

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

CH 1998 D No. 2149.

Court No. 58
The Royal Courts of Justice
The Strand
LONDON EC4

21st June 1999

Before:

MR JUSTICE LADDIE

JOHN ALFRED DONOVAN

(Plaintiff)

-v-

SHELL UK LTD

(Defendant)

(by Original Action)

AND BETWEEN

SHELL UK LTD

(Plaintiff by Counterclaim)

-and-

- (1) JOHN ALFRED DONOVAN
(2) DON MARKETING UK LIMITED
(3) ALFRED ERNEST DONOVAN
(Defendants to Counterclaim)
(by Counterclaim)
-

MR G COX, assisted by MS L LANE, instructed by Royds
Treadwell, appeared on behalf of the Plaintiffs.

MR G HOBBS, assisted by MR P ROBERTS, instructed by DJ
Freeman, appeared on behalf of the Defendant.



SMITH BERNAL
INTERNATIONAL

A LEGALINK COMPANY

[1] Monday, 21st June, 1999
 [2] MR ROGER SOTHERTON
 [3] Cross-examined by MR HOBBS (Cont.)
 [4] MR HOBBS: Mr Sotherton, please, I would like you to take
 [5] file E1, if you would not mind. You might like to take
 [6] this opportunity to clear your bench of the other
 [7] files. At file E1, would you turn to page 450/A, which
 [8] is a document we were looking at together on Friday.
 [9] A: Yes.
 [10] Q: All right, now, I think we have agreed that the
 [11] handwriting at the top of that page, at the top right,
 [12] is your handwriting?
 [13] A: Yes.
 [14] Q: It says, "Relates to proposal presented to Paul King in
 [15] November 1989".
 [16] A: Yes.
 [17] Q: This proposal, as I understand it, that you are
 [18] referring to there is Concept 4?
 [19] A: Yes.
 [20] Q: Do you have any recollection yourself of presenting that
 [21] proposal which we know as Concept 4 to Paul King in
 [22] 1989?
 [23] A: Not clearly, no.
 [24] Q: Do you have any recollection?
 [25] A: Yes, that I presented it at some point, but I could not

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[1] be accurate about the date.
 [2] Q: You see, what intrigues me is that you are writing on
 [3] the top of this letter to Paul King in November 1989 in
 [4] circumstances where, as I understand it from all other
 [5] materials in the case, that the proposal was presented
 [6] on 23rd October 1989?
 [7] A: No, the comment refers to a presentation to Paul King in
 [8] 1989.
 [9] Q: True. The date which you are writing is November 1989.
 [10] You are as I understand it -
 [11] A: No, sorry, I think the date that I am writing here is
 [12] 24.11.92.
 [13] Q: Which date are you referring to?
 [14] A: I am referring to the date on which that note was
 [15] written, on the top right-hand corner of page 450/A.
 [16] Q: You are saying that you wrote the note at the front
 [17] here?
 [18] A: Yes.
 [19] Q: In 1992?
 [20] A: I would think so, yes.
 [21] Q: Right. Okay. Now, in fact, the date on the document
 [22] relating to Concept 4 and its presentation to Paul King
 [23] was on 23rd October 1989. Did you not know that in
 [24] 1992, in November 1992?
 [25] A: Yes, probably.

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[1] Q: Who made the presentation to Paul King, do you know?
 [2] A: I certainly would have been involved.
 [3] Q: Was it you?
 [4] A: I probably jointly with John Donovan, yes.
 [5] Q: Turn, if you would, please, to -
 [6] MR JUSTICE LADDIE: Mr Sotherton, I know this is difficult
 [7] because you are having to turn your mind back in this
 [8] case 10 years, and I find it unhelpful when you say "I
 [9] probably did something, yes". What Mr Hobbs is asking
 [10] you to do is to recall what happened. If you say "I
 [11] probably did something", it means that you cannot
 [12] remember but you think it is likely. If you say "yes",
 [13] it means you did something. I want to know whether you
 [14] can recall these events or whether you cannot recall
 [15] them. I want to know, if you cannot recall them,
 [16] whether you are trying to do your best to work out what
 [17] was likely to have happened. So for you to say
 [18] "probably, yes", really does not do me any good.
 [19] A: I think the answer would be "probably", then.
 [20] MR HOBBS: So when you answer "probably", you are answering
 [21] within that frame of reference which my Lord has just
 [22] indicated?
 [23] A: Yes.
 [24] Q: Would you turn to page 449, in the same bundle, please.
 [25] This letter carries the letter reference RGS/SDP/AB100b

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[1] at the top. Do you see that?
 [2] A: Yes.
 [3] Q: You were present in court when I was asking Mr Donovan
 [4] questions about that reference, were you not?
 [5] A: Yes.
 [6] Q: The RGS is you, is it not?
 [7] A: Correct.
 [8] Q: SDP is Sharon Peacock?
 [9] A: Correct.
 [10] Q: And why is this numbered B, do you know?
 [11] A: AB100b would probably be the file reference or the
 [12] computer reference.
 [13] Q: And the significance of the last letter "b" is what?
 [14] A: I am not completely sure but it may be a second letter
 [15] in a sequence or perhaps a redraft of a letter.
 [16] Q: A redraft of a letter?
 [17] A: Yes, maybe.
 [18] Q: How might that occur?
 [19] A: Only if it is - probably if it is retained on computer.
 [20] Q: You will have to explain because it is a little cryptic
 [21] to me.
 [22] A: If a letter is drafted and is not printed or sent, and
 [23] left on computer, it may be modified and then sent, but
 [24] for the reference of - for the purpose of what did it
 [25] say before, I think that we used to use a system like

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[1] that. That was something that was devised by Sharon
 [2] Peacock. I do not really know the complete details. I
 [3] am drawing on my memory of what we used to do
 [4] administratively.
 [5] Q: Would this be designated AB100b because it is the second
 [6] draft of a letter, the first draft of which was AB100?
 [7] A: That is a possibility.
 [8] Q: Keep a finger in 449 and go to 422. Do you see the code
 [9] reference at the top of 422?
 [10] A: Yes.
 [11] Q: Are you able to explain the relationship, if there is
 [12] one, between what is on 422 and what is on 449?
 [13] A: Without reading the entire contents of the letter,
 [14] probably that it is a follow on letter.
 [15] Q: Right. Is it your recollection that Mr John Donovan had
 [16] a hand in the drafting of the letter which is at 449?
 [17] A: Yes, he most certainly would have done.
 [18] Q: Are you able to recollect to what extent he was involved
 [19] in the drafting and to what extent it is your wording?
 [20] A: No, I am not. It is probably myself that generated it
 [21] and passed it to John for approval. At that time we
 [22] were very busy with a number of projects.
 [23] Q: Turn to page 450?
 [24] A: Yes.
 [25] Q: And you will see just above "yours sincerely" there is a

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[1] contents of this letter?
 [2] A: I think so.
 [3] Q: Is there anything - think about this carefully - is
 [4] there anything in this letter which would have been
 [5] added at the time of writing of this that not been
 [6] discussed previously with Horley?
 [7] A: Could you repeat that?
 [8] Q: Is there anything in the contents of this letter that
 [9] has been added at the time of writing that had not
 [10] previously been discussed with Horley?
 [11] A: I should not think so, I wouldn't think so.
 [12] Q: So your evidence to my Lord is that the totality of the
 [13] material there, if not exactly in those words, but the
 [14] totality of the material was discussed with Horley?
 [15] A: Yes.
 [16] Q: Now, I need you, please, to give my Lord an account in
 [17] your own words of how this letter came to be written,
 [18] and I want to start your recollection in this way.
 [19] There came a time in July when a game proposal was put
 [20] to Sainsbury, and that was the letter that I had open
 [21] with you a moment or two ago, which I have just lost.
 [22] 422.
 [23] At page 422, which was the other letter which
 [24] carried the reference AB100, there is a proposal being
 [25] put to Horley by John Donovan and it relates to games?

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[1] statement:
 [2] "I trust that the above account accurately
 [3] reflects the various matters disclosed and discussed".
 [4] Do you see that?
 [5] A: This is 450B.
 [6] Q: It is 450 in the bundle. There is no B number on the
 [7] page I have open.
 [8] A: I have 450A and B.
 [9] Q: Yes, if you could - I am not after the A and B letter.
 [10] We have left that one. If you go to the page in front
 [11] of 450A, it should be just 450?
 [12] A: I can see now.
 [13] Q: That is the second page of the two page letter, the
 [14] first page is at 449, and I am asking you about that
 [15] statement at the back end of 450. On 450 it says:
 [16] "I trust that the above account accurately
 [17] reflects the various matters disclosed and discussed".
 [18] Do you see that?
 [19] A: Yes.
 [20] Q: Is it your evidence to my Lord that the contents of this
 [21] letter, that is referring to which precedes that
 [22] statement, is a record which truly and accurately
 [23] reflects conversations you had had with Mr Horley?
 [24] A: Yes, I believe so.
 [25] Q: You would say that would you about the totality of the

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[1] A: Yes.
 [2] Q: Do you need to see the letter at 422 to accept that from
 [3] me?
 [4] A: I have that in front of me.
 [5] Q: Right. There is nothing in that letter of 10th July
 [6] 1990 relating to the multibrand loyalty card proposal,
 [7] is there?
 [8] A: Correct.
 [9] Q: I need you, please, to tell my Lord how between the 10th
 [10] July 1990 you reach a situation in which you come to
 [11] write the letter of 24th July 1990. What happens
 [12] between the 10th and the 24th that results in the letter
 [13] of the 24th, please?
 [14] A: I followed up John's initial contact with Mr Horley,
 [15] John being very busy on the Star Trek promotion, as I
 [16] recall, and it was then left for me, being based more so
 [17] at the office, to follow things through. I can't recall
 [18] exactly how many phone calls I had with Mr Horley but it
 [19] resulted in this final letter to him.
 [20] Q: Now, at one stage in your telephone communications with
 [21] Horley, you claim to have revealed to him the multibrand
 [22] loyalty card proposal?
 [23] A: Yes.
 [24] Q: You are saying "yes"?
 [25] A: Yes.

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[1] Q: Do you remember doing that?
 [2] A: Not clearly.
 [3] Q: How poor is your recollection of doing that?
 [4] A: Quite poor for any detail.
 [5] Q: Are you actually certain of the general proposition that
 [6] you did reveal to Horley the multibrand loyalty card
 [7] proposal?
 [8] A: Yes, because of the notes that are contained in the
 [9] letter.
 [10] Q: So your position is that the letter says you did and
 [11] therefore you did?
 [12] A: That is my reminder, yes.
 [13] Q: You have no independent recollection of doing it, apart
 [14] from this letter, would that be right?
 [15] A: Very vague, very vague.
 [16] Q: Was your recollection vague when you prepared your
 [17] witness statement for the purposes of these proceedings?
 [18] A: Just as vague, but reminded by the information that is
 [19] contained in the letters.
 [20] Q: You felt able to indicate a date in July 1990 when you
 [21] had this conversation with Horley. Are you able now to
 [22] indicate a date for that conversation with Horley?
 [23] A: No, I can't recall.
 [24] Q: You say in your witness statement that it was about 20th
 [25] July?

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[1] A: Yes, that is a guess.
 [2] Q: You described the conversation in your witness
 [3] statement. What I would like you to do is to describe
 [4] the conversation now from your recollection.
 [5] A: I was better able to do that of course with all of the
 [6] information that I had in front of me.
 [7] Q: What did you have in front of you?
 [8] A: But I think I recall I would normally basically follow
 [9] some documents for prompting, which certainly would have
 [10] been in the letters on the file to that point, and then
 [11] would have gone on to just cover as many matters as
 [12] possible that were contained within that.
 [13] Q: When you contacted Horley, as I understand it, you had
 [14] been deputed by John Donovan to speak to him about the
 [15] game proposal which had been ventilated in the earlier
 [16] letter?
 [17] A: Yes.
 [18] Q: So you were not initially deputed by John Donovan to
 [19] speak to him about a multibrand loyalty card programme
 [20] at all, were you?
 [21] A: That does not seem to be the case from my original
 [22] letter, no.
 [23] Q: You were not deputed to speak to him about a multibrand
 [24] loyalty card scheme at all?
 [25] A: No.

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[1] Q: How come then that you did?
 [2] A: I think the conversation led that way.
 [3] Q: Did you lead it that way?
 [4] A: I probably did, yes.
 [5] Q: He would not have, would he, because he did not know
 [6] what you had to tell him?
 [7] A: No.
 [8] Q: Did you, before speaking to Horley on the multibrand
 [9] loyalty concept, discuss the fact that you were going to
 [10] do so with John Donovan?
 [11] A: I probably would have done loosely.
 [12] Q: You have to be more helpful than that please?
 [13] A: If the conversation had been specific and we were going
 [14] to make a major proposal, I think I probably would have
 [15] had a formal proposal form written out with notes to
 [16] refer to.
 [17] Q: Let me be clear on this. I think I had understood that
 [18] the revelation to Horley about the multibrand loyalty
 [19] card scheme was something which occurred in the course
 [20] of the conversation on your initiative?
 [21] A: Yes.
 [22] Q: Would I be right in understanding, therefore, that this
 [23] revelation occurred without any prior discussion between
 [24] yourself and John Donovan to the effect that you were
 [25] going to do it?

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[1] A: I can't recall a specific.
 [2] Q: If you had had a conversation with John Donovan, that
 [3] would be something you would recall, would it not?
 [4] A: Not necessarily. It may have been that I may have said
 [5] to John Donovan that I am going to speak to Mr Horley,
 [6] and if I had an opportunity I might mention to him the
 [7] multibrand loyalty programme during the conversation, if
 [8] there was an opportunity. I might ask for a meeting to
 [9] make a more formal presentation to him. I can't recall
 [10] the exact content of the telephone conversation.
 [11] Q: In order to have made a proposal to Horley about the
 [12] multi-brands concept, you would have to know what it
 [13] was, would you not?
 [14] A: Yes.
 [15] Q: When, according to your recollection, did John Donovan
 [16] reveal to you the multibrand loyalty card concept?
 [17] A: We had been talking about it for some years on and off.
 [18] Q: Some years?
 [19] A: Yes, we had been developing it for quite a long while.
 [20] Q: How many years?
 [21] A: A couple of years, three years maybe. I am not certain
 [22] about that, but we were certainly discussing it and
 [23] developing our thoughts on it for a very long while.
 [24] Q: And your thoughts, that is your collective thoughts on
 [25] the subject -

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[1] A: That is led by John Donovan.
[2] Q: Yes. The thoughts that you had been exchanging on the
[3] subject of the multibrand loyalty card concept, you are
[4] saying a couple of years, it is measured in years.
[5] A: Yes.
[6] Q: And that is a couple of years prior to this letter of
[7] 24th July 1990?
[8] A: Well, originally, we had the Megamatch game that was
[9] devised in 1985/86 I think, and this really was a
[10] further development of that.
[11] Q: Speaking in terms of this being a further development of
[12] that, "this", for the purposes of the transcript, is the
[13] letter of 24th July 1990 to Horley. This is a
[14] refinement, is it not, of earlier thoughts?
[15] A: Yes.
[16] Q: And, as I understand the position, the person who was
[17] the author of the refinements was John Donovan?
[18] A: Yes.
[19] Q: If I have understood the position correctly, the
[20] refinements include the use of Smart cards, issuing and
[21] redeeming partners and all of that sort of stuff?
[22] A: Yes.
[23] Q: When did John Donovan reveal to you the enhancements
[24] that we see set out in this letter?
[25] A: 1987/88.

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[1] Q: As I understand it, the information was that Shell was
[2] not interested at that time?
[3] A: No, they were interested in long-term.
[4] Q: What do you mean "interested in long-term".
[5] A: Well, a project that may be developed at a later date.
[6] Q: They were not interested in going ahead with it at that
[7] point in time?
[8] A: Not immediately, no.
[9] Q: Not for the foreseeable future, correct?
[10] A: No.
[11] Q: When you say "no", do you mean not?
[12] A: I am saying, no, not for the foreseeable future.
[13] Q: That is right. So your recollection is that you gave
[14] Horley information about the multibrand loyalty
[15] programme before you obtained clearance from anyone at
[16] Shell to do so, is that correct?
[17] A: Yes, it may be that way around, yes.
[18] Q: Did you regard the multibrand loyalty programme concept
[19] as a very original - the card concept as a very
[20] original and innovative thing?
[21] A: Certainly.
[22] Q: Had you, prior to seeking Paul King's authorisation,
[23] revealed that to anybody at Shell? Had you revealed the
[24] concept to anyone at Shell?
[25] A: Paul King.

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[1] Q: He did not reveal them to you in the run up to this
[2] letter on 24th July 1990, the last few days of it?
[3] A: Much longer than that previously.
[4] Q: You are sure about that, aren't you?
[5] A: Yes, I am fairly sure about that, yes.
[6] Q: Did you say "very sure"?
[7] A: Fairly sure.
[8] Q: As sure as you are about anything -
[9] A: It is putting fine dates on it that I am unable to do.
[10] Q: But we are measuring it in years. When you came to
[11] disclose the proposal to Horley, had you previously
[12] indicated to anyone at Shell UK that you were going to
[13] disclose it to Horley?
[14] A: Paul King.
[15] Q: And that was prior to making the disclosure down the
[16] telephone to Horley, was it?
[17] A: Yes.
[18] Q: How far in advance -
[19] A: Sorry, no. I have got that slightly wrong. The
[20] sequence of events probably were, I spoke to Horley
[21] about it and then had to speak to Paul King to be able
[22] to give Horley further information.
[23] Q: What further information did King authorise you to give
[24] to Horley?
[25] A: The fact that Shell would be interested.

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[1] Q: When?
[2] A: Certainly in 89, as per the note of the letter we wrote
[3] - we read a short while ago.
[4] Q: Let me follow up on that. Are you saying that in 1989
[5] you revealed to Paul King substantially the same
[6] information as we see set out in this letter of 24th
[7] July 1990?
[8] A: Sorry, would you repeat the question?
[9] Q: Are you saying that in 1989 you had revealed to Paul
[10] King substantially the same information as we see set
[11] out in this letter of 24th July 1990?
[12] A: Yes.
[13] Q: How clear is your recollection on that?
[14] A: Not very, but we were having ongoing discussions with
[15] Paul King as to the development or how things were
[16] developing.
[17] Q: I would like you, please, to take your witness
[18] statement, which you will find in volume C1 at tab 2.
[19] It is tab 2, paragraph 14 I would like you to look at
[20] first. This is where you are discussing these matters
[21] that I have been discussing with you just now.
[22] A: Yes.
[23] Q: I assume you are familiar with the contents of your own
[24] witness statement?
[25] A: Yes.

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[1] Q: In paragraph 14 you say:

[2] "Around 20th July 1990, John Donovan asked me to
[3] take over dealing with the approach to Sainsbury because
[4] he had become so heavily involved with the Star Trek
[5] project, which by then Shell seemed very likely to
[6] adopt." Right?

[7] A: Yes.

[8] Q: "John Donovan asked me to telephone Brian Horley, who
[9] was the Advertising and Marketing Manager of Sainsbury.
[10] During my conversation with Horley, I disclosed the
[11] multibrand loyalty card scheme after seeking and
[12] receiving his undertaking of strictest confidentiality".

[13] A: Yes.

[14] Q: As I understand this, you are saying here that you did
[15] it of your own initiative?

[16] A: Yes.

[17] Q: You say:

[18] "I put it forward because, having listened to his
[19] comments, it seemed a more likely prospect for joint
[20] activity with Shell than Sainsbury becoming involved
[21] with a promotional game".

[22] A: Yes.

[23] Q: That is your evidence:

[24] "I note that although Sainsbury has in recent
[25] years launched the reward loyalty card scheme, it has

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[1] A: Yes.

[2] Q: So they had no particular interest, Mr Sotherton, did
[3] they, in going forward with this proposal at that time?

[4] A: No, not immediately.

[5] Q: They had no particular interest for the foreseeable
[6] future?

[7] A: Yes.

[8] Q: Then you say:

[9] "I suspected that he only expressed an interest
[10] because he was intrigued by all the secrecy attached to
[11] the idea of a Shell/Sainsbury partnership promotion".

[12] A: Yes.

[13] Q: What gave you that impression?

[14] A: Normally one would not have received a response from
[15] somebody like Sainsbury. They were known not to promote
[16] actively below the line.

[17] Q: What was it that he said or did that left you with the
[18] impression that he only expressed an interest because he
[19] was intrigued by all the secrecy?

[20] A: The fact that he was not going to take the matter any
[21] further.

[22] Q: At this point in time your position in your witness
[23] statement is that you have not had a discussion with
[24] King, because if you turn the page to paragraph 15 you
[25] say:

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[1] never conducted a Sainsbury's promotional game. My
[2] assessment of what was likely to be the most appealing
[3] promotional vehicle for Sainsbury has therefore proved
[4] to be correct. I explained the basics of the scheme
[5] with a common currency of loyalty points being
[6] substituted for the game pieces in the MegaMatch
[7] concept. We talked about the shared costs and the type
[8] of loyalty card that would be required."

[9] Pausing there, you are saying, are you, that you
[10] discussed the use of Smart cards with him and the way in
[11] which the cards would be used?

[12] A: Yes.

[13] Q: You talked about shared costs. What was it about costs
[14] that you discussed?

[15] A: That would have been the shared costs for funding the
[16] entire exercise, and how it could be proportionalised
[17] through the different trades or industries.

[18] Q: You went into that degree of detail with Horley, did
[19] you?

[20] A: Yes, but only - that is only a small detail to say that
[21] it would be proportional.

[22] Q: You go on:

[23] "Mr Horley was interested but said that the timing
[24] was not appropriate for Sainsbury. They were not ready
[25] to become involved in promotional activity". Correct?

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[1] "However, John Donovan and I decided that it would
[2] be appropriate to send a letter to Mr Horley, confirming
[3] what had been discussed, and the basis on which the
[4] discussions had been concluded".

[5] "We drafted a letter and sent a copy by fax to
[6] Paul King, probably on the same date, 20th July 1990".

[7] That is your recollection, is it?

[8] A: Yes.

[9] Q: "I subsequently spoke by telephone to Paul King". Was
[10] that subsequently the same day, Mr Sotherton, or
[11] subsequently at some later date?

[12] A: I believe it was on the same day.

[13] Q: And what then was the gist of your conversation with
[14] Mr King that day?

[15] A: It would be to say that I had revealed that concept to
[16] Horley, and obviously wanting to respond to it to get
[17] his approval to do so, and how we should go about it.

[18] Q: You are saying, are you, that Paul King expressed no
[19] surprise or demur to - he did not raise any objection
[20] in relation to your having discussed this with Sainsbury
[21] without clearing it with him first?

[22] A: Not that I can recall.

[23] Q: If he had, you would have recalled, I expect?

[24] A: Or made a note of it, yes.

[25] Q: And there are no notes?

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[1] A: There are no notes, no.
 [2] Q: You say that, having spoken subsequently to King you
 [3] made "some minor alterations to the draft by deleting a
 [4] paragraph about the research carried out for Shell in
 [5] relation to loyalty schemes."
 [6] What did that paragraph say?
 [7] A: I can't recall exactly, but the gist of it was that we
 [8] should not be releasing information that Shell could
 [9] gain.
 [10] Q: Could you say that again, please?
 [11] A: The gist of it was that we should not be releasing
 [12] information that Shell had obtained from their research.
 [13] Q: And what research was this referring to?
 [14] A: This was referring to some research into loyalty schemes
 [15] that Paul King had had carried out, which I believe it
 [16] showed them not to be very, very popular.
 [17] Q: Now, that paragraph was in the letter before King said
 [18] "Take it out", was it?
 [19] A: Yes.
 [20] Q: That would imply that you had revealed the information
 [21] about that research already to Horley?
 [22] A: No, not necessarily.
 [23] Q: Why not?
 [24] A: Because the letter was going to - would be laying out
 [25] in a little more detail to Horley the scheme, and we

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[1] probably would have put that information in it to make
 [2] Mr Horley aware of that.
 [3] Q: So you are saying that King objected to the inclusion of
 [4] a paragraph about research but had no objection to your
 [5] revealing an exciting new multibrand loyalty concept to
 [6] Horley?
 [7] A: No.
 [8] Q: He had no objection to that?
 [9] A: No, not that I can recall.
 [10] Q: Going on:
 [11] "During my conversation with Paul King there was
 [12] some mention about ownership rights to the concept".
 [13] What mention and what discussion was that, please?
 [14] A: I can't remember in detail but Paul King wondered where
 [15] we all stood, going back to the earlier days when we had
 [16] presented the original MegaMatch proposals.
 [17] Q: Or indeed the revelation, as you would have it, of this
 [18] very proposal to him some time previously?
 [19] A: Yes.
 [20] Q: You say that Mr King recalled that Shell had contributed
 [21] towards the costs of Project 100?
 [22] A: Yes.
 [23] Q: "I reminded him that their contribution was solely in
 [24] respect of research costs".
 [25] A: Yes.

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[1] Q: "King then said that he had been instructed to seek an
 [2] option on the multibrand loyalty card concept."
 [3] A: Yes.
 [4] Q: Is that true?
 [5] A: Yes.
 [6] Q: He said in the course of your conversation about this
 [7] letter that he has not seen before that he had
 [8] instructions to seek an option on the concept?
 [9] A: We had lots of conversations following this through at
 [10] different times, but in essence that is it, yes.
 [11] Q: What are these "lots of conversations" you are talking
 [12] about, please?
 [13] A: Discussing all of these matters that are contained in
 [14] here, and I think there are a couple of other prospects
 [15] going on as well, with some other promotional games,
 [16] small promotional games.
 [17] Q: Focusing on this concept that we are looking at here,
 [18] the one that is being referred to in your evidence, do
 [19] you see that there were a number of conversations
 [20] between yourself and King about that?
 [21] A: Yes.
 [22] Q: Was John Donovan party to those discussions?
 [23] A: He was involved with those discussions.
 [24] Q: Was he a party to them in the sense that you sat down
 [25] face to face with King and discussed these matters?

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[1] A: Not that I can recall.
 [2] Q: So then it would have been you, would it, that had the
 [3] discussions with King?
 [4] A: I think we were shuttling calls backwards and forwards.
 [5] If one was in the office one would take a call, but I
 [6] suppose it would be fair to say that I was working
 [7] alongside John with pursuing that matter.
 [8] Q: Are you making this up as you go along?
 [9] A: No, I am just trying to recall.
 [10] Q: Look: "Mr King then said he had been instructed to seek
 [11] an option on the multibrand loyalty card concept".
 [12] A: Yes.
 [13] Q: Who did he say had instructed him? Did he reveal that
 [14] to you?
 [15] A: No, I have no notes to that effect, no.
 [16] Q: Did you ask him?
 [17] A: No.
 [18] Q: You go on to say "...but went on to explain" so King is
 [19] explaining that his department only had budget available
 [20] for the Star Trek scheme?
 [21] A: Yes.
 [22] Q: "Paul King dangled an additional carrot by saying that
 [23] the scheme could have value to Shell in other markets as
 [24] well as in the UK."
 [25] A: Yes.

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[1] Q: "I had a discussion with John Donovan and telephoned
[2] Paul King back with an option arrangement that we knew
[3] Shell would find acceptable."
[4] A: Yes.
[5] Q: What was that option arrangement?
[6] A: That if we received the Star Trek business that we would
[7] hold the option open for Shell.
[8] Q: And that was -
[9] A: Virtually forever.
[10] Q: I beg your pardon?
[11] A: Forever.
[12] Q: Yes, forever, and you did receive the Star Trek
[13] business, did you not?
[14] A: Yes, we did.
[15] Q: And therefore you were aware, you and John Donovan, on
[16] your own version of events, were aware of the existence
[17] of the option at all relevant times subsequently, were
[18] you not?
[19] A: Yes.
[20] Q: You go on in this statement:
[21] "If Shell went forward with the Star Trek concept
[22] they would also seek an option on the multibrand loyalty
[23] scheme. We did not include a time limit on the option
[24] because we knew that Shell would be committed to short
[25] term promotions for a number of years. We were

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[1] administration.
[2] MR JUSTICE LADDIE: Once again, when you say "It would have
[3] been", "There must have been", are you saying you assume
[4] there was or are you saying you recall there was?
[5] A: I am saying I assume there was.
[6] MR JUSTICE LADDIE: You cannot recall it yourself?
[7] A: No.
[8] MR HOBBS: Then I am foxed as to why you assume there was,
[9] if you have no recollection of it. What is it that
[10] makes you assume there was?
[11] A: That would be a standard office procedure.
[12] Q: It would be in a small office?
[13] A: Yes.
[14] Q: And how does it work then? You signed off your letter
[15] of 24th July, did you, you signed it?
[16] A: Yes.
[17] Q: What do you do about taking copies for the purposes of
[18] your files?
[19] A: I would not.
[20] Q: Who would?
[21] A: Sharon Peacock.
[22] Q: And you would sign the letter. A copy would be made for
[23] the purposes of the file, would it?
[24] A: Yes.
[25] Q: And then where would it go from there?

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[1] delighted..." and so on.
[2] You say in paragraph 16:
[3] "I sent the amended letter to Mr Horley on 24th
[4] July 1990 with a copy of the section from our proposal
[5] to Shell dated 23rd October 1989."
[6] Can I ask you this: do you have a clear
[7] recollection of sending that letter of 24th July 1990?
[8] A: No, but I have it noted somewhere I think.
[9] Q: Why are you able to say, as you do here, that you sent
[10] it? What is your basis for that statement?
[11] A: Somewhere in the files is a note to that effect.
[12] Q: Is there?
[13] A: There must be, yes.
[14] Q: Which files?
[15] A: Well, Don Marketing's own files.
[16] Q: Do you have a post book?
[17] A: No, I am no longer involved with Don Marketing.
[18] Q: Did they have a post book at the time?
[19] A: I am unsure.
[20] Q: There are six people in this office and you were
[21] regularly in that office. Did they have a post book?
[22] A: I would assume that there must have been a post book,
[23] yes.
[24] Q: Where was it? Who kept it?
[25] A: It would have been one of the young ladies looking after

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[1] A: I would have a file. She would file it in its relevant
[2] file. It may be one that she would copy to John
[3] Donovan, to his own personal file.
[4] Q: Did you say you would have a file?
[5] A: Yes.
[6] Q: You were a freelance in 1990, or were you an employee in
[7] 1990?
[8] A: An employee in 1990.
[9] Q: Did you keep your files when you ceased to be employed
[10] and became a freelancer to the firm?
[11] A: Yes, there was some information that was kept.
[12] Q: Have you kept files in your house relating to these
[13] matters that we are discussing here?
[14] A: I had done.
[15] Q: Until when?
[16] A: Last October-ish.
[17] Q: Did you not think that they ought to be kept beyond
[18] October?
[19] A: No, I did not, and the reason I disposed of the files
[20] was I had a burglary, and it was rather a strange
[21] circumstance really, because very little was taken but
[22] small items of jewellery left laying around, and at a
[23] later point I discovered that these files had actually
[24] been tampered with, although at the point that the
[25] police were called, the scenes of crimes officers went

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[1] over the house, I had not noticed that any of it had
[2] been disturbed. At that point I wondered, as other
[3] people that appeared to be involved as witnesses in this
[4] case or whatever, who also had burglaries, that I no
[5] longer wanted any of the paperwork with anything to do
[6] with these matters, and passed them back to John
[7] Donovan.

[8] Q: So you passed your files back to him?

[9] A: Yes. He has had them since about last October.

[10] Q: How complete were those files?

[11] A: Not very. Very limited.

[12] Q: They were so complete that you did not notice to begin
[13] with that anything was missing from them, correct?

[14] A: No, they were actually in date order, and there were
[15] also some personal files as well and items from my
[16] personal files had somehow got physically into the file
[17] that contained information not only about the Shell
[18] business but other business as well, and the whole thing
[19] had been upset.

[20] Q: And you stripped out, did you, and gave back to John
[21] Donovan the bits that related to Shell?

[22] A: Anything that related to anything that was not personal,
[23] yes.

[24] Q: Do you remember when you first went into the witness box
[25] I was asking you questions about a letter before action

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[1] not leading anything at all. It was obviously that was
[2] John Donovan that was -

[3] Q: Close up your witness statement, please, and go back to
[4] the letter that we still have open in the other file.

[5] MR JUSTICE LADDIE: Which one is that?

[6] MR HOBBS: E1, 449. I am going to go through with you
[7] certain points under the heading "A multibrand loyalty
[8] programme". This is your letter to Horley. Now, are
[9] you quite sure that this letter was sent and that this
[10] letter was written at this time?

[11] A: Yes.

[12] Q: Are you really sure that that is so? Is it your
[13] evidence on oath to my Lord that it was?

[14] A: Yes.

[15] Q: Under that heading you say:

[16] "When the timing is suitable for Shell, Sainsbury
[17] will be willing to consider the consortium-based
[18] customer loyalty proposal which, with Shell's approval,
[19] we disclosed to you in strictest confidence."

[20] When did you get Shell's approval for the oral
[21] disclosure down the telephone?
[22] (12.15 pm).

[23] A: (Pause). That would have been a couple of days before.

[24] Q: Before what?

[25] A: Before the letter was written.

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[1] which was written by John Donovan in April 1997?

[2] A: I have a vague remembrance of that, yes.

[3] Q: This happened on Friday I think. Is your memory that
[4] bad?

[5] A: It is unfortunately. This weekend I have just been
[6] through a traumatic house completion, and it has been
[7] rather upsetting because the people that we were
[8] completing the house with would not move out and did not
[9] move out until Sunday, so it has not helped my memory at
[10] all.

[11] Q: Look, when I asked about correspondence and letters
[12] which were mentioned in that letter before action of
[13] April 1997, I was not aware at that point in time that
[14] you had your own files in your own house in date order
[15] relating to those matters?

[16] A: To some of the matters.

[17] Q: Some of the matters?

[18] A: Yes, it was not a complete file.

[19] Q: You must, therefore, when that letter before action came
[20] to be written, you know what I am talking about, do you
[21] not, the April 1997 letter -

[22] A: Yes, I think so.

[23] Q: You must have checked your own files relating to those
[24] matters for corresponding letters, must you not?

[25] A: I don't think I did. I don't recall that I did. I was

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[1] Q: No, before the telephone conversation surely?

[2] A: Oh -

[3] Q: When did you get Shell's approval for the oral
[4] disclosure down the telephone to Horley?

[5] A: I am not certain I did.

[6] Q: So that letter is not accurate insofar as it may suggest
[7] that you did have Shell's approval to speak to Horley?

[8] A: I think that was after the event, yes.

[9] Q: Right:

[10] "Copies of pages 12, 13 and 14 of Concept Four, a
[11] section of a multiconcept proposal we presented to
[12] Shell, are attached for your information."

[13] You had permission to do that, you say?

[14] A: Yes.

[15] Q: Who gave you that permission?

[16] A: Paul King.

[17] Q: Did it ever occur to you that it would have been
[18] appropriate to speak to Stuart Carson on these matters?

[19] A: No.

[20] Q: Did you know that Paul King had been sidelined within
[21] Shell at this point?

[22] A: I must have done. Because, of course, Stuart Carson was
[23] there as National Promotions Manager.

[24] Q: Did you know that your colleague, John Donovan, was
[25] dealing, at this very point in time, with Stuart Carson

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[1] on the Star Trek promotion?
[2] A: Yes.
[3] Q: If I have understood you correctly, the option in
[4] relation to this multibrand loyalty programme was linked
[5] to Star Trek?
[6] A: Yes.
[7] Q: Are you saying that you did not think it was appropriate
[8] to speak to Stuart Carson at this point in time about
[9] these matters?
[10] A: No, because Paul King was confidence in what he was
[11] doing. He knew what he was doing. He was involved in
[12] that.
[13] Q: Continuing in this paragraph, you say:
[14] "We foresee a wide variety of redemption options,
[15] perhaps including Air Miles."
[16] Had you discussed that on the telephone with
[17] Horley, according to your evidence?
[18] A: Not that I can recall.
[19] Q: So you had not mentioned Air Miles to Horley -
[20] A: Not in the original conversation.
[21] Q: No. Going ahead:
[22] "As mentioned, if the project proceeds, Shell
[23] would be the lead partner in organising the consortium
[24] which would consist of a range of retailers, plus
[25] possibly fast moving consumer goods brands and other

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[1] "The partners could issue the currency against a
[2] different purchase value. For example, one point with
[3] every £5 spent at Shell stations and one point with
[4] every £2 spent at Sainsburys. Some other businesses
[5] might be linked to the scheme only to the extent of
[6] redeeming the promotional currency."
[7] A: Yes.
[8] Q: You say you revealed that to Horley at the time?
[9] A: In essence, yes.
[10] Q: Turning over to the top of the page:
[11] "Being the originators of the idea, Don Marketing
[12] and our Marketing Director, John Donovan, who has a
[13] personal stake in the project, would require an
[14] appropriate concept fee, a role in the promotion ..."
[15] What was the point of writing to Horley about
[16] this?
[17] A: Because Don Marketing were known actually for supplying
[18] promotional game. This is not actually a promotional
[19] game. That was just making it clear as to where
[20] Don Marketing benefits would come from. Previously, of
[21] course, we were literally selling game cards - numbers
[22] of game cards and taking commissions on the production
[23] of the game cards.
[24] Q: Do you say that you had raised that matter, the matter
[25] of the financial aspects of this, with Horley in

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[1] businesses, with each partner operating the scheme on an
[2] exclusive basis within their own market sector."
[3] A: Yes.
[4] Q: Do you say you revealed substantially that to Horley in
[5] conversation with him?
[6] A: In essence, yes.
[7] Q: You go on to say:
[8] "The programme could even be set up as a separate
[9] business venture in which all the partners issuing and
[10] redeeming the common promotional currency could share
[11] the costs and the benefits."
[12] What did you mean when you wrote "could even be
[13] set up as a separate business"? What did you envisage?
[14] A: That each of those participating partners would each own
[15] a proportion pro rata of that business, that company.
[16] Q: What is that you are seeking to draw out by referring to
[17] it as a "separate" business, as opposed to a simple
[18] consortium?
[19] A: Well, away from the main line business.
[20] Q: Do you say that you revealed that concept or that
[21] proposal to Horley in conversation?
[22] A: In essence, probably, yes.
[23] Q: How probably?
[24] A: It is very likely.
[25] Q: You say:

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[1] conversation before this letter was sent?
[2] A: I probably would not have gone into such detail.
[3] Q: Would you have raised the matter even in not that
[4] detail?
[5] A: I do not think so.
[6] Q: You do not think you raised it?
[7] A: No.
[8] Q: "Paul King of Shell has given me authority to disclose
[9] to you that he recently approached Tesco to explore the
[10] possibility of a joint promotion. This followed up a
[11] meeting which John Donovan had with Tesco directors some
[12] time ago on the Shell-led consortium principle."
[13] When was that meeting?
[14] A: I cannot recall, and it is not noted there.
[15] Q: Do you remember any such meeting, even though you cannot
[16] recall when it occurred?
[17] A: I do not actually, no.
[18] Q: Continuing:
[19] "Although Tesco apparently gave a favourable
[20] response to FKB, Shell senior management decided against
[21] pursuing the discussions with Tesco. We have reason to
[22] believe that Sainsburys would be Shell's preferred
[23] partner."
[24] Who gave you authority to write that?
[25] A: I do not know that we had any authority, specific

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[1] authority, but the subject had come up in discussion a
[2] number of times and Sainsburys were seen to be the
[3] upmarket supermarket that would want to be associated -
[4] that Shell would want associated with their name.

[5] Q: Continuing you say:

[6] "We informed Shell of our discussions with you and
[7] Mr King subsequently approved the content of this
[8] letter, which was drafted following a long telephone
[9] conversation with him."

[10] A: Yes.

[11] Q: I note there that you are saying the letter was drafted
[12] following a long telephone conversation with him, rather
[13] than the other way round; that the letter proceeded in
[14] draft form after the conversation with him?

[15] A: Yes.

[16] Q: Which way round was it?

[17] A: The conversation with Paul King, drafting of letter,
[18] further conversation with Paul King, final letter.

[19] Q: Did that all happen on 20th July, according to your
[20] recollection?

[21] A: On or about.

[22] Q: All in one day?

[23] A: It would probably have been spread over a couple of
[24] days.

[25] MR JUSTICE LADDIE: Mr Sotherton, do you remember the

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[1] or Shell will be in contact with you". There was no
[2] basis, even on your own evidence, was there?

[3] A: I do not recall.

[4] Q: Continuing, it says:

[5] "Bearing in mind the cyclical nature of
[6] promotional activity on petrol forecourts, we anticipate
[7] that there is likely to be a substantial interval,
[8] perhaps five years or six years, before Shell decides
[9] that the timing is suitable."

[10] Do you say it was King who suggested that figure
[11] of five years or six years?

[12] A: No - well, it may have been Paul, but it was probably
[13] John Donovan's crystal ball.

[14] Q: His crystal ball?

[15] A: Yes.

[16] Q: Are you saying that you had made statements to Horley to
[17] substantially the effect of that paragraph I have just
[18] read you before you wrote this letter?

[19] A: No.

[20] Q: No. Look at the next paragraph:

[21] "The proposed multibrand loyalty scheme could
[22] utilise plastic Swipe Cards. In the not too distant
[23] future a multipurpose Smart Card could not only process
[24] the common promotional currency, but also provide other
[25] functions including data capture and even financial

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[1] sequence, or are you trying to reconstruct it?

[2] A: No, I - I think I am probably reconstructing it.

[3] MR HOBBS: In the next paragraph you say:

[4] "Either Don Marketing or Shell will be in contact
[5] with you at an appropriate date in the future to discuss
[6] making a detailed presentation to Sainsburys and other
[7] selected potential partners."

[8] How did you know that?

[9] A: (Pause). I can only assume that Paul King had indicated
[10] that, if things were to move forward at a later date,
[11] there would obviously be that contact that it mentions,
[12] by either one of us: Don Marketing or Paul King or
[13] Shell.

[14] Q: In fact you knew, did you not, at the time - in 1990 -
[15] according to your own version of these events, that
[16] Shell was not interested in proceeding and Sainsburys
[17] were not interested in proceeding?

[18] A: No, not in the near future.

[19] Q: Or the foreseeable future actually. You knew that, did
[20] you not?

[21] A: Yes.

[22] Q: Even on your own version of events you knew that?

[23] A: Yes.

[24] Q: There is no basis and there was no basis, even in your
[25] own evidence, for writing that statement "Don Marketing

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[1] transactions. We have already discussed possibilities
[2] with Barclays Bank. It is possible that the cards
[3] could, to some degree, be personalised in terms of
[4] design and function to suit the marketing objectives of
[5] individual partners, who could reap the benefits of
[6] shared customer data, shared costs and unprecedented
[7] advertising exposure at many thousands of retail
[8] outlets."

[9] Are you saying you revealed substantially that
[10] information to Horley in conversation before this
[11] letter?

[12] A: No, not all of it.

[13] Q: Which bits of it?

[14] A: Certainly the Swipe Cards, which was a term that I used,
[15] and certainly the data capture facility, as they were
[16] two important parts of it.

[17] Q: And you say you revealed that orally - those
[18] points - to Horley in conversation before this letter?

[19] A: Yes.

[20] Q: Right. Do you wish to reconsider then what you said a
[21] few moments ago - it is more than a few moments ago
[22] actually - in relation to that sentence there:

[23] "I trust that the above account accurately
[24] reflects the various matters disclosed and discussed."

[25] I think, on your own evidence just now, you did

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[1] not discuss all of those matters or disclose all of them
 [2] to Horley?
 [3] A: No, some of them are being revealed as new in the text
 [4] of the letter.
 [5] Q: Which of them do you regard as innovative at the date of
 [6] this letter?
 [7] A: The combining together or the essence of the multibrand
 [8] consortium and its use of electronic-type cards for
 [9] gaining the information and the common currency.
 [10] Q: Mr Sotherton, this letter substantially describes the
 [11] Shell Smart Scheme, does it not?
 [12] A: Yes.
 [13] Q: And was it written with knowledge of the Shell Smart
 [14] Scheme?
 [15] A: How could it be?
 [16] Q: Was it written with knowledge of the Shell Smart Scheme?
 [17] A: No.
 [18] Q: So you foresaw, did you, what was going to come to pass
 [19] in five or six years' time?
 [20] A: I think that was a good guess.
 [21] Q: Turn to the letter, please, which is on page 446.
 [22] A: Yes.
 [23] Q: This is you again, and this time we have a copy of your
 [24] signature on the letter?
 [25] A: Yes.

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[1] Q: What was your normal practice in this connection?
 [2] Because your signature does not appear on page 450.
 [3] A: I probably signed it before copies were made.
 [4] Q: How do you account then for the absence of your
 [5] signature on 450?
 [6] A: I see that it has got circulation, so maybe I was given
 [7] the original to sign for posting and the rest were filed
 [8] without signature.
 [9] Q: You see, these two letters would have gone out at the
 [10] same time, would they not? Because they are closely
 [11] related, they have been produced under parallel
 [12] circumstances and they are both dated 24th July?
 [13] A: Yes.
 [14] Q: 446; this is your letter to King. Do you remember this
 [15] letter?
 [16] A: Yes, inasmuch as I have it in front of me and am
 [17] reminded by the content of it.
 [18] Q: "Thank you for confirming by telephone Shell's approval
 [19] of the letter to Sainsburys, which you have now cleared
 [20] with Stuart Carson and senior management."
 [21] What was the source of your information there?
 [22] A: Paul King.
 [23] Q: "As per instructions, we have deleted the reference to
 [24] the research findings. The revised version enclosed has
 [25] been mailed to Sainsburys."

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[1] Your evidence is, is it not, that the letter we
 [2] were just looking at is the enclosed letter?
 [3] A: Yes.
 [4] Q: "The letter does get across the message you were keen to
 [5] convey; that Shell view Sainsburys as an ideal partner.
 [6] They are apparently not considered to be too
 [7] downmarket."
 [8] You go on to say:
 [9] "Sainsburys' unexpected interest at least spurred
 [10] us on to put some flesh on the initial proposal we
 [11] discussed with you and Tim some months ago."
 [12] MR JUSTICE LADDIE: Have you finished with that second
 [13] paragraph, Mr Hobbs?
 [14] MR HOBBS: I have, my Lord.
 [15] MR JUSTICE LADDIE: Mr Sotherton, as I understand the
 [16] evidence you have given, Shell were not interested at
 [17] this time in a multibrand loyalty scheme?
 [18] A: Yes.
 [19] MR JUSTICE LADDIE: And, from your conversations with
 [20] Sainsburys, Sainsburys was not interested in a
 [21] multibrand loyalty scheme, certainly not for the
 [22] immediate and maybe not for the long future?
 [23] A: Yes.
 [24] MR JUSTICE LADDIE: You say in the second paragraph:
 [25] "The letter [the letter to Sainsburys] does get

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[1] across the message you were keen to convey ..."
 [2] A: Yes.
 [3] MR JUSTICE LADDIE: Why were they keen to convey that they
 [4] wanted Sainsburys to be a partner in a project they were
 [5] not keen to have?
 [6] A: That was Paul King on the basis that, if there is a
 [7] sudden change, that Sainsburys would be the ideal
 [8] partner because they were not too downmarket.
 [9] MR JUSTICE LADDIE: And they wanted you to tell them that in
 [10] case they changed their mind some years in the future?
 [11] A: Probably, yes.
 [12] MR JUSTICE LADDIE: You say "probably". Do you remember it,
 [13] or are you trying to reconstruct?
 [14] A: I do have vague recollections of that discussion,
 [15] because it was discussed on a number of occasions. So
 [16] that is obviously the reason for its inclusion in the
 [17] letter.
 [18] MR HOBBS: Something has just been pointed out to me that
 [19] I ought to point out to you: the letter of
 [20] 24th July 1990 and the letter of 24th July 1990 at
 [21] 449 - so the letter at 446 and the letter at 449 are
 [22] both same date. They both carry the same reference
 [23] "RGS/SDP"?
 [24] A: Yes.
 [25] Q: There is an oddity. Why is it that the word

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[1] "Sainsburys" is written every time it appears with "s"
 [2] in the letter in 446 and it is not written in that way
 [3] every time it appears in the other letter at 449?
 [4] (12.30 pm)
 [5] A: I really cannot imagine.
 [6] Q: But you proofread documents extremely carefully, do you
 [7] not?
 [8] A: Yes.
 [9] Q: These letters were supposedly from the reference typed
 [10] by "SDP", were they not?
 [11] A: Yes.
 [12] Q: Speaking purely for myself, I would expect a secretary
 [13] like Sharon Peacock to use the same way of writing
 [14] "Sainsburys" from one letter to the next on the same
 [15] day. Would you not?
 [16] A: Yes, but the reference would not necessarily mean that
 [17] Sharon had typed it.
 [18] Q: Who did, if she did not?
 [19] A: It would have been one of the other young ladies that
 [20] were there at the time.
 [21] Q: And both letters go out under your signature with that
 [22] niggling disconformity between the two?
 [23] A: Yes. That may also have been the reason that one has a
 [24] signature and one does not.
 [25] Q: We have the paragraph on 446, the third paragraph:

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[1] Q: Do you remember the enhancement taking place?
 [2] A: Not exactly, no.
 [3] Q: You would not have been responsible for those
 [4] enhancements anyway, would you?
 [5] A: I would have been involved but not responsible.
 [6] Q: You would not have generated them, would you?
 [7] A: I may have done.
 [8] Q: You might have generated the enhancements that we see
 [9] summed up in the -
 [10] A: I would have been involved in the generation of those
 [11] enhancements.
 [12] Q: What role would you have played?
 [13] A: Working alongside John Donovan in the development of
 [14] that. Normally we would work with promotional games.
 [15] John would concentrate on concepts and my role was very
 [16] much to provide a game mechanic and secure print.
 [17] Q: This is not a game?
 [18] A: No, it is not. Nevertheless, we would both have input
 [19] into the development.
 [20] Q: What was your input to the enhanced concept?
 [21] A: I do not recall.
 [22] Q: Do you recall making any input to the enhanced concept?
 [23] A: Yes, I recall making day-to-day input to the development
 [24] of that and also the marketing of that.
 [25] Q: At what point in time do you claim to have made input to

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[1] "Sainsburys' unexpected interest at least spurred
 [2] us on to put some flesh on the initial proposal we
 [3] discussed with you and Tim some months ago."
 [4] Do you have that sentence in mind?
 [5] A: Yes, I have.
 [6] Q: What did you mean by "some months ago"?
 [7] A: There had been ongoing discussions with Paul King with
 [8] regard to the multibrand loyalty scheme, and that is
 [9] saying we are developing it just slightly more.
 [10] Q: You say "slightly more". What prompts you to say
 [11] "slightly" more?
 [12] A: Because there were little developments that were taking
 [13] place all along, where different considerations were
 [14] being made as to its technical ability, what information
 [15] could be gleaned and so on.
 [16] Q: You are saying that Sainsburys' unexpected interest
 [17] spurred you on to put some flesh on the proposal; yes?
 [18] A: Yes.
 [19] Q: Right. In what way and with what effect did it spur you
 [20] on?
 [21] A: To keep the project going and to try and encourage
 [22] people to take it up, to take the scheme up.
 [23] Q: You, in fact, according to this letter, were spurred by
 [24] Sainsburys' interest to enhance earlier thoughts?
 [25] A: Yes.

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[1] the enhanced concept?
 [2] A: On an ongoing basis. I cannot think of a specific point
 [3] in time.
 [4] Q: So it could not be true, could it, looking at this
 [5] letter, that the enhanced concept was fully worked up
 [6] years before the date of this letter?
 [7] A: I suppose there was always room for improvement.
 [8] Q: It could not be true, could it, that the enhanced
 [9] concept was worked up years in advance of this letter of
 [10] 24th July 1990?
 [11] A: No, I take your point.
 [12] Q: You accept that, do you not?
 [13] A: Yes.
 [14] Q: So the question I have for you is: when, during
 [15] July 1990, do you claim, with John Donovan, to have
 [16] enhanced the concept?
 [17] A: I do not recall.
 [18] Q: Is that because there is nothing to recall because you
 [19] did not, yourself, have any role in enhancing any
 [20] earlier concept?
 [21] A: I think I would have had involvement, yes. I do recall
 [22] it being an ongoing process, but I could not be
 [23] specific.
 [24] Q: You are saying in this letter, if I have understood the
 [25] letter correctly, that Sainsburys has given you impetus

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[1] to put some flesh on the initial proposal. You are
 [2] saying that here. Is that your recollection of what
 [3] happened at the time?
 [4] A: Yes, I think so. That is encouragement, is it not?
 [5] Q: Your next sentence says:
 [6] "Your brief challenged us to devise an innovative
 [7] leap forward in loyalty schemes. We delivered the
 [8] goods."
 [9] A: Yes.
 [10] Q: That, if I understand it correctly, is saying that you
 [11] made an innovative leap forward in response Sainsburys'
 [12] unexpected interest and, therefore, this innovative leap
 [13] forward occurred in July 1990?
 [14] A: I am sorry, I do not think I understand the question.
 [15] Q: We will read this slowly. It says:
 [16] "Your brief challenged us to devise an innovative
 [17] leap forward in loyalty schemes. We delivered the
 [18] goods."
 [19] A: Yes.
 [20] Q: Do you not understand that to be saying that you have in
 [21] fact delivered an innovative leap forward as a result of
 [22] Sainsburys' unexpected interest?
 [23] A: Yes, yes. I understand what you are saying now, yes.
 [24] Q: Is that your evidence and your recollection to my Lord:
 [25] that that is what you claim to have done?

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[1] Q: You are saying that you used research to make the
 [2] enhancement in the expanded proposal, are you not?
 [3] A: Yes.
 [4] Q: Is that true?
 [5] A: Yes. It would point development in the right direction.
 [6] Q: Sorry?
 [7] A: It would point development in the right direction.
 [8] Q: And you went back to that research, did you, in order to
 [9] make the expanded proposal which we have seen described
 [10] in the other letter?
 [11] A: We would have done.
 [12] Q: How long did it take you to come up with the expanded
 [13] proposal?
 [14] A: I cannot recall.
 [15] Q: Days?
 [16] A: Probably.
 [17] Q: Weeks?
 [18] A: Days, I would think.
 [19] Q: Going on:
 [20] "Although we made some suggestions to enhance
 [21] Collect and Select, a revolutionary concept along the
 [22] lines proposed would put Shell miles ahead of the
 [23] opposition if you decide to return to collection schemes
 [24] at a later date."
 [25] Do you see those words "a revolutionary concept"?

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[1] A: Yes.
 [2] Q: In July 1990?
 [3] A: Yes.
 [4] Q: Then you go on:
 [5] "The expanded proposal, as set out in the agreed
 [6] letter to Sainsburys, provides the answers to the
 [7] failings in loyalty schemes which our research
 [8] identified."
 [9] What research is that?
 [10] A: Research that we carried out amongst motorists with
 [11] regard to the popularity of forecourt promotion schemes.
 [12] Q: When did you carry out that research?
 [13] A: I do not recall exactly. That was done at
 [14] John Donovan's instigation, and it did happen on two or
 [15] three occasion that I can recall back in those years.
 [16] Q: Back in ...
 [17] A: Those years.
 [18] Q: What years?
 [19] A: The pre-1990 years.
 [20] Q: The pre-1990 years. Look at that sentence, which goes
 [21] on to say:
 [22] "The research was invaluable, as incidentally was
 [23] the analysis carried out by Jill Shaw on the Fundraisers
 [24] project."
 [25] A: Yes.

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[1] A: Yes.
 [2] Q: Why are you laughing?
 [3] A: It is a glossy word, is it not? It is gloss on what in
 [4] fact it is.
 [5] Q: What about an "innovative leap forward"? Does that make
 [6] you laugh?
 [7] A: That also ...
 [8] Q: Is that what you thought it was: a revolutionary
 [9] concept?
 [10] A: Yes.
 [11] Q: Are you saying to my Lord that you recollect disclosing
 [12] that revolutionary concept orally down the telephone to
 [13] Horley before you told King about it?
 [14] A: No, we had already been discussing it with Paul King on
 [15] an ongoing basis.
 [16] Q: So you had discussed the revolutionary concept, had you,
 [17] as you said earlier, in the years preceding 1990?
 [18] A: Yes.
 [19] Q: Continuing:
 [20] "Even though senior management accepted our
 [21] recommendation to come out of long-term schemes for the
 [22] foreseeable future, it is nice to know that they want to
 [23] keep our multibrand loyalty concept in the locker."
 [24] When did you make that recommendation that you are
 [25] referring to in that first sentence?

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[1] (12.45 pm)
[2] A: I do not recall that I made the recommendation.
[3] Q: Who did?
[4] A: John Donovan.
[5] Q: When did he make it?
[6] A: I would not be certain. Some time prior to this letter
[7] being produced. If I am vague about certain aspects of
[8] the letter of course it is because that at the time it
[9] was written with John Donovan.
[10] Q: Recording a conversation that you claim to have had with
[11] Paul King?
[12] A: Yes.
[13] Q: Your conversation -
[14] A: Parts of the letter would be doing that, yes.
[15] Q: As I understand it, the whole of this letter is
[16] recording your conversation with Paul King?
[17] A: Yes.
[18] Q: It goes on to say:
[19] "It is nice to know they want to keep our
[20] multibrand loyalty scheme in the locker."
[21] You are referring to senior management there?
[22] A: Yes.
[23] Q: What was the source of your information to the effect
[24] that that was the intention of senior management?
[25] A: Paul King.

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[1] Q: Who did you understand senior management to be?
[2] A: Whoever Paul King's senior management was.
[3] Q: Did you not know?
[4] A: Not sure of the change of command, if you like, no.
[5] Q: Right. So do we actually arrive at this position: you
[6] have communicated to Sainsburys orally a revolutionary
[7] concept which they are not interested in going forward
[8] with and which Shell is not interested in going forward
[9] with?
[10] A: Yes, so it transpires.
[11] Q: So you knew at the time?
[12] A: Yes.
[13] Q: It does not transpire: you knew at the time?
[14] A: Yes.
[15] Q: Can you explain to my Lord why it was thought
[16] appropriate to write a letter reinforcing this at that
[17] time?
[18] A: Because I think we were keen to keep the momentum and
[19] the interest going.
[20] Q: What interest?
[21] A: The interest of - well, both the parties here:
[22] Sainsburys and Paul King.
[23] Q: What interest?
[24] A: An interest that it might be usable in the future.
[25] Q: No immediate interest for the foreseeable future?

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[1] A: Right.
[2] Q: And you wanted to keep it going?
[3] A: Yes, to keep the interest.
[4] Q: You are saying, are you, that Shell's senior management
[5] authorised to you reveal a revolutionary concept in
[6] those circumstances?
[7] A: I am saying that is what Paul King said.
[8] Q: You go on to say:
[9] "It was also interesting to hear that, at some
[10] stage, it could have applications in other Shell
[11] markets. The exercise has therefore been well
[12] worthwhile, even if there are no immediate dividends and
[13] we do seem to have won a great consolation prize."
[14] You were referring there to Star Trek?
[15] A: Yes.
[16] Q: You have the option on page 447. We have discussed the
[17] option together. It is your evidence, is it, to my Lord
[18] that you agreed an option to that effect with Paul King?
[19] A: Yes.
[20] Q: Okay, Mr Sotherton, I am going to put it to you
[21] squarely: these two letters were not written in 1990,
[22] were they?
[23] A: Yes, they were.
[24] Q: These two letters were written at a point in time after
[25] the Shell Smart Scheme had rolled out, were they not?

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[1] A: No.
[2] Q: And, Mr Sotherton, the letter of 24th July 1990 that we
[3] have just had open with the option in it was written
[4] after the other letter of 24th July - whenever that was
[5] written - was it not?
[6] A: No.
[7] Q: That explains why, does it not, that the letter of
[8] 24th July 1990 to Paul King seems to have slipped yours
[9] and Mr Donovan's recollection in the letter before
[10] action in April 1997?
[11] A: Sorry, could you repeat that?
[12] Q: In the letter before action of April 1997 there is no
[13] reference to this letter of 24th July 1990 to King?
[14] A: I do not know.
[15] Q: You say you do not know. Do you want me to show you
[16] that letter again?
[17] MR JUSTICE LADDIE: Take it from Mr Hobbs that this letter
[18] is not referred to in the 1997 letter before action.
[19] A: Right.
[20] MR JUSTICE LADDIE: Just assume that is true.
[21] A: Yes.
[22] MR HOBBS: I may not remember your exact words, but I think
[23] you gave evidence in answer to questions from me that
[24] you found that surprising?
[25] A: That it was not found?

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[1] Q: That it was not mentioned.
 [2] A: Yes.
 [3] Q: I put it to you that the reason it was not mentioned in
 [4] that letter before action was because the letter had not
 [5] been written at that point in time?
 [6] A: Well, it was written at that point in time.
 [7] Q: In which case I want you to tell my Lord how it is that
 [8] both you and John Donovan had no recollection of it
 [9] around and about the time of the letter before action in
 [10] April 1997?
 [11] A: I am sorry, you will have to -
 [12] Q: How is that this surprising omission occurred in
 [13] circumstances where you yourself had written the letter
 [14] that is not referred to?
 [15] A: I have never held the files. Only those odd files that
 [16] I had. I did not have the information.
 [17] Q: You negotiated, according to your evidence, the relevant
 [18] option?
 [19] A: Yes.
 [20] Q: Why was it that, when you saw the text of the April 1997
 [21] letter, you made no mention of that fact to Donovan and
 [22] suggested that he refer to it in the letter?
 [23] A: Sorry, I am getting a little bit confused about what it
 [24] is you are saying at the moment.
 [25] Q: There is a letter in April 1997 which makes no mention

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[1] moving and fashion-conscious? In other words, things
 [2] which are marketable now may not be marketable in two
 [3] years' time?
 [4] A: Yes, that is possible.
 [5] MR JUSTICE LADDIE: I have a little bit of problem with this
 [6] letter of 24th July on page 446. According to this, the
 [7] expanded proposal was an innovative leap forward. Is
 [8] that what you thought at the time?
 [9] A: Yes.
 [10] MR JUSTICE LADDIE: It was revolutionary; is that what you
 [11] thought at the time?
 [12] A: Yes.
 [13] MR JUSTICE LADDIE: It would put Shell miles ahead; was that
 [14] what you thought at the time?
 [15] A: Yes.
 [16] MR JUSTICE LADDIE: If all of those were true, it would be
 [17] very valuable; correct?
 [18] A: Yes.
 [19] MR JUSTICE LADDIE: But, of course, if it was not exploited,
 [20] a time could come along when somebody else thought of a
 [21] similar or better scheme for themselves, yes?
 [22] A: That is possible, yes.
 [23] MR JUSTICE LADDIE: You volunteered to Mr Hobbs a few
 [24] minutes ago that the option that you gave to Shell was
 [25] without limit of time?

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[1] of the letter we have open here at 446?
 [2] A: Yes.
 [3] Q: The letter at 446 contains an option that you
 [4] negotiated?
 [5] A: Yes.
 [6] Q: You proofread the letter in April 1997?
 [7] A: Yes.
 [8] Q: Why did it not occur to you that it was appropriate to
 [9] mention the existence of an option in that letter?
 [10] A: I do not recall. I do not know.
 [11] Q: Do you find your own failure to notice that the option
 [12] was not mentioned odd?
 [13] A: No.
 [14] MR JUSTICE LADDIE: Mr Sotherton, you had a responsibility
 [15] to Don Marketing when negotiating with Shell or other
 [16] third parties to secure good deals for Don Marketing?
 [17] A: Yes.
 [18] MR JUSTICE LADDIE: Were you on the sales side, or were both
 [19] you and Mr Donovan on the sales side?
 [20] A: Yes.
 [21] MR JUSTICE LADDIE: Either one or the other. It cannot be
 [22] "yes" to both. Was it you alone, or you and
 [23] Mr Donovan?
 [24] A: Myself and John Donovan.
 [25] MR JUSTICE LADDIE: I see. Is this field one which is fast

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[1] A: Yes.
 [2] MR JUSTICE LADDIE: Do I understand your evidence to be that
 [3] you gave, without limit of time, an option at no charge
 [4] to Shell for something which was a revolutionary leap
 [5] forward and which would put Shell miles ahead of their
 [6] competitors? So, for nothing and without limit of time,
 [7] you gave to Shell something which was very valuable and
 [8] which they had no interest in at the time? Is that your
 [9] evidence?
 [10] A: Yes.
 [11] MR JUSTICE LADDIE: I see.
 [12] MR HOBBS: I have no further questions, my Lord.
 [13] Re-examination by MR COX
 [14] MR COX: Mr Sotherton, to deal with his Lordship's point
 [15] first, could you turn in file E1 - so we can answer
 [16] his Lordship as quickly as we can - to a few
 [17] pages before the documents that you have just been
 [18] shown. Particularly a letter in May; page 429, please.
 [19] Do you have 429? E1/429. What I want to do with you,
 [20] Mr Sotherton, is give you the time to look at the
 [21] documents and put it together in your mind. Do you
 [22] understand?
 [23] A: Yes.
 [24] Q: This is not a memory test, as far as we can make it.
 [25] You must have the documents to be able to look at. Take

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[1] your time, if you would like time to read it. This is a
 [2] letter dated 17th July from Mr Donovan. I want you to
 [3] read it over to yourself and particularly the bottom
 [4] paragraph of page 429 and the top. It talks about the
 [5] relationship of trust between Shell and Don Marketing.
 [6] A: Yes, I have read that part.
 [7] Q: Did you read the top of page 430 as well?
 [8] A: Yes, I did.
 [9] Q: Was it anything odd or unusual, to your mind, that
 [10] Mr Donovan and the company should have been prepared to
 [11] give the right to Shell to first call on the idea?
 [12] A: Not at all. Nothing unusual at all.
 [13] Q: And without any limitation, in the sense of no period of
 [14] time actually affixed to it?
 [15] A: No.
 [16] Q: Why is it not surprising, bearing in mind what you know
 [17] of the relationship?
 [18] A: Because that was the ongoing relationship that we had
 [19] with Shell.
 [20] Q: Yes. I want to come to these letters, if I may, because
 [21] I want you to understand as fully as you can what is
 [22] being suggested. It has not actually been suggested
 [23] yet, but I want you to take in your hand - we will have
 [24] to assume that it is implied - do you see the document
 [25] in the same file at 450A?

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[1] with Andrew Lazenby, does it?
 [2] A: Yes.
 [3] Q: 24/11/92. That records the date of the meeting and the
 [4] date of the note?
 [5] A: Yes.
 [6] Q: "Shell will negotiate royalty arrangements et cetera
 [7] with us if they progress scheme ..."
 [8] What is the next word?
 [9] A: "... at future date."
 [10] Q: "At future date." And the scheme referred to, which
 [11] scheme was that?
 [12] A: The multibrand loyalty scheme.
 [13] Q: The one contained in this letter?
 [14] A: Yes.
 [15] Q: "Don could work with Shell Internationally to exploit
 [16] overseas. Copy of this letter left with AL."
 [17] Is that a true note, as you recorded it at the
 [18] time, of what occurred?
 [19] A: Yes, it is a note left for John Donovan.
 [20] Q: When you put the note on page 450A:
 [21] "Relates to proposal presented to Paul King in
 [22] November 1989."
 [23] Do you see that?
 [24] A: Yes.
 [25] Q: That was put there for what purpose? Can you recall?

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[1] A: Yes.
 [2] Q: And 450B?
 [3] A: Yes.
 [4] Q: You have given evidence already that both of the
 [5] handwritten notes on that letter are your writing;
 [6] correct?
 [7] A: Yes.
 [8] Q: I want you to understand exactly what it is that
 [9] Mr Hobbs is implying and putting to you and the whole
 [10] bearing of the cross-examination that has just been
 [11] concluded with you from Friday into today. Those notes
 [12] that you have put down there are a complete fabrication
 [13] in the sense that they were not put there on the
 [14] 24th, but you have deliberately, in order to fabricate
 [15] evidence, to hoodwink his Lordship, put those down after
 [16] March 1997. Do you understand?
 [17] A: I understand.
 [18] Q: Is that true?
 [19] A: No, it is not true.
 [20] Q: You have appended those notes to help John Donovan after
 [21] March 1997; is that true?
 [22] A: No, it is not.
 [23] Q: When did you make those notes?
 [24] A: On 24th November 1992.
 [25] Q: So, when it says "meeting with AL" that means meeting

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[1] A: I think as a reminder to myself for that presentation.
 [2] Q: Yes. Did you have the document we have been calling
 [3] Concept Four, the initial written document that was put
 [4] to Paul King in front of you at the time? Can you
 [5] remember?
 [6] A: I cannot recall.
 [7] Q: You see, that document is dated 23rd October. The
 [8] document that Concept Four is in.
 [9] A: Right.
 [10] Q: Have a look at it just for a moment. It is in the same
 [11] bundle at page 331. You have told us these notes were
 [12] made, either during the meeting - certainly the one on
 [13] 450B - or on the train on the way home. Is that right?
 [14] A: Yes.
 [15] Q: 331 is the initial proposal, in writing at least, put
 [16] forward to Mr King in 1989. Do you have that?
 [17] A: Yes.
 [18] Q: Do you have the top sheet; 23rd October 1989?
 [19] A: Yes.
 [20] Q: Does it follow that, when you made the note at 450A, you
 [21] had or did not have the document in front of you?
 [22] A: I think we probably would have had it with us.
 [23] Q: You think you probably would?
 [24] A: Yes.
 [25] Q: Why would you put November rather than October then?

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[1] A: I do not know now.
 [2] Q: All right. What I want to make certain you are
 [3] understand is that the accusation against you is that
 [4] you are conspiring to pervert the course of justice
 [5] today by fabricating notes on a document; pretending
 [6] that they happened in 1992 when in fact they never did.
 [7] Do you understand?
 [8] A: Yes, I understand.
 [9] Q: I just want to hear your answer one more time about it
 [10] please: is that true or not?
 [11] A: That is true.
 [12] Q: It is true you fabricated -
 [13] A: Sorry, no, it is not true.
 [14] Q: Let us have a look at the letter itself because -
 [15] MR JUSTICE LADDIE: Mr Cox, how long are you going to be?
 [16] If it is going to take a bit of time ...
 [17] MR COX: I wonder whether we could break now, if
 [18] your Lordship pleases.
 [19] MR JUSTICE LADDIE: Yes.
 [20] (1.00 pm)
 [21] (Luncheon adjournment)
 [22] (2.00 pm)
 [23] MR COX: I was dealing with you just before the
 [24] adjournment, with the understanding that I want you to
 [25] have fully what is being put to you, do you follow that,

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[1] on Friday to Mr Hobbs you said you could not actually
 [2] remember having read this letter, but that you presumed
 [3] that you would have done so and proof read it. I want
 [4] to ask you - just have a quick look at its pages -
 [5] whether or not you can actually remember ever having
 [6] seen this letter before Mr Hobbs showed it to you on
 [7] Friday?
 [8] A: I don't have a clear memory.
 [9] Q: No. It is said, you see, that in that letter, and a lot
 [10] of cross-examination was conducted of you on the
 [11] assumption that you have seen it, there is missing,
 [12] although it refers on page 2 at paragraph 5 to the
 [13] letter to Sainsbury dated 24th July, page 2, paragraph
 [14] 5, that relates to our page 446. Do you see?
 [15] A: Yes.
 [16] Q: In the file open in front of you?
 [17] A: Yes, sorry, which?
 [18] Q: 446 in the big file that you have open. Sorry, 449 in
 [19] the big file you have open in front of you?
 [20] A: Yes.
 [21] Q: So that letter is referred to in Mr Donovan's March
 [22] letter, do you see?
 [23] A: Yes.
 [24] Q: But the one at 446 is not, the one that went with it on
 [25] the same day to Mr King. It is not mentioned in that

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[1] that the notes on the letter at 450A and B have been put
 [2] on by you fraudulently and dishonestly - this is the
 [3] suggestion - after March 1997, or sometime around that
 [4] period, to assist a false claim. Now, is that correct?
 [5] A: No, it is not correct.
 [6] Q: Would you do such a thing to support Mr Donovan?
 [7] A: Certainly not.
 [8] Q: Coming to the letters themselves if you would with me,
 [9] because what is being put forward is that on an analysis
 [10] of some documents one can conclude or infer that these
 [11] letters were not written at the time, I want to explore
 [12] that with you. First I want to ask you this: do you
 [13] actually remember reading that March 1997 letter before
 [14] action that you were shown on Friday? Do you remember
 [15] the one with the different points? Do you remember that
 [16] letter?
 [17] A: Yes, I recall that.
 [18] Q: Do you remember going through it on Friday with
 [19] Mr Hobbs, him taking you through it?
 [20] A: Yes.
 [21] Q: I will take you to it because I do not want to make that
 [22] mistake. It is in bundle X. Do you have a black bundle
 [23] X?
 [24] A: Yes.
 [25] Q: You should find it at tab one. When you gave evidence

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[1] letter, do you see?
 [2] A: Yes.
 [3] Q: Now, do you know how it came about that the letter was
 [4] omitted from that list of letters that Mr Donovan sent
 [5] out?
 [6] A: No, I do not.
 [7] Q: But are you able to tell his Lordship that the letter on
 [8] page 446, going back to 446, as far as you are
 [9] concerned, was that a letter written on 24th July 1990?
 [10] A: Yes.
 [11] Q: How are you able to say that?
 [12] A: Because it has my signature on it.
 [13] Q: Help me with this. Do you recall the background
 [14] discussions that led to it?
 [15] A: Yes, some of them.
 [16] Q: I want to come to those, please, if I may, and see if we
 [17] can help you with some of the documents. Take out file
 [18] E1?
 [19] A: Yes, I have that.
 [20] Q: Go back a little bit in time to the 14th May at page
 [21] 414. Perhaps we can go back a little even before then,
 [22] to page 384. You have told his Lordship that there were
 [23] ongoing discussions with Paul King between October 1989
 [24] and July 1990. Do you recall?
 [25] A: Yes.

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[1] Q: I do not want to take you through all of them but I want
 [2] to see if they jog any memories. If you can take up E1,
 [3] you will see on 14th May there is a letter to Mr Paul
 [4] King?
 [5] MR JUSTICE LADDIE: Page?
 [6] MR COX: Page 414, my Lord. Do you have that?
 [7] A: Yes, I have.
 [8] Q: Now this, if you just quietly read it, skim it over to
 [9] yourself, you will see it is about a Sherlock Holmes
 [10] game.
 [11] A: Yes.
 [12] Q: Have a look at it. (Pause.) Do you remember the
 [13] Sherlock Holmes game?
 [14] A: Not very well at all.
 [15] Q: All right. 14th May, Sherlock Holmes, and you cannot
 [16] help me with a recollection about that?
 [17] A: Not really. Nothing became of it.
 [18] Q: Can you go back to 381. 19th March 1990. Again, a
 [19] letter to Mr King about Project Harbour. Do you
 [20] remember what Project Harbour was? See if the content
 [21] jogs your memory.
 [22] A: Project Harbour would probably be the Make Merry
 [23] proposal.
 [24] Q: Can you remember now, Mr Sotherton, what it was?
 [25] A: From the content of the letter it suggests that that is

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[1] A: Yes.
 [2] Q: Again, do you have any recollection, other than the
 [3] letter, of having done that?
 [4] A: No.
 [5] Q: So, does it come to this really, in relation to all of
 [6] your evidence; that in order for you to be able to give
 [7] it, not unsurprisingly, perhaps not surprisingly, 9
 [8] years ago, you need the documents in front of you?
 [9] A: I need memory joggers, yes.
 [10] Q: If you have a document that records something that you
 [11] have done, it either jogs your memory or you are
 [12] satisfied that that is what you did?
 [13] A: Correct.
 [14] Q: Let us go on in time and see if we can attract any
 [15] more. On page 420, there is a letter to Mr Donovan from
 [16] Mr Horley, 20th June 1990:
 [17] "Dear Mr Donovan, your letter dated 31st May to
 [18] Mr Sturrock was passed to me as Advertising and
 [19] Marketing Manager. Given the information in your
 [20] letter, it is clearly very difficult to make an
 [21] appropriate comment, but if you would like to send me
 [22] the written presentations you refer to I will of course
 [23] give it my consideration".
 [24] Do you see that?
 [25] A: Yes.

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[1] what it was.
 [2] Q: You may be wrong about that. That is why I am asking
 [3] you. Can you remember now, leaving aside the content of
 [4] the letter, what it was, Project Harbour?
 [5] A: No, I can't recall at the moment.
 [6] Q: Let us move on then. 30th May 1990. You have already
 [7] said you cannot remember much about Sherlock Holmes.
 [8] That was 417 where Mr Carson wrote back to Mr Donovan
 [9] about the Sherlock Holmes games proposal. Again, do you
 [10] remember much about that?
 [11] A: I remember it happening at the time in the
 [12] correspondence.
 [13] Q: Do you remember a request? If you have a look at page
 [14] 419, this appears to have been a letter at least PP'd on
 [15] your behalf to Mr Carson on 31 May. See if that jogs
 [16] your memory. (Pause.)
 [17] A: Yes, that helps me to recall that happened.
 [18] Q: Right, what happened there?
 [19] A: I had been asked to - obviously the content of the
 [20] letter, I had been asked to respond to Stuart Carson
 [21] providing those terms and conditions which he had
 [22] requested.
 [23] Q: If you look at the page before you will see Mr Carson
 [24] requesting the terms and conditions. This is the 30th
 [25] and 31st May?

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[1] Q: So again Sainsbury first contact. Help me about
 [2] Sainsbury. Were they regarded as being a useful
 [3] potential person to get involved in promotion with?
 [4] A: Most certainly, yes.
 [5] Q: How were they regarded in that context?
 [6] A: Highly, and an up-market company.
 [7] Q: Did Shell have any interest in Sainsbury?
 [8] A: Yes.
 [9] Q: What interest was that?
 [10] A: That if ever they were to be linked with sales
 [11] promotions of another company with a supermarket brand,
 [12] that Sainsbury would be the ideal one.
 [13] Q: Is it right to observe that Sainsbury was regarded in
 [14] the industry as something of a prize?
 [15] A: You could say that.
 [16] Q: Well, it has been said. It has been said in fact - I
 [17] will give your Lordship the reference in due course -
 [18] by one of the witnesses for Shell in this case.
 [19] Sainsbury, when they got back to Mr Donovan on 20th
 [20] June, was that something unexpected or expected, that
 [21] they would bother to reply?
 [22] A: Unexpected I think.
 [23] Q: Why?
 [24] A: They had not been known to conduct or entertain
 [25] promotional games previously. This was the first time

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[1] that I think we had got any response from them at all.
[2] Q: In previous years had some response been sought from
[3] Sainsbury by Don Marketing?
[4] A: I think so. It would have been part of a standard mail
[5] shot.
[6] Q: But on this occasion the company actually got an answer?
[7] A: Yes.
[8] Q: Asking to be further informed?
[9] A: Yes.
[10] Q: If we turn the page, we see a letter, again with your
[11] reference as well as Mr Donovan's at the top, to
[12] Mr Carson;
[13] "Dear Stuart, Sainsbury have never before
[14] expressed the slightest interest in promotional games.
[15] I was therefore very surprised to receive a letter this
[16] morning from Brian Horley, their Advertising and
[17] Marketing Manager, taking us up on an offer to make a
[18] presentation. I thought it might be worthwhile taking
[19] advantage of the opportunity to mention the multibrand
[20] game concept, hence my call to you this morning
[21] requesting permission to do so. I will make it clear to
[22] Sainsbury that the approach in regard to the multibrand
[23] games is at our instigation and purely to explore the
[24] possibility of joint promotional activity between Shell
[25] and Sainsbury without any commitment from either party".

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[1] Q: Let us have a look, if we may, at this. Mr Horley is
[2] written to about Disneytime?
[3] MR JUSTICE LADDIE: Which one are you on now?
[4] MR COX: 422, my Lord. Mr Horley is written to about
[5] Disneytime, but at the bottom paragraph on 422:
[6] "I would also like to take this opportunity to ask
[7] if Sainsbury might be interested in entering into
[8] exploratory discussions regarding a joint promotional
[9] game next year with Shell UK Oil. As you may be aware,
[10] we have supplied Shell with all of their promotional
[11] games during the last decade and this approach is made
[12] with their knowledge and approval".
[13] Then the basic idea is set out. That is really
[14] the Make Money MegaMatch development, is it not, of Make
[15] Money?
[16] A: Yes.
[17] Q: "The left-hand half note obtained at a Shell station
[18] might match up with the right-hand half note received at
[19] the Sainsbury store." Then there is a suggestion about
[20] being subject to agreement. Disney could not be run
[21] because there is a tie up between Walt Disney and a
[22] rival gasoline company. Mention about some new
[23] concepts, and then;
[24] "To be frank I was surprised to receive your
[25] response to my letter because Sainsbury have not been

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[1] Do you see that?
[2] A: Yes.
[3] Q: Now, that is on 25th June 1990?
[4] A: Yes.
[5] Q: Again, Mr Donovan dealing with this?
[6] A: Yes.
[7] Q: Asking permission to put forward the multibrand game
[8] concept?
[9] A: Yes.
[10] Q: On 10th July 1990, there has been some responses because
[11] it is again a letter from Mr Donovan, this one is - I
[12] ought to ask you about this. The letter before
[13] Mr Donovan, there is a photocopy with a signature on.
[14] The next copy has no signature at 423. When you gave
[15] your evidence before you thought that that might be
[16] because the photocopy was taken in one case after he had
[17] signed and in another case before?
[18] A: Yes.
[19] Q: Simple as that?
[20] A: Yes.
[21] Q: And that happens, if one looks at the papers, quite
[22] consistently or inconsistently throughout all the files
[23] we have. Is that something that would accord with your
[24] recollection?
[25] A: That would be normal.

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[1] receptive in the past to even considering promotional
[2] games".
[3] Is that something that accords with your
[4] understanding of things at that time?
[5] A: Yes.
[6] Q: "However, I hope the concepts mentioned above do
[7] demonstrate that it is possible for Sainsbury to benefit
[8] from the proven appeal (not bingo) which would be
[9] incompatible with Sainsbury's image".
[10] We can leave the next letters and go to 13th
[11] July.
[12] Now, you mentioned in your evidence before that
[13] this time there were some other projects ongoing,
[14] promotions?
[15] A: Yes.
[16] Q: If you look at the letter of 13th July, page 425,
[17] Mr Donovan has written on the 10th July at 422 about the
[18] MegaMatch. We have just looked at that?
[19] A: Yes.
[20] Q: On the 13th he writes to Mr Carson, as you will see,
[21] about Star Trek. Does that ring a bell with you?
[22] A: Yes.
[23] Q: Do you remember the Star Trek promotion?
[24] A: Yes.
[25] Q: What do you remember about it? Not about its detail but

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[1] about what happened to it?
 [2] A: In what respect?
 [3] Q: Well, did it run?
 [4] A: Yes, it ran, it certainly did, yes.
 [5] Q: It was a game?
 [6] A: Yes, scratch card game.
 [7] Q: Have a look at the letter:
 [8] "Dear Stuart, I understand we may still be in time
 [9] for just one last concept option for the autumn slot".
 [10] Then it is set out;
 [11] "As you can see from the visual, Star Trek: The
 [12] Game ... highly topical", and then I will not go through
 [13] every detail but it is set out, the reasons why the Star
 [14] Trek game should be gone forward with. Do you see that?
 [15] A: Yes.
 [16] Q: At the last paragraph on 427;
 [17] "We are therefore confident that the proposed
 [18] concept would be the logical choice to maintain Shell's
 [19] reputation for innovative, memorable promotional games,
 [20] not the run of the mill variety mounted in the past by
 [21] rival brands".
 [22] Do you see that?
 [23] A: Yes.
 [24] Q: If we turn the pages, 17th July, just 4 days later,
 [25] another letter at page 429, another letter from

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[1] **Mr Donovan:**
 [2] "Dear Stuart, as you seem to be close to making a
 [3] decision on the choice of a game specialist, perhaps it
 [4] might be appropriate to remind you of some of the points
 [5] we made about our services and experience during our
 [6] meeting." Again, I don't know whether you have any
 [7] independent recollection of it, but it appears that
 [8] there had been a meeting at least between Mr Donovan and
 [9] Mr Carson, sometime between 13th and 17th July.
 [10] **MR JUSTICE LADDIE:** I think he does not know that is a
 [11] question.
 [12] **MR COX:** Is that right?
 [13] A: Yes, sorry, yes.
 [14] Q: There appears to have been a meeting?
 [15] A: Yes.
 [16] Q: Let us go on because we will see that Mr Donovan here is
 [17] urging his case for Star Trek?
 [18] A: Yes.
 [19] Q: "...for two decades, specialised in supplying games to
 [20] the brewery, 50 games in the last 10 years, and more
 [21] relevantly to petrol retailers."
 [22] Some words about experience. "Since autumn 83 we
 [23] have worked exclusively for Shell supplying seven
 [24] national promotions, 4 in UK, 3 overseas, and when
 [25] disaster games occur companies seek our advice".

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[1] Written many articles about the pitfalls of promotional
 [2] games. Do you see that. Following the letter through
 [3] with me, are you?
 [4] A: Yes, I have it.
 [5] Q: Then the passage you looked at just before the
 [6] adjournment:
 [7] "We appreciated right from the commencement of our
 [8] association with Shell that you need to be open to game
 [9] concepts proposed from any source. However, Shell was
 [10] so pleased with our work on the Shell Make Money game
 [11] that it was agreed on an informal basis that if you
 [12] accepted any ideas proposed by third parties you would
 [13] use our services to plan and manage the game. This
 [14] enabled you to take advantage of our expertise and
 [15] growing knowledge of Shell's marketing operation. We
 [16] were also trusted with your confidential requirements in
 [17] regard to seeding major prizes."
 [18] Seeding major prizes means what, could you explain
 [19] to us?
 [20] A: That means inserting randomly anywhere amongst the
 [21] printed game pieces the prizes of high value.
 [22] Q: So it is a sensitive secure job?
 [23] A: Very much so.
 [24] Q: Would the company, your company, Mr Donovan's company
 [25] do that on behalf of Shell in the promotional games?

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[1] A: Every time.
 [2] Q: "This arrangement proved to be satisfactory to both
 [3] parties. Shell had the first option on any concept we
 [4] devised and were also completely open to ideas submitted
 [5] from other sources. We had an incentive to remain loyal
 [6] to Shell.
 [7] "We were pleased that under these circumstances of
 [8] open competition three out of the four games run by
 [9] Shell during the mid-80s were concepts originated by Don
 [10] Marketing and accepted by Shell purely on their merit."
 [11] Some words about creative ability and some
 [12] reminders about the disaster with the competitor's game
 [13] Noughts and Crosses. "I trust these important factors
 [14] will be borne in mind when you make your choice of games
 [15] specialist. With regards to the Star Trek game, I would
 [16] like to stress that this visual was our first stab", and
 [17] a suggestion about being willing to be flexible in
 [18] relation to fees. Do you see that?
 [19] A: Yes.
 [20] Q: This Star Trek promotion, who dealt with that in Don
 [21] Marketing?
 [22] A: John Donovan in the main.
 [23] Q: Were you involved with dealing with that in any
 [24] significant sense at all?
 [25] A: Yes, I was.

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[1] Q: How?
[2] A: In the production of the games variations, these are the
[3] printed combinations of symbols, and in the prize fund
[4] structuring and in the printing of all of the game
[5] pieces, at a supervisory level, and inserting the major
[6] prices.
[7] Q: I want to ask you this. Star Trek, we know - and I do
[8] not think it is disputed - that Mr Donovan's original
[9] company had been folded up in about 1986?
[10] A: Yes.
[11] Q: But restarted in 1989?
[12] A: Yes.
[13] Q: Why was it that you understood that Mr Donovan was going
[14] to restart?
[15] A: Because there was potential business coming from Shell,
[16] from the continued relationship with Shell.
[17] Q: So the relationship with Shell, as it were, restarted?
[18] A: Yes.
[19] Q: Star Trek was the first piece of actual business that
[20] Shell had accepted, was it not?
[21] A: Yes.
[22] Q: So it was an important event?
[23] A: Very much so.
[24] Q: I mean by that since the company had restarted?
[25] A: Yes.

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[1] Q: Who dealt with the negotiations with Shell in relation
[2] to Star Trek, as far as you recollect?
[3] A: John Donovan.
[4] Q: Have a look at page 431, on the 18th July:
[5] "Dear Stuart", and then some words about the
[6] licensing agency unable to get information from the BBC
[7] about plans for airing Star Trek movies. One of the
[8] things that matters when you are running a promotion is
[9] to see whether the game catches some particular craze or
[10] fashion at the moment?
[11] A: Yes, it is topical.
[12] Q: And this letter addresses that, about whether or not the
[13] BBC are going to run Star Trek programmes. Is that
[14] right?
[15] A: Yes.
[16] Q: "We are not sure of the importance of this issue", that
[17] is to say the BBC's policy to issue information, "as the
[18] audience for the first Star Trek movie was built up
[19] solely from the success of the original 79 episodes.
[20] "Sarah Harman of TEN hopes to speak later today to
[21] Nick Chapman, the MD of BBC Enterprises".
[22] All of this toing and froing relating to Star Trek
[23] would have been done by whom?
[24] A: John Donovan.
[25] Q: Right. When a promotion is on the brink of acceptance

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[1] and you are putting it together, is it a fairly intense
[2] activity?
[3] A: Yes, very much so.
[4] Q: So Mr Donovan, focusing as he says on the 18th July, on
[5] discussions to see what is going to be run by the BBC
[6] and the licensing agency continues:
[7] "He may be willing to bend the rules to enable us
[8] to give you some definite information. Possibility they
[9] may now launch the new series Star Trek - The Next
[10] Generation this autumn. You may be able to use the
[11] original characters for the instant win game and the new
[12] ones for the collector game."
[13] I have not gone into the details but the mechanics
[14] for the Star Trek, the issues, all of these things had
[15] been worked on by whom?
[16] A: John Donovan and myself.
[17] Q: And they had been worked up, had they?
[18] A: Yes.
[19] Q: "Aside from the BBC's plans, a good deal of publicity
[20] has been generated by the Star Trek battle between the
[21] two satellite TV companies", and some more words about
[22] that, and really the next page:
[23] "May be interested to learn than we carried out
[24] our own comparative market research using unbranded
[25] story boards for Star Trek Disneytime and three other

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[1] concepts on Saturday".
[2] Do you see that?
[3] A: Yes.
[4] Q: What would you do if you wanted to test a game? What
[5] does it refer to there "We carried it out on Saturday",
[6] third paragraph, 432?
[7] A: That would be market research, probably going into the
[8] streets and seeking opinions from the public.
[9] Q: And you would have a sort of survey of what -
[10] A: Yes, we would send people out to do that.
[11] Q: In relation to the games?
[12] A: Yes.
[13] Q: Continuing with that letter "Aware there were numerous
[14] devoted Star Trek fanatics, Trekkies, pleased that our
[15] expectation of popularity confirmed. The research only
[16] involved a small sampling. We have no expertise in
[17] conducting market research. We would recommend if there
[18] were two very strong contenders perhaps it would be
[19] possible to arrange for impartial market research to be
[20] carried out urgently this weekend to determine which
[21] should be more popular. If this is not practical,
[22] perhaps you may be able to carry out some internal
[23] research among Shell employees. Confidentiality is not
[24] quite as important as it formerly was, because we have
[25] reason to believe your main competitor has, almost

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[1] certainly, already been inadvertently tipped off.
[2] "Even though the Star Trek series has not been
[3] aired on TV, interesting to note 10 and a half million
[4] viewers for a movie shown just a few weeks ago".
[5] Then, over the page:
[6] "Even if the BBC cannot be persuaded ...
[7] reasonable to speculate they will take advantage of the
[8] major promotion. Telephone today as soon as I have some
[9] further news".

[10] Do you see that?

[11] A: Yes.

[12] Q: That is 18th July. Over the page, you will see a second
[13] letter on the same day sent by fax?

[14] MR JUSTICE LADDIE: Mr Cox, I do not understand Mr Hobbs or
[15] his client to be disputing that Mr Donovan was deeply
[16] concerned with the Star Trek project. I am concerned
[17] however as to where this re-examination is going. Is it
[18] just to that issue of what was involved in that? I do
[19] not understand there to be a dispute between the
[20] parties.

[21] MR COX: I hope not. What I submit is that it is rather
[22] inextricable from this rather extraordinary and wholly
[23] unnotified attack that has been made upon the claimant
[24] and Mr Sotherton's integrity. They are being suggested
[25] and it is a very grave allegation.

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[1] MR COX: I hope not to take too long but I do feel the
[2] allegations made need to be answered as far as
[3] Mr Sotherton can recall. I will not take very long. On
[4] the 18th July a second letter, 434. Do you see that?

[5] A: Yes.

[6] Q: Further information about this Star Trek that is on the
[7] brink apparently of being accepted. Over the page at
[8] 435 a third fax, all on the 18th July, do you see that?

[9] A: Yes.

[10] Q: With some details from Paramount. If we turn past those
[11] we get to the 20th July at 439:

[12] "You indicated during our telephone conversation
[13] yesterday that you wished to discuss our fees regarding
[14] the above project during today's meeting", 20th July.

[15] "You have of course given a rough indication", and the
[16] letter then deals with fees and says:

[17] "As we recognise it would give us a negotiating
[18] lever if Shell were to proceed further without the fees
[19] being agreed to their satisfaction, we are happy to
[20] undertake, relying on the fact that Shell have always
[21] treated us fairly in the past, that we will accept your
[22] decision on the fees to be charged."

[23] Does that reflect the nature of the relationship
[24] that you had with Shell at that time as you understood
[25] it?

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[1] MR JUSTICE LADDIE: Of course.

[2] MR COX: Of the most wholesale and astonishing fraud,
[3] including the creation of evidence for a court. Now -

[4] MR JUSTICE LADDIE: It is either an astonishing accusation
[5] or it is an astonishing fraud, one or other of them. It
[6] is certainly astonishing one way or the other.

[7] MR COX: It would be both, I think, but my Lord the point
[8] is that -

[9] MR JUSTICE LADDIE: Obviously you need to - all I am
[10] trying to do - I do not want to waste anybody's costs
[11] that is all, and insofar as there is a - you are
[12] putting it to this witness that Mr Donovan was deeply
[13] concerned with running the Star Trek, I thought that was
[14] a common currency between the parties, that he was
[15] deeply concerned in running Star Trek.

[16] MR COX: My Lord, I must say that I am grateful for your
[17] Lordship's indication, because I had not understood that
[18] anything was accepted.

[19] MR JUSTICE LADDIE: Is that not the position? Thank you.

[20] MR COX: I am grateful, but it is nevertheless from the
[21] point of view of an examination of the accuracy of these
[22] allegations important that he should be given the time
[23] to look through the documents one by one and to see
[24] whether he can -

[25] MR JUSTICE LADDIE: Take your course, Mr Cox.

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[1] A: Very much so, yes.

[2] Q: You were willing to accept what they thought was fair on
[3] fee?

[4] A: Yes.

[5] Q: Of course, particularly if you could get this business?

[6] A: Yes.

[7] Q: "This does not mean to say that we will not argue our
[8] case most strenuously, as we have done in the past, but
[9] at this time we feel it is more important to move ahead
[10] with the other elements which need to be tackled
[11] urgently if the promotion is to be launched by the
[12] target date".

[13] Now, that is 20th July. Who in the meantime was
[14] dealing with the contact with Sainsbury?

[15] A: Myself.

[16] Q: Right. Was that or was it not because Mr Donovan was
[17] intensively concerned with Star Trek?

[18] A: Very, yes.

[19] Q: And getting this first piece of business since the
[20] company had restarted?

[21] A: Yes.

[22] Q: Let us turn the page to 443, if you would. There is a
[23] fax on 23rd July at 441. That is from Mr Carson to John
[24] Donovan about a print buyer who wanted to start a tender
[25] process;

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[1] "I have already advised ... if more to provide ...
 [2] please advise when possible".
 [3] A: I am not sure I have the right page.
 [4] Q: That was 441. There is a fax from Mr Carson,
 [5] handwritten fax?
 [6] A: Yes, I have that.
 [7] Q: Wanting to get to Mr Donovan, and a handwritten note
 [8] asking for a written specification of the Board?
 [9] A: Yes.
 [10] Q: If we turn the page to 443 there is a letter on 23rd
 [11] July 1990 to the licensing - this is the Star Trek
 [12] licensing company, TEN Licensing;
 [13] "Apologies for cancelling the meeting on Friday.
 [14] I had to remain at Shell House to assist in the
 [15] preparation of a presentation which took late until the
 [16] afternoon".
 [17] Did you attend that presentation?
 [18] A: I do not think I did.
 [19] Q: Star Trek being dealt with by Mr Donovan?
 [20] A: Yes.
 [21] Q: "I am pleased to formally confirm that Shell are
 [22] proceeding with the project and have requested that the
 [23] licensing agreement be completed if at all possible by
 [24] this Thursday afternoon".
 [25] Then some further discussion about - this is to

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[1] Q: Now, during that discussion did you talk to Mr Horley
 [2] about the MegaMatch game?
 [3] A: Yes.
 [4] Q: In the course of that discussion did you mention
 [5] anything else, other than the MegaMatch game?
 [6] A: Only expanding around that.
 [7] Q: To go to what?
 [8] A: Oh, to the larger scheme.
 [9] Q: Now, why did you mention that?
 [10] A: Because I felt it would be of interest.
 [11] Q: Right. When you had had your conversations with
 [12] Mr Horley, did you report or mention anything to
 [13] Mr Donovan?
 [14] A: Yes.
 [15] Q: Right. As you can recollect it, if you go to page 446,
 [16] how did you - what impression did you get when you had
 [17] spoken to Mr Horley about the MegaMatch game and the
 [18] multibrand loyalty concept?
 [19] A: That there was an interest, that he was not going to
 [20] turn it down flat without seeing or hearing some more.
 [21] Q: Right. What happened when you had got that initial
 [22] nibble from Sainsbury, what happened next, as you
 [23] recall?
 [24] A: The responses as you see that are contained within these
 [25] letters.

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[1] Sarah Harman of the licensing, about how it would run.
 [2] If you turn to 445, on 24th July, so the same day as
 [3] these letters that we have seen:
 [4] "John, reference your fax today, re theme music,
 [5] BBH only just been asked to consider whether radio would
 [6] be advantageous and how much we might spend. Details
 [7] when available should be obtained direct from myself.
 [8] Cheers, Stuart".
 [9] Do you see that?
 [10] A: Yes.
 [11] Q: In the meantime you have given evidence that you were
 [12] dealing with the contact with Sainsbury, yes?
 [13] A: Yes, amongst other things, yes.
 [14] Q: Let us concentrate on the Sainsbury thing. If you go
 [15] back to the earlier letter, the last Sainsbury letter
 [16] had been at 421 and 422, 10th July. In the meantime
 [17] Shell had bitten on Star Trek, had they not?
 [18] A: Yes.
 [19] Q: Mr Donovan had asked permission whether he could raise
 [20] the MegaMatch game. Do you remember that
 [21] correspondence?
 [22] A: Yes.
 [23] Q: So it came about that you had a discussion with
 [24] Mr Horley on the phone, is that right?
 [25] A: Yes.

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[1] Q: Is there any doubt in your mind that the letters you
 [2] have referred to were written at the time?
 [3] A: No doubt. They were written at the time.
 [4] Q: Mr Donovan was of course still acutely and intensely
 [5] absorbed on Star Trek?
 [6] A: Very much so. There was a tight deadline.
 [7] Q: You were talking with Mr Carson, as we have seen. You
 [8] were talking to who when you spoke to Shell about this
 [9] Sainsbury contact?
 [10] A: Paul King.
 [11] Q: Was there anything in the conduct of Mr King or
 [12] Mr Carson for that matter, that led you to believe that
 [13] Mr King was not a proper person to talk to about these
 [14] affairs?
 [15] A: No.
 [16] Q: Have a look at the letter at 446:
 [17] "Thank you for confirming by telephone Shell's
 [18] approval of the letter to Sainsbury which you have now
 [19] cleared with Stuart Carson and senior management".
 [20] Again, when you wrote that and signed it, did you
 [21] understand that Mr King had spoken to Mr Carson and
 [22] senior management?
 [23] A: Yes.
 [24] Q: Would you have written those lines if you did not
 [25] believe them to be correct?

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[1] A: No, I believed them to be correct.
 [2] Q: "As per instructions, we have deleted the reference to
 [3] the research findings. The revised version enclosed has
 [4] been mailed to Sainsbury".
 [5] Now, who had the discussion with Mr King about the
 [6] amendments to the letter to Sainsbury? If you cannot
 [7] remember, do say so, but have a look at the letter?
 [8] A: Yes, I cannot remember exactly but this may well say
 [9] within the letter.
 [10] Q: The letter is your letter, signed by you, direct to
 [11] Mr King;
 [12] "Thank you for confirming by telephone".
 [13] Again, can you help me, if you had written this
 [14] letter thanking him for confirming by telephone, with
 [15] whom would have been the telephone conversation do you
 [16] think?
 [17] A: With myself.
 [18] Q: We will see that what is being suggested, what you say
 [19] in the letter is that the letter gets across the message
 [20] you were keen to convey that Shell viewed Sainsbury as
 [21] an ideal partner; "They are apparently not considered
 [22] to be too down market".
 [23] Again, that reflects your understanding of what
 [24] Shell did think, is that right?
 [25] A: Yes.

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[1] before?
 [2] A: Yes, in fact it was an ongoing thing.
 [3] Q: Right, the company had started up again in 1989, had it
 [4] not?
 [5] A: Yes.
 [6] Q: Does it follow from that it was some time in 1989?
 [7] A: No, we had contact in between times.
 [8] Q: All right. So when you say, "Your brief challenged us
 [9] to devise an innovative leap forward in loyalty
 [10] schemes", you are talking about an event that occurred
 [11] before Sainsbury's unexpected interest?
 [12] A: Yes.
 [13] Q: When you says "We delivered the goods", are you talking
 [14] there about the proposal made to him on the 23rd
 [15] October, Concept 4? Do you remember Concept 4?
 [16] A: Yes.
 [17] Q: Or are you talking about something else?
 [18] A: No, I think that is what we were referring to.
 [19] Q: Because what you say next is "The expanded proposal as
 [20] set out in the agreed letter to Sainsbury's", i.e the
 [21] one going with this?
 [22] A: Yes.
 [23] Q: "... provides the answers to the failings in loyalty
 [24] schemes."
 [25] A: Yes.

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[1] Q: "Sainsbury's unexpected interest at least spurred us on
 [2] to put some flesh on the initial proposal we discussed
 [3] with you and Tim some months ago. Your brief challenged
 [4] us to devise an innovative leap forward in loyalty
 [5] schemes. We delivered the goods. The expanded proposal,
 [6] as set out in the agreed letter, provided the answers".
 [7] I want to ask you something about that paragraph.
 [8] You have been cross-examined at some length on this.
 [9] You see the words "your brief challenged us to devise an
 [10] innovative leap forward in loyalty schemes. We
 [11] delivered the goods".
 [12] A: Yes.
 [13] Q: "Sainsbury's unexpected interest at least spurred us on
 [14] to put some flesh on the initial proposal we discussed
 [15] with you and Tim". So there has been an initial
 [16] proposal?
 [17] A: Yes.
 [18] Q: We have seen that, that is October 89. "Your brief
 [19] challenged us to devise an innovative leap forward in
 [20] loyalty schemes". What was the brief there referred to?
 [21] A: It was an open brief, ongoing, to come up with some
 [22] ideas to improve basically loyalty schemes and get away
 [23] from the need for bits and pieces of paper, that type of
 [24] thing, to make them more flexible and universal.
 [25] Q: Right. That had been set for you by Mr King some time

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[1] Q: "which our research identified and" then mentioned about
 [2] how the research was invalid. Is that right?
 [3] A: Yes.
 [4] MR JUSTICE LADDIE: Just to warn you, Mr Cox, you do of
 [5] course appreciate the reduced value of led
 [6] re-examination.
 [7] MR COX: My Lord, I do.
 [8] MR JUSTICE LADDIE: That is all I want to say.
 [9] MR COX: I am also concerned about cross-examination that
 [10] has taken place this morning with this witness, without
 [11] having shown him or taken time to get him to understand
 [12] the wording of the documents. I am troubled about it.
 [13] It is an insoluble problem and I do appreciate what your
 [14] Lordship says.
 [15] In any event, if we just complete that letter;
 [16] "Although we made some suggestions to enhance
 [17] Collect & Select, a revolutionary concept along the
 [18] lines proposed would put Shell miles ahead of the
 [19] opposition if you decide to return to collection schemes
 [20] at a later date".
 [21] Could you just turn back to the Concept 4
 [22] document, which is at 331. Do you remember the
 [23] proposals in that document, if you were just to have a
 [24] quick look through?
 [25] A: I do recall them all, yes.

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[1] Q: When you said: "Although we proposed some suggestions
 [2] to enhance Collect & Select", what were you referring
 [3] to?
 [4] A: Concept 4.
 [5] Q: Well, just think about it a moment, because what you are
 [6] saying in the letter, "Although we made some suggestions
 [7] to enhance Collect & Select, a revolutionary concept
 [8] along the lines proposed would put Shell miles ahead of
 [9] the opposition". Do you see that?
 [10] A: Yes.
 [11] Q: So are the suggestions to enhance Collect & Select the
 [12] same as the revolutionary concept?
 [13] A: No.
 [14] Q: Again, do you recall what you are referring to here?
 [15] A: Not clearly, no.
 [16] Q: When you went to make presentations with Mr Donovan,
 [17] who
 [18] would normally take the lead role in making the oral
 [19] presentation?
 [20] A: John Donovan.
 [21] Q: Who would normally - was there any division of labour
 [22] between you?
 [23] A: Yes, I would probably take care of the technical aspects
 [24] of the game piece production, prize fund development and
 [25] things like that and security matters.
 [26] Q: Was Mr Donovan good on the talking side?

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[1] A: Yes.
 [2] Q: Presentationally?
 [3] A: Yes, certainly with Shell, yes.
 [4] Q: And letters again, would you divide those between
 [5] yourselves?
 [6] A: Yes, and do them together in the main.
 [7] Q: Moving on through the letter of 446: "Nice to know that
 [8] senior management want to keep our multibrand loyalty
 [9] concept in the locker. Also interesting to hear it
 [10] could have applications in other Shell markets".
 [11] Again, what were you referring to there as you
 [12] understood it?
 [13] A: Other Shell markets of the world.
 [14] Q: About "being nice to know that they wanted to keep our
 [15] multibrand loyalty concept in the locker". What were
 [16] you referring to there?
 [17] A: Literally the multibrand scheme.
 [18] Q: Turn the page, because you then introduce the Star Trek;
 [19] "We do seem to have won a great consolation
 [20] prize. The exercise has been well worthwhile. We do
 [21] seem to have won a great consolation prize. I refer of
 [22] course to the Star Trek project. We are finalising
 [23] details with Stuart Carson and Sarah Harman. Good to
 [24] hear from Stuart that we will be working with Alan Roman
 [25] again", who was the print gentleman?

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[1] A: Print buyer.
 [2] Q: "On the basis that Shell does adopt our proposal for a
 [3] Star Trek themed 'blockbuster', we confirm our agreement
 [4] as requested to forego an option scheme on the
 [5] multibrand loyalty scheme. This is on the understanding
 [6] that the rights to the multibrand scheme remain vested
 [7] solely with Don Marketing".
 [8] When you wrote that paragraph, did you write it on
 [9] 24th July 1990?
 [10] A: Yes.
 [11] Q: Was it written in fact, as put to you, after 1997?
 [12] A: No.
 [13] Q: When you wrote that paragraph, and said that "We confirm
 [14] our agreement as you" i.e Paul King "requested to forego
 [15] an option scheme", was that truthfully what Mr King had
 [16] requested?
 [17] A: Yes.
 [18] Q: What do you remember Mr King's concern was to achieve by
 [19] this?
 [20] A: So that we were not able to take that concept to any
 [21] other oil company.
 [22] Q: Why was he concerned?
 [23] A: Because he thought that it was a valuable concept that
 [24] certainly had merit for the promotional purposes.
 [25] Q: And what was particular about the moment that had

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[1] arrived then on the 24th that made him want to reach
 [2] that arrangement at that time?
 [3] A: Because they did not have an immediate use for it.
 [4] Q: Again, you were disclosing this to Sainsbury, were you
 [5] not?
 [6] A: Yes.
 [7] Q: Until this arrangement was reached, you could have
 [8] legitimately approached Sainsbury with the concept, yes?
 [9] A: Yes.
 [10] Q: Can you help me, and if you cannot, say so, why Mr King
 [11] chose this moment to say that he would like you to agree
 [12] to keep it at Shell's disposal. If you cannot help me
 [13] then say so?
 [14] A: No, I don't think I can.
 [15] Q: All right.
 [16] MR JUSTICE LADDIE: Just a second. (Pause.)
 [17] MR COX: "I should add that John Donovan has verified with
 [18] John Chambers that Leo Burnett's agreement with Don
 [19] Marketing was only in respect of the advertising
 [20] campaign they devised for the MegaMatch multibrand game
 [21] that. That agreement is mentioned in a memo recording a
 [22] discussion between Ken Danson" - who is I think a Shell
 [23] or ex-Shell employee?
 [24] A: Yes.
 [25] Q: "... and John Chambers", who was at that time employed by

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[1] Don Marketing, correct?
[2] A: Yes.
[3] Q: "... who has kindly supplied us with a copy". What was
[4] the purpose of that paragraph?
[5] A: To show that - that was in response I think to a
[6] question by Paul, as to whether anybody else had an
[7] interest in what it was that we were proposing.
[8] Q: In the multibrand loyalty scheme?
[9] A: Yes.
[10] Q: You are clearing that up by saying that John Donovan, to
[11] whom it implies you have spoken, has verified with John
[12] Chambers that Leo Burnett's agreement with Don Marketing
[13] was only in respect to the advertising campaign they
[14] devised for the MegaMatch multibrand game. Is that
[15] right?
[16] A: Yes.
[17] Q: That agreement is mentioned in a memo recording that
[18] discussion.
[19] If we turn the page, the actual concept or
[20] programme is set out. Now, again you understand that
[21] what is being said here is that this letter is a
[22] forgery?
[23] A: Yes.
[24] Q: That you have cooked it up with Mr Donovan sometime in
[25] 1997. One of the things you mentioned when you were

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[1] being questioned about this, you said that was John
[2] Donovan's crystal ball. You said it with a sort of
[3] humorous inflection in your voice. What do you mean by
[4] that?
[5] A: A lot was said yesterday about how John Donovan has been
[6] able to see into the future with regard to some of the
[7] concepts that he devised, and it actually happened.
[8] Q: Again, you have known John Donovan quite a long time,
[9] have you not?
[10] A: Yes.
[11] Q: As an ideas man, how do you rank him?
[12] A: Very good.
[13] Q: Has it happened in the past that he has been able to, as
[14] it were, predict what happened in the future in the
[15] promotional game?
[16] A: Yes, he has looked very clearly ahead and come up with
[17] the answers as to what may be happening.
[18] Q: So when you said John Donovan's crystal ball, you did
[19] not mean that to be ironic; you meant it seriously, did
[20] you?
[21] A: Yes.
[22] Q: So let us have a look at the letter itself. "Writing to
[23] confirm the main points of the telephone discussions
[24] with John Donovan and I have had with you.
[25] "You have decided the timing not right for

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[1] Sainsbury to move into game activity. Willing to
[2] consider the opportunity at a later date."
[3] Then the multibrand loyalty programme. I do not
[4] want to go through it all with you because you have
[5] been, but what you have said is that in writing this
[6] letter some more detail would have been added in the
[7] articulation and formulation of it in writing?
[8] A: Yes.
[9] Q: Is that your position?
[10] A: Yes.
[11] Q: So you would have discussed what in relation to it, not
[12] necessarily about the points but what would you have got
[13] across to Mr Horley concerning this?
[14] A: I am sorry, I am not clear.
[15] Q: You have said some more detail was added for the
[16] purposes of this letter?
[17] A: Yes.
[18] Q: Now, when you explained the ideas to Mr Horley, did you
[19] explain it in all its details or the essential structure
[20] of it?
[21] A: The essential structure of it.
[22] Q: So what you would have conveyed to Mr Horley is the
[23] essential structure of the scheme?
[24] A: Yes, in the form of a tease.
[25] Q: Could you tell his Lordship what that essential

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[1] structure would have been, as you understood it?
[2] A: The basics of the multibrand loyalty scheme.
[3] Q: Which was?
[4] A: The consortium scheme that is mentioned in those
[5] previous proposals.
[6] Q: But exactly - help us now, I know it is a long time
[7] ago, but how would you have described it to Mr Horley?
[8] MR JUSTICE LADDIE: Mr Cox, just a second. There are two
[9] possibilities. How would you have described it and how
[10] did you describe it? First will you tell me what you
[11] recall, actually recall of what you said to Mr Horley
[12] and then answer insofar as there are gaps in your memory
[13] what you think you would have done. I am anxious to
[14] know what you recall. If you do not recall it, tell me?
[15] A: I don't think I recall it.
[16] MR COX: Very well. Looking at the letter as a whole, and
[17] you have had a chance to look at it several times now,
[18] first, is it a letter that was written, as I have asked
[19] you, in relation to the other letter on 24th July 1990
[20] and not in 1997?
[21] A: Yes.
[22] Q: Second, did you have a discussion with Mr Horley about
[23] the multibrand loyalty scheme?
[24] A: Yes.
[25] Q: Third, did you convey him some details concerning it?

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[1] A: Yes.
 [2] Q: Fourth, when you went to see Mr Lazenby on 24th November
 [3] 1992 - do you remember?
 [4] A: Yes.
 [5] Q: You were asked questions about that on Friday?
 [6] A: Yes.
 [7] Q: Did you put the note at page 450B on it on that day?
 [8] A: Yes.
 [9] Q: Does it follow from that, did you have the letter with
 [10] you at that meeting?
 [11] A: Yes.
 [12] Q: When you noted that a copy of this letter was left with
 [13] AL, did that record the fact that you knew such a copy
 [14] had been given to him?
 [15] A: Yes.
 [16] Q: When you wrote that Shell will negotiate royalty
 [17] arrangements with us if they progress the scheme at a
 [18] future date, did that too reflect a discussion that had
 [19] been held with Mr Lazenby on 24th November 1992?
 [20] A: Yes.
 [21] Q: Have a look at the top of page 450B:
 [22] "Being the originators of the idea, Don Marketing
 [23] and our managing director, John Donovan, who has a
 [24] personal stake in the project, would require an
 [25] appropriate concept fee, a role in the promotion, UK and

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[1] A: Oh, yes.
 [2] Q: Have a look back in that same file - no, would you take
 [3] down E2. Page 973, top of 973, "Proposal for national
 [4] promotion activity" on 12th May 1992. Do you see that.
 [5] 973?
 [6] A: Yes.
 [7] Q: It has got your initials, top left?
 [8] A: Yes.
 [9] Q: Those are your initials?
 [10] A: Yes.
 [11] Q: You wrote them?
 [12] A: Yes.
 [13] Q: If you turn the pages, this was presented on the 12th
 [14] May. On page 975 there is some writing?
 [15] A: Yes.
 [16] Q: Is that your writing?
 [17] A: Yes, it is.
 [18] Q: "Make money re-run can be produced in three months. AL
 [19] concerned about lead in times for MegaMatch".
 [20] Do you see that?
 [21] A: Yes.
 [22] Q: "AL willing to enter into discussions with potential
 [23] partners. JAD to contact Woolworth, Safeway Little
 [24] Chef, Sun".
 [25] A: Yes.

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[1] international royalties covering proprietary rights".
 [2] Do you see that?
 [3] A: Yes.
 [4] Q: That letter was discussed in the meeting with
 [5] Mr Lazenby, you have given evidence?
 [6] A: Yes.
 [7] Q: Was the note that you put at the bottom, was the top
 [8] paragraph of page 450B discussed in the meeting, looking
 [9] at your own note and comparing the two?
 [10] A: Yes, but -
 [11] MR JUSTICE LADDIE: "Yes, but" what?
 [12] A: I couldn't recall the detail and the content.
 [13] MR COX: Going through the letter, one reaches that
 [14] paragraph about royalties and the concept fee. What you
 [15] have recorded is the upshot of the discussion on 450B,
 [16] is that right?
 [17] A: Yes.
 [18] Q: What you have not recorded is the process of discussion
 [19] by which that conclusion was reached, is that right?
 [20] A: That is correct.
 [21] Q: You have simply recorded the conclusion. Is that
 [22] something you were in the habit of doing when you had
 [23] meetings?
 [24] A: Yes.
 [25] Q: Writing on the documents themselves?

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[1] Q: Turn the page. These are the type of notes you would
 [2] make during a meeting, are they?
 [3] A: Yes.
 [4] Q: It is 979: "AL says soccer theme produced poor results
 [5] in research." Do you see that?
 [6] A: Yes.
 [7] Q: Your writing?
 [8] A: Yes.
 [9] Q: Turn the page to conclusion, 980. Is that your writing
 [10] on page 980?
 [11] A: Yes.
 [12] Q: Did you put that note there on the 12th May 1992?
 [13] A: Yes.
 [14] Q: Does it reflect a discussion that you had on the 12th
 [15] May 1992?
 [16] A: Yes.
 [17] Q: "RGS mentioned". What does that mean? It may sound a
 [18] very silly question but answer it anyway, would you.
 [19] "RGS mentioned". What does that mean?
 [20] A: That I brought the subject up.
 [21] Q: You brought the subject up?
 [22] A: Yes.
 [23] Q: "Multibrand loyalty card scheme presented to Paul King.
 [24] AL said Shell could be interested but at a later date.
 [25] Will ask Paul for proposal to make sure it is retained

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[1] for long-term".
 [2] Does that reflect the short upshot of that
 [3] discussion?
 [4] A: Yes.
 [5] Q: Is there any doubt in your mind that that was discussed
 [6] on that day, given your note?
 [7] A: No doubt in my mind.
 [8] Q: Would there have been any reason whatsoever for you to
 [9] put a note there reflecting that discussion if it had
 [10] not in fact taken place?
 [11] A: No.
 [12] Q: Let us look at the note for a moment. "RGS mentioned",
 [13] so you have given evidence that would suggest that you
 [14] brought it up, correct?
 [15] A: Yes.
 [16] Q: "Multibrand loyalty card scheme presented to Paul
 [17] King". Does it follow from that note, tell me please,
 [18] that you would have said that it was presented, the
 [19] idea, originally to Paul King?
 [20] A: Yes.
 [21] Q: Can you recall, to use his Lordship's formulation first,
 [22] can you recall whether you did explain the circumstances
 [23] in which it had been presented to Paul King, the
 [24] history?
 [25] A: Sorry?

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[1] Q: Can you remember whether you explained the circumst-
 [2] ances
 [3] in which it had been presented to Paul King?
 [4] A: Oh, yes, in terms of confidentiality.
 [5] Q: Yes, not just that, but the history?
 [6] A: Of development, yes.
 [7] Q: Yes?
 [8] A: Yes.
 [9] Q: Would you have just - first, can you remember -
 [10] perhaps they elide these two questions so may I put it
 [11] this way. Would you have just said "Oh, we presented
 [12] this idea to Paul King", or would you have gone into
 [13] some of the history about it?
 [14] A: Probably a little history.
 [15] MR JUSTICE LADDIE: Probably means that you cannot recall
 [16] but you think it is likely?
 [17] A: Yes.
 [18] MR COX: Think it is likely, yes. "AL said Shell could be
 [19] interested but at a later date. Will ask Paul for
 [20] proposal to make sure it is retained for the long-term".
 [21] Was Paul King still working in the Department in
 [22] May 92? I think it is common ground, my Lord.
 [23] A: I think he must have been, yes.
 [24] Q: So, in your mind, recording that, there would have been
 [25] no difficulty for Mr Lazenby to ask Mr King about it?
 A: No.

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[1] Q: You I think were not involved in any follow up letters
 [2] after the May 1992 meeting with Mr Lazenby, were you?
 [3] A: I do not think so, not with letters, but with meetings.
 [4] Q: Is it right that during this period you were coming in
 [5] part-time or from time to time?
 [6] A: Yes.
 [7] Q: Not as a full time employee?
 [8] A: No.
 [9] Q: Why was that?
 [10] A: Because John Donovan was running the company at the
 [11] lowest possible level and all the staff had been made
 [12] redundant. I was working on a speculative basis with
 [13] John Donovan, helping with these proposals in the hope
 [14] that we could generate some new more business.
 [15] Q: I want to move on to later events, if I may, please?
 [16] MR JUSTICE LADDIE: Mr Cox, before you do, can I ask some
 [17] questions which you may want to re-examine on.
 [18] MR COX: Yes, indeed.
 [19] MR JUSTICE LADDIE: Mr Sotherton, can I ask you to go to
 [20] volume E1 and go to page 446.
 [21] I want you to understand that of course on the
 [22] assumption that this was written on the date it says it
 [23] was, and you know that Mr Hobbs says it was not -
 [24] A: Yes.
 [25] Q: But if it was, it is a long time ago and of course

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[1] everybody's memory fails them. I want you to do the
 [2] best you can. As I understand it, if you look at 446,
 [3] this was a letter which was sent to Mr King after a
 [4] discussion that you had with Mr King?
 [5] A: Yes.
 [6] Q: In that discussion, apparently, look at paragraph 2,
 [7] Mr King had expressed a desire that a message should be
 [8] conveyed to Shell. Do you see that?
 [9] MR COX: To Sainsbury, my Lord.
 [10] MR JUSTICE LADDIE: Sorry, to Sainsbury?
 [11] A: Yes.
 [12] MR JUSTICE LADDIE: So he was anxious to tell Sainsbury
 [13] something?
 [14] A: Yes.
 [15] Q: And that was that Sainsbury was a good partner?
 [16] A: Yes.
 [17] Q: At the same time as that we know from the contents of
 [18] that letter that the other letter, the letter to
 [19] Sainsbury itself, was shown to Mr King?
 [20] A: Yes.
 [21] Q: And that you will find at 449?
 [22] A: Yes.
 [23] Q: If you look at page 450, you have explained what a good
 [24] idea it is?
 [25] A: Yes.

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[1] Q: Then in the third paragraph you say:
 [2] "Either Don Marketing or Shell will be in contact
 [3] with you at an appropriate date in the future".
 [4] So at least, Mr Sotherton, as far as I can see
 [5] reading this, what this is saying is "When it goes ahead
 [6] you are going to be the partner or you are going to be
 [7] one of the partners. Shell is anxious for you to be one
 [8] of the partners".
 [9] A: Yes.
 [10] Q: Can I ask you to look at page -- one other thing of
 [11] course is that 447, that is the second paragraph, as far
 [12] as you can recall, were you anxious to put in place a
 [13] binding option at this stage, that is an option binding
 [14] Shell?
 [15] A: Yes, we would have been keen to do that, yes.
 [16] Q: Would it have been high in the list of priorities?
 [17] A: Yes.
 [18] Q: All right. Now can I ask you to go back to page 421,
 [19] which is just a few weeks earlier. Can I ask you to
 [20] read the last paragraph to yourself. (Pause.)
 [21] At this stage, Mr Sotherton, it looks like Shell's
 [22] attitude was not "We are anxious to get Sainsbury on
 [23] board", but, on the contrary, "We do not want to look as
 [24] if we are making any moves at all and certainly we do
 [25] not want any commitment".

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[1] Q: Mr Cox has just drawn your attention to a letter, to a
 [2] note you made two years later, page 980 in E2. Do you
 [3] remember your manuscript at the bottom?
 [4] A: Yes.
 [5] Q: "Mr Sotherton mentioned multibrand loyalty in the scheme
 [6] presented to Paul King. Said Shell would be interested
 [7] but at a later date. Will ask Paul for proposals to
 [8] make sure it is retained for long-term."
 [9] Now, according to your evidence, two years
 [10] earlier, you had entered into a binding relationship
 [11] with Shell which protected this without limit of time?
 [12] A: Yes.
 [13] Q: Why were you saying here that you would contact them
 [14] with a view to securing it for the long-term, if that
 [15] was something that had already happened. Do you
 [16] understand the point?
 [17] A: This refers to the proposal itself.
 [18] (3.15 pm)
 [19] MR JUSTICE LADDIE: Sorry, I do not understand?
 [20] A: No, this refers to the proposal, the proposal document.
 [21] MR JUSTICE LADDIE: Does this relate to the multibrand
 [22] loyalty proposal?
 [23] A: Yes.
 [24] MR JUSTICE LADDIE: The idea here is that you would
 [25] enter -- that Paul King should make proposals to ensure

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[1] A: Yes.
 [2] Q: Which seems to be quite different, does it not, to the
 [3] letters in July, where what they are suggesting is that
 [4] Shell will be contacting Sainsbury. It is quite
 [5] different, is it not?
 [6] A: Yes, I take your point.
 [7] Q: When did this change in attitude by Shell occur, just
 [8] bearing in mind, Mr Sotherton, that as I understand it
 [9] from June onwards Shell were not terribly interested in
 [10] going ahead with the multi-partner loyalty scheme at
 [11] all. Nevertheless, when did this change in attitude
 [12] from the sort of rather laid back non-committal to
 [13] anxious commitment, when did that happen? Do you
 [14] remember a conversation with Mr King where that
 [15] happened?
 [16] A: No, I can only remember ongoing conversations, that he
 [17] was always keen to continue exploring that avenue, but I
 [18] can't remember the specifics of it all, no.
 [19] Q: All right, Mr Sotherton. We have already seen in the
 [20] second letter of 24th July 1970 (sic) the reference to
 [21] the option to Shell. That was, as I understand it, you
 [22] say, a binding relationship between you and Shell, under
 [23] which Shell had the option to take on this new
 [24] promotional scheme?
 [25] A: Yes.

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[1] that it [the scheme] is retained for the long-term?
 [2] A: Yes.
 [3] MR JUSTICE LADDIE: But you had already done that two years
 [4] before, if the earlier letter --
 [5] A: No, the retention was to be by Mr Lazenby.
 [6] MR JUSTICE LADDIE: So Mr Lazenby will ask Paul --
 [7] A: That is correct.
 [8] MR JUSTICE LADDIE: For a proposal to make sure --
 [9] A: Yes.
 [10] MR JUSTICE LADDIE: But nothing needed to be sought from
 [11] Mr King because you already had a letter saying it was
 [12] retained, did you not? What did Mr King have to
 [13] supply? You already had a letter which said that this
 [14] was retained?
 [15] A: Yes, Paul King would have had the original proposal that
 [16] he could pass on to Mr Lazenby. Which is what the note
 [17] refers to.
 [18] MR JUSTICE LADDIE: Thank you.
 [19] MR COX: Mr Sotherton, you were all advertising men, or
 [20] rather, promotions men, were you not? Do you know
 [21] whether, if at all, the arrangement you came to in some
 [22] haste on 24th July 1990 would have had a binding legal
 [23] effect? Do you know whether it was legally binding or
 [24] not?
 [25] A: Not really.

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[1] Q: No. What happened on 24th July - is this correct -
 [2] was that you sought, or rather, Mr King requested an
 [3] arrangement whereby -

[4] MR JUSTICE LADDIE: Mr Cox, I have given you immense
 [5] latitude. To start a question in re-examination: "Is
 [6] not the position as follows; Mr King ...", so on and so
 [7] forth. That is about as leading a question as it is
 [8] possible to get.

[9] MR COX: I was taking into account that your Lordship is not
 [10] a jury and would understand -

[11] MR JUSTICE LADDIE: That has nothing to do with it, Mr Cox.
 [12] The rules of evidence apply as much in this court as
 [13] anywhere else.

[14] MR COX: My Lord, I wholly accept that. But I am troubled
 [15] about the rules of evidence and the way in which these
 [16] whole allegations have been raised. I think perhaps,
 [17] once I have completed my submissions -

[18] MR JUSTICE LADDIE: They come as no surprise to me, Mr Cox.

[19] MR COX: Forgive me, I am not following your Lordship's
 [20] observation.

[21] MR JUSTICE LADDIE: None of the allegations made by Mr Hobbs
 [22] has come as any surprise to me. Having read the papers
 [23] and the evidence, none of them has come as a surprised
 [24] to me.

[25] MR COX: My Lord, I am astonished to here your Lordship say

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[1] MR JUSTICE LADDIE: Of course I have your point.

[2] MR COX: Mr Sotherton, dealing with his Lordship's question
 [3] just a moment ago, if I may. I have asked you whether
 [4] you understood it to be binding in legal effect. Was
 [5] that the first time you had met Mr Lazenby, in May 1992?

[6] A: Yes.

[7] Q: And he was a new Promotions Manager; is that what you
 [8] understood?

[9] A: Yes.

[10] Q: When you spoke to Mr Lazenby - as far as the note
 [11] records your recollection. If you could look at it
 [12] again;

[13] "...mentioned multibrand loyalty card scheme
 [14] presented to Paul King. Shell could be interested but
 [15] at a later date. Will ask Paul for a proposal to make
 [16] sure it is retained for long-term."

[17] What do you understand that observation to mean?

[18] Just explain to me again, would you, so I understand
 [19] what you are saying. Mr Lazenby says Shell could be
 [20] interested but at a later date?

[21] A: Yes. They have expressed an interest but would like to
 [22] keep a reminder of some sort on file, I would think.

[23] Q: You see, what is being asked of you, an enquiry is put
 [24] of you; well, if you had the option beforehand, how does
 [25] that affect this note? Did you recollect the option at

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[1] that. They are not raised in the pleadings.

[2] MR JUSTICE LADDIE: This is a matter which will have to be
 [3] dealt with between counsel and me later. Let us get on
 [4] with the evidence. The witness needs to be released
 [5] from the witness box.

[6] MR COX: I agree, my Lord. But I am gravely troubled by it,
 [7] and it is a matter I feel I will have to raise with you,
 [8] if not today, then tomorrow morning.

[9] MR JUSTICE LADDIE: Fine. Do it then.

[10] MR COX: Because these are serious allegations and the
 [11] foundation put forward, it will be our submission, is a
 [12] tissue without substance.

[13] MR JUSTICE LADDIE: At the very beginning of this case,
 [14] Mr Cox, it was quite apparent that each side was saying
 [15] that the other side was not telling the truth. Or at
 [16] least that has been my understanding from the very
 [17] outset.

[18] MR COX: But your Lordship will look in vain in a paper
 [19] produced by the defendant for any indication that
 [20] forgery of documents that had been with the defendant
 [21] for months was going to be raised during the course of
 [22] that trial. Now that places the claimant -

[23] MR JUSTICE LADDIE: Continue with the re-examination.

[24] MR COX: My Lord, your Lordship has my point. I need not
 [25] labour it at this stage.

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[1] the time? Did you know of the option, but not mention
 [2] it? What is the position?

[3] A: I would think that, as the option was not discussed, it
 [4] had been forgotten or was of no concern at the time.

[5] Q: Can you remember now whether it was discussed?

[6] A: I do not believe it was, as an option.

[7] Q: Why do you say that?

[8] A: I think I would have made a note of it, to be honest
 [9] with you. If there were specifics, I would have made a
 [10] note.

[11] Q: Right. So, if the option had been mentioned explicitly,
 [12] you would have made a note, you believe?

[13] A: Yes.

[14] Q: Very well. Let us move on, if we may, please, to later
 [15] events. You mention that Mr Donovan had spoken to you
 [16] some time - some years - later about his concerns
 [17] relating to the Multibrand Scheme. You said that your
 [18] reaction had been, "Oh, here we go again, keeping in
 [19] mind the three previous cases that had been some while
 [20] before". How long after those three previous cases do
 [21] you recollect that he had contacted you and spoken to
 [22] you about the multibrand ...

[23] A: Maybe half a dozen months.

[24] Q: Was it after the settlement of those cases?

[25] A: Yes.

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[1] Q: So the first time he contacted you to register his
[2] concerns about the multibrand loyalty concept was some
[3] half a dozen months after the settlement of those
[4] earlier cases?

[5] A: Yes.

[6] Q: That is your best recollection?

[7] A: Yes.

[8] Q: Now, the settlement of those cases - I think if we look
[9] at the core bundle, the green bundle B - you were in
[10] fact a party too, were you not? You signed it, is what
[11] I mean by that. Tab 4, (IV), page 25.

[12] A: Yes.

[13] Q: It may be difficult for you to recall, but can you
[14] remember whether it was after this document that you had
[15] signed that Mr Donovan contacted you?

[16] A: Yes, most certainly. Yes.

[17] Q: Which was it, before or after?

[18] A: After, sorry.

[19] Q: So, when you said to Mr Hobbs earlier that it was, "Oh
[20] here we go again, keeping in mind the three previous
[21] cases that had been some while before", you were
[22] referring to a time after the settlement of those cases,
[23] as you recollect it?

[24] A: Yes.

[25] Q: Thank you, Mr Sotherton. Would your Lordship just bear

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[1] MR COX: I am very happy for him to do so. My concern is
[2] that maybe - I know he has waited a long time - it
[3] would be better and more advantageous to him to be
[4] called. But I apprehend he may, in any event, have to
[5] return tomorrow, subject to Mr Hobbs.

[6] MR JUSTICE LADDIE: Mr Hobbs, how long do you expect to be?

[7] MR HOBBS: I think we should finish him today.

[8] MR COX: In that case, may I call him? Mr Armstrong-Holmes,
[9] please.

[10] MR JOHN ARMSTRONG-HOLMES (sworn)

[11] Examination-in-chief by MR COX

[12] MR COX: Your Lordship should have a replaced, revised
[13] statement in your Lordship's bundle.

[14] MR JUSTICE LADDIE: Has that been put into my file?

[15] MR COX: I hope so, my Lord. I do not know. Yes, it has.

[16] MR JUSTICE LADDIE: Yes.

[17] MR COX: It should end at paragraph 18, my Lord.

[18] MR JUSTICE LADDIE: It should end at 18?

[19] MR COX: It should do, my Lord.

[20] MR JUSTICE LADDIE: Mine ends at 23. What does yours end
[21] at, Mr Hobbs?

[22] MR HOBBS: To where it did before, but Mr Roberts is telling
[23] me it should end between 17 and 18.

[24] MR COX: My Lord, we have that for your Lordship.

[25] (Handed).

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[1] with me a moment? Thank you.

[2] MR HOBBS: I would like to ask one or two more questions,
[3] my Lord.

[4] MR JUSTICE LADDIE: Are they necessary?

[5] MR HOBBS: Yes.

[6] Further Cross-examination by MR HOBBS

[7] Mr Sotherton, did you, over this last weekend,
[8] discuss your evidence in this case with any relatives of
[9] yours?

[10] A: No.

[11] Q: Did you discuss your evidence in this case with anybody
[12] else in this case? Mr Donovan, for example?

[13] A: No.

[14] Q: You are quite sure about that, are you?

[15] A: Very sure about it.

[16] Q: Right.

[17] MR COX: No further questions. Thank you very much,
[18] Mr Sotherton.

[19] (The witness withdrew)

[20] My Lord, I have Mr Armstrong-Holmes here, but
[21] there is an issue that I would like to raise with
[22] your Lordship and I am in your Lordship's hands as to
[23] when it should be.

[24] MR JUSTICE LADDIE: Would you prefer Mr Armstrong-Holmes
[25] to

leave the court while -

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[1] Mr Armstrong-Holmes, if you turn to your right,
[2] you will find the carousel with a yellow bundle marked
[3] C1. It is in front of you, is it?

[4] A: Yes.

[5] Q: If you could turn to tab 5, please. You will find there
[6] a copy of a witness statement?

[7] A: Yes.

[8] Q: Which, I hope, should bear your signature at the end?

[9] A: It does not bear my signature but ...

[10] Q: It does?

[11] A: It does not have my actual signature.

[12] MR COX: My Lord, this is the revised one. The original was
[13] signed. I hope no point need be taken on it.

[14] Mr Armstrong-Holmes, your original statement

[15] I think concluded in 24 paragraphs. In fact, for
[16] various reasons, it has been cut down only to 18

[17] paragraphs. It need not trouble you for the moment.

[18] I will not be asking you questions at this stage. Do

[19] you confirm that the contents of all of your original
[20] statement as you put it in were correct and true to the
[21] best of your knowledge?

[22] A: Yes, I do.

[23] Q: Would you remain there, because there will be questions
[24] for you.

[25] Cross-examination by MR HOBBS

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[1] **MR HOBBS:** As I understand it, Mr McMahon is present in
 [2] court, is he?
 [3] **MR COX:** No, he is not.
 [4] **MR HOBBS:** He is not. Thank you.
 [5] Mr Armstrong-Holmes, can I ask you: have you been
 [6] in attendance during any part of this trial up until
 [7] now?
 [8] **A:** I came for the first time on Friday.
 [9] **Q:** Have you received any reports as to what was going on in
 [10] your absence?
 [11] **A:** No.
 [12] **Q:** There came a time, did there not, when you were
 [13] approached by Mr Donovan to give evidence in these
 [14] proceedings?
 [15] **A:** That is right.
 [16] **Q:** Do you remember that occasion?
 [17] **A:** It was in March of this year.
 [18] **Q:** How did he make contact with you?
 [19] **A:** He wrote me a letter.
 [20] **Q:** I am not aware that I have seen that letter. Are you
 [21] willing to produce a copy of it?
 [22] **A:** Well, I do not have it with me, but he wrote me a
 [23] letter, I seem to remember.
 [24] **MR JUSTICE LADDIE:** I think the question was: do you object
 [25] to producing a copy of it?

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[1] **A:** Sorry. No, I do not object.
 [2] **MR HOBBS:** I call for production of that letter, please.
 [3] Can I just ask you this: what do you recollect the gist
 [4] of the letter to be?
 [5] **A:** That he was involved in a litigation against Shell UK
 [6] and that, within the discovery procedure, he had found
 [7] documents which I had actually submitted to Shell UK.
 [8] **Q:** Go on.
 [9] **A:** That was the gist of it.
 [10] **Q:** Did he go on to indicate in that letter what it was he
 [11] wanted you to do, if you would?
 [12] **A:** He was asking in effect if I would be willing to be a
 [13] witness for him. That is what I read between the lines,
 [14] and invited me to give him a telephone call.
 [15] **Q:** Right. Were there any enclosures to that letter in the
 [16] form of the discovery documents?
 [17] **A:** No, there were no enclosures at that particular time.
 [18] **Q:** Was Mr Andrew Lazenby's name mentioned in that letter?
 [19] **A:** Yes, he was.
 [20] **Q:** What was it that he said about Andrew Lazenby in that
 [21] letter to you?
 [22] **A:** He asked me if Mr Andrew Lazenby had purchased a concept
 [23] from me called "Spring Into Shell".
 [24] **Q:** Was there anything else in that letter about
 [25] Andrew Lazenby and Mr John Donovan's observations about

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[1] him?
 [2] **A:** He suspected that Mr Lazenby had not purchased the
 [3] concept from me.
 [4] **Q:** Was he in fact putting it to you that Mr Lazenby had
 [5] done something improper towards you?
 [6] **A:** It was perhaps inferred, yes.
 [7] **Q:** I beg your pardon?
 [8] **A:** It is probably inferred.
 [9] **Q:** You mean it was not explicit but you were left to work
 [10] it out for yourself?
 [11] **A:** Well, I am not a stupid man, Mr Hobbs, and, reading
 [12] between the lines, it was inferred.
 [13] **Q:** How did you react to this letter?
 [14] **A:** I called Mr Donovan and asked him if he would send me
 [15] the documents that related to me.
 [16] **Q:** And you had a conversation with John Donovan at that
 [17] time beyond simply asking for documents, did you not?
 [18] **A:** It was purely and simply that he had got a case against
 [19] Shell. He did not go into any great detail.
 [20] **Q:** What little detail did he go into?
 [21] **A:** That he was involved in a litigation with Shell.
 [22] **Q:** Did he not outline to you what the nature of that
 [23] complaint was?
 [24] **A:** No.
 [25] **Q:** Were you not interested to know?

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[1] **A:** Not particularly. I was more interested in my own
 [2] concerns.
 [3] **Q:** What were your concerns?
 [4] **A:** My concerns? My concerns were if something had happened
 [5] that I had been involved with that had, shall we say,
 [6] not been acted on in the correct manner.
 [7] **Q:** So your passions had been aroused by the letter you had
 [8] received from him?
 [9] **A:** Of course.
 [10] **Q:** What then happened after this telephone conversation?
 [11] **A:** I received the documents related to a concept of ours,
 [12] which was called Spring Into Shell. I also received
 [13] another document as well.
 [14] **Q:** Approximately how many documents did you receive? Can
 [15] you say now?
 [16] **A:** Half a dozen.
 [17] **Q:** Before -
 [18] **MR JUSTICE LADDIE:** Sorry. You received another document.
 [19] What was the other document?
 [20] **A:** Sorry, sir?
 [21] **MR JUSTICE LADDIE:** You said you received another document.
 [22] You said, "I received the documents relating to Spring
 [23] Into Shell and another document". What was the other
 [24] document?
 [25] **A:** That was a document to, I believe, a company called the

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[1] Hazell Consultancy.

[2] **MR HOBBS:** What was that about?

[3] **A:** That was a letter from Mr Lazenby to the

[4] Hazell Consultancy.

[5] **Q:** What was it about?

[6] **A:** It was advising Hazell Consultancy that they would not
[7] be proceeding with a concept for the garden concept
[8] which Shell had put out for research as it had been a
[9] project that Shell themselves had been working on and
[10] working up internally.

[11] **Q:** Before you received this letter from Don Marketing, the
[12] first letter we just spoke about that prompted your
[13] phone call, had you received any other form of
[14] communication from John Donovan?

[15] **A:** No, sir.

[16] **Q:** Was this the first communication you had ever received
[17] from John Donovan?

[18] **A:** The very first.

[19] **Q:** Am I right in thinking that you did not know
[20] John Donovan?

[21] **A:** I knew of him because I had read about him in trade
[22] media, but I had never met him before in my life. The
[23] first time I saw him was when he was giving evidence on
[24] Friday.

[25] **Q:** So you had never seen him, you had never spoken to him

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[1] **A:** I beg your pardon?

[2] **Q:** He did not discuss long-term -

[3] **A:** Not at the meeting, he did not, no. But he did
[4] subsequently in a telephone conversation with me.

[5] **Q:** Did he?

[6] **A:** Yes, he did.

[7] **Q:** I see. We had reached the position just before we
[8] digressed there where you received back from Mr Donovan
[9] a selection of letters?

[10] **A:** I received back my first letter to a Mr MacNab at Shell,
[11] I received a copy of a letter from Andrew Lazenby to me,
[12] I received a copy of my proposal to Shell, I received a
[13] further copy of a letter from me to Shell and I received
[14] a copy of a letter for the Hazell Consultancy.

[15] **Q:** Right. What did you do with those letters after you
[16] received them? You kept them, you read them and then
[17] what?

[18] **A:** I then agreed to write to Royce Tredwell.

[19] **Q:** You say you then agreed to write to Royce Tredwell. How
[20] does that come about? Somebody asks you, do they,
[21] whether you would be willing to give a witness
[22] statement?

[23] **A:** Yes. I was asked if I would be willing. I have said
[24] that already, I believe.

[25] **Q:** Who asked you?

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[1] but you had heard of him through trade media?

[2] **A:** Yes.

[3] **Q:** As I understand it, you had not heard of his company; is
[4] that correct?

[5] **A:** No, I had heard of Don Marketing before and in fact
[6] I believe, at the particular time I met with Mr Lazenby
[7] and in discussions with him after, Don Marketing came up
[8] at one point at that time.

[9] **Q:** You say you believe that. What makes you believe that?

[10] **A:** Because I remember at the particular time I met with
[11] Mr Lazenby they were talking about a lot of short-term
[12] promotions, one of which was the Star Trek promotion,
[13] which was linked in with Don Marketing.

[14] **Q:** You say he discussed all that with you?

[15] **A:** He discussed it. It was a successful promotion.

[16] **Q:** He discussed it with you?

[17] **A:** Loosely, briefly.

[18] (3.30 pm)

[19] **Q:** What do you mean "loosely" and "briefly"? I need a
[20] little bit more help from you as to the conversation you
[21] are referring to.

[22] **A:** The conversation I am referring to is, when I met with
[23] Mr Lazenby, he talked about short-term promotions.

[24] **Q:** He did not discuss long-term promotions with you at all,
[25] did he?

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[1] **A:** Mr Donovan.

[2] **Q:** So he contacted you again after you had received the
[3] material which he had sent to you?

[4] **A:** No, he had already asked me at the beginning, when
[5] I first responded to his letter with a phone call, if
[6] I would be willing. That is what the object of the
[7] letter was. He sent me these documents, which I read,
[8] and it was then that I decided, having read those
[9] documents through, that I would be willing to give a
[10] witness statement.

[11] **Q:** So you reported back to somebody that you would be
[12] willing, having read the documents, to make a statement?

[13] **A:** That is right.

[14] **Q:** And that was John Donovan: that you reported back to?

[15] **A:** I told him that I would send to his solicitors a letter
[16] of my recollections of events.

[17] **Q:** Right. You, therefore, spoke to John Donovan after you
[18] had received the material that he sent you?

[19] **A:** Yes, I did.

[20] **Q:** Was this a long or short conversation?

[21] **A:** Short.

[22] **Q:** What did you discuss in this short conversation?

[23] **A:** That it appears from the correspondence that I had got
[24] then, in particular the Hazell Consultancy letter, I was
[25] rather gobsmacked by it, to be honest.

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[1] Q: So you discussed that in some detail with him, did you?
 [2] A: Not in some detail. But that particular letter shook
 [3] me.
 [4] Q: How did the conversation end? Were you going to meet or
 [5] speak to John Donovan again?
 [6] A: No, I did not speak to John Donovan again. I then spoke
 [7] with Royce Tredwell.
 [8] Q: Are you saying that, after the conversations that we
 [9] have just discussed, you and I, that your only
 [10] communications after that were with Royce Tredwell?
 [11] A: Yes.
 [12] Q: Did you, at any stage, see a draft of the witness
 [13] statement that John Donovan has put in in these
 [14] proceedings?
 [15] A: No, sir.
 [16] Q: Did you, at any stage, to your knowledge, supply
 [17] John Donovan with a copy of the witness statement you
 [18] proposed to put in these proceedings yourself?
 [19] A: No, sir.
 [20] Q: Now, there came a time when you met Mr Lazenby, and
 [21] I understand that that was in 1992?
 [22] A: That is right.
 [23] Q: Right. I think you said that he discussed with you
 [24] short-term promotions?
 [25] A: At that particular meeting, yes, they had had -

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[1] Q: And there would have been no reason for him to do so,
 [2] would there?
 [3] A: It depends, does it not? I cannot say whether there
 [4] would be any reason. I do not know. Primarily I was
 [5] there to discuss what my concept was; but you often move
 [6] away from that and you discuss other concepts that are
 [7] around at the time. Especially if they are running and
 [8] they have been successful. Because obviously they want
 [9] to continue the success they have already had.
 [10] Q: You say there came a later point in time when you spoke
 [11] to Mr Lazenby on the telephone.
 [12] A: That is right.
 [13] Q: Who rang who?
 [14] A: I rang Mr Lazenby. It was shortly after 13th May.
 [15] Q: What did you want to know?
 [16] A: He agreed at the meeting on the 1st to take our concept
 [17] to an internal meeting with a view to it being put out
 [18] to research, and that meeting would decide whether or
 [19] not our concept would go out to research.
 [20] Q: So you raised that with him, did you; what was happening
 [21] to your proposal?
 [22] A: That is right.
 [23] Q: And he gave you that answer?
 [24] A: I beg your pardon?
 [25] Q: He gave you that answer, did he?

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[1] Q: Where did this meeting take place?
 [2] A: Sorry?
 [3] Q: Where did this meeting take place?
 [4] A: Shell-Mex House.
 [5] Q: How long did it last?
 [6] A: Round about two hours.
 [7] Q: Two hours. How did the subject of short-term promotions
 [8] come up, other than the one you were discussing with
 [9] him?
 [10] A: It started off he was telling me about they had had a
 [11] lot of success with short-term promotions, particularly
 [12] ones that had "pester power", as he called them, I seem
 [13] to recall. In other words, seducing children to
 [14] actually purchase from their forecourts.
 [15] Q: I cannot quite remember, was this the meeting of
 [16] 1st May that you are talking about?
 [17] A: 1st May. That is the only meeting I had with
 [18] Mr Lazenby.
 [19] Q: I see. Then you say there came a time
 [20] subsequently - well, let us be clear. He did not, at
 [21] that first meeting, according to you, mention
 [22] Don Marketing, John Donovan or anything to do with
 [23] either of them, did he?
 [24] A: To the best of my knowledge, not at that particular
 [25] meeting, no.

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[1] A: He had already told me on May 1st that he was going to
 [2] present to a meeting on 13th May our concept with a view
 [3] to recommending that it goes forward for research.
 [4] Q: So you rang him up to ask what had happened?
 [5] A: I rang him up to ask what had happened.
 [6] Q: And he told you what had happened and you have just told
 [7] my Lord what he told you?
 [8] A: He told me that it had been positive. He also told me
 [9] that it would be going out for research.
 [10] Q: Your proposal was a short-term game plan, was it not?
 [11] A: It was a general concept. It could have been either
 [12] short-term or long-term.
 [13] Q: You put it forward as a short-term proposal, did you
 [14] not?
 [15] A: I put it forward as a proposal. If you actually read -
 [16] Q: Did you have any discussion on 1st May as to whether it
 [17] would be a long-term proposal or a short-term proposal?
 [18] A: There was no definitive. I think, although it was
 [19] probably leading initially, that it might well be a
 [20] short-term proposal.
 [21] Q: Right. You reached this conversation you say you had on
 [22] the telephone on the 13th. You ask him what has
 [23] happened to your proposal and he tells you it is going
 [24] out to research?
 [25] A: That is right.

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[1] Q: And that was the end of that conversation, was it?
 [2] A: No, it was not the end of the conversation.
 [3] Q: What more happened in that conversation?
 [4] A: He told me that, whilst it was being considered as a
 [5] short-term, it may well also be considered in a
 [6] long-term scheme at that particular time. But initially
 [7] it was being sent out for research as a stand-alone
 [8] concept.
 [9] Q: And, at that point, the conversation ended?
 [10] A: No. He told me that the research would be back round
 [11] about the end of July and that he would be back in touch
 [12] with me then.
 [13] Q: And then, at that point, the conversation ended?
 [14] A: Pretty much so, I would think.
 [15] Q: Yes. Is the evidence you have just given the totality
 [16] of your evidence in relation to that conversation on
 [17] 13th May?
 [18] A: Pretty much so. I think I have covered it ...
 [19] Q: Right. There is nothing more that he said to you in the
 [20] course of that conversation, correct?
 [21] A: No, he was talking - if I think about it - I think he
 [22] mentioned something at that particular time - in fact,
 [23] now I am sure he did, as part of it. He talked about
 [24] options on schemes.
 [25] Q: Really? Just apropos nothing, he discussed options? Is

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[1] Q: Really? When did he say that much later?
 [2] A: I remember contacting Mr Lazenby again towards the end
 [3] of July 1992 and I asked him how the research had gone.
 [4] He said words to the effect that: "Whilst the proposal
 [5] we had put forward had not come top of the list out in
 [6] research, it had done pretty well and that it was still
 [7] a possibility".
 [8] Q: But that was much later than the conversation you and
 [9] I have just been discussing?
 [10] A: Yes.
 [11] Q: It was after he put it into research. I cannot remember
 [12] specifically myself, but I think the research on this
 [13] may have been done in September or some such time?
 [14] A: No, I think you will find it was done in July 1992, sir.
 [15] Q: Really?
 [16] A: The conclusion of that research.
 [17] Q: That is based on the discovery documents that were sent
 [18] to you, was it?
 [19] A: No, it is not based on the discovery documents.
 [20] Q: Then how do you know that?
 [21] A: It is based on Mr Lazenby telling me, from his meeting
 [22] first of all in May 13th, which was the internal meeting
 [23] at Shell, which was discussing it going out to research,
 [24] and that research was due to be concluded in July 1992.
 [25] Q: So there came a conclusion to that research and you

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[1] that what you are saying?
 [2] A: He discussed options relating to a longer term scheme.
 [3] Q: What did he say to you, according to your evidence?
 [4] A: I cannot remember it one hundred per cent, but I am
 [5] pretty confident he said to me that he had an option on
 [6] a longer term scheme and our concept could well be
 [7] incorporated as part of it.
 [8] Q: That is the totality of what he said to you on that,
 [9] according to you, is it? Is it?
 [10] A: I am thinking.
 [11] Q: Sorry.
 [12] A: I am just taking a moment to recollect. Yes, I think
 [13] I have covered it.
 [14] Q: Right. That is the totality now. Do you think we have
 [15] finally got to the totality of that conversation?
 [16] A: Well, we could probably have discussed a few other
 [17] things, other promotions. You ask questions, you talk
 [18] about questions.
 [19] Q: Yes, right. He did not, therefore, say to you that he
 [20] had inherited an option from a predecessor, did he?
 [21] A: I beg your pardon?
 [22] Q: He did not say to you that he had inherited an option
 [23] from a predecessor, did he?
 [24] A: No, he did not at that particular time. No, sir. But
 [25] he did much later.

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[1] spoke again, you are saying?
 [2] A: In July 1992, yes.
 [3] Q: Right. Back end of July?
 [4] A: Yes, it was.
 [5] Q: Do you remember the conversation?
 [6] A: Yes, it was about the research. He told me that our
 [7] concept had not come out at the top of the list, because
 [8] it was being researched amongst several other items. It
 [9] had not come out at the top of the list, but that it had
 [10] done pretty well and that they were still exploring the
 [11] possibilities of its use.
 [12] Q: Okay. Do you say there was a discussion in the course
 [13] of that conversation, the one at the end of July, about
 [14] options?
 [15] A: No, not at that time, no.
 [16] Q: There was not?
 [17] A: Not at that particular time.
 [18] Q: Was there a discussion at some later stage about
 [19] options?
 [20] A: I rang Mr Lazenby up several times after that.
 [21] Progressively the distance between each call got
 [22] longer. I think it would probably be about the summer
 [23] of 1993 when I called him to find out what was
 [24] happening. He was talking to me then with words to the
 [25] effect that our concept was more likely to be

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[1] incorporated in a longer term loyalty scheme, of which
[2] they had an option.

[3] Q: This was in the summer of 1993, did you say?

[4] A: Yes, yes.

[5] Q: You are clear about that, are you -

[6] A: Yes, I am.

[7] Q: - as your recollection?

[8] A: Yes. I also asked him at that particular point if he
[9] would like to negotiate an option on our concept. It

[10] was then that Mr Lazenby told me that they do not
[11] negotiate options anymore, and I reminded him of a
[12] previous conversation that we had had in respect of an
[13] option. It was then that Mr -

[14] Q: What previous conversation was that?

[15] A: This is going back to May 1992.

[16] Q: You had a conversation about options in May 1992?

[17] A: Yes. Because he told me he had an option during that
[18] phone call - which I have already said,

[19] I believe - and I reminded him about that situation.

[20] It was then that he told me that that option had been
[21] inherited from a predecessor.

[22] Q: He used those words, did he?

[23] A: Words to that effect, yes.

[24] Q: You see, I have taken those words, which I have just put
[25] to you, out of Mr Donovan's witness statement, but they

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[1] agency, which is at the end of July 1992, which is not
[2] many months from after me having put a proposal to them,
[3] which was a unique first in the industry and a first
[4] time presentation of a concept to Shell, which it was
[5] and which, I think you will find in my statement, that
[6] confirms, he is writing to an agency purporting to have
[7] actually worked up the scheme himself internally in
[8] Shell, which was -

[9] Q: How do you know he is referring to -

[10] MR JUSTICE LADDIE: Let him finish, Mr Hobbs.

[11] A: Which he is purporting to be, because it was based on a
[12] garden concept, dealing with bulbs, seeds and plants
[13] et cetera, writing to this agency in that respect and
[14] saying that Shell had been doing this scheme themselves,
[15] which was completely untrue. On that basis, yes, I was
[16] aggrieved.

[17] MR HOBBS: Therefore you do have a sense of grievance
[18] against Mr Lazenby and his employers, Shell?

[19] A: Personally I have nothing against Shell, but I do not
[20] like to see people taking somebody like me for ride,
[21] which he clearly was doing.

[22] Q: Your assumption is that the discussion that he was
[23] having with the other people related entirely to your
[24] concept? That is the assumption you are making?

[25] A: If you read the actual paragraph in that letter, you

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[1] are not in your witness statement. I am just wondering
[2] how it is that Mr Donovan is giving evidence of what
[3] Mr Lazenby is supposed to have said to you in those
[4] terms, but it is not in your -

[5] MR COX: It is.

[6] MR HOBBS: Those words "inherited an option".

[7] MR JUSTICE LADDIE: Paragraph 17, the penultimate sentence.

[8] MR HOBBS: I will make good the point I have just made.

[9] Would you turn to Mr Donovan's statement, C1, tab 1. In
[10] paragraph 57 there is a quote "inherited an option from

[11] a predecessor" which is, I understand, Mr Donovan
[12] getting it from you; yes? I have not seen, in your
[13] statement, those words "inherited an option". Perhaps
[14] I am working on a different statement.

[15] (3.45 pm)

[16] It has just been pointed out to me for the first
[17] time in my life. I apologise. I was asking you that
[18] question on a false basis.

[19] A: Thank you very much.

[20] Q: I am very sorry. Now, the question I have for you is
[21] this: I have the impression that you have a personal
[22] sense of grievance against Mr Lazenby; is that correct?

[23] A: I could not say I have a personal sense of grievance
[24] against Mr Lazenby. I hardly know the chap. Except
[25] that, when I read a letter that he sends to another

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[1] will find it is a direct inference.

[2] Q: What I really want to put to you is this: your
[3] recollection in relation to these option discussions,
[4] you do not in fact recollect these conversations with
[5] him at all on the subject of options, do you?

[6] A: Yes, I do. Quite clearly.

[7] Q: You say "quite clearly". You heard me ask you questions
[8] about the discussion on 13th May 1992 on the telephone.
[9] You remember me asking you those questions, do you not?

[10] A: Yes, I do.

[11] Q: I think I understood you to say - I think I have
[12] remembered correctly - you said the name of
[13] Don Marketing was not mentioned in that conversation?

[14] A: No, I do not think I said that at that particular time
[15] at all. I think I may well have made reference to
[16] Don Marketing, or Don Marketing was made reference to
[17] vis-a-vis other promotions that were running at that
[18] time. I am pretty sure that is what I replied to you,
[19] Mr Hobbs.

[20] Q: I put it to you Mr Lazenby has no recollection of this
[21] being said; that is to say, that there was any reference
[22] to Don Marketing in any conversation with you, and that
[23] you could well be mistaken?

[24] A: Well, I think I am far from being mistaken, Mr Hobbs.

[25] Q: Are you a member of any pressure group relative to

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[1] Shell? A Shell shareholder pressure group member?
 [2] A: The only pressure group I am a member of is the
 [3] Conservative party.
 [4] Q: Very good. Could you take E3, please, and turn to
 [5] page 1178.
 [6] A: Yes.
 [7] Q: Just look at that letter. Have you seen that letter
 [8] before?
 [9] A: Yes. That is the letter I was referring to, to the
 [10] Hazell Consultancy.
 [11] Q: That is the one which provoked your ire?
 [12] A: Yes, paragraph 3.
 [13] Q: Thank you.
 [14] Re-examination by MR COX
 [15] MR COX: Mr Armstrong-Holmes, you feel a sense of grievance,
 [16] but I want to ask you this - and it has not been
 [17] spelled out to you: would you come to this court to tell
 [18] a lie or to recollect something which you did not
 [19] recollect purely because you feel that you may have been
 [20] deceived or are justifiably aggrieved because of conduct
 [21] by Shell?
 [22] A: No, sir. I have the greatest respect for the law, but
 [23] I do believe in justice and fair play.
 [24] Q: Do you vividly recall, as you have said to Mr Hobbs,
 [25] being told by Mr Lazenby that there was an option

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[1] endeavour to get it to him as quickly as possible.
 [2] MR JUSTICE LADDIE: The witness may have to be recalled.
 [3] MR COX: He may have to be recalled if there were to be
 [4] questions following on from it. I am still unattended,
 [5] I am afraid, so I cannot even pass it on now.
 [6] I apologise.
 [7] (The witness withdrew)
 [8] My Lord, I am anxious to call my next witness,
 [9] who, I apprehend, will be short. Indeed, my learned
 [10] friend has been good enough to say I may read him. But
 [11] I have asked him to come because I wish to ask him one
 [12] or two questions in examination-in-chief.
 [13] MR JUSTICE LADDIE: I think what we will do in that case is
 [14] you had better tell Mr Hobbs what it is you are going to
 [15] get out of him in-chief, so he knows whether he needs to
 [16] cross-examine and prepare accordingly. You had better
 [17] tell him what you are going to ask him.
 [18] (4.00 pm)
 [19] MR HOBBS: My Lord, there are two points which my learned
 [20] friend has been good enough to outline to me. The first
 [21] one is apparently going to involve some evidence -
 [22] MR JUSTICE LADDIE: Which witness are we talking about?
 [23] MR HOBBS: Mr Chambers. I had sent my learned friends a
 [24] letter on Friday saying that his statement, as they put
 [25] it in, could be read and taken for what it was worth in

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[1] inherited from a predecessor?
 [2] A: Yes, I do, sir.
 [3] Q: On a long-term loyalty scheme?
 [4] A: I do.
 [5] Q: Were you also told that, within that scheme, your own
 [6] gardening concept could be used?
 [7] A: Yes, I was.
 [8] Q: Why was it again you raised the subject of the option in
 [9] summer 1993 with him?
 [10] A: The reason I raised it with him was I was asking if he
 [11] wanted to negotiate an option with me for my particular
 [12] scheme. I reminded him of the fact that, when I spoke
 [13] to him after his internal meeting in May, he had
 [14] mentioned then that they had an option on this - a
 [15] multi-retailer loyalty scheme.
 [16] Q: And those recollections and those conversations you
 [17] recall having?
 [18] A: Yes.
 [19] Q: And they are true?
 [20] A: They are true.
 [21] Q: Thank you, Mr Armstrong-Holmes.
 [22] MR HOBBS: Before the witness is released, can I have a copy
 [23] of the letter that was referred to?
 [24] MR COX: I am afraid, my Lord, when my learned friend called
 [25] for it, I was unattended by a solicitor. We will

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[1] the scheme of the evidence-in-chief as a whole at the
 [2] end of the day. So I was content for it to be read as
 [3] it stands. This is the first intimation that I have had
 [4] that there was a desire to supplement the evidence with,
 [5] apparently, production -
 [6] MR JUSTICE LADDIE: Do not give me the details.
 [7] MR HOBBS: I will not.
 [8] MR JUSTICE LADDIE: Is the supplementing something which
 [9] you
 [10] may wish to cross-examine on?
 [11] MR HOBBS: Undoubtedly.
 [12] MR JUSTICE LADDIE: In which case I will direct that a
 [13] supplementary witness statement be prepared and served
 [14] on you by 6 o'clock this afternoon, together with any
 [15] documents it refers to and that the witness will have to
 [16] be available tomorrow morning. I am sorry, Mr Hobbs.
 [17] That does not give you very much time to prepare. But
 [18] I do not want the witness held back any further than
 [19] that. So I want a supplementary witness statement on
 [20] this issue. All right. No problem with you for that,
 [21] Mr Cox?
 [22] MR COX: May I again - I am afraid I am unattended. I have
 [23] to say to your Lordship that I perfectly understand that
 [24] and indeed -
 [25] MR JUSTICE LADDIE: If there is any problem -
 [26] MR COX: We will do it. Would your Lordship give me just

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[1] one moment?

[2] **MR JUSTICE LADDIE:** Yes.

[3] **MR COX:** Mr Chambers has been here before is the problem and
[4] waited on one or two other occasions. That is nobody's
[5] fault, save possibly mine for bad timing.

[6] **MR JUSTICE LADDIE:** What are you saying, that he wants to be
[7] examined this evening?

[8] **MR COX:** My Lord, he would have liked to be, but I see no
[9] alternative.

[10] **MR JUSTICE LADDIE:** When did you know of the additional
[11] material?

[12] **MR COX:** This weekend. This relates to the unexpected -

[13] **MR JUSTICE LADDIE:** Do not tell me what it relates to. I do
[14] not want to know anything other than what is in the
[15] witness -

[16] **MR COX:** Can I put it this way, so that I can get my
[17] position straight -

[18] **MR JUSTICE LADDIE:** You think the case has developed along
[19] unpleasant paths and you -

[20] **MR COX:** Wholly unexpected from the claimant's point of
[21] view; an allegation of forgery. I know I am continually
[22] repeating the same thing but -

[23] **MR JUSTICE LADDIE:** I got the point the first three times.

[24] **MR COX:** It is not adumbrated anywhere. Over the weekend
[25] I have had many hours - I say with weariness - of

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[1] **MR JUSTICE LADDIE:** Absolutely. Can we leave it like that
[2] then for this afternoon? We then have Mr Chambers to
[3] deal with, Mr Donovan Senior to deal with. Is that
[4] right?

[5] **MR COX:** My Lord, I do not think at this stage, unless it is
[6] appropriate - I am not certain what course he will
[7] take.

[8] **MR JUSTICE LADDIE:** Fine. You are at least just as entitled
[9] to keep your powder as dry as Mr Hobbs' continues to be.

[10] **MR COX:** I have to be honest, my Lord, I do not know what
[11] his course will be.

[12] **MR JUSTICE LADDIE:** We have Mr Chambers, Mr McMahon?

[13] **MR COX:** My Lord, I may call no further evidence. I want to
[14] make that plain today.

[15] **MR JUSTICE LADDIE:** I see.

[16] **MR COX:** I am going to take instructions this evening.

[17] **MR JUSTICE LADDIE:** So it may just be Mr Chambers left?

[18] **MR COX:** And that is it.

[19] **MR JUSTICE LADDIE:** Mr Hobbs, will you be ready with your
[20] witnesses, on the assumption you are going to bless us
[21] with any?

[22] **MR HOBBS:** My Lord, I think my learned friend might have
[23] taken a cue there and been graceful and said that he got
[24] my running order last Thursday -

[25] **MR JUSTICE LADDIE:** For the second time, Mr Hobbs, put your
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[1] conference and discussion over this issue. To what
[2] extent I am taking it over-seriously, I am not sure, but
[3] what evidence the claimant ought to, at this very late
[4] stage, think of producing to meet these allegations.

[5] **MR JUSTICE LADDIE:** Because they are serious, Mr Cox, and
[6] they are as serious when they are made by the defendants
[7] against your clients as they are when they are made by
[8] your clients against the defendants. Both sides, as
[9] I said at the very outset of this case, are making the
[10] most serious allegations of dishonesty against the
[11] others. That has been clear from the outset. Whether
[12] the actual detail of it was clear, I know not. But
[13] certainly, to me, it was clear that each side was
[14] accusing the other of lying and insofar as -

[15] **MR COX:** But not forgery.

[16] **MR JUSTICE LADDIE:** Because the allegations are serious,
[17] Mr Cox, and because they go to the honesty of your
[18] witnesses and the honesty of Mr Lazenby, I think,
[19] as I say, a supplemental witness statement should be
[20] done.

[21] **MR COX:** It will be done.

[22] **MR JUSTICE LADDIE:** I am sorry it will be inconvenient for
[23] Mr Chambers, but it has to be dealt with.

[24] **MR COX:** I agree entirely, my Lord. I hope your Lordship
[25] understands why it is late.

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[1] claws back in.

[2] **MR HOBBS:** I am sorry. I have a running order which made an
[3] assumption, as it said, that I would have witnesses in
[4] the box today. That assumption has been falsified, so
[5] I have to go back and find out. But the answer is:
[6] there will be witnesses from my side tomorrow. I will
[7] let your Lordship know through the usual channels what
[8] the proposed running order is.

[9] **MR JUSTICE LADDIE:** Thank you very much, Mr Hobbs. Finally,
[10] for the third time of asking, Mr Cox, can I have your
[11] skeleton argument on disk?

[12] **MR COX:** No. My Lord, the disk is stuck in the computer.
[13] I have been trying to get it out all day. I promise
[14] you, it is the truth.

[15] **MR JUSTICE LADDIE:** If the worst comes to the worse, give me
[16] a clean copy and I will scan it in.

[17] **MR COX:** My Lord, we have been wrestling with this thing all
[18] day.

[19] **MR JUSTICE LADDIE:** I will scan it in. It will be a lot
[20] faster.

[21] **MR COX:** We have a solution. Does your Lordship has
[22] E-mail?

[23] **MR JUSTICE LADDIE:** I do.

[24] **MR COX:** Could I Email it to your Lordship.

[25] **MR JUSTICE LADDIE:** I cannot guarantee it will -

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[1] **MR COX:** If I was to give it to your clerk, that may solve
 [2] the problem.
 [3] **MR JUSTICE LADDIE:** Will that also include the chronology
 [4] with an extra column?
 [5] **MR COX:** Yes, it is all done.
 [6] **MR JUSTICE LADDIE:** Anything else?
 [7] **MR HOBBS:** Since I have to bring witnesses, and since it is
 [8] possible that Mr Chambers may be the last one, when
 [9] might I know whether he is the last one, please?
 [10] **MR COX:** I will tell my learned friend this evening.
 [11] **MR JUSTICE LADDIE:** Before you close your case, will you
 [12] make sure that Mr Hobbs has a copy of the correspondence
 [13] between Mr Donovan Junior and the last witness. So
 [14] that, in case Mr Armstrong-Holmes has to be recalled,
 [15] that can be done before?
 [16] **MR COX:** I will certainly do that. Yes.
 [17] **MR JUSTICE LADDIE:** Anything else, Mr Hobbs?
 [18] **MR HOBBS:** Nothing occurs, my Lord.
 [19] **MR JUSTICE LADDIE:** Thank you very much.
 [20] (4.10 pm)
 [21] (The court adjourned until 10.30 am
 [22] on Tuesday, 22nd June 1999)
 [23]
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