute of that meeting, of that
 16 decision?
 17 A. I can't answer that question because I didn't go looking
 18 for it, but I understand we have searched for it and to
 19 no avail.
 20 Q. To no avail. When did this alleged decision take place?
 21 A. It would have been some time around 2002, but I am
 22 guessing.
 23 Q. Was Mr McAlindon involved in the decision?
 24 A. Well, Mr McAlindon would have provided the rationale
 25 behind the proposal.

1 Q. So --
 2 A. This is a blended rate. This is to incorporate the
 3 costs of -- you know, the people who attend the store
 4 are, in the main, in the Loss Prevention team. It's
 5 their salary, it's their travel, it's their
 6 accommodation, it's their living away from home
 7 allowances, it's their meals. So £440 a day as
 8 a blended cost, when you put it in those terms, is the
 9 true cost of what it costs us to do the support and the
 10 investigation.
 11 Q. Is what you now say, but you --
 12 A. No.
 13 Q. -- have no evidence of that blended cost --
 14 A. That's what I have always said since we agreed £440
 15 a day, a way back, some time around 2002.
 16 Q. He says he is invoicing £440 a day, so that is the
 17 investigation department is invoicing £440 a day for her
 18 services?
 19 A. Well, they are under his control and his rate for
 20 investigating and supporting a store is £440 a day.
 21 Q. Who agreed to pay her £400 a day?
 22 A. I believe that was Mr McAlindon.
 23 Q. So you didn't play any part in that?
 24 A. No.
 25 Q. Did he ask you?

1 A. No.
 2 Q. It seems a lot, £400 a day, given that Mr McLaughlin was
 3 £200 a day?
 4 A. I understand that Mr McLaughlin was £200 a day, yes.
 5 Q. So double seems an awful lot?
 6 A. The rate that Mr McAlindon charged was the rate that we
 7 had agreed at board for him providing services to
 8 stores, either through support or through investigation.
 9 Q. I'm not talking about the rate that he charges; I'm
 10 talking about the rate that he agreed to give to
 11 Ms Slark for doing what she had to do.
 12 A. Well, Ms Slark is one of the very few people that were
 13 available with the required leadership skills,
 14 knowledge, understanding of our business, to provide
 15 that sort of support. We are not fishing in a pond
 16 where there are hundreds of people; it's a very small
 17 pond. And if Mrs Slark says she is charging £400, then
 18 Mr McAlindon has to base that on the fact that he hasn't
 19 got a queue of people waiting to do this.
 20 Q. The truth is that SOG seeks to charge the individual
 21 stores as much as it thinks it can get away with?
 22 A. That's not true.
 23 Q. And as evidence of that, we see, for example, page 546.
 24 {E/128/546} As well as all of the costs of the
 25 emergency manager, you also charge the stores all of the

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1 costs of the investigation itself, don't you?
 2 A. We do.
 3 Q. And we see an email from Mr Hamilton, who is the man who
 4 you have put in alongside Mr McAlindon at this stage?
 5 A. Yes.
 6 Q. And he is writing to Linda Weaver, who I understand is
 7 Mark Raines's PA?
 8 A. Correct.
 9 Q. So you must know her quite well?
 10 A. I must know ...?
 11 Q. You must know her quite well?
 12 A. Linda? Yes, I do know her.
 13 Q. I'm not sure quite what Mr Raines's involvement -- why
 14 is Mr Raines's PA dealing with Mr Hamilton's
 15 investigation charges?
 16 A. He is dealing with Mr Hamilton's ...?
 17 Q. Investigation charges. Look, he says:
 18 "Linda.
 19 "Just to confirm costs to be attributed to Dartford
 20 re the Investigation ..."
 21 A. Because Mr Hamilton works for Mr Raines.
 22 Q. Okay:
 23 "I presume Owen will charge them for Bina.
 24 "Also if you need the cost of my room/food and
 25 airport parking they were £77.70 and £41.50

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1 respectively. Then there's the car hire.
 2 "I'd screw 'em for everything!!!"
 3 Is that an appropriate way to speak about your JV
 4 partners?
 5 A. No, it's not.
 6 Q. "I'd screw 'em for everything!!!"
 7 Exclamation marks. Is that the way you speak over
 8 there?
 9 A. No.
 10 Q. It looks like Linda Weaver does. Linda Weaver, because
 11 she says at the top of page 546 -- her response is:
 12 "I agree ha ha."
 13 Is that appropriate?
 14 A. No.
 15 Q. No. It looks like Mr Raines and his PA, at least,
 16 consider it appropriate to charge the store as much as
 17 you can possibly get away with?
 18 A. I think that Mr Raines would not agree with that and
 19 these two comments in here are extremely unfortunate and
 20 I don't condone them, and I was unaware that this was
 21 being said at the time.
 22 Q. Okay. Swiftly on. 582. {E/138/582} 28 June.
 23 Ms Groves's invoices for June are now being forwarded
 24 on, under the subject heading, "Sensitive matter"?
 25 A. 582?

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1 Q. Yes. Do you know who Kelly Turian is?
 2 A. No. You asked me that earlier. I don't know.
 3 Q. Okay. Your involvement at this time, June 2007,
 4 late June, seems to be this. Page 588. {E/139/588} You
 5 are obviously speaking to Mr McAlindon about this and he
 6 is emailing you; do you see at the top of the page:
 7 "To: Derek Dyson.
 8 "From: Mel McAlindon."
 9 Do you see that?
 10 A. Yes.
 11 Q. 7.24 in the morning:
 12 "Derek.
 13 "I thought you might be interested in this email,
 14 Carol Groves very happy. Not bad for me either as she
 15 has seen the other side now and now appreciates the work
 16 we do in dealing with bad eggs..."
 17 Is Ms Birdi a "bad egg", Mr Dyson?
 18 A. Ms Birdi's obviously had serious allegations put against
 19 her for serious things that were being considered by the
 20 disciplinary.
 21 Q. But at this point, we hadn't had any disciplinary
 22 hearing, had we? Mr Raines hadn't started yet?
 23 A. No, I know that.
 24 Q. She is not a "bad egg" yet, surely?
 25 A. No, that -- I'm not agreeing. This is obviously

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1 a comment that has been made by Mr McAlindon.
 2 Q. Hm-mm. Is this indicative of Mr McAlindon's view of
 3 her, as far as you were aware, at this time?
 4 A. Sorry, can you just repeat that again?
 5 Q. Is the comment "bad eggs" -- plainly referring to
 6 Ms Birdi -- is that indicative of Mr McAlindon's view of
 7 Ms Birdi at around this time?
 8 A. The answer must be he must do, because that's what he
 9 has written.
 10 Q. Yes. Presumably you were having conversations with him
 11 in this period, April, May, June 2007, regarding
 12 Dartford and Ms Birdi?
 13 A. Not that I'm aware of. You can point me to the
 14 correspondence.
 15 Q. No, there is no -- there are no notes, there are no
 16 memos of your conversations. In the whole of the
 17 15 bundles, we don't have --
 18 A. Yes, but I think you have to -- we have already talked
 19 about it but you have to appreciate, I don't sit there
 20 worrying about one store out of nearly 1,000 stores.
 21 I've got a big reporting structure. I'm involved in
 22 international expansion and, you know, this is not stuff
 23 that's on my agenda every single day, unless I'm called
 24 to make some decision.
 25 Q. Ms Groves refers to generating her own little gold mine.

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1 Do you see in the second paragraph of her email? Was
 2 Dartford also a little gold --
 3 A. Sorry, can you point me to that?
 4 Q. Yes. So the second paragraph of Ms Groves's email,
 5 which was forwarded to you, says:
 6 "I unfortunately have to request that I cease work
 7 at the Dartford store on the 13th July due to
 8 commitments required in preparation of my new store and
 9 the fact that I wish to try and get a holiday before
 10 I put my head down and generate my little gold mine."
 11 Do you see?
 12 A. Correct.
 13 Q. So she had been approved by you to become a JV partner
 14 at another store; is that right?
 15 A. Yes, she was already a JV partner and she was waiting
 16 for the other opportunity to come up.
 17 Q. Okay.
 18 Page 592. {E/141/592} We deal with Mr Patel's THP
 19 invoices. Did you have any role to play in authorising
 20 these invoices?
 21 A. No.
 22 Q. No. Okay, I won't ask you about it then.
 23 At page 637, {E/155/637} we have the issue of
 24 Mr Patel's Mercedes and payments made in relation to it.
 25 Did you have any role to play in relation to payment

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1 of monies to Mr Patel in relation to a --
 2 A. No.
 3 Q. No. Right, I won't ask you about that.
 4 Who was taking these decisions then, if it wasn't
 5 you, the director? These financial decisions?
 6 A. When you say "financial decisions", it would all depend
 7 on the size of that and whether it was invoiced, and
 8 invoices go off to be paid through accounts payable. So
 9 it's not making decisions; it is -- it's due process.
 10 Q. These weren't due process. This is Mr Patel's -- some
 11 of the invoices were in his personal account. Not all
 12 of them, but some of them, and then this payment was to
 13 Mr Patel in relation to --
 14 A. But Ms Groves wouldn't know that. She just believed
 15 that there were invoices coming into the store and she
 16 would forward those on to the appropriate department.
 17 Q. I see. So you didn't -- you think she just dealt with
 18 it herself, without even realising they were unusual?
 19 A. Correct.
 20 Q. Did you speak to her about it at the time, so that you
 21 gain that view?
 22 A. Did I...?
 23 Q. Did you speak to her at the time, so you could gain that
 24 view as to what she was up to?
 25 A. No, but she is an experienced joint venture partner of

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1 many years and would be dealing with it in the way that
 2 she deals with all invoices that come into our store.
 3 Q. Okay. Page 643. {E/157/643} There seems to be some
 4 issue about Mr McAlindon's department's budget at around
 5 this time; do you recall that? You are cc'ed on the
 6 email just by the first holepunch.
 7 A. Okay. Shall I read it?
 8 Q. You can do. (Pause)
 9 A. I've read it. I'm not saying I understand it but I've
 10 read it.
 11 Q. Okay. It appears to be an email about Mr McAlindon's
 12 department's budget?
 13 A. Yes.
 14 Q. If you look at page 644, for example, this is a string
 15 of emails. {E/157/644} So 644 at the top, this is cc'ed
 16 to you. It's from Mel McAlindon to Laura, who is in the
 17 financial accountancy department.
 18 A. Yes.
 19 Q. He is there -- if you look at the third paragraph of his
 20 email, cc'ed to you, it says:
 21 "In relation to the income budget, I have emailed
 22 an explanation to this previously. In May, £85,185 was
 23 invoiced to stores, and in June £30,043."
 24 It's all about his budget, isn't it?
 25 A. Yes.

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1 Q. Do you recall there was an issue about him having to
2 sort out income so that his budget balanced?
3 A. No, because this is what you would find, this type of
4 correspondence, for all cost centre owners who are
5 responsible to make sure that they are managing their
6 budget correctly.
7 Q. Okay. How much contact did you have with Mrs Groves at
8 this time, you personally?
9 A. None.
10 Q. You must have spoken to her?
11 A. Not that I can recollect at this moment in time.
12 Q. What, in the whole period she was in the store you never
13 spoke to her once?
14 A. I may have seen her at a regional meeting that we have.
15 I told you we meet the partners every eight weeks.
16 Q. Yes.
17 A. Carol had been a chairman of that region. So if I was
18 at that meeting, I may have spoken to her.
19 Q. Okay.
20 A. But I don't recollect.
21 Q. I see. So your management as -- you're acting as
22 A director at this time of the Dartford store -- your
23 management of that store didn't involve you
24 communicating with Mrs Groves? You, the director?
25 A. Not me personally. Mr Raines may have been talking to

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1 her.
2 Q. What has it got to do with Mr Raines?
3 A. Mr Raines is the person responsible for all stores in
4 the UK.
5 Q. Right.
6 A. Operations.
7 Q. But what's his role in relation to Dartford at this
8 time?
9 A. The same as it is for every other store, and that is he
10 is responsible for retail operations in the UK. He
11 works for SOS. He has a team of store support managers
12 and retail support managers, et cetera, and that's his
13 role.
14 Q. Did that include then telling Ms Slark what to do?
15 A. I didn't say that -- you asked me --
16 Q. Or discussing with her what she should do?
17 A. You asked me whether -- who else may have been in
18 contact with her.
19 Q. Yes, about the management of the store, I asked you.
20 Are you saying he was involved in the decision-making of
21 the --
22 A. No.
23 Q. No. What about Mr McAlindon? He was, of course?
24 A. He was providing the emergency cover.
25 Q. No, but she worked for him, effectively?

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1 A. Correct.
2 Q. And --
3 A. She was providing the emergency cover in the Dartford
4 store.
5 Q. Yes, for him, and then he was doing it for you,
6 effectively?
7 A. He was doing it to make sure that the Dartford business
8 was covered with effective leadership during the time
9 that Ms Birdi wasn't available.
10 Q. Okay. And flick on to 650. {E/160/650} By the end
11 of July Mrs Groves is leaving. She is writing to you --
12 to Mr McAlindon but copying you in, and Alison Anderson.
13 Why are getting involved in that level of email
14 correspondence?
15 A. I don't know. I mean, Carol obviously thinks it's
16 important to her to include me on the email. I have got
17 no reason why -- I don't think there is any reason other
18 than her wanting to just send a message.
19 Q. Fine. Finally on this question of the rate, the £440
20 rate?
21 A. Correct.
22 Q. You say that £440 was a rate which was agreed in about
23 2002?
24 A. I'm guessing. I know that we established the department
25 around about 2000. So by the time you have got it up

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1 and running, I'm guessing around 2002, but it is
2 a guess.
3 Q. Okay. The Loss Prevention department had a rate for its
4 store auditing service, didn't it, of, I think, £300
5 a day?
6 A. That's correct. This is for the NHS audit.
7 Q. Well, not just NHS, but store audits that covered
8 a number of things?
9 A. Cash management.
10 Q. Physical security review?
11 A. Yes.
12 Q. Complete review, et cetera, et cetera.
13 So that's, for the whole department's work on
14 a store, £300 a day. But you are saying £440 a day just
15 for having one person sitting in the store?
16 A. These are two different functionalities. One is an
17 audit team and one is an investigation team, and the
18 audit team can plan ahead, they can maybe do more than
19 one store in a day. There are lots of reasons and
20 rationale behind the rate. It isn't just about purely
21 wanting to charge the same rate. There are two
22 different parts of the Loss Prevention team.
23 Q. Okay. Would you go to, just whilst we are in E3 --
24 A. Sorry, I missed that.
25 Q. Whilst we are in E3, could you flick to page 700?

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1 {E/179/700}. I should have taken you to this right at
2 the beginning of my cross-examination but I'm going to
3 just catch up now. Page 700. Do you see it?
4 This is page 5 of the store's policy manual. It
5 starts on page 696. Page 696? You will see the
6 document.
7 A. 69 ...?
8 Q. 696, Store Policy Manual, page 1 of 54. Do you see it?
9 A. Yes.
10 Q. And so page 700 is page 5 of that document. So you have
11 the context of where we are?
12 A. Okay.
13 Q. Do you see that?
14 A. Yes.
15 Q. And this is signed off by Doug Perkins on page 701,
16 {E/179/701} not his signature but his name, and it says
17 that the core values -- do you see just above the first
18 hole punch on page 700?
19 A. Yes.
20 Q. The core values are honesty. Do you see that?
21 A. Yes.
22 Q. He says:
23 "We do not rip off our customers."
24 But presumably you would agree that you don't intend
25 to rip off your JV partners either?

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1 A. Correct.
2 Q. "Respect for others: we try to treat people as we would
3 wish to be treated ourselves."
4 That includes your JV partners?
5 A. It does.
6 Q. So the conduct of some of your staff hasn't lived up to
7 that in relation to Ms Birdi.
8 A. In terms of the comments that they have made, no.
9 Q. Okay:
10 "Partnership: our objective is to make our partners
11 successful."
12 That's obviously the partners who are in favour,
13 rather than the bad eggs.
14 A. The majority of our partnerships are extremely
15 successful.
16 Q. Yes, quite right, and those that are not in the majority
17 are the bag eggs?
18 A. No, the ones that aren't in the majority, the people
19 that may be in the amber or the red, we give them lots
20 of support to help them to try and turn around their
21 businesses. That's why we have the turnaround practice,
22 which we mentioned earlier in -- I remember my Lord
23 asking what TAPS was.
24 MR JUSTICE NUGEE: Can you explain amber and red. Is this
25 some sort of code based on financial --

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1 A. It's in terms of performance. So you've got the green
2 stores that are just really, really doing really, really
3 well. You have got the stores at the bottom, say
4 5 per cent of the stores, that are not as well as we
5 would want them to do, and then you have got a mass of
6 people in the middle, because there's a lot of stores.
7 So I would say 10 to 15 per cent at the top, 5 per cent
8 at the bottom and the rest of the guys in the middle,
9 who are somewhere either moving up or maybe moving down,
10 and do we provide them monitoring and support, to make
11 sure that they are as successful as they can be.
12 MR STUART: Okay. Page 710, August 2007. {E/184/710} The
13 Dartford salary review. A new manager has come in at
14 this point. Do you remember Ms Slark has left and now
15 an internal person, Imogen Collar, has come in?
16 A. Correct.
17 Q. Do you see on 28 August she is writing to Susannah Hart:
18 "I need assistance and authorisation to do a salary
19 review for the staff at Dartford."
20 I did ask you about Susannah Hart previously. What
21 business of Susannah Hart's is this?
22 A. She is a retail support manager, supporting the field
23 teams, providing them with information, dealing with
24 enquiries, seeing people in SOG, communicating to the
25 regions that they are in charge of, helping to provide

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1 information, when we go on our regional meetings, in
2 terms of slides. It's all about supporting the stores.
3 Q. Ms Collar is reporting to Mr McAlindon. Is that right?
4 A. That's correct.
5 Q. And she is seeking authorisation to do a salary review
6 for the staff. Would this come up to you? And we see
7 you are copied in on the email -- no, you are not, I'm
8 sorry, you are not even copied in on the email.
9 A. No, I have got no recollection of it.
10 Q. No. So this is my question: have you somehow authorised
11 Ms Hart to now --
12 A. Miss?
13 Q. Susannah Hart, or Mrs Hart, is it? -- to somehow now be
14 taking decisions on behalf of the store?
15 A. No.
16 Q. So who is going to authorise the salary review if it's
17 not you personally?
18 A. Well, it's not going to be authorised because it will
19 come to me. I have no idea what this is. I have never
20 seen it and never saw any correspondence on it. So it
21 clearly didn't come to me and therefore didn't get
22 authorised.
23 Q. Okay. So by this time -- we are into late
24 August 2007 -- you, SOG, had decided, had you not, to
25 exit Ms Birdi from the store, so that you can then

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1 carry --
 2 A. I don't understand the comment that we had made
 3 a decision to exit Ms Birdi.
 4 Q. I'm giving you the opportunity to tell the honest truth.
 5 By this time you, SOG, had made the decision to exit
 6 Ms Birdi from the store and to effect one of the plans
 7 which I asked you about at the beginning of the day,
 8 namely either to sell both sets of A shares to new JVPs,
 9 or to enter into some sort of shared venture
 10 arrangement, or to go group venture on this store at
 11 Dartford?
 12 A. No.
 13 Q. All right. Go to page 711. Do you recognise this
 14 document? Do you recognise this document? {E/185/711}
 15 A. Specifically? No.
 16 Q. All right. Do you recognise the template for this
 17 document?
 18 A. I have seen the template before, yes.
 19 Q. "Dartford (305)". Is that an internal code for the
 20 store number at Dartford?
 21 A. I think it's the branch number, yes.
 22 Q. Yes:
 23 "Shared Venture Assessment."
 24 Which team that worked for you would be conducting
 25 the shared venture assessment? Whose team?

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1 A. The shared venture team.
 2 Q. Under the control of Mr ...?
 3 A. Lunn.
 4 Q. Lunn. All right. We have got director
 5 Swarandee Birdi. Trading date, 1995. Criteria 1,
 6 resident partner "promise".
 7 And the comment is:
 8 "Due to an ongoing Loss Prevention exercise there is
 9 no current promise regarding the future structure of the
 10 store. Partners from Bexleyheath and Gravesend have
 11 expressed interest in the opportunity but no indication
 12 has been given."
 13 And the score that is therefore applied is +2. Do
 14 you see that?
 15 A. I do.
 16 Q. So are we to take it from that, that if the resident
 17 partners do not have any moral or legal promise to still
 18 be in the store, you apply a positive score in deciding
 19 whether --
 20 A. I have got no idea. I don't understand the word
 21 "promise". I don't understand the scoring system.
 22 I have not seen this document until you showed to me
 23 today.
 24 Q. I see, but you have seen a template like this --
 25 A. I have seen the template.

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1 Q. -- with these criteria on it and the way the scoring
 2 system works; not for this particular store but the way
 3 the system works?
 4 A. I have seen these before.
 5 Q. Okay. Number 2:
 6 "Reasonable SOG shareholding."
 7 Again, a score of +2 and here we have it:
 8 "100 per cent of shares should be available once the
 9 Loss Prevention situation has been concluded."
 10 That's a bit presumptuous, surely, Mr Dyson?
 11 A. Well, I don't know who filled it in; I don't know who
 12 completed it. They clearly were not as part of the
 13 management decision at my level and there was no plan,
 14 as you said, to do anything other than to investigate it
 15 and to follow it through with the disciplinary
 16 procedure.
 17 Q. How is it clearly not part of the management decision at
 18 your level? How is it clearly that? How do we know
 19 whose management decisions are in this and at what
 20 level?
 21 A. I tell you, it's not my management decision. I have not
 22 seen this before. I was not party to it and it has no
 23 bearing on the decisions that I made.
 24 Q. The man who reports to you, Mr Lunn?
 25 A. He doesn't report to me. He works in a team that -- he

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1 reports to Jill Clark, who reports to me.
 2 Q. Yes. Someone has got the impression that:
 3 "100 per cent of shares should be available once the
 4 Loss Prevention situation has been concluded. This
 5 should give SOS sufficient scope to attract a buyer."
 6 Do you see that?
 7 A. I do.
 8 Q. Someone seems to be presuming that the outcome of the
 9 investigation, the Loss Prevention situation, will be
 10 that Ms Birdi's shares will be transferred to you, to
 11 SOS. Someone?
 12 A. Someone, but not me.
 13 Q. I'm going to suggest to you that it was with the
 14 knowledge of your entire department and their view of
 15 the Dartford situation at this time.
 16 A. No, that's not true.
 17 Q. Anyway, that got a score of +2 for whatever is being
 18 planned. Shall we just skip down to the conclusion --
 19 no, let's go to 9, "Professional availability":
 20 "The South East is an area where our existing Shared
 21 Venture stores (Bexleyheath and Bromley) experience
 22 difficulties in securing consistent OO cover."
 23 Ms Birdi is the OO here, isn't she?
 24 A. Hm-mm.
 25 Q. "A focused OO director will greatly benefit this

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1 business."
 2 So whoever has written this seems to take the view
 3 that Ms Birdi is not going to be there, doesn't he or
 4 she?
 5 A. They are certainly making a suggestion of that, yes.
 6 Q. An assumption rather than a suggestion, isn't it? This
 7 is assuming that Ms Birdi is not going to be there?
 8 A. Like I say, I've got no -- I don't know anything about
 9 this. It's the first time I've seen it and I don't know
 10 who wrote it.
 11 Q. Okay. But it would have been somebody in the shared
 12 venture department and that department reports to you?
 13 A. The department reports directly -- not directly, but
 14 indirectly through Jill Clark.
 15 Q. Okay. Let's go to the total score bit. +6:
 16 "The shared venture assessment of this opportunity
 17 is conservatively positive. The issue of ophthalmic
 18 cover has affected the over SV stores in the area and
 19 I would expect that in the short term this would apply
 20 to Dartford, as they have one relatively inexperienced
 21 employed OO.
 22 "I would recommend that we initially attract an OO
 23 JVP..."
 24 Do you see that?
 25 A. I do.

1 Q. It's a bit harsh on Ms Birdi, isn't it?
 2 A. I can only say again, I haven't seen this before. I've
 3 never made any decisions based on this assessment and
 4 nor was the fact that Ms Birdi did leave ever a reality.
 5 So -- I know it's there and I know that you are taking
 6 me through it, but I have got no knowledge of this
 7 report, nor any input into it.
 8 Q. Okay:
 9 "In summary, the Dartford store is a good comparison
 10 to the potential turnaround of the Weymouth store.
 11 Previous performance was questionable, and a single OO
 12 Director on a 60/40 split was introduced."
 13 Do you see that?
 14 A. I do.
 15 Q. "(As a contingency, I know that both the Gravesend store
 16 Partners and the Bexleyheath store Partner are
 17 interested in buying into this store, with Gravesend
 18 being the preferred option from these two.)"
 19 Who could possibly have had that knowledge and be
 20 giving that view?
 21 A. What, the knowledge of this document?
 22 Q. Yes, who --
 23 A. I've got no idea who wrote this --
 24 Q. Who knew that the Gravesend and Bexleyheath partners
 25 were interested and who was able to say that the

1 Gravesend partners were the preferred option from those
 2 two?
 3 A. Could you repeat the question, Mr Stuart, because --
 4 Q. Yes, who within your various departments -- who would
 5 have the knowledge that the Gravesend store partners and
 6 the Bexleyheath store partners were interested in buying
 7 into this store, and who would --
 8 A. I don't know about Bexleyheath but I was aware that the
 9 Gravesend partners -- when Mr Patel had put his shares
 10 on sale prior to us finding out that he had been
 11 fraudulent, had made some contact with Michael Moore.
 12 That's the only knowledge that I've got.
 13 Q. I'm going to suggest to you that Mr Lunn, who is in
 14 charge of the shared venture element here -- I'm going
 15 to suggest to you that it was him and that he discussed
 16 this with you at the time?
 17 A. I've got no recollection of that.
 18 Q. Okay. Go to page 714. {E/187/714}
 19 Mr Lunn on that very day, 31 August --
 20 MR JUSTICE NUGEE: When you say on that very day, is the
 21 document at page 711 dated?
 22 MR STUART: Your Lordship is right. It's not on its face
 23 dated. I have got that information from the meta data.
 24 MR JUSTICE NUGEE: If it's disputed --
 25 MR STUART: I don't know whether it's disputed. It has been

1 put into this agreed bundle at this point. So I think
 2 it's agreed that it is dated somewhere between
 3 28 August, which is page 710-5, {E/184.2/710.5} and
 4 31 August, which is page 712. {E/186/712}
 5 MR JUSTICE NUGEE: It's not listed in the index with a date.
 6 Could you clarify with those on the other side as to
 7 whether there is any dispute as to what the meta data
 8 shows?
 9 MR STUART: Yes.
 10 MR JUSTICE NUGEE: Thank you.
 11 MR STUART: So, Mr Dyson, just for the moment we will
 12 presume -- but it's only a presumption -- that this is
 13 dated around the end of August 2007. And I'm suggesting
 14 to you that you discussed Dartford with the shared
 15 venture man, Mr Lunn, at that very time, as evidenced on
 16 page 714, where Mr Lunn is emailing Mr McAlindon at 4.15
 17 in the afternoon of 31 August and he says: {E/187/714}
 18 "Subject: Dartford.
 19 "Hi Mel.
 20 "I have caught up with Derek regarding Dartford..."
 21 Do you see?
 22 A. Yes.
 23 Q. We have the introduction of Mr McLaughlin:
 24 "As the store is currently (technically) a Shared
 25 Venture, and likely to become a Group Venture..."

1 Do you see that?
 2 A. I see that.
 3 Q. "As the store is currently (technically) a Shared
 4 Venture, and likely to become a Group Venture..."
 5 That comment is entirely consistent with the shared
 6 venture assessment, isn't it?
 7 A. I don't see the connection, but -- just give me
 8 a second.
 9 Q. A group venture is one in which Specsavers owns the
 10 A shares, isn't it? Owns all the shares?
 11 A. Correct.
 12 Q. And the document I took you to at page 711 -- I took you
 13 to the entries which said -- {E/185/711}
 14 A. Yes.
 15 Q. "100 per cent of shares should be available once the
 16 Loss Prevention situation has been concluded. This
 17 should give SOS sufficient scope to attract ..."
 18 Et cetera, et cetera. Do you see that?
 19 A. I do.
 20 Q. It would appear that Mr Lunn, at least, thought that as
 21 at 31 August 2007, the store was technically a shared
 22 venture but likely to become a group venture. That is
 23 a venture where you own all the shares?
 24 A. That's what he said.
 25 Q. And he said that after having caught up with you. Do

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1 you remember the conversation with Mr Lunn?
 2 A. No, I don't.
 3 Q. Do you have any notes of the conversation?
 4 A. No.
 5 Q. Anyway, he says: {E/187/714}
 6 "... until we find a prospective Partner I would
 7 like to discuss the Loss Prevention charges being
 8 applied to the store, as they will effectively be
 9 reducing SOG income as we are the shareholder."
 10 Do you see that?
 11 A. I do, yes.
 12 Q. Surely, reducing Ms Birdi's income also, as she is
 13 a shareholder? It's your capacity as A shareholder that
 14 he is talking about there, isn't it, because as
 15 B shareholder you are not entitled to any profits, are
 16 you?
 17 A. No, that's not the way that the partnership works.
 18 Q. Yes. So it's:
 19 "... the Loss Prevention charges being applied to
 20 this store, as they will effectively be reducing the SOG
 21 income as we are the shareholder."
 22 That is, "We are the present shared venture
 23 A shareholder". That's right, isn't it?
 24 A. You could take that interpretation from what Mr Lunn has
 25 written.

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1 Q. Right. Given that you say that the £440 rate is a fixed
 2 rate, agreed five years earlier and applies to
 3 absolutely every store, there is no need to have
 4 a discussion about the charges, is there?
 5 A. When you say there is no need to have a discussion about
 6 the charges ...?
 7 Q. What's to discuss?
 8 A. I've no idea. I didn't write the email and I've never
 9 seen it before.
 10 Q. I'm going to suggest to you that what's to discuss is
 11 the level of charges that are going to be applied to
 12 this store?
 13 A. Well, the level of charges applied to the store is £440
 14 a day. I'm very clear on that.
 15 Q. I'm suggesting to you that that's not right. There is
 16 no fixed basis for that. There is no evidential basis
 17 for it and you can charge whatever you like?
 18 A. I don't know what you are saying, Mr Stuart. Do you
 19 want to --
 20 Q. I'm saying that you fixed the rate at £440 because
 21 Mr McAlindon wants to charge £440?
 22 A. No, we set a blended rate a way back with the board, as
 23 I said, somewhere around 2002. That was the rate that
 24 we signed up to. That's the rate that has been applied
 25 to every other investigation and support that we have

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1 done in stores, and it was the rate that we agreed at
 2 the board. And it's not a question of just making up
 3 numbers to charge stores.
 4 Q. You see, what Mr Lunn then says is -- because this is
 5 now one of his stores, you see, so he is effectively
 6 having to oversee the profitability of it from the
 7 perspective of a shared venture shareholding. He says:
 8 {E/187/714}
 9 "Can we please agree that Sean McLaughlin charges
 10 the store directly for his days..."
 11 No £440 for Mr McAlindon's department; just £200 for
 12 Mr McLaughlin. Do you see?
 13 A. Yes, but this is not under his control or management
 14 until such time as the investigation and the
 15 disciplinary had been completed.
 16 Q. Right. So, what, you are saying that the store is about
 17 to come under Mr Lunn's control now?
 18 A. Mr Lunn looks after those stores in the business that
 19 are strategically shared venture, or they are temporary
 20 shared venture, or, on some occasions, where stores
 21 become group venture, all depending on what activities
 22 are going on and the shareholding arrangements with
 23 partners.
 24 Mr Lunn here, from what I can see -- and, again, I'm
 25 interpreting what I'm seeing here -- at the end of the

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1 investigation and the disciplinary, this store will then
 2 no longer be managed going forward on emergency cover
 3 because an outcome will have been agreed and he will be
 4 then involved with the store. That's the way that
 5 I sort of interpret what I'm reading.
 6 Q. What it appears to say is that he is trying to agree
 7 that Mr McLaughlin's charges are going to be charged
 8 direct to the store, so without Mr McAlindon's mark-up;
 9 that appears to be what he is seeking?
 10 A. Yes.
 11 Q. So as to reduce the charges to the store. And then he
 12 says:
 13 "I haven't discussed the topic of charges with
 14 DD..."
 15 That would be you, wouldn't it? "DD" is you?
 16 A. Yes.
 17 Q. "... but as Dartford is currently running at a £16K loss
 18 for the year, every little helps."
 19 So it does appear that the amount of charging for
 20 these managers to the store is a matter that can be
 21 discussed with you, with Mr McAlindon, with other
 22 members of the Specsavers team?
 23 A. Anything can be discussed.
 24 Q. Why wasn't it discussed with Ms Birdi, the A shareholder
 25 and A director?

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1 A. I think I've said it; I'll say it again: Ms Birdi was
 2 suspended. She was the subject of an investigation and,
 3 potentially, disciplinary action, and at that time she
 4 was suspended of her duties as well as her employment
 5 during that period.
 6 Q. All right. If you put away E3 and go to E4, page 802,
 7 if you can pick up the email correspondence.
 8 {E/191/802} Mr McAlindon now writes to Mr Lunn and to
 9 you; do you see that?
 10 A. Yes.
 11 Q. The next day, a Saturday, and says:
 12 "Derek."
 13 So he is really addressing it to you but he is
 14 showing Mr Lunn what he is doing:
 15 "I am currently charging Dartford the equivalent of
 16 £440 a day for management fees. As you are aware, two
 17 reasons. First, an income stream for the dept ..."
 18 That's his department, isn't it, the Loss Prevention
 19 department?
 20 A. Yes.
 21 Q. "Second and more important, because of the share
 22 value -- the more the store is charged, the lower the
 23 value."
 24 What he doesn't say there, Mr Dyson, is, "I'm
 25 currently charging Dartford the equivalent of £440 a day

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1 for management fees. As you are aware, one reason,
 2 that's the fixed fee for every store."
 3 He doesn't mention that, does he?
 4 A. No.
 5 Q. No.
 6 A. But why would he?
 7 Q. Why would he? You are quite right, why would he, since
 8 that is not the legitimate reason for these charges.
 9 The legitimate reason is set out by --
 10 A. No, the legitimate -- the legitimate reason for these
 11 charges is that that is the rate that we agreed at the
 12 board that Mr McAlindon would charge. He is entitled to
 13 charge for them and recover -- and recover the -- the
 14 income for his department, and he is making the point
 15 that if he doesn't charge for them, the position of the
 16 store will not be the correct position because it will
 17 not have been charged appropriately.
 18 Q. He doesn't make that point.
 19 A. Well, that's the way that I read it.
 20 Q. Where? I'll read out the words to you. It says:
 21 "Second and more important, because of the share
 22 value - the more the store is charged, the lower the
 23 value. Do you want me --"
 24 A. That's exactly what I have just said, Mr Stuart, and
 25 that is, he is saying, "If I don't charge the store,

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1 then the financial position of the store will be
 2 incorrect and therefore any calculation on the share
 3 value will be incorrect".
 4 Q. Where does he say anything about incorrect?
 5 A. "... the more the store is charged, the lower the
 6 value."
 7 Q. Yes, so if we charge it £800 a day, the shares will be
 8 worth even less?
 9 A. No, he's not suggesting that. He's saying -- he's
 10 suggesting carries on charging at £440 a day because he
 11 is entitled to charge that because he's providing the
 12 emergency cover.
 13 Q. "Do you want me to continue charging until a compromise
 14 agreement has been agreed..."
 15 That would be a compromise with Ms Birdi, a la the
 16 compromise agreement with Mr Patel; is that right? Is
 17 that how you understood it?
 18 A. I hadn't thought about that until you've just raised it
 19 now.
 20 Q. Would you agree with me that that's how it reads:
 21 "Do you want me to continue until a compromise
 22 agreement has been agreed..."
 23 A. I can't say yes or no. I see the point that you are
 24 making.
 25 Q. Okay:

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1 "... disciplinary process completed ..."
 2 That must be Ms Birdi. She is the only person
 3 subject to disciplinary process, isn't she?
 4 A. Yes.
 5 Q. So that is a reference to Ms Birdi?
 6 A. Yes.
 7 Q. "... and/or all shares are bought ..."
 8 Now, you already own all the B shares and Mr Patel's
 9 A shares, so the only buying of shares is her shares,
 10 isn't it?
 11 A. Yes.
 12 Q. So that's a reference to her shares?
 13 A. It would seem so, yes.
 14 Q. "... or stop charging to improve store performance?"
 15 So it does appear that Mr McAlindon, at least,
 16 believes that there is a connection between charging
 17 these fees and a compromise agreement that's going to be
 18 reached with Ms Birdi, or a disciplinary process that's
 19 going to be completed against Ms Birdi, or the purchase
 20 of Ms Birdi's shares?
 21 A. No, I think Mr McAlindon is responding to the fact of
 22 the email below where Neil Lunn, who is a very focused
 23 and structured individual, who wants to help the stores
 24 particularly, you know, to become very successful, he is
 25 talking about this £16,000 -- £16,000 of loss, and

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1 Mr McAlindon is responding to that by saying to me,
 2 "What do you want me to do? Do you want me to -- I'm
 3 entitled to it and I should be charging it. If I don't
 4 charge for it, then the store financial position will
 5 not be correct, therefore the share value will be
 6 incorrect. Or do you want me to respond to Neil and do
 7 you want me to start charging -- stop charging to
 8 improve the store performance?"
 9 That's the way that I interpreted that email.
 10 Q. Well, I suggest to you that the plan was clearly in
 11 place by this stage that you, SOG, were going to acquire
 12 Ms Birdi's shares by one form or another; you were going
 13 to exit her from the business and then you were going to
 14 decide what you were going to do with those shares.
 15 That was the plan?
 16 A. No, that's not any plan. That's not what's going on.
 17 Q. The plan was by this point that you, SOG, would have
 18 100 per cent of the shares, at some point in the near
 19 future?
 20 A. No. I don't agree with that.
 21 Q. Well, that doesn't seem to be how Mr McAlindon and
 22 Mr Lunn understood your position at the time, because if
 23 you flick over one page to page 803?
 24 A. 803?
 25 Q. 803. {E/192/803} You will see that Mr Lunn then emails

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1 Mr McAlindon on the Tuesday and he is following the
 2 chain from the email I have just taken you to and he
 3 says:
 4 "Hi Mel.
 5 I understand from Derek ..."
 6 That must be you, mustn't it?
 7 A. Yes.
 8 Q. There aren't two Dereks in this organisation, are there?
 9 A. No.
 10 Q. No:
 11 "I understand from Derek that at the point where SOG
 12 own 100 per cent of the shares that the Loss Prevention
 13 involvement will cease..."
 14 So the plan is for you to acquire 100 per cent of
 15 the shares and:
 16 "... the Loss Prevention involvement will cease and
 17 [Mr Lunn's] involvement will commence, therefore leaving
 18 the charging arrangements with me."
 19 That was your plan, wasn't it?
 20 A. No.
 21 Q. It must be, Mr Dyson, given that. Now, perhaps you can
 22 recall, now that you see this email --
 23 A. No. I didn't get emailed/copied on this and I don't
 24 have any recollection of any conversation with Mr Lunn.
 25 I don't know why he has written it. There was no plan.

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1 I was waiting for due process to be carried out and
 2 Mr Raines to complete the -- the investigation to be
 3 completed and Mr Raines to decide what the outcome of
 4 that investigation was through the disciplinary process.
 5 Q. I suggest to you that all the documents I have just
 6 taken you to show you that Mr Lunn and his department
 7 had been tasked with assessing whether this store would
 8 be a good store for you to take in-house on a group
 9 basis or a shared venture basis; that you had had
 10 a discussion with him shortly on or before 31 August,
 11 and that Mr Lunn is correctly recording your
 12 instructions to him, which are that at the point where
 13 SOG own 100 per cent of the shares, this, that and the
 14 other is going to happen, because that was your plan?
 15 A. I absolutely do not agree with that point that you've
 16 just made.
 17 Q. All right. Finally, on this shared venture position at
 18 this stage, can you just go to page 934 in this bundle?
 19 {E/230/934}
 20 A. 934? Part way through a letter?
 21 Q. Part way through a letter; quite right. So this is
 22 a letter, 932, {E/230/932} from Cristina del Grazia to
 23 Mr Artley, who is Ms Birdi's solicitor; okay?
 24 October 2007.
 25 At 934, just above the second holepunch -- Ms Birdi

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1 was taken to this in cross-examination. Do you see, it
 2 says: {E/230/934}
 3 "Mr Patel's departure from the business has resulted
 4 in SOG holding 50 per cent of the 'A' shares."
 5 Just above the second holepunch, the paragraph
 6 starting:
 7 "Mr Patel's departure ..."
 8 A. I don't see that.
 9 Q. Second holepunch. Just below the half way on the page?
 10 A. Sorry, I was at the top holepunch.
 11 Q. That's all right. That's fine. Do you have it?
 12 A. I've got that, yes.
 13 Q. "Mr Patel's departure from the business has resulted in
 14 SOG holding 50 per cent of the 'A' shares. The
 15 expression 'shared venture' is used internally within
 16 the Specsavers group to describe a situation such as
 17 Dartford's where SOG holds 'A' shares and, therefore,
 18 shares in the profits of the business..."
 19 Do you see that?
 20 A. Yes.
 21 Q. But Mr Dyson, if you are saying that, "Right, we are the
 22 A shareholder and we share in the profits of the
 23 business"; yes?
 24 A. Yes.
 25 Q. You can't also charge the business £120,000 --

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1 A. But we haven't taken any profits, because there are no
 2 profits.
 3 Q. Well, all of the profits of the business have gone out
 4 in payments to your Loss Prevention department. We have
 5 seen that from Mr Lunn.
 6 A. If we hadn't have provided the cover, then there would
 7 have been a lot more problems with the store.
 8 Q. If you want to provide the cover, that's a matter for
 9 you. As A shareholder, you do what you want to do to
 10 protect your share in the profits. That's what's being
 11 said here. But what gives you the right to charge for
 12 that?
 13 A. I think I have already answered that earlier and that is
 14 that all the day-to-day costs of running the store are
 15 to be borne by the store. Is my understanding.
 16 Q. Okay. Do you see, it goes on:
 17 "Given Ms Birdi's recent conduct and the outcome of
 18 the disciplinary hearing held on 20 September ..."
 19 Do you see that?
 20 A. Yes.
 21 Q. "... SOG does not deem it appropriate at this time to
 22 make any firm plans regarding the future structure of
 23 the Dartford business."
 24 Do you see that?
 25 A. I do.

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1 Q. What does that mean? You personally were SOG for these
 2 purposes, weren't you? You were the man making these
 3 decisions?
 4 A. Let me read the context, in where this has come from.
 5 (Pause)
 6 Okay.
 7 Q. So, it is you, isn't it, who is making these decisions?
 8 A. Yes.
 9 Q. It's not Dame Mary Perkins, or --
 10 A. No, no.
 11 Q. It's just you. So what do you mean by that?
 12 A. I think what it says in there. You know, we have just
 13 gone through a very long, protracted investigation and
 14 disciplinary, and we -- before we go making any plans
 15 about that future structure, it's time to reflect on
 16 what the best next steps are.
 17 Q. So what possible structures were there?
 18 A. I think we are just making a statement that we are not
 19 going to be rushed into making decisions based on --
 20 I don't know if there's a question asked and this is why
 21 it has been responded to, but Ms del Grazia is just
 22 saying, "We haven't made a decision".
 23 We haven't made a decision.
 24 Q. Okay. At around this time, the disciplinary decision
 25 was being made, as you know, as recorded there. Can you

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1 just go back to a little run of emails involving you; it
 2 starts at page 870. {E/211/870}
 3 A. Yes.
 4 Q. Mr McAlindon is emailing you:
 5 "Derek.
 6 "I have a couple of outstanding invoices:
 7 "Dartford - £14,781.25.
 8 "This excludes the £8,800 management costs that are
 9 being charged monthly and is purely the investigation
 10 costs ... Do you want this invoicing before any
 11 discussions take place re share valuations?"
 12 Do you see that? 870; do you see it?
 13 A. Yes.
 14 Q. So how does that work, Mr Dyson? What are the
 15 discussions re share valuations?
 16 A. I have got no idea.
 17 Q. All right. So you don't think that Mr McAlindon and you
 18 were discussing this matter, Dartford and what --
 19 A. You've taken me to it, you've asked me what is that
 20 about. I have got no idea what that is about.
 21 Q. Would you agree with me that it appears, on the face of
 22 it, to be linking the question of putting charges
 23 against the Dartford store -- linking that to the
 24 discussions that might take place re share valuations?
 25 A. What it says is that he has got a couple of outstanding

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1 invoices for Dartford totalling £14,700.
 2 Q. Yes?
 3 A. And that doesn't include £8,800 management costs that
 4 were charged. That's what it says.
 5 Q. What has that got to do with share valuation?
 6 A. I've got no idea.
 7 Q. Anyway, you didn't respond, saying, "I have got no idea
 8 what you are talking about, Mel". You responded at
 9 page 872 to Mel from your PA's email address, but you
 10 sign off, "Regards, Derek": {E/213/872}
 11 "Mel."
 12 "Dartford - put through the first charge now
 13 (Nimesh)."
 14 Do you see that?
 15 A. Yes.
 16 Q. "Wait for outcome of disciplinary before issuing 2nd
 17 phase."
 18 What's that all about?
 19 A. Well, he has asked about two -- two lots of money. One
 20 is about the management costs.
 21 Q. Hm-mm?
 22 A. And the other one is about costs that appear to be -- to
 23 do with Nimesh.
 24 Q. Hm-mm. Yes, but what he has asked for is:
 25 "Do you want the invoicing before any discussions

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1 take place re share valuations?" {E/211/870}
 2 And your answer is not, "I don't know what share
 3 valuations you are talking about, Mel"; your answer is:
 4 "... put through the first charge now ... wait for
 5 the outcome of the disciplinary before issuing 2nd
 6 phase."
 7 A. I can't -- I can't recollect exactly what was the
 8 thoughts in my mind. But what my interpretation is, is
 9 he's owed money with regards to Dartford. One is to do
 10 with Nimesh and one is to do with management costs that
 11 are being charged monthly.
 12 Q. Were you in contact with Mr Raines about his
 13 investigation?
 14 A. No.
 15 Q. Not at all? Weren't you interested to know what his
 16 findings were going to be?
 17 A. No, not until the investigation and the disciplinary had
 18 completed.
 19 Q. Okay.
 20 My Lord, I can see it's 1 o'clock?
 21 MR JUSTICE NUGEE: Yes. 2 o'clock. I'll remind you not to
 22 speak to anyone.
 23 (1.02 pm)
 24 (The short adjournment)
 25 (2.00 pm)

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1 MR JUSTICE NUGEE: Yes, Mr Stuart.
 2 MR STUART: Mr Dyson, which bundles have you got --
 3 A. E4 and B1.
 4 Q. You can put away E4; I've finished with that. D1 you
 5 can put away because I have finished with that.
 6 Could you be passed E5. Do you have E5?
 7 A. Not yet.
 8 Q. E5, please. All right.
 9 E5 starts in November 2007 -- do you see,
 10 page 1073 -- with Mr Perkins' investigation into the --
 11 do you see that letter? {E/264/1073}
 12 A. Yes.
 13 Q. So Ms Birdi had been given some disciplinary sanctions
 14 in October 2007 -- do you remember -- by Mr Raines's
 15 decision. And she was appealing that, wasn't she?
 16 A. I understand so, yes.
 17 Q. You, presumably, were not involved at all in any of
 18 that?
 19 A. No.
 20 Q. And that's why you don't mention any of it in your
 21 statement?
 22 A. That's correct.
 23 Q. That's fine.
 24 In paragraph 66 of your statement, {C/9/103} you say
 25 she got a final written warning; yes?

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1 A. Yes.
 2 Q. And she had got a final written warning for having
 3 incomplete or missing documents. Do you remember; that
 4 related to the documents relating to her father, her
 5 father's employment, and her husband's employment.
 6 For breaches of employment regulations; again, no
 7 contract of employment, et cetera.
 8 For treating her family members differently to other
 9 members of staff.
 10 For not following the correct procedures in relation
 11 to the Polish workers' work on the --
 12 A. Correct.
 13 Q. And in summary, for not being transparent in the
 14 treatment of staff.
 15 That, in summary, is what she was disciplined for;
 16 you would agree with that?
 17 A. I would agree with that.
 18 Q. She was not disciplined for the allegation that Mr Patel
 19 had made -- the original Patel allegation -- of paying
 20 Mr Rehman large sums of money for doing no work
 21 whatsoever. She was not disciplined for that, was she?
 22 A. No, it wasn't proven.
 23 Q. That's right. In your paragraph 66 -- and at the end of
 24 your statement, indeed -- {C/9/103} you make the point
 25 that she could have been dismissed in 2007. This is

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1 when you get to the end of it all and you are suggesting
2 that it's not correct to say that you had a long-term
3 plan to get rid of her, and one of the examples you give
4 is that you say Mr Raines could have dismissed her in
5 2007?

6 A. Yes.

7 Q. But is that right? For those sorts of levels of
8 misconduct, ie not having the right paperwork in place
9 and using a supplier, one supplier, who is not on the
10 list of approved Specsavers suppliers, on one --

11 A. Using Polish builders who are not -- not just not
12 suppliers; they have not got any credentials whatsoever,
13 so far as I could see. So the issues of health and
14 safety, the issues of insurance, the issues of people
15 getting injured, perhaps. So that's quite serious.

16 Q. But it was a historic issue, wasn't it? It had
17 happened?

18 A. Yes.

19 Q. It had happened. No health and safety issue had arisen?

20 A. No.

21 Q. Nobody had fallen down the ... et cetera.

22 Are you seriously suggesting that any JVP whose
23 paperwork wasn't quite in order in relation to some of
24 their staff and who had on one occasion used
25 a non-approved supplier -- are you seriously saying that

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1 that would result --

2 A. It wasn't those two things, there was four things that
3 you said and I think, collectively, those things would
4 and could amount to gross misconduct, and Mr Raines
5 could have formed the opinion it was gross misconduct
6 and he could have dismissed her.

7 Q. I gave you five things as per Mr Raines's account, but
8 four of those five things related to the same thing,
9 namely the lack of paperwork, lack of contract of
10 employment, lack of transparency, as it was put, lack of
11 employment regulations documents -- they all related to
12 the same thing, namely the employment of her father and
13 her husband?

14 A. And Mrs Patel, I think, as well.

15 Q. And of course Mrs Patel, you are quite right; yes.

16 Are you saying that a JVP who doesn't get their
17 paperwork in order in relation to the employment of
18 a family member, for example, and who uses non-approved
19 suppliers on one occasion -- are you seriously saying
20 that for a first offence, that's dismissal?

21 A. It could have accounted for gross misconduct, yes.

22 Q. All right. Can we flick on in your statement to
23 paragraph 73. {C/9/105} This is just finalising what
24 I was dealing with just before lunch. You set out these
25 costs that you have applied?

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1 A. Yes.

2 Q. So you have got the Loss Prevention emergency management
3 costs and then you have got the other Loss Prevention
4 investigation costs. And (e) the disciplinary costs as
5 well. All of those things?

6 A. Yes.

7 Q. And the way you put it there, you say, 73:

8 "... the following costs were incurred by SOS..."

9 "Incurred". So you seem to, there, be trying to
10 assert that SOS incurred a cost, ie got charged by
11 somebody for a cost, and then passed that on to the
12 store company. Is that right? That is what you are
13 trying to say by the use of the word "incurred"?

14 A. Yes.

15 Q. Right. So these emergency management covers, the actual
16 cost incurred by SOS was surely only the £400 plus
17 expenses that Ms Slark was charging and then the much
18 lower £200 that Mr McLaughlin later was charging, and no
19 charge incurred by SOS for its own internal people? SOS
20 didn't incur any such costs, did it?

21 A. I think that we did incur costs because we had to cover
22 the emergency management cover. We had to pay for those
23 people that were providing the leadership in the store.

24 Q. I'm agreeing with you that to the extent that SOS
25 incurred the cost of, for example, Mr McLaughlin, he

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1 charged you £200 a day, all right? That's a cost
2 incurred. Mr McLaughlin is charging £200 an hour.
3 That's a cost of Mr McLaughlin incurred.

4 Mr McLaughlin charges £200 an hour [sic], but you,
5 SOS, charge the store £400 an hour [sic], for example,
6 or £440, for a period of time when all that
7 Mr McAlindon's department is doing -- I'm talking about
8 the McLaughlin period -- all that SOS are doing at that
9 time is having the man in the store?

10 A. Yes.

11 Q. There is no more investigation going on, is there?

12 A. No, because it's emergency management cover and charged
13 at £440, which is the rate which Mr McAlindon charges
14 for his services.

15 Q. Do you understand the difference between charging
16 something and incurring it?

17 A. I understand the difference, yes.

18 Q. So would you agree with me that £65,120 wasn't incurred;
19 it's what was charged?

20 A. Correct.

21 Q. Okay. Similarly, the investigation into Ms Birdi,
22 £6,943.75; yes?

23 A. Correct.

24 Q. Apart from any camera work -- and I'm not sure you would
25 have -- you surely wouldn't be putting cameras in, in

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1 relation to Ms Birdi?
 2 A. No.
 3 Q. So the £6,943 incurred by the Loss Prevention
 4 department, that's actually charges of the Loss
 5 Prevention department, which --
 6 A. Charging for the services at the rate; correct.
 7 Q. Which you are charging to the store, not something that
 8 you are incurring as a charge yourself, SOS?
 9 A. I get the point that you are making.
 10 Q. You would agree with me?
 11 A. Yes.
 12 Q. Good. And I suppose (e), you would say that some of the
 13 accommodation and travel expenses were incurred --
 14 because if there was a train ticket and you have paid
 15 for it, then you have incurred that cost; is that right?
 16 A. Yes.
 17 Q. That's what you have incurred. But fees for
 18 Mr Hamilton, the retail development consultant,
 19 Mr Raines, Mr Rowe, Dominic Savill --
 20 A. We have incurred costs there because we have to pay
 21 their salaries.
 22 Q. Is that what you are saying: salaries of Mr Hamilton --
 23 A. No, I'm just saying -- I'm just saying there will be --
 24 inside of that charge, there will be costs for us to
 25 provide all of those things that are said there, so they

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1 would be incurred to us.
 2 Q. And you think you are entitled to pass on your staff
 3 salaries to the store company?
 4 A. I think we are -- we are entitled to charge for our
 5 support, investigation, et cetera, yes.
 6 Q. Okay. From paragraph 74 onwards, there is set out there
 7 various matters relating to Mr Clark's letter and the
 8 explanations for it, et cetera. Were you personally
 9 involved in any of that?
 10 A. Can I just --
 11 Q. Yes, do. So paragraph 74. {C/9/105} Ms Birdi requested
 12 a detailed breakdown and Mr Clark provided one to her;
 13 do you remember?
 14 A. Yes, in terms of Mr Clark conducting his review or
 15 investigation, whatever you want to call it, then
 16 clearly that was down to Mr Clark.
 17 Q. So I should ask him. He is coming along to give
 18 evidence. So I can ask him about it?
 19 A. Yes.
 20 Q. You weren't personally involved?
 21 A. No.
 22 Q. That's fine. So skip to paragraph 82 then, which is
 23 a matter more of principle. Do you see paragraph 82?
 24 {C/9/107}
 25 A. Yes.

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1 Q. Last four lines:
 2 "Accordingly, the cost of any additional service,
 3 whether that service be an investigation at the request
 4 of SOG, as a B shareholder/director of that Store
 5 Company, or emergency management cover required to keep
 6 a store trading in the absence of the A directors, will
 7 be charged to the Store ..."
 8 Do you see that?
 9 A. I can, yes.
 10 Q. So I'm interested in the way you put that in relation to
 11 the investigation costs?
 12 A. Can I read the paragraphs, so I have got the full
 13 context?
 14 Q. Yes, do. (Pause)
 15 A. Yes, I have read it, Mr Stuart.
 16 Q. So the investigation element of the costs -- not the
 17 management cover, which is something separate --
 18 A. Yes.
 19 Q. -- but the investigation element, you say that arises
 20 from you as B shareholder requesting an investigation?
 21 A. Correct.
 22 Q. And you say that in those circumstances, absent any
 23 resolution by the board of Dartford Specsavers Limited
 24 or its subsidiary, Dartford Visionplus Limited, you say,
 25 merely as a result of you being allowed to request as

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1 B shareholder of the store company that there be an
 2 investigation of your fellow A shareholder, Ms Birdi?
 3 A. Yes.
 4 Q. That you have the right to charge the store for that?
 5 A. Correct.
 6 Q. And on what basis do you assert that?
 7 A. On the basis that we are -- SOG is a B shareholder.
 8 Q. Yes.
 9 A. That we have got an investigation to carry out. The
 10 investigation is to do with the business of Dartford.
 11 The people involved in that investigation work for
 12 Dartford. Therefore, as 3.1.1, then all the costs that
 13 are associated with the store, we are entitled to charge
 14 the store for those costs.
 15 Q. 3.1.1 is day-to-day management, Mr Dyson. You are not
 16 suggesting that this is day-to-day management?
 17 A. I'm suggesting that any costs that are incurred -- back
 18 to that word -- with regard to doing the investigation,
 19 we are entitled to charge Dartford for those costs.
 20 Q. Okay. Could you just go to bundle E6, page 1482.
 21 {E/389/1482} Do you see that? That's an email,
 22 7 July 2008:
 23 "Subject: Dartford costs."
 24 This is to David Clark, who is the man who had
 25 written the letter; do you remember?

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1 A. Yes.
 2 Q. It is from someone called Catherine Lillington. Can you
 3 just tell his Lordship who Catherine Lillington is?
 4 A. I don't know.
 5 Q. "Hi David.
 6 "Following my earlier email, Derek has asked me to
 7 send you his hand written amendments."
 8 Do you see that?
 9 A. Yes.
 10 Q. That would be you, Derek, wouldn't it?
 11 A. It would be, yes.
 12 Q. And then we see page 1483: {E/389.1/1483}
 13 "Derek.
 14 "Please find attached my response to S Birdi ref her
 15 email querying charges made to the Dartford store ...
 16 Legal have checked the wording."
 17 Do you see that?
 18 A. Yes.
 19 Q. And then you have annotated it:
 20 "Amend and copy DC CDG for final review.
 21 "Derek."
 22 Do you see that?
 23 A. Yes.
 24 Q. So these are your amendments, aren't they?
 25 A. They are.

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1 Q. On page 1484 to 1485? {E/389.1/1484}
 2 A. Correct.
 3 Q. Why were you getting involved in the detail of
 4 Mr Clark's explanation here?
 5 A. Because he had sent it to me.
 6 Q. Yes.
 7 A. And I reviewed it and I thought that there would be more
 8 clarity. I corrected things that I thought weren't
 9 right and I added a line, particularly around the daily
 10 charge, to try and explain, so that when Ms Birdi got
 11 this letter, it was clearer than perhaps it was before,
 12 when David had just sent me the copy as it was.
 13 So these are -- not changing, but giving more
 14 clarity to the individual comments that are enclosed in
 15 the letter.
 16 Q. Okay. And so under the heading, "Daily management of
 17 store", it says: {E/389.1/1484}
 18 "SOG do not require store directors or acting store
 19 directors to --"
 20 A. Sorry, can you take me where...?
 21 Q. Half way down there is a heading, "Daily management of
 22 store"?
 23 A. Yes.
 24 Q. Page 1484. Do you see that?
 25 A. Yes.

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1 Q. "SOG do not require store directors or acting store
 2 directors to complete a log sheet of hours..."
 3 Do you see that?
 4 A. Yes.
 5 Q. "... in attendance therefore this information is not
 6 available."
 7 You have added:
 8 "The store is charged a daily rate which covers all
 9 their costs."
 10 A. Correct.
 11 Q. "With regard to days of attendance, I have investigated
 12 a sample of four month of costs relating to the 'day to
 13 day running' of the business. All of the invoices
 14 submitted were found to be correct and relate exactly to
 15 the days whereby an Acting store director was in
 16 attendance ..."
 17 You have added:
 18 "... at the Dartford store."
 19 Yes?
 20 A. Can I just read that, sorry.
 21 Q. You are dealing with the minutiae of the letter here.
 22 You have changed --
 23 A. Erm --
 24 Q. -- "Dartford" to "the Dartford store"?
 25 A. Well, when you are invited to read something and comment

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1 on it and you see something, then you annotate.
 2 Q. Okay. All right. So it's the next paragraph:
 3 "The daily charge for an SOG employee Acting store
 4 director ..."
 5 Who is acting as store director, according to you?
 6 A. Not according to me. David wrote that bit. I just put
 7 "employee" in there.
 8 Q. Yes, you changed the meaning from "SOG Acting store
 9 director" to "SOG employee Acting store director". So
 10 which SOG employee do you mean?
 11 A. That's clearly wrong.
 12 Q. Okay. And then at the bottom you have added the note:
 13 "The is ..."
 14 I think you mean:
 15 "This is the equivalent to an average daily charge
 16 of £440, which covers all costs including travel, meals,
 17 accommodation and staff salaries."
 18 Do you see that?
 19 A. I do.
 20 Q. If it covers all staff salaries, how can you charge for
 21 the person concerned, the manager, the £440, and, on top
 22 of that, the further staff element in relation to the
 23 fees you say you charge for other things?
 24 A. Can you repeat the question?
 25 Q. Yes. You have told us, when I took you to the bit where

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1 you were charging for Mr Raines, Mr Rowe and other
 2 people's involvement --
 3 A. Yes.
 4 Q. -- not just their expenses, you said, "Ah, well we have
 5 got their salaries as well. We are providing them."
 6 A. Correct.
 7 Q. But, surely, according to you, the staff salaries are
 8 included within the £440?
 9 A. Yes, as a combined charge of £440, but the people who
 10 were actually providing, on two of the occasions over
 11 this cover, are people who are not employees, ie
 12 Carol Slark and Sean McLaughlin.
 13 Q. All right. Just explain to me again why you are
 14 personally getting so involved in this?
 15 A. Because David sent this to me.
 16 Q. Yes.
 17 A. I read it, I thought I was adding clarity to make it
 18 easier for when it was received to answer some of the
 19 questions that were being asked.
 20 Q. Okay. All right. I think we have dealt with
 21 paragraphs 83 to 85 earlier this morning, so I'm not
 22 going to take you to that.
 23 Can you go to paragraph 89 of your witness
 24 statement. {C/9/108} Mr Lunn.
 25 A. Yes.

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1 Q. Which is the point I was asking you about earlier. Do
 2 you remember I showed you the Mr Lunn email?
 3 A. Yes.
 4 Q. It's half way down 89. Do you see there is a sentence
 5 in the middle. It says:
 6 "If Dartford was an independent business ..."
 7 A. Yes.
 8 Q. "If Dartford was an independent business and it had no
 9 directors to run it then it would have to incur the
 10 costs of a temporary store director. In this case, the
 11 store had the support of one of its main
 12 shareholder/directors (SOG), but this did not mean that
 13 legitimate business expenses should have been waived."
 14 Do you see that?
 15 A. Yes.
 16 Q. It's your use of the term "waived". What legitimate
 17 business expenses are you talking about there that may
 18 or may not be waived?
 19 A. Can I just have a minute to read the context? (Pause)
 20 Right. It's in the context that I believe that the
 21 charging that we were -- charges that were made to
 22 Dartford for the cover are legitimate. They should be
 23 there, and they shouldn't be stopped.
 24 Q. Okay. Paragraph 90 is really fundamental to what your
 25 explanation is and I need your explanation for what you

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1 say here. Paragraph 90, do you see it? You say in the
 2 first sentence that: {C/9/108}
 3 "Where a full-scale investigation involving
 4 emergency management cover is required, this is usually
 5 because one or more of the JVPs ... are suspected of
 6 fraudulent or dishonest conduct."
 7 Fraud or dishonesty. Yes?
 8 A. Yes.
 9 Q. I can quite see that paying Mr Rehman large sums of
 10 money for doing no work is potentially fraud or
 11 dishonesty. That is an allegation of, effectively,
 12 a fraud or dishonesty. But not having employment
 13 contracts or the paperwork in place, that wouldn't be
 14 an allegation of fraud or dishonesty, would it?
 15 A. No.
 16 Q. And using a non-approved supplier, whilst wrong, whilst
 17 entirely wrong --
 18 A. I do -- I do think that is fraudulent and dishonest.
 19 Q. Is it? Fraudulent?
 20 A. Yes, because there was no permission to do it. There
 21 was no invoices. We haven't seen how the company paid
 22 for that works to be done. So, yes.
 23 Q. What's the fraud? Fraud on whom?
 24 A. Well, there's clearly tax implications for the people
 25 that are doing the work, because there are no invoices

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1 for this work.
 2 Q. Yes. So it's a fraud on the Revenue; is that what you
 3 are suggesting? Or possibly?
 4 A. I'm just saying it's fraudulent and dishonest conduct.
 5 Q. It's easy to say, isn't it? But how is it fraudulent;
 6 how is it fraudulent to employ somebody to do put up
 7 a -- fix a window that's broken? They are not on your
 8 approved list; they are Polish. How is that fraudulent?
 9 A. The activity that they are doing, if they are not
 10 providing invoices and not providing guarantees and
 11 other things, could lead you to believe there's some
 12 fraudulent activity going on.
 13 Q. Could lead you believe that, but it's not actually an
 14 allegation of fraudulent conduct, is it? To employ
 15 somebody who is not on the approved list and to do so
 16 without the proper paperwork is not itself fraudulent,
 17 is it? It's a different sort of wrongdoing to fraud and
 18 dishonesty?
 19 A. I think that their activities were clearly not above
 20 board. Maybe that isn't fraudulent, but there's clearly
 21 something not right about the fact that people do work
 22 and don't provide us with invoices and don't --
 23 Q. I mean --
 24 A. -- and potentially don't pay their taxes or pay NHI or
 25 whatever else they are supposed to do whilst about doing

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1 legitimate business.
 2 Q. The lack of paperwork, whilst it may well be evidence
 3 that something dishonest is going on -- because who
 4 doesn't document what they are doing -- the lack of
 5 paperwork isn't necessarily fraudulent, is it?
 6 A. No.
 7 Q. I mean, you yourself -- we have got here five years'
 8 worth of your involvement in this matter and not one
 9 single document evidencing the meetings and discussions
 10 which you say you had with these people. But you
 11 weren't acting fraudulently when you didn't put anything
 12 on paper, were you?
 13 A. No. I didn't actually say I didn't put it on paper.
 14 I said if I did make notes, they are -- they don't --
 15 they no longer exist because I probably shredded with
 16 them as I dealt with things on my daily tasks.
 17 Q. Again, the shredding of documents might be fraudulent,
 18 mightn't it? But it might not be?
 19 A. But it's not a document, it's a note.
 20 Q. All right. So at the end of this paragraph 90, you say
 21 that: {C/9/109}
 22 "... the investigation was necessitated by serious
 23 allegations regarding financial matters of the Dartford
 24 business against her which transpired to be true."
 25 That's not fair --

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1 A. Where am I?
 2 Q. The end of this paragraph 90. The allegations, the
 3 serious allegations --
 4 A. Sorry, I can't see where you are.
 5 Q. At the end of paragraph 90?
 6 A. Yes.
 7 Q. The last sentence is four lines. It says:
 8 "It is true that the costs of emergency management
 9 cover can be substantial, but I have little sympathy for
 10 Ms Birdi when she complains of this given that ..."
 11 Then you use the words:
 12 "... the investigation was necessitated by serious
 13 allegations regarding financial matters of the Dartford
 14 business against her which transpired to be true."
 15 A. Okay, it's over the page; sorry, yes.
 16 Q. You have already told us that the investigation was
 17 necessitated by Mr Patel's allegations; no one else's.
 18 That's right, isn't it?
 19 A. For the theft of the money and the activity through
 20 refunding, that's Mr Patel.
 21 Q. No. The investigation into Ms Birdi was necessitated by
 22 serious allegations made against her by Mr Patel?
 23 A. Correct.
 24 Q. And those allegations were that she paid or caused the
 25 company to pay large sums of money to her husband when

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1 her husband did no work for the business?
 2 A. Yes.
 3 Q. Do you remember?
 4 A. I do.
 5 Q. Which, as you have said, would be fraud or dishonesty.
 6 That allegation did not transpire to be true, did
 7 it? It transpired to be false?
 8 A. It transpired not to be proven.
 9 Q. No, no, no: it transpired to be false, that allegation.
 10 Mr Rehman did some work for the business, didn't he?
 11 A. He did.
 12 Q. SOG and Ms Mancini did an investigation and she
 13 summarised all the work that he did. So that allegation
 14 of paying somebody for no work was a false allegation?
 15 A. Correct.
 16 Q. It's not your fault that Mr Patel made a false
 17 allegation -- as long as Mr McAlindon didn't cause him
 18 to make that allegation -- but it was a false
 19 allegation, not one that transpired to be true?
 20 A. Correct.
 21 Q. Okay. I think I have dealt this morning with the salary
 22 increases, so we can skip past that. We are almost at
 23 the end of your first statement now. Let's move on to
 24 97, under the heading, "Payments to Mr Singh". Do you
 25 see that? {C/9/110}

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1 A. I have got it, yes.
 2 Q. Let's deal with a few points first. You seek to rely
 3 upon clause 15 of the shareholders' agreement;
 4 paragraph 98. Would you be shown D1. Do you see it?
 5 Page 186. {D/15/186} So you pray in aid clause 15 and
 6 you use the words:
 7 "Pursuant to clause 15 of the Shareholders'
 8 Agreement, the decision of who would replace Mr Patel as
 9 a JVP in Dartford was subject to SOG's approval..."
 10 A. Correct.
 11 Q. Do you see that? So if we look at clause 15 -- do you
 12 have it? Page 186? Clause 15 says:
 13 "An A director ..."
 14 That would be Mr Patel:
 15 "... shall not transfer or dispose of all or any of
 16 his A shares or any interest in any of them to any other
 17 person except in accordance with clause 16..."
 18 We will come back to that in a moment. So he can do
 19 it under clause 16 but otherwise he can't do it:
 20 "... unless such person has first been approved by
 21 Specsavers as being an acceptable transferee."
 22 A. Correct.
 23 Q. So you, Specsavers, effectively have a right of approval
 24 over anyone to whom he is going to transfer, not by
 25 clause 16?

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1 A. Correct.
2 Q. "Such approval will not be unreasonably withheld..."
3 So your right to approve is itself subject to
4 obligations on you, isn't it?
5 A. It is.
6 Q. It's not an unfettered right for you simply to say, "We
7 don't like Ms Kaur", for example, your example. "We
8 don't think she is appropriate, you can't transfer";
9 your approval will not be unreasonably withheld:
10 "If such person is an individual who is registered
11 with the [GOC] or any body replacing it as an ophthalmic
12 optician..."
13 So an OO.
14 A. Hm-mm.
15 Q. "... or if the A director in question is a dispenser as
16 a dispensing optician or if the A director in question
17 is described in this Agreement as a retailer..."
18 That doesn't apply here, does it, in this agreement?
19 Do you remember, it was dispenser, and at page 177,
20 {D/15/177} the structure was Specsavers; the optician,
21 which is Swarandeeep Birdi, and the dispenser, which is
22 Nimesh Patel. This wasn't a retailer-type example.
23 A. He would have been responsible -- Nimesh would have been
24 responsible for the dispensing and the retailing.
25 Q. That's not the point of this clause, is it? The point

1 25

1 of this clause is that if somebody is described in this
2 agreement as "the retailer" -- because in some of your
3 stores, you have OO, DO and retailer, or you have OO and
4 retailer. You don't always --
5 A. Correct.
6 Q. -- use the dispenser --
7 A. I accept that.
8 Q. But if you look back at page 177, just to help you.
9 Page 177, the parties. Do you see it? It says:
10 "2. Parties."
11 You have got Specsavers; then you have got the
12 optician, Swarandeeep Birdi, and the dispenser,
13 Nimesh Patel?
14 A. Correct.
15 Q. So, in this case it was the dispenser, Mr Patel.
16 A. Yes.
17 Q. He was the dispenser?
18 A. Yes.
19 Q. So if you go back to 15.1.1, {D/15/186} you are not
20 unreasonably to withhold your approval if the person --
21 that is the person who is purchasing; do you see?
22 A. Yes.
23 Q. -- is a dispenser:
24 "... if the A director in question is the dispenser
25 as a dispensing optician, or ... "

1 26

1 So it's that that applies here, and (ii):
2 "Such person covenants with Specsavers in a deed to
3 perform and observe all the obligations..."
4 So they have to comply with all the obligations.
5 So you do not have an unfettered right to approve or
6 not approve people, do you?
7 A. I think we have a right to approve and not approve
8 people based on whether they are qualified and whether
9 they are able to pass our stage 1 process, which is
10 a process that we use, and they've got to have the
11 skills appropriate to the job that they are being asked
12 to do.
13 Q. Yes. The next point that arises from that, this clause
14 that you are relying on, is that, 15: {D/15/186}
15 "An A director shall not transfer or dispose of all
16 or any of his A shares or any interest in any of them to
17 any other person except in accordance with clause 16
18 unless such person has first been approved by Specsavers
19 as being an acceptable transferee."
20 Then clause 16 is the purchase notice process. Do
21 you see?
22 In the case of Mr Patel, you didn't serve a purchase
23 notice, did you?
24 A. Sorry?
25 Q. In the case of Mr Patel and his shares --

1 27

1 A. Yes.
2 Q. -- you did not serve a purchase notice?
3 A. That's correct.
4 Q. So we can ignore clause 16, the purchase notice
5 provisions, can't we?
6 A. We can.
7 Q. So Mr Patel as A director can't transfer or dispose of
8 his A shares, can he, unless the person to whom he has
9 transferred them has first been approved by Specsavers
10 as an acceptable transferee?
11 A. Correct.
12 Q. Who did you approve and where is the approval?
13 A. Who did we approve...?
14 Q. For him to transfer his shares to?
15 A. Who did we approve him to transfer his shares -- you
16 mean Nimesh Patel?
17 Q. Yes.
18 A. He transferred those shares to us.
19 Q. Yes. And when did you approve yourselves as an
20 acceptable A shareholder?
21 A. I'm not sure that we have to approve ourselves.
22 Q. Okay. Going back to your witness statement, you say at
23 paragraph 100 and then 101 {C/9/111} that you were not
24 involved in the selection process of Mr Singh. You left
25 all of that to Mr Ryan. Do you see that?

1 28

1 A. No.
2 Q. Paragraph 101 of your witness statement?
3 A. Yes.
4 Q. I'm sorry, 101:
5 "I was not involved in the selection process of
6 Mr Singh as that matter was dealt with by [Mr] Ryan..."
7 A. "... in conjunction with [Mr] Raines."
8 Q. "... in conjunction with [Mr] Raines."
9 At this time -- so that was late 2007/beginning of
10 2008, okay?
11 A. Yes.
12 Q. Is there some reason why you have stepped out of the
13 position of being the controlling director of the
14 Dartford store?
15 A. Not that I'm aware of.
16 Q. Have you appointed Mr Ryan as a director of the Dartford
17 store?
18 A. No.
19 Q. Or Mr Raines?
20 A. No.
21 Q. I'm going to suggest to you that you were involved in
22 approving or discussing the appointment of Mr Singh. We
23 don't see it anywhere on the paperwork but I'm going to
24 suggest to you that you were actually involved, and
25 would have been involved, discussing things with

1 29

1 Mr Raines at around this time?
2 A. Can you say that again, Mr Stuart?
3 Q. Yes. You said:
4 "I was not involved in the selection process of
5 Mr Singh..."
6 A. Correct.
7 Q. I am going to suggest to you that you were involved --
8 "involved" in the sense of discussing it with Mr Raines?
9 A. The selection of the individual would be done by Mr Ryan
10 and Mr Raines.
11 Q. Yes.
12 A. And then I, as it says in here, would have the final
13 say. So I get involved at the point where they say, "We
14 believe that this individual is the right individual for
15 this store".
16 Q. Okay. And at what stage did they advise you of that?
17 A. When you say "at what stage", I mean, this is a long
18 time ago. I don't know what you mean by "at what
19 stage".
20 Q. You are saying that the appointment of Mr Singh is
21 a matter, if you like, where they are doing a proper
22 investigation into him; checking out his credentials;
23 assessing whether he is the right man for the store.
24 That's your evidence, isn't it?
25 A. Yes.

1 30

1 Q. And then at some point --
2 A. It's normal business practice for both Mr Ryan,
3 sometimes Mr Howarth and Mr Raines, to be involved in
4 selecting the joint venture partners.
5 Q. Okay. And then at some point they come to you and they
6 say, "Right, we have looked at all the options and
7 Mr Singh is the best option"?
8 A. Yes.
9 Q. And that's why you approve his appointment?
10 A. Correct.
11 Q. I'm going to suggest to you that the concept of putting
12 in Mr Singh was one in which you were involved, in
13 discussing with Mr Raines and/or Mr Ryan throughout the
14 period of time when they were considering what to do?
15 A. In terms of the selection of the individual, there would
16 have been -- I don't know. I don't know how many
17 individuals they considered. At a point where they have
18 made a decision, then they would talk to me about it.
19 Q. Okay. Is that -- let's see just a couple of documents.
20 E5, page 1177. There is Mr Raines --
21 A. E5 ...?
22 Q. E5/1177. {E/281/1177}
23 A. Yes.
24 Q. This is Mr Raines's day book. He has got this book,
25 like a diary, where he notes down all the conversations

1 31

1 he has with people, et cetera?
2 A. Yes.
3 Q. This one, which you will see has been put into this
4 bundle by Specsavers, is somewhere between 9 January,
5 page 1176, {E/280/1176} and 21 January, page 1180.
6 {E/284/1180} So we can guess that this is
7 around January 2008. Would you take that from me?
8 A. Yes.
9 Q. And we have got a heading, just above the first
10 holepunch:
11 "Derek."
12 Do you see that?
13 A. Yes.
14 Q. Do you recall speaking to Mr Raines at this time?
15 A. I can't say I would be able to pinpoint it to a date,
16 no, but if you gave me a topic --
17 Q. Around this time -- well, the topic appears to be --
18 second holepunch:
19 "Dominic - Dartford. (Plan) ..."
20 In a circle:
21 "Action."
22 Then on the right, someone has put:
23 "Put in plan."
24 Or could that be "place":
25 "Put in place."

1 32

1 Do you see that?
 2 A. Yes.
 3 Q. Do you know what that was about?
 4 A. No.
 5 Q. This is all under the heading, "Derek". It looks like
 6 one of the items of your discussion was:
 7 "Dominic - Dartford (Plan). - Action."
 8 What plan of action did you have for Dartford: you,
 9 personally, Mr Dyson, in January 2008?
 10 A. What plan?
 11 Q. Yes.
 12 A. I wouldn't have had any plan, other than dealing with
 13 work or activities associated with doing my job. There
 14 was no plan.
 15 This is obviously a reference by Mark. He wants
 16 Dominic to do something. I have no idea what it is, and
 17 he is going to take an action against that.
 18 Q. Who is Dominic?
 19 A. Dominic is an RDC, so a Regional Development Consultant
 20 for London.
 21 Q. Okay, and what was Dominic's role in all of this?
 22 A. I've got no idea.
 23 Q. So when you were -- okay. You can't recall this
 24 discussion at all with Mr Raines?
 25 A. No, it doesn't mean anything to me.

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1 Q. Right.
 2 MR JUSTICE NUGEE: Is it Dominic Savill?
 3 A. Dominic Savill, yes.
 4 MR STUART: Can you just go down from there?
 5 A. Yes.
 6 Q. You have got:
 7 "Dominic - Dartford..."
 8 Something to do with digital cameras.
 9 A. Yes.
 10 Q. Do you see that? Then it says:
 11 "Linda - send to Derek David Clark."
 12 A. Yes.
 13 Q. What's that about?
 14 A. I suspect, if you go to the top of it, it says:
 15 "121."
 16 David Clark had just joined the business at this
 17 time, so he has done an induction. I imagine that he
 18 was sending me a copy of his induction plan.
 19 Q. Okay.
 20 A. Because David Clark did get involve in digital cameras
 21 as one of the first jobs he did working with Simon,
 22 whose second name I can't remember, whose job it was to
 23 roll out this piece of equipment to all of the
 24 Specsavers' portfolio of stores.
 25 Q. So that all seems to have nothing to do with Dartford?

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1 A. No.
 2 Q. So the only interest in Dartford seems to be the Dominic
 3 item and the action plan, but you don't know what that
 4 was a reference to?
 5 A. I have no idea.
 6 Q. Okay, fine. Would you just flick on to page 1210?
 7 A. 1210?
 8 Q. Yes. 1210. {E/302/1210} We are into March 2008 now.
 9 Do you see that?
 10 A. Right.
 11 Q. Do you have that?
 12 A. I have got it, yes.
 13 Q. Maura Faller; who is she?
 14 A. She is John Perkins's PA.
 15 Q. Okay, so "John" is John Perkins. It's from
 16 Michael Ryan. He is reporting to you, isn't he? He is
 17 the man we have heard of already, Michael Ryan?
 18 A. He is the business transfer manager.
 19 Q. That's right. It says:
 20 "Hi John ..."
 21 And then something has been scrubbed out, which is
 22 presumably nothing to do with Dartford:
 23 "Dartford -- I've spoken to Kam Singh who still
 24 wants the Dartford shares, and he will start the process
 25 of selling his Grays shares. He will also call

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1 Michael McGonagle, who I have asked to facilitate the
 2 initial meeting with Swarandeeep, and generally manage
 3 Kam's introduction to the store.
 4 "We paid £55,000 for Nimesh's shares, so I propose
 5 to sell them for £60K, which is 3x p/e based on current
 6 performance. This will cover BT fees."
 7 That's "business transfer" fees; is that right?
 8 A. Yes.
 9 Q. "Are you okay with this sale price?"
 10 Mr Dyson, were you involved at this stage in these
 11 discussions --
 12 A. Not that I'm aware of, because obviously it's unusual
 13 for Michael to go straight to John, so I may have been
 14 on holiday.
 15 Q. Okay.
 16 A. Or I may have been out of -- in the Nordics. I have no
 17 idea; I can't tell you without -- without knowing
 18 precisely on the day. So, it sounds as if Mike is
 19 checking in with John with regard to the share sale.
 20 Q. Okay. But who was it who decided to let Mr Singh have
 21 some shares, which your business transfer department,
 22 Mr Ryan, had valued in February 2007 at -- remember the
 23 document I took you to first thing this morning? In
 24 February 2007 he valued it at somewhere in the region
 25 of --

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1 A. Well, Mike Ryan didn't, but somebody --
 2 Q. A member of his staff did?
 3 A. Yes.
 4 Q. At between £80,000 and £125,000. Do you remember?
 5 £85,000 and £125,000?
 6 A. Yes.
 7 Q. Whose decision was it to sell those shares to Mr Singh
 8 for just £60,000?
 9 A. Well, that would have been Michael Ryan, proposing what
 10 the value of the shares was at the time. So, going back
 11 to your original question, Mr Ryan and Mr Raines
 12 obviously would have looked at who are the people --
 13 potential candidates; they would have done a selection
 14 of the best person that they believed, and Michael Ryan
 15 would have done a calculation of what the shares were,
 16 value, to sell it to Mr Singh.
 17 Q. We don't have that, you see. I did ask you about this
 18 yesterday and you said, "Yes, each time we bought, we
 19 would do one of those valuations and each time we sold
 20 we would do a valuation". That's what you said
 21 yesterday?
 22 A. Yes, we would do a valuation, yes.
 23 Q. So what was the valuation as at March 2008? What was
 24 the valuation of these shares?
 25 A. According to this memo, Michael Ryan said it's £60,000.

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1 Q. No, he doesn't say that's the value. He said:
 2 {E/302/1210}
 3 "We paid £55,000 ... so I propose to sell them for
 4 £60K..."
 5 There is no valuation there?
 6 A. Okay, I take the point you are making, but Mike Ryan
 7 would have -- would have made that decision, to say what
 8 he believed the share price was.
 9 Q. Mr Singh is getting a real bargain, isn't he?
 10 A. Well, if it's based on three times P/E, that makes it
 11 60 grand. It's not doing very well.
 12 Q. The reason it's not doing very well for that last year,
 13 between March 2007 and March 2008, is because it has had
 14 almost £100,000 worth of charges, fees --
 15 A. £65,000 for the management cover, yes.
 16 Q. Management cover, plus all the investigation costs, do
 17 you remember?
 18 A. Yes.
 19 Q. These are all unusual items, aren't any?
 20 A. But it's also unusual for that length of time to
 21 transpire, which I said right at the beginning of the
 22 day, because we never envisaged that it would take six
 23 months to do an investigation and a disciplinary.
 24 Q. That's not the question I'm asking you, is it? You
 25 acknowledge that simply applying a figure to the

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1 profits -- actually losses -- earned in that last year
 2 is a wholly unusual year, for whatever reason --
 3 illness, suspension, Nimesh Patel investigation, thefts,
 4 et cetera. Those are wholly unusual items, and the true
 5 position here is that this was a company which was
 6 turning over about £1 million to £1.2 million, with
 7 profits of about £100,000 to £120,000?
 8 A. I don't know where you have got a figure from £120,000
 9 on profits from.
 10 Q. Okay. What do you think the profits would be, stripping
 11 out the unusual items?
 12 A. I have got no idea. I have got nothing on which to
 13 base -- answer that question.
 14 Q. All right, well, if you had absolutely no idea and no
 15 basis for doing it, on what basis do you value these
 16 shares at £60,000?
 17 A. I do not value the shares. Mike Ryan values the shares.
 18 That is his job. He is the business transfer manager.
 19 Q. And he didn't discuss it with you?
 20 A. No.
 21 Q. All right. Were you involved personally at all then
 22 from this point onwards in relation to this -- 2008
 23 now -- when Mr Singh gets finally appointed, buys the
 24 shares, is appointed as a director?
 25 A. I mean, I could say no, unless there is a point of

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1 reference that says I was. It's very difficult for me
 2 to make --
 3 Q. If you go to your witness statement, I'm sure you would
 4 have it there.
 5 A. Yes.
 6 Q. At paragraph 103, last sentence, you say: {C/9/112}
 7 "... Mr Singh was being brought into Dartford as in
 8 my view he had the necessary retailing skills to carry
 9 out the role of a Retail JVP."
 10 A. Correct.
 11 Q. So are you saying that you are the person who had to
 12 make the decision and that was the basis for your
 13 decision? Because I can't find any notes made by you or
 14 any emails sent to you, saying, "Look, here are the
 15 candidates, this chap has got specific retail skills",
 16 or anything in fact, anything --
 17 A. Mr Ryan and Mr Raines made the selection.
 18 Q. Okay.
 19 A. They put that forward to me. I endorsed that I felt
 20 that Mr Patel was the right individual because he was in
 21 -- working in a successful store in Grays, performing
 22 the role of the retail director. It was a successful
 23 store. I had no reason to believe that he wasn't
 24 a suitable candidate.
 25 Q. As you sit here now, do you actually recall having these

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1 conversations?
 2 A. With?
 3 Q. Mr Ryan, I suppose you are saying?
 4 A. Not specifically, no.
 5 Q. No. All right.
 6 Then we come on to Mr Singh's salary, paragraph 104.
 7 {C/9/112} Were you involved in setting that salary, or
 8 was that a matter for Mr Raines?
 9 A. I was involved but not at the point when the original
 10 letter went out. So the offer letter went to Mr Singh.
 11 It then was duly returned and the number was crossed out
 12 and another number was annotated on it. I think it was
 13 42.
 14 Q. Yes, that's page 1217 in bundle E5. March 12th.
 15 {E/307/1217}
 16 A. 12 ...?
 17 Q. ... 17.
 18 A. Yes.
 19 Q. Is that what you are referring to at the bottom there?
 20 A. Yes.
 21 Q. "... you will be acting as the DO/Retail partner in
 22 Dartford and will therefore be paid in the region of
 23 £32,500..."
 24 A. Correct.
 25 Q. That's because that was the going rate, wasn't it, for

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1 a DO retail director at that time?
 2 A. No, that was the rate at which Mr Patel was paid. It
 3 wasn't necessarily the going rate. The going rate would
 4 be, based on experience, anything from that level up to
 5 £45,000-ish. I can't be completely accurate.
 6 So it would have been based on experience,
 7 performance of the individual and how long they had had
 8 service with us.
 9 Q. Did you play any part in the decision-making to fix
 10 these figures?
 11 A. Mr Ryan -- I remember -- the reason I remember it,
 12 I remember him bringing this to me, showing me what had
 13 happened. And I, in a discussion with Mr Ryan, said
 14 I was happy once he had explained that he was in Grays
 15 and he was earning a similar salary. Bearing in mind
 16 that the store wasn't making lots of money, lots of
 17 dividends, so not a lot of chance of Mr Singh taking any
 18 distributions, I was happy at the salary level of
 19 £42,000.
 20 Q. You say a similar salary. That's not right, is it? If
 21 we are talking about basic salary -- so even if the
 22 store makes a whopping loss, the director still gets
 23 their basic salary. No bonuses, no distributions.
 24 A. Yes.
 25 Q. The £32,500 that was going into the offer letter for the

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1 employment was basic salary, wasn't it?
 2 A. Well, £42,000 is basic salary as well, so I'm not sure
 3 the point you are trying to make.
 4 Q. I'm making the point that you said he was getting
 5 £42,000 in his other store?
 6 A. As basic -- basic salary.
 7 Q. That wasn't his basic salary. Do you have evidence that
 8 it was his basic salary?
 9 A. No, but I was told he was being paid a similar amount.
 10 Q. Including bonuses or including other benefits?
 11 A. My interpretation of the information that was given to
 12 me is that he was earning a similar salary in Grays.
 13 Q. Basic salary. You understood that what he was being
 14 offered here was £42,000 basic?
 15 A. Absolutely, I understand that 100 per cent.
 16 Q. Plus bonuses if appropriate?
 17 A. Distributions, are you talking about?
 18 Q. Distributions as bonuses.
 19 A. Yes.
 20 Q. So salary bonuses; yes? Plus other employment benefits?
 21 A. Correct.
 22 Q. So the £32,500 figure was just the basic salary
 23 entitlement?
 24 A. And so was the £42,000 that I agreed with Mike Ryan as
 25 basic.

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1 Q. Fine. And you believed that he was earning £42,000
 2 basic salary under his contract of employment at Grays?
 3 A. A similar amount of money.
 4 Q. Okay. So from that, it does sound like you were
 5 personally involved in the decision to pay him this
 6 amount?
 7 A. When this was brought to my attention, yes.
 8 Q. Yes. So Mike Ryan came to you and said, "Look, he wants
 9 42 basic"?
 10 A. Yes.
 11 Q. And you said, "Yes, pay him 42"?
 12 A. No, I wouldn't have just said -- I wouldn't have just
 13 said, "Yes, basic pay him". I would have asked some
 14 questions around about, "What are we currently paying
 15 around"; "What was he earning before", et cetera. So
 16 I would have had some information to hand in order for
 17 me to then do it. I wouldn't just make it up on a snap
 18 decision.
 19 Q. Okay. Are there any notes or any emails from you,
 20 relating to you approving this salary?
 21 A. No.
 22 Q. Did you consider it was unusual, £42,000 basic?
 23 A. No.
 24 Q. Could you flick to page 1300. {E/349/1300} The deal by
 25 which Mr Singh came in was a sort of composite deal,

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1 wasn't it? Not just basic, not just share sale. It was
 2 a composite of a number of things.
 3 Page 1300. Do you recognise this format?
 4 A. I recognise the format, yes.
 5 Q. So obviously, there came a point where it was decided
 6 that the 50 per cent A shareholding was going to be sold
 7 to Mr Singh. He is inserted under "Buyer's Details"; do
 8 you see that half way down the page?
 9 A. "Kam Singh (Grays Director)"? Is that what you -- yes?
 10 Q. Yes. The salary is £42,000?
 11 A. Yes.
 12 Q. Looking above, under the severance package item -- this
 13 is all in relation to the seller -- there is an item
 14 which says:
 15 "Contingent Liability...
 16 "The buyer acknowledges that there is a potential
 17 estimated liability of £20,340, payable to HMRC at some
 18 time in the future. It will need to be paid from future
 19 profits and cashflow."
 20 Do you see that?
 21 A. I do.
 22 Q. That was the HMRC payment that had to be paid in
 23 relation to Mr Patel's liability, wasn't it?
 24 A. It would have been, yes.
 25 Q. Yes.

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1 A. Up until the point he left.
 2 MR JUSTICE NUGEE: Sorry, I didn't understand that. What is
 3 Mr Patel's liability to HMRC?
 4 A. At the time that Mr Patel was employed and at the time
 5 he left, HMRC were doing an investigation as to our dual
 6 company structure.
 7 MR JUSTICE NUGEE: This was the VAT investigation?
 8 A. Yes. So we were putting money out of everybody's
 9 accounts to one side in case we ended up with a payment
 10 back to HMRC of -- rather than leave it so that it was
 11 just a number that turned up, we were making provision
 12 for that and making sure everybody was aware of that.
 13 MR JUSTICE NUGEE: I have not quite understood why then you
 14 said in answer to counsel's question that it was the
 15 HMRC payment that had to be paid in relation to
 16 Mr Patel's liability. If it's the VAT investigation,
 17 it's a liability of the business.
 18 A. That he was employed and a director responsible up until
 19 the point at which he left, so he would have some
 20 liability of the total.
 21 MR JUSTICE NUGEE: Okay, thank you.
 22 MR STUART: Then just going down that page, the rest of the
 23 deal. Do you see under the heading, "The Deal", on the
 24 left-hand side?
 25 A. Yes.

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1 Q. There is a heading "The Deal":
 2 "SOG sells KS 50 A shares at £1,200 per share
 3 totalling £60,000..."
 4 Do you see that?
 5 A. I do.
 6 Q. So it's a sort of composite deal whereby he gets
 7 a £42,000 salary, he gets the shares for £60,000.
 8 That's right, isn't it?
 9 A. Yes.
 10 Q. All part of that deal. And then underneath that it
 11 says:
 12 "New Shareholders Agreement/Deed of Adherence."
 13 And then you have got there:
 14 "New JVA."
 15 So you are hoping to get a new joint venture
 16 agreement signed up by Ms Birdi and Mr Singh. Is that
 17 fair?
 18 A. Erm... yes, probably.
 19 Q. And then it says:
 20 "MPT level: £19,700."
 21 What's that?
 22 A. Minimum performance threshold.
 23 Q. Is that to be inserted into the new JVA?
 24 A. I think it would already be in the existing JVA.
 25 Q. So that's a sort of turnover figure for the business --

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1 A. Yes.
 2 Q. -- per week?
 3 A. Yes.
 4 Q. So that's, by my reckoning, £1 million a year turnover;
 5 52 weeks times £19,700?
 6 A. If you say so, Mr Stuart.
 7 Q. £20,000 times 50 weeks would be £1 million?
 8 A. Correct.
 9 Q. £19,700 times 52 weeks would be £1 million?
 10 A. Yes.
 11 Q. So it was part of the deal that Mr Singh was getting
 12 into a company which had a minimum turnover level of
 13 £1 million turnover; that's right, isn't it? So when
 14 I said to you that he was buying these shares at a bit
 15 of a snip, he was buying the shares at a bit of a snip,
 16 wasn't he? Because these were shares in a company which
 17 was minimum expected to turn over £1 million?
 18 A. But because a store takes £1 million, doesn't mean to
 19 say that the store is going to be profitable.
 20 Q. No, of course. Profitability --
 21 A. Because it requires really good joint venture partners
 22 working together in order to drive the business forward,
 23 which is the whole principle on which Specsavers is
 24 based. So just because it takes £1 million, doesn't
 25 mean to say it will make money.

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1 Q. But the anticipated profits on a turnover of £1 million
 2 would be what? In your experience as the --
 3 A. Around 10 per cent.
 4 Q. So £100,000 profit?
 5 A. Yes.
 6 Q. That's the profit that is then available for
 7 distribution?
 8 A. It's not necessarily available for distribution --
 9 Q. Not necessarily, but we are talking in round terms?
 10 A. It is a number minus all the other things that have to
 11 be done in order to get to a distribution point.
 12 MR JUSTICE NUGEE: Is that £100,000 over and above the --
 13 A. Their salaries.
 14 MR JUSTICE NUGEE: -- basic salaries for the JVPs?
 15 A. Correct.
 16 MR STUART: So he is acquiring a shareholding that will, in
 17 rough and round terms, pay about £50,000 worth of
 18 profits for his 50 per cent shareholding, and he is
 19 acquiring it for £60,000. That's a snip.
 20 A. It will only pay him out £50,000 if the profitability is
 21 there and that will be down to the partnership, working
 22 together, controlling costs, running the business well,
 23 delivering great service, trading hours, et cetera. So
 24 there is no guarantee that just because it's £1 million
 25 turnover, they are going to make £100,000 profit.

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1 Q. No guarantee, no, but so long as he did all the things
 2 which he should do, and so long as he received his
 3 £42,000 salary for doing his actual work?
 4 A. Yes.
 5 Q. And so long as Ms Birdi received her salary for doing
 6 her actual work, and so long as they didn't have unusual
 7 items, like £65,000 of assistant manager's costs or
 8 £20,000 worth of investigation costs, he might have
 9 anticipated profits of £100,000-ish, split 50/50 with
 10 his joint venture A shareholder?
 11 A. In the future, yes.
 12 Q. So acquiring those shares for £60,000, that pay £50,000
 13 a year potentially, average, et cetera, that is a snip,
 14 isn't it?
 15 A. It's a motivation for the partnership to do well.
 16 Q. I'm going to suggest to you that it's a motivation --
 17 that is, the giving to him of those shares at such
 18 a discount is a motivation to do what the seller --
 19 here, SOG -- asks you to do?
 20 A. No, that's not true.
 21 Q. And that if the seller gives you shares at a snip and
 22 a salary level at a high point, and agrees to support
 23 you in anything you do, that is an incentive to then do
 24 what the seller, SOG, wants you to do?
 25 A. That is not the case here at all and I disagree with

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1 you.
 2 Q. To the same extent that you disagree with me that when
 3 you bought the shares from Mr Patel, that wasn't a plan
 4 of action?
 5 A. There is no plan. There's not a conspiracy at all.
 6 Never has been. I've not been part of one. I have
 7 acted in the best interests of the business in all my
 8 decisions.
 9 Q. You have acted in the best interests of your business,
 10 SOG; you haven't acted in the best interests of the
 11 company --
 12 A. The best interests of the business. I was talking about
 13 Dartford Visionplus, when I made that comment.
 14 Q. All right. Very swiftly, just to finish this statement.
 15 At paragraph 105 you say --
 16 A. Is that my witness statement?
 17 Q. Yes, your witness statement. Do you have it?
 18 A. I have got it.
 19 Q. From the last word of line 3, you say: {C/9/112}
 20 "SOG never intended to hold the A shares for the
 21 long term so a purchaser was always required."
 22 I suggest to you that, given the evidence I have
 23 showed you this morning, that can't be right, can it?
 24 You certainly did, at some point, intend to hold the
 25 A shares for the long-term?

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1 A. No, we didn't.
 2 Q. You were going to put it into group venture or shared
 3 venture?
 4 A. I wasn't going to put it into anything. It may have
 5 ended up in group venture by default, not because there
 6 is a plan to make it a group venture store.
 7 Q. All right.
 8 A. We don't have group venture stores in the business.
 9 I personally removed them all from the business when
 10 I joined because they are not well run, they are not
 11 profitable, and the shared venture and joint venture
 12 business is the best model.
 13 Q. At paragraph 107 on page 113, {C/9/113} you deal with
 14 the issue about Ms Birdi raising objection to Mr Singh
 15 because of his involvement in matters of dishonest
 16 activity relating to his time at another Specsavers
 17 store. Do you recall that?
 18 A. Where does it say "dishonest activity"?
 19 Q. It doesn't use -- in your statement it doesn't use that,
 20 but you have set out what Ms Birdi's objections were and
 21 we know -- she was cross-examined about it and shown
 22 documents -- that she had put to Ms del Grazia?
 23 A. This is to do with his -- with Maidstone or some store,
 24 many years -- six or seven years before?
 25 Q. That's right, where his brother was the JVP?

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1 A. No.
 2 Q. What do you mean, no?
 3 A. Not in Maidstone.
 4 Q. Okay.
 5 A. This is an issue around locumming, I think is what you
 6 are referring to.
 7 Q. Okay. Were you aware of the issue in which he was
 8 involved with his brother, where his brother was a JVP?
 9 Were you not aware of that?
 10 A. I was aware of that, yes.
 11 Q. Was that not part of Ms Birdi's objections to Mr Singh?
 12 A. I know that Ms Birdi wrote on four or five occasions
 13 with regard to this and Cristina del Grazia wrote back
 14 to her. I can't remember the issues that Ms Birdi
 15 raised.
 16 Q. Okay. You see, the way you have put it here is that --
 17 I'm reading from the fourth line from the bottom:
 18 {C/9/113}
 19 "Even if there was any supporting detail, I did not
 20 consider it to be of sufficient importance..."
 21 Do you see that?
 22 A. I was aware of the Grays scenario and I didn't believe
 23 that it was of importance in my decision-making.
 24 Q. It appears something of a whitewash you are conducting
 25 here. You are just ignoring allegations against

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1 Mr Singh?
 2 A. No, I am considering those allegations that Ms Birdi is
 3 raising and Ms Birdi is getting responses back through
 4 Cristina del Grazia to the questions that she raises.
 5 Q. Well, she is not actually, is she? Specsavers say,
 6 "It's not a matter for you?"
 7 A. It was a private matter to do with the director in
 8 Grays.
 9 Q. Exactly. So Ms Birdi was not being told the truth. She
 10 was not being given the information?
 11 A. She wasn't being given the information because I didn't
 12 believe that it was relevant, because it's to do with
 13 another store some three years prior to Mr Singh
 14 purchasing shares in Dartford.
 15 Q. Well, this is a matter of appointing a new A director
 16 and you were actually going to ask Ms Birdi to enter
 17 into a joint venture agreement with him, weren't you,
 18 a new JVA? She was going to sign up to a new agreement
 19 to be a partner with him?
 20 A. I don't know about a new JVA. I think it's an existing
 21 joint venture agreement.
 22 Q. I just took you to the document, and the plan was to
 23 sign a new JVA. She was in fact asked to sign a new JVA
 24 almost immediately afterwards?
 25 A. This document I haven't seen until you've showed me now.

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1 It's not a document that I now refer to. I just --
 2 I just -- when I'm talking to Mike Ryan and we talk at
 3 a high level about what activity we are going to do --
 4 this is Mike Ryan's job; this is the detail behind it.
 5 Q. She was entitled to know the material facts regarding
 6 any --
 7 A. I don't agree with that. I don't agree with that -- if
 8 there'd have been anything material we would have showed
 9 it with Ms Birdi. What happened in Grays was three
 10 years before and was not -- was a matter to do with the
 11 Grays store and had no implications on the Dartford
 12 store.
 13 Q. You were going to get her to become a partner with
 14 a person, about whom she had heard that there were two
 15 matters potentially involving some dishonest activity on
 16 his part?
 17 A. And I considered Ms Birdi's questions and I didn't
 18 believe that they -- that it was relevant.
 19 Q. Skipping on to --
 20 MR JUSTICE NUGEE: Mr Stuart, if you are moving on to
 21 another topic?
 22 MR STUART: I am, my Lord, yes.
 23 MR JUSTICE NUGEE: We will take a five minutes' break.
 24 (3.15 pm)
 25 (Short break)

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1 (3.23 pm)
 2 MR JUSTICE NUGEE: Yes, Mr Stuart.
 3 MR STUART: So, Mr Dyson, we have almost reach the end of
 4 your first statement here. Paragraphs 113 through to
 5 117 {C/9/114} are all about Mr Singh's increased salary
 6 and bonus payments, and these are the bonus payments
 7 that you also refer to in your second witness statement.
 8 You set them out in more detail. The £2,500 a quarter,
 9 do you remember?
 10 A. Yes.
 11 Q. And obviously the salary increase which you refer to
 12 there.
 13 Your justification for these sums is, as
 14 I understand it, in paragraphs 115 and 116. You say:
 15 {C/9/115}
 16 "... Mr Singh had shown great commitment to his
 17 role..."
 18 115?
 19 A. Yes.
 20 Q. "... as a Retail JVP and in improving the performance of
 21 Dartford since he had joined. On that basis
 22 I considered that he was entitled to the usual annual
 23 increase of 5 per cent..."
 24 Are you suggesting that there was some standard
 25 5 per cent salary increase that applies to all JVPs in

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1 the country where they have shown great commitment and
2 improved performance?

3 A. No, what I'm suggesting is that the -- we have --
4 I think we have explained we have a cap and that cap is
5 the -- at £50,000, which is, you know, a point at which
6 we won't go beyond. But if partners wish to apply for
7 pay rises on an annual basis, we normally will allow up
8 to 5 per cent in a year.

9 Q. All right. Ms Birdi hadn't received any pay rises, had
10 she?

11 A. From?

12 Q. At all.

13 A. No, Ms Birdi has never applied for a pay rise, even
14 though she was sent documentation which she could have
15 used, I think from Mr Moore or Mr Kidd.

16 Q. Okay. You are suggesting that it's somehow due to
17 improved performance. This is in July 2010 you say you
18 are analysing this; July 2010?

19 A. The 5 per cent applied for, yes, 2010.

20 Q. So you were having this thought to yourself about why
21 you were justifying paying him a salary increase as you
22 were thinking about it in July 2010?

23 A. As I was thinking about it?

24 Q. Yes. Have I understood your evidence correctly that you
25 were thinking of giving him this pay rise in July 2010,

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1 so you were looking at the figures, for example, of his
2 performance --

3 A. No, I don't think that's right. I think what happened
4 was is Mr Singh sent a letter in, asking for a pay rise.
5 I was then asked by Alison Girollet, as the SOG
6 B shareholder, to consider the letter.

7 Clearly, I wasn't going to pay the money that
8 Mr Singh had wanted, but I did give it consideration as
9 to the fact that he hadn't had a pay rise in the period
10 of time that he had been a director. The performance of
11 the business had gone up and indeed the dividends which
12 both he and Ms Birdi enjoyed had also gone up
13 significantly.

14 He was managing the store on his own, without
15 a second partner, because this is a two-partner store,
16 and I felt that applying a retrospective pay rise to
17 him, for both July 2010 and 2011, was appropriate.

18 Q. Would you be passed bundle D2. Can you go to page 365.
19 {D/27/365} 365?

20 A. Yes.

21 Q. Do you have it?

22 That's the profit and loss accounts consolidated for
23 Dartford Specsavers Limited. Do you see?

24 A. Yes.

25 Q. And we can see that is for the year ended

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1 30 September 2010. So by July 2010, you were ten months
2 into that year; you still had another month until the
3 end of August, another month until the end of September,
4 but you were ten out of twelve months of the year.

5 We can see that for that period, up
6 to September 2010, the turnover was £1.193 million,
7 whereas the previous year, it had been £1.218 million,
8 hadn't it?

9 A. Correct.

10 Q. And the profit for the period to September 2010, if we
11 take the profit on ordinary activities before taxation
12 figure, it's £16,225 for the year, whereas for the
13 previous year, it had been £140,842.

14 So actually, his performance at this
15 time, July 2010, wasn't particularly good, was it? In
16 fact, it was pretty calamitous. Turnover down and
17 profits down by 90 per cent?

18 A. But the 5 per cent pay rise is not based on the
19 profitability of the store; that's a request that the
20 directors can put in on an annual basis and we will
21 consider that and we will normally pay a 5 per cent
22 increase, as long as it doesn't go above the cap.

23 Q. No. At 115, {C/9/115} you said:

24 "I considered that Mr Singh had shown great
25 commitment to his role..."

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1 I'm sure you did consider that, but:

2 "... and in improving the performance of Dartford
3 since he had joined. On that basis I considered he was
4 entitled to the usual annual increase of 5 per cent to
5 commence from July 2010..."

6 So actually, reading that, you must have actually
7 decided that a bit after. The way the words are used
8 there, it must have been after he had been managing the
9 store on his own that you made that decision. Would you
10 agree?

11 A. Can I just read it?

12 Q. Yes. (Pause)

13 In fact, we can cut much quicker can't we? I should
14 have taken you to paragraph 114. {C/9/114}.

15 We can see when you were considering this. You were
16 actually considering it in September 2011.
17 September 2011, so you had the full year's profit and
18 loss accounts to September 2010. You must have done.
19 So you must have seen that 2010 was a poor year:
20 turnover down, profits down by 90 per cent.

21 So on what basis do you consider that his
22 performance was such as to justify a substantial pay
23 increase, backdated by over a year?

24 A. I think it says it in my statement, which says --

25 Q. No, it just says due to his performance. I'm asking

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1 you, what about his performance?
 2 A. Well, he had been managing the store on his own,
 3 single-handedly.
 4 Q. Yes, with the assistance of locums, dealing with all of
 5 Ms Birdi's --
 6 A. That's not -- the locum is not the same as having
 7 another partner helping you to run the store, sharing
 8 the burden, the long hours, and probably working six
 9 days a week, rather than five days a week, whatever it
 10 takes. So it was rewarding him for him working
 11 extremely hard on his own, running the store, which was
 12 a two-partner store. And he hadn't had a pay increase
 13 since he joined.
 14 Q. All right. Okay. Can we move swiftly on to the appeal.
 15 You conducted the appeal. As you rightly put it at the
 16 end of paragraph 120 of your statement, you are not
 17 intending to comment on it at length. {C/9/116} Do you
 18 see that?
 19 A. Yes, I've got that.
 20 Q. So you just basically summarised your appeal. Can you
 21 go to bundle E -- I think it is E15?
 22 A. Can I get rid of any of these, Mr Stuart?
 23 Q. Yes, get rid of everything. We can move to E15.
 24 A. And a page to go to, Mr Stuart?
 25 Q. 4192, I think, is your decision.

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1 A. 4192. {E/1068/4192}
 2 Q. It ends at 4199 with your signature. {E/1068/4199}
 3 A. Sorry. Yes.
 4 Q. You have said at paragraph 118 in your statement
 5 {C/9/115} that the investigation was done by Mr Clark.
 6 This is the 2010 investigation?
 7 A. Yes.
 8 Q. I take it from the fact that there is no mention of you
 9 in this witness statement being involved in any way in
 10 the 2008/2009 issues between Mr Singh and Ms Birdi that
 11 we heard about at length during cross-examination of
 12 them -- so that's the four days' testing issue and the
 13 allegation and counter-allegation, et cetera?
 14 A. Yes.
 15 Q. I take it you personally had no part to play in any of
 16 that?
 17 A. No, not at all.
 18 Q. Presumably, from the point when Mr Singh was appointed
 19 an A director back in 2008, you personally took a step
 20 back from all of this, did you, because you were no
 21 longer having to act as SOG A director?
 22 A. Correct.
 23 Q. So you rather left it to the A directors and then the
 24 B directors appointed by SOG --
 25 A. Correct.

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1 Q. -- at the time. So we can see their names appearing.
 2 Mr Rowe at one point becomes an appointed B director;
 3 Dame Mary Perkins?
 4 A. Correct.
 5 Q. Mr Raines. Is that right?
 6 A. It sounds about right, yes.
 7 Q. Yes. Do I understand, from the fact that there doesn't
 8 appear to be anything in your witness statement about
 9 that, that you personally, for whatever reason, just
 10 didn't get involved in that period?
 11 A. I didn't, no.
 12 Q. Okay. So you really only then become involved, as you
 13 say, in December 2010. There is an appeal against the
 14 disciplinary findings of Mr Clark and overseen by
 15 Dawn McIntyre. And you now come back involved; you are
 16 to hear the appeal?
 17 A. That's correct.
 18 Q. I say, "hear the appeal". There was no hearing; you
 19 just made your decisions without actually hearing
 20 Ms Birdi in person?
 21 A. No, because Ms Birdi cancelled the -- attending the
 22 hearing that had been organised.
 23 Q. Yes. Why were you chosen to hear this appeal?
 24 A. Because I'm SOG's retail director.
 25 Q. True, but --

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1 A. And the majority of the issues are all around retailing.
 2 Q. Ah, but the majority of the issues, if you like, if you
 3 have read the appeal and you have read everything that
 4 led up to that appeal --
 5 A. I did read all the reports, including Mr Clark's report.
 6 Q. Absolutely.
 7 A. Dawn McIntyre's report.
 8 Q. It involved all the things going back -- according to
 9 Ms Birdi, going back to 2007, didn't it? She was trying
 10 to re-open --
 11 A. Correct.
 12 Q. -- as part of her appeal all those things back in 2007?
 13 A. That had been investigated and decisions made,
 14 et cetera, yes.
 15 Q. Which all involved members of your team, if you like?
 16 A. Yes.
 17 Q. 2008 and 2009. Why you, personally? Why were you
 18 chosen?
 19 A. I can't -- I can't answer the question. I can't
 20 remember -- at the time -- I have given you my
 21 suggestion is that I'm the retail director and
 22 responsible for stores, partners, partnerships,
 23 et cetera, and I'm normally an individual that gets
 24 involved in these matters as part of my job.
 25 Q. Who chose you?

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1 A. I think I have just answered the question before and
 2 that was, I think, I was nominated because of -- but
 3 I don't know -- I don't --
 4 Q. Sorry, you didn't hear the question: who chose you?
 5 A. I don't know.
 6 Q. Which board of which company appointed you to do this?
 7 A. I don't know. I don't think any --
 8 Q. Or which director of which company appointed you to do
 9 it? Or did you appoint yourself because you were the
 10 director of SOG?
 11 A. No, I think -- I think I was appointed to hear the
 12 appeal by Visionplus, Dartford Visionplus, but that's
 13 something in my mind.
 14 Q. Did you have any discussion with anybody -- and I'm not
 15 talking about legal advice now -- any discussion amongst
 16 any directors of any companies about who would be the
 17 most appropriate person to hear this appeal?
 18 A. No.
 19 Q. Given the wide nature of what Ms Birdi was saying and
 20 the people that she was saying it against -- she was
 21 making allegations begins Mr McAlindon, wasn't she?
 22 A. Correct.
 23 Q. That was the start of it all. And against what you had
 24 done, back in 2007, because at that time you were SOG,
 25 acting as A director, and all those costs and charges

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1 and everything she wanted to say about that.
 2 She wanted to bring in the appointment of Mr Singh;
 3 that's 2008. That was really on your say so, wasn't it?
 4 And your final say so?
 5 A. Final say so, yes.
 6 Q. And if it wasn't you, then it was your subordinates,
 7 Mr Ryan and Mr Raines, who did that, who put that to you
 8 for you to approve?
 9 A. Yes.
 10 Q. So there was all the imposition of Mr Singh and then
 11 there was the support of Mr Singh, so she said, the
 12 biased support of Mr Singh, throughout 2008 and 2009.
 13 Do you recall? That was also all part of her ...
 14 Now, all of those aspects of the matter that she saw
 15 as central to her appeal and as being really the motive
 16 behind all of this, they really all came under your
 17 supervision, didn't they, all of those things?
 18 A. In the main.
 19 Q. So, surely, you are judge and jury on a trial where
 20 really, it's you and your departments who are facing the
 21 allegations, so far as she was concerned?
 22 A. I can understand why that might be Ms Birdi's view.
 23 Q. So of all the people in all of SOG, perhaps you were the
 24 least appropriate person, if we were trying to find
 25 a fair and unbiased appeal tribunal, which is what your

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1 SOG policies say are most important in the disciplinary
 2 process: at all stages, fair and unbiased. Do you
 3 remember?
 4 A. Yes.
 5 Q. It's not fair and you are not unbiased when it comes to
 6 dealing with the allegations that formed the basis of
 7 Ms Birdi's appeal and her general complaints here. You
 8 are neither fair nor unbiased, are you?
 9 A. You may say that. I think I am fair and I think I am
 10 unbiased.
 11 Q. Are you sure that you don't recall how it was that you
 12 came to be appointed, and that it was as a result of
 13 a decision of the board of SOG to ensure that this was
 14 the final nail in the coffin?
 15 A. Not at all.
 16 Q. Right. Very, very swiftly, although you are not
 17 commenting on all the detail of it, you say at
 18 paragraph 122 that you: {C/9/116}
 19 "... discussed the points of appeal further with
 20 Mr Moore of SOG's Legal Department..."
 21 A. Correct.
 22 Q. That's what you say:
 23 "... in or around March 2011 ..."
 24 I'm noting the use of words there:
 25 "... before reaching my decision."

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1 Do you actually have any recollection now of sitting
 2 down and going through each of these points of appeal
 3 yourself --
 4 A. Absolutely --
 5 Q. -- rather than leaving it to the legal department to
 6 draft something for you?
 7 A. -- I have got 100 per cent recollection.
 8 Q. Okay. I'm going to suggest to you that page 4192
 9 through to page 4199 was drafted for you and that you
 10 didn't either type or dictate -- {E/1068/4192}
 11 A. No, I was given -- I was given all of the information by
 12 Mr Moore.
 13 Q. Yes.
 14 A. I consulted with him, which we can't -- we won't go
 15 into.
 16 Q. No.
 17 A. And that was around February, because we thought we'd
 18 got an appeal to deal with on a face-to-face basis with
 19 Ms Birdi. It was then -- obviously that wasn't going to
 20 happen, and I spent three or four weeks working my way
 21 through all of the paperwork that Mr Moore had provided
 22 me, which was David Clark's report, Dawn McIntyre's
 23 report, the board -- meeting with the board in which --
 24 where Ms Birdi was sacked, Ms Birdi's letter of appeal.
 25 So I had quite a bit of documentation and I took my

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1 time to work my way through that. I did consult with
 2 Mr Moore on many occasions and then I reached my
 3 decision.
 4 Q. Hm-mm. That's not actually what I asked you. I asked
 5 you whether this document here, 4192 to 4199, were your
 6 words or those drafted for you, and I'm suggesting to
 7 you they are not your words; they were drafted for you?
 8 A. And I took my time to go through this, consulted with
 9 Legal and this is my findings.
 10 Q. This is?
 11 A. These are my findings. These are my words.
 12 Q. So how did you come to draft this document? Did you
 13 type it yourself?
 14 A. No.
 15 Q. No. Did you give it to your secretary for her to type?
 16 A. No, it was probably -- it was probably handwritten at
 17 the time.
 18 Q. So you made manuscript notes against your pack -- you
 19 said in your statement you had got a pack of materials?
 20 A. Yes.
 21 Q. That was in paragraph 122: {C/9/116}
 22 "I was provided with a pack ..."
 23 A. Yes.
 24 Q. So you made manuscript notes having gone through all the
 25 materials, reaching certain conclusions in manuscript,

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1 and that's sort of the end of your notes of your appeal
 2 decision?
 3 A. Yes.
 4 Q. And then --
 5 A. And then --
 6 Q. -- those somehow turn into this --
 7 A. And then long conversations with Mr Moore.
 8 Q. Yes, and long conversations with Mr Moore, which I don't
 9 want to go into.
 10 A. No.
 11 Q. But somehow, your manuscript notes -- which would run to
 12 how many pages, roughly?
 13 A. Well, there would -- there would have been lots of notes
 14 on the actual documentation and I would have been
 15 picking up points and writing them down as I was going
 16 through the documents following the appeal that Ms Birdi
 17 made in a logical order, working my way through the
 18 points that she was raising.
 19 Q. Yes. Now, your pack, with your manuscript annotations
 20 showing that you actually addressed your mind to any of
 21 this -- where is that pack with your manuscript
 22 annotations?
 23 A. I have got no idea.
 24 Q. What did you do with it when you had -- because it's
 25 obviously a very important document. You knew that

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1 there was a dispute arising here, didn't you?
 2 A. There was a dispute. This was an appeal.
 3 Q. Yes, it was an appeal against her dismissal.
 4 A. So that would have been given to the legal team.
 5 Q. What, the pack? You handed the pack back to the legal
 6 team?
 7 A. All of -- all of my notes and all of my annotations
 8 would then go to the legal team; yes.
 9 Q. Right. So do you know what has happened to them since?
 10 A. No.
 11 Q. No.
 12 MR POTTS: My Lord, an issue of privilege is asserted and is
 13 relied upon.
 14 MR STUART: These are annotations that you made in your
 15 capacity as the decider of the appeal; annotations that
 16 you made?
 17 MR POTTS: If my friend is asking for a legal argument about
 18 it, I will give him one.
 19 MR STUART: No, no, I'm not asking for any legal argument;
 20 I'm asking for clarification as to facts so that we can
 21 see whether any subsequent legal argument has any basis
 22 whatsoever.
 23 MR POTTS: Well, Mr Dyson is entitled to take legal advice.
 24 MR STUART: Yes, and I am not asking for documents
 25 relating --

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1 MR POTTS: And the company -- this is not
 2 Dartford Visionplus. The company has not been charged
 3 for that legal advice. He is entitled to receive advice
 4 from SOG's internal legal department and he took such
 5 advice.
 6 MR JUSTICE NUGEE: But I thought that what Mr Stuart was
 7 asking about was his manuscript draft of the decision on
 8 the appeal, together with annotations he had made?
 9 MR POTTS: My Lord, there has been discussion with --
 10 I don't know if now is the appropriate time, but there
 11 has been a discussion about the methodology in relation
 12 to the production --
 13 MR JUSTICE NUGEE: Yes.
 14 MR POTTS: Mr Dyson has confirmed that this represents his
 15 end, the end product, and it represents his views and
 16 his findings on the appeal. Communications, the back
 17 and forth of communications with lawyers in relation to
 18 the production of that, is a matter in respect of --
 19 the back of forth of communications, the giving and
 20 taking of legal advice in relation to a matter, is
 21 a matter in relation to which privilege may properly be
 22 asserted.
 23 MR STUART: I don't want the back and forth of
 24 communications. Mr Dyson has --
 25 MR POTTS: My friend is asking for the back and forth.

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1 MR STUART: No, I'm not.
 2 MR POTTS: Mr Stuart is asking for the back and forth.
 3 MR STUART: No, I'm not.
 4 MR JUSTICE NUGEE: Mr Stuart, what are you asking for?
 5 MR STUART: As I understand your evidence, Mr Dyson, it is
 6 that you were the director who considered this appeal?
 7 A. Correct.
 8 Q. You are the decision maker. You say that you had a pack
 9 of material, given to you as the appeal decision maker?
 10 A. That's correct.
 11 Q. And that you made manuscript annotations of your own on
 12 that pack as part of your decision-making process?
 13 A. Correct.
 14 Q. You then --
 15 MR POTTS: My Lord, sorry, the additional point I should
 16 make, just from (inaudible) the background, is that
 17 there is adversarial litigation involving Ms Birdi and
 18 she has commenced employment tribunal proceedings.
 19 MR STUART: That's right, and in those employment
 20 tribunal --
 21 MR JUSTICE NUGEE: Yes, I was aware of that.
 22 MR POTTS: Yes.
 23 MR JUSTICE NUGEE: But I think at the moment, there is still
 24 a lack of clarity as to what document it is that
 25 Mr Dyson is referring to and to what extent that

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1 encompasses privileged material. And I think that's
 2 what Mr Stuart is trying to clarify at the moment.
 3 At the moment, I haven't heard any questions asking
 4 for the content of that material, but just what it is,
 5 and I think Mr Stuart can continue to try and elucidate
 6 from Mr Dyson what documentary material existed, and
 7 then we will see where we go from there.
 8 MR POTTS: My Lord, it's quite a fine line, but there does
 9 come a point where, when asking about the nature of
 10 a document, that gives an insight in relation to the
 11 contents of the document.
 12 MR JUSTICE NUGEE: Well, I think I am going to ask Mr Dyson
 13 some questions.
 14 My understanding of the answers you have already
 15 given Mr Stuart is you received a pack of material to
 16 consider when considering the appeal?
 17 A. Correct.
 18 MR JUSTICE NUGEE: You made notes on that pack of material
 19 in relation to the matters which arose on the appeal?
 20 A. Correct.
 21 MR JUSTICE NUGEE: When you were making those notes, was
 22 that your own thought process, or was that something on
 23 which you were taking legal advice, before or at the
 24 time of making the notes?
 25 A. I would have reviewed the documentation, made notes and

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1 started to form my own opinion, and then I would consult
 2 with the legal team.
 3 MR JUSTICE NUGEE: There comes a stage at which you ask the
 4 lawyers, but before that stage, you make your own
 5 consideration of the matters which appear on the appeal?
 6 A. Correct.
 7 MR JUSTICE NUGEE: Yes. And I think the other question is:
 8 do you know what has happened to the legal pack of
 9 material -- the pack of material you received on which
 10 you started making your notes?
 11 A. I have no idea.
 12 MR JUSTICE NUGEE: Right.
 13 Mr Stuart, do you want to take this any further?
 14 MR STUART: My Lord, yes, I want to just take it on from
 15 there.
 16 Leave aside the pack with your notes on, so these
 17 are pieces of paper with your manuscript notes on them;
 18 from another answer that you gave I thought you were
 19 also saying that you then produced for yourself -- for
 20 yourself, not for the legal department, for yourself --
 21 some sort of structured decision-making in relation to
 22 all the points made --
 23 A. No.
 24 Q. -- in manuscript?
 25 A. No.

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1 Q. You didn't do that?
 2 A. No.
 3 Q. Fine. So it's just your notes on the pack that form any
 4 documentary evidence of you having yourself addressed
 5 the issues that were put to you by Ms Birdi?
 6 A. Correct.
 7 Q. We started all of this on the basis of this is your
 8 document, this document here, signed off by you, okay?
 9 A. Yes.
 10 Q. And if you tell me that this document was drafted for
 11 you, as a result of legal advice, then I will not ask
 12 you any more about it. If, on the other hand, you say,
 13 "No, I drafted," or, "I caused to be drafted" the words
 14 set out here by some other people who physically typed
 15 them up, then I will ask you about it.
 16 So, did you draft the words set out here or not?
 17 A. In the process of coming to my decision, which was done
 18 over quite a considerable amount of time -- because
 19 I think it was about three or four weeks of doing it --
 20 I would have dealt with the issues and done annotations,
 21 made some notes and then I would have then went to the
 22 legal team to talk to them about the process I was going
 23 through and to get advice --
 24 Q. I don't want to know what advice you got. I'm not
 25 asking but it. But there must have come a stage where

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1 someone drafted this document?
 2 A. That would have come from the legal team.
 3 Q. Fine. That's the answer then.
 4 Are you suggesting that all the arguments set out in
 5 here are your own arguments, the arguments in rebuttal
 6 of the points of appeal?
 7 A. Yes.
 8 Q. So, for example, if we just take one example, the last
 9 page, 4199 {E/1068/4199}, there is an argument about
 10 the interpretation of clause 9.2 of Ms Birdi's service
 11 contract. Do you see that?
 12 A. I do.
 13 Q. And the counter-argument is put in the fifth paragraph:
 14 "I do not agree with your assertion ... "
 15 So it's written as if by you?
 16 A. Correct.
 17 Q. "I don't agree with your assertion that the
 18 circumstances of your dismissal by DVL falls under the
 19 scope of clause 9.2. However, in any event clause 9.2
 20 is not an exhaustive list of the only possible reasons
 21 why a JVP could ever be dismissed 'with immediate
 22 effect', ie either with no notice pay, or with pay in
 23 lieu of notice. Contrary to your suggestion, it is does
 24 ... "
 25 I'm not sure what's gone on there:

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1 " ... it is does not say that the only situations
 2 where DVL could ever dismiss a JVP with pay in lieu of
 3 notice are the four situations in 9.21-9.24. Rather,
 4 clause 9.2 is simply an illustrative list of some
 5 situations which 'may' lead to dismissal."
 6 Are you saying that's your personal argument?
 7 A. That's my personal argument based on experience,
 8 remembering this is not the first appeal that I've done.
 9 I have worked for Tesco for 27/28 years. I know that
 10 you put into documents things that are illustrative but
 11 are not necessarily exhaustive in terms of what can be
 12 brought in these circumstances.
 13 Q. Yes. But did you yourself then address her -- did you
 14 go to her service contract?
 15 A. Did I go to her service --
 16 Q. Yes, did you pick up her service contract, look at
 17 clause 9.2, start looking at the subclauses, 9.2.1. We
 18 find it in bundle D1 at page 17 {D/3/17}. Are you
 19 suggesting this is your argument?
 20 A. D1?
 21 Q. D1, page 17. Do you see it? That's Ms Birdi's service
 22 contract. Page 15, the head sheet. And clause 9.2
 23 appears on page 17. Do you see that:
 24 "9.2 The company may by notice terminate this
 25 agreement with immediate effect if the executive shall

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1 "9.2.1 commit any act of gross misconduct ..."
 2 Do you see that?
 3 A. I do.
 4 Q. " ... or
 5 "9.2.2 be guilty of any conduct which in the
 6 reasonable opinion of the board brings him or the
 7 company into serious disrepute ... "
 8 A. Yes.
 9 Q. " ... or
 10 "9.2.3 be convicted of any criminal offence ... or
 11 "9.2.4 commit any act of dishonesty whether relating
 12 to the company or any of its employees or otherwise."
 13 A. But Ms Birdi specifically raises this issue in her
 14 appeal, so I went to the specific area that she raised
 15 in her appeal.
 16 Q. Did you? You had her service contract, did you?
 17 A. I don't know if it was her service contract. I would
 18 have had at least a piece of paper with that on.
 19 I can't say to you it was Ms Birdi's but it would have
 20 been a shareholder's agreement.
 21 Q. Okay. And so this was your argument, where it says:
 22 "However, in any event clause 9.2 not an exhaustive
 23 list of the only possible reasons why a JVP could ever
 24 be dismissed 'with immediate effect' ... "
 25 A. That is based on 40 years of experience in dealing with

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1 these things through retail and dealing with employment
 2 law issues, dealing with tribunals, knowing that you put
 3 down examples of what it may be but the list isn't
 4 always exhaustive and there are other things that may
 5 cause people to terminate employment.
 6 Q. So that's your interpretation of that clause of that
 7 agreement, that it's a non-exhaustive list?
 8 A. It is.
 9 Q. All right. Paragraph 124 you say: {C/9/117}
 10 "There was nothing new for me to consider on the
 11 appeal."
 12 You effectively, don't you, support every one of
 13 Mr Clark's and Ms McIntyre's decisions?
 14 A. Yes, there was nothing because Ms Birdi didn't attend
 15 the appeal to give me any other evidence, other than her
 16 appeal letter.
 17 Q. But that was a very long letter, wasn't it?
 18 A. Sorry?
 19 Q. That was a very long letter, her appeal letter?
 20 A. Yes.
 21 Q. Do you remember it at all?
 22 A. I do. I have that as a copy, which was -- I worked my
 23 way through. It was sent to Alison Girollet.
 24 Q. Page 4132 right through to page 4138. {E/1056/3132}
 25 A. Which pack am I in, sorry?

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1 Q. Sorry, you are still in E15. That's the only one you
 2 need to have, E15.
 3 A. 4 ...?
 4 Q. ... 132 through to 4138.
 5 A. Yes, got it.
 6 Q. She had set out for you, hadn't she, a very large amount
 7 of examples of the mistreatment that she had suffered,
 8 et cetera, et cetera?
 9 A. Yes.
 10 Q. And you are saying you considered all of that but simply
 11 came to the conclusion that there was nothing new?
 12 A. No, most of this had been dealt with by either
 13 David Clark or Ms McIntyre at a point in the past when
 14 they were doing their own investigations.
 15 Q. Okay. Would you go finally then in your first witness
 16 statements, under the heading "Conclusion",
 17 paragraph 126. {C/9/117} You say:
 18 "The allegation that SOG had a desire to remove
 19 Ms Birdi from the Dartford business is false."
 20 A. That's true.
 21 Q. But it's not the point, right, is it? We have seen the
 22 evidence that you did have an intention at some point to
 23 remove her from the business so that you would have the
 24 shares --
 25 A. You keep saying that, Mr Stuart. I don't recognise what

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1 you are saying or where the reference is. There was
 2 never any intention on my behalf to do anything other
 3 than manage this whole process further, and there was no
 4 intention to get rid of Ms Birdi at all.
 5 Q. But the documentary evidence from members of your shared
 6 venture team and from members of your business transfer
 7 team --
 8 A. But these are people that are not in making decisions.
 9 I don't know why they did it. I don't know what their
 10 motivation was in carrying out that survey. I can't
 11 comment. I never saw it, was not involved in it. I can
 12 only talk about at my level what I was doing and how
 13 I was performing my duties, and I never had any
 14 intention at all to remove Ms Birdi from the business.
 15 Q. But they all worked for you -- that shared ventures team
 16 and the business transfer team worked and reported to
 17 you --
 18 A. I understand what you are saying.
 19 Q. -- didn't they?
 20 A. It's a big business, a big organisation, and people --
 21 yes, you can say not directly but indirectly I was
 22 responsible for those people; they were in my team.
 23 Q. And quite directly. Mr Ryan worked directly for you?
 24 A. That's not the same as shared venture. Shared venture
 25 doesn't work for -- directly to me; it works to

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1 Jill Clark.
 2 Q. I said shared venture and business transfer.
 3 A. Business transfer did work directly for me.
 4 Q. And the shared venture aspect worked to you through
 5 Ms Clark, you say?
 6 A. Correct.
 7 Q. And you were personally taking a very detailed amount of
 8 involvement in Dartford, weren't you? We have seen your
 9 fingerprints, if you like, all over it.
 10 A. At various points in time, yes.
 11 Q. And certainly -- well, from 2007 and 2008, when those
 12 documents were created?
 13 A. Those documents being?
 14 Q. The ones I took you to earlier today showing that the
 15 members of your shared venture team believed that
 16 100 per cent of the shares were going to be yours.
 17 A. That's what it says on the document. I have no
 18 knowledge of it. Nor did I ask them to do that.
 19 Q. So we have got those two departments working to you, and
 20 then, of course, the third aspect is Mr McAlindon and
 21 his Loss Prevention department. They work to you, don't
 22 they?
 23 A. They do.
 24 Q. He reports directly to you?
 25 A. He does.

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1 Q. And so if we just looked at those three departments, and
 2 you above them, all of those people appear to be working
 3 towards removing Ms Birdi from the store.
 4 A. I don't accept that.
 5 Q. Paragraph 127. {C/9/117} You say:
 6 "Ms Birdi had ignored a legitimate board instruction
 7 to conduct sight tests for four days a week."
 8 A. Yes.
 9 Q. Are you referring to a board meeting which recorded that
 10 she had agreed to do that?
 11 A. Yes.
 12 Q. Did you personally have any knowledge or involvement in
 13 that --
 14 A. No.
 15 Q. -- in 2009?
 16 A. No.
 17 Q. No? I won't ask you about it then. And 128 -- this is
 18 your last paragraph: {C/9/118}
 19 "SOG does not desire that a JVP be removed forcibly
 20 from a business."
 21 That's not quite true, is it?
 22 A. That is absolutely --
 23 Q. In some cases SOG do desire that.
 24 A. Sorry?
 25 Q. You say:

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1 "SOG does not desire that a JVP be removed forcibly
2 from a business."
3 And I'm putting to you that that is an over
4 simplification, a generalisation, which is not true.
5 Sometimes SOG does desire to remove, to exit, in your
6 terms, a JV partner from the business?
7 A. Yes, if they have done something that they deserve to
8 exit for.
9 Q. Hm-mm. If they have not done what you want them to do?
10 A. That's not what I said.
11 Q. No, I'm putting it to you -- you see I have to put it to
12 you because it's the case that Ms Birdi asserts. She
13 asserts that if the JV partner doesn't do what you
14 wanted them to do, what SOG wants them to do, you will
15 come to or may come to the conclusion that you would
16 like the JV partner exited from the business?
17 A. Only if the JV partner has done something that they
18 deserve to be exited from the business for -- the only
19 circumstance.
20 Q. Well, Ms Birdi hadn't done anything to deserve this, had
21 she, save that she had fallen foul of Mr McAlindon, who
22 considered -- well, we know what his views of her were.
23 A. Her exit was because the relationship had completely
24 broken down between SOG, Ms Birdi and Mr Singh.
25 Q. If that were true, that was caused by Mr McAlindon
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1 having commenced a process of harassing her from
2 February 2007 onwards --
3 A. I don't accept that we commenced a process of
4 harassment; we commenced a process to investigate
5 allegations that were made against her by her fellow
6 director, who we exited for those activities.
7 Q. You have already agreed that if Mr McAlindon did what
8 Mrs Frondigoun says he did, his attitude towards
9 Ms Birdi was wholly improper -- if he did do what it's
10 said he did?
11 A. Okay.
12 Q. You would agree with that?
13 A. If the allegation that Ms Frondigoun made are --
14 Q. Are true --
15 A. -- true.
16 Q. -- then Mr McAlindon had a malicious attitude towards
17 Ms Birdi from that point, didn't he?
18 A. A malicious attitude? I'm not sure I would agree he had
19 a malicious attitude.
20 Q. Calling somebody "a real bitch", it's malicious, isn't
21 it?
22 A. I would have to accept that, Mr Stuart, yes.
23 Q. So, to the extent that the process started with that and
24 then carried on into all of the other things that
25 Ms Birdi talks about, that would be, wouldn't it?
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1 A. But during the whole of this process Ms Birdi never ever
2 tried to make this work: compromise, mediate, follow
3 instructions, you know, everything. We tried our very,
4 very best to make this partnership work and Ms Birdi
5 refused every opportunity to try and make it work, as
6 far as I can see.
7 Q. Well, haven't you just then more or less come to the
8 same conclusion as me: if she doesn't do what you want
9 her to do, you will exit her from the business?
10 A. That's not what I said. I just said she failed to even
11 try and meet people half way on the journey to try and
12 make this business opportunity work really, really well,
13 which it could have done for both of them.
14 Q. She had been an excellent JV partner for ten years, and
15 suddenly, in 2007 onwards, you describe her as the most
16 difficult one.
17 A. We did not -- we did not go into the store and not
18 uncover things that were wrong. Neither did, when
19 Mr Patel made his allegations, find that what he was
20 saying was not absolutely true. I know you have made
21 your point about one aspect of it, but other things he
22 said were true. We didn't make that up. We didn't
23 engage in making the allegations. Other people made
24 them. All we did was follow that up through
25 investigation and disciplinary procedures and tried on
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1 numerous occasions to try and make the partnership work
2 through offers of mediation and other things.
3 Q. All right. I just have to deal very quickly with your
4 two short statements. If you go to bundle C, tab 10?
5 A. Tab?
6 Q. 10 {C/10/119}.
7 A. I have got that, Mr Stuart.
8 Q. I think I have already dealt with some of the parts
9 about Mr Singh, but you deal here -- do you have it,
10 tab 10, your second statement?
11 A. Yes.
12 Q. At paragraphs 5, 6, 7, 8, onwards you deal with payments
13 to Mr Patel, credit card payment -- the THP I have
14 already dealt with -- the tax payment --
15 A. Yes.
16 Q. -- and his company car. Did you personally have any
17 involvement in any of this?
18 A. No.
19 Q. So although it has been put into your statement here, by
20 way of a sort of formal response statement, these are
21 not matters are where you personally dealt with it?
22 A. No, I wasn't personally involved.
23 Q. All right. Then I'm not going to ask you any more about
24 those.
25 You then move on to Mr Singh from paragraph 19
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1 onwards. Do you see that? {C/10/122}

2 A. Yes.

3 Q. First of all, the equalisation dividend and the £14,942

4 you refer to at paragraph 22. {C/10/123} Did you

5 personally have any knowledge --

6 A. Sorry, is that ... ?

7 Q. So paragraph 22.

8 A. Not 17? Paragraph 22?

9 Q. Yes, in paragraph 22?

10 A. Okay.

11 Q. You refer back to the equalisation dividend -- you see,

12 Mr Patel had agreed that Ms Birdi was entitled to an

13 equalisation dividend, she says.

14 A. She said, yes.

15 Q. She says. But that hadn't been paid by the time

16 Mr Singh became the A shareholder. Do you understand?

17 A. This is to do with the car, isn't it? But Ms Birdi was

18 already due the first £14,942 as an equalisation.

19 I thought that was to do with the car. Because, you

20 remember that Mr Patel had been gifted his car. I could

21 be wrong but I thought that's what --

22 Q. I suppose my question was this: were you personally

23 involved in any of this?

24 A. No, I wasn't, no.

25 Q. We can see from the documents what the documents say

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1 but --

2 A. Sorry, I misunderstood the question.

3 Q. -- my question is: did you personally have any knowledge

4 of any of these actual transactions?

5 A. No.

6 Q. I'm not going to ask you about those.

7 Over the page. This is page 124 now, the last two

8 pages of your statement, 124 to 126. {C/10/124} Do you

9 see that?

10 A. Yes.

11 Q. Under the heading, "Pay Rise and Bonuses". Do you see

12 that?

13 A. I do.

14 Q. I have already dealt with the question of some of the

15 pay rises. But at paragraph 36 --

16 A. Yes.

17 Q. -- you set out there an argument about why Ms Birdi

18 shouldn't be seen in the same way as Mr Singh when he is

19 in his capacity as sole director, conducting the

20 business and therefore entitled to his pay rise and his

21 bonuses and anything else. You make the point at 36

22 that you don't consider that the period when Ms Birdi

23 was the sole director can have such a similar analysis

24 put to it. Is that right? Do you see that?

25 A. I am just reading the context.

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1 Q. Okay.

2 A. Sorry, Mr Stuart, what was your question?

3 Q. Paragraph 36. You make the point that you can't, in

4 your view, apply the same rules to Ms Birdi's period of

5 sole directorship that you are applying to Mr Singh's

6 period of sole directorship.

7 A. (inaudible) for the bonuses.

8 Q. Salary rises and bonus. You say are justified because

9 you say he is now the sole director.

10 A. It's specifically about bonuses, isn't it?

11 Q. I think it's under the heading, "Pay Rise and Bonuses".

12 A. That's correct, because the distributions were available

13 here, so we can see the performance, which is why the

14 bonuses were paid and ratified through Dartford

15 Visionplus.

16 Q. Hm-mm. You then go on in paragraph 37: {C/10/125}

17 "The reason as to why Mr Singh has been paid

18 employee bonuses from Dartford Visionplus and not

19 dividends from Dartford is because he has been rewarded

20 by his employer, Dartford Visionplus, for his work and

21 performance as an employee in successfully completing

22 the day-to-day management of the store on his own

23 since January 2010 to date."

24 Do you see that?

25 A. That's correct.

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1 Q. What you are there saying is that he is not getting

2 these sums because of being an A director of

3 Dartford Specsavers --

4 A. No, he is getting rewarded by his employer, Dartford

5 Visionplus.

6 Q. Do you have any evidence that he actually spends more

7 time employed in the store by Dartford Visionplus?

8 A. When you say "evidence", what I know is he is a sole

9 director in a business where there should be

10 two directors. The business is doing really well, the

11 dividends are going up, and rewarding Mr Singh for his

12 endeavours as an employee feels an appropriate thing to

13 do.

14 Q. But you have previously said in your statements that the

15 benefits of more profits in the store, et cetera, et

16 cetera, go to the A shareholders through their

17 shareholding.

18 A. Correct.

19 Q. Not through salary rises.

20 A. This is not about equalisation, this is about rewarding

21 a individual for his hard and dedicated work, increasing

22 the profitability of the store and, by way of paying him

23 a bonus as an employee, continuing to motivate him to

24 keep performance up.

25 Q. He doesn't need any motivation, does he? He is an

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1 A shareholder; he is getting 50 per cent of the profits.
 2 A. I think he does need motivating. It's part of the way
 3 that Specsavers operates in terms of motivating and
 4 bonusing people. And this is --
 5 Q. Did you motivate or bonus --
 6 A. -- remember -- this, remember -- this, remember -- this
 7 is not forever. As soon as, you know, Mr Singh is not
 8 the only partner in that store, this remuneration for
 9 him from his employer will cease.
 10 Q. All right.
 11 Finally, can you flick to tab 18, tab 18, your last
 12 witness statement. {C/18/184} It's only deals with
 13 a couple more points. Page 184, under the heading,
 14 "Sean McLaughlin's Charges."
 15 A. Sorry, I'm not there.
 16 Q. Sorry, tab 18. Do you have it?
 17 A. Yes.
 18 Q. You have made a third witness statement which sort of
 19 responded to --
 20 A. I have, yes.
 21 Q. -- a number of matters which were in Ms Birdi's fourth
 22 witness statement. Do you remember?
 23 A. Yes.
 24 Q. And first item is, "Sean McLaughlin's Charges", and that
 25 goes on from paragraph 5 to paragraph 11? {C/18/184} Do

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1 you see that?
 2 A. Yes.
 3 Q. Now we have got all the actual details of the figures.
 4 My only question to you is: do you actually have any
 5 personal knowledge of all the specific figures of
 6 Mr McLaughlin's charges?
 7 A. No.
 8 Q. No. All right. Over the page on 186, "Security Camera
 9 Invoices" is the heading. Do you see it? {C/18/186}
 10 A. I do.
 11 Q. Paragraphs 12 to 15. You deal with a number of
 12 different items of alleged security camera charges.
 13 A. Correct.
 14 Q. Especially at 13(a), (b), (c), (d), (e). Same question:
 15 do you personally have any knowledge about these cameras
 16 or about the charges for these cameras?
 17 A. Not personally, no.
 18 Q. No, all right, I won't ask you. Over the page, the
 19 credit note item. {C/18/187} This is the new
 20 explanation as to how the figures might work. Do you
 21 remember?
 22 A. I do remember, yes.
 23 Q. You will know the question that's coming: Did you
 24 personally work out this explanation as to how the
 25 credit note works with the other invoices and somehow --

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1 A. No, this is in response, I think, to some previous
 2 correspondence, and it was discovered on further
 3 investigation that a credit note had been issued.
 4 Q. Right, but do you personally have any knowledge about
 5 this credit note or about the circumstances in which the
 6 figures were --
 7 A. No.
 8 Q. No?
 9 A. No.
 10 Q. All right, fine. And the gift of the company car. This
 11 is Mr Patel's car. Do you remember he got it --
 12 A. I do remember, yes.
 13 Q. -- gifted to him? And this is all about HM Revenue and
 14 Customs, the P11D calculation, paragraph 20 of your
 15 witness statement. {C/18/188}?
 16 A. Yes.
 17 Q. At paragraph 19 you talk about there's a number of ways
 18 to value a car. Do you see that, paragraph 19?
 19 {C/18/188}
 20 A. I do.
 21 Q. Do you have any knowledge about how Mr Patel's car was
 22 actually analysed or dealt with by way of valuation or
 23 tax?
 24 A. No, only what's written here.
 25 Q. Fine. Then I won't ask you about it.

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1 And then page 189, the liability to HMRC.
 2 {C/18/189} This is this £9,469 figure that his Lordship
 3 asked you about earlier. Do you remember?
 4 A. I do, yes.
 5 Q. I think at the time you told his Lordship that you
 6 didn't have a clear knowledge yourself personally of
 7 quite how this works, this analysis and this £9,000.
 8 Does that remain the position.
 9 A. It does, yes.
 10 Q. So it wouldn't really assist if I started asking you
 11 about the detail of this explanation?
 12 A. I don't think it would, no.
 13 Q. No? All right. And I don't think I need to ask you
 14 about the last two items anyway.
 15 The last paragraph of your last statement, the
 16 salary increases. {C/18/191} You say:
 17 "... I note that I authorised increases from 3 to
 18 13 per cent ..."
 19 These are the staff increases now, not Mr Singh?
 20 A. Yes.
 21 Q. "... of five out of the 19 employees ... upon
 22 re-reading this paragraph, I should like to clarify that
 23 those five employees were Patrice O'Brien ... Fernandes
 24 ... Jita, Denise Kinsella and Sheila O'Brien."
 25 Did you personally have any involvement in deciding

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1 anything about these --
 2 A. I did.
 3 Q. -- staff salaries --
 4 A. I did.
 5 Q. -- or did you leave it to Mr McAlindon and Ms Slark?
 6 A. No, I went through the list and that's why only five of
 7 the 19 -- there is another two but I actually sought to
 8 check the validity of the information, not because
 9 I didn't disbelieve it, but I wanted to make sure we
 10 were making a decision, that it was based on correct
 11 information. Jill Clark helped me with that and there
 12 were two people that got pay rises. One was
 13 an optometrist, who was behind the market rate, and the
 14 other was a lady who was a trainee DO, who became a DO
 15 and I just made sure that she was paid the right salary
 16 for the rate of doing the job.
 17 Q. Very, very last question. We are flicking back to
 18 one issue. E2. Could you be shown E2, page 306-24.
 19 {E/44.2/306-24}. Just keep your finger in there and
 20 then just go back to page 360-1 {E/44.1/360.1}, so that
 21 we can see the context of this.
 22 A calculation had been done to see what severance
 23 dividend would have been payable upon Mr Patel's
 24 departure.
 25 MR POTTS: Sorry, but that £1,288 is my friend's document
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1 and I don't believe it's contemporaneous.
 2 MR STUART: That's right. I wasn't seeking to say it was.
 3 MR JUSTICE NUGEE: I don't think Mr Stuart meant to suggest
 4 it.
 5 MR POTTS: No, I'm sorry.
 6 MR STUART: No, absolutely not.
 7 MR JUSTICE NUGEE: No, but it was slightly ambiguous, the
 8 way you expressed it.
 9 MR STUART: I'm sorry: a calculation has recently been
 10 done -- I don't know how recently, but recently done,
 11 not done at the time -- calculating what might have been
 12 the severance dividend payable upon Mr Patel's departure
 13 in February 2007. Okay?
 14 A. Yes.
 15 Q. And it starts with a figure:
 16 "Previous year's profit brought forward: £128812."
 17 Do you see that?
 18 A. I do.
 19 Q. So that would be to September 2006. And then losses for
 20 a period, then distributable profits available, and then
 21 the retained reserves, the 40,000 figure, which you say
 22 should be 70,000. That's right, isn't it?
 23 A. Correct.
 24 Q. So it's a severance dividend of 76,000 but you would, at
 25 least, say you would have to deduct 30,000 from that?
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1 A. Correct.
 2 Q. I don't need to take you to the document if you will
 3 accept that. Do you accept the concept of severance
 4 dividends being payable when one of the partners leaves?
 5 Is that a reasonably common circumstance?
 6 A. When you say "severance" ...
 7 Q. Yes. So an A shareholder, one of the two --
 8 A. I mean, is that the same as whatever distributable
 9 profits were available at the time the person who was
 10 leaving would be entitled to them?
 11 Q. Up to that point, yes.
 12 A. Yes.
 13 Q. And then the money might not even be available; there
 14 might not be cash in the bank?
 15 A. Correct.
 16 Q. But at least a figure would be calculated, so that the
 17 seller --
 18 A. That is my understanding, yes.
 19 Q. So that is your understanding of what commonly happens?
 20 A. Yes.
 21 Q. All right, I don't need to ask you any more about it.
 22 My Lord, thank you. I don't have any more
 23 questions.
 24 MR JUSTICE NUGEE: Mr Potts, I assume you have some --
 25 MR POTTS: No, I am very short. I have got one question, my
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1 Lord, I think.
 2 Re-examination by MR POTTS
 3 MR POTTS: Do you have volume D2?
 4 A. Yes.
 5 Q. You were asked -- could you turn to page 368, please,
 6 {D/27/368}
 7 A. Yes.
 8 Q. You were asked about the consideration of Mr Singh's
 9 position as at September 2011, in terms of considering
 10 his remuneration and his salary and request for an
 11 increase.
 12 A. Correct.
 13 Q. And page 368 showed the position as at
 14 30 September 2010. Do you see that? 368?
 15 A. Yes.
 16 Q. In fact, sorry, you were shown 365 in fact. {D/27/365}
 17 A. Yes.
 18 Q. Which is as at 30 September 2010, a year earlier;
 19 correct?
 20 A. Yes.
 21 Q. You weren't shown 368, were you, in terms of the bottom
 22 of the page in relation to dividend payments?
 23 A. No.
 24 Q. And in terms of the company, was the only financial
 25 information in relation to the company the historic
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1 accounts from a year earlier?
 2 What financial information was available in relation
 3 to the company on an ongoing basis, apart from the
 4 annual accounts?
 5 A. There would have been the bottom line reports that were
 6 sent out to the stores.
 7 Q. And what did the bottom line position show?
 8 A. It shows the amount of money that's available for
 9 distribution.
 10 Q. And what's the periodic details as to how those are
 11 produced? How are they produced?
 12 A. My understanding is that they are produced on a monthly
 13 basis.
 14 Q. Okay. Could you turn forward? You weren't shown 395,
 15 which is the annual consolidated accounts balance sheet
 16 as at 30 September 2011. {D/29/395}
 17 A. Yes.
 18 Q. But your evidence is that there would have been bottom
 19 line reports for the monthly periods thereafter, and in
 20 relation to the financial position of the company as
 21 at September 2011, what was your understanding of the
 22 financial position of the company at that time?
 23 A. That it was very healthy.
 24 Q. Thank you. I have no further questions.

25 Questions by THE JUDGE
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1 MR JUSTICE NUGEE: Thank you very much.
 2 Mr Dyson, I have one question, which is that when
 3 you were being asked by Mr Stuart about whether Mr Singh
 4 was being given the shares very cheaply, you said:
 5 "Just because it has got £1 million turnover, it
 6 doesn't mean it's going to produce a profit and it
 7 depends on how well it works."
 8 And you said something like it will only pay out
 9 50,000 if the profitability is there, and that will be
 10 down to the partnership working together. Do you
 11 remember that answer?
 12 A. Yes.
 13 MR JUSTICE NUGEE: Yes.
 14 One of the complaints that Ms Birdi had in her
 15 appeal, which came to you, was that Mr Singh had been
 16 imposed on her against her will, and I just wondered how
 17 important it was that the two joint venture partners in
 18 a two-partner firm got on well together.
 19 A. We select our partners on their -- first of all, to
 20 answer your question about (inaudible) other way, but we
 21 obviously need to understand their previous experience
 22 and whether they've worked for us or another optician or
 23 another retailer. They have to pass the stage 1, which
 24 does the check in terms of psychometric testing; test
 25 their commercial acumen; and we have confidence that we

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1 are giving a business or allowing someone to join
 2 a business that's going to add value. And that's our
 3 primary concern.
 4 Of course, making sure that partners can work
 5 together -- they don't have to like each other and we
 6 have got lots and lots of partnerships where they don't
 7 like each other but they are very, very successful. And
 8 so it is important that we choose the right person
 9 because of their skills and experience and their
 10 leadership because they are the most important things,
 11 and hopefully, when we do that, they will get on, but we
 12 don't -- we don't try and do matchmaking, if I can
 13 describe it that way.
 14 And it's what we have done for as long as I have
 15 been there and probably done to a different set of
 16 standards prior to me arriving in the company.
 17 MR JUSTICE NUGEE: Thank you.
 18 How common is it for a JV partner to be introduced
 19 to a two-person business against the active opposition
 20 of the existing JV partner? Because Ms Birdi actually
 21 voted against Mr Singh being introduced into the
 22 business, didn't she, at the board meeting?
 23 A. It's not frequent. It has happened in the past, but
 24 I can think of a couple of occasions, but it's not
 25 something that normally happens. It's normally -- we

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1 introduce -- because we introduce the partner before
 2 they actually do sign up. They spend some time
 3 together. The partner who is buying the shares normally
 4 spends a day in the store or even longer, depending on
 5 how the chemistry works, and then we then go on to
 6 complete the sale and then appoint them as directors.
 7 MR JUSTICE NUGEE: Thank you very much. I don't know if
 8 either of you want to ask anything arising out of that.
 9 MR STUART: No, my Lord.
 10 MR JUSTICE NUGEE: Thank you very much for your help,
 11 Mr Dyson.
 12 A. Thank you.
 13 MR POTTS: Could Mr Dyson be released and finally catch his
 14 flight?
 15 MR JUSTICE NUGEE: Yes. Of course, yes. I hope you have
 16 a safe flight back to Australia.
 17 A. Thank you.
 18 MR JUSTICE NUGEE: Unless there is anything else, 10.30
 19 tomorrow.
 20 MR POTTS: My Lord, no. I think it's Mr McAlindon. My
 21 Lord, there is a document in relation to some
 22 corrections. I have handed it to my friend today. I
 23 can --
 24 MR JUSTICE NUGEE: Corrections to?
 25 MR POTTS: Mr McAlindon's --

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1 MR JUSTICE NUGEE: McAlindon's statement?
 2 MR POTTS: We'll deal with those but I have agreed with my
 3 friend, rather than me trying to --
 4 MR JUSTICE NUGEE: Do it orally.
 5 MR POTTS: -- orally, it's by a piece of paper. I will hand
 6 it to your Lordship --
 7 MR JUSTICE NUGEE: That would be very grateful.
 8 MR POTTS: -- perhaps tomorrow morning -- perhaps.
 9 MR JUSTICE NUGEE: Yes.
 10 MR POTTS: But my friend has it.
 11 MR JUSTICE NUGEE: Thank you very much. 10.30 tomorrow.
 12 (4.30 pm)
 13 (The court adjourned until 10.30 am the following day)

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