

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

18th June 1999

Before:

MR JUSTICE LADDIE

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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)

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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] Friday, 18th June, 1999  
 [2] (10.30 am)  
 [3] MR JOHN DONOVAN (continued)  
 [4] Cross-examination by MR HOBBS (continued)  
 [5] MR HOBBS: My Lord, could I just mention a matter before  
 [6] I go on? I have asked my learned friend whether he  
 [7] would be willing for Mr Sotherton to be out of court  
 [8] while I do this next part of cross-examination. He  
 [9] declines that. Therefore, since your Lordship has no  
 [10] power to compel it in civil proceedings, I am bound to  
 [11] go on.  
 [12] MR JUSTICE LADDIE: I could compel it; I could go into  
 [13] camera.  
 [14] MR HOBBS: I would wish to be in a position whereby  
 [15] Mr Sotherton was not present in court.  
 [16] MR JUSTICE LADDIE: Mr Cox, I take it that you are not  
 [17] prepared to ask Mr Sotherton to leave? A simple "yes"  
 [18] or "no" will do.  
 [19] MR COX: He is not here, actually.  
 [20] MR JUSTICE LADDIE: Fine.  
 [21] MR HOBBS: I thought you told me he was.  
 [22] MR JUSTICE LADDIE: Let us not worry about it --  
 [23] MR COX: However, he will be coming, I expect, in the next  
 [24] 15 or 30 minutes. I have to say that Mr Lazenby's  
 [25] presence throughout the trial might give the appearance,

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[1] impression, looking from the documents and the witness  
 [2] statements, is that there came a time when Mr Paul King  
 [3] ceased to be the National Promotions Co-ordinator and  
 [4] Stuart Carson became National Promotions Co-ordinator.  
 [5] Do you remember that?  
 [6] A: Yes, I do.  
 [7] Q: Looking at page 417, I identify that point in time as  
 [8] about 30th May, which you see as the date on that  
 [9] letter. This is Stuart Carson writing back to you:  
 [10] "Dear Mr Donovan, thank you for your letter of  
 [11] 14th passed to myself by Paul King."  
 [12] It is about a Sherlock Holmes' game proposal?  
 [13] A: Yes.  
 [14] Q: Am I right in thinking that, at about May 1990, Stuart  
 [15] Carson effectively became the man doing the job  
 [16] previously done by Paul King?  
 [17] A: Certainly at that time he was. I do not know when the  
 [18] changeover occurred.  
 [19] Q: Can we agree that it was by this point in time?  
 [20] A: Yes.  
 [21] Q: Without going into too much detail on this, you know, do  
 [22] you not, or you accept that Paul King had been somewhat  
 [23] unwell for some time?  
 [24] A: I know that now. I did not know it at the time.  
 [25] Q: What was happening was that from about May 1990 onwards

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[1] if Mr Sotherton were removed, of a certain inequality.  
 [2] MR JUSTICE LADDIE: Fair enough. Carry on.  
 [3] MR HOBBS: Right, Mr Donovan, we go into the final furlong.  
 [4] Would you take volume E1, please? In that volume --  
 [5] MR JUSTICE LADDIE: Just before you start, Mr Cox, two  
 [6] things. First of all, do you remember that I asked you  
 [7] for a chronology with an extra column. Has that been  
 [8] done?  
 [9] MR COX: It is coming.  
 [10] MR JUSTICE LADDIE: So is Christmas.  
 [11] MR COX: Not as long as Christmas, Monday.  
 [12] MR JUSTICE LADDIE: Good. The other thing is I have  
 [13] everybody's material on --  
 [14] MR COX: Monday, on one disc.  
 [15] MR JUSTICE LADDIE: Your skeleton, that is the only thing  
 [16] I am missing.  
 [17] MR COX: Yes. We discovered a problem with a disc we had  
 [18] prepared. It had certain extra amendments and notes.  
 [19] MR JUSTICE LADDIE: The expletives!  
 [20] MR COX: It was cross-referenced to my learned friend's.  
 [21] MR HOBBS: Page 418, Mr Donovan, if you would not mind.  
 [22] Actually 417, if you would not mind.  
 [23] A: I have that.  
 [24] Q: What I am trying to do is to get my bearings with you  
 [25] for what was happening within Shell in 1990. My

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[1] he had been sidelined within the department; would that  
 [2] be a fair way of putting it?  
 [3] A: Something had happened and he had apparently been  
 [4] demoted.  
 [5] Q: Yes. Do you mind me calling it "sidelined"?  
 [6] A: Okay.  
 [7] Q: All right. Now, page 420, if you would. Here is a  
 [8] letter from Sainsbury's, dated 20th June 1990, and it is  
 [9] addressed to you. Are you familiar with this letter?  
 [10] A: I am indeed.  
 [11] Q: You can see the contents of the letter. I do not think  
 [12] any of us have retained copies of the letter of 31st May  
 [13] that you may have sent to Mr Sturrock?  
 [14] A: It was a mail shop letter that went to a lot of  
 [15] companies.  
 [16] Q: It was a sort of pitch for business?  
 [17] A: Yes, it was.  
 [18] Q: Are you able to say what it was a pitch for business  
 [19] for?  
 [20] A: Yes, it was the Disneytime promotion.  
 [21] Q: It was a game concept?  
 [22] A: It was a game with a detachable loyalty card as well.  
 [23] Q: Right. As I understand your evidence in relation to  
 [24] this document, this was regarded as significant from  
 [25] your perspective to receive a reply from Sainsbury's

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[1] because they had never responded to a mail shop before?

[2] A: That is correct, yes.

[3] Q: If we turn the page then to page 421, this is you  
[4] writing on 25th June 1990 to Stuart Carson?

[5] A: Correct.

[6] Q: By now, Stuart Carson is firmly in the driving seat at  
[7] Shell on these matters, is he not?

[8] A: Yes.

[9] Q: You are writing:

[10] "Dear Stuart, re J Sainsbury's.

[11] "Sainsbury's have never before expressed the  
[12] slightest interest in promotional games. I was  
[13] therefore very surprised to receive a letter this  
[14] morning from Brian Horley, their advertising and  
[15] marketing manager, taking us up on an offer to make a  
[16] presentation.

[17] "I therefore thought it might be worthwhile taking  
[18] advantage of the opportunity to mention the multibrand  
[19] game concept to them - hence my call to you this morning  
[20] requesting permission to do so. I will make it clear to  
[21] Sainsbury's that the approach in regard to the  
[22] multibrand game is at our instigation and purely to  
[23] explore the possibility of joint promotional activity  
[24] between Shell and Sainsbury's, without any commitment  
[25] from either party."

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[1] A: It would just be a computer reference.

[2] Q: It was not at random, was it?

[3] A: I would not have thought so.

[4] Q: I have seen many of your documents and I have looked at  
[5] the references on the top of them. As I understand it,  
[6] you have a proposal file reference number for proposals  
[7] that you make to people and for related correspondence;  
[8] am I right?

[9] A: With all correspondence that went out.

[10] Q: And proposals in the form of three, four, five  
[11] page documents, and so on, that you present to your  
[12] clients, you use a proposal file reference number, do  
[13] you not?

[14] A: Right.

[15] Q: That is correct, is it not?

[16] A: I will check, yes. I think that would be the case.

[17] Q: I hope we do not get hung up on this. I could point to  
[18] quite a few documents where you have actually said on  
[19] the front of it -

[20] A: Yes, I am sure that is the case, so that we can find it  
[21] quickly if we wanted to.

[22] Q: That is the whole purpose of it, is it not?

[23] A: Yes.

[24] Q: If I have understood your file numbering system  
[25] correctly, you went up alphabetically from one file to

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[1] A: Correct.

[2] Q: Now, I infer from this, and I believe you will confirm,  
[3] that you had never met Brian Horley yourself before?

[4] A: No, I had not.

[5] Q: I think you had probably never spoken to him?

[6] A: Never spoken to him; no contact at all.

[7] Q: This was a step into the unknown, from your point of  
[8] view?

[9] A: Yes, it was.

[10] Q: Okay. Stuart Carson gives you permission to mention the  
[11] multibrand game concept to them?

[12] A: Correct.

[13] Q: Just to be clear on this, the multibrand game concept,  
[14] that would be Megamatch, would it not?

[15] A: Yes, it would.

[16] Q: This would, therefore, be matching halves used as a  
[17] universal promotional currency?

[18] A: That is correct, yes.

[19] Q: Just help me on one thing: do you see the reference at  
[20] the top of the letter, JAD/RGS/SB85? I would like to  
[21] know whether I have correctly decoded this. JAD is you?

[22] A: Correct.

[23] Q: RGS is Sotherton?

[24] A: Correct.

[25] Q: AB85 is your promotional proposal file reference?

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[1] the next file. So you start with A, you go AB, then you  
[2] go B, then you go C, D, E, F, G. That was how you went  
[3] up on these files?

[4] A: Yes.

[5] Q: So we are into the file references which carry the AB  
[6] number here, and this one has a file reference number  
[7] AB85 at the top. Turn the page then, please, to  
[8] page 422?

[9] A: Right.

[10] Q: This is a letter which you sent out to Horley, so far as  
[11] I can tell; yes?

[12] A: Yes, correct.

[13] Q: Look at the reference at the top: JAD, that is you.  
[14] SDR, that is Mrs or Miss Peacock, is it not?

[15] A: Sharon Peacock, yes.

[16] Q: What was she in your organisation?

[17] A: She was the office manager.

[18] Q: Right. When did she leave your employment?

[19] A: I would guess at the end of 1991, although she did do  
[20] some part-time work for me after that, in through 1992  
[21] and since then.

[22] Q: I think I established with you that she lived in  
[23] Stowmarket?

[24] A: Yes, Stowmarket.

[25] Q: And she is alive and well, is she not?

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[1] **A:** As far as I know. I have not spoken to her for some  
 [2] time.  
 [3] **Q:** Here is your letter of 10th July 1990 to Brian Horley,  
 [4] marked "Strictly confidential". You see the reference,  
 [5] "It's called Disneytime ..."  
 [6] **A:** Yes.  
 [7] **Q:** You introduce Disneytime down those three following  
 [8] paragraphs, yes?  
 [9] **A:** Yes.  
 [10] **Q:** In the bottom paragraph, you say:  
 [11] "I would also like to take this opportunity to ask  
 [12] if Sainsbury's might be interested in entering into  
 [13] exploratory discussions regarding a joint commercial  
 [14] game next year with Shell UK Oil. As you may be aware,  
 [15] we have supplied Shell with all of their promotional  
 [16] games during the last decade and this approach is made  
 [17] with their knowledge and approval."  
 [18] Then you talk about the basic idea, and it is the  
 [19] one we have just discussed?  
 [20] **A:** Yes.  
 [21] **Q:** The matching halves, common currency, and so on?  
 [22] **A:** Yes.  
 [23] **Q:** You say:  
 [24] "The actual game format and theming would  
 [25] obviously be subject to agreement by both parties", and

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[1] **A:** Right.  
 [2] **Q:** Page 429.  
 [3] **A:** I have that.  
 [4] **Q:** Thank you. This is AB108, the reference at the top. It  
 [5] is yourself writing to Stuart Carson. The point I want  
 [6] to make here is that you are communicating now with  
 [7] Carson on 17th July, 1990. He is the person that your  
 [8] company is dealing with within Shell at this point in  
 [9] time, is it not?  
 [10] **A:** We were talking to Stuart Carson and to Paul King during  
 [11] that period.  
 [12] **Q:** Yes. Why were you speaking to Paul King, do you say?  
 [13] **A:** Because we were working on another project, I think it  
 [14] was a Select Shop game, if my memory serves me  
 [15] correctly. We were doing that with Paul exclusively.  
 [16] **Q:** That was his remit, was it, within Shell at that point  
 [17] in time?  
 [18] **A:** Yes.  
 [19] **Q:** So far as National Promotions were concerned, you would  
 [20] be speaking to the National Promotions Co-ordinator,  
 [21] would you not?  
 [22] **A:** I spoke to Stuart and Paul about the National  
 [23] Promotions.  
 [24] **Q:** Paul King was not the National Promotions Co-ordinator  
 [25] anymore?

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[1] so on.  
 [2] The last paragraph, let us just notice that, on  
 [3] page 423:  
 [4] "To be frank, I was surprised to receive your  
 [5] response to my letter because Sainsbury's have not been  
 [6] receptive in the past to even considering promotional  
 [7] games. However, I hope the concepts mentioned above do  
 [8] demonstrate that it is possible for Sainsbury's to  
 [9] benefit from the proven appeal of promotional games,  
 [10] without using a theming (i.e. Bingo) which would  
 [11] obviously be totally incompatible with Sainsbury's  
 [12] image."  
 [13] All right?  
 [14] **A:** Yes.  
 [15] **Q:** You had not, I think, spoken to Brian Horley at that  
 [16] stage. This was a letter, you were responding, and this  
 [17] was the way you chose to communicate with him?  
 [18] **A:** I think that is correct, yes.  
 [19] **Q:** Here we are in July 1990 and as far as you can recollect  
 [20] now, you had not actually spoken to Horley, this is the  
 [21] only communication you had with him?  
 [22] **A:** I think that is correct, yes.  
 [23] **Q:** Okay. I just want to show you one or two letters in  
 [24] passing, that were passing between yourself and Stuart  
 [25] Carson at this time?

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[1] **A:** No, but he had been and Stuart was green in the job and  
 [2] he relied on Paul to quite a degree.  
 [3] **Q:** How do you know that?  
 [4] **A:** From just the contact that I had with them at the time.  
 [5] **Q:** Here are the contacts you are having with them. Here we  
 [6] are in July, you are writing letters to Stuart Carson.  
 [7] We have one on page 429. I do not think the precise  
 [8] details of the contents of this letter matter very much  
 [9] but, as far as I can see, it is a game promotion concept  
 [10] you are discussing with him?  
 [11] **A:** Yes.  
 [12] **Q:** Would that be right?  
 [13] **A:** That is correct.  
 [14] **Q:** That is 17th July you are writing to him. Turn the  
 [15] page to page 431. This is you, again, 18th July, in  
 [16] contact with Stuart Carson, are you not?  
 [17] **A:** Yes.  
 [18] **Q:** This is what?  
 [19] **A:** This is Star Trek.  
 [20] **Q:** Okay. The position on Star Trek is a little complicated  
 [21] because there were questions over clearances and rights  
 [22] and when they were going to go public, and so on. The  
 [23] point I am putting to you is that you are communicating  
 [24] with Stuart Carson on this potential national promotion  
 [25] on 18th July?

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[1] A: I was communicating with Stuart. I also spoke to Paul  
 [2] about it as well.  
 [3] Q: You spoke to Paul about Star Trek, did you?  
 [4] A: Yes.  
 [5] Q: You did not write to him?  
 [6] A: No, I spoke to him on the telephone.  
 [7] Q: What was Paul's involvement in that?  
 [8] A: Because Stuart was speaking to him about it, they had  
 [9] the proposal and they were discussing it. I phoned and  
 [10] got Paul King instead of Stuart and he said that they  
 [11] were excited about it, and so on, and that Stuart would  
 [12] be talking to me further about it.  
 [13] Q: You remember that very clearly, do you?  
 [14] A: I remember I was pretty excited about it myself at the  
 [15] time. It was very important to me.  
 [16] Q: As far as I can tell, with one exception, you were not  
 [17] in correspondence with King at all in July 1990?  
 [18] A: Was that the Select Shop game?  
 [19] Q: As far as I can tell, based on documents I have seen.  
 [20] A: I certainly spoke to him a number of times during that  
 [21] period on the Select Shop theme. I would need to check  
 [22] the documents to be certain of this but that is my  
 [23] recollection sitting here. I also spoke to him about  
 [24] Star Trek.  
 [25] Q: Star Trek was a national promotion, potentially?

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[1] Q: You would not want two documents carrying the same  
 [2] reference number, would you?  
 [3] A: Unfortunately, that does happen, yes. Sometimes I have  
 [4] got involved myself and, to save typing in the name and  
 [5] address again, I would take a letter that someone else  
 [6] had got with a reference number and use the address from  
 [7] there and just type in the letter myself.  
 [8] Q: You would use the same reference number?  
 [9] A: Not on purpose but that could happen, yes. Sometimes  
 [10] I would put "/B" on it.  
 [11] Q: Tell me why you put "/B" on it?  
 [12] A: To denote that I was using the same letter that had been  
 [13] used before but I was involved in that.  
 [14] Q: The "/B" would tell you what, when you went back to your  
 [15] files?  
 [16] A: It would only tell me that I had re-used the letter that  
 [17] had been typed before, I had used the top details again.  
 [18] Q: I do not see -- I know what you are talking about  
 [19] because there is a document that has a "B" on it, but  
 [20] I do not see too much of that happening in these files?  
 [21] A: I am just saying that did happen. I think Shell would  
 [22] know by now from my correspondence that, as far as  
 [23] references are concerned and dates, I am not always  
 [24] accurate.  
 [25] Q: Come on now. You are using these proposal file

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Holley 449 w. 'B'  
 RGS/SDP/118 - King

[1] A: Yes. Remember, the Disneytime project that I had  
 [2] written to Sainsbury's about, I had worked on that with  
 [3] Paul King, not with Stuart Carson.  
 [4] Q: Let us turn on. Page 434, just showing you another  
 [5] letter here. Here you are on 18th July, corresponding  
 [6] with Stuart Carson.  
 [7] A: Right.  
 [8] Q: This is Star Trek?  
 [9] A: Right.  
 [10] Q: All right?  
 [11] A: Yes.  
 [12] Q: I do not see any passing references in here to Paul  
 [13] King's name at all.  
 [14] A: No, the main contact was with Stuart Carson on Star  
 [15] Trek. At the beginning, Paul was involved when they  
 [16] were thinking about it. After that, it was Stuart.  
 [17] Q: All right. You are still using your AB reference  
 [18] numbers and the numbers are rising. This is AB110.  
 [19] That was the way it went, was it not, on promotional  
 [20] proposals' correspondence, the number rose? It was AB  
 [21] for the volume you filed it in and the numbers went up  
 [22] sequentially.  
 [23] A: Generally, yes. There were two different terminals  
 [24] churning out this correspondence and they were picking  
 [25] off numbers to put on the references.

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[1] reference numbers -- AB110, AB114 -- for a reason  
 [2] because you need to know, when you go back to a given  
 [3] customer, what you had previously said to them, do you  
 [4] not?  
 [5] A: Yes. In general terms, yes, the people in the office  
 [6] were using the system and they usually generated the  
 [7] documents.  
 [8] Q: Can I just have your position clear on this? What do  
 [9] you say the significance is of there being a "B"  
 [10] reference on the file number?  
 [11] A: It would normally mean that I had become involved in it  
 [12] and had re-used the address and put new content  
 [13] underneath it.  
 [14] Q: When you say you had become involved in it, of course  
 [15] your reference, your initials JAD, appears on quite a  
 [16] few of these letters and there is no "B" after the --  
 [17] A: What I mean is I had become physically involved in the  
 [18] typing side of it.  
 [19] Q: So a letter that carries the designation "B" is one that  
 [20] you had a hand in actually physically typing?  
 [21] A: Yes. Maybe I edited it or something but normally it  
 [22] would mean that I would have typed it in.  
 [23] Q: Thank you for that assistance. Now turn to page 439.  
 [24] Here is a letter, I am showing it to you not for its  
 [25] content but because here we are on 20th July, you are

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[1] writing to Stuart Carson, JAD/SDP/AB114, and this is  
 [2] about Star Trek, the game; all right?  
 [3] **A:** Right.  
 [4] **Q:** This is demonstrating, in this correspondence that we  
 [5] are looking at here, a pattern, is it not, whereby you  
 [6] are communicating with Stuart Carson during July?  
 [7] **A:** That is correct, yes.  
 [8] **Q:** On anything that was of any real importance in terms of  
 [9] National Promotions, you would have to speak to Stuart  
 [10] Carson or write a letter to him, would you not, at this  
 [11] point in time?  
 [12] **A:** They were still working as a team but Stuart was dealing  
 [13] primarily with the Star Trek game and Paul was still  
 [14] advising him on matters and Paul was primarily  
 [15] responsible for the Select Shop game.  
 [16] **Q:** Yes, but who is in charge?  
 [17] **A:** I guess that it must be Stuart Carson who had got that  
 [18] title.  
 [19] **Q:** Put it this way: on any matter of particular importance,  
 [20] you would have to make sure that Stuart Carson was,  
 [21] shall we say "in the loop"?  
 [22] **A:** Yes.  
 [23] **Q:** That is because Paul King had been, as I think you were  
 [24] prepared to agree a little while ago, sidelined within  
 [25] the department and that the manager in charge was

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[1] **A:** I would say that I did.  
 [2] **Q:** The reference as a matter of fact, AB100, I think it  
 [3] cross-correlates with the letter to Sainsbury's --  
 [4] I will just look that up so I am not wrong on this. Is  
 [5] it 431? That has AB100 on it.  
 [6] **A:** Yes.  
 [7] **Q:** Anyway, here we are on page 449. This is a letter that  
 [8] you had written to Mr Horley. You had a hand in this;  
 [9] yes?  
 [10] **A:** Yes.  
 [11] **Q:** It goes out under the signature or above the name of  
 [12] Roger Sotherton; right?  
 [13] **A:** Yes.  
 [14] **Q:** The fact that Roger Sotherton is the signatory to this  
 [15] letter indicates simply that you were working together  
 [16] on the communications you were having, or you say you  
 [17] were having, with Sainsbury's; correct?  
 [18] **A:** Yes. He had now become more involved in that because  
 [19] I was so involved in Star Trek, with Stuart Carson.  
 [20] **Q:** You knew what was going on here, did you not?  
 [21] **A:** Yes, I did.  
 [22] **MR JUSTICE LADDIE:** Just a moment. Mr Hobbs, are you going  
 [23] to ask anything about those numbers that appear in 431  
 [24] and 449? I just want to know if you are going to or  
 [25] not.

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[1] Stuart --  
 [2] **MR JUSTICE LADDIE:** Carson.  
 [3] **MR HOBBS:** Carson, I am sorry.  
 [4] **A:** I did not know what had happened. I guessed that --  
 [5] I did not raise the subject because I thought it could  
 [6] be embarrassing.  
 [7] **Q:** Why did you think it would be embarrassing?  
 [8] **A:** Because he was National Promotions Manager and now he  
 [9] was not, someone else had that function. But he also  
 [10] had more experience than anyone else in the Promotions  
 [11] Department because he had been there such a long time  
 [12] and I think that he was seen as a valuable asset to give  
 [13] advice to the people that succeeded him.  
 [14] **Q:** Right.  
 [15] **A:** I think I have seen that in Shell's witness statements.  
 [16] **Q:** You have seen that in what?  
 [17] **A:** I think I have seen something along those lines in  
 [18] Shell's witness statements.  
 [19] **Q:** Turn to page 449 in this bundle, please. Do you  
 [20] recognise this letter? I would be very surprised if you  
 [21] say you do not.  
 [22] **A:** I do recognise it, certainly.  
 [23] **Q:** You see the reference at the top, AB100b?  
 [24] **A:** Yes.  
 [25] **Q:** You had a hand in typing this letter?

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[1] **MR HOBBS:** Okay, I will, and I will do it this way.  
 [2] I jumped off it because I could hear 431 being suggested  
 [3] to me.  
 [4] Could you just put a finger, please, in 449 and  
 [5] could you please go back to 422?  
 [6] **A:** Right. Yes, I have that.  
 [7] **Q:** Right. Now, the reference JAD/SDP/AB100 is on 422;  
 [8] right?  
 [9] **A:** Yes.  
 [10] **Q:** Although for a reason which I cannot explain, but  
 [11] I rather came to the view that it was a typing error on  
 [12] 431, there is AB100 again, but I may be wrong on that.  
 [13] Anyway, turn to 449. You have AB100b.  
 [14] **A:** Right.  
 [15] **Q:** Remembering what you do about your numbering system  
 [16] and  
 [17] the way in which something acquires a "B" number, do you  
 [18] think it likely that the 449 reference to AB100b is  
 [19] linked back to the 422 reference to AB100?  
 [20] **A:** Yes.  
 [21] **Q:** Right.  
 [22] **MR JUSTICE LADDIE:** Is that all you were going to ask?  
 [23] **MR HOBBS:** That was all I was going to ask.  
 [24] **MR JUSTICE LADDIE:** I do not understand for the moment,  
 [25] Mr Donovan. I understood you to say, "It rang a very  
 familiar bell with me because sometimes, when I want to

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[1] use a letter again, I put it up on the screen, blank out  
 [2] all the text that I do not want and type the new text  
 [3] and sometimes I find I send off letters with the old  
 [4] date on it by mistake, as a result". I think lots of  
 [5] people who are not professional secretaries do that.  
 [6] I thought that that was the sort of thing that you were  
 [7] saying you did, that you pull up an existing letter,  
 [8] blank out the bits you do not want and retype?  
 [9] A: Yes, I did do that, yes.  
 [10] Q: Is that what you are saying has happened here?  
 [11] A: I guess that is what happened here. Of course, it is a  
 [12] long time ago but I would think that was what had  
 [13] happened.  
 [14] Q: Mr Donovan, it is not possible. If you look at 449?  
 [15] A: Mmm.  
 [16] Q: And you look at the code at the top, RGS/SDP/AB100b?  
 [17] A: Yes.  
 [18] Q: If you had taken an existing letter and blanked out the  
 [19] text, you would have ended up with the same code, the  
 [20] same address at the top, but the only thing that has  
 [21] been retained is AB100. For example, at 449, RGS/SDP;  
 [22] 431 is JAD/SDP and so is 422. If you just blank out the  
 [23] text, you should have had JAD/SDP?  
 [24] A: Yes, but I may have changed the reference at the top as  
 [25] well.

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[1] A: No.  
 [2] Q: So that is the file that this would have got into and it  
 [3] is a letter you had a hand in writing on 24th July,  
 [4] 1990. Let us look at the first portion of the text:  
 [5] "I am writing to confirm the main points of the  
 [6] telephone discussions which John Donovan and I have had  
 [7] with you."  
 [8] Okay?  
 [9] A: Yes.  
 [10] Q: How many conversations were there?  
 [11] A: I had one conversation. I think Roger may have had one  
 [12] or two.  
 [13] Q: Would Roger have had the telephone conversation in your  
 [14] presence?  
 [15] A: No, I do not think so.  
 [16] Q: Would you have tape recorded it or made notes about it?  
 [17] A: No.  
 [18] Q: Surely you would have made notes about it, would you  
 [19] not?  
 [20] A: I would not have done, no, because he had calls with  
 [21] him.  
 [22] Q: Would he have made notes; was it his practice to make  
 [23] notes?  
 [24] A: No, it was not his practice, unless we were making a  
 [25] proposal to someone, then notes would be made.

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[1] Q: If you changed the reference at the top, why did you  
 [2] leave AB100? It goes a bit further than that. You then  
 [3] change the date, do you?  
 [4] A: Change the date.  
 [5] Q: You change three-quarters of the code, change the date  
 [6] and just leave in the --  
 [7] A: I think it was to save typing in the address.  
 [8] Q: I see.  
 [9] (11.00 am)  
 [10] MR HOBBS: In fact, this is a fresh letter, is it not, to  
 [11] which you have given the code number AB100b?  
 [12] A: Yes.  
 [13] Q: Right. This is a fresh letter which you had a hand in  
 [14] typing; correct?  
 [15] A: Yes.  
 [16] Q: Like all these letters in sequence, it would have been  
 [17] filed when written on the AB file, would it not, because  
 [18] of the way these files run in sequence?  
 [19] A: I would have thought so, yes.  
 [20] Q: It is the obvious place for it, is it not?  
 [21] A: Yes, it is.  
 [22] Q: There is no point in using a numbering system of the  
 [23] kind you are using unless you, in fact, put the letters  
 [24] in the relevant file, alphabetical file, in the correct  
 [25] sequence of numbers. There is no point, is there?

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[1] Q: All right. You have pitched -- and we have established  
 [2] this by the letters -- on 10th July 1990, that was the  
 [3] letter at 422, you have pitched for a game?  
 [4] A: That is correct.  
 [5] Q: What you are saying, or what you wish my Lord to  
 [6] understand is that by the time we get to 24th July you  
 [7] have revealed more than a game, you are talking about a  
 [8] long-term multibrand loyalty scheme, are you not?  
 [9] A: Yes.  
 [10] Q: At what point in time between 10th July game proposal  
 [11] and 24th July multibrand loyalty proposal do you say  
 [12] that you discussed with Horley the latter, the  
 [13] multibrand loyalty --  
 [14] A: I had a phone call with him probably within a few days  
 [15] of when we sent the first letter.  
 [16] Q: Right.  
 [17] A: Then Roger took that over, I asked him to. Mr Horley,  
 [18] if I recollect correctly, did not have time to talk  
 [19] about it and I asked Roger to phone him back. That  
 [20] happened in the intervening period.  
 [21] Q: All right. So is it your recollection and your evidence  
 [22] that you, yourself, discussed with Horley the multibrand  
 [23] loyalty programme, as we call it?  
 [24] A: I do not think that I did, no. I phoned him about the  
 [25] letter that I had sent, which was about Megamatch, and

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[1] asked whether he had time to discuss it or whether we  
 [2] could set up a meeting. He said that he was busy and he  
 [3] had not had time to look at it and could we call him  
 [4] back in a few days? I handed it over to Roger Sotherton  
 [5] to do that.

[6] Q: We are what, four, five, six days after 10th July, that  
 [7] you are making that follow-up conversation?

[8] A: I would have thought within a few days.

[9] Q: Four, five, six days?

[10] A: It is very difficult for me to say now. I would say  
 [11] within a few days. I would say about three days after  
 [12] the first call.

[13] Q: So you, in fact, do not get anywhere with him on the  
 [14] follow-up call because he is not able to respond to your  
 [15] letter of 10th July?

[16] A: Yes.

[17] Q: You then pass it over to Sotherton?

[18] A: Correct.

[19] Q: How long do you understand Sotherton to have waited  
 [20] before Sotherton made contact?

[21] A: I cannot recall that now. I just do not know.

[22] Q: Sotherton would have made contact from your offices,  
 [23] would he not?

[24] A: Yes, he would have done.

[25] Q: The number of personnel in your offices was never more

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[1] have thought it would have been within a few days. That  
 [2] would be my guess.

[3] Q: So it is a few days added to a few days. Let us say six  
 [4] or seven days then after 10th July. You hear from  
 [5] Sotherton. What does Sotherton say to you about his  
 [6] conversation with Horley?

[7] A: He said that he had spoken to him about the Megamatch  
 [8] game and that it was clear that Sainsbury's were not  
 [9] really interested in a promotional game and he decided  
 [10] from what Mr Horley was saying that he may as well -- as  
 [11] always, when we talk about Megamatch, he thought of the  
 [12] loyalty version of it and he thought that could be the  
 [13] right thing for Sainsbury's and he discussed it with  
 [14] him.

[15] Q: You are saying, are you, that Sotherton reports back to  
 [16] you saying, "I tried to get him interested in the  
 [17] Megamatch game, he was not very interested so I tried to  
 [18] lure him with discussions about the multibrand loyalty  
 [19] programme"?

[20] A: Yes.

[21] Q: Right. What was your understanding of what Roger  
 [22] Sotherton had told him about the multibrand loyalty  
 [23] programme? Were you given to understand what  
 [24] information had been passed on?

[25] A: In general terms, he told me that he had described the

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[1] than about six, was it, at this point in time?

[2] A: That would be about correct.

[3] Q: In those circumstances, you would have got to here,  
 [4] would you not? Sotherton would have reported back to  
 [5] you?

[6] A: Yes, he would have done.

[7] Q: Do you remember him reporting back to you on the  
 [8] discussion?

[9] A: I do, but I do not remember the exact date of when that  
 [10] happened. The other side of it is that I was very busy  
 [11] trying to find the concept to put up to Shell instead of  
 [12] the Disneytime and I thought of Star Trek and got  
 [13] totally engrossed with that, which is why I handed this  
 [14] over to Roger Sotherton.

[15] Q: So you give Sotherton the task of following up 10th July  
 [16] letter, and that letter is about a game, a Megamatch  
 [17] game?

[18] A: Correct, yes.

[19] Q: You must have wanted to know or you must have heard at  
 [20] some stage that he had made contact with Horley again?

[21] A: Yes.

[22] Q: What shall we say, five or six days after 10th July?

[23] Seven or eight days? How many days do you reckon?

[24] A: I cannot recall now. I would have thought it would have  
 [25] been within a matter of days rather than weeks. I would

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[1] scheme to him, that Mr Horley had agreed to treat the  
 [2] information as being confidential and he had just  
 [3] described how it was different to Megamatch because a  
 [4] lot of the features, of course, are similar, or the  
 [5] same.

[6] Q: You are saying, I think, that you were not party to  
 [7] those discussions between Sotherton and Horley?

[8] A: I do not think so, no.

[9] Q: Did there come a time subsequently when you were a party  
 [10] to discussions on the loyalty brand programme point with  
 [11] Horley? Did you become a party to such discussions?

[12] A: It is possible that I did. I do not have a  
 [13] recollection. It is possible that I did.

[14] Q: Look at the letter on 449;

[15] "I am writing to confirm the main points of the  
 [16] telephone discussions which John Donovan and I have had  
 [17] with you."

[18] Does that jog your recollection?

[19] A: Yes, because I certainly had the first conversation with  
 [20] him when we discussed the Megamatch game.

[21] Q: And you typing out this letter, are you not?

[22] A: Yes, well, I was certainly involved in that.

[23] Q: Here you are, drafting or typing it, in some way

[24] producing this letter, and you are referring to

[25] telephone discussions which you are attributing to

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[1] yourself as well as Sotherton?

[2] **A:** Yes.

[3] **Q:** Would I be right in thinking that you did in fact at  
[4] some stage prior to this letter yourself speak to Horley  
[5] about the multibrand loyalty programme?

[6] **A:** I would not rule out the possibility, but I do not  
[7] recollect it.

[8] **Q:** Surely this was a rather important event, was it not?

[9] **A:** As far as I can recall, Roger dealt with that part of it  
[10] with Mr Horley.

[11] **Q:** Not entirely alone surely?

[12] **A:** Entirely alone, because I was getting absolutely wrapped  
[13] up in the Star Trek project.

[14] **Q:** Are you trying to distance yourself from any  
[15] communications between yourself and Horley over the  
[16] telephone?

[17] **A:** I am trying to give you my best recollection of what  
[18] happened.

[19] **MR JUSTICE LADDIE:** You have to be fair. This letter says,  
[20] "discussions that John Donovan and I had with you" and  
[21] if you look straight below, the first thing that is  
[22] there is the Megamatch.

[23] **MR HOBBS:** I understand that, my Lord.

[24] **MR JUSTICE LADDIE:** You put it to him that he was distancing  
[25] himself from all the conversations.

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[1] a derivative of the Megamatch idea of a Shell-led

[2] consortium. You have to remember that at the time I was

[3] extremely busy with Stuart on the Star Trek project

[4] which was just starting and if perhaps that had not been

[5] the case, then maybe we would have discussed it with

[6] him. I might have done but I cannot recall that.

[7] **Q:** I just want to follow up with something that I think

[8] I heard you say there. Were you for a moment suggesting

[9] there that the permission referred to on 421 extended to

[10] what you are calling the multibrand loyalty programme?

[11] **A:** I am saying that Megamatch, in my mind, that was where

[12] the multibrand loyalty scheme came from and, as I have

[13] said many times, whenever we got into conversation with

[14] anyone about Megamatch, we often then went to the

[15] loyalty version of it. As I also said yesterday, one

[16] was a short-term game and the other was a long-term

[17] loyalty scheme.

[18] **Q:** I am not sure you actually answered my question there.

[19] Are you suggesting in your evidence now that the

[20] permission that you refer to in this letter on 421 would

[21] have extended to the multibrand loyalty programme?

[22] **A:** I am not sure that that would be fair to say that.

[23] **Q:** No. In fact, the position would be that if you were

[24] going to disclose the multibrand loyalty programme to

[25] Sainsbury's, that is something that you would have had

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[1] **MR HOBBS:** No, my Lord, with great respect, I did put that  
[2] point but I was conscious of what I was saying and  
[3] I believe I have a proper basis of putting it the way  
[4] I did.

[5] Can I just be clear on this? Is your best  
[6] recollection now that in discussions you had yourself  
[7] with Horley, you, yourself, did not discuss the  
[8] multibrand loyalty programme?

[9] **A:** I do not think that I did, to the best of my  
[10] recollection. It is possible that I might have spoken  
[11] to him subsequently but I cannot - I have not got a  
[12] recollection of that. I would not rule it out.

[13] **Q:** Keep a finger in 449 and turn back to 421, please. On  
[14] 421, you make a point of asking Stuart Carson for  
[15] permission to discuss with Sainsbury's the multibrand  
[16] game, Megamatch?

[17] **A:** Yes.

[18] **Q:** Right. Did you make a point of seeking permission from  
[19] Stuart Carson to discuss this multibrand loyalty  
[20] programme with Horley of Sainsbury's?

[21] **A:** I have not got a recollection that I did. I may have  
[22] done, but I cannot recall that I did.

[23] **Q:** You would certainly agree, would you not, that you ought  
[24] to have done?

[25] **A:** I am not sure that that would be the case because it was

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[1] to revert to Stuart Carson on, is it not?

[2] **A:** I am not sure about that. I think that our relationship

[3] with Shell was good enough that I had the consent from

[4] him to talk to Sainsbury's about the Shell-led

[5] consortium and what I was then - what we were going to

[6] suggest to Sainsbury's was not a mile away from that.

[7] It was a Shell-led consortium.

[8] As I said earlier, if we had not been very busy on

[9] the other project, maybe I would have specifically

[10] raised the subject with him.

[11] **Q:** Let us press on in the letter on 449. Was it your

[12] understanding when you wrote this letter that Sotherton

[13] may have had more than one discussion with Horley on the

[14] subject of the multibrand loyalty programme?

[15] **A:** It is very difficult to put my mind back to 1990, unless

[16] there is something that says it in the letter. I knew

[17] certainly that he had spoken at least once to Mr Horley

[18] and maybe I knew that he had spoken to him more than

[19] once. It is possible that I also spoke to Mr Horley

[20] again, I just do not have a recollection about it.

[21] **Q:** When Sotherton informed you of his discussion with

[22] Horley, did Sotherton go on to tell you anything about

[23] how interested or otherwise he thought Horley was in

[24] what had been discussed with him?

[25] **A:** I think he must have done for this letter to be

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[1] written. He must have given me the basics of it, yes.  
 [2] **Q:** But you do not have any recollection, as you give  
 [3] evidence now, as to whether you picked up any idea as to  
 [4] the degree of enthusiasm that Horley may have had for  
 [5] this concept?  
 [6] **A:** I remember that it was not something that Sainsbury's  
 [7] were going to do immediately. It was something they  
 [8] might be interested in at a later date.  
 [9] **Q:** So --  
 [10] **A:** If the timing was right with Shell, then we should get  
 [11] back to them. They were aware that Shell were not ready  
 [12] for a long-term scheme, they were concentrating on  
 [13] short-term activity, which was the reason we went with  
 [14] Megamatch, but that at a later stage, if Shell decided  
 [15] to go with it, then we could go back to Sainsbury. I do  
 [16] not think that there was anything more than that to it.  
 [17] There was not any guarantee that Sainsbury's had a  
 [18] strong interest in it. They had an interest in it.  
 [19] **Q:** They were kind of going to wait, were they, to see  
 [20] whether Shell came back to them on the proposal; is that  
 [21] what you are saying?  
 [22] **A:** Yes, and they would consider it at that time.  
 [23] **Q:** At what time?  
 [24] **A:** Whenever Shell were ready to look at it seriously, then  
 [25] Sainsbury's would consider the proposal again.

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[1] consortium-based customer loyalty promotion which (with  
 [2] Shell's approval) we disclosed to you in strictest  
 [3] confidence."  
 [4] **A:** Yes, I see that.  
 [5] **Q:** My Lord, I wonder if the window could be shut. I am  
 [6] finding it very difficult to hear what the witness is  
 [7] saying. We seem to have World War 3 started out there?  
 [8] **MR JUSTICE LADDIE:** The people who are trying to disrupt  
 [9] central London at the moment do not have helicopters.  
 [10] They disapprove of helicopters and everything else.  
 [11] **MR HOBBS:** I am sorry. I am finding it so difficult to hear  
 [12] what is going on. Thank you.  
 [13] You got that first sentence, did you?  
 [14] **A:** I did.  
 [15] **Q:** "With Shell's approval"?  
 [16] **A:** Yes.  
 [17] **Q:** When did you get that approval?  
 [18] **A:** I would guess that I am referring to the letter that was  
 [19] actually relating to Megamatch.  
 [20] **Q:** Let us just look at what you have actually written;  
 [21] "... willing to consider the consortium-based  
 [22] customer loyalty promotion which (with Shell's approval)  
 [23] we disclosed to you in strictest confidence."  
 [24] That is implying that the disclosure was with  
 [25] Shell's approval?

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[1] **Q:** No matter how long it was before Shell came back to  
 [2] them?  
 [3] **A:** I do not suppose there was any date put on it.  
 [4] **Q:** Why was there no date put on it?  
 [5] **A:** Because the petrol promotions run in cycles, you have  
 [6] several years of loyalty schemes and then they change  
 [7] over to short-term activity, and then they swap back.  
 [8] It has been going on since the 1960s, that I know of.  
 [9] **Q:** On 449 we deal under the heading, first of all, with  
 [10] Disneytime and Megamatch proposals. This letter records  
 [11] that you have decided that the timing would not be right  
 [12] for Sainsbury's to move into promotional game activity  
 [13] in 1991. You are willing to reconsider the opportunity  
 [14] at a later date?  
 [15] **A:** That is correct, yes.  
 [16] **Q:** That was effectively, "Do not call us, we will call  
 [17] you", was it not?  
 [18] **A:** You could interpret it that way. They were not in the  
 [19] market at that time for a promotional game.  
 [20] **Q:** Right. Now the next heading you have in this letter is  
 [21] "A multibrand loyalty programme"; right?  
 [22] **A:** Right.  
 [23] **Q:** You are writing here;  
 [24] "When the timing is suitable for Shell,  
 [25] Sainsbury's will be willing to consider the

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[1] **A:** In the intervening period we had, of course, then  
 [2] discussed this with Shell. That was around 20th, was it  
 [3] not? We discussed this with Shell and we did get their  
 [4] approval to send the letter to Sainsbury's.  
 [5] **Q:** I am not talking about the letter; I am talking about  
 [6] the discussions. This letter that we are looking at  
 [7] here is recording the discussions.  
 [8] **A:** Well, this happened after we had got Shell's approval to  
 [9] write to Sainsbury's and I guess I was talking about  
 [10] that.  
 [11] **Q:** You are talking about getting Shell's approval to write  
 [12] to Sainsbury's. Your letter is saying "Sainsbury's will  
 [13] be willing to consider the consortium-based customer  
 [14] loyalty promotion which (with Shell's approval) we  
 [15] disclosed to you in strictest confidence."  
 [16] We are talking about events which have already  
 [17] happened before this letter?  
 [18] **A:** Yes.  
 [19] **Q:** First of all, do you say that that is true, that you got  
 [20] Shell's approval to make the disclosure to Horley of  
 [21] Sainsbury's?  
 [22] **A:** Roger Sotherton spoke to Paul King about it and we sent  
 [23] a letter across to them. They changed it slightly and  
 [24] we sent that to Sainsbury's, with their approval, yes.  
 [25] **Q:** You are talking about letters. I am asking you about

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[1] discussions. I have built up a picture from your  
 [2] answers that there was one, or maybe more, telephone  
 [3] conversations between Sotherton and Horley and I have  
 [4] understood you to say that in one, or possibly more  
 [5] discussions between Sotherton and Horley, Sotherton  
 [6] reveals the multibrand loyalty programme concept?  
 [7] A: That is correct.  
 [8] Q: I am asking you whether that disclosure in that  
 [9] telephone conversation, or there may have been more than  
 [10] one, whether you say that that disclosure took place  
 [11] with Shell's approval; the actual telephone disclosure?  
 [12] A: It is very difficult for me to say under the  
 [13] circumstances that I was extremely wrapped up in a £4.5  
 [14] million project for Shell, Star Trek, trying to arrange  
 [15] licencing, the print, et cetera, for that. This was of  
 [16] secondary importance because I knew that Shell - the  
 [17] timing was not right for them. They were going with  
 [18] Star Trek and were looking at other short-term  
 [19] activity. This was of secondary importance and  
 [20] I therefore decided to ask Roger to deal with it, and he  
 [21] dealt with Paul King at Shell. As far as the exact  
 [22] timing is concerned, it is difficult for me to recall  
 [23] that now.

[24] Q: At all events, you are in some way involved in the  
 [25] drafting of this letter we have on 449?

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[1] the multibrand loyalty programme took place without  
 [2] Shell's approval?  
 [3] A: It is possible that the first discussion that Roger had  
 [4] with Mr Horley, that he did that without Shell's  
 [5] approval. Yes, I think that is possible.  
 [6] Q: You think it is possible. Are you able to give my Lord  
 [7] an indication as to just how likely you think it is that  
 [8] Sotherton did that?  
 [9] A: I would have thought that it was quite likely because my  
 [10] impression was that when he had the conversation he was  
 [11] not intending to raise that subject. It was only in  
 [12] response to what Mr Horley had said in regard to the  
 [13] Megamatch project.  
 [14] Q: Reading on, on page 449, in the fourth line of the  
 [15] paragraph we are in:  
 [16] "Copies of pages 12, 13 and 14 of Concept Four, a  
 [17] section of a multiconcept proposal we presented to  
 [18] Shell, are attached for your information."  
 [19] Yes?  
 [20] A: Yes.  
 [21] Q: Right. Are you saying that you sent that document to  
 [22] Sainsbury's, Horley of Sainsbury's, with Shell's  
 [23] approval?  
 [24] A: Yes.  
 [25] Q: Whose approval within Shell do you say you had to do

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[1] A: Yes.  
 [2] Q: You are writing, you will agree with me, in terms which  
 [3] indicate that the disclosure was with Shell's approval?  
 [4] A: Yes.  
 [5] Q: That is the disclosure between Sotherton and Horley over  
 [6] the telephone, is it not?  
 [7] A: I cannot really say that. It may have been, because in  
 [8] the intervening period we had had, or Roger had had  
 [9] discussions with Paul King about that. Exactly when  
 [10] that happened I do not know.  
 [11] Q: You were, during July, and in particular between 10th  
 [12] July and 24th July, in fairly regular contact with  
 [13] Stuart Carson, were you not?  
 [14] A: I was.  
 [15] Q: Did you, yourself, ever seek Stuart Carson's approval  
 [16] for disclosure of what we are calling in this letter the  
 [17] multibrand loyalty programme?  
 [18] A: Not that I can recall, no.  
 [19] Q: No. So you did not seek it off Carson. Do you have any  
 [20] reason to believe that Sotherton sought it off Carson?  
 [21] A: He was speaking to Paul King. As I understood it,  
 [22] Stuart Carson had asked Paul King to deal with this, the  
 [23] Sainsbury's connection, because he was very busy with me  
 [24] on Star Trek.  
 [25] Q: Is it possible, in fact, that this alleged disclosure of

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[1] that?  
 [2] A: Roger had been dealing with Paul King on it. It is  
 [3] possible that Stuart Carson was involved in that. But  
 [4] certainly it was Paul King that he was dealing with  
 [5] primarily.  
 [6] Q: This is not something that you could have done without  
 [7] the express approval of Stuart Carson, is it?  
 [8] A: We had been used to doing all sorts of things on the  
 [9] instruction of Paul King, not only when he was National  
 [10] Promotions Manager but from way back to the early 1980s  
 [11] when he was an individual in the Marketing Promotions  
 [12] Department.  
 [13] Q: Paul King?  
 [14] A: Paul King.  
 [15] Q: But Paul King has been sidelined by the date of this  
 [16] letter, has he not?  
 [17] A: He had been sidelined but he was still a very important  
 [18] person, because he had more experience than all of the  
 [19] others put together.  
 [20] Q: Are you unable to accept my proposition that you needed  
 [21] Stuart Carson's permission to do any such thing, as you  
 [22] are purporting to do here?  
 [23] A: If we had instructions from Paul King, we would have  
 [24] assumed that he had arranged that with Stuart Carson,  
 [25] naturally because they worked together, very closely.

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[1] Q: In the period that you were in communication with Stuart  
[2] Carson, you yourself did not double-check as to whether  
[3] you had permission from him?

[4] A: We are talking nine years ago. I cannot recall that.  
[5] I may have done, I may not have done. As I say, I was  
[6] very excited at the time of getting an order from Shell  
[7] for a £4.5 million promotion.

[8] Q: Going on with the paragraph I have just taken you to,  
[9] you go on to say:

[10] "We foresee a wide variety of redemption options,  
[11] perhaps including Air Miles."

[12] Do you see that?

[13] A: Yes, I do.

[14] Q: What prompted you to write that; can you recollect?

[15] A: Because it seemed that it would be -- it would enhance  
[16] the promotion for a loyalty scheme if you had Air Miles  
[17] plus, because that was not a mass appeal scheme at the  
[18] time.

[19] Q: In 1990?

[20] A: In 1990, Air Miles -- it certainly was not a mass appeal  
[21] scheme in 1992. It took --

[22] Q: Are you actually saying that Air Miles was not a mass  
[23] appeal scheme in 1990?

[24] A: Certainly. Mr Lazenby, sitting in front of you, if you  
[25] check the Shell discovery, you will see that he

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[1] you what Sainsbury's long-term commercial plans were?

[2] A: I am certainly not saying that. I am only saying what  
[3] we were told at the time.

[4] Q: You know, in fact, that Sainsbury's at some point, I do  
[5] not know specifically when, brought out their own reward  
[6] cards scheme, did they not?

[7] A: In 1997, I think it was.

[8] Q: Anyway, as far as you are concerned in relation to this  
[9] letter, Sainsbury's had no immediate interest in  
[10] pursuing the matter; correct?

[11] A: Correct --

[12] Q: If you could --

[13] MR JUSTICE LADDIE: I know you are getting excited,  
[14] Mr Hobbs. Let him finish.

[15] A: I was only going to say that, of course, Sainsbury's did  
[16] become involved as a partner in the Shell consortium in  
[17] 1996. As I understand it, they invested at least  
[18] £50,000 and probably £100,000 in the project for  
[19] research, et cetera. That was Project Rainbow.

[20] MR JUSTICE LADDIE: Your go.

[21] MR HOBBS: Right. Let us see if we can agree that I have  
[22] correctly understood your position. Sainsbury's, at the  
[23] date of this letter, according to you, had no immediate  
[24] interest in pursuing the matter of a long-term  
[25] multibrand loyalty programme?

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[1] originated a document about Air Miles when he said that,  
[2] that it was not a mass appeal promotion and I absolutely  
[3] agree with him. It used to take the average person  
[4] forever to save up Air Miles and they never had enough  
[5] for a free flight. There was lots of publicity about  
[6] it. I mean, it is a very successful scheme but they had  
[7] a hard time getting it off the ground.

[8] Q: You are saying, if I understand the position correctly,  
[9] that Sainsbury's were not interested in their own right,  
[10] they were simply going to stand there waiting for  
[11] however long it might be before Shell reverted to them;  
[12] yes?

[13] A: Yes. They quite clearly had no plans themselves to  
[14] launch anything nationally and, therefore, they were  
[15] quite happy to wait until Shell went back. That does  
[16] not mean to say that if someone else came along with  
[17] another project, that they would not look and that and  
[18] might do it. As far as we were concerned, that was the  
[19] response they gave to us.

[20] Q: You had no idea what Sainsbury's internal cogitations  
[21] were on the subject of long-term promotional concepts,  
[22] did you?

[23] A: We only knew what we were told. We had no other means  
[24] of knowing.

[25] Q: You are not telling my Lord, are you, that Horley told

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[1] A: That is correct. That was my understanding, yes.

[2] Q: Right. If I have also understood the position, neither  
[3] did Shell?

[4] A: That is correct. But Shell was interested in the  
[5] Sainsbury's connection and therefore wanted us to hold  
[6] the promotion for them.

[7] Q: Shell, at this point in time, had no immediate interest  
[8] in going forward with Sainsbury's on a multibrand  
[9] loyalty programme?

[10] A: That is correct.

[11] Q: So this letter, according to your own version of events,  
[12] is being written at a time when neither of the two  
[13] parties have any immediate interest in pursuing the  
[14] matter with each other?

[15] A: Not at that point, no.

[16] Q: You are agreeing with me?

[17] A: I am agreeing with you.

[18] Q: What I cannot understand is why you say, if you do say,  
[19] you felt it necessary in those circumstances to write a  
[20] letter of this kind?

[21] A: Because Shell were very interested, as they always have  
[22] been, in the Sainsbury's connection. The idea of a  
[23] long-term partnership with Sainsbury's was very  
[24] important to them.

[25] Q: Where do you get that information from?

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[1] A: From Shell's discovery. It is all the way through the  
[2] discovery.

[3] Q: You did not know it at the time?

[4] A: I did not know it at the time, no.

[5] Q: That is just --

[6] A: I am only telling you the impression that I got at the  
[7] time from the discussions that Roger had with Paul King,  
[8] that they were very interested in Sainsbury's. I also  
[9] had discussions myself with Paul about Megamatch, if you  
[10] remember with Tesco's, and we also discussed  
[11] Sainsbury's. I knew that Sainsbury's were an important  
[12] potential partner for Shell.

[13] Q: All right, let me take you back to where I thought we  
[14] were a few moments ago. At the date of this letter we  
[15] are looking at here on 449 there is no immediate  
[16] interest in pursuing the matter either on Sainsbury's  
[17] side or on Shell's side.

[18] Look on to the next paragraph:

[19] "As mentioned, if the project proceeds, Shell  
[20] would be the lead partner in organising the consortium  
[21] which would consist of a range of retailers, plus  
[22] possibly fast-moving consumer goods' brands, and other  
[23] businesses, with each partner operating the scheme on a  
[24] exclusive basis within their own market sector."

[25] Yes?

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[1] Q: So far as you were concerned, this could perfectly well  
[2] have been adding new information to discussions which  
[3] had already occurred?

[4] A: It may have been.

[5] Q: And, if it was, what was the point in adding information  
[6] in circumstances where neither party wished to proceed?

[7] A: Because, long-term, we would dearly have liked to have  
[8] got business on that project with Shell and with  
[9] Sainsburys.

[10] Q: So you are writing a letter of record for history, are  
[11] you?

[12] A: Not for history. Because, if Shell, at a later  
[13] stage -- remember what I said earlier on: these  
[14] promotional cycles had been going since the 1960s with  
[15] the oil companies, from loyalty to games. I knew that  
[16] it would turn again, as of course it did, and I was  
[17] anxious that, if that did happen, if Shell decided they  
[18] were interested in it, we could resurrect and contact  
[19] Sainsburys.

[20] Q: Go on in the paragraph we have here:

[21] "The parties could issue the currency against a  
[22] different purchase value. For example, one point for  
[23] every £5 spent at Shell stations and one point with  
[24] every £2 spent at Sainsburys. Some other businesses  
[25] might be linked to the scheme only to the extent of

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[1] A: Yes.

[2] Q: What is the point of writing this in this letter at that  
[3] point in time?

[4] A: I think it was because our own thinking had proceeded,  
[5] had moved forward, and this was a convenient way of  
[6] putting it into writing where both sides got a copy of  
[7] it, that is Shell and Sainsbury's.

[8] Q: You wanted to create a written record, did you?

[9] A: Yes, of the thinking as it had been advanced at that  
[10] stage.

[11] (11.30 am)

[12] Q: Go to the next paragraph:

[13] "The programme could even be set up as a separate  
[14] business venture, in which all of the partners issuing  
[15] and redeeming the common promotional currency could  
[16] share the costs and the benefits."

[17] What exactly was the "separate business venture"  
[18] you are discussing there in that paragraph?

[19] A: I think it was that the consortium members could change  
[20] the loyalty scheme into its own brand, where they all  
[21] had shares in the company.

[22] Q: Are you saying that this had previously been discussed  
[23] on the telephone with Horley?

[24] A: I do not know, because I do not think I had that  
[25] conversation with him.

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[1] redeeming the promotional currency."

[2] Do you see that?

[3] A: Yes, I do.

[4] Q: Is it your recollection, or is it your evidence to  
[5] my Lord that this represents information disclosed  
[6] orally beforehand to Horley?

[7] A: It is very difficult for me to put myself back now nine  
[8] years as to the information that Mr Sotherton had given  
[9] to me verbally and was involved in the construction and  
[10] drafting of this letter. I cannot be sure of what  
[11] stemmed from his discussions with them and what we had  
[12] added to when we were writing the letter.

[13] Q: Turn to the top of the next page, page 450:

[14] "Being the originators of the idea, Don Marketing  
[15] and our Managing Director, John Donovan, who has a  
[16] personal stake in the project, would require an  
[17] appropriate concept fee, a role in the promotion, UK and  
[18] international royalties covering proprietary rights,  
[19] plus agency commission on merchandise, instant gifts or  
[20] otherwise and on promotion and advertising."

[21] A: Yes.

[22] Q: What was the point in telling him that?

[23] A: Just saying that we would want to earn money out of the  
[24] venture if it did proceed. Because it would obviously  
[25] be a very important promotion. It would be long-term.

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[1] It could make any promotion company that was involved  
 [2] with it. That did not mean to say that we expected to  
 [3] get all of those things. It was just a statement of  
 [4] what our aims were.

[5] **Q:** It is a statement you are making to a potential possible  
 [6] partner in retailing at a future date. Did you make any  
 [7] such similar statement to Shell at that time?

[8] **A:** We sent them a copy of this letter and we may have -- or  
 [9] Roger may have discussed that with them. I am not sure  
 [10] about that.

[11] **Q:** That is dealings between Sotherton and King, is it not?

[12] **A:** Yes.

[13] **Q:** Go to the next paragraph:

[14] "Paul King of Shell has given me authority to  
 [15] disclose to you that he recently approached Tesco to  
 [16] explore the possibility of a joint promotion. This  
 [17] followed up a meeting which John Donovan had with Tesco  
 [18] Directors some time ago on the Shell-led consortium  
 [19] principle. Although Tesco apparently gave a favourable  
 [20] response to FKB, Shell's senior management decided  
 [21] against pursuing the discussions with Tesco. We have  
 [22] reason to believe that Sainsburys would be Shell's  
 [23] preferred partner. We informed Shell of our discussions  
 [24] with you, and Mr King subsequently approved the content  
 [25] of this letter which was drafted following a long

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[1] **Q:** You see "Either Don Marketing or Shell 'will be' in  
 [2] contact with you at an appropriate date in the future to  
 [3] discuss making a detailed presentation to  
 [4] Sainsburys ..."

[5] **A:** Yes.

[6] **Q:** It is the words "will be".

[7] **A:** Yes, well ...

[8] **MR JUSTICE LADDIE:** Please, Mr Cox, do not interrupt the  
 [9] cross-examination. It is most distracting for Mr Hobbs,  
 [10] it is distracting for me and it is distracting for the  
 [11] witness. If you wish to make an objection, stand up and  
 [12] object. But stage whispers, please not here.

[13] **MR COX:** I am not very good at stage whispers, I am afraid.

[14] They tend to carry rather further than I intend.

[15] I apologise.

[16] **MR HOBBS:** You are writing this letter and you are making  
 [17] more than, if you like, a prediction: you are saying  
 [18] that Don Marketing or Shell will be in contact with you  
 [19] and I am asking you what basis, according to your  
 [20] knowledge, there was for making that statement?

[21] **A:** You are saying, instead of "will", I should have put  
 [22] "may"?

[23] **Q:** Yes.

[24] **A:** I am not sure that I gave it that thought at the time.

[25] Perhaps I should have done.

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[1] telephone conversation with him."

[2] Right?

[3] **A:** Yes.

[4] **Q:** If I have understood this correctly, you are saying in  
 [5] this portion of text we have just looked at that you  
 [6] were authorised to discuss Shell's thinking vis-a-vis  
 [7] Sainsburys on the one hand and Tesco on the other?

[8] **A:** Yes.

[9] **Q:** You are saying, are you, that you got that authorisation  
 [10] from Mr King?

[11] **A:** Yes.

[12] **Q:** You are not saying, are you, that you got any such  
 [13] authorisation from Stuart Carson?

[14] **A:** As I said earlier on, I may have spoken to Stuart Carson  
 [15] about it. We had many conversations over the telephone,  
 [16] we had many meetings at Shell-Mex House. I cannot  
 [17] recollect doing so.

[18] **Q:** Your next paragraph says:

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

[23] What basis was there for that statement?

[24] **A:** Based on the discussions that Roger Sotherton had had  
 [25] with Paul King.

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[1] **Q:** You see, you have two people, Shell and Sainsburys, who  
 [2] have no immediate interest in pursuing this project with  
 [3] each other?

[4] **A:** That is correct.

[5] **Q:** If that is correct, how is it that you are able to write  
 [6] here that "Don Marketing or Shell will be in contact  
 [7] with you"?

[8] **A:** Because Shell was certainly interested in the Sainsburys  
 [9] connection. They were interested in the Multibrand  
 [10] Loyalty Scheme. Sainsburys were interested, though  
 [11] perhaps to a lesser extent. But it was a magic  
 [12] combination, if it could be put together, and, when the  
 [13] market changed, we would certainly have it in mind, if  
 [14] Shell gave its permission, we would want to go back to  
 [15] Sainsburys.

[16] **Q:** Look on in that paragraph:

[17] "Bearing in mind the cyclical nature of  
 [18] promotional activity on petrol forecourts, we anticipate  
 [19] that there is likely to be a substantial interval,  
 [20] perhaps five years or six years, before Shell decides  
 [21] that the timing is suitable."

[22] **A:** Yes.

[23] **Q:** Where did you get those figures of five or six years  
 [24] from?

[25] **A:** Based on -- I have been involved in petrol promotions

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[1] since 1967. I have seen these cycles happen repeatedly  
 [2] and I thought -- that was my guess at the time: that it  
 [3] would be five or six years before they turned back to  
 [4] loyalty schemes.

[5] Q: So that is 1995 or 1996?

[6] A: Yes.

[7] Q: You were predicting, were you not, in this letter of  
 [8] 24th July 1990 that there would be a communication, it  
 [9] would come between Shell UK and Sainsburys, but it would  
 [10] not come for a long period of time, which you set or  
 [11] indicated would be five or six years' time?

[12] A: Yes.

[13] Q: What happened in 1995, as you now know?

[14] A: In October 1994 Shell launched the pilot scheme, or a  
 [15] scheme in Scotland, for the stand-alone Smart Scheme.

[16] Q: And in 1995 John Menzies was there?

[17] A: Yes, July 1995.

[18] Q: In 1996 you got that statement -- 21st July 1996 -- in  
 [19] The Times Business News?

[20] A: And this Project Rainbow consortium with Sainsburys  
 [21] I think that same year as well.

[22] Q: Yes, the Rainbow/Sainsburys consortium the same year as  
 [23] well: 1996?

[24] A: I think it was, yes.

[25] Q: Your ability to foretell the future is, if I may say so,

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[1] A: I would have to check the articles. I think it was in  
 [2] 1996. It would have been after September 1996.

[3] Q: Well, there we are. You predicted in this letter in  
 [4] 1990 that they would in communication in connection with  
 [5] a multibrand loyalty programme in five or six years'  
 [6] time i.e. 1995 or 1996. Look at the next paragraph:

[7] "The proposed multibrand loyalty scheme could  
 [8] utilise plastic Swipe Cards. In the not too distant  
 [9] future a multipurpose Smart Card could not only process  
 [10] the common promotional currency but also provide other  
 [11] functions, including data capture and even financial  
 [12] transactions. We have already discussed possibilities  
 [13] with Barclays Bank. It is possible that the cards  
 [14] could, to some degree, be personalised in terms of  
 [15] design and function to suit the marketing objectives of  
 [16] the individual partners, who could reap the benefits of  
 [17] shared customer data, shared costs and unprecedented  
 [18] advertising exposure at many thousands of retail  
 [19] outlets, all using the same basic continuous programme  
 [20] under a universal identity."

[21] You were predicting the future again in this  
 [22] paragraph, were you not?

[23] A: Yes.

[24] Q: And the future you predicted seems to have come to pass,  
 [25] if we look backwards down the telescope of time?

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[1] astonishing in this letter of 1990?

[2] A: I have been in petrol retailing or petrol promotions --  
 [3] for over 30 years I have been associated with them.

[4] I have been a Greenshield franchise holder, I have been  
 [5] a Pinkshield franchise holder, I have run all sorts of  
 [6] promotions, I have supplied promotions to Shell, I have  
 [7] supplied ten promotions to Conoco, I have acted as a  
 [8] consultant to BP. Yes, I do know about petrol  
 [9] promotions and the cycles that frequently happen, yes.

[10] Q: But let us just again -- because I think it repays  
 [11] reiteration here: you are writing this letter in  
 [12] circumstances where Shell has no immediate interest in  
 [13] going ahead with Sainsburys, Sainsburys has no immediate  
 [14] interest in going ahead with Shell and you are telling  
 [15] both of them that, whatever they might think, in fact  
 [16] you are predicting that in five or six years' time they  
 [17] will come together and will be talking about this very  
 [18] thing?

[19] A: As it happens, my prediction was not that accurate, was  
 [20] it? Because Shell actually started work on the project  
 [21] in 1992, late 1992. So it was not all that accurate.  
 [22] It just took a long time to actually be launched.

[23] Q: I think you yourself just referred to the discovery  
 [24] relating to Project Rainbow and I think you yourself  
 [25] fixed it at 1996, did you not?

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[1] A: Yes, it has.

[2] Q: You are describing here the Shell Smart Scheme?

[3] A: I think I am, yes.

[4] Q: You are, are you not?

[5] A: Yes.

[6] Q: That is exactly what you are describing in this letter.  
 [7] You are writing this as a description of the Shell Smart  
 [8] Scheme?

[9] A: That is why we are all here, I think.

[10] MR COX: Will my learned friend make his allegation --

[11] MR JUSTICE LADDIE: No, Mr Cox, please wait until Mr Hobbs  
 [12] sees his way to the end of the letter. I will ensure  
 [13] that he is fair to the witness. Do not worry.

[14] Carry on, Mr Hobbs.

[15] MR HOBBS: I did not actually hear what the witness last  
 [16] said, because of this intervention on my left.

[17] MR JUSTICE LADDIE: Mr Donovan, go back again. You were  
 [18] describing the Smart Card system, were you not? The  
 [19] Shell Smart system?

[20] A: Yes, I was.

[21] MR HOBBS: This is an accurate description -- substantially  
 [22] accurate, let us say, so we do not get into the details  
 [23] -- of the Shell Smart Scheme, was it not?

[24] A: This in combination with the proposal we put to Shell,  
 [25] ycs.

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[1] **Q:** Let us look at the degree of prediction that you have  
 [2] here. On the preceding page at 449 you say, underneath  
 [3] the heading "Multibrand Loyalty Programme":  
 [4] "We foresee a wide variety of redemption options,  
 [5] perhaps including Air Miles."  
 [6] **A:** Correct.  
 [7] **Q:** That came to pass, so far as the Shell Smart Scheme was  
 [8] concerned?  
 [9] **A:** To be fair, they had already been running Air Miles for  
 [10] three years. So I suppose it could be said it was a  
 [11] reasonably obvious development: that Air Miles could be  
 [12] retained in the new scheme.  
 [13] **Q:** It came to pass?  
 [14] **A:** Yes, it happened.  
 [15] **Q:** You have, at the bottom of page 449:  
 [16] "Some other businesses might be linked to the  
 [17] scheme only to the extent of redeeming the promotional  
 [18] currency."  
 [19] **A:** Yes.  
 [20] **Q:** That came to pass with the Shell Smart Scheme, did it  
 [21] not?  
 [22] **A:** Yes, it did.  
 [23] (11.45 am)  
 [24] **Q:** You suggested in the prepenultimate paragraph on  
 [25] page 450 that Sainsburys and Shell would be coming

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[1] that last comment?  
 [2] **A:** What I mean is that there may be more in this letter  
 [3] than was actually discussed with Sainsburys.  
 [4] **Q:** If that is right, why did you write those words:  
 [5] "I trust that the above account accurately  
 [6] reflects the various matters disclosed and discussed."  
 [7] **A:** Because it would cover the matters that were disclosed  
 [8] and discussed.  
 [9] **Q:** It says:  
 [10] "The above account accurately reflects" ..  
 [11] accurately reflects .. "the various matters disclosed  
 [12] and discussed."  
 [13] **A:** Yes.  
 [14] **Q:** I am understanding those words, as you may be gathering,  
 [15] as indicating that what has gone before is an accurate  
 [16] reflection in writing of the various matters disclosed  
 [17] and discussed?  
 [18] **A:** It may be .. it may be that I have added something to  
 [19] it. It is a long while ago and, as I said earlier on,  
 [20] Roger had had the discussions with Mr Horley. He had  
 [21] relayed that to me. He was involved in drafting this  
 [22] letter with me and, at the time, I felt it proper to put  
 [23] that at the foot of the letter. That is all I can say  
 [24] to you.  
 [25] **Q:** Look at the very bottom:

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[1] together in this connection in five or six years' time.  
 [2] That is 1995 and 1996. That came to pass?  
 [3] **A:** It came to pass in late 1996, yes.  
 [4] **Q:** Then you make the reference to multipurpose Smart Cards,  
 [5] data capture, financial transactions and that came to  
 [6] pass too, did it not?  
 [7] **A:** Yes. But, of course, there had been a number of pilot  
 [8] schemes for Smart Cards, as you are probably aware of,  
 [9] stretching back to the late 1980s. I had also had  
 [10] discussions with John Orrick from Ilets Lottery  
 [11] Systems (?), a sister company of Fortronic.  
 [12] **Q:** That is the stuff you referred to yesterday?  
 [13] **A:** That is correct, yes.  
 [14] **Q:** You see at the bottom there, above "yours sincerely":  
 [15] "I trust that the above account accurately  
 [16] reflects the various matters disclosed and discussed?"  
 [17] **A:** Yes.  
 [18] **Q:** This is purporting to be a complete record in writing of  
 [19] discussions between your company, represented, as  
 [20] I understand it, by Sotherton, and Sainsburys,  
 [21] represented by Horley. That is what this letter is  
 [22] purporting to be?  
 [23] **A:** Yes, I think that it covered the subjects that had been  
 [24] discussed and I would suspect that it was also added to.  
 [25] **Q:** Just tell me what you are wanting me to understand from

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[1] "cc Shell UK Promotions Department,  
 [2] Mr Stuart Carson, National Promotions  
 [3] Coordinator/Mr Paul King, Promotions Coordinator."  
 [4] You are, at least, in that annotation at the  
 [5] footnote, indicating that it was a matter of interest to  
 [6] Stuart Carson that you would have been communicating  
 [7] with Sainsburys in these terms if you did?  
 [8] **A:** Yes, because I had started with him. I had started the  
 [9] contact with Sainsburys with his knowledge.  
 [10] **Q:** You never got any reply to this letter from Sainsburys,  
 [11] did you?  
 [12] **A:** No, we did not. Not that I can recall.  
 [13] **Q:** You never subsequently spoke to Sainsburys in this  
 [14] connection, did you?  
 [15] **A:** No, we did not.  
 [16] **Q:** The letter itself is not signed. It is not unusual, but  
 [17] there are quite a few letters from your files in which  
 [18] we have a photocopied version with a signature on. Do  
 [19] you recollect seeing this letter signed?  
 [20] **A:** Not offhand, no, I cannot.  
 [21] **Q:** Is it your evidence that it was in fact sent on  
 [22] 24th July 1990?  
 [23] **A:** Yes, it is.  
 [24] **Q:** Who would have signed off on it? Was it signed off in  
 [25] your presence?

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[1] A: This is nine years ago. I was involved in another  
 [2] £4,500,000 project for Shell. I am sorry, but I cannot  
 [3] remember details like that on this particular scheme.  
 [4] Q: I think I understand your evidence correctly to be that,  
 [5] at the date of this letter, Shell had taken an option on  
 [6] it?  
 [7] A: That is correct, yes.  
 [8] Q: You mention the financial proposals at the top of  
 [9] page 450. I think I am right in saying, I have not  
 [10] noticed that you make any note in here of Shell having  
 [11] taken an option on this proposal?  
 [12] A: No, but there was another letter, was there not?  
 [13] I believe there was another letter that went to Shell.  
 [14] Q: So your evidence to my Lord is that Shell senior  
 [15] management authorised you and Sotherton, or Sotherton --  
 [16] one or other of you. I do not know particularly  
 [17] which -- but you are saying that Shell senior management  
 [18] authorised you to send this letter in this form to  
 [19] Sainsburys on a proposal that they themselves were not  
 [20] interested in pursuing at that stage?  
 [21] A: Shell senior management know Paul King. He spoke to  
 [22] Roger about it.  
 [23] Q: You do not know that, do you?  
 [24] A: I do know that, because Roger told me at the time and  
 [25] I was then involved in drafting the letters.

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[1] to have sent to Paul King on 24th July 1990; correct?  
 [2] A: Correct.  
 [3] Q: You never got a reply to this letter, did you?  
 [4] A: Not that I can recall, no.  
 [5] Q: In fact, this is the letter you say was mislaid for some  
 [6] considerable period of time?  
 [7] A: That it was misfiled, yes.  
 [8] Q: This is the letter which, on the face of it, you purport  
 [9] to grant Shell an option?  
 [10] A: Correct.  
 [11] Q: An important sort of a letter, would you not think?  
 [12] A: An important letter. But, as you have been pointing  
 [13] out, Shell were not going to run the scheme at the  
 [14] time. It was something for the future but they wanted  
 [15] to keep a hold on it. They did not want us to go to any  
 [16] other oil company.  
 [17] Q: So you are saying it was important, I believe?  
 [18] A: Yes, it was important, yes.  
 [19] Q: Important for you to keep it on file?  
 [20] A: Yes.  
 [21] Q: Because it created, as you would say, a situation in  
 [22] which your company and Shell owed obligations to each  
 [23] other; is that right?  
 [24] A: Correct.  
 [25] Q: It has a file reference number AB/118 at the top and

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[1] Q: Roger told you that King had told him that King had  
 [2] spoken to Carson; is that right? Is that what you are  
 [3] saying?  
 [4] A: He had spoken to someone else in Shell management and  
 [5] had got -- I think there was some change made to a draft  
 [6] letter and the letter went off.  
 [7] Q: What I am going to put to you now is this: what would  
 [8] appear to be clairvoyance -- amazingly accurate  
 [9] clairvoyance -- in this letter of 24th July 1990 is not  
 [10] clairvoyance. That, in fact, this letter was written at  
 [11] a time when you knew how the Shell Smart Card consortium  
 [12] was working?  
 [13] A: That is not true.  
 [14] Q: You understand what I am putting to you?  
 [15] A: Yes, I do.  
 [16] Q: I am saying to you that this letter was written entirely  
 [17] with the benefit of hindsight?  
 [18] A: And I am saying it definitely was not.  
 [19] Q: I am saying this letter was written for the purpose of  
 [20] supporting your claim against Shell in connection with  
 [21] the litigation which has now come to trial?  
 [22] A: We sent copies of this letter to Shell, which they must  
 [23] have had on file or have on file.  
 [24] Q: You have mentioned the other letter. I will take you to  
 [25] that now. Page 446; this is a letter which you purport

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[1] that is the place it would have been in your files if it  
 [2] had existed; correct?  
 [3] A: Correct.  
 [4] Q: How do you account for the fact it was not in the those  
 [5] files, the AB files?  
 [6] A: Because I would have been involved in another project  
 [7] called Fundraisers and, at some stage, Paul King had  
 [8] expressed an interest in it. He said that he would like  
 [9] to give details to his research department to look at  
 [10] it, which he did. This letter ended up in that file  
 [11] because it mentions research in there. About Gill Shaw  
 [12] on the Fundraiser project.  
 [13] Q: So you would have taken it off a file, is that what you  
 [14] are saying? It would have been taken off a file and put  
 [15] into another file?  
 [16] A: It got put back into the wrong file because it was  
 [17] connected with this Fundraisers project.  
 [18] Q: Once again this purports to be a letter to Paul King.  
 [19] Is it your evidence, or is it your understanding that  
 [20] this letter -- this letter here, 24th July -- was sent  
 [21] to or discussed with Carson?  
 [22] A: As I have said earlier, I cannot recall discussing the  
 [23] loyalty scheme with Mr Carson. Though it is possible  
 [24] I did. Mr Sotherton was dealing with Mr King and he may  
 [25] have -- Mr King may have been discussing it with

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[1] Mr Carson or some other Shell manager.  
 [2] Q: But nobody on your side of that equation took steps, so  
 [3] far as you know, to make Carson aware, specifically  
 [4] themselves, of what was going on?  
 [5] A: As I say, I do not have a recollect of discussing it  
 [6] with him. I may have done. I had regular meetings with  
 [7] him, regular telephone discussions.  
 [8] Q: Right. Let us look at the letter in the first  
 [9] paragraph:  
 [10] "Dear Paul, thank you for confirming by telephone  
 [11] Shell's approval of the letter to Sainsburys which you  
 [12] have now cleared with Stuart Carson and senior  
 [13] management."  
 [14] A: Right.  
 [15] Q: Do you happen to know the basis in fact upon which that  
 [16] statement was made?  
 [17] A: I assume that it was based on the discussion that  
 [18] Mr Sotherton had with Mr King.  
 [19] Q: "As per the instructions, we have deleted the reference  
 [20] to the research findings. The revised version enclosed  
 [21] has been mailed to Sainsburys."  
 [22] Is it your understand, the same as mine, that the  
 [23] enclosure referred to as the "revised version" is what  
 [24] we were just looking at a few moments ago..  
 [25] A: I assume that must be the case.

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[1] A: It must have been after Mr Sotherton spoke to Mr Horley  
 [2] at Sainsburys about it, based on the original proposal  
 [3] to Shell. Then, when we came to actually write the  
 [4] letter to Sainsburys, as is often the case, when you  
 [5] take a fresh look at an idea after some time has passed,  
 [6] then you are likely to change it or add to it. This is  
 [7] what happened on this occasion.  
 [8] Q: So the exercise of putting flesh on Concept Four is  
 [9] occurring then in a pretty narrow time-frame. It is  
 [10] occurring between, let us say, 12th July 1990 and the  
 [11] date of this letter; 24th July 1990?  
 [12] A: Yes.  
 [13] Q: You are putting flesh on that concept?  
 [14] A: Yes.  
 [15] Q: I believe I am right in understanding your witness  
 [16] statement to indicate you are the author. You claim the  
 [17] credit for the concept as refined and developed?  
 [18] A: Correct.  
 [19] Q: So the people putting the flesh on that concept must  
 [20] have included you and may have consisted simply of you;  
 [21] correct?  
 [22] A: Probably did.  
 [23] Q: So you were putting flesh on that proposal between  
 [24] 12th July and 24th July?  
 [25] A: After Mr Sotherton had spoken to Mr Horley and when we

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[1] Q: -- on page 449. The letter goes on to say:  
 [2] "The letter does get across the message that you  
 [3] were keen to convey that Shell have used Sainsburys as  
 [4] an ideal partner. They are apparently not considered to  
 [5] be too downmarket."  
 [6] A: Yes.  
 [7] Q: "Sainsburys' unexpected interest [the letter at 420] at  
 [8] least spurred us on to put some flesh on the initial  
 [9] proposal we discussed with you and Tim some months ago."  
 [10] A: Yes.  
 [11] Q: This, if I have understood it correctly, is saying that  
 [12] Sainsburys letter, the unexpected letter, spurred  
 [13] Don Marketing on to flesh out Concept Four?  
 [14] A: Yes.  
 [15] Q: Now, we know that the proposal that was first put in  
 [16] writing to Sainsburys was for a Megamatch game?  
 [17] A: Correct, yes.  
 [18] Q: I think, if I am right, the date of that was  
 [19] 10th July letter. So on 10th July the proposal that is  
 [20] actually being put is for a Megamatch game and there is  
 [21] no mention of any multibrand loyalty proposal?  
 [22] A: That is correct.  
 [23] Q: So when do you say there was the "flesh putting" taking  
 [24] place in relation to Concept Four? When was the flesh  
 [25] put on that concept?

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[1] actually wrote this letter to Sainsburys.  
 [2] Q: That is right. So you are agreeing with me?  
 [3] A: Yes.  
 [4] Q: You are putting flesh on that proposal?  
 [5] A: Yes.  
 [6] Q: Tell my Lord exactly how you recollect devising the  
 [7] improvements to Concept Four in that 12-day time-frame?  
 [8] A: Exactly how?  
 [9] Q: Yes, how did it go? A momentous event surely?  
 [10] A: Not really, no. The momentous event was the Star Trek  
 [11] promotion. This was secondary. It was not immediate.  
 [12] But, when I came to actually write the letter to  
 [13] Sainsburys, then it went through my mind again and  
 [14] I updated it. I knew the cost of Smart Cards was  
 [15] falling and I added to what had previously been stated.  
 [16] Q: So your refinements to Concept Four are what we see  
 [17] written out in the letter that we have just looked at to  
 [18] Horley?  
 [19] A: Yes.  
 [20] Q: You committed yourself to writing on those refinements  
 [21] in that letter?  
 [22] A: It is difficult for me to go back nine years and  
 [23] remember exactly what happened. Whether it was  
 [24] something that was drafted and then worked on the next  
 [25] day or whether it was done in one session, I cannot

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[1] remember now.

[2] Q: And, before that letter of 24th to Horley that we just  
[3] looked at you, you never yourself communicated these  
[4] refinements to Sotherton?

[5] A: I may have discussed it with him before the letter was  
[6] prepared. We may have had a meeting about it. I do not  
[7] know.

[8] Q: Anyway, you yourself have been telling my Lord that your  
[9] letter of 24th July to Horley could well have contained  
[10] additions to anything that might have been discussed  
[11] orally on the telephone?

[12] A: Yes, it is possible.

[13] Q: Insofar as it contained additions, the additions it  
[14] contains are your brainchild which you are committing to  
[15] writing on the 24th?

[16] A: The basic idea was set out in that proposal and this was  
[17] adding to it.

[18] Q: You are agreeing with me, I think?

[19] A: I think so.

[20] Q: Insofar as you are adding material on a brainchild  
[21] process -- you know what I am getting at there? I am  
[22] speaking loosely -- but, insofar as you had brainwaves  
[23] for refinement of Concept Four, you wrote them in the  
[24] letter of 24th July 1990, which we were just looking at,  
[25] to Sainsburys and, if I have understood you correctly,

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[1] A: As I have said earlier, not that I can recollect.

[2] Though I may have done, because I spoke all the time to  
[3] Mr Carson. I had meetings with him regularly. I also  
[4] spoke regularly to Paul King and to -- I had meetings  
[5] with him also.

[6] Q: Do you recollect disclosing to anyone at Shell the  
[7] brainwave as described in the letter of 24th July 1990  
[8] to Horley?

[9] A: As I recall, this all happened over a weekend, something  
[10] like a Friday to a Tuesday. We were going into meetings  
[11] at Shell-Mex House. I was probably discussing this with  
[12] Roger on the train and we finally put it into writing.  
[13] It is very difficult for me to say exactly the sequence  
[14] of events. Only what I can see in writing, and that was  
[15] the letter that we ended up with, that we sent. But we  
[16] may have discussed it with Mr Carson. We may have  
[17] discussed it with Mr King. Roger certainly did.

[18] Q: You say you may well have discussed it with Mr Carson or  
[19] Mr King. Where would you have discussed it with them  
[20] and when?

[21] A: During a telephone conversation or during a meeting at  
[22] Shell-Mex House. I am not saying that I did. I am  
[23] saying I may have done.

[24] Q: Let us just assume for the sake of it at the moment that  
[25] you did not communicate it to Shell?

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[1] you may well not have communicated those to Sotherton  
[2] before you wrote that letter?

[3] A: It is difficult for me to say, is it not, nine years  
[4] later? I may have discussed it with him first. He  
[5] certainly had one conversation with Mr Horley. He may  
[6] have had two, I do not know. It is a long time ago.  
[7] I am just doing my best to recollect and to tell you  
[8] what I can recall.

[9] Q: Let me put it to you plain fair and square: if you did  
[10] not tell Sotherton, there is no way, on your evidence,  
[11] that Sotherton could have told Horley?

[12] A: I do not know exactly what Mr Sotherton conveyed to  
[13] Mr Horley. It would certainly have been the basics of  
[14] the scheme, the Shell-led consortium, the major  
[15] retailers all issuing or redeeming a common currency.  
[16] That was the basic of the scheme and we added things to  
[17] it in the letter.

[18] Q: So the state of the brainwave on 24th July is set out in  
[19] the letter to Horley. That, I think, is the upshot of  
[20] what you have just said?

[21] A: I -- certainly this was the first time that it was put  
[22] into writing, whatever the thinking was about the -- the  
[23] latest thinking on that concept.

[24] Q: Right. And you had not communicated it to anyone at  
[25] Shell personally yourself at all, had you?

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[1] A: Right.

[2] Q: You would regard what I have called the "brainwave  
[3] material" in the letter to Horley as an innovation,  
[4] would you not?

[5] A: I would regard the basic scheme as an innovation and  
[6] this was putting some flesh onto it.

[7] Q: So is it really your evidence to my Lord that you are  
[8] disclosing innovative material to Sainsburys almost at  
[9] the same time and possibly not even at the same time as  
[10] you are communicating it to Shell?

[11] A: Yes. There was a lot going on in those days. Because  
[12] we had just got the informal decision to go ahead with  
[13] Star Trek, which was very important to us.  
[14] (12.00 pm)

[15] So there was a lot of discussion. There were a  
[16] lot of meetings at the time.

[17] Q: You are doing this, are you: that is, disclosing it to  
[18] Sainsburys, even in circumstances where you are not sure  
[19] that you have Carson's approval to do it?

[20] A: According to this correspondence, it says that he did  
[21] know about it. But I do not personally remember  
[22] discussing it with him at the time, no.

[23] Q: You have already agreed with me that neither Sainsburys  
[24] or Shell had any immediate interest in pursuing this  
[25] matter?

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[1] A: That is correct.

[2] Q: So you are actually telling something of considerable

[3] commercial importance, as you would have it, to

[4] Sainsburys in circumstances where neither they nor Shell

[5] are interested in pursuing it at that stage?

[6] A: They were not interested at that stage, but the

[7] arrangement was that, if Shell did decide to move

[8] forward with the project at a later date, we would then

[9] recontact Sainsburys. Remember the background history

[10] with Make Money, where I put it to them in 1981 and it

[11] took two years of discussions et cetera before they

[12] actually used it.

[13] Q: Anyway, going back to this letter -- and, just before we

[14] go on, is that Mr Sotherton sitting over there?

[15] (Indicates).

[16] A: It is indeed.

[17] Q: Page 446, in the third paragraph:

[18] "Sainsburys' unexpected interest at least spurred

[19] us on to put some flesh on ..."

[20] Your evidence is that it was some stage between

[21] 12th July 1990 and 24th July 1990, that sort of

[22] time-frame, during which you were spurred on to put

[23] flesh on the initial proposal?

[24] A: Yes.

[25] Q: Go on to the third line of that paragraph:

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[1] advertising, of the branding, of the marketing.

[2] Q: Are you saying that the innovative leap forward was

[3] Concept Four?

[4] A: Yes. Concept Four, plus the additions that were spelt

[5] out in this letter. But the basic promotion was Concept

[6] Four.

[7] Q: What is being said in this letter surely is that the

[8] unexpected interest of Sainsburys has spurred you on to

[9] put some flesh on the initial proposal -- that is

[10] Concept Four -- and that you are in fact praising the

[11] enhancements which you claim to have made. That is what

[12] you are doing here, is it not?

[13] A: Yes.

[14] Q: And that is the added matter you are referring to as the

[15] "innovative leap forward". That is what you are

[16] referring to, are you not?

[17] A: Could I read it again?

[18] Q: Yes, please.

[19] A: I think it means exactly what it says: it was adding to

[20] the basic promotion and enhancing it.

[21] Q: Yes. You make that clear, do you not, if you look at

[22] the fourth line:

[23] "The expanded proposal, as set out in the agreed

[24] letter to Sainsburys, provides the answers to the

[25] failings in loyalty schemes which our research

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[1] "Your brief challenged to us devise an innovative

[2] leap forward in loyalty schemes. We delivered the

[3] goods."

[4] A: Yes. I am just reminding Paul King of what happened.

[5] Q: Reminding him?

[6] A: Yes.

[7] Q: So he already knew?

[8] A: He already knew because that had happened back in late

[9] 1989.

[10] Q: You were reminding him that you made an innovative leap

[11] forward in loyalty schemes and delivered on his brief?

[12] A: Yes. That was the original proposal dated

[13] 23rd October 1989.

[14] Q: Is this the first time he is getting this statement from

[15] you? This is 24th July 1990. Is this the first time

[16] you are, as it were, taking him into confidence on the

[17] question of your brainwave?

[18] A: No, because the basics of the scheme had already been

[19] set out over six months earlier in that original

[20] proposal.

[21] Q: What is the "innovative leap forward" then?

[22] A: That was the idea of a multibrand loyalty scheme cutting

[23] out the middle man, so that it did not have an Air Miles

[24] company or GreenShield. Shell would be in control with

[25] its partners of its own scheme, of the data, of the

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[1] identified."

[2] A: Yes.

[3] Q: What research was that?

[4] A: This was the research I have mentioned before that was

[5] carried out, first of all, I think in Essex and then,

[6] secondly, in Stowmarket.

[7] Q: When was that carried out?

[8] A: The Stowmarket research I think was in late 1989. I am

[9] talking now -- there were no dates on any of the

[10] documents that I can recall. There were just some

[11] survey forms that we made up that were undated. There

[12] was some display that we showed to people.

[13] Q: When was it carried out, please?

[14] A: I am giving you my guesstimate: somewhere towards the

[15] end of 1989. That would be for the second bout of the

[16] survey.

[17] Q: So some time in July prior to 24th July 1990 you come up

[18] with a solution to the problem which has been identified

[19] in research, you say, in 1989?

[20] A: Yes. This was mentioned actually in a Promotions and

[21] Incentives article in July 1991, which mentioned the

[22] research we had carried out and that Shell had, on our

[23] recommendation, carried out their own independent

[24] research and found that the independent research had

[25] duplicated our findings and that had persuaded them to

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[1] close the Collect and Select Scheme. You have that  
[2] article in discovery.

[3] **Q:** Thank you for telling me that. "The research was  
[4] invaluable". Is it there being indicated that the  
[5] research was invaluable to the working up and  
[6] improvement in the form of the expanded proposal? Is  
[7] that what is being said? Is that the fact?

[8] **A:** Can I read that again? Sorry.

[9] **Q:** Yes. Please read it.

[10] **A:** I think I was talking mainly about the concept that we  
[11] put originally to them, but also taking into account the  
[12] extra elements that were spelt out in this letter.

[13] **Q:** My understanding -- and it may be wrong or  
[14] imperfect -- is that you are saying the research was  
[15] invaluable in connection with working out the expanded  
[16] proposal?

[17] **A:** You have to remember that I am an advertising man,  
[18] promotions man, not a lawyer. Therefore I might not  
[19] always put things exactly correct when I write a letter.

[20] **Q:** None of that research gave you anything to do with Smart  
[21] Card technology, did it?

[22] **A:** I do not think it did, no. It was on the basics. We  
[23] put some traditional collection schemes for various oil  
[24] companies, including, I think, one of Shell's own  
[25] schemes: Collect and Select, and we just got consumer

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[1] **Q:** Is it really your evidence to my Lord that you thought  
[2] you had come up with a revolutionary concept and you  
[3] took no steps to make it known -- yourself, personally  
[4] -- to make it known to Stuart Carson, the National  
[5] Promotions Manager?

[6] **A:** I may have discussed it with him. As I say -- and have  
[7] said many times -- you have to remember the background.  
[8] I had put a lot of work into Megamatch with Paul King.  
[9] He had approached Tesco. That did not go forward. We  
[10] then switched to the Disneytime project. We put a lot  
[11] of work into that -- several weeks I think at least --  
[12] and then that did not go forward because they could not  
[13] get the licensing from the Disney organisation. Those  
[14] schemes were all researched, Disneytime had come out  
[15] number one. So it all looked very promising and then we  
[16] ended up with nothing. So I was delighted and excited  
[17] when we managed to come up with the Star Trek concept,  
[18] right at the last minute when Shell were about to go  
[19] with another agency and they switched to Star Trek and  
[20] of course I had to put a lot of time into that.

[21] (12.15 pm)

[22] **Q:** Turn to the bottom paragraph on 446:

[23] "Even though senior management accepted our  
[24] recommendation to come out of long-term schemes for the  
[25] foreseeable future ..."

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[1] reaction to them, compared with promotional games.

[2] **Q:** Let us move on to the next paragraph:

[3] "Although we made some suggestions to enhance  
[4] Collect and Select, a revolutionary concept" -- look at  
[5] those words -- "a revolutionary concept along the lines  
[6] proposed would put Shell miles ahead of the opposition  
[7] if you decide to return to collection schemes at a later  
[8] date."

[9] **A:** That is correct.

[10] **Q:** What is the revolutionary concept?

[11] **A:** A consortium of major retailers on a national basis, all  
[12] with market leading brands ideally, co-operating  
[13] together, sharing the benefits, the costs, in control of  
[14] their own scheme, no middle man taking a slice of the  
[15] profits or having control of the various elements of the  
[16] scheme. Shell, first of all, would be able to set up  
[17] the scheme exactly as it wished and the other parties  
[18] could be given the opportunity to share in all of that.

[19] **Q:** Thank you for that. Now, the revolutionary concept then  
[20] is what you are describing in writing in that letter of  
[21] 24th July 1990 to Horley?

[22] **A:** Yes.

[23] **Q:** Right.

[24] **A:** Because there was no other scheme of that ilk that was  
[25] in operation.

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[1] Do you see "the foreseeable future"?

[2] **A:** I do.

[3] **Q:** "... it is nice to know that they want to keep our  
[4] Multibrand Loyalty Concept in the locker."

[5] **A:** Yes.

[6] **Q:** What is the basis for that statement? Can you help  
[7] my Lord, please?

[8] **A:** Because Mr King, according to his discussions with  
[9] Mr Sotherton, wanted to retain an option on the scheme.  
[10] This was not unusual. They had previously taken an  
[11] option on the Make Money promotion and, subsequently, on  
[12] Let's Go Racing after this on the Star Trek concept,  
[13] when it was terminated because of the Gulf war. So it  
[14] was not unusual.

[15] **Q:** If I have the picture correct in my mind, this is  
[16] purporting to indicate that Shell liked the idea -- that  
[17] is, the enhanced idea, yes? Are you following me?

[18] **A:** Whether they liked the concept of a Shell-led multiparty  
[19] consortium.

[20] **Q:** It was revolutionary in your terms, they liked it and  
[21] they want to put it in the locker and they are quite  
[22] happy in the meantime to authorise you to tell it to  
[23] Sainsburys, who is not interested in going ahead with  
[24] the scheme?

[25] **A:** Because Sainsburys was the most important partner that

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[1] they could possibly have. At that time Sainsburys was  
 [2] the number one supermarket chain and Shell would dearly  
 [3] like to have them as a partner.  
 [4] **Q:** So they authorised you to reveal a revolutionary concept  
 [5] to Sainsburys --  
 [6] **A:** I think we said earlier that, at the time that  
 [7] Mr Sotherton had his telephone conversation with  
 [8] Mr Horley, it may be that, at that time, we had not  
 [9] already got permission to disclose it to them, to  
 [10] Sainsburys. We had only had permission for Megamatch.  
 [11] Then Roger had discussions with Shell about it.  
 [12] **Q:** Your evidence, I think, is going to the proposition that  
 [13] the letter of 24th July which you helped to write --  
 [14] **A:** Yes.  
 [15] **Q:** -- going to Horley contains a statement in writing of  
 [16] what you are prepared to say was a revolutionary  
 [17] concept?  
 [18] **A:** Yes.  
 [19] **Q:** And I think your evidence goes to this: you are saying  
 [20] that Shell was not interested in pursuing it with  
 [21] Sainsburys; correct?  
 [22] **A:** They were interested in pursuing it with Sainsburys, but  
 [23] not at that time.  
 [24] **Q:** Not for the foreseeable future?  
 [25] **A:** Correct. Because they were committed to short-term

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[1] **A:** Yes.  
 [2] **MR JUSTICE LADDIE:** As the other letter of the same date  
 [3] says, his position had now been taken by Mr Carson, who  
 [4] was senior to him now in the establishment?  
 [5] **A:** Yes.  
 [6] **MR JUSTICE LADDIE:** If you look at the first sentence of the  
 [7] first paragraph, you address him as "Paul" and you say  
 [8] there is certain confirmation " ... now cleared with  
 [9] Stuart Carson and senior management."  
 [10] Do you see that?  
 [11] **A:** Yes, I do.  
 [12] **MR JUSTICE LADDIE:** Senior management is not Stuart Carson,  
 [13] it is the top of the company; yes?  
 [14] **A:** It is probably talking about the General Manager of  
 [15] Retail, probably.  
 [16] **MR JUSTICE LADDIE:** If you now go down to the  
 [17] paragraph Mr Hobbs is on, you say:  
 [18] "Even though senior management ... it is nice to  
 [19] know that they want to keep our multibrand loyalty  
 [20] concept in the locker."  
 [21] So somebody told you that somebody above  
 [22] Mr Carson, above Mr King, wanted to keep your multibrand  
 [23] loyalty concept in the locker. That is what this letter  
 [24] says, does it not?  
 [25] **A:** Yes, this letter was from Roger Sotherton. I was

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[1] activity.  
 [2] **Q:** And that Sainsburys were not themselves interested in  
 [3] pursuing it at that time?  
 [4] **A:** That is correct.  
 [5] **Q:** Yet Shell senior management authorised you to reveal the  
 [6] revolutionary concept to Sainsburys?  
 [7] **A:** As I say, they may not have done at the time  
 [8] Mr Sotherton spoke to Mr Horley, but they did  
 [9] subsequently, as a result of the conversations that he  
 [10] had with Mr King.  
 [11] **Q:** So you yourself are not able to give any evidence, are  
 [12] you, of any event involving you directly communicating  
 [13] with Carson or anyone other than King about this rather  
 [14] momentous event?  
 [15] **A:** Not that I can recall. I may have discussed it with  
 [16] Mr King and Mr Carson, but I do not recollect the  
 [17] conversations. My interest at that time was mainly in  
 [18] Star Trek and taking that proposal forward.  
 [19] **Q:** Look on:  
 [20] "It was also interesting to hear that, at some  
 [21] stage, it could have applications in other --  
 [22] **MR JUSTICE LADDIE:** Stop for a moment, Mr Hobbs. Can I just  
 [23] ask you a question, Mr Donovan? This was a letter  
 [24] written to Paul King who, by this time, I think Mr Hobbs  
 [25] has very gently said, he had been "sidelined"?

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[1] involved in drafting it, as I often was. Almost always  
 [2] and it was based on his discussions with Mr King. As  
 [3] I said earlier on, although we did not know what had  
 [4] happened to Paul King, we knew that he was still a very  
 [5] important player there because of his long experience  
 [6] with promotions.  
 [7] **MR JUSTICE LADDIE:** I am sorry, Mr Donovan. I have not made  
 [8] myself clear. It is my fault. This says that somebody  
 [9] had informed you, or you had got to know, that senior  
 [10] management -- not Mr Carson, not Mr King -- that senior  
 [11] management wanted to keep your multibrand loyalty  
 [12] concept in the locker. All I am asking you is: who in  
 [13] senior management or who told you that senior  
 [14] management --  
 [15] **A:** This information came from -- Roger Sotherton informed  
 [16] me. He was involved in writing this letter and he had  
 [17] spoken to Paul King. So I assumed that he must have got  
 [18] that information from Mr King.  
 [19] **MR JUSTICE LADDIE:** So Mr Sotherton told you that Paul King  
 [20] had told him that senior management wanted to keep it in  
 [21] the locker?  
 [22] **A:** Yes, that is correct.  
 [23] **MR HOBBS:** Following on from that, that was good enough for  
 [24] you to feel satisfied that your position was protected  
 [25] then vis-a-vis Shell, was it?

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[1] A: Yes.  
 [2] Q: I was just referring you to the sentence which says:  
 [3] "It was also interesting to hear that, at some  
 [4] stage, it could have applications in other Shell  
 [5] markets."  
 [6] A: Yes.  
 [7] Q: That statement is in this letter here; 446.  
 [8] A: Yes.  
 [9] (12.15 pm)  
 [10] Q: That was seeing the future very clearly, was it not?  
 [11] A: Not really, because a number of the promotions that we  
 [12] had supplied to Shell UK we had then run in various  
 [13] countries: Singapore and Ireland, on more than one  
 [14] occasion for Bruce's Lucky Deal, for Make Money, and it  
 [15] was always dealt with through Shell International.  
 [16] I guessed there had be some conversation between  
 [17] Mr Sotherton and Mr King about that.  
 [18] Q: Turn the page. You are referring to Star Trek at the  
 [19] top?  
 [20] A: Yes.  
 [21] Q: "We are currently finalising details with Stuart Carson  
 [22] and Sarah Harman."  
 [23] Sarah Harman is an outside licensing consultant,  
 [24] is she not?  
 [25] A: She was the agent for Paramount Films, for Star Trek.

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[1] hundred million game pieces to be printed, arranging the  
 [2] contingency insurance against redemptions. I was  
 [3] thoroughly immersed in the Star Trek project.  
 [4] Q: Yes. But, you see, the Star Trek project is linked via  
 [5] this statement about options to the new multibrand  
 [6] loyalty project. It is linked?  
 [7] A: It is, yes.  
 [8] Q: Do you still stand by your evidence that it was enough  
 [9] for your purposes that you got a message from Sotherton,  
 [10] you got a message from King, who had been sidelined  
 [11] within Shell, that the senior executives were putting it  
 [12] in a locker for the future? That was good enough for  
 [13] you?  
 [14] A: We would bend over backwards to give Shell whatever they  
 [15] wanted because we had got a lot of business from them.  
 [16] They were our best client for a number of years and we  
 [17] would do whatever - if they expressed an interest in a  
 [18] concept that they could not use at the time but they  
 [19] wanted to keep it, then we would do whatever we could to  
 [20] meet their wishes.  
 [21] Q: I think we have probably reached the point where I had  
 [22] better put it to you quite formally: this letter here of  
 [23] 24th July 1990 is a letter that was written at some  
 [24] later stage in time. It was not written on  
 [25] 24th July 1990, was it?

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[1] Q: "It was especially good to hear from Stuart that we will  
 [2] be working with Allen Roman again."  
 [3] That is a reference to Stuart Carson, is it not?  
 [4] A: It is.  
 [5] Q: Here we come to the option paragraph:  
 [6] "On the basis that Shell does adopt our proposal  
 [7] for a Star Trek-themed blockbuster, we confirm our  
 [8] agreement, as you requested, to forego an option fee on  
 [9] the multibrand loyalty scheme. This is on the  
 [10] understanding that the rights to the Multibrand Scheme  
 [11] remain vested solely with Don Marketing."  
 [12] Do you see that?  
 [13] A: Correct, yes.  
 [14] Q: You were in direct frequent contact with Stuart Carson  
 [15] about the Star Trek theme?  
 [16] A: Yes.  
 [17] Q: The option, which this letter purports to refer to, is  
 [18] linked to the question of the implementation or  
 [19] non-implementation of Star Trek, is it not?  
 [20] A: Yes, it was.  
 [21] Q: If this existed, you must inevitably have discussed it  
 [22] with Stuart Carson in that connection?  
 [23] A: I may have done, but I do not recall. I do recall the  
 [24] other things that were going on, which was working out  
 [25] the price fund for the game, arranging for a

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[1] A: It was written on or around 24th July 1990.  
 [2] Q: I put it to you that in fact it was written at a much  
 [3] later stage. It was probably written at an even later  
 [4] stage than the one of 24th July we looked at on 449.  
 [5] Would you like to comment on that?  
 [6] A: Only to say that it was written on or around 24th July,  
 [7] because that is the date on it.  
 [8] Q: And I wish to put it to you explicitly that your failure  
 [9] to mention the existence of this letter in your letter  
 [10] before action in 1997 is because this letter had not  
 [11] been actually written by you or anyone at that stage?  
 [12] A: No, the reason was that the letter had been misplaced in  
 [13] the Fundraisers research file because it referred to  
 [14] research Shell had conducted on Fundraisers. It  
 [15] sometimes happens, unfortunately, that documents do get  
 [16] misfiled. It does happen.  
 [17] Q: And that your evidence yesterday relating to the fact  
 [18] that you had forgotten the existence of the option at  
 [19] certain points in time is attributable to the fact that  
 [20] the letter had not been written and, therefore, you had  
 [21] nothing in fact to forget?  
 [22] A: No. It was because it had been put into a file that had  
 [23] not been used since the early 1990s and I had been  
 [24] engrossed since 1992 in suing Shell for various actions  
 [25] and that had - was not an important thing in my mind.

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[1] I was engrossed in what I was doing.  
 [2] **Q:** Anyway, I think you know where I stand in relation to  
 [3] those two letters, do you not?  
 [4] **A:** I know --  
 [5] **MR HOBBS:** Excuse me, I have just heard some more muttering.  
 [6] **MR COX:** I am sorry if my learned friend heard my  
 [7] muttering. It was not intended to be heard.  
 [8] I simply said to myself that, as I understood the  
 [9] position, my learned friend has no position. It is his  
 [10] client who has the position. It may simply be a  
 [11] conflict of styles which exist in different division.  
 [12] But it was not intended to be heard and, if he heard it  
 [13] and it upset him, I apologise.  
 [14] **MR JUSTICE LADDIE:** There is one system of civil justice.  
 [15] There is no difference between different courts. We  
 [16] will play this one absolutely with a straight bat,  
 [17] Mr Cox and Mr Hobbs. Please try to keep your feelings  
 [18] to yourselves, both of you.  
 [19] **MR COX:** I apologise to my learned friend. If it upset him,  
 [20] then I do regret it.  
 [21] **MR HOBBS:** Mr Donovan, you understand my client's position,  
 [22] do you, in relation to these two letters, which are  
 [23] dated 24th July 1990 that we have been discussing for  
 [24] some period of time?  
 [25] **A:** Yes, I do, and I have made my position clear as well:

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[1] until the last few minutes of yesterday's trailing of  
 [2] this extraordinary issue not one single notice or  
 [3] mention has been made to the claimant that it was going  
 [4] to be suggested that these letters were fraudulent.  
 [5] That may or may not be improper or wrong, but this is  
 [6] the first time the claimant has understood that these  
 [7] letters are questioned in the sense that they were not  
 [8] sent to Shell at the material times or to Sainsburys.  
 [9] So, my Lord, in our submission, whatever my  
 [10] learned friend is about to say would be unsafe and wrong  
 [11] admit and it may be that I have to consider a course in  
 [12] this trial which could cause considerable delay by  
 [13] application to your Lordship if it were to be admitted  
 [14] or taken seriously.  
 [15] **MR JUSTICE LADDIE:** Mr Hobbs, you may think, in view of  
 [16] Mr Cox's interjection, the best thing to do is to say  
 [17] nothing more. If you want to subpoena somebody --  
 [18] **MR HOBBS:** I certainly do not want to abort the trial.  
 [19] **MR JUSTICE LADDIE:** No, I am not going to allow anything to  
 [20] happen to abort this trial, Mr Hobbs. So you may decide  
 [21] the best thing to do is to say nothing more about it.  
 [22] **MR HOBBS:** I will say nothing more and I will address the  
 [23] matter with my solicitors over the short adjournment and  
 [24] decide what is the appropriate action.  
 [25] **MR JUSTICE LADDIE:** Let us leave it like that.

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[1] that they were written at that time.  
 [2] (12.30 pm)  
 [3] **Q:** Well, my Lord will be the judge of your answers now.  
 [4] **MR JUSTICE LADDIE:** Mr Hobbs, I understand in the bundles  
 [5] there were no acknowledgments by either Shell or  
 [6] Sainsburys in the files. That, so far as discovery  
 [7] goes, none of this material was found in Shell's files,  
 [8] but there are documents missing from Shell's files. Let  
 [9] us not worry about that for the moment. Has anybody  
 [10] made enquiries or sought to subpoena Sainsburys,  
 [11] **MR HOBBS:** Before I answer that I need to speak to my  
 [12] solicitor.  
 [13] **MR JUSTICE LADDIE:** Mr Hobbs, before you say any more, if  
 [14] this is a matter which you want to address at a time  
 [15] more convenient to the presentation of your case, please  
 [16] do not let me change the sequence.  
 [17] **MR HOBBS:** I am going to answer your Lordship's question  
 [18] now. What I wanted to check was that I was able to do  
 [19] it. That is why I have just spoken to my solicitors. A  
 [20] representative of DJ Freeman, who is the young lady  
 [21] solicitor sitting in front of me --  
 [22] **MR COX:** I object to this. We have had no notice of it. It  
 [23] sounds very much like hearsay piled upon hearsay. That  
 [24] of course is a matter for your Lordship to judge.  
 [25] I quite understand that. May I also make this plain:

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[1] **MR HOBBS:** There is one point I should perhaps respond to --  
 [2] **MR JUSTICE LADDIE:** What did Mr Lazenby say? My  
 [3] recollection is that Mr Lazenby gave evidence about  
 [4] these letters, did he not?  
 [5] **MR HOBBS:** He does give evidence. It is in several places.  
 [6] I cannot remember more than the gist of it. On this  
 [7] question of no notice or warning, the authority which  
 [8] immediately springs to mind is John Walker in which it  
 [9] was held specifically that, if a case of this kind  
 [10] emerges during the course of a trial, the court can take  
 [11] (inaudible) and counsel can raise it properly and  
 [12] consistently with the evidence which emerges.  
 [13] **MR JUSTICE LADDIE:** Carry on.  
 [14] **MR HOBBS:** Would your Lordship give me two seconds to  
 [15] consult with those in front and behind as to what I need  
 [16] to do?  
 [17] **MR JUSTICE LADDIE:** Yes. Would you like me to rise for five  
 [18] minutes? I have very acute hearing. I am deliberately  
 [19] not listening, but I am also immensely inquisitive and  
 [20] I am finding it hard. Would you prefer me to rise?  
 [21] **MR HOBBS:** I think I have finished and my point is that I am  
 [22] trying to find out whether anyone thinks there is more  
 [23] I should put. I think I have finished, but something  
 [24] has just been said to me which would make me ask  
 [25] your Lordship not to in fact release the witness, but

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[1] perhaps I can stop for the moment.

[2] **MR JUSTICE LADDIE:** You want not to have Mr Cox re-examine,  
[3] or what?

[4] **MR HOBBS:** He would say that he should not re-examine until  
[5] I have made my position clear.

[6] **MR JUSTICE LADDIE:** There are such serious issues in this  
[7] case, Mr Hobbs. I would not want either your client or  
[8] Mr Donovan to be in the position where an attempt to  
[9] find the truth or full facts is impeded. Mr Cox has to  
[10] re-examine anyway. How many more witnesses do we have  
[11] today? Mr Cox, I got a message through the grapevine

[12] that one of the witnesses that you hope to have here  
[13] today is not going to be here and we may run short.

[14] **MR COX:** The grapevine has worked.

[15] **MR JUSTICE LADDIE:** I just wondered whether it would be more  
[16] convenient to the proper conduct of this case for me to  
[17] rise now and start again at 1.45 pm. I will do whatever  
[18] counsel want, as long as it is reasonable.

[19] **MR HOBBS:** I understand. I am being given to understand  
[20] that there is material that I might wish to put to this  
[21] witness, but I am being also given to understand that it  
[22] cannot be brought here for certain by 2 o'clock. That  
[23] is the reason why I am in this dilemma.

[24] **MR JUSTICE LADDIE:** Mr Hobbs, this is your  
[25] cross-examination. You have to be prepared to

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[1] re-examination, you should not take it as granted that

[2] I will allow you to have Mr Donovan back in the witness  
[3] box. You will have to make out strong grounds for it.

[4] Do you understand that? I do not want you to say it is  
[5] a foregone conclusion. Basically, once Mr Donovan has  
[6] been in and out --

[7] **MR HOBBS:** -- the normal rule will apply. My Lord, I will  
[8] now sit down and stop.

[9] **MR JUSTICE LADDIE:** Thank you very much. Mr Cox, is it  
[10] convenient for you to start now or would you prefer  
[11] to --

[12] **MR COX:** I would infinitely prefer to take the adjournment  
[13] now.

[14] **MR JUSTICE LADDIE:** And start again at 1.45 pm?

[15] **MR COX:** If your Lordship pleases.

[16] **MR JUSTICE LADDIE:** For this afternoon, any idea how much --

[17] **MR COX:** Twenty minutes.

[18] **MR JUSTICE LADDIE:** Are we going to take up the whole  
[19] afternoon?

[20] **MR COX:** It very much looks so now. I do not have any  
[21] criticism about that at all. But it now looks as though  
[22] we shall not have any difficulty at all in so doing.

[23] **MR JUSTICE LADDIE:** Thank you very much.

[24] (12.45 pm)

[25] (The luncheon adjournment)

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[1] cross-examine.

[2] **MR HOBBS:** Your Lordship --

[3] **MR JUSTICE LADDIE:** There are faxes, you know,

[4] **MR HOBBS:** I am sorry, my Lord, this is completely  
[5] unforeseeable from my perspective, no less than from  
[6] anybody else's perspective. The dilemma I am in is what  
[7] I am being told cannot materialise, if it can be made to  
[8] materialise, before 2 o'clock.

[9] **MR JUSTICE LADDIE:** If it is very important and you have  
[10] cross-examined Mr Donovan and Mr Cox has re-examined  
[11] Mr Donovan, and if you have seen new material which you  
[12] think is crucial, you can always make an application for  
[13] leave to have Mr Donovan put back in the witness box,  
[14] I will consider such an application on the merits and  
[15] bearing in mind the weight or significance of any  
[16] additional material you may have.

[17] **MR HOBBS:** My Lord, yes.

[18] **MR JUSTICE LADDIE:** I can do that. What I do not want is to  
[19] let this case go on one minute longer than necessary,  
[20] because both Shell and Mr Donovan are paying a lot of  
[21] money for it.

[22] **MR HOBBS:** My decision, as captain of the ship, is to say --

[23] **MR JUSTICE LADDIE:** Before you say anything, I want you to  
[24] understand, Mr Hobbs, that, if you finish your  
[25] cross-examination and Mr Cox finishes his

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[1] (1.45 pm)

[2] Re-examination by MR COX

[3] **MR COX:** Mr Donovan, one or two things, please. Could you  
[4] turn to file E2, page 635?

[5] **MR JUSTICE LADDIE:** Sorry, what page was that, Mr Cox?

[6] **MR COX:** 635, my Lord.

[7] **MR JUSTICE LADDIE:** Right.

[8] **MR COX:** At least, I hope it is. I am going to try to get  
[9] there before others to see that it is. It is 634.

[10] **A:** I have that letter.

[11] **Q:** E2?

[12] **A:** Yes.

[13] **Q:** 634.

[14] **A:** A Shell letter to Senior King.

[15] **Q:** That is it, dated 20th November 1995.

[16] **A:** Fine.

[17] **Q:** Let us just have a look at it together for a moment.

[18] Plainly, it is not a letter that you would have seen  
[19] until discovery; correct?

[20] **A:** Correct.

[21] **Q:** It is a letter to Mr Grahame Senior of Senior King from  
[22] Mr Pirret, the General Manager of Retail, and he is  
[23] answering, plainly, the theme on which Mr Hobbs was  
[24] asking you questions, the claim made by Senior King. Do  
[25] you understand?

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[1] A: I do.

[2] Q: He has dealt, in the first few paragraphs, with points  
[3] about a retainer, that he believed that Senior King had  
[4] been retained to advise on Shell's retail promotions,  
[5] and with regard to the presentations, made initially on  
[6] 8th January, in response to a general enquiry regarding  
[7] Shell's options by various competitors:

[8] "However, no firm decision was made on the  
[9] progress of the matter until a briefing document,  
[10] prepared by Tim Hannagan was sent out by Andrew Lazenby  
[11] during September 1992 ...

[12] "As a result of the brief, a number of  
[13] presentations were made to Shell, including one from  
[14] Senior King, putting forward various card based  
[15] schemes. The schemes proposed by yourselves were for  
[16] the use of a contactless smart device manufactured by  
[17] Hughes or for a smart device manufactured by  
[18] Schlumberger. Ultimately it was considered that neither  
[19] of these systems would be appropriate and the solution  
[20] adopted by Shell did not use the devices favoured by  
[21] your company and put forward in your presentations."

[22] Now, does that reflect what you understood to be  
[23] the position in 1993 and 1994 about the nature of  
[24] Senior King's claims?

[25] A: Yes, it does. I understood that it was a

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[1] his ability to negotiate or to deal with you on behalf  
[2] of Shell?

[3] A: No.

[4] Q: I just want to see if we can get the proximity, how  
[5] recent this change may have been and what you understood  
[6] of it, because on 14th May you actually wrote to Mr King  
[7] about a new game, did you not?

[8] A: Correct, yes.

[9] Q: This is concerning "The Games Afoot", which was a  
[10] Sherlock Holmes game?

[11] A: That is correct, yes.

[12] Q: When you wrote that letter, why did you write it to  
[13] Mr King?

[14] A: Well, at that time I must have thought it appropriate to  
[15] send the proposal to him.

[16] Q: Yes. What you received back, of course, was the letter  
[17] that we see at 417 from Mr Carson, saying he had been  
[18] passed the letter, yes?

[19] A: Correct, yes.

[20] Q: Doing your best, and it is a very long time ago, the  
[21] change in relation to Mr King, was it a very recent  
[22] change, as you understood it, in May, June, July of  
[23] 1990?

[24] A: I think that it probably was. I cannot recollect, but  
[25] according to these documents that would appear to be the

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[1] technology-based proposal.

[2] Q: Yes, so having nothing to do with the promotional  
[3] framework or scheme that you were proposing?

[4] A: No.

[5] Q: Put that file away now for a moment, if you would.

[6] A: Right.

[7] Q: I want to come back, if I may, to the documents that  
[8] Mr Hobbs has just been asking you questions about.

[9] Could you turn to E1 and we can start with the letter of  
[10] 14th May at page 414. I will let everybody find the  
[11] page just for the moment.

[12] You had told Mr Hobbs, in answer to questions,  
[13] that as at 30th May, which is the date of the letter --  
[14] if you keep your finger at 414 you can see at 417 the  
[15] letter back as it were -- you understood that something  
[16] had happened as a result of which Mr King had been  
[17] replaced as National Promotions Manager, or  
[18] Co-ordinator; is that right?

[19] A: Yes, correct. Yes.

[20] Q: But that he was still in the Department?

[21] A: Yes.

[22] Q: We have seen a letter addressing him as Promotions  
[23] Co-ordinator; is that right?

[24] A: Correct.

[25] Q: Did you understand that Mr King was thereby deprived of

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[1] case.

[2] Q: Did it affect your belief that Mr King was somebody with  
[3] whom you could negotiate and did negotiate on behalf of  
[4] Shell?

[5] A: Yes, we dealt exclusively with him with a project called  
[6] the "Select Shop Game".

[7] Q: If we can turn now to the documents immediately  
[8] relevant, you understand what is being put to you about  
[9] the letter of the 20th, at page 439, and the letter of  
[10] 24th July at page 446; what is being put to you, so that  
[11] you understand it clearly --

[12] A: Yes.

[13] Q: -- because I want you to comment on it, is that you are  
[14] a person whose vendetta and hatred is such for Shell  
[15] that you have been prepared to forge these two documents  
[16] at or around March 1997 for the purposes solely of this  
[17] litigation.

[18] A: That is not the case.

[19] Q: Just have a look, if you would, at the letters. The  
[20] basis for this suggestion, as I understand it, is that,  
[21] analysing the text and content of these letters, they  
[22] are so inappropriate to their time, as it were --

[23] MR JUSTICE LADDIE: I think you said 439 and 446.

[24] MR COX: 446 and 449, my Lord. I beg your Lordship's  
[25] pardon.

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

[2] **MR COX:** Analysing those two letters textually, their

[3] content --

[4] **A:** Yes.

[5] **Q:** -- they are so inappropriate to their time by a form of

[6] textual exegesis that you could not have written them

[7] then; do you follow?

[8] **A:** I do.

[9] **Q:** What do you say to that?

[10] **A:** That at the time, or just before this, I had actually

[11] been preparing contingency plans for BP so it was quite

[12] normal for me to try to look forward into the future to

[13] see the way that the market was going, and ideally to

[14] give Shell the first opportunity at new ideas.

[15] **Q:** Yes.

[16] **A:** Which I did many times.

[17] **Q:** Could you keep your finger in the letters, just insofar

[18] as we can try to get some perspective on this, and turn

[19] back in the same volume, for example, to the 1986

[20] Megamatch proposal, and particularly page 110. Looking

[21] into the future: was that a part of your job, as it

[22] were, at that time?

[23] **A:** Yes, it was.

[24] **Q:** Trying to anticipate other people?

[25] **A:** Correct. For Shell to be first.

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[1] **Q:** Meaning what?

[2] **A:** Well, the Megamatch game, as far as I know, has never

[3] been run anywhere.

[4] **Q:** Of course, Shell were the first into the market as they

[5] themselves have pronounced and trumpeted --

[6] **A:** Yes.

[7] **Q:** -- with the other idea, the loyalty consortium concept?

[8] **A:** Correct.

[9] **Q:** Yes. If we go back to those two letters, again just

[10] briefly, I do not want to go through each one at this

[11] stage of the trial. It may be a matter for later, for

[12] analysis with his Lordship.

[13] It is a very, very grave allegation that is being

[14] made against you. You perceive that?

[15] **A:** I do.

[16] **Q:** That you are prepared to forge these documents; do

[17] you understand?

[18] **A:** Yes, I do.

[19] **Q:** And, on this basis, to come to court to invite the

[20] learned judge to give you justice.

[21] **A:** Correct.

[22] **Q:** Would you do something like that?

[23] **A:** No, I would not.

[24] **Q:** You are not, I think, as I think his Lordship knows,

[25] legally aided for this purpose, are you?

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[1] **Q:** Yes. On page 110, as far back as 1986 we see that

[2] you are looking into the future again, do we?

[3] **A:** Correct, yes.

[4] **Q:** If we go as far back as 1981, perhaps I need not deal

[5] with this one, but in your proposal, I think, for

[6] Make Money, had you also looked into the future there?

[7] **A:** Yes. The promotion changed the whole petrol retailing

[8] scene in this country when Shell launched the 1984

[9] version because all the other oil companies then

[10] followed with similar schemes using the same format,

[11] which none of them had done before on a national basis,

[12] and I am talking about no purchase necessary --

[13] **Q:** Let us look at Concept 4 in the same bundle at

[14] page 347. Under "Conclusion - Multibrand Loyalty

[15] Programme", at page 347, again, when you first presented

[16] this as a consequence of the brief given to you by

[17] Mr King, you said:

[18] "We predict that Mega Match and this proposed

[19] development of the multibrand promotional concept will

[20] come to pass."

[21] **A:** Yes.

[22] (2.00 pm)

[23] **Q:** "The benefits will be reaped by the first consortium to

[24] be set up."

[25] **A:** Correct. I was only half right, unfortunately.

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[1] **A:** That is correct.

[2] **Q:** How are you paying for this action?

[3] **A:** With a legal charge over my house.

[4] **Q:** Who else lives in your house?

[5] **A:** My mother and father.

[6] **Q:** Your father is how old?

[7] **A:** 82.

[8] **Q:** Your mother?

[9] **A:** Is 78.

[10] **Q:** Is she in good health?

[11] **A:** No, she has Alzheimer's.

[12] **Q:** Why are you bringing this action against Shell?

[13] **A:** Because I was the first agency to put up the proposal to

[14] Shell. I have examined their discovery; I have not seen

[15] any evidence of any other similar proposal.

[16] **Q:** Yes. Would you put that bundle to one side. I have

[17] asked you to do that, but there is one other question

[18] I needed to ask you about that letter. Would you come

[19] back to it? It is the 24th July letter at page 446 to

[20] Mr King.

[21] At the bottom of the page, you have been

[22] cross-examined concerning the sentence and indeed

[23] I think his Lordship asked one or two questions

[24] concerning it, the paragraph at the bottom dealing with

[25] senior management:

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[1] "It is nice to know that they want to keep our  
 [2] multibrand loyalty concept in the locker."  
 [3] A: Correct.  
 [4] Q: When you wrote this letter --  
 [5] A: Yes.  
 [6] Q: -- which you say you did at the time, is that correct?  
 [7] A: Yes, I did.  
 [8] Q: Would you have written that if you did not believe that  
 [9] senior management had given it consideration?  
 [10] A: I was told through Roger Sotherton that -- from his  
 [11] conversation with Paul King -- that they had.  
 [12] Q: Right. If this letter went, which it is your case it  
 [13] did, would you have been embarrassed to be making a  
 [14] statement like that that would turn out subsequently to  
 [15] be untrue?  
 [16] A: I would have thought it would be a dangerous thing to do  
 [17] because Shell would have thought very badly of it.  
 [18] Q: Yes. You might have expected to receive some comeback  
 [19] if it was not agreed with?  
 [20] A: Correct.  
 [21] Q: Yes. I want to deal with some letters written  
 [22] in November and December of 1993 in file E7. Your  
 [23] letter of 19th November is at page 2976, I hope.  
 [24] A: Yes, I have the letter.  
 [25] Q: This was the letter that you wrote to Mr Watson; is that

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[1] Q: Was that the day or round about the days that you taped  
 [2] the conversations --  
 [3] A: Yes, yes.  
 [4] Q: -- that we can see?  
 [5] A: Yes.  
 [6] Q: When you saw that Shell were running a promotion that  
 [7] I think, on any view, you at that stage considered to be  
 [8] very like yours, did you not?  
 [9] A: Yes.  
 [10] Q: What did you suspect had occurred?  
 [11] A: I knew that something wrong had happened. I did not  
 [12] know how it had come about, and I was sick inside at  
 [13] seeing the advert.  
 [14] Q: Why?  
 [15] A: Because I thought that this was my idea, for Shell to  
 [16] run a Nintendo themed promotional game with Gameboy  
 [17] prizes, that I put to Mr Lazenby.  
 [18] Q: Had anybody come back to you from Shell in the meantime  
 [19] to explain that they were running with such a promotion?  
 [20] A: No.  
 [21] Q: During the conversations -- I do not want to go into  
 [22] them in detail at the moment but, during the  
 [23] conversations, had certain things been said to you that  
 [24] you considered -- I mean the tape-recorded  
 [25] conversations --

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[1] right?  
 [2] A: That is correct.  
 [3] Q: After you had become aware, in 1993, that Nintendo had  
 [4] been launched; yes?  
 [5] A: That is correct, yes.  
 [6] Q: Now, let us just get this clear because Nintendo had  
 [7] been a proposal you had put to Mr Lazenby when?  
 [8] A: On 4th June 1992.  
 [9] Q: Yes. You had faxed Mr Lazenby concerning that proposal  
 [10] again in 1993, had you not?  
 [11] A: I did.  
 [12] Q: Was that on February 19th, 1993?  
 [13] A: It was.  
 [14] Q: What had been the answer that you had had faxed back to  
 [15] you by a handwritten note appended to the bottom of that  
 [16] fax?  
 [17] A: That Mr Lazenby would recontact me when there was any  
 [18] further progress.  
 [19] Q: As far as you were concerned, after 19th February 1993,  
 [20] what was the position as it was left with Nintendo, the  
 [21] game?  
 [22] A: That it was still under consideration for possible  
 [23] research and development.  
 [24] Q: Right. When did you see that Nintendo was launched?  
 [25] A: On 18th June, 1993.

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[1] A: Yes.  
 [2] Q: -- that you considered to be unsatisfactory?  
 [3] A: Yes. There was mention of Megamatch, Make Money, that  
 [4] Mr Lazenby or Shell could run these without  
 [5] Don Marketing, and I found that also very upsetting in  
 [6] view of the previous history with them.  
 [7] Q: So, by the letter that we have in this bundle, by  
 [8] 19th November 1993, the position as you have just  
 [9] indicated was that they had run with a promotion without  
 [10] telling -- certainly without indicating to you --  
 [11] A: Yes.  
 [12] Q: -- very like one you had put up to Mr Lazenby; that is  
 [13] your view at the time?  
 [14] A: Yes, the concept I saw to be the same, yes.  
 [15] Q: In courses of conversations, Mr Lazenby had also  
 [16] indicated that he could run -- or implied or hinted that  
 [17] he could run Megamatch and Make Money as well without  
 [18] reference to you?  
 [19] A: Yes, he said that.  
 [20] Q: Yes. If we come to the letter of 19th November 1993,  
 [21] you are writing now to Mr Watson, Mr Lazenby's boss; is  
 [22] that right?  
 [23] A: Correct, yes.  
 [24] Q: You had also had, I think, a conversation with him  
 [25] preceding this?

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[1] A: Probably, yes.  
 [2] Q: If you look at the letter just for a moment, the last  
 [3] paragraph:  
 [4] "Like Andrew Lazenby, you expressed some doubt  
 [5] over our proprietary claim to the 'Mega Match'  
 [6] concept ..."  
 [7] Do you see that?  
 [8] A: Yes, that is true. In the conversation that I had with  
 [9] him, I had mentioned to him that I was upset that  
 [10] Mr Lazenby had said that he could run Megamatch and Make  
 [11] Money without Don Marketing, and Mr Watson seemed to  
 [12] support that view.  
 [13] Q: Right. When you came to write this last paragraph of  
 [14] this letter, what was the main concern that you had as a  
 [15] consequence of those events that you have just run  
 [16] through?  
 [17] A: It was that Shell had plans to develop and run  
 [18] Megamatch.  
 [19] Q: You say:  
 [20] "Please note that I am in possession of a  
 [21] multitude of documents regarding presentations and  
 [22] contact with Shell over several years, which confirm our  
 [23] rights to that concept."  
 [24] Then you go on:  
 [25] "These proposals also cover promotional schemes,

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[1] correspondence. Megamatch was secondary.  
 [2] (2.15 pm)  
 [3] Q: Now, at the last paragraph he wrote:  
 [4] "I note the last paragraph of your letter  
 [5] regarding the 'Mega Match' concept, but do not however  
 [6] entirely understand your position. You may have rights  
 [7] over some particular promotions based on the concept of  
 [8] various retailers using a common promotional currency  
 [9] but you cannot have any rights over the concept itself  
 [10] and there have been many such schemes already."  
 [11] Did those lines puzzle you?  
 [12] A: Yes.  
 [13] Q: Why?  
 [14] A: Because I could not understand, and still cannot  
 [15] understand, exactly what it is saying. Can I read it  
 [16] again?  
 [17] Q: Yes, please do.  
 [18] A: Sorry. (Pause)  
 [19] It is not clear what it is that he is saying.  
 [20] Q: Did you believe at that time that Shell were embarked  
 [21] upon full systems steam ahead upon developing a  
 [22] multibrand loyalty concept, just such as the one that  
 [23] you had outlined to them ...  
 [24] A: Definitely not.  
 [25] Q: ... before?

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[1] whereby the common currency - points, vouchers, tokens,  
 [2] etc - are collected or awarded at outlets belonging to  
 [3] the various types of retailer participating in the  
 [4] activity."  
 [5] What was your concern when you wrote that passage?  
 [6] A: I just wanted to remind Shell that we had invented the  
 [7] concept and that we had the rights to it.  
 [8] Q: Did you, at that stage, have any suspicion that Shell ...  
 [9] or any knowledge that Shell were embarked upon exactly  
 [10] such a multibrand loyalty concept?  
 [11] A: None at all.  
 [12] Q: Had you had such knowledge, would you have been content  
 [13] to remain with the few lines at the bottom of that  
 [14] letter?  
 [15] A: No, I would have concentrated on spelling out exactly  
 [16] what the background was.  
 [17] Q: Yes. Let us look, if we may, at the response to this.  
 [18] We can stay in that bundle, I hope. Page 3066 is a  
 [19] letter to you from Mr Watson dated 2nd December; yes?  
 [20] A: Yes.  
 [21] Q: Now, at this stage what was your state of mind?  
 [22] You have written on 19th November. What is in your mind  
 [23] that Shell might be doing, from your subjective point of  
 [24] view?  
 [25] A: Make Money was the main concern for all of this

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[1] A: No.  
 [2] Q: If we then turn to the conclusion of that little chain  
 [3] of correspondence at 3214, you are writing to Mr Watson  
 [4] in response to his letter of the 2nd and you express  
 [5] some regret about the previous relationship. You had  
 [6] hoped Shell:  
 [7] "... would have wanted us to be involved in any  
 [8] new version of a previous game ..."  
 [9] What did you mean? What was the previous game?  
 [10] A: The 1984 Make Money game.  
 [11] Q: "My comments regarding the Make Money game [and it  
 [12] mentions the ISP award] and proprietary rights ... were  
 [13] made in reply ...", and you state there Mr Lazenby's  
 [14] assertion that he could run them without any involvement  
 [15] by Don Marketing.  
 [16] You say that it was the first. You recite the  
 [17] history that you provided the copy letter:  
 [18] "... and some further background information, just  
 [19] to illustrate how inappropriate it was for Mr Lazenby to  
 [20] be so dismissive, without apparently having the  
 [21] slightest knowledge of the background circumstances."  
 [22] Then, in the final paragraph, you wrote:  
 [23] "However, unless Shell is actively considering  
 [24] running one the relevant promotions, it seems to me that  
 [25] further discussion is unwarranted at this moment.

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[1] Discussions relevant to a particular concept could be  
 [2] undertaken at the appropriate time, should it ever  
 [3] become necessary."

[4] This is 20th December 1993.

[5] A: That is correct, yes.

[6] Q: Did you ever have any communication from Shell  
 [7] whatsoever indicating that they were proposing to  
 [8] operate, or run, or were using a concept, not  
 [9] necessarily yours, but were intending to use a concept  
 [10] of a multibrand scheme resembling the one you had put  
 [11] forward?

[12] A: No, none at all.

[13] Q: If Mr Watson was, as Mr Hobbs suggested to you in his  
 [14] letter of 2nd December 1993, referring to the multibrand  
 [15] loyalty concept --

[16] MR JUSTICE LADDIE: 20th December, I think.

[17] MR COX: 2nd December, my Lord. If Mr Watson was referring  
 [18] on 2nd December, in his last paragraph, to the  
 [19] multibrand loyalty concept, it follows that he knew that  
 [20] you were asserting rights, does it not?

[21] A: Yes.

[22] Q: You conclude with the paragraph that if they are not  
 [23] going to run it anyway it does not much matter; yes?

[24] A: Yes.

[25] Q: If that had been in Mr Watson's mind on 2nd December,

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[1] promotions.

[2] I did not -- I want to get this correct. We were  
 [3] involved in a major promotion in 1967 with a couple of  
 [4] oil companies. Then we were involved in the  
 [5] garage/petrol retailing, running our own promotions  
 [6] until about 1978/1979, and then we started a promotions  
 [7] company.

[8] Q: Have you ever provided expert reports or given expert  
 [9] evidence in any case?

[10] A: Yes, I have.

[11] Q: Given evidence, or provided reports?

[12] A: Provided reports.

[13] Q: I do not think it has been disputed, and there is  
 [14] certainly not anything to dispute those parts of your  
 [15] witness statement in which you set out your history and  
 [16] background, successful and award-winning in many  
 [17] cases --

[18] A: Yes.

[19] Q: -- in developing and devising concepts for promotions.  
 [20] Just explain why, when you put this scheme to Shell, you  
 [21] thought that it was new, or novel?

[22] A: Well, because there was not, that I was aware of, any  
 [23] other scheme anywhere else in any country; that it was a  
 [24] Shell-led consortium of major retailers operating in  
 [25] different trades on an exclusive basis; and that the

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[1] would you have considered it natural for him, in  
 [2] response to your letter, in the light of your letter --

[3] A: Yes.

[4] Q: -- to come back to you to talk about it?

[5] A: Yes, especially because of the long relationship with  
 [6] Shell.

[7] Q: So, after that letter, you obviously -- and you have  
 [8] made it clear many times -- you had other very  
 [9] considerable and engrossing subjects of concern with  
 [10] Shell?

[11] A: Yes.

[12] Q: Did you think, from that point on, that a multibrand  
 [13] loyalty scheme was going to be proposed -- until 1996?

[14] A: No, I did not, no.

[15] Q: Was going to be used?

[16] If you put that volume away, Mr Donovan, I am not  
 [17] sure there could be any better person to ask this -- and  
 [18] certainly you have been asked what your concept was and  
 [19] questions regarding the means and the particular reasons  
 [20] why you considered it to be revolutionary. Do you  
 [21] recall those questions?

[22] A: Yes, I do.

[23] Q: You have been in the promotions industry for how long?

[24] A: Since 1967. For a part of that time, I was also in

[25] petrol retailing with my father and we were running

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[1] consortium members could actually benefit from each  
 [2] other's trade. They could have direct redemption so  
 [3] that people buying from Shell would have -- if  
 [4] Sainsburys was the supermarket partner, they would have  
 [5] a very strong reason for going into Sainsburys to get  
 [6] their groceries, Shell to get their petrol, and within  
 [7] the family of organisations actually conducting the  
 [8] scheme.

[9] Q: You were aware, were you, in 1989/1990 and again in  
 [10] 1992, for example, of the existence of Air Miles?

[11] A: Yes, I was.

[12] Q: Indeed, you said that -- did you know at the time that  
 [13] Shell had been issuing Air Miles --

[14] A: Yes, I did.

[15] Q: -- or members of the Air Miles scheme?

[16] A: I did.

[17] Q: If you had put forward a scheme that simply resembled in  
 [18] concept, in structure, Air Miles, would you have  
 [19] considered yourself at the time that it was something  
 [20] you would have had an interested response in?

[21] A: No.

[22] Q: Were you aware at the time, in 1992, or 1990, or 1989,  
 [23] of any of the other schemes that you have heard mention  
 [24] of and Mr Hobbs cross-examined upon?

[25] A: I do not think I was aware of them at the time, no.

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[1] Q: Air Miles, certainly?  
 [2] A: I knew about Air Miles and --  
 [3] Q: Premier Points?  
 [4] A: -- Premier Points, yes.  
 [5] Q: Again, these schemes were in your mind at the time?  
 [6] A: Yes, because they were operated by a third party company  
 [7] that organised the scheme and controlled it in every  
 [8] respect: the advertising; the marketing; the branding;  
 [9] the ownership of the data; the issue rate with the  
 [10] previous trading stamp companies, because, as I said,  
 [11] I used to have a Greenshield franchise. At that stage,  
 [12] when they first started, you could only give single  
 [13] stamps on your franchise. Then they changed it to  
 [14] double, then treble, quadruple, sixfold it ended up  
 [15] with, and it all cancelled out, became -- other people  
 [16] of my age group may remember this.  
 [17] Q: You mean the currency became diluted, in other words?  
 [18] A: Diluted, and we were paying a lot of money to  
 [19] Greenshield Stamps at the time and we had a franchise  
 [20] with Pinkshield Stamps, and eventually they all  
 [21] cancelled each other out.  
 [22] Q: What about exclusivity in Greenshield Stamps? Was there  
 [23] any exclusivity?  
 [24] A: It started off where you had a reasonable franchise  
 [25] area, but then Greenshield moved the goal posts and they

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[1] A: No, it would have been a waste of everyone's time.  
 [2] Q: When you put forward the schemes, did Mr King, or  
 [3] perhaps more importantly Mr Lazenby, ever suggest to you  
 [4] that the idea could not be confidential?  
 [5] A: No. He never suggested that in respect of any scheme  
 [6] that I put to Mr Lazenby. I put several to him and  
 [7] there was no question about confidentiality until after  
 [8] they launched a Nintendo game on 18th June, 1993.  
 [9] Q: I want to break this up into stages. First, did he ever  
 [10] say, "I will not accept this in confidence"?  
 [11] A: No.  
 [12] Q: Did he ever say, "That cannot be treated as confidential  
 [13] because it is common information"?  
 [14] A: No.  
 [15] Q: When you put it to him in those discussions that  
 [16] you have given evidence about in your witness statement  
 [17] and again yesterday, when you put it, the scheme, to  
 [18] him, what was the purpose that you put it to him for?  
 [19] A: To see whether he was interested in the idea.  
 [20] Q: Subsequently, what did you envisage happening if he were  
 [21] to show interest?  
 [22] A: That he would bring us in to be involved in it on an  
 [23] agreed basis.  
 [24] Q: Was that something that you believed to have been  
 [25] obvious to anybody who had been present at the

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[1] had a franchise committee where, in our own experience,  
 [2] they put in two other sites within our franchise area so  
 [3] we ended up competing with other Greenshield outlets.  
 [4] This is what really actually drove us into promotions.  
 [5] Q: Was that in your mind too when you were thinking and  
 [6] refining the multibrand loyalty concept?  
 [7] A: Yes, it was.  
 [8] Q: When you came to put the idea, the scheme, to Mr King  
 [9] and then subsequently to Mr Lazenby in 1992, were you  
 [10] conscious that they too would have been aware of  
 [11] Air Miles, Premier Points, and so on?  
 [12] A: Yes, yes.  
 [13] Q: Did you consider yourself to be dealing with experienced  
 [14] people or inexperienced people?  
 [15] A: With Mr King, I was dealing with a very experienced  
 [16] marketing and promotions man; with Mr Lazenby, I do not  
 [17] think he had hardly any experience at all.  
 [18] Q: But he had experience to draw upon, did he?  
 [19] A: I can see from his witness statement that he had been  
 [20] involved in the retail network, so he would have been  
 [21] aware of other petrol promotions.  
 [22] Q: Again, if you put forward to them schemes that -- would  
 [23] you have considered it worth putting forward schemes to  
 [24] them that simply resembled in every detail and were  
 [25] familiar --

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[1] discussions?  
 [2] A: Yes.  
 [3] Q: Though the meetings were short, or, rather, not the  
 [4] meetings but the discussions --  
 [5] A: Yes.  
 [6] Q: -- that took place within the meetings, I think you have  
 [7] given evidence: five or ten minutes on each occasion?  
 [8] A: Yes.  
 [9] Q: Is there any doubt in your mind that the essentials of  
 [10] this scheme were spelt out on 12th May, first?  
 [11] A: No.  
 [12] Q: Is there any doubt in your mind that, as you put it to  
 [13] Mr Hobbs, you went through the Sainsburys letter on  
 [14] 24th November?  
 [15] A: No. No doubt at all.  
 [16] Q: Were the discussions that you had, both on 12th May and  
 [17] 24th November, sufficient, in your mind, to have clearly  
 [18] conveyed to him the nature of the scheme?  
 [19] A: Yes.  
 [20] Q: And for it to have lodged in his mind?  
 [21] A: Yes.  
 [22] Q: In other words, it was not just such a passing reference  
 [23] that it might not have stuck?  
 [24] A: I would not have thought so.  
 [25] Q: In the second meeting, you say you went through the

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[1] letter?  
 [2] **A:** Yes.  
 [3] **Q:** You realise, of course, that your word is being pitted  
 [4] here against that of Mr Lazenby?  
 [5] **A:** I do.  
 [6] **Q:** I want to come on, if I may, to a period later. You  
 [7] received discovery -- I am not going to pin you to a  
 [8] date, and I do not suppose anybody else will, but how  
 [9] long ago was it when you conducted the discovery?  
 [10] **A:** I would guess December last year.  
 [11] **Q:** Right. When you went through that discovery, did you  
 [12] discover certain documents that led you to certain  
 [13] names?  
 [14] **A:** I did.  
 [15] (2.30 pm)  
 [16] **Q:** Was one of them Mr Armstrong-Holmes?  
 [17] **A:** It was.  
 [18] **Q:** You have been asked about the circumstances in which you  
 [19] approached Mr Armstrong-Holmes. Did you have any  
 [20] knowledge of Mr Armstrong-Holmes before you came across  
 [21] the discovery?  
 [22] **A:** None at all.  
 [23] **Q:** Did you seek in any way to influence Mr Armstrong-Holmes  
 [24] to say something that was not true?  
 [25] **A:** No.

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[1] **A:** Of course, it is.  
 [2] **Q:** As you know, one of the things I will have to do is  
 [3] I will have to decide what the true story is.  
 [4] **A:** Yes.  
 [5] **Q:** The story that you give and the story that Mr Lazenby  
 [6] gives are difficult to reconcile with each other.  
 [7] **A:** Yes.  
 [8] **Q:** There are all sorts of possibilities.  
 [9] **A:** Mmm.  
 [10] **Q:** One is that you have made it all up and one is that  
 [11] Mr Lazenby has made it all up. Another possibility is  
 [12] that parts are true and parts are not true, and at the  
 [13] end of the day I am going to have to decide whether the  
 [14] whole or a part of a story is true, or whether the whole  
 [15] or a part of it is untrue. Do you understand?  
 [16] **A:** I do.  
 [17] **Q:** I have to do that without regard to the financial impact  
 [18] that that will have on the parties.  
 [19] **A:** I understand that as well.  
 [20] **Q:** Can I ask you to go to file E1? It is the one with the  
 [21] letters of 24th July, 1990.  
 [22] **A:** Right.  
 [23] **Q:** There are some other documents, I do not need to go to  
 [24] them, but there are some other documents which seem to  
 [25] suggest that you made claims in relation to Concept 4 to

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[1] **Q:** Mr King and your relationship with him, insofar as  
 [2] it has been raised -- although sometimes by what I will  
 [3] call "implication" -- your relationship with Mr King:  
 [4] did you ever have anything other than a relationship on  
 [5] a professional basis with Mr King?  
 [6] **A:** No.  
 [7] **MR JUSTICE LADDIE:** I do not think any suggestion of  
 [8] impropriety was being made by Mr Hobbs. If it was, it  
 [9] passed me by, Mr Cox, and I will not allow Mr Hobbs to  
 [10] run it now.  
 [11] **MR COX:** Thank you, Yes. Would your Lordship give me just  
 [12] one moment? (Pause)  
 [13] Does the same apply to Mr McMahon?  
 [14] **A:** Yes, it does.  
 [15] **Q:** As did for Mr Armstrong-Holmes, I mean.  
 [16] **A:** Yes.  
 [17] **Q:** Thank you, my Lord. Thank you, Mr Donovan.  
 [18] **MR JUSTICE LADDIE:** Mr Donovan, I would just like to ask you  
 [19] a couple of questions.  
 [20] **A:** Right.  
 [21] **Q:** Mr Cox, at the beginning of his re-examination of you,  
 [22] asked you to explain the funding of this case?  
 [23] **A:** Yes.  
 [24] **Q:** Of course, this case must be a significant worry to  
 [25] you.

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[1] Shell. I am concerned about the documents at 446 and  
 [2] 449.  
 [3] **A:** I have those.  
 [4] **Q:** I want you to look at them carefully, I want you to read  
 [5] them to yourself. 446 and 449. Read them to yourself.  
 [6] (Pause)  
 [7] **A:** Yes, I remember the letters.  
 [8] **Q:** Whatever may be the status of other documents --  
 [9] **A:** Yes.  
 [10] **Q:** -- I want you to reflect again on what Mr Hobbs is  
 [11] putting to you.  
 [12] **A:** Yes.  
 [13] **Q:** Are you sure that you wrote these letters in July of  
 [14] 1990 --  
 [15] **A:** I --  
 [16] **Q:** -- and sent them, "and sent them", in July of 1990?  
 [17] **A:** I am sure that I wrote -- I was involved in writing the  
 [18] letters, probably the prime person involved in it, and  
 [19] that the letters were prepared and put in the mailing  
 [20] system, but I do not know whether they were actually  
 [21] sent, and so on.  
 [22] **Q:** In July 1990?  
 [23] **A:** In July 1990.  
 [24] **Q:** Thank you very much.  
 [25] **MR COX:** Thank you, Mr Donovan.

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[1] (The witness withdrew)

[2] **MR COX:** My Lord, Mr Roger Sotherton, please.

[3] **MR ROGER GEOFFREY SOTHERTON (sworn)**

[4] Examination-in-chief by MR COX

[5] **Q:** Mr Sotherton, I think you should find -- I hope it is a

[6] yellow bundle -- in the carousel to the right of you,

[7] marked C1.

[8] **A:** Did you say yellow?

[9] **Q:** I hope it is yellow.

[10] **A:** It looks like "G", but it says "C1", yes.

[11] **Q:** If you turn to tab number 2 there, you should find the

[12] frontispiece to a statement that purports to be yours.

[13] If you turn to the end, there is a photocopy and it

[14] bears a signature which I want to ask you if you

[15] recognise as yours.

[16] **A:** It is mine.

[17] **Q:** Is this the statement that you made for the purposes of

[18] this case?

[19] **A:** It is.

[20] **Q:** Mr Sotherton, the way it is done here is that I do not

[21] get a chance to ask you questions about yourself. I am

[22] simply going to ask you to confirm that, to the best of

[23] your recollection and belief, the details in that

[24] statement true?

[25] **A:** Yes.

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[1] **Q:** Thank you. Have you had a detailed breakdown of what

[2] has been going on in your absence?

[3] **A:** No, I have not.

[4] **Q:** How detailed was it, if it was not detailed?

[5] **A:** I saw part of a transcript of yesterday's proceedings.

[6] **Q:** Did you?

[7] **A:** That is all I have seen.

[8] **Q:** What was the part of the transcript of yesterday's

[9] proceedings you looked at?

[10] **A:** Most of the latter part, for some of which I was present

[11] as it was happening.

[12] **Q:** Right. You will remember, I think, that the Shell Smart

[13] Scheme rolled out, became public, in 1994?

[14] **A:** If that is the date you say it was, yes, I accept that.

[15] **Q:** Do you remember the Shell Smart Scheme coming onto the

[16] scene?

[17] **A:** Not really, no. I had not taken much notice. I was

[18] advised that it had come onto the scene.

[19] **Q:** Who advised you?

[20] **A:** John Donovan.

[21] **Q:** When did he advise you, can you recollect?

[22] **A:** I cannot really, but I think it was in early -- what

[23] year did you say?

[24] **Q:** It is 1994.

[25] **A:** 1994. I would have thought it would have been early-ish

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[1] **Q:** There will be questions for you from Mr Hobbs.

[2] Cross-examination by MR HOBBS

[3] **Q:** Mr Sotherton, did you just take something into the

[4] witness box with you? I saw you carrying something in.

[5] **A:** (Indicating)

[6] **Q:** Is there anything in there?

[7] **A:** Yes, there is a copy of my statement, a couple of

[8] statements and things.

[9] **Q:** Nothing else beyond that?

[10] **A:** No.

[11] **Q:** Right. Now, Mr Sotherton, you have been in court today,

[12] I believe? If you do not say out loud "yes", it will

[13] not come onto the tape.

[14] **A:** Yes.

[15] **Q:** You have been in court today. Were you in court at all

[16] yesterday?

[17] **A:** For a short period at the end.

[18] **Q:** Right. Have you been receiving reports as to what has

[19] been going on?

[20] **A:** Yes, some.

[21] **Q:** Who has been communicating those reports to you, if you

[22] do not mind me asking?

[23] **A:** Mr Woodman.

[24] **Q:** Sorry?

[25] **A:** Mr Woodman.

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[1] 1994.

[2] **Q:** Can you remember the occasion when he advised you about

[3] the introduction of the scheme?

[4] **A:** Not really, no, other than that it was a casual -- I say

[5] casual, obviously now important -- telephone call that

[6] he had made.

[7] **Q:** Right. You, at that stage, were not, I think, still

[8] connected with Don Marketing, were you?

[9] **A:** No, far from it.

[10] **Q:** Right. You say "far from it"; were you at loggerheads

[11] with Don Marketing?

[12] **A:** No, not at all. I had gone into a completely different

[13] area of business.

[14] **Q:** At what point in time, looking back, do you say that you

[15] formed the idea in your mind that the Shell Smart Scheme

[16] used concepts disclosed, as you would say, in 1992 to

[17] Mr Lazenby?

[18] **A:** After the point I had had the conversation with John who

[19] had advised me, and he explained to me, the essence of

[20] what is the Smart scheme, and it seemed obviously so

[21] similar to what it is that we had proposed earlier.

[22] **Q:** This is the conversation you have just referred to --

[23] **A:** Yes.

[24] **Q:** -- when John Donovan rang you?

[25] **A:** Yes.

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[1] Q: That was in 1994 and he was talking to you about the  
 [2] scheme that had just rolled out from Shell?  
 [3] A: Yes.  
 [4] Q: So this was a new scheme he was talking to you about?  
 [5] A: Yes.  
 [6] Q: His position in conversation with you was, at that  
 [7] stage, that this appeared to involve concepts which had  
 [8] been disclosed to Lazenby before; is that correct?  
 [9] A: Yes.  
 [10] Q: Right. What happened after that? How did it go? That  
 [11] is 1994 and here we are in 1999, and there are  
 [12] five years in between.  
 [13] A: Right. Well, very much left to John Donovan to pursue  
 [14] the matter how he felt that he should and that I was  
 [15] available if he wanted any information that I could  
 [16] possibly help with along the way.  
 [17] Q: Quite, so how did you leave it? You left it on the  
 [18] basis that he would do some further investigations into  
 [19] the scheme which had just rolled out from Shell?  
 [20] A: Yes, and that we would just keep in touch as to how  
 [21] things were going; was it indeed the Don Marketing  
 [22] scheme, et cetera.  
 [23] Q: Did he come back to you at all? When did he come back  
 [24] to you? He must have come back to you, so when did he  
 [25] come back to you? The same year, 1994?

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[1] A: No.  
 [2] Q: He was proposing, was he, to investigate with a view to  
 [3] bringing a further complaint against Shell; is that your  
 [4] understanding of these discussions?  
 [5] A: That is what it turned out to be, yes, with the passage  
 [6] of time.  
 [7] Q: Yes. It was not a surprise to you that that is what it  
 [8] turned out to be because that is how it started out:  
 [9] he was going to look into the Shell scheme?  
 [10] A: Absolutely, yes.  
 [11] Q: Yes, he was going to get to the bottom of it?  
 [12] A: Yes.  
 [13] Q: He was going to bring a claim against Shell --  
 [14] A: Yes.  
 [15] Q: -- at a time that he saw fit?  
 [16] A: Yes.  
 [17] Q: You had conversations with him in 1994 and you have said  
 [18] it could have been as many as 15 conversations?  
 [19] A: Yes.  
 [20] Q: It was quite a few. I should imagine, but you must help  
 [21] me please, did this go on during 1995 as well? Were  
 [22] there further conversations between you and him?  
 [23] A: Yes, there must have been. I cannot recollect any, but  
 [24] yes, there must have been.  
 [25] Q: Right, there must have been. Were these face-to-face,

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[1] A: Certainly, yes. We would have had conversations during  
 [2] the course of the year. I would not like to put a time  
 [3] span on it.  
 [4] Q: Can you give us an indication of the number of  
 [5] conversations there might have been: 5, 10, 15?  
 [6] A: Could have been.  
 [7] Q: Could have been what, 15?  
 [8] A: It could have been 10, it could have been 15. I think  
 [9] it would have been weekly, maybe the odd monthly --  
 [10] I think probably as news arose, or there was a  
 [11] development, then he would just make me aware of that.  
 [12] Q: All right. You say he was making you aware of it. Can  
 [13] you recall, please, for us now, what sort of points were  
 [14] coming up in the discussions that he was having with you  
 [15] and you were having with him?  
 [16] A: Well, it was very much -- or it appeared to me to be  
 [17] very much an "Oh, here we go again" situation, keeping  
 [18] in mind the three previous cases that had been some  
 [19] while before --  
 [20] Q: Right.  
 [21] A: -- and John was going to decide quite what he had done  
 [22] about what appeared to be our idea being used. That was  
 [23] very much left in John's court to deal with. I had no  
 [24] interest in the matter at all.  
 [25] Q: You had no interest in the matter?

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[1] or some of them face-to-face and some of them over the  
 [2] telephone?  
 [3] A: Probably a mixture of both.  
 [4] Q: Right. When you did meet face-to-face -- you had some  
 [5] face-to-face contact?  
 [6] A: Yes.  
 [7] Q: When you did have face-to-face contact, was that at the  
 [8] offices of Mr Donovan, or was it at your home, or his  
 [9] home? Where would you meet?  
 [10] A: At his office at his home, or there were perhaps a  
 [11] couple of other occasions where we were meeting friends  
 [12] and we would meet together.  
 [13] (2.45 pm)  
 [14] Q: All right. Could you give us an indication of the  
 [15] frequency with which you met to discuss the state of the  
 [16] Shell Smart Scheme and Mr Donovan's position in relation  
 [17] to it during 1995?  
 [18] A: I think there was no planned frequency. There was --  
 [19] casual updating probably is the best way to describe it.  
 [20] Q: You think it could have been as many as 15 discussions,  
 [21] or so, in 1994. Would it have been more or less during  
 [22] 1995, or as many again?  
 [23] A: Maybe as many again, but I am working that on the basis  
 [24] that perhaps we talked once a month and maybe twice in  
 [25] one month or something.

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[1] Q: Right. I should imagine that you were aware that,  
 [2] during 1995, Mr Donovan was in dispute with Shell?  
 [3] A: Yes.  
 [4] Q: Right. Not to put too fine a point on it, there came a  
 [5] point in time where you had a disagreement with him, did  
 [6] you not?  
 [7] A: Yes.  
 [8] Q: Would you like to just tell us please, from your own  
 [9] recollection, what the nature of that dispute was and  
 [10] how it resolved itself?  
 [11] A: Yes. Earlier, some concepts had been presented to Shell  
 [12] that had materialised in varying forms but certainly  
 [13] appearing to be Don Marketing concepts. John took an  
 [14] action against Shell for those, but my involvement was,  
 [15] at the time those presentations, et cetera, were made,  
 [16] I was working alongside John on a speculative basis, so  
 [17] I was putting my time and my effort into developing my  
 [18] aspect of the promotions, which was generally the  
 [19] mechanical side and security aspects.  
 [20] Q: Yes.  
 [21] A: This was done with no payment from anywhere, purely  
 [22] speculative. When it came to the --  
 [23] Q: Could I just interrupt for a moment? This was 1992, was  
 [24] it not?  
 [25] A: Yes.

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[1] a conclusion of his dispute with Shell --  
 [2] A: Yes.  
 [3] Q: -- and that that would bring some remuneration in his  
 [4] direction?  
 [5] A: Yes.  
 [6] Q: And your position was that you were entitled, under the  
 [7] agreement you had with him, to a percentage of it?  
 [8] A: Yes.  
 [9] Q: Right. I believe I am right in saying that he did not  
 [10] share your view of that matter?  
 [11] A: Well, he did, but -- I do not think he would have  
 [12] welched on the deal, that is to say, but what did happen  
 [13] was that suddenly I was faced with silence from  
 [14] John Donovan.  
 [15] Q: Right.  
 [16] A: Something had gagged him and I could no longer get  
 [17] information from him as to how the proceedings were  
 [18] going, or what was happening indeed. I ended up taking  
 [19] out a writ against John Donovan.  
 [20] Q: A writ? It became that serious, did it?  
 [21] A: Yes, it did.  
 [22] Q: Right. Would I be right in thinking this was 1995, or  
 [23] would it be 1996?  
 [24] A: I am unsure of the dates. I cannot recall.  
 [25] Q: Shall we, at this juncture, just look at bundle X? One

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[1] Q: Okay. Carry on please.  
 [2] A: Well, I think it was 1992. I am terrible on dates,  
 [3] so --  
 [4] Q: I can help you in a moment or two. Carry on.  
 [5] A: It reached the point where John was taking the action  
 [6] against Shell and I was obviously involved because I had  
 [7] been involved on a promise of a share in the revenue  
 [8] from the promotions as and when they rolled out, if and  
 [9] when they rolled out.  
 [10] Q: What was the promise, tell us please?  
 [11] A: It was commission-based on the amount of game pieces  
 [12] that may be produced for any particular promotion.  
 [13] Q: Was it a percentage, in fact?  
 [14] A: Yes, it was.  
 [15] Q: Am I right in thinking it was 17.65 per cent?  
 [16] A: Correct.  
 [17] Q: Have you read about my questions to Mr John Donovan in  
 [18] the transcript yesterday on this point?  
 [19] A: Not on that point, no.  
 [20] Q: No, all right. Carry on. Let me help you carry on.  
 [21] You had an arrangement with him which would give you,  
 [22] shall I call it, a piece of the action, if you know what  
 [23] I mean?  
 [24] A: Yes.  
 [25] Q: Is this correct: you became aware that he was coming to

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[1] has been prepared and I am afraid it has not reached  
 [2] your Lordship's bench. Could I hand it up to  
 [3] your Lordship now? (Handed)  
 [4] MR JUSTICE LADDIE: Certainly. Does it have some flags on  
 [5] it for all the documents we have already accumulated?  
 [6] MR HOBBS: It does. There should be one in the witness box  
 [7] on the carousel somewhere beside you. You still have  
 [8] the clutter, I think, left over from before, have you?  
 [9] A: I have the clutter, yes.  
 [10] MR JUSTICE LADDIE: Why not get one of your solicitors to go  
 [11] up? Just find one on the carousel for him, otherwise it  
 [12] wastes time.  
 [13] MR HOBBS: Tab 4, please. If the system has gone well, this  
 [14] should be page 16 and it should be a letter which  
 [15] I think you will be familiar with.  
 [16] A: Yes.  
 [17] Q: Actually this is 1996, I notice?  
 [18] A: Yes.  
 [19] Q: Were those your solicitors, Gudgeons Prentice?  
 [20] A: Yes.  
 [21] Q: You had to go and issue a writ, I should imagine, at  
 [22] some point just after this?  
 [23] A: Yes.  
 [24] Q: This is a letter of demand?  
 [25] A: Yes.

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[1] Q: All right.  
 [2] A: This was the first letter that was sent.  
 [3] Q: The first letter, was it?  
 [4] A: Yes.  
 [5] MR JUSTICE LADDIE: Sorry, which tab are you in?  
 [6] MR HOBBS: Tab 4, my Lord.  
 [7] MR JUSTICE LADDIE: Sorry, yes.  
 [8] MR HOBBS: On that letter, please, Mr Sotherton, let us just  
 [9] have a look at the second blocked paragraph there,  
 [10] "We are instructed"; do you see that?  
 [11] A: Mmm.  
 [12] Q: "We are instructed that an independent witness was  
 [13] present when our client agreed terms with  
 [14] Mr John Donovan, a director of Don Marketing ..."  
 [15] Who was the independent witness?  
 [16] A: Mike Macrow.  
 [17] MR JUSTICE LADDIE: Sorry, who was that?  
 [18] A: Mike Macrow, M-A-C-R-O-W.  
 [19] MR HOBBS: Okay:  
 [20] "... that our client would provide on a  
 [21] speculative basis, his time and expertise in the  
 [22] preparation and presentation of promotional proposals to  
 [23] Shell. In return, our client would be entitled to an  
 [24] agency commission of 17.65 per cent on any concept fee,  
 [25] commission and any other fees received by Don Marketing

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[1] collection.  
 [2] Q: Is that because, therefore, your position in 1996 was  
 [3] that those were the only presentations that had been  
 [4] made at those meetings?  
 [5] A: No, it is just that they were the only ones that were in  
 [6] dispute.  
 [7] Q: But your agreement is in relation to all presentations  
 [8] made at those meetings, is it not?  
 [9] A: Well, yes, this is obviously written by someone in the  
 [10] legal profession to cover all points, but I had not  
 [11] realised it had covered all points, or had that  
 [12] potential.  
 [13] Q: So your position is that you do not, in fact, have an  
 [14] interest, via the agreement that we see written here, in  
 [15] relation to Mr Donovan's claim in the present case?  
 [16] A: Not at all. I abandoned all involvement with this after  
 [17] that case was resolved.  
 [18] MR JUSTICE LADDIE: That is a bit unfair on him because he  
 [19] may have found that his lawyers have given him a  
 [20] contractual right much greater than he had anticipated  
 [21] and his right may be determined by the contract that his  
 [22] lawyers entered into on his behalf. I think he can say  
 [23] what his expectations were, but I do not think it is  
 [24] right to say whether he is abandoning rights, or  
 [25] anything like that.

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[1] from Shell arising from the presentations that  
 [2] John Donovan and our client might make to Shell's  
 [3] National Promotion Manager. Such presentations were  
 [4] made at Shell-Mex House in 1992 on 12th May, 4th June  
 [5] and 24th November."  
 [6] Do you see that?  
 [7] A: (Witness nods)  
 [8] Q: Right. The National Promotions Manager mentioned there  
 [9] was Andrew Lazenby, was it not?  
 [10] A: Yes.  
 [11] Q: There were three presentations during that year: the  
 [12] 12th, the 4th and the 24th?  
 [13] A: Yes.  
 [14] Q: Correct. You had an involvement, did you, on a  
 [15] speculative basis in relation to those three meetings?  
 [16] A: Yes.  
 [17] Q: Let me just ask you this: is it your position and your  
 [18] perspective that, if Mr Donovan succeeds in this present  
 [19] action against Shell, this agreement will agree to the  
 [20] proceeds of this action too?  
 [21] A: No, I had not even realised that this was that tightly  
 [22] worded. As far as I was concerned, this was involving  
 [23] purely those three cases that were being dealt with --  
 [24] two cases, in fact, that were being dealt with earlier,  
 [25] which was the Nintendo game and the Hollywood

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[1] MR HOBBS: I am sorry.  
 [2] MR JUSTICE LADDIE: It may be that this will end up with yet  
 [3] another round of litigation.  
 [4] MR HOBBS: Perish the thought, my Lord, that any such thing  
 [5] should happen.  
 [6] MR JUSTICE LADDIE: Perish the thought, Mr Hobbs, quite.  
 [7] MR HOBBS: Perish the thought.  
 [8] MR JUSTICE LADDIE: You have the point that you wanted out  
 [9] of it. I just think that to go further and to get him  
 [10] to say that he is abandoning any claims --  
 [11] MR HOBBS: No, I am sorry.  
 [12] MR JUSTICE LADDIE: It is all right. Do not worry,  
 [13] Mr Sotherton.  
 [14] MR HOBBS: You are not deaf, you have heard the exchanges.  
 [15] We read what we read here.  
 [16] Anyway, you found yourself in a dispute with  
 [17] John Donovan, did you not?  
 [18] A: Yes.  
 [19] Q: It was resolved, and it was resolved on the basis that  
 [20] you got some compensation, did you not?  
 [21] A: Yes, I did. I was happy with the outcome at the end of  
 [22] the day, at the end of the final mediation.  
 [23] Q: On that note I need to ask you, please, to reach for  
 [24] volume B.  
 [25] In that volume, if you would not mind

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[1] Mr Sotherton, please turn behind tab 4.  
 [2] **MR JUSTICE LADDIE:** Which is volume B?  
 [3] **MR HOBBS:** The core bundle, my Lord.  
 [4] **MR JUSTICE LADDIE:** Yes. Tab 4, did you say?  
 [5] **MR HOBBS:** Tab 4, my Lord, yes, please.  
 [6] **MR JUSTICE LADDIE:** Yes.  
 [7] **MR HOBBS:** Mr Sotherton, there is a document and we can see  
 [8] your name on it.  
 [9] **A:** This is the letter of agreement. I have the right  
 [10] document, have I?  
 [11] **Q:** I do not want to show you mine because it has markings  
 [12] all over it?  
 [13] **A:** Is that the one. (Indicating)  
 [14] **Q:** It looks like the one, yes. You have the heading. Look  
 [15] down those names in the middle -- Don Marketing,  
 [16] Shell UK -- and then you have a list of names and  
 [17] you are the fifth man.  
 [18] **A:** I am.  
 [19] **Q:** Do you remember how you came to be a party to this? In  
 [20] fact you signed it, look, on the next page.  
 [21] **A:** Yes. This was the outcome of the mediation, was it  
 [22] not?  
 [23] **Q:** This is the outcome of the litigation.  
 [24] **A:** Yes.  
 [25] **Q:** This is John Donovan's dispute coming -- well, one of

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[1] you from time to time for help, or giving you an update  
 [2] on his progress, was he not?  
 [3] **A:** Yes.  
 [4] **Q:** We lurch into 1997 and in 1997 are you aware that  
 [5] Mr Donovan went forward with his claim against Shell, in  
 [6] other words he put it into a letter? Were you aware  
 [7] that that had happened?  
 [8] **A:** Not as a specific thing, no.  
 [9] **Q:** Right. Do you still have bundle X anywhere near you?  
 [10] **A:** X?  
 [11] **Q:** Yes. That was the one we were looking at a moment or  
 [12] two ago.  
 [13] **A:** Yes.  
 [14] **Q:** Behind tab 1 in that bundle is a letter which you will  
 [15] see under the Don Marketing letterhead. It is dated  
 [16] 27th March 1997. Do you have that?  
 [17] **A:** Yes, I have it. Yes.  
 [18] **Q:** Is this a letter you have seen before?  
 [19] **A:** I probably have, but I do not actually recall it.  
 [20] (3.00 pm)  
 [21] **Q:** That leaves me in a little bit of a difficult position.  
 [22] You probably have, but you do not recall it. Are you  
 [23] saying that you probably did because you realise what  
 [24] the nature of the letter is? Are you saying to me that  
 [25] you knew that there came a time when John Donovan

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[1] his disputes. I cannot remember what the sequence was,  
 [2] but this is one that is coming to a conclusion. The  
 [3] letter of agreement is undated but it turned into a  
 [4] court order behind the next tab, tab 5,  
 [5] in October 1996.  
 [6] **A:** Right.  
 [7] **Q:** You do not seem to have a recollection of how you came  
 [8] to be named on there or why you were signing it. Let me  
 [9] help you, if I can.  
 [10] It was the case, was it not, that Shell required  
 [11] any settlement to be comprehensive and that, since  
 [12] you had an outstanding claim for some of the proceeds in  
 [13] that dispute, it was suggested, and you acceded to the  
 [14] suggestion, that you should become a party to the  
 [15] settlement agreement?  
 [16] **A:** Yes.  
 [17] **Q:** That is more or less how you remember it, is it?  
 [18] **A:** Yes.  
 [19] **Q:** During this period, this period being 1996, and I am  
 [20] speaking in terms of a calendar year, you were still in  
 [21] communication with John Donovan, were you not, on the  
 [22] subject of the Shell Smart Scheme?  
 [23] **A:** Yes.  
 [24] **Q:** So far as you were aware, he was continuing to build his  
 [25] case against Shell during that period and he was asking

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[1] unveiled his claim to Shell in writing and that you see  
 [2] this letter and you assume, therefore, that this is a  
 [3] letter you will have seen before? Is that your  
 [4] position?  
 [5] **A:** Yes, that John has probably said to me, "Look, this is  
 [6] the letter that I had to send to Shell".  
 [7] **Q:** Right.  
 [8] **A:** But I certainly would not have absorbed it.  
 [9] **Q:** Before John Donovan wrote this letter to Shell, he would  
 [10] have had discussions with you and he would, would he  
 [11] not, have cleared the text of it with you to see whether  
 [12] it tallied with your recollection?  
 [13] **A:** Yes, probably. I do not recall if that was the case,  
 [14] but yes, probably.  
 [15] **Q:** Let us see how much of this --  
 [16] **A:** Certainly if I am mentioned in the letter, that would be  
 [17] sure.  
 [18] **Q:** Well, you are mentioned in the letter.  
 [19] **A:** Right.  
 [20] **Q:** Has anybody told you that I was asking questions about  
 [21] this letter yesterday?  
 [22] **A:** No.  
 [23] **Q:** Perhaps I had better ask you then specifically: which  
 [24] portion of the transcript for yesterday was it that you  
 [25] read? What was the subject matter you read about?

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[1] **A:** It was the latter part dealing with discussions that  
 [2] I had with Paul King. In fact, it is a similar subject  
 [3] that went on again this morning.  
 [4] **Q:** So you read the evidence relating to the two letters,  
 [5] both of which bear your name, I think.  
 [6] **MR COX:** My Lord, there is no secret. I asked my solicitor  
 [7] to speak to him about this issue --  
 [8] **MR HOBBS:** I did not suggest there was a secret.  
 [9] **MR JUSTICE LADDIE:** All right, Mr Hobbs, put your horns in.  
 [10] The letter of 24th July.  
 [11] **MR HOBBS:** Yes, and that was the portion of the transcript,  
 [12] and you were here this morning to hear further  
 [13] questioning on that?  
 [14] **A:** Yes.  
 [15] **Q:** Those were the documents which had your name or your  
 [16] initials on them?  
 [17] **A:** Yes.  
 [18] **Q:** In terms of this letter, you may or may not have seen  
 [19] this before? You think you probably did, but you cannot  
 [20] be certain for the moment?  
 [21] **A:** Yes, I would say that almost certainly I must have read  
 [22] it at some point because it does involve me and, as you  
 [23] quite rightly say, John may have said to me, "Where  
 [24] you are mentioned, does that fit in right with your  
 [25] recollection of things?"

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[1] he was putting his case together for this claim, there  
 [2] was Paul King, was there not? You knew about that?  
 [3] **A:** Yes.  
 [4] **Q:** Yes, and there were people from Senior King who were one  
 [5] of Shell's agencies at one particular point in time, and  
 [6] you knew about that, did you not?  
 [7] **A:** I was aware of those, yes.  
 [8] **Q:** Yes, and were there any other names mentioned in that  
 [9] connection that John Donovan told you that he had been  
 [10] approaching in connection with what we see here as  
 [11] Project Hercules?  
 [12] **A:** Not that I can recall.  
 [13] **Q:** Right. The position was, as stated here, that the  
 [14] information that he told you he had received from these  
 [15] people was that project Smart was designed from the  
 [16] outset to eventually become a consortium promotion, was  
 [17] it not?  
 [18] **A:** Mmm.  
 [19] **Q:** You are saying --  
 [20] **A:** Yes.  
 [21] **Q:** It will not come on the transcript if you do not say the  
 [22] word "yes".  
 [23] This, in fact, is the nature of the information  
 [24] that he was telling you he was receiving from the people  
 [25] that he was communicating with over this period of years

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[1] **Q:** Absolutely. Here we are in 1997. This claim has been  
 [2] brewing for three years and during that period he has  
 [3] been in frequent communication with you. It would be  
 [4] strange and illogical, would it not, if he did not in  
 [5] fact touch base with you closely on this letter at this  
 [6] time?  
 [7] **A:** Yes.  
 [8] **Q:** Right. There are just a couple of points I would like  
 [9] to draw your particular attention to. Look at the top  
 [10] of page 2. This is Mr Donovan's letter to the Chairman  
 [11] of Shell UK:  
 [12] "We have contacted a number of potential witnesses  
 [13] including Shell and senior agency staff involved in  
 [14] 'Project Hercules' - your code-name for the Smart  
 [15] project. They confirm that Mr Lazenby headed up the  
 [16] project team and that Smart was designed from the outset  
 [17] to eventually become a consortium promotion. This is  
 [18] further confirmed by a recent report in 'Marketing  
 [19] Week' ..."  
 [20] Just concentrating on that top paragraph, those  
 [21] are matters that John Donovan had made you aware of over  
 [22] the years, had he not, that he had made enquiries of  
 [23] potential witnesses?  
 [24] **A:** Yes.  
 [25] **Q:** Right. Amongst the witnesses that he had spoken to as

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[1] that he was investigating the Shell Smart Scheme;  
 [2] correct?  
 [3] **A:** Yes.  
 [4] **Q:** There are a number of letters down here. I could take  
 [5] up a lot of time going to the various bundles with you  
 [6] in relation to these letters, but I just want to see  
 [7] where we are getting to. Do you see that number 5 on  
 [8] that page 2 is a letter to Sainsburys, dated 24th July?  
 [9] **A:** Yes.  
 [10] **Q:** I will just read you the text:  
 [11] "On 24th July 1990, we sent a further letter to  
 [12] Sainsburys following discussions which Mr Sotherton and  
 [13] I had with Mr Brian Horley, their Advertising and  
 [14] Marketing Manager. We sent with the letter a copy of  
 [15] Concept 4 from the October 1989 proposal plus the cover  
 [16] page of the proposal."  
 [17] Now, from that description there and from what  
 [18] you have heard in court and from what you read in  
 [19] yesterday's transcript, you know what that letter is --  
 [20] **A:** Yes.  
 [21] **Q:** -- what that letter reference is, do you not?  
 [22] **A:** Yes.  
 [23] **Q:** If you turn the page and flick, as it were, between  
 [24] page 2 and page 3, you will notice that there is no  
 [25] mention in this letter of the other letter of 24th July

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[1] 1990 that you heard so much about, which is the letter  
 [2] to King at Shell. It is not mentioned here.  
 [3] **A:** No.  
 [4] **Q:** I will not beat about the bush with you on this. It is  
 [5] a matter of considerable surprise to me, where I am  
 [6] standing, that John Donovan should have unveiled his  
 [7] claim in this letter in 1997 and yet not put in a  
 [8] reference to that letter of 24th July 1990 to Mr King.  
 [9] Are you surprised to see that it is not mentioned here?  
 [10] **A:** I am not sure of its relevance, so I --  
 [11] **MR JUSTICE LADDIE:** Mr Hobbs, this is an important issue.  
 [12] I think you really ought to show him the letter so that  
 [13] he has it fully in mind. He has been sitting in the  
 [14] spectators' section. Why not let him see the document,  
 [15] so he knows what it is, and then he can express views as  
 [16] to whether he is surprised it is left out.  
 [17] **MR HOBBS:** Right. For that purpose we need volume E1,  
 [18] please.  
 [19] **MR JUSTICE LADDIE:** E1/446.  
 [20] **A:** It happens to be already open.  
 [21] **MR HOBBS:** What do you say now?  
 [22] **A:** It happens to be already open.  
 [23] **Q:** Good. You are one jump ahead of me. E1/446 is a letter  
 [24] to Paul King and it has your signature on the second  
 [25] page?

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[1] **A:** Yes.  
 [2] **Q:** It is supposed to be recording the existence of an  
 [3] option agreement concluded between Don Marketing and  
 [4] Paul King on behalf of Shell UK, on 24th July 1990.  
 [5] That is what it appears to be recording to me, all  
 [6] right?  
 [7] **A:** Yes.  
 [8] **Q:** Right. Let me ask you, do you have any recollection,  
 [9] independently of this letter, of any such option  
 [10] arrangement having been made?  
 [11] **A:** Yes, but very little.  
 [12] **Q:** What little do you recollect?  
 [13] **A:** Well, the fact that there was an option that was taken.  
 [14] The exact timings I would not like to guess at.  
 [15] **Q:** The exact timing of the option?  
 [16] **A:** Yes.  
 [17] **Q:** You would not like to say for certain that it was at the  
 [18] date of this letter, the apparent date of this letter  
 [19] then?  
 [20] **A:** Well, I would say that, as the letter refers to it at  
 [21] that point, that yes, that would be --  
 [22] **Q:** Right, okay, well you see --  
 [23] **A:** I think there may have been some discussion beforehand,  
 [24] you see.  
 [25] **Q:** Yes. Look, the point that brought me to this letter

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[1] **A:** Yes.  
 [2] **Q:** This is a letter that you must be pretty familiar with?  
 [3] **A:** Yes, reasonably so.  
 [4] **Q:** Pardon?  
 [5] **A:** Reasonably so.  
 [6] **Q:** When did you last read it before you read it there?  
 [7] **A:** Probably earlier in the year.  
 [8] **Q:** I cannot hear you, I am sorry?  
 [9] **A:** Probably earlier in the year.  
 [10] **Q:** When did you last read it before that?  
 [11] **A:** Probably when it was written.  
 [12] **Q:** What, eight years ago then?  
 [13] **A:** Yes.  
 [14] **Q:** Right. You have read the letter recently, have you  
 [15] not --  
 [16] **A:** Yes, I have.  
 [17] **Q:** -- before just sitting there now?  
 [18] **A:** Yes.  
 [19] **Q:** This letter seems to be recording a communication of a  
 [20] conversation between yourself and Paul King?  
 [21] **A:** Yes.  
 [22] **Q:** One aspect of it on the second page, at 447, is an  
 [23] option arrangement?  
 [24] **A:** Yes.  
 [25] **Q:** You see that option arrangement, do you not?

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[1] was, do you remember, I was showing you the other letter  
 [2] in the bundle X file?  
 [3] **A:** Yes.  
 [4] **Q:** If you still have that, I was asking you to, as it were,  
 [5] flick between pages 2 and 3 of that X file letter.  
 [6] **A:** Yes.  
 [7] **Q:** Flicking between pages 2 and 3 of the X file letter,  
 [8] I was telling you, and I said I would not beat about the  
 [9] bush on it, that I am very struck by the fact that there  
 [10] is no mention in this letter, where John Donovan is  
 [11] unveiling his claim, there is no mention of the letter  
 [12] you have open in front of you in the other bundle.  
 [13] **A:** Right.  
 [14] **Q:** Do you find that odd?  
 [15] **A:** In retrospect, I guess yes.  
 [16] **Q:** I mean, it is --  
 [17] **A:** It seems as though it ought to be there.  
 [18] **Q:** Well, an option agreement --  
 [19] **A:** Yes.  
 [20] **Q:** -- over the very thing. For goodness sake, if there was  
 [21] one place where it ought to be mentioned, you would  
 [22] agree with me it is in this letter, is it not?  
 [23] **A:** Yes.  
 [24] **Q:** Absolutely.  
 [25] **A:** Yes.

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[1] Q: Are you able to offer my Lord any explanation as to why  
[2] it is not in this letter, this letter being the X file  
[3] letter? I know you did not write it. Are you able to  
[4] offer my Lord any explanation at all as to why it was  
[5] not in this letter?

[6] A: No, I do not think I am. My recollection of all this is  
[7] fairly poor anyway.

[8] Q: Is your recollection of events poor on the meetings back  
[9] in 1992 as well?

[10] A: Yes, with a few highlights that I can remember.

[11] Q: Right. Anyway, I think we can agree, can we not, that  
[12] we are both mutually surprised by the absence of any  
[13] reference to that letter of 24th July that you have open  
[14] in the other bundle?

[15] A: I should think, if it is that important, it ought to be  
[16] there, yes.

[17] Q: Agreeing on that basis then, can I put it to you quite  
[18] formally -- and I think you know what I am about to say,  
[19] do you not?

[20] A: (Witness nods)

[21] Q: You are nodding in agreement. The reason it is not  
[22] mentioned in this letter is because it was not in  
[23] existence at the date of this letter; what do you say?

[24] A: Certainly not the case.

[25] Q: When you say "certainly not", when did it come into

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[1] producing my statement, that any of this material has  
[2] actually come to light again.

[3] Q: On the X file letter which we had open on page 2, item 5  
[4] is the letter at 449 in the other bundle to  
[5] Brian Horley.

[6] A: Yes.

[7] Q: So you will, will you not, have been aware of the  
[8] existence of the reference, at least, to that letter on  
[9] 27th March 1997 or some time shortly before? You will  
[10] have known, will you not?

[11] A: Sorry, would you put the question to me again?

[12] Q: Yes. You have a letter at 449 of the big bundle.

[13] A: Yes.

[14] Q: At 449 of the big bundle, it is a letter to Brian Horley  
[15] of Sainsburys?

[16] A: Yes.

[17] (3.15 pm)

[18] Q: Okay. On item paragraph number 5, page 2 of the letter  
[19] of 27th March, that I have open in front of you in the X  
[20] file, item 5 is that letter?

[21] A: Yes.

[22] Q: All right? I thought we had reached a position where  
[23] this letter -- that is the letter of 27th March 1997 --  
[24] it is likely to have been discussed with you before it  
[25] was sent?

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[1] existence?

[2] A: At this point in time.

[3] Q: Did it?

[4] A: 24th July or thereabouts.

[5] Q: Did it?

[6] A: Certainly.

[7] Q: Mr Sotherton, it is not too late to recognise the  
[8] position. Will you please now confront this issue? Was  
[9] the letter that we have open of 24th July 1990, was that  
[10] letter written long after 1990 and signed by you long  
[11] after that date?

[12] A: Certainly not.

[13] Q: I see. You are going to maintain in evidence, are you,  
[14] that the letter of 24th July 1990, in 446, that we have  
[15] open, and the letter that you have heard about this  
[16] morning on 449, that both of those letters were written  
[17] as they purport to be written?

[18] A: Definitely.

[19] Q: How certain are you?

[20] A: I am very certain.

[21] Q: What makes you so certain?

[22] A: Because the letters would have been produced at the  
[23] time. I certainly never had sight of those letters for  
[24] any reason at all -- were filed by John Donovan  
[25] somewhere -- and it is not until more recently, in

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[1] A: Yes.

[2] Q: Right. Now, assuming it to be quite likely that the  
[3] letter was discussed with you before it was sent, it is  
[4] equally likely, is it not, that you would have seen and  
[5] looked through the letters which he itemises in that  
[6] letter under paragraphs 1 to 14?

[7] A: No, it is not. It is not necessarily likely that that  
[8] would have happened.

[9] Q: It is not?

[10] A: No.

[11] Q: You see, he is mentioning your name in a number of  
[12] places?

[13] A: I know he does and I certainly would take John at his  
[14] word. If he has included a reference to me in here,  
[15] I would not need to double-check it. If John has put in  
[16] here a comment relating to me, I would trust him, that  
[17] the comments that he made were accurate. I would not  
[18] have to go to files and double-check what he had  
[19] written. My interest in it was not that great.

[20] Q: Tell me why your interest in it was not that great. He  
[21] had been speaking to you on and off over a period of  
[22] what, possibly three years by now?

[23] A: Yes.

[24] Q: But your interest was not that great?

[25] A: Not really, no.

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[1] Q: What was your attitude then? "Why is this man bothering  
 [2] me?"  
 [3] A: No, it was not. It was I was keen to see justice done  
 [4] for what appeared to be more taking of Don Marketing  
 [5] concepts.  
 [6] Q: How keen were you then; were you not keen enough to take  
 [7] an interest in the contents of his letter of 27th March  
 [8] 1997?  
 [9] A: Certainly, but from the sidelines.  
 [10] Q: Yes, but you must have been keen in knowing what he was  
 [11] saying in support of the claim to put the record  
 [12] straight, as you would say?  
 [13] A: Yes, I suppose to a degree.  
 [14] Q: Why do you need to suppose? Can you not remember?  
 [15] A: I do not remember the occasion of reading the letter,  
 [16] no. I do not attach great importance to it. I have not  
 [17] had the interest in it to want to follow it.  
 [18] Q: You have not?  
 [19] A: No.  
 [20] Q: So what was the purpose of him ringing you up on and off  
 [21] over all those years?  
 [22] A: Just to update me and let me know what was happening.  
 [23] Q: Why an earth should he have thought you wanted to know  
 [24] if you did not have an interest in it?  
 [25] A: Because I was involved in the previous history with it.

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[1] Q: Absolutely. So you think it more likely than not you  
 [2] would have gone through this checking to see whether  
 [3] anything had been left out?  
 [4] A: No, not whether anything had been left out. I said  
 [5] whether it was spelling mistakes or words had been left  
 [6] out. If it did not read right, grammar.  
 [7] Q: Okay. So you think it is more likely than not you would  
 [8] have gone through this with an editorial eye?  
 [9] A: There is a very good chance of that, yes.  
 [10] Q: Not only going through it with an editorial eye, but you  
 [11] will have also surely at the same time have been reading  
 [12] it with a view to the accuracy of its contents, would  
 [13] you not?  
 [14] A: Reasonably so, yes.  
 [15] Q: You are not his proof reader, are you? You are going to  
 [16] read this letter both for editorial accuracy and for  
 [17] truth and accuracy of its contents. You must have done  
 [18] that, must you not?  
 [19] A: To a degree.  
 [20] Q: To what degree?  
 [21] A: To a very small degree.  
 [22] Q: How small is small?  
 [23] A: John would have given it to me to read, look through,  
 [24] and say, "Does that sound right to you, does it look  
 [25] right?" I would say, "Yes, it sounds okay to me".

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[1] Q: Right. So you are telling my Lord that this letter,  
 [2] I think you have agreed that you are more likely than  
 [3] not to have been aware of the existence of this letter  
 [4] in March 1997. You are therefore more likely than not  
 [5] to have been aware that he was about to tackle Shell  
 [6] again; yes?  
 [7] A: Yes.  
 [8] Q: You would have been aware that more likely than not it  
 [9] concerned you, because it was a series of incidents in  
 [10] which you were directly and personally involved?  
 [11] A: Yes.  
 [12] Q: He take steps, does he not, more likely than not to keep  
 [13] you informed of what it is he is about to say to Shell?  
 [14] A: Yes.  
 [15] Q: And he is putting your name in the frame in that  
 [16] connection?  
 [17] A: Yes, and he is keeping me updated on that basis, that  
 [18] "You are involved with this, or you were there, here is  
 [19] your update". Almost certainly, at the same time,  
 [20] probably John would have asked me to check spellings,  
 [21] Q: Why is that?  
 [22] A: It is just something that we have always done over the  
 [23] years, with letters, I would check spellings. The  
 [24] computer does it now, more so. Had anything been left  
 [25] out, was anything was misspelt?

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[1] Q: Mr Sotherton, you went through it with a fine toothcomb,  
 [2] did you not?  
 [3] A: I would not need to.  
 [4] Q: You did, Mr Sotherton?  
 [5] A: I did not.  
 [6] Q: You did?  
 [7] A: I would remember it if I did.  
 [8] Q: Mr Sotherton, in order to carry out the kind of  
 [9] editorial exercise that you have described, checking for  
 [10] typos and grammar, you would inevitably at the same time  
 [11] have gone through it with a fine toothcomb for its  
 [12] content, would you not?  
 [13] A: No, a fine toothcomb and absorbing some of the content  
 [14] of it. I certainly would have absorbed the content of  
 [15] it at the time. But as for checking what is or is not  
 [16] in the letter, no, I certainly would not have done.  
 [17] Q: You said you had absorbed some of its content. How does  
 [18] this work? That you are editorially examining line by  
 [19] line for accuracy of language and yet you are only  
 [20] absorbing parts of the meaning and message of the text?  
 [21] A: Correct.  
 [22] Q: Only parts of it?  
 [23] A: Yes. Especially when my name appears.  
 [24] Q: Yes, of course. Especially when your name appears. So  
 [25] I look at this, do I, as if it is a variegated leaf with

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[1] some dark patches where you have absorbed information  
 [2] from it and light patches where you have not. Is that  
 [3] how you are asking us to look at this document?  
 [4] **A:** I am not asking you to look at the document. That is  
 [5] probably how I looked at the document.  
 [6] **Q:** Okay. Doing the very best you can, which bits of it do  
 [7] you think you absorbed from the text of it? Give us the  
 [8] edited highlights?  
 [9] **A:** Shall I look over it and give you an idea of what might  
 [10] have been the situation?  
 [11] **Q:** Yes, please.  
 [12] **A:** Certainly the third paragraph, which opens, on page 1:  
 [13] "We presented to Shell two alternative executions  
 [14] of our proposals."  
 [15] **Q:** Thank you.  
 [16] **A:** I have absorbed a bit of that because I would have known  
 [17] which the two alternatives were.  
 [18] John probably would have told me on the first  
 [19] paragraph on page 2 that he had contacted potential  
 [20] witnesses.  
 [21] **Q:** You would have noted it?  
 [22] **A:** He probably would have mentioned those to me and who  
 [23] they were at the time.  
 [24] **Q:** Go on.  
 [25] **A:** I probably would not have put too much in store on the

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[1] I would not have paid too much attention to.  
 [2] I certainly would have read the similarities page, which  
 [3] is page 5.  
 [4] **Q:** Right. From what particular perspective would have read  
 [5] that page?  
 [6] **A:** As the heading says, "The similarities between DM's  
 [7] proposals and the Smart Consortium". Just for personal  
 [8] information as to what are the differences.  
 [9] **Q:** Look at item (c) on that page, by the way. Do you see:  
 [10] "Uses a multipurpose Smartcard which can  
 [11] accumulate points and capture customer data. DM  
 [12] discussed the technology for a Shell consortium  
 [13] Smartcard in 1990 with a security print plc who  
 [14] specialise in supplying loyalty cards. Mr Paul King was  
 [15] present during one such discussion at the printers'  
 [16] factory."  
 [17] Do you remember such an event in 1990?  
 [18] **A:** No, I do not. I do not think it involved me.  
 [19] **Q:** Do you have any knowledge or awareness of any initiative  
 [20] on the part of Don Marketing in 1990 with regard to  
 [21] Smartcards?  
 [22] **A:** Yes, there were various -- we were continuing to look to  
 [23] new technology and take an interest in it from wherever  
 [24] it was coming from.  
 [25] **Q:** Tell me more.

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[1] list of letters because they were past history.  
 [2] **Q:** Except for the one in particular at 5 that has your name  
 [3] on it?  
 [4] **A:** Yes. But then again, that was past history.  
 [5] **Q:** So you think that because it is past history you might  
 [6] not have put much weight on even that reference in that  
 [7] letter?  
 [8] **A:** Yes. Not from a personal point of view, certainly not.  
 [9] **Q:** Giving it your best shot now, do you think you actually  
 [10] looked at a copy or asked to see a copy of that letter  
 [11] again at the time of this letter?  
 [12] **A:** I would not have asked to look at any copies of any of  
 [13] those letters.  
 [14] **Q:** You would not?  
 [15] **A:** No.  
 [16] **Q:** But you had no recollection of the actual contents of  
 [17] that letter independently of what he is writing here  
 [18] then?  
 [19] **A:** No.  
 [20] **Q:** You did not want to see a copy of it to check it out,  
 [21] refreshing your memory?  
 [22] **A:** Not at all. It did not need to be put into my memory.  
 [23] I was merely reading this letter.  
 [24] **Q:** Carry on, please. This is a very useful exercise.  
 [25] **A:** All of the letters really that are contained in that,

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[1] **A:** I cannot really remember a lot about it, to be honest  
 [2] with you. That is an area that probably John Donovan  
 [3] dealt with more than I did.  
 [4] **Q:** You were not a very crowded office, were you?  
 [5] **A:** No.  
 [6] **Q:** It was about six of you at times, yes?  
 [7] **A:** Probably, yes.  
 [8] **Q:** You really knew what was going on around you?  
 [9] **A:** Basically, yes.  
 [10] **Q:** What I am really asking you is, is it your recollection  
 [11] that in 1990 there was discussion about the  
 [12] technological aspects of Smartcards within Don  
 [13] Marketing?  
 [14] **A:** I cannot remember.  
 [15] **Q:** Okay. What do you think --  
 [16] **A:** Did you wish me to continue through the letter?  
 [17] **Q:** Yes, please.  
 [18] **A:** I probably would have taken interest in page 9.  
 [19] **Q:** Yes.  
 [20] **A:** Where we have a list of --  
 [21] **Q:** What was about to happen?  
 [22] **A:** Yes.  
 [23] **Q:** Did you, in fact, take a sufficient interest to know  
 [24] what did happen in the aftermath of this letter in  
 [25] 1997/1998?

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[1] **A:** Do you mean did I follow it up?  
 [2] **Q:** Yes.  
 [3] **A:** No.  
 [4] **Q:** Did you hear about it; did John Donovan keep in touch  
 [5] with you?  
 [6] **A:** He almost certainly would have updated me.  
 [7] **Q:** So you knew about the campaigning, and so on and so  
 [8] forth, that occurred in 1997 and 1998, did you?  
 [9] **A:** I am sorry?  
 [10] **Q:** Did you know about campaigning by John Donovan during  
 [11] 1997 and 1998, in support of his claim?  
 [12] **A:** Yes.  
 [13] **Q:** He kept you informed?  
 [14] **A:** Yes, reasonably so.  
 [15] **Q:** Do I get the picture correctly that he has kept you  
 [16] informed of developments at every stage, every time  
 [17] there was a development from 1994 onwards?  
 [18] **A:** I would not say necessarily every stage but certainly  
 [19] the majority of major events.  
 [20] **Q:** Go back to page 7 of the letter you have open in front  
 [21] of you. You would have --  
 [22] **MR JUSTICE LADDIE:** Was that page 11?  
 [23] **MR HOBBS:** 7, the bottom two paragraphs there. These are  
 [24] matters that you would have taken an interest in, would  
 [25] you not? Look at the one that says:

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[1] "The Megamatch option for Shell-led promotion  
 [2] consortium issuing and redeeming a common promotional  
 [3] currency was also touched on in discussion with you in  
 [4] May 1995."  
 [5] That is surely something you would have taken  
 [6] notice of because it was during this period that you had  
 [7] a financial interest in the claim that he was making in  
 [8] his then pending disputes against Shell?  
 [9] **A:** It would have interested me in May 1995 but may not have  
 [10] interested me so much in March 1997.  
 [11] **Q:** Right. Okay. I think you are saying to me that you did  
 [12] not take much interest in what was said in that  
 [13] paragraph in terms of content?  
 [14] **A:** I do not think so, no.  
 [15] **Q:** In the bottom paragraph, is there anything there on  
 [16] page 7 that you would have taken much interest in in  
 [17] this connection when reading this letter?  
 [18] **A:** Only the last three lines would have interested me.  
 [19] **Q:** Right. Because that is the stuff that involved the  
 [20] earlier claims and part of those earlier claims was your  
 [21] claim on the periphery?  
 [22] **A:** Yes.  
 [23] **Q:** Anyway, can we take it that this letter is as proof-read  
 [24] by you, even if not as fully digested by you?  
 [25] **A:** Yes.

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[1] **Q:** There came a time, did there not, in the course of this  
 [2] present litigation leading up to the trial in which you  
 [3] prepared a witness statement?  
 [4] **A:** Yes.  
 [5] **Q:** Just describe, please, the exercise as you remember it  
 [6] of preparing that statement. First of all, did you  
 [7] write your own statement?  
 [8] **A:** No, only some parts of it, handwritten. A very small  
 [9] part of it.  
 [10] **Q:** Did you sit down with John Donovan and discuss the  
 [11] contents of your witness statement before you finalised  
 [12] it?  
 [13] **A:** Yes.  
 [14] **Q:** How frequently did you sit down with him for that  
 [15] purpose?  
 [16] **A:** Three or four times.  
 [17] **Q:** Were these fairly long sessions; were these a couple of  
 [18] hours at a time, more than a couple of hours at a time?  
 [19] **A:** Probably a couple of hours, maybe more, on one or two  
 [20] occasions.  
 [21] **Q:** On those occasions, you were considering not only what  
 [22] you would be saying in your statement but what he would  
 [23] be saying in his statement; correct?  
 [24] **A:** Yes.  
 [25] **Q:** On those occasions documents were tabled, were they not,

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[1] so that you could look back at the documents you were  
 [2] referring to in your statement?  
 [3] **A:** Yes.  
 [4] **Q:** And documents that he was proposing to refer to; they  
 [5] were tabled and you looked at those as well, did you  
 [6] not?  
 [7] **A:** Yes.  
 [8] **Q:** So the statements that you both put in represent, as it  
 [9] were, your respective -- they accord, do they, with your  
 [10] respective views as to what happened in times gone by in  
 [11] these disputes?  
 [12] **A:** I think so, yes.  
 [13] **Q:** Right. I would like to show you -- let me just find  
 [14] it -- in the volume you have open, the other volume you  
 [15] have open, which is E1?  
 [16] **A:** Yes.  
 [17] **Q:** I would like to show you, please, page 450/A.  
 [18] (3.30 pm)  
 [19] **A:** Yes.  
 [20] **Q:** Do you have that? That handwriting at the top, on the  
 [21] top right on that page, whose handwriting is that?  
 [22] **A:** That is mine.  
 [23] **Q:** Turn the page to 450/B.  
 [24] **A:** Yes.  
 [25] **Q:** Whose handwriting is that?

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[1] A: That is mine.  
 [2] Q: Are the words, if we can read them together.  
 [3] "Meeting with AL [Andrew Lazenby] 24/11/92.  
 [4] Shell will negotiate royalty arrangement [something]  
 [5] with us."  
 [6] What is that word, "etc"?  
 [7] A: I think it is, yes.  
 [8] Q: "... with us, if they progress scheme probably at  
 [9] future date. Don could work with Shell International to  
 [10] exploit overseas. Copy of this letter left with AL  
 [11] [Andrew Lazenby]"?  
 [12] A: Right.  
 [13] Q: Right. When was that note written in your handwriting  
 [14] on the document that carried it?  
 [15] A: 24/11/92.  
 [16] Q: Can you remember writing those words on that paper?  
 [17] A: Not specifically.  
 [18] Q: Or at all? You cannot remember at all, can you?  
 [19] A: Well, the evidence of writing it is there in front of  
 [20] me. I wrote it.  
 [21] Q: Yes. Can you remember holding a pen in your hand and  
 [22] writing those words on that paper?  
 [23] A: No, I do not think I can.  
 [24] Q: You cannot?  
 [25] A: No. But that is how they got there.

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[1] A: Mmm.  
 [2] Q: So even if he did not actually instruct you to write  
 [3] them, you would have told him, "Here you are, I have  
 [4] written this note on here, it is for the record"?  
 [5] A: That is right. They are for the record, to be filed for  
 [6] future reference.  
 [7] Q: You would have brought them - the fact that you had  
 [8] written these words on here - to his attention, when  
 [9] you wrote them or soon after you wrote them?  
 [10] A: Probably.  
 [11] Q: Right. Giving it the best shot you can, using your  
 [12] recollection, and concentrate as hard as you can, do you  
 [13] think you wrote these words during the course of the  
 [14] meeting with Lazenby or at some time afterwards? Do the  
 [15] best you can on this, please.  
 [16] A: I would say, as I said a moment ago, either during the  
 [17] course of the meeting or on the return train journey.  
 [18] I would not have completed the notes much after that.  
 [19] Q: No.  
 [20] A: In fact, I can even be more positive, on reflection. It  
 [21] has just occurred to me that at the time John Donovan  
 [22] and I, on reaching our destination station, would have  
 [23] gone in separate ways. I would not necessarily be  
 [24] seeing John Donovan the following days, or days to  
 [25] follow. It is likely that I would give him a

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[1] Q: You moved a pen and the words appeared on the paper.  
 [2] Yes, I think we can agree on that. But you do not  
 [3] remember when you actually wrote those words on there?  
 [4] A: I could have a pretty good guess. I would say that they  
 [5] were on 24/11/92 and they would have either been written  
 [6] during the course of the meeting or, if not, certainly  
 [7] afterwards on the return train journey home.  
 [8] Q: You travelled to that meeting with John Donovan, did you  
 [9] not?  
 [10] A: Yes.  
 [11] Q: And you travelled away from that meeting with John  
 [12] Donovan?  
 [13] A: Yes.  
 [14] Q: So if you wrote them on your way home you would have  
 [15] written them on the train, in his presence, and he would  
 [16] have seen you write them, would he not?  
 [17] A: Probably.  
 [18] Q: Probably, yes?  
 [19] A: Yes, probably, yes.  
 [20] Q: Right.  
 [21] A: It may have been him who told me to write them.  
 [22] Q: Because there is always a good need to keep an accurate  
 [23] record?  
 [24] A: Exactly. These notes actually are for him.  
 [25] Q: They are for him?

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[1] bundle that he would take back to the office and file or  
 [2] act on, or whatever.  
 [3] Q: Right. The bundle, the copy you gave him would have had  
 [4] your note on it?  
 [5] A: Mmm.  
 [6] Q: The existence of that note on it, since it was for his  
 [7] record, you would have made sure one way or another that  
 [8] he knew that the note was on there when you gave him the  
 [9] documents to take away with him?  
 [10] A: Probably. He would know, if there was anything  
 [11] important, that I had made a note on the document.  
 [12] Q: Absolutely. That is the whole point of making the note,  
 [13] to bring it to John Donovan's attention, is it not?  
 [14] A: Yes.  
 [15] Q: And give him a good and accurate record of the point  
 [16] that you are noting for him?  
 [17] A: Of course, yes.  
 [18] Q: Right. How clearly do you remember this meeting on 24th  
 [19] November 1992, since we have this open in front of us?  
 [20] A: That was our third meeting.  
 [21] Q: Yes. Third meeting that year.  
 [22] A: I think we proposed the Hollywood Collection.  
 [23] Q: Do you have a clear recollection of the meeting, or do  
 [24] you have any recollection of the meeting?  
 [25] A: Yes, I have a very loose recollection of the meeting.

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[1] Q: Taking it by stages, so that you can help us with your  
 [2] recollection as it currently is, first of all, where did  
 [3] the meeting take place; do you recollect?  
 [4] A: Always at Shell House.  
 [5] Q: The parties present were, as I understand it, yourself  
 [6] and John Donovan, Andrew Lazenby and nobody else?  
 [7] A: Correct.  
 [8] Q: How long did the meeting last?  
 [9] A: Meetings usually lasted about an hour, unless there was  
 [10] any particular points that needed further discussion.  
 [11] It could go on for an hour and a half.  
 [12] Q: Do you remember going to that meeting and taking  
 [13] anything with you for the purposes of the meeting?  
 [14] A: Certainly we would have taken proposals and  
 [15] what-have-you, anything else that had been requested.  
 [16] Q: You say anything else that would have been requested.  
 [17] Can you identify anything else that you think may have  
 [18] been requested?  
 [19] A: Not off the top of my head.  
 [20] Q: Do you have a recollection of taking anything more to  
 [21] that meeting than a proposal?  
 [22] A: Not certainly. This letter would have gone.  
 [23] Q: Can you remember that letter being tabled at that  
 [24] meeting?  
 [25] A: No, I cannot clearly.

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[1] content.  
 [2] MR JUSTICE LADDIE: Mr Sotherton, you said "probably would  
 [3] have" and kept on phrasing your answers "probably would  
 [4] have" and then you have been asked to say how long you  
 [5] spent on this and you have given us a guess.  
 [6] A: Yes.  
 [7] Q: I just want to note, do you actually recall discussing  
 [8] this letter at the meeting or are you trying to  
 [9] reconstruct it now? Do you actually recall --  
 [10] A: I do not clearly recall discussing the letter but it is  
 [11] apparent that we did discuss the letter because I have  
 [12] made notes to that effect on the letter.  
 [13] MR HOBBS: Right. Now, discussion of the matters discussed  
 [14] in this letter would have involved discussion of what is  
 [15] called there, on 450/A, the multibrand loyalty  
 [16] programme?  
 [17] A: Yes.  
 [18] Q: Is that something you, as opposed to John Donovan, would  
 [19] have discussed with Mr Lazenby or is that something that  
 [20] John Donovan would have discussed with Mr Lazenby?  
 [21] A: We could both have discussed it, and probably would both  
 [22] have discussed it.  
 [23] Q: You do not claim, do you, to have been the person who  
 [24] devised the multibrand loyalty programme as summarised  
 [25] in this letter that we have open in front of us?

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[1] Q: Can you remember it being the subject of any discussion  
 [2] at that meeting?  
 [3] A: We certainly had discussion that involved the letter.  
 [4] Q: Tell me what you recollect of those discussions.  
 [5] A: It was with regard to the acceptability of Sainsbury's  
 [6] becoming involved in promotional games/involvement in a  
 [7] consortium promotion or scheme.  
 [8] Q: All right. So your recollection is that there was some  
 [9] discussion of those matters?  
 [10] A: Mmm.  
 [11] Q: In a meeting lasting about an hour, give or take a bit.  
 [12] How much time do you think was spent on discussing those  
 [13] matters you have just mentioned?  
 [14] A: The majority of time would have been spent presenting  
 [15] the contents of the proposals that we would have taken.  
 [16] Q: Right.  
 [17] A: We probably would have covered an item like that towards  
 [18] the end of the meeting. It could last anything from  
 [19] five minutes to maybe twenty minutes if it was that  
 [20] interesting.  
 [21] Q: What is your best recollection as to how long it took?  
 [22] A: Well, it would be purely a guess. The letter written,  
 [23] read, being discussed, a two-page letter, maybe 15  
 [24] minutes, 10 minutes. I cannot recall whether there was  
 [25] too much in the way of expansion in the letter or its

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[1] A: No, I do not.  
 [2] Q: And John Donovan is the person who does claim to have  
 [3] been the deviser of it?  
 [4] A: Certainly.  
 [5] Q: Therefore, would I be right in thinking that as between  
 [6] the two of you he is the person who is going to discuss  
 [7] it, rather than you?  
 [8] A: Yes.  
 [9] Q: Right. Do you have any recollection of Mr Lazenby's  
 [10] contributions to the discussion on this matter, these  
 [11] matters in this letter?  
 [12] A: Only that that are noted.  
 [13] Q: Only --  
 [14] A: Those that are noted.  
 [15] Q: Right. What you are saying here in this note is that  
 [16] Andrew Lazenby made some commitment or other that "Shell  
 [17] will negotiate royalty arrangements, et cetera, with us  
 [18] if they progress the scheme at a future date"?  
 [19] A: Yes.  
 [20] Q: Is it your evidence that Mr Lazenby did commit Shell,  
 [21] then, to make payments in respect of what ultimately  
 [22] became the Shell Smart Scheme?  
 [23] A: No, it is said that Shell would negotiate.  
 [24] Q: All right. In principle, he agreed that there would be  
 [25] remuneration to be discussed --

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[1] A: If they used our scheme.  
 [2] Q: And you are saying that that was a matter which was  
 [3] discussed between your side and Andrew Lazenby on 24th  
 [4] November, are you?  
 [5] A: Yes.  
 [6] Q: Right. Could you just look at it from his perspective  
 [7] for a moment? Here he is in 1992. Do you know, from  
 [8] any discovery documents, what was going on in Shell in  
 [9] 1992?  
 [10] A: No, I have not read them.  
 [11] Q: Right. Do you know about Project Hercules?  
 [12] A: No.  
 [13] Q: No?  
 [14] A: I am aware of it.  
 [15] Q: Right.  
 [16] A: The name.  
 [17] Q: You see, in 1993, Project Hercules was developed and  
 [18] progressed within Shell and it matured into the Shell  
 [19] Smart Scheme. Does that tally with what you may have  
 [20] heard from John Donovan?  
 [21] A: Yes.  
 [22] Q: Right. During 1992 work was going on in an earlier  
 [23] phase in relation to that project. This is happening in  
 [24] 1992; all right? Are you following me?  
 [25] A: Yes, I am with you.

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[1] A: Yes.  
 [2] Q: Do you, in fact, then remember carrying anything with  
 [3] you to that meeting? Do you actually remember carrying  
 [4] this letter to the meeting?  
 [5] A: I do not remember specifically carrying the letter to  
 [6] the meeting but I know I would have had a bundle of  
 [7] documents to be taken to the meeting. This obviously  
 [8] would have been one of them.  
 [9] Q: You will have had discussions with John Donovan on the  
 [10] train on the way down as to how you would play the  
 [11] meeting and what you were going to discuss at the  
 [12] meeting, would you not?  
 [13] A: Yes.  
 [14] Q: That is normal common sense planning, is it not?  
 [15] A: Yes.  
 [16] Q: Right. Concentrate now. In those discussions on the  
 [17] train on the way down, do you have any recollection of  
 [18] John Donovan saying to you, "He has been in touch with  
 [19] me and he wants to have a copy of the Sainsbury's  
 [20] letter"?  
 [21] A: No, I do not recall that.  
 [22] Q: It was not in fact you then that carried the letter down  
 [23] to the meeting at all, was it?  
 [24] A: I may well have done, if I had been given a bundle for  
 [25] the presentation. We would each probably carry

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[1] Q: Looking at this meeting from Andrew Lazenby's  
 [2] perspective, he, Andrew Lazenby, is involved in  
 [3] preparatory work which is going in due course to mature  
 [4] into the Shell Smart Scheme and yet, according to your  
 [5] note, he is committing Shell to an agreement in  
 [6] principle to pay money to your company for the use of  
 [7] that concept?  
 [8] A: If that is the definition of it - if that is ultimately  
 [9] the legal definition of it, then yes, that is the case.  
 [10] I do not attach such importance to it as that.  
 [11] Q: Tell me why you do not?  
 [12] A: Because I think the discussions were much looser than  
 [13] that.  
 [14] Q: How loose is loose?  
 [15] A: It may or may not happen, therefore no importance is  
 [16] attached to it, but if indeed we are interested in  
 [17] taking this one to its ultimate end, then obviously,  
 [18] when the time is right, negotiations will take place in  
 [19] terms of payment and overall distribution, perhaps.  
 [20] Q: Do you remember your journey down on the train to this  
 [21] meeting?  
 [22] A: No, I certainly do not.  
 [23] Q: You are very adamant that you do not remember the  
 [24] journey down and yet you remember some aspects of the  
 [25] meeting?

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[1] duplicates. That would be normal for all  
 [2] presentations. We would have copies of all documents  
 [3] for all those persons at the meeting, including  
 [4] ourselves.  
 [5] Q: If I have the picture correct, you are indicating that  
 [6] it was intended that you would go to a meeting, that  
 [7] there would be tabled at that meeting a copy of this  
 [8] letter, that this letter would be read through at that  
 [9] meeting and that there would then be a discussion  
 [10] between those present at the meeting about the contents  
 [11] of it?  
 [12] A: Yes.  
 [13] Q: That must have been, if it happened, the subject of  
 [14] discussion between yourself and John Donovan beforehand,  
 [15] must it not?  
 [16] A: At some point beforehand, certainly.  
 [17] Q: At what point beforehand, if not on the train journey on  
 [18] the way down?  
 [19] A: I am not sure, when it was put together.  
 [20] Q: When what was put together?  
 [21] A: The presentation, the documents for the presentation and  
 [22] the need for documents for the presentation.  
 [23] Q: Right. So there must have been some discussion of what  
 [24] you were going to do with this letter at that meeting.  
 [25] There must have been?

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[1] A: Probably, if I look at it logically, I probably would  
 [2] not have had contact with John the day or days before  
 [3] that. I would probably be making a special journey to  
 [4] go into Shell with this and I believe probably what  
 [5] happened is that John would hand me my bundle of copies  
 [6] for the meeting.  
 [7] Q: All right. You will, of course, have read that bundle  
 [8] because there is no point in going to any meeting  
 [9] without reading the papers in advance?  
 [10] A: I probably would have done that in the train on the way  
 [11] down.  
 [12] Q: You would have said to him, "Hey, John, what is this  
 [13] letter to Sainsbury's doing in this file I am reading?"  
 [14] A: Probably.  
 [15] Q: You would be bound to, would you not?  
 [16] A: If I was not aware of what it was doing there, yes.  
 [17] Q: How else are you going to be aware it was there? It is  
 [18] not being put there by you at your request. It is being  
 [19] put there by John Donovan at his request, is it not?  
 [20] A: Yes.  
 [21] Q: Since are you are going to go to a meeting and you will  
 [22] want to be properly briefed in relation to it, you are  
 [23] going to say to him, "John, what is this letter doing in  
 [24] this file?"  
 [25] A: Yes.

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[1] document was not tabled at that meeting and that there  
 [2] were no discussions of these financial arrangements;  
 [3] what do you say?  
 [4] A: I say, as far as I am concerned it definitely happened.  
 [5] Q: I put it to you that it was not. You are not able to  
 [6] say for certain that it was, are you?  
 [7] A: Yes, because I have this as evidence of the date that  
 [8] this was -- that the notes was made and the letter was  
 [9] presented.  
 [10] Q: What you are saying is that your only basis for saying  
 [11] that it was put forward is your own note in the bottom  
 [12] right-hand corner?  
 [13] A: Yes.  
 [14] Q: And you do not have an actual recollection of putting  
 [15] pen to paper to make that note, do you?  
 [16] A: No.  
 [17] Q: Therefore, you cannot say with any certainty when the  
 [18] document was put before Mr Lazenby, if it ever was?  
 [19] A: Yes, on 24th November, which is why I made the note on  
 [20] it.  
 [21] Q: You understand that I take a different position on  
 [22] behalf of Shell. My position to you is that this letter  
 [23] was not produced at this meeting. You understand that?  
 [24] A: I understand that, yes.  
 [25] Q: Insofar as what was discussed at the meeting, do you

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[1] Q: What explanation did you get?  
 [2] A: I do not recall. He may have said, "I am going to  
 [3] present that to Andrew for X, Y, Z reason". I have no  
 [4] recollection at this time.  
 [5] Q: It must follow from that -- does it not seem logical to  
 [6] you then, if in fact you had no recollection of it, it  
 [7] is because you were not going to have a speaking part in  
 [8] relation to that letter at that meeting?  
 [9] A: Probably.  
 [10] Q: The likelihood is, on the evidence that you are giving,  
 [11] that you did not have a speaking part in relation to  
 [12] this letter and that John Donovan did?  
 [13] A: Very possibly, yes.  
 [14] Q: So as between the two of you, he would have been the  
 [15] person primarily concerned with this aspect of that  
 [16] meeting; is that correct?  
 [17] A: Yes.  
 [18] Q: Are you aware that Mr Lazenby has no recollection of  
 [19] this document being produced to him at that meeting?  
 [20] A: I understand that, yes.  
 [21] Q: Are you aware that he has no recollection of any royalty  
 [22] arrangements of the kind noted in this document on  
 [23] page 450/B?  
 [24] A: I am aware that he said that.  
 [25] Q: I am going to put it to you now that in fact this

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[1] have any recollection of what other matters were  
 [2] discussed at the meeting?  
 [3] A: No, very little at all.  
 [4] Q: You say "very little" and you have said "very little"  
 [5] quite a few times. What little do you remember?  
 [6] A: That we presented the Hollywood Collection.  
 [7] Q: Yes.  
 [8] A: That we presented a second promotion; that we had some  
 [9] general discussion about promotions in general of  
 [10] different types, updating on the previous meeting.  
 [11] Q: The previous meeting being which?  
 [12] A: The one that was held in -- there were three meetings.  
 [13] The second meeting that we had.  
 [14] Q: You had an updating on the June meeting?  
 [15] A: Yes.  
 [16] Q: Right. Now, do you remember the May meeting?  
 [17] A: Yes.  
 [18] Q: How clearly do you remember the May meeting?  
 [19] A: Not very, but there are a few highlights that I recall.  
 [20] Q: Give us the highlights.  
 [21] A: Opening the meeting and tabling a handful of promotional  
 [22] game cards to Andrew Lazenby.  
 [23] Q: Yes.  
 [24] A: Him playing the game cards, as they are irresistible,  
 [25] some time going on, bringing the meeting back to order

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[1] so that we got back into the purpose of coming and then  
 [2] making the presentations that we had for that day.  
 [3] Q: Yes?  
 [4] A: I would need to remind myself of what those were.  
 [5] Q: Do you have any recollection of what those were?  
 [6] A: That probably was the Nintendo. No, the first meeting  
 [7] was the promotions -- National Promotions and it was,  
 [8] from what I recall, a raft of a few promotions,  
 [9] promotional ideas, and was being put in as a "test the  
 [10] water".  
 [11] Q: This was the first occasion on which you had ever met  
 [12] Andrew Lazenby, was it not?  
 [13] A: Correct, yes.  
 [14] Q: He was the new man, he was the National Promotions  
 [15] Manager and you wanted to make a presentation that you  
 [16] hoped would be effective to him?  
 [17] A: Yes.  
 [18] Q: That is right, is it not? In making that presentation,  
 [19] was there any discussion of any earlier matters that you  
 [20] claimed to have discussed with Paul King?  
 [21] A: I have a very, very loose recollection that we covered a  
 [22] lot of old ground, if you like. That was our history --  
 [23] explaining to Mr Lazenby our history with Shell, of the  
 [24] work that we carried out for Shell and what was  
 [25] available.

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[1] affirmatively.  
 [2] For the moment, I would like you to take volume E2  
 [3] and turn to page 973, please. (Pause). Do you have  
 [4] 973?  
 [5] A: Sorry, I thought you said 972. Yes, I have that.  
 [6] Q: It says:  
 [7] "Strictly confidential, proposal for National  
 [8] Promotion activity."  
 [9] And in the bottom left-hand corner it says:  
 [10] "12th May 1992."  
 [11] A: Yes.  
 [12] Q: We have the same document. Good. When was the last  
 [13] time you saw this document?  
 [14] A: When I produced a witness statement.  
 [15] Q: Right. Turning into it, the handwriting at the top of  
 [16] 975 and the bottom of 975, is that yours?  
 [17] A: Yes.  
 [18] Q: Look through it and tell me whether there is any  
 [19] handwriting in there that is not yours. I think it is  
 [20] all yours, but you can tell me otherwise.  
 [21] A: Through the entire proposal?  
 [22] Q: Pardon? I cannot hear you.  
 [23] A: Are you suggesting through the entire proposal or just  
 [24] that page?  
 [25] Q: I will do it with you. On page 975, that is your

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[1] Q: But, as far as I can tell, you did not discuss, did you,  
 [2] any communications you may have had, in particular, with  
 [3] Paul King on any particular proposals? You were going  
 [4] there to present the ones for which you had a written  
 [5] brief?  
 [6] A: Yes.  
 [7] Q: That is right. Now, let us see if I can trace for you  
 [8] the written brief. If you take volume E2.  
 [9] MR JUSTICE LADDIE: Just before we do that, have you  
 [10] finished with 450/A?  
 [11] MR HOBBS: Yes, I have.  
 [12] MR JUSTICE LADDIE: Just before you do so, it seems to me  
 [13] that there are a number of possibilities. You have put  
 [14] to Mr Donovan a certain position that your clients take  
 [15] in relation to that letter --  
 [16] MR HOBBS: Yes.  
 [17] MR JUSTICE LADDIE: -- as to its proper date and as to how  
 [18] it came to be written. You have cross-examined this  
 [19] witness as to his recollection of whether or not it was  
 [20] presented at the meeting. There is a certain lack of  
 [21] consistency, it seems to me, between the points that you  
 [22] are putting to the two witnesses on a critical issue.  
 [23] MR HOBBS: I have not finished, because 450/A is a different  
 [24] version of the letter which precedes it, and I am going  
 [25] back to that. That is why I answered your Lordship

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[1] handwriting?  
 [2] A: Correct.  
 [3] Q: The first proposal in the text there is Megamatch; do  
 [4] you see that?  
 [5] A: Yes, on page 975.  
 [6] Q: That is it. Then there is a graphic on 976, and that is  
 [7] a Megamatch graphic. We can see that.  
 [8] A: Yes.  
 [9] Q: Then the second of the two proposals discussed at that  
 [10] meeting is on 977 and that is the Shell Treble Chance  
 [11] proposal. Do you remember that one?  
 [12] A: Yes.  
 [13] Q: There is a graphic for that on 978.  
 [14] A: Yes.  
 [15] Q: It looks to me as though, on 979, the Pools coupon prize  
 [16] is all part of the graphic game we have seen on the  
 [17] previous page.  
 [18] A: Yes.  
 [19] Q: Look at the bottom:  
 [20] "AL says soccer theme produced poor results in  
 [21] research."  
 [22] So he is showing negative inclinations in relation  
 [23] to that proposal?  
 [24] A: Yes.  
 [25] Q: Then, on page 980, you have a conclusion paragraph and

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[1] you have:  
 [2] "RGS mentioned multibrand ...", what is that?  
 [3] A: "Multibrand".  
 [4] Q: "...loyalty card scheme presented to Paul King.  
 [5] Andrew Lazenby said Shell could be interested, but at a  
 [6] later date. Will ask Paul for proposal to make sure it  
 [7] is retained for long-term?"  
 [8] A: Yes.  
 [9] Q: Is that your handwriting?  
 [10] A: Yes.  
 [11] Q: Will you have written that note at that meeting?  
 [12] A: Yes, or on the train on the way home.  
 [13] Q: Will you have brought that note to the attention of  
 [14] John Donovan at or shortly after the time you wrote it?  
 [15] A: I think he would have been aware of it at the time and,  
 [16] therefore, probably I would not have made a special note  
 [17] to bring it to his attention.  
 [18] Q: What, you think he would have seen you write the  
 [19] manuscript note on there?  
 [20] A: Possibly.  
 [21] Q: Right. Now, this refers to the multibrand loyalty card  
 [22] scheme presented to Paul King?  
 [23] A: Yes.  
 [24] Q: No mention there of Sainsbury's proposals or anything of  
 [25] that kind, is there?

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[1] A: No, I think not.  
 [2] Q: You think not. Right. Turning, therefore, to page 981  
 [3] for a moment -- are you with me? 981.  
 [4] A: Yes.  
 [5] Q: This is a --  
 [6] A: Oh. I am not sure.  
 [7] Q: What are you not sure about?  
 [8] A: What is 981? Okay, I have found it.  
 [9] Q: It should be headed "Don Marketing Promotional Games".  
 [10] It is a Don letter, signed by John Donovan, 14th May?  
 [11] A: Yes.  
 [12] Q: This follows on from that meeting in May?  
 [13] A: Yes.  
 [14] Q: "Dear Andrew, Roger Sotherton and I would like to thank  
 [15] you for the time you gave to our presentation. With  
 [16] your authority, I will now be contacting the various  
 [17] potential partners we discussed in relation to the  
 [18] multibrand proposal. I will supply them with outline  
 [19] proposals, plus invitations to attend exploratory  
 [20] discussions at Shell-Mex House in June as per  
 [21] instructions."  
 [22] A: Yes.  
 [23] Q: Do you remember what that is about?  
 [24] A: Yes.  
 [25] Q: Tell me.

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[1] A: Not within the notes that I have written.  
 [2] Q: No. There was not in fact any discussion about the  
 [3] Sainsbury's communications or correspondence at this  
 [4] meeting at all, was there?  
 [5] A: Not that I have noted.  
 [6] Q: No. If there had been, you would have noted it, would  
 [7] you not?  
 [8] A: Probably, if there was any significance in it, yes.  
 [9] Q: You see, you did not go to this meeting with any  
 [10] Sainsbury's letters or anything of that kind  
 [11] supplementing the written proposal, did you?  
 [12] A: It seems not.  
 [13] Q: No. If there had been a requirement to follow the  
 [14] meeting up with any Sainsbury's material, that is  
 [15] something that would have been noted down on this  
 [16] document, would it not?  
 [17] A: Not necessarily, but probably.  
 [18] Q: You would have --  
 [19] A: Sometimes I had separate notes. Action notes were kept  
 [20] to one side and notes for file would be written into  
 [21] something like this.  
 [22] Q: At this meeting, the May meeting that we are discussing,  
 [23] where these proposals were put, can we agree that there  
 [24] was no discussion of Sainsbury's communications between  
 [25] Don Marketing and Sainsbury's?

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[1] A: That follows on from a note I have made here on  
 [2] page 975.  
 [3] Q: Yes.  
 [4] A: "JAD to contact Woolworth, Safeway, Little Chef, Sun."  
 [5] Q: If you care to just keep a finger in 981 and go to the  
 [6] preceding page, 980/C --  
 [7] A: Yes.  
 [8] Q: -- that is Andrew Lazenby's note, that is his  
 [9] handwriting?  
 [10] A: Yes.  
 [11] Q: His second bullet point at the bottom:  
 [12] "They to develop Megamatch to named partners."  
 [13] All right? "They" meaning your side, Don:  
 [14] "They to develop Megamatch to named partners".  
 [15] A: I have it.  
 [16] Q: There are three bullet points at the bottom.  
 [17] A: I cannot read the second but last word.  
 [18] Q: The first is "Reconvened week commencing 1st June". The  
 [19] second one is "They to develop Megamatch to named  
 [20] partners".  
 [21] A: It was the word "named" that I could not read.  
 [22] Q: Okay. The third is "AJ Lazenby to approve" --  
 [23] approve -- "competitions". Looking then on page 981  
 [24] again, the first paragraph accords with your  
 [25] recollection as to what the outcome of the meeting was,

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[1] which was that you were going to go on and develop the  
 [2] Megamatch proposal to a number of named retailers?  
 [3] A: Yes.  
 [4] Q: And you were going to reconvene in June, as per  
 [5] instructions. There are going to be exploratory  
 [6] discussions in June. That is noted in the letter of  
 [7] 14th May. Now, I will take you on. On page 981, there  
 [8] is the paragraph which says:  
 [9] "We also noted your interest in the related  
 [10] multibrand loyalty card proposal to Paul King, dated  
 [11] 23rd October 1989 and I enclose a copy of the proposal  
 [12] for your further information. Please read Concept  
 [13] Four. I am glad you agree that the idea has sufficient  
 [14] merit to be retained on file for Shell's further  
 [15] consideration at an appropriate time in the future."  
 [16] A: Mmm.  
 [17] Q: If I say Concept Four, do you know what I am talking  
 [18] about?  
 [19] A: Yes.  
 [20] Q: You sound hesitant. Therefore, I must make it clear to  
 [21] you what Concept Four is. Leave that bundle open where  
 [22] it is and take volume E1. Are you with me?  
 [23] A: I have that.  
 [24] Q: In E1 I would like you to turn to the page which carries  
 [25] the number 345. You see the heading at the top on 345

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[1] "Concept Four; A Multibrand Loyalty Programme"?  
 [2] A: Yes.  
 [3] Q: This is occurring in a longer document, and the longer  
 [4] document begins on page 331. So if you want to turn  
 [5] back and see the front sheet.  
 [6] A: Yes.  
 [7] Q: All right? From where I am standing it is looking as  
 [8] though this is not a document you are very familiar  
 [9] with. Are you familiar with this document?  
 [10] A: Not very familiar, no. I do remember it.  
 [11] Q: How well do you remember it?  
 [12] A: Quite well.  
 [13] Q: Quite well?  
 [14] A: Yes. I was involved in the game mechanics that were  
 [15] produced for the Disneytime game, certainly the  
 [16] Monte Carlo game.  
 [17] Q: Okay. You remember it quite well and Concept Four,  
 [18] which is on page 345?  
 [19] A: Yes.  
 [20] Q: First of all, without looking at the text, what is your  
 [21] recollection of what Concept Four was?  
 [22] A: I would need to read this --  
 [23] Q: Is that because you have no recollection of what --  
 [24] A: No.  
 [25] Q: You cannot remember what Concept Four was?

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[1] A: Not at this point, no.  
 [2] Q: It is so revolutionary you cannot remember it?  
 [3] A: No, I do not know what Concept Four refers to. If I saw  
 [4] the content of it --  
 [5] Q: Have a look then at the text on page 345 and see whether  
 [6] it comes back to you.  
 [7] A: I now know clearly what it refers to.  
 [8] Q: What was your difficulty of recollection just now?  
 [9] A: Just the fact it was entitled "Concept Four".  
 [10] Q: Now that I have refreshed your memory as to what Concept  
 [11] Four is, you should have still open in the other bundle  
 [12] page 981?  
 [13] A: Yes.  
 [14] Q: I will read to you again that paragraph:  
 [15] "We also noted your interest in the related  
 [16] multibrand loyalty card proposal to Paul King dated  
 [17] 23rd October 1989 and I enclose a copy of the proposal  
 [18] for your further information. Please read Concept  
 [19] Four. I am glad you agree that the idea has sufficient  
 [20] merit to be retained on file for Shell's further  
 [21] consideration at an appropriate time in the future."  
 [22] Do you remember any discussion of Concept Four at  
 [23] the meeting on 12th May?  
 [24] A: At this time, no, I do not recall.  
 [25] Q: At all events, what is being sent under cover of this

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[1] letter of 14th May 1992 is that document, Concept Four,  
 [2] which we have open in the other file. What I want to  
 [3] just be sure that you and I agree on is this: there was  
 [4] no discussion at the May meeting in 1992 of  
 [5] communications with Sainsbury's or the contents of  
 [6] communications with Sainsbury's which may have taken  
 [7] place earlier. There was no discussion of that, was  
 [8] there?  
 [9] A: No, I do not think so.  
 [10] Q: Right. The question I want to ask you is: do you  
 [11] remember anything about Concept Four being discussed by  
 [12] John Donovan at the meeting on 12th May?  
 [13] A: No, I do not.  
 [14] Q: Are you able to recollect that, if there was discussion,  
 [15] it was not you who was discussing it?  
 [16] A: Yes, I would say so.  
 [17] Q: Because, you see, if you had gone to the presentation  
 [18] together and you were going to be the person who  
 [19] discussed it, it is the kind of thing you would remember  
 [20] about the meeting, is it not?  
 [21] A: Maybe.  
 [22] Q: You certainly have no recollection of suddenly, during  
 [23] the course of the meeting, raising the subject of what  
 [24] we have just seen as Concept Four?  
 [25] A: No, I do not recall.

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