

OPUS 2

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

Day 9

November 4, 2014

Opus 2 International - Official Court Reporters

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1 Tuesday, 4 November 2014
 2 (10.30 am)
 3 MR JUSTICE NUGEE: Yes?
 4 MR POTTS: My Lord, I propose to call Mr McAlindon.
 5 MR JUSTICE NUGEE: Yes.
 6 MR MEL MCALINDON (affirmed)
 7 Examination-in-chief by MR POTTS
 8 MR JUSTICE NUGEE: Would you, please, sit down,
 9 Mr McAlindon.
 10 MR POTTS: Good morning, Mr McAlindon.
 11 Could Mr McAlindon be passed volume C, please.
 12 Could you turn, please, to tab 11? In there,
 13 pages 127 to 143; is that your first statement in this
 14 matter? {C/11/127}
 15 A. It is.
 16 Q. I understand, Mr McAlindon, that there are two matters
 17 of correction that you would like to deal with?
 18 A. Yes.
 19 Q. One of which is in relation to this statement.
 20 My Lord, that's the matter on the piece of paper
 21 which I gave to my friend yesterday, and with your
 22 Lordship's leave, I will pass a copy up to your Lordship
 23 and to Mr McAlindon?
 24 MR JUSTICE NUGEE: Thank you.
 25 MR POTTS: I apologise for the inelegance of the formatting

1

1 of the document, my Lord. I'm sorry, a clean copy
 2 should have been produced. (Handed)
 3 MR JUSTICE NUGEE: Thank you.
 4 MR POTTS: The first matter: paragraph 33 of your first
 5 statement at page 134. {C/11/134}
 6 My Lord, just for your Lordship's note, the first
 7 issue in relation to the second interview, that was
 8 a matter which was raised in correspondence on
 9 10 October. For your Lordship's note, F2/503 is the
 10 letter in which it was raised. {F/229/503}
 11 MR JUSTICE NUGEE: Yes.
 12 MR POTTS: Mr McAlindon, you have considered this
 13 correction. Is that a correction that you would like to
 14 make in relation to paragraph 33? {C/11/134}
 15 A. It is.
 16 Q. And then if you could turn on to paragraph 47, at the
 17 bottom of the page and over, there is some additional
 18 wording. Is that additional wording your additional
 19 evidence in relation to that matter? {C/11/137}
 20 A. It is.
 21 Q. Subject to those two matters, could you confirm --
 22 sorry. 143; is that your signature at 143? {C/11/143}
 23 A. It is.
 24 Q. Subject to those two matters, are the contents of this
 25 witness statement true?

2

1 A. They are.
 2 Q. Could you turn on to the next tab, please, 144. At 144
 3 through to 150, is that your second statement?
 4 {C/12/144}
 5 A. It is.
 6 Q. Then if you turn to paragraph 14, there is
 7 a consequential amendment shown on the piece of paper.
 8 Is that the correction you would like to make in
 9 relation to paragraph 14? {C/12/146}
 10 A. It is.
 11 Q. Subject to that single point, could you confirm that the
 12 contents of this statement are true?
 13 A. They are.
 14 Q. Could you turn on, please, to tab 19, page 192 to 196.
 15 {C/19/192} Is that your third statement?
 16 A. It is.
 17 Q. At 196, is that your signature? {C/19/196}
 18 A. It is.
 19 Q. Can you confirm that the contents of that statement are
 20 true?
 21 A. I can.
 22 MR POTTS: If you wait there, Mr Stuart will have some
 23 questions.
 24 Cross-examination by MR STUART
 25 MR STUART: Mr McAlindon, whilst these amendments to your

3

1 statement are fresh in our memory, let me deal with
 2 those first.
 3 The first amendment that you make is in relation to
 4 the interview on 20 February with Mr Patel. You say you
 5 wish to change paragraph 33 of your witness statement?
 6 A. Yes.
 7 Q. Which is page 134 of bundle C, tab 11. {C/11/134}
 8 You made that amendment after Akin Palmer, the
 9 petitioner's solicitor, wrote asking for the native
 10 format of the electronic version, if you like, of the
 11 document which purported to be your contemporaneous
 12 record. Do you recall?
 13 A. I do.
 14 Q. So, what has triggered this amendment is the fact that,
 15 effectively, Akin Palmer have pointed out that your
 16 version of events in your witness statement as
 17 originally set out, paragraph 33, is wrong?
 18 A. Correct.
 19 Q. If you go to your witness statement, from paragraph 13
 20 of your witness statement on page 129. {C/11/129} So
 21 your first witness statement, paragraph 13.
 22 When you made your first witness statement, which
 23 was in May of this year, you said as follows. You said:
 24 "As the events set out below took place over six
 25 years ago, I have refreshed my memory by consulting

4

1 documents prepared contemporaneously at the time..."

2 Do you see that?

3 A. I do.

4 Q. "... including an investigation log ..."

5 Et cetera. We will come back to that in a moment.

6 But can one take it from that that you don't actually,

7 as you sit here today, now, seven years later -- you

8 don't actually recall precisely the dates, the days,

9 et cetera?

10 A. I don't recall the specific dates. However, I do recall

11 the events, having had a lot of debate and discussion

12 with my team. At the time that I made my witness

13 statement, I, at around that time, dealt with another

14 Asian male, who was a very similar build and size and

15 looks and personality, and the circumstances in that

16 case were that I did see the individual the following

17 day and I confused the two. But after it was raised and

18 we debated the issue, I refreshed my memory of it, of

19 the series of events.

20 Q. The log that you refer to by contrast -- could you be

21 shown bundle E2, page 330, which is the first version of

22 the log. Do you see it? {E/59/330}

23 A. I do.

24 Q. As I understand your evidence, it is that this document

25 is sort of drafted as you go along, so each time

5

1 something happens, you add something on to the log?

2 A. Correct.

3 Q. So that, for example, the entry at page 330 for Tuesday,

4 20 February, that was written either on or shortly after

5 20 February?

6 A. Correct.

7 Q. Would it be on or shortly after?

8 A. I don't know.

9 Q. But you have a very good recollection of the precise

10 events, you have just told us. You can't remember the

11 dates, but you can remember the sequence and exactly

12 what happened when. So you must recall when you entered

13 this into here?

14 A. No, I don't.

15 Q. Okay. So, returning to your suggested -- the amendment

16 that you are making to paragraph 33, {C/11/134} in your

17 original statement at paragraph 33 of your witness

18 statement, you said the interview was on 20 February,

19 which it plainly was. We can see emails on 20 February,

20 which tie in to that date. You say there:

21 "... Mr Patel made a number of 'off the record'

22 allegations against Ms Birdi ... Although he formally

23 resigned on that day, he was uncertain about making

24 a formal complaint against Ms Birdi and so we agreed

25 that he would think about it overnight."

6

1 Leave aside the precise dates, Mr McAlindon, leave

2 aside the days, leave aside whether you are confusing

3 him with some other Asian male. Your evidence, clear in

4 your own mind because you were so clear as to having

5 discussed it at length with your colleagues before

6 making this statement, was that he was going to think

7 about it overnight. Do you see that?

8 A. I do.

9 Q. So we are not talking about dates here; we are talking

10 about what actually happened in the interview. Either

11 you did or did not agree that he would think about it

12 overnight?

13 A. We did.

14 Q. But you have deleted that from --

15 A. No, I haven't.

16 Q. Yes, you have. Look at your amendment. Do you have

17 your amendment with you? Sorry, you should have a copy

18 the amendment.

19 A. Yes, I do.

20 Q. You have deleted that now.

21 A. Sorry, whereabouts are we referring to?

22 Q. The first red amendment. Do you see?

23 A. Yes.

24 Q. You have got rid of the sentence which says:

25 "Although he formally resigned on that day he was

7

1 uncertain about making a formal complaint against

2 Ms Birdi and so we agreed that he would think about it

3 overnight."

4 A. That's correct.

5 Q. That's now deleted?

6 A. No --

7 Q. It is.

8 A. The sequence of events is very clear in my mind. After

9 the initial interview, I had gone out and made some

10 phone calls and came back in, and he'd been making

11 some -- he spoke to both of us about various concerns

12 that he had got and allegations. So we took a second

13 transcript of interview that detailed, broadly, the

14 things that he was discussing.

15 He then continued and said that he felt that he

16 wanted to state the entire case and raise the issue with

17 the company because he felt there was an awful lot that

18 should also be considered, and I explained to him at the

19 time, "If you want to do that, that's absolutely fine,

20 you think about it overnight, document anything that you

21 want, and if you want to forward something additional

22 in, you should forward it through to the legal

23 department", which I think at the time was either

24 Cristina del Grazia or Alison Girollet -- or Alison

25 Anderson, as she was then -- which he subsequently did.

8

1 He wrote a manual letter, which he sent into the
 2 centre. So that's the part, the manual transcript --
 3 the manual letter that he wrote detailing more concerns
 4 that he had was subsequently sent in, and that was the
 5 overnight part that he then followed up with.
 6 Q. Which manual letter are you now referring to?
 7 A. I don't know where it is in the bundle, but it was
 8 a letter from Nimesh Patel that he sent into the centre,
 9 which was manually written and I think had about
 10 13 points on it.
 11 Q. When do you say that happened, roughly, by comparison
 12 with his alleged interview?
 13 A. It happened after the day that we met him.
 14 Q. Yes, I know. That's obviously now your evidence, but
 15 when? You have a clear recollection of the sequence of
 16 events here. Roughly when? A week later, a month
 17 later?
 18 A. What, that the letter arrived in Guernsey?
 19 Q. This letter that you are talking about.
 20 A. Yes.
 21 Q. Which one are you talking about?
 22 A. The letter that he manually wrote that he
 23 subsequently sent into Guernsey.
 24 Q. A week later, a month later, two months later; when?
 25 A. I don't recollect but it came in after the event.

1 I don't know whether the letter's dated.
 2 Q. In your first version of your witness statement, having
 3 agreed that he would think about it overnight, you and
 4 Mr Barnes then meet him again the next day at the store.
 5 Do you see that? {C/11/134}
 6 A. I do see that.
 7 Q. You decide the dates, you decide the precise dates; your
 8 recollection was that you met again the next day,
 9 whenever the next day was to be?
 10 A. That was my recollection at the time that I wrote this
 11 witness statement, yes.
 12 Q. We will take out the "after a short break" because
 13 that's your new amendment, but you say:
 14 "... where he provided further details with regard
 15 to Ms Birdi in an 'on the record' basis. A signed
 16 transcript of what was said at that meeting is at
 17 pages 24 to 26 of MM1."
 18 I believe we have that in bundle E2. Do you have
 19 E2?
 20 A. I do.
 21 Q. I believe you are suggesting that that is the document
 22 at E2, page 284. {E/41/284} Do you see that?
 23 A. Sorry, which page number?
 24 Q. 284.
 25 A. The contemporaneous record of interview?

1 Q. That's what I understand you are saying is the signed
 2 transcript of what was said at that meeting. That is at
 3 the meeting -- the second meeting, whenever that took
 4 place?
 5 A. At the time I wrote my witness statement, that's what
 6 I thought and I thought that the date that I'd put on
 7 this interview record was incorrect. Having gone back
 8 and reviewed it, I now have cleared up my
 9 misunderstanding and my recollection and the confusion
 10 caused by the other case that I dealt with, and this was
 11 the second interview that followed on the same day.
 12 Q. Did it follow, or was it before the first interview?
 13 A. No, this came after the first interview.
 14 Q. I see.
 15 A. The first interview was first thing in the morning. We
 16 met them to sign the resolution at 9 o'clock. I think
 17 the interview, first interview, started about 9.30. It
 18 didn't last terribly long and this one was the one that
 19 followed that first interview.
 20 Q. Well, I'm not sure you have got that right, have you?
 21 I had understood that your alleged contemporaneous
 22 record of the first interview is pages 281 to 283,
 23 {E/40/281} and that interview, that first interview,
 24 terminated at 12.50 hours. Do you see that, page 283,
 25 the last page the interview? {E/40/283}

1 A. I do.
 2 Q. That terminated at 12.50, ten to one?
 3 A. No, that's not true.
 4 Q. That's what it says.
 5 A. I know it says that. The reason why that error exists
 6 in the transcript is because my general practice at the
 7 time was if I needed an interview template, I would copy
 8 one from a non-related issue, paste it in a different
 9 folder, rename the file, delete all the interview record
 10 out of it, leaving the sort of standard parts in there.
 11 I think when I have done that, I haven't deleted the
 12 time of that non-related interview out of there, and
 13 when we have finished the interview record, I didn't
 14 notice it to correct it. So that time is wrong, but the
 15 meta data for the document reflects the time that it
 16 finished.
 17 So that's just an error on my part. It's a typing
 18 error.
 19 Q. I see.
 20 A. Not a typing error; it is a fall back from a previous
 21 document that I should have deleted.
 22 Q. Okay. Just looking at the words that you have used
 23 there, page 281 to 283. {E/40/281} You've plainly
 24 amended these words, haven't you, because do you see, in
 25 the first line it says:

1 "I have read the above ..."
 2 And it says:
 3 "... 74 lines."
 4 A. Correct.
 5 Q. So this is not just a template document because there
 6 are 74 lines?
 7 A. No, that's not what I suggested. What I suggested was
 8 that in order to get a template that was the same as
 9 the ones that we've always used, I've used another
 10 document, copied and pasted it. Clearly, there was 74
 11 lines because I've put that in. However, I didn't
 12 notice the interview terminated part and I didn't
 13 correct it.
 14 Q. And the meta data that you are referring to -- you just
 15 referred to meta data. So what you've done is you've
 16 sought to alter paragraph 33 of your witness statement
 17 {C/11/134} to try to create a version of events,
 18 a sequence of events, that fits some meta data. The
 19 meta data has enabled you to remind yourself what
 20 actually happened?
 21 A. No. I think that the fact that the time -- had the
 22 first interview gone on for as long as it did, the times
 23 would be wrong in the second interview. The times are
 24 not wrong in the second interview because I can see that
 25 I have manually entered in pen the concluding times of

1 that interview. So for one -- the first interview to
 2 have rolled over past the second interview is
 3 impossible.
 4 Q. What meta data are you referring to?
 5 A. I don't know, it's somewhere in the bundles.
 6 Q. All right.
 7 A. But the first interview could not have gone on until
 8 12.50 because the second interview, where I've manually
 9 written in pen the finishing times, finished at 11.33
 10 and the transcript finished -- finished at 11.21 and the
 11 record was finished at 11.33 and I've manually entered
 12 that in pen.
 13 Q. You have written 11.21 and 11.33 on the second document,
 14 on page 284? {E/41/284}
 15 A. I don't recognise the time started and concluded -- the
 16 concluded one that's manually written in is not my
 17 writing. The "11.33" is my writing. The hours that
 18 follows it is not my writing, but that "11.33"
 19 I recognise as my writing and, therefore, the first
 20 interview could not possibly have concluded at 12.50 and
 21 I recognise how that can have happened by the
 22 methodology that I use.
 23 Q. But that reverse logic begs the question as to whether
 24 all of these times are accurate. You are the only
 25 person who has put these times in, aren't you?

1 A. Yes. No, I appreciate that there are errors in the
 2 times but in 20 years of using this methodology, it has
 3 never been questioned or scrutinised to the extent that
 4 it's being in this process. So I have never recognised
 5 it as something that was so significant that I needed to
 6 pay as much focus as, with the benefit of hindsight,
 7 I might consider going forward.
 8 So there are errors, but the records accurately
 9 reflect what was said.
 10 Q. Well, as you know, that's going to be challenged in just
 11 a moment, but I still want to get to the bottom of the
 12 basis upon which you are making these amendments.
 13 You have referred to meta data. I'm going to
 14 suggest to you that perhaps you are looking at -- could
 15 you be shown bundle F2. If you go to page 503,
 16 {F/229/503} which is the one Mr Potts referred the court
 17 to, and then there is an attachment at page 506 but we
 18 will go to page 503 first of all. This is Taylor
 19 Wessing's letter of 10 October.
 20 A. Sorry, which page number?
 21 Q. 503. {F/229/503}. Do you see it? And it's under the
 22 heading:
 23 "SD002016 Native File Request."
 24 Do you see that?
 25 A. I'm just reading it. Yes, I see that.

1 Q. "We also enclose a report of the files' metadata."
 2 So we can see that -- that's the attachment,
 3 I presume, at page 506. {F/229/506} Do you see that?
 4 A. I do.
 5 Q. It says:
 6 "The enclosed metadata report indicates that the
 7 first and second contemporaneous records of interview
 8 with Mr Patel were both last modified on
 9 20 February 2007, suggesting that both meetings with
 10 Mr Patel took place on that day. We have discussed
 11 the matter with Mr McAlindon given that his evidence at
 12 paragraph 33 of his first witness statement states that
 13 the second meeting with Mr Patel took place on
 14 21 February 2007, the day after the first meeting.
 15 Mr McAlindon's recollection of the events seven years
 16 after the fact is vague..."
 17 Do you see that?
 18 A. I do.
 19 Q. You are not so vague today?
 20 A. I'm clear in my own mind that the first interview
 21 happened at around 9.30 because that was shortly after
 22 we went into the store. I'm also clear in my mind that
 23 there was a break when that interview was concluded and
 24 I went away to make phone calls, and I'm also clear in
 25 my mind that the second record followed the first.

1 Q. You are now.
 2 A. Yes, I appreciate that.
 3 Q. Go to the meta data report that you are relying upon to
 4 remind yourself of these things. Page 506. Do you see
 5 it? {F/229/506}
 6 A. Yes.
 7 Q. Under the last modified column, over to the right-hand
 8 side, do you see it says:
 9 "Date last modified."
 10 A. I do.
 11 Q. It seems to say 28 June 2013; is that right?
 12 A. It does.
 13 Q. Under the "Date Last Printed" column, there are a number
 14 of documents, but this is all said to relate to 2016 --
 15 your document SD002016 -- and they seem to have been
 16 printed off on 2 May 2007, twice; on 27 November 2008,
 17 twice; and 18 April 2007. Do you see those?
 18 A. I do, but I'm not familiar with this document. The
 19 document that I was referring to with meta data report
 20 was one that I was shown from Akin Palmer this morning,
 21 and it was clearer than this is to me. I don't really
 22 understand this document or what it means.
 23 Q. Well, the meta data report that is referred to on
 24 page 503 is not one sent by Akin Palmer; it says:
 25 "Enclosed by Taylor Wessing."

17

1 It's Taylor Wessing's document?
 2 A. I don't know. Could you show me the document?
 3 Q. I have shown it to you; 506?
 4 A. I'm unfamiliar with this document and I'm not very
 5 familiar with meta data. The document that I looked at
 6 this morning I felt showed me clearly where the
 7 start/finish times were of both interviews.
 8 Q. Ah. Are you talking about the meta data report in
 9 relation to the 2 May documents, the Mrs Frondigoun and
 10 Patrice O'Brien documents?
 11 A. I could, but --
 12 Q. If you go to page -- in F2 there is some correspondence.
 13 If you go to the back of F2, page 609.
 14 My Lord, I should mention here that I understand --
 15 A. No, that is correct, I am confusing --
 16 Q. -- that the document that Mr McAlindon is referring to,
 17 and which is page 612 in this correspondence clip, is
 18 not accepted by Taylor Wessing. We received a letter
 19 today, saying:
 20 "We do not agree to the addition of the meta data
 21 report to the trial bundle. Your purported meta data
 22 report is misleading."
 23 And then it goes on. So I'm not putting that in as
 24 a --
 25 MR POTTS: I'm sorry to interrupt, but the position is that

18

1 we were sent a letter, I think some time after 9 o'clock
 2 last night. That's the response. I think some matters
 3 have been admitted. There is a notice to admit in
 4 relation to some of the stuff, but there is obviously
 5 a great deal of information in there and we are
 6 certainly not in a position to admit all of it on such
 7 short notice. That is the position.
 8 MR JUSTICE NUGEE: No doubt, you will keep the matter under
 9 review and let me know.
 10 MR POTTS: My Lord, we will, of course. As I said there is
 11 a notice to admit in relation to part of it.
 12 MR JUSTICE NUGEE: Thank you.
 13 MR STUART: Mr McAlindon, is what you are saying that when,
 14 back in 2010 --
 15 A. Sorry, I have got confused with the meta data report.
 16 So the one I was referring to, I have mistakenly said --
 17 I was mistakenly referring to the ones relating to the
 18 employee interviews, rather than this.
 19 Q. Right. So you think the report that you saw back on
 20 10 October, when Taylor Wessing wrote page 503 on your
 21 behalf -- do you think that was the report that they
 22 attached, page 506? {F/229/506}
 23 A. Sorry, where are you referring to in my statement?
 24 Q. No, not your statement. Page 503, the letter.
 25 {F/229/503} Do you remember? I just took you to it.

19

1 A. Sorry, yes, it does refer to --
 2 Q. We had asked for the meta data for the 20 February
 3 documents.
 4 A. Yes, it is referring to 506. Correct. It's my mistake.
 5 Q. Just to be clear, page 506 -- so that's the document you
 6 say that helps you to remind yourself now of the
 7 sequence of events, page 506?
 8 A. Sorry, where do I say that in my statement?
 9 Q. No, in this letter it says --
 10 A. Oh, right.
 11 Q. "The enclosed metadata report indicates that the first
 12 and second contemporaneous records of interview with
 13 Mr Patel were both last modified on 20 February 2007,
 14 suggesting that both meetings with Mr Patel took place
 15 on that day. We have discussed the matter with
 16 Mr McAlindon, given that his evidence ..."
 17 Et cetera. Do you see it?
 18 A. I do.
 19 Q. "Mr McAlindon's recollection of the events seven years
 20 after the fact is vague but based on the documents and
 21 the metadata report ..."
 22 Do you see?
 23 A. I do.
 24 Q. "... Mr McAlindon accepts that both meetings must have
 25 taken place on 20 February."

20

1 A. Correct.
 2 Q. So the way it is put is, you don't actually recall --
 3 you are vague as to your recollection but it must have
 4 been 20 February because a certain meta data report
 5 proves that?
 6 A. Erm...
 7 Q. And I'm asking you where on page 506 does it say that?
 8 It doesn't prove any such thing?
 9 A. It's difficult to -- I don't know which documents the --
 10 because I don't understand the headings of "SD ProdBeg"
 11 or -- I don't know which line refers to which document.
 12 So I can't -- it's difficult to comment but I do see
 13 that there's two lines that have 20 February 2007, one
 14 of which has 9.48 and one of which has 11.21, which is
 15 consistent with some of the times that were in those two
 16 records. So I believe that that reflects the fact that
 17 both interviews happened on the same day.
 18 Q. If you are saying those help assist you in telling
 19 anything about the documents in E2 at page 281
 20 {E/40/281} and 284 -- {E/41/284}
 21 A. Sorry, 281 and 284 of which?
 22 Q. 281 and 284?
 23 A. In which bundle?
 24 Q. E2. The two contemporaneous records documents that you
 25 were referring to?

21

1 A. Yes.
 2 Q. If they tell you anything, is it not that -- you are
 3 looking at the key date column on page 506 {F/229/506}
 4 and you are saying: SD002019, key date 20 February 2007,
 5 11.21.
 6 Page 284 of E2 is what you purport to be the second
 7 interview. {E/41/284} Do you see it?
 8 A. I do.
 9 Q. Which, according to your manuscript additions, you now
 10 say started at 11.21 and finished at 11.33?
 11 MR JUSTICE NUGEE: No, I don't think so.
 12 A. No, the time started was 10.50 and the record was
 13 finished at 11.21.
 14 MR STUART: What's 11.33?
 15 A. That's when the interview was printed and he was given
 16 the opportunity to read through it and sign it. So it
 17 would have been shortly after I physically stopped --
 18 the first one is when I physically stopped typing and
 19 the second one is when I printed the document out and we
 20 signed it up.
 21 Q. When did the record start?
 22 A. It looks like 10.50.
 23 Q. How can the record start at 10.50 and -- you are saying
 24 it started at 10.50 and finished at 11.33, the record.
 25 Is that what you are now saying?

22

1 A. The 11.33 -- the 11.33 --
 2 Q. I don't accept this is correct at all, but this is what
 3 you are now saying those figures mean?
 4 A. I believe so, yes.
 5 Q. But the record from the meta data report shows that that
 6 document was opened at 11.21?
 7 A. I don't know.
 8 Q. That's the time the document is opened. The time last
 9 modified would be later, on the right?
 10 A. Yes. I don't know enough about meta data to understand
 11 the differences. What I can say to you is that one
 12 happened first thing in the morning. After a short
 13 break, followed the second one. There may be errors in
 14 the timings of them. I don't understand why, with the
 15 passage of time, but I believe that both records --
 16 well, I know both records were done on the same day.
 17 Q. The first record, page 281 -- so you see that?
 18 {E/40/281}
 19 A. I do.
 20 Q. What time do you say that interview started?
 21 A. It looks like 9.20.
 22 Q. And what time do you say the record started?
 23 A. About the same time.
 24 Q. Pardon?
 25 A. About the same time. I don't know. I can only

23

1 speculate.
 2 Q. Where do you get the time it started from?
 3 A. On page 281, are you referring to? Yes, because it says
 4 there:
 5 "Time started 0920."
 6 Q. It says immediately beneath that:
 7 "Time record commenced 0920."
 8 A. So it started at the same time the reported commenced.
 9 Q. Did it?
 10 A. Yes.
 11 Q. Do you recall that?
 12 A. No, but I wouldn't have put the same time down if that
 13 hadn't been the case.
 14 Q. You seem to put the same time down on all your records,
 15 regardless of when they actually started and when the
 16 interview started?
 17 A. No, had there been conversation beforehand and we then
 18 went on to a record, which wasn't the case in this
 19 situation, the starting point of the record would have
 20 been that the conversation started earlier. When the
 21 record was commenced, I would put in a summary of the
 22 conversation that had taken before, and then continue in
 23 the normal format. But that didn't happen in this case,
 24 so where the times are the same, there was no prior
 25 discussion that took place.

24

1 Q. When did this interview end?
 2 A. I don't know.
 3 Q. When did the record of the interview end?
 4 A. I don't know.
 5 Q. All right.
 6 A. I think the reason for line 77, where it says:
 7 "... terminated 12.50."
 8 Looking at this record, I have clearly copied and
 9 pasted a previous interview record because on the first
 10 page, I have actually got "Translator", {E/40/281} who
 11 is a lady from Holland, who is employed in the Dutch
 12 team, who was a translator of an interview that we did
 13 in Holland. So I have clearly copied a previous
 14 interview record, pasted it, cleared the conversation
 15 that wasn't relevant, so that I had a basic template,
 16 but the bit that I left is the last two words, which is:
 17 "Terminated 12.50."
 18 So the "12.50" is an error, and it's an error caused
 19 by the methodology that we used, but it's just an error;
 20 it's a typing error.
 21 Q. Hm-mm. All right. So your first amendment is that you
 22 wish to now say, based upon what you believe to be the
 23 meta data for these two records, that the two interviews
 24 both took place on the 20th?
 25 A. Correct.

25

1 Q. Which plainly they did?
 2 A. Correct.
 3 Q. And as it's put in the Taylor Wessing letter:
 4 "The second meeting would have taken place that same
 5 morning, 20 February, at some point after the first
 6 meeting."
 7 A. That's correct.
 8 Q. So your previous statement, which said that we agreed
 9 that he would think about it overnight; you met him
 10 again the next day, and then you provided further
 11 details on an "on the record" basis, all of that is
 12 completely wrong?
 13 A. Erm, yes.
 14 Q. And --
 15 A. Sorry, not all of it is completely wrong because I did
 16 say to him, when he discussed after the second interview
 17 the fact that he wanted to say an awful lot more, I did
 18 say to him:
 19 "If you want to do that, that's absolutely fine, but
 20 you need to put that in writing and I would suggest that
 21 you send it through to the legal department."
 22 Because at that stage, we had finished with him. So
 23 if he wanted to add a lot more that he felt should have
 24 been considered by the company, that was the right way
 25 to do it and that's why I told him to think about it

26

1 overnight.
 2 Q. What, to add more than what's in pages 284 to 286?
 3 {E/41/284}
 4 A. Yes.
 5 Q. The second interview?
 6 A. Yes, correct.
 7 Q. And what more could he add?
 8 A. I don't know because he wanted to think about it and it
 9 was whatever he wanted to add.
 10 Q. What did he tell you he wanted to add, off the record?
 11 A. He said that -- no, I'm reconstructing it. It's that
 12 long ago that I can't remember the details of what he
 13 was saying that he wanted to add. However, I did feel
 14 that if he wanted to do that, he should reflect on it
 15 and gather as much detail surrounding what he wanted to
 16 add and to send that into the centre with any
 17 accompanying documentation he felt was appropriate.
 18 Q. Okay. So when you wrote your first paragraph 33,
 19 {C/11/134} you had obviously identified the problem with
 20 the two interviews taking place on the same day -- which
 21 we will come back to later -- because you had originally
 22 written, and you have now deleted:
 23 "The transcript of the meeting incorrectly notes the
 24 date of the meeting as 20 February 2007 when in fact it
 25 took place on 21 February."

27

1 So this is not a matter which had passed you by,
 2 when you made your first statement?
 3 A. I have explained and I'll explain it again. I had,
 4 around that time, dealt with another Asian male, who was
 5 very similar in personality, build and looks, who we did
 6 meet the second day and I confused the two because of
 7 the passage of time, and I made a mistake when I wrote
 8 that.
 9 Q. Whereas what you said in your statement, which you
 10 signed to, was nothing to do with that; it was:
 11 "This was a typographical error on my part."
 12 A. That's what I believed at the time because I had in my
 13 mind that we had met him the second day in a hotel in
 14 London.
 15 Q. In a hotel in London?
 16 A. That was what happened in the previous case.
 17 Q. No, but this second interview, contemporaneous record,
 18 isn't said to have taken place in a hotel in London, is
 19 it?
 20 A. I'm referring to the individual that I dealt with on or
 21 around that time that I had confused with the sequence
 22 of events with Nimesh Patel.
 23 Q. Hm-mm.
 24 A. So when I'm saying a hotel in London, I'm referring to
 25 the other case that I dealt with.

28

1 Q. So your recollection of matters was so vague as
 2 at May 2014 that you couldn't even differentiate between
 3 two people you were investigating at that time?
 4 A. Yes, I would say that's reasonable.
 5 Q. But now, your recollection is so clear that you can say
 6 exactly the sequence of interviews, what was said at one
 7 interview and then a second, and the circumstances in
 8 which you allegedly drew up a contemporaneous record?
 9 A. I think there's a number of things that you are saying
 10 there. You know, can I recollect in detail all of the
 11 conversations that took place? No, I can't. You know,
 12 those conversations are documented in these records. My
 13 recollection is from these records, not from the actual
 14 conversation that took place.
 15 Having gone through and challenged all of the
 16 evidence and looked at the -- looked at why I had put in
 17 my statement what I put and the fact that it was being
 18 challenged, I have then gone back and we have debated it
 19 and other people have said, "No, that's absolutely not
 20 what was happening; you are confusing it with this job",
 21 and it was then corrected.
 22 Q. Okay. Let's move on to your second amendment, which is
 23 to paragraph 14 of your second statement, which is in
 24 tab 12 at page 146 in bundle C. {C/12/146} Of course,
 25 what you were seeking to do was to counter the

1 suggestion --
 2 A. Sorry, which ...?
 3 Q. Paragraph 14, page 146 in tab 12 of bundle C. What you
 4 were seeking to do in this paragraph is to counter the
 5 suggestion --
 6 A. Sorry, which paragraph?
 7 Q. 14 -- the suggestion that somehow the provision of
 8 information against Ms Birdi was part of the deal that
 9 you --
 10 A. Sorry, I'm just reading the statement. (Pause)
 11 Sorry, yes, I've read it.
 12 Q. -- was part of the deal which you were that very morning
 13 getting Mr Patel to sign up to?
 14 A. Sorry, I'm not understanding your question.
 15 Q. The purpose of your paragraph 14 is to deal with the
 16 allegation that you were getting Mr Patel to provide
 17 allegations against Ms Birdi, at the very same time and
 18 as part of the deal that you were striking with him
 19 regarding his departure from the store.
 20 A. I didn't strike any deal with Mr Patel.
 21 Q. You didn't strike any deal with Mr Patel?
 22 A. No.
 23 Q. All right. So who struck the deal with Mr Patel?
 24 A. Which deal are you referring to?
 25 Q. The one that I just said; the deal regarding his

1 departure from the store?
 2 A. The only deal that was struck was in relation to the
 3 valuation of his shares and the costs in relation to
 4 that. There was no deal done in relation to providing
 5 information against another person.
 6 Q. The deal done --
 7 A. There wasn't even a conversation about, you know, "Tell
 8 me about your other partner". He was frustrated with
 9 his situation because he felt that in some respects, he
 10 had been forced into it. He was frustrated. He wanted
 11 to talk and he made, through those conversations,
 12 a series of allegations, and it would have been
 13 inappropriate on my part not to document them. And
 14 I sent him away because he continued to say there was
 15 more that he wanted to say, and I said, "Go away and
 16 think about it, document what you have got to say and
 17 send it in".
 18 I didn't solicit anything from it. It came out with
 19 his emotion and it had nothing to do with any deal as
 20 part of his exit. And the decision-making around the
 21 financial package that was subsequently offered to him
 22 had nothing to do with me. There was absolutely no
 23 deal. He just volunteered information.
 24 Q. In your original version, in order to explain how it's
 25 not a term of that deal or any deal that Mr Patel

1 provide the information against Ms Birdi, you refer to
 2 paragraph 33 of your first witness statement and you
 3 say: {C/12/146}
 4 "[He] chose to make formal allegations against
 5 Ms Birdi of his own volition on 21 February 2007, the
 6 day after he resigned."
 7 So you are saying that those allegations --
 8 A. Sorry, can you point me to that part of my statement,
 9 please?
 10 Q. Paragraph 14 of your witness statement. We are only
 11 going to look at that paragraph at the moment. Page 146
 12 in bundle C.
 13 A. Yes.
 14 Q. You have just read it twice.
 15 A. Yes.
 16 Q. You say, the bottom line of 146, the second line the
 17 paragraph. You say:
 18 "As referred to at paragraph 33 of my first witness
 19 statement, Mr Patel chose to make formal allegations
 20 against Ms Birdi --"
 21 A. I'm sorry, Mr Stuart, I can't find the reference.
 22 Q. 147.
 23 A. Sorry, I was on the wrong page.
 24 Q. First line of 147? {C/12/147}
 25 A. Yes.

1 Q. "... chose to make formal allegations against Ms Birdi
2 of his own volition on 21 February 2007, the day after
3 he resigned."
4 A. Correct.
5 Q. So what you were seeking to put in your evidence was
6 that the making of allegations against Ms Birdi didn't
7 happen on the day that you did the deal?
8 A. He made a series of allegations verbally to both myself
9 and Phil Barnes, which we recorded in
10 a contemporaneous -- the second contemporaneous record
11 of interview. That was documented because of the nature
12 of the allegations he was making, which I felt was
13 appropriate, and he wanted to go much further and put
14 in -- put in a formal position on much greater detail,
15 which he wanted to consider. So I told him to go away
16 and consider overnight and if he wanted to put in
17 a formal grievance, if you like, then he should document
18 it and send it in. So I don't see what's wrong with
19 what I have explained. It's exactly as it was.
20 Q. The first thing that's wrong with what you have just
21 explained is that it didn't happen?
22 A. It did happen.
23 Q. The second is, if it did happen, you didn't document it.
24 Look at page 286. {E/241/286} Far from this part of the
25 interview --

1 A. 286 in which bundle?
2 Q. In E2. Far from this part of the interview being on the
3 basis of these being, as it were, just his initial
4 off-the-cuff, informal allegations against Ms Birdi, and
5 then, "He told us that he intended to make further
6 formal allegations against Ms Birdi in due course, and
7 we said to him, 'Go away and think about it overnight
8 and send in what you want to say'" -- far from that,
9 this record of this interview -- at page 284 onwards --
10 purports to set out formal allegations signed by him at
11 the bottom.
12 And then at the end, look at lines 83 and 84, you
13 ask:
14 "Question: Anything else at all?
15 "Answer: No, I think that is it."
16 End of interview.
17 A. Correct.
18 Q. So this version of events that you are now seeking to
19 put forward, as an explanation for the completely wrong
20 version of events contained in paragraphs 33 of your
21 first statement {C/11/134} and paragraph 14 of your
22 second statement {C/12/146} -- this suggested version of
23 events doesn't appear anywhere on the record?
24 A. No, I don't accept anything that you say. This
25 interview --

1 Q. Go on then, where does it appear on the record?
2 A. This interview was taken after the first one and the
3 details of what he had said to us were what they were.
4 At that time, you know, he did say, "No, I think that's
5 it".
6 I don't recollect when the conversation took place
7 within -- as to "I want to add further allegations", or
8 whatever. I don't know whether it was immediately after
9 this interview or whether it was some time later because
10 after this interview, we sent him out of the store and
11 said, "We will get the -- the paperwork is being
12 created. It's probably not appropriate, because it's
13 going to take some time, for you to sit here, because it
14 will be uncomfortable. You know, go out and get
15 yourself a cup of coffee."
16 We took his mobile number and said we'd ring him to
17 come back. Now, it may well have been that that
18 conversation took place, having had a period of
19 recollection on his own, that he came back and said
20 those comments, but I remember vividly saying that --
21 him asking me about it and me telling him that if there
22 is more you want to add now, then that's the methodology
23 to use.
24 So I can't remember the exact times, with the
25 passage of time. It's just too far ago, but I do

1 remember him asking me further and saying that he wanted
2 to go further. Even though in the interview record he
3 said, "No, that's it", you know, he was mulling it over
4 as he went along. So at some point subsequent to this
5 interview record, he clearly wanted to say more.
6 Q. You say that now, but there is no evidence of that, is
7 there?
8 A. There is no evidence apart from the fact that he wrote
9 a letter and sent it into the centre subsequent to this
10 interview.
11 Q. I'm going to come back to that in a moment.
12 Let's go to your investigation log.
13 A. I don't actually know what evidence would exist.
14 Q. You would have made a note of anything important, like,
15 "Mr Patel said that he had lots of other things that he
16 wanted to allege against Ms Birdi on a formal 'on the
17 record' basis, but we told him to go away and think
18 about doing that and come back the next day". You would
19 have noted that down if it happened because that's
20 a very important statement, isn't it?
21 A. I did document everything that he had a recollection of
22 that he wanted to talk about at that time, and that is,
23 in its entirety, in the second record of interview.
24 At some point further down the line, he wanted to
25 add more detail and I said, "That's absolutely fine, go

1 away and think about it overnight". And part of the not
2 going away and thinking about it was that he said that
3 he could actually provide evidence that would support
4 some of the things that he suggested, such as cheques
5 and things like that. I said, "You need to go away and
6 think about that and if you want to provide more
7 evidence to support what you've already said, you need
8 to document it all and send it into us".

9 So, would I have documented the minutes of the
10 discussion along those lines after I had already done
11 a contemporaneous transcript? No, I wouldn't. But that
12 was the conversation that I had with him.

13 Q. In your Loss Prevention case file log, you don't refer
14 to any such conversation. If you go to page 330 of
15 bundle E2 -- that's the document that you say --

16 A. Sorry, bundle E2?

17 Q. Same bundle. We are just staying in E2. 330. This is
18 the document you said that you wanted the court to
19 consider as being the near-contemporaneous record of
20 what actually happened. Do you see that? {E/59/330}

21 A. Sorry, where in the document are you referring?

22 Q. Well, I presume we are to look at Tuesday,
23 20 February 2007.

24 A. Yes.

25 Q. Is that your record of what actually happened on that

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1 day? Do you see page 330?

2 A. Yes -- no, I've read it.

3 Q. Under 20 February 2007 heading, all of the matters that
4 appear in the contemporaneous record of the second
5 interview, as you keep calling it, appear. Okay? So we
6 have got the:

7 "... new cabinets, heaters and kitchen sink were
8 installed. No invoices could be identified ... NB
9 alleged that SB knew the business could not afford the
10 works and Financial Planning would either reject the
11 request ... [we] could not afford it. SB wanted to use
12 Polish immigrant workers and to pay them in cash. She
13 paid £750..."

14 Do you see that?

15 A. Yes.

16 Q. Then the second issue is:

17 "She paid £750 through payroll to [Nimesh Patel's]
18 wife, Karina Patel [KP] who did not work for the
19 business, and NP gave SB a personal cheque for £536.41,
20 the amount once deductions had been removed."

21 Do you see that?

22 A. I do.

23 Q. And then:

24 "NP also explain that had a number of other works
25 were carried out in a similar manner, such as a repair

38

1 that had been done in the lab ... Again, no invoices can
2 be identified."

3 Do you see that?

4 A. Correct.

5 Q. And then:

6 "NP also admitted that he and SB had been paying his
7 wife, Karina Patel [KP], and SB's husband, Mushtaq
8 Rehman [MR] a salary through the business, but that KP
9 and MR did not do any work."

10 Do you see that?

11 A. I do.

12 Q. And then:

13 "NP also alleged that this December 2005, SB paid
14 MR..."

15 That's Mushtaq Rehman:

16 "... £4,000 for overtime done during the refit. He
17 did not agree with this payment and totally disputed
18 it."

19 That's the £4,000 payment. Do you see that?

20 A. Yes.

21 Q. And that's it. Those are the allegations that you
22 record there and those are the allegations contained in
23 the second interview. Those are the formal allegations
24 that Mr Patel signed up to when you asked him to, on the
25 day, on 20 February. No mention of, "Oh, there's lots

39

1 more"?

2 A. I didn't necessarily say there was lots more. What
3 I said was that he had said to me at the time that he
4 felt that he could provide additional information, the
5 cheque being one of them, because he was saying that his
6 wife was paid a lump of overtime and he had to write
7 a cheque back -- a personal cheque back to Swarandeeep to
8 pay into her account in order for the money to be paid,
9 and he said, "I can go away and find more of this, and
10 I can probably produce the cheque to back it up". So
11 I said, "That's absolutely fine". I didn't write it in
12 there; I don't know why.

13 Q. That's just a piece of evidence, Mr McAlindon?

14 A. That's a narrative of the story that I made at the time
15 ongoing.

16 Q. That's not making formal allegations against Ms Birdi,
17 making new formal allegations against Ms Birdi. That's
18 the same allegation which he has made formally by you
19 getting him to sign this interview, this second
20 interview, on 20 February. And he said to you at the
21 end, "Oh, I think I can get some more evidence to back
22 it up"?

23 A. I said to him, "If you can think of more, go away and
24 think about it and if you want to send it in, in
25 writing, go and do it". And that's exactly what he did.

40

1 So I might not have written it in the case file
 2 sheet, I don't know why, I don't think there's a --
 3 I can't see a reason why not writing it in there would
 4 be a problem because that's what he intended to go away
 5 and do and that's what he subsequently did. So I didn't
 6 write it in here, I've no idea why, but I don't
 7 necessarily see that it's massively relevant that
 8 I said, you know, "Think over it -- think about
 9 everything that you said overnight, write in" -- I don't
 10 see it as significant that I didn't put that in the
 11 document.
 12 Q. But that's a totally different point to the one that you
 13 have made in paragraph 14. Look at paragraph 14 on
 14 page 147. You've said: {C/12/147}
 15 "In fact, Mr Barnes and I recommended to Mr Patel
 16 that he think about it overnight before making any
 17 formal allegations against Ms Birdi..."
 18 "Any". Not, "Before sending to us a bit more
 19 evidence to back up the ones that he had just provided
 20 to us formally in a full written, transcribed..."
 21 It's a totally different point, Mr McAlindon.
 22 A. I don't see that's a completely different point. Any
 23 formal allegations --
 24 Q. You don't? All right.
 25 A. There could well have been -- apart from further detail

1 about the existing allegations that he had already
 2 verbally explained to us in the interview record, he was
 3 suggesting that there could be other things that, if he
 4 spent time thinking about it, that he could bring to our
 5 attention. And I said, "That's your choice. Before
 6 making any formal allegations about them..."
 7 And that's what I'm referring to in the statement.
 8 I told him to go away and think about it and if he had
 9 more information or more allegations, to document them,
 10 evidence them and send them into the centre. So I don't
 11 see that what I've written there is incorrect.
 12 Q. He had made these formal allegations against Ms Birdi on
 13 20 February by signing your contemporaneous record of
 14 interview, hadn't he?
 15 A. That's one way of looking at it. The way that I looked
 16 at it was he had made a load of verbal allegations that
 17 I made a record of and he signed the transcript of
 18 interview to say that it was an accurate reflection of
 19 what was said. Had he taken out a formal grievance and
 20 written in a letter, "I want to take out a formal
 21 grievance", you know, no, he hadn't at that stage, and
 22 he may well have subsequently done. It was his choice
 23 to go away and think about it and decide what he wanted
 24 to do.
 25 But I made a record of the allegations that he made

1 verbally to me, which I thought was appropriate to do
 2 so, and he signed those records to say it was an
 3 accurate reflection of what we discussed.
 4 Q. Are you now trying to argue that this is not a formal
 5 allegation that has been made by Mr Patel, and that
 6 somehow, he later sent you a letter, saying, "Right, I'm
 7 now making these allegations formally"?
 8 A. I don't know whether you would take the -- an interview
 9 record as a formal or informal allegation. I don't
 10 know. I mean, it's the individual's perception.
 11 Q. All right. So where is this letter that you are talking
 12 about? Look at your own log to assist you, if you can.
 13 Where is the reference to this letter where he formally
 14 starts authorising the formal making of allegations.
 15 A. What, in my log?
 16 Q. Where is the reference to it in the log?
 17 A. Erm, I wouldn't --
 18 Q. It's obviously a very important stage in your
 19 investigation: finally, you have got something?
 20 A. This all relates to subsequent dealings with Swarandeeep.
 21 Q. I know.
 22 A. I wouldn't necessarily -- the fact that Legal had
 23 received the letter and they would have a copy of it and
 24 they've sent me a copy of the letter, which I had a copy
 25 of it, I wouldn't necessarily put that into this log.

1 I had the letter.
 2 Q. Okay, so which letter are you referring to?
 3 A. The manuscript letter that Nimesh Patel wrote and sent
 4 to the legal department in Guernsey.
 5 Q. Okay, and you referred to that in your statement where?
 6 A. I don't know.
 7 Q. Do you recall?
 8 A. I've said, I don't know. I know the letter is in the
 9 bundles.
 10 Q. Okay. Is it perhaps -- if you would be taken to E3.
 11 Long after you conducted the investigation -- is it
 12 page 504? {E/108.3/504}
 13 A. It is. Sorry, it starts at 502. There is a letter at
 14 503 -- oh, no, sorry -- yes, you are right, it's 504.
 15 Q. But that's just, "List of Investigation Matters". You
 16 had, obviously, got Mr Patel to provide this to you,
 17 hadn't you?
 18 A. No. It's exactly as I described. I said to him that if
 19 he wanted to put more substance to what he was saying,
 20 he should put it in writing and send it into the centre.
 21 That's what he sent into the centre.
 22 Q. When do you say this was all sent in?
 23 A. After the second contemporaneous record of interview.
 24 When I say, "After", I mean it would have arrived, you
 25 know, either a couple of days or longer after the second

1 interview. It was posted in to Guernsey, I believe.
 2 Q. So you are saying you had this in February 2007, or
 3 early March at the latest?
 4 A. I don't know, because very early on in the
 5 investigation, I was taken off. So I didn't actually
 6 collate all of the evidence and I don't know at what
 7 stage this landed, or was this in my possession prior to
 8 me being taken out of the investigation and somebody
 9 else taking it over.
 10 Q. If you look at page 499 -- this is the only reference to
 11 this document; there is no earlier version of it.
 12 {E/108/499} It looks like you are the person who is,
 13 shall we say, collating everything?
 14 A. No, so clearly I got that letter because when I was
 15 taken off the case, I emailed them forward to the person
 16 that was dealing with the case.
 17 Q. Yes. So on 4 June 2007, you are providing Mr Hamilton
 18 with -- you say:
 19 "Please find the attached as discussed."
 20 So you've obviously been prepping Mr Hamilton on
 21 what's happening?
 22 A. I wouldn't recognise the word "prepping". The decision
 23 had been taken that, for various reason, that I would be
 24 taken off the case and the case would be passed to
 25 Neil Hamilton to investigate. So I would have had

1 a conversation with Neil -- I don't know whether Neil
 2 phoned me or I phoned Neil -- to hand that over to him.
 3 So that's all it's referring to.
 4 Q. So, you are passing this to Mr Hamilton, but what we
 5 don't see is when you are getting this document. When
 6 do you say you got this document?
 7 A. I don't know.
 8 Q. You don't know? All right. Just whilst we are on
 9 page 499, plainly you have your own view as to
 10 Ms Birdi's guilt or not and you are seeking to encourage
 11 Mr Hamilton a certain way in his investigation. Would
 12 that be fair?
 13 A. I'm saying that even at that early stage, there was
 14 evidence that in my view was consistent with some form
 15 of misconduct, and I was explaining that Mr Hamilton
 16 needed to look at all of those documents and understand
 17 them in order that he could then take over and continue.
 18 Q. But you're not fair and unbiased in your approach, are
 19 you, because --
 20 A. I don't agree at all.
 21 Q. Look at the words you use?
 22 A. I appreciate the words that I use and in the absence of
 23 an explanation, at that point in time, based on the
 24 evidence that I had, I believed there was -- there would
 25 be -- it would be difficult for somebody to explain how

1 they could legitimately do what was being suggested and
 2 what the evidence tended to support.
 3 So, yes, I did have a view that there was
 4 a probability that malpractice had taken place, but, you
 5 know, that view could have altered as the investigation
 6 continued and interviews had taken place and
 7 explanations were given, but at that stage, based on
 8 what I had, yes, I did have a view.
 9 Q. Let's take the most serious allegation, just as an
 10 example. The most serious allegation was that she had
 11 paid £4,000 to her husband for him doing no work at all
 12 for the business. Do you remember Mr Patel's
 13 allegation?
 14 A. Correct.
 15 Q. That allegation could be shown from all of the
 16 documentation that would have been available to
 17 Specsavers -- could be shown to be wrong, couldn't it?
 18 And was shown in the end to be wrong, and Ms Mancini
 19 concluded that it was plainly wrong?
 20 A. No, I don't accept that. We had a -- it couldn't be
 21 a director who was saying that he had agreed payments to
 22 go to an individual who didn't work in the business.
 23 There are checks that you can do electronically to see
 24 whether or not, you know, it's obvious that that's true
 25 or not true; transactional analysis would give you some

1 indication that, you know, they were routinely in the
 2 business and there wasn't any evidence to support that.
 3 So albeit the fact that he could be in there doing
 4 other functions that didn't involve systems, and that's
 5 probable, there was some degree of consistency, albeit
 6 the fact that at some point in the future, when you
 7 interviewed employees, they would give a different
 8 picture and say, "No, actually, he was here all the time
 9 and this is what he does", and your view may change
 10 throughout the course of the process of investigating it
 11 and challenging what certain individuals said. But
 12 I think at that time I had a -- I had a view. I don't
 13 think it was terribly unreasonable or judgmental. You
 14 know, I still have an open mind but the evidence that
 15 I had, I felt, begged some questions.
 16 Q. That's not they way you put, that "the evidence begged
 17 some questions". What you said was there are documents
 18 that:
 19 "... demonstrate many possible explanations she
 20 could give would be untrue, and therefore you [Neil]
 21 would need knowledge of them in detail to ensure that
 22 explanations that are clearly untrue can be challenged
 23 in light of the evidence in the files."
 24 A. And I suspect that probably what I was referring to --
 25 and I'm guessing -- I would have to check the dates of

1 the interviews for Lorraine Frondigoun and
 2 Patrice O'Brien -- but I suspect that might be what
 3 I was referring to when I said that, because the
 4 explanations that were given by the employees were
 5 consistent with the allegations that were being made by
 6 Nimesh Patel that he wasn't in there doing work.
 7 So, again, albeit the fact that that view may have
 8 subsequently changed, at that time, based on the two
 9 employees, what they were saying, what Nimesh Patel was
 10 saying, there appeared to be some substance to it.
 11 Q. Those two employee interviews. That is Ms Frondigoun
 12 and Ms O'Brien?
 13 A. Correct.
 14 Q. If the content of Ms Frondigoun's record of interview
 15 was just your selected highlights, rather than her
 16 actual evidence, you are seeking to mislead Mr Hamilton
 17 as well, aren't you?
 18 A. On the basis that I have manufactured dishonestly the
 19 record of interview, which is categorically not the
 20 case.
 21 Q. Obviously, his Lordship is going to decide whether --
 22 A. Correct.
 23 Q. -- your evidence on that, which I haven't heard yet --
 24 A. Correct.
 25 Q. -- is true or whether Ms Frondigoun was telling the

1 truth when she came to the box?
 2 A. Correct.
 3 MR STUART: Okay. My Lord, I see the time?
 4 MR JUSTICE NUGEE: Yes. We will take a five-minute break.
 5 (11.42 am)
 6 (Short break)
 7 (11.47 am)
 8 MR STUART: Mr McAlindon, can we move on to the
 9 Lorraine Frondigoun and Patrice O'Brien documents. So
 10 this is your final of your three amendments. This
 11 amendment, you sought to make yesterday, didn't you?
 12 A. Yes.
 13 Q. For the first time. And again, the sequence of events
 14 was that Ms Frondigoun had given evidence last week.
 15 You were present in court at the time, weren't you?
 16 A. I was.
 17 Q. And Akin Palmer had then made a request asking for the
 18 meta data for those two interviews, the documents that
 19 you find in E2. At page 418, is the Lorraine Frondigoun
 20 one {E/86/418} and then 426 is the Patrice O'Brien one.
 21 {E/86/426}
 22 A. Yes.
 23 Q. So Akin Palmer asked for the meta data for those
 24 documents in native format. Having got that meta data,
 25 they then wrote on Friday -- this is in bundle F2; do

1 you see it?
 2 A. No, you haven't told me the page number.
 3 Q. Sorry. I think we can pick up the story at 591. Do you
 4 see 591?
 5 A. Sorry, 491?
 6 Q. It's very near the end. Do you see 591? On Thursday
 7 last week, 30 October, Taylor Wessing wrote:
 8 "We entirely reject your assertion ..."
 9 Et cetera, about disclosure:
 10 "Dealing with each of your additional disclosure
 11 requests in turn, one, we are instructed that
 12 Ms Frondigoun's interview with Mr McAlindon was not
 13 recorded."
 14 Do you see that?
 15 A. I do.
 16 Q. That obviously arose from the fact that Ms Frondigoun
 17 said it was and you had been asked to provide a copy of
 18 the recording?
 19 A. Correct.
 20 Q. Do you recall?
 21 A. Yes.
 22 Q. "To remind you that you already had in your possession
 23 the native file and meta data report of Ms Frondigoun's
 24 interview, subsequent to your request of 1 October.
 25 Mr McAlindon has confirmed to our clients that he did

1 not make manuscript notes of the interview with
 2 Ms O'Brien on 1 May."
 3 Do you see that?
 4 A. I do.
 5 Q. So, again, Ms O'Brien had said in her evidence --
 6 I think you were present -- that you had made manuscript
 7 notes. She had signed those and you had then gone away
 8 and created the typed-up version. You recall her
 9 evidence?
 10 A. I recall her evidence, yes.
 11 Q. Nowhere in that letter did it say:
 12 "Oh, by the way, it's not 1 May, it's 2 May."
 13 Does it?
 14 A. No.
 15 Q. No. What then happened was that -- if you flick on to
 16 page 602 -- having received that letter on Thursday, on
 17 Friday Akin Palmer wrote -- do you have that, 602?
 18 A. I do.
 19 Q. Saying:
 20 "In our letter, we requested document 2016 and its
 21 attachments in native format, such document being
 22 Mr McAlindon's contemporaneous record of conversation
 23 with Ms Frondigoun dated 1 May. We duly provided the
 24 native files..."
 25 Do you see?

1 A. Hm-mm.
 2 Q. "... which show the following information in relation to
 3 that document. Created on 2 May. Last modified by Mel
 4 M on 2 May. Last printed on 2 May. Last saved by Mel
 5 M. Authored by Mel M."
 6 Do you see that?
 7 A. I do.
 8 Q. So it was pointed on to you that the native format
 9 information that we could now see in relation to that
 10 document appeared to be consistent with Ms Frondigoun's
 11 evidence that there was a recording done and that then
 12 you only created the typed-up contemporaneous record
 13 later?
 14 A. I totally disagree with that.
 15 Q. It appeared to be consistent --
 16 A. I think what that accurately reflects is the fact that
 17 I wrote the wrong date down. You know, it's the
 18 beginning of the month, I wrote the wrong date down.
 19 That's all it's consistent with.
 20 Q. That's now your explanation -- or is it? We will come
 21 to what you actually say in your new amended statement
 22 in a moment.
 23 The fact that the document was created by you,
 24 drafted by you on 2 May, if the interview did take place
 25 on 1 May, then Ms Frondigoun's version of events is

1 supported, at least, isn't it?
 2 A. I only attended the store on one day and there is
 3 an email from Carol Slark after these interviews, where
 4 she says, "It was great to meet you today," or something
 5 of that ilk, "for the first time".
 6 Q. There is no evidence available to us --
 7 A. And her email is consistent with the fact that I got the
 8 wrong date, because her email is dated the 2nd as well.
 9 So this is a question about I've got the wrong date.
 10 I categorically didn't do any form of voice recording
 11 and transcribed this record at a later date.
 12 Q. There is no evidence that you were only in the store on
 13 one day, is there? That is now your recollection, is
 14 it?
 15 A. I only went to the store to take those statements.
 16 Q. No, you went to the store on a number of occasions,
 17 didn't you?
 18 A. I did, but in terms of taking statements, I went on one
 19 occasion.
 20 Q. I would suggest to you that you can't possibly recall
 21 precisely the occasions you went. Your recollection --
 22 A. I couldn't possibly recall the date that I went. I have
 23 a fairly vague recollection of going to the store.
 24 I say "vague" because I didn't recognise Mrs Frondigoun
 25 at all. So I do have a vague recollection, but I know

1 that I went to the store on a day and took both of these
 2 records.
 3 Q. You went to the store on another day to interview
 4 somebody else, at least, didn't you. Do you remember?
 5 A. No.
 6 Q. You don't remember going to the store to interview
 7 somebody else?
 8 A. There are only two interview records. If I interviewed
 9 somebody, there would be an interview record for it and
 10 I only have two interview records and can therefore only
 11 conclude that I went to the store on one occasion.
 12 Q. Okay. So your recollection of events is so poor now
 13 that you don't recall interviewing Ms Fendick?
 14 A. I didn't interview Ms Fendick. I had a conversation
 15 with Ms Fendick.
 16 Q. Okay. Where was that?
 17 A. I recollect having a conversation. I don't recollect
 18 where it was it would have been in the store. I don't
 19 recollect where in the store and I don't remember her at
 20 all. But I do recollect having a conversation with her.
 21 Q. I suggest to you it was in the store, so you were at the
 22 store on another day and you were having a conversation
 23 with her?
 24 A. Correct.
 25 Q. All right. Paragraph 47 of your first witness statement

1 in its unamended form said -- this is page 137 in
 2 bundle C, tab 11 {C/11/137}:
 3 "As part the investigation, I conducted interviews
 4 with Lorraine Frondigoun --"
 5 A. Sorry -- oh, right, yes, I've found it.
 6 Q. Paragraph 47, do you see it?
 7 A. I do.
 8 Q. And according to that, you conducted those interviews on
 9 1 May?
 10 A. Yes.
 11 Q. Do you see that?
 12 A. I do.
 13 Q. Looking at your Loss Prevention log --
 14 A. Which is where?
 15 Q. E2, page 482. {E/101.3/482} Do you see it, 482?
 16 A. Yes.
 17 Q. No mention of your attendance at the store on 1 May, nor
 18 the 2 May, strangely, but perhaps that is so that there
 19 is no record that could be checked against. But what
 20 there is is a record of 8 May:
 21 "Attended store..."
 22 A. I can only assume that that's the date that I wrote that
 23 in this document.
 24 Q. Yes. Tuesday 8 May:
 25 "Attended store for review to and speak to employees

1 to clarify some issues..."

2 Do you see that?

3 A. I do.

4 Q. So you have gone there on 8 May?

5 A. Not necessarily. The 8 May could have been the day that

6 I wrote this in this document. It doesn't say within it

7 I attended the store on a specific date. So that date

8 reference -- and again, I have no -- I can't recollect

9 writing this, but it could very easily refer to the date

10 that I put it in the document, which is a number of days

11 later.

12 Q. I see. So some time between 1 and 2 May, being the date

13 when you interviewed Ms Frondigoun and Ms O'Brien, and

14 8 May, you are now saying that the item on the left, in

15 the left-hand column, is not the date of something

16 happening; it's merely the date when you --

17 A. Sorry, now I have read the text within that, that that

18 relates to, and I'm referring to the employee who had

19 spoken to Carol Slark and I went back into the store to

20 see her as a consequence of the conversation she had

21 with Carol.

22 Q. Yes, that's what I'm saying.

23 A. No, so that was Tuesday 8 May then, I would guess.

24 Q. Yes. So you went back on 8 May because Jo Fendick was

25 concerned that there was a witch hunt?

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1 A. Correct.

2 Q. And that followed the interviews that you had had with

3 Frondigoun and O'Brien?

4 A. Yes.

5 Q. Those are the only two interviews, you say --

6 A. It followed chronologically, yes.

7 Q. Yes. So there is no mention in your log of precisely

8 the date that you interviewed these people. I mean,

9 these were important interviews, weren't they?

10 A. Sorry, interviewed which people?

11 Q. Frondigoun and O'Brien.

12 A. Yes.

13 Q. There is no mention in this log?

14 A. There wouldn't need to be because there is

15 a contemporaneous record of interview.

16 Q. Which is dated 1 May?

17 A. Correct.

18 Q. But typed up on 2 May?

19 A. Correct. But there was an interview record that

20 detailed everything that was said.

21 Q. Not everything that was said?

22 A. Yes, everything that was said. Categorically everything

23 that was said.

24 Q. No. Mr McAlindon, you are not telling his Lordship that

25 that interview record that you have made there, which

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1 you allege you typed at the time, was a verbatim record

2 of everything that was said?

3 A. What I am saying, my Lord, is that that interview record

4 had everything in it that was discussed. There may have

5 been, by the nature of the process, words that

6 I misunderstood or misrepresented, but in terms of: does

7 it fundamentally represent what the entire discussion --

8 yes, it does.

9 Q. Does it fundamentally represent the entire discussion?

10 A. The process of typing in a question, reading it out, and

11 typing in a reply, is a slow difficult process. So to

12 get that as accurate, for example, as you could with

13 a recorded interview, is a tall order. I'm not

14 a typist. But you get it at almost 100 per cent. You

15 will make errors and that's why you give the individual

16 the opportunity to correct, alter or add if you have

17 misunderstood something or misrepresented it or they

18 want to add further detail, but the process does

19 accurately reflect everything that was discussed and

20 I don't omit anything that people say to me.

21 MR JUSTICE NUGEE: What do you say -- you were typing -- you

22 typed a question?

23 A. Correct.

24 MR JUSTICE NUGEE: You then read the question to

25 Ms Frondigoun?

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1 A. Yes.

2 MR JUSTICE NUGEE: You then heard her answer and typed the

3 answer?

4 A. Correct.

5 MR JUSTICE NUGEE: Typing on what?

6 A. On a laptop. And sometimes the process can be quite

7 difficult in that if somebody gives you a long answer,

8 it's difficult to take all of that whilst you are typing

9 it into the laptop. Sometimes you might get half way

10 through their response and say, "Actually, stop, this is

11 what I have got so far. What else did you say?"

12 I might not put into the record, "Stop, this is what

13 I have, can you please finish it", but certainly, do

14 I reflect her answer accurately? Yes, I do.

15 MR STUART: You heard her evidence, didn't you,

16 Mr McAlindon, which was that the record, page 418,

17 doesn't at all reflect all the things that you said to

18 her and she said to you? {E/86/418}

19 A. I think that her evidence was honestly given, but

20 I think there are some fundamental mistakes in -- she

21 has incorrectly recollected a number of issues. For

22 example, the fact that I typed it. She actually says in

23 one of her quotes, "This is difficult as you type", and

24 it was difficult.

25 She also says that I started and stopped the

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1 interview throughout the interview and that's correct,
 2 but that's consistent with me using a typed methodology.
 3 It's not consistent with a methodology where I'm alleged
 4 to have tape-recorded an interview to then subsequently
 5 doctor a record that suited my purpose, because if I was
 6 recording it, either electronically or on some other
 7 form of voice media, you would just let the interview
 8 run; you wouldn't start and stop it. It's illogical,
 9 because I don't know what she is going to say, so
 10 I would miss something.
 11 So, you know, I think that when you look at her --
 12 I think she has misunderstood at the very beginning,
 13 this is a contemporaneous record of interview. And with
 14 hindsight, I should use more simplistic language in that
 15 situation. I think she has misunderstood the fact that
 16 it's recorded when it wasn't.
 17 Q. No, the fact that you didn't record everything she said
 18 is because you had a pre-determined view as to the
 19 evidence you wanted to collect, didn't you?
 20 A. I've answered that very clearly. I do not omit
 21 anybody's answers out of a transcript of interview. The
 22 only wording that could possibly be missed out of that
 23 transcript is where I have stopped somebody and said,
 24 "Can you repeat the last part of your..." whatever
 25 answer it was, and that part of the conversation might

1 not be in, but in terms of their replies, their replies
 2 are fully documented.
 3 Q. I'm going to come back to Ms Frondigoun's evidence in
 4 a minute, but at the moment I'm just trying to deal with
 5 your amendment to your paragraph 47. As it now reads,
 6 it reads -- have you got the amended bit? It reads:
 7 "... I conducted interviews with
 8 Lorraine Frondigoun, an administrative assistant at the
 9 Store, and Patrice O'Brien, an optical assistant at the
 10 Store which both took place on either 1 or 2 May."
 11 That is now your sworn evidence to this court?
 12 A. Correct. And of the two I believe it's the 2 May, but
 13 I'm not incorrect in saying that it was either the 1st
 14 or the 2nd.
 15 Q. So you can't actually recall whether it was the 1st or
 16 the 2nd?
 17 A. I couldn't possibly recall what date it was. I can only
 18 from reconstruction try and figure out exactly what day
 19 it was.
 20 Q. That's right. You are just trying to reconstruct an
 21 amendment to your statement from the evidence that has
 22 been put to you, which proves that the typed-up record
 23 document was typed on the 2nd?
 24 A. My recollection is that it all took place on the same
 25 day.

1 Q. But your recollection might be mistaken?
 2 A. No, in terms of did I conduct those two interviews on
 3 one day, then, yes, I did. If I have labelled it
 4 incorrectly with the wrong date, then I've made
 5 a mistake in the date that I wrote on the transcript of
 6 interview.
 7 Q. You can't even say now whether it was the 1st or the
 8 2nd?
 9 A. It's seven years ago and I couldn't possibly recollect.
 10 What I can say unequivocally is that they were both done
 11 on the same day, they were printed, and those employees
 12 were given the opportunity to read and sign them on that
 13 day.
 14 Q. But if that were right, then you would be able to say it
 15 was definitely the 2nd? But of course, you are not
 16 putting your name to that sworn statement because it
 17 might be provable that it wasn't the 2nd, but we will
 18 come back to that.
 19 If it were on the 2nd, which we know to be the date
 20 when the documents were created -- if it were on the
 21 2nd -- then you would be able to swear on oath that you
 22 interviewed them on the 2nd?
 23 A. Sorry, say your question again, please?
 24 Q. If you interviewed them on the 2 May?
 25 A. Yes.

1 Q. Being the date when the documents were created?
 2 A. Yes.
 3 Q. Then you would be able to swear on oath a statement
 4 which said, "I interviewed them both on 2 May"?
 5 A. Erm, I've clearly made an error on the document where
 6 I've -- the facts demonstrate the fact that I made an
 7 error on the document where I wrote the 1st and it
 8 should have been the 2nd.
 9 Q. No, they don't demonstrate any such thing. The
 10 interview may have been on the 1 May -- it might have
 11 happened this way: the interviews were on 1 May and that
 12 as both witnesses, Frondigoun and O'Brien, said, you
 13 didn't produce to them typed-up versions at the end of
 14 the interview and you typed up those versions after the
 15 interview had finished. So it is possible that that's
 16 what happened?
 17 A. No, it's not possible. I can say with absolute clarity
 18 that on the day that I went into that store to conduct
 19 those interviews, the interviews were recorded
 20 contemporaneously on to a laptop, they were printed off.
 21 I did Lorraine Frondigoun first, I did Patrice O'Brien
 22 second, and after each interview they were given the
 23 paper document to read, add any amendments/corrections
 24 they wanted to put, and sign the documents. Whether
 25 that was the 1st or the 2nd of May, with the time that's

1 passed, it's difficult to say. However, both interviews
 2 were done on the same day. Both interviews were signed
 3 on the same day.
 4 Q. When did you draft the two documents?
 5 A. Draft in what respect?
 6 Q. Typed?
 7 A. I typed them in front of the employees.
 8 Q. No. What day did you type them up?
 9 A. They were typed in front of the employees on whatever
 10 day I was in that store. They were present when the
 11 records were typed. They were present when they were
 12 printed and they were -- and they were given the
 13 documents straight after and given the opportunity to
 14 correct, alter or add anything they wished. And
 15 whatever day that was, it was one day and they were done
 16 consecutively, one after the other, and they were signed
 17 on the same day.
 18 Q. All right. I had better take you to the transcripts
 19 then. Could you be passed the transcript bundle? Go to
 20 day 5.
 21 A. Is that file 1 or 2?
 22 Q. Oh, file 1, yes. You can put away file 2 then. Day 5.
 23 Do you know how the pagination works here?
 24 A. Yes.
 25 Q. Four pages to a page. Go to page 158 on day 5.

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1 {Day5/158:1}
 2 Do you see, that is Ms Frondigoun starting her
 3 evidence?
 4 A. Yes.
 5 Q. If you flick over to page 162, {Day5/162:24} at the
 6 bottom you see I ask a question:
 7 "Question: No, that's fine, that's fine.
 8 "Now, the interview then. We see it there."
 9 A. Which line?
 10 Q. The very last line on page 162?
 11 A. Yes.
 12 Q. "Question: Now, the interview then. We see it there.
 13 It lasted, according to the record, 2 hours 20 minutes?
 14 "Answer: It just lasted so much longer than that."
 15 A. Yes.
 16 Q. Line 4: {Day5/163:4}
 17 "Answer: That wasn't right. It lasted an awful lot
 18 longer than that."
 19 Line 7, her answer was: {Day5/163:7}
 20 "Answer: The machine was turned on, it was turned
 21 off, it was turned on, it was turned off. It was about
 22 four hours."
 23 Do you see that?
 24 A. I do.
 25 Q. At line 9, I asked:

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1 "Question: When you say the machine, what was the
 2 machine? How was he recording this?"
 3 To be clear, Ms Frondigoun, her task at the store
 4 was administration. Do you remember?
 5 A. I do.
 6 Q. So she dealt with things like computers, printers and
 7 the like?
 8 A. Hm-mm.
 9 Q. So she would certainly understand, wouldn't she, what
 10 a laptop computer was?
 11 A. I don't know.
 12 Q. Were you sitting there in front of her --
 13 A. I was sitting in front of her.
 14 Q. -- or were you behind a screen --
 15 A. No, I was sat -- I was sat --
 16 Q. -- secretly hidden away so she couldn't see what you
 17 were recording this on?
 18 A. I was sitting directly in front of her, at a desk.
 19 Q. So if you had a laptop computer sitting there in front
 20 of her, typing away, she couldn't fail to have seen it,
 21 could she?
 22 A. I don't see how she couldn't, no.
 23 Q. Good. And it would be absolutely clear to her that you
 24 were typing away?
 25 A. I think that's reflected in her replies in the interview

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1 record, where she says, "This is very difficult, trying
 2 to do it as you are typing", or something along those
 3 lines.
 4 Q. But you drafted that; you typed that into the record?
 5 A. No, I --
 6 Q. You did. That's your evidence?
 7 A. I typed into a laptop in front of her a contemporaneous
 8 record of that -- about the discussion that we had, at
 9 the end of which it was printed and she signed it.
 10 Q. You typed the document, so whatever appears in that
 11 document --
 12 A. I typed it in front of her.
 13 Q. -- you typed it.
 14 A. Correct.
 15 Q. So whatever appears in that document is what you chose
 16 to type?
 17 A. In terms of my questions, they were the questions
 18 I chose to ask. In terms of the replies, I typed in the
 19 replies that she gave me.
 20 Q. This is still on page 163. So I've asked: {Day5/163:9}
 21 "Question: how was he recording this?
 22 "Answer: This thing he just had, I didn't take
 23 a lot of notice of it. He told me it was being recorded
 24 and that was fine and then he --
 25 "Question: But recorded, what, like a tape recorder

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1 type of thing?
 2 "Answer: Yes, kind of an oldy-fashionedy kind of
 3 thing. It was -- I honestly didn't take a lot of notice
 4 of it but I know he kept stopping it and then he kept
 5 saying --"
 6 Do you see that?
 7 A. Yes.
 8 Q. As you have already said, Ms Frondigoun would be able to
 9 recognise a modern day laptop computer. Your laptop
 10 computer didn't look like an old-fashionedy-type tape
 11 recorder, did it?
 12 A. It did look like on an old-fashionedy thing, but --
 13 Q. Did it? What make was it?
 14 A. I have no idea. It was an old laptop.
 15 Q. Try and recall because it's quite important. This
 16 laptop that you say you took this note on, what make was
 17 it?
 18 A. I don't know. No idea. I don't know what my current
 19 laptop make is.
 20 Q. Okay. When did you dispose of your old laptop?
 21 A. Erm, I don't know.
 22 Q. Roughly?
 23 A. I don't know.
 24 Q. How many laptops have you had between 2007 and 2014?
 25 A. I've recently had a new one.

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1 Q. Yes. Was the one before that the 2007 one?
 2 A. I don't know. I've had a number of laptops over the
 3 years. I can -- I can recollect having three laptops
 4 over 14 years. I don't think there is more than that.
 5 Q. Right. The 2007 laptop that you say you were recording
 6 this on, do you know where it is now?
 7 A. No.
 8 Q. Do you know what you did with it?
 9 A. I have no recollection of what I did with it but the
 10 normal protocol is, when you are given a replacement
 11 laptop, that laptop goes back to the IT centre.
 12 Q. Okay. So line 17 on page 163: {Day5/163:17}
 13 "Answer: I know he kept stopping it and then he kept
 14 saying --
 15 "Question: Saying things to you?
 16 "Answer -- various things, yes. Pushing --
 17 "Question: Which were sort of off the machine?
 18 "Answer: Pushing and pushing and pushing.
 19 "Question: And then he would put it back on to
 20 record and then for a short while, what you were saying
 21 would be on the record, as it were, on record?
 22 "Answer: Yes.
 23 "Question: And then he would turn it off again for
 24 a while?
 25 "Answer: Yes.

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1 "Question: And you would discuss things with you,
 2 not on the record?
 3 "Answer: That's right, so by the time I got to the
 4 end, I truly didn't know if it was on or off."
 5 I know you sat here and listened to this evidence on
 6 the day, didn't you?
 7 A. I did.
 8 Q. Is Ms Frondigoun right about all of that?
 9 A. No, she is mistaken.
 10 Q. All right, page 164, line 17, having taken her to the
 11 signatures at the bottom of the pages that you had got
 12 her to sign: {Day5/164:17}
 13 "Question: Did he produce this to you at the end of
 14 the --"
 15 And she didn't even allow me to finish the question.
 16 The answer was:
 17 "Answer: No."
 18 Do you see that?
 19 A. I do.
 20 "Question: When did he produce it to you?
 21 "Answer: About two days later, I think."
 22 Do you see that?
 23 A. I do.
 24 Q. Is that true or false?
 25 A. That was false.

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1 Q. Okay. Line 21: {Day5/164:21}
 2 "Question: Two days later. So what he must have
 3 been doing then was he was recording some of your
 4 answers and then he was going to take that recording
 5 away, turn it into a transcript of the interview and get
 6 you to sign that as a transcript of the interview.
 7 Because he wasn't taking manuscript notes and he didn't
 8 have someone sitting next to him tapping away, making
 9 any sort of transcript of what you were saying?
 10 "Answer: No."
 11 She couldn't be clearer, could she?
 12 A. She is clear in how she perceives it, but, as I've
 13 explained, we have never interviewed any employee on
 14 a tape recorder. The only employees we have ever
 15 interviewed was after this case, when we decided it
 16 would be a good idea to buy an interview recording
 17 machine and give partners the choice as to whether or
 18 not they were interviewed on record or not interviewed
 19 on record -- interviewed electronically or directly into
 20 a laptop. But we have never interviewed -- nobody in my
 21 department has -- any employee with a voice recording.
 22 Q. You say, "We've never interviewed --"
 23 A. When I say "we", I mean myself and the people who work
 24 in my department.
 25 Q. The odd thing about this interview was that despite the

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1 fact that Ms Birdi had by this stage -- that is prior to
 2 1 May -- made a complaint about you and your role in
 3 this investigation -- do you recall?
 4 A. Sorry, say that again?
 5 Q. Ms Birdi had made a complaint about you --
 6 A. Yes.
 7 Q. You personally, Mr McAlindon, before 1 May?
 8 A. I don't know the chronology. I know that there were
 9 a number of letters exchanged as the issue was debated
 10 and at some point in time, after these interviews were
 11 done, it was decided that Neil Hamilton would do the
 12 interview.
 13 Q. Sorry, who?
 14 A. Neil Hamilton.
 15 Q. Do the interview with her?
 16 A. Hm-mm, correct.
 17 Q. But she had complained about you, including, for
 18 example, page 367 --
 19 A. Sorry, which bundle?
 20 Q. E2, page 367. {E/65/367} On 6 April, posted it on
 21 12 April.
 22 A. Which page, sorry?
 23 Q. 367. Do you see that one?
 24 A. I do.
 25 Q. End of the first paragraph:

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1 "I have now been placed under intolerable pressure
 2 by the unwarranted intimidation and harassment by
 3 Mel McAlindon and his associate."
 4 Do you see that?
 5 A. I see that.
 6 Q. If you flick on to page 371. {E/67/371}, she wrote again
 7 on 12 April. It looks like, "Arrived 16 April", in the
 8 top right-hand corner.
 9 A. Hm-mm.
 10 Q. Do you see she is making complaints about you --
 11 A. Yes.
 12 Q. -- and your approach. Do you see that?
 13 A. I do.
 14 Q. And so she asks at the bottom, so this is two paragraphs
 15 from the end of 371: {E/67/371}
 16 "I would, therefore, be grateful for your
 17 confirmation that any further interviews will not
 18 involve Mel McAlindon. My concern is also that
 19 Mel McAlindon had already formed his judgment even
 20 though an investigation process had not been completed.
 21 Therefore, he has already prejudiced my position."
 22 Do you see that?
 23 A. I see that.
 24 Q. That's plainly her view?
 25 A. Correct.

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1 Q. And the response to that, as I presume you know, is that
 2 it was said that -- I'll take to you page 393.
 3 {E/77/393}
 4 A. Yes.
 5 Q. 20 April. So this is now 11 days before the 1 May
 6 interviews.
 7 A. Yes.
 8 Q. It says:
 9 "Thank you for your letters."
 10 So we see those letters that I've just taken you to?
 11 A. Yes.
 12 Q. And it says, in the third paragraph:
 13 "In the Dartford situation the investigation is
 14 carried out through the specialised services of the
 15 Specsavers Loss Prevention Audit department. If, on
 16 receipt of the investigation report and without
 17 pre-judging the results of the current ongoing
 18 investigation at Dartford or assuming that any
 19 disciplinary action will actually be necessary, it is
 20 considered that there is a case to answer, then you will
 21 be invited formally to a disciplinary hearing."
 22 Do you see that? That's the stage we have reached.
 23 Then, if you go to the bottom paragraph of 393:
 24 {E/77/393}
 25 "We note that you have made a formal complaint

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1 regarding Mr McAlindon's conduct."
 2 Do you see?
 3 A. I do.
 4 Q. Over the page: {E/77/394}
 5 "All complaints of this nature are taken very
 6 seriously. We have questioned both Mr McAlindon and
 7 Mr Barnes."
 8 Do you see that?
 9 A. I do.
 10 Q. "We are satisfied that no inappropriate behaviour on
 11 their part took place."
 12 Do you recall who questioned you?
 13 A. Erm, no.
 14 Q. No. Mr Dyson said it wasn't him. I asked him.
 15 A. Yes.
 16 Q. So I'm just asking you.
 17 A. I don't recollect it.
 18 Q. No. Do you think anyone did actually question you or is
 19 this just Alison Anderson putting out an SOG-type
 20 response?
 21 A. I remember being --
 22 MR POTTS: My Lord, I'm sorry, that's -- "an SOG-type
 23 response" is, I think, a little --
 24 MR JUSTICE NUGEE: It's an offensive comment but --
 25 MR STUART: Or is this Alison Anderson putting out

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1 a response on behalf of SOG?
 2 A. No, I recollect being interviewed at some point by
 3 David Clark, but I don't know when in the chronology or
 4 whether or not it was around this time. But that's the
 5 only interview as such that -- where I was interviewed
 6 that I can recollect.
 7 Q. I think, according to Mr Clark, that was much later, but
 8 we will see:
 9 "We are satisfied no inappropriate behaviour on
 10 their part took place."
 11 So a clean bill of health for you and your
 12 colleague; yes?
 13 But then it does say, next paragraph down:
 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 at Dartford."
 18 Do you see that?
 19 A. I do.
 20 Q. "However, to show respect for your feelings and
 21 comments, Mr McAlindon has agreed to be accompanied by
 22 a senior person, appointed by this office, to act as an
 23 independent observer at the investigatory interview."
 24 Do you see that?
 25 A. I do.

1 Q. I presume you are going to say you were only agreeing to
 2 do that when you were in a room with Ms Birdi?
 3 A. I don't know what you mean.
 4 Q. You went off to do an investigatory interview with the
 5 two staff concerned, didn't you?
 6 A. As witnesses, yes.
 7 Q. And you didn't have anybody with you -- not Mr Barnes,
 8 not a senior member of staff, nobody -- to check your
 9 independence.
 10 A. No, and I did that because I felt interviewing
 11 witnesses -- employees as witnesses, it would be
 12 oppressive to have multiple people there.
 13 Q. Would be ... ?
 14 A. Oppressive.
 15 Q. I think Ms Frondigoun found it fairly oppressive with
 16 you there.
 17 A. I can't help how she felt. We treated her as decently
 18 as we could.
 19 Q. All right. She didn't feel you treated her that
 20 decently. She felt you tricked her into it?
 21 A. I don't agree with that.
 22 Q. No, but that's the way she felt. You said her evidence
 23 was honest evidence.
 24 A. She is saying that I tricked her into signing the
 25 document because she felt forced to because she knew

1 I had tape recorded it, and, as I have explained,
 2 I think that she was incorrect in her mindset that the
 3 interview was being recorded. It wasn't. I think she
 4 has misunderstood contemporaneous record as this is
 5 being recorded.
 6 Q. She has not just misunderstood, has she? We started on
 7 page 165 --
 8 A. I think she has -- I think she very clearly has
 9 misunderstood.
 10 Q. It's not misunderstanding, is it, Mr McAlindon, to sit
 11 in front of somebody and not see them tapping into
 12 a laptop computer?
 13 A. It is if I didn't record the interview, and I didn't
 14 record the interview. I never recorded -- I have never
 15 recorded any interview with an employee in a voice
 16 electronic format in 14 years.
 17 Q. You have already told us you did because I know you did
 18 because I cross-examined you about a voice recording
 19 interview that you did.
 20 A. Well, I was very clear about what I said, that I never
 21 interviewed any normal store employee, either for
 22 dishonesty issues or as a witness, nor has anybody in my
 23 team, and the only people that we have ever recorded
 24 interviews with have been done electronically on to
 25 a CD ROM format, and that was introduced after this case

1 and it was done with specific agreements, where we would
 2 give people the opportunity to agree to it, having
 3 explained to them that it would ensure that there was
 4 a transparent record and you could hear the tone of the
 5 conversation, and if they didn't want it electronically
 6 record, we would do it in the normal way on a laptop.
 7 So I'm very clear about what's recorded and what's
 8 not recorded and in terms of employees, I've never
 9 recorded an interview.
 10 Q. All right, go to page 167 of the transcript, line 16 to
 11 17. I asked the question: {Day5/167:16}
 12 "Question: So that means that on your version ..."
 13 I'm speaking to Ms Frondigoun?
 14 A. Sorry, which line?
 15 Q. Line 16 to 17. There is a question that starts.
 16 "Question: So that means that on your version there
 17 is three and three quarter hours' worth of speaking that
 18 is not in here."
 19 A. Sorry, I'm trying to find it.
 20 Q. Page 167, half way through line 16. The sentence
 21 starts:
 22 "Question: So that means ..."
 23 Page 167?
 24 A. Yes. Line?
 25 Q. Line 16?

1 A. 167, 16:
 2 "To say the words ..."
 3 Sorry, yes.
 4 Q.
 5 "Question: So that means that on your version there
 6 is about three and three quarter hour's worth of
 7 speaking which is not in here?
 8 "Answer: Hm-mm.
 9 "Question: When you were asked to sign this
 10 two days later, did you not feel a bit uncomfortable
 11 about that?
 12 "Answer: Yes, definitely.
 13 "Question: Did you tell him that?
 14 "Answer: I kind of really thought I had been
 15 caught -- not caught; it's the wrong word: I had fallen
 16 into a trap here. But what do I do? It's on a tape."
 17 Do you see that?
 18 A. I do.
 19 Q. Her evidence was very clear about this, wasn't it?
 20 A. Yes.
 21 Q. And you said she was giving honest evidence, didn't you?
 22 A. I believe so, yes, from her perspective, but I think her
 23 perspective is wrong.
 24 Q. Her perspective was she was sitting across from you at
 25 a desk, where she could see everything you were doing?

1 A. Correct.
 2 Q. Page 168, line 8, after the question is:
 3 "Question: But there is a context, isn't there?
 4 "Answer: He continually pushed, started out, "Tell
 5 me anything you can think off.' Turn it off. He said,
 6 'She's a real bitch, isn't she?'
 7 "Question: He said that to you?
 8 "Answer: Yes.
 9 "Question: Was that his opening comment?
 10 "Answer: No, the first couple of pages it kind of
 11 went okay and then he said that: 'She's a real bitch.'"
 12 That's in inverted commas. And:
 13 ""That Nimesh seems like quite a nice guy to me."
 14 That's in inverted commas as well:
 15 "Turned it back on again. But it went further and
 16 further. He was just saying all sorts of things in
 17 between."
 18 Let's leave aside just for one moment the thorny
 19 issue of whether you did it on a tape recorder or
 20 a laptop computer, et cetera. Leave that to one side.
 21 Do you accept Mrs Frondigoun's honest evidence was that
 22 you said things to her about Ms Birdi and about
 23 Mr Patel. Do you accept that?
 24 A. Not at all.
 25 Q. I suggest to you that it's only human nature for you to

1 have done so.
 2 A. My Lord, I totally disagree with that. Over the years
 3 there have been a number of circumstances where the
 4 nature of what you are dealing with is difficult for
 5 people, and over the years, as a consequence, I have
 6 found out a number of people that have recorded
 7 conversations that I was unaware that they were
 8 recording but I subsequently became aware, and I'm sure
 9 that there are many, many more recordings that have
 10 taken place of conversations that I have held with
 11 people, that I don't know about, but, because of those
 12 experiences, I am very, very careful about what I say to
 13 employees and I haven't even -- I hadn't had any
 14 experience because I had only had literally two or
 15 three conversations with Swarandeeep before this to have
 16 even formed that view, and even if I had that view,
 17 which I didn't, I would never express it to an employee
 18 because I'm paranoid about people recording because
 19 people do it, and they do it frequently. So I have to
 20 be transparent and I can't express -- if I had expressed
 21 views like that and somebody produced a tape recording
 22 of it, the consequences to me as an individual, given
 23 the nature of my position, would be severe.
 24 So that isn't something that in any way, shape or
 25 form what I say to an employee, because I don't

1 understand her, I don't know anything about her
 2 loyalties, her views; I have no knowledge of this
 3 individual. So to take the risk of expressing a view
 4 like that is just something that I wouldn't do.
 5 Q. Mr McAlindon, let's get the context in which you walked
 6 Mrs Frondigoun into this interview. This is not an
 7 interview that she knew about a few days in advance, is
 8 it?
 9 A. Correct.
 10 Q. It's not one where she could come prepared with a little
 11 secret recording device, is it?
 12 A. People have mobile phones.
 13 Q. But she didn't, did she?
 14 A. I don't know.
 15 Q. There was no sign of it?
 16 A. There often isn't, but people do have mobile phones that
 17 are capable of recording conversations very well, and
 18 all I'm saying is that the reality of life nowadays is
 19 that there are lots of technologies that people have on
 20 their body that routinely can be used for that purpose,
 21 and because of that, I'm very careful about what I say.
 22 Q. Are you saying that her evidence is untrue?
 23 A. In that respect, yes.
 24 Q. Are you able to provide to the court any reason why she
 25 should give untrue evidence?

1 A. No.
 2 Q. Is it possible -- it's seven years ago now -- that
 3 within the pleasantries that must occur in any such
 4 interview, where just the two of you are in a room
 5 together -- is it possible that you may have said
 6 something about Ms Birdi from which she has got the
 7 impression that you thought she was a real bitch?
 8 A. Not during the interview process, because the interview
 9 processes, you are typing in a question that you think
 10 is relevant to the case, and then you are listening
 11 to -- reading it out, listening to her reply. So you
 12 are concentrating on the actual questions and their
 13 understanding of what you are talking about. So there
 14 isn't really casual conversation between that. So,
 15 there just isn't any casual conversation.
 16 Q. All right, if there was casual conversation --
 17 A. There wasn't.
 18 Q. If there was, if there was, like the casual conversation
 19 with Mr Patel two months earlier, which you didn't
 20 record in the interview notes?
 21 A. The only casual conversation that would take place is
 22 either before or after the interview. The interview
 23 record itself -- at no point during that actual process
 24 of documenting her evidence, if you like, at no time
 25 would I not have put that in the transcript.

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1 Q. If you had made some comments, even if they were off the
 2 record comments or informal comments, is it your
 3 evidence that you would not have typed those into your
 4 formal records?
 5 A. I think I have been quite clear that I am very mindful
 6 of the fact that people take recorded conversations when
 7 I'm unaware of the fact that they are tape recording
 8 them, and if I'm speaking to a person or interviewing
 9 them, either situation, I would be very circumspect
 10 about what I said to an individual whose motivation and
 11 loyalties I had no understanding of.
 12 Q. So your explanation to this court of her evidence at
 13 page 168, {Day5/168:15} all the detail about the
 14 quotes -- she quotes you:
 15 "She is a real bitch."
 16 And she quotes you:
 17 "That Nim seemed like quite a nice guy to me."
 18 That's all just made up by Ms Frondigoun?
 19 A. I wouldn't say it's made up but it's not true. I don't
 20 know how she has come to those conclusions.
 21 Q. You are an investigator --
 22 A. I don't know how she has come to those conclusions but
 23 they -- but I did not say anything of that nature to her
 24 in the entire time that I spent with her, not just the
 25 interview.

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1 Q. She is not coming to conclusions, is she? You are an
 2 interviewer, so you know the difference between what you
 3 say and what you think. She is not there saying,
 4 "I reached the conclusion that he thought she was
 5 a bitch", or, "I reached the conclusion that he thought
 6 Nim Patel was quite a nice guy". She was very clear in
 7 her evidence, wasn't she, that this is what you actually
 8 said?
 9 A. That's what she is saying, yes.
 10 Q. You say that's false?
 11 A. Correct.
 12 Q. Okay. Line 21 -- sorry, line 19, we ought to have gone
 13 to. {Day5/168:19}
 14 "Answer: 'Do you know what she is saying?'"
 15 This is in inverted commas, so this is what
 16 Mrs Frondigoun says you were saying to her, and this
 17 forms an important part of the interview, actually, in
 18 a moment:
 19 "Answer: 'Do you know what she is saying?'"
 20 That is she, Ms Birdi, is saying:
 21 "'She is saying this. Have a look at this, have
 22 a look at that.'"
 23 So Ms Frondigoun's evidence was that you showed her
 24 some documents?
 25 A. That's what she is saying.

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1 Q. Do you recall showing her documents?
 2 A. I don't recall showing some documents. I recollect
 3 having documents.
 4 Q. Hm-mm?
 5 A. I don't know whether I showed them to her or not. I do
 6 refer to them in detail because I think at some point in
 7 the interview record, I specify specific payments by
 8 month, bonus payments that were made: the month, the
 9 amount, the month, the amount, and I think there is
 10 a question in there that details that which I would have
 11 lifted from documents I had, but whether or not I showed
 12 them to her, I don't know.
 13 Q. So when her evidence was clearly that you did show her
 14 documents, you think she is mistaken about that?
 15 A. I don't know. I wouldn't accept it and I wouldn't
 16 refute it.
 17 Q. Would you not record in your contemporaneous record of
 18 interview, this important document -- would you not
 19 record the fact that you were actually showing her
 20 a document?
 21 A. I think my question would reflect the fact that, you
 22 know, "Here is a document I'm going to give to you.
 23 Would you have a look and tell me what you think?"
 24 Q. You don't do that, do you?
 25 A. No, I don't know, which -- I don't know whether I showed

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1 her a document or not. I don't think I did.
 2 Q. Okay. Over the page, page 169, line 3. {Day5/169:5}
 3 "Question: -- you have allowed these bits to stay
 4 in here?
 5 "Answer: Yes, because I really didn't feel I had
 6 any choice. I knew what happened and so I signed it
 7 because it was on recording and I couldn't say I didn't
 8 say it. It has been recorded.
 9 "Question: That's right.
 10 "Answer: But the whole afternoon of what happened
 11 has not been recorded."
 12 That was her evidence.
 13 A. Correct.
 14 Q. So she says that your pages 418 to 425 -- E2, page 418
 15 to 425, {E/86/418} those seven and a half pages, those
 16 263 lines of text --
 17 A. Oh, the interview record with Ms Frondigoun?
 18 Q. Yes. She says that's not all that happened in your
 19 interview?
 20 A. She is incorrect.
 21 Q. Can I just ask you: 418 to 425?
 22 A. Sorry, which bundle are we in now?
 23 Q. E2. {E/86/418} Seven and a half pages of text?
 24 A. Yes.
 25 Q. 263 lines. Do you see that?

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1 A. I do.
 2 Q. If you compare that with your interview of Mr Patel --
 3 do you remember the one that we just had? Page 281?
 4 Perhaps the better one would be 284, the second
 5 interview. {E/41/284} 284? Do you remember 284?
 6 A. I do.
 7 Q. How long did the recording of this interview take, the
 8 recording, page 284?
 9 A. From the times that are on the interview record, about
 10 30 minutes.
 11 Q. And the previous document, 281 to 283, {E/40/281} of
 12 which you now say the termination time is wrong, how
 13 long would you say that interview took?
 14 A. I don't know, not long. It's two pages -- it's two
 15 pages long.
 16 Q. Yes. Roughly how long did that take?
 17 A. I don't really know, to be honest. Not long.
 18 Q. A few minutes?
 19 A. It's longer than a few minutes, isn't it?
 20 Q. I don't know.
 21 A. But it's two pages long, so however long it took me to
 22 read out questions and write in his responses, but it's
 23 a pretty brief interview.
 24 Q. Hm-mm. Turning, then, back to the seven and a half
 25 pages of text, you say that took two hours 20 minutes?

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1 A. That's what it looks like from the record, yes.
 2 Q. Well, we don't understand this record, do we? I should
 3 have asked you: {E/86/418}
 4 Interviewee: Lorraine ..."
 5 And then somebody has written in:
 6 "... Frondigoun".
 7 On page 418?
 8 A. Yes.
 9 Q. Who has done that?
 10 A. I have no recollection of who wrote that in, but
 11 I believe it was Lorraine.
 12 Q. Okay.
 13 A. Because I didn't know her surname, she has written in
 14 her surname.
 15 Q. Okay. The number, "14.54". Who wrote that?
 16 A. That would be the same person's handwriting.
 17 Q. Are you sure?
 18 A. It's not my handwriting.
 19 Q. Okay.
 20 A. Sorry, "14.54", did you say, or 14 --
 21 Q. Yes, "14.54"?
 22 A. That's not my handwriting.
 23 Q. Right. Then the "14.34" in manuscript?
 24 A. That is my handwriting.
 25 Q. So you have written that in?

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1 A. Correct.
 2 Q. And the time started, "1215". Where does that come
 3 from?
 4 A. That's what I typed in at the beginning of the
 5 interview.
 6 Q. Did you type that in, or would that simply be from
 7 a previous document?
 8 A. Erm... I believe I have typed it in.
 9 Q. Okay. So you think you started the interview at 12.15?
 10 A. I believe so.
 11 Q. And you started the recording at 12.15?
 12 A. At the same time.
 13 Q. Your version of events is that, as I think you told his
 14 Lordship just now, you say the question -- is this
 15 right? You say the question -- let's take the first
 16 question?
 17 A. Yes, I say the question, the person gives their reply.
 18 Q. Hold on, hold on, we haven't got that far yet. You say
 19 the question and then you type it in?
 20 A. Sometimes I pre-type questions.
 21 Q. Okay. Whilst she is sat there with you or -- have you
 22 prepared for this interview and you have some questions
 23 lined up? Do you have a recollection, Mr McAlindon?
 24 A. No. No.
 25 Q. You don't really have a recollection of what you did?

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1 No?
 2 A. No, I think -- I think from looking at the -- the only
 3 part that I could have retyped -- and I don't know,
 4 I don't have a recollection of whether I did or
 5 I didn't -- is the question at 10 to 14 and the question
 6 at 16 to 33. I think when you then look through the
 7 rest of the interview, they are very specific and very
 8 short, and therefore I don't think I pre-prepared any
 9 questions here from that point forward. So, no, I don't
 10 think they were pre-prepared.
 11 Q. Let's just look at page 426, which was the interview
 12 with Ms O'Brien. {E/86/426} Keep open page 418
 13 {E/86/418} and have 426 with it?
 14 A. Yes.
 15 Q. Your first five lines of text from line 10 to line 14 --
 16 A. Yes.
 17 Q. -- appears to be just exactly the same?
 18 A. Correct.
 19 Q. The answer is the same:
 20 "No."
 21 Then the next seven lines of text, from line 16 to
 22 23, appears to be exactly the same?
 23 A. Correct.
 24 Q. The answer is exactly the same:
 25 "Yes, okay."

1 It's an incredible coincidence that the two of them,
 2 who are not in the room together, not heard what each
 3 other has said, but in response to your questions they
 4 have answered exactly the same.
 5 A. Erm...
 6 Q. It's a coincidence, isn't it, if you are actually typing
 7 these things?
 8 A. I have -- I would have, in that circumstance, where I'm
 9 going to say exactly the same opening paragraphs, copied
 10 the document, pasted the document, renamed the document
 11 for the second person, deleted all the lines that were
 12 not relevant to that person and left in the two
 13 questions that I was going to repeat verbatim.
 14 Q. When did you do that?
 15 A. I would have done that after this interview. So when
 16 I was going into the second interview, that's when
 17 I would have created the template. So, knowing that
 18 I was going to ask those two questions again, I would
 19 use the same document and just leave that text in.
 20 Q. If only that explanation could work. On the times, you
 21 are still with Lorraine Frondigoun at 2.54 because
 22 you've printed off, you say, the version of the
 23 conversation at 2.34. She then has to read through
 24 seven and a half pages with you present -- it's in your
 25 witness statement -- and sign it?

1 A. Correct. But no, she could --
 2 Q. But according to you, you started Patrice O'Brien's
 3 interview at 2.45?
 4 A. That could simply reflect the fact that she had gone
 5 away to read her interview record and signed it at that
 6 time somewhere else. I was -- at that time, I was with
 7 the other person. So the interview had finished, she
 8 was given a record, asked to reflect on it, make any
 9 corrections that she wanted. I don't have
 10 a recollection of whether I sat there and waited until
 11 she had read every line, but she went -- she would have
 12 been given the opportunity to go through that. She may
 13 have done it in a different room. There could be
 14 a number of reasons for that. But at that time --
 15 Q. She would have had that opportunity. You can't even
 16 recall --
 17 A. No, I can't.
 18 Q. You can't recall the circumstances in which she was
 19 provided with a typed-up version of this interview?
 20 A. I know that in every case, I print off the document and
 21 I give it to the individual and give them the
 22 opportunity to read it and sign it.
 23 Q. But on your version of events, you are not there -- you
 24 are the only person present at the store?
 25 A. There's lots of people present in the store.

1 Q. From your investigation team at this stage?
 2 A. Correct, yes.
 3 Q. You don't have a man sitting next to you doing all this
 4 typing?
 5 A. No.
 6 Q. You don't have a man waiting outside to print it off for
 7 you and then liaise with the interviewee about any
 8 amendments that they wish to make?
 9 A. Yes.
 10 Q. It's just you?
 11 A. Correct.
 12 Q. And so, if you have started the interview with
 13 Ms O'Brien at 2.45 and, according to you, you have had
 14 time to open up the document, alter it, alter it to
 15 delete large chunks --
 16 A. That's a 30-second job.
 17 Q. No, no, no, no, you have got to delete chunks, haven't
 18 you? You have got to choose which chunks?
 19 A. It's only the first two paragraphs that I'm repeating.
 20 Q. No, it's not, and we'll come to it in a minute,
 21 Mr McAlindon. No, it's not. Do you remember now?
 22 A. No.
 23 Q. No?
 24 A. I'm sure you will point me to it.
 25 Q. I will, we will get there, but do you not recall that

1 you created these two documents the next day?
 2 A. No, I didn't.
 3 Q. At a time when you had the opportunity to do
 4 block-copying of text -- amending original versions,
 5 actually, not just block-copying -- but taking the
 6 original version of the Lorraine Frondigoun record as
 7 a Word document, opening it up again as a new Word
 8 document, but it's still the Lorraine Frondigoun
 9 document. And then, before you first save it as
 10 Patrice O'Brien document, the Word document has a number
 11 of -- you work on that document for a period of time,
 12 such a long period of time, in fact, for the autosave
 13 function to apply to the Word document. Do you recall
 14 that now?
 15 A. Sorry, can you repeat it?
 16 Q. Yes. When you came to create the Patrice O'Brien
 17 document the next day, on 2 May, what you did was you
 18 opened --
 19 A. Sorry, sorry, it is not the next day.
 20 Q. All right.
 21 A. I may well have got the date wrong on the interview
 22 record, but these interviews both happened consecutively
 23 on the same day.
 24 Q. What you did was you opened the Lorraine Frondigoun
 25 document, okay?

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1 A. I don't accept that.
 2 Q. You don't accept that?
 3 A. No, I copied and pasted the Lorraine Frondigoun
 4 document. I say that because that's my normal practice.
 5 I Ctrl C, Ctrl V; it comes up with a copy of Lorraine;
 6 I then rename it and then open that document; correct
 7 the headers to put the right name, times, whatever, and
 8 delete the sections that are specific to the other
 9 person; leave in the bits that I want to repeat verbatim
 10 to the next employee, and that's the methodology that
 11 I use.
 12 Q. Are you saying that you block-copied text from the
 13 Lorraine Frondigoun --
 14 A. I block-copied the document. I copied the entire
 15 document, pasted the document into the same folder,
 16 renamed the document to the right name for the person,
 17 and then opened the document.
 18 Q. Stop just there. You don't rename a document if you
 19 have opened a fresh document?
 20 A. I haven't opened a fresh document. I have copied
 21 a document. I have pasted it into the folder -- into
 22 the folder.
 23 Q. Into what folder? You would have to paste it into a new
 24 document?
 25 A. No, I wouldn't. I'm sorry, but maybe I'm not making

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1 myself clear.
 2 I'm not cutting and pasting the text from inside one
 3 document to another open -- a second open document; I'm
 4 copying the entire document. So in the folder, there
 5 will be a -- the first document will be labelled
 6 "Lorraine Frondigoun, interview date", and I usually use
 7 the same format. If you click on that so that it
 8 highlights that one Word document and Ctrl V [sic], it
 9 will copy the entire document. If you Ctrl V, it will
 10 paste into that folder a copy of the entire document and
 11 it's labelled "Copy of Lorraine Frondigoun"
 12 automatically.
 13 If you click on it once, you can then rename the
 14 entire document, so I would've renamed it with the right
 15 name and then opened the document. So I then have two
 16 documents that are exactly the same, one in one person's
 17 name, one in another person's name.
 18 When I then open that document, I would flick
 19 through and everything that didn't relate to me asking
 20 a duplicated question, I would delete.
 21 Q. Right. So that second document, which starts off having
 22 the name, "Frondigoun"?
 23 A. Correct.
 24 Q. But you change its name?
 25 A. Correct.

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1 Q. In the period that it's still called "Frondigoun", so
 2 before it has changed its name?
 3 A. Yes.
 4 Q. Autosave will, every few minutes or a quarter of an hour
 5 or whatever, will save it for you so that you don't lose
 6 any amendments you have made? Do you recall?
 7 A. No, because the documents are not open. When I'm
 8 copying and pasting the documents, the documents are
 9 closed, so there is no autosave in closed documents, is
 10 my understanding. The document is closed.
 11 Q. The meta data -- if it were closed, you might be right,
 12 but the meta data report that you yourself referred to
 13 earlier in your evidence -- page 612 in bundle F2. This
 14 is the meta data for these two documents. F2, last
 15 page, 612. Remember, this is the document that you say
 16 that you were looking at yesterday or this morning?
 17 A. I wasn't looking at this document because this document
 18 doesn't have times on it.
 19 Q. Okay.
 20 A. And is an IT-sort of report that I don't recognise. The
 21 previous two documents, on 610 and 611, show the times
 22 and the creation modification printed date.
 23 Q. What they don't show are all the revision times?
 24 A. Well --
 25 Q. The O'Brien document, which is the one on the right, on

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1 page 412, has nine --
 2 A. Sorry, where are you referring to there? Right, sorry,
 3 go on.
 4 Q. So on page 612, sorry. On the right-hand column is the
 5 record of conversation with Patrice O'Brien document;
 6 okay?
 7 A. Yes.
 8 Q. And on the left-hand side is the record of conversation
 9 Lorraine Frondigoun document. All right?
 10 A. Yes.
 11 Q. The Patrice O'Brien document, the record of it, from its
 12 meta data, shows nine revisions. Okay?
 13 A. I'm trying to find it.
 14 Q. All the way down the right-hand side?
 15 A. Yes. Oh, revision, nine. Yes, I understand.
 16 Q. Revision numbers 0, 1, 2, 3, 4, 5, 6, 7, 8, 9 -- so
 17 actually, it's ten revisions, because there is
 18 a revision number 0?
 19 A. Yes.
 20 Q. Revision 0 is an auto recovery save for that document
 21 and at that time, it's still called, "Contemporaneous
 22 record of conversation, Lorraine". So that's obviously
 23 before you have changed its name to "Patrice O'Brien".
 24 Do you see that?
 25 A. Correct.

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1 Q. Then the next revision is not an auto recovery save,
 2 it's a revision. The document is still called
 3 "Lorraine" at that point. Do you see that?
 4 A. Correct.
 5 Q. And then the next revision is an auto recovery save of
 6 the document and it's still called "Lorraine" at that
 7 point. Do you see that?
 8 A. Yes.
 9 Q. As is the next one, version number 3, and then it's only
 10 at revision number 4 that -- that's not an auto
 11 recovery; that's a revision, author Mel M. And this is
 12 now called, "Record of conversation, Patrice O'Brien".
 13 So at that point, you have changed its name?
 14 A. Yes.
 15 Q. From there onwards, we have some auto recovery saves for
 16 the next four items -- they are all called
 17 Patrice O'Brien -- and then the last item is not an auto
 18 recovery; it's a revision, okay?
 19 A. Hm-mm.
 20 Q. So what you have done is you have got the
 21 Lorraine Frondigoun document; yes? As you say, you
 22 copied the entire Word document?
 23 A. Yes.
 24 Q. Into a new file or folder, and before you've changed its
 25 name, you've made some revisions, and the auto recovery

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1 has saved some work that you have done on the document?
 2 A. It would appear that.
 3 Q. And --
 4 A. It would appear from this document -- I don't know where
 5 this document comes from and I don't know who the author
 6 is, and it's a very specialist subject that I have to
 7 say I don't really have a great understanding of, so I'm
 8 kind of --
 9 Q. Okay, I thought you did. I thought you were saying --
 10 A. No, I understand the principle of meta data, but I don't
 11 understand the sheer mechanics of it.
 12 MR POTTS: My Lord, as I mentioned this morning, this is
 13 a document I haven't -- my friend has --
 14 MR JUSTICE NUGEE: That you haven't yet taken instructions
 15 on.
 16 MR POTTS: No.
 17 MR JUSTICE NUGEE: Understood.
 18 MR STUART: So looking back at the two documents themselves,
 19 418 {E/86/418} and 426, {E/86/426} you finished the
 20 interview, you say, at 2.34 with Lorraine Frondigoun.
 21 That's your handwriting?
 22 A. Correct.
 23 Q. She has inserted "Frondigoun" and "14.54"?
 24 A. It would appear that way.
 25 Q. It would appear, according to you. Is that right?

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1 A. That's what I have just said. It would appear that way.
 2 Q. Yes. She has signed the documents, but most
 3 importantly, Mr McAlindon, I'm afraid you were present
 4 because on page 425, you've signed the document.
 5 {E/86/425} She is not in a room on her own. She is not
 6 off doing something else?
 7 A. I don't agree. I could have signed that any time.
 8 I could have signed that that evening when I went back
 9 to a hotel and was completing the documentation. The
 10 issue was, did I give it to her to read, to digest and
 11 consider and make any corrections or alterations that
 12 she wanted. I think the fact that she has signed every
 13 page and the fact that she has put her surname in
 14 reflects the fact that she has read the document and is
 15 comfortable with the contents.
 16 Q. Her clear sworn evidence is that that didn't happen at
 17 all that day. You understand that?
 18 A. It's also that it went on for four and a half hours,
 19 which I don't --
 20 Q. Four hours?
 21 A. I think it's transparent, it's not the case.
 22 Q. On your version of events, the interview was concluded
 23 at 2.34. You are getting her to sign the pages after
 24 she has read each of them. There is only you present
 25 and yet, on your version of events, you are sitting in

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1 an interview at 2.45 with Ms O'Brien?
 2 A. Correct. She may well have taken -- I gave her the
 3 paper -- I have no direct recollection of sitting there
 4 in front of her and watching her sign the documents.
 5 I know that I would have printed it off and given it to
 6 her. If, given the time of the day, and it was going to
 7 take her some time to read, I would have been quite
 8 happy for her to go off into the staff room, have a cup
 9 of tea and read it. And it may well be that that
 10 happened but I have no recollection of it.
 11 However, fairly shortly afterwards I have then gone
 12 into the interview with the other employee. So it
 13 doesn't mean that she wasn't signing it on her own
 14 somewhere else.
 15 Q. On your now version of events, not only have you gone
 16 into a room with another interviewee, you have had time
 17 to go through the completed Lorraine Frondigoun
 18 document, copy it as a Word document into another file,
 19 and then edit that document by removing elements of the
 20 Lorraine Frondigoun document that you weren't going to
 21 use for Patrice O'Brien. And it's not just the
 22 questions at page 418, line 10 and line 16.
 23 Let us, for example, go to page 421. {E/86/421} I'm
 24 only taking examples because we haven't got time for
 25 everything. Page 421.

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1 Do you have it?
 2 A. Yes.
 3 Q. Line 124, this is a question from you:
 4 "Question: He also refers to internal shop
 5 organisation and helping during stocktaking. Have you
 6 a view on that?"
 7 Do you see that?
 8 A. I do.
 9 Q. Your next question is:
 10 "Question: What is your view on that as an
 11 explanation for his salary?"
 12 Do you see that; that's line 128?
 13 A. Yes.
 14 Q. I'm just picking out your questions.
 15 A. Yes.
 16 Q. Next question, line 130:
 17 "Question: Apart from his salary, he was paid
 18 bonuses. In August 2006 he got an additional £1,000.
 19 September 2006..."
 20 Et cetera. Do you see that?
 21 A. I do.
 22 Q. And that question goes on for four lines. Your next
 23 question, 135:
 24 "Question: Clearly, in the process of having to ask
 25 you questions relating to these payments to try and

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1 validate the justification of them, you have become
 2 aware of them for the first time. Having tried to
 3 discuss with you and develop an understanding of the
 4 legitimacy of these payments, you may have developed
 5 your own view. Do you have one?"
 6 Do you see that?
 7 A. I do.
 8 Q. So those four questions appear on page 421.
 9 Now go to page 429. {E/86/429}
 10 A. Yes.
 11 Q. Line 114 seems to be the same first question. Line 119
 12 appears to be the same second question. Line 122
 13 appears to be the same third question. Line 127 appears
 14 to be the same fourth question.
 15 A. Correct.
 16 Q. Do you see all of that?
 17 A. I do.
 18 Q. How does this work, Mr McAlindon?
 19 A. In what respect?
 20 Q. When did you do all of this editing?
 21 A. There and then.
 22 Q. What, between 2.54 and 2.45, in the minus nine minutes
 23 between finishing with one lady and starting with the
 24 other?
 25 A. No, it would take you -- to copy a paste a document, to

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1 open the document and to skim-read it and delete
 2 anything that is not relevant would take a matter of
 3 minutes. It's not a lengthy task because I'm not
 4 duplicating something, as in writing the same thing all
 5 over again; I am just deleting stuff. So it's not a big
 6 job, it's a few-minute job.
 7 Q. I'm going to suggest to you that these two documents are
 8 simply what you have created on the next day?
 9 A. No, it's utterly incorrect.
 10 Q. Doing it in the easiest way possible, which is to start
 11 with the document that you drafted up on 2 May for
 12 Ms Frondigoun's interview, and then for the O'Brien
 13 interview, you used the template of the first document
 14 and you've added some answers in, where appropriate?
 15 A. Where appropriate, I agree.
 16 Q. In line with the answers, or the evidence at least, that
 17 Ms O'Brien had given you and as you had noted down in
 18 manuscript, as she gave clear evidence about when she
 19 gave evidence last Thursday.
 20 A. I'm sorry, I'm not sure what you are asking me.
 21 Q. I'm suggesting to you that you did all of that, you
 22 created these two documents away from the actual
 23 interviews themselves, and you did them at a time
 24 convenient to yourself the next day?
 25 A. No, I totally disagree with that and I think that

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1 Patrice O'Brien was mistaken in her understanding of
2 manuscript when you put that to her, and again, I think
3 the fact that she has made a number of corrections to
4 the document, a number of additional comments into it,
5 and the fact this she said, when asked, the document
6 contained everything that was said, I think it's fairly
7 transparent that those documents accurately reflect the
8 conversations that took place.
9 MR STUART: My Lord, I see the time.
10 MR JUSTICE NUGEE: Yes. We will break until 2 o'clock.
11 Mr McAlindon, you have been in court, you have heard
12 me say it to other witnesses: while you are in the
13 course of giving your evidence, you mustn't discuss the
14 case or your evidence with anybody.
15 A. I understand.
16 MR JUSTICE NUGEE: We will see you back at 2 o'clock.
17 (1.02 pm)
18 (The short adjournment)
19 (2.00 pm)
20 MR JUSTICE NUGEE: Yes, Mr Stuart?
21 MR STUART: Mr McAlindon, how did you print these two
22 documents off, these two contemporaneous records of
23 interview?
24 A. I don't have a direct recollection of it, but normally
25 we would save a document to a PDF file, put it on

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1 a dongle and put the dongle into the store machine and
2 print from there, because the store machines only print
3 PDFs. So that's how I normally do it but I don't have
4 a specific recollection of this situation.
5 Q. The room that you were interviewing Mrs Frondigoun in,
6 did it have a printer there?
7 A. Not that I'm aware of.
8 Q. So you must have gone out to get it printed off on the
9 printer, then?
10 A. I could well have done, I don't know.
11 Q. The dongle that had this on, do you know what happened
12 to that?
13 A. I always have a dongle on my key ring.
14 Q. How long did it take to print off?
15 A. I don't recollect.
16 Q. All right. I just need to take to you a few more bits
17 of the transcript and then I can finish on this
18 interview.
19 I think we had reached page 69. I had put to you
20 that she had said: {Day5/169:11}
21 "Answer: But the whole afternoon of what happened
22 has not been recorded."
23 At line 11, do you see that?
24 A. Yes.
25 Q. I asked at line 13: {Day5/169/13}

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1 "Question: He has, in your words -- I think you use
2 the words -- he 'slightly tricked' you into this, hasn't
3 he?
4 "Answer: Yes."
5 Do you see that?
6 A. I do.
7 Q. Do you agree that you did "slightly trick" her into it?
8 A. No, I think she has misunderstood the reference to
9 contemporaneous records. No, I didn't trick her at all.
10 It was a typed interview into a laptop.
11 Q. Okay. Let's go on to the actual questioning, then. If
12 you go to page 171 of the transcript, we are dealing
13 with a part of the questions that you were asking her
14 about Mr Mushtaq Rehman, Ms Birdi's husband; okay?
15 {Day5/171:10}
16 A. Yes.
17 Q. At line 10, my question was:
18 "Question: Just taken out of context, your answer,
19 'Oh, no, never', has been said to be you giving sworn
20 evidence that he never worked in the store."
21 Do you see that?
22 A. I do.
23 "Answer: No --
24 "Question: That's not right, is it?
25 "Answer: No, because I had already said in the

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1 previous answer, I think when I first started here he
2 came in occasionally. And he did my interview."
3 "Question: He did, exactly.
4 "Answer: He interviewed me, so obviously -- but
5 that was seven years previously.
6 "Question: Of course. He did a day's worth of
7 interviewing other people, didn't he?
8 "Answer: Yes, so my 'Oh, no, never' was at that
9 time and like I said there, a couple of years prior to
10 that, we hadn't seen him."
11 Do you see that?
12 A. I -- yes.
13 Q. So the way that you have recorded her answers to
14 specific questions doesn't seem to accord with her
15 version of what she intended to say. Do you understand
16 that's her evidence?
17 A. I understand that her verbal recollection may not be the
18 same as she explained to me at the time many years ago.
19 Q. Page 172: {Day5/172:2}
20 "Question: It may be that Mr McAlindon has led
21 you -- misled you -- into misunderstanding what period
22 of time we are talking about.
23 "Answer: Yes, maybe."
24 What period of time were you asking her about in
25 relation to Mr Mushtaq Rehman's payments?

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1 A. Erm, I was talking to her generally about her
2 recollection of what periods and what activities
3 Mr Rehman was involved in. I don't think I specified
4 a particular time, other than at the point in the
5 interview when I referred to specific bonuses in
6 specific months and specific years. I think that was
7 the only time that I was referring to a specific point
8 in time, but was asking her generally as a starting
9 point.
10 Q. Did you make it clear to her that Mr Rehman hadn't been
11 paid any salary or bonuses for the years up to
12 July 2006?
13 A. Erm, no, like I said, I asked her generally what her
14 recollection was of him ever working in the store was
15 a general concept in itself. And then I went on to talk
16 about the specific payments that had been made to him at
17 specific points in time.
18 Q. If you go to the interview itself, page 419. Page 419?
19 {E/86/419}
20 A. Yes.
21 Q. You have moved on to the question of Mr Rehman and at
22 line 49, you say:
23 "Does he earn a weekly wage of any description."
24 She answered, according to you:
25 "Mushtaq, yes, he is a qualified pharmacist ..."

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1 Et cetera. Do you see that?
2 A. No, which line?
3 Q. Line 50, her response:
4 "Mushtaq, yes, he is a qualified pharmacist..."
5 Line 50?
6 A. Yes, I am just reading the -- either side of it.
7 Q. Okay. Then you said:
8 "I actually meant here."
9 A. Yes.
10 Q. She said:
11 "Answer: Oh, no, never."
12 "Question: So would it be fair to describe it as
13 the odd bit once or twice a year?"
14 Do you see that?
15 A. Yes. Yes, I see that.
16 Q. You seem to be talking -- to her, according to your
17 version of this transcript -- you were asking her about
18 his work once or twice a year?
19 A. That's what it says in the question.
20 Q. So that would infer that we are dealing with a period of
21 more than six months, the last six months?
22 A. I don't know, I asked the question that I thought was
23 appropriate at the time.
24 Q. Okay. You don't go on then to explain what period of
25 time -- other shorter period of time -- you are dealing

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1 with, but what you do is you say -- let's take to you
2 page 420, line 104. Do you see that? {E/86/420}
3 A. I do.
4 Q. You asked the question:
5 "He states ..."
6 You are telling her what Mr Rehman states, allegedly
7 states -- it's not what he stated at all but this is
8 what you are telling her. According to you:
9 "He states that he was regularly given
10 administrative work to do such as checking statements,
11 rotas and Mars under supervision of the Directors.
12 Could this be true?
13 "Answer: I couldn't say with the statements, that
14 is something directors would do.
15 "Question: Rotas and Mars?"
16 Answer, as recorded by you:
17 "Answer: No way! How could you do Mars without
18 being here physically? It is impossible."
19 Then your question, I thought, was an interesting
20 one. You are a fair and unbiased interviewer at this
21 stage, aren't you, just investigating the matter?
22 A. I believe so.
23 Q. In an open way, asking open questions. Yes?
24 A. I believe so, yes.
25 Q. The question you actually asked is:

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1 "Question: Is that an exaggeration, or a blatant lie
2 in your eyes?"
3 A funny thing to say?
4 A. I don't think it is in the circumstances that I made the
5 statement.
6 Q. No. You wanted her to say that it's a blatant lie,
7 didn't you?
8 A. I wanted her to explain what her perception was.
9 Q. Hm-mm. Did you make it clear that you were only dealing
10 with the period since July 2006?
11 A. Erm, I think I go on, further on in the interview -- and
12 I do at 130 -- where I talk about a specific period in
13 time, which is what those questions were in relation to,
14 where he was paid substantial bonuses and payments. And
15 what I was asking her, as I'm going through this, is:
16 {E/86/421}
17 "What activities could he have performed in the
18 store that you are aware of?"
19 That doesn't mean to say that at some subsequent
20 point there would have been evidence from another
21 employee that said, "Actually, I can remember
22 specifically and I know why he got paid that".
23 This is a starting point in the interview with the
24 first person, and I was asking her generally about what
25 activities he could or couldn't do and then went on to

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1 talk about specific payments with her.
 2 Q. The question at 130, where you talk about all those
 3 figures, you knew Mrs Frondigoun wasn't in the store for
 4 part of that period of time, didn't you?
 5 A. No, I didn't, no.
 6 Q. You knew that she had been off sick?
 7 A. Not that I'm aware, no.
 8 Q. Had you not investigated?
 9 A. I was just starting to investigate.
 10 Q. Had you not investigated the assertion that you say was
 11 made, that whilst admin staff were off sick, Mr Rehman
 12 had done some work for the store?
 13 A. The -- at the time that I came and did the first two
 14 interviews -- and I would have subsequently gone on, had
 15 I not been taken off the case and it'd been passed on --
 16 I was told that Lorraine was an individual who had been
 17 in the store a long time and had a lot of general
 18 knowledge of people, by the simple fact she had been
 19 there a long time. So that was why I started with her.
 20 It doesn't negate the possibility that somebody else
 21 could have -- I wouldn't necessarily have recognised
 22 when she was sick or not sick. I was asking her because
 23 she was a long-term employee. And it doesn't negate the
 24 fact that if somebody else that we'd subsequently
 25 interviewed, had I not been taken off, would have said,

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1 "Actually, I can explain that period because she was off
 2 sick and I was here". This was just a first interview
 3 with the first employee.
 4 Q. Go back to page 173 and 174 of the transcript. We see
 5 here how Ms Frondigoun said you misled her about this?
 6 A. What page?
 7 Q. Page 173. You see from line 5, I referred to.
 8 "Question: From 2003 to July 2006: Nil."
 9 So for that period of time, Mr Rehman was paid nil.
 10 Do you see that?
 11 A. Sorry, no.
 12 Q. Page 173, line 5?
 13 A. No, I appreciate that. I'm just reading the context
 14 that that statement is made in.
 15 Q. I was quoting from Ms Mancini's report, and quoting the
 16 fact that Ms Mancini had recorded that for the period of
 17 time, 2003 to July 2006, the amount of remuneration,
 18 including bonuses and everything else, paid to Mr Rehman
 19 was nil, nothing. Do you have it?
 20 A. I do, and the period that I'm referring to
 21 is October -- September through
 22 to March -- September 2006 until March 2007.
 23 Q. That's the period you are now referring to?
 24 A. Because I don't dispute the fact, my Lord, that he
 25 wasn't paid anything up to then, but I don't feel I was

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1 misleading the employee at all because I spelt out the
 2 payments that I was concerned about, over the period of
 3 time that I was concerned about.
 4 Q. Mr McAlindon, of course, we don't know what you actually
 5 told Ms Frondigoun?
 6 A. I do, it's in the transcript of interview.
 7 Q. Okay. Did you show her some documents?
 8 A. I don't recollect showing her documents. I would have
 9 had documents with me, simply by the fact that
 10 I specified some very specific figures and dates and
 11 times. So I would probably have been in possession of
 12 payroll reports. But did I show them? I don't know.
 13 Q. Look at line 5, then. So from 2003 to 2006, and I say
 14 it again in line 7 --
 15 A. Sorry, which page?
 16 Q. Page 173? {Day5/173:7}
 17 A. Yes.
 18 Q. I asked:
 19 "Question: Not a pound?
 20 "Answer: No, that's right, which would probably be
 21 about the time when I said, 'Oh, no, never', because
 22 this -- in that above question that I had said --
 23 "Question: We will come back to that in a moment.
 24 "Answer: -- previously.
 25 "Question: We will come back to that in a moment.

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1 The effect of your evidence is, to deal with
 2 that period, as if Mr McAlindon led you to believe that
 3 he was being paid a salary over that period of time. Is
 4 that what Mr McAlindon led you to believe?
 5 "Answer: Yes."
 6 A. I think in the process of taking any transcript of
 7 interview and talking about circumstances where you have
 8 no fundamental knowledge -- that's why you are
 9 interviewing, to try and gain some knowledge and
 10 understanding -- you will misunderstand what people say
 11 to you. And the reason for including in the transcript
 12 of interview and giving them the opportunity is to
 13 explain to them that in this process, I may have
 14 misunderstood, misrepresented, or, having read it, you
 15 can agree that it's an accurate transport of what was
 16 said, but having seen it in context, you want to add
 17 further detail -- that's the reason for doing it,
 18 because in that process, I may well have misunderstood
 19 what she said. But it doesn't mean that I'm
 20 fundamentally being deceitful in any way, shape or form.
 21 I've misunderstood what she said if that's what she
 22 believes.
 23 Q. Page 174, start at line 5, where the question starts.
 24 Do you see that? {Day5/174:5}
 25 A. I do.

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1 Q. You can read lines 5 through to 9 and then I ask the
2 question at line 10. (Pause)
3 Do you see I said: {Day5/174:8}
4 "Question: So it's just for that little period that
5 it's actually being suggested that he was paid a salary.
6 Do you now understand that?
7 "Answer: Yes.
8 "Question: When you answered these questions to
9 Mr McAlindon on the tape, did you understand that?
10 "Answer: No, I don't think I did. He showed me
11 various things, people that -- all sorts of things, 'Did
12 you know this, did you know that?' As I said..."
13 Do you see what Mrs Frondigoun says you were doing?
14 A. I see how she is explaining her perspective on events.
15 I don't agree that I have in any way misled her,
16 deliberately or consciously. I think that the process
17 of then continuing to investigate other employees would
18 have either added clarity or could well have
19 contradicted what she said. You know, that's the
20 process of interviewing a whole load of people and
21 gathering all of the evidence. And had it then
22 subsequently gone to a disciplinary situation, well, the
23 interviews with the individuals, Mr Rehman and
24 Swarandeeep, would have taken place and they would have
25 had an opportunity to comment on that and explain why

1 21

1 they thought that this has been misunderstood or
2 misrepresented or whatever.
3 So, you know, there is a whole -- this is the very,
4 very start of a process. The process didn't continue
5 because I was stopped. But had that process continued,
6 all of this would have been provided to the individuals
7 and they would have been asked for their explanations
8 for it. And they may well have been able to shed light
9 and a very different perspective on all of it. But
10 that's the entire process. I'm asking questions at
11 a stage that's very, very preliminary. It's the first
12 start of trying to gain an understanding of the validity
13 of Nimesh Patel's allegations.

14 Q. Go over to page 178. Ms Frondigoun makes the following
15 allegation about your record and interviewing. Line 19.
16 I'm asking about one of her answers, which is recorded
17 by you as: {Day5/178:18}
18 "Absolutely not."
19 Do you see in line 18? And then her answer is:
20 "Answer: It has, yes, it has. I mean, everything
21 that I have said is there.
22 "Question: Hm-mm?
23 "Answer: Everything that he says isn't."
24 So her clear evidence is that you have not recorded
25 in this document all the things that you were saying to

1 22

1 her?
2 A. I absolutely recorded everything.
3 Q. Swiftly over to 183, line 9: {Day5/183:9}
4 "Question: Perhaps I ought to ask you: when you
5 were speaking to Mr McAlindon, in the four hours, not on
6 the record, were you saying things to him like, 'Well,
7 you know, he could be working at home, I don't know,
8 Mel'? Were you sort of putting those provisos in?
9 "Answer: Yes, yes I was."
10 There is no mention anywhere in your record of the
11 interview that Mrs Frondigoun was provisoing any of her
12 answers with, "Well, he could be working at home"?
13 A. I think after a number of years, she is giving her view
14 on life. Do I think that that was what was said at the
15 time? No, I don't. And had it been said, it would be
16 in the transcript. I would have no reason to exclude
17 it.
18 Q. Okay. Bottom of page 184. Here is a specific example
19 of you misleading her. Line 23, page 184.
20 {Day5/184:23} This is in respect of one of her answers
21 which you have recorded as:
22 "Can I swear? ... absolute rubbish!"
23 And her answer is:
24 "Answer: Yes. He told me ..."
25 That's he, Mel:

1 23

1 "... that he ..."
2 That's he, Mushtaq;
3 "... was doing all my NHS work. That's what
4 Mr McAlindon told me.
5 "Question: Is that what he said?
6 "Answer: Yes.
7 "Question: That's what Mr McAlindon said to you?
8 "Answer: Yes.
9 "Question: That Mr Rehman was saying that he,
10 Mr Rehman, was doing all your --
11 "Answer: Doing my job.
12 "Question: -- NHS work?
13 "Answer: Yes, which made me really cross, because
14 then I said, 'Absolutely not, no, of course he
15 weren't...'"

16 Do you see that?
17 A. I do see that?
18 Q. Now, Mr Rehman had not said that he had done all
19 Mrs Frondigoun's work, had he?
20 A. I didn't necessarily say that. What I said is recorded
21 in the record of interview, and although she may have
22 that perception from the discussions that we had, what
23 was said was what was put in the interview record.

24 Q. Okay. I asked her again, line 12: {Day5/185:12}
25 "Question: Strangely, in the 'on the record' bit,

1 24

1 Mr McAlindon doesn't seem to have written down the
 2 fact --"
 3 A. Sorry, where are you reading from?
 4 Q. Line 12:
 5 "Question: Strangely, on the 'on the record' bit,
 6 Mr McAlindon doesn't seem to have written down the fact
 7 that he said to you that Mr Rehman was saying that he
 8 did all your work for you. He didn't seem to slip that
 9 in. Is that just one of the three and three quarter
 10 hours' worth that he hadn't put in?
 11 "Answer: Yes, it was."
 12 A. I see that and I don't agree with it at all. The
 13 interview didn't last as long as she was suggesting and
 14 I think she is mistaken in that. It may well have felt,
 15 due to the alien nature of the situation that she was
 16 in, that it was a lot longer than it actually was.
 17 Q. All right. And that point is made again.
 18 If you turn to page 189 -- I'm not going to read it
 19 all out -- between lines 4 to 12. {Day5/189:4} Do you
 20 see the bit about the "blatant lie"? The answer you
 21 have recorded:
 22 "It's a blatant lie."
 23 I asked her about that.
 24 A. Yes.
 25 Q. And what she says is that you said that Mr Rehman was

1 25

1 saying he was doing it all:
 2 "Answer: Yes, yes.
 3 "Question: And so when you respond, 'That's
 4 a blatant lie', you mean, 'Of course he is not doing all
 5 of it'?
 6 "Answer: Yes."
 7 A. I'm not saying that that's not what she said in her
 8 verbal evidence, but what is reflected in what I said,
 9 about the NHS and what work he was or wasn't doing in
 10 relation to any aspect, is reflected in the interview
 11 record. And although she may have subsequently
 12 developed some distortion from that, I don't know, but
 13 what was recorded and what was -- well, what was said in
 14 that interview, both by myself -- I read the questions
 15 out. The start, stop, start, stop is a very clear
 16 indication that it was being typed and there were pauses
 17 as I went back and I documented it. And the -- at the
 18 time, those were -- what's in the transcript is what she
 19 said to me.
 20 Q. Okay. Swiftly over -- I'm not going to deal with every
 21 one but to the more serious ones. Page 195. Do you see
 22 page 195, line 8, the quote from your record:
 23 {Day5/195:8}
 24 "It is a lie."
 25 Do you see that?

1 26

1 "Question: Again, that's a very serious allegation?
 2 "Answer: It is, yes.
 3 "Question: Especially in circumstances where your
 4 allegation is untrue.
 5 "Answer: Hm-mm.
 6 "Question: Is there some context to the way
 7 Mr McAlindon has written that? Do you now recall?
 8 "Answer: No, I don't. I remember the interview
 9 very well. I don't recall. Say, from as it went
 10 through, my answers got more emphatic, more cross,
 11 more -- because he was stopping, he was talking to me.
 12 "Question: He was encouraging you?
 13 "Answer: More than encouraging."
 14 Inverted commas:
 15 "'Tell me anything you can think of ...'.
 16 "And making you angry, saying someone is doing your
 17 job, they are claiming to get paid because they are
 18 doing your job. You think, 'That's ridiculous'. It
 19 makes you angry.
 20 "Question: Yes.
 21 "Answer: So then the way that you answer, more
 22 emphatic because you have been made to be really cross.
 23 "Question: Absolutely.
 24 "Answer: So probably using words that are stronger
 25 in a way than maybe they should have been.

1 27

1 "Question: Fair enough.
 2 "Answer: Because you had been made to be angry."
 3 So her evidence is clear that you effectively more
 4 than encouraged her?
 5 A. No, I don't agree with that at all. I was asking her
 6 questions about a set of facts that I had at the time.
 7 I believed that, when I was asking these questions, that
 8 Mushtaq Rehman had said that he had been doing these
 9 types of work and I was putting that to her. I could
 10 understand why, in her shoes, that would make her angry
 11 and respond, but the bottom line is, I asked her those
 12 questions and the responses that she gave, I wrote down.
 13 That doesn't mean that I am provoking her necessarily or
 14 deliberately making her angry. The facts that I'm
 15 asking her about might make her angry, but I can't
 16 really control how she would respond to that. And
 17 I think that, had the process continued, and there had
 18 been more balanced views from other people, you know,
 19 that would have placed in context what she said.
 20 Q. Mr McAlindon, you weren't interested in the context, in
 21 the more balanced views of other people; you had your
 22 agenda and you wanted to get some evidence to support
 23 it?
 24 A. No, I had no agenda. I had been presented with a set of
 25 allegations from Nimesh Patel. We had spent a period of

1 28

1 time looking for evidence that would contradict his
 2 allegations and we couldn't find any, and I was
 3 interviewing an employee to get an understanding of her
 4 knowledge of what work he did that could have justified
 5 these payments and would have contradicted
 6 Nimesh Patel's allegations.
 7 Q. Page 199, line 21: {Day5/199:21}
 8 "Answer: Sometimes it was just like he was just
 9 chatting to me."
 10 She is giving her explanation as to how you
 11 conducted the interview. Do you remember?
 12 A. I see that.
 13 Q. And similarly over the page, page 203, line 16:
 14 {Day5/203:16}
 15 "Answer: No, I don't recall how it developed. As
 16 I say, a lot of it was done in conversation."
 17 A. Sorry, line?
 18 Q. Page 203, line 16. Her answer was:
 19 "Answer: No, I don't recall how it developed. As
 20 I say, a lot of it was done in conversation."
 21 So her evidence was that you were sort of speaking
 22 to her, not on your record, as she put it --
 23 A. Sorry, I don't understand the question.
 24 Q. The question is: do you accept that you were at least
 25 chatting and speaking to her not on the record?

1 29

1 A. No, not at all. The process that we follow is
 2 consistent. We've done the same for 14 years. I did it
 3 previously in my other company. I type in the question
 4 and wait for their response and type in the response.
 5 Sometimes there is a degree of discussion over, you
 6 know, "I didn't quite catch what you said there. I have
 7 got this much, can you clarify the rest of it for me?"
 8 So in that context there may have been a discussion,
 9 but it is start, stop, start, stop, start, stop, all the
 10 way through.
 11 But, you know, that's the nature of
 12 a contemporaneous record being typed into a laptop.
 13 Q. Okay. On page 204 she describes you as intimidating
 14 when you came to the store on that Tuesday. Do you see
 15 that, page 204? {Day5/204:5}
 16 A. Yes.
 17 Q. Perhaps it's part of your process, to turn up at the
 18 store?
 19 A. Well, also, it's possibly because of my appearance, but
 20 I can't help that.
 21 Q. Were you intentionally intimidating, or not?
 22 A. Absolutely not, unequivocally.
 23 Q. Okay. Over to 209 and 210. There is her false
 24 allegation of insurance fraud, which you faithfully
 25 record, according to you?

1 30

1 A. Sorry, say that again?
 2 Q. Page 209 to 210.
 3 A. Yes.
 4 Q. There is her false allegation of insurance fraud. Do
 5 you recall it?
 6 A. I recall the allegation, not whether it's false or not
 7 false. I don't know whether it is or it isn't.
 8 Q. Okay. She says she made that allegation because you had
 9 pumped her up over a long period of time?
 10 A. I don't agree with that. She clearly did get frustrated
 11 because of the questions that were being asked and her
 12 knowledge of the situation. But that wasn't something
 13 that I was actively trying to provoke into her. I can
 14 understand how she would see it from that perspective
 15 and get angry and frustrated about it, because she'd
 16 think, "Well, hang on, this isn't right", but she is
 17 responding in respect of specific payments that I have
 18 read out to her and said, you know, "During that period,
 19 what could he have done?"
 20 So, I'm not pumping her up, I'm just simply asking
 21 questions, and it may well be that her responses to that
 22 were inappropriate, but the whole investigation process,
 23 had it continued, the whole process, had it gone to
 24 a disciplinary, you know, that would have analysed that.
 25 And it's somebody else's decision to look at the rights

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1 and wrongs of it and actually consider it in context and
 2 see whether or not statements have been made that are
 3 out of context and out of anger and frustration and --
 4 you know, this is just an information gathering and she
 5 came out with a statement and I recorded it.
 6 Q. Page 213 to 214 of the transcript. We are moving on to
 7 the issue of the salaries of the staff.
 8 Look at line 25 of 213: {Day5/213:25}.
 9 "Question: So Mr McAlindon, as part of his pumping
 10 you up, was talking about the fact that you didn't get
 11 paid properly and that these other people were taking
 12 the money out of the business by salary and bonuses?
 13 "Answer: Yes.
 14 "Question: Okay. That's him telling you that,
 15 telling you all those things.
 16 "Answer: Yes.
 17 "Question: Did you say anything about your salary
 18 and bonus?
 19 "Answer: Well, I would have discussed the fact that
 20 we didn't get pay rise hardly ever and sometimes we got
 21 a bonus system and then it started working quite well.
 22 So then it was changed. So we had those conversations.
 23 They are not here."
 24 That is, they are not recorded in the transcript:
 25 "Question: No, none of it is there.

1 32

1 "Answer: No, loads of it isn't there.
2 "Question: Did you tell Mr McAlindon that you were
3 dissatisfied with the level of your bonus?
4 "Answer: No, because at that time I was working six
5 days a month and I was really glad to be able to come
6 and do those six days ..."
7 Et cetera.
8 When did the issue of her salary and bonus arise?
9 A. I don't know whether it did here. If it's in the
10 transcript, it arose in the transcript. I --
11 Q. It's not.
12 A. -- can't recollect anything outside the transcript.
13 Q. But you tell Mr Dyson that it's from these interviews
14 with the staff that the issue has arisen?
15 A. Where do I say that? Can you point me to the document?
16 Q. Page 447 in bundle E2: {E/95/447}
17 "Derek,
18 "Following our interviews ..."
19 You have already told me, Mr McAlindon, that the
20 only interviews you conducted were with Mrs Frondigoun,
21 Patrice O'Brien, and you wouldn't even accept that
22 Jo Fendick was an interview when I suggested it might
23 be. You said, "No, no, no, that's not an interview".
24 So there are just the two interviews, being the only
25 ones you have recorded, because you record all

1 3 3

1 interviews?
2 A. Correct.
3 Q. "... salaries were identified as being an issue..."
4 A. That's correct. That's correct.
5 Q. Not in the record of the interview that you've produced?
6 A. That reference, my Lord, is a reference to after the
7 date of those two interviews, Carol Slark was in that
8 business managing the day-to-day running of the
9 business. She was reviewing all aspects of the
10 day-to-day running and payroll. Obviously it came to
11 her attention, I don't know how. So following those
12 interviews, payroll had become an issue, and Carol
13 phoned me from time to time --
14 MR JUSTICE NUGEE: Did she report to you?
15 A. Not as such. I was -- I was more of a conduit, if you
16 like, for her to have a point of contact to go through
17 to the rest of the business. So if she had queries of
18 a certain type, although I wouldn't have the
19 understanding or the skill set to necessarily answer any
20 of her questions, what I could do was direct her
21 questions to the right people within the group who would
22 answer those questions for her.
23 So at that time, she had spoken to me about --
24 I mean, I can't recollect the conversation or when it
25 happened, but she had raised those as an issue and

1 3 4

1 I said, "Well, review them and put in a paper and I'll
2 find the right person to send it to".
3 So I'm absolutely right in saying following the
4 interviews, payroll was identified as an issue, and she
5 subsequently submitted a report with her views on what
6 she thought was appropriate.
7 So I don't see anything in there that I'm saying,
8 that I have said, that's incorrect or factually not --
9 it is what it is.
10 MR STUART: Let's just get the sequence right. According to
11 your version of events, then, prior to the interviews
12 with the staff, Mrs Frondigoun and Ms O'Brien -- prior
13 to that, Carol Slark hasn't raised the issue of
14 salaries?
15 A. Erm, I don't know. I don't know.
16 Q. You just said it was following the interviews?
17 A. No, what I --
18 Q. Following, as in after?
19 A. I think at some point after, she submitted a report
20 about salaries.
21 Q. Yes. That's the end of the process, isn't it? Before
22 she --
23 A. The end of which process?
24 Q. Before she issues the report --
25 A. Sorry, I don't understand; at the end of which process?

1 3 5

1 Q. That you just described?
2 A. Do you mean the analysis of payroll?
3 Q. The sequence, according to you, goes as follows -- is
4 this right? You have some interviews with staff.
5 Following those interviews, at some point -- and you
6 can't recall when -- Carol Slark raises with you the
7 issue of salaries?
8 A. I believe so.
9 Q. You say to her, "Put your proposals, do your analysis or
10 whatever"?
11 A. I can't recollect any of the conversation at all.
12 Q. Okay.
13 A. In that context, I would not have been able to give her
14 an answer because I don't understand enough about the
15 benchmarks for payroll or bonuses, and the only thing
16 I could say to her is, "You need to put that in writing
17 and I need to get somebody who knows what they are
18 talking about to look at it". And that's the only thing
19 I could have done. I couldn't have given her any advice
20 on it.
21 Q. No, but when she first raises it with you, she doesn't
22 raise it and give you her new proposals, does she?
23 A. I don't know, I don't recollect the sequence of events.
24 I just know that she raised payroll as an issue and
25 I passed it on at some point.

1 3 6

1 Q. Okay. She then does a salary review of the staff?
 2 A. She did at some point.
 3 Q. She makes enquiries of various other stores and such
 4 like?
 5 A. Apparently so, but I didn't realise that's what she was
 6 doing at the time.
 7 Q. And then she draws up her proposals for salary increases
 8 for each of the staff. They each get a different
 9 amount?
 10 A. Right.
 11 Q. Do you remember?
 12 A. I'm vaguely aware of it but I didn't really have any
 13 involvement in it. So, yes, I'm vaguely aware of it.
 14 Q. You had more than a little involvement in it; you are
 15 the person who then dealt with it, aren't you?
 16 A. No. She passed the document to me and explained it to
 17 me and I forwarded it on to Derek saying that, "From
 18 what Carol is telling me, their proposals seem
 19 reasonable. You make a decision on it."
 20 Q. Look at page 447, the one I just took you to? {E/95/447}
 21 A. Yes.
 22 Q. "Derek,
 23 "Following our interviews, salaries were identified
 24 as being an issue, which I asked Carol to review."
 25 So it has not come from her, the impetus for this;

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1 it is you?
 2 A. I -- what I'm saying there is I asked Carol to prepare
 3 a document.
 4 Q. No, what you are saying there is you asked Carol to
 5 review?
 6 A. Well, yes, we discussed it. If she is telling me -- if
 7 there is somebody who is a regional chairman who has
 8 been in the business for many, many years, if she was to
 9 tell me that salaries were an issue and they need to be
 10 reviewed, I would take her at her word. She is
 11 a trusted, known individual who was well respected. So
 12 I would take her at her word. I had no reason not to.
 13 Q. As you say to Derek, you asked Carol to review the
 14 salaries. That's right, isn't it?
 15 A. It says that in this email, yes.
 16 Q. She then did produce a review. That's the next stage?
 17 A. Correct.
 18 Q. She produced an initial review?
 19 A. Correct.
 20 Q. She sent that to you on 2 May?
 21 A. Where are you referring to?
 22 Q. Page 433, a document that you referred to earlier.
 23 {E/88/433}
 24 A. 433?
 25 Q. Yes. Do you see? She has already produced the review?

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1 A. Yes.
 2 Q. And in order to produce the review she has had to do
 3 various things, she says.
 4 A. Yes.
 5 Q. She has spoken to Susannah Hart. She has looked at the
 6 salary scales on EyeQ. She has made a phone call to the
 7 Gravesend store to compare salaries. Do you see?
 8 A. I see that.
 9 Q. She has then produced a full schedule of everybody,
 10 page 435. {E/89/435}
 11 A. Yes.
 12 Q. She is also, at the bottom, proposing a new bonus
 13 scheme?
 14 A. Yes, I see that.
 15 Q. And as she said at the end of 434: {E/88/434}
 16 "I have been very generous here!"
 17 Exclamation mark.
 18 A. I see that.
 19 Q. Obviously, you and she, by this point -- at least by
 20 2 May -- have an understanding about the way that she is
 21 dealing with this matter?
 22 A. Erm, I've clearly got an understanding of what her point
 23 of view is on the salaries, but regardless of what her
 24 point of view is, or what my point of view is, it's not
 25 for either of us to make that decision. That decision

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1 could only be made by somebody who -- I would refer it
 2 to Derek. I don't know who Derek would get to look at
 3 that but there are, you know, a set of guidelines and
 4 rules and what's right and what's wrong, and regardless
 5 of whether she was excessively generous, her view would
 6 be considered within the guidelines by somebody who
 7 understands the subject matter properly.
 8 Q. You didn't pass that email on to Mr Dyson, did you:
 9 "I have been very generous here!"
 10 A. I don't know. I don't know.
 11 Q. Or to anybody?
 12 A. I don't know.
 13 Q. Anyway, I'm going to suggest to you that she couldn't
 14 have done all of that --
 15 A. I have passed it on because I have passed the
 16 salaryreviews.xls on the Derek -- on the email I sent to
 17 Derek Dyson on 17 May.
 18 Q. That's a different document.
 19 A. Okay.
 20 Q. We can see what you have passed on; you have passed on
 21 her email of 16 May, page 447: {E/95/447}
 22 "Hi Mel,
 23 "I have worked with the figures and based the
 24 suggestion of salary increases on the fact that the
 25 staff have not even had a salary review ..."

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1 Et cetera, et cetera. Do you see that?
 2 A. Yes.
 3 Q. She has attached a document and says:
 4 "Hope all this makes sense and hope the attachment
 5 opens okay."
 6 That's what you pass on to Mr Dyson?
 7 A. Right.
 8 Q. Going back to 433, {E/88/433} I'm going to suggest to
 9 you that she didn't do all of the things that she said
 10 there. She didn't do those after you had completed your
 11 interviews with Mrs O'Brien --
 12 A. Erm...
 13 Q. -- if those interviews took place on 2 May.
 14 A. Those interviews --
 15 Q. There is not enough time to do it all?
 16 A. Those interviews did take place on 2 May, at which point
 17 she was already managing the day-to-day running of the
 18 business and she would have been looking at a whole
 19 range of retail-related issues, just as part of the fact
 20 that she's in there running the day-to-day running of
 21 the business. So I don't know the chronology and
 22 whether or not the timing is coincidental or not
 23 coincidental. It's a completely separate
 24 review/decision-making process that she would eventually
 25 send through to the centre.

1 41

1 Q. Send through to what centre? Everything is through you,
 2 Mr McAlindon?
 3 A. I appreciate that, that's what I've said --
 4 Q. She doesn't send anything to the centre?
 5 A. That's exactly what I have said. It comes through me
 6 and I would have passed it to the appropriate person to
 7 review and say, "This is appropriate or this isn't
 8 appropriate".
 9 Q. All right. Just finally back to the interview, the
 10 transcript in relation to Mrs Frondigoun's interview,
 11 the last thing I need to ask you about. Page 217 to 219
 12 {Day5/217:1} Do you see 217? We are talking about
 13 Ms Slark, to start with?
 14 A. Yes.
 15 Q. And it became clear, it appears, to Mrs Frondigoun, that
 16 Carol Slark was working for you?
 17 A. Yes.
 18 Q. Is that right?
 19 A. Yes.
 20 Q. So the staff understood that Mrs Slark worked to your
 21 say so and with your approval?
 22 A. Correct.
 23 Q. Did you tell Mrs Slark to give them a very generous pay
 24 rise?
 25 A. Not at all.

1 42

1 Q. Why do you say Mrs Slark thought it appropriate to start
 2 being very generous with other people's money?
 3 A. Sorry, did I say that?
 4 Q. Well, you didn't write back to her saying, "Dear Carol,
 5 please do not be very generous. This is somebody else's
 6 money that you are playing with."
 7 A. But I don't think that's my decision to make either way.
 8 You know, she, as a retail director and regional
 9 chairman who is running the day-to-day running of the
 10 business, has made -- has looked at certain aspects of
 11 the business and has made what, in her view, are
 12 decisions as to the appropriateness of stuff.
 13 That's a very separate entity to what I was doing
 14 and she would send that to me and I would pass it on to
 15 the relevant person. It's as simple as that. It's not
 16 a complex issue.
 17 Q. She is neither a retail director of this business nor
 18 a retail chairman, as you put it?
 19 A. No, what I'm talking about is in her former employment,
 20 she was the retail director, I think at Lymington, and
 21 the regional chairman of that region at some point prior
 22 to this situation.
 23 Q. She was working for you; who were you working for?
 24 A. I work for SOS under the instruction of -- I report to
 25 Derek Dyson, who is main board director of SOG.

1 43

1 Q. But what about Dartford Visionplus Limited and Dartford
 2 Specsavers Limited? Because these are the companies
 3 whose assets are being played with here.
 4 A. That's your terminology.
 5 Q. You are right, sorry, not "played with". These are the
 6 companies whose assets are being paid away?
 7 A. Yes, and I don't think that's my decision. I didn't get
 8 involved in that decision-making. I referred it through
 9 to Derek to go to the right location and I don't know
 10 who that person would be in the company. But somebody
 11 would have reviewed her proposals, that she thought was
 12 appropriate, being responsible for the day-to-day in
 13 Dartford, but somebody would have ratified and validated
 14 that decision as appropriate or inappropriate, or
 15 excessively generous or vice versa.
 16 Q. Okay. I see you have got a lot of bundles open. Shall
 17 we just clear them out. You can get rid of the
 18 transcript bundle. You can get rid of F2. You might
 19 still have that open.
 20 If you could have bundles E1 and E2?
 21 A. Do I need C and E3?
 22 Q. You had better have C because it has got your witness
 23 statement in.
 24 A. Yes, E2 and E3?
 25 Q. E1 and E2 will be enough. You can put away E3 for the

1 44

1 moment. Let's start with E1.
 2 When do you say you first became involved at all
 3 with the Dartford store?
 4 A. Erm, at some point in time we do routine transactional
 5 analysis across the group, and the people who do that
 6 analysis found a pattern of transactions that they felt
 7 were indicative of somebody taking money out of the till
 8 inappropriately and they, at some point, spoke to me
 9 about it.
 10 Q. Okay. So if we go to the last page of E1,
 11 1 September 2006, Mr Patel tells SOG that he is
 12 intending to sell -- contemplating selling his shares?
 13 A. Sorry, which page of the bundle?
 14 Q. The last page, 200. {E/12/200}
 15 A. Yes.
 16 Q. At the point when a joint venture partner is thinking of
 17 selling their shares, is it not the case that the Loss
 18 Prevention Investigation department commonly does an
 19 audit?
 20 A. Yes, not 100 per cent of the time, but occasionally we
 21 do. But I don't think that this was coincidental --
 22 I don't think that our routine checking of stores
 23 coincided. I think that it was the transactional
 24 analysis through group refunds that we look at that
 25 identified the problem, not the process that we -- that

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1 we also do in the background when share sales are going
 2 through, just to make sure that the business is right.
 3 We do that check on a routine basis across all stores.
 4 Q. Okay. So the initial trigger then -- you can put away
 5 E1; we have finished with that now. E2. The first
 6 document that I can find that has any apparent
 7 connection to you is page 218 {E/18/218}
 8 18 November 2006. There is a text. Obviously, either
 9 you or somebody in your department has contacted
 10 Ms Birdi?
 11 A. That's my mobile number.
 12 Q. Yes. So this is Ms Birdi responding to a contact from
 13 you?
 14 A. Correct.
 15 Q. And that, presumably, is the contact that you refer to
 16 in your witness statement -- do you have your witness
 17 statement open as well? It's probably the easiest way
 18 to do it.
 19 A. Which page?
 20 Q. Page 130. {C/11/130} Paragraph 15.
 21 A. Yes.
 22 Q. I think you must be a little bit out with the dates.
 23 You say:
 24 "On or around 20 November ... Dartford was
 25 identified by Ben Walls..."

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1 Then you say as a result of that you then contact
 2 the store, but is it possible that actually it was a bit
 3 before then, because she is phoning you back by the
 4 18th?
 5 A. I think -- "on or around" I think is accurate. The
 6 normal protocol in those circumstances, where there is
 7 a possibility that a director could be involved, is that
 8 I would speak to somebody in the retail support team,
 9 the RST, like a retail development consultant or
 10 somebody from that, who would phone the store director
 11 who we didn't believe was involved, and they would ask
 12 them to contact me --
 13 Q. Right.
 14 A. -- so that we are not heard to ring the store.
 15 Q. Okay. Do I understand that -- if you go over the page,
 16 at 219, do you see there is an email where you,
 17 in November 2006, are sending some refund information,
 18 and we see it at 220, 221 and 222? {E/19/219}
 19 A. Yes.
 20 Q. Which seems to relate to some transactions; is that
 21 right?
 22 A. Correct.
 23 Q. Can you just explain to us page 220? {E/19/220} Which
 24 are the transactions which are suspicious? Is it the
 25 "bolded" ones?

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1 A. It is. It is, and the issues that make those obvious
 2 are the fact that the -- there is generic SKUs that are
 3 used, which allow you to put any price point in. So it
 4 has got "contact lens other" at £300, which is a highly
 5 unusual transaction. It's that type of thing that makes
 6 them very unusual.
 7 MR JUSTICE NUGEE: What is SKU?
 8 A. SKU. It's the -- a SKU is the unique barcode for
 9 a specific product. So where you might, for example,
 10 select a frame, a frame will have a SKU code of 1234567
 11 and if you scan that, it'll recognise the product.
 12 MR JUSTICE NUGEE: So if we look on this page, there is
 13 a line about seven or eight lines down:
 14 "SAMUEL 50:20 140..."
 15 A. That long digit --
 16 MR JUSTICE NUGEE: That has an eight-digit SKU code?
 17 A. -- that's a frame SKU.
 18 MR JUSTICE NUGEE: So you could identify from that
 19 a particular product?
 20 A. Correct.
 21 MR JUSTICE NUGEE: And what you are saying is that the
 22 "5043" is a generic --
 23 A. Yes, and they're very rarely -- they're very rarely used
 24 because the vast proportion of products that we use,
 25 other than a small percentage of non-core products that

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1 are not Specsavers --
 2 MR JUSTICE NUGEE: I see.
 3 A. So there is a catch-all set of SKUs, but they are very
 4 rarely used. To do a refund onto a catch-all SKU is
 5 very unusual. You would normally do a refund of that
 6 magnitude against the patient record, so that there is
 7 a record that they have actually had a refund.
 8 MR JUSTICE NUGEE: These are -- these do have customer
 9 numbers --
 10 A. They do and they're --
 11 MR JUSTICE NUGEE: -- with names; is that not a patient
 12 record?
 13 A. It is. It is to a specific patient.
 14 MR JUSTICE NUGEE: I see.
 15 A. But the chances, statistically, of "R Nash" having three
 16 refund transactions totalling £830 is statistically
 17 improbable.
 18 MR JUSTICE NUGEE: Thank you.
 19 MR STUART: And I want to understand -- I asked you is it
 20 the bold ones. If we look on the right-hand side under
 21 the column, "Tender".
 22 A. Yes.
 23 Q. We see a number of items which are boldened and a number
 24 which are not?
 25 A. Yes.

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1 Q. Are all the boldened ones suspected to be Mr Patel doing
 2 his fraud?
 3 A. Yes, because typically, large round amounts are unusual,
 4 whereas smaller amounts, less --
 5 Q. So --
 6 A. -- can happen.
 7 Q. Sorry to interrupt. But by my reckoning, if we just
 8 look at those, we have got an item of £310; £300. Skip
 9 the next four which are in the £200s and the next one,
 10 and then another one of £320. So we have got three
 11 items that are about £300, £310, £320. That's £930
 12 worth in three items; yes?
 13 A. Yes.
 14 Q. Those big three items.
 15 A. Sorry, which --
 16 Q. Then we have got six items of about £200, or between
 17 £200 and £220?
 18 A. You are referring to all the ones that are in bold.
 19 Q. I just asked you: is it all the ones in bold, and you
 20 said yes.
 21 A. The ones that have been highlighted in bold, Ben Walls,
 22 when he reviewed these transactions, he would have
 23 highlighted those because he would feel that there was
 24 a higher probability that they were dishonest
 25 transactions.

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1 Q. Yes, okay. So on that sheet, the boldened items, by my
 2 reckoning, come to about £2,200?
 3 A. I would accept that, unless you want me to add it up --
 4 Q. That seems to be in the period -- 10 November is the
 5 latest item, at the top?
 6 A. Yes.
 7 Q. And the earliest of those items is 13 March 2006, the
 8 £199.95 item?
 9 A. Yes.
 10 Q. So in that eight-month period, £2,200 worth of items
 11 identified there?
 12 A. Identified as a concern, some of which may subsequently
 13 be -- become clear were genuine transactions.
 14 Q. We will come on to that, I'm sure, when you are able to
 15 show us where you got your £4,160 from; yes?
 16 A. Yes.
 17 Q. Okay. So November 2006, we see -- page 223.1 -- you are
 18 now authorising Mr Barnes to put in some cameras and you
 19 are going on pay him £1,500? {E/20.1/223.1}
 20 A. Correct.
 21 Q. Is that right?
 22 A. Yes.
 23 Q. In your witness statement at paragraph 15, five lines
 24 from the end of 15, you say: {C/11/130}
 25 "... install covert cameras ... This is normal

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1 protocol in such circumstances and if a Store employee
 2 had been suspected, I would have approached either of
 3 the Store directors for their agreement. However, in
 4 this case, as it was in fact a Store director who were
 5 suspected, I cleared the matter with Mr Dyson..."
 6 Why didn't you clear the matter in advance with
 7 Ms Birdi?
 8 A. Erm, I think Ms Birdi's situation was different. The
 9 issue here is we're about to install covert cameras into
 10 a business where one partner was unaware of it, and in
 11 those circumstances, I always discuss that prior to
 12 doing it and get Derek's agreement that it's appropriate
 13 in the circumstances to approach a single partner and
 14 suggest to that partner that they do it without the
 15 knowledge of the other partner.
 16 Q. But according to your paragraph 16 {C/11/130} you didn't
 17 suggest this to Ms Birdi; you informed her of that and
 18 she didn't raise an objection, is the way you now put
 19 it?
 20 A. Sorry, no. I phoned up Swarandeep Birdi and had a long
 21 conversation with her about -- about the problem.
 22 I emailed her the transactions so that she could see
 23 them for herself and understand why we had our
 24 suspicions, and I explained to her that the only way
 25 that we could safely prove, one way or the other, who

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1 was actually doing the transactions was to put a camera
2 in and see who was doing the key strokes, and the reason
3 for that is because in significant numbers of cases
4 where these situations arise, other people misuse other
5 people's operator codes. So it's not unusual to have,
6 you know, a director's code, one that's allocated to
7 that individual. They are only a three- or four-digit
8 code so they are not terribly difficult to remember and
9 people do misuse other people's codes to avert suspicion
10 from themselves.

11 So, the only way to do it is to see who does the key
12 strokes. So I would have phoned Swarandee up and
13 I would have explained that to her and said that this is
14 the safest way of removing suspicion, one way or
15 the other, from Nimesh. It either would have been him
16 or it would've been somebody else, and that's the way to
17 prove it.

18 Q. Did you tell her how much it was going to cost?

19 A. I did.

20 Q. Did you tell her it was your good friend and colleague
21 Phil Barnes who was receiving the money?

22 A. No, I didn't.

23 Q. No. And how much did you say it was going to cost,
24 then?

25 A. £1,500 per camera.

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1 Q. Per what period?

2 A. For a month's rental and de-installation. For
3 installation, a month's rental and de-installation.

4 Q. How many cameras were there to be?

5 A. Erm, it really depended on what we found and what the
6 building structure was, and it would have been
7 an assessment at the time, and I think at that time we
8 put in two cameras because we believed we had sufficient
9 coverage with two, which subsequently proved not to be
10 the case and a third one was installed at a later date.

11 And that's to do with where stores handled money.
12 What you sometimes find is that where people expect the
13 money to be taken to be counted, for example, which is
14 often the location where somebody would take money out,
15 the money is actually taken somewhere else beforehand
16 and the money goes in a different location.

17 Q. We are in E2. At 223-1 is an invoice --

18 A. Yes.

19 Q. -- to you from Retail Covert Surveillance?

20 {E/20.1/223.1}

21 A. Yes.

22 Q. Do you always receive invoices in this format?

23 A. Yes.

24 Q. No address of the company that's invoicing you?

25 A. Well, there is an address there, but for some reason the

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1 print on it, it's minuscule, but they are not normally
2 like that.

3 Q. Where is the address?

4 A. It's in the top left-hand corner, but for some reason
5 the box has gone minuscule, which I'm guessing is
6 something to do with the box that contains the text.
7 Normally, the text fills that box completely and is
8 clearly legible.

9 Q. How much camera invoicing on average were you doing with
10 Mr Barnes, per annum average, to the nearest £5,000?

11 A. I don't know.

12 Q. £20,000, £30,000, £40,000 a year?

13 A. I don't know. We would probably deal with -- maybe one
14 case a month? I'm guessing. I don't know.

15 Q. One case a month. But, as we see here, the months clock
16 up. So once you have put in a new camera, you then just
17 keep charging £1,500 a month?

18 A. No, this is a particularly unusual set of circumstances.

19 The number of cameras that you use very much depends on
20 processes and procedures and building control that the
21 store has when you go there. So, for example, in
22 a normal high street retailing environment, all
23 businesses have station-monitored alarms, so you can
24 rule out the possibility of somebody coming in overnight
25 and accessing the money.

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1 It's also in every retail that I know a serious
2 disciplinary matter that could result in dismissal if
3 you either access the safe on your own, or you count
4 cash on your own, or you collect and transit money from
5 the sales floor to the cash-counting area on your own.

6 So there were very strict disciplines that removed
7 substantial opportunities out of that business.

8 Until you go into a store and you know exactly what
9 systems they are operating -- and we have written these
10 in a Loss Prevention manual and we have talked to them,
11 to partners, on numerous occasions over the years,
12 and advised people to follow these because it minimises
13 risks and it makes it more simplistic to unravel.

14 However, the situation in this case was there was no
15 building controls. The cash-handling processes were
16 very open. There was no safe best practice, which is
17 a process that we have written that requires two people
18 to sign for counting cash, collecting cash, sealing
19 cash, et cetera. That wasn't in place.

20 So we had to -- whereas if you had that audit trail
21 in place, you could, with fair certainty, understand
22 where the money was going because it couldn't -- it
23 couldn't occur in the back end processes; it would only
24 probably occur at the till. So you would put a camera
25 on the till.

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1 If people aren't following that and the back end is
2 wide open, then you would have to put a second camera in
3 to cover those processes, but it really depends on
4 a case-by-case process, when you go in and try and find
5 out what's going on.
6 Q. How do you get invoiced for this? These invoices, are
7 they hand-delivered to you by Phil?
8 A. No, they come through the post and I scan them to a PDF
9 and email them to group accounts.
10 Q. So they are sent by post to your office?
11 A. Correct.
12 Q. Is that the one in Southampton?
13 A. No.
14 Q. No. So where are you based?
15 A. My office is based at home.
16 Q. Where is that?
17 A. In Hull.
18 Q. Hull?
19 A. Correct.
20 Q. So he sends them to your home address in Hull?
21 A. Correct.
22 Q. And you then scan them into the system and email them on
23 to SOG in Guernsey?
24 A. Group accounts.
25 Q. Okay. All right.

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1 Swiftly on. At page 270 we seem to pick you up. At
2 page 270, there is a very short email exchange with
3 Susannah Hart over in Guernsey. Do you see that?
4 {E/30/270}
5 A. Yes.
6 Q. 12 January:
7 "Hi Mel
8 "Just wondering whether there was any update on your
9 investigations and what the plan of action is likely to
10 be."
11 A. Yes.
12 Q. You answer:
13 "Needs to run another fortnight before dealing with
14 it."
15 A. Yes.
16 Q. That would be the surveillance of Mr --
17 A. Correct.
18 Q. -- Patel? Fine. Were you aware that Mr Patel's sale of
19 his shares was being held up by this?
20 A. Erm... no.
21 Q. Okay. So now we are into -- nothing does seem to
22 happen, according to the documents at least; I can't see
23 anything in the next two weeks. Okay? Because the next
24 document where we seem to have any involvement is at
25 page 275. That's from you to Emma Meagher, whom we know

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1 is Mr Dyson's PA or secretary? {E/34/275}
2 A. Correct.
3 Q. And:
4 "Catch up with Derek re Dartford."
5 A. Yes.
6 Q. "Emma,
7 "Could you ask Derek to give me a call re Dartford
8 this morning..."
9 Do you see that?
10 A. I do.
11 Q. Up until this point, have all your investigations that
12 you have been doing -- and I can't see what you have
13 been doing at the moment, apart from installing some
14 cameras -- have all those investigation been being done
15 pursuant to Mr Dyson having told you to do it back
16 in November?
17 A. Yes, it took some considerable time to -- I don't know
18 whether Mr Patel had left the business -- had gone on
19 holiday or whatever, but there wasn't -- during the two
20 and a half months that the video imaging was recording,
21 there were either no transactions or the transactions
22 that had happened, the video imaging didn't give
23 sufficient continuity, ie you couldn't see where the
24 money was actually taken. So I know at one point the
25 third camera was put in subsequent to the other two to

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1 gain that clarity.
2 Video imaging was eventually obtained that gave
3 a clear picture and it was at the point at which we knew
4 that there was a clearer picture that I contacted Derek
5 to ask him what his thoughts were.
6 Q. Okay. So we can read from Friday, 16 February:
7 "... need to have a chat with him on how he wants us
8 to deal with this in case it does not go to plan."
9 Do you see that?
10 A. I see that.
11 Q. "I will be speaking to Cristina ..."
12 That's Cristina del Grazia, isn't it?
13 A. Yes.
14 Q. "... first thing ..."
15 You are sending this fairly first thing, 7.42 am.
16 What time does the office open in Guernsey? 8.30?
17 9 o'clock?
18 A. Different people arrive but it's always open sort of --
19 Q. "First thing" would be around 9 o'clock in the morning?
20 A. Yes, probably.
21 Q. "I will be speaking to Cristina first thing as well to
22 get papers drawn for suspension, right to investigate
23 et cetera..."
24 Do you see that?
25 A. Yes:

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1 "... but want to know if Derek is prepared to go the
2 whole hog with this or not (if we hit a brick wall, are
3 we prepared to call the police on this or not, it is
4 what we would do with a normal employee but as he is a
5 Director, not sure if the Board would agree to this)."
6 Do you see that?
7 A. Yes.
8 Q. Prior to this message to his PA, had you spoken to
9 Derek Dyson about this Dartford matter at all?
10 A. I don't know. I had regular conversations with Derek
11 about that time. I may or may not have done.
12 Q. Did you take any notes of any meetings?
13 A. No.
14 Q. -- or conversations with him?
15 A. No. I hadn't had meetings.
16 Q. They would be by telephone, would they, these
17 discussions?
18 A. I would have had phone calls and discussions with him.
19 Q. Right. What is the "plan", at that point, 16 February?
20 A. I think the plan was to -- "plan" is a -- I would have
21 put to -- gone to the store to put the allegations to
22 Nimesh Patel with a view to interviewing him, interview
23 him, and see what he had to say.
24 Q. So that was as far as the plan was going to go?
25 A. Well, depending on the outcome of what he had to say,

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1 there are a number of different routes that could be
2 considered, whether it be to, you know, in the event of
3 admission, to take a commercial view and come to
4 an agreement with him, if that's what he wanted to do.
5 Or alternatively, to continue down a disciplinary road.
6 But part of the reason for having the discussions with
7 Derek was to get a steer on, you know, "If he admits it,
8 these are the options. Which would you prefer or
9 advise? If he doesn't admit it, how far do I go with
10 it?"
11 So there are a number of possibilities and I would
12 be guided by Derek as to which road, depending on how
13 things developed, I would continue down.
14 Q. I'm going to suggest to you that you discussed with
15 Mr Dyson, in your catch-up call on 16 February, the
16 possibility of Mr Patel, when faced with your evidence,
17 admitting or not contesting your evidence, at least, and
18 wanting an exit route. It happens quite a lot according
19 to your own statement?
20 A. Yes.
21 Q. It's quite common that that's the methodology that you
22 use quite a lot?
23 A. Yes, but that is very much the choice of the individual.
24 Q. Of course.
25 A. The fallback position is always we are constrained by

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1 following a set of rules and protocols: "If you don't
2 want to do that, then the only thing I can do is
3 complete the investigation, submit the file,
4 a disciplinary process will be started because the
5 evidence is compelling and somebody will have to make
6 a decision on it."
7 But, you know, I think at that point it was fairly
8 obvious that there was a case to answer.
9 Q. What appears to have happened is that on that same day,
10 the business transfer team did a calculation.
11 Do you have the next page in your bundle? Does that
12 say 275-1?
13 A. Yes.
14 MR STUART: Does your Lordship have a 275-1?
15 MR JUSTICE NUGEE: Yes.
16 MR STUART: Do you see that?
17 A. I do.
18 Q. I know you are only the investigating officer, but
19 presumably from your numerous previous experiences of
20 giving the exit route possibility to a guilty JVP who
21 has been discovered --
22 A. Yes.
23 Q. -- you would know that SOG will arrive at a figure,
24 a price, following a valuation --
25 A. Yes.

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1 Q. -- by Mr Ryan; I think he is the man -- or his team --
2 A. He was the head of the department.
3 Q. And either he or somebody in his team would do
4 a valuation to arrive at a price at which --
5 A. In these circumstances I always dealt with Michael Ryan.
6 I thought Michael Ryan did all these.
7 Q. It was Michael Ryan?
8 A. Well, that's who I would have spoken to, had I spoken to
9 somebody about it.
10 Q. Fine.
11 A. In these sorts of the circumstances.
12 Q. Yes. So it looks like Mr Glass, who directly reports to
13 Mr Ryan; Steve Glass?
14 A. Yes.
15 Q. I don't think you know him?
16 A. I do know him.
17 Q. Yes. It looks like he has prepared this report on
18 16 February, that same day. Presumably --
19 A. Yes.
20 Q. -- you had no input into any of that?
21 A. None at all.
22 Q. Okay. Did Mr Dyson say to you when you left him on the
23 16th, on the telephone -- did he say to you, "I'll look
24 into some figures"?
25 A. No. The figures are never looked at until there is

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1 a clear and agreed outcome in principle, and if there is
 2 an agreement in principle, then somebody would be asked
 3 for figures.
 4 Q. But that doesn't seem quite right here, does it, because
 5 the figures are being looked at in principle --
 6 A. No --
 7 Q. -- and in reality, on Friday, 16 February, the very day
 8 when you are planning to go into the store on the --
 9 A. I have --
 10 Q. -- Tuesday?
 11 A. I have no knowledge --
 12 Q. Possibly the Monday?
 13 A. -- of this document --
 14 Q. No, I know.
 15 A. -- and I not only have no knowledge of it but I didn't
 16 instigate the work to be done, and I am unaware of who
 17 did.
 18 Q. Okay.
 19 A. The only thing I can do with this document is speculate,
 20 and I am speculating. However, Steve Glass is
 21 a junior -- at that time was the junior person who had
 22 just been brought into the business and was effectively
 23 being trained up, because Michael Ryan had been there
 24 many years and was coming up to retirement.
 25 Throughout the normal -- with these sorts of

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1 situations we discuss them -- we currently discuss them
 2 on a conference call on a weekly basis. So any cases
 3 that are ongoing, whether they be -- are discussed and
 4 there are a group of people who are involved in that
 5 process, and business transfer are one of the people
 6 that are involved in that.
 7 So Steve Glass would have been -- had an awareness
 8 of what was going on, the fact that an individual was
 9 being investigated, the fact that the evidence looked
 10 probable that he had committed an act of gross
 11 misconduct, and if Steve Glass has thought it would be
 12 prudent to act in advance and to start getting the work
 13 together, you know, he would have made his own decision.

14 So I'm speculating in that respect, but what I can
 15 say is that I am unaware of anybody instructing the
 16 valuation to be done.

17 Q. How is Mr Glass knowing about your investigation into
 18 Mr Patel?

19 A. As I have just explained, the consequences to these
 20 decisions and these situations affect a number of
 21 different people. If a partner does end up leaving the
 22 business, you know, there is crisis management issues to
 23 consider, but there's also, you know, finding
 24 replacement partners. There is the -- you know, it
 25 impacts on a number of different people.

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1 So part of any -- part of the normal -- we call it
 2 the compliance group that meet and discuss these to keep
 3 a handle on where things are: where it's likely to go;
 4 when it's likely to go; once it's dealt with, who is it
 5 then going to. And there has to be some process control
 6 around.

7 So there are people involved behind the scenes that
 8 have a degree of understanding as to what's going on.

9 Q. So there was a meeting; a control group meeting?

10 A. No, I didn't say there was a control group meeting.

11 There were -- currently, we have a compliance team that
 12 has a conversation once a week. Historically, we used
 13 to physically have a meeting where we discussed these
 14 issues. I don't know at this time whether we have gone
 15 to the compliance call process or whether we met as
 16 a group of people. But there has -- there has always
 17 been, to my recollection, people who meet and interact
 18 who discuss these situations so that they understand and
 19 can plan.

20 MR JUSTICE NUGEE: So, while an investigation of this type
 21 is ongoing, someone from the business transfer
 22 department would know that there was an investigation
 23 ongoing?

24 A. Yes, who were in that closed -- you know, it's
 25 a confidential group of people and -- but somebody from

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1 the business transfer people -- team -- would have been
 2 represented there because it does have an effect on them
 3 at some point in the process.

4 MR STUART: And that little group of people, that would
 5 include Mr Ryan, presumably?

6 A. He attended on occasions. I don't know whether he was
 7 always there, but he attended on occasions.

8 Q. And Mr Dyson, presumably?

9 A. No.

10 Q. Mr Dyson wasn't aware?

11 A. No -- no, no, I didn't say he wasn't aware. I'm saying
 12 he is not a part of that process. That happens with the
 13 teams of people from a range of departments, department
 14 heads, on an ongoing basis.

15 MR STUART: My Lord, I see the time. I think the shorthand
 16 writers may need a break.

17 MR JUSTICE NUGEE: Yes. We will take a break for five
 18 minutes.

19 (3.14 pm)

20 (Short break)

21 (3.21 pm)

22 MR JUSTICE NUGEE: Yes?

23 MR STUART: Mr McAlindon, we had reached paragraph 19 of
 24 your first witness statement. {C/11/131} You say you:

25 "... relayed your recommendations to Mr Dyson by

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1 mobile phone and on 20 February 2007, the board of
2 Dartford Visionplus passed a written resolution (signed
3 by Ms Birdi) that Mr Patel be suspended from work
4 pending a full investigation."

5 Do you see that?

6 A. I see that.

7 Q. Then you say:

8 "I, along with Mr Barnes, Senior Loss Prevention
9 Consultant, met with Mr Patel that day at the Store and
10 informed him of his suspension..."

11 Do you see that?

12 A. Yes.

13 Q. "... by giving him a letter provided by SOG's Legal
14 Department ..."

15 Do you see that?

16 A. I do.

17 Q. E2/280. {E/39/280} So if you go to -- are you in E2?
18 Do you have E2 there? That's a letter of formal
19 suspension?

20 A. Sorry, which page?

21 Q. 280.

22 A. Yes.

23 Q. That's an undated letter. It says "Recorded Delivery",
24 but we will leave that to one side.

25 That's the letter that you say you were provided

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1 with by SOG's legal department. Is that right?

2 A. Yes.

3 Q. And I think you must also be saying that page 279,
4 {E/38/279} the directors' written resolution, resolving
5 that Mr Patel be suspended and the investigation --
6 I think that must be what you are referring to in
7 paragraph 19, where you say: {C/11/131}

8 "... the board of Dartford Visionplus passed
9 a written resolution ..."

10 A. Correct.

11 Q. My question is this: when were these documents drawn up,
12 these two documents?

13 A. I don't know.

14 Q. When were you provided with the documents?

15 A. I don't know.

16 Q. How were you provided with the documents?

17 A. I would have been sent them by email.

18 Q. We don't see the email anywhere?

19 A. I don't know.

20 Q. Is that because attached to the email there are some
21 other documents that you don't want us to see?

22 A. I don't know.

23 Q. When you received the page 279 document, was it a PDF
24 already signed by Mary Perkins on 19 February?

25 A. I don't know.

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1 Q. Or was it blank as to signatures?

2 A. I don't know.

3 Q. Did you --

4 A. Sorry, excuse me. It must have been -- it must have
5 been signed the day that I got them because hers is
6 dated the 19th.

7 Q. Yes. Hers is dated the 19th. I know.

8 A. Right.

9 Q. Her signature is dated the 19th, but I'm curious as to
10 how these other three signatures came on the document?

11 A. Because I brought the document to the store and sat down
12 with Swarandeeep Birdi and Nimesh Patel, discussed the
13 document and explained it and asked them both to sign
14 it.

15 Q. Okay. Was Dame Mary Perkins' signature already on the
16 document?

17 A. I don't know, I couldn't --

18 Q. Okay. What about the authorised signatory for SOG?

19 A. I don't know.

20 Q. We think that's Cristina del Grazia.

21 A. I don't know. I don't know whether they were signed
22 before or after.

23 Q. How could they be signed after?

24 A. Because I would have sent the document to Legal.

25 Q. When did you do that?

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1 A. I didn't say I did that; I said I would have -- if they
2 have signed it afterwards, I would have sent it to them
3 to sign afterwards. I don't recollect when they were
4 signed, whether they were signed before or after.

5 Q. Okay. So you had received by email a version of this
6 document, which you had then printed off and taken with
7 you -- whether it be a PDF with some signatures on
8 already or just an unsigned document, which might not
9 necessarily be a PDF, I suppose?

10 A. Yes.

11 Q. You took that document along with you on the 20th?

12 A. I had that document with me in my possession when
13 I walked into the store on the 20th.

14 Q. And what time did you walk in?

15 A. Erm...

16 Q. Roughly?

17 A. Well, I say that, I don't know whether somebody would
18 have faxed it to the store. I don't know. I don't know
19 how I came into possession of it. What I do know is
20 that when I was in store, I was in possession of it. Do
21 I have a recollection of how I came into possession of
22 it or when I came into possession of it? I don't know.
23 I can't recollect.

24 Q. Okay. Getting them to sign it, though, the way you have
25 written it, you see, in your witness statement, is that

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1 we have got the signed resolution, the written
2 resolution?
3 A. Sorry, where are you referring?
4 Q. End of paragraph 19? {C/11/131}
5 A. Yes.
6 Q. You have got the written resolution "(signed by
7 Ms Birdi)", as you put it. It's actually signed by
8 Ms Birdi and Mr Patel?
9 A. Correct.
10 Q. And Cristina del Grazia?
11 A. I don't mention Cristina del Grazia, but I mention that
12 I had that document in the store when I was sat in front
13 of Mr Patel and Ms Birdi and I asked them both to sign
14 it.
15 Q. When were you sat in front of the two of them, then?
16 What time was this?
17 A. Erm, I'm guessing. I have no -- it would have been
18 first thing in the morning, when the store opened.
19 9 o'clock, I would have thought.
20 Q. 9 o'clock? Okay. So you have a meeting with the two of
21 them at 9 o'clock. You present them with this document.
22 What was Mr Patel's initial reaction? He didn't know
23 about this, did he? This must have surprised him?
24 A. Yes. I can't recollect what his reaction was.
25 MR JUSTICE NUGEE: Can I ask you, Mr McAlindon: you were

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1 based in Hull at the time?
2 A. Correct, yes.
3 MR JUSTICE NUGEE: Did you drive down early that morning?
4 A. Yes, yes.
5 MR JUSTICE NUGEE: Yes.
6 A. 4.30 start, probably, for London.
7 MR JUSTICE NUGEE: And did you get back that evening?
8 A. Erm, I don't know.
9 MR JUSTICE NUGEE: What else would you have done?
10 A. I may have stayed over in London. I don't know what
11 I was doing the next day or -- I mean, I may have been
12 in London the night before. I don't recollect whether
13 I either drove down to the store -- I do drive down to
14 the store first thing in the morning to get to the store
15 for 9, but I may have gone down the night before to make
16 it easy to get into the store and miss traffic, but
17 I have no direct recollection.
18 MR JUSTICE NUGEE: Thank you.
19 MR STUART: So you have a meeting with Ms Birdi and
20 Mr Patel. You get them to sign this document. That's
21 the first thing you do?
22 A. Yes.
23 Q. What do you say to Ms Birdi about what you are going to
24 do next?
25 A. Erm, I don't have a direct recollection of it. I would

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1 have said that I'm going to interview him.
2 Q. Okay. Then you start the interview process. Is that
3 right? On your version of events?
4 A. Correct.
5 Q. And you say in paragraph 21 {C/11/131} that the signed
6 transcript of what was said in the meeting is at pages 9
7 to 11, which is pages 281 to 283 in our bundle.
8 {E/40/281}
9 A. Yes.
10 Q. Does Mr Barnes type up this one?
11 A. I normally type.
12 Q. Sorry?
13 A. I normally type.
14 Q. You do the typing? Okay. So Mr Barnes is down as the
15 witness on this list, but was he actually the one asking
16 the questions?
17 A. No, I would have been asking the questions.
18 Q. So you type and ask the questions at the same time?
19 A. Yes.
20 Q. Even when Mr Barnes is there with you?
21 A. A bit slow, but, yes.
22 Q. What evidence did you present to Mr Patel -- I have
23 taken you to every document in the bundle that I can
24 find --
25 A. Hm-mm.

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1 Q. -- that's relevant. What documentation did you show to
2 Mr Patel relating to his fraudulent activities on the
3 till?
4 A. I don't recollect specifically, but I would have had
5 a spreadsheet of transactions and I believe somewhere in
6 the bundle there are -- there are journal roll printouts
7 of the transactions. So I had a number of documents.
8 Q. So what does that look like? I haven't seen it; what
9 does that look like?
10 A. It looks like a till receipt.
11 Q. Till receipts?
12 A. Hm-mm.
13 Q. For what period of time?
14 A. I don't know. I would have to look at them, I don't
15 recollect. They were for transactions that had happened
16 up to -- both prior to the installation and post the
17 installation. I would have been in possession of those.
18 I don't recollect it and I don't recollect the document,
19 but I would have been in possession of those.
20 Q. Okay. Has there been some meeting which I'm not aware
21 of between you telling Ms Birdi and Mr Patel, "Please
22 sign this document, you are suspended", and this
23 interview starting?
24 A. No.
25 Q. No. Okay. So looking at the interview notes, page 281,

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1 {E/40/281} after your initial introduction, you say at
 2 line 25 -- do you see that:
 3 "Prior to this interview I explained that we were
 4 investigating refund activity in this store and
 5 I explained that we had been monitoring your actions for
 6 a number of months using a covert camera. You admitted
 7 that you had stolen money..."
 8 Do you see that?
 9 A. Yes.
 10 Q. Now, that didn't happen in Ms Birdi's presence, did it?
 11 A. I don't know. I cannot recollect it.
 12 Q. Well, you were there?
 13 A. I know, but I can't recollect it.
 14 Q. Him admitting stealing, in Ms Birdi's presence?
 15 A. I didn't say in Ms Birdi's presence.
 16 Q. I have just asked you --
 17 A. I would have --
 18 Q. It didn't happen in Ms Birdi's presence, and you said --
 19 A. I have clearly -- I have clearly explained to him the
 20 circumstances of the investigation and he clearly made
 21 an unsolicited admission and I have repeated it in the
 22 interview to give him the opportunity to say, yes, that
 23 was right or, no, that wasn't right. So all I was doing
 24 was explaining to him -- I have clearly explained to him
 25 at some point the circumstances surrounding the

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1 investigation.
 2 Q. Not just the circumstances. It's not very legible in my
 3 version; others may have a better copy but:
 4 "... you admitted that you had stolen money..."
 5 Do you see that?
 6 A. I do.
 7 Q. What else does it say?
 8 MR JUSTICE NUGEE: My copy says:
 9 "... by putting [something] ..."
 10 MR STUART: "...by putting..."
 11 A. Sorry, which line are we on?
 12 Q. 27:
 13 "... by putting ..."
 14 And then it does really go very blank?
 15 MR POTTS: I see "fraudulent", my Lord.
 16 MR JUSTICE NUGEE: You see what?
 17 MR POTTS: I see:
 18 "... by putting fraudulent..."
 19 MR JUSTICE NUGEE: That's better than I have got.
 20 MR STUART: Okay:
 21 "... by putting fraudulent..."
 22 A. I would've thought it would be:
 23 "... by putting fraudulent refunds through the
 24 till..."
 25 I can't see that but that's the obvious --

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1 Q. So you think it was "refunds through the till"?
 2 A. Yes:
 3 "... to steal money..."
 4 Q. And then something?
 5 A. Yes.
 6 Q. Oh:
 7 "... to steal money as you were in serious financial
 8 difficulty."
 9 A. Correct. There is something after that but I can't read
 10 it.
 11 MR JUSTICE NUGEE: I think it says:
 12 "Is that right?"
 13 MR STUART: "Is that right?"
 14 So he has already admitted to the stealing and given
 15 you his explanation as to why he has done it?
 16 A. It would appear so.
 17 Q. Before the interview has even started?
 18 A. It would appear so.
 19 Q. So, was this in sort of "off the record" conversation?
 20 A. No, not at all. As I have explained, you know, as
 21 a matter of simple courtesy and for practical reasons,
 22 I explained to him what the investigation was about and
 23 that we had evidence that gave us the belief that he had
 24 been stealing money. So I have simply made a statement
 25 explaining why I'm now going to interview you.

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1 Q. But the only evidence you have told him about is, "In
 2 the last few months we have been looking at you through
 3 a covert camera"?
 4 A. Well, that's true.
 5 Q. So do you think that was the only evidence you put to
 6 him of his last few months' worth of thefts?
 7 A. No, I don't think so. The nature of the transactions
 8 that he was doing were quite specific and quantifiable,
 9 in that they were in relation to "Nash", the patient
 10 file called "Nash", and you can quantify that because
 11 you can see all the transactions.
 12 Q. The "Nash" ones, are those the ones we saw on that
 13 previous document?
 14 A. Yes, I think there's -- I think they're referred to in
 15 the -- throughout the interview record, or where we have
 16 gone through it in detail.
 17 Q. Those were the ones in November, on page 220, the ones
 18 that say "Nash R"? {E/19/220}
 19 A. Yes.
 20 Q. They are items on 10 November, 30 October, 16 October,
 21 possibly 25 September and 26 August.
 22 So in that two- to three-month period, all the Nash
 23 items?
 24 A. There's four Nash items on there.
 25 Q. Okay. I couldn't work out whether the one in between

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1 the four Nash items, where it just has a "00" --
 2 A. No, that's where he has not entered any patient details.
 3 Q. Not entered any patient -- okay, so the Nash items. All
 4 right. Four Nash items in that period, August to
 5 November 2006 only?
 6 A. Yes.
 7 Q. Do you think that's all you put to him?
 8 A. Erm, I think that was all that was consistent with the
 9 video imaging. The process of identifying the
 10 transactions in the period that we reviewed, we would
 11 have -- once we knew where he was actually taking the
 12 money, what we would have done is we would have looked
 13 at the amounts of money that he was taking and
 14 cross-referenced that back to the transactions to see if
 15 it was consistent with the transactions that we picked
 16 out that we believed to be fraudulent.
 17 Q. Right.
 18 A. If there was more money that was going missing, for
 19 example, if we saw him counting out £700 in 20s in the
 20 video imaging and there was only one transaction that
 21 looked suspicious, we would have looked for other
 22 methodologies that would have given an indication that
 23 money was being stolen in other ways.
 24 For example, if he had been putting through -- if he
 25 had been putting money into a till using a till key but

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1 not registering the sales in the till, then you wouldn't
 2 see any transactional pattern, but it is another method
 3 that people could use.
 4 So you would "stress test", if you like, the
 5 transactions against the money that was being stolen and
 6 see if they are consistent. If they are consistent,
 7 then, you know, that would be fairly indicative of what
 8 he had stolen.
 9 Q. Okay. So your question there is, you say: {E/40/281}
 10 "Can you tell me how much you have been stealing?"
 11 Do you see that?
 12 A. Line?
 13 Q. Line 30:
 14 "Can you tell me how much you have been stealing?"
 15 What does it go on -- I can't read that very well?
 16 MR JUSTICE NUGEE: "... how long has it been going --"
 17 A. "... how long has it been going on and why?"
 18 MR STUART: Okay:
 19 "... how long has it been going on and why?"
 20 "Answer: A couple of hundred pounds.
 21 "Question: Is that a couple of hundred a time?
 22 "Answer: Yes, I suppose.
 23 "Question: What is the highest you have ever done
 24 in one go?
 25 "Answer: Probably about £400."

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1 Then over the page on 282: {E/40/282}
 2 "Question: The highest we have is £480, the average
 3 is between 200 and 300 in a go. There are two main
 4 patient files that you have been associated to which are
 5 customer number 109149 named S Coor and the other,
 6 115200 named R Nash. Is that correct?"
 7 Do you see that?
 8 A. I do.
 9 "Answer: Yes."
 10 Then it says:
 11 "Shown transactions in file from 2007, 2006,
 12 2004..."
 13 A. Yes.
 14 Q. "... all of which were ..."
 15 "Casting", does that say?
 16 MR POTTS: It may be "cash refunds".
 17 MR STUART: "Cash refunds"?
 18 MR POTTS: "Cash", I'm sure of.
 19 MR STUART: Yes, okay:
 20 "... cash [possibly] refunds ..."
 21 Something something:
 22 "... that all Nash and Coor were definitely him.
 23 The others he was not..."
 24 A. "... sure."
 25 Q. "... he was not sure.

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1 "Question: Is it fair to say that if it is a large
 2 round amount it is you?
 3 "Answer: Yes.
 4 "Question: Both R Nash and S Coor, their TDR numbers
 5 that you have done the transactions against are 5 digit
 6 numbers instead of the 7 digit numbers. That is because
 7 the systems changed in 1998. Therefore you have been
 8 refunding on TDRs that there is actually no sale, so
 9 they must be fraudulent.
 10 "Answer: Yes, I see."
 11 Do you see that?
 12 A. I do.
 13 Q. "Question: Do you have the TDR for Nash.
 14 "Answer: No, I think it was shredded.
 15 "Question: How do you remember the number?
 16 "Answer: It is in my diary (shown to
 17 investigators)."
 18 So Mr Patel produced to you, did he, a diary that
 19 had some notes in it of some sort, where he had kept
 20 some numbers?
 21 A. It would appear so.
 22 Q. You say:
 23 "The amount I feel can be easily attributable to you
 24 totals 3,500 on Nash and Coor."
 25 Do you see that?

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1 A. I do.
 2 Q. If we just go back to page 220, {E/19/220} for a minute,
 3 we can see that Nash appears -- those four items that
 4 you mentioned, Mr McAlindon -- but Coor is not any of
 5 the other ones on that page?
 6 A. Yes.
 7 Q. But that, of course, was the position when you were
 8 doing your desktop --
 9 A. Right.
 10 Q. -- research back in November 2006?
 11 A. Correct.
 12 Q. So since that time you had seen him on camera doing
 13 transactions in December and January?
 14 A. And we clearly at some point -- and I don't know
 15 where -- where the file was. That was the document that
 16 I had in my possession but somebody would have had the
 17 transaction history going back years because somebody
 18 has obviously gone through the transaction history going
 19 back a number of years, in the transcript of the
 20 interview.
 21 Q. You say the transaction history, the transaction history
 22 for what?
 23 A. For the store.
 24 Q. To look at what, though?
 25 A. To look at refund transactions that could through the

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1 tills in the store.
 2 Q. Are you suggesting that £3,500 being done on two matters
 3 only, Nash and Coor, and that the sum total of all the
 4 rest is only £680?
 5 A. Correct.
 6 Q. But that's not right, is it, because we can see more
 7 than that just on page 220?
 8 A. You can but some of those transactions could
 9 subsequently have been found to be genuine. When you
 10 pull the -- when you look at the transaction -- the
 11 patient records, there may well have been explanations
 12 on there.
 13 Q. Do we see anywhere this analysis or this --
 14 A. No.
 15 Q. -- investigation into what he has actually been stealing
 16 from the store for the last at least three years by this
 17 point?
 18 A. No.
 19 Q. So you say the amount you feel can easily be attributed
 20 to him is £3,500 on Nash and in total, on his operator
 21 number alone, £4,180: {E/40/282}.
 22 " ... when you did the [something something] Nash."
 23 So:
 24 " ... since 2004, when you did the ... "
 25 Is it "first"?

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1 MR POTTS: " ... first one ... "
 2 MR STUART: "... first one on Nash."
 3 Do you see that?
 4 A. Yes.
 5 Q.
 6 "Question: That would tend to suggest it is not
 7 financial difficulty.
 8 "Answer: If you look at the business, we have not
 9 taken bonuses ..."
 10 And then it all goes a bit blank:
 11 " ... [something] time, and we have had a refit.
 12 "Question: Would you agree with the amounts?
 13 "Answer: To be honest with you, I do not know."
 14 Is that the end of the sentence? That's a full
 15 stop:
 16 " I do not know."
 17 A. Correct.
 18 Q. So he wasn't agreeing to the 4,160, which you could
 19 absolutely prove, just on £3,500 on Nash and Coor alone,
 20 and £680 on some others; he wasn't saying that was the
 21 sum total of it, was he?
 22 A. It's not an exact science, and it's certainly not an
 23 exact science for him to recollect all the transactions
 24 that he had done over a long period of time. What we
 25 were trying to quantify was ballpark. The transactions

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1 that we have seen is his explanation that he has given,
 2 consistent with what we have seen, and do we believe
 3 that that more or less is what we think has been stolen,
 4 and could there be anybody else misusing other operator
 5 numbers. You know, if he is telling me that, "I can say
 6 to you categorically I have only stole £400 ever," then
 7 you would be concerned that somebody else had misused
 8 the operator code.
 9 So it isn't an exact science and you are sort of
 10 testing the reliability of what he is saying against
 11 what you know in the history.
 12 Q. Unfortunately for us, all of that is rather opaque,
 13 isn't it, because you write the rather brief sentence:
 14 "Discussion re amounts."
 15 So you do not record what he actually said about the
 16 sums of money that he might have been taking and over
 17 what period of time?
 18 A. I think we had a lengthy -- I say lengthy; we clearly
 19 had a discussion about the consistency of the amounts,
 20 the methodology and his recollection, to try and
 21 quantify how much had been involved by discussing the
 22 documents that we had, and I summarised that in those
 23 two lines.
 24 Q. Hm-mm. But he could have been stealing a lot more.
 25 A. It depends what you suggesting to be a lot more. You

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1 know, you could have a 10 per cent interpretation rate
2 of error, where you assume that the transaction's
3 fraudulent, and it might not be. But he is accepting
4 the fact that it is. Equally, it could work vice versa
5 but, because of the nature of the transactions and the
6 way that he was going about it, it was sort of -- you
7 know, it was like having his fingerprints all over it
8 and you could quantify that fairly well.

9 So, if somebody was saying, "We have tried to
10 quantify it as best we can, we have added it up to
11 £4,100," it's probably about right. Do I think it was
12 £40,000? No, no way.

13 So it depends what you mean by how much he has been
14 stealing. If you'd have said, "We've got it to 4,100,"
15 you know, it's not inconceivable that it could be £5,000
16 or £6,000, but it depends what you mean by how big
17 a chunk of money he has had. And to the best of our
18 ability -- and it was consistent -- his explanation was
19 consistent with what we could see -- we believed that
20 that was about right. If the money was much more, then,
21 you know, it just couldn't have happened.

22 Q. He didn't give an explanation, as you have just put it.

23 He said:

24 "I do not know."

25 A. He has given an explanation as to how he has gone about

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1 doing what he's done.

2 Q. Where?

3 A. For Nash and Coor.

4 Q. Yes, for Nash and Coor, you've got him. You've got the
5 reference numbers, you've got him on camera, you can --
6 you've got his --

7 A. But I haven't told him that in this interview.

8 Q. You've told him that in the interview.

9 A. Sorry, I haven't -- I haven't shown him the video
10 footage of what we do and don't have.

11 Q. No, but you've told him that at the beginning.

12 A. Yes.

13 Q. You've told him that you've got video --

14 A. Yes --

15 Q. -- footage of him.

16 A. -- no, I did tell him.

17 Q. He knows you have got him on the Nash and Coor, and
18 that's £3,530 worth, just on those two --

19 A. No, it's not because --

20 Q. -- frauds alone.

21 A. Okay, yes.

22 Q. He has not said to you, "That's all I have done." You
23 haven't pressed him or investigated him even; you halted
24 the investigation on Mr Dyson's say so at this point.

25 A. No, I didn't. I can't speak to Mr Dyson in the middle

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1 of an interview. That's not really a fair statement, is
2 it.

3 Q. You proceeded with the investigation, did you?

4 A. We completed the interview record and that was the end
5 of the interview and I then spoke to Derek Dyson.

6 Q. That's what I just said.

7 A. No, it wasn't quite what you said, but carry on.

8 Q. Did you go on to investigate with him all the other
9 thefts, frauds, that he had or may have committed? Did
10 you ask him?

11 A. I don't know what evidence you are referring to. I have
12 no evidence of extensive other frauds. I had
13 a transactional pattern that was clear. We traced it
14 back as far as we could go chronologically and I had no
15 other evidence of any other potential dishonesty
16 patterns.

17 Q. Apart from the investigation into the till refunds --
18 apart from that, had you investigated -- had you done a
19 detailed investigation into Mr Patel --

20 A. In what respect?

21 Q. -- at this stage?

22 A. In what respect?

23 Q. To see whether he had committed any other kinds of
24 fraud?

25 A. Part of the reviewing of video imaging is to look at the

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1 amounts that you can actually see that he is stealing
2 and making sure that those amounts are consistent with
3 what -- with the transactions that you believe are to be
4 fraudulent. If he is counting out £700 and there is
5 only £200 of the fraudulent transactions going on, you
6 know that there is alternative being used that you would
7 then have to go and find and try and quantify in
8 a different way.

9 But in this case the amounts that we were seeing
10 were 100 per cent consistent with the transactions that
11 he was putting through, so I don't think that it's
12 probable that he was stealing cash from the tills in any
13 other way than the one that was consistent with pattern
14 and the video imaging.

15 Q. Did you investigate him for any other kind -- even ask
16 him whether he had stolen any money in any other way?
17 Did you even ask him that question?

18 A. I probably didn't ask him that question because I didn't
19 feel that there was any evidence to suggest that he
20 could have used another method.

21 Q. No, but you have put to him that you have got evidence
22 on these two -- effectively, these two matters, £3,500
23 worth: camera evidence, documentary evidence.

24 A. Yes.

25 Q. You have put that to him. He hasn't come to you

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1 admitting this up front?
 2 A. No.
 3 Q. You have put that to him?
 4 A. Correct.
 5 Q. He has then admitted to those things -- to those things?
 6 A. Yes.
 7 Q. At that point, having admitted fraud, you could have
 8 asked him, "Have you stolen any more, Nimesh, just so
 9 that we can clear the decks here."
 10 A. Okay, we could have asked that question.
 11 Q. You could have done. You could have asked him, "How
 12 much have you stolen over the last --
 13 A. I could have done but I had no evidence to suggest that
 14 he was taking money out the tills in any other way.
 15 Q. Because you had limited your investigation into what
 16 you'd got.
 17 A. I hadn't limited my investigation. We looked at the
 18 entire transactional pattern. There are other
 19 methodologies that you can use. For example, you could
 20 put through a petty cash of £50, which just deflates the
 21 till balance by that amount of money, and put the £50 in
 22 your pocket.
 23 We reviewed petty cash transactions as part of all
 24 of the analysis that we did of the entire sales history.
 25 You can open the till draw using a no sale to put in
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1 money but you are not declaring the transaction into the
 2 till and then that would create an overage in the till
 3 that you would subsequently take when you are doing the
 4 reconciliation at the end of the day. We reviewed no
 5 sale transactions.
 6 So every transactional type that gives you an
 7 opportunity to extract money out of the till -- cash out
 8 of the till -- we reviewed that as part of all of this,
 9 but there was no evidence in any of the transactions
 10 that we looked through that suggested that there was any
 11 other methodology being used than the one that had been
 12 consistently used for a long period of time. So we felt
 13 it was improbable.
 14 Q. You don't mention this more detailed, fuller
 15 investigation anywhere in your witness statement. When
 16 do you say this --
 17 A. I'm respond --
 18 Q. -- allegedly happened?
 19 A. I'm responding to the questions that you are asking me
 20 about my evidence and I'm trying to explain that we --
 21 the fact that I haven't written an exhaustive list of
 22 everything that we do as a matter of normal protocol
 23 doesn't mean that we didn't consider at the time and
 24 explore the possibilities of other avenues. You know,
 25 what is clear is that there were no other -- there was
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1 no evidence that would indicate that other avenues were
 2 being used.
 3 So I'm responding to your questions in relation to
 4 that and the possibility that substantial amounts of
 5 money could have been taken in other ways.
 6 Q. But there is no evidence of you doing any such
 7 investigation.
 8 A. No, but I'm explaining that we do that as a matter of
 9 course.
 10 Q. Okay. I'm going to suggest to you that your witness
 11 statement is accurate and that, as you say at
 12 paragraph 19, {C/11/131}, having got evidence, in the
 13 form of paragraph 18, of him on tape putting those
 14 refunds through the till on 6 February, you considered
 15 this to be sufficient evidence -- sufficient, and that
 16 was it, and when you went along on the 20th February,
 17 you had no more than that.
 18 A. Because I don't think anything more existed. We
 19 reviewed all of the video footage, we considered all of
 20 the possibilities and we considered all of the
 21 transactional types that could be misused. So at that
 22 point that is what we had and that's what we went to put
 23 to him.
 24 Q. Okay. Paragraph 21. {C/11/131} You and Mr Barnes
 25 proceeded with your planned meeting, and that's the
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1 signed transcript, so that's what we see there. You say
 2 that finished when, not at 12.50, as recorded on
 3 page 210, but at what time? {E/40/283}
 4 A. I don't know what time it finished.
 5 Q. Okay.
 6 A. It certainly finished before the start of the
 7 second interview, that starts at 10.50 and goes on to
 8 11.33, on B284. {E/41/284}
 9 Q. Yes.
 10 A. But I don't know specifically what time before that
 11 interview record it --
 12 Q. Okay. Paragraph 23 of your witness statement:
 13 {C/11/132}
 14 "The interview commenced by covering what Mr Patel
 15 had told me prior to the meeting."
 16 So this is the first interview we are dealing with.
 17 Do you see that?
 18 A. Yes.
 19 Q. And then 24: {C/11/132}
 20 "In most situations where JVPs admit serious
 21 wrongdoing in the past SOG, acting on behalf of the
 22 relevant store company, will offer them a way out ... "
 23 When you say, "SOG acting on behalf of the relevant
 24 store company would offer them a way out", you mean
 25 that, do you? You mean SOG takes upon itself to act for
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1 and on behalf of, in this case, Dartford Specsavers
 2 Limited?
 3 A. Yes.
 4 Q. Without any reference to the 25 per cent owner --
 5 50 per cent of the profits owner -- of that company,
 6 Ms Birdi?
 7 A. Yes.
 8 Q. And on what basis do you suggest that you are entitled
 9 to do that?
 10 A. I don't know whether there is an entitlement or not.
 11 Q. Okay.
 12 A. That's the normal way that things work.
 13 Q. That's SOG's practice, is what you are saying?
 14 A. Correct.
 15 Q. Okay:
 16 "... will offer them a way out without recourse to
 17 formal procedure. This usually involves offering the
 18 JVP an opportunity to resign ..."
 19 Do you see that?
 20 A. I do.
 21 Q. "... and for SOG to offer to purchase their shares from
 22 them."
 23 So this is the practice in cases where people admit
 24 serious wrongdoing when you first hit them with it?
 25 A. Yes.

1 Q. Okay. 25: {C/11/132}
 2 "As Mr Patel had confessed to stealing money from
 3 Dartford ... there was little point in continuing the
 4 investigation against him."
 5 So it does appear that you stopped investigating
 6 against him on your own decision?
 7 A. The interview had concluded.
 8 Q. You had concluded it.
 9 A. When I say "stopped investigating", what I mean by that
 10 is I didn't then create an investigation file and
 11 present it to the board for consideration to instigate
 12 disciplinary process --
 13 Q. Right.
 14 A. -- which is part of the investigation process.
 15 Q. You then go on immediately, from stopping the
 16 investigation, which you now say is the end of the
 17 first interview ...
 18 A. Hm-mm.
 19 Q. You immediately go on to:
 20 "By way of an 'off the record' conversation,
 21 I therefore presented Mr Patel with the following
 22 options. He could either resign, following which SOG
 23 would purchase his shares at a fair price (as determined
 24 by SOG's business transfer department) minus deductions
 25 for the sums that he had stolen from Dartford and the

1 cost of the investigation; or we could complete the
 2 investigation and (if appropriate) recommend to Dartford
 3 Visionplus that it commence disciplinary action against
 4 him."
 5 A. Correct.
 6 Q. Dartford Visionplus, that's the company on which
 7 Ms Birdi is a director.
 8 A. Correct.
 9 Q. And shareholder. SOG is a company upon which she has no
 10 control over and is not a director or shareholder?
 11 A. Sorry?
 12 Q. SOG is a company which Ms Birdi has no control over; she
 13 is neither a director nor shareholder.
 14 A. No.
 15 Q. So what you say you presented him with immediately was
 16 he can either go with you, SOG, or he can have it all go
 17 formally to Dartford.
 18 A. Erm, I don't have specific recollection of the
 19 conversation. However, the way that I would always
 20 explain that is that, "The findings are very clear
 21 because you are admitting everything that you have done.
 22 You agree and understand that that is a gross misconduct
 23 situation so there has to be some degree of
 24 inevitability about the outcome. You can either
 25 continue down the process, which we would have to follow

1 to the end, which would be submit an investigation
 2 report, instigate disciplinary proceedings, disciplinary
 3 chairman appointed, who would have to make the decision,
 4 and the outcome would be fairly -- and that is a long,
 5 protracted process, some longer than others, or, if you
 6 just want to sort it out now, we can get a valuation for
 7 your shares." You know, "We would expect you to pay the
 8 costs and the money that you have stolen out of that.
 9 But it's your choice."
 10 So I would explain to them that, "There are
 11 two options, one which you control in its entirety, and
 12 the other, which is due process, that we would have to
 13 follow. What would you like to do?" And at that time
 14 he would have said to me from the -- and I say this from
 15 the communications that exist, that he would want to
 16 resign and sort his share sales out. So I point out the
 17 options to them and give them the choice.
 18 Q. And this is all in a conversation that takes place with
 19 him in a room with Mr Barnes, just the three of you?
 20 A. Correct.
 21 Q. Unminuted, undocumented, unrecorded in any way, shape or
 22 form?
 23 A. It was on a without prejudice basis.
 24 Q. That's without prejudice as between --
 25 A. I didn't document it, I didn't document it, I agree.

1 Q. And you are doing this investigation -- you are only
 2 authorised to conduct this investigation by Dartford
 3 Visionplus Limited?
 4 A. I don't know the technicalities of the various different
 5 companies, but normal practice, as was the case on this
 6 instance: once the interview was finished, I went and
 7 phoned Derek Dyson. Derek would not normally answer
 8 a phone call, you know, during the day easily because he
 9 is tied up in meetings, but Derek was aware that we were
 10 about to go into the interview with him, so he answered
 11 my call and I explained to situation to him, that he was
 12 admitting the issues, and I asked him, you know, should
 13 we go down the road of offering the two options and that
 14 it would include the costs, et cetera, and Derek agreed
 15 it in principle. At that point I went back in and said,
 16 "Well, look, there is an agreement that, you know, if
 17 you do resign, we won't carry on down that process.
 18 It's up to you. Do you want to or not?" And he said,
 19 "Yes, I did."
 20 So at that point the formal process of annotating
 21 everything then kicks in but up until that point it's
 22 just trying to gauge through conversation
 23 an understanding of his mindset and what he felt he
 24 wanted to do that was best for him -- for him and for
 25 what I felt was best for the company.

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1 So it was just a discussion that -- you would never
 2 minute a discussion like that because the formal
 3 paperwork would arise as a consequence of those
 4 discussions, when you all understand where each other
 5 is.
 6 Q. But these discussions you are having are about terms
 7 that are going to bind Dartford Visionplus Limited, his
 8 employer, Dartford Specsavers Limited, the company whose
 9 profits have been stolen --
 10 A. Correct.
 11 Q. -- Ms Birdi, effectively, because she is the 25 per cent
 12 shareholder, 50 per cent of the profits, of those
 13 companies.
 14 A. Correct.
 15 Q. You are not going to minute or document or record any of
 16 this?
 17 A. It was all documented and recorded in the subsequent
 18 paper -- paperwork that was done after.
 19 Q. What, the offer that you made to him?
 20 A. The conversations that actually took place are fairly
 21 short conversations; they are not long, lengthy debates.
 22 You know, it was a simple question of, "This is the
 23 situation; are you in agreement in principle?" "Yes,
 24 I am." "Right, we will make the necessary calls and get
 25 the necessary paperwork drawn up."

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1 Q. Did you have that conversation that you say you had --
 2 the first time you had the conversation offering him the
 3 deal, if we can call it that in general terms, the deal
 4 in principle, did you have that conversation before or
 5 after you spoke to Mr Dyson, allegedly?
 6 A. I don't recollect whether I discussed it with Nimesh
 7 before I rang Derek. I may well have done because
 8 I could have indicated to Derek that in principle he
 9 wouldn't be averse to -- he doesn't want to go down this
 10 process. So I may have done but I don't recollect it.
 11 But, equally, I may well have just have gone straight
 12 outside and rang Derek and said, "Look, this is the
 13 situation. It's pretty obvious. Do you want me to put
 14 it to him?" I can't remember which one it was with the
 15 passage of time.
 16 Q. Paragraph 26 of your statement. {C/11/132} You appear
 17 to be saying that you can't even say whether it was on
 18 that day or the previous day.
 19 A. Sorry, which -- sorry, where you referring to?
 20 Q. Paragraph 26:
 21 "Whilst Mr Dyson authorised the deal that
 22 I presented to Mr Patel (outlined above), given the
 23 passage of time, I do not recall whether this occurred
 24 ..."
 25 That is whether Mr Dyson authorised it:

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1 "... prior to the meeting or whether discussions
 2 took place with Mr Dyson on the day."
 3 So it appears from that that you are saying that you
 4 might have had the discussion with Mr Dyson on
 5 a previous day; you might have done?
 6 A. There are stages in the process and the email that
 7 I sent to Emma Meagher, saying that, you know, "I need
 8 to get a guide as to which possible outcomes you would
 9 consider." And I had that conversation with Derek prior
 10 to that. So, you know, there are a number of
 11 conversations that I would have at various stages to
 12 confirm this is okay to do or this isn't okay to do.
 13 Q. And the deal that you are offering him, the way out, as
 14 you put it in paragraph 25, as well as it being
 15 an investigation that goes to Dartford Visionplus, given
 16 that he has admitted theft and he is a dispensing
 17 optician, that would necessarily involve, wouldn't it,
 18 the possibility at least of reporting him to the police
 19 for a crime of theft, and to the GOC?
 20 A. In relation to the police, I think that's individual
 21 choice. I don't think there is an obligation to report
 22 crimes to the police, is my understanding -- it might be
 23 wrong. And I don't -- I don't know whether there was
 24 an obligation to report it to the GOC or not.
 25 Q. There was a possibility that that might happen?

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1 A. Yes, but I don't think they were my decisions to make.
 2 I think those are decisions that would have been taken
 3 after the event through consultation with legal by the
 4 board.
 5 Q. You yourself in other cases have threatened people
 6 facing such allegations with --
 7 A. Where have I made --
 8 Q. -- reporting them to the police and reporting them to
 9 the GOC?
 10 A. Where have I made that threat?
 11 Q. In other cases.
 12 A. I have never made that threat to anybody.
 13 Q. In fact you have yourself erroneously reported matters
 14 to the GOC, haven't you, in another case where you
 15 allowed a false allegation of fraud to be sent off, you
 16 said by mistake, to the GOC?
 17 A. I don't know what you are referring to.
 18 Q. Okay.
 19 MR JUSTICE NUGEE: When you said a moment ago that you
 20 regarded that as a matter for the board, who are you
 21 referring to? Which board?
 22 A. SOG board.
 23 MR JUSTICE NUGEE: SOG board.
 24 A. Yes.
 25 MR JUSTICE NUGEE: Okay.

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1 MR STUART: Why doesn't Ms Birdi have a chance to have a say
 2 in that?
 3 A. I think if Ms Birdi had strongly disagreed when I spoke
 4 to her after the event and we had dealt with it and
 5 said, "No, I insist, I want to report it to the police,"
 6 I would have referred that back to the board and the
 7 legal department and taken advice on it.
 8 I explained to her, after the event, what had
 9 happened, why both I and the board felt it was acting in
 10 the best interests of the business because, had we
 11 insisted on following the process through to its nth
 12 degree, go through a disciplinary process, that can be
 13 very long and protracted. If the individual says, "I'm
 14 sick with stress," or, "I've had a nervous breakdown,"
 15 that process could take a very long time and then you
 16 could end up arbitrating over the share valuation for
 17 months and months and months, at which point he would
 18 still have been entitled to the profits of that
 19 business.
 20 So in that respect it was expedient and it was
 21 probably likely to be less financially damaging to
 22 Ms Birdi than -- had we followed route that we did.
 23 Q. You are suggesting you had this discussion with Mr Dyson
 24 at the time to reach these bona fide, in the best
 25 interests of the business, conclusions?

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1 A. I think we both understand very well that these
 2 situations can go one of a number of ways and it is an
 3 expedient way if the individual resigns; it saves a load
 4 of costs and a load of money.
 5 Q. You can't even recall whether you had this conversation
 6 with Mr Dyson on that day or some previous day?
 7 A. No, that's correct, but I had these discussions with him
 8 regularly, and I know, you know, how people feel about
 9 it.
 10 Q. All right. So, just to get the sequence right now by
 11 reference to these documents: you have signed off the
 12 first interview; you can't recall whether you then spoke
 13 to Mr Dyson or not that day -- it may have been
 14 a previous day; you have had an off the record,
 15 informal, in principle discussion with Mr Patel; he
 16 gives you his in principle decision that he would like
 17 to go the resignation route, sale of shares route. Is
 18 that right?
 19 A. Correct.
 20 Q. Do you then phone Mr Dyson again and say, "Right, he has
 21 agreed it"?
 22 A. I have already explained that I don't recollect the
 23 actual sequence of events, whether or not we got the --
 24 you know, I had a brief conversation with Nimesh Patel,
 25 then rang Derek, or rang Derek, got the instructions to

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1 put it to him and then do it. I don't know which way
 2 round it was.
 3 Q. You only spoke to Mr Dyson the once, whichever way it
 4 was?
 5 A. I don't know.
 6 Q. You can't even recall?
 7 A. No.
 8 Q. Okay. Then, according to your paragraph 28: {C/11/132}
 9 "In light of Mr Patel's agreement to my proposed
 10 terms ..."
 11 What are the terms that you have proposed as regards
 12 price?
 13 A. The terms were that a valuation would be done --
 14 Q. Yes.
 15 A. -- and it would be a fair valuation, and that it would
 16 also take into account the cost of the investigation and
 17 the money that had been -- that we had agreed was about
 18 what he had stolen.
 19 Q. What, that the price for the shares would take account
 20 of the money that was stolen?
 21 A. Whatever the financial settlement -- I didn't know --
 22 again, not my role. I feed that information to business
 23 transfer and explain to them that we have incurred this
 24 amount of costs, we have incurred this amount of money,
 25 and somebody somewhere along the line would ...

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1 Q. No, I'm not making it clear. My question was: you
 2 referred to "my proposed terms".
 3 A. Yes.
 4 Q. So you personally, Mr McAlindon, were proposing terms to
 5 Mr Patel?
 6 A. Yes, and that was that he would sell his shares and he
 7 would pick up the cost for the investigation and the
 8 money.
 9 Q. The stolen money?
 10 A. Yes.
 11 Q. Yes. But he had stolen the money from Dartford
 12 Visionplus?
 13 A. Correct.
 14 Q. SOG were going to buy the shares off him?
 15 A. Correct.
 16 Q. So what was to happen? Was he to pay the stolen money
 17 to Dartford Visionplus?
 18 A. I don't know because I am not an accounts person, but
 19 somebody in accounts would have resolved that issue and
 20 accounted for it in the right way. I don't know how
 21 they do it.
 22 Q. Okay. What about his loan? Is there any mention of the
 23 loan at that point?
 24 A. No.
 25 Q. What about the car? Any mention of the car at that

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1 point?
 2 A. At the time he said he would like to keep the car, so
 3 when I subsequently phoned -- I don't know whether
 4 I phoned Cristina del Grazia or Michael Ryan because
 5 I don't recollect it, but I would have phoned somebody
 6 up and said, "These are the figures, whatever the
 7 investigation costs, the money, and he also says that he
 8 wants to keep his company car." So I told people that.
 9 How they then went about incorporating that into
 10 an agreement, I don't know, but I just get the agreement
 11 back that this is how it's going to work.
 12 Q. Where do you get the figures from? Where do you get the
 13 figures for the investigation costs, £15,610?
 14 A. Well, I would have been aware of those because I have
 15 the timesheets for the people that work for me and they
 16 are charged at a hourly rate equivalent to £440 for an
 17 eight-hour day. I also have the invoices for the camera
 18 costs. So I would have added that up, and that's how
 19 I would have come to the figure that I would have
 20 informed legal or business transfer.
 21 Q. But when are you suggesting you did all of that?
 22 A. There and then.
 23 Q. So you had with you all the invoices --
 24 A. No, I did not have with me all the invoices but I knew
 25 what had been --

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1 Q. You had all the timesheets?
 2 A. I knew what had been paid in respect of cameras and
 3 I would have had a record of how many hours people had
 4 worked on the case. So I was in the position to say at
 5 that point, "The costs up to that point are ..."
 6 Q. You are in a position to say whatever you like, aren't
 7 you? You are the head of the investigation department.
 8 If you say to Mr Patel it's £15,610, he is not in
 9 a position to gainsay you. If you were to say £25,610,
 10 he is not in a position to gainsay you, is he?
 11 A. Well, I'm not the beneficiary of those charges. Those
 12 charges are calculated on the instructions that I'm
 13 being given by the board. They are based from
 14 timesheets and they're automatically calculated in
 15 a formula in a spreadsheet, and they are based on the
 16 time people submit that they work on that case.
 17 Q. You haven't disclosed any documents which evidence any
 18 such raw data, nor calculations have you?
 19 A. I don't agree with that. There is a breakdown of the
 20 investigation costs.
 21 Q. The £15,610 figure? On a piece of paper?
 22 A. I don't know how I came to that at the time.
 23 Q. No. All right. Anyway, you say that's what you did.
 24 Paragraph 28. {C/11/132} You say you contacted
 25 Ms del Grazia and asked her to arrange for the necessary

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1 paperwork. Shortly thereafter a share sale agreement
 2 and a stock transfer form pops into the email address,
 3 and we see that at page 288. Is that right? {E/43/288}
 4 A. Correct.
 5 Q. I'm not entirely clear what's happening on 288. The
 6 original message is at 1.30 to your personal email
 7 address. Is that right? Your personal business
 8 address, melm@uk.specsavers.com?
 9 A. Yes.
 10 Q. "Subject: N Patel paperwork."
 11 A. Yes.
 12 Q. I don't know what happens below that in the email.
 13 A. Neither do I.
 14 Q. Do you know what happened?
 15 A. No.
 16 Q. Okay. Then she forwards you three documents, all three
 17 PDF documents?
 18 A. Yes.
 19 Q. Is that right? And those three PDF documents are -- I
 20 say "forwards", she sends but under the heading,
 21 "Subject: FW: N Patel paperwork":
 22 "Forward N Patel paperwork."
 23 Do you see that?
 24 A. Yes.
 25 Q. So she sends to you at the Dartford store the paperwork,

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1 and we see the paperwork at page 290? Stock transfer
 2 form?
 3 A. Yes.
 4 Q. The 50 units, the ordinary shares. Okay?
 5 A. Yes.
 6 Q. And then, 291, {E/43.2/291} we see a share sale
 7 agreement which goes right through to page 297. Is that
 8 right?
 9 A. Yes.
 10 Q. Somebody has drafted all of this and put all the figures
 11 in. So we are on page 291. The price has now been
 12 agreed at £55,000?
 13 A. Yes.
 14 Q. That's the price for the shares?
 15 A. Yes.
 16 Q. Were you aware from speaking to Mr Ryan, for example,
 17 that Specsavers had on the Friday before, 16 February,
 18 valued those shares at between £82,000 and £123,500?
 19 A. I had no knowledge of that document.
 20 Q. Okay -- no, not the document; I'm just saying you
 21 presumably spoke to Mr Ryan --
 22 A. I had no knowledge that anybody else had even looked at
 23 it.
 24 Q. Okay, but you presumably spoke to Mr Ryan. He was the
 25 man who always gave you the figures?

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1 A. I don't know whether -- I believe Derek Dyson went out
 2 of his office -- Michael Ryan sits a few desks away --
 3 and spoke to him. I subsequently had a conversation
 4 with him -- well, with either him or with
 5 Cristina del Grazia, I don't remember which one it was,
 6 to give them the figures that had to be taken into
 7 account from my side.
 8 So I don't recollect who specifically was spoken to
 9 whom but he was given the instruction, was my
 10 understanding, to create a valuation.
 11 Q. But you can't even recall whether you spoke to Mr Dyson
 12 on that day or not?
 13 A. No, I recall clearly that I spoke to him but I don't
 14 recall the chronology of it and the timing, whether it
 15 was before or after the discussion with Nimesh -- the
 16 verbal discussion that I had with Nimesh Patel.
 17 Q. You do not mention in your witness statement that
 18 Mr Dyson said to you that he would get Mr Ryan to do
 19 a valuation, that Mr Ryan would then come up with
 20 a figure and you would then feed in your two figures, as
 21 you put it, the £15,610 and the £4,160 figures, and that
 22 those would be fed, what, into Mr Ryan? You don't
 23 mention any of this in your witness statement.
 24 A. I'm telling you that that's how it works in practice.
 25 Q. Or you already had a figure ready when you went in

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1 there?
 2 A. No, that's not the case.
 3 Q. Okay. You say at paragraph 28 {C/11/132} you contacted
 4 Ms del Grazia and she sends you these documents.
 5 A. Sorry, where am I looking now?
 6 Q. Paragraph 28. I just took you to it. These
 7 three documents. Are you able to tell us how the
 8 £55,000 figure got inserted to page 291?
 9 A. No, not at all.
 10 Q. There is no mention in the agreement of the stolen
 11 money.
 12 A. Like I said, I have no idea how they account for it
 13 because I'm not an accountant, and people in the
 14 accounts department would deal with that.
 15 Q. Okay. Nor is there any mention of your £15,610 --
 16 figures?
 17 A. My understanding was that that had been taken into
 18 account. How they account for that, I have no idea.
 19 Q. Who did you give the £15,610 figure to?
 20 A. It would either have been Cristina del Grazia or
 21 Michael Ryan.
 22 Q. So you may have spoken to Mr Ryan on that day?
 23 A. Yes, I have said this previously in answer to one of
 24 your questions, that I would have spoken to either
 25 Michael Ryan or Cristina del Grazia but I don't recall

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1 which one.
 2 Q. All right. When you went back in to see Mr Patel, armed
 3 with this document --
 4 A. Yes.
 5 Q. -- because it's you who put this document to him, isn't
 6 it?
 7 A. Yes.
 8 Q. -- what did you explain to him about the terms that had
 9 been agreed?
 10 A. I don't have any direct recollection of the
 11 conversation. I had been told that -- off the top of my
 12 head I will probably get the figure wrong, I don't know,
 13 but that his shares were in principle worth, say,
 14 £70,000, but they had taken into account the
 15 investigations costs, the money that was stolen, and
 16 that was what he would get paid and that was what he was
 17 signing up to. So I would have explained that to him,
 18 but I don't recall specifically the conversation.
 19 Q. Did he try to bargain with you about the value, because
 20 he had had an offer of £170,000 a month beforehand?
 21 A. I don't recall.
 22 Q. You don't recall? You got him to produce page 287, his
 23 short manuscript letter? {E/42/287}
 24 A. No, I didn't get him to produce that at all. As
 25 I explained -- oh, sorry, no -- yes, you are quite

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1 right.
 2 Q. I think you did.
 3 A. No, you are quite right. I thought I was looking at the
 4 previous letter but, no, you are quite right.
 5 Q. It says:
 6 "I wish to resign with immediate effect as employee
 7 and director of Dartford Visionplus Limited and Dartford
 8 Specsavers Limited.
 9 "I would also like to pay for
 10 "[The] investigation costs of 15,610."
 11 That's the figures you had told him. Is that right?
 12 A. Yes.
 13 Q. "The stolen monies of 4,180."
 14 That's the figure you told him.
 15 A. Yes.
 16 Q. "I would also like to transfer my shares to SOG ..."
 17 Or is that "SOS"? I'm not sure.
 18 A. SOG.
 19 Q. "... and would ask that the above funds be deducted from
 20 the share value.
 21 "I would like to sell my shares to SOG at
 22 a reasonable value."
 23 So, plainly, by the time he writes that, no value
 24 has been assigned. He could say, "I would like to sell
 25 my shares at £70,000, which is what we have agreed."

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1 A. I don't know.
 2 Q. How did this letter come to be written?
 3 A. He wrote it.
 4 Q. Yes. When?
 5 A. At some point after the second interview, and I would
 6 imagine -- there was quite a period of time between the
 7 second interview and the paperwork being drafted and we
 8 told him to go for lunch or leave the building. He left
 9 the building for a period of time. I don't recall
 10 whether he wrote that before he left the building,
 11 whilst all the paperwork was being waited for, or when
 12 he got back and the paperwork was there and he wrote it
 13 at that time. I don't know when but it was some time
 14 following the second interview.
 15 Q. What do you call the "second interview"?
 16 A. The second interview, where he made the allegations.
 17 Q. So does he makes the allegations before or after the
 18 deal is done --
 19 A. Erm ...
 20 Q. -- or as part of the same timescale?
 21 A. I don't know. That letter could have been written
 22 before. I don't know.
 23 Q. You don't seem to have a very good recollection of quite
 24 what happened that day.
 25 A. No, I don't have a strong recollection of what happened

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1 that day.
 2 Q. Is it possible then that you had instructions from
 3 Mr Dyson, before you went in, to try to get his shares
 4 off him at a very low price, let's say £55,000, and that
 5 if you were able to do that, you should do it. Is that
 6 possible?
 7 A. Not at all.
 8 Q. Is it possible that you were under instruction from
 9 Mr Dyson not to tell Ms Birdi what was going on in
 10 relation to all of that?
 11 A. Not at all.
 12 Q. Is it possible that Mr Dyson instructed you to ensure
 13 that Ms Birdi had no means of preventing you from doing
 14 these things on behalf of her company?
 15 A. No.
 16 Q. And when you came to get him to do his second interview,
 17 as you call it --
 18 A. Hm-mm.
 19 Q. -- and that may have been part of the discussions, part
 20 of the discussions, for the sale of his shares and his
 21 way out.
 22 A. No, the second interview was completed before any
 23 discussion was taken in relation to what we would do
 24 next. So all interviews were done, finished, before we
 25 then started on the next stage, which was discussing how

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1 we were going to resolve it.
 2 Q. Oh, I see. So the offer for a way out was only made
 3 after the second interview?
 4 A. Yes, I wouldn't discuss that -- that would be premature
 5 in the normal process of events that you would follow.
 6 I would complete interviews and once everything was
 7 done, signed and agreed, I would then start having
 8 conversations about where do we go from here, but you
 9 would document all the evidence first before you then
 10 embark on another journey.
 11 Q. So we can time matters much better then. According to
 12 you, the second interview, page 286, finished at 11.20?
 13 A. Sorry, page?
 14 Q. 286. {E/41/286} The second interview, the one where he
 15 makes the allegations against Ms Birdi, finishes at,
 16 according to you, 11.20.
 17 A. Yes.
 18 Q. And you said you did actually put that number in, that
 19 figure?
 20 A. It was actually a bit further than that because it's
 21 11.33 at the front, where I have written in manuscript
 22 a time.
 23 Q. That would be after he has had a chance to -- you would
 24 have had to print off the interview --
 25 A. Yes.

220

1 Q. -- get him to read through it -- 1
2 A. Yes. 2
3 Q. -- sign it, and that's 11.33. So by 11.33 on the 20th 3
4 you have got him to make the allegations on the 4
5 second interview. 5
6 A. I haven't got him to make any allegations. He has made 6
7 allegations that I have documented in a transcript of 7
8 interview. 8
9 Q. Okay. 9
10 A. I didn't solicit them. 10
11 Q. Why is it a separate interview? 11
12 A. Because I dealt with his questions of honesty in the 12
13 first interview and after that we then made verbal 13
14 comments around his motivation and his frustrations and 14
15 in that process made a series of allegations. So I then 15
16 did a second interview -- interview record. 16
17 Q. And only once he has done that do you now say you even 17
18 got on to the possibility of a way out for him. 18
19 A. I don't think I would have had those discussions before 19
20 this interview but I don't recall it specifically. But 20
21 I think it's unlikely. 21
22 MR STUART: My Lord, I see the time. 22
23 MR JUSTICE NUGEE: Very well. 23
24 We will resume at 10.30 tomorrow. 24
25 I'll remind you, Mr McAlindon, not to speak to 25

1 anybody about the case or your evidence overnight.
2 Mr Potts?
3 MR POTTS: My Lord, I'm just wondering, in terms of
4 scheduling witnesses, my Lord, on the timetable.
5 MR JUSTICE NUGEE: Yes, the timetable is --
6 MR STUART: It's slipping, yes, my Lord. I'm sorry.
7 MR JUSTICE NUGEE: You still have quite a few questions to
8 ask Mr McAlindon, I apprehend.
9 MR STUART: I have, yes.
10 MR JUSTICE NUGEE: Yes. Could you have discussions with
11 Mr Potts --
12 MR STUART: Yes.
13 MR JUSTICE NUGEE: -- as to the effect that is likely to
14 have on the remainder of the timetable, because there
15 are various witnesses still to come and it's fair to
16 give them as much notice as possible.
17 MR STUART: Absolutely definitely, my Lord.
18 MR JUSTICE NUGEE: Yes. 10.30 tomorrow.
19 (4.23 pm)
20 (The court adjourned until 10.30 am the following day)
21
22
23
24
25

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